THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
NOV - 6 2013
S.C. Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 09-CP-23-0741

FREDDIE EUGENE OWENS ..... Petitioner,

v.

STATE OF SOUTH CAROLINA ..... Respondent.

APPENDIX
VOLUME VII OF VIII

EMILY C. PAAVOLA
Death Penalty Resource & Defense Center
900 Elmwood Ave., Suite 101
Columbia, SC 29201
(803)765-1044

KEIR M. WEYBLE
Cornell Law School
112 Myron Taylor Hall
Ithaca, New York 14853
(607)255-1030

Counsel for Petitioner

J. ANTHONY MABRY
Office of the Attorney General
P.O. Box 11549
Columba, SC 29211
(803) 734-4037

Counsel for Respondent

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[illegible] RDVD BLED 0242 272768 153548.7

11743

[illegible] BLOOD 272768
U.S. INQUIRY OF BLED OB-1 FILES
DOT-(SDZ2401ED PUR-C
[illegible]-TYPE(S) ALEX BERNARD
FOR [illegible] MAD-E DOB:[illegible]

UNIT 07/27/83 TIME-15:29 PAGE-01 OF 01
END-SD2242ISD PERRY R & B CENTER
BLOOD IDENT RESPONSE TO IQ-S INQUIRY
- A RESPONSE CONTAINS POSSIBLE HITS ONLY AND DOES NOT IMPLY A POSITIVE
MATCH WITH THE INDIVIDUAL IN QUESTION

NAME-[illegible] ALEX BERNARD SEX-M RACE-B
HGT-507 WGT-[illegible] EYES-BRO HAIR-BLK SKIN- SOC-XX
FBI: HENRY-[illegible] [illegible] NCIC-[illegible]
SID-SD2225176B FBI-[illegible]
PLACE OF BIRTH UNKNOWN

[illegible]

[illegible]

[illegible]

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

REQUEST FOR PROTECTIVE CUSTODY

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF S. C.)

PERSONALLY APPEARED before me, Alex Bernard Mason, South Carolina Department of Corrections Number 117433, who upon oath deposes and says:

I am an inmate at Northside Correctional Center, South Carolina Department of Corrections. The following is my statement regarding my request for protective custody.

As of the 1st day of August, 19 83, I am of the belief that my safety and physical well-being are in jeopardy if I remain in the general population of this institution. I further understand that the South Carolina Department of Corrections and the _____ cannot provide me maximum protection unless I request to be placed in protective custody. Therefore, I am requesting as of this date that I be placed in protective custody at this institution. I understand that this transfer is a voluntary action on my part and is in no way intended to be punitive in nature but is accomplished for my benefit.

I have this day been provided a copy of this affidavit and hereby acknowledge receipt thereof.

Alex Mason
(Affiant's Signature)

Sworn to and subscribed
before me this 1st day of
August, 1978. 83
Frances B. Tipton (L.S.)
Notary Public for South Carolina

My Commission Expires: 10-24-90

DISTRIBUTION

Warden Concerned (Original)
Inmate
Original Record
Warden's Record

SCDC 19-92 (Sept 78)

...IAL CLASSIFICATION AND ASSIGNME...

7-27-83
Date

Name Mason, Alex Bernard SCDC# 117433

Custody Assignment: AII

Transfer: NCC
Institution

Comments: Assignment Based on Type + Length of Sentence

Recommendations: 1- Job Assign

J

J. Haines
Classification Committee Chairperson

7-28-83
Date

cc: Warden's Record

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
R & E CENTERS
MEDICAL EXAMINATION DATE: 7/29/83

Mr.
Mrs.
Miss _____ SCDC # 111433 SS # 251-31-3153
Last First Middle

Next of kin _____ Address _____ Phone _____

POB _____ DOE _____ Age _____ Race _____ Sex _____ Marital Status _____

Family Physician _____ Address _____ Phone _____

Medical History:

CHILDHOOD DISEASES: [illegible]

ALLERGIES: [illegible]

OPERATIONS OR FRACTURES: [illegible]

GUNSHOT OR STAB WOUNDS: [illegible]

USE OF DRUGS OR ALCOHOL: [illegible]

FAMILY HISTORY OF T.B. OR DIABETES: [illegible]

FREE BLEEDER: [illegible]

GONORRHEA OR SYPHILIS: [illegible]

COMPLAINTS: [illegible]

PREVIOUS NUMBER: _____

The above history is true to the best of my knowledge. _____
Inmate's Signature

Laboratory:
Urinalysis: Specific Gravity _____ Albumen _____ Sugar _____ Mic [illegible]

Blood Serology: Result _____ PPD _____ mm; PPD .1cc LD _____ DTO .5cc IM [illegible]

GC Culture: _____

Physical Examination:
Height _____ ft. [illegible] in. Weight _____ Temperature _____ Pulse _____ Resp _____

Blood Pressure _____/_____ Vision (Distant) without glasses: R.20/ _____ L.20/ _____

With glasses: R.20/ _____ L.20/ _____

CERTIFICATION OF INMATE ORIENTATION

This is to certify that I, Freddie Massey, SCDC # 171476 have completed the orientation program at PREA
(Assigned Institution/Center)

advising me of institutional rules and regulations, staff organization and programs as required by SCDC Policy 1200.3-1, and SCDC Policy 1200.5.

DATE: 12/15/93

[signature] 171476
Inmate's Signature SCDC #

D Bryant
Certifying Official's Signature

c.c. Institutional Record
Central Records Office

SCDC 1869 (August 1987)

2947

84-GS-23 ~~3703~~ AWD

The State of South Carolina

County of ENTERED GREENVILLE

COURT OF GENERAL SESSIONS

July Term, 19 84

B007678 GPD 83-106748

THE STATE

GUILTY A+P 5yrs + Ag. Nat VS.

ALEX BERNARD MASON B/M

1-5-63

D.L None

5 Lee ST. G'ville 29607

Steve Henry, Ap. Atty

013

INDICTMENT FOR

Aggravated Assault and Battery

ASSESSMENT WAIVED

TRUE BILL

Foreman of Grand Jury

McCAW PRINTERS, COLUMBIA, S. C. 29205

Witnesses

A. K. Morton
GPD
4/20/84

Verdict

FIND THE DEFENDANT GUILTY OF ASSAULT AND BATTERY HIGH AND AGGRAVATED NATURE

Foreman

#70

11433

1984 CHCI

SRPC I.123555 MASON · ALEX BERNARD LOC:0194
ENTER NEXT TRANSACTION ---- - ---
00000000

TOTAL SENTENCE
PROJ SENT. EXPIRES DATES:
WITH GOODTIME(GT) & EWC
WITH GT, NO EWC
FULL TIME (NO GT/EWC)
PROJ. INIT. EWC. PAR. ELG. DTE
PAROLE ELIG. CATEGORY
GOOD-TIME CYCLE DATE
TOTAL GOOD TIME EARNED
TOTAL EWC EARNED
EXTRA EARNED CREDIT
SERVICE TIME EARNED
WORK-RELEASE ELIG. DATE
120-DAY PRE-RELEASE DATE
NEXT PAROLE HEARING DATE

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

INMATE NO: 123555 NAME: ALEX BERNARD MASON

*** DATA IS CURRENT AS OF: 11/19/84***

CUSTODY LEVEL: C CLOSE SENTENCE: 8 YRS 0 MON 0 DYS

RACE: BLACK SENTENCE START DATE: 11/13/84

	ONE	TWO	THREE	FOUR	FI
SEX: MALE PROBATION	YRS=00	YRS=00	YRS=00	YRS=00	YRS=0

DATE OF BIRTH: ADMISSION DATE: 11/16/84

PLACE OF BIRTH: SOUTH CAROLINA JAIL TIME: 0001

U.S. CITIZEN: YES MEDICAL STATUS: NOT ON FILE

RELIGIOUS PREF: BAPTIST-GENERAL FBI NUMBER: NOT ON FILE

COLOR OF EYES: BROWN NCIC CLASS FPC:1102101202060308130 9

HAIR COLOR: BLACK HENRY CLASS FPC: 11 S 1U I TI8

SKIN TONE: MEDIUM BROWN HENRY CLASS(CONT): S 1U I I1

BODY BUILD: MEDIUM DRIVER LICENSE # AND STATE: -9056215

HEIGHT: 5 FT 9 IN SOCIAL SECURITY NUMBER: 251313152

WEIGHT: 138 ENC PLACEMENT LEVEL: NOT ON FILE

BLOOD TYPE: NOT ON FILE WRK RLSE ELIG: NOT ON FILE

MARITAL STATUS: COMMON LAW PAROLE ELIGIBILITY : / /

MARKS AND SCARS:

CONVICTIONS: ADULT: JUVENILE: PRIOR ESCAPES/AWOLS:

COMMITMENT INFORMATION

CURRENT OFFENSE	SENTENCE YRS	MONS	DYS.	CHAR	CNTS	YOR	CONC WITH	CONS TO	SUSP	COMM CNTY
1 ASSL&BATTERY-HIGH&AGG. NAT	8	0	0	F	1				00	GREENVILLE

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

INMATE NO: 123555 NAME: ALEX BERNARD MASON

PERSON TO NOTIFY IN EMERGENCY: HELEN MASON

ADDRESS OF ABOVE:

STREET: UNKNOWN
CITY: GREENVILLE, PHONE: 803 2532589
STATE: SOUTH CAROLINA ZIP CODE:

RELATIONSHIP OF ABOVE: MOTHER

HOME ADDRESS, IF DIFFERENT FROM ABOVE:

ADDRESS AT TIME OF ARREST:

STREET:
CITY: GREENVILLE,
STATE: SOUTH CAROLINA ZIP CODE:

PERSON LIVING WITH AT ARREST: DORA MASON

RELATIONSHIP OF ABOVE: COMMON-LAW WIFE

ALIAS NAMES:

ALEX BERNARD MASON
BERNARD MASON

ACCOMPLICE NAMES:

MARK CARSON

CAUTION	AGENCY	COUNTY	STATE	OFFENS

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

INMATE NO: 123555 NAME: ALEX BERNARD MASON

FAMILY INFO: KIN ORDER: SPOUSE 1ST, CHILDREN, MOTHER, FATHER, ETC>

NAME:	JOSEPH MASON	RELATIONSHIP:BROTHER
STREET ADDR:	STERLING COMMUNITY	AGE: 20
CITY:	GREENVILLE,	
STATE:	SOUTH CAROLINA	
NAME:	JAMES CHARLES MASON	RELATIONSHIP:BROTHER
STREET ADDR:	GREEN AVENUE	AGE: 22
CITY:	GREENVILLE,	
STATE:	SOUTH CAROLINA	
NAME:	SIDNEY MASON	RELATIONSHIP:BROTHER
STREET ADDR:	PERRY AVENUE	AGE: 23
CITY:	GREENVILLE,	
STATE:	SOUTH CAROLINA	
NAME:	LARRY KENNETH MASON	RELATIONSHIP:BROTHER
STREET ADDR:	NICHOLTOWN	AGE: 24
CITY:	GREENVILLE,	
STATE:	SOUTH CAROLINA	
NAME:	JORICE MASON	RELATIONSHIP:SISTER
STREET ADDR:	GREEN AVENUE	AGE: 19
CITY:	GREENVILLE,	
STATE:	SOUTH CAROLINA	

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

INMATE NO: 123555 NAME: ALEX BERNARD MASON

EMPLOYMENT HIST

EMPLOYER: COLONIAL DRUG STORE
STREET ADDR: PLEASANTBURG SHP C
CITY: GREENVILLE
STATE: SOUTH CAROLINA
OCCUPATION: MISCELLANEOUS OSS
START DATE: 02/01/84
END DATE: 02/14/84

EMPLOYER: REECE CONSTRUCTION COMPANY
STREET ADDR:
CITY: GREENVILLE
STATE: SOUTH CAROLINA
OCCUPATION: CONSTRUCT OCC
START DATE: 03/01/84
END DATE: 11/14/84



PCI 11-16.4y

83-GS-23 1967 SGY

Witnesses

S. T. Johnson
Sheriff's Dept.
2/13/83

Verdict

Foreman

The State of South Carolina

County of GREENVILLE

COURT OF GENERAL SESSIONS

June Term, 19 83

6 W#A 823111 C# 83-15301

PLEAD GUILTY

THE STATE

vs.

ALEX BERNARD MASON B/M

490 Stevenson St
Greenville SC
DOB:
SSN -
DLN - None
Clay Walker - appt Owens Cir

013

INDICTMENT FOR

Aggravated Assault and Battery

TRUE BILL

Ronnie L Pope

FOREMAN GRAND JURY

Foreman of Grand Jury

McCAW PRINTERS COLUMBIA

$20 ASSESSMENT PAID

ARRESTED

NOW COMES THE DEFENDANT Alex Bernard Mason

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
GREENLER SUMMARY

SID NO: 123555 NAME: ALEX ELEMARL PASON

**********DATA IS CORRECT AS OF: 12/18/84**********

CUSTODY LEVEL>: A TRUSTY
SENTENCE---------->: 11 YRS 0 MOS 0 DYS
RACE---------->: BLACK
SENTENCE START DATE: 11/13/84
SEX---------->: MALE
PROBATION: NO PROBATIONS ON FILE
BIRTH DATE--->: 01/05/63
RELEASE DATE---->: 11/16/84
BIRTH PLACE-->: SOUTH CAROLINA
JAIL TIME---------->: 0001
U.S.CITIZEN-->: YES
MEDICAL STATUS---->: NO PHYSICAL LIMITATIONS
RELIGION----->: BAPTIST-GENERAL
FBI NUMBER-------->: NONE ON FILE
EYE COLOR---->: BROWN
NCIC CLASS PEC---->: 11021012066663061309
HAIR COLOR--->: BLACK
HENRY CLASS PEC--->: 11 S 10 I 118
SKIN TONE---->: MEDIUM BROWN
F C PEC(CONT)----->: S 10 I 11
BUILD--->: MEDIUM
DRIVER LIC # & ST->: 9066215 SC
HGT-------->: 5 FT 5 IN
SOCIAL SECURITY NUM: 251313153
WGT-------->: 136
EMC PLACEMENT LEVEL: NOT ON FILE
SCC TYPE--->: NOT ON FILE
WRK RLSE ELIG---->: 12/12/86

MARITAL STAT->: COMMON LAW
PAROLE ELIGIBILITY>: 07/15/86

MKS/SCARS-->: NONE ON CORE FILE
***-->ADDITIONAL MARKS & SCARS ON BACK PAGE

	ADULT	JUVENILE
CONVICTIONS-->:	00	00

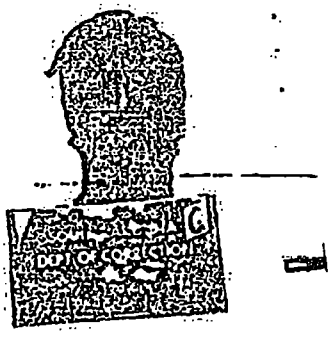
PRIOR ESCAPES/AWOLS: 00

**********COMMITMENT INFORMATION**********

CURRENT OFFENSE	SENTENCE YRS	MONS	DYS	CLASS	CNTS	YOA	CONC WITH	CONS TO	SUSP	COMM.CNTY
ASSLT&BATTERY-HIGH&AGG.NAT	8	0	0	E	1				00	GREENVILLE
CCR ASSAULT & BATTERY	3	0	0	E	1			1	00	GREENVILLE

REMARKS: Sentenced to Offense #2 on 11-14-84. CS

DCI



84-GS-23 ~~2703~~ AWD

Witnesses

A. K. Morton
GPD
4/20/84

Verdict

WE FIND THE DEFENDANT
GUILTY OF ASSAULT AND BATTERY
OF HIGH AND AGGRAVATED
NATURE

Foreman

The State of South Carolina

County of ENTERED GREENVILLE COMPUTER

COURT OF GENERAL SESSIONS

July Term, 19 84

B007678 GPD 83-106748

Appeal Set

THE STATE

GUILTY A+B of 3rd deg. Amd

vs.

A+B of 3rd deg. ALEX BERNARD MASON B/M

D.L. None
5 Lee ST. G'ville 29607

Steve Henry, Asp. Atty

013

INDICTMENT FOR

Aggravated Assault and Battery

ASSESSMENT WAIVED

TRUE BILL

FOREMAN GRAND JURY
Foreman of Grand Jury

McCAW PRINTERS, COLUMBIA, S. C. 29205

#70

Pursuant to remand of this matter by The Honorable Supreme Court of South Carolina for reconsideration of sentence Defendant appeared before the Court May 8, 1985, accompanied by his attorney and the State was represented by counsel of record with hearing, [illegible] in the record having

Inmate Name: Alex Mason SCDC# 167838

Location of Infraction: Dorm F-4 Dailyyard Date and Time of Infraction: 06-17-92 1 p.m. am/pm

Text: On the above date and approximate time, I, CPL K. Robinson, observed Inmate Alex Mason, SCDC# 167838, in his kitchen whites waiting at the 100 wing door for the institutional count to clear so he could report to work in the cafeteria. The normal procedure is to allow the cooks to report to work when the first count is cleared for the dorm of the month. (The cooks and the dorm of the month is released first and later the remainder of the population is released). Mr. Seigler and I both saw Inmate Mason wearing jeans at 4:00 p.m., in the canteen line on 06-16-92. I/M Mason asked me today on 06-17-92, to "hurry up and open the door when the count clears so I can leave." At this time I/M Mason was wearing his kitchen whites. I contacted FSS Merritt and asked if I/M Mason reported to work for the afternoon shift. FSS Merritt stated, "No, his day ends at 12:00 in the afternoon. LT Waddle was notified when I/M Mason had left the dorm. He was wearing his kitchen whites when he left the dorm after the first count cleared for the dorm of the month only. Inmates are not allowed per cafeteria policy to wear their kitchen whites except to work and back. I/M Mason was found by LT Waddle sitting by the

I attest this narrative is an objective, accurate and true representation of the facts. (CONTINUED)

CPL K. Robinson Signature of Accuser 6/23/92 Date

Witnesses: W. Seigler, FSS Merritt

Evidence:

Disposition of Evidence:

INSTRUCTIONS TO THE ACCUSED INMATE

You have been accused of violating South Carolina Department of Corrections Rules for Inmates as set out in the Inmate Guide. You are requested to sign below ACKNOWLEDGING YOU RECEIVED A COPY OF THE CHARGES. This does not constitute an admission the report is correct and is not an admission of guilt. If you do not sign for receipt, you lose your right to request assistance by an inmate representative in investigating and preparing your case and you lose your right to request your accuser be present at the Adjustment Committee hearing.

____ I do want my accuser present at the hearing.
____ I do not request my accuser to be present at the hearing.

x Alex Mason Signature of Inmate

CHECK ONE
✓ I do wish assistance by an inmate representative
____ I do not wish assistance by an inmate representative.

167433 06-2092 8:00 a.m. SCDC# Date Time am/pm

NOTE to Officer Serving Report of Rules Violations: (See Specific Instructions on Reverse Side)

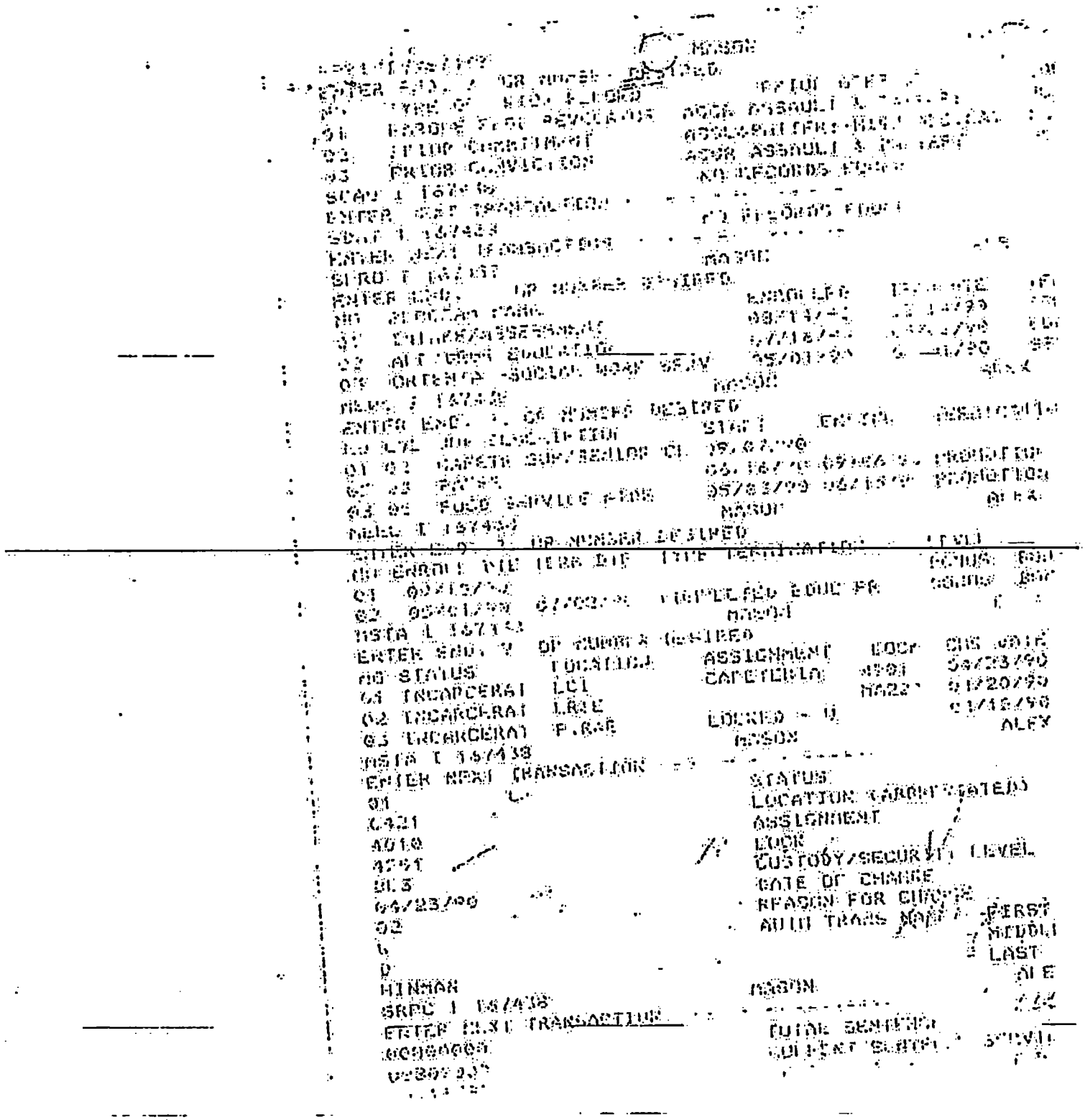
Adjustment Committee Summary

Location: CCI Date: Time: 1:15 p.m. am/pm

Committee Members:

Recorder: Starnes Witnesses:

Disposition: 4.40-Guilty plea accepted. 4.4A-Guilty plea accepted. 4.4B-Guilty plea accepted. The inmate disregarded a standing order which prohibits the wearing of kitchen whites except to and from work. 4.4B-Guilty plea accepted.
4.40-1st Offense- 4.4A-1st Offense-1 month AS/CS and lost 30 days GT; aggravating circumstance: I/M committed fraud by willfully deceiving the DFC in order to obtain an early release to the yard on I/M [illegible] (45 to serve day-for-day); suspose 1 month AS/CS for 4.6I Threatening Conduct from 05/20/92 which was suspended on 05/20/92.
4.40-2nd Offense-15 days [illegible]/92



Location of Infraction: Cafeteria — SCDC#

Date and Time of Infraction: 7/26/91 — 11:50 A.M. am/pm

Text: On the above date and approx. time I, FSD Biles was on duty during the serving of the dinner meal in the cafeteria. I/M Alex Mason came thru the population serving line to eat after being told by me FSD Biles to report back to the ~~serving line~~ cafeteria at serving time so he could perform his job of refilling the salad bar along with two other inmates. Therefore I/M Alex Mason #167438 is being charged with the above listed rule violations.

I attest this narrative is an objective, accurate and true representation of the facts.

Jackie Biles — Signature of Accuser — 7-30-91 — Date

Witnesses:

Evidence:

Disposition of Evidence:

INSTRUCTIONS TO THE ACCUSED INMATE

You have been accused of violating South Carolina Department of Corrections Rules for Inmates as set out in the Inmate Guide. You are requested to sign below ACKNOWLEDGING YOU RECEIVED A COPY OF THE CHARGES. This does not constitute an admission the report is correct and is not an admission of guilt. If you do not sign for receipt, you lose your right to request assistance by an inmate representative in investigating and preparing your case and you lose your right to request your accuser be present at the Adjustment Committee hearing.

AM ✓ ___ I do want my accuser present at the hearing.

___ I do not request my accuser to be present at the hearing.

CHECK ONE

AM ✓ ___ I do wish assistance by an inmate representative

___ I do not wish assistance by an inmate representative.

Alex Mason — Signature of Inmate

167438 — SCDC#

7-30-91 — Date

12:05 ~~AM~~ PM — Time am/pm

NOTE to Officer Serving Report of Rules Violations: (See Specific Instructions on Reverse Side.)

Adjustment Committee Summary

Location: DCI — Date: 8-2-91 — Time: 10:30 am am/pm

Committee Members: Magistrate Hearing

Recorder: Strange — Witnesses:

Disposition: 4.4N-Guilty plea accepted. 4.4N-1st Offense-15 days AS/CS (Suspended).

c/o O.A. file

Spec's Copy

SOUTH CAROLINA
DEPARTMENT OF PROBATION, PAROLE,
AND PARDON SERVICES
COLUMBIA, SC

CERTIFICATE OF PAROLE

KNOW ALL MEN BY THESE PRESENTS:

It having been made to appear to the SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES *that* Mary Lee Mingo

SCDC *No.* 150929 *and* SID *No.* 00203438 *who was convicted of*

Assault & Batty. Of a High & Aggravated Nature *on the* 8th *day of*

August *19* 88 *in the County of* Greenville

is eligible to be paroled, and that there is a reasonable probability that said prisoner WILL REMAIN AT LIBERTY WITHOUT VIOLATING THE LAWS, *and it being the opinion of the said South Carolina Board of Probation, Parole, and Pardon Services that the release of this prisoner is not incompatible with the welfare of society, and it appearing further that the Board is satisfied* Mary Lee Mingo *will not become a public charge on release.*

It is therefore ORDERED *that said prisoner be paroled effective the* 4th *day of* October *19* 89 *pending good behavior under supervision subject to the specific conditions of parole as listed on the reverse side of this Order, until the expiration of his maximum sentence, to wit* April 12, 1993

This parole shall not prevent the delivery of the prisoner to authorities of the Federal Government or of any State otherwise entitled to his custody.

In witness whereof this Certificate bearing the approval of the South Carolina Board of Probation, Parole, and Pardon Services, is issued the 4th *day of* October *19* 89.

By order of:
SOUTH CAROLINA BOARD OF PROBATION,
PAROLE, AND PARDON SERVICES

By: Gracey A Wallace
Commissioner

STATEMENT OF CONDITIONS UNDER WHICH PAROLE IS GRANTED

This Certificate shall not become operative until the following conditions are agreed to by the prisoner. Violation of any of these conditions may result in immediate revocation of parole.

1. I shall report in person within 48 hours of my arrival at my destination to the Supervising Agent under whose supervision I am released.

   My Supervising Agent is:
   Name: Mr. Bobby F. Wood ADDRESS: Greenville, SC

2. I understand that I do not have complete freedom of the community and will restrict my activity to those programs approved by my Supervising Agent. I agree to future modifications of these conditions by duly authorized representatives of the Board as a condition of this release.

3. I shall not change my residence or employment without first procuring the consent of my Supervising Agent.

4. I shall each month, and whenever instructed to by my Supervising Agent, until my final release, make a complete and truthful report to my Supervising Agent.

5. I shall not use controlled substances, except when properly prescribed by a licensed physician.

6. I will not consume alcoholic beverages to excess or visit establishments whose primary business is the dispensation and consumption of alcoholic beverages.

7. I shall avoid injurious habits and shall associate only with law-abiding persons.

8. I shall, in all respects, conduct myself honorably, work diligently at a lawful occupation, and support my dependents, if any, to the best of my ability.

9. I shall refrain from the violation of any Federal, State, or Local penal law, and will contact my supervising agent immediately if arrested or questioned by a law enforcement official.

10. I will not leave the State without authorization and I realize that if I leave the State or my assigned area, I will be considered to have absconded from supervision, and dealt with accordingly. I hereby waive all extradition rights and process and agree to return to South Carolina when directed to by the Board or pursuant to a warrant.

11. I shall not have in my possession or purchase a weapon.

12. I shall promptly and truthfully answer all inquiries directed to me by the Board and my Supervising Agent and allow him/her to visit me at any time in my home, at my employment site or elsewhere, and carry out all instructions he/she gives.

13. I shall pay during my participation in this program, any restitution, fines, or other payments which have been ordered as a part of my sentence whether this order to pay is made prior to or after my release on this program.

14. I shall immediately notify my supervising agent in case of unemployment and/or absenteeism from work and in case of illness or injury.

15. I must submit to a urinalysis test and/or a blood test when requested by my Supervising Agent and I agree that the test results may be used as evidence that I did or did not violate these conditions.

16. I shall pay a supervision fee to the South Carolina Department of Probation, Parole, and Pardon Services of $10 per week while under intensive supervision and $240 per year while under any other level of supervision during parole release.

Additional Conditions:

Must attend a substance abuse program for as long as they deem necessary and submit to screening upon request; Must stay away from victim and/or victim's family for duration of parole.

I hereby certify that this Statement of Conditions has been read and explained to the Parolee and he/she has agreed to them.

This 4th day of October, 19 99.

Parole Agent

I hereby certify that the conditions listed above have been explained fully to me and in agreement thereto, I attach my signature.

Signature

35-A Woodland Homes

Greenville, [illegible]

REPORT 1 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

OFFENDER SUMMARY

INMATE NO 156929 NAME MARY LEE HICKS

PERSONAL/IDENTIFICATION DATA

RACE -- BLACK
SEX -- FEMALE
HEIGHT --- 5 FT 5 IN
WEIGHT --- 190
EYES --- BROWN
HAIR COLOR -- BLACK
COMPLEX --- LIGHT BROWN
BODY BUILD --- HEAVY
SCARS, MARKS, TATTOOS --- NONE OF RECORD

FBI NUMBER ---
BIRTH DATE ---
SOCIAL SECURITY ---
RELIGION ---
MARITAL STATUS ---
MILITARY STATUS ---
SOCIAL SEC. TYP 2 ---
DRIVER LIC # / ST ---
ALIAS (OR MAIDEN NAME) ---

STATUS --- INCARCERATED
CUR INST --- WOMEN'S CORR CENTER
CUR CUST LVL --- MEDIUM
CUR ASSIGN --- CAFETERIA
ADMIT DT --- 08/25/89
ESCAPE/ATTEMPTS --- 0
WNT/DET --- NONE OF RECORD
PRIOR CONVICTIONS --- NONE OF RECORD

SENTENCE

SENTENCE DATE ---

COMMITMENT INFORMATION

CURRENT OFFENSE --- SENTENCE --- DISPOSITION DATE

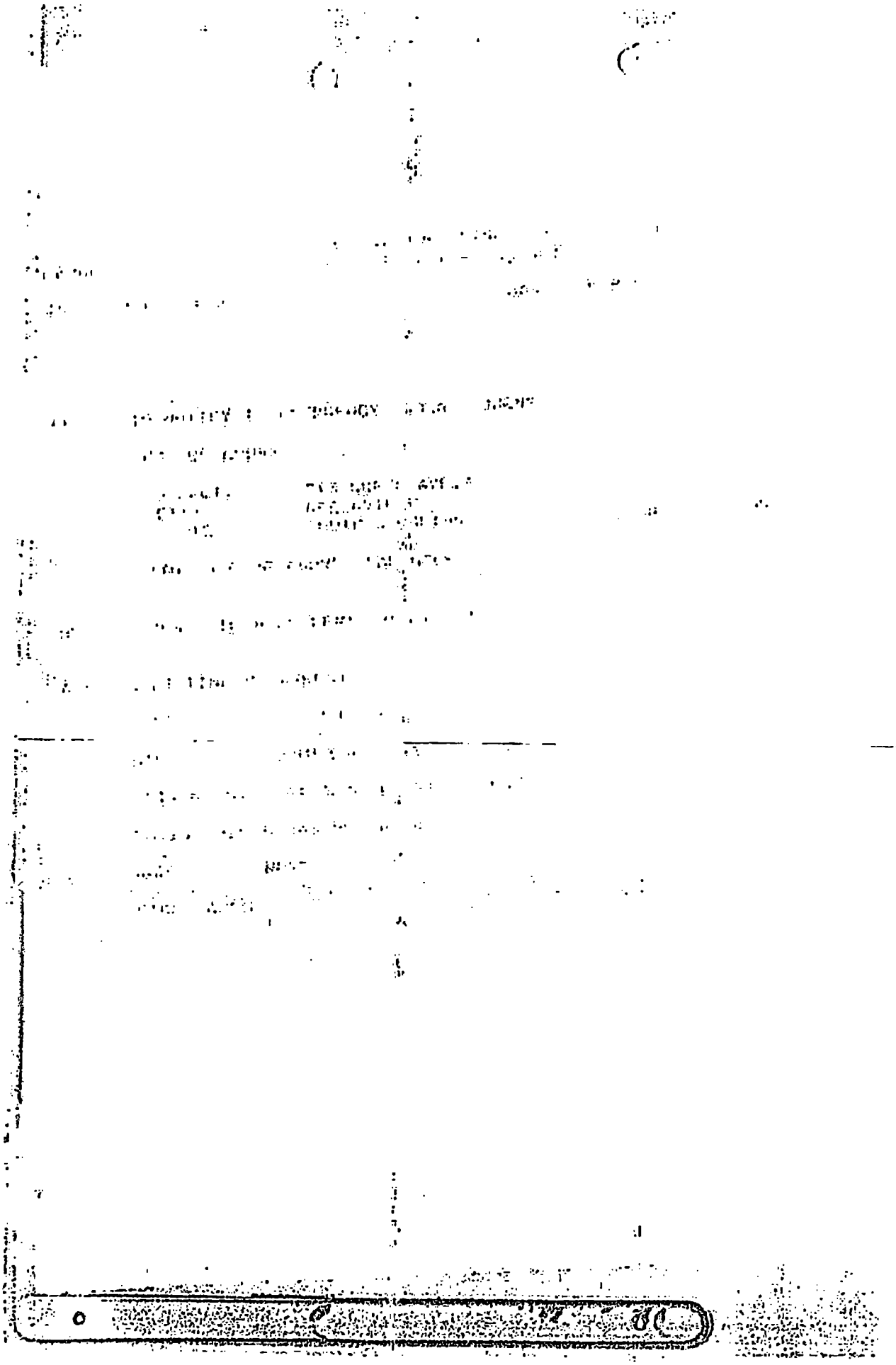
YRS MONS DYS

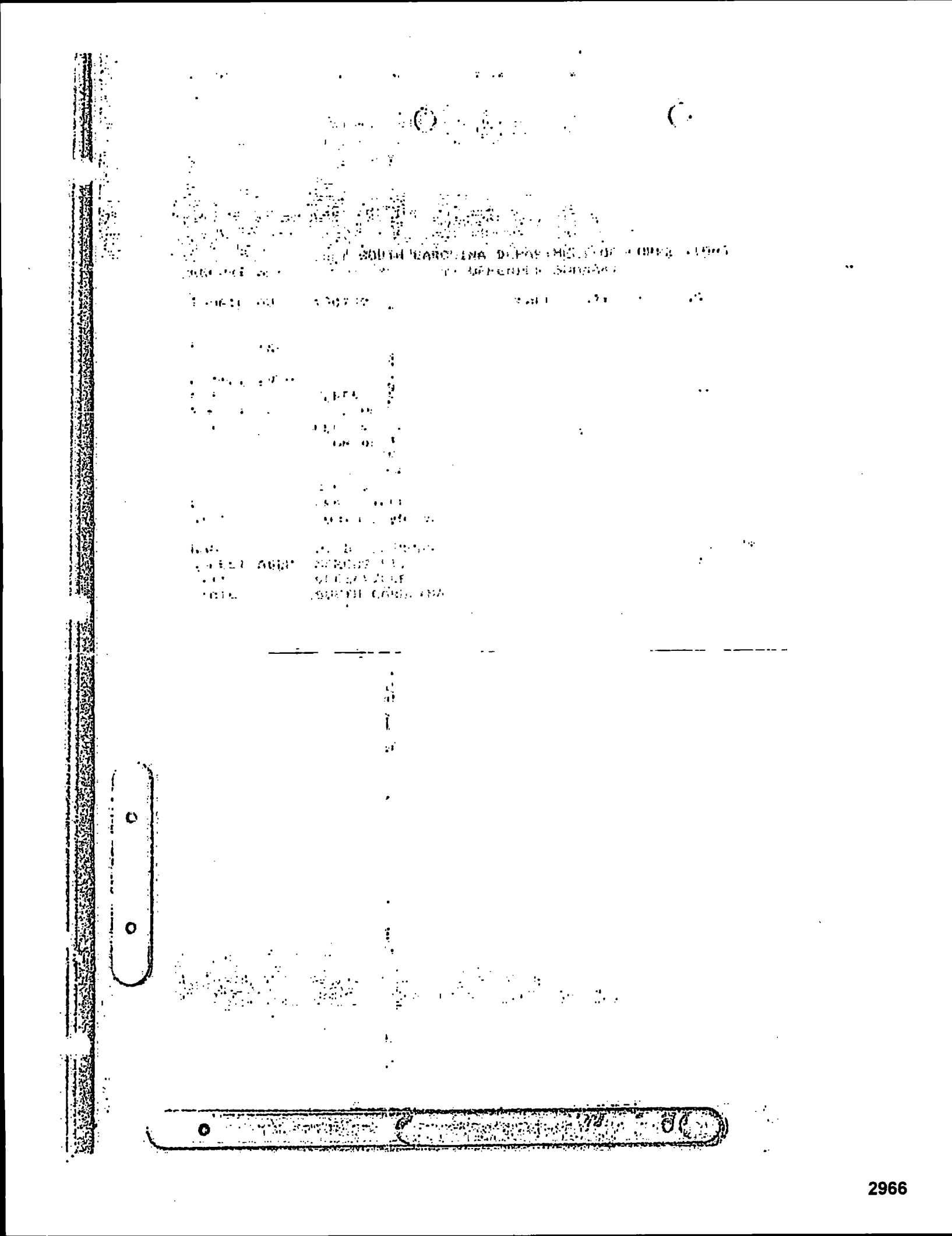
1 BURGLARY 1ST,NAI --- 6 0 0 --- 6/29/89

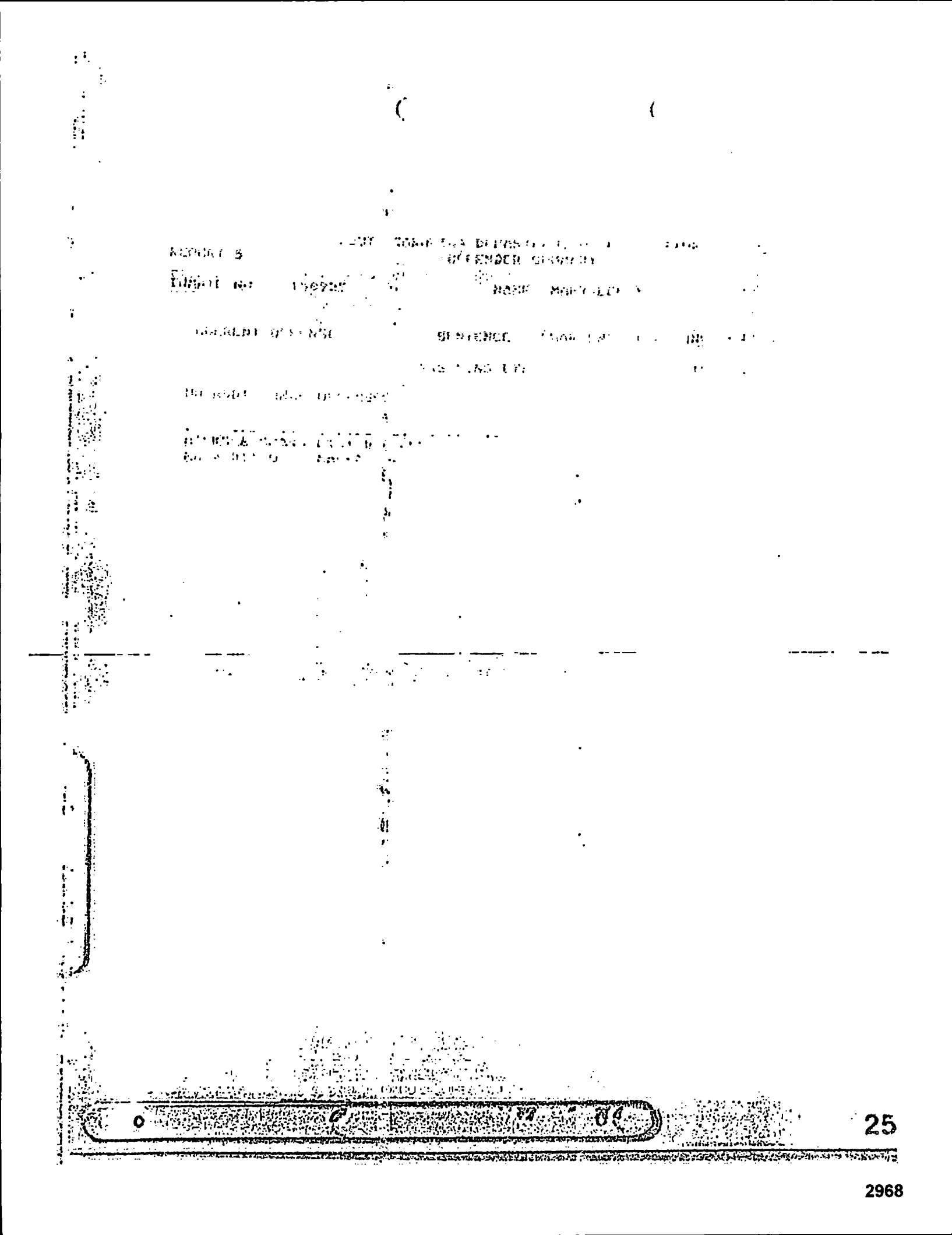
NOTICE: REPRODUCTIONS OF MICROFILMED RECORDS ARE DUE TO THE QUALITY OF THE ORIGINAL DOCUMENTS. ALL MICROFILMED RECORDS ARE APPROVED AS TO QUALITY & LEGIBILITY BY THE SC DEPT. OF ARCHIVES & HISTORY. ORIGINAL MICROFILM IS AVAILABLE FOR VIEWING AT THE SCDC INACTIVE RECORDS CENTER.

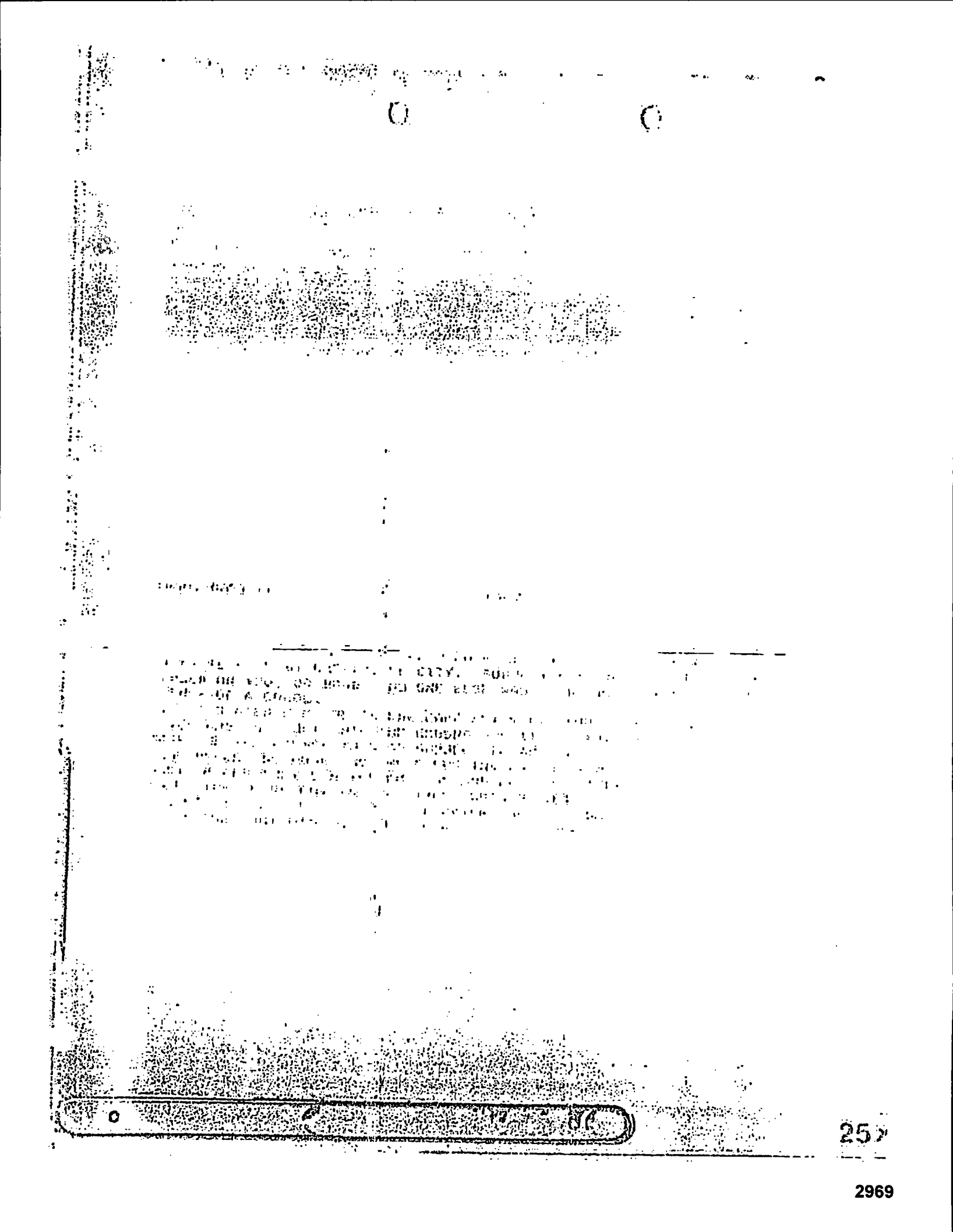
PHOTOGRAPHED BY ARCHIVES 10/4/89

25









WITNESSES

D. M. Henderson

GPD

1-15-88

ARREST WARRANT NO. C 022707

ACTION OF GRAND JURY

TRUE BILL

R.C. Kennedy

Foreman Grand Jury

FOREMAN OF GRAND JURY

VERDICT

DOCKET NO. 88-GS-23-3006

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

ENTERED COMPUTER

COURT OF GENERAL SESSIONS

MAY TERM 1988

THE STATE

GUILTY

VS.

MARY LEE MINGO B/F

313 Green Ave. Greer

Lesser Included Off. Charge

INDICTMENT FOR

ASSAULT AND BATTERY

WITH INTENT TO KILL

AND GROUND

CONSEQUENCE MURDER

PERRY R & E CENTER
FINGERPRINTED AUG 09 1988
DATE:

AUG 9 1988
P.R. & E.
150929

2970

88-GS-23 Book

NOW COMES THE DEFENDANT

Who in open Court plead guilty to the within indictment;

and consents to sentence this ___ day of _____ 19 ___

ATTEST: _____

Caroline M. Watts
Clerk of Court

SENTENCE

The defendant Mary Lee Driggs is committed to the State Dept. of Corrections/County for a term of Co[illegible] months/years and/or to pay a fine of $ _____, provided upon the service of _____ months/years and/or payment of $ _____, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for _____ months/years.

Restitution:
Yes / No
to be paid: _____
_____
to clerk for _____
Other conditions _____

For physical injury $ _____
Property damage $ _____

Date AUG 8 1988

William B. Caudill Jr.
Presiding Judge

* Costs and Assessments

Non-waivable	$ _____
Not waived	$ _____
Total	$ _____

25

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Community Services Branch

MEMORANDUM

TO: Ms. Mary L. Mingo, SCDC #150929, WCC

FROM: *Chief, Community Services Branch*

SUBJECT: *Work Release Application* - WRU/SPCC

DATE: 10-27-98

* * *

Your work release application has been received in this office and is presently undergoing processing. Normally, this processing procedure requires from 60 to 90 days to be completed. We will advise you of the final disposition of your application just as soon as possible.

Chief
Community Services Branch

cc: CS File
Central File
SCDC 27-3 (Rev. 10-77)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Offender Reclassification Report

PART II NEEDS ASSESSMENT (Classification Program Status Review)

1 SCDC #:	2 INMATE NAME:	3. INSTITUTION	4. DATE OF REVIEW:
150929	Mingo Mary	W.C.C.	9-6-88

5 TYPE OF REVIEW
- ☐ Scheduled Review
- ☐ Inmate Request
- ☒ Initial Institutional Review
- ☐ Other (Specify)

6 METHOD OF REVIEW
- ☒ Classification Committee Review
- ☐ Individual Interview

7 PROGRAM RECOMMENDATIONS MADE BY THE INITIAL INSTITUTIONAL CLASSIFICATION COMMITTEE
Self Improvement School

8 PROGRAM PARTICIPATION (SINCE LAST REVIEW)
None

9 RECOMMENDED PROGRAM CHANGES
None

10 COURT ORDERED INTERVENTION ☐ Yes ☒ No
ACTION TAKEN

11. CURRENT EWC TITLE

12. EWC CODE.

13 EWC
Hours per day ____ Days per week ____

14 WORK EVALUATION
None

15 RECOMMENDED WORK ASSIGNMENT CHANGE
None

16. LIMITING PHYSICAL OR PSYCHOLOGICAL FACTORS
None

17 WAS THIS INMATE PROVIDED THE OPPORTUNITY TO PARTICIPATE IN MEANINGFUL PROGRAMS AS REQUIRED?
☒ Yes ☐ No, Explain

18 CURRENT PROJECTED PAROLE ELIGIBILITY DATE

19 CURRENT PROJECTED MAX OUT DATE

20 EVALUATION OF JOB AND PROGRAM PERFORMANCE
☐ Poor ☐ Average ☐ Good ☐ Excellent
(Definitions of ratings are on back of this page. Give reasons for the rating in item 21 below.)
None

(Record Score on Part I, Section B, Item 7)

21 COMMENTS.
Subject assigned to the Captain of Subject was placed in

22. CLASSIFICATION COMMITTEE AREAS REPRESENTED.
Warden Troy Security
A. Kelley Bldg Grnd Services
A. Mason Soc. Services
M. Bass Education
D. Kelly Plant Manager

Signature: Evelyn Gamble
Chairperson

RECEIVED
88 SEP 23 AM 10:
CENTRAL RECORDS OFFICE

SIGNATURE
Larry Lee Troy

DISTRIBUTION:
White: Central Records
Yellow: Institutional Records
Pink: Classification Branch

SCDC 10-71 (December 1985)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
SUMMARY ADMISSION REPORT
INITIAL CLASSIFICATION REVIEW OF 9/ 1/88

150929 MINGO, MARY LEE INST: MCC

CENTRAL MONITORING CASE: N

SECTION A. SECURITY SCORE		CATEGORY	SCORE
1. SEVERITY OF CURR.OFF.....	1317 ASSLT&BATTERY-HIGH&AGG.NAT	2	16
OTHER OFFENSES.....	1399 ASSLT & BATT W/INTNT KILL		
2. NUMBER OFFENSES IN CURRENT COMMITMENT.....	(1)X8=___	(MAX.OF 05)	0
3. CURRENT SENTENCE.....	6 YRS 0 MOS. 0 DYS		6
4. MAND. TIME TO SERVE BEFORE PAR. ELIG/RELEASE..	0 YRS.		0
VIOL. OFFENSE WITH PRIOR VIOL. CONVICTION...	N - PENDING VERIFICATION		
5. ALCOHOL/DRUGS ASSOCIATED WITH CURRENT OFFENSE...	Y		4
6. CURRENT AGE.....	50		15
7. NUMBER OF PRIOR CONVICTIONS OVER 90 DAYS.....	(0)X8=___	(MAX OF 10)	0
8. HISTORY OF VIOLENCE:			0

DATE OF LAST MAJOR INCIDENT: 0/ 0/ 0 NUM. OF MAJOR INCIDENTS: 0
DATE OF LAST MINOR INCIDENT: 0/ 0/ 0 NUM. OF MINOR INCIDENTS: 0
REMARKS:

9. TOTAL SECURITY SCORE..... 49

SECTION B. ADMINISTRATIVE REVIEW

THERE ARE NO KNOWN INCIDENTS OF ESCAPE OR RELATED OFFENSES AT REVIEW

THERE ARE NO KNOWN DETAINERS,NOTIFIES, HOLDS AT TIME OF REVIEW

RECOMMENDED CUSTODY/SECURITY LEVEL FROM SECURITY SCORE.. AL2

COORDINATOR DECISION..... O-H
COORDINATOR/COMMITTEE RECOMMENDATION - BL3
RECOMMENDED INST. PLACEMENT: MCC NEXT SCHEDULED REVIEW: 3/89

COORDINATOR COMMENTS: EWHITE Because of her violence offense, subject was placed in Bs13 Custody by the Classification Committee. S/ Evelyn A White DATE: 9-6-88

WARDENS APPROVAL: Y S/ _____ DATE: 9-22-88
WARDENS COMMENTS:

INMATE'S SIGNATURE S/ X Mary Lee Mingo DATE: 9-6-88

DISTRIBUTION: CENTRAL RECORD
INSTITUTIONAL RECORD
DATE PRINTED: 09/08/88
VERSION NUM:8803
AUDIT FLAGS - PRIORS: N INDICT: Y DETAIN: N DISCIP: N REL: N EWC: N

RECEIVED
88 SEP 26 AM 10:04
CENTRAL RECORDS
OFFICE

25X

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Community Services Branch

Community Programs Application

MEMORANDUM

TO: Ms. Mary L. Ingo, SCDC #150929, MCC

FROM: Chief, Community Services Branch

SUBJECT: Community Programs Application

DATE: 12-12-88

PART I

_____ Initial Review - Your application for community programs participation has been received by this office and disapproved initially. It will not receive a second review because of the reasons checked in Part II below.

_____ Second Review - Your previously disapproved work release application has received a second review with disposition as checked in Part II below.

_____ Staff Assignment.

XXX
_____ Processing has been completed on your community programs application with the disposition as checked in Part II below. If your application was disapproved due to reasons 1 through 5 below, it will be necessary for you to submit your request at the specified time.

If your work release application was disapproved due to any one of 6 through 10 below, your request will be placed in abeyance and again reviewed in six months if your projected release or parole eligibility date is within one year. If your projected release or parole eligibility date is more than 18 months from the date of this memorandum you will be reviewed one year from that date.

PART II

_____ APPROVED to the _____ Center. Your eligibility date is _____, and transfer will be coordinated by the appropriate Regional office with personnel within your institution as you can be released from your present job and as space is available within the work release center to which you are approved.

WE TRUST YOU REALIZE THE OPPORTUNITY YOU HAVE BEEN GIVEN, AND WILL STRIVE TO MAKE THE BEST OF THIS OPPORTUNITY AND AVOID PROBLEMS.

XXX
_____ DISAPPROVED for the following reason(s):

_____ 1. Not eligible until _____. Reapply three months prior to your eligibility date.

_____ 2. Disciplinary infraction within six months (_____). Resubmit three months after the date of your disciplinary.

_____ 3. Due to the fact that you have been committed on two or more occasions for crimes of a violent nature, you are ineligible for community programs.

_____ 4. Extensive record.

_____ 5. Nature of your offense.

_____ 6. Problems with drugs and/or alcohol.

_____ 7. Unfavorable results of psychological and/or medical tests and evaluations.

_____ 8. Prior participation on community programs.

XXX
_____ 9. Negative responses were received from the community on your early return as a community programs participant.

_____ 10. Other: _____

_____

Distribution:
Central Records
Community Services File
Warden Toy
SCDC 27 (Rev. April 1986)

_____
Chief, Community Services Branch

25

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER RECLASSIFICATION REPORT OF 03/17/89
PROGRAM STATUS REVIEW

PART II: NEEDS ASSESSMENT

INMATE #: 00150929 INST: WCC ASSGNMNT: 4010
MINGO,MARY LEE CUSTODY/SEC: BL3 AIMS GRP:

REASON FOR NEEDS ASSESSMENT REVIEW: 6 MONTH REVIEW METHOD: COMMITTEE

PROGRAM RECOMMENDATIONS FROM LAST REVIEW:	PROGRAM PARTICIPATION SINCE LAST REVIEW:	RECOMMENDED PROGRAMS OR CHANGES:
	158 ASSERTIVENESS SK	159 PROB SOLV & DEC1
	143 PSY-SOC EVAL-GEN	142 ANGER MANAGEMENT

COURT ORDERED PROGRAMS: N ACTION TAKEN:

CURRENT EHC LEVEL: 03 CURRENT PROJ MAXOUT DATE 08/20/91
JOB DESCRIPTION: TRAY LINE SUPERVISOR CURRENT PROJ PAROLE ELIG: 10/04/89

WORK EVALUATION: Excellent

RECOMMENDED WORK CHANGES: None

INMATE WAS PROVIDED OPPORTUNITY TO PARTICIPATE IN MEANINGFUL PROGRAMS Y
LIMITING PHYSICAL/PSYCHOLOGICAL FACTORS: N

EVALUATION OF JOB PERFORMANCE: EXCEL
EVALUATION OF PROGRAM PERFORMANCE: EXCEL

COMMITTEE/AREAS REPRESENTED
Ms. Moore - Social Work
Mr Bennett - Plant
Mr Burke - Security

COMMENTS:

S/ Dellie Teague
CHAIRPERSON: D TEAGUE

S/ X Mary J. Mingo
INMATE: MARY MINGO

DISTRIBUTION: CENTRAL RECORDS
INSTITUTIONAL RECORDS

DATE PRINTED: 03/17/89

25

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER RECLASSIFICATION REPORT OF 3/17/89

150929 MINGO, MARY LEE INST: MCC
ASSGNMNT: CUSTODY/SEC: BL3 AIMS GROUP:

SENTENCE: 6 YRS. 0 MOS. 0 DYS. CENTRAL MONITORING CASE: Y

SECTION A. SECURITY SCORE

	CATEGORY	SCORE
1. SEVERITY OF CURR.OFF.....1317 ASSLABATTERY-HIGH&AGG.NAT	2	608
2. MAND. TIME TO SERVE BEFORE PAR. ELIG/RELEASE.... 0 YRS.		0
VIOLENT OFFENSE WITH PRIOR VIOLENT CONVICTION: N		
3. TYPE OF DETAINER/HOLD/NOTIFY:		0
4. NUMBER OF PRIOR COMMITMENTS OVER 90 DAYS.....(0)X14=___ (MAX OF 10)		0
5. PRIOR HISTORY OF VIOLENCE		0
DATE OF LAST MAJOR INCIDENT: 0/ 0/ 0 NUM OF MAJOR INCIDENTS. 0		
DATE OF LAST MINOR INCIDENT: 0/ 0/ 0 NUM OF MINOR INCIDENTS: 0		
REMARKS:		
6. TOTAL RECLASSIFICATION SECURITY SCORE..... 608 **		

MANAGEMENT SECURITY CONCERN (OVERRIDE)
THERE ARE NO KNOWN INCIDENTS OF ESCAPE/RELATED OFFENSES AT TIME OF REVIEW

SECTION B. ADJUSTMENT SCORE

7. PERCENTAGE OF TIME SERVED (BASED ON MAXOUT): (0)X 3 = ___	60
8. CURRENT AGE 50	(60)
9. EVALUATION OF JOB PERFORMANCE: EXCEL (SEE NEEDS ASSESSMENT)	24
10. EVALUATION OF PROGRAM PERFORMANCE: EXCEL (SEE NEEDS ASSESSMENT)	12
11. RULES VIOLATIONS IN LAST 12 MONTHS	40
MINOR INSTITUTIONAL DISCIPLINARY CONVICTIONS 10 (YES = 0; NONE = 10)	
MAJOR INSTITUTIONAL DISCIPLINARY CONVICTIONS: 30 (YES = 0; NONE = 30)	
(SUM OF THE TWO ITEMS:) 40	
12. TOTAL RECLASSIFICATION ADJUSTMENT SCORE..... 236 **	
13. NET SCORE (LINE 6 MINUS LINE 12).....	372

SECTION C. ADMINISTRATIVE REVIEW
1. RECOMMENDED CUSTODY/SECURITY LEVEL FROM NET SCORE.....*AL3
2. COMMITTEE OPTIONS..... A * LIMITED TO ONE LEVEL SHIFT
COMMITTEE RECOMMENDATIONS..... AL3 NEXT SCHEDULED REVIEW: 9/89
RECOMMENDED INST. PLACEMENT.....
CHAIRPERSON: TEAGUE S/ Willie League DATE 3/23/89
COMMENTS: Advance AL3 per Agent
WARDENS APPROVAL: S/ Thomas X. Ivey DATE 3-31-89
WARDENS COMMENTS:

RECOMMENDATION REQUIRES REGIONAL APPROVAL ✓ YES ___ NO
DISTRIBUTION - CENTRAL RECORD
INSTITUTIONAL RECORD
DATE PRINTED: 03/22/89
VERSION NUM.M0806
AUDIT FLAGS - PRIORS: N INDICT: Y DETAIN: N DISCIP: N REL. N EWL: N

25

SOUTH[illegible]ROLINA DEPARTMENT OF CO[illegible]ECTIONS

RECEIVED

Offender Reclassification Report

PART II - APPROVAL WORKSHEET

TYPE ACTION: ( ) TRANSFER (X) A CUSTODY ( ) AA CUSTODY

SCDC #:	NAME:	PRESENT CUSTODY CATEGORY	INSTITUTION:
150929	Mingo, Mary Lee	B II	WCC

CURRENT OFFENSE(S) AND SENTENCE LENGTH(S): Assault + Battery - High & Aggravated Nature, 6yrs

SENTENCE START DATE: 8-8-88

DATE ADMITTED TO SCDC: 8-9-88

ASSIGNMENT RECORD (INSTITUTIONS AND DATES): RHC → WCC - 8-9-88

PROPOSED ASSIGNMENT: N/A

CLASSIFICATION COMMITTEE (Members and area represented listed on Program Status Review Form)			WARDEN SUPERINTENDENT		
APPROVED: ✓	DISAPPROVED:	DATE: 3-23-89	APPROVED: X	DISAPPROVED	DATE: 3 31 89
REMARKS:			REMARKS:		
SIGNATURE: [signature] Chairperson			SIGNATURE: [signature]		
REGIONAL ADMINISTRATOR			DIRECTOR, DIVISION OF INMATE OPERATIONS AND CONTROL		
APPROVED: ✓	DISAPPROVED:	DATE: 4-10-89	APPROVED:	DISAPPROVED	DATE
REMARKS			REMARKS:		
SIGNATURE: [signature]			SIGNATURE:		
LAW ENFORCEMENT LIAISON			DEPUTY COMMISSIONER FOR OPERATIONS		
APPROVED:	DISAPPROVED	DATE:	APPROVED	DISAPPROVED	DATE
REMARKS:			REMARKS:		
SIGNATURE:			SIGNATURE:		

DISTRIBUTION:
White: Central Records
Yellow: Institutional Records
Pink: Classification Branch

SCDC [illegible]

mail sent 4/19/89

2978

RECORD CHECKLIST

SCDC #:	Name of Inmate:	Institution:
150929	Price, Mary	WCC

ITEMS TO BE CHECKED	YES	NO	CORRECTIVE ACTION
1. Up-to-date face sheet to include any new sentences.	✓		
2. Up-to-date picture I.D./SMRK screen is current.	✓		
3. All applicable commitment papers (or a copy of SCOF screen) in record.	✓		
4. Available commitment papers clear and legible.	✓		
5. Commitment papers coincide with offense information on face sheet.	✓		
6. Current FBI Rap Sheet or SLED summary to include any current escape offenses, etc.		✓	
7. Notation of any cautions to include any previous Category III offense.		✓	
8. Verifiable description of the crime if sex offense or Category III offense.	N/A		
9. Copy of all adjustment committee actions (if applicable).	N/A		
10. Current disposition of all detainers, warrants, and holds.	N/A		
11. Other (explain) SS card		✓	ck file.

12. Remarks:

Note: This information is valid only for the date indicated.

Date:	Signature of Caseworker or Supervisor:
2/7/89	Melissa Maginn

White Copy: Inmate's Central Record
Yellow Copy: Warden's Inmate Record
Pink Copy: Suspense Copy

SCDC IR-15 (9-83)

RECEIVED

DISPOSITION OF RECLASSIFICATION REVIEW

INMATE NAME BINGO MARY [illegible]

DATE OF RECLASSIFICATION REVIEW [illegible]

1) PROJECTED RELEASE AND PAROLE ELIGIBILITY DATES AS OF [illegible]

A) SENTENCE EXPIRATION (MAXIMUM) [illegible]
B) INITIAL PAROLE ELIGIBILITY [illegible]
C) NEXT SCHEDULED PAROLE HEARING [illegible]
D) WORK RELEASE ELIGIBILITY [illegible]
E) INMATE WORKER ELIGIBILITY [illegible]

2) DATES ABOVE ARE BASED ON THE FOLLOWING [illegible]

	YES	NO	DAYS
A) CURRENT SENTENCE SERVING	X		
B) SENTENCE START DATE	07	82	
C) CURRENT EWC LEVEL/ASSIGNMENT	03		

3) RECLASSIFICATION REVIEW

A) YOUR CUSTODY/SECURITY LEVEL PRIOR TO REVIEW [illegible]
B) YOUR REVIEW RESULTED IN A [illegible]
CUSTODY/SECURITY LEVEL
C) THE CLASSIFICATION COMMITTEE

DENIED NEW LEVEL [illegible]

D) THE PRIMARY REASON FOR [illegible]
SERIOUS
LAST FOUR DIGITS OF

YOUR CLASSIFICATION CATEGORY WILL BE [illegible]

E) YOUR NEXT RECLASSIFICATION REVIEW IS SCHEDULED [illegible]

4) RECOMMENDATIONS FOR YOUR NEXT REVIEW PERIOD ARE AS FOLLOWS:
Should complete at least one [illegible]
institutional activity.

5) COMMENTS:
Inmate must [illegible]

[illegible]
CLASSIFICATION SUPERVISOR OR CASEWORKER [illegible]

CC: INSTITUTIONAL RECORDS
CENTRAL RECORDS

2

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Division of Community Services
Post Office Box 21787
Columbia, South Carolina 29221
Telephone: 737-8552

Information Request

TO: See Distribution Below

FROM: Division of Community Services

SUBJECT: Information Reques:

DATE: 6-6-89

Name of Inmate: [illegible]
SCDC#: [illegible] Race: B
Soc. Sec. #: [illegible]
Date of Birth: [illegible]
Hometown: Greenville SC
Sentence: Start Date/Length: [illegible]
Offense: [illegible]
County of Commitment: Greenville
Projected: Parole Elig. [illegible] Release Elig. [illegible]

The above named inmate of this Department has made application for our Community Programs as indicated below and if approved, subject will be assigned to the [illegible] Work Center/City, S.C.

☐ **Institutional Worker Position** (Upon successful completion of assignment, this individual will be eligible for placement on our community work programs).

☐ **Community Work Program - Eligibility** Now (Date)

☐ **Extended Work Program** (Upon successful completion of a required period of time on the work program, this individual may be considered for extended work program placement, within his/her home community provided other factors are met).

(As an institutional worker and work program participant the individual will be eligible for periodic Home Visit Passes).

Even though the final decision rests with the Department of Corrections, we often find that there are pertinent facts concerning the individual or his/her crime which are known only to the law enforcement officials of his/her community.

In order for us to place only the most qualified inmates on the program, we would appreciate your recommendations below and any information you have which would aid in our decision in this individual's case.

We appreciate your cooperation in this and other cases. If at anytime you have problems concerning any of our inmates or programs, please contact me and I assure you that we will work with you in any way possible to alleviate the problem.

Director
Division of Community Services

RECOMENDATION: (If not received in 30 days we will assume you have no opinion)

☐ Recommend Approval At This Time

☐ Recommend Approval After Serving _____ Additional Months on Current Sentence

☐ Recommend Approval With Condition That _____ This agency does not oppose this person as a candidate for this program.

☐ Recommend Disapproval With No Future Reconsideration

☐ Wish To Make No Recommendations

Comments:

This inmate was disapproved in December, 1988, and has now come up for a second review.

Date: 6/21/89 Signature & Title of Responding Official: Capt. W.R. Birney

DISTRIBUTION:
Sheriff Capt. John Finkus of Greenville County, S.C.
Chief of Police Capt. Ray Berry of Greenville S.C.

SCDC 21-8 (Rev. 9/88)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Division of Community Services
Post Office Box 21787
Columbia, South Carolina 29221
Telephone: 737-8552

Information Request

TO: See Distribution Below

FROM: Division of Community Services

SUBJECT: Information Request

DATE: 6-6-89

Name of Inmate: MINGO, Mary Lee
SCDC#: 150929 Race: BF
Soc. Sec. #: _____
Date of Birth: _____
Hometown: Greenville, SC
Sentence: Start Date/Length: 8-8-88; 6 yrs
Offense: A&B/HAN
County of Commitment: Greenville
Projected: Parole Elig. 11/89 Release Elig. 11/91

The above named inmate of this Department has made application for our Community Programs as indicated below and if approved, subject will be assigned to the KIW/Columbia (Work Center/City), S.C.

☐ **Institutional Worker Position** (Upon successful completion of assignment, this individual will be eligible for placement on our community work programs).

☒ **Community Work Program - Eligibility** Now. (Date)

☒ **Extended Work Program** (Upon successful completion of a required period of time on the work program, this individual may be considered for extended work program placement, within his/her home community provided other factors are met).

(As an institutional worker and work program participant the individual will be eligible for periodic Home Visit Passes).

Even though the final decision rests with the Department of Corrections, we often find that there are pertinent facts concerning the individual or his/her crime which are known only to the law enforcement officials of his/her community.

In order for us to place only the most qualified inmates on the program, we would appreciate your recommendations below and any information you have which would aid our decision in this individual's case.

We appreciate your cooperation in this and other cases. If at anytime you have problems concerning any of our inmates or programs, please contact me and I assure you that we will work with you in any way possible to alleviate the problem.

_____
Director
Division of Community Services

RECOMENDATION: (If not received in 30 days we will assume you have no opinion)

☐ Recommend Approval At This Time
☐ Recommend Approval After Serving _____ Additional Months on Current Sentence
☐ Recommend Approval With Condition That _____
☐ Recommend Disapproval With No Future Reconsideration
☐ Wish To Make No Recommendations

This agency does not oppose this person as a candidate for this program.

Comments:

This inmate was disapproved in December, 1988, and has now come up for a second review.

Date: 6/15/89 Signature & Title of Responding Official: _____

DISTRIBUTION:
Sheriff Capt. John Vinskus of Greenville County, S.C.
Chief of Police Capt. Ray Berry of Greenville S.C.

SCDC 27-4 (Rev. 10-84)

25.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Division of Community Services

Community Programs Application

MEMORANDUM

TO: Ms. Mary L. Mingo, SCDC #150929, WCC

FROM: Director, Division of Community Services

SUBJECT: Community Programs Application

DATE: 7-3-89

Family situation to be carefully assessed before pass participation.
Mandatory Substance Abuse/Group Counseling.
Referred to Social Worker Services.
Per recommendations received during processing, I are not to be considered for Extended Work Progr at this time.

PART I

_____ Initial Review - Your application for community programs participation has been received by this office and disapprov initially. It will not receive a second review because of the reasons checked in Part II below.

XXX Second Review - Your previously disapproved work release application has received a second review with disposition checked in Part II below.

_____ Inmate Worker

_____ Processing has been completed on your community programs application with the disposition as checked in Part II bel If your application was disapproved due to reasons 1 and 2 below, it will be necessary for you to submit your request at specified time.

If your **work program** application was disapproved due to any one of 6 through 10 below, your request will be place abeyance and again reviewed in six months if your projected release or parole eligibility date is within one year. If y **projected release or parole eligibility date** is more than one year from the date of this memorandum you will reviewed **one year prior to your earliest parole/release date.**

PART II

XXX APPROVED to the WWU/SPCC Center. Your eligibility date is [illegible]

transfer will be coordinated by the appropriate Regional office with personnel within your institution as you can be released f your present job and as space is available within the work center to which you are approved.

WE TRUST YOU REALIZE THE OPPORTUNITY YOU HAVE BEEN GIVEN, AND WILL STRIVE TO MAKE THE BEST THIS OPPORTUNITY AND AVOID PROBLEMS.

_____ DISAPPROVED for the following reason(s):

_____ 1. Not eligible until _____. Reapply three months prior to your eligibility date

_____ 2. Disciplinary infraction within six months (_____). Resubmit three months after the date of disciplinary.

_____ 3. Due to the fact that you have been committed on two or more occasions for crimes of a violent nature, you are ineli for community programs.

_____ 4. Extensive record.

_____ 5. Nature of your offense.

_____ 6. Problems with drugs and/or alcohol

_____ 7. Unfavorable results of psychological and/or medical tests and evaluations.

_____ 8. Prior participation on community programs.

_____ 9. Negative responses were received from the community on your early return as a community programs partici

_____ 10. Other: _____

Distribution:
- ✓ Central Records
- Community Services File
- Inmate
- Warden

Warden Anderson
Mr. Harvey
Mr. Angevine
Mr. Glover, VR-WCC
Mr. Rice, VR-WPRC

Director, Division of Community Services

SCDC 27 13 (Rev. 10-89)

8-21-89
Cover copy
file one copy
with our appeal
to Legal
copy

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

-MEMORANDUM-

TO: Mr. Tony L. Strawhorn, Director,
Division of Community Services

FROM: Doris P. Howell, Deputy Warden,
State Park Women's Work Unit

SUBJECT: Mary L. Mingo, SCDC #150929

DATE: August 13, 1989

The above mentioned resident was assigned to the Work Program with the following stipulation:

Family situation to be carefully assessed before pass participation.

On August 13, 1989 I telephoned Ms. Dora Mason, daughter of resident Mary Mingo. Ms. Mason assured me that it was safe for Ms. Mingo to come home on passes and that her common-law son-in law had not taken out a warrant for Ms. Mingo as a result of the incident. Ms. Mingo and the victim still converse and her daughter was still in the common law marriage with the victim. Ms. Mason also informed me that the victim had recently been sentence to a prison term of one (1) year for violation of his probation. Ms. Mason stated that the victim was at Perry Correctional Institution. This information could not be confirm by Perry Correctional Institution because the daughter nor resident Mingo could give me the correct name of the victim, they only knew the nickname.

Resident Mingo will be eligible for passes on August 26 - 27th.

s/ Doris P. Howell

:dph
cc: Warden Anderson
Warden's Record
Work Program Record
Central Record
File

SCDC 8-2 (SEPT 77)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
R & E CENTERS
MEDICAL EXAMINATION

DATE: 8-9-88

Mr.
Mrs.
Miss Mingo Mary SCDC # 150929 SS #
Last First Middle

Next of kin John Brown Address Phone

POB Anderson Co. DOB Age 49 Race B Sex F Marital Status

Family Physician Address Phone

Medical History:

CHILDHOOD DISEASES: Measles, Chickenpox, Mumps

ALLERGIES: NKA

OPERATIONS OR FRACTURES: None.

GUNSHOT OR STAB WOUNDS: None.

USE OF DRUGS OR ALCOHOL: Occasional Beer

FAMILY HISTORY OF T.B. OR DIABETES: Brother

FREE BLEEDER: No

GONORRHEA OR SYPHILIS: None.

COMPLAINTS: Neck, eyeglasses

PREVIOUS NUMBER:

The above history is true to the best of my knowledge.

Inmate's Signature

Laboratory:
Urinalysis: Specific Gravity 1.030 Albumen NVS Sugar NVS Mic

Blood Serology: Result 8/9/88 PPD 0 mm; PPD .1cc I.D. DTO .5cc IM

GC Culture: 8/10/88

Physical Examination:
Height 5 ft. 5 in. Weight 110# Temperature 98 Pulse 72 Resp 18

Blood Pressure 120 / 84 . Vision (Distant) without glasses: R.20/ 60 L.20/ 40

With glasses: R.20/ L.20/

SCDC 29-16 (rev. 5-87)

	Check if Normal	Describe Abnormality
1. EYES (Discharge, Strabismus, Pterygium ptosis, lesion, cataract, etc.)		
2. EARS (Evidence of deafness, middle ear or mastoid disease. Drums: Absent perforated, dull, retracted. Discharge)		
3. NOSE (Obstruction, evidence of chronic sinus infection, polyps)		
4. THROAT (Tonsils: Enlarged, Removed)		
5. MOUTH (Missing teeth, pyorrhea, caries, abnormal tongue or palate)		
6. NECK (Thyroid enlargement, nodules, masses)		
7. BREASTS (Abnormal discharge, nodules, tenderness)		
8. LUNGS (Conformation, respiratory, movement, breath sounds, rales, dullness)		
9. HEART (Enlargement, thrill, murmurs, rhythm, dyspnea, cyanosis, edema)		
10. ARTERIES (Peripheral pulsations)		
11. VEINS (Varicose: Location, Severity)		
12. ABDOMEN (Scars, masses, palpable liver or spleen, tenderness)		
13. HERNIA (Site, type, severity)		
14. GENITALIA—MALE (Discharge, varicocele, hydrocele, prostate)		
15. GYNECOLOGICAL (Describe significant abnormal condition, severity and extent)		
16. ANO—RECTAL (Severity & Extent of hemorrhoids, prolapse, fissures, fistula, etc.)		
17. NERVOUS SYSTEM (Gait, reflexes, sensation, paralysis, speech, etc.)		
18. PSYCHIATRIC (Mood, abnormal behavior, etc.)		
19. SKIN (Lesions, scars, abnormalities, extent and severity)		
20. ORTHOPEDIC (Congenital or acquired impairments, feet, back, amputation, etc.)		
21. HEAD		
22. HEARING:		

(a) Summary of Diagnosis

Physician's Signature

(b) Code:

Name

Number

(c) Recommendation

White: Medical Records
Yellow: Warden's Record
Pink: Original Record

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Comment Sheet

SCDC#	Name of Inmate:	Name of Staff Member:	Date:
150929	May, Mike	[illegible]	3/27/03

Comments:

May,

I received the mail from you with [illegible]
for Jim Jackson Otho Te 4G
Jan 15, 1996 to Feb 29, 1996.

SCDC 18-49 (Nov 1993)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

FILED 2/23/98

Comment Sheet

SCDC#	Name of Inmate:	Name of Staff Member:	Date:
150931	May, Mike	[illegible]	2/23/98

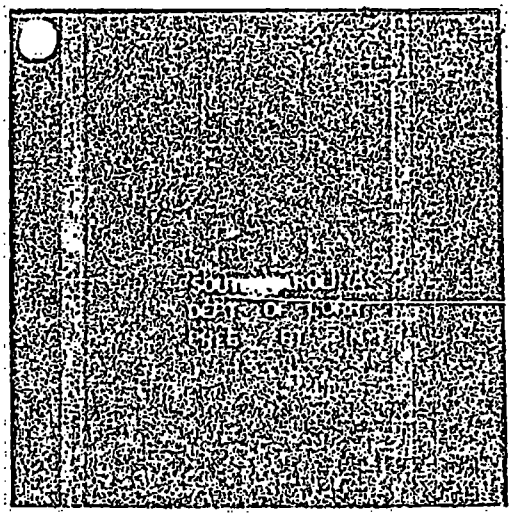
Comments:

[illegible]

SCDC: 18-49 (June 1993)



Mingo, Mary L
150929



MINGO, MARY
150929



Birth Place Passes 3-3-89

Religion Education

Nearest Relative

Previous Terms

Parties Of

Wanted

Blood Test

PUNISHMENT RECORD

Days Jail Time

I G P

PRISON WORK ASSIGNMENT

1-14-89 Curtude "A"
5-89 Cottage Details "A"
12-89 Diana to Ad. Park

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Health Services

Medical Clearance for Work Release

	Yes	No
Is this inmate presently on any type of medication?		✓
Is he/she physically capable of performing arduous type work situations?	✓	
From a medical and physical standpoint, would you recommend him/her for community work placement?	✓	

Remarks: _____

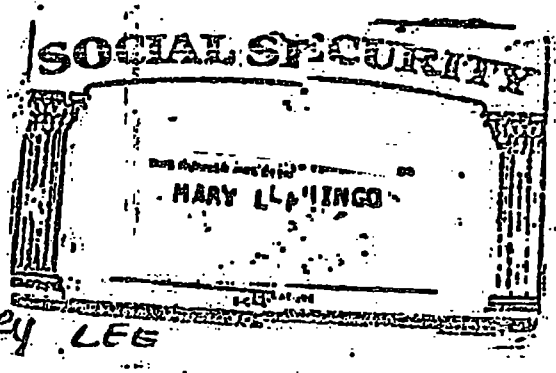
9-1-89
Date

For Medical Supervisor

NAME Mingo, Mary SCDC# 150929

SCDC #4999 (Rev. Apr. 1988)

CRT



WINGO, MARY LEE

Admitted

08/09/88

I, MARY WINGO, SCDC #: 150122, have been read and given a copy of the 1968 GUN CONTROL ACT. I am aware of and understand how this act applies to me.

Witness: [signature] Instructor

Signature: [signature]

Date: 7-4-87

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Division of Health Services

Medical Screen

Name: Mary Mungo SCDC # 150929

Institution: Felc/Nus

THIS QUESTIONNAIRE SHOULD BE FILLED IN BY A TRAINED PERSON WHO INTERVIEWS THE INMATE WHEN HE/SHE IS RECEIVED AT THE INSTITUTION.

1. Do you have any medical or dental problems? YES _____ NO ✓ If yes, describe:

HIGH BLOOD PRESSURE: _____ ALLERGIES: _____
SEIZURES: _____ DIABETES: _____
HEART TROUBLE: _____ SPECIAL DIET: _____
ULCER: _____ RECENT SURGERY: _____
OTHER: _____

2. Are you receiving treatment for medical or dental problems? YES _____ NO _____
3. ARE YOU ON ANY MEDICATIONS? YES _____ NO _____, If yes, list:
   1. HCTZ 25 mg.
   2. Min plus 10 mg.
   3. _____

Inmate's Signature: _____ Date: 9-1-05

OBSERVATIONS: Completed by trained employee

GENERAL APPEARANCE:

Physical deformities? YES _____ NO _____, If yes, describe:

Evidence of trama (such as obvious bruises, abrasions) ? YES _____ NO _____, If yes, describe:

BEHAVIOR:

Cooperative? YES _____ NO _____
Alert to person, place & time ? YES _____ NO _____

DISPOSITION OF INMATE:

Room and Dorm _____
Immediate referral to medical needed? YES _____ NO _____, If yes, action taken: _____

SIGNATURE: _____ DATE: 9-1-05

White: Inmate's Medical Record
Canary: Inmate's Institutional File

SCDC 20-11 (REV. Dec. 1988)

TRANSFER OF INMATES

FROM (Institution/Center)	TO (Institution/Center)
State Park	Blue Ridge

Effective this date, the following inmate(s) are transferred to the above-captioned location. (Warden's Record, Medical Record Flash Card, Commissary Card, Report, and Medical Security Clearance (if appropriate) are attached. Also accompanying the inmate(s) are his/her personal and state-issued property and medications.

DATE

SCDC NUMBER	NAME	REASON FOR TRANSFER	LAST AMOUNT PAID
15944	Polly Gaither	AWS	
15929	Mary Mungo B/F	AWS	

NOTE: The reverse side of this form must be completed for Parole Board Hearing transfers only. *Pending disciplinary actions and or serving administrative segregation sentence.

NOTE: Immediately notify Central Records Office by telephone at time of transfer, if during normal working hours.

In case of emergency when a transfer is made after normal working hours, notify Central Records Office as soon as possible.

DFC Seymour
AUTHORIZED SIGNATURE

SCDC 9112 (Rev May, 1999)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Human Services

Social Work Services Waiting List Notification

1. NAME Mary L Mungo DATE 9-13-89
2. SCDC # 150929 INSTITUTION Alston Wilkes
3. SPECIFIC SERVICES PLACED ON WAITING LIST:

	Service Name	MPRO Code	Waiting List Number
9-1-89 TO AWS			
a.	Family situation to be carefully assessed before		
b.	pass participation. 4th Day off 9/18/89 See copy of		
c.	S/W Assistant in file		
d.	Substance Awareness Counseling — by AWS staff		
e.			
f.	Referred to Social Worker Services 9/18/89 Mental Health Assessment done		
g.			
h.		Prog potential	
i.	Paula McCaskill, AWS/LCSW		

S/ _____ Inmate

S/ David E Chandler Responsible Staff Member

White: Inmate
Canary: Classification
Pink: Social Work Services Case File
Goldenrod: Waiting List File

SCDC IN-88 (Rev. 11, 1986)

C

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Health Services
Medical Screen

Name: Mezzo, Mary SCDC # 150295

Institution: [illegible] SPC

THIS QUESTIONNAIRE SHOULD BE FILLED IN BY A TRAINED PERSON WHO INTERVIEWS THE INMATE WHEN HE/SHE IS RECEIVED AT THE INSTITUTION.

****

1. Do you have any medical or dental problems? YES ✓ NO _____, If yes, describe:

HIGH BLOOD PRESSURE: yes ALLERGIES: no
SEIZURES: no DIABETES: no
HEART TROUBLE: no SPECIAL DIET: no
ULCER: no RECENT SURGERY: no
OTHER: no

2. Are you receiving treatment for medical or dental problems? YES ✓ NO _____
3. ARE YOU ON ANY MEDICATIONS? YES ✓ NO _____, If yes, list:
   1. Meniptase 1/2 + bid
   2. HCTZ 25 + p.o. qd
   3. _____

Inmate's Signature: [illegible] Date: _____

****

OBSERVATIONS: Completed by trained employee

GENERAL APPEARANCE:

Physical deformities? YES _____ NO ✓, If yes, describe:

Evidence of trama (such as obvious bruises, abrasions) ? YES _____ NO ✓, If yes, describe:

BEHAVIOR:

Cooperative? YES ✓ NO _____
Alert to person, place & time ? YES ✓ NO _____

DISPOSITION OF INMATE:

Room and Dorm 275
Immediate referral to medical needed? YES _____ NO ✓, If yes, action taken: _____

SIGNATURE: [signature] DATE: 1/13/89

FILE

[illegible]

CLAS[illegible]
STATE [illegible]

White: Inmate's Medical Record
Canary: Inmate's Institutional File

SCDC 24 11 (REV, Dec. 1988)

2994

RECORD CHECKLIST

SCDC #:	Name of Inmate:	Institution:
150929	Mary Mingo	WOMEN'S CORRECTIONAL CENTER

ITEMS TO BE CHECKED	YES	NO	CORRECTIVE ACTION
1. Up-to-date face sheet to include any new sentences.	✓		
2. Up-to-date picture I.D./SMRK screen is current.	✓		
3. All applicable commitment papers (or a copy of SCOF screen) in record.	✓		
4. Available commitment papers clear and legible.	✓		
5. Commitment papers coincide with offense information on face sheet.	✓		
6. Current FBI Rap Sheet or SLED summary to include any current escape offenses, etc.	✓		
7. Notation of any cautions to include any previous Category III offense.			n/a
8. Verifiable description of the crime if sex offense or Category III offense.			n/a
9. Copy of all adjustment committee actions (if applicable).			
10. Current disposition of all detainers, wanteds, and holds.			
11. Other (explain) R & E MEDICAL ✓ OFFENDER SUMMARY ✓ INMATE ORIENTATION ✓ INMATE GUIDE RECEIPT ✓ Social Security Card ✓			
12. Remarks: IPC orientation ✓ IPC Medical ✓ IPC Work program Approved ✓			

Note: This information is valid only for the date indicated.

Date:	Signature of Caseworker or Supervisor:
7-11-89	Judith P. Warlick 8-22-89

White Copy: Inmate's Central Record
Yellow Copy: Warden's Inmate Record
Pink Copy: Suspense Copy

25

TRANSFER OF INMATES

FROM (Institution/Center)	TO (Institution/Center)
Women's Correctional Center	SPCC/HHU

Effective this date, the following inmate(s) are transferred to the above-captioned location. Warden's Record, Medical Record Flash Card, Commissary Card, Diagnostic and Medical Security Clearance (if appropriate) are attached. Also accompanying the inmate(s) are his/her person and state-issued property and medication.

DATE July 12, 1989

SCDC NUMBER	NAME	REASON FOR TRANSFER	LAST AMOUNT PAID
150362F	Agnes Williams	Regular Work Program	
153161F	Kimberly Herd	Regular Work Program	
154814F	Polly Guthrie	Regular Work Program	
154123F	Fernanda Wiley	Regular Work Program	
150847F	Sonja Barger	Regular Work Program	
151404F	Pamela Weeks	Regular Work Program	
150985F	Mary Mingo	Regular Work Program	

FILED

JUL

WORK PROGRAM
State Park Correctional Center

NOTE: The reverse side of this form must be completed for Parole Board Hearing transfers only. *Pending disciplinary actions and/or serving administrative segregation sentence

NOTE: Immediately notify Central Records Office by telephone at time of transfer, if during normal working hours.

In case of emergency when a transfer is made after normal working hours, notify Central Records Office as soon as possible.

AUTHORIZED SIGNATURE

SCDC 19-182 (Rev. 4/88)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Community Services

Community Programs Application

MEMORANDUM

TO: Ms. Mary L. Minge, SCDC #150929, WCC

FROM: Director, Division of Community Services

SUBJECT: Community Programs Application

DATE: 7-3-89

Family situation to be carefully assessed before pass participation.
Mandatory Substance Awareness Counseling.
Referred to Social Worker Services.
Per recommendations received during processing, you are not to be considered for Extended Work Program at this time.

PART I

_____ Initial Review - Your application for community programs participation has been received by this office and disapproved initially. It will not receive a second review because of the reasons checked in Part II below.

XXX Second Review - Your previously disapproved work release application has received a second review with disposition as checked in Part II below.

_____ Inmate Worker

_____ Processing has been completed on your community programs application with the disposition as checked in Part II below. If your application was disapproved due to reasons 1 and 2 below, it will be necessary for you to submit your request at the specified time.

If your work program application was disapproved due to any one of 6 through 10 below, your request will be placed in abeyance and again reviewed in six months if your projected release or parole eligibility date is within one year. If your projected release or parole eligibility date is more than one year from the date of this memorandum you will be reviewed one year prior to your earliest parole/release date.

PART II

XXX APPROVED to the INW/SPCC Center. Your eligibility date is Now, and transfer will be coordinated by the appropriate Regional office with personnel within your institution as you can be released from your present job and as space is available within the work center to which you are approved.

WE TRUST YOU REALIZE THE OPPORTUNITY YOU HAVE BEEN GIVEN, AND WILL STRIVE TO MAKE THE BEST OF THIS OPPORTUNITY AND AVOID PROBLEMS.

_____ DISAPPROVED for the following reason(s):

_____ 1. Not eligible until _____. Reapply three months prior to your eligibility date.

_____ 2. Disciplinary infraction within six months (_____). Resubmit three months after the date of your disciplinary.

_____ 3. Due to the fact that you have been committed on two or more occasions for crimes of a violent nature, you are ineligible for community programs.

_____ 4. Extensive record.

_____ 5. Nature of your offense.

_____ 6. Problems with drugs and/or alcohol.

_____ 7. Unfavorable results of psychological and/or medical tests and evaluations.

_____ 8. Prior participation on community programs.

_____ 9. Negative responses were received from the community on your early return as a community programs participant.

_____ 10. Other: _____

Distribution:
Central Records
Community Services File
Inmate
✓ Warden
SCDC #150929

Warden Anderson
Mr. Harvey
Mr. Angevine
Mr. Glover, VR-WCC
Mr. Rice, VR-UPRC

_____
Director, Division of Community Services

C-2 CMC

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Offender Reclassification Report

RECEIVED

APR 12 1989

Women's Correctional

PART III - APPROVAL WORKSHEET

TYPE ACTION: ( ) TRANSFER (X) A CUSTODY ( ) AA CUSTODY

SCDC #:	NAME:	PRESENT CUSTODY/CATEGORY:	INSTITUTION:
150929	Mims, Mary Lee	B II	WCC

CURRENT OFFENSE(S) AND SENTENCE LENGTH(S): Assault + Battery - High + Aggrav. Nature 6 yrs

SENTENCE START DATE: 8-8-88

DATE ADMITTED TO SCDC: 8-9-88

ASSIGNMENT RECORD (INSTITUTIONS AND DATES): RHC → WCC - 8-9-88

PROPOSED ASSIGNMENT: N/A

CLASSIFICATION COMMITTEE (Members and area represented listed on Program Status Review Form)			WARDEN/SUPERINTENDENT		
APPROVED: ✓	DISAPPROVED:	DATE: 3-23-89	APPROVED: X	DISAPPROVED:	DATE: 3 31 89
REMARKS:			REMARKS:		
SIGNATURE: Chairperson			SIGNATURE: Program by Proxy		

REGIONAL ADMINISTRATOR			DIRECTOR - DIVISION OF INMATE OPERATIONS AND CONTROL		
APPROVED: ✓	DISAPPROVED:	DATE: 4-10-89	APPROVED:	DISAPPROVED:	DATE:
REMARKS:			REMARKS:		
SIGNATURE:			SIGNATURE:		

LAW ENFORCEMENT LIAISON			DEPUTY COMMISSIONER FOR OPERATIONS		
APPROVED:	DISAPPROVED:	DATE:	APPROVED:	DISAPPROVED:	DATE:
REMARKS:			REMARKS:		
SIGNATURE:			SIGNATURE:		

DISTRIBUTION:
White: Central Records
Yellow: Institutional Records
Pink: Classification Branch

SCDC 1672 (November 1988)

MCC sent 4/10/89

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER RECLASSIFICATION RECORD AS OF 5/17/99

[illegible] KING, MARY LEE [illegible] INST WCI
ASSIGNMNT: CUSTODY/SEC MED AIMS CRIME

SENTENCE 6 YRS. 0 MOS. 0 DYS. CENTRAL MONITORING CASE Y

SECTION A. SECURITY SCORE
1. SEVERITY OF CURR.OFF..... 1317 ASSL&BATTERY-HIGH/AGG.NAT CATEGORY 2 [illegible]
2. MAND. TIME TO SERVE BEFORE PAR. ELIG/RELEASE..... 2 YRS. [illegible] 0
VIOLENT OFFENSE WITH PRIOR VIOLENT CONVICTION N
3. TYPE OF DETAINER/HOLD/NOTIFY:

4. NUMBER OF PRIOR COMMITMENTS OVER 90 DAYS .....(0)X 1 = [illegible]
5. PRIOR HISTORY OF VIOLENCE
DATE OF LAST MAJOR INCIDENT 0/ 0/ 0 NUM OF MAJOR INCIDENTS [illegible]
DATE OF LAST MINOR INCIDENT: 0/ 0/ 0 NUM OF MINOR INCIDENTS [illegible]
REMARKS.

6. TOTAL RECLASSIFICATION SECURITY SCORE..... [illegible]

MANAGEMENT SECURITY CONCERN (OVERRIDE)
THERE ARE NO KNOWN INCIDENTS OF ESCAPE/RELATED [illegible]

SECTION B. ADJUSTMENT SCORE
7. PERCENTAGE OF TIME SERVED (BASED ON MAXIMUM [illegible]
8. CURRENT AGE ... 50
9. EVALUATION OF JOB PERFORMANCE [illegible]
10. EVALUATION OF PROGRAM PERFORMANCE [illegible]
11. RULES VIOLATIONS IN LAST 12 MONTHS
MINOR INSTITUTIONAL DISCIPLINARY CONVICTIONS 1 [illegible]
MAJOR INSTITUTIONAL DISCIPLINARY CONVICTIONS 0 [illegible]
(SUM OF THE TWO LINES [illegible]
12. TOTAL RECLASSIFICATION ADJUSTMENT SCORE..... [illegible]

13. NET SCORE (LINE 6 MINUS LINE 12)..... [illegible]

SECTION C. ADMINISTRATIVE REVIEW
RECOMMENDED CUSTODY LEVEL FROM BCI SCORE [illegible]
COMMENTS OF REVIEWER..... [illegible]
COMMENTS OF REVIEWER [illegible]
RECOMMENDED INST. ASSIGNMENT [illegible]
CHAIRPERSON DECISION [illegible]
COMMENTS [illegible]
WARDENS APPROVAL [illegible]
WARDENS COMMENTS [illegible]

RECOMMENDATION REQUIRES CENTRAL OFFICE APPROVAL [illegible] NO
DISTRIBUTION CENTRAL RECORD DATE PRINTED 05/17/99
INSTITUTIONAL RECORD WORKING CUSTODY
AUDIT FLAGS - PRIORS N INDICT Y DETAIN: N DISCIP. N ASSL N ESC N

25

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER RECLASSIFICATION REPORT OF 03/17/89
PROGRAM STATUS REVIEW

PART III: NEEDS ASSESSMENT

INMATE #: 00150929 INST: WCC ASSGNMNT 4010
HINGO,MARY LEE CUSTODY/SLC B 4 WING GRP

REASON FOR NEEDS ASSESSMENT REVIEW 6 MONTH REVIEW METHOD COMMITTEE

PROGRAM RECOMMENDATIONS FROM LAST REVIEW

PROGRAM PARTICIPATION SINCE LAST REVIEW

158 ASSERTIVENESS SK
144 PSY SOC EVAL GEN

RECOMMENDED CHANGES

COURT ORDERED PROGRAMS N ACTION TAKEN

CURRENT EWC LEVEL 03
JOB DESCRIPTION: TRAY LINE SUPERVISOR

CURRENT PRI MARKET DES
CURRENT PROJ FORCE ELIG

WORK EVALUATION:

RECOMMENDED WORK CHANGES

INMATE WAS PROVIDED OPPORTUNITY TO PARTICIPATE IN MANDATORY PROGRAM
LIMITING PHYSICAL/PSYCHOLOGICAL FACTORS N

EVALUATION OF JOB PERFORMANCE EXCEL
EVALUATION OF PROGRAM PERFORMANCE EXCEL

COMMITTEE RECOMMENDATIONS

COMMENTS

CHAIRPERSON: D TEAGUE

INMATE MARY HINGO

DISTRIBUTION: CENTRAL RECORDS
INSTITUTIONAL RECORDS

DATE TYPED

DISPOSITION OF RECLASSIFICATION REVIEW

INMATE NAME: MINGO ,MARY LEF SCDC NUMBER: 150929

DATE OF RECLASSIFICATION REVIEW: 3/17/89 CURRENT LOCATION WCC

1) PROJECTED RELEASE AND PROGRAM ELIGIBILITY DATES AS OF: 03/22/89

A) SENTENCE EXPIRATION (MAXOUT) 8/20/91
B) INITIAL PAROLE ELIGIBILITY 10/ 4/89
C) NEXT SCHEDULED PAROLE HEARING 0/ 0/ 0
D) WORK RELEASE ELIGIBILITY 3/ 1/89
E) INMATE WORKER ELIGIBILITY 0/ 0/ 0

2) DATES (ABOVE) ARE BASED ON THE FOLLOWING INFORMATION:

	YRS	MO	DYS
A) CURRENT SENTENCE SERVING:	6	0	0
B) SENTENCE START DATE	8/ 8/88		
C) CURRENT EWC LEVEL/ASSIGNMENT	03		

3) RECLASSIFICATION REVIEW:

A) YOUR CUSTODY/SECURITY LEVEL PRIOR TO REVIEW BL3
B) YOUR REVIEW RESULTED IN A NET SCORE OF 272 WHICH INDICATES A(L3 CUSTODY/SECURITY LEVEL
C) THE CLASSIFICATION COMMITTEE

AGREES: NEW LEVEL=)*AL3

4) THE PROPOSED ACTION REQUIRES FURTHER APPROVAL BY THE FOLLOWING AUTHORITIES:
✓WARDEN
✓REGIONAL ADMINISTRATOR

(YOUR CLASSIFICATION CASEWORKER WILL NOTIFY YOU WHEN A FINAL DECISION IS MADE).

5) YOUR NEXT RECLASSIFICATION REVIEW IS SCHEDULED FOR 9/89

6) RECOMMENDATIONS FOR YOUR NEXT REVIEW PERIOD ARE AS FOLLOWS:
Enroll/complete at least one Social Work—Work Release to next evaluation.

7) COMMENTS:
Continue your excellent work and program performance

S/ Debbie Cooper 3/23/89
CLASSIFICATION SUPERVISOR OR CASEWORKER DATE

CC: INSTITUTIONAL RECORDS
CENTRAL RECORDS

RECORD CHECKLIST

SCDC #:	Name of Inmate:	Institution:
150929	[illegible]	[illegible]

ITEMS TO BE CHECKED	YES	NO	CORRECTIVE ACTION
1. Up-to-date face sheet to include any new sentences.	✓		
2. Up-to-date picture I.D./SMRK screen is current.	✓		
3. All applicable commitment papers (or a copy of SCOF screen) in record.	✓		
4. Available commitment papers clear and legible.	✓		
5. Commitment papers coincide with offense information on face sheet.	✓		
6. Current FBI Rap Sheet or SLED summary to include any current escape offenses, etc.		✓	
7. Notation of any cautions to include any previous Category III offense.		✓	
8. Verifiable description of the crime if sex offense or Category III offense.	N/A		
9. Copy of all adjustment committee actions (if applicable).	N/A		
10. Current disposition of all detainers, wanteds, and holds.	N/A		
11. Other (explain) [illegible]	✓		[illegible]

12. Remarks:

Note: This information is valid only for the date indicated.

Date:	Signature of Caseworker or Supervisor:
3/7/89	[illegible]

White Copy: Inmate's Central Record
Yellow Copy: Warden's Inmate Record
Pink Copy: Suspense Copy

SCDC 18-15 (7/89)

Send to: Law Enforcement Center
Sidney S.C. 29601

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

REQUEST FOR JAIL TIME

Inmate Wingo, Mary SCDC# 150929

indicated he/she served a period of pre-trial confinement in your facility for

A+B - Agg. Assault & Battery
(Offense)

Tried by Judge William B. Traxler, Jr. on 8-8, 19 88.

he/she was committed to the S.C. Department of Corrections on 8-9 19 88.

If he/she is entitled to credit for jail time for the above offense, please fill in the requested information; if he/she is not entitled to jail time for this offense, please sign the form in the alloted space. Return to the address below.

Credit _____ for jail time from,
(Inmate Name)

_____ 19 _____ until _____ 19 _____ for _____
(Offense)

She tells she was in jail from 1-15-88 until ? Agreed. a mugshot + Jeff. Sheriff's Dept. Mugshot agrees 2 months time. Also confirmed by S.C.

S/ _____
Sheriff/Supervisor/Administrator

_____ _____
County or City Date

Return to:

RECORD'S OFFICE
WOMEN'S CORRECTIONAL CENTER
4450 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29210

South Carolina Department of Corrections
Chief, Offender Records Branch
P.O. Box 21787
4444 Broad River Road
Columbia, South Carolina 29210

INSTRUCTIONS: This form is to be presented to each inmate at the time of his/her classification interview.

TO THE INMATE: In order to receive credit for jail time, you will be responsible for forwarding this form to the appropriate Sheriff, Supervisor, or Jail Administrator.

SCDC 13-61 (Rev. 87)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

REQUEST FOR JAIL TIME

Inmate MINGO, MARY SCDC# 150929

indicated he/she served a period of pre-trial confinement in your facility for

A & B - HIGH & AGGRAVATED NATURE
(Offense)

Tried by Judge WILLIAM B. TRAXLER JR. on 8-8 19 88 ;

he/she was committed to the S.C. Department of Corrections on 8-9 19 88 .

If he/she is entitled to credit for jail time for the above offense, please fill in the requested information; if he/she is not entitled to jail time for this offense, please sign the form in the alloted space. Return to the address below.

Credit Mary Lee Mingo for jail time from.
(Inmate Name)

JAN 15 19 88 until FEB 29 19 88 for (GRIT ASSAULT)
(Offense)

She states she was in jail from 1-15-88 until ??. Approx. a month & half. She was released on bond for approx 2 months before being sentenced to WCC.

S/ James W. Bowers (MSB)
Sheriff/Supervisor/Administrator

Sheriff's Office 3/14/89
County or City

Return to:

RECORD'S OFFICE
WOMEN'S CORRECTIONAL CENTER
4450 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29210

South Carolina Department of Corrections
Chief, Offender Records Branch
P.O. Box 21787
4444 Broad River Road
Columbia, South Carolina 29210

RECEIVED
Women's Correctional Center
MAR 21 1989
Records Office

INSTRUCTIONS: This form is to be presented to each inmate at the time of his/her classification interview.

TO THE INMATE: In order to receive credit for jail time, you will be responsible for forwarding this form to the appropriate Sheriff, Supervisor, or Jail Administrator.

SCDC 10-81

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

REQUEST FOR JAIL TIME

MINGO, MARY SCDC# 150229

he/she served a period of pre-trial confinement in your facility for

HIGH & AGGRAVATED NATURE (Offense)

dge WILLIAM B. TRAXLER JR. on 8 - 8 - 1988

committed to the S.C. Department of Corrections on 8 - 9 - 1988

s entitled to credit for jail time for the above offense, please fill in the

nformation; if he/she is not entitled to jail time for this offense, please sign

the alloted space. Return to the address below.

Mary Lee Mingo (Inmate Name) for jail time from,

19 88 until FEB 29 19 88 for (SAME AS ABOVE) (Offense)

as in jail from 1-13-88
x. a month & half
bond for approx 2 months
tenced to WCC.

[signature] Sheriff/Supervisor/Administrator

Greenville County or City 3/14/89 Date

RECORD'S OFFICE
WOMEN'S CORRECTIONAL CENTER
4450 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29210

Mail from South Carolina Department of Corrections
Chief, Offender Records Branch
P.O. Box 21787
4444 Broad River Road
Columbia, South Carolina 29210

RECEIVED Correctional Center MAR 15 1989 COLUMBIA

INS: This form is to be presented to each inmate at the time of his/her classification interview.

ATE: In order to receive credit for jail time, you will be responsible for forwarding this form to the appropriate Sheriff, Supervisor, or Jail Administrator.

3005

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Community Services Branch

Application For Community Programs

SCDC Number:	Name: LAST	FIRST	MIDDLE	Date:
150929	Mingo,	MARY	LEE	10-4-88
Present Custody:	Institution/Center:			Date of Birth:
B	Women's Correctional Center			

Social Security Number:	Height:	Weight:	Sex:	Race:	Date of Trial:
[redacted]	5'5	190	F	BLK	8-8-88

Length of Sentence:	Offense:	Sentencing County:
6 YRS	Assault + Battery High + Aggravated	Greenville

Home Address: STREET [redacted] CITY Greenville STATE S.C. COUNTY G'ville ZIP

DEPENDENTS (Persons who will receive your earnings)

Name:	Relationship:	On Welfare?
MARY Mingo	SELF	( ) Yes (X) No

Address: STREET [redacted] CITY STATE COUNTY ZIP
Same As Above

NAME:	Relationship:	On Welfare?
		( ) Yes ( ) No

Address: STREET CITY STATE COUNTY ZIP

WORK HISTORY WITH THE DEPARTMENT OF CORRECTIONS
Last Two Jobs

	Date	Job Title	Section	Institution	Supervisor	Reason for Leaving
From:	9-8-88	Cook	Cafe	NCC	Arthur Gilley	—
To:	10-4-88					
From:						
To:						

WORK HISTORY PRIOR TO INCARCERATION
Last Two Jobs

	Date	Job Title	Company Name	Address	Reason for Leaving
From:	1987	Janitorial	Greenville High School	Greenville S.C.	Incarceration
To:	1988				
From:		Short order Cook/Salad	Charlie's Steak House	Greenville, S.C.	—
To:					

TYPE OF WORK PREFERENCE

First Choice	Second Choice
Cook	Janitor

WORK/RELEASE INSTITUTIONAL PREFERENCE

State Pack

SCDC 272 (Rev. 88)

INTAKE ASSESSMENT/FORM WORKSHEET

SCDC #: 150929 NAME OF INMATE: Munro DATE:

MIA1 ASSESSMENT RECOMMENDATIONS

___ COURT INTERVENTION

_1_ ___ ___ AREA OF RESPONSE/DISPOSITION

CLIENT/WORKER PLAN

070 1. _____

025 2. _____

___ 3. _____

___ 4. _____

___ 5. _____

___ 6. _____

MIA2 EDUCATION BACKGROUND

08 HIGHEST GRADE COMPLETED

6 REASON FOR WITHDRAWAL

N SPECIAL EDUCATION

22 VOCATIONAL TRAINING

__ YEAR CERTIFIED

MIA3 EMPLOYMENT HISTORY

N EMPLOYED AT TIME OF ARREST

2 OVERALL EMPLOYMENT

3 EMPLOYMENT LAST YEAR

GU USUAL JOB

_____ AVERAGE WEEKLY SALARY

___ NATURE OF JOB

___ SUPPORTED FAMILY

MIA4 MENTAL HEALTH BACKGROUND

_1_ (1) PRIOR MENTAL HEALTH/LENGTH OF INVOLVEMENT

_1_ (2) _1_ (3)

N MENTAL HEALTH TREATMENT AT ARREST

N HAVE MENTAL HEALTH PROBLEMS NOW

N DESIRE MENTAL HEALTH TREATMENT

00 # PRIOR SUICIDE ATTEMPTS

7 (1) __ (2) __ (3) __ (4) TYPE ATTEMPTS

~~__/__/__ DATE OF LAST ATTEMPT~~

MIA5 ALCOHOL/DRUG HISTORY

Y DRUG-RELATED OFFENSE

NO. TIME CONVICTED OF:

01010100 DUI/DRUGS/PUBLIC DRUNK

3 DRUG/ALCOHOL PROBLEM

4 PRIOR ALCOHOL/DRUG TREATMENT

N ALCOHOL/DRUG TREATMENT AT ARREST

N DESIRE ALCOHOL/DRUG TREATMENT

3 GENERAL OVERALL HEALTH

4 LIMITS WORK/TRAINING

4 FAMILY RELATIONS

MIA6 TEST DATA

110 BETA II

___ WAIS

__ 85 GATES READING

__ 33 WRAT SPELLING

__ 18 WRAT ARITHMETIC

TEST RESULTS			SUMMARY COMMENTS	
02	___	(1)	___	___
10	___	(2)	___	___
___	___	(3)	___	___
___	___	(4)	___	___
___	___	(5)	___	___
___	___	(6)	25	___
15	___	(7)	___	___
17	___	(8)	___	___

(F/INTAKE - CLASSIFI)

4

CONSENT TO BE DOUBLED CELLED

INSTITUTION DCC

INMATE'S NAME [illegible] SCDC# 150929

1. I, the undersigned do hereby agree to be double-celled at the above named institution in conformance with the terms reached between the parties in the Nelson vs Leeke Decree.

2. I agree to such action freely and voluntarily as indicated by my signature below.

DATE: 6/1988 INMATE'S SIGNATURE [illegible]

DATE: 8-16-88 WITNESS' SIGNATURE [illegible]
State Employee

DISTRIBUTION:
Original to Institutional Record
Copy to Central Record
Copy to Inmate Concerned

25

3008

O O SWM

INTAKE INTERVIEW GUIDE

NAME Mau Mayo DATE 9/2/88
SCDC # 115929 AGE 47 RACE B
CURRENT OFFENSE ARWIK
SENTENCE LENGTH 10 years

MIA1 1. Is there a court order? N If so, what type? _____

Family History

1. Are you currently married (this includes common-law arrangements), single, separated, divorced or widowed? _____

2. Have you ever been married? yes How many times? 1

3. How long have you been separated (if separated)? _____

4. How many children do you have? 6

5. Who supports the children? Mother

Education Background

MIA2 1. What is the highest grade level that you have completed? 8

2. If you did not finish high school, what was the reason? Married

3. Were you ever suspended or expelled from school? No

4. Did you ever fail any grades? No

5. Were you ever in special education classes? No
(If IQ is low, ask client to: a) name months of year; b) count change; c) tell time)

6. Have you ever taken a vocational training course? No

7. Were you certified? _____
What year? _____

(CLASSIFI/INTERVIE) 1

O 6 14 88 25 x

3009

Employment History

MIA3 1. Were you employed at the time of your arrest? No -

2. If not, how long prior to your arrest had you been without work?

3. What is your usual job? Cafeteria Work

4. What is your average weekly salary?

5. How many months did you work in the past year? 0

6. How many months do you usually work each year? 0

7. Did you ever have any problems with your employer?

Mental Health Background

MIA4 1. Have you ever seen a psychiatrist, psychologist, counselor, or social worker before? No

2. If so, when and where did you go for counselling, treatment, or evaluation? (list type of service and duration of service)
   a)
   b)
   c)

3. Have you ever tried to hurt yourself? No

4. When was your last attempt?

5. How did you try to hurt yourself?

Alcohol/Drugs

MIA5 1. How many times have you been convicted for DUI? 01 Drugs? 00 Public Drunkenness? 00 (Indicate the number of times for each)

2. Were you under the influence of alcohol or other drugs at the time of this crime? No
   (What type?)

3. Has your spouse ever threatened to leave you because of your drinking or drug use? No

4. Have you ever lost a job, or been threatened with the loss of a job because of your drinking or drug use? No

25×

5. Have you ever suffered any financial difficulties because of your drinking or drug use? No

6. How much do you spend on drugs per week? None

7. How much do you drink per week? 2-3 beers on weekends occasionally

8. Have you ever participated in any alcohol/drug treatment programs? No If so, what type? _____

9. Were you in any alcohol/drug treatment programs when you were arrested? No

10. Do you feel you have a problem with alcohol or drugs? No

11. Do you feel you need to be in treatment? No

Physical History

MIAS 1. How would you characterize your current state of health? Good

2. Do you now, or have you in the past, ever had a serious physical problem? No

3. Does your health limit the kind of work you can do? No

Legal History

AIMS 23,9 1. Have you ever been in trouble with the law before now? No

2. When? _____

3. What were the circumstances? _____

4. Would you please tell me about these charges you have been convicted of? (If they say they didn't do it, ask, "What do others say about you and those charges?") (Convicted) Theft, Leavell & Route 66 Inc - Petit Larceny Grand Larceny Placement & 1st Air Force

25 x

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
SUMMARY ADMISSION REPORT
INITIAL CLASSIFICATION REVIEW OF 9/ 1/88

150929 MINCO, MARY LEE INST: WCC

CENTRAL MONITORING CASE: N

SECTION A. SECURITY SCORE		CATEGORY	SCORE
1. SEVERITY OF CURR.OFF.....	1317 ASSL&BATTERY-HIGH&AGG.NAT	2	16
OTHER OFFENSES.....	1399 ASSLT & BATT W/INTNT KILL		
2. NUMBER OFFENSES IN CURRENT COMMITMENT.....	(1)X8=___ (MAX.OF 05)		8
3. CURRENT SENTENCE.....	6 YRS 0 MOS. 0 DYS		6
4. MAND. TIME TO SERVE BEFORE PAR. ELIG/RELEASE.:	0 YRS.		0
VIOL. OFFENSE WITH PRIOR VIOL. CONVICTION...	N - PENDING VERIFICATION		
5. ALCOHOL/DRUGS ASSOCIATED WITH CURRENT OFFENSE...	Y		4
6. CURRENT AGE.....	50		15
7. NUMBER OF PRIOR CONVICTIONS OVER 90 DAYS.....	(0)X8=___ (MAX OF 10)		0
8. HISTORY OF VIOLENCE:			0
DATE OF LAST MAJOR INCIDENT: 0/ 0/ 0	NUM. OF MAJOR INCIDENTS: 0		
DATE OF LAST MINOR INCIDENT: 0/ 0/ 0	NUM. OF MINOR INCIDENTS: 0		
REMARKS:			
9.TOTAL SECURITY SCORE.....			49

SECTION B. ADMINISTRATIVE REVIEW

THERE ARE NO KNOWN INCIDENTS OF ESCAPE OR RELATED OFFENSES AT REVIEW

THERE ARE NO KNOWN DETAINERS,NOTIFIES, HOLDS AT TIME OF REVIEW

RECOMMENDED CUSTODY/SECURITY LEVEL FROM SECURITY SCORE.. AL2

COORDINATOR DECISION..... D-H
COORDINATOR/COMMITTEE RECOMMENDATION - BL3
RECOMMENDED INST. PLACEMENT: WCC NEXT SCHEDULED REVIEW: 3/89

COORDINATOR: EWHITE Because of her S/ Evelyn G White DATE: 9-6-88
COMMENTS: violence offense, subject was
placed in Bs13 Custody by the Classification Committee

WARDENS APPROVAL: Y S/ _____ DATE: 9-22-88
WARDENS COMMENTS:

INMATE'S SIGNATURE S/X Mary Lee Minco DATE: 9-6-88

DISTRIBUTION: CENTRAL RECORD
INSTITUTIONAL RECORD

DATE PRINTED: 09/08/88
VERSION NUM:8803

AUDIT FLAGS - PRIORS: N INDICT: Y DETAIN: N DISCIP: N REL: N EMC: N

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Offender Reclassification Report

PART II - NEEDS ASSESSMENT (Classification Program Status Review)

1 SCDC #:	2 INMATE NAME:	3. INSTITUTION:	4. DATE OF REVIEW:
150929	Thomas Mary	WCC	[illegible]

5 TYPE OF REVIEW
- ☐ Scheduled Review
- ☐ Inmate Request
- ☒ Initial Institutional Review
- ☐ Other (Specify) _____

6. METHOD OF REVIEW:
- ☒ Classification Committee Review
- ☐ Individual Interview

7 PROGRAM RECOMMENDATIONS MADE BY THE INITIAL INSTITUTIONAL CLASSIFICATION COMMITTEE:
Job Assignment
School

8. PROGRAM PARTICIPATION (SINCE LAST REVIEW)
None

9 RECOMMENDED PROGRAM CHANGES
None

10. COURT ORDERED INTERVENTION ☐ Yes ☒ No
ACTION TAKEN:

11. CURRENT EWC TITLE:

12. EWC CODE:

13. EWC:
Hours per day _____ Days per week _____

14. WORK EVALUATION:
None.

15 RECOMMENDED WORK ASSIGNMENT CHANGE
None

16. LIMITING PHYSICAL OR PSYCHOLOGICAL FACTORS:
None

17. WAS THIS INMATE PROVIDED THE OPPORTUNITY TO PARTICIPATE IN MEANINGFUL PROGRAMS AS REQUIRED?
☐ Yes ☐ No, Explain

18 CURRENT PROJECTED PAROLE ELIGIBILITY DATE:

19. CURRENT PROJECTED MAX OUT DATE:

20. EVALUATION OF JOB AND PROGRAM PERFORMANCE:
☐ Poor ☐ Average ☐ Good ☐ Excellent
(Definitions of ratings are on back of this page
Give reasons for the rating in space below.)

None

(Record Score on Part I, Section B, Item 7)

21. COMMENTS:
Inmate received
the Captain's [illegible]
[illegible]

22. CLASSIFICATION COMMITTEE AREAS REPRESENTED:
[illegible]

Signature _____ Chairperson

23. INMATE SIGNATURE:
Signature [illegible]

DISTRIBUTION:
White: Central Records
Yellow: Institutional Records
Pink: Classification Branch

SCDC 1671 (November 1994)

3013

NAME: Mingo, Mary Lee
RACE: B F
JAIL TIME: 8-8-88
REASON FOR TRANSFER TO S.C.D.C.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECEIPT

INMATE GUIDE

I, MARY MINGO SCDC # 150929
did receive a copy of the newly revised INMATE GUIDE. I have been instructed to read the INMATE GUIDE and to thoroughly familiarize myself with its contents. I have further been advised that if I am unable to read, it will be my responsibility to have someone read the INMATE GUIDE to me, or to request Department of Corrections authorities to have it read to me. I understand that I am to keep the INMATE GUIDE in my possession so I may use it for future reference.

Date: 3/20/89

Mary L Mingo — 150929
Inmate's Signature — SCDC #

Y.O.II O. Bulkitt
Issuing Official's Signature

cc: Central Record
Institutional Record

SCDC [illegible]

25

3014

CERTIFICATION OF INMATE ORIENTATION

This is to certify that I, Mario Mago, SCDC # 150729
have completed the orientation program at L.I.C.I.
(Assigned Institution/Center)

advising me of institutional rules and regulations, staff organization and programs as required by SCDC Policy 1200.3, paragraph 2 page 1.

DATE: 8-17-88

Mario Mago
Inmate Signature SCDC #

Certifying Official's Signature

cc: Institutional Record
Central Records Office

SCDC 1543 (Rev. 1/82)

CERTIFICATION OF INMATE ORIENTATION

This is to certify that I, Mario Mago, SCDC # 150729
have completed the orientation program at SPWMU
(Assigned Institution/Center)

advising me of institutional rules and regulations, staff organization and programs as required by SCDC Policy 1200.3, paragraph 2 page 1.

RECEIVED
AUG 17 10:17
CENTRAL RECORDS

DATE: 8/16/88

Mario Mago
Inmate Signature SCDC #

Certifying Official's Signature

cc: Institutional Record
Central Records Office

SCDC 1543 (7/80)

INMATE PERSONAL PROPERTY

State Park Correctional Center

By my signature below, I acknowledge that I have received a copy of the applicable personal property limits. I understand that I am responsible for keeping my personal property inventory within the stipulated limits. I also understand that my personal property, excluding television, fan, radio, typewriter, and ice chest, must fit into the personal property bag which will be issued at time of transfer and/or applicable absence from facility. I realize that if I fail to maintain my property within the stipulated limits, I am subject to appropriate disciplinary action and that items over the limits will be confiscated.

Date: Mary Mingo SI Resident Name 150929 SCDC #

Witness: Staff Member

cc: Warden's Record
Offender Records

CLASSIFICATION OF INMATE ORIENTATION

This is to certify that I, Mary Mingo SCDC # 150929

have completed the orientation program at SPCWMC (Assigned Institution/Center)

advising me of institutional rules and regulations, staff organization and programs as required by SCDC Policy 1200.3, paragraph 2 page 1.

DATE: 7/12/89 Inmate Signature SCDC #

FILED

JUL 17 1989

Certifying Official's Signature

cc: Institutional Record
Central Records Office

CLASSIFICATION
STATE PARK CORR. CENTER

SCDC 25-42 (7-80)

3016

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
RECEPTION AND EVALUATION CENTER
EVALUATION

NAME: Satail DATE: 06/25/98

MIS#: 201229 AGE: 16 DOB:

DATE OF COMMITMENT: 05/28/98 COUNTY: Greenville

DATE OF RELEASE: 07/01/98 DISCHARGE TO: Greenville

DETENTION ORDER: No

ALERT: None

DISPOSITIONAL RECOMMENDATION:

___ Diversion ___ Suspended Commitment ___ Monetary Restitution

_X_ Probation ___ Commitment _X_ Community Service

PLACEMENT RECOMMENDATION:

_X_ Home Placement ___ Alternative Placement ___ DJJ Institution

ATTACHMENTS:

_X_ Form 5

_X_ Court Order

_X_ Social Work Report

_X_ Psychological Evaluation

_X_ Psychiatric Evaluation

___ Clinical Assessment Summary (Alcohol and Drug Use)

_X_ Student Transcript

_X_ Health Examination Record

_X_ Medical Lab Report

FORM5 CURRENT DATE 06/23/98

CASE#: 201229 CLIENT INFORMATION

CLIENT NAME: SATAIL LATORYA
ALIAS: COUNTY: GREENVILLE
CLIENT ADDRESS: GREENVILLE SC 29607
RACE: BLACK SEX: FEMALE SSN: PHONE: 3701174
AGE: 16 DOB: DOB HAS BEEN VERIFIED: NO

FATHER'S NAME: FREDDIE MASSEY
FATHER'S ADDRESS: UNKNOWN GREENVILLE SC

MOTHER'S NAME: DORA MASON
MOTHER'S ADDRESS: SAME

GUARDIAN'S NAME:
GUARDIAN'S ADDRESS:

INTAKE OFFICER: C122 PROB/AFTC OFFICER: PROB/AFTC UNIT:
SCHOOL: 2391 GRADE: NINTH GRADE
EDUC. STATUS: SPEC. PROGRAM, EMOTIONALLY HANDICAPPED
REGISTRY REQUIRED - NO
PRIOR-HIST: 01
REM/COMP: NO REMEDIAL/COMP CLASS
DSS HAS LEGAL CUSTODY OF CLIENT: NO FAMILY INCOME: $5,000 - $9,999
NATURAL PARENTS MARITAL STATUS: DIVORCED/SEPARATED
CLIENT'S LIVING ARRANGEMENT: NATURAL MOTHER
KNOWN ALCOHOL/DRUG ABUSE: NO ALCOHOL OR DRUG USE
CLIENT EMPLOYMENT STATUS: UNEMPLOYED, NO PREVIOUS WORK
CRIMINAL STATUS OF FAMILY:
SIBLING, NO DELINQ.; AT LEAST 1 PARENT, PRIOR CRIM. RECORD
IDENTIFIED SPECIAL NEEDS:
EDUCABLY MENTALLY HANDICAPPED

INTAKE HISTORY

DIST LOC	OFFENSE DATE	REF DATE		OFFENSE	REF SEQ	SOL DEC	DATE
123	970506	970506		TRUNCY 01	020	DIS	980428
123	971008	980225		SIMA&B 01	040	PRO	980306
	980219			DISTSL 01		PRO	980306
~~123~~	~~971008~~	~~980528~~	~~801~~	~~SIMA&B 01~~	~~041~~	~~PRO~~	~~980306~~
	980219			DISTSL 01		PRO	980306

COURT HISTORY

HEARING	COURT ACTIONS		JDG	DISP DATE
AR	R&E	01	ACB	980528
	CON	01		

********** END LIST **********
ALERT:

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)

IN THE FAMILY COURT
CASE NO. 97-1722

STATE OF SOUTH CAROLINA,

PLANTIFF,

VS.

Natalia

DEFENDANT.

ORDER

(ADJUDICATION)

This matter came before me on a ( ) Petition, ( ) Rule to Show Cause, filed in the Greenville County Clerk of Court's Office on the 14 day of Nov, 19 97, alleging that the minor:

( ) _____;

( ) _____;

( ) Assault & Battery;

( ) violated Code Section _____ of the 1976 Code of Laws, as amended.

Present at the hearing were the following, to wit:

( ) solicitor, _____;

( ) mother, _____;

( ) father, _____;

( ) custodian, _____;

( ) Guardian ad Litem, _____;

( ) Attorney for the minor, _____;

( ) _____;

( ) _____.

ADJUD.ORDER
MISCELLANEOUS ORDER

AS TO THE ADMITTANCE

I find that the minor is:

(✓) 16 years old;

(✓) can (cannot) read and write;

(✓) understands the nature of the charges or was explained the charges by the Court to the Court's satisfaction;

( ) is in the 9 grade;

( ) has finished the _____ grade;

(✓) that the child was not forced or coerced to admit the allegations;

(✓) that the parent(s) agree that the child should admit the allegation;

(✓) that the child is (not) under the influence of drugs or alcohol at this time.

AS TO JURISDICTION

I find that the offense was committed in Greenville County, South Carolina and the child lives in Greenville County, South Carolina, and was 16 years old when the offense was committed.

AS TO THE OFFENSE

( ) I find that on the _____ day of _____, 19___, the minor did the following: _____

_____

_____.

( ) I find that on the ____ day of _____, 19___, the minor did the following: _____

_____

_____

(X) I find that the minor admitted that (s)he committed the offense described in the (X) Petition, ( ) Rule to Show Cause.

I find that the ( ) Petition, ( ) Rule to Show Cause was modified in the following particulars:

( ) the allegation was amended to _____

_____

( ) the allegation in paragraph ____ was omitted;

( ) I find that this child may meet the Alexander S criteria.

( ) I find that this child has a history of not complying with parental instruction.

( ) I find that this child has a history of running from his home.

( ) I find that this child will most probably not stay in the area for a local Mental Health or Department of Mental Retardation evaluation due to his/her failure to stay home and/or comply with parental instructions.

( ) I find that these parents are capable of contributing to the support of the minor child while in placement.

( ) _____

_____

AS TO DISPOSITION

1 (a). (✓) I find that the minor should be committed to the Department of Youth Services for a period not to exceed forty-five (45) days and upon his return to be:

( ) detained and as soon as possible be brought back before the Court;

(✓) returned to the parents home conditional upon the fact the child attend school each and every day unless sick and not be out past 6:00 o'clock p.m.

( ) the child is not to leave the ( ) house; ( ) yard without a parent.

(b). ( ) That the minor be evaluated by the Department of Mental Health to determine if the minor can be evaluated locally by the agency; however, if it is determined that the minor cannot be evaluated locally, the child shall be sent to the State Department of Mental Health in Columbia, South Carolina, for a fifteen (15) day evaluation. That a dispositional hearing will be held after the evaluation of the minor.

(c). ( ) That the minor be evaluated by the Department of Mental Retardation to determine if the minor can be evaluated locally; however, if it is determined that the minor cannot be evaluated locally, the child shall be sent to the regional Department of Mental Retardation for a

thirty (30) day evaluation. That a dispositional hearing will be held after the evaluation of the minor.

2. ( ) That the minor be evaluated by a psychiatrist while at R & E.

3. ( ) That the minor met the criteria (for Alexander S.) and he/she shall be placed at ( ) Department of Mental Retardation regional facility; ( ) State Hospital.

4. ( ) I find that the minor should be committed to the Department of Youth Services for an indeterminable period not to exceed the child's 21st birthday.

I find that the parents of the committed juvenile are to supply sufficient clothing that meets DYS clothing guidelines to the juvenile during the time he/she is committed to DYS.

5. I find that the minor shall be placed at ( ) Morris Village, ( ) DYS foster care, ( ) DSS foster care, ( ) Another Way Group Home, ( ) Carolina Youth Development, ( ) York County Group Home, ( ) John de la Howe, ( ) Charleston Marine Institute, ( ) Beaufort Marine Institute, ( ) Fairplay Wilderness Camp, ( ) Wil Lou Gray; ( ) _____.

6. ( ) I find that the minor shall be evaluated by the Department of Youth Services locally.

7. ( ) I find that the minor shall attend the Chronic Status Offenders Program in Columbia.

8. ( ) I find that the minor should be sentenced for _____ months for contempt of this Court's Order dated

_____, 19___; ( ) suspended upon service of _____ days/ _____ year(s) probation.

9. ( ) I find that the minor should serve _____ community service hours or pay $_____ restitution.

10. (✓) I find that the minor should attend counseling at ( ) Mental Health; ( ) Alcohol and Drug Abuse Commission; ( ) private; ( ) other _____

11. ( ) I find that the minor should be placed on probation for _____ months, and that the minor conform to all conditions of probation required by the Department of Youth Services and attached to this Order.

12. (✓) I find that the parents shall comply with all instructions and requirements of the Department of Youth Services and help implement this Order for the benefit of the minor.

13. ( ) I find that the school shall perform a pyscho-educational evaluation on the minor and place him/her in the appropriate class.

14. ( ) I find that the minor should be referred to the South Carolina Department of Vocational Rehabilitation.

15. ( ) I find that the Department of Social Services should do a home investigation on _____.

16. ( ) I find that ( ) the parents maintain health and medical insurance on the minor; ( ) that they shall pay the sum of $_____ per _____, plus three percent

(3%) through the Clerk of Court for The Family Court for Dorchester County, beginning the _____ day of _____, 19____.

Now therefore, it is

ORDERED, that the above findings are hereby made the Order of this Court.

AND IT IS SO ORDERED.

_____, S.C.
_____, 19__.

ALVIN C. BIGGS, JUDGE
THE FAMILY COURT

FAILURE TO COMPLY WITH AN ORDER OF THE FAMILY COURT CAN RESULT IN UP TO ONE YEAR IN PRISON AND/OR A FINE OF UP TO $1,500.00 AND/OR 300 HOURS UPON THE PUBLIC WORKS OR A COMBINATION OF ALL THREE CIVIL CONTEMPT OR 6 MONTHS CRIMINAL CONTEMPT.

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
RECEPTION AND EVALUATION CENTER
SOCIAL WORK REPORT

NAME: Satail DATE: 06/25/98

MIS#: 201229 AGE: 16 DOB:

CURRENT OFFENSE

Assault and Battery

COURT SUMMARY

Satail admitted that she committed the above offense of Assault and Battery. According to Satail, her offense came about when she kicked the victim twice in his side. Satail reported that her brother, Lorenzo age seventeen was fighting at the bus stop when she came out of the house. Satail revealed to this worker, when she noticed her brother fighting, she ran to the bus stop without thinking and kicked the victim twice in his side.

The Community Specialist with the Greenville County Department of Juvenile Justice reported to this worker, that Satail walked up to the victim, while he was on the ground, and kicked him in the head twice.

This was Satail's first appearance in the Family Court of Greenville County.

NEEDS ASSESSMENT

Substance Abuse

Satail denied the use of drugs and alcohol.

Living Arrangement/Family Function

Prior to commitment, Satail resided with her birth mother, Dora Mason; her seventeen year old brother, Lorenzo and her twenty-two year old sister, Maria Owens. Satail's seventeen year old brother was just released from an institution with the South Carolina Department of Juvenile Justice. Also, Satail reported a good relationship with family members. They enjoy playing Jeopardy and Monopoly games. Satail also indicated that she is sent to her bedroom and cannot go outside, if she misbehaves. However, Satail does not give her mother any trouble in the home. Therefore, she reported that consequences are not given to her. Satail's mother is employed with Garrison Company as a supervisor. Her work hours are 7:30 a.m. until 3:00 p.m. Furthermore, Satail's mother does not work on Thursdays and Sundays. Also, Satail's birth father is Freddie Massey, who resides in Greenville County. Satail sees her father "about every month." Her birth parents were never married. However, Satail's mother was married to Alex Mason, who is currently in prison.

Satail's mother reported to this worker that her daughter is not a problem in the home and she follows house rules.

Please be advised the Community Specialist with the Greenville County Department of Juvenile Justice reported to this worker that Satail's mother was charged with Criminal Domestic Violence. She further reported that Satail has a brother, who is in jail for a possible murder charge. She further reported that Satail is a discipline problem and comes from a violent family.

Based on the information submitted by the Community Specialist with the South Carolina Department of Juvenile Justice, we believe that this family would benefit from family counseling and Family Preservation.

School/Employment

Prior to commitment, Satail attended J. L. Mann as a ninth grader in the Emotional Handicapped class. She also committed an offense of Disturbing School that was reported on February 25, 1998. The information submitted by the J. L. Mann school official reveals that Satail has a history of school problems, truancy and inappropriate behavior. Satail was also suspended twice. Once for two weeks due to her current offense of Assault and Battery, and a week for being tardy on two occasions. Furthermore, Satail was not an active participant in school activities. However, she was a volunteer for helping wheelchair patients move from point A to B during their school's Special Olympics. Also, Satail reported to this worker that she enjoys going to school and that her favorite subject was English. Satail reported that she repeated the seventh grade. In addition, Satail is undecided about her career goals, and which college she would like to attend. In essence, Satail reported no thoughts about her future goals. However, Satail's grades for this school year were B's, C's and one F. She received the F in Home Economics.

Please be advised school records submitted by the J. L. Man High School reveals that Satail received two F's, two D's and three B's the first nine weeks. The second nine weeks, she received two F's, five C's, three B's, and three F's. Also, Satail received one C, one D, three F's, and two B's the third nine weeks.

We believe that Satail would benefit from her participation in a tutorial program. Furthermore, her mother should have regular contact with school officials in reference to Satail's behavior, performance, and attendance. In addition, we recommend that Satail have regular contact with school counselors in reference to school-related and personal problems.

Emotional Stability

Satail has a "quick temper." she indicated that her teachers have confirmed that she has a "quick temper," because she once wanted to fight a male student. Satail reported that the incident came about when she and her friends were playing a game and the male student tried to join in without their approval. However, Satail and her friends did not want the male student to play and did not allow him to play. Also, Satail has fought on many occasions. Furthermore, Satail denied physical and sexual abuse, and reported no suicidal thoughts and gestures.

We believe that Satail would benefit from Mental Health counseling. Her sessions should focus on anger management, impulse control, positive decision making skills, and social skills.

Peer Associations

Satail associates with juvenile between the ages of fifteen and sixteen. Satail and her friends spend a lot of time at her house watching videos. Satail has no favorite hobbies. Also, Satail reported that she was sexually involved once, during the summer of last year. Satail is not on birth control and denies gang membership.

~~We believe that Satail would benefit from a 9:00 p.m. curfew.~~ Furthermore, she should participate in a program which should provide her with a positive female role model, introduce her to positive peer relationships, and address effective ways that Satail can communicate with others, teen pregnancy, safe sex, and sexually transmitted diseases.

BEHAVIORAL OBSERVATIONS

Satail's residential staff reported that her overall personality and behavior was very quiet. Her personal grooming habits, manners, and work habits and sense of responsibility were good. Staff further reported that Satail was a positive mix among her peers, participated well in recreational activities, had a good relationship with staff, and her attitude toward supervision was positive at all times.

NOTE: Additional behavioral observations are presented in the attached Student Transcript.

RECOMMENDATIONS

The following dispositional and placement recommendations were formulated in consultation with the case psychologist:

___ Diversion ___ Suspended Commitment ___ Monetary Restitution

_X_ Probation ___ Commitment _X_ Community Service

_X_ Home Placement ___ Alternative Placement ___ DJJ Institution

1. We recommend that Satail be placed on probation, under the direct supervision of the Greenville County Department of Juvenile Justice. Satail should be placed on a binding contract with the Greenville County Department of Juvenile Justice, which should specify the following guidelines: (a) Juvenile shall obey the rules of her mother's home, community, and abide by a set curfew; (b) Mandatory school attendance and obedience to all school rules; (c) Frequent contact with her probation counselor; (d) Mandatory family counseling and participation in services provided by Family Preservation. Furthermore, it is court-ordered, upon Satail's release from the Reception and Evaluation Center, she is to apply for services with the Department of Disabilities and Special Needs.

2. Community service is recommended for Satail to assist her with ways that she can learn to accept responsibility for her actions and to modify her behavior.

Home placement is recommended for Satail, who needs her mother's support, love, and guidance. Furthermore, we believe that Satail's mother may benefit from participating in a Parent Effectiveness Training Program.

NOTE: Additional service recommendations are presented in the attached Psychological Evaluation.

Dorothy W. White Rouse, LMSW
Social Worker

DWR:dp

DWR

CONFIDENTIAL

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
RECEPTION AND EVALUATION CENTER
PSYCHOLOGICAL EVALUATION

NAME: , Satail
MIS#: 201229 DOB:
DOE: June 23, 1998
AGE: 16

Referral Statement:

This juvenile participated in a psychological evaluation as part of the comprehensive assessment process of the R&E Center. Findings may be used in consultations with social workers and other R&E personnel. The present report addresses the juvenile's current intellectual and academic functioning, personality and emotional stability, and psychosocial strengths and needs. In addition this report identifies services that will help to alter problem behaviors and thus protect the public.

Identifying Information:

This sixteen-year-old African-American female was temporarily committed to the R&E Center pursuant to a court order of Greenville County dated 5/28/98 for the offense of Assault and Battery. There were no specific referral questions.

Sources of Information:

Wechsler Adult Intelligence Scale-Third Edition (WAIS-III)
Peabody Individual Achievement Test-Revised (PIAT-R)
Reading Comprehension Subtest
Beery Developmental Test of Visual-Motor Integration (VMI)
Incomplete Sentences Blank
House-Tree-Person
Clinical Interview
File Information
Behavioral Observations

Background Information:

Prior to commitment, Satail was living with her mother, seventeen-year-old brother and twenty-two-year-old sister in Greenville, South Carolina. She stated that she has a twenty-year-old brother who is currently in prison for murder. She reported that she has a nineteen-year-old brother who is currently waiting trial for a charge of rape. Satail reported that her seventeen-year-old brother was recently released from jail after being charged with Assault and Battery. This charge stemmed from the same incident that lead to Satail's current charges. She reported a good relationship with her mother who is employed as a janitor at a local mall. She said that her mother will sometimes take her to work with her so that they can spend time together. She reported that her father is employed in construction and that they have contact about every six months. She said he lives across town and that she will visit him but he does not visit her. She reported that they have a strained relationship because he does not put forth an effort toward

seeing her. Satail cited truancy, and not coming home by her curfew as points of conflicts between she and her mother. She cited restriction as a form of punishment used within the home. She denied any physical or sexual abuse.

Satail was last enrolled in the ninth grade at J.L. Mann High School. Records indicate that she is classified as an Educably Mentally Disabled student and that she was receiving appropriate special education classes. She reported that she repeated that seventh grade after missing too many days of school. She reported that her first suspension occurred in middle school and that she is most often suspended for being tardy, fighting, or arguing with her teachers. She denied any expulsion from school. She said that she gets along "alright" with her teachers. She said that sometimes she obeys them. She said that she will disobey if her teachers yell at her and tell her she has to do things.

Satail was administered the WISC-III on 12/18/91 and she obtained a Full Scale IQ score of 72, a Verbal IQ score of 73 and a Performance IQ score of 74. She was administered the WISC-III again on 2/5/96. Her scores from this administration fell in the Intellectually Deficient range but since some of the scores were illegible and could not be confirmed, they are not reported here. She was also administered the Woodcock Johnson Psychoeducational Battery-Revised on 2/5/96. She obtained the following Standard Scores: Broad Reading 78, Broad Math 65, and Broad Written Language 72. On the Vineland Adaptive Behavior Scale-Teacher Version, Satail obtained the following Standard Scores: Communication 44, daily living Skills 55, Socialization 50. Her adaptive Behavior Composite for this measure was 46.

Satail associates with one friend who is fifteen years of age. She said that she also likes to spend her free time playing with her mother's friend's baby. She admitted to becoming sexually active at sixteen years of age and that she always practices safe sex.

Satail denied any head injury or loss of consciousness. She stated that when she was eleven years old she was hit by a van. She said this occurred as she was walking across the street from an ice-cream truck and she did not check the street before crossing. She reported that she sustain no injuries from this other than a headache. She denied use of psychotropic medication. She reported no inpatient psychiatric hospitalizations. She said that she has never participated in counseling before.

Satail denied the use of drugs or alcohol. She reported that her mother will drink alcohol on Fridays but that she does not become intoxicated. Satail reported that in addition to her brothers legal problems, her father has been incarcerated for shooting a person, not paying child support and breaking parole.

Regarding her current offense of Assault and Battery, Satail stated that her brother was fighting with another boy. She said that she saw the fight and her brother appeared to be losing so she tried to intervene. She started kicking her victim and then her brother told a friend to restrain her. She reported that she did not know why her brother and the victim were fighting only that she wanted to defend her brother. She reported that the victim's mother pressed charges. She said that she and her brother were never arrested, but they were just given a court date. Satail stated that she feels "not good" about her charges because she was sent to R&E. Satail reported that her pending charge of Disturbing School occurred because a male student grabbed her leg to which she responded by cursing him loudly and would not stop. She said that a teacher had to intervene to calm her down.

Behavioral Observations:

Satail arrived for testing appropriately dressed institutional attire. She was oriented in all spheres. Her affect was within normal limits, although at times she seemed to be sad. This particularly occurred when she was presented with difficult tasks on the WAIS-III. When she felt that she was not doing well she would begin to cry but seemed to recover quickly. She maintained no eye contact and she engaged in minimal conversation with the examiner. However, she was cooperative with the evaluation and she was able to maintain the necessary levels of motivation and concentration to consider the following test results to be an accurate reflection of her abilities.

Test Results and Interpretations:

Satail was administered the WAIS-III to determine her current level of intellectual functioning. She obtained a Full Scale IQ score of 64 which falls in the Intellectually Deficient range. The odds are 95 out of 100 that her true score falls between 61 and 69. Her Full Scale IQ score is a composite of her Verbal IQ score of 68 and Performance IQ score of 65, both of which fall in the Intellectually Deficient range. Her individual subtest scores were as follows:

Verbal		Performance	
Information	6	Picture Completion	4
Similarities	5	Digit Symbol-Coding	6
Arithmetic	2	Picture Arrangement	5
Vocabulary	4	Block Design	4
Comprehension	5	Matrix Reasoning	3
Digit Span	6		

These scores suggest a significant weakness on a subtest which measure mathematical reasoning.

Satail was administered the PIAT-R Reading Comprehension subtest to determine her current reading level. She obtained a Standard Score of 57 which is equivalent to a 3.7 grade level. This score is commensurate with her Verbal IQ score of 68. On the VMI, a test of visual perception and motor coordination, she obtained a Standard Score of 61 which places her in the first percentile. This score is consistent with her Performance IQ score of 65.

Psychological testing, clinical interview and behavioral observations suggest an individual who comes from a family with a substantial history of legal difficulties. She reported that her brothers and father have been incarcerated for such offenses as murder, rape, assault and battery, and not paying child support. Because of the number of family members who have been incarcerated, Satail may fail to appreciate the seriousness of her behavior. This may contribute to Satail failing to understand how her behavior affects others. This is further compounded by her cognitive limitations which may leave her susceptible to the influence of others and may hinder her from properly thinking through her behavior before acting. Satail did not seem to understand how her behavior, which led to her current charges, was wrong. This suggests that she may benefit from counseling that helps people with decision making skills. Satail should continue with appropriate special education class placement at school and also be considered for vocational assessment and training.

Strengths:

1. Satail is capable of interacting well with others.
2. Satail reported a good relationship with her mother.

Needs:

1. Improve impulse control and respect the rights and property of others. She should conform to society's rules and learn to understand the difference between right and wrong.
2. Continued education that focuses on her particular academic strengths and weaknesses.
3. Training and education in responsible sexual behavior.
4. Constructive alternatives for peer interaction.

Services:

1. A closely supervised and structured environment with clear limits and expectations. This environment should provide both positive and negative consequences for her behavior enrollment in an anger management group.

Services: (cont.)

2. Placement in appropriate classes as indicated in most recent psychoeducational evaluation.

3. A sexual issues awareness class or counseling with a qualified professional.

4. Involvement in supervised peer group activities such as organized sports or volunteer programs.

Diagnostic Impressions:

AXIS I: 312.9 Disruptive Behavior Disorder, Not Otherwise Specified

AXIS II: Rule Out Mild Mental Retardation

AXIS III: None

J. Patrick Meyer III, M.S.
Psychologist III

Lisa Neuson, Ph.D.
Supervising Psychologist

DJJR

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
RECEPTION AND EVALUATION CENTER
PSYCHIATRIC EVALUATION

, Satail **#201229** **June 18, 1998**

Identifying Information:

Satail was a sixteen-year, five-month-old African-American female evaluated at R&E pursuant to a court order from the Greenville County Family Court where she was charged with Simple Assault and Battery. There were no specific referral questions.

Statement of Non-Confidentiality:

Satail understood a written report of this evaluation would be sent to the Family Court Judge and that her communication was not confidential.

Sources of Information:

Forty-five Minute Psychiatric Interview on 6/18/98
DJJ Client Assessment
Review of Court-Order
Review of DJJ Psychological Assessment

Pertinent Statements:

The court should be informed that the following information was not made available to the R&E Evaluation Center for this provider to review: school records, incident report and probable psychological evaluation from the school system due to this individual being placed in the emotionally handicapped program or the educable mentally handicapped program per the DJJ Client Assessment. Although the limited information available and interview with Satail did not support any treatment for mental illness, if the court is able to have that information available if it exist I would recommend it be forwarded to the local community mental health center for them to review.

Satail did not endorse any symptoms consistent with a major mental illness. At the time of this evaluation IQ testing had not been completed. Due to her history of possibility being in the educably mentally handicapped classes Satail may have a mental deficit of mental retardation. Her use of vocabulary and her sentence completion on the psychological testing that had been completed at the time of this dictation would most likely place her either in the mild mental retarded range or the borderline intellectual functioning range.

Satail did not endorse history of ever using alcohol or drugs. She stated that she has never had thoughts of suicide, never attempted suicide, never been place on psychiatric medications and never hospitalized for psychiatric reasons. Her

school history was significant for her endorsing failing the seventh grade on two occasions and currently being in the ninth grade making B's, C's and D's. She did endorse a history of "two or three suspensions" due to tardiness, cursing the teachers and fighting in school. Satail endorsed significant difficulties with managing her temper.

Satail denied any medical problems. At the time of this evaluation she was on no medications and she was not aware of any drug allergies. Her review of systems was unremarkable.

Mental Status Examination:

Satail was a well developed, thin African-American female who appeared slightly younger than her stated age. She was dressed in DJJ attire with appropriate grooming. She maintained eye contact throughout the evaluation and no abnormal neurological movements were noted. She described her mood as "good." Her affect was euthymic (normal), nonlabile and congruent with her mood. She did not endorse any psychotic symptoms, delusions or hallucinations. She denied thoughts of suicide, thought of harming herself, thoughts of harming others or homicidal thoughts. She was fully alert and oriented during the evaluation. Her insight into her situation appeared intact. Her judgement appeared to be fair during the evaluation but impulsive upon historical review.

Diagnosis Impressions:

AXIS I: No Diagnosis

AXIS II: Borderline Intellectual Functioning versus Mild Mental Retardation

AXIS III: No Diagnosis

Recommendations:

1. It is recommended that Satail be referred to the local community mental health center for treatment for anger management.

2. It is recommended that she be evaluated by the Department of Disabilities and Special Needs to fully assess her capabilities.

3. Satail may benefit from a role model program such as the Big Sister Program.

David M. Walker, M. D.
Consulting Forensic Psychiatrist

Rouse
U-4-5-Pe

Student Assessment Form

Student Satail Date June 6, 1998

Teacher Lee G. Edens

This student was enrolled in a **Career Education/Lifeskills** class at the Department of Juvenile Justice Educational Assessment Center. In this course, students discussed future life goals, values, interests, and attitudes toward career possibilities. Students were also taught practical skills for entering and succeeding in the workforce. This course also covers segments on managing money, writing checks and establishing credit.

	Poor				Excellent
Takes responsibility for his/her behavior	1	2	(3)	4	5
Is eager to get along well with peers	1	2	3	(4)	5
Is dependable in following class rules	1	2	3	(4)	5
Displays maturity in decision-making situations	1	2	(3)	4	5
Has high respect for authority	1	2	3	(4)	5
Participates in large group activities	1	2	(3)	4	5
Prefers to work by themselves or in small groups	1	2	(3)	4	5
~~Shows enthusiasm for learning~~	1	2	3	(4)	5
Attentiveness to videos	1	2	(3)	4	5
Attentiveness to discussions and lectures	1	2	3	(4)	5
Completion of written assignments	1	2	3	(4)	5
Follows directions	1	2	3	(4)	5

Behavioral Comments: Satail has no observable class behavioral problems.

Based on the assessment shown above, this student's overall rating in this class is: 1 2 3 (4) 5

Academic Rating: B-90

Lee G. Edens
Teacher signature

House
11

Student Assessment Form

Student Daniel Date 6-17-98

Teacher Betty Moses

The above-referenced student was enrolled in a **Drug Education** class at the South Carolina Department of Juvenile Justice Educational Assessment Center. For the duration of this course, this student was exposed to a variety of media and materials relating to substance abuse. The curriculum is based on video tapes which cover numerous aspects of drugs and addictions. Students participate in class discussions and activities, answer questions on assigned reading material, and complete various worksheets pertaining to drugs and decision making. This student's participation was evaluated as shown below:

	Poor				Excellent
Attentiveness to videos	1	2	3/4		5
Attentiveness to discussion and lectures	1	2	3/4		5
Participation in class discussions	1	2	3	4	5
Communications skills	1	2	3	4	5
Completion of written assignments	1	2	3/4		5
Positive attitude toward drug education	1	2	3	4	5
Understanding consequences of substance abuse	1	2/3		4	5
Needs to continue participation in drug education class	1	2	3	4	5
Positive relationship with peers	1	2	3	4	5

Behavioral Comments: Satisfactory effort + behavior

Based on the assessment shown above, this student's overall rating in this class is: 1 2 3 4 5

Academic Rating: 85/B

Betty Moses
Teacher signature

3038

Route (4)

STUDENT ASSESSMENT FORM

STUDENT Satail DATE 6/17/98

TEACHER Billmann

The above-referenced student was enrolled in a basic mathematics (Algebra/Geometry) class at the Department of Juvenile Justice Educational Assessment Center. For the duration of this course the student was exposed to the basic concepts of number theory, logic, analysis and application to real-life problems. Methods of instruction included, but were not limited to large and small group instruction; individual discovery; guided practice; and open discussion. The chart below indicates the extent to which the listed behavior applies to this student.

	never				always
Volunteers in open discussion	1	2	(3)	4	5
Is motivated in large group activities	1	2	(3)	4	5
Is a leader in small group activities	1	(2)	3	4	5
Works independently without close supervision	1	2	(3)	4	5
Participates in note-taking activities	1	2	(3)	4	5
Enjoys discovering new concepts	1	2	(3)	4	5
Is motivated by problem-solving applications	1	(2)	3	4	5
Has good communication skills	1	2	(3)	4	5
Is appropriate in communication with staff	1	2	(3)	4	5
Is appropriate in interaction with peers	1	2	(3)	4	5
Follows posted class/school rules	1	2	(3)	4	5

Behavioral comments Satail does not perform to potential; is easily distracted from her work.

Based on the assessment shown above, this students overall rating is 1 (2) 3 4 5

Academic Rating: 84/C

S Billman

Teacher's signature

Rouse U

Student Assessment Form

Student Satail Date 6-16-98

Teacher D. Wise-Parker

This course is designed to provide basic Langunge Arts 1 Reading activities to students while at the Department of Juvenile Justice Educational Assessment Center. The general teaching approach in this program could best be described as interactive and students centered. The program enhances students' reading, writing, critical thinking, and reference skills. The content of the course permits the teacher to diagnose students' weaknesses in a systematic manner while engaging them in purposeful coping skills needed in there public schools and communities.

	Poor				Excellent
Understands and applies rules of grammar	1	2	(3)	4	5
Spells correctly words commonly used in writing	1	2	(3)	4	5
Writes neatly and legibly in written work	1	2	(3)	4	5
Follows directions	1	2	3	(4)	5
Works independently	1	2	3	(4)	5
Exhibits motivation and completes assignments	1	2	(3)	4	5
Exhibits appropriate attitude toward authority	1	2	3	(4)	5
Relationship with peers	1	2	(3)	4	5
Adaptability to class structure and rules	1	2	3	(4)	5
Demonstrates self control and responsibility	1	2	(3)	4	5
Respect for property	1	2	(3)	4	5

Behavioral Comments: Satail is a good student. She strives to excel academically and perseveres to complete all tasks.

Based on the assessment shown above, this student's overall rating in this class is: 1 2 (3) (4) 5

Academic Rating: 90/B

D. L. Wise-Parker
Teacher signature

Rouse
u

Student Assessment Form

Student Latail Date 6/17/98

Teacher Allison

This student was enrolled in a **Law-Related Education** class at the Department of Juvenile Justice Educational Assessment Center. This class exposes the student to concepts relating to the US Constitution, civil and criminal law, juvenile legal problems, family law, and consumer law. An important part of this curriculum is conflict resolution theory and techniques. Instruction involves oral presentation, group discussion, reading comprehension, use of examples, videotaped subject lessons, and peer teaching. We also use role modeling skits. Evaluation includes assessment of class participation, multiple choice tests, and written performance (essays, discussion questions).

	Poor				Excellent
Is appropriate in interaction with peers	1	2	(3)	4	5
Is appropriate in communications with staff	1	2	(3)	4	5
Participates willingly in large group discussions	1	2	(3)	4	5
Follows written instructions without supervision	1	2	(3)	4	5
Follows oral instructions without supervision	1	2	(3)	4	5
Is able to define selected vocabulary words	1	2	(3)	4	5
Demonstrates note-taking skills	1	2	(3)	4	5
Is able to form conclusions from examples	1	2	(3)	4	5
Is able to choose correctly in multiple choice format	1	2	(3)	4	5
Is able to identify selected legal concepts	1	2	(3)	4	5
Shows enthusiasm for new concepts	1	2	(3)	4	5
Is able to recognize selected citizenship concepts	1	2	(3)	4	5
Takes responsibility for learning	1	2	(3)	4	5

Behavioral Comments: _____

Based on the assessment shown above, this student's overall rating in this class is: 1 2 (3) 4 5

Academic Rating: 88/B

Dorothy J. Allison Ph.D.
Teacher signature

_____Official Transcript

_____"Issued to Student Transcript"

SCDJJ
Educational Assessment Center
Student Transcript/Evaluation Summary
Date: 6/17/98

NAME: Satail DOB: _____

HOMEROOM TEACHER: Billmann GRADE: 9

DATE OF ENROLLMENT: 5/29/98 DATE RELEASED: 7/1/98

DAYS IN ENROLLMENT: 23

Courses Taken: Academic Rating

___ Community Safety	___ Physical Education
85B Drug Education	90B Pre-Voc. Education
90B Language Arts	___ Reading
88B Law Related Education	___ Science
84C Mathematics	___ Social Studies
86B OTHER Character Ed.	

	Poor				Excellent
Overall Behavioral Rating	1	2	(3)	4	5

:201229 LEE UNIT SW: ROUSE

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
MEDICAL SERVICES
3200 BROAD RIVER ROAD
COLUMBIA, SC 29210
(803-896-9125)

;, SATAIL LATORYA
:OA:
:OR:
:REENVILLE COUNTY
.SS T AND BATTERY
:O: MASON, DORA
:REENVILLE, SC 29607
.07-1174
.LERTS: NONE
:B

DOB:
DOC: 05-28-98

R&E CENTER

B/F/16
5'4" 120 LBS.
BROWN EYES, BLACK HAIR

HEALTH EXAMINATION RECORD

Part II - Family Data

Adopted: NO
Birthrank: #5 last
Natural Father Age 32 Living? YES
Natural Mother Age 36 Living? YES
Natural Siblings # 4 # Living 4
Significant Family Health Problems: Ø

Part III - Personal Health History
If yes, check ( ) and explain

- ___ Allergies Ø
- ___ Anemia Ø
- ___ Asthma Ø
- ___ Blood Transfusions Ø
- ___ Breast Pain/Discharge Ø
- ___ Bronchitis Ø
- ___ Cancer Ø
- ___ Childhood Diseases Ø
- ___ Dental Problems Ø
- ___ Diabetes States hospitalization
- ___ Ear Problems Ø does but refuses
- ___ Epilepsy/Seizures Ø prescription
- ___ Headaches (chronic Ø
- ___ Headaches (migraine) Ø
- ___ Heart Problems Ø
- ___ Hepatitis Ø
- ___ Injuries Ø
- ___ Intestinal Problems Ø
- ___ Kidney Problems Ø
- ___ Mental Illness Ø
- ___ Mononucleosis Ø
- ___ Neurological Problems Ø
- ___ Skin Problems Ø
- ___ Sickle Cell Ø
- ___ Strept Throat Ø
- ___ Tuberculosis Ø
- ___ Ulcers Ø
- ___ Visual Problems Ø
- ___ Weight loss > 10 lbs. Ø
- ___ Other Heat related Headaches

Part IV - Sexual History

Females: LMP 5/28/98 Cycle every 2wks Problems real sick & start throwing up
#Para Ø #Gravida Ø #Miscarriages Ø #Abortions Ø
Males: Hernias ___ Testicular ___ Problems ___ Other ___
Males/Females: Age at 1st sexual contact 16 Date of last sexual contact 4 months
#Sex Partners past month 1 year 1 Oral intercourse Ø Rectal intercourse Ø
Sexual Preference: Heterosexual ✓ Homosexual ___ Bisexual ___
STD's (If yes, give dates): Syphilis Ø Gonorrhea Ø
Chlamydia/NGU Ø Herpes Ø Venereal Warts Ø HIV Ø Other ___
Frequency of condom use: always ✓ sometimes ___ never ___
Other contraceptive use: NO

Part V - Substance/Chemical Use

Cigarettes: not often PPD x 1 mos/yrs. Marijuana: amt. Ø freq. Ø Date of last use Ø
Alcohol: amt. Ø freq. Ø
IV Drugs: amt. Ø freq. Ø Date of last use Ø
Other Drugs: Ø Date of last use Ø
Date of last use Ø

S. C. DEPARTMENT OF JUVENILE JUSTICE
MEDICAL/DENTAL RECORD

MIS #: _____ DOB: _____ DATE: 6/12/98

CAMPUS: _____

NAME: Satail (LAST / FIRST / MI) DORM: Lee

REASON FOR REFERRAL: c/o constipation

INITIATOR: _____

SUBJECTIVE FINDINGS: ~ state no BM x 3 wks ; bleeding rectally

OBJECTIVE FINDINGS: + bleeding (bright red) & small abrasion seen & (?) fissure; hard stools felt

ASSESSMENT: Constipation

PLAN: (1) MOM 4 tbsp how & water
(2) Fleets enema given (good results)
(3) Colace 100mg TID x 2 days, then q hs x 5 days
(4) F/U c NP Monday if needed

MEDICATIONS: _____

DATE OF ASSESSMENT: 6/12/98 TIME: 10 PM TPR: _____ BP _____

SIGNATURE Kamala Hansen RN

Bryant R Fortner MD
SC Lic # 8518
DEA # BF4729019

SC 7/97

LABORATORY REPORT

299155 AREA/ROUTE/STOP: OAT3400
DEPT OF JUVENILE JUSTICE
HEALTH SERVICES/R & E
ATTN: GWEN HICKS
1620 SHIVERS ROAD
COLUMBIA, SC 29210

SmithKline Beecham Clinical Laboratories

PATIENT NAME	PATIENT ID	ROOM NO.	AGE	SEX	PHYSICIAN
SATAIL			15	F	UNRECORDED

*AGE	REQUISITION NO	ACCESSION NO.	LAB REF. #	COLLECTION DATE & TIME	LOG-IN-DATE	REPORT DATE	& TIME
1	1670183	AT045087B		06/03/98 0945	06/08/98	06/09/98	2:18PM

REMARKS

EASTERN TIME

REPORT STATUS	TEST	RESULT	FLAG	UNITS	REFERENCE RANGES	SITE CODE
FINAL						

CHLAMYDIA & GC BY DNA PROBE AT

NUCLEIC ACID RESULT: NONE DETECTED

THIS METHOD HAS BEEN VALIDATED USING ENDOCERVICAL AND MALE URETHRAL SPECIMENS. PERFORMANCE WITH OTHER SPECIMENS HAS NOT BEEN ASSESSED.

>> END OF REPORT <<

INDICATES TESTING SITE SEE REVERSE SIDE

MEDICATION ADMINISTRATION RECORD

MEDICATION-STRENGTH-ROUTE-SCHEDULE — MONTH: June — YEAR: 98 — INSTITUTION: RTE — DORM: LeL

START DATE	STOP DATE		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
6/2	6/15	FSBS 7 a.m. before breakfast 7A		X			79																										
		L4 PM 12/5			61																												
		X 3 days 4 P		80	78	76	86																										
		Then NP review		64	72																												

MEDICATION-STRENGTH-ROUTE-SCHEDULE — MONTH: ____ — YEAR: ____ — INSTITUTION: ____ — DORM: ____

START DATE	STOP DATE		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31

MEDICATION-STRENGTH-ROUTE-SCHEDULE — MONTH: ____ — YEAR: ____ — INSTITUTION: ____ — DORM: ____

START DATE	STOP DATE		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31

MEDICATION-STRENGTH-ROUTE-SCHEDULE — MONTH: ____ — YEAR: ____ — INSTITUTION: ____ — DORM: ____

START DATE	STOP DATE		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31

NURSES' SIGNATURE: [signature] — JUVENILE'S NAME: Estail L. — MIS#: 20/709

DOB: ____

LABORATORY REPORT

299155 AREA/ROUTE/STOP: OATE400
DEPT OF JUVENILE JUSTICE
HEALTH SERVICES/R & E
ATTN: GWEN HICKS
1620 SHIVERS ROAD
COLUMBIA, SC 29210

SATAI

SmithKline Beecham
Clinical Laboratories

PATIENT NAME	PATIENT ID	ROOM NO.	AGE	SEX	PHYSICIAN
SPEC, ND201229			16	F	FORTNER, BRYANT R

PAGE	REQUISITION NO.	ACCESSION NO.	LAB REF. #	COLLECTION DATE & TIME	LOG-IN-DATE	REPORT DATE	& TIME
1	0679680	AT907377A		05/29/98 1520	05/29/98	05/30/98	9:07AM

REMARKS

EASTERN TIME

REPORT STATUS: FINAL

TEST	RESULT IN RANGE	RESULT OUT OF RANGE	UNITS	REFERENCE RANGES	SITE CODE
HEPATITIS B SURFACE ANTIGEN	NONE DETECTED			NONE DETECTED	AT
HIV-1 AB SCREEN	NON-REACTIVE			NON-REACTIVE	AT
***NOTE: A NON-REACTIVE RESULT INDICATES THAT HIV1 (HTLV-III) ANTIBODIES HAVE NOT BEEN FOUND IN THIS PATIENT SPECIMEN. A NON-REACTIVE RESULT, HOWEVER, DOES NOT PRECLUDE PREVIOUS EXPOSURE OR INFECTION WITH HIV1.					
RAPID PLASMA REAGIN (RPR)	NON-REACTIVE			NON-REACTIVE	AT

)) END OF REPORT ((

1

INDICATES TESTING SITE SEE REVERSE SIDE

3047

JUVENILES NAME (Satail

MEDICATION DISPENSED AMOUNT DISPENSED

Ducosate Sodium #14

MEDICATION ATTACHED TO COURT PAPERS BY

SIGNATURE OF NURSE Pamela Hansen RN

WRITTEN PRESCRIPTIONS YES NO ✓

****
****

THE UNDERSIGNED HAVE THIS DATE RECEIVED FROM THE RECEPTION & EVALUATION CENTER MEDICATION.

FOR: Satail (Yor)

SIGNATURE OF COMMUNITY REPRESENTATIVE Signed) Mary A Brinelichte

LOCATION Gallatin D.J.

TITLE: Assessm. Specialist

DATE: July 1, 1998

Name: ~~V~~ Salah Campus: R&E Date: 5-28-98

Part VI - Screening

BP 102/64 Temp 98.9 Pulse 66 Resp 16 Weight: 120 lbs. Height: 5 ft. 4 in.

Vision: Without glasses: R 20/25 L 20/~~200~~ Audiometry: R Passed ✓ Failed ___ Retest ___
With glasses: R 20/ L 20/ L Passed ✓ Failed ___ Retest ___
Comments: ___ Comments: ___

Part VII - Immunizations/Laboratory Tests

	Date	Results		Date	Results		Date	Results
DT			Urine dip	5/29/98	Ketones trace Protein trace SG 1.030	GC	6/8/98	NEG
PPD	5/29/98	0 mm	UA/C&S			Chlamydia	6/8/98	NEG
RPR	5/29/98	NONREACTIVE	Drug Screen			Pap Smear		
CBC/HCT			Pregnancy (urine)	5/29/98	neg	Throat Culture		
HIV	5/29/98	NONREACTIVE	Pregnancy (serum)					
Other	Hep B, VDRL							

RN/LPN

Part VIII - Physical Assessment

Subjective: Sts? DM D's meds

Objective: Check ( ) A (Adequate) or I (Impaired). Comment if impaired.

A	I		
		Integument	Fluid filled mobile cyst on neck
		Hygiene	
		Nutrition	
		HEENT	
		Dental	
		Respiration	CTA
		Circulation	S1 S2 RRR
		Abdomen/Digestion	Round, soft NT +BS
		Elimination (Urinary)	
		Elimination (Bowel)	
		Muscular/Skeletal	Nl
		Neurological	
		Mental/Emotional	
✓		Reproduction Breast: Tanner # (5)	Symmetrical, no D/C
✓		Ext. Genitalia: Tanner # (4)	NL Labia, Clitoris, Perineum, Rugae, Hymen
✓		Int. Genitalia:	Mucosa, Cervix - Bimanual ND
	✓	Wet Prep: 6/8/98	+ trich 8-10 WBC/HPF Occ clue

6/8/98 FSBS fasting
Advise Pt on <80 fasting
Cu Milley Parsons

Assessment/Diagnosis:
1. R/O DM
2. pt
3.
4. 6/8/98 Trichomoniasis
5. R/O GC/Chl
6.

Plans:
Health Education: BSE___ TSE___ Hygiene: Oral___ Body___ Genital___ Pregnancy Prev.___
STD Prevention___ Other ___

1. FSBS before breakfast + 4:00 PM x 3d + have me review
2.
3. RTC 7d for pelvic
4.
5. 6/8/98 Flagyl 2 gms p lunch today
6. GenProbe — gmm 6/8/98
7.
8.

Date: 6/8/98 Cu Milley Parsons NP CNS/MD

JUVENILE TREATMENT PLAN - RESIDENTIAL LIFE EVALUATIONS

SW: White-Pulse
MIS: 201229

JUVENILE: Satalie C INSTITUTION: RiE

UNIT: LEE UNIT DATE: 6/9/98

1. PERSONAL GROOMING: Juvenile personal grooming Juvenile personal hygiene

2. OVERALL PERSONALITY AND BEHAVIOR (I.E., EASYGOING, LOUD, QUIET, MILD-TEMPERED, EASILY ANGERED, ARGUMENTATIVE, FIGHTS, EXPLOSIVE, MOODY, AGGRESSIVE, UNPREDICTABLE, ETC.): Juvenile personality is ccasionaly real quiet

3. MANNERS: Juvenile has good manners.

4. WORK HABITS AND SENSE OF RESPONSIBILITY: Juvenile have not shown any work habits.

5. PEER RELATIONSHIPS (I.E., LONER, MIXER, LEADER, FOLLOWER, INFLUENCED): Juvenile has good peer relationship she is a mixer.

6. PARTICIPATION IN ACTIVITIES: Juvenile does participate in activities.

7. STAFF RELATIONSHIP: Juvenile has good staff relationship.

8. ATTITUDE TOWARD SUPERVISION: Juvenile has no problem with supervision at L.E.E. Ctr.

9. OVERALL IMPROVEMENT IN BEHAVIOR AND/OR PERSONALITY: Juvenile overall personality and behavior is good.

10. OTHER OBSERVATIONS: /

11. RESIDENTIAL LIFE COMMENTS: Judge Decision

S/ Drew Ball
Juvenile Correctional Officer

Louise

BEHAVIOR REPORT

CLIENT'S NAME Satail DORM Lee

TYPE REPORT: POSITIVE BEHAVIOR ✓ NEGATIVE BEHAVIOR _____

DATE/TIME OBSERVED 6-22-98 PLACE OBSERVED Room 6

DESCRIBE BEHAVIOR OBSERVED

Very good effort on class work.

SUMMARY OF ACTION TAKEN

CLIENT'S SIGNATURE Satail STAFF SIGNATURE B. Moses

SERVICE NOTES

Exhibit 4.04.03

Admissions Screening

Name: Satul MR: 201229

1) Any currently prescribed medication s.f. Yes ____ No X

If yes, specify type: ____

Date time medication last taken: ____

Name and location of physician: ____

2 Any current medical conditions? Yes ____ No X

If yes, specify type: ____

3 Vision or hearing problems? Yes ____ No X

If yes Do you use: Eyeglasses ___ Contact Lens ___ Hearing Aid ___

4 Prior psychiatric hospitalization s.f. Yes ____ No X

If yes places and dates: ____

5 Prior participation in counseling psychotherapy? Yes ____ No X

If yes, places and dates: ____

6 History of suicidal gestures attempts? Yes ____ No X

If yes, date of most recent: ____

Current suicidal ideations? Yes ____ No X

7 DSS Custody? Yes ____ No X

If yes, county and caseworker: ____

8. Prior placements? Yes ____ No X

If yes, places and dates: ____

9 Served by other agencies? Check all that apply:

Continuum of Care ____ DMH ____ Vocational Rehabilitation ___

Protection and Advocacy ____ DDSN ____ Health Department ___

Family Preservation ___ DAODAS ___ Other: ____

DLMP 6/3/98

Social Worker Date

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE

SOCIAL WORK SERVICE LOG

NAME: Satail ' , 2/6/229 DATE OF COMMITMENT: 5/28/98

FILE/COURT ORDER REVIEWED: 6/3/98 (date) SPECIAL PROVISIONS:

ACTION TAKEN:

INITIAL CONTACT/SCREENING: 5/29 INITIAL INTERVIEW: 5/29

LEGAL CUSTODIAN: Bea Mann - B - mother
(Parent/Guardian or DSS Caseworker/Agency)

DATE(S) OF CONTACTS: 5/29/98 Spoke w/ Mom
6/29/98 at 7:09. Line
Busy

COMM. SPEC./CTY.: L. Chiles, Dillon PSYCH:

DATE(S) OF CONTACTS: 6/3/98. Left message w/ Juvenile
6/3/98 spoke w/ Mr. Chiles
6/10/98

FACE-TO-FACE CONTACTS WITH JUVENILE (MINIMUM OF ONE PER WEEK):

OTHER CONTACTS: NAME/AGENCY OR RELATIONSHIP:

DATE (S):

DATE (S):

DATE (S):

D. McRae
SOCIAL WORKER

5/29/98
DATE

I 20229

6/3 Spoke w/ Dr. Chiles. Did not understand the writing on the last sheet of the order 6/10/98 Per Workes, Dated. Richard the Victim twice in the head, while he was on the ground

Go to Belknap

Satan

Satan

5/28/98

6/1 (6-24)

PSY

mental health clearance

U

6-9-98

Dr. Grille

PX

X

Per mom
→ no problem in the home
→ follows house rules

Per mother Walker 6/3/98
→ mother was charged w/ criminal dam. w/ intent
→ Brother jailed for murder
→ kicked victim twice in the head while on the ground
→ is a discipline problem
→ cusses from a little, usually

3055

Reuse

BEHAVIOR REPORT

CLIENT'S NAME Satail DORM Lee

TYPE REPORT: POSITIVE BEHAVIOR ✓ NEGATIVE BEHAVIOR ____

DATE/TIME OBSERVED 6-25-98 PLACE OBSERVED Room 6

DESCRIBE BEHAVIOR OBSERVED Completed 28 assignments Good Work!

SUMMARY OF ACTION TAKEN ____

CLIENT'S SIGNATURE Satail Owens STAFF SIGNATURE B. Moses

SERVICE NOTES

Exhibit 4.04.03

RECEPTION AND EVALUATION CENTER
O R I E N T A T I O N

I. Explanation of Commitment

* You were committed to the R&E Center on a temporary order of commitment by a family court judge for the purpose of an evaluation. The evaluation will contain recommendations to the family court about what action should be taken for the offense(s) for which you have been adjudicated delinquent. After your evaluation is completed, you will return to family court for a dispositional hearing.

* Your evaluation will last for approximately four weeks. A social worker will oversee your evaluation but you will also be seen by a psychologist, teachers, Juvenile Correctional Officers, nurses, recreation staff and a chaplain. You may also be seen by a psychiatrist and/or a clinical counselor for alcohol and drug abuse.

* If you feel you have been abused, neglected or mistreated by a staff member at the R&E Center, you should immediately report this to another staff member. If you wish to file a written complaint, you may request to do so. You may also make a written request to be seen by a nurse by completing a medical form and depositing it in the box outside the cafeteria.

II. Guidelines for:

* Mail: All mail should be addressed to you in care of the R&E Center. All incoming mail is opened and screened for contraband but is not read by staff.

* Visitors: Your parent(s) and/or guardian(s) may visit each Saturday and Sunday from 1:00 pm until 5:00 pm.

* Telephones: You may not make or receive telephone calls unless your social worker permits you to do so from his or her office.

---

* Canteen: If you have money available in your canteen account, you may visit the canteen once each week.

* Money: Deposits to your canteen account must be made by money orders mailed to you. Money is considered contraband.

*Clothing: All clothing will be issued to you during your commitment.

*Haircuts: Males may be required to receive haircuts while at the R&E Center.

III. Behavioral Expectations

* Do not threaten, fight or assault your peers or staff members.
* Do not damage or deface property.
* Do not steal.
* Do not attempt to escape.
* Smoking and possession of contraband items is not permitted.
* Follow all rules and instructions given by staff members.

Possible Consequences for misbehavior include:
-Extra work assignments
-Early curfew
-Loss of canteen privileges
-Restricted visits with parent(s)/guardian(s)
-Confinement to a maximum security building

05/29/98 _____ _____
Date Juvenile's Signature Social Worker

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
CHECKLIST

EVALUATION * COMMITMENT * TRANSFER

Sotail Latonya — DOB 20129 MIS
Juvenile's Name:

Type: 1. ___ Evaluation Commitment
2. ___ DJJ Commitment
3. ___ Probation/Parole Transfer ___ secondary ___ primary
4. ___ Change of Venue

Please find enclosed the following information:

	Inc.	Not Avail.	Not Appl.	To be Sent
Letter of Justification				
Form 5				
Client Assessment	X			
Court Orders				
Psychological Eval.		X		
Psychiatric Eval.		X		
Evaluation Report		X		
Education Records	X			
Medical Evaluation		X		
Plan for Services		X		
Circumstances of Commitment Offense	X			
Authorization to Release Information/Records	X			
Other	X			

Known medical problems/pertinent background information, etc:
If you have any questions pertaining to this case, please contact me.

Elaine Chiles
Case Manager

Supervisor

County Jpenville

Date 6/8/04

Phone (864) 467-5892

FORM 210.03 B

STATE OF SOUTH CAROLINA

DEPARTMENT OF JUVENILE JUSTICE

MIS # 201229
DATE
MEDICAID #

CLIENT ASSESSMENT

Name and Address of Juvenile:
Satail Latorya
st.
Greenville, SC 29607

Prepared By:

Alias:

Phone No: 370-1174

Social Security No. of Juvenile:

DOB: 1/2/82	Age: 16	POB:	
Sex: Female	Race: Black	Weight: 120	Height: 5'6"
Hair: Black	Eyes: Black	Complexion:	

Legal Custodian: Dora mason Phone No: 370-1174

Custodian Address:
st.
Greenville, SC
29607

Other Identifying Marks:

School: JL mann

Grade: 9th

Other:

Directions to Residence:

FAMILY INFORMATION

	Natural Mother	Natural Father	Step-Parent	Significant Adult
Name	Dora mason	Freddie Massey		
Address	st. Greenville, SC 29607			
Phone	370-1174			
Marital Status	Seperated	Single		
DOB				
Health	Good	Good		
Employer/ Income	Garrisan Janitorial			
Employer Phone No	288-4322			
Criminal Record	☑ YES ☐ NO	☑ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO

MEMBERS OF HOUSEHOLD/SIGNIFICANT PEERS:

Name	Relationship	DOB	School/Occupation	Other
Donald	brother		JL mann	Greenville Detention center
Robert	brother		Handicapped	
Lorenzo	brother		Northwood Middle	

CLIENT ASSESSMENT
PART (II)

NAME: Satail	Initial Signature Date:
SS #	3 mo. Update Signature Date:
	6 mos. Update Signature Date:
	12 Mo. Update Signature Date:

Is this juvenile involved with any of the following:
Check all that apply.

☐ CCEDC ☐ DSS ☐ DMH ☐ DDSN ☐ CCRS ☐ DAODAS
☐ PVT.C ☐ P&A ☐ F.P. ☐ DHEC ☐ DVR ☐ Prior SMI/SMR Inclusion?

IQ If available: FS V P Date and Source of Testing:

Past or present psychiatric diagnosis? Yes ☐ No ☐
Specify diagnosis, source, and date:

Social withdrawal or isolation? Yes ☐ No ☑
Details:

History of suicidal ideation or self-destructive behavior such as self-mutilation or purposefully placing self at risk: Yes ☐ No ☑
Details:

Marked increase or decrease in eating, sleeping, or involvement in activities with others? Yes ☐ No ☑
Details:

Significant mood changes? Yes ☐ No ☑
Details:

Auditory or visual hallucinations? Yes ☐ No ☑
Details:

Bizarre obsessional behavior such as hoarding objects or performing tasks in a ritualized manner? Yes ☐ No ☑
Details:

Frequent nightmares about or "flashbacks" of traumatic events? Yes ☐ No ☑
Details:

Able to sustain attention long enough to complete tasks comprehend instructions from others,and maintain appropriate conversation?Details: Yes ☑ No ☐

Physical symptoms of panic attacks such as intense fear, dizziness, nausea, shortness of breath,heart palpitations, sweating, and having a lump in their throat? Yes ☐ No ☑
Details:

Impaired judgement such that behavior endangers others? Yes ☐ No ☑
Details:

Department of Juvenile Justice Special School District
Columbia, SC 29210

Parental Permission to Release Information

Student Daniel L. [redacted]

DOB 1/2/82

I give my permission for Greenville County Schools to release all psychological records and special education records regarding my child to the Department of Juvenile Justice and any other agency my child may be referred to which may require such information.

When my child is released from the Department of Juvenile Justice I also give my permission for the Department of Juvenile Justice to send copies of their psychological evaluation, school evaluations, transcripts, and special education placement date, and any additional education records, to the appropriate Department of Juvenile Justice field counselor or to the appropriate community school.

This consent shall be valid until my child is age 18, unless my child's return to his community school is past that period, in which case this shall stay in effect until he/she returns.

Doja Mason
Parent/Guardian Signature

5/29/98
Date

FORM 210.03 E

PC-8
2/95

J. L. Mann High School
Discipline Detail Report

Date: 6/ 3/98
Page: 1

Detail for Student ID: 249519922

Reporting Period: 8/13/97 to 6/ 3/98

Occ	Infraction / Action Taken	Date	Inf reported by / Action follow up	Ref ID#
5	Tardy	9/ 2/97	Rouse	
6	Failure to Dress for Gym	9/10/97	Harrelson	6
7	ISD	9/10/97	Rouse	
8	Failure to Dress for Gym	10/14/97	Harrelson	8
9	ISD	10/14/97	Rouse	
11	Disrespectful	10/19/97	Luttrell	
12	DD violation	10/19/97	Luttrell	13
14	Detention	10/20/97	Luttrell	
15	Failure to Report to Detention	10/20/97	Carpenter	
10	Tardy	10/21/97	Rouse	11
12	ISD	10/29/97	Rouse	15
16	OSS 1 Day	10/31/97	Rouse	
17	DD violation	11/ 1/97	Luttrell	17
18	Detention	11/ 2/97	Luttrell	
19	Failure to Report to Detention	11/ 2/97	Carpenter	19
20	OSS 3 Day	11/ 7/97	Rouse	
1	DD violation	1/ 9/98	Luttrell	1
2	Detention	1/10/98	Luttrell	
3	Failure to Report to Detention	1/10/98	Carpenter	3
4	OSS 3 Day	2/ 3/98	Elrod	

X. L. MANN HIGH SCHOOL
Report Card Fourth Quarter 1997-98

Student Name
DOB 10/19/82
Grade 9
Homeroom Teacher: C Cooke

Course/Teacher	1st Qtr	2nd Qtr	Sem Ex	1st Sem	3rd Qtr	4th Qtr	2nd Sem	Yr Ex	Fin Grd
Supported Employment/SCT Per 1 K Luttrell	F	F	69	F	B+	C	B		75
Absent 22 times NO CREDIT - EXCESSIVE ABSENCES									
Prep For Careers/SC Per 1 J Walsh	D	C		C	B	D	C		78
Absent 15 times NO CREDIT									
Financial Math 2/SC Per 3 K Luttrell	B	C	15	B-	F	F	D+	0	61
Absent 16 times									
Consumer/Homemaking 1 Per 2 A Shalely	F	F		F	F	F	F	0	30
Absent 27 times NO CREDIT									
EMHSC Resource Per 3 C Walsh	B	C		B	B	B	B		85
Absent 15 times NO CREDIT - EXCESSIVE ABSENCES									
Conflict Management/SC Per 3 P Cloonan	D-	C		D+	F	B	C		75
1 UNIT EARNED									
Physical Education 1 Per 4 E Hazelson	E	C		C	C	F	D	C	50
Absent 18 times NO CREDIT									

A 94-100 B 87-93 C 77-86
D 70-76 F 0-69 F Pass

SOCIAL SUMMARY

Satail Latorya
MIS #201229

Assault & Battery
Disturbing Schools
Petition No. 97JU23-1722
Attorney: Hal Roach

Satail Latorya is before this Court for the offense of Assault & Battery. She also has a Disturbing School that was received on February 25, 1998. She has no court history.

Satail attends J. L. Mann as a 9th grader in the Emotional Handicapped Class; school records are attached. Satail has a history of school problems, Truancy and inappropriate behavior in school. Mrs. Mason reports that Satail is mouthy in the home; there are no other problems. Satail currently has a brother, Donald who is awaiting a trial for murder. The family has a history of criminal behavior. Due to the problems present in the Community, I recommend that Satail be committed to the Reception & Evaluation Center.

RECOMMEND: Commitment to R & E

Elaine Chiles
Intake Worker
S C D J J
March 18, 1998

COURT HISTORY CURRENT DATE 03/18/98

CLIENT INFORMATION PAGE 1

CLIENT NAME: SATAIL LATORYA CASE NUMBER: 201229

CLIENT ADDRESS: GREENVILLE SC 29607

RACE: BLACK SEX: FEMALE SSN:

AGE: 16 DOB: 01/02/82 DOB HAS NOT BEEN VERIFIED

FATHER'S NAME: FREDDIE MASSEY

FATHER'S ADDRESS: UNKNOWN GREENVILLE SC

MOTHER'S NAME: DORA MASON

MOTHER'S ADDRESS: SAME

GUARDIAN'S NAME:

GUARDIAN'S ADDRESS:

SCHOOL: J L MANN HIGH
61 ISBELL LN, GREENVILLE,SC 29607-3799

GRADE: 9TH GRADE

EDUC. STATUS: SPEC. PROGRAM

DSS DOES NOT HAVE LEGAL CUSTODY FAMILY INCOME: $ 5,000 - $ 9,999

NATURAL PARENTS MARITAL STATUS: DIVORCED/SEPARATED

CLIENT'S LIVING ARRANGEMENT: NATURAL MOTHER

KNOWN ALCOHOL/DRUG ABUSE: NO ALCOHOL OR DRUG USE

CLIENT EMPLOYMENT STATUS: CURRENTLY UNEMPLOYED

CRIMINAL STATUS OF FAMILY:
AT LEAST ONE OTHER FAMILY MEMBER HAS A DELINQUENCY/CRIMINAL RECORD

IDENTIFIED SPECIAL NEEDS:
EDUCABLY MENTALLY HANDICAPPED

CLIENT NAME: SATAIL LATORYA CASE NUMBER: 201229

REFERRAL	OFFENSE / DISPOSITION	NUMBER OF COUNTS
NUMBER OF PRIOR REFERRALS = 1		
CURRENT REFERRAL:		
2/25/98	SIMPLE ASSAULT & BATTERY 3/06/98 PROSECUTE	(1)
	DISTURBING SCHOOLS 3/06/98 PROSECUTE	(1)

JUVENILE CASE SHEET

DEJONG ____
PETERS ____

DATE: 10-10-97

RECOMENDATION: ✓
COURT: ____
INFORMAL ____
DISMISS ____
JPT ____
CDP: ____

CASE #: 97-76085

REASON FOR DISMISSAL ____

PRIOR RECORD YES ____ NO ____
PRIOR INFORMAL YES ____ NO ____
OTHER ~~Has pending Truancy~~

* See CO-D file for photos of Vict.

NAME: Satalia L.

AGE: 15 DOB: - - W (B) O-M (F)

CO-DEFENDANTS: Lorenzo Abdul

OFFENSE A & B

VIOLENT: No

OFFENSE DATE: 9-30-97

VICTIM: Jeffrey Charles Lewis

LOCATION: bus stop

DESCRIPTION: Did kick vict in the head

VALUE: ____ RESTITUTION: ____
Mailed vic. letter: 11-3-97
NOTES: Gave statement - admits Had no reason to get involved

JUVENILE REFERRAL

Greenville Police Department

Greenville, South Carolina

RECEIVED
OCT 10 1997
SOLICITOR'S OFFICE

Pictures Attached of victim

Brother & Sister both charged

CASE #: 97-76085

JUVENILE INFORMATION

NAME: Natalia LaHood ALIAS:

RACE: B SEX: F AGE: 15 D.O.B -3

HGT: 5'5 WGT: 129 EYES: BRO HAIR: BLK

ADDRESS:

PHONE: 370-1174

SCHOOL ATTENDED: T.C. Mann

LEGAL GUARDIAN:

FATHER'S NAME: ADDRESS:

MOTHER'S NAME: Dora Mason ADDRESS: Same

GUARDIAN'S NAME: ADDRESS:

PARENT'S EMPLOYER: Hagwood Mall

ARREST / OFFENSE INFORMATION

DATE OF ARREST: 10-8-97 TIME:

PLACE ARRESTED: 4 McBee St.

OFFENSE(S): Assault & Battery

VICTIM'S NAME: PHONE: 370-0854

ADDRESS: 54

COMPLAINANT'S NAME: PHONE: 370-0854

ADDRESS: St.

HAVE YOU NOTIFIED DEPT. OF YOUTH SERVICES? YES ☐ NO ☒

HAS D.Y.S. APPROVED DETAINMENT? YES ☐ NO ☒ (Not required in felony case)

JUVENILE(S) PLACED IN DETENTION? YES ☐ NO ☒

COMMENTS:

ARRESTING OFFICERS

NAME: Springfield-K DATE: 10-8-97

NAME: DATE:

3068

INCIDENT REPORT

AGENCY I.D. SC0230200 | OFFENSE | CLASS | DAY | CASE NUMBER 9701001071610185 | NCIC ENTRY

EVENT

INCIDENT TYPE	OFFENSE COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED
1 ASSAULT + BATTERY	YES NO	YES NO	13	
2	YES NO	YES NO		
3	YES NO	YES NO		

TYPE VICTIM: INDIVIDUAL, BUSINESS, FINANCIAL INST, GOVERNMENT, RELIG ORGN, SOC/PUBLIC, OTHER, UNKNOWN, POLICE OFF

INCIDENT LOCATION (SUBDIVISION, MILL VILLAGE, APARTMENT AND NUMBER, STREET NAME AND NUMBER): REBECCA AND CLARK ST (CRUS STOP) | ZIP CODE 29607

INCIDENT DATE	TIME	TO	DATE	TIME	WEAPON TYPE	TIME ARRIVED	TIME COMPLETED	PATROL DISTRICT
09-30-97	0730				40	0807	0835	G

VICTIM

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE
DELORIS ST				OSOU	B	F	43	N	3700854	2880171

ADDRESS	CITY	STATE	ZIP CODE	PATROL DISTRICT
	GREENVILLE	SC	29607	G

VICTIM'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE
Jeffrey Childs	AQ			OSOU	B	M	17	N	3700854	

ADDRESS	CITY	STATE	ZIP CODE	PATROL DISTRICT
	GREENVILLE	SC	29607	G

VISIBLE INJURY (VICT 1) YES NO EXPLAIN: ½ CUT FR. UPPER LIP, SCRATCHES ABOVE + FOR HEAD | COMPLAINT OF ANY NON-VISIBLE INJURIES YES NO

VICTIM (NO 1) USING ALCOHOL YES NO UNK. DRUGS YES NO UNK. TYPE:

SUBJECT

SUSPECT / RUNAWAY / WANTED / WARRANT / ARREST / MISSING

NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
ABDUL O	B	M	16	1-5-81	510	170	BLK	BRO

ADDRESS | SSN 251-45-7994

FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC | CITY GREENVILLE | STATE SC | ZIP CODE 29607 | PATROL DISTRICT G

SUBJECT (NO. 1) USING ALCOHOL YES NO UNK. DRUGS YES NO UNK. TYPE. | ARRESTED NEAR OFFENSE SCENE YES NO | TOTAL # ARRESTED | DATE/TIME OF OFFENSE | DATE/TIME OF ARREST

ARRESTEE ARMED YES NO WEAPON TYPE: | SEMI-AUTO | FULL-AUTO | ARRESTED ON CURRENT OFFENSE | CLEARED BY ARREST ON PRIOR OFFENS:

JUVENILE DISPOSITION: 1. HANDLED, RELEASED REFERRED TO OTHER AUTHORITY | ON VIEW ARREST | SUMMONED | CUSTODY

CHARGES	WARRANT #	TICKET #
1	1.	1.
	2.	2.
	3.	3.

VEHICLE

STOLEN / RECOVERED / SUSPECT / VICTIM

TAG NUMBER	STATE	YEAR	VIN	VALUE

YEAR	MAKE	MODEL	STYLE	COLOR

TAG ONLY | ADDITIONAL VEHICLE DESCRIPTION

TWO-MAN VEH ONE MAN VEH DETECTIVE/SPLASMT OTHER | ALONE ASSISTED | J - THIS JURISDICTION S - STATE O - OUT OF STATE U - UNKNOWN

NARRATIVE

Rb Responded To Victims Residence In Regards To an assault That Just occured. Rb met w/ Compl + Victim. Victim walked up To The Bus Stop (Incident Location) w/ His Girlfriend TIA CBE (16yrs). Once There The Subj (According To Victim) approached stating "I Heard You Been Talkin About me!". The Subj Then Began To Strike Victim About The Face w/ His Fist, As a Result The Victims Face was

JURISDICTION OF THEFT | JURISDICTION OF RECOVERY

PROPERTY

TYPE						TOTAL VALUE
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
SEIZED						

ADMIN

SUBJECT IDENTIFIED	SUBJECT LOCATED	ACTIVE / ADMIN. CLOSED / UNFOUNDED	ARRESTED UNDER 18 / ARRESTED 18 AND OVER	EX-CLEAR UNDER 18 / EX-CLEAR 18 AND OVER
YES NO	YES NO			

REASON FOR EXCEPTIONAL CLEARANCE: 1. OFFENDER DEATH. 2. NO PROSECUTION. 3. VICTIM/DECLINES COOPERATION 4. EXTRADITION DENIED 5. JUVENILE-NO ARREST.

REPORTING OFFICER(S)	DATE	UNIT NO.	APPROVING OFFICER	DATE	UNIT NO.
BELL 113 0014	09-30-97	106			

FOLLOW-UP INVESTIGATION YES NO (OFFICER)

AGENCY I.D. SC0230200

SUPPLEMENTAL REPORT

97000076085

INC | ENT

☒ ORIGINAL REPORT ☐ STATUS CHANGE ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY

INCIDENT TYPE: ASB

☐ SUPPLEMENTAL REPORT ☐ ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

PATROL DISTRICT: G

PAGE 2 OF 2 PAGES

Revised

I.D. OVERFLOW

☐ COMPLAINANT ☐ VICTIM # ☐ SUBJECT # ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ MISSING ☐ JAIL ☐

NAME (LAST, FIRST, MIDDLE)	VICTIM RELATIONSHIP TO SUBJECT: #1	#2	#3	RESIDENT	RACE	SEX	AGE	D.O.B.	ET
				JSOU					

ADDRESS	CITY	STATE	ZIP CODE	PATROL DISTRICT	DAY PHONE H B	EVENING PHONE

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

☐ VICTIM NO. ____ VISIBLE INJURY: ☐ YES ☐ NO EXPLAIN:

COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES

VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK. DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK.

☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPL. ASMT. ☐ ALON ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTE

SUBJECT NO. ____: USING ALCOHOL: ☐ NO ☐ YES ☐ UNK. USING DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK.

☐ ARRESTED ON CURRENT OFFENSE ☐ CLEARED BY ARREST ON PRIOR OFFENSE

ARRESTEE ARMED ☐ YES ☐ NO WEAPON TYPE: ☐ SEMI-AUTO ☐ FULL-AUTO

☐ ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY

JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY

SCRATCHED W CUT on The Nose And Forehead, A ½ inch cut was under Victims Right Eye. The Victim When Returned Home Contd Calls GPD. R/O made contact w/ TIA who stated the two were arguing when Altercation took Place. TIA witnessed incident along w/ others at Bus Stop. 1-9-81 25-43-7474

PROPERTY	TYPE							TOTAL VALUE
	STOLEN							
	DAMAGED							
	BURNED							
	RECOVERED							
	SEIZED							

ADMIN.

SUBJECT IDENTIFIED ☒ YES ☐ NO | SUBJECT LOCATED ☐ YES ☒ NO | ☒ ACTIVE ☐ ADMIN. CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ VICTIM DECLINES COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE-NO ARREST

REPORTING OFFICER(S)	DATE	UNIT NO.	APPROVING OFFICER	DATE	UNIT NO.
BELL JB 0014	09-30-97	100		9-30-97	122

FOLLOW-UP INVESTIGATION ☐ YES ☐ NO (OFFICER)

3070

Children's Emergency Center
Greenville Hospital System
Greenville, SC 29605

08-10208620 249-43-1141
JEFFREY CHARLES
N/A OR UNKNOWN
EMS 04 OAK 09/30/97
SBLM017 03-05-920
Patient Identification

Discharge Instructions:
Your child has been diagnosed with Assault - Laceration

The Doctor recommends: Advil or Tylenol for pain
head handouts. Return for vomiting increased
pain, hard to wake up or worsening symptoms

The Doctor has prescribed:

Medicine	Amount	How Often	How Long	Why

Preprinted Information Closed Head Injury - Mouth Trauma
Tetanus

Additional Information:

- [x] Your need to call your child's Doctor if symptoms get worse, or your child is not better in 2-3 days.
- [ ] Your child needs to be rechecked/seen again PRN needed
- [ ] Your child is contagious
- [x] Your child may return to school or daycare October 1, 1997
- [ ] Sutures out in _____ days. They may be removed here or by your doctor.
- [ ] Your child may participate in gym class or other physical activities on _____
- [ ] We will call you if your child's culture comes back positive.
- [ ] A radiologist, a doctor who is specially trained to read X-rays, will read your child's X-ray(s). After your visit today, if your child needs additional treatment, you will be contacted by our staff.

School/work excuse: From: 9/30/97. May return on 10/1/97

Your follow-up doctor is Dr. Clarke. **Phone** 455-7981

Physician / Discharge Nurse FKP, CCS Date 10/1/97

I have read and understand the discharge instructions and have received all of my valuables and clothing.

Patient Selena L. O'Neal

CITY OF GREENVILLE
COUNTY OF GREENVILLE
STATE OF SOUTH CAROLINA

CASE # 97-76085
DATE 10-6-97

Jeff Springfield do hereby give freely and voluntarily this statemen
TR Springfield and who have identifled themselves as officers
the Greenville Police Department, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement,
that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my cho
that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promi
any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rig

I am 17 years old and reside at [illegible] Greville, SC

[illegible] I heard [illegible] I [illegible] hitting
[illegible] I [illegible] [illegible] [illegible] telling
[illegible] [illegible] Then [illegible] [illegible] his shirt
[illegible] [illegible] He [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Sell
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

CITY OF GREENVILLE
COUNTY OF GREENVILLE
STATE OF SOUTH CAROLINA

CASE # 97-76085
DATE 10-8-97

I Lorenzo [illegible] do hereby give freely and voluntarily this statemen
HK Springfield and [illegible] who have identified themselves as officer
the Greenville Police Department, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement,
that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my ch
that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or prom
any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these ri

I am 16 years old and reside at [illegible]

I went to the bus stop and
my friend did he want to fight me
and he did it say anything and
he hit me first. Then I
hit him Back

I have read or had read to me, the above statement of 1 pages and it is true and correct as best I recall, and I have received a
of this statement.

WITNESSES: HK Springfield [illegible]

Sworn before me this _____ day of _____ 199 ____.

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____

CITY OF GREENVILLE
COUNTY OF GREENVILLE
STATE OF SOUTH CAROLINA

CASE # 97-7685
DATE 10-8-97

Natalia [illegible] do hereby give freely and voluntarily this statement
K. Springfield and who have identified themselves as officers
the Greenville Police Department, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement,
that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my cho
that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promi
any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rig

I am 15 years old and reside at [illegible] Taylors SC

when I was in the house sitting down and I
heard a noise out side and so I saw my
mom and dad noise out side fighting so I just
[illegible] two times I [illegible] when my Mom and
my Daddy two times I [illegible] I could hear them
saying [illegible] back
[illegible]

I have read or had read to me, the above statement of 1 pages and it is true and correct as best I recall, and I have received a c
of this statement.

WITNESSES: K. Springfield

Natalia [illegible]

Sworn before me this _____ day of _____ 199__.

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____

CITY OF GREENVILLE
COUNTY OF GREENVILLE
STATE OF SOUTH CAROLINA

CASE # 97-76685
DATE 10-6-97

I Lila Rucker
K Springfield and _____ do hereby give freely and voluntarily this statemen
who have identified themselves as officer
the Greenville Police Department, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement,
that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my ch
that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or prom
any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these ri

I am 44 years old and reside at 9 McAdoo - Gville SC

and the fight had broke up and I was trying to get Jeff up when he got up & warned him more

I have read or had read to me, the above statement of 2 pages and it is true and correct as best I recall, and I have received a
of this statement.

WITNESSES:
K Springfield

Lila Rucker

Sworn before me this _____ day of _____ 199____.

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____

CITY OF GREENVILLE
COUNTY OF GREENVILLE
STATE OF SOUTH CAROLINA

CASE # 97-76985
DATE 10-6-97

I, Tia Rucker, do hereby give freely and voluntarily this statement to K Springfield and _____ who have identified themselves as officers of the Greenville Police Department, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my cho that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promi any reward to make this statement and do so voluntarily. I understand I have the right to stop at any time. I hereby waive these rig

I am 14 years old and reside at 9 Magnolia McAdoo Gville, SC 421-9428

Jeff walked me to the bus stop on 9th and Lorenzo said Jeff I heard you and Tim was talking about me (Lorenzo) Jeff said I'm not talking about him Lorenzo looking at me and said man I don't like people talking about me behind my back so I was holding Jeff back and Lorenzo started running at Jeff so Jeff hit him and Lorenzo fell on the ground the same time Jeff fell on the ground on Lorenzo was hitting and kicking him in the face and Jeff wasn't doing anything he was just lying there not moving

I have read or had read to me, the above statement of 1 pages and it is true and correct as best I recall, and I have received a c of this statement.

WITNESSES:
K Springfield

Tia Rucker

Sworn before me this _____ day of _____ 199_____.

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____

TO: DYS1
FROM: WAN

A.DYS1
* NO WANTED RECORD FOUND ON SLED/CJICS COMPUTER *
NAME - _.IS, SATAIL LATORYA
DOB - 01/02/1982

* INQUIRY SENT TO NCIC WANTED*

IN MAY 29, 1998 21:01:01 000440501453/331
OUT MAY 29, 1998 21:01:02 MSG# 5404 SAN: 440MPJD742G6

TO: DYS1
FROM: NCIC1

1L01440MPJD742G610B
SC040115C
NO NCIC WANT DOB/010282 NAM/ SATAIL LATORYA SEX/F RAC/B

IN MAY 29, 1998 21:01:03 000440506354/331
OUT MAY 29, 1998 21:01:04 MSG# 5405 SAN: 440MPJD742G6

CASE#: 201229 CLIENT INFORMATION

CLIENT NAME: SATAIL LATORYA
ALIAS:
CLIENT ADDRESS: COUNTY: GREENVILLE
GREENVILLE SC 29607
RACE: BLACK SEX: FEMALE SSN: PHONE: 3701174
AGE: 16 DOB: 2 DOB HAS BEEN VERIFIED: NO

FATHER'S NAME: FREDDIE MASSEY
FATHER'S ADDRESS: UNKNOWN GREENVILLE SC

MOTHER'S NAME: DORA MASON
MOTHER'S ADDRESS: SAME

GUARDIAN'S NAME:
GUARDIAN'S ADDRESS:

INTAKE OFFICER: C122 PROB/AFTC OFFICER: PROB/AFTC UNIT:
SCHOOL: 2391 GRADE: NINTH GRADE
EDUC. STATUS: SPEC. PROGRAM, EMOTIONALLY HANDICAPPED
REGISTRY REQUIRED - NO

PRIOR-HIST: 01
REM/COMP: NO REMEDIAL/COMP CLASS
DSS HAS LEGAL CUSTODY OF CLIENT: NO FAMILY INCOME: $5,000 - $9,999
NATURAL PARENTS MARITAL STATUS: DIVORCED/SEPARATED
CLIENT'S LIVING ARRANGEMENT: NATURAL MOTHER
KNOWN ALCOHOL/DRUG ABUSE: NO ALCOHOL OR DRUG USE
CLIENT EMPLOYMENT STATUS: UNEMPLOYED, NO PREVIOUS WORK
CRIMINAL STATUS OF FAMILY:
SIBLING, NO DELINQ.; AT LEAST 1 PARENT, PRIOR CRIM. RECORD
IDENTIFIED SPECIAL NEEDS:
EDUCABLY MENTALLY HANDICAPPED

INTAKE HISTORY									COURT HISTORY				
DIST LOC	OFFENSE DATE	REF DATE		OFFENSE	REF SEQ	SOL DEC	DATE	HEAR-ING	COURT ACTIONS		JDG	DISP DATE
123	970506	970506		TRUNCY 01	020	DIS	980428					
123	971008	980225		SIMA&B 01	040	PRO	980306	AR	R&E	01	ACB	980528
	980219			DISTSL 01		PRO	980306		CON	01		
123	971008	980528	801	SIMA&B 01	041	PRO	980306					
	980219			DISTSL 01		PRO	980306					

********** END LIST **********
ALERT:

KR2 N INSTITUTION HOLD SUMMARY 07:11AM FC20S

CASE # LAST FIRST,MIDDLE) R/S D. UNIT
201229 S DAIAIL CATORYA B F 820.02 23

--COUNSELORS-- DRUG --LAST SCHOOL-- HEIGHT EYE HAIR
FIELD STUDENT SOCIAL USE GRADE FT IN WEIGHT COLOR COLOR
6122 1102 H 2991 I 09 5 04 120 BROWN BLACK

--RISK STATUS-- INSTITUTIONAL
SCHOOL GRADE ADMIT CLASS PLACEMENT

ALERT
REF DATE DATE G REF DATE DATE
NBR INST IN OUT OFFENSE L NBR INST IN OUT OFFENSE
051 BOI 19980528 SIMABB

ENTER I FOR INSTITUTIONAL DETAIL, OR L FOR LOCKUP/FURLOUGH HISTORY
PF1=NAME SEARCH PF2=MASTER PF3=SUMMARY PF5=SERVICES PF6=PAYMENTS PF9 DISP A
ENT 0 001

CASE # SEN
201229 041
OWLNS
ALERT

INSTITUTIONAL HOLD RECORD
R/S CNTY
BATAIL LAI YA B F 23 SIMAŬB

INSTITUTE	DORM	DATE IN	DATE OUT
801	3	19980529	

PF1=NAME PF2=MASTER PF3=RELEASE PF9=RESUME/A PF10=INST SUMMARY PF11=MENU

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville) IN THE FAMILY COURT
CASE NO. 97- 1722

STATE OF SOUTH CAROLINA,)
PLANTIFF,)
VS.) ORDER
Natalia) (ADJUDICATION)
DEFENDANT.)

This matter came before me on a (X) Petition, ( ) Rule to Show Cause, filed in the Greenville County Clerk of Court's Office on the 14 day of Nov, 19 97, alleging that the minor:

( ) _____;

( ) _____;

(X) Assault & Battery;

( ) violated Code Section _____ of the 1976 Code of Laws, as amended.

Present at the hearing were the following, to wit:

(X) solicitor, _____;

(X) mother, _____;

( ) father, _____;

( ) custodian, _____;

( ) Guardian ad Litem, _____;

(X) Attorney for the minor, _____;

( ) _____;

( ) _____.

ADJUD.ORDER
MISCELLANEOUS.DISK

AS TO THE ADMITTANCE

I find that the minor is:

(✓) 16 years old;

(✓) can (cannot) read and write;

(✓) understands the nature of the charges or was explained the charges by the Court to the Court's satisfaction;

( ) is in the 9 grade;

( ) has finished the _____ grade;

(✓) that the child was not forced or coerced to admit the allegations;

(✓) that the parent(s) agree that the child should admit the allegation;

(✓) that the child is (not) under the influence of drugs or alcohol at this time.

AS TO JURISDICTION

I find that the offense was committed in Greenville County, South Carolina and the child lives in Greenville County, South Carolina, and was 16 years old when the offense was committed.

AS TO THE OFFENSE

( ) I find that on the _____ day of _____, 19___, the minor did the following: _____

_____

_____

( ) I find that on the ____ day of _____, 19___, the minor did the following: _____

_____

_____.

(✓) I find that the minor admitted that (s)he committed the offense described in the (✓) Petition, ( ) Rule to Show Cause.

I find that the ( ) Petition, ( ) Rule to Show Cause was modified in the following particulars:

( ) the allegation was amended to _____

_____.

( ) the allegation in paragraph ____ was omitted;

( ) I find that this child may meet the Alexander S criteria.

( ) I find that this child has a history of not complying with parental instruction.

( ) I find that this child has a history of running from his home.

( ) I find that this child will most probably not stay in the area for a local Mental Health or Department of Mental Retardation evaluation due to his/her failure to stay home and/or comply with parental instructions.

( ) I find that these parents are capable of contributing to the support of the minor child while in placement.

( ) _____

_____.

AS TO DISPOSITION

1 (a). (✓) I find that the minor should be committed to the Department of Youth Services for a period not to exceed forty-five (45) days and upon his return to be:

( ) detained and as soon as possible be brought back before the Court;

(✓) returned to the parents home conditional upon the fact the child attend school each and every day unless sick and not be out past 6:00 o'clock p.m.

( ) the child is not to leave the ( ) house; ( ) yard without a parent.

(b). ( ) That the minor be evaluated by the Department of Mental Health to determine if the minor can be evaluated locally by the agency; however, if it is determined that the minor cannot be evaluated locally, the child shall be sent to the State Department of Mental Health in Columbia, South Carolina, for a fifteen (15) day evaluation. That a dispositional hearing will be held after the evaluation of the minor.

(c). ( ) That the minor be evaluated by the Department of Mental Retardation to determine if the minor can be evaluated locally; however, if it is determined that the minor cannot be evaluated locally, the child shall be sent to the regional Department of Mental Retardation for a

thirty (30) day evaluation. That a dispositional hearing will be held after the evaluation of the minor.

2. ( ) That the minor be evaluated by a psychiatrist while at R & E.

3. ( ) That the minor met the criteria (for Alexander S.) and he/she shall be placed at ( ) Department of Mental Retardation regional facility; ( ) State Hospital.

4. ( ) I find that the minor should be committed to the Department of Youth Services for an indeterminable period not to exceed the child's 21st birthday.

I find that the parents of the committed juvenile are to supply sufficient clothing that meets DYS clothing guidelines to the juvenile during the time he/she is committed to DYS.

5. I find that the minor shall be placed at ( ) Morris Village, ( ) DYS foster care, ( ) DSS foster care, ( ) Another Way Group Home, ( ) Carolina Youth Development, ( ) York County Group Home, ( ) John de la Howe, ( ) Charleston Marine Institute, ( ) Beaufort Marine Institute, ( ) Fairplay Wilderness Camp, ( ) Wil Lou Gray; ( ) _____

6. ( ) I find that the minor shall be evaluated by the Department of Youth Services locally.

7. ( ) I find that the minor shall attend the Chronic Status Offenders Program in Columbia.

8. ( ) I find that the minor should be sentenced for _____ months for contempt of this Court's Order dated

_____, 19___; ( ) suspended upon service of _____ days/ _____ year(s) probation.

9. ( ) I find that the minor should serve _____ community service hours or pay $_____ restitution.

10. (✓) I find that the minor should attend counseling at (✓) Mental Health; ( ) Alcohol and Drug Abuse Commission; ( ) private; ( ) other _____ (✓) Both for DDSN Skills group Dr. Kelton

11. ( ) I find that the minor should be placed on probation for _____ months, and that the minor conform to all conditions of probation required by the Department of Youth Services and attached to this Order.

12. (✓) I find that the parents shall comply with all instructions and requirements of the Department of Youth Services and help implement this Order for the benefit of the minor.

13. ( ) I find that the school shall perform a pyscho-educational evaluation on the minor and place him/her in the appropriate class.

14. ( ) I find that the minor should be referred to the South Carolina Department of Vocational Rehabilitation.

15. ( ) I find that the Department of Social Services should do a home investigation on _____.

16. ( ) I find that ( ) the parents maintain health and medical insurance on the minor; ( ) that they shall pay the sum of $_____ per _____, plus three percent

(3%) through the Clerk of Court for The Family Court for Dorchester County, beginning the _____ day of _____, 19____.

Now therefore, it is

ORDERED, that the above findings are hereby made the Order of this Court.

AND IT IS SO ORDERED.

_____, S.C.
May 14, 19 87.

ALVIN C. BIGGS, JUDGE
THE FAMILY COURT

~~FAILURE TO COMPLY WITH AN ORDER OF THE FAMILY COURT CAN~~ RESULT IN UP TO ONE YEAR IN PRISON AND/OR A FINE OF UP TO $1,500.00 AND/OR 300 HOURS UPON THE PUBLIC WORKS OR A COMBINATION OF ALL THREE CIVIL CONTEMPT OR 6 MONTHS CRIMINAL CONTEMPT.

Ct shall not go more than one day.

Dola Mabon

Sarah

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE

This certifies that Satalia
Juvenile

has this 28th day of May, 1998
Month Year

been delivered to the RECEPTION AND EVALUATION CENTER for commitment to the SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE by

✓ Sheriff's Department
___ County Detention Center
___ Police Department
___ Other _____

Garrett Cain of Greenville
Transporting Official County

Time Arrived
2:50

Admissions Staff
JC B

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
RECEPTION AND EVALUATION CENTER

DATE: 7/1/98

I, the undersigned, have this date received from the Reception and Evaulation Center Satalia to be returned to Greenville County.

Signature: Derek D. Glass
Title: Admin. Specialist

FORM5 CURRENT DATE 05/02/96

CASE#: 151869 CLIENT INFORMATION

CLIENT NAME: DONALD ANDREW
ALIAS: OWENS ANDREW DONALD COUNTY: GREENVILLE
CLIENT ADDRESS: 11 HALL ST. GREENVILLE SC 29607
RACE: BLACK SEX: MALE SSN: PHONE: 3701174
AGE: 17 DOB: DOB HAS BEEN VERIFIED: YES

FATHER'S NAME: FREDDIE MASSEY
FATHER'S ADDRESS: INCARCERATED GREENVILLE SC

MOTHER'S NAME: DORA MASON
MOTHER'S ADDRESS: SAME AS JUVENILE

GUARDIAN'S NAME: ALEX (SF) MASON
GUARDIAN'S ADDRESS: SAME AS JUVENILE

INTAKE OFFICER: C122 PROB/AFTC OFFICER: C125 PROB/AFTC UNIT: 23
SCHOOL: 2337 GRADE: NINTH GRADE
EDUC. STATUS: HELD BACK
REGISTRY REQUIRED - NO

PRIOR-HIST: 02
REM/COMP: NO REMEDIAL/COMP CLASS
DSS HAS LEGAL CUSTODY OF CLIENT: NO FAMILY INCOME: $5,000 - $9,999
NATURAL PARENTS MARITAL STATUS: LIVING APART, NEVER MARRIED
CLIENT'S LIVING ARRANGEMENT: NATURAL MOTHER/STEPFATHER
KNOWN ALCOHOL/DRUG ABUSE: ALCOHOL, AT TIME OF ARREST
CLIENT EMPLOYMENT STATUS: UNEMPLOYED, PREVIOUS FULL-TIME
CRIMINAL STATUS OF FAMILY:
SIBLING, CURRENT DELINQ.; AT LEAST 1 PARENT, CURRENT CRIM. STATUS
IDENTIFIED SPECIAL NEEDS:
NONE

INTAKE HISTORY / COURT HISTORY

DIST LOC	OFFENSE DATE	REF DATE		OFFENSE	REF SEQ	SOL DEC	DATE	HEAR-ING	COURT ACTIONS	JDG	DISP DATE
123	940107	940119		SHPLF1 01	020	DIV	940303				
123	941213	941214		BURG2A 02	040	PRO	941215	DT	OTH CON 02	JWK	941215
123	941213	941214		BURG2A 02	041	PRO	950222	AD	PRO RES COM 01	JWK	950828
123	951231	960103	D	ASLTPO 01	060	PRO	960118	AR	OTH CON 01	BLM	960118
	951231			RESOFF 01		PRO	960118		OTH CON 01		
	951231			INTFER 01		PRO	960118		OTH CON 01		
	951231			POSALC 01		PRO	960118		OTH CON 01		
123	960104	960104	D	ASLTPO	061	***					
				RESOFF		***					
				OTHACT		***					
				POSALC		***					
123	951231	960103		ASLTPO 01	062	PRO	960118	AR	CON 01	BLM	960415
	951231			RESOFF 01		PRO	960118		R&E 01		
	951231			INTFER 01		PRO	960118		R&E 01		
	951231			SIMA&B 01		PRO	960118		R&E 01		
	951231			POSALC 01		NOL	960118				
123	951231	960416	801	ASLTPO 01	063	PRO	960118				
	951231			RESOFF 01		PRO	960118				
	951231			INTFER 01		PRO	960118				

***** HOLD REFERRAL LIST CONTINUED NEXT PAGE *****

INTAKE HISTORY / COURT HISTORY

DIST LOC	OFFENSE DATE	REF DATE	OFFENSE	REF SEQ	SOL DEC	DATE	HEAR-ING	COURT ACTIONS	JDG	DISP DATE
	951231		SIMA&B 01		PRO	960118				

********** END LIST **********
ERT: PROB. ENDS 2-28-96

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF GREENVILLE)

COMMITMENT ORDER FOR EVALUATION
DJJ

IN THE INTEREST OF:

Donald A. [illegible] Steed
Greenville, S.C.
AGE: 17 YRS DOB:-

HEARING DATE: 4-15-96
JUDGE: MOBLEY
COURT REPORTER: Kelly Wall
GUARDIAN AD LITEM: Dana Mason

ATTORNEY FOR SOLICITOR: Allison Peters
ATTORNEY FOR JUVENILE: C. Steele
ARRESTING AGENCY: GRVL Co.

The Office of the Solicitor for the Thirteenth Judicial Circuit having filed petitions in this Court alleging that the above named juvenile was delinquent in that (he/she) in Greenville did commit the :

OFFENSE(S)	LAWS-SECTION	OFF.DATE	FILING DATE:	PET.#
RA	16-9-320	12-31-95	1-5-96	96-0039
Intel w/4th Off.	16-3-50	12-31-95	1-5-96	96-0041
Assault & Battery		12-31-95	1-5-96	96-0042

AN ADJUDICATORY HEARING was held and following (plea of guilty) (a hearing on the merits), the allegations were determined to be true upon proof beyond a reasonable doubt. I find that an evaluation of this juvenile is necessary in order to aid the Court in the disposition of this matter and that the said child is a suitable person to be committed to the South Carolina Department of Juvenile Justice Reception and Evaluation Center.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the within named juvenile is hereby committed to the South Carolina Department of Juvenile Justice for a period not to exceed forty-five days for the purpose of evaluation of said child and making recommendation to the Court concerning proper disposition of this case.

This commit is suspended upon the child's acceptance successful completion of a community evaluation and return to this Court for further disposition.

Dated : APRIL 15, 1996
Greenville, S.C.

JUDGE OF THE FAMILY COURT
THIRTEENTH JUDICIAL CIRCUIT

To be detained in Greer pending transportation to the Columbia Juvenile Facility on 4-16-1996.

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
RECEPTION AND EVALUATION CENTER
SOCIAL WORK REPORT

NAME: Donald Andrew DATE: May 11, 1996

MIS#: 151869 AGE: 17 DOB:

CURRENT OFFENSE

Resisting Arrest; Interfering with Police; Assault and Battery

COURT SUMMARY

In the absence of official reports, the description of the offenses comes from Donald. He said that he had been to a family party with his parents. They were all drinking, he said. He said that his mother had left a little while before he did and when he got home he found that she was being arrested for failing to pay a fine. Donald became upset at the way his mother was being treated, he said, and there was an incident with the police. Donald said that he was kicked and hit, he thinks with a flashlight, in an eye. He referred to pictures that would substantiate this. This worker was unable to locate them. He also said there were hospital reports that would substantiate this.

An aggravating factor is that Donald said that he was under the influence of alcohol at the time of the incident.

In August, 1995, Donald was put on probation, given restitution and community service for a Burglary charge. File indicates that he was supposed to come off probation February 28, 1996.

NEEDS ASSESSMENT

Substance Abuse

Donald said that he uses alcohol casually, socially, and used to use marijuana but quit.

While at the R&E Center, Donald participated in a drug education class. It is recommended that he continue with drug education. It is also recommended that his local Drug and Alcohol Abuse Council interview him to assess possible need of services.

Living Arrangement/Family Function

Donald said that he is one of five children born to Dora Mason and Freddie Massey. He said they were never married but did live together as a family, and his father is currently in jail for nonsupport. Prior to coming to the R&E Center, Donald was living with his mother, stepfather, sisters (ages twenty and thirteen) and fifteen year old brother. He has an eighteen year old brother committed to the Department of Juvenile Justice. Donald said that his stepfather moves furniture for Rhodes Furniture Company and his mother is a housekeeper at a hotel. He said that needs are met, there is no financial strain and they do not have

a vehicle. He said they take a cab or relatives transport them as needed. He said they live in a house where he has his own room. They have lived there about a year. He has always lived with his mother, he said. Donald said that a number of relatives live in the Greenville area. He said that some of his family members, including himself, attend church.

Donald denied ever being abused in any way and said that he is disciplined by being talked to. His mother informed this worker that he is good at home and quiet. He said that life at home is peaceful and that there is no arguing. He could think of nothing in need of improvement at home. He said that the family sits down to a family meal every week night and either go out to eat on weekends or just "pick up" something to eat. They also go to movies, play cards and go to a park together. He said that his mother is the most important person to him and that when he has a problem he talks to his stepfather. He said that his mother has high blood pressure and receives treatment for it.

In the absence of known problems within the family unit, it is recommended that, should problems arise in the future, they be open to counseling.

School/Employment

Donald was a ninth grade at J.L. Mann High School. He was dropped from the rolls on March 15, 1996. Donald said that the school said he owed money for books. He said that the books were taken from his locker by school officials and he did not think that he needed to pay for them. He said that he repeated fourth and sixth grades. He said that his behavior was acceptable. There was no file material to contradict it. There were numbers of missed days. Donald said that he was not in special education. Testing at the R&E Center revealed that Donald reads at the third grade level. He said that his favorite subjects are science, math, and social studies. He said that he played intramural basketball when he was in middle school. He said that he would like a management job when he grows up. He has worked full time for a moving company called Two Men and a Truck.

It is recommended that Donald enroll in a program which would enable him to get a GED to prepare himself for a productive future. Reading remediation is also recommended.

Emotional Stability

Donald described himself to this worker as a hard worker, easy to get along with and a caring person. He said that he likes music. He denied being quick-tempered. He denied ever being suicidal or depressed or in counseling. He said that he knows right from wrong and is able to express his feelings. He said that his happiest memories are when his whole family was together at Easter. His worst memory is the death of his maternal grandfather on Thanksgiving Day a few years ago. He died of a heart attack, Donald said.

It is recommended that Donald engage in group counseling to deal with issues common to adolescence, such as learning the importance of following society's rules and learning the relationship between cause and effect.

Peer Associations

Donald said that he spends time with people his age in his neighborhood. He said they come to his house and play video games and talk. They also play basketball. He denied ever being in a gang and said that he is not a risk-taking person. He said that his friends are a positive influence. He said that he has had a girlfriend in the past and if sexually active would be careful to avoid disease and premature parenthood. He said that he would like to be a father some day.

It is recommended that Donald choose only positive peers with whom to engage in constructive activities of common interest.

BEHAVIORAL OBSERVATIONS

Donald made a very good adjustment to his living unit at the R&E Center, and his staff said that his behavior got better each day. He showed respect for staff and responded to directions very well; therefore, his relationships with staff were good. He participated in all activities and mixed well with peers, choosing his companions carefully. He had good work habits and sense of responsibility. His grooming habits were acceptable. Overall, he was seen as an easygoing juvenile.

NOTE: Additional behavioral observations are presented in the attached Student Transcript.

RECOMMENDATIONS

The following dispositional and placement recommendations were formulated in consultation with the case psychologist:

___ Diversion ___ Suspended Commitment ___ Monetary Restitution

_X_ Probation ___ Commitment _X_ Community Service

_X_ Home Placement ___ Alternative Placement ___ DJJ Institution

1. Short-term probation, under the supervision of the Greenville County Department of Juvenile Justice, is recommended, with a period of community service. Also assessment by the local Drug and Alcohol Abuse Council for Donald's possible need of services is recommended.

2. Home placement is recommended due to the bond between Donald and his family and his need for their guidance and support.

NOTE: Additional service recommendations are presented in the attached Psychological Evaluation.

Mary Lou Taylor, LBSW
Social Worker

MLT:ksa2

CONFIDENTIAL

South Carolina Department of Juvenile Justice

Psychological Evaluation

Donald Andrew #151869 May 1, 1996

Referral Statement:
This student was referred for psychological evaluation as part of the comprehensive evaluation process of the Reception & Evaluation Center. Findings may be used in consultations with social workers or other R & E staff. This report addresses issues of intellectual and academic functioning; personality factors and emotional stability; personal strengths and needs; and services to help change problem behavior and to protect the public.

Identifying Information:
Donald is a 17-year-old male who was temporarily committed to the R & E Center by the Greenville County Family Court on 4/15/96. A psychological evaluation was conducted on 4/25/96 and 4/26/96. No specific referral questions were asked.

Sources of Information:
Wechsler Adult Intelligence Scale-Revised (WAIS-R) (4/25/96)
Wechsler Individual Achievement Test (Basic Reading and Reading Comprehension subtests) (WIAT; 4/25/96)
Developmental Test of Visual-Motor Integration (VMI)
Millon Adolescent Clinical Inventory (MACI)
Incomplete Sentences Blank
File Information
Clinical Interview
Behavioral Observations

Background Information:
Donald lives with his mother, step-father, grandfather, two brothers (18 and 15), and two sisters (20 and 13). His mother is employed as a housekeeper at a hotel and his step-father moves furniture for a retail store. His mother and natural father were never married, and he has little contact with his father, who is currently in prison. Donald's 18-year-old brother is also currently incarcerated in Birchwood. Donald reports that he has good relationships with all family members. He and his step-father lift weights, work on automobiles, and play basketball together, and his step-father is the person in which he confides many of his problems. Donald enjoys playing cards with his mother. The entire family goes out to eat and to movies. He stated that his father does not punish him, although he speaks to Donald when Donald has broken a rule. Donald described his home as having curfews and rules to follow, and that he usually does not break them. Donald does not believe he has suffered any past abuse.

Donald enjoys video games, football, basketball, talking on the telephone, and watching television. Donald has been employed part-time for the past two years in the same furniture store as his step-father, moving furniture. He reported that his friends are "into education and work."

He admitted that he sometimes engages in fights in neighborhoods other than his own, from every day to every few weeks. He denied that he had initiated any fights, but he does carry weapons. He has carried a Colt .32 or another gun, and he has also carried a box cutter. He related that he has used alcohol since he was 16. Every week or two he drinks about two "quarts" with his friends. His marijuana use began at age 16 as well, smoking it approximately twice a day for almost a year. He stated that he stopped his marijuana use three months ago because it became "tiring." This was not his first attempt to curb his drug use; he had attempted to quit last year, but was not successful. Donald reported that none of his immediate family members used drugs or alcohol. He has a girlfriend, and has been sexually active since age 14. He uses condoms and has had three partners.

This year, Donald is enrolled in J. L. Mann High School in the ninth grade. He has not regularly attended school since January of this year. His grades have steadily dropped from above average to failing over the school year. He stated that he is distracted by his friends in class. He reports difficulty with math, but he is good at social studies and science. Donald expressed a desire to finish high school and become a manager in a bank or other business. He is also considering college. He characterizes his relations with most of his teachers as good. This year, he was suspended from school for disturbing class, disrespecting teachers, and excessive tardiness. In previous years he has been suspended for similar behavior. He has been expelled twice, once for threatening a school principal. He repeated the fourth and sixth grades.

Donald has no history of serious illness, and he is not on any medication at present. He denied a history of serious head injury. He has never received psychological treatment.

Donald is charged with resisting arrest, interfering with police, and assault and battery. He stated that the incident in question took place on last New Year's Eve. He admitted that he arrived home from a party intoxicated and found his mother intoxicated, in handcuffs. He asked the officers the reason his mother was being taken into custody. Apparently he came too close to one of the officers because the officer hit him with his fist, and put Donald in handcuffs. Donald said that the officer told him to walk toward the police car, then pushed him. Donald used profane language with the officer, and was hit with a fist again.

Donald believes that he is responsible for his incarceration. He stated that, "I learned from my mistakes," and that he will attempt to avoid similar situations in the future. He feels he deserves probation and enrollment in a program that will keep him "off the street."

Behavioral Observations:
Donald is a 17-year-old African-American male, standing 5'11" tall and weighing 187 pounds. He was friendly, cooperative and responsive during the course of all testing. He spoke freely and politely to the examiner.

Donald feels he is in a good mood most of the time. He reports that he does not eat much since

he is unused to eating at the times when the meals are scheduled. His sleeping habits, energy level and concentration abilities are satisfactory. He reports no suicidal ideations. He evidenced no signs of psychotic symptoms.

Test Results and Interpretations:
Donald scored in the Borderline range on the WAIS-R. His Full Scale Score was 72, with a Verbal Scale Score of 74 and a Performance Scale Score of 72. The individual subtest scores are listed below:

Verbal		*Performance*	
Information	3	Picture Completion	7
Digit Span	6	Picture Arrangement	7
Vocabulary	5	Block Design	3
Arithmetic	6	Object Assembly	5
Comprehension	3	Digit Symbol	6
Similarities	5		

Donald appears to have approximately equal skill at verbal and nonverbal tasks. He appears to have a relative weakness in reproducing three-dimensional patterns with blocks (Block Design).

Donald reads at the third-grade level, showing very below-average ability. On the Reading Comprehension subtest of the WIAT he achieved a standard score of 67 (1st percentile). His base of recognizable words as measured by the Basic Reading subtest resulted in a similar standard score, 66 (1st percentile). His composite Reading standard score is 58.

On a test of visual-motor integration, Donald performed in the below average range. His VMI Scaled Score of 60 (1st percentile) represents an age equivalence of 7 years, 2 months. In general, Donald's ability to copy simple designs was commensurate with his performance on the WISC-III.

Personality tests and clinical interview data indicate that Donald wishes to paint a socially desirable picture of himself. He has displayed taking some responsibility for his actions, but he has denied it in others areas, e.g., he blames his friends for his inability to concentrate in school. He is also likely to do things without thinking of the possible consequences since he admitted that he preferred to act on impulse. His current incarceration may have compelled him to consider his behavior with more thought than he is used to, and it could be a benefit to him if he were to develop skills that would allow him to do this when he returns home. Talks with his step-father and probation officer could allow him to practice thinking about the impact of his behavior.

Donald is also at a point in his education where he may benefit more from adult education GED classes than the day-school in which he was enrolled for this year. He could continue his employment with the moving company and make progress toward his degree without experiencing the awkwardness of being a 17-year-old in a grade with 14- and 15-year-olds.

Donald has attempted to convey that his disruptive behavior is in his past. He continues to need consistent, meaningful consequences that follow directly from his behavior. If he does not receive strict boundaries for his behavior and learn to control his impulses by considering the consequences, his behavior could turn increasingly serious.

Strengths:

1. Donald has a positive self-concept and appears confident.

2. He has attempted to stop using marijuana and reports success for the past three months.

3. He is able to occupy himself with appropriate, community-oriented social activities.

4. He expresses interest in finishing high school and has plans for future employment.

5. He is capable of developing relationships with adults, i.e., he has positive interactions with his step-father.

Needs:	Services:
1. Constructive alternatives for peer interaction; practice in prosocial behavior skills.	1. Involvement in supervised peer group activities such as Big Brother program, organized sports, and Boys Clubs.
2. Education that focuses on his particular academic strengths and weaknesses.	2. A psychoeducational evaluation if one has not already been performed; possible placement in learning disabled classes.
3. Completion of education/learn trade.	3. Contract with school to attend regularly or complete GED program/refer for vocational assessment and training.
4. Education about the long-term effects of drugs; to reduce and/or stop using using illegal substances.	4. Counseling and education with a qualified professional; participation in a twelve-step program.

Diagnostic Impressions:

Axis I: 312.9 Disruptive Behavior Disorder Not Otherwise Specified
305.20 Cannabis Abuse

Axis II: V62.89 Borderline Intellectual Functioning

Axis III: None

Jennifer L. Genthner, B. S.
Psychology Intern

Hildy Dinkins, Psy. D.
Supervising Psychologist

_____Official Transcript

_____"Issued to Student Transcript"

SCDJJ
Educational Assessment Center
Student Transcript

Date: 5-8-96

NAME: Donald DOB: /

HOMEROOM TEACHER: Mayer GRADE: 9

DATE OF ENROLLMENT: 4-17-96 DATE RELEASED: 5-15-96

DAYS IN ENROLLMENT: 20

* * *

Courses Taken:

____Community Safety	A|93 Physical Education
B|90 Drug Education	B|91 Pre-Voc. Education
B|85 Language Arts	____Reading
B|88 Law-Related Education	____Science
A|94 Mathematics	____Social Studies
____OTHER_____	

	Poor				Excellent
Overall Behavioral Rating	1	2	3	(4)	5

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE

MEDICAL SERVICES REFERRAL FORM

DATE: _____ TIME: _____

JUVENILE'S NAME: Donald

INSTITUTION: R&E leaves 5/15/96

PHYSICIAN/MEDICAL FACILITY: Dr. Randolph

TELEPHONE NUMBER: _____

*** *** *** ***

REASON FOR REFERRAL: 20/40 OD 20/33 OS

PLEASE BILL FOR MEDICAL SERVICES:

S. C. DEPARTMENT OF JUVENILE JUSTICE
Finance Department
P.O. Box 21069
Columbia, South Carolina 29221-1069
(803) 737-8270

INFIRMARY TELEPHONE NUMBERS:

(803) 896-9461 (Nurses' Station - WL)
(803) 896-9125 or 896-9467 (R&E)

DIAGNOSIS/RECOMMENDATIONS: Low Astigmatism

PHYSICIAN'S ORDERS: RX

NTA R&E 5-16

PHYSICIAN'S SIGNATURE: [signature]

**PLEASE RETURN THIS FORM WITH THE JUVENILE WHEN HE/SHE RETURNS TO JUVENILE JUSTICE SO THAT THE PHYSICIAN'S RECOMMENDATIONS CAN BE FOLLOWED THROUGH IMMEDIATELY!!!

PLEASE FAX RESULTS AND/OR RECOMMENDATIONS TO - 896-9535.

PLEASE DO NOT SCHEDULE FOLLOW-UP APPOINTMENTS. INDICATE THE NEED FOR ONE AND THE PERSON RESPONSIBLE AT OUR AGENCY WILL TELEPHONE AND SCHEDULE. THE PATIENT DOES NOT NEED TO KNOW THE DATE OF HIS/HER FOLLOW-UP.

LABORATORY REPORT

299155 AREA/ROUTE/STOP: OAT5400
DEPT OF JUVENILE JUSTICE
HEALTH SERVICES/R & E
3200 BROAD RIVER RD
COLUMBIA, SC 29210

SmithKline Beecham
Clinical Laboratories

S/ DONALD

PATIENT NAME	PATIENT ID	ROOM NO.	AGE	SEX	PHYSICIAN
SPEC, NO151869			17	M	REED, MICHAEL E

AGE	REQUISITION NO.	ACCESSION NO.	LAB REF. #	COLLECTION DATE & TIME	LOG-IN-DATE	REPORT DATE	& TIME
1	5781473	AT310231N		05/10/96 1045	05/10/96	05/11/96	7:43AM

REMARKS

EASTERN TIME

REPORT STATUS: FINAL

TEST	RESULT	IN RANGE	OUT OF RANGE	UNITS	REFERENCE RANGE	LAB SITE CODE
RAPID PLASMA REAGIN (RPR)	NON-REACTIVE				NON-REACTIVE	AT

)) END OF REPORT ((

3104

PART I--PERSONAL DATA

Juvenile Justice

#151869 SUMTER UNIT S.W. Tarver

S, DONALD DOB:
DOA: 04-16-96 DOC: 04-5-96
DOR: _____
GREENVILLE COUNTY R&E CENTER
RESISTING ARREST, INTERFERING W/ POLICE & ASSAULT & BATT.
MO: & SF: MASON, DORA & ALEX B/M/17
1 5'11", 187 LBS
GREENVILLE SC 29607 BRN EYES, BLK HAIR
370-0174 SS# 251-43-5308
ALERT: None
SH

SCDJJ - MEDICAL SERVICE
3000 BROAD RIVER ROAD
COLUMBIA, SC 29210-4092
TELEPHONE (803) 896-9112
TELEPHONE (803)896-9107

PART II - FAMILY HEALTH HISTORY

ADOPTED: O NATRL FATHER NATL MOTHER NATL SIBLINGS
BIRTH RANK: 3rd AGE 35 LIVING? yes AGE 35 LVNG yes # 4 #LIVI
SIGNIFICANT FAMILY HEALTH PROBLEMS: None

PART III - PERSONAL HEALTH HISTORY

if yes, check (✓) and explain

O ALLERGIES
O ANEMIA
O ASTHMA
O BLOOD TRANSFUSIONS
O BRST PAIN, DISCHG
O BRONCHITIS
O CANCER
✓ CHLD-HD DISEASES Chickenpox
O DENTAL PROBLEMS
O DIABETES
O EAR PROBLEMS
O EPILEPSY/SEIZURES
O HEADACHES (CHRONIC)
O HEADACHES (MIGRAINE)
O HEART PROBLEMS
O HEPATITIS
O INJURIES
O INTESTINAL PROBLEMS
O KIDNEY PROBLEMS
O MENTAL ILNS
O MONO
O NEURO
O SKIN PRBLMS
O SICKLE CELL
O STREPT
O TUBERCULOSIS
O ULCERS
VISUAL PROBLEMS
O WEIGHT LOSS 10LBS
O OTHER

PART IV - SEXUAL HISTORY

FEMALES: LMP ✓ CYCLE ✓ PROBLEMS ✓
PARA ✓ #GRAVIDA ✓ #MISCARRIAGES ✓ #ABORT ✓
MALES: HERNIAS O TESTICULAR O PROBLEMS ✓ OTHER ✓
MALES/FEMALES: Age 1st sexual contact 15 Date of last sexual contact 1/96
#Sex parters past month O year 1 oral intercs ✓ rectal intercs ✓
Sexual preference: Heterosexual ✓ Homosexual ✓ Bisexual ✓
STDS (if yes, give dates): Syphillis Denies Gonorrhea Denies
Chlamydia/NGU Denies Herpes Denies Venereal Warts ✓ HIV ✓
Frequency of condom use: Always ✓ Sometimes ✓ Never ✓
Other ✓

PART V - SUBSTANCE/CHEMICAL USE Counsel

CIGARETTES: 3 PPD x 1 MTH/YRS. MARIJUANA: AMT 10 blunts DATE OF LAST USE 3/96
ALCOHOL: AMT 3 cans FREQ. Daily DATE OF LAST USE 7 months ago
IV DRUGS: AMT. ✓ FREQ ✓ DATE OF LAST USE ✓
OTHER DRUGS: ✓ DATE OF LAST USE: ✓

EXHIBIT:7 10 02 PAGE 1 OF 2

CAMPUS: [illegible] DATE: [illegible]

PART VI - SCREENING

[illegible] TEMP 98 PULSE 68 RESP 18 WEIGHT ____ LBS. HEIGHT: ____ FT. ____ IN.

ON: WIOUT GLAS: R20/40 L20/33 AUDIOMETRY: R PASSED ✓ FAILED ____ RETEST ____
WITH GLAS: R20/ L20 L PASSED ✓ FAILED ____ RETEST ____
COMMENTS aggt c Dr. Randolph 5/13/96 COMMENTS: Heard 250-500 @ 35 dec. bl

PART VII - IMMUNIZATIONS/LABORATORY TESTS

DATE	RESULTS		DATE	RESULTS		DATE	RES
5/10/96		URINE DIP	5/10/96	Neg	GC		
5/10/96		UA/C&S			CMYDIA		
5/10/96	NONREACTIVE	DRUG SCRN			PAP SP		
HCT		PREG/URI			THRT		
		PREG/SERU					

Mary Hall RN

:R

PART VIII - PHYSICAL ASSESSMENT

ECTIVE

ECTIVE: CHECK(✓) (ADEQUATE) OF 1 (IMPAIRED). COMMENT IF IMPAIRED.

I		
✓	INTEGUMENT	Tattoo both arms.
	HYGIENE	
	NUTRITION	WD
✓	HEENT	Glas-TMJ-NL Eye-PERL, DNL-FVA OP-4 tonsils 1+ & moda
	DENTAL	Irreg lower ⑧ Caries
	RESPRATN	BS clear
	CIRCULTN	RRR
✓	ABDO/DIGST	NT & mass
	ELIMNATION (URINARY)	
	ELIMINATION (BOWEL)	
	MUSCULAR/SKELETAL	
	NEUROLOGICAL	
	MENTAL/EMOTIONAL	
	REPRODUCTION/BREAST:	TANNER # ( )
✓	EXT. GENITALIA:	TANNER # ( ) Circumcised
	INT. GENITALIA:	Female
	WET PREP:	

ESSMENT/DIAGNOSIS:
Poor Visual Improvement - Gave eye clinic today
4.
5.
6.

ANS:
ALTH ED: BSE ____ 1SE ____ HYGIENE: ORAL ____ BODY ____ GENITAL ____ PREG PRE ____
STD PREVENTION ____ OTHER:

DATE: 5/13/96 [signature] RNC NP/CHS

3106

CASE # SEQ
151869 063

INSTITUTIONAL HOLD RECORD DYSJIM42 DELETE

R/S CNTY ---- OFFENSES ----------=
B M 23 RESOFF ENTFER SIMA&B _____ _____

DONALD

ALERT PROB. ENDS 2-28-96

*1ST	----DATE-----		*2ND	-----DATE-----		*3RD	----DATE-----		*4TH	----DATE----	
T	IN	OUT	INST	IN	OUT	INST	IN	OUT	INST	IN	OUT
960416											

DORM 5 GUIDELINES

PAGE 01

TYPE (A,T,M)	REF SOURCE	REF REASON	REFERRAL CAMP/DORM	TYPE UNIT	DATE IN	TIME IN	DATE OUT	TIME OUT

TRANSACTION SUCCESSFUL

PF1=NAME PF2=MASTER PF3=REFERRAL PF9=SCORE PF10=INST SUMMARY PF11=MENU

SB O-001

```
 RR? N                          INSTITUTION HOLD SUMMARY                          FORM5? _

CASE #          LAST          (FIRST MIDDLE)     R/S     DOB        CNTY
151869                        DONALD             B M                23
-----COUNSELORS-----  DRUG          --LAST SCHOOL--  HEIGHT          EYE    HAIR
FIELD STUDENT SOCIAL  USE          DIST STAT GRADE    F II   WEIGHT  COLOR  COLOR
 425      ____   I100   H          2337  M    07      5 11    187    BROWN  BLACK
----------RISK STATUS----------                  INSTITUTIONAL ---------------
                                    SCHOOL   GRADE   ADMIN-CLASS    PLACEMENT
ALERT: PROB. ENDS 2-28-96 ______                ____     __          __          _
  REF        DATE   DATE                          REF        DATE   DATE
  NBR DORM    IN    OUT    ---OFFENSE---          NBR DORM    IN    OUT    ---OFFENSE---
_ 063 801  960416 ______ RESOFF INTFER

PF1=NAME SEARCH  PF2=MASTER  PF3=SUMMARY  PF5=SERVICES  PF6=PAYMENTS  PF9=SCORE
SB                                                                      O-001
```

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE

X/O

This certifies that Donald
Juvenile

has this 16 day of April 96
Month Year

been delivered to the RECEPTION AND EVALUATION CENTER for commitment to the SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE by

- ✓ Sheriff's Department
- ___ County Detention Center
- ___ Police Department
- ___ Other ___

Smith of Greenville
Transporting Official County

Time Arrived
2:35

Admissions Staff
Shoore

SH

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
RECEPTION AND EVALUATION CENTER

Date 5/15/96

I, the undersigned, have this date received from the Reception and Evaluation Center Donald to be returned to Greenville County.

Signature Derek O. Mass

Title Admin Specialist

FORM5 CURRENT DATE 05/07/98

CASE#: 179130 CLIENT INFORMATION

CLIENT NAME: [redacted] LORENZO
ALIAS: COUNTY: GREENVILLE
CLIENT ADDRESS: GREENVILLE SC 29607
RACE: BLACK SEX: MALE SSN: PHONE:
AGE: 17 DOB:) DOB HAS BEEN VERIFIED: YES

FATHER'S NAME: FREDDIE MASSEY
FATHER'S ADDRESS: UNKNOWN N GREENVILLE SC

MOTHER'S NAME: DORA MASON
MOTHER'S ADDRESS: SAME AS JUVENILE

GUARDIAN'S NAME:
GUARDIAN'S ADDRESS:

INTAKE OFFICER: C122 PROB/AFTC OFFICER: PROB/AFTC UNIT:
SCHOOL: 2391 GRADE: NINTH GRADE
EDUC. STATUS: SPEC. PROGRAM, LEARNING DISABLED
REGISTRY REQUIRED - NO

PRIOR-HIST: 01
REM/COMP: NO REMEDIAL/COMP CLASS
DSS HAS LEGAL CUSTODY OF CLIENT: NO FAMILY INCOME: $5,000 - $9,999
NATURAL PARENTS MARITAL STATUS: LIVING APART, NEVER MARRIED
CLIENT'S LIVING ARRANGEMENT: NATURAL MOTHER
KNOWN ALCOHOL/DRUG ABUSE: DRUGS, CASUAL, NOT AT TIME OF ARREST
CLIENT EMPLOYMENT STATUS: UNEMPLOYED, PREVIOUS PART-TIME
CRIMINAL STATUS OF FAMILY:
SIBLINGS, CURRENT DELINQ.; AT LEAST 1 PARENT, PRIOR CRIM. RECORD
IDENTIFIED SPECIAL NEEDS:
LEARNING DISABLED

INTAKE HISTORY

DIST LOC	OFFENSE DATE	REF DATE		OFFENSE	REF SEQ	SOL DEC	DATE
123	951231	960103	D	RESOFF 01	020	PRO	960103
	951231			INTFER 01		PRO	960103
123	951231	960103		RESOFF 01	021	PRO	960103
	951231			INTFER 01		PRO	960103
123	951231	960103		RESOFF 01	022	PRO	960103
	951231			INTFER 01		PRO	960103
123	951231	960103		RESOFF 01	023	NOL	971014
	951231			INTFER 01		NOL	971014
123	971008	971009		SIMA&B 01	040	PRO	980306
	971003			SHPLFT 01		PRO	980306
123	971008	980507	818	SIMA&B 01	041	PRO	980306
	971003			SHPLFT 01		PRO	980306

COURT HISTORY

HEARING	COURT ACTIONS		JDG	DISP DATE
AR	OTH CON	01	JWK	960103
	OTH CON	01		
AD	CON	01	RKJ	960801
	CON	01		
AD	CON OTH	01	FSA	961125
	CON OTH	01		
AR	R&E	01	RKJ	980507
	CON	01		

********** END LIST **********

```
 RR? N    DYSJIM30        DYS CLIENT REFERRAL SUMMARY                    FORM5? _
CASE # 179130                        R/S  DOB  CNTY  SCHOOL/GRADE   UNIT OFF
NAME                  LORENZO _____  B M   C     3    2391    09      __  ____
 -DRUG & ALCOHOL USAGE--   SP NEEDS   -LIVING ARRANGEMENT-   REMEDIAL/COMP CLASS
DRUG USE - CASUAL           D  11     NATURAL MOTHER         NONE
----EDUCATION STATUS----    -----------RISK STATUS------------              -DSS-
SPEC PROG LEARN DISABLE     _____ _____ ____ _____ _____                    N NO
ALERT:
-------------------------------------------------------------------------PAGE 01
  DIST --REF/HOLD--              HOLD PROC  DEC    HEAR                      HEAR
  OFF  SEQ    DATE  OFFENSE CNT AGCY DEC   DATE   TYPE JUDGE DISPOSITION    DATE
_ 123  020   951231  RESOFF 01   D    PRO  960103  AR   JWK  OTH CON        960103
              951231  INTFER 01        PRO  960103                OTH CON
_ 123  021   951231  RESOFF 01        PRO  960103  AD   RKJ  CON           960801
              951231  INTFER 01        PRO  960103                CON
_ 123  022   951231  RESOFF 01        PRO  960103  AD   FSA  CON OTH       961125
              951231  INTFER 01        PRO  960103                CON OTH
_ 123  023   951231  RESOFF 01        NOL  971014
              951231  INTFER 01        NOL  971014
_ 123  040   971008  SIMA&B 01        PRO  980306  AR   RKJ  R&E            980507
              971003  SHPLFT 01        PRO  980306                CON
_ ADD NEW DETENTION, INSTITUTIONAL, OR REFERRAL RECORD
HOLD/REFERRAL LIST CONTINUED NEXT PAGE - PRESS ENTER
 ENTER D=DETENTION  I=INSTITUTE  R=REFERRAL  ENTER-NEXT PAGE  PF12-PREVIOUS PAGE
SB                                                                      O-001
```

```
 RR? N    DYSJIM30        DYS CLIENT REFERRAL SUMMARY                    FORMS? _
CASE # 179130                          R/S  DOB  CNTY  SCHOOL/GRADE   UNIT OFF
NAME __                LORENZO         B M __    23    2391   09      ___ ____
 -DRUG & ALCOHOL USAGE--   SP NEEDS   -LIVING ARRANGEMENT-   REMEDIAL/COMP CLASS
DRUG USE - CASUAL           D  11     NATURAL MOTHER          NONE
----EDUCATION STATUS----    ----------RISK STATUS-----------              -DSS-
SPEC PROG LEARN DISABLE     _____ ____ _____ _____ _____                  N NO
ALERT:
-------------------------------------------------------------------------PAGE 02
  DIST --REF/HOLD--                    HOLD PROC  DEC    HEAR                  HEAR
  OFF  SEQ   DATE   OFFENSE  CNT AGCY DEC  DATE   TYPE JUDGE DISPOSITION      DATE
_ 123  040  971008  SIMA&B  01       PRO  980306 AR   RKJ   R&E              980507
             971003  SHPLFT  01       PRO  980306               CON
_ 123  041  971008  SIMA&B  01  818  PRO  980306
             971003  SHPLFT  01       PRO  980306

_ ADD NEW DETENTION, INSTITUTIONAL, OR REFERRAL RECORD
END OF HOLD/REFERRAL LIST
 ENTER D=DETENTION  I=INSTITUTE  R=REFERRAL  ENTER-NEXT PAGE  PF12-PREVIOUS PAGE
SB                                                                    O-001
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 RR? N                        INSTITUTION HOLD SUMMARY        DYSJIM40        FORM5? _

CASE #        LAST          (FIRST,MIDDLE)     R/S   DOB       CNTY
 79130        ____          LORENZO            B M               23
-----COUNSELORS-----  DRUG          --LAST SCHOOL--  HEIGHT                 EYE    HAIR
FIELD STUDENT SOCIAL  USE           DIST STAT GRADE    F II    WEIGHT     COLOR  COLOR
C122     _____  I803  E             2391  F    09      5 09    149        BLACK  BLACK
                                                  ------------ INSTITUTIONAL ------------
----------RISK STATUS----------                   SCHOOL   GRADE   ADMIN-CLASS   PLACEMENT
_______ _____ _____ _____ _____                    _____    __      ___           _
ALERT:
  REF       DATE      DATE                  G      REF       DATE      DATE                 G
  NBR INST   IN       OUT      OFFENSE      L      NBR INST   IN       OUT      OFFENSE     L
_ 041 818  19980507  _________  SIMA&B       _

ENTER I FOR INSTITUTIONAL DETAIL, OR L FOR LOCKUP/FURLOUGH HISTORY
 PF1=NAME SEARCH  PF2=MASTER  PF3=SUMMARY  PF5=SERVICES  PF6=PAYMENTS PF9=RISK/A
SB                                                                      O-001
```

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
UPSTATE EVALUATION CENTER
EVALUATION

NAME: Lorenzo / DATE: 06/09/98

MIS #: 179130 AGE: 17 DOB:

DATE OF COMMITMENT: 05/07/98 COUNTY: Greenville

DATE OF RELEASE: 06/09/98 DISCHARGE TO: Greenville

DETENTION ORDER: NO

ALERT: NONE

DISPOSITIONAL RECOMMENDATION:

___Diversion ___Suspended Commitment ___Monetary Restitution

_X_Probation ___Commitment ___Community Service

PLACEMENT RECOMMENDATION:

_X_Home Placement ___Alternative Placement ___DJJ Institution

ATTACHMENTS:

_X_ Form 5

_X_ Court Order

_X_ Social Work Report

_X_ Psychological Evaluation

___ Psychiatric Evaluation

_X_ Education Transcript/Education Evaluation Summary

_X_ Health Examination Record

_X_ Medical Lab Report

FORM5 CURRENT DATE 05/07/98

CASE#: 179130 CLIENT INFORMATION

CLIENT NAME: LORENZO
ALIAS: COUNTY: GREENVILLE
CLIENT ADDRESS: ... GREENVILLE SC 29607
RACE: BLACK SEX: MALE SSN: PHONE:
AGE: 17 DOB: DOB HAS BEEN VERIFIED: YES

FATHER'S NAME: FREDDIE MASSEY
FATHER'S ADDRESS: UNKNOWN N GREENVILLE SC

MOTHER'S NAME: DORA MASON
MOTHER'S ADDRESS: SAME AS JUVENILE

GUARDIAN'S NAME:
GUARDIAN'S ADDRESS:

INTAKE OFFICER: C122 PROB/AFTC OFFICER: PROB/AFTC UNIT:
SCHOOL: 2391 GRADE: NINTH GRADE
EDUC. STATUS: SPEC. PROGRAM, LEARNING DISABLED
REGISTRY REQUIRED - NO

PRIOR-HIST: 01
REM/COMP: NO REMEDIAL/COMP CLASS
DSS HAS LEGAL CUSTODY OF CLIENT: NO FAMILY INCOME: $5,000 - $9,999
NATURAL PARENTS MARITAL STATUS: LIVING APART, NEVER MARRIED
CLIENT'S LIVING ARRANGEMENT: NATURAL MOTHER
KNOWN ALCOHOL/DRUG ABUSE: DRUGS, CASUAL, NOT AT TIME OF ARREST
CLIENT EMPLOYMENT STATUS: UNEMPLOYED, PREVIOUS PART-TIME
CRIMINAL STATUS OF FAMILY:
SIBLINGS, CURRENT DELINQ.; AT LEAST 1 PARENT, PRIOR CRIM. RECORD
IDENTIFIED SPECIAL NEEDS:
LEARNING DISABLED

INTAKE HISTORY

DIST LOC	OFFENSE DATE	REF DATE		OFFENSE	REF SEQ
123	951231	960103	D	RESOFF 01	020
	951231			INTFER 01	
123	951231	960103		RESOFF 01	021
	951231			INTFER 01	
123	951231	960103		RESOFF 01	022
	951231			INTFER 01	
123	951231	960103		RESOFF 01	023
	951231			INTFER 01	
123	971008	971009		SIMA&B 01	040
	971003			SHPLFT 01	
123	971008	980507	818	SIMA&B 01	041
	971003			SHPLFT 01	

COURT HISTORY

SOL DEC	DATE	HEAR-ING	COURT ACTIONS		JDG	DISP DATE
PRO	960103	AR	OTH CON	01	JWK	960103
PRO	960103		OTH CON	01		
PRO	960103	AD	CON	01	RKJ	960801
PRO	960103		CON	01		
PRO	960103	AD	CON OTH	01	FSA	961125
PRO	960103		CON OTH	01		
NOL	971014					
NOL	971014					
PRO	980306	AR	R&E	01	RKJ	980507
PRO	980306		CON	01		
PRO	980306					
PRO	980306					

********** END LIST **********

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF GREENVILLE)

IN THE INTEREST OF:

COMMITMENT ORDER FOR EVALUATION
DJJ

Lorenzo
H H
Greenville, SC

AGE: 17 DOB:

HEARING DATE: 5-7-98 ATTORNEY FOR SOLICITOR: Weston
JUDGE: L. Johnson ATTORNEY FOR JUVENILE: Rosenfeld
COURT REPORTER: M. Smith ARRESTING AGENCY: 200
GUARDIAN AD LITEM: D. Mason

The Office of the Solicitor for the Thirteenth Judicial Circuit having filed petitions in this Court alleging that the above named juvenile was delinquent in that (he/she) in Greenville did commit the :

OFFENSE(S)	LAWS-SECTION	OFF.DATE	FILING DATE:	PET.#
47B		9/30/97		97-1723

AN ADJUDICATORY HEARING was held and following (plea of guilty) ✓ (a hearing on the merits), _____ the allegations were determined to be true upon proof beyond a reasonable doubt. I find that an evaluation of this juvenile is necessary in order to aid the Court in the disposition of this matter and that the said child is a suitable person to be committed to the South Carolina Department of Juvenile Justice Reception and Evaluation Center.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the within named juvenile is hereby committed to the South Carolina Department of Juvenile Justice for a period not to exceed forty-five days for the purpose of evaluation of said child and making recommendation to the Court concerning proper disposition of this case.

_____ This commitment is suspended upon the child's successful completion of a community evaluation. The DJJ psychologist is authorized to determine the most appropriate methods of consultation or evaluation for the purpose of preparing a recommendation to this Court for disposition.

Dated: 5/7/98
Greenville, S.C.

R. Kinard Johnson, Jr.
JUDGE OF THE FAMILY COURT
THIRTEENTH JUDICIAL CIRCUIT

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
UPSTATE EVALUATION CENTER
SOCIAL WORK REPORT

NAME: Lorenzo Abdul **DATE:**06/03/98

MIS#: 179130 **AGE:** 17 **DOB:**

CURRENT OFFENSE(S)

Simple Assault and Battery

COURT SUMMARY

In December 1995, Lorenzo was charged with Resisting an Officer and Interfering with an Officer. Regarding these charges Lorenzo states his mother and stepfather had gotten into an argument at home. His mother called police. When police arrived, his mother got into an argument with them, and an officer hit her on the back of the head with a flashlight. Lorenzo states he intervened and the police beat him up and kicked him in the side which loosened stitches he had received earlier in the day. Lorenzo states the stitches were required earlier in the day because he had intervened when an aunt and his sister were fighting. He states the aunt tried to cut his sister and when he intervened the aunt cut him requiring twenty-five stitches in his side. He states his mother was not at home when that fight occurred, but was in Columbia visiting his older brother, who was in prison. The charges of Resisting Arrest and Interfering with an Officer were subsequently dropped in October 1997.

Lorenzo gives the following account regarding the current charge. He states he was at the school bus stop when he was told one of his neighbors, Jeff, was talking about him. Lorenzo states he approached Jeff and asked him about it. Jeff's girlfriend came by and Jeff began talking loudly. Lorenzo states Jeff then hit him and knocked him down. A fight ensued and Lorenzo states that he struck Jeff, body slammed him to the ground and continued punching him. Jeff went home and Lorenzo proceeded to get on the bus and go to school. Jeff's mother called the school and Lorenzo was arrested at school. The police report indicated cuts and bruises on Jeff.

NEEDS ASSESSMENT

Substance Abuse

Lorenzo states he tried drinking once but the alcohol hurt his stomach. He states he has tried Marijuana once. He reports family history of substance abuse. He states that his brother Donald smokes Marijuana and drinks approximately two beers two days per week. He states his mother drinks beer by the quart on Fridays and Saturdays. Lorenzo's mother denies any family history of substance abuse. However, a psychological evaluation dated June 13, 1996 reveals considerable family history of substance abuse. It states that most of Lorenzo's father's family have drug or alcohol problems and his father was reported to have used alcohol, Marijuana and Crack Cocaine. The psychological evaluation goes on to state that Lorenzo's mother was reported to have a drinking problem and one of her sisters and her father also have drinking problems. At the time of this psychological evaluation a stepfather was in the family and served as a contributor to the evaluation. He admitted a history of abusing alcohol and drugs but reported that he had completed a recovery program two years prior, and at the time of the interview, drank socially. Lorenzo had been charged with Resisting an Officer and Interfering with an Officer prior to this psychological evaluation being conducted. The stepfather stated those charges were directly related to the alcohol abuse by himself and Lorenzo's mother. He stated he and Lorenzo's mother had been out drinking and when they returned home were angry and arguing with each other. The mother called police to have the husband arrested. When police arrived they discovered that the mother had outstanding warrants for fraudulent checks. The mother was taken into custody and the manner in which she was arrested led to interference by Lorenzo's younger brother. Lorenzo then verbally "mouthed off" to police and he was arrested. The stepfather states these kinds of behaviors were common in the family and interfered with their functioning.

It is recommended that Lorenzo participate in a substance abuse awareness group. It is believed that a support group such as Al-anon or Al-a-teen would be helpful to him in coping with the history of and any possible active addiction on the part of family members.

Living Arrangement/Family Function

Prior to admission to UEC, Lorenzo lived in Greenville, S.C. with is thirty-nine year old mother Dora Mason who is said to be in good health and employed full time at Haywood Mall as a custodian. Also in this household are Lorenzo's twenty-one year old sister Marie, who is employed at a restaurant, sixteen year old sister Peggy who attends J.L. Mann High School, and eighteen year old brother, Donald, who is employed by a moving company. Donald is said to have served time in the Greenville Detention Center as well as at Perry Correctional Institution. He has been on probation and violated probation.

According to Lorenzo, his stepfather, Bernard Mason, is currently serving a fifteen year sentence in the South Carolina Department of Corrections. He states Mr. Mason as completed one year on this sentence and that he is incarcerated due to stealing and several other charges. Lorenzo points out that Mr. Mason used to smoke Crack Cocaine. He states that he used to steal VCR's and other items out of the house and that his mother argued with him a lot about this and called police.

Lorenzo's biological father is Freddie Massey. His whereabouts are unknown, although he is thought to live in Greenville, S.C. Regarding his relationship with Mr. Massey Lorenzo states "I ain't seen him in a long time. Not since I was five years old".

According to Lorenzo, rules in his house include no smoking, no cursing and friends cannot stay late when they visit. He reports an 11:00 p.m. curfew during the week and 12:00 midnight curfew on weekends. Grounding and restriction are the forms of discipline most used by his mother. Lorenzo reports cleaning house and laundry as his regular chores. Lorenzo has never lived away from his mother. He states he feels closest to his mother. Lorenzo reports family activities to be going to movies, to the park and riding bikes. He states his family attends church every Sunday and states "my sister is a religious person".

School/Employment

Most recently Lorenzo was enrolled as a ninth grader at J.L. Mann, but was expelled from there October 1997 after receiving the charge of Simple Assault and Battery. He was finally accepted at Sullivan Street Alternative School but was admitted to UEC before starting classes there. According to Ms. Mason, Lorenzo was placed in special education class in fourth grade. She states he has not presented many behavior problems at school and has had two or three out of school suspensions. However, he was expelled from school for excessive tardiness and placed on homebound instruction during the 1996-97 school year. He repeated sixth and ninth grades. His grades tend to be B's and C's but he has failed math and physical education. Lorenzo has not participated in any extracurricular school related activities. He expressed plans for his future as completing high school and going to college and having a career as an auto mechanic.

Emotional Stability

Lorenzo was pleasant, open and talkative throughout the interview process. He states he is usually in a good mood. The mother states that he does not present behavior problems at home and is usually pleasant. However, the history of substance abuse and violence in this family does cause concern. Lorenzo talked about one major loss. His grandmother died in 1995 or 1996 of a heart attack during her boyfriend's birthday party. He states

since her death he feels his family has been "split apart". Lorenzo has not participated in any sort of counseling.

It is recommended that Lorenzo participate in mental health counseling.

Peer Associations

Most of Lorenzo's friends range in age from fifteen to twenty-one. He states one friend works two jobs. Lorenzo and his friends watch movies and go riding. He denies any gang involvement. Lorenzo became sexually active at age sixteen and has had one partner who is his present girlfriend. He reports the girlfriend was pregnant but the pregnancy resulted in a stillbirth.

BEHAVIORAL OBSERVATIONS

Lorenzo has not presented any major behavior problems at UEC. He has received four negative behavior reports for horseplaying and talking during quiet time after several warnings. He was said to display a poor attitude when corrected by living unit staff.

NOTE: Additional behavioral observations are presented in the attached Student Transcript.

RECOMMENDATIONS

The following dispositional and placement recommendations were formulated in consultation with the case psychologist:

___Diversion	___Suspended Commitment	___Monetary Restitution
_X_Probation	___Commitment	___Community Service
_X_Home Placement	___Alternative Placement	___DJJ Institution

1. It is recommended that Lorenzo be placed on probation under the supervision of Greenville County DJJ.
2. It is recommended that Lorenzo return to the home of his mother. Ms. Mason should complete a parenting skills group such as Back In Control.
3. Lorenzo should complete a substance abuse awareness group. He should be referred to a support group such as Al-anon or Al-a-teen if available.
4. Lorenzo should fully participate in mental health counseling which should include family sessions.

5. A referral to Vocational Rehabilitation is recommended to access appropriate services for Lorenzo.

NOTE: Additional service recommendations are presented in the attached Psychological Evaluation.

Joyce Jones, LMSW

Joyce Jones, LMSW
Social Worker
Upstate Evaluation Center

JJ/sdb

MIS: 179130

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
UPSTATE EVALUATION CENTER

Psychological Evaluation

Name of Student: Lorenzo
Number: 179130

Date of Evaluation: 5-21-98
Date of Birth:

REFERRAL STATEMENT:

This student was referred for psychological evaluation as part of the comprehensive evaluation process of the Upstate Evaluation Center. Findings may be used in consultations with social workers or other Upstate Evaluation Center staff. This report addresses issues of intellectual and academic functioning; personality factors and emotional stability; personal strengths and needs; and services to help change problem behavior and protect the public.

IDENTIFYING INFORMATION:

Lorenzo is a seventeen-year-old black male who was temporarily committed to the Upstate Evaluation Center pursuant to a court order dated May 7, 1998 from the Greenville County Family Court. A psychological evaluation was conducted on May 21, 1998. There were no specific referral questions.

BACKGROUND INFORMATION:

Lorenzo stated that prior to commitment, he lived with his mother, one older brother, one older sister, and one younger sister in Greenville, South CArolina. He reported that his parents never married. He stated that he has infrequent contact with his father who lives in Greenville. He indicated that he and his father have a "good" relationship. However, he reported that he sees him only once a year, with contact between visits. He described his relationship with his mother and siblings as "good." He reported that his mother works at "Garrison's a store in the Haywood Mall in Greenville, South Carolina." He reported that his father works at "a moving company in Greenville."

Lorenzo stated that he has a 12:00 curfew on the weekends and a 10:00 limit on the weekdays. He indicated that he adheres to the time limits set by his mother. He described his mother as being not too strict. He described his household responsibilities as including: "cutting grass, raking the yard, and washing dishes." He reported that he and his family "go to the park and go to movies" as fun activities.

Lorenzo reported that his oldest brother has been in trouble with law officials for "robbery." He added that his brother took clothes from Sports Town, a store. He stated that his brother spent three years in jail for the offenses.

SOURCES OF INFORMATION:

___Wechsler Intelligence Scale for Children-III (WISC-III)
___Developmental Test of Visual-Motor Integration (VMI)
___Incomplete Sentences Blank (ISB)
___Peabody Individual Achievement Test-Revised (PIAT-R)--Reading Comprehension
___Mooney Problem Checklist (Mooney)
___Draw-A-Person (DAP)
___Kinetic Family Drawing
___Clinical Interview
___Behavioral Observations
___DJJ File Information

CLINICAL INTERVIEW:

Lorenzo identified restriction as the primary form of discipline employed by his mother. He denied having been the victim of physical or sexual abuse. He reported that he consumed bourbon at age 16, twice, long ago. He reported no use of any other drugs. He acknowledged having a girlfriend and being sexually active. He further stated that he uses condoms for protection all the time. However, he reported that he fathered a child who was still born in May of 1998.

He described himself as being popular with his peers. He described himself as nice, friendly, and temperamental. He described his family as one that "gets along." He further indicated no alcohol or drug problems in his family.

Lorenzo is currently enrolled as a ninth grader at J.L. Mann High School in Greenville, South Carolina. He reported that he repeated the eighth grade. He stated that in general he makes "C's and D's." He reported that he has received special education services since the sixth grade in a resource room. He added that he receives assistance with Math and Reading. He receives services as a Learning Disabled student, according to the South Carolina Department of Juvenile Justice Client Information, dated May 7, 1998. Lorenzo reported being absent about 50 days last school year when he was expelled. He missed regular classes this school year when he was in in-school suspension.

He further reported being suspended twice last school year for arguing with a student and wrestling in class and twice this school year for fighting and excessive tardies. He reported being expelled in the last school year in second semester for fighting. He was expelled second semester this year for excessive tardies, according to him.

Lorenzo's favorite subject is Reading and his least favorite subject is Math. He reported that he is aggressive at school and that he gets along with a few of his teachers and administrators.

He denied any history of past serious illnesses or physical problems. He denied having experienced suicidal ideation. He denied having experienced hallucinations or delusions.

He identified becoming a mechanic as his career interest. Lorenzo demonstrated little insight into the career and the skills required. He stated that he earned money cooking at Checkers and that he bought

clothes with his money. He added that he got fired after working four months. He stated he was fired because he didn't call in.

Lorenzo is currently adjudicated on the offense of Assault and Battery. He exhibited some insight into the destructive nature of his behaviors. He attempted to justify his behavior. He stated, "I beat up a boy at the bus stop. He hit me first." He added that he punched him repeatedly in the face and the boy incurred a small slash under his eyes and his forehead." Lorenzo stated that he was sorry for his actions, had apologized to the boy, and they are now "best friends." He indicated that he knew how to avoid getting into trouble in the future. He stated, "go to school and find a job."

Information he provided during the interview indicated significant needs for structure and consistency within his immediate environment. No evidence of thought disorder was noted.

Significant amounts of defiant behavior were noted and appear to frequently surface in the form of disregarding rules and regulations in the community. It is believed that he is able to interpret his environment in a basically rational and conventional manner.

BEHAVIORAL OBSERVATIONS:

This seventeen-year-old male stands, 5'9" and weighs 149 pounds. He was casually, but appropriately dressed in institutional clothing when seen for a psychological evaluation. He presented as a cooperative youth who was polite. He maintained adequate eye contact, responded to questions asked, and engaged in spontaneous conversation.

He appeared to put forth effort in completing assigned tasks. It is thought that test results are valid indicators of current levels of emotional and intellectual functioning. Lorenzo's responses were situationally appropriate and his associations were intact.

TEST RESULTS AND INTERPRETATIONS:

Kaufman Brief Intelligence Test (K-BIT):

The K-BIT is a brief screening measure of intellectual abilities. It should not be considered a substitute for a thorough evaluation of cognitive abilities. DJJ file information indicated that Lorenzo is in special education classes and is classified as learning disabled. This means that intelligence testing has been conducted at some time during the past three years. However, UEC was unable to obtain the results of the most recent school psychology evaluation. The K-BIT was used because readministering most standard intelligence tests within a short period of time may result in invalid test results. On the K-BIT, Lorenzo obtained the following standard scores:

Vocabulary	57
Matrices	72
IQ Composite	61

Peabody Individual Achievement Test-Revised: (PIAT-R)

Lorenzo obtained a grade equivalent score of 60 with a standard score of 4.0, in Reading Comprehension. This score is commensurate with his overall Vocabulary score on the K-BIT, and indicates that his reading comprehension skills are deficient.

Developmental Test of Visual Motor Integration (VMI):

On the VMI, Lorenzo obtained a standard score of 61 and an age equivalent of 7-5. His performance is below his overall score on the Matrices section of the K-BIT. His performance indicates that his psychomotor skills are deficient.

Incomplete Sentence Blank:

His responses on the Incomplete Sentence Blank indicate that Lorenzo admires his mother; fears he will be committed; and would like to have a girlfriend."

Mooney Problem Checklist:

Lorenzo identified the following concerns on the Mooney Problem Checklist: "failing in many things I try to do; trouble with writing; and getting low grades in school."

Summary and Conclusion:

In summary, Lorenzo resides with his mother and three siblings. He reported infrequent contact with his father who lives in Greenville. Lorenzo has a history of delinquent acts that dates back to 1995 with a charge of Resisting Law Enforcement Officer Serving Process.

Lorenzo is a seventeen-year-old male whose intelligence fell in the Lower Extreme range on the Kaufman Brief Intelligence Test (K-BIT). The K-BIT is a brief screening of intellectual abilities. Lorenzo receives special education services as a Learning Disabled student. A complete report of his most recent school psychology evaluation could not be obtained. Reading comprehension skills are deficient. Psychological testing indicated the presence of hostility and a disregard for rules and regulations found in the community. Clinical Interview indicated that Lorenzo does not use appropriate problem solving techniques to resolve his problems. Instead, he lashes out at others, using verbal and physical violence. Lorenzo possesses cognitive skills to assist in solving his problems.

STRENGTHS, NEEDS, AND SERVICES:

Strengths:

1. Lorenzo can be a cooperative youth.
2. He is capable of learning.
3. He verbalized intent to modify future behavior.

Needs:

1. Structured living environment

   Services: Guidance, structured, supervised living arrangement

   Parenting sessions for his mother

2. To attend school on a regular basis and exhibit appropriate behavior

   Services: Development of a behavior plan that will involve Lorenzo, his mother, and school personnel.

3. Impulse control and decision making skills

   Services: Involvement in a program aimed at assisting youth who disregard rules and use violent means to solve his problems.

4. Cease drug use

   Services: Participation in a drug education program

5. Job Skills/Appropriate Education

   Services: Continue in an appropriate educational program

   Involvement in activities that will expose him to various careers

   A complete evaluation should be conducted by the local school district to determine the presence/absence of mental retardation.

   Refer to DDSN to determine eligibility, if necessary.

DIAGNOSTIC IMPRESSION:

AXIS I: 313.81 Oppositional Defiant Disorder
AXIS II: Rule Out Mental Retardation
AXIS III: None

Sandra Calliham, Ed.D.
School Psychologist II

Todd Morton, Ph.D.
Supervising Psychologist

EDUCATIONAL EVALUATION SUMMARY

179130 Student: Lorenzo Date: 05/25/98

C.A.T. Reading Score: 1.6-3.2 C.A.T.Math Score: 2.6-4.2

Classroom Observations	Always	Sometimes	Never
1. Follows oral direction.		✓	
2. Respects authority		✓	
3. Adapts to class structure and rules		✓	
4. Demonstrates self control		✓	
5. Demonstrates responsibility		✓	
6. Demonstrates age appropriate social skills		✓	

Educational Observations:

Lorenzo has presented a positive attitude toward class assignments. He seems to participate well in class discussions and activities. Lorenzo has demonstrated a willingness to comply with classroom rules and procedures. He shows positive character, self-discipline, and respect for authority. He may benefit from tutorial services to strengthen weakness in reading and grammar skills.

Signed: Mrs Carlson Carson

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
UPSTATE EVALUATION CENTER
EDUCATIONAL TRANSCRIPT

NAME: Lorenzo (179130)

DOB: _____ GRADE: 9th

DATE OF ENROLLMENT: 05/08/98 DATE RELEASED: 06/03/98

The subjects offered at the Upstate Evaluation Center are designed to maintain the student's eligibility for days and credits toward promotion and graduation. The general teaching approaches are whole group and individualized instruction.

Subjects and Grades

Language Arts 70D

Mathematics 70D

Science 91B

Social Studies 87B

Physical Education S

Reading Range 1.6-3.2

Days Present 15

Math Range 2.6-4.2

Copy to Student

PART I--PERSONAL DATA

Juvenile Justice

#179130 FAIRFOREST UNIT SW: JONES

LORENZO ABDUL
DOA: 05-07-98
DOR
GR VILLE COUNTY
ASSAULT & BATTERY
MO: DORA MASON
11 HALL STREET
GREENVILLE, SC 29607
864 370-1174 251-45-7994
ALERT:
KY

DOB:
DOC: 05-07-98
UEC

B/M/17
5'9", 149 LBS.
BLK EYES, BLK HAIR
TATT-"BABY ADUL.O"
LT. ARM, THUG LIFE-
RT. ARM

SCDJJ - MEDICAL SERVICES
UPSTATE EVALUATION CENTER
1585 JONESVILLE HWY.
UNION, SC 29379
(864) 429-3610

PART II - FAMILY HEALTH HISTORY

ADOPTED: no NATRL FATHER NATL MOTHER NATL SIBLINGS
BIRTH RANK: 4 AGE 38 LIVING? yes AGE 39 LVNG yes # 5 #LIVI
SIGNIFICANT FAMILY HEALTH PROBLEMS: Mother has heart condition

PART III - PERSONAL HEALTH HISTORY

If yes, check () and explain

- ø ALLERGIES
- ANEMIA
- ASTHMA
- BLOOD TRANSFUSIONS
- BRST PAIN DISCHG
- BRONCHITIS
- √ CANCER
- CHILD-HD DISEASES chicken pox @ 7 yo.
- DENTAL PROBLEMS chipped both right & jaw
- ø DIABETES
- ø EAR PROBLEMS
- √ EPILEPSY/SEIZURES 5 year ago @ 11
- ø HEADACHES (CHRONIC)
- ø HEADACHES (MIGRAINE)
- ø HEART PROBLEMS
- ø HEPATITIS
- √ INJURIES Numerous broken bones - thumb broke
- ø INTESTINAL PROBLEMS
- ø KIDNEY PROBLEMS
- ø MENTAL ILNS
- ø MONO
- ø NEURO
- ø SKIN PRBLMS
- ø SICKLE CELL
- ø STREPT
- ø TUBERCULOSIS
- ø ULCERS
- ø VISUAL PROBLEMS
- ø WEIGHT LOSS 10LBS
- OTHER

PART IV - SEXUAL HISTORY

FEMALES: LMP CYCLE PROBLEMS
PARA #GRAVIDA #MISCARRIAGES #ABORT
MALES: HERNIAS TESTICULAR PROBLEMS OTHER
MALES/FEMALES: Age 1st sexual contact Date of last sexual contact 2 mo
#Sex parters past month 1 year 6 oral interes 0 rectal interes 0
Sexual preference: Heterosexual Homosexual Bisexual √
STDS (if yes, give dates): Syphillis Gonorrhea √
Chlamydia/NGU Herpes Venereal Warts HIV
Frequency of condom use: Always Sometimes √ Never
Other gonorrhea = 4 mo ago - Rx at St. Francis in Greenville S.C.

PART V - SUBSTANCE/CHEMICAL USE

CIGARETTES: 0 PPD x daily/MTH/YRS. MARIJUANA: AMT. √ DATE OF LAST USE occas.
ALCOHOL: AMT. 0 FREQ. DATE OF LAST USE
IV DRUGS: AMT. 0 FREQ DATE OF LAST USE
OTHER DRUGS: 0 DATE OF LAST USE:

NAME: -, Lorenzo Abdul CAMPUS: FF LEC DATE: 5/10/98

PART VI - SCREENING

BP 122/68 TEMP 98.2 PULSE 64 RESP 16 WEIGHT 149 LBS. HEIGHT: 5 FT. 9 IN.

VISION: WIOUT GLAS: R20/ 70 L20/ 70 AUDIOMETRY: R PASSED ✓ FAILED ___ RETEST ___
WITH GLAS: R20/ L20 L PASSED ✓ FAILED ___ RETEST ___
COMMENTS: WNL COMMENTS: WNL

PART VII - IMMUNIZATIONS/LABORATORY TESTS

	DATE	RESULTS		DATE	RESULTS		DATE	RES
DT	5/10/98		URINE DIP	5/10/98	tr protein	GC		
PPD	5/10/98	0m 5/13 R-	UA/C&S			CMYDIA		
RPR	5/10/98	5/10/98 Neg	DRUG SCRN			PAP SP		
CBC/HCT			PREG/URI			THRT		
HIV	5/10/98	5/10/98 Neg	PREG/SERU					
OTHER	Hep B 5/10/98 - 5/12/98 Neg							

Scott Dyson RN

PART VIII - PHYSICAL ASSESSMENT

SUBJECTIVE:

OBJECTIVE: CHECK( ) (ADEQUATE) OF 1 (IMPAIRED). COMMENT IF IMPAIRED.

A	I		
✓		INTEGUMENT	Multiple tatts ↑ @ ↑ & ↓ forearm - Acne ↑ @ post chest + ↑ @ L scapula
✓		HYGIENE	
✓		NUTRITION	
✓		HEENT	Visual Acuity - (Not have corrective aid), 2nd hand Glasses
✓		DENTAL	
✓		RESPRATN	
✓		CIRCULTN	
✓		ABDO/DIGST	
✓		ELIMNATION (URINARY)	✓
✓		ELIMINATION (BOWEL)	✓
✓		MUSCULAR/SKELETAL	
✓		NEUROLOGICAL	
✓		MENTAL/EMOTIONAL	Difficult time at home - Not willing to discuss - Counseling
✓		REPRODUCTION/BREAST: TANNER # (1)	
✓		EXT. GENITALIA: TANNER # (2)	WNL
✓		INT. GENITALIA:	
✓		WET PREP:	

ASSESSMENT/DIAGNOSIS:
1. Visual difficulty - 4.
2. " " 5.
3. 6.

PLANS:
HEALTH ED; BSE ✓ 1SE ___ HYGIENE: ORAL ___ BODY ___ GENITAL ___ PREG PRE ___
STD PREVENTION ___ OTHER: ___

1. Refer for Opt. evaluation - Issued sunglasses/sight - Tested & Cooperative
2.
3.
4.
5.
6.
7.
8.

DATE: 5/12/98 Lydia Hom NP/CHS

3130

LAB^RATORY REPORT

78650 AREA/ROUTE/S -: 9999999
DEPT OF JUVENILE JUSTICE-
UPSTATE EVALUATION CENTER
ATTN: WENDY GREGORY
1585 JONESVILLE HIGHWAY
UNION, SC 29379

SmithKline Beecham
Clinical Laboratories

PATIENT NAME	PATIENT ID	ROOM NO	AGE	SEX	PHYSICIAN
MIS, 179130		FF	17	M	REED, MICHAEL E

PAGE	REQUISITION NO	ACCESSION NO.	LAB REF. #	COLLECTION DATE & TIME	LOG-IN-DATE	REPORT DATE	& TIME
1	8341184	AT617190A		05/10/98 1455	05/12/98	05/12/98	9:59PM

REMARKS

EASTERN TIME

Lorenzo Abdul

REPORT STATUS: FINAL

TEST	RESULT IN RANGE	RESULT OUT OF RANGE	UNITS	REFERENCE RANGE	LAB SITE CODE
*HEPATITIS B SURFACE ANTIGEN		NONE DETECTED ab		NONE DETECTED	AT

)) END OF REPORT ((

LAP[illegible]RATORY REPORT

78650 AREA/ROUTE/S[illegible]: 9999999
DEPT OF JUVENILE JUSTICE-
UPSTATE EVALUATION CENTER
ATTN: WENDY GREGORY
1585 JONESVILLE HIGHWAY
UNION, SC 29379

SmithKline Beecham
Clinical Laboratories

PATIENT NAME	PATIENT ID	ROOM NO.	AGE	SEX	PHYSICIAN
MIS, 179130		FF	17	M	REED, MICHAEL E

AGE	REQUISITION NO.	ACCESSION NO.	LAB REF. #	COLLECTION DATE & TIME	LOG-IN-DATE	REPORT DATE	& TIME
1	8341184	AT617190A		05/10/98 1455	05/12/98	05/12/98	2:56PM

REMARKS

EASTERN TIME

, Lorenzo Abdul

REPORT STATUS: PARTIAL

TEST	RESULT IN RANGE / OUT OF RANGE	UNITS	REFERENCE RANGE	SITE CODE
HEPATITIS B SURFACE ANTIGEN	PENDING			
HIV-1 AB SCREEN	NON-REACTIVE as		NON-REACTIVE	AT
RAPID PLASMA REAGIN (RPR)	NON-REACTIVE as		NON-REACTIVE	AT

***NOTE: A NON-REACTIVE RESULT INDICATES THAT HIV1 (HTLV-III) ANTIBODIES HAVE NOT BEEN FOUND IN THIS PATIENT SPECIMEN. A NON-REACTIVE RESULT, HOWEVER, DOES NOT PRECLUDE PREVIOUS EXPOSURE OR INFECTION WITH HIV1.

)) END OF REPORT ((

INDICATES TESTING SITE SEE REVERSE SIDE

ADVANCED MEDICAL ASSOCIATES
URGENT CARE CENTER
720 S. DUNCAN BYPASS
UNION, S.C. 29379
(864) 429-3212

DATE: 6/2/98

PATIENT'S NAME: Lorenzo

DATE OF BIRTH: 1/9/81

CHART NO. 4098

X-RAY REPORT OF Pelvis

URGENT CARE/FAMILY PRACTICE MD/NP IMPRESSION:

X NORMAL

____ ABNORMAL: ____

M Cohen NP-C
SIGNATURE

RADIOLOGIST'S REPORT:

____ NORMAL

____ ABNORMAL: ____

SIGNATURE

S. C. DEPARTMENT OF JUVENILE JUSTICE
MEDICAL/DENTAL RECORD

MIS #: _____ DOB: _____

DATE: 6/8/98
CAMPUS: UEC
DORM: Fairforest

NAME: _____ Lorenzo _____
LAST FIRST MI

REASON FOR REFERRAL: hurt middle finger on right hand

INITIATOR: L. Dixon

SUBJECTIVE FINDINGS: Jammed (R) middle finger yesterday during Basketball - Wasn't put in cast

OBJECTIVE FINDINGS: Sl. swelling at middle (R) PIP joint. Tenderness c ROM

ASSESSMENT: Sprain (R) middle finger

PLAN: (1) Applying ice pack
(2) Splint
(3) Refer to NP tomorrow if still bothers

MEDICATIONS: _____

DATE OF ASSESSMENT: 6-8-98 TIME: 12:30p TPR: _____ BP _____

SIGNATURE L. Canada

SC 7/97

S. C. DEPARTMENT OF JUVENILE JUSTICE
MEDICAL/DENTAL RECORD

MIS #: _____ DOB: _____

DATE: 5/23/98
CAMPUS: UEC
DORM: FF

NAME: Owens ; Lorenzo _____
LAST FIRST MI

REASON FOR REFERRAL: Got hit in left side playing basket ball
pt Nursing supervision - check B/P & pulse -

INITIATOR: _____

SUBJECTIVE FINDINGS: States "jail ball" - was kneed in side
States hurts to exercise

OBJECTIVE FINDINGS: ambulates well

ASSESSMENT: Post aggressive basket ball game - soreness to trauma
blunt force - no ecchymotic areas

PLAN: No more jail ball - heat prn 24h

MEDICATIONS: N/A

DATE OF ASSESSMENT: 5/23/98 TIME: 1605 TPR: 68, 20 BP 138/92

SIGNATURE Scott Johnson RN

SC 7/97

S. C. DEPARTMENT OF JUVENILE JUSTICE
MEDICAL/DENTAL RECORD

MIS #: _____ DOB: _____ DATE: 5/24/98

CAMPUS: UEC

NAME: LAST Lorenzo FIRST MI DORM: TRoad

REASON FOR REFERRAL: _____

INITIATOR: _____

SUBJECTIVE FINDINGS: Playing basket ball - was kneed in back & fell - recheck ordered per nursing supervisor -

OBJECTIVE FINDINGS: ambulates well states "a little sore". pulse regular B.P. WNL

ASSESSMENT: Normal Vital signs

PLAN: Report to medical prn

MEDICATIONS: N/A

DATE OF ASSESSMENT: 5/24/98 TIME: 1000 TPR: 76, pulse 104/66 BP _____

SIGNATURE Scott Johnson RN

SC 7/97

S. C. DEPARTMENT OF JUVENILE JUSTICE
MEDICAL/DENTAL RECORD

MIS #: _____ DOB: _____ DATE: 5-21-98

CAMPUS: UEC

NAME: _____ LORENZO _____ DORM: FF
LAST FIRST MI

REASON FOR REFERRAL: States his left side hurts. Pain

INITIATOR: _____

SUBJECTIVE FINDINGS: Playing Basketball - Knocked in (L) side by another player this AM - Pain

OBJECTIVE FINDINGS: Pain noted over (L) CVA area - T ↓ deep inspiration & sitting - Lungs cl bilaterally

ASSESSMENT: Contusion

PLAN: Check U/A for blood (Neg) mc
✓ Tylenol PRN q 4hrs (2) pain - given 5/21 mc
✓ Ice / Heat 5/22 tid (20 min.) x3 days each.
✓ Recheck next week if still having pain.
✓ BP & pulse q. AM x3 - Report ↓ in BP or ↑ Pulse (significant)

MEDICATIONS: (not given to cell 3 5/22 AC) ◊ Basketball - sports - or physical exercise x3 days

DATE OF ASSESSMENT: 5/21/98 TIME: 1710 TPR: 80-18 BP 120/70

SIGNATURE M. Cohen NP-C

SC 7/97 5/26 - Recheck - still painful - pain mostly over Pelvic brim (L) side ... no sports or physical exercise till ... Motrin 600 mg tid c food x 6 days.

MEDICATION ADMINISTRATION RECORD

MEDICATION-STRENGTH-ROUTE-SCHEDULE MONTH: May YEAR: 58 INSTITUTION: UCR DORM: F/F

START DATE	STOP DATE		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
5-26	6-1	Chlorpromazine 100mg 8																															
		fruit juice 6oz 12 8																															

MEDICATION-STRENGTH-ROUTE-SCHEDULE MONTH: June YEAR: 58 INSTITUTION: UCR DORM: F/F

START DATE	STOP DATE		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
5/26	6/1	Chlorpromazine 100mg 8	AB	X																													
5		fruit juice 6oz 12	AB	X																													
		5	X	X																													

MEDICATION-STRENGTH-ROUTE-SCHEDULE MONTH: _____ YEAR: _____ INSTITUTION: _____ DORM: _____

START DATE	STOP DATE		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31

MEDICATION-STRENGTH-ROUTE-SCHEDULE MONTH: _____ YEAR: _____ INSTITUTION: _____ DORM: _____

START DATE	STOP DATE		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31

NURSES' SIGNATURE AB Alfred Bonnette

JUVENILE'S NAME Lorenzo

MIS# 179130 DOB

3138

TREATMENT ADMINISTRATION RECORD

MONTH: May YEAR: 98 INSTITUTION: WCC DORM: F4

Start Date	Stop Date		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
5-4	5-22	May have ice pack x 3 days to affected side																															

MONTH: May YEAR: 98 INSTITUTION: WCC DORM: F4

Start Date	Stop Date		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	
5-21	5-24	May have ice pack x 3 days to affected side																															

MONTH: YEAR: INSTITUTION: DORM:

Start Date	Stop Date		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31

MONTH: YEAR: INSTITUTION: DORM:

Start Date	Stop Date		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31

NURSES' SIGNATURES: M. Ann Canadas

NAME Arenas M3 D.S.

\TE OF SOUTH CAROLINA)
)
JNTY OF GREENVILLE)

IN THE FAMILY COURT

THE INTEREST OF:

COMMITMENT ORDER FOR EVALUATION
DJJ

Lorenzo

Greenville, SC

IE: 17 DOB: 1-9-81

:ARING DATE: 5-7-98 ATTORNEY FOR SOLICITOR: Weston
DGE: R. Johnson ATTORNEY FOR JUVENILE: Rosenfeld
)URT REPORTER: M. Smith ARRESTING AGENCY: 200
JARDIAN AD LITEM: D. Mason

The Office of the Solicitor for the Thirteenth Judicial Circuit having filed petitions in this Court eging that the above named juvenile was delinquent in that (he/she) in Greenville did commit the :

FFENSE(S)	LAWS-SECTION	OFF DATE	FILING DATE:	PET #
AFB		9/20/97		97-1723

AN ADJUDICATORY HEARING was held and following (plea of guilty) ✓ (a hearing on e merits), _____ the allegations were determined to be true upon proof beyond a reasonable doubt. find that an evaluation of this juvenile is necessary in order to aid the Court in the disposition of this .atter and that the said child is a suitable person to be committed to the South Carolina Department of ıvenile Justice Reception and Evaluation Center.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the within named juvenile is ereby committed to the South Carolina Department of Juvenile Justice for a period not to exceed forty- .ve days for the purpose of evaluation of said child and making recommendation to the Court concerning roper disposition of this case.

___ This commitment is suspended upon the child's successful completion of a ommunity evaluation. The DJJ psychologist is authorized to determine the most appropriate methods of :onsultation or evaluation for the purpose of preparing a recommendation to this Court for disposition.

Dated: 5/7/98
Greenville, S.C.

R. Lindsay Johnson, Jr.
JUDGE OF THE FAMILY COURT
THIRTEENTH JUDICIAL CIRCUIT

E

[illegible]

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE

This certifies that Juvenile

has this 7 day of May 1998

been deliveed to the Upstate Evaluation Center for commitment to the SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE by

Transporting Official of Greenville County

- ___ Sheriff's Department
- ✓ County Detention Center
- ___ Police Department
- ___ Other ___

Time Arrived

6:30

Admission Staff

Upstate Evaluation Center

Department of Juvenile Justice

Date of Commitment: 5-7-98

I, Lorenzo, _____, was seen by my Social Worker, Ms. Jones, on 5-8-98. My Social Worker has discussed the following rules with me:

✓ 1) I am committed here for up to 45 days.

✓ 2) I ~~do~~/do not have a detention order.

✓ 3) I have the right to request to see my Social Worker but understand that I will not be seen immediately unless it is an emergency. I can obtain a Request Form from the JCO in my unit.

✓ 4) I understand that on the Request Form I must be specific as to why I need to see my Social Worker.

✓ 5) I understand that my Social Worker will meet with me when he/she needs to see me.

✓ 6) ~~I understand that I am not allowed to call my Social~~ Worker's name or ask to speak with him/her when he/she is in my unit or in the hall.

✓ 7) I understand that I will be released when and only when my evaluation is complete.

✓ 8) I understand that being sent to lock-up will affect my evaluation, and I can be sent to lock-up anytime up to and including my date of release.

✓ 9) I understand that my behavior is being observed 24 hours a day and will be reflected in my evaluation.

✓ 10) I understand that I will respect all staff members - blue shirts, white shirts and plain clothes.

Juvenile's Signature: Lorenzo _____ Date: 5-8-98

FACSIMILE TRANSMITTAL FORM

TO:

COMPANY Upstate Eval.

INDIVIDUAL Joya Jones

FROM: Elaine Chubb

GREENVILLE DEPT. OF JUVENILE JUSTICE
P.O. BOX 1803
GREENVILLE, SC 29602

Sender's FAX Number: 864/467-5899

Sender's Phone No: 864/467-5875

Number of Pages (including this cover sheet)--- 28

Please call if you do not receive all pages.

Remarks: Lorenzo

JUVENILE CASE SHEET

DATE: 10-10-97

DEJONG ____
PETERS ____

RECOMENDATION:
COURT: ✓
INFORMAL ____
DISMISS ____
JPT ____
CDP: ____

CASE #: 97-76085

REASON FOR DISMISSAL ____

PRIOR RECORD YES ____ NO ____
PRIOR INFORMAL YES ____ NO ____
OTHER Prior N.P.

Has a pending SL

NAME: Lavonne Abdul

AGE: 16 DOB: W-(B) O-(M) F-

CO-DEFENDANTS: Satalia C

OFFENSE A+B

VIOLENT: No

OFFENSE DATE: 9-30-97

VICTIM: Jeffery Charles Lewis (B/M 17)

LOCATION: bus stop

DESCRIPTION: Did charge at vict. - Struck Vict. + kicked him in the face with vict. on ground

VALUE: ____ RESTITUTION: ____

Mailed vic. letter: 11-3-97

NOTES: Photos attached

GREENVILLE POLICE DEPARTMENT
INCIDENT REPORT

AGENCY I.D. SC0230200 | OFFENSE | CLASS | DAY | CASE NUMBER 9700071610185 | NCIC ENTRY

Assault & Battery

Rebecca And Clark St (Bus Stop)

INCIDENT DATE 09-30-97 | TIME 0730 | DATE | TIME | WEAPON 40 | TIME ARRIVED 0803 | TIME COMPLETED 0835 | PATROL DISTRICT G

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE): ONEAL, DELORIS | RELATIONSHIP TO SUBJECT | RESIDENT | RACE B | SEX F | AGE 48 | ETH N | DAYTIME PHONE 370-0858 | EVENING PHONE 288-0171

ADDRESS 116B Hilton St | CITY GREENVILLE | STATE SC | ZIP CODE 29607 | PATROL DISTRICT G

VICTIM'S NAME (LAST, FIRST, MIDDLE): LEWIS, Jeffrey Chad | RELATIONSHIP TO SUBJECT | RESIDENT | RACE B | SEX M | AGE 17 | ETH N | DAYTIME PHONE 370-0251

ADDRESS 116B Hilton St | CITY GREENVILLE | STATE SC | ZIP CODE 29607 | PATROL DISTRICT G

VICTIM WAS ☐ OFFICIAL ☐ BUSINESS ☐ GOVERNMENT ☐ RELIGIOUS ☐ SOCIETY/PUBLIC ☐ OTHER ☐ UNKNOWN ☐ POLICE OFFICER | COMPLAINT AGAINST VICTIM WAS INJURED? ☐ YES ☐ NO

VICTIM (NOT 1) USING ALCOHOL ☐ YES ☐ NO ☐ UNK | DRUGS ☐ YES ☐ NO ☐ UNK

☐ SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ MISSING

NAME (LAST, FIRST): [illegible] BDU D | RACE B | SEX M | AGE 16 | DATE OF BIRTH 1/24/81 | HEIGHT 5'0 | WEIGHT 140 | HAIR BLK | EYES BRO

ADDRESS 11 Hall St | CITY Greenville | STATE SC | ZIP CODE 29607 | PATROL DISTRICT G

FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES | SUBJECT (NOT 1) USING ALCOHOL ☐ YES ☐ NO ☐ UNK | DRUGS ☐ YES ☐ NO ☐ UNK, TYPE | ARRESTEE WAS ARMED WITH | TOTAL # ARRESTED | DATE/TIME OF OFFENSE | DATE/TIME ARRESTED

ARRESTEE ARMED ☐ YES ☐ NO ☐ WEAPON TYPE | ☐ SEMI-AUTO ☐ FULL-AUTO | ☐ ARRESTED ON CURRENT OFFENSE ☐ CLEARED BY ARREST ON PRIOR OFFENSE

JUVENILE DISPOSITION 1 ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY | ☐ ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY

CHARGES | WARRANT # | FOR OFFICE USE

☐ STOLEN ☐ RECOVERED ☐ SUSPECT ☐ VICTIM | TAG NUMBER | STATE | YEAR | VIN | VALUE | YEAR | MAKE | MODEL | STYLE | COLOR | TAG ONLY ☐ | ADDITIONAL VEHICLE DESCRIPTION

1 MAN VEH ☐ 2+ MAN VEH ☐ DETECTIVE/PLAINCLOTHES ☐ OTHER ☐ | ALONE ☐ ASSISTED ☐ | 1 - 2 MILE RADIUS ☐ STATE ☐ OUT OF STATE ☐ UNKNOWN

Rb Responded To Victims Residence in Regards To an assault That Just occurred. Rb met W/ Comp'l & Victim. Victim walked up To The Bus Stop (Incident Location) W/ His Girlfriend, Tia. (Age. 16yrs). Once There The Subj (According To Victim) approached Stating "I Heard You Been Talkin About me". The Subj Then Began To Strike Victim About The Face W/ His Fist, As a Result The Victims Face was . . .

	DESCRIPTION OF THEFT	DESCRIPTION OF RECOVERY	TOTAL VALUE
TYPE			
STOLEN			
DAMAGED			
BURNED			
RECOVERED			
SEIZED			

SUBJECT IDENTIFIED ☐ YES ☐ NO | SUBJECT LOCATED ☐ YES ☐ NO | ☐ ACTIVE ☐ ADMIN. CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ VICTIM DECLINES COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE-NO ARREST

REPORTING OFFICER(S)	DATE	UNIT NO	APPROVING OFFICER	DATE	UNIT #
J. Bell 213 0014	09-30-97	106	[illegible]	9-30-97	12

☐ YES ☐ NO (OFFICER)

GREENVILLE POLICE DEPARTMENT
SUPPLEMENTAL REPORT

AGENCY I.D. SC0230200

CASE NUMBER: 970000760885

INC. | ENT.

☒ ORIGINAL REPORT ☐ STATUS CHANGE ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☐ SUPPLEMENTAL REPORT ☐ ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

Revised

INCIDENT TYPE: A+B

PATROL DISTRICT: C

PAGE 2 OF 2 PAGES

I.D. OVERFLOW

☐ COMPLAINANT ☐ VICTIM # ☐ SUBJECT # ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ MISSING ☐ JAIL ☐

NAME (LAST, FIRST, MIDDLE)	VICTIM RELATIONSHIP TO SUBJECT #1 / #2 / #3	RESIDENT	RACE	SEX	AGE	D.O.B.	ED
		USOU					

ADDRESS	CITY	STATE	ZIP CODE	PATROL DISTRICT	DAY PHONE H / B	EVENING PHONE H / B

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC

☐ VICTIM NO ____ VISIBLE INJURY ☐ YES ☐ NO EXPLAIN:

COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES

VICTIM USING ALCOHOL ☐ NO ☐ YES ☐ UNK. DRUGS ☐ NO ☐ YES TYPE ☐ UNK.

☐ TWO-MAN VEHICLE ☐ DETECTIVE/PL ASWT ☐ ALONE ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED

SUBJECT NO ____ USING ALCOHOL ☐ NO ☐ YES ☐ UNK USING DRUGS ☐ NO ☐ YES TYPE: ☐ UNK

☐ ARRESTED ON CURRENT OFFENSE ☐ CLEARED BY ARREST ON PRIOR OFFENSE

ARRESTEE ARMED ☐ YES ☐ NO WEAPON TYPE: ☐ SEMI-AUTO ☐ FULL-AUTO

☐ ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY

JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY

SCRATCHED...M...CUT on The Lower Left Forehead. A 1/2 inch cut was under Victims Right Eye. The Victim later Returned Home — Cond. Cmpl. GPD... RP... made contact ...w/... TIA who stated the Stup were ... arguing when altercation took Place. TIA witness incident along w/ others at Bus Stops

PROPERTY

TYPE							TOTAL VALUE
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
SEIZED							

ADMIN.

SUBJECT IDENTIFIED ☐ YES ☐ NO | SUBJECT LOCATED ☐ YES ☐ NO | ☒ ACTIVE ☐ ADMIN. CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH, 2. ☐ NO PROSECUTION, 3. ☐ VICTIM DECLINES COOPERATION, 4. ☐ EXTRADITION DENIED, 5. ☐ JUVENILE-NO ARREST

REPORTING OFFICER(S)	DATE	UNIT NO.	APPROVING OFFICER	DATE	UNIT NO.
BELL JR 0014	09-30-97	10A	[redacted] ☐ YES ☐ NO (OFFICER)	9-30-97	12A

CLIENT ASSESSMENT (PART II) Page 2

History of fire-setting? Yes ☐ No ☑
Details:

History of risky sexual behavior? Yes ☐ No ☑
Details.

Are referrals needed? Yes ☐ No ☑

History of physical and/or sexual abuse? Yes ☐ No ☑
Details:

History of brain disease or severe head injury? Yes ☐ No ☑ Had seizure at one time did not find
Details: cause for the seizure

Able to care for their own needs? Yes ☑ No ☐
Details:

Has client ever been employed? Yes ☑ No ☐ Hayewood Mall (2 weeks)
Details:

Has the client received immunizations? Yes ☑ No ☐
If yes, has the immunization record been received?

Does the client have a primary care physician? Yes ☑ No ☐
If so, name:
If No, how are medical needs being met? Medical Clinic

Does the client have a dentist? Yes ☑ No ☐
If yes, name:
If no, how are dental needs being met? Dr. Sherry

Is the client presently taking medication or has in the past? Yes ☐ No ☑
If so, what, how much, how often, when and for what purpose?

Is the client pregnant? Yes ☐ No ☑
If so, is the client receiving prenatal care? Yes ☐ No ☐

Client ever receive family planning and health education services? Yes ☑ No ☐

Describe any other risk factors not listed and indicate whether appropriate referrals needed:

Is SMI/SMR suspected? Yes ☑ No ☐
If yes, refer to psychologist for consultation:

Date referred: Date staffed:

Level II Assessment recommended? Yes ☐ No ☐
If yes, give date of assessment:

HOME ENVIRONMENT

Live: ☑ House ☐ Apartment ☐ Trailer ☑ Rent ☐ Own

Describe Living Conditions/Placement History:

SCHOOL INFORMATION

Special Placement Classes: Learning Disability | Grades Repeated: None | Attendance:

Reports/Comments:

School Address and Phone No: Northwood Middle 292-1640

CHILD HISTORY

Child's Behavior in Home/Community: No behavior problems at home

Home Discipline: Restrictions

Parent/Child Relationship: Good

Child's Health History: Seizures - last one 3 yrs ago - Has a history of bronchitis - Prone to bladder infections.

Strengths/Interests: Water sports.

History of Running Away? Describe: ☐ YES ☑ NO

History of Substance Abuse? Describe: ☐ YES ☑ NO

D. S. S. Services? Describe: ☐ YES ☑ NO

Other Agency Services? Describe: ☐ YES ☑ NO

COMMENTS:

CLIENT ASSESSMENT PART (II)

Initial Signature:	Date:
3 mo. Update Signature	Date:
6 mos. Update Signature	Date:
12 Mo. Update Signature	Date:

NAME: [illegible] Lorenzo [illegible]

SS #

Is this juvenile involved with any of the following:
Check all that apply.

☐ CCEDC ☐ DSS ☐ DMH ☐ DDSN ☐ CCRS ☐ DAODAS
☐ PVT.C ☐ P&A ☐ F.P. ☐ DHEC ☐ DVR ☐ Prior SMI/SMR inclusion?

IQ if available.. FS V P Date and Source of Testing:

Past or present psychiatric diagnosis? Yes ☐ No ☐
Specify diagnosis, source, and date:

Social withdrawal or isolation? Yes ☐ No ☑
Details:

History of suicidal ideation or self-destructive behavior such as self-mutilation or purposefully placing self at risk Yes ☐ No ☑
Details:

Marked increase or decrease in eating, sleeping, or involvement in activities with others? Yes ☐ No ☑
Details:

Significant mood changes? Yes ☐ No ☑
Details:

Auditory or visual hallucinations? Yes ☐ No ☑
Details:

Bizarre obsessional behavior such as hoarding objects or performing tasks in a ritualized manner? Yes ☐ No ☑
Details:

Frequent nightmares about or "flashbacks" of traumatic events? Yes ☐ No ☑
Details:

Able to sustain attention long enough to complete tasks comprehend instructions from others, and maintain appropriate conversation? Details: Yes ☑ No ☐

Physical symptoms of panic attacks such as intense fear, dizziness, nausea, shortness of breath, heart palpitations, sweating, and having a lump in their throat? Yes ☐ No ☑
Details:

Impaired judgement such that behavior endangers others? Yes ☐ No ☐
Details:

STATE OF SOUTH CAROLINA

DEPARTMENT OF JUVENILE JUSTICE

MIS # 177130
DATE 5/1/96
MEDICAID #

CLIENT ASSESSMENT

Name and Address of Juvenile:
Abdul
11 Hall St. Greenville, S.C. 29607

Prepared By: Elaine Chiles

Alias:

Phone No: 370-1174

Social Security No. of Juvenile:

DOB:	Age:	POB:	Legal Custodian:	Phone No:
1/14/81	15	Greenville, S.C.	Doris Mason	370-1174
Sex:	**Race:**	**Weight:** / **Height:**	**Custodian Address:**	
Male	Black	140 / 5'8"	11 Hall St.	
Hair:	**Eyes:**	**Complexion:**	Greenville SC. 29607	
Black	Black			

Other Identifying Marks:

School: Northwood middle | Grade: 7th | Other: L.D.

Directions to Residence:
Pleasant Jackson Town Homes to 4 way stop - turn right - 3rd House left hand side

FAMILY INFORMATION

	Natural Mother	Natural Father	Step-Parent	Significant Adult
Name	Doris Mason	Freddie Massey	Alex Mason	
Address	Above	Greenville Detention	Above	
Phone	Above		Above	
Marital Status	Married	Single	Married	
DOB	4/20/60	9/25/59	11/5/63	
Health	Good	Good	Good	
Employer/ Income	Comfort Inn	Unemployed	Unemployed	
Employer Phone No	370-0014 271-0060			
Criminal Record	☑ YES ☐ NO	☑ YES ☐ NO	☑ YES ☐ NO	☐ YES ☐ NO

MEMBERS OF HOUSEHOLD/SIGNIFICANT PEERS:

Name	Relationship	DOB	School/Occupation	Other
Donald C	brother		G L Mason	
Natail	sister		Northwood	
Robert	brother		Handicapped	

FORM 265-24
(New 93)

THE SCHOOL DISTRICT OF GREENVILLE COUNTY

Lake Forest Elem.
31 Shannon Dr.
Greenville, SC 29615

NOTIFICATION OF RESULTS OF REEVALUATION

Date May 20, 1998
Student [redacted]
ID# 999-38-1127

Dear Parent/Surrogate Parent/Legal Guardian:

Your child's reevaluation as required by the Individuals With Disabilities Education Act, (Public Law 94-42 As Amended) has been completed. Please find attached the results of the evaluation and the educational implications.

No changes in education services are indicated by the evaluation results.

You have a right to request a meeting to discuss the results of the evaluation. If you wish to schedule a meeting, please contact [redacted] (Coordinator) at [redacted] (phone number).

If you do not wish to schedule a meeting, the results will be discussed at the annual IEP review meeting.

Please feel free to contact me if you have any questions.

Sincerely,

[redacted]
School District Representative

[redacted]
Title

Enclosures: Evaluation Summary

WHITE – Area Office
PINK – School Due Process File
CANARY – Parent/Legal Guardian/Surrogate Parent
GOLDENROD – Psychologist

MANIFESTATION STAFFING SUMMARY FOR STUDENTS WITH DISABILITIES

DATE: May 1, 1996
TO: JACKIE WILLIAMS
FROM: Bonnie James, Northwood Social Services Chairperson
REGARDING: Lorenzo

Adul, a student enrolled at Northwood Middle, grade 8; is currently being served in the Learning Disabilities Self-Contained special education class. He (she) is being recommended for expulsion as a result of: possession of drugs on campus

A committee reviewed this case including all placements, psychololgicals and other pertinent data. Based on this information, the following two questions were answered:

1. Is the misconduct a manifestation of the student's disability?

YES _____ NO ✓ all agree

2. Is the misconduct the result of an inappropriate program or placement?

YES _____ NO ✓ all agree

Comments/Recommendation:

Offense and new test results were discussed. Adul is generally well behaved but made a bad decision in this situation. We would like to recommend Homebound Services for the rest of the school year. We hope this case will be reexamined for 1996-97 placement at an appropriate time.

SIGNATURES:

Bonnie James Social Services
Kathryn Sch Psychol
Dora Master
Melissa A Zeits Soc Teacher
Mary L Bp Principal

copies to: Director of Attendance
School Due Process File

(Revised 11/95)

THE SCHOOL DISTRICT OF GREENVILLE COUNTY

Form 265-1B
(New 90)

Evaluation Summary

STUDENT'S NAME: Adul

ID NUMBER: 002273366

SCHOOL: Lake Forest Elementary

GRADE: 5

AREA CASE NUMBER: NE 8044-B

PARENT'S NAME: Ms. Dora Owens

ADDRESS:
Greenville, SC 29607

PHONE NUMBER:

CENSUS CODE: WLM 2

DATE OF EVALUATION: 2-16-93; 3-2-93

REEVALUATION

DATE OF BIRTH:

CHRONOLOGICAL AGE: 12-1

RACE/SEX: B/M

EXAMINER: Reggie Harrison

EXAMINER'S CERTIFICATION: School Psychologist II

SOURCE OF REFERRAL: Gail Walsh, Teacher

Tests Administered:

Wechsler Intelligence Scale for Children - Third Edition (WISC-III)
Stanford-Binet Intelligence Scale, Fourth Edition (Binet)
Wide-Range Achievement Test-Revised (WRAT-R)
Bender Visual Motor Gestalt Test

Summary of Test Results:

Adul functions within the slow learner range of ability on the visual/abstract reasoning portion of the Stanford-Binet, with other areas reflecting borderline capabilities. Perceptual motor skills appear to be adequate while achievement scores reflect reading levels below 3rd grade, and math at beginning 3rd grade. A discrepancy is evident in basic reading and math calculation that needs to be addressed by the multidisciplinary team at his school.

TEST RESULTS INDICATE THAT ADUL DOES MEET THE CRITERIA FOR SPECIAL EDUCATION AS A LD STUDENT AT THIS TIME.

If you wish a conference concerning this evaluation please call the undersigned.

Date sent home: May 18, 1993

Reggie Harrison
Reggie Harrison

School Psychologist II
(Title)

NAME: Adul [illegible]
DOB:

TEST RESULTS

WECHSLER INTELLIGENCE SCALE FOR CHILDREN - THIRD EDITION (WISC-III)

Verbal Scaled IQ Score	59
Performance Scaled IQ Score	70
Full Scale IQ Score	62

VERBAL TESTS		LO	RA	AV	AA	BI	Xile
Information	General Knowledge-Long Term Memory from Experience - Education	01	—	—	—	—	—
Similarities	Relationship & Abstract Thinking Association of Abstract Ideas	02	—	—	—	—	—
Arithmetic	Concentration, Enumerating - Arithmetic Reasoning - Sequencing	05	—	—	—	—	—
Vocabulary	Word Knowledge - Verbal Fluency Expressive Vocabulary	03	—	—	—	—	—
Comprehension	Practical Knowledge and Social Judgment - Reasoning - Logical Solutions	03	—	—	—	—	—
Digit Span	Attention, Concentration & Rote & Immediate Memory - Sequencing	—	—	—	—	—	—

PERFORMANCE							
Picture Completion	Visual Memory & Alertness to details	05	—	—	—	—	—
Picture Arrangement	Interpretation of Social Situations Sequencing-Visual Alertness	—	06	—	—	—	—
Block Design	Reproduce Abstract Designs from Pattern - Visual Perception	04	—	—	—	—	—
Object Assembly	Reproduce Familiar Forms from Memory - Visual Retention	04	—	—	—	—	—
Coding	Speed and Accuracy of Learning Meaningless Symbols - Immediate Motor Control	—	06	—	—	—	—

WIDE RANGE ACHIEVEMENT TEST-REVISED (WRAT-R)

	G.E.	S.S.
Reading	below 3rd	57
Arithmetic	3b	54

BENDER-GESTALT VISUAL MOTOR TEST: Nonsignificant

STANFORD-BINET INTELLIGENCE SCALE - FOURTH EDITION:
Composite Score - 72

	SAS
Verbal Reasoning	75
Abstract/Visual Reasoning	82
Quantitative Reasoning	78
Short-Term Memory	68

Form 304
Page 1

THE SCHOOL DISTRICT OF GREENVILLE COUNTY

PSYCHOLOGICAL EVALUATION

STUDENT'S NAME: Adul

ID NUMBER: 002273366

SCHOOL: Lake Forest Elementary

GRADE: 5

AREA CASE NUMBER: NE 8044-B

PARENT'S NAME: Ms. Dora Owens

ADDRESS:
Greenville, SC 29607

PHONE NUMBER:

CENSUS CODE: WLH 2

DATE OF EVALUATION: 2-16-93; 3-2-93

REEVALUATION

DATE OF BIRTH:

CHRONOLOGICAL AGE: 12-1

RACE/SEX: B/M

EXAMINER: Reggie Harrison

EXAMINER'S CERTIFICATION: School Psychologist II

SOURCE OF REFERRAL: Gail Walsh, Teacher

Reason for Referral: Adul was referred for a psychological evaluation for the purpose of assisting school personnel in planning an educational program.

Behavioral Observations:

Adul was cooperative during testing, responding with a minimum of prompting. Rapport was established easily and maintained well. No unusual behavior was evident. Two administrations of cognitive measures were required, with the Stanford-Binet seemingly more indicative of his actual ability than the WISC-III. Despite such, scores continue to be a minimal estimate of ability in view of previous data.

Physical Development:

DOMINANCE: Right
HEARING SCREENING: Passed
OTHER SIGNIFICANT FACTORS: None

VISION SCREENING: Passed
SPEECH SCREENING: Passed

Tests Administered:

Wechsler Intelligence Scale for Children - Third Edition (WISC-III)
Stanford-Binet Intelligence Scale, Fourth Edition (Binet)
Wide Range Achievement Test-Revised (WRAT-R)
Bender Visual Motor Gestalt Test

Form 304
Page 2

NAME: Adul
DOB:

Summary of Test Results:

On the Wechsler Intelligence Scale for Children - Third Edition, Adul obtained a full scale score within the upper limits of the mildly mentally handicapped range (score 60-65). Verbal scale scores were within the MMH range also (score 55-60), with significant limitations across all language areas, including general knowledge, abstract and arithmetic reasoning, vocabulary, and social judgment. Nonverbal scores were within the borderline range (score 70-75), with additional deficits noted in subtests related to visual alertness and memory, sequencing, visual motor coordination, perception of abstractions and logical problem solving. Previous scores on the WISC-R indicated verbal scores within the borderline range, and nonverbal abilities within the average range, therefore lending suspicion as to the validity of WISC-III results.

In view of such information, additional testing was conducted on the Stanford-Binet Intelligence Scale, Fourth Edition. New test composite score of 72 was noted on the Binet, with this score comprised of area SAS scores in four separate categories listed as follows:

	SAS
Verbal Reasoning	75
Abstract/Visual Reasoning	82
Quantitative Reasoning	78
Short Term Memory	68

The components of each area include such skills in verbal areas as vocabulary, abstract reasoning, and comprehension, with nonverbal or abstract visual reasoning categories including visual motor coordination, nonverbal abstract reasoning, and logical problem solving. Quantitative reasoning involves math skills, with short term memory self-explanatory. The abstract visual reasoning SAS score would appear to indicate more capabilities in nonverbal areas than noted on the WISC-III, although continuing to be depressed in view of previous results of the WISC-R in nonverbal areas. However, this subtest would appear to be more useful for placement purposes.

The Bender Visual-Motor Gestalt Test indicated a score within average for his age group. No diagnostic significance is attached to scores that were obtained.

The Wide Range Achievement Test - Revised reflected the following achievement scores - reading - below 3rd grade, math - 3b. Instructional levels in the classroom indicate 4th grade levels in math, and 2nd - 3rd grade levels in other language arts areas. A tendency to become frustrated quite easily was noted on his referral.

Summary and Recommendations:

As evident from results of the Stanford-Binet Intelligence Scale, Fourth Edition, Adul functions within the slow learner range of ability on the abstract/visual reasoning portion of the test. Other scores reflected borderline capabilities in verbal areas, as well as quantitative reasoning area, with short term memory within the upper limits of the mildly mentally handicapped range. As was noted, the WISC-III indicates additional corroboration of a discrepancy between verbal and nonverbal abilities, again with verbal areas more severely impaired, but with lower ability levels than indicated by the WISC-III or the the WISC-R. Perceptual motor skills appear to be adequate while achievement scores reflect reading levels below 3rd grade, and math skills at beginning 3rd grade. A comparison of ability and achievement levels indicates a significant discrepancy between ability and achievement in basic reading and math calculation, and such would indicate a need for the multidisciplinary team to meet to determine if a learning disability exists in these areas. An additional factor involves the hesitancy to ask for assistance noted

Form 304
Page 3

NAME: Adul
DOB: 1-9-81

as well as significant variances in motivation depending on his att[illegible]tion. He apparently needs to be reinforced for effort as well as accurac[illegible]f his responses to help maintain motivation in the classroom. Avoid relying solely on [illegible]ecture as a means of teaching in the classroom, and utilize both visual and auditory cue[illegible] in combination when presenting information.

It is recommended that the multidisciplinary team meet to determine the student's eligibility for placement in a learning disability program as a result of a discrepancy in the following area(s):

Basic Reading Skills
Mathematics Calculation

Reggie Harrison
School Psychologist II

WHITE - Special Education Consultant
CANARY - Area Office
PINK - Student's Cumulative Record
GOLDENROD - Psychologist

Stanley J. Burton, Ph.D
State Director

Lonnie A. Bowman, Jr.
Deputy State Director
Support Services

Robert W. Barfield
Deputy State Director
Fiscal Management

Brent H. Kovle, Ph.D.
Deputy State Director
Services and Programs

COMMISSION
Melvin L. Burton, Jr. Chairperson
William E. Walsh, Vice Chairperson
Judy P. Felder, Secretary
Emily A. Towler
Annabelle S. Boykin, Ph.D.
Kitty S. Moeller
Cary H. Hall, Jr.

South Carolina Department of Disabilities and Special Needs
3440 Harden Street Extension (29203)
Post Office Box 4706
Columbia, South Carolina 29240
Telephone and TDD: 803/737-6474 Fax: 803/737-6323

February 13, 1997

The Honorable E.P. Segars-Andrews
Judge of the Ninth Judicial Circuit - Family Court
P.O. Box 934
Charleston, South Carolina 29402

RE: Lorenzo
96-JU-23-0037 & 0038

Dear Judge Segars-Andrews:

In accordance with your court order, an evaluation of the above mentioned individual was conducted. A copy of the evaluation is enclosed for your review and use.

If additional information is needed, please contact me at (803) 737-6464.

Sincerely,

Michelle E. Ford

Michelle E. Ford, Ph.D.
Director, Behavioral Supports

/ypg

Enclosure

cc: John DeJong, Assistant Solicitor
Jennifer Rosenfeld, Attorney for the Defendant
Jim Hill, General Counsel

Stanley J. Butkus, Ph.D.
State Director

Lonnie A. Bowman, Jr.
Deputy State Director
Support Services

Robert W. Barfield
Deputy State Director
Fiscal Management

Brent H. Kayle, Ph.D.
Deputy State Director
Services and Programs

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South Carolina Department of Disabilities and Special Needs
3440 Harden Street Extension (29203)
Post Office Box 4706
Columbia, South Carolina 29240
Telephone and TDD: 803/737-6474 Fax: 803/737-6323

FORENSIC EVALUATION

Name: Lorenzo Abdul
Date of Birth:
Date of Evaluation: 1-28-97
Gender: Male
Race: African American
Age: 16 years, 1 month
DDSN Examiners: David A. Ott, Ph.D., Meredith J. Clifton, M.S.
Others Present: Richard L. Frierson, M.D., Carol M. David, LISW (SCDMH)

Charge(s): ...s has been charged with Resisting Arrest & Interfering with Police.

Purpose of Evaluation: This evaluation was conducted pursuant to an order of the Family Court of Greenville County dated November 26, 1996 that be evaluated to determine his competency to stand trial.

Statement of Non-Confidentiality: ...s was notified at the outset of the evaluation of the lack of confidentiality with respect to the content of the interview and his responses during the same. He also was informed of recipients of copies of the evaluation results, as well as the possibility that the examiners might be called to testify regarding the evaluation.

Evaluation Procedures:
Interview with Mr. ...: 1-28-97
Review of Available Records:
Court Order: 11-26-96
Incident Reports and Supplement Reports
Juvenile Petitions
SCDJJ Psychological Consultation: 6-96
School District of Greenville Co. Psychological Evaluation: 3-2-93
School District of Greenville Co. Re-evaluation Referral: 2-9-93
School District of Greenville Co. Placement Form: 5-7-92
School District of Greenville Co. LD Multidisciplinary Team Report: 3-8-93
School District of Greenville Co. Manifestation Staffing Summary: 5-1-96

Summary of Evaluation Results:
Competency to Stand Trial: Yes.

Relevant History: The following background information was obtained from Mr. ;, from a social history of obtained by Ms. Carol David of the SC Department of Mental Health, and from review of available records. Mr. is reportedly is the product of a normal pregnancy and delivery. His mother reported no problems with the pregnancy, although she indicated that she was involved in a relationship that was abusive at the time. Mr. ' achievement of developmental language and motor milestones reportedly was within normal limits. His medical history is significant for seizures that reportedly began at age 4 to 5. His mother indicated that he rarely experiences seizures at this time, the last one having occurred approximately one year ago. Mr. ; also reportedly has a history of numerous broken bones as a child and was reportedly knocked unconscious after falling on his head at age 12 to 13. Mr. ; denied any experimentation with or use of cigarettes or other substances, although he admitted that a number of family members either drink alcohol or use other drugs. He also stated that some of his friends engage in substance use. He denied receipt of treatment services related to substance use. He denied any history of mental illness or receipt of mental health services.

Mr. reportedly attended Head Start as a child, and failed both kindergarten and the first grade. He reportedly begin receiving Special Education services in the third grade. Records indicate that he has been served in classes for students classified as learning disabled (LD) and, as recently as May, 1996, was served in self-contained classroom for LD students. Mr. reported that he was expelled from school last year as a result of possession of a marijuana cigarette on campus. He denied any prior suspensions from school, although he admitted that he has had problems in the past with fighting and being disrespectful towards staff. Mr. has no vocational history. He reportedly receives disability income, for which his mother is representative payee. Mr. ; stated that he is interested in a career as either a police officer or a truck driver.

Prior Testing Results: Records indicate that Mr. ; has undergone psychological evaluation on three occasions since 1990 as a result of his placement in Special Education. On a 1990 administration of the Wechsler Intelligence Scale for Children - Revised (WISC-R), Mr. obtained a Verbal IQ of 72, a Performance IQ of 92, and a Full Scale IQ of 80. These results are above the range of mental retardation, and indicate that at that time he demonstrated verbal skills in the Borderline range of abilities and nonverbal skills in the Average range of abilities. He was placed in a self-contained LD classroom following that evaluation, and *not* a classroom for students with mental retardation. During the subsequent re-evaluation conducted in March, 1993, Mr. Owens was administered the Wechsler Intelligence Scale for Children - Third Edition (WISC-III). During that testing, he obtained a Verbal IQ score of 59, a Performance IQ score of 70, and a Full Scale IQ score of 62.

It should be noted that these scores represented a significant decline from the results obtained in 1990. In addition, the difference between Verbal and Performance IQ

scores decreased from 20 points to 11 points. It should be noted that research comparing scores obtained using the WISC-R and then the WISC-III has found that this very pattern of changes often is observed in the performance of LD students (i.e., an overall decline in scores and a decrease in the magnitude of Verbal-Performance IQ score differences). The research literature specifically cautions against diagnosing learning disabled students as mentally retarded on the basis of WISC-III scores. As such, Mr. [illegible] was administered the Stanford-Binet Intelligence Scale: Fourth Edition in 1993. On the Binet, Mr. [illegible] obtained a Verbal Reasoning score of 75, an Abstract-Visual Reasoning score of 82, a Quantitative Reasoning score of 78, a Short-Term Memory score of 68, and a Test Composite score of 72. The examiner in 1993 reported that the results of the Stanford-Binet were more indicative of Mr. [illegible] actual ability, although the examiner also noted that Binet scores were a minimal estimate of Mr. [illegible] intellectual abilities. These scores are again above the range of mental retardation. As a result of this evaluation, Mr. [illegible] was recommended for continued placement in LD classes and remained in LD classes until as recently as May, 1996.

A psychological consultation from the SC Department of Juvenile Justice dated June 13, 1996 makes reference to a WISC-III Full Scale IQ score of 63, with no other scores reported. This Full Scale IQ score should be treated with caution, as Mr. Owens has a history of large differences between Verbal and Performance IQ scores. When significant differences between these two scores are present, interpretation of the Full Scale IQ score as an indicator of overall intellectual abilities is inappropriate.

In summary, prior intelligence testing indicates that Mr. [illegible] nonverbal abilities are much better developed than are his verbal skills. While he exhibits significant limitations in verbal skills, he may function nonverbally as high as the average range. This pattern of performance is inconsistent with the presence of mental retardation, which is typically characterized by consistently poor performance in all areas of functioning. As such, ***it is our opinion that Mr. [illegible] does not exhibit mental retardation at this time.***

Behavioral Observations/Mental Status Examination: Mr. [illegible] was interviewed at W.S. Hall Psychiatric Institute, Cooper Building. He was dressed casually yet neatly. His hygiene and grooming appeared adequate, and he was cooperative throughout the interview. He was oriented to person, place, time, and situation. He correctly stated that the current interview was related to "[him] and the police." He described his current mood as "good." He displayed a somewhat restricted range of affect that was generally appropriate to the situation. His thought process was logical and goal-directed. He denied any suicidal or homicidal thought, intent, or plan. He denied auditory or visual hallucinations and no evidence to the contrary was noted. No evidence of delusional thinking was noted. Mr. Owens' general fund of information was somewhat limited. He correctly stated the current president of the United States but was unable to state any other presidents. He correctly added 4+4, but was unable to add 8+5. He was unable to tell time using an analog watch, although he reported that he is able to read a digital clock. His understanding of time concepts was somewhat variable. He correctly identified the longer of two periods of time in two of three instances. It should be noted that school records indicate that his learning disability is

in the area of mathematics. No difficulties with receptive language were noted. Mr. [illegible]s' speech was of normal rate and rhythm. Some articulation problems were noted, although his speech was generally intelligible. He demonstrated a tendency to speak in a very low tone of voice and to cover his mouth with his hand as he spoke. As a result, his responses were occasionally difficult to understand, although he readily responded to prompts to speak more loudly and to lower his hand from his mouth. His word usage was simplistic but adequate to convey his meaning. No difficulties with attention or concentration were noted during the ninety-minute interview. Mr. correctly recalled three of three items immediately, and two of three items after five minutes.

Discussion of Results:

Competency to Stand Trial: ***It is recommended to the court that Mr. be considered currently competent to stand trial.*** The bases for this opinion are described below. Mr. **Miranda** warnings were reviewed with him orally at the outset of the evaluation session. Although he was unable to restate his rights in his own words, his responses to subsequent questions indicated that he possessed a basic understanding of those rights. He correctly defined the terms **right**, **silent**, and **remain**. He correctly stated that he was not required to answer the examiners' questions and could choose which, if any, questions he would answer. He correctly stated that the content of the interview would not be kept secret, and listed recipients of the evaluation results. He correctly stated that his responses during the interview would be considered again "in court," and that his responses could be "used for [his] case." He stated that the phrase **used against** meant that he could potentially be adversely affected as result of his responses during the evaluation. Mr. was reminded of his right to consult with his attorney prior to and during the interview. He declined to consult with his attorney, and agreed to participate.

Mr. was also interviewed with respect to his knowledge of the current charges, his familiarity with his attorney and ability to assist in his defense, and knowledge of the legal system. Mr. correctly stated the current charges against him, as well as the nature thereof. He stated that those charges are serious, and that he could "go to jail" if adjudicated guilty. He was unable to state the potential length of any sentence he might receive or where he would serve such a sentence. He correctly defined the terms **guilty** and **not guilty**. He was unable to define a **plea bargain**, or state potential reasons one might accept or reject such an offer. He correctly listed several potential conditions of **probation**, and correctly stated possible penalties for violating those conditions. Mr. was able to state both a likely and a desired outcome to his case.

Mr. correctly stated his attorney's name, and stated that her role is to "help me with my case." He subsequently indicated that she would do so by speaking with the judge, with his family, and with him. He correctly stated that a defense attorney seeks to have a defendant found not guilty and to be allowed to go home. He stated his trust in and willingness to work with his attorney, and in response to direct and hypothetical questions indicated awareness of the need to provide his attorney with all information relevant to his defense. In response to hypothetical questions, he demonstrated awareness that he should consult with his attorney in the event that he does not

understand some portion of proceedings, to make decisions regarding legal strategy, or to challenge witnesses or evidence. Mr. ' performance during this interview strongly suggests that he possesses sufficient attention, concentration, and language skills to adequately attend to and comprehend proceedings and communicate with his attorney regarding his defense.

With respect to this knowledge of the legal system, Mr stated that the solicitor's role is to "make the judge think [he is] guilty." He indicated that the solicitor wishes to have him found guilty and sent to jail. As such, he appears to have adequate appreciation of the adversarial nature of the trial process. Mr. .s stated that judge's role is to "see if [he is] guilty or not guilty." He stated that the judge does this by "listening to the solicitor and my lawyer." He correctly stated possible actions the judge could take depending upon how he is adjudicated. Mr. correctly defined a witness, and correctly stated the scope of allowable testimony for an eyewitness. He demonstrated awareness of his right to testify in his own defense, and correctly stated that he is not required to do so. He identified his attorney as the person with whom he should speak in making a decision regarding any testimony he might give. He correctly defined evidence and demonstrated awareness of the use of evidence in identifying the perpetrators of crimes. He correctly identified three of six possible items of evidence when presented with a hypothetical crime situation. He identified potential items of evidence in his case. Mr. demonstrated awareness of appropriate courtroom behavior, as well as potential consequences for inappropriate courtroom behavior. He appears highly unlikely to act out in court. He stated that his role in court is to "sit there, be quiet, and listen to what they are saying."

David A. Ott, Ph.D.
State Level Psychological Examiner
SCDDSN State Central Office
Lead Examiner

BEHAVIOR REPORT

CLIENT'S NAME _____ DORM Dairforest

TYPE REPORT: POSITIVE BEHAVIOR ✓✓✓ NEGATIVE BEHAVIOR _____

DATE/TIME OBSERVED 5-23-18 13:30 PLACE OBSERVED Fairforest Unit

~~DESCRIBE BEHAVIOR OBSERVED~~ The following juveniles were on good behavior while the other juveniles were on quiet time for bad behavior. The whole unit lost 1 hour visitation for this weekend, so I wanted to give the

~~SUMMARY OF ACTION TAKEN~~

CLIENT'S SIGNATURE _____ STAFF SIGNATURE P. Sherfield

SERVICE NOTES

Ones that were compliant and followed my instructions a good behavior report. End of statement

The following juveniles were as follows

1) 4 times each

2) 4 times

3)

4)

5)

6)

7)

8)

9)

10)

Exhibit 4.04.03

James

BEHAVIOR REPORT

CLIENT'S NAME Lorenzo _____ DORM Lair-Lorent

TYPE REPORT: POSITIVE BEHAVIOR JJJ NEGATIVE BEHAVIOR _____

DATE/TIME OBSERVED _____ PLACE OBSERVED _____

DESCRIBE BEHAVIOR OBSERVED Lorenzo is a nice young man. Very respectful good manners. He has improved

~~SUMMARY OF ACTION TAKEN~~ Since his stay at upstate.

May God Bless + Good Luck

CLIENT'S SIGNATURE [illegible] STAFF SIGNATURE [signature]

SERVICE NOTES

Exhibit 4.04.03

SW Jones

BEHAVIOR REPORT

CLIENT'S NAME Lorenzo DORM F-F

TYPE REPORT: POSITIVE BEHAVIOR ____ NEGATIVE BEHAVIOR V

DATE/TIME OBSERVED 5-21 8:10pm PLACE OBSERVED ____

DESCRIBE BEHAVIOR OBSERVED Horseplaying in Unit

SUMMARY OF ACTION TAKEN ____

CLIENT'S SIGNATURE Lorenzo STAFF SIGNATURE T. Carter

SERVICE NOTES

Exhibit 4.04.03

BEHAVIOR REPORT

ET

CLIENT'S NAME Lorenzo DORM Fairforest

TYPE REPORT: POSITIVE BEHAVIOR ____ NEGATIVE BEHAVIOR X

DATE/TIME OBSERVED 5-21-98 PLACE OBSERVED Unit

DESCRIBE BEHAVIOR OBSERVED juvenile was warned several times that they were on quiet-time, but this juvenile continued to talk. After being told that he was going to be write up, he got a real bad attitude & me.

CLIENT'S SIGNATURE _____ STAFF SIGNATURE C.A. Tee

SERVICE NOTES

Also requesting that this juvenile loose his phone call for 5-22 or 5-23-98 and that his visitation be restricted.

Exhibit 4.04.03

Jones

BEHAVIOR REPORT

CLIENT'S NAME Lorenzo DORM Trinfacet

TYPE REPORT: POSITIVE BEHAVIOR ____ NEGATIVE BEHAVIOR X

DATE/TIME OBSERVED 5-28-98 PLACE OBSERVED Unit

DESCRIBE BEHAVIOR OBSERVED Talking on guard tour, after several Warnings.

SUMMARY OF ACTION TAKEN Request that he brings pass privileges 5-29 & 5-30-98

CLIENT'S SIGNATURE Lorenzo ____ STAFF SIGNATURE C&A Tech

SERVICE NOTES

Exhibit 4.04.03

Jones

BEHAVIOR REPORT

CLIENT'S NAME Lorenzo DORM FF

TYPE REPORT: POSITIVE BEHAVIOR ____ NEGATIVE BEHAVIOR ✓

DATE/TIME OBSERVED 6-2-98 PLACE OBSERVED Unit

DESCRIBE BEHAVIOR OBSERVED Lorenzo Continued to talk when on quiet time, Fail to follow instruction.

SUMMARY OF ACTION TAKEN

CLIENT'S SIGNATURE Lorenzo STAFF SIGNATURE Jco S. Odom

SERVICE NOTES

Exhibit 4.04.03

June 2009

CURRICULUM VITA

Name: James Garbarino

Address: Maude C. Clarke Professor of Psychology and Director of the Center for the Human Rights of Children
Psychology Department
Loyola University Chicago
6525 N. Sheridan Road
Chicago IL 60626

Personal: Born: April 7, 1947
New York

Education:

1964-1968	B.A.	Major: History & Government St.Lawrence University Minor: Sociology & Philosophy, Canton, New York
1968-1970	M.A.T.	Major: Government & Social Studies Cornell University Minor: Education, Educational Psychology and Curriculum, Ithaca, New York
1970-1973	Ph.D.	Major: Human Development and Family Studies Cornell University Minor: Social and Personality Development Ithaca, New York

Academic Honors:

President's Celebrating Success Award, National Association of School Psychologists, 2000

Humanitarian Award, Center for the Study of Psycho-social Trauma, University of Missouri, 1999

Honorary Doctor of Humane Letters, St. Lawrence University, Canton, New York, 1995

Dale Richmond Award, American Academy of Pediatrics, Section on Developmental and Behavioral Pediatrics, 1994.

Nicholas Hobbs Award, American Psychological Association, Division 37, Child, Youth and Family Services, 1994.

C. Henry Kempe National Center for Treatment and Prevention of Child Abuse and Neglect, Brandt F. Steele Award for Contributions to the Field of Child Abuse and Neglect, 1993

Research Prize, "Child Maltreatment as a Community Problem," Society for the Psychological Study of Social Issues, 1991.

St. Lawrence University, Outstanding Alumnus Citation, 1990.

American Psychological Association, Award for Distinguished Professional Contributions to Public Service, 1989

Vincent De Francis Award, American Humane Association, for significant national contributions to child protection, presented at the annual convention of the American Humane Association, November 1988

C. Henry Kempe Award for Outstanding Professional Contribution to the Prevention and Treatment of Child Abuse and Neglect, presented by the National Conference on Child Abuse and Neglect 1985.

"Outstanding Academic Book Award," for Successful Schools and Competent Students from the American Library Association, 1981.

Mitchell Prize, Woodlands Conference on Growth Policy Essay Competition, entry entitled, "Corporate Self-Reliance and the Sustainable Society" (with Ann C. Crouter, 1982).

International Film and Television Festival of New York, Silver Award for co-authoring "Don't Get Stuck There: A Film on Adolescent Abuse," 1981.

Kellogg Foundation, National Fellow, 1981-1984.

American Educational Research Association, Research Award, Division of Counseling and Human Development, 1981.

Mitchell Prize, Woodlands Conference on Growth Policy Essay Competition, entry entitled "The Issue is Human Quality: In Praise of Children," 1980.

National Academy of Education, Spencer Fellow, 1975-1978.

Society for Experimental Social Psychology finalist in Thesis Prize Competition, 1974.

Graduate Fellowships: Woodrow Wilson Fellow, 1968; Herbert Lehman Fellow, 1968; Cornell University Humanities and Social Science Fellow, 1968.

St. Lawrence University: magna cum laude, Phi Beta Kappa, high honors in Government and History, academic honor societies: political science and journalism.

Teaching and Related Professional Experience:

2006-	Maude C. Clarke Professor of Humanistic Psychology and founding Director of the Center for the Human Rights of Children, Loyola University Chicago
2000- 2005	Elizabeth Lee Vincent Professor of Human Development, Cornell University
2003-2004	Professor of Social Work, Boston College Graduate School of Social Work
1994-2003	Director, Family Life Development Center and Professor of Human Development , Cornell University, Ithaca, New York.
2000-2001	Visiting Adjunct Professor (part-time) School of Social Work, Columbia University, New York, New York
1985-1994	President, Erikson Institute for Advanced Study in Child Development, Chicago, Illinois.
1980-1985	Associate Professor of Human Development, Department of Individual and Family Studies, College of Human Development, The Pennsylvania State University.
1976-1980	Fellow and Project Director, Center for the Study of Youth Development, Boys Town, Nebraska.
1977-1979	Adjunct faculty, Psychology Department, University of Nebraska, Omaha, Nebraska.
1975-1976	Director, Unirondack (a summer camp and human growth center).
1974-1976	Visiting Assistant Professor (part-time), Cornell University (Human Development and Family Studies).
1974-1976	Assistant Professor, Empire State College, State University of New York (Human Development and Family Studies).
1973-1975	Visiting Assistant Professor (part-time) Eisenhower College (Psychology).
1970-1973	Teaching assistant, Cornell University (Human Development and Family Studies).

1969-1970	Ithaca City School District, Ithaca, New York, Secondary and Elementary Social Studies.
1971-1972	Research Director, "Assessing the impact of 'open' and 'community' education." Project supported by the 1970 White House Conference on Children.
1970-1972	Research Assistant, Cornell University, Ithaca, New York.

Selected Consultation and Related Professional Activities:

2000	Threat Assessment in Dealing With School Violence, Federal Bureau of Investigation, Washington, D.C.
1991-1999	Co-Chair, Consortium for Children in War and Community Violence
1992- 1996	Childwatch International Research Network, Founding Board of Directors
1996	Editorial Board, *Journal of Research on Adolescence*
1996	National Child Farm Safety Center, Expert Panel on Childhood Injury Prevention
1996	Norwegian Center for Child Research and the Russian Center for Environmental Action, Youth Environmental Action
1996	Stockholm University School of Social Work, 75th Anniversary Lecturer and Symposium Chair
1996	Public Defenders Office, Denver, Colorado, Expert winess, youth homicide
1995	President of the Board of Directors, The Half Full Foundation, Ithaca, NY
1995	Public Defenders Office, Denver, Colorado, Expert witness: impact of community violence on adolescent development
1995	Fundacion Paniamor, San Jose Costa Rica, Child Welfare and International Development
1995	Graduate School of Education, Harvard University, "Violence and Trauma."
1995	Academy for Educational Development, "Trauma and the Education of Refugee Children.
1994	Bureau of Maternal and Child Health "Research Priorities"

1994	NBC News, Dateline NBC, "Youth Violence"
1994	United Relief, Psychological Services for Bosnian Children
1994	MacArthur Foundation "Ethnic Identity and Conflict, " January 1994
1994	Newsweek "The End of Childhood?" January, 1994
1993	International Children's Institute, Croatia site visit
1993	Government of Kuwait, Social Development Office, "Long Term Consequences of War Trauma."
1993	Newsweek, "Children and Violence."
1993	International Children's Center, Field Assessment, Republic of Croatia
1993	ABC-TV "20/20" Violence and Moral Development
1992	National PublicRadio, "Breaking the Cycle of Child Maltreatment."
1992	West Bay Law, expert witness on childhood trauma among children living in low income housing.
1992	Center for Studies of Youth, Ministry of Social Affairs, Madrid, Spain, Program for Bosnian Refugees
1991-1992	U. S. Advisory Committee on Child Abuse and Neglect. consultant on "Neighborhood and Social Support in the Prevention of Child Abuse."
1991	Co-Chair, Consortium for Children in War and Community Violence.
1991	U. S. Senate, Committee on Youth, Drugs and Alcohol, Hearing on "Guns. Drugs, and Kids."
1991	Hong Kong, International Catholic Children's Bureau, Assessment of Detained Vietnamese Unaccompanied Minors, Displaced Persons.
1991	UNICEF, Field Mission to Kuwait, Assessing the Impact of the Gulf War on Children in Kuwait.
1991	UNICEF, Field Mission to Iraq, Assessing the Impact of the Gulf War on Children and Plans for a National Response.
1991	U. S. House of Representatives, Committee on Education, Testimony on Reuathorization of the Higher Education Act

1990	U. S. Senate Committee on Human Resources, Sub-Committee on Children, Families, Alcoholism, and Drugs. "Children in War Zones"
1990	Center for the Study of Social Policy, Washington, D.C., "Indicators of Childhood Well Being."
1990-1993	W. K. Kellogg Foundation, National Fellowship Program, Advisor to Group XII Fellows
1990	WTTW Television, Program Development, Issues in Child Development
1990	Family Life Development Center, Program Review Committee, Cornell University, Ithaca, New York
1990	National Institute of Mental Health, Community Violence and Child Development
1989	National Institute of Child Health and Development, "Childhood Injury Prevention: Issues of Definition"
1989	NBC News, Children in Urban War Zones
1989	Johnson Foundation, Wingspread Center, "Violence in America: Relation to Normal Corporal Punishment"
1989	U. S. Today "Emotional Maltreatment"
1988	Newsweek, "Emotional Child Abuse."
1988	ABC TV Good Morning America, "Intergenerational Transmission of Child Abuse"
1988	Center for National Policy, National Advisory Board
1988	Canadian Council on Children and Youth, "Presidential Consultation on Infant Day Care"
1988	"Children and Youth in Dangerous Environments," site visit to Gaza and the West Bank, Middle East Resource Center
1988	Conference Coordinator, "The Challenge of Public Education, W. K. Kellogg Foundation
1987-1988	ABC Television "20/20", "Emotional Maltreatment and Adolescence."
1987	Conference Coordinator, "The Changing American Family," W. K. Kellogg Foundation
1987	Youth Services, Philadelphia, "Community-Based Child Abuse

Prevention"

1987 National Resource Center for Children in Poverty, Advisory Board

1987 Illinois Department of Children and Family Services, Chair, Cook County Child Protection Advisory Panel.

1987 U.S. House of Representatives, Committee on Children, Youth, and Families, "Opportunities for Prevention."

1987 Canadian Senate Committee on the Judiciary, "Children as Witnesses."

1986 Northwest Training Programs, "Psychological Abuse".

1986 New York State Council on Children and Families, "Child Abuse".

1986 Youth Advocates, "Adolescent Maltreatment," San Francisco, California.

1986-1987 Carnegie Corporation, "Adolescence," New York.

1986-1987 Wilder Foundation, "Adolescence," St. Paul, Minnesota.

1986 C. Henry Kempe Center for the Prevention and Treatment of Child Abuse, Denver, Colorado.

1986 "Preventing Sexual Abuse," Family Research Center, University of California, Berkeley.

1985 Westat, "National Incidence Study of Child Abuse and Neglect," funded by the National Center on Child Abuse and Neglect.

1984-1988 National Committee for Prevention of Child Abuse; Board of Directors: Chair, Committee on Research and Program Evaluation; Executive Committee; Long Range Planning Committee; Public Awareness Committee.

1985 Foster Parents Plan International, Khartoum, Sudan, Site Visit.

1985-1988 Ounce of Prevention Fund, Chicago, Illinois, Advisory Board.

1985 Carnegie Corporation of New York., "Prevention of Childhood Injuries."

1985 Canadian Department of Health and Welfare, Health Promotion Directorate, "Family Policy."

1985 Aspen Associates, Sexual Abuse Treatment and Prevention Research.

1985	WCAU TV-Philadelphia, "Latchkey Children: Children At-Risk?"
1985	Advisory Board, Office for the Study of the Psychological Rights of the Child, Indiana University School of Education.
1985	Society for Research in Child Development, Committee on Child Development and Social Policy, Summer Institute on Child Development and Social Policy, Research Core Faculty, "Child Abuse and Social Policy."
1985	U.S.-Sweden Symposium on Physical and Sexual Abuse of Children, National Science Foundation Award.
1984	Boys Town National Institute for Communication Disorders in Children, "Center for Abused Handicapped Children."
1984	National Black Child Development Institute, "Sexual Abuse in Child Care Centers."
1984	National Institute of Justice, "Family Violence as a Criminal Justice Issue."
1984	NIMH, Criminal and Violent Behavior Research Review Committee.
1984	University of Pennsylvania School of Nursing and Boston City Hospital, Advisory Board for OJJDP Project on "Linkages Between Sexual Abuse, Exploitation, and Juvenile Delinquency."
1984	Wellesley College Center for Studies on Women, Latchkey Children.
1984	National Child Welfare Leadership Seminar, "Preventing Unnecessary Child Placement"
1984	Urban Rural Systems Associates (URSA), "Adolescent Maltreatment"
1984	National Committee for the Prevention of Child Abuse, Conference Facilitator, "Child Abuse and Juvenile Delinquency"
1984	Institute of Scientific and Technical Information of China, Beijing (Peking), Peoples Republic of China
1983	U.S. Senate Committee on Juvenile Justice, "Child Abuse and Juvenile Delinquency"
1983	"Social Change in Brazil," Seminar and site visit, Kellogg Fellowship Program
1983	NIMH, Office for Prevention, "Models of Early Intervention"

1983	Region X Resource Center for Children, Youth and Families, University of Washington, Seattle, Washington
1983	Region VI Resource Center for Children, Youth and Families, University of Texas, Austin, Texas
1983	"Good Morning America," ABC Television
1983	Department of Family and Consumer Studies, University of Utah, Salt Lake City, Utah
1982	Institute on Human Development and Family Studies, University of Texas, Austin, Texas
1982	Child Abuse Research Group, University of Quebec at Montreal, Montreal, Canada
1982	NBC News Magazine, "Latchkey Children"
1981-	Associate Editor, Children and Youth Services Review; Associate Editor, Family Issues; Reviewer: Child Development, Developmental Psychology, American Psychologist, Child Development Monographs; Social Service Review; Editorial Board: The Journal of Interpersonal Violence, Child Abuse and Neglect: The International Journal, Early Childhood Development, American Journal of Orthopsychiatry, Psychological Bulletin,
1981	U.S. Senate Subcommittee on Aging, Family and Human Services.
1981	National Committee for the Prevention of Child Abuse, National Conference Development.
1981	Child Abuse and Neglect Research Project, Lehigh University, Bethlehem, Pennsylvania.
1980	Washington State Child Protective Services Training Project, Seattle, Washington.
1980	American Medical Association, Department of Mental Health, "The Physician and Adolescent Mental Health."
1980	Center for the Study of Youth Development at Boys Town, "Adolescent Abuse."
1980	National Institue of Mental Health, Laboratory of Developmental Psychology.
1979	National School Resource Network, Center for Human Services.
1979	Project REACH, School of Education, University of California at Los Angeles.

1979	National Academy of Sciences, Committee on Child Development Research and Public Policy.
1979	Advisory Committee, National Study of Child Neglect and Abuse Reporting, American Humane Association.
1978	Youth Development Bureau (DHEW) and Urban Rural Systems Associates, National Symposium on Adolescent Abuse and Neglect, Monterey, California.
1978	Institute of Medicine, National Academy of Sciences, "Issues in Adolescent Health."
1977-1978	Visiting Nurses Association, Omaha, Nebraska.
1978	American Institute for Research, Palo Alto, California, "Youth and Specific Social Indicators Project."
1977-1978	Child Abuse Team, University of Nebraska Medical Center.
1977-1979	Child Abuse Council of Metropolitan Omaha, Executive Committee: Chairman, Board of Directors.
1975	Joseph P. Kennedy, Jr. Foundation, Washington, D.C.: "Who Cares for America's Families?" Conference Development.
1974-1976	Test Item Writer, Social Sciences, American College Testing Program.
1974-1975	Marketing Science Institute, "Children, T.V., and the World of Work."
1974	Extension Division of the N.Y.S. School of Industrial and Labor Relations Conference Center–"Youth: Socialization for Change."
1972-1973	New York State Assembly Scientific Advisory Committee, the role of educational institutions in alienation among children and adolescents.
1971	Johnson Foundation, Racine, Wisconsin, project to study the impact of business organization and practices upon family life, and propose remedial programs.

Membership in Professional Organizations and Other Professional Activities:

Society for Research in Child Development

American Psychological Association:
- Division 7: Developmental Psychology;
- Committee on Public Information;
- Division 27: Community;
- Division 37: Children, Youth, and Family Services – elected Fellow, 1985; President, 1988.

Association for Humanistic Psychology

International Society for the Study of Behavioral Development

American Professional Society on the Abuse of Children,
Charter member of the Board of Directors, 1987-1989.

International Traumatic Stress Studies Society

International Society of the Prevention of Child Abuse and
Neglect, Executive Council, 1986-1988

U.S. Association for the Club of Rome

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Selected Presentation of Papers and Conference Addresses:

International

"Megalopolis and the High School as a Socializing Agency," Biennial Convention of the International Society for Behavorial Development, University of Surry, Guildford, England, July, 1975.

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"Adolescent Maltreatment in Cross-Cultural Perspective," National Science Foundation-funded U.S.-Sweden Conference on Family Violence, Satra-Bruk, Sweden, June 1-4, 1985.

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"Have We Given Up on Childhood?" Faculty of Social Welfare, University of Alberta, Calgary, Alberta, Canada, December 2, 1986.

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"The Ecology of Childhood – Issues of Social Policy," Munich, Germany, September 1989.

"Children and Youth in Danger: Coping With the Consequences," Bielefeld, Germany, October 1989.

"Child Maltreatment: Challenges of Prevention," Melbourne, Australia, May 1989.

"Youth in a Changing World," European Conference on Youth Development and Socialization, University of Bielefeld, Bielefeld, Germany, June 20, 1990.

"Children in Danger: Coping With the Consequences," International Conference on Children in War, Jerusalem, Israel, June 25, 1990.

"Child Abuse Prevention and Community Development," International Congress on Child Abuse and Neglect, Hamburg, Germany, September 3-4, 1990.

"Child Maltreatment in Ecological Perspective," Center for Youth Studies, Madrid, Spain, February 1992.

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"A Conceptual Tool Box For Collaborations Between Child Protection and Mental Health." Victoria State Government Symposium, Melbourne, Australia, May 1998.

"Children and Families in a Socially Toxic Environment." National Institute for Families, Sydney, Australia, May 1998.

"Making Sense of 'Senseless' Youth Violence. Keynote address, International Society for the Study of Behavioral Development, Bern, Switzerland, July 1998.

"Educating Young Children in a Socially Toxic Environment." Association for Early Childhood Education, Victoria, British Columbia, April, 1998.

"An Ecological and Developmental Perspective on Violence Trauma." Keynote address, International Congress of the International Association of Child and Adolescent Psychiatry and Allied Professions. Stockholm, Sweden, August 1998.

"Violence, Trauma, and Development" Keynote address, Queen Sofia Center for the Study of Violence, International Workshop on Children and Adolescents as Victims of Violence, Valencia, Spain, November 1998.

"Pathways from Childhood Sadness to Youth Violence," Keynote address, International Association of Child and Adolescent Psychiatry and Allied Mental Health Professionals, Stockholm, Sweden. August 1998

"Lost Boys: Origins of Youth Violence," Keynote address, South African Mental Health Association, Capetown, South Africa, September 1999.

"Origins of Youth Violence," Keynote address, Swedish Mental Health Association, Stockholm, Sweden, November 1999.

"Trauma and the Development of Refugee Children," Center for Refugee Studies, Oxford University, Oxford, England, November 1999.

United States

"A Preliminary Study of Some Ecological Correlates of Child Abuse: The Impact of Socioeconomic Stress Upon Mothers," Biennial Convention of the Society for Research in Child Development, Denver, Colorado, April, 1975.

"The Human Ecology of Child Maltreatment." Biennial Convention of the Society for Research in Child Development, New Orleans, Louisiana, March, 1977.

"Using Report Data in Defining the Community Context of Child Abuse and Neglect." Second Annual National Conference on Child Abuse and Neglect, Houston, Texas, April, 1977.

"Child Abuse and Juvenile Delinquency: The Developmental Impact of Social Isolation." Symposium on Child Abuse and Juvenile Delinquency, Seattle, Washington, July, 1977.

"The Social Networks of Children Approaching Adolescence: Studying the Ecology of Youth Development." Annual Convention of the American Psychological Association, San Francisco, California, August, 1977.

"Studying the Human Ecology of Child Maltreatment: The Role of Isolation from Potent Social Support Systems." Conference on Perspectives for Research in the Ecology of Human Development, Ithaca, New York, August 17-20, 1977.

"Meeting the Needs of Mistreated Youth." Third Annual Kansas Governor's Conference on Child Abuse and Neglect, Wichita, Kansas, September, 1978.

"Where are the Children in Utopia.?" Conference on Utopias and Intentional Communities, University of Nebraska at Omaha, October 14, 1978.

"Child Maltreatment: An Ecological Perspective." Annual Meeting of the American Orthopsychiatric Association, Washington, D.C., April 2, 1979.

"Screening Neighborhoods for Informal Helping Networks." Annual Convention of the American Psychological Association, New York, New York, September, 1979.

"An Ecological View of Child Maltreatment." Fourth Annual National Conference on Child Abuse and Neglect, Los Angeles, California, October 9, 1979.

"Youth Helping Youth as an Approach to Adolescent Abuse." Fourth Annual Conference on Child Abuse and Neglect, Los Angeles, California, October 9, 1979.

"The Issue is Human Quality: In Praise of Children." Third Biennial Woodlands Conference on Growth Policy, Houston, Texas, October 19, 1979.

"Theories of Domestic Violence." American Society for Criminology, Philadelphia, Pennsylvania, November 8, 1979.

"Violence in the Family: Integrating Research and Clinical Practice." Groves Conference on Marriage and the Family. Gatlinburg, Tennessee, May 31, 1980.

"The Making of a Dysfuncational Spouse/Parent." Workshop in Domestic Violence, Wright State University, Dayton, Ohio, July 14, 1980.

"Socio-cultural Risk." Colloquium, Psychology Department, University of Virginia, October 3, 1980.

"Assessing Stress and Support in Family Environments." Seminar, NIMH, Laboratory of Developmental Psychology, Bethesda, Maryland, November 19, 1980.

"The Social Ecology of Child Maltreatment." Colloquium, Lehigh University, January 26, 1981.

"Adolescent Maltreatment as a Developmental Issue." Paper presented at the Biennial Meeting of the Society for Research in Child Development, Boston, Massachusetts, April 4, 1981.

"We Know More About Child Abuse Than We Did But Less That We Thought We Did." Paper presented at the Annual Meeting of the American Orthopsychiatric Association, New York, New York, April 1, 1981.

"Using Family Support Services to Prevent and Treat Child Maltreatment." Keynote presentation and workshop for the National Conference on Child Abuse and Neglect, Milwaukee, Wisconsin, April 5-6, 1981.

"Social Support and Community Development." Keynote address, Conference on Neighbrohood Development, Roanoke, Virginia, May 7, 1981.

"Cultural and Ethnic Differences in Child Maltreatment: What Are the Implications for Prevention?" Conference on Prevention, Wingspread, Racine, Wisconsin, June 28, 1981.

"Adolescent Maltreatment." Paper presented at the Annual Meeting of the American Psychological Association, Washington, D.C., August 24, 1982.

"Corporate Self-Reliance and the Sustainable Society." Presentation to the Woodlands Conference on Growth Policy, Houston, Texas, November 8, 1982.

"Child Welfare and the Economic Crisis." University of Utah, Salt Lake City, Utah, February 23, 1983.

"Families At-Risk for Destructive Parent-Child Relations in Adolescence." School of Social Work, University of Washington, Seattle, Washington, March 3, 1983.

"The Role of Psychopathology in Adolescent Maltreatment." Biennial convention of the Society for Research in Child Development, Detroit, Michigan, April 23, 1983.

"Supporting Families and Preventing Child Maltreatment." Conference on Family Support Programs, Yale University, New Haven, Connecticut, May 16, 1983.

"Psychological Maltreatment" (with Joan Vondra). Keynote speech to the International Conference on Psychological Maltreatment, Indianapolis, Indiana, August 8, 1983.

"Latchkey Children: Can We Afford the Luxury of Childhood?" Presentation to the Annual Meeting of the American Psychologocal Association, Anaheim, California, August 26, 1983.

"Intervening in Child Maltreatment." Symposium presentation to the Annual Meeting of the American Psychological Association, Anaheim, California, August 26, 1983.

"Adolescent Maltreatment" Troubled Youth, Troubled Families." Presentation to the Fifth National Conference on Child Abuse and Neglect, Baltimore, Maryland, September 26, 1983.

"Methodological Issues in Research on Child Abuse and Neglect" (with Joan Vondra). Presentation to the Fifth National Conference on Child Abuse and Neglect, Baltimote, Maryland, September 27, 1983.

"Intervening in Adolescent Maltreatment" (with Joan Vondra), Symposium presentation, Annual Meeting of the Association for the Advancement of Behavioral Therapy, Washington, D.C., December 10, 1983.

"Child Abuse and Juvenile Deliinquency: (with Margaret Plantz). Keynote presentation, Wingspread Conference on Child Abuse and Juvenile Delinquency, Racine, Wisconsin, April, 1984.

"An Ecological Perspective on the Consequences of Child Maltreatment." Social Science Research Council Conference on Child Abuse and Neglect, May, 1984.

"Latchkey Children: What Does the Research Tell Us?" First National Conference on Latchkey Children, Boston, Massachusetts, May, 1984.

"Can American Families Afford the Luxury of Childhood? Keynote speech, Keystone Conference on Children, Scranton, Pennsylvania, May, 1984.

"Troubled Youth, Troubled Families: Adolescent Abuse." Invited address to Division 37 (Children, Youth, and Families) of the American Psychological Association, Toronto, Canada, August 25, 1984.

"Child Maltreatment as a Criminal Justice Issue," National Institute of Justice Working Conference on "Family Violence as a Criminal Justice Issue," October, 1984.

"Demographic and Socioeconomic Influences on the Supply and Demand for Child Welfare Services in the United States" (with Edna Guttman). Presentation to an international symposium on child welfare services, Hubert Humphrey Institute on Public Affairs, University of Minnesota, June 19, 1985.

"Adolescent Abuse: Troubled Youth, Troubled Families." Grand Rounds, North Shore University Hospital, Manhasset, NY, April 19, 1985.

"Adolescents as Victims." Presentation to an Institute on "Adolescence: Recent Progress in Managing Serious Pathology." Annual meeting of the American Orthopsychiatric Association, New York, NY, April 21, 1985.

"Child Abuse and Juvenile Delinquency." New York State Conference on Child Abuse and Neglect, Albany, NY, April 22, 1985.

"The Community as a Source of Risk and Support." Presentation to "Working with Families and Infants At-Risk." Harvard University Medical School, Cambridge, MA., May 21, 1985.

"Psychological Maltreatment." Mini-course presented to the Seventh National Conference on Child Abuse and Neglect, Chicago, Illinois, November 11-12, 1985.

"We Can Prevent Child Abuse." Keynote Point/Counterpoint, Seventh National Conference on Child Abuse and Neglect, Chicago, Illinois, November 11, 1985.

Is Prevention Possible Through Parent Education?" Plenary address to the Second Annual Parenting Symposium, Philadelphia, Pennsylvania, March 8, 1986.

"Dealing with Psychological Maltreatment," Institute on Domestic Violence, Anchorage, Alaska, December, 1985.

"Can American Families Afford the Luxury of Childhood?" Keynote presentation, South Carolina Council on Family Relations, Columbia, South Carolina, February, 1986.

"Psychological Maltreatment: Issues for Professionals", Annual Conference of the Michigan Association of Children's Alliances, Detroit, Michigan, February, 1986; April 16, 1986, Indiana University, Gary, Indiana, April 22, 1986, Human Services Coalition, Williamsport, Pennsylvania.

"The Role of the Mass Media in High Visibility Cases: Seventh National Conference on Sexual Victimization, New Orleans, Louisiana, May 15, 1986.

"Dealing with Psychological Maltreatment: A Challenge to the Community." Keystone Conference on Child Abuse and Neglect, C. Henry Kempe Center, Keystone, Colorado, May 22, 1986.

"Community-Based Program Evaluation," First National Conference of the Family Resource Coalition, Chicago, Illinois, September 13, 1986.

"Adolescent Maltreatment." Keynote, 8th Annual Adolescent Medicine and Health Conference, University of Minnesota, September 26, 1986.

"The Psychologically Battered Child" Bush Center in Child Development and Social Policy, Yale University, New Haven, Connecticut, October 24, 1986.

"An Update on Research on Latchkey Children" Keynote, National Policy Symposium on School Age Childcare, Cambridge, Massachusetts, December 2, 1986.

"Adolescent Maltreatment" New York State Bar Association Convention, New York, New York, January 30, 1987.

"Viewing the Family Through the Eyes of a Child," Keynote, Chicago Association for the Education of Young Children, February 21, 1987, and Southern Association on Children Under Six, Keynote, Memphis, Tennessee, March 27, 1987.

"Social Policy and Its Impact on Children and Families," Keynote, Better Babies Coalition Convention, Piscataway, New Jersey, April 22, 1987.

"What is Sexual and What is Abusive About Sexual Abuse?" Keynote, Wright State University Child Abuse Workshop, Akron, Ohio, June 19-20, 1987.

"The Community as an Influence on Child Development," Chaping Hall Colloquium, Chicago, Illinois, February 18, 1988.

"The Abuse of Handicapped Children," Keynote, University of Pittsburgh, March 31, 1988.

"An Update on Child Abuse Research," National Conference on Child Victimization and Abuse, Anaheim, California, April 29, 1988.

"The Meaning of Poverty in the Lives of Children," Keynote, Conference on Children and Poverty, Case Western Reserve University, Cleveland, Ohio, March 2, 1990.

"What Children Can Tell Us," Keynote, National Association of School Psychologists, San Francisco, California, April 20, 1990.

"The Future As If Families Really Matter," Auburn University, May 10, 1990.

"Research on Child Maltreatment: What Issues Remain?" American Human Association, National Conference, Nashville, Tennesee, September 13, 1990.

"Children in War Zones," UN Conference in Support of the World Summit on Children, New York, September 12, 1990.

"Children and Traumatic Stress," Keynote, Naim Foundation Conference on Mental Health, Washington, D. C., October 11, 1990.

"Child Development in Crisis," Wye Conference on Television and Social Change, Aspen Institute, Wye, Maryland, September 12, 1990.

"What Children Can Tell Us," Josselyn Clinic, Chicago, Illinois, October 17, 1990.

"What Children Can Tell Us," Psychiatry Grand Rounds, University of Vermont, Burlington, Vermont, November 9, 1990.

"A Perspective on Community Violence and Child Development," Keynote, NIMH Conference on Community Violence and Children, Bethesda, Maryland, November 15, 1990.

"The Human Ecology of Risk and Intervention," Keynote, Conference on Human Development, Michigan State University, E. Lansing, Michigan, November 28, 1990.

"Children, Violence and Trauma," National Conference of the Child Welfare League of America." Washington D. C., March 1993.

"Children in War Zones; At Home and Abroad," Keystone Conference on Child Abuse and Neglect, Keystone, Colorado, May 1993.

"Community Violence and Child Maltreatment," National Conference on Child Abuse and Neglect, Pittsburgh, PA December 1993.

"Growing Up in a Socially Toxic Environment," Nebraska Symposium on Motivation, University of Nebraska, April 1994.

"Children and Violence," President's Panel, American Orthopsychiatric Association, Washington, DC, April 1994.

"Children, Violence, and Television," International Child and Adolescent Psychiatry Association, San Francisco, 1994.

"Violence, Communities and Children: An Agenda for Journalists," Casey Journalism Center, University of Maryland, June 1994.

"Raising Children in a Socially Toxic Environment," Keynote, National Child Welfare Conference, Washington, DC, February 1995.

"Family Violence," Conference on Childhood Sexual Abuse and Memories, University of Kansas Medical Center, Kansas City, Kansas, March 31, 1995.

"The Role of Identity in Children's Violence." Society for Research in Child Development Bi-ennial Meeting, Indianapolis, Indiana, April 1, 1995.

"Poverty and Children in a Socially Toxic Environment," Keynote, Conference on "Growing Up ion Proverty: From Research to Action," University of Michigan, Ann Arbor, Michigan, April 21, 1995.

"Growing Up in a Socially Toxic Environment," American Association of Family and Consumer Sciences, New Roleans, LA, June 1995.

"Raising Children in a Socially Toxic Environment," American Public Health Association, San Diego, CA, October 1995.

"Vulerable Youth and Toxic Environments: Implications for Juvenile Crime," California Task Force to Review Juvenile Crime and the Juvenile Justic Response, San Jose; CA, August 1995.

"Raising Children in a Socially Toxic Environment," National Resrouce Center for Youth Services, Anaheim, CA, July 1995.

"Violence and Trauma" Dual Disorder Professional Development Conference Series, 1995-1996 (San Diego, Orlando, New York, Baltimore, Las Vegas, Seattle)

"HOW Does It Take a Whole Village to Raise a Child," Bowling Green State University, Bowling Green, Ohio, September 1996.

"Is Being Male Risk Factor?" Nebraska Conference on Gender Roles, July, 1996.

"Trauma and Children," Keynote address, Trauma Conference, University of Missouri, July, 1996.

"Raising Children in the Urban Village," Presidential Forum, American Psychological Association, Toronto, Canada, August 1966.

"What Should Home Visiting Work? Home Visiting Conference, Sacramento, California, March 1998.

"Social Toxicity and Young Children." National Head Start Transition Conference, Washington, DC. April 1997.

"Making Sense of Trauma and Youth Violence. International Family Law Conference, San Francisco, California, June 1997.

"Making Sense of Youth Violence. " Invited Address, American Psychological Association, Chicago, Illinois, August 1997.

"The Moral Development of Violent Children and Youth." Yale Child Study Center, New Haven, Connecticut, December 1997.

"Youth Violence." Keynote presentation. American Probation and Parole Association, Orlando, Florida. January 1998.

"The Meaning of Trauma in Child Development." National Association for Schools for Exceptional Children, Ft. Myers, Florida January 1998.

"Making Sense of Senseless Youth Violence." Juvenile Justice Association,

Elmira, New York, April 1998.

"Social Policy and Parenthood." Plenary presentation, Conference on "Parenthood in America." Madison, Wisconsin, April 1998.

"Child Maltreatment and Conduct Disorder: Pathways to Youth Violence." Keynote address, National Conference on Child Abuse and Neglect. Cincinnati, Ohio, November 1998.

"Supporting Young Children and Families Coping with Violence." Keynote address, Eighth Annual Summer Seminar, Associated Colleges of Central Kansas, Lindsborg, Kansas, June 1998.

"Child Abuse: The Primal Wound," Plenary address, National Conference on Child Abuse and Neglect, Cincinnati, Ohio, November 19, 1998.

"Lost Boys: Pathways from Childhood Sadness and Aggression to Lethal Youth Violence" Keynote Address delivered in multiple sites in 1999, including:
FBI Conference on Youth Violence Threat Assessment, Williamsburg, Virginia, July 1999
American Psychological Association Annual Convention, Boston, Massachusetts, August 1999
US Navy Conference on Violence, Gulf Port, Mississippi, September 1999.
Westminster Forum, Minneapolis, Minnesota, October 1999.
Conference on Law and Child Maltreatment, University of Virginia, Charlotteville, Virginia, October 1999.
Adelphi-Columbia University Conference on Violence and Culture, New York City, New York, October 1999.
National Association of School Boards, New Orleans, Louisiana, November 1999.

Selected Public Information Articles:

The family: A school for living. The National Elementary Principal, 1976, 55, May/June.

The impact of social change on children and youth. Vital Issues, 1978, 27, No. 5, January. (Published by Information for America).

Finding the resources necessary to meet the problem of child maltreatment. Vital Issues, 1978, 27, October. (Published by Information for America).

Adolescents Becoming Adults. Forum, 1979 Spring/Summer.

Investigating Child Abuse? Investigative Reporters and Editor's Forum, 1979, Spring.

What is emotional abuse? Caring (Publication of the National Committee for the Prevention of Child Abuse), Spring, 1979.

Breaking the link between child abuse and delinquency. Focus on Juvenile Justice. (Publication of the Boys Club of America), November, 1979.

Latchkey children: What needs to be done? Vital Issues, 1980, 30, December. (Published by Information for America).

Adolescent abuse. Caring (publication of the National Committee for the Prevention of Child Abuse). Spring 1980.

"What Do We Know About Child Maltreatment?" Research summary prepared for the National Ad Hoc Coalition to Reauthorize the Child Abuse and Neglect Prevention and Treatment Act, 1981.

The Who, What, and Why of Vandalism. Vital Issues, 1981, 31, December. (Published by Information for America.)

"The Lessons of Early Education." Chicago Tribune, October 14, 1985.

"The Protection of Our Children," Chicago Tribune, May 3, 1986.

"How We Let Abused Children Die," Chicago Tribune, September 23, 1986.

"Kids in Jeopardy," Chicago Tribune, February 8, 1988.

"Children First," PTA Today, 1992, November, 4-6.

"The School's Role in Supporting Children in the Community," Chicago Parent, September 1993.

"Confronting Fear is the Key to Overcoming Violence," Chicago Tribune, December 27, 1993.

"What Children Can Tell Us About Danger," Brown University Child and Adolescent Behavior Letter. September 1993.

"How Can You Tell Which Children Need Extra Help Dealing with the Bombing?" Brown University Child and Adolescent Newsletter, June, 1995.

"Children and Violence," American Bar Association Child Law Practice. March 1996.

"Some children are orchids." Viewpoint, Time Magazine, December 20, 1999.

FILED-CLERK OF COURT
GREENVILLE CO., S.C.

MAR 23 2 10 PM '95

STATE OF SOUTH CAROLINA) IN THE FAMILY COURT

COUNTY OF GREENVILLE)

COMMITMENT ORDER
(DJJ)

IN THE INTEREST OF:
Freddie
[illegible]
Greenville, SC
AGE: 17 yrs DOB: 1-18-78

HEARING DATE: March 23, 1995
JUDGE: Kittredge
COURT REPORTER: Dawn Kaffskey

ATTORNEY FOR SOLICITOR: John DeLong
ATTORNEY FOR JUVENILE: Jennifer Rosenthal
GUARDIAN AD LITEM: Dora Mason

The Office of the Solicitor for the Thirteenth Judicial Circuit having filed petitions in this Court alleging that the above named juvenile was delinquent in that (he)/(she) in Greenville County did commit the:

OFFENSE(S)	1976 CODE OF LAWS AS AMENDED SECTION	OFFENSE DATE	FILING DATE	PETITION NO
Burglary 2nd (B)		12-10-94		95-149
Burglary 2nd (B)		3-13-94		95-150
Unlawful Poss. of Pistol	16-23-20	1-26-94	5-9-94	94-520
Assault With Intent to Kill		1-26-94	5-9-94	94-521

AN ADJUDICATORY HEARING was held and following (✓ plea of guilty)/(___ a hearing on the merits), the allegations were determined to be true upon proof beyond a reasonable doubt to be delinquent for having committed the above offenses.

1995 A DISPOSITIONAL HEARING was held on the 23 day of March and as a result thereof, I find that the within named juvenile is a suitable person to be committed to the South Carolina Department of Juvenil Justice.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED in the best interest of the within named juvenile that he/she is hereby committed to the South Carolina Department of Juvenile Justice, which shall arrange for placement of this child in a suitable corrective environment, with said commitment being for an indeterminate period not to exceed the twenty-first birthday c said juvenile, unless sooner released by proper authority.

Dated: 3-23-95
Greenville, SC

FAMILY COURT JUDGE

STATE'S EXHIBIT
07 | 9 | 10 - TBS

Respondent

0043

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
County of Greenville	)	
	)	
Freddie Eugene Owens, #5065, *Applicant,*	)	Case No.: 09-CP-23-0741
	)	
vs.	)	**POST-HEARING MEMORANDUM OF LAW IN SUPPORT OF SECOND AMENDED APPLICATION FOR POST-CONVICTION RELIEF**
	)	
State of South Carolina, *Respondent.*	)	
	)	

Applicant, Freddie Eugene Owens ("Owens"), by and through undersigned counsel, files this Post-Hearing Memorandum of Law in support of his Second Amended Application for Post-Conviction Relief. The PCR Application raises multiple grounds for post-conviction relief, including claims that: (a) trial counsel were ineffective in failing to investigate and present available mitigating evidence; and, (b) trial counsel failed to object to a variety of inadmissible evidence and improper arguments by the State. This memorandum begins with a detailed statement of the case and its procedural history, followed by a discussion of the relevant legal principles governing ineffective assistance of counsel claims, and, finally, a discussion of each specific ground on which Owens is entitled to post-conviction relief.

STATEMENT OF THE CASE

I. INTRODUCTION.

Owens was originally tried, convicted and sentenced to death on February 17, 1999, for an armed-robbery shooting that occurred at a Speedway convenience store on November 1, 1997, in Greenville, South Carolina. Owens was charged along with three co-defendants, Steven Andre Golden, Nakeo Vance, and Lester Young. There was no affirmative proof of the shooter's identity. Instead, the State relied heavily on self-interested testimony from Golden and Vance to

secure Owens' conviction. After the South Carolina Supreme Court reversed the death sentence on two occasions, *see State v. Owens*, 346 S.C. 637, 552 S.E.2d 745 (2001); *State v. Owens*, 362 S.C. 175, 607 S.E.2d 78 (2004), the State initiated a third effort to obtain a death sentence. On February 2, 2006, Judge Larry R. Patterson appointed William ("Bill") Godfrey and Kenneth Gibson to represent Owens at his 2006 capital sentencing proceeding. *PCR Hearing Transcript (hereafter "Tr.") pp.33, 83.*[1] Bill Godfrey was appointed as lead counsel. At the time of his appointment, Godfrey had previously served as second-chair in one capital trial. *Tr. p.84.* He had also worked on a second capital case, but he was replaced as counsel approximately one month before jury selection began. *Id.* Gibson had no prior capital experience. *Tr. p.33.*

II. DEFENSE COUNSEL'S TRIAL PREPARATIONS.

Following their appointment on February 2, 2006, Gibson and Godfrey did not meet with Owens until nearly five months later. Their first meeting occurred at Lieber Correctional Institution on June 19, 2006. *Tr. pp.50, 104-05.* This meeting lasted approximately three hours.[2] Trial counsel met with Owens a second time for approximately two hours on September 7, 2006, at Perry Correctional Institution.[3] *Tr. pp.51, 106.* This constituted the entirety of Gibson's

[1] For the Court's convenience, Owens has included an appendix containing a copy of the PCR Hearing transcript and copies of Applicant's PCR Hearing Exhibit Nos. 1-11, which are cited extensively throughout this memorandum.

[2] Godfrey's time sheet reflects a total of 9.0 hours spent on this date for "Travel to Lieber CI to visit Freddie." *Applicant's PCR Exhibit 1, Timesheet of Attorney Bill Godfrey, at p.1.* Gibson testified that it took "roughly a little over three hours" to travel each way to and from Lieber Correctional Institution. *Tr. p.51.* Gibson's timesheet entry for June 19, 2006, reports a total of 11.0 hours for "Travel to Lieber; conference with Defendant; Review files and other general trial preparation." *Applicant's PCR Exhibit 5, Timesheet of Attorney Kenneth Gibson, at p.3.*

[3] Godfrey billed 3.0 hours on September 7, 2006, for "Visit Freddie at Perry CI." *Applicant's PCR Exhibit 1, at p.3.* Perry Correctional Institution is located in Pelzer, SC, approximately 30 minutes from Greenville. Gibson's time sheet reports 6.0 hours on this date for "Travel to Perry Correctional and Conference with Client; and other general trial preparation." *Applicant's PCR Exhibit 5, at p.3.*

substantive meetings with Owens. *Tr. p.52.* Trial counsel spoke to Owens briefly in the holding cell "at the courthouse and stuff like that," but, for Gibson, these two meetings "were the two times that basically I went, you know, for the purpose of seeing him." *Id.* Godfrey met with Owens a third time on October 2, 2006, which was the original trial date before it was continued. *Tr. p.106.*

Early on in their case preparations, Godfrey and Gibson agreed to a division of labor under which "Godfrey was going to handle primarily the [m]itigation evidence" and Gibson "was going to primarily handle the evidence related to [the] crime and guilt issues." *Tr. p.35; see also, Tr. pp.49, 86.* In Godfrey's role as both lead counsel and the one primarily responsible for preparing the mitigation case, it fell to Godfrey to assemble a team of investigators and experts. Gibson was not involved in selecting the defense team members:

> [Godfrey] told me who he knew because [he] had a lot more experience than I had. He said they were good people. I trusted [Godfrey] and that's who we picked.

Tr. p.53. Thus, Godfrey selected the investigators and experts who would investigate Owens' life history, help identify mitigation issues, and then present a mitigation case on Owens' behalf. The trial was originally scheduled to begin on October 2, 2006. *Tr. p.106.* And yet, Godfrey did not even begin to contact potential defense team members until "about the middle of August." *Tr. p.107.* He made a final decision about who to hire at the end of August, leaving only one month before the scheduled trial for the team to prepare the case. *Tr. p.107-08; see also, Applicant's PCR Exhibit 1, at p.2* (Godfrey's time sheet reflects entries on August 30th and August 31st that state, "interviewed possible death team members.").

For the defense team, Godfrey initially chose: (1) Dr. Donna Schwartz-Watts ("Dr. Watts"), a forensic psychiatrist; (2) Dr. Tora Brawley, a neuropsychologist; (3) Paige Tarr, a

mitigation investigator; and, (4) Marjorie Hammock, a social worker. *Tr. p.108.* Godfrey selected Dr. Brawley and Paige Tarr based on Dr. Watts' recommendation. *Tr. pp.109-10.* He chose Marjorie Hammock because she had been involved in the previous two trials. *Tr. pp.110-11.* These team members were charged with conducting the mitigation investigation. Neither Godfrey nor Gibson personally conducted any mitigation investigation before the team was assembled. *Tr. pp.54, 113.* Right away, however, in about "[e]arly to middle September," Godfrey realized that Paige Tarr was having some "personal problems [that] were having an impact on her ability to do her job." *Tr. pp.111, 126.* So, he decided to bring in another investigator, Carolyn Graham. *Tr. p.111.* On September 15, 2006 – two weeks before the scheduled trial – Godfrey prepared letters of introduction for Paige Tarr and Carolyn Graham so that they could begin meeting with Owens. *See Applicant's PCR Exhibit 1, at p.3.*

Five days later, Dr. Watts requested that Godfrey seek a continuance from the October 2, 2006 trial date. *See id. at p.4* ("Dr. Watts needs more time – wants continuance. Discussion of why and how much time."). Dr. Watts sent an email stating that although she had been given "short notice," she was able to evaluate Owens on one occasion during which she discovered that he was on several powerful medications – a fact that "came as a surprise to all of us." *See Applicant's PCR Exhibit 3, Email from Donna Watts dated 9/20/2006.* Dr. Watts then suggested what would ultimately become a defense mitigation theme at trial:

> Even more surprising are the preliminary reports that show Mr. Owens [sic] disciplinaries have decreased substantially which may or may not coincide with these medications. At this point, although the SCDC [South Carolina Department of Corrections] records have been requested, we have yet to receive them.

Id. Dr. Watts urged Godfrey to get more time so that she could receive and review records from SCDC and the Department of Juvenile Justice ("DJJ"). *Id.* Finally, Dr. Watts noted: "I also

need to meet with your social worker, as I have no social history at all at this point." *Id.* On September 27, 2006, Godfrey moved the trial court for a continuance. *See Applicant's PCR Exhibit 1, at p.4.* On October 2, 2006, the trial court granted a five-week continuance and rescheduled the trial for November 6, 2006. *See id.*

With less than four weeks left to prepare for trial, Godfrey identified problems with yet another defense team member – Marjorie Hammock. *See Applicant's PCR Exhibit 4, Email Communications.* Ms. Hammock was the "primary" witness through whom the defense hoped to tell Owens' life story. *Tr. pp. 123-24, 130.* She was supposed to "go over in great detail the family history of Freddie Owens and what happened to him," in order to "give the jury an understanding of his family background [and] things that had gone on in his life," which had "led up to the events that caused this trial." *Tr. pp.129, 56.* But in mid-October, Godfrey expressed serious concerns about Ms. Hammock's ability to handle that task. On October 11-12, 2006, Godfrey wrote that Ms. Hammock "continues to worry me a little, in as much as she loses items given to her and then finds them again. I want to make sure that she is truly on board and ready to go." *Applicant's PCR Exhibit 4, at p.3.* He told defense team members that he "[did] not like her attitude regarding preparation," and that he was considering replacing her. *Id. at pp.1-2.* Ms. Tarr confirmed, "Marjorie is moving slowly," and stated that she was "not all that enthusiastic about Marjorie's level of preparation and interest." *Id. at p.1.* Ms. Tarr and Dr. Watts discussed asking Godfrey to replace Ms. Hammock, "but with a few weeks to prepare, we thought it safer to just push Marjorie through." *Id.*

So Godfrey continued on with Ms. Hammock on the team, but decided to alter his previous agreement with Gibson about their division of labor. Approximately two weeks before trial, in "mid-to-late October," trial counsel decided that Gibson, not Godfrey, would handle the

testimony of Ms. Hammock and Dr. Brawley. *Tr. pp.54-55.* They reached this agreement because "we sort of realized that there was a whole lot more mitigation stuff [than] . . . guilt stuff." *Tr. p.49.* Gibson explained, "it just seemed, in order for me to pull my fair share, that I should take on more witnesses." *Tr. p.50.* So Gibson took responsibility for presenting Ms. Hammock's testimony. Prior to this time, Gibson was generally aware of the mitigation preparations, but he had not been "focusing on the subjects that [the mitigation witnesses] were going to testify to." *Tr. p.57.* Per trial counsel's prior agreement, Gibson had been "more focused on the guilt issues." *Id.* He never read any of the voluminous social history or institutional records that were in the case file, nor did he talk to any of Owens' family members or acquaintances. *Id.*

On or about November 3, 2006, the defense team met in Columbia, South Carolina, at the home of Dr. Watts.[4] *Tr. pp.55, 123.* The meeting included Gibson, Godfrey, Dr. Watts, Dr. Brawley, Paige Tarr, Carolyn Graham, and Marjorie Hammock. *Tr. p.123.* The purpose of this meeting was "to work on [a] unified theory of defense in [the] penalty phase." *Applicant's PCR Exhibit 1, at p.5.* At the meeting, Gibson was still unaware of the details of Owens' documented

[4] Gibson testified at the PCR hearing that the meeting occurred on November 3, 2006, (*Tr. p.55*), which he said was on a Saturday (*Tr. p.58*), and his timesheet also records the meeting as having taken place on November 3, 2006. *See Applicant's PCR Exhibit 5, at p.2.* November 3, 2006 occurred on a Friday. *See* http://www.timeanddate.com/calendar/?year=2006. Godfrey testified that he was not certain whether the meeting took place on either November 2 or November 3, 2006, but that he remembered that the meeting occurred on a Saturday. *Tr. p.123* ("It would have been a Saturday. Whatever the Saturday was. It was not during a work week. It was during a Saturday morning."). Godfrey's timesheet records the meeting as occurring on October 27, 2006, which was also a Friday. *See Applicant's PCR Exhibit 1, at p.5.* During this relevant period in question, Saturday occurred on October 28, 2006, and on the following week on November 4, 2006. *See* http://www.timeanddate.com/calendar/?year=2006. In any event, this meeting occurred sometime within one week to two days before trial.

life history, having *never* read the social history records or conducted any interviews.[5] *Tr. p.57.*

Instead, he prepared Ms. Hammock's testimony as follows:

> Uh, I sort of used her – when we met on that Saturday, we sat and we talked. We sort of went through what information she had, what information, you know, that she thought was important, what information – we talked about her earlier testimony, you know, what she thought had gone well, you know, whatever, what she thought hadn't. And then based on that conversation, I basically formulated, you know, the questions to try to get it out of her. What I do is basically is also I say I'm going to ask you questions

[5] Specifically, Gibson testified at the PCR hearing:

Q: [P]rior to the time you agreed to handle these two [mitigation] witnesses which occurred around mid-to-late October, I guess?

A: Yeah.

Q: Had you been focusing on the subject they were going to testify about or were you sort of generally aware of them because of your overall involvement in the case?

A: I was more focused on the guilt issues.

Q: Okay. Now, had you personally reviewed any of the – Mr. Owens' social history or institutional records that were in the case file?

A: I had reviewed the transcripts from the previous trial. So whatever is included in those previous trials, that is what I have gone over.

Q: Had you personally interviewed any members of Mr. Owens' family?

A: No.

Q: Or acquaintances?

A: No.

Q: All right.

A: Never did. And did not throughout the trial other than the ones that we were planning on calling.

Tr. p.57. At trial, the defense called Owens' third-grade teacher to testify. They did not call any other family members or acquaintances.

> that are going to allow you to talk okay. That's how I formulated it.

Tr. p.58. As late as November 1, 2006, Godfrey reported that he was still "tr[ying] to find any other theory [the] defense could use in [the] penalty phase." *Applicant's PCR Exhibit 1, at p.6.*

III. JURY SELECTION AND OPENING STATEMENTS

On November 6, 2006, Owens' capital sentencing trial began as scheduled before Judge Patterson. Gibson and Godfrey shared responsibilities for jury selection. Solicitors Robert Ariail and Betty Strom represented the state. Early in the individual *voir dire* process, Solicitor Airial began previewing what would later become a theme in his closing argument by telling members of the jury panel that the state may only seek death in rare cases. For example, he repeatedly told potential jurors that "the State of South Carolina, represented by the solicitor, is not allowed to seek the death penalty, except in certain limited circumstances," which he characterized as "a very, very, very small group of cases." *Record on Appeal from 2006 sentencing proceeding (hereafter "ROA"), pp.560, 537.* He stated that "[n]ormally in a criminal case when a defendant is convicted, the judge sentences. And that's 99.9 percent of the time." *ROA p.312; see also ROA p.445* ("the State is allowed to seek the death penalty only in a very limited set of circumstances"); *ROA p. 590* (same); *ROA p. 670* (same). During individual *voir dire*, Solicitor Airial made these comments to seven of the jurors who were ultimately seated in Owens' case. *See ROA pp.151, 270, 312, 414, 431, 445, 537, 560.*

During opening statements, Ms. Strom told the jury that "Freddie Owens has already been convicted of murder; He's already been found guilty of murder." *ROA p.1040.* However, for purposes of the sentencing proceeding, the state planned to present "an overview of that murder, because you are going to need to know the facts and circumstances of the crime in order to determine what punishment to impose." *Id.* Strom told jurors they would actually observe the

crime with their own eyes because the state would introduce a video that captured the shooting. *ROA p.1043.* Finally, Ms. Strom stated that the jury would hear evidence of Owens' character, "[w]hat kind of person he is; what else he has done" and "how he's behaved while he's been confined." *ROA p.1044.*

Bill Godfrey gave an opening statement for the defense. He promised the jury a two-part mitigation case. First, he explained that the jury would hear about Owens' life history and background:

> What we believe the evidence in mitigation will show, and you will hear testimony from our witnesses that describe how it is that Freddie grew up; how he really didn't have a home on a consistent basis; how he really didn't have food on a consistent basis. You will hear evidence of the violence that he has lived through his entire life. And you will come to know him as a person, basically from the time he was a young boy up to where he is now.

ROA at p.1047. Godfrey claimed the social history evidence would detail "where Freddie came from and everything that he went through." *Id. at p.1048.* He warned that this evidence was "not pretty," and cautioned jurors that they would hear "things that happened here in Greenville to a family that should never happen." *Id.* For part two of the presentation, Godfrey stated the defense would call Dr. Thomas Cobb, a psychiatrist who worked at the prison, to establish that Owens had recently improved his behavior. *Id. at p.1047.* Through Dr. Cobb, the jury would hear that "within this past year while Freddie was in the Department of Corrections he kept asking for help." *Id.* Dr. Cobb would explain that he was treating Owens with medication, which "has helped him control his impulses." *Id.*

IV. THE STATE'S CASE FOR DEATH

The state's presentation consisted of three main elements. First, the state offered evidence about the murder of Irene Graves and Owens' involvement in the crime. Second, the

state tried to show that Owens was not adaptable to a prison environment because he had a lengthy history of prison violence and other misconduct, including the 1999 killing of Christopher Lee – one of Owens' cell-mates in the Greenville County Detention Center. Third, the state called two witnesses to provide victim impact testimony.

A. OVERVIEW OF THE CRIME

1. THE CRIME SCENE VIDEO

The state offered evidence to establish that Ms. Irene Graves died from a single gunshot wound to the head in the early morning on November 1, 1997, while working at a Speedway gas station on Laurens Road in Greenville, South Carolina. *ROA pp. 1053, 1060, 1096-1101.* Officer Larry Bellew testified that he responded to the scene and collected a videotape from the Speedway's security camera. *ROA p.1072.* He introduced State's Exhibit 21 (a DVD copy of the videotape) and explained that it shows two armed men wearing masks entering the store. *ROA p.1075.* Bellew stated that the jurors would see Ms. Graves standing behind the counter "and then you see her get shot." *Id.* Without further explanation, the state then played the videotape for the jury. *ROA p.1076.*

The video does indeed show two masked men dressed in dark clothing entering the Speedway store. *See State's 2006 Trial Exhibit 21.* However, it is impossible to determine their identities. *See id.* After the two men enter the store, the video focuses primarily on a single man standing in front of the counter, directly opposite Ms. Graves and pointing a gun at her head. *See id.* The second man is not visible for most of the remainder of the video. *See id.* The man opposite the counter continues pointing his gun at Ms. Graves and then she falls backwards to the floor before the two men run away. *See id.* Given that the jurors had already been told that Owens was convicted of murder and that they would see video-graphic evidence, they most

likely assumed that Owens was the video's primary player – i.e., the man standing in front of the counter who appears to shoot Ms. Graves. The jurors were not told that Owens' co-defendant, Steven Andre Golden, testified in 1999 and again in 2002, that *he* – not Owens – was the man standing behind the counter for the duration of the video. *1999 Record on Appeal, pp.2310, 2403-2406.* Trial counsel asked no questions of Officer Bellew. *ROA pp.1079-80.*

2. OWENS' ARREST AND STATEMENTS ABOUT THE CRIME

After showing the video again for the jury, the state called Officer Joe Wood, who testified that Owens was arrested for the crime after several days of investigation. *ROA pp.1081, 1083.* During an interview with Owens, Wood told Owens "that what he was telling me did not particularly add up with what the evidence and the witnesses had told us and that we had a pretty strong case against him." *ROA p.1091.* Wood testified that Owens responded, "the only thing I'm here for is to eat, sleep, shit and piss. I don't give a shit. I was born to be in jail." *ROA p.1092.* Wood claimed that the police had obtained incriminating evidence from Owens' mother, and Owens answered:

> if my mom says anything, tell her I said adios, to kiss her ass too. She can kiss my ass too. Tell Ian and the rest of them assholes to fuck themselves. If I go to jail, I go to jail. I don't give a shit. . . . [P]eople tend to think I have a sick and evil mind, but I have a very educated mind. I would like to take the blame for all of this, but I'm not going to take it all myself. I made my mark on Hall Street after I got out of jail selling lots of drugs. I made lots of money. Yeah, I want to be remembered as the one who killed the most people in Greenville. I'm a real menace.

ROA pp.1092-93. Finally, Woods told Owens that he could get the death penalty, and Owens said, "I don't give a shit about that either." *ROA p.1094.* Woods described Owens as "cocky," with a "don't care attitude." *ROA p.1093.* He claimed that Owens "smiled a lot when he was saying this," and that, "[h]e's one of two people out of probably 25 years in homicide that I have

interviewed that actually gave me cold chills." *Id.* Trial counsel did not object, and did not question Officer Wood. *ROA p.1094.*

The state also called Aisha Austin, who testified that she was Owens' girlfriend at the time of the crime. *ROA p.1109.* Austin stated that on the morning after the crime, Owens received a phone and told the caller, "I know you know I did it. Just keep quiet." *ROA p.1112.* When Austin asked Owens about a newspaper article he had obtained about the Speedway shooting, he told her "they went into the store and the lady didn't open up the safe, so he just shot her." *ROA p.1114.* Austin testified that Owens stated, "I shot the bitch." *Id.* Austin also claimed that Owens told her "he wanted to go down in history for committing the most murders in Greenville County without getting caught." *ROA p.1116.* On cross-examination, Gibson suggested that Austin was angry at Owens because he cheated on her, but Austin denied this. *ROA p.1116-17.*

3. PRIOR TESTIMONY OF NAKEO VANCE

For an overview of the events leading up to the crime, the state relied on the prior testimony of Owens' co-defendant, Nakeo Vance. *ROA p.1141.* Vance testified at the original trial in 1999, but refused to testify in the 2006 proceeding. *ROA pp. 1133-39.* The state read his prior testimony into the record. *See ROA pp.1143-1227.*

Vance testified that on October 31, 1997, he gathered with Owens, Lester Young and Steven Andre Golden. *ROA p. 1149.* Young and Vance were cousins, and Vance had known Young "about all my life." *ROA pp. 1149, 1197.* Vance and Golden were also longtime friends. They grew up in the same neighborhood and had known each other for "about 15" years. *ROA pp.1198, 1225.* By contrast, Owens was the newcomer to the group, as Vance had only known

him "[a]bout a year and a half." *ROA p.1149.*[6] The four men spent the day riding around in Golden's grandmother's car, smoking marijuana, drinking alcohol, and talking about robbing various businesses in town. *ROA pp.1152-53, 1166.* The group abandoned a series of robbery attempts in the early part of the day, getting out of the car and scoping out stores before deciding not to go through with their plans. *ROA pp.1154-60.* Each member of the group had a gun – specifically, Vance had a .32, Owens had a .25, Golden had a .32, and Lester Young had either a .25 or a .22. *ROA p.1155.* They were all dressed in dark clothing and wearing masks to cover their faces. *ROA pp. 1221-22.*

Ultimately, Lester Young and Andre Golden got out of the car and robbed the Prestige Dry Cleaners on Laurens Road. *ROA p.1161-64.* They returned to the car and divided the money among the group. *ROA p.1164.* About an hour later, the group drove to the Conoco Hot Spot gas station on Augusta Road, where Owens, Golden and Young all got out and robbed that store as well. *ROA pp.1167-70.* A couple of hours after that, they decided to get a hotel room at the Red Roof Inn on Laurens Road. The Inn was beside the Waffle House and across the street from the Speedway, and the four men planned to rob both locations. *ROA pp.1173-75.* Golden went inside the hotel and reserved a room. *ROA p.1175.* Then, Vance testified that he and Young went to rob the Waffle House while Golden and Owens went to the Speedway. *ROA pp.1176-77.*

Before the two groups parted ways, Vance claimed that he and Owens switched guns – Owens taking Vance's .32 and Vance taking the .25 that belonged to Owens. *ROA pp.1178,*

[6] Vance did not explain how he came to know Owens. However, Owens was incarcerated in the Department of Juvenile Justice for over three and a half years prior to the crime. He was released from DJJ on July 7, 1997, less than four months before the crime occurred. *See Applicant's PCR Exhibit 2, Social History Chronology, at pp. 14, 17.* He was 19 years old. *See id. at p.17.*

1184. Vance stated that he and Young got as far as the Waffle House parking lot, but decided not to go inside. *ROA p.1179.* As they stood outside the Waffle House, they saw Owens and Golden running back across the Speedway parking lot. As the group jumped back into the car and drove away, Owens said that "[h]e shot that bitch in the head." *ROA p.1180-81.* He "[s]aid she wasn't opening the safe, so he shot the whore." *Id.* Vance explained that he retrieved his .32 from Owens, stashed it in some bushes, and then threw it off a bridge into a river the next day. ROA *pp.1184, 1187.* Vance stated that he knew "it was my pistol used in the shooting," and so he disposed of it because he "didn't want it to come up." *ROA p.1188.*

B. OWENS' PRISON BEHAVIOR

For part two of its presentation, the state pointed to Owens' history of violence and aggression in prison, starting with his detailed confession to killing Christopher Lee, his cell-mate at the Greenville County Detention Center on February 16, 1999, during the twenty-four hour waiting period between Owens' conviction for the murder of Ms. Graves and his first sentencing proceeding. In a statement written by SLED Agent Gary Dean Brown, Owens stated that Lee taunted him and claimed that Lee's cousin was on the jury that had just convicted Owens of murder. *ROA p.1337.* Owens then described his actions as follows:

> I then walked into his cell and hit him in the eye. He fell down on his back. I got on top and started hitting him mostly in the face and throat. I took a pen from his right hand and my right hand and stabbed him in his right eye. I then tried to stab him in his chest but the pen would not go in. I then stabbed him in his throat. I don't know if the pen went into his throat or not. He started bleeding out of his mouth. There was a sheet tied into a snare laying on his bed. I reached and got it and put it over his head onto his neck. I wrapped it around my left hand and pulled it tight. I started hitting him in the face with my right hand. Then I started choking him with my right hand and pounding his head against the floor. He never fought back after the first punch he was out of it. He was still breathing and the stuff coming out of his mouth stunk, so I stood up and stomped his head and body with my feet. I saw a

> black and blue lighter under the bunk. I grabbed it and burned him around the eye and on the left side of his head. I rammed his head into the wall. He was still moaning and breathing. I walked out of the cell to leave him alone. I heard the crazy moaning again, so I grabbed the pen off the floor where I had thrown it and went back into his cell. I got back over him and rammed the pen up his right nostril. I closed his left nostril with my left hand and started choking him with my right hand. The sheet was still around his neck. I was choking him above the sheet. Throughout all of the above he was moaning and breathing. I kept checking him to see if he was dead. I would check his pulse on his wrist, and I put my ear beside his neck and chest to hear if he was breathing. I wanted him to be dead at that time. I finally thought he was dead, so I threw him on his bunk and covered him up. The first time I put him on the bunk he fell off. I then packed my stuff and put my mattress on the table and went to sleep.

ROA pp.1337-38. The next morning, as the inmates were lining up for breakfast, Owens told an officer to "cuff" him, and advised the officer to go into Lee's cell. *ROA pp.1338-39*.

Second, the state attempted to introduce a set of records containing allegations of Owens' bad behavior in prison. *ROA pp.1354-55*. After trial counsel objected that the records were hearsay, the trial court ruled that the state could introduce a summary of 28 specific incidents, which stated:

- April 13, 2001, breaks toilet, sink and sprinkler.
- May 26, 2001, throws hot water on another inmate.
- May 27, 2001, had a six and a half inch shank made from fencing and toothbrush.
- June 14, 2001, spat on a correctional officer.
- February 8, 2002, a 14 inch solid brass shank.
- March 29, 2002, stabs correctional officer Smith in the face with a shank.
- June 12, 2002, stabs [A]ndre Golden in the shower.
- June 15, 2002, kicks an inmate who is restrained in a restraint chair.
- August 5, 2002, slaps a male nurse in the face.
- August 17, 2002, throws a food tray and hits officer Guess in the head.
- August 23, 2002, struck officer in the face with his fist.
- October 22, 2002, hits officer Eaton in face with the fist.
- October 23, 2002, sets fire to cell.
- December 22, 2002, shank made from fencing.
- December 30, 2002, a ten inch shank made from a push rod of the sink.
- July 17, 2005, spits in the face of officer Jones.

- August 26, 2005, slaps officer Henley in the face.
- August 31, 2005, sets fire to cell.
- September 11, 2005, threatens officer Jones.
- January 1, 2006, a 12 inch homemade knife.
- January 3, 2006, breaks cell door window with broom stick.
- January 13, 2006, throws feces on officer Williams hitting him in the face.
- February 3, 2006, spits in the face of another inmate.
- February 4, 2006, orally threatens officer Jones.
- February 28, 2006, a 12 inch weapon hidden between the mattresses.
- April 4, 2006, an eight and a half inch shank made from flat metal sharpened at the edge and wrapped with ace bandage.
- May 1, 2006, sets fire to his mattress.
- May 20, 2006, throws coffee on officer Smith.

ROA pp.1385, 1389-91; see also, State's 2006 Trial Exhibit 30, summary of prison incidents.

Major Thierry Nettles, from Lieber Correctional Institution where Owens was housed in 2006, also testified that Owens was "an ADD inmate. He's assaultive, destructive, and damaging. He's – he's, within that housing unit, bar none, my most problematic inmate." *ROA p.1392.*

C. VICTIM IMPACT TESTIMONY

Finally, the state offered victim impact evidence. Mary Hall, the victim's co-worker at the Speedway, testified that Irene Graves was a good worker who worked hard and sacrificed her own interests to support her three children. *ROA pp.1102-06.* Hall testified that Graves' death made her "feel guilty sometimes because I'm so glad it wasn't me," and stated that "it hurts me to think there is kids that have grown up without a mother." *ROA p.1106.*

Juliana Christy testified that she had worked as the victim advocate for the Greenville County Sheriff's office for fifteen and a half years. *ROA p.1266.* She described how she went to Ms. Graves' home on the morning of November 1, 1997, to tell Graves' two small children about their mother's death:

> [T]he prettiest little girl came to the door with long hair and pigtails that were braided and she had on a cheerleading costume and she had lipstick on and she was just precious. She was beautiful. And she came to the door and her eyes were huge and

> she said, 'where is my mommy?' . . . The little girl was Insley, Ms. Graves' daughter, and she kept repeating, 'where is my mommy?' And then a little boy came out from the back of the apartment and he had obviously just woken up. He just had his little boxer shorts on. And he came out into the front of the apartment and they both said that they were going to a cheerleading competition that day and they were waiting for their momma to get home to take them to the cheerleading competition. . . . And they kept saying, 'where is my momma?"

ROA pp.1268-69. Christy told the children that their mother had been hurt, and then Insley walked around in a daze crying and saying, "I want my mommy." *ROA p.1270.* As Christy made preparations to leave, she stated:

> [T]hey kept saying what happened, 'where is mommy? Where is mommy?' And I told them that their mommy was in Heaven. And that was extremely traumatic, once gain, of course. And Insley ran into her mother's room, and her mother's coat was hanging on the door on a hanger. And she asked if she could put that coat on. And, of course, I told her she could, and she just put the coat on and just wrapped it around her and was smelling the coat. And she kept the coat on. And we left and she went home with the friend – they both went home with the friend to wait for [their grandparents]. And I told them that I would come and meet with them when the [grandparents] arrived from Mullins. So that was hours later that afternoon. And I drove over to the friend's house and Insley still had that coat on. And she looked at me – we were by ourselves and she looked at me and said 'what do I do?' And she was a little girl, just a little girl. . ."

ROA p.1271. Christy concluded her testimony by describing the impact that these events had on her own fifteen-year career:

> This was the hardest, hardest case I have ever had to work on. I have never had to do death notification before, or since, and this is definitely the hardest case I have. It affected me the most deeply, and still does.

ROA p.1274.

V. THE DEFENSE'S MITIGATION CASE

A. PRESENTATION OF OWENS' LIFE HISTORY

Trial counsel began their presentation by calling Marjorie Hammock – their primary intended vehicle for conveying Owens' life history. After qualifying Hammock as an expert in conducting psycho-social assessments, Gibson asked her to describe her findings from Owens' assessment. Hammock testified:

> [W]hat we concluded was that this was a young man who was born to a woman who was I think 18 at the time and had one child, who had very limited resources and had difficulty caring for her family because of those limited resources. For that reason there were factors in their childhood which prohibited him from getting the kind of normal, comfortable, supportive environment that they needed.
>
> And it's also a great deal of violence in both the immediate experience that the client experienced, because he – his – both his stepfather and his father were described as very violent people, and his mother was a victim of that violence in many instances.
>
> Again, because of the limited resources, the children of Ms. Mason [Owen's mother] were removed when Freddie was about four years old and taken into custody in foster care where they stayed for a relatively short period of time. She worked very hard to get them back. But, again, there were – there was evidence of abuse and neglect, which is why the children were removed. And some of that neglect, at least, continued because the existence of the family was pretty marginal.
>
> The community also was one of considerable violence and concern on a regular basis. Freddie moved, and his family moved a number of times, and he also changed schools a number of times.
>
> In this instance he was somewhat of an outsider, and so he was always having to prove himself and defend himself. He was taught at an early age that in order for him to survive, he had to fight his way to and from school almost on a daily basis. His stepfather told me that it was necessary for this gentleman – this young man to learn how to take care of himself and to defend himself. So, in essence, what he was taught at a very early age is that he had to

> fight. And, so again, that kind of violence continued in his existence.
>
> He also had what we found out some fairly significant learning disabilities, learning impairments, and that was made even worse by the limitations in the home, which could not support him, and his educational deficits like he needed to be. So school failure was a part, not only of his existence, but it was part of his family. And those learning difficulties and disabilities compromised Freddie's ability to really develop the skills and the competence that he needed in order to feel good about himself and to succeed. So, again, it didn't help him to regard himself as a competent human being.
>
> All of these things put together provide a picture of a young man who did not have the interventions that he needed and it made him – it made it very difficult for him as a child to compensate for all of those losses. He developed the kind of coping strategies that made him always on the defensive, and those coping strategies you can find in the histories of children who are typically neglected and/or abused.
>
> He saw a lot of violence and he acted out on that violence, and he ended up, as we know, in juvenile and adult criminal activity.

ROA pp.1406-08. Hammock then described a genogram depicting Owens' family tree. *ROA pp.1408-11.* She noted that Owens "experienced witnessing family members who were engaged in using violence to settle problems. There was a considerable amount of incarceration, that of his brothers and his uncle." *ROA p.1408.* Hammock also mentioned that Owens' grandmother "did time for assaulting, shooting a family member." Then she concluded, "[s]o a history of losses, some violence, a great deal of instability, and this was Freddie's existence. I think that's it." *ROA p.1412.*

Gibson asked Hammock a single question regarding the effect that Owens' life history may have had on his actions:

> Q: Now, in your years of experience have you noticed any correlation between this type of family circumstance and a

person committing a crime or violence or anything like that?

A. Yes, I have. There is – there appears to be, both in the literature and then in casual observation, the kind of association with limited resources, considerable violence, neglect as a child, abuse in the environment and criminal behavior.

ROA p.1413. The state did not question Hammock. Her entire account of Owens' life history covers eight pages of the trial transcript. *ROA pp.1406-14.*

Next, trial counsel called Fain Maag, Owens' former third-grade teacher. *ROA p.1415.* She testified that "on the first day of school," Owens "threw a desk across the room and asked me what I was going to do about it." *Id.* She explained that Owens' had learning difficulties and his home environment was "sparse." *ROA p.1416.* Maag once took Owens a turkey for Thanksgiving. *ROA p.1417.* She described the talents she observed in Owens. He was "one heck of a runner," and he "was a very good artist." *ROA pp. 1418-19.* He was also able to "express himself beautifully" through poetry. *ROA p.1420.* Maag was Owens' teacher for only one year, but she continued to follow him afterwards because he made an impression on her. *ROA pp.1419-20.*

B. EXPERT DIAGNOSES AND OWENS' RECENT MENTAL HEALTH TREATMENT

The defense concluded its case with testimony from three expert witnesses. First, Dr. Tora Brawley, a neuropsychologist, testified that Owens has some mild impairment with his verbal memory and verbal learning skills, but he improved his IQ score over the years through reading and self-teaching. *ROA p.1427.* She noted that Owens had a history of depression. *ROA p.1430.* She described the scope of her work on the case as "very limited. In this proceeding, in this evaluation, I was asked to look at his brain function." *ROA p.1431; see also p.1434* ("I'm just a small part."). With regard to that narrow inquiry, Dr. Brawley found "there

were not big things wrong with Mr. Owens' brain," and she agreed with the solicitor's characterization of her findings as "not significant." *ROA p.1433.*

Next, Dr. Thomas Cobb, a forensic psychiatrist, testified that he began treating Owens at the prison in August of 2005, after Owens requested treatment because "he had been getting in a lot of trouble and wanted some help to stay out of trouble." *ROA p.1437.* Dr. Cobb diagnosed Owens with "impulse control disorder, not otherwise specified; and anxiety disorder, not otherwise specified." *ROA pp.1443-44.* He prescribed some medications to help Owens control his impulses and testified that he believed these medications were working because Owens "has had a reduced number of incidents." *ROA pp.1445-47.* On cross-examination, Dr. Cobb admitted that he had met with Owens on "two or three" occasions for approximately 15 minutes each before prescribing the medication. *ROA pp.1449-50.* He further admitted that he had not reviewed any of Owens' social history or criminal records and that he based his belief that Owens had recently improved on conversations with Owens himself and with prison guards. *ROA pp.1449-51.* Cobb did not review Owens' SCDC records to confirm his belief. Instead, he stated, "I admit I heavily rely on the correctional officers there, as well as my frankly asking Freddie, because I didn't have a list of all the disciplinary actions." *ROA pp.1452-53.* Dr. Cobb speculated that the nature of Owens' disciplinary incidents may have improved, even if their quantity had not diminished, but without having reviewed the records, he could only speculate. *Id.*

Finally, Dr. Donna Schwartz-Watts, also a forensic psychiatrist, testified about her evaluation of Owens. She explained that she "interviewed him three times," and "spent about ten hours with Mr. Owens." *ROA p.1461.* When asked about "any significant findings in [Owens'] developmental history," Dr. Watts noted that: (a) his mother was only 18 when he was

born; (b) Owens was more hyper than his siblings as a child, but his IQ was "a good bit higher" than theirs; (c) "he experienced a lot of physical abuse as a child;" (d) he witnessed an incident in which his grandmother "shot a family member" and another incident where his "stepfather took a machete to [Owens' mother] and chased her through the house." *ROA pp.1463-66.* Dr. Watts concluded, "[s]o those were the significant things in his childhood." *ROA p.1466.*

Dr. Watts testified that Owens was first treated for depression in 1997 in DJJ, but shortly after that, "he turned 18 and he had to be transferred to the Department of Corrections." *ROA pp.1467-68.* She testified that Owens exhibited "horrible behavior" in DJJ:

> he had a lot of write-ups in the Department of Juvenile Justice; very disruptive. Write-ups for singing in class, disrupting school. Write-ups sometimes for fighting other juveniles. He had a number of write-ups there.

ROA p.1470. After his transfer to the Department of Corrections, Owens "asked for psychiatric help . . . but he received none." *ROA pp.1468-69.* Dr. Watts diagnosed Owens with chronic depression; attention deficit disorder, in partial remission; and, antisocial personality disorder. *ROA pp.1477-81.*

On cross-examination, Dr. Watts agreed that "[m]edication ingestion is always voluntary," and acknowledged that even within the one year that Owens had been on Dr. Cobb's prescribed regiment, he had "already attempted to wean himself off of his medications." *ROA p.1491.* She also testified that Owens' DJJ records indicated that he was sent there "for burglary, second degree, two counts; unlawful possession of a pistol; and assault with intent to kill. And it states that he had shot a .38 in the direction of some other boys." *ROA p.1494.*

VI. THE STATE'S CLOSING ARGUMENT

In his closing statement, Solicitor Ariail returned to the comments he made during jury selection by arguing that the jury should consider that the state only seeks the death penalty in a

rare number of cases. *ROA p.1552.* He opened his argument by telling jurors that there are "thousands of cases that we have to handle in this court system every year." *ROA p.1547.* With regard to death penalty cases, he stated:

> Only limited circumstances are allowed for us to seek the death penalty, and rarely do we seek the death penalty in all those cases that are eligible. In only certain cases do we choose to seek the death penalty. This is a legal process. It is a process – it is a function of government.

ROA p.1552. Next, Ariail discussed his decision to seek death in Owens' case. *ROA p.1553* ("It's a tough decision for me to ask you to do it when we seek the death penalty, but responsible people make responsible decisions all the time."). And, he stated his personal view on what Owens' punishment should be:

> They have said earlier that the solicitor is not satisfied with a life sentence, and I am not, and that's why we have asked for the death penalty. They told you that I was going to want the death penalty, and I do. Why is the death penalty the appropriate punishment? That's a fair question for you to ask, and that's a fair one for me to answer. And the answer is very simple. There are mean and evil people in this world who do not deserve to continue to live with the rest of us, regardless of how confined they may be. The law limits the right to seek the death penalty to a very select number of cases, very few, and we seek the death penalty in only a few, but the circumstances where we seek it is available for mean and evil people who commit atrocious acts of murder; the worst of the worst. That's what the death penalty is reserved for. Those whose behavior sets them apart even from the criminal world, and that is Freddie Owens.

ROA p.1555. He called on Officer Joe Wood's "cold chills" testimony as further support for his view that Owens' was one of those rare cases:

> [H]is disrespect is so apparent that it put chills on the neck of Joe Wood, who said he had been a detective for over 25 years, and he was only one of two people, Freddie Owens, who put chills on his neck. And that's the reason, because Freddie is a unique person. . . . He's cold. He's unfeeling.

ROA pp.1559-60.

Ariail argued that a life sentence would be an insignificant punishment – no more than "a change of address" for Owens:

> Sure, you and I may think going to prison would be a serious thing, and it would be, but what about Freddie Owens? Big prison is like a little city. In prison he will have all the necessities of life. Sure, he will be in solitary, but he will still have food to eat. They will provide him with clothes. He will have books to read. He will be able to recreate and exercise. He will have doctors to take care of him. He will have the clothing that they provide, and he will have contact with his family and loved ones, and TV at times, and he will have family business. Not much more than a change of address for Freddie Owens. So don't think putting Freddie Owens in prison for the rest of his life is going to be a significant punishment for him. The death penalty is the appropriate punishment.

ROA p.1561; *see also, ROA p.1555* (referencing life as "a minimal sentence"); *ROA p.1557* ("Does this case deserve the minimum penalty?").

Ariail argued that the defense had failed to prove Owens deserved life instead of a death sentence. *ROA p.1554.* ("If they ask for mercy, ask them to show you one shred of evidence for any reason why he deserves mercy more than he deserves justice."). He disparaged Owens' mitigation evidence. *ROA p.1555.* ("He wrecked all of these peoples lives and he can't just argue that he had a bad upbringing, or his parents didn't treat him right, or that he should have had a better chance in life and get a minimal sentence."). And, he characterized Owens' history as one full of opportunities that Owens simply refused to take:

> Remember that Freddie could have made something of himself. He had a mother who did the best she could by him. That's what was testified by the psychiatrists. A teacher who cared about him, beyond normal expectations, gave him special help. He had average intelligence. In fact, his intelligence, IQ, has increased over the years. He was artistic. He was athletic, but he chose another route. He chose a route to be a predator and he chose a route to be a killer.

ROA p.1561.

Finally, Ariail urged the jury to impose a death sentence for the greater good of the community and the State as a whole:

> [A]s you speak for this community and make this decision, whatever decision that you will make, it will ring like a bell outside of this courthouse. It will ring like a bell to be heard by all who are listening and all who will listen. And I urge you on behalf of the State of South Carolina and this community to let that bell ring, to let people know that people who commit murders of this atrocity and have conduct of this type is something that we will not tolerate without the maximum punishment.

ROA pp.1562-63.

The jury returned a death verdict after one and a half hours of deliberation. *ROA p.1606.*

VII. POST-TRIAL PROCEEDINGS

Chief Appellate Defender Joseph Savitz represented Owens on direct appeal. Savitz raised a single preserved issue – whether the trial judge erred in admitting the list of Owens' prison disciplinary actions. The South Carolina Supreme Court ruled that trial counsel had not preserved a Confrontation Clause or Due Process argument regarding these records, but had only preserved an objection based on state hearsay grounds. *State v. Owens*, 378 S.C. 636, 664 S.E.2d 80 (2008). The Court ruled that the records fell within the business records exception to South Carolina's hearsay rule, and affirmed Owens' death sentence on July 14, 2008. *Id.* The Court denied rehearing on August 8, 2008. The United States Supreme Court denied *certiorari* on January 21, 2009. *Owens v. South Carolina*, 129 S.Ct. 1004 (2009).

Owens filed an initial application for post-conviction relief *pro se* on January 29, 2009. This Court appointed the undersigned counsel to represent Owens on March 27, 2009. Through the assistance of counsel, Owens amended his PCR Application on May 26, 2009, and filed a

second amended application on June 15, 2010. This Court held an evidentiary hearing in Greenville County on July 19-20, 2010. The parties agreed to a post-hearing briefing schedule to begin upon receipt of the hearing transcript. Accordingly, Owens hereby submits this post-hearing memorandum.

LEGAL PRINCIPLES GOVERNING INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS[7]

"An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense." *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)); *see also, Porter v. McCollum*, --- U.S. ---, 130 S.Ct. 447, 452 (2009) ("To prevail under *Strickland*, [petitioner] must show that his counsel's deficient performance prejudiced him."). "To establish deficiency, [Owens] must show that his 'counsel's representation fell below an objective standard of reasonableness.'" *Porter*, 130 S.Ct. at 452 (citing *Strickland*, 466 U.S., at 688). Attorney performance is measured by "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. "To establish prejudice, [Owens] 'must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Porter*, 130 S.Ct. at 452 (citing *Strickland*, 466 U.S. at 694). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

[7] Owens' Second Amended Application for Post-Conviction Relief exclusively alleges claims of ineffective assistance of counsel. Accordingly, this section provides a general overview of the law controlling ineffective assistance of counsel claims, which is relevant to all of Owens' grounds for relief.

I. DEFICIENT PERFORMANCE

In its recent decisions in *Sears v. Upton*, --- U.S. ---, 130 S.Ct. 3259 (2010), and *Porter v. McCollum*, --- U.S. ---, 130 S.Ct. 447 (2009), the United States Supreme Court underscored several well-established principles governing *Strickland* claims. First, with regard to deficient performance, it has long been clear that prevailing professional norms require trial counsel to conduct a thorough investigation of a capital defendant's life and background:

> It is unquestioned that under the prevailing professional norms at the time of Porter's trial [in 1988], counsel had an 'obligation to conduct a thorough investigation of the defendant's background.'

Porter, 130 S.Ct. at 452-53 (citing *Williams v. Taylor*, 529 U.S. 362, 396 (2000) (discussing trial counsel's duty to conduct a thorough investigation in 1986). In *Wiggins*, the Court stated that "well-defined norms" as far back as 1989 required trial counsel to investigate "*all reasonably available* mitigating evidence," including "medical history, educational history, employment and training history, *family and social history*, prior adult and juvenile correctional experience, and religious and cultural influences." 539 U.S. at 524 (emphasis in original) (citations omitted).[8] Where counsel fail in this obligation, they necessarily lack the information required to make strategic judgments concerning the selection and presentation of evidence, and deference to decisions made under such conditions is inappropriate. *Porter*, 130 S.Ct. at 453 (affording no deference to trial counsel's judgments where "like the counsel in *Wiggins*, he ignored pertinent avenues for investigation of which he should have been aware").

[8] Counsel's duty to investigate exists even if a capital defendant and his family members are uncooperative or suggest that no mitigating evidence is available. *Porter*, 130 S.Ct. at 453 ("Porter may have been fatalistic or uncooperative, but that does not obviate the need for defense counsel to conduct *some* sort of mitigation investigation); *Rompilla v. Beard*, 545 U.S. 374, 381 (2005) (noting that Rompilla was "uninterested in helping" and that he "was even actively obstructive" to the mitigation investigation, before finding counsel's independent investigation constitutionally inadequate).

Further, the Court has condemned "*post-hoc* rationalization of counsel's conduct" by reviewing courts, and established that it is reversible error to "merely assume that the investigation was adequate." *Wiggins*, 539 U.S. at 526-527. Instead, a reviewing court must "conduct an assessment of whether [counsel's] decision . . . actually demonstrated reasonable professional judgment." *Id.* at 527. In doing so, the court must focus on whether the investigation said to support counsel's decision was *itself* reasonable. *Id.* at 528; *see Sears*, 130 S.Ct. at 3265 ("We have rejected any suggestion that a decision to focus on one potentially reasonable trial strategy . . . can be justified by a tactical decision when counsel did not fulfill their obligation to conduct a thorough investigation of the defendant's background.") (citing *Williams v. Taylor*, 529 U.S. 362, 396 (2000)).

II. PREJUDICE

Sears and *Porter* also highlight deeply-rooted principles regarding the prejudice inquiry under *Strickland*. First, a proper prejudice analysis requires a "probing inquiry" during which the reviewing court must "consider the totality of the available mitigating evidence – both that adduced at trial, and the evidence adduced in the habeas proceeding – and reweigh it against the evidence in aggravation." 130 S.Ct. at 3266 (citing *Porter*, 130 S.Ct. at 453-454). The test is not whether a defendant would have received a life sentence absent counsel's deficient performance. *Porter*, 130 S.Ct. at 455-456 ("We do not require a defendant to show 'that counsel's conduct more likely than not altered the outcome' of his penalty proceeding, but rather that he establish 'a probability sufficient to undermine confidence in [that] outcome.'") (citing *Strickland*, 466 U.S. at 693-694)); *see also, Porter*, 130 S.Ct. at 451 (holding the state court conducted the wrong prejudice analysis by concluding "that even considering [the new mitigation evidence developed in post-conviction], the 'trial judge and jury still would have imposed death.'"). Rather, the

question is whether "the undiscovered evidence, taken as a whole, might well have influenced the jury's appraisal of [petitioner's] culpability." *Rompilla*, 545 U.S. at 393. In *Rompilla*, the Court carefully reviewed the totality of the mitigation evidence developed in post-conviction, compared it to the mitigation case presented at trial, and concluded:

> This evidence adds up to a mitigation case that bears no relation to the few naked pleas for mercy actually put before the jury, and although we suppose it is possible that a jury could have heard it all and still have decided on the death penalty, ***that is not the test.*** It goes without saying that the undiscovered mitigating evidence, taken as a whole, might well have influenced the jury's appraisal of Rompilla's culpability, and the likelihood of a different result if the evidence had gone in is sufficient to undermine confidence in the outcome actually reached at sentencing.

Id. (emphasis added) (citing *Wiggins*, 539 U.S. at 538; *Williams*, 529 U.S. at 398; and, *Strickland*, 466 U.S. at 694). Prejudice is established if "there is a reasonable probability that at least one juror would have struck a different balance." *Wiggins*, 539 U.S. at 536.

Second, a proper prejudice analysis, taken in the context of a claim of ineffective representation in a capital sentencing proceeding, must necessarily be conducted through the lens of a capital defendant's constitutional right to present *all* available mitigating evidence. *See Porter*, 130 S.Ct. at 454 (holding trial counsel's failure to present evidence of Porter's military service, childhood history of physical abuse and learning difficulties was prejudicial because they failed to present "evidence which 'might well have influenced the jury's appraisal of Porter's moral culpability'") (citing *Williams*, 529 U.S. at 398); *see also, Penry v. Lynaugh*, 492 U.S. 302, 319 (1989) ("'[E]vidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background . . . may be less culpable."). "Indeed, the Constitution requires that 'the sentencer in capital cases must be permitted to consider any

relevant mitigating factor.'" *Porter*, 130 S.Ct. at 454-455 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982)).

Furthermore, a prejudice analysis under *Strickland* must account for all of the ways in which counsel's deficiencies affected the jury's appraisal of the issues. *See, e.g., Williams*, 529 U.S. at 397-98; *Sussman v. Jenkins*, 636 F.3d 329, 360-61 (7th Cir. 2011); *Richards v. Quarterman*, 566 F.3d 553, 571-72 (5th Cir. 2009); *Morales v. Mitchell*, 507 F.3d 916, 936 (6th Cir. 2007).

GROUNDS FOR RELIEF

I. TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE BY FAILING TO INVESTIGATE AND PRESENT READILY AVAILABLE MITIGATING EVIDENCE.[9]

A. THE MITIGATION STORY THAT TRIAL COUNSEL NEVER TOLD

At the PCR hearing, Owens presented the testimony of Dr. James Garbarino, an expert in the psychological effects of trauma and violence on children.[10] *Tr. p.197.* Dr. Garbarino reviewed documents related to: (a) Owens' life and background; (b) the "social history developed by professionals involved in this case previously;" (c) information regarding Owens' incarceration in DJJ; (d) "reports from other expert witnesses in earlier trials;" and, (e) "a chronology of family events in Freddie's life." *Tr. p.199.* He also interviewed Owens in person and had a brief phone conversation with him as well. *Id.* Based on Dr. Garbarino's review of Owens' life history, as well as his research and expertise in his field of child development and

[9] This section discusses claims 10 & 11(b)(5) and 10 & 11(b)(6) in the Second Amended Application For Post-Conviction Relief.

[10] Dr. Garbarino is a professor of psychology at Loyola University in Chicago. *Tr. p.193.* He is "the author of more than 20 books and about 150 scholarly articles; [a]ll dealing in one way or another with child development, trauma, child abuse, [and] violence." *Tr. p.195.* He has been qualified as an expert to testify in court approximately 30 times. *Tr. p.197.*

the effects of childhood trauma, Dr. Garbarino reached a number of relevant conclusions. Part One of this section gives an introduction to the ways in which trauma negatively affects the development of children. Part Two discusses Dr. Garbarino's testimony regarding specific developmental "risk factors" and the effects of their accumulation. And, Part Three explains Owens' childhood exposure to trauma and other risk factors, and describes the results of the accumulation of those factors in his life.

1. THE EFFECTS OF TRAUMA ON CHILDREN

Dr. Garbarino explained that all children require some basic things in order to achieve healthy and stable psychological development. They need: (a) "positive attachment relationships with key adults;" (b) "safety and security, particularly, in the early childhood;" (c) "[o]pportunities for educational development;" (d) "basic physical and emotional care from parents or other caregivers;" (e) "[a]cceptance by parents;" and, (f) a "positive sense of identity." *Tr. pp. 199-200.*

Trauma occurs when a person is exposed to "the simultaneous experience of overwhelming negative arousal and overwhelming negative cognition." *Tr. p.200.* Overwhelming negative arousal is "feeling flooded, feeling terrified, feeling like your emotional circuits are blown." *Id.* Trauma results when these feelings are combined with an "overwhelming negative cognition," such as when a person realizes his "utter vulnerability, the feeling of total threat, the feeling of having no control over your fate." *Id.* "Those two elements together seem to produce what we typically call trauma." *Id.* Exposure to trauma teaches children that "the human body [is] very fragile;" that "adults can't protect you;" and that people are capable of unthinkable things. *Tr. pp.201-203.* Trauma can come in many forms, including physical, sexual or emotional abuse and experiencing or witnessing acts of violence in the family

or community. *See Tr. p.206* ("There are many studies that point to the effect of observing first-hand violence committed against others in prisons, in refugee camps, in war zones, in violent neighborhoods and in families.")

Children are especially vulnerable to trauma because of their inability to generate a "fight or flight" response. *Tr. p.207.* Adults who are "faced with a terrifying situation" typically "either flee or fight back." *Id.* But young children are too weak and inexperienced to cope in that manner. Instead, they are more likely to "dissociate," or "to emotionally disconnect from the situation." *Id.* This is "a very normal self-protective response, but it also carries with it the risk of causing other problems down the line." *Tr. pp.207-208.*

Chronic trauma – "where a trauma becomes a frequent occurrence, almost part of the fabric of daily life" – is also particularly problematic for children because it produces

> a developmental adjustment, where you begin to change your whole pattern of thinking and feeling and behaving to accommodate to this reality that you have been in jeopardy, are in jeopardy, [and] will probably continue to be in jeopardy. So it tends to have more effects on what you think about the world, how you see yourself, how you shape your personality, [and it has] much more far-reaching effects.

Tr. p.205. Dr. Garbarino explained that chronic exposure to trauma erodes a child's "sense of future orientation," which is "the expectation that you will live in the future and so you are motivated to do things in the future that contribute to that." *Tr. p.208.* Children who have hope for the future will learn to act according to that belief. "But one of the effects of trauma, particularly repeated chronic trauma is to reduce the sense of future orientation," and replace it with hopelessness, or "terminal thinking." *Id.*

Finally, Dr. Garbarino described how trauma resulting from child abuse is particularly damaging for children:

> the traumatic effect [of child abuse] is magnified because the people that you were counting on to be your basic security and acceptance and support are the people who are delivering the traumatic experience. It is particularly debilitating.

Tr. pp.209-210.

2. THE RESULT OF ACCUMULATED RISK FACTORS OVER TIME

Childhood trauma is just one factor among many that have been shown to negatively impact child development and increase the likelihood that a child will later engage in violent crime. Dr. Garbarino testified that a "risk factor" is "some variable, some experience, [or] some characteristic which, on average, pushes a child in adolescence in a negative direction as opposed to what might be called a developmental asset which pushes them in a positive direction." *Tr. p.210.* He identified a variety of risk factors, including: (a) poverty; (b) absence or abandonment by a parent, particularly fathers; (c) substance abuse of a parent; (d) low educational attainment in a parent; (e) racism; (f) boys who must play the role of their mother's protector; and, (g) coming from a family with a history of violence. *Tr. pp.210-219.*

Dr. Garbarino noted several specific risk factors that are known to be particularly problematic for young boys. For example, he testified that parental abandonment is "one of the most powerful single risk factors" because "parental rejection, by itself, seems to account for about 25 percent of all bad development in kids." *Tr. p.214.* There have been "hundreds of studies on father abandonment and its impact on children or teenagers," and "[a] lot of lists of risk factors put father absence for boys as near the top – something that is very risky or dangerous." *Tr. pp.214-215.* The presence of an abusive father or father-figure contributes significantly to "boys' development of aggressive beliefs and behaviors." *Tr. p.216.* Another common risk factor for a boy is playing the "role of being their mother's protector as a young child." *Id.* Being forced to take on a "man of the house" role places responsibilities on young

boys that they are not yet equipped to handle and reduces their mother's ability to effectively discipline and guide them. *Tr. p.217* ("[T]hey quite rightly say, I've been protecting you all these years, you know, who are you to tell me what to do."). Finally, Dr. Garbarino identified exposure to racism as a significant risk factor "because of its communication of the message of rejection and because of its historical impact on identity." *Tr. p.219.*

But, Dr. Garbarino explained, numerous studies have shown that it is not the impact of *a single risk factor* that disables a child. Rather, it is the *accumulation* of these factors – or the buildup of negative influences and the lack of compensatory positive influences over time – that does the damage. *Tr. pp.211-213, 219.* For example, Dr. Robert Zagar and his colleagues conducted a study finding that a boy's chances of committing murder are doubled if he has been exposed to four risk factors: "being an abused child, being in a family with family violence, being in a gang, [and] having substance abuse problems." *Tr. p.212; see* Robert Zagar, *et. al.*, *Adolescents Who Kill*, 46 JOURNAL OF CLINICAL PSYCHOLOGY 4, pp.472-485 (July 1990). Zagar later found that there were "four more factors that tripled the risk," which included neurological problems, difficulties in school and poor attendance, exposure to weapons, and having a prior arrest. *Tr. p.212.* Another study by the Search Institute in Minnesota looked at a list of 40 positive developmental assets. *Id.* Only six percent (6%) of children who had between 31 to 40 of those positive assets were involved in violent behavior, but sixty-one (61%) of children who had only 10 assets or less had engaged in violence. *Tr. pp.212-213; see, e.g.,* Research Institute, THE POWER OF ASSETS, *available at http://www.search-institute.org/research/assets/assetpower.* Thus, the issue is not whether an individual child has a particular risk factor in his life, but rather, how many risk factors are present and how many positive assets the child has to offset those negative influences. *Tr. pp.210-213.*

Dr. Garbarino testified that a young boy exposed to a high number of risk factors over time comes to understand how the world works through the lens of his own abuse and trauma. He undergoes a developmental adjustment and adopts a "code" of behavior, which is a new pattern of thinking and behaving designed to help him cope with his circumstances. *Tr. p.220.* The "code" refers to a persona that the boy adopts to show he is "in control" and is "a strong, powerful person." *Id.* According to the code, "negative feelings like sadness and fear need to be hidden and not displayed because they are viewed as signs of weakness." *Id.* Dr. Garbarino explained that, for boys, "one of the ways this issue of the code is manifest" is through aggressive "masking" behavior:

> males don't display symptoms of depression as easily because it's taken as a sign of weakness. They mask their feelings of sadness. They mask their feelings of fear. They mask their feelings of hopelessness and despair. . . . [T]he masking is this aggressive, tough persona that they present to the world. Often beneath that is someone who is very scared, very sad, very depressed.

Tr. p.221.

3. OWENS' LIFE-LONG EXPOSURE TO ACCUMULATED RISK FACTORS

Based on his review of Owens' life history, Dr. Garbarino concluded:

> Freddie Owens had almost all of the risk factors that I've ever read about. I would be hard-pressed to think of any that he didn't have.

Tr. p.221. This section details the evidence relevant to each specific risk factor over the course of Owens' life history, drawing from Dr. Garbarino's testimony, the PCR hearing exhibits, and prior trial testimony.

a. EARLY CHILDHOOD EXPOSURE TO RISK FACTORS

i. PARENTAL ABANDONMENT AND NEGLECT

Owens' mother, Dora Diane Mason had five children over a period of six years with Owens' father, Freddie Eugene Massey (hereafter, "F.E. Massey"). *Applicant's PCR Exhibit 2, p.2.* Dora was sixteen (16) years old and F.E. Massey was nineteen (19) when their first child, Marie Owens, was born in 1976. *Id.* Freddie Owens was their second child, born one and a half years after Marie. *Id. at p. 6.* Four years later, Dora had also given birth to Owens' younger siblings: Donald Andrew Owens (b. 1979), Lorenzo Owens (b.1981), and Satail Owens (b.1982). *Id. at p.1.* "Dora continued to live at home with her mother, Mary Mingo, after the births of each of her five children." *Id. at p.6.* Owens parents "never married," and F.E. Massey "refused to pay child support," even under court order to do so, and he "never supported Dora's five children." *Id. at p.2; see Applicant's PCR Exhibit 11, at pp.11-16; 35-39.* F.E. Massey was absent for the bulk of Owens' childhood, spending his time in and out of prison for a variety of violent criminal arrests. *Applicant's PCR Exhibit 2, at p.2; see also, infra, FAMILY HISTORY OF CRIMINAL VIOLENCE AND PHYSICAL ABUSE.*

When Freddie Owens was only one year old, the Department of Social Services ("DSS") began investigating claims of physical neglect against Dora Mason. *Applicant's PCR Exhibit 11, DSS Records, at p.1.* The primary concern at this time was "due to lack of finances." *Id.* The Greenville hospital clinic reported that it "was concerned about Donald because of lack of weight gain." *Id.* When Owens was four years old, DSS received a second complaint "alleging educational and physical neglect." *Id.* A social worker made a home visit on February 4, 1983, and found that Marie Owens was not properly enrolled in school. *Id.* Dora Mason was living with her mother, Mary Mingo, where "the apartment was very crowded." *Id.* The social worker

advised Dora that she "need[ed] to apply for AFDC [Assistance for Families with Dependent Children] and enroll Marie in school." *Id.* The next month, the social worker returned for a follow-up visit, but found that Dora still "had not enrolled Marie in school," nor had Marie received her vaccination shots. *Id.* Again, the social worker "stressed to [Dora] that Marie had to be enrolled in school no matter what the reason," and advised her that "[t]he Health Department could get Marie's shots up to date." *Id.*

Two months later, DSS received a third complaint against Dora Mason, "alleging abuse, physical and educational neglect." *Id. at p.2.* This time, the social worker's home visit revealed that "the children had ticks" and "Marie was still not attending school." *Id.* The social worker reported that Dora Mason, "as a parent, has a long history of marginal child rearing practices." *Id.* The caseworker observed Dora "appears to be unable to care for [her children] properly," and concluded that, "[f]ive children from ages seven to one year demand more time, money, energy and motivation than [Dora] has available to her." *Id.*

Later that same year, on August 16, 1983, the Greenville Police Department received a call alleging that Owens and his siblings had been left alone at home. *Id. at p.4.* Upon arrival, officers found all five children "unattended by an adult or other suitable baby sitter." *Id. at p.8.* "A witness told the Officers that the mother had been gone for some time." *Id. at p.4.* Inside the apartment, "the Officers found that the electrical power was disconnected, there was no food in the house, [the] bathtub contained six inches of standing water, and pans with old food in them." *Id.* Owens and his siblings were taken into emergency protective custody and transported to Pendleton Place. *Id.* "The staff at Pendleton Place noted, as did the police, that the children were filthy and hungry." *Id.* DSS workers reported that Dora Mason had been previously

known to the agency due to child neglect and that she "has not ceased her neglectful behavior in regard to her children." *Id. at p.5.*

After a full hearing, the family court held that the allegations of neglect were substantiated. *Id. at pp.11-16.* The court found that Dora Mason was "not employed," and "has no income and lives in a residence at this time with no electricity." *Id. at p.13.* The whereabouts of F.E. Massey were unknown. *Id. at pp.13, 17.* The court ordered that the Owens children remain in protective custody, where they stayed for approximately one year. *Id. at pp.14, 17-18.* Documents attached to a November 15, 1985 family court order closing the DSS case noted their "father has had no contact with the children since 1983." *Id. at p.27.* Years later, Owens' former middle-school teacher, John Pressley, reported that, at age thirteen, Owens did not have clean clothes to wear to school; he was "basically unkempt, basically wore the same thing, more or less two or three pants;" (*1999 Record on Appeal at p.3234-35*) and, he had no one at home to support his educational development:

> Maybe educational-wise they didn't know how to support him. There was no coming to PTA meetings or open house, they were not in attendance there. No one was coming to sit down and have a conference to see what can we do to help Freddie improve his grades. Freddie was with the attitude, "there is no one there at home that cared about my grade, no one here that cares about my grades."

1999 Record on Appeal at p.3241.

ii. TRAUMA

Dr. Garbarino labeled the area where Owens grew up as "a war zone neighborhood," which he described as:

> the kind of neighborhood where community violence was very common. The police were often called or lots of incidents go

> unreported to police. Lots of exposure to traumatic violence. The kind of experience that many people would never encounter in their entire lives, children in these neighborhoods encounter it with some regularity and frequency.

Tr. p.223; see also, Tr. p.213 (explaining more generally what is a "war zone neighborhood"). In this environment, Owens witnessed and experienced trauma on a regular basis. His social history is replete with "evidence of traumatic exposure." *Tr. p.225.* Over his lifetime, Owens witnessed "dead bodies, . . . acts of severe violence, people being hit in the head, people being shot, bodies that were shot, whippings with electrical cords, . . . the torture and rape of a young girl, a girl who stabbed to death his pet rabbit, children being beaten because the perception was that they might be gay." *Tr. p.225.*

For example, when he was approximately 10 or 11 years old, Owens was riding in a car when he witnessed another person in the car shoot someone "point-blank in the face." *Tr. p.230.* Owens recalled seeing the victim's blood and bone fragments blow out and splatter onto his own face. *Id.* Around this same time-frame, Owens saw a young girl "being sodomized and raped by three men in the clearing of a path that he used to walk home by." *Tr. p.231.* He witnessed "the afermath of that," and recalled seeing the girl's "bloody clothing" on the ground. *Tr. p.225.* Owens was so terrified by this event that "[h]e didn't go out of the house for weeks afterward." *Tr. p.231.* A couple of years later, Owens found two dead bodies in a house in his neighborhood following a murder suicide. *Tr. p.232.* One of the victims was "a member of [Owens'] extended family." *Id.*

These events are just a few examples of the traumatic violence that became part of the daily fabric of Owens' childhood. He also experienced a vast amount of trauma and abuse in his own family, and he personally experienced physical and sexual abuse. *See, infra, FAMILY HISTORY OF CRIMINAL VIOLENCE AND PHYSICAL ABUSE; and, SEXUAL ABUSE.* In sum, Dr. Garbarino

concluded that Owens life history contains "a whole list of traumatic events" which is "extensive and come[s] from so many different sources that I think it is extremely unlikely that all of these sources could be misrepresenting the nature of his experiences." *Tr. p.225.*

iii. FAMILY HISTORY OF CRIMINAL VIOLENCE AND PHYSICAL ABUSE

F.E. Massey

Freddie Owens was born into a family filled with violence, criminal behavior and abuse. His biological father, F.E. Massey, "was extremely violent and came from a violent family." *Applicant's PCR Exhibit 2, at p.2.* In Owens' family, "harsh beatings from [F.E. Massey] were frequent and common place." *Id.* At the time of Owens' first trial in 1999, five relatives on his father's side were "in prison for murder." *Id.* Beginning at age seventeen, F.E. Massey has an extensive criminal history, including arrests for: (a) larceny; (b) auto tampering; (c) disorderly conduct; (d) multiple counts of trespassing; (e) failure to appear in court; (f) damage to private property; (g) multiple charges for driving under the influence; (h) no less than eight counts of assault and battery; (i) possession with intent to distribute crack cocaine; and, (j) unlawful possession of a firearm. *Id. at pp.6, 8-12.* On February 2, 2005, when Owens' was sixteen years old, F.E. Massey was arrested and charged with assault and battery of a high and aggravated nature ("ABHAN") after he "hit Viola Hill in the head with a beer bottle." *Id. at p.14.* Ms. Hill was "transported to the hospital and received stitches in her head." *Id.* Massey was incarcerated in SCDC for extended periods of time on at least four separate occasions. *Id. at p.2; see also, Applicant's PCR Exhibit 13, Freddie Massey's SCDC Records.*

Alex Bernard Mason

When Freddie Owens was approximately four years old, "Dora began a relationship with Alex Bernard Mason" (hereafter, "Bernard"), who periodically played the role of step-father,

when he was not imprisoned.[11] *Applicant's PCR Exhibit 2, at p.2.* "Bernard was also extremely violent and abusive." Dora described their home life as filled with "chaos and confusion," and reported that "[p]olice being called to the house was common in [her] relationships with both F.E. Massey and Bernard Mason." *Id.*

Shortly after Dora's relationship with Bernard began, he was "arrested and charged with ABWIK [assault and battery with intent to kill] for cutting Michael Lee Clark in the face with a knife at a local club. Clark received 32 stitches in his face." *Id. at p.7.* Bernard's criminal history contains extensive arrests, including: (a) shoplifting; (b) disorderly conduct; (c) grand larceny; (d) multiple counts of assault and battery; (e) rape; (f) possession with intent to distribute crack cocaine; (g) multiple counts of criminal domestic violence for assaulting Dora Mason; (h) failure to appear in court; and, (i) receiving stolen goods. *Id. at pp.7-8, 11-18.* On November 26, 1994, when Freddie Owens was sixteen years old, "Bernard Mason was involved in an altercation with Richard Carson. Mason cut Carson with a knife on his face and neck; Carson underwent surgery and was hospitalized." *Id. at p.13.* Bernard was later charged and convicted of ABWIK. *Id. at pp.13-15.* SCDC records document that Bernard had extensive prison disciplinary violations, a "history of assaultive behavior," and "poor adjustment to the institution." *Id. at pp.9, 13; see generally, Applicant's PCR Exhibit 14, Alex Bernard Mason's SCDC Records.*

By his own admission, Bernard Mason is an extremely violent person. *Applicant's PCR Exhibit 2, at p.3* (reporting that Bernard stated, "I am an extremely violent individual myself," and "he does not like when someone 'crosses' him."). He was abusive towards Owens' mother,

[11] Bernard and Dora Mason married on September 19, 1989, when Freddie Owens was eleven years old. *Applicant's PCR Exhibit 11, at p.32; Applicant's PCR Exhibit 2, at p.11.* They divorced four years later, (*Applicant's PCR Exhibit 11, at pp. 32-33*), but they remained together off and on throughout Owens life. *See generally, Applicant's PCR Exhibit 2.*

as well as the children. *Id.; see also, Tr. p.225* (Owens recalled receiving "whippings with electrical cords."); *Tr. p.226* (Dr. Garbarino testified that "[t]here are multiple reports of extreme corporal punishment in the form of whippings"). Regarding his abuse of Dora, Bernard explained:

> he would give [Dora] his paycheck to pay bills and then he would want portions of it back to go buy drugs and then more drugs – she would say 'no' or she would have already spent it and then he would get angry and beat her up – he says this story repeated itself over and over.

Applicant's PCR Exhibit 2, at p.3. Multiple records corroborate this account. For example, on August 26, 1989, when Freddie Owens was eleven years old, Dora Mason was seen at the emergency room after Bernard Mason assaulted her, striking her in the head and face with his fists, and breaking her nose. *Applicant's PCR Exhibit 10, Dora Mason Medical Records, at pp. 2, 4-5; see also, e.g., Applicant's PCR Exhibit 2, at p.14* (Bernard Mason arrested for criminal domestic violence ("CDV")); *id. at p.15* (arrested for CDV, 3rd offense; "Dora Mason reported that Bernard hit her in the mouth with a closed fist during an argument"); *id. at p.16* (Bernard arrested for CDV during an argument with Dora Mason; Dora told an arresting officer that she was afraid for her safety).

As his mother's oldest son, Freddie Owens tried to protect her and combat this abuse. *Tr. pp.226-227.* Dr. Garbarino testified that Owens "often slept on the floor in front of the door to his mother's bedroom to try to protect her." *Tr. p.227.* School records document that Owens "had trouble staying awake" in class and reported that "he could not sleep at night." *Id.* Owens eventually obtained a gun at a young age, after which he felt he was "able to be a more powerful, protective figure." *Id.*; *see also, id. at p.279* (reporting that Owens first got a gun around age 9 or 10). Dr. Garbarino also reported that "as the oldest boy in the family, it was [Owens'] job to

protect the other kids." *Tr. p.291.* He noted "repeated instances" where Owens and his siblings were "being bullied or attacked or threatened and [Owens] ultimately felt a responsibility to protect them." *Id. at pp.291-92.* Dr. Garbarino testified

> [i]t was very clear, given the message by his stepfather that anybody who disrespects you or infringes on you, you have to respond to that with violence and aggression. That was the message he was given very early on and learned, unfortunately, well.

Id. at p.292.

Indeed, it was Bernard Mason who "claim[ed] to be the one who 'had to teach Freddie how to fight and stand up for himself.'" *Applicant's PCR Exhibit 2, at p.4.* Bernard reported that as a young boy, "Feddie was continually picked on in the neighborhood." *Id.* "A gang of five would chase Freddie and his brother, [Donald] Andrew, home after they got off the bus." *Id.* To deal with this problem, "Bernard instructed Dora to lock the boys out of the house in order 'to make them learn how to fight.'" *Id.* According to Bernard, this "had to be done for Freddie's own good." *Id.*

Mary Mingo

The maternal side of Freddie Owens' family was equally violent. Owens was very close to his maternal grandmother, Mary Mingo, with whom he sometimes lived. *See Applicant's PCR Exhibit 2, at pp.2, 4, 10.* When Owens was seven years old, he witnessed a family friend, Jerome Smith, smash his grandfather over the head with a cinder block following an argument. *Tr. p.231.* After this happened, Mary Mingo shot Jerome Smith in the left leg as he was sitting on the porch of her home. *Id.; see also, Applicant's PCR Exhibit 2, at p.9.* Ms. Mingo was arrested and charged with assault and battery with intent to kill. *Applicant's PCR Exhibit 2, at p.9.*

Three years later, Freddie Owens witnessed a second violent offense by his grandmother when she shot her son-in-law in the stomach with a .22 pistol. *Id. at p.10.* Ms. Mingo "was under the influence at the time of her arrest." *Id.* She told arresting officers that she shot her son-in-law because he had stabbed her daughter (Owen's maternal aunt) the night before and then came after Ms. Mingo with a knife. *Id.* "All of this happened in the street in front of their house," where "Freddie was living with his grandmother at the time." *Id.* Ms. Mingo was again charged with assault and battery with intent to kill, and was sentenced to six years in prison. *Id.* She had one prior DUI conviction at the time of her sentencing. *Id.* Two years after her release from prison, Ms. Mingo was arrested for being a felon in possession of a handgun and falsifying information during the handgun purchase. *Id. at pp.4, 12.* She was sentenced to one year in prison for that offense. *Id. at p.12.* She died of a heart attack three years later, when Freddie Owens was sixteen years old. *Id. at p.13.*

Kathy Owens Walker

When Freddie Owens was seventeen years old, nearly all of his immediate family members were arrested following an altercation during which his maternal aunt, Kathy Owens Walker, stabbed his brother, Lorenzo Owens, in the abdomen. *Id. at p.4-5, 15.* On December 31, 1995, Lorenzo Owens "intervened in [a] fight between his aunt, Kathy Walker, and his sister [Marie Owens]." *Id. at p.15; see also, id. at p.5.* As a result, Kathy stabbed Lorenzo in the stomach. He "was transported to the hospital and received 25 stitches in his side." *Id. at p.15.* Later that day:

> Dora, Bernard, and all the children were at a party drinking [and] intoxicated. Dora and Bernard returned home first and began arguing and fighting. Dora called the police to have Bernard arrested. The police arrived and realized that Dora had several outstanding warrants for fraudulent checks. They arrested her. [Donald Andrew] (age 16) and Lorenzo (age 14), returned home to

> find their mother being arrested. They [were] each drunk and tried to intervene, a scuffle broke out, and they were also each arrested and charged with resisting arrest, interfering with a police officer and assault. During this scuffle, Lorenzo tore some stitches that he had received earlier in the day from the incident with his aunt. . . . By the end of this say, Dora, her sister (Kathy Walker), and her two sons were all sitting in jail from two separate incidents.

Id. at p.15.

Criminal histories of Owens' siblings

Both of Freddie Owens' brothers have criminal histories. His brother Donald Andrew Owens has an arrest record beginning at age fourteen, which includes charges for: (a) shoplifting; (b) assault; (c) rape; (d) burglary; and, (e) violation of probation. *Applicant's PCR Exhibit 2, at pp.2, 14, 15, 17.* He is currently serving a 10-year sentence for committing a lewd act on a minor under the age of fourteen. *See SCDC Incarcerated Inmate Search, available at* https://sword.doc.state.sc.us/scdc-public/. Donald has a full-scale IQ of 72.[12] "He failed the 4th and 6th grades" and had "high absenteeism" at school. *Applicant's PCR Exhibit 2, at p.5.* He "dropped out of school at age 17 – reading at a 3rd grade level." *Id.* "He reported to DJJ that he always carried weapons in the neighborhood at age 17 (Colt .32 and box cutter)." *Id.* He began drinking at age 16. *Id.*

Owens' brother, Lorenzo, also has a criminal history. He has been arrested for assault on at least two separate occasions. *Id. at pp.5, 15, 18.* Lorenzo "was expelled from J.L. Mann High School in October 1997 after being charged with simple assault [when] he beat a kid up at the bus stop on 9/30/97." *Id. at p.5.* His IQ has been measured at 62. *Id.* He failed kindergarten

[12] A diagnosis of mild mental retardation requires a full-scale IQ score of 75 or less. *See, e.g.*, INTELLECTUAL DISABILITY: DEFINITION, CLASSIFICATION, AND SYSTEMS OF SUPPORTS, 36 (American Association on Intellectual and Developmental Disabilities, 11th ed. 2010); American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR) 41-42 (4th ed. text rev. 2000).

and the 1st, 6th and 9th grades. *Id.* He suffered from seizures as a child, had numerous broken bones throughout his childhood, was knocked unconscious at age 12 or 13, and receives social security disability benefits. *Id.*

Owens' youngest sister, Satail Owens, has "a history of school problems, truancy and inappropriate behavior in school." *Id. at pp.5-6.* She has a full-scale IQ of 72, and has been classified by the school system as Educably Mentally Disabled. *Id. at p.6.* She was arrested on assault and battery charges for the same incident at the bus stop on 9/30/97 that involved her brother, Lorenzo. *Id. at pp.5, 18.*

Marie Owens is the only sibling without a prior arrest record.[13] However, Dr. Garbarino testified that she "left school at age 16 and has had a series of difficult relationships," as well as "mental health issues," including depression. *Tr. p.287-88.* Dr. Garbarino also explained that "boys are more vulnerable to these environments, particularly when it comes to criminal violence, than girls. That's pretty well established." *Tr. p.260.* Moreover, Dr. Garbarinio testified that the effect of traumatic environments "differs as a function of [the child's] temperament as well as their actual life experience." *Id.* He noted reports indicating "that as a little child, [Owens] was fearful," and sensitive. *Tr. p.237; see also, Tr. p.239* (reporting that Owens "cried a lot" as a child). Dr. Garbarino also noted that he had not reviewed Marie Owens' life experiences in detail. *Tr. p.260.* But, with respect to Freddie Owens, Garbarino found:

> He has so many experiences that any one of them would have lead, I think, in a middle class well functioning family, to a kid going into therapy or counseling. Any one of these incidents would have

[13] Marie may also have a different father than her other siblings. *See Applicant's PCR Exhibit 11, at pp.28-31* (Family Court records alleging that another man named Jimmy Webb is the father of Marie Owens).

> been deemed significant enough to initiate that kind of mental health intervention. As best I could understand, there [was] no mental health intervention for any of these incidents.

Tr. p.231.

iv. SCHOOL DIFFICULTIES AND NEUROLOGICAL IMPAIRMENTS

Freddie Owens began the first grade at Cone Elementary School, but transferred to San Souci Elmentary later that year. On January 24, 1985, Owens' teacher notified Dora Mason that he was failing the first grade and would have to be retained. He had been absent 20 days already during the first few months of school. During his second attempt at the first grade, Owens' teacher noted that his clothes were often dirty and he had excessive unexcused absences. He transferred to Pelham Road Elementary School in the third grade. He had difficulty mastering grade-level tasks. His teacher, Ms. Fain Maag, referred him for testing. Owens was tested and diagnosed with a learning disability in the fourth grade. His IQ was measured at an 85. He had difficulties with "poor impulse control, poor anger control, poor attention, poor intellectuality, poor academics and poor social conformity." He failed the fourth grade but was socially promoted.

Owens' absence from school continued throughout his educational history. In the fifth grade, the school officially notified Dora Mason and the Sheriff's Department that Owens had "excessive unexcused absences." In the sixth grade, Owens was given a follow-up psychological evaluation. By this time, he had moved to Greenville Middle School. His IQ was measured at an 84. He was removed from the special education program, but his actual grades revealed that he was failing in every subject. Owens repeated the sixth grade the following year.

During his second attempt at the sixth grade, Owens was sent to the Foothills Alternative School, where his grades improved and he was promoted. For the seventh grade, he returned to

Greenville Middle School, but the next year he enrolled in yet another alternative program, where his performance again improved. In the ninth grade, Owens enrolled at Eastside High School, where he attended for sixty days. He failed every class. He was committed to the Department of Juvenile Justice at age sixteen and never returned to school after that.

During Owens' first re-sentencing proceeding in 2003, Dr. Jim Evans, a neuropsychologist, testified that Owens suffers from brain dysfunction, which is not inconsistent with his past difficulties in school performance. *See 2003 Record on Appeal at p.417.* But, more significantly, Dr. Evans found that Owens' had dysfunction in "frontal lobe areas and certain right hemisphere areas, especially right temporal." *Id.* This particular type of brain dysfunction is likely to impact "emotional and behavioral responsivity" and would make it "difficult for [Owens] to control impulsive behavior." *Id.*

v. DRUG AND ALCOHOL ABUSE

Owens was exposed to drug and alcohol abuse at a young age. Both of the male figures in his life – his biological father, F.E. Massey, and his stepfather, Bernard Mason – were crack addicts. *Applicant's PCR Exhibit 2, at p.3.* His grandmother, Mary Mingo, was described as "the neighborhood bootlegger," (*id. at p.5*) and "an alcohol dependent." *1999 ROA at p.3247.* Numerous events over the course of Owens' childhood involved use and abuse of drugs or alcohol by various family members. *See generally, Applicant's PCR Exhibit 2.* Dr. Garbarino testified that it was clear Owens grew up around "family drug use." *Tr. p.228.* Owens recalled an occasion where his stepfather requested that Dora Mason purchase cocaine for him for his birthday, and she complied. *Id.* Dr. Garbarino also testified that "Freddie was drawn into the drug culture at a very young age and was involved with those drugs and, to some degree, perhaps

using drugs and alcohol." *Id.* He explained that drug and alcohol use was "very common among traumatized children as self-medication." *Id.*

vi. RACISM

Dr. Garbarino testified that Owens' exposure to racism was a risk factor during his life. He stated that it was "an undeniable fact that racism exists in America and that, as an African-American child, [Owens] would have encountered this growing up." *Tr. p.229.* As an example, he discussed a specific incident in foster care where Owens and other black foster children were "forced to live in the basement in very substandard conditions [while] the white children were kept upstairs." *Id.*

vii. SEXUAL ABUSE

Dr. Garbarino testified that Freddie Owens' "first two sexual encounters at age 12 were with [a] 34-year-old woman [and] a 30-year-old woman." *Tr. p.230; see also, id. at p.226.* One of these women "was a crack addict who offered to have sex with him in exchange for drugs." *Id. at p.230.* "The other woman also drew him in when he was 12." *Id.* Dr. Garbarino explained that these events constituted "statutory rape" and "classic sexual abuse." *Id.* Owens also had "other sexual encounters before the age of 16 with older girls and women, many of whom were drug addicted people." *Id.* Owens' DJJ records report that he had gonorrhea before age 16. *Id. at p.274.* Owens had no support system to teach him about appropriate and responsible sexual behavior. On the contrary, he reported that his family once "arrang[ed] for a prostitute to come as a birthday present for [his] 12-year-old brother." *Id. at p.226.* Owens continued to experience and witness sexual abuse after he was incarcerated in DJJ. *See infra, DEPARTMENT OF JUVENILE JUSTICE EXPERIENCES.*

b. DEPARTMENT OF JUVENILE JUSTICE EXPERIENCES

Freddie Owens was sixteen-years-old when he was committed to the Reception and Evaluation Center at DJJ in December of 1994. *See Applicant's PCR Exhibit 2, at p.14.* He was then transferred to the Birchwood Dorm on March 29, 1995, for permanent placement. *Id.* Shortly after his nineteenth birthday, Owens was transferred to SCDC to serve the remainder of his juvenile sentence in an adult prison at Turbeville Correctional Institution. *Id. at pp.16-17.* He was released later that year on July 7, 1997. *Id. at p.17.* The murder of Ms. Irene Graves occurred approximately four months later, on November 1, 1997.

Dr. Garbarino testified that when Owens entered DJJ, he encountered "a system in which the issues of violence, sexual and physical violence, continued, if not were magnified." *Tr. p.233.* When he entered this environment, Owens was in "a very vulnerable state," and he was forced to adapt to his new surroundings by becoming "more and more violent and dangerous." *Id.* For example, when Owens was admitted to DJJ, "he was described as being sort of a skinny kid." *Id.* "[H]e was about 147 pounds, 5 foot 10 when he entered." *Id.* By the time Owens left the DJJ system, he had "begun to exercise and lift weights and do pushups and built himself up physically to become more strong and intimidating." *Id.* Other inmates reported that Owens would "cry a lot when he first came into DJJ." *Tr. p.239.*

The DJJ institution was overcrowded, understaffed, and filled with violent inmate-on-inmate attacks. *See, e.g., Tr. p.236* (noting a "widespread pattern of . . . crowding, lack of supervision" and inappropriate conduct by staff members); *Applicant's PCR Exhibit 7* (describing extensive inmate violence in South Carolina's juvenile facilities at this time); *Applicant's PCR Exhibit 8, at p.5* (finding DJJ facilities to be at three times their maximum

capacity in December of 1995). Owens reported that he was forced to fight back "as a necessary survival strategy." *Tr. p.293.* Dr. Garbarino explained that fighting

> was also a way to send a message that you were not to be attacked and you were a strong person and that even if you . . . were defeated, you got more respect for fighting back. The worst possible thing was to be a passive victim. It was much better to fight, hurt other people, even hurt yourself in the course of these fights in order to establish your position and protect yourself.

Tr. pp.293-94. Owens' former contemporaries corroborated this account, recounting "the frequency of assaults and fights and necessity of fighting." *Tr. p.235.* "Some of them spoke about initiation rituals where the new boys were told they had to fight their way out of rooms." *Id.* Dr. Garbarino testified that Owens still has scars on his body that "were attributed to various fights and assaults that took place" in DJJ. *Id.*

Dr. Garbarino testified that Owens also witnessed and experienced sexual abuse in DJJ. First, "there were numerous incidences" during which Owens "observed threatened or actual sexual assault that occurred in his presence." *Tr. p.234.* "[H]e observed a younger boy being forced to endure anal rape by an older [inmate] who threatened him with a pencil to his throat." *Id.* Owens also witnessed "multiple anal rape of other boys on at least one occasion." *Id.* "He observed boys being forced to perform oral sex on older boys on at least one occasion." *Id.* Owens estimated that probably 6 or 7 out of every 10 boys in DJJ experienced some kind of sexual assault. *Id.* Dr. Garbarino testified, "I have no reason to doubt that given the reports that were available as well as the reports that have been made in the past about juvenile institutions of this nature." *Tr. pp.234-35.*

Second, Owens also admitted that he personally experienced sexual abuse in DJJ. *Tr. p.235.* On multiple occasions, he was threatened with sexual assault. *Id.* On one specific occasion, Owens "was sleeping in a cot near the guard station" when "another boy approached

him and began to have oral sex with him within sight of at least one staff member." *Tr. p.290.* Owens tried to report the event, but the staff member only laughed at him and dismissed the incident. *Id.* In another episode, Owens felt that "someone repeatedly tried to come at him sexually in the shower on several instances." *Id.* At least one of these occasions was also known to a staff member who did not intervene. *Id.; see also, id. at p.270.*

Court documents filed in a class-action lawsuit brought on behalf of all DJJ inmates in South Carolina during this time period further corroborate Owens' descriptions. On January 25, 1995, the United States District Court for the District of South Carolina entered an Order finding DJJ institutions were overcrowded and "routinely hold more than twice [their capacity]." *Applicant's PCR Exhibit 6, at p.7.* The court noted that "[t]he Reception and Evaluation Center frequently experiences severe overcrowding." *Id. at p.16.* DJJ acknowledged this fact and told the court it had plans to close the R&E facility. *Id.* The court also observed that the Birchwood campus "houses the oldest, most aggressive male residents." *Id. at p.17.* The court found that DJJ's own records showed that its employees were using CS gas, "a potent form of tear gas," excessively and inappropriately as a form of punishment. *Id. at p.19.* The court found this practice "teaches the victims to inflict pain as a method of controlling others and makes the juveniles more volatile, more aggressive, and less likely to respond properly to authority figures." *Id. at p.20.*

The district court observed that "[i]n South Carolina, incarceration of juveniles is said to be for benefit rather than punitive purposes." *Id. at p.10* (citing S.C. Code Ann. § 20-7-20 (Law. Co-op. 1985 & Supp. 1993)). Throughout the class-action court proceedings, "virtually every witness who testified in the case asserted that appropriate programming can make a difference and substantially enhance the juveniles' opportunity to succeed upon release from confinement."

Id. at p.28. However, the court found that "the rehabilitative efforts of DJJ are not working and juveniles are often returned to society more prone to commit crimes than they were before their incarceration." *Id. at p.8* (citing a study by one of the trial experts that "demonstrated juveniles had more hostility and more aggressive tendencies after their confinement at DJJ" than before they entered).

Under these conditions, the court stated that "the agency is simply warehousing juveniles and ignoring the statutory purpose of their confinement." *Id. at p.28.* The court quoted journalist Howard James, who observed, "Too often all that society provides [for juveniles] *is* storage – like ripe peaches in a warm cellar." *Id. at p.28-29* (alterations in original). The court found this to be true in South Carolina, stating,

> South Carolina juvenile correctional facilities produce graduates who later swell the populations of adult correctional facilities and figure prominently in the ranks of those who later commit violent offenses as adults. Although exact figures are difficult to obtain, the evidence indicates that between fifty-six and eighty-two percent of DJJ juveniles later commit crimes as adults and are sentenced to adult prisons.

Id. at p.9.

The district court ordered DJJ to remain under federal monitoring and to adopt a remedial plan to correct these problems, but later reports indicated that no major improvements had occurred and many conditions had actually worsened. In December 1995, the South Carolina Department of Health and Environmental Control published a report commissioned by the Governor's Office. *Applicant's PCR Exhibit 7, at p.1.* The report found that 41.7% of DJJ inmates had a documented injury "resulting from another juvenile." *Id. at p.4.* The authors of the study acknowledged "these numbers may under-represent the number of injuries," since the agency "did not have any information on the number of injuries that were not seen by infirmary staff nor injuries that were not clearly recorded as juvenile-on-juvenile violence." *Id. at p.5.*

On February 16, 1996, the district court entered an interim order in the ongoing class-action after the plaintiffs filed an Emergency Motion for Temporary Relief. *Applicant's PCR Exhibit 8, at p.1.* The order stated that conditions at DJJ had not improved. DJJ representatives conceded that the inmate population had recently risen to "over three times the 'rated capacity' of the dorms," which was "at least a forty percent (40%) increase over the population at the time of the original trial." *Id. at p.5.* Plaintiffs presented witnesses at the emergency hearing "who testified to unsafe conditions caused by lack of staffing." *Id. at p.4.* "These witnesses included a number of juveniles who testified to various altercations occurring on campus." *Id.* The court's monitor, a retired judge, reported "that the combination of overcrowded conditions and under-staffing caused him to fear for the safety of the juveniles." *Id. at p.3.* Even DJJ's own counsel sent a letter to the court stating, "DJJ continues to be hampered by overcrowding, reaching a record high of some 1000 juveniles at the three long-term institutions last week. The disturbing fact is that overcrowding is increasing rather than decreasing or staying level since the case was tried." *Id. at p.4.* The court ordered DJJ to modify their plan for improving conditions and to remain under federal monitoring, including monthly reports to the court and plaintiff's counsel. *Id. at p.8.* The DJJ system remained under a federal monitoring plan until 2003. *See "No More Federal Oversight: Now Maybe Juvenile Justice Department Can Get On Track,"* The Charlotte Observer, December 21, 2003, at 6-Y (reporting that the district court had recently lifted its 1995 order putting DJJ under federal oversight when "facilities were overcrowded, children routinely became victims of abuse, and the bureaucracy that ran the agency was embarrassingly inept and slow to fix the problems," making DJJ "one of South Carolina's worst public failures of the past decade").

Freddie Owens entered the DJJ system in December of 1994, and remained there until he was transferred to SCDC on March 21, 1997. *See Applicant's PCR Exhibit 2, at p.14, 17.* Thus, the time he spent in DJJ corresponds directly with the period described in the class-action lawsuit. For Owens, these years were "a significant period in his life." *Tr. p.236.* Dr. Garbarino explained

> [t]hese years of middle – adolescent years are generally recognized to be very important for correcting bad developmental patterns that he was developing or interventions to bring kids back to some social or positive development. All the evidence seems to be that all [his] many problems, mental health problems, behavioral problems that Freddie Owens brought to the institution were compounded and exacerbated by his experience there at a time when he needed very powerful positive interventions to recover.

Id. In sum, Owens' experiences in DJJ did nothing to help him deal with the overwhelming difficulties he had already faced in his life, and, instead, merely taught him that survival requires even more aggression and violence.

c. RESULTS OF OWENS' ACCUMULATED RISK FACTOR EXPOSURE

When Freddie Owens was released from prison in July 1997, he was nineteen years old. *Tr. p.243.* He was not yet "a fully mature adult," and he was exiting the DJJ environment he had experienced for the past three and a half years and returning to the same "war zone" environment into which he was born. *Id.* Up to this point, his life had been one of "incredible accumulation of risk factors." *Tr. p.237.* Dr. Garbarino testified:

> I think the overall story of [Owens'] life is the incredible accumulation of risk factors that undermined his mental health, his motivation for pro-social behavior, his capacity for pro-social behavior, his vocational success. Almost every domain of his development seems to have been impaired by this, by this cumulative effect of trauma and lack of positive intervention.

Id.

Dr. Garbarino stressed that Owens "didn't volunteer for this life that he started as an infant." *Tr. p.241.* Many of the events he experienced "would have been out of his control. Who his parents were, the quality of care he got, the neighborhood he lived in." *Tr. p.244.* "Certainly, once he was sentenced into the juvenile justice system, [he had] very little control over whether or not he would face the threat of assault and experience assault." *Tr. p.245.*

As a result of his life experiences, Owens adopted virtually all of the coping strategies that Dr. Garbarino and others have noted in their work with traumatized youth. Garbarino testified that Owens "very clearly" has adopted masking behaviors. *Tr. p.239.* "[M]ost people see his very, very aggressive, angry, rageful behavior and yet there are multiple evidence[s] of a sort of softer side that is kept private and it's very, almost jealously guarded as a private thing because it's such a sign of weakness and should not be revealed to those who might hurt him." *Id.* Garbarino testified that nearly every report from Owens' childhood speaks about him having "a very high level of suspicion about disclosing feelings to anyone" and confirmed that, throughout his life, Owens had received "a very strong message that only by being strong and aggressive will he be safe." *Tr. pp.239-40.* Owens also has a documented history of depression – one of the most common symptoms of a traumatic childhood like the one he experienced. *Tr. pp.238, 220-221.* Dr. Garbarino pointed to Owens' post-arrest statements to Officer Joe Wood as another example of masking behavior. *See ROA p.1902* (Owens stated, "I don't give a shit. I was born to be in jail"). He explained that statements like these are "part of this general masking, his general persona of aggressive violent behavior as a defensive, protective mechanism," and are also an example of "his terminal thinking." *Tr. p.241.*

Dr. Garbarino concluded that "the cumulative effect" of Owens' life experiences was "to inflict a high level of damage evidenced in his diagnosed depression, evidenced in his severe

reaction to violence, to sexualized issues. On almost every domain of development." *Tr. p.238.* By contrast, if Owens had had a more positive environment or had been given access to intervention programs, Dr. Garbarino testified that "he certainly could have had a positive life." *Id.* But, Owens simply never got these opportunities:

> I think that if Freddie had been placed in a different family early on in life, he might well have turned out differently. If he had been placed in a different juvenile facility at 15, 16, he might well have turned out differently. There is evidence that violence reduction programs in teenagers can be effective if they simultaneously change their thinking and give them practice and alternatives to violent behavior. I don't see any evidence that these kinds of programs were available to him. I believe there's even a record of him requesting counseling at some point and none being offered.

Tr. p.245.

Finally, Dr. Garbarino explained that a detailed life history accompanied by expert testimony would have benefitted Owens' mitigation presentation in several major respects. First, without the assistance of expert analysis, most people who have not experienced trauma cannot even begin to comprehend it. Dr. Garbarino explained that jurors "have to be able to see, not only the 200-pound grown man that we're looking at in court, but understand there is an untreated traumatized child inside." *Tr. p.248.* And, for people who have not had these same life experiences, "it's hard for people to know what trauma is . . . unless you give them a lot of specific details about it." *Tr. p.252.* Those details fill "[t]hat gap between what people typically know and what trauma [actually] involves." *Tr. p.253.* When this gap is filled, jurors are able to "understand you are not talking about something very vague and small-scale, but something very profound." *Id.* Second, expert testimony like Dr. Garbarino's helps jurors to understand "this fundamental idea about accumulation of risk factors, that if enough risk factors accumulate, no one is immune." *Tr. p.249.* Finally, hearing that a person has been sexually abused is "a very

high intensity issue for people," and can have a major impact on a juror's understanding "of how a person was developed and how a person was damaged." *Tr. p.252.*

B. TRIAL COUNSEL'S FAILURE TO TELL OWENS' STORY WAS DEFICIENT PERFORMANCE

Trial counsel's failure to adequately investigate and present available mitigating evidence was objectively unreasonable under prevailing professional norms for capital sentencing proceedings in 2006. *See, e.g., Porter v. McCollum*, --- U.S.---, 130 S.Ct. 447, 452-53 (2009); *Wiggins v. Smith*, 539 U.S. 510, 524-27 (2003); *Williams v. Taylor*, 529 U.S. 362, 396 (2000); *Council v. State*, 380 S.C. 159, 170, 172-75, 670 S.E.2d 356, 361, 363-64 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607-608, 602 S.E.2d 738, 742-743 (2004). Trial counsel: (a) failed to thoroughly investigate Owens' life and background; (b) ignored information in their possession that should have alerted them to the need for further investigation; and, (c) failed even to present the mitigating evidence that they did have in their possession.

First, trial counsel's investigation and trial preparations were constitutionally inadequate. Trial counsel did not even meet with Owens until nearly five months after their appointment, and, even then, spent such an inadequate amount of time with Owens that they could not build a relationship of trust or collect even the basic details of his life history. *Tr. pp.50-52, 104-105, 106.* Trial counsel did no independent investigation of their own, and instead relied on a haphazardly selected group of investigators and experts, assembled less than two months before trial. *Tr. pp.54, 113*; *see, e.g., Council*, 380 S.C. at 172-173, 670 S.E.2d at 363 (holding trial counsel was deficient in "not beginning his investigation into [defendant's] background once the State served its notice of intent to seek the death penalty;" not "request[ing] certain background records until the day of jury selection;" and, not "set[ting] up a meeting between [an expert] and [the defendant] until one month before trial"). This group was defunct from the beginning.

Mitigation investigator Paige Tarr was dealing with personal problems that interfered with her ability to do her work. *Tr. pp.111, 126.* Carolyn Graham came on board to supplement Tarr's efforts, but neither woman had adequate time to investigate, given that they did not begin meeting with Owens until approximately five weeks before trial. *See Applicant's PCR Exhibit 1, at p.3.* Marjorie Hammock had worked on the case previously, but proved to be unresponsive and slow in her preparations. *See Applicant's PCR Exhibit 4.* By the time trial counsel identified these problems, however, there was no time left to solve them. *Id.*

Ken Gibson was responsible for presenting Ms. Hammock's testimony at trial. At the time of her testimony, however, Gibson had spent approximately five total hours meeting with Owens; had not read any of Owens' social history records; and, had not interviewed any of Owens' family members or acquaintances. *Tr. pp.52, 57.* Gibson did not even take responsibility for any mitigation witnesses until two weeks before the trial. *Tr. pp.54-55.* Prior to that time, he had lacked even a passing acquaintance with the mitigation issues, and knew nothing of the extensive mitigating evidence in Owens' life history. *Tr. p.57.* Instead, he relied on Ms. Hammock to tell him what she thought was important. *Tr. p.58.* Gibson was unable to make informed strategic decisions about what evidence to include in Ms. Hammock's testimony, because he did not know the details of Owens' life history at the time of their preparations. *See, e.g., Sears* 130 S.Ct. at 3265 (2010) (internal quotations omitted) (holding trial counsel's actions (or inaction) cannot be "justified by a tactical decision when counsel did not fulfill their obligation to conduct a thorough investigation of the defendant's background"); *see also, Rompilla v. Beard,* 545 U.S. 374, 382-383 (2005) (trial counsel's conduct was deficient where they failed to review school records despite their knowledge that Rompilla left school after the ninth grade and failed to further investigate juvenile and adult incarcerations even though they

were aware of their client's criminal record). Recently, a federal district court in the fourth circuit held that trial counsel was deficient because he failed to read school, social service, or hospital records and instead forwarded the records to an expert and relied on the expert to tell him if they contained any useful information. *Winston v. Kelly*, --- F.Supp.2d ---, 2011 WL 1838844, at *7 (W.D. Va. May 16, 2011). The court explained

> *[c]apital defense counsel must have a command of reasonably discoverable evidence that is material to the question of life and death.* Though they must often necessarily rely on paralegals, investigators, experts, and other members of the defense team to gather essential evidence, *they are responsible for having command of that evidence*. Their right to rely on the opinions of experts does not relieve them of the responsibility of familiarizing themselves with the evidence they have gathered. . . . Dr. Nelson was not responsible for telling counsel what they needed to know. Rather, *they were responsible for knowing what evidence they had* and for asking him searching questions raised by that evidence.

Id. (emphasis added).

Second, trial counsel ignored information that should have prompted them to investigate further. *See, e.g., Porter*, 130 S.Ct. at 453 (trial counsel "ignored pertinent avenues for investigation of which he should have been aware" since trial counsel knew that Porter attended few years of regular school, sustained injuries during military service, and had a father who "over-disciplined" him); *Wiggins*, 539 U.S. at 524 (counsel were deficient because they "abandoned their investigation of petitioner's background after having acquired only rudimentary knowledge of his history from a narrow set of sources"); *Council*, 380 S.C. at 173, 670 S.E.2d at 363 ("Even the limited information obtained should have put counsel on notice that [defendant's] background, with additional investigation, could potentially yield powerful mitigating evidence."). Although Gibson admitted that he never read any of Owens' social history records, Godfrey did, at least, obtain and review the social history records he received

from prior trial counsel's files. *Tr. pp.57, 113.* Those files included a chronology prepared by Ms. Drucy Glass prior to Owens' first capital trial in 1999. *Tr. p.309.* The chronology alone contains extensive mitigating evidence and should have alerted trial counsel to the need for additional investigation. *See Applicant's PCR Exhibit 2.* For example, the chronology should have notified trial counsel of their need to obtain and review DSS records, family arrest records, family medical records, and family incarceration records. *Id.* However, trial counsel never obtained these records. *See PCR Testimony of Ms. Jill Rider, Tr. pp.166-167* (explaining that a complete copy of trial counsel's files did not contain Applicant's PCR Exhibits 10-18, including family medical records, arrest records, DSS records and family incarceration records); *see also, PCR Testimony of Bill Godfrey, Tr. p.116* (testifying that if records were not in the copy of trial counsel's files, that meant they had never been in the file and trial counsel did not have them).

Nor did trial counsel investigate additional details about Owens' life and background outside of the information reported on the chronology. Trial counsel was generally aware that Owens grew up in a poor family and lived in a violent neighborhood, but they failed to investigate any of those potential areas of mitigation. Trial counsel was aware that Owens spent a significant period in his life in DJJ. *Tr. p.119.* Bill Godfrey testified at the PCR hearing that he was actually a former board member of Protection and Advocacy, the agency involved in the DJJ class-action lawsuit, and, he even made a visit to DJJ where he observed that conditions were "particularly horrible." *Tr. pp.152-53.* Despite this knowledge, trial counsel made no effort to investigate the details of Owens' time in this environment. Trial counsel never even spoke to Owens about "his experiences during that period when he was in DJJ" (*Tr. p.120*), nor did trial counsel ever ask Owens if he had been sexually abused. *Tr. pp.81, 120.*

Finally, trial counsel failed even to present the mitigating evidence that they did have in their possession. *See, e.g., Williams v. Taylor*, 529 U.S. 362, 393 (2000) ("it is undisputed that Williams had a right – indeed, a constitutionally protected right – to provide the jury with the mitigating evidence that his trial counsel either failed to discover *or failed to offer*.") (emphasis added); *Council*, 380 S.C. at 172, 670 S.E.2d at 363 ("We believe it was unreasonable for trial counsel not to further investigate [defendant's] background and present even the minimal mitigating evidence that was obtained."). As explained above, the social history chronology prepared by Ms. Glass contains eighteen (18) pages of mitigating details from Owens' life history. *See Applicant's PCR Exhibit 2.* If trial counsel had simply asked Ms. Hammock to testify to these items alone, it would have been a far fuller and more powerful mitigation presentation than the one trial counsel put up. Trial counsel also had access to Owens' school records and the testimony of mitigation witnesses from prior trials, but they failed to offer any of this evidence as well. *See, e.g., 1999 ROA pp.3234-3235, 3241; 2003 ROA p.417.*

Trial counsel had no strategic reason for their failure to present a complete picture of Owens' life history. Given that trial counsel's investigation was inadequate and incomplete, any strategic decisions they made were likewise unreasonable. *See, e.g., Council v. State*, 380 S.C. at 175, 670 S.E.2d at 364 (internal quotations omitted) ("This Court has recognized that strategic choices made by counsel after an incomplete investigation are reasonable only to the extent that reasonable professional judgment supports the limitations on the investigation"); *see also, Wiggins*, 539 U.S. at 523 (same). Moreover, both attorneys admitted at that PCR hearing that they had no strategic reason for failing to present the fullest possible mitigating account of Owens' life and background. *Tr. pp.59-60, 131.* Even if trial counsel had not admitted that they had no strategic reason for this failure, their conduct was objectively unreasonable in light of

their planned mitigation theme at trial. *ROA pp.1047-1048.* Trial counsel told the jury to expect a detailed presentation of "everything that [Owens] went through" over his lifetime, but they failed to deliver on that promise.[14] In sum, trial counsel had nothing to lose and everything to gain by including the details of Owens' life history recounted above. That they failed to do so simply highlights the fact that their omissions were the result of inattention rather than reasoned strategic judgments. *See Wiggins*, 539 U.S. at 526.

C. TRIAL COUNSEL'S FAILURE RESULTED IN PREJUDICE

Viewed as a whole, the evidence presented at trial left the jurors with a false and damaging picture that was artificially skewed toward aggravation. As a result of trial counsel's failures, Owens' sentencing jury did not "come to know him as a person" or "hear everything that he went through," as trial counsel had promised. *ROA pp.1047-1048.* Instead, the jurors saw a large, muscular, physically aggressive man who had killed two people and told officers, "I don't give a shit. I was born to be in jail." *ROA p.1092.* The state presented Owens as a rarity among thousands – the only one of two to ever give Officer Wood the "cold chills" (*ROA p.1093*); the victim advocate's "hardest, hardest case" in a fifteen year career (*ROA p.1274*); Major Nettles' "most problematic inmate – bar none" (*ROA p.1392*); and, a "unique," "cold," and "unfeeling" person who the solicitor had personally selected, under very narrow

[14] Trial counsel stated:

> What we believe the evidence in mitigation will show, and you will hear testimony from our witnesses that describe how it is that Freddie grew up; how he really didn't have a home on a consistent basis; how he really didn't have food on a consistent basis. You will hear evidence of the violence that he has lived through his entire life. And you will come to know him as a person, basically from the time he was a young boy up to where he is now.

ROA at p.1047.

circumstances, as the worst of the worst. *ROA pp. 1555, 1559-60.* To combat the state's evidence in aggravation, trial counsel presented a mitigation case that their own witnesses acknowledged to be contradictory and "not significant." *ROA pp. 1433, 1449-53, 1491.* According to Ms. Hammock – trial counsel's main source of mitigating information – Owens' life included "a history of losses, some violence, a great deal of instability, and that's about it." *ROA p.1412.*

Owens' sentencing jury heard almost nothing about his extensive history of neglect and physical abuse.[15] Ms. Hammock testified that, on one occasion, the Owens children were "taken into custody in foster care where they stayed for a relatively short period of time." *ROA p. 1406.*

[15] The fact that trial counsel presented *some* mitigating evidence at trial does not mean that Owens was not prejudiced by their deficient performance. *Sears*, 130 S.Ct. at 3266 ("We certainly have never held that counsel's effort to present some mitigation evidence should foreclose an inquiry into whether a facially deficient mitigating investigation might have prejudiced the defendant. To the contrary, we have consistently explained that the *Strickland* inquiry requires precisely the type of probing and fact-specific analysis that the state trial court failed to undertake below."). The available mitigating evidence that trial counsel failed to present on Owens' behalf was both quantitatively and qualitatively different from the limited, generalized evidence they actually presented. *See, e.g., Outten v. Kearney*, 464 F.3d 401, 421 (3d Cir. 2006) ("Simply because some mitigating evidence regarding Outten's abusive childhood was introduced to the jury . . . it does not follow that the jury was provided a comprehensive understanding of Outten's abusive relationship with his father or other aspects of his troubled childhood."); *Powell v. Collins*, 332 F.3d 376, 399 (6th Cir. 2003) (rejecting contention that post-conviction evidence was cumulative to trial evidence, finding trial counsel ineffective for presenting "vague references to [p]etitioner's family history and background" through a witness who "was not able to fully describe . . . petitioner's background, history, and character for mitigation purposes"); *Cargle v. Mullin*, 317 F.3d 1196, 1222 (10th Cir. 2003) ("as a result of counsel's utter lack of preparation, the jury heard only brief, personally remote, and fairly generic testimony . . . [which did] not relate the individualized, humanizing facts that other potential witnesses could have provided"); *Neal v. Puckett*, 286 F.3d 230, 238-240 (5th Cir. 2002) (*en banc*) (trial counsel ineffective where, "[a]lthough [the mitigation evidence presented at trial] seems to touch many relevant points, it was presented . . . in an abbreviated form with no elaboration"; "counsel never contacted any of the other people . . . who have provided the additional testimony we now have before us, and which would have added to and developed the skeletal evidence before the jury"); *Jermyn v. Horn*, 266 F.3d 257, 311 (3rd Cir. 2001) ("While the jury clearly was aware that [petitioner] claimed that he suffered from a mental illness, the lack of directed and specific testimony about [his] childhood and its impact on [his] mental illness left the jury's awareness incomplete.").

But, the jury never heard about Dora Mason's documented, "long history of marginal child rearing practices," including her failure to feed her children adequately, her failure to comply with DSS instructions, or her lack of enough "time, money, energy and motivation" to care for five young children. *See, infra, PARENTAL ABANDONMENT AND NEGLECT.* They did not know that DSS workers found the Owens children covered in ticks, or that Ms. Mason left five children under the age of seven at home alone in an apartment with no electricity, no food, and surrounded in filth. *Id.* The jury did not know that Owens' teachers noted his dirty clothing, or that his parents never cared about his educational development. *Id.* They did not know that Owens' father abandoned him at an early age and never supported any of his siblings. *Id.*

Ms. Hammock told the jury that Owens' stepfather and father "were described as very violent people" and that "the community also was one of considerable violence and concern on a regular basis," but she gave the jury no details or examples of what she meant by this testimony. *ROA p.1406.* The jury did not hear that Owens personally witnessed grotesque acts of violence at a very young age, including a shooting during which he was so close to the victim that blood and bone fragments splattered out onto his own face. *See, infra, TRAUMA.* They did not know that Owens witnessed a violent rape in a clearing near his house at age ten or that he was so traumatized by this event that he was scared to go outside. *Id.* They did not know that Owens' stepfather beat him with electrical cords, punched his mother in the face on multiple occasions, broke her nose, and was repeatedly arrested on charges of criminal domestic violence. *See, infra, FAMILY HISTORY OF CRIMINAL VIOLENCE AND PHYSICAL ABUSE.* They never heard about how Owens fell asleep at school because he was up all night guarding his mother's bedroom door in an effort to protect her. *Id.*

Ms. Hammock testified that Owens' family history included "a considerable amount of incarceration, that of his brothers and his uncle," but she gave no further details about the extensive violent criminal histories of Owens' most influential family figures. *ROA p.1408.* Hammock briefly mentioned an incident during which Owens' grandmother "did time for assaulting, shooting a family member," (*ROA p.1412*), but failed to point out that Owens actually *witnessed* this event, which was preceded by another violent act when the ultimate victim of this shooting smashed a cinder block over Owens' grandfather's head. *See, infra, FAMILY HISTORY OF CRIMINAL VIOLENCE AND PHYSICAL ABUSE.* The jury also never heard that Owens witnessed his grandmother shoot her son-in-law in the stomach after he had stabbed Owens' aunt the day before. *Id.* The jury never heard that this same aunt later stabbed Owens' brother, Lorenzo, in the stomach during a fight with Owens' sister, Marie. *Id.* Nor did they hear that, on the very same day, the family later engaged in yet another drunken brawl at the conclusion of which three more family members were arrested. *Id.* Ms. Hammock told the jury nothing about the sexual abuse that Owens experienced over his lifetime, nor did she touch on the nearly four years he spent in DJJ. *ROA pp.1406-14.* The jury never heard about the formative period Owens spent in an environment that was "ignor[ing] the statutory purpose" of juvenile confinement, warehousing violent juveniles under constitutionally inadequate conditions, and, as a result, "produc[ing] graduates who later swell the populations of adult correctional facilities." *See, infra, DEPARTMENT OF JUVENILE JUSTICE EXPERIENCES.*

Moreover, trial counsel presented virtually no evidence about how Owens' upbringing shaped his development as a child and made him into the person he was when the Speedway shooting occurred. Ms. Hammock vaguely referenced her own "casual observations" that a difficult childhood might be associated with later criminal behavior. *ROA p.1413.* But she gave

no details to explain what such a difficult childhood might involve, cited no specific studies, and did not explain how Owens' accumulation of risk factors had specifically and personally affected him. Ms. Hammock did not point out that Owens lacked control over his exposure to risk factors, nor did she explain the fact that, if enough risk factors accumulate over time, "no one is immune." *Tr. p.249.* In sum, trial counsel's presentation gave jurors no information from which they might come to see Owens' "aggressive, tough persona" as a mask designed to protect "an untreated, traumatized child inside" – one who is "very scared, very sad, very depressed." *Tr. pp.248, 221.*

A complete mitigation story would have both humanized Owens in the jury's eyes and neutralized much of the State's aggravating evidence by explaining Owens' behavior through the lens of his past experiences and the developmental adjustments he had to make to deal with those experiences. In other words, a full account of Owens' life history and its effects would have dramatically altered "the sentencing profile." *Strickland v. Washington*, 466 U.S. 668, 699-700 (1984). Faced with the mitigating evidence that could have been presented on Owens' behalf, "there is a reasonable probability [that] at least one juror would have struck a different balance and returned with a different sentence." *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *see also, e.g., Porter*, 130 S.Ct. at 454 ("Had the judge and jury been able to place Porter's life history 'on the mitigating side of the scale,' and appropriately reduced the ballast on the aggravating side of the scale, there is clearly a reasonable probability that the advisory jury – and the sentencing judge – 'would have struck a different balance,' and it is unreasonable to conclude otherwise.") (citing *Wiggins*, 539 U.S. at 537).

II. TRIAL COUNSEL FAILED TO OBJECT AND/OR REQUEST PROPER INSTRUCTIONS FROM THE COURT REGARDING THE CRIME SCENE VIDEO.

The United States Supreme Court has long held that "the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death." *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982) (quoting *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976)). Thus, the Court has "insist[ed] that capital punishment be imposed fairly, and with reasonable consistency, or not at all." *Id.* Among other things, this mandate prohibits imposition of a death sentence on the basis of information that is "materially inaccurate." *Johnson v. Mississippi*, 486 U.S. 578, 590 (1988). But, of course, these principles are useless if defense counsel fails to protect them at trial. It is therefore trial counsel's duty not only to investigate and present any mitigating circumstances regarding the defendant's life and background, but also to ensure that the circumstances of the crime itself are not presented or argued in a way that artificially or unfairly skews them toward aggravation. *See Rompilla*, 545 U.S. at 385-393 (counsel's performance was deficient and prejudicial where they failed to investigate and attempt to rebut evidence they knew that the State planned to offer as aggravation).

Here, the state told the jury that it would show a video of the crime because the jurors needed "to know the facts and circumstances of the crime in order to determine what punishment to impose." *ROA p.1040.* The State also told the jury that Owens had already been convicted of the murder of Ms. Graves. *Id.* But no one told the jury that: (a) the identities of the men in the video had never been conclusively determined; (b) Owens' co-defendant, Steven Golden, had previously testified that *he* – not Owens – was the primary figure in the video, *1999 Record on Appeal, pp.2310, 2403-2406*; or, (c) that the jury in 1999 was given an instruction on accomplice

liability under which they could find Owens guilty of murder without ever determining whether or not he actually pulled the trigger. *1999 Record on Appeal pp.2979-2980.* Trial counsel did not object to the state showing the video under these circumstances, nor did they request, at a minimum, that the trial court issue proper instructions to the jury explaining that the identity of the men in the video had never been conclusively determined. As a result, trial counsel left the jury with a false impression that they were watching video documentation of a shooting that another jury had already determined to be perpetrated by Owens.

Trial counsel's failure to object and/or request proper instructions was unreasonable. There was no strategic reason for this failure. Rather, both attorneys testified at the PCR hearing that they never even considered raising an objection or requesting instructions. *Tr. pp.41, 93.* Trial counsel's failure was prejudicial because it allowed jurors to make the false assumption that conclusive video-graphic evidence existed showing Owens shoot Ms. Graves. It has long been accepted that, in terms of culpability and appropriate punishment, there is an important distinction between a triggerman and a non-triggerman. *See* S.C. Code Ann. § 16-3-20(C)(b)(4) (1976) (recognizing, as a statutory mitigating circumstance, that "the defendant was an accomplice in the murder committed by another person and his participation was relatively minor"); *State v. Peterson*, 287 S.C. 244, 248, 335 S.E.2d 800, 802 (1985), overruled on other grounds by *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (holding "During the penalty phase of death penalty cases which involve conspiracy liability the trial judge should charge that the death penalty cannot be imposed on an individual who aids and abets in a crime in the course of which a murder is committed by others, but who did not himself kill, attempt to kill, or intend that a killing take place or that lethal force be used."). Thus, if not for trial counsel's error, there is a reasonable probability that at least one juror would have viewed Owens' role in the crime –

or even the ambiguity over what that role was – as "a basis for a sentence less than death." *Lockett*, 438 U.S. at 604; *see also*, *Porter*, 130 S.Ct. at 454-455 ("the Constitution requires that 'the sentencer in capital cases must be permitted to consider any relevant mitigating factor.'") (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982)).

III. TRIAL COUNSEL FAILED TO OBJECT TO OFFICER WOOD'S "COLD CHILLS" TESTIMONY.

Trial counsel failed to object when Officer Joe Wood was asked, "[h]ow did [Owens] make you feel?" *ROA p.1093*. Wood responded: "He's one of two people out of probably 25 years in homicide that I have interviewed that actually gave me cold chills." *Id.* This testimony was irrelevant, inflammatory and prejudicial. Officer Wood's subjective propensity to "get the chills" bears no cogent relation to the jury's sentencing decision, which must be "based on an impartial, rational, and careful evaluation of all the facts and circumstances about the crime, the victim, and the defendant as presented at trial." *Von Dohlen v. State*, 360 S.C. 598, 613, 602 S.E.2d 738, 746 (2004). The State's use of this testimony and later reliance on it in closing argument injected an arbitrary factor into the sentencing process. S.C. Code Ann. § 16-3-25(C)(1) (2003); *State v. Northcut*, 372 S.C. 207, 223, 641 S.E.2d 873, 882 (2007) (reversing death sentence because the Solicitor's closing argument injected an arbitrary factor and encouraged the jury to render a verdict under the influence of passion and prejudice); *State v. Burkhart*, 371 S.C. 482, 488-489, 640 S.E.2d 450, 453 (2007) ("A capital jury may not impose a death sentence under the influence of an arbitrary factor. When the jury is invited to speculate about irrelevant matters upon which a death sentence may be based, § 16-3-25(C)(1) is violated.").

Trial counsel's failure to object to this testimony was unreasonable. At the PCR hearing, Ken Gibson admitted there was "no strategic reason or otherwise for us not to object to that." *Tr.*

p.42. Bill Godfrey also admitted that he did not consider objecting to the question, but attributed his failure to object to the answer to his "surprise." *Tr. pp.93-94* ("Now that I know Joe's answer, I would have objected when I heard the question. I didn't know where he was going with it."). Godfrey's claim of surprise, however, flies in the face of his testimony that he carefully reviewed the transcripts of the two prior proceedings in this case, *Tr. p.113*, since Officer Wood made this exact same statement at both the 1999 and the 2003 trials in the same context as his testimony in 2006. *1999 Record on Appeal at p.3054* ("He was very cocky. He had an arrogant, don't care attitude about him. And while I was talking to him, he is probably one of two people I have ever interviewed that actually gave me cold chills."); *2003 Record on Appeal at p.231* ("His demeanor was – it was cocky. He had a "don't care" attitude about him. He's one of two people I've ever interviewed that gave me cold chills.").

Given that trial counsel was aware of Officer Wood's testimony from two prior occasions, their failure to object to this statement cannot be attributed to surprise. Trial counsel performed deficiently by failing to object, and their failure prejudiced Owens by allowing an arbitrary, speculative, inflammatory and irrelevant consideration into the jury's sentencing decision. Moreover, counsel's failure allowed the Solicitor to capitalize on Wood's improper testimony by emphasizing it in his closing argument. Trial counsel further failed to object to the Solicitor's improper arguments, including his references to Joe Wood's "cold chills" testimony. *See, infra, section VI.* Trial counsel's failure resulted in prejudice because it allowed yet another improper, irrelevant and arbitrary factor to enter the jury's decision-making process. Had trial counsel "appropriately reduced the ballast on the aggravating side of the scale, there is clearly a reasonable probability that the . . . jury 'would have struck a different balance.'" *Porter*, 130 S.Ct. at 454 (quoting *Wiggins*, 539 U.S. at 537).

IV. TRIAL COUNSEL FAILED TO OBJECT TO THE LIST OF PRISON DISCIPLINARY INFRACTIONS ON CONFRONTATION CLAUSE AND DUE PROCESS GROUNDS.

At trial, the State attempted to introduce a set of prison disciplinary records detailing a variety of misconduct allegedly committed by Owens. *ROA p.1354-1385.* Ken Gibson objected that the records were hearsay. *ROA p.1354.* The state asserted that the records were admissible under the Business Records Act (S.C. Code Ann. § 19-5-510) and Rule 803(6) of the South Carolina Rules of Evidence. *ROA pp.1355-1366.* The trial court agreed that "business records are admissible under the hearsay exception." *ROA p.1361.* However, the court stated that it would only admit a summary that the State prepared containing a list of "the incident, the date, and the – just the – and the general nature of that, and that's it." *ROA p.1367.* Following this ruling, the state revised a draft summary down to "31" or "32" infractions. *ROA p.1378.* Gibson reasserted his earlier objection, but otherwise agreed "the proposed new list is fine." *ROA p.1379.* In the end, the trial court ruled that a summary describing twenty-eight (28) of the incidents could be admitted. *ROA p.1385.* This finalized summary of 28 incidents was published to the jury. *ROA pp.1389-1392.*

On appeal, appellate counsel argued that the admission of the summary violated the rule against hearsay, Owens' Confrontation Clause rights and his due process rights. *State v. Owens*, 378 S.C. 636, 638-639, 664 S.E.2d 80, 81 (2008). The South Carolina Supreme Court held, however, that "[n]either the Confrontation Clause nor due process [claim] was raised to the trial court, and accordingly neither constitutional claim is preserved for our review." *Id.*

A. RELEVANT LEGAL PRINCIPLES

The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right "to be confronted with the witnesses against him." U.S. Const. Amend. VI.[16] In *Crawford v. Washington*, 541 U.S. 36 (2004), the United States Supreme Court unequivocally held that the admission of testimonial hearsay violates the Confrontation Clause. The Court stated that the Framers did not mean to "leave the Sixth Amendment's protection to the vagaries of the rules of evidence, much less to amorphous notions of 'reliability.'" *Id. at 61*. Instead, "[w]here testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation." *Id. at 68-69*. Since *Crawford*, the Court has consistently held to this view. *See, e.g., Davis v. Washington*, 547 U.S. 813, 821 (2006); *United States v. Gonzalez-Lopez*, 548 U.S. 140, 146 (2006); *Whorton v. Bockting*, 549 U.S. 406, 413-414 (2007); *Danforth v. Minnesota*, 552 U.S. 264, 269 (2008); *Giles v. California*, 554 U.S. 353, 357-58 (2008); *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527, 2531 (2009).

In *Crawford*, the Court declined to "spell out a comprehensive definition of 'testimonial.'" 541 U.S. at 68. However, the majority approvingly cited one definition: "*ex parte* in-court testimony or its functional equivalent – that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, *or similar pretrial statements that declarants would reasonably expect to be used prosecutorially.*" 541 U.S. at 51 (emphasis added). Further, the Court specifically noted,

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[16] "In South Carolina, not only is this right applicable to state prosecutions under the Fourteenth Amendment, it is specifically mandated by the State Constitution." *State v. Mitchell*, 378 S.C. 305, 311, 662 S.E.2d 493,497 (2008) (citing *State v. Green*, 269 S.C. 657, 661, 239 S.E.2d 485, 487 (1997); *see also*, S.C. Const. Art. I, § 14. In addition, the right of confrontation is secured by statute in South Carolina. S.C. Code Ann. § 17-23-60.

> Involvement of government officers in the production of testimony with an eye toward trial presents unique potential for prosecutorial abuse – a fact borne out time and again throughout a history with which the Framers were keenly familiar. This consideration does not evaporate when testimony happens to fall within some broad, modern hearsay exception, even if that exception might be justifiable in other circumstances.

Id. at 56 n.7.

Since *Crawford*, the Court has decided a series of cases elaborating on the definition of "testimonial." A statement is testimonial "when the circumstances objectively indicate that there is no . . . ongoing emergency, and that the primary purpose of the [statement] is to establish or prove past events potentially relevant to later criminal prosecution." *Davis v. Washington*, 547 U.S. 813, 822 (2006). In other words, a testimonial statement is one which is made as "part of an investigation into *possibly criminal past conduct.*" *Id.* at 829 (emphasis added); *see also, State v. Davis*, 371 S.C. 170, 178, 638 S.E.2d 57, 61 (2006) (statements made in "an investigatory or judicial context" are testimonial). The involvement of government officers, such as prison guards, also points to a statement's testimonial character. *See Crawford*, 541 U.S. at 51 ("An accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not."). The Court has specifically held that a record "solely directed at establishing the facts of a past crime, in order to identify (or provide evidence to convict) the perpetrator . . . whether reduced to a writing signed by the declarant or embedded in the memory (and perhaps notes) of the interrogating officer, is testimonial." *Davis*, 547 U.S. at 826.

The Court's recent decision in *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527 (2009), further confirms these legal principles. In *Melendez-Diaz*, the trial court—over defense counsel's objection on confrontation grounds—admitted laboratory certificates attesting that a

substance seized from a defendant contained cocaine. Before the Supreme Court, the State argued, *inter alia*, that the certificates were admissible without confrontation because they were "akin to the types of official and business records admissible at common law." *Id.* at 2538. The Court disagreed, finding that "the affidavits do not qualify as traditional official or business records, and even if they did, their authors would be subject to confrontation nonetheless." *Id.* In finding that there was "little doubt" that the laboratory certificates "fall within the 'core class of testimonial statements,'" the Court emphasized that they contained "the precise testimony the analysts would be expected to provide if called at trial." *Id.* at 2532. The Court concluded, "[t]he 'certificates' are functionally identical to live, in-court testimony, doing 'precisely what a witness does on direct examination.'" *Melendez-Diaz*, 129 S.Ct. at 2532 (quoting *Crawford*, 541 U.S. at 51 and *Davis*, 547 U.S. at 830).

B. ARGUMENT

Here, Owens was not provided an opportunity to cross-examine the prison officials who purportedly witnessed the alleged misconduct he was accused of committing. The only remaining issue then, is whether the statements contained in the prison documents were "testimonial." There are several reasons that prison records of the sort admitted at Owens' capital sentencing proceeding are testimonial.

First, the summary of Owens' disciplinary records was "'calculated for use essentially in the court.'" *Melendez-Diaz*, 129 S.Ct. at 2538 (internal quotation omitted). The Solicitor, when initially submitting the summary to the court, candidly admitted as much. *See ROA p.1420* ("Now, *as a part of my preparation*, I did prepare a summary of those events.") (emphasis added). Not only was the summary created specifically for use in court, it was amended there as well. *ROA pp. 1421-1437.* After an initial period of revision, the Solicitor informed the court that

"*[W]hat I have prepared* something I think it's [sic] accordance with what you had said earlier." *ROA p.1377.* (emphasis added). Upon receiving this new version of the summary, the court suggested additional specific revisions. *ROA pp.1378-1380.* The Solicitor promptly revised the document once more. *ROA p.1380.* Finally, after a recess, the attorneys agreed on a final version of the summary that included twenty-eight of the original thirty incidents. *ROA p.1384.* Clearly, this final summary was prepared (and amended) specifically for use at trial.[17]

Moreover, prison records, such as those at issue here, are plainly calculated to "establish or prove past events potentially relevant to later criminal prosecution." *Davis*, 547 U.S. at 822. They are kept with the expectation that they will be used in future proceedings against the petitioner, either administrative or criminal.[18] In *Russeau v. State*, 171 S.W.3d 871, 881 (Tex.

[17] "[T]he rule is well established that documents made in anticipation of litigation are inadmissible under the business records exception." *Certain Underwriters at Lloyd's v. Sinkovich*, 232 F.3d 200, 205 n.4 (4th Cir. 2000); *see also Gilbert v. Gulf Oil Corp.*, 175 F.2d 705, 710 (4th Cir.1949) ("[I]t would be a perversion of [the exception's] purpose to apply [it] to reports . . . which may well become the subject of litigation.") (citing *Palmer*, 318 U.S. at 114). As the Court reaffirmed in *Melendez-Diaz*, when law enforcement "create[s] a record for the sole purpose of providing evidence against a defendant," that record is, by definition, *not* admissible as a business record. *Melendez-Diaz*, 129 S. Ct. at 2539. A prison disciplinary report, like the one introduced against Owens at sentencing, is perhaps a quintessential example of a record "created for the sole purpose of providing evidence against a defendant," and is therefore inadmissible. *See People v. Smith*, 565 N.E.2d 900, 912-17 (Ill. 1990); *Yisrael v. State*, 993 So.2d 952, 955-958 (Fla. 2008).

[18] In addition to their role in disciplinary and criminal proceedings against the prisoner, such reports can (and indeed, must) be used in determining the length of time that prisoner will remain incarcerated. Under South Carolina law, the SCDC is required to "keep a record of the industry, habits, and deportment of the prisoner." S.C. Code Ann. § 24-21-70. "One purpose for keeping records is to provide information to the Parole Board upon which it can make informed decisions about paroling prisoners." *Rayfield v. South Carolina Department of Corrections*, 297 S.C. 95, 108, 374 S.E.2d 910, 917 (1988). State law "specifically provides for the Board to consider the complete record of a prisoner and delegates to the Board the responsibility of determining if and when a prisoner meets the prerequisites of parole eligibility." *State v. McKay*, 300 S.C. 113, 115, 386 S.E.2d 623, 623 (1989) (citing S.C. Code Ann. § 24-21-640). *See also* S.C. Code Ann. § 24-13-150(B) (If a prisoner confined in a facility of the department "commits an offense or violates

Crim. App. 2005), the Texas Court of Criminal Appeals held that prison reports detailing disciplinary offenses "amounted to unsworn, ex parte, affidavits of government employees and were the very type of evidence the [Confrontation] Clause was intended to prohibit." In *United States v. Mills*, 446 F.Supp.2d 1115, 1137 (C.D. Cal. 2006) (quoting *Crawford*, 541 U.S. at 52), a federal district court barred the admission of prison discipline reports because they were "made 'under circumstances which would lead an objective witness reasonably to believe that [they] would be available for use at a later trial." In addition, the Seventh Circuit has found that prison employees in some instances fill out incident reports with the intent of protecting themselves from civil liability. *Bracey v. Herringa*, 466 F.2d 702, 704 (7th Cir. 1972).

In the case of a prison disciplinary record kept about a prisoner who is facing the death penalty and has an upcoming resentencing, there is another reason why records of this sort are testimonial. Solicitors in death penalty sentencing often argue that the defendant would be dangerous, even in confinement, and that therefore the death penalty is the only acceptable option. *See, e.g., Kelly v. South Carolina*, 534 U.S. 246 (2002). Prison officials in this case would have known that the records they were creating could be used as evidence in Owens' upcoming resentencing.

In this case, the prison guards—had they been available to testify—undoubtedly would have laid out Owens' alleged infractions in much the same way as they did when writing out the records in the first place: by giving the date of the incident as well as a brief synopsis. Thus, the summary of these records served as the functional equivalence of live testimony "doing 'precisely what a witness does on direct examination.'" *Melendez-Diaz*, 129 S.Ct. at 2532

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one of the rules of the institution during his term of imprisonment, all or part of the credit he has earned may be forfeited in the discretion of the Director of the Department of Corrections.").

(quoting *Crawford*, 541 U.S. at 41; *Davis*, 547 U.S. at 830). And yet, Owens was denied an opportunity to challenge the reliability of these allegations by confronting the witnesses against him and testing their statements "in the crucible of cross-examination." *Crawford*, 541 U.S. at 61.

1. COUNSEL'S CONDUCT WAS DEFICIENT

Trial counsel's failure to object and preserve the constitutional grounds for excluding the summary of prison incidents was deficient performance. As noted above, the Confrontation Clause's "ultimate goal is to ensure *reliability* of evidence . . . by *testing* in the crucible of cross-examination." *Crawford*, 541 U.S. at 61. Un-confronted testimony has not been tested in the manner envisioned by *Strickland*, and the attorney who allows its introduction has fallen far short of providing the "reasonably effective assistance" mandated by the Sixth Amendment. *See, e.g., Dawkins v. State*, 346 S.C. 151, 156, 551 S.E.2d 260, 263 (2001) ("Since the testimony was inadmissible hearsay, counsel's failure to object to the introduction of that evidence fell below an objective standard of reasonableness."). It has long been clear that "assistance which is ineffective in preserving fairness does not meet the constitutional mandate." *Mickens v. Taylor*, 535 U.S. 162, 166 (2002).

Not only did counsel's deficient performance fail to preserve the fairness of Owens' sentencing trial, it failed to preserve vitally important constitutional issues for appellate review. A trial attorney's failure to raise or preserve meritorious objections frequently has served as a basis for post-conviction relief in South Carolina. For example, in *State v. Jolly*, 314 S.C. 17, 443 S.E.2d 566 (1994), the South Carolina Supreme Court held that "because [a prosecution witness'] testimony did not fall within an exception to the hearsay rule and was detrimental to [defendant's] defense . . . counsel's failure to object to the introduction of this hearsay evidence

fell below an objective standard of reasonableness." *See also, Hopkins v. State*, 317 S.C. 7, 10, 451 S.E.2d 389, 390 (1994); *Simmons v. State*, 308 S.C. 481, 485, 419 S.E.2d 225, 227 (1992); *Gallman v. State*, 307 S.C. 273, 277, 414 S.E.2d 780, 782 (1992).

In the confrontation context, there is "persuasive authority . . . that an assignment of error under *Crawford* requires more than a standard hearsay objection." *State v. Mitchell*, 378 S.C. 305, 313, 662 S.E.2d 493, 497 (2008). "South Carolina's strict error preservation rules are no less applicable in death penalty cases." *State v. Stone*, 376 S.C. 32, 36 n.1, 655 S.E.2d 487, 489 n.1 (2007). Trial counsel had no strategic reason for their failure to object on constitutional grounds. *Tr. p.45*. Trial counsel testified at the PCR hearing that they wanted to do whatever they could to keep the disciplinary records out. *Tr. p.97*. The unreasonableness of their failure to object was magnified in this case by the inadequate and cursory cross-examination that followed. After Major Nettles recited the summary of Owens' disciplinary records, trial counsel asked only six cross-examination questions, none of which addressed the accuracy or reliability of the records. *ROA p.1393*. Instead, trial counsel effectively conceded that the summary accurately portrayed Owens' disciplinary history, and tried in vain to minimize its impact by pointing out that Owens was not the only inmate in the state of South Carolina who had made shanks and gotten into fights. *Id.*

2. COUNSEL'S FAILURE RESULTED IN PREJUDICE

Owens suffered prejudice as a result of trial counsel's failure because the jury was allowed to consider highly prejudicial evidence that he had no opportunity to subject to adversarial testing. Consequently, there exists a significant likelihood that Owens' "death sentence was imposed, at least in part, on the basis of information which he had no opportunity to deny or explain." *Gardner v. Florida*, 430 U.S. 349, 362 (1977). Trial counsel's failure to

object deprived Owens of his constitutionally-protected right to confrontation, a right that is "so important that the absence of confrontation at trial *calls into question the ultimate integrity of the fact-finding process.*" *State v. Williams*, 285 S.C. 544, 553, 331 S.E.2d 354, 359 (1985) (emphasis added) (internal quotation marks omitted).

The summary of Owens' prison disciplinary records was a crucial part of the State's case for death. In addition to the testimony of Major Nettles, the Solicitor used the records in his closing argument to rebut the defense's contention that Owens was mentally ill and would be able to control his behavior in prison with the help of medication. *ROA p.1558.*[19] The untested evidence undermined the defense theory of the case, and supported the State's argument that Owens would be a danger in prison. It is well-established that "'evidence of future dangerousness in prison can raise a strong implication of 'generalized . . . future dangerousness'. . . . A jury hearing evidence of a defendant's demonstrated propensity for violence reasonably will conclude that he presents a risk of violent behavior, whether locked up or free.'" *State v. Stone*, 350 S.C. 442, 451, 567 S.E.2d 244, 249 (2002) (quoting *Kelly v. South Carolina*, 534 U.S. 246, 253-254 (2002)); *see also, State v. Laney*, 367 S.C. 639, 644 n.1, 627 S.E.2d 726, 729 n.1 (2006); *State v. Shafer*, 352 S.C. 191, 199-200, 573 S.E.2d 796, 800 (2002). Trial counsel's error allowed these implications to be raised, to go virtually unchallenged, and to be driven home vividly in the State's closing argument. Absent these errors, there is a reasonable probability that the jury would have reached a different sentence. *Wiggins*, 539 U.S. at 537.

[19] The Solicitor argued, "The defense has presented you evidence that he [had] Attention Deficit Disorder, had depression, had Antisocial Personality Disorder. Could control his behavior from now on with medications, but that's not so. *If you look at his record of disciplinary infractions* since he went on his medication, there is no significant difference than it was before. He has no mental illness. He knew right from wrong. He could assist in his own defense. He could not—but he can still not be allowed to be outside of solitary confinement." *Id.* (emphasis added).

V. TRIAL COUNSEL FAILED TO OBJECT TO IMPROPER VICTIM IMPACT EVIDENCE.

As part of its effort to offer victim impact evidence, the State called Ms. Juliana Christy, a victims' advocate who had worked for the Greenville County Sheriff's Department for over fifteen years. *ROA p.1266.* Ms. Christy summarized her encounter with Ms. Graves' children, and then concluded her testimony by describing the effect that Ms. Graves' death had had on *herself*:

> Q: Now, Ms. Christy, how long have you been a victim advocate?
>
> A: 15 and a half years.
>
> Q: And in that 15 years, how many cases have you been involved in in which you assisted victims or their families on crimes?
>
> A: Thousands.
>
> Q: And how would you describe this event in your career?
>
> A: This was the hardest, hardest case I have ever had to work on. I have never had to do death notification before or since, and this is definitely the hardest case I have. It affected me the most deeply, and still does.

ROA p.1274.

A. RELEVANT LEGAL PRINCIPLES

Victim impact evidence is admissible only for the limited purposes of showing a "glimpse of the life" of the victim in order for the jury to see the victim as a "unique individual," or a brief discussion of the "specific harm" to the victim's family. *Payne v. Tennessee*, 501 U.S. 808, 824 (1991) (citation omitted); *id.* at 831 (O'Connor, J., concurring); *State v. Rocheville*, 310

S.C. 20, 425 S.E.2d 32 (1993).[20] Specifically, the United States Supreme Court stated in *Payne,* 501 U.S. at 825, that the jury may be presented with evidence in the sentencing phase "of the *specific harm* caused by the defendant" and evidence "about the victim and about the impact of the murder on the victim's family." *Accord Rocheville,* 310 S.C. at 27, 425 S.E.2d at 36 (finding permissible victim impact testimony showing the *specific harm* committed by defendant).

Similarly, when the South Carolina Supreme Court has approved victim impact statements it has emphasized their limited nature and how they were confined to brief comments by or regarding the family of the victims. *See Riddle v. State,* 314 S.C. 1, 11-12, 443 S.E.2d 557, 564 (1994) (noting similarity to the limited victim impact statements in *Rocheville*) (superseded on other grounds by rule as stated in *State v. Needs,* 333 S.C. 134, 508 S.E.2d 857 (1998)); *Lucas v. Evatt,* 308 S.C. 31, 416 S.E.2d 646 (1992) (solicitor's comments made in response to comment by defendant's mother and described immediate impact of crime on victim's family); *State v. Johnson,* 306 S.C.119 , 410 S.E.2d 547 (1991) (brief comment made in response to statement made by defendant's sister). Both *Payne* and decisions of the South Carolina Supreme Court acknowledge that victim impact evidence may deprive a defendant of due process under the Fourteenth Amendment. *Payne,* 501 U.S. at 825; *Riddle,* 314 S.C. at 11-12, 443 S.E.2d at 563; *Rocheville,* 310 S.C. at 27, 425 S.E.2d at 36; *Lucas,* 308 S.C. at 33, 416 S.E.2d at 647.

The Eighth Amendment requires that a defendant be treated as a "uniquely individual human being," *Woodson v. North Carolina,* 428 U.S. 280 (1976), and that the sentencing determination must be based on a consideration of the circumstances of the crime and the characteristics of the defendant. For this reason, *Payne* does not sanction the unlimited use of

[20]*See also Payne,* 501 U.S. at 839 (Souter, J., concurring) (victim impact statements should be limited to the consequences of the defendant's acts that were "obviously foreseeable"); *accord State v. Bernard,* 608 So.2d 966 (La. 1992).

victim impact statements. Instead, it emphasizes the duty of state courts to avoid the risk that victim worth becomes "unduly prejudicial" so as to render the trial fundamentally unfair. *Payne*, 501 U.S. at 830 n.2 (prohibiting "victim's family members' characterizations and opinions about the crime, the defendant, and the appropriate sentence"); *id.* at 833 (O'Connor, J., concurring); *id.* at 836 (Souter, J., concurring) ("Evidence about the victim and survivors, and any jury argument predicated on it, can of course be so inflammatory as to risk a verdict impermissibly based on passion, not deliberation."); *accord Lucas v. Evatt*, 308 S.C. 31, 416 S.E.2d 646, 647 (1992).[21]

B. ARGUMENT

Instead of focusing on the limited and permissible areas of inquiry for victim impact evidence, Ms. Christy's testimony relayed the impact that Ms. Graves' death had on *her own life and career*. However, Ms. Christy is not a member of the victim's family; rather, she is an officer of the state who has been employed in criminal casework for the past fifteen years. *ROA p.1266*. Ms. Christy did not know the victim personally at all; and she was therefore not within the narrow class of witnesses *Payne* permits to provide a quick glimpse of the victim's life. *See Payne v. Tennessee*, 501 U.S. at 827 (holding testimony about the effect of the victim's death on her son was relevant); *State v. Johnson*, 306 S.C. 119, 132, 410 S.E.2d 547, 555 (1991) ("the impact of the murder on the victim's family is relevant to the jury's decision as to whether or not the death penalty should be imposed"); *Riddle v. State*, 314 S.C. at 11-12, 443 S.E.2d at 564

[21] *See also, Kelly v. California*, 129 S.Ct. 564, 566 (2008) (stating that courts should restrict the use of victim impact evidence because it "puts a heavy thumb on the prosecutor's side of the scale in death cases") (Stevens, J., issuing statement respecting the denial of petitions for writs of certiorari).

(holding testimony from the victim's stepdaughter about the effect of the victim's death had on her and the victim's grandchildren was relevant). Her testimony on this topic was irrelevant.

Ms. Christy's testimony also exceeded the boundaries of relevant victim impact testimony because she provided an opinion, based on non-record evidence, that Owens' case was comparably worse than the others she had handled during her career. *ROA pp.*1266-75; *see also, Vasquez v. State*, 388 S.C. 447, 458, 698 S.E.2d 561, 566-67 (2010) (holding in the sentencing phase of a capital trial, it is improper for counsel to argue to the jury regarding anything that is not either evidence in the record, or a reasonable inference from the record). Ms. Christy testified that she has worked on "thousands" of cases, but that "[t]his was the hardest, hardest case I have ever had to work on. I have never had to death notification before or since." *ROA p.1275.* The thousands of other cases Ms. Christy had handled were not relevant to the jury's individualized sentencing determination in Owens' case, nor were they facts in evidence. Accordingly, this testimony was outside the scope of permissible victim impact evidence under *Payne*. Moreover, Ms. Christy's testimony was improper because it was more prejudicial than probative. *See, e.g., Cargle v. State*, 909 P.2d 806 (Okl.Cr.1996) (reversing a death sentence because the victim impact statement was inflammatory and focused on irrelevant topics); *State v. Muhammad*, 145 N.J. 23, 47 (1996) (holding "statements that are grossly inflammatory, unduly prejudicial, or extremely likely to divert the jury from its focus on the aggravating and mitigating factors should be excluded"); *United States v. Glover*, 43 F.Supp.2d 1217, 1235-36 (D. Kan. 1999) (holding that the prejudicial effect of victim impact evidence must be weighed against its probative value before it is admitted).

The South Carolina Supreme Court has also recognized that some victim impact evidence may be so prejudicial that it renders a trial fundamentally unfair. In *Hall v. Catoe*, 360 S.C. 353,

362, 364, 601 S.E.2d 335, 340 (2004), the court reversed a death sentence where the prosecutor's closing argument impermissibly compared the worth of the victim's life to the worth of the defendant's life. The court objected to the comments made in *Hall* by explicitly stating that this type of comparison testimony is distinguishable from traditional impact evidence in that it was not actually offered to show the impact of the crime on the victim or the victim's family. Therefore, *Hall* suggests that under South Carolina law, the court's suspicion that victim impact testimony is unduly prejudicial is heightened when that testimony does not relate to a *Payne*-sanctioned topic for victim impact testimony, such as the uniqueness of the victim or the nature of the harm. Ms. Christy's testimony was especially prejudicial because of the position she holds at the sheriff's office. Furthermore, the solicitor added to the prejudicial effect of her statements by commenting on them in closing argument and adding his own improper statements giving his view that Owens' case was particularly rare, and expressing his personal opinion that the appropriate sentence was death. *ROA p.1555.*

Trial counsel's failure to object to Ms. Christy's testimony was deficient performance. Counsel had no strategic reason not to object. Rather, they mistakenly believed that the testimony was permissible. *Tr. pp.43-44, 96.* Their deficient performance prejudiced Owens because it allowed yet another piece of impermissible evidence to be added to the aggravating side of the scale, and wrongly tipped the balance in favor of death. If not for trial counsel's unprofessional errors, there is a reasonable probability that at least one juror would have struck a different balance and returned a different sentence. *See Porter*, 130 S.Ct. at 454 (citing *Wiggins*, 539 U.S. at 537).

VI. TRIAL COUNSEL FAILED TO OBJECT TO THE SOLICITOR'S IMPROPER CLOSING ARGUMENT AND IMPROPER STATEMENTS DURING *VOIR DIRE*.

In his closing argument, Solicitor Ariail made a series of impermissible statements, which can be roughly divided into four separate categories of impropriety: (1) Ariail emphasized his own decision to seek death against Owens and expressed his personal opinion about what the jury's decision should be; (2) he argued that prison life is "easy" and that a life sentence is an inadequate punishment for murder; (3) he misstated the law by arguing that Owens was required to prove he deserved a life sentence and that jurors should not consider Owens' mitigating evidence; and, (4) he argued that the jurors were required to return a death sentence for the greater good of the community and the State as a whole. These lines of argument violated Owens' rights under the Eighth and Fourteenth Amendments, and injected an arbitrary factor into the proceedings in violation of S.C. Code Ann. § 16-3-25(C)(1). Trial counsel did not object to any of these improper arguments.

A. RELEVANT LEGAL PRINCIPLES

The Eighth Amendment is violated when the decision to impose the death penalty is made in an arbitrary manner, or under the influence of a "whim, passion, prejudice, or mistake." *Caldwell v. Mississippi*, 472 U.S. 320, 329 n.2 (1985). S.C. Code Ann. § 16-3-25(C)(1) similarly prohibits a death sentence from being imposed under the influence of passion and prejudice. *State v. Northcutt*, 372 S.C. 207, 641 S.E.2d 873 (2007); *State v. Burkhart*, 371 S.C. 482, 640 S.E.2d 450 (2006). The South Carolina Supreme Court has repeatedly held that "evidence in the sentencing phase of a capital trial must be relevant to the character of the defendant or the circumstances of the crime." *Burkhart*, 371 S.C. at 488, 640 S.E.2d at 453; *see also, State v. Bowman*, 366 S.C. 485, 498-499, 623 S.E.2d 378, 385 (2005) (abrogated on other grounds by *State v. Evans*, 371 S.C. 27, 637 S.E.2d 313 (2006)). Accordingly, evidence

regarding general prison conditions "is not relevant to the question of whether a defendant should be sentenced to death or life imprisonment." *Burkhart*, 371 S.C. at 488, 640 S.E.2d at 453 (describing the Court's holding in *Bowman*). Moreover, it is improper for a solicitor to inject his personal opinion regarding the jury's sentencing decision. *State v. Smart*, 278 S.C. 515, 299 S.E.2d 686 (1982) (reversing a death sentence because the solicitor stated he expected the death penalty) (overruled on other grounds by *State v. Torrence*, 305 S.C. 45, 506 S.E.2d 315 (1991)); *Thompson v. Aiken*, 281 S.C. 239, 315 S.E.2d 110 (1984) (finding prejudicial error where solicitor's argument put his personal opinion before the jury regarding the death penalty); *Northcutt*, 372 S.C. at 223, 641 S.E.2d at 881 (reversing a death sentence where the solicitor "ignored our precedent which rebukes such an imposition of the solicitor's personal belief").

Violations of the Fourteenth Amendment occur when improper prosecutorial closing arguments "so infect[] the trial with unfairness as to make the resulting [sentence] a denial of due process." *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974); *see Darden v. Wainwright*, 477 U.S. 168, 181 (1986); *Romano v. Oklahoma*, 512 U.S. 1, 12 (1994). To determine whether a solicitor's remarks so infected a proceeding with unfairness as to make the jury's verdict a violation of due process, "examination of the entire proceedings is necessary." *Donnelly*, 416 U.S. at 643; *see also, Darden*, 477 U.S. at 179 (remarks must be placed "in context"). The United States Supreme Court has made clear that within the universe of improper arguments, some are more likely to infect a proceeding with unfairness than others. One focus of concern is whether "the prosecutor's remarks so prejudiced a specific right as to amount to a denial of that right." *Donnelly*, 416 U.S. at 643. In a parallel vein, the Court has warned against prosecutorial misconduct that "implicate[s] other specific [constitutional] rights of the accused." *Darden*, 477 U.S. at 182; *see also Donnelly*, 416 U.S. at 643 (noting that when specific guarantees are

involved, the Court "has taken special care to assure that the prosecutorial conduct in no way impermissibly infringes on them").

In addition, frequency and repetition of comments are relevant considerations. Jurors are less likely to be improperly influenced by "isolated passages" than by repeated remarks or themes. *Donnelly*, 416 U.S. at 646. The length of remarks is relevant for the same reason. *Id.* at 647 (noting that impropriety, if any, was limited to "a few brief sentences"). Thus, remarks that are both extended and repeated are especially likely to produce fundamental unfairness.

Finally, whether the jury is "affirmatively misled" is also of importance. *See Romano*, 512 U.S. at 9. A jury may be misled "regarding its role in the sentencing process," *id.* at 9, or it may be misled when the solicitor "manipulate[s] or misstate[s] the evidence." *Darden*, 477 U.S. at 182.

B. ARGUMENT

Solicitor Ariail's arguments were riddled with improprieties that offend an array of interests protected by the Eighth and Fourteenth Amendments and S.C. Code Ann. § 16-3-25(c)(1). First, in keeping with the theme he started during individual *voir dire*,[22] Ariail told the jury that the State is only allowed to seek death in limited circumstances, and further, the State rarely seeks the death penalty even within that limited pool of cases.[23] Ariail emphasized his position as the person who decides whether to seek death and made assertions in that capacity which suggested that the jurors should defer to his expertise in evaluating the gravity of Owens'

[22] Ariail repeatedly told potential jurors that "the State of South Carolina, represented by the solicitor, is not allowed to seek the death penalty, except in certain limited circumstances," which are a "very, very, very small group of cases." *ROA pp.560, 537; see also, ROA pp. 151, 270, 312, 414, 431, 445, 590, 670.*

[23] He stated: "Only limited circumstances are allowed for us to seek the death penalty, and rarely do we seek the death penalty in all those cases that are eligible. In only certain cases do we choose to seek the death penalty. This is a legal process. It is a process – it is a function of government." *ROA p.1552; see also ROA p.1555.*

crime relative to other murders.[24] Ariail expressed his personal view that a death sentence was the only appropriate punishment.[25] And, he called on the previous testimony of Officer Joe Wood, Ms. Juliana Christy, and Major Thierry Nettles as further support for his own position that Owens' place among "the worst of the worst" had already been determined by officials possessing knowledge and judgment ostensibly superior to the jurors' own.[26]

These arguments undermined the concept of discretion afforded to a jury as required by the Eighth Amendment. *See Zant v. Stephens*, 462 U.S. 862, 879 (1983). They are inconsistent with the Court's mandate in *Caldwell* that the "jury cannot be led to believe that the responsibility for determining the appropriateness of the defendant's death sentence rests elsewhere." 472 U.S. at 328-29. And, moreover, they violated the South Carolina Supreme Court's well-established precedent that a solicitor may not inject his personal opinion into the jury's decision-making process. *Smart*, 278 S.C. 515, 299 S.E.2d 686 (1982); *Thompson*, 281 S.C. 239, 315 S.E.2d 110 (1984); *Northcutt*, 372 S.C. at 223, 641 S.E.2d at 881.

Second, Solicitor Ariail misled the jury into believing that a lifetime in prison would amount to a comfortable, easy life that would be "not much more than a change of address for

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[24] *ROA p.1553* ("It's a tough decision for me to ask you to do it when we seek the death penalty, but responsible people make responsible decisions all the time.").

[25] *ROA p.1555* ("They have said earlier that the solicitor is not satisfied with a life sentence, and I am not, and that's why we have asked for the death penalty. They told you that I was going to want the death penalty, and I do. Why is the death penalty the appropriate punishment? That's a fair question for you to ask, and that's a fair one for me to answer. And the answer is very simple. There are mean and evil people in this world who do not deserve to continue to live with the rest of us, regardless of how confined they may be. The law limits the right to seek the death penalty to a very select number of cases, very few, and we seek the death penalty in only a few, but the circumstances where we seek it is available for mean and evil people who commit atrocious acts of murder; the worst of the worst. That's what the death penalty is reserved for.").

[26] *ROA pp.1559-60* ("his disrespect is so apparent that it put chills on the neck of Joe Wood, who said he had been a detective for over 25 years, and he was only one of two people, Freddie Owens, who put chills on his neck"); *ROA pp.1560, 1562.*

Freddie Owens." *ROA p.1561.*[27] Ariail also repeatedly argued that life without parole was not a "serious" or "significant" sentence.[28] These arguments violated Owens' rights in several respects. First, they violated the Eighth Amendment right to be free from arbitrary sentencing by expanding the scope of the jury's sentencing decision to include factors unrelated to "any arguably valid sentencing consideration." *Caldwell*, 472 U.S. at 336; *State v. Plath*, 281 S.C. 1, 15, 313 S.E.2d 619, 627 (1984); *Bowman*, 366 S.C. at 498-499, 623 S.E.2d at 385; *Burkhart*, 371 S.C. at 488, 640 S.E.2d at 453. Second, because prison conditions are beyond Owens' control, the solicitor's argument heightened the risk of arbitrariness by encouraging the jury to act out of dissatisfaction with South Carolina's penological policies. *See State v. Atkinson*, 253 S.C. 531, 534-35, 172 S.E.2d 111, 112 (1970) (overruled on other grounds by *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991)). Third, the Solicitor's contention violated due process by creating the risk that Owens' "death sentence was imposed, at least in part, on the basis of information which he had no opportunity to deny or explain." *Gardner v. Florida*, 430 U.S. 349, 362 (1977); *see also, State v. Woomer*, 278 S.C. 468, 473, 299 S.E.2d 317, 320 (1982). Finally, the Solicitor's denigration of life in prison as punishment violated due process by suggesting that

[27] "Big prison is like a little city. In prison he will have all the necessities of life. Sure, he will be in solitary, but he will have food to eat. They will provide him with clothes. He will have books to read. He will be able to recreate and exercise. He will have doctors to take care of him. He will have the clothing that they provide, and he will have contact with his family and loved ones, and TV at times, and he will have family business. Not much more than a change of address for Freddie Owens. So don't think putting Freddie Owens in prison for the rest of his life is going to be a significant punishment for him. The death penalty is the appropriate punishment." *ROA p.1561.*

[28] Ariail stated: "Sure you and I may think going to prison would be a serious thing, and it would be, but what about Freddie Owens? . . . [D]on't think putting Freddie Owens in prison for the rest of his life is going to be a significant punishment for him. *ROA p.1561.* Ariail later stated that life without parole would be "a minimal sentence" and asked, "[d]oes this case deserve the minimum penalty?" *ROA pp.1555, 1557.*

anything less than death would allow Owens to escape punishment. *See Beck v. Alabama*, 447 U.S. 625, 638 (1980).

Third, Ariail misstated the law by arguing that it was Owens' burden to prove that he deserved a life sentence instead of the death penalty,[29] and he argued that the jury should not give meaningful consideration to Owens' mitigation evidence.[30] These arguments "affirmatively misled" the jury "regarding its role in the sentencing process." *Romano*, 512 U.S. at 10. They also prejudiced Owens' constitutional right to present mitigating evidence for the jury's meaningful consideration. *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

Finally, Ariail urged the jury to impose a death sentence for the greater good of the community and the State as a whole by telling them that they would "speak for this community" and that their decision would "ring like a bell outside of this courthouse; it will ring like a bell to be heard by all." *ROA p.1562.* Ariail concluded, "I urge you on behalf of the State of South Carolina and this community to let that bell ring, to let people know that people who commit murders of this atrocity and have conduct of this type is something that we will not tolerate without the maximum punishment." *ROA pp.1562-1563.* These arguments cannot be reconciled with the Supreme Court's capital punishment jurisprudence recognizing that the jury's role at the sentencing phase is to make an "individualized assessment of the appropriateness of the death penalty." *California v. Brown*, 479 U.S. 538, 545 (1987) (O'Connor, J., concurring); *see also, Penry v. Lynaugh*, 492 U.S. 302, 304 (1989) ("punishment should be directly related to the personal culpability of the defendant"); *Eddings*, 455 U.S. at 105; *Lockett v. Ohio*, 438 U.S. 586,

[29] "If they ask for mercy, ask them to show you one shred of evidence for any reason why he deserves mercy more than he deserves justice." *ROA p.1554.*

[30] "He wrecked all of these peoples lives and he can't just argue that he had a bad upbringing, or his parents didn't treat him right, or that he should have had a better chance in life and get a minimal sentence." *ROA p.1555.*

606 (1978). Ariail's urgings for a death sentence "on behalf the State of South Carolina" also violate the Court's mandate that the jury's sense of responsibility – to make an individualized sentencing determination regarding a particular criminal defendant – may not be diminished by arguments that suggest "the responsibility for determining the appropriateness of the defendant's death rests elsewhere." *Caldwell*, 472 U.S. at 328-329.

These numerous improper arguments violated Owens' rights under the Eighth and Fourteenth Amendments and S.C. Code Ann. § 16-3-25(C)(1). Trial counsel's failure to object to these arguments was objectively unreasonable. *Strickland*, 466 U.S. at 694. They had no strategic reason for their failure to object. *Tr. pp.47-48, 99-101.* Whether considered alone or in combination with their other errors and omissions, trial counsel's failure to object to closing arguments calculated to distort the questions before the jury undermines confidence in the outcome of Owens' trial. *Strickland*, 466 U.S. at 688.

CONCLUSION

Freddie Owens had a rich, detailed and compelling mitigation story to tell. The mitigating evidence that was available to trial counsel, and that could have been presented on Owens' behalf, bears no relation to the limited, generalized case that trial counsel actually put before the jury. *See Rompilla*, 545 U.S. at 393. "It goes without saying that the undiscovered [and un-presented] mitigating evidence, taken as a whole, might well have influenced the jury's appraisal of [Owens'] culpability." *Id.* (citing *Wiggins*, 539 U.S. at 538). Moreover, trial counsel unreasonably failed to object to a myriad of evidence that was improperly offered in aggravation. The Solicitor seized on these circumstances by giving a closing argument riddled with improper and prejudicial statements that so infected the trial with unfairness as to make the resulting sentence a denial of due process. *Donnelly*, 416 U.S. at 643. To make matters worse, trial

counsel unreasonably failed to object to these comments as well. If, instead: (a) the jury had been able to place Owens' life history on the mitigating side of the scale; (b) trial counsel had appropriately reduced the ballast on the aggravating side of the scale; and, (c) the Solicitor's improper and prejudicial arguments had been excluded, there is clearly a reasonable probability that the outcome of Owens' trial could have been different.

For all of the reasons discussed above, Owens is entitled to relief on his Second Amended Application For Post-Conviction Relief. This Court should issue an order vacating the death sentence and granting him a new sentencing proceeding.

Respectfully submitted,

KEIR M. WEYBLE
Cornell Law School
Myron Taylor Hall
Ithaca, NY 14853-4901
Keir@blumelaw.com
(607) 255-3805

EMILY C. PAAVOLA
Death Penalty Resource & Defense Center
Post Office Box 11311
Emily@deathpenaltyresource.org
Columbia, SC 29211
(803) 765-1044

By: Emily C. Paavola
Counsel for Applicant

September 12, 2011

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	CA No. 09-CP-23-0741
	)	
FREDDIE EUGENE OWENS, SK5065	)	
Applicant,	)	
	)	
	)	CERTIFICATE OF SERVICE
v.	)	
	)	
	)	
THE STATE OF SOUTH CAROLINA.	)	
Respondent.	)	
	)	

The undersigned hereby certifies that a copy of the Applicant's Post-Hearing Memorandum of Law in Support of Second Amended Application for Post-Conviction Relief was served by first class United States mail, postage prepaid, this 12th day of September, 2011, upon the following:

J. Anthony Mabry
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

Jill A. Rider

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
Freddie Eugene Owens, #5065, Applicant, v. State of South Carolina, Respondent.	)	**C/A No. 09-CP-23-0741** **RESPONDENT'S POST-TRIAL BRIEF**

The Respondent, above-named, through below-signed counsel, submits the following post-trial brief.

I.

PROCEDURAL HISTORY

This capital post-conviction relief (PCR) applicant, Freddie Eugene Owens, (hereinafter "Owens" or "applicant") was indicted by the Greenville County grand jury during the October 20, 1998 term of the Court of General Sessions of Greenville County for the crimes of murder, armed robbery, conspiracy to commit armed robbery, and possession of a weapon during a violent crime (1998-GS-23-5218, 5220, 5223). The charges arose from the November 1, 1997 shooting death of Irene Graves at the Speedway convenience store, formerly located at I-85 and Laurens Road, in Greenville, South Carolina, and the armed robbery of that store. The State, through Solicitor Robert M. Ariail, served a Notice of Intent to Seek the Death Penalty on Owens. Owens was appointed John M. Rollins, Esq. and Karl B. Allen, Esq., to represent him on the charges. The State was represented by Solicitor Ariail and Deputy Solicitor Betty Strom.

The Trial and 1st Sentencing Proceeding

On February 11, 1999 through February 15, 1999, Owens was tried by a jury for the indicted charges before the Honorable Alexander Macaulay, Circuit Court Judge. The jury found Owens guilty of all charges.

During the statutory twenty-four (24) hour waiting period, Owens murdered his cell-mate, Christopher Lee, at the Greenville County Detention Facility. Owens confessed to this murder.

After the required statutory twenty-four (24) hour waiting period, the sentencing phase began on February 17, 1999, and ended the same date. The jury found the State had proven the following aggravating circumstances beyond a reasonable doubt: (1) the murder was committed in the commission of robbery while armed with a deadly weapon; (2) the murder was committed while in the commission of larceny with the use of a deadly weapon.

On the murder charge, the jury recommended a sentence of death. Judge Macaulay upheld the sentence and followed the jury's recommendation and sentenced Owens to death. Judge Macaulay also sentenced Owens to thirty (30) years for armed robbery, five (5) years for conspiracy to commit armed robbery, and five (5) years for possession of a weapon during a violent crime. (R., the Honorable Alexander Macaulay, 7 Volumes).

The 1st Appeal

Owens appealed his convictions and sentences to the South Carolina Supreme Court. Owens was represented in this appeal by Joseph Savitz, Chief Appellate Defender and Katherine Carruth Link, Assistant Appellate Defender. Respondent was represented by Assistant Attorney General, Tracey Colton Green. Owens raised eight (8) issues in his final brief:

1. Did the trial court lack subject matter jurisdiction of the murder charge because

the indictment failed to set forth all the essential elements of the offense of murder?

2. Did the trial court err in ruling that evidence of Owens' alleged involvement in other crimes October 31 and November 1 was admissible in the guilt phase of his trial?

3. Did the trial court err in admitting Owens' February 16 statement in the sentencing phase, where the investigation into the death of his cellmate at the detention center was not yet complete and the facts of that incident had not yet been fully developed, and in not granting a continuance on the same basis once it was determined that evidence related to that incident would be admitted, in violation of the Eighth and Fourteenth Amendments to the United States Constitution, Article I, Section 3 of the South Carolina Constitution, and Rule 403 of the South Carolina Rules of Evidence?

4. Did the trial Court err in admitting Owens' February 16 statement in the sentencing phase, where this evidence was not within the ambit of the state's initial notice of evidence of aggravation and where the state's supplemental notice was not filed and served within the time allowed by S.C. Code Ann. Section 16-3-20?

5. Did the trial court err in admitting Owens' February 16 statement in the sentencing phase, where that statement was the product of a representation by state officials that it would not be used in this proceeding, in violation of Owens' rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 12 of the South Carolina Constitution?

6. Did the trial judge err in admitting Owens' February 16 statement in the sentencing phase, where that statement was obtained in violation of Owens' right to counsel under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 14 of the South Carolina Constitution?

7. Did the trial court err in denying the defense motion for a new trial based on after-discovered evidence, where information learned after the sentencing proceeding revealed that the statement of Owens admitted in that proceeding was not accurate?

8. Did the trial court err in sentencing Owens for possession of a firearm in the commission of a violent crime, where South Carolina law expressly prohibits imposition of such sentence in a case in which the death penalty is imposed.

(See FBOA, the Honorable Alexander Maccaulay, pp. vii.-viii.). The South Carolina Supreme Court affirmed Owens' convictions, but reversed his death sentence on the basis that defense counsel did not have sufficient time to investigate Owens' confession to the murder of his cell-mate, which

occurred during the statutory twenty-four (24) hour waiting period. State v. Owens, 346 S.C. 637, 552, S.E.2d 745 (2001). The case was remanded to the circuit court for re-sentencing.

The 2nd Sentencing Hearing

Upon remand, Owens waived his right to have a jury determine his sentence, and his second sentencing proceeding was conducted by the Honorable John Kittredge, Circuit Court Judge. Owens was represented in the second sentencing proceeding by Steve Sumner, Esq. and Alex Kinlaw, Esq. Following the bench re-sentencing proceeding from February 10-14, 2003, Owens was again sentenced to death. Judge Kittredge found beyond a reasonable doubt that the victim, Irene Graves, was murdered was committed during the commission of an armed robbery. (ROA, the Honorable John Kittredge, 2 Volumes).

The 2nd Appeal

Owens appealed his second death sentence to the South Carolina Supreme Court. Owens was represented in this appeal again by Joseph L. Savitz, III., Chief of Appellate Defense. Respondent was represented by Assistant Attorney General Derrick McFarland. On appeal, Owens raised only one issue in his brief:

> The judge erred during the jury waiver colloquy by informing Owens that his best hope for a life sentence might ultimately depend on lying jurors who would "claim to support the death penalty in hopes of getting on the jury" when "in reality such a juror is opposed to the death penalty and . . . when they're selected and the time comes, they refuse to vote for the death penalty and will only vote for life."

(See FBOA, the Honorable John Kittredge). The South Carolina Supreme Court vacated the death sentence finding the trial judge's comments to Owens regarding his right to a jury trial at re-sentencing constituted reversible error. State v. Owens, 362 S.C. 175, 607 S.E.2d 78 (2004). The case was remanded to the circuit court for another re-sentencing proceeding.

The 3rd Sentencing Proceeding

Upon remand, Owens elected to have a jury determine his sentence. At the conclusion of his third sentencing proceeding, this time before a jury, Owens was sentenced to death for the third time on November 11, 2006. Owens was represented at his third sentencing proceeding by E.P. "Bill" Godfrey, Esq., and Kenneth Gibson, Esq. The jury found the same two (2) aggravating circumstances were proven beyond a reasonable doubt. The Honorable Larry R. Patterson, Circuit Court Judge, upheld the sentence and followed the jury's recommendation and sentenced Owens to death. (ROA, the Honorable Larry R. Patterson, 4 Volumes).

The 3rd Appeal

Owens appealed his third death sentence to the South Carolina Supreme Court. Owens was represented in this appeal again by Chief Appellate Defender Savitz and Assistant Appellate Defender LaNelle DuRant. Respondent was represented by Assistant Attorney General J. Anthony Mabry. In this appeal, Owens raised three issues in his brief:

1. The trial judge abused his discretion when he summarily disqualified a potential juror, Sonya Ables (Juror Number 1), solely because she "went to [her] pastor and talked to him about [the death penalty]," as he incorrectly believed "there is a case right on point, that if a woman talks to her priest after she's been called as a juror about capital punishment, she is disqualified under the law."

2. The trial judge committed reversible error by admitting Owens' prison disciplinary records, as they violated the rule against hearsay, as well as the Sixth and Fourteenth Amendments.

3. The trial judge committed reversible error by allowing the Solicitor to argue in closing that the conditions of life imprisonment in general justified a death sentence for Owens, as this argument injected an arbitrary factor into the jury sentencing considerations in violation of S.C. Code Section 16-3-25(C)(1).

(FBOA, the Honorable Larry R. Patterson). The South Carolina Supreme Court affirmed Owens'

third death sentence on July 14, 2008. State v. Owens, 378 S.C. 636, 664 S.E.2d 80 (2008). Owens filed a Petition for Rehearing. The South Carolina Supreme Court denied the petition for rehearing on August 8, 2008.

Owens, through retained counsel, John H. Blume and Keir M. Weyble, made a Motion for a Stay of Execution on August 12, 2008 to appeal to the United States Supreme Court. The State opposed the Stay of Execution. On September 5, 2008, the South Carolina Supreme Court denied the Stay of Execution pursuant to In Re Stays of Execution, 321 S.C. 544, 471 S.E.2d 140 (1996) and Rule 23.3 of the South Carolina Supreme Court finding the issues Owens alleged he wanted to raise to the United States Supreme Court were not preserved for review. Owens, through attorneys Blume and Weyble, made a petition for stay before the United States Supreme Court. On September 30, 2008, Chief Justice Roberts entered a stay of execution pending the timely filing and disposition of a petition for certiorari. Owens, through counsel, subsequently filed a Petition for Writ of Certiorari. The State opposed the grant of certiorari through its Brief in Opposition to the Petition for Writ of Certiorari. Respondent was represented in this matter by Deputy Attorney General Donald Zelenka. On January 21, 2009, the United States Supreme Court denied Owens' Petition for Writ of Certiorari.

The Petition for a Stay of Execution to Pursue PCR

Owens subsequently filed a Petition for a Stay of Execution to pursue *potential* post-conviction relief (PCR) remedies. The State did not oppose this request. On March 5, 2009, the South Carolina Supreme Court granted Owens request for a stay of execution to pursue post-conviction relief (PCR) remedies.

The Capital PCR Action

Owens filed an Application for PCR, an amended Application for PCR, and a Final (2nd Amended) PCR Application (09-CP-23-0741), which is now before this Court. Respondent timely filed a Return to all three applications including to the Final Amended Application and attached and incorporated by reference the following materials:

1. Record on Appeal, the Honorable Alexander Macaulay (7 Volumes)
2. Final Brief of Appellant
3. Final Brief of Respondent
4. Final Reply Brief of Appellant
5. State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001)
6. Record on Appeal, the Honorable John Kittredge (2 Volumes)
7. Final Brief of Appellant
8. Final Brief of Respondent
8. State v. Owens, 362 S.C. 175, 607 S.E.2d 78 (2004)
9. Record on Appeal, the Honorable Larry R. Patterson (4 Volumes)
10. Final Brief of Appellant
11. Final Brief of Respondent
12. State v. Owens, 378 S.C. 636, 664 S.E.2d 80 (2008)
13. Petition for Rehearing
14. Order of the South Carolina Supreme Court denying Petition for Rehearing
15. Remittitur
16. Execution Order

17. Petition for Stay of Execution (to appeal to the United States Supreme Court)

18. State's Response to Request for Stay of Execution

19. Order of the South Carolina Supreme Court Denying the Request for a Stay of Execution

20. Petition for Stay of Execution to the United States Supreme Court

21. Order of Chief Justice John Roberts Staying the Execution pending filing of Writ

22. Petition for Writ of Certiorari to the United States Supreme Court

23. State's Brief in Opposition to the Petition for Writ of Certiorari

24. Order of the United States Supreme Court Denying Petition for Certiorari

25. Petition for Stay of Execution to Pursue PCR Relief

26. State's Response to Stay of Execution Request

27. Order of the South Carolina Supreme Court Granting Stay to Pursue PCR

28. Owens' PCR Application

29. Owens' Amended PCR Application

30. Owens' Final (2nd Amended) Application

Factual Summary [1]

Applicant, Freddie Eugene Owens, brutally murdered Irene Graves on November 1, 1997. **(R. 1111, 1113).** Owens shot Graves in the right side of the head with a .32 caliber pistol. **(R. 1239, 1255, 1106).** The bullet went through Graves' brain and ricocheted back off of the inside of her skull to the other side of her head. **(R. 1106).** Ms. Graves was a single mother of one adult and two

[1]The record citations in Respondent's Statement of Facts are from the Record on Appeal (4 Volumes) from the third sentencing proceeding before the Honorable Larry R. Patterson. Some of the facts are taken from the South Carolina Supreme Courts' opinion in State v. Owens, *supra* (*Owens I*).

children at the time of her murder. **(R. 1156).** She worked three jobs at the time of her death. **(R. 1153).** If she had survived, Ms. Graves was scheduled to take her two small children to cheerleading camp the following day. **(R. 1320-22).**

Ms. Graves was operating a convenience store on Lauren's Road in Greenville during the early morning hours of November 1st, just after Halloween night. **(R. 1148).** Owens and three of his friends had been on a crime spree on Halloween afternoon and into Halloween night. **(R. 1194-1224).** Owens and his three co-defendants cased several stores and two co-defendants eventually robbed Prestige Cleaners on Lauren's Road, and Owens participated in robbing the Conoco Hot Spot on Augusta Road prior to the robbery of Ms. Graves' business.[2] **(R. 1194-1224).** During each robbery, the assailants wore ski masks or panty hose over their heads and carried handguns. **(R. 1210-11, 1214-15, 1222-23, 1209-11, 1220, 1260, 1277).**

After midnight, the four men met again on Owens' front porch and discussed robbing two stores near the intersection of Lauren's Road and I-85. **(R. 1224-27).** One of the stores was the Speedway convenience store at which the victim Irene Graves worked. **(R. 1226-27).**

Ms. Graves was murdered during the commission of the armed robbery planned and executed by applicant Owens. Owens and one of his co-defendants, Stephen Andre Golden, entered the store, again wearing disguises over their faces. **(R. 1126).** Upon Owens initially entering the store, Ms. Graves was accosted and cash was removed from one register. **(R. 1126).** At gun point, Ms. Graves was then taken to the area of the store safe. **(R. 1126).** She was then shot in the head. **(R. 1126).**

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[2]Owens did not participate in the robbery of the Prestige cleaners. He did participate in the robbery of the Conoco Hot Spot and carried a firearm. Owens and his friends had also cased a bank but decided against robbing it.

Surveillance video captured the robbery and her murder. Another employee, who had stepped out of the store to obtain ice for the store's drink machine shortly before Owens and Golden entered, found Ms. Graves' lifeless body in front of the safe. **(R. 1127).**

Applicant Owens bragged to his girlfriend the next morning that he shot the victim because she would not open the safe.[3] **(R. 1165).** Applicant also bragged to another co-defendant, not Golden, that he shot Ms. Graves for the same reason.[4] **(R. 1232).** After the robbery, when the cash register was totaled up by store personnel, $37.29 was missing from the store. **(R. 1180).** Owens eventually admitted to police he shot Ms. Graves. State v. Owens, *supra* (*Owens I.)*

As previously stated, Owens was convicted by a Greenville County jury of murder, possession of a weapon during a violent crime, armed robbery, and conspiracy.[5] The night after Owens was convicted, Owen's cellmate, Christopher Lee, was beaten to death in the cell he shared with Owens in the Greenville County Detention Center. S.L.E.D. agents questioned Owens, and he

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[3]Ms. Graves, as a cashier, could not open the safe. She did not have the combination. **(R. 1180).**

[4]Owens told Nikko Vance when he got back in the getaway car that "He shot that bitch in the head"; and "she wasn't opening the safe, so he shot the whore." (R. 1232). Owens' girlfriend testified Owens told her "[s]he kept throwing up her hands and said she couldn't open the safe, so he just said 'I shot the bitch'". **(R. 1165).**

[5]In addition to applicant's girlfriend Aisha Austin, Stephen Andre Golden testified in the guilt phase of applicant's first trial and also identified applicant as the person who shot Ms. Graves. State v. Owens, *infra (Owens I.).* Nikko Vance, another co-defendant, who did not enter the store, testified at applicant's first trial and identified applicant as the shooter based on statements applicant and Golden made when they returned to the getaway vehicle. Detectives Wood and Willis testified Owens initially denied involvement but later admitted he shot Ms. Graves. Id. Owens mother was also called as a witness. She denied she gave a written statement to police admitting that Owens told her he killed the lady at the store; however, Owens mother's written statement to police detailing his confession to her was admitted into evidence in Owens first trial. **(R., Macaulay, pp. 2026-2055, 2067-2084).**

confessed to the murder of Lee. **(R. 1388-1391).** Owens admitted he beat, strangled, slammed, and kicked Lee, jabbed the victim with a ballpoint pen, and then stuffed the pen up Lee's nose. **(R. 1388-1391).** Owens also confessed to burning Lee with a cigarette lighter after he beat him unconscious. **(R. 1388-1391).** The findings at Lee's autopsy were consistent with Owens' confession including the fact that Lee's chin hair was singed. **(R. 1404).**

In addition to the murder of Christopher Lee, in the 3rd sentencing proceeding, the State introduced Owens' record of prison disciplinary infractions. Owens had accumulated approximately fifty-six (56) prison disciplinary infractions of which the State only offered a brief summary of twenty-eight (28). These included stabbing his co-defendant Andre Golden and assaulting prison guards, fellow inmates, and prison staff.

II.

On June 15, 2010, Owens, through collateral counsel Emily Paavola and Keir Weible, according to this Court's scheduling order, filed his final amended application for post-conviction relief (2009-CP-23-0741).

In his Final Amended Application, Owens alleged the following grounds:

10(a) Applicant was denied the right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution, during jury selection at his 2006 capital re-sentencing proceeding..

11(a) Supporting Facts: Trial counsel's performance during jury selection was both deficient and prejudicial. *See* Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included the following:

1) Counsel failed to object to statements by the solicitor, and similar instructions by the trial court, that the State may only seek death where aggravating circumstances are present, which improperly suggested to potential jurors that the aggravating

circumstances had already been found.

2) Counsel failed to object when the trial judge erred by disqualifying a potential juror, Sonya Ables (Juror Number 1), solely because she "went to [her] pastor and talked to him about [the death penalty]," as the trial judge incorrectly believed "there is a case right on point, that if a woman talks to her priest after she's been called as a juror about capital punishment, she is disqualified under the law."

10 (b): Applicant was denied the right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution, during his 2006 capital sentencing proceeding.

11(b): Supporting Facts: Trial counsel's performance during the sentencing phase was both deficient and prejudicial. *See* Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included the following:

1) Counsel failed to object and/or request proper instructions from the court when the State played a crime scene video without further explanation or analysis. *2006 Tr. At 1076.* The crime scene video shows two masked men but their faces are not identifiable. One of the masked men is primarily shown in the video. He stands behind the counter, points a gun at the clerk, and appears to shoot the clerk before the two men run out of the convenience store. Applicant's co-defendant, Steven Golden testified at Applicant's previous trials that it was he (Golden) who is primarily visible in the video. The State then offered an analysis as to why it believed that the fatal shot came from the other man standing off camera. The jury at Applicant's 2006 re-sentencing heard no analysis about who appears in the video. They were simply instructed that Applicant had already been found guilty of the murder, and then they were shown the video without explanation. The trial judge at the 2006 re-sentencing instructed the jurors that they could consider whether Applicant had "minor participation" in the crime as a mitigating circumstance. *2006 Tr. At 1592.* But, without further instructions, the video misled the jury to believe that there was conclusive video-graphic evidence that Applicant fired the fatal shot, thereby foreclosing consideration of both the "minor participation" mitigating circumstance, and the related possibility that Applicant, though perhaps present, had not been the triggerman.

2) Counsel failed to object to improper and prejudicial opinion testimony from Officer Joe Wood that Applicant gave him "cold chills", and the solicitor's

reliance on that testimony in closing argument. *2006 Tr. at 1093 and 1559.*

3) Counsel failed to object to victim impact testimony regarding the effect of the victim's death on the victim outreach coordinator. *2006 Tr. at 1274.* Such testimony was outside the scope of proper victim impact evidence, and counsel's failure to lodge an appropriate objection was unreasonable and prejudicial. Counsel also failed to object to hearsay testimony from the victim outreach coordinator concerning statements that the victim's children made to her after the victim's death. *2006 Tr. at 1268-1271.* These statements violated the evidentiary rules of South Carolina, as well as the confrontation and due process clauses of the state and federal constitutions.

4) Counsel failed to preserve the state and federal constitutional issues relating to the admission of a list of disciplinary infractions by failing to object on the basis of the Confrontation Clause and due process. On appeal, the South Carolina Supreme Court held that counsel's objection was inadequate to preserve the federal constitutional issues and thus, the issue was procedurally barred. Counsel's failure to lodge an appropriate objection was deficient and prejudicial.

5) Counsel failed to present readily available mitigating evidence that had already been developed at Applicant's previous trial and first re-sentencing proceeding. Ms. Marjorie Hammock previously testified in much greater detail to Applicant's life history and background. Further, Dr. Jim Evans previously testified that Applicant had brain dysfunction and difficulties with attention and impulse control. Counsel failed to have Ms. Hammock testify to all of the details that were available concerning Applicant's life history, and counsel failed to call Dr. Evans to testify at all.

6) Counsel failed to investigate and present mitigating evidence of Applicant's experiences while incarcerated in the Department of Juvenile Justice, and the impact of those experiences upon his character, conduct, and psychological condition.

7) Counsel failed to ensure that jurors did not see applicant in restraints.

8) Counsel failed to object to the solicitor's improper and prejudicial closing argument. For example, counsel failed to object to the solicitor's statements that the prosecution seeks death only rarely, even in eligible cases, and this case was one of those rare cases: "Only limited circumstances are allowed for

us to seek the death penalty, and rarely do we seek the death penalty in all those cases that are eligible. In only certain cases do we seek the death penalty." *2006 Tr. at 1552; see also, 2006 Tr. at 1555* ("There are mean and evil people in the world who do not deserve to continue to live with the rest of us, regardless of how confined they may be. The law limits the right to seek the death penalty to a very select number of cases, very few, and we seek the death penalty only in a few, but the circumstances where we seek it is available to mean and evil people who commit atrocious acts of murder; the worst of the worst. That is what the death penalty is reserved for. Those whose behavior sets them apart even from the criminal world, and that is Freddie Owens, and this murder and his behavior are one of those cases"). Counsel further failed to object when the solicitor argued that the jury should sentence Applicant to death because his life would be easy in prison. *See e.g., 2006 Tr. at 1561* ("[b]ig prison is like a little city. In prison he will have all the necessities in life. He will have clothing that they provide, and he will have contact with his family, and TV at times, and he will have family business. Not much more than a change of address for Freddie Owens. So don't think putting Freddie Owens in prison for the rest of his life is going to be a significant punishment for him"). Counsel also failed to object when the solicitor told the jury that he personally wanted the death penalty and would not be "satisfied with a life sentence." *2006 Tr. at 1555.* Counsel thus failed to preserve for appeal whether the improper arguments violated the Sixth, Eighth and Fourteenth Amendments and the corresponding provisions of the South Carolina Constitution and South Carolina law, including S.C. Code Ann. Section 16-3-25(C)(2003).

10(c): Applicant's death sentence was obtained in violation of the Sixth, Eighth and Fourteenth Amendments to the United States Constitution, and the corresponding provisions of South Carolina law, because the jurors saw Applicant in restraints.

11(c): The above ground states the relevant facts.

10(d): Applicant was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution, during the appellate phase of his 2006 re-sentencing proceeding.

11(d) Supporting facts: Appellate counsel's performance on appeal was both deficient and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984); *Evitts v. Lucey*, 469 U.S. 387 (1985). Appellate counsel failed to assert that it was error for the trial court to deny Applicant's request to ask potential jurors if they would have a bias in favor of police officers because of their previous work in that field.

The Merits Hearing

On July 19, 2010 through July 20, 2010, an evidentiary merits hearing was convened before this Court at the Greenville County Courthouse. Owens was present at the hearing and represented by his appointed collateral counsel Keir Weyble, Esq. and Emily Paavola, Esq. Respondent was represented by Assistant Attorneys General Anthony Mabry and Brendan MacDonald.

At the beginning of the hearing, applicant expressed his intent to *waive* and *abandon* Grounds 10(b)/11(b)7 and 10(c)/11(c), which were allegations alleging ineffective assistance of counsel and violation of due process regarding applicant being seen in restraints. Respondent did not object to applicant's desire to waive, withdraw, or abandon these two (2) grounds. Therefore, the Court granted applicant's request to withdraw, waive and abandon these two (2) grounds. Accordingly, these two (2) grounds were dismissed with prejudice.

At the hearing, applicant called as witnesses Joseph Savitz, Esq., Bill Godfrey, Esq., Kenneth Gibson, Esq., Jill Rider (a paralegal), and James Garbarino, a psychologist. At the hearing, applicant also offered an affidavit of Drucy Glass, the mitigation investigator from Owens' first trial and sentencing proceeding and Owens' second sentencing proceeding. The State was allowed to cross-examine Ms. Glass by sworn telephonic testimony before this Court, which was consented to by applicant. Applicant Owens did not testify at the PCR hearing. Respondent called as witnesses John Rollins, Esq., Steve Sumner, Esq., Solicitor Robert Ariail, Doctor Donna M. Schwartz-Watts, and Tora Brawley, a neuro-psychologist.[6] Applicant's collateral counsel had the opportunity to or did cross-examine these witnesses.

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[6]By the agreement of applicant and Respondent, Doctor Schwartz-Watts' and Doctor Brawley's testimony was taken by sworn telephonic testimony before this Court.

This Court has before it the Record on Appeal of Owens' previous trial and sentencing proceedings, the records of the Clerk of Court for Greenville County regarding Owens' convictions and sentences, the evidence introduced in Owens' previous trial and sentencing proceedings, the appellate briefs and the previous decisions of the South Carolina Supreme Court regarding Owens convictions and sentences, the briefs and Orders of the United States Supreme Court regarding Owens' Petition for Writ of Certiorari, the PCR applications, the PCR transcript, and the evidence and exhibits introduced at the PCR merits hearing.

After reviewing the record, including the Record on Appeal and the trial exhibits, and after reviewing all of the evidence submitted in this case, including the testimony of each witness and the exhibits introduced at the PCR hearing, and making a credibility assessment regarding the witnesses and evidence introduced, this Court must find the application for post-conviction relief to be without merit and dismiss the application with prejudice.

III.

Standard of Review/Allegations of Ineffective Assistance of Counsel

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Brown v. State, 383 S.C. 506, 680 S.E.2d 909 (2009); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). In order to prove that counsel was ineffective, the applicant must show that: (1) counsel's performance was deficient; and (2) there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different. Id., *citing* Strickland v. Washington, 466 U.S. 668 (1984). Applicant must show his attorneys representation fell below an objective standard of reasonableness, and the applicant must show prejudice. Id.; Simpson v. Moore, 367 S.C. 587, 595-96, 627 S.E.2d 701, 706 (2006). "A convicted defendant making a claim of

ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Strickland, 466 U.S. at 690. "There are countless ways to provide effective assistance in any given case," and the simple fact that counsel's strategy was ultimately unsuccessful does not render counsel's assistance constitutionally ineffective. Strickland, 466 U.S. 689; Bell v. Evatt, 72 F.3d 421, 429 (4th Cir. 1995). "The proper measure of attorney performance remains simply reasonableness under prevailing professional norms." Strickland, 466 U.S. at 688; Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993).

To effect a fair review of counsel's performance, a reviewing court must "eliminate the distorting effects of hindsight" and attempt "to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689; Butler v. State, 286 S.C. 444-45, 334 S.E.2d 815 (1985). "[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690; Butler, 286 S.C. at 455, 334 S.E.2d at 815-16, and an applicant claiming error bears the burden of showing counsel's conduct did not constitute reasonable assistance, Strickland, 466 U.S. at 689; Butler 286 S.C. at 443, 334 S.E.2d at 814. As set out above, counsel must be given latitude in the art of advocacy, which necessarily, allows for strategic decisions. "Where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006), *citing* Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). This is true as long as counsel's strategic decision was objectively reasonable. Strickland v. Washington, 466 U.S. 668, 689 (1985)(objectively reasonable trial strategy decisions cannot be the basis of a claim of ineffective assistance of counsel). Counsel's strategy will be reviewed under "an objective

standard of reasonableness." Council v. State, 380 S.C. 159, 670 S.E.2d 356 (2008), *quoting* Ingle v. State, 384 S.C. 467, 470, 560 S.E.2d 401, 402 (2002).

"Surmounting Strickland's high bar is never an easy task[.]" Premo v. Moore, 562 U.S. ___ (2011) *citing* Harrington v. Richter, 562 U.S. ___, (2011), *quoting* Padilla v. Kentucky, 559 U.S. ___, ___ (2009)(slip op. at 14). "It is 'all too tempting' to 'second-guess' counsel's assistance after conviction or adverse sentence." Harrington v. Richter, 562 U.S. ___, (2011), *citations omitted.* "The question is whether an attorney's representation amounted to incompetence under 'prevailing professional norms," not whether it deviated from best practices or most common custom." Id.; Strickland, 466 U.S., at 690.

In Strickland, the United States Supreme Court made clear that "the purpose of the effective assistance guarantee of the Sixth Amendment is not to improve the quality of legal representation. . . [but] simply to ensure that criminal defendants receive a fair trial." Cullen v. Pinholster, ___ U.S. ___, 131 S.Ct. 1388 (2011), *quoting* Strickland, 466 U.S. at at 689, 104 S.Ct. 2052. Thus, " the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so *undermined* the proper functioning of the adversarial process that the trial cannot be relied on has having produced a just result." Id., *quoting* Strickland, at 696, 104 S.Ct. 2052 (emphasis added by Court). In Pinholster, the Court noted that the Strickland Court acknowledged that "[t]here are countless ways to provide effective assistance in any given case," and that '[e]ven the best criminal defense attorneys would not defend a particular client in the same way." Id., *quoting* Strickland, at 689, 104 S.Ct. 2052.

Lastly, as noted, relief will not be granted on a showing of mere error. Prejudice must also be shown. Strickland, 466 U.S. at 687. The standard of "prejudice" differs depending upon whether

it is related to guilt phase issues or penalty phase issues. In order to prove "prejudice" in the guilt phase, an applicant must show that but for counsel's errors, there is a reasonable probability the result of the trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In his Final Application (2nd Amended Application), applicant raised no grounds of ineffective assistance of trial counsel arising from his guilt phase proceeding which occurred in 1998.[7] Therefore, the appropriate standard of prejudice is as follows.

In the context of a capital sentencing proceeding, applicant must prove that "there is a reasonable probability that ... the sentencer--including an appellate court, to the extent it independently reweighs the evidence--would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." Strickland, 466 U.S. at 695. *See also* Wiggins, 539 U.S. at 537; Jones v. State, 332 S.C. 329,344-45, 504 S.E.2d 822, 829-30 (1998). Again, [a] reasonable probability is a probability sufficient to undermine confidence in the outcome. Jones, 504 S.E.2d at 823-824. The United States Supreme Court made clear in its recent decision in Wong v. Belmontes, ___ U.S. ___, 2009 WL 3805746 (2009) that the burden is *not on the State* to show the lack of prejudice, but the burden is *on the applicant* to show prejudice. Id. To establish prejudice, applicant "must show 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Id., *quoting* Strickland, 466 U.S. at 694.[8] That

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[7]In one of his earlier applications, applicant had alleged ineffective assistance of his trial counsel in his guilt phase proceeding which occurred before Judge MacCaulay. Subsequently, applicant withdrew this ground when he filed his Final Amended Application, and applicant presented no evidence regarding this claim at the merits hearing. Therefore, this ground was waived and abandoned by applicant, and, in any event, applicant failed to meet his burden of proof on this ground. Caprood; Butler.

[8]*See also* Smith v. Spisak, 558 U.S. ___ (2010).

showing requires applicant to establish a reasonable probability that had counsel acted competently there is a reasonable probability that the jury would have returned with a different sentence. Id., *quoting* Wiggins v. Smith, 539 U.S. 510, 535, 536, (2003). Such a showing "requires a substantial, not just conceivable, likelihood of a different result." Cullen v. Pinholster, ___ U.S. ___, 131 S.Ct. 1388, 1403 (2011)(internal quotations omitted), *citing* Harrington v. Richter, ___ U.S. ___, 131 S.Ct. 770, 791 (2011). Reviewing applicant Owens' allegations under the cited standards,[9] Owens cannot establish a claim of ineffective assistance of counsel as to any issue raised in his Final Amended Application.

Additionally, many of applicant Owens' grounds allege ineffective assistance of sentencing phase counsel in failing to object. Ineffective assistance of counsel claims based on a failure to object are tied to the admissibility of the underlying evidence. Hough v. Anderson, 272 F.3d 878 (7th Cir. 2001). If the evidence admitted without objection was admissible in any event, then the complaint fails both prongs of the Strickland test, as it was neither deficient not to object nor prejudicial. Id.

Furthermore, as set forth above, applicant Owens must show deficient performance, as defined above, and prejudice under the appropriate penalty phase standard. Strickland; Wong; Jones. Respondent submits Owens has failed to show deficient performance or resulting prejudice arising from any of the grounds he alleges in his Final Amended Application for Post-Conviction Relief. "Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim." Pelzer v. State, 381 S.C. 217, 672 S.E.2d 790 (Ct. App. Re-filed

[9]Since applicant is raising only one (1) issue of ineffective assistance of appellate counsel, Respondent will discuss the standard of review of such a claim under the appropriate ground, 10(d)11(d).

February 3, 2009) *quoting* Strickland, 466 U.S. at 700.

IV.

RESPONSE TO EACH GROUND

Ground 10(a)/11(a)(1)

10(a)Applicant was denied the right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution, during jury selection at his 2006 capital re-sentencing proceeding..

11(a) Supporting Facts: Trial counsel's performance during jury selection was both deficient and prejudicial. *See* Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included the following:

1) Counsel failed to object to statements by the solicitor, and similar instructions by the trial court, that the State may only seek death where aggravating circumstances are present, which improperly suggested to potential jurors that the aggravating circumstances had already been found.

In this ground, Owens alleges counsel was ineffective in failing to object to alleged statements by the Solicitor and instructions by the sentencing court (Judge Patterson) that the State may only seek the death penalty where aggravating circumstances are present, which Owens *alleges* improperly suggested to potential jurors that the aggravating circumstances had already been found. As the record shows, there is no merit to this ground. **(See ROA, the Honorable Larry R. Patterson, Volumes I-IV).** Furthermore, Owens waived and abandoned this ground in his post-trial brief.[10]

A review of the entire record, including the trial judge's instructions to the jury, shows the

[10]Owens makes no argument in his post-trial brief regarding this ground. (See Post-Trial Brief of Applicant, pp. 1-93). It is clear he has waived and abandoned this ground. It should be dismissed with prejudice.

jury fully understood from any comments of the trial judge or the Solicitor that the aggravating circumstances must be proved by the State beyond a reasonable doubt. There was no inference from the court's comments or from the Solicitor's questions or comments that the aggravating circumstances already existed. **(See ROA, Patterson, Vols. I-IV).** The challenged comments were merely explanatory to the jury that there was a difference between a capital and non-capital murder case, and they, the jury, could not impose a death sentence, unless at least one (1) of the aggravating circumstances alleged was proven beyond a reasonable doubt, and that burden rested on or with the State. This is clear from the record of the 3rd sentencing proceeding as a whole, the challenged comments themselves, and from the unanimous finding of aggravating circumstances by the jury at the conclusion of the third (3rd) sentencing proceeding. **(See ROA, Patterson, Vol. I-IV & Finding of Aggravating Circumstances).** As counsel testified at the PCR hearing, there was nothing objectionable about these comments, and they did not suggest to the jury that the aggravating circumstances already existed or had already been proven. Counsel's testimony on this issue is credible and is supported by the record itself. Given this record, applicant cannot show *deficient performance* in failing to object. Strickland v. Washington.

Nor can Owens show prejudice given this record. Wong v. Belmontes; Jones v. State. The record of the 3rd sentencing proceeding shows the trial judge clearly explained to the jury several times that the State was required to prove the aggravating circumstances alleged beyond a reasonable doubt. It was clearly explained to the jury that they could not even consider imposing the death penalty unless the State proved to them and they found beyond a reasonable doubt that at least one (1) of the aggravating circumstances alleged existed. The impression that applicant Owens alleges under this ground that the jury was left with, by the court's or the Solicitor's comments, is simply

not supported by the record itself. **(ROA, Patterson Vol. I-IV).**

Additionally, trial counsel testified at the PCR merits hearing that there was nothing improper about the court's instructions or the Solicitor's comments in this regard. **(PCR Tr. p. 135-36).** Trial counsel testified it was typical in a capital case that at some point it was explained to the jury the difference between capital and non-capital murder. **(PCR Tr. pp. 135-36).** Trial counsel testified he did not believe there was any suggestions by these instructions or comments that the aggravating circumstances had already been found. **(PCR Tr. p. 136).** Trial counsel also testified the jury was instructed numerous times that the State had to prove the aggravating circumstances beyond a reasonable doubt, and counsel testified he felt Judge Patterson did an excellent job in keeping that in the forefront of the jury's mind and explaining it correctly from the time the jurors were questioned until the end of the trial. **(PCR Tr. p. 136).** This Court had the opportunity to view the witnesses and listen to their testimony. Trial counsel's testimony on this issue is credible and supported by the record. **(ROA, Patterson Vol. I-IV).**

Additionally, the record shows the aggravating circumstances were proven beyond a reasonable doubt. Prior to Owens' 3rd sentencing proceeding beginning, the jury was instructed Owens had already been convicted of the murder of Irene Graves. **(R. p. 93, ll. 9-15).** The crime-scene video itself **(State's Ex. 21)**, which was introduced into evidence by the State, proved Ms. Graves was murdered during the commission of an armed robbery and during the commission of a larceny with a deadly weapon. **(PCR Tr. p. 135, ll. 5-9).** *See* State v. Humphries, 325 S.C. 28, 479 S.E.2d 52 (1996); State v. Damon, 285 S.C. 125, 328 S.E.2d 628 (1985); State v. Hudgins, 319 S.C. 233, 460 S.E.2d 388 (1995). Two masked gunmen enter the store, and it is clear they are inside the store to commit an armed robbery and/or a larceny with a deadly weapon. Additionally, Ms. Graves

was murdered by the use of a firearm. Furthermore, the testimony of Aisha Austin, the testimony of Nikko Vance, the testimony of Detective Bellew, and the testimony of store personnel established Ms. Graves was murdered during the commission of an armed robbery and during the commission of a larceny with a deadly weapon. **(R. pp. 1110-1130, 1147-1157, 1158-1170, 1171-1180, 1181-1278, PCR Tr. p. 135, ll. 5-13).**

Finally, the jury's unanimous finding of aggravating circumstances and unanimous recommendation of sentence of death in conjunction with the trial court's charge shows the jury found, not that the aggravating circumstances already existed, but that the jury determined independently and unanimously the State had proven the aggravating circumstances by the evidence in the record beyond a reasonable doubt. **(See R. pp. 1632-1657, Finding of Aggravating Circumstances, R. p. 1672, Unanimous Recommendation of Sentence for Death Penalty, R. p. 1675).** Owens has failed to demonstrate prejudice in this regard. Wong v. Belmontes; Jones v. State. This ground has no merit and must be dismissed with prejudice.

Ground 10(a)/11(a)(2)

10(a) Applicant was denied the right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution, during jury selection at his 2006 capital re-sentencing proceeding..

11(a) Supporting Facts: Trial counsel's performance during jury selection was both deficient and prejudicial. *See* Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included the following:

2) Counsel failed to object when the trial judge erred by disqualifying a potential juror, Sonya Ables (Juror Number 1), solely because she "went to [her] pastor and talked to him about [the death penalty]," as the trial judge incorrectly believed "there is a case right on point, that if a woman talks to her priest after she's been called as a juror about capital punishment, she is disqualified under the law."

Owens *alleged* in his direct appeal brief from his 3rd sentencing proceeding that the trial judge (Judge Patterson) erred in excusing Juror #1, Sonya Ables, because the trial judge stated on the record that the juror had to be excused for consulting with her pastor or priest because there was a case directly on point when, [allegedly] there was no such case. **(See FBOA, the Honorable Larry R. Patterson).** The Supreme Court found this issue was not preserved for appellate review. Owens, *supra* (*Owens III.*). Owens *now alleges* counsel was ineffective for failing to object to the trial judge's dismissal of the juror for this reason. Owens is wrong. Counsel could not have been ineffective in failing to object to the disqualification of the juror because the juror was properly disqualified by the trial judge. Additionally, Owens cannot show deficient performance or prejudice.

Standard of Review

Juror Qualification/Disqualification

In a capital case, a defendant has no right to a trial by any particular jury, only a right to a trial by a competent and impartial jury. State v. Caldwell, 300 S.C. 494, 338 S.E.2d 816 (1990); State v. Gaskins, 284 S.C. 105, 326 S.E.2d 132 (1985). It is the duty of the trial judge to see that a jury of unbiased, fair, and impartial jurors are impaneled. State v. Mathews, 291 S.C. 339, 353 S.E.2d 444 (1986). The determination of whether a juror is qualified to serve on a death penalty case is within the sole discretion of the trial judge and not reversible on appeal unless wholly unsupported by the evidence. State v. Dickerson, Shearhouse Advance Sheets, Opinion No. 27048 (Filed October 3, 2011); State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2009) *citing* State v. Green, 301 S.C. 347, 392 S.E.2d 157, *cert denied* 498 U.S. 881 (1990); State v. Plemmons, 286 S.C. 78, 332 S.E.2d 765 (1985).

The voir dire examination of a juror must be viewed in its entirety to determine whether the trial judge erred in his qualification or disqualification of a prospective juror. State v. Drayton, 293 S.C. 417, 361 S.E.2d 329 (1987). A juror's disqualification will not be disturbed on appeal if there is a reasonable basis from which the trial court could have concluded that the juror would not have been able to faithfully discharge his or her responsibilities as a juror under the law. State v. Evins, 373 S.C. 404, 645 S.E.2d 904 (2007); State v. Green, 301 S.C. 347, 392 S.E.2d 157 (1990).

The Lack of Merit of this Ground

The trial judge's decision regarding Juror Ables was correct and was based on precedent of the South Carolina Supreme Court. In State v. Gilbert, 277 S.C. 53, 283 S.E.2d 179 (1982), it was held that a trial judge properly excused a prospective juror, who, despite the court's instructions, revealed to her priest that she might be serving in a capital case and solicited his opinion as to the Church's stance on capital punishment. The Court reasoned that the possible seating of this juror would have introduced an outside influence into the deliberations of the jury.[11]

The same is true in the present case. Juror Ables testified during individual voir dire by the court regarding the death penalty: "I just don't think that I can do it and live okay. It's just too deep within me. I have battled it since you told us that in October. I have thought about it a lot. *I went to my pastor and talked to him about it.* I really don't think I could do it." **(R. 5258-29)**(emphasis added).

The trial judge was correct in stating on the record: "Ladies and gentlemen, there's a case

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[11]Owens argued in his direct appeal brief that the trial judge was wrong in stating that there was *a case directly on point* on this issue. Owens failed to mention or discuss State v. Gilbert, which is on point, anywhere in his brief. **(See FBOA, the Honorable Larry R. Patterson).**

right on point that if a woman talks to her priest after she's been called as a juror about capital punishment, she is disqualified under the law." **(R. 529).** It is clear from Juror Ables' testimony that she met and talked with her pastor about the death penalty. The trial judge properly disqualified the juror. Id. Juror Ables, if qualified and seated on this case, would have introduced an outside influence into the jury's deliberations. Gilbert, 277 S.C. at 57. This would have been improper. Counsel was not deficient in failing to object to the excusal of this juror. This ground must be dismissed with prejudice.

Trial counsel testified at the PCR merits hearing that he was familiar with decision in Gilbert at the time the case was tried. **(PCR Tr. pp. 136-37).** Counsel testified his understanding of the holding in Gilbert was if a juror seeks outside advise, like this juror did from a pastor, you are disqualified. **(PCR Tr. p. 137).** Counsel testified he did not see any way he could rehabilitate the juror especially given her testimony that she had went to pastor spoke with him about capital punishment. **(PCR Tr. p. 138).**

Additionally, even if counsel had objected, the result of the proceeding would not have been different. The trial judge would have disqualified the juror under Gilbert, just as he did, and would have attached the juror's summons and letter from the court as a court's exhibit evidencing the fact that the juror talked to an outside source about the case and the issues therein after being summoned for jury service.[12] Further questioning of the juror would not change these facts. The juror was properly disqualified by the trial court. Id. The trial judge did not abuse his discretion and his

[12]This is obviously what the juror (Juror Ables) was referring to when she said "I have battled this since you told us that in October." Voir dire of the jury did not begin until November 7, 2006. **(See Tr. Nov. 7, 2006, p. 1).** Furthermore, if counsel had objected the trial judge could and would have disqualified Juror Ables for another reason, failing to follow his instructions prior to reporting for jury service.

decision was not wholly unsupported by the record. Plemmons. Owens cannot show prejudice from counsel's failure to object to the excusal of Juror Ables. Wong v. Belmontes; Jones v. State; Strickland v. Washington.

It is also clear from the record that further examination of the juror would have been unlikely to reveal she could subordinate her views and apply the law of this state. Juror Ables clearly stated during thorough examination by the trial judge that she would be unable to impose a death sentence, because she would be unable to go forward with her life or live if she did so. **(R. 525-29).** A juror may be excluded for cause when her views on capital punishment are such as would "prevent or substantially impair the performance of [her] duties as a juror in accordance with [her] instructions and [her] oath." State v. Sapp, 366 S.C. 283, 291 (2005) *quoting* Wainwright v. Witt, 469 U.S. 412, 424, 105 S.Ct. 844 (1985).[13] A juror may be excused in a death penalty case if her beliefs or attitudes against capital punishment would render her unable to return a verdict according to the law. Sapp, *supra.*

The record shows Juror Ables' beliefs rendered her unable to return a verdict according to the law. She stated she could not impose the death penalty and live. She clearly stated an unwillingness to impose the death penalty and could properly have been disqualified. Witherspoon, *supra*; State v. Lindsey, 372 S.C. 185, 642 S.E.2d 557 (2007); State v. Jones, 288 S.C. 1, 340 S.E.782 (1985); State v. Copeland, 278 S.C. 572, 300 S.E.2d 63 (1982). Her disqualification, even if based on her views regarding the death penalty, which it was not, was proper. An objection to her excusal would have been frivolous. Owens cannot show deficient performance or prejudice.

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[13]In Sapp, this Court also dealt with an alleged Witherspoon violation. Id., at 287-292. Witherspoon v. Illinois, 391 U.S. 510, 88 S.Ct. 1770 (1968).

Owens also appeared to argue in his brief on appeal that there was an Atkins[14] violation, because defense counsel did not conduct individual voir dire of Juror Ables. This argument, if made here, is also erroneous for two reasons. First, the juror was not excused for cause because of her views regarding the death penalty, but was disqualified because she had spoken to her pastor regarding the case, the death penalty, and her service as a juror. **(R. p. 529, ll. 10-14).** The record is clear on this point. Atkins is simply not implicated. State v. Wise, 359 S.C. 14, 596 S.E.2d 475 (2004)(holding Atkins was distinguishable when the juror was disqualified for reason other than jurors personal views regarding the death penalty). Juror Ables was *disqualified*, because she had contact with an outside source regarding the case after she was summoned for jury service. If she had been seated on the jury she would have introduced an outside influence into the jury's deliberations. Gilbert, *supra*.

"Second, it is clear from this record that further examination of [the] Juror would have been unlikely to reveal she could subordinate her views and apply the law of the state." Wise, *supra* at 26. As previously stated, Juror Ables clearly stated she would not be able to live or go on with her life if she sentenced someone to death. **(R. 528-29).** The record reflects she stated an unwillingness to impose the death penalty.

In fact, Owens' attorneys were not denied the right to question Juror Ables, they simply did not request to ask any questions given her clear testimony. They did not suggest or offer any additional questions to the trial judge. *See* Wise, *supra* at 26. As previously stated, no objection was made to the Judge's voir dire of the juror nor did trial counsel request to ask any further questions.

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[14]State v. Atkins, 293 S.C. 294, 360 S.E.2d 302 (1987). *See also* State v. Tucker; 334 S.C. 1, 512 S.E.2d 99 (1998); State v. Holmes, 320 S.C. 259, 464 S.E.2d 334 (1995); State v. Owens, 277 S.C. 189, 284 S.E.2d 584 (1981).

(R. 529-530). There was no need to. The juror simply could not impose a death sentence. She stated several times that she did not believe she could personally impose a death sentence or sign a death warrant. She also stated she was a Type 2 juror, one who would always impose life imprisonment. **(R. pp. 525-529).** Trial counsel testified at the merits hearing that Juror Ables appeared to be telling the truth in her responses to the trial court, and he saw no probability of success in trying to rehabilitate her and attempting to have her qualified under Witherspoon. **(PCR Tr. pp. 138-39).** Trial counsel's testimony on this issue was credible. Trial counsel's testimony on this issue is supported by the record.

While our Court made clear in Wise that it was not diluting the mandate of Section 16-3-20(D) as expressed in Atkins, *supra*, it also made clear the following:

> When the record reveals a juror plainly is not qualified, after thorough examination by the trial judge, to serve and it does not reasonably appear further examination would likely reveal the juror could subordinate his views and apply the law of the state, a reasonable basis exists for excusal for cause of the juror without further examination by defense counsel.

Wise, *supra*. There was no Atkins, violation in this case. Wise. Trial counsel testified that in his estimation he would not be able to rehabilitate this juror. Trial counsel's testimony is corroborated by the sworn testimony of Juror Ables. Nor would there have been an Atkins violation even if the juror was excused because of her views on the death penalty, which she was not. Counsel could not have been ineffective in failing to object to the trial judge's excusal of Juror Ables. If Juror Ables had not been excused under Gilbert, she would have been excused in any event because she could not return a death sentence under any factual scenario. She was not Witherspoon qualified. Owens cannot establish deficient performance or prejudice in this regard. Wong; Jones; Strickland. For the

above stated reasons, this ground must be dismissed with prejudice.

Lack of Prejudice/Harmless Error

Even assuming *arguendo* Juror Ables was improperly disqualified, her disqualification was harmless. *See* Holmes, *supra* (holding disqualification of juror was harmless where juror was placed on alternate list and alternates were never called). Owens cannot show prejudice from counsel's failure to object to the excusal of Juror Ables for an additional reason.

In the present case, if Juror Ables had been qualified, she would have been the seventeenth (17th) juror qualified. The jurors were struck in order of their qualification. **(R. 1064-69).** Juror Ables' voir dire occurred after the 16th juror qualified, Juror Fawn Norton. **(R. 524-25).** Juror Ables would have been the seventeenth (17th) juror presented at the jury strike. **(R. 1067-68).** At the time she would have been presented, the State had exercised only two (2) of its five (5) peremptory challenges. **(R. 1064-68).** The State had excused Jurors Cassandra Carrol and Fawn Norton. **(R. 1066, 1067-68).** There can be no question, based on Juror Ables' testimony that she could not live or go on with her life if she imposed the death penalty and that she was *a type 2 juror*, that the State would have struck Juror Ables with its third strike. Furthermore, this is supported by the fact that the State exercised only one (1) more of its peremptory challenges, Juror Rebecca Hunter, and that occurred during alternate juror selection, not selection of the petit jury panel. **(R. 1069).** The State only exercised a total of two (2) peremptory challenges during the petit jury panel selection. **(R. 1064-69).** After all twelve (12) jurors were seated on this case, the State still had three (3) of its five (5) peremptory panel challenges remaining. Even if Juror Ables had been qualified, she would not have been seated on this jury, because the State would have exercised *at least one* of its *three*

remaining peremptory challenges to excuse Juror Ables.[15] Solicitor Ariail testified under oath at the PCR merits hearing. Solicitor Ariail testified that if Juror Ables had somehow been qualified in this case, she would have been struck by the State using one of its three (3) remaining strikes. **(PCR Tr. pp. 326-329).** This Court viewed and heard Solicitor Ariail's testimony, and Respondent submits that it is credible and supported by this record. Juror Ables testified she was *a type 2 juror*, which means she could only impose a life sentence and could not impose a death sentence regardless of the facts or evidence. Juror Ables would not have been seated on this jury even if she had somehow been qualified. Any error in Juror Ables' disqualification was harmless. Applicant Owens cannot show prejudice from counsel's failure to object to the trial judge's disqualification of Juror Ables. Wong; Jones; Strickland.

Conclusion regarding Ground 10(a)/11(a)(2)

Since there was no error in the disqualification of Juror Ables, counsel could not have been ineffective in failing to object to the juror's disqualification. Additionally, given this record and trial counsel's credible testimony, Owens cannot demonstrate deficient performance because trial counsel was not going to be able to rehabilitate Juror Ables to have her Witherspoon qualified in any event. Furthermore, Owens cannot establish prejudice on this issue. Juror Ables was properly disqualified under Gilbert, and would have been disqualified based on her inability to follow the law of this state and impose a death sentence under the appropriate facts. Wise. Additionally, the disqualification

[15] Owens will certainly argue in reply that this analysis is merely speculative, however it strains credulity to argue the State would have allowed Juror Ables to be seated on the jury when she stated she could not give someone the death penalty and "..be able to go forward with my life then and then–I just don't think that I can do it and live okay. Its just too deep within me." **(R. 528-29, Tr. p. 482, l. 24 -p. 483, l. 2).** Solicitor Ariail's sworn testimony removes any speculation from this analysis, if there were any to begin with.

of Juror Ables was harmless where the State would clearly have exercised one of its three (3) remaining petit jury peremptory challenges to excuse the juror, *a type 2 juror*, had she been qualified. Owens has failed to show deficient performance or prejudice in this regard. Wong; Jones. This ground must be dismissed with prejudice.

Ground 10(b)/11(b)(1)

10 (b): Applicant was denied the right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution, during his 2006 capital sentencing proceeding.

11(b): Supporting Facts: Trial counsel's performance during the sentencing phase was both deficient and prejudicial. *See* Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included the following:

> 1) Counsel failed to object and/or request proper instructions from the court when the State played a crime scene video without further explanation or analysis. *2006 Tr. At 1076.* The crime scene video shows two masked men but their faces are not identifiable. One of the masked men is primarily shown in the video. He stands behind the counter [sic], points a gun at the clerk, and appears to shoot the clerk before the two men run out of the convenience store. Applicant's co-defendant, Steven Golden testified at Applicant's previous trials that it was he (Golden) who is primarily visible in the video. The State then offered an analysis as to why it believed that the fatal shot came from the other man standing off camera. The jury at Applicant's 2006 re-sentencing heard no analysis about who appears in the video. They were simply instructed that Applicant had already been found guilty of the murder, and then they were shown the video without explanation. The trial judge at the 2006 re-sentencing instructed the jurors that they could consider whether Applicant had "minor participation" in the crime as a mitigating circumstance. *2006 Tr. At 1592.* But, without further instructions, the video misled the jury to believe that there was conclusive video-graphic evidence that Applicant fired the fatal shot, thereby foreclosing consideration of both the "minor participation" mitigating circumstance, and the related possibility that Applicant, though perhaps present, had not been the triggerman.

In this ground, Owens alleges counsel was ineffective in failing to object or request instructions from the Court when the State played a crime-scene videotape **(State's Ex. 21)** without

further explanation or analysis. Applicant alleges counsel should have objected to the State introducing the crime-scene videotape or requested an instruction from the Court as to what the testimony was in the guilt phase of Owens' first (1st) trial [before Judge MacCaulay] regarding the videotape. At PCR, and subsequently in his brief, Owens argues counsel should have requested other instructions from the Court. Owens alleges the jury was left with a false impression about the videotape, and Owens alleges this prejudiced him by foreclosing the consideration of the mitigating factor of "minor participation," which was charged to the third (3rd) sentencing jury. Owens is incorrect.

Owens has flipped this issue around from what he originally claimed in his previous application[16] and now claims his attorneys in his third (3rd) sentencing proceeding should have objected to the admission of the crime-scene tape without further explanation or instruction by the trial court as to what the testimony was at the first (1st) trial. Owens contends the tape definitively shows the perpetrator in front of the counter was the trigger-man.[17] Owens alleges the sentencing jury in his third (3rd) sentencing proceeding was left with the impression that the videotape portrayed Owens as the man in front of the counter, and the jury was left with the impression that it had clear videotaped evidence of Owens killing Ms. Graves. Owens is wrong.

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[16]Owens previously claimed his original application that *trial* attorneys, Karl Allen and John Rollins should have objected to Investigator Bellew's guilt phase testimony regarding the video-tape. (See First Amended Application for Post-Conviction Relief & Respondent's Return). This claim has now been dropped and the above ground against *penalty phase* counsel substituted.

[17]Owens *ground* actually mis-states the facts and states the "person behind the counter" appears to shoot Ms. Graves and was Golden. The person Owens is referring to is actually in front of the counter. **(See Post-Trial Brief of Applicant).** Applicant Owens was behind the counter with Ms. Graves in the area of the store safe.

This Court had the opportunity to view the crime scene videotape during the PCR merits hearing. The tape does not definitively show the person in the videotape in front of the counter fired the fatal shot. **(See Investigator Bellew's testimony from the 1st trial and sentencing proceeding, R. Macaulay, pp. 2218-2236).** Nor was there any testimony at the 3rd sentencing proceeding that Owens was the man in front of the counter.

What the crime-scene videotape does definitively show or prove is that Ms. Graves was murdered during the commission of an armed robbery by two (2) masked gunmen, and she was murdered during the commission of a larceny while armed with a deadly weapon, the two (2) aggravating circumstances alleged by the State. The crime-scene videotape proves the aggravating circumstances beyond a reasonable doubt and was therefore relevant and admissible. *See* State v. Ard, 332 S.C. 370, 378-79, 505 S.E.2d 328, 332 (1998)(photograph of unborn child was admissible to prove aggravating circumstance); State v. Johnson, 338 S.C. 114, 525 S.E.2d 519 (2000)(photograph admissible to prove aggravating circumstance); State v. Haselden, 335 S.C. 190, 577 S.E.2d 445 (2003)(photographs admissible to prove aggravating circumstance); State v. Shuler, 353 S.C. 176, 577 S.E.2d 438 (2003)(911 audiotape of victim was admissible to prove aggravating circumstance).

Additionally, the crime-scene videotape proves the circumstances of the crime and the character of the accused, which is clearly relevant and admissible evidence in the penalty phase of a capital sentencing proceeding. *See* State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010); State v. Rosemond, 335 S.C. 593, 518 S.E.2d 588 (1999); State v. Burkhart, 371 S.C. 482, 640 S.E.2d 450 (2007); State v. Powers, 331 S.C. 37, 501 S.E.2d 116 (1998)(videotape of crime scene was admissible to prove circumstances of the crime and character of the accused); State v. Shuler, 353

S.C. 176, 577 S.E.2d 438 (2003)(911 audio-tape admissible to prove circumstances of the crime and character of the defendant); State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001)(crime scene video-tape admissible in sentencing phase of capital trial).

In a penalty or sentencing proceeding, the scope of the probative value of admissible evidence is much broader. State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010); State v. Kornahrens, 290 S.C. 281, 289, 350 S.E.2d 180, 186 (1986); State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000), *reversed on other grounds* Rosemond v. State. In State v. Shaw & Roach, 273 S.C. 194, 255 S.E.2d 799 (1979), the Supreme Court recognized that the purpose of having a sentencing proceeding is to permit the introduction of such evidence that would be inadmissible in the guilt phase of a trial. Shaw, 273 S.C. at 208, 255 S.E.2d at 806. "The purpose of sentencing phase in a capital trial is to direct the jury's attention to the specific circumstances of the crime and the characteristics of the offender." State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001)(*Owens I*), *citations omitted*. Photographs of a crime scene are admissible in a sentencing proceeding to show the circumstances of a crime. State v. Gilbert, 277 S.C. 53, 283 S.E.2d 179 (1981). *See also* State v. Kornahrens, 290 S.C. 281, 350 S.E.2d 180 (1986)(photographs of excavation of grave site where defendant had buried the victims were admissible in sentencing phase proceeding). No reported case in South Carolina has held that a photograph of a murder victim *at a crime scene* was inadmissible in the sentencing phase of a capital sentencing proceeding. *See also* State v. VonDohlen, 322 S.C. 234, 471 S.E.2d 689 (1996).

Penalty phase counsel could not have been ineffective in failing to object to the playing of the crime-scene videotape because there was no basis for an objection at the time the crime-scene videotape was introduced and played to the jury. The authenticity of the crime-scene videotape is

not in question. Trial counsel testified to this fact at the PCR merits hearing. **(PCR Tr. pp. 139-140).** There is no question the crime-scene videotape shows what the various cameras within the store captured during the perpetration of the armed robbery of the Speedway convenience store and the murder of Irene Graves. Trial counsel testified to this fact as well. **(PCR Tr. pp. 139-140).** There was no contention, allegation, or evidence produced at the PCR hearing that the videotape was tampered with or manufactured in anyway. **(PCR Tr. pp. 1-365).** In fact, counsel stated there was no evidence the videotape had been manufactured or tampered with in any way. **(PCR Tr. pp. 139-140).** Nor is there any evidence that the chain of custody of the crime-scene videotape was not properly maintained. **(PCR Tr. pp. 139-140).**

At the time the videotape was offered by the State in the 3rd sentencing proceeding, there was no basis to make an objection to the admission of the crime-scene videotape, which would have been sustained. Rule 1001(1) & (2) S.C.R.E.(photographs include videotapes); State v. Campbell, 259 S.C. 339, 191 S.E.2d 770 (1972)(it is sufficient to justify the admission of photographs into evidence if a person familiar with the scene can say that the pictures truly and accurately represent the scene involved); State v. Kelly, 46 S.C. 55, 24 S.E.60 (1896)(there is no better way to illustrate a crime scene to a jury than by a photograph). Any objection to the admission of the crime-scene videotape would have been overruled by the trial judge, whatever the basis of any alleged objection. Ard, 332 at 378-79, 505 S.E.2d at 332 (photograph of unborn child was admissible to prove aggravating circumstance); Johnson, (photograph admissible to prove aggravating circumstance); Haselden, (photographs admissible to prove aggravating circumstance); Shuler, (911 audiotape of victim was admissible to prove aggravating circumstance); State v. Torres; State v. Rosemond; State v. Burkhart; State v. Powers, (videotape of crime scene was admissible to prove circumstances of the

crime and character of the accused); State v. Shuler, (911 audio-tape admissible to prove circumstances of the crime and character of the defendant); State v. Jones, (crime scene video-tape admissible in sentencing phase of capital trial).

Counsel testified there was no basis to object to the admission of the crime-scene videotape at the time it was offered into evidence. **(PCR Tr. pp. 139-140).** Counsel's testimony is credible and supported by the record and the case law.[18] There could be no ineffective assistance of counsel in failing to object. Hough v. Anderson, (ineffective assistance of counsel claims based on failure to object are tied to the admissibility of the underlying evidence; if the evidence was admissible, the ineffective assistance claim based on a failure to object fails both prongs of the Strickland test because counsel was neither deficient nor was there prejudice).

Furthermore, there was no basis to obtain an instruction from Judge Patterson regarding what was depicted on the crime-scene videotape. The videotape is what it is. It depicts what occurred during the armed robbery of the Speedway and murder of Ms. Graves, as far as what the cameras in the convenience store could capture. This fact is supported by the record of the three (3) different capital proceedings of applicant Owens and the credible testimony of counsel at the PCR merits hearing. **(R., Macaulay, R., Kittredge, R., Patterson & PCR Tr. pp. 135, 139-140).**

Applicant alleges that counsel should have requested, and Judge Patterson would have been required to instruct the jury as to who was who in the videotape *based on testimony from Owens'*

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[18]Not only was there no evidence the video-tape was tampered with or the chain of custody not maintained, but also the video-tape is black and white, contains distant shots of the robbery of the store, and does not show any close ups of Ms. Graves' body when she was murdered or after she was murdered. *Compare* State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003); State v. Middleton, 288 S.C. 21, 339 S.E.2d 692 (1986); State v. Patrick, 289 S.C. 301, 345 S.E.2d 481 (1986).

first trial. Applicant is wrong. Judge Patterson would have been required to deny such a request under our State Constitution and case law.

The trial court cannot instruct the jury in such a fashion since it would be a comment on the facts, which is entirely within the province of the jury. Judges shall not charge juries as to matters of fact but shall declare the law. State v. Smalls, 98 S.C. 297, 82 S.E. 421 (1914)(interpreting Article V, section 26 of the 1895 Constitution which was the predecessor of Section 21 of the current State Constitution). *See also* State v. Williams, 288 S.C. 329, 342 S.E.2d 600 (1986). A judge violates the provisions of Article V, Section 21, when he expresses in his charge his own opinion upon the force and effect of the testimony, or any part of it, or intimates his views on the sufficiency or insufficiency of the evidence in whole or in part. State v. Thorne, 237 S.C. 248, 116 S.E.2d 854 (1960).

Both Mr. Godfrey and Mr. Gibson testified that the trial judge could not instruct the jury on who was who in the video-tape because such an instruction would have been a comment on the facts. **(PCR Tr. pp. 139-140, 73).** Their testimony is credible and is supported by the record, the case law, and our State Constitution.

Additionally, because this case was remanded for a new sentencing hearing, the State did not move to introduce any testimony or evidence from Owens' previous trial or sentencing proceedings, as is normally done in a death penalty case.[19] At the beginning of the 3rd sentencing proceeding, except for Owens' conviction of murder, which was communicated to the jury, there was an entirely

[19]If the State would have moved to introduce the evidence from the previous trial and sentencing proceedings of Owens, that would have also required someone to read all of the testimony from both prior proceedings into the record, or would have required the jury read all of the prior testimony and review all the prior exhibits before rendering a verdict in this case.

clean slate as far as the evidence was concerned. *See* State v. Stewart, 288 S.C. 232, 341 S.E.2d 789 (1986). The State could produce what evidence it deemed necessary to establish the existence of the aggravating circumstances beyond a reasonable doubt and what evidence it deemed necessary to show the circumstances of the crime and Owens' character to justify a death sentence. *See* State v. Riddle, 301 S.C. 68, 389 S.E.2d 665 (1990)(*Riddle II*); State v. Stewart, 288 S.C. 232, 341 S.E.2d 789 (1986). The State was not required to recall every witness it called in Owens' first trial and sentencing proceeding or his second sentencing proceeding. The State could present its case to the jury as it saw fit, in compliance with the Rules of Evidence. Estelle v. McGuire, 502 U.S. 62 (1991) (defendant cannot force the prosecution to stipulate to facts); Terry v. State, Shearhouse Advance Sheets, Opinion No. 27022 (August 29, 2011)(prosecution is accorded wide discretion in the selection and presentation of its evidence and it is entitled to prove its case by evidence of its own choice), *citing* State v. Johnson, 338 S.C. 114, 525 S.E.2d 519 (2000) *and* Old Chief v. U.S., 519 U.S. 172 (1997).

In the third (3rd) sentencing proceeding, the State introduced the crime-scene videotape to establish beyond a reasonable doubt that Ms. Graves' murder was committed during the commission of an armed robbery and during the commission of a larceny while armed with a deadly weapon. S.C. Code Ann. Section 16-3-20 (C)(a)(1)(e) & (f). The videotape depicts two (2) masked men entering the store armed with weapons, and Ms. Graves being murdered during the commission of an armed robbery and a larceny while armed with a deadly weapon. This was indisputable direct evidence of the aggravating circumstances the State was required to prove in the penalty phase beyond a reasonable doubt. State v. Riddle, 301 S.C. 68, 389 S.E.2d 665 (1990)(*Riddle II*)(state may not rely on prior convictions to prove aggravating circumstance, but must produce evidence in

penalty phase). And, this is exactly what the Solicitor argued in his closing argument.. **(R. p. 1601, ln. 24 - p. 1604, ln. 15).**

The State also established through the crime scene video-tape the circumstances of the crime. The tape shows two masked gunmen enter the store with the clear intent to rob the store. And, the tape shows Ms. Graves was murdered while she was being accosted by one of the gunmen inside the store.[20]

The State established through the testimony of Aisha Austin and Nikko Vance that Owens was the trigger-man. Austin testified she overheard Owens talking on the phone and Owens was telling the person on the other end of the line: "I know you know I did it. Just keep quiet." **(R. p. 1163).** Austin testified that Owens also admitted to her the day following the murder that he shot Ms. Graves because she would not open the safe. **(R. p. 1165).** Austin testified: "He – he say he went in and he kept asking her to open the safe. She kept throwing up her hands and said she couldn't open the safe, so he just said 'I shot the bitch.'" **(R, p. 1165).** Owens also told her Andre [Golden] was with him when he went in the store, and Owens was wearing all black clothing. **(R. p. 1166).** Owens also told Austin that he burned the clothes he was wearing at an old school. **(R. p. 1166).** Vance also testified that Owens admitted to him when he returned to the getaway vehicle that he shot Ms. Graves because she would not open the safe. Vance also testified that he gave Owens his .32 caliber weapon before Owens entered the store to rob Ms. Graves, and Owens gave

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[20]The video-tape is a series of still photographs taken from four (4) different cameras in the store. Ms. Graves is initially accosted at a cash register and money is taken from the register. She is then taken to the area of the store safe, which is further behind the counter and just slightly off camera. After she is shot, in the video-tape, you can see her body fall in the direction of the counter back into range of the camera and fall to the floor. **(State's Ex. 21).**

him the gun back after Owens shot Ms. Graves. Vance also testified he checked the weapon and while the gun had been fully loaded when he gave it to Owens, when Owens returned it to him, the .32 caliber pistol had one fired shell casing in the circular chamber. **(R. pp. 1232-1233, 1235, 1239, ln. 16 -1240, ln. 13).**

Nor could Judge Patterson instruct the jury on who was who in the video-tape based on the testimony from the first trial or second sentencing proceeding, because that evidence was not before the third sentencing jury. Any such charge would have been based on facts not in evidence *and* would have been a charge on the facts, which is prohibited by our Constitution and case law.

Furthermore, in the 3rd sentencing proceeding, there was no contention by the State that the robber/perpetrator in front of the counter fired the fatal shot. Importantly, in the 3rd sentencing proceeding, there was no contention by the State that Owens was the person in front of the counter. There was no false impression under which the jury was operating as Owens alleges above.

In fact, in the third (3rd) penalty proceeding, Investigator Bellew testified that the person in front of the counter at the Speedway had *a home made mask on.* **(R. p.1126, ll. 10-13).** Investigator Bellew also testified that the other perpetrator, who would have been the perpetrator behind the counter, had *a ski mask on.* **(R. p. 1126, ll. 10-14).** Nikko Vance testified that *Owens was wearing a ski mask* when he went to rob the Speedway. **(R. pp. 1209-1211, pp. 1222-1223, p. 1236, ll. 11-18).** Vance also testified Stephen *Golden was wearing a homemade mask* when he went with Owens to rob the Speedway, the same one he had worn in two (2) earlier robberies. **(R. pp. 1213-1215, 1222-1223, p. 1236, ll. 11-22).** Therefore, from the testimony from the State, the jury would have been able to determine Stephen Golden was the person in front of the counter and not Owens. And, from this testimony from the State, the jury would have been able to determine Owens was behind the

counter with Ms. Graves. There was no false impression that Owens was the man in front of the counter as Owens alleges. Trial counsel also testified there was no false impression the State left with the jury regarding who was who in the video-tape. **(PCR Tr. p. 140, ll. 7-21).** This Court had the opportunity to view and listen to trial counsel's testimony on this issue. It is credible and supported by the record. This ground has no merit.

Furthermore, Owens told both his girlfriend, Aisha Austin, and Nikko Vance that he shot Ms. Graves because she would not open the safe. The safe was located behind the counter where Owens and Ms. Graves were. **(R. p.1126, ll. 10-13, p. 1126, ll. 10-14, pp. 1209-1211, pp. 1222-1223, p. 1236, ll. 11-18, pp. 1213-1215, 1222-1223, p. 1236, ll. 11-22).** The jury was not left with any false impression from the testimony and evidence.

Additionally, Respondent disagrees with Owens' characterization of the videotape. The jury through its own observations and view of the evidence could have determined that the individual in front of the counter did not shoot Ms. Graves but merely jumped back or was startled because of the firing of the fatal shot by the other perpetrator, Owens. The jury could have also determined from the videotape, based on the lack of muzzle flash, or based on the fact the person in front of the counter was looking away from Ms. Graves, that either the perpetrator in front of the counter did not fire the fatal shot, or they could not determine which perpetrator fired the fatal shot from the videotape alone. Again, in the 3rd sentencing proceeding the State established Owens was the trigger-man through Aisha Austin and Nikko Vance. The State established Owens was behind the counter at the safe with Ms. Graves through the testimony of Investigator Ballew and Nikko Vance. There was no false impression. The video-tape established the aggravating circumstances beyond a reasonable doubt and the character of the accused and the circumstances of the crime.

Nor could counsel have voiced a valid objection which would have been sustained at the close of the State's case. The videotape depicted what the surveillance camera's captured during the armed robbery and murder. There was no question as to the authenticity of the tape. Nor was there any contention that the videotape had been tampered with or that the chain of custody had not been maintained. The videotape proved the two (2) aggravating circumstances alleged by the State. The videotape also established the circumstances of the crime and the character of the accused. The testimony of Inv. Bellew and Vance established Owens was *not* the person in front of the counter. This ground has no merit.

Even assuming *arguendo* that the video-tape displays what Owens asserts it shows, that the person in front of the counter fired the fatal shot, the State's presentation of evidence did not leave a false impression. The State's presentation of evidence would have assisted Owens in his claim that he was a minor participant in the crime, i.e. not the trigger-man. The State asserted through its evidence that Owens was the person behind the counter, not the person in front of the counter. **(R. p.1126, ll. 10-13, p. 1126, ll. 10-14, pp. 1209-1211, pp. 1222-1223, p. 1236, ll. 11-18, pp. 1213-1215, 1222-1223, p. 1236, ll. 11-22).** There is no merit to this ground.

At the PCR merits hearing, collateral counsel questioned the trial attorneys why they did not request an instruction from the trial court to the 3rd sentencing jury that the jury that convicted Owens did not determine who was who in the video-tape. **(PCR Tr. pp. 93, ll. 1-8).** This claim has no merit as well.

Judge Patterson could not instruct the jury in this regard, because neither he nor anyone else, except the jury that convicted Owens, knows whether the jury determined who was who in the video-tape. Additionally, that jury had even more evidence before it that Owens was behind the counter and

not the person in front of the counter. **(R. Macaulay).** Stephen Golden testified before the first jury that he was the person in front of the counter, and Owens was the person behind the counter. Nikko Vance also testified as he did in the 3rd sentencing proceeding that Golden was wearing a homemade mask and Owens was wearing a ski mask when they entered the Speedway convenience store. The jury that convicted Owens could view the video-tape and see the person with the homemade mask was in front of the counter. It is therefore more probable the jury that convicted Owens did determine Golden was in front of the counter, and Owens was behind the counter, especially given the testimony from Austin and Vance regarding the statements Owens made to them regarding why he shot Ms. Graves, i.e. because she would not open the safe.

Regardless, applicant's basis for requesting this instruction is that the 3rd sentencing jury could have been laboring under the false impression that he [Owens] was the person in front of the counter, and as a result they could have believed they had video-graphic evidence of Owens shooting Ms. Graves, and this would have foreclosed consideration of the mitigator minor participation, i.e. not the shooter. There was no basis to request this instruction as previously shown. The State did not create a false impression that Owens was the person in front of the counter in the 3rd sentencing proceeding, and the jury was not laboring under any impression that it was viewing Owens [as the person in front of the counter] shooting Ms. Graves. **(PCR Tr. pp. 67-70, 140).** The State's presentation of evidence in the 3rd sentencing proceeding was that Owens was the person behind the counter. This new claim has no merit.

In his brief, Owens argues trial counsel should have requested an instruction from the trial court, in conjunction with the admission of the video-tape, that the jury who convicted him did not specifically determine Owens was the trigger-man. This claim also has no merit. Judge Patterson

could not give such an instruction. Owens criminal liability was submitted to his convicting jury under both principal and "the hand of one is the hand of all" theories. No one, except the members of the convicting jury, knows whether they determined Owens was the trigger-man or not. In fact, the evidence before that jury was overwhelming that Owens was the trigger-man. **(R., Macaulay).** At the first trial, Golden identified Owens as the trigger-man. Nikko Vance identified Owens as the trigger-man. Aisha Austin identified Owens as the trigger-man. Owens mother's statement to police identified Owens as the trigger-man. And, two different investigators testified to Owens confession to the murder (shooting) of Ms. Graves. **(See R. Macaulay).** *See also* Owens, *supra* (*Owens I*). It is highly probable Owens convicting jury did determine him to be the trigger-man.

Regardless, applicant's basis for requesting this instruction is that the 3rd sentencing jury could have been laboring under the false impression that he [Owens] was the person in front of the counter, and as a result they could have believed they had video-graphic evidence of Owens shooting Ms. Graves, and this would have foreclosed consideration of the mitigator minor participation, i.e. not the shooter. **(See Ground above).** There was no basis to request this instruction as previously shown. The State did not create a false impression that Owens was the person in front of the counter in the 3rd sentencing proceeding, and the jury was not laboring under any impression that it was viewing Owens [as the person in front of the counter] shooting Ms. Graves. **(PCR Tr. pp. 67-70, 140).** The State's presentation of evidence in the 3rd sentencing proceeding was that Owens was the person behind the counter. This new claim has no merit.

Counsel could not force the State to call other witnesses. Estelle v. McGuire, (the defendant cannot dictate to the prosecution how it presents its case or force it to enter a stipulation); Terry v. State, (similar). Defense counsel was free to present its own evidence in the third sentencing

proceeding. State v. Stewart, 288 S.C. 232, 341 S.E.2d 789 (1986). *See also* State v. Dickerson, Shearhouse Advance Sheets, Opinion No. 27048 (Filed Oct. 3, 2011), *citing* State v. Northcutt, 372 S.C. 207, 221, 641 S.E.2d 873, 880 (2007). However, the presentation of evidence regarding which perpetrator in the videotape was Owens and which person fired the fatal shot, would had to have come from someone, such as Investigator Bellew, Stephen Andre Golden, or Owens and would have opened the door to the testimony of Investigator Bellew, from the first trial and sentencing proceeding, and also to the testimony of applicant's co-defendant Stephen Andre Golden from the first (1st) trial and sentencing proceeding, or the second (2nd) sentencing proceeding, in rebuttal. *See* Wong v. Belmontes, *supra* (in judging prejudice, the Court must not only look at what mitigating evidence would have come in, but also what additional aggravating evidence would have been introduced in response).

Owens could also have called Golden as a witness to establish who was in front of the counter and who was behind the counter, but he chose not to, again, for obvious objectively reasonable strategic reasons. Golden testified in the two (2) earlier proceedings against Owens that Owens fired the fatal shot. Golden also testified that Owens admitted to Vance and another co-defendant when they returned to the getaway vehicle that he, Owens, shot the victim. **(R., Macaulay pp. 2283-2415 & R. Kittredge, pp. 143 -214).** If Owens' had called Golden, on cross-examination, the State would have brought out Golden's prior testimony, including not only the fact that Owens was the shooter, but also that Owens had stabbed Golden as he was leaving a prison shower. **(R., Kittredge, pp. 176-180).** Wong v. Belmontes.[21] If counsel had opened this door, in reply, the State could also have

[21]This Court does not have to speculate as to what each of these *witnesses* would have testified to if called because their testimony is contained in the record of the 1st trial and sentencing proceeding and the 2nd sentencing proceeding. **(See R., Macaulay, R., Kittredge).**

called the two (2) investigators who took the confession from Owens, who testified in the first trial that Owens made a tearful confession to shooting Irene Graves. **(R., Macaulay, pp. 2710-2739 & pp. 2792-2802).** State v. Owens, *supra* (*Owens I*). In reply, the State could also have called Owens' own mother, and impeached her with her own written statement to police that Owens confessed to her that he shot Ms. Graves. **(R., MacCaulay, pp. 2026-2042).** Wong v. Belmontes. And, the State could have introduced Investigator Bellew's testimony from the first trial. **(R., MacCaulay, pp. 2225 -2236).**[22]

Owens could have testified in the 3rd sentencing proceeding and addressed these issues but he chose not to. For obvious objectively reasonable strategic reasons, Owens did not testify, and open himself up to cross-examination on numerous issues, including his confession to police to murdering Irene Graves, his confession to his mother that he killed Ms. Graves, and his confession to the torture and murder of Christopher Lee, his cellmate.

Furthermore, it makes no difference. Applicant received a charge on the mitigating circumstance of "minor participation." Applicant did not argue minor participation as collateral counsel has theorized. Applicant argued to the jury that he, Owens, was a minor participant in the crime, because the murder weapon was admittedly Nikko Vance's weapon, and Vance admitted to having the gun before the robbery and disposing of it after the robbery; and the remainder of Vance's testimony was *arguably* not credible based on his pending charges and hope for leniency. Counsel

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[22]Bellew explained to the jury in Owens 1st trial and sentencing proceeding, how police determined the person in front of the counter could not have fired his weapon and killed Ms. Graves because of the angle he was holding his gun, the location and height of Ms. Graves' body including her head wound, the person in front of the counter was looking at the other perpetrator and not Ms. Graves when the fatal shot was fired, and the lack of muzzle flash from the person in front of the counter's weapon.

also argued to the jury that Aisha Austin's testimony regarding Owens' confession to her was fabricated based on *alleged* jealousy. Counsels' decision not to introduce Golden's version of events or Owens' or Bellew's testimony was an objectively reasonable trial strategy decision. Id.; Strickland v. Washington.

Furthermore, in the third sentencing proceeding, Owens' culpability met the standard required by Tison v. Arizona, 481 U.S. 137, 107 S.Ct. 1676 (1987) and Enmund v. Florida, 458 U.S. 782, 102 S.Ct. 3368 (1982)(as modified by Tison), whether he was the trigger-man or not. **(See R., Patterson, Vol. IV).** Owens cannot demonstrate deficient performance or prejudice in regard to this allegation. Wong; Strickland; Jones. This ground must be dismissed with prejudice.[23]

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[23] In his brief, Owens cites and quotes from State v. Peterson, 287 S.C. 244, 335 S.E.2d 800 (1985). (Applicant's Post-trial Brief, p. 69). Peterson was decided before Tison v. Arizona. And, following Owens' argument in this ground, he was present in the store during the robbery, wearing a mask, with a weapon, participating in the armed robbery, but was not the trigger-man. As a result, Owens' culpability met the standard required by Tison v. Arizona, 481 U.S. 137, 107 S.Ct. 1676 (1987)(modifying Enmund by declaring that the death penalty was not disproportionate punishment for someone who did not intend to kill but exhibited a "reckless disregard for human life" and played a major role in the crime, finding society has approved the death penalty for defendants with such a culpable mental state and that the goals of criminal sentencing-retribution and deterrence-are served by executing this subset of felony murderers); Buckner v. Polk, 453 F.3d 195, 201 (4th Cir. 2006)(Tison standard of culpability met because defendant's participation in and concealment of robbery murder "constituted reckless indifference to human life"); State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999)(noting the United States Supreme Court specifically modified Enmund in Tison wherein it held the Enmund culpability requirement is satisfied by major participation in the underlying felony combined with reckless indifference to human life); Foster v. Quaterman, 466 F.3d 372 (5th Cir. 2006)(Tison standard of culpability met because defendant was a major participant in crime and "acted with reckless indifference to human life"); Deputy v. Taylor, 19 F.3d 1485, 1497-98 (3d Cir. 1994)(defendant's presence at murders, active participation in underlying robbery, and failure to stop or object to co-defendant's acts in committing murders justified death penalty). *See* State v. Longworth, 313 S.C. 360, 438 S.E.2d 219 (1993)("Major participation in the crimes committed combined with reckless indifference to human life is sufficient culpability to impose the death penalty upon a defendant liable for murder under a theory of accomplice liability"), *citing* Tison v. Arizona. *See also* State v. Copeland, 278 S.C. 572, 300 S.E.2d 63 (1982)(pre-Tison case distinguishing Enmund where defendant held gun on two of the murder victims and intended or

Lack of Prejudice

Finally, Owens cannot establish prejudice even if counsel had objected because any objection would have been overruled. The video-tape was admissible to prove the aggravating circumstances and to prove the character of the accused and the circumstances of the crime. Hough v. Anderson (defendant cannot show deficient performance for failure to object when the evidence was admissible in any event).

And, Owens cannot establish prejudice even if counsel had requested an instruction from the trial judge because he would have been required to deny the same. Furthermore, Owens cannot show prejudice even if Judge Patterson had instructed the jury in conjunction with the admission of the videotape. Wong v. Belmontes; Jones v. State As previously stated, the sentencing jury knew from the testimony of Nikko Vance and Investigator Ballew that Owens was the person behind the counter with Ms. Graves near the store safe.[24] There was no false impression from the evidence Owens was the person in front of the counter as Owens alleges. If the video-tape shows what Owens alleges it shows, the State's evidence would have assisted Owens in any argument of the minor participation

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contemplated that life may be taken); State v. Yates, 280 S.C. 29, 310 S.E.2d 805 (1982)(pre-Tison case distinguishing Enmund and finding defendant's death sentence was proper where he was present during robbery, possessed a handgun, and shot one of the victims but not the victim who was murdered). In any event, the sentence in this case did not rest on moral culpability established solely by accomplice liability. Hughes, *supra* Statements by appellant admitted in the sentencing phase indicated he was the triggerman. The evidence of direct moral culpability in the killing of Ms. Graves supports the imposition of death based on the aggravating circumstance found. Id. Furthermore, Owens raised no claim in his application that counsel was ineffective for failing to request a Tison/Enmund charge.

[24]The jury could also look at the still photographs from the video-tape entered into evidence and see the person in front of the counter was not wearing a ski-mask, i.e. the person in front of the counter was not Owens. **(See PCR Tr. p. 70).**

mitigator, which was charged to the jury,

Additionally, the jury also viewed the video-tape and could determine for themselves what the video-tape showed or depicted. The jury could just as easily have determined the person in front of the counter was startled by Owens' murder of Ms. Graves and did not fire the fatal shot.

Furthermore, the jury was also aware Owens had been adjudicated as a juvenile of burglary (2 counts), assault with intent to kill (AWIK), and possession of a pistol. The jury knew Owens had shot at some juveniles with a pistol.

The jury also knew that upon his release from DJJ and adult prison, Owens was charged with several armed robberies and assaults. The jury also knew that after his release from DJJ Owens sold lots of drugs and made lots of money selling drugs.

The jury also knew Owens participated in the robbery of the Hot Spot on Halloween night before the murder of Ms. Graves and the robbery of her store. Owens wore a ski mask and carried a gun during that armed robbery.

The jury also knew Owens and his confederates planned the armed robbery of Ms. Graves' store and the Waffle House located nearby. The jury knew Owens told Vance just moments after the robbery and murder that he shot Ms. Graves because she would not open the safe. The jury also knew Owens admitted to his girlfriend the next morning that he killed Ms. Graves because she would not open the safe. The jury knew Owens referred to Ms. Graves after her murder as that "bitch" and the "whore."

The sentencing jury also knew Owens tortured and murdered his cell-mate Christopher Lee while detained in the Greenville County Detention Center. The jury heard Owens' confession to this murder. The jury also heard the pathologist testimony that the injuries to Christopher Lee

corroborated Owens' confession to that murder.

The jury was also aware that Owens told Investigator Ballew that he wanted to be remembered as the person who killed the most people in Greenville County, and described himself as a "real menace". They also knew that Owens told his girlfriend that he wanted to be the person who killed the most people in Greenville County and got away with it.

The sentencing jury was also aware that while incarcerated in the Department of Corrections, Owens assaulted prison staff, other inmates, and medical staff. The jury was aware Owens had a total of fifty-six (56) disciplinary violations in the adult department of corrections. The jury was aware that Owens was described as the worst of the worst inmates in the super-max facility of Lieber Correctional Facility and had to be kept inside a cell inside a cage because of his disruptive and assaultive behavior. The jury was also aware that even in this maximum security environment Owens continued to make shanks and engage in assaultive behavior.

Considering all of the evidence, including the instruction(s) applicant Owens alleges Judge Patterson should have given, Owens cannot show that had counsel objected, requested an instruction, or a requested instruction been given, there is a reasonable probability the jury would have returned with a different sentence. Wong v. Belmontes; Jones v. State. This ground must be dismissed with prejudice.

Ground 10(b)/11(b)2

10 (b): Applicant was denied the right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution, during his 2006 capital sentencing proceeding.

11(b): Supporting Facts: Trial counsel's performance during the sentencing phase was both deficient and prejudicial. *See* Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included the following:

2) Counsel failed to object to improper and prejudicial opinion testimony from Officer Joe Wood that Applicant gave him "cold chills", and the solicitor's reliance on that testimony in closing argument. *2006 Tr. at 1093 and 1559*

In Ground 10(b)/11(b)(2), applicant Owens alleges counsel was ineffective in failing to object to alleged improper and prejudicial opinion testimony from Investigator Joe Wood that applicant gave him "cold chills," and the Solicitor's reliance on that testimony in closing argument.

What applicant Owens fails to explain in his Final Amended Application is the context in which this statement was made. Officer Wood did not give opinion testimony but related to the jury his actual physical reaction to comments made by Owens. The testimony was admissible and counsel's failure to object was neither deficient nor prejudicial given this record.

As previously stated, evidence that would be inadmissible in the guilt phase of a capital trial is admissible in the penalty phase of a capital trial if it bears on the character of the defendant or the circumstances of the crime. State v. Kornahrens, 290 S.C. 281, 350 S.E.2d 180 (1986), *cert. denied*, 480 U.S. 940, 107 S.Ct. 1592 (1987); State v. Shaw, 273 S.C. 194, 255 S.E. 799 (1979), *overruled on other grounds*, 305 S.C. 45, 406 S.E. 315 (1991), *rehearing denied* 444 U.S. 957. The Constitution does not prohibit the sentencing jury from considering non-statutory aggravating circumstances which relate to the character of the defendant or circumstances of the crime. Zant v. Stephens, 462 U.S. 862 (1983). The purpose of the sentencing phase in a capital trial is to direct the jury's attention to the specific circumstances of the crime and the characteristics of the offender. State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001)(*Owens I.*).

During the sentencing phase, the trial judge may permit the introduction of additional evidence of aggravation in order to aid the jury in determining whether to recommend a death sentence. Id. *See also*, State v. Shuler, 353 S.C. 176, 577 S.E.2d 438 (2003). In a penalty or sentencing phase, the

scope of the probative value of admissible evidence is much broader. State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010); State v. Kornahrens, 290 S.C. 281, 289, 350 S.E.2d 180, 186 (1986); State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000), *reversed on other grounds* Rosemond v. State. In State v. Shaw, 273 S.C. 194, 255 S.E.2d 799 (1979), the Court recognized that the purpose of having a sentencing proceeding is to permit the introduction of such evidence that would be inadmissible in the guilt phase of a trial.

In a sentencing proceeding, the State may establish as an aggravating factor that the defendant would in the future pose a danger to others if not executed. State v. Patterson, 290 S.C. 104, 320 S.E.2d 447 (1994), *vacated on other grounds,* 111 S.Ct. 2253 (1991)(*citing* Jurek v. Texas, 428 U.S. 262 (1976) *and* Barefoot v. Estelle, 463 U.S. 880 (1983)). The sentencing jury is charged with considering all possible relevant information about the individual defendant whose fate it must determine. State v. Tucker, 324 S.C. 155, 478 S.E.2d 260, 270 (1996), *cert. denied,* 117 S.Ct. 1561 (1997). It was for the jury to weigh all the evidence regarding applicant's behavior to assess his character and propensity for violence. *See* State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998)(generally in evidentiary law character refers to an individual's propensity), *and* State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999).

Future dangerousness is a proper consideration for jury consideration in a sentencing phase. Jurek v. Texas, 428 U.S. 262, 96 S.Ct. 2950 (1976). "The very purpose of the sentencing phase is to direct the jury's attention to the specific circumstances of the crime and characteristics of the offender." State v. Mathews, 296 S.C. 379, 373 S.E.2d 587 (1988). *See also* State v. George, 323 S.C. 496, 476 S.E.2d 903 (1996)(defendant's statement regarding an unrelated murder was properly admitted as evidence of the characteristics of the defendant).

Investigator Woods testified in the applicant's third penalty/sentencing proceeding regarding statements applicant Owens made to him. **(R. pp. 1131-1141).** Woods testified that in response to being told that the State had an extremely strong case against him, Owens stated " the only thing I'm here for is to eat, sleep, shit and piss. I don't give a shit. I was born to be in jail." **(R. p. 11430).** Woods also asked Owens if he knew his mother was about to turn him in. Woods testified that Owens responded that "if my mom says anything, tell her I said adios, to kiss her ass too. She can kiss my ass too. Tell Ian and the rest of them assholes to fuck themselves. If I go to jail, I go to jail. I don't give a shit." **(R. pp. 1143-1144).** Woods testified Owens made other statements as well. Woods testified Owens said "people tend to think I have a sick and evil mind, but I have a very educated mind. I would like to take the blame for all of this, but I'm not going to take it all myself." **(R. pp. 1144).** Woods testified Owens said "I made my mark on Hall Street after I got out of jail selling lots of drugs. I made lots of money." **(R. p. 1144).** Woods testified Owens also said "Yeah, I want to remembered as the one who killed the most people in Greenville. I'm a real menace." **(R. p. 1144).** Woods testified Owens' demeanor during this conversation was "cocky. He had a don't-care attitude. He smiled a lot when he was saying this." **(R. p. 1144).** When asked how Owens made him feel when talking to him, Woods testified that as an experienced law enforcement officer of twenty-five years, Owens was one of only two people who actually gave him cold chills. **(R. p. 1144).** Woods also testified that during the conversation with Owens, they discussed the possibility that this case could be a capital or death penalty case. **(R. p. 1145).** Woods testified that Owens responded to this by stating "I don't give a shit about that either." **(R. p. 1145).** Applicant now alleges counsel should have objected to Woods' testimony that Owens gave him cold chills. Applicant also alleges counsel was ineffective for failing to object to the Solicitor's closing argument

referencing the same. There is no merit to this ground.

Woods did not give opinion testimony as Owens alleges. Woods described his emotional and actual physical reaction to Owens statements to him.

It can certainly be inferred from Investigator Woods' testimony that Owens' statements were made in such a fashion that Woods took them seriously. Officer Woods reaction to Owens' statements substantiates the fact that Owens' statements were not mere bravado or bragging but Owens' real and serious desire to be known and remembered in the community as a violent murderer.[25]

The entirety of this testimony, in the penalty phase, certainly went to Owens' character and future dangerousness. *See* State v. Howard, 295 S.C. 462, 369 S.E.2d 132 (1988); State v. Riddle, 291 S.C. 232, 353 S.E.2d 138 (1987), *overruled in part on other grounds,* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). It was therefore admissible. Owens, *supra (Owens I.)*. Counsel was not deficient in failing to object. Hough.

Since the testimony was admitted, the Solicitor's argument referencing the same was not improper. The Solicitor may argue the evidence in the record and the reasonable inferences therefrom. *See* Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004). A Solicitor has a right to state his version of the testimony and comment on the weight to be given such testimony. Smith v. State, Shearhouse Advance Sheets, Opinion No. 26405, (filed December 10, 2007) *quoting* Randall v. State, 356 S.C. 639, 591 S.E.2d 608 (2004) *citing* State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999). The Solicitor's closing argument focused on Owen's character, his background and the nature

[25]The relevance and importance of this testimony is further highlighted by the fact that applicant argues in his brief, and elicited testimony from Dr. Garbarino, that these statements were not serious or real but "masking behavior."

or circumstances of the crime. *See* State v. Bennett, 369 S.C. 219, 632 S.E.2d 281(2006); State v. Reed, 293 S.C. 515, 519, 362 S.E.2d 13, 15 (1987)(*overruled on other grounds by* State v. Torrence, 305 S.C. 45, 69, 406 S.E.2d 315, 328 (1991)). Wide latitude and freedom of counsel in arguments to the jury are allowed so long as the arguments are based on facts in the record or inferences from those facts. Edwards v. Lawton, 244 S.C. 276, 136 S.E.2d 708 (1964).

Lack of Prejudice

Additionally, Owens cannot show prejudice under Wong and Jones in regard to the challenged evidence or the argument. *See* Von Dohlen v. State, 360 S.C. 598, 613-614, 602 S.E.2d 738, 746 (2004)(holding failure to object to improper closing argument in the penalty phase was not prejudicial to applicant). *See also* Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). Given this record, Owens cannot show that but for counsel's failure to object "there is a reasonable probability that, absent [counsel's] errors, the sentencer - including an appellate court, to the extent it independently reweighs the evidence - would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998). Again, "[a] reasonable probability is a probability sufficient to undermine confidence in the outcome." Jones, 504 S.E.2d at 823-824. Owens cannot show that but for this one (1) comment, either in the testimony or argument, there is a reasonable probability the jury would have returned with a different sentence. Wong v. Belmontes.

As previously set forth, applicant Owens' third sentencing jury knew applicant murdered Irene Graves, admitted to murdering her, and was convicted by a previous jury of her murder. The jury knew Ms. Graves was murdered by Owens during the commission of an armed robbery and a larceny while armed with a deadly weapon. The jury saw the crime-scene video-tape. The jury also heard

the testimony of the store personnel regarding the commission of the armed robbery and the theft of money from the store.

The sentencing jury also knew Owens tortured and murdered his cell-mate Christopher Lee at the Greenville County Detention Center, and Owens confessed to this murder. The jury heard Owens' detailed confession. The jury heard the pathologist testimony regarding the injuries to Lee's body.

The jury also knew that Owens had no regard for Irene Graves' life or the life of his murdered cell-mate Christopher Lee. Owens referred to Ms Graves as "a whore" and "that bitch." Owens told two different individuals that he murdered Ms. Graves because she would not open the store safe. Owens went to sleep after torturing and murdering Christopher Lee.

The jury also knew Owens had assaulted several individuals while incarcerated including a guard, another inmate, and a nurse. The jury was also aware that Owens was identified as the worst of the worst prisoners in the super-max portion of Lieber Correctional Facility. The jury was also aware that Owens stated that he wanted to be remembered as the person who killed the most people in Greenville County. He stated this desire to not only one person, Aisha Austin, but two, Investigator Wood. The jury was also aware that Owens had a complete cavalier attitude toward incarceration or the death penalty as punishment.[26] The jury was also aware of Owens' past criminal record, including adjudications for burglary (2 Counts) and assault with intent to kill and the commission of one armed robbery by Owens the night before he murdered Irene Graves. The jury

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[26]Applicant does not contend that counsel should have objected to Investigator Woods testimony regarding what applicant Owens said to Woods, nor would there be any merit to such an objection. All of the statements of Owens that Investigator Woods testified to would have been before the jury even if counsel had objected to this one question and the court sustained the objection.

was well aware of Owens' extensive disciplinary violations in the Department of Corrections, a total of fifty-six (56), including stabbing another inmate and assaulting guards or prison personnel. The jury also knew that due to Owens' behavior while incarcerated, he had to be kept inside a cell inside a cage. Finally, the jury knew that even though Owens was kept inside a cell inside a cage he still continued to make illegal weapons or "shanks." Applicant Owens cannot show prejudice given the extensive record of aggravation in this case. Wong v. Belmontes; Jones v. State. Applicant has failed to show that even if counsel had objected to this one question or sentence, and the objection sustained, whether in the testimony or the argument, or both, there is a reasonable probability the jury would have returned with a different sentence. Id. Not given this record. Therefore, this ground must be dismissed with prejudice.

Ground 10(b)/11(b)(3)

10 (b): Applicant was denied the right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution, during his 2006 capital sentencing proceeding.

11(b): Supporting Facts: Trial counsel's performance during the sentencing phase was both deficient and prejudicial. *See* Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included the following:

> 3) Counsel failed to object to victim impact testimony regarding the effect of the victim's death on the victim outreach coordinator. *2006 Tr. at 1274.* Such testimony was outside the scope of proper victim impact evidence, and counsel's failure to lodge an appropriate objection was unreasonable and prejudicial. Counsel also failed to object to hearsay testimony from the victim outreach coordinator concerning statements that the victim's children made to her after the victim's death. *2006 Tr. at 1268-1271.* These statements violated the evidentiary rules of South Carolina, as well as the confrontation and due process clauses of the state and federal constitutions.

In ground 10(b)/11(b)(3), Owens alleges counsel failed to object to *alleged* victim impact

testimony regarding the effect of the victim's death on the victim outreach coordinator. Owens alleges such testimony was outside the scope of proper victim impact evidence, and counsel's failure to lodge an appropriate objection was unreasonable and prejudicial. Owens also alleges testimony from the victim outreach coordinator concerning statements that the victim's children made to her after the victim's death was announced to them violated the evidentiary rules of South Carolina, as well as the confrontation and due process clauses of the state and federal constitutions, and counsel's failure to object was deficient and prejudicial. Owens misapprehends the testimony. There is no merit to this ground.

The Challenged Testimony

The victim Irene Graves was a single mother of two (2) small children. At the time she was murdered by Owens, her two (2) minor children were at home asleep in their beds. Instead of calling the children as victim impact witnesses, the State called the Sheriff's Office' victim/witness coordinator, Juliana Christy, who testified to what occurred when she notified or tried to notify the two (2) small children of Ms. Graves' death and that their mother had been murdered. Ms. Christy's testimony consists of only seven (7) pages of the sentencing phase transcript. **(R. 1318-1326).**

Ms. Christy testified she was called to the crime scene during the early morning hours of November 1, 1997. Ms. Christy learned at the crime scene that the victim, Irene Graves, was a single mother and her two (2) small children were home alone. Ms. Christy realized that since Ms. Graves had been murdered, someone would have to notify the children immediately and attempt to locate other family members who could take custody of the children. **(R. 1319-13-20).**

Ms. Christy testified that she and Lieutenant Terrance Brooks drove to Mauldin, S.C., where Ms. Graves lived, and met a friend of Ms. Graves who took them to Ms. Grave's home. Ms. Christy

testified the friend went with them so the children would not be afraid to open the door.

Ms. Christy testified that Ms. Graves daughter, Insley, came to the door wearing her cheerleading outfit. **(R. p. 1320).** Ms. Christy testified Insley first words were: "Where is my mommy?" **(R. p. 1320).** Ms. Christy testified the little girl kept repeating "where is my mommy?" **(R. p. 1320).** Ms. Christy then testified how Ms. Graves' son, Jeremy, came from the back of the apartment with only his boxer shorts on. **(R. p. 1321).** The children told Ms. Christy and Lt. Brooks that they were waiting on their mother to take them to cheerleading camp that day. **(R., p. 1321).** Ms. Christy testified that both children continued to ask "where is my momma?" while at the same time offering them Halloween candy where they had gone trick or treating the night before. **(R., p. 1321).**

Ms. Christy described for the jury how she and Lieutenant Brooks first informed the children that their mother had been injured. Ms. Christy testified Ms. Graves' daughter, Insley, screamed out crying and put her hands up on her face. **(R. p. 1321).** Her son Jeremy just sat extremely still and quiet. **(R. p. 1321).** A few minutes later, Jeremy sprang off the couch and into Ms. Christy's arms and just held on and cried. **(R. p. 1321).** Ms. Christy described the situation as very sad. **(R. p. 1321).**

Ms. Christy testified they then asked the children if they had family in Greenville. **(R. p. 1321-1322).** The children said they had a brother but he was out of town. **(R. p. 1322).** They told Ms. Christy and Lieutenant Brooks they did have a grandmother who lived in Mullins, South Carolina. **(R. p. 1322).** Ms. Christy described how during this time period Insley was walking around kind of in a daze and she would cry again, in a daze and cry again, saying "I want my mommy." **(R. p. 1322).** Ms. Christy described how Jeremy tried to take care of his sister by walking up and putting his arm around her. **(R. p. 1322).**

Ms. Christy testified that at that point she had to leave the apartment because she had to go tell the family who was going to give the children the ride to cheerleading camp to go ahead and go to the camp, because Ms. Graves' children were not going to be able to go to the competition. **(R. p. 1322).** Ms. Christy testified that when she returned to the apartment, Lieutenant Brooks had Jeremy, and he was talking with him; and she and the family friend were taking care of Insley. **(R. p. 1322).**

Ms. Christy then described how they had difficulty locating anyone to take care of the children. **(R. p. 1322).** Ms. Christy described how they could not find the grandmother or her phone number and had to call dispatch and ask them to track down the grandparents. They were finally able to track them down. **(R. p. 1322).** Ms. Christy called the grandmother and told her that she needed to come to Greenville and get her grandchildren. **(R. p. 1323).** Ms. Christy testified that the children had not had very much contact with their grandmother and did not know her that well and they were very afraid. **(R. p. 1323).** Ms. Christy testified that their only family was their mother and they had no one else to call. **(R. p. 1323).**

Ms. Christy testified that as they were getting ready to leave, the children kept saying "where is mommy? Where is mommy." **(R. p. 1323).** Ms. Christy testified she told them their mommy was in Heaven. **(R. p. 1323).** Ms. Christy testified telling the children that their mother was dead was extremely traumatic. **(R. p. 1323).** Insley ran to her mother's room, and put on her mother's coat and wrapped it around her and was smelling the coat. **(R. p. 1323).** Ms. Christy testified Insley kept the coat on. **(R. p. 1323).** Ms. Christy testified she told the children she would come back and see them when the grandparents arrived. **(R. p. 1323).** Ms. Christy testified that when she returned the child still had her mother's coat on. **(R. p. 1323).** Ms. Christy testified that Insley looked at her and asked "what do I do?" **(R. p. 1323).**

Ms. Christy testified that when the grandparents finally arrived, Jeremy went outside and got in the grandparents' truck and just sat there. **(R. p. 1325).** Prior to that Jeremy had gathered up a few things at their home for them to have, some of their own things. **(R. p. 1325).** Ms. Christy testified there were pictures all over the inside of Ms. Graves' home of Jeremy and Insley. There were pictures of Insley cheerleading, and Jeremy and Insley taking dance together. There were pictures all over the apartment of the three of them together- Irene, Jeremy, and Insley, or just Jeremy and Insley participating in all kind of extracurricular activities. **(R. p. 1325).** Jeremy had packed one of the pictures for them, and Ms. Christy promised to send Insley a picture frame. And then, Ms. Christy testified, they left. **(R. p. 1325).** Ms. Christy was asked how she would describe this event in her career. Ms. Christy testified that out of the thousands of cases she worked on in her fifteen (15) years this was the hardest case she ever had to work on. She explained that she had never had to do death notification before or since, and it affected her the most deeply. **(1326).** There was nothing improper regarding the victim impact testimony from this witness.

The Lack of Merit of Applicant Owens' Ground

Victim impact evidence is admissible where it shows the specific harm committed by the defendant in murdering the victim and is relevant for the jury to meaningfully assess the defendant's moral culpability and blameworthiness. Payne v. Tennessee, 111 S.Ct. 2597 (1991); State v. Bixby, 388 S.C. 528, 698 S.E.2d 572 (2010); State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997). *See also* State v. Rocheville, 310 S.C. 20, 425 S.E.2d 32 (1993), *cert. denied*, 113 S.Ct. 2978, *reh'g denied* 62 USLW 3113 (trial court properly admitted testimony by the parents of two murder victims regarding their reliance on the victims, as well as the victim's dreams, in the sentencing phase since the evidence was relevant to the victim's uniqueness as individual human beings); Riddle v. State,

314 S.C. 1, 443 S.E.2d 557, *cert. denied*, 115 S.Ct. 518 (1994)(testimony of the victim's stepdaughter was relevant to establishing the victim as a unique human being and to showing the specific harm committed by the defendant).

Ms. Christy testified to the harm applicant Owens caused these children and the effect Ms. Graves' murder had on them. This was proper victim impact testimony. The entirety of this testimony was admissible and not subject to objection. Bixby; Rocheville; Byram; Riddle.

A careful review of her testimony also reveals that many of the statements made to her by the children, such as "where is my mommy,?" and "What do I do now?" were not hearsay because they were not offered for the truth of the matter asserted. Rule 801(c), SCRE. *See also* Player v. Thompson, 259 S.C. 600, 193 S.E.2d 531 (1972). They were offered to show the harm Owens inflicted on this family, that the children were waiting on their mother to get home, but she would never come home, and then that they wanted their mother but they would never be able to have her again. State v. Kelly, 343 S.C. 350, 340 S.E.2d 851 (2001)(testimony by witness as the victim's child's statements was not objectionable as hearsay because they were not offered for the truth of the matter asserted but to show the impact of the murder on the child), *reversed on other grounds* Kelly v. South Carolina, 534 U.S. 246, 122 S.Ct. 726 (2003)(parole ineligibility charge).

Furthermore, *a question* is not hearsay because it is not assertive. State v. Johnson, 324 S.C. 38, 476 S.E.2d 681 (1996); Collins, Danny R., South Carolina Evidence, Second Edition, p. 487, SC Bar, (2000). Therefore, these statements were not subject to a hearsay objection. They were relevant and admissible. Kelly. Counsel was not deficient in failing to object here. Hough v. Anderson.

Additionally, the children relating to Ms. Christy and Lt. Brooks that they had a brother who was out of town, and grandmother who lived in Mullins who they were not closely connected with,

is not subject to a hearsay objection. These statements were admissible because they were offered to show the difficulty the State had in locating a family member due to Owens' actions in murdering their mother and leaving these children orphaned. Payne; Bixby; Riddle; Kelly.

The children's cries for the mother were likewise admissible. First, it is questionable whether such a statement by a child under these conditions would even qualify as hearsay. "Evidence offered to prove the state of mind of the declarant is not hearsay because such evidence would make the declarant's state of mind more or less probable without regard to the truth of the declaration." *Collins, Danny R.*, South Carolina Evidence, Second Edition, p. 496, SC Bar (2000) *citing* Winburn v. Minnisota Mut. Life Ins. Co. 261 S.C. 568, 201 S.E.2d 372 (1973). "An individual's state of mind may be determined from his own words." Id.; McLane v. Reliance Ins. Co. 192 S.C. 245, 6 S.E.2d 13 (1939). "Evidence to show the declarant's state of mind has been admitted in numerous instances" including "a statement or conduct to show anxiety or apprehension." Id., *citing* State v. Lewis, 293 S.C. 107, 359 S.E.2d 66 (1987). The children's cries for their mother showed how distraught they were at the loss of their mother, which resulted directly from the actions of applicant Owens. Riddle. There was no ineffective assistance of counsel in failing to lodge a hearsay objection here. Hough.

Furthermore, even if the children's cries for their mother constituted hearsay, they fall under a recognized exception to the hearsay rule. The statements of the children that they wanted their mother were offered to show their state of mind after being notified of their mother's death and the peculiar harm applicant Owens caused to the minor children of the victim. Rule 803(3), SCRE (providing hearsay exception for a "statement of the declarant's then existing state of mind, emotion, sensation, or physical condition..."); Ex parte McKie, 107 S.C. 57, 91 S.E. 978 (1917); McClintock v. Hunter, 23 S.C.L. (Dud.) 327 (1838). One cannot find a more profound statement of a child's

psychological pain, distress, and anxiety as a result of a startling event than the child's cry for their own mother. Owens cannot show deficient performance in regard to failing to object to these statements because they were admissible and any objection would have been overruled. Hough v. Anderson.

Additionally, Respondent would submit to the Court that the children's cries for their mother fall under the excited utterance exception to the hearsay rule. The statements were made as a direct result of a startling event, being informed of their mother's injury and death; the statements were made while they were under the stress of the event, being told of their mother's death and injury; and the declarations they made related to the exciting event or condition. United States v. Moore, 791 F.2d 566 (7th Cir. 1986); *Collins, Danny R.*, South Carolina Evidence, Second Edition, pp. 577-582, S.C. Bar 2000. Any objection would have been overruled. Therefore, counsel was not deficient in failing to object to this testimony. Hough v. Anderson.

Additionally, Ms. Christy's testimony regarding the children's statements when notified of their mothers death, even if hearsay, were non-testimonial and do not violate the confrontation clause of the federal or state constitution as applicant Owens has alleged. State v. Bixby, Opinion No. 4768 (Ct. App., re-filed August 10, 2011), *citing* State v. Davis, 371 S.C. 170, 178, 638 S.E.2d 57, 61 (finding statements made outside the "investigatory or judicial context" to be non-testimonial), *and referencing* State v. Ladner, 373 S.C. 103, 115, 644 S.E.2d 684, 690 (2007)("In sum, the victim's hearsay statement in the instant case was not admitted in violation of the Confrontation [Clause] because it is a nontestimonial statement."); *and* Crawford v. Washington, 541 U.S. 36, 68 (2004)("Where testimonial evidence is at issue, however, the Sixth Amendment demands what common law required; unavailability and a prior opportunity to for cross-examination.").

The purpose of Ms. Christy going to the victim's home the night Irene Graves was murdered was not to gather evidence, whether victim impact or otherwise. **(R, p. 1318 - p. 1326).** In fact, prior to Owens' first sentencing proceeding, Ms. Christy had never testified before in a criminal case. **(R., Macaulay, pp. 3082-83).** Ms. Christy went to the victim's home because she knew the children were orphaned, and she needed to notify them of their mother's death and find someone to take care of the small children. **(R. pp. 1319 - p. 1326).** The children's statements were non-testimonial and did not violate the confrontation clause. Michigan v. Bryant, ___ U.S. ___, 131 S.Ct. 1143 (2011); Melendez–Diaz v. Massachusetts, 557 U.S. , 129 S.Ct. 2527 (2009); Davis v. Washington, 547 U.S. 813, 126 S.Ct. 2266 (2006); Hammond v. Indiana, 547 U.S. 813, 126 S.Ct. 2266 (2006).

Nor was there any due process violation. Applicant was on notice that this testimony would be admitted in his 3rd sentencing phase. It had been admitted in his 1st sentencing proceeding. **(R. Macaulay, pp. 2073-3083).** And, it had been admitted at the 2nd sentencing proceeding. **(R. Kittredge, pp. 247-253).** On neither occasion had there been any objection to Ms. Christy's testimony.

Nor did Ms. Christy testify to any effect Ms. Graves' *murder* had on her as Owens alleges. **(R. p. 1326).** A careful review of the record shows Ms. Christy was asked how she would describe *this event* in her career. **(R. p. 1326).** The context and purpose of this question and her answer was to show why she remembered this event so vividly and how profoundly sorrowful it was to the children, not her. State v. Johnson, 306 S.C. 119, 132, 410 S.E.2d 547, 555 (1991)("the impact of the murder on the victim's family is relevant to the jury's decision as to whether or not the death penalty should be imposed"). She testified only to how *this notification process* out of the thousands of cases she had worked on effected her the most deeply because she had never done death

notification before and children were involved. **(R. p. 1326, ll. 1-12).** In responding to the now challenged question, she was describing how profoundly sorrowful this death notification was. **(R. p. 1318 - p. 1326).** What she testified to was how difficult and painful this situation was, informing these children that there mother was dead and would never be returning. **(R. p. 1318 - p. 1326).** What she properly described for the jury was two (2) small children whose world had been completely shattered, and the remainder of the evidence in the record showed it had been shattered by applicant Owens. **(R. p. 1318 - 1326).** This was proper victim impact evidence. Payne v. Tennessee; State v. Bixby; State v. Kelly; State v. Byrum. There was no due process violation.

Likewise, Owens cannot show that counsel was deficient in failing to make an objection under Rule 403, SCRE that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. State v. Bixby, 388 S.C. 528, 556-57, 698 S.E.2d 572 (2010). Victim impact evidence is relevant to the jury's decision as to whether or not the death penalty should be imposed. Payne, 501 U.S. at 827, 111 S.Ct. 2597. Victim impact evidence demonstrates "the loss to the victim's family and to society which has resulted from the [victim's] homicide." Id. at 822, 111 S.Ct. 2597, *as quoted in* Bixby, 388 S.C. at 556. As the Court found in Bixby, the totality of Ms. Christy's testimony was not substantially outweighed by the danger of unfair prejudice. The evidence was "relevant to show the uniqueness of the victim, the harm committed by Appellant, and the impact of the victim's death on..." her family. Bixby, 388 S.C. at 556 (finding admission of actual funeral video-tape of victim officer's funeral was not erroneous under Rule 403 SCRE).

Furthermore, Owens cannot show prejudice under Wong and Jones. Owens cannot show that but for counsel's failure to object "there is a reasonable probability that, absent [counsel's] errors, the sentencer - including an appellate court, to the extent it independently reweighs the evidence - would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998). Again, "[a] reasonable probability is a probability sufficient to undermine confidence in the outcome." Jones, 504 S.E.2d at 823-824. Owens cannot show that absent counsel's alleged deficient performance, there is a reasonable probability the jury would have returned with a different sentence. Wong v. Belmontes.

Again, ineffective assistance of counsel claims based on a failure to object to evidence are tied to the admissibility of the underlying evidence; if the evidence was admissible, the claim fails both prongs of the Strickland analysis including prejudice. Hough. The evidence of the effect the murder had on Ms. Graves' children was clearly admissible under Payne v. Tennessee, 111 S.Ct. 2597 (1991) and would have been before the sentencing jury. Bixby; Rocheville; Riddle; State v. Byrum, 326 S.C. 107, 485 S.E.2d 360 (1997)(testimony of victim's husband regarding effect of murder on victim's children was proper victim impact evidence and did not violate appellant's rights under 8th Amendment or 14th Amendment due process clause); Lucas v. Evatt, 308 S.C. 31, 416 S.E.2d 646 (1992). Therefore, Owens cannot show prejudice from the failure to object to this testimony. Hough.

Additionally, given this record, Owens cannot show prejudice from any of the victim/witness coordinator's testimony. First, even without the challenged testimony, the jury was entitled to know and would have known Owens had taken the life of the mother of two minor (2) children who depended on their mother for nurture, safety, and support. Payne v. Tennessee; State v. Southerland, 316 S.C. 377, 447 S.E.2d 862 (1994), *cert denied*, 115 S.Ct. 1136 (1995), *overruled on other*

grounds, 317 S.C. 302, 454 S.E.2d 317 (1995). The jury was entitled to know and would have known the effect her murder had on her children, including the fact that as a result of her death the children had to immediately leave their family home and go and live with their grandparents. Bixby; Riddle; Southerland (a court may admit evidence of the specific harm caused by a defendant so that a jury may meaningfully consider the defendant's blameworthiness at the sentencing phase); Byrum (evidence of effect of murder on victim's children was proper). Likewise, the jury was entitled to know the children's emotional reaction and actions after being notified of their mothers death and murder to show the specific harm caused by Owens. Bixby; Riddle; Southerland; Kelly. All of this evidence would have been before the jury even if counsel had objected to the challenged portions of Ms. Christy's testimony and the trial court had, for some reason, sustained part of the objection.

Likewise, the children's statements to Ms. Christy that they were waiting on their mother to go to cheerleading camp, even if objectionable, were merely cumulative to other properly admitted evidence, and were therefore harmless and not prejudicial. State v. Bell, 302 S.C. 18, 393 S.E.2d 364 (1990)(admission of alleged improper hearsay in penalty phase of a capital trial was harmless where the evidence was cumulative to other evidence), *citing* State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978)(it is a settled rule that the admission of improper evidence is harmless where it is merely cumulative to other evidence). Ms. Christy testified before the jury that as a result of the murder of Ms. Graves she [Ms. Christy] left the apartment for a short time and notified the family that was going to give the children and Ms. Graves a ride to the cheerleading camp that they would have to go on without Ms. Graves' children. This testimony was clearly not hearsay, as Ms. Christy, the declarant, testified, and was relevant to the direct harm caused by applicant Owens. State v. Dingle, 279 S.C. 278, 306 S.E.2d 223 (1983)(evidence of a prior statement made by a witness who offers the statement

at trial and who is available for cross-examination is not hearsay). Owens not only took their mother's life, he destroyed the plans the Graves' family had made for the Saturday following her murder. Kelly; Byrum. Owens cannot show prejudice in this regard. Bell; Blackburn.

Nor did Ms. Christy testify to any effect Ms. Graves' *murder* had on her. **(R. p. 1326).** A careful review of the record shows Ms. Christy testified how *this notification process* effected her. In responding to the now challenged question, she was describing how profoundly sorrowful this death notification was. What she testified to was how difficult and painful this situation was, informing these children that there mother was dead and would never be returning. **(R. p. 1318 - 1326).** What she properly described for the jury was two (2) small children whose world had been completely shattered, and the remainder of the evidence in the record showed it had been shattered by applicant Owens. **(R. p. 1318 - p. 1326).** This was proper victim impact evidence. Payne v. Tennessee; State v. Bixby; State v. Kelly; State v. Byrum.

Additionally, Owens cannot show any prejudice from Ms. Christy's testimony about how *this notification,* not Ms. Graves' murder, affected her, because she testified this was the only time she had ever done a death notification in her entire career, before or since this incident. The jury was well aware of this fact. **(R. p. 1326).** The essence of her testimony was how profound, traumatic, and significant this notification was *to the children.* This is what was communicated to the jury through Ms. Christy's testimony and her answer to this question. **(R. p. 1318-1326).** Additionally, her answer to this question informed the jury of why she remembered the details of this particular event so vividly. Given the context in which this testimony was given, her answer, and this record, applicant Owens cannot show prejudice from this testimony. Nor did the Solicitor argue in his closing argument that the jury should impose a death sentence because of the effect this notification process

had on Ms. Christy. In fact, the Solicitor only properly argued in his closing argument that the jury should impose a death sentence because of what applicant Owens did to Ms. Graves. **(R. pp. 1600-1617).**

Furthermore, the evidence in aggravation presented by the State was overwhelming. The sentencing jury was aware that Owens was convicted by a previous jury of Ms. Graves' murder. The sentencing jury was aware Owens admitted to a confederate that he murdered Ms. Graves. The jury was aware that Owens admitted to his girlfriend that he had murdered Ms. Graves. The jury heard Owens' complete disregard for the value of Ms. Graves' life, including his statements that he "shot the bitch" because she could not or would not open the safe. The jury also knew Owens had called Ms. Graves "a whore" and "a bitch." The jury also heard that Owens was involved in either the planning or commission of other armed robberies during the evening preceding Ms Graves' murder. The jury also saw the crime-scene videotape which clearly showed Ms. Graves was murdered during the commission of an armed robbery and larceny with a deadly weapon.

The sentencing jury also heard that Owens had confessed to the brutal torture murder of his cell-mate Christopher Lee in the Greenville County Detention Facility. The jury heard the pathologist describe the injuries to Mr. Lee and how Owens' confession was corroborated by Mr. Lee's autopsy.

The jury was also aware Owens had previously been adjudicated delinquent for burglary (2 counts), assault with intent to kill, and possession of a pistol. The jury also heard that Owens had accumulated fifty-six (56) disciplinary violations in the Department of Corrections since his arrest on these charges and the substance of twenty-eight (28) of those disciplinary violations. The jury was aware that because of his assaultive behavior in prison, Owens was kept in a cell inside a cage, and he was considered the worst inmate of the worst inmates in the super-max facility of Lieber

Correctional Facility. The jury was also aware that Owens had assaulted fellow inmates, Department of Correction guards, and a male nurse while in prison. The jury also heard that while he was contained within a maximum security cell inside a cage, he continued to engage in assaultive behavior and make weapons.

Given the unchallengeable victim impact testimony, the testimony that was clearly admissible, the context in which the testimony was given, and given the overwhelming evidence of aggravation, Owens cannot show prejudice from the admission of any currently challenged victim impact testimony in this case. Wong; Strickland; Jones. *See also* State v. Bixby. 388 S.C. 528, 698 S.E.2d 572 (2010)(finding given the entire record there was no prejudice to appellant from the admission of the victim impact evidence). Additionally, Owens has failed to show that even if counsel had objected to certain portions of Ms. Christy's testimony, and the objections sustained, that there is a reasonable probability the jury would have returned with a different sentence. Wong; Jones. Therefore, this ground must be denied and dismissed with prejudice.

Ground 10(b)/11(b)(4)

10 (b): Applicant was denied the right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution, during his 2006 capital sentencing proceeding.

11(b): Supporting Facts: Trial counsel's performance during the sentencing phase was both deficient and prejudicial. *See* Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included the following:

4) Counsel failed to preserve the state and federal constitutional issues relating to the admission of a list of disciplinary infractions by failing to object on the basis of the Confrontation Clause and due process. On appeal, the South Carolina Supreme Court held that counsel's objection was inadequate to preserve the federal constitutional issues and thus, the issue was procedurally barred. Counsel's failure to lodge an appropriate objection was deficient and prejudicial.

In this ground of his Final Amended Application, Owens alleges trial counsel was ineffective

for failing to *quote* "properly object" to the admission of a list of his prison disciplinary infractions in the penalty phase of his 3rd sentencing proceeding. Owens contends counsel should have objected to the admissibility of these infractions on the grounds their admission violated the Confrontation Clause and violated due process. This ground is without any merit.

Counsel could not have been ineffective because the prison disciplinary infractions were admissible under the business records exception to the hearsay rule, were not testimonial, and did not violate the Confrontation Clause or the due process clause.[27] Since the evidence was admissible and did not violate any right of Owens, counsel could not have been ineffective in failing to "properly object" to this evidence. *See* Hough v. Anderson, 272 F.3d 878 (7th Cir. 2001)(ineffective assistance of counsel claims based on a failure to object are tied to the admissibility of the underlying evidence; if evidence admitted without objection was admissible in any event, then the complaint fails both prongs of the Strickland test, as it was neither deficient nor prejudicial).

The Evidence Admitted

Owens has been incarcerated in the South Carolina Department of Corrections since his first conviction and death sentence. During his incarceration, the South Carolina Department of Corrections recorded the following incidents in their disciplinary records that were offered by the State in the 3rd sentencing proceeding:

April 13, 2001, breaks toilet, sink and sprinkler.
May 26, 2001, throws hot water on another inmate.
May 27, 2001, had a six and a half inch shank made from fencing and toothbrush.
June 14, 2001, spat on a correctional officer.

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[27]Respondent cannot determine from the Application what due process violation Owens is asserting. Respondent is having to assume it is the same issue raised in his last direct appeal brief.

February 8, 2002, a 14 inch solid brass shank.
March 29, 2002, stabs correctional officer Smith in the face with shank.
June 12, 2002, stabs Undra Golden in the shower.
June 15, 2002, kicks an inmate who is restrained in a restraint chair.
August 5, 2002, slaps a male nurse in the face.
August 17, 2002, throws a food tray and hits officer Guess in the head.
August 23, 2002, struck an officer in the face with his fist.
October 23, 2002, hits officer Eaton in the face with the fist.
October 23, 2002, sets fire to cell.
December 22, 2002, shank made from fencing.
December 30, 2002, a ten inch made from a push rod of the sink.
July 17, 2005, spits in the face of officer Jones.
August 26, 2005, slaps officer Henley in the face.
August 31, 2005, sets fire to cell.
September 11, 2005, threatens officer Jones.
January 1, 2006, a 12 inch homemade knife.
January 3, 2006, breaks cell door window with broom stick.
January 13, 2006, throws feces on officer Williams hitting him in the face.
February 3, 2006, spits in the face of another inmate.
February 4, 2006, orally threatens officer Jones.
February 28, 2006, a 12 inch weapon hidden between the mattresses.
April 4, 2006, an eight an a half inch shank made from flat metal sharpened at the edge and wrapped with ace bandage.
May 1, 2006, sets fire to his mattress.
May 20, 2006, throws coffee on officer Smith.

(R. 1441-43, Tr. p. 1389-1391). The records themselves were not admitted, only the summary set forth above listing each infraction contained within the records. The summary was admitted through the live testimony of the qualified custodian of records.

Standard of Review/Admission of Evidence

The relevance, materiality, and admissibility of evidence are matters within the sound

discretion of the trial court, and a ruling will be disturbed only upon a showing of an abuse of discretion. State v. Rosemond, 335 S.C. 593, 518 S.E.2d 588 (1999).

The Admissibility of the Evidence

The purpose of the sentencing phase in a capital trial is to direct the jury's attention to the specific circumstances of the crime and the characteristics of the offender. State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001)(*Owens I*). Evidence which would ordinarily be inadmissible in the guilt phase of trial may be introduced during the penalty phase. State v. Kornahrens, 290 S.C. 281, 350 S.E.2d 180 91986), *cert. denied*, 480 U.S. 940, 107 S.Ct. 1592 (1987). During the sentencing phase, the trial judge may permit the introduction of additional evidence of aggravation in order to aid the jury in determining whether to recommend a death sentence. Id. *See also*, State v. Shuler, 353 S.C. 176, 577 S.E.2d 438 (2003).

Certainly the prison disciplinary records summary was relevant to Owens' future adaptability in prison, a matter which was clearly proper for the sentencing jury. *See* State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999); State v. Howard, 295 S.C. 462, 369 S.E.2d 132 (1988); State v. Riddle, 291 S.C. 232, 353 S.E.2d 138 (1987), *overruled in part on other grounds,* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). The records were also relevant, because they demonstrated the character of the accused and his future dangerousness. Owens, *supra*; State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999)(evidence of defendant's behavior in prison is admissible in capital sentencing because it bears on his character and future dangerousness). "The State may establish as an aggravating factor that the defendant would in the future pose a danger to others if not executed." Hughes, 336 S.C. at , 521 S.E.2d at , *citing* State v. Patterson, 290 S.C. 523, 351 S.E.2d 853 (1986), *vacated on other grounds*, 500 U.S. 950 (1991).

There were a total of fifty-six (56) disciplinary violations by Owens while in the Department of Corrections. **(R. p. 1486, ll. 8-15).** The State did not introduce all fifty-six (56) violations.

During the 3rd sentencing proceeding, counsel objected to the admission of the prison disciplinary records of Owens. **(R. 1406-1438).** Counsel argued the records were not trustworthy because they were made by guards and sometimes the victims were third parties. Counsel argued the records could not come in under the business records exception.[28] **(R. p. 1407-1409).** Counsel also objected to the custodian testifying to records from any other facility other than the facility at which the custodian worked. **(R. 1406-1438).** The trial court conducted an *in camera* hearing in which the custodian of records testified regarding the keeping of the records. **(R. pp. 1411-1418).** The court ruled it would only allow those incidents witnessed by an officer who had a duty to report the incident. **(R. pp. 1406-1438).** The court also ruled the custodian of records could testify and authenticate the records.

After an *in limine* ruling by the trial judge, the State only offered the short summary above of the twenty-eight (28) violations in which an officer was involved and *required* or had a *business duty* to report the incident. The trial judge carefully considered this issue and had even researched the issue before the trial. **(R. 1409, Tr. p. 1357).** The court limited the State to the above summary under the business records exception. After the trial court's ruling *in limine*, the State did not offer nor would the court allow each individual disciplinary record, because the court felt it contained subjective matter. **(R. 1406-1437, Tr. p. 1354-1385).** The limited summary listing each infraction

[28]Counsel also argued that "it would be the same as the police trying to enter an incident report in a regular General Sessions trial." **(R. p. 1407).**

contained within the records was all that was admitted.[29]

Rule 803(6)(c) South Carolina Rules of Evidence provides that even though the declarant is available to testify as a witness:

> A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness; provided, however, that subjective opinions and judgments found in business records are not admissible. The term "business" as used in this subsection includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

In State v. Whipple, 324 S.C. 43, 476 S.E.2d 683 (1996), the South Carolina Supreme Court specifically decided held that prison disciplinary records were admissible under the Uniform Business Records as Evidence Act. S.C. Code Ann. § 19-5-510 (1985).[30] The Whipple Court specifically cited as authority State v. Rich, 293 S.C. 172, 359 S.E.2d 281 (1987)(parole records admissible) and State v. Howard, 295 S.C. 462, 369 S.E.2d 132 (1988)(police fingerprint records admissible). On

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[29]The record shows that not only was counsel able to keep out the disciplinary records themselves by their objection, counsel was also able to prevent the State from presenting a Power-Point presentation of the disciplinary violations broken down by crimes against persons and property crimes.

[30]Section 19-5-510 provides:

> A record of an act, condition, or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition, or event and if, the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

direct appeal, Owens attacked the Whipple decision on the basis that it was decided under Section 19-5-510 and not SCRE 803(6). This reasoning was incorrect.

In State v. Holmes, 361 S.C. 333, 605 S.E.2d 19 (2004) *reversed on other grounds* Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727 (2006), decided after the enaction of SCRE 803(6), the South Carolina Supreme Court specifically cited Whipple as controlling authority on the issue of whether prison disciplinary records are admissible under the Uniform Business Records as Evidence Act, S.C. Code Ann. § 19-5-510 (1985). Clearly, § 19-5-510 was not obviated by the Rules of Evidence. Otherwise, the South Carolina Supreme Court would not have recognized that statute as controlling in Holmes, a 2004 decision. In fact, in Holmes, the trial judge admitted the prison disciplinary records in the penalty phase of the trial under both § 19-5-510 and Rule 803(6).[31] Appellant Holmes raised the same objections Owens raised in his third appeal, and they were emphatically denied by the South Carolina Supreme Court as having no merit. Holmes, *supra*.[32]

Regardless, "SCRE 803(6) is substantially the same as former South Carolina law as Section 19-5-510 of the *Code of Laws of South Carolina* has been interpreted." Danny R. Collins, South Carolina Evidence (2nd Ed. 2000), South Carolina Bar, *emphasis in the original.* The case law interpreting Section 19-5-510 also required that the record be trustworthy in the opinion of the court. Id. at 603, *citing* Jenkins v. Dixie Specialty, Co., 284 S.C. 425, 326 S.E.2d 658 (1985); State v. Duncan, 274 S.C. 379, 264 S.E.2d 421 (1980). The prison disciplinary records infractions were admissible under either 19-5-510 or SCRE 803(6).

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[31]See brief of Respondent from Holmes, *supra*.

[32]Applicant Owens failed to mention the Holmes decision anywhere in his direct appeal brief. **(See BOA, the Honorable Larry R. Patterson).**

In State v. Owens, 378 S.C. 636, 664 S.E.2d 80 (2008)(*Owens III.*), our Supreme Court unanimously rejected applicant Owens' contention that the prison disciplinary records summary as admitted in this case in the penalty phase was not admissible under the business records exception. The unanimous Court cited Whipple and Holmes as authoritative on this issue.

The admissibility of prison disciplinary records under the business records exception has now been affirmatively decided by our Supreme Court three (3) times. Owens (*Owens III*); Whipple; Holmes. Furthermore, the summary used by the State was appropriate under South Carolina Law. Rule 1006, SCRE (contents of voluminous records may be presented in the form of a summary provided underlying data are admissible in evidence). Holmes, *supra* (same).

Other states are in agreement our Court's decision in Owens *(Owens III)*. In People v. Jackson, 182 Ill.2d 30, 230 Ill. Dec. 901, 692 N.E.2d 391 (1998), the court rejected an assertion similar to the one raised by Owens on appeal from his third death sentence. In Jackson, the court held that prison incident reports were admissible in a capital sentencing proceeding through the custodian, even when the author did not testify. In addressing these issues in People v. Casillas, 749 N.E.2d 864 (Ill. 2001), the court noted that it had previously rejected such a claim by an appellant, holding that the contents of prison incident reports are admissible during the penalty phase of a sentencing hearing so long as they are relevant and reliable. People v. Armstrong, 183 Ill.2d. 130, 233 Ill. Dec. 252, 700 N.E.2d 960 (1998); People v. Jackson, *supra.*

Similarly, in U.S. v. Chong, 98 F. Supp.2d 1110 (D. Hawaii. 1999), the court held disciplinary reports covering the defendant while in prison were admissible in the penalty phase of a capital proceeding, under the business records exception to the hearsay rule under Federal Rules of Evidence

803(6).[33] In Chong, the defendant, like Owens, contended that these records are inherently untrustworthy and, hence, inadmissible. The defendant also argued the correctional officers were motivated to make unfavorable records, because they were involved in the proceedings and this fact erodes their reliability. The defendant further argued the reports were not generated with sufficient regularity to qualify for this hearsay exception. The court ruled otherwise, finding the records were reliable because the officers were required to report these incidents.

The Nevada court has similarly held these types of prison records admissible. In Thomas v. State, 114 Nev. 1127, 967 P.2d 1111 (Nev. 1999), the court held prison documents pertaining to the defendant were properly authenticated, and thus were properly admitted during the penalty phase of a murder trial pursuant to the business records hearsay exception. The court, based on persuasive federal and California authority, concluded the proper foundation was laid for the documents to fall under the business records hearsay exception. Other courts have similarly allowed the admission of the prison disciplinary records under a business or public records 803(8) exception. *See* Hall v. State, 650 P.2d 893 (Okl.Cr.1982)(prison records containing information about an inmate's history of misconduct within the system fell within the business records exception to the hearsay rule found at 12 O.S. 1981 § 2803(8), and were not excluded under 2803(8)(a)-(e)). *See also* Frazier v. State, 874 P.2d 1289, 1292 (Okl.Cr. 1994)("pen-pack" falls squarely within 2803).

The trial court in the present case directed Owens' attorneys to examine each record, and the court determined he would only allow the admission of the report of an incident by an officer who was under a duty to report the same. **(R. 1435, 1436-37, Tr. p. 1383, ll. 4-23, p. 1384, l. 23 -p. 1385,**

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[33]Federal Rule 803(6) does not exclude subjective opinions or judgments as does 19-5-510 and SCRE 803(6), however Respondent still believes the reasoning in Chong is apposite.

l. 17). He would not allow details of the incident or hearsay within hearsay. **(R. 1413-15, Tr. p. 1361, ll. 16- p. 1363, l. 2).** Owens' trial counsel reviewed each underlying record and agreed that twenty-eight (28) were officer reported as required by the judge.[34] **(R. 1436-37, Tr. p. 1384, ll. 1-11, p. 1385, ll. 7-17).** The trial court found the records to be trustworthy. **(R. 1436-37, Tr. p. 1384, l. 24-p.1385, ll. 1-17).** Furthermore, the recordings of a disciplinary infractions which were introduced have special indicia of reliability. The Solicitor only offered a summary of those particular disciplinary infractions contained within business records of which there was an administrative hearing in the Department of Corrections, which resulted in a conclusion by that body that the incident or infraction actually occurred, or Owens waived his right to such a hearing. **(R. 1434, Tr. p. 1382, ll. 12-25).**

First, the disciplinary summary was properly admissible first under Holmes; Whipple; and now Owens *(Owens III)*. Disciplinary reports are admissible under the common law of this state in capital sentencing proceedings under the business records exception of § 19-5-510 and now the Rules of Evidence. Id. Without question, the records are relevant, because they address Owens' adaptability to prison based on his past conduct, his character, and his future dangerousness. Howard; Riddle, Owens.

Second, the submitted summary listing the infractions was reliable. The prison system is obligated as a matter of state law to keep records concerning prisoner's habits and deportment. S.C. Code Ann. §§ 24-1-130, 24-1-140, 24 -21-60, 24-21-70. *See*, Rayfield v. South Carolina Dep't. Of Corrections, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988)(discussing state statute requiring prison

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[34]Trial counsel did not waive their stated objections in conducting this review. **(See R. pp. 1406-1437).**

and parole officials to keep records of prisoners' habits and deportment and to prepare adequate reports concerning parole candidates). The custodian of the records testified that the records were kept in the regular course of business and were timely reported. Further, it has been generally held that such public records "have circumstantial guarantees of trustworthiness." *Accord*, State v. Pearson, 223 S.C. 377, 76 S.E.2d 151 (1953). Since the evidence is both relevant and reliable it was properly admitted.

Additionally, the record shows the challenged evidence was admissible under S.C.R.E. 803(6). Owens *(Owens III)*. Rule 803(6) SCRE provides that memorandum, reports, records, etc. in any form, of acts, events conditions, or diagnosis, are admissible as long as they are (1) prepared near the time of the event recorded; (2) prepared by someone with or from information transmitted by a person with knowledge; (3) prepared in the regular course of business; (4) identified by a qualified witness who can testify regarding the mode of preparation of the record; and (5) found to be trustworthy by the court. Rule 803(6); S.C. Code Ann. § 19-5-510 (Supp. 2001). *Accord*, Ex Parte D.H.E.C., 350 S.C. 243, 565 S.E.2d 293 (2002). The evidence was properly admitted under this Rule, recognized as the business records exception.

1. Record prepared at or near the time of the event recorded.

The evidence before the trial court revealed the underlying correctional officer disciplinary reports were prepared at or near the time of the incident and in fact were made contemporaneously. **(R. 1440, 1412, Tr. p. 1388, ll. 18-20 & p. 1360, ll. 10-17).** Major Nettles testified the summary accurately reflected the records themselves. **(R. 1441, Tr. p. 1389, ll. 3-5).**

The federal courts, applying this rule, have recognized that the record of the transaction need not be contemporaneous with the event, but should be recent enough to be reliable as evaluated by

the court. *Accord*, U.S. v. Goodchild, 25 F.3d 55 (1st Cir. 1994)(computer printouts of collection memos containing records of phone statements allowed as business records since underlying data recorded during conversation or immediately thereafter); Wheeler v. Sims, 951 F.2d 123 (7th Cir. 1992)(11 day lapse between observation and production of the record allowed). The records in this case satisfy this requirement.

2. Record prepared by or from information by a person with knowledge.

The record conclusively reveals that the summary admitted in this case was based upon disciplinary reports prepared by a correctional officer with knowledge of the incident. **(R. 1412, 1435, 1436-37, Tr. p. 1360, ll. 21-23, p. 1383, ll. 4-7, p. 1384, l. 1-p. 1385, l. 17).** Judge Patterson would not allow evidence of any other records into evidence but those prepared by a correctional officer with knowledge. **(R. 1426, 1433, 1435, 1436-37, Tr. p. 1374, ll. 10-25, p. 1381, ll. 14-18, p. 1383, ll. 4-7, p. 1384, l. 1 - p. 1385, l. 17).** It is not necessary to have the person who prepared the report present at trial. U. S. v. Moore, 923 F.2d 910 (1st Cir. 1991). The trustworthiness of the source was enhanced by the fact that it was reported through the prison disciplinary process. **(R. 1434, Tr. p. 1382, ll. 12-25).** A sufficient foundation is laid if the party seeking to introduce the evidence is able to show that it was the regular practice of the activity to base the incident report upon transmission from a person with knowledge. **(R. 1412-13, Tr. p. 1360, l. 10-p. 1361, l. 9).** With regard to these records, this was satisfied.

3. Record prepared in the regular course of business.

The record custodian testified that this data was prepared or recorded in the regular course of business. **(R. 1412-13, Tr. p. 1360, l. 10-p. 1361, l. 6).** As stated above, South Carolina statutory law requires that prisoner records be maintained and provided to another state agency to assist in its

decision-making process. It cannot be seriously disputed that these records qualify. Records which are drafted during regularly conducted business and not in response to isolated or unusual events are admissible. Courts have held that the regular practice requirement should be generously construed to favor admission, and stringent standards including requirements of careful checking and habits of precision were rejected in In re Japanese Electronic Antitrust Litigation, 723 F.3d 238 (3rd Cir. 1983). *See* Blondie v. Bic. Corp., 947 F.2d 15321 (6th Cir. 1991)(social worker's report on what fire victims said about cause of fire admissible as business record inasmuch as made in scope of employment and as part of regularly conducted activity). Here the practice of providing accurate information of the prison incidents for parole reasons, to enhance safety, and make the appropriate housing assignments requires the prison guards to timely report, making this an essential link in the trustworthiness chain.

4. Qualified witness identifies the record.

An actual custodian of the records of the South Carolina Department of Corrections, Major Thierry Nettles, the custodian at Lieber Correctional where Owens was housed, was the witness who presented and identified the records. **(R. 1413, Tr. p. 1361, ll. 7-9).** And Major Nettles is aware of what happens at other facilities with regards to how records are maintained. **(R. 1416, 1418, Tr. p. 1364, ll. 8-12, p. 1366, ll. 7-13).** And the record establishes that how the records are kept, the process for reporting incidents, and making a record of that, is standardized throughout the Department of Corrections. So, the same policy regarding making of the disciplinary record and the keeping of it is the same at each institution, not just at Lieber. **(R. 1418, Tr. p. 1366, ll. 7-13).** Under Connelly v. Wometco Enterprises, 314 S.C. 188, 442 S.E.2d 204 (S.C. App. 1994), the appropriate custodian testified. As stated in U.S. v. Reese, 568 F.2d 1246 (6th Cir. 1977), it is not required that the custodian have actual knowledge of actual data contained in the business record. *See* Twelfth RMA

Partners, L.P. v. National Safe Corp., 335 S.C. 635, 518 S.E.2d 44 (Ct. App. 1999).

Major Nettles was certainly a qualified witness under Rule 803(6). The trial court found he was qualified to testify under the Rule. **(Tr. p. 1358, ll. 18-20, p. 1375, ll. 12-14, p. 1379, l. 18-p. 1380, l. 1).** He had custody of Owens' file since Owens was housed at his facility. **(R. 1431-32, 1433, 1439-1441, Tr. p. 1379, l. 18-p. 1380, l. , p. 1381, ll. 13-20, p. 1387, l. 10 - p. 1389, l. 5).** Who better to testify to the contents of Owens' disciplinary file than the custodian of records at the facility at which Owens was housed and the person responsible for the supervision of Owens' housing. **(R. 1444, 1431-32, Tr. p. 1392, ll. 13-15, p. 1379, l. 23-p. 1380, l. 1).**

5. Record is trustworthy in the opinion of the court.

Judge Patterson found these prison records trustworthy.[35] **(R. 1410, 1436-37, Tr. p. 1358, ll. 9-22, p. 1384, l. 24-p. 1385, l. 17).** The lower court reviewed the underlying incident reports for the summary and found the portions he admitted had an indicia of trustworthiness, because they were reported by an employee of the Department of Corrections who was under a duty to report the incidents and the Department kept a record on incidents involving inmates. **(R. 1436-37, Tr. p. 1384, l. 24-p. 1385, l. 17).** Further, this summary is purely a factual recording of the incident recorded in the record which eventually had a disciplinary result. **(R.1434, Tr. p. 1382, ll. 12-25).** It was properly admitted. *See* State v. Key, 277 S.C. 214, 284 S.E.2d 781 (1981). Further, the summary is admissible, because the underlying records were (1) kept pursuant to a routine procedure designed to assure

[35]Judge Patterson in his final decision did not use the exact word "trustworthy", however a reading of the record dealing with this issue can lead to no other conclusion but that Judge Patterson found the offered portion of the records trustworthy, since Judge Patterson was clearly familiar with the requirements of Rule 803 and admitted the summary into evidence. **(See R. 1406-1441, Tr. p. 1354-1389).** In fact, Judge Patterson pointed to the fact that the officers were required to report the incidents recorded, in deciding to admit the summary.

accuracy; 2) created for motives that end to assure accuracy; and (3) they are not merely accumulations of hearsay. *See* Rosenburg v. Collins, 624 F.2d 659 (5th Cir. 1980). **(R. 1413, 1427, 1433, 1436-37, Tr. p. 1361, ll. 16-22, p. 1375, ll. 21-22, p. 1381, ll. 14-17, p. 1384, l. 24- p. 1385, l. 17).**

6. The Prison Records are admissible under either 803(6) or 803(8).

At trial, the State proffered this evidence under Rule 803(6). As set forth above, this evidence meets the conditions precedent to its admission under this Rule. In addition to the cases cited above, prison disciplinary records have been held to be admissible under Rule 803(8) in Games v. State, 743 N.E.2d 1132 (Ind. 2001), a capital case in which similar underlying reports were admitted. Also, in Combs v. Wilkinson, 315 F.3d 548 (6th Cir. 2002), the court found that the report prepared by a use of force committee was admissible under Rule 803(8), even though the committee lacked personal knowledge and its report was based upon 123 interviews and numerous documents, including staff and inmate incident reports, as well as an investigative report.

Owens has asserted the summary contains "subjective opinions and judgements." Owens reads this exclusionary phrase too broadly. The summary is based upon the factual recitation of the incident contained in the records themselves and includes the disciplinary result. It is not a listing of subjective opinion, i.e. "proceeding from taking place within the mind." but rather an objective statement of a factual result. Under Owens' theory, the business records exception to the hearsay rule would be eviscerated, since factual representations with an indicia of trustworthiness are the reasoning for its existence.[36]

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[36]At trial, the prosecution did not assert admissibility under Rule 803(8). Respondent would submit this evidence can be admitted under this alternate rule. Although S.C.D.C. employees are "peace officers", disciplinary reports do not involve necessarily criminal case

In his brief, Owens first argues that the summary itself was not admissible under the business records exception because it was prepared by the prosecution in anticipation of litigation. In making this argument, Owens ignores several significant and critical facts. First, the summary was simply a listing of the disciplinary infractions of Owens which were contained within the records themselves and determined by the court to be admissible under the business records exception. Therefore, the summary or listing of violations only contained information that was admissible. Second, the listing of disciplinary infractions admitted at trial came about as a result of counsel's objection to other matter contained within the records themselves that the court agreed was irrelevant and inadmissible, and therefore the listing admitted was not a document generated in anticipation of litigation, but as a result of the court's ruling certain matters were inadmissible.[37] It was basically a redaction of irrelevant and inadmissible matter. Third, Rule 1006 SCRE provides that the contents of voluminous writings, recordings, which cannot be conveniently examined in court may be presented in the form of a chart or summary, provided the underlying data are admissible. The chart or summary was in compliance with the Rule and what occurred during the proceeding. The listing of disciplinary violations contained only those items contained within numerous disciplinary records which the court

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matters observed by police and law enforcement personnel. Instead, this information is maintained for correctional purposes to evaluate the deportment of the inmate and the safety of the institution. Respondent submits the excluded data was to exclude observations made by law enforcement at a crime scene, because such observations were made in an adversarial setting which were deemed less reliable than observations made by public officials in other settings. Here, the disciplinary records were not necessarily crimes, but prison violations. As such, Respondents submit the exclusion does not apply and the reports are admissible under Rule 803(8) as well.

[37]The record shows the State intended to introduce all of the disciplinary records, but because of the court's ruling, rather than going through and redacting each record, introduced the summary listing each disciplinary result. **(See R. pp. 1424-37).**

determined was admissible, and the records themselves would had to have been redacted if the listing was not used. **(R. pp. 1424-37).** Fourth, the South Carolina Supreme Court determined that the summary or listing of disciplinary violations in this case was admissible under the business records exception. Owens, *supra* (*Owens III*). Finally, the custodian of records testified he had reviewed the disciplinary records of Owens and testified to each violation, which the court had already determined was admissible under the business records exception, as set forth in the summary or listing. **(R. pp. 1440-1443).**

The Evidence does not violate the Confrontation Clause

Owens alleges that even if the disciplinary violations were admissible, counsel should have objected on the grounds they violate the Confrontation Clause under Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354 (2004). This objection, if made at trial, would have been baseless and would have been overruled. It would also have been rejected on appeal.

Owens' reliance on Crawford is misplaced. The Supreme Court in Crawford specifically excepted the contents of business records from a Confrontation Clause challenge. Id. In fact, this exact issue regarding prison disciplinary records, was also decided by our Supreme Court in Holmes, *supra*. Id. ("properly administered the business and public records exceptions are among the safest against a Confrontation Clause challenge of the hearsay exception") *citing* Crawford. *supra*.[38]

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[38]The Court in Holmes was correct. Hearsay evidence contains sufficient indicia of reliability to satisfy the Confrontation Clause when the evidence either falls within " a firmly rooted hearsay exception" or "contains particularized guarantees of trustworthiness such that adversarial testing would be expected to add little, if anything, to the statements reliability." Lilly v. Virginia, 527 U.S. 116, 124-125, 119 S.Ct. 1887 (1999), (*quoting* Ohio v. Roberts, 448 U.S. 56, 66, 100 S.Ct. 2531 (1980) *modified by* Crawford, *see also* Idaho v. Wright, 497 U.S. 805, 815, 110 S.Ct. 3139 (1990). A defendant's right to confrontation is not absolute. Lilly, *supra* at 123-24, Ohio, *supra* at 65-66, Christian v. Rhode, 41 F.3d 461, 467 (9th Cir. 1994).

The South Carolina Supreme Court recognized subsequent to Holmes, that business records *do not* implicate the Confrontation Clause. State v. Cutro, 365 S.C. 366, 618 S.E.2d 890 (2005)("Finally, in Crawford v. Washington, 541 U.S. 36, 54, 124 S.Ct. 1354 (2004), the United States Supreme Court noted the hearsay exception for business records and observed that business records are not 'testimonial' and therefore do not implicate the Confrontation Clause."). In Cutro, our Supreme Court held public records do not implicate the Confrontation Clause.

Subsequent to Crawford and Cutro, the United States Supreme Court has clarified that business records may infringe on a defendant's Confrontation Clause rights if they are testimonial, i.e. the regularly conducted business activity is the production of evidence for use at trial. Michigan v. Bryant, ___ U.S. ___, 131 S.Ct. 1143 (2011); Melendez–Diaz v. Massachusetts, 557 U.S. , 129 S.Ct. 2527 (2009); Davis v. Washington, 547 U.S. 813, 126 S.Ct. 2266 (2006); Hammond v. Indiana, 547 U.S. 813, 126 S.Ct. 2266 (2006). The underlying records in this case are non-testimonial because, as previously discussed, they were not prepared in anticipation of producing testimony in a criminal trial, but were required by South Carolina statutory law for the administration of prison affairs. *See* S.C. Code Ann. §§ 24-1-130, 24-1-140, 24 -21-60, 24-21-70. *See*, Rayfield v. South Carolina Dep't. Of Corrections, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988)(discussing state statute requiring prison and parole officials to keep records of prisoners' habits and deportment and to prepare adequate reports concerning parole candidates). Therefore, they would have been admissible in Owens' third sentencing proceeding even if counsel had objected on this ground. People v. Perez, 195 Cal. App. 4th 801, 125 Cal. Rptr. 3d 723 (Ct. App. Cal. 2011)(prison records did not violation confrontation under Sixth Amendment, where they were prepared for the administration of an entity's affairs and not for the purpose of establishing or proving some fact at trial); People v. Larson, 194

Cal. App.4th 832, 123 Cal. Rptr.3d 756 (Ct. App. Cal. 2011)(records were prepared or kept for other reason than providing testimony at later trial of defendant on later criminal charges, therefore they were not testimonial and did not violate Confrontation Clause); People v. Moreno, 192 Cal App.4th 692, 121 Cal Rptr.3d 669 (Ct. App. Cal. 2011)(prison records were prepared and kept for administrative purposes of prison system and admission did not violate the Confrontation Clause); People v. Moore, ___ P.3d ___, 2010 W.L. 5013681 (Col. App. 2010)(*not yet released for publication*)(prison records were generated for administrative purposes, not testimonial, and their admission did not violate the Confrontation clause); People v. Dileva, 2011 WL 776163 (Cal App. 2011)(Unpublished); People v. Taulton, 129 Cal. App. 4th 1218 (2005); *See also* Grey v. State, 299.S.W.3d 902 (Ct, App. Tex 2009).

The records in this case were generated by law for administrative purposes of the S.C. Department of Corrections regarding behavior and deportment of inmates for the classification and housing of prisoners. *See* S.C. Code Ann. §§ 24-1-130, 24-1-140, 24-21-60, 24-21-70. *See*, Rayfield v. South Carolina Dep't. Of Corrections, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988)(discussing state statute requiring prison and parole officials to keep records of prisoners' habits and deportment and to prepare adequate reports concerning parole candidates). Furthermore, the incidents admitted in this case were reported by an employee of the Department of Corrections who was under a duty to report the incidents and the Department kept a record of incidents involving inmates. **(R. 1436-37, Tr. p. 1384, l. 24-p. 1385, l. 17).** Further, this summary is purely a factual recording of the incidents which eventually had a disciplinary result. **(R.1434, Tr. p. 1382, ll. 12-25).**

In addition, the summary admitted at Owens third sentencing proceeding sets out a sterile routine recitation of an official finding or unambiguous factual matter such as a bare-bones

disciplinary finding, therefore they are non-testimonial and do not violate the Confrontation Clause. Weinberger v. Texas, 2011 WL 652847 (Unpublished) (Tex-App. 2011); Smith v. State, 297 S.W.3d 260, 276 (Tex. Crim. App. 2009); Segundo v. State, 270 S.W.3d 79, 107 (Tex. Crim. App. 2008). The trial court in the present case directed Owens' attorneys to examine each record, and the court determined he would only allow the admission of the report of an incident by an officer who was under a duty to report the same. **(R. 1435, 1436-37, Tr. p. 1383, ll. 4-23, p. 1384, l. 23 -p. 1385, l. 17).** He would not allow details of the incident or hearsay within hearsay. **(R. 1413-15, Tr. p. 1361, ll. 16- p. 1363, l. 2).** Owens' trial counsel reviewed each underlying record and agreed that twenty-eight (28) were officer reported as required by the judge. **(R. 1436-37, Tr. p. 1384, ll. 1-11, p. 1385, ll. 7-17).** The trial court found the records to be trustworthy. **(R. 1436-37, Tr. p. 1384, l. 24-p.1385, ll. 1-17).** Furthermore, the records which were introduced have special indicia of reliability. The Solicitor only offered a summary of those particular business records of which there was an administrative hearing in the Department of Corrections, which resulted in a conclusion by that body that the incident or infraction actually occurred, or Owens waived his right to such a hearing. **(R. 1434, Tr. p. 1382, ll. 12-25).**

There is no merit to Owens argument that trial counsel should have objected to the summary on confrontation clause grounds. If Owens had made the objection it would have been overruled.

Finally, even if the prison disciplinary summary qualified as testimonial hearsay, which it does not, courts have stated recently that it is "far from clear" whether the Confrontation Clause even applies at sentencing or capital sentencing proceedings, and several have stated that it does not. *See* Wilson v. Simmons, 536 F.3d 1064, 1111-1112 (10th Cir. 2008)(not clear Confrontation Clause even applies at capital sentencing proceedings); United States v. Barrett, 496 F.3d 1079, 1099 (10th Cir.

2007)(same) *quoting* United States v. Higgs, 353 F.3d 281, 324 (4th Cir. 2003)[39](which cited the 11th Circuits' decision in Proffit v. Wainwright, 685 F.2d 1227, 1254-55 (1982) to the contrary as being contrary to Fourth Circuit law); United States v. Brown, 441 F.3d 1330, 1361 (11th Cir. 2006)(declining to decide because statements were not testimonial but hinting it may extend right); Szabo v. Walls, 313 F.3d 392, 398 (7th Cir. 2002)(the Confrontation Clause does not apply to capital sentencing); United States v. Katzopoulos, 437 F.3d 569, 576 (6th Cir. 2006); United States v. Fields, 483 F.3d 313 (5th Cir. 2007)(6th Amendment Confrontation Clause does not apply to operate in a capital sentencing proceeding as a bar to admission of testimony only admissible as to issue of whether to give sentence within statutory frame work not to prove aggravating circumstance). *See also* United States v. Beydoun, 469 F.3d 102, 108 (5th Cir. 2006); United States v. Chau, 426 F.3d 1318, 1323 (11th Cir. 2005); United States v. Luciano, 414 F.3d 174, 179 (1st Cir. 2005); United States v. Martinez, 413 F.3d 239, 243 (2d Cir. 2005).

Simply put, the rule in Crawford has not been uniformly extended to sentencing hearings. United States v. Fields, 483 F.3d 313, 330 (2007)(finding wholly unpersuasive the 11th Circuits' extension of the 6th Amendment confrontation right through the entirety of the capital sentencing process, noting that the 11th Circuit is the only federal circuit to have done so, and noting that the 7th Circuit, relying on Williams, has ruled that the Confrontation Clause does not apply at capital sentencing proceedings); Higgs; Szabo v. Walls, 313 F.3d 392, 398 (7th Cir. 2002)(*citing* Williams v. New York, 337 U.S. 241, 69 S.Ct. 1079 (1949), for the proposition that the Confrontation Clause does not apply to capital sentencing and noting that the Supreme Court "has never questioned the

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[39]In Higgs, a 2003 case, the Fourth Circuit Court of Appeals stated "[i]t is far from clear that the Confrontation Clause applies to a capital sentencing proceeding". 353 F.3d at 324.

precise holding of" Williams).[40] *See also* United States v. Jordan, 357 F.Supp.2d 889, 901-04 (E.D. Va. 2005)(Confrontation Clause does not apply to penalty phase after assuming without deciding that it does at the eligibility phase in a bifurcated penalty phase); United States v. Brown, 441 F.3d 1330, 1361 (11th Cir. 2006)(wherein the Court noted that it was not deciding Crawford applied at the penalty phase of a federal capital trial precisely because the challenged evidence offered in the case was so clearly non-testimonial). *See also* Maynard v. Dixon, 943 F.2d 407, 414, 414 n. 5 (4th Cir. 1991)(discussing the State's reliance on the Williams v. New York and Williams v. Oklahoma, 358 U.S. 576, 79 S.Ct. 421 (1959) holdings in contrast to the defendants reliance on *dicta* in Bullington v. Missouri, 451 U.S. 430, 101 S.Ct. 1852 (1981)(which stated relying on Specht v. Patterson, 386 U.S. 605, 87 S.Ct. 1209 (1967) that the right to confront witnesses is available at a sentencing hearing at which the sentence may be imposed based upon a new finding of fact that was not an ingredient of the offense charged[41]); Bassette v. Thompson, 915 F.2d 932, 939 (4th Cir. 1990)(citing Williams v. New York, the court suggested that even in capital cases a defendant does not have right under due process clause to confront and cross-examine at the sentencing phase all witnesses as to his prior record); Simpson v. Polk, 129 Fed. Appx. 782, 791 (4th Cir. 2005)(habeas review)*(UNPUBLISHED)*. *But see* State v. Holmes, 355 N.C. 719, 565 S.E.2d 154 (2002); State v. McLaughlin, 341 N.C. 426, 462 S.E.2d 1, 19 (1995), Call v. Branker, 254 Fed. Appx. 257 (4th Cir. 2007)(*UNPUBLISHED)*(discussing N.C. law). *Contra* People v. Banks, 237 Ill.2d 154, 934 N.E.2d

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[40]*See also* United States v. Martinez, 274 Fed. Appx. 291,293 (4th Cir. 2008) *(UNPUBLISHED)*; United States v. Debreus, 255 Fed. Appx. 725, (4th Cir. 2007)*(UNPUBLISHED)*

[41]The evidence in question in this case, the prison disciplinary summary, was not evidence used to establish a statutory aggravating circumstance (i.e. death penalty eligibility), but was evidence of Owens' character, future dangerousness, and lack of ability to adapt to prison.

435 (Ill. 2010)(holding Confrontation Clause does not apply to the aggravation/mitigation phase of a capital sentencing hearing); State v. McGill, 213 Ariz. 147, 140 P.3d 930 (2006)(similar); State v. Stephenson, 195 S.W.3d 574 (Tenn. 2006)(same); Summers v. State, 122 Nev. 1326, 148 P.3d 778 (2006)(same); Wallace v. State, ___ S.W.3d ___, 2010 Ark. App. 706, 2010 WL 4221303 (Ark. App. 2010)(same).

Therefore, for the above stated reasons, Owens has failed to prove counsel was deficient in failing to object to the prison disciplinary summary on the grounds that it violated the Confrontation Clause.

The Evidence did not violate the Due Process Clause

Owens also alleges counsel was ineffective in failing to object to the introduction of the prison disciplinary summary on due process grounds. First, it cannot be determined from reviewing the Application what due process violation Owens is alleging. Therefore, Respondent moves to dismiss this specific allegation with prejudice on the grounds that it is vague and ambiguous and fails to state a claim upon which relief may be granted. SCRCP 12(b)(6).

To the extent that Owens is raising the same due process claim that he raised on direct appeal from his 3rd sentencing proceeding, there is absolutely no merit to this claim or issue. Due process involves notice, an opportunity to be heard, and judicial review. Harbit v. City of Charleston, Shearhouse Advance Sheets, Opinion No. 4511 (Ct. App. Filed February 25, 2009, Amended May 4, 2009) *citing* U.S. Const. amends. V and XIV, Section 1; S.C. Const. art. 1, Section 22; Stono River Envtl. Prot. Ass'n v. S.C. Dep't of Health and Envtl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). Further, due process is flexible and calls for such procedural protections as the particular situation demands. Harbit, *supra, citing* Kurschner v. City of Camden Planning Comm'n, 376 S.C.

165, 172, 656 S.E.2d 346, 350 (2008).

Owens was certainly on notice that his prison misconduct would be introduced in his penalty phase re-sentencing before Judge Patterson, his 3rd sentencing proceeding. **(See Final Brief of Appellant, the Honorable Larry R. Patterson, p. 18,** wherein Owens notes that in his second re-sentencing the State relied heavily on his conduct while in prison). The record shows Owens and his attorneys knew full well that the State was going to attempt to introduce his prison disciplinary violations in the 3rd sentencing proceeding. The records were provided to defense counsel by the State. **(Tr. p. 1368, ll. 3-14).** Counsel reviewed them prior to trial. **(Applicant's Exhibit 1, Godfrey's time sheet).** The Solicitor also provided a summary of the disciplinary violations and provided those to defense counsel. **(Tr. p. 1368, ll. 23-25).** The record shows defense counsel was thoroughly prepared to object, and did object, although not on the grounds Owens now alleges they should have objected. **(Tr. pp. 1354-1394).** Applicant Owens was also served with Notice of Aggravating Circumstances by the Solicitor's Office prior to his 3rd sentencing proceeding. This Notice included the fact that the State would rely on his prison disciplinary record as evidence in aggravation. **(See Notice of Aggravating Circumstances & Applicant's Ex. 1, Godfrey's time sheet).** Additionally, Owens had been provided with a Notice of Evidence in Aggravation prior to his first trial and sentencing proceeding. It set forth that the State would rely on characteristics of the defendant including evidence of Owens occurring before and after his arrest. *See* State v. Owens, 346 S.C. at 653-58 (*Owens I.*). The notice requirement of the due process clause was certainly met.

In his Final Brief of Appellant from his 3rd sentencing hearing, Owens argued his due process rights were violated because the admission of the disciplinary summary violated the requirements of Gardner v. Florida, 430 U.S. 349 (1977). **(See FBOA, the Honorable Larry R. Patterson p. 20).**

Owens reliance on Gardner is misplaced.

Gardner held that a capital defendant is denied due process when the death penalty was imposed, at least in part, on the basis of information which *he had no opportunity to deny or explain.* 430 U.S. at 362; State v. Riddle, 291 S.C. 232, 353 S.E.2d 138 (1987). Gardner is simply not applicable to the facts of this case.

In Gardner, the defendant was prohibited from denying or rebutting the evidence in question that was admitted and considered by the trial judge in rejecting the jury's recommendation of a life sentence and ultimately sentencing the defendant to death. The evidence in question was *confidential information in a pre-sentence report* that the defendant and his counsel **were not allowed to see or respond to.** Gardner v. Florida.

What occurred in Gardner did not occur in this case. Owens had an opportunity to deny or explain the prison disciplinary infractions, he simply chose not to. Owens could have testified himself, or called any prison guards, prison staff, medical personnel, or fellow inmates to testify regarding the details of his prison disciplinary violations or to explain why they occurred. Owens simply chose not to. Owens was not prohibited from testifying in the penalty phase or calling any witnesses that he would like to call to rebut or explain the disciplinary violations. Owens had an opportunity to be heard. There simply was no due process violation. This portion of ground 11(c) must be dismissed with prejudice.

Furthermore, to the extent Owens is alleging the evidence violated due process because it was not trustworthy, this assertion has no merit. As previously discussed in extensive detail, the records were trustworthy. Furthermore, a sentencing court may consider any relevant information, including hearsay evidence, provided the information has "sufficient indicia of reliability to support its probable

accuracy." *See* United States v. Uwaeme, 975 F.2d 1016, 1021 (4th Cir. 1992). As our Supreme Court pointed out in its decision affirming Owens' third death sentence, trustworthiness is a condition of 803(6). Owens (*Owens III.*), *supra.* Owens contended at trial and on appeal that the prison disciplinary summary was not trustworthy under Rule 803(6). Our Supreme Court specifically found "no abuse of discretion in the trial judge finding trustworthy those incidents witnessed by prison staff." Owens (*Owens III*). As previously discussed, the record fully supports the trial judge's determination. Applicant was afforded judicial review by the trial court and our Supreme Court. Similarly, the Supreme Court pointed out that it had previously held that these type records were admissible in the sentencing phase of a capital trial under the Business Records as Evidence Act and that trustworthiness was an issue under the Act, not a new addition by the Rules of Evidence. Id. Clearly, the admitted summary had sufficient indicia of reliability to support its probable accuracy. This issue, if raised, has absolutely no merit. As Owens has not established any due process violation by the admission of this evidence, he cannot show deficient performance from any failure to object on this basis.

Lack of Prejudice

For the reasons set forth above, this Court must also find Owens has failed to establish prejudice. The prison disciplinary summary was admissible under the business records exception and did not violate the Confrontation Clause or any due process right of Owens. Therefore, if counsel had raised the objections that Owens now alleges counsel should have raised, the objections would have been overruled and the challenged summary admitted. Hough v. Anderson, (ineffective assistance of counsel claims based on failure to object are tied to the underlying admissibility of the evidence; if the evidence was admissible in any event, then the applicant has failed to prove either deficient

performance or prejudice under Strickland).

Even if this Court were to assume *arguendo* that counsel should have raised an additional objection to the admission of the disciplinary summary, this Court must conclude that such error was harmless and there could be no prejudice to applicant Owens. *See* State v. Bell, 302 S.C. 18, 393 S.E.2d 362 at 372 (1990); *See also* King v. State, 953 S.W.2d 266, 271 (Tex. Crim. App. 1988)("assuming without deciding that the case summaries and disciplinary records were improperly admitted", the court held its examination of the record in its entirety led it to conclude the alleged error did not affect a substantial right of the appellant).[42] Likewise, in the present case there was overwhelming evidence of applicant's future dangerousness, bad character, and inability to adapt to prison life outside of the business records summary. Applicant Owens cannot show prejudice under Strickland/Wong/Jones given the record in this case.

The violation of a defendant's right of confrontation, if proven, is also subject to harmless error analysis. Delaware v. Van Arsdall, 475 U.S. 673, 684, 106 S.Ct. 1431(1986). A violation of the Confrontation Clause is not *per se* reversible error. State v. Dinkins, 345 S.C. 412, 548 S.E.2d 217 (2001), *citing* State v. Dinkins, 339 S.C. 597, 529 S.E.2d 557 (Ct. App. 2000); State v. Jenkins, 322 S.C. 360, 364, 474 S.E.2d 812, 815 (Ct. App. 1996). *Also* Bell, 302 S.C. 18, 393 S.E.2d at 372 (1990).

This Court must consider several factors to determine whether the *alleged* error is harmless or requires reversal. These factors include the importance of the challenged evidence to the State's

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[42]While the King court relied on Kotteakos v. U.S., 328 U.S. 750 (1946) harmless error standard rather than that set forth in Chapman v. California, 386 U.S. 18 (1967), the court's decision is still persuasive, because it found harmless error in light of other properly admitted evidence of future dangerousness.

case, whether the evidence was cumulative, whether the evidence was materially corroborated or contradicted by other evidence introduced at trial, the extent of cross-examination otherwise permitted, and the overall strength of the State's case. Jenkins, *supra* at 364-65, 474 S.E.2d at 815.

On this issue, these factors conclusively weigh towards a conclusion of harmless error/lack of prejudice since the factors reveal: 1) The summary is similar to testimony of Major Thierry Nettles who stated Owens was the worst inmate in his custody and he houses problem inmates, and this statement came from personal knowledge of the witness, 2) the summary is exactly the same as Major Nettles testimony to each of the disciplinary violations, so the testimony was already before the jury, 3) the evidence is cumulative to other evidence of Owens inability to adapt in prison, i.e. the murder of his cell-mate Christopher Lee,[43] 4) the exhibit itself was corroborated by a defense witness, Dr. Donna Schwartz Watts, and not contradicted in the record, 5) cross examination clarified the record; defense counsel was able to clarify for the jury exactly what was meant by each entry if he so chose, and 6) the strength of the state's case in developing Owens' bad character was overwhelming without the challenged summary.[44]

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[43]Dr. David Brunetti, a psychologist, also testified that Owens has antisocial personality disorder which is primarily characterized by repeated disregard for the rights and safety of others. **(R. 1341, Tr. p. 1289, ll. 1-14).** Brunetti stated Owens was likely to be an individual who is hostile in his relationship with others, very quick to experience anger, and had learned the way to deal with anger is aggressively, as well as with the use of weapons. **(R. 1342, Tr. p. 1290, ll. 3-18).** After reviewing Owens' confession to the Lee murder, Dr. Brunetti's opinion changed from Owens being an impulsive actor "to that this was a much more predatory type of aggression." **(R. 1348-49, Tr. p. 1296, l. 16- p. 1297, l. 18).** Brunetti also testified he reviewed all of Owens' records from the D.O.C. since 1999 and in his opinion even in maximum solitary confinement Owens continues to harm others. **(R. 1350-51, Tr. p. 1298, l. 11-p. 1299, l. 8).** This testimony was before the jury separate from the disciplinary summary.

[44]In addition to the evidence of the robberies and brutal murder committed by Owens, the jury heard testimony that Owens was adjudicated delinquent as a juvenile for burglary (two counts), assault with intent to kill, and unlawful possession of a pistol. **(R. 1547, Tr. p. 1494, ll.**

The disciplinary records were clearly cumulative to other evidence in aggravation. Likewise, the evidence that Owens would be a predator in prison was firmly established without reference to the records. **(R. 1444, Tr. p. 1392, ll. 11-20).** The admission of the records summary, was harmless beyond a reasonable doubt; therefore Owens cannot establish prejudice. Wong; Jones.

Furthermore, the record is clear that Owens' own experts reviewed and relied on Department of Corrections' disciplinary records in rendering their opinions. **(R. 1457-58, Tr. p. 1404, l. 16-p. 1405, l. 15).** These witnesses included Marjorie Hancock and Doctor Thomas Cobb. **(R. 1457-58, 1502, Tr. p. 1404, l. 16-p. 1405, l. 15 & Tr. p. 1449, ll. 12-16).** Doctor Cobb testified Owens was in maximum security at Leiber Correctional Facility, and Owens was getting in a lot of trouble. **(R. 1490, Tr. p. 1437, ll. 1-6).** Cobb testified Owens was kept "in a cell, inside of a cage" which was different than all the other cells on the cell block. **(R. 1494, Tr. p. 1441, ll. 9-13).** Cobb also testified Owens was found with a shank in his cell. **(R. 1505, Tr. p. 1452, ll. 8-16).** Cobb also testified Owens made things [weapons] for protection. **(R. 1506, Tr. p. 1453, ll. 19-21).**

And Doctor Donna Schwartz-Watts relied on the DOC records as well. **(R. 1514, Tr. p. 1461, ll. 2-5).** Dr. Schwartz-Watts, a defense witness, testified that she was "..aware of many of his

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3-17). The jury also heard Owens' confession to the murder of his cellmate in the Greenville County Detention Center along with the testimony of the pathologist who performed the autopsy on Christopher Lee, who described the savage beating that resulted in Lee's death. **(R. 1359-1391, 1393-1405, Tr. p. 1307-1339, 1341-1353).** The jury also heard testimony that Owens, because of his prison conduct, was required to be housed "in a cell inside a cage" and that of the worst inmates in his cellblock, he was the most problematic inmate. **(R. 1444, Tr. p. 1392, ll. 11-20).** The jury also heard testimony from officer Joe Wood who testified Owens bragged about selling lots of drugs and stated he wanted to be remembered as the one "who killed the most people in Greenville." **(R. 1144, Tr. p. 1093, ll. 10-13).** Owens also told his girlfriend he wanted to go down in history for committing the most murders in Greenville County without getting caught. **(R. 1167, Tr. p. 1116, ll. 1-4).**

disciplinaries since he's been confined in the Department of Corrections." **(R. 1514, Tr. p. 1461, ll. 2-5).** Schwartz-Watts told the jury Owens had horrible behavior in the Department of Juvenile Justice which included write-ups for fighting and being disruptive in school, among other things. **(R. 1523, Tr. p. 1470, ll. 17-23).** Schwartz-Watts testified Owens' behavior in the juvenile correction facilities was at times "aggressive". **(R. 1525, Tr. p. 1472, ll. 12-19).** Schwartz-Watts testified that upon Owens' release from Turbeville Correctional Institute, Owens accrued a number of armed robbery and assault charges. **(R. 1524-25, Tr. p. 1471, l. 24-p. 1472, l. 7).** Schwartz-Watts testified Owens had about fifty-six (56) write-ups in the adult correctional system, including assaultive behavior. **(R. 1525-26, Tr. p. 1472, l. 35-p. 1473, l. 7).** She also stated he had a "long disciplinary history". **(R. 1526, Tr. p. 1473, ll. 6-7).** Dr. Schwartz-Watts testified Owens "has a long history of illegal behaviors." **(R. 1534, Tr. p. 1481, ll. 13-14).** She also testified Owens set fire to his cell and threw coffee in an officer's face. **(R. 1541-42, Tr. p. 1488, l. 16- p. 1489, l. 2).** Schwartz-Watts admitted Owens was caught with a 12 inch weapon and a 8 inch shank on two different occasions in 2006. **(R. 1540-41, Tr. p. 1487, l. 16-p. 1488, l. 10).** And Dr. Schwartz-Watts testified to the following:

> Q: And I don't want to belabor this point, but in your report it talks that you referred to the disciplinary reports of the South Carolina Department of Corrections from 2001 through 2006?
>
> A: Yes, sir.
>
> Q: You had copies of all those infractions, incident reports?
>
> A: Yes, sir. I would have had a list of them and then I think for probably the majority of them, there would have been a narrative to describe what happened.
>
> Q: Right, the internal report –
>
> A: Yes.

Q: - - that describes all that.

A. Yes.

Q: Now, I don't want to stand up here and read or have you read all those reports, but you did consider and use those reports as part of your review and diagnosis?

A: Absolutely, yes.

Q: And I assume you also used the material contained in the report as to who said what and who did what?

A: Yes, sir.

Q: All right. So if we needed to, we could go through those with you, but I just want to summarize in the end your comments were that Mr. Owens had substantial disciplinary infractions during his course of incarceration?

A: That is very fair to say.

Q: In fact, I believe you said he had something more than ordinary?

A: I counted 56, and - - of course, in the course of my career I look at - - its very common in doing evaluations I'll look at the list of assaultive disciplinaries, and it was a lengthy list.

Q: And we have - - and you may have been in the courtroom. We put in, through Mr. Nettles, a summary, very brief summary, of each one of those events, 28 of them to be exact we put in, and were you in the courtroom when we - -

A: No, sir.

Q: Okay, Well, there is a summary or a list of those that I would like to show you, State's Exhibit 30.

A: Thank you.

Q: And just so you will understand what that is, that is a summary of all of - - of 28 of those reports that - - you had the whole report. That's just a summary of what the heading of it was.

A: Yes, these all look familiar. Each one of these I have some recollection of reading the reports that went with them.

(R. 1538-40, Tr. p. 1485, l. 12 - p.1487, l. 8).

In summary, Dr. Schwartz-Watts and others testified that Owens had a lengthy disciplinary history including a history of assaultive behavior and possession of illegal weapons while incarcerated. In fact, the defense' witnesses testified *to more disciplinary violations* than the State offered into evidence. All of this evidence was before the jury without reference to the challenged summary. Additionally, Dr. Schwartz-Watts testified that the State's summary admitted into evidence was in fact a summary of the very documents she relied upon in reaching her opinion.[45] The summary could have been properly admitted through Doctor Schwartz-Watts if it had not already been entered. Owens cannot establish prejudice from counsel's failure to *properly object* to the admission of his prison disciplinary record summary. Wong v. Belmontes; Jones v. State.

Even assuming *arguendo* that the admission of the summary was error, its admission was harmless beyond a reasonable doubt. State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003)(admission of improper evidence is harmless where the evidence is merely cumulative to other evidence); State v. Braxton, 343 S.C. 629, 541 S.E.2d 833 (2001); State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978); *see also* State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996)(instructing that error in admission of evidence is harmless where it is cumulative to other evidence which was properly admitted); State v. Douglas, 367 S.C. 498, 520, 626 S.E.2d 59, 71 (Ct. App. 2006)("The admission of improper evidence is harmless where the evidence is merely cumulative to other

[45]In fact, Dr. Brunetti, a former defense expert, testified on behalf of the State that after reviewing the very same records, Owens continues to harm others while in maximum solitary confinement. Brunetti testified before Major Nettles and before the record summary itself was offered by the State. This evidence was also before the jury.

evidence").[46]

The sentencing jury, without regard to the summary, was aware Owens had a lengthy record of assaultive behavior while in confinement, including murdering a cell-mate, and a history of making weapons or "shanks". And, within his housing unit he was considered "assaultive", "destructive", and "damaging", the "most problematic inmate". **(R. 1444, Tr. p. 1392, 18-20).** Even in maximum solitary confinement, a cell inside a cage, "he continues to harm others." **(R. 1351, Tr. p. 1299, ll. 1-8).** The admission of the summary was harmless beyond a reasonable doubt. State v. Motley, 251 S.C. 568, 164 S.E.2d 569 (1968)(no prejudice shown where a different witness testified to the same matter without objection).[47] As a result, Owens cannot show prejudice from the failure to *properly object.* Wong; Jones.

Conclusion to this Issue

Since the prison disciplinary summary was relevant, admissible, and did not violate the Confrontation Clause or due process, Owens cannot show deficient performance in counsel's failure to object on Confrontation Clause or due process grounds. Strickland; Hough v. Anderson, 272 F.3d 878 (7th Cir. 2001)(ineffective assistance of counsel claims based on failure to object are tied to the admissibility of the underlying evidence; if evidence admitted without objection was admissible, then the claim fails *both prongs* of the Strickland test, as it was neither deficient nor prejudicial). And, since the prison disciplinary summary was merely cumulative to other extensive evidence of Owens'

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[46]*See also* State v. Rice, 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007)(admission of business records was harmless where records were cumulative to other evidence).

[47]Owens also ignores the fact that if the trial judge had kept the disciplinary summary out of evidence for some reason, the State could have called each officer or victim to testify to each incident or assault before the jury.

bad character, future dangerousness, and prison behavior, Owens cannot show had counsel objected on these basis, and the objection sustained, there is a reasonable probability the result of the sentencing proceeding would have been different. Strickland; Wong; Jones. This ground has no merit and must be dismissed with prejudice.

Ground 10(b)/11(b)(5)

10 (b): Applicant was denied the right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution, during his 2006 capital sentencing proceeding.

11(b): Supporting Facts: Trial counsel's performance during the sentencing phase was both deficient and prejudicial. *See* Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included the following:

5) Counsel failed to present readily available mitigating evidence that had already been developed at Applicant's previous trial and first re-sentencing proceeding. Ms. Marjorie Hammock previously testified in much greater detail to Applicant's life history and background. Further, Dr. Jim Evans previously testified that Applicant had brain dysfunction and difficulties with attention and impulse control. Counsel failed to have Ms. Hammock testify to all of the details that were available concerning Applicant's life history, and counsel failed to call Dr. Evans to testify at all.

In this ground, Owens alleges counsel failed to present readily available mitigating evidence that had already been developed at applicant's previous trial and two (2) sentencing hearings.[48] Applicant alleges Marjorie Hammock, a social worker, testified in much more detail at his 1st and 2nd sentencing proceedings. Applicant also alleges counsel should have called Jim Evans, who testified previously that applicant had brain dysfunction and difficulties with attention and impulse control. Owens alleges counsel should have had Ms. Hammock testify in greater detail in the 3rd sentencing proceeding and should have called Evans again in the 3rd sentencing proceeding. (See

[48]Owens does not allege a failure to investigate and develop mitigation evidence under this ground, but the failure to present mitigation that was already developed and available at the previous proceedings.

Ground 10(b)/11(b)(5). This ground has no merit.[49]

Evans' testimony at the 2nd Sentencing Proceeding

Jim Evans, a neuro-psychologist, testified at Owens 2nd sentencing proceeding regarding Owens' brain dysfunction. Evans based his testimony, in part, on a quantitative EEG (QEEG) he performed on Owens. This QEEG was then forwarded to the State of California for evaluation and results. Evans testified at the 2nd sentencing proceeding regarding the results of the QEEG. Evans also testified to the results of other testing he did on Owens. Owens was still sentenced to death. **(ROA, Kittredge, pp. 409-431, 521-523).**

The record also shows counsel made an objectively reasonable strategic decision with regard to not calling Mr. Evans, a psychologist, in applicant's 3rd sentencing proceeding and instead calling Doctors Thomas Cobb, Donna Schwartz-Watts, and Tora Brawley (a neuro-psychologist) who testified to applicant's diagnosis and problems with attention deficit, depression, and impulse control. Strickland v. Washington. And, the record shows the testimony offered in the mitigation phase was in large part cumulative to that of Jim Evans' earlier testimony. Simpson v. Moore. Owens has failed to show deficient performance in this regard.

Trial counsel testified at the PCR merits hearing he did not feel comfortable using Mr. Evans in the 3rd sentencing proceeding. Counsel testified he had concerns about Mr. Evans' credibility and

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[49]At the PCR merits hearing, Owens went outside the allegations of this ground and elicited testimony from his expert James Garbarino that counsel was ineffective in failing to present new mitigation evidence regarding things Owens allegedly witnessed in his childhood in Greenville and as a teenager at DJJ. The State had previously objected and moved to strike any testimony as outside the allegations of the final amended application. Owens also went outside the allegations of this ground of his final application and alleged counsel failed to present mitigation evidence contained within Drucy Glass' file. These new allegations will be dealt with at the end of the discussion under this ground. Respondent will first deal with the allegation as pled.

the credibility of the test he ran on Owens. Counsel testified he believed the Solicitor would be able to impeach Mr. Evans before the 3rd sentencing jury, and he did not want the 3rd sentencing jury to be distracted by this impeachment. Counsel also testified he believed that a Greenville County jury would be sophisticated enough to realize that if a test was in fact valid, it would not have to be sent to California for computation of results and could have been conducted in South Carolina and possibly even in the Greenville area. Counsel testified he wanted to present something different to the 3rd sentencing jury that had not been presented before and would dovetail with other experts testimony to present a cogent theory of mitigation regarding applicant Owens. Counsel testified he did not want to present the same information that had been unsuccessful in two (2) previous sentencing proceedings. Counsel testified that his psychiatric expert, Doctor Donna Schwartz-Watts, recommended Doctor Tora Brawley, a neuro-psychologist, to be the psychological expert in Owens 3rd sentencing proceeding, rather than Jim Evans. Counsel testified he relied on Doctor Schwartz-Watts' recommendation and retained Doctor Brawley to be the psychological expert in Owens 3rd sentencing proceeding. **(PCR Tr. pp. 109-110, 149-152).**

Doctor Schwartz-Watts testified similarly at the PCR hearing. She testified she felt more comfortable with and trusted the expertise of Doctor Tora Brawley as a psychologist. The two had worked together closely in the past, and she was impressed by Dr. Brawley. She testified Doctor Brawley is a more conservative psychologist as far as the battery of tests that she runs, and the tests she runs on a defendant are different than those run by Evans. Doctor Schwartz-Watts testified she recommended to counsel that they retain Doctor Brawley for the 3rd sentencing proceeding rather than relying on Jim Evans again. Doctor Schwartz-Watts testified she considered Doctor Brawley more reliable than Evans. She also admitted that Jim Evans findings had been attacked in previous

proceedings. Doctor Schwartz-Watts also testified that a Quantitative EEG is not a study generally accepted by psychologists. **(PCR Tr. pp. 331-335).**

Doctor Brawley also testified at the PCR hearing. Doctor Brawley testified that she was a neuro-psychologist. Doctor Brawley testified she had previously served on the faculty of Duke University Medical School and worked in head injury and spinal cord injury facilities. Doctor Brawley testified she was hired as the psychological expert in the 3rd sentencing proceeding based on the recommendation of Doctor Schwartz-Watts. Doctor Brawley testified that a Quantitative EEG is not something that is typically relied upon or generally accepted by experts in her field and is subject to challenge and impeachment regarding its results. She testified a QEEG is still considered controversial and experimental, and there are significant issues with that test. **(PCR Tr. pp. 351-354).**

At the PCR merits hearing, this Court had the opportunity to listen to the witnesses' testimony and judge their credibility accordingly. The testimony of trial counsel and applicant's 3rd sentencing phase experts on this issue is credible and supported by the record, and Owens' claim is not credible and without evidentiary support.

Owens has failed to prove counsel was deficient in not calling Jim Evans again in the 3rd sentencing proceeding, and Owens has failed to prove prejudice. Strickland; Wong; Jones.

The scientific validity of a Quantitative EEG (QEEG) has been attacked successfully in several cases across the country. John v. Shik, 263 Va. 315, 559 S.E.2d 694 (Va. 2002)(finding trial judge did not err in excluding testimony of QEEG results); Nadell v. Las Vegas Metro. Police Dep't., 268 F.3d 924, 928 (9th Cir. 2001)(affirming a district court's decision to exclude QEEG expert testimony based on record evidence indicating QEEG' may tend to produce "false positive."),

abrogated on other grounds Beck v. City of Upland, 527 F.3d 853 (9th Cir. 2008); Tran v. Hilburn, 948 P.2d 21 (Col. App. 1997)(finding trial judge erred in admitting evidence of QEEG because it was not generally accepted in the relevant scientific and clinical community for the purpose for which it was offered); Ross v. Schrantz, 1995 WL 254409 (Minn. App. 1995)(unpublished)(trial judge did not abuse his discretion in excluding QEEG on the basis of scientific literature); State v. Zimmerman, 166 Ariz 325, 802 P.2d 1024 (Ariz. App. 1990)(trial court did not abuse discretion in excluding similar technology to QEEG, Brian Electrical Activity Mapping (BEAM)).

As trial counsel correctly theorized, the Solicitor had the transcript from the 2nd sentencing proceeding, and would have been prepared to impeach Evans' testimony regarding the validity of any results of any QEEG at the 3rd sentencing proceeding before a jury. Furthermore, the Solicitor could have raised a Daubert[50] or similar challenge to the admissibility of the QEEG results themselves. *See* John v. Shik, (finding trial judge did not err in excluding testimony of QEEG results); Nadell v. Las Vegas Metro. Police Dep't., (affirming a district court's decision to exclude QEEG expert testimony based on record evidence indicating QEEG' may tend to produce "false positive."), *abrogated on other grounds* Beck v. City of Upland, 527 F.3d 853 (9th Cir. 2008).

Additionally, trial counsel's testimony regarding how the jury would have viewed the testimony is also credible and valid. A Greenville County jury would have been sophisticated enough to question why, if a test was indeed valid, it needed to be sent to California for computation of its results, when the Medical University of South Carolina is located right here within this state, and there are numerous practicing neurologists in the upstate area. Further, Doctor Schwartz-Watts and Doctor Brawley also testified that a QEEG is not a scientifically reliable test generally relied upon

[50]Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786 (1993).

in the psychological community to make a diagnosis. **(PCR Tr. pp. 331-335, 351-354).** Given this evidence, applicant has failed to prove deficient performance in failing to call Dr. Evans again before a jury.

The record also supports a finding that counsel made an objectively reasonable trial strategy decision not to call Evans again in the 3rd sentencing proceeding. Counsel did not want to present the same evidence that was previously unsuccessful, which Evans' testimony was. Evans testified in the 2nd sentencing proceeding, and Owens was still sentenced to death. Counsel also did not want the jury to get sidetracked or distracted on an issue regarding the reliability of a QEEG. Counsel correctly did not want to appear to being "pulling the wool over the jury's eyes" by relying on a questionable test to support a diagnosis. This was an objectively reasonable strategic decision. Strickland; Council. Counsel did not want to use Dr. Evans again because the State already had his testimony recorded from the previous sentencing proceeding and would have had time to research the validity of the QEEG, challenge its admissibility, and prepare for intensive cross-examination and impeachment of Evans. This was also an objectively reasonable strategic reason for not calling Evans again. Id.

Counsel relied on his forensic expert Dr. Schwartz-Watts' recommendation that they retain a different neuro-psychologist, who had not been used in a previous proceeding, Dr. Tora Brawley. Counsel also relied on Dr. Thomas Cobb, a psychiatrist, who was treating Owens at Lieber Correctional Institution, who had not testified in the previous sentencing proceedings. Counsel also relied on Doctor Schwartz-Watts, a forensic psychiatrist to testify in the sentencing proceeding regarding Owens psychiatric issues. These were objectively reasonable trial strategy decisions given the circumstances counsel was presented with, and are not subject to a claim of ineffective assistance of counsel. Strickland v. Washington; Council v. State.

Furthermore, Owens cannot demonstrate prejudice on this record. Wong v. Belmontes; Jones v. State. Owens cannot show that but for counsel's alleged deficiencies in this regard, there is a reasonable probability the result of the sentencing proceeding would have been different. Id.

First, Jim Evans testified in the 2nd sentencing proceeding, and Owens was still sentenced to death. It is difficult for Owens to show prejudice given this fact alone.

Second, Jim Evans' testimony regarding the QEEG, its results, and findings would have been challenged pre-trial, and in all likelihood kept from the jury. John; Nadell; Tran.

Third, the 3rd sentencing jury was fully aware that applicant Owens had attention deficit disorder and impulse control disorder through the testimony of Doctors Thomas Cobb and Donna-Schwartz-Watts. The jury was also aware that Owens had been diagnosed with anxiety disorder, not otherwise specified by Dr. Cobb. **(R. p. 1497).** The jury was also aware Owens was on psychiatric medications including Vistaril, Risperdal, and Depakote for his impulsivity and anxiety. **(R. pp. 1498-1499).** The jury was also aware of Owens' problems with attention and impulsivity from Dr. Brawley, a psychologist. **(R. p. 1481).** The jury was also aware of Owens' history of depression through Doctors Schwartz-Watts, Cobb, and Brawley and the treatment for the same. The jury was also aware through the testimony of Dr. Brawley of Owens' lifelong problems with brain function and psychiatric issues. **(R. p. 1485).** The jury was also aware from Doctor Brawley that Owens had select areas of deficit in his brain. **(R. p. 1485).** The jury was also aware through the testimony of Dr. Brawley that Owens' depression could manifest itself as aggression, impulsivity, and resistance. **(R. p. 1483-1484).** Ms. Hammock, the forensic social worker, also told the jury about Owens' fairly significant learning disabilities and his school difficulties. **(R. pp. 1453-1467).** Ms. Maag also testified to Owens' learning disabilities and poor social skills. **(R. pp. 1468-1475).**

This Court has before it the testimony of Jim Evans from the 2nd sentencing proceeding. **(R., Kittredge, pp. 409-431).** This Court can compare the admissible testimony of Evans to that which was presented through three (3) credible psychological or psychiatric experts in the 3rd sentencing proceeding. **(R., pp. 1475-1548).** The evidence Owens alleges should have been introduced from Jim Evans which was admissible in the penalty phase and not subject to challenge or impeachment is cumulative to the other evidence admitted in the 3rd sentencing proceeding. **(R., Kittredge, pp. 409-431, R., Patterson pp. 1475-1548, 1460, ll. 13-23, 1469).** Wong v. Belmontes, 588 U.S. ___, 130 S.Ct. at 387-88 (when substantial mitigation case was presented, evidence that is merely cumulative to evidence actually presented fails to demonstrate the prejudice necessary to meet the prejudice prong of Strickland); Buckner v. Polk, 453 F.2d 195, 206 (4th Cir. 2006)(trial counsel's failure to present merely cumulative mitigating evidence does not prejudice defendant's case); Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006)(finding where substantial mitigation case was presented, applicant failed to show prejudice from failure to call other mitigation witnesses that were in essence cumulative); Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998)(holding that "fancier mitigation case" does not render prior case inadequate).

Furthermore, if Owens had recalled Jim Evans in the 3rd sentencing proceeding, his testimony in all likelihood would have been attacked and impeached. *See* Tran v. Hilburn, 948 P.2d 21 (Col. App. 1997)(finding trial judge erred in admitting evidence of QEEG because it was not generally accepted in the relevant scientific and clinical community for the purpose for which it was offered); Ross v. Schrantz, 1995 WL 254409 (Minn. App. 1995)(unpublished)(trial judge did not abuse his discretion in excluding QEEG on the basis of scientific literature); State v. Zimmerman, 166 Ariz 325, 802 P.2d 1024 (Ariz. App. 1990)(trial court did not abuse discretion in excluding similar

technology to QEEG, Brian Electrical Activity Mapping (BEAM)). This would in turn have caused the jury to reject the testimony or at least have caused counsel to lose credibility in the eyes of the jury.

Not only could Mr. Evans' testimony have been challenged or impeached regarding the QEEG, but also in other areas. Several of the tests Evans ran on Owens were subject to manipulation of the results by Owens intentionally or simply through lack of effort. **(See R., Kittredge pp. 412-416).** As Doctor Schwartz-Watts testified, Evans' findings had been attacked in the past.

When determining if want of mitigation evidence resulted in prejudice, the Court must determine whether the "mitigation evidence, taken as a whole, 'might well have influenced the jury's appraisal' of [the defendant's] culpability." Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009), *quoting* Wiggins v. Smith, 539 U.S. 510, 538, 123 S.Ct. 2527 (2003), *quoting* Williams v. Taylor, 529 U.S. 362, 398, 120 S.Ct. 1495 (2000); *see also* Rompilla v. Beard, 545 U.S. 374, 393, 125 S.Ct. 2456 (2005). In this regard, the United States Supreme Court held, "the likelihood of a different result if the [mitigation] evidence had gone in is 'sufficient to undermine confidence in the outcome' actually reached at sentencing." Rompilla, 545 U.S. at 393, 125 S.Ct. 2456 (*quoting* Strickland, 466 U.S. at 694, 104 S.Ct. 2052). Accordingly, if counsel's failure to present mitigation evidence undermines confidence in the outcome, then the applicant suffered prejudice. Rosemond v. Catoe, *supra* (finding counsel's complete failure to present mitigation evidence undermined confidence in the outcome where the jury deliberated over two days before reaching a death sentence).

The mitigation evidence applicant Owens alleges counsel did not present through Jim Evans does not undermine confidence in the outcome of Owens' 3rd penalty phase proceeding. Id. In fact, counsel's presentation of mitigation evidence in Owens' 3rd sentencing proceeding was the polar

opposite of counsel's actions in cases such as Rosemond v. Catoe, *supra* (failure to present any mental health mitigation), Council v. State, 380 S.C. 159, 181, 670 S.E.2d 356, 368 (2008)(failure to present mental health mitigation or social worker), and Gray v. Branker, 529 F.3d 220, 238 (4th Cir. 2008)(failure to present any mental health mitigation) where the South Carolina Supreme Court and the Fourth Circuit Court of Appeals found counsel's performance was deficient and the applicant was prejudiced.

In the present case, counsel presented mental health mitigation from Doctor Schwartz-Watts, a forensic psychiatrist, Doctor Tora Brawley, a neuro-psychologist, and Doctor Thomas Cobb, applicant's treating psychiatrist at Lieber. Counsel also presented the testimony of Owens' forensic social worker Marjorie Hammock and an elementary school teacher, Ms. Maag. Although it was not as lengthy as presented in the 1st and 2nd sentencing proceeding, Hammock's testimony was essentially the same, and simply more concise. Considering the mitigation evidence, taken as a whole, Owens has not shown that the jury might well have been influenced in the appraisal of his culpability and there is the likelihood of a different result had this mitigation evidence gone in sufficient to undermine confidence in the outcome. Rosemond v. Catoe; Rompilla.

The United States Supreme Court made clear in its recent decision in Wong v. Belmontes, *supra* that the burden *is not* on the State to show the lack of prejudice, but the burden is *on the applicant to show prejudice.* Id. To establish prejudice, applicant "must show 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Id., *quoting* Strickland, 466 U.S. at 694. That showing requires applicant "to establish 'a reasonable probability that a competent attorney aware of the [available mitigating evidence], would have introduced it at sentencing," and "that had the jury been confronted with this . . .

mitigating evidence, there is a reasonable probability that it would have returned with a different sentence.'" Id., *quoting* Wiggins v. Smith, 539 U.S. at 535, 536. "In evaluating that question, it is necessary to consider *all* the relevant evidence that the jury would have had before it" if applicant "had pursued the different path - not just the mitigation evidence" applicant could have presented, but also" the aggravating evidence "that almost certainly would have come in with it." Id., *referencing* Strickland, at 695-696, 700 (emphasis in original). "Thus, to establish prejudice," applicant "must show a reasonable probability that the jury would have rejected a capital sentence after it weighed the entire body of mitigating evidence" (including the additional testimony applicant could have presented) against the entire body of aggravating evidence (including any additional aggravating evidence likely to have come in). Id.; *See also* Porter v. McCollum, 558 U.S. ___ (2009). Applicant has not met this burden. Plath v. Moore, 130 F.3d 595, 602 (4th Cir. 1997)(holding that, considering the sheer magnitude of the aggravating evidence, the defendant failed to show prejudice from trial counsel's failure to present certain mitigating evidence).

Additionally, if Evans' testimony had been admitted in the 3rd sentencing proceeding, the testimony was "double edged." The sentencing jury could have determined the evidence was aggravating instead of mitigating, because it further highlighted Owens' future dangerousness. **(See Solicitor's cross-examination of Evans, R. Kittredge, pp. 425-430).** Wong v. Belmontes. *See* Truesdale v. Moore, 142 F.3d 749, 755 (4th Cir. 1998)(mental health evidence is a "double edged sword that might as easily condemn a defendant to death as excuse his actions."); St. Pierre v. Walls, 297 F.3d 617, 633 (7th Cir. 2002)(facts that show a defendant has a condition or proclivity toward violence are often aggravating, not redeeming or mitigating factors).

In addition to the extensive mitigation evidence presented by counsel at the 3rd sentencing

proceeding, the jury was also aware of the overwhelming evidence in aggravation against Owens. The jury was aware Owens had been convicted of the murder of Irene Graves. The jury was aware Owens had admitted to his girlfriend and a co-defendant that he shot Ms. Graves because she would not open the store safe. By viewing the crime-scene videotape, the jury was aware Ms. Graves was murdered during the commission of an armed robbery and during the commission of a larceny with the use of a deadly weapon. The jury was aware that Owens referred to Ms. Graves as a "bitch" and a "whore." The jury was also aware that Owens had murdered his cell-mate Christopher Lee in the Greenville County Detention Facility. The jury was aware that Owens tortured Christopher Lee in addition to murdering him. The jury was also aware that Owens went to sleep after murdering Christopher Lee. The jury was also aware Owens had been adjudicated delinquent of AWIK, possession of a pistol, and Burglary (2 counts) before murdering Ms. Graves or Mr. Lee. The jury was also aware Owens had actually shot at some other juveniles in the AWIK incident. The jury was also aware that Owens had assaulted other inmates, assaulted prison staff, and made shanks illegally while in the Department of Corrections. The jury was aware that because of Owens' terrible prison behavior Owens had to be kept in a cage inside a cell. The jury was also aware that Owens was considered the worst inmate in the maximum security section of Lieber Correctional Facility.

Given this record, Owens cannot establish prejudice. Wong v. Belmontes; Jones v. State. *See* Plath v. Moore, (holding that, considering the sheer magnitude of the aggravating evidence, the defendant failed to show prejudice from trial counsel's failure to present certain mitigating evidence). Owens has failed to show that had counsel had Jim Evans give the same testimony that was unsuccessful in his 2nd sentencing proceeding, there is a reasonable probability the jury would have returned with a different sentence. Id.. Therefore, this ground must be dismissed with prejudice.

Ms. Hammock's testimony

Owens also alleges counsel was ineffective in failing to present Ms. Hammock's testimony as it was presented in the 1st and 2nd sentencing proceedings. (See Ground above). Applicant cannot show deficient performance for several reasons.

First, as previously set forth, Ms. Hammock testified in both the 1st and 2nd sentencing proceeding, and Owens was still sentenced to death. **(R., Macaulay, pp. 3241-3271, 3320 - 3323 & R., Kittredge, pp. 445-473, 521-523).** She testified allegedly in more detail in the 1st and 2nd sentencing proceedings, and Owens was still sentenced to death at the conclusion of both proceedings, once by a jury and once by Judge Kittredge. **(R., Macaulay, pp. 3241-3271, 3320-3323 & R., Kittredge, pp. 445-473, 521-523).** It is difficult for Owens to demonstrate deficient performance where the more detailed testimony he now alleges should have been presented in his 3rd sentencing proceeding was previously presented and was unsuccessful before a jury and a judge separately.

Second,, counsel presented a cogent mitigation case in the 3rd sentencing proceeding through the testimony of not only the forensic social worker, Ms Hammock, but also through Doctors Schwartz-Watts, Cobb, and Brawley, and an elementary school teacher, Ms. Maag. This covered the same relevant mitigation topics covered by Ms. Hammock in the 1st and 2nd sentencing proceeding. (*Compare* **R., Macaulay, pp. 3241-3271, R. Kittredge pp. 445-473 *to* R. Patterson pp. 1449-1467, 1468-1473, 1475-1487, 1487-1506, 1507-1547).**

In the 3rd sentencing proceeding, Ms. Hammock testified that Owens grew up in a violent neighborhood. **(R. p. 1459).** Ms. Hammock testified Owens was exposed to violence both in his home and in his neighborhood. **(R. p. 1459).** The jury was aware through Ms. Hammock's testimony that Owens witnessed family members who were engaged in using violence to settle problems. **(R.**

p. 1461). Ms. Hammock also testified Owens suffered abuse and neglect at home. **(R. p. 1459).** Doctor Schwartz-Watts also testified Owens suffered a lot of physical abuse as a child, and she was able to confirm many of those instances. **(R. p. 1518).** Doctor Schwartz-Watts also testified Owens witnessed physical abuse as a child. **(R. p. 1518).** Doctor Schwartz-Watts testified Owens witnessed his step-father take a machete to his mother and chase her through the house. **(R. p. 1519).** Ms. Hammock testified Owens biological father was a very violent or extremely violent man. **(R. pp. 1459, 1465).** Ms. Hammock testified Owens step-father was a very violent man. **(R. p. 1459).** Owens' school teacher also testified Owens lived in a violent neighborhood, and he was chased and picked on by violent boys in the neighborhood. She testified when Owens was frightened, his step-father would lock Owens out of the house, and make him fight. **(R. p. 1469-1470).** Ms Hammock testified Owens' biological father and step-father abused Owens' mother. **(R. p. 1459, 1464).** Dr. Schwartz-Watts also testified Owens mother was physically abused, though not while pregnant with Owens. **(R. p. 1517).** Doctor Schwartz-Watts testified Owens would remain home from school in an attempt to protect his mother from his step-father, and Owens' school attendance fell off as a result of the abuse of his mother by the step-father, and he would stay home for days out of fear or in an attempt to protect his mother. **(R. p. 1519).** Ms. Hammock testified Owens step-father forced Owens to learn to fight and to resolve disputes with violence. **(R. p. 1460).** The jury also knew Owens step-father taught him to be "violent and vigilent at all times" to protect himself.[51] **(R. p. 1464).** Doctor Schwartz-Watts also testified Owens witnessed a lot of physical abuse as a child. **(R. p. 1518).**

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[51]This fact was not contested by the State. In fact, the State called as a witness Dr. Brunetti, who had been Owens' expert in a previous proceeding. Dr. Brunetti testified Owens had been taught in his childhood by several role models that the way you deal with anger is aggressively as well as with the use of weapons. **(R. p. 1342).**

Ms. Hammock also testified there was a considerable amount of incarceration of Owens' family which included his brothers and his uncle. **(R. p. 1461).** The jury was also aware that at the time of Owens 3rd sentencing proceeding, two (2) of Owens' brothers were incarcerated. **(R. p. 1463).** The jury was also aware through Ms. Hammock's testimony that Owen's grandmother had been incarcerated for assault. **(R. p. 1463).** The jury was aware Owens' grandmother was incarcerated for shooting someone. **(R. p. 1465).** The jury was aware that Owens was present, as a small child, and witnessed his grandmother shoot this person. **(R. p. 1518).** The jury was aware Owens was very close to his grandmother so he lost her companionship because of her incarceration. **(R. p. 1465).** Ms. Hammock also testified Owens' biological father had been incarcerated. **(R. p. 1464).** The jury also knew there was considerable strife and violence in Owens' maternal grandmother's family. **(R. p. 1463).** Doctor Cobb also testified most, if not all, of Owens' family was incarcerated. **(R. p. 1495).** Ms. Hammock testified there was a total of five (5) members of Owens' family who had been incarcerated. **(R. p. 1464).**

The jury was also aware through Ms. Hammock's testimony that Owens' other brother, Lorenzo, was mentally disabled. **(R. p. 1463).** The jury was also aware that Owens' uncle David is a disabled person and lives with Owens' mother and lived with her when Owens was born. **(R. p. 1463).** Owens school teacher also testified that Owens home was crowded, and he shared his family home with a lot of people. **(R. p. 1469).**

The jury was aware through Ms. Hammock's testimony that because of abuse and neglect when Owens was approximately four (4) years old he and his siblings were removed from the home and placed in foster care. **(R. p. 1459, 1464).** As a result of being removed from his home at such a young age, Owens experienced separation and foster care. **(R., p. 1461).** The jury new that some

of that neglect continued because of the family's existence was marginal even after Owens was returned to his mother's home. **(R. p. 1459).** The jury was aware Owens and his family had to move several times, and as a result, Owens was always considered an outsider and having to prove himself and defend himself in a new neighborhood or school. **(R. p. 1496).**

The jury was also aware that Owens' family had a very marginal financial and economic existence throughout Owens' life as a young child. **(R. p. 1461, 1465).** One of Owens' school teachers also testified that Owens' home life was sparse, and there were times there was no food in the home. **(R. p. 1469).** She testified she was not aware if Owens ever got anything for Christmas, and she and others would take him a turkey at Christmas or provide him with a coat or other clothing when needed. **(R. p. 1471).** The jury was aware Owens' family had limited resources and skills that would enable them to provide for Owens' brothers and sister with a healthy, stable existence. **(R. p. 1465).** The jury was also aware that Owens' family perceived themselves as being on the outside of society because they didn't have the kind of resources that they needed to have. **(R. p. 1465).** Doctor Schwartz-Watts also testified to Owens' major depression while at DJJ as a result of his family's financial situation. **(R. pp. 1513-1514, 1520-1524).**

The jury was also aware through Ms. Hammock's testimony that drug use and alcohol use ran throughout Owens' family. **(R. p. 1464).** Dr. Schwartz-Watts also testified records indicated Owens used marijuana and alcohol during his teenage years. **(R. p. 1523).** Schwartz-Watts testified Owens may have also experimented with cocaine, although he denied it to her. **(R. p. 1523).**

Ms. Hammock testified Owens biological father abandoned Owens. **(R. p. 1464).** Ms. Hammock testified Owens had very little contact with his father growing up. **(R. p. 1465).** Ms. Hammock testified that Owens was born to a mother who was only eighteen years old at the time of

his birth. **(R. p. 1459).** Ms. Hammock also testified when Owens was born, his eighteen (18) year old mother already had one child. **(R. p. 1459).** Ms. Hammock testified that when Owens was born his mother had very limited resources and had difficulty caring for Owens and the older child because of those limited resources. **(R. p. 1459).**

Ms. Hammock also testified to Owens' difficulties in school. **(R. pp. 1455-56, 1460).** Ms. Hammock testified to Owens' fairly significant learning disabilities that were made even worse by the limitations in the home which could not support him and his educational deficits. **(R. p. 1460).** Ms. Maag also testified to Owens' learning disabilities. **(R. p. 1469).** She testified Owens had tremendous trouble trying to read and his social skills were lacking. **(R. p. 1469).** Ms. Maag also testified Owens was picked on in school because of his small size. **(R. p. 1469).** Ms. Magg testified Owens received help from a resource teacher to improve his reading skills. **(R. p. 1470).** Ms. Maag testified Owens went to resource classes one (1) hour a day during the school year she taught him. **(R. p. 1470).** Ms. Maag testified that Owens tried very hard in school, but he did not have the skills that he needed to do what was expected of him. **(R. p. 1472).** Ms. Maag testified the only time Owens' name was called out for doing anything special in school was for his athletic ability, and that was because he had learned to run so well escaping from being picked on by other boys at school and at home. **(R. pp. 1471-72).** Doctor Brawley also testified to Owens' diagnosis of a learning disability and various other problems in the classroom.[52] **(R. pp. 1481).** Doctor Brawley testified Owens had a documented learning disability and poor attention. **(R. p. 1481).** Dr. Brawley also testified Owens had significant difficulties with attention and focusing according to his school records

[52]Dr. Brunetti also confirmed Owens had a learning disability, poor social conformity and anger control issues as a child. **(R. p. 1355-56).**

and an interview with one of his teachers. **(R. p. 1482).** Doctor Brawley also testified Owens' I.Q. was much lower in school, in the 80s, than it is today. Doctor Schwartz-Watts also testified to Owens hyperactivity as a child and in school and her diagnosis of attention deficit disorder. **(R. p. 1517, 1532).** Doctor Schwartz-Watts testified when Owens was in the 6th grade he was referred for testing for hyperactivity. **(R. p. 1517).** Dr. Schwartz-Watts testified this assessment process was stopped and he never had a complete assessment to see if he needed to be placed on medication to treat the problem. **(R. p. 1516-17).** Doctor Schwartz-Watts testified Owens' attention deficit disorder goes back to his childhood. **(R. p. 1533).** Doctor Schwartz-Watts also testified to Owens' truancy from school to protect his mother. **(R. p. 1518).** Dr. Brawley testified Owens' learning problems were documented in the school records as early as elementary school. **(R. p. 1482).** Dr. Brawley also testified Owens has a lifelong problem with brain function and may have been suffering from depression even as an elementary school child. **(R. pp. 1484-85, 1482-83).** Ms. Hammock testified school failure was part of Owens' existence as well as that of his family. **(R. p. 1460).** Ms. Maag testified she never had a conference with Owens' mother the entire time she taught him. **(R. p. 1470).** Ms. Hammock testified Owens' family had very little formal education and very few of the family members had even completed high school. **(R. p. 1464).** Hammock testified Owens' learning difficulties and disabilities compromised Owens' ability to really develop skills and the competence to feel good about himself and succeed in life. **(R. p. 1460).** Ms Hammock also testified this school failure and lack of skills did not help Owens to regard himself as a competent human being. **(R. p. 1460).**

Ms. Hammock testified Owens' existence was one of a history of losses, violence, and a great deal of instability. **(R. p. 1465).** Doctor Cobb also testified that Owens had a very rough childhood.

(R. p. 1495, ll. 3-4). Ms. Hammock also testified all of the factors listed above demonstrated that Owens was a young man who did not have the interventions that he needed, and it made it difficult for him to compensate for all of these losses. **(R. pp. 1460-61).** As a result, Owens developed the kind of coping strategies you find in the histories of children who are typically neglected and abused. **(R. p. 1461).** Ms. Hammock testified Owens witnessed a lot of violence, and as a result he acted out on that violence and ended up in juvenile and adult criminal activity. **(R. p. 1461).** Ms. Hammock also testified that in her forty-seven (47) years of experience she found a correlation between this type of family circumstance and a person committing violence. **(R. p. 1465, ll. 7-10).** Ms. Hammock testified that in both the literature and in her observation, there was a correlation between limited resources, considerable violence and neglect as a child, abuse in the environment, and later criminal behavior. **(R. p. 1465, ll. 7-14).**

This Court has before it the record of Ms. Hammock's testimony from Owens' 1st sentencing proceeding before Judge Macaulay. **(R., Macaulay, pp. 3241-3271).** This Court also has before it Ms. Hammock's testimony from Owens' 2nd sentencing proceeding before Judge Kittredge. **(R., Kittredge, 445-473).** This Court also has before it Ms. Hammock's testimony from Owens' 3rd sentencing proceeding. **(R., Patterson, 1449-1467).** This Court can carefully review each and compare the same. The testimony of Ms. Hammock in the 3rd sentencing proceeding is largely cumulative and the same. It covers the same topics as listed above, but is simply more concise.[53]

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[53]Ms. Hammock's testimony is also more lengthy in previous proceedings because she was cross-examined in the 1st and 2nd sentencing proceeding. The Solicitor chose not to cross-examine or challenge her testimony in the 3rd sentencing proceeding. **(See R., Macaulay Vol. 7, R. Kittredge, Vol. 1, R. Patterson, Vol. 6).** Additionally, a large portion of Ms. Hammock's testimony in the *1st sentencing proceeding* dealt with how Mr. Owens would be classified in the S.C. Dept. of Corrections. **(See R. Macaulay, pp. 3257-3270).** By the time the 3rd sentencing

Additionally, topics covered and not covered by Ms. Hammock were covered by other mitigation witnesses in the 3rd sentencing proceeding including Doctors Schwartz-Watts, Cobb, and Brawley and also by Owens' teacher Ms. Maag. Owens has failed to show deficient performance on the part of counsel in not having Ms. Hammock testify in as much detail or exactly as she did in the 1st sentencing proceeding or the 2nd sentencing proceeding.

Lack of Prejudice

When determining if want of mitigation evidence resulted in prejudice, the Court must determine whether the "mitigation evidence, taken as a whole, 'might well have influenced the jury's appraisal' of [the defendant's] culpability." Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009), *quoting* Wiggins v. Smith, 539 U.S. 510, 538, 123 S.Ct. 2527 (2003), *quoting* Williams v. Taylor, 529 U.S. 362, 398, 120 S.Ct. 1495 (2000); ***see also*** Rompilla v. Beard, 545 U.S. 374, 393, 125 S.Ct. 2456 (2005). In this regard, the United States Supreme Court held, "the likelihood of a different result if the [mitigation] evidence had gone in is 'sufficient to undermine confidence in the outcome' actually reached at sentencing." Rompilla, 545 U.S. at 393, 125 S.Ct. 2456 (*quoting* Strickland, 466 U.S. at 694, 104 S.Ct. 2052). Accordingly, if counsel's failure to present mitigation evidence undermines confidence in the outcome, then the applicant suffered prejudice. Rosemond v. Catoe, *supra* (finding counsel's complete failure to present mitigation evidence undermined confidence in the outcome where the jury deliberated over two days before reaching a death sentence).

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proceeding was taking place, this testimony of Ms. Hammock was irrelevant because Owens had been in prison for several years and because of Owens' prison behavior. (See disciplinary summary). As discussed under a previous ground, there was a wealth of evidence about how Owens was confined and would be confined from other witnesses in the 3rd sentencing proceeding. Counsel could not be deficient for re-presenting this testimony from the first sentencing proceeding.

The mitigation evidence applicant Owens alleges counsel did not present from the previous two sentencing proceedings does not undermine confidence in the outcome of Owens 3rd penalty phase proceeding. Id. In fact, counsel's presentation of mitigation evidence in Owens' 3rd sentencing proceeding was the polar opposite of counsel's actions in cases such as Rosemond v. Catoe, *supra* (failure to present any mental health mitigation), Council v. State, 380 S.C. at 181, 670 S.E.2d at 368 (failure to present mental health mitigation or social worker), and Gray v. Branker, 529 F.3d 220, 238 (4th Cir. 2008)(failure to present any mental health mitigation) where the South Carolina Supreme Court and the Fourth Circuit Court of Appeals found counsel's performance was deficient and the applicant was prejudiced.

In the present case, counsel presented the testimony of Owens' forensic social worker Marjorie Hammock again. Although it was not as lengthy as presented in the 1st and 2nd sentencing proceeding, Hammock's testimony was essentially the same, and simply more concise. Counsel also introduced through other witnesses in addition to Ms. Hammock that Owens grew up in a violent neighborhood, witnessed violence, suffered abuse and neglect, had difficulty in school, learning disabilities, and most of his family was incarcerated. Considering the mitigation evidence, taken as a whole, Owens has not shown that the jury might well have been influenced in the appraisal of his culpability and there is the likelihood of a different result had the exact mitigation evidence from the 1st and 2nd sentencing proceeding of Ms. Hammock gone in sufficient to undermine confidence in the outcome. Rosemond v. Catoe; Rompilla.

The United States Supreme Court made clear in its recent decision in Wong v. Belmontes, *supra* that the burden *is not* on the State to show the lack of prejudice, but the burden is on the applicant to show prejudice. Id. To establish prejudice, applicant "must show 'a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Id., *quoting* Strickland, 466 U.S. at 694. That showing requires applicant "to establish 'a reasonable probability that a competent attorney aware of the [available mitigating evidence], would have introduced it at sentencing," and "that had the jury been confronted with this . . . mitigating evidence, there is a reasonable probability that it would have returned with a different sentence.'" Id., *quoting* Wiggins v. Smith, 539 U.S. 510, 535, 536, (2003). "In evaluating that question, it is necessary to consider *all* the relevant evidence that the jury would have had before it" if applicant "had pursued the different path - not just the mitigation evidence" applicant could have presented, but also" the aggravating evidence "that almost certainly would have come in with it." Id., *referencing* Strickland, at 695-696, 700 (emphasis in original). "Thus, to establish prejudice," applicant "must show a reasonable probability that the jury would have rejected a capital sentence after it weighed the entire body of mitigating evidence" (including the additional testimony applicant could have presented) against the entire body of aggravating evidence (including any additional aggravating evidence likely to have come in). Id.; *See also* Porter v. McCollum. Applicant has not met this burden. Plath v. Moore, (holding that, considering the sheer magnitude of the aggravating evidence, the defendant failed to show prejudice from trial counsel's failure to present certain mitigating evidence).

This Court does not have to speculate as to prejudice. Owens simply cannot demonstrate the same. The *allegedly* more detailed testimony of Ms. Hammock was presented before Owens 1st sentencing jury and Judge Kittredge, who sentenced Owens in his 2nd sentencing proceeding. Both Owens' 1st sentencing jury, and Judge Kittredge in Owens' 2nd sentencing proceeding, sentenced Owens to death after hearing this allegedly more extensive or detailed testimony.

In addition to the extensive mitigation evidence presented by counsel at the 3rd sentencing proceeding, the jury in Owens' 3rd sentencing proceeding was also aware of the overwhelming evidence in aggravation against Owens. The jury was aware Owens had been convicted of the murder of Irene Graves. The jury was aware Owens had admitted to his girlfriend and a co-defendant that he shot Ms. Graves because she would not open the safe. By viewing the crime-scene videotape, the jury was aware Ms. Graves was murdered during the commission of an armed robbery and during the commission of a larceny with the use of a deadly weapon. The jury was aware that Owens referred to Ms. Graves as a "bitch" and a "whore." The jury was also aware that Owens had murdered his cell-mate Christopher Lee in the Greenville County Detention Facility. The jury was aware that Owens tortured Christopher Lee in addition to murdering him. The jury was also aware that Owens went to sleep after murdering Christopher Lee. The jury was also aware Owens had been adjudicated delinquent of AWIK, possession of a pistol, and Burglary (2 counts) before murdering Ms. Graves or Mr. Lee. The jury was also aware Owens had actually shot at some other juveniles in the AWIK incident. The jury was also aware that Owens had committed another armed robbery the night before Ms. Graves murder, again wearing a mask while he perpetrated that armed robbery. The jury was also aware that Owens had assaulted other inmates, assaulted prison staff, and made shanks illegally while in the Department of Corrections. The jury was aware Owens had a total of fifty-six (56) discliplinary violations in the adult department of corrections. The jury was aware that because of Owens' terrible prison behavior Owens had to be kept in a cage inside a cell. Even while in this confined setting Owens continued to make shanks and engage in assaultive behavior. The jury was also aware that Owens was considered the worst inmate in the maximum security section of Leiber Correctional Facility.

Given this record, Owens cannot establish prejudice. Wong v. Belmontes; Jones v. State. *See* Plath v. Moore, 130 F.3d a 602 (holding that, considering the sheer magnitude of the aggravating evidence, the defendant failed to show prejudice from trial counsel's failure to present certain mitigating evidence). Owens has failed to show that had counsel had Marjorie Hammock give the same testimony that was unsuccessful in his 1st and 2nd sentencing proceeding, there is a reasonable probability the 3rd sentencing jury would have returned with a different sentence. Id.. Therefore, this ground must be dismissed with prejudice.

Drucy Glass' File

At the PCR hearing, applicant alleged for the first time, that this ground extended to the failure of counsel to present mitigation evidence contained within mitigation investigator Drucy Glass' file.[54] Respondent objected on the grounds it was not provided adequate notice of this ground, and had not been able to investigate and properly defend this claim. The allegations of this ground, as stated in the Final Amended Application, are as follows:

> Counsel failed to present readily available mitigating evidence that had already been developed *at* Applicant's *previous trial* and *first re-sentencing proceeding*. Ms. Marjorie Hammock previously testified in much greater detail to Applicant's life history and background. Further, Dr. Jim Evans previously testified that Applicant had brain dysfunction and difficulties with attention and impulse control. Counsel failed to have Ms. Hammock testify to all of the details that were available concerning Applicant's life history, and counsel failed to call Dr. Evans to testify at all.

(Final Application, emphasis added).

Prior to the hearing in this matter, Respondent requested the Court enter in its scheduling order that all allegations of the application be filed within ninety (90) days of the merits hearing so it could adequately investigate, respond to, and defend the allegations of this capital PCR Application.

[54]Ms. Glass was the mitigation investigator in Owens 1st and 2nd sentencing proceeding.

Collateral counsel objected to this request stating thirty (30) days was sufficient time for Respondent to investigate and defend the allegations. This Court agreed with collateral counsel and entered a Scheduling Order requiring collateral counsel to assert all grounds within thirty (30) days of the merits hearing. Applicant filed his Final Amended Application as required by the Scheduling Order entered by this Court. Applicant did not allege in his Final Application anything regarding the contents of Ms. Glass' file not being presented at the 3rd sentencing proceeding. Applicant only alleged, as set forth above, that counsel was ineffective for not presenting Ms. Hammock's testimony in as much detail as in the 1st trial and sentencing proceeding and the 2nd sentencing proceeding, and counsel did not call Jim Evans who had testified in the 2nd sentencing proceeding in Owens' 3rd sentencing hearing. Applicant did not move to amend his application at the merits hearing, but argued Respondent was reading this ground too strictly. The Court agreed with collateral counsel. Respondent reasserts its objection because, respectfully, it is not reading this ground too strictly but reading the allegation as pled. The evidence regarding Ms. Glass' file should be stricken with prejudice because it is irrelevant to the ground as pled.

The Lack of Merit of this Claim

Regardless, there is no merit to this ground. At the PCR merits hearing, applicant Owens attempted to prove that trial counsel in the 3rd sentencing proceeding did not have Ms. Glass' file by use of a negative. Applicant submitted that Mr. Godfrey brought his file to collateral counsel's office several years after Owens' 3rd capital sentencing proceeding, and collateral counsel copied the same. Collateral counsel also received a copy of Ms. Glass' file from her, and compared the same to Mr. Godfrey's file. According to collateral counsel's paralegal, Jill Rider, portions of Ms. Glass' file were missing from the file delivered by Mr. Godfrey to collateral counsel several years after the 3rd

sentencing proceeding. **(PCR Tr. pp. & Applicant's Ex. 9).**

However, the testimony at the PCR hearing established something different. Applicant Owens was represented in his 2nd sentencing proceeding by Steve Sumner and Alex Kinlaw, Esquires. Mr. Sumner had custody of the trial counsel' file. Ms. Glass testified that she was the mitigation investigator in both Owens' 1st trial and sentencing proceeding and Owens 2nd sentencing proceeding. Ms. Glass testified she turned over her entire file to trial counsel in Owen's 1st trial and sentencing proceeding (Mr. Rollins and Mr. Allen), and she again turned over her entire file to trial counsel in Owens' 2nd sentencing proceeding (Mr. Sumner and Mr. Kinlaw). **(R. pp. 303-311).** Mr. Sumner testified he turned over his entire file, which would have included Ms. Glass' file, to attorney Ken Gibson, prior Owens' 3rd sentencing proceeding. **(R. pp. 320-325).** Attorney Sumner also testified Ms. Glass chronology looked like a document he had seen before and would have been in his file. **(R. pp. 320-325).** Attorney Gibson's time sheet also shows that Gibson met with prior counsel on April 28, 2006 and picked up prior counsel's files. **(Applicant's Ex. 5, p. 1).** Attorney Godfrey testified 3rd sentencing phase counsel had the prior attorneys entire case file, which based on Sumner and Glass' testimony, would have contained Ms. Glass' file. **(PCR Tr. pp. 113-114).** Gibson's time sheet also reflects he reviewed the files of attorney Steve Sumner on August 11, 2006. **(Applicant's Ex. 5, p. 3).** Finally, applicant admits in his post-trial brief that Mr. Godfrey had Ms. Glass chronological summary prior to the 3rd sentencing proceeding based on the testimony at the PCR hearing. **(See Applicant's Post-Trial Brief, pp. 60-61, citing PCR Tr. pp. 55, 113, & 309).**

Furthermore, and importantly, Ms. Glass testified that she turned over a copy of her entire mitigation file to Marjorie Hammock, who was the forensic social worker in Owens' 1st trial and sentencing proceeding, 2nd re-sentencing proceeding, and 3rd re-sentencing proceeding. **(PCR Tr. p.**

305). So, Ms. Hammock, Owens' social worker in his 3rd sentencing proceeding (the proceeding at issue here) also had a copy of Ms. Glass' mitigation file, and she had it before Owens' 3rd sentencing proceeding. **(PCR Tr. p. 305).** Ms. Hammock was tasked with presenting the social history mitigation of Owens before the 3rd re-sentencing jury. Finally, counsel testified they met with Ms. Hammock, Doctor Schwartz-Watts, Dr. Brawley, Page Tarr, and Carolyn Graham prior to the 3rd sentencing proceeding, whereupon their experts, including Ms. Hammock discussed with counsel the results of the mitigation investigation on behalf of Owens, and counsel and the experts developed a cogent unified mitigation presentation. **(PCR Tr. pp. 63-64, 122-123).** Additionally, counsel testified that the drafting of questions for Ms. Hammock was a joint enterprise between both counsel. **(PCR Tr. pp. 128-129).** Therefore, Owens has failed to show that counsel in his 3rd sentencing proceeding or their experts were not in possession of Ms. Glass' mitigation file.

The record also shows counsel thoroughly reviewed Owens' school, prison, and psychiatric records. **(Applicant's Ex. 1, p. 4).** Counsel also re-read all of Owens medical, psychiatric, school prison disciplinary, and incident reports. **(Applicant's Ex., p. 6).** Counsel also reviewed the files obtained from Sumner on May 22, 2006, May 24, 2006, and August 11, 2006, which would have necessarily included Glass' file. **(Applicant's Ex. 5).**

Furthermore, as previously stated, counsel presented a cogent mitigation case through the testimony of not only the forensic social worker, but also through Doctors Schwartz-Watts, Cobb, and Brawley, and an elementary school teacher, Ms. Maag. This Court has had an opportunity to review Ms. Glass' file in comparison to the mitigation case presented at the 3rd sentencing proceeding. Owens has failed to show deficient performance or prejudice in this regard. The information contained in Glass' file was presented to the 3rd sentencing jury and not contested by the State.