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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County
Capital Action
Honorable R. Keith Kelly, Circuit Court Judge

JAMES ROBERTSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000505

**APPENDIX
VOLUME 12 OF 14
(PAGES 5351-5834)**

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

James Dejarnette Robertson, #5067

Applicant,

vs.

C.A. No. 2011-CP-46-0072

State of South Carolina,

Respondent.

AFFIDAVIT OF GEOFFREY R. MCKEE, PhD, ABPP

Dr. McKee, first being duly sworn, states and deposes as follows:

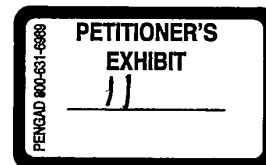
1. That he is a Forensic Psychologist and, in that capacity, interviewed and performed testing by reason of a court order on James Dejarnette Robertson on March 5 and 10 of 1999.

2. In furtherance of that interview I took notes. Attached as an exhibit to this affidavit is a copy of the notes I made and they are, to the best of my knowledge, complete.

Sworn to before me this 14 day
Of January, 2021.

Shelli B. Guntter
Notary Public for South Carolina
My Commission Expires: 4.1.2024

Geoffrey R. McKee, PhD
Geoffrey R. McKee, PhD, ABPP



631-6989 PETITIONER'S EXHIBIT

5353

I'd rather work than do anything - think, say

Come at first I am not to have
come to work high / truck - oh yes worked 2X fast & once to
Lorson's L & also went it - bunch of things in my car.
Never about home for high / truck - they get N.
Carrie, etc. - everything always outside. Lady & food put N.
food food. Waffles, cook, hot, M. for food 2X
@ Aunt, school on week @ church - fresh self
regards for them. Please, come! Everything? Ab.
I'll come tomorrow, so waiting for it in trip. Going away
from place all day - leaving due to drink too
G working 70-80 hrs E. Control over her & how can
move up in co. L small box. I plant myself
Coke owner, base factory - 30-40 workers I should
be in work way up to Superior, V. H. m.
Co. on Charlotte Street 2X on couple yrs - I like to
use me / other & use my handwork & such.

M./SEX L HY 1st - anal suppurative - blood & mucus (2)
Discovered known - not told about it.
normal w/ edn - first period from (2)
Cple health classes in school a necessary law passed
we already 15-17.
Don't want to know what you have to do. (P) will be careful
Vaginal smears only for generaly. A. Buehler & Miller
all need be careful - like having sex w/ me 5m. etc.
Femur broken? (P) at top in Doran - just girl's met accident
at 17 or 18 yrs. I was afraid to tell her as her work - she under
great pressure.
I'm glad to see you. - antiseptic (P) 2 years ago

[illegible]

1462-1463
 5X above the eye
 small can on the
 1. perfectly normal for
 this time of year.
 (M) not me naked eye X's
 & not by naked eye X's.
 (15) the W. of the
 high of the eye
 under the eye - I am not
 under the eye of it.
 (16) the W. of the
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[illegible]

ALC/PAVE HX - never sold it - I saw das sherrygl
in the 60s

[illegible][illegible]

Anything else & child Kab
your sexual life - I
fandizing - girl Kim HS.
should give me Kaffee

Dono histriktusance H.

2 mo p 1.0.

3/10/99 (1A)

25.

I got out jail July 9th, in presumably relationship to D.F. Off the crack ready to work
 found own place to stay - we'd talked at Whitney's place @ home - for once
 I listened to me staying in place - I found good job across street from apt
 I'd walk - no D.L. within distance to Yb. Post office @ home - some X. 2-3 miles wk - chit chat for the month
 I was usually No day - I on parole Nitching go back prison
 I whole new man a prison - I realized I gonna work @ hands for my life,
 me/f doing wonderfully. I drinking alot - today work unconscious 2 wks
 M.J. 2X/wk. Smoking Kitalin every once a while.
 Night of 3 days - bunch people there week @ mind. Co-A suggest 20
 I doing well - \$ - paying rent - debts - I say OK OK where buy it - I would
 I hit it once - but back all parts 4125 in jail - I DARE anymore for it
 I did affect my body - no growing of it next am.
 I'd told (P) I would drink & wild smoke M.J. - they accepted it - if they accepted
 that 10 yrs ago we'd have had 10 yrs of agony.
 Weeks 1.0. 22 days work straight - no sleep in - doing well, I'd tell
 it been happier.
 Yb - I worked for him - I'd bring lunch many to
 meds - nothing formally prescribed. Depend on 5K tabs in hotel. I'd on some
 I'd see if I can make it 5 meds - I'd take me take meds but not easier.
 I'd 3 mos
 were no arguments these 3 months - I hear en - cuz they big prob
 E Bro College.
 One more I'd not from prison Bro - no others.
 Week 1.0. - partying hard - living apt @ roommate - he'd atn I got to house
 he real shy - abt to meet - he got kind of constant people in apt & working up to work
 I'd tell him I'd been in prison - he max. He thinking he'd at record & landed with N
 let from 10 yrs least.
 21st he ask me to leave - nothing personal - was his deal - I moved out into hotel.
 one night for 1 to wife partying that Fri night. Sat turned home last of 22 weeks
 23rd One more my furniture in his house. We planning to join. I not excited about it.
 We stopped together - talked about politics,
 23rd I'd he rules had Fri/merch at house - all from Charlotte - party 4.6 am
 later we could in (E) work. Had to see Parole Officer later that wk
 Parole Officer came to my work - wanted to search my place - I'd N here it 10 min hours
 I got 30' off - they found signs of M.J. but not M.J. - they didn't want take me for drug test
 I told him it was my apt. He told me I was.
 I'd again to Charlotte to buy stuff to take M.J. out of system or I'd think drug test for parole
 I had X off from restaurant for working 22 days straight.
 Evening of 24th 10 hrs @ (P) killed. I'd sudden beer - start drinking I'd had house
 to clean - I'd Chrys Kitalin - got it - said 20 mg felt OK morning, drinking, watched
 drink a little & govt - promise rose of drink then about.
 I'd M.J. & Chrys up at 11 PM - I'd showed me post office - then I'd at Loderman
 I'd M.J. & Chrys & me & took some home. They left. I'd cleaning & strong
 laundry - bags full - smoking, drinking.

[illegible]

(3) 3/10/99

I told her I got Yung under control. Dropped hammer out of head - hit him few more times every quadrant of head - trying to kill him. I got releasing 10 years of anger. I needed knife.

Before I took bat - I went to check if she alive & put her out of her misery. I hit her hammer.

I go to (F) take bat & probably saving 300 X's screaming all the time. I beat him on his spine, neck. I saw blood in his mouth. I told it to be over with. His back & a canyon spine through. I tried hitting him 15? I sweating, bloody, shaking.

Meredith is scared. I stand there 2 mins - I hear movement.

I say (F) - I go back up - he breathes - I see movement. I hit him just long enough blood. I beat more on head.

I go back down - heard more noise - I what I got to do

to put him out of his misery - cut his head off? - I took bat up

again - hit him more - then finally silence. While killing

self I could see myself before last of body only more vivid.

I come downstairs - it Meredith's job to clean up - I had to

get in shower. I covered in blood & we didn't much time down

breathing - I told her throw in Ritalin, clothes, bat, socks

knives used. I left on bed - knife not used we packed the bloody

stuff. I told what Meredith did while I in shower - she cleaned up some

hitting (Ps). I assumed she cleaning up. When I out of shower - in

I got purse looking for \$ - we not looking to

run. Just to get Chip & bring him home.

Chip had my mello x 2 was 1.0. - old he told

of I did it.

We wrote eple checks - but realized we had bank cameras - we decide to use

as credit card

I threw purse into bedroom & (F) wallet

Daylight broken Meredith used it to LL robbery I did I did I did

take poke it through some on door - I cut finger on glass - blood on

We left - I R Hvg feeling wild be 2 police cars waiting for me - I saw

Neighborhood waves I came back - we throw stuff in back. To check

I say I did it - oh! as shell I was cuz I did it. she done better.

Gas in trunk - I planning to burn it or put it in river. I need S.T. for

gas for car - we jacked up - I told her get it from bandaid & 2 phs Marlboro

I want to know chick finger. I'll credit card

About 2 hrs - we stopped I called work told him I got in trouble

she broke down on her what I done - she say I killed my (Ps)

3/10/99 (3A)

Jorgens unconvincingly denying off Kitalin
I thinking of what we discussed up
Wrote down stuff on paper in car
I what if you are friends for 10-15 hours - if
you are friends but you don't get along come
home fix our mistakes and help each
other & others.
We got in Maryland - Meredith & I had
on clothes - we went to buy new clothes
she suggested we should get rid of bags.
I said holy shit I'd forgotten to get
I throw it in the trunk - it broke.
We got to Philly get lost find his place
he not there - I pissed - we go to eat

On 3/2 I'd taken photos off hook before
I pulled the car in old it reached it
fumbled - From MD to VA I call home
to check if phone back on hook &
I got voice mail - I got really scared
I very scared & tired I'd been up for
36 hrs straight - we park in front
of Chops place - cops came out of
bushes, houses, & guns drawn.
Meredith flipped I calm I'd
been arrested before. I cooperative
but not too cooperative.

6-8 hours interrogation I give
statement - I said you can ask Q's
I may or may not answer they
told me my Q's pulled I pulled shock
found out Chops questioned earlier.
Meredith & I down listen & ask Q's
I am inexperienced criminal
I never shot at anyone's in the past
if we arrested - I said about her
I never got chance to tell her what he
do.
They told me she written 6pg. statement
I said yes but she said I said no. One cop
scream at me. next one talk quietly to me.

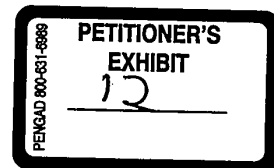
STATE OF SOUTH CAROLINA)
)
)
COUNTY OF RICHLAND)

AFFIDAVIT OF
JOSEPH L. SAVITZ, III

Joseph L. Savitz, III Esq., who appeared personally before me, affirms and states the following:

1. I was appointed to represent James D. Robertson in his capital murder direct appeal. I was appointed by way of an Order of the Supreme Court of South Carolina dated, November 15, 2001. (Exhibit #1)
2. As Mr. Robertson's attorney, I was aware of the October 10, 2002, Competency Hearing before Judge John C. Hayes, III to determine if Mr. Robertson was deemed competent to waive his right to counsel and proceed *pro se* in his direct appeal.
3. At no time prior to the October 10, 2002, Competency Hearing did I advise Mr. Robertson about the dangers of self-representation. (Exhoibit #2)
4. I chose not to attend the October 10, 2002, Competency Hearing because Mr. Robertson was trying to have me relieved as his counsel and I had numerous other Death Row clients who were eager to have me represent them and devote time to their cases.
5. I had no strategic legal reason not to attend the October 10, 2002, Competency Hearing. In hindsight I should have attended the hearing. Had I done so I would have moved the Court to Order a Psychiatric Evaluation of my client by a qualified expert to assist the Court in determining if Mr. Robertson was competent to make a knowing and intelligent waiver of counsel.
6. By Order dated November 21, 2002, the Supreme Court granted Mr. Robertson's motion to have me relieved and to proceed *pro se*. Additionally, the Court also ordered the Office of Appellate Defense to remain associated in the case and provide Mr. Robertson with, "...whatever assistance he may desire in preparing his appeal." (Exhibit #3)
7. At the time of the Supreme Court's Order dated November 21, 2002, Robert Dudek and I were the only two lawyers in the Office of Appellate Defense who handled Death Penalty cases. Mr. Dudek had previously represented Mr. Robertson in this case and had been relieved of representation by the Supreme Court's Order of November 15, 2001. Thus, I took on representation of Mr. Robertson again as a result of the November 21, 2002, Order attached as Exhibit #3.
8. As Mr. Robertson's attorney during this period of time, I preformed numerous legal duties on Mr. Robertson's behalf including securing continuances for filings and preparing legal documents on his behalf.
9. I was aware of the February 22, 2005, Competency Hearing held by Judge John C. Hayes, III to determine if Mr. Robertson was competent to make a knowing and intelligent waiver of his right to appeal and to consent to death. I chose not to attend that hearing.

John
1 of 2



10. I had no strategic legal reason not to attend the February 22, 2002, Competency Hearing. In hindsight I should have attended the hearing. Had I done so I would have clarified the issue of "stand by counsel" for the Court. (Exhibit #4) Also, I would have moved the Court to Order a Psychiatric Evaluation of my client by a qualified expert to assist the Court in determining if Mr. Robertson was competent to make a knowing and intelligent waiver of his appellate rights.

I affirm, under the penalty of perjury, that the above information is true and correct.
FURTHER AFFIANT SAYETH NAUGHT

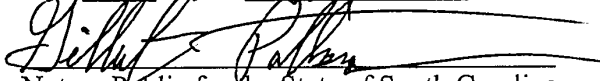

Joseph L. Savitz, III

John
Ref 2

July 27, 2021

Sworn to and subscribed before me

This 27 day of July, 2021.



Notary Public for the State of South Carolina

My commission expires: 8/7/24



The Supreme Court of South Carolina

James D. Robertson, Petitioner,

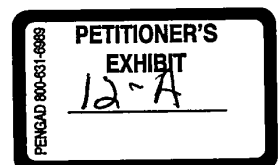
v.

State of South Carolina, Respondent.

ORDER

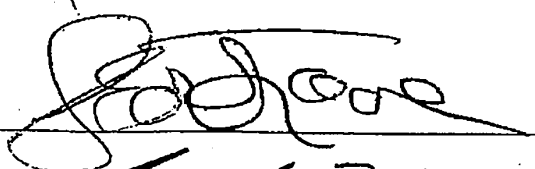
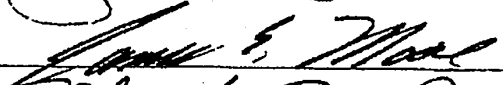
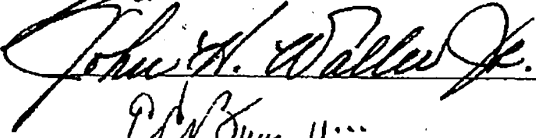
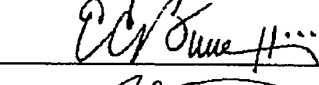
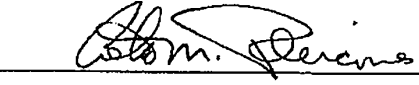
After petitioner moved to proceed pro se and drop his appeal, this Court remanded the matter to Judge Hayes to hold a hearing on petitioner's competency to make those decisions. Judge Hayes reported to the Court that petitioner did wish to pursue his appeal, but that he wished to relieve Robert Dudek of the Office of Appellate Defense as his counsel. Because it was unclear whether petitioner still wished to proceed pro se, the matter was again remanded to Judge Hayes to make this determination.

Judge Hayes has now filed a second report indicating that petitioner wants Dudek relieved and another attorney appointed to represent him. Dudek is hereby relieved as counsel for petitioner, and Deputy Chief Attorney Joseph L. Savitz, III of the South Carolina Office of Appellate



Defense is appointed to represent petitioner in this matter.

IT IS SO ORDERED.


C.J.

J.

J.

J.

J.

Columbia, South Carolina

November 15, 2001

South Carolina Office of Appellate Defense

COPY

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney
Wanda H. Haile
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, S.C. 29201-3243
Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Tara S. Taggart
Aileen P. Clare
Katherine Carruth Link
Eleanor Duffy Cleary
Assistant Appellate Defenders

June 12, 2002

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

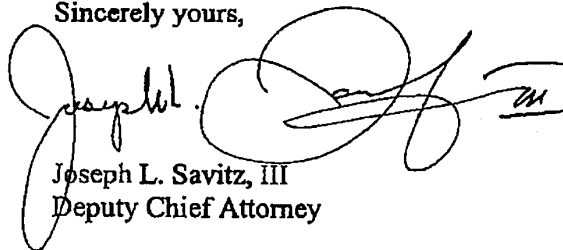
Re: The State v. James D. Robertson (capital case)

Dear Mr. Shearouse:

I am responding to Mr. Robertson's letter of June 3, demanding that I be relieved as his appellate counsel so he can proceed *pro se*. I take no position on his request, one way or the other. I should point out that I have not explained the dangers of self-representation – his likely execution – to Mr. Robertson.

As always, I remain at the Court's service.

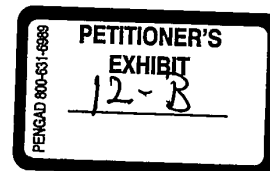
Sincerely yours,


Joseph L. Savitz, III
Deputy Chief Attorney

JLS,III/srw

cc: Mr. James D. Robertson
Donald J. Zelenka

2002 JUN 12 PM 4:13
SC SUPREME COURT



The Supreme Court of South Carolina

James D. Robertson, Petitioner,

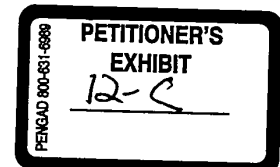
v.

State of South Carolina, Respondent.

ORDER

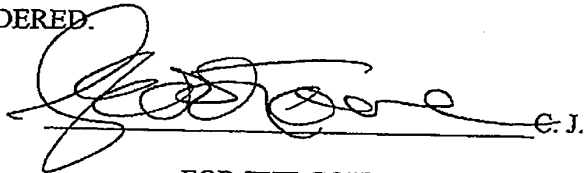
Petitioner moved to relieve counsel and proceed pro se in this matter. We remanded the matter to Judge Hayes to hold a hearing to determine whether petitioner was competent to make a knowing and intelligent waiver of the right to counsel and proceed pro se. Judge Hayes found that petitioner was aware of the dangers and disadvantages of self-representation and was competent to waive his right to counsel and proceed pro se.

We grant petitioner's motion to relieve counsel and proceed pro se in this matter. The Office of Appellate Defense shall forward a copy of the transcripts(s) in this matter to petitioner, and petitioner shall, within forty-



five (45) days of the date of this order, serve and file his Initial Brief and Designation of Matter to be Included in the Record on Appeal as provided in Rules 208 and 209, SCACR. The Office of Appellate Defense shall remain associated for the purpose of paying for any necessary transcripts; providing copies of the briefs and Record on Appeal; and providing petitioner with whatever assistance he may desire in preparing his appeal.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "James E. Moore", is written over a horizontal line. To the right of the signature, the initials "E. J." are printed.

FOR THE COURT
Justice James E. Moore, not participating.

Columbia, South Carolina

November 21, 2002

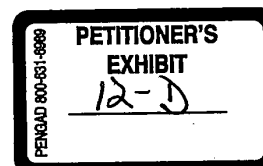
STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF YORK	)	
	)	
JAMES D. ROBERTSON,	)	
	)	
Petitioner,	)	Report to the
	)	Supreme Court of South Carolina
STATE OF SOUTH CAROLINA	)	
	)	
Respondent.	)	

This matter comes before the Court by way of an Order of the South Carolina Supreme Court dated November 22, 2004. This matter was remanded to the undersigned for a determination of James D. Robertson's (Robertson) competency regarding his waiver of his right to appeal and to determine if such waiver is exercised by Robertson knowingly and voluntarily. A hearing was held in York County on February 22, 2005. Robertson represented himself¹ and the State was represented by William Edgar Salter, III, Esq., Senior Assistant Attorney General.

STANDARD OF REVIEW

In *State v. Torrence*, 317 S.C. 45, 451 S.E.2d 883 (1994) (*Torrence II*), the Supreme Court held that a capital defendant may constitutionally waive the right of general appeal provided that he is competent and his decision is knowing and voluntary. 317 S.C. at 45, 451 S.E.2d at 883. The Court in *Torrence* also directed the circuit court,

¹ The court was unaware that Joseph L. Savitz III, Esq. (Savitz) had been appointed stand by counsel for Robertson. This information was developed at the hearing. The court was informed by Robertson that Savitz was aware of the instant proceeding. At the hearing Robertson made no request to have Savitz present nor did Robertson request a need to discuss matters with Savitz or consult or communicate with Savitz. Savitz was copied on the order transmittal letter as "Acting Chief Attorney", a status with which the author of this Order was unfamiliar. Savitz was informed by the author's clerk that a hearing was to be scheduled the week of February 21, 2005, and has not heard from Savitz in any regard. (See attached letter of 12-1-04). Further, by letter to Mr. Salter and Robertson dated January 5, 2005, the author noted "It is my understanding that the Supreme Court has not appointed standby counsel and does not intend to" (letter attached). Savitz is an attorney with the Office of Appellate Defense.



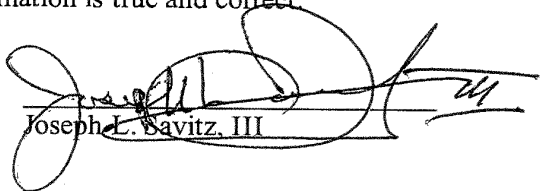
STATE OF SOUTH CAROLINA)
)
)
COUNTY OF RICHLAND)

AFFIDAVIT OF
JOSEPH L. SAVITZ, III

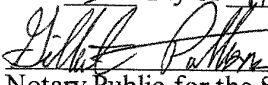
Joseph L. Savitz, III Esq., who appeared personally before me, affirms and states the following:

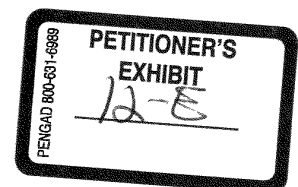
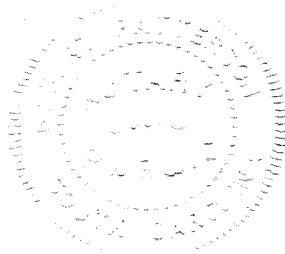
1. I was appointed to represent James D. Robertson in his capital murder direct appeal. I was appointed by way of an Order of the Supreme Court of South Carolina dated, November 15, 2001.
2. I have seen the three (3) pages of handwritten notes entitled, "James Robertson PCR Notes". (Exhibit 12-F)
3. Those notes are my notes from the time I was researching and preparing Mr. Robertson's Direct Appeal.
4. Those notes are in my handwriting.
5. Those notes were made in the normal course and scope of my representation of Mr. Robertson.
6. Mr. Robertson attempted to have me relieved as his counsel however, the Court did not grant that as my office was ordered to remain in the case and I was the only option available at that time.
7. At no time did I discuss with Mr. Robertson the potentially meritorious claims in my notes, there was no strategic reason not to do so.
8. As a result, I do not believe Mr. Robertson had the ability on his own to know of or to develop the potentially meritorious issues I had discovered into an appeal. Thus, he did not have the ability to knowingly and intelligently decide to proceed *pro se* with his appeal.
9. I do not believe Mr. Robertson had the ability on his own to know of all the potentially meritorious issues I had discovered regarding his appeal. Thus, he did not have the ability to knowingly and intelligently waive his appellate rights.

I affirm, under the penalty of perjury, that the above information is true and correct.
FURTHER AFFIANT SAYETH NAUGHT


Joseph L. Savitz, III

August 5, 2021

Sworn to and subscribed before me
This 5 day of August, 2021.

Notary Public for the State of South Carolina
My commission expires: 8/7/24



ROBERTSON PCR

✓ 31 Δ told to tell expert everything

✓ 32 "as if speaking with attorneys"

55 AG crosses Δ with expert's notes

✗ 88 expert's testimony was "very damning"

✗ 126 "as if Δ was testifying against himself"

✗ 147 no inculpatory statements in evidence prior to expert's testimony

✗ 175 "causing him to testify against himself"

✗ 187 consented to turning over notes, even though they knew they would be harmful

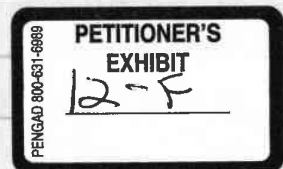
✗ 189 "bad witness"

✗ 204 sol. says notes isolated case

216 judge rules notes get turned over if witness testifies

✓ 218 sol. describes notes as a gift

✓ 221 became a model cross exam for teaching



268 cross was "very devastating to the defense"

269 "most damaging of the trial"

✓ 271 better not to put her up - a "disaster"

289 "wasn't her job to get details of the crime"

378 judge agrees counsel should have kept notes from prosecution if possible

390 testimony most damaging

ROBERTSON TRIAL

✓ 2604 sub. requests experts notes

✓ 2749 defense surrenders it without objection
night before expert testifies

✓ 2855 expert's first time testifying

2954 cross on notes

3015 details of crimes

✓ last defense witness

sub. exploits expert's testimony throughout
closing

judge denies PCR on 88

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF YORK

James D. Robertson, SCDC 5067,

Applicant,

-vs-

C.A. No. 2011-CP-46-0072

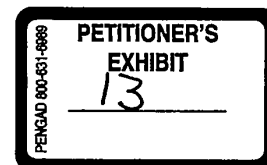
State of South Carolina,

Respondent.

UNIFORM BUSINESS RECORDS ACT
AFFIDAVIT OF MARIA McLAUGHLIN
S.C. CODE ANN., 19-5-510
S.C. RULE OF EVIDENCE 803(6)

Maria McLaughlin, first being duly sworn, states and deposes as follows:

1. She is employed by the Indiana Federal Community Defender, Federal Death Penalty Projects, as the National Mitigation Paralegal.
2. At the request of counsel for James D. Robertson, a death sentenced individual in South Carolina, she conducted a search of the records pertaining to courses of study offered to capital defenders by recognized education and training services and generally concerning the topic of counsel's retained expert witnesses, including working with, preparing, brainstorming with, and choosing expert witnesses.
3. The search criteria of "expert witnesses" was limited to the general dates of 1996-2006. The attached Excel spreadsheet contains the results of that search.
4. The data compilation is of information normally kept in the course of business for training providers, specifically training program agendas, was created at the time of the education event, and the search is part of the affiant's normal function as the



National Mitigation Paralegal. She is familiar with the database containing training program agendas and the results are known to the affiant to conform to the general format of such information and is reliable evidence that the program event occurred and the training session was in fact offered.

5. The database of training programs does not include every capital defense program in the country during the period 1996 to 2006. The database represents a major collection of capital defense training programs in that time period.

SWORN TO BEFORE ME THIS 16th DAY OF DECEMBER, 2020

~~_____
Notary Public of California
My Commission
Expires: _____~~

*See attached
Notary Jurat*

mmz
MARIA McLAUGHLIN
National Mitigation Paralegal

JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

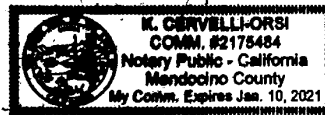
State of California

County of Mendocino

Subscribed and sworn to (or affirmed) before me on this 16 day of December
20 20 by Maria McLaughlin

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

K. Cervelli Orsi
Signature (Seal)



OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Affidavit
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 2 Document Date 12/16/20

Additional information

INSTRUCTIONS

The wording of all Jurats completed in California after January 1, 2015 must be in the form as set forth within this Jurat. There are no exceptions. If a Jurat to be completed does not follow this form, the notary must correct the verbiage by using a jurat stamp containing the correct wording or attaching a separate jurat form such as this one with does contain the proper wording. In addition, the notary must require an oath or affirmation from the document signer regarding the truthfulness of the contents of the document. The document must be signed AFTER the oath or affirmation. If the document was previously signed, it must be re-signed in front of the notary public during the jurat process.

- State and county information must be the state and county where the document signer(s) personally appeared before the notary public.
- Date of notarization must be the date the signer(s) personally appeared which must also be the same date the jurat process is completed.
- Print the name(s) of the document signer(s) who personally appear at the time of notarization.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different jurat form.
 - ◆ Additional information is not required but could help to ensure this jurat is not misused or attached to a different document.
 - ◆ Indicate title or type of attached document, number of pages and date.
- Securely attach this document to the signed document with a staple.

Year	Auspices	Conference	City	State
1997	CACJ/CPDA	Capital Case Defense Seminar	Monterey	CA
1997	Habeas Assistance and Training Counsel	National Federal Habeas Corpus Seminar	New Orleans	LA
1997	National Legal Aid and Defender Association	Life in the Balance	Dallas	TX
1997	The North Carolina Central University School of Law	Mental Retardation, Mental Illness and the Death Penalty.	Durham	NC
1998	CACJ/Santa Clara Law School	Death Penalty College	Santa Clara	CA
1998	NACDL	Making the Case for Life	Scottsdale	AZ
1999	Habeas Assistance and Training Counsel	Mental Health and Criminal Law	Washington, D.C.	DC
1999	National Assn Criminal Defense Lawyers	Making the Case for Life	Boise, ID	ID
1999	National Legal Aid & Defender Association	Life in the Balance XI: Defending Death Penalty Cases	Atlanta	GA
1999	New York Capital Defense Training	Capital Defender Office	New York	NY
2000	Federal Death Penalty Resource Counsel Projects	Missouri Public Defender Winter Workshops	Lake Ozark	MO
2000	Habeas Assistance and Training Counsel	Habeas Institute: Representing a Death-Sentenced Client in Federal Court	New York	NY
2000	NACDL	Making the Case for Life	Houston	TX
2000	NACDL	Making the Case for Life	Houston	TX
2000	National Institute for Trial Advocacy, Habeas Assistance	Habeas Institute: Representing a Death-Sentenced Client in Federal Court	New York	NY
2000	National Legal Aid & Defender Association	Life in Balance 2000: Defending Death Penalty Cases	Washington	DC
2000	National Legal Aid & Defender Association	Life in Balance 2000: Defending Death Penalty Cases	Washington	DC
2002	CACJ/CPDA	Capital Case Defense Seminar	Monterey	CA
2002	CACJ/CPDA	Capital Case Defense Seminar	Monterey	CA
2002	National Assn Criminal Defense Lawyers	Making the Case for Life	Raleigh	NC
2002	National Assn Criminal Defense Lawyers	Making the Case for Life	Raleigh	NC
2003	CACJ/CPDA	Capital Case Defense Seminar	Monterey	CA
2003	National Assn Criminal Defense Lawyers	Making the Case for Life	Memphis	TN
2003	The Practicing Law Institute, Texas Criminal Defense	Life in the Balance 2003	Austin	TX
2004	CACJ/CPDA	Capital Case Defense Seminar	Monterey	CA
2004	CACJ/Santa Clara Law School	Death Penalty College	Santa Clara	CA
2004	Habeas Assistance and Training Counsel	National Seminar on the Development and Integration of Mitigation	New Orleans	LA
2004	Mexican Capital Legal Assistance Program	Representing Mexican Nationals in Capital Cases: Challenges, Opportunities	San Francisco	CA
2004	NAACP Legal Defense Fund	Capital Punishment Conference (Airlie)	Airlie	VA
2004	NAACP Legal Defense Fund	Capital Punishment Conference (Airlie)	Airlie	VA
2005	ABA DP Rep Project/Ctr Justice Capital Cases	Mitigation Training Program	DePaul College of Law	IL
2005	CACJ/Santa Clara Law School	Death Penalty College	Santa Clara	CA

1997 - 2006 sessions re experts (selection from National Mitigation Project capital case training program agendas database)

Year	Auspices	Conference	City	State
2005	California Attorneys for Criminal Justice	Capital Case Defense Seminar	Monterey	CA
2005	California Attorneys for Criminal Justice	Capital Case Defense Seminar	Monterey	CA
2005	Federal Capital Defense Strategy Session	Advocacy in a New Era	Pittsburg	PA
2005	Georgia Capital Defender Office	Capital Defense Training Seminar: "The Nitty-Gritty of Capital De	Atlanta	GA
2005	Habeas Assistance and Training Counsel	National Seminar on the Development and Integration of Mitiga	Salt Lake City	UT
2005	Habeas Assistance and Training Counsel	The Habeas College	Houston	TX
2005	Habeas Corpus Resource Center	Spring Conference: Advocacy in a New Era	San Francisco	CA
2005	Louisiana ACDL	Capital Defense CLE Seminar	Baton Rouge	LA
2005	Missouri State Public Defender	Appellate/Post-Conviction Workshop	St. Louis	MO
2005	National Consortium for Capital Defense Training	Capital Defense Training	Santa Clara Law Sch	CA
2005	National Consortium for Capital Defense Training	Capital Defense Training	Santa Clara Law Sch	CA
2005	National Legal Aid and Defender Assn	Life in the Balance	New Orleans	LA
2005	National Legal Aid and Defender Assn	Life in the Balance	New Orleans	LA
2006	CACJ/CPDA	Capital Case Defense Seminar	Monterey	CA
2006	CACJ/Santa Clara Law School	Death Penalty College	Santa Clara	CA
2006	Habeas Assistance and Training Counsel	National Seminar on the Development and Integration of Mitiga	Washington	DC
2006	Habeas Corpus Resource Center	A Dialogue About Race and Culture	San Francisco	CA
2006	NAACP Legal Defense Fund	Capital Punishment Conference (Airlie)	Airlie	VA
2006	National Alliance of Sentencing Advocates and Miti	Death Penalty Mitigation Institute	Baltimore	MD
2006	National Alliance of Sentencing Advocates and Miti	NASAMS Conference: Spotlight on Team Defense	Baltimore	MD
2006	National Legal Aid and Defender Assn	Life in the Balance	Philadelphia	PA

1997 - 2006 sessions re experts (selection from National Mitigation Project capital case training program agendas database)

Presentation Title	Speaker 1	Speaker 2	Speaker 3
How to Identify Mental Health Issues And Present Them At Trial: The Use of Experts	Kathleen Wayland		
Video presentation - Expert Witnesses	Scharlette Holdman		
Workshop A - Working with Experts (Lecture & practice)	Kelly Henry	James Clark	
Working with Expert Witnesses			
The Mental Health Experts: Eight Steps to Integrating a Specialist Into Your Case	James J. Clark	Edward C. Monohan	
Litigating Resources and Using Experts	Natman Schaye	Mark E. Olive	
Working with experts	Jay Pultz	Scharlette Holdman	
Litigating Resources and Using Experts	T Gutierrez (?)	Jeff Buckles (?)	
Workshop E - Working with Your Own Experts	Marshall Dayan	Russell Stetler	Kathy Wayland
Recognizing Mental Health Issues and Working with Experts	Russell Stetler		
Selecting, Investigating, & Working With an Expert	David Lewis		
Mitigation and other mental health issues. Interview of mental health experts	Richard H. Burr	Scharlette Holdman	
Litigating for Expert Funds	Mark Olive		
Working with Experts - On the Team and On the Stand, Ours and Theirs	M. Cristina Gutierrez	Denise LeBoeuf	
Mitigation and other mental health issues. Interview of mental health experts	Richard H. Burr	Scharlette Holdman	
Establishing the Defense Team: Finding and Using Experts, and Crossing Theirs	Richard Jaffe		
Working with Expert	Craig Haney	Kathleen Wayland	
Investigators & Attorneys: First Trial Case (Including funding of experts; sustaining relat	Robert Caturegli	Denise Gragg	
What Does the Mental Health Expert Need and What Do We Give Him or Her?	Fred Manaster		
Dealing With Prior Evaluations, Test Results, and Experts	Russell Stetler		
Working With Defense Team Experts	David Bruck		
Working with Mental Health Experts	Scharlette Holdman	Jack Earley	
Dealing with Prior Tests, Evaluations and Experts	Russ Stetler	Denny LeBoeuf	
Mental Health Evaluations: What the Attorney and Expert Must Discuss	Mark Cunningham		
The Many Ways to Use Mental Health Experts	Xavier Amador		
Dealing with Mental Health Experts	James Thomson		
What is: A Client? a Defense Team? a Mitigation Specialist? a Social History Investigator	Denny LeBeouf	Russ Stetler	
Mental Retardation and the Mexican Client (Part II): Working with Experts and Using th	Danalynn Recer		
Before You Call an Expert: The Art of Self-Education			
MR Issues: Developing Adaptive Skills, Evidence, Working with an Expert and Avoiding and Litigation			
Introduction to Mental Illness and Mental Health Experts	Kathy Wayland		
Dealing with Mental Health Experts	James Thomson		

1997 - 2006 sessions re experts (selection from National Mitigation Project capital case training program agendas database)

Presentation Title	Speaker 1	Speaker 2	Speaker 3
Bring your DNA case - Brainstorming with the Experts	Kim Kruglick	Jeff Thoma	Elizabeth Johnson
Preparing the Mental Health Expert for Cross Examination	Scharlette Holdman	Gary Sowards	
Working with trial experts	Gary Sowards		
Sum and Substance: Working with Experts	Denny Le Boeuf		
Working with Experts (and lawyers)	Dr. Dale Watson	Gary Sowards	
Obtaining funds, Investigative and Expert Assistance: Creating A Record	Robert McGlasson		
Working With Trial Experts	Gary Sowards		
Dealing with Mental Health Evidence and Working with Experts	Gary Sowards		
Screening Test v Lucky Guess: What Experts Do You Need?	Tami Miller		
Dealing with mental health experts: ours and theirs	Charles Gessler		
Investigating experts and interviewing lay witnesses about mental health issues	Russell Stetler	Kathleen Wayland	
Using Your Expert as a Consultant or How to Prepare for the Battle Ground of Cross-Ex	Nancy Cowardin	Michael Gelbort	
What Lawyers Need to Discuss with Their Experts	Tom Reidy	Mark Cunningham	
Working With Trial Counsel And Trial Experts	Marcia Morrissey	Lynne Coffin	
Mental Health & Experts	Denny LeBoeuf	John Niland	
Working with Mental Health Experts	Dick Burr		
Experts/Teams	Richard Dudley		
My Difficult Client - Brain-storming with the Experts	Rick Dudley	Russ Stetler	Susan Cary
Selecting & Working with Mental Health Experts			
Dealing with Expert Witnesses Offensively and Defensively			
Now you tell me: critical issues to discuss with mental health experts before retention	Mark Cunningham		

1997 - 2006 sessions re experts (selection from National Mitigation Project capital case training program agendas database)

Year	Auspices
2002	National Assn Criminal Defense Lawyers
2002	National Assn Criminal Defense Lawyers
2003	CACJ/CPDA
2003	National Assn Criminal Defense Lawyers
2003	The Practicing Law Institute, Texas Criminal Defens
2004	CACJ/CPDA
2004	CACJ/Santa Clara Law School
2004	Habeas Assistance and Training Counsel
2004	Mexican Capital Legal Assistance Program
2004	NAACP Legal Defense Fund
2004	NAACP Legal Defense Fund
2005	ABA DP Rep Project/Ctr Justice Capital Cases
2005	CACJ/Santa Clara Law School
2005	Georgia Capital Defender Office
2005	Habeas Assistance and Training Counsel
2005	Habeas Assistance and Training Counsel
2005	Habeas Corpus Resource Center
2005	National Consortium for Capital Defense Training
2005	National Consortium for Capital Defense Training
2005	National Legal Aid and Defender Assn
2005	National Legal Aid and Defender Assn
2005	California Attorneys for Criminal Justice
2005	California Attorneys for Criminal Justice
2005	Federal Capital Defense Strategy Session
2005	National Consortium for Capital Defense Training
2006	CACJ/CPDA
2006	CACJ/Santa Clara Law School
2006	Habeas Assistance and Training Counsel
2006	Habeas Corpus Resource Center
2006	NAACP Legal Defense Fund
2006	National Alliance of Sentencing Advocates and Miti
2006	National Alliance of Sentencing Advocates and Miti
2006	National Legal Aid and Defender Assn

Conference
Making the Case for Life
Making the Case for Life
Capital Case Defense Seminar
Making the Case for Life
Life in the Balance 2003
Capital Case Defense Seminar
Death Penalty College
National Seminar on the Development and Integration of Mitiga
Representing Mexican Nationals in Capital Cases: Challenges, Op
Capital Punishment Conference (Airlie)
Capital Punishment Conference (Airlie)
Mitigation Training Program
Death Penalty College
Capital Defense Training Seminar: "The Nitty-Gritty of Capital De
National Seminar on the Development and Integration of Mitiga
The Habeas College
Spring Conference: Advocacy in a New Era
Capital Defense Training
Capital Defense Training
Life in the Balance
Life in the Balance
The Capital Case Defense Seminar
The Capital Case Defense Seminar
Advocacy in a New Era
Capital Defense Training
Capital Case Defense Seminar
Death Penalty College
National Seminar on the Development and Integration of Mitiga
A Dialogue About Race and Culture
Capital Punishment Conference (Airlie)
Death Penalty Mitigation Institute
NASAMS Conference: Spotlight on Team Defense
Life in the Balance

City	State
Raleigh	NC
Raleigh	NC
Monterey	CA
Memphis	TN
Austin	TX
Monterey	CA
Santa Clara	CA
New Orleans	LA
San Francisco	CA
Airlie	VA
Airlie	VA
DePaul College of Law, Chicago	IL
Santa Clara	CA
Atlanta	GA
Salt Lake City	UT
Houston	TX
San Francisco	CA
Santa Clara Law School	CA
Santa Clara Law School	CA
New Orleans	LA
New Orleans	LA
Monterey	CA
Monterey	CA
Pittsburg	PA
Santa Clara	CA
Monterey	CA
Santa Clara	CA
Washington	DC
San Francisco	CA
Airlie	VA
Baltimore	MD
Baltimore	MD
Philadephia	PA

Presentation Title	Speaker 1	Speaker 2
Dealing With Prior Evaluations, Test Results, and Expert	Russell Stetler	
Working With Defense Team Experts	David Bruck	
Working with mental Health Experts	Jack Earley	Scharlette Holdman
Dealing with Prior Tests, Evaluations and Experts	Denny LeBoeuf	Russ Stetler
Mental Health Evaluations: What the Attorney and Exp	Mark Cunningham	
The Many Ways to Use Mental Health Experts	Jack Earley	Xavier Amador
Dealing with Mental Health Experts	David Freedman	James Thomson
What is: A Client? a Defense Team? a Mitigation Specia	Scharlette Holdman	Denny LeBeouf
Mental Retardation and the Mexican Client (Part II): W	Greg Kuykendall	Danalynn Recer
Before You Call an Expert: The Art of Self-Education	N/A	
MR Issues: Developing Adaptive Skills, Evidence, Worki	N/A	
Introduction to Mental Illness and Mental Health Exper	Kathy Wayland	
Dealing with Mental Health Experts	James Thomson	
Sum and Substance: Working with Experts	Denny Le Boeuf	
Working with Experts (and lawyers)	Gary Sowards	Dr. Dale Watson
Obtaining funds, Investigative and Expert Assistance: C	Jim Marcus	Robert McGlasson
Working With Trial Experts	Gary Sowards	
Dealing with mental health experts: ours and theirs	Charles Gessler	
Investigating experts and interviewing lay witnesses ab	Kathleen Wayland	Russell Stetler
Using Your Expert as a Consultant or How to Prepare fo	Michael Gelbort	Nancy Cowardin
What Lawyers Need to Discuss with Their Experts	Mark Cunningham	Tom Reidy
Bring your DNA case - Brainstorming with the Experts	Bicka Barlow	Kim Kruglick
Preparing the Mental Health Expert for Cross Examinat	Gary Sowards	Scharlette Holdman
Working with trail experts	Gary Sowards	
Dealing with Mental Health Experts: Ours and Theirs	Charles Gessler	
Working With Trial Counsel And Trial Experts	Lynne Coffin	Marcia Morrissey
Mental Health & Experts	John Niland	Denny LeBoeuf
Working with Mental Health Experts	Dick Burr	
Experts/Teams	Richard Dudley	
My Difficult Client - Brain-storming with the Experts	Susan Cary	Rick Dudley
Selecting & Working with Mental Health Experts	TBD	
Dealing with Expert Witnesses Offensively and Defensiv	TBD	
Now you tell me: critical issues to discuss with mental	Mark Cunningham	

Year	Auspices	Conference	City	State
1997	CACJ/CPDA	Capital Case Defense Seminar	Monterey	CA
1997	Habeas Assistance and Training Counsel	National Federal Habeas Corpus Seminar	New Orleans	LA
1997	National Legal Aid and Defender Association	Life in the Balance	Dallas	TX
1997	The North Carolina Central University School of Law	Mental Retardation, Mental Illness and the Death Penalty.	Durham	NC
1998	CACJ/Santa Clara Law School	Death Penalty College	Santa Clara	CA
1998	NACDL	Making the Case for Life	Scotsdale	AZ
1999	Habeas Assistance and Training Counsel	Mental Health and Criminal Law	Washington, D.C.	DC
1999	National Assn Criminal Defense Lawyers	Making the Case for Life	Boise, ID	ID
1999	National Legal Aid & Defender Association	Life in the Balance XI: Defending Death Penalty Cases	Atlanta	GA
1999	New York Capital Defense Training	Capital Defender Office	New York	NY
2000	Federal Death Penalty Resource Counsel Projects	Missouri Public Defender Winter Workshops	Lake Ozark	MO
2000	Habeas Assistance and Training Counsel	Habeas Institute: Representing a Death-Sentenced Client in Federal Court	New York	NY
2000	NACDL	Making the Case for Life	Houston	TX
2000	NACDL	Making the Case for Life	Houston	TX
2000	National Institute for Trial Advocacy, Habeas Assistance	Habeas Institute: Representing a Death-Sentenced Client in Federal Court	New York	NY
2000	National Legal Aid & Defender Association	Life in Balance 2000: Defending Death Penalty Cases	Washington	DC
2000	National Legal Aid & Defender Association	Life in Balance 2000: Defending Death Penalty Cases	Washington	DC
2002	CACJ/CPDA	Capital Case Defense Seminar	Monterey	CA
2002	CACJ/CPDA	Capital Case Defense Seminar	Monterey	CA
2002	National Assn Criminal Defense Lawyers	Making the Case for Life	Raleigh	NC
2002	National Assn Criminal Defense Lawyers	Making the Case for Life	Raleigh	NC
2003	CACJ/CPDA	Capital Case Defense Seminar	Monterey	CA
2003	National Assn Criminal Defense Lawyers	Making the Case for Life	Memphis	TN
2003	The Practicing Law Institute, Texas Criminal Defense	Life in the Balance 2003	Austin	TX
2004	CACJ/CPDA	Capital Case Defense Seminar	Monterey	CA
2004	CACJ/Santa Clara Law School	Death Penalty College	Santa Clara	CA
2004	Habeas Assistance and Training Counsel	National Seminar on the Development and Integration of Mitigation	New Orleans	LA
2004	Mexican Capital Legal Assistance Program	Representing Mexican Nationals in Capital Cases: Challenges, Opportunities	San Francisco	CA
2004	NAACP Legal Defense Fund	Capital Punishment Conference (Airlie)	Airlie	VA
2004	NAACP Legal Defense Fund	Capital Punishment Conference (Airlie)	Airlie	VA
2005	ABA DP Rep Project/Ctr Justice Capital Cases	Mitigation Training Program	DePaul College of Law	IL
2005	CACJ/Santa Clara Law School	Death Penalty College	Santa Clara	CA

1997 - 2006 sessions re experts (selection from National Mitigation Project capital case training program agendas database)

Year	Auspices	Conference	City	State
2005	California Attorneys for Criminal Justice	Capital Case Defense Seminar	Monterey	CA
2005	California Attorneys for Criminal Justice	Capital Case Defense Seminar	Monterey	CA
2005	Federal Capital Defense Strategy Session	Advocacy in a New Era	Pittsburg	PA
2005	Georgia Capital Defender Office	Capital Defense Training Seminar: "The Nitty-Gritty of Capital De	Atlanta	GA
2005	Habeas Assistance and Training Counsel	National Seminar on the Development and Integration of Mitiga	Salt Lake City	UT
2005	Habeas Assistance and Training Counsel	The Habeas College	Houston	TX
2005	Habeas Corpus Resource Center	Spring Conference: Advocacy in a New Era	San Francisco	CA
2005	Louisiana ACDL	Capital Defense CLE Seminar	Baton Rouge	LA
2005	Missouri State Public Defender	Appellate/Post-Conviction Workshop	St. Louis	MO
2005	National Consortium for Capital Defense Training	Capital Defense Training	Santa Clara Law Sch	CA
2005	National Consortium for Capital Defense Training	Capital Defense Training	Santa Clara Law Sch	CA
2005	National Legal Aid and Defender Assn	Life in the Balance	New Orleans	LA
2005	National Legal Aid and Defender Assn	Life in the Balance	New Orleans	LA
2006	CACJ/CPDA	Capital Case Defense Seminar	Monterey	CA
2006	CACJ/Santa Clara Law School	Death Penalty College	Santa Clara	CA
2006	Habeas Assistance and Training Counsel	National Seminar on the Development and Integration of Mitiga	Washington	DC
2006	Habeas Corpus Resource Center	A Dialogue About Race and Culture	San Francisco	CA
2006	NAACP Legal Defense Fund	Capital Punishment Conference (Airlie)	Airlie	VA
2006	National Alliance of Sentencing Advocates and Miti	Death Penalty Mitigation Institute	Baltimore	MD
2006	National Alliance of Sentencing Advocates and Miti	NASAMS Conference: Spotlight on Team Defense	Baltimore	MD
2006	National Legal Aid and Defender Assn	Life in the Balance	Philadelphia	PA

1997 - 2006 sessions re experts (selection from National Mitigation Project capital case training program agendas database)

Presentation Title	Speaker 1	Speaker 2	Speaker 3
How to Identify Mental Health Issues And Present Them At Trial: The Use of Experts	Kathleen Wayland		
Video presentation - Expert Witnesses	Scharlette Holdman		
Workshop A - Working with Experts (Lecture & practice)	Kelly Henry	James Clark	
Working with Expert Witnesses			
The Mental Health Experts: Eight Steps to Integrating a Specialist Into Your Case	James J. Clark	Edward C. Monohan	
Litigating Resources and Using Experts	Natman Schaye	Mark E. Olive	
Working with experts	Jay Pultz	Scharlette Holdman	
Litigating Resources and Using Experts	T Gutierrez (?)	Jeff Buckles (?)	
Workshop E - Working with Your Own Experts	Marshall Dayan	Russell Stetler	Kathy Wayland
Recognizing Mental Health Issues and Working with Experts	Russell Stetler		
Selecting, Investigating, & Working With an Expert	David Lewis		
Mitigation and other mental health issues. Interview of mental health experts	Richard H. Burr	Scharlette Holdman	
Litigating for Expert Funds	Mark Olive		
Working with Experts - On the Team and On the Stand, Ours and Theirs	M. Cristina Gutierrez	Denise LeBoeuf	
Mitigation and other mental health issues. Interview of mental health experts	Richard H. Burr	Scharlette Holdman	
Establishing the Defense Team: Finding and Using Experts, and Crossing Theirs	Richard Jaffe		
Working with Expert	Craig Haney	Kathleen Wayland	
Investigators & Attorneys: First Trial Case (Including funding of experts; sustaining relat	Robert Caturegli	Denise Gragg	
What Does the Mental Health Expert Need and What Do We Give Him or Her?	Fred Manaster		
Dealing With Prior Evaluations, Test Results, and Experts	Russell Stetler		
Working With Defense Team Experts	David Bruck		
Working with Mental Health Experts	Scharlette Holdman	Jack Earley	
Dealing with Prior Tests, Evaluations and Experts	Russ Stetler	Denny LeBoeuf	
Mental Health Evaluations: What the Attorney and Expert Must Discuss	Mark Cunningham		
The Many Ways to Use Mental Health Experts	Xavier Amador		
Dealing with Mental Health Experts	James Thomson		
What is: A Client? a Defense Team? a Mitigation Specialist? a Social History Investigato	Denny LeBeouf	Russ Stetler	
Mental Retardation and the Mexican Client (Part II): Working with Experts and Using th	Danalynn Recer		
Before You Call an Expert: The Art of Self-Education			
MR Issues: Developing Adaptive Skills, Evidence, Working with an Expert and Avoiding and Litigation			
Introduction to Mental Illness and Mental Health Experts	Kathy Wayland		
Dealing with Mental Health Experts	James Thomson		

1997 - 2006 sessions re experts (selection from National Mitigation Project capital case training program agendas database)

Presentation Title	Speaker 1	Speaker 2	Speaker 3
Bring your DNA case - Brainstorming with the Experts	Kim Kruglick	Jeff Thoma	Elizabeth Johnson
Preparing the Mental Health Expert for Cross Examination	Scharlette Holdman	Gary Sowards	
Working with trial experts	Gary Sowards		
Sum and Substance: Working with Experts	Denny Le Boeuf		
Working with Experts (and lawyers)	Dr. Dale Watson	Gary Sowards	
Obtaining funds, Investigative and Expert Assistance: Creating A Record	Robert McGlasson		
Working With Trial Experts	Gary Sowards		
Dealing with Mental Health Evidence and Working with Experts	Gary Sowards		
Screening Test v Lucky Guess: What Experts Do You Need?	Tami Miller		
Dealing with mental health experts: ours and theirs	Charles Gessler		
Investigating experts and interviewing lay witnesses about mental health issues	Russell Stetler	Kathleen Wayland	
Using Your Expert as a Consultant or How to Prepare for the Battle Ground of Cross-Ex	Nancy Cowardin	Michael Gelbort	
What Lawyers Need to Discuss with Their Experts	Tom Reidy	Mark Cunningham	
Working With Trial Counsel And Trial Experts	Marcia Morrissey	Lynne Coffin	
Mental Health & Experts	Denny LeBoeuf	John Niland	
Working with Mental Health Experts	Dick Burr		
Experts/Teams	Richard Dudley		
My Difficult Client - Brain-storming with the Experts	Rick Dudley	Russ Stetler	Susan Cary
Selecting & Working with Mental Health Experts			
Dealing with Expert Witnesses Offensively and Defensively			
Now you tell me: critical issues to discuss with mental health experts before retention	Mark Cunningham		

1997 - 2006 sessions re experts (selection from National Mitigation Project capital case training program agendas database)

Year	Auspices
2002	National Assn Criminal Defense Lawyers
2002	National Assn Criminal Defense Lawyers
2003	CACJ/CPDA
2003	National Assn Criminal Defense Lawyers
2003	The Practicing Law Institute, Texas Criminal Defens
2004	CACJ/CPDA
2004	CACJ/Santa Clara Law School
2004	Habeas Assistance and Training Counsel
2004	Mexican Capital Legal Assistance Program
2004	NAACP Legal Defense Fund
2004	NAACP Legal Defense Fund
2005	ABA DP Rep Project/Ctr Justice Capital Cases
2005	CACJ/Santa Clara Law School
2005	Georgia Capital Defender Office
2005	Habeas Assistance and Training Counsel
2005	Habeas Assistance and Training Counsel
2005	Habeas Corpus Resource Center
2005	National Consortium for Capital Defense Training
2005	National Consortium for Capital Defense Training
2005	National Legal Aid and Defender Assn
2005	National Legal Aid and Defender Assn
2005	California Attorneys for Criminal Justice
2005	California Attorneys for Criminal Justice
2005	Federal Capital Defense Strategy Session
2005	National Consortium for Capital Defense Training
2006	CACJ/CPDA
2006	CACJ/Santa Clara Law School
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2006	Habeas Corpus Resource Center
2006	NAACP Legal Defense Fund
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2006	National Alliance of Sentencing Advocates and Miti
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Capital Punishment Conference (Airlie)
Mitigation Training Program
Death Penalty College
Capital Defense Training Seminar: "The Nitty-Gritty of Capital De
National Seminar on the Development and Integration of Mitiga
The Habeas College
Spring Conference: Advocacy in a New Era
Capital Defense Training
Capital Defense Training
Life in the Balance
Life in the Balance
The Capital Case Defense Seminar
The Capital Case Defense Seminar
Advocacy in a New Era
Capital Defense Training
Capital Case Defense Seminar
Death Penalty College
National Seminar on the Development and Integration of Mitiga
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Capital Punishment Conference (Airlie)
Death Penalty Mitigation Institute
NASAMS Conference: Spotlight on Team Defense
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Raleigh	NC
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Monterey	CA
Memphis	TN
Austin	TX
Monterey	CA
Santa Clara	CA
New Orleans	LA
San Francisco	CA
Airlie	VA
Airlie	VA
DePaul College of Law, Chicago	IL
Santa Clara	CA
Atlanta	GA
Salt Lake City	UT
Houston	TX
San Francisco	CA
Santa Clara Law School	CA
Santa Clara Law School	CA
New Orleans	LA
New Orleans	LA
Monterey	CA
Monterey	CA
Pittsburg	PA
Santa Clara	CA
Monterey	CA
Santa Clara	CA
Washington	DC
San Francisco	CA
Airlie	VA
Baltimore	MD
Baltimore	MD
Philadelphia	PA

Presentation Title	Speaker 1	Speaker 2
Dealing With Prior Evaluations, Test Results, and Experts	Russell Stetler	
Working With Defense Team Experts	David Bruck	
Working with mental Health Experts	Jack Earley	Scharlette Holdman
Dealing with Prior Tests, Evaluations and Experts	Denny LeBoeuf	Russ Stetler
Mental Health Evaluations: What the Attorney and Expert	Mark Cunningham	
The Many Ways to Use Mental Health Experts	Jack Earley	Xavier Amador
Dealing with Mental Health Experts	David Freedman	James Thomson
What is: A Client? a Defense Team? a Mitigation Specialist?	Scharlette Holdman	Denny LeBeouf
Mental Retardation and the Mexican Client (Part II): Working	Greg Kuykendall	Danalynn Recer
Before You Call an Expert: The Art of Self-Education	N/A	
MR Issues: Developing Adaptive Skills, Evidence, Working	N/A	
Introduction to Mental Illness and Mental Health Experts	Kathy Wayland	
Dealing with Mental Health Experts	James Thomson	
Sum and Substance: Working with Experts	Denny Le Boeuf	
Working with Experts (and lawyers)	Gary Sowards	Dr. Dale Watson
Obtaining funds, Investigative and Expert Assistance: Can	Jim Marcus	Robert McGlasson
Working With Trial Experts	Gary Sowards	
Dealing with mental health experts: ours and theirs	Charles Gessler	
Investigating experts and interviewing lay witnesses about	Kathleen Wayland	Russell Stetler
Using Your Expert as a Consultant or How to Prepare for	Michael Gelbort	Nancy Cowardin
What Lawyers Need to Discuss with Their Experts	Mark Cunningham	Tom Reidy
Bring your DNA case - Brainstorming with the Experts	Bicka Barlow	Kim Kruglick
Preparing the Mental Health Expert for Cross Examination	Gary Sowards	Scharlette Holdman
Working with trial experts	Gary Sowards	
Dealing with Mental Health Experts: Ours and Theirs	Charles Gessler	
Working With Trial Counsel And Trial Experts	Lynne Coffin	Marcia Morrissey
Mental Health & Experts	John Niland	Denny LeBoeuf
Working with Mental Health Experts	Dick Burr	
Experts/Teams	Richard Dudley	
My Difficult Client - Brain-storming with the Experts	Susan Cary	Rick Dudley
Selecting & Working with Mental Health Experts	TBD	
Dealing with Expert Witnesses Offensively and Defensively	TBD	
Now you tell me: critical issues to discuss with mental health	Mark Cunningham	

Speaker 3	Speaker 4	Speaker 5	Speaker 6
Russ Stetler			
Jeff Thoma	Elizabeth Johnson		
Russ Stetler			

State of South Carolina

In the Court of Common Pleas

County of York

James D. Robertson,

Applicant,

-vs-

C. A. No. 2011-CP-46-0072

State of South Carolina,

Respondent.

Certificate of Service by Electronic Mail

The undersigned certifies that he forwarded a cover letter with the affidavits and exhibits for: Toni Cascio, PhD. X3, Catherine Smith Hendrix, x3, James Boyd, x2, Geoffrey McKee, PhD., and Maria McLaughlin via electronic mail only.

William Edgar Salter, III
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
esalter@scag.gov

May 22, 2021



WILLIAM HARRY EHLIES, II
ATTORNEY FOR THE APPLICANT
Building A, Suite 201
310 Mills Avenue
Greenville, South Carolina 29605
864-232-3503
hank@ehlieslaw.com

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF YORK

James D. Robertson, SCDC 5067,

Applicant,

-vs-

C.A. No. 2011-CP-46-0072

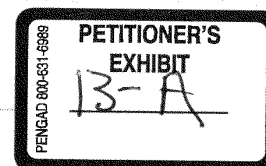
State of South Carolina,

Respondent.

UNIFORM BUSINESS RECORDS ACT
AFFIDAVIT OF MARIA McLAUGHLIN
S.C. CODE ANN., 19-5-510
S.C. RULE OF EVIDENCE 803(6)

Maria McLaughlin, first being duly sworn, states and deposes as follows:

1. She is employed by the Indiana Federal Community Defender, Federal Death Penalty Projects, as the National Mitigation Paralegal.
2. At the request of counsel for James D. Robertson, a death sentenced individual in South Carolina, she conducted a search of the records pertaining to courses of study offered to capital defenders by recognized education and training services and generally concerning the topics of 1) counsel's retained expert witnesses, including working with, preparing, brainstorming with, and choosing expert witnesses; 2) mitigation investigation and ABA Guidelines; 3) trauma, DNA and victim impact evidence; and 4) parricide, case management and waiver of appeal and of appellate Counsel.
3. The search criteria was limited to the general dates of 1997-2006. The attached Excel spreadsheet contains the results of those searches.



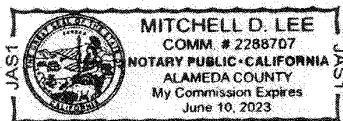
4. The data compilation is of information normally kept in the course of business for training providers, specifically training program agendas, was created at the time of the education event, and the search is part of the affiant's normal function as the National Mitigation Paralegal. She is familiar with the database containing training program agendas and the results are known to the affiant to conform to the general format of such information and is reliable evidence that the program event occurred and the training session was in fact offered.

5. The database of training programs does not include every capital defense program in the country during the period 1997 to 2006. The database represents a major collection of capital defense training programs in that time period.

SWORN TO BEFORE ME THIS 21 DAY OF JULY, 2021


Notary Public of California
My Commission
Expires: June 10, 2023


MARIA McLAUGHLIN
National Mitigation Paralegal



2004	Mexican Capital Legal Assistance Program	Representing Mexican Nationals in Capital
2004	National Assn Criminal Defense Lawyers	Making the Case for Life
2004	National Assn Criminal Defense Lawyers	Making the Case for Life
2004		Federal Capital Defense Strategy Session
2004		Federal Capital Defense Strategy Session
2005	ABA DP Rep Project/Ctr Justice Capital Cases	Mitigation Training Program
2005	ABA DP Rep Project/Ctr Justice Capital Cases	Mitigation Training Program
2005	ABA DP Rep Project/Ctr Justice Capital Cases	Mitigation Training Program
2005	ABA DP Rep Project/Ctr Justice Capital Cases	Mitigation Training Program
2005	ABA DP Rep Project/Ctr Justice Capital Cases	Mitigation Training Program
2005	ABA DP Rep Project/Ctr Justice Capital Cases	Mitigation Training Program
2005	ABA DP Rep Project/Ctr Justice Capital Cases	Mitigation Training Program
2005	ABA DP Rep Project/Ctr Justice Capital Cases	Mitigation Training Program
2005	ABA DP Rep Project/Ctr Justice Capital Cases	Mitigation Training Program
2005	Administrative Office of the US Courts Office of Defe	2005 Winning Strategies Seminar
2005	CACJ/CPDA	Capital Case Defense Seminar
2005	CACJ/Santa Clara Law School	Death Penalty College
2005	Defender Services Training Branch	Winning Strategies: Training Seminar for C
2005	Equal Justice Initiative	Capital Post-Conviction Litigation Conferer
2005	Equal Justice Initiative	Capital Post-Conviction Litigation Conferer
2005	Georgia Capital Defender Office	Capital Defense Training Seminar: "The Ni
2005	Georgia Capital Defender Office	Capital Defense Training Seminar: "The Ni
2005	Georgia Capital Defender Office	Capital Defense Training Seminar: "The Ni
2005	Georgia Capital Defender Office	Capital Defense Training Seminar: "The Ni
2005	Habeas Assistance and Training Counsel	National Seminar on the Development and
2005	Habeas Assistance and Training Counsel	National Seminar on the Development and
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2005	Habeas Assistance and Training Counsel	National Seminar on the Development and
2005	Habeas Assistance and Training Counsel	National Seminar on the Development and
2005	Habeas Assistance and Training Counsel	The Habeas College
2005	Habeas Assistance and Training Counsel	The Habeas College
2005	Habeas Corpus Resource Center	Spring Conference: Advocacy in a New Er
2005	Louisiana ACDL	Capital Defense CLE Seminar
2005	Mexican Capital Legal Assistance Program	Representing Mexican Nationals in Capital
2005	Mexican Capital Legal Assistance Program	Representing Mexican Nationals in Capital
2005	Missouri State Public Defender	Appellate/Post-Conviction Workshop
2005	NAACP Legal Defense Fund	Capital Punishment Conference (Airlie)
2005	NACDL	Making the Case for Life
2005	NACDL	Making the Case for Life
2005	National Assn Criminal Defense Lawyers	Making the Case for Life
2005	National Consortium for Capital Defense Training	Capital Defense Training
2005	National Consortium for Capital Defense Training	Capital Defense Training
2005	National Legal Aid and Defender Assn	Life in the Balance
2005	National Legal Aid and Defender Assn	Life in the Balance
2005	National Legal Aid and Defender Assn	Life in the Balance

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2005	National Legal Aid and Defender Assn	Life in the Balance
2005	National Legal Aid and Defender Assn	Life in the Balance
2005	National Legal Aid and Defender Assn	Life in the Balance
2005	Texas Defender Service	Mitigation in the Criminal Justice System
2005	Texas Defender Service	Mitigation in the Criminal Justice System
2005	Texas Defender Service	Mitigation in the Criminal Justice System
2005	Texas Defender Service	Mitigation in the Criminal Justice System
2005	Texas Defender Service	Mitigation in the Criminal Justice System
2006	Bureau of Justice Assistance_Feb	National Consortium for Capital Defense T
2006	Bureau of Justice Assistance_Feb	National Consortium for Capital Defense T
2006	Bureau of Justice Assistance_Nov	National Consortium For Capital Defense T
2006	Bureau of Justice Assistance_Nov	National Consortium For Capital Defense T
2006	Bureau of Justice Assistance_Nov	National Consortium For Capital Defense T
2006	Bureau of Justice Assistance_Nov	National Consortium For Capital Defense T
2006	Bureau of Justice Assistance_Nov	National Consortium For Capital Defense T
2006	Bureau of Justice Assistance_Nov	National Consortium For Capital Defense T
2006	Bureau of Justice Assistance_Nov	National Consortium For Capital Defense T
2006	CACJ/CPDA	Capital Case Defense Seminar
2006	CACJ/CPDA	Capital Case Defense Seminar
2006	CACJ/Santa Clara Law School	Death Penalty College
2006	Center for American and International Law	Capital Trial Advocacy For the Defense
2006	Center for American and International Law	Capital Trial Advocacy For the Defense
2006	Darrow Death Penalty College_May	National Consortium for Capital Defense T
2006	Darrow Death Penalty College_May	National Consortium for Capital Defense T
2006	Habeas Assistance and Training Counsel	National Federal Habeas Corpus Seminar
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2006	Habeas Assistance and Training Counsel	National Seminar on the Development and
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2006	Habeas Assistance and Training Counsel	National Seminar on the Development and
2006	Habeas Assistance and Training Counsel	National Seminar on the Development and
2006	Habeas Assistance and Training Counsel/NITA	Habeas Institute
2006	Habeas Corpus Resource Center	Mitigation Workshop
2006	Habeas Corpus Resource Center	Mitigation Workshop
2006	Habeas Corpus Resource Center	Mitigation Workshop
2006	Habeas Corpus Resource Center	Mitigation Workshop
2006	Habeas Corpus Resource Center	Mitigation Workshop
2006	Habeas Corpus Resource Center	Mitigation Workshop

2006	Habeas Corpus Resource Center	Mitigation Workshop
2006	Habeas Corpus Resource Center	Mitigation Workshop
2006	Habeas Corpus Resource Center	Mitigation Workshop
2006	NAACP Legal Defense Fund	Capital Punishment Conference (Airlie)
2006	NAACP Legal Defense Fund	Capital Punishment Conference (Airlie)
2006	National Alliance of Sentencing Advocates and Mitig	Death Penalty Mitigation Institute
2006	National Alliance of Sentencing Advocates and Mitig	Death Penalty Mitigation Institute
2006	National Alliance of Sentencing Advocates and Mitig	Death Penalty Mitigation Institute
2006	National Alliance of Sentencing Advocates and Mitig	NASAMS Conference: Spotlight on Team I
2006	National Assn Criminal Defense Lawyers	Making the Case for Life
2006	National Assn Criminal Defense Lawyers	Making the Case for Life
2006	National Assn Criminal Defense Lawyers	Making the Case for Life
2006	National Assn Criminal Defense Lawyers	Making the Case for Life
2006	National Legal Aid and Defender Assn	Life in the Balance
2006	National Legal Aid and Defender Assn	Life in the Balance
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2006	National Legal Aid and Defender Assn	Life in the Balance
2006		Federal Capital Defense Strategy Session
2006		Federal Capital Defense Strategy Session
2006		Federal Capital Defense Strategy Session
2006	Georgia Capital Defender Office	Capital Defender BiAnnual DP Defense Tr

ABA Guidelines

2003	Habeas Assistance and Training Counsel	National Federal Habeas Corpus Seminar
2003	National Assn Criminal Defense Lawyers	Making the Case for Life
2004	National Assn Criminal Defense Lawyers	Making the Case for Life
2005	CACJ/CPDA	Capital Case Defense Seminar
2005	Defender Services Training Branch	Winning Strategies: Training Seminar for C
2005	Habeas Corpus Resource Center	Spring Conference: Advocacy in a New Era
2005	Louisiana ACDL	Capital Defense CLE Seminar
2005	NAACP Legal Defense Fund	Capital Punishment Conference (Airlie)
2005	National Legal Aid and Defender Assn	Life in the Balance
2006	Bureau of Justice Assistance_Feb	National Consortium for Capital Defense T
2006	Bureau of Justice Assistance_Nov	National Consortium For Capital Defense T
2006	Center for American and International Law	Capital Trial Advocacy For the Defense
2006	Darrow Death Penalty College_May	National Consortium for Capital Defense T
2006	National Assn Criminal Defense Lawyers	Making the Case for Life
2006	National Assn Criminal Defense Lawyers	Making the Case for Life
2006	National Legal Aid and Defender Assn	Life in the Balance
2006		Federal Capital Defense Strategy Session

Location	Presentation Title	Category
New Orleans, LA	Life and social history investigations in capital cases	
Airlie, VA	Workshops: Trial #2: Protecting Your Mitigation Witnesses & Preserving the Case	
Monterey, CA	State Habeas Corpus Practice: Identifying, Developing, Preserving and Presenting	
Monterey, CA	State Habeas Corpus Practice: Identifying, Developing, Preserving and Presenting	
Scottsdale, AZ	Social History Investigation & Identifying Mitigation Themes	
Scottsdale, AZ	Interviewing Skills — Working With the Client and the Client's Family	
Scottsdale, AZ	Mental Health Investigation	
Scottsdale, AZ	Mitigating a Youthful Client	
Washington, D.C.	Client interviews: Symptoms and Culture	
Washington, D.C.	Laying the Proper Foundation: An introduction to the development of an accurate	
Boise, ID	Interviewing Skills: Working with your client and your client's family	
Boise, ID	Major Mitigation Themes - Finding and Making the Most of Mitigation Evidence (ov	
Boise, ID	Introduction — What is a "penalty phase?" What is "mitigation" and why is it impor	
Airlie, VA	How to Find the Facts Necessary for a Full Psycho-Social History (Small Group S	
Boise, ID	Organizing Your Case and Getting Started - the fundamentals of social history inv	
Boise, ID	Interviewing Skills: Tackling tough topics (incest, abuse etc)	
Boise, ID	Major Mitigation Themes - Finding and Making the Most of Mitigation Evidence (ov	
Boise, ID	Substance Abuse Investigation	
Boise, ID	Mental Health Investigation	
San Francisco, CA	Laying the Proper Foundation: An Introduction to the Development of an Accurate	
Houston, TX	Interviewing 101 - Nuts and Bolts	
Houston, TX	Organizing Your Case and Developing an Investigation Strategy	
Monterey, CA	HOW TO WORK TOGETHER AS A TEAM – ATTORNEYS, INVESTIGATORS &	
Santa Clara, CA	Developing a Social History	
Raleigh, NC	Mitigation & social history	
Raleigh, NC	Mitigation Theme - Mental Illness, Trauma and Other Impairments	
Raleigh, NC	Basics of Social History Investigation	
Raleigh, NC	Documents Gathering, Genograms & Chronologies	
Raleigh, NC	Memos and Report Writing	
Raleigh, NC	Urban Mitigation - Race, Community Violence, Gangs and Culture	
Raleigh, NC	Post Traumatic Stress Disorder/Anti-Social Personality Disorder/Considering Psyc	
Raleigh, NC	Dealing With Prior Evaluations, Test Results, and Experts	
Raleigh, NC	Interviewing Demonstration (30 minutes - client, 30 minutes - family member) Gro	
Memphis, TN	Mitigation Themes: Mental Illness, Trauma and Other Impairments	
Memphis, TN	Dealing with Prior Tests, Evaluations and Experts	
Monterey, CA	Developing Relationships and Obtaining Information from the Client	
Santa Clara, CA	Unifying your case through Mitigation Themes	
New Orleans	What is: A Client? a Defense Team? a Mitigation Specialist? a Social History Inve	
New Orleans	How Social History Investigations in Capital Cases Differ from Other Types of Soc	
New Orleans	Multiple uses of Social Histories	
New Orleans	Records Breakouts (4) – An exercise in reviewing records of our client's life	
San Francisco, CA	Mitigation: Poverty	
San Francisco, CA	Mitigation: Brain Damage	

San Francisco, CA	Mitigation: Exposure to Toxins	
Arlington, VA	The Standard of Care in Mitigation and the ABA Guidelines	
Arlington, VA	The Alchemy of Records Review: Finding and Creating Gold	
Salt Lake City, UT	Expanding the Horizons of Mitigation	
Salt Lake City, UT	Storytelling: Presenting a Compelling Mitigation Case	
DePaul College of	Overview of Mitigation and the Death Penalty	
DePaul College of	Overview of Mitigation and the Death Penalty	
DePaul College of	Cultural Considerations	
DePaul College of	Working with the Team	
DePaul College of	Interviewing about Mental Illness	
DePaul College of	Interview Techniques Part I	
DePaul College of	Documents: What to Get & How to Get Them	
DePaul College of	Introduction to Mental Illness and Mental Health Experts	
DePaul College of	Internet Sleuth	
DePaul College of	Legal, Ethical Duties; Case Organization	
DePaul College of	Genograms	
	The Importance of Mitigation	
Monterey, CA	Standards of Care under Wiggins & ABA Guidelines	
Santa Clara, CA	Investigating your case	
Philadelphia, PA	The Importance of Mitigation	
Orange Beach, AL	Developing and Integrating Mental Health Evidence into your Theory of Relief	
Orange Beach, AL	Investigation of Crime, Mitigation and Other Facts That Can Result in Relief for You	
Atlanta, GA	The Emerging Law and Theory of Mitigation: The Soul of the Client	
Atlanta, GA	Mitigation: The Heart of the Matter	
Atlanta, GA	The Name of the Game: Mitigation Investigation	
Atlanta, GA	Sum and Substance: Identifying and Understanding Mitigating Risk Factors	
Salt Lake City	Mitigation in the Trenches: lessons for trial and post-conviction	
Salt Lake City	Is There an Accepted Standard of Care for Investigations in Capital Cases? A Gro	
Salt Lake City	Trial - pre-arrest, post-arrest and future mitigation	
Salt Lake City	Trial - "Frontloading" Mitigation	
Salt Lake City	Post-Conviction - Making the case for ineffective assistance of counsel due to the	
Houston, TX	The Development And Presentation of Mental Health Issues	
Houston, TX	Working with Records to find the Facts we need	
San Francisco, CA	Standard of Care in Mitigation and ABA Guidelines	
Baton Rouge, LA	The Basics of Mitigation Investigation	
Houston, TX	Mitigation: The Relevance of Poverty and Exposure to Toxins	
Houston, TX	Mitigation: Brain Damage	
St. Louis, MO	The Mitigation Treasure Hunt: Recognizing the Clues in the Records	
Airlie, VA	Enforcing Standards in Mitigation in Light of Wiggins and the ABA Guidelines	
Oklahoma City, OK	Understanding and Interviewing for Symptoms of Mental Disorders, Part I	
Oklahoma City, OK	Frontloading Mitigation and Integrating the Penalty and Merit Phases	
Oklahoma City, OK	Culture and Mitigation	
Santa Clara Law S	Building the case for mitigation	
Santa Clara Law S	Putting together a social history	
New Orleans, LA	Enforcing the Standards and the ABA Guidelines	
New Orleans, LA	How to Investigate and Mitigate an Old Case	
New Orleans, LA	When Your Mitigation is 'All Good'	

New Orleans, LA	Social History Overview	
New Orleans, LA	Institutional Issues as Mitigation	
New Orleans, LA	Telling Your Clients Story of Mental Retardation and Mental Illness	
New Orleans, LA	The Mitigation of the Antisocial Personality Disorder	
New Orleans, LA	Expanding the Horizons of Mitigation, Life History, Redemption, Client Self-Work,	
New Orleans, LA	How to Make Horrific Mitigating Evidence Uncovered in Post-Conviction Something	
New Orleans, LA	Mitigation Concepts from the US Department of Justice: How Science Can Inform	
New Orleans, LA	Discovering the Theory of Mitigation Through the Use of Psycho-dramatic Technic	
Galveston, TX	Mental Health Issues in Mitigation	
Galveston, TX	Mitigation Work Across the Country	
Galveston, TX	Your First Case as a Mitigation Specialist	
Galveston, TX	Gathering Records That Tell the Story of the Client's Life	
Galveston, TX	The Mitigation Process: Putting it All Together	
Charleston, SC	The ABA guidelines and Zealous Team Advocacy	
Charleston, SC	The elements of Social History Work - A Team Approach	
Memphis, TN	Using The ABA Guidelines To Meet The Standard Of Care In Death Penalty Case	
Memphis, TN	Social History Investigation - The Team Approach	
Memphis, TN	Mitigation Specialist And Investigator Strategy Session	
Memphis, TN	When Fact And Mitigation Investigations Overlap & Integrating Guilt And Penalty P	
Memphis, TN	Trauma And Abuse- What Makes It So Bad?	
Memphis, TN	Presenting The Mitigation Case At Trial	
Memphis, TN	Mental Health Factors In Mitigation: Some Issues To Consider	
Monterey, CA	Finding the Link Between Mitigation and the Crime	
Monterey, CA	Mitigation Investigation after Wiggins	
Santa Clara, CA	Mitigation Evidence	
Plano, TX	Social History Work - A Shared Duty	
Plano, TX	Locating, Hiring & Working with Mitigation Specialists	
Chicago, IL	Social History Work: A Shared Duty	
Chicago, IL	Brainstorming and Developing your Theory of the Case & Integrating Themes and	
Pittsburgh, PA	provide information about significant	
Pittsburgh, PA	Fire and Rain	
Pittsburgh, PA	Keys to Successful Post-Conviction Investigation	
Pittsburgh, PA	Summertime: What I Learned during summer vacation (mental health insights)	
Washington	Mitigation: What's the Lawyer's Duty? What's the Mitigation Specialist's Duty? Wh	
Washington	Getting Started As A Mitigation Specialist: Question and Answer Session for New	
Washington	Courtroom Presentation of Mitigation: Strategies, Tricks, Rules of Evidence, etc	
Washington	Paper Presentation of Mitigation: Proving Your case with Declarations and Other P	
Washington	Finding Mitigation in Aggravation and Rebutting Aggravation: Some Lessons from	
Washington	Law for Mitigation Specialists: What the Nonlawyers Needs to Know about Capital	
Atlanta, GA	Lecture and Discussion: Planning, Preparing and Presenting Mental-Health and M	
San Francisco, CA	Discovery issues as they pertain to trial and post conviction practice, and the impli	
San Francisco, CA	Using documentary evidence to develop case theories and themes	
San Francisco, CA	Translating records into working documents to understand and develop your case	
San Francisco, CA	Interviewing and working with witnesses at trial and post-conviction	
San Francisco, CA	Discussion of implications for the development of mitigation evidence	
San Francisco, CA	Interviewing Witnesses	
San Francisco, CA	Translating witness interviews into testimony and declarations	

San Francisco, CA	Obtaining funding and making and protecting the record	
San Francisco, CA	Identifying and working with appropriate experts	
San Francisco, CA	Pulling the case together: A unified theory of the case	
Airlie, VA	Translating Mitigation -- Cross-cultural Challenges	
Airlie, VA	Culture and Mitigation	
Baltimore, MD	Utilizing Historical Records to Uncover & Demonstrate Mental Illness	
Baltimore, MD	The Role and Responsibilities of the Mitigation Specialist	
Baltimore, MD	The Bio-Psycho-Social History: The Foundation for a Reliable Mental Health Evalu	
Baltimore, MD	Integrated Representation: Sustaining Mitigation Teamwork Within and Across Dis	
Las Vegas, NV	Presenting your mitigation early and often	
Las Vegas, NV	Social history as science and narrative	
Las Vegas, NV	The ABA guidelines: standards of practice and how to use them	
Las Vegas, NV	Investigating mitigation to settle the case	
Philadelphia, PA	Plenary: social History as Science Narrative	
Philadelphia, PA	Records / Chronology 1	
Philadelphia, PA	Producing the Penalty Phase	
Philadelphia, PA	Interviewing skills for mitigation investigation	
Philadelphia, PA	Interviewing for trauma	
Philadelphia, PA	Investigating and interviewing for mental disorders I	
Philadelphia, PA	Social history overview	
Philadelphia, PA	Enforcing the standards and the ABA Guidelines	
Philadelphia, PA	Investigating and interviewing for mental disorders Part II	
Philadelphia, PA	The family as a resource: what they need to know and what they know that will he	
San Antonio, TX	Finding and Using Evidence of Historical Events and Cultural Values: Successes i	
San Antonio, TX	Finding and Using Evidence of Historical Events and Cultural Values: Successes i	
San Antonio, TX	Workshop: What You Need to Know to Conduct a Competent Mental Health Inves	
St. Simons, GA	Volunteers	

Chicago, IL	The Ethical Responsibilities of Counsel in Capital Cases: the ABA Guidelines and	
Memphis, TN	Wiggins and the ABA Guidelines	
Arlington, VA	The Standard of Care in Mitigation and the ABA Guidelines	
Monterey, CA	Standards of Care under Wiggins & ABA Guidelines	
Philadelphia, PA	New Amendments to the Guidelines	
San Francisco, CA	Standard of Care in Mitigation and ABA Guidelines	
Baton Rouge, LA	Your Ethics Hour - Using the ABA Guidelines to Get Help	
Airlie, VA	Enforcing Standards in Mitigation in Light of Wiggins and the ABA Guidelines	
New Orleans, LA	Enforcing the Standards and the ABA Guidelines	
Charleston, SC	The ABA guidelines and Zealous Team Advocacy	
Memphis, TN	Using The ABA Guidelines To Meet The Standard Of Care In Death Penalty Case	
Plano, TX	Using the ABA Guidelines to Meet the Standard of Care in Death Penalty	
Chicago, IL	Using the ABA Guidelines to Meet the Standard of Care in Death Penalty Cases	
Las Vegas, NV	The ABA guidelines: standards of practice and how to use them	
Las Vegas, NV	Update on implementation and use of the ABA guidelines	
Philadelphia, PA	Enforcing the standards and the ABA Guidelines	
San Antonio, TX	Using the ABA Guidelines to Enhance Our Advocacy	

Speaker 1	Speaker 2	Speaker 3	Speaker 4	Speaker 5
Scharlette Holdman				
Michael Burt	Russell Stetler	Kathleen Wayland		
Susan Ten Kwan	Mary McComb			
Susan Ten Kwan	Mary McComb			
Scharlette Holdman, Ph.D.				
Joe Gustafarro	Scharlette Holdman, Ph.D.			
Kathleen Wayland, Ph.D				
Caterina DiTraglia	Mandy Welch			
Dr. Richard Dudley				
Mark E. Olive	Pamela Leonard	John Blume		
Rosanne Dapsauski	Denise Young			
Mark Olive				
Scharlette Holdman	Michael Laurence			
Scharlette Holdman	Russ Stetler			
Rosanne Dapsauski	Russell Stetler			
Russell Stetler	Jill Miller			
Mark Olive				
Joan Fisher	Russell Stetler			
Mark Olive	Michael Laurence			
Scharlette Holdman				
Russell Stetler				
Russell Stetler				
Charles Gessler	Scharlette Holdman, Ph.D.	Russell Stetler		
Scharlette Holdman	Russ Stetler			
Angela Mason				
Russell Stetler				
Kara Richards-Baker				
Kara Richards-Baker				
Jill Miller				
Diane Savage	Jill Miller			
Russ Stetler	Pam Laughoun	Jerry Noble		
Russell Stetler				
Russ Stetler				
Russ Stetler				
Denny LeBoeuf	Russ Stetler			
Will Rumble	Russ Stetler			
James Thomson	Russ Stetler	Monica Foster		
Scharlette Holdman	Denny LeBeouf	Russ Stetler		
Lee Norton	Denise Young	Russ Stetler		
George Woods	Dick Burr			
Marie Campbell	Kathy Wyland	Russ Stetler		
Russell Stetler				

Russ Stetler				
Russ Stetler	Kathy Wayland			
Dick Burr				
Nancy Pemberton	Scharlette Holdman	Kevin McNally		
Dani Waller	Andrea Lyon	Robin Maher		
Federal Magistrate Judge N	Dani Waller	Emily Hughes		
Mort Smith				
Russ Stetler	Kathy Wayland			
Kathy Wayland				
Dani Waller				
Russ Stetler	Kathy Wayland	Dani Waller		
Kathy Wayland				
Jon Lyon				
Russ Stetler				
Jeff Eno				
Russell Stetler				
Russell Stetler	Monica Foster			
Russ Stetler				
Russell Stetler				
Dr Kathy Wayland	Dr Karen Salekin	Russ Stetler		
Dr Dianne Swann-Wright	Dr Marti Loring	Russ Stetler		
Dick Burr				
Scharlette Holdman				
Russ Stetler				
Scharlette Holdman	Elizabeth Beck	Pamela Blume Leonard		
Kevin McNally				
Scharlette Holdman	Russ Stetler	Dr. Kathy Wayland		
Dick Burr				
Judy Clarke	Sean O'Brien			
Michael Laurence	Denise Young			
Dick Burr				
Russ Stetler				
Mark Olive	Russell Stetler			
Melanie Carr	Ursula Price			
Dr. Andres Lugo				
Ricardo Weinstein				
Russell Stetler				
Russell Stetler	Richard G. Dudley	Lori James-Monroe		
Kathy Wayland				
Mary Ann Tally				
Scharlette Holdman	Jesse Cheng			
Craig Haney				
Scharlette Holdman				
Kathy Wayland	Russ Stetler			
Lori James-Monroe	Amy Tenney			
Lori James-Monroe				

Jill Miller				
Craig Haney				
Ira Mickenberg				
James Eisenberg				
Richard Burr				
Mark Olive				
Mark D. Cunningham	Tom Reidy			
Rick Kammen	Cyndy Short			
Russ Stetler				
Russ Stetler				
Shelli Schade				
Shelli Schade				
John Niland				
Monica Foster				
Russell Stetler				
Danalynn Recer	Russell Stetler			
Danalynn Recer	Russell Stetler			
Sita Sovin	Scharlette Holdman			
TBD				
Dr. Arlene Andrews				
Scharlette Holdman				
Dr. Arlene Andrews	Denny LeBoeuf			
Kevin Doyle	Russell Stetler			
Russ Stetler	Sandra Babcock			
Scharlette Holdman	Russ Stetler			
Russell Stetler				
John Niland				
Cecelia Alfonso	Monica Foster			
Stephen Bright				
George Kendall	Robin Maher	Russ Stetler		
Ron Tabak				
Kathy Wayland	Russ Stetler			
Scharlette Holdman	Kathy Wayland			
Sean O'Brien	Russ Stetler	Scharlette Holdman		
Scharlette Holdman	Pam Leonard			
Judy Clarke				
Michael Laurence				
Michael Wiseman				
Mark Olive				
Russ Stetler				
Sita Jo-Ann Sovin	Wes Van Winkle			
Kathy Wayland				
Courtney Bell	Holly Jackson			
Susan Garvey	Sita Jo-Ann Sovin	Kathy Wayland		
Russell Stetler				
Kathy Wayland				
Susan Garvey	Russell Stetler			

Scharlette Holdman	Wes Van Winkle			
Scharlette Holdman				
Russell Stetler	Wes Van Winkle	Scharlette Holdman		
Anne Chapman	Scharlette Holdman	Jan Vogelsang		
Jesse Cheng	Scharlette Holdman			
Russell Stetler				
Jill Miller				
Lori James-Monroe				
Lori James-Monroe	Michael Morrisette	Katy O'Donnell		
Scharlette Holdman				
Craig Haney				
Mark Olive				
Jackie Walsh				
Craig Haney				
Russ Stetler	Kathy Wayland			
Juliet Yackel				
Mark Cunningham	Dani Welller			
Scharlette Holdman				
Kathy Wayland				
Scharlette Holdman				
Russ Stetler				
Kathy Wayland				
Claudia Whitman	Tonya McClary			
Jesse Cheng	Scharlette Holdman	John Grele		
Russell Stetler	J. Diego Vigil			
Scharlette Holdman	Russell Stetler			
Scharlette Holdman	Russ Stetler			

Robin Maher	Ron Tabak			
Chris Adams				
Russ Stetler				
Russell Stetler	Monica Foster			
Alan DuBois				
Mark Olive	Russell Stetler			
David Price	Kerry Cuccia			
Russell Stetler	Richard G. Dudley	Lori James-Monroe		
Kathy Wayland	Russ Stetler			
Monica Foster				
Danalynn Recer	Russell Stetler			
Robin Maher				
Monica Foster				
Mark Olive				
Russ Stetler				
Russ Stetler				
Monica Foster				

Trauma / Kathy Wayland

1994	NAACP Legal Defense Fund	Capital Punishment Conference (Airlie)
1996	CACJ/CPDA	Capital Case Defense Seminar
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1997	NAACP Legal Defense Fund	Capital Punishment Conference (Airlie)
1997	CACJ/CPDA	Capital Case Defense Seminar
1998	Habeas Assistance and Training Counsel	National Federal Habeas Corpus Seminar
1998	NACDL	Making the Case for Life
1999	Habeas Assistance and Training Counsel	Mental Health and Criminal Law
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1999	Habeas Assistance and Training Counsel	National Federal Habeas Corpus Seminar
1999	National Assn Criminal Defense Lawyers	Making the Case for Life
1999	National Assn Criminal Defense Lawyers	Making the Case for Life
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2000	NACDL	Making the Case for Life
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2001	CACJ/CPDA	Capital Case Defense Seminar
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2002	National Assn Criminal Defense Lawyers	Making the Case for Life
2002	National Assn Criminal Defense Lawyers	Making the Case for Life
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2003	Habeas Assistance and Training Counsel	National Federal Habeas Corpus Seminar
2003	CACJ/CPDA	Capital Case Defense Seminar
2003	National Assn Criminal Defense Lawyers	Making the Case for Life
2003	National Assn Criminal Defense Lawyers	Making the Case for Life
2004	CACJ/CPDA	Capital Case Defense Seminar
2004	Habeas Assistance and Training Counsel	National Seminar on the Development and Integration
2004	National Assn Criminal Defense Lawyers	Making the Case for Life
2004	National Assn Criminal Defense Lawyers	Making the Case for Life
2004	CACJ/CPDA	Capital Case Defense Seminar
2004	CACJ/CPDA	Capital Case Defense Seminar
2005	Habeas Assistance and Training Counsel	National Federal Habeas Corpus Seminar
2005	Habeas Assistance and Training Counsel	National Seminar on the Development and Integration

2005	Habeas Assistance and Training Counsel	National Seminar on the Development and Integration
2005	Habeas Corpus Resource Center	Spring Conference: Advocacy in a New Era
2005	CACJ/CPDA	Capital Case Defense Seminar
2005	CACJ/CPDA	Capital Case Defense Seminar
2005	Louisiana ACDL	Capital Defense CLE Seminar
2005	National Legal Aid and Defender Assn	Life in the Balance
2006	National Assn Criminal Defense Lawyers	Making the Case for Life
2006	National Legal Aid and Defender Assn	Life in the Balance
2006	Bureau of Justice Assistance_Nov	National Consortium For Capital Defense Training
2006	NAACP Legal Defense Fund	Capital Punishment Conference (Airlie)
2006		Federal Capital Defense Strategy Session

DNA

1996	CACJ/CPDA	Capital Case Defense Seminar
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2002	CACJ/CPDA	Capital Case Defense Seminar
2002	Habeas Assistance and Training Counsel	Forensic Evidence and The Criminal Law
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2002	Habeas Assistance and Training Counsel	National Federal Habeas Corpus Seminar
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2005	CACJ/CPDA	Capital Case Defense Seminar
2005	NAACP Legal Defense Fund	Capital Punishment Conference (Airlie)
2005	National Legal Aid and Defender Assn	Life in the Balance
2005	National Legal Aid and Defender Assn	Life in the Balance
2006	CACJ/CPDA	Capital Case Defense Seminar
2006	CACJ/CPDA	Capital Case Defense Seminar
2006	Habeas Assistance and Training Counsel	Forensic Evidence and Criminal Law
2006	Habeas Assistance and Training Counsel	Forensic Evidence and the Criminal Law
2006	National Legal Aid and Defender Assn	Life in the Balance
2006	National Legal Aid and Defender Assn	Life in the Balance

2006	National Legal Aid and Defender Assn	Life in the Balance
Victim Impact		
1996	CACJ/CPDA	Capital Case Defense Seminar
1998	CACJ/Santa Clara Law School	Death Penalty College
1999	CACJ/CPDA	Capital Case Defense Seminar
1999	National Assn Criminal Defense Lawyers	Making the Case for Life
2001	NAACP Legal Defense Fund	Capital Punishment Conference (Airlie)
2002	CACJ/CPDA	Capital Case Defense Seminar

Airlie, VA	Backlash Against the Consideration of Certain M
Monterey, CA	DSM-IV Understanding Past Diagnosis with Toda
Airlie, VA	Manic Depression -- New Developments & Insight
Monterey, CA	Advanced Psychological Testing
Airlie, VA	Workshops: Trial #2: Protecting Your Mitigation
Monterey, CA	Dynamics of client trauma: presenting trauma thr
Atlanta, GA	Understanding Personality Testing (I.e., the Rors
Scottsdale, AZ	Mental Health Investigation
Washington, D.C.	Relationships with delusional, paranoid and traur
Washington, D.C.	Trauma: a conceptual framework for abuse; new
Washington, D.C.	Explaining trauma to a judge or jury: avoiding the
Washington, D.C.	Trauma: Legal and clinical issues surrounding th
Washington, D.C.	Trauma: Juvenile Institutions
Washington, D.C.	Living in Captivity: The dynamics and effects of li
Washington, D.C.	Chronic Childhood Deprivation: Attachment and I
Atlanta, GA	Understanding Our Clients And Avoiding Volunte
Boise, ID	Investigating Child Abuse, Violence and Psychok
Boise, ID	Understanding and Explaining Post-Traumatic St
Nashville, TN	Emerging Mental Health Issues in Capital Cases
Nashville, TN	Psychological Trauma: psychodynamics and psy
Airlie, VA	CASE REVIEW FOR ALL - MENTAL HEALTH IS
Houston, TX	Mental Illness (advanced)
Houston, TX	Mental Illness (beginner)
Houston, TX	Physical and Mental Trauma and Abuse (advanc
San Francisco, CA	Why Trauma? A Conceptual and Developmental
San Francisco, CA	The Biological Effects of Living with Chronic Trau
Nashville, TN	Emerging Mental Health Trends in Capital Post-C
Nashville, TN	Understanding Trauma
Monterey, CA	Trauma-Related Cognitive and Biological Change
Monterey, CA	Prosecutors' Social Histories of Our Clients & Me
Monterey, CA	Trauma-Related Cognitive and BiologicalChange
Raleigh, NC	Mitigation Theme - Mental Illness, Trauma and C
Raleigh, NC	Basics of Social History Investigation
Raleigh, NC	Post Traumatic Stress Disorder/Anti-Social Perso
Chicago, IL	An introduction to mental health issues in Post-C
Monterey, CA	The Impact of Trauma on Child Development Iss
Memphis, TN	Mitigation Themes: Mental Illness, Trauma and C
Memphis, TN	Trauma
Monterey, CA	Basic Child Development Including Impact of Tra
New Orleans	What Has Gone Wrong: Brain-behavior Dynamic
Arlington, VA	Trauma, Trauma, Trauma - It's All About the TR/
Arlington, VA	Challenging Clients?
Monterey, CA	Trauma (Plenary)
Monterey, CA	Culture, Ethnicity and Trauma
Pittsburgh, PA	"Damn right, he's nuts:" how not to miss symptom
Salt Lake City	Is There an Accepted Standard of Care for Inves

Salt Lake City	Trauma: Recognizing and Understanding its Effects
San Francisco, CA	Interviewing Traumatized Witnesses, Including Survivors
Monterey, CA	The Effects of Trauma Brain and Psychosocial Dynamics
Monterey, CA	Plenary-Poverty, Trauma, and Gangs
Baton Rouge, LA	Uncovering Trauma
New Orleans, LA	Litigating Trauma
Las Vegas, NV	The dynamics and effect of psychological trauma
Philadelphia, PA	Interviewing for trauma
Memphis, TN	Trauma And Abuse- What Makes It So Bad?
Airlie, VA	How Extensive Trauma Exposure Can Lead to PTSD
San Antonio, TX	Demonstrating the Impact of Trauma and Attachment
Monterey, CA	DNA Basics
Monterey, CA	DNA For Beginners
Monterey, CA	The Basic Principles and Terminology for DNA -
Monterey, CA	DNA For Beginners - Non-Scientific Attacks in Court
Monterey, CA	The Basic Principles and Terminology of DNA
Monterey, CA	Addressing DNA That Implicates Your Client
Monterey, CA	DNA: Its Use to Eliminate Your Client as the Offender
Monterey, CA	Basic DNA
Monterey, CA	Strategies and Practicalities of Obtaining Post Conviction
Monterey, CA	Addressing DNA That Implicates Your Client (including
Monterey, CA	DNA - Eliminating Your Client as the Offender
Monterey, CA	Bring Your DNA Case — Brainstorming with the Expert
New Orleans, LA	Introduction to DNA Evidence and New DNA Developments
New Orleans, LA	Challenges with High-Tech DNA Evidence
Nashville, TN	Understanding and attacking DNA evidence in post conviction
Airlie, VA	New Developments in DNA
Monterey, CA	Attacking DNA that Implicates Your Client, including
Monterey, CA	DNA Post Conviction
Monterey, CA	Bring your DNA Case Brainstorming with the Expert
Monterey, CA	Basic DNA
Monterey, CA	Exonerating the Wrongfully Convicted, Including
Monterey, CA	DNA: Cold Hits, Attacking STR and Mixed Samples
Monterey, CA	Bring Your DNA Case: Brainstorming with the Expert
Monterey, CA	DNA
Monterey, CA	Mitochondrial & Y-STR-DNA
Monterey, CA	Bring your DNA Case-Brainstorming with the Expert
Airlie, VA	DNA Evidence: Discovering, Testing, Interpreting
New Orleans, LA	Dealing with DNA Evidence
New Orleans, LA	Evaluating Forensic DNA Evidence
Monterey, CA	Understanding DNA
Monterey, CA	Brainstorming Your DNA Case
San Antonio, TX	Introduction to DNA Evidence and New DNA Developments
San Antonio, TX	DNA to Prove Your Client's Innocence
Philadelphia, PA	Dealing with DNA evidence
Philadelphia, PA	Evaluating Forensic DNA Evidence

Philadelphia, PA	Cold hits and familial searches of DNA Database
Monterey, CA	Victim Impact
Santa Clara, CA	Sample Victim Impact Motions
Monterey, CA	Victim Impact Issues
Boise, ID	Contacting and working with the victim's family &
Airlie, VA	Execution Impact and Victim Impact Evidence
Monterey, CA	Victim Impact – Excluding It; Dealing with It

litigating Evidence, and What To Do About It	Michael Burt	Kathy Wayland	
ay's Knowledge	Kathy Wayland		
its	Kathy Wayland		
	Kathy Wayland		
Witnesses & Preserving the Case for	Michael Burt	Russell Stetler	Kathleen Wayland
ough demonstrative evidence	Mark D. Cunningham		
chach, Sentence Completion, Draw-a	Scharlette Holdman	Kathleen V	Mandy Welch
	Kathleen Wayland, Ph.D		
natized clients	Xavier F. Amador		
developments	Kathy Wayland	Arlene Andrews	
"abuse excuse" trap	David Bruck	Lee Norton	
e recovery of early childhood memories			
	Professor Jon Conte		
ving with chronic violence	Kathy Wayland		
Loss	Arlene Andrews		
ers: How to deal with their delusions,	Dr. Xavier Amador	Denise Young	
ogical Trauma	Dr. David Foy	Scharlette Holdman	
ress Disorder	Dr David Foy	Scharlette Holdman	
	Scharlette Holdman	Kathy Wayland PhD	
chobiology	Kathy Wayland Ph.D.		
ISSUES IN CAPITAL CASES	DICK BURR	LEE NORTON	KATHY WAYLAND
	Kathleen Wayland	Michael Laurence	
	Kathleen Wayland	Michael Laurence	
ed)	David Foy	Jill Miller	
Framework for Understanding Trauma	Julie Krieger		
ima	David Foy		
Conviction Litigation	Scharlette Holdman	Kathy Wayland	
	Kathy Wayland		
es — PTSD Demonstrated Scientifically	Elisabeth Semel		
ethods of Developing Defense Life Histories	Steve Harmon	Kathy Wayland, Ph.D.	
es — PTSD Demonstrated Scientifically	Elisabeth Semel		
Other Impairments	Russell Stetler		
	Kara Richards-Baker		
onality Disorder/Considering Psychology	Russ Stetler	Pam Laug	Jerry Noble
onviction litigation	Rebecca Blaskey		
ues	Marcia Morrissey	John Briere	
Other Impairments	Russ Stetler		
	Denny LeBoeuf		
uma	Denise Gragg	Kathy Wayland	
s, Trauma, Mental Illness, Mental Retardation	Scharlette Holdman	Kathy Wayland	George Woods
AUMA!	Denny LeBoeuf		
	Scharlette Holdman		
	John Briere	Gary Sowards	
	Terry Gock	Richard C. Zakee	Matthews
ns of mental illness on death row	Scharlette Holdman	Kathy Wayland	
tigations in Capital Cases? A Group Discussion	Scharlette Holdman	Russ Stetler	Dr. Kathy Wayland

cts	Kathy Wayland			
exual Trauma Survivors	Kathy Wayland	June Clausen		
velopment in the Early Childhood Ye	Patricia van Horn	Myla Young		
	James Diego	Jeannie Sternberg		
	Russ Stetler			
	Marie LeBoeuf Campbe	Danny LeBoeuf		
	Kathy Wayland			
	Scharlette Holdman			
	Dr. Arlene Andrews			
ychosis and PTSD	Denny LeBoeuf	Frederic Sautter		
ment Disorders on Our Clients	Richard Dudley	Kathy Wayland		
	Jeffrey E. Thoma			
Introduction to DNA Evidence	Walter Krstulja			
ourt - Expert Evidence: A Practitioner's	Jeff Thorna	William Thompson, Ph.D.		
	Simon Ford	Jeff Thorma		
	Michael Burt			
nder	Peter Neufeld	Barry Scheck		
	Robert Blasier			
onviction DNA Testing	Jennifer Friedman	John Grele		
cluding STR)	Michael N. Burt	William C. Thompson		
	Barry Scheck	Jeff Thoma		
Experts	James McWilliams	Jeff Thoma	William C. Thompson	
velopments	Peter J. Neufeld			
	Susan Herrero	Randell T. Libby		
ost-conviction litigation	Susan Herrero			
	Barry Scheck	Peter Neufeld		
ing STR	Norah Rudin			
	Peter Neufeld	Barry Scheck		
erts	Bicka Barlow	William Th	Jeff Thoma	
	Norah Rudin	Bicka Bar	Simon Ford	
Through the Use of DNA	Sean O'Brien	Barry Sch	Juan Melendez	
les	Elizabeth Johnson	William Thompson		
perts	Elizabeth Johnson	Kim Krugli	William Thompson	
	Bicka Barlow	Elizabeth Johnson, Ph.D.		
	Elizabeth Johnson, Ph.D.	Terry Melton, Ph.D.		
erts	Bicka Barlow	Kim Krugli	Jeff Thoma	
	Greg Hampikian			
	Kari Converse	Jason Gilder		
	Jason Gilder			
	Bicka Barlow	William Thompson		
	Bicka Barlow	William Thompson		
velopments	Jennifer Friedman			
	Barry Scheck			
	Kari Converse	Dan Krane		
	Dan Krane			

s	Dan Krane			
	Regina Laughney	Katy O'Donnell		
	Katy C. O'Donnell			
	Katy C. O'Donnell			
victim impact law	James Boren	Joan Fisher		
	Marc Bookman	David Hoose		
	Michael Ogul	Jean Wilkinson		

YEAR	SPONSORING ORGANIZATION

Parricide:

2001	National Legal Aid & Defender Association

Case Management:

1997	CACJ/CPDA
1999	National Assn Criminal Defense Lawyers
2002	National Assn Criminal Defense Lawyers
2004	
2005	ABA DP Rep Project/Ctr Justice Capital Cases
2000	Federal Death Penalty Resource Counsel Projects
1999	National Assn Criminal Defense Lawyers
1999	National Assn Criminal Defense Lawyers
2000	NACDL
2004	CACJ/CPDA
2005	CACJ/CPDA
2005	Center for American and International Law
2005	National Legal Aid and Defender Assn
2006	CACJ/CPDA
2005	California Attorneys for Criminal Justice
2002	Oregon Capital Resource Center
1997	National Legal Aid and Defender Association
1998	CACJ/CPDA
1997	National Legal Aid and Defender Association
2002	National Association of Sentencing Advocates
2001	National Legal Aid & Defender Association
	<i>Waiver of appeal; waiver of appellate counsel:</i>
2004	CACJ/CPDA
1999	National Legal Aid & Defender Association
1999	Habeas Assistance and Training Counsel
2001	Habeas Assistance and Training Counsel
2003	Habeas Assistance and Training Counsel
2005	NAACP Legal Defense Fund
2005	NAACP Legal Defense Fund
2005	National Legal Aid and Defender Assn
2006	Georgia Capital Defender Office
2006	National Legal Aid and Defender Assn
1999	National Legal Aid & Defender Association
1998	Habeas Assistance and Training Counsel
1999	National Assn Criminal Defense Lawyers
2005	CACJ/CPDA
2006	NAACP Legal Defense Fund

CONFERENCE TITLE

LOCATION

Life in the Balance		

Capital Case Defense Seminar	Monterey, CA	
Making the Case for Life	Boise, ID	
Making the Case for Life	Raleigh, NC	
Federal Capital Defense Strategy Session	Salt Lake City, UT	
Mitigation Training Program	DePaul College of Law	
Missouri Public Defender Winter Workshops		
Making the Case for Life	Boise, ID	
Making the Case for Life	Boise, ID	
Making the Case for Life	Houston, TX	
Capital Case Defense Seminar	Monterey, CA	
Capital Case Defense Seminar	Monterey, CA	
Concurrent Sessions: Mitigation Track Agenda	Plano, TX	
Life in the Balance	New Orleans, LA	
Capital Case Defense Seminar	Monterey, CA	
The Capital Case Defense Seminar		
Essential Tools for the Capital Defender		
Life in the Balance		
Capital Case Defense Seminar	Monterey, CA	
Life in the Balance		
"Ten years in the fight for justice"		
Life in the Balance		
Capital Case Defense Seminar	Monterey, CA	
Life in the Balance XI: Defending Death Penalty Cases		
National Federal Habeas Corpus Seminar	Atlanta, GA	
National Federal Habeas Corpus Seminar	Nashville, TN	
National Federal Habeas Corpus Seminar	Chicago, IL	
Capital Punishment Conference (Airlie)	Airlie, VA	
Capital Punishment Conference (Airlie)	Airlie, VA	
Life in the Balance	New Orleans, LA	
Capital Defender BiAnnual DP Defense Training	St. Simons, GA	
Life in the Balance	Philadelphia, PA	
Life in the Balance XI: Defending Death Penalty Cases		
National Federal Habeas Corpus Seminar	Atlanta, GA	
Making the Case for Life	Boise, ID	
Capital Case Defense Seminar	Monterey, CA	
Capital Punishment Conference (Airlie)	Airlie, VA	

PRESENTATION NAME

Exposure to Domestic Violence? A mitigator
Computers for Investigators: Case Management Systems
Gathering and Organizing Documents
Documents Gathering, Genograms & Chronologies
Document organization, demonstrative evidence and researching the web
Legal, Ethical Duties; Case Organization
Tips & Tools for Effective Investigation: A Discussion
Organizing Your Case and Getting Started - the fundamentals of social history investigation
Gathering and Organizing Documents
Organizing Your Case and Developing an Investigation Strategy
Conceptually Organizing the Huge Case and Use of Databases to Organize Your Case
Organizing your Case from the Ground Up, Including Creating a Family Tree-Attorneys & Investigators
Organizing Your Facts, Paper, People and Theories into a Coherent Case: the Masterdocs System
Organizing a Capital Case One Step at a Time
Organizing the Case from the Ground Up
Organizing your Case from the Ground Up, Including Creating a Family Tree - Attorneys & Investigators
Welcome to the Digital Age: Organizing and Sharing Information
Part II: The Complex Case: Collecting, Organizing and Accessing Records
Computers for Beginners: Introduction to Case Management and Internet Resources - A Few Ideas for the
Workshop B - Complex Case Documentation and Management
Managing Your Capital Case
Managing your capital case
Appellate and Trial Lawyer Relations (Plenary)
Plenary- When the Client Seeks Death: Dealing with Volunteers
Understanding Our Clients And Avoiding Volunteers: How to deal with their delusions, paranoia, trauma and
Challenging Clients: "Volunteers"
Conditions of Confinement and "Volunteers"
Extinguishing the Will to Live: The Link Between Volunteering and Prolonged Confinement on Death Row
The Ethics of "Representing" Volunteers
When Your Client Wants to Die: Strategies for Dealing with the Death Volunteer
Volunteers
How to win the hopeless mess: strategies for dealing with not only the case, but the death volunteer
Plenary- When the Client Seeks Death: Dealing with Volunteers
Interacting with Difficult Clients
Interviewing Skills: Working with a very difficult client
LEAP/Difficult Clients Because of Mental Problems
My Difficult Client - Brain-storming with the Experts

PRESENTER 1

PRESENTER 2

PRESENTER 3

	Cessie Alfonso	Jorge Abreu		

	Barry Melton			
	Richard Hays	Mary Hudson Goody		
	Kara Richards-Baker			
	Jeff Flax			
	Russ Stetler			
	Rosanne Dapsauski	Russell Stetler		
	Richard Hays	Mary Hudson Goody		
	Russell Stetler			
	Ron Turner	Jack Earley	Allen Hopper	
	Sean Broderick	Herbert Duzant	Sita Jo-Ann Sovin	
	Liz Vartkessian			
	John Mauldin			
	Laura Rodgers	Jonathon Oringer		
	Sean Broderick	Hebert Duzant	Sita Jo-Ann Savin	
	Mark Larranaga	Colin Byrne		
	Donna Morales	Pat Berrigan	Rebecca Dickens	
Computer B	Michael McMahon	James McWilliams		
	Patrik Barrigan	Rebeca Dickens		
	John Mauldin			
	John Mauldin			
	Michael Belter	Marcia Morrissey	Elisabeth Semel	
	Shelton Green	Michael Mears		
I the effects	Dr. Xavier Amador	Denise Young		
	Kelley Henry	Mandy Welch	Denise Young	
	John Blume	Julie Hall		
	Stuart Grassian	John Holdridge	John Blume	
	David Ruhnke	John Holdridge		
	Rose Valdez	Peter Cannon		
	Scharlette Holdman	Russ Stetler		
	Michael Wiseman	Anne Sunders	James McHugh	
	Shelton Green	Michael Mears		
	Judy Clarke	Jay Pultz	Susan Cary	
	Scharlette Holdman	Michael Laurence		
	Xavier Amador, Ph.D.	Kathy O'Donnell		
	Susan Cary	Rick Dudley	Russ Stetler	

1 PSYCHOTIC EPISODE ON NOVEMBER 25TH, 1997.

2 Q. ALL RIGHT, SIR. AND AS REGARDS TO HIS BIPOLAR
3 DISORDER, WAS THAT IN EFFECT AT THE TIME, ON
4 NOVEMBER 25TH, 1997, WAS HE EXPERIENCING THE
5 SYMPTOMS OF HIS BIPOLAR DISORDER ON THAT DATE?

6 A. IT IS MY OPINION THAT HE WAS NOT EXPERIENCING
7 THE SYMPTOMS OF BIPOLAR DISORDER, THOUGH IT WAS
8 MY OPINION THAT HE HAD BIPOLAR DISORDER DURING
9 THAT TIME.

10 Q. ALL RIGHT, SIR. HAVE YOU HAD OCCASION TO REVIEW
11 THE NOTES OF DR. TONI CASCIO?

12 A. I HAVE.

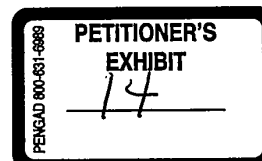
13 Q. AND YOU, OF COURSE, HAVE SAID THAT YOU HAD AN
14 OPPORTUNITY TO INTERVIEW THE DEFENDANT?

15 A. THAT'S CORRECT.

16 Q. ARE THE COMMENTS IN DR. CASCIO'S NOTES
17 CONSISTENT WITH THE DETAILS RELATED TO YOU BY
18 THE DEFENDANT?

19 A. I REVIEWED -- WAS PRESENTED WITH A COPY OF HER
20 NOTES THIS MORNING AND I REVIEWED THOSE AND
21 THOSE ARE GENERALLY CONSISTENT WITH THE NOTES
22 THAT I HAD FROM MY INTERVIEW WITH MR. ROBERTSON.

23 Q. ALL RIGHT, SIR, AND WE'VE HEARD ALL OF THAT, SO
24 JUST FOCUSING BRIEFLY ON THE FACTS AS RELATED TO
25 YOU, CAN YOU TELL US WHAT IT IS ABOUT THIS CASE





CLERK OF COURT'S OFFICE

Post Office Box 649, York, South Carolina 29745-0649

FAX TRANSMISSION

YORK COUNTY GOVERNMENT

PO Box 649

York, SC 29745

Office: (803) 628-3036

Fax: (803) 628-3133

To: Page Reid -Attorneys General Office

Date: 12/22/03

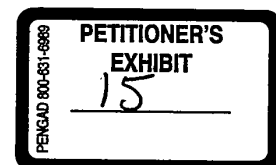
Fax #: 1-803-734-4035

Pages: 5 , including this cover sheet

From: Felicia -Clerk Of Court

Subject: James D. Robertson

Comments: COPY OF ORDER FOR EVALUATION AS TO COMPETENCY & CRIMINAL .
RESPONSIBILITY





The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

FILED-RECEIVED
2003 DEC 22 AM 11:05

CLERK OF COURT
YORK COUNTY, SC

VIA FACSIMILE 803-628-3133

TO: Clerk of Court - York County
FROM: Page Reid - Attorney General's Office *PR*
DATE: December 22, 2003

RE: James D. Robinson
98-GS46-1020, 1021, 1022, 1023

I need a copy of an Order signed by Judge Hayes and dated sometime around February 25, 1999 in the death penalty case referenced above. When you have located this Order, please fax to me at 803-734-4035.

Feel free to give me a call at 803-734-9020 if you should have any questions.

Thank you!

AHN:

Page,

*Could you please tell me what the order
is pertaining to.*

*Thank you,
Selicia*

Fundamental fairness dictates that the State be afforded the opportunity to verify or rebut evidence presented by the defense through expert testimony regarding the defendants mental status. Adequate rebuttal cannot be had without an independent examination. Estelle v. Smith, 451 U.S. 454 (1981); United States v. Albright, 388 F.2d 719 (4th Cir. 1968); State v. Sloan, 298 S.E. 2d 92.

An independent psychiatric examination under these circumstances is warranted and is a distinct aid in the determination and the administration of justice in order to confirm a claim of mental illness, discover fraudulent claims, or to rebut psychiatric testimony which can only reasonably be accomplished by the presentation of expert testimony. See State v. Myers, 67 S.E. 2d 506 (1951); State v. Jackson, 335 S.E. 2d 903 (N.C. Ct. App., 1985). It is therefore, under the circumstances of this case, within the inherent power of this court to require an independent psychiatric evaluation of the defendant where he may offer such evidence in this case.

NOW, THEREFORE, IT IS ORDERED that the Defendant shall be:

1. Examined and observed by independent examiners designated by the State for a period not to exceed fifteen (15) days, relative to his mental capacity. Prior to any examination the defendant shall be re-advised of his Constitutional privilege against self-incrimination, however he shall not be entitled to have counsel present during the examination. U.S. v. Albright, 388 F.2d 719 at 726 (4th Cir. 1968).
2. The report of the examination shall be made to the Court and the state

JCH#2

within five (5) days of the completion date of the examination. The report shall contain at minimum the following:

A. A diagnosis of the Defendant's mental condition; and

B. Clinical findings bearing on the issues of:

(1)(a) whether or not the defendant is capable of understanding the proceedings against him/her and assisting with his/her own defense; and

(b) if there is a substantial probability that he/she will attain such capacity in the foreseeable future;

and (2) whether or not, under the M'Naughten standard, the Defendant is criminally responsible for his actions on or about November 25, 1997;

and (3) if the Defendant is found responsible under the M'Naughten standard, whether or not, because of mental disease or defect, the Defendant lacked sufficient capacity to conform his conduct to the requirements of the law on or about November 25, 1997.

This examination is to take place immediately. Within Five (5) days of the examination or at the conclusion of the observation period by the independent agency, a written report shall be made to the Court.

IT IS FURTHER ORDERED that neither the results of the examinations, nor any communications made by the defendant during the examinations, shall be admissible in any criminal proceeding against the defendant unless:

get #3

1. The defense first interjects the mental status of the defendant as an issue
in either the guilt or the penalty phase of the trial; or

2. To rebut testimony or evidence offered by the defendant.

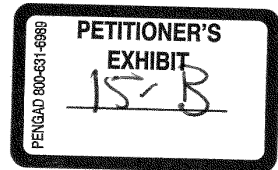
Nothing in this order shall be construed to abridge the defendant's Fifth
Amendment right to remain silent.

AND IT IS SO ORDERED.

York, South Carolina
February 17th 1999



Presiding Judge
Sixteenth Judicial Circuit #4



STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF
GENERAL SESSIONS

STATE OF SOUTH CAROLINA,
Plaintiff,
v.
JAMES D. ROBERTSON,
Defendant.

ORDER FOR EVALUATION AS
TO COMPETENCY AND
CRIMINAL RESPONSIBILITY

#98-GS-46-10207, 1021,
1022, 1023

FILED-RECEIVED
MAR 3 3 32 PM '99

The Court issued its's order dated February 17, 1999, wherein Defendant was ordered to undergo an independent mental evaluation. Defendant filed a motion seeking reconsideration of said order by the Court. This order disposes of Defendant's motion for reconsideration.

In addition to the well drafted briefs of counsel for Defendant and counsel for the State the Court had before for review and has again reviewed the following.

1. Psychological Final Summary from William S. Hall Institute by Dr. Ronald E. Prier for admission dates of August 24-31, 1995.
2. Psychological Evaluation of Dr. William Rothstein, Chief Psychology Service, William S. Hall Institute, dated August 25, 1998.
3. November 12, 1998, letter from Dr. Jonathan H. Pincus, M. D. to Ms. Drucy Glass.

Each of the three noted documents addressed Defendant and were proper for the Court's review. I find nothing prohibiting the Court's review of or use of these documents in ruling on the

JCH-#1

State's motion. I find the third document was submitted by Defendant pursuant to discovery. I find documents one and two were obtained by the State and do not appear to be covered by 42 U.S.C.A. § 290 dd-2 and thus not considered confidential under this Federal enactment. As to this section there is no showing it would apply to William S. Hall Institute (William S. Hall has not been shown to be or to be assisted by any department or agency of the United States). Also the submitted documents are not considered by the Court for the purpose of initiating or sustaining any criminal charges against a patient or as part of any investigation of a patient. Additionally, the admission in question was an involuntary admission based on potential dangerousness to defendant or others based at least in part on a threat. Admittedly the reports include matters dealing with substance abuse and a partial diagnosis of Axis I is alcohol dependence.

In any event, if any confidentiality was breached it was not a function of this Court and having been presented to the Court the Court can not ignore the records as they pertain to the issues before it. Also, even without the William S. Hall records, Dr. Pincus' letter to Ms. Glass, warrants and supports, alone, the Court's ruling herein and the February 17, 1999 order.

The Court has the inherent authority in appropriate circumstances, as the Court here finds exists, to order a Defendant to undergo an independent mental evaluation. U.S. v. Albright, 385 F2d 719 (4th Cir. 1968). Albright deals with a situation in which

JEH/2

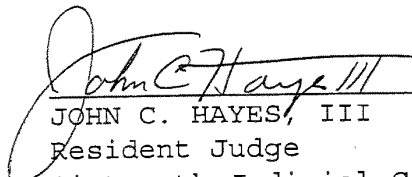
the Defendant asserted an insanity defense, not the case here. However, I find the rationale of Albright equally applicable here where mental issues are being explored by Defendant (Dr. Pincus' letter, Dr. Pincus named as potential witness; naming mental expert witnesses, Dr. Evans and Toni Cascio), and where, has here the current record reveals the presence of myriad mental issues which may be relevant as to issues which arise in a case wherein the death penalty is sought.

Defendant must be afforded his Fifth Amendment rights and be advised of same and specifically warned that he has a right to remain silent and that anything he says can and will be used against him in Court. Estelle v. Smith, 45 U.S. 454 (1981)..

Defendant has been afforded his Sixth Amendment right to counsel, but this right does not grant him the right to have counsel present during the psychiatric evaluations ordered in this Court's February 17, 1999 order. Defendant can be afforded the "guiding hand of counsel" prior to the examination and make his decisions regarding the evaluation accordingly. Albright, supra.

Defendant's Motion to Reconsider the Court's order of February 17, 1999, is Denied and said February 17, 1999 order remains in full force and effect.

IT IS SO ORDERED!


JOHN C. HAYES, III
Resident Judge
Sixteenth Judicial Circuit

#3

March 1, 1999
Spartanburg, S. C.

1 PENALTY. IT'S JUST A CALL THAT YOU GO THROUGH AT THAT
2 PARTICULAR TIME.

3 Q WELL, YESTERDAY, DID YOU NOT SAY IT POSSIBLY COULD HAVE
4 CHANGED THE OUTCOME?

5 A ANYTHING THAT WAS PUT BEFORE THE JURY POSSIBLY COULD
6 HAVE CHANGED THE OUTCOME. WE JUST DIDN'T KNOW WHAT. WE
7 WERE TRYING TO FIND SOMETHING.

8 Q AND YOU WOULD AGREE WITH ME THAT SHE WAS A HORRIBLE
9 WITNESS?

10 A OH, YES.

11 MR. BROWN: BEG THE COURT'S INDULGENCE JUST A SECOND.

12 A CAN I QUALIFY THAT, MR. BROWN?

13 Q SURE.

14 A I CAN'T SAY HORRIBLE. SHE WAS A BAD WITNESS.

15 MR. BROWN: NO FURTHER QUESTIONS, YOUR HONOR.

16 MR. SALTER: NOTHING FURTHER, YOUR HONOR.

17 THE COURT: ALL RIGHT. I WANT TO ASK A COUPLE OF
18 QUESTIONS REGARDING THE DECISION TO CALL THIS DOCTOR CASCIO.
19 DID I PRONOUNCE IT CORRECTLY? CASCIO?

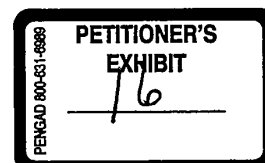
20 A CASCIO.

21 THE COURT: YOU AND MR. BOYD DID IN FACT KNOW ABOUT THE
22 NOTES WHEN YOU MADE THE DECISION TO CALL HER?

23 A WE HAD TO TURN THEM OVER, YES SIR.

24 THE COURT: BUT YOU PERSONALLY HAD READ THOSE NOTES?

25 A YES SIR.



JAMES HANCOCK - QUESTIONS BY THE COURT

1 THE COURT: AND YOU KNEW WHAT WAS IN THEM?

2 A YES SIR.

3 THE COURT: AND YOU REALIZED WHEN YOU PUT HER ON THE
4 STAND SHE WAS GOING TO BE CROSS EXAMINED ABOUT THE
5 CONTENTS OF THOSE NOTES?

6 A YES SIR, BECAUSE WE HAD THE DAY BEFORE, SHE HAD TO TURN
7 THEM OVER. SO, I KNEW THEY HAD THEM. NOW, AS FAR AS WHAT
8 DECISIONS WERE MADE AND HOW THEY WERE MADE, AS I SAID, I
9 DON'T REMEMBER. BUT WE REVIEWED EVERYTHING THAT THEY HAD
10 AND THEY---

11 THE COURT: NOW, MY QUESTION IS VERY SPECIFIC.

12 A YES SIR.

13 THE COURT: DID YOU ACTUALLY KNOW ABOUT THE NOTES
14 WHEN YOU MADE THE DECISION TO CALL THIS WITNESS TO TESTIFY?

15 A YES SIR, WE HAD TO, BECAUSE--

16 THE COURT: ALL RIGHT. I JUST WANT TO KNOW, YES OR NO.

17 A YES SIR.

18 THE COURT: AND THEN, SO YOU ACTUALLY HAD READ THE
19 NOTES?

20 A YES SIR.

21 THE COURT: AND THEN, IN MAKING THE DECISION TO CALL HER
22 TO TESTIFY DID YOU BALANCE WHAT YOU THOUGHT WOULD BE THE
23 BENEFIT FROM CALLING HER AGAINST THE OBVIOUS HARM THAT
24 WOULD COME FROM THE CONTENT OF THOSE NOTES COMING OUT?

25 A YES SIR, WE HAD TO DO THAT.

1 THE COURT: HOW FAR IN ADVANCE OF TRIAL DID YOU FIND OUT
2 ABOUT THESE NOTES?

3 A JUDGE, I CAN'T TELL YOU.

4 THE COURT: WELL, GIVE ME YOUR BEST ESTIMATE.

5 A MAYBE-- I WAS NOT DEALING WITH MS. CASCIO. JIM WAS
6 DEALING WITH HER. AND I DON'T EVEN HAVE-- IT WOULD HAVE ONLY
7 BEEN A WEEK OR SO AT THE MOST, PROBABLY. IT MIGHT HAVE BEEN
8 LONGER THAN THAT. BUT I CAN'T TELL YOU. I CAN'T EVEN-- I CAN'T
9 EVEN GIVE YOU A GOOD GUESS.

10 THE COURT: BUT YOU THINK IT WAS LESS, AROUND A WEEK?

11 A MAYBE A WEEK. THAT'S JUST A GUESS. AGAIN, I DO NOT
12 REMEMBER.

13 THE COURT: CAN I SEE THAT EXHIBIT, PLEASE?

14 MR. BROWN: YOUR HONOR, IF I MAY. AS TO PETITIONER'S
15 EXHIBIT NUMBER 5, I HAVE A COVER LETTER, THIS IS DATED MARCH 1,
16 1999. I HAVE A COVER LETTER SOMEWHERE THAT IS ADDRESSED TO
17 MR. HANCOCK WHERE THE PRELIMINARY REPORT AND NOTES WERE
18 MAILED MARCH 1. IF I CAN BEG THE COURT'S INDULGENCE JUST ONE
19 SECOND.

20 THE COURT: MARCH 1, 1999?

21 MR. BROWN: YES SIR. HERE IT IS.

22 THE COURT: AND THE TRIAL IS?

23 MR. BROWN: STARTED MARCH 15, YOUR HONOR. FOR THE
24 RECORD, I WOULD MOVE TO ADMIT THIS LETTER. IT'S THE COVER
25 LETTER THAT CAME WITH THE REPORT.

1 THE COURT: IS THERE ANY EVIDENCE THAT WE KNOW OF RIGHT
2 NOW AS TO WHEN THE NOTES WERE MADE, WHEN THE INTERVIEW
3 BETWEEN DOCTOR CASCIO AND THE DEFENDANT OCCURRED?

4 MR. BROWN: YES SIR. AND, BEGGING THE COURT'S
5 INDULGENCE, I CAN GIVE YOU THOSE DATES.

6 THE COURT: MADAM CLERK, WILL YOU GIVE THAT TO THE
7 COURT REPORTER OR WHOEVER IS KEEPING TRACK OF THE EXHIBITS.

8 (WHEREUPON LETTER DATED MARCH 1, 1999, WAS PASSED TO
9 THE COURT REPORTER AND MARKED AS APPLICANT'S EXHIBIT
10 NUMBER SIX.)

11 (PAUSE)

12 MR. BROWN: YOUR HONOR, AS IT IS RIGHT NOW, IT'S GOING TO
13 TAKE ME A COUPLE OF MINUTES TO FIND THEM. THERE WERE THREE
14 DATES, THREE OR FOUR TIMES SHE MAILED THEM IN '98.

15 THE COURT: ALL RIGHT. THOSE FACTS ARE GOING TO NEED TO
16 BE PROVEN BEFORE THE END OF THE TRIAL.

17 GO AHEAD. YOU CAN CALL YOUR NEXT WITNESS. COME ON
18 DOWN, SIR. THANK YOU. UNLESS EITHER OF YOU WISHES TO RESPOND
19 BY FOLLOW-UP TO MY QUESTIONS.

20 MR. SALTER: I DON'T HAVE ANY QUESTIONS, YOUR HONOR.

21 MR. BROWN: I JUST WANT TO MAKE THE POINT THAT THE
22 INFORMATION I HAVE IS IT WAS MAILED MARCH 1, 1999.

23 THE COURT: THANK YOU.

24 MR. SALTER: WE WOULD ASK THAT MR. HANCOCK BE EXCUSED.

25 MR. BROWN: WITHOUT OBJECTION.

1 THE COURT: HE'S EXCUSED.

2 MR. BROWN: YOUR HONOR, MAY WE APPROACH ONE SECOND?

3 (WHEREUPON A BENCH CONFERENCE TOOK PLACE)

4 THE COURT: I UNDERSTAND THAT THE STATE IS GOING TO CALL
5 A WITNESS OUT OF ORDER WITH THE CONSENT OF THE APPLICANT.

6 MR. BROWN: THAT'S CORRECT, YOUR HONOR.

7 MR. SALTER: YES SIR, YOUR HONOR. THE STATE WOULD CALL
8 SOLICITOR POPE.

9 THOMAS E. POPE, DULY SWORN,
10 TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION BY MR. SALTER:

12 Q MR. POPE, WOULD YOU STATE YOUR FULL NAME FOR THE
13 RECORD?

14 A THOMAS E. POPE, P-O-P-E.

15 Q WHERE AND HOW ARE YOU CURRENTLY EMPLOYED?

16 A I'M EMPLOYED AT THOMAS E. POPE AND ASSOCIATES IN ROCK
17 HILL, ACROSS THE STREET.

18 Q HOW LONG HAVE YOU BEEN IN PRIVATE PRACTICE?

19 A A MONTH AND A HALF, TWO MONTHS.

20 Q PRIOR TO THAT TIME YOU WERE THE SOLICITOR HERE?

21 A I HAVE, SIR. I'VE RETIRED AS THE SOLICITOR OF THE SIXTEENTH
22 CIRCUIT.

23 Q HOW LONG WERE YOU SOLICITOR?

24 A I GOT ELECTED IN '92; APPROXIMATELY FOURTEEN YEARS, I
25 BELIEVE.

THOMAS POPE - CROSS EXAMINATION BY MR. BROWN

1. WEDNESDAY, JANUARY 31, 2007 - COURT IN SESSION - 1:00 P.M.

2 MR. BROWN: YOUR HONOR, BEFORE WE BEGIN, BY AGREEMENT
3 WE HAVE STIPULATED-- AND I THINK IT WAS A BIT OF AN OVERSIGHT
4 ON MY BEHALF. I INTRODUCED A LETTER YESTERDAY AND YOU
5 INITIALLY REQUIRED, WHERE MR. HANCOCK GOT A PRELIMINARY
6 REPORT FROM MS. CASCIO. THE LETTER WAS MARKED MARCH 1, 1999.
7 BY AGREEMENT WE ARE MOVING THAT INTO EVIDENCE.

8 YOUR HONOR, I'VE ALSO GIVEN MR. SALTER A COPY OF THE
9 REMAINDER OF MS. CASCIO'S NOTES. THESE ARE THE ORIGINALS. I
10 HAVE A COPY. I WANT TO MOVE THE ORIGINALS INTO EVIDENCE BY
11 AGREEMENT.

12 MR. SALTER: THAT'S CORRECT, YOUR HONOR.

13 THE COURT: DOES EVERYBODY HAVE COPIES OF THE FULL SET
14 OF NOTES?

15 MR. SALTER: YES SIR, YOUR HONOR.

16 MR. BROWN: YES SIR.

17 THE COURT: SO, THE FULL SET OF NOTES OBVIOUSLY IS A GOOD
18 BIT MORE THAN WHAT I HAVE REVIEWED---

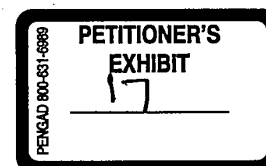
19 MR. BROWN: THAT IS CORRECT, ---

20 THE COURT: ---AS APPLICANT'S EXHIBIT FIVE?

21 MR. BROWN: ---YOUR HONOR.

22 THE COURT: AND---

23 MR. BROWN: EVERYONE HAS A COPY, YOUR HONOR. THOSE ARE
24 THE ORIGINALS.



1 THE COURT: IS THIS THE-- IS THIS WHAT-- IS THIS THE ORIGINAL
2 OF WHAT SOLICITOR POPE WAS GIVEN THE NIGHT BEFORE DOCTOR
3 CASCIO TESTIFIED?

4 MR. BROWN: THAT'S WHAT I'M A LITTLE BIT CONFUSED, YOUR
5 HONOR. I'M GOING TO ASK MR. BOYD ABOUT THAT TODAY.

6 THE COURT: HERE, JUST SHOW HIM.

7 MR. BROWN: HE'S GOT A COPY, YOUR HONOR.
8 (WHEREUPON APPLICANT'S EXHIBITS SIX AND SEVEN WERE ADMITTED
9 INTO EVIDENCE WITHOUT OBJECTION)

10 THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS WHENEVER
11 YOU'RE READY.

12 MR. BROWN: AND YOUR HONOR, ONE LAST THING, THE COURT
13 INQUIRED, AND WE AGREED UPON, THAT MS. CASCIO INTERVIEWED
14 MR. ROBERTSON ON THE FOLLOWING DAYS, AND THIS IS FROM THE
15 TRANSCRIPT: JULY 17, 1998, JULY 22, 1998. THERE'S A NOTATION THAT
16 ONE OCCURRED IN NOVEMBER OF 1998, IN HER NOTES, BUT THE
17 TRANSCRIPT REFLECTS IT WAS NOVEMBER 30, 1998. THERE'S ONE,
18 WHICH IS ALREADY IN EVIDENCE, OF DECEMBER 7, 1998.

19 THE COURT: REPEAT THOSE DATES AGAIN, PLEASE.

20 MR. BROWN: JULY 17, 1998, JULY 22, 1998, NOVEMBER 30, 1998,
21 DECEMBER 7, 1998.

22 THE COURT: THOSE ARE THE DATES THAT SHE MET WITH HIM?

23 MR. BROWN: YES SIR.

24 THE COURT: IS THERE EVIDENCE IN THE RECORD THAT
25 CORRELATES THOSE MEETING DATES WITH THESE NOTES?

1 MR. BROWN: YOUR HONOR, THE DATES IN THE RECORD ARE
2 JULY 17, 1998, JULY 22, 1998, NOVEMBER OF '98. BUT IN HER NOTES IT
3 REFLECTS THE DATE OF NOVEMBER 30, 1998.

4 THE COURT: SO, THE NOTES WERE MADE FROM THE FIRST
5 THREE MEETINGS?

6 MR. BROWN: AND DECEMBER 7, WHICH IS ALREADY IN THE
7 RECORD, YOUR HONOR. THAT'S WHAT YOU ALREADY READ AND WAS
8 ATTACHED TO THE MARCH 1, LETTER WITH THE PRELIMINARY
9 REPORT, NOTES FROM DECEMBER 7.

10 MR. SALTER: AND YOUR HONOR, IF I MIGHT ADD THAT ON
11 CROSS EXAMINATION SOLICITOR POPE ESTABLISHED THAT AT LEAST
12 TWO OF THOSE DATES WERE IN FACT ACCURATE, THE NOVEMBER 30
13 AND DECEMBER 7 DATES, WHICH SPECIFICALLY REFERS TO NOTES
14 FROM THOSE DAYS.

15 THE COURT: AND THE TRIAL WAS MARCH OF '99?

16 MR. BROWN: MARCH 15, 1999, YOUR HONOR.

17 THE COURT: OKAY.

18 MR. BROWN: WE CALL TO THE STAND JIM BOYD.

19 THE COURT: WELL, LET ME ASK ONE MORE QUESTION ABOUT
20 THE NOTES. THE PORTION OF THE-- THE NOTES OBVIOUSLY DEAL
21 WITH A LOT MORE THAN JUST WHAT ROBERTSON SAID ABOUT WHAT
22 HAPPENED AT THE TIME OF THE KILLINGS.

23 MR. BROWN: CORRECT, YOUR HONOR.

1 THE COURT: THE NOTES ABOUT WHAT HE SAID ABOUT WHAT
2 HAPPENED AT THE TIME OF THE KILLING, ARE THEY ALL FROM ONE
3 INTERVIEW?

4 MR. BROWN: NO SIR. TO THE BEST OF MY RECOLLECTION, NO
5 SIR.

6 THE COURT: WELL, WHICH INTERVIEW DID THOSE COME FROM?
7 IS THAT WHAT YOU WERE REFERRING TO A SECOND AGO?

8 MR. SALTER: TO GIVE SOME DIRECTION, ON CROSS
9 EXAMINATION THE RECORD REFLECTS THAT SOLICITOR POPE ASKED
10 HER A SERIES OF QUESTIONS NOT RELATED TO THE CRIME ITSELF, BUT
11 FROM THE NOVEMBER 30, NOTES. AND THE REMAINING QUESTIONS
12 DEAL WITH THE CRIME ITSELF. I THINK VIRTUALLY ALL THOSE CAME
13 FROM THE DECEMBER 7 INTERVIEW.

14 THE COURT: OKAY. SO,—

15 MR. SALTER: THOSE WERE THE NOTES THAT I HAD AND
16 PROVIDED A COPY TO OPPOSING COUNSEL.

17 MR. BROWN: THAT'S CORRECT, YOUR HONOR.

18 THE COURT: OKAY, I'M READY.

19 MR. BROWN: WE CALL TO THE STAND, JIM BOYD.

20 JAMES W. BOYD, DULY SWORN, TESTIFIED AS
21 FOLLOWS:

22 DIRECT EXAMINATION BY MR. BROWN:

23 Q YOU'RE JAMES W. BOYD?

24 A THAT'S CORRECT.

25 Q HOW DID YOU BECOME INVOLVED IN THIS CASE?

1 A I THINK I DID A RE-DIRECT, BUT I DON'T REMEMBER WHAT I
2 ASKED AT THAT TIME OR ANY OF THE DETAILS OF THAT.

3 MR. SALTER: I DON'T BELIEVE I HAVE ANYTHING FURTHER,
4 YOUR HONOR.

5 RE-DIRECT EXAMINATION BY MR. BROWN:

6 Q ON RE-DIRECT EXAMINATION OF MS. CASCIO, STARTING WITH
7 2856, QUESTION BY YOU:

8 "Q. WHAT WERE YOU ASKED TO DO IN REFERENCE TO THIS
9 CASE?

10 A. I WAS ASKED TO CONDUCT A SOCIAL HISTORY ASSESSMENT.

11 Q. OF WHO?

12 A. OF JIMMY ROBERTSON.

13 Q. OKAY. AND WHAT IS A SOCIAL HISTORY ASSESSMENT?

14 A. IN A SOCIAL HISTORY ASSESSMENT, WHAT YOU DO IS GET A

15 VARIETY OF DATA FROM A NUMBER OF DIFFERENT SOURCES.

16 YOU SIT DOWN, YOU ANALYZE IT, YOU SYNTHESIZE IT, YOU TRY

17 TO COME UP WITH WHAT'S THE DEFINITION OF THE PROBLEM.

18 AND THEN YOU LOOK AT WHAT FACTORS CONTRIBUTED TO

19 THAT PROBLEM AND MAINTAINED THAT PROBLEM.

20 Q. WHAT DID YOU DO IN YOUR ASSESSMENT OF THIS CASE?

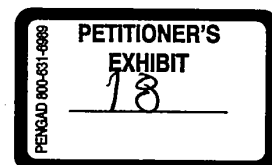
21 WHAT DID YOUR ASSESSMENT IN THIS CASE CONSIST OF IN

22 GENERAL TERMS OF HOW'D YOU GO ABOUT IT?

23 A. I LOOKED AT A VARIETY OF DOCUMENTS HAVING TO DO

24 WITH THE ROBERTSON FAMILY. I LOOKED AT MEDICAL AND

25 PSYCHOLOGICAL RECORDS FROM ALL MEMBERS OF THE



JAMES BOYD - RE-DIRECT EXAMINATION BY MR. BROWN

1 FAMILY. I ALSO EXAMINED EARL ROBERTSON'S WORK
2 DOCUMENTS, SOME OF JIMMY'S INCARCERATION DOCUMENTS,
3 THE PERSONAL NOTEBOOKS OF TERRY ROBERTSON. I ALSO
4 CONDUCTED ABOUT THIRTEEN INTERVIEWS WITH PEOPLE WHO
5 WERE FROM A VARIETY OF AREAS OF JIMMY'S LIFE."

6 IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q NOWHERE IN THERE DOES SHE SAY SHE EVER INTERVIEWED
9 JIMMY. IS THAT CORRECT?

10 A NO, SHE DOESN'T.

11 Q AS A MATTER OF FACT, HER JOB IN THIS CASE WAS NOT TO GET
12 INTO THE DETAILS OF THIS CRIME, BUT TO CONDUCT A SOCIAL
13 HISTORY OF WHAT LED UP TO THIS PROBLEM.

14 A THAT'S CORRECT.

15 Q SO, SHE BASICALLY WENT ON A FISHING EXPEDITION NOT
16 RELATED TO WHAT SHE WAS THERE FOR.

17 A I DON'T KNOW HOW MUCH DETAIL SHE NEEDS TO GET TO
18 RELATE WHAT HAPPENED TO THE SOCIAL HISTORY. SO, I DON'T KNOW
19 AS I'M QUALIFIED TO ANSWER THAT. BUT IT WASN'T HER JOB TO GET
20 DETAILS OF THE CRIME, IF THAT'S WHAT YOU'RE SAYING.

21 Q BUT AS WE ALL KNOW, SHE DID THAT ANYWAY. IS THAT
22 CORRECT?

23 A THAT'S CORRECT.

24 Q WOULD IT BE SAFE TO SAY, OR, COULD ONE OF THE
25 CONTRIBUTING FACTORS TO HER GOING BEYOND THE SCOPE OF HER

1 EMPLOYMENT, FOR LACK OF A BETTER TERM, WAS HER
2 INEXPERIENCE?

3 A THAT'S A POSSIBILITY.

4 Q MR. SALTER ASKED YOU ABOUT THE MENTAL ILLNESS. DID NOT
5 DOCTOR PINCUS TESTIFY ON RE-CROSS BY MR. BRACKETT THAT IT
6 WAS THAT EXPERIENCE, PLUS THE PSYCHIATRIC DISEASE, PLUS THE
7 NEUROLOGICAL DISEASE AND THE DRUGS THAT BROUGHT HIM TO
8 THIS TERRIBLE, TERRIBLE SITUATION AND THIS TERRIBLE, TERRIBLE
9 ACT?

10 A THAT'S CORRECT.

11 Q THAT WOULD QUALIFY AS MENTAL ILLNESS, WOULD IT NOT?

12 A YES. WELL, THE DRUGS PART WOULD, YES.

13 Q AND ALSO, ON DIRECT BY MR. HANGOCK, DID HE NOT ALSO
14 TESTIFY, "WELL, IT WAS AN IMPULSE. THE NERVES WERE NOT ONLY
15 STIMULATED BY THE DRUGS HE WAS ON. AND THE MANIA HE WAS
16 HAVING WAS ALSO NOT CHECKED BY THE FUNCTIONING OF HIS
17 FRONTAL LOBE AT THE TIME, WHICH WAS NOT WORKING WELL
18 BECAUSE OF THE MEDICINE HE HAD TAKEN AND BECAUSE OF THE
19 ALCOHOL THAT HE HAD DRUNK AND BECAUSE THE STATUS OF HIS
20 BRAIN TO BEGIN WITH. THE THREE THINGS COMBINED, THE DISEASE,
21 THE DRUGS HE WAS ON, THE DAMAGE HE WAS ALREADY CARRYING."?

22 A THAT'S CORRECT.

23 Q AND YOU WOULD AGREE WITH ME THAT WOULD QUALIFY AS A
24 MENTAL ILLNESS. CORRECT?

25 A YES.

1 QUESTION-- FIRST OF ALL, THERE'S NO EVIDENCE AS TO WHAT HER
2 ANSWER WOULD HAVE BEEN. SHE MIGHT HAVE HAD AN
3 EXPLANATION FOR THAT THAT TOTALLY NEUTRALIZED ANY
4 PREJUDICIAL EFFECT THAT MAY HAVE AGAINST HER CREDIBILITY. WE
5 DON'T KNOW THAT. AND SO, THERE'S NO BASIS ON WHICH I COULD
6 CONCLUDE THAT THE OUTCOME OF THE TRIAL COULD HAVE BEEN
7 ANY DIFFERENT.

8 THAT LEAVES-- OKAY. THE ONE ADDITIONAL THING YOU SAID
9 WAS THAT COUNSEL DID NOT PROPERLY ADVISE MR. ROBERTSON
10 BEFORE HE WENT DOWN TO THE STATE'S MENTAL EVALUATION. AND
11 THAT WAS DOCTOR WHO?

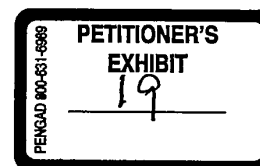
12 MR. BROWN: DOCTOR McKEE, YOUR HONOR.

13 THE COURT: DOCTOR McKEE. AND DOCTOR McKEE IS THE ONE
14 THAT Y'ALL JUST TOLD ME WHEN HE TESTIFIED, HE DID NOT TESTIFY
15 CONCERNING THE SUBSTANCE OF WHAT MR. ROBERTSON TOLD HIM.
16 ABOUT THE DETAILS OF THE CRIME. CORRECT?

17 MR. BROWN: THAT'S CORRECT, YOUR HONOR.

18 THE COURT: SO, EVEN IF-- AND, YOU KNOW, I DON'T KNOW
19 WHAT COUNSEL TOLD HIM, EXCEPT THAT THEY TOLD ME. WELL, THAT
20 ALLEGATION HAS SEVERAL LEVELS ON IT. FIRST OF ALL, COUNSEL
21 SHOULD HAVE ADVISED HIM NOT TO DISCUSS THE FACTS OF THE CASE
22 WITH THE STATE'S DOCTOR. THEY DID THAT. I FIND THAT AS A FACT
23 THAT THEY DID THAT.

24 SECOND OF ALL, COUNSEL SHOULD HAVE DONE EVERYTHING
25 THEY COULD TO MAKE SURE THAT THIS OVER-TALKATIVE



1 DEFENDANT DIDN'T DISOBEY THEIR INSTRUCTIONS WHEN HE WENT
2 DOWN THERE. THERE'S NO EVIDENCE THAT THEY DID THAT. AND
3 THAT, UNDER SOME CERTAIN CIRCUMSTANCES COULD HAVE BEEN
4 INEFFECTIVE. BUT AS I UNDERSTAND IT, THEY WERE NOT ALLOWED
5 INTO THE MEETING WITH DOCTOR McKEE. AND THAT, THEREFORE,
6 BECOMES AN APPELLATE ISSUE RATHER THAN A PCR ISSUE.

7 IF JUDGE HAYES WAS INCORRECT IN RULING THAT BOYD AND
8 HANCOCK WERE NOT TO BE ALLOWED IN THAT MEETING IN ORDER TO
9 CONTROL WHAT MR. ROBERTSON MIGHT SAY CONCERNING THE FACTS
10 OF THE CASE, THAT'S AN APPELLATE ISSUE, NOT AN INEFFECTIVENESS
11 ISSUE. BUT EVEN TO THE EXTENT IT IS AN INEFFECTIVENESS ISSUE,
12 THERE'S NO EVIDENCE THAT IT COULD HAVE MADE ANY DIFFERENCE
13 BECAUSE McKEE DID NOT TESTIFY TO THOSE PREJUDICIAL FACTS.
14 THEY DIDN'T COME OUT AT TRIAL. THEY DIDN'T AFFECT WHAT THE
15 JURY'S DECISION WAS.

16 SO, THAT LEAVES US WITH TWO CATEGORIES OF CLAIMS. I
17 THINK I HAVE RULED ON EVERYTHING EXCEPT THESE TWO
18 CATEGORIES OF CLAIMS. ONE IS THE FAILURE TO DEVELOP THE
19 MENTAL HEALTH HISTORY OF THE ENTIRE FAMILY, WHICH WOULD
20 INCLUDE THE FAILURE TO PROPERLY CROSS EXAMINE SKIP MEYER,
21 AND THE ISSUES SURROUNDING DOCTOR CASCIO.

22 NOW, I THINK THOSE ARE INTERTWINED BECAUSE DOCTOR
23 CASCIO'S TESTIMONY IS THE VEHICLE BY WHICH COUNSEL WENT
24 ABOUT DEVELOPING THE FAMILY'S MENTAL HEALTH HISTORY, OR AT
25 LEAST, IT'S THE MAJOR VEHICLE BY WHICH THEY DID THAT.

1 AND SO, TO THAT EXTENT, YOU KNOW, YOUR CLAIMS ARE A
2 LITTLE CONTRADICTORY. SO, CLEARLY, I THINK THE LAWYERS COULD
3 HAVE DEVELOPED THE FAMILY MENTAL HEALTH HISTORY MORE
4 COMPLETELY. THERE'S NO DOUBT ABOUT THAT. BUT I CAN'T SIT
5 HERE AND SAY THAT THERE ISN'T A POINT AT WHICH YOU REACH
6 ENOUGH. AND WHERE THAT POINT IS IN A FAMILY LIKE THIS IS A
7 JUDGMENT CALL THAT HAS TO BE MADE DURING THE COURSE OF THE
8 TRIAL. AND I FIND NO REASON TO BELIEVE THAT THE DECISION TO
9 PRESENT NO MORE OF THE FAMILY'S MENTAL HEALTH HISTORY THAN
10 THEY DID WAS UNREASONABLE.

11 AND, SECONDLY, I FIND THAT BASED ON THAT I HAVE HEARD,
12 BASICALLY WHAT YOU HAVE PRESENTED IN ADDITIONAL MENTAL
13 HEALTH EVIDENCE REGARDING THE FAMILY ARE THESE RECORDS
14 THAT YOU PUT IN. YOU HAVEN'T PUT IN ANY ADDITIONAL
15 TESTIMONY, THE RECORDS. AND I WILL SAY THAT THAT IS AN
16 INSUFFICIENT BASIS, IN MY OPINION, ON WHICH FOR ME TO
17 CONCLUDE, UNDER THE SECOND PRONG OF STRICKLAND, THAT THE
18 OUTCOME OF THE TRIAL COULD HAVE BEEN ANY DIFFERENT.

19 SO, ON THE GROUP OF CLAIMS THAT RELATE TO THE AMOUNT
20 OF MENTAL HISTORY THAT COUNSEL CHOSE TO PRESENT TO THE
21 JURY, I FIND THAT THE APPLICANT HAS FAILED ON BOTH PRONGS OF
22 THE STRICKLAND TEST.

23 AND SO, THAT GETS US DOWN TO CASCIO. BEFORE I GET INTO
24 CASCIO, IS THERE ANYTHING THAT YOU WOULD LIKE TO POINT OUT
25 TO ME NOW WHERE I MIGHT HAVE MISSED SOMETHING, OR WHERE I

1 MIGHT HAVE MIS-REMEMBERED SOMETHING OR OVERLOOKED
2 SOMETHING? ANYTHING I SAID THAT YOU THINK IS WRONG, BASED
3 ON THE EVIDENCE?

4 I MEAN, OBVIOUSLY, YOU DISAGREE WITH WHAT I'VE SAID. BUT
5 IF YOU THINK I HAVE NOT CONSIDERED SOMETHING THAT IS
6 IMPORTANT, OR IF I HAVE MISUNDERSTOOD SOMETHING, THEN PLEASE
7 POINT THAT OUT TO ME NOW.

8 MR. BROWN: NO SIR, YOUR HONOR. IF YOU DON'T FIND ON
9 STRICKLAND, THE FIRST PRONG OF STRICKLAND, THE ONLY EVIDENCE
10 I FORGOT TO OFFER, AND THE BEST EVIDENCE FROM MY PERSPECTIVE
11 OF THIS TRIAL, IS NOT BECAUSE OF THE DOCTORS, AS MR. BOYD
12 POINTED OUT, THAT EXPLAIN IT AWAY. THE RECORDS SPEAK FOR
13 THEMSELVES, YOUR HONOR.

14 THE COURT: ALL RIGHT. NOW, REGARDING CASCIO, YOU'VE
15 GOT WHAT I THINK ARE FOUR BASIC CLAIMS. FIRST OF ALL, YOU
16 CLAIM THAT BECAUSE SHE HAD NEVER TESTIFIED IN A DEATH
17 PENALTY CASE BEFORE; IN FACT, NEVER TESTIFIED AT ALL BEFORE,
18 THAT THE DECISION TO USE HER AS A CONSULTANT AND A WITNESS IN
19 THE FIRST PLACE WAS AN UNREASONABLE DECISION, AND I DISAGREE
20 WITH THAT.

21 I THINK THAT VARIOUS-- THERE ARE PROS AND CONS TO
22 HAVING EXPERIENCED, EXPERT WITNESSES. SOME WITNESSES WHO
23 HAVE TESTIFIED IN A LOT OF DEATH PENALTY CASES ARE OPEN TO
24 EFFECTIVE CROSS EXAMINATION ABOUT THE BIASES AND THE
25 PREJUDICES THAT THOSE WITNESSES BRING INTO A TRIAL OF THIS

POST CONVICTION RELIEF

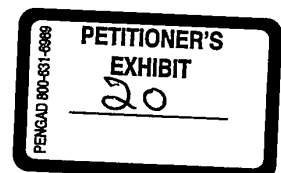
James D. Robertson

Common Pleas

06-CP-46-532

General Sessions

98-GS-46-1020
Thru 1023





CLERK OF COURT'S OFFICE

P.O. Box 649, York, South Carolina 29745

March 14, 2006

Julia M. Thames
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211-1549

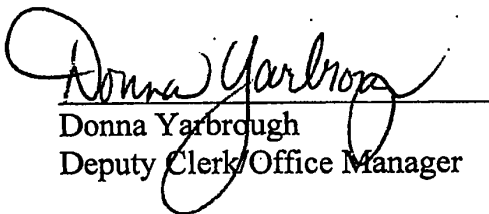
Re: Post Conviction Relief Application – James D. Robertson

Ms. Thames:

Enclosed please find a copy of the Post Conviction Relief Application for the above named person. Please be advised Mr. Robertson already has two attorneys. They are as follows:

Michael L. Brown
P. O. Box 1025
Rock Hill, SC 29731

Joseph D. Matlock
P. O. Box 11101
Rock Hill, SC 29731


Donna Yarbrough
Deputy Clerk/Office Manager

cc: Thomas E. Pope, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF YORK

JAMES D. ROBERTSON

SCDC ID #00005067

v.

STATE OF SOUTH CAROLINA

FILED-RECEIVED
FORM 5

2006 MAR -1 AM 11:29

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS

06-CX16-532

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS- READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the application and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of Detention: Lieber Correctional Institution
2. Name and Location of Court which imposed sentence: York County General Sessions

3. Name(s) of co-defendant(s) (if any): None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
- (a) Armed Robbery; 97-GS-461020
- (b) Credit Card Fraud; 97-GS-461021
- (c) Fraudulent Check; 97-GS-46-1022
- (d) Murder; 97-GS-461023
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 26, 1999, Death Sentence
6. Check whether a finding of guilty was made:
- (a) After a plea of not guilty ✓
- (b) After a plea of guilty _____
- (c) After a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- Yes
8. If you answered "yes" to (7), list:
- (a) The name of each Court to which you appealed:
- i. South Carolina Supreme Court
- ii. _____
- iii. _____
- (b) The result in each such Court to which you appealed:
- i. The Defendant dropped the appeal

ii. _____

iii. _____

(c) The date of each such result:

i. 2002

ii. _____

iii. _____

(d) If known, citations of any written opinion or orders entered pursuant to such results:

i. Not Applicable

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel- specifics to be amended later.

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Ineffective assistance of counsel which resulted in an unjust conviction.

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) Any Petition in a State Court under South Carolina Law? No

(b) Any Petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) Any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) Any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes: to any part of (12), list with respect to each petition, motion or application: Not Applicable

(a) The Specific nature thereof: _____

i. _____

ii. _____

iii. _____

iv. _____

(b) The name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(b) The disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(e) If known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented tot his or any other Court, State or Federal, in any petition, motion or application which you have filed?

No _____

15. In you answered "yes" to (14) identify:

(a) Which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) The proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective assistance of counsel

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) Your arraignment and plea? Yes

(b) Your trial, if any? Yes

(c) Your sentencing? Yes

(d) Your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes until the Defendant dropped the appeal.

(e) Preparation, presentation, or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) The name and address of each attorney who represented you:

i. James Boyd, 1544 Ebenezer Road, PO Box 36425, Rock Hill, South Carolina 29732.

ii. James W. Hancock, PO Box 2851, Rock Hill, South Carolina 29732

iii. _____

(b) The proceedings at which each such attorney represented you:

i. At the trial of the above-referenced indictments.

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

Overturn of my conviction and a new trial.

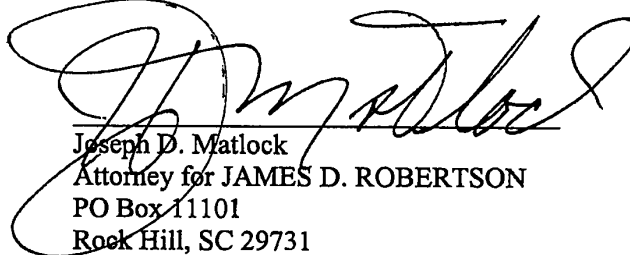
20. Are you now under sentence from any other court that you have not challenged?

No

Respectfully submitted,



Michael L. Brown, Jr.
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ORIGINAL

FILED - RECEIVED

STATE OF SOUTH CAROLINA - I AM 11:30

COUNTY OF YORK

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS

JAMES D. ROBERTSON
SCDC ID #00005067

06-CP46-532

v.

STATE OF SOUTH CAROLINA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Application for Post-Conviction Relief, regarding the above-referenced case, was placed in the United States Mail, postage prepaid, addressed to the following:

Tommy Pope
Solicitor
Moss Justice Center
1675 1-A York Hwy
York, South Carolina 29745

W. Edgar Salter, III
Attorney General
PO Box 11549
Columbia, SC 29211

DATED this 28th day of February, 2006.



MELANIE S. HOLLIMAN, Paralegal
LAW OFFICES OF MICHAEL L. BROWN, JR.
P.O. Box 1025
Rock Hill, South Carolina 29731
(803) 328-8822

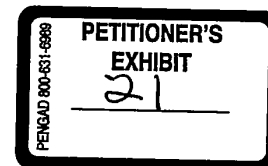
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terms to [his father];" and other comments concerning the social history, such as the turbulent relationship he had with Earl, Sr. Tr. pp. 2955-70; 2979-3008.

Robertson also complains of the damage to the defense's case by the State's cross-examination regarding admissions he made to Ms. Cascio concerning the facts of the crime and his activities around the time of the murder, including admissions that:

- he had taken 250-280 mg of Ritalin over the course of the previous evening and the morning of the murders;
- Meredith Moon and Erin Savage were at the residence for approximately two hours that morning;
- he and Moon snorted 40 mgs. of Ritalin at that time;
- he continued to use Ritalin after they left;
- he talked to Chip for about two hours about coming home for Thanksgiving, and that Chip was dropping out of school;
- he later called Moon and spoke to her on two or three occasions;
- he asked Moon to give him \$ 75.00 to get Chip home and, although she wouldn't give him money, she agreed to drive up and get Chip;
- Moon was infatuated with him and would have done anything he asked;
- After Moon came to his house, they began talking about the problems surrounding Chip coming home and "somehow it led to I'm going to do it;"
- he discussed which bat to use;
- he decided not to use the wooden one because it was autographed and he did not want to ruin it;
- he condensed two bottles of Tilex;
- he sat in his room and waited for his father to get in the shower before killing his mother because there would be noise;
- he took the phone off of the hook and laid a knife in the hallway in case his father came in;
- he went in the bedroom and started struggling with his mother, who began screaming for his father;
- "it was getting at me to hear her screaming;"
- he was "in a rage like a maniac;"
- he came downstairs and said "one down, one to go;"
- he laid the bat at the top of the stairs, sat and waited with the hammer "like I was standing on the other side of myself watching me;"
- it was "like someone else committing the crime and I was watching;"
- he sprayed Tilex in his father's eyes and buried the hammer in his head;
- his father "put up a fight with the hammer stuck in his head;"

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- eventually, his father fell to the ground and Petitioner hit him 200 times with the hammer and bat;
- he said that "22 years of hatred came out;"
- it was "overkill" and he "went on and on and on and on;"
- he then went into the bedroom and checked on his mother;
- he hit his mother in the head with the hammer to make sure that she was dead;
- Moon thought he was going to kill her;
- he later heard a noise upstairs and it was his father breathing into the carpet;
- he wondered "how is he still breathing;"
- he "went to find the drill to end the matter;"
- he then took the bat upstairs to beat his father again and he kicked him with his toe to make sure he was dead;
- he cleaned up, took the money and car keys and packed stuff to dump;
- he said that "Meredith's testimony wasn't good enough by itself;"
- he broke the window downstairs to make it look like a robbery;
- a man pulled up across the street and he waived then got in car and left;
- he explained how he used his father's credit card, and how he stopped and bought Neosporin for his finger;
- he was going to get Chip and bring him to South Carolina, where they would discover his parents;
- no one would notice that his parents were missing;
- what he had done would not be a surprise to his brother;
- he called home and realized that someone had found the bodies and put the phone back on the hook;
- he thought he was "too smart to let this happen," meaning getting caught;
- Meredith was "running her mouth" but he never confessed; and
- he killed his mother because he couldn't live with her knowing that he killed his father.

Tr. pp. 3009-25.

Finally, the Court would note that, before the State began cross-examining Ms. Cascio about Robertson's admissions related to the murders, she was specifically asked whether she took Robertson's statements about the crime into consideration informing her evaluation of him. Ms. Cascio replied, "I was looking at early childhood history that could have led him to that point;" and she agreed that she factored Robertson's statements into her assessment. Tr. p. 3010, ll. 10-22.

Mr. Hancock testified that Ms. Drucie Glass and the Center for Capital Litigation, which specialized in providing assistance to defense lawyers trying capital cases, recommended that the defense hire Ms. Cascio as a social worker and they hired her. Counsel were well aware of her limited experience and that she had never testified as a forensic social worker. *See* Applicant's Ex. 4 (curriculum vitae for Toni A. Cascio), Tr. pp. 2852-55. However, another social worker with experience (Ms. Glass) and the Center for Capital Litigation had recommended Ms. Cascio. Also, counsel had met with Ms. Cascio a number of times over the course of a year to prepare her testimony, and Mr. Hancock did not report any problems in terms of her gathering information for the social history of Robertson. Nor were counsel able to locate a more experienced social worker.

It was Mr. Hancock's recollection that counsel objected to production of Ms. Cascio's notes, which contained a number of admissions by Robertson with which Ms. Cascio was cross-examined by the State at trial. Both attorneys, however, made the joint decision to present her as a witness even though they were aware that her notes would have to be disclosed to the prosecution because counsel felt that she was a necessary part of the defense's case in mitigation. Mr. Hancock was not happy with the State's cross-examination of Ms. Cascio and felt that she hurt the defense. However, he testified that she had provided the jury with a good deal of mitigating evidence on direct examination.⁵⁵

⁵⁵ Mr. Pope characterized Ms. Cascio as the one defense expert who could pull together the various matters testified to by the other experts for the jury's benefit.

As discussed, Mr. Boyd mistakenly thought that Mr. Hancock had already hired the defense experts before he was appointed.⁵⁶ However, Mr. Boyd testified that he did not object to what had been done with regard to the experts. Ms. Cascio was hired to investigate Robertson's mental health history and his family history. In Mr. Boyd's estimation, it was important to develop Robertson's background and mental health problems in order to find a reason for what had happened. Mr. Boyd also testified that the defense received a copy of Ms. Cascio's report shortly before trial; and Robertson introduced Applicant's Ex. 6, which is a March 1, 1999 letter from Ms. Cascio to Mr. Hancock providing counsel with a copy of the preliminary report.

Mr. Boyd further testified that Ms. Cascio was the last defense expert who testified. He felt that all of the other defense experts were good witnesses. Although Ms. Cascio was able to provide beneficial information to the jury on direct examination, Mr. Boyd felt that this benefit was overshadowed by the damage resulting from the State's cross-examination of her.

Mr. Boyd did not recall whether he was aware, at the time of the trial, that Ms. Cascio had never testified before Robertson's trial. However, Mr. Boyd noted that sometimes it is not a good idea to hire someone with previous experience in testifying and this would not be his main reason for not using an expert witness. As with Mr. Hancock, Mr. Boyd did not recall consenting to the disclosure of Ms. Cascio's notes (Applicant's Ex. 7). Likewise, Mr. Boyd did not recall when he became aware of the notes;⁵⁷ but he testified that he would have reviewed them before disclosing them to the State. Mr. Boyd testified that he met with Ms. Cascio on

⁵⁶ Both the Order appointing Mr. Hancock and the Order appointing Mr. Boyd were filed in the York County Clerk of Court's Office on the same date. See Respondent's Exs. 1-2.

⁵⁷ Mr. Boyd's recollection was that he became aware of the admissions in the notes either shortly before or during the trial, and he did not recall any conversations with Ms. Cascio between December 1998 (the date of her last interview with Robertson) and March 1999, but admitted that Ms. Cascio may have told him about the notes.

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more than two occasions and that co-counsel was not present on at least one occasion. Counsel corroborated that he and co-counsel decided to use her as a witness at trial, even after they learned that they would have to disclose her notes, because of the importance of her testimony to the defense.

Robertson testified that counsel had advised him to fully cooperate, and be honest with the defense experts, and he did so.

A. Cascio's lack of experience.

Robertson's first complaint is that counsel were ineffective for employing Ms. Cascio because she had never testified before his trial. The Court rejects this allegation. In *Ake v. Oklahoma*, 470 U.S. 68, 83 (1985), the Supreme Court held that under some circumstances, a state must assure an indigent defendant "access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense."

However, Robertson did not have a constitutional right to insist on the appointment of any particular expert. See *Ake v. Oklahoma*, 470 U.S. 68, 83 (1985); *Walton v. Angelone*, 321 F.3d 442, 464 (4th Cir. 2003); *Wilson v. Greene*, 155 F.3d 396, 401-02 (4th Cir. 1998). Also, "[t]he Constitution does not entitle a criminal defendant to the effective assistance of an expert witness." *Wilson*, 155 F.3d at 401; see also *Joseph v. Angelone*, 184 F.3d 320, 327 (4th Cir. 1999); *Pruett v. Thompson*, 996 F.2d 1560, 1573 n.12 (4th Cir.1993); *Poyner v. Murray*, 964 F.2d 1404, 1419 (4th Cir. 1992); *Waye v. Murray*, 884 F.2d 765, 766-67 (4th Cir. 1989) (per curiam), *ccrt. denied*, 492 U.S. 936 (1989).⁵⁸

⁵⁸ Even if this Court were to conclude that such a right exists under the Constitution, it would be prohibited by *Teague v. Lane*, 489 U.S. 288, 311-13 (1989), from applying the rule here. See *Fisher v. Angelone*, 163 F.3d at 853. See also *Am. Trucking Ass'ns, Inc. v. Smith*, 496 U.S. 167,

Further, even though *Ake* refers to an "appropriate" evaluation, this Court finds that it is doubtful "that the Due Process Clause prescribes a malpractice standard for a court appointed psychiatrist's performance. Rather, the decision in *Ake* reflects primarily a concern with ensuring a defendant access to a psychiatrist or psychologist, not with guaranteeing a particular substantive result." *Wilson*, 155 F.3d at 401. Yet, "[e]ven if *Ake*'s use of the term 'appropriate' suggests that an examination must satisfy some minimal level of professional competence," the Court finds that Ms. Cascio's met that standard here. *See Wilson*, 155 F.3d at 402.

The Court finds that Robertson cannot meet his burden of proving deficient performance by merely relying on the fact Ms. Cascio had not testified before her testimony in Robertson's case or was otherwise inexperienced. The Court finds that experts are not advocates. Rather, they present medical, technical, scientific or other opinions related to their field of expertise. Nor is Robertson correct in asserting that it cannot be a reasonable under *Strickland* for counsel to employ an expert who is qualified in his or her field of expertise but legally inexperienced.

The Court finds that there are both advantages and disadvantages to employing experienced expert witnesses. Some expert witnesses, who have testified in numerous death penalty cases, are open to effective cross-examination by the State about the biases and prejudices that the witnesses bring into a trial of this nature. On the other hand, an expert who does not have a "track record" may not be subject to similar impeachment.

178 (1990) ("In order to ensure the uniform application of decisions construing constitutional requirements and to prevent States from denying or curtailing federally protected rights, we have consistently required that state courts adhere to our retroactivity decisions"); *Gibson v. State*, 355 S.C. 429, 586 S.E.2d 119 (2003) (applying *Teague* to determine whether *Sandstrom v. Montana*, 442 U.S. 510 (1979), should be applied retroactively on collateral review).

Moreover, if Robertson's reasoning is followed to its logical conclusion, then counsel could not employ any social worker (or other expert), who had not previously testified in capital cases. This is an unworkable rule, and the Court finds that it is not required by the Constitution. Indeed, the United States Supreme Court rejected a similar claim in the context of the inmate's ineffective assistance of counsel claim in *Cronic*, 466 U.S. 648. The Court in *Cronic* refused to apply a presumption of prejudice to the representation by a young, inexperienced attorney whose principal practice was in real estate, and who was participating in his first jury trial. In doing so, the Court observed that "[e]very experienced criminal defense attorney once tried his first criminal case." *Cronic* 466 U.S. at 665.

Even assuming *arguendo* that Robertson had established that counsel were ineffective for hiring Ms. Cascio based solely upon her lack of experience, the Court finds that Robertson has failed to prove any prejudice because he did not present a social worker or any other evidence of mitigating information that a more experienced social worker would have found which was not discovered by Ms. Cascio. In the absence of evidence to support any additional statutory or non-statutory mitigating circumstance(s), apart from those which were submitted to the jury as the result of the evidence presented by trial counsel (*see* § 16-3-20(c)(b) (1) – (2), (6) and (7)) the Court finds that Robertson has not established that "there is a reasonable probability that ... the sentencer ... [can] conclude[] that the balance of aggravating and mitigating circumstances [do] not warrant death." *Strickland*, 466 U.S. at 695; *see also Wiggins*, 539 U.S. at 537.

B. Counsel's agreement to provide Ms. Cascio's notes to the State.

Robertson contends that trial counsel were ineffective for agreeing to provide and providing Ms. Cascio's handwritten notes to the prosecution. As discussed, it was Mr.

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Hancock's recollection that the defense opposed producing the notes but that the trial judge ordered the defense to produce them.

As discussed, Mr. Hancock recalled that the defense only disclosed the notes after the trial judge ruled that disclosure was required. A review of the pretrial motions hearings reflects that the defense did object to production of any reports of experts under the reciprocal discovery provisions act of Rule 5(b), S.C. R. Crim. P., until such time as the prosecution had fully complied with the defense's request for discovery under Rule 5(a) and until the defense could complete their testimony. The transcript from those proceedings further reflect that the trial judge required reciprocal discovery. *See* 7/20/98 r. pp. 4-20; 2/12/99 Tr. pp. 3-4; 8/16; Tr. pp. 74-78 (9/25/98 hearing); 79-82; 86-87 (11/2/98 hearing); 90-103; 116 (12/4/98 hearing).

Before the state began its cross-examination of Dr. Pincus in the sentencing phase of the trial, Mr. Brackett asked for Dr. Pincus' notes and underlying data. After the trial judge ordered that they be provided, the State requested a break to review those materials, in order to prepare for cross-examination; and the trial judge granted his request. Mr. Brackett then noted that, "for the sake of expediency," that the defense should produce any similar information for "any other experts that are going to testify." The defense did not object, and Mr. Boyd stated that "I thought we took a big box of all that stuff to your office the other day." Tr. pp. 2505-06.

After Dr. Pincus' testimony, the trial judge asked if the State needed "any further help in getting what they are entitled to." (Sic). Mr. Brackett, again, stated that, "if [he] could get all of the information from any expert they have who is going to testify, [he] will have a chance to review the other two over lunch and that will be plenty of time." Tr. pp. 2531. Mr. Hancock stated that the defense was doing everything it could to provide the information. The trial judge

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indicated that, if judicial intervention was necessary, he would bring in the experts and Order them to determine whether they were going to testify. In response to the trial judge's inquiry, Mr. Hancock stated that "if we haven't, we will get them, your Honor." When the trial judge asked if Ms. Cascio's notes had been produced, Mr. Hancock said no, and the trial judge stated, "I think they've got a right to have it to cross-examine." Tr. pp. 2532 l. 2 – p. 2533, l. 23.

During an *in camera* break after Dr. Evans had testified, then-Solicitor Pope noted that the State had not yet received Ms. Cascio's underlying data. Mr. Boyd explained that Ms. Cascio had left her notes in Columbia and had gone to get them and bring them to court. Tr. pp. 2604-05.

Ms. Cascio testified the next day. Early in the State's cross-examination of her, Mr. Pope asked for and received a copy of her notes, without objection. Tr. pp. 2897, ll. 1-16.

Rule 705, SCRE, provides that:

The expert may testify in terms of opinion or inference and give reasons therefore without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.⁵⁹

Thus, the Court finds that Rule 705 "permits the cross-examination to require the expert to reveal otherwise inadmissible underlying information before the jury, subject to a Rule 403, SCRE prejudice analysis. See *United States v. A&S Council Oil Co., et al.*, 947 F.2d 1128, 1134 (4th Cir. 1991). See also *State v. Slocumb*, 336 S.C. 619, 821 SE2d 507 (Ct. App. 1999). Moreover, the Court finds that the record demonstrates that the trial judge ordered production of

⁵⁹ The notes to Rule 705 state that "The rule is identical to the federal rule. It differs from former Rule 43(m)(4), SCRCPP, and former Rule 24(d), SCRCrimP, which contained the phrase 'without prior disclosure of' in place of the phrase 'without first testifying to.'"

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all notes of the defense experts, for the purposes of the State's cross-examination, and that his ruling is consistent with this Court's construction of Rule 705. In other words, the underlying notes or other data must be produced if the expert witness testifies. Further, this Court would not permit any exception because the purpose of disclosure is to counteract the liberality of the Rule, see *A&S Council Oil*, 947 F.2d at 1134; *United States v. Gillis*, 773 F.2d 549, 553-54 (4th Cir. 1985),⁶⁰ and Ms. Cascio clearly testified that the statements by Robertson pertaining to the murders, as reflected in her notes, was considered by her in arriving at her opinion. Tr. p. 3010, ll. 10-22. Under these circumstances, the Court finds that Robertson cannot show any deficient performance because disclosure of the notes was objectively reasonable under *Strickland*.

C. Counsel's failure to discover Robertson's admissions about the crime in enough time to permit counsel to employ a different social worker.

Robertson contends that counsel was ineffective for failing to discover Robertson's damaging admissions about the crime in enough time to permit counsel to employ a different social worker. The Court, however, finds that Robertson has not proved that trial counsel's performance was deficient in this regard. The only evidence before the Court is that counsel only learned about the notes shortly before trial. However, the Court finds that it was not unreasonable for counsel to fail to anticipate that Ms. Cascio's work on the case would result in her asking Robertson questions concerning the case or for otherwise failing to instruct her as to how to conduct an appropriate social history assessment. To the contrary, the reason counsel employed her as an expert witness was to take advantage of her expertise in the area of

⁶⁰ This construction of Rule 705 appears to be consistent with the changes discussed in the Notes to Rule 708, SCRE. Also, the Court would note that both *A&S Council Oil* and *Gillis* were cited with approval in *Slocumb*, 336 S.C. 619, 821 SE2d 507.

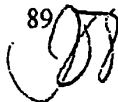
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performing a social history. The Court finds that *Strickland* does not require counsel to instruct defense experts on how they should conduct their evaluations in their areas of expertise.

Nor was counsel ineffective in failing to anticipate that Ms. Cascio would seek information from Robertson about the facts of the crime in order to have enough information to formulate her opinion as to the social history, or that he would freely discuss the crime with her.⁶¹ While an attorney can be expected to learn that the client has relayed potentially damaging information to an expert, counsel is not required to anticipate everything that can possibly go wrong in the client's interaction with an expert in the months before a trial.

Further, while Robertson has characterized Ms. Cascio's inquiry into the facts of the case as going beyond the scope of her employment, *i.e.*, to perform a social history assessment of Robertson, the only evidence is Ms. Cascio's contrary testimony that Robertson's admissions relating to the murders were considered by her in formulating her opinion that at the time of the crimes, Robertson might have felt like violence was his only alternative. *See* Tr. pp. 2886-88; 2949-52; 3010, 11. 10-22. Robertson likewise did not present testimony from any social worker that he or she would have been able to work on Robertson's case. In the absence of any testimony that this information is unnecessary or not part of a proper social history in a capital case, the Court finds that Robertson has failed to prove either deficiency or prejudice resulting from counsel's failure to learn of Robertson's admissions earlier in time to hire another social worker or find a suitable alternative to presenting Ms. Cascio as a witness. *See Glover*, 318 S.C. 496, 458 S.E.2d 538. Finally, the Court notes that two of Robertson's mental health witnesses, Dr. Pincus (Tr. p. 2472) and Dr. Evans (Tr. pp. 2545-46) relied upon the information gathered by

⁶¹ In this regard, the Court would note that Robertson's current allegation may have simply resulted from his own decision to discuss the murder freely.

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Ms. Cascio, at least in part, in reaching their conclusions about his mental status at the time of the offense. Under the circumstances, the Court finds that Robertson has not proven either deficient performance or prejudice under *Strickland*.

D. Counsel's presentation of Ms. Cascio as a witness.

Robertson contends that it was reasonably foreseeable that the State would engage in the lines of cross-examination discussed above; and, therefore, counsel were ineffective for presenting Ms. Cascio as a witness. The Court rejects this allegation because the Court finds that Robertson has failed to prove any prejudice resulting from the State's cross-examination of her. *See Strickland*, 466 U.S. at 687 ("a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies," and "[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, ... that course should be followed").⁶²

Here, the Court finds that, upon discovering the existence of Ms. Cascio's notes, counsel was faced with the choice of either producing the notes and calling Ms. Cascio as a witness or not presenting her as a witness.⁶³ Moreover, if counsel was going to accomplish the previously determined strategy of having all of the evidence in mitigation tied together for the benefit of the sentencing jury, they had to call her as a witness. Thus, counsel was forced to weigh the benefit

⁶² The Court does not find that Robertson has met his burden of proving that counsel's performance was deficient; and, in light of the facts discussed throughout this allegation, the Court specifically finds that counsel were not deficient. However, the remaining portions of this Order only discuss the lack of prejudice.

⁶³ For the reasons set forth in this section as well as the reasons set forth in connection with the preceding sections of this allegation, the Court rejects Robertson's contention that counsel were ineffective for failing to move *in limine* to bar production of the portion of the notes relating to Robertson's admissions to the crimes. Once the decision to call her was made, the notes had to be produced because the admissions to the murders formed part of the basis of her opinion on Robertson's social history assessment. *See* Tr. p. 3010, ll. 10-22.

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to the defense from presenting her as a mitigation witness against the potential harm to the defense resulting from the State's cross-examination of her about the admissions that Robertson had made. In this regard, the Court finds that counsel's decision was much like the decision this Court must make in determining whether there is prejudice under *Strickland*.⁶⁴ After this Court's review of the record, the Court finds that there is no reasonable probability of a different result but for counsel's decision to present Ms. Cascio as a witness.

First, the Court finds that both lines of inquiry at issue in this allegation only took place after the State had already cross-examined Ms. Cascio, at length, about her findings to which she had testified on direct examination. *See* Tr. pp. 2895-2955. Second, Ms. Cascio's testimony was only part of a lengthy case in mitigation, but it served to tie all of the other evidence together. Third, the Court finds that the statements concerning his family's mental health and social history clearly were cumulative to other evidence in the record, including – but not limited to – Ms. Cascio's testimony on direct examination, the testimony concerning his involuntary admission to the William S. Hall Institute, and the testimony of Mr. Meyer.

The record is replete with evidence of the strained, tumultuous and confrontational relationship Robertson had with his parents, especially his father. Much of that history is discussed throughout this Order, and Robertson discussed similar evidence in his PCR testimony. Moreover, the Court finds that this was a proper line of cross-examination. The Court also finds that the State's inquiries concerning evidence of other bad acts was a proper topic for cross-

⁶⁴ In order to make such an assessment, counsel had to look at Moon's testimony, as well as Dr. Sexton's testimony and other evidence presented by the prosecution in both phases of the trial relating to proof of their client's guilt of the murders and the alleged statutory aggravating circumstances. This evidence included the manner in which Robertson committed the murders. Additionally, counsel had to consider that the State was going to be allowed to present Dr. McKee as a reply witness.

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examination because it reflected upon Robertson's character. *See Hitchcock v. Dugger*, 481 U.S. 393 (1987) (in the penalty phase, the sole function of the jury is to decide which sentence to impose upon the defendant: either life or death. This determination must be based upon the specific circumstances of the case and the individual characteristics of the defendant). *State v. Shaw*, 273 S.C. 194, 255 S.E.2d 799 (1979); *see also Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (plurality opinion); *State v. Skipper*, 285 S.C. 42, 328 S.E.2d 58 (1985), *rev'd. on other grounds.*, 476 U.S. 1 (1986) ("What is essential is that the jury have before it all relevant information about the individual defendant whose fate it must determine") (internal quotes and citation omitted). Further, the trial transcript clearly reflects that counsel objected when the State began cross-examining Ms. Cascio about Robertson's involvement in prior stalking incidents. However, the trial judge overruled the objection and permitted the examination. Also, Ms. Cascio took this information into account in forming her opinion. *E.g.*, Tr. pp. 3000-3003.

Moreover, Robertson cannot show any conceivable prejudice resulting from the sentencing phase jury hearing this information. This evidence of other bad acts was cumulative to evidence of bad acts discussed elsewhere in the Order. It was likewise cumulative to evidence presented by the State that Robertson had previously burglarized his neighbor's home and stole over \$15,000.00 worth of valuables, including a car, blank checks and credit cards, Tr. pp. 2107-20.⁶⁵ Also, the trial judge's sentencing phase charge included a limiting instruction, in which he

⁶⁵ Based upon that crime and his subsequent activities with the credit cards, Robertson was charged with a series of offenses to which he pled guilty. The State introduced the indictments and subsequent sentencing sheets into evidence, as follows: State's Ex. 191, an indictment and sentencing sheet to burglary in the second degree; State's Ex. 192, an indictment for burglary in the first degree and guilty plea and sentencing sheet for burglary in the second degree; State's Ex. 193, an indictment and sentencing sheet for grand larceny; State's Ex. 194, an indictment and sentencing sheet for grand larceny; State's Ex. 195, an indictment and sentencing sheet for

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instructed jurors that, before they considered any such evidence, they must first find that the State had proved that Robertson committed any bad acts beyond a reasonable doubt. Even if the jury found that the State had met its burden of proof, the evidence could only be considered as evidence of "his character in general." The evidence could not be considered as proof of any aggravating circumstances. Tr. pp. 3217-18. He charged that prior convictions could only be considered as character evidence as well. Tr. p. 3218.

The trial judge further instructed the jury that, in considering whether to recommend a sentence of death, it must first find the existence of one or more aggravating circumstances beyond a reasonable doubt. He also instructed jurors that they could only consider the statutory aggravating circumstances that the murder was committed while in the commission of robbery while armed with a deadly weapon, larceny with the use of a deadly weapon and physical torture, as well as the aggravating circumstances that the offender committed the murder for himself or another for the purpose of receiving money or a thing of value and that two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct. Tr. pp. 3203-26. In light of the sentencing phase instructions, the Court finds that the challenged evidence was not prejudicial.

The Court further finds that Robertson was not prejudiced by the State's cross-examination concerning Robertson's admissions concerning the murders because the substance of the various admissions, including the information concerning how he committed the murders, was cumulative to other evidence in the record and already before the sentencing phase jury. His

forgery; State's Ex. 196, an indictment and sentencing sheet for financial transaction card fraud; State's Ex. 197, an indictment and sentencing sheet for financial transaction card fraud. Tr. p. 2119. Robertson gave a statement to the police in which he attributed the crimes to a drug problem. Tr. pp. 2117-19; State's Ex. 190.

co-defendant, Meredith Moon testified in the guilt phase that she met Robertson "[a]bout mid-'95," when he was dating her friend Erin. They "partied together" and "hung out at his apartment." She began to get to know him better in the fall of 1997, when they worked together at Dinkins in the food court at Winthrop. Tr. pp. 1575-76.

On the morning of Monday, November 24, 1997, Moon picked up Robertson, and they went to Charlotte, North Carolina, where they shopped. That night, she and another friend went to the Outback Steakhouse and ate. There, she saw her friend Erin, sometime between 11:30 p.m. and 12:30 a.m. on November 25. Later, Erin came by her house, picked her up and the two women went to Erin's. They "hung out" for several minutes before they went to Robertson's house. Tr. pp. 1576-78.

When she first went to visit him in the early morning of November 25,⁶⁶ his parents were upstairs and she did not see them. Neither she nor Robertson were drinking but they snorted "[a] couple of lines" of Ritalin. She and Erin eventually left and Erin drove her home after Moon retrieved her purse from Erin's apartment.⁶⁷ Tr. pp. 1578-81.

Moon could not sleep because of the effects of the Ritalin. Between 3:00 and 3:30 a.m., she received a call from Robertson, who wanted to use Moon's mother's credit card so that he could buy a bus or plane ticket for this brother, Chip, and bring Chip home for Thanksgiving.

⁶⁶ By then, she estimated that it was between 12:30 and 1:30 a.m. Erin wanted to show Robertson a pool stick that she had bought as a gift for her boyfriend's birthday. Tr. p. 1579.

⁶⁷ The Court finds that her testimony is substantially corroborated by the guilt phase testimony of Erin Savage. Savage added that they parked off to the side of the house on the left-hand side of the road, in order not to wake anyone. She and Moon entered the house through the downstairs door leading to the basement. Robertson was "cleaning" when they arrived. Tr. pp. 1537-42.

Moon, however, told him no.⁶⁸ Moon subsequently received another call from Robertson around 5:00 a.m. He told her to come to his house and "bring some traveling clothes." She was under the impression that they were going to Philadelphia to bring Chip home. Tr. pp. 1581-82. After telling her father a lie about where she was headed, she drove to Robertson's home in her Honda Accord. Again, she entered the home through the rear door, where Robertson was waiting for her. Tr. pp. 1582-85.

She sat down on the sofa in the basement, and they talked. During their conversation, Moon saw a note on the coffee table that had a list of things to do.⁶⁹ Also, Robertson revealed his plan to kill his parents. He told her that he was going to wait until his father's alarm clock rang and his father got into the shower. Then, he was going to kill his mother. Moon unsuccessfully tried to talk him out of this plan, but he would not listen. Instead, he told her to put socks on her hands, "take two bottles of Tiletex and pour them into one" bottle. Moon did as she was told, and the two snorted Ritalin. She did not know how much they snorted but agreed that it impaired her judgment. Tr. pp. 1584-97; 1623-28; 1644-46.⁷⁰

⁶⁸ Erin had received a call "probably around 3:30" from Robertson. He wanted to know if Moon was there, and Erin said no. He then asked if Moon's father would be home if he called her house, and Erin did not know. Tr. p. 1542.

⁶⁹ This list (State's Ex. 25) had several things listed on it, such as "trash bags" and "need to scrub out the shower for blood." Tr. pp. 1624; 1636. She further testified that, at Robertson's direction, she also later wrote a list of things to do, such as "alarm clock, wipe blood from downstairs doorknob and dispose of yard rake. She stated that these were things Robertson planned to do. Tr. pp. 1636-38; 1643.

⁷⁰ Robertson had previously told her on many occasions that he planned to kill his parents, both when he was sober and when he was drunk. Also, he explained that his motive was the insurance money, which Moon said was "a couple of million" dollars. As discussed in *Ground 10(a)(3)*, *supra*, a number of sentencing phase witnesses testified about similar conversations. Tr. pp. 2155-57; 2163-68; 2177-78; 2187-89; 2202-03; 2219; 2222; 2228. He had also often told Moon that he did not have the same type of freedom as his peers enjoyed in high school to go out, party and do things with his friends. Tr. pp. 1642-43.

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Moon testified that Robertson was not always with her throughout the ensuing time, and she did know where he went when he left her.⁷¹ She was alone and sitting on the couch in Robertson's bedroom when she heard the alarm clock ring and the shower start running. "In a couple of minutes," she heard a struggle commence. During the struggle, she heard Terry Robertson screaming for Earl, and saying, "no, Jimmy; no, Jimmy." This lasted for about a minute or so, and she could hear even though she had her hands over her ears. She went outside, smoked a cigarette and returned to Robertson's room. She testified on cross-examination that she did not leave because she was scared. Tr. pp. 1597-99; pp. 1625-27.

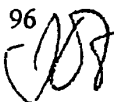
Shortly thereafter, she went upstairs at his direction and saw him covered with blood. She went downstairs and, unable to leave through the garage, retrieved a knife from the kitchen and gave it to him. Following his instructions, she went back to his bedroom and sat on the couch. Within minutes, the shower stopped running and she heard a loud thumping noise for about a minute.⁷² Robertson then came downstairs and again was covered in blood. Because "he thought he heard something upstairs," he went back upstairs for about five minutes. Upon his return, he took off all of his clothes and showered. Tr. pp. 1599-1602; p. 1616.

Once he had showered, he put the bloody clothes in a garbage bag that was in front of the fireplace. He also placed other items in the bag, but Moon did not see what they were.⁷³ By now, it was between 7:30 and 8:00 a.m. Again following his instructions, Moon grabbed the bag and they went outside through the downstairs door, which he then broke with the end of a rake.

⁷¹ In her estimation, "he was a little more hyper, but he was acting pretty much the way he always does." Tr. 1596.

⁷² She said that the noise sounded "like a hand beating on a pillow." Tr. p. 1601.

⁷³ She did, however, remember seeing Earl's wallet and Terry's purse on the pool table in the basement; and she saw Robertson take Earl's credit card from the wallet. Tr. pp. 1615-16; 1635.

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Next, they walked up to the driveway and she put the bag in the trunk of a red Mazda.⁷⁴ They waved to a neighbor who saw them. Tr. pp. 1602-04; pp. 1615-16.⁷⁵

After the car was loaded, they got on I-77 and headed north. They stopped at the Peach stand in Fort Mill, where they bought gasoline, as well as Neosporin and some band-aids because Robertson had "cut his finger pretty badly" when he broke the glass on the window to the back door.⁷⁶ They used Earl's credit card to pay for these items. Tr. pp. 1604-06. Also, Moon called Savage and told her that she was on her way to Philadelphia. Tr. pp. 1542-43; 1605-06.⁷⁷ Following this stop, they got back onto I-77 North and drove until they reached I-85 North. They then drove until they reached I-95 North and headed to Philadelphia.⁷⁸ Tr. pp. 1606-07.

During their ten hour trip to Philadelphia, Robertson repeatedly said that his brother was going to be proud of him, and he told Moon that he had broken off a knife blade in his mother's neck during the course killing her. He said that he was glad that it was over, and that he was going to use the insurance money to buy a house on the lake and renovate a local club. Finally, he told her the plan was to pick up Chip, return home, discover the bodies and call 911. Tr. pp. 1609-16; pp. 1632-33; pp. 1641-42.

Also, they stopped at a rest area in Virginia and at a rest area called the Chesapeake House in Maryland. While at the Chesapeake House, Robertson got the garbage bag containing

⁷⁴ Another witness testified that the Mazda was registered to Chip. Tr. p. 1409.

⁷⁵ This neighbor was Wayne Langley, Sr., and he corroborated this portion of Moon's testimony. Tr. pp. 1423-28.

⁷⁶ Photographs taken after Robertson's arrest reflect that he his index finger had abrasions and injuries, and he had an abrasion on his elbow. Tr. pp. 1486-88; State's Ex. 138.

⁷⁷ Glenda Johnson, the cashier at the Peach Stand corroborated their stop at the store, as did a receipt for their purchases (State's Ex. 90), a surveillance videotape from the store (State's Ex. 89) and still photographs from the tape (State's Exs. 123-124). Tr. pp. 1428-35; 1438-42.

⁷⁸ They took turns driving. At some point, they stopped at a rest area, where Robertson telephoned work and told his employer that he would not be coming to work. Tr. p. 1606.

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the bloody clothes and other items out of the trunk, and he threw it in a dumpster. They eventually went on to Philadelphia and were arrested outside of Chip's apartment. Tr. pp. 1607-15; 1632-33; 1641-42.

Based upon information provided by Moon, law enforcement officers from other jurisdictions located a credit card receipt for the purchase of gasoline on Earl's credit card at a Shell station in Lady Smith, Virginia (State's Ex. 91), and officers recovered the garbage bag and its contents from a dumpster at the Chesapeake House exit off I-95 in Maryland. Among the items in the bag were a beach towel; a gray t-shirt intertwined with a maroon sweatshirt; a small roll of toilet paper; a white t-shirt; a pair of yellow Union Bay pants; two prescription bottles of Ritalin with Chip Robertson's name on them; the Eaton aluminum baseball bat and the Craftsman claw hammer used by Robertson on his parents; a bottle of Zydol dry powder; a kitchen towel; a serrated, wooden handled knife; a file with a wooden handle and a scalpel with a black plastic handle; a pair of moccasins; two check receipts with the name of Robertson on them; check numbers 5219 and 5220; a check receipt and check number 6111, with the name Robertson on it; a kitchen hand towel. Tr. pp. 1442-78; 1530-31.

Subsequent to Robertson's arrest in Philadelphia, an officer from the University of Pennsylvania Police Department recovered Robertson's wallet (State's Ex. 88) from Robertson's back pocket. Tr. pp. 1468-73. Inside the wallet, the officer found a South Carolina identification card with Robertson's name on it (State's Ex. 88.1); a NationsBank Visa card in Earl Sr.'s name (State's Ex. 88.2); and a receipt from the Peach Stand (State's Ex. 88.3). Tr. pp. 1478-80.

The investigation at the crime scene revealed that the back door was open and the glass in the window had been broken, in the condition that Moon described, a yard rake with a broken

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handle was found in Robertson's back yard. Subsequent testing by SLED's trace evidence department revealed that a smear on the rake handle was consistent with paint on the rear door. Tr. pp. 1347; 1657-59; 1748-51.

Inside the house, there was broken glass on the floor near the back door. Earl was found, clad only in his underwear, in a hallway at the top of the stairs. He was lying face down in a large pool of blood, and his hands were underneath his body. There was blood "all about the upper portion of the staircase" and in the hallway. Terry was found just to the right of the bed in the master bedroom. The sheets were pulled on top of her. Both "multiple wounds" and blood "all over the bed" were clearly present. A knife with a broken tip was found in the bed and the tip of the knife was found under Terry. A towel with blood on it (State's Ex. 13) was found under the couch downstairs. Tr. pp. 1354-55; 1397-1400; 1659-66; 1675-77; 1689; 1700; 1710-11; 1715-16.

On Earl's underwear, SLED Agent Bret Baker, an expert witness in latent prints and crime scene analysis, found what appeared to be an impression made by the heel of a shoe of some other object after the other had come into contact with blood. See State's Ex. 3.1. However, the impression was "too partial for him to render a meaningful conclusion." Tr. pp. 1679-80. An impression on a floral sheet found near Earl's body, similar to the one found on his underwear, was consistent with the fabric weave of several pairs of socks retrieved from the dumpster in Maryland. Tr. pp. 1691-95. Likewise, the top fitted sheet off of Terry's bed had impressions which were consistent with the fabric weave of three of the socks found in the dumpster in Maryland. Tr. pp. 1700-03. Earl's wallet was found at the end of the hallway, and

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Terry's purse – with the “contents somewhat hanging out” was found in the bedroom. Tr. pp. 1707-09.

Downstairs, Agent Baker found a note in the kitchen, in which Robertson told his parents that he had “gone to get Chip in his car. Sorry, but he needs me right now. Love, Jim.” (State's Ex. 24). His right palm print was on the note. Agent Baker found a pad with a “to do” list (State's Ex. 25) from a table in the basement. Subsequent handwriting analysis revealed that Robertson wrote State's Ex. 24.

Agent Baker gave blood spatter opinion evidence in the sentencing phase, which he supported with photographs (State's Exs. 206-37) and a videotape (State's Ex. 279).⁷⁹ He testified that the blood spatter patters he found in the hallway were indicative of a beating and he opined that Earl had been hit at least four times with a circular, long, cylindrical object. Most of the blood spatter was 18-24” from the floor, indicating that Earl was on the floor throughout most of the beating. Also, he found a piece of brain matter and skull. He likewise gave opinion evidence concerning the blood spatter found in the bedroom around Terry. He found transfer blood on the purse and a blood smear on a Tilex bottle at the top of the stairs, near Earl's body. He also testified, in both phases of the trial that he could smell the odor of Tilex in the hallway. Tr. pp. 2379-83; 2386-2415.

In a search of the red Mazda conducted pursuant to a search warrant, Tr. pp. 1485-86; 1496-98; 1653, Agent Baker collected a number of items. Of particular relevance were a receipt from a Shell station in Ladysmith, Virginia; a Fred Pryor seminar manual with a list written on the back of it; check number 5233, on Earl and Terry Robertson's account (and a duplicate); a

⁷⁹ The jurors were not shown the victims on this video.

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check on Earl and Terry's account, number 5221 (and a duplicate) which "was partially written out beginning with" Robertson's name and the date November 10, and both Moon's and Robertson's fingerprints. Tr. pp. 1726-32. Subsequent handwriting analysis revealed that Robertson wrote the note on the Fred Pryor manual. Tr. pp. 1820-24.⁸⁰

Other testimony showed that three Caucasian head hairs recovered at autopsy from Earl's right hand were consistent with his hair, as were numerous grey and brown Caucasian head hairs recovered from the upstairs bathroom. Numerous brown Caucasian head hairs recovered from the claw hammer (State's Ex. 64) were consistent with either Terry or Earl. Moreover, a number of Caucasian head hair fragments recovered from the socks retrieved from the dumpster were similar to those of the victims, and they could not be eliminated as the source of those hairs. However, the fragments were too small to make further analysis of them. Tr. pp. 1751-56; 1758-59.

Restriction Fragment Length Polymorphism (RFLP) DNA analysis was performed on a number of items recovered in the case. Cuttings from one of the white socks and the yellow Union Bay pants retrieved from the dumpster in Maryland matched Earl's DNA. The probability of selecting an unrelated person at random having a DNA profile matching the DNA on these items is one in 35,000,000,000 blacks and "one in four point seventy billion caucasians." Blood found on the Tilex bottle and a cutting from another white sock found in the dumpster also matched Earl's DNA. The DNA found on cuttings from the sheet, a swab of the purse strap, a swab from the end of the knife blade, a cutting from the Union Bay pants, cuttings from two socks retrieved from the dumpster and a cutting from the kitchen towel found in the dumpster, all

⁸⁰ Handwriting analysis also linked Robertson to a check seized from the dumpster (State's Ex. 85). Tr. pp. 1824-25.

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matched Terry's DNA profile. The probability of selecting an unrelated person at random with DNA profile matching the DNA on those items is approximately "one in one hundred and eighty-eight billion blacks and one in five point five trillion caucasians." Tr. pp. 1830-37; 1839-51; State's Ex. 189 (RFLP results work sheet); State's Ex. 187 (report of DNA expert).

DNA from stains found on the green pillowcase and a white pillow cover also matched Earl's DNA; and the probability of selecting someone at random with a matching DNA profile is approximately "one in one point nine trillion blacks and one in one hundred and ninety billion caucasians." The DNA profile from a stain on the "low end" of the claw hammer was consistent with either Earl or Robertson's DNA, which was "not uncommon in this case because the suspect ... is the sons of the victims." The DNA profile of a cutting from a beige sock retrieved from the dumpster and a stain found on the tip of the bat was consistent with being a mixture of different individuals, and neither Earl, Terry nor Robertson could be eliminated as the source of these stains. However, Moon was eliminated as a contributor. Tr. pp. 1851-57; State's Exs. 186-187.

Dr. Joel Sexton, the forensic pathologist who performed the autopsies on Terry and Earl Robertson, testified at length in both phases of the trial about his findings. His sentencing phase testimony involved opinion evidence, relevant to the statutory aggravating circumstance of physical torture, concerning whether the victims were conscious throughout the attacks, whether they may have suffered pain and whether any of the knife wounds were deliberately inflicted after the victim's were immobilized. Tr. pp. 1784-1808; 2249-2302.

His sentencing phase findings as to Terry Robertson were that she had three pairs of hammer tine marks on the left side of her head, where most of her injuries were located. Tr. p.

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2277, ll. 3-8. There were also three deep lacerations on her back associated with hammer tines (Tr. p. 2278, ll. 8-16) and a tine mark on her shoulder. Tr. p. 2281, ll. 22-23. An injury to the back of her right hand was caused either by the tines or a knife. Tr. p. 2288, ll. 6-10.

Dr. Sexton also found injuries that were consistent with the lateral edge of a hammer. There were two such lacerations on the left side of Terry's head (Tr. p. 2277, ll. 9-14), one on the back of her neck (Tr. p. 2278, ll. 22-24) and another on the side of her head. Tr. p. 2278, l. 25 – p. 2279, l. 1. Additionally, he found injuries consistent with knife wounds. One was on the back of Terri's neck (Tr. p. 2279, l. 25 – p. 2280, l. 6); three lacerations were found on the front of her shoulder (Tr. p. 2280, ll. 23-24); a "very shallow wound" across her wrist was found that "runs parallel to a much deeper incised wound" (Tr. p. 2284, ll. 3-5); there were four cuts on the left forearm (Tr. p. 2285, ll. 17-25); one on the back of her left wrist (Tr. p. 2286, ll. 22-24); three stab wounds in her lower right back (Tr. p. 2288, ll. 25-p. 2289, l. 12);⁸¹ a cut across the left cheek and jaw (Tr. p. 2291, ll. 9-7); multiple cuts on her neck (Tr. p. 2291, l. 10); and a "mutilating injury" across the right side of her face. Tr. p. 2292, ll. 14-19. Dr. Sexton characterized a number of the knife wounds as "deliberate" and opined that they were inflicted after Terry was immobilized or no longer moving. Some were inflicted after her heart had stopped. Tr. p. 2284, l. 17 – p. 2285, l. 14.

The various injuries Dr. Sexton found on Terry were all detailed in diagrams which were introduced as State's Ex. 267. Dr. Sexton opined that most of the knife wounds were perimortem; and he described them as "superficial" because they did not cause her death. The fatal wounds were "the ones that are in the left temporal region where there were multiple

⁸¹ One wound was close to "an actually impacted the spine. This wound was only 2¼." Two did not enter the abdominal cavity but only went about "four inches into the soft tissue of the back."

fractures in the skull." This included a "pair of marks" on the left ear and two more above the left ear, as well as "deeper lacerations that extend around to the back side and had [multiple fractures] underlying them." Tr. pp. 2294-96; State's Ex. 268.

Dr. Sexton gave similar testimony regarding the injuries that he found on Earl Robertson's body. He testified that he found a number of hammer tines injuries. He found one penetrating on the head (Tr. p. 2258, ll. 14-25); two pairs of injuries on the left side of the head (Tr. p. 2259, ll. 20-24); and tines marks on the temple (which actually could have been caused by "the blunt edge of the hammer turned sideways") that pinched part of the ear off (Tr. p. 2260, ll. 6-12). He found similar injuries on the right shoulder (Tr. p. 2262, ll. 11-19); the right side of Earl's neck (Tr. p. 226358, ll. 13-15); on the back of Earl's left hand (Tr. p. 2265, ll. 11-215); and on the back of Earl's right hand. Tr. p. 2265, ll. 18-23.

Dr. Sexton further testified that he found two linear abrasions consistent with the baseball bat on the top of the spine (Tr. p. 2253, ll. 22-24); one on the left side of Earl's back (Tr. p. 2254, ll. 7-10); and one on the upper right back. Tr. p. 2254, ll. 21-22. Dr. Sexton likewise found another injury consistent with the hammer on Earl's ear. Tr. p. 2260, ll. 7-11. There was a stab wound, consistent with being caused by a knife, on Earl's hand (Tr. p. 2252, l. 17); a cut from a knife or other sharp object on the right back side of Earl's neck (Tr. p. 2252, ll. 18-20); a perimortem knife injury "just above the left knee" (Tr. p. 2264, ll. 3-9); and another injury on the ride side of the neck. Tr. p. 2263, ll. 15-16.

As with the injuries to Terry, Dr. Sexton utilized several diagrams (State's Ex. 267) to illustrate Earl's various injuries. Again, he indicated that the knife wounds were superficial because they were not fatal. However, many would have been painful. Tr. pp. 2269-72; State's

Ex. 267. He further testified that the head injuries would not have caused immediate unconsciousness or immediate death. Also, the blow that "caused the most damage" and was the most likely cause of death was the one on the top of the head, which he testified was consistent with a bat. Tr. pp. 2274-76; State's Ex. 267.

After reviewing the graphic nature of Dr. Sexton's testimony, it is clear that he was able to both identify the many different blows and show these injuries to the jury through pictures and diagrams. When this testimony is viewed in combination with Moon's testimony, the DNA evidence and other forensic evidence discussed above, the Court finds that the sentencing jury had already been presented with an overwhelmingly graphic and vivid picture of what had occurred at the time of the murders before Ms. Cascio testified. The jury was, therefore, aware of both the heinous nature, not only of the crimes, but also of the defendant who committed them.

Thus, the Court finds that, although admissions testified to by Ms. Cascio are significant, they are not so strong that this Court can conclude that there is a reasonable probability of a different result but for the presentation of her testimony. *See Strickland*, 466 U.S. at 695 (to prove that "there is a reasonable probability that ... the sentencer ... [can] conclude[] that the balance of aggravating and mitigating circumstances [do] not warrant death"); *see also Wiggins*, 539 U.S. at 537. The obvious lack of any discernable prejudice from cross-examination is manifestly clear when Dr. McKee's subsequent reply testimony is considered on this issue. *See* Tr. pp. 3067-72.⁸² The Court finds that his testimony presented the substance of many, if not all

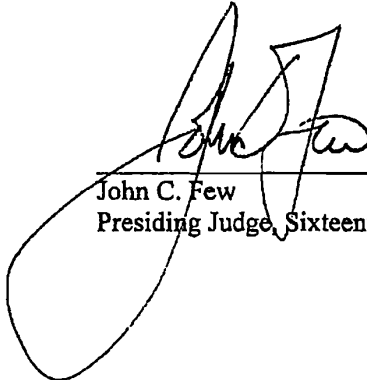
⁸² Again, any supposed impropriety of Dr. McKee's testimony about the information he received from Robertson under *Hudgins* is not properly before this Court because the trial judge overruled trial counsel's objection, and ruled that the statements made by Robertson were admissible. Tr.

of Ms. Cascio's testimony on cross-examination; and he testified that the factual information provided to him by Robertson was virtually identical to those facts in the notes of Ms. Cascio. Tr. pp. 3066-67. For the above-stated reasons, the Court finds that this allegation is without merit.

IT IS, THEREFORE, ORDERED:

1. That the Application for Post-Conviction Relief in this matter is dismissed with prejudice; and
2. That Robertson is remanded to the custody of Respondent.

IT IS SO ORDERED.



John C. Few
Presiding Judge, Sixteenth Judicial Circuit

March 7, 2008

pp. 3044-57. Thus, the question of his ruling could have been raised on direct appeal and is barred in PCR. See § 17-27-20(b); *Drayton*, 312 S.C. at 9, 430 SE2d at 520 (issue that could have been raised at trial and on direct appeal cannot be asserted in PCR application, absent a claim of ineffective assistance of counsel). Moreover, the Court concludes, in the alternative, that this objection was properly overruled.

STATE'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>FOR I.D.</u>	<u>IN EV.</u>
1	YARD RAKE HEAD		1512
2	BROKEN HANDLE FROM RAKE		1512
3	UNDERWEAR of EARL ROBERTSON		1504
3.1	IMPRESSION ON UNDERWEAR		1679
4	FLORAL NIGHTGOWN		1504
5	BLOOD SAMPLE OF EARL ROBERTSON		1504
6	HAIR SAMPLE OF EAR ROBERTSON		1504
7	HAIR SAMPLE FROM HAND OF EARL ROBERTSON		1504
8	HAIR SAMPLE FROM HAND OF EARL ROBERTSON		1504
9	BLOOD SAMPLE FROM TERRY ROBERTSON		1504
10	HAIR SAMPLE FROM TERRY ROBERTSON		1504
11	WEDDING RINGS		1504
12	BLOOD SAMPLE		1687
13	WHITE HAND TOWEL		1689
14	FLORAL FLAT SHEET		1691
14.1, .2, .3	PHOTOS OF SHEET		1693
15	BLOOD SAMPLE		1687
16	BLOOD SAMPLE		1687
17	BLOOD SAMPLE		1687
18	PINK SHEET (18.1 PHOTO)		1702
19	NIKE TENNIS SHOES		1706
20	BROWN WALLET		1708
21	BLACK PURSE (21.1 - ITEMS IN PURSE)		1709

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PETITIONER'S
EXHIBIT

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STATE'S EXHIBITS CONTINUED

<u>NO.</u>	<u>DESCRIPTION</u>	<u>FOR I.D.</u>	<u>IN EV.</u>
269	PHOTO OF EARL	2341	
270	PHOTO		
271	PHOTO OF EARL		2330
272	PHOTO OF GOLFERS	2341	
273	PHOTO OF TERRY	2341	2353
274	PHOTO OF TERRY	2312	
275	PHOTO OF GRADUATION OF CHIP	2341	2353
276	PHOTO OF TERRY IN COLLEGE		2305
277	WEDDING PHOTO		2305
278	WEDDING PHOTO		2305
279	VIDEO		2383
280	TELEPHONE RECORDS		2248
281	STIPULATION		2249
282	REPORT	2508	
283	MRI		2509
284	REPORT OF DR. PINCUS		2511
285	'96 RECORDS FROM DEPT. OF CORR.		2747
286	REPORT OF DR. CASCIO	2896	
287	MIRANDA RIGHTS	3047	3053

RECEIPTS FOR EXHIBITS

CASE NO. 99-1020, 1021, 1022, 1023 JUDGE John C. Hayes, III
PLAINTIFF: State PLTF'S ATTY. Thomas E. Pope
DEFENDANT: James D. Robertson DEF'S ATTY. James W. Hancock, James W. Boyd
DATE TRIAL STARTED: 3-15-99 DATE TRIAL ENDED: _____
Received of Janet Fischer, Court Reporter for above case,
these Exhibits: 0

This space for Clerk
of Court's use

281	<u>Stipulation</u>	
X 282	<u>Report</u>	
X 283	<u>MRI</u>	
X 284	<u>Report of Dr. Pincus</u>	
X 285	<u>Records ('96) from Dept. of Corrections</u>	
X 286	<u>Report of Ms. Cascio - not put in evidence</u>	
X 287	<u>Miranda Rights - not put in evidence</u>	
8.		
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Received from Court Reporter Janet Fischer this _____ day of
March, 1999.

YORK COUNTY CLERK OF COURT
By: Tolly Belin Clerk III

Page 15 of _____

FROM COLLEGE SOCIAL WORK

803 777 3492

1999-03-01

16:10

#532 P.02/05

James W. Hancock, Jr.
246 East Black Street
P.O. Box 2851
Rock Hill, SC 29732

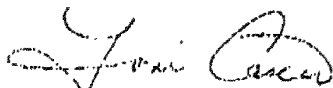
March 1, 1999

Dear Mr. Hancock,

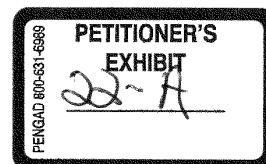
Attached you will find my preliminary report for James Robertson. This report is based on in-depth interviews, medical and psychiatric records of the Robertson family, and school records of Jimmy Robertson. I hope you find this helpful.

If I can answer any questions for you, please do not hesitate to contact me at (803) 777-3912

Sincerely,



Toni Casero, Ph.D.
Assistant Professor



Preliminary Report for James Robertson
March 1, 1999
prepared by Toni Cascio, Ph.D.

James Robertson is an intelligent, cooperative 25 year old white male currently incarcerated at Lee Correctional Institute. Jimmy has a history of bipolar disorder, obsessive compulsive disorder, and attention deficit-hyperactivity disorder. He has one previous psychiatric hospitalization at the Hall Institute in Columbia, SC in 1995, and he has a history of polysubstance abuse as well. Jimmy also has had a troubled family history, and it is on this history that this report will focus.

There are several themes which emerge from Jimmy's family of origin. They include: domestic violence, physical, emotional and possible sexual abuse, and impaired parental bonding (particularly due to mental illness in the family).

Domestic Violence

Domestic violence actually took many forms in the Robertson household. Psychiatric records indicate that there were physical confrontations between Earl and Terry Robertson. The literature indicates that children who witness domestic violence manifest a variety of difficulties later in life. They are more likely to have social skills deficits, low self-esteem, depression, anger, low empathy, aggression, and alcohol/drug abuse.

Physical Abuse

Jimmy Robertson was beaten by both parents. Terry was known to hit Jimmy and pull his hair. Earl's physical abuse, however, was more severe. It began early in childhood. Jimmy reported having a habit of positioning himself on his hands and knees in bed and banging his head against the headboard as a way of rocking himself to sleep as a small child. He would sometimes continue rocking against the headboard after he had drifted off to sleep. Often, Earl would come into his room and beat the sleeping child with a belt in an attempt to make him stop making noise. This type of violence is particularly damaging given its unexpected, unpredictable nature. Jimmy also reported having been thrown against walls, tackled, and beaten with a belt by his father. There was one incident in which Earl held Jimmy off the back deck by his neck. Earl also had an argument with Jimmy's brother Chip in which he literally pulled the polo shirt off of Chip's back in his rage. Earl also, on one occasion, pushed Chip down a flight of steps. Jimmy reported being afraid of his father's unpredictable temper. Further, Jimmy has a history of three unexplained head injuries. Two of the three were concussions, and in the third, he was "hit with a fist"; he could, however, not remember details of these incidents. It is possible that these are also incidents of physical abuse. Finally, Jimmy reported that some of his anger toward his mother was due to her failure to protect him and Chip from their father.

FROM: COLLEGE SOCIAL WORK

803 777 3498

1999-03-01

16111

#532 P.04/05

Emotional Abuse

Emotional abuse is perhaps the most prevalent theme in Jimmy's family life. Jimmy reported almost continual verbal abuse, primarily by Earl. Earl would stand close to Jimmy ("get up in your face") and yell at him, calling him names, such as "stupid," "idiot," and "worthless." These incidents were numerous throughout the years. In fact, employment records confirm that Earl had difficulties communicating with subordinates. Emotional abuse is extremely damaging. It results in feelings of anger, helplessness, and despair in children that it often acted out in criminal behavior. Jimmy reported that he never truly felt loved by his father, and he believes that his mother loved him only because "she had to." As a result of his father's verbal abuse, Jimmy felt very rejected; his feelings of rejection were intensified by experiences with his mother. Jimmy recalled an argument with Terry in which she slapped him and told him that she wished he had never been born. This theme of impaired attachment between Terry and Jimmy will be explored in more detail.

Sexual Abuse

Jimmy does not report any recollections of sexual abuse; however, there are two reasons for the inclusion of this theme. First, Jimmy cannot recall where he went to kindergarten and first grades; he mistakenly believed that he was in Michigan at this time when the family was really in California. His brother Chip, who is two years younger, however, can recall vivid details of that time in their childhoods. This lapse in memory is often characteristic of trauma, especially early sexual abuse. In addition, he and Chip would take showers with their parents until the age of 11 or 12. Although he cannot recall specific sexual acts taking place, this behavior is highly developmentally inappropriate.

Impaired Bonding

There are several indicators of impaired bonding between Terry and Jimmy. This theme is especially significant because children who are insecurely attached in childhood have difficulty with empathy and forming attachments later in life. One indicator of this impaired bonding is the rocking and head banging as a small child described by Jimmy. Such self-stimulation is often related to a condition known as marasmus in which a child's physical needs (feeding, changing) are met, but their emotional needs for touch and affection are not. Children in these situations (often found in orphanages) will resort to such self-stimulation in an attempt to sooth themselves. In addition, given Terry's psychiatric history, it is likely that this, too, took its toll on her bonding ability with her children. Terry had a history of bipolar disorder and obsessive-compulsive disorder. She also engaged in self-mutilating behavior, including cutting on her arms, thighs, and breasts. She reported visual hallucinations, hearing voices, and compulsions to count. Terry was on a plethora of psychotropic medications. She made at least one suicide attempt and, indeed, was admitted to the psychiatric unit at Piedmont Medical Center in Rock Hill, SC for suicidal impulses in December, 1995. Earl was also diagnosed with an affective disorder and as having attention deficit hyperactivity disorder. The literature is replete with information about the

Jimmy went
to school 8
years early -
his memory would
thus be impaired
even more than
normal!

adverse effects of parental mental illness on children.

Conclusions

Jimmy Robertson came from a family that was quite chaotic. Although they appeared to be a well functioning family to the outside world, there were some serious problems in the Robertson household. Any one of these as an isolated incident would be unremarkable; however, taken cumulatively, these abuses resulted in a myriad of emotional difficulties for Jimmy. His inability to form social relationships left him isolated, thereby compounding the problem. The lack of attachment is an almost ironic disorder in that you can feel your pain but cannot feel the pain of others, in an attempt to deal with the pain of virtual emotional abandonment, Jimmy sought solace in substance abuse which only intensified his impulsivity. Thus, Jimmy saw violence as his only available alternative.

Night of Crime

12/7 earlier that night came home from work
drinking beer watching Mon night football
just moved back home

cleaning downstairs

Letterman coming on

~~Alan~~ & Erin & Meredith came over for 1/2 hr
snorting Ritalin for 2 1/2 hrs.

250-280 mg.

M. took some Ritalin (40 mg & took 40 c her)

5:20 M left; J continued Ritalin

talked to Chip

he wouldn't let J. talk to Chip when he was drunk

2:30 called Chip for 1/2 hr

nothing going through head

talked about C. coming home for Thanksgiving

C. going to drop out of school

called Meredith, knew she wouldn't be asleep

asked for \$75 to get C. home

talked to her 2-3 times

she offered to drive up & get C.

* M. unfatigated & J., would have done anything for him

5:30 still snorting Ritalin

"doing a lot of thinking"

called M. "put on travelling clothes"

M. "Now that you're living at home, are you still thinking
about that?"

telling her about problems surrounding coming home
"somehow it led to I'm gonna do it"
talked about it; M. asked if he wanted her to help
"you may need some help; your father's gonna get up in
fight"

discussed which hat to use

(not wooden signed; autographed didn't want to ruin it)

condensed 2 bottles of Filix

sat in room; waited until fr. went to shower

Kill mom while dad was in shower -- there would
be noise

took phone off hook, laid 1 knife in hallway in case
dad came in

went in bedroom; struggled E.M. for a few minutes
she started screaming for dad

"it was getting at me to hear her scream"

now it bothers him that he was the last thing they
saw before they died

"in a rage" "like a maniac"
come downstairs

"the clown one to go"

unsure what happened in bet.

hid but at top of stairs

pat & waited E.M. however

"like I was standing on other side of myself watching
me"

"like someone else committing crime & I was watching"
sprayed Tlex in eyes & buried claw hammer in head
"fr. put up a fight & a hammer stuck in his head"
eventually dad fell to ground; hit him with
hammer & baseball bat

X "22 years of hatred come out"
overkill; kept on and on and on and on
went into bedroom to check on mom
hit her in head w/ hammer to make sure she was dead

Mom thought he was going to kill her
heard noise upstairs

"it was his fr. breathing into carpet"
"how is he still living?"

went to find drill to end the madness
took bat upstairs to beat on him again
kicked to toe to make sure he was dead

Clean up, \$, car keys, pack stuff to dump

* M. testimony not good enough by itself
don't know what M. did while in shower
did M. happen anything?

broke window downstairs to make look like robbery
man across street pulled up; I waved
got in car, left

used credit card for gas, cig, something to drink
stopped for Mesquite for finger

"speaking ticket would have landed me back in jail"
shook for 1st 5-6 hrs

"What did I just do?"

fitting woke off; hadn't slept or eaten in 36 hrs.
thought it was all a nightmare

woke up crying; crying for 3 hrs. straight

get C. no one would notice parents missing

"not a surprise to my brother"

called home; realized that someone found bodies & just
phone or hook

didn't call Chip -- would have been in Europe
too smart to let this happen

could have been in Europe in return of hrs.

detectives questioned him (C) all day

still thinking he was bringing C. home for Thanksgiving

got to Phila, C. not there

got something to eat

went back; didn't get car parked before swarmed

didn't think they were after him for murder

interrogation room 48-72 hrs

good cop/bad cop 36 hrs straight

M. "pursuing her mouth"

never confessed

1 Q. OKAY. I'LL SHOW YOU THIS DOCUMENT AND THEN I'LL
2 HAVE IT MARKED FOR IDENTIFICATION. I'LL ASK IF
3 YOU COULD LOOK AT THAT AND TELL ME IF THAT IS
4 THE REPORT AND IF THAT ACCURATELY REFLECTS YOUR
5 FINDINGS?

6 A. YES.

7 Q. YOUR HONOR, THIS IS STATE'S FOR IDENTIFICATION
8 286 AND I WOULD MOVE IT INTO EVIDENCE.

9 MR. BOYD: YOUR HONOR, I DON'T THINK THE DOCUMENT
10 ITSELF IS ADMISSIBLE. IF HE WANTS TO CROSS HER ON IT,
11 THAT'S FINE.

12 THE COURT: LET ME SEE IT.
13 (THE REPORT WAS SHOWN TO THE COURT)

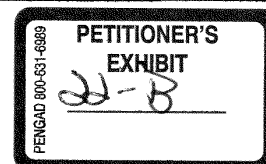
14 THE COURT: WHY WOULD IT NOT COME IN; SHE HAS
15 IDENTIFIED IT AS A REPORT SHE GENERATED FOR THIS TRIAL.

16 MR. BOYD: MY UNDERSTANDING IS A REPORT ITSELF IS
17 NOT ADMISSIBLE. THERE ARE PARTICULAR PORTIONS THAT YOU
18 COULD CROSS EXAMINE FROM BUT ---

19 THE COURT: WELL, JUST GO AHEAD AT THIS POINT, SO
20 I WON'T HAVE TO LET THE JURY GO OUT, JUST CROSS EXAMINE ON
21 IT AND I'LL MAKE A DECISION LATER.

22 Q. YES, SIR. MS. CASCIO, I'M GOING TO HAND THIS
23 BACK TO YOU, STATE'S EXHIBIT 286 FOR
24 IDENTIFICATION AND ALLOW YOU TO REFER TO IT.

25 A. UH HUH.



THE COURT: YOU MAY CONTINUE.

Q. MS. CASCIO, HAVE YOU HAD AN OPPORTUNITY TO
RETRIEVE YOUR NOTES?

A. YES.

Q. AND I BELIEVE YOU PROVIDED ME WITH A COPY OF
THESE YESTERDAY?

A. YES.

Q. I'M GOING TO ASK YOU A COUPLE OF THINGS ABOUT
YOUR NOTES. SOMETIMES YOU HAVE THINGS IN QUOTES
AND, OF COURSE, I KNOW YOU HAD INTERVIEWS WITH
JIMMY BUT THEN YOU HAD INTERVIEWS WITH OTHER
PEOPLE, TOO; IS THAT CORRECT?

A. YES.

Q. WHEN IT IS IN QUOTES DOES THAT MEAN THAT WHOEVER
YOU'RE TALKING TO SAID IT OR IS THAT FOR
INFERENCES?

A. THOSE ARE DIRECT QUOTES.

Q. OKAY. I WANT TO CALL YOUR ATTENTION BEGINNING
WITH YOUR INTERVIEW, I THINK THIS PROBABLY WOULD
END UP BEING ON YOUR YELLOW SHEETS BUT THIS IS
THE INTERVIEWS WITH THE DEFENDANT. IT SAYS 11-
30, I GUESS NOVEMBER 30TH?

A. YES.

Q. I JUST WANT TO CUT THROUGH A COUPLE OF THINGS
THAT HE HAD RELATED. YOU TOOK THESE NOTES AS

1 A. HE WAS SAYING THAT HE FELT THAT THINGS WERE KIND
2 OF RELATIVELY NORMAL, EXPERIMENTATION WITH DRUGS
3 FOR AN ADOLESCENT WERE SEEN BY HIS PARENTS -- HE
4 FELT THAT HIS PARENTS OVER-REACTED.

5 Q. HIS PARENTS OVER-REACTED WHEN THEY FOUND OUT HE
6 WAS USING DRUGS, BASICALLY? I DON'T WANT TO PUT
7 WORDS IN YOUR MOUTH; IS THAT WHAT YOU'RE SAYING
8 OR THAT'S WHAT AT LEAST HE WAS SAYING?

9 A. I THINK WHAT HE WAS SAYING WAS THAT MOST
10 ADOLESCENTS DO AT SOME POINT TRY DRUGS AND WHEN
11 HIS PARENTS FOUND OUT, THEY OVER-REACTED.

12 Q. BECAUSE THEY WERE SO CLUELESS. THAT WAS HIS
13 WORD?

14 A. THOSE WERE HIS WORDS, YES.

15 Q. NOW, AGAIN, I MAY NOT HAVE BEEN FAIR TO YOU ON
16 THIS. THE ACTUAL TIME YOU TALKED TO HIM -- I
17 REALIZE YOU'RE KIND OF GETTING A HISTORY FROM
18 HIM, IS THAT RIGHT?

19 A. YES.

20 Q. AND YOU'RE TALKING ABOUT COLLEGE ---

21 A. WE WERE TALKING ABOUT HIS WHOLE LIFE.

22 Q. OKAY. THIS SAYS 11-30, IT DOESN'T HAVE A YEAR
23 AND HIS HONOR CALLS IT TO MY ATTENTION WHEN I
24 DON'T MENTION YEARS. NOVEMBER 30TH, WHEN WAS
25 THIS NOVEMBER 30TH ---

1 A. YES.

2 Q. MA'AM, NOW IF WE COULD, I'D LIKE TO REFER TO
3 YOUR ACTUAL PRELIMINARY REPORT.

4 A. YES.

5 Q. DO YOU HAVE THAT IN YOUR HAND?

6 A. UH HUH.

7 Q. I JUST WANT TO GO THROUGH IT BRIEFLY. I REALIZE
8 I'M PUTTING MY BACK TO THE JURY AGAIN. YOU SAID
9 JAMES ROBERTSON WAS AN INTELLIGENT, COOPERATIVE
10 25 YEAR OLD WHITE MALE INCARCERATED AT LEE
11 CORRECTIONAL. IS THAT CORRECT?

12 A. YES.

13 Q. SO, YOU ACTUALLY TALKED TO HIM -- I'M LOSING
14 TRACK OF TIME, BUT THE BEGINNING OF THIS MONTH;
15 IS THAT RIGHT?

16 A. NO, SIR.

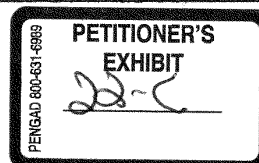
17 Q. IS THIS MARCH 1ST OF '99?

18 A. THAT'S THE DATE OF THE REPORT. THE DATES THAT I
19 SAW JIMMY WERE A FEW MONTHS BEFORE THAT.

20 Q. OKAY. I THINK THAT'S REFLECTED IN YOUR NOTES.
21 IS IT LIKE NOVEMBER ---

22 A. NOVEMBER 30TH, DECEMBER 7TH, DECEMBER 9TH.

23 Q. NOVEMBER 30TH, DECEMBER 7TH, DECEMBER 9TH, OKAY.
24 YOU RELATED HIS HISTORY THAT WE'VE HEARD
25 INCLUDING BIPOLAR DISORDER, OBSESSIVE COMPULSIVE



1 THE COURT: YOU MAY CONTINUE.

2 Q. MS. CASCIO, HAVE YOU HAD AN OPPORTUNITY TO
3 RETRIEVE YOUR NOTES?

4 A. YES.

5 Q. AND I BELIEVE YOU PROVIDED ME WITH A COPY OF
6 THESE YESTERDAY?

7 A. YES.

8 Q. I'M GOING TO ASK YOU A COUPLE OF THINGS ABOUT
9 YOUR NOTES. SOMETIMES YOU HAVE THINGS IN QUOTES
10 AND, OF COURSE, I KNOW YOU HAD INTERVIEWS WITH
11 JIMMY BUT THEN YOU HAD INTERVIEWS WITH OTHER
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15 YOU'RE TALKING TO SAID IT OR IS THAT FOR
16 INFERENCES?

17 A. THOSE ARE DIRECT QUOTES.

18 Q. OKAY. I WANT TO CALL YOUR ATTENTION BEGINNING
19 WITH YOUR INTERVIEW, I THINK THIS PROBABLY WOULD
20 END UP BEING ON YOUR YELLOW SHEETS BUT THIS IS
21 THE INTERVIEWS WITH THE DEFENDANT. IT SAYS 11-
22 30, I GUESS NOVEMBER 30TH?

23 A. YES.

24 Q. I JUST WANT TO CUT THROUGH A COUPLE OF THINGS
25 THAT HE HAD RELATED. YOU TOOK THESE NOTES AS

- 1 PART OF ASSISTING YOU IN MAKING YOUR
2 PRESENTATION, IN MAKING THE DETERMINATION -- I
3 MEAN YOU DID LOTS OF THINGS. YOU TALKED TO
4 PEOPLE, YOU TOOK NOTES, TOOK INTERVIEWS, BUT YOU
5 ALSO INTERVIEWED DOCUMENTS.
6 A. YES.
7 Q. BUT THIS WAS AN INTEGRAL PART, JUST AS THESE
8 DOCUMENTS OR AS THE DIAGRAMS THAT YOU USED
9 TODAY. IS THAT CORRECT?
10 A. (THE WITNESS NODDED IN THE AFFIRMATIVE.)
11 Q. I'M SORRY, MA'AM, BUT YOU'VE GOT TO ANSWER OUT.
12 A. YES. SORRY; YES.
13 Q. OKAY, JUST GOING THROUGH THIS 11-30 INTERVIEW,
14 THAT WAS AN INTERVIEW WITH THE DEFENDANT?
15 A. YES.
16 Q. YOU HAD IN QUOTES THAT HE WAS A PRETTY SMART
17 GUY. WERE YOU SAYING THAT OR WAS HE SAYING
18 THAT?
19 A. I ASKED HIM TO DESCRIBE HIMSELF.
20 Q. OKAY. HE SAID HE WAS A PRETTY SMART GUY? OKAY.
21 HE SAID HE DIDN'T LIKE COLLEGE?
22 A. UH HUH.
23 Q. THAT IT WAS FORCED DOWN HIS THROAT?
24 A. YES.
25 Q. AND THAT HE REBELLED AGAINST IT?

1 A. HE WAS SAYING THAT HE FELT THAT THINGS WERE KIND
2 OF RELATIVELY NORMAL, EXPERIMENTATION WITH DRUGS
3 FOR AN ADOLESCENT WERE SEEN BY HIS PARENTS -- HE
4 FELT THAT HIS PARENTS OVER-REACTED.

5 Q. HIS PARENTS OVER-REACTED WHEN THEY FOUND OUT HE
6 WAS USING DRUGS, BASICALLY? I DON'T WANT TO PUT
7 WORDS IN YOUR MOUTH; IS THAT WHAT YOU'RE SAYING
8 OR THAT'S WHAT AT LEAST HE WAS SAYING?

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10 ADOLESCENTS DO AT SOME POINT TRY DRUGS AND WHEN
11 HIS PARENTS FOUND OUT, THEY OVER-REACTED.

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13 WORD?

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15 Q. NOW, AGAIN, I MAY NOT HAVE BEEN FAIR TO YOU ON
16 THIS. THE ACTUAL TIME YOU TALKED TO HIM -- I
17 REALIZE YOU'RE KIND OF GETTING A HISTORY FROM
18 HIM, IS THAT RIGHT?

19 A. YES.

20 Q. AND YOU'RE TALKING ABOUT COLLEGE ---

21 A. WE WERE TALKING ABOUT HIS WHOLE LIFE.

22 Q. OKAY. THIS SAYS 11-30, IT DOESN'T HAVE A YEAR
23 AND HIS HONOR CALLS IT TO MY ATTENTION WHEN I
24 DON'T MENTION YEARS. NOVEMBER 30TH, WHEN WAS
25 THIS NOVEMBER 30TH ---

- 1 A. 1998.
- 2 Q. SO, BACK LAST NOVEMBER?
- 3 A. YES, YES.
- 4 Q. OKAY. AND HE SAID -- HE MENTIONED THE CHURCH
- 5 WOULD HELP HIM, BUT HE DOESN'T WANT HELP FROM
- 6 THEM. IS THAT CORRECT?
- 7 A. I DON'T KNOW WHERE YOU ARE.
- 8 Q. I'M SORRY, MA'AM, I'VE JUMPED. BACK WHERE WE
- 9 WERE TALKING ABOUT HIS PARENTS BEING SO
- 10 CLUELESS? IT'S RIGHT DOWN BELOW THERE AT THE
- 11 BOTTOM OF THAT LITTLE PARAGRAPH ABOUT THE CENTER
- 12 OF THE PAGE?
- 13 A. YES.
- 14 Q. OKAY. AND THEN THAT'S CORRECT THAT HE SAID HE
- 15 DIDN'T WANT ANY HELP FROM THEM?
- 16 A. THAT'S WHAT IT SAYS.
- 17 Q. SO, THERE WERE PEOPLE AVAILABLE TO HELP HIM, BUT
- 18 HE DIDN'T WANT THEIR HELP; IS THAT RIGHT?
- 19 A. THAT'S WHAT IT SAYS.
- 20 THE COURT: KEEP YOUR VOICE LEVEL UP; YOU KEEP
- 21 TRAILING OFF.
- 22 A. I'M SORRY. MAY I MOVE CLOSER?
- 23 Q. YES, MA'AM. WELL, THE CHAIR WON'T ROLL, MA'AM.
- 24 A. OH, OKAY, I'LL JUST KIND OF LEAN THIS WAY.
- 25 THANK YOU.

1 ONE CASE BUT DIDN'T TESTIFY IN IT?

2 A. YES.

3 Q. WHAT IS THE CENTER FOR CAPITAL LITIGATION?

4 A. IT'S AN ORGANIZATION THAT WORKS WITH PEOPLE WHO
5 ARE FACING DEATH PENALTY CHARGES.

6 Q. AND HE INDICATED ON NOVEMBER, I'M SORRY, MA'AM,
7 NOVEMBER 30TH OF THIS LAST YEAR THAT HE WAS
8 LEARNING A LOT FROM DRUCIE; IS THAT CORRECT?

9 A. UH HUH, ABOUT HIS MOTHER.

10 Q. ABOUT HIS MOTHER?

11 A. YES.

12 Q. SO, HOW DO WE KNOW THAT THE THINGS HE RELATED
13 THAT YOU'RE BASING YOUR DECISION ON, WHETHER
14 THEY CAME FROM DRUCIE OR WHETHER THEY CAME FROM
15 JIM'S OWN KNOWLEDGE?

16 A. BECAUSE A LOT OF THINGS I CORROBORATED WITH
17 STATEMENTS FROM SKIP MEYER'S NOTES AND FROM
18 TERRY'S OWN NOTEBOOKS.

19 Q. I UNDERSTAND THAT, MA'AM, BUT WHEN YOU'RE SAYING
20 THAT JIM TOLD ME THIS BECAUSE JIM REMEMBERED
21 THIS AND JIM REMEMBERED THAT, HOW DO YOU KNOW
22 DRUCIE DIDN'T JUST TELL HIM THOSE THINGS IN
23 PREPARATION FOR THIS CASE?

24 A. I DON'T, BUT I DON'T BELIEVE THAT SHE DID.

25 Q. YOU'D LIKE TO BELIEVE THAT SHE DIDN'T, BUT YOU

RE: RE: RE: Robertson; James D. v South Carolina

From: Hank Ehlies (hank@ehlieslaw.com)

To: Kevin.Brackett@yorkcountygov.com; hank@ehlieslaw.com

Cc: ESalter@scag.gov; merry.collins@yorkcountygov.com; tpope@elrodpope.com; jbradleybennett@yahoo.com

Date: Wednesday, May 26, 2021, 07:45 AM EDT

Best to all! I attach a few pages that may help you locate the complete contents of State's Exhibit 286 which has been in the continuous, uninterrupted care, custody and control of the Solicitor's office since March 25, 1999. Thanks, Hank Ehlies

-----Original Message-----

From: Hank Ehlies

Sent: Tuesday, May 25, 2021 4:30 PM

To: 'Brackett, Kevin'

Cc: 'Ed Salter'; 'Collins, Merry'; 'Tommy Pope'; 'Bennett, Joseph Bradley'

Thank you for your continued search. The trial transcript is very literal in what was going on during Mr. Pope's cross-examination of Dr. Cascio. Mr. Pope pursued every single detail in the November 30, December 7th and 9th notes. He called the notes out on the record by date; "Dr. Cascio on your November 30th notes....." All the notes and the typed "Preliminary Report" of Dr. Cascio were marked and moved into evidence as State's Exhibit 286. Judge Hayes sustained the defense objection and the Exhibit remains to this day as part of the Solicitor's file. I went to the Clerk's office knowing that Judge Hayes sustained the defense objection to admitting 286 and indeed confirmed that the exhibit remained in the custody of the Solicitor's office. I then went next door and visited with Merry Collins who was kind enough to give me a copy of Exhibit 286 which was NOT part of the thumb drive. It contained the typed Preliminary Report, the interview notes dated December 7, 1998 and that was all. In furtherance of your "pure speculation" remark, I wonder if you have checked with Mr. Pope. Word on the street is that those notes were included in the training materials he used during and after his tenure as Solicitor. Hank Ehlies

-----Original Message-----

From: Brackett, Kevin

Sent: Tuesday, May 25, 2021 10:30 AM

To: 'Hank Ehlies'

Cc: Ed Salter; Collins, Merry; Tommy Pope; Bennett, Joseph Bradley

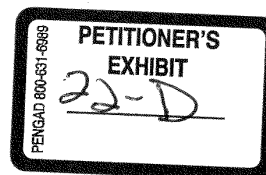
This is pure speculation but it is possible that Cascio provided all of her notes to us for review, Tommy reviewed them and copied the pages he felt were relevant and those did not include November 30 and December 9. In any event, I am confident that we do not have them in our possession. Merry Collins has gone through our trial notebooks again and there is nothing in there that has not been provided to you except work product. I believe States 286 (not in evidence) was only her report. I am not sure that the Clerk kept it since it was not placed in evidence however you can check with them to see if you like.

Kevin

-----Original Message-----

From: Hank Ehlies <hank@ehlieslaw.com>

Sent: Monday, May 24, 2021 7:40 PM



To: Brackett, Kevin <Kevin.Brickett@yorkcountygov.com>
 Cc: Ed Salter <ESalter@scag.gov>; Collins, Merry
 <merry.collins@yorkcountygov.com>; Tommy Pope <tpope@elrodpope.com>;
 Bennett, Joseph Bradley <jbradleybennett@yahoo.com>
 Subject: Re: Robertson; James D. v South Carolina

WARNING: The email below is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

They were specifically included in State's exhibit 286 and used by Mr. Pope in cross of Dr. Cascio. Thank you for making a diligent search of your trial exhibits. HE

Sent from my iPhone Hank Ehliès

> On May 24, 2021, at 5:09 PM, Brackett, Kevin
 <Kevin.Brickett@yorkcountygov.com> wrote:
 >
 > ?I see the reference but we have no notes with those dates on them. We
 will look back through the transcript and see if there is anything that can
 help remind us as to how the sequence of events unfolded re the notes.
 >
 > -----Original Message-----
 > From: Hank Ehliès <hank@ehlieslaw.com>
 > Sent: Monday, May 24, 2021 3:40 PM
 > To: 'Ed Salter' <ESalter@scag.gov>; Collins, Merry
 <merry.collins@yorkcountygov.com>; 'Tommy Pope' <tpope@elrodpope.com>;
 Brackett, Kevin <Kevin.Brickett@yorkcountygov.com>
 > Cc: 'Bennett, Joseph Bradley' <jbradleybennett@yahoo.com>
 > Subject: RE: FW: Robertson; James D. v South Carolina
 >
 >
 > WARNING: The email below is from an EXTERNAL source. Ensure you trust this
 sender before clicking on any links or attachments.
 >
 >
 >
 > Thank you very much. I have seen all these documents. Let me be more
 explicit. On March 24, 1999 Mr. Pope received Dr. Cascio's hand written
 notes. On March 25, 1999, Mr. Pope cross-examined Dr. Cascio using what Mr.
 > Pope described as notes dated November 30, 1998, December 7, 1998 and
 December 9, 1998. I have sent you the pages from the trial transcript from
 which I obtained this information. I have received from the Solicitor's
 office notes dated December 7, 1998 and no others. I am looking for the
 Solicitor's copies of Dr. Cascio's notes dated November 30, 1998 and
 December 9, 1998 and not the Attorney General's copies should he even have
 them. Thanks for sending those notes. Hank Ehliès
 >
 > -----Original Message-----
 > From: Brackett, Kevin
 > Sent: Monday, May 24, 2021 2:47 PM
 > To: Hank Ehliès; 'Ed Salter'; Collins, Merry; Tommy Pope
 > Cc: 'Bennett, Joseph Bradley'
 >
 > Hank,
 >
 > This is everything we have on Cascio. Merry says that this has already
 been provided (the notes back in December when you were in York copying the
 > exhibits) but in the event that it was misplaced in your files, here is

another copy.

> KB

>

> -----Original Message-----

> From: Collins, Merry <merry.collins@yorkcountygov.com>

> Sent: Monday, May 24, 2021 2:21 PM

> To: Brackett, Kevin <Kevin.Brackett@yorkcountygov.com>

> Subject: FW: Robertson; James D. v South Carolina

>

> This is all I have on Cascio.

>

>

> -----Original Message-----

> From: Hank Ehlies <hank@ehlieslaw.com>

> Sent: Monday, May 24, 2021 2:09 PM

> To: 'Salter, III, William Edgar' <esalter@scag.gov>; Collins, Merry

> <merry.collins@yorkcountygov.com>; Brackett, Kevin

> <Kevin.Brackett@yorkcountygov.com>; 'Tommy Pope' <tpope@elrodpope.com>

> Cc: 'Bennett, Joseph Bradley' <jbradleybennett@yahoo.com>

> Subject: Re: Robertson; James D. v South Carolina

>

>

> WARNING: The email below is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

>

>

>

> Folks, I have reviewed the thumb drive provided by the Solicitor's office, the subsequent materials provided separately, the privilege log, exhibit 286 that Merry Collins gave me, the State's answers to the Applicant's Request for Production and I still cannot locate Dr. Cascio's complete notes as described by, and in the possession of, Mr. Pope as illustrated in the attached page from the jury trial transcript. They are reports (excluding the three page typed report dated March 1, 1999) and notes dated November 30, December 7 and December 9, 1998. Can someone help me?" Hank Ehlies

>

>

> Attachment(s): CasciosNotes.pdf; CascioRept.pdf; Defense Cascio Rept.PDF

>



Cascio Trial Testimony.pdf

1.8MB

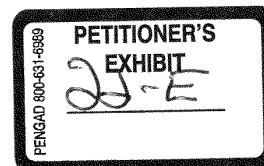
Privilege Log

<i>Nature of Documents or Information Withheld</i>	<i>Date of Document</i>	<i>Privilege or Protection</i>	<i>Bates Range</i>
<u>Thousands of pages of case materials prepared and used by Solicitors office in the prosecution of State v. James Robertson. These materials consist of only documents that have already been provided to the defense plus notes or outlines created by Solicitor's office staff for use in trial. The material also includes all of our files and notes on prospective jurors summoned for court.</u>		Work Product	Not Bates stamped
Six page report of Agent Mike Prodan detailing his analysis of the crime scene based on review of the file. This was performed at behest of Solicitor's office and for informational purposes not for use in trial.		Consulting expert not used at trial	
<u>Thirteen pages of investigative notes that were copied inadvertently from the Sheriff's Office file. These were not part of our case file and were not used by any witness to refresh their memory while testifying and would not otherwise be discoverable.</u>		Work Product	



Kevin S. Brackett
16th Circuit Solicitor

May 19, 2021
York, South Carolina



RECEIPTS FOR EXHIBITS

CASE NO. 99-1020, 1021, 1022, 1023 JUDGE Joh C. Haynes, III
 PLAINTIFF: State PLTF'S ATTY. Thomas E. Pope
 DEFENDANT: James D. Robertson DEF'S ATTY. James H. Hancock & James W. Boyd
 DATE TRIAL STARTED: 3-15-99 DATE TRIAL ENDED: _____
 Received of Janet Fischer, Court Reporter for above case,
 these Exhibits: 0

This space for Clerk
of Court's use

281. <u>Stipulation</u>	
~~282.~~ <u>Report</u>	
~~283.~~ <u>MRT</u>	
~~284.~~ <u>Report of Dr. Pincus</u>	
~~285.~~ <u>Records ('96) from Dept. of Corrections</u>	
~~286.~~ <u>Report of Mrs. Carcio - not put in evidence</u>	
~~287.~~ <u>Miranda Right - not put in evidence</u>	
8.	
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Received from Court Reporter Janet Fischer this _____ day of
March, 1999.

YORK COUNTY CLERK OF COURT

By: Tally Belin Clerk III

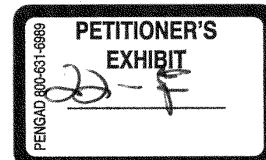
Page 15 of _____

Received from _____

(Clerk of Court's Office)

the above circled items.

(DATE)



FROM COLLEGE SOCIAL WORK

003 727 3492

1999.03-01

16:10

MS32 P.02/05

James W. Hancock, Jr.
746 East Black Street
P.O. Box 2851
Rock Hill, SC 29732

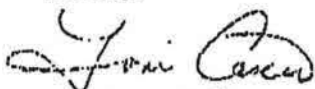
March 1, 1999

Dear Mr. Hancock,

Attached you will find my preliminary report for James Robertson. This report is based on in-depth interviews, medical and psychiatric records of the Robertson family, and school records of Jimmy Robertson. I hope you find this helpful.

If I can answer any questions for you, please do not hesitate to contact me at (803) 777-3912.

Sincerely,



Toni Caserio, Ph.D.
Assistant Professor

FROM: COLLEGE SOCIAL WORK

803 777 3498

1999-03-01

15:10

HS32 P.02.05

Cascio

Preliminary Report for James Robertson
March 1, 1999
prepared by Toul Cascio, Ph.D.

James Robertson is an intelligent, cooperative 25 year old white male currently incarcerated at Lee Correctional Institute. Jimmy has a history of bipolar disorder, obsessive compulsive disorder, and attention deficit-hyperactivity disorder. He has one previous psychiatric hospitalization at the Hall Institute in Columbia, SC in 1995, and he has a history of polysubstance abuse as well. Jimmy also has had a troubled family history, and it is on this history that this report will focus.

There are several themes which emerge from Jimmy's family of origin. They include: domestic violence, physical, emotional and possible sexual abuse, and impaired parental bonding (particularly due to mental illness in the family).

Domestic Violence

Domestic violence actually took many forms in the Robertson household. Psychiatric records indicate that there were physical confrontations between Earl and Terry Robertson. The literature indicates that children who witness domestic violence manifest a variety of difficulties later in life. They are more likely to have social skills deficits, low self-esteem, depression, anger, low empathy, aggression, and alcohol/drug abuse.

Physical Abuse

Jimmy Robertson was beaten by both parents. Terry was known to hit Jimmy and pull his hair. Earl's physical abuse, however, was more severe. It began early in childhood. Jimmy reported having a habit of positioning himself on his hands and knees in bed and banging his head against the headboard as a way of rocking himself to sleep as a small child. He would sometimes continue rocking against the headboard after he had drifted off to sleep. Often, Earl would come into his room and beat the sleeping child with a belt in an attempt to make him stop making noise. This type of violence is particularly damaging given its unexpected, unpredictable nature. Jimmy also reported having been thrown against walls, tackled, and beaten with a belt by his father. There was one incident in which Earl held Jimmy off the back deck by his neck. Earl also had an argument with Jimmy's brother Chip in which he literally pulled the polo shirt off of Chip's back in his rage. Earl also, on one occasion, pushed Chip down a flight of steps. Jimmy reported being afraid of his father's unpredictable temper. Further, Jimmy has a history of three unexplained head injuries. Two of the three were concussions, and in the third, he was "hit with a fist"; he could, however, not remember details of these incidents. It is possible that these are also incidents of physical abuse. Finally, Jimmy reported that some of his anger toward his mother was due to her failure to protect him and Chip from their father.

Emotional Abuse

Emotional abuse is perhaps the most prevalent theme in Jimmy's family life. Jimmy reported almost continual verbal abuse, primarily by Earl. Earl would stand close to Jimmy ("get up in your face") and yell at him, calling him names, such as "stupid," "idiot," and "worthless." These incidents were numerous throughout the years. In fact, employment records confirm that Earl had difficulties communicating with subordinates. Emotional abuse is extremely damaging. It results in feelings of anger, helplessness, and despair in children that it often acted out in criminal behavior. Jimmy reported that he never truly felt loved by his father, and he believes that his mother loved him only because "she had to." As a result of his father's verbal abuse, Jimmy felt very rejected; his feelings of rejection were intensified by experiences with his mother. Jimmy recalled an argument with Terry in which she slapped him and told him that she wished he had never been born. This theme of impaired attachment between Terry and Jimmy will be explored in more detail.

Sexual Abuse

Jimmy does not report any recollections of sexual abuse; however, there are two reasons for the inclusion of this theme. First, Jimmy cannot recall where he went to kindergarten and first grades; he mistakenly believed that he was in Michigan at this time when the family was really in California. His brother Chip, who is two years younger, however, can recall vivid details of that time in their childhoods. This lapse in memory is often characteristic of trauma, especially early sexual abuse. In addition, he and Chip would take showers with their parents until the age of 11 or 12. Although he cannot recall specific sexual acts taking place, this behavior is highly developmentally inappropriate.

Impaired Bonding

There are several indicators of impaired bonding between Terry and Jimmy. This theme is especially significant because children who are insecurely attached in childhood have difficulty with empathy and forming attachments later in life. One indicator of this impaired bonding is the rocking and head banging as a small child described by Jimmy. Such self-stimulation is often related to a condition known as marasmus in which a child's physical needs (feeding, changing) are met, but their emotional needs for touch and affection are not. Children in these situations (often found in orphanages) will resort to such self-stimulation in an attempt to sooth themselves. In addition, given Terry's psychiatric history, it is likely that this, too, took its toll on her bonding ability with her children. Terry had a history of bipolar disorder and obsessive-compulsive disorder. She also engaged in self-mutilating behavior, including cutting on her arms, thighs, and breasts. She reported visual hallucinations, hearing voices, and compulsions to count. Terry was on a plethora of psychotropic medications. She made at least one suicide attempt and, indeed, was admitted to the psychiatric unit at Piedmont Medical Center in Rock Hill, SC for suicidal impulses in December, 1995. Earl was also diagnosed with an affective disorder and as having attention deficit hyperactivity disorder. The literature is replete with information about the

FROM COLLEGE SOCIAL WORK

803 777 3498

1999-03-01

16:12

R532 P.05.05

adverse effects of parental mental illness on children.

Conclusions

Jimmy Robertson came from a family that was quite chaotic. Although they appeared to be a well functioning family to the outside world, there were some serious problems in the Robertson household. Any one of these as an isolated incident would be unremarkable; however, taken cumulatively, these abuses resulted in a myriad of emotional difficulties for Jimmy. His inability to form social relationships left him isolated, thereby compounding the problem. The lack of attachment is an almost ironic disorder in that you can feel your pain but cannot feel the pain of others, in an attempt to deal with the pain of virtual emotional abandonment, Jimmy sought solace in substance abuse which only intensified his impulsivity. Thus, Jimmy saw violence as his only available alternative.

Hank Ehlies Thu Aug 5, 2021

Page: 1

E-mail

From: Collins, Merry
Date: Wed Aug 4, 21 - 4:24 PM - E-mail
To: Bradley Bennett (jbradleybennettlaw@gmail.com); Hank Ehlies
CC: 'Ed Salter'; Brackett, Kevin
Subject: James D. Robertson - PCR

Contact: Collins, Merry A.
File: Robertson; James D. v South Carolina -

Mr. Bennett:

In response to your request yesterday, I am attaching herewith a copy of the Exhibits sheet and a copy of State's Exhibit 286 marked for ID "Report of Ms. Cascio – not put in evidence" as you stated that you and Mr. Ehlies both misplaced the copy I printed out for you on December 3, 2020.

Sr. Investigator Merry A. Collins
16th Judicial Circuit Solicitor's Office
Moss Justice Center
1675-1A York Highway
York, SC 29745

(803) 628-3020 – work
(803) 628-3025 – fax
(803) 818-6616 – direct
(803) 627-2398 – cell

CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential, proprietary, and/or privileged information protected by law. If you are not the intended recipient, you may not read, use, copy, or distribute this e-mail message or its attachments. If you believe you have received this e-mail message in error, please contact the sender by reply e-mail or telephone immediately and destroy all copies of the original message. Any information provided on this email, including any attachments, may be subject to the South Carolina Freedom of Information Act and may be disclosed to third parties in accordance with applicable law.

Attachments: St Exh 286.pdf

**JAMES C. ANDERS, P.A.
& ASSOCIATES**

ATTORNEYS AND COUNSELORS AT LAW

P.O. BOX 7485

COLUMBIA, SOUTH CAROLINA 29202

1315 BLANDING STREET

THE NATIONAL REGISTER OF HISTORIC PLACES

TELEPHONE (803) 799-9400

TELECOPIER (803) 799-2017

JAMES C. ANDERS

THAD L. MYERS

KEITH GIESE

CHERYL F. PERKINS

S. RANDALL HOOD

JOHN G. FELDER, JR.

ROCK HILL OFFICE

125 HAMPTON ST. • SUITE 102

P.O. BOX 4770

ROCK HILL, SC 29732

(803) 366-2236

FAX (803) 366-0203

REPLY TO:

April 2, 1998

York County Clerk of Court
General Sessions Clerk
Post Office Box 649
York, South Carolina 29745

Re: James D. Robertson
Warrant Numbers: F337309, F 337314, F 337355, F 337356

Dear Clerk:

Enclosed please find for filing, three copies of Brady Motion, Rule 5, Motion for Discovery, Motion for Brady and other Favorable Material, and Memorandum of Law S C Rule of Criminal Procedure Rule.

Please file the originals and clock in the copies, once the copies have been clocked in I would appreciate you forwarding a set to the Solicitor's Office, in the envelope provided and returning the last copy in the self-addressed stamped envelope.

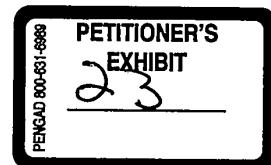
Thank you for your assistance in this matter, it is greatly appreciated.

With warmest regards, I am

Sincerely yours,

Thad
Thad L. Myers

TLM/edp



ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK)

SIXTEENTH JUDICIAL CIRCUIT

State,)

Plaintiff,)

-versus-)

James D. Robertson,)

Defendant(s).)

BRADY MOTION

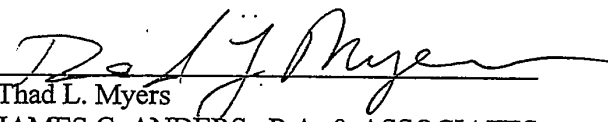
RULE 5

FILED-RECEIVED
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APR 6 8 58 AM '98
DAVID HANCOCK
CLERK OF COURT
YORK COUNTY

Pursuant to the authority of Brady and Rule 5 of the South Carolina Rules of Civil Procedure the Defendant, James D. Robertson hereby requests "Rap" sheets on all witnesses the State intends on calling in the trial of this case and further asks for all "Rap" information on any other State witnesses, both in South Carolina and other Jurisdictions, State and Federal.

This Motion is made pursuant to the authority of Brady and Rule 5 of the South Carolina Rules of Civil Procedure.

Respectfully submitted,


Thad L. Myers
JAMES C. ANDERS, P.A. & ASSOCIATES
1315 Blanding Street
Post Office Box 7485
Columbia, South Carolina 29202
(803) 799-9400
Attorney for Defendant.

Columbia, South Carolina

5th day of April, 1998.

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

State,) Warrant No.: F337309, F337314, F337355
Plaintiff,) F337356

-versus-

James D. Robertson,

Defendant(s).

MOTION FOR DISCOVERY

FILED/RECEIVED
BOOK PAGE
APR 6 8 58 AM '98
DAVID H. HARRIS
CLERK

NOW COMES the Defendant, James D. Robertson, by and through his undersigned counsel of record, pursuant to Rule 5 of the Rules of Practice in the Circuit Courts, and moves the prosecution to permit the Defendant to inspect and copy or photograph, including, but not limited to, the following, with the express provision that the duty of disclosure be a continuing one in the event that any such materials come into existence or become available after the initial disclosures:

A) Any written or recorded statements made by the Defendant, or copies thereof, within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;

B) The substance of any oral statement which the prosecution intends to offer into evidence at the trial made by the Defendant, whether before or after arrest, in response to interrogation by any person then known to the Defendant to be a prosecution agent;

C) A copy of the Defendant's prior criminal record, if any, as is within the

possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;

D) All books, papers, documents, photographs, tangible objects, building or places, or copies or portions thereof, which are within the possession, custody, or control of the prosecution, and which are material to the defense, or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the Defendant;

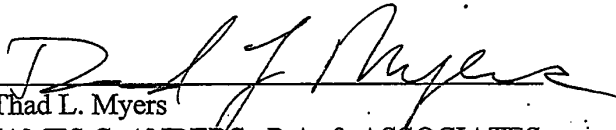
E) All results or report of physical or mental examinations, and of specific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial; and

F) The statement of any witness or prospective prosecution witness, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution.

The Defendant further moves that compliance with the foregoing request be made within ten (10) days from the service of this motion, and upon failure of the prosecution to so comply, the Defendant will move before the Presiding Judge of this Circuit, by Notice and Motion, for an Order prohibiting the prosecution from introducing at trial evidence not disclosed, and if the foregoing is denied, an Order permitting the discovery and inspection requested, or a continuance of the trial, or such Order as the Court in its discretion deems just under the circumstances.

For purposes of this motion, the Defendant asserts that any item requested in Paragraphs A, B, C, D, E, and F above is material to the preparation of the defense in this case.

Respectfully Submitted,


Thad L. Myers
JAMES C. ANDERS, P.A. & ASSOCIATES
1315 Blanding Street
Post Office Box 7485
Columbia, South Carolina 29202
(803) 799-9400
Attorney for Defendant

Columbia, South Carolina

5th day of April, 1998.

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

State,) Warrant No.: F337309, F337314,
F337355, F337356

Plaintiff,)

-versus-

James D. Robertson,

Defendant(s).)

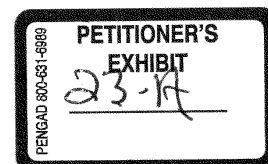
**MOTION FOR BRADY AND OTHER
FAVORABLE MATERIAL
MEMORANDUM OF LAW
SC RULE OF CRIMINAL PROCEDURE
RULE 5**

FILED-RECEIVED
BOOK 7725
APR 6 8 58 AM '80

COMES NOW the Defendant, by and through undersigned counsel, and files this Motion for Brady and other favorable material and incorporated Memorandum of Law and, as grounds therefore, the undersigned would show as follows:

1. Under the United States Supreme Court decision in Brady v. Maryland, 373 US 83, 83 S.Ct. 1194 (1963), the State has an obligation to produce all Brady material for the Defendant well in advance of the scheduled trial date.

2. Defendant claims under Brady, and its progeny, as well as the language and spirit of Giglio v. United States, 405 US 150, 92 S.Ct. 763 (1972); United States v. Tashman, 478 F.2d 129 (5th Cir., 1973); and Napue v. Illinois, 360 US 264, 79 S.Ct. 1173 (1959); that he is entitled to any and all records, memoranda and documents as well as a statement of the Attorney General's Office and all appropriate State, Federal and Local Law Enforcement Agencies as to:



(a) Any and all promises, rewards and inducements made to all witnesses herein, whether or not they have testified before any State or Federal Grand Jury, or other investigative agency, and regardless of whether they will testify at the trial herein.

(b) Any offers or grants of immunity in this case to any witness from loss of property, fine, forfeiture, prosecution, or punishment in this or any other case, related or otherwise.

(c) Whether any witness called before the Grand Jury or who has or will give testimony to any investigative agency or at trial has ever been psychiatrically hospitalized or undergone psychiatric examination, treatment, mental status examination or case, and, if so, a list of names and addresses of the psychiatrists, hospitals and copies of any and all relevant records and reports.

(d) Any "inconsistent" statements of a particular witness or between witnesses.

(e) Any and all "rap" sheets or histories of arrests or convictions of any unindicted co-conspirator or State witness.

3. In addition, Defendant requests copies of any and all memoranda, reports and correspondence to and from the various law enforcement agencies of the United States and all state, county, municipal and local law enforcement agencies regarding the investigation herein.

4. Defendant also contends that he is entitled to any statement or admissions by a witness for or on behalf of the State with respect to the witness' memory or loss thereof.

5. Defendant contends that this Court should specifically direct the Government in the spirit of fairness and equity, seek and produce for Defendant the documents, letters, records and other items sought, irrespective of the State's determination of whether a witness' statement or a particular letter or exhibit can "help" the Defendant. The Defendant and his attorney, not the Attorney General ought to be the judge of his defense and the documents relevant thereto and necessary in support of same.

6. To the extent that specifically is required to demonstrate the materiality of the requested information, see Untied States v. Agurs, 427 US 97 (1976), the Defendant submits that this requirement is satisfied in this motion.

7. To disclose to counsel for the defense any and all evidence in the actual or constructive possession of the State which is of a favorable character for the Defendant in this case and material to the issue of guilty or innocence or to punishment in this case, pursuant to the due process clause of the Fourteenth Amendment to the United States Constitution, including, but not limited to, the following materials:

(a) Any oral, written or recorded statements made by any person to the police, to the Attorney General, or to the Grand Jury which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit or contradict the testimony of any witness whom the Government will call at the trial of the cause, Brady v. Maryland, 373 US 83, S.Ct. 1194 (1963).

(b) Any police investigation report made to the police which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit, or contradict the

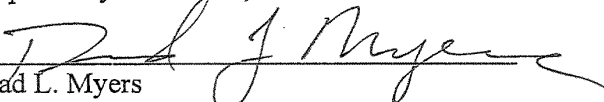
testimony of any witness whom the State will call at trial of the cause. Giles v. Maryland, 386 US 87, S.Ct. 793 (1967).

(c) The names and addresses of witnesses who might establish the Defendant's innocence, mitigate punishment, or impeach, discredit, or contradict the testimony of any witness whom the State will call at the trial of the cause.

(d) Any information or material which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit, or contradict the testimony of any witness whom the Government will call at the trial of the cause. Napue v. Illinois, *supra*; Giglio v. U.S., *supra*.

(e) Any scientific or medical report which tends to establish the Defendant's innocence, to mitigate punishment or to impeach, discredit or contradict the testimony of any witness whom the State will call at the trial of the cause; all laboratory and all test work and any/all research which has been done. Ashley v. Texas, 319 F.2d 80 (5th Cir.), cert. denied, 375 US 931, 84 S. Ct. 331 (1963).

Respectfully Submitted,



Thad L. Myers
JAMES C. ANDERS, P.A. & ASSOCIATES
1315 Blanding Street
Post Office Box 7485
Columbia, South Carolina 29202
(803) 799-9400
Attorney for Defendant

Columbia, South Carolina

5 day of April, 1998.

JAMES W. HANCOCK, JR.

ATTORNEY AT LAW
246 EAST BLACK STREET
P.O. BOX 2851

ROCK HILL, SOUTH CAROLINA 29732

(803) 324-7681

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BOOK 1998

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Fax (803) 324-0710

July 17, 1998

DAVID HAMILTON
D.C.C.P. & S.
YORK CO. 1511

Mr. David Hamilton
Clerk of Court
York County
P. O. Box 649
York, South Carolina 29745

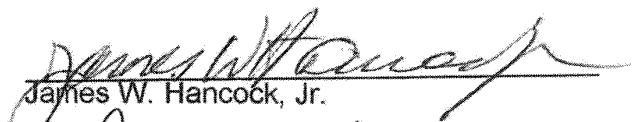
Re: James D. Robertson
Charges: Murder, Armed Robbery, Credit Card Fraud, Fraudulent Check
Case Nos: 98-GS-46-1020, 98-GS-46-1021, 98-GS-46-1022, 98-GS-46-1023
Agency: York County Sheriff's Dept.

Dear Mr. Hamilton:

Enclosed please find a copy of my letter to Mr. Thomas E. Pope for the above named person on the stated charges. Also enclosed please find the original copies of the **Motion For Discovery And Inspection** and **Motion For Brady And Other Favorable Material And Incorporated Memorandum of Law** along with a Certificate of Service by Mail in the above matter.

If you have any questions, please contact my office.

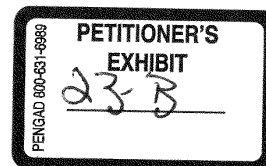
Yours truly,


James W. Hancock, Jr.

James W. Boyd, Jr.

JWH/bw

Enclosures



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BOOK _____ PAGE _____
Jul. 17 1 29 PM '99

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

STATE OF SOUTH CAROLINA) **WARRANT/TICKET #:** 98-GS-46-1020,
DAVID M. HAMILTON) 98-GS-46-1021, 98-GS-46-1022,
JUDGE) 98-GS-46-1023
) **CHARGE:** Murder, Armed Robbery,
) Credit Card Fraud, Fraudulent Check
)
vs.) Agency: YCSD
)
)
JAMES D. ROBERTSON,) **MOTION FOR DISCOVERY**
) **AND INSPECTION**
Defendant.)
_____)

NOW COMES the Defendant, James D. Robertson, by and through his/her undersigned counsel of record, pursuant to Rule 5 of the Rules of Criminal Practice in the Circuit Courts, and moves the prosecution to permit the Defendant to inspect and copy or photograph, including, but not limited to, the following, with the express provision that the duty of disclosure to be a continuing one in the event that any such materials come into existence or become available after the initial disclosures:

(a) Any written or recorded statements made by the Defendant, or copies thereof, within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;

(b) The substance of any oral statement which the prosecution intends to offer into evidence at the trial made by the Defendant, whether before or after arrest, in response to interrogation by any person then known to the Defendant to be a

prosecution agent;

(c) A copy of the Defendant's prior criminal record, if any, as is within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;

(d) All books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody, or control of the prosecution, and which are material to the defense, or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the Defendant, including videotapes;

(e) All results or reports or physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial; and

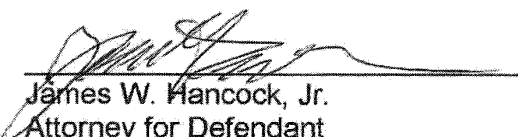
(f) The statement of any witness or prospective prosecution witness, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution.

The Defendant further moves that compliance with the foregoing request be made within ten (10) days from the service of this Motion, and upon failure of the prosecution to so comply, the Defendant will move before the Presiding Judge of this Circuit, by Notice and Motion, for an Order prohibiting the prosecution from introducing at trial evidence not disclosed, and if the foregoing is denied, an Order permitting the

discovery and inspection requested, or a continuance of the trial, or such Order as the Court in its discretion deems just under the circumstances.

For purposes of this Motion, the Defendant asserts that any item requested in Paragraphs (a), (b), (c), (d), (e), and (f), above is material to the preparation of the defense in this case.

Respectfully submitted,


James W. Hancock, Jr.
Attorney for Defendant
246 E. Black Street
P. O. Box 2851
Rock Hill, SC 29732
803/324-7681

Rock Hill, South Carolina


_____, 1998

James W. Boyd, Jr.

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ROCK HILL, SC

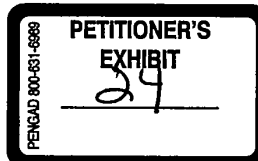
RECEIPTS FOR EXHIBITS

CASE NO. 05-CP-46-532 JUDGE. Jew
 PLAINTIFF: James Rakutson PLTF'S ATTY. Brown/Mat
 DEFENDANT: State of LC DEF'S ATTY. Ed Satter G/F
 DATE TRIAL STARTED 1/28/07 DATE TRIAL ENDED: 1/31/07
 Received of Phyllis Bunn, Court Reporter for above case,
 these Exhibits:

- This space for Cle
of Court's use
1. A#1 - Psychological records (Chip Rakutson)
 2. A#2 - " " (Earl Rakutson)
 3. A#3 - Psychiatrist records
 4. A#4 - Curriculum Vitae of Joni Cassio
 5. A#5 - Report & Notes
 6. D#1 - Order of Appointment
 7. D#2 - Order of Appointment
 8. D#3 - Insurance records
 9. D#4 - Medical records
 10. A#6 - Letter 3/1/99
 11. D#5 - Box of records
 12. A#7 - Original notes
 13. D#6 - DOC Records
 14. D#7 - DOC Records
 15. D#8 - Visitation records
 16. C#1 - Sexler notes re: Jerry
 17. C#2 - Sexler notes re: Earl
 18. _____
 19. _____
 20. _____

Received from Court Reporter Phyllis Bunn this 31st day
January, 2007.

YORK COUNTY CLERK OF COURT
 Rm. Kramer Room



Page 1 of 1

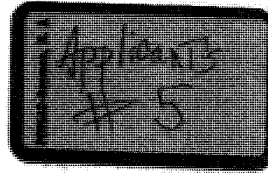
FROM: COLLEGE EDITORIAL WORK

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Cascio

Preliminary Report for James Robertson
March 1, 1999
prepared by Toni Cascio, Ph.D.

James Robertson is an intelligent, cooperative 25 year old white male currently incarcerated at Lee Correctional Institute. Jimmy has a history of bipolar disorder, obsessive compulsive disorder, and attention deficit-hyperactivity disorder. He has one previous psychiatric hospitalization at the Hall Institute in Columbia, SC in 1995, and he has a history of polysubstance abuse as well. Jimmy also has had a troubled family history, and it is on this history that this report will focus.

There are several themes which emerge from Jimmy's family of origin. They include: domestic violence, physical, emotional and possible sexual abuse, and impaired parental bonding (particularly due to mental illness in the family).

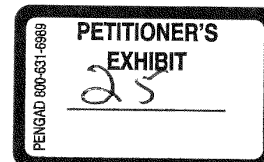
Domestic Violence

Domestic violence actually took many forms in the Robertson household. Psychiatric records indicate that there were physical confrontations between Earl and Terry Robertson. The literature indicates that children who witness domestic violence manifest a variety of difficulties later in life. They are more likely to have social skills deficits, low self-esteem, depression, anger, low empathy, aggression, and alcohol/drug abuse.

Physical Abuse

Jimmy Robertson was beaten by both parents. Terry was known to hit Jimmy and pull his hair. Earl's physical abuse, however, was more severe. It began early in childhood. Jimmy reported having a habit of positioning himself on his hands and knees in bed and banging his head against the headboard as a way of rocking himself to sleep as a small child. He would sometimes continue rocking against the headboard after he had drifted off to sleep. Often, Earl would come into his room and beat the sleeping child with a belt in an attempt to make him stop making noise. This type of violence is particularly damaging given its unexpected, unpredictable nature. Jimmy also reported having been thrown against walls, tackled and beaten with a belt by his father. There was one incident in which Earl held Jimmy off the back deck by his neck. Earl also had an argument with Jimmy's brother Chip in which he literally pulled the polo shirt off of Chip's back in his rage. Earl also, on one occasion, pushed Chip down a flight of steps. Jimmy reported being afraid of his father's unpredictable temper. Further, Jimmy has a history of three unexplained head injuries. Two of the three were concussions, and in the third, he was "hit with a fist"; he could, however, not remember details of these incidents. It is possible that these are also incidents of physical abuse. Finally, Jimmy reported that some of his anger toward his mother was due to her failure to protect him and Chip from their father.

Page 1



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Emotional Abuse

Emotional abuse is perhaps the most prevalent theme in Jimmy's family life. Jimmy reported almost continual verbal abuse, primarily by Earl. Earl would stand close to Jimmy ("get up in your face") and yell at him, calling him names, such as "stupid," "idiot," and "worthless." These incidents were numerous throughout the years. In fact, employment records confirm that Earl had difficulties communicating with subordinates. Emotional abuse is extremely damaging. It results in feelings of anger, helplessness, and despair in children that it often acted out in criminal behavior. Jimmy reported that he never truly felt loved by his father, and he believes that his mother loved him only because "she had to." As a result of his father's verbal abuse, Jimmy felt very rejected; his feelings of rejection were intensified by experiences with his mother. Jimmy recalled an argument with Terry in which she slapped him and told him that she wished he had never been born. This theme of impaired attachment between Terry and Jimmy will be explored in more detail.

Sexual Abuse

Jimmy does not report any recollections of sexual abuse; however, there are two reasons for the inclusion of this theme. First, Jimmy cannot recall where he went to kindergarten and first grades; he mistakenly believed that he was in Michigan at this time when the family was really in California. His brother Chip, who is two years younger, however, can recall vivid details of that time in their childhoods. This lapse in memory is often characteristic of trauma, especially early sexual abuse. In addition, he and Chip would take showers with their parents until the age of 11 or 12. Although he cannot recall specific sexual acts taking place, this behavior is highly developmentally inappropriate.

Impaired Bonding

There are several indicators of impaired bonding between Terry and Jimmy. This theme is especially significant because children who are insecurely attached in childhood have difficulty with empathy and forming attachments later in life. One indicator of this impaired bonding is the rocking and head banging as a small child described by Jimmy. Such self-stimulation is often related to a condition known as marasmus in which a child's physical needs (feeding, changing) are met, but their emotional needs for touch and affection are not. Children in these situations (often found in orphanages) will resort to such self-stimulation in an attempt to sooth themselves. In addition, given Terry's psychiatric history, it is likely that this, too, took its toll on her bonding ability with her children. Terry had a history of bipolar disorder and obsessive-compulsive disorder. She also engaged in self-mutilating behavior, including cutting on her arms, thighs, and breasts. She reported visual hallucinations, hearing voices, and compulsions to count. Terry was on a plethora of psychotropic medications. She made at least one suicide attempt and, indeed, was admitted to the psychiatric unit at Piedmont Medical Center in Rock Hill, SC for suicidal impulses in December, 1995. Earl was also diagnosed with an affective disorder and as having attention deficit hyperactivity disorder. The literature is replete with information about the

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adverse effects of parental mental illness on children.

Conclusions

Jimmy Robertson came from a family that was quite chaotic. Although they appeared to be a well functioning family to the outside world, there were some serious problems in the Robertson household. Any one of these as an isolated incident would be unremarkable; however, taken cumulatively, these abuses resulted in a myriad of emotional difficulties for Jimmy. His inability to form social relationships left him isolated, thereby compounding the problem. The lack of attachment is an almost ironic disorder in that you can feel your pain but cannot feel the pain of others, in an attempt to deal with the pain of virtual emotional abandonment, Jimmy sought solace in substance abuse which only intensified his impulsivity. Thus, Jimmy saw violence as his only available alternative.

12/17

earlier that night came home from work
drinking beer watching New England football
just moved back home

cleaning downstairs

Letterman coming on

~~David~~ Evan & Meredith came over for 1/2 hr
procting Ritalin for 2 1/2 hrs.

250-280 mg.

M. took some Ritalin (40 mg & took 40 & then)

& M. left; I continued Ritalin

talked to Chip

fr. David let J. talk to Chip when he was drunk

2:30 called Chip for 1/2 hr

nothing going through head

talked about C. coming home for Thanksgiving

C. going to drop out of school

called Meredith, knew she wouldn't be asleep

asked for \$75 to get C. home

talked to her 2-3 times

she offered to drive up & get C.

* M. unfatigued & J., would have done anything for him

5:30 still procting Ritalin

"doing a lot of thinking"

called M. "put on travelling clothes"

M. "Now that you're living at home, are you still thinking
about that?"

telling her about problems surrounding C. coming home
"somehow it led to I'm gonna do it"

talked about it; M. asked if he wanted her to help

"you may need some help; your father's gonna put up a fight"

discussed which hat to use

(not wooden signed; autographed didn't want to ruin it)

condensed 2 bottles of Filix

sat in room; waited until fr. went to shower

Kill mom while dad was in shower -- there would be noise

Took phone off hook, laid 1 knife in hallway in case dad came in

went in bedroom; struggled to M. for a few minutes
she started screaming for dad

"it was getting at me to hear her scream"

now it bothers him that he was the last thing they saw before they died

"in a rage" "like a maniac"

Came downstairs

"one down one to go"

unsure what happened in bet.

hid bet at top of stairs

pat & waited to hammer

"like I was standing on other side of myself watching me"

"like someone else committing crime & I was watching"
 sprayed Tlex in eyes & buried claw hammer in back
 of put up a fight & a hammer stuck in his hand."
 eventually, dad fell to ground; hit him with
 hammer & baseball bat

X "22 years of hatred come out"
 overkill; kept on and on and on and on
 went into bedroom to check on mom
 hit her in head w/ hammer to make sure she was dead.

Mom thought he was going to kill her
 heard noise upstairs

"it was his fr. breathing into carpet"
 "how is he still living?"

went to find drill to lend the madness"
 took bat upstairs to beat on him again
 kicked to toe to make sure he was dead

clean up, \$, car keys, pack stuff to dump

* M. testimony not good enough by itself
 don't know what M. did while in shower
 did M. happen to anything?

broke windows downstairs to make look like robbery
 man across street pulled up; I waved
 got in car, left

used credit card for gas, cig, something to drink
stopped for Mosquin for finger

"speaking ticket would have landed me back in jail"

shook for 1st 5-6 hrs

"What did I just do?"

feeling worn off; hadn't slept a cent in 36 hrs.

thought it was all a nightmare

woke up crying; crying for 3 hrs. straight

get C. no one would notice parents missing

"not a surprise to my brother"

called home; realized that someone found bodies & just
phone or book.

didn't call Chip -- would have been in Europe
too smart to let this happen

could have been in Europe in matter of hrs.

detectives questioned Kim (C) all day

still thinking he was bringing C. home for Thanksgiving

got to Phila, C. not there

got something to eat

went back; didn't get car parked before swarmed

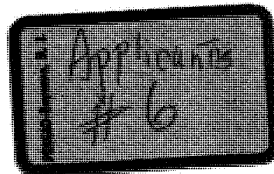
didn't think they were after him for murder

interrogation from 48-72 hrs

good cop/bad cop 36 hrs straight

M. "running her mouth"

never confessed.



James W. Hancock, Jr.
246 East Black Street
P.O. Box 2851
Rock Hill, SC 29732

March 1, 1999

Dear Mr. Hancock,

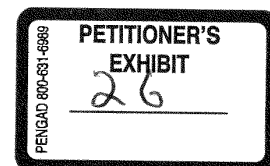
Attached you will find my preliminary report for James Robertson. This report is based on in-depth interviews, medical and psychiatric records of the Robertson family, and school records of Jimmy Robertson. I hope you find this helpful.

If I can answer any questions for you, please do not hesitate to contact me at (803) 777-3912

Sincerely,

A handwritten signature in cursive script that reads "Toni Cascio".

Toni Cascio, Ph.D.
Assistant Professor



~~school principal~~
~~dept. of correction~~ ^{teachers}
guidance counselor

List of Family Members

10 free sheets
Newer Gen 30263

* Christine Robertson - paternal grandmother
paternal grandfather died - 5/96
had been in home care prior to death
404-353-5583
(770)

→ great uncle -

millersville

Maternal grandparents - died years earlier
full colonel / grandad - 1989 died
More 20th century - preferred these
set up grandparents - children used to do things w/ them

→ "drove me crazy" - didn't get to see grandad
before his death - can never forgive
momma -

Never experienced any freedom / outdoors -

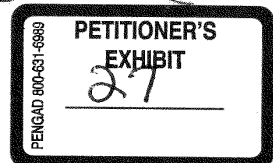
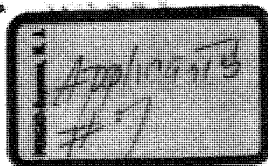
both parents only children

Parents close friends

Billy Hopper -

George Hook -

Spring was part



originally lived in H. Hill

1) William / Linda Weaver - H. Hill
Ben; Jennifer Weaver

2) Lissy / Ken? George -
Lauri Martha George - Wintthrop
Anna George - ~~David~~ Wake Forrest

friends 3) Jordan - Harlinsdale
JP Jordan -
Sharon; Brett

4) Don / Young -

5) George / Linda Hook -
Lett
Kyle - close since beginning of
time -

7) Langley - across street neighbors

8) George Sullivan -

Parents Employment

early
life

Momma = not usually worked - lots of
volunteer stuff / candy stripper / G. League
most quit when Ed. was 10 -

"Where Momma kept sentimental things?"

early years memories - attic
address books - back of phone book -

Jim's yearbooks - his room

Fishing expedition:
Bodily intrusion

Joan in Robertson: Kevin Brachett:

1. Roughly 5 weapons
2. Large amount of blood
3. Hair found in his land
1.
2.
4. Cut on Mr. Robertson's land
1. May have cut his land
2. Back door blood on door
Indicated: Springfield, Mass. A cut as obtained a cut.
5. Clear indication:
6. Note -
handwriting samples:
7. Large # of fingerprints:
Major case, plain prints.
LA to be submitted

Showing that
there is some
evidence it may
my client/

7/17/98 Interview w/ JDR
LWH, JB, EWC / MCS
~~HP~~ ~~JP~~ ~~APL~~ ~~R~~

3:15 pm

Combined two bottles of Tixer -
Moon combined them

explained to a Drury glass / center
for Capital Litigation

Order for prison -

Clothing?

No physical harm -

Had hung him over balcony
among 42 yrs of age

because wouldn't clear out tent
from Eagle scout trip

Mom jumped in between -
Momma supposed to

Mom had been gambling
18 yrs of age / Dad hit him in
chest

pushed chip down stairs —

No reason for it to be that
particular day —
chip not

[Dad didn't call police on me
this time for stealing the
family car & it was Chip's car]

only thought @ killing them
when really drunk [for several days]
or be on Ritalin

would talk to friends @ killing them
usually would ~~that~~ please us

11:30 pm / Mom : Chip would speak
on phone - a

Ritalin = Chip's prescription /
Mom ordering it 5-600 at a time

Subpoena
CVS / drugstore

Express Pharmacy - Springs Ind.

Mom kept Litalin @ house

Chip began using / gave him confidence

Northwestern Insurance Co -

Boonville Ind. - 1st night Jimmy out
of car - front of Chip &
Chip high on Litalin - picked up a
cable-knew it at Jimmy - called dad
came to get chip -

Clay Robinson there
Patie Martin - used at back

Chip introduced Jimmy to Litalin

Jimmy began using Litalin / Aug -
Sept
1978

Mom would mail chip Litalin
10-15 tablets per week -

* Juvenile Record - possible

Addicted to crack cocaine /
40,000 - on credit card fraud
Taxi / Gr. Taxi
Burglary 1st / Gr. Burglary
Michael Brown -

Nov 1998

Stayed home mon night / drinking beer
outside
not allowed ^{to drink} in house

Marion & Merideth came by - left
@ 12:15 pm
he was cleaning house / grandmother
coming

Mom & Dad up in bed /

snoring / called Chip
rule in house - no one can speak
w/Chip if he's drunk - had to hang up

phone discharged - told Chip to let him
charge phone @ 5:40 am -

called him @ 2³⁰ - 3⁰⁰ AM / spoke only
of getting him home / getting \$ for
trip / agreed to speak to him the
next day -

was planning to get \$ for a ticket
from Clay / Meridith
planning to go to work next day

called Meridith - had given her
some pit / asked her for \$ but
she offered to go get cash

called again /

called 3rd time @ 4³⁰ - 5 AM told
her to put on travelling clothes -

Meridith came over - told father that
she had to take friend to hospital
began speaking to her @ killing pas.
- what can i do to help -

told her to get black bag for anything
he may need

both now still doing stabil
150-180 stabil = money by
time MM arrived. at 4³⁰ - 5:00 AM

Aaron = drug free /

Neredita = 10/20 mg. Then did
@ 40 mg when she returned
at 5:00 AM

He can hear everything in house from
his room - they in there talking - ^{mom offered to} heard dad's alarm / listened to him
get up & shave - heard shower
start -

got & saw himself in mirror / looked like
a monster / saw the sweat rolling
off his face / off his body
jumped on mom's bed / ^{happened} knife caught in covers - 2 pps of socks
mom turned / looked up &
saw me - probably not
to late to stop - ^{done put}
mom = "you're killing me, Jimmy" ^{to working}
"passed her in back" & mom started ^{"anything"}
"Earl help me" - screaming
Jimmy jumped up to see that dad
not coming - went back to finish

figured had a minute or two before
dad got out
ran downstairs — told mm that
mom dead / got hammer & bb bat
(mm outside smoking / No' know. how)
He went up w/ hammer / mm said
call if need me —
put bat at top of steps — ^{long outside} closed door

Tile = left hand / stood
hammer = right hand
door opened
got second to let dad out
Tile = square in eyes —
buried hammer claw $\frac{1}{2}$ in above
left eyebrow
Dad's eyes bulged / Dad charged
out / grabbing for hammer / both
are trying to get it
screamed for mm — for help

[dad = fingers @ my throat —
(bored and next when showering)]
Jimmy got control / dragged
dad thru hall / lowered him to
floor

mm @ hall / got in control of hammer
chuck out of car / hit neck several
times

standing over body - hitting in
head

Jimmy = moccasins - blood on
these = chips from
past fight

Jimmy = ~~beat~~ during this - sticking
foot

opened door - had been closed
now went for bat / -

mm standing / step up from bottom

beat him / day done - killed him 30
times
"24 yrs of anger built up in me"

sweat everywhere -

came downstairs -

someone
in this
changed
jacks

went into mom's bedroom / buried
hammer in mom's head - make
sure not one living - worst thing
that could happen - / testifying
I dead

heard wheezing
looked at him Could I be living
went upst
dad face down in blood / cold
shove
"whaled" on him for another 30-60
times

made nearly ¹⁰ deep crevices
left in ^{back} ^{upst}
went down stairs - put hammer
in bag

heard noise again
went into tool room / looking
couldn't find drill bit

went back up - hit him few more
times -

went thru got wallet, mom's safe

checked dad's leg - looking to see
if body cooling

and knife left on bed

got undressed - num right there
threw away everything concerned a/crime
file / vitamin bottle /

took shower / checked neck really
downtown well -
took a thorough shower -

mm had ~~the~~ bag -
put all in bag Then dble tagged

~~the~~
another pair of socks
from parents bedroom -
took \$, credit cards, took check
books -

now had on nocoxins / avoided blood
on foot / lifted up pants leg to
avoid blood -

2/15/17 Wrote checks - never cashed them

had not planned on anyone finding
parents until he was back &

leaving - decided to break glass
pane used - threw over in pile

mm "Rabbits knew what had happened"
going apx shift -

→ cut himself on glass - decided not
to look for it -
Ms. Wagoner drove up / waved

to him -

loaded car / sat in Harris' car
sitting lot - in Jimmy's car -

stopped at Hackensack -
scrubbed hard - nasty cut / got
bandaids, neosporin etc -

12:00 noon / crying uncontrollably
"what have I done"

MM said - It's over now - they
will never tell you what to do again

36 hrs - w/o sleep / only averaged
2 hrs. of sleep per night

Scott Williams = parole agent -

→ want to sleep - in car

MM would keep her mouth shut for
check for 50g.

Grandmother = doesn't blame him
didn't raise you right -

Nancy Ray

introduced as a psychologist

Dr. Blanton / prison psychologist

When asked if he did it / he
nodded —
kept telling him - didn't write down
what he said specifically but his
appearance

Office used to ^{across from} ~~across from~~
Nalle clinic
Dr. in Charlotte / 10-11 yrs old
family counselor
saw Jimmy separately as well

Jabpoena Catawba Court Record

only 10th
grader
in
class
B in Algebra - not good enough
~~didn't~~ threw him @ the room
Algebra 3 Trig class - Ms. Smith
still teaching

had to ask permission to go
outside to shoot basketballs
even at 15-16 yrs. old

"words more harmful than his
fists" - got right in your
face & scream

screamed at every little thing
stuff average parents wouldn't
worry about -
teenage pranks - upset dad -

Julian ^{Burly} McLaughlin
2989 Duong White
329-2039

Jimmy Robertson
234979
LCI

Aunter North
Cell 2211
1204 E. Church St
Bishop 29010

7/22/98

Just advises him not to physically
resist tests for blood, hair, urine
etc but to vocally insist that
a representative of our office
is there.

★ 404 (170) 253-5583 Grandmother
no known health problems

7/22/98

1992 - exchange student } had to call
had neck problem again } Dr. Fleischer
had underdeveloped bones in neck
1988-89 4th time w/ problem - was in
trillion -
German dr's. treated him -
contacted dr. fleischer on return

Momma = heart attack; hearing loss;

Jimmy denies any physical abuse w/in
family
- @ other types of abuse - says ~~that~~
mom did alot for dad; says relationship
w/ dad was better than had been
in awhile -

Good work record - says he is a whacko

Awards received

perfect attendance - high school
B. achievement; eagle scout @ 14; NADA;
Mach team + key club; Pres. of student body treas @ C.A.S.
Chris = top of his class; honor roll

known @ inheritance since 80's
1 1/2 million = Jimmy's assessment of
value of the estate →

77-81 East Grand Rapids, Mich.
was where Robert's lived prior to Rf
before that in Chasno, Calif
Miller Deaton - Mr. Robert's closest
supervisor
→ moved to Rf when 7-8 yrs. old -

Aunt Margaret Ann Brenner
outside of Milledgeville, Ga -
Thomson Ga.

Jimmy's momma inherited lots from
her mother's death

Borders = safe deposit boxes
Nationbank = wills; trusts etc -

Dead = health problems;
shoulder; etc

7/29/98

Mom = volunteer work @ Arp Meyers
traded secretarial work for counseling
became best friends w/ Arp -
Arp would routinely call Mom 11:30 pm
at night

Both families knew of these calls
she & Jimmy used to joke @
them - believed they were having
an affair

Chip doesn't write nor accept calls
- used to talk to him every day -

Chips # 215-382-3650 in Pa
"best friends" - closer than that -

Aug 25 / 1998 Jimmy = raped by man in car
dad wouldn't take care

coming home from Concord - had paid
speeding ticket -
in Chips car -

car comes up behind him / flashing
lights - "Hi" man -
wanted to Jimmy → Jimmy trying to

remember of moving him - speeds up & passes
Man signals JDR to pull over
JDR does -
Both men get out of car -
Man walks in hotel -
JDR in car -
Man comes out of hotel / signals JDR to come here

Memorandum
JDR comes into lobby - pushes JDR in
bathroom - pulls knife
propositions JDR - JDR refuses -
Man slashes him back to wall
pulls down JDR's pants -
performs oral sex on JDR w/ knife
at his chest -

JDR ran out - in car - goes
back to work - Man pulls up
beside him - JDR gets license #
911 - JDR says he was raped -
Girl laughed & hung up - he called
again - sent a car - JDR went police &
said couldn't find scene - JDR took notes
them to find witness -
called dad - told him -
JDR went home - ~~gun~~ gave ~~him~~
the license ~~case~~ #
JDR had to go back to Ga Tech

Dad didn't want to pursue this
wanted to let it go -
didn't want going to go to lawyer
for Libinette - his supervisor knew
of incident -

→ Dad = pretend it didn't happen

Same thing from being in prison -
Dad would complain @ me being there
wanted to look down & see dad going
to work after burying me

begin
thinking
of suicide

Dad yelling at you all the time
400 peaces until 12 or 18 -
finally stood up to him -

→ would get in your face -

^{Charles}
Brian Mills - partially lived w/us
joined Air Force - on British road

→ parents = Bill Mills } William
 Harry Mills } Mills
live in Wild & Pines }
 star

Brian Mills -
Clay Robinson -
~~Scott~~ Langley } across the street
Josh Langley }
Dyle Hook }

Dorothy Davis / Camden
met her when worked at Winstanrop
→ 587 Charlotte-Thompson Rd
Camden S 29020
803 432-0466 -

1240 PONY
APR 306

Maria Enn ~~Lavage~~ - on: JD for 3 yrs -
~~RNVC~~ 985-7102
Meredith Moon - sexually involved
w/ Jimmy Robertson -

Monday William Under → DR told them
Sunday Paul McWhight he had spoken w/
us @ death pen
Ask them for what was morally right
for him to do in cell room →
Told them he wanted to make tope
do his job -

Chip's friends -

"Guinea pig" to family / Jimmie's
description of himself /
paved way for Chip

Chip doesn't have right to know
what went

- told him lies - told JR still in school; job @ Winthrop;
- May 98 Chip had given his life to God.
gone to Keystone - quit drinking;
- now he back doing ~~get~~ drugs
- Chip = conspirator in this - told me he was going to come home; do it too -
- Chip having all his mail subpoenaed
Pipe got all Jim's letters /
- Halloween - go ahead - do it
just be careful what you do -

Dad loved golf; work
not me.
was always there for us -
would attend our play, baseball
games -
went out of his way to spend
time w/ us when we were young
Didn't last - activities didn't
continue - Jangleys would get
bored go fishing
Dad didn't do anything w/ us
looked up to Mr. Jangley
Mom: Dad there for us in little
things but it stopped when
we got older
tried to play golf together but
Dad would get too frustrated cause
I would hold him up -

JNBINQC

YORK COUNTY SHERIFF'S OFFICE - DETENTION
SEARCH BOOKING FILE1/31/07 YCDC14
15:41:38 MARTINR

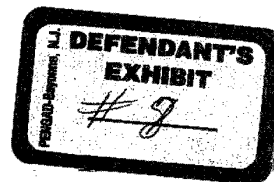
Name ROBERTSON, JAMES DEJARNETTE

JACKET# 4129

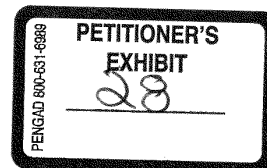
Cell

SELECT RECORD:

S#	Booking		Booking Number	Release		Sts	Jail Time	
	Date	Time		Date	Time		Days	Hours
1	2/12/99	14:36	99-0000674	3/26/99	22:07	R	42	7.5
2	11/20/98	8:27	98-0005069	11/23/98	22:54	R	3	14.0
3	11/02/98	16:28	98-0004803	11/16/98	17:09	R	14	.5
4	9/24/98	14:11	98-0004104	9/25/98	14:36	R	1	
5	7/17/98	12:24	98-0003084	7/23/98	12:48	R	6	
6	2/27/98	19:37	98-0000823	4/13/98	10:26	R	44	14.5
7	8/01/96	14:40	96-0002984	9/03/96	9:18	R	32	18.5
8	3/21/93	5:28	93-0000995	3/21/93	23:40	R		18.0



F3=Exit

Bottom
F12=Previous

JUNVINQE

YORK COUNTY SHERIFF'S OFFICE - DETENTION
VISITORS1/31/07 YCDC14
15:44:13 MARTINR

Name ROBERTSON, JAMES DEJARNETTE

JACKET# 4129

Cell

SELECT RECORD:

S#	Date	Time		Visitor Name	Sts
		In	Out		
1	3/03/99	9:30	10:30	HALL, HAROLD E	I
2	11/06/98	15:30	16:30	SULLIVAN, GENE	I
3	3/27/98	16:50	17:00	HALL, HAROLD E	I
4	3/20/98	16:46	17:00	HALL, HAROLD E	I
5	3/13/98	16:05	17:00	SULLIVAN, GENE	I
6	8/22/96	11:13	12:00	ROBERTSON, TERRY	I

F3=Exit

Bottom
F12=Previous

JNAINQC

YORK COUNTY SHERIFF'S OFFICE - DETENTION
ALL EVENTS INQUIRY1/31/07 YCDC14
15:42:52 MARTINR

Name ROBERTSON, JAMES DEJARNETTE

JACKET# 4129

Cell

SELECT RECORD:

S#	Event Date	Code	Event	Comment	Return Date	Sts
1	3/05/98	SC	SICK CALL REQUESTED	I/M ROBERTSON REQUESTED S	0/00/00	I
2	3/04/98	EX	EXERCISE	I/M ROBERTSON OUT FOR REC	0/00/00	I
3	3/03/98	EX	EXERCISE	1700-1800	0/00/00	I
4	3/03/98	CLV	CLERGY VISIT	WILLIAM PENDER TO SEE.	0/00/00	I
5	3/02/98	IVF	INMATE VISIT. FORM	FORM GIVEN	0/00/00	I
6	3/02/98	ITF	INMATE TELEPHONE FOR	FORM GIVEN	0/00/00	I
7	3/01/98	EX	EXERCISE	OUT FOR REC FROM 1520-162	0/00/00	I
8	2/28/98	EX	EXERCISE	REFUSED REC	0/00/00	I
9	2/27/98	ST	STATUS CHANGE	FROM TO A1	0/00/00	I
10	2/27/98	BC	BOX CHANGE	ASSIGNED BOX - 0041	0/00/00	I
11	2/27/98	CC	CELL CHANGE	ASSIGNED CELL - 4A 02100	0/00/00	I
12	9/03/96	ST	STATUS CHANGE	FROM H6 TO 01	0/00/00	I

ROLL UP/ROLL DOWN

F3=Exit

More...

F12=Previous

JNAINQC

YORK COUNTY SHERIFF'S OFFICE - DETENTION

1/31/07 YCDC14
15:43:04 MARTINR

ALL EVENTS INQUIRY

Name ROBERTSON, JAMES DEJARNETTE

JACKET# 4129

Cell

SELECT RECORD:

S#	Event Date	Code	Event	Comment	Return Date	Sts
1	3/11/98	SC	SICK CALL REQUESTED	N CODY	0/00/00	I
2	3/10/98	CLV	CLERGY VISIT	WILLIAM PENDER TO SEE	0/00/00	I
3	3/10/98	EX	EXERCISE	OUT FOR REC 1100-1200	0/00/00	I
4	3/10/98	EX	EXERCISE	OUT FOR REC 1100 TO 1200	0/00/00	I
5	3/10/98	VAS	VISITATION ASSIGN.	FRIDAY 4:00-5:00	0/00/00	I
6	3/09/98	AD	ARRAIGNMENT DATE		0/00/00	I
7	3/09/98	GM	GENERAL MESSAGE	I/M TAKEN TO COURT ESCORT	0/00/00	I
8	3/08/98	EX	EXERCISE	I/M OUT FOR REC. AT 0900	0/00/00	I
9	3/07/98	EX	EXERCISE	I/M OUT FOR REC 2200-2300	0/00/00	I
10	3/06/98	EX	EXERCISE	REC 2100 - 2200	0/00/00	I
11	3/05/98	EX	EXERCISE	REC 2000 - 2100	0/00/00	I
12	3/05/98	CLV	CLERGY VISIT	PAIGE MCRIGHT TO SEE.	0/00/00	I

ROLL UP/ROLL DOWN
F3=ExitMore...
F12=Previous

JNAINQC

YORK COUNTY SHERIFF'S OFFICE - DETENTION

1/31/07 YCDC14

ALL EVENTS INQUIRY

15:43:06 MARTINR

Name ROBERTSON, JAMES DEJARNETTE

JACKET# 4129

Cell

SELECT RECORD:

S#	Event Date	Code	Event	Comment	Return Date	Sts
1	3/18/98	EX	EXERCISE	REC 2100 - 2200	0/00/00	I
2	3/18/98	CA	COURT APPEARANCE		0/00/00	I
3	3/18/98	SC	SICK CALL REQUESTED	N CODY	0/00/00	I
4	3/17/98	CLV	CLERGY VISIT	PAIGE MCRIGHT TO SEE.	0/00/00	I
5	3/16/98	EX	EXERCISE	1900-2000	0/00/00	I
6	3/16/98	SC	SICK CALL REQUESTED	14 DAY PE.	0/00/00	I
7	3/15/98	EX	EXERCISE	ROBERTSON OUT FOR EXERCIS	0/00/00	I
8	3/14/98	MD	MEDICATION RECORD	I/M GIVEN 2 TYLENOL.	0/00/00	I
9	3/14/98	EX	EXERCISE	I/M OUT FOR REC FROM 1600	0/00/00	I
10	3/13/98	EX	EXERCISE	ROBERTSON OUT FOR EXERCIS	0/00/00	I
11	3/12/98	IRF	INMATE REQUEST FORM	INMATE GIVEN INMATE REQUE	0/00/00	I
12	3/11/98	EX	EXERCISE	OUT FOR REC.	0/00/00	I

ROLL UP/ROLL DOWN

F3=Exit

More...

F12=Previous

JNAINQC

YORK COUNTY SHERIFF'S OFFICE - DETENTION
ALL EVENTS INQUIRY1/31/07 YCDC14
15:43:08 MARTINR

Name ROBERTSON, JAMES DEJARNETTE

JACKET# 4129

Cell

SELECT RECORD:

Event					Return	
S#	Date	Code	Event	Comment	Date	Sts
1	3/26/98	EX	EXERCISE	REC.FROM 1600-1700.	0/00/00	I
2	3/25/98	IRF	INMATE REQUEST FORM	I/M GIVEN FORM.	0/00/00	I
3	3/25/98	EX	EXERCISE	I/M REC. TIME (1500-1600)	0/00/00	I
4	3/25/98	SC	SICK CALL REQUESTED	N CODY	0/00/00	I
5	3/24/98	CLV	CLERGY VISIT	WILLIAM PENDER TO SEE	0/00/00	I
6	3/23/98	IRF	INMATE REQUEST FORM		0/00/00	I
7	3/23/98	EX	EXERCISE	I/M OUT AT SCHEDULED TIME	0/00/00	I
8	3/22/98	EX	EXERCISE	REC 1100-1200.	0/00/00	I
9	3/20/98	LVI	CRT APPNT LAWY VISIT	THAD MYERS TO SEE (COURT	0/00/00	I
10	3/20/98	EX	EXERCISE	EXERCISE 0900 TO 1000	0/00/00	I
11	3/19/98	EX	EXERCISE	I/M OUT FOR REC 2200 TO 2	0/00/00	I
12	3/19/98	EX	EXERCISE	OUT FOR REC FROM 2200-230	0/00/00	I

ROLL UP/ROLL DOWN

F3=Exit

More...

F12=Previous

JNAINQC

YORK COUNTY SHERIFF'S OFFICE - DETENTION
ALL EVENTS INQUIRY1/31/07 YCDC14
15:43:10 MARTINR

Name ROBERTSON, JAMES DEJARNETTE

JACKET# 4129

Cell

SELECT RECORD:

S#	Event Date	Code	Event	Comment	Return Date	Sts
1	4/06/98	MAL	MAIL RECEIVED	RECEIVED MAIL TODAY.	0/00/00	I
2	4/06/98	CLV	CLERGY VISIT	PAIGE MCRIGHT TO SEE.	0/00/00	I
3	4/06/98	SC	SICK CALL REQUESTED	INM. REQUEST SICK CALL FO	0/00/00	I
4	4/03/98	INV	INVESTIGATOR VISIT	BOOTH #6	0/00/00	I
5	4/03/98	CI	CRIMINAL INVEST. INT	WADE COMER TO SEE/JAMES H	0/00/00	I
6	4/02/98	TS	TELEPHONE LOG	FORM GIVEN TO CHANGE PHON	0/00/00	I
7	4/01/98	RET	INMATE RETURNED	RETURNED FROM MEDICAL BY	0/00/00	I
8	4/01/98	SC	SICK CALL REQUESTED	N CODY	0/00/00	I
9	3/31/98	VAS	VISITATION ASSIGN.	WEDNESDAY 4:00-5:00 CELL	0/00/00	I
10	3/30/98	CC	CELL CHANGE	CELL CHANGED - 4B 02700	0/00/00	I
11	3/29/98	EX	EXERCISE	EXERCISED FROM 2000-2100.	0/00/00	I
12	3/28/98	EX	EXERCISE	I/M OUT FOR REC FROM 1900	0/00/00	I

ROLL UP/ROLL DOWN

F3=Exit

More...

F12=Previous

JNAINQC

YORK COUNTY SHERIFF'S OFFICE - DETENTION
ALL EVENTS INQUIRY1/31/07 YCDC14
15:43:12 MARTINR

Name ROBERTSON, JAMES DEJARNETTE

JACKET# 4129

Cell

SELECT RECORD:

S#	Event Date	Code	Event	Comment	Return Date	Sts
1	7/22/98	CVA	CONTACT VISIT APPROV	BILL HANCOCK, WADE COMER,	0/00/00	I
2	7/22/98	CC	CELL CHANGE	CELL CHANGED - 4B 04100	0/00/00	I
3	7/22/98	MD	MEDICATION RECORD	RECIEVED MEDS	0/00/00	I
4	7/18/98	MP	MEDICATION FILL REC.	REC MEDS,	0/00/00	I
5	7/18/98	CC	CELL CHANGE	CELL CHANGED - 4B 04300	0/00/00	I
6	7/17/98	CVA	CONTACT VISIT APPROV	CATHERINE SMITH; JAMES BO	0/00/00	I
7	7/17/98	ST	STATUS CHANGE	FROM TO H6	0/00/00	I
8	7/17/98	BC	BOX CHANGE	ASSIGNED BOX - 0053	0/00/00	I
9	7/17/98	CC	CELL CHANGE	ASSIGNED CELL - 3INBI5AG0	0/00/00	I
10	4/13/98	RL	RELEASED FROM JAIL	JAIL RELEASE - 98-000082	0/00/00	I
11	4/09/98	IVF	INMATE VISIT. FORM	GAVE FORM	0/00/00	I
12	4/08/98	SC	SICK CALL REQUESTED	N CODY	0/00/00	I

ROLL UP/ROLL DOWN
F3=ExitMore...
F12=Previous

JNAINQC

YORK COUNTY SHERIFF'S OFFICE - DETENTION
ALL EVENTS INQUIRY1/31/07 YCDC14
15:43:14 MARTINRName ROBERTSON, JAMES DEJARNETTE
JACKET# 4129

Cell

SELECT RECORD:

S#	Event Date	Code	Event	Comment	Return Date	Sts
1	9/25/98	ST	STATUS CHANGE	FROM H7 TO A1	0/00/00	I
2	9/25/98	TS	TELEPHONE LOG	PIN NUMBER ASSIGNED	0/00/00	I
3	9/25/98	ITF	INMATE TELEPHONE FOR	GIVEN ITF.	0/00/00	I
4	9/25/98	CC	CELL CHANGE	CELL CHANGED - 4C 04400	0/00/00	I
5	9/24/98	CC	CELL CHANGE	CELL CHANGED - 4A 00300	0/00/00	I
6	9/24/98	ST	STATUS CHANGE	FROM TO H7	0/00/00	I
7	9/24/98	BC	BOX CHANGE	ASSIGNED BOX - 0050	0/00/00	I
8	9/24/98	CC	CELL CHANGE	ASSIGNED CELL - 3HLDI9 G0	0/00/00	I
9	7/23/98	RL	RELEASED FROM JAIL	JAIL RELEASE - 98-000308	0/00/00	I
10	7/23/98	ST	STATUS CHANGE	FROM H6 TO A2	0/00/00	I
11	7/22/98	MP	MEDICATION FILL REC.	REC MEDS,	0/00/00	I
12	7/22/98	TS	TELEPHONE LOG	PIN # ASSIGNED	0/00/00	I

ROLL UP/ROLL DOWN
F3=ExitMore...
F12=Previous

JNAINQC

YORK COUNTY SHERIFF'S OFFICE - DETENTION

1/31/07 YCDC14

ALL EVENTS INQUIRY

15:43:16 MARTINR

Name ROBERTSON, JAMES DEJARNETTE

JACKET# 4129

Cell

SELECT RECORD:

S#	Event Date	Code	Event	Comment	Return Date	Sts
1	11/05/98	CVA	CONTACT VISIT APPROV	WADE COMER TO SEE ROBERTS	0/00/00	I
2	11/04/98	MP	MEDICATION FILL REC.	MEDS DELIVERED BY NURSE N	0/00/00	I
3	11/04/98	VAS	VISITATION ASSIGN.	INM HAD VISIT FROM HIS PA	0/00/00	I
4	11/04/98	VAS	VISITATION ASSIGN.	FRIDAY - 2:30 - 3:30 P.M.	0/00/00	I
5	11/04/98	TS	TELEPHONE LOG	PIN NUMBER ASSIGNED	0/00/00	I
6	11/04/98	EX	EXERCISE	INM TOOK REC FROM 0900-10	0/00/00	I
7	11/03/98	EX	EXERCISE	REC. 0900 TO 1000	0/00/00	I
8	11/02/98	CC	CELL CHANGE	CELL CHANGED - 4A 02100	0/00/00	I
9	11/02/98	ST	STATUS CHANGE	FROM TO H8	0/00/00	I
10	11/02/98	BC	BOX CHANGE	ASSIGNED BOX - 0063	0/00/00	I
11	11/02/98	CC	CELL CHANGE	ASSIGNED CELL - 3HLDI9 G0	0/00/00	I
12	9/25/98	RL	RELEASED FROM JAIL	JAIL RELEASE - 98-000410	0/00/00	I

ROLL UP/ROLL DOWN

F3=Exit

More...

F12=Previous

JNAINQC

YORK COUNTY SHERIFF'S OFFICE - DETENTION

1/31/07 YCDC14

ALL EVENTS INQUIRY

15:43:18 MARTINR

Name ROBERTSON, JAMES DEJARNETTE

JACKET# 4129

Cell

SELECT RECORD:

Event				Return	
S#	Date	Code	Event	Comment	Date Sts
1	11/11/98	EX	EXERCISE	OUT 1900-2000	0/00/00 I
2	11/11/98	TS	TELEPHONE LOG	ADDED NUMBERS	0/00/00 I
3	11/10/98	CVA	CONTACT VISIT APPROV	WADE COMER TO SEE ROBERTS	0/00/00 I
4	11/10/98	MP	MEDICATION PILL REC.	MEDS DELIVERED BY NURSE C	0/00/00 I
5	11/09/98	EX	EXERCISE	REC 1600-1700	0/00/00 I
6	11/08/98	EX	EXERCISE	REC. 1500 TO 1600	0/00/00 I
7	11/07/98	EX	EXERCISE	REC 1400 TO 1500	0/00/00 I
8	11/06/98	EX	EXERCISE	OUT FOR REC 1300-1400	0/00/00 I
9	11/06/98	GM	GENERAL MESSAGE	REFUSED TO CLEAN CELL.	0/00/00 I
10	11/06/98	MD	MEDICATION RECORD	GIVEN MEDS BY STRICKLAND.	0/00/00 I
11	11/05/98	MP	MEDICATION PILL REC.	MEDS DELIVERED BY NURSE C	0/00/00 I
12	11/05/98	EX	EXERCISE	OUT FOR REC 1100=1200	0/00/00 I

ROLL UP/ROLL DOWN

F3=Exit

More...

F12=Previous

JNAINQC

YORK COUNTY SHERIFF'S OFFICE - DETENTION
ALL EVENTS INQUIRY1/31/07 YCDC14
15:43:20 MARTINRName ROBERTSON, JAMES DEJARNETTE
JACKET# 4129

Cell

SELECT RECORD:

S#	Event Date	Code	Event	Comment	Return Date	Sts
1	11/21/98	CC	CELL CHANGE	CELL CHANGED - 4A 00300	0/00/00	I
2	11/20/98	TS	TELEPHONE LOG	PIN NUMBER ASSIGNED	0/00/00	I
3	11/20/98	ST	STATUS CHANGE	FROM TO H6	0/00/00	I
4	11/20/98	BC	BOX CHANGE	ASSIGNED BOX - 0057	0/00/00	I
5	11/20/98	CC	CELL CHANGE	ASSIGNED CELL - 3HLDI9 G0	0/00/00	I
6	11/16/98	ST	STATUS CHANGE	FROM H8 TO A1	0/00/00	I
7	11/16/98	RL	RELEASED FROM JAIL	JAIL RELEASE - 98-000480	0/00/00	I
8	11/16/98	VAS	VISITATION ASSIGN.	ADDED FOUR NAMES	0/00/00	I
9	11/15/98	IRF	INMATE REQUEST FORM	INMATE GIVEN FORM	0/00/00	I
10	11/15/98	MP	MEDICATION PILL REC.	MEDS GIVEN 1830	0/00/00	I
11	11/14/98	MP	MEDICATION PILL REC.	MEDS GIVEN 1830	0/00/00	I
12	11/12/98	CC	CELL CHANGE	CELL CHANGED - 4B 04400	0/00/00	I

ROLL UP/ROLL DOWN
F3=ExitMore...
F12=Previous

JNAINQC

YORK COUNTY SHERIFF'S OFFICE - DETENTION
ALL EVENTS INQUIRY1/31/07 YCDC14
15:43:22 MARTINRName ROBERTSON, JAMES DEJARNETTE
JACKET# 4129

Cell

SELECT RECORD:

S#	Event Date	Code	Event	Comment	Return Date	Sts
1	2/14/99	GM	GENERAL MESSAGE	I/M REFUSED HIS MORNING M	0/00/00	I
2	2/13/99	CC	CELL CHANGE	CELL CHANGED - 4A 01900	0/00/00	I
3	2/13/99	CC	CELL CHANGE	CELL CHANGED - 4A 01100	0/00/00	I
4	2/12/99	ST	STATUS CHANGE	FROM TO H7	0/00/00	I
5	2/12/99	BC	BOX CHANGE	ASSIGNED BOX - 0031	0/00/00	I
6	2/12/99	CC	CELL CHANGE	ASSIGNED CELL - 3INBOPWW0	0/00/00	I
7	11/23/98	RL	RELEASED FROM JAIL	JAIL RELEASE - 98-000506	0/00/00	I
8	11/23/98	ST	STATUS CHANGE	FROM H6 TO A1	0/00/00	I
9	11/23/98	MP	MEDICATION PILL REC.	MEDS DELIVERED BY NURSE N	0/00/00	I
10	11/22/98	TS	TELEPHONE LOG	TELE LOG GIVEN	0/00/00	I
11	11/22/98	IRF	INMATE REQUEST FORM	REQUEST FORM GIVEN	0/00/00	I
12	11/22/98	CC	CELL CHANGE	CELL CHANGED - 4B 03600	0/00/00	I

ROLL UP/ROLL DOWN
F3=ExitMore...
F12=Previous

JNAINQC

YORK COUNTY SHERIFF'S OFFICE - DETENTION

1/31/07 YCDC14

ALL EVENTS INQUIRY

15:43:24 MARTINR

Name ROBERTSON, JAMES DEJARNETTE

JACKET# 4129

Cell

SELECT RECORD:

S#	Event Date	Code	Event	Comment	Return Date	Sts
1	2/18/99	CVA	CONTACT VISIT APPROV	BILL HANCOCK AND JIM BOYD	0/00/00	I
2	2/18/99	MP	MEDICATION FILL REC.	I/M ROBERTSON GIVEN MED B	0/00/00	I
3	2/17/99	TGF	INMATE GRIEVANCE FOR	REQUESTED AND RECIEVED FO	0/00/00	I
4	2/17/99	EX	EXERCISE	NO REC TODAY FOR BANGING	0/00/00	I
5	2/16/99	EX	EXERCISE	OUT FOR REC.1730-1800 INM	0/00/00	I
6	2/16/99	CLV	CLERGY VISIT	REV. PENDER TO SEE ROBERT	0/00/00	I
7	2/15/99	EX	EXERCISE	PER REC SCHEDULE & PREVIO	0/00/00	I
8	2/15/99	VAS	VISITATION ASSIGN.	FRIDAY - 11:00 - 12:00 P.	0/00/00	I
9	2/15/99	TS	TELEPHONE LOG	PIN NUMBER ASSIGNED.	0/00/00	I
10	2/14/99	ITF	INMATE TELEPHONE FOR	I/M REC'D FORM	0/00/00	I
11	2/14/99	IVF	INMATE VISIT. FORM	I/M REC'D FORM	0/00/00	I
12	2/14/99	EX	EXERCISE	I/M OUT FOR REC 1500-1600	0/00/00	I

ROLL UP/ROLL DOWN

F3=Exit

More...

F12=Previous

JNAINQC

YORK COUNTY SHERIFF'S OFFICE - DETENTION
ALL EVENTS INQUIRY1/31/07 YCDC14
15:43:26 MARTINR

Name ROBERTSON, JAMES DEJARNETTE

JACKET# 4129

Cell

SELECT RECORD:

S#	Event Date	Code	Event	Comment	Return Date	Sts
1	3/05/99	COE	COURT ORD EVALUATION	CONTACT VISIT WITH GEOFFR	0/00/00	I
2	3/05/99	PAV	PRIV. ATTORNEY VISIT	VISITATION WITH WADE COME	0/00/00	I
3	3/02/99	TS	TELEPHONE LOG	ADDED NUMBER	0/00/00	I
4	3/01/99	SC	SICK CALL REQUESTED	14 DAY PE.	0/00/00	I
5	2/26/99	SC	SICK CALL REQUESTED	BLOOD IN HIS STOOL	0/00/00	I
6	2/25/99	IGF	INMATE GRIEVANCE FOR	GAVE ABOVE FORM	0/00/00	I
7	2/24/99	IRF	INMATE REQUEST FORM	GAVE ABOVE FORM.	0/00/00	I
8	2/21/99	MP	MEDICATION PILL REC.	MEDS GIVEN 0700	0/00/00	I
9	2/20/99	MP	MEDICATION PILL REC.	MEDS GIVEN 0730	0/00/00	I
10	2/19/99	VAS	VISITATION ASSIGN.	WEDNESDAY - 9:30 - 10:30	0/00/00	I
11	2/19/99	CA	COURT APPEARANCE	INMATE TAKEN TO COURT @ 0	0/00/00	I
12	2/18/99	CC	CELL CHANGE	CELL CHANGED - 4A 02800	0/00/00	I

ROLL UP/ROLL DOWN
F3=ExitMore...
F12=Previous

JNAINQC

YORK COUNTY SHERIFF'S OFFICE - DETENTION
ALL EVENTS INQUIRY1/31/07 YCDC14
15:43:28 MARTINRName ROBERTSON, JAMES DEJARNETTE
JACKET# 4129

Cell

SELECT RECORD:

S#	Event Date	Code	Event	Comment	Return Date	Sts
1	3/09/99	IRF	INMATE REQUEST FORM	REQUESTED AND RECIEVED FO	0/00/00	I
2	3/08/99	GM	GENERAL MESSAGE	ENTERED IN ERROR	0/00/00	I
3	3/08/99	SAN	SANCTION/DISP/TICKET	VIOLATED CAT.II-10 POSSES	0/00/00	I
4	3/08/99	DA	DISCIPLINARY ACTION	FOUND IN VIOLATION OF CAT	0/00/00	I
5	3/08/99	CVA	CONTACT VISIT APPROV	CONTACT VISIT APPROVED BY	0/00/00	I
6	3/08/99	TS	TELEPHONE LOG	ADDED ATTORNEY NUMBER.	0/00/00	I
7	3/07/99	MP	MEDICATION FILL REC.	MEDS GIVEN 2100	0/00/00	I
8	3/07/99	IRF	INMATE REQUEST FORM	GAVE ABOVE FORM.	0/00/00	I
9	3/07/99	MP	MEDICATION FILL REC.	MEDS GIVEN 1830	0/00/00	I
10	3/06/99	MP	MEDICATION FILL REC.	MEDS GIVEN 2100	0/00/00	I
11	3/06/99	MP	MEDICATION FILL REC.	MEDS GIVEN 1830	0/00/00	I
12	3/05/99	MP	MEDICATION FILL REC.	MEDS DELIVERD BY NURSE NA	0/00/00	I

ROLL UP/ROLL DOWN
F3=ExitMore...
F12=Previous

JNAINQC

YORK COUNTY SHERIFF'S OFFICE - DETENTION

1/31/07 YCDC14

ALL EVENTS INQUIRY

15:43:30 MARTINR

Name ROBERTSON, JAMES DEJARNETTE

JACKET# 4129

Cell

SELECT RECORD:

S#	Event Date	Code	Event	Comment	Return Date	Sts
1	3/15/99	RT	DUE TO RETURN	IF NO OTHER VIOLATIONS AR	0/00/00	I
2	3/14/99	EX	EXERCISE	I/M OUT FOR REC 1000-1100	0/00/00	I
3	3/13/99	EX	EXERCISE	I/M HAD REC FROM 1400-150	0/00/00	I
4	3/12/99	RCU	RESTRAINT CHAIR USE	REMOVED FROM RESTRAINT CH	0/00/00	I
5	3/12/99	RCU	RESTRAINT CHAIR USE	I/M PLACED IN RESTRAINT C	0/00/00	I
6	3/12/99	EX	EXERCISE	OUT FOR REC AT 1600-1700	0/00/00	I
7	3/12/99	GM	GENERAL MESSAGE	TRANSPORTED TO BOOKING BY	0/00/00	I
8	3/11/99	CVA	CONTACT VISIT APPROV	CONTACT VISIT HAS ARRIVED	0/00/00	I
9	3/11/99	CVA	CONTACT VISIT APPROV	CVA APPROVED FOR ATTY HAN	0/00/00	I
10	3/11/99	EX	EXERCISE	EXERCISED FROM 1000-1100.	0/00/00	I
11	3/10/99	COE	COURT ORD EVALUATION	GEOFFREY MCKEE, PHD TO VI	0/00/00	I
12	3/10/99	EX	EXERCISE	IM EXCERCISED (PER REC S	0/00/00	I

ROLL UP/ROLL DOWN

F3=Exit

More...

F12=Previous

JNAINQC

YORK COUNTY SHERIFF'S OFFICE - DETENTION

1/31/07 YCDC14
15:43:32 MARTINR

ALL EVENTS INQUIRY

Name ROBERTSON, JAMES DEJARNETTE

JACKET# 4129

Cell

SELECT RECORD:

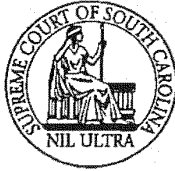
S#	Event Date	Code	Event	Comment	Return Date	Sts
1	3/26/99	ST	STATUS CHANGE	FROM H7 TO A1	0/00/00	I
2	3/26/99	RL	RELEASED FROM JAIL	JAIL RELEASE - 99-000067	0/00/00	I
3	3/23/99	CC	CELL CHANGE	CELL CHANGED - 3HLDI7 00	0/00/00	I
4	3/22/99	CC	CELL CHANGE	CELL CHANGED - 4A 02800	0/00/00	I
5	3/21/99	CC	CELL CHANGE	CELL CHANGED - 3HLDI8 00	0/00/00	I
6	3/21/99	MP	MEDICATION PILL REC.	MEDS GIVEN 0700	0/00/00	I
7	3/20/99	MP	MEDICATION PILL REC.	MEDS GIVEN 0700	0/00/00	I
8	3/19/99	RET	INMATE RETURNED	INMATE RETURNED FROM COUR	0/00/00	I
9	3/19/99	CA	COURT APPEARANCE	INMATE TAKEN TO COURT @ 0	0/00/00	I
10	3/17/99	MD	MEDICATION RECORD	INMATE'S MEDS WERE ADMINI	0/00/00	I
11	3/17/99	EX	EXERCISE	INMATE ALLOWED TO USE THE	0/00/00	I
12	3/15/99	CA	COURT APPEARANCE	INMATE IN COURT ALL DAY &	0/00/00	I

ROLL UP/ROLL DOWN

F3=Exit

More...

F12=Previous



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
(803) 734-1080
FAX (803) 734-1499

April 26, 2001

The Honorable John C. Hayes, III
Moss Justice Center, 2nd Floor
1675-1H York Highway
York, SC 29745

Re: Robertson, James D. v. State

Dear Judge Hayes:

Enclosed is the order issued in the above entitled matter.

By copy of this letter and order, we are advising all interested parties of the action by the Court.

Very truly yours,

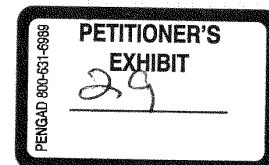
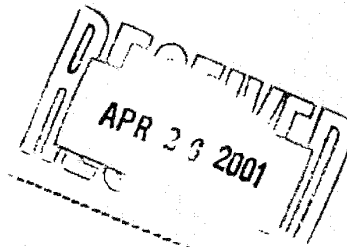


CLERK

DES/dmh

Enclosure

cc: Mr. James D. Robertson
Samuel P. Greer, Esquire
✓ Assistant Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Donald J. Zelenka
Senior Assistant Attorney General William Edgar Salter, III
The Honorable Thomas E. Pope
The Honorable David Hamilton



The Supreme Court of South Carolina

James D. Robertson, Petitioner,

v.

State of South Carolina, Respondent.

ORDER

Petitioner was convicted of two counts of murder and sentenced to death. Petitioner failed to timely file a notice of appeal and a petition for a writ of certiorari is being treated as a direct appeal. Petitioner previously moved to proceed pro se and to drop his appeal. This Court remanded the matter to the circuit court to hold a hearing to determine whether petitioner was competent to waive his appeal and whether he was competent to proceed pro se. Judge John C. Hayes, III, was assigned to the case.

Judge Hayes has now written to the Court about the status of the matter. Judge Hayes included with his correspondence an affidavit from

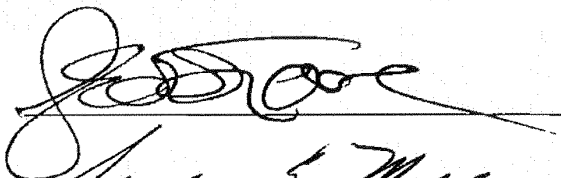
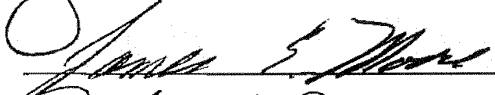
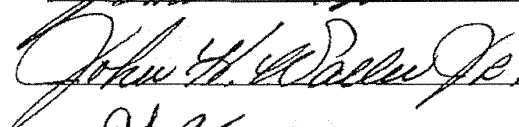
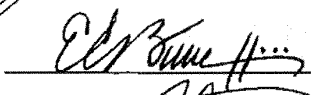
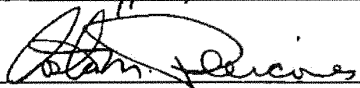
petitioner and a letter from Christopher Wellborn, amicus for petitioner.

Petitioner stated in his affidavit that although he previously expressed his desire to withdraw his appeal, he decided that he wished to pursue all appellate processes available to him. He further stated that he continued to wish that Robert Dudek of the Office of Appellate Defense be relieved as his counsel.

Given petitioner's assertion in his sworn affidavit that he wishes to proceed with his appeal, this Court finds that a competency hearing is no longer necessary in order to determine whether petitioner is competent to drop his appeal. However, it is unclear from the affidavit whether petitioner wishes to relieve Dudek and proceed pro se or whether he wishes to relieve Dudek and have other counsel appointed.

The circuit court is requested to determine whether petitioner wishes to proceed pro se or wishes to move before this Court to relieve counsel and have other counsel appointed. If petitioner wishes to proceed pro se, the circuit court should then hold a competency hearing.

IT IS SO ORDERED.

 C.J.
 J.
 J.
 J.
 J.

Columbia, South Carolina

April 26, 2001

JUL 16 11 03 AM '02

DAVID B. ...
C.C.C. ...
YORK COUNTY, N.Y.

Petitioner,

VS.

ORDER OF APPOINTMENT OF LEGAL COUNSEL

State of South Carolina

Respondent.

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge

PENGAD 800-631-6669

PETITIONER'S
EXHIBIT
30



State of South Carolina
The Circuit Court of the Sixteenth Judicial Circuit

JOHN C. HAYES, III
JUDGE

MOSS JUSTICE CENTER, 2ND FLOOR
1675-1H YORK HIGHWAY
YORK, SOUTH CAROLINA 29745-7423
(803)628-3047
FAX: (803)628-3055

RECEIVED

2002 OCT 29 PM 9: 21

SUPREME COURT

October 28, 2002

The Hon. Daniel E. Shearouse
Clerk of Court
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: James D. Robertson v. State

Dear Mr. Shearouse:

Enclosed please find my report on James D. Robinson.

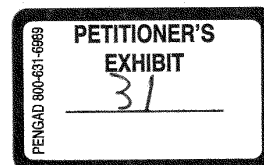
With kind regards, I am

Yours very truly,


John C. Hayes, III

JCHIII/fjk
Enclosures

cc: Deputy Chief Attorney Joseph L. Savitz, III
Senior Assistant Attorney General William Edgar Salter, III
Honorable Thomas E. Pope, Solicitor
Bruce M. Poore, Esquire.
James D. Robertson



STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
JAMES D. ROBERTSON,)
Petitioner,)
vs.)
STATE OF SOUTH CAROLINA,)
Respondent,)

IN THE COURT OF GENERAL SESSIONS

RECEIVED
2002 OCT 29 PM 9: 21

SC SUPREME COURT

Report to the
Supreme Court of
South Carolina

This matter comes before the Court by way the Order of the South Carolina Supreme Court dated June 26, 2002. This matter was remanded to the undersigned for a determination of James D. Robertson's ("Robertson") competency to proceed *pro se* in the appellate process and waive his right to counsel. A hearing was held in York County on October 10, 2002. Robertson was represented by Bruce M. Poore, Esq. of Rock Hill, SC. The State was represented by the Office of the Attorney General, William Edgar Salter, III, Esq., Senior Assistant Attorney General. After a forty minute hearing, the Court took the matter under advisement.

STANDARD OF REVIEW

To decide if Robertson should be allowed to go forward in the appellate process *pro se* the Court must evaluate Robertson's competency. According to the United States Supreme Court Robertson must be (1) advised of his right to counsel and (2) adequately warned of the dangers of self-representation. *Gardner v. State* 2002 WL 31007518 (S.C. 2002) citing *Prince v. State*, 301 S.C. 422, 392 S.E.2d 492 (1990) (citing *Faretta v.*

je-7/11

California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). The hearing was to decide whether, under *Faretta v. California*, Robertson's Sixth Amendment right to counsel has been knowingly and intelligently waived. 95 S.Ct. 2525 (1975). It is well established that someone may waive his right to counsel and proceed *pro se*. *State v. Reed*, 503 S.E.2d 747, 750 (S.C. 1998) citing *Faretta* at 2545.

Further, Robertson's position as a capital defendant does not prohibit him from knowingly and intelligently waiving his right to counsel. *State v. Brewer*, 492 S.E.2d 97, 99 (S.C. 1997) citing *State v. Brown*, 347 S.E.2d 882 (S.C. 1986). The ultimate test of a knowing and intelligent waiver is Robertson's understanding of waiving counsel and continuing *pro se*. The trial judge's responsibility is to inform Robertson of the dangers and disadvantages of self-representation. *Reed* at 750. Accordingly, Robertson may not be determined competent unless the hearing reveals that he meets this standard.

GENERAL ANALYSIS

To determine his understanding of what it meant to waive appointed counsel and continue *pro se* Robertson was extensively questioned by his counsel, the State, and the Court. First, Robertson was advised of his right to counsel by his attorney. Mr. Poore asked:

Q: All right sir, Mr. Robertson, do you understand that you have a right to the services of an attorney and in fact an attorney has been appointed for you to handle your appeal?

A: Yes, I do.

Q: You understand you have a right to represent yourself on appeal?

A: Yes, I do.

Q: 7#2

Q: All right. And do you want to represent yourself or do you want to be represented by an attorney?

A: I wish to represent myself. (TR 6, LL 1-12)

The Court asked a similar line of questions to confirm the answers given during Mr. Poore's examination (TR 24, L 2 thru TR 25, L 2). Robertson's answers to the Court reflected the same interest in continuing the appellate process *pro se* that he expressed during Mr. Poore's examination.

Second, Robertson was advised, by Mr. Poore, of the dangers involved with self-representation. Mr. Poore asked:

Q: You understand those lawyers (Robertson's appellate attorneys) are trained and experienced lawyers in handling cases of this type?

A: Yes, sir.

Q: All right. Do you understand that there is some risk associated in firing your lawyers and representing yourself?

A: Yes, sir.

Q: You understand that there is a risk that that act itself could cause you to lose your appeal?

A: Yes.

Q: All right. If you, what do you understand to be the results if you lose your appeal?

A: Sentence to death will be carried out.

Q: All right, sir. And are you willing to undertake that risk?

A: Yes, I am. (TR 7, LL 2-24)

2014 3

The Court questioned Robertson concerning the dangers of self-representation in a similar manner and Robertson's answers reinforced his intention to continue *pro se* aware of the inherent dangers (TR 24, L 2 thru TR 25, L 2).

Robertson has adequate intelligence (I.Q. between 110-120, TR 17, LL 19-23) and education (some college, TR 7, L 25 thru TR 8, L 3) to make an intelligent knowing waiver of his right to counsel.

Robertson understands why he has been sentenced to death and the consequences of same (TR 9, L 24 thru TR 11, L 2). He also understands that *pro se* he will be required to comply with the Rules of Court (TR 25, LL 11-25).

While he does have some mental health issues (TR 8, L 4 thru TR 9, L 23), Robertson is taking medication and receiving counseling. The Court finds to the degree mental health issues are present they do not create an issue as to Robertson's competency. Robertson is fully capable and competent to act knowingly and intelligently on his own behalf.

Robertson's answers during the hearing are sufficient evidence of the knowledge and intelligence necessary to waive his right to counsel and continue *pro se* in the appellate process. Throughout the hearing Robertson's answers to questions illustrated his awareness of the dangers and disadvantages of self-representation. *Wroten v. State*, 391 S.E.2d 575 (S.C. 1990) citing *Faretta* at 2541, 45. The record of the hearing establishes his knowledge of what he is attempting to do and that his choice is being made with his eyes open. *Id.*

Oct 4

The issue of stand-by counsel was discussed with Robertson during the hearing. Although not asking for stand-by counsel, Robertson stated he does not object to stand-by counsel being made available to him. To address this issue, the Court asked:

Q: All right. Now I was going to ask you about stand-by counsel but you've already answered that question and you said you would not want stand-by counsel. Would you object to stand-by counsel?

A: No sir. (TR 20, L 25 thru TR 21, L 5)

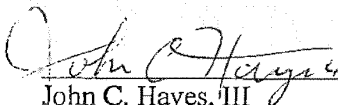
CONCLUSION

The record from the hearing demonstrates Robertson's decision to continue *pro se* was made with the knowledge of his right to counsel and an understanding of the risks of self-representation. Robertson's knowledge and understanding satisfy the requirements of a voluntary intelligent waiver of counsel. *Wroten v. State*, citing *Fitzpatrick v. Wainwright*, 800 F.2d 1057, 1065 (11th Cir. 1986). Robertson did not simply provide pro forma answers to pro forma questions by his counsel, the State, or the Court. His answers during the hearing reflected the requisite understanding of the issues related to the hearing. Robertson's decision can be made intelligently, understanding the consequences, without the decision truly being considered by the Court, a wise one.

Therefore, the Court finds that the petitioner, James D. Robertson, is competent to proceed in the appellate process *pro se* and waive his Sixth Amendment right to counsel. Further, it is recommended that stand-by counsel be provided to aid Robertson on appeal.

J. H. S.

HERE ENDS THIS REPORT.


John C. Hayes, III
Presiding Judge #6

October 28, 2002
York, South Carolina

Note: The transcript of record of the October 10, 2002 hearing is filed herewith.

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

JAMES D. ROBERTSON,
PETITIONER
-V-

STATE OF
SOUTH CAROLINA,
RESPONDENT

COURT OF GENERAL SESSIONS

TRANSCRIPT OF RECORD

OCTOBER 10, 2002
YORK, SOUTH CAROLINA

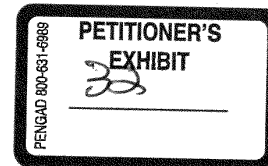
B E F O R E:
THE HONORABLE JOHN C. HAYES, III

A P P E A R A N C E S:

WM. EDGAR SALTER, ASSISTANT ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, SC 29211

THOMAS POPE, SOLICITOR
1675 YORK HIGHWAY
YORK, SC 29745

BRUCE POORE, ESQUIRE
POST OFFICE BOX 11808
ROCK HILL, SC 29732
ATTORNEY FOR DEFENDANT



I N D E X

JAMES ROBERTSON EXAMINATION BY:

MR. POORE	4
MR. SALTER	13
MR. POORE	17
THE COURT	17
MR. SALTER	29
THE COURT	31

(NO EXHIBITS WERE PRESENTED.)

1 THE COURT: ALL RIGHT. WE'RE READY TO GO
2 AHEAD AND CONVENE THIS HEARING. THIS SAYS HERE,
3 IT HAS IT IT LISTED JAMES D. ROBINSON,
4 PETITIONER VERSUS STATE OF SOUTH CAROLINA,
5 RESPONDENT. ACTUALLY THAT'S THE WAY THE SUPREME
6 COURT HAS THE ORDER ISSUED, BUT IT INVOLVES
7 ACTUALLY THE UNDERLYING CASE OF THE STATE VERSUS
8 JAMES D. ROBINSON. I WILL OF COURSE CONTINUE
9 THE CAPTION AS THE SUPREME COURT HAS SINCE WE'RE
10 HERE ON A MOTION-PETITION, BUT IT HAS TO DO WITH
11 THE UNDERLYING CASE TRIED IN THIS COURTROOM
12 BEFORE ME WHEREIN MR. ROBINSON WAS FOUND GUILTY
13 OF MURDER AND SENTENCED TO DEATH.

14 PERTINENT TODAY IS THE ORDER OF THE SUPREME
15 COURT DATED JUNE 26, 2002, WHEREIN I WAS ORDERED
16 BY THE CHIEF, WELL, BY THE WHOLE SUPREME COURT,
17 TO HOLD A COMPETENCY HEARING WITHIN THE
18 GUIDELINES OF FARETTA VERSUS CALIFORNIA, STATE
19 VERSUS BREWER, AND OF COURSE IN SOUTH CAROLINA
20 WE HAVE THE TORRENCE AND COUNSEL CASES ALSO
21 WHICH ARE OF ASSISTANCE, AT LEAST TORRENCE. SO
22 I'M GOING TO ALLOW, MR. ROBINSON IS PRESENT WITH
23 APPOINTED COUNSEL MR. BRUCE POORE. THE STATE IS
24 REPRESENTED BY MR. SALTER AND I'M GOING TO ALLOW
25 MR. POORE TO OPEN THE PROCEEDINGS.

1 MR. POORE: MAY IT PLEASE THE COURT.

2 THE COURT: YES, SIR.

3 MR. POORE: CALL THE PETITIONER.

4 THE COURT: IF YOU'LL COME UP AND BE
5 SWORN.

6 JAMES D. ROBERTSON, BEING
7 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION BY MR. POORE:

9 Q MR. ROBERTSON, STATE YOUR NAME?

10 A JAMES DEJARNETTE ROBERTSON.

11 Q AND HOW OLD ARE YOU?

12 A 28.

13 Q ALL RIGHT. WHERE DO YOU RESIDE AT THIS TIME?

14 A ON DEATH ROW.

15 Q IS THAT LIEBER CORRECTIONAL INSTITUTE DOWN IN
16 SUMMERVILLE?

17 A YES, SIR.

18 Q HOW LONG HAVE YOU BEEN THERE?

19 A THREE AND A HALF YEARS.

20 Q ALL RIGHT, SIR. DO YOU UNDERSTAND WHY WE'RE
21 HERE TODAY?

22 A YES, SIR.

23 Q WHY ARE WE HERE TODAY?

24 A WE'RE HERE ON MY MOTION TO PROCEED PRO SE.

25 Q ALL RIGHT. AT THIS POINT DO YOU UNDERSTAND THE

1 STATUS OF YOUR CASE; WHERE YOUR CASE IS IN THE
2 LEGAL SYSTEM?

3 A YES, I DO.

4 Q AND WHAT'S ITS STATUS AT THIS TIME?

5 A I BELIEVE THE INITIAL APPEAL HAS BEEN FILED.

6 Q ALL RIGHT. SO YOU ARE ON APPEAL AT THIS TIME TO
7 THE SUPREME COURT?

8 A YES, SIR.

9 Q ALL RIGHT. AND PRESENTLY ARE YOU REPRESENTED BY
10 APPELLATE COUNSEL?

11 A YES, SIR.

12 Q AND HAVE THEY PREPARED YOUR AND FILED WHAT WE
13 CALL THE INITIAL APPELLATE BRIEF?

14 A YES, THEY HAVE.

15 Q AND HAVE YOU BEEN PROVIDED A COPY OF IT?

16 A YES, I HAVE.

17 Q YOU UNDERSTAND YOUR APPELLATE ATTORNEYS
18 IDENTIFIED THREE ISSUES THAT THEY ARE GOING TO
19 PRESENT ON APPEAL?

20 A YES, SIR.

21 Q AND WE'RE HERE TODAY ON YOUR MOTION THAT YOU
22 WANT TO DISMISS YOUR APPELLATE COUNSEL?

23 A YES, SIR.

24 Q AND YOU WANT TO REPRESENT YOURSELF?

25 A YES, SIR.

1 Q ALL RIGHT, SIR. MR. ROBERTSON, DO YOU
2 UNDERSTAND THAT YOU HAVE A RIGHT TO THE SERVICES
3 OF AN ATTORNEY AND IN FACT AN ATTORNEY HAS BEEN
4 APPOINTED FOR YOU TO HANDLE YOUR APPEAL?

5 A YES, I DO.

6 Q YOU UNDERSTAND YOU HAVE A RIGHT TO REPRESENT
7 YOURSELF ON APPEAL?

8 A YES, I DO.

9 Q ALL RIGHT. AND DO YOU WANT TO REPRESENT
10 YOURSELF OR DO YOU WANT TO BE REPRESENTED BY AN
11 ATTORNEY?

12 A I WISH TO REPRESENT MYSELF.

13 Q ALL RIGHT. AND HAVE YOU COMMUNICATED THAT
14 DESIRE TO THE SUPREME COURT?

15 A YES.

16 Q ALL RIGHT, SIR. IN FACT, DID YOU ALSO
17 COMMUNICATE TO THE COURT THAT YOU DID NOT WANT A
18 LAWYER APPOINTED TO REPRESENT YOU AT THIS
19 HEARING?

20 A THAT IS CORRECT, SIR.

21 Q ALL RIGHT. YOU UNDERSTAND THAT I'VE BEEN
22 APPOINTED TO REPRESENT YOU?

23 A YES, SIR.

24 Q NOW ARE YOU COMFORTABLE WITH ME HELPING YOU
25 TODAY?

1 A YES, SIR.

2 Q ALL RIGHT, SIR. DO YOU UNDERSTAND, MR.
3 ROBERTSON, THAT THE STATE OF SOUTH CAROLINA IS
4 REPRESENTED BY ATTORNEYS WHO WILL BE PROSECUTING
5 THE APPEAL OR THE PART OF THE APPEAL THAT'S
6 BEING HANDLED BY THE STATE?

7 A YES, SIR.

8 Q YOU UNDERSTAND THOSE LAWYERS ARE TRAINED AND
9 EXPERIENCED LAWYERS IN HANDLING CASES OF THIS
10 TYPE?

11 A YES, SIR.

12 Q ALL RIGHT. DO YOU UNDERSTAND THAT THERE IS SOME
13 RISK ASSOCIATED IN FIRING YOUR LAWYERS AND
14 REPRESENTING YOURSELF?

15 A YES, SIR.

16 Q YOU UNDERSTAND THAT THERE IS A RISK THAT THAT
17 ACT ITSELF COULD CAUSE YOU TO LOSE YOUR APPEAL?

18 A YES.

19 Q ALL RIGHT. IF YOU, WHAT DO YOU UNDERSTAND TO BE
20 THE RESULTS IF YOU LOSE YOUR APPEAL?

21 A SENTENCE TO DEATH WILL BE CARRIED OUT.

22 Q ALL RIGHT, SIR. AND ARE YOU WILLING TO
23 UNDERTAKE THAT RISK?

24 A YES, I AM.

25 Q ALL RIGHT, SIR. WHAT IS YOUR EDUCATION LEVEL,

1 MR. ROBERTSON?

2 A GRADUATED FROM HIGH SCHOOL AND ABOUT TWO YEARS

3 OF COLLEGE.

4 Q ALL RIGHT, SIR. TODAY ARE YOU UNDER THE

5 INFLUENCE, ARE YOU TAKING ANY MEDICATION AT THIS

6 TIME?

7 A YES, SIR.

8 Q WHAT IS THAT?

9 A PROZAC, LITHIUM, VISTARIL.

10 Q WHAT'S THE PROZAC FOR?

11 A ALL THREE OF THEM ARE FOR MY MANIC DEPRESSION.

12 Q ARE THEY FOR DIFFERENT ASPECTS OF YOUR MANIC

13 DEPRESSION?

14 A YES.

15 Q WHAT'S THE PROZAC FOR?

16 A IT'S TO CONTROL MOOD SWINGS.

17 Q HOW MUCH PROZAC DO YOU TAKE?

18 A 20 MILLIGRAMS A DAY.

19 Q ALL RIGHT. YOU TAKE IT ONE TIME A DAY?

20 A RIGHT, JUST ONCE.

21 Q AND DOES PROZAC AFFECT YOUR ABILITY TO

22 UNDERSTAND WHAT YOU ARE DOING TODAY?

23 A NO.

24 Q ALL, RIGHT SIR. YOU ARE ALSO TAKING LITHIUM?

25 A YES, SIR.

1 Q HOW MUCH LITHIUM DO YOU TAKE?
2 A 300 MILLIGRAMS.
3 Q WHAT'S THAT FOR?
4 A IT'S A MOOD STABILIZER BASICALLY.
5 Q DOES LITHIUM AFFECT YOUR ABILITY TO UNDERSTAND
6 WHAT YOU ARE DOING TODAY?
7 A NO, SIR.
8 Q AND WHAT'S THE THIRD MEDICATION YOU ARE TAKING?
9 A VISTARIL.
10 Q WHAT'S THAT FOR?
11 A IT'S TO KEEP MANIC THOUGHTS AT BAY, TO KEEP
12 MANIA FROM COMING ABOUT, AND BASICALLY WHAT IT'S
13 USED FOR IS TO PUT ME TO SLEEP.
14 Q HOW MUCH OF THAT DO YOU TAKE?
15 A ONLY TAKE IT ONCE A DAY AT NIGHT. I FIGURE 100
16 MILLIGRAMS.
17 Q YOU TAKE IT TO HELP YOU SLEEP?
18 A YES.
19 Q OKAY. DOES THAT, DOES VISTARIL AFFECT YOUR
20 ABILITY TO UNDERSTAND WHAT YOU ARE DOING TODAY?
21 A NO, SIR.
22 Q OKAY. ARE YOU CLEAR-HEADED TODAY?
23 A YES, SIR.
24 Q ALL RIGHT, SIR. NOW MR. ROBERTSON, DO YOU
25 UNDERSTAND WHAT YOU WERE TRIED FOR IN THIS

1 COURTROOM SEVERAL YEARS AGO?

2 A YES, SIR.

3 Q AND WHAT CRIME WERE YOU CHARGED WITH?

4 A WITH THE MURDERS OF MY PARENTS.

5 Q ALL RIGHT, SIR. WERE YOU CONVICTED OF THAT

6 CRIME BY A JURY?

7 A YES, SIR.

8 Q ALL RIGHT. DO YOU UNDERSTAND THE SENTENCE THAT

9 YOU RECEIVED?

10 A YES, SIR.

11 Q WHAT SENTENCE DID YOU RECEIVE?

12 A SENTENCED TO DEATH.

13 Q ALL RIGHT. YOU UNDERSTAND THE REASON THAT YOU

14 WERE SENTENCED TO DEATH?

15 A YES.

16 Q WHAT WAS THE REASON THAT YOU WERE SENTENCED TO

17 DEATH?

18 A I WAS FOUND GUILTY OF KILLING MY PARENTS.

19 Q ALL RIGHT, SIR. DO YOU UNDERSTAND WHAT THE

20 DEATH PENALTY IS?

21 A YES, SIR.

22 Q WHAT DOES IT MEAN TO YOU?

23 A IT MEANS IT'S THE FINAL ACT. IT'S THE END.

24 Q THE END OF WHAT?

25 A THE END OF ME.

1 Q ALL RIGHT, SIR.

2 A I WILL DIE AND THAT WILL BE IT.

3 Q MR. ROBERTSON, I HAD VISITED YOU AT LIEBER
4 CORRECTIONAL INSTITUTION ON AUGUST 19, DO YOU
5 REMEMBER THAT VISIT?

6 A YES, SIR, I DO.

7 Q DO YOU REMEMBER TALKING WITH ME AND TELLING ME
8 WHO YOUR BEST FRIEND WAS AT THAT FACILITY?

9 A YES, SIR, I DO.

10 Q WHO WAS THAT?

11 A MIKE PASSARO.

12 Q ALL RIGHT, SIR. AND WAS HE THERE ON DEATH ROW
13 ALSO?

14 A YES, HE WAS.

15 Q SINCE MY VISIT TO YOU, HAS HIS SENTENCE BEEN
16 CARRIED OUT?

17 A YES, SIR, IT HAS SINCE SEPTEMBER 13.

18 Q HAS THAT SENTENCE, HAS THE CARRYING OUT OF HIS
19 SENTENCE HAD ANY IMPACT OR TO YOU OR ON
20 UNDERSTANDING THE NATURE OF A DEATH SENTENCE?

21 A I MEAN, IT HASN'T CHANGED MY VIEW. WHAT IT DID
22 WAS IT MADE ME UNDERSTAND -- IT ENHANCED REALITY
23 A BIT TO SEE MY BEST FRIEND GO FROM ONE DAY
24 PLAYING CARDS WITH ME TO THE NEXT DAY NOT BEING
25 THERE ANYMORE. YOU KNOW, IT'S TRUE THAT HE

1 BASICALLY HAS TAKEN A SIMILAR ROUTE THAT I'M
2 CHOOSING TO TAKE NOW AND WE SPOKE OFTEN ABOUT
3 HIS DECISION, ABOUT MY DECISION AND.

4 Q ALL RIGHT, SIR. LET ME, WHAT DECISION ARE YOU
5 REFERRING TO THAT HE MADE?

6 A HE MADE A DECISION TO DROP HIS APPEALS.

7 Q OKAY. AND DO YOU UNDERSTAND THAT HIS DECISION
8 LED TO THE EXECUTION OR CARRYING OUT OF HIS
9 SENTENCE?

10 A YES, SIR.

11 Q DO YOU UNDERSTAND THAT YOUR DECISION TODAY MAY
12 HAVE THE EXACT SAME RESULT?

13 A YES, SIR.

14 Q DO YOU UNDERSTAND THAT IS A RISK YOU ARE TAKING?

15 A YES, SIR.

16 Q ALL RIGHT, SIR. DO YOU UNDERSTAND THE FINALITY
17 OF THE DEATH SENTENCE?

18 A YES, SIR.

19 Q ALL RIGHT, SIR. DO YOU UNDERSTAND THAT THERE IS
20 FINALITY TO THE DECISION YOU ARE MAKING TODAY
21 THAT YOU ARE ASKING THE COURT TO APPROVE TODAY?

22 A YES, I'M ASKING THAT I BE ALLOWED TO REPRESENT
23 MYSELF AND THEREFORE FIRE THE ATTORNEYS THAT
24 HAVE BEEN APPOINTED FOR ME.

25 Q ALL RIGHT. YOU UNDERSTAND THAT THERE IS

1 FINALITY TO THAT DECISION?

2 A YES, I UNDERSTAND THAT, ACTUALLY I'M UNCLEAR AS
3 TO WHETHER THIS MEANS AT SOME NUMBER OF YEARS
4 DOWN THE ROAD SHOULD SOMEBODY VOLUNTEER TO
5 REPRESENT ME OR SHOULD I HAVE THE MEANS TO
6 RETAIN SOMEBODY TO REPRESENT ME WHETHER I'LL BE
7 ABLE TO OR NOT. I KNOW THAT RIGHT NOW I'M
8 SEEKING TO FIRE STATE APPOINTED APPELLATE
9 ATTORNEYS.

10 Q AND TO REPRESENT YOURSELF?

11 A AND TO REPRESENT MYSELF.

12 Q DO YOU UNDERSTAND IF THAT DECISION IS APPROVED
13 THAT YOU CANNOT CHANGE YOUR MIND AND ASK THE
14 STATE TO RE-APPOINT LAWYERS TO YOU?

15 A YES, I UNDERSTAND THAT.

16 Q ALL RIGHT, SIR. HAVE YOU AND I DISCUSSED THE
17 USE OF STAND-BY COUNSEL?

18 A YES.

19 Q JUST DID WE DISCUSS IT?

20 A YES.

21 Q DID YOU AND I REVIEW THE CASE STATE VERSUS
22 BREWER WHICH INVOLVED STAND-BY COUNSEL?

23 A YES, SIR, WE DID.

24 Q AND ARE YOU ASKING THE COURT TODAY TO APPROVE
25 STAND-BY COUNSEL?

1 A NO, SIR, I'M NOT.

2 Q ALL RIGHT, SIR. SO YOU DO NOT WANT ANY
3 ASSISTANCE FROM THE STATE ATTORNEYS AT ALL?

4 A NO, SIR.

5 Q THANK YOU VERY MUCH.

6 CROSS EXAMINATION BY MR. SALTER:

7 Q MR. ROBERTSON, MY NAME IS ED SALTER AND I ONLY
8 HAVE A FEW QUESTIONS FOR YOU. YOU ARE CURRENTLY
9 REPRESENTED BY APPELLATE DEFENSE, IS THAT
10 CORRECT?

11 A YES, SIR.

12 Q WHO AT APPELLATE DEFENSE IS NOW REPRESENTING
13 YOU?

14 A MR. JOSEPH SAVITZ.

15 Q AND YOU WANT TO HAVE HIM RELIEVED, CORRECT?

16 A YES, SIR.

17 Q DO YOU MIND TELLING US WHY?

18 A BECAUSE IT'S MY RIGHT.

19 Q OKAY. NOW HE'S NOT PRESENT TODAY IN THE
20 COURTROOM. WOULD YOU LIKE FOR HIM TO BE HERE?

21 A NO, IT DOESN'T MAKE A DIFFERENCE TO ME.

22 Q HOW ABOUT, HOW ABOUT MR. DUDEK WHO HAD
23 PREVIOUSLY REPRESENTED YOU?

24 A I DON'T WISH FOR HIM TO BE HERE EITHER. I HAVE
25 NO DESIRE TO SEE HIM.

1 Q AND YOU UNDERSTAND THAT THESE OTHER ATTORNEYS
2 WHO HAVE REPRESENTED YOU PREVIOUSLY HAVE GONE TO
3 LAW SCHOOL AND RECEIVED TRAINING IN THE LAW,
4 CORRECT?

5 A YES, SIR.

6 Q THEY HAVE SPECIALIZED TRAINING IN BOTH THE
7 SUBSTANTIVE LAW AND PROCEDURAL LAW, YOU
8 UNDERSTAND THAT?

9 A YES, SIR.

10 Q AND DO YOU UNDERSTAND THAT IF YOU REPRESENT
11 YOURSELF IN THIS, IT'S GOING TO FALL UPON YOU TO
12 HAVE THAT UNDERSTANDING?

13 A YES, SIR.

14 Q IN OTHER WORDS, YOU ARE GOING TO BE REQUIRED TO
15 ABIDE BY THE PROCEDURES OF THE STATE SUPREME
16 COURT ON DIRECT APPEAL?

17 A YES, SIR.

18 Q DO YOU HAVE, HAVE YOU DONE ANY RESEARCH IN ORDER
19 TO FAMILIARIZE YOURSELF WITH WHAT PROCEDURES ARE
20 IN PLACE IN THE STATE SUPREME COURT?

21 A NO EXTENSIVE BUT I DO HAVE ACCESS TO A FAIRLY
22 EXTENSIVE LAW LIBRARY.

23 Q HOW OFTEN DO YOU HAVE ACCESS TO THAT LIBRARY?

24 A FIVE DAYS A WEEK 24 HOURS A DAY.

25 Q DO YOU UNDERSTAND THAT YOU CAN'T UTILIZE YOUR

1 RIGHT TO APPEAR PRO SE IN ORDER TO OBSTRUCT OR
2 DELAY MATTERS IN THE STATE SUPREME COURT?

3 A YES, SIR.

4 Q IS THAT YOUR INTENT?

5 A TO OBSTRUCT MATTERS?

6 Q YEAH, TO OBSTRUCT THE APPEAL, TO DELAY THE
7 APPEAL?

8 A NO.

9 Q WHAT'S YOUR PHYSICAL HEALTH LIKE TODAY?

10 A NO BETTER NO WORSE THAN FIVE YEARS AGO.

11 Q IS THERE ANYTHING ABOUT YOUR PHYSICAL HEALTH
12 THAT MIGHT IMPACT UPON YOUR DECISION THIS
13 MORNING?

14 A NO, SIR.

15 Q NOW I UNDERSTAND YOU DON'T WANT AN ATTORNEY TO
16 REPRESENT YOU ON APPEAL, BUT IS THAT BECAUSE YOU
17 CANNOT COMMUNICATE WITH THE ATTORNEY?

18 A I DON'T HAVE A PROBLEM WITH COMMUNICATING WITH
19 AN ATTORNEY.

20 Q NO PROBLEMS?

21 A NO.

22 Q OKAY. YOU WOULDN'T HAVE ANY PROBLEMS EXPLAINING
23 MATTERS TO AN ATTORNEY, YOU JUST DON'T WANT ONE
24 TO REPRESENT YOU, IS THAT CORRECT?

25 A THAT'S CORRECT.

1 Q ALL RIGHT. YOU UNDERSTAND THAT IF YOU DID HAVE
2 AN ATTORNEY HE MIGHT BE BETTER ABLE TO HANDLE
3 YOUR APPEAL OR ARGUE YOUR APPEAL?

4 A YES, SIR.

5 Q HAS ANYONE THREATENED YOU OR COERCED YOU IN ANY
6 MANNER TO MAKE THIS DECISION?

7 A NO, SIR.

8 Q HAS ANYBODY PROMISED YOU ANYTHING?

9 A NO, SIR.

10 Q DO YOU INTEND TO PROCEED WITH YOUR APPEAL ONCE
11 THE COURT MAKES ITS RULING IF IT RULES IN YOUR
12 FAVOR?

13 A I'M NOT SURE.

14 Q YOU HAVEN'T MADE THAT DETERMINATION YET?

15 A NO, SIR.

16 MR. SALTER: I DON'T THINK I HAVE ANYTHING
17 FURTHER, YOUR HONOR.

18 REDIRECT EXAMINATION BY MR. POORE:

19 Q MR. ROBERTSON, ONE QUESTION I JUST NEGLECTED, I
20 OVERLOOKED IT. DO YOU KNOW WHAT YOUR IQ IS?

21 A ROUGHLY, WITHIN 10-15 POINTS.

22 Q WHAT IS IT?

23 A BETWEEN 110 AND 120.

24 Q THANK YOU, SIR. NO FURTHER QUESTIONS.

25 MR. SALTER: NOTHING FURTHER, YOUR HONOR.

1 THE COURT: MR. ROBERTSON, I JUST HAVE A
2 COUPLE OF THINGS TO GO OVER WITH YOU. I THINK
3 SOME OF THEM HAVE SORT OF BEEN COVERED AND I
4 MIGHT JUST ASK THE SAME THINGS IN A DIFFERENT
5 WAY, BUT TELL ME AGAIN THE SIMPLE ANSWER, THE
6 ANSWER TO THE SIMPLE QUESTION OF WHY YOU WANT TO
7 PROCEED PRO SE?

8 A BECAUSE I HAVE A RIGHT TO.

9 THE COURT: BUT THAT'S IT. IT'S SIMPLY
10 THAT YOU HAVE A RIGHT TO. YOU DON'T, THAT'S IT?

11 A RIGHT.

12 THE COURT: OKAY. NOW I'M NOT GOING TO ASK
13 YOU TO RELATE TO ME THE ISSUES THAT ARE ON
14 APPEAL, BUT DO YOU BELIEVE THAT YOUR COUNSEL HAS
15 FRETTED OUT AND COVERED THE ISSUES OR DO YOU
16 THINK THERE ARE SOME ISSUES THAT HAVE BEEN
17 OVERLOOKED OR ARE YOU CONCERNED ABOUT THE ISSUES
18 THAT HAVE BEEN RAISED, DOES THAT FACTOR IN
19 SOMEHOW TO YOUR FEELINGS ABOUT COUNSEL?

20 A I BELIEVE THAT THEY ARE CAPABLE, THAT "HE" THEY
21 ARE CAPABLE ATTORNEYS, NO DOUBT THAT THEY HAVE
22 RAISED MEANINGFUL ISSUES, BUT WITH TIME MAYBE
23 I'LL FIND OTHER ISSUES THAT I PREFER TO RAISE.
24 MAYBE I'LL RAISE THE SAME ISSUES. MAYBE I'LL
25 RAISE NEW ISSUES. I'M NOT SURE.

1 THE COURT: WHAT WAS YOUR COLLEGE MAJOR?

2 A INDUSTRIAL ENGINEERING.

3 THE COURT: HAVE YOU EVER HAD ANY COURSES
4 IN LAW, LAW-TYPE COURSES?

5 A NO, SIR.

6 THE COURT: WHEN YOU SAY YOU HAVE ACCESS TO
7 EXTENSIVE LAW LIBRARY, EXTENSIVE IS A RELATIVE
8 WORD. WHEN YOU SAY EXTENSIVE LAW LIBRARY, YOU
9 ARE NOT TALKING ABOUT A SET OF THE CODE AND
10 NOTHING ELSE OR WHAT DO YOU MEAN?

11 A I MEAN I HAVE ACCESS, I HAVE IMMEDIATE ACCESS TO
12 THE CODE OF LAW OF SOUTH CAROLINA. YOU KNOW,
13 ALL TYPES OF DIGESTS, SOUTHEASTERN SECOND FROM
14 THE BEGINNING OF TIME IT SEEMS LIKE. AFTER THAT
15 I HAVE ACCESS TO A LAW CLERK WHO ACTUALLY HAS
16 ACCESS TO WEST LAW AND SIMILAR DATABASES.

17 THE COURT: THAT WAS GOING TO BE MY NEXT
18 QUESTION, SO YOU DO HAVE ACCESS TO THE NET, TO
19 COMPUTER, TO A COMPUTER, AND THROUGH THE
20 COMPUTER EITHER NEXUS, LEXUS, OR WEST LAW OR
21 SOMETHING LIKE THAT?

22 A A TRAINED CLERK IN THE LAW LIBRARY AT LIEBER HAS
23 ACCESS TO THIS COMPUTER AND WITH, ALL I NEED TO
24 DO IS ASK HIM.

25 THE COURT: DO YOU KNOW HOW LONG THAT

1 TRAINED CLERK IS GOING TO, IS THE TRAINED CLERK
2 AN INMATE OR?

3 A YES, HE IS AN INMATE.

4 THE COURT: WELL, WHAT HAPPENS IF THAT
5 PARTICULAR INDIVIDUAL IS RELEASED? IS HE ON
6 DEATH ROW ALSO?

7 A NO, HE'S JUST IN THE GENERAL POPULATION.

8 THE COURT: WHAT, DO YOU KNOW IF HE'S GOING
9 TO BE AROUND, HE OR SHE, IS GOING TO BE AROUND
10 LONG ENOUGH TO BE OF ASSISTANCE TO YOU?

11 A I DO NOT. I KNOW THAT JUST FROM THE PAST THAT
12 THEY TRY TO, THEY TRY TO HIRE (GESTURES WITH
13 HANDS) PEOPLE THAT EITHER WORKED IN THE LAW
14 FIELD BEFORE THEY CAME TO PRISON. WHEN I WAS AT
15 ANOTHER PRISON THE GUY WAS ACTUALLY A FORMER
16 LAWYER THAT WAS JUST IN PRISON AND WHAT BETTER
17 PERSON TO HAVE RUNNING THE LAW LIBRARY THAN A
18 FORMER LAWYER.

19 THE COURT: DO YOU HAVE ANY PERSONAL
20 CONTACT WITH ANY ATTORNEYS, YOU KNOW ANY
21 PERSONALLY THROUGH YOUR FAMILY OR GROWING UP WHO
22 YOU COULD TURN TO FOR ASSISTANCE IF YOU WANTED
23 ANY?

24 A POSSIBLY.

25 THE COURT: ALL RIGHT. NOW I WAS GOING TO

1 ASK YOU ABOUT STAND-BY COUNSEL BUT YOU'VE
2 ALREADY ANSWERED THAT QUESTION AND YOU SAID YOU
3 WOULD NOT WANT STAND-BY COUNSEL. WOULD YOU
4 OBJECT TO STAND-BY COUNSEL?

5 A NO, SIR.

6 THE COURT: ALL RIGHT. AND I WROTE DOWN
7 THAT YOU SAID YOUR MAIN REASON, THIS WAS IN
8 RESPONSE TO A QUESTION THAT'S WHY I WANTED TO
9 HEAR IT IN YOUR WORDS, THE MAIN REASON YOU
10 WANTED TO GO PRO SE IS TO GET RELIEVED OF
11 CURRENT COUNSEL SINCE THE COURT WON'T RELIEVE
12 CURRENT COUNSEL; IS THAT SORT OF IN A NUTSHELL
13 WHAT YOU SAID?

14 A YES, SIR.

15 THE COURT: ALL RIGHT. IF THE LAW CLERK
16 WASN'T PRESENT, WAS NOT PRESENT WHEN YOU WENT TO
17 DO SOME RESEARCH WHAT WOULD, IS THERE ANYTHING
18 YOU CAN DO ON YOUR OWN OR WOULD YOU HAVE TO
19 COMPLETELY RELY ON A THIRD PERSON I.E. THE LAW
20 CLERK?

21 A NO. LIKE I SAID THE LAW CLERK IS THERE TO PULL
22 BOOKS. WE PUT IN A REQUEST FOR BOOKS THAT WE
23 WANT AND WE HAVE A COMPLETE LISTING OF EVERY
24 BOOK IN THE LIBRARY AND WE IF WANT SOUTHEASTERN,
25 THIS, THAT, AND THE OTHER OR WE WANT THE FEDERAL

1 DIGEST OR THIS, THAT, AND THE OTHER WE JUST
2 SIMPLY WRITE FOR IT, IT'S BROUGHT TO OUR ROOM,
3 DO OUR OWN RESEARCH. SHOULD WE NEED THE HELP OF
4 A LAW CLERK, SHOULD WE NEED SOMEBODY TO PULL
5 SOMETHING OUT OF A COMPLETELY DIFFERENT CIRCUIT,
6 OUT IN CALIFORNIA SOMEWHERE, THEN IT WOULD BE
7 HIM THAT GOT ON THE COMPUTER AND PULLED THAT FOR
8 US.

9 THE COURT: THEN THE LAW CLERK IS NOT AN
10 ADVISER AS I UNDERSTAND, YOU TELL ME, IT APPEARS
11 THAT THE LAW CLERK IS MORE IN THE ROLE OF A
12 LIBRARIAN AS OPPOSED TO SOMEONE WHO ADVISES AND
13 ASSISTS, IS THAT CORRECT?

14 A YES, 90 PERCENT OF THE TIME HE PLAYS THE ROLE OF
15 A LIBRARIAN.

16 THE COURT: ALL RIGHT. ARE YOU TAKING YOUR
17 MEDICATION REGULARLY?

18 A YES, I AM.

19 THE COURT: DO YOU HAVE REGULAR CONTACT
20 WITH A PSYCHOLOGIST OR A PSYCHIATRIST?

21 A I DO.

22 THE COURT: WHEN I USE THE TERM REGULAR AND
23 THAT'S NOT A VERY GOOD WORD TO USE. WHAT KIND
24 OF FREQUENCY, DO YOU SEE SOMEBODY REGULARLY OR
25 DO YOU SEE SOMEBODY SPORADICALLY ON AN AS NEEDED

1 BASIS OR HOW IS THE MEDICATION MONITORED AND I'M
2 ASKING YOU SEVERAL QUESTIONS AT ONE TIME. HOW
3 IS YOUR MEDICATION MONITORED?

4 A IT'S MONITORED THROUGH A PSYCHIATRIST FROM MUSC
5 IN CHARLESTON AND I'D SAY HE'S AVAILABLE AT
6 LEAST TWO OR THREE TIMES A MONTH AND HE WON'T
7 JUST SEE YOU JUST TO COME SEE YOU. IF YOU WRITE
8 A REQUEST AND SAY I NEED TO SEE HIM THEN HE'LL
9 BE GLAD TO SEE YOU THEN. THERE IS A COUNSELOR
10 THAT HE WORKS VERY CLOSE WITH THAT IS THERE ALL
11 THE TIME. HIS JOB IS BASICALLY OVERSEE DEATH
12 ROW AND THE VARIOUS MENTAL PROBLEMS OF DEATH ROW
13 PATIENTS.

14 THE COURT: AND I MAY BE GOING A LITTLE FAR
15 AFIELD FROM THE PURPOSE OF THIS HEARING, BUT IT
16 MIGHT HELP ME IN MY THOUGHT PROCESSES, IS THE
17 INDIVIDUAL THAT'S THERE ON THE PREMISES SOMEONE
18 WITH A, THIS IS NOT AN INMATE?

19 A NO, THIS IS --

20 THE COURT: BUT IS IT SOMEONE WHO HAS SOME
21 DEGREE IN PSYCHOLOGY OR IS IT JUST SOMEBODY?

22 A I WOULD ASSUME THAT HE HAS, HE'S NOT A
23 PSYCHIATRIST AND HE'S NOT A PSYCHOLOGIST. HE'S
24 CERTAINLY NOT A M.D. OF ANY TYPE, BUT, YOU KNOW,
25 A COUNSELOR, YOU KNOW, WOULD BE THE BEST WAY TO

1 DESCRIBE HIM.

2 THE COURT: NOW DO YOU UNDERSTAND THAT
3 THERE ARE BENEFITS TO HAVING AN ATTORNEY BY
4 SOMEONE WHO IS NOT AN ATTORNEY, AND QUITE
5 FRANKLY EVEN FOR AN ATTORNEY WHO IS FACING ANY
6 CRIMINAL CHARGES, LET ALONE THE ONE YOU ARE
7 FACING, BUT DO YOU UNDERSTAND AN ATTORNEY COULD
8 BE OF BENEFIT TO YOU IN REGARD TO FOLLOWING
9 THROUGH ON YOUR APPEALS?

10 A YES, SIR, YOUR HONOR.

11 THE COURT: DO YOU UNDERSTAND AN ATTORNEY
12 MAY KNOW OF OTHER, IF IN FACT YOU GO FORWARD
13 WITH YOUR APPEAL, THE FIRST THING AN ATTORNEY
14 MAY KNOW OF WAYS TO PRESENT AN ARGUMENT THAT A
15 NON-ATTORNEY WOULD NOT KNOW OR MAY KNOW OF
16 ISSUES TO LOOK FOR THAT A NON-ATTORNEY WOULD NOT
17 KNOW, YOU UNDERSTAND THAT?

18 A YES, YOUR HONOR.

19 THE COURT: YOU UNDERSTAND THAT IF YOU GO
20 THROUGH WITH YOUR APPEAL AND IT'S, YOU'RE NOT
21 SUCCESSFUL, THAT AN ATTORNEY MAY KNOW OF OTHER
22 PROCEDURAL APPROACHES TO COLLATERALLY ATTACK OR
23 IN SOME FASHION RAISE FURTHER ISSUES EITHER IN
24 FEDERAL COURT OR THROUGH POST CONVICTION, YOU
25 UNDERSTAND AN ATTORNEY WOULD KNOW OF THOSE

1 AVENUES, YOU UNDERSTAND THAT?

2 A YES, SIR.

3 THE COURT: HAVE YOU EVER ARGUED, I KNOW
4 THIS SOUNDS RATHER STUPID BUT I'M GOING TO ASK
5 YOU, HAVE YOU EVER ARGUED A CASE IN FRONT OF THE
6 STATE SUPREME COURT?

7 A NO, SIR, YOUR HONOR.

8 THE COURT: HAVE YOU EVER ARGUED A CASE IN
9 FRONT OF ANY COURT?

10 A MINOR TRAFFIC OFFENSES, SIR.

11 THE COURT: AND YOU ARE, WELL, ARE YOU
12 AWARE THAT, WE TALKED A LITTLE BIT ABOUT
13 PROCEDURAL MATTERS, THAT THERE ARE CERTAIN TIME
14 FRAMES SETFORTH IN PROCEDURAL OR CERTAIN TIME
15 FRAMES ARE REQUIRED TO BE MET IN REGARD TO
16 APPEALS AND/OR COLLATERAL ATTACKS ON A SENTENCE,
17 DO YOU UNDERSTAND THAT?

18 A YES, SIR.

19 THE COURT: WHERE WOULD YOU GO TO FIND
20 THOSE TIME FRAMES, DO YOU KNOW?

21 A SUPPOSING ONE OF THE BOOKS, YOU KNOW. ALTHOUGH
22 I DON'T HAVE ACCESS TO NECESSARILY TRAINED LAW
23 CLERK, WHAT I DO HAVE ACCESS TO IS 70 OTHER
24 INMATES ON DEATH ROW WHO HAVE BEEN DOING THIS
25 FOR 20 YEARS.

1 THE COURT: AND HOW MANY OF THEM ARE
2 ATTORNEYS?

3 A NO, GRANTED NONE OF THEM ARE ATTORNEYS BUT MOST
4 OF THEM TAKE AN ACTIVE ROLE IN THEIR CASE WHICH
5 MEANS THAT MOST OF THEM HAVE SOME KNOWLEDGE OF,
6 YOU KNOW, WHERE TO TURN TO, YOU KNOW, TO FIND
7 THIS INFORMATION. YOU KNOW, AT LEAST GET YOU TO
8 THE BOOK THAT YOU NEED. IT'S YOUR JOB, ONLY
9 JOB, TO READ THE BOOK.

10 THE COURT: ALL RIGHT. AND DO YOU
11 UNDERSTAND THAT THERE ARE DANGERS IN SELF
12 REPRESENTATION? I SORT OF HIT ON SOME OF THEM
13 AND THAT IS, NUMBER ONE; FIRST, DO YOU
14 UNDERSTAND THERE IS DANGER IN YOUR REPRESENTING
15 YOURSELF SINCE YOU ARE NOT AN ATTORNEY?

16 A I DO UNDERSTAND.

17 THE COURT: THERE ARE DANGERS IN MISSING
18 ISSUES, YOU UNDERSTAND THAT?

19 A YES, SIR.

20 THE COURT: THERE ARE DANGERS IN MISSING
21 TIME REQUIREMENTS, DO YOU UNDERSTAND THAT?

22 A YES, SIR.

23 THE COURT: THERE ARE DANGER IN NOT KNOWING
24 OTHER AVENUES BY WHICH YOUR SENTENCE COULD BE
25 QUESTIONED OR ATTACKED, DO YOU UNDERSTAND THAT?

1 A YES, SIR.

2 THE COURT: ONE OTHER QUESTION THAT
3 APPARENTLY MR. SALTER DID ASK YOU ALONG THESE
4 LINES. YOU ARE HERE ASKING TO PROCEED ON YOUR
5 OWN PRO SE WITHOUT COUNSEL, IS IT YOUR INTENTION
6 TO, I GUESS FOR LACK OF A BETTER WORD, STICK
7 WITH THAT DETERMINATION; THAT IS, IS IT YOUR
8 INTENTION TO REPRESENT YOURSELF THROUGHOUT THESE
9 PROCEEDINGS?

10 A IT'S MY INTENTION TO REPRESENT MYSELF. MY
11 INTENTIONS AFTER THAT ARE NOT KNOWN. WHETHER I
12 PROCEED WITH THE APPEAL BY MYSELF OR WHETHER I
13 DROP THE APPEAL AS MY OWN ATTORNEY, I DON'T KNOW
14 YET.

15 THE COURT: ALL RIGHT. I'M NOT GOING TO
16 ASK YOU TO TELL ME WHETHER YOU'VE BEEN SATISFIED
17 WITH WHAT THE SUPREME COURT HAS DONE. YOU'VE
18 BEEN, SEVERAL THINGS HAVE STARTED IN YOUR
19 APPELLATE PROCESS REGARDING YOUR WANTING AT ONE
20 TIME TO DROP YOUR APPEAL, PROCEED PRO SE, HAVE
21 OTHER COUNSEL APPOINTED, DO YOU HAVE ANY, I'M
22 NOT TALKING ABOUT LEGAL OBJECTION, BUT JUST ANY
23 OBJECTION TO THE WAY THAT'S BEEN HANDLED AT THIS
24 POINT?

25 A THIS HAS BEEN ABOUT A TWO AND A HALF YEAR

1 AFFAIR. I CERTAINLY HAVEN'T DELAYED THIS ANY.
2 IF ANYBODY'S DELAYED THIS ANY IT'S BEEN THE
3 ATTORNEYS. I'VE SIMPLY FROM THE START ASKED FOR
4 THIS AND ONE ATTORNEY AFTER ANOTHER SIT DOWN IN
5 FRONT OF ME, PROMISE ME TO DO SOMETHING FOR ME,
6 AND TURN AROUND AND DO THE EXACT OPPOSITE. YOU
7 KNOW. I HAVE NOT DELAYED THIS ENTIRE PROCESS AT
8 ALL. TWO YEARS AGO I ASKED SIMPLY TO BE ALLOWED
9 TO DROP MY APPEALS AND AN ATTORNEY TOLD ME HE
10 WOULD BE GLAD TO HELP ME DO THAT, WALKED OUT,
11 AND TOLD THE SUPREME COURT THE EXACT OPPOSITE
12 THING. I WAS LEFT WITH NO OTHER CHOICE. THE
13 MAN WOULDN'T REPRESENT ME. HE REPRESENTED WHAT
14 HE WANTED TO REPRESENT AND WHAT HE THOUGHT
15 SHOULD BE REPRESENTED AND WHAT 99 PERCENT OF
16 DEATH ROW APPELLATES WANT TO BE REPRESENTED, BUT
17 HE DIDN'T REPRESENT WHAT I WANT. NO, IT HAS NOT
18 BEEN A SMOOTH THING. IT'S BEEN VERY
19 ADVERSARIAL.

20 THE COURT: YOU MEAN ADVERSARIAL BETWEEN
21 YOU AND COUNSEL?

22 A YES.

23 THE COURT: OKAY. BUT YOU DO REALIZE THAT
24 THERE IS AN INHERENT DANGER IN ANY NON-ATTORNEY
25 REPRESENTING THEMSELVES IN ANY LEGAL PROCEEDING?

1 A I DO UNDERSTAND.

2 THE COURT: AND THAT WILL INCLUDE YOUR
3 REPRESENTING YOURSELF IN ANY LEGAL PROCEEDING
4 INVOLVING YOUR CURRENT SENTENCE?

5 A YES, YOUR HONOR.

6 THE COURT: DO YOU HAVE ANY QUESTIONS YOU
7 WANT TO ASK ME ABOUT WHERE YOU ARE AS FAR AS
8 WHAT WE'RE DOING TODAY OR ANY STATEMENTS YOU
9 WANT TO MAKE ABOUT WHERE WE ARE TODAY?

10 A I BELIEVE ALL THE BASES HAVE BEEN COVERED.

11 THE COURT: ALL RIGHT. MR. POORE, DO YOU
12 HAVE ANY FURTHER QUESTIONS.

13 MR. POORE: NO, SIR. THANK YOU.

14 THE COURT: MR. SALTER, DO YOU HAVE ANY
15 FURTHER QUESTIONS?

16 MR. SALTER: YES, SIR, YOUR HONOR, JUST
17 BRIEFLY.

18 RECROSS EXAMINATION BY MR. SALTER:

19 Q HIS HONOR MENTIONED POST CONVICTION RELIEF. DO
20 YOU UNDERSTAND WHAT STATE POST CONVICTION RELIEF
21 IS ABOUT?

22 A NOT SPECIFICALLY. I DO UNDERSTAND THAT IT'S
23 USUALLY A HEARING OR HEARINGS USUALLY TAKE PLACE
24 IN THE SAME COUNTY OR IN THE SAME, PERHAPS THE
25 SAME COURTROOM THAT THE CASE WAS TRIED IN TO

1 START WITH, SEPARATE ATTORNEYS ARE APPOINTED,
2 DIFFERENT THINGS CAN BE RAISED IN PCR THAT CAN'T
3 BE RAISED ON DIRECT APPEAL, AND I'M NOT FAMILIAR
4 WITH THE EXACT ISSUES THAT CAN BE RAISED IN ONE
5 PART OF THE APPEAL OR THE OTHER PART OF THE
6 APPEAL, BUT I'M AWARE THAT THERE ARE DIFFERENT
7 ISSUES THAT CAN BE RAISED.

8 Q YOU UNDERSTAND THAT IN STATE POST CONVICTION
9 RELIEF YOU CAN RAISE CHALLENGES TO
10 REPRESENTATION ISSUES THAT YOU RECEIVED BY YOUR
11 ATTORNEY, YOU UNDERSTAND THAT?

12 A YES, SIR.

13 Q THAT WOULD INCLUDE BOTH YOUR TRIAL ATTORNEYS AND
14 YOUR ATTORNEY ON APPEAL, YOU UNDERSTAND THAT?

15 A YES, SIR.

16 Q DO YOU UNDERSTAND THAT IF YOU DECIDE TO GO, IF
17 YOU DECIDE TO APPEAR PRO SE AND THE COURT ALLOWS
18 TO YOU DO SO THAT THAT MAY IMPACT UPON YOUR
19 ABILITY TO CHALLENGE THE EFFECTIVENESS OF YOUR
20 REPRESENTATION ON APPEAL, DO YOU UNDERSTAND
21 THAT? IN OTHER WORDS, YOU CAN'T BE APPOINTED,
22 BE ALLOWED TO APPEAR PRO SE AND THEN TURN AROUND
23 AND SAY YOU DID A BAD JOB ON DIRECT APPEAL?

24 A YES, I UNDERSTAND.

25 Q OKAY. YOU UNDERSTAND THAT YOUR DECISION TODAY

1 MIGHT ADVERSELY IMPACT ON YOUR ABILITY TO
2 RECEIVE RELIEF IN FEDERAL COURT?

3 A YES, SIR.

4 Q NOW YOU SAY YOU HAVEN'T MADE UP YOUR MIND
5 WHETHER OR NOT YOU WERE GOING TO PURSUE YOUR
6 APPEAL, AND YOU ARE NOT FAMILIAR WITH THE TIME
7 LIMITS, ARE YOU, FOR FILING BRIEFS, ET CETERA,
8 IN THE STATE SUPREME COURT?

9 A NO, BUT I HOPE TO BE VERY SHORTLY.

10 Q DO YOU UNDERSTAND THAT YOU WOULD HAVE 30 DAYS
11 FROM THE DATE THE SUPREME COURT AFFIRMED THE
12 JUDGE'S RULING, PROVIDING HE ALLOWS YOU TO
13 APPEAR PRO SE, YOU WOULD HAVE 30 DAYS FROM THE
14 SUPREME COURT'S RULING WITHIN WHICH TO FILE A
15 BRIEF, YOU UNDERSTAND THAT?

16 A YES, SIR.

17 Q NOW YOU CAN MAKE YOUR DECISION TO DROP YOUR
18 APPEAL THEREAFTER, BUT YOU WOULD HAVE ONLY 30
19 DAYS IN WHICH TO FILE A BRIEF?

20 A YES, SIR.

21 Q ALL RIGHT.

22 MR. SALTER: NOTHING FURTHER, YOUR HONOR.

23 THE COURT: ALL RIGHT. MR. SALTER DID
24 COVER ONE THING THAT I HAD THOUGHT ABOUT AT ONE
25 TIME AND I'M JUST GOING TO ASK IT IN A DIFFERENT

1 WAY. MR. SALTER ASKED YOU ABOUT THE FACT OR
2 ASKED YOU ABOUT THE ASPECT OF PERHAPS WHAT I
3 WOULD CALL LOSING A POSSIBLE TOOL IN ANY FURTHER
4 POST CONVICTION RELIEF; THAT IS, IF YOU HAVE
5 COUNSEL ON APPEAL AND THAT COUNSEL, IN YOUR
6 OPINION MAKES AN ERROR, YOU CAN USE THAT AS A
7 GROUND FOR FURTHER RELIEF DOWN THE ROAD, YOU
8 UNDERSTAND THAT?

9 A YES, SIR.

10 THE COURT: IF YOU REPRESENT, AND I'M NOT
11 SAYING THAT COUNSEL WOULD MAKE ANY MISTAKE, BUT
12 IF YOU REPRESENTED YOURSELF THEN YOU DON'T HAVE,
13 YOU ARE LOSING THAT ASPECT; THAT IS, YOU CAN'T,
14 JUST AS HE COUCHED IT, YOU WON'T HAVE THE
15 ABILITY TO GO BACK AND SAY SOMEBODY MESSED UP.

16 A BECAUSE IT'S MYSELF.

17 THE COURT: THAT'S RIGHT. WELL BECAUSE
18 IT'S YOURSELF BUT MAINLY BECAUSE IT'S NOT AN
19 ATTORNEY. YOU DON'T HAVE ANYBODY TO COMPLAIN
20 ABOUT, YOU UNDERSTAND THAT?

21 A I UNDERSTAND THAT.

22 THE COURT: NOW WE'VE GONE THROUGH A FAIR
23 AMOUNT OF MATERIAL AND QUESTIONS AND ANSWERS AND
24 IS IT AFTER HAVING BEEN POSED THESE QUESTIONS
25 AND AFTER HAVING BEEN GIVEN QUITE A BIT OF TIME

1 TO THINK ABOUT THIS SINCE THIS HAS BEEN GOING ON
2 SINCE FOR LIKE YOU SAY A COUPLE OF YEARS, IS IT
3 STILL TODAY OCTOBER 10, 2002, YOUR DESIRE TO
4 PROCEED PRO SE IN REGARD TO YOUR APPEAL OF YOUR
5 DEATH PENALTY SENTENCE FROM THIS COURT?

6 A YES, YOUR HONOR, IT IS.

7 THE COURT: OKAY. THANK YOU. THAT
8 CONCLUDES THE HEARING. I WILL ISSUE AN ORDER.
9 I'M NOT GOING TO ISSUE AN ORAL ORDER. I'M
10 GOING TO GIVE SOME THOUGHT TO IT AND REVIEW THE
11 TRANSCRIPT. WE'LL TAKE A SHORT BREAK.

12 (COURT'S IN RECESS AT 10:36.)

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1 I, THE UNDERSIGNED JANET M. RICH, OFFICIAL COURT
2 REPORTER FOR THE 16TH JUDICIAL CIRCUIT OF THE
3 STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT
4 THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE
5 TRANSCRIPT OF RECORD OF ALL THE TESTIMONY HAD
6 AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
7 CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT
8 OF GENERAL SESSIONS FOR YORK COUNTY, SOUTH
9 CAROLINA, ON THE 10TH OF OCTOBER, 2002.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
11 COUNSEL NOR INTEREST TO ANY PARTY HERETO.
12
13

14 OCTOBER 11, 2002

15 *Janet M. Rich*
16

17 JANET M. RICH
18
19
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21
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23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF YORK

COURT OF GENERAL SESSIONS
1998-GS-46-1020

STATE OF SOUTH CAROLINA
VS.
JAMES D. ROBERTSON

)
)
)
)
)

TRANSCRIPT OF RECORD

February 22, 2005
York, South Carolina

B E F O R E:

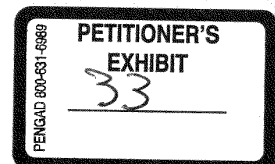
HONORABLE JOHN C. HAYES, III

A P P E A R A N C E S:

Mr. Ed Salter, Assistant Attorney General
For the State

Mr. James D. Robertson, Pro Se

Michael C. Watkins
Circuit Court Reporter



1 THE COURT: We have convened the matter of State
2 versus -- actually the way they have got it captioned is
3 James D. Robertson vs. State of South Carolina -- I think
4 the matter still pending is State of South Carolina vs.
5 James D. Robertson, that is the appeal that
6 Mr. Robertson -- has been I believe filed on
7 Mr. Robertson's behalf earlier by counsel, an appeal from
8 the finding of guilt and imposition of a death penalty here
9 in this court. The matter before the court at this time is
10 that as outlined by an order of Supreme Court dated
11 November 22, 2004, this matter was remanded to me for the
12 determination of whether Mr. Robertson is competent as to
13 whether or not his decision to waive his right to appellate
14 review is knowingly and voluntarily.

15 I have received from the State a memorandum, I have
16 received no submissions from Mr. Robertson. I have not
17 ordered any kind of mental evaluation, but if that is
18 determined to be a needed part of the picture I certainly
19 will do that after the hearing or at a later time if I deem
20 it necessary.

21 Now, before we get started I want to ask both
22 Mr. Salter to put on the record and identify himself and
23 his role in this, and Mr. Robertson, I'm going to let you
24 make any statements you wish at this point.

25 MR. SALTER: Thank you, Your Honor. For the record my

1 name is Ed Salter, I'm with the South Carolina Attorney
2 General's Office and I represent the State on the direct
3 appeal.

4 THE COURT: And do you take issue with anything I have
5 put on the record or do you want to elaborate on anything
6 that I have at this point put on the record?

7 MR. SALTER: No, sir. I think the memorandum that I
8 previously submitted pretty much sets forth our position,
9 and that is that the inquiry of the Court is to inquire and
10 make -- I believe you can address sufficiently just through
11 questioning of Mr. Robertson any Singleton/Torrence
12 standard of which I'm sure Your Honor is very familiar. It
13 does not necessarily require expert testimony on
14 competency. While in the Torrence and in the State vs.
15 Passaro there was expert testimony, I would bring to the
16 Court's attention that in at least one case which I was
17 personally involved involving Michael Eugene Elkins, there
18 was no expert testimony presented. Mr. Robertson's experts
19 at trial did not indicate that he had any problems with
20 competency. The State's expert, Dr. McKey, testified at
21 length that he was in fact competent. I believe, in fact,
22 his trial counsel stipulated to his competency and Your
23 Honor may find putting it on the record, there was a
24 presumption of competency, there's no reason to believe
25 that that status has changed negatively.

1 THE COURT: Mr. Robertson, do you want to say anything
2 before you testify or --

3 THE DEFENDANT: Nothing. I don't disagree with
4 anything that he said.

5 THE COURT: All right. Well, do you want to come
6 forward and we will let you take the stand. I know you
7 can't raise your right hand but if you will just put your
8 left hand on the Bible.

9 The witness, JAMES D. ROBERTSON, was first duly sworn
10 and testified as follows, on:

11 EXAMINATION

12 BY THE COURT:

13 THE COURT: Mr. Salter, do you want me to ask the
14 questions first or do you have anything you wish to address
15 first?

16 MR. SALTER: I will defer to Your Honor.

17 Q Mr. Robertson, of course, you know who I am, correct?

18 A Yes, sir.

19 Q You and I have been in this same courtroom I believe
20 this is the third time and we also have had hearings on a
21 civil matter back in September I believe of last year that
22 was an adjunct issue as to the matter now before the Court
23 It's my understanding -- and I, of course, am not on the
24 Supreme Court so I don't have access to everything that
25 they say or do, but it's clear from the order of the Court

1 that you have indicated your desire to withdraw your direct
2 appeal and the Court has -- Supreme Court asked me to
3 inquire into whether or not you are competent to do so,
4 that is whether or not you can make a competent decision to
5 exercise your right, which you do have that right to
6 withdraw your appeal, and to make sure that you are
7 knowingly and willingly and voluntarily exercising that
8 right. Do you understand all of that?

9 A Yes, Your Honor.

10 Q The direct appeal has been filed; is that correct?

11 A On my part and the attorney general has filed their
12 response. What has been lacking for a year and a half has
13 been the record on appeal and designation of matter. And
14 at this point I got bogged down with the system and said I
15 can't provide you a record on appeal if my attorney won't
16 provide it for me, that's where I stood and, you know, we
17 tried to resolve it in a civil matter, you know. The
18 courts have basically said, "Look, provide it." And I'm
19 saying I can't provide it and therefore I will move on.

20 Q When you say you move on, what do you mean? Do you
21 mean that out of frustration you will let yourself be
22 executed? I hate to be so blunt but that's what I'm
23 hearing.

24 A Well, you know, I mean I don't have the original
25 wording. I believe that when I wrote the last time I wrote

1 the Court, I said that I would allow them to dismiss it. I
2 didn't take an active stance and say please dismiss it. I
3 just said I will allow you to dismiss it and when you
4 dismiss it then I will take issue of it when you sign the
5 death warrant and we can talk.

6 Q Well, and let me follow-up on that. Then obviously
7 through a letter that you wrote me back on September 16th
8 of last year and previous contacts you are certainly aware
9 that if the direct appeal is dismissed either at your
10 behest or because you opt not to progressively seek to
11 continue, that you believe that you have exhausted all
12 collateral matters and methods of attacking your trial; is
13 that my understanding?

14 A Should I choose to I do believe so, yes.

15 Q Well, I'm just asking you if you understand what your
16 options are such as post conviction relief application.

17 A Yes.

18 Q You are familiar with that?

19 A I'm aware of that.

20 Q And the federal system has --

21 A Habeas Corpus.

22 Q You are aware of that?

23 A Yes, sir.

24 Q Now, are you aware that the issue that you raise
25 collaterally that's through a post conviction relief

1 application and/or the federal habeas corpus proceeding,
2 those issues would differ from those that you could raise
3 on direct appeal, do you understand that?

4 A I have been explained that.

5 Q All right. And so such matters as proportionality
6 review, that is a review by the Supreme Court of the
7 imposition of the death penalty in your case as opposed to
8 other death penalties, that there wouldn't be any review of
9 your penalties visa vie, that of other individuals that
10 have been found guilty of similar conduct, do you
11 understand that?

12 A Yes, Your Honor.

13 Q And I have not seen and have not been privy to all of
14 the issues that are in your appeal. Could you just kind of
15 quickly indicate to me your understanding of those issues,
16 that is the issues that are --

17 A The issues that I raised or the issues that appellate
18 defense tried to raise?

19 Q Both. What are the issues that you see for the direct
20 appeal and what did appointed counsel see?

21 A I think we both agreed on psychological evaluation
22 that was ordered by you, that it was either A, improperly
23 ordered; or B, improperly used by the State. I raised the
24 issue of -- it's right there, can I get it? I have copy of
25 it right there in my file. That is the State's response,

1 mine should be right there under it. Okay. Statement of
2 issue on appeal, the judge erred in denying three separate
3 motions for a direct verdict based on insufficient
4 evidence. The State's failure to meet the burden of proof
5 is the first element of murder. At the conclusion of the
6 State's Case the judge erred by forcing appellant to submit
7 to a state sponsored psychological evaluation solely for
8 the purpose of obtaining evidence to be used against him at
9 sentencing since neither competency to stand trial, guilt
10 by mentally ill nor insanity were ever an issue in the
11 case. The judge erred by denying the jurors to take notes
12 to use while in deliberations. The Court erred in
13 revealing the location where the jurors were sequestered
14 thereby denying appellant's constitutional right to a fair
15 and impartial jury. The judge erred in not allowing the
16 defense to define life in prisonment as it appears in the
17 state statute to potential jurors during voir dire thereby
18 denying the appellant a fair and impassionate jury. The
19 judge erred by refusing to select an unbiased jury from
20 another county. The judge erred in sentencing appellant to
21 death. The two that I don't have, the two that we agreed
22 on was -- well, the two that we had in common or two we
23 agreed on was psychological evaluation and refusing to
24 select an unbiased jury.

25 Q All right. Now, I certainly don't make rulings as to

1 appellate issues, but do you understand that some if not
2 all of these issues may not be available through either
3 habeas corpus or post conviction relief, that is some of
4 these issues may -- and I keep emphasizing the word may
5 because I'm not the Supreme Court and I can't decide and
6 I'm not your attorney so I can't give you legal advice, but
7 I can ask do you understand that some if not all of these
8 issues may not be available on either collateral attack
9 through post conviction relief or federal habeas, do you
10 understand that?

11 A Yes, I do.

12 Q Do you understand that they are not available, then
13 that means they would not be available for consideration.
14 And that in essence -- I don't want to use the words
15 they've been abandoned because that will be the case if you
16 voluntarily and progressively ask that it be dismissed, the
17 appeal, and I'm not saying you would abandon these by not
18 fighting the dismissal of the appeal, but regardless of how
19 it's couched, that they would not -- that they possibly
20 would not be available to you at any future time, do you
21 understand that?

22 A I understand.

23 Q And reviewing some of the past submissions and orders
24 in the file you had some relationship with Mr. Passaro who
25 has been executed; is that correct?

1 A Yes, Your Honor.

2 Q And you understand that he abandoned either -- I don't
3 know whether it was affirmatively or by action or
4 inactions, let's put it like that -- that he abandoned what
5 his appeal and did not follow through and that that
6 resulted in his being executed, you understand that?

7 A Yes, Your Honor.

8 Q Now, you and I have -- you've been before me before
9 and we went over the issue I believe it was in July of
10 2002 -- June of 2002 we went over the -- actually
11 October 10, 2002, the order from the Court was June 12,
12 2002 -- the issue of your right to counsel and I determined
13 that you had the -- that you were competent to waive your
14 right knowingly and intelligently to counsel on your direct
15 appeal, do you recall that?

16 A I do, Your Honor. That was a discussion that I had
17 with stand-by counsel as we were trying to figure out if I
18 was competent to represent myself. I should be competent
19 to make any decision within the realm of representing
20 myself and nobody would question my competency if I chose
21 to appeal tomorrow, it's just because I have chosen an
22 unpopular decision. Nevertheless, I mean, I don't think
23 anybody is challenging my competency here, I'm know the
24 State Attorney General is not.

25 Q Well, that I believe is an accurate statement, no one

1 is actively challenging your competency. But obviously
2 with the penalty that you are facing it's incumbent on
3 those of us involved in the process -- and whether you
4 think we are doing it to the best of our abilities or not
5 is not the issue -- but it's incumbent on us to make sure
6 that you understand what you are doing and that you are
7 competent in making these decisions, not that you do or do
8 not make them, but that you are competent to make them and
9 understand the ramifications of them and also make sure
10 that if you had counsel -- and this sounds kind of obtuse
11 in a way, but to make sure that if you had counsel that you
12 could communicate with counsel and you understand that you
13 feel that you can -- well, let me back up. Do you
14 understand that if you went through and the appeal was
15 granted you would be entitled to a de novo new trial on the
16 murder charges and the guilt and innocence phase, do you
17 understand that?

18 A Yes, sir, Your Honor.

19 Q What is your, James D. Robertson's, wish regarding the
20 appeal? Do you wish to go forward or do you wish to have
21 it dismissed?

22 A I wish to have it dismissed, whether affirmatively or
23 whether by neglect it doesn't make a difference to me. I
24 was -- yes, I was frustrated, but too, I was just
25 explaining to the Court that you don't expect some miracle

1 record on appeal to show up on y'all's desk tomorrow
2 morning from James Robertson, it's not going to happen.
3 Y'all can get the remittitur ready and send it on down and
4 we can move on with this process. They took an active step
5 of saying he's taking an active step, I didn't mean it as
6 an active step, but it certainly doesn't bother me. I have
7 no desire to continue with the direct appeal.

8 Q So it would be your desire to waive your right to a
9 direct appeal?

10 A Yes, it would.

11 Q This issue has popped up in your letter. I'm going to
12 make that letter of September 16th a part of the record. I
13 know you again are frustrated with trial counsel and trial
14 counsel's inability and the Court has ruled on that so we
15 are not going to revisit that entirely. You have said what
16 you wanted to about the inability to provide you anything
17 other than what's already been provided. But you
18 understand that a direct appeal would be a record that the
19 court should have and Supreme Court should have, because it
20 would be the record that was actually of the trial
21 proceeding itself, not of the collateral matters, do you
22 understand that?

23 A Yes.

24 Q So do you understand that at least from the Court's
25 view -- this Court's view -- that the issue that you have

1 catalogued a moment ago, their validity or lack of validity
2 could be raised, argued and reviewed by the South Carolina
3 Supreme Court on the available record -- I'm not saying you
4 think it's a complete record, but on the available record,
5 do you understand that?

6 A Yes. The documents I was asked to provide on the
7 record of appeal I don't have, don't exist neither, weren't
8 created. They were destroyed. Somebody decided that
9 Mr. Robertson doesn't deserve to have them, appellate
10 office doesn't have them, you know, we are talking about
11 routine things. Not the indictments, obviously. Obviously
12 I have a copy of the indictments. But, I mean, Solicitor
13 Pope's motion to seek the dealt penalty, that simple thing
14 that has his signature on the bottom of it doesn't exist.

15 Q You mean the notice of --

16 A It doesn't exist in my file, it doesn't exist in
17 Hancock's, it doesn't exist in Boyd's, it doesn't exist
18 in South Carolina Office of Appellate Defense. If it does
19 I have been lied to the whole way.

20 Q Well, if those things were to somehow miraculously
21 appear, would that change your --

22 A That would have made life a lot easier but it
23 wouldn't -- it would make life a lot easier but it would
24 not change my decision. It would have made my life over
25 the last five years considerably easier.

1 THE COURT: Mr. Salter, do you have any questions?

2 MR. SALTER: Yes, sir, Your Honor.

3 THE COURT: You can certainly confer with the
4 Solicitor, they are present, if they have anything they
5 would like you to follow-up.

6 EXAMINATION

7 BY MR. SALTER:

8 Q Just very briefly, Mr. Robertson, how old are you
9 today?

10 A Thirty-one.

11 Q You put on the record and we have gone through many of
12 these questions before. Please put on the record your
13 educational background.

14 A Graduated from high school, approximately two years of
15 college.

16 Q All right. And what was your major in college before
17 you left?

18 A Industrial engineering.

19 Q What is your understanding as to your IQ?

20 A Above average.

21 Q And you indicated earlier that you understand the
22 purposes of the hearing today.

23 A Yes, I do.

24 Q And what is your understanding about what the South
25 Carolina Supreme Court would do on a direct appeal?

1 A It allows for alleged errors to be corrected through a
2 process that only looks at what happened during the trial,
3 what is on record, what my attorney and what the State's
4 attorney did or did not object to. The fact that you are
5 innocent or not innocent really makes no big deal in this
6 case, you had your chance to do that at trial. So any new
7 issues, that kind of stuff, that's kind of way on down the
8 line. This is strictly errors that maybe the judge made,
9 not necessarily on purpose, just errors that the judge made
10 in directing the jury or directing one of the attorneys or
11 whatnot.

12 Q I know you indicated a frustration with not being able
13 to get certain documents, I just want to make sure that
14 that frustration is not what is driving your decision, the
15 judge has already talked to you about this. Do you
16 understand by compiling a record on appeal you would be
17 limited to presenting to the State Supreme Court the
18 transcripts of any hearings before Judge Hayes or any
19 documents that were presented in evidence as part of the
20 clerk's office file?

21 A I understand. Yes, I'm frustrated, I'm still
22 frustrated, I'm going to be for a long time. But I would
23 rather move on, I would rather move on to an arena where I
24 can address maybe those issues.

25 Q You mentioned the notices of the intent to seek the

1 dealt penalty, that that was one of the things you couldn't
2 find.

3 A Right.

4 Q If, for instance, I could help locate a copy of that
5 document or any other documents that you say are
6 unavailable, would you change your mind?

7 A No. Like I told the judge, it would have been
8 wonderful, it would have been nice to have three or four
9 years ago in the middle of drafting a civil complaint and
10 everything else in this world, it would have been nice to
11 have had that stuff, but it's not going to change my mind.
12 It's not the overriding factor in this decision.

13 Q And you understand that separate and apart from any
14 issues that you may wish to raise on appeal, that the State
15 Supreme Court is obligated by statute and by the 8th
16 Amendment to determine whether or not the sentence was
17 excessive or disproportionate in light of the crime and in
18 light of you as the defendant?

19 A Yes, sir. I'm aware according to statute that that's
20 technically -- there was an issue raised with Prassaro
21 where you can waltz through this process without that ever
22 happening. It raises some complicated issues, it raises
23 some -- obviously some issues of not guilty people throwing
24 themselves upon the alter.

25 Q You understand that the State Supreme Court as part of

1 that review would determine whether or not the sentences
2 was a result of passion, prejudice or any or arbitrary
3 factor?

4 A Yes.

5 Q All right. And unless you asked the State Supreme
6 Court, affirmatively asked them not to perform that review,
7 they may still do so like they did in the Prassaro case?

8 A Yes. It's my understanding that if I asked them not
9 to perform that duty it will still be performed, and if
10 it's not then somebody on the other side will take up the
11 issue and fight against me to make sure it is. But yes, I
12 understand, I have no problem with them reviewing it.

13 Q And you obviously understand from your responses from
14 Judge Hayes that you still have a right to pursue a PCR and
15 federal habeas corpus even if you waive direct appeal?

16 A Yes. I'm undecided at this point, but I do understand
17 I have that option.

18 Q Now, you've previously filed the initial brief of
19 appellant which you referenced earlier. And did you have
20 occasion to review the initial brief of respondent that was
21 submitted on behalf of the State?

22 A I did.

23 Q And are you aware that on the second issue that you
24 raised the State has conceded that there was error but we
25 have argued that it was harmless error?

1 A I understand that.

2 Q And are you aware that if the State Supreme Court
3 agreed with your position instead of the State's position
4 then you would be entitled to a new sentencing procedure?

5 A Yes. And I am most assuredly against a new sentencing
6 proceeding.

7 Q Why is that?

8 A I got the better end of the deal this time, I'm not
9 taking my chances. The world says death is bad but it
10 doesn't have to be better. I'm not going to give those
11 twelve jurors a chance to do the right thing to be honest
12 with you.

13 Q All right. Why is it that you wish to waive your
14 right to appeal?

15 A I'm tired, I have no desire. There is nothing to gain
16 from it. A new trial means nothing to me. It means that
17 at some point we are going to be standing in front of
18 another sentencing jury. Guilt has never been an issue at
19 this trial, never will be, never was, which, you know, just
20 leads us back at the sentencing hearing and I don't want
21 another sentencing hearing either. So nothing good can
22 come from this other than just rolling the dice with twelve
23 more jurors.

24 Q The Judge went through a lot of this earlier. You are
25 aware that in some issues like sufficiency of the evidence

1 challenges can only be raised on direct appeal in the state
2 court.

3 A I'm aware.

4 Q Do you understand if you don't raise those to the
5 State Supreme Court you forever waive your right to raise
6 these in state court proceedings?

7 A Yes.

8 Q And you likewise understand that your decision to
9 waive your right to appeal may adversely impact your
10 ability to raise habeas corpus and raise issues in federal
11 habeas?

12 A I'm not aware of specifics, but in general, yes.

13 Q In that regard, do you understand that in order to
14 preserve an issue for the review of federal courts the
15 issue must be first submitted to the State Supreme Court?

16 A I understand.

17 Q If you don't present it to the State Supreme Court you
18 therefore can't raise it in federal court.

19 A By the same argument that it's not preserved during
20 the trial it can't be raised on direct appeal, I
21 understand.

22 Q Have you made up your mind as to whether or not you
23 wish to proceed with either post conviction relief or
24 federal habeas?

25 A Changes by the minute, by the day. It depends on

1 which side of the bed I wake up on, how hot the cup of
2 coffee is that I drink that morning. Literally it changes
3 frequently.

4 Q Well, you understand, though, if you decide to waive
5 this appeal here today then your decision may not be -- the
6 basis for your decision might be whimsical, whether you
7 wake up on one side of the bed or another, you may not have
8 the right to pursue certain issues you might be able to
9 pursue if you don't make your appeal.

10 A I understand that.

11 Q And you understand that if you waive the right to
12 appeal that it may very well result in your death sentence
13 being carried out?

14 A That's not such a big deal. It's what I was sentenced
15 to.

16 Q What is your understanding of what that death sentence
17 is?

18 A I will be dead. It will be over with.

19 Q You still wish to waive your right to appeal?

20 A I do.

21 Q Back in October of 2002 when you testified you
22 indicated you are being treated for by bipolar disorder.

23 A Yes, sir.

24 Q Are you still being treated for that?

25 A Yes, sir.

1 Q Can you tell the Court what medications you are on?

2 A Same three; Prozac, Vistoril, Lithium.

3 Q All right. Are you taking them for the same reasons
4 you previously testified?

5 A Yes, sir.

6 Q And do you know what the dosage is you are taking?

7 A 20 milligrams of Prozac, maybe 150 or 200 of Lithium,
8 100 or 125 of Vistoril, it hasn't changed much since 2002.
9 It fluctuates a little bit here and there, but generally --

10 Q Do any of those medications you're taking interfere
11 with your ability to understand what you are doing here
12 today?

13 A Absolutely not.

14 Q Have you had any problems, any manic phases as a
15 result of this bipolar disorder that may impact upon your
16 decision today?

17 A No. I have been taking this medicine continuously for
18 at least three years. I did come off of it for a period
19 before that, but this decision has been made wholly while
20 on this medication.

21 Q Have you had any alcohol in the last twenty-four
22 hours?

23 A No, sir.

24 Q How about any other drugs that might impact your
25 ability to understand what you're doing here today?

1 A No, sir.

2 Q You testified in 2002 that there's someone who
3 monitors your drugs -- prescription drugs. Who is that?

4 A Dr. Cusack, C-u-s-a-c-k.

5 Q Where is he located? Is he at the corrections
6 institution?

7 A No. He's at the Medical University at South Carolina,
8 Charleston.

9 Q How often do you have access to him?

10 A At will, short of asking for him every day. You can
11 easily see him once every two weeks if you want to.

12 Q Is there anyone more readily available to assist in
13 monitoring your medication or to help you with any problems
14 you may have?

15 A A nurse and a counselor. I'm not even sure what level,
16 I'm sure just a master's level or something like that, but
17 just a general counselor.

18 Q This counselor is not a psychologist or psychiatrist?

19 A No. He'll come down and talk to you. He's aware of
20 what medicine you're taking, he's aware of the general
21 situation on death row, so forth. We see a nurse who
22 delivers medication three times a day.

23 Q Now, are you currently being treated for depression?

24 A I think I'm always being treated for depression.

25 Whether I'm currently depressed, no, I am not.

1 Q Okay. All right. I'm going to ask you a couple of
2 questions virtually identical to the ones that we asked in
3 October of 2002. Do you understand why you were tried?

4 A Yes.

5 Q What is your understanding as to why you were tried?

6 A I murdered two people in the course of committing
7 another crime.

8 Q And who were those people?

9 A My parents, Terry and Earl Robertson.

10 Q And you understand that you received the death penalty
11 as a result of that.

12 A Yes.

13 Q You understand that your decision to waive your right
14 to appeal is final, you can't thereafter change it.

15 A I understand that.

16 Q Has anyone threatened you or coerced you in any manner
17 to get you to make this decision?

18 A Absolutely not.

19 Q Anybody promised you anything?

20 A Absolutely not.

21 Q Now, you previously waived your right to counsel on
22 the appeal. Prior to that time did you have any problems
23 communicating with your attorneys?

24 A It was difficult, it was challenging.

25 Q When you say it was difficult and it was challenging,

1 could you understand them and could they understand you?

2 A Yes. Did we agree? No. Did we work well together?

3 No.

4 Q And if another attorney is at some point appointed to
5 represent you in the future, do you think you will be able
6 to adequately communicate with him or her?

7 A I don't see it as any problem. Stand-by counsel right
8 now I communicate with about once a week as it is.

9 Q And have you discussed your decision here today with
10 stand-by counsel?

11 A I have.

12 Q I'm not going to ask you what the lawyer told you, but
13 you have had a discussion?

14 A Yes.

15 Q And you still wish to go forward and waive your right
16 to appeal?

17 A Yes.

18 MR. SALTER: Nothing further, Your Honor.

19 FURTHER EXAMINATION

20 BY THE COURT:

21 Q Let me revisit one quick issue. My check with the
22 Supreme Court indicates that you do not have any court
23 appointed stand-by counsel. Are you talking about just
24 someone you seek advice from as opposed to someone who was
25 formally appointed stand-by counsel?

1 A When we were here in 2002 you asked me whether I had
2 any objections and I said no, I would prefer not to but I
3 didn't have any objections. And a few weeks later they
4 appointed Joseph Slavitz as stand-by counsel.

5 Q The reason I'm raising that is he's not here today.

6 A No. And we discussed that and we were a little -- he
7 was like, "Hey, you know, if they don't want you to have
8 representation to represent yourself while you are "-- to
9 him it was a little iffy. If the man is not competent to
10 die then he's certainly not competent to represent himself
11 in the competency hearing to determine he can die. But, I
12 mean, I don't believe I have the order with me, but, I
13 mean, he -- every time the Court sends something to me they
14 send a copy of it to him.

15 Q Was he aware that there was a hearing on this issue
16 today?

17 A Only because of me.

18 Q But you have told him that?

19 A Yes. But like he said, he said, "I didn't get a copy,
20 it wasn't addressed to me from Judge Hayes." He was
21 basically going off what I told him.

22 Q And I don't know Mr. Slavitz and I assume he's not
23 here in court.

24 A I have never seen him in person, but I presume -- I
25 can deduct from the people in the audience that he's not

1 here.

2 Q Anything else you want to put on the record while we
3 are having this hearing?

4 A No. I think we about covered it.

5 Q All right. Well, I am going to make this letter that
6 you sent me dated -- your date was September 16th, 2004, we
7 received it on the 22nd of September, I am going to make
8 that part of the record. And if there will be no further
9 business I'm going to allow you to step down. And does the
10 State have any other presentation to make?

11 MR. SALTER: Your Honor, the only thing I would do
12 is -- this has previously been introduced at trial as
13 Court's Exhibit Three and that's the letter from
14 Dr. Jeffrey McKey concerning his findings as to competency.
15 I would like to submit a copy of this just for the record.
16 It's already part -- it would go before the State Supreme
17 Court already if we have a direct appeal, but I just want
18 it put in for purposes of this record.

19 THE COURT: Any objection, Mr. Robertson?

20 THE DEFENDANT: You know, no. I don't agree with his
21 report but I don't have any objection --

22 THE COURT: I'm not asking that, I'm just asking --

23 THE DEFENDANT: No. I have no objection to that.

24 THE COURT: You may offer it. All right. If you will
25 escort Mr. Robertson back to the holding cell and I will

1 issue an order as promptly as I can. Thank you.

2 (END OF HEARING.)

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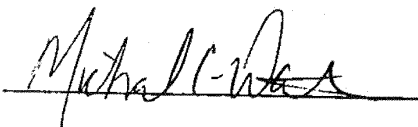
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25

I, the undersigned Michael C. Watkins, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 22nd day of February, 2005.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 28th, 2005.


Court Reporter

ROBERT JOHN BURKE
171 Rhododendron Drive
Beech Mountain, NC 28604
202-487-0598 (c)
oldhoopster@hotmail.com

WORK EXPERIENCE

10/15-Present Indigent Defense Trainer and Consultant

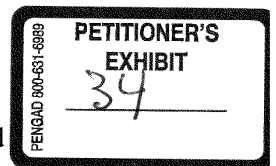
Designed or assisted with the design of training events, and served as faculty for events, of the Defender Services Office of the Administrative of the U.S. Courts, the Defense Assistance Program (U.S. Military), the Missouri State Public Defender, the University of North Carolina's School of Government and the NC Indigent Defense Board, and International Bridges to Justice.

8/17-10/19 Contractor, Administrative Office of the U.S. Courts, Defender Services Division, Washington, D.C. – Designed and conducted a training needs assessment for the Defender Services Office of the Administrative Office of the U.S. Courts. This effort included over 4,000 surveys, hundreds of interviews, literature reviews, training observations, and a comprehensive report.

12/03-10/15 Defender Services Office, Training Division, Administrative Office of the U.S. Courts (AO), One Columbus Circle, NE, Suite G-430, Washington, DC 20544;

ATTORNEY-ADVISOR (12/03-8/04)
ASSISTANT BRANCH CHIEF (8/04-11/04)
BRANCH CHIEF (11/04-10/13)
DIVISION CHIEF (10/13-10/02/15)

Managed a seventeen-person training division that implemented approximately 40 training programs per year and provided other educational and resource services to federal public defenders and private lawyers practicing under the federal Criminal Justice Act. Division used principles of adult learning and training design to deliver practical, useful, and highly regarded training to legal professionals, including capital and non-capital training. Work included the hiring, professional development, supervision, mentoring and evaluation of staff; development and use of a training spending plan totaling approximately \$6 million, and supervision of the implementation of that plan; the management of contracts and contractors, and the development and implementation of national litigation support strategies on the use of technology in litigation. Received Time Off Award in 2007, the Superior Performance Award in 2004, 2005, 2006, 2007, 2008, 2010, and 2015, and a Special Act



Award in 2009.

2/03-12/03 Criminal Justice and Indigent Defense Consultant

9/03-12/03 - Defender Services Division, Administrative Office of the U.S. Courts (AO), One Columbus Circle, NE, Suite G-430, Washington, DC 20544.

Contractor with the Defender Services Division responsible for developing a conference on the Quality of Indigent Criminal Defense Representation for state and federal public defenders, and a management and substantive law conference for attorneys in Capital Habeas Units of federal public defender offices.

6/03 – Grant Recipient, United States Embassy, Avenida Andres Bello 2800, Santiago, Chile.

Designed and implemented a one and one-half day Train the Trainers session for the Training Division of the Defensoria Penal Publica (the National Chilean Public Defender's Office). Also provided the office with standards related to indigent defense practice and indigent defense training and advised them on the use of those standards to evaluate individual training events, the training function, and quality of representation. Contacts at Defensoria Penal Publica are Gonzalo Medina Schultz, gmedina_dp@defensoriapenal.cl, and Paulina Hernandez Badilla, Phernandez_dp@defensoriapenal.cl.

2/03 - Legal Training Specialist, American Bar Association
Central and Eastern European Law Initiative, 740 15th Street,
NW, Washington, D.C. 20005.

Two-week assignment in Bosnia in which I assessed the training needs of criminal defense attorneys resulting from a change in Bosnia's criminal procedure code. The assessment was accomplished through a series of meetings with U.S. Embassy officials, staff of the Office of the High Representative, Bosnian judges, prosecutors, and defense attorneys, as well as other Bosnian and international individuals, government officials, and civil society organizations. Once the assessment was completed, I designed both a trial advocacy skills training and a training session for the education of Bosnian attorneys to better perform as local trainers.

3/98–2/03

Defender Services Division, Administrative Office of the U.S. Courts (AO), One Columbus Circle, NE, Suite G-430, Washington, DC 20544.

ATTORNEY-ADVISOR (Program Operations,
Legal, and Training Branches) (3/98 - 5/02)

ASSISTANT CHIEF, TRAINING BRANCH (5/02-2/03)

Primary responsibilities included: being the lead staff person on a strategic planning and performance measurement project for the federal Criminal Justice Act program in coordination with Federal Judges and Federal Public Defenders; performing operational and management assessments of Federal Public and Community Defender Organizations to evaluate management operations and compliance with federal laws and regulations; working on efforts to increase the hourly pay rate for Criminal Justice Act panel attorneys; responding to inquiries from the field on legal and policy issues; and assisting with management of the training activities of a 13-person training branch. Received the Sustained Superior Performance Award in 2000 and the Special Act Award in 2001 and 2002.

10/91 - 3/98

National Legal Aid & Defender Association, 1625 K Street, NW, #800, Washington, DC 20006.

SENIOR ATTORNEY (Defender Division)

Edited NLADA's death penalty defense newsletter, Capital Report, applied principles of adult learning to the design and management of, and participation in, NLADA's Appellate Defender, Mitigation Specialists, Death Penalty, Defender Management, Trial Skills and other training events. I also managed a substantial number of volunteer faculty for each training event. I prepared papers, articles, grant proposals, legislative analyses and other documents, and responded to requests for technical assistance received from defenders in the field.

1/88 - 10/91

Public Defender's Office, 1320 NW 14th Street, Miami, FL 33125.
ASSISTANT PUBLIC DEFENDER (Appellate Division)

Responsible for handling criminal appeals, petitions for extraordinary writs and resentencings.

8/86 - 1/88

Thornton & Hinshaw Culbertson, Miami, FL. Supervisor:
ASSOCIATE

Handled appeals, trial support, and limited trial work in an insurance defense firm.

5/84 - 8/86

Third District Court of Appeal, Miami, FL.
RESEARCH AIDE (To The Honorable Joseph Nesbitt)

Prepared case summaries and assisted in the preparation of court opinions.

8/78 - 5/81

State of Florida Department of Corrections, Probation and Parole Services, Miami, FL. Supervisor: Christine Russell, (305) 476-4800
Probation and Parole Officer

Supervised offenders in their attempts to comply with conditions of probation, including field visits, the preparation of written reports, and court appearances.

EDUCATION

University of Miami College of Law, Coral Gables, FL
Harvey T. Reid Merit Scholarship
J.D. 1984, with honors
Inter-American Law Review
Dean's list, five semesters

University of Florida, Gainesville, FL
B.A., Political Science, March 1978
Phi Beta Kappa

Christopher Columbus High School, Miami, FL
May 1973

BAR MEMBERSHIPS

Florida Bar
District of Columbia Bar

Publications

Burke, Mickenberg, Natale, Small Group Feedback and Coaching: How to Prepare for and Facilitate Small Groups (Defender Services Office Train the Trainers Workshop 2015).

The Basics of [Training] Needs Assessments, Indigent Defense (NLADA July/Aug. 1999).

You Can Get There From Here, Again and Again: Integration, Coherence and Improvement of Large, Repeated Training Events, (NLADA Train the Trainers Seminar Sept. 1998).

Profile: Jim Hennings, Indigent Defense (NLADA May/June 1997).

Defender Perspectives on Drug Courts: Successful Programs Which Could Be Doing More, (NLADA [Bureau of Justice Assistance Grant] July 1996).

Defense Advocacy Meets Treatment: Can Criminal Defense Standards Be Reconciled with the Implementation and Operation of Drug Courts? (State Justice Institute Symposium Dec. 1995).

Evaluation of the Kentucky Department of Public Advocacy's 7th Death Penalty Practice Persuasion Institute (NLADA April 1995).

Money is Silver Lining in Cloudy Crime Bill, Cornerstone, Vol. 16, No. 3 (NLADA Fall 1994).

Generous Defender Suspended for Criticism of Judge, Cornerstone, Vol. 16, No. 3 (NLADA Fall 1994).

Contributing Editor, The Roundtable (Newsletter of the NLADA's Defender Trainers Section).

Contributing Editor, The Appellate Brief (Newsletter of the NLADA's Appellate Defender Section).

Editor & Author, Various articles, Capital Report (Bimonthly Newsletter of the NLADA's Death Penalty Litigation Section, Nov. 1991 to 1997).

Courts, Law Reviews Address Indigent Defense Issues, Cornerstone, Vol. 14, No. 1 (NLADA Spring 1992).

Minnesota Court Voids Crack Cocaine Law on Racial Discrimination Grounds, Cornerstone, Vol. 14, No. 1 (NLADA Spring 1992).

Burke, Robert; Broderick, Mary, INDIGENT DEFENSE CASELOADS AND COMMON SENSE: AN UPDATE (NLADA 1992).

Other Activities/Associations

Author, Indigent Defense Training & Development: Where Does It Stand? Where Should It Be Headed? Grant proposal to the National Institute of Justice (NLADA Oct. 1994).

Certified Mediator, Florida, 1991.

Co-author, Public Defender Assessment Teams for Violent Youthful Offenders: Demonstration and Evaluation, Grant proposal to the Bureau of Justice Assistance and the National Institute of Justice (NLADA June 1995).

Co-chair, NLADA Defender Trainers' Section (1998 to 2007).

Collaborator with DOJ Office for Access to Justice and the Bureau of Indian Affairs on trial skills training for tribal defenders (2014-2015).

Designer/Manager/Faculty Member, Remote Indigent Defense Trial School, UNC School of Government (2021).

Designer/Manager, Remote Appellate Training Conference, UNC School of Government (2020).

Designer/Faculty Member, Sentencing Advocacy Skills Workshop, Administrative Office of the U.S. Courts, Defender Services Office Training Division (2002, 2005, 2009, 2011-2015).

Designer/Faculty Member, Train the Trainers Workshop, Administrative Office of the U.S. Courts, Defender Services Office Training Division (2006-07, 2010-12, 2014-15).

Designer/Faculty Member, Federal CJA Trial Skills Academy, Administrative Office of the U.S. Courts, Defender Services Office Training Division (2009-2016).

Designer/Faculty Member, Train the Trainers Workshop, International Bridges to Justice, Xiamen, China (2011).

Designer/Faculty Member, Trial Advocacy Training, International Bridges to Justice (Myanmar - 2017, Burundi - 2017, Rwanda - 2018, Sri Lanka - 2019, Indonesia [Remote] – 2021).

Designer/Faculty Member, Trial Advocacy Workshop, Administrative Office of the U.S. Courts, Defender Services Office Training Division (June 2004).

Designer/Faculty Member, Capital Habeas Unit Conference, Administrative Office of the U.S. Courts, Defender Services Division Training Branch (May 2004).

Designer/Faculty Member, Conference on Quality of Criminal Defense Representation, Administrative Office of the U.S. Courts, Defender Services Office (Feb.-Mar. 2002).

Evaluator, 1994 Kentucky Department of Public Advocacy Death Penalty Practice Persuasion Institute.

Expert Field Reviewer of Draft Treatment Improvement Protocols, Department of Health and Human Services, Substance Abuse & Mental Health Services Administration (March 1995).

Faculty Member, Indigent Defense Trial School, UNC School of Government (2016, 2017, 2019).

Faculty Member, Missouri State Public Defender Train the Trainers Workshop (July 2016).

Faculty Member, Missouri State Public Defender Post-Conviction Skills Workshop (Nov. 2015).

Faculty Member (Closing Remarks), National Capital Federal Habeas Corpus Seminar, Administrative Office of the U.S. Courts, Defender Services Office Training Division (2014).

Faculty Member, Skills Building Training: Effective Report Writing and Testifying (Nat'l Ass'n of Sentencing Advocates 2002, 2005).

Faculty Member, Federal Defender/Administrative Officer Conference (Defender Services Division January 2001).

Faculty Member, Appellate Defender Training (NLADA 1994-2001, 2003-2006, 2008, 2011, 2012, 2014).

Faculty Member, Train the Trainers Seminar (NLADA 1998, 2000).

Faculty Member, Training Needs Assessments (NLADA's Defender Trainers= Section Meeting and Training Session, Aug. 1999).

Faculty Member, Appellate Advocacy Conference (Indiana Public Defender Council Apr. 1999).

Faculty Member, Kentucky Department of Public Advocacy's Post-Conviction Institute (1997).

Faculty Member, Death Penalty Seminar of the Indiana Public Defender Council. (1997).

Faculty Member, Juvenile Defender Leadership Summit (ABA Juvenile Justice Center Oct. 1997).

Faculty Member, Defender Advocacy Institute (Trial Skills Training Program) (NLADA Aug. 1997).

Faculty Member, Seminar for Israeli Public Defenders (American University's Justice Programs Office July 1997).

Faculty Member, Skillfully Handling Scientific Evidence and Expert Testimony at Trial (NLADA Jan. 1997).

Faculty Member, Appellate Defender Training (NLADA & the Indiana Public Defender Council, in cooperation with the ABA Juvenile Justice Center, Oct. 1996).

Faculty Member, The Admissibility of Scientific Evidence and Its Use in Criminal Case Investigations (NLADA Annual Conference Dec. 1995).

Faculty Member, Appellate Advocacy Conference (Indiana Public Defender Council May 1995).

Faculty Member, Criminal Law, The Investigation & Presentation of the Criminal Defense in the Death Penalty Case (Kansas Trial Lawyers Association Education Fund Feb. 1995).

Founding Member, National Association for Public Defense (2013-16).

Indigent Defense Advisor, General Accounting Office's Survey of, and Report to Congress on, the Availability of Legal Representation to Juveniles(1994).

Indigent Defense Member, Institute for Law and Justice's National Assessment Program (1994).

Member, Joint Electronic Technology Working Group, Defender Services Office (2008- 2015).

Member, National Association of Indigent Defense Educators (2011-Present)

Member, Death Penalty Consortium Executive Committee for Dept. of Justice Grant to State and Local Indigent Death Penalty Defense Teams (2008-2012).

Member, American Bar Association Juvenile Justice Center's Advisory Committee for National Summit on Juvenile Justice (1997, 1998).

Member, Advisory Committee for National Survey on Indigent Defense (U.S. Department of Justice's Bureau of Justice Statistics 1997).

Member, American Society for Training and Development (1994-2013).

Member, State Justice Institute's Advisory Committee for the 1995 National Symposium on the Implementation and Operation of Drug Courts; Coordinator of the Defender Working Committee of the Advisory Committee.

NLADA Liaison to the ABA Death Penalty Representation Project (1991-1998). NLADA

Liaison to the ABA Juvenile Justice Center (1996-98).

NLADA Liaison to the ACLU's Capital Punishment Project (1991-1998).

NLADA Staff Liaison to the NLADA's Appellate Defender, Death Penalty Litigation, Defender Trainers' and Social Services Sections and the Amicus Committee (1991-98).

Presenter on Contracting for Indigent Defense Services at the Summit of the Legal Action Group (London, Nov. 1997).

Presenter to members of the Japan Federation of Bar Associations on Indigent Defense Delivery

Systems in the U.S. (April 1997).

Presenter, The Constitutional Right to Effective Assistance of Counsel, The Washington Semester Program, American University, Washington, DC (March 1992).

Volunteer Reader, Closed Circuit Radio Broadcast for the Visually Impaired (Washington Metropolitan Ear 1999).

Volunteer Tutor, Project Northstar, Washington, DC (1996-97).

Volunteer Basketball Coach, Fairfax County High School Summer Basketball League (1995).

Volunteer Basketball Coach, Springfield Youth Club, Springfield, VA(1992-94).

Volunteer Guardian Ad Litem, Dade County (FL) Bar Association's Guardian Ad Litem Program (1990).

Volunteer Basketball Coach, Suniland Youth Club, Miami, FL (1989-91)

JOHN MITCHELL BAILEY IV
330 Franklin Road
Ste. 135A-427
Brentwood, TN 37027-3282
(615) 319-1342

RESUME

EDUCATION:

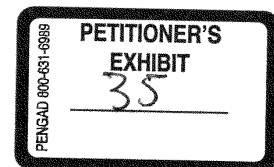
Undergraduate: University of Georgia
A.B.J., December, 1979
Major: Journalism
Cum Laude

Law School: National Law Center, George Washington University
Juris Doctor, May, 1983

WORK:

March 1996 to Present -- Private Practice

I currently represent one client in a federal capital case in the Eastern District of Michigan and one client in the Southern District of Mississippi. I also currently represent a capital client in federal habeas corpus proceedings in the Sixth Circuit Court of Appeals. I have been appointed as a standard of care expert on behalf of the defense in a capital post-conviction case pending in the State of Arizona. Previously, I have represented clients in federal capital cases in the Middle District of Tennessee, the Eastern District of Kentucky, and in the District of Rhode Island. I have been appointed as "learned counsel" in seven (7) federal capital cases. I was hired as a consultant to work with the Alabama Federal Public Defender's Office on a capital federal habeas corpus proceeding. I have both represented and consulted on state post-conviction cases in Tennessee. I have represented capital clients at the trial level and on direct appeal in Missouri. I represented capital clients at the trial level and in executive clemency proceedings in Arizona. I represented one capital client on direct appeal in California. I also worked on approximately three dozen capital cases in Arizona as a consultant for attorneys at the trial, direct appeal, and state post-conviction levels. I was the primary author of the 1999 Supplement to the Arizona Capital Case Defense Manual. I have also represented clients in noncapital appeals before the United States Court of Appeals for the Sixth Circuit.



January 1992 to February 1996 -- Director, Western District, Capital Unit,
Missouri Public Defender

During this time, I handled thirty-four capital cases at the trial level. I also handled more than a dozen pretrial writs, including full briefing and oral argument before appellate courts in Missouri. I was also responsible for supervising a five attorney office that handled capital cases throughout the western half of Missouri.

March 1991 to September 1991 -- Deputy Director,
New Hampshire Public Defender

I was briefly the deputy director of the New Hampshire Public Defender. I resigned my position with NHPD when they fired the executive director, Neal Kravitz, for reasons that I found extraordinarily unpersuasive. Mr. Kravitz is, and has been since his appointment in 1998, an associate judge of the Superior Court of the District of Columbia.

July 1989 to February 1991 -- Staff Attorney,
Arizona Capital Representation Project

My responsibilities with ACRP included consultation with attorneys handling capital cases at the trial level and direct representation of capital defendants at both the state post-conviction and federal habeas corpus stages. I also was responsible for writing a bi-monthly newsletter informing defense attorneys handling capital cases of new caselaw and issues involved in capital litigation. I was a contributing author and editor to the 1991 Arizona Capital Case Defense Manual. As an adjunct professor, I taught a course on death penalty jurisprudence at Arizona State University School of Law.

May 1987 to June 1989 -- Staff Attorney,
Rhode Island Public Defender

During this time, I was a trial attorney handling a felony caseload. I also handled approximately a half dozen cases on appeal.

August 1983 to April 1987 -- Staff Attorney, Louisville, Kentucky Public Defender

During this time, I was a trial attorney handling a felony caseload. I also handled six (6) capital cases. Additionally, I handled approximately a half dozen cases on appeal.

STATE BAR MEMBERSHIPS

Kentucky
Missouri
Tennessee

FEDERAL BAR MEMBERSHIPS

United States Supreme Court
Sixth Circuit Court of Appeals
Ninth Circuit Court of Appeals
Western District of Kentucky
Eastern District of Kentucky
District of Arizona
Western District of Missouri
Middle District of Tennessee
Eastern District of Michigan

AFFIDAVIT OF JOHN M. BAILEY IV

I, John M. Bailey IV, declare under penalty of perjury as follows:

1. I am an attorney duly licensed to practice before state courts in the States of Kentucky, Missouri, and Tennessee; the Sixth, Eighth, and Ninth Circuits of the United States Courts of Appeals; the Eastern District of Kentucky, Western District of Kentucky, Western District of Missouri; Middle District of Tennessee, and Arizona District of the United States District Courts; and the United States Supreme Court. I have represented indigent individuals in criminal matters since 1984. Since 1989, my primary, in fact virtually exclusive, area of criminal practice has involved the trial, appeal, and post-conviction representation of indigent individuals in capital cases.

2. From 1983 till 1987, I was an Assistant Public Defender with the Louisville, KY Public Defender. During my time with the Louisville PD, I handled a full felony caseload, including four (4) capital cases. I tried over twenty (20) felony cases, including rapes, robberies, and four (4) first degree murder trials. I also worked on approximately a dozen appeals, including oral argument before the Supreme Court of Kentucky.

3. From 1987 till 1989, I was an Assistant Public Defender with the Rhode Island Public Defender. During my time with the Rhode Island PD, I handled a full felony caseload of over one hundred (100) cases, including three (3) first degree murder cases. I tried eleven (11) felony cases, including robberies, child molestation, and two (2) first degree murder trials. I also worked on three (3) appeals, including oral argument before the Rhode Island Supreme Court.

4. From 1989 till 1991, I was an attorney with the Arizona Capital Representation Project (ACRP). My responsibilities with ACRP included consultation with attorneys handling capital

cases at the trial, direct appeal, and post conviction stages; as well as direct representation of capital defendants at both the state post-conviction and federal habeas corpus stages. I also was responsible for writing a bi-monthly newsletter informing defense attorneys handling capital cases of new caselaw and issues involved in capital litigation.

5. In 1991, I was briefly the Deputy Public Defender with the New Hampshire State Public Defender. I resigned my position with NHPD when they fired the executive director, Neal Kravitz, for reasons that I found extraordinarily unpersuasive. Mr. Kravitz has been an Associate Judge of the Superior Court for the District of Columbia for the past seventeen (17) years.

6. From 1992 till 1996, I was the Director of the Western District Capital Unit of the Missouri Public Defender. During that time, I handled thirty-four (34) capital cases at the trial level. I also handled more than a dozen pretrial writs, including full briefing and oral argument before appellate courts in Missouri. I was also responsible for supervising a four (4) attorney office that handled capital cases throughout the western half of Missouri. As the supervisor of the office, I was responsible for ensuring that the attorneys working under me represented their clients in accordance with prevailing professional norms. During my tenure as Director, no defendant represented by my office was sentenced to death.

7. Since 1996, I have been in private practice. Until 2013, I worked exclusively on capital cases. I have been appointed as “learned counsel” pursuant to 18 U.S.C. § 3005 in federal capital cases in Rhode Island, Tennessee (2), and Kentucky. I have represented two capital clients at the trial level and one on direct appeal in Missouri. I represented two capital clients at the trial level, one in executive clemency proceedings, and one in a capital federal habeas corpus proceeding in Arizona. I represented one capital client on direct appeal in California. I have

worked on approximately three dozen capital cases in Arizona as a consultant for attorneys at the trial, direct appeal, and state post-conviction levels. I was hired as a consultant to work with the Alabama Federal Public Defender's Office on a capital federal habeas corpus proceeding. I have both represented and consulted on state post-conviction cases in Tennessee. I have represented clients on direct appeal in the United States Court of Appeals for the Sixth Circuit, including full briefing and oral argument. I currently represent a capital client in federal habeas corpus proceedings in Kentucky. My two most recent federal capital trial representations have resulted in the Department of Justice declining to seek death in either case. Both of these cases have been resolved by way of pleas: one for a period of incarceration of between 22.5 and 25 years; the other for a period of incarceration of ten (10) years.

8. I have been invited faculty at a number of local and national seminars on a wide variety of topics relating to the role and obligation of defense counsel in capital cases, including topics which address such issues as the mitigation function of capital defense teams; the critical importance of jury selection in capital cases; generally accepted techniques that are involved in "death qualification" voir dire and which are required to obtain a constitutionally fair and impartial jury; effective trial advocacy skills; the necessity and practices for working with interdisciplinary teams to investigate and develop unifying and consistent defense strategies for a guilt and penalty phase defense in capital cases; the essential steps for effectively investigating and presenting the narrative of a client's development and functioning, including strategies for overcoming barriers to disclosure of relevant social history information and effective methods for identifying and consulting with appropriate experts; the ethical considerations involved in representing and counseling clients who express a preference for execution over life

imprisonment; the duty to investigate the prosecution's guilt phase evidence and theories of culpability; and the importance of preserving issues for appellate review. Specifically, I have presented lectures at seminars in Arizona, Missouri, Kansas, New Hampshire, California, and Rhode Island.

9. I was a contributing author and editor to the 1991 Arizona Capital Case Defense Manual. I was the primary author and editor of the 1999 Supplement to the Arizona Capital Case Defense Manual. I taught courses in death penalty jurisprudence as an adjunct professor at Arizona State University School of Law (1989-1991).

10. I received a Bachelor of Arts in Journalism from the University of Georgia in 1979. I earned a J.D. from the National Law Center of the George Washington University in 1983.

11. Through my training, education, experience and independent research, I am very familiar with the practical skills, resources and prevailing professional norms necessary for the competent representation of individuals in proceedings, including trials, in which the government seeks a judgment authorizing the taking of a human life. In particular, I am thoroughly familiar with constitutional standards governing the defense of capital cases.

12. The attorneys who are representing Mr. Wayne Prince in post-conviction proceedings in Arizona have asked me to review the record in the case, compare the performance of Mr. Prince's trial attorneys with prevailing professional norms, and provide an opinion as to trial counsels' performance is consistent with those norms. The documents I have reviewed in connection with this request include the following:

- Transcript: Mr. Prince's 1999 trial

- Transcript: Mr. Prince's 2007 retrial
- Transcript: Mr. Prince's 2008 retrial
- ROA
- Appellate Decisions in Mr. Prince's case
- Mitigation Notebook 1- Wayne Prince Jr
- Mitigation Notebook Volume 2 Wayne Prince Sr
- Mitigation Notebook Volume 3- Louise Rawnsley
- Mitigation Notebook Volume 4- Tammy Mielke and Corey Prince
- Mitigation Notebook Volume 5 - Christine, Cassandra & Andrew Parker
- Mitigation Notebook Volume 6- Donald & Sophia Prince
- Mitigation Notebook Volume 8-Declarations
- Mitigation Notebook Volume 10- Royce Drysdale
- Juror Questionnaires, Questions and Voir Dire
- Petition for Post- Conviction Relief
- Petition for Post- Conviction Relief- Exhibits¹

13. Based on my review, I can say without reservation that the performance by Emmet Ronan, Vernon Lorenz, Dennis Jones, and John Napper objectively failed to meet with prevailing professional norms and is constitutionally deficient. Counsel failed to conduct a reasonable investigation into their client's life history and mental health; failed to communicate sufficiently with their client; failed to conduct a reasonable investigation of the facts surrounding Cassandra Parker's killing and potential first phase defenses; failed to conduct a reasonable jury selection in Mr. Prince's trials which are currently at issue; and failed to adequately challenge the State's aggravation evidence and present mitigation evidence. Counsel's professional failures constitutionally undermine the reliability of Mr. Prince's conviction and sentence.

I. Prevailing Professional Norms in Arizona at the Time of Mr. Prince's Trials

14. The standards governing the performance of defense counsel in death penalty cases originate from multiple sources. A plethora of scholarly articles exists which describe the

¹A more detailed list of the documents which I have reviewed is attached as Appendix A to this Declaration.

standard of care in capital cases. Such articles have been collected in numerous legal journals and are too numerous to list here. Samples of such article are found in the Hofstra and University of Missouri at Kansas City law reviews. In 2003, the American Bar Association published the ABA Guidelines for Appointment and Performance of Defense Counsel in Death Penalty Cases (rev. ed. 2003) in 31 Hofstra L. Rev. 913 (2003). The 2003 ABA Guidelines were gleaned from thorough and studied review of generally accepted practices that had been adopted by the defense bar in the years following the Supreme Court's decision in Furman v. Georgia² and the jurisprudence that had developed since that time. Numerous courts have looked to the guidelines as guides to assess the merits of challenges to the performance of trial counsel in capital cases.³

15. The focal point of counsel's investigation in the post-Furman era of capital litigation is the client's life history. Investigation of a capital defendant's background, character, life experiences, and mental health is axiomatic in the defense of a capital case, and has been for as long as I have done this work. In every capital case seminar in which I have participated since the mid 1980s, instructors have emphasized the importance of conducting a "mitigation investigation" in preparation for the penalty phase of a capital trial and developing a unified strategy for the guilt-innocence and sentencing phases.

16. This practice is rooted in the United States Supreme Court's jurisprudence. The Supreme Court's Eighth Amendment cases make it clear that the concept of mitigation is

²408 U.S. 238 (1972).

³See *List of Cases Citing to the 2003 ABA Guidelines*, http://www.americanbar.org/content/dam/aba/migrated/2011_build/death_penalty_representati on/2003list.authcheckdam.pdf (last visited March 29, 2015).

extremely broad. In Lockett v. Ohio,⁴ the Supreme Court held that evolving standards of human decency embodied in the Eighth Amendment require a sentencer to consider “any aspect of a defendant’s character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.”⁵ Justice Kennedy has described the scope of mitigation evidence as “potentially infinite.”⁶

17. In 1979, Dennis Balske, an effective capital litigator practicing in the South at the time, emphasized, “Importantly, the life story must be complete.”⁷ In 1984, Mr. Balske taught capital defense counsel that they “must conduct the most extensive background investigation imaginable. You should look at every aspect of your client’s life from birth to present. Talk to everyone that you can find who has ever had any contact with the defendant.”⁸

18. It has long been well-accepted that “where sentencing discretion is granted, it generally has been agreed that the [sentencer’s] ‘possession of the fullest information possible concerning the defendant’s life and characteristics’ is ‘[h]ighly relevant—if not essential—to

⁴438 U.S. 586 (1978).

⁵Id. at 604.

⁶Ayers v. Belmontes, 549 U.S. 7, 21 (2006).

⁷Dennis N. Balske, *New Strategies for the Defense of Capital Cases*, 13 AKRON L.REV 331, 358 (1979).

⁸Dennis Balske, *The Penalty Phase Trial: A Practical Guide*, THE CHAMPION (March 1984), at 40, 42. See also David C. Stebbins and Scott P. Kenney, *Zen and the Art of Mitigation Presentation, or, the Use of Psycho-Social Experts in the Penalty Phase of a Capital Trial*, THE CHAMPION (August 1986), at 14, 18 (“capital defense attorneys must recognize that the profession demands a higher standard of practice in capital cases”); and Robert R. Bryan, *Death Penalty Trials: Lawyers Need Help*, THE CHAMPION (August 1988), at 32 (“There is a requirement in every case for a comprehensive investigation not only of the facts but also the entire life history of the client.”).

the] selection of an appropriate sentence.”⁹ Over three decades ago, the Supreme Court held that “in capital cases 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.”¹⁰ The Court regards the unrestricted scope of mitigating evidence necessary to “be sure that the sentencer has treated the defendant as a ‘uniquely individual human bein[g]’ and has made a reliable determination that death is the appropriate sentence.”¹¹ Arizona native, Justice O’Connor, emphasized that “the sentence imposed at the penalty stage should reflect a reasoned moral response to the defendant’s background, character, and crime.”¹² The Court’s commitment to this principle is unwavering.

19. The unfettered constitutional right to offer mitigating evidence “does nothing to fulfill its purpose unless it is understood to presuppose the defense lawyer will unearth, develop, present and insist on consideration of those ‘compassionate or mitigating factors stemming from the diverse frailties of humankind.’”¹³ The broad scope of mitigation evidence mandated by the

⁹Lockett v. Ohio, 438 U.S. 586, 602-03 (1977) (quoting Williams v. New York, 337 U.S. 241, 247 (1949)) (alterations in original).

¹⁰Woodson v. North Carolina, 428 U.S. 280, 304 (1976).

¹¹Penry v. Lynaugh, 492 U.S. 302, 319 (1989) (quoting Woodson v. North Carolina, 428 U.S. 280, 304, 305 (1976)) (alteration in original).

¹²Id. (quoting California v. Brown, 479 U.S. 538, 545 (1987) (O’Connor, J., concurring)) (emphasis in original). See also, Abdul-Kabir v. Quarterman, 550 U.S. 233, 252 (2007)(same).

¹³*Comm. on Defender Servs., Judicial Conference of the U.S., Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (1998), <http://www.uscourts.gov/dpenalty/4REPORT.htm> [hereinafter Spencer Report]. 6 (quoting Louis D. Bilonis & Richard A. Rosen, *Lawyers, Arbitrariness and the Eighth Amendment*, 75 Tex. L.

Eighth Amendment has a direct bearing on counsel's duty to investigate and present defense evidence. Defense counsel is the only participant in the criminal justice system entrusted with the responsibility of seeking out and presenting mitigating evidence on behalf of the accused. Failure to discharge this professional duty results in a capital sentence that is constitutionally unreliable because the sentence is based on a false or incomplete picture of the defendant and the sentencer is deprived of critical facts necessary for an individualized sentencing determination.

20. These norms have long been well-accepted. In 1983, professor Gary Goodpaster researched standards of performance of competent capital defense teams and derived basic principles of mitigation work that are still relevant. Professor Goodpaster described trial counsel's "duty to investigate the client's life history, and emotional and psychological make-up" in capital cases.

There must be inquiry into the client's childhood, upbringing, education, relationships, friendships, formative and traumatic experiences, personal psychology and present feelings. The affirmative case for sparing the defendant's life will be composed in part of information uncovered in the course of this investigation. The importance of this investigation, and the care with which it is conducted, cannot be overemphasized.¹⁴

21. Counsel's performance standards are likewise found in the Supreme Court's Sixth Amendment jurisprudence. "The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results."¹⁵ The Court emphasizes counsel's professional duty

Rev. 1301, 1316-17 (1997) (citation omitted)).

¹⁴Gary Goodpaster, *The Trial for Life: Effective Assistance of Counsel in Death Penalty Cases*, 58 New York University Law Review 299 (1983) at 323-324.

¹⁵Strickland v. Washington, 466 U.S. 668, 685 (1984).

in a capital case “to conduct a thorough investigation of the defendant’s background,”¹⁶ and deference to counsel’s strategic choices is only appropriate “after thorough investigation of law and facts relevant to plausible options.”¹⁷ Counsel’s strategic decisions are not reasonable if reached after a less than thorough investigation.

22. The Sixth Amendment standard includes counsel’s duty of loyalty to the client and corresponding duty to communicate regularly and effectively with the client:

Counsel’s function is to assist the defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. See Cuyler v. Sullivan, *supra*, at 346. From counsel’s function as assistant to the defendant derive the overarching duty to advocate the defendant’s cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution. Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process.¹⁸

23. In addition to the constitutional provisions that create duties on the part of capital defense counsel, the Supreme Court has referred to the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases as “well-defined norms,”¹⁹ and as “guides to determining what is reasonable.”²⁰ The ABA Guidelines are simply a contextualized application of the principles articulated in Strickland, as are the Supplementary

¹⁶Wiggins v. Smith, 539 U.S. 510, 522 (2003).

¹⁷Strickland v. Washington, 466 U.S. at 690.

¹⁸Id., at 688.

¹⁹Wiggins v. Smith, 539 U.S. at 524.

²⁰Strickland v. Washington, 466 U.S. at 688.

II. IAC in Investigation and Presentation of Mitigation Evidence

24. In the absence of a thorough multi-generational social history investigation, it is impossible to ascertain the existence of genetically linked mental illness, sexual abuse, abandonment, learning disability, substance abuse, previous head injuries, childhood trauma, and a host of other life experiences that provide compelling reasons for a juror to vote for a life sentence. Without a complete social history, counsel cannot make an informed and thoughtful decision about which experts to retain. Prevailing professional norms require counsel to retain experts who are qualified to gauge the nature and extent of a client's possible mental disorders and impairments. Mental health experts, in turn, require social history information to conduct a complete and reliable evaluation.²² It is useless and a waste of resources to hire experts and then fail to provide them with complete and accurate information. The resulting opinion from the retained expert in such a circumstance will ultimately be unreliable and unpersuasive.

25. The social history investigation should include a thorough collection of objective, reliable documentation about the client and his family. It is the accepted professional standard

²¹The Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases have not been formally adopted in Arizona. However, the performance standards of the 2003 Guidelines were adopted in 2006 (Ariz.R.Crim.Pro. 6.8), meaning the Supplemental Guidelines are implicitly adopted, as they flesh out Guideline 10.7, which has been explicitly adopted.

²²See Richard G. Dudley, Jr. & Pamela Blume Leonard, *Getting It Right: Life History Investigations the Foundation for a Reliable Mental Health Assessment*, 36 HOFSTRA L. REV. 963 (2008); and Douglas Liebert & David Foster, *The Mental Health Evaluation in Capital Cases: Standards of Practice*, 15:4 AM.J.FORENSIC PSYCHIATRY 43 (1994). See also George W. Woods, David Freedman, & Stephen Greenspan, *Neurobehavioral Assessment in Forensic Practice*, 35 INT'L J OF L. & PSYCHIATRY 432 (2012).

for record collection to span three generations because it is well established that many mental illnesses have a genetic component and that adult caretakers who subject children to trauma were often traumatized as children themselves.

26. Documents typically and regularly gathered by competent capital trial teams include medical, educational, employment, social service, and court records. Such contemporaneous records are intrinsically credible and often document events which the client and other family members were too young to remember, too impaired to understand and record in memory, or too traumatized, ashamed, or biased to voice. Careful review of records often discloses the existence of collateral documentation which, in turn, needs to be pursued. Documents are the tools of the trade for capital defense attorneys and absolutely essential to the presentation and development of a constitutionally reliable defense. The documents collected for purposes of social history investigation often produce additional relevant evidence which is critically useful in the first phase of the trial as well.

27. A social history cannot be completed in a matter of hours or days. In addition to bureaucratic obstacles to the acquisition of essential documentation, it takes time to establish rapport with the client, his family, and others who may have important information to share about the client's history. It is quite typical, in initial interviews with clients and their family members, to obtain incomplete, superficial, and defensive responses to questions about family dynamics, socio-economic status, the existence of intra-familial abuse, and mentally ill family members. Competent trial counsel is aware of these realities and takes them into account as he or she plans pre-trial investigation strategy. These inquiries invade the darkest and most shameful secrets of the client's family, expose raw nerves, and often re-traumatize those being interviewed. Only

with time can an experienced mitigation specialist break down the barriers, establish trust, and obtain accurate and meaningful responses to these sorts of questions. There simply are no shortcuts in this process. Competent trial counsel also understand that regular communication and personal visits with the client are essential to this process of establishing trust and rapport. The client and his family members are not schooled in the law and often do not understand the need for this type of investigation or how it will help the case. A lack of effective communication can result in the family believing that they should keep the family secrets away from the trial team in a misguided effort to only show the “good” side of the client. Competent trial counsel understand this risk and guards against non-disclosure by investing substantial time (their own and their team members) to developing these crucial relationships with the client and his family.

28. Under standards governing capital defense when Mr. Prince’s charges were pending, it was universally accepted that competent mitigation investigation is critical to providing adequate representation in capital cases. Effective capital defense throughout the post-*Furman* era has required counsel to conduct a thorough investigation of the client’s life. This investigation involves a multi-generational inquiry into the biological, psychological, and social influences on the development and adult functioning of the client. Mitigation investigation involves parallel tracks of collecting and analyzing life-history records, and conducting multiple, in-person, face-to-face interviews. The purpose of this thorough investigation is to develop evidence that will humanize the client, help jurors understand why he or she may have committed the capital offense, and to evoke compassion and empathy by identifying the client’s individual frailties that at once establish human kinship and expose vulnerabilities and disadvantages. The

fruits of a thorough mitigation investigation not only provide capital defendants with the effective representation to which they are entitled under the Sixth Amendment, but assures jurors of the opportunity to consider all the evidence relevant to the reasoned moral judgment they are asked to render, thereby also assuring the courts of an outcome that is just and reliable.

29. The essential importance of the mitigation investigation stems from the fact that it encompasses both evidence that affirmatively mitigates the defendant's moral culpability (i.e. by demonstrating the "good" in the client's character or the "bad" that affected his upbringing and development) and evidence that may refute the prosecution's theory of legal culpability (e.g., by reducing culpable mental states or disproving purported, inflammatory facts). Decisions regarding the presentation of such evidence require ongoing assessment throughout the substantial completion of the necessary investigation. "Counsel at every stage have an obligation to conduct thorough and independent investigations relating to the issues of both guilt and penalty."²³

30. The duty to conduct such an investigation is required in every capital case. It is long understood that sentencers are moved by persuasive evidence that cruel or inhuman parental violence resulted in a defendant's cognitive or developmental disabilities; or that environmental factors such as poor nutrition, substandard education, other consequences of poverty and peer pressure to engage in substance abuse led (or contributed) to unlawful behaviors. Mental health and sociological research, including research sponsored and published by the National Institute of Mental Health established a direct and undeniable correlation between such factors and contact with the criminal justice system in adulthood. Experienced capital trial lawyers also know that

²³ABA Guideline 10.7.

such evidence can play a crucial role in the jury's determination of guilt or innocence as well as a consideration of lesser included offenses. It is vitally important that capital defense teams have the ability in terms of time, training, funds, and skills to effectively investigate and develop evidence of these and other issues that can provide the jury with evidence essential to understanding the defendant and the context for his or her actions.

31. This duty to investigate is the foundation for everything else the defense team does to prepare a capital case. "Of course, no mitigation case is better than the facts in support of it, which is why the ABA Guidelines, the Supplementary Guidelines, and the decided cases place such heavy emphasis on counsel's duty to investigate."²⁴ Indeed, capital juries are likely to have a negative reaction to defense expert witnesses if the testimony is not fortified by other contemporaneous information and objective witnesses supporting the expert's opinion.²⁵

32. As stated above, the cornerstone of any competent investigation is communication with the client and among the team. Team communication is essential to a full understanding of the client and his history. Competent teams have a schedule for frequent meetings with the client. It is my experience that trial clients often require visits two or three times a week, with variations depending on logistics and case exigencies. Some clients will require daily visits.²⁶

²⁴Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases, 36 HOFSTRA L. REV. 663, 671 (2008).

²⁵See Scott Sundby, *The Jury as Critic: An Empirical Look at How Capital Juries Perceive Expert and Lay Testimony*, 83 VA.L.REV. 1109, 1185 (1997); and Krauss and Sales, *The Effects of Clinical and Scientific Expert Testimony on Juror Decision Making in Capital Sentencing*, 7 Psychology, Public Policy and Law 267, 278 (2001).

²⁶If the holding facility does not cooperate, the team should decide whether or not to litigate conditions and frequency of visits.

The team decides how to rotate visits among team members, how to communicate by telephone or mail when not visiting, and when and how to change focus or messages to the client in the upcoming visits. Critically, the team as a whole must analyze the information as it is gathered by the mitigation investigation, and observe and record observations and assessments of the client. Nothing the client says or does is trivial or unimportant or, if repetitive, unworthy of documentation.²⁷ It is the standard of care amongst competent capital trial teams to conduct full team meetings, to safeguard against missing or overlooking important investigative needs. It is the professional obligation of trial counsel to schedule these meetings and ensure that they take place.

33. This did not happen during any of the trial phases in Wayne Prince's case.²⁸ The lack of communication both between defense team members and with Mr. Prince led him to file a motion to remove counsel during his resentencing procedure. Mr. Prince's conflict counsel, Pamela Nicholson, explained, "Wayne was frustrated by their relationship. He was not sure the team cared about him and trust was an issue. ... It was my perception that Wayne wanted a close, trusting relationship with the team, but Dennis (Jones) just wanted to have complete control. Dennis went so far as to cut Wayne off from communicating with other team members."²⁹

34. Although competent defense counsel have a duty to conduct a life history

²⁷A pattern of repetitive, seemingly trivial, conversations with a client is sometimes symptomatic of neurocognitive impairment or other mental disease or defect.

²⁸See Declaration of Diane Apple (mitigation specialist), p. 3. ("The Prince team, as a team, did not hold regular meetings, in person or otherwise.") See also Declaration of Lisa Ann Bollinger (mitigation specialist), p. 6. (Wayne Prince's defense team "did not hold regular team meetings.")

²⁹Declaration of Pamela Nicholson, p. 3.

investigation, they generally lack the skill to conduct the investigation themselves.³⁰ The mitigation function is multi-faceted and multi-disciplinary, “even though the ultimate responsibility for the investigation of such issues rests irrevocably with counsel.”³¹ Moreover, even if lawyers possess the skills, it is more cost effective to employ those with recognized expertise in developing mitigation evidence. Competent capital counsel acting pursuant to prevailing professional norms retain a mitigation specialist to complete a detailed, multi-generational social history to highlight the complexity of the client’s life and identify multiple risk factors and mitigation themes.

35. Mitigation specialists are essential to counsel’s fulfillment of their constitutional duty to conduct a reasonable investigation into the client’s background and mental health. The American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases require that the capital defense team “should consist of no fewer than two attorneys qualified in accordance with Guideline 5.1, an investigator, and a mitigation specialist.”³² The Commentary to Guideline 4.1 describes the mitigation specialist as “an indispensable member of the defense team throughout all capital proceedings,” and observes that “the use of mitigation specialists has become ‘part of the existing “standard of care”’ in capital

³⁰This point is made clear in the Declaration of Deborah Ann Howell, a potential mitigation witness for Mr. Prince, in which she explains how she was interviewed by Mr. Prince’s trial counsel, who made vague, conclusory statements about the witness’ father and, after promising to get back in touch with her, never did. Declaration of Deborah Ann Howell, p. 19.

³¹Supplementary Guidelines fo the Mitigation Function of Defense Teams in Death Penalty Cases, in 36 Hofstra L. Rev. 677 (2008).

³²ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Guideline 4.1.A.1 (rev. ed. 2003), in 31 HOFSTRA L. REV. 913 (2003).

cases.”

36. It is widely accepted among national mitigation experts that a minimal social history investigation requires, at a minimum, hundreds of hours.³³ Competent counsel are aware that the investigation necessary to uncover such evidence involves a time-consuming, painstaking process to overcome substantial barriers to disclosure of some of the most compelling types of mitigating evidence. Recounting experiences of trauma can trigger powerful emotional reactions, including shame and embarrassment, so that individuals and families learn to avoid or minimize discussion of such matters. It is understandable and normal for victims and witnesses, as well as perpetrators of physical violence, to initially deny or minimize such behavior. It is known that extraordinarily harmful interpersonal violence which has been inflicted on multiple generations by perpetrators within, or external to, the family and community may be regarded and described as “normal” by the families involved. In these and many other circumstances, the lack of appropriate skills can cause an investigator to overlook clinically significant developmental, genetic and cultural contexts, and fail to pursue crucial information.

37. Germane to this case is the fact that thorough and competent investigation of such evidence is crucial for a reliable clinical assessment of a client by mental health experts, because such assessments require, at a minimum, consideration of detailed and verifiable information about the client’s development. “The process of gathering, organizing, and analyzing life history data often leads to the identification of mental health issues requiring assessments by mental

³³*Id.*, at pp. 43-45. See also, Prof. Robert J. Smith, *Forgetting Furman*, 100 IOWA L.REV. 1149, 1173, n.130 (2015)(noting that it often takes thousands of hours to complete the extraordinarily difficult and time-consuming task).

health experts who potentially will testify regarding their findings.”³⁴ Many symptoms of mitigating cognitive and mental conditions are manifested by functioning and behaviors that occur during the developmental period, so it becomes important to inquire about significant developmental milestones in the client’s life. Documentation, photographs, and eyewitness accounts from caretakers, teachers, ministers, healthcare providers and others are essential sources of potentially significant information that is required for a reliable assessment of the client’s functioning and abilities. An unskilled or unduly hurried investigator will fail to appreciate or explore important areas of inquiry, and may fail to recognize significant evidence even if he or she stumbles upon it. The conclusions of the State expert about Mr. Prince’s mental health are vulnerable to attack for these very reasons. A thorough investigation by defense counsel would have enabled trial counsel to challenge the State expert’s erroneous opinions using the volumes of mitigation documents, evidence, and witness statements discovered by post-conviction counsel (catalogued in Attachment 1 to this Declaration).

38. The hazards of failing to conduct a thorough and informed mitigation investigation are illustrated by the Supreme Court decision in Rompilla v. Beard,³⁵ in which trial counsel themselves attempted to conduct family interviews and obtain the background information for their three mental health experts. Counsel’s truncated and unskilled investigation produced misleading information from the client’s family, who claimed that the client had a normal childhood and otherwise were unable to say much about him. With such a mundane historical

³⁴Richard G. Dudley, Jr., & Pamela Blume Leonard, *Getting it Right: Life History Investigation as the Foundation for a Reliable Mental Health Assessment*, 36 HOFSTRA L. REV. 963 (Spring 2008).

³⁵545 U.S. 374 (2005).

background, defense experts, in the Court's words, could produce "nothing useful" for the defense. After the client was sentenced to death, a competent investigation conducted by post-conviction counsel with the assistance of a qualified mitigation specialist uncovered documents that Mr. Rompilla had been previously hospitalized in a psychiatric institution and diagnosed with schizophrenia and that he grew up in a household with alcoholic parents who were quick to resort to physical violence against their children. As in Mr. Prince's case, the State's ill-informed pretrial examiner erroneously concluded that Mr. Rompilla was anti-social rather than mentally ill.

39. In Mr. Prince's case, a thorough investigation would have shown genetically linked mental illness, as well as serious mental impairments related to both childhood maltreatment and pervasive sexual abuse. The lack of a complete biopsychosocial history investigation caused Mr. Prince's counsel to miss: bipolar disorder; genetic predisposition to mood disorders; executive functioning impairment; obsessive compulsive disorder; dissociative symptoms; and impulsivity.³⁶ Under similar circumstances, the Supreme Court found Rompilla's lawyers ineffective for failing to conduct a reasonable investigation into the defendant's background. The Rompilla case teaches that defense teams who fail to devote the time and professional services necessary to conduct an adequate mitigation investigation have a significant blind spot that unconstitutionally undermines the effective representation demanded in a capital case. Even though the trial counsel in *Rompilla* did far more than Mr. Jones and Mr. Napper in Mr. Prince's case (they interviewed multiple members of Rompilla's nuclear family and hired three mental health experts), they were found constitutionally ineffective for failing to uncover life history

³⁶See Petition for Post-Conviction Relief, pp. 116-123.

information that was relevant to a clinical assessment.

40. To summarize, prevailing professional norms as well as the ABA Guidelines and Supplementary Guidelines addressing the mitigation function emphasize the importance of assembling an interdisciplinary defense team, which includes members possessing specialized expertise in working with mental health experts; and for members of the team to have early, frequent and ongoing access to the client. Extensive communication with the client is recognized as an essential component to building the rapport and relationship necessary to effective representation, including the exploration of sensitive matters and instilling a sense of trust and confidence necessary for the client to rely on counsel's advice in making decisions that have life or death consequences.

41. In the area of mitigation investigation and presentation, Mr. Prince's trial counsel objectively fell below prevailing professional norms in three areas: 1) trial counsel did not fully uncover and did not adequately develop evidence of maltreatment and neglect during Mr. Prince's formative years; 2) trial counsel did not fully uncover and did not adequately develop evidence of Mr. Prince's developmental disabilities and mental impairments; and 3) trial counsel did not fully uncover and adequately develop evidence of Mr. Prince's positive, humanizing qualities. While counsel made some efforts in each of these categories of mitigation, their efforts fell far short of the competent and thorough investigation that is constitutionally demanded to develop and present the most compelling material that was available and to ensure a reliable, individualized sentencing determination.

42. At his trial, the horrific trauma that Wayne Prince experienced in his childhood - his father's brutalization of his entire family and his repeated sodomy by a deviant sexual predator,

to whose care Mr. Prince's mother abandoned him - was reduced to an abstract battle of experts instead of the reality of the vivid, life-defining victimization it was.

43. The singular impact of rape on children was noted in both the majority and dissenting opinions in Kennedy v Louisiana.³⁷ Writing for the majority, Justice Kennedy noted, "Rape has a permanent psychological, emotional and sometimes physical impact on the child. We cannot dismiss the years of long anguish that must be endured by the victim of child rape."³⁸ Justice Alito, in dissent, added, "Long-term studies show that sexual abuse is 'grossly intrusive in the lives of children and is harmful to their normal psychological, emotional, and sexual development in ways which no just or humane society can tolerate. ... The deep problems that afflict child rape victims often become society's problems as well. Commentators have noticed correlations between childhood sexual abuse and later problems such as substance abuse, dangerous sexual behaviors or dysfunction, inability to relate to others on an interpersonal level, and psychiatric illness."³⁹

44. In addition to not having a thorough and complete life history, Mr. Prince's counsel failed to obtain the necessary and qualified expert assistance to explain Mr. Prince's particular and unique mental health issues. The defense retained Dr. Robert Smith, a psychologist. However, Dr. Smith did not, because he could not, explain to the jury how Wayne Prince's background and life experiences affected his behavior. This is true for two critical reasons.

³⁷554 U.S. 407 (2008).

³⁸Id., 554 U.S. at 435. (Citations omitted)

³⁹Id., 554 U.S. at 468-69. Dr. David Lisak observes all of these factors to be presented in his Report on the Childhood Trauma Affecting Wayne Prince, Jr..

First, Mr. Prince's counsel did not provide Dr. Smith with anything close to complete information regarding Mr. Prince's life history.⁴⁰ Second, Dr. Smith's area of expertise does not extend to all of the mental health issues raised by Mr. Prince's life history. A person with Mr. Prince's background requires an expert with specific expertise and training in trauma who understands the impact of childhood trauma not only on psychological development but also on neurocognitive development.⁴¹ Dr. Smith simply did not have the necessary background information or expertise to diagnose and present a complete picture of the mental health issues at play in Mr. Prince's case. After being made aware of the bulk of materials obtained by Mr. Prince's current defense team, Dr. Smith is "less confident in the diagnosis I made at Mr. Prince's resentencing" and now recognizes that he "may have recommended additional experts" in Mr. Prince's case.⁴²

45. By way of analogy, retaining a ballistics expert for a client charged with DUI offers little promise of providing necessary assistance to a defense. More to the point, it does nothing to effectuate the client's constitutionally protected right to expert assistance "to present their claims fairly within the adversary system" under Ake v. Oklahoma.⁴³ What trial counsel's

⁴⁰As Dr. Smith states in his Declaration, he was "provided only a fraction of the background information that was available related to Mr. Prince's family history of mental illness, trauma, and addiction." Declaration of Robert L. Smith, Ph. D., p. 4.

⁴¹Indeed, Dr. Smith now recognizes the need for additional experts in Mr. Prince's case. "If I had been exposed to additional documents, interviews, etc. related to Mr. Prince ... I would have recommended additional experts related to the areas of note, *such as an expert on neurological processes*." Declaration of Robert L. Smith, Ph. D., p. 3. (Emphasis added)

⁴²Declaration of Robert L. Smith, Ph. D., p. 4.

⁴³470 U.S. 68, 77 (1985).

actions do show is that they were on notice that Wayne Prince had significant mental health problems and those problems needed to be developed for trial. Had they properly prepared in advance of trial and conducted a thorough and competent investigation, they would have discovered the readily available red flags which would cause constitutionally effective counsel to secure the services of experts similar to those presented in Mr. Prince's post conviction petition.

46. One of the bedrock principles of mitigation presentation in capital cases is that "counsel must portray the defendant as a human being with positive qualities."⁴⁴ It is a common saying amongst the capital defense bar that no person should be defined by the single worst thing they ever did.⁴⁵ Every human being is unique and possesses innate human characteristics which when explained to a sentencer create a reasonable likelihood that the sentencer will impose a sentence of life imprisonment. My review of Wayne Prince's case and life history reveals that trial counsel presented only a small fraction of the evidence available to demonstrate Mr. Prince's intrinsic humanity. As Mr. Prince's appointed conflict counsel, Pamela Nicholson, stated, "'Wayne was one of the sweetest and most damaged people I have ever met. Wayne was always smiling and eager to please. His need to please exceeded just about anyone I have ever met."⁴⁶ As the Declarations presented to this Court as Exhibits for Mr. Prince's Petition for Post-Conviction Relief, which I have reviewed, vividly demonstrate, there were a plethora of

⁴⁴Gary Goodpastor, *The Trial for Life: Effective Assistance of Counsel in Death Penalty Cases*, 58 N.Y.U.L.REV. 299, 334 (1983).

⁴⁵See e.g., Stevenson, Bryan, *We Need to Talk About an Injustice*, Ted Talk, https://www.ted.com/talks/bryan_stevenson_we_need_to_talk_about_an_injustice/transcript?language=en (last visited March 29, 2015).

⁴⁶Declaration of Pamela Nicholson, p. 2.

witnesses available to give concrete examples of Mr. Prince's kind hearted and generous words and deeds both before and after his arrest in the instant case.⁴⁷

47. Under prevailing professional norms, trial counsel's professional errors and omissions are not excused simply because trial counsel presented some evidence in mitigation. The United States Supreme Court reiterated this principle in Sears v. Upton.⁴⁸ The Supreme Court reaffirmed that the presentation of mitigation evidence and the development of a mitigation theory by trial counsel does not preclude a finding of constitutionally ineffective assistance of counsel. The Court held:

We certainly have never held that counsel's effort to present some mitigation evidence should foreclose an inquiry into whether a facially deficient mitigation 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. In the Williams decision, for instance, we categorically rejected the type of truncated prejudice inquiry undertaken by the state court in this case. 529 U.S., at

⁴⁷See e.g., Declaration of Daniel Ross Reeves (Mr. Prince's little league baseball coach, who briefly dated Mr. Prince's mother), p. 6, "To me, Wayne was a special kid. ... He was starved for attention, acceptance, and affection. He consistently came to me looking for approval compliments, and guidance like any kid would expect to get from his dad."; Declaration of Shannon Dean Whittom (a teenage friend of Mr. Prince), p. 16, "I loved Wayne back in school when I knew him, and I still love him now. He is a great person. He was kind, fun, generous, and willing to do anything for his friends."; Declaration of Robert Allen Woodworth (a church friend of Mr. Prince's), p. 7, "After I heard the news about Wayne shooting Cassie and Cassandra, I racked my brain trying to understand how this could have happened, and trying to make sense of such a violent act from the friendly and positive Wayne that I knew. ... To this day it still does not make sense to me that the Wayne I knew could have done what he did."; Declaration of Rebecca Cooke Lister (pen pal and spiritual advisor for Mr. Prince), p. 10, "When I ponder over Wayne's deep reservoir of gratitude and his positive approach to life I am truly humbled. There are days when I receive his letters that I may feel sorry for myself. On those days I read Wayne's letter and am truly uplifted out of my self-pity. His letters are simple, fun, sweet, and thoughtful."; and Declaration of Marjean Hellyer (a neighbor of Mr. Prince), p. 1, "Wayne was a really kind guy. He liked to help people and would do anything for anyone."

⁴⁸130 S.Ct. 3259 (2010).

397-398, 120 S. Ct. 1495, 146 L. Ed. 2d 389. And, in Porter, we recently explained: “To assess [the] probability [of a different outcome under Strickland], we consider the totality of the available mitigation evidence -- both that adduced at trial, and the evidence adduced in the habeas proceeding -- and reweigh[h] it against the evidence in aggravation.”⁴⁹

48. Competent capital lawyers who represent clients held in custody understand the importance of proceeding quickly to develop the working relationship necessary to reassure and guide the client through the unfamiliar and anxiety-producing stages and decision making involved in pre-trial and trial litigation.⁵⁰ The ABA Guidelines specifically require counsel to “make every appropriate effort to establish a relationship of trust with the client, and [to] maintain close contact with the client.”⁵¹ Often capital clients suffer severe impairments that interfere with effective communication, or that render them highly distrustful, intellectually and cognitively impaired, and unable to accurately perceive reality, and it is not unusual for a capital

⁴⁹Id., 130 S.Ct. at 3266, (quoting Porter v. McCollum, 558 U.S. ___, 130 S. Ct. 447, 454, 175 L. Ed. 2d 398 (2009)(internal quotation marks omitted; third alteration in original).

⁵⁰In the year and a half prior to Mr. Prince’s first trial in August, 1999, Emmet Ronan, Mr. Prince’s lead counsel, visited him nine (9) times. Four (4) of those visits occurred in the week prior to trial commencing. Vernon Lorenz, Mr. Ronan’s co-counsel, visited with Mr. Prince eight (8) times prior to trial. Four (4) of Mr. Lorenz’s visits were in the week before trial, including twice the day before trial began. The initial trial team’s infrequent visits are important. Mr. Prince had already experienced poor lawyering and must have learned to mistrust appointed counsel. Such failures on the part of the first team put even more of an onus on the new team to step up the communication with Mr. Prince and demonstrate that they would be different. The hurdles to establishing trust and rapport were thus even greater. Unfortunately, John Napper first visited Mr. Prince on February 8, 2005. From that time until the conclusion of Mr. Prince’s re-sentencing hearing in January, 2009 - a period of four years - records indicate that Mr. Napper visited Wayne Prince eight (8) times. During that same time period, Dennis Jones visited Mr. Prince thirty (30) times, or an average of seven (7) to eight (8) visits per year. This amount of client contact is completely inadequate to establish the trust and lines of communication necessary to obtain the type of information necessary to developing an accurate picture of the client’s life history, functioning, strengths, and frailties.

⁵¹Guideline 10.5.A.

defendant to become suicidal while awaiting trial.⁵² The Spencer Committee found that while client communication is important in every case, it is “vastly more time consuming and demanding in a death penalty case,” in part because of “the enormous stress that the risk of a death sentence imposes on both the client and the lawyer.”⁵³ The litigation regarding Mr. Prince’s request for a change of counsel reveals Mr. Prince’s frustration from not being able to communicate with his lawyers or obtain satisfactory answers to his questions. The few attorney-client visits that occurred were relatively short-typically approximately an hour in length.⁵⁴ A thorough investigation and regular communication with Mr. Prince would have enabled counsel to assuage Mr. Prince’s sense of hopelessness, obtain more complete information regarding potential mitigation witnesses, and to help Mr. Prince make competent and adequately informed decisions in his case. Such failures in communication and client visits also cut off important avenues to discovering and interviewing critical witnesses.

49. A partial list of the mitigation witnesses that trial counsel failed to interview

⁵²ABA GUIDELINE 10.5, commentary.

⁵³Spencer Report, at 7. The committee listed some of the reasons: First, the nature of the penalty phase inquiry requires a relationship which encourages the client to disclose his or her most closely guarded life history with the lawyer. Experiences of mental illness, substance abuse, emotional and physical abuse, social and academic failure, and other “family secrets” must be revealed, researched and analyzed for the insight they may provide into the underlying causes of the client’s alleged conduct. The establishment of trust and confidence is also vitally important if the lawyer is to convince the defendant to consider an offer to plead guilty, especially because what is offered is likely to be life imprisonment without the possibility of parole. Accepting such a “deal” requires tremendous faith in counsel. *Id.*

⁵⁴As noted above, in reviewing jail visitation records, it appears that very little time was spent visiting with Mr. Prince, and he was allowed to languish in the jail for a month or more at a time without contact from his attorneys.

includes Daniel Ross Reeves (Mr. Prince's Little League coach); Shannon Dean Whittom (a teenage friend of Mr. Prince); Jodie Lynn Zimmerman (the girlfriend of Mr. Prince's brother, who is the mother of two of Mr. Prince's brother's children); Robert Allen Woodworth (a church friend of Mr. Prince's); Richard Charles and Faith Tenaya Donavin (Mr. Prince's pen pals since 2004/2005); Emmett Alexander Hebert, Jr. (Mr. Prince's maternal uncle); Michael Prince (Mr. Prince's paternal half brother); Terasa Alaine Prince (Mr. Prince's cousin);⁵⁵ Susan Leimbach (Mr. Prince's next door neighbor from 1985-1987); Thomas Shane Bicksler (a childhood friend of Wayne Prince); Tad Kline (a witness to Royce Drysdale's behavior with Wayne Prince and other young boys); David Gordon Turley (a witness to Royce Drysdale being a sexual predator to both Mr. Turley and Mr. Prince); Margaret Grace Aiken and Rebecca Cooke Lister (sisters who have been pen pals and spiritual advisors for Mr. Prince); and Marjean Hellyer (a neighbor of Mr. Prince). As their Declarations give meaningful proof, these witnesses all had information regarding Mr. Prince's life history that not only would have made them compelling witnesses at trial, but would have provided important information to help Mr. Prince's experts come to accurate and complete evaluations of his mental health issues.

50. Counsel's professional errors continue with the mitigation witnesses who Mr. Prince's trial team *did* contact - then abandoned without obtaining the important information those witnesses had to offer: Thomas Rawnsley (Mr. Prince's stepfather and his mother's husband); Michael Lee Schoenocker (Mr. Prince's friend during his teenage years); Gary Robert Sitnik (whose family owned the horse barn in which the Prince family lived during Wayne

⁵⁵Terasa Prince is both Mr. Prince's maternal *and* paternal first cousin. See Petition for Post-Conviction Relief, Exhibit 104.

Prince's childhood); William Gerald Prince (Mr. Prince's paternal uncle); Edward Francis Prince (Mr. Prince's paternal great uncle); Deborah Ann Howell (Mr. Prince's paternal aunt); Susan Louise Prince (Mr. Prince's paternal cousin); Dena Reynolds (a friend of Mr. Prince's mother); Gordon Ray Reynolds (an acquaintance of Mr. Prince's father); Shelley Reynolds (a childhood friend of Mr. Prince); Michael James Marcucci II (Mr. Prince's high school friend); and Janey Jacoby (Mr. Prince's elementary school teacher). Their Declarations make clear that these witnesses all had information which Mr. Prince's defense team failed to gather in their insufficient and abbreviated interviews, regarding Mr. Prince's life history that not only would have made them compelling witnesses at trial, but would have provided important information to help Mr. Prince's experts reach an accurate and complete evaluations of his mental health issues.

51. With regard to just two of the major traumas in Wayne Prince's life - his father forcing his family to live in a squalid horse barn during Wayne's childhood and his mother abandoning Wayne to a large, older sexual predator - trial counsel skimmed the surface of each issue without providing the necessary, and readily available, evidentiary details to provide meaning and context to these two horrific events.

52. It is difficult to imagine a more impoverished, abusive, and horrifying home life than Mr. Prince endured as a child. And, yet, because trial counsel provided only the surface details of Mr. Prince's tragic day to day existence as a child, the prosecutor was able to argue, essentially, that Mr. Prince grew up on some bucolic farm. Nothing could be further from the truth, as the Declarations that Mr. Prince's current counsel have obtained ably demonstrate.

53. Likewise, the repeated forced sodomy and sexual abuse that Mr. Prince suffered at the hands of an older, larger sexual predator, Royce Drysdale, was reduced to a milquetoast

Stipulation that gave Mr. Prince's jury absolutely no meaningful understanding of the torment that Wayne Prince suffered as a teenager.⁵⁶ And the fact that Mr. Prince's mother effectively abandoned young Wayne to Royce Drysdale was glossed over completely at Mr. Prince's trial.

54. The impact of counsel's deficient investigation and presentation is evident in the reports of Dr. Woods and Dr. Lisak. Dr. Woods, after a thorough review of Mr. Prince's life history, wrote, "Wayne's life demonstrates the effect of multi-generational patterns of mental illness, mood disorders, learning disability, abuse, neglect, addictions, alcoholism, and poverty within his family. The combined effects of trauma and mental illness on his development together provide the necessary context for understanding Wayne's life."⁵⁷ As Dr. Lisak noted, "(w)hat happened to Wayne (Prince) at the hands of Royce Drysdale over the course of five years can only be described as sexual slavery."⁵⁸

55. Equally important, the lack of a complete social history investigation and proper consultation with appropriate defense experts prohibited trial counsel from cross-examining the State's mental health expert, Dr. Youngjohn, in an effective manner. As noted above, Dr. Youngjohn diagnosed Wayne Prince as suffering from antisocial personality disorder. Had Mr.

⁵⁶There was nothing to even approximate the stark statement we now have from one of Royce Drysdale's would-be sexual victims, David Gordon Turley. "Wayne ... told me that Royce was making him have sex with him." Declaration of David Gordon Turley, p. 5. The stark imagery that statement conjures - an large, older man forcing a young, frail boy into performing sexual acts with him - is something the juries in Mr. Prince's trials never were presented. Nor did the jury get to hear Mr. Turley's testimony that, "I came into (Royce Drysdale's) house several times and found (Wayne Prince) crying or with tears in his eyes. Wayne seemed depressed to me." Declaration of David Gordon Turley, p. 4.

⁵⁷Dr. George Woods, Evaluation, p. 3.

⁵⁸Lisak, Report on the Childhood Trauma Affecting Wayne Prince, Jr., p. 33.

Prince's defense team conducted a thorough mitigation investigation and obtained the appointment of suitable defense experts, Dr. Youngjohn's diagnosis could have been readily exposed as contrary to accepted psychological standards.⁵⁹

56. The above is simply a brief summary of parts of the defense evidence that was available to trial counsel and which could have been presented in support of a defense. Further, as the reports of Dr. Woods and Dr. Lisak reflect, this information is critical to a professionally reasonable complete and reliable assessment of Mr. Prince's background, character, and mental impairments. A complete social history enabled Dr. Woods to make a reliable diagnosis of Complex PTSD, cognitive deficits in executive functioning, Bipolar Disorder, and symptoms of obsession and compulsion,⁶⁰ and relate that condition to the sexual, psychological, and physical trauma Mr. Prince received as a youth.

57. Over the past fifteen (15) years, the United States Supreme Court has found trial counsel ineffective in five (5) cases for failing to investigate potential mitigation evidence: Williams v. Taylor,⁶¹ Wiggins v. Smith,⁶² Rompilla v. Beard,⁶³ Porter v. McCollum,⁶⁴ and Sears

⁵⁹It is also important to note that, had Mr. Prince's counsel undertaken a complete mitigation investigation and obtained appropriate expert assistance, counsel could have effectively attacked the use of the (F)(6) aggravating circumstance in Mr. Prince's case. See Petition for Post-Conviction Relief, 142-148.

⁶⁰Dr. George Woods, Evaluation, p. 42.

⁶¹529 U.S. 362 (2000).

⁶²539 U.S. 510 (2003).

⁶³545 U.S. 374 (2005).

⁶⁴558 U.S. 30 (2009).

v. Upton.⁶⁵ Each of these cases address the prevailing professional norms and find counsel constitutionally deficient.

58. In Williams, the Court reaffirmed an all-encompassing view of mitigation and found trial counsel ineffective for not only failing to prepare the mitigation case until a week before trial, but also failing to conduct an investigation of the readily available mitigating evidence (nightmarish childhood, borderline retardation, model prisoner status, etc.).

59. In Wiggins, trial counsel were found deficient in their performance, even though they had their client examined by a mental health expert, because they failed to conduct a complete social history investigation in accordance with the ABA Guidelines. “Despite these well defined norms, however, counsel abandoned their investigation of petitioner’s background after having acquired only rudimentary knowledge of his history from a narrow set of sources.”⁶⁶

60. In Rompilla, as discussed in more detail above, counsel were found deficient even when a capital defendant’s family members and the defendant himself suggested that no mitigating evidence was available⁶⁷ and despite consulting three mental health experts. Similarly, in Porter, counsel were found deficient despite a “fatalistic and uncooperative” client because “that does not obviate the need for defense counsel to conduct mitigation investigation.”⁶⁸ Quoting Williams, the Court in Porter reaffirmed this duty: “It is unquestioned that under the prevailing professional norms at the time of Porter’s trial, counsel had an

⁶⁵130 S.Ct. 3259 (2010).

⁶⁶Wiggins v. Smith, 539 U.S. at 524.

⁶⁷Rompilla, 545 U.S. at 381-82.

⁶⁸Porter, 558 U.S. at 40.

‘obligation to conduct a thorough investigation of the defendant’s background.’” Among the mitigation that Porter’s counsel failed to present was “brain damage that could manifest in impulsive, violent behavior.”⁶⁹

61. In Sears, the Court found trial counsel ineffective even though they had presented seven (7) witnesses in the penalty phase. The Court noted, “(w)e have never limited the prejudice inquiry under Strickland to cases in which there was only ‘little or no mitigation evidence’ presented”⁷⁰ Post-conviction evidence emphasized significant frontal lobe brain damage causing deficiencies in cognitive functioning and reasoning.⁷¹

62. In sum, because of trial counsel’s failure to investigate fully and present all of the mitigation present in Mr. Prince’s case, and retain the appropriate expert assistance to diagnose and convey that information, the jury that sentenced Mr. Prince to death never heard the full story of the maltreatment and neglect Mr. Prince’s suffered in his formative years. Nor did Mr. Prince’s jury hear the full details of how his mother abandoned Mr. Prince during his early teenage years to an unspeakable form of sexual torture. The jury did not hear accurate information regarding Mr. Prince’s developmental disabilities and mental impairments. The jury never heard the details of Mr. Prince’s positive, humanizing qualities. Mr. Prince’s jury never heard the most compelling material that was available and that was essential for them to hear to ensure a reliable, individualized sentence in the instant case.

III. IAC in First Phase Defense

⁶⁹Id., 558 U.S. at 36. (Citations omitted)

⁷⁰Sears v. Upton, 130 S.Ct. at 3266.

⁷¹Id., at 3261.

63. In any criminal case, but particularly in a capital case, minimally competent counsel must investigate and present to the jury, all available evidence which lessens the degree of culpability of the client for the crime charged. In Mr. Prince's case, trial counsel failed in at least two important aspects of first phase investigation: the failure to research the possibility of presenting a mental health defense to the murder charge; and the failure to conduct an adequate forensic investigation.

A. Failure to Investigate and Present "Christensen Defense"

64. In Arizona, expert testimony that a defendant had a character trait of acting impulsively or reflexively in response to stress is admissible to negate the element of premeditation in first degree murder.⁷² The viability of the Christiansen defense to premeditation was reaffirmed by the Arizona Supreme Court in State v. Mott.⁷³

65. I am familiar with the Christensen defense as I presented that defense during the first phase of Allen Nicklasson's capital trial in Mohave County, Arizona in October, 2001.⁷⁴ Not only does the Christensen defense offer the possibility of negating the element of premeditation during the first phase of a capital trial, it also offers the opportunity to synchronize the first phase defense with the mitigation evidence to be presented should there be a second phase to the trial

⁷²State v. Christiansen, 129 Ariz. 32, 35-36, 628 P.2d 580, 583, 584 (1981).

⁷³187 Ariz. 536, 544, 931 P.2d 1046, 1054 (1997). Mott later filed a habeas petition that the Arizona district court granted in an unpublished opinion. Mott v. Stewart, 98-CV-239, 2002 WL 31017646 (D.Ariz. Aug. 30, 2002) (unpublished). The court concluded that "[t]he exclusion of evidence of mental disease or defect offered to negate the specific intent element of an offense or to establish an alternative explanation for a defendant's conduct is disproportionate to the purposes stated by the court that it was designed to serve." Id. at *6.

⁷⁴State of Arizona v. Allen Nicklasson, Mohave Co. Superior Court No. CR-96-503.

and to “front load” the mitigation evidence which is a critical concern given that studies indicate that almost half of the jurors who sat in capital cases believed that they knew what the punishment should be before the sentencing phase of the trial began.⁷⁵ This concern is well known to competent capital defense lawyers and it is the standard of care to formulate a first phase strategy that will harmonize, compliment, and even foreshadow the penalty phase evidence.⁷⁶

66. As the Declarations of Dr. Woods and Dr. Lisak demonstrate, Wayne Prince is exactly the type of defendant for whom the Christensen defense applies. Dr. Woods wrote,

Mr. Prince’s behavior and choices during stressful events and periods in his life, ***such as on the night of the offense***, demonstrate the combination of trauma symptoms, irritability, affective dysregulation, dissassociation, and chemical dependency; coupled with the mood symptoms of impaired judgment, poor decision making, ***impulsivity***, and defective weighing and deliberating.⁷⁷

Dr. Lisak, after a thorough review of a complete social history in Mr. Prince’s case, noted:

(Wayne Prince) was unable to cope with the intense emotions and impulses that flooded him in response to everything from normal, daily frustrations and

⁷⁵See William J. Bowers, Marla Sandys, & Benjamin Steiner, *Foreclosed Impartiality in Capital Sentencing: Jurors’ Predispositions, Attitudes and Premature Decisionmaking*, 83 CORNELL L.REV. 1476 (1998); William S. Bowers, *The Capital Jury Project: Rationale, Design and Preview of Early Findings*, 70 Indiana Law Journal 1043, 1093 (1995); and Marla Sandys, *Cross-Over-Capital Jurors Who Change Their Minds About the Punishment: A Litmus Test for Sentencing Guidelines*, 70 Indiana Law Journal 1183, 1222-21 (1995).

⁷⁶That Mr. Prince’s first trial was conducted with Judge sentencing, rather than jury sentencing, does not change this fact. “Judges are human beings also and are subject to the same psychological reactions as laymen.” Estes v. Texas, 381 U.S. 532, 548 (1965). See also, In re. J.P. Linahan, Inc., 138 F.2d 650, 652-653 (2nd Cir. 1943)(“Much harm is done by the myth that, merely by putting on a black robe and taking the oath of office as a judge, a man ceases to be human The judicial mind is subject to the laws of psychology like any other mind. When a judge assumes the ermine he does not divest himself of humanity.”)

⁷⁷Dr. George Woods, Evaluation, p. 2.

conflicts to more extreme events that triggered intense, overwhelming emotional states.⁷⁸

67. Likewise, lay witnesses who were readily available to Mr. Prince's trial counsel, could have provided concrete examples of Mr. Prince's long term character trait for acting impulsively.⁷⁹ As Thomas Rawnsley explained from repeated examples that he had witnessed, "(i)t was typical of Wayne to act on an impulse without thinking through what the consequences might be."⁸⁰ Terasa Prince added, "(Wayne) did not break rules for the sake of it; it was that he was unable to focus. The sense I got was that he could not help himself. ... (Wayne) was impulsive and unpredictable"⁸¹

68. Even the one expert, Dr. Parrish, who Mr. Prince's trial attorneys had consulted made findings, at the time of Mr. Prince's trial, which supported a Christensen defense.⁸² In her initial report, Dr. Parrish specifically noted, "(Wayne) has acted impulsively in the past ... towards someone who physically threatened him in some way."⁸³ Tellingly, in Dr. Parrish's recent Declaration, she stated, "I noted in my report that Mr. Prince had acted impulsively in the past ... Mr. Prince's impaired problem solving abilities ... were fundamental to my conclusions. Had I been provided with a complete biopsychosocial history, I would have had more context, and

⁷⁸Lisak, supra, p. 55.

⁷⁹See Petition for Post-Conviction Relief, pp. 71-72.

⁸⁰Declaration of Thomas Rawnsley, p. 12.

⁸¹Declaration of Terasa Alaine Prince, p. 9.

⁸²See Petition for Post-Conviction Relief, pp. 72-73.

⁸³Susan Downs Parrish, Ph.D., Report, February 13, 2000, p. 9.

potentially more support for my conclusions.”⁸⁴

69. There is no plausible explanation for Mr. Prince’s trial counsel *not* to have explored a Christensen defense, particularly in the face of evidence which clearly pointed in the direction of such a first phase defense.⁸⁵

B. Failure to Conduct Competent Forensic Investigation

70. In Mr. Prince’s case, as well documented in his Petition for Post-Conviction Relief,⁸⁶ a critical factor in the State’s evidence regarding Mr. Prince’s alleged deliberation was the bullet hole in the pillow through which Cassandra Parker was shot. The State’s expert concluded from his examination of the pillow, gun, and bullets that Ms. Parker was shot at contact range.⁸⁷ The State then used this opinion to argue that Wayne Prince was lying in his trial testimony that he did not know what happened and that Mr. Prince must have reflected on killing Ms. Parker because he shot her from such close range.⁸⁸

71. However, upon a further examination of the evidence - the examination that Mr. Prince’s trial counsel chose not to undertake - it is now evident that the State expert’s opinion is subject to serious doubt and the argument premised upon that opinion is speculative, at best. The

⁸⁴Declaration of Susan Downs Parrish, Ph.D., p. 4.

⁸⁵For example, at Mr. Prince’s first trial, Christine Parker testified that right before the shootings, Mr. Prince’s had an expression that “was like staring into nothing” and that “the look on his face was something I had never seen before.” Transcript, August 23, 1999, p. 80. See also, Petition for Post-Conviction Relief, pp. 72-75 (examples of “red flags” that counsel should have recognized as a reason to investigate a mental health defense at trial).

⁸⁶Petition for Post-Conviction Relief, pp. 78-87.

⁸⁷Id., pp. 79-80.

⁸⁸Id., pp. 80-81.

State's expert did not conduct a thorough examination of the pillow, without which, his conclusion is unsupportable. The State expert's opinion is further diminished by the fact - unknown to the jury at any of Mr. Prince's trials - that a person held a towel to Ms. Parker's head shortly after the shooting, and before the police arrived, in an attempt to stop her bleeding.⁸⁹

72. The potential impact of counsels' deficient investigation is evident in the Declarations of Dr. Haddix and Jaco Swanepoel.⁹⁰ It now seems more likely that the bullet wound to Cassandra Parker was *not* a contact wound and the State's argument that Mr. Prince must have deliberated before the shooting because it was a contact wound was both false and misleading.

73. Just recently, the Second Circuit had occasion to examine a factual predicate similar to the one presented by this issue in Mr. Prince's case. "Where, as here, a petitioner's claim stems from a 'strategic choice[] made after less than complete investigation,' such a choice is reasonable 'precisely to the extent that reasonable professional judgments support the limitations on investigation.'"⁹¹ "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."⁹²

74. In Rivas, the court explained, "In assessing whether counsel exercised 'reasonable

⁸⁹See Declaration of Jason Vincent Soto (a neighbor of the Princes at the time of the shooting), p. 3 ("I tossed a towel to Duffy. Duffy pressed the towel to one side of Cassie's head and used his other hand on the other side of Cassie's head to steady her head and create pressure.").

⁹⁰See Petition for Post-Conviction Relief, pp. 78-87.

⁹¹Rivas v. Fischer, 2015 WL 1036047, *14 (2nd Cir., March 11, 2015), quoting, Strickland v. Washington, 466 U.S. 668, 690-91 (1984).

⁹²Strickland, 466 U.S. at 691.

professional judgment,’ our ‘principal concern ... is not whether counsel should have presented’ the additional evidence that further investigation would have revealed, but rather, ‘whether the investigation supporting counsel’s decision not to introduce’ the additional evidence ‘was itself reasonable.’”⁹³ “In doing so, we look to ‘not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further.’”⁹⁴

75. The prejudice to Mr. Prince in trial counsels’ failure to adequately investigate the bullet holes in the pillow is clear from the post trial interview of the jurors in Mr. Prince’s case, who described the State expert’s testimony regarding the bullet holes in the pillow as “the most compelling evidence of premeditation” and “the most important evidence for me in determining premeditation”⁹⁵

76. There is no valid reason for Mr. Prince’s trial counsel *not* to have explored retaining a defense expert to challenge the State’s ballistics testing,⁹⁶ particularly because the argument

⁹³Rivas, *supra*, quoting, *Wiggins*, 539 U.S. at 522–23.

⁹⁴*Id.*, quoting, *Wiggins*, 539 U.S. at 527.

⁹⁵Petition for Post-Conviction Relief, p. 85, *quoting*, Declarations of Jurors Carusone and Forquer.

⁹⁶In *Ake v. Oklahoma*, 470 U.S. 68 (1985), the Supreme Court recognized that to deny an indigent basic, critical expert assistance would render a criminal trial fundamentally unfair, particularly given the state’s ability to use the services of virtually any expert of its choosing:

We recognized long ago that mere access to the courthouse doors does not by itself assure a proper functioning of the adversary process, and that a criminal trial is fundamentally unfair if the State proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense . . . [This Court] has often reaffirmed that

that Mr. Prince clearly deliberated before shooting a thirteen year old girl was such a crucial fact to dispute in presenting the case to save Mr. Prince's life. Nor is there any reason to believe that the trial court would have been unreceptive to a defense request for a ballistics examiner for Mr. Prince's defense. In State of Arizona v. Allen Nicklasson, the Mohave County capital case referenced above in which I was lead counsel, the request for a ballistics examiner was the *only* one of five experts which I requested in that case for Mr. Nicklasson's defense which the trial court initially granted.

77. Finally, it cannot escape notice that trial counsel's failure to investigate a potential Christiansen defense, coupled with the failure to subject the State's ballistics examination to defense testing, worked in conjunction to effectively concede the State's theory of first degree murder without serious adversarial dispute. When this failure to meaningfully contest the State's evidence of first degree murder, which put Mr. Prince's defense in a huge deficit at the start of the penalty phase of trial, is combined with the lack of a full and complete mitigation investigation in Mr. Prince's case, it virtually assured the result which now obtains for Mr. Prince.

IV. IAC During Jury Selection

78. Another area in which Mr. Prince's trial counsel performed below prevailing

fundamental fairness entitles indigent defendants to "an adequate opportunity to present their claims fairly within the adversary system."

Id. at 77, quoting Ross v. Moffitt, 417 U.S. 600, 612 (1974). Long before the United States Supreme Court made clear the constitutional entitlement to such defense experts in Ake, courts had recognized such a right, specifically with respect to ballistics testing. See e.g., Barnard v. Henderson, 514 F.2d 744, 746 (5th Cir. 1975); and United States v. Pope, 251 F.Supp. 234, 241 (D.Neb. 1966).

professional norms was in jury selection. “Experienced trial lawyers agree that a case can often be won or lost in voir dire.”⁹⁷ “Meaningful voir dire is absolutely essential to a capital defendant’s ability to obtain a fair trial.”⁹⁸

79. The United States Supreme Court has invariably recognized the importance of attorney participation in death qualification voir dire in its opinions on jury selection in capital cases. In Wainwright v. Witt,⁹⁹ the Court stated, “As with any other trial situation where an adversary wishes to exclude a juror because of bias, then, it is the adversary seeking exclusion who must demonstrate, **through questioning**, that the potential juror lacks impartiality.” (Emphasis added). Indeed, an attorney who fails to conduct probative questioning of the venire can waive his client’s right to have an appellate court review issues pertaining to a juror’s qualifications.¹⁰⁰

80. Death qualified juries are unquestionably more conviction-prone.¹⁰¹ The death qualification process distorts the composition of the jury panel and automatically creates a

⁹⁷45 Am. Jur. Trials § 144 (1992). See also, Margaret Covington, *Jury Selection: Innovative Approaches to Both Civil and Criminal Litigation*, 16 St. Mary’s L.J. 575, 575-76 (1984)(“(e)xperienced trial lawyers agree that the jury selection process is the single most important aspect of the trial proceedings. In fact, once the last person on the jury is seated, the trial is essentially won or lost.”)

⁹⁸John H. Blume, *An Overview of Significant Findings from the Capital Jury Project and Other Empirical Studies of the Death Penalty Relevant to Jury Selection, Presentation of Evidence and Jury Instructions in Capital Cases*, www.lawschool.cornell.edu/research/death-penalty-project.

⁹⁹469 U.S. 423, 425 (1985).

¹⁰⁰Id.

¹⁰¹Lockhart v. McCree, 476 U.S. 162, 173 (1986)(“‘death qualification’ in fact produces juries somewhat more ‘conviction prone’ than ‘non-death-qualified’ juries.”).

situation in which the jurors that sit in the case are more inclined towards the prosecution.¹⁰²

Those persons who favor capital punishment are significantly predisposed to evaluate evidence more favorably to the prosecution. To cite just one example, pro-death penalty jurors differ substantially from death scrupled jurors on mental state defenses.¹⁰³

81. To attempt to combat this heavy thumb on the scales of justice in capital case jury selection, for at least the past two decades, it has been generally accepted amongst competent capital defense practitioners that the “Colorado Method” of jury selection is not only the best,¹⁰⁴ but the only reasonable, system for selecting a jury in a capital case.

82. The “Colorado Method” of jury selection in capital cases began in the mid 1980s.¹⁰⁵ It is a structured approach to capital jury selection that maximizes the opportunity to obtain a life verdict. Jurors are questioned, ranked, and selected based solely on their opinions regarding capital punishment. The questioning focuses, among other things, on breaking down pro-death

¹⁰²See Seguin and Horowitz, *The Effects of “Death Qualification” on Juror and Jury Decisionmaking, An Analysis From Three Perspectives*, 8 LAW & PSYCHOLOGY REV. 49, 61 (1984)(“A considerable body of research conducted since Witherspoon indicates that individuals who favor the death penalty have correlated attitudes which may bias them towards the prosecution.”).

¹⁰³ See Ellsworth, Bukaty, Cowan, and Thompson, *The Death-Qualified Jury and the Defense of Insanity*, 8 LAW HUM. BEHAV. 81, 88-89 (1984).

¹⁰⁴Just recently, the “Colorado Method” was recognized as “the gold standard of effective capital defense.”
http://www.denverpost.com/news/ci_27806839/defense-jury-strategy-could-decide-aurora-theater-shooting

¹⁰⁵David Wymore, former chief trial deputy for the Colorado Public Defender System, and his colleagues, developed the “Colorado Method” for jury selection, specifically for capital cases.

penalty jurors' reluctance to admit how strongly in favor of the death penalty they actually are and empowering jurors who are willing to consider a life sentence to retain that ability in the pressure filled atmosphere of jury deliberations. At its most basic, the "Colorado Method" helps capital defense attorneys familiarize jurors with the law that a capital sentencing decision is a deeply personal choice and not a collective analysis.¹⁰⁶

83. With one exception, which was only because of a trial court's ruling prohibiting it,¹⁰⁷ I have utilized the "Colorado Method" of jury selection in every capital case that I have tried since the mid 1990s.¹⁰⁸ Like other experienced capital defense attorneys, I have found it to be an essential component for obtaining a life sentence in any capital case which proceeds to trial.¹⁰⁹ I have taught at seminars and workshops in the State of Arizona on the "Colorado Method" of jury selection.

¹⁰⁶See, supra, fn. 102.

¹⁰⁷In State of Missouri v. Allen Nicklasson, Lafayette Co. case no.: CR394-582FX, the trial judge refused to let counsel participate in any way in the "death qualification" voir dire in that trial. It is no coincidence that Mr. Nicklasson's Missouri trial is the only case of the over forty (40) capital clients that I have represented at the trial level in which my client received a death sentence. It is instructive to note that Mr. Nicklasson received a life sentence on the Mohave County, Arizona case on which I represented him - a double homicide - as opposed to the death sentence that Mr. Nicklasson received in Missouri - a single homicide. The difference in the jury selection procedures, along with the fact that Mr. Nicklasson was **not** allowed to present all of his mitigation evidence in Missouri and **was** allowed to present all of his mitigation evidence in Arizona, were the two critical differences in Mr. Nicklasson's trials.

¹⁰⁸State of Missouri v. Chad Davis, Jackson Co. case no.: CR91-2024 (1994); State of Arizona v. Allen Nicklasson, Mohave Co. case no. CR-96-503 (first phase trial)(2001); State of Arizona v. Allen Nicklasson, Mohave Co. case no. CR-96-503 (penalty phase trial)(2003); and United States v. Jamal Shakir, No. 3:98-00038 (M.D.TN)(2007).

¹⁰⁹As just one example, in United States v. Jamal Shakir, supra, we were able to obtain a life sentence for Mr. Shakir by utilizing the "Colorado Method" of jury selection, despite the fact that the jury found Mr. Shakir responsible for committing nine (9) premeditated murders.

84. During Mr. Prince's first trial, which provides the underlying conviction still at issue in Mr. Prince's case, counsel performed virtually no meaningful death qualification voir dire and made no attempt to employ the "Colorado Method" of jury selection. During Mr. Prince's second and third trials, which provided the death sentence at issue in Mr. Prince's case, counsel's attempts at death qualification voir dire were completely ineffectual and evidenced a complete lack of understanding of the basic principles of the "Colorado Method."¹¹⁰

85. Specifically, during Mr. Prince's first trial, counsel asked only the most cursory question regarding the potential jurors' opinions about the death penalty, e.g., whether the jurors believed the death penalty should be the automatic punishment for a person who kills another human being. That sort of question is completely ineffectual in ascertaining a person's true feelings about the death penalty. To cite the obvious, a person could full well answer that question with a "no" because they believe that a person should not receive the death penalty automatically if they kill another in self defense or by accident, while still harboring the meaningful belief that a person who commits premeditated murder *does* automatically deserve the death penalty. Simply put, counsel's questioning during Mr. Prince's first trial produced no significant information regarding the jurors' opinions and beliefs about capital punishment.¹¹¹

¹¹⁰The same is true of Mr. Prince's second trial, at which the same attorneys represented him, and at which the jury found the aggravating circumstances at issue in Mr. Prince's case. In fact, the voir dire conducted by defense counsel in Mr. Prince's second and third trials was very similar.

¹¹¹As the Court held in Morgan v. Illinois, 504 U.S. 719, 735 (1992), "(a)s to general questions of fairness and impartiality, such jurors could in all truth and candor respond affirmatively, personally confident that such dogmatic views are fair and impartial, while leaving the specific concern unprobed." See also, Murphy v. Florida, 421 U.S. 794, 800 (1975) ("the juror's assurances that he is equal to the task cannot be dispositive of the accused's rights, and it remains open to the defendant to demonstrate 'the actual existence of such an opinion in the mind

86. At Mr. Prince's second and third trials, counsel attempted to conduct a more in-depth death qualification voir dire. Unfortunately, that attempt failed because of counsel's apparent lack of understanding of how to properly conduct such an examination. First, and most obviously, counsel in most instances, lectured potential jurors, rather than asking questions to find how the juror's opinions about the death penalty. Reading the transcripts of the jury selection in Mr. Prince's second and third trials, one can not help but be struck by the pages upon pages of transcript with only Mr. Prince's attorney talking to the potential juror, after which there was little, if anything, more than a monosyllabic response by the potential juror. To state the obvious, this is not the way to learn meaningful information about a potential juror's attitudes about the death penalty.¹¹² Second, when jurors gave an answer which indicated a predisposition to favor the death penalty in first degree murder cases, counsel either asked no meaningful follow-up questions, or far worse, in some instances, locked the jurors into committing not to be bullied out of their opinion in jury deliberations.¹¹³ As a result, as documented in Mr. Prince's

of the juror as will raise the presumption of partiality.'")

¹¹²In many instances, there was no attempt whatsoever to ascertain what the potential juror meant by their cryptic response to counsel's lecture. *See e.g.*, Transcript, November 3, 2008, pp. 92-93, Juror 69. After an extremely short lecture/question by Dennis Jones, the juror agreed with Mr. Jones that he "would want to know more." *But, we have no idea what he would want to know.* Asked if he could consider Mr. Prince's background, the juror said, "yes." *But, we have no idea how he would consider if, or even if he understood what factors in Mr. Prince's background were being asked about.* Asked if there was anything "in particular" that the juror would like to know, the juror responded, "No, not right now." Mr. Jones then stated, "Okay. No further questions." *That was the end of the questioning. Which means that there is absolutely no way that we can know this juror's attitudes about mitigating evidence and how he would consider it in determining whether Wayne Prince should live or die.*

¹¹³*See e.g.*, Transcript, November 6, 2008, pp. 46-56, Juror 111. After the juror told counsel that he would be "leaning" towards a death sentence and that he could "listen" but not really consider mitigating evidence, Mr. Prince's counsel asks the juror if he could "stick with

Petition for Post-Conviction Relief,¹¹⁴ at Mr. Prince's third trial, he ended up with a jury consisting of individuals about whom he had no meaningful information on what their beliefs were about capital punishment and individuals who favored capital punishment and had been emboldened by Mr. Prince's counsel to hold on to those beliefs during jury deliberations.

Conclusion

87. In assessing the performance of Wayne Prince's defense counsel, I have abided by Strickland's caveat to avoid the distorting effects of 20/20 hindsight. I have evaluated the performance of counsel from the standpoint of what a reasonably competent attorney would do, based on the circumstances and the law as it existed at the time of Mr. Prince's trials. As noted above, the scope of the factual and legal issues available to the defense defines the duty of counsel. While Strickland creates a general presumption of validity of an attorney's informed strategy decisions, the Court specifically imposed a duty on counsel to conduct a reasonable investigation. Counsel's decisions in a case are reasonable only if based on a reasonable investigation.¹¹⁵ If there is evidence that would support a particular defense or would mitigate the sentence, counsel is obliged to further explore those issues.¹¹⁶ In Mr. Prince's case, trial counsel failed to conduct the constitutionally mandated social history investigation, failed to conduct constitutionally mandated investigation into reasonable first phase defenses, and failed

what you think is right as long as you continue to think it was right." This is **not** what the "Colorado Method" teaches. In fact, it is just the opposite.

¹¹⁴Petition for Post-Conviction Relief, pp. 134-138.

¹¹⁵Strickland, *supra*, 466 U.S. at 691.

¹¹⁶Wiggins, *supra*, 539 U.S. at 522-23.

to conduct constitutionally mandated adequate voir dire.

88. As the United States Supreme Court recently noted, “(t)he right to the effective assistance of counsel at trial is a bedrock principle in our justice system. It is deemed an ‘obvious truth’ the idea that ‘any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.’”¹¹⁷ The harm in this case is not just to Mr. Prince, whose life is in jeopardy, but to the jurors who rendered a life-and-death decision without the evidence needed to produce a morally reliable result, and to the justice system itself, which holds the public’s trust only to the extent that its proceedings are fair and “appear fair to all who observe them.”¹¹⁸

89. None of the above is meant to impugn the integrity or general competence of any of Mr. Prince’s trial counsel. For instance, I first met Dennis Jones shortly after I was hired by the ACRP in 1989. At that time, Dennis was one of the attorneys who regularly sought advice and counsel from ACRP on his capital cases. I thought then, and think now, that Dennis is a dedicated and caring capital defense attorney.¹¹⁹ However, that does not answer the question of whether he provided effective assistance of counsel in Mr. Prince’s case.¹²⁰ By way of example,

¹¹⁷Martinez v. Ryan, 132 S.Ct. 1309, 1317 (2012)(citations omitted).

¹¹⁸Wheat v. United States, 486 U.S. 153, 160 (1988)(noting, “the institutional interest in the rendition of just verdicts” is just as important as the rights of the criminally accused).

¹¹⁹It is to his credit that Dennis now recognizes that his preparation of Mr. Prince’s case - at both the first phase and penalty phase - was less than adequate. Declaration of Dennis Jones, pp. 3-4.

¹²⁰Sadly, it now appears that a significant part of the problem is likely the neurological symptoms that Mr. Prince’s counsel was experiencing at the time of Mr. Prince’s third trial. See Declaration of Robert L. Smith, Ph.D., pp. 2-3. (“Dennis confided in me that he was having trouble with his memory and told me that he was forgetting things. When I asked him what he

Henry Martin is the Federal Public Defender for the Middle District of Tennessee and has been since 1985. Not only is Mr. Martin considered one of the foremost criminal defense practitioners in Tennessee, he lectures nationally on criminal defense and ethics issues. Bill Reddick was the first Director of the Tennessee Death Penalty Resource Center when it opened in 1989 and remained so until the Resource Center was defunded in 1995. Mr. Reddick was considered one of, if not, the foremost authority on capital defense work in Tennessee. It is no exaggeration to say that Mr. Martin and Mr. Reddick together were considered to be the gold standard for criminal defense, and specifically capital defense, in the State of Tennessee.

90. Henry Martin and Bill Reddick were appointed to represent Richard Taylor on a capital case in Tennessee in 1984. Despite their considerable skills and abilities, Mr. Martin and Mr. Reddick were found to have provided ineffective assistance of counsel on Mr. Taylor's case. The Tennessee Court of Appeals held, "The court finds that trial counselors' performance was not within the range of competence demanded of attorneys in criminal cases. Based on the factual evidence adduced during the post-conviction hearing and other submitted information, the court finds that counsel failed to adequately prepare Taylor's case for trial at both the guilt phase [and sentencing]. Counselors did not fully seek exploration of the mental competency at trial despite the evidence which showed a background replete with mental problems. Counselors failed to explore this issue for mitigation or to put forth evidence concerning his background,

wanted the jury to understand from my testimony, Dennis could not articulate cohesive themes. The difference in Dennis' functioning between 2007 and 2008 was quite noticeable. He seemed anxious, uncertain and indecisive. It was uncomfortable for me to watch him struggling.")

medications, and social history.”¹²¹

91. In three (3) of the capital cases in which I was counsel that proceeded to trial, my co-counsel was Patrick Berrigan.¹²² Pat has been one of, if not, the best capital defense attorney in the state of Missouri for the past twenty five (25) years. He is an extremely talented litigator and cares deeply about his clients and their cases. When I was appointed as counsel for Jamal Shakir in the nine (9) murder, federal capital case referenced above, I conducted a nationwide search for the best co-counsel possible to prepare and present Mr. Shakir’s defense. Pat was the person I chose. He is truly the best of the best in capital defense work. However, in Johnson v. United States,¹²³ Pat was found to have provided ineffective assistance of counsel to Ms. Johnson in failing to investigate adequately and present mitigation evidence in the penalty phase of Ms. Johnson’s trial, as well as failing to provide defense experts with complete information on which they could form their opinions regarding mitigation issues in Ms. Johnson’s case.

92. Similarly, in Glenn v. Tate,¹²⁴ the court specifically noted that the petitioner’s two

¹²¹Taylor v. State, 1999 Tenn.Crim.App. LEXIS 732, *46 (1999). Neither Mr. Martin, nor Mr. Reddick are mentioned by name in the court’s opinion. However, I can avow to this Court that I have personal knowledge of the fact that Mr. Martin and Mr. Reddick did, in fact, represent Mr. Taylor at trial. Similarly, in State v. Poindexter, 608 S.E.2d 761, 763, 359 N.C. 287, 290 (2004), the court found trial counsel to be ineffective. Although the name of trial counsel is not mentioned in the court’s opinion, through the course of researching the instant Declaration, I learned that trial counsel was a well respected committee member of the North Carolina Indigent Defense Services.

¹²²State of Missouri v. Chad Davis, Jackson Co. case no.: CR91-2024 (1994); In State of Missouri v. Allen Nicklasson, Lafayette Co. case no.: CR394-582FX; and United States v. Jamal Shakir, No. 3:98-00038 (M.D.TN)(2007).

¹²³860 F.Supp. 2d 663 (N.D. Iowa 2012).

¹²⁴71 F.3d 1204, 1207 (6th Cir. 1996).

trial attorneys were “experienced criminal defense attorneys.” Nonetheless, the Sixth Circuit found counsel ineffective at the sentencing phase of capital trial for failing to investigate and present evidence of petitioner’s brain damage. This failure to investigate and present crucial mitigation evidence is **exactly** the same type of mistake made by Wayne Prince’s experienced criminal defense attorneys. Likewise, in Osborn v. Shillinger,¹²⁵ “an experienced criminal attorney who had previously argued and won capital cases” was found ineffective for his lack of preparation for the sentencing phase of a capital trial.

93. Simply put, the fact that Mr. Prince’s trial counsel may well be caring and generally competent attorneys is of no moment in deciding the question of whether they provided ineffective assistance of counsel to Wayne Prince when trial counsel decided not to conduct a full and complete investigation for either the first or second phases of Mr. Prince’s trial, which could have persuaded a jury either not to convict Mr. Prince of murder or not to sentence him to death. As one court wisely noted, while finding experienced counsel to have provided ineffective assistance in a capital case, “this court knows that Mr. Weiser is, and in 1984 was, one of the best attorneys in El Paso. Thus, the trite-but-true lesson is that ‘it can happen to the best of us.’”¹²⁶

94. There is substantial evidence favorable to Wayne Prince that the jury in his case never heard. It is uniquely the role of trial counsel to investigate, develop, and present this evidence, and their failure to do so diminishes the reliability of Mr. Prince’s conviction and sentence of death. It is my professional judgment that Mr. Prince’s trial defense team failed to perform

¹²⁵861 F.2d 612, 629 (10th Cir. 1988).

¹²⁶Martinez-Macias v. Collins, 810 F.Supp. 782, 790 (W.D.Tex. 1991).

consistently with the ABA guidelines on the appointment and performance of counsel in capital cases as well as with the supplemental guidelines on the defense mitigation function in capital cases, and that their performance fell below the constitutional minimum standard of care. It is also my opinion that the failure of the defense team to meet the minimum standard of care resulted in their failure to uncover mitigating and mental health evidence essential to a fair and reliable outcome in this capital case.

I declare under penalty of perjury, under the laws of the United States of America and the State of Arizona, that the foregoing is true and correct.



John M. Bailey IV

APPENDIX A

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Petition for Post-Conviction Relief

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MEMORANDUM:

To: Hank Ehli

From: John Bailey

Re.: Appointments as “learned counsel” in federal capital cases

Date: Aug. 2, 2021

I have previously provided you with a copy of the Affidavit that I prepared as a part of my appointment as an expert witness in the case of *State of Arizona v. Wayne Prince*. Since I prepared that Affidavit, I have been appointed as “learned counsel,” pursuant to 18 U.S.C. §3005 in three (3) additional cases: 1) *United States v. Jamison Townsend*, 3:17-cr-00072 (SDMS); 2) *United States v. Mariano Garcia*, 2:17-cr-20639 (EDMI); and 3) *United States v. Maurice Burks*, 3:17-cr-00124 (MDTN). In all three (3) of those cases, the Department of Justice (DOJ) did not authorize local United States Attorney’s offices to seek the death penalty after defense mitigation presentations.

CHARLES PATRICK EWING

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EDUCATION

J.D., *cum laude*, Harvard Law School, 1983.

Post-Doctoral Fellow, Yale University, Institution for Social and Policy Studies, 1976-1977.

Ph.D., Cornell University, 1975.

B.A., *magna cum laude*, Syracuse University, 1971.

PROFESSIONAL LICENSURE AND BOARD CERTIFICATION

Attorney and Counselor at Law, New York.

Licensed Psychologist, New York and Florida.

Diplomate, Forensic Psychology, American Board of Professional Psychology.

CURRENT POSITIONS

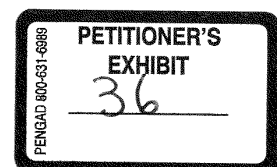
State University of New York Distinguished Service Professor (since 2003).

Professor of Law, State University of New York, SUNY Buffalo Law School (Member of the faculty since 1983; promoted to Professor with tenure in 1988).

Editor, *Behavioral Sciences and the Law* (since 1991).

PREVIOUS POSITIONS

Vice Dean, School of Law, State University of New York at Buffalo (Vice Dean for Academic Affairs (Academic Dean), 2012-2014 Vice Dean for Legal Skills, 2009-2012).



Lecturer in Legal Studies, Brandeis University (1982-83).

Director, Children's Services, Genesee Mental Health Center (1977-78).

Emergency Room Psychiatric Officer, Genesee Hospital (1977-78).

Visiting Assistant Professor of Psychology, Mansfield University (1975-76).

Intern in Clinical Psychology, Framingham Youth Guidance Center (1973-74).

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- Ewing, C. P. (2002). Criminal defenses. In Levinson, D. (Ed.), Encyclopedia of Crime and Punishment (397-402). Thousand Oaks, CA: Sage Publications.
- Ewing, C. P. (2000). Parricide. In Pinard, G. F. and Pagani, L. (Eds.), Clinical Assessment of Dangerousness: Empirical Contributions (pp. 181-194). New York: Cambridge University Press.
- Ewing, C. P. (1999). Teenage violence. In Gottesman, R. (Ed.), Encyclopedia of violence in the United States (255-258). New York: Charles Scribner and Sons.
- Ewing, C. P. (1999). School violence. In Microsoft Encarta. Redmond, Washington: Microsoft Corporation.
- Ewing, C. P. (1999). Violence, custody and visitation. In E. K. Carll (Ed.), Violence in our lives: Impact on workplace, home and community. Boston: Allyn & Bacon.
- Ewing, C. P. (1998). "Above all, do no harm": The role of health and mental health professionals in the capital punishment process. In J.R. Acker, R.M. Bohm, & C.S. Lanier (Eds.), America's experiment with capital punishment (pp. 461-476). Durham, NC: Carolina Academic Press.
- Ewing, C. P. (1995). Forensic psychology. In L. Heiden and M. Hersen (Eds.), Introduction to clinical psychology (pp. 381-393). New York: Plenum Publishing.
- Ewing, C. P. (1992). Child abuse can cause youths to become violent. In M. Biskup and C. Cozic (Eds.), Youth Violence: Current Controversies (pp. 79-82). San Diego: Greenhaven Press.

- Ewing, C. P. (1990). Crisis intervention as brief psychotherapy. In R. Wells and V. Gianetti (Eds.), Handbook of the brief psychotherapies (pp. 277-296). New York: Plenum Publishing.
- Ewing, C. P. (1990). Legal issues in terminating treatment. In E. Margenau (Ed.), Encyclopedic handbook of private practice (pp. 720-726). New York: Gardner Press.
- Ewing, C. P. (1983). Ethical issues in clinical practice. In P. Keller & L. Ritt (Eds.), Innovations in clinical practice, Vol. I (pp. 399-410). Sarasota, FL: Professional Resource Press.
- Ewing, C. P. (1982). Crisis intervention: Helping clients in turmoil. In P. Keller & L. Ritt (Eds.), Innovations in clinical practice, Vol. I (pp. 5-15). Sarasota, FL: Professional Resource Press.

Peer Reviewed Papers Presented

- Ewing, C. P. (2009, July). Legal and Psychological Issues in the Assessment of Parricide Perpetrators. XXXIst International Congress on Law and Mental Health, New York, New York.
- Ewing, C. P. and Gelles, M.G. (2002, February). Standards of Practice in Forensic Consultation to Military, National Security and Law Enforcement Agencies. Paper presented at the Annual Meeting of the American Academy of Forensic Sciences, Atlanta GA.
- Gelles, M. G. and Ewing, C. P. (1999, February). Psychological autopsy: Truth or consequences. Paper presented at the Annual Meeting of the American Academy of Forensic Sciences, Orlando, FL.
- Ewing, C. P. (1998, August). Overview of forensic psychology practice and expert testimony. In H. K. Wexler (Chair), Symposium: Opportunities for Psychologists in Criminal Justice Research and Practice, conducted at the Annual Meeting of the American Psychological Association, San Francisco.
- Ewing, C. P. (1996, August). Past as prologue: The historical roots of forensic psychology. In M. A. Small (Chair), Symposium: History of Psychology in Law, symposium conducted at the Annual Meeting of the American Psychological Association, Toronto, Ontario, Canada.
- Ewing, C. P. (1994, August). Psychopathy and criminal responsibility: A legal prespective. In J. R. Meloy (Chair), Psychopathy and Criminal Responsibility, symposium conducted at the Annual Meeting of the American Psychological Association, Los Angeles, CA.

- Ewing, C. P. (1993, August). Forensic psychology in the twenty-first century. Paper presented at the Annual Meeting of the American Psychological Association, Toronto, Ontario, Canada.
- Ewing, C. P. (1992, August). When children kill: The dynamics of juvenile homicide. In C. P. Ewing (Chair), *From Victims to Victimizers: Child Abuse and Juvenile Homicide*, symposium conducted at the Centennial Meeting of the American Psychological Association, Washington, D.C.
- Ewing, C. P. (1990, August). Scientific and forensic issues in the validation of child sexual abuse. In Validation of Child Sexual Abuse: Issues and Controversies. Symposium conducted at the Annual Meeting of the American Psychological Association, Boston, Massachusetts.
- Ewing, C. P. (1988, August). Psychological self-defense: Narrowing the gap between law and reality. In L. Rosewater & J. Blackman (Chairs), Battered Women Who Kill: Public Policy Issues. Symposium conducted at the Annual Meeting of the American Psychological Association, Atlanta, GA.
- Ewing, C. P. (1988, August). The "ultimate issue" rule in insanity cases: Legal perspectives. Paper presented at the Annual Meeting of the American Psychological Association, Atlanta, GA.
- Aubrey, M. and Ewing, C. P. (1988, April). Student and voter subjects: differences in attitudes toward battered women. Paper presented at the Annual Meeting of the Eastern Psychological Association, Buffalo, N.Y.
- Ewing, C. P. (1988, March). Killing kids who kill: Psychological and criminological perspectives on the death penalty for juveniles. In D. Wolfe (Chair), Issues and Perspectives on Juvenile Capital Punishment: A Dying Debate? Symposium conducted at the Meeting of the American Psychology-Law Society, Miami, FL.
- Ewing, C. P. (1987, August). Preventive detention and execution: The constitutionality of punishing future crimes. In A. Tomkins (Chair), Social Science and the Constitution. Symposium conducted at the Annual Meeting of the American Psychological Association, New York, NY.
- Ewing, C. P., Aubrey, M. and Jamieson, L. (1986, August). The battered woman syndrome: Expert testimony and public attitudes. Paper presented at the Annual Meeting of the American Psychological Association, Washington, D.C.
- Ewing, C. P. (1985, August). Battered women who kill: Psychological self-defense as legal justification. Paper presented at the Annual Meeting of the American Psychological Association, Los Angeles, CA.

- Ewing, C. P. (1984, August). The ethics of clinical predictions of dangerousness in capital sentencing. Paper presented at the Annual Meeting of the American Psychological Association, Toronto.
- Ewing, C. P., Levine, M., and Burns, T. (1984, August). Dangerousness and the adversary process in capital sentencing. Paper presented at the Annual Meeting of the American Psychological Association, Toronto.
- Ewing, C. P. (1982, August). Psychologists and psychiatrists in capital sentencing proceedings: Experts or executioners? Paper presented at the Annual Meeting of the American Psychological Association, Washington, D.C.
- Ewing, C. P. (1981, October). Psychological disorders and employment: the causal nexus problem in workers' compensation. Paper presented at the Meeting of the American Psychology-Law Society, Cambridge, MA.
- Ewing, C. P. (1977, November). Issues in the treatment of inner-city teenage mothers. Paper presented at the Annual Meeting of the American Association of Psychiatric Services for Children, Washington, D.C.
- Ewing, C. P. (1976, November). Evaluating family crisis intervention. Paper presented at the Annual Meeting of the American Association of Psychiatric Services for Children, San Francisco, CA.

Book Reviews

- Ewing, C.P. (2012). A New Standard for Research on Juvenile Homicide Offenders and Victims [Review of Young Homicide Offenders and Victims: Risk Factors, Prediction, and Prevention from Childhood]. *PsycCRITIQUES*, 57 (2).
- Ewing, C. P. (2003). Review of School violence threat management and Threats in schools: A practical guide for managing violence. *Journal of Threat Assessment*, 2 (2), 93-96.
- Ewing, C. P. (1993). The graying of America: Law and the elderly patient [Review of Geriatrics and the Law: Patient Rights and Professional Responsibilities (2nd ed.)]. *Contemporary Psychology*, 3, 863-864.
- Ewing, C. P. (1990). Law and psychiatry: Caveat Lector [Review of Commentary on legal psychiatry]. *Contemporary Psychology*, 35, 480-481.
- Ewing, C. P. (1989). Review of The mentally disabled and the law. *World Health Organization International Digest of Health Legislation*, 40, 755-756.

Ewing, C. P. (1986). Crisis intervention: Two very different approaches [Review of Crisis intervention: Contemporary issues for on-site intervenors and People in Crisis: Understanding and helping]. Contemporary Psychology, 31, 540-542.

Other Articles

Ewing, C. P. (2006). Collateral interviews reconsidered: Reversal of Conviction in 'Kendra's Law' Case Calls Into Question Expert Testimony. *American Psychological Association Monitor*, 37, 7, 83.

Ewing, C. P. (2006). Testing Tool in Question: A Court's Exclusion of a Sex Offender Measurement Could Prompt a Harsher Stance on the Admissibility of Similar Assessment Tools. *American Psychological Association Monitor*, 37, 1, 61.

Ewing, C. P. (2005). *Tarasoff* reconsidered. *American Psychological Association Monitor*, 36, 7, 112.

Ewing, C. P. (2003). False Credentials Cause Extensive Fallout. *American Psychological Association Monitor*, 34, 7, 84.

Ewing, C. P. (2003). Determining Trial Competency: Should Nonviolent Mentally Ill Defendants be Forced to Take Psychotropic Medications Before Being Tried? *American Psychological Association Monitor*, 34, 2, 26.

Ewing, C. P. (2002). Findings in spy case limit confidentiality of psychotherapy. *American Psychological Association Monitor*, 33, 7, 26.

Ewing, C. P. (2002). Tarasoff Update: Psychotherapy Threats Alone Provide No Basis for Criminal Prosecution. *American Psychological Association Monitor*, 33, 2, 18.

Ewing, C. P. (2001). Is Academic Freedom Legally Protected? *American Psychological Association Monitor*, 32, 6, 22.

Ewing, C. P. (2001). Suing Your Own Expert Witness: Competing Policies, Uncertain Law. *American Psychological Association Monitor*, 32, 1, 80.

Ewing, C. P. (2000). Professionals in the jury room. *American Psychological Association Monitor*, 31, 7, 18.

Ewing, C. P. (2000). Court Overturns Ban on Use of Sexual Devices: Law Found to Unconstitutionally Inhibit Access to Items that have Legitimate Therapeutic Value. *American Psychological Association Monitor*, 31, 1, 90.

Ewing, C. P. (2000). Sensible Zero Tolerance Protects Students. Harvard Education Letter. January/February 2000 issue.

Ewing, C. P. (1997) Yes: Good lawyering can weed out unscientific testimony. American Bar Association Journal, 83, 76.

Audiotape

Ewing, C. P. (1985). Ten commandments for the expert witness. [audiotape]. Sarasota, FL: Professional Resource.

LECTURES, TESTIMONY & PUBLIC SPEAKING

Invited Lectures at Other Universities and Colleges

Johns Hopkins University, University of Nebraska, New York University, Cornell University, Pace University, Rice University, Michigan State University, Washington and Lee University, Albany College of Medicine, Mansfield University, Geneseo State College, University of South Florida, Buffalo State College, University of Miami, Daemen College, Hilbert College, Rochester Institute of Technology, Erie Community College, and Jamestown Community College

Legislative and Other Invited Public Testimony

Testified by invitation before New York State Senate Committee on Video Violence, January 26, 2000

Testified by invitation before New York State Lt. Governor's Commission on Youth Violence, June 14, 1999

Testified by invitation before U.S. House of Representatives Select Committee on Children, Youth and Families, September 23, 1987

Other Public Speaking

More than 200 lectures to community and professional groups in New York, Massachusetts, Virginia, California, South Carolina, Maryland, Pennsylvania, Michigan, Arizona, Texas, Florida, Georgia, Arizona, Puerto Rico and Canada.

SELECTED SERVICE (PAST AND PRESENT)

National

President, American Board of Forensic Psychology (2013)

Board of Directors, American Board of Forensic Psychology (2008-2013)

Consultant, University News Services (hundreds of interviews with local, state, national, and international media including New York Times, Washington Post, Los Angeles Times, New York Post, Newsweek, Time, U.S. News and World Report, Christian Science Monitor, Boston Globe, Washington Times, New York Daily News, New York Newsday, San Francisco Chronicle, San Francisco Examiner, Dallas Morning News, Houston Chronicle, Chicago Sun-Times, Chicago Tribune, St. Louis Post-Dispatch, Cleveland Plain Dealer, Toronto Star, Toronto Globe and Mail and numerous Asian and European publications; appearances on NBC Today Show, ABC Good Morning America, ABC Nightly News, CBS Evening News, NBC Dateline, MSNBC, NPR, and CBC; work featured on several episodes of A&E's American Justice and TLC's Medical Detectives)

Work Sample Reviewer and Board Certification Oral Examiner, American Board of Forensic Psychology (more than 20 years)

Continuing education presenter, American Academy of Forensic Psychology (approximately 20 years)

Appeals Committee, American Board of Professional Psychology

Consultant, U.S. Department of Defense, Office of General Counsel, Office of Military Commissions

Consultant, U.S. Naval Criminal Investigative Service

Consultant, U.S. Secret Service (Safe Schools Initiative)

Former Member, National Advisory Council of the National Clearinghouse for the Defense of Battered Women.

State

Consultant, New York State Office of Professional Discipline

Consultant, New York State Mental Hygiene Legal Service

Continuing education presenter, New York State Association of Criminal Defense Lawyers, New York State Academy of Trial Lawyers, New York State Office of Court Administration

Hearing Officer, New York State Division for Youth

Local

New York State Bar Association Mock Trial Competition (High School Mock Trial coach for eight years)

Consultant, Amherst Central School District, Lancaster Central School District, Williamsville Central School District, Lewiston-Porter School District, Albion Central School District, Lockport School District, Horseheads School District, Cleveland Hill School District, Pavilion Central School District, Buffalo City School District, Maryvale School District, and Erie-Niagara Board of Cooperative Educational Services (BOCES)

Pro bono counsel, Western New York Psychological Association

Expert panel, Assigned Counsel Program, Erie County Bar Association, Society for Aid to Indigent Prisoners (more than 25 years)

HONORS, FELLOWSHIPS & RECOGNITIONS

2010: Jacob D. Hyman “Professor of the Year” Award, University at Buffalo Law School Students of Color (Asian Law Students Association, Black Law Students Association, Latin American Law Students Association)

2004-Present: Rated “AV “ (highest level of professional excellence) as an attorney by Martindale Hubbell peer review

2003: Named State University of New York Distinguished Service Professor by the SUNY Board of Trustees

2003: Certificate of Excellence, Citizenship Education Committee, New York State Bar Association

2001: New York State Bar Association Award for Outstanding Contribution in the Field of Criminal Law Education

1993: Distinguished Contributions to Forensic Psychology Award, American Academy of Forensic Psychology

1991: Elected Fellow of the American Psychological Association

1990: Distinguished Achievement Award, Psychological Association of Western New York

1986: William J. Magavern Fellowship

1982: First Prize, American Society of Law and Medicine - John P. Rattigan, M.D. Essay Competition

1982: Joshua A. Guberman Teaching Fellowship in Legal Studies, Brandeis University

1971-1975: Herbert H. Lehman Fellowship in Public and International Affairs

EDITORIAL POSITIONS

Editor, *Behavioral Sciences and the Law*

Member, Editorial Board, *Journal of Child Sexual Abuse*

Member, Editorial Advisory Board, *New Criminal Law Review*

Member, Editorial Board, *Psychological Injury and the Law*

AFFILIATIONS

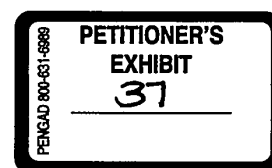
American Board of Forensic Psychology (Board of Directors 2008-2013; President 2013)

American Psychological Association (Fellow)

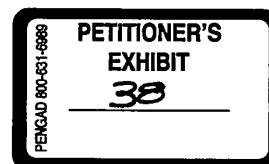
American Psychology-Law Society (Fellow)

American Academy of Forensic Psychology (Fellow)

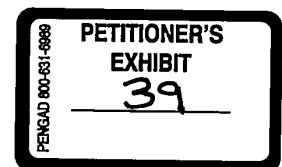
THUMB DRIVE - Pope Cascio Cross Examination



THUMB DRIVE - Robertson Summary of Records



THUMB DRIVE - Bracket File





5749-A



5749-B



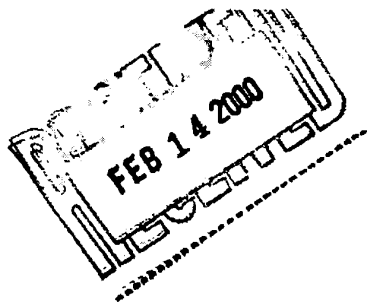
5749-C



5749-D



5749-E



S.C. Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, S.C. 29201-3243

February 10, 2000

James D. Robertson, SK 5067
Lieber Corr. Inst.
PO Box 205
Ridgeville, S.C. 29472

Dear Mr. Dudek:

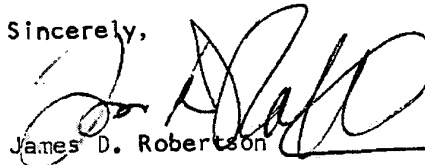
Due to complications with the telephone system, I am writing in order to address a couple of issues with you.

Firstly and most importantly, I would like to forego my appeals. I have spent a considerable amount of time giving my decision careful thought. I wish to allow the state to carry out the execution of me within 18-24 months of now. I have no desire to possibly receive a lighter sentence or to win freedom. I see no logical reason why you and your office should spend the better part of a decade fighting for something I don't want for myself. I understand you may not be willing to take the necessary steps to facilitate this; please inform me of the information and steps that must be taken in order to accomplish this myself.

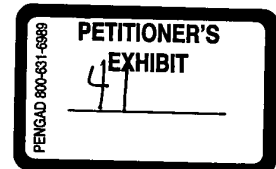
The second issue concerns my case file. I am confident that, by now, you have acquired my file from my trial lawyers, Bill Hancock and Jim Boyd. I have received most of my transcripts with the exception of a few scattered hearings. During the time I awaited trial I repeatedly requested, from my lawyers, a copy of everything in my file so I could adequately assist in my defense. These requests were denied. I would like you to send me a copy including: investigative notes and reports, all paperwork, attorney work product, photos, etc. I still have some unanswered questions and misgivings about my representation.

I LOOK FORWARD to a timely response from you. Thank you for your time.

Sincerely,


James D. Robertson

cc: File
Robert M. Dudek





received
5-4-00

State of South Carolina
The Circuit Court of the Sixteenth Judicial Circuit

JOHN C. HAYES, III
JUDGE

MOSS JUSTICE CENTER, 2ND FLOOR
1675-1H YORK HIGHWAY
YORK, SOUTH CAROLINA 29745-7423
(803)628-3047
FAX: (803)628-3055

May 2, 2000

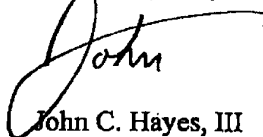
Mr. James W. Hancock, Jr.
Attorney at Law
Post Office Box 2851
Rock Hill, S.C. 29731

Dear Bill:

Would you please see if you can help Mr. Robertson with the concerns he expresses in the enclosed letter.

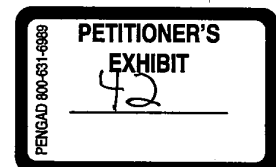
Thanking you, I am

Yours very truly,


John C. Hayes, III
Presiding Judge

JCHIII/fjk
Enclosures

cc: James D. Robertson



April 20, 2000

Dear Judge Hayes:

Hello. I need your help in a minor legal matter. I would like a copy, which I am entitled to, of my entire case file. I want all statements, attorney work product, investigative notes, pictures, crime photos, all discovery turned over, all motions filed, briefs written, and anything else that pertains to my case, trial, etc.

I have attempted to obtain this from the Office of Appellate Defense but was told that they didn't have a complete copy of the file. I have the trial transcripts for the most part, though. On several occasions prior to the trial, written and verbally, I requested the file from Mr. Hancock. He refused for various reasons. I have since the trial made a written request outlining exactly what I desire. I have a right to this information and for me to be able to evaluate my appeal options I must know what my lawyers had in their possession. I ask that you please issue an order

for someone (trial lawyers, or solicitor's office)
to make a full copy of this and make it
available to me. If you will not do this
I would appreciate any advice on how to
go about getting this.

Thank you for your time. I look forward
to a response from you soon.

Sincerely,

James D. Robertson

James D. Robertson SK5067
RB106 Lieber Corr Inst.
P.O. Box 205
Ridgeville, S.C. 29472

e-mail: Jamesr@inmate.com

James D. Robertson 9K5067
RB106 Lieber Corr. Inst.
P.O.Box 205
Ridgeville, S. C. 29472

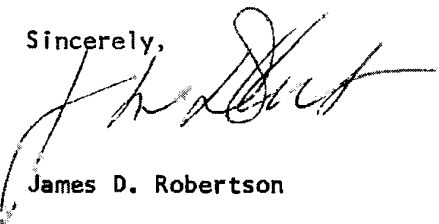
July 6, 2000

Office of Appellate Defense
Robert M. Dudek
1122 Lady St., Suite 940
Columbia, S.C. 29201

Dear Mr. Dudek:

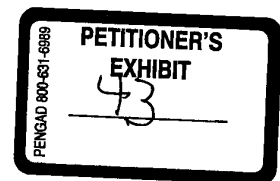
Please find enclosed a copy of my intentions pertaining to my appeals.

Sincerely,



James D. Robertson

enclosure



James D. Robertson SK5057
RB106 Lieber Corr. Inst.
P.O.Box 205
Ridgeville, S.C. 29472

July 4, 2000

South Carolina Supreme Court
Chief Justice Jean Toal
P.O.Box 17730
Columbia, S.C. 29211

Dear Chief Justice Toal:

My name is James deJarnette Robertson and I was sentenced to death on March 26, 1999 for the murders of my parents. I am writing to address two orders of business.

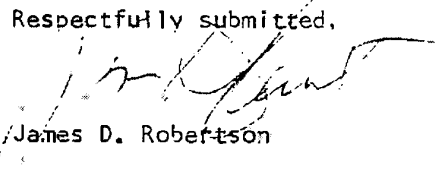
Firstly, I ask that my attorney, Robert M. Dudek of the Office of Appellate Defense, be relieved of his duty to represent me and that I be permitted to proceed pro se.

Secondly, I hereby waive mandatory review and all further appeals. I request that all actions already before the Court pertaining to my appeals be dismissed.

I have made this decision voluntarily and with great thought. I have neither a desire to be a free man nor serve a lesser sentence. I am aware that there are appealable issues but have no desire for justice either.

I ask that you set an execution date that is timely and reflective of my desires. The Court's response is eagerly awaited. Thank you for your time.

Respectfully submitted,


James D. Robertson

cc: Robert M. Dudek, Assistant Appellate Defender
Charlie Condon, S.C. Attorney General
John C. Hayes III, Chief Judge Sixteenth Judicial Circuit
Thomas E. Pope, Solicitor Sixteenth Judicialn Circuit
James W. Hancock, Attorney at Law
James Boyd, Attorney at Law

SWORN to before me this 17
day of July, 2000.

Terrence E. Whitaker
Notary Public for South Carolina
My Commission Expires: December 2, 2001

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney
Wanda H. Haile
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, S.C. 29201-3243
Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
M. Anne Pearce
Tara S. Taggart
Melody J. Brown
Aileen P. Clare
Katherine Carruth Link
Assistant Appellate Defenders

August 22, 2000

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: James D. Robertson v. State of South Carolina (death penalty case)

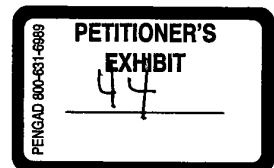
Dear Mr. Shearouse:

Please accept this letter in lieu of a formal return to the Court's request for a response to Mr. Robertson's letter to Chief Justice Toal. In that letter Mr. Robertson requested to proceed *pro se*, and to drop his direct appeal.

I met with Mr. Robertson on August 1, 2000 in a conference room at Lieber Correctional Institution. We had a rather lengthy and very pleasant discussion. Without disclosing attorney-client matters, we essentially talked about Mr. Robertson's life, and his request to Chief Justice Toal.

I explained to Mr. Robertson that his competence to waive his appeals and consent to execution would have to be tested by mental health experts. Mr. Robertson understands this fact, and the necessity for it. There are numerous mental health issues involved in this case, and Mr. Robertson also understands that I am not a psychiatrist. Consequently, I am not qualified to render a medical opinion on whether his request to drop his appeals is the result of manic depression that may be treatable, other mental illness, or a voluntary, intelligent, and competent waiver.

We also discussed State v. Torrence III, 322 S.C. 475, 473 S.E.2d 703 (1996), where Mr. Torrence was allowed to drop his appeal after a remand for a competency hearing. Mr. Torrence was found competent, and this Court also personally questioned him at oral argument to be sure his waiver was voluntarily and intelligently tendered. I explained to Mr. Robertson that Torrence III involved a situation where the appellant was almost guaranteed a new sentencing hearing pursuant to Simmons v. South Carolina, and he dropped his appeal because the only prospect of relief was a life sentence without parole. Mr. Torrence had also had a prior direct appeal from which he was granted that relief.



Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
August 22, 2000
Page two

Mr. Robertson has never had an appeal, and he understands the distinction. There has not been any appellate attorney or any appellate court review of his case. Consequently, no one can presently advise Mr. Robertson of his prospects of obtaining a new trial, or a new sentencing hearing.

I asked Mr. Robertson for his indulgence, and explained my schedule to him on August 1, 2000. I hope to give Mr. Robertson an opinion about his options on appeal after a full review of his trial transcripts in the near future. I told Mr. Robertson that I did not have any interest in delaying his case, and that I would give his case as much priority as humanly possible. Mr. Robertson agreed that he would provide me a reasonable opportunity to complete this task. Mr. Robertson also agreed that he would not request that this Court honor that his decision to proceed *pro se* and to drop his appeal unless and until he gave me prior notice that he was contemplating such a letter.

I informed Mr. Robertson that I wanted our attorney-client relationship to remain amicable, and not adversarial. I explained to Mr. Robertson that it was my understanding the state attempted to claim standing in Torrence III between the appellant and his attorney. Mr. Robertson related that the motion to proceed *pro se* was only made because he thought a defense attorney could not ethically assist a client in his desire to be executed. My relationship with Mr. Robertson remains excellent, and I hope it remains such.

Mr. Robertson has also related that there is not any animosity between us. I have always found him to be an extremely polite client. I will keep the Court advised as circumstances warrant.

Sincerely yours,


Robert M. Dudek
Assistant Appellate Defender

RMD/srw

cc: Mr. James D. Robertson
Donald J. Zelenka, Esquire

To: Bob
From: Dora

James D. Robertson SK5067
RB108, Lieber Carr. Inst.
P.O. Box 205
Ridgeville, S.C.

29472

August 28, 2000

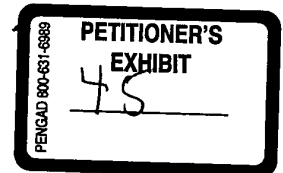
Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

RECEIVED

SEP 01 2000

S.C. SUPREME COURT

RE: James D. Robertson v. State of S.C.



Dear Mr. Shearouse:

Please excuse the informality of this handwritten letter; my typewriter is temporarily out of service. This letter serves as a response to Mr. Dudek's letter to the Court and a clarification of matters.

I was surprised and blindsided by the letter of August 22, 2000. Firstly, as of today, Mr. Dudek no longer represents me. I speak for myself and request that I be allowed to proceed pro se in future

Legal matters.

I believe that I made it very clear during our August 1st meeting that my intentions had not changed. Yes, there were mental health issues involved in my case but they were not a factor in my decision. I made this decision while still taking prescribed drugs and whether my illness is or isn't treatable isn't germane to the issue at hand.

I do not wish for there to be any review of my case nor do I wish for any advice pertaining to prospects for relief. Possible options or outcomes remain the same whether an attorney has reviewed the trial transcripts or not. I am fully aware of all potential outcomes that are feasible should the appeals proceed.

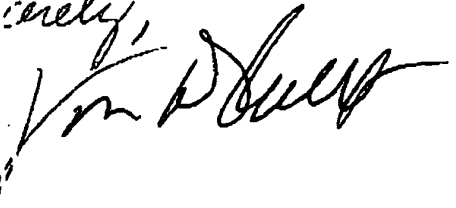
Mr. Dudek explained that he would be busy for a few weeks and therefore his response to the Court would be delayed. I did not agree to his reviewing of the transcripts and then revisiting the issue at a later date. My first letter to Chief Justice Toal was not a joke or a mistake. When I mailed it I assured that

my request would be taken seriously and honored. I did agree that I would not further contact the Court without his prior knowledge but that had nothing to do with whether I wanted the Court to honor my request.

I would like to reiterate that this decision was made voluntarily and with my senses intact. I request that any pending or future action before the Court pertaining to my appeal be disregarded unless initiated and signed by me. I request that all future correspondence be directed toward me and not Mr. Dudek.

Thank you for your time.

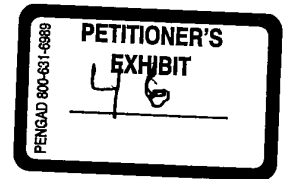
Sincerely,



James D. Robertson

cc: Charles Condon, Attorney General

Robert M. Dudek, Assistant Appellate Defender



STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
SEP 11 2000
S.C. SUPREME COURT

Certiorari to York County

John C. Hayes, III. Circuit Court Judge

JAMES D. ROBERTSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO MOTION

Undersigned counsel for petitioner would show this Court that:

1. Petitioner was convicted of two counts of murder in York County for the death of his parents, and was sentenced to death;
2. Petitioner wrote a letter to Chief Justice Toal requesting that appellate counsel be relieved, that he be allowed to proceed *pro se*, that his appeal be dismissed and his execution date set;
3. This Court requested a response to this letter from counsel;
4. Counsel met with petitioner in person, and at length, on August 1, 2000 at Lieber Correctional Institution to discuss his requests of this Court;
5. Counsel filed a written response to petitioner's letter to Chief Justice Toal. In that letter to this Court counsel carefully summarized the events of that meeting with petitioner;

6. Counsel informed petitioner, that in his opinion, this Court would order him evaluated for competency before it would allow him to dismiss his appeal, and be executed. Counsel also told petitioner that counsel was not a psychiatrist, and not competent to render an opinion on petitioner's competency. Counsel noted in his letter to this Court that there were mental health issues involved in this case, and that counsel was not competent to determine whether manic depression or other illness was driving petitioner's request to be executed;

7. Counsel also requested that petitioner not contact this Court, opposing counsel, or the solicitor again without the courtesy of letting counsel know such a action was contemplated. Counsel explained that he did not think the state had standing to invade the attorney-client relationship. However, counsel informed petitioner of his understanding that in State v. Torrence III, 322 S.C. 475, 473 S.E.2d 703 (1996), the state attempted to drive a wedge between Torrence and his appellate attorney by asserting a conflict of interest. It was that concern that led counsel to request that our discussions remain internal until counsel could further advise petitioner;

8. The only real source of misunderstanding from that meeting with petitioner appears to be counsel's request to review the transcript, and advise petitioner of possible issues on appeal. Counsel informed petitioner of his schedule in early August 2000, but promised to try and advise petitioner on as much of an expedited basis as possible. Counsel understood petitioner to agree to give counsel that opportunity. Counsel explained that the records of pre-trial hearings in this case were most inadequate, and conflicting counsel has confronted. [The numerous letters in this case about the requested transcripts are on file with the Court]. Nonetheless, it was counsel's hope that the task of rendering an opinion about the issues in this case could be accomplished without undue delay to petitioner's wishes.

9. Counsel does not disagree with petitioner's assertion that petitioner stated he wanted to be executed regardless of the possible outcome of his appeal. However, the real point, in context,

of the discussion was that in State v. Torrence, *supra*, the defendant understood that a new sentencing hearing was the probable outcome of his appeal, and he wanted to be executed anyway. Counsel explained that petitioner is not similarly situated with Torrence because petitioner has not been advised of the issues in his case, and the possible result of his appeal;

10. Counsel also does not disagree that petitioner maintained he was competent to make these life and death decisions, and that mental health issues were not a factor. However, it is not petitioner's or counsel's opinion of petitioner's competence that is determinative of that issue. Petitioner's assertion that mental health issues are not a factor furthers his present wish, and counsel is not qualified to have an opinion on the matter.

11. Counsel submits that petitioner's statement that he "was surprised and blindsided" by counsel's letter must simply be a honest misunderstanding of minor parts of a lengthy discussion. [Counsel's letter to this Court and petitioner's response are attached as Exhibit A for comparison.];

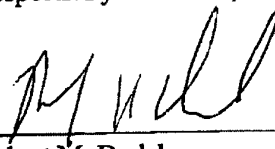
12. Petitioner has never, to the best of counsel's knowledge, been advised of the dangers of proceeding *pro se*. Counsel does not believe that petitioner will be able to present this Court, or a lower court on remand, with balanced competency information if he proceeds *pro se*. Counsel respectfully submits that a balanced presentation of expert testimony is in the best interests of petitioner, and the criminal justice system;

13. Counsel does not have any reason to delay this case. Counsel does not have any reason to frustrate petitioner's wishes if he is competent. However, counsel believes it is in petitioner's best interests, and the best interests of justice, that petitioner be represented by counsel during this process. Counsel regrets that minor misunderstandings have caused petitioner to request that he be relieved.

WHEREFORE, having responded to this Court's letter of September 1, 2000, counsel requests that this Court take such action as it deems appropriate and just to ensure that petitioner is

competent to proceed *pro se*.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

Robert M. Dudek
Assistant Appellate Defender

ATTORNEY FOR PETITIONER.

This 11th day of September, 2000

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

John C. Hayes, III. Circuit Court Judge

JAMES D. ROBERTSON,

PETITIONER,

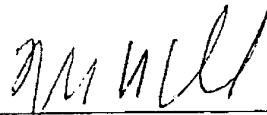
V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

I certify that a true copy of the Return to Motion in this case has been served on Donald J. Zelenka, Esquire, this 11th day of September, 2000.



Robert M. Dudek
Assistant Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 11th day
Of September, 2000.

Sandra B. Wise (L.S.)

Notary Public for South Carolina

My Commission Expires: 2-3-2005

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Saviuz, III
Deputy Chief Attorney
Wanda H. Haile
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, S.C. 29201-3243
Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
M. Anne Pearce
Tara S. Taggart
Melody J. Brown
Aileen P. Clare
Katherine Carruth Link
Assistant Appellate Defenders

August 22, 2000

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: James D. Robertson v. State of South Carolina (death penalty case)

Dear Mr. Shearouse:

Please accept this letter in lieu of a formal return to the Court's request for a response to Mr. Robertson's letter to Chief Justice Toal. In that letter Mr. Robertson requested to proceed *pro se*, and to drop his direct appeal.

I met with Mr. Robertson on August 1, 2000 in a conference room at Lieber Correctional Institution. We had a rather lengthy and very pleasant discussion. Without disclosing attorney-client matters, we essentially talked about Mr. Robertson's life, and his request to Chief Justice Toal.

I explained to Mr. Robertson that his competence to waive his appeals and consent to execution would have to be tested by mental health experts. Mr. Robertson understands this fact, and the necessity for it. There are numerous mental health issues involved in this case, and Mr. Robertson also understands that I am not a psychiatrist. Consequently, I am not qualified to render a medical opinion on whether his request to drop his appeals is the result of manic depression that may be treatable, other mental illness, or a voluntary, intelligent, and competent waiver.

We also discussed State v. Torrence III, 322 S.C. 475, 473 S.E.2d 703 (1996), where Mr. Torrence was allowed to drop his appeal after a remand for a competency hearing. Mr. Torrence was found competent, and this Court also personally questioned him at oral argument to be sure his waiver was voluntarily and intelligently tendered. I explained to Mr. Robertson that Torrence III involved a situation where the appellant was almost guaranteed a new sentencing hearing pursuant to Simmons v. South Carolina, and he dropped his appeal because the only prospect of relief was a life sentence without parole. Mr. Torrence had also had a prior direct appeal from which he was granted that relief.

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
August 22, 2000
Page two

Mr. Robertson has never had an appeal, and he understands the distinction. There has not been any appellate attorney or any appellate court review of his case. Consequently, no one can presently advise Mr. Robertson of his prospects of obtaining a new trial, or a new sentencing hearing.

I asked Mr. Robertson for his indulgence, and explained my schedule to him on August 1, 2000. I hope to give Mr. Robertson an opinion about his options on appeal after a full review of his trial transcripts in the near future. I told Mr. Robertson that I did not have any interest in delaying his case, and that I would give his case as much priority as humanly possible. Mr. Robertson agreed that he would provide me a reasonable opportunity to complete this task. Mr. Robertson also agreed that he would not request that this Court honor that his decision to proceed *pro se* and to drop his appeal unless and until he gave me prior notice that he was contemplating such a letter.

I informed Mr. Robertson that I wanted our attorney-client relationship to remain amicable, and not adversarial. I explained to Mr. Robertson that it was my understanding the state attempted to claim standing in Torrence III between the appellant and his attorney. Mr. Robertson related that the motion to proceed *pro se* was only made because he thought a defense attorney could not ethically assist a client in his desire to be executed. My relationship with Mr. Robertson remains excellent, and I hope it remains such.

Mr. Robertson has also related that there is not any animosity between us. I have always found him to be an extremely polite client. I will keep the Court advised as circumstances warrant.

Sincerely yours,


Robert M. Dudek
Assistant Appellate Defender

RMD/srw

cc: Mr. James D. Robertson
Donald J. Zelenka, Esquire

To: Bob

From: Donna

James D. Robertson Sk 5067
RB108, Lieber Carr. Inst.
P.O. Box 205
Ridgeville, S.C.

29472

August 28, 2000

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

RECEIVED

SEP 01 2000

S.C. SUPREME COURT

RE: James D. Robertson v. State of S.C.

Dear Mr. Shearouse:

Please excuse the informality of this handwritten letter; my typewriter is temporarily out of service. This letter serves as a response to Mr. Dudek's letter to the Court and a clarification of matters.

I was surprised and blindsided by the letter of August 22, 2000. Firstly, as of today, Mr. Dudek no longer represents me. I speak for myself and request that I be allowed to proceed pro se in future

Legal matters.

I believe that I made it very clear during our August 1st meeting that my intentions had not changed. Yes, there were mental health issues involved in my case but they were not a factor in my decision. I made this decision while still taking prescribed drugs and whether my illness is or isn't treatable isn't germane to the issue at hand.

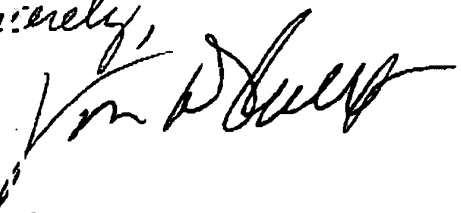
I do not wish for there to be any review of my case nor do I wish for any advice pertaining to prospects for relief. Possible options or outcomes remain the same whether an attorney has reviewed the trial transcripts or not. I am fully aware of all potential outcomes that are feasible should the appeals proceed.

Mr. Dudek explained that he would be busy for a few weeks and therefore his response to the Court would be delayed. I did not agree to his reviewing of the transcripts and then revisiting the issue at a later date. My first letter to Chief Justice Toal was not a joke or a mistake. When I mailed it I assumed that

my request would be taken seriously and honored. I did agree that I would not further contact the Court without his prior knowledge but that had nothing to do with whether I wanted the Court to honor my request.

I would like to reiterate that this decision was made voluntarily and with my senses intact. I request that any pending or future action before the Court pertaining to my appeal be disregarded unless initiated and signed by me. I request that all future correspondence be directed toward me and not Mr. Dudek.

Thank you for your time.

Sincerely,

James D. Robertson

cc: Charles Condon, Attorney General
Robert M. Dudek, Assistant Appellate Defender



Presbytery of Charlotte

5700 EXECUTIVE CENTER DRIVE, SUITE 200
CHARLOTTE, NORTH CAROLINA 28212-8801

TELEPHONE 704/535-9999

FAX 704/537-3476

The Honorable Jean Hoefler Toal
Chief Justice, South Carolina Supreme Court
1231 Gervais Street
Supreme Court Building
Columbia, South Carolina 29211

E-MAIL PRESCLT@UNIDIAL.COM

September 12, 2000



Dear Jean,

I am writing to express my concern regarding the appeal process for James D. Robertson who is on death row for the murder of his parents, as I am sure you know. Jim and his parents, Earl and Terry, were members of Oakland Avenue Church, the church I served in Rock Hill until I came to Charlotte Presbytery's staff.

I knew Terry when we were students at Agnes Scott and had just reestablished contact with her in Rock Hill when Jim killed her and his father. Through the Presbyterian network, I found a preacher in Philadelphia who visited him until he was sent back to South Carolina. Since his return, I have visited him some and written to him regularly. Both Peter Sine in Philadelphia and I have reason to believe from our conversations with him, that he acted impulsively and has had genuine remorse for his acts from the day he committed the murders. I was asked to plead for his life at his trial, but the counsel I got from his attorney led me to believe that I could not say I thought he was remorseful or that his acts were not for personal financial gain.

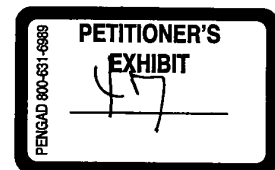
In recent weeks I have become increasingly concerned because Jim has written to tell me that he has waived all appeals and fired his attorney. He says that he is now representing himself. He further says that he is taking no medication. When he is not on medication, he suffers from severe mood swings and paranoia. His letters reflect those symptoms to me. Church members who visit him and talk with him on the phone have told me that he seems not to be thinking rationally to them, too. I have concern about whether he is mentally competent to act as his own counsel and to waive his right to appeal. I have reason to believe that he just wants to die so as not to have to live for years daily dealing with his guilt over his parents' deaths. While I can understand his motive, I wonder whether his acts serve the cause of justice for himself and for others who may be convicted under similar circumstances.

I have no clue whether it is appropriate for me to write you this letter, but I will sleep better for having shared my concern with you. Thanks for reading, and for being where you are.

Peace and blessings

Paige M. McRight

Presbyter for Leadership Development



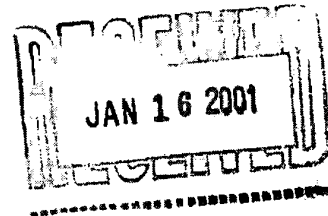


The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

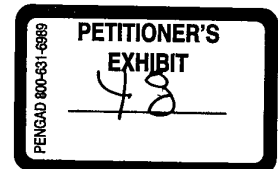
January 12, 2001

The Honorable John C. Hayes, III
Judge, Sixteenth Judicial Circuit
Moss Judicial Center
1675-1H York Highway
York, South Carolina 29745



Re: James D. Robertson v. State of South Carolina

Dear Judge Hayes:



Enclosed please find a copy of the transcripts from Mr. Robertson's trial, as well as three orders signed by Judge Keesley in The State v. Michael Torrence and the briefs of the parties in Torrence regarding the issue of an inmate's right to waive his appeal. (The latter is in response to your request for citations to other jurisdictions which have considered the right of a capital defendant to waive his appeal). By copy of this letter, I am providing a copy of all these materials to Mr. Greer, and a copy of everything except for the transcripts to Mr. Dudek, since I obtained the transcripts from him. Additional copies are available should they be requested by either counsel or any mental health expert involved in the case, and I will gladly furnish them upon request. I apologize for the delay in getting this information to you and counsel.

Also, I briefly would like to respond to Mr. Dudek's January 5, 2001, letter to you, in which he enclosed a proposed Order for the appointment of Chris Wellborn, Esquire, to act as an *amicus* or guardian. Once again, it is the State's position that there is no need for the appointment of an *amicus*; however, the Court is more than able to appoint qualified counsel to act in this role should the Court feel the need to have an attorney act in that capacity.

The Honorable John C. Hayes, III

Page 2

January 12, 2001

Please do not hesitate to contact me if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Will. Salter, III".

William Edgar Salter, III
Senior Assistant Attorney General

WES,III/shb

Enclosures

cc: Samuel P. Greer, Esquire
Robert M. Dudek, Esquire



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

February 13, 2001

The Honorable John C. Hayes, III
c/o The Honorable Donald W. Beatty
Judge, Seventh Judicial Circuit
Spartanburg County Courthouse
P. O. Box 3543
Spartanburg, South Carolina 29304

Re: The State of South Carolina v. James D. Robertson

Dear Judge Hayes:

Enclosed is a proposed Order for your signature in the above-referenced case. The only thing I bring to your attention is that the proposed Order does not suggest that the Department of Mental Health use the same examiners who evaluated Mr. Robertson previously because he was never evaluated independently. Rather, both parties hired their own experts. If you want any changes made to the proposed Order, please advise.

By copy of this letter, I am providing opposing counsel with a copy of the proposed Order.

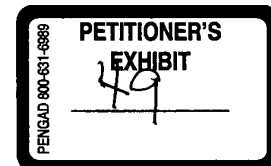
Sincerely,

William Edgar Salter, III
Senior Assistant Attorney General

WES,III/shb

Enclosure

cc: Samuel P. Greer, Esquire
Christopher A. Wellborn, Esquire
Robert M. Dudek, Esquire



STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF YORK)

STATE OF SOUTH CAROLINA,)
)
) Respondent,)
)
) vs.)
) ORDER FOR PRE-EXECUTION
) COMPETENCY EVALUATION
 JAMES R. ROBERTSON,)
)
) Defendant.)
 _____)

This matter comes before the Court by way the Order of the South Carolina Supreme Court dated October 6, 2000, which remanded the case to this Court for a full competency hearing. Specifically, the Supreme Court directed this Court to apply the standards enunciated in Singleton v. State, 313 S.C. 75, 437 S.E.2d 53 (1993), and State v. Torrence, 317 S.C. 45, 451 883 (1994). Pursuant to that order, on November 20, 2000, this Court entered a written order appointing Samuel P. Greer, Esquire, to represent the defendant. The Court subsequently entered an order appointing Christopher A. Wellborn to act as *amicus curiae*.

In Torrence, the Supreme Court held that a capital defendant may, constitutionally, waive the right of general appeal provided that he is competent and his decision is knowing and voluntary. 317 S.C. at 45, 451 S.E.2d at 883. The Court in Torrence also directed, upon remand, that the circuit court shall conduct a full hearing allowing the introduction of testimony, exhibits, and evidence, to provide a full record for the Supreme Court's evaluation. Additionally, the Supreme Court instructed the trial court that the standard to be

applied in determining Torrence's competency to waive his appeal is that enunciated in Singleton v. State, 313 S.C. 75, 437 S.E.2d 53 (1993). The Singleton case sets forth the standard for competency to be executed in South Carolina:

1. Whether the convicted defendant can understand the nature of the proceedings, what he was tried for, the reason for the punishment, or the nature of the punishment; and
2. Whether the convicted defendant possesses sufficient mental capacity or ability to rationally communicate with counsel.

Accordingly, Robertson may not be determined competent unless the hearing reveals that he meets this standard.

On January 26, 2001, Respondent made a request for the appointment of independent designated examiners from the South Carolina Department of Mental Health to evaluate James Robertson's present competency under the Singleton standards prior to any hearing.

In light of the October 6, 2000, Order of the Supreme Court requiring this Court to make findings on his competency to abandon and waive his right to a direct appeal, the Court finds that Respondent's request is well founded that an evaluation by the South Carolina Department of Mental Health should be done prior to any scheduled hearing in this matter. This Court further finds that Respondent's motion is well founded based upon the need for an evidentiary hearing by this Court pursuant to Singleton, supra.

Therefore, it is ordered that the defendant, James D. Robertson, shall be:

A. Examined and observed in an appropriate facility of the State of South Carolina to determine whether the defendant can understand the nature of the proceedings, what he was tried for, the reason for the punishment, or the nature of the punishment, and

whether the convicted defendant possesses sufficient mental capacity or ability to rationally communicate with counsel. It is further ordered that such person be examined by two qualified mental health examiners designated by the Department of Mental Health. It is suggested that the examiners have experience in capital cases.

B. It is further ordered that written reports from these designated examiners shall be provided to the Court, the Attorney General's Office, the Office of the Solicitor of the Sixteenth Circuit, Robertson's current counsel (Mr. Greer), appellate counsel (Robert M. Dudek) and to *amicus curiae* (Mr. Wellborn) as soon as practicable after the designated examiners' evaluations are completed.

C. The examiners designated by the Department of Mental Health shall be available during the week that any evidentiary hearing is scheduled to testify concerning the evaluation.

D. It is further ordered that the State of South Carolina, through the Solicitor or the Attorney General and the appointed counsel for the defendant, Mr. Greer, shall have fifteen days from the receipt of the report of the independent evaluation to move to have their own designated examiners also evaluate the defendant under the Singleton test.

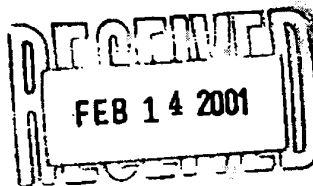
AND IT IS SO ORDERED this ____ day of February, 2001.

JOHN C. HAYES, III
Circuit Court Judge

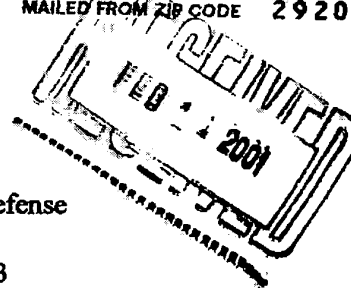
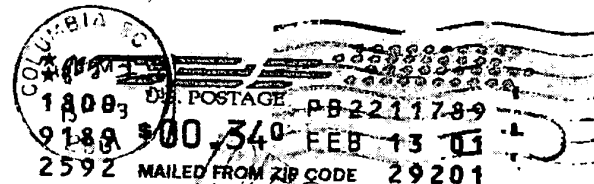
_____, South Carolina



CHARLIE CONDON
ATTORNEY GENERAL
STATE OF SOUTH CAROLINA
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA
29211-1549



Robert M. Dudek, Esquire
South Carolina Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, South Carolina 29201-3243



29201X32 65





The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

March 2, 2001

HAND DELIVERED

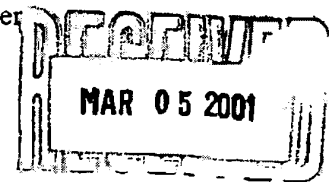
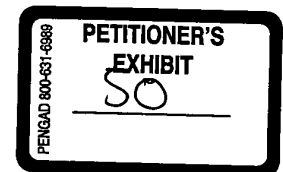
Dr. Pamela Crawford
Forensic Psychiatrist
William S. Hall Psychiatric Institute
1800 Colonial Drive
Columbia, South Carolina 29202

Re: The State v. James D. Robertson

Dear Dr. Crawford:

As requested, I am enclosing a copy of the following documents in the above-referenced case:

1. Indictments Nos. 98-GS-46-1020, 98-GS-46-1021, 98-GS-46-1022, and 98-GS-46-1023;
2. Dr. Geoffrey R. McKee's March 12, 1999, letter (with attachments) to Solicitor Thomas E. Pope;
3. July 4, 2000, letter from James D. Robertson to the South Carolina Supreme Court;
4. James D. Robertson's August 28, 2000, letter to the Honorable Daniel E. Shearouse, Clerk of the South Carolina Supreme Court;
5. The Return to Motion (with attachments) dated September 11, 2000, and signed by Robert M. Dudek;



REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, S.C. 29211-1549 • TELEPHONE: 803-734-3970 • FACSIMILE: 803-253-6283

Appellate Counsel IAC 31 of 132

5780

Dr. Pamela Crawford

Page 2

March 2, 2001

6. The Return to Motion to Relieve Counsel and Proceed Pro Se dated September 11, 2000, and prepared by Donald J. Zelenka;
7. An Order of the South Carolina Supreme Court dated October 6, 2000, directing that a competency hearing be held;
8. The February 19, 1998, transcript;
9. The November 20, 1998, transcript;
10. The December 18, 1998, transcript;
11. The February 12, 1999, transcript;
12. The March 15, 1999, trial transcript (13 volumes).

If I may provide you with any further information, please do not hesitate to contact me.

Sincerely,



William Edgar Salter, III
Senior Assistant Attorney General

WES,III/shb

Enclosures

cc: The Honorable John C. Hayes, III (without enclosures)
Samuel P. Greer, Esquire (without enclosures)
Christopher A. Wellborn, Esquire (without enclosures)
Robert M. Dudek, Esquire (without enclosures)



South Carolina
Department of
Mental Health

William S. Hall Psychiatric Institute
1800 Colonial Drive
P. O. Box 202
Columbia, S.C. 29202

James H. Scully, Jr., M. D.
Director, Division of Education,
Training, and Research
(803) 434-4266

Dalmer P. Sercy
Facility Director
(803) 898-1725

March 28, 2001

Donald J. Zelenka
Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211

RE: Robertson, James
DOB: 11/17/73

Dear Attorney Zelenka:

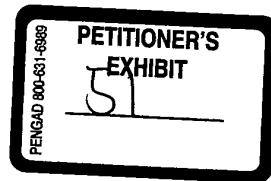
The Competency Evaluations for the above-named client has been scheduled for April 5, 2001 at 1:00 p.m. and on April 13, 2001 at 9:30 a.m. Please arrange to have your client transported to the William S. Hall Psychiatric Institute, Cooper Building on the above date and time. You may find it necessary to obtain a transport order signed by a judge directing the detention center, jail, or sheriff's department to bring the client to the appointment as we do not provide transportation. **The officers must stay in the building with your client until the evaluation is completed.**

Competency evaluations include discussion of potential evidence in criminal cases and criminal responsibility evaluations entail a discussion of the events of the alleged crime. We review Miranda Warnings prior to these evaluations. Some defendants decline the evaluation until they speak with their attorney and/or have their attorney present. For this reason we request that you discuss the evaluation with your client prior to this appointment to prevent the evaluation from having to be rescheduled.

Thank you for your cooperation and should you have any questions or concerns, please contact me at 803-898-1393 or fax me at 898-1357.

Sincerely,
Rebecca
Rebecca Woodley, asc

cc: The Honorable John C. Hayes, III
Samuel P. Greer, Esquire
Christopher A. Wellborn, Esquire
Robert M. Dudek, Esquire
Department of Correction



We will not be responsible for arranging transportation for your client (i.e., Department of Juvenile Justice, Department of Corrections, Out on Bond.)

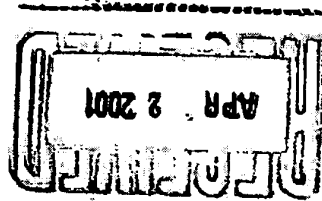
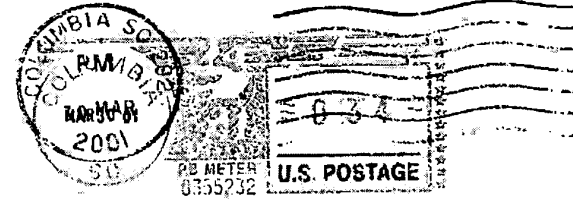
MENTAL HEALTH COMMISSION:
Elizabeth L. Forrester, Chair, Georgetown
Brenda H. Council, Orangeburg

Priscilla L. Tanner, Johnsonville
Douglas F. Gay, Rock Hill
Herman G. Green, Ph.D., Central

Lisa H. Stevens, Greenville
James E. Whitford, Sr., M.D., Vice Chair, Goose Creek



William S. Hall Psychiatric Institute
1800 Colonial Drive (P.O. Box 202), Columbia, S.C. 29202



Robert M. Dudek
Assistant Appellate Defender
South Carolina Office of Appellate Defense
Suite 940
1122 Lady Street
Columbia, SC 29201



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

April 2, 2001

VIA FACSIMILE TO 898-1357 AND U. S. MAIL

Ms. Rebecca Woodley, ASC
South Carolina Department of Mental Health
William S. Hall Psychiatric Institute
P. O. Box 202
Columbia, South Carolina 29202

Re: James Robertson
DOB: 11/17/73

Dear Ms. Woodley:

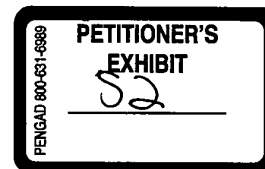
Donald Zelenka has asked me to respond to your March 28, 2001, letter to him and correct an obvious misunderstanding on your part. Neither Mr. Zelenka nor myself represent Mr. Robertson. We represent the interests of the State. Mr. Robertson, who is an inmate on Death Row, is represented by Samuel P. Greer, Esquire.

However, this office will arrange to have the South Carolina Department of Corrections transport Mr. Robertson per your request to the Cooper Building of the William S. Hall Psychiatric Institute on the dates and times specified in your letter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Will Salter".

William Edgar Salter, III
Senior Assistant Attorney General



WES,III/shb

Ms. Rebecca Woodley, ASC

Page 2

April 2, 2001

cc: The Honorable John C. Hayes, III
Samuel P. Greer, Esquire
Christopher A. Wellborn, Esquire
Robert M. Dudek, Esquire
Ms. Lynn Turbeville, Department of Corrections



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

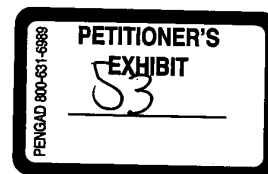
CHARLIE CONDON
ATTORNEY GENERAL

April 2, 2001

VIA FACSIMILE TO 896-2750 AND U. S. MAIL

Ms. Lynn F. Turbeville
South Carolina Department of Corrections
P. O. Box 21787
Columbia, South Carolina 29221-1787

Re: James D. Robertson, # 5067
Lieber Correctional Institution

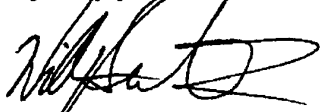


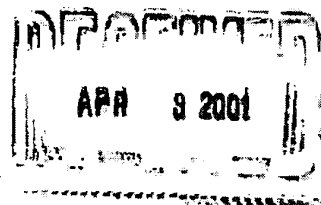
Dear Ms. Turbeville:

The above-named death row inmate is scheduled to have competency evaluations on Thursday, April 5, 2001, at 1:00 P.M. and on Friday, April 13, 2001, at 9:30 A.M., in the Cooper Building of the William S. Hall Psychiatric Institute. Enclosed is a copy of a letter from Ms. Rebecca Woodley, with the South Carolina Department of Mental Health, giving further details. Please have Mr. Robertson transported to the Cooper Building at the dates and times indicated and please arrange for the officers to stay in the building until the evaluations are completed.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,


William Edgar Salter, III
Senior Assistant Attorney General



WES,III/shb

Enclosure

REMERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, S.C. 29211-1549 • TELEPHONE: 803-734-3970 • FACSIMILE: 803-253-6283

Appellate Counsel IAC 37 of 132

5786

Ms. Lynn Turbeville

Page 2

April 2, 2001

cc: The Honorable John C. Hayes, III
Samuel P. Greer, Esquire
Christopher A. Wellborn, Esquire
Robert M. Dudek, Esquire
Ms. Rebecca Woodley, ASC
Ms. Sandi Wofford, Victim Services



State of South Carolina
The Circuit Court of the Sixteenth Judicial Circuit

JOHN C. HAYES, III
JUDGE

MOSS JUSTICE CENTER, 2ND FLOOR
1675-1 N. YORK HIGHWAY
YORK, SOUTH CAROLINA 29745-7434
(803) 628-3047
FAX: (803) 628-3055

April 6, 2001

The Honorable Chief Justice Jean H. Toal
The Supreme Court of South Carolina
Post Office Drawer 12456
Columbia, South Carolina 29211

RE: James D. Robertson

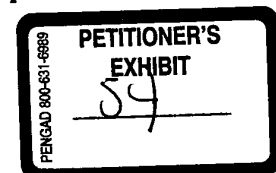
Dear Chief:

This is a follow-up to my March 23rd letter regarding James D. Robertson.

First, I handled this probably in haste, as I was in the middle of a death penalty case in York (the retrial of Bobby Lee Holmes). I understand the Attorney General's Office has filed some type of petition with the Court regarding the issues with which we are now faced. I am unsure of the exact relief requested but am told that the Attorney General's position is that Mr. Robertson has unalterably waived his right to an appeal and that I should continue my assigned task regarding Mr. Robertson's competency to proceed pro se. While Mr. Robertson's affidavit seeks to relieve Mr. Dudek as counsel, the affidavit is silent as to whether he wishes to proceed pro se or with substitute counsel.

Based on the somewhat confused posture of this matter and on my belief that the Court will be looking at all of these issues soon (per a telephone call with Debbie in the Supreme Court Clerk's Office), I will continue to await the Court's guidance.

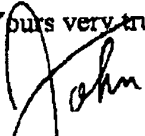
By copy of this letter to all counsel, I am suggesting that, if the attorneys have any information that would assist us in posturing this matter, they immediately fax it to both the Supreme Court and me.



The Honorable Chief Justice Jean H. Toal
April 6, 2001
Page Two

With kindest regards, I am

Yours very truly,



John C. Hayes, III

JCH/pkb

cc: William Edgar Salter, III, Esquire (via facsimile transmittal only)
Robert M. Dudek, Esquire (via facsimile transmittal only)
Samuel P. Greer, Esquire (via facsimile transmittal only)
Christopher A. Wellborn, Esquire (via facsimile transmittal only)
Debbie, Supreme Court Clerk's Office (via facsimile transmittal only)



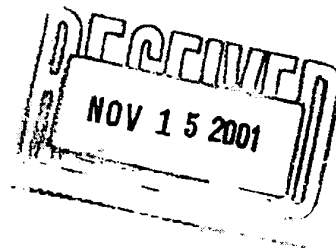
The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
(803) 734-1080
FAX (803) 734-1499

November 15, 2001

Assistant Appellate Defender Robert M. Dudek
Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201



Re: Robertson, James D. v. State

Dear Counsel:

Enclosed is the order issued in the above entitled matter.

Please be advised that the petitioner's initial brief and designation of matter should be served and filed within sixty (60) days of the date of this letter.

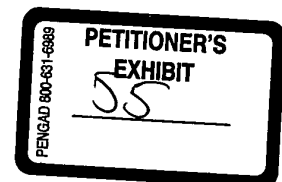
Very truly yours,

CLERK

DES/dmh

Enclosure

cc: ✓ Deputy Chief Attorney Joseph L. Savitz, III
Mr. James D. Robertson
Assistant Deputy Attorney General Donald J. Zelenka
The Honorable John C. Hayes, III



The Supreme Court of South Carolina

James D. Robertson, Petitioner,

v.

State of South Carolina, Respondent.

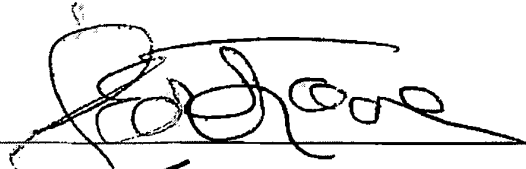
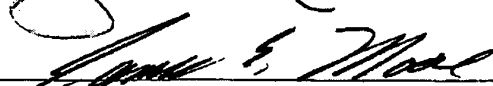
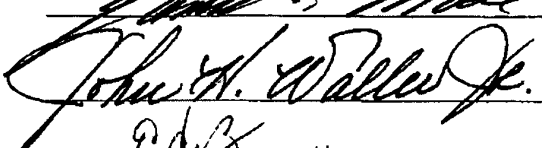
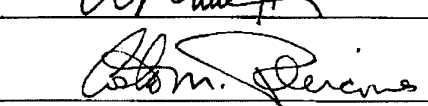
ORDER

After petitioner moved to proceed pro se and drop his appeal, this Court remanded the matter to Judge Hayes to hold a hearing on petitioner's competency to make those decisions. Judge Hayes reported to the Court that petitioner did wish to pursue his appeal, but that he wished to relieve Robert Dudek of the Office of Appellate Defense as his counsel. Because it was unclear whether petitioner still wished to proceed pro se, the matter was again remanded to Judge Hayes to make this determination.

Judge Hayes has now filed a second report indicating that petitioner wants Dudek relieved and another attorney appointed to represent him. Dudek is hereby relieved as counsel for petitioner, and Deputy Chief Attorney Joseph L. Savitz, III of the South Carolina Office of Appellate

Defense is appointed to represent petitioner in this matter.

IT IS SO ORDERED.

 C.J.
 J.
 J.
 J.
 J.

Columbia, South Carolina

November 15, 2001



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

May 16, 2002

Mr. James D. Robertson
SK5067
RB 205 Lieber Correctional
P. O. Box 205
Ridgeville, SC 29472

Re: Robertson, James D. v. State

Dear Mr. Robertson:

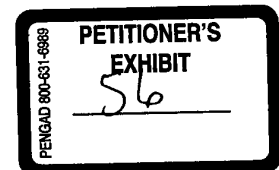
The following Order has been endorsed on your Motion to Relieve Counsel and Appoint New Counsel in the above entitled case on appeal.

“Motion to Relieve Counsel and
Appoint New Counsel is denied.

s/ Jean H. Toal C.J.
For the Court

May 16, 2002.”

By copy of this letter we are advising opposing counsel that the respondent's initial brief and designation should be served and filed within thirty (30) days of the date of this letter.



Mr. James D. Robertson
Page Two
May 16, 2002

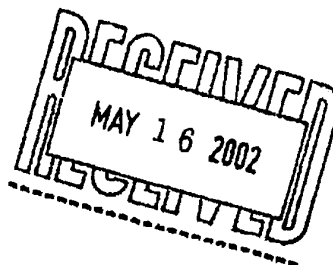
Very truly yours,

Brenda J. Shealy

DEPUTY CLERK

BFS/dmh

cc: Deputy Chief Attorney Joseph L. Savitz, III
Senior Assistant Attorney General William Edgar Salter, III



COPY

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, S.C. 29201-3243

Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Tara S. Taggart
Aileen P. Clare
Katherine Carruth Link
Eleanor Duffy Cleary
Assistant Appellate Defenders

June 12, 2002

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED
2002 JUN 12 PM 4:13
SC SUPREME COURT

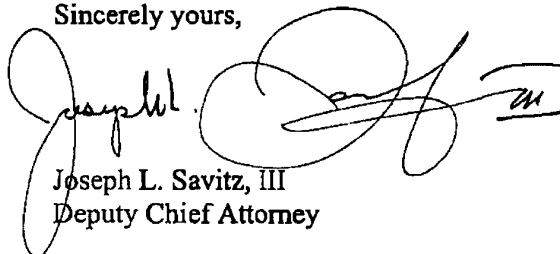
Re: The State v. James D. Robertson (capital case)

Dear Mr. Shearouse:

I am responding to Mr. Robertson's letter of June 3, demanding that I be relieved as his appellate counsel so he can proceed *pro se*. I take no position on his request, one way or the other. I should point out that I have not explained the dangers of self-representation – his likely execution – to Mr. Robertson.

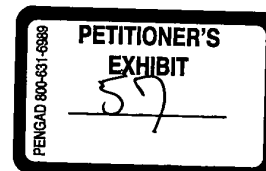
As always, I remain at the Court's service.

Sincerely yours,


Joseph L. Savitz, III
Deputy Chief Attorney

JLS,III/srw

cc: Mr. James D. Robertson
Donald J. Zelenka





State of South Carolina
The Circuit Court of the Sixteenth Judicial Circuit

RECEIVED

2002 OCT 29 PM 9: 21

JOHN C. HAYES, III
JUDGE

MOSS JUSTICE CENTER, 2ND FLOOR
1675-1H YORK HIGHWAY
YORK, SOUTH CAROLINA 29745-7423
(803)628-3047
FAX: (803)628-3055

October 28, 2002

The Hon. Daniel E. Shearouse
Clerk of Court
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: James D. Robertson v. State

Dear Mr. Shearouse:

Enclosed please find my report on James D. Robinson.

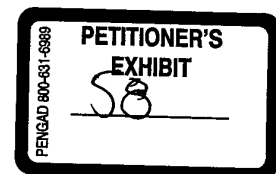
With kind regards, I am

Yours very truly,


John C. Hayes, III

JCHIII/fjk
Enclosures

cc: Deputy Chief Attorney Joseph L. Savitz, III
Senior Assistant Attorney General William Edgar Salter, III
Honorable Thomas E. Pope, Solicitor
Bruce M. Poore, Esquire.
James D. Robertson



STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
JAMES D. ROBERTSON,)
Petitioner,)
vs.)
STATE OF SOUTH CAROLINA,)
Respondent,)

RECEIVED
IN THE COURT OF GENERAL SESSIONS
2002 OCT 29 PM 9: 21
SC SUPREME COURT
Report to the
Supreme Court of
South Carolina

This matter comes before the Court by way the Order of the South Carolina Supreme Court dated June 26, 2002. This matter was remanded to the undersigned for a determination of James D. Robertson's ("Robertson") competency to proceed *pro se* in the appellate process and waive his right to counsel. A hearing was held in York County on October 10, 2002. Robertson was represented by Bruce M. Poore, Esq. of Rock Hill, SC. The State was represented by the Office of the Attorney General, William Edgar Salter, III, Esq., Senior Assistant Attorney General. After a forty minute hearing, the Court took the matter under advisement.

STANDARD OF REVIEW

To decide if Robertson should be allowed to go forward in the appellate process *pro se* the Court must evaluate Robertson's competency. According to the United States Supreme Court Robertson must be (1) advised of his right to counsel and (2) adequately warned of the dangers of self-representation. *Gardner v. State* 2002 WL 31007518 (S.C. 2002) citing *Prince v. State*, 301 S.C. 422, 392 S.E.2d 492 (1990) (citing *Faretta v.*

je-7/11

California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). The hearing was to decide whether, under *Faretta v. California*, Robertson's Sixth Amendment right to counsel has been knowingly and intelligently waived. 95 S.Ct. 2525 (1975). It is well established that someone may waive his right to counsel and proceed *pro se*. *State v. Reed*, 503 S.E.2d 747, 750 (S.C. 1998) citing *Faretta* at 2545.

Further, Robertson's position as a capital defendant does not prohibit him from knowingly and intelligently waiving his right to counsel. *State v. Brewer*, 492 S.E.2d 97, 99 (S.C. 1997) citing *State v. Brown*, 347 S.E.2d 882 (S.C. 1986). The ultimate test of a knowing and intelligent waiver is Robertson's understanding of waiving counsel and continuing *pro se*. The trial judge's responsibility is to inform Robertson of the dangers and disadvantages of self-representation. *Reed* at 750. Accordingly, Robertson may not be determined competent unless the hearing reveals that he meets this standard.

GENERAL ANALYSIS

To determine his understanding of what it meant to waive appointed counsel and continue *pro se* Robertson was extensively questioned by his counsel, the State, and the Court. First, Robertson was advised of his right to counsel by his attorney. Mr. Poore asked:

Q: All right sir, Mr. Robertson, do you understand that you have a right to the services of an attorney and in fact an attorney has been appointed for you to handle your appeal?

A: Yes, I do.

Q: You understand you have a right to represent yourself on appeal?

A: Yes, I do.

9/7/72

Q: All right. And do you want to represent yourself or do you want to be represented by an attorney?

A: I wish to represent myself. (TR 6, LL 1-12)

The Court asked a similar line of questions to confirm the answers given during Mr. Poore's examination (TR 24, L 2 thru TR 25, L 2). Robertson's answers to the Court reflected the same interest in continuing the appellate process *pro se* that he expressed during Mr. Poore's examination.

Second, Robertson was advised, by Mr. Poore, of the dangers involved with self-representation. Mr. Poore asked:

Q: You understand those lawyers (Robertson's appellate attorneys) are trained and experienced lawyers in handling cases of this type?

A: Yes, sir.

Q: All right. Do you understand that there is some risk associated in firing your lawyers and representing yourself?

A: Yes, sir.

Q: You understand that there is a risk that that act itself could cause you to lose your appeal?

A: Yes.

Q: All right. If you, what do you understand to be the results if you lose your appeal?

A: Sentence to death will be carried out.

Q: All right, sir. And are you willing to undertake that risk?

A: Yes, I am. (TR 7, LL 2-24)

Dec 7/14 3

The Court questioned Robertson concerning the dangers of self-representation in a similar manner and Robertson's answers reinforced his intention to continue *pro se* aware of the inherent dangers (TR 24, L 2 thru TR 25, L 2).

Robertson has adequate intelligence (I.Q. between 110-120, TR 17, LL 19-23) and education (some college, TR 7, L 25 thru TR 8, L 3) to make an intelligent knowing waiver of his right to counsel.

Robertson understands why he has been sentenced to death and the consequences of same (TR 9, L 24 thru TR 11, L 2). He also understands that *pro se* he will be required to comply with the Rules of Court (TR 25, LL 11-25).

While he does have some mental health issues (TR 8, L 4 thru TR 9, L 23), Robertson is taking medication and receiving counseling. The Court finds to the degree mental health issues are present they do not create an issue as to Robertson's competency. Robertson is fully capable and competent to act knowingly and intelligently on his own behalf.

Robertson's answers during the hearing are sufficient evidence of the knowledge and intelligence necessary to waive his right to counsel and continue *pro se* in the appellate process. Throughout the hearing Robertson's answers to questions illustrated his awareness of the dangers and disadvantages of self-representation. *Wroten v. State*, 391 S.E.2d 575 (S.C. 1990) citing *Faretta* at 2541, 45. The record of the hearing establishes his knowledge of what he is attempting to do and that his choice is being made with his eyes open. *Id.*

Oct 4

The issue of stand-by counsel was discussed with Robertson during the hearing. Although not asking for stand-by counsel, Robertson stated he does not object to stand-by counsel being made available to him. To address this issue, the Court asked:

Q: All right. Now I was going to ask you about stand-by counsel but you've already answered that question and you said you would not want stand-by counsel. Would you object to stand-by counsel?

A: No sir. (TR 20, L 25 thru TR 21, L 5)

CONCLUSION

The record from the hearing demonstrates Robertson's decision to continue *pro se* was made with the knowledge of his right to counsel and an understanding of the risks of self-representation. Robertson's knowledge and understanding satisfy the requirements of a voluntary intelligent waiver of counsel. *Wroten v. State*, citing *Fitzpatrick v. Wainwright*, 800 F.2d 1057, 1065 (11th Cir. 1986). Robertson did not simply provide pro forma answers to pro forma questions by his counsel, the State, or the Court. His answers during the hearing reflected the requisite understanding of the issues related to the hearing. Robertson's decision can be made intelligently, understanding the consequences, without the decision truly being considered by the Court, a wise one.

Therefore, the Court finds that the petitioner, James D. Robertson, is competent to proceed in the appellate process *pro se* and waive his Sixth Amendment right to counsel. Further, it is recommended that stand-by counsel be provided to aid Robertson on appeal.

J. H. S.

HERE ENDS THIS REPORT.

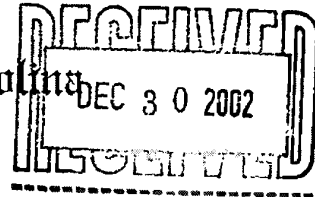

John C. Hayes, III
Presiding Judge

6

October 28, 2002
York, South Carolina

Note: The transcript of record of the October 10, 2002 hearing is filed herewith.

The Supreme Court of South Carolina



James D. Robertson,

Petitioner

v.

State of South Carolina,

Respondent.

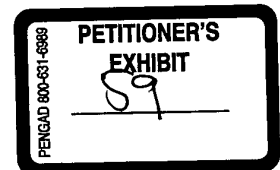
The Honorable John C. Hayes, III
York County

Trial Court Case No. 1998-GS-46-1020
1998-GS-46-1021
1998-GS-46-1022
1998-GS-46-1023

ORDER

For good cause having been shown, the time for serving and filing
appellant's pro se initial brief and designation of matter in the above entitled
matter is hereby extended until February 5, 2003.

IT IS SO ORDERED.



JEAN H. TOAL, CHIEF JUSTICE

BY Brenda A. Shealy
DEPUTY CLERK

Columbia, South Carolina

December 30, 2002

cc: ✓ Deputy Chief Attorney Joseph L. Savitz, III
Mr. James D. Robertson, #SK 5067
Senior Assistant Attorney General William Edgar Salter, III



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 5, 2003

REGULAR AND CERTIFIED MAIL

Mr. James D. Robertson, #SK 5067
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

Re: Robertson, James D. v. State

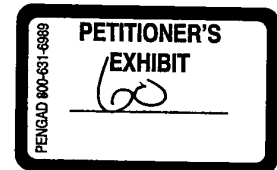
Dear Mr. Robertson:

Enclosed is the order issued in the above entitled matter.

By copy of this letter and order, we are advising all interested parties of the action by the Court.

Very truly yours,

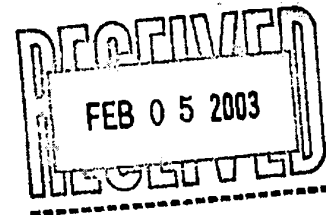
CLERK



DES/dmh

Enclosure

cc: ✓ Deputy Chief Attorney Joseph L. Savitz, III
James W. Boyd, Esquire
James W. Hancock, Jr., Esquire
Senior Assistant Attorney General William Edgar Salter, III



The Supreme Court of South Carolina

James D. Robertson,

Petitioner,

v.

State of South Carolina,

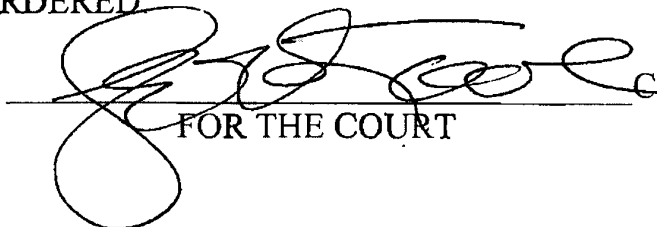
Respondent.

ORDER

Petitioner's Initial Brief (IB) and Designation of Matter (DOM) are due on February 5, 2003. He asks this Court for an indefinite extension of at least six months in which to serve and file his IB and DOM so that he may obtain his file from his trial attorney. The request for an indefinite extension is denied.

Within ten (10) days of the date of this order, petitioner's trial counsel shall provide petitioner with the contents of his file in this matter. Petitioner shall, within thirty (30) days after he receives the file from trial counsel, serve and file his IB and DOM.

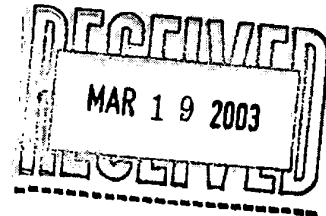
IT IS SO ORDERED


C.J.
FOR THE COURT

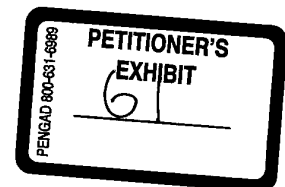
Columbia, South Carolina

February 5, 2003

JAMES D. ROBERTSON SK5067
RA126 L.C.I.
P.O. BOX 205
RIDGEVILLE, SC 29472



MR. JOSEPH D. SAVITZ, III
S.C. OFFICE OF APPELLATE DEFENSE
1122 LADY STREET, SUITE 940
COLUMBIA, SC 29201



JAMES D. ROBERTSON SK5067
RA126 U.C.I.
P.O. BOX 205
RIDGEVILLE, SC 29472

MARCH 16, 2003

THE SUPREME COURT OF S.C.
P.O. BOX 11330
COLUMBIA, SC 29211

RE: ROBERTSON, JAMES D. V. STATE

DEAR COURT:

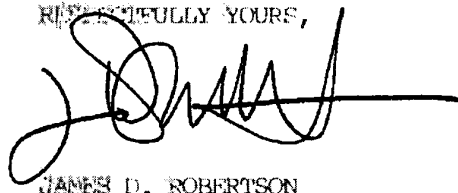
THANK YOU FOR YOUR ASSISTANCE IN THE MYSTERY OF MY RELOCATION. I AM UNABLE TO GET ANY ANSWERS. I HAVE ON SEVERAL OCCASIONS EXPLAINED MY PENDING LEGAL ACTION AND POINTED OUT THE LACK OF A DESK OR SUFFICIENT SPACE WITH WHICH TO PERUSE VOLUMES OF DOCUMENTS. AS IT IS NOW I HAVE CLEARED A PATH FROM THE DOOR TO THE BED. OFFICIALS HERE ARE TAKING AN INDIFFERENT ATTITUDE TOWARD MY PLEAS AND HAVE GIVEN NO INDICATION OF WHEN THIS "OBSERVATION" MIGHT CEASE. AS I RELATED IN MY PREVIOUS LETTER OF MARCH 10, 2003, SINCE I'VE BEEN GIVEN NOTHING TO RULE IT OUT, I MUST CONCLUDE THAT THERE IS A POSSIBILITY THAT EITHER OR A COMBINATION OF SCDC, LIEBER CORRECTIONAL INSTITUTION, OR THE GUARDS ARE ATTEMPTING TO SABOTAGE MY ATTEMPT TO PROCEED WITH APPELLATE MATTERS.

ON MARCH 3, 2003 THIS COURT INFORMED ME THAT IT HAD BEEN ADVISED BY MY TRIAL ATTORNEY THAT HE HAD PROVIDED ME A COPY OF THE CASE FILE. FURTHER, THIS COURT INFORMED ME THAT THE INITIAL BRIEF AND DESIGNATION OF MATTER SHOULD BE FILED WITHIN THIRTY (30) DAYS. I THINK THAT YOUR ACCEPTANCE OF TRIAL COUNSEL'S WORD IS NOBLE BUT I RESPECTFULLY DISAGREE. YES, HE DID RECENTLY DROP OFF ANOTHER BOX OF DOCUMENTS. HOWEVER, THIS QUEST OF MINE IS APPROACHING IT'S FIFTH YEAR AND I HAVE NO REASON TO BELIEVE THAT I POSSESS EVERYTHING. I HAVE NO CONFIDENCE THAT ALL THE SUDDEN HE HAD A CHANGE OF HEART AND

RELINQUISHED EVERYTHING NOW. HE HAS NOW BEEN SERVED WITH A COPY OF JAMES D. ROBERTSON V. JAMES W. HANCOCK AND I BELIEVE IT TO STILL HAVE MERIT. I CERTAINLY HAVE NOT RECEIVED ALL OF THE PROPERTY SOUGHT IN THE SUIT. HE EITHER POSSESSES THE PROPERTY IN QUESTION OR DID POSSESS IT AT SOME TIME BETWEEN MY FIRST REQUEST IN AUGUST 1998 AND PRESENT. I FEEL SURE THAT THIS WILL BE RESOLVED IN THE VERY NEAR FUTURE.

FOR THE REASONS OUTLINED ABOVE, I HEREBY MOTION AND PRAY THIS COURT TO GRANT AN EXTENSION OF NO LESS THAN SIXTY (60) DAYS FOR SERVICE AND FILING OF PRO SE INITIAL BRIEF AND DESIGNATION OF MATTER. IN THE EVENT MY MOTION IS DENIED THEN IN ALL LIKELIHOOD THE CURRENT DEADLINE OF APRIL 2, 2003 WILL PASS WITHOUT AN INITIAL BRIEF BEING FILED. I BELIEVE THAT I AM AWARE OF THE CONSEQUENCES. THANK YOU FOR YOUR TIME AND CONSIDERATION. I REMAIN,

RESPECTFULLY YOURS,

A handwritten signature in black ink, appearing to read 'J. D. Robertson', with a long horizontal flourish extending to the right.

JAMES D. ROBERTSON

CC: DEPUTY CHIEF ATTORNEY JOSEPH L. SAVITZ, III
SENIOR ASSISTANT ATTORNEY GENERAL WILLIAM EDGAR SALTER, III

OFFICE OF THE ATTORNEY GENERAL
STATE OF NEW YORK
ALBANY, NY 12242
90.100.006
ALBANY, NY 12242

RECEIVED

MAR 18 2003

MAILROOM
LIEBER CI

SCDC

MAR 21 2003

MAIL ROOM



29201+3243 85



The Supreme Court of South Carolina

James D. Robertson, Petitioner

v.

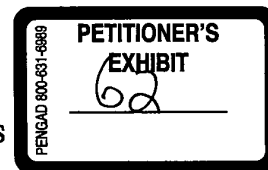
State of South Carolina, Respondent.

The Honorable John C. Hayes, III
York County
Trial Court Case No. 1998-GS-46-1020
1998-GS-46-1021
1998-GS-46-1022
1998-GS-46-1023

ORDER of DISMISSAL

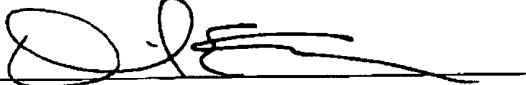
The above entitled case is pending on appeal in this Court. Due to the failure of appellant to timely serve and file the Appellant's Initial Brief and Designation of Matter in the above matter, as provided for in Rule 208(a)(1) of the South Carolina Appellate Court Rules and this Court's order dated March 20, 2003,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in the case will be sent to the Clerk of Court for York County after (15) days, exclusive of the date of filing this Order.



JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

May 27, 2003

cc: ✓ Deputy Chief Attorney Joseph L. Savitz, III
Mr. James D. Robertson (Regular and Certified Mail)
Senior Assistant Attorney General William Edgar Salter, III
The Honorable Thomas E. Pope

COPY

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, S.C. 29201-3243

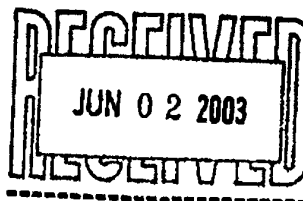
Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Tara S. Taggart
Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

May 30, 2003

The Honorable Daniel E. Shearouse, Clerk
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: State v. James D. Robertson



Dear Mr. Shearouse:

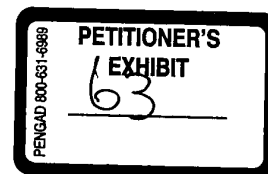
I spoke with Mr. Robertson yesterday (May 29) and informed him that the Court had dismissed his appeal due to his failure to file an initial brief and designation of matter within the time limits established by the Court. I also explained that he had until June 11 to petition the Court to reinstate the appeal. Finally, I advised Mr. Robertson that I thought it would be in his best interest to ask the Court to reappoint me as counsel for his direct appeal.

Thank you for your courtesy and cooperation. Please let me know if the Court wishes me to take any further action in connection with this matter.

Sincerely,

A handwritten signature in black ink, appearing to be "Joseph L. Savitz, III".

Joseph L. Savitz, III
Deputy Chief Attorney



JLS,III/kde

cc: James D. Robertson
William Edgar Salter, III



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

June 25, 2003

REGULAR AND CERTIFIED MAIL

Mr. James D. Robertson
SK5067
RB 205 Lieber Correctional
P. O. Box 205
Ridgeville, SC 29472

Re: Robertson, James D. v. State

Dear Mr. Robertson:

Enclosed is the order issued in the above entitled matter.

By copy of this letter and order, we are advising all interested parties of the action by the Court.

Very truly yours,

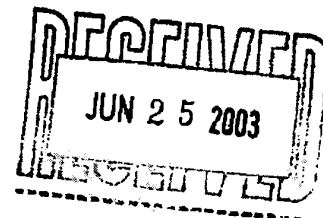
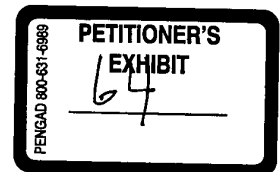


CLERK

DES/dmh

Enclosure

cc: ✓ Deputy Chief Attorney Joseph L. Savitz, III
Senior Assistant Attorney General William Edgar Salter, III



The Supreme Court of South Carolina

James D. Robertson,

Petitioner,

V.

State of South Carolina,

Respondent.

ORDER

By order dated May 27, 2003, this Court dismissed this matter for petitioner's failure to serve and file his Initial Brief (IB) and Designation of Matter (DOM). Petitioner now asks that his appeal be reinstated and that he be given sufficient time to resolve the issue of trial counsel's failure to provide petitioner with his file before serving and filing his IB and DOM.

The request to reinstate this matter is granted. Trial counsel has advised this Court that he has provided petitioner with the entire contents of his file. Accordingly, there is no reason to further delay this matter based on petitioner's need for his file. Petitioner shall, within thirty (30) days of the date of this order, serve and file his IB and DOM. No further extensions will be granted to petitioner for service and filing of his IB and DOM.

for service and filing of his IB and DOM.



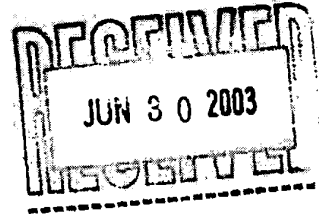
C. J.

FOR THE COURT

Columbia, South Carolina

June 25, 2003

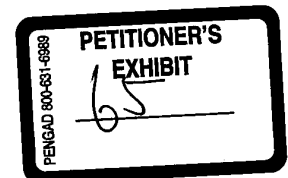
JAMES D. ROBERTSON
SK5067 RA133 LCI
P.O. BOX 205
RIDGEVILLE, SC 29472



JUNE 26, 2003

THE SUPREME COURT OF SOUTH CAROLINA
P.O. BOX 11330
COLUMBIA, SC 29211

RE: ROBERTSON, JAMES D. V. STATE



DEAR COURT:

I AM IN RECEIPT OF YOUR ORDER DATED JUNE 25, 2003. WHILE I AM APPRECIATIVE OF THE REINSTATEMENT OF MY APPEAL, THE FAILURE OF THIS COURT TO RECOGNIZE MY DIFFICULTY IN OBTAINING MY FILE FROM TRIAL COUNSEL HAS RENDERED THE REINSTATEMENT MOOT—IN MY EYES.

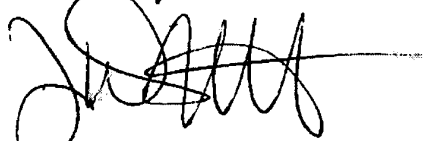
I WOULD LIKE TO BRIEFLY REITERATE MY POINT. I DO NOT KNOW WHETHER THERE IS ANYTHING IN THE FILE GERMANE TO MY APPEAL. WHAT I DO KNOW IS THAT ANYONE ELSE REPRESENTING ME WOULD HAVE HAD, AT THE VERY LEAST, ACCESS TO THE FILE. UNTIL I HAVE EVERYTHING IN FRONT OF ME AND AM BETTER ABLE TO UNDERSTAND THE LEGAL ISSUES WITHIN THE TRIAL, I CANNOT MAKE AN INFORMED DECISION CONCERNING MY APPEAL. IF THERE WAS NOT ALMOST 5 YEARS OF HISTORY, I MIGHT BE A LITTLE MORE INCLINED TO BELIEVE TRIAL COUNSEL'S EXPLANATION TO THE COURT. I HAVE NO REASON WHATSOEVER TO BELIEVE TRIAL COUNSEL. IT TOOK HIM ALMOST 4 YEARS TO TURN OVER THE FIRST DOCUMENT. HE HAS NOW RETAINED A FIRM TO DEFEND HIM AGAINST MY SUIT. AGAIN THERE MAY BE NOTHING TO HELP ME BUT I BELIEVE THAT

SINCE I AM IN CHARGE OF MY APPEAL THAT I AM ALSO IN THE POSITION TO DECIDE WHAT IS OR IS NOT IMPORTANT TO MY APPEAL. I WOULD LIKE TO APOLOGIZE FOR RESPECTING OUR SYSTEM AND THE OFFICERS OF THE COURT PRESENT AT MY TRIAL. I HAVE BEEN LET DOWN BY EVERY MEMBER OF THE LEGAL PROFESSION I HAVE ENCOUNTERED FROM ARRAIGNMENT TO PRESENT WITH THE EXCEPTION OF THE COUNSEL APPOINTED TO REPRESENT ME AT THE COURT ORDERED COMPETENCY HEARING.

I CAN TELL YOU NOW THAT THIS LATEST AND FINAL DEADLINE IMPOSED BY THIS COURT WILL PASS WITHOUT ANY ACTION ON MY PART. YOU MIGHT AS WELL NOTIFY YORK COUNTY AND THE STATE TO BEGIN THE PROCESS THAT WILL RESULT IN THE SENTENCE OF DEATH BEING CARRIED OUT. I WILL MAINTAIN MY RIGHT TO THIS FILE UNTIL THE END. I THINK I WILL TAKE A PEEK AT THE CONSTITUTION--SEEMS LIKE A SURE-FIRE WAY TO GET THE COURT'S ATTENTION THESE DAYS.

THANK YOU FOR YOUR TIME.

SINCERELY,



JAMES D. ROBERTSON

CC: DEPUTY CHIEF ATTORNEY JOSEPH L. SAVITZ, III ✓
SENIOR ASSISTANT ATTORNEY GENERAL WILLIAM EDGAR SALTER, III



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

July 9, 2003

Mr. James D. Robertson
SK5067
RB 205 Lieber Correctional
P. O. Box 205
Ridgeville, SC 29472

Re: Robertson, James D. v. State

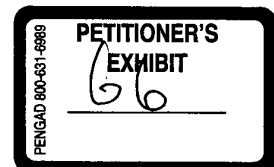
Dear Mr. Robertson:

Enclosed is the order issued in the above entitled matter.

Very truly yours,



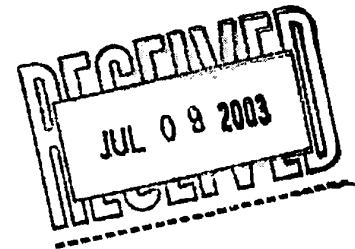
CLERK



DES/dmh

Enclosure

cc: Deputy Chief Attorney Joseph L. Savitz, III ✓
Senior Assistant Attorney General William Edgar Salter, III



The Supreme Court of South Carolina

James D. Robertson,

Petitioner,

v.

State of South Carolina,

Respondent.

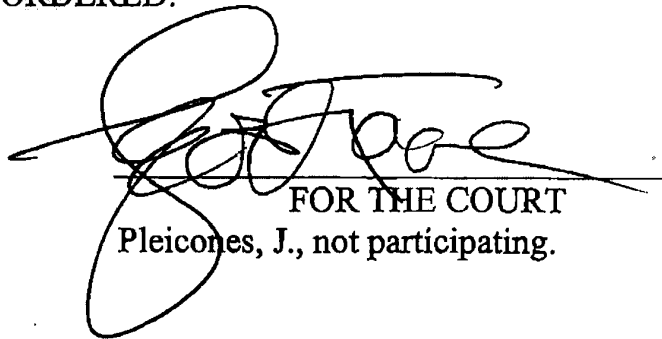
ORDER

By order dated June 25, 2003, this Court reinstated petitioner's appeal in this matter, denied petitioner's request for an extension until he could obtain his file from trial counsel, granted petitioner thirty days to serve and file his Initial Brief (IB) and Designation of Matter (DOM), and advised petitioner that no further extensions would be granted for the service and filing of the IB and DOM.

Petitioner has now sent a letter to the Court continuing his complaint that he has not obtained his file from trial counsel. He states that the deadline for filing his IB and DOM will pass without any action on his part because he does not believe that counsel has provided him with all of the documents from his file. We construe this letter as a request for rehearing.

A petition for rehearing on a motion will not be entertained by this Court unless the Court's action on the motion effectively dismisses or finally decides a party's appeal. Rule 221(c), SCACR. Because the June 25th order of this Court did not finally decide petitioner's appeal, we deny petitioner's request for rehearing. We find that counsel has released the entire contents of his file to petitioner. Accordingly, petitioner has presented no reason for any further delay in proceeding with this matter. Petitioner shall serve and file his IB and DOM by July 25, 2003.

IT IS SO ORDERED.

 C. J.
FOR THE COURT
Pleicones, J., not participating.

Columbia, South Carolina

July 9, 2003

COPY

South Carolina Office of Appellate Defense

Joseph L. Savitz, III
Acting Chief Attorney

Wanda P. Hagler
Acting Deputy Chief Attorney

1205 Pendleton Street, Room 306
Columbia, S.C. 29201

Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Tara S. Taggart
Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

January 30, 2004

Honorable Kenneth A. Richstad
Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

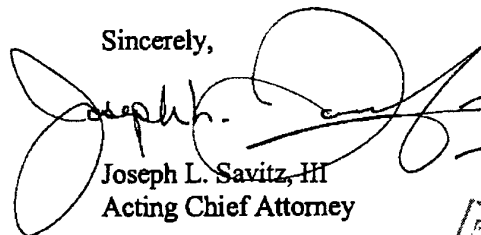
Re: The State v. James D. Robertson

Dear Mr. Richstad:

I am writing on behalf of James Robertson. After speaking with him today, he informed me that he has not completed the record on appeal for filing with this Court. Therefore, I am respectfully requesting an extension until March 1, 2004, on his behalf.

By copy of this letter, I am informing William Edgar Salter, III, of the Attorney General's Office, of this request.

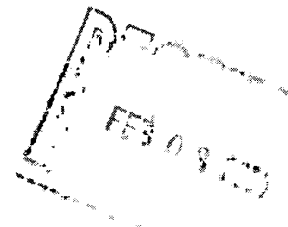
Sincerely,


Joseph L. Savitz, III
Acting Chief Attorney



JLS,III/kde

cc: William Edgar Salter, III
James D. Robertson #5067



JAMES D. ROBERTSON
SK5067 RA232 LCI
P.O. BOX 205
RIDGEVILLE, S.C. 29472

MAY 6, 2004

THE SUPREME COURT OF SOUTH CAROLINA
P.O. BOX 11330
COLUMBIA, S.C. 29211

RE: JAMES D. ROBERTSON V. STATE

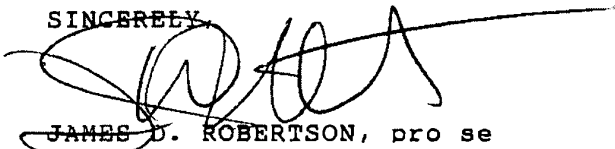
DEAR COURT:

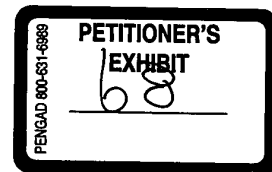
PLEASE FIND ENCLOSED, FOR FILING, THE RECORD ON APPEAL REGARDING THE ABOVE-REFERENCED MATTER.

ALSO, PLEASE NOTE THAT I AM AWAITING THE COURT'S RESPONSE TO MY LETTER OF APRIL 15, 2004 CONCERNING PAYMENT OF LEGAL EXPENSES AND PRIVELEGED COMMUNICATION.

BY COPY OF THIS LETTER, I HEREBY SERVE WILLIAM EDGAR SALTER, III, OF THE S.C. ATTORNEY GENERAL'S OFFICE, WITH A COPY OF THE RECORD ON APPEAL.

SINCERELY,


JAMES D. ROBERTSON, pro se



ENCLOSURE

CC: ACTING CHIEF ATTORNEY JOSEPH L. SAVITZ, III ✓
SENIOR ASSISTANT ATTORNEY GENERAL WILLIAM EDGAR SALTER, III

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM YORK COUNTY

JOHN C. HAYES, III, CIRCUIT COURT JUDGE

TRIAL COURT CASE NO. 1998-GS-46-1020
1998-GS-46-1021
1998-GS-46-1022
1998-GS-46-1023

JAMES D. ROBERTSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RECORD ON APPEAL

JAMES D. ROBERTSON, pro se
SK5067 RA232 LCI
P.O. BOX 205
RIDGEVILLE, SC 29472

WILLIAM EDGAR SALTER, III
SENIOR ASSISTANT ATTORNEY GENERAL
P.O. BOX 11549
COLUMBIA, SC 29211
ATTORNEY FOR THE RESPONDENT

INDEX

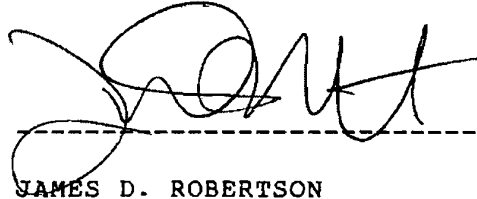
STATEMENT OF THE PETITIONER, MAY 6, 2004.....	1

STATEMENT OF PETITIONER

DUE TO THE FAILURE OF MY TRIAL ATTORNEY, JAMES W. HANCOCK, JR., TO TURN OVER MY CASE FILE, I AM UNABLE TO PUT TOGETHER THE NECESSARY DOCUMENTS. I HAVE PERSONALLY SEARCHED THROUGH THE ENTIRETY OF WHAT WAS TURNED OVER TO ME AND DID NOT FIND THE DOCUMENTS NEEDED TO PERFECT RECORD ON APPEAL.

PLEASE LET THIS STATEMENT SERVE AS THE RECORD ON APPEAL. I CERTIFY THAT THIS STATEMENT IS TRUE AND IS RELEVANT TO THIS APPEAL.

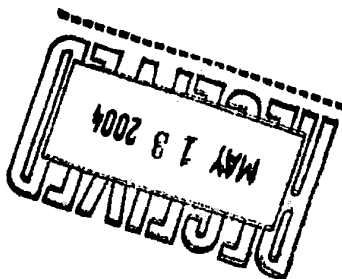
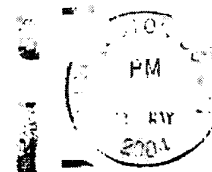
MAY 6, 2004



JAMES D. ROBERTSON

SK5067 RA237 LCI
P.O. BOX 205
RIDGEVILLE, SC 29472
PETITIONER, pro se

JAMES . ROBERTSON
SK506, RA232 LCI
P.O. BOX 205
RIDGEVILLE, SC 29472



JOSEPH L. SAVITZ, III
OFFICE OF APPELLATE DEFENSE
1205 PENDLETON ST.
COLUMBIA, SC 29201

SCDC

MAY 22 2004

MAIL ROOM

29201+3731 76



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The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

May 13, 2004

REGULAR AND CERTIFIED MAIL

Mr. James D. Robertson
SK5067
RB 205 Lieber Correctional
P. O. Box 205
Ridgeville, SC 29472

Re: Robertson, James D. v. State

Dear Mr. Robertson:

Enclosed is the order issued in the above entitled matter.

Please be advised that all necessary documents for the record on appeal must be provided to the Office of Appellate Defense within twenty (20) days of the date of this letter.

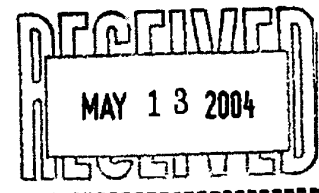
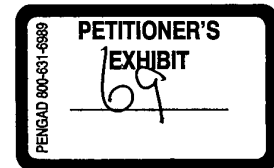
By copy of this letter, we are advising their office that the record on appeal must be served and filed within thirty (30) days of the date of this letter.

Very truly yours,

Brenda F. Shealy
CHIEF DEPUTY CLERK

BFS/dmh

Enclosure



Mr. James D. Robertson
Page Two
May 13, 2004

cc: ✓ Deputy Chief Attorney Joseph L. Savitz, III
Senior Assistant Attorney General William Edgar Salter, III

The Supreme Court of South Carolina

James D. Robertson,

Petitioner,

v.

State of South Carolina,

Respondent.

ORDER

Petitioner seeks an order allowing him to communicate confidentially with and pay for the services of anyone he deems necessary concerning his appeal. Because the Initial Briefs have already been prepared and filed, no further investigation, research, or communication is necessary for petitioner to serve and file the Record on Appeal and his Final Brief. Accordingly, petitioner's request is denied.



C. J.
FOR THE COURT

Columbia, South Carolina

May 13, 2004

JAMES D. ROBERTSON
SK5067 RA232 LCI
P.O. BOX 205
RIDGEVILLE, SC 29472

MAY 17, 2004

THE SUPREME COURT OF SOUTH CAROLINA
P.O. BOX 11330
COLUMBIA, SC 29211

RE: JAMES D. ROBERTSON V. STATE

DEAR COURT:

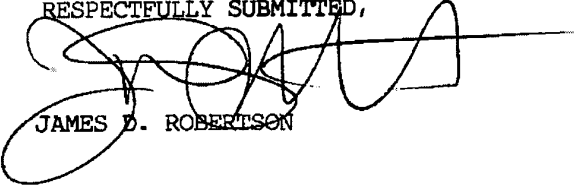
PLEASE LET THIS LETTER SERVE AS A MOTION TO RECONSIDER THIS COURT'S ORDER OF MAY 13, 2004 AS WELL AS A RESPONSE TO THIS COURT'S LETTER OF MAY 13, 2004.

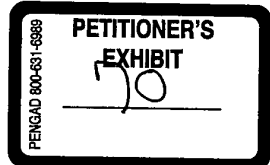
I RESPECTFULLY DISAGREE WITH THE COURT'S DENIAL OF MY REQUEST. IT REMAINS MY POSITION THAT I SHOULD BE ALLOWED, AMONG OTHER THINGS, TO COMMUNICATE AND SEEK ADVICE OF ANYONE AT ANYTIME DURING THE APPELLATE PROCESS BEFORE THIS COURT. I ASSERT THAT COUNSEL FOR THE STATE WILL BE PERMITTED TO RETAIN THE SERVICES OF AND COMMUNICATE WITH ANYONE THEY DEEM NECESSARY. THERE IS NO REASON THAT I SHOULDN'T BE AFFORDED THE SAME OPPORTUNITY. WITHOUT EQUAL OPPORTUNITY TO ACCESS, I AM BEING DENIED MEANINGFUL ACCESS TO THE COURT.

IN RESPONSE TO THE COURT'S LETTER REGARDING THE SERVICE AND FILING OF THE RECORD ON APPEAL, I STATE, AGAIN, THAT THE NECESSARY DOCUMENTS CANNOT BE PRODUCED. THE RECORD ON APPEAL IN THE ABOVE-REFERENCED MATTER HAS BEEN FILED WITH THE COURT AND SERVED ON COUNSEL FOR THE RESPONDENT. IT IS ACCURATE AND I DO NOT WISH TO AMEND OR WITHDRAW IT.

BY COPY OF THIS LETTER, I AM INFORMING WILLIAM EDGAR SALTER, III, OF THE S.C. ATTORNEY GENERAL'S OFFICE, OF MY REQUEST AND RESPONSE.

RESPECTFULLY SUBMITTED,

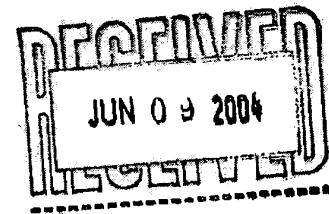

JAMES D. ROBERTSON



THE SUPREME COURT OF SOUTH CAROLINA
PAGE TWO
MAY 17, 2004

CC: ACTING CHIEF ATTORNEY JOSEPH L. SAVITZ, III ✓
SENIOR ASSISTANT ATTORNEY GENERAL WILLIAM EDGAR SALTER, III

JAMES D. ROBERTSON
SK 5067 RA232 LCI
P.O. BOX 205
RIDGEVILLE, SC 29472



JUNE 7, 2004

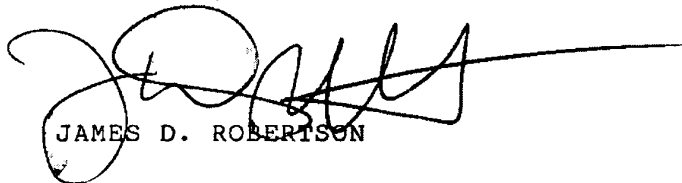
S.C. OFFICE OF APPELLATE DEFENSE
JOSEPH L. SAVITZ, III
1205 PENDLETON ST., ROOM 306
COLUMBIA, SC 29201

DEAR MR. SAVITZ:

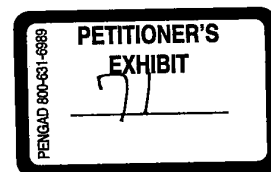
I WANTED TO MAKE SURE MY INTENTIONS CONCERNING THE RECORD ON APPEAL WERE CLEAR TO YOU. I HAVE FILED THE RECORD ON APPEAL. I DO NOT WISH FOR YOU TO FILE ANYTHING FURTHER WITH THE COURT. I HAVEN'T PROVIDED YOU WITH ANY MATERIAL WITHIN THE PRESCRIBED TIME LIMIT AND THEREFORE I EXPECT THAT YOU WILL HAVE NOTHING FURTHER TO FILE WITH THE COURT.

THIS ISN'T PERSONAL. IT'S JUST THAT I HAVE FILED WHAT I WISH TO BE CONSIDERED AS THE RECORD ON APPEAL IN THIS CASE AND I HAVE NO DESIRE TO AMEND OR SUPPLEMENT IT. THANK YOU FOR YOUR TIME.

SINCERELY,

A handwritten signature in black ink, appearing to be "James D. Robertson", written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

JAMES D. ROBERTSON



JAMES D. ROBERTSON
5067 RA232 LCI
P.O. BOX 205
RIDGEVILLE, SC 29472

SCDC

JUN 26 1988

MAIL ROOM

S.C. OFFICE OF APPELLATE
DEFENSE

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Assistant Appellate Defenders

January 30, 2004

Honorable Kenneth A. Richstad
Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

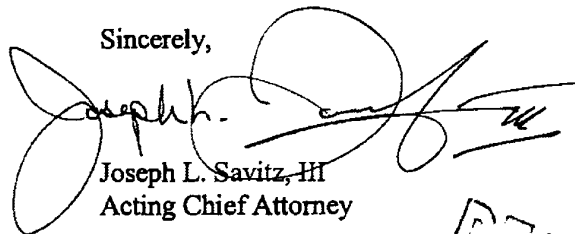
Re: The State v. James D. Robertson

Dear Mr. Richstad:

I am writing on behalf of James Robertson. After speaking with him today, he informed me that he has not completed the record on appeal for filing with this Court. Therefore, I am respectfully requesting an extension until March 1, 2004, on his behalf.

By copy of this letter, I am informing William Edgar Salter, III, of the Attorney General's Office, of this request.

Sincerely,



Joseph L. Savitz, III
Acting Chief Attorney

JLS,III/kde

cc: William Edgar Salter, III
James D. Robertson #5067

