ALAN WILSON
ATTORNEY GENERAL

May 31, 2024

The Honorable Beulah G. Roberts
Clarendon County Clerk of Court
Post Office Box 136
Manning, South Carolina 29102

Re: Anthony Woods v. State of South Carolina
Case No. 2018-CP-14-382
Capital PCR Action

Dear Ms. Roberts:

Enclosed please find, for filing in your office, Respondent's Response in Opposition to Motion to Proceed *Ex Parte* in Funding Matters, along with a Certificate of Service in reference to the above-mentioned case.

Thank you for your assistance in this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Melody J. Brown
Senior Assistant Deputy Attorney General

MJB/abb
Enclosure

cc: The Honorable Benjamin H. Culbertson (via email and US Mail)
Emily Paavola, Esquire (via email and US Mail)
Lindsey S. Vann, Esquire (via email and US Mail)
Victim Advocacy Division (with copy of enclosures)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	
Anthony Woods,	)	C/A No. 2018-CP-14-00382
	)	(Capital PCR Action)
Applicant,	)	
v.	)	RESPONSE IN OPPOSITION TO
	)	MOTION TO PROCEED
State of South Carolina,	)	*EX PARTE* IN FUNDING MATTERS
	)	
Respondent.	)	
	)	

The captioned case is a capital post-conviction relief (PCR) action filed on September 19, 2018. In the action, Applicant claims he is intellectually disabled and exempt from execution pursuant to *Atkins v. Virginia*, 536 U.S. 306 (2002), and *Franklin v. Maynard,* 356 S.C. 276, 588 S.E.2d 604 (2003). Applicant has now filed a motion to proceed *ex parte* in funding matters. [1] Respondent submits, consistent with the Supreme Court of South Carolina's treatment of the issue, that an *ex parte* funding procedure is not authorized, and the motion must be denied:

1. "Ex parte communications are strongly disfavored." *A & I, Inc. v. Gore*, 366 S.C. 233, 241, 621 S.E.2d 383, 387 (Ct. App. 2005). A matter may not be heard *ex parte* unless it falls within limited exceptions. *See* Rule 501, SCACR, Canon 3(B)(7). One such exception covers those matters "expressly authorized by law" to be considered *ex parte.* Canon 3(B)(7)(e). Applicant's request for *ex parte* communications, motions and orders related to funding is not "expressly authorized by law" in this PCR action. Thus, Applicant's request to allow *ex parte*

[1] This matter was previously summarily dismissed by order dated June 3, 2019. Applicant appealed, and the Supreme Court of South Carolina remanded for additional proceedings on the application. *Woods v. State*, No. 2019-001713, 2019 WL 6898088, at *1 (S.C. Dec. 18, 2019). Because there was no need for factual development in the prior disposition, this is the first time the issue of *ex parte* funding procedure has been before this Court.

funding proceedings pursuant to S.C. Code §§ 17-27-160 and 16-3-26[2] does not satisfy the provision that would allow *ex parte* funding procedures.

2. The first case to discuss and explain the distinction between the authorization for *ex parte* submissions on behalf of a criminal defendant as provided in S.C Code § 16-3-26, and the absence of such authorization in PCR process, appears to be *Thames v. State,* 325 S.C. 9, 478 S.E.2d 682 (1996). (Attachment 1). In *Thames*, our Supreme Court considered, and rejected, the concept that the *ex parte* provisions in § 16-3-26 were applicable to post-conviction proceedings:

> When a defendant requests expert services for a criminal trial, the request is determined by the judge in *ex parte* proceedings. S.C.Code Ann. § 16–3–26(C) and § 17–3–50(B) (Supp.1995); *Ex parte Lexington County,* 314 S.C. 220, 442 S.E.2d 589 (1994). These statutory provisions are, however, inapplicable to post-conviction relief proceedings.
>
> Section 16–3–26(C), which is limited to capital cases, applies to "the representation of the defendant whether in connection with issues relating to guilt or sentence." **Therefore, this provision applies only to the capital trial itself and not to post-conviction relief proceedings.** While § 17–3–50(A) mentions that the same hourly rates for appointed counsel shall apply to post-conviction proceedings, the use of the word "defendant" throughout § 17–3–50(B) indicates that it applies only to the criminal trial itself and not to post-conviction relief actions. Accordingly, the post-conviction relief judge in this case properly conducted a hearing on the motion at which counsel for the State was allowed to fully participate.

Thames, 325 S.C. at 11, 478 S.E.2d at 682 n. 1 (emphasis added).

Critically, each time the Supreme Court has considered whether such *ex parte* proceedings in collateral actions are allowed, it has continued to adhere to its resolution in *Thames*, including in capital PCR actions.

---

2 (*See* Motion at 1 and 3-4). Further, Respondent submits that citing to both statutes is an implicit admission there is not a clear, stand-alone provision in the PCR statute that expressly allows Applicant the *ex parte* proceedings he seeks.

3. In *State v. Stanko,* Appellate Case No. 2015-000212, a capital post-conviction relief action from Horry County, the State made a similar request under *Thames.* Counsel for the applicant sought intervention and "oversight" by our Supreme Court in the matter of funding. By Order dated February 25, 2015, the Court denied the petition, reasoning that the circuit court could "ably address[]" the matter. (Attachment 2, Order, Appellate Case No. 2015-000212 (filed February 25, 2015)). Notably, though, the Court added that "the issue of *ex parte* proceedings in PCR matters, which is at the heart of the petition currently before this Court, was addressed in *Thames v. State,* 325 S.C. 9, 478 S.E.2d 682 (1986) [scrivener's error (1996)], and **such proceedings were found to be improper.**" (Attachment 2 at n. 2) (emphasis added). The Court has been clear – both in *Thames* and in *Stanko* – that funding requests filed *ex parte* are, without exception, improper in a collateral, PCR action. Further, the distinction shown in *Thames* and embraced in *Stanko* has been applied by our Supreme Court in another type of collateral proceeding.

4. In *Sanders v. State*, Appellate Case Number 2022-000351, the petitioner, as part of an original jurisdiction action, requested *ex parte* for our Supreme Court to authorize services of a legal expert and payment of fees. Again, the Court relied on *Thames* and its reasoning to find:

> ... the motion was improperly filed *ex parte* in this collateral action. *See Thames v. State,* 325 S.C. 9, 11 n.1 , 478 S.E.2d 682, 682 n.1 (1996) (holding the statutes providing for *ex parte* determinations of requests for expert services apply only in criminal trials and not in post-conviction relief proceedings); S.C. Code Ann. § 1 6-3-26(C) (2015) (providing for an *ex parte* determination of the necessity of payment for expert services in capital cases that are "reasonably necessary for the representation of *the defendant* whether in connection with issues relating to guilt or sentence" (emphasis added)); S.C. Code Ann . § 17 -3-50(B) (2014) (although § 17-3-50(A) requires the same hourly rates for appointed counsel to apply in post-conviction relief proceedings, paragraph (B) authorizes an *ex parte* determination that expert services are "reasonably necessary for the representation of *the defendant*" and uses the term

> "defendant" throughout the section, thereby indicating *ex parte* determinations are not required in post-conviction relief proceedings (emphasis added)).

(Attachment 3, Order, Appellate Case No. 2022-000351 (filed June 8, 2022), at p. 2).

Though it ultimately denied the State's motion to strike the improperly filed *ex parte* motion simply because it became moot upon denial of the funding request, the Court's finding the motion was improperly filed *ex parte* is plainly set out.

5. In light of the statute and our Supreme Court's consistent treatment of *ex parte* motions in collateral proceedings as improper, there is little left to be said. However, Respondent also notes that two circuit court orders in capital PCR matters reflect the acknowledgment of that same bar to *ex parte* requests, *Stanko v. State*, Case Number 2014-CP-26-035 (Horry County) (dated February 27, 2014) (motion to unseal granted without argument) (Attachment 4), *Stanko v. State*, Case Number 2008-CP-22-1446 (Georgetown County) (dated March 14, 2018)(consent order to unseal citing *Thames*) (Attachment 5); and, Respondent is aware of other consent orders to unseal in non-capital PCR actions on the same basis, *see Simpson v. State*, Case Number 2020-CP-39-0617 (consent order unsealing citing *Sanders*) (Attachment 6); *Massey v. State*, Case Number 2020-CP-23-2134 (opposing counsel provided copy of sealed order and consented to unsealing) (Attachment 7).

6. Respondent acknowledges that there have been circuit court judges that have allowed the *ex parte* procedure, sometimes with simple notice to Respondent; however, these are not consistent with the statute or, critically, our Supreme Court's decision and its continued application and acknowledgement of the prohibition.[3] Consequently, other circuit court orders

---

[3] Applicant relies upon such contrary rulings. (*See* Motion at 3, 5, and Exhibits B, C and D). In those cases, Applicant must concede that Respondent consistently asserted the same argument that the Supreme Court acknowledged was correct in the *Stanko* and *Sanders* matters

that are in contrast to the Supreme Court's decision are not controlling nor could they be persuasive in light of those decisions. The authority from our Supreme Court, necessarily, is controlling.

7. Applicant alternatively submits Due Process and Equal Protection grant him an independent basis for *ex parte* proceedings. (*See* Motion, at 7-11). But Applicant's offered precedent does not support his assertion. First, the precedent cited is geared toward securing funding at the trial level. (*See* Motion at 10). Second, where the precedent references *ex parte* procedures, as acknowledged in *Thames* and reasserted in *Sanders*, the provisions are directed toward a *defendant, i.e.,* procedures at the trial level. The parties are in a wholly different position here than in a trial setting – the trial is the "main event" for determining the facts and whether the State has carried its burden of proof. *See Wainwright v. Sykes*, 433 U.S. 72, 90 (1977) (referencing "the state trial on the merits" as "the 'main event,' so to speak"); *see also Thames, supra* ("Section 16–3–26(C), which is limited to capital cases, applies to "the representation of the defendant whether in connection with issues relating *to guilt or sentence.*") (emphasis added). Collateral proceedings need not be afforded at all, nor all constitutional trial protections afforded a defendant if such proceedings are offered. *See Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987) ("States have no obligation to provide" post-conviction relief actions "and when they do, the fundamental fairness mandated by the Due Process Clause does not require that the State supply a lawyer as well."). And, if such proceedings are allowed, there is no guarantee of funding under any theory posited. Even so, Applicant's motion goes beyond the simple ability to request funding and alleges

---

and that there is no appellate opinion in those cited cases to signal acceptance of the contrary circuit court interpretation. Even Applicant does not assert allowing *ex parte* procedure is settled by these lower court opinions. (*See* Motion at 1). Moreover, Respondent would point out that the referenced State's appeal on the matter in the *Inman* [a/k/a Inmon] case was dismissed as interlocutory, not as a ruling on the merits. The only direction from our Supreme Court is that the process is not authorized.

a right to *ex parte* (disfavored) proceedings to obtain that funding and to discuss and disclose "privileged" information with the fact-finder. The Constitution cannot be stretched that far. At bottom, though, Applicant can still seek funding here, he simply must do so by open proceedings. *Thames, supra.*

8. Notably, in capital post-conviction relief proceedings, the civil discovery rules apply automatically. S.C. Code Ann. § 17-27-150 (B). After services of ordinary discovery requests, Applicant is required to disclose relevant matter whether as to claim or defense. *See* Rule 26 (b)(1), SCRCP. The objections to privilege, if any, may be handled in ordinary course. *See* Rule 26(b)(5) and (c). However, this action is extremely limited. Only one condition is at issue: intellectual disability.[4] Further, the relevant details of background, family, and testing are matters uniquely held by the Applicant making discovery uniquely difficult for the responding party, the State.[5] This has been recognized in another pending action in which the circuit court found "substantial need" for disclosure of case preparation materials under the provisions of Rule 26(b)(3), SCRCP. (Attachment 8, *Stone v. State*, Sept. 26, 2023 Order). Of note is this finding:

---

[4] The only exception to the successiveness and time bar that has been recognized within this action has applied to Applicant's current application and his narrow and precise issue regarding intellectual disability and potential exemption from execution pursuant to *Atkins*. *Woods v. State,* No. 2019-001713, 2019 WL 6898088, at *1 (S.C. Dec. 18, 2019). No other issue or condition may be litigated. Indeed, our Supreme Court limited the scope of the hearing to existing application. *Id. See also Prince v. Beaufort Mem'l Hosp.,* 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011) (on remand from the appellate court, "[t]he trial court has a duty to follow the appellate court's directions") (citing *Ackerman v. McMillan,* 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct.App.1996)).

[5] To the extent Applicant may assert his counsel could offer potential facts from conversations with him, the Court should be aware that DDSN concluded that Applicant, though cooperative, was "not deemed to be a reliable historian" 'who readily changed his answers when they were challenged," such that the examiner determined those assertions were unreliable. (Attachment 9 at 10). Further, if facts are known, they should be disclosed timely in discovery anyway.

> The Court agrees that information held by individuals best known to the Applicant is critical. The reason that the Applicant wanted a qualified and trained investigator was to find and collect information relevant to adaptive functioning.

(Attachment 8 at 6).

Again, the request is likely to be similar here: a request for an expert trained to collect additional data on functioning. Further, if Applicant has any indication of a fact or information that goes to the claim or defense, that should be timely disclosed to prevent undue delay in the litigation and, critically, a reliable result. Timing aside (which the rules provide must be "prompt[]," Rule 26(e), SCRCP), Applicant agrees that discovery will be due, yet also argues that notice of a motion for funding would give the State a "windfall" of some sort. (*See* Attachment 9). Any possibility of "windfall" is far from clear. Again, this action is limited to one condition; the parties are aware that experts will be used; and strategy is limited to showing intellectual disability.

9. Further, Applicant has already submitted to evaluation by the South Carolina Department of Disabilities and Special Needs which found: "Based on the totality of the data, it is the opinion of this examiner that Mr. Anthony Woods does not meet the diagnostic criteria for intellectual disability (mental retardation) as defined in the South Carolina Code of Laws." (Attachment 9, DDSN, May 2013 Report at 17). In making that report, the parties presented copious materials and Applicant underwent additional testing. (Attachment 9 at 2-4). A lengthy history – family and medical – was reviewed within the report. (Attachment 9 at 4 – 10).[6] In other words, Applicant is not beginning a new action with a fresh slate. These materials exist and decrease the need to withhold materials from the opposing party for strategic purposes.

---

[6] Our Supreme Court has found such history of prior known facts and tests is relevant for a court's consideration of funding requests. *See Thames,* at 11, 478 S.E.2d at 683.

10. Lastly, to the extent that Applicant bases his request on the need to satisfy the requirements for payments through the Office of Indigent Defense, Respondent offers that this Court may hold a hearing with the parties and counsel for indigent defense to set a path to allow sufficient requests without unnecessary argument which would avoid the need for *ex parte* submission at all. Alternatively, this Court could allow redaction of names of experts consulted but not retained for testimony, or even request that the Supreme Court of South Carolina appoint a circuit court judge for evaluation of such requests to avoid *ex parte* communication in total. However, *ex parte* funding requests are not "expressly authorized," thus are prohibited. Our Supreme Court applies the prohibition in collateral matters, and this Court should as well.

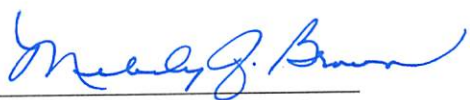
THEREFORE, based on the foregoing, the motion should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
mbrown@scag.gov

By: 
MELODY J. BROWN

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

May 31, 2024

ATTORNEYS FOR RESPONDENT

Index of Attachments to the Response

1. *Thames v. State,* 325 S.C. 9, 478 S.E.2d 682 (1996);

2. *State v. Stanko,* Order, Appellate Case No. 2015-000212 (filed February 25, 2015);

3. *Sanders v. State*, Order, Appellate Case Number 2022-000351(filed June 8, 2022);

4. *Stanko v. State*, Case Number 2014-CP-26-035 (Horry County) (dated February 27, 2014) (motion to unseal granted without argument);

5. *Stanko v. State*, Case Number 2008-CP-22-1446 (Georgetown County) (dated March 14, 2018)(consent order to unseal citing *Thames*);

6. *Simpson v. State,* Case Number 2020-CP-39-0617 (consent order unsealing citing *Sanders*);

7. *Massey v. State*, Case Number 2020-CP-23-02134 (opposing counsel provided copy of sealed order and consented to unsealing);

8. *Stone v. State*, Case Number 2018-CP-43-01025, Sept. 26, 2023 Order on Respondent's Motion to Compel;

9. DDSN Report, May 2013.

325 S.C. 9
Supreme Court of South Carolina.

Ruth Ann THAMES, Petitioner,
v.
STATE of South Carolina, Respondent.

No. 24535.
|
Submitted May 15, 1996.
|
Decided Dec. 2, 1996.

Synopsis
Postconviction relief petitioner filed motion seeking authorization for payment of psychiatrist fees to be used in support of her claim of mental incompetency at time of her guilty plea. The Circuit Court, Oconee County, Gerald C. Smoak, J., denied motion. On writ of certiorari, the Supreme Court held that postconviction relief judge acted within his discretion in denying petitioner's motion, given that petitioner had already been examined by two experts at time of her guilty plea.

Affirmed.

West Headnotes (3)

[1] **Costs, Fees, and Sanctions** ⇐ Medical or psychiatric witnesses or assistance
Trial court acted within its discretion in denying postconviction relief petitioner's motion for payment of psychiatrist fees, which were to be used in support of petitioner's claim that she was mentally incompetent at time of her guilty plea, given that petitioner had already been examined by two experts at time of her plea; mere possibility that petitioner could find expert somewhere to support her claim of incompetency was insufficient to warrant authorization of funds to pay expert.

1 Cases that cite this headnote

[2] **Costs, Fees, and Sanctions** ⇐ Expert witnesses or assistance in general
Postconviction relief judge properly conducted hearing on petitioner's motion for payment of expert witness fees at which counsel for state was allowed to fully participate, rather than holding ex parte hearing. Code 1976, §§ 16-3-26(C), 17-3-50(B).

[3] **Costs, Fees, and Sanctions** ⇐ Expert witnesses or assistance in general
When defendant requests expert services for criminal trial, request is determined by judge in ex parte proceedings. Code 1976, §§ 16-3-26(C), 17-3-50(B).

Attorneys and Law Firms

**682 *10 Assistant Appellate Defender Robert M. Dudek, of S.C. Office of Appellate Defense, Columbia, for petitioner.

Attorney General Charles Molony Condon, Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Teresa Nesbitt Cosby, and Assistant Attorney General Allen Bullard, Columbia, for respondent.

Opinion

PER CURIAM:

This matter is pending before the Court on a petition for a writ of certiorari seeking review of an order denying petitioner's application for post-conviction relief. We deny the petition as to Question 2, grant the petition as to Question 1, dispense with further briefing, and affirm the order of the post-conviction *11 relief judge.

[1] Petitioner filed a motion seeking authorization for the payment of expert witness fees in connection with her post-conviction relief action. She asserts that the post-conviction relief judge erred in denying her motion. We disagree.

[2] [3] Petitioner had been examined by two psychiatrists prior to her guilty plea, one of whom was retained by trial counsel. Both had opined that she was competent both at the time the crime was committed and at the time of

her plea. At the post-conviction relief hearing, counsel for petitioner stated that petitioner sought to be examined by a third psychiatrist to support her claim of mental incompetency at the time of her guilty plea. Petitioner contended that the two psychiatrists who examined her prior to her plea had not spent sufficient time with her to adequately evaluate her mental state. The post-conviction relief judge ruled that since petitioner had been examined by two experts at the time of her guilty plea there was no need to have a third examination. [1]

**683 In our opinion, the post-conviction relief judge did not abuse his discretion in denying petitioner's motion. *Cf. State v. Matthews*, 291 S.C. 339, 353 S.E.2d 444 (1986). Petitioner had been examined by two experts prior to trial and the mere possibility that petitioner could find an expert somewhere to support her claim of incompetency at the time of her plea is insufficient to warrant the authorization of funds to pay an expert. *See Primeaux v. Leapley*, 502 N.W.2d 265 (S.D.1993) (in habeas proceeding, no error in failing to appoint expert who would testify that pretrial psychiatric examination was inadequate).

*12 Accordingly, the order of the post-conviction relief judge is affirmed.

AFFIRMED.

All Citations

325 S.C. 9, 478 S.E.2d 682

Footnotes

1 When a defendant requests expert services for a criminal trial, the request is determined by the judge in *ex parte* proceedings. S.C.Code Ann. § 16–3–26(C) and § 17–3–50(B) (Supp.1995); *Ex parte Lexington County*, 314 S.C. 220, 442 S.E.2d 589 (1994). These statutory provisions are, however, inapplicable to post-conviction relief proceedings.

Section 16–3–26(C), which is limited to capital cases, applies to "the representation of the defendant whether in connection with issues relating to guilt or sentence." Therefore, this provision applies only to the capital trial itself and not to post-conviction relief proceedings. While § 17–3–50(A) mentions that the same hourly rates for appointed counsel shall apply to post-conviction proceedings, the use of the word "defendant" throughout § 17–3–50(B) indicates that it applies only to the criminal trial itself and not to post-conviction relief actions. Accordingly, the post-conviction relief judge in this case properly conducted a hearing on the motion at which counsel for the State was allowed to fully participate.

End of Document

The Supreme Court of South Carolina

Stephen C. Stanko, SK 6022, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-000212

ORDER

Counsel for petitioner have filed a "Petition for Court Oversight of Capital PCR Action" in which they essentially ask this Court to review the circuit court's rulings on *ex parte* motions regarding funding for experts filed in this matter. The State has filed a return in which it requests this Court issue an order unsealing the *ex parte* funding requests and orders so that it may properly respond to the merits of the petition before this Court.[1] The petition and the State's request are denied.[2]

C.J.

J.

J.

J.

J.

[1] The State currently has such a motion pending before the circuit court, where it can be ably addressed.

[2] We note, however, that the issue of *ex parte* proceedings in PCR matters, which is at the heart of the petition currently before this Court, was addressed in *Thames v. State*, 325 S.C. 9, 478 S.E.2d 682 (1986) and such proceedings were found to be improper.

Columbia, South Carolina

February 25, 2015

cc:
Emily C. Paavola, Esquire
Lindsey Sterling Vann, Esquire
J. Anthony Mabry, Esquire
Alan McCrory Wilson, Esquire
John W. McIntosh, Esquire
Donald J. Zelenka, Esquire

The Supreme Court of South Carolina

Tunzy Antwain Sanders, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2022-000351

ORDER

Petitioner has filed a petition for a writ of habeas corpus in this Court's original jurisdiction. He asks the Court, *ex parte*, to authorize services of a legal expert and payment of the expert's fees for this proceeding pursuant to *Ake v. Oklahoma*, 470 U.S. 68 (1985); S.C. Code Ann. § 17-3-50(B) and (C) (2014); and Rule 602, SCACR. The State moves to strike the *ex parte* motion as improper.

We deny the request for authorization of services and funds. *See State v. Commander*, 396 S.C. 254, 264, 721 S.E.2d 413, 418 (2011) (holding expert testimony on issues of law is usually inadmissible); *McKnight v. State*, 378 S.C. 33, 57, 661 S.E.2d 354, 366 (2008) (holding the lower court properly excluded the proffered legal expert's opinion because it "amounted to a case-specific application of the *Strickland* test that was not designed to assist the post-conviction relief court to understand certain facts, but rather, was a legal argument as to why the court should rule that McKnight's trial counsel was ineffective); *Dawkins v. Fields*, 354 S.C. 58, 66–67, 580 S.E.2d 433, 437 (2003) (finding the trial court properly declined to consider an expert affidavit that "offered some helpful, factual information" but mainly offered legal arguments concerning the reasons the trial court should deny summary judgment); *Green v. State*, 351 S.C. 184, 198, 569 S.E.2d 318, 325 (2002) (holding the post-conviction relief judge properly refused to admit the testimony of a legal expert when "the testimony was not designed to assist the PCR court to understand certain facts, but, rather, was legal argument why the PCR court should rule, as a matter of law, trial counsel's actions fell below an acceptable legal standard of competence" and was not the type of testimony contemplated by Rule 702, SCRE).

As to the State's motion to strike the motion to authorize services and payment of funds, the motion was improperly filed *ex parte* in this collateral action. *See Thames v. State*, 325 S.C. 9, 11 n.1, 478 S.E.2d 682, 682 n.1 (1996) (holding the statutes providing for *ex parte* determinations of requests for expert services apply only in criminal trials and not in post-conviction relief proceedings); S.C. Code Ann. § 16-3-26(C) (2015) (providing for an *ex parte* determination of the necessity of payment for expert services in capital cases that are "reasonably necessary for the representation of *the defendant* whether in connection with issues relating to guilt or sentence" (emphasis added)); S.C. Code Ann. § 17-3-50(B) (2014) (although § 17-3-50(A) requires the same hourly rates for appointed counsel to apply in post-conviction relief proceedings, paragraph (B) authorizes an *ex parte* determination that expert services are "reasonably necessary for the representation of *the defendant*" and uses the term "defendant" throughout the section, thereby indicating *ex parte* determinations are not required in post-conviction relief proceedings (emphasis added)). However, because we deny the motion to authorize services of a legal expert and payment of the expert's fees, we deny the motion to strike the *ex parte* motion as moot.

C.J.

J.

J.

J.

J.

Columbia, South Carolina
June 8, 2022

cc:
Adam Sinclair Ruffin, Esquire
Taylor Davis Gilliam, Esquire
Alan McCrory Wilson, Esquire
David A. Spencer, Esquire

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-26-035

Stephen C. Stanko, #6022
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

FILED

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court.*** The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Respondent's Motion to Unseal Ex Parte Funding Requests and Orders is GRANTED.
(*This motion is decided without oral arguments.)**

ORDER INFORMATION

This order ☐ ends ☑ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	$ N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Benjamin H. Culbertson

Benjamin H. Culbertson, Circuit Court Judge | **2148** Judge Code | **Feb. 27, 2014** Date

SCRCP Form 4C (03/2013)

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Emily C. Paavola
Lindsey S. Vann

ATTORNEY(S) FOR THE PLAINTIFF(S)

Anthony Mabry
Jimmy A. Richardson

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: None

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Stephen C. Stanko, #6022, Applicant, v. State of South Carolina, Respondents.	C/A No. 2008-CP-22-1446 (On remand from Appellate Case No. 2017-000211) **Consent Order to Unseal** ***Ex Parte* Funding Motions and Orders**

FILED
GEORGETOWN COUNTY, S.C.
2018 MAR 19 AM 10:21
ALMA Y. WHITE
CLERK OF COURT

This Court held a motions hearing in this capital post-conviction relief (PCR) action on March 2, 2018, in Florence County. Applicant was present at the hearing and represented by Lindsey S. Vann, Esquire. Caroline Scrantom and William Edgar Salter, III, represented Respondent, who moved before this Court to formally unseal any prior funding motions and orders filed *ex parte* by Applicant's initial PCR counsel. Respondent noted that some *ex parte* funding motions and orders appear on the public index in this matter. Applicant's first-chair PCR counsel consented to the request.

This matter is on remand for the purposes of holding a hearing to determine whether Applicant was prejudiced by initial PCR counsel's lack of statutory qualifications for representation. *Stanko v. State*, App. Case No. 2017-000211, S.C. Sup. Ct. Order dated Dec. 14, 2017. Accordingly, this Court finds that any funding requests and orders made by Applicant's initial PCR counsel are relevant to the determination before it and should be available for use by the parties in preparation for the forthcoming hearing in this action. *See* Rule 41.1, SCRCP (requirements for sealing documents and settlement agreements). Additionally, the statutory provision providing for *ex parte* funding requests in capital trials does not apply in PCR proceedings. *Thames v. State*, 325 S.C. at 11 n.1, 478 S.E.2d at 682 n.1 (1996) (citing S.C. Code

Ann. § 16-3-26(C) and § 17-3-50(B) (Supp. 1995); *Stanko v. State,* App. Case No. 2015-000212, S.C. Sup. Ct. Order dated Feb. 25, 2015 (citing *Thames, supra*) (denying Pet. for Oversight in funding and denying Respondent's Mot. to Unseal *Ex Parte* documents) (Horry County PCR); *Cf.* S.C. Code Ann. § 16-3-26(C)(1).

With the parties consenting, it is therefore ORDERED that any *ex parte* funding motions and orders previously filed in this action be unsealed and made available to the parties.

AND IT IS SO ORDERED.

D. Craig Brown
Presiding Judge

March 14, 2018
Florence, South Carolina

SUBMITTED:

Caroline Scrantom, Esquire
Office of the S.C. Attorney General
P.O. Box 11549
Columbia, SC 29211
cscrantom@scag.gov

WITH CONSENT:

Lindsey S. Vann, Esquire
Justice 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201
lindsey@justice360sc.org

STATE OF SOUTH CAROLINA COUNTY OF PICKENS	)	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT
Suzanna Brown Simpson, #368727, Applicant, v. State of South Carolina, Respondent.	)	2020-CP-39-0617 **CONSENT ORDER UNSEALING THE *EX PARTE* ORDER FILED UNDER SEAL**

2022 SEP 29 P 12: 10
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief filed by Suzanna Brown Simpson ("Applicant"), through counsel, on June 1, 2020. The State ("Respondent") filed its return to the application on November 2, 2020, moving for the summary dismissal of some of Applicant's claims and requesting that an evidentiary hearing be convened regarding the remaining claims. On April 28, 2022, an order was filed in this matter, and it is described on the Pickens County Public Index as "Order/Ex Parte Order/Under Seal." Respondent learned of the existence of the *ex parte* order under seal on June 16, 2022, after finding it listed on the Public Index during an audit of its case file.

Respondent takes the position that ex parte motions and orders are improper in post-conviction relief proceedings. Respondent cites to a South Carolina Supreme Court Order filed on June 8, 2022, in the case of *Sanders v. State*, which is a pending case in the original jurisdiction of the Supreme Court. This Order found that the petitioner had improperly filed an ex parte motion to authorize services and payment of funds because ex parte motions are improper in collateral actions. The Order in *Sanders* gave the following legal citation:

> *See Thames v. State*, 325 S.C. 9, 11 n.1, 478 S.E.2d 682, 682 n.1 (1996) (holding the statutes providing for *ex parte* determinations of requests for expert services apply only in criminal trials and not in post-conviction relief proceedings); S.C.

> Code Ann. § 16-3-26(C) (2015) (providing for an *ex parte* determination of the necessity of payment for expert services in capital cases that are "reasonably necessary for the representation of the defendant whether in connection with issues relating to guilt or sentence" (emphasis added)); S.C. Code Ann. § 17-3-50(B) (2014) (although § 17-3-50(A) requires the same hourly rates for appointed counsel to apply in post-conviction relief proceedings, paragraph (B) authorizes an ex parte determination that expert services are "reasonably necessary for the representation of the defendant" and uses the term "defendant" throughout the section, thereby indicating *ex parte* determinations are not required in post-conviction relief proceedings . . . .

Sanders, at 2.

It should be noted that the Applicant filed its *Ex Parte* Motion for Funding prior to the Order in *Sanders* and prior to the Court granting the motion. In light of the *Sanders* Order, the Applicant has consented to unsealing the *Ex Parte* funding order.

To resolve the matter, and with the consent of the parties, the *ex parte* order filed under seal on April 28, 2022, shall be unsealed.

IT IS THEREFORE ORDERED THAT THE *EX PARTE* ORDER FILED UNDER SEAL SHALL BE UNSEALED.

9-26, 2022.

Anderson, South Carolina

R. Lawton McIntosh
Presiding Judge

I CONSENT:

s/James W. Bannister
Counsel for Applicant

s/Taylor Zane Smith
Counsel for Respondent

2022 SEP 29 P 12:14
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Quincy Massey, SCDC No. 330636, Applicant, v. State of South Carolina, Respondent.	)	C/A No. 2020-CP-23-02134 CONSENT ORDER UNSEALING FILED *EX PARTE* FUNDING ORDER

'23 AUG 8 PM 2:51
Brice Garrett COC GVL SC

ENTERED COMPUTER

This matter comes before the court by way of an application for post-conviction relief filed by Applicant Quincy Massey. On or about April 12, 2023, the Honorable G. D. Morgan, Jr., as Chief Administrative Judge, issued an order authorizing expenses to be expended on Applicant's behalf. The order shows an "*ex parte*" designation and is not publicly available *See* https://www2.greenvillecounty.org/SCJD/PublicIndex/CaseDetails.aspx?County=23&CourtAgency=23002&Casenum=2020CP2302134&CaseType=V&HKey=116909975721081161021161028771117527111412281107116113107119438254122476690102103489710943905611697908899. However, counsel for Respondent has been provided a copy. After consultation, counsel for both parties agree and consent to unsealing the order.

THEREFORE, with consent of the parties, this court orders that the April 12, 2023, order be unsealed.

7/25, 2023.

J. Derham Cole
Presiding Judge

_____, South Carolina

I CONSENT:

Sarah M. Henry, Esquire
Counsel for Applicant

Melody J. Brown, Sr. Asst. Dep. Attorney General
Counsel for Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) THIRD JUDICIAL CIRCUIT

RECORDED
2023 SEP 29 PM 3:26
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Bobby Wayne Stone, #5051,
Applicant,

v.

State of South Carolina,
Respondent.

C/A No. 2018CP4301025

ORDER ON RESPONDENT'S MOTION TO COMPEL

Heard: September 12, 2023 in Lexington, South Carolina by Consent
Applicant's Attorneys: E. Charles Grose, Jr. and Rosalind Major
Respondent's Attorneys: Melody J. Brown, Tommy Evans, and Julianna Battenfield
Court Reporter: Digital – Melinda D. Jones

The State moves to compel responses to its request for production. The requests, on their face, support the State's contention that non-privileged documents must be provided. However, in order to make the determination of what is protected, the Applicant's counsel must provide a privilege log and allow the court to conduct an *in camera* review. The privilege log and materials that are claimed to be privileged must be supplied to the court within 45 days in order to protect the claims of privilege.

WPR #1

This post-conviction relief (PCR) application seeks a determination of whether Bobby Wayne Stone, who has been sentenced to death, is a person with intellectual disability and therefore exempt from the death penalty under *Atkins v. Virginia*, 536 U.S. 304 (2002). Both Dr. Sara Boyd, Applicant's retained expert, and Dr. Alicia Hall, the examiner designated by the Department of Disabilities and Special Needs ("DDSN") have issued reports opining that the Applicant meets the diagnostic criteria for intellectual disability.

On March 6, 2023—more than three months after receiving Dr. Hall's written report—the

State served a Request for Production for production of several kinds of documents related to Applicant's claim. The State agreed that certain categories of documents are to be excluded from production:

a. Documents which have been provided to Applicant by the Office of the Attorney General, including copies of the documents the Attorney General provided to DDSN on or about December 9, 2020 with copies to Applicant at that time;

b. Documents previously provided by Applicant in the October 8, 2020 disclosures to DDSN and provided to the Attorney General's office at that time;

c. The affidavit of Pamela Blume Leonard dated October 10, 2022, and provided by Applicant via email dated January 27, 2023.

The responses were due by Wednesday, April 5, 2023 under Rule 34(b), SCRCP. Applicant did not meet that deadline. On April 18, 2023, counsel for Mr. Stone mailed to the State copies of three documents: (a) curriculum vitae for Dr. Sara Boyd, (b) draft report authored by Dr. Boyd dated December 23, 2022, and (c) final report from Dr. Boyd dated April 10, 2023. On April 27, 2023, the State objected to the lack of a formal written response. On May 8, 2023, after appropriate consultation, the State filed this motion to compel.

WPC #2

Counsel for Mr. Stone sent a formal written response to the State on May 30, 2023. At the hearing, the State clarified that it is seeking the entirely of Applicant's mitigation investigator's file, except what may be privileged.

DISCUSSION

Pursuant to the South Carolina Rules of Civil Procedure, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . ." Rule 26(b)(1), SCRCP. The South Carolina Supreme Court recognizes the "scope of discovery is broad," but that "there are limits." *Oncology & Hematology Assoc. v. S.C. Dep't Health & Envtl. Control*, 387 S.C. 380, 387, 692 S.E.2d 920, 924 (2010).

"Although the scope of discovery is broad, requests must show a reasonable expectation of obtaining information that will aid in the dispute's resolution. Thus, discovery requests must be 'reasonably tailored' to include only relevant matters." *Id.* at 388, 692 S.E.2d 924-25 (quoting *In re CSX Corp.*, 124 S.W.3d 149 (Tex. 2003)). In light of these limitations, the Court cautioned that "[t]he trial court abuses its discretion by ordering discovery that exceeds that permitted by the rules of procedure." *Id.*

To determine whether the State is entitled to the specific discovery requested, the Court must determine what is "relevant to the subject matter involved in the pending action." Rule 26(b)(1), SCRCP. However, parties are entitled to withhold information that would be otherwise discoverable "by claiming that it is privileged or subject to protection as trial preparation material." Rule 26(b)(5)(A), SCRCP. Parties can discover trial preparation material, "only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means." Rule 26 (b)(3), SCRCP.

WHC #3

The Applicant concedes that the State has made a showing that there is a substantial need for some of the underlying information requested as it relates directly to the underlying question of whether the Applicant is a person with intellectual disability. This includes information about names of people who might have information about the Applicant's adaptive functioning. The Applicant argues that the State has failed to make a showing that it is unable to obtain the subsequent equivalent of the Applicant's mitigation investigator's file without undue hardship. The Applicant cites to interview memos mentioned by the State as establishing that the State has been able to obtain this information without access to the work product in the file of Applicant's counsel.

The State contends that the absence of proper compliance is substantially interfering with development of the defense and delaying the investigation and ability to take complete depositions. (*See* Motion, p. 2-3). The State offered documents recounting their own independent investigative efforts. In an example that more information appears to be available, the State offered that its investigator located Applicant's former live-in girlfriend, Michelle Bailey Price. According to the investigative summary, Ms. Price indicated that she had information that directly goes to adaptive functioning, *i.e.*, that Mr. Stone "helped with bills and the cooking and cleaning," and indicated knowledge of at least some details going to school and work. (Hearing Court Exhibit, Investigative Notes, Interview of Michelle Bailey Price). This witness, however, does not appear as a source on the DDSN report dated December 1, 2022. The State asserted that it has tried to investigate the information in the exhibit, with little success, apart from the summary of information from Ms. Price. The State argues that obtaining potential leads on this subject have proven to be sparse.

WPH #4

The State asserted that the information that is of critical importance is information held by individuals best known to the Applicant –those individuals who knew him best – people with whom he spent time, worked, etc. The State argues that claims of work-product privilege must be preserved by providing a privilege log. Further, the State argues that Rule 26(b)(3), SCRCP, permits production of documents prepared for litigation, where the opposing party shows "substantial need ... and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means." *See also* Rule 26(b)(4)(B), SCRCP (may obtain "facts known or opinions held" by expert not to be called at trial upon Rule 35(b) showing or "showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means."). The State emphasized that it was not attempting to obtain impressions, but facts and identity of those who would have relevant facts.

The State also argued that relevant testing should be disclosed, including testing known or knowable to the Applicant's counsel from the trial or other PCR actions. This relates to the DSM-5-TR[1] provision that both IQ testing and neuropsychological testing should be considered in making a diagnosis of intellectual disability. The State maintains that any such testing was not disclosed to the State in prior actions because there was no allegation of intellectual disability. However, any such information would now be relevant and known, or certainly more knowable, by the Applicant than the State.

The State pointed out that the DDSN report reflected that the examiner considered the matter to be close and that adequate and complete information is critically important for reliable opinions. The State argued that the experts and the court should have all available information that may be discovered and produced in order to make informed determinations.

WKL #5

In opposing the motion, the Applicant argued that the materials submitted as a result of Respondent's investigation show the State has the ability to investigate without obtaining information that is the Applicant's work product. The Applicant noted that the discovery requests were not submitted until after the DDSN report was completed, and argued that the State had the opportunity to submit documentation to DDSN as the Applicant did.

FINDINGS AND CONCLUSIONS

The Court rejects the Applicant's argument that the discovery request was not timely. The parties were aware that DDSN was acting as the Court's witness and that the report would be shared with both parties. Further, the State has been candid in prior hearings and status conferences to advise that it would review the report in order to make an informed decision about whether the

[1] The American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition Text Revision (2022).

State would need an expert. There has not been a sufficient showing of undue delay.

The Court agrees that information held by individuals best known to the Applicant is critical. The reason that the Applicant wanted a qualified and trained investigator was to find and collect information relevant to adaptive functioning. It was reported to this Court that such investigation spanned several years with multiple interviews. Respondent's discovery of a witness who was a former live-in girlfriend was not identified as a source of information for the DDSN evaluation, and this indicates that more information of a critical nature might be available.

Experts should have all available information in order to make informed determinations and assist the Court. Eventually, the Court will be called upon to decide whether the Applicant has carried his burden of showing intellectual disability. As such, the Court should also have all the relevant and necessary information to make that determination.

#6 THEREFORE, IT IS ORDERED that the motion is granted; provided, however, that the Applicant is permitted to submit a privilege log and the related documents for *in camera* review within 45 days from the date that this order is filed. *See* Rule 26 (b)(5), SCRCP. If the privilege log and documents are submitted in a timely fashion, the Court plans to conduct the required review before determining whether disclosure of those specific documents is warranted and whether documents are protected by a privilege that is asserted.

AND IT IS SO ORDERED.

William P. Keesley
Circuit Court Judge

September 26, 2023

Anthony Woods COPY
DDSN Eval.

SOUTH CAROLINA Department OF Disabilities AND Special Needs

3440 Harden Street Ext (29203)
PO Box 4706, Columbia, South Carolina 29240
803/898-9600
Toll Free: 888/DSN-INFO
Website: www.ddsn.sc.gov

May 9, 2013

Ms. Beulah Roberts
Clerk of Court - 3rd Judicial Circuit
P.O. Box 486
Manning, SC 29102

RE: Order for Diagnostic Evaluation
Anthony Woods

Dear Ms. Roberts:

Enclosed for filing, please find the Diagnostic Report as required by The Honorable George C. James, Jr.'s Order dated January 22, 2012. Please file the report and return a filed copy to me in the enclosed postage-paid envelope.

If you have any questions, please feel free to contact me at (803) 898-9683 or by email at tvanderbilt@ddsn.sc.gov.

Sincerely,

Tana Vanderbilt

Tana Vanderbilt
General Counsel

cc: The Honorable George C. James, Jr. - Judge, 3rd Judicial Circuit
Mr. William E. Salter, III, Esq., SC Attorney General's Office
Ms. Melissa Armstrong, Esq.
Mr. Robert L. Kilgo, Jr., Esq.
Mr. Steve Von Hollen, Director-Clinical Services, DDSN

Beverly A. H. Buscemi, Ph.D.
State Director
David A. Goodell
Associate State Director
Operations
Kathi K. Lacy, Ph.D.
Associate State Director
Policy
Thomas P. Waring
Associate State Director
Administration

SOUTH CAROLINA
Department
OF
Disabilities
AND
Special Needs

3440 Harden Street Ext (29203)
PO Box 4706, Columbia, South Carolina 29240
803/898-9600
Toll Free: 888/DSN-INFO
Website: www.ddsn.sc.gov

COMMISSION
Fred Lynn
Chairman
Deborah C. McPherson
Vice Chairman
Christine Sharp
Secretary
Katherine W. Davis
Harvey E. Shiver
Katherine Llamas Finley
Eva R. Ravenel

DIAGNOSTIC EVALUATION

Name: **Anthony Woods**
Dates of Interviews: 4/5/2012 and 4/26/2012
Place of Interviews: Lieber Correctional Institute
Ridgeville, SC

Gender: Male
Race: African-American
Age: 48 years

Examiner: Gordon E. Brown, Jr., Ph.D.
Licensed Clinical Psychologist

PURPOSE OF EVALUATION:

This evaluation was conducted pursuant to an order dated 1/22/2012 (received 1/30/2012) and signed by the Honorable George C. James, Jr., Presiding Judge in the Court of Common Pleas, Clarendon County. The order required that Mr. Woods be evaluated by the Department of Disabilities and Special Needs "for the existence or lack of existence of mental retardation" pursuant to *Franklin et. al. v. Maynard*, 356 S.C. 276,588 S.E.2d 604 (2003) and as defined by S.C. Code Ann. § 16-3-20.

LIMITS OF CONFIDENTIALITY:

Before each interview started, Mr. Woods was advised of the purpose of the evaluation, and that the results and content of the evaluation would be communicated to his attorney(s), the Office of the Attorney General, and the judge. In addition, he was informed of the possibility that the examiner might be called to testify regarding the content and results of the evaluation. He demonstrated a poor understanding of this information.

TERMINOLOGY:

The court order in this case requires an evaluation "to determine the existence or lack thereof of mental retardation." That terminology is consistent with the current diagnostic manual of the American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR). The term "mental retardation" has been replaced by the term "intellectual disability" in the South Carolina Code of Laws, and "intellectual disability" is the terminology used by the American Association on Intellectual and Developmental Disabilities (AAIDD). Those terms (mental retardation and intellectual disability) will be used interchangeably within this report. Regardless of the specific terminology, the diagnosis requires concurrent deficits in both intellectual and adaptive

functioning with onset during the developmental period. DSM-IV-TR and the AAIDD specify that the developmental period is prior to the age of 18. The South Carolina statute, in §16-3-20 defines mental retardation/intellectual disability as "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period."

EVALUATION PROCEDURES:

Mr. Woods was interviewed for approximately two hours on 4/5/2012 by the undersigned. His attorney, Melissa Armstrong, was present during that interview.

A second session was necessary to conduct formal testing. Mr. Woods was seen again on 4/26/2012. His attorney was not present during that session, although she did make a brief appearance near the beginning of the session. During this session, Thomas Kirby, Ph.D., a contract psychologist with DDSN, administered the Stanford-Binet Intelligence Scales, Fifth Edition. Dr. Kirby was requested to do so because he has extensive experience with the Stanford-Binet and with assessments for intellectual disability. After Mr. Woods completed the Stanford-Binet with Dr. Kirby, the undersigned then administered the Independent Living Scales. Both Dr. Kirby and the undersigned were present during the administration of both measures.

In addition, the following documents were reviewed:

Order for an Evaluation of Applicant for Mental Retardation dated 1/22/2012.
Letters from William Edgar Salter, III, Senior Assistant Attorney General, dated 1/25 and 2/3/2012.
Record on Appeal, State of South Carolina, in the Supreme Court, Appeal from Clarendon County, *The State v. Anthony Woods* (eight volumes).
Record on Appeal, State of South Carolina, in the Supreme Court, Appeal from Clarendon County, *The State v. Anthony Woods*, Final Brief of Appellant.
Record on Appeal, State of South Carolina, in the Supreme Court, Appeal from Clarendon County, *The State v. Anthony Woods*, Final Brief of Respondent.
Report of Findings, SCDMH, dated 6/8/2005, with attached Forensic Evaluation Report, dates of evaluation 10/27/2004, 3/15/2005, and 5/19/2005.
Order for Competency Evaluation and Criminal Responsibility, Clarendon County Court of General Sessions, dated 7/28/2004.
Psychiatric Social Work Assessment, William S. Hall Psychiatric Institute, dated 10/6/2004.
Indictment for Burglary First Degree, Assault and Battery with Intent to Kill, Criminal Sexual Conduct First Degree, and Grand Larceny; Clarendon County Court of General Sessions dated 1/22/2004.
Indictment for Murder, Burglary First Degree, and Criminal Sexual Conduct First Degree; Clarendon County Court of General Sessions dated 1/22/2004.
Indictment for Burglary First Degree and two counts of Assault and Battery of a High and Aggravated Nature, Clarendon County Court of General Sessions dated 1/22/2004.
Autopsy Report for Joann Dubose, Medical University of South Carolina, dated 6/5/2003.
Report of Finding Mental Capacity, SCDMH, dated 6/29/2000, with attached Forensic Unit Outpatient Evaluation Report, date of evaluation 5/9/2000.
Progress Note (Dr. Atkins), SCDMH, dated 5/13/2000.
Psychiatric Social Work Assessment, SCDMH, dated 5/1/2000.
Order for Competency Evaluation (and Criminal Responsibility), Clarendon County Court of General Sessions, dated 8/31/1999, with attached SCDMH file for that evaluation.
Neuropsychological Evaluation Report, Tidewater Psychological Associates, dated 7/13/2005.
Psychiatric Social Work Assessment, SCDMH, dated 10/6/2004.

Handwritten Interview Notes, Unidentified Interviewer, SCDMH, dated 10/27/2004, 3/15/2005, and 5/19/2005.
E-mail from Katherine Ann Jacoby to Camilla Tezza dated 6/7/2005.
E-mail from Katherine Ann Jacoby to Camilla Tezza dated 4/8/2005.
E-mail from Katherine Ann Jacoby to Camilla Tezza dated 3/24/2005.
Draft copy of paragraph titled "DX: Personality Change secondary to CHI, unspecified type," Camilla Tezza, undated.
Referral for "neuropsych," from Jacoby to Camilla Tezza, dated 3/18/2005.
Consultation Report (handwritten, 2 pages) by Camilla Tezza, Ph.D., dated 4/14/2005.
Consultation Report (handwritten, 2 pages) by Camilla Tezza, Ph.D., dated 12/14/2004.
Test Protocols for TOMM, RBANS, WAIS-III, and WRAT3, dated 4/5/2005.
Test Protocol for TOMM and SIRS dated 12/9/2004.
Handwritten Interview Notes (16 pages), Unidentified Interviewer (Dr. Tezza), dated 12/9/2004.
Handwritten Interview Notes, Unidentified interviewer (Dr. Tezza), dated 4/5 and 4/8/2005.
Handwritten Notes (14 pages), Unidentified author (Dr. Tezza), appear to be review of collateral information, undated but with multiple dates from records reviewed.
Handwritten Notes (1 page), Unidentified author (Dr. Tezza), appears to be review of Social Work Assessment, undated.
Handwritten Notes (11 pages), Unidentified interviewer, dated 12/9/2004.
MRI of the Brain Report, Palmetto Imaging, dated 4/6/2005.
Supplemental Interdisciplinary Progress Notes, SCDMH, dated 9/22/2004, 3/15/2005, 7/11/2005, and 7/14/2005.
Letter from Kevin W. Hoyle, M.A., Clarendon County Mental Health Clinic; to R. Ferrell Cothran, Jr., Assistant Solicitor; dated 10/29/1985.
Records from Clarendon County Mental Health Clinic dated 10/17 to 10/25/1985.
School Records (7 pages, very poor copies), Manning High School, multiple dates.
Fax Coversheet from Tuomey Healthcare System dated 3/24/2005:
SCDC Classification Summary (Maxout Date 1/15/1995) dated 3/24/2005.
SCDC Classification Summary (Maxout Date 3/13/2003) dated 3/24/2005.
EEG Report, SCDMH, dated 4/6/2005.
Confidential Laboratory Report, SC DHEC, dated 4/8/2005.
Laboratory Reports (2), Quest Diagnostics, dated 4/6/2005.
Laboratory Report, SCDMH Hematology Laboratory, dated 4/5/2005.
Laboratory Report, SCDMH Chemistry Laboratory, dated 4/5/2005.
SCDC Medical Screen dated 12/2/1994.
SCDC R&E Centers Medical Examination dated 1/17/1990.
SCDC Guideline Medical Screening for Inmate Food Service Workers dated 2/12/1990.
SCDC Medical Screen dated 9/26/1991.
Medical Records, SCDC, multiple dates.
SCDC Records entitled "Copies of Warden Record," multiple dates.
SCDC Records entitled "Copies of Microfilm," multiple dates.
SCDC Records entitled "Copies of Central Record," multiple dates.
Records from Clarendon County Detention Center, multiple dates 2003-2004.
Letter from McLeod Regional Medical Center dated 3/17/2005.
Letter from Anthony Wood [sic] Jr. to Operation Captain Kelley, undated.
Records from Clarendon Memorial Hospital.

Letter from Sumter School District 17, undated (but attached to request dated 12/9/2004).
Records from Eastern Healthcare Group, Inc., (Clarendon County Detention Center).
Memos (2) from Santee-Wateree Community Mental Health Center dated 10/1/2004.
WAIS-IV Record Form Score Page and WRAT4 Score Page, Dr. David Price, date of evaluation 3/28/2012.

TESTS ADMINISTERED:

Stanford-Binet Intelligence Scale, 5th Edition
Independent Living Scales

RELEVANT HISTORY:

Mr. Woods correctly stated that he was currently living at Lieber Correctional Institute, and said he had been there for five or six years. He said he was living in Lincoln Park in Manning prior to his incarceration, but seemed unable to determine how long he had lived there. He said his current incarceration is because he was convicted of "criminal sexual," burglary, and murder. He said he has been in prison three or four times, with his first incarceration occurring in his 20's.

Family History: Little reliable information is available regarding developmental history. A previous (2005) DMH evaluation report indicates that "Mr. Woods was the product of a planned normal pregnancy, and that his father reported that walking and talking were delayed."

Mr. Woods said he was born in New York City and lived there for five or six years before moving to South Carolina with his mother. He seemed unsure where they lived when they first arrived in South Carolina but said he thought it was Florence County. Mr. Woods said he has two older sisters; Vera is 50 and lives in New York, and Brenda is 47 or 48 and lives in Columbia. He said he has a younger brother who is 46, lives in Alabama, and works in a hospital. He said he had another brother who died with a "brain tumor" while "still a baby." Mr. Woods said his father currently lives in Savannah, Georgia, is 67 years old, and is retired and/or disabled. He said his mother lives in North Carolina, and with further inquiry was able to say that she is in a "mental hospital." Mr. Woods said he has not seen either of his parents in a long time.

Records confirm that Mr. Woods was reportedly born in New York and was the third of four siblings; he has two older sisters and a younger brother. The family moved from New York to Clarendon County with his mother and her father; although it is unclear exactly when that move occurred, it appears to have been when he was about 6 years old. During his trial, his sister Brenda reported that their mother worked while they lived in New York but had a "nervous breakdown" after which she did not work. Brenda also reported that their parents "used to fight" in the presence of the children and that there was "physical fighting" with "a lot of violence." Their parents separated and the two boys went to live with their paternal grandmother while the girls went to live with their father in New York. Mr. Woods reported that he was physically abused by his mother, grandmother, and an uncle for about "a year or so" while in his teens. He said the abuse included being beaten with a stick and with an extension cord as well as being "slapped in the face." The 2005 DMH report indicates that he was "beaten with sticks and extension cords," that it was a frequent occurrence and "was more than just normal spanking."

DMH records indicate that Mr. Woods' father is reported to have worked two jobs and to have mostly been away from home. Mr. Woods' mother has a history of mental illness. Her diagnosis was apparently paranoid schizophrenia, and it seems to have gradually become worse. At the time of his trial, she was in a psychiatric hospital in North Carolina.

When Mr. Woods was evaluated by DMH in 2000, he reported that he "was living in a garage behind his grandmother's house." Prior to his arrest for murder, Mr. Woods was reportedly living alone in a house that was owned by the Manning Church of Christ.

Educational History: In interview Mr. Woods said he graduated high school and specified the "new" Manning High School. He said he failed the ninth grade at the "old" Manning High School, but said he was "socially promoted" and allowed to graduate. When asked about special education services, Mr. Woods said his teachers thought he "had a problem" because he "never did talk." He said he was "put in a special class" because of that. Mr. Woods seemed unsure whether he had been expelled or suspended while in school. He initially said he was suspended for "coming in late," but when it was suggested that he had been suspended for fighting he readily acknowledged that and said the fights were typically about "who was the better man." Mr. Woods said he "went out for football" but quit before qualifying. He said he also "went out for track and field," to "run for distance," but said his performance was "real poor." Mr. Woods said he did best in "lunch" in school and said history was the hardest for him. He said he had no particular vocational goals upon leaving high school and said he has received no further education or job training.

The 2005 DMH report indicates that Mr. Woods "did not do well in school" and "was held back several years in junior high and high school." It was noted that he was in "lower level classes" although there was no history of special education. Mr. Woods told the DMH examiners that he graduated during the summer after his senior year and that he had been suspended numerous times for fighting while in school. It appears that he received a certificate of attendance rather than a diploma. There is no indication that he ever received special education services or that he was recommended or evaluated for such services.

Vocational History: In interview Mr. Woods reported having had several different jobs. All involved unskilled labor and appeared to be at or near minimum wage; he estimated his highest pay as about $4 per hour. He described farm work with his brother and mother; he said they would "hang tobacco" every summer and described working in tobacco fields. He said he also worked at a "truck wash" where they washed "big rigs." He said he was fired from that job "for being late" because he did not have transportation. He said he has worked for a furniture company delivering furniture and loading/unloading trucks. He said he has also "picked cucumbers" and worked at a "feed mill" where he did such things as help "tie up corn bags" and "stack hay." He said he has also done yard work and "renovation work"; he described the renovations as involving "putting in plastic" in bathrooms. He said while in New York he worked at fast food restaurants washing dishes and cooking.

During his trial, a social worker testified that Mr. Woods had been employed at McDonalds and at a "chicken place" in New York, that he had worked "minimal jobs" at "minimal wages," and that he had quit one job because of difficulty using the bus system there.

Mr. Woods said he has never received unemployment compensation or disability payments.

Records from the Department of Corrections indicate that in 1986 Mr. Woods was self-employed in "roofing" and that he left that job because he was incarcerated. Those records indicate that Mr. Woods had assigned work details within DOC, and all appear to have been 8 hours per day, 5 days per week. In January 1991 Mr. Woods was assigned to the Laundry/Commissary to work as a Laundry Room Attendant, and in April 1991 he received a promotion to become a Commissary Operator. In December 1991 he was transferred from the Commissary to Construction due to "institutional needs." He was given the title of "Mason Supervisor" and was assigned to work 8 hours per day, 5 days per week. A Program Status Review dated 2/5/1993 indicates a job description of "Electrician Supervisor." From December through June 1993 he was a "Mason Supervisor" in the Construction Section at MACCI. That information is provided on an application for community work programs, and the application also indicates that Mr. Woods completed a brick mason training program from 1983-1985. The application also indicates 18 months experience as an electrician. Mr. Woods was recommended by his supervisor for Community Program Placement and he was rated as "average." A more detailed evaluation form in the application indicated average or above average ratings in all areas. He was rated as above average in trustworthiness, cooperation, reaction under stress, desire to help self, and morale. His supervisor

indicated that he believed Mr. Woods can and will perform his duties without supervision "within his knowledge." It appears that he was not approved for work release for medical (non-psychiatric) reasons. In June 1993 Mr. Woods was transferred from Construction to the Dorm upon his third infraction of "being out of place at quitting time."

Other DOC records regarding his work performance are somewhat contradictory. In September 1992 it was noted that "he always does what he is asked." An undated Inmate Evaluation Form (possibly from May 1991) rated Mr. Woods as below average in cooperation, but he was rated above average in 7 areas and average in 5 areas. He was noted to have a "good attitude at work most of the time," but it was also noted that he "sometimes questions work assignments and requires extra instructions and additional supervision."

Relationship History: There is no reliable information regarding relationship history. In interview Mr. Woods said he has never married. He said he has one son who is "in his 20's" and lives in Schenectady, New York. Mr. Woods said he had a relationship with his son's mother at one time and that they lived together in New York for a year or two. The DMH evaluation in 2000 indicated that he was reportedly "involved in a common law marriage with a woman . . . and they reportedly have a 10-year-old son who he has not seen recently." The DMH evaluation in 2005 indicates that there may have been "several significant female relationships," and it is noted that "there were frequent verbal altercations in these relationships."

Medical History: Mr. Woods reported hospitalizations following head injuries, but said he has not been hospitalized for other reasons. He reported three specific head injuries, saying he was "hit by a car" and "hit by an iron pipe." He also said he "fell on my head" while in New York. He said all head injuries resulted in loss of consciousness. He said he has never had a seizure, although he later described what may have been a seizure. When asked if he has ever broken any bones, Mr. Woods showed his teeth and said he lost his front teeth when he was struck by a car. He apparently thought that teeth were bones, but said he has not broken any other bones.

Medical records related to head injuries were not available for review. However, the DMH evaluation in 2005 also cites three head injuries similar to those described by Mr. Woods to the undersigned. The first head injury was noted to be at about age 20 when as a pedestrian he was struck by an automobile and was hospitalized for a week. Other head injuries were noted as caused by being hit in the head with a lead pipe and with a 2 X 4. The DMH examiners requested an MRI of Mr. Woods' brain, and the results of that "were not felt to be of clinical significance." The DMH evaluation in 2000 referred to the automobile accident as occurring in 1989; it also mentioned the other two head injuries.

The 2005 DMH evaluation indicated a history of treatment for recurrent genital warts, history of a positive PPD and treatment for tuberculosis in 1993 while incarcerated, history of treatment for headaches in 2000 and 2001, and history of treatment for athlete's foot.

Psychiatric History: Mr. Woods has no history of psychiatric hospitalization. There is no indication that Mr. Woods has received any ongoing psychiatric treatment or mental health counseling except during incarcerations.

Mr. Woods was seen at the Clarendon County Mental Health Clinic of Santee-Wateree Mental Health Center on 10/17/1985. That visit was described in a letter dated 10/29/1985 from Kevin W. Hoyle, M.A., Clinic Director, to R. Ferrell Cothran, Jr., Assistant Solicitor for Clarendon County. Mr. Woods was seen one time for one hour; he did not keep a follow-up appointment scheduled for 10/25/1985. Clinic notes indicate that Mr. Woods had been "picked up this morning on suspicion of sodomizing and killing a dog at animal shelter." Mr. Woods "admitted the act" and "admitted sodomizing on at least three occasions." He was given a diagnosis of Zoophilia.

The DMH evaluation of competency to stand trial in 2000 (with D. Lanette Atkins, M.D., presiding) listed diagnoses as follows:

AXIS I:	Alcohol Dependence.
	Cocaine Dependence, sustained full remission.
	Paraphilia, Not Otherwise Specified.
	Possible Psychotic Disorder, Not Otherwise Specified.
AXIS II:	Antisocial Personality Disorder.
AXIS III:	History of Head Injury.

In the narrative of her report, Dr. Atkins also indicated that Mr. Woods had previously been given a diagnosis of Bestiality; she further described "peeping in windows," "a history of frottage," and "being sexually aroused by girls who were not fully sexually developed."

The DMH evaluation of competency to stand trial in 2005 (with Katherine Jacoby, M.D., presiding) listed diagnoses as follows:

AXIS I:	Voyeurism, by history.
	Frotteurism, by history.
	Paraphilia, NOS (Zoophilia), by history.
	Malingering of Psychosis.
	Anxiety Disorder, Not Otherwise Specified (Features of Obsessive-Compulsive Disorder).
	Alcohol Dependence.
	Cocaine Dependence, by history.
	Personality Change secondary to Closed Head Injury, unspecified type.
AXIS II:	Antisocial Personality Disorder, Adolescent Onset.
	Borderline Intellectual Functioning, Provisional.
AXIS III:	History of Several Closed Head Injuries.

In the narrative of her report, Dr. Jacoby included a section entitled "Sexual History" which explained the paraphilias and other sexual disorders. The psychiatric history section of her report included information about the accident in which he was hit by an automobile, and noted that "all the family members interviewed for this evaluation reported that his personality changed after this incident." It was noted that "he would frequently stare off into space and not respond to conversation directed at him" and that "he became withdrawn from family and friends." It was also noted that "his conversation occasionally became tangential and hard to follow" and that such behavior remained present in 2005.

Dr. Jacoby's report summarized records from the Clarendon County Detention Center for his incarceration while awaiting trial. It was noted that he was taking "up to nine" showers per day and that he would sometimes wear socks on his hands and multiple pairs of socks on his feet.

During the sentencing phase of the trial, Dr. Harold Morgan, a psychiatrist, testified that Mr. Woods had "an antisocial personality disorder." His testimony did not support a diagnosis of a psychotic disorder, despite some reports of "hearing voices" and the prescription of antipsychotic medication for a while. He also testified that Mr. Woods "had a learning disorder" that was not "addressed when he was a kid." Testimony was also given regarding other diagnoses in the record (voyeurism, frotteurism, paraphilia, zoophilia, and malingering). When asked specifically about mental retardation, Dr. Morgan responded, "No. He's borderline according to the IQ tests, but I don't think he's mentally retarded."

In interview, Mr. Woods reported a long history of auditory hallucinations, although these appear somewhat atypical. He said the voices "tell me what I'm doing" and "tell me what to do." He described the voices as male and female and as being outside his head. He said the voices have instructed him to

commit suicide, but do not tell him how to do so; he said he has never attempted to harm or kill himself. He said he has never heard voices telling him to harm others. He said the voices are worse when he is incarcerated and are especially troublesome when he is alone (as he is in his current placement on death row). Mr. Woods said he is currently prescribed "codeac" and Invega. Presumably he was referring to Cogentin, and he said that was prescribed for "hearing voices. He said he did not know what the Invega is for, but said it works for him and he "sleeps a lot." When it was suggested that Invega may be prescribed for "voices" and Cogentin may be prescribed for side effects, he immediately agreed with that. He said he occasionally takes ibuprofen for pain in his arm, and he explained that the prison had discontinued Tylenol. He said he wasn't sure why they no longer used Tylenol but suspected it could be because of overdoses. Medical records indicate that most recent medications were Risperidal (antipsychotic) and Cogentin.

Medical records from the SC Department of Corrections were reviewed. On 8/15/2007 at Lieber, a Health Summary for Classification/Assignment was completed and indicated "MI-3 Outpatient Mental Health Treatment." It is noted that "MR Mentally Retarded" was not checked (however, it is also acknowledged that the instructions were to "check one"). Mental Health Treatment Plans were available with irregular dates ranging from 1/25/2008 through 1/4/2012. The most recent simply indicated "no changes in diagnosis" and "no changes in medication" from 7/19/2011 at which time the primary diagnosis was schizophrenia with V71.09 [DSM-IV-TR Code for "no diagnosis] noted on Axis II. The Axis II entry was consistently either V71.09 or "none," although the Axis I diagnosis had previously included such diagnoses as Psychosis NOS, Depression, Polysubstance Abuse, and Antisocial Personality Disorder.

Substance Abuse: In interview Mr. Woods minimized his use of drugs. He said he smoked cigarettes until the prison banned them and said the most he smoked was a pack over two to three days. He said he was "not too much of a drinker," but said he liked to mix Budweiser and Crown Royal when he did drink. He said he did that "not often." He said he had used marijuana, but "not much," estimating a joint per day. He denied use of any other illicit drugs. He said he huffed gasoline one time because he was curious about why people would do that. Mr. Woods said he has never had treatment for substance abuse and said such treatment has never been recommended.

It is noted that during a DMH evaluation in 2000 Mr. Woods was given diagnoses of Alcohol Dependence and Cocaine Dependence. During that evaluation he said he drank a pint of liquor and a 40-ounce beer every day; he acknowledged work problems related to that and also endorsed withdrawal symptoms. He told those examiners he had first used alcohol somewhere between 10 and 15 years of age. He reported having used crack cocaine from 1988 to 1997 and occasionally having used marijuana. Other records indicate that in 1985 he reported using marijuana often. Records from the Department of Corrections in 2000 include a diagnosis of Polysubstance Dependence. A Program Status Review dated 2/5/1993 indicates that during his first incarceration Mr. Woods attended and completed phases I, II, and III of the substance abuse program; it was noted that this was to satisfy a court order.

PREVIOUS EVALUATIONS:

Mr. Woods has not previously been evaluated by the Department of Disabilities and Special Needs; he has never been referred for a determination of eligibility for services, nor has he been evaluated regarding competency to stand trial or criminal responsibility. There are no records available which would indicate that he was ever evaluated for special education services while he was in school. Records currently available include two evaluations of competency to stand trial, with both of those having been conducted by the Department of Mental Health.

On 5/9/2000 Mr. Woods was evaluated at the William S. Hall Psychiatric Institute pursuant to a court order regarding competency to stand trial, criminal responsibility, and capacity to conform. He was 35 years old at the time of that evaluation and faced charges of breaking and entering auto (12 counts), grand larceny, petty larceny (12 counts), and possession of stolen goods. D. Lanette Atkins, M.D., and

Selina Coleman, LMSW, were the examiners, and Attorney Harry Devoe was also present during the interview. The evaluators opined that Mr. Woods was competent to stand trial, was criminally responsible, and had the capacity to conform. They assigned diagnoses of alcohol dependence, cocaine dependence (sustained full remission), paraphilia, and possible psychotic disorder. They specifically recorded Antisocial Personality Disorder on Axis II and History of Head Injury on Axis III. The narrative of the report also refers to previous diagnoses of bestiality, voyeurism, and frottage. In her report, Dr. Atkins assigned several diagnoses and addressed other previous diagnoses in the narrative of the report. It is noteworthy that she did not address mental retardation in such a thorough diagnostic review.

Mr. Woods again underwent a forensic evaluation by DMH on three dates from 10/27/2004 to 5/19/2005. At that time he was charged with murder as well as other charges. Katherine Jacoby, M.D., was the presiding examiner, and Richard L. Frierson, M.D., was the second examiner. Also present were two psychiatry residents (Joe Markowitz, M.D., and Carmen Nichita, M.D.) and Attorney James Hoffmeyer. In her report, Dr. Jacoby assigned numerous diagnoses. Those included a provisional diagnosis of Borderline Intellectual Functioning on Axis II and History of Several Closed Head Injuries on Axis III. The diagnosis of Borderline Intellectual Functioning would specifically exclude a diagnosis of Mental Retardation. The General Sessions Court Order for Competency Evaluation and Criminal Responsibility (dated 7/28/2004 and signed by the Honorable Howard P. King) specifically required that the defendant be "automatically referred for evaluation to the State Department of Disabilities and Special Needs if there is any evidence of retardation." During the course of the 2004-2005 evaluation Mr. Woods was also seen by two clinical psychologists and their involvement included rather extensive testing. The decision by the DMH examiners regarding the absence of mental retardation appears to have been based on careful consideration of that issue, and the report reflects that the decision was not made before considering all the available data including results of psychological testing.

As a part of the DMH evaluation of competency and criminal responsibility, Mr. Woods was referred to Camilla Tezza, Ph.D., psychologist. Dr. Tezza saw Mr. Woods on 12/9/2004 and at that time conducted an interview and administered tests to address the issue of possible malingering. Her impression was that "clinical presentation and testing results suggest malingered psychosis." She saw Mr. Woods again on 4/5/2005 for more extensive testing and administered, among other items, the Wechsler Adult Intelligence Scale, Third Edition (WAIS-III). Dr. Tezza's impression was that "At this juncture, current cognitive deficits/relative deficits cannot be attributed to head injury given Mr. Woods' apparent pre-morbid functioning and alcohol and drug history." She noted that his deficits did not "rise to a level that would preclude competence" but suggested that "his attorney should be informed about his borderline intellectual functioning, limited academic skills, and limited vocabulary." It is significant that Dr. Tezza's diagnosis, given at a critical point in the larger context of an evaluation of competence to stand trial, was Borderline Intellectual Functioning rather than Mental Retardation. Dr. Tezza administered not only an IQ test, but also academic measures and neuropsychological measures.

After he was seen by Dr. Tezza, Mr. Woods was further evaluated by Gordon Teichner, Ph.D., psychologist, who conducted a neuropsychological evaluation. Dr. Teichner reviewed Dr. Tezza's results and conducted further evaluation. Dr. Teichner concluded that "overall intellectual functioning was in the Borderline range of abilities with better developed non-verbal, as compared to verbal, intellectual skills." In response to his referral question, Dr. Teichner emphasized that "on the basis of this evaluation, it is my opinion that there are no identifiable neurocognitive deficits that would have substantially impaired his ability to conform his conduct to the requirements of law." Dr. Teichner did not give a diagnosis of Mental Retardation despite extensive testing which did identify some specific weaknesses.

Mr. Woods' background was an issue during his trial, and particularly in the sentencing phase. While no psychologists testified, Harold Morgan, M.D., a psychiatrist, did testify regarding Mr. Woods' diagnoses. When Dr. Morgan was asked specifically if Mr. Woods is "mentally retarded," he responded (page 2506 of the trial transcript), "No, he's borderline according to the IQ tests, but I don't think he's mentally retarded." That question was asked and answered in the context of clarifying what Mr. Woods' diagnosis

is (having already specified that he is "not psychotic" and later discussing such diagnoses as "voyeurism" and "frotterism"). Like the DMH examiners, Dr. Morgan appears to dismiss the diagnosis of Mental Retardation based upon a thorough review of available records rather than as a hasty response.

BEHAVIORAL OBSERVATIONS/MENTAL STATUS EXAMINATION:

Mr. Woods was interviewed for approximately two hours on 4/5/2012 at Lieber Correctional Institute. His attorney, Melissa Armstrong, was also present during that interview. The purpose of the interview was to obtain background information and to conduct a mental status examination. Cooperation with this evaluation was excellent. Mr. Woods demonstrated little understanding of the purpose of the evaluation. When questioned about the purpose of the evaluation, he said it was to "help" him. He seemed unable to explain how it might "help" him and he was reminded of the impartiality of the undersigned; he did not appear to understand that the undersigned was not there to "help" him or that the undersigned's report could potentially be harmful or helpful to him. He was able to correctly state that the report would go to "the other lawyers" and the judge, but required coaching to add that his attorneys would also receive the report.

While he was very cooperative and was easily engaged in conversation, Mr. Woods is not deemed to be a reliable historian. He readily changed his answers when they were challenged. This did not appear to be an effort to malinger, but appeared more consistent with an effort to try to provide adequate answers. Further inquiry was not attempted at many points during review of background information because of the apparent unreliability of some of the information.

Mr. Woods was brought from his prison cell to the interview room. He was appropriately attired in a detention center uniform; he was wearing handcuffs and shackles [It is noted that handcuffs were removed for the session on 4/26/2012 when psychological testing was conducted]. Grooming and hygiene were good. Sensory systems appeared intact, with the exception that Mr. Woods appeared to have difficulty hearing questions when the examiner was not looking directly at him. Eye contact was good. He was alert and oriented in all spheres. Speech was normal in rate and volume and articulation was clear. Attention and concentration skills appeared to be adequate in interview. There was no indication of psychomotor agitation or slowing, and no unusual mannerisms were noted. Affect was congruent with topic of conversation. Mood appeared to be normal and he described his current mood as "so-so" and responded that his usual mood would be similar. He reported no suicidal or homicidal ideation or intent. No current perceptual distortions were reported and none were evident in interview. No delusional material was elicited. Thought processes appeared to be predominantly logical and coherent, although Mr. Woods easily became tangential. Insight and judgment by history appear to have been fair to poor. Mr. Woods described sleep as "so-so" and said he will sometimes "toss and turn" and will sometimes worry about his case. He also described his appetite as "so-so." He said he eats three meals per day but does not usually eat everything on the tray. He said he does eat junk food when he has money. He said he gets no exercise except in his room, where he does do push-ups and pull-ups.

Mr. Woods was able to spell his name. When asked if he has a middle name, he initially said "Junior," but then said that is his last name. He knew his age and birth date. He was able to name the current day of the week, month, and year. He initially said the date was "twenty-something," but then spontaneously determined that it was early in the month and estimated the date as the fourth or fifth (and it was actually April 5). He knew there are seven days in a week and twelve months in a year; he was able to correctly recite the days and months without difficulty. He correctly named the current season as spring and was able to name the other seasons. He identified our location as "Lieber" and as a "correctional institute" and he knew that we were in the state of South Carolina. He had some difficulty naming the country we live in but was able to name "the United States" with cueing. He was easily able to name other states (NC, FL, VA, and TX), but also included "New York City" as a state. He initially named Charleston as the capital of the United States, and then said the capital of the United States is Columbia. He said he did not know the capital of South Carolina. With additional cues he was able to

determine that the president lives in the capital city of Washington. He was able to name the current president. He said he could not remember the name of the previous president, but after additional cues he offered the name of "Bush." He said he did not know who the first president was, and when given a clue of "George" said he thought it was Abraham Lincoln. Mr. Woods was able to identify Martin Luther King only as a "black leader" and seemed unable to give additional information; when pressed he said he did remember that John F. Kennedy was president during the same time period. Mr. Woods was easily able to name the colors of the American flag.

Mr. Woods was able to name the Pacific and the Atlantic as oceans but said the Pacific is closer to us. He was able to name the directions on a map. He initially said that one would go "up" to go to New York, and eventually said that would be north. He said one would go "down," or south, to Florida. When asked about California, he said that is "a long way" and eventually said one would go east to get there.

Regarding current events, Mr. Woods opined that Barack Obama would be re-elected as president, but when pressed regarding why he believes that he was only able to say that the president is "giving people jobs." He said he did not know who was running against President Obama.

Mr. Woods was able to read the time on an analog watch without numbers, although he commented about the lack of numerals and counted the marks; he read the time as 3:05 at an actual time of 3:02. He was able to register and immediately recall three words. After a delay with intervening tasks he was able to spontaneously recall one of them. He erred in naming a second one as "bat" and then "ball" before with cues being able to produce the correct response of "baseball." He seemed unable to recall the third even with cues.

Although he seemed to have some difficulty understanding the word (eventually understanding it when his attorney assisted), he was able to correctly spell the word *world*. Despite two attempts (and initially trying to read what the examiner had written) he seemed unable to spell it backwards. He had difficulty with serial three's and with serial two's when he was asked to count backwards by three and then by two. He was able to read a simple sentence. He was able to correctly name simple geographic shapes, although he initially called the circle "the planet earth" (perhaps related to his attorney's earlier attempt to help him understand the word "world") and then a "ball" before giving the expected response of "circle." He was able to name common objects including an "ink pen," a "chair," and a "watch." He was able to perform simple addition but seemed unable to correctly solve subtraction problems. He was able to state how many quarters, dimes, and pennies are in a dollar but seemed unable to determine how many nickels are in a dollar. He said there are twelve items in a dozen and said there are either twenty-five or twenty cigarettes in a pack; when questioned he clarified that some have twenty-five and others have twenty.

Mr. Woods demonstrated some difficulty in abstract thinking. While he was easily able to identify similarities between objects he seemed unable to adequately interpret simple proverbs and tended to restate them in rather literal terms.

Mr. Woods appears to have developed good conversational skills, although he seems to have only a surface knowledge of most topics. He was asked specifically about the Bible because previous reports indicate some unusual religious beliefs, and he said he does spend some time reading the Bible. When asked which version of the Bible he reads, he did not seem to know. When asked about his favorite passages, he seemed unable to name any except for the first few chapters of Genesis which he explained as dealing with creation, the sin of Adam and Eve, and eventually the flood to destroy all but eight people. He said the book of Revelation deals with "the end of time," "666," and "the beast." When asked to explain that further, he said, "Some people say that's the computer," but he seemed unable to explain adequately. When he was asked how he would find the book of Amos in the Bible, he was eventually able to say he would look in "the list" of books at the front of the Bible to find the page number; he said he did not remember whether Amos was in the Old Testament or the New Testament.

He said he uses a "Strong's Concordance" to aid in Bible study, but he explained that as looking up words in an index-type of concordance at the back of the Bible to find passages related to that word. When asked whether he is allowed to attend any church services in prison, he responded that someone comes once a week to speak to them and he said he is able to follow and understand the message.

PSYCHOLOGICAL TEST RESULTS:

Mental retardation is defined by the Diagnostic and Statistical Manual, Fourth Edition, Text Revision (DSM-IV-TR), using three criteria. Criterion A is that there must be significantly subaverage general intellectual functioning. Criterion B requires concurrent significant limitations in adaptive functioning, and Criterion C requires onset prior to the age of 18 years.

Intellectual Functioning:

General intellectual functioning is defined by the Intelligence Quotient (IQ) which is obtained by assessment with a standardized, individually administered intelligence test. Significantly subaverage intelligence is defined as an IQ of about 70 or below, which is approximately two standard deviations below the mean. [Intelligence Tests have a mean of 100 with a standard deviation of 15].

Summary of Psychological Test Results of Intellectual Functioning:

4/26/2012	Dr. Kirby, DDSN, at Lieber Correctional Institute		
	Stanford-Binet Intelligence Scales, 5th Edition	Full Scale IQ (±4)	**81**
		Verbal IQ	81
		Nonverbal IQ	83
		Fluid Reasoning	91
		Knowledge	83
		Quantitative Reasoning	86
		Visual-Spatial Processing	77
		Working Memory	83
3/28/2012	Dr. Price at Lieber Correctional Institute		
	Wechsler Adult Intelligence Scale, 4th Edition	Full Scale IQ	**72**
		Verbal Comprehension	68
		Perceptual Reasoning	82
		Working Memory	71
		Processing Speed	86
4/5/2005	Department of Mental Health (Dr. Tezza)		
	WAIS-III	Full Scale IQ	**73**
		Verbal IQ	69
		Performance IQ	81
		Verbal Comprehension	68
		Working Memory	73
		Perceptual Organization	86
		Processing Speed	84

Stanford-Binet results appear to rule out intellectual disability. Scores are predominantly within the low average range of intellectual functioning. Using a 95% confidence interval would place the "true" IQ score between 77 and 85. Mr. Woods was very cooperative with the evaluation, and these results appear to represent his optimal level of functioning. It is noted that these results were obtained after he has spent more than eight years on death row.

Mr. Woods achieved higher full scale scores on the Stanford-Binet in 2012 than he had achieved on Wechsler Adult Intelligence Scales in 2005 and 2012. In 2005 he obtained a Full Scale IQ of 73 on the WAIS-III, and in 2012 he obtained a Full Scale IQ of 72 on the WAIS-IV. Both of those scores fall within the range of Borderline Intellectual Functioning; however, both are low enough that they would not necessarily rule out a diagnosis of intellectual disability.

It is noteworthy that on the Wechsler Adult Intelligence Scale in 2005 Mr. Woods obtained a Verbal IQ of 69, and in 2012 his Verbal Comprehension Index Score (which replaced the "Verbal IQ" score) was 68. On the Stanford-Binet in 2012 he obtained a Verbal IQ Score of 81. Results on verbal items on the Stanford Binet were higher than on the Wechsler and are inconsistent with previous assessments which indicated that his performance skills are better than his verbal skills.

In 2005 he obtained a Performance IQ of 81 and in 2012 he obtained a Perceptual Reasoning Index Score (which replaced the "Performance IQ" score) of 82. On the Stanford-Binet in 2012 he obtained a very consistent Performance IQ Score of 83.

Intellectual functioning was addressed during the DMH evaluation in 2005. A draft copy of a section of a report includes a comment from Dr. Tezza's response – "I cannot with confidence say that any of his measured/observed cognitive deficits are caused by the head injury because his premorbid intellectual/cognitive functioning was so poor." Dr. Tezza, in a handwritten consultation dated 4/14/2005, concluded that "Overall, neuropsychological screening results appear commensurate with past achievement and current intellectual testing scores. Relative deficits were noted in attention/ concentration and in delayed free recall of non-contextual (list learning) information." That evaluation was conducted within the context of an evaluation of competency to stand trial for a murder charge. Dr. Tezza noted that the Full Scale IQ score of 73 "falls in the borderline range," and she further commented that "his attorney should be informed about his borderline intellectual functioning, limited academic skills, and limited vocabulary." Handwritten notes are also available from Dr. Tezza's interview with Mr. David Woods from 4/8/2005. It is noted that David and Anthony Woods are cousins who "grew up together, same house." The notes from that interview indicate that Dr. Tezza considered the issue of intellectual disability/mental retardation, as they include the phrases "never identified as MR" and "never showed the signs of MR."

Gordon Teichner, Ph.D., conducted a neuropsychological evaluation in July 2005 upon referral during the process of the aforementioned DMH evaluation. Dr. Teichner indicated that his evaluation was requested "to objectively assess his neurocognitive functioning and to assist in determining if any possible neurocognitive deficits would have substantially impaired his ability to conform his conduct to the requirements of the law." Dr. Teichner reviewed Dr. Tezza's results and administered additional tests. Dr. Teichner concluded that "overall intellectual functioning was in the Borderline range of abilities with better developed non-verbal, as compared to verbal, intellectual skills."

As noted, a diagnosis of intellectual disability requires assessment with a standardized, individually administered intelligence test. However, there are numerous tests available which provide a brief screening measure of intelligence. References to four such instruments are found in the records available for Mr. Woods. Mr. Woods was given the Revised Beta II (typically administered in a group setting to obtain an estimate of IQ level) upon incarceration in 2000 and again in 2005. In 2000 he obtained a score of 87, which was characterized as "below normal intelligence" but which falls within the low average range of intellectual functioning. In 2005 he obtained a score of 91, which was categorized as

"normal intelligence" and falls within the average range of intellectual functioning. The four point difference between those two scores is not significant. Although the date is illegible, school records indicate that at the age of 9 years, 7 months, Mr. Woods took the Otis-Lennon, which is usually described as a school ability test. On that test he obtained an "IQ" score of 78. Similarly, in October 1975 at the age of 9 years, 4 months, he obtained an "IQ" score of 74 on the CTBS. A handwritten note (which may have been added by SCDMH examiners in 2005) indicated that the CTBS is the California Test of Basic Skills; however, the same acronym is used by the Comprehensive Test of Basic Skills. While those scores fall within the borderline range of intellectual functioning, they are more accurately described as measures of academic aptitude than as a general measure of "IQ."

Adaptive Functioning:

The second criterion for a diagnosis of mental retardation is concurrent deficits in adaptive functioning. Adaptive functioning is defined by DSM-IV-TR as "how effectively individuals cope with common life demands and how well they meet standards of personal independence expected of someone in their particular age group, sociocultural background, and community setting." This is further defined as requiring deficits in present adaptive functioning in at least two of the following areas: Communication; self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.

The AAIDD, alternatively, defines adaptive behavior as "the collection of conceptual, social, and practical skills that have been learned and are performed by people in their everyday lives." On appropriate standardized measures of adaptive behavior, "significant limitations in adaptive behavior are operationally defined as performance that is approximately two standard deviations below the mean of either (a) one of the following three types of adaptive behavior: conceptual, social, or practical or (b) an overall score on a standardized measure of conceptual, social, and practical skills." [Quotes are from Intellectual Disability: Definition, Classification, and Systems of Supports, the eleventh edition of the AAIDD Definition Manual, 2010, page 43].

Summary of Psychological Test Results of Adaptive Functioning:

During the present evaluation, Mr. Woods was administered the Independent Living Scales (ILS) immediately after he completed the Stanford-Binet. Cooperation was excellent. The ILS was chosen because it is one of the few instruments that can be administered directly with the examinee in a correctional setting. It is noted that DDSN does not accept the ILS as an adequate measure of adaptive functioning, and the ILS was developed to be used with a geriatric population. While such measures as the Vineland Adaptive Behavior Scales and the Adaptive Behavior Assessment System are more appropriately used as measures of adaptive functioning, both of those measures present problems in such cases as this one. Neither is intended to be used with the examinee as the informant and Mr. Woods in particular is not deemed to be a reliable source of information. Mr. Woods has spent recent years on death row and a significant part of his adulthood incarcerated, and there is no measure which adequately addresses adaptive functioning for individuals who have such extremely limited opportunities to demonstrate adequate adaptive functioning. Even if suitable informants could be located to address his adaptive functioning during the developmental period, they would be asked to rate how Mr. Woods functioned many years ago; and there are no suitable available informants who have had regular, ongoing contact with him.

On the ILS, Mr. Woods obtained a Full Scale Standard Score of 76. That score would be generally consistent with the "borderline" level of intellectual functioning. [In a very small standardization sample, the mean score for examinees with Borderline Intellectual Functioning was 78.4, and the average range for examinees with mild mental retardation was 57.4]. However, there was significant scatter among the subscale scores. Mr. Woods' poorest performance was on the "Managing Money" subscale, and it is noted that it has been many years since he has been able to handle money. While everyone is expected

to know what "social security" benefits are, that is not a concept that is relevant to Mr. Woods; it is also not surprising that he would be unable to correctly write a check. He also performed very poorly on the "Health and Safety" subscale, but some of his responses received no credit despite being reasonable answers in his setting. For example, when asked what he would do if he were having difficulty hearing, he responded that there is "not much I can do." Similarly, when asked about reading difficulties he said he would get a magnifying glass and did not appear to consider the possibility of eyeglasses. Mr. Woods performed within the "low average" to "average" range on other subscales. He demonstrated a relative strength in "Memory/Orientation," but it is noted that similar items had been discussed during a previous interview. He demonstrated no significant problems in "Social Adjustment." He demonstrated some weaknesses in "Managing Home and Transportation," but some of those items are not particularly relevant when one is incarcerated.

The ILS also includes two "Factor" scores. Mr. Woods demonstrated a significant weakness on the "Problem-Solving Factor" and was also below average on the "Performance/Information Factor." If the ILS were used for its stated purpose, a logical conclusion would be that Mr. Woods would be capable of living independently with some assistance, and that he would specifically require assistance in managing money, household responsibilities, and transportation.

The ILS results, especially in light of its psychometric weaknesses, cannot be used to confirm or refute a diagnosis of Intellectual Disability. While the ILS does indicate significant adaptive deficits in at least the two areas of managing money and health and safety, it is not possible to know if those areas would remain deficient if Mr. Woods had the opportunity to live in society and gain more experience in those areas.

There are no measures of adaptive functioning available in previous evaluation reports. There is relatively strong anecdotal data which suggests the presence of significant deficits in adaptive functioning. DSM-IV-TR requires deficits in only two areas (from communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety) to meet the criteria for a diagnosis of intellectual disability. It is clear that Mr. Woods performed poorly academically while in school, and all available achievement test data indicate that as a weakness. While Mr. Woods has held a number of jobs, all seem to have involved unskilled labor. He did receive some "promotions" on prison work details, and apparently had a job title as "supervisor" at least once within the prison system; it is unclear whether either of those factors would indicate meritorious work performance. While Mr. Woods seems to have performed satisfactorily in job settings within the Department of Corrections, it is noted that such performance within a highly structured institutional setting is not equivalent to vocational success in the community.

Age of Onset:

The third prong which must be satisfied is age of onset, which must be within the developmental period and specifically before the age of 18. It is clear that Mr. Woods did not receive a formal diagnosis of intellectual disability prior to the age of 18, nor is there a record of any evaluations prior to the age of 18.

Malingering:

No specific instrument was used to assess malingering as a part of the current evaluation, nor was it deemed necessary. During a DMH evaluation in 2005 he was suspected to have malingered regarding psychotic symptoms; whether he was at that time malingering or has more recently been malingering psychotic symptoms is an issue that is beyond the scope of this evaluation. It was not suggested, however, that he was malingering on other measures during intelligence testing or during a more extensive neuropsychological evaluation. It is very clear that he was not malingering during administration of the Stanford-Binet V in 2012, and he appeared to be putting forth an excellent effort.

During the interview by the undersigned in 2012, Mr. Woods was deemed to be a poor historian, but that did not appear to be due to malingering.

DIAGNOSTIC SUMMARY AND CONCLUSIONS:

In summary, it is clear that Mr. Woods suffers from chronic mental illness. Diagnosis of mental illness is beyond the scope of this evaluation, but the history of mental illness cannot be ignored. Mr. Woods clearly experienced neglect and physical abuse as a child, and he has a history of head injuries. All of those factors are relevant in evaluating cognitive and adaptive functioning. However, a diagnosis of intellectual disability must meet three specific criteria.

A diagnosis of Intellectual Disability requires concurrent significant deficits in intellectual and adaptive functioning, with an age of onset prior to the age of 18 years.

At the time of this report there are three separate individually administered IQ tests available for Mr. Woods. While all three resulted in scores above the range required for a diagnosis of Intellectual Disability, two resulted in scores which were only slightly above that range. The most recent test results, however, fell within the range of Low Average Intellectual Functioning and rule out a diagnosis of Intellectual Disability.

There are no adequate formal assessments of adaptive functioning available for Mr. Woods. Anecdotal evidence suggests that there were deficits in adaptive functioning in the areas of functional academics and occupational functioning, but it is unclear whether those would have been significant enough to meet the criteria for a diagnosis of intellectual disability.

While Mr. Woods has sustained some head injuries, it is unclear what effect those may have had upon his intellectual or adaptive functioning. He also had a history of mental illness and of substance abuse. However, there is no clear evidence that any of those factors have had a substantial negative effect upon his intellectual functioning. Mr. Woods obtained a Full-Scale IQ score of 81 at the age of 47 despite those factors.

While recent test results are sufficient to rule out a diagnosis of Intellectual Disability, it is also noted that the psychologists and psychiatrists who were involved with previous evaluations of competency to stand trial and criminal responsibility did not give Mr. Woods a diagnosis of Intellectual Disability despite the WAIS-III and other test results available at that time. Diagnoses appear to have been carefully considered. Reports by Dr. Atkins and by Dr. Jacoby (psychiatrists) and further evaluations by Dr. Tezza and by Dr. Teichner (psychologists) concluded that Mr. Woods did not meet the criteria for a diagnosis of Intellectual Disability. Dr. Morgan (psychiatrist) in his court testimony also gave several well-supported diagnoses and said that he did not believe Mr. Woods was mentally retarded. Results of the WAIS-IV in 2012 are remarkably consistent with results of the WAIS-III in 2005.

While the present evaluation is a clinical one, the legal context within which it is conducted cannot be ignored. It is especially significant that in 2004-2005 the DMH examiners in their pretrial evaluation determined that Mr. Woods was not intellectually disabled. It was noted above that the issue of mental retardation was carefully considered at that point and that further evaluation, including a neuropsychological assessment, was conducted; such an extensive evaluation is not typical in evaluations of competency to stand trial or of criminal responsibility/capacity to conform. The significance of the DMH examiners' diagnostic decision is noted for two reasons; first, that the General Sessions Court order for that evaluation required an "automatic" referral to DDSN in the event of any indication of mental retardation, and second, that the US Supreme Court had in 2002 ruled in *Atkins v. Virginia* that the mentally retarded could not be executed. The DMH examiners, after an extensive evaluation, determined that there was not sufficient basis for referring the case to DDSN. It is also significant that Mr. Hoffmeyer, a defense attorney who represented Mr. Woods in the murder trial as well as in previous

trials, was present for all three dates of the DMH evaluation. During the sentencing phase of the trial, in both the opening and closing arguments by the defense, references were made to "borderline" intellectual functioning; mental retardation was not introduced as a mitigating factor or as an exclusionary factor for the death penalty.

Based on the totality of the data, it is the opinion of this examiner that Mr. Anthony Woods does not meet the diagnostic criteria for intellectual disability (mental retardation) as defined in the South Carolina Code of Laws.

Gordon E. Brown, Jr. PhD **Date signed:** 5/8/2013

Gordon E. Brown, Jr., Ph.D.
Chief Psychologist/State-Level Psychological Examiner
SC License # 429
SCDDSN Central Office

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	)	IN THE COURT OF COMMON PLEAS THRID JUDICIAL CIRCUIT
Anthony Woods, Applicant, v. State of South Carolina, Respondent.	)	C/A No. 2018-CP-14-382 AFFIDAVIT OF SERVICE

1. I am an employee for Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Respondent's Response in Opposition to Motion to Proceed *Ex Parte* in Funding Matters**, in the above-captioned matter on the following by depositing same in the United States mail, postage prepaid:

Emily Paavola, Esquire
Lindsey S. Vann, Esquire
Justice 360
900 Elmwood Avenue, Suite 200
Columbia, South Carolina 29201

DATED this 31st day of May, 2024.

Angela Brown
Angela Brown
Administrative Coordinator