

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Dec 16 2024

S.C. SUPREME COURT

IN THE ORIGINAL JURISDICTION

Appellate Case No. _____

MARION BOWMAN, JR., SK #6006,

Petitioner,

v.

BRYAN P. STIRLING, Commissioner, South Carolina
Department of Corrections,

Respondent.

EXHIBITS TO
PETITION FOR A WRIT OF HABEAS CORPUS

TERESA L. NORRIS
CAPITAL HABEAS UNIT FOR THE FOURTH
CIRCUIT
129 West Trade Street, Suite 300
Charlotte, NC 28202
(980) 378-5105
Teresa_Norris@fd.org

LINDSEY S. VANN
JUSTICE 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201
(803) 765-1044
lindsey@justice360sc.org

S. BOYD YOUNG
S.C. COMMISSION ON INDIGENT DEFENSE
CAPITAL TRIAL DIVISION
1330 Lady Street, Suite 401
Columbia, SC 29201
(803) 734-7818
byoung@sccid.sc.gov

Counsel for Petitioner

Exhibits to Petition for Writ of Habeas Corpus
Index

Exh. No. - Exhibit Name	Habeas Petition Exhibits Page No.
1 – Solicitor’s Interviews Needed Memo.....	1
2 – Amended PCR Appeal Petition for Writ of Certiorari	4
3 – Investigator Robert Minter 2024 Affidavit.....	92
4 – Robert Minter 2018 Affidavit	95
5 – Undated Letter to Judge Goodstein	98
6 – Letter to Judge Goodstein (Nov. 5, 2001)	101
7 – Judge Goodstein Response Letter	104
8 – Governor & Bar Letters.....	105
9 – Jeffrey Yungman, M.S.W., J.D., 2024 Affidavit	108
10 – Jeffrey Yungman 2018 Affidavit	110
11 – Juror Richard Perez Affidavit	113
12 – Martin pictures from sentencing evidence	115
13 – News article from time of arrest with Bowman’s picture.....	120
14 – Kendra Bowman Affidavit	122
15 – Bowman (aka “Black”) picture from sentencing	127
16 – Jim Brown Affidavit	130
17 – <i>State v. Owens</i> , Appellate Case No. 2024-001397 (Sep. 12, 2024) (unpublished)	137
18 – Elizabeth Cauffman, Ph.D., Report.....	149
19 – Donna Maddox, M.D., Report	161

20 – Donna Maddox, M.D., Curriculum Vitae.....	177
21 – Susan Knight, Ph.D., Report.....	188
22 – Susan Knight, Ph.D., Curriculum Vitae	212
23 – Ralph Hunter Affidavit	224
24 – Darryl McGhee Affidavit	227
25 – Marissa Bowman Affidavit	229
26 – Denise Bowman Affidavit.....	234
27 – Marion Bowman, Sr., Affidavit	239
28 – Quanisha Clark Affidavit	241
29 – Lorraine Johnson Affidavit.....	245
30 – Dorothy Bowman Affidavit	248
31 – Francis Bruce Affidavit	251
32 – Yolanda Bowman Affidavit	254
33 – Lena Clark Affidavit	258
34 – Gordon Manning Affidavit.....	261
35 – Larry Tyree Affidavit	263
36 – Bob McAlister Affidavit	266
37 – Shannon Brown Affidavit	269
38 – Kimberly Fuhrmeister Affidavit	273
39 – Stacy Ferraro Affidavit (Berry)	276
40 – Stacy Ferraro Affidavit (Burt)	280

Exhibit 1

INTERVIEWS NEEDED

HIRAM JOHNSON:

Who was present at Allen Murray's club and burning of the auto?

YOLANDA BOWMAN:

Bowman's threat to kill victim while sitting in her car.

Did she see pistol on Bowman on the 16th?

Where is the pistol now?

(May need to threaten her and mother with prosecution to get statement)

JAMES GADSON, SR:

Who instructed him to buy gloves at EZ Shop?

Who was in the car?

FRANKIE MARVIN:

Was with Bowman and victim earlier that day, according to Bowman.

Did Bowman say anything to him about his intentions?

HANK KOGER:

Did he see Bowman with gun that night?

Did Bowman say anything to him about his intentions?

JOE FOGLE:

Did he see Bowman with gun that night?

Did Bowman say anything to him about his intentions?

MEKA (last name unknown - lives in Apt. 10):

Who fired the pistol earlier in the project?

Did Gadson spend the entire night with her or did he go to the club?

VAMETRA GADSON:

What is the boyfriend's name that Bowman offered to sell the 380 to?

(INTERVIEW BOYFRIEND)

KENDRA BOWMAN:

Did she go to Dorothy Bowman's house, remove the gun from a chair, and give it to her father?

(May need to threaten her, mother, and father with prosecution)

KATRINA WEST:

Did Kendra Bowman tell her that she got gun from Dorothy Bowman's house and gave it to her father?

Exhibit 2

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dorchester County
James E. Lockemy, Circuit Court Judge

RECEIVED

APR 30 2014

S.C. Supreme Court

MARION BOWMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213468

AMENDED PETITION FOR WRIT OF CERTIORARI

ROBERT M. DUDEK
Chief Appellate Defender

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

MICHAEL J. ANZELMO, *pro bono*

NELSON MULLINS RILEY & SCARBOROUGH, LLP
Meridian, 17th Floor
1320 Main Street
Columbia, South Carolina 29201
(803) 255-9589

ATTORNEYS FOR PETITIONER

INDEX

INDEX.....	1
ISSUES PRESENTED.....	5
STATEMENT OF FACTS	8
ARGUMENTS	
1. Trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to investigate and prepare for the impeachment of Taiwan Gadson and by failing to impeach the testimony of Taiwan Gadson in any meaningful way, including, but not limited to, the fact that the state threatened Gadson with the death penalty in his plea agreement, how Gadson's prior inconsistent statements showed that his story changed, and the fact Gadson had access to the murder weapon.....	14
Introduction.....	14
1. What the Jury Heard at Trial from Gadson.....	14
2. What the Jury Did Not Hear Because of Trial Counsel's Ineffective Cross-Examination.....	19
a. The Jury Never Heard that Gadson Faced the Death Penalty.....	19
b. The Jury Never Heard the Details of Gadson's Inconsistent Statements.....	20
c. The Jury Never Heard that Gadson Fired the Murder Weapon.....	22
3. The PCR Court's Ruling	23
4. Discussion.....	23
a. The PCR Court Erred in Finding that Gadson Was Not Threatened with the Death Penalty	23
b. Petitioner was Prejudiced by Trial Counsel's Failure to Impeach Gadson with his Prior Inconsistent Statements and Evidence He Fired the Murder Weapon	27

2. Trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to investigate and prepare for the impeachment of Travis Felder and by failing to impeach the testimony of Travis Felder in any meaningful way, including impeaching Felder with a videotape that would have shown Felder lied to the jury about buying the gas to burn the decedent's car, impeaching Felder on bias with his original charges, and impeaching Felder with his prior inconsistent statements	31
Introduction.....	31
1. What the Jury Heard from Travis Felder During the Guilt Phase of the Trial.....	31
Felder Omits His Purchase of the Gasoline	33
What Felder Told the Jury He Saw at Nursery Road	33
2. What the Jury Did Not Hear in the Guilt Phase Because of Counsel's Errors	35
a. Petitioner Himself is the First Person to Point out Felder's Lie about the Gasoline	35
b. Felder's Original Charges and the Changing of his Story Immediately Before Trial.....	35
3. The PCR Court's Ruling	37
4. Discussion	38
a. Counsel's Failure to Impeach Felder with His Lie about the Gasoline Purchase was Deficient and Prejudiced Petitioner	38
b. Petitioner was Prejudiced by Cummings' Failure to Impeach Felder with his Original Charges and Inconsistent Statements.....	42
3. Trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to investigate and prepare for the impeachment Hiram Johnson and by failing to impeach the testimony of Hiram Johnson by cross-examining Johnson on his prior inconsistent statement which, critically, did not include his allegation at trial that petitioner confessed to the murder	45
Introduction.....	45
1. What the Jury Heard at Trial from Johnson.....	45

2. What the Jury Did Not Hear Because of Trial Counsel's Ineffective Cross-Examination	47
3. The PCR Court's Ruling	47
4. Discussion	48
4. Petitioner is entitled to a new trial because the state withheld information necessary for impeachment and necessary for defense in violation of petitioner's due process rights under the Fourteenth Amendment and under the rules of discovery, those items being a memorandum of a law enforcement interview with Ricky Davis who heard Gadson confess to the murder, Gadson's mental health evaluation, and the fact that Hiram Johnson had unindicted pending charges at the time of his testimony.....	50
Introduction.....	50
Discussion.....	50
1. Ricky Davis – The Sam Memo.....	51
2. Gadson's Mental Health Evaluation.....	55
3. Hiram Johnson's Pending Charges.....	57
The Brady Errors Must be Considered in the Aggregate	59
5. Trial counsel rendered ineffective assistance of counsel because counsel had a conflict of interest between two of her clients -- Petitioner Bowman and Ricky Davis -- that caused counsel to fail to call Ricky Davis as a witness, despite Davis' statement that exculpated Petitioner Bowman and established Gadson shot the victim	61
6. Defense counsel was ineffective for failing to object to the solicitor's examination of James Aiken regarding favorable prison conditions and recreational facilities available to inmates since this Court had long ago in <i>State v. Plath</i> , 281 S.C. 1, 313 S.E.2d 619 (1984), held such evidence was impermissible because it did not relate to the character of the defendant or the nature of his crime. This evidence was highly prejudicial in the eyes of the jury, and the failure to object to it properly at trial also barred consideration of this winning issue on petitioner's direct appeal.....	68
Discussion.....	76

7. Petitioner's rights under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution and under state law were violated because the trial judge failed to properly consider his application as evidenced by the PCR court's wholesale adoption of the state's proposed order	81
CONCLUSION	85

ISSUES PRESENTED

1.

Whether trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to investigate and prepare for the impeachment of Taiwan Gadson and by failing to impeach the testimony of Taiwan Gadson in any meaningful way, including, but not limited to, the fact that the state threatened Gadson with the death penalty in his plea agreement, how Gadson's prior inconsistent statements showed that his story changed, and the fact Gadson had access to the murder weapon?

2.

Whether trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to investigate and prepare for the impeachment of Travis Felder and by failing to impeach the testimony of Travis Felder in any meaningful way, including impeaching Felder with a videotape that would have shown Felder lied to the jury about buying the gas to burn the decedent's car, impeaching Felder on bias with his original charges, and impeaching Felder with his prior inconsistent statements?

3.

Whether trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to investigate and prepare for the impeachment Hiram Johnson and by failing to impeach the testimony of Hiram Johnson by cross-examining Johnson on his prior inconsistent statement which, critically, did not include his allegation at trial that petitioner confessed to the murder?

4.

Whether petitioner is entitled to a new trial because the state withheld information necessary for impeachment and necessary for defense in violation of petitioner's due process rights under the Fourteenth Amendment and under the rules of discovery, those items being a memorandum of a law enforcement interview with Ricky Davis who heard Gadson confess to the murder, Gadson's mental health evaluation, and the fact that Hiram Johnson had unindicted pending charges at the time of his testimony?

5.

Whether trial counsel rendered ineffective assistance of counsel because counsel had a conflict of interest between two of her clients -- Petitioner Bowman and Ricky Davis --that caused counsel to fail to call Ricky Davis as a witness, despite Davis' statement that exculpated Petitioner Bowman and established Gadson shot the victim?

6.

Whether defense counsel was ineffective for failing to object to the solicitor's examination of James Aiken regarding favorable prison conditions and recreational facilities available to inmates since this Court had long ago in *State v. Plath*, 281 S.C. 1, 313 S.E.2d 619 (1984), held such evidence was impermissible because it did not relate to the character of the defendant or the nature of his crime. This evidence was highly prejudicial in the eyes of the jury, and the failure to object to it properly at trial also barred consideration of this winning issue on petitioner's direct appeal?

7.

Whether petitioner's rights under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution and under state law were violated because the trial judge failed to properly consider his application as evidenced by the PCR court's wholesale adoption of the state's proposed order?

STATEMENT OF FACTS

The state's key witnesses against Petitioner Marion Bowman at trial were James Gadson, Travis Felder and Hiram Johnson. Superficially, the case presented through these witnesses by the solicitor appeared rather straightforward. As will be seen infra powerful impeaching evidence against each of these three witnesses existed that defense counsel did not use because of incompetence or because the solicitor withheld impeaching evidence from them.

The state's theory at trial was that petitioner and the decedent, Kandee Martin¹, were friends. Gadson testified that on the day decedent was shot he had been drinking gin for most of the day, and he was "feeling in good shape." App. 3992, l. 11 – 3993, l. 25. Gadson said he was with petitioner and the decedent that evening. The decedent was driving. They went to the Horizon E-Z shop where they pumped gas, and then drove away without paying. App. 3994, l. 3 – 3995, l. 2.

Gadson claimed petitioner told the decedent where to drive and that she drove onto Nursery Road. "She stopped, cut the car off, cut the lights off, we got out." App. 3995, ll. 3-21.

Gadson maintained petitioner walked away from the car and that petitioner said he was going to kill the decedent "because she was wearing a wire." App. 3998, l. 4 – 3999, l. 3. Gadson testified that a car drove by and they "jumped in the woods." App. 3999, ll. 16-21.

After the vehicle passed by, the decedent started walking back to the car and petitioner followed her. Gadson claimed he heard a gunshot and saw the decedent running back towards him. Gadson claimed petitioner shot at the decedent two times and "she fell to the ground," then petitioner dragged her body into the woods. App. 4001, l. 5 – 4012, l. 24.

¹ Kandee is also spelled "Candee" in other places in the record. For ease of reference she is consistently referred to as "Kandee."

Later that night Gadson went to the Allen Murray Club with petitioner, Hiram Johnson, and another man in the decedent's car. Hiram Johnson would later testify that petitioner was trying to sell the decedent's car at the Allen Murray Club late that night. App. 4017, l. 4 – 4018, l. 17; App. 4067, ll. 3-20.

The state presented evidence that Travis Felder was with petitioner when petitioner burned the decedent's car. Felder claimed that petitioner came to the Villa Apartments and told him "I need to park this car." Felder testified that he only followed petitioner while petitioner drove the decedent's automobile to Nursery Road. App. 4092, l. 6 – 4096, l. 19.

Felder maintained when they arrived at Nursery Road, petitioner pulled the decedent's dead body out of the woods, put it in the trunk, and set the car on fire. App. 4096, l. 13 – 4100, l. 14.

Hiram Johnson's role during the trial was to testify that petitioner was trying to sell the decedent's car that evening, and that on the way back from the Allen Murray Club petitioner told him: "I killed Kandee, heh, heh, heh." Johnson claimed petitioner had a gun in his lap at the time. App. 4067, l. 25 – 4068, l. 18.

Marva Hardee-Thomas, ("Thomas") who is presently suspended from the practice of law by this Court, represented petitioner along with Norbert Cummings ("Cummings"). Thomas later acknowledged during PCR that she did not know what the guilt phase strategy was, and she referred any questions about it to Cummings. As to the penalty phase strategy she again stated: "You're going to have to ask Mr. Cummings." App. 7307, l. 5 – 7308, l. 10; App. 7325, ll. 6-23. The defense's mitigation investigator and social work expert testified they had no idea what the strategy was for the penalty phase. App. 6962, ll. 3-7; App. 6786, ll. 7-23. Thomas even wrote a letter to the jail, while she was a Dorchester County Public Defender, stating petitioner could call the Public

Defender's Office collect between "8:45 - 9:00" "concerning his capital case" but she added "[h]e is not allowed to contact me on a daily basis." App. 9170.

At the time Thomas represented petitioner, as will be seen infra, she also had an attorney-client relationship with Ricky Davis. Davis wrote a statement in 2001 that Gadson had confessed to Davis that he killed the decedent. In this statement Davis said Gadson admitted or bragged: "[T]hat he was the one that shot the girl and gave Petitioner the gun that was used and he said it didn't matter because Black [petitioner's nickname] family had got caught with the gun [anyway]." App. 8966.

As will be seen infra, Thomas candidly admitted a conflict of interest existed in her representation of both petitioner and Davis. Thomas explained the dual representation had her "trying to help Mr. Bowman but not hurt my aspect with Mr. Davis because I still had an ethical responsibility with him also." App. 7330, l. 18 – 7333, l. 6.

The defense failed to call Davis as a witness during petitioner's trial even though Davis was brought to the courthouse. Thomas did not remember even discussing Ricky Davis with petitioner, much less detailing the former attorney-client relationship she had with Davis to petitioner. App. 7294, l. 11 – 7296, l. 18. As will also be seen infra, Davis, after leaving the jail and when he was away from petitioner and Gadson, gave an additional statement to Solicitor Bailey's investigator, Sam Richardson, in which Davis stated that Gadson confessed in jail to "killing a girl." Davis told Richardson that petitioner never admitted shooting anyone, but Davis said Gadson later went back on his confession and claimed Petitioner shot her. App. 9122.

This statement was not turned over to the defense prior to trial. Bailey first tried to claim this statement was subject to the "attorney-client privilege." He then attempted to characterize the Richardson memorandum as work product. App. 7860, l. 12 – 7879, l. 18.

Solicitor Bailey also admitted he did not provide the defense with Gadson's mental health evaluation, and trial counsel Cummings confirmed he never received it. This report stated that Gadson reported hearing "voices" and "a little beeping noise." The report also recorded the fact that Gadson's testing showed he had memory problems which was not unusual given his admission of smoking "six blunts of cannabis on a daily basis." App. 8960.

As seen above, Travis Felder testified during petitioner's trial that he went to the crime scene and saw petitioner pull the decedent's dead body out of the woods, put her body in the trunk, and set the decedent's car on fire. During the PCR hearing testimony was adduced to show that Cummings failed to impeach Felder's story at trial, and he also failed to impeach Felder with the fact that Felder faced and feared the death penalty if he violated his plea agreement at the time of his trial testimony. Cummings admitted he knew at the time Felder testified during the state's case-in-chief that Felder purchased gasoline alone at the E-Z shop prior to the decedent's car being set on fire. Cummings had watched the videotape of Felder purchasing the gasoline with petitioner. Yet he did not impeach Felder with this serious omission where Felder claimed he was just a bystander. App. 7017, l. 15 – 7021, l. 21.

After petitioner had been convicted of murder, Cummings called Felder as a witness during the sentencing phase, when guilt was no longer an issue, to testify that he did purchase the gasoline that evening. When Felder was asked why he did not tell the jury that fact earlier, he told the solicitor: "You didn't ask." App. 4925, ll. 17-25.

When Felder was interviewed by the police he denied any knowledge of the decedent's murder. App. 6381, l. 17 – 6384, l. 16. After Felder was charged with murder and arson in 2001, he hired Charles Williams as his attorney. During plea negotiations, Felder's attorney sent a proffer letter to Solicitor Bailey. The proffer letter omitted both the fact that Felder bought the gasoline that

evening, and his claim that he saw petitioner put the decedent's body in the trunk of the car. App. 6384, l. 25 – 6390, l. 6; App. 9118.

At the PCR hearing, Cummings testified that he did not find out about Felder "cutting a deal" until just before the trial. The plea agreement allowed the solicitor to reinstate all of Felder's charges and seek the maximum penalty [death], "*and the defendant hereby waives any objection to the state seeking of the maximum penalty*" if Felder did not tell the "absolute truth." App. 8971. (emphasis added). Cummings apologized at PCR for not cross-examining Felder on the issue of Felder of his sentencing exposure of death or life imprisonment, particularly where Felder never even went to prison. App. 7029, l. 10 – 7034, l. 25. Cummings also apologized for not impeaching Felder with his prior inconsistent statements and omissions. App. 7045, ll. 1-10.

As seen, Hiram Johnson testified at trial that petitioner confessed to him that he "killed Kandee, heh, heh, heh." However, the jury never learned Johnson was a biased witness because of his pending charges -- from the same solicitor's office -- that were not disclosed by Solicitor Bailey. App. 4068, ll. 4-18. Further, at the PCR hearing it was revealed that nowhere in Hiram Johnson's earlier statement to Detective Coker on April 5, 2001, did he claim Petitioner said "I killed Kandee, heh, heh, heh." App. 9054. Johnson belatedly testified at PCR he thought petitioner was kidding when he said he killed the decedent, but he did not tell the jury during his testimony he thought petitioner was kidding. App. 6290, l. 10 – 6298, l. 10.

As will also be seen infra, Defense Counsel Cummings mistakenly thought that the penalty phase of petitioner's trial could focus on whether life imprisonment was really a harsh punishment or whether inmates lived rather relaxing lives in prison. Cummings reacted sarcastically when told that this Court had long held such evidence was improper: "Isn't that nice of them, but how else do

you argue about somebody having a chance to live in prison? I mean, I don't argue academically." App. 7449, l. 21 – 7450, l. 22.

When asked a question about the aggravating circumstance of kidnapping Cummings responded with a lecture to the petitioner:

Mr. Cummings: I want to say this out loud and with Marion [present], what are you doing on Nursery Road at that time of the morning with a white female and African American males in Dorchester County? Really. This is 2001 but what good are you doing out there on a dirt road? Okay. And we have all the homeowners calling us saying they heard shots, then they come out and they find a burning car. So, that's the way this thing portrayed. The fire department comes out, as you know. I have read this file backward and forward. If he's there he's a principal, if he's in the car. If he's not there, how does all these facts get known, how are all these facts to be told?

App. 7126, ll. 7-25.

ARGUMENT

1.

Trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to investigate and prepare for the impeachment of Taiwan Gadson and by failing to impeach the testimony of Taiwan Gadson in any meaningful way, including, but not limited to, the fact that the state threatened Gadson with the death penalty in his plea agreement, how Gadson's prior inconsistent statements showed that his story changed, and the fact Gadson had access to the murder weapon.

Introduction

Taiwan Gadson ("Gadson") was the chief witness against petitioner at the trial. Gadson claimed that he witnessed petitioner shoot the decedent and drag her body into the woods. App. 4011, l. 20 – 4012, l. 2. Gadson's version of events went essentially unchallenged by the defense. The jury never heard that Gadson gave inconsistent statements to the police, that he had previously fired the pistol the state alleged was the murder weapon, and that Gadson was threatened with the death penalty. Had trial counsel not been ineffective and impeached Gadson with this information, there is a reasonable probability that Gadson would not have been believed and the outcome of the trial would have been different.

1. What the Jury Heard at Trial from Gadson

In order to understand the vast importance of any evidence that could be used to impeach Gadson, it is important to understand the centrality of his testimony to the state's case. Without Gadson, the state had very little evidence against petitioner.

At the time of his testimony, Gadson was twenty-three years old. App. 3980, ll. 8 – 9. He had lived in Branchville his whole life. App. 3980, ll. 12 – 13. He was in jail at the time of his

testimony. App. 3980, ll. 19 – 21. The state initially charged him with the decedent's murder. App. 3980, ll. 22 – 24.

Gadson testified that the first time he saw petitioner on the day of the murder was early that morning. App. 3983, ll. 13 – 16. Petitioner was in the car with his sister, Yolanda Bowman, on their way to a meat market in St. George. App. 3983, ll. 17 – 21. Gadson went with Yolanda Bowman and petitioner to the meat market. App. 3984, ll. 2 – 3. Afterwards, they returned to Branchville to petitioner's house. App. 3984, ll. 14 – 17. Petitioner came out of the house “with a little limp.” App. 3984, ll. 18 – 25. Petitioner said he was walking that way because he had a gun in his pants and the gun was cold. App. 3985, ll. 1 – 9. Gadson saw the gun. App. 3985, ll. 10 – 12. Petitioner had a beer and a bag, took the beer out of the bag and put the gun in it. App. 3985, ll. 10 – 15.

Gadson claimed that he was with petitioner when petitioner purchased the gun. App. 3985, ll. 21 – 24. According to Gadson, petitioner purchased the gun approximately two weeks before the murder. App. 3986, ll. 1 – 3. The gun was a gray and black .380 High Point automatic pistol. App. 3986, ll. 6 – 8. Petitioner bought the gun from a “dude in Orangeburg.” App. 3986, ll. 12 – 13. A gun, state's Exhibit 42, looked the same to Gadson as the one petitioner had on the day of the murder. App. 3987, ll. 5 – 10. Gadson never said anything about Felder being present when petitioner supposedly bought this gun. App. 3985, l. 19 – 3986, l. 25. Trial counsel failed to point out this inconsistency. App. 4101, ll. 9 – 15.

Yolanda Bowman then took them to the Villa Apartments in Branchville. App. 3987, ll. 11 – 25. They went to Hank Koger's house and started drinking. App. 3988, ll. 1 – 12. Gadson saw petitioner put his gun in a trash barrel. App. 3988, ll. 18 – 20. After petitioner returned from the store, petitioner started an argument with him about the gun. App. 3989, ll. 4 – 8. The

argument ended when Hiram Johnson retrieved the gun from nearby woods. App. 3989, ll. 16 – 20.

Gadson's claims about the gun at Hank Koger's house conflicted with the testimony of Hiram Johnson. Johnson testified that he hid the gun at Katrina West's house. App. 4060, ll. 5 – 8. Johnson testified that petitioner went to Katrina West's house, got his gun, and came back to Koger's house. App. 4060, ll. 12 – 19. Trial counsel failed to point out this inconsistency to the jury.

Gadson remained at Hank Koger's house. App. 3990, ll. 16 – 18. He next saw petitioner at approximately 7:30 PM. App. 3990, ll. 19 – 23. Petitioner was in the decedent's car. App. 3991, ll. 4 – 7. The decedent was driving. App. 3991, ll. 23 – 24. Gadson described her car as a "green Ford Escort." App. 3991, ll. 13 – 14. Petitioner supposedly called Gadson over and told him to get in the car. App. 3992, ll. 4 – 10. Gadson had been drinking gin and beer since 1:00 PM. App. 3992, l. 20 – 3993, l. 20. Gadson admitted he had drunk "a good little bit" of gin and "about five" beers. App. 3993, ll. 2 – 20. Gadson was intoxicated and "feeling in good shape." App. 3993, ll. 21 – 25.

Gadson got in the backseat of the decedent's car and they went to the Horizon EZ Shop. App. 3994, ll. 3 – 7. They stole some gasoline. App. 3994, ll. 8 – 11. They left the store and the decedent drove them down Highway 78. App. 3994, ll. 12 – 14. Petitioner was telling the decedent where to turn. App. 3994, ll. 19 – 24. They eventually made their way to Nursery Road where petitioner told her to turn around near a yellow road sign. App. 3995, ll. 7 – 15. The decedent stopped the car, turned off the ignition, turned off the lights, and they all got out of the car. App. 3995, ll. 18 – 21. Gadson later changed this version and said that it was only he and petitioner who got out of the car. App. 3997, ll. 17 – 19.

Gadson and petitioner walked down the road while the decedent stayed in the car. App. 3997, l. 20 – 3998, l. 3. On this walk, petitioner told Gadson “he was going to kill her because she was wearing a wire.” App. 3998, ll. 4 – 7. The decedent came down the road and grabbed petitioner by his right arm and told him she was scared. App. 3998, ll. 14 – 17. A car came by and they “jumped off in the woods.” App. 3999, ll. 11 – 13.

The decedent left the woods and started towards her car. App. 3999, l. 23 – 4000, l. 2. Petitioner followed the decedent down the road. App. 4000, ll. 5 – 9. Gadson stayed at the spot where they jumped into the woods. App. 4000, ll. 21 – 22. Gadson next saw “three fires come from a gun” and heard gunshots. App. 4001, ll. 5 – 13.

Gadson saw “[the decedent] come running down the road” towards him. App. 4002, ll. 4 – 11. The decedent stopped when she got close to Gadson then turned around to face petitioner. App. 4002, ll. 12 – 21. The decedent told petitioner, “Please, Black, don’t shoot me no more, I have a child to take care of.” App. 4011, ll. 16 – 19. Petitioner shot the decedent two times, she fell to the pavement, and petitioner dragged her in the woods. App. 4011, l. 20 – 4012, l. 2.

Gadson then “messed” his pants and got in the car. App. 4013, ll. 2 – 10. When petitioner got in the car, he said, “I shot that bitch in the head.” App. 4013, ll. 21 – 23.

Petitioner drove them back to Branchville. App. 4014, ll. 5 – 24. Petitioner supposedly parked the decedent's car in a wooded area and then told Gadson he would blow his brains out if he told anyone what happened. App. 4015, ll. 3 – 11. Gadson got out of the car and went to Hank Koger's house. App. 4015, ll. 19 – 23. Petitioner got Yolanda Bowman's car and the two of them drove to the Horizon EZ Shop to get beer. App. 4016, ll. 2 – 15. They proceeded to the house of someone named “Fred.” App. 4016, ll. 20 – 21. At Fred's house, they talked to Travis

Felder. App. 4016, ll. 22 – 25. They then returned to the Villa Apartments and Gadson went back to Hank Koger's house. App. 4016, l. 22 – 4017, l. 3.

Later that evening, Gadson saw petitioner and Hiram Johnson leaving in Yolanda Bowman's car. App. 4017, ll. 4 – 15. Gadson next saw petitioner again at the Villa Apartments just before they left to go to the Allen Murray Club. App. 4017, ll. 18 – 24. Gadson, Darian Williams, Hiram Johnson, and petitioner drove the decedent's car to the Allen Murray Club, with petitioner behind the wheel. App. 4018, ll. 3 – 10.

Once they got in the car, petitioner handed out four pairs of brown gloves. App. 4018, ll. 18 – 23. All four of them put on the gloves. App. 4019, ll. 6 – 8. They arrived at the Allen Murray Club at approximately midnight. App. 4019, ll. 18 – 20.

Gadson and Darian Williams went inside the club. App. 4019, l. 21 – 4020, l. 4. Hiram Johnson and petitioner stayed outside in the car. App. 4019, l. 24 – 4020, l. 1. Travis Felder was also in the club. App. 4020, ll. 5 – 6. They were inside the club for approximately one hour. App. 4020, ll. 7 – 8. When Gadson came out of the club, petitioner was still sitting in Yolanda Bowman's car. App. 4020, ll. 12 – 16. Gadson got in the backseat of Yolanda Bowman's car and lay down because he was drunk. App. 4020, l. 24 – 4021, l. 12. They left in the decedent's car with petitioner driving and Darian Williams and Hiram Johnson also as passengers. App. 4021, ll. 13 – 22. They returned to the Villa Apartments. App. 4021, l. 25 – 4022, l. 2. Gadson went to the apartment of a woman named "Meeka." App. 4022, ll. 3 – 4.

In an effort to reduce the sting of impeachment, the solicitor had Gadson admit on direct that he gave a false statement to police on February 18, 2001, in which he claimed he did not know anything. App. 4022, ll. 5 – 7. When asked why he provided a false statement, Gadson said it was because he was scared. App. 4022, ll. 12 – 13.

Cummings' cross-examination served only to confirm Gadson's direct testimony. He simply re-asked many of the same questions asked by the solicitor and received the same answers. App. 4021, l. 21 – 4038, l. 9. Excluding argument on a state's objection, trial counsel's cross-examination of the state's chief witness in a capital case only encompasses approximately ten pages in the trial transcript. App. 4021, l. 21 – 4038, l. 9. The main focus of Cummings' questions was the recentness of Gadson's plea deal and that in 2000, Gadson purchased a High Point .380 pistol that was black and gray just like the pistol the state entered into evidence as the purported murder weapon. App. 4031, ll. 5 – 11. Cummings also placed considerable emphasis on where Gadson claimed he was standing on Nursery Road, to no effect. App. 4036, l. 5 – 4037, l. 21.

2. What the Jury Did Not Hear Because of Trial Counsel's Ineffective Cross-Examination

a. The Jury Never Heard that Gadson Faced the Death Penalty

During the state's presentation, Gadson admitted that he had entered into a plea agreement. App. 3981, ll. 7 – 11. The solicitor had Gadson agree that he was charged with murder. App. 3980, ll. 22 – 24. Gadson testified that his understanding of the agreement was that he would be charged with "accessory after the fact and misprision of a felony." App. 3981, ll. 12 – 16. The solicitor asked him, "All right, sir. And are you going to get a negotiated sentence of twenty years for that?" to which Gadson responded, "Yes, sir." App. 3981, ll. 17 – 19.

Cummings failed to emphasize that Gadson was testifying to avoid the death penalty. Rather, Cummings only confirmed the false impression that Gadson did not face the death penalty. App. 4024, ll. 18 – 20. Cummings asked the leading question, "You were never served

the notice of death penalty on you at all, were, you?” App. 4024, ll. 18 – 20. Gadson replied, “No, sir.” App. 4024, ll. 18 – 20.

The details of Gadson’s plea agreement, which the jury never heard, required him to “truthfully cooperate” with the solicitor’s office in petitioner’s prosecution. App. 8945. He was required to give the solicitor’s office a “complete debriefing.” App. 8945. The plea agreement also required that in his testimony, Gadson was required to be truthful and was unable to “omit facts.” App. 8947. Most critically, the plea agreement stated that if Gadson failed to cooperate in the investigation and prosecution of petitioner, “The state may, in its option, reinstate the murder charge and seek the death penalty against [Gadson] and [Gadson] hereby waives any objection to the state’s seeking of the death penalty.” App. 8946.

Gadson testified at the PCR hearing that he feared the death penalty. App. 5851, ll. 15 – 17. He knew that his agreement meant that he could get the death penalty and he was afraid of getting the death penalty. App. 5851, ll. 15 – 17. Gadson ultimately served less than five years in prison. App. 5937, ll. 13 – 15.

b. The Jury Never Heard the Details of Gadson’s Inconsistent Statements

Trial counsel failed to explore in detail Gadson’s prior inconsistent statements. All the jury heard was that Gadson denied knowing anything about the crime to police because he was “scared.” App. 4022, ll. 12 – 13.

Gadson’s first written statement was given to the police on February 18, 2001. App. 5861, l. 24 – 5862, l. 1. In his first statement, Gadson said that he was dropped off after petitioner and the decedent obtained gasoline without paying for it at the EZ Horizon store. App. 5862, ll. 2 – 5; App. 8950 – 8953. In the statement, he also talked about the disagreement he had with petitioner over the gun and claimed that petitioner found the gun in a brown paper bag

“over near the woods.” App. 8951. This claim was directly contradicted by Hiram Johnson’s testimony. App. 6296, ll. 1 – 10. Gadson’s statement talks about an “old raggedy gun” and does not mention the grey and black .380 pistol allegedly bought from the “dude in Orangeburg.” App. 8950. Gadson does not say that he saw the decedent get shot. App. 8950-51. He never said that he saw Travis Felder. App. 5862, ll. 9 – 11. He never said that he saw petitioner on Nursery Road or that petitioner threatened to blow his brains out. App. 5862, ll. 15 – 20.

Gadson admitted he lied in this statement. App. 5863, ll. 16 – 17.

Gadson also admitted being questioned by a police officer named Tim Stephenson. App. 5864, ll. 5 – 7. He admitted changing his story after speaking with Officer Stephenson. App. 5865, ll. 21 – 24. Gadson also admitted that he changed his story after being shown a warrant for his arrest for murder. App. 5867, ll. 11 – 14.

Later on February 18, 2001, Gadson gave a second written statement. App. 5868, ll. 12 – 15; App. 8954 – 8955. It was in this statement that he first claimed he saw petitioner shoot the decedent. App. 8955. The statement does not say that Gadson went to the Allen Murray club after the shooting. App. 5868, l. 23 – 5869, l. 1. It does not mention any threats from petitioner. App. 5869, ll. 8 – 10. Gadson admitted at the PCR hearing that the first time he claimed that petitioner had “threatened to blow his brains out” was during his testimony at trial. App. 5870, ll. 5 – 7. Gadson again admitted that he changed his story after signing the plea agreement. App. 5873, ll. 13 – 15. Gadson also stated in the PCR hearing that he lied in his statement about petitioner pointing a finger at the decedent as if he was going to shoot her. App. 5876, l. 23 – 5877, l. 7. He claimed, as he did at trial, that he did not know there was going to be a killing before he got to Nursery Road. App. 5877, ll. 2 – 7. Gadson stated that had he been asked those questions at trial he would have answered the same. App. 5879, ll. 5 – 14.

Officer Tim Stephenson testified that he ran a polygraph test on Gadson on February 18, 2001. App. 6486, ll. 6 – 12. Stephenson asked Gadson whether he shot the decedent and whether he was withholding any information about the shooting of the decedent. App. 8956. Gadson responded “no” to these questions. App. 6505, ll. 2 – 7. Stephenson's report indicated deception in Gadson's answers. App. 8956. While the polygraph results would not be admissible, Gadson's lie about withholding information would have served to impeach his credibility.

c. The Jury Never Heard that Gadson Fired the Murder Weapon

The jury never heard that Gadson fired the pistol the state contended was the murder weapon. Margaret Hawkins (“Hawkins”) gave a statement to police on February 22, 2001. App. 9046. She said that she was in her apartment two weeks before the murder and heard four gunshots. She walked outside and picked up four shell casings and put them in her kitchen drawer. App. 9046. She turned the shell casings over to SLED. App. 9046. Tiara Coleman also gave a statement on February 22, 2001. She also stated that two weeks before the murder Gadson shot a gun given to him by petitioner into the air. App. 9047. She also stated that Gadson fired his own gun in the air. App. 9047. The shell casings left from this incident were the same ones turned over to SLED by Hawkins. App. 9046.

David Collins (“Collins”) was the state's firearms expert at trial. Collins testified (and the state did not dispute) that the shell casings picked up by Hawkins were fired by the pistol retrieved from the Edisto River. App. 6085, l. 8 – 6095, l. 16; App. 9046. The state claimed that pistol was the murder weapon and shell casings from the crime scene were matched by Collins to the pistol at trial. The shell casings picked up by Hawkins were entered into evidence as Exhibit

46 and 49 at trial. App. 6090, l. 4 – 6092, l. 11. Cummings never told the jury that these casings came from shots fired by Gadson.

3. The PCR Court's Ruling

Petitioner raised the above grounds in his applications and in his post-hearing brief. App. 9467-76. The PCR Court denied petitioner's application on all of these issues. Supp. App. III 14-31. Regarding the failure to impeach Gadson with the fact that he had been threatened with the death penalty, the PCR court based its denial on the fact that the state never served a notice of intent to seek the death penalty. Supp. App. III 20. It also held that no evidence was presented that Gadson feared the death penalty and petitioner was not prejudiced because of the "overwhelming" evidence of petitioner's guilt. Supp. App. III 20-21.

As for Gadson's prior inconsistent statements and the fact that he fired the gun, the PCR court agreed with the facts presented by petitioner, but reached a different conclusion. Supp. App. III 29-30. The PCR court credited trial counsel with making a reasonable strategic decision in failing to present to the jury that the only other suspect had fired the murder weapon. Supp. App. III 30. The PCR court, as it did for virtually every ground raised by petitioner, also found no prejudice because of "overwhelming evidence" of petitioner's guilt. Supp. App. III 30.

4. Discussion

a. The PCR Court Erred in Finding that Gadson Was Not Threatened with the Death Penalty

The PCR court erred because it based its conclusion on an irrelevant concern: whether Gadson was served with a death notice. This finding ignores the incontrovertible language of Gadson's plea agreement that **explicitly threatens him with the death penalty**. App. 8946. The plea agreement's threat could not be any more clear. It states: "The state may, in its option, reinstate the murder charge and seek the death penalty against [Gadson] and [Gadson] hereby

waives any objection to the state's seeking of the death penalty." App. 8946. Not only did the state explicitly threaten him with the death penalty, it forced Gadson to waive any objection to the death penalty. App. 8946. This waiver is extraordinary and it is hard to imagine greater evidence of a witness's bias than the fact that he has waived the right to attempt to save his own life. Because of trial counsel's deficiency, the jury never heard this extraordinary fact.

The PCR court also erred in its finding that Gadson did not subjectively fear the death penalty. Gadson testified at the PCR hearing that he feared the death penalty. App. 5851, ll. 15 – 17. He knew that his agreement meant that he could get the death penalty and he was afraid of getting the death penalty. App. 5851, ll. 15 – 17.

Trial counsel's failure to impeach Gadson with the fact that he faced the death penalty constituted deficient performance that prejudiced petitioner. Strickland v. Washington, 466 U.S. 668, 686 (1984). When asked whether it would be important for the jury to know that Gadson faced the death penalty, Thomas offered the meager answer, "Could, but I'm not the jury." App. 7311, l. 14 – 7312, l. 14. Cummings was initially unsure whether he ever saw Gadson's plea agreement prior to trial. App. 7383, l. 11 – 7387, l. 21. If Cummings failed to cross-examine Gadson because he did not review the plea agreement, that would constitute deficient performance for failure to investigate and failure to prepare. Von Dohlen v. State, 360 S.C. 598, 608, 602 S.E.2d 738, 743 (2004). However, on cross-examination, Cummings agreed that Bailey said he provided him with a copy of the plea agreement based on a statement made by Bailey during the trial, but could not remember what date. App. 7635, ll. 2 – 7636, l. 23. Tellingly, the Attorney General did not ask Cummings the obvious follow-up question of whether Cummings ever read the plea agreement. App. 7636, l. 24 – 7640, l. 9.

The magnitude of this error is amplified by the fact that Gadson was threatened by the state for the death penalty when none of the state's evidence showed he would be eligible for such a sentence. Even though Gadson's plea agreement required him to provide complete and truthful testimony, nothing in his testimony indicated he could be convicted of murder. At best, Gadson's testimony showed that he was present at a crime scene with some knowledge that a crime might occur. Both Cummings and Solicitor Bailey agreed that Gadson's actual trial testimony could only form the basis of a conviction of misprision of a felony. App. 7389, ll. 1 – 11; App. 7018, ll. 3 – 25. This meant that the state threatened a witness with the death penalty without any evidentiary or legal basis.

Solicitor Bailey could not give specific details about what information he had that would support a murder charge against Gadson as a principal. App. 7816, l. 14 – 7817, l. 19. Bailey admitted that their knowledge of Gadson's actions only amounted to misprision. App. 7018, ll. 3 – 25. When asked what would merit death for Mr. Gadson, Bailey responded, "You're asking a hypothetical. I mean I don't know at this point or at that point in time." App. 7824, ll. 3 – 6. Nothing about PCR counsel's question was "hypothetical." The plea agreement drafted by Solicitor Bailey explicitly threatened Gadson with the death penalty. Neither Solicitor Bailey—nor the evidence as presented by the state at trial—supported such a drastic threat.

Had trial counsel informed the jury that the state was willing to threaten a witness with the death penalty when it was also telling them that Gadson had nothing to do with the crime, it would have impeached not only Gadson's credibility, but the state's entire presentation. Cummings agreed that it would impeach Gadson's credibility to show the state was threatening him with the death penalty, but that Gadson's actual trial testimony did not show he did anything

to merit such a threat. App. 7394, l. 25 – 7395, l. 4. Cummings admitted that was a threat to a witness. App. 7395, ll. 5 – 13. The following questioning occurred:

Q. Okay. Why didn't you tell, cross-examine him about the fact that he faced a death sentence?

A. You asked me that before. I cross-examined him, it was murder, I didn't know if the Solicitor had ever served the death penalty notice on him.

Q. They threatened him with it?

A. They threatened.

Q. Why didn't you tell the jury he had been threatened with his life?

A. I guess it didn't flow from my brain at that time, I'm sorry, no strategy, clearly.

App. 7724, ll. 1 – 11. Cummings admitted his performance was deficient and that he had no strategy in not impeaching both Gadson and the state with evidence of the state's baseless threat.

Petitioner was prejudiced by this failure. Had the jury known this vastly important fact, it would have shown the full extent of Gadson's bias. It would have shown that Gadson was motivated—literally to save his life—to please the state in his testimony. It also would have further impeached the state's case because it would have shown the lengths to which the state was willing to go to obtain favorable testimony. No evidence presented at trial supported a capital charge against Gadson, yet the state threatened him with the death penalty. Gadson's plea agreement required complete and truthful testimony, but nothing in his testimony supported a charge more serious than misprision of a felony. Had the jury heard this important evidence of bias by Gadson and witness intimidation by the state, the result at trial likely would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989).

b. Petitioner was Prejudiced by Trial Counsel's Failure to Impeach Gadson with his Prior Inconsistent Statements and Evidence He Fired the Murder Weapon

Cummings could not articulate any strategy as to why he did not impeach Gadson with his prior inconsistent statements, including his statements during the polygraph examination. App. 7492, l. 5 – 7493, l. 5; App. 7494, ll. 10 – 14. Cummings responded, defensively, “I didn't ask the question, okay?” App. 7494, ll. 10 – 14. Cummings’ deficient performance prejudiced petitioner. The failure to impeach a witness with prior inconsistent statements is deficient performance that prejudices a defendant. Driscoll v. Delo, 71 F.3d 701, 710-11 (8th Cir. 1995); Berryman v. Morton, 100 F.3d 1089, 1097 (trial counsel failed to impeach with inconsistent eyewitness identifications). In Driscoll, defense counsel’s failure to impeach an eyewitness with prior inconsistent statements was held prejudicial. Id. The defendant was sentenced to death for stabbing a prison guard. Trial counsel failed to impeach a prosecution witness who claimed at trial that the defendant confessed to the murder with a prior statement omitting the confession. Id. at 709-12. The centrality of the witness’s testimony was an important factor in the court’s consideration. Id. Here, Gadson was the central witness in the trial and failure to impeach his testimony could not have been more prejudicial. See also Peebles v. State, 958 S.W.2d 533, 536-37 (Ark. 1998) (holding that defendant was prejudiced by trial counsel’s failure to impeach a witness with a prior denial that a crime occurred); Delarosa v. State, 24 So.3d 741, 741-42 (Fla. Ct. App. 2009) (remanding case for prejudice inquiry because of trial counsel’s failure to impeach police officer with prior statement claiming he was attacked by three Mexicans when same officer testified at trial he was only attacked by defendant).

The PCR court erred in finding that Cummings had a strategic reason for not presenting this information. Supp. App. III 30. At the PCR hearing, Cummings admitted he had no

strategic reason for not informing the jury that Gadson had been seen shooting the same gun that the state claimed was the murder weapon. App. 7410, l. 18 – 7411, l. 3; App. 7427, ll. 5 – 13. Cummings admitted the jury never heard that Gadson had fired the gun that came from the Edisto River. App. 7435, l. 24 – 7436, l. 3. On cross-examination, Cummings initially claimed that he did not want this evidence before the jury because it tied petitioner to the murder weapon. App. 7654, ll. 8 – 19. However, Cummings later admitted that he “didn't know it was the Edisto River gun.” App. 7727, ll. 5 – 9. Trial counsel can only be credited with a reasonable trial strategy if they conduct a full investigation and are aware of all the facts. Wiggins v. Smith, 539 U.S. 510, 521-22 (2003). The evidence at the hearing contradicts the PCR court's finding, which not only is not based on any evidence, but also constitutes a legal error because Cummings did not have all of the relevant information.

This failure prejudiced petitioner. The PCR court speculated that this information would have had “minimal benefit.” Supp. App. III 30. This finding ignored that the only evidence the jury heard was that petitioner controlled the murder weapon and was the only one who ever fired it. The only way to lessen the harmful impact of Gadson's testimony was to show that he also had access to the gun and had fired it. This places the murder weapon in Gadson's hands and gives the jury yet another reason to doubt the state's version of events and Gadson's credibility.

In State v. Poe, 822 N.W.2d 831, 835 (Neb. 2012), a witness in a murder case testified that the defendant confessed to the victim's murder. The defense theory was that the witness was complicit in the crime. Id. at 838. The court found that trial counsel could be held ineffective for failing to impeach the witness with a prior statement to a third party that the defendant did not commit the crime and he was being pressured to lie by the police. Id. at 848-50.

In Bryant v. State, ___ So.3d ___, 2011 WL 339585, *20 (Ala. Crim. App. 2011), a capital case, the state's key witness's trial testimony differed from his prior statement by omitting the presence of a third party when the victim's body was moved. The witness also previously denied helping the defendant move a car. The witness also previously admitted holding the gun. The court found that the failure to cross-examine the witness regarding these prior inconsistencies entitled the defendant to an evidentiary hearing. Id. See also Gabaree v. State, 290 S.W.3d 175, 181 (Mo. Ct. App. 2009) (defendant entitled to remand where trial counsel failed to cross-examine victim on prior inconsistent description of crime).

In People v. Lee, 541 N.E.2d 747 (Ill. Ct. App. 2009), the defendant was charged with murder in the course of an arson. Id. at 750. The prosecution's key witness, a co-defendant, testified that he assisted the defendant in starting the fire. Id. at 750. Prior to trial, the witness gave three different versions of his story. Id. at 758-59. Like Gadson, the witness initially denied any involvement in the crime. Id. The court noted that trial counsel only asked three questions regarding the prior statements, one of which was "Didn't you tell me you weren't there that night?" Id. The court held that the previous statements should "have been used much more extensively." Id. The court also held that counsel violated a cardinal rule of cross-examination: "don't repeat the direct examination[.]" Id. at 759. Cummings also violated this rule. Cummings' cross-examination parroted the solicitor's questioning on direct in the same fashion criticized by the court in Lee. The Lee court reversed and, in part, based its decision on the accumulation of errors by counsel in handling impeachment evidence. Id. at 763.

Finally, respecting all of trial counsel's failures regarding Gadson, the PCR court erred in finding no prejudice resulted because of "overwhelming" evidence of petitioner's guilt. The state's entire case against petitioner was based on witnesses who had been charged by the state in

connection with the crime and cut deals to save themselves. Gadson was the central witness in the trial. He was the only witness who claimed he saw petitioner commit the crime. Without Gadson, the state's case was drastically weaker. Had the jury disbelieved Gadson's testimony, the result likely would have been different. No evidence supports any other conclusion.

Trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to investigate and prepare for the impeachment of Travis Felder and by failing to impeach the testimony of Travis Felder in any meaningful way, including impeaching Felder with a videotape that would have shown Felder lied to the jury about buying the gas to burn the decedent's car, impeaching Felder on bias with his original charges, and impeaching Felder with his prior inconsistent statements.

Introduction

Travis Felder lied during his direct examination. Felder told the jury he followed petitioner from the Villa Apartments to Nursery Road, saw petitioner drag the decedent's body from the woods and put it in the trunk of her car, and then watched petitioner set the decedent's car on fire. Felder omitted a crucial fact: that he was the one that bought the gasoline. When Felder lied about his role, trial counsel failed to impeach him with a videotape from the gas station that showed Felder buying gasoline at 3:14 AM. Petitioner did not appear on this videotape. Trial counsel recognized this error after the jury rendered its verdict and tried to use the videotape **during the penalty phase**, but of course, by that time, the jury had already found petitioner guilty. Trial counsel also failed to impeach Felder with his original charge as accessory before the fact to murder and with his prior inconsistent statements. These deficiencies prejudiced petitioner. This Court should reverse and grant petitioner a new trial.

1. What the Jury Heard from Travis Felder During the Guilt Phase of the Trial.

Felder claimed he got home from work at approximately 6:30 PM on the day of the murder. App. 4087, ll. 2 – 6. He took a nap. App. 4087, ll. 7 – 8. He woke up from his nap at approximately 8:30 PM. App. 4087, ll. 9 – 11. He went to Fred's house where he drank beer. App. 4087, ll. 12 – 20. He saw petitioner at Fred's house. App. 4087, l. 21 – 4088, l. 2.

Petitioner asked Felder if he was going to the club. App. 4088, ll. 1 – 2. Petitioner told Felder that if he decided to go to the club, to come to the Villa Apartments. App. 4088, ll. 3 – 7.

Felder then saw a friend of his named Tyrone Smith and they proceeded to “Club Get It Get It” in Bamberg. App. 4088, ll. 11 – 19. When they left the club, they returned to Fred's house, split up their beer, and Felder returned to the Villa Apartments. App. 4088, l. 20 – 4089, l. 1. At the Villa Apartments he saw Valorna Smith. App. 4089, ll. 2 – 4. Felder and Valorna Smith decided to go to the Allen Murray Club. App. 4089, ll. 7 – 10. They first went to the store to get ice. App. 4089, ll. 11 – 18. When they got to the store, the seating arrangements changed and Valorna Smith got out of Felder's car and Carolyn Brown got in. App. 4089, ll. 11 – 18. Felder and Carolyn Brown arrived at the Allen Murray Club around midnight. App. 4089, ll. 19 – 25.

When he got to the club, Felder saw petitioner, Hiram Johnson, Darian Williams, and Taiwan Gadson. App. 4090, ll. 5 – 8. Darian Williams and James Gadson came into the club, but Hiram Johnson and petitioner did not. App. 4090, ll. 9 – 19. Felder was at the club for approximately two and one-half hours. App. 4090, ll. 20 – 23. He left the club with Carolyn Brown and Valorna Smith. App. 4091, ll. 2 – 7. They stopped at the EZ Horizon Store and Felder bought some chips. App. 4091, ll. 8 – 13. This fact was confirmed by Detective Alvin Coker's review of the videotape from the store that showed Felder buying chips at 2:56 AM. App. 6718, ll. 18 – 24.

They returned to the Villa Apartments and went to Valorna Smith's apartment. App. 4091, ll. 17 – 21. Felder said they sat around “and watched a couple of movies.” App. 4091, ll. 22 – 25. Valorna Smith worked on Felder's braids. App. 4091, ll. 22 – 25. Petitioner knocked on the door at approximately 3:00 AM. App. 4092, ll. 6 – 18. Petitioner asked Felder to come

Speak with him outside. App. 4092, ll. 6 – 22. Petitioner supposedly said, “Come here, I need to park this car.” App. 4092, l. 23 – 4093, l. 1.

Felder Omits His Purchase of the Gasoline

Petitioner got in a Ford Escort and Felder followed petitioner in his own car. App. 4093, ll. 9 – 23. Solicitor Bailey asked Felder, “And did you leave the town of Branchville?” App. 4094, ll. 3 – 4. Felder responded, “Yes.” App. 4094, l. 5. Solicitor Bailey then asked Felder, “Tell the jury where [petitioner] went, where you followed him.” App. 4094, ll. 6 - 7. Felder responded, “We went out down McAlhany Road, then went out to Nursery Road.” This answer was a lie because it omitted the fact that Felder went to the EZ Horizon Store and bought gasoline. App. 7017, ll. 5 – 7.

What Felder Told the Jury He Saw at Nursery Road

Omitting the key fact that he alone bought the gasoline, Felder told the jury he followed petitioner to Nursery Road. App. 4094, ll. 6 – 13. Petitioner stopped the car, went into the woods, and returned dragging the decedent's body by her feet. App. 4096, ll. 13 – 19. Petitioner put the decedent's body in the trunk of her car. App. 4097, ll. 3 – 10. Petitioner said, “You didn't think I did it, did you?” App. 4098, ll. 2 – 11. Felder replied, “Did what?” Petitioner supposedly replied, “I killed Kandee Martin.” App. 4098, ll. 12 – 16. Felder never got out of his car. App. 4098, ll. 19 – 23.

Petitioner told him to drive down the road and turn around. App. 4099, ll. 2 – 6. Felder saw petitioner “get out of the car, he lit something, threw it in the car, the car was on fire.” App. 4100, ll. 10 – 14. Petitioner got in Felder's car. App. 4100, ll. 15 – 18. Felder told petitioner, “Man, I don't want nothing to do with this.” App. 4100, ll. 22 – 24. Petitioner allegedly replied, “Travis, I ain't get you involved with it, don't worry about it, everything is taken care of.” App.

4100, l. 25 – 4101, l. 2. Felder then took petitioner home. App. 4101, ll. 3 – 4. Felder said from the time petitioner came to the apartment to the time he dropped him off at his house, it took approximately forty minutes. App. 4101, ll. 5 – 8.

Felder admitted that it was his face on the videotape buying gas after 3:00 AM. App. 6442, ll. 3 – 10. Detective Coker testified that he knew Felder was on the videotape buying gasoline at 3:14 AM. App. 7017, ll. 5 – 7. Coker testified that he informed the solicitor's office that Felder purchased the gasoline. App. 6630, ll. 1 – 5. Coker regarded videotape as "a crucial piece of evidence regarding the arson charge." App. 6633, ll. 22 – 24.

During his deposition, Felder said he told Solicitor Bailey in his pre-trial debriefing that he had purchased the gasoline to burn the decedent's car. App. 6401, ll. 2 – 16. Interestingly, Solicitor Bailey denied knowing this key fact and claimed he was surprised to learn after the verdict that Felder bought the gasoline. App. 7768, ll. 17 – 18. App. 7782, l. 18 – 7783, l. 2. Solicitor Bailey certainly did nothing to correct Felder's testimony. App. 4094, ll. 6 – 13.

At the PCR hearing, Felder admitted that in his trial testimony, he "left out" that he had purchased the gasoline used to burn the decedent's car. App. 6406, l. 24 – 6407, l. 3. At his deposition, Felder testified that the reason why he did not mention the gasoline purchase was because, "I had a lot of stuff on the table, I was scared. I was scared, I was in jail for three months and, you know what I'm saying, I lost my job, I ain't had nothing." App. 6412, ll. 8 – 15. He admitted that when he was asked by the solicitor where he went when he left the Villa Apartments and he answered that he and petitioner went to Nursery Road, that testimony was a lie. App. 6415, ll. 15 – 19.

2. What the Jury Did Not Hear in the Guilt Phase Because of Counsel's Errors

a. Petitioner Himself is the First Person to Point out Felder's Lie about the Gasoline

Cummings failed to impeach Felder with the fact that he lied about purchasing the gasoline. It was not until after the beginning of the sentencing phase that this fact was brought to light. Neither Cummings nor Thomas caught Felder's lie—petitioner did. Before the sentencing phase commenced, Cummings told the trial judge that petitioner had something he wanted to tell her. App. 4590, ll. 13 – 18. After defense motions, Thomas introduced petitioner. App. 4621, l. 25 – 4622, l. 1. Petitioner said:

Ma'am, I was going through some of my paperwork, right, I noticed that in some of my information I had wrote down that I would like the jury to see the videotape that Detective Coker and Agent Helms took from the gas station showing that Travis Felder after he dropped me off home went to the gas station and bought a dollar worth of gasoline.

App. 4622, ll. 3 – 10. Cummings then says, “The tape is in evidence.” App. 4622, ll. 11 – 13. Cummings says, “[M]y client is asking us to show a portion of the tape in his mitigation case as to giving the jury something to consider along the lines of mitigation, also about possible issue of testimony. I'll leave it at that.” App. 4622, ll. 20 – 24. Cummings also said, “And I would not prohibit that to make sure the record knows that we are not at odds with Mr. Bowman or that we are not prohibiting him from presenting any mitigation facts that would be presented to the jury, Ma'am.” App. 4623, ll. 10 – 15. Of course, this impeachment evidence did not belong in the mitigation case, but in the guilt phase.

b. Felder's Original Charges and the Changing of his Story Immediately Before Trial

The jury never heard that the state had originally charged Felder with accessory before the fact to the decedent's murder. The jury also never heard that Felder lied to police immediately before trial.

When Felder was first interviewed by the police, he told them he did not know anything about the decedent's death. App. 6381, ll. 17 – 25. He was told on Monday, February 19, that Dorchester County had a warrant for his arrest so Felder turned himself in and was jailed. App. 6382, ll. 5 – 14. He was given a Miranda waiver. App. 6382, ll. 19 – 24. App. 8974. Felder once again denied any knowledge of the decedent's murder to the police. App. 6384, ll. 7 – 16.

On February 19, 2001, Detective Coker swore out an affidavit charging Felder with accessory to felony murder/arson. App. 8975. The warrant was served on Felder the same day. App. 6384, l. 25 – 6385, l. 5. At the PCR hearing, Felder testified that in 2001, he knew he was charged with murder and arson. App. 6387, ll. 11 – 14. Felder hired an attorney, Charles Williams. App. 6389, l. 24 – 6390, l. 1. Charles Williams advised Felder he was facing either life in prison or the death penalty on the murder charge. App. 6390, ll. 2 – 6.

Felder never gave a written statement to the police. App. 6392, ll. 3 – 5. On March 27, 2002, during plea negotiations, Felder's attorney sent a proffer letter to Solicitor Bailey. App. 9118. The proffer letter omits two important items. App. 9118. The proffer letter omits that Felder bought the gasoline. App. 9118. It also omits Travis Felder's claim at trial that he saw petitioner put the decedent's body in the trunk of the car. App. 9118. Cummings admitted that the version in the proffer letter was different from Felder's trial testimony. App. 7050, ll. 4 – 19.

On April 16, 2002, a month before petitioner's trial, Officer Van Doran administered a polygraph examination to Felder. App. 8973. During the examination, Felder was asked if he saw the decedent's body placed into the trunk of her car. App. 8973. Felder answered no. App. 8973. The polygraph results indicated deception. App. 8973. At the PCR hearing, Felder stated he could not remember taking the polygraph exam. App. 6392, l. 6 – 6393, l. 21. Cummings admitted that he had a copy of Felder's polygraph report. App. 7037, l. 22 – 7038, l. 2.

Subsequent to the failed polygraph examination and after talking with his attorney, Felder decided to enter into a plea agreement. App. 6396, l. 4 – 6397, l. 10. Felder had a debriefing with Solicitor Bailey. App. 6398, ll. 10 – 13.

Felder's plea agreement was executed on May 23, 2002, which was during the sentencing phase of petitioner's trial. App. 8969 – 8972. In his plea agreement, Felder agreed to plead guilty to the offense of accessory after the fact of arson in exchange for his testimony. App. 8969. His indicted charges of accessory after the fact of murder and arson third-degree would be dismissed. App. 8969 – 8972. The plea agreement allowed the solicitor to reinstate all of Felder's charges and seek the maximum penalty. App. 8971. The new charge carried a maximum sentence of five years in prison. App. 6423, ll. 17 – 20. Felder was ultimately sentenced to three years' imprisonment suspended to three years' probation. App. 6424, ll. 10 – 14.

3. The PCR Court's Ruling

The PCR court ruled that Cummings had a valid strategic reason for failing to expose Felder as a liar. The PCR court found that Cummings did not want the videotape entered into evidence because it would "corroborate Applicant's involvement in the plan to burn the car." Supp. App. III 47. The court further held that exposing Felder as a liar would not have influenced the outcome of the trial. Supp. App. III 47-48. The PCR court based this conclusion on Felder's after-the-fact claims during the PCR hearing and during the sentencing phase that petitioner instructed him to buy the gas and that petitioner did not appear on the tape because he waited around the corner. App. 6430, ll. 13 – 17. Petitioner presented these claims in his applications and in his post-trial brief. App. 9477-97.

4. Discussion

a. Counsel's Failure to Impeach Felder with His Lie about the Gasoline Purchase was Deficient and Prejudiced Petitioner

The PCR court erred in finding that Cummings had a strategic reason for not impeaching Felder with his lie about the gasoline. First, the evidence at trial seemed to suggest that Cummings did not even realize that Felder had lied about the purchase of the gasoline. Petitioner was the first person to mention it. App. 4622, ll. 3 – 10. After petitioner brought Felder's lie to everyone's attention, Cummings called Felder as a witness in the penalty phase and impeached him with the videotape. App. 4911, l. 19 – 4929, l.10. Cummings introduced the videotape into evidence during Felder's penalty phase testimony and played it for the jury. App. 4929, ll. 1 – 8; Defendant's Ex. 19. Cummings' penalty phase impeachment of Felder directly contradicts the PCR court's conclusion that he made a strategic decision to keep it out because **he actually introduced it, but too late.**

At the PCR hearing, Cummings initially claimed that he knew Felder had purchased the gasoline before trial. App. 7004, l. 18 – 7005, l. 7. Cummings said "there was no question that Travis had bought the gasoline later that evening." App. 7004, ll. 21 – 24. Cummings first maintained that he was "very frightened of that tape." App. 7005, ll. 5 – 7. Cummings complained that he was frightened of the tape because "there was no evidence against Marion that he bought the gasoline, that he poured the gasoline, that he did anything about burning this young white female in Dorchester County." App. 7006, ll. 1 – 5.

This backpedaled assertion of strategy is an astounding claim in the face of Felder's damaging testimony at trial about petitioner burning the car. Even if Cummings actually possessed such a strategy, it was unreasonable in light of the fact that it was completely

incorrect. Cummings' claim that nothing tied petitioner to the burning of the car ignores what Felder told the jury he saw at Nursery Road. Furthermore, any strategy that the tape would corroborate that petitioner was involved with the plan to burn the car is unreasonable because the tape did not show petitioner. App. 7006, ll. 12 – 16.

Regardless of the unreasonableness of such a strategy, the PCR court also erred because Cummings ultimately admitted he had no strategic reason for not impeaching Felder. During the Attorney General's questioning **and during questioning by Judge Lockemy**, Cummings confessed he lacked any strategy regarding his handling of Felder. App. 7664, l. 25 – 7666, l.

23. The Attorney General asked:

Q. All right. So, when Travis testified during the guilt phase and did not mention purchasing the gas beforehand why did you decide not to elicit that from him at the time?

A. **I don't know.** I can't sit here and tell you why I didn't do it. I don't know. Maybe I didn't want how he purchased the gas or for whom.

MR. BROWN: Your Honor, I object to that speculation.

THE COURT: If you don't know you don't know.

Q. You don't recall saying you saw no good in that coming in, it was ultimately confirmatory of what Felder had said?

A. I just said a moment ago I don't recall, I didn't remember if I chose not to. To answer the question, I must have had a reason at that time and it would be hurting, but again I really can't say that today, I can't. I'm trying to go back and think. I know I didn't choose certain lines of questions in this case, I chose not to do that, and we have been over that now for three days. To answer your question in particular about that, **I don't recall specifically the reason why, I don't, other than I tried the case as I thought appropriate.**

Q. So, you don't remember, you don't remember expressing to me a strategic reason for that?

MR. BROWN: Your Honor, this is some kind of vouching or bolstering here. Now he is going into a conversation they have had.

MR. WATERS: I did not –

THE COURT: He asked if he remembered. If he doesn't remember he doesn't remember.

THE WITNESS: I really don't, sorry, sir.

THE COURT: He doesn't remember.

MR. WATERS: Okay.

BY MR. WATERS:

Q. So, you don't recall ever saying you saw no good in, that you saw no good in it coming in, that you held it back in the guilt phase because it cuts both ways but that ultimately you –

THE COURT: He says he doesn't remember. Let's proceed.

MR. WATERS: I was trying to refresh his recollection.

MR. BROWN: With a conversation they had.

THE COURT: Do you remember anything, Mr. Cummings?

THE WITNESS: No, I don't. No, sir, I don't.

THE COURT: He doesn't remember.

THE WITNESS: I don't know what to say.

BY MR. WATERS:

Q. Okay. Do you recall whether or not it was an intentional decision at this point? I'm asking you if you recall.

THE COURT: That's a different area.

A. **I don't believe it was intentional.** I don't believe I would not have asked something or if I thought at the time something else was going to come out about it. There was no gasoline on my client's pants, I didn't want anybody tying him to Felder, for Marion telling him to go buy the gas. I would say that with open heart. So, if I, when I was meeting with you I said something **I don't recall it, I don't remember. I don't.**

App. 7665, l. 6 – 7667, l. 20 (emphasis added). This testimony conclusively shows that the PCR court's finding that Cummings strategically failed to impeach Felder is not based on any evidence.²

This error severely prejudiced petitioner. Had trial counsel exposed Felder as a liar—not just in a prior statement, but under oath before the jury—Felder's credibility would have been severely damaged. The jury would have realized that Felder deliberately obscured his role in the burning of the car. Felder already testified that petitioner burned the car, so petitioner was already linked to the gasoline and the arson.

This failure to impeach Felder left his testimony unchallenged and gave the jury the impression that petitioner essentially acted alone in the decedent's murder. Felder would have been the second state's witness to be shown as a liar on the stand and telling an unbelievable story that they were merely innocently present at the scene of a horrific crime. Had Felder been exposed as a liar and his role in the arson been shown to the jury, the outcome of the trial would likely have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989).

² This exchange between the Court and Cummings also bears on Issue 7 of this petition concerning the wholesale adoption of proposed orders submitted by the state. At the hearing, Judge Lockemy clearly credited Cummings' testimony that he had no strategy, but the state's proposed order contradicts Judge Lockemy's finding. The fact that the final order does not express Judge Lockemy's findings shows the due process errors that arise from this condemned practice.

b. Petitioner was Prejudiced by Cummings' Failure to Impeach Felder with his Original Charges and Inconsistent Statements.

The PCR court erred in finding that Cummings did not perform deficiently when he failed to impeach Felder with his original charges. Supp. App. III 44-47. First, the PCR court's order contains no assertion that Cummings informed the jury that Felder was originally indicted as an accessory before the fact. Supp. App. III 44-47. Instead, the PCR court credits Cummings with a reasonable trial strategy based on the idea that if he cross-examined Felder about his original charges, that petitioner's written statements would come into evidence. Supp. App. III 46.

Such a notion cannot form the basis of reasonable trial strategy because it is not based on an accurate understanding of the rulings at trial. The state was in possession of four written statements purportedly given by petitioner. App. 9214-26. The first two of these statements contain no inculpatory statements. App. 9214-26. The third statement inculcates Gadson. Petitioner said that Gadson drove him into the woods and showed him the decedent's dead body and confessed to murdering her. App. 9214-26. The fourth alleged statement, written in the hand of Orangeburg County Sheriff Larry Williams, was suppressed as involuntary by Judge Goodstein. App. 1333, l. 14 – 1355, l. 2. Judge Goodstein found that Sheriff Williams coerced this statement from petitioner and suppressed it. App. 1352, l. 7 – 1355, l. 2. Solicitor Bailey did not use petitioner's other three statements during the trial likely because they helped petitioner's case or would create a possible appellate issue. Regardless of Solicitor Bailey's reasons, the state could have used the first three statements at any time. It is difficult to grasp how impeaching a state's witness for bias due to lenient treatment is the evidentiary predicate for admission of a defendant's statements, particularly one obtained by the Sheriff's coercion.

Cummings also claimed that evidence that was involuntarily produced could still be introduced if an attorney made a mistake and opened up the door. App. 7007, l. 19 – 1278, l. 3. This was a mistake of law by Cummings. Involuntary statements are not allowed to be used against a criminal defendant for impeachment purposes. Mincey v. Arizona, 437 U.S. 385 (1978); New Jersey v. Portash, 440 U.S. 450 (1979). The PCR court unfortunately adopted Cummings' legal error in its own ruling. Therefore, the credited trial strategy was unreasonable and Cummings performed deficiently. Cummings should have cross-examined Felder about his original charges.

Furthermore, the PCR court's ruling is not based on any evidence produced at the PCR hearing. Cummings said he did not find out Felder was cutting a deal until the eve of trial. App. 7024, l. 22 – 7025, l. 2. Cummings said he did not have Felder's plea agreement until after the trial. App. 7026, ll. 19 – 24. He admitted that Felder had been charged with accessory to murder and would have been as guilty as the principal. App. 7029, ll. 10 – 17. Felder avoided a potential life sentence or the death penalty and never served a day in prison. App. 7030, ll. 2 – 9. Cummings called Felder's deal a "sweetheart deal" and the magnitude of the reduction in his charges was relevant to bias. App. 7030, ll. 22 – 23. App. 7034, ll. 16 – 25. Cummings ultimately **apologized** for not cross-examining Felder on this issue. App. 7030, ll. 10 – 15.

The PCR court also erred in finding that trial counsel was not deficient in failing to impeach Felder with his inconsistent statements made immediately before he agreed to testify against petitioner. Supp. App. III 40-47. Driscoll v. Delo, 71 F.3d 701, 710-11 (8th Cir. 1995); Berryman v. Morton, 100 F.3d 1089, 1097; Peebles v. State, 958 S.W.2d 533, 536-37 (Ark. 1998); Delarosa v. State, 24 So.3d 741, 741-42 (Fla. Ct. App. 2009) State v. Poe, 822 N.W.2d 831, 835 (Neb. 2012); Bryant v. State, ___ So.3d ___, 2011 WL 339585, *20 (Ala. Crim. App.

2011); Gabaree v. State, 290 S.W.3d 175, 181 (Mo. Ct. App. 2009); People v. Lee, 541 N.E.2d 747 (Ill. Ct. App. 2009). Cummings apologized that he didn't impeach Felder with the inconsistencies between the proffer letter and polygraph statements and Felder's trial testimony. App. 7045, ll. 1 – 10. When questioned by Judge Lockemy, Cummings said he had no strategic reason for not impeaching Felder. App. 7045, ll. 16 – 25. Cummings admitted that Felder's repeated assertions that he had nothing to do with the murder and then changed his story to accuse petitioner after cutting a "sweetheart" deal should have been used on cross-examination. App. 7046, ll. 14 – 25.

This deficient performance prejudiced petitioner. Had the jury known Felder was originally charged as an accessory before the fact, the magnitude of the deal received by Felder in exchange for his testimony against petitioner would have shown the extent of his bias and placed his inconsistent statements in their proper context. At the time of the trial, Felder faced the death penalty on the accessory before the fact of murder charge. It was not until 2007 that this Court decided that a defendant charged with accessory before the fact could not receive the death penalty. State v. Bixby, 373 S.C. 74, 644 S.E.2d 54 (2007). Felder testified that his attorney told him he was facing either life in prison or the death penalty on the murder charge. App. 6390, ll. 2 – 6. Had the jury heard that Felder faced and feared the death penalty, then it would have seen his motivation to fabricate testimony favorable to the state. The fact that Felder changed his story only weeks before trial would have further undermined his credibility. Trial counsel's deficient performance in these areas prejudiced petitioner and he is entitled to a new trial.

Trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to investigate and prepare for the impeachment Hiram Johnson and by failing to impeach the testimony of Hiram Johnson by cross-examining Johnson on his prior inconsistent statement which, critically, did not include his allegation at trial that petitioner confessed to the murder.

Introduction

The solicitor portrayed Hiram Johnson as one of the state's best witnesses because he seemed to be unbiased. As will be shown in Issue 4, Johnson was, in fact, a biased witness because he had pending charges against him that were not disclosed by the state. Johnson was an important witness for the state, primarily because he testified that petitioner confessed to the murder. Had trial counsel impeached Johnson with available evidence, there is a reasonable probability that the outcome of the trial would have been different.

1. What the Jury Heard at Trial from Johnson

Hiram Johnson testified that Taiwan Gadson was his cousin. App. 6251, ll. 16 – 17. He had known petitioner and Gadson his entire life. App. 4057, ll. 4 – 10. He knew the decedent. App. 4057, ll. 11 – 12.

In the early afternoon on the day of the murder, Johnson was at Hank Koger's house. App. 4057, ll. 20 – 23. Johnson overheard an argument between petitioner and Gadson about the gun being moved. App. 4059, ll. 9 – 12. Johnson told petitioner that he had moved the gun. App. 4059, ll. 22 – 24. Johnson removed the gun from a barrel at Koger's house and took it to Katrina West's house. App. 4060, ll. 5 – 8. Petitioner retrieved his gun and came back to

Koger's house. App. 4060, ll. 12 – 19. Johnson's testimony contradicted Gadson, who said Johnson retrieved the gun from the woods. App. 3989, ll. 16 – 20.

Later that evening, petitioner came to Katrina West's house and asked Johnson if he wanted to go downtown. App. 4061, ll. 15 – 18. Johnson claimed that he and petitioner took Yolanda Bowman's car to the Horizon EZ Shop where Johnson saw petitioner ask Gadson's father to buy four pairs of gloves. App. 4062, ll. 3 – 22.

After buying the gloves, they went back to the Villa Apartments and later decided to drive to the Allen Murray Club. App. 4063, l. 15 – 4064, l. 6. Johnson claimed that petitioner drove the decedent's car with him, Gadson, and Darian Williams as passengers. App. 4064, ll. 7 – 20. Johnson claimed that petitioner made the three men put on gloves and said he had stolen the decedent's car. App. 4065, ll. 1 – 17.

When they got to the Allen Murray Club, petitioner walked around the parking lot trying to sell the car. App. 4066, l. 18 – 4067, l. 8. Johnson remained in the car. App. 4066, ll. 12 – 17. They were at the club about an hour and left at approximately 1:00 AM.. App. 4066, l. 24 – 4067, l. 11. Johnson claimed that on the way back from the club, petitioner said "I killed Kandee, heh, heh, heh." App. 4068, ll. 4 – 6. Johnson saw a gun sitting on petitioner's lap. App. 4068, ll. 17 – 18.

On cross-examination, Cummings clumsily asked Johnson about giving a statement to Alvin Coker on February 22. App. 4073, ll. 5 – 9. Cummings attempted to impeach him with the statement but was unable to do so. App. 4076, ll. 21 – 24. Solicitor Bailey objected and Cummings dropped his impeachment attempt. App. 4076, l. 21 – 4077, l. 6.

2. What the Jury Did Not Hear Because of Trial Counsel's Ineffective Cross-Examination

In fact, Johnson gave a written statement to Detective Coker on April 5, 2001. App. 9054. Nowhere in this written statement does Johnson claim that petitioner made the devastating admission, "I killed Kandee, heh heh heh." App. 9054. At the PCR hearing, Johnson could not even remember whether he ever told the police about petitioner's supposed confession. App. 6289, ll. 7 – 13. Next he said at PCR that he thought petitioner was kidding when he said that he had killed the decedent. App. 6290, ll. 10 – 14. He did not tell the jury that he thought petitioner was kidding. App. 6290, ll. 15 – 17. Johnson testified that his response to petitioner was, "Man, stop playing." App. 6298, ll. 3 – 10.

Cummings did not ask Johnson any questions about the April 5, 2001, statement, much less the glaring omission that petitioner had confessed to the murder. At the PCR hearing, Cummings admitted that Johnson needed to be impeached because he claimed he heard petitioner confess to the killing. App. 7114, ll. 20 – 23. Cummings admitted that the confession was not in Hiram Johnson's written statement. App. 7116, ll. 12 – 15. He described Hiram Johnson's testimony about petitioner's alleged confession as "the worst evidence in the world." App. 7117, ll. 2 – 4. Cummings could not explain why he did not cross-examine Johnson on whether or not Johnson thought petitioner was kidding when he said, "I killed Kandee, heh heh heh." App. 7677, ll. 13 – 20.

3. The PCR Court's Ruling

The PCR court held that Cummings gave a valid strategic reason for not cross-examining Johnson about the inconsistency between his written statement and his trial testimony. The PCR court credited Cummings as saying he did not want the statement repeated in front of the jury. Supp. App. III 55.

4. Discussion

The PCR court's conclusion was erroneous. It was impossible for the jury to overlook such a damaging piece of evidence as a confession. The solicitor already had Johnson repeat this testimony twice on direct-examination. App. 4067, l. 25 – 4068, l. 6. A reasonable trial lawyer would certainly know the solicitor would emphasize such a damaging piece of evidence in closing argument, which Solicitor Bailey certainly did. App. 4474, ll. 12- 21. Solicitor Bailey told the jury in his closing argument that petitioner laughed about the murder. App. 4474, ll. 12- 21. He repeated the alleged confession twice. App. 4474, ll. 12- 21. Solicitor Bailey also said, "And Hiram Johnson's a friend of [petitioner's] with no reason to lie about it. App. 4474, ll. 12- 21. As will be seen in Issue 4, this was a deliberate misrepresentation to the jury because Johnson had pending charges which the solicitor did not disclose to the defense.

Given the damaging nature of this evidence, it was unreasonable not to cross-examine Johnson on the serious omission in his written statement. The failure to impeach a witness with prior inconsistent statements is deficient performance that prejudices a defendant. Driscoll v. Delo, 71 F.3d 701, 710-11 (8th Cir. 1995); Berryman v. Morton, 100 F.3d 1089, 1097; Peebles v. State, 958 S.W.2d 533, 536-37 (Ark. 1998); Delarosa v. State, 24 So.3d 741, 741-42 (Fla. Ct. App. 2009); State v. Poe, 822 N.W.2d 831, 835 (Neb. 2012); Bryant v. State, __ So.3d __, 2011 WL 339585, *20 (Ala. Crim. App. 2011); Gabaree v. State, 290 S.W.3d 175, 181 (Mo. Ct. App. 2009); People v. Lee, 541 N.E.2d 747 (Ill. Ct. App. 2009). Considering the detail of the written statement, it confounds belief that such an important piece of evidence was omitted. Had the jury known that petitioner's alleged confession was a courtroom invention, it would have called Johnson's credibility into question, especially considering that, as far as the jury knew, Johnson

had not been charged and was petitioner's "friend." Cummings' failure to cross-examine Johnson on this issue constituted deficient performance that prejudiced petitioner.

4.

Petitioner is entitled to a new trial because the state withheld information necessary for impeachment and necessary for defense in violation of petitioner's due process rights under the Fourteenth Amendment and under the rules of discovery, those items being a memorandum of a law enforcement interview with Ricky Davis who heard Gadson confess to the murder, Gadson's mental health evaluation, and the fact that Hiram Johnson had unindicted pending charges at the time of his testimony.

Introduction

The state withheld three key pieces of evidence from the defense. The state failed to disclose that it had interviewed Ricky Davis, who heard Gadson confess to the murder and that he had framed petitioner. The state failed to disclose Gadson's mental health evaluation that showed he heard voices, suffered from blackouts, heard beeping noises, and smoked six blunts of marijuana a day. Finally, the state failed to disclose charges pending in the same judicial circuit against one of its key witnesses, Hiram Johnson. Each of these pieces of evidence was material to the defense and their suppression meant that petitioner did not receive a fair trial.

Discussion

The state's duty to disclose evidence favorable to the defendant is addressed by the United States Supreme Court in Brady v. Maryland, 373 U.S. 83 (1963) "The suppression by the [state] of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment." Brady, 373 U.S. at 87. Consequently, an individual asserting a Brady violation must demonstrate that the evidence: (1) was favorable to the accused; (2) was in the possession of or known by the prosecution; (3) was suppressed by the state; and (4) was material to the accused's guilt or innocence or was impeaching. Kyles v. Whitley, 514 U.S. 419, 432-42 (1995); State v. Moses, 390 S.C. 502, 702 S.E.2d 395 (Ct. App. 2010); Riddle

v. Ozmint, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006).

Brady evidence includes both exculpatory and impeachment evidence. United States v. Bagley, 473 U.S. 667, 676 (1985); Kyles, 514 U.S. at 436-40. When assessing whether to overturn a case because of the state's failure to disclose evidence, "[t]he question is not whether petitioner would more likely have been acquitted had this evidence been disclosed, but whether, without this impeachment evidence, he received a fair trial 'resulting in a verdict worthy of confidence.' " Riddle, 369 S.C. at 45, 631 S.E.2d at 73 (quoting Kyles, 514 U.S. at 434)).

In this case, the Court need not address two of Brady's four prongs. For each of the three violations, the PCR court found that the state was in possession of the evidence and did not disclose it to the defense. Therefore, the Court's analysis will turn on whether the evidence was favorable to petitioner and material.

1. Ricky Davis – The Sam Memo

Ricky Davis was housed at the Dorchester County Detention Center with Gadson. App. 5978, ll. 14 – 22. Ricky Davis testified that they were housed on "A Side." App. 5978, ll. 21 – 22. Officer Van Doran interpreted the jail records introduced at the PCR hearing. App. 6529, l. 8 – 6532, l. 23; App. 9064 – 66. Officer Van Doran confirmed that Gadson was housed on "A Side." App. 9065; App. 6532, LL. 6 – 9. The jail records did not indicate where Ricky Davis was housed. App. 6532, ll. 18 – 21. Officer Van Doran testified that petitioner was housed in the maximum security "C Side" pod. App. 6532, LL. 10 – 17; App. 9066. Petitioner's cell is shown as "C-8". App. 9066.

On August 6, 2001, Ricky Davis wrote the following note which recounted a confession made by Gadson to the decedent's murder:

I Rickie Davis was on A side with Gadson and he said that he was the one that shot the girl and gave petitioner back the gun that was used and He said that it

didn't mater because Blak famile had got caught with the gun. He also that the police all he got to do is say Blak did it.

App. 8966 (errors in original). Ricky Davis confirmed in his testimony at the PCR hearing that the note was in his handwriting. App. 5979, ll. 2 – 4. Ricky Davis testified that he wrote this note on August 6, 2001. App. 5979, l. 23 – 5980, l. 4.

Eighteen months before the PCR hearing, PCR counsel subpoenaed the prosecutor's file. App. 6769, ll. 4 – 24. PCR counsel did not get the prosecutor's file until approximately one month before the PCR hearing began. App. 6769, ll. 4 – 24. In the file, PCR counsel found notes written by an investigator in the solicitor's office named Sam Richardson ("Sam"). App. 6773, l. 12 – 6774, l. 9. The notes were from an interview Sam conducted with Ricky Davis. App. 6773, l. 12 – 6774, l. 9. These notes became known at the hearing as the "Sam Memo."

The text of the Sam Memo confirms Ricky Davis' handwritten note and adds detail:

RICKY DAVIS INTERVIEW

CONDUCTED BY SAM AT LIEBER CORRECTIONAL INSTITUTION.

RICKY DAVIS STATES THAT HE AND JAMES TAIWAN GADSON ALONG WITH 4 OR 5 OTHERS WERE SITING AT A TABLE ON THE A-SIDE. GADSON WAS TALKING TO THE GROUP WHEN HE SAID SOMETHING ABOUT KILLING A GIRL. HE STATED THAT THEY WERE GOING TO ROB SOMEONE. THEY THOUGHT SHE WAS WIRED AND HE SHOT HER IN THE HEAD WITH A .380.

THIS CONVERSATION OCCURRED ABOUT 3 WEEKS BEFORE HE WROTE THE LETTER. (AUGUST 6, 2001).

AFTERWARDS, DAVIS WAS PLAYING CHESS WITH MARION BOWMAN IN CELL 8. DAVIS TOLD MARION BOWMAN ABOUT THE CONVERSATION HE HAD WITH JAMES GADSON. BOWMAN SAID "IF YOU HEARD ALL THIS, WRITE IT DOWN." BOWMAN SHOWED HIM A PICTURE OF THE DEAD GIRL. HE ALSO SHOWED HIM A FILE FROM HIS ATTORNEY.

BOWMAN SAID HE HAD BEEN SMOKING DOPE THAT DAY. HE SAID IT WAS HIM, JAMES GADSON AND THE GIRL AT THE SCENE. THE GIRL WAS SUPPOSE TO HELP THEM ROB A HOUSE TO GET DRUGS AND MONEY. BOWMAN KNEW THE INTENDED VICTIM.

BOWMAN NEVER ADMITTED HE SHOT ANYONE.

SUBSEQUENT TO THIS, DAVIS TALKED TO JAMES GADSON AGAIN. AT THIS TIME, GADSON SAID THAT BOWMAN SHOT HER.

App. 9122.

Solicitor Bailey initially claimed that he could not recall whether the Sam Memo was provided to the defense. App. 7860, ll. 12 – 16. Bailey then alleged that the Sam Memo was subject to the attorney-client privilege because he viewed Sam Richardson as his “alter ego.” App. 7861, ll. 17 – 25. Bailey then attempted to characterize the Sam Memo as work product. App. 7878, l. 3 – 7879, l. 18. Bailey made the extraordinary inference that unless something was produced by an agency outside of the solicitor’s office, such as law enforcement or the Department of Corrections, it was protected by the work product privilege. App. 7878, l. 23 – 7879, l. 6.

Even though Ricky Davis was brought to the courthouse during petitioner’s trial, Cummings and Thomas elected not to call him as a witness. App. 5980, ll. 5 – 15. Ricky Davis recalled Thomas meeting with him in the holding cell. App. 5980, l. 16 – 5981, l. 16. He told Thomas he wrote the August 6, 2001, note. App. 5981, ll. 4 – 22. As will be seen in Issue 5, Thomas had a conflict of interest because she represented Davis on other charges while she represented petitioner. Thomas admitted that the unsigned notary block on the August 6, 2001, note was her handwriting. App. 7294, ll. 23- 24. Thomas never told Cummings she represented Davis. App. 7059, ll. 4 – 6.

Cummings testified that the first time he ever saw the Sam Memo was when it was handed to him at the PCR hearing. App. 7061, l. 17 – 7063, l. 7. The only thing Cummings recalled learning about Ricky Davis was the handwritten note that was signed by Davis. App. 7062, ll. 17 – 24. Cummings was familiar with the solicitor's investigator, Sam Richardson. Investigator 7062, ll. 4 – 9. He did not know that Sam Richardson had interviewed Ricky Davis. App. 7062, ll. 17 – 24. Cummings admitted the knowledge that Gadson and Davis were in a cell together would have been very helpful. App. 7065, ll. 6 – 16. Cummings said he sent his own investigator to check with Ricky Davis and Davis told the investigator that he denied giving the statement. App. 7065, ll. 17 – 24.

The PCR court did not find that the Sam Memo was disclosed to the defense, but instead found, erroneously, that the Sam Memo was not favorable to the defense or material under Brady. Supp. App. III 57-60. First of all, the Sam Memo is clearly relevant to guilt or innocence. It recounts a co-defendant confessing to the crime. It is hard to imagine any piece of evidence that could be more material to guilt or innocence. The Sam Memo also constitutes impeachment evidence. It directly contradicted the only eyewitness to the murder. Sam's interview took place at Lieber where Davis had no contact with petitioner and nothing to fear from petitioner. It was also an interview conducted by the state and the jury was likely to be favorably disposed to a witness' testimony that had been confirmed by law enforcement.

Furthermore, the PCR court's ruling is based on a legal error. The PCR court's order inaccurately states that Cummings would not have called Ricky Davis as a witness or changed his strategy had he known about the Sam Memo. Supp. App. III 59-60. The question is not whether Cummings' strategy would have changed, but whether the evidence is material for guilt or innocence or impeachment. Also, Cummings' statements are irrelevant if they conflict with

the actions that would be taken by a reasonable attorney. Wiggins v. Smith, 539 U.S. 510, 521-22 (2003). Considering the seriousness of the charges and the necessity of impeaching the state's sole witness to the crime, not calling Ricky Davis or Sam Richardson would be an unreasonable act.

Furthermore, the PCR court's order mischaracterizes Cummings' testimony. Cummings testified that had he known about the second interview by law enforcement, "I would put Mr. Richardson up on the stand if I had known about it." App. 7069, ll. 6 – 11. Cummings admitted that he made the decision not to put Ricky Davis on the stand without the benefit of the knowledge of Sam's interview of Ricky Davis. App. 7072, ll. 5 – 7. Cummings stated that if he had known of the interview it "would have really shed a different light." App. 7627, ll. 2 – 4. Cummings said that the Sam Memo meant that he "would have known the state thought he was of evidentiary value early on." App. 7627, ll. 9 – 17. Cummings testified, "I don't think Sam would make anything up." App. 7728, l. 16.

Under these circumstances, the PCR court's ruling that the Sam Memo was not material under Brady is erroneous. See Conyers v. State, 790 A.2d 15 (Md. 2002) (reversing death sentence in part because prosecution violated Brady when it failed to disclose impeachment evidence on a jailhouse informant). Its omission renders the trial's outcome unworthy of confidence and resulted in an unfair trial for petitioner. Therefore, the PCR court's ruling must be reversed.

2. Gadson's Mental Health Evaluation

Bailey admitted that he did not provide the defense with Gadson's mental health evaluation. App. 7851, ll. 20 – 24. Cummings testified that he never received Gadson's mental evaluation. App. 7377, ll. 16 – 23. Based on this testimony, the PCR court did not rule that

Gadson's mental health evaluation was provided to the defense. Instead, the PCR court found that the evaluation was not favorable and not material.³

Gadson's evaluation was completed on September 10, 2001. App. 8957. It diagnosed Gadson with "Cannabis Dependence" and "History of Seizure Disorder." App. 8957. In the report, Gadson told the doctors that he suffered from blackouts. App. 8959. Gadson said he smoked "six blunts of cannabis on a daily basis." App. 8960. The report states, "He does report that he hears a voice and 'a little beeping noise.'" App. 8960. The report also noted that Gadson's testing showed he had memory problems. App. 8960.

The PCR court's finding that this information was not material is erroneous. The information in the report could have been used to impeach Gadson. Had the jury heard that he had memory problems, blackouts, heard voices and beeping noises, it would have undermined Gadson's credibility. It also would have supported a defense theory that Gadson was the murderer. Cummings admitted that hearing beeping noises, voices, consuming drugs, having blackouts would've been relevant to Gadson's credibility. App. 7378, ll. 14 – 22. Cummings admitted that failure to cross-examine Gadson on anything in the mental evaluation would not have been trial strategy. App. 7378, l. 23 – 7379, l. 13. Even Solicitor Bailey admitted there would be impeachment value to the mental health evaluation. App. 7852, ll. 11 – 14. Under

³ The PCR court inexplicably found that trial counsel could have obtained the mental health evaluation and that relieved the state from the burden of producing it. Even if this were a correct statement of the law, then trial counsel were ineffective for not obtaining the report and using it to impeach Gadson. It is not, however, a correct statement of the law, since, as stated by the United States Supreme Court in Kyles, "[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. But whether the prosecutor succeeds or fails in meeting this obligation . . . the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable." Kyles, 514 U.S. at 437-38.

these circumstances, the Court should find that the state violated Brady by not disclosing Gadson's evaluation to the defense.

3. Hiram Johnson's Pending Charges

Hiram Johnson had pending charges in Orangeburg County at the time of his testimony and petitioner's case. App. 6263, l. 18 – 6265, l. 14. The warrant for Johnson for receiving stolen goods was sworn on November 13, 2000 and served on him May 29, 2001. App. 9074. Johnson claimed he did not remember what the charges were. App. 6265, ll. 9 – 14. The warrant was served and pending. App. 7102, ll. 13 – 20. Johnson also had pending charges for second degree burglary and grand larceny. Supp. App. III 50. The charges pending in Orangeburg were dismissed. App. 6276, l. 17 – 6277, l. 42. They were dismissed by the same solicitor's office that prosecuted petitioner. App. 6277, ll. 11 – 23. Johnson claimed he could not remember why the charges were dismissed. App. 6277, ll. 3 – 5.

Solicitor Bailey admitted he had no recollection of providing any information to Cummings or Thomas about Johnson's pending burglary charges. App. 7832, ll. 1 – 8. Bailey admitted this evidence would be relevant to bias. App. 7832, ll. 17 – 22. Bailey first attempted to suggest that the Attorney General's office would have handled Hiram Johnson's pending charges in Orangeburg County. App. 7833, l. 13 – 7834, l. 1. Bailey then was forced to admit that an assistant solicitor with his office actually prosecuted the case. App. 7834, l. 2 – 7835, l. 3. Bailey agreed that unless Johnson's charges appeared on his rap sheet, it was unlikely that information was conveyed to petitioner's attorneys. App. 7834, ll. 2 – 23. Interestingly, Detective Coker testified that rap sheets usually show pending charges statewide. App. 6740, ll. 3 – 7.

Cummings testified that according to the rap sheet he received, there were no pending charges against Johnson in the first judicial circuit. App. 7100, ll. 4 – 24. Johnson was arrested May 29, 2001. App. 7100, l. 25 – 7101, l. 2. Johnson was not indicted until April 17, 2003, after the trial. App. 7100, l. 25 – 7101, l. 2. Cummings said that the only thing shown on Johnson's rap sheet was a conviction for unlawful possession of a pistol. App. 7101, ll. 17 – 23. It did not show the pending warrant. App. 7101, l. 24 – 7102, l. 4.

Cummings admitted the pending charge could have been used to impeach Johnson for bias. App. 7103, ll. 6 – 8. Cummings would have asked questions about Johnson's pending charges had he known about them. App. 7106, l. 21 – 7107, l. 4. Cummings agreed that Hiram Johnson need to be impeached because he claimed he heard petitioner confessed to the killing. App. 7114, ll. 20 – 23.

The PCR court did not find that the charges were disclosed to the defense, but inexplicably held that they were not material because of the “overwhelming evidence of Applicant's guilt.” Supp. App. III 50. This patently erroneous approach to analyzing evidence was disapproved by a unanimous United States Supreme Court in Holmes v. South Carolina, 547 U.S. 319 (2006). This holding ignores the rules regarding Brady evidence and imposes the higher Strickland standard on a Brady claim. It cannot be disputed that Johnson's pending charges were impeachment information. See also Giglio v. United States, 405 U.S. 150 (1972); Reutter v. Solem, 888 F.2d 578, 580-82 (8th Cir. 1989) (finding a Brady violation where prosecutors failed to disclose that key witness had pending petition for commutation of his sentence). Furthermore, the absence of a deal on pending charges is even more prejudicial impeachment evidence because it “suggests the witness will testify more favorably to the State's position.” State v. Mizzell, 349 S.C. 326, 332-33, 563 S.E.2d 315, 318 (2002). It is reasonable

to believe that a witness would “have felt that the quality of his cooperation would determine the degree of benefit he would later receive.” Id.

The importance of this information is highlighted by Solicitor Bailey’s closing argument. Chaffee v. State, 294 S.C. 88, 91-92, 362 S.E.2d 875, 877 (1987). Solicitor Bailey falsely told the jury, **“You hadn’t heard any testimony about Hiram Johnson having any kind of charge against him or any kind of a deal with the state, any reason to say something wasn’t true.”** App. 4474. ll. 3 – 11. The solicitor’s emphasis on Johnson’s neutrality demonstrates beyond cavil the materiality of this evidence. Without this impeachment evidence, petitioner did not receive a fair trial resulting in a verdict worthy of confidence. Kyles, 514 U.S. at 434.

The Brady Errors Must be Considered in the Aggregate

The PCR court also failed to consider the cumulative effect of the state’s failure to disclose these key pieces of evidence. When considering Brady materiality, the suppressed evidence must be “considered collectively, not item by item.” Kyles, 514 U.S. at 436-37. “[A] showing of materiality does not require demonstration by a preponderance that disclosure would have resulted ultimately in the defendant’s acquittal.” Id. at 434. “A defendant need not demonstrate that after discounting the inculpatory evidence, there would not have been enough left to convict.” Id. at 434-35.

When these three key pieces of evidence are considered together, the cumulative effect is that no confidence can be had that petitioner received a fair trial. The state suppressed the fact that its star witness had confessed to a police investigator. The state suppressed the fact that its star witness had blackouts, memory problems, and heard voices and beeping noises. Finally, the solicitor suppressed the fact that a witness it told the jury had no pending charges was, in fact, being prosecuted by his office. This misrepresentation to the jury should greatly concern this

Court. It is disturbing that the state's conduct shows a pattern of concealing evidence, threatening witnesses, and claiming that it did not know about the untruths in its primary witnesses' testimony. Enforcing the Brady rule in this case "will tend to preserve the criminal trial, as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal accusations." Id. at 440. The Court should reverse the PCR court's ruling and grant petitioner a new trial.

Trial counsel rendered ineffective assistance of counsel because counsel had a conflict of interest between two of her clients -- Petitioner Bowman and Ricky Davis -- that caused counsel to fail to call Ricky Davis as a witness, despite Davis' statement that exculpated Petitioner Bowman and established Gadson shot the victim.

The PCR court erred in determining that the actual conflict of interest of Petitioner Bowman's co-trial counsel, Marva Hardee-Thomas did not amount to ineffective assistance of counsel. At the time she represented petitioner, Thomas also had an attorney-client relationship with Ricky Davis ("Davis"). App. 8967. Davis executed a written statement, stating Davis heard James Tawain Gadson confess to shooting the victim and handing the murder weapon over to petitioner. App. 8966. Davis executed the statement prior to turning state's evidence and accepting a plea deal in this matter from the State. Id. Despite this critical, exculpatory evidence on behalf of petitioner, Thomas failed to call Davis as a witness at trial. App. 7302. Thomas failed to present this critical testimony because of a conflict of interest created by her representation of Davis and petitioner.

Counsel's simultaneous obligations to both petitioner and Davis constituted an actual conflict of interest that affected her performance. "To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance." Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001) (citing Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 773 (1998)). As this Court has explained, "[a]n actual conflict of interest occurs where an attorney owes a duty to

a party whose interests are adverse to the defendant's." Id. at 143-44, 551 S.E.2d at 256 (citing Jackson, 329 S.C. at 354, 495 S.E.2d at 773).

"The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client" [citation omitted] Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008). A defendant does not need to show prejudice if there is an actual conflict of interest. Id. See, also, Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984) (quoting Zuck v. Alabama, 588 F.2d 436, 439 (5th Cir. 1979)).

The case of State v. Gregory, 364 S.C. 150, 612 S.E.2d 449 (2005) is instructive on the situation involved here. In Gregory, this Court found counsel, who was representing the defendant on criminal sexual conduct with a minor charges, had a conflict because he represented an assistant solicitor in her divorce action; the assistant solicitor had initially prosecuted the case even though by the time of trial, the solicitor had been replaced. Still, this Court found:

The question in this case is whether defense counsel owed duties to a party whose interests were adverse to Gregory. Under this Court's holding in Duncan[281 S.C. at 438, 315 S.E.2d at 811 (1984)], and the case cited therein, Zuck v. Alabama, we find that he did. In Zuck v. Alabama, the Fifth Circuit Court of Appeals held that where the law firm retained to represent the defendant in a murder trial also represented the state prosecutor in an unrelated civil trial, there was an actual conflict of interest, and the conflict rendered the trial fundamentally unfair. The court noted that "the basis of these decisions is our belief that the sixth amendment requires that **a defendant may not be represented by counsel who might be tempted to dampen the ardor of his defense in order to placate his other client. . . . This possibility is sufficient to constitute an actual conflict as a matter of law.**" 588 F.2d at 440 (emphasis in original).

Where an actual conflict is shown, the aggrieved party “need not demonstrate prejudice in order to obtain relief.” Cuyler v. Sullivan, 446 U.S. 335, 349-50 (1980); Holloway v. Arkansas, 435 U.S. 475, 487-91 (1978).

An actual conflict of interest can undoubtedly arise when an attorney represents two parties simultaneously. Courts from around the country hold that simultaneous representation of both the criminal defendant and a defense witness may give rise to an actual conflict of interest. See, e.g., United States v. Moscony, 927 F.2d 742, 750 (3d Cir. 1991) (“Conflicts of interest arise whenever an attorney’s loyalties are divided and an attorney who cross-examines former clients inherently encounters divided loyalties”) (citations omitted)); Louisiana v. M.M., 802 So. 2d 43, 68 (La. Ct. App. 2001) (“Nevertheless, [conflicting loyalties] may also arise when an attorney has to cross-examine a State witness or call a defense witness who the attorney represents in another litigation”); Massachusetts v. Walter, 487 N.E.2d 513, 517 (Mass. 1986) (“We nevertheless agree that where an attorney simultaneously represents both a criminal defendant and a possible defense witness, the potential for a serious conflict does exist.”); Tennessee v. Franklin, No. W2009-01087-CCA-R3-CD, 2010 Tenn. Crim. App. LEXIS 457, 23 (Tenn. Crim. App. June 3, 2010) (“[A] conflict of interest may arise not only in simultaneous representation cases but also in cases of successive representation ‘when an attorney who once represented a co-defendant or witness currently represents the accused.’” (citation omitted)).

This is precisely the situation in this matter. An actual conflict existed because trial counsel represented petitioner and Davis. As noted, Thomas had an attorney-client relationship with Ricky Davis. Counsel was appointed to represent Davis on two separate armed robbery charges in 2001. App. 8967. In October of 2001, Davis was tried by jury, convicted of one count of armed robbery, and sentenced to twenty years. App. 8980. His second indictment was

nol prossed on October 18, 2001. App. 9291-92. Thomas filed a notice of appeal on Davis's behalf on October 24, 2001. App. 9306. Nevertheless, her obligations to Davis did not cease because the solicitor certainly retained discretion on whether to recharge Davis for the matter that was nol prossed. Thomas admitted this concern in her testimony at the PCR hearing. App. 7288-89.

Without contraction, Thomas admitted a conflict between petitioner and Davis existed. When asked whether she thought there would have been a conflict had she spoken to Davis and had he confirmed that his statement was true, Thomas admitted that "there is a bigger conflict that would arise with regard to representation of Marion [Bowman]." App. 7332. As she explained, the dual representation would have led to "trying to help Mr. Bowman but not hurt my aspect with Mr. Davis because I still have an ethical responsibility with him also." App. 7333. When asked if she "would not have decided not to call Ricky Davis to protect him, to the detriment of Mr. Bowman, you didn't do that, did you? Thomas answered: "No, I wouldn't put anybody in that predicament." App. 7334.

Regardless, Davis was not called as a witness at petitioner's trial. Thomas failed to do so despite the exculpatory nature of the statement.⁴ When asked why Davis did not testify that he heard Gadson confess to shooting the victim, counsel testified: "I don't know." App. 7302. Counsel also acknowledged she did not have any strategic reason for not putting Ricky Davis on the stand to testify that he had heard Gadson's confession. App. 7302.

Despite the exculpatory written statement, Thomas did not even recall speaking to Davis directly. App. 7331. In fact, not only did Thomas fail to call Davis, Thomas could not

⁴ Thomas acknowledged, in her testimony at the PCR hearing, that her handwriting was on the notary block, which was not filled out. App. 7294, 7331.

remember even discussing Ricky Davis with her capital client, petitioner, much less detailing the former attorney-client relationship with petitioner. App. 7294. This constituted ineffective assistance of counsel.

Thomas' conflict stemmed from the fact that she had legitimate concerns about Davis's second armed robbery charge which was nol processed. As the Supreme Court of South Carolina has explained, when a charge is nol processed it is extinguished. Mackey v. State, 357 S.C. 666, 668, 595 S.E.2d 241, 242 (2004). However, "'if the nolle prosequi is entered prior to the jury being empanelled and sworn, there is no bar to future prosecution for the same offense because the innocence or the guilt of the defendant would not have been adjudicated.'" Id. (quoting State v. Patrick, 318 S.C. 352, 457 S.E.2d 632 (1995)). Therefore, in situations where charges are nol processed before a jury has not been empanelled and sworn, the solicitor would be free to bring the charges against the defendant again. Davis' situation presented that exact scenario.

First, if Thomas had called Davis to testify at petitioner's trial, she ran the risk of the solicitor seeking to impeach Davis regarding his armed robbery conviction. The very real chance also existed that Davis may have discussed the second charge⁵ instead of his conviction and stated something detrimental on the stand that could be used against him by the solicitor in deciding whether to re-file the charge. As the Mackey case explains, the solicitor clearly maintained that right to charge Davis again. Counsel had already assisted Davis in avoiding this charge once, and there would be a strong motivation to keep Davis off the stand regardless of the context to avoid any chance of it being brought again. Second, counsel likely felt that there was

⁵ The conviction and the second charge were disposed of around the same time; hence, the chance that Davis could testify as to the second charge.

a potential for retribution if Davis was called. Davis was a potentially exculpatory witness who made a clear statement that petitioner was not the shooter and that the state's primary witness against Bowman was actually the murderer. App. 8966. There was certainly the potential that the solicitor would simply recharge Davis if he was called at petitioner's trial. Counsel had a duty to keep Davis from testifying or helping the defense in any way, as it could have resulted in renewed charges being brought against him. This is in direct conflict with her duty to zealously represent petitioner and provide effective counsel. Such an inherent conflict undoubtedly had a negative impact on her performance at trial, evidenced by the complete failure to call Davis.

Ricky Davis was convicted of one armed robbery charge and had the second nol processed. The second charge was dropped on October 18, 2001. Thomas represented Davis in both instances. Not long after, she was also appointed to defend petitioner at trial. As shown above, these clients' interests were adverse to one another. As the recognized by the above-authority, Thomas's dual representation of petitioner, and a potential defense witness, Davis, sufficiently established an actual conflict of interest. It is evident that the standard for establishing prejudicial conflict has been met in this case. If petitioner had been made aware of the prior attorney-client relationship and advised of the adverse interests, he would have likely objected to Thomas's representation. Due to the existence of an actual conflict, petitioner should not be required to show prejudice resulting from this conflict.

However, even if this Court were to require a prejudice analysis, petitioner was prejudiced due to counsel's reluctance to call Davis and failure to advise petitioner of the attorney-client relationship. The conflict of interest, whether actual or potential, related directly to the heart of the case and cannot constitute harmless error. Our Supreme Court very recently

held that error related directly to the central issue of a case cannot constitute harmless error. In Sulton v. Health South, 400 S.C. 412, 734 S.E.2d 641 (2012), the Court addressed an erroneous jury charge that incorrectly elevated the duty of care owed by a hospital on the seminal issues of the case. The Supreme Court held that, despite the harmless error approach to review of jury instructions, the error could not be harmless because it went to the heart of the case. The court held remand was warranted because the error on the key issue caused the defendant to suffer prejudice. Id. at 418, 734 S.E.2d at 644-45.

This matter is analogous to the court's logic and rationale in Sulton. The identity of the shooter constituted the critical issue in this matter. Whether petitioner's counsel excluded potentially exculpatory testimony due to a conflict of interest directly affected that critical issue in the matter. If counsel should not have represented petitioner, as was the case, his right to effective counsel was violated. It was critical that the trial court, and the PCR court, hear Davis' exculpatory testimony to ensure that petitioner received adequate representation, especially in light of the fact that the state sought the death penalty against petitioner. Thomas's improper representation of petitioner prejudiced him significantly. Accordingly, Thomas provided ineffective assistance of counsel, and the PCR court should have granted petitioner post-conviction relief.

Defense counsel was ineffective for failing to object to the solicitor's examination of James Aiken regarding favorable prison conditions and recreational facilities available to inmates since this Court had long ago in *State v. Plath*, 281 S.C. 1, 313 S.E.2d 619 (1984), held such evidence was impermissible because it did not relate to the character of the defendant or the nature of his crime. This evidence was highly prejudicial in the eyes of the jury, and the failure to object to it properly at trial also barred consideration of this winning issue on petitioner's direct appeal.

Correctional Consultant James E. Aiken was qualified as an expert witness for the defense in the fields of prison adjustment and future dangerousness. App. 4832, l. 22 – 4838, l. 10. On cross-examination, the solicitor questioned Aiken about petitioner having received a youthful offender act (YOA) sentence in the past. Aiken acknowledged that the purpose of a YOA sentence was to rehabilitate the youthful offender, and that petitioner had “flunked out” because he was unable to comply with the mandates of the program. App. 4847, l. 1 – 4848, l. 3. Aiken also admitted there was a “use of force” report regarding a fight petitioner had while serving his YOA sentence was being served at Stevenson Correctional Institution. App. 4848, l. 8 – 4849, l. 2.

The solicitor had Aiken acknowledge that inmates can work while inside the correctional facility. The solicitor also asked Aiken to also admit that inmates were allowed to leave the correctional facility and pick up trash on the side of the road. This drew an objection from defense counsel because “that’s clearly not available here and it’s not proper.” App. 4857, l. 22 – 4858, l. 6.

The solicitor then asked Aiken to admit that even an inmate serving a life without parole sentence could still work. Aiken answered, "If you're going to be in prison, you're going to work." App. 4862, l. 2 – 4864, l. 11. On re-direct examination, Aiken said there was not any way a person serving a life without parole sentence would be allowed outside the prison to pick up trash. App. 4864, l. 16 – 4869, l. 3.

Immediately on re-cross examination, the solicitor focused on escape and prison conditions. The solicitor noted that Aiken had said petitioner would never get out of prison and he then asked him how many inmates had escaped during the time he was affiliated with the South Carolina Department of Corrections. Defense counsel's objection to this escape testimony was sustained. App. 4869, l. 13 – 4970, l. 11.

The solicitor then requested permission to question Aiken about "conditions of general population, the work conditions he's already gotten into." The defense's only objection was that such questioning would occur on re-cross examination. Defense counsel did not object on the grounds that such prison conditions evidence was inadmissible. App. 4873, l. 21 – 4874, l. 19.

The solicitor then questioned Aiken extensively about what an inmate's "routine" in prison. Aiken then admitted to the solicitor that inmates not in "super max" were able to work, and they were compensated for their work. When the solicitor asked how much inmates were paid, Aiken said he thought they made three dollars, four dollars, or five dollars, but he admitted he was not exactly sure how much they were paid for their work. App. 4878, ll. 11-24.

The solicitor then questioned Aiken about an inmate did in prison when he was not working. Aiken answered that inmate got up in the morning, had breakfast, then went to work, took a recess break "in the middle of the day, lunch break, to eat as provided by the constitution, and of course go back to work and then eat in the evening. And a person can involve himself in

bible study, a person can involve himself in education, a person can involve himself in anger management and other things that are provided within the correctional environment. That's one routine." App. 4878, l. 11 – 4880, l. 14.

Aiken then attempted to explain that inmates were constantly being watched during their activities, and they were written up for administrative violations. The solicitor objected: "Your Honor, I think he's not being responsive to my question. I was simply asking him about conditions of the prison that he had testified about and he's going off into a speech. I would like him to respond. So I've tried to ask simple questions and get direct answers." App. 4878, l. 11 – 4880, l. 14.

Defense Counsel Cummings responded: "I think the gentleman was trying to answer, Judge." The judge partially agreed: "I think he is trying to answer" but instructed Aiken to listen to the question and answer it fully "but if you could be mindful to remember brevity I would appreciate it." App. 4880, ll. 14-25. The following exchange then occurred with Aiken and the solicitor:

Mr. Aiken: I'll just answer the question like this. I gave the daily routine, but you have to understand that you are doing it around very dangerous people that use violence to resolve issues. And that gives a better picture of what it means living in prison.

Mr. Bailey: All right, sir. And are there recreational facilities available?

Mr. Aiken: Yes, sir.

Mr. Bailey: What type of recreational facilities?

Mr. Aiken: An inmate can play basketball, an inmate can exercise, you know, on his own, but to understand, again, to give it in a complete context as briefly as I can, you're doing it around very dangerous predator people.

Mr. Bailey: My question is related to the recreational facilities and we understand prison is dangerous people. In addition to that are there libraries they go to, to read books?

Mr. Aiken: Yes, sir. As guaranteed by the constitution.

Mr. Bailey: Are there movies they can watch?

Mr. Aiken: Yes, sir.

Mr. Bailey: Television?

Mr. Aiken: In some instances, yes, sir.

Mr. Bailey: Softball, do they play softball?

Mr. Aiken: I don't know. It's some type of recreation such as that.

Mr. Bailey: Thank you. That's all I have.

App. 4881, l. 1 – 4882, l. 3.

In his closing argument the solicitor reminded the jurors about the testimony of James Aiken. The solicitor said Aiken was “a very knowledgeable person, I had some trouble getting him to answer some questions, but I would concede he's very knowledgeable, he's an expert in prison adjustment. The solicitor noted that Aiken did say that petitioner could adjust well to prison. App. 4965, ll. 3-15. However, the solicitor urged the jury what its focus should be based on Aiken's testimony:

But when you're talking about adaptability to prison environment, you need to know what that environment is like. And he told you all a little bit about it, Mr. Aiken. I asked him about the prison environment, you work, you get paid some degree of money, some amount of money for working, that after work there are recreational opportunities available, he said **they could play basketball, they had a library where they could read books, movies, television. In the meantime, Kandee Martin's in her grave and she'll be there forever.**

App. 4965, l. 16 – 4966, l. 2. (emphasis added).

On direct appeal to this Court, undersigned counsel argued the following on direct appeal regarding this issue:

The court abused its discretion by allowing the solicitor on re-cross examination of James Aiken to examine him about conditions in general population. Recreational facilities, watching movies, watching television and reading books were matters not raised by any relevant evidence, and the jury's sole concern was supposed to be with whether appellant should be sentenced to death or life imprisonment without parole.

In State v. Bowman, 366 S.C. 485, 498-499, 623 S.E.2d 378, 385 (2005) this Court held the issue was procedurally barred – the only objection was improper re-cross examination -- but again warned the bench and bar that such prison conditions evidence was improper:

Appellant argues the trial court erred by allowing the State, on re-cross examination, to ask Aiken about prison conditions.

We find this issue is not preserved for review because appellant did not raise this issue to the trial court before the testimony was presented and did not make a contemporaneous objection when the testimony was actually elicited. Further, the trial court did not rule on this issue as now stated by appellant. See State v. Moore, 357 S.C. 458, 593 S.E.2d 608 (2004) (to be preserved for appeal, issue must be raised to and ruled on by trial court); State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997) (party cannot argue one ground below and then argue different ground on appeal). See also State v. Johnson, 363 S.C. 53, 609 S.E.2d 520 (2005) (to preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court).

We take this opportunity, however, to caution the State and the defense that the evidence presented in a penalty phase of a capital trial is to be restricted to the individual defendant and the individual defendant's actions, behavior, and character. Generally, questions regarding escape and prison conditions are not relevant to the question of whether a defendant should be sentenced to death or life imprisonment without parole. We emphasize that how inmates, other than the defendant at trial, are treated in prison; and whether other inmates have escaped from prison, is inappropriate evidence in the penalty phase of a capital trial. We admonish both the State and the defense that the penalty phase should focus solely on the defendant and any evidence introduced in the penalty phase should be connected to that particular defendant.

In his application for post-conviction relief filed April 7, 2006, petitioner Bowman alleged his attorney was ineffective for failing to object to inadmissible “good prison conditions” evidence, and to preserve the issue for direct appeal. App. 1571. Petitioner continued to assert the failure to object to this prison conditions issue evidence as a PCR issue in subsequent pleadings. App. 5681-5682; App. 5694-5695; App. 5715-5716.

PCR counsel questioned defense counsel about the prison conditions evidence during the evidentiary hearing. Defense counsel stated that “it’s been the same argument throughout the last ten years in this state, what are its present conditions, and the Supreme Court is coming out telling the solicitor to stop it, and defense attorneys, you can’t sell it to the jury anymore, that it ain’t the life of a picnic anymore.” Trial counsel added:

For God’s sake, we have all tried to show LWOP means life without possibility of parole, and every Solicitor, and **I would do it myself if I was still prosecuting**, *he gets to watch TV, Kandee is dead, he gets to eat, she doesn’t, and he gets to have recreation in the yard, she doesn’t*, and then in the heat of that stuff, Mr. Bailey and I were going at it, you read the transcript. You should have been there.

App. 7450, ll. 3-12. (emphasis added).

When PCR counsel reminded trial counsel that this Court had held this very evidence introduced an arbitrary factor into the sentencing proceeding, counsel responded: “Isn’t that nice of them, but how else do you argue about somebody having a chance to live in prison? I mean, I don’t argue academically.” App. 7449, l. 21 – 7450, l. 22.

PCR counsel then asked trial counsel why he did not object to the prison conditions evidence:

Mr. Brown: [M]y question is why didn’t you object when Mr. Bailey brought it out so he couldn’t talk about it at all anymore?

Mr. Cummings: Maybe I just didn't remember to do that because we were still fighting with each other by the side of the table, or the judge, and you have to read what I was doing.

Mr. Brown: That's fine, I'm just asking if you had a reason.

Mr. Cummings: *There is not reason that a lawyer misses an objection, he misses it.*

App. 7451, l. 15 – 7452, l. 1. (emphasis added).

After this question, a colloquy occurred between the assistant attorney general and PCR counsel and the court. PCR counsel argued that trial counsel was ineffective for failing to preserve this issue for appeal “because it would have been reversed” if they had preserved the issue. App. 7453, l. 1 – 7460, l. 19. Trial counsel then responded: “It was on re-cross and again, if I made an error, if I made a mistake, that man, respectfully, should get the benefit, I just want to apologize.” App. 7462, ll. 18-21.

The assistant attorney general attempted to distinguish this case from State v. Burkhart, 371 S.C. 482, 640 S.E.2d 450 (2007), by arguing that defense counsel in this case “opened the door” to the prison conditions evidence. Obviously recognizing that Burkhart decided the prison conditions evidence introduced an impermissible arbitrary factor into the case, he urged: “I think in the context of ineffective assistance we still have a prejudice prong as well.” App. 7460, l. 24 – 7461, l. 12.

In petitioner's brief supporting his fourth amended application for post-conviction relief, which the judge permitted counsel to file as a post-hearing brief, counsel again made a succinct argument on the prison conditions issue. App. 9546 - 9547. Counsel noted the trial prison conditions evidence and the fact defense counsel did not make a contemporaneous objection to this impermissible evidence. Counsel also pointed out the fact that defense counsel during PCR hearing did not offer any strategic reason for his failure to object. App. 9546 – 9547. Counsel

noted “in Burkhart, the Court *reaffirmed the long standing rule that evidence admitted in the sentencing phase of a capital trial must be limited to either character evidence of the defendant or the circumstances of the crime.*” App. 9547. (emphasis added). Counsel noted that petitioner’s jury sentenced him to death while considering the arbitrary factor of this “good” prison conditions evidence . . .” App. 9547.

In his order denying petitioner’s application for post-conviction relief filed March 12, 2012, the judge found that the defense “opened the door” to the good prison conditions evidence. Supp. App. III 101-121. The order acknowledged that this Court procedurally barred this issue in State v. Bowman, 366 S.C. 45, 623 S.E.2d 378 (2005), but sought to distinguish it from State v. Burkhart, 371 S.C. 482, 640 S.E.2d 450 (2007), by arguing the solicitor called a witness in his case in chief in Burkhart about prison conditions. Supp. App. III 105-107. The order of dismissal continued to make the Attorney General’s argument that seemingly because of Kelly v. South Carolina, 534 U.S. 246 (2002), and the two cases that preceded it, Simmons v. South Carolina, 512 U.S. 154 (1994) and Shafer v. South Carolina, 532 U.S. 36 (2001), which held that evidence of future dangerousness as a matter of due process mandated a jury instruction that life meant “life without parole” constituted a “new legal setting” that allegedly now allows the admission of evidence on the “routine” of daily prison life to counter adaptability evidence in some way. Supp. App. III 105.

The order also found defense counsel had a “strategic” reason not to object to this evidence because he wanted to emphasize “the harsh conditions of prison” to the jury and he fully expected the solicitor to respond with the good conditions in prison. Supp. App. III 107-109. As petitioner demonstrates infra, trial counsel’s reasons are in error. This Court has consistently emphasized that penalty phase evidence must concentrate on the character of the

defendant and the circumstances of his crime. Consequently, the ruling that defense counsel here “opened the door” to evidence of general prison condition evidence is actually an additional finding of ineffectiveness. This is not a direct appeal. This ruling reinforces the admitted ineffectiveness of counsel, and his demonstrated lack of awareness concerning long-standing binding precedents of this Court. It ignores the fact such evidence has nothing to do with petitioner’s character or the circumstances of his crime, or any matter within his control and it is inadmissible.

For this and other reasons, petitioner now seeks a writ of certiorari from this Court.

Discussion

Defense counsel testified at the PCR hearing that if he was still prosecuting cases he would have done exactly what the solicitor in this case did. He would have presented evidence and argued that Marion Bowman would be allowed to watch television, have recreation, go the library and have other amenities while the victim was dead in her grave as a result of the murder. “He gets to eat, she doesn’t, and he gets to have recreation in the yard, she doesn’t,” as defense counsel testified at the PCR hearing. App. 7450, ll. 3-12. Defense counsel had no appreciation of the fact that this Court has long held that evidence of prison conditions and execution did not constitute proper jury considerations. State v. Atkinson, 253 S.C. 531, 172 S.E.2d 111, 112 (1970); State v. Plath, 281 S.C. 1, 313 S.E.2d 619 (1984).

In Plath, this Court noted that the Department of Corrections controls the conditions of imprisonment and not the defendant. “This determination as to the time, place, manner, and condition of execution or incarceration . . . are reserved by statute . . . to agencies other than the jury. As we have repeatedly stated, the sole function of the jury in a capital sentencing trial is the individualized selection of one or the other penalty, based on the circumstances of the crime

and the characteristics of the individual defendant.” State v. Plath, 281 S.C. at 15, 313 S.E.2d at 627.

This Court in petitioner’s case on direct appeal in State v. Bowman procedurally barred this prison conditions issue as seen supra, and reminded the bench and bar that evidence such as that offered during petitioner’s trial was improper. Defense counsel’s only objection at trial was that the evidence was being offered on re-cross examination. Evidence offered on re-cross examination is within the sound discretion of the judge where the objection should have been, as a matter of law, that the evidence the solicitor intended to elicit was improper and inadmissible. While objecting only on the basis that the solicitor was presenting the prison condition evidence on re-cross examination, defense counsel framed the issue as simply one vested to the sound discretion of the trial court since the right to, and scope of, re-cross examination is purely a discretionary matter. See Liberty Mutual Insurance Company v. Gould, 266 S.C. 521, 533, 224 S.E.2d 715, 720 (1976); State v. Singleton, 179 S.C. 184, 183 S.E. 910 (1936).

As the Chief Justice, while arguing against automatic reversal based upon the arbitrary statutory factor, wrote in her dissent in State v. Burkhart, 371 S.C. 482, 494, 640 S.E.2d 450, 456 (2007)::

Our pronouncement disfavoring this evidence in Bowman was nothing new. See Plath, 281 S.C. at 15, 313 S.E.2d at 627 (“It should not be necessary in the near future ... to remind the bench and bar of the strict focus to be maintained in the course of a capital sentencing trial.”); and Smart, 278 S.C. at 526, 299 S.E.2d at 692-93 (“While this Court approves zealous representation ... it is important in capital cases to maintain strict focus upon the particular characteristics of the specific crime and the unique attributes of the defendant.”). In reversing this case, I believe we treat the disapproval of this type of evidence as though it were a novel development, and that we unnecessarily depart from an established course of analysis that is easily tied to defined doctrines. In my view, reversing Appellant’s sentence uses Bowman to propagate a rule that inappropriately presumes prejudice in many cases and is unjustified given the existing constitutional framework.

State v. Burkhart, 371 S.C. 482, 494, 640 S.E.2d 450, 456 (2007).

As seen above, defense counsel belatedly admitted at the PCR hearing that there could not be any excuse, reason or strategic reason to justify his failure to object to this prison condition evidence if it was inadmissible. Regardless, it is clear defense counsel erroneously thought that petitioner's day to day life in prison routine was a proper matter for the jury's consideration.

Counsel's failure to understand the law in this area allowed the solicitor to capitalize on the prison condition evidence that was admitted without objection to argue that petitioner would enjoy playing basketball and watching television in prison while the victim remained dead in her grave. That was a powerful argument and it is improper. As early as State v. Atkinson, 253 S.C. 531, 172 S.E.2d 111, 112 (1970), this Court held:

The legislature committed to the jury the responsibility to decide in the first instance whether the punishment should be life or death. It charged another agency with the responsibility of how a life sentence should be executed. The jurors perform their task completely when they decide the matter assigned to them upon the evidence before them. *What happens thereafter is of no concern of theirs.* (emphasis added).

The solicitor painted the jury a picture here of life in prison as a relaxing experience where inmates work, play basketball, watch television and go to the library. That certainly would not sound like severe punishment to many jurors for a murderer.

However, as this Court has repeatedly held, punishment in a death penalty trial must be focused on the character of the defendant and the circumstances of his crime. Sentencing a defendant to death based upon the jury's perception of what life imprisonment is like behind the prison walls introduces an impermissible arbitrary factor into the sentencing phase. See State v. Burkhart, supra.

The state in this case continued to urge upon the PCR court that if the defendant introduces evidence that the defendant can adapt to prison that this opens the door to introduce evidence and argument that the defendant is allegedly adapting to a relaxing prison life and routine. That was a fallacious argument.

Skipper v. South Carolina, 476 U.S. 1 (1986) held that evidence that a particular defendant can adapt to prison must be allowed because it is evidence in mitigation that a jury must be allowed to consider as a reason to impose a sentence of less than death. See Eddings v. Oklahoma, 455 U.S. 104 (1982); Lockett v. Ohio, 438 U.S. 586 (1978).

While the refusal to allow prison adaptability in the lower court in Skipper was based upon the precedent at the time, State v. Koon, 278 S.C. 528, 298 S.E.2d 769 (1982), there should be no serious argument that Skipper v. South Carolina prison adaptability mitigating evidence relating to a particular defendant on trial “opened the door” to evidence of favorable prison conditions and a relaxing daily routine in prison in response. This Court has long held such inadmissible. Such evidence simply is irrelevant to the character of the defendant or the circumstances of his crime.

Further, a death sentence imposed where a defendant has no opportunity to explain or deny information which forms the basis for that sentence - - here the changing rules and regulations of the Department of Corrections under which inmates must live - - denies the defendant his right to due process. See Gardner v. Florida, 430 U.S. 349 (1977). Petitioner had and has no control over the conditions in prison that he must live by as a result of his conviction. Those rules, as petitioner argued in his procedurally barred argument on direct appeal, are often left to the discretion of the Director of the Department of Corrections in power at the time, and perhaps public sentiment at the time. See Brief of Appellant at Supp. App. 27.

Had trial counsel made the proper objection to the prison condition evidence and argument at trial there is no reason to believe that petitioner would not have been granted a new sentencing trial in his appeal, State v. Bowman, 326 S.C. 485, 623 S.E.2d 378 (2005), where this issue was procedurally barred instead. Petitioner submits that this prison conditions evidence presented an arbitrary factor into the case that mandates a new sentencing trial in the same manner as if the issue had been preserved for direct appeal. See State v. Burkhardt, *supra*.

However, should the court conduct a prejudice analysis beyond the arbitrary factor, petitioner strongly asserts that under Strickland v. Washington, 466, U.S. 668 (1984) that this highly prejudicial evidence that the solicitor fully capitalized on during his closing argument mandates a new sentencing hearing. As this Court held in State v. McClure, 342 S.C. 403, 409, 537 S.E.2d 273, 275 (2000), the evaluation of the consequences of an error in the sentencing phase of a capital trial is more difficult because of the wide discretion that is given to the sentencing jury. A capital jury can recommend a life sentence **for any reason or no reason at all**.

The solicitor's examination of Dr. Aiken successfully painted the erroneous picture that life imprisonment is a tranquil experience because an inmate, here petitioner, would be able to work, have recreation, watch television, go to the library, and play basketball. It is hardly a leap to assert that this evidence and the solicitor's powerful argument capitalizing on it was a factor in at least one juror's decision to not choose a life sentence. See Chaffee v. State, 294 S.C. 88, 362 S.E.2d 875 (1987)(Solicitor took advantage of evidentiary error in closing argument in a capital sentencing proceeding, error was not harmless). This Court should respectfully grant certiorari on this issue.

Petitioner's rights under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution and under state law were violated because the trial judge failed to properly consider his application as evidenced by the PCR court's wholesale adoption of the state's proposed order.

The PCR court adopted the state's proposed order with no changes. Compare Supp. App. 142 – 286 with Supp. App. III 5-149. Petitioner noted this problem in his Rule 59(e) motion. App. 9953. The last date the PCR court heard testimony was December 22, 2008. App. 7749. The state's proposed order was submitted on June 17, 2011. Judge Lockemy signed it on February 27, 2012. Supp. App. III 149. The Court should note that the only change appears to be overwriting "2011" with "2012." Supp. App. III 149.

This Court has on two occasions warned PCR judges against wholesale adoption of proposed orders. In Pruitt v. State, the Court stated:

We take this opportunity to express our concern with the increasing number of orders in PCR proceedings that fail to address the merits of the issues raised by the applicant. . . . Counsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to the issuance of the order, and the PCR judge should carefully review the order prior to signing it.

310 S.C. 254, 255-56, 423 S.E.2d 127, 128 (1992). Despite the Court's admonishment in Pruitt, the practice continued. This Court again was forced to address this issue in Hall v. Catoe, stating:

Although we strongly encourage PCR judges to draft their own findings of fact and conclusions of law in death penalty cases, we also acknowledge that in all other cases, it is common practice for judges to ask a party to draft a proposed order for the sake of efficiency.

360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004).

Just like this Court, the United States Supreme Court recognizes that wholesale adoption of proposed orders in capital cases raises serious questions about the fairness of the process and a trial court's factual findings. Jefferson v. Upton, ___ U.S. ___, 130 S.Ct. 2217, 2223 (2010). In Jefferson, the state PCR court adopted an *ex parte* proposed order verbatim.⁶ Id. at 2222. The Supreme Court remanded the case based solely on the impropriety of the PCR court's actions. Id. at 2223. The Court stated, "Although we have stated that a court's 'verbatim adoption of findings of fact prepared by the prevailing parties' should be treated as findings of the court, we have also criticized that practice." Id. (quoting Anderson v. Bessemer City, 470 U.S. 564, 572 (1985)).

Other state courts also expressly disapprove of the verbatim adoption of proposed orders in capital cases. "We cannot . . . in this post-conviction case involving a review of the propriety of a death sentence, condone the wholesale adoption by the post-conviction court of an advocate's brief." Commonwealth v. Williams, 732 A.2d 1167, 1176 (Pa. 1999); see also Dobyne v. State, 805 So.2d 733, 741 (Ala. Crim. App. 2000) (criticizing practice and quoting Anderson); Dukes v. State, 621 N.W.2d 246, 258-59 (Minn. 2001) (criticizing practice).

A state PCR court must engage in a "probing and fact-specific analysis" in capital cases. Sears v. Upton, ___ U.S. ___, 130 S.Ct. 3259, 3266 (2010). Just as in Jefferson, and in violation of this Court's strictures concerning proposed orders, the verbatim adoption of a proposed order demonstrates petitioner did not receive a full and fair hearing as required by the Eighth and Fourteenth Amendments.

The proper remedy in this case is a *de novo* review of the evidence in this case or, in the

⁶ The proposed order in this case was not solicited or provided *ex parte*, but this should not change the Court's analysis.

event petitioner is not granted a new trial after a *de novo* review, a remand for a new post-conviction relief hearing. The Court should not apply the deferential “any evidence” standard normally used in PCR cases. Not only has this occurred in petitioner’s case, but it is occurring in other capital PCR cases. This same issue was raised in Marion Lindsey v. State, which is currently pending before this Court. In Lindsey, it appeared that the PCR judge did not even read the proposed order before signing it. See also Charles O. Shuler v. State, CA No. 2003-CP-38-0359, Order filed Jan. 9, 2013, Denying Rule 59 SCRCP/Motion to Alter or Amend Judgment. Shuler was a capital PCR. Shuler raised the issue of the PCR court’s wholesale adoption of the state’s proposed order. Id. at 4-5. Shuler passed away before an appeal from his PCR could be heard. It is manifestly clear that the problems recognized by this Court in Pruitt and Hall persist and are not unique to petitioner’s case. See Sammie Louis Stokes v. state, CA No. 2001-CP-38-1240, Order filed Feb. 19, 2013, Denying Rule 59 Motion and Denying Motion to Appoint New Counsel at 3-7 (addressing wholesale adoption of state’s proposed order).

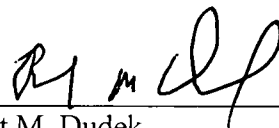
It appears that this Court’s instructions to circuit judges in capital PCR cases continue to be ignored. Without some adverse consequence, circuit judges and the Attorney General have no incentive to see that orders in capital cases are drafted by the court. What is even more troubling is that this error has occurred in an order signed by one of this state’s best judges. Appellate counsel for petitioner have great respect for Judge Lockemy, both as a trial judge and as an appellate judge. He is a fair, smart, and hard-working judge. The disparity between Judge Lockemy’s unquestioned judicial ability and the errors in the order should be attributed to the systemic fault that is resulting from circuit judges’ continued reliance on the Attorney General’s office to draft their orders in these cases. Writing an order in a capital PCR case requires discipline of thought and judgment. The process of writing the order helps ensure the careful

consideration of the evidence and the law by a neutral arbiter instead of an adversarial party.
This Court should use this case to reiterate its prior commands that this practice must end.

CONCLUSION

By reason of the foregoing arguments a writ of certiorari should be granted to allow full briefing on these issues.

Respectfully submitted,

By: 
Robert M. Dudek
Chief Appellate Defender

David Alexander
Assistant Appellate Defender

Michael Anzelmo, *pro bono*
Nelson Mullins Riley & Scarborough, LLP

ATTORNEYS FOR PETITIONER

This 30th day of April, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dorchester County
James E. Lockemy, Circuit Court Judge

MARION BOWMAN,

PETITIONER,

V.

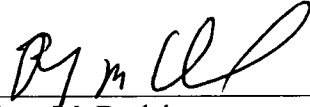
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213468

CERTIFICATE OF SERVICE

I certify that a true copy of the Amended Petition for Writ of Certiorari has been served on Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 30th day of April, 2014.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 30th day
of April, 2014.

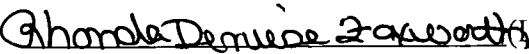

(L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021

Exhibit 3

AFFIDAVIT OF ROBERT L. MINTER

STATE OF SOUTH CAROLINA

)

COUNTY OF CHARLESTON

)

AFFIDAVIT

I, Robert Minter, being first duly sworn, swear and affirm that the following is true to the best of my knowledge:

1. I worked as an investigator for the Charleston County Sheriff's Office. Upon my retirement, I began working as a private investigator. I have worked in that capacity for 29 years.
2. Norb Cummings and Marva Hardee-Thomas hired me to investigate the capital murder case for which Marion Bowman was charged and facing the death penalty.
3. I previously worked two other death penalty cases with Norb Cummings, and worked a number of cases with him in family court. In my experience, Norb was not aggressive in his representation of clients. Norb did not like to try cases and would push his clients to plead guilty or otherwise settle their cases, even when they had strong cases that supported a finding of innocence or an issue they could win on in court.
4. It is my overall experience working as an investigator for Norb that Norb was very hands off and did not direct the work of the investigator, even to such an extent that he would not be dissatisfied if the investigator did not get their job done.
5. In Mr. Bowman's case, in particular, I know that Norb very strongly disliked the mitigation specialist hired to work on Marion Bowman's case, Dale Davis. Norb considered her too pushy and headstrong. She asked him for subpoenas for records and assistance with other tasks which were necessary in order for Ms. Davis to successfully

complete her task of developing mitigation for Mr. Bowman. These requests were reasonable and should have been met with action on the part of Norb but he refused and resented her for trying to do her job.

6. Mr. Bowman's other attorney, Marva Hardee-Thomas, was a lackluster attorney and I don't believe that she adequately represented Mr. Bowman.
7. I believe that if Mr. Bowman had different trial attorneys, then his case may have resulted in a different outcome.

Further affiant sayeth naught.

Robert L. Minter
ROBERT L. MINTER

Sworn to and subscribed before
me this 6th day of December, 2024.

Sherry C. Minter
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: Sept 6, 2029

Exhibit 4

COUNTY OF DORCHESTER
STATE OF SOUTH CAROLINA

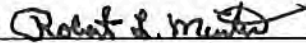
AFFIDAVIT OF ROBERT MINTER

Comes now ROBERT MINTER, before the undersigned officer duly licensed to administer oaths and swears or affirms as follows:

1. My name is Robert Minter. I live in North Charleston, South Carolina and I am over the age of eighteen. The information contained in this affidavit is within my personal knowledge and I am competent to testify to the matters herein. RM
2. I worked at the Charleston County Sheriff's Department from 1972 to 1995. After I left there I became a licensed private investigator. I was hired by attorney Norb Cummings as the fact investigator on Marion Bowman's case. It was the second death penalty case we worked on together. The first involved an armed robbery and the client was sentenced to death. Norb called me and asked me to work on Marion's case and I agreed. RM
3. Norb sent me about 1000 pages of discovery to review at the outset of my involvement. It looked like the discovery had been tossed up into the air and put back into a pile in no particular order – it was a jumbled up mess. It took me a few days to go through all of it and make sense of it. RM
4. I was never given any direction on the case from Norb or his co-counsel, Marva Hardee-Thomas. They never asked me to go interview witnesses or assigned me any specific investigative tasks. I operated more as a gopher on the case. Norb had me go with him when he talked to the psychiatrist and to meet with Marion's mom about a plea offer. I have no recollection of interviewing any fact witnesses from the discovery. If I did I would have typed up a summary and provided it to Norb. RM

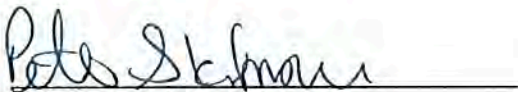
5. I have no recollection of discussing the facts of the case with Marion. I never talked with him about people he wanted interviewed or issues he wanted investigated.
6. I believe that I provided my entire file to Marion's PCR lawyer.

Further affiant sayeth naught.



Robert L. Minter

Sworn to me this 8th day of
January, 2018.



Notary Public

My commission expires: 2-26-2023

Exhibit 5

W/D

Dear Honorable Judge Goodstein:

I marion Bowman Jr am well aware of the offer Mr. Bailey has gave me. However, I'm so confused I don't what to do. Mr. Bailey is offering me a plea bargain of life without the possibility of parole, but is still giving me information concerning this case. And the fact that is an substantial amount of discovery I do not have it is very difficult to understand what is going on. My Attorney is trying to convince me to accept this plea because he said and I quote "These white jurors whose skin is whiter than his is going to see a Black male verses a White female victim, are going to convict me because of my skin color, and not based upon evidence."

This in mind that I would like to Request and evidential hearing as soon as possible in your presence. I am aware that you will be here in Dorchester county on the week of the 26th of Nov. and would like to speak with you. I have in my possession a letter from Mrs Hardee-Thomas dated September 13, 2001 requesting interrogation policy and procedures of both DCSD and DCSD and she has not complied to my Request.

I am not trying to act as if know alot about the law, but I would certainly like to understand the law that Habeas Corpus Exhibits p. 99 attorney whose willing to Right this case →

with their ability and knowledge of the law.

Exhibit 6

Dear Judge Goodstein:

Nov. 5, 2001

I Marion Bowman JR am writing to ask you may I see you while you are here in Dorchester County. Reason for this meeting is that I'm scared for my life and I'm aware of the offer Mr. Bailey has offered, which I refused to accept. I understand that Mr. Bailey has all of his facts to try this case, so I would like to request a evidential hearing AS SOON AS POSSIBLE, because the police getting people to change or add things to their statements months later.

I am not trying to be wise or smart about this, but I do want to know what I'm trying to defend myself against. My Attorney has informed me the on Sept. 17, 2001 signed a EX Parte Order (authorizing Expert AND Investigative services) in my case, in which my attorneys said have not started working because they have not received their checks. you ordered an urgency on October 18, 2001 when I was in front of you. I had some issues that I wanted to bring to your attention, but was told it was not that type of conference.

I'm very concerned about my future, please find the time to spare to see me as soon as schedule will permit.

Thanks very much

Marion Bowman JR

Exhibit 7



State of South Carolina
The Circuit Court of the First Judicial Circuit

DIANE SCHAFFER GOODSTEIN
JUDGE

212 DEMING WAY, BOX 5
SUMMERVILLE, SOUTH CAROLINA 29483-4707
PHONE: (843) 832-0388
FAX: (843) 832-0389

November 14, 2001

Marion Bowman, Jr.
100 Sears Street
St. George, South Carolina 29477

Dear Mr. Bowman:

I am in receipt of your recent correspondence. Please be advised that this is considered ex parte communication. Judicial ethics do not allow a judge to have any form of communication with a party in an action outside of the proper setting (which is in the courtroom with all necessary parties present).

I can not consider anything unless it is on the record and the opposing party is present. If a hearing needs to be scheduled, the attorneys that have been appointed can arrange that for you. I am hereby forwarding this correspondence to your attorneys. Please direct any further communications to the attorneys that have been appointed to represent you.

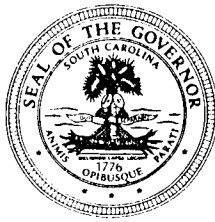
Sincerely,

Diane Schaffer Goodstein
Chief Administrative Judge
First Judicial Circuit

DSG:tkh

cc: Marva Hardee-Thomas, Esquire
Norbert Cummings, Esquire
Walter Bailey (w/o enclosure)

Exhibit 8



State of South Carolina

Office of the Governor

JIM HODGES
GOVERNOR

OFFICE OF EXECUTIVE
POLICY AND PROGRAMS

May 25, 2001

Mr. Marion Bomen
Dorchester County Detention Center
100 Sear Sreet
St. George, South Carolina 29477

Dear Mr. Bomen:

This is in receipt of your letter to Governor Jim Hodges concerning your judicial problem. While The Governor is sympathetic, this office does not and can not interfere with judicial matters. However, if you wish to lodge a formal complaint against your attorney I suggest you contact the following:

Commission on Lawyer Conduct
Office of Disciplinary Counsel
Post Office Box 11330
Columbia, South Carolina 29211

I am sorry we can not provide you with direct assistance in this matter but hope that the information provided will be useful to you.

Sincerely,

A handwritten signature in black ink that reads "Andrew G. Dial".

Andrew G. Dial



950 Taylor Street
PO Box 608
Columbia, SC 29202-0608
803-799-6653 Phone
803-799-4118 Fax
www.sctbar.org

June 6, 2001

ADVANCING JUSTICE,
PROFESSIONALISM
AND UNDERSTANDING
OF THE LAW.

Mr. Marion Bowmen, Jr.
D.C.D.C.
100 Sears St.
St. George, SC 29477

Dear Mr. Bowmen:

I am in receipt of your letter. My job here is to mediate disputes between clients and their own attorneys.

Please know that the Public Defenders are appointed to many clients and are very busy. I will, however notify your Public Defender, Ms. Hardee-Thomas, of your concerns.

If I can be of further assistance to you, please do not hesitate to contact me.

Sincerely yours,

Jill C. Rothstein
Counsel,
Client Assistance Program

cc: Ms. Hardee-Thomas

Exhibit 9

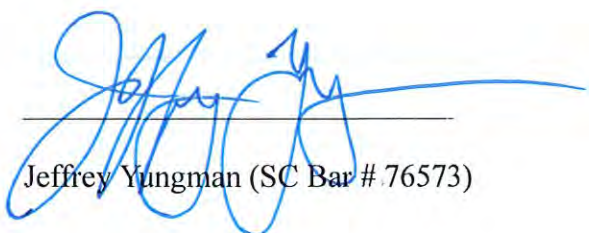
COUNTY OF ORANGEBURG
STATE OF SOUTH CAROLINA

AMENDED AFFIDAVIT OF JEFFREY YUNGMAN

Comes now JEFFREY YUNGMAN, sworn before the undersigned officer duly
licensed to administer oaths and swears or affirms as follows:

1. My name is Jeffrey Yungman. I live in Mount Pleasant, South Carolina and I am over the age of eighteen. The information contained in the affidavit is within my personal knowledge and I am competent to testify to the matters herein. JY
2. In December 2018 I submitted an affidavit regarding the caliber of the work done by the attorneys who represent Marion Bowman. JY
3. I have recently reviewed my affidavit. I believe that in my affidavit I made it clear that the efforts of the attorney's representing Marion Bowman were well below the standards of attorneys in any of the other 29 death penalty cases I have been involved with. JY
4. It is also my belief that if the attorneys for the defendant in this case had performed at a same level of professionalism as other attorneys in similar cases, Marlon Bowman would not be facing the death penalty. JY

Further affiant sayeth naught.


Jeffrey Yungman (SC Bar # 76573)

Sworn to me this 25th day of

November, 2024.

Helen R. Howell

Notary Public South Carolina

My commission expires: 11/20/25

Exhibit 10

COUNTY OF ORANGEBURG
STATE OF SOUTH CAROLINA

AFFIDAVIT OF JEFFREY YUNGMAN

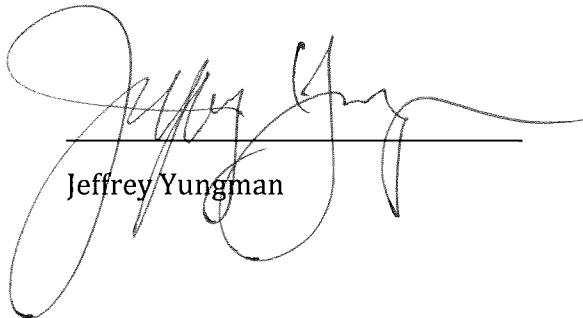
Comes now JEFFREY YUNGMAN, before the undersigned officer duly licensed to administer oaths and swears or affirms as follows:

1. My name is Jeffrey Yungman. I live in Mount Pleasant, South Carolina and I am over the age of eighteen. The information contained in this affidavit is within my personal knowledge and I am competent to testify to the matters herein. JY
2. A funding order was signed for my services as a forensic social worker for Marion Bowman's trial on March 13, 2002 and the case proceeded to trial on May 3, 2002. JY
3. At the time I joined Mr. Bowman's defense team, Dale Davis, an experienced mitigation specialist, had been working on the team since July 2001. Ms. Davis and I communicated regularly about the case - interviews we conducted, records that were collected, and Marion's family dynamics. Unfortunately, we were unable to speak with trial counsel about our findings and seek direction for our investigation, despite numerous requests for meetings. In fact, I only recall all of us meeting together one time prior to the start of the trial, which was very unique in my experience with prior capital cases. In my prior experience on capital cases, there were numerous strategic planning meetings before trial to discuss what evidence was going to be presented and how. That never happened in Marion's case. JY
4. At one point, I was so concerned about the lack of communication and trial preparation by Marion's lawyers that I reached out to other attorneys I had worked with and it was obvious that Mr. Cummings and Ms. Hardee-Thomas were not taking the necessary steps

to adequately prepare for a death penalty trial. Most notably I had no idea what the lawyers' trial strategy was and there was zero preparation done for my testimony. From my experience in 30 death penalty cases, they neglected to do any of the routine tasks attorneys regularly performed throughout their representation of capital clients. There was simply no direction given and a serious lack of communication between the attorneys and the experts. JA

5. It was clear to me that they did not know what they should be asking us to do, but I cannot say if they did not know what they should be doing or knew and just were not doing it. It appeared that the information Ms. Davis and I were able to gather was not reviewed or followed up on in a timely fashion and was often entirely overlooked. JA

Further affiant sayeth naught.


Jeffrey Yungman

Sworn to me this 27th day of
December, 2018.



Notary Public

My commission expires: 11-26-2023

Exhibit 11

STATE OF SOUTH CAROLINA)

COUNTY OF Dorchester)

AFFIDAVIT)

Richard Perez, who appeared personally before me, affirms and states the following:

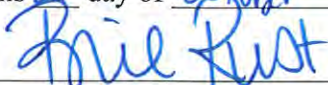
1. I, Richard Perez, served as a juror during Marion Bowman's capital murder trial.
2. I am over the age of 18 years old and I have lived in Dorchester County since 1995.
3. I remember that I was not impressed by Mr. Bowman's attorneys and recall thinking that I would have wanted a different attorney if I were in Mr. Bowman's shoes. I don't recall that Mr. Bowman's attorneys presented any evidence on his behalf, therefore we had to rely solely on the case as presented by the prosecution.
4. Similarly, I do not recall hearing much of anything about Mr. Bowman's childhood or background. Thus, I had to rely completely on the prosecution's characterization of Mr. Bowman.
5. I believe that race played a role in this case, consciously or otherwise.
6. Although I was a strong proponent of the death penalty at the time of Mr. Bowman's trial, I no longer believe in the death penalty and would not sentence Mr. Bowman to death if I were on his jury today. At the time, I strongly believed in "an eye for an eye," but my religious views have since changed and the death penalty no longer seems appropriate.
7. I am in support of a conversion or commutation of Mr. Bowman's sentence to a life in prison sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.


RICHARD PEREZ

Sworn to and subscribed before me

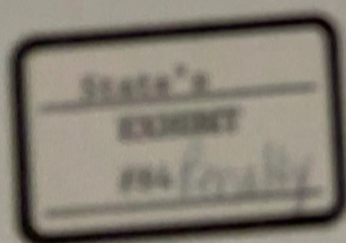
This 28 day of October, 2023


Notary Public for the State of South Carolina

My commission expires: 3/24/27

Exhibit 12







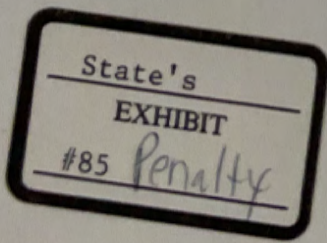


Exhibit 13

3 arrested in burned body case

BY DELAWESE FULTON
Of The Post And Courier Staff

SUMMERVILLE-Three young men stood before a judge Tuesday charged in connection with the death of a woman whose burned body was found in the trunk of a torched car in the woods of northwestern Dorchester County.

Dorchester County Deputy Solicitor Robert Robbins urged the court to deny bail for all three men, and Magistrate Whitney Cunningham agreed.

James Tawain Gadson, 22, and Marion Bowman Jr., 20, both of Branchville, are charged with murder. Bowman also faces a third-degree arson charge.

Travis Dawit Felder, 19, also of Branchville, was charged with accessory to murder and third-degree arson, according to sheriff's office affidavits. He

was arrested Monday.

Tears welled in the eyes of Felder's parents Tuesday as they watched their son, shackled and clothed in an orange prison uniform.

The victim was found in the trunk of a torched Ford Escort on Saturday morning in Reevesville. She had been shot twice sometime between 8 p.m. Friday and 3 a.m. Saturday.

The coroner's office has not yet released her name.

Felder's attorney, Clyde Dean of Orangeburg, argued in court that his client should be given bail.

"Travis doesn't have a record," he said.

Felder would be a low flight risk because "he lives with his parents," he added.

Bowman and Felder are accused of setting fire to the car and placing the woman, who had been shot in the head and back, in the trunk. The car was registered to Cordellia or Kandee Martin of Branchville, according to sheriff's office affidavits.

The victim was killed in the Reevesville area, said Lt. Jimmy Nettles. He said she and the men charged had "known each other for quite some time."

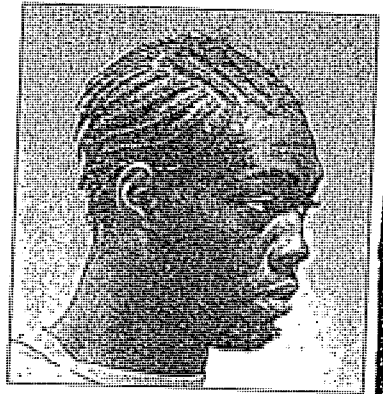
Sheriff Ray Nash called the slaying "a horrible case."

Nash credited teamwork put forth by the Orangeburg County Sheriff's Office, Branchville Police Department and State Law Enforcement Division with expediting arrests in the case.

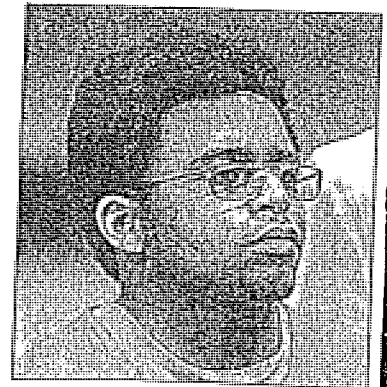
Bowman and Gadson's families were not at the hearing.



James Gadson



Marion Bowman Jr.



Travis Felder

RULE 5
DISCOVERY

Exhibit 14

COUNTY OF ORANGEBURG
STATE OF SOUTH CAROLINA

AFFIDAVIT OF KENDRA BOWMAN

Comes now KENDRA BOWMAN, before the undersigned officer duly licensed to administer oaths and swears or affirms as follows:

1. My name is Kendra Bowman. I live in Orangeburg, South Carolina and I am over the age of eighteen. The information contained in this affidavit is within my personal knowledge and I am competent to testify to the matters herein. KB
2. I am Marion Bowman's sister. For as long as I can remember our parents did not get along. There are too many loud, violent fights to remember how any began or ended—it was a constant struggle for the two of them to be around each other. I remember my mom screaming out in pain, sobbing and crying after he would attack her. He would beat her so bad you really couldn't believe it. KB
3. After my mom finally left my dad we had absolutely nothing. We got an apartment with government help and DSS paid her money each month so we could survive. My mom worked on and off but she has rheumatoid arthritis so she was not able to do much most of my life. Marion and I had to clean, cook, and find work around the community to buy necessities like meat, shower soap, and bleach. KB
4. Growing up I did not have a strong relationship with my father because I did not ever get to spend time with him. He would often say he was coming to get us but every time we would get dressed and be waiting for him, excited, he would never show up. I remember one day he gave my brother enough money for a field trip but said mom would have to pay for mine. My brother just threw the money on the ground in front of him out of

frustration. I think we both realized that day we would never really have a dad in our lives so we would just have to take care of our family the best we could. KB

5. Because we did not have a strong relationship with our dad we also did not get to have any real relationship with his parents. He decided his “new family” with his second wife was his only family, so we did not have a close relationship with his parents or almost anyone else in his family. KB
6. My mother had a few boyfriends over the years but the only one that ever lived with us was Joe Sims. He really treated us like his own kids and tried to make a difference in our lives. He did everything for us—we ate better, had help with our homework, he went to talk to our teachers, he made sure we had stuff for school, everything. He was like a savior to us; he helped get us where we are today. Without him we would have never left Orangeburg or St. George. I wish he would have stayed in our family but we have always stayed in touch and I still call him Dad. KB
7. I remember it was really hard for my brother growing up. Everyone seemed to pick on him and bully him. They called him “tar baby” and other terrible names because his skin is so dark, darker than everyone else’s and he has what they call a high booty. Everyone picked on him so much and called him “Black” that he just accepted it and started calling himself Black instead of “Jr” like our family always had. KB
8. My brother really tried to do everything he could for our family. He often attended my basketball games and went to watch me cheerlead at other sporting events like I really wanted my dad do. KB
9. I was closer to my brother than anyone else. We even got an apartment together when we moved out of my mom’s house. Although we were still really poor, living in housing authority apartments, we were always really close. My brother was really easy to talk to

and I always loved to be around him. I remember him giving me piggy back-rides to the store down the road when I was hungry but too lazy to walk that far. He would do everything he could to make our lives a little better, a little more normal. KB

10. I grew up with Kandee Martin and we were friends. She would even spend the night sometimes and we were so close she would sleep in my bed. She called me her black sister—Kandee did not see race, there were not two different sets of people. We were all the same in her eyes, but that is not how everyone else, especially her parents, saw it. Kandee started using drugs as a teenager and she seemed to enjoy that kind of life. She dated a few different black guys and was always around the neighborhood—she knew just about every body. I know no one at his trial understood her relationship with everyone that was involved and it would have made everything much more clear. KB

11. Everyone also knows that Hiram was sleeping with my brother's wife and he wanted to make sure my brother was taken out of the picture. They even had a paternity test done on one of her kids to see if it was his. Hiram was the only person that said he knew anything about the gun that was found in my sister-in-law's couch and that was after the police had searched it over and over with metal detectors. Hiram would do anything he had to get what he wanted. He had been running the streets with guns for years at that point and had always done whatever it took to take care of himself. KB

12. The story of who had the gun and when has gotten really mixed up. I never had the gun until my dad called and told us to go get it. I have no idea where he got it from or why he had it. It was really hard to deal with everything going on with my brother at the time and having charges pinned on me too. It made it seem like the people were trying to just get rid of our whole family. KB

13. I did not testify at my brother's trial but I would have if I had been asked. Everyone was putting us under a lot of pressure about the charges we had. I really wish my brother's lawyers had asked me to talk about him to the jury. KB

Further affiant sayeth naught.

Kendra Bowman
Kendra Bowman

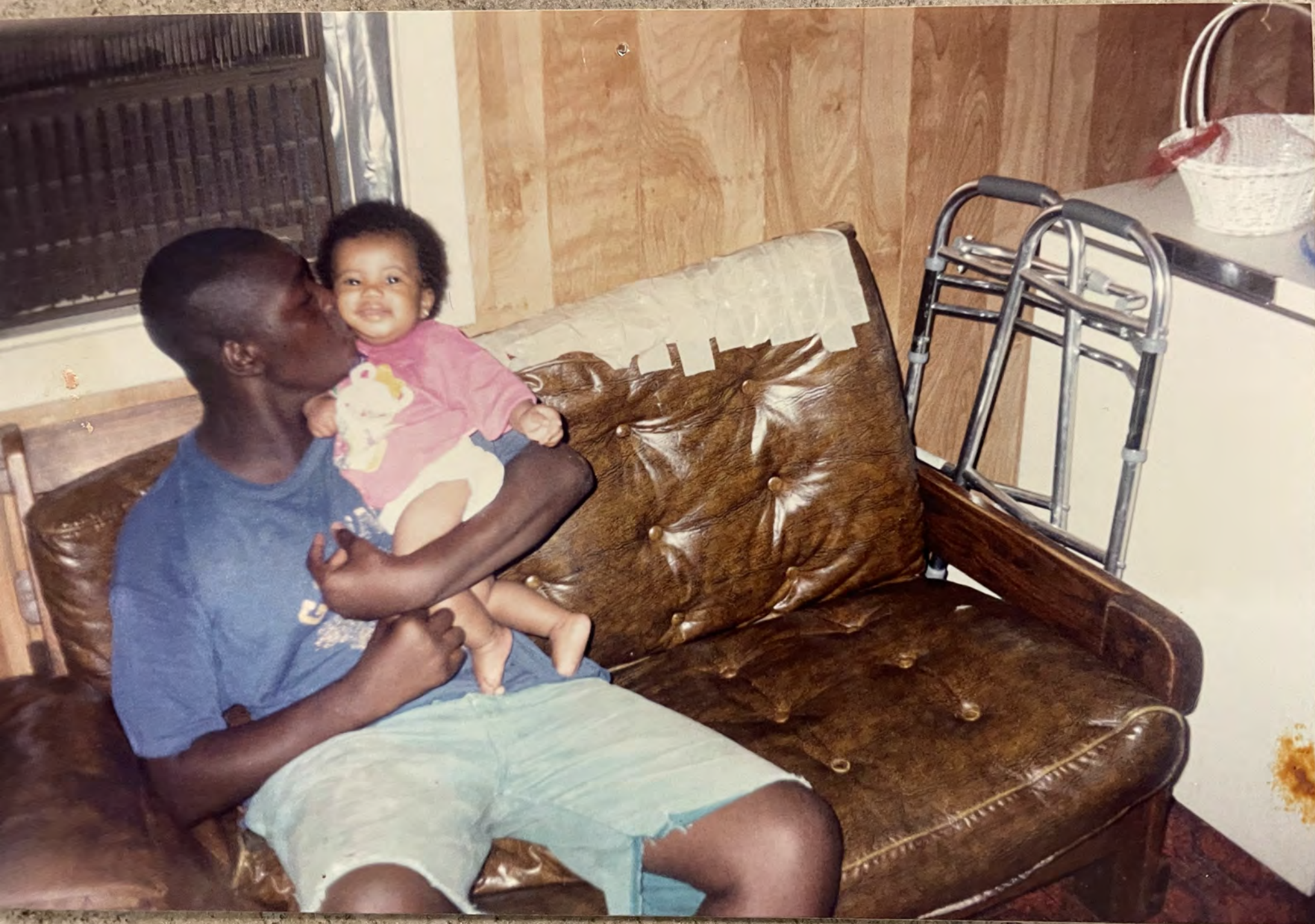
Sworn to me this 20th day of
December, 2018.

Boni Russell

Notary Public South Carolina

My commission expires: 3/24/27

Exhibit 15



Black
+
Na Quasha

(No. 147) 009 23-08 111111+0000 004

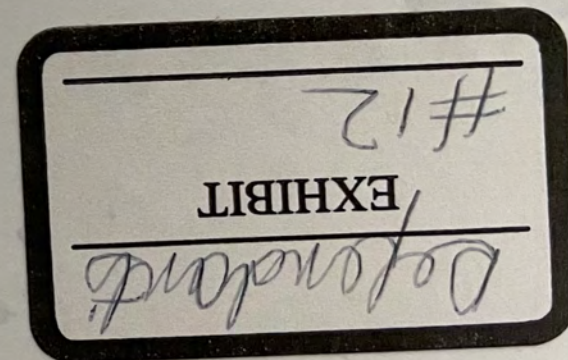


Exhibit 16

COUNTY OF BEAUFORT)
)
STATE OF SOUTH CAROLINA) AFFIDAVIT OF JAMES ARTHUR BROWN, JR.

I, James Arthur Brown, Jr., being duly sworn, do state:

1. I am a currently a resident of Beaufort County, South Carolina.
2. I am at least eighteen years of age.
3. I currently work as an attorney in Beaufort, South Carolina where I have lived since 1998. I have operated my own private practice in Beaufort since 2001. I have served on the board of the South Carolina Association of Criminal Defense Lawyers for more than 20 years and served as president of this organization in 2007. I have served on the CJA for the United States Court of Appeals since 2002. I have been counsel in five death penalty matters and handled criminal cases for more than 3000 clients since being licensed in 1996.
- 4 I have been married for 30 years and have three grown sons. One son just passed the bar in South Carolina, another son is in his second year of law school and my third son is an Emmy award winner working for Extra TV and True Crime TV in Los Angeles. My wife is a retired school teacher.
5. I am writing to ask for you to spare the life of my friend, Marion Bowman.
6. I was originally appointed as the lead attorney for Mr. Bowman's PCR case in 2007. Since that time, I have litigated his case and closed out my file more than a decade ago. He and I are close in age so we have grown through many of life's experiences together including parenting a child and losing a parent.

HIS CONTINUED EMOTIONAL VALUE TO OTHERS

7. Marion loves his daughter and now his granddaughter. Over nearly twenty years, his daughter has always been the first thing he talks about.
8. His eyes light up when he talks about their birthday and Christmas time visits together. I remember when she got her first bicycle. I remember how happy he was that he could give her a shirt for Christmas bought by others on his behalf.
9. I remember as she grew up and Marion's shame that his relationship with her was one with a plastic barrier between their humanity.
10. Marion cherishes that relationship nonetheless. Instead of despair, Marion advised his daughter to better herself and she followed this advice and moved to a better city and obtained a gainful job following that advice.

11. I remember when Marion's grandchild was born. I remember the smile on his face when he told me and my wife about the chance to see her.
12. These moments show the emotional value Marion provides by just being alive. As a fellow Christian, there is no greater trait that a human can possess than love.
13. Letting him live fosters the love of our fellow man in us. Killing him only harvests wind.

ONE OF HIS TRIAL ATTORNEYS WAS AN ABJECT RACIST

14. You should spare Marion's life because of the problems with his attorneys.
15. His lead attorney's words and actions demonstrated his uncontradicted racism. His racist remarks were made spontaneously under oath during his testimony about his work for Marion.
16. During his testimony at a PCR hearing, Marion's trial attorney interrupted the questions and answers and turned directly to Marion at the petitioner's table.
17. The trial attorney asked Marion *why a black man would be alone on a road with a white girl*. He asked what good could come out of an interracial relationship.
18. Blind to the normal, positive reasons an African American and a Caucasian American would have a relationship, the trial attorney perpetuated the trope that black men are a danger to white women.
19. Everyone in the courtroom, including the judge, was shocked that Marion's trial lawyer made such a racist remark. The courtroom went silent and there was a long pause before questioning resumed.
20. If I recall correctly, the PCR judge even tried to explore this statement to make sure he understood the racism behind it correctly.
21. But the context of this outburst is also important. The trial lawyer made these statements when being asked why he did not tell the jury about the true relationship between Marion and the deceased.
22. If the trial lawyer had not been racist he would have presented evidence of this biracial relationship and the jury would have known that Marion and the deceased grew up together and attended school together from elementary school until adulthood.
23. If the trial lawyer had not been racist, he would have presented evidence that Marion was younger than the deceased. He would not have portrayed Marion as an adult and the deceased as a child.

24. If the trial lawyer had not been racist, he would have presented evidence that Marion worked alongside the deceased's father and brother as laborers in the construction industry.
25. If the trial lawyer had not been racist, he would have told the jury of Marion's abusive dad who beat his mom with brass knuckles.
26. If the trial lawyer had not been racist, he would have told the jury of Marion's relationship with his then young daughter and how he had the capacity to develop a loving relationship with her.
27. Instead, Marion's trial lawyer fostered the unspoken theme of the prosecution - that Marion deserved the death penalty because he had a sexual relationship with a white woman and that black men prey on white women.
28. You should spare Marion's life because he was represented by a racist attorney during a death penalty trial involving the killing of a white woman by a black man. It is impossible to view this in the context of South Carolina's complicated history on race and not believe this racism infected the trial and resulting sentence of death.
29. I know about this racism through my work and I also know about this racism through my own life experiences. My father marched in the civil rights marches in the 1960's and his mother stood down the Klan in south Florence County in the 1950's. But just one generation before that, my direct ancestor wore a green robe of terror. Two hundred years before that, my family on both sides owned slaves - the largest symbol of suffering inflicted by one citizen against another in our nation's history.
30. South Carolina has grown up and past those hateful ways. Sparing Marion's life will show this growth and how we are a better state. Your grant of clemency will be proof we are not still a state full of hate.

ONE ATTORNEY WAS INCOMPETENT AND WITHHELD EVIDENCE

31. As required by state law, Marion was also represented by a second attorney at his trial. This attorney was incompetent and under investigation by the Office of Disciplinary Counsel at the time of the trial of Marion's case. It was never clearly divulged what she was being investigated for but I believe she suffered some type of suspension as a result of her conduct.
32. But the most troubling aspect of her representation of Marion is that she also represented another client who gave the prosecutor a statement questioning the extent of Marion's involvement in the killing. This information was hidden from Marion by his own lawyer and the prosecutor. The jury never heard this information.

33. This lawyer was so incompetent that she did not even ask the trial judge for guidance or a ruling about this conflict. Her efforts to conceal the statement of her other client puts her clearly on the side of the prosecution. She did not serve as any safeguard to the racism of Marion's lead attorney.
34. You should commute Marion's sentence because of this incompetent attorney.

THE PROSECUTOR WITHHELD EVIDENCE

35. You should commute Marion's sentence because of misconduct and false testimony occurring during Marion's trial. At least three witnesses committed perjury during Marion's trial or provided false statements during negotiations with the prosecutors. The prosecutor admitted he did not disclose evidence about these witnesses' lies.
36. Three persons were charged as co-defendants in Marion Bowman's case. One of these persons was his first cousin. All three of these people provided false testimony during the trial or during negotiations with prosecutors.
37. Specifically, Mr. Travis Felder repeatedly lied to the prosecutor during his efforts to negotiate his own freedom. He later admitted his trial testimony was also untruthful. However, the prosecutor hid the lies which occurred during the negotiations with Felder. The prosecutor also failed to correct the false testimony during the trial. Marion's lawyers failed to uncover the truth because there was no investigation into the statements made by Mr. Felder.
38. Likewise, Hiram Johnson lied during the trial. His deals he cut with the prosecution were not provided to the defense. The jury never heard that Mr. Johnson lied at every point in Marion's case.
39. But the biggest concealed evidence was evidence that Taiwan Gadson was the killer and not Marion or that Taiwan was at least equally culpable in the killing. Two different statements were made documenting Mr. Gadson's jailhouse confessions but the prosecutor hid this information from the court and the jury never heard about this. The concealment of one of these confessions occurred with the complicity of one of Marion's trial attorneys.
40. You should spare Marion's life for this reason.

HIS POST-CONVICTION TRIAL WAS RUSHED TO ACCOMMODATE THE ASCENSION OF A JUDGE TO AN APPELLATE COURT

41. Unlike most post conviction challenges, the PCR in this case involved testimony generated at many depositions and court hearings which spanned several weeks. However, the last week of testimony was truncated because of the Christmas and New Years holidays and because the PCR judge was ascending to the appellate bench at the

end of the year.

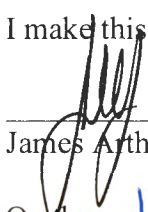
42. I know that I am human and I surely overlooked something I should have done for Marion. This last minute development in a multi-year PCR could not have inured toward's Marion's benefit.

NOT THE WORST OF THE WORST

43. You should spare Marion's life because this case is not the worst of the worst. All murders are bad but not all murders are punished by the loss of life. This penalty is reserved for the worst of the worst. While serious, the aggravating circumstance in this case was that Marion lied to the deceased to encourage her to drive to a secluded area.
44. But for this lie, this would not even be a death penalty case. In most jurisdictions, lying would not be an aggravating circumstance. While the decision to define kidnaping this broadly is left to the legislature, the power to commute a sentence allows you to serve as a check and balance in the appropriate situation.
45. This is the type of case where you should spare Marion's life because lying to the deceased does not make this case the worst of the worst.

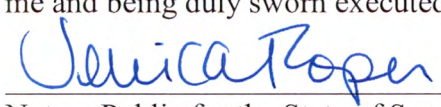
FORGIVENESS IS THE CHRISTIAN THING TO DO

46. Finally, you should spare Marion's life because he is not the man he was at the time of this crime. We have been taught the lesson of the imperfect vessel. The power to break what was not infirm and build it back.
47. Marion's mistakes in the past do not define who is today. His incarceration exacts penalty and punishment but killing him as he lives today would serve no purpose to anyone. Instead it would demonstrate hate towards fellow man. As we have been taught, Christ's last act on Earth was not to condemn the unrepentant but instead to show mercy on the forgiven.
48. I make this statement of my own free will and accord, absent any coercion or duress.


James Arthur Brown, Jr.

12/16, 2024

On the 16th day of Dec, 2024, James Arthur Brown, Jr. appeared before me and being duly sworn executed the foregoing Affidavit.


Notary Public for the State of South Carolina
My Commission Expires: 01/08/2034

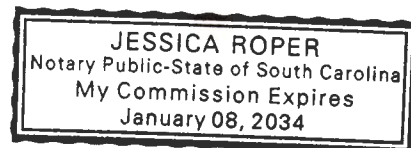


Exhibit 17

The Supreme Court of South Carolina

The State, Respondent,

v.

Freddie Eugene Owens, Appellant.

Appellate Case No. 2024-001397

ORDER

Freddie Eugene Owens seeks a stay of his September 20, 2024 execution to pursue post-conviction relief (PCR). Owens filed a third PCR application on August 30, 2024, alleging he discovered evidence on August 21 and August 22, 2024, which entitles him to a hearing and would invalidate his conviction and death sentence. He has also filed a petition for a writ of habeas corpus in this Court's original jurisdiction and seeks a stay pending this Court's resolution of that petition.

Pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 548, 471 S.E.2d 140, 142 (1996), a motion for a stay of execution pending the filing of a successive PCR action or a petition for a writ of habeas corpus must demonstrate exceptional circumstances warranting the issuance of the stay. Because Owens has not shown exceptional circumstances, we deny the motions to stay the execution.

Stay Pending Successive PCR

We agree with Owens that the facts in his PCR application must be accepted as true and must be viewed in the light most favorable to Owens. *See Robertson v. State*, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016). Further, when a PCR applicant alleges facts that would establish an exception to the statute of limitations or the prohibition against successive PCR applications, and those facts are not conclusively refuted, the applicant is entitled to a hearing. *Id.* We are not, therefore, required to decide whether the newly discovered evidence would entitle Owens to a new trial. Instead, we must only determine whether Owens has presented "exceptional circumstances" to warrant a stay of execution to pursue the PCR action. *See In re Stays of Execution in Cap. Cases*, 321 S.C. at 548, 471

Golden Affidavit

The first piece of evidence presented as support for Owens' request for a stay of execution is an affidavit executed by one of Owens' co-defendants, Steven Andra Golden, on August 22, 2024 (the 2024 Affidavit). At Owens' trial, Golden testified it was Owens who shot the victim. He further testified he had received no promises as to his sentence in exchange for his testimony except for those set forth in his signed plea agreement. Golden's signed plea agreement was provided to Owens and introduced into evidence at trial. The signed plea agreement provided the Solicitor advised Golden and his counsel that he "will consider a recommendation of leniency" if Golden testified in accordance with his prior written statement. (Emphasis in original). The plea agreement further provided Golden faced sentences of death, life without parole (LWOP), or a minimum term of imprisonment for thirty years, and it was in the Solicitor's sole discretion to recommend leniency upon an evaluation of Golden's testimony.

In the 2024 Affidavit, Golden states his attorneys advised him the Solicitor had offered him a deal promising to drop the death penalty and LWOP if he testified consistent with his prior written statement. The 2024 Affidavit further states the prosecutor who questioned Golden about the plea agreement advised him to testify that he knew he could be sentenced to death and no guarantees had been made as to his sentence; however, Golden claims he knew he would not be sentenced to death or LWOP if he testified his prior statement was true. Owens asserts the 2024 Affidavit is evidence the State committed a *Brady*¹ violation by failing to disclose the alleged promise not to pursue the death penalty or an LWOP sentence because the promise could have been used to impeach Golden's testimony against Owens.

At trial, Owens' counsel filed a *Brady* motion seeking an unsigned affidavit prepared by one of Golden's trial counsel, Richard W. Vieth (the 1999 Draft Affidavit). At the hearing, Vieth informed the trial court he prepared the 1999 Draft Affidavit to memorialize the fact that Golden was advised of the evidence that would be presented against him and declined the plea offer in which the Solicitor offered "no guarantees except that[,] as the plea agreement indicated[,] if he cooperated, testified truthfully[,] that the Solicitor would consider leniency." According to Vieth, "if the Solicitor were ever inclined to go below life in prison

¹ *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding the suppression by the State of evidence favorable to the accused upon request violates due process if the evidence is material either to guilt or punishment).

without parole[, it] would be purely in the Solicitor's discretion, never any overtures to the contrary." The Solicitor also represented to the trial court that the only agreement was the signed plea agreement introduced at trial.

Although the 1999 Draft Affidavit was prepared by Vieth for Golden to sign, Golden did not sign it. According to the 1999 Draft Affidavit, Golden was told by his lawyers that he had been offered a deal in which "the solicitor *will*" withdraw the death penalty and LWOP and "*would* agree to recommend a sentence less than the mandatory sentence for capital cases" if Golden testified in accordance with his statement. (Emphasis added). The 1999 Draft Affidavit further provides Golden was aware he "*will* receive a sentence that will allow [him] to be parole eligible" if he testified truthfully in accordance with his prior statement, but he chose not to cooperate with the State. (Emphasis added).

Owens was aware of the 1999 Draft Affidavit at the time of his trial and asked the trial court to require the State to produce it under *Brady*. The trial court conducted a hearing on the request and reviewed the 1999 Draft affidavit *in camera*. The trial court determined the 1999 Draft Affidavit was a privileged communication between Golden and his counsel and Golden had not waived the privilege. The court further found it "could not serve any benefit, would[,] therefore[,] not be prejudicial to [Owens]" and stated it was not sure it could be used as impeachment because it was not "adopted by [Golden.]" Therefore, the court denied Owens' *Brady* motion. The 1999 Draft Affidavit was marked as Court's Exhibit 4. Owens did not appeal the trial court's ruling.

To begin analyzing Owens' request for a stay of execution based on an alleged secret plea agreement with Golden, we consider the substance of the evidence in the 2024 Affidavit and the 1999 Draft Affidavit, which Owens claims corroborates the 2024 Affidavit. According to Owens, both affidavits show Golden was promised he would not face the death penalty or an LWOP sentence if he testified consistently with his prior written statement.

We do not accept Owens' interpretation of the 1999 Draft Affidavit. Vieth, who prepared the 1999 Draft Affidavit for Golden to sign, stated unequivocally to the trial court during the *Brady* hearing that the document "had nothing to do with negotiations with the Solicitor's office whatsoever. Absolutely none." Rather, Vieth explained the document "was produced by me to try to convince a client to do what I thought was in his best interest and that is all that document is. Anything trying to intimate it means anything else would be totally erroneous." Vieth reiterated to the trial court "that there had been negotiations with the Solicitor's office that offered no guarantees except that as the plea agreement indicated if he

cooperated, testified truthfully[,] that the Solicitor would consider leniency in this case." The 1999 Draft Affidavit was—as Vieth explained to the trial court—a document designed as

. . . a cover our rear-end type letter that might be used or might not be used two or three years down the road if he ever was convicted of this crime and was sentenced to death and told any tribunal that we did not advise him of the evidence that could be used against him. So I wanted him to understand what I thought was potential evidence that could be used against him in this trial, understanding that there had been negotiations with the Solicitor's office

Thus, the 1999 Draft Affidavit was not prepared to represent the plea negotiations between the Solicitor and Golden's attorneys but, rather, was evidence of what *Vieth* told Golden to advise him of the evidence against him and try to induce him to accept the signed plea agreement. This understanding is supported by Golden's statement in paragraph 4 of his 2024 Affidavit: "During jury selection, *my lawyers told me* the prosecutors offered me a deal. *They* said that if I testified that what I said about [Owens] in my written statement was true, the prosecutors would drop the death penalty and the possibility of life without parole." (Emphasis added). Similarly, Golden's 2024 Affidavit does not indicate *the Solicitor* made him a promise of leniency. Rather, like the 1999 Draft Affidavit, Golden's statements in the 2024 Affidavit are clearly based on what he was told by his lawyers in 1999. Therefore, the allegation that *the Solicitor* promised Golden sentencing leniency is not supported by either affidavit.

However, even if we accept Owens' interpretation of the two affidavits that they show the State failed to disclose a promise made to Golden by the State not to seek the death penalty or an LWOP sentence, we deny the motion for a stay because Owens knew of the 1999 Draft Affidavit and Golden's admission that he was testifying to avoid the death penalty during his trial in February 1999. Therefore, his claim of a secret plea agreement cannot constitute material evidence discovered within one year of the date of Owens' filing of his latest PCR application. First, Golden openly conceded in his testimony at Owens' trial that he was testifying to avoid the death penalty. In addition, by exercising reasonable diligence, Owens could have obtained the 1999 Draft Affidavit and appealed the trial court's ruling on his *Brady* motion or otherwise discovered it during his first PCR action filed in 2009. In fact, it appears Owens contemplated raising the issue in his 2009 PCR action because his PCR counsel interviewed Golden prior to the PCR hearing to determine whether he had been offered anything other than what appeared in the

plea agreement introduced at trial. Although Golden denied any other deal at that time, nothing prevented Owens from obtaining the 1999 Draft Affidavit or interviewing Golden's attorneys and/or the Solicitor about the plea agreement. Therefore, evidence of the alleged secret plea agreement was available to Owens long ago, and the PCR application is not timely. *See* S.C. Code Ann. § 17-27-45(C) (2014) (providing a PCR application must be filed within one year of the actual discovery of material facts, or within one year of the date the facts could have been discovered by the exercise of reasonable diligence, that require the vacation of the conviction or sentence).

Because he has not met his burden of showing he could not have discovered the alleged secret plea deal by the time of his 2009 PCR, Owens cannot show he is entitled to file a successive PCR application based on the alleged deal. *See Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) (holding as long as it was possible to raise an argument in a prior PCR application, an applicant may not raise it in a successive application, and the applicant has the burden of proving that the grounds could not have been raised in a prior PCR application).²

Juror Affidavit

The second piece of evidence Owens sets forth in support of his motion to stay his execution is an affidavit by a juror at Owens' trial. The affidavit states the juror noticed Owens was wearing a device on his back because it created an obvious bulge under his clothing. She stated, "[a]t the time[, she] thought it was some kind of stun device."

Initially, we question whether the juror's affidavit would be admissible at a PCR hearing. Rule 606(b), SCRE, provides:

[A] juror may not testify as to any matter or statement occurring

² In a footnote, Owens argues the State also had a secret plea deal with Nakeo Vance, another co-defendant who testified against Owens. He supports this argument with the 2024 Affidavit alleging a secret plea deal with Golden and Vance's bail form (set one week after Owens' sentence), guilty pleas to accessory to murder and armed robbery (taken two weeks later), and negotiated sentence of ten years, suspended on fourteen months of time served and five years of probation. This is not evidence of a secret plea deal with Vance, much less newly discovered evidence that would warrant a successive PCR application or application of the discovery rule of the statute of limitations. *See* S.C. Code Ann. § 17-27-45(C); *Aice*, 305 S.C. at 451, 409 S.E.2d at 394.

during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, *except* that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

(Emphasis added).

It is unclear whether the juror's observation of the bulge under Owens' clothing is "extraneous prejudicial information" under the Rule. *See, e.g., United States v. Gambina*, 564 F.2d 22, 24 (8th Cir. 1977) (holding the defendant could not examine the jurors as to whether "security measures" used in court influenced their verdict because the security measures were not "extraneous matters" under Rule 606(b), FRE). *But see United States v. Simpson*, 950 F.2d 1519, 1521 (10th Cir. 1991) (holding the accidental viewing by jurors of a co-defendant in handcuffs was "extraneous information" under Rule 606(b), FRE).

We further question whether the juror's observation of what she believed to be a stun device was "improperly brought to the [juror's] attention" or would constitute an "outside influence [that] was improperly brought to bear upon [the] juror" as required by Rule 606(b). Outside influence is where jurors receive information from some outside source. *State v. Galbreath*, 359 S.C. 398, 405, 597 S.E.2d 845, 848–49 (Ct. App. 2004). The juror's affidavit does nothing more than recite what she observed in the courtroom and her speculation that it was some sort of stun device. Trial counsel had ample opportunity to address Owens' appearance while wearing the stun belt, and there is no indication that counsel observed anything they found concerning. Thus, there was nothing "improper" about the juror observing Owens' appearance in the courtroom.

Even if the affidavit is admissible, however, in his first PCR application, Owens raised an allegation that his 2006 resentencing counsel were ineffective in failing to ensure the jurors did not see him in restraints and his death sentence was unconstitutional because jurors saw him in restraints. In preparing for the PCR hearing, Owens' PCR counsel questioned jurors about whether they saw Owens in restraints. Although Owens filed a motion for summary judgment on these allegations, attaching affidavits from two jurors who stated they noticed Owens in

shackles, he waived the allegations at the beginning of the PCR hearing.

Although the juror who provided the affidavit was on the panel at Owens' original trial, Owens' trial counsel were aware he was wearing the stun belt, and his PCR counsel were clearly concerned about jurors seeing his restraints. There is no reason PCR counsel could not have questioned the jurors from the original trial about Owens' restraints at that proceeding. Owens has failed to show he could not have discovered, through the exercise of reasonable diligence, that jurors saw the stun belt at his original trial and raised it in his first PCR application. As such, this claim is also barred by the statute of limitations and impermissibly successive. See S.C. Code Ann. § 17-27-45; *Aice*, 305 S.C. at 451, 409 S.E.2d at 394.

Petition for a Writ of Habeas Corpus

Habeas corpus relief is available to prisoners in South Carolina in this Court's original jurisdiction. See S.C. Const. art. I, § 18. Writs of habeas corpus are seldom used—only when necessary to ensure fundamental constitutional rights—and the applicant bears a much higher burden in a habeas corpus proceeding. *Williams v. Ozmint*, 380 S.C. 473, 477, 671 S.E.2d 600, 602 (2008). Therefore, a writ of habeas corpus will issue "only under circumstances where there has been a 'violation, which, *in the setting*, constitutes a denial of fundamental fairness shocking to the universal sense of justice.'" *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (quoting *State v. Miller*, 84 A.2d 459 (N.J. Super. 1951)); see also *Moore v. Stirling*, 436 S.C. 207, 218–19, 871 S.E.2d 423, 429 (2022) ("Two components are needed to meet the standard articulated in *Butler* and other cases. The petitioner must prove (1) the existence of a constitutional violation; and (2) the denial of fundamental fairness which, in the setting, is shocking to the universal sense of justice."); *McWee v. State*, 357 S.C. 403, 406, 593 S.E.2d 456, 457 (2004) (stating a writ of habeas corpus will be granted only under "unique and compelling circumstances"). This Court has noted that "[a]t some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice." *Williams*, 380 S.C. at 480, 671 S.E.2d at 603. This is the lens through which we must view Owens' allegations.

Owens contends he is entitled to a writ of habeas corpus based on the trial court's charge on implied malice from the commission of a felony and the disproportionality of his sentence.

Implied Malice Charge

The trial court initially charged the jury on implied malice as follows:

If one intentionally kills another during the commission of a felony an implication of malice may arise. If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you along with other evidence in the case. And you may give it such weight as you, the jury, determine it should receive.

When later instructing the jury on accomplice liability, the trial judge stated:

If persons kill another in doing or attempting to doing [sic] an act amounting to a felony, the killing is murder and if a culpable homicide results from the pursuant common purpose or the conspiracy, all are alike criminally responsible. This is commonly described as the hand of one is the hand of all.

In *Lowry v. State*, 376 S.C. 499, 506, 657 S.E.2d 760, 764 (2008), the Court held an instruction like the second one given in this case, unconstitutionally shifted the burden of proof for malice from the State to the defense. However, as in this Court's recent decision in *State v. Brown*, ___ S.C. ___, 904 S.E.2d 448 (2024), the charge here did not contribute to the verdict and was harmless beyond a reasonable doubt because Owens denied participating in the crimes. "Significantly, at no point did Petitioner dispute that the armed robbery and murder of the victim occurred or that the victim's death was the result of malice." *Id.* at ___, 904 S.E.2d at 450. Therefore, the erroneous instruction is not "shocking to the universal sense of justice."

Further, Owens could have raised an allegation of error in the instruction based on our 2008 *Lowry* decision in his 2009 PCR application and has presented no reason for not raising the issue then. See S.C. Code Ann. § 17-27-45(B) (Supp. 2014) ("When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later

than one year after the date on which the standard or right was determined to exist.").

Proportionality

Owens contends his death sentence is inherently disproportionate for a defendant who did not kill; intend to kill; or, while acting as a major participant in a felony, display reckless indifference to human life. He further contends he is entitled to a second³ proportionality review under the standard set forth in *Moore*, 436 S.C. 207, 871 S.E.2d 423.

As to Owens' allegation that his death sentence is disproportionate because there was no specific finding by the jury that he was the triggerman, a death sentence may be disproportionate to the degree of moral culpability where the defendant merely "aids and abets a felony in the course of which a murder is committed by others but who does not himself kill, attempt to kill, or intend that a killing take place or that lethal force will be employed." *Enmund v. Florida*, 458 U.S. 782, 797 (1982). However, in *Tison v. Arizona*, 481 U.S. 137, 157–58 (1987), the United States Supreme Court clarified that:

Enmund held that when "intent to kill" results in its logical though not inevitable consequence—the taking of human life—the Eighth Amendment permits the State to exact the death penalty after a careful weighing of the aggravating and mitigating circumstances. Similarly, we hold that the reckless disregard for human life implicit in *knowingly engaging in criminal activities known to carry a grave risk of death represents a highly culpable mental state*, a mental state that may be taken into account in making a capital sentencing judgment when that conduct causes its natural, though also not inevitable, lethal result.

(Emphasis added). Therefore, "major participation in the felony committed, combined with reckless indifference to human life, is sufficient to satisfy the *Enmund* culpability requirement." *Id.* at 158.

Our first point in rejecting Owens' belated claim of disproportionality is that his assertion that he was somehow not a major participant in the murder is—to say the

³ This Court first conducted a proportionality review of Owens' death sentence in 2008, concluding his "sentence was neither excessive nor disproportionate." *State v. Owens*, 378 S.C. 636, 641, 664 S.E.2d 80, 82 (2008).

least—absurd. Owens' interpretation of the facts of this case has been squarely refuted by, as the Fourth Circuit Court of Appeals stated, "the long chain of events giving rise to this capital habeas action, which encompass a criminal trial, three sentencing trials, three rounds of direct appeal, and two rounds of state postconviction proceedings, in addition to the proceedings in the district court." *Owens v. Stirling*, 967 F.3d 396, 403 (4th Cir. 2020). Summarizing the actual facts of the case in its review of that "long chain" of proceedings, the Fourth Circuit described Owens' participation in the brutal murder for which he was convicted and has now been sentenced to death in three separate trials. 967 F.3d at 403–04.

The evidence at the third sentencing proceeding—including a video showing the man in the ski mask shot the clerk; testimony that Owens was wearing a ski mask, while Golden was wearing a stocking mask; and testimony that Owens admitted being the shooter—showed conclusively Owens was the person who shot the clerk. However, even if the jury determined Owens was the man in the stocking mask, he was a major participant in the murder and armed robbery who showed a reckless disregard for human life by knowingly engaging in criminal activity that carries a grave risk of death.

Owens' claim that he is entitled to a proportionality review that includes cases in which the defendant was not sentenced to death is also without merit. In *Moore*, 436 S.C. at 230, 871 S.E.2d at 435, this Court held it is not required to limit the similar cases for proportionality review to only those cases in which the death penalty was imposed. However, there is no language in *Moore* suggesting a constitutional proportionality review *requires* the consideration of cases in which the death penalty was not imposed. Further, *Moore* did not set forth a retroactive rule requiring a new proportionality review that includes cases in which the death penalty was not imposed. Instead, *Moore* merely clarified the application of section 16-3-25(C)(3) of the South Carolina Code (2015). *See Moore*, 436 S.C. at 230, 871 S.E.2d at 435 ("[A]s a point of law, we clarify our holding in [*State v. Copeland*, 278 S.C. 572, 300 S.E.2d 63 (1982),] and hold this Court is not statutorily required to limit the pool of 'similar cases' for comparative proportionality review to only those cases in which the death penalty was imposed.").

Comparative proportionality review is an essential task for this Court to ensure the jury's decision was not the result of arbitrariness. *Moore*, 436 S.C. at 222–23, 871 S.E.2d at 431. Looking at the aggravating circumstances present in other cases is an obvious point for comparison when analyzing whether a defendant's capital sentence is the result of a jury's arbitrariness or is disproportionate to the sentences

of other offenders. *Id.* at 225, 871 S.E.2d at 433.

However, proportionality is not limited to whether the facts of the murder are similar. Instead, the jury considers both aggravating and mitigating circumstances in determining whether a murder defendant should receive a death sentence. *See Enmund*, 458 U.S. at 798 (emphasizing the focus must be on the defendant's culpability because "we insist on 'individualized consideration as a constitutional requirement in imposing the death sentence,' . . . which means that we must focus on 'relevant facets of the character and record of the individual offender'" (first quoting *Lockett v. Ohio*, 438 U.S. 586, 605 (1978); and then quoting *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976))); *State v. Passaro*, 350 S.C. 499, 510, 567 S.E.2d 862, 868 (2002) (noting the Court considered evidence of Passaro's individual characteristics that he suffered slight mental or emotional disturbance at the time of the murder and did not have a substantial history of violent criminal conduct).

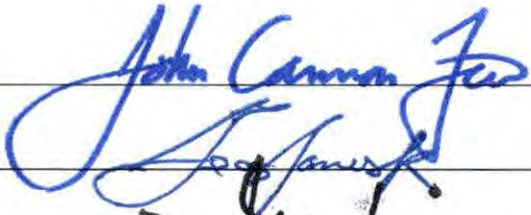
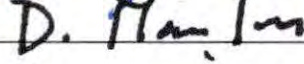
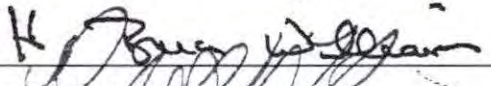
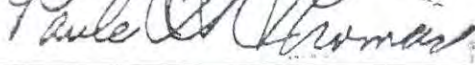
In the third sentencing proceeding, the State presented numerous facts in addition to those of the underlying murder itself to prove Owens deserved a sentence of death. In addition to evidence he committed a string of armed robberies on the same night as the robbery in which he murdered the victim, this Court summarized the many disciplinary infractions Owens committed while in jail awaiting trial. *Owens*, 378 S.C. at 639–40, 664 S.E.2d at 81–82. Most importantly, however, the State presented Owens' February 16, 1999 statement in which he admitted he brutally murdered his cellmate during the twenty-four-hour waiting period between his 1999 criminal conviction and his first sentencing trial. *See State v. Owens*, 346 S.C. 637, 653–66, 552 S.E.2d 745, 753–60 (2001) (discussing at length the admissibility of Owens' statement that he brutally murdered his cellmate); *see also Owens*, 967 F.3d at 406 ("Among other things, evidence of [Owens' future dangerousness] included testimony about Owens'[] killing of his fellow inmate on the eve of his first sentencing trial—the 'elephant in the room,' as [resentencing counsel] later referred to it.").

Considering all of this evidence and everything Owens presented to accompany his request for a second proportionality review, including the recent study conducted by Professor Baumgartner and Dr. Johnson, we again definitively find that Owens' sentence of death "was neither excessive nor disproportionate" under the constitution or section 16-3-25 of the South Carolina Code.

Conclusion

Because Owens' third PCR application is barred by the statute of limitations and is

impermissibly successive, he cannot show exceptional circumstances exist that warrant a stay of execution to pursue the successive application. Exceptional circumstances are also lacking for a stay based on the request for a writ of habeas corpus as Owens has failed to meet his burden of showing a constitutional violation that, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. We, therefore, deny the petition for a writ of habeas corpus and deny the motions for a stay of execution.

 A.C.J.
 J.
D. Hamilton J.
 A.J.
 A.J.

Columbia, South Carolina
September 12, 2024

cc:

Alan McCrory Wilson
Melody Jane Brown
Donald J. Zelenka
Salley Wood Elliott
Gabrielle Amber Pittman
Joshua Snow Kendrick
Emily C. Paavola
Bryan Peter Stirling
Gerald W. King, Jr.

Exhibit 18

REPORT ON ADOLESCENT DEVELOPMENT
Prepared by Elizabeth Cauffman, Ph.D.

EXPERT BACKGROUND AND QUALIFICATIONS

1. My name is Elizabeth Cauffman. I am a Professor in the Department of Psychological Science at the University of California, Irvine (UCI) and hold courtesy appointments in the Department of Criminology, Law & Society, the School of Education, and the School of Law. I received my Ph.D. in Developmental Psychology with a specialization in adolescent development from Temple University. I completed a post-doctoral fellowship at the Center on Adolescence at Stanford University and have served as a member of the MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice. I served as a member of the National Academies of Sciences, Engineering, and Medicine's Committee on the Neurobiological and Socio-behavioral Science of Adolescent Development and Its Applications. In addition, I am the Director of the on-line Masters in Legal & Forensic Psychology at UCI and also direct the Center for Psychology & Law at the University of California, Irvine.
2. Findings from my research were incorporated into the American Psychological Association's amicus briefs submitted to the U.S. Supreme Court in *Roper v. Simmons* (2005), which abolished the juvenile death penalty, and in both *Graham v. Florida* (2010) and *Miller v. Alabama* (2012), which placed limits on the use of life without parole as a sentence for juveniles.
3. At the broadest level, my research addresses the intersection between adolescent development and juvenile justice. I have published over 150 articles, chapters, and books on the study of contemporary adolescence, including adolescent brain development, risk-taking and decision-making, and juvenile justice. In addition, I have received over \$35 million dollars in funding from both the Federal government (e.g., National Institute of Mental Health, Office of Juvenile Justice and Delinquency Prevention, National Institute of Justice, etc.) private foundations (William T. Grant Foundation, John D. & Catherine T. MacArthur Foundation, etc.), and county agencies (Orange County Health Care Agency) to conduct my research.
4. I have served as a consultant on numerous cases and have testified as an expert witness in court over 60 times. Usually my testimony pertains to the sentencing phase of the defendant; however, several cases have involved the guilt phase or whether the youth was competent to stand trial. In addition, I have also served as an expert witness on the issue of transferring juveniles to adult court as well as the re-sentencing of juveniles who have received life without the possibility of parole. I have testified as an expert in both state and federal court.

REASON FOR REFERRAL

5. I was contacted by Teresa Norris to provide information on normative adolescent development as well as adolescent brain development and how adolescents' have capacity for change as they grow up. Particularly, I was asked to summarize – in a user friendly way – the recent research on adolescent development as it applies to Marion Bowman who I am informed was 20 years old at the time of the offense.

CONCLUSION

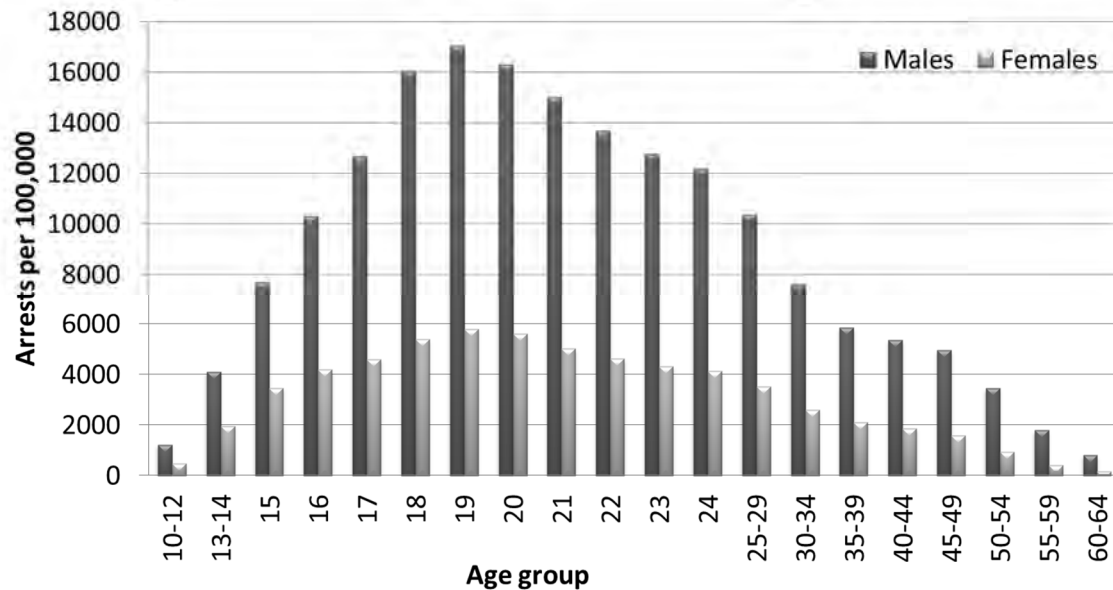
6. Developmental science demonstrates that important neurobiological development is ongoing throughout the teenage years and continuing into the mid 20s. As a result of neurobiological immaturity, teenagers continue to demonstrate difficulties in exercising self-restraint, controlling impulses, considering future consequences, and resisting the coercive influence of others. Heightened susceptibility to emotionally laden and socially charged situations renders adolescents more vulnerable to the influence of others, and in such situations adolescents are even less able to consider and weigh the risks and consequences of a chosen course of action.
7. As Marion was 20 years old when the incident occurred, research on adolescent development, in general, and brain development, in particular, provides insight into his developmental status at the time of the offense. As the pre-frontal cortex of the brain is not fully mature until approximately age 25, it is likely that Marion was unable to regulate his emotions effectively (as the pre-frontal cortex is responsible for such self-regulatory behavior). It is also important to note that Marion had a history of abusing substances (alcohol, in particular). Research shows that substance use affects the development of brain structures that regulate behavioral, emotional, and cognitive processes. Finally, as noted by the Pathways to Desistance study, the majority of youth who commit serious crimes stop their criminal behavior as they transition to adulthood (roughly 24-25 years of age).
8. As age is not development – merely a marker of development – and as noted in the scientific research discussed in recent U.S. Supreme Court decisions (i.e, *Roper v. Simmons*, which abolished the juvenile death penalty, and in both *Graham v. Florida* and *Miller v. Alabama*, which placed limits on the use of life without parole as a sentence for juveniles), adolescents are developmentally different from adults and thus, the signature qualities of adolescence reduce their culpability and increase their capacity for change.

DEVELOPMENT & RISK TAKING CONTINUE AFTER AGE 18

9. Adolescence is a unique stage of human development. It is commonly defined as beginning at age 10 or 11 and continuing until the mid 20's. As such, scientists who study adolescence differentiate among *early adolescence* (ages 10 to 13), *middle adolescence* (ages 14 to 17) and *late adolescence* (ages 18 to 25) (Arnett, 2000; Kagan & Coles, 1972; Keniston, 1970; Lipsitz, 1977). In addition, adolescence has long been regarded as a period of poor decision-making and rash behavior. This account of adolescence is reinforced by empirical data surveying a range of behaviors, such as illicit drug use (Monitoring the Future, 2009), reckless driving (Chen, Baker, Braver, & Li, 2000; National Highway Traffic Safety Administration, 2007), unsafe sex (Finer, 2010), and criminal activity (Piquero, 2008; Stolzenberg, & D'Alessio, 2008). The pattern observed across these diverse studies is one in which risky behavior becomes increasingly common during adolescence, peaks in late adolescence and then declines.

This pattern is often referred to as the age-crime curve (See Figure 1; Federal Bureau of Investigation, 2010).

FIGURE 1: Age-Crime Curve based on FBI Uniform Crime Reports

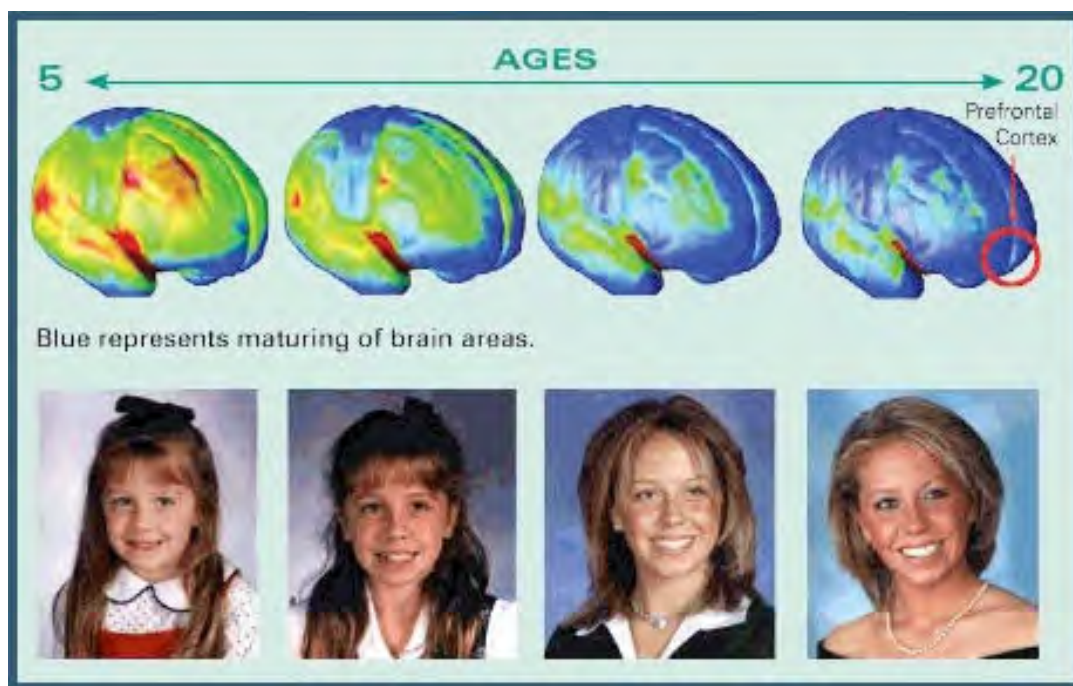


10. When combined with more fine-grained studies showing specifically how susceptibility to peer pressure, impulsivity, risk taking, and short-term thinking do not subside until later in young adulthood, it becomes impossible to reconcile the argument that 18 years old is a sensible age at which to expect people to “know better” and to be “responsible” with the observation that these indicators of impulsive, reckless, self-destructive, and antisocial tendencies peak at precisely this point. For example, in a study of over 1,000 participants ranging in age from 12 to 48 years, impulsivity declined, the ability to think long term increased, and individuals became more responsible as they transitioned out of adolescence and into adulthood (Cauffman & Steinberg, 2000). In another study comparing adolescent and adult decision-making, results indicated that, when asked to evaluate hypothetical decisions, adolescents as old as 18 years of age were less likely than adults to mention possible long-term consequences, to evaluate both risks and benefits, and to examine possible alternative options (Halpern-Felsher & Cauffman, 2001). Furthermore, a study involving a gambling task with more than 900 individuals ages 10 to 30 found that late adolescents focus more on the potential rewards of a risky decision than to the potential costs, whereas adults tend to consider both (Cauffman, et al., 2010). These empirical studies confirm that adolescents – even older adolescents – have not fully developed these abilities which may account for their poor decision-making and immature judgment.

BRAIN DEVELOPMENT CONTINUES UNTIL AGE 25

11. What accounts for these differences between adolescents, including those in the transitional period between adolescence and adulthood, and adults with respect to risk-taking, planning, inhibiting impulses, and generating alternatives? Recent research demonstrates a biological dimension to adolescent behavioral immaturity: the human brain does not reach its mature, adult form until after the adolescent years have passed and a person has entered young adulthood, which occurs at approximately age 25 (Gotgay et al., 2004).
12. Although the majority of brain growth occurs prior to adolescence, there is considerable refinement within the brain that occurs across adolescence and through the transitional period – particularly in the area of the prefrontal cortex, which is among the last to develop (See Figure 2; Giorgio et al., 2010). The pre-frontal cortex is like the CEO of the company. It is responsible for the evaluation of future consequences, the ability to weigh risks and rewards, and general decision-making processes (Bechara et al., 2000). In addition, this region of the brain is also essential for controlling emotions and inhibiting impulses (Casey et al., 2000).

FIGURE 2: The adolescent brain continues to develop until approximately age 25

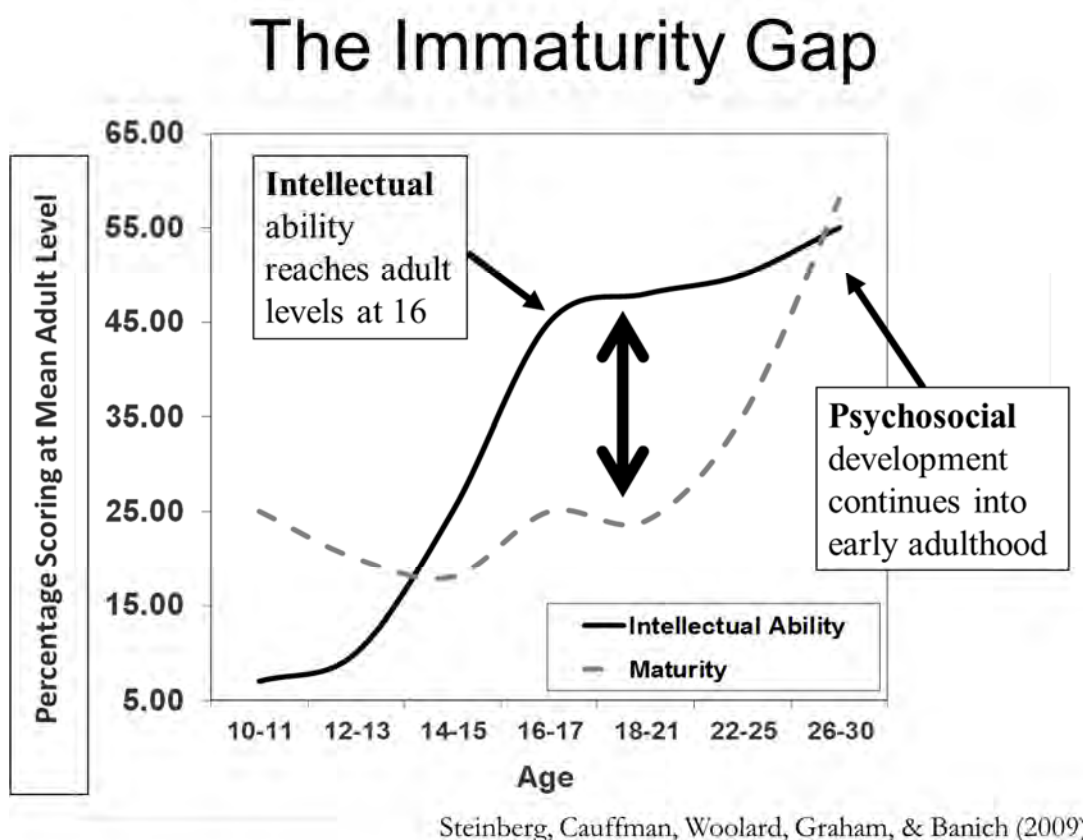


13. This refinement is evidenced by brain imaging studies that reveal increases in white matter volume (Giedd, 2004) and density (Paus et al., 1999), as well as decreases in grey matter (Sowell, 2001). Specifically, the brain undergoes myelination, the process through which the neural pathways connecting different parts of the brain become insulated with white fatty tissue

called myelin (Paus, 2010). This insulation makes connections between different parts of the brain faster and more reliable and, thus, aids in the speed of neural transmission which is important for the processing of emotion and social information (Sowell et al., 2001). Decreases in grey matter volume are thought to reflect synaptic pruning (the systematic elimination of synapses that are not used or are less efficient; Luciana, 2013). For example, just as a gardener prunes away the unnecessary branches of a rose bush to help it grow, the brain prunes away unnecessary synapses so that the transfer of neural connections is more efficient. Research finds synaptic pruning is not complete during early adolescence, as was once thought, but rather continues well into the third decade of life (Petanjek et al., 2011). In short, the part of the brain that is critical for the control of impulses and emotions and maturity, considered decision-making is still developing in late adolescence and these important aspects of brain maturation remain incomplete until, at least, age 25.

14. In addition, the sensitivity of the brain to specifically social rewards, such as peer acceptance, during adolescence is consistently seen across many studies using various methodological approaches (see review by Sebastian, Viding, Williams, & Blakemore, 2010). Specifically, during puberty, it is thought that gonadal hormones affect the activity of oxytocin in socio-emotional brain regions, specifically the amygdala and the nucleus accumbens (Nelson, Leibenluft, McClure, & Pine, 2005). Oxytocin plays a crucial role in social bonding and regulates the recognition of social stimuli (Insel & Fernald, 2004). This change in the activity of oxytocin in the socio-emotional system of the brain is thought to make adolescents respond differently to social stimuli, affecting their subsequent emotional and behavioral responses.
15. With the aid of advanced brain imaging technology and well-validated behavioral tasks, researchers are pinpointing the conditions under which adolescents' decision-making differs from adults' and illuminating the neurological developments that may correspond to these age differences. Synthesizing data from several lines of work, findings suggest that increased risk-taking in adolescence results from asynchrony in the development of one's psychosocial (e.g., self-regulatory system) and cognitive ability (e.g., intellectual ability). While one's cognitive ability (i.e., the ability to think) reaches adult levels at approximately age 16, the psychosocial/self-regulatory system continues to develop at a steady pace from childhood into adulthood. The maturation of this psychosocial/self-regulatory system, which involves the prefrontal cortex and its connections with subcortical regions, is associated with improved impulse-control, harm-avoidance, and modulation of emotional and behavioral responses. In fact, research has shown that by age 16, adolescents' general cognitive abilities are essentially indistinguishable from those of adults. Adolescents' psychosocial functioning, however, even at the age of 15, is significantly less mature than that of individuals in their mid-20s (See Figure 3; Steinberg, Cauffman, Woolard, Graham, & Banich, 2009). As such, in situations that elicit impulsivity, that are typically characterized by high levels of emotional arousal or social coercion, or that do not encourage or permit consultation with an expert who is more knowledgeable or experienced, adolescents' decision making is likely to be less mature than adults'.

FIGURE 3: Differences in the development of the psychosocial and cognitive (intellectual) systems



SUBSTANCE ABUSE ALTERS BRAIN DEVELOPMENT AND SLOWS NORMATIVE DEVELOPMENT

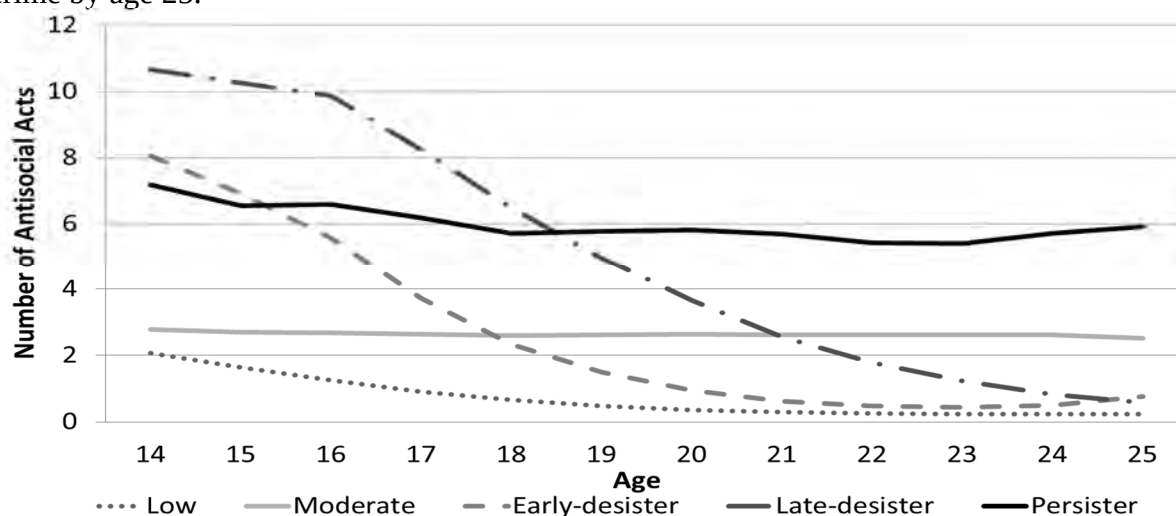
16. Evidence submitted in Marion's case indicates that he abused substances (primarily alcohol). Adolescent substance use has been shown to impair psychosocial maturity by affecting the development of brain structures that regulate behavioral, emotional, and cognitive processes (Clark, Thatcher, & Tapert, 2008; Moss, 2008). Many of the brain regions that undergo developmental change during adolescence are also affected by alcohol and drug use (Volkow & Li, 2005). For example, fMRI studies suggest that the prefrontal cortex and sub-cortical striatal areas are both actively engaged in decision-making and affected by addictive substances (Chambers, Taylor, & Potenza, 2003) and substance use may also affect brain circuits involved in the experience of reward and self-regulation (e.g. Brown & Tapert, 2004). For example, research has shown that adolescent substance use leads to poorer neurocognitive performance, poorer white matter quality, and changes in brain volume (Squeglia, Jacobus, & Tapert, 2009). Substance use has also been associated with heightened impulsivity (Colder & Chassin, 1997), impaired affect regulation (Cooper, Agocha, & Sheldon, 2000), poor judgment (Giancola, Martin, & Tarter, 1996), and less successful decision-making (White, 1990). In

addition, individuals with substance dependence tend to choose small immediate rewards over larger postponed incentives (Potenza, 2007), display a reduced sensitivity to natural reinforcers, and show decreased inhibitory control (Volkow, Fowler, & Wang, 2003). These findings suggest that substance use may suppress age-typical growth in psychosocial maturity from adolescence to young adulthood, however, when youth stop using substances they do regain in psychosocial maturity (Chassin, Dmitrieva, Modecki, Steinberg, Cauffman, Piquero, Knight, & Losoya, 2010).

THE VAST MAJORITY OF ADOLESCENTS DESIST FROM CRIME BY AGE 25

17. As adolescents transition to adulthood and their cognitive and psychosocial systems become fully mature, we would expect to see improvements in self-regulation and a gradual ceasing of engagement in criminal behavior. Thus, one way to consider the impact of this development on crime is through a study of why and when adolescents desist from (stop) criminal behavior. The Pathways to Desistance Study was designed for the express purpose of examining the second half of the age-crime curve: the desistance tail. Pathways, a prospective longitudinal study of over 1,300 serious adolescent offenders (e.g., offenses included robbery, aggravated assault, murder, etc.), tracked desistance from crime across adolescence and into adulthood. Youth who had committed serious felony level offenses were recruited for the study between the ages of 14-18 and were interviewed over 7 years, completing the study at ages 21-25 (see Schubert et al. 2004 for details on the study's methodology).
18. As illustrated in Figure 4, the Pathways study found that most youth, despite being serious felony offenders, do indeed desist from crime; less than 10% of the participating youth persisted in high-level offending after 7 years (see Figure 4; Monahan, Steinberg, Cauffman & Mulvey, 2013).

FIGURE 4: Pathways to Desistance Study: The majority of serious adolescent offenders desist from crime by age 25.



19. Indeed, the major factor that distinguished those youth who persisted at a high level from those who desisted or remained at low levels was the increase in their psychosocial/self-regulatory development. Specifically, youth who persisted in offending displayed less psychosocial maturity (particularly lower levels of impulse control, suppression of aggression, and future orientation), while youth who stopped their criminal behavior displayed developmentally normative increases in these domains (Monahan, Steinberg, Cauffman, & Mulvey, 2013). In sum, the desistance tail of the age-crime curve may be largely (though certainly not wholly) explained by normative developmental changes that occur across adolescence and into adulthood.

SUMMARY

20. It is important that justice system responses take the developmental considerations described above into account. Specifically, although youth who commit crime should unquestionably face consequences for their offenses, the sanctions applied should be appropriate to the offender's developmental status, amenability to future change, and degree of culpability (which may be lowered because of the diminished reasoning capacity implied by a lack of fully developed impulse control or ability to recognize long-term negative consequences of risky behavior). In Marion's case, there is no reliable scientific way to distinguish the development of someone who is 20 years old (the age Marion was at the time of the offense) from someone who is under 18. Further, substance abuse has been shown to impair psychological maturity, however, once substance use has ceased then psychosocial maturity will rebound. These are appropriate factors to consider in assessing Marion's degree of culpability and punishment.



6/4/2023

Elizabeth Cauffman, Ph.D.
Professor of Psychological Science
Director, Center for Psychology & Law
University of California, Irvine

References Cited

- Arnett, J. (2000). Emerging adulthood: A theory of development from the late teens through the twenties. *American Psychologist*, 55, 469-480.
- Bechara, A., Tranel, D., & Damasio, H. (2000). Characterization of the Decision- Making Deficit of Patients with Ventromedial Prefrontal Cortex Lesions, *Brain*, 123, 2189-2202.
- Brown, S., & Tapert, S. F. (2004). Adolescence and the trajectory of alcohol use: Basic to clinical studies. *Annals of the New York Academy of Sciences*, 1021(1), 234-244.
- Casey, B., J., Giedd, J. N., & Thomas, K. M., (2000). Structural and Functional Brain Development and its Relation to Cognitive Development, *Biological Psychology*, 54, 241-257.
- Cauffman, E. & Steinberg, L. (2000). (Im)maturity of judgment in adolescence: Why adolescents may be less culpable than adults. *Behavioral Sciences & the Law*, 18, 741-760.
- Cauffman, E., Shulman, E., Steinberg, L., Claus, E., Banich, M., Woolard, J., & Graham, S. (2010). Age differences in sensitivity to the rewards and costs of a risky decision as indexed by performance on the Iowa gambling task. *Developmental Psychology*, 46, 193-207.
- Chassin, L., Dmitrieva, J., Modecki, K., Steinberg, L., Cauffman, E., Piquero, A., Knight, G., & Losoya, S. (2010). Does adolescent alcohol and marijuana use predict suppressed growth in psychosocial maturity? *Psychology of Addictive Behaviors*, 4, 48-60.
- Chen, L. H., Baker, S. P., Braver, E. R., & Li, G. (2000). Carrying passengers as a risk factor for crashes fatal to 16-and 17-year-old drivers. *Journal of the American Medical Association*, 283(12), 1578-1582.
- Clark, D.B., Thatcher, D.L., & Tapert, S.F. (2008). Alcohol, psychological dysregulation, and adolescent brain development. *Alcoholism: Clinical and Experimental Research*, 32(3), 375-385.
- Colder, C.R., & Chassin, L.C. (1997). Affectivity and impulsivity: Temperament risk for adolescent alcohol involvement. *Psychology of Addictive Behaviors*, 11(2), 83-97.
- Cooper, M.L., Agocha, V.B., & Sheldon, M.S. (2000). A motivational perspective on risky behaviors: The role of personality and affect regulatory processes. *Journal of Personality*, 68(6), 1059-1088.
- Federal Bureau of Investigation. (2010). *Crime in the United States, 2010*. Retrieved from fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010.
- Finer, L. B. (2010). Unintended pregnancy among U.S. adolescents: Accounting for sexual activity. *Journal of Adolescent Health*, 47(3), 312-314.
- Giancola, P.R., Martin, C.S., & Tarter, R.E. (1996). Executive cognitive and aggressive behavior in preadolescent boys at high risk for substance abuse/dependence. *Journal of Studies on Alcohol*, 57, 352-259.
- Giedd, J. N. (2004). Structural magnetic resonance imaging of the adolescent brain. *Annals of the New York Academy of Sciences*, 1021, 77-85.
- Giorgio, A., Watkins, K. E., Chadwick, M., James, S., Winmill, L., Douaud, G., ... & James, A. C. (2010). Longitudinal changes in grey and white matter during adolescence. *NeuroImage*, 49(1), 94-103.
- Gogtay, N., Giedd, J., Lusk, L., Hayashi, K., Greenstein, D., Vaituzis, A. C., Nugent III, T., Herman, D., Clasen, L., Toga, A., Rapoport, J., & Thompson, P. (2004). Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood, *Proc. Nat'l Acad. Sci*, 101, 8174-8179.

- Halpern-Felsher, B. & Cauffman, E. (2001). Costs and benefits of a decision: Decision-making competence in adolescents and adults. *Journal of Applied Developmental Psychology*, 22, 257-273.
- Insel, T. & Fernald, R. (2004) How the brain processes social information: Searching for the social brain. *Annual Review of Neuroscience*, 27, 697–722.
- Kagan, J. & Coles, R. (Eds.). (1972). *Twelve to sixteen: Early adolescence*. New York: Norton.
- Keniston, K. (1970). Youth: A “new” stage of life. *American Scholar*, 39, 631-641.
- Luciana, M. (2013). Adolescent brain development in normality and psychopathology. *Developmental Psychopathology*, 25, 1325–1345.
- Monahan, K., Steinberg, L., Cauffman, E., & Mulvey, E. P. (2013). Psychosocial (im)maturity from adolescence to early adulthood: Distinguishing between adolescence limited and persisting antisocial behavior. *Development & Psychopathology*, 25, 1093-1105.
- Monitoring the Future. (2009). Trends in lifetime prevalence of use of various drugs. University of Michigan. Retrieved from <http://monitoringthefuture.org/data/09data/pr09t1.pdf>
- National Highway Traffic Safety Administration. (2007). Comparison analysis of fatality trend by age group – 1996 to 2005. Retrieved from <http://www.nrd.nhtsa.dot.gov/Pubs/810759.pdf>
- Nelson, E. E., Leibenluft, E., McClure, E. B., & Pine, D. S. (2005). The social re-orientation of adolescence: A neuroscience perspective on the process and its relation to psychopathology. *Psychological Medicine*, 35, 163-174.
- Paus, T., Zijdenbos, A., Worsley, K., Collins, D. L., Blumenthal, J., Giedd, J. N., ... & Evans, A. C. (1999). Structural maturation of neural pathways in children and adolescents: In vivo study. *Science*, 283, 1908-1911.
- Paus, T. (2010). Growth of white matter in the adolescent brain: Myelin or axon? *Brain and Cognition*, 72, 26-35.
- Petanjek, Z., Judas, M., Simic, G., Rasin, M.R., Uylings, H.B., Rakic, P., & Kostovic, I. (2011). Extraordinary neoteny of synaptic spines in the human prefrontal cortex. *Proceedings of the National Academy of Science of the United States of America*, 108(32), 13281-13286.
- Piquero, A. R. (2008). Taking stock of developmental trajectories of criminal activity over the life course. *The long view of crime: A synthesis of longitudinal research*, 23–78.
- Potenza, M.N. (2007). To do or not to do? The complexities of addiction, motivation, self-control and impulsivity. *American Journal of Psychiatry*, 164, 4-6.
- Schubert, C. A., Mulvey, E. P., Steinberg, L., Cauffman, E., Losoya, S. H., Hecker, T., & Knight, G. P. (2004). Operational lessons from the Pathways to Desistance project. *Youth Violence and Juvenile Justice*, 2, 237-255.
- Sebastian, C., Viding, E. Williams, K. D., & Blakemore, S.-J. (2010). Social brain development and the affective consequences of ostracism in adolescence. *Brain and Cognition*, 72, 134-145.
- Sowell, E. R., Thompson, P. M., Tessner, K. D., & Toga, A. W. (2001). Mapping continued brain growth and gray matter density reduction in dorsal frontal cortex: Inverse relationships during post-adolescent brain maturation. *The Journal of Neuroscience*, 21, 8819-8829.
- Squeglia, L., Jacobus, J., & Tapert, S. (2009). The influence of substance use on adolescent brain development. *Clinical EEG and Neuroscience*. 40, 31-38.

- Steinberg, L., Cauffman, E., Woolard, J., Graham, S. & Banich, M. (2009). Are adolescents less mature than adults? Minors' access to abortion, the juvenile death penalty, and the alleged APA "flip-flop". *American Psychologist*, 64, 583-594.
- Stolzenberg, L., & D'Alessio, S. J. (2008). Co-offending and the age-crime curve. *Journal of Research in Crime and Delinquency*, 45(1), 65–86.
- Volkow, N.D., Fowler, J.S., & Wang, G.J. (2003). The addicted human brain viewed in the light of imaging studies: brain circuits and treatment strategies. *Neuropharmacology*, 47, 3-13.
- Volkow, N., & Li, T.-K. (2005). The neuroscience of addiction. *Nature Neuroscience*, 8(11), 1429-1430.
- White, H.R. (1990) The drug use-delinquency connection in adolescence. In R. Weisheit (Ed.), *Drugs, crime and the criminal justice system*, (pp. 215-256). Cincinnati, Ohio: Anderson.

Exhibit 19

Psychiatric Evaluation
Marion Bowman, Jr.
Date of Birth: [REDACTED]
Dates of Evaluation: 2/23/23, 5/1/23
Date of Report: 6/5/23

Identifying Information: Mr. Marion Bowman is a 42-year-old male evaluated pursuant to a request from his attorney, Teresa Norris. Mr. Bowman was convicted of Murder and third-degree arson in Dorchester County. He was sentenced to death for the murder of Kandee Martin and a ten-year imprisonment for the Arson in May 2002 in Dorchester County.

Qualifications of Examiner: I, Donna S. Maddox, MD, am a physician licensed to practice medicine in the State of South Carolina. I have been qualified as an Expert in Forensic Psychiatry in numerous state and federal courts. I evaluated and treated juveniles as a contract psychiatrist at the South Carolina Department of Juvenile Justice for over 15 years. I also worked as a contract psychiatrist for the South Carolina Department of Corrections for a period of four years treating mentally disordered inmates. Additional details can be found in my curriculum vitae.

Sources of Information

Fact Chronology by K. Fuhrmeister 3/8/23

Developmental Records:

Marriage certificate Marion Bowman Sr and Denise Bowman 8/17/78
Marriage certificate Marion Bowman Sr. and Florence
Birth certificate Marion Bowman Jr.
Marriage certificate Marion Bowman Jr and Dorothy
Family Court Divorce Records Denise and Marion sr.

School records:

New York District File
Orangeburg School District 8
Palmetto Unified School records
Orangeburg District 4 Branchville HS
Orangeburg District 4

Employment Records

Moody's Mechanical

Medical Records

Orangeburg Regional Medical Center
Pediatric Records Dr. Belding

Orangeburg Calhoun Regional Medical Center records

Mental Health Records

DMH report and records from Pratap Narayan, MD CST 5/7/2001
Mental Health referral 2/8/95

Substance Abuse Treatment records

Tri County Admission Drug and Alcohol Abuse
SC Drug and Alcohol Programs
William J. McCord

Jail records:

Dorchester County Detention Center records 2/01-3/02

Prison Records:

SCDC prison records 1998-2023

Court cases:

State v Bowman 11/28/05
Bowman v. Stirling 3/26/20
Marion Bowman Jr. v Stirling 8/16/22

Memorandums of Interviews of Corrections officers, prison ministers and inmates regarding adaptation to prison:

Memorandum of interview Fred Thompson 4/17/23
Memorandum Interview Lt. Darryl McGee 3/8/23
Memorandum Interview Ernest Riddle 4/14/23
Memorandum Interview Gordon Manning 3/7/23
Memorandum Interview Jimmy Stewart 3/7/23
Memorandum Interview Larry Tyree 4/13/23
Memorandum Interview Ralph Hunter 3/7/23
Memorandum Interview Stan Burt 4/13/23
Memorandum Interview Vaughn Johnson 4/17/23
Memorandum Interview Eddie Beery 3/14/23
Memorandum Interview Derek Walden 4/18/23

Affidavits of Family Members:

Joseph Sims 11/23/18

Present Consultations/Reports:

Joette James, Ph.D. 5/5/23
Robert Ellis, MD 5/5/23
Susan Knight, Ph.D. 5/5/23 (consultation) 6/5/23 (report)

Elizabeth Cauffman, Ph.D. 5/24/23

Past Evaluations:

Psychosocial Assessment Jeff Yungman 5/21/02

DMH Competency To Stand Trial Evaluation 5/17/01 P. Narayan, MD and T. Brawley Ph.D.

DMH Criminal Responsibility Evaluation 5/7/01

Letter of Neuropsychological test results J. James, Ph.D. 4/12/23

Developmental History:

Mr. Bowman's parents were married in 1978. Denise was 15 and Marion Sr. was 20. Their first child, Kendra was born on 1/14/79. While pregnant with Mr. Bowman, Denise was treated for premature labor at 37 weeks at Orangeburg Regional Medical Center. Marion Bowman, Jr., was born a week later on 6/6/80. He weighed 5.4 lbs. Denise Bowman had five prenatal visits during her pregnancy. Their third child, Yolanda was born on 8/9/81.

Denise and Marion Sr. separated in 1984, and Denise maintained custody of the children. Marion received speech therapy from 1985-87 through the Orangeburg School District 4. Mr. Bowman Sr applied for visitation in 4/87. Their divorce was final on 7/10/87. Mr. Bowman Sr. remarried Florence Bowman on 3/1/90.

Denise Bowman and the children lived with Joseph Sims from 1990-97. Mr. Sims was a truck driver. The family moved to Queens, New York in March 1991. Mr. Sims and the Bowmans lived in the downstairs basement while Mr. Sims' mother and two aunts lived upstairs. Marion Jr. described this period as a happy time in his life. He stated he liked New York, although he was teased about his accent and "ratty clothes." He denied that the education was more difficult. The family returned to South Carolina in July 1992, but Mr. Bowman reported Kendra remained in New York for another year.

The DMH reports indicate that Marion Jr. had no contact with his biological father until age 13.

In an affidavit, Mr. Bowman's mother was referred to as a prostitute by her former paramour Joseph Sims. The federal court file indicated the mother prostituted herself to support her family, and the children in the hometown were treated differently based on their race. Mr. Bowman's mother had multiple legal charges during his development including Food Stamp Fraud (1/31/85), and Possession with Intent to Distribute Marijuana (4/26/2000.) Mr. Bowman denied knowledge of her promiscuity or illegal behaviors. He referred to himself as a "Dixie Cup kid." When questioned about the phrase, he replied: "you throw it away." He did report memories of her being disabled. He stated she had Rheumatoid arthritis and had multiple back and knee surgeries. He recalled buying her "cluster rings" for her birthday because they were thin enough to be cut off when her fingers swelled. Social worker, Jeff Yungman testified that Denise was receiving Workers Compensation in 1998.

Mr. Bowman admitted to a strong attachment to his stepfather, Joseph Sims and his step grandfather. Mr. Bowman reported that Mr. Sims "took the pressure off "by providing for the

family. Mr. Bowman reported that Mr. Sims was a truck driver, which became a vocational goal for him. He reported that Mr. Sims “is still my dad to this day.” Mr. Bowman reported he does not have contact with him presently.

Mr. Bowman did endorse awareness that his biological father was abusive to his mom.

School History:

Orangeburg School District 4 records indicate Marion Jr. had an IEP for speech therapy in 1985. Marion Jr. reported he “remembered some speech therapy in first grade.” He could not recall whether he had difficulty with articulation or stuttering.

As his elementary school education progressed, his standardized test scores began to fall. On 10/15/90 at the age of ten, Marion Jr. had his first referral for chronic behavioral problems.

A Medical note from his 4th grade Branchville Elementary School record indicates a teacher grabbed his arm, and he had abrasions. His mother was involved. He had to repeat 4th grade. When questioned about that school year, he replied: “I was hungry, angry and not stable.”

The school records indicate Denise withdrew him from school to transfer to New York for the 1991-1992 school year. There are no records that Marion or his siblings were attending school in the Fall of 1991. A note from the school district indicated one of the children had been seen on September 28 of that year.

The school records from New York indicate he missed a lot of school in 5th grade. He missed 18 days during his last semester.

He moved back to South Carolina for 6th grade.

He was recommended for expulsion on 2/17/93 after attempting to hit another student with a pine limb. He was allowed to return under probation. Marion Jr. stated he fought a twin named Devin. He stated earlier in the day, Devin’s twin, Kevin hit him with a stick.

Records indicate he attended weekend school on 11/29/95 to help with his grades.

On 12/3/95, he was suspended for five days for stealing calculator.

He was absent 19 days during his 9th grade year.

In 10th grade, he attended the Alternative Learning Environment program. The plan was for him to go to Palmetto Unified Vocational school in 1998. He did not complete the 10th grade.

He has not received or tested for his GED.

Vocational History

Marion Jr. worked for Hood Construction from 12/97-4/99. He then worked for Moody Mechanical in 5/26/99 and was living in Georgetown.

He was charged with Driving Under Suspension and was fired on 7/30/99. He stated he did not return to work at Moody after his grandfather died. He stated his grandfather died on his 19th birthday. Jeff Yungman testified on 3/26/02 that Marion “felt dead” when his grandfather died. He was not employed at the time of the current offense.

Family History:

Mr. Bowman’s family history is significant for a completed suicide.

Records from the Branchville Police Department from 7/28/97 indicate Mr. Bowman’s cousin killed himself with a gun. Numerous studies indicate that the rate of suicide is significantly higher in the families of suicide victims than in families without such history. “Family History of Suicide Among Suicide Victims” Am J Psychiatry 2003; 160:1525-1526.

Mr. Bowman’s family history is significant for alcoholism.

There are reports of heavy alcohol use on his mother’s side of family. The Tri County records from 1995 also note his father drank. Both the age of onset and a family history of alcoholism contribute to a person’s risk of becoming alcohol dependent. The original data was collected in a 1992 National Longitudinal Alcohol Epidemiologic Survey. Persons with a family history of alcoholism had a higher prevalence of lifetime alcohol dependence. Youths whose parents have alcohol use disorder are at higher risk for earlier initiation and greater magnitude of alcohol use and have a higher likelihood of developing Alcohol Use Disorder. “Parental family History of Alcohol Use Disorder and Neural Correlates of Response inhibition in Children from the Adolescent Brain Cognitive Development Study” Alcohol Clinical and Experimental Research (44) 6: 1234-44, 2020.

Mr. Bowman’s family history is significant for autoimmune disorder.

Mr. Bowman reports his mother has Rheumatoid arthritis which is an autoimmune disorder which can be inherited.

Medical History:

Mr. Bowman was treated for a fractured arm at age 2 on 5/12/82. He was treated at Orangeburg Regional Medical Center. His pediatric orthopedist, Dr. Belding performed an Open Reduction and Internal Fixation.

Mr. Bowman was burned with a kerosene heater on his right palm on 9/18/86. When questioned, he did recall the burn. “My mother took me to a fire talker.” He stated the “fire talker” blew on his hand and the burn no longer hurt. His mother also took him to his pediatrician.

Mr. Bowman was involved in a car wreck on 1/13/87. He was unrestrained and hit his head on the back of the front car seat. He was treated at the Orangeburg Regional Medical Center. He denied a loss of consciousness but did report he hit his head.

Mr. Bowman reported two head injuries in adolescence as well. On 12/19/99, he reported his sister was driving and their car was t-boned when a woman ran a stop sign. He stated he was a restrained passenger in the back seat. He states his head hit the rear passenger window on the right side. He reported headaches after this accident. He was seen in the Regional Medical Center Emergency Room. His C-spine was x-rayed. He was discharged with a cervical collar.

Mr. Bowman reported a "slip and fall" injury eight months before his charges in June 2000. He stated he fell from a picnic table and "woke up bloody and laying on table." He reported he lost consciousness. He reported he "definitely" had headaches after this injury.

He reported additional head injuries to Dr. Narayan during his 5/01 evaluation. He reported at age 17 he was assaulted, and he reported a recent slip and fall at a gas station. He described some headaches.

Mr. Bowman is presently treated for hypothyroidism which has caused him to gain extensive amounts of weight at various times during his incarceration. He is presently stable on Synthroid.

Mr. Bowman had a surgical decompression of a herniated nucleus pulposus on 9/2/19. He was hospitalized on 9/11 with urinary retention. He was treated at Palmetto Prisma for 11 days and then the Kirkland Infirmary for four days. He wore a foley catheter until November 2019. He has some chronic pain which is managed with Duloxetine. By 2020, he returned the wheelchair and his walker and worked hard at his rehabilitation.

Additionally, he is treated for Hyperlipidemia with Pravastatin, Lisinopril® for hypertension and Tamsulin® for Prostatic Hypertrophy.

Substance Use History:

Prior to his offense and after the death of his grandfather, Mr. Bowman was consuming large amounts of alcohol on a daily basis. Consistent with research on persons with a family history of alcohol use disorder, Mr. Bowman began drinking at a younger age.

He reported he was drinking sips of alcohol from his uncle in fourth grade.

The report of Dr. Brawley and the testimony of Jeff Yungman noted he started drinking at age 14. Mr. Bowman reported he could drink up to ten beverages before getting drunk. Dr. Narayan diagnosed him with Alcohol Abuse and Personality Disorder Not Otherwise Specified with Antisocial traits. The DMH report indicated Mr. Bowman's alcohol intake increased at age 16 when he quit smoking marijuana.

Mr. Bowman reported he "drank all day and every day." He stated he began drinking after he "took the kids to school." He stated he would walk to the store to get a quart of malt. He stated he would return to the store again for another malt if he finished before 9 am. He stated once

the liquor store opened at 9am, he would buy a pint of gin and drink that during the day. He stated he would drink beer for the remainder of the day after finishing the gin. He reported he never "felt drunk." He stated he ate during the day. He stated he would grill chicken livers and other meats while he drank.

The Dorchester County Detention Center records from 2/20/01 noted he drank alcohol and beer, at least one quart every day.

Mr. Bowman told Narayan he was drinking on the day of offense.

Mental Health History:

He had no history of inpatient psychiatric treatment. He had two brief episodes of outpatient treatment. He is not mentally ill.

Beginning on 2/8/95 at age 15, Mr. Bowman received services from the Tri County Commission on Drug and Alcohol Use. He was diagnosed with a Phase of Life problem. He reported little contact with his father. He was referred for treatment because he was in trouble for referrals from school. The record noted that his father drank. Mr. Bowman reported a "high temper." A note from 5/19/95 indicates he attended groups and did well. He completed the structured group counselling. Of note, the record made mention that Kandee Martin also participated in this program.

Mr. Bowman had another brief period of treatment while incarcerated after the death of a family member. He was diagnosed with normal bereavement on 7/13/20.

Social:

Mr. Bowman has excellent family support.

Mr. Bowman married Dorothy Mae Williams (Dot) on 12/6/99. He was 19 and she was 23. They remain married and in communication and share a daughter Marissa. Marion Jr. and Marissa talk regularly. She also visits him. Mr. Bowman reported he will soon be a grandfather.

Mr. Bowman has excellent family support. He speaks with his cousin, daughter, mother, father and aunt regularly. He continues to have visits from his mother and sister, Kendra. He reported he continues to speak with his father. Marion Jr. reported that his mother is 60 years old and continues to have back and knee problems. His sister Kendra is 44 years old. His sister Yolanda is 41 years old, and his half-brother Mario is 33 years old.

Legal History:

Mr. Bowman's legal history was significant for the year prior to his current offense. After he was charged with Possession of a Pistol during a traffic stop on 8/4/2000, Mr. Bowman

reported he stopped checking in with is probation officer. He was eventually charged with Failure to Report. This is also the period when he was drinking larger amounts of alcohol. He was 20 years and 8 months old at the time he was charged with the Murder of Kandee Martin.

Prior to his offense, Mr. Bowman had four prior convictions for Larceny or Burglary according to court records. While he was detained for his murder charges, he was charged with another Burglary and Grand Larceny.

He had DJJ charges of Simple Assault and Malicious Injury to Property which were dismissed.

Mr. Bowman was charged with Burg 2nd and Petty Larceny on 7/27/97. He spent 25 days in jail. He and codefendants stole a gun and money. He was sentenced to a 1–5-year shock sentence and ordered to pay restitution. He entered SCDC on 3/13/98. Marion Jr. reported that the cousin who committed suicide used that gun to kill himself. Mr. Bowman reported he was not involved in the string of burglaries going on in town but would not tell on his peers.

On 7/25/00, he was charged with Grand Larceny and Burglary, first degree.

On 8/4/00, he was charged with Possession of a Pistol. He stated he was riding with his cousin, and they were stopped by the police. He stated the police officer told him he would serve five years because he was on probation. Mr. Bowman stated at that point, he no longer checked in with his probation officer. He stated the gun belonged to his cousin. This charge was dismissed.

On 10/28/00, he was charged with receiving stolen goods.

On 12/5/00, he was cited for failure to report, and failure to complete public service.

On 12/29/00, he failed to appear and a warrant for his arrest was issued.

He was charged with Murder and Arson third degree on 2/16/01. The trial aggravators were murder during the commission of a kidnapping and during the commission of larceny with a deadly weapon.

Institutional History:

Mr. Bowman was sentenced to the YOA SHOCK program in 1998 for the Burglary, 3rd degree and the two Petty Larceny charges. He was admitted to SCDC on 3/13/08. He was 17 years old. At the time of his incarceration, he was 6'3" and 210 lbs. He was cleared medically and psychiatrically to complete the program at Stevenson Correctional Institution. He was involved in a physical altercation with another inmate MS who was observed pushing Mr. Bowman by corrections officers. He was placed in the Special Management Unit and his SHOCK program was

extended for two weeks. His completion date was moved from 6/22/98 until 7/6/98. He was conditionally released without further extensions.

He was arrested on 2/17/01 for an Outstanding Receiving Stolen Goods warrant. During this detention, he reported he was drinking everyday compared to past disclosures. He reported drinking a quart per day. He was charged with the Murder of Kandee Martin on 2/19/01.

He was sentenced to death on 5/23/02. He was admitted to SCDC on 5/24/02 at the age of 21. He was housed at Lieber Correctional Institution. His YOA was revoked on 7/15/02. He was placed on Security Level III-DR.

On 6/7/03, Mr. Bowman was charged with a non-assaultive disciplinary, Institutional threatening to inflict Harm by CO Eaton (known to this examiner). The charge was reduced to using vulgar language.

On 11/28/05 his death sentence was affirmed on direct appeal.

On 1/9/07, an item described as a ski mask was found in Mr. Bowman's cell and he was transferred to supermax pending an investigation but ultimately was never charged with contraband or any other offense. Mr. Bowman reported the alleged mask was a hat he wore for rec on cold mornings. He stated the holes in the hat were for his dreadlocks. During that period, Lt. McGhee reported he received an outside call that Mr. Bowman and other inmates were planning to escape. Mr. Bowman was never charged. On 1/26/07, his security level was decreased to I-DR. He was transferred to the Special Management Unit at Kirkland on 2/6/07. He was advanced to Security Level 2 on 5/24/07. He was advanced to Security Level III on 6/21/07. He was transferred back to Lieber.

On 11/6/07 he was charged with Disrespect, according to a record summary.

On 2/14/08, he was charged with Damaging property when he and another inmate damaged their toilets.

On 12/19/08 he was involved in his PCR hearings.

He began developing medical problems in 2014 including blood in his stool.

On 4/15/16, the South Carolina Supreme Court denied review of his PCR appeal but did investigate one area which was denied on 1/10/18.

On 12/14/16 he was charged with Damaging Property. He damaged his toilet. He reported he had been window locked for days and was unable to receive legal mail.

On 9/26/17, Mr. Bowman and all other death row inmates transferred from Lieber to Kirkland.

10/6/17 Mr. Bowman began a hunger strike due to not receiving his property. He received his property and began eating the same day. Mr. Bowman reported to the undersigned that his hunger strikes are “nonviolent ways to protest prison conditions.”

He had another hunger strike on 12/17/17 and asked to speak with the warden. The strike lasted three days. The inmates had a list of grievances which included sanitary conditions, having to kneel to receive mail, and the overall conditions. By this time, Mr. Bowman was having back problems which resulted in surgery and nerve damage, so kneeling would have been especially painful for him.

Mr. Bowman began filing grievances on SCDCs grooming policies. He is Rastafarian and he believed that SCDC grooming policies were discriminatory. He was not requesting twists but to be able to braid his hair.

He began another hunger strike on 4/30/18. SCDC records noted his peaceful protest over being shackled when he is well behaved. He continued through 5/7/18 and requested to meet with the warden. He was in lockdown. During the hunger strike, he was tested and found to have hypothyroidism.

Death row was transferred Broad River Correctional Institution on 7/11/19. A medical note indicated he was pleased to look out of a window.

On 9/1/19, he was transferred to Richland due to his back condition. He had surgery on 9/2/19. He was discharged on 9/11/19. He had gained nearly 100 lbs by 7/20 until it was discovered his Synthroid had been discontinued.

Mr. Bowman recognizes that he has successfully adapted to long term incarceration. He has developed a routine, maintains familial relationships and focuses on others as part of his coping. Mr. Bowman also writes poems to cope. His health does not permit him to work various jobs as he did in the past. He continues to have complications from his back surgery including difficulty voiding.

Mr. Bowman reported being out of his room most of the day from 5:30 a.m. to 5:00 p.m. with the exception of 30 minutes around 8:30 a.m. and 30 minutes around 2:00 p.m. during count. He reported the following morning routine. He awakens at 3 am or 4 am. He says his prayers which include a daily Psalm. He then takes his cholesterol and thyroid medications. He watches the News. He speaks with his mother and then his cousin Quanisha. He will then associate with other inmates and play cards. He will also check on inmates who are lower functioning. Mr. Bowman was the Inmate representative for several years. Once he goes back in his room, he reads his Bible, writes in his journal or writes poetry, and watches tv. He stated he “cleans up” at 9:30 p.m. He then watches the Stephen Colbert show which he enjoys at 11:45 pm.

SCDC records have numerous citation which demonstrate positive coping on Mr. Bowman’s part. While at Kirkland awaiting transfer to Broad River, Mr. Bowman was questioned about a

necklace he wore. He reported the necklace had inspirational sayings and one had his daughter's name on it.

Various memorandums from present and retired SCDC employees indicate Marion Jr. has adapted well and has not been a behavioral problem.

Lt. Darryl McGee, who originally investigated Mr. Bowman for an alleged escape plan which never resulted in a charge was interviewed on 3/8/23. The interview resulted in a memorandum. Lt. McGee reported he retired in 2018. He remembered Mr. Bowman and did not recall that he was "a problem."

In a memorandum, Fred Thompson 4/17/23 was interviewed. He was the 1st major at Lieber, and retired in 2017. He did not recall Mr. Bowman being problematic and had no recollection of a ski mask incident.

The Chief Psychiatrist on Death Row, Dr. Ellis was interviewed by the undersigned on 5/5/23. He described Mr. Bowman as a "leader." Dr. Ellis reported he has known Mr. Bowman for five years. He stated he does not treat Mr. Bowman for mental illness but has worked with him while he was on the Inmate Representative Committee and subsequently because Mr. Bowman has been able to persuade noncompliant mentally disordered offenders to cooperate with Dr. Ellis' treatment. Dr. Ellis reported that Mr. Bowman's interpersonal skills differentiate him from many other inmates. He reported that Marion Jr. helps others. There is a note that while Mr. Bowman was IRC, he requested that two of the inmates on the restricted side be brought to the open side before Christmas. As was noted by Dr. Ellis, there was no secondary gain for his request. Dr. Ellis reported that Mr. Bowman is liked by inmates and staff. They refer to him as "the gentle giant" because his presence is calming. "He keeps the peace with his presence and calm demeanor." Dr. Ellis noted that Mr. Bowman is not antisocial. He reported that Mr. Bowman would be an asset in General Population because of his calming demeanor and concern for the wellbeing of other inmates and staff.

Mental Status Examination:

Mr. Bowman was pleasant and cooperative. He had a mildly antalgic gait. He maintained good eye contact throughout the evaluation. He had excellent hygiene. His speech was normal in rate and tone. His thinking was goal directed. His mood was euthymic. He was not suicidal or homicidal. There was no evidence of psychosis. His cognitive functions were intact. His judgment and insight are excellent.

Previous testing and Consultations:

Prior to his trial, Mr. Bowman was evaluated at the Department of Mental Health for his competency to stand trial and criminal responsibility. The presiding examiner was Dr. Pratap Narayan. He was also evaluated by a neurologist Dr. Steedman and tested by a

Neuropsychologist Dr. Brawley. Dr. Narayan noted his prior history of head injury. Dr. Steedman, the neurologist ordered a CT scan of the head which was unremarkable and also performed an EEG which was normal. Dr. Brawley administered the WASI (Wechsler Abbreviated Scale of Intelligence) and RBANs (Repeatable Battery for the Assessment Neuropsychological Status) and did not find any abnormalities. Dr. Narayan diagnosed him with Alcohol Abuse, Personality Disorder NOS with antisocial traits and opined he was competent to stand trial and criminally responsible. Dr. Brawley reported his Full-Scale IQ was 81, with a Verbal Scale of 86 and a Performance of 80.

He was seen by a private neuropsychologist, Brian West, Ph.D. on 4/4/02. Dr. James noted that Mr. Bowman was hit in the head with a baseball bat at age 17. He was seen by a private Forensic psychiatrist, Dr. Morgan. Neither expert issued a report.

Present Testing:

He was evaluated by neuropsychologist, Joette James, Ph.D. in March 2022 and a summary of testing report was issued in April 2023. Dr. James noted he gave a good effort across four tests. She administered the WAIS-IV and noted a Full-Scale Score of 84, a Verbal Score of 95, a Performance Score of 73 which has dropped, a Working Memory Score of 92, and a Processing Speed score of 92. He had a low score on block design and a Borderline score on visual puzzles.

Dr. James was consulted about her testing on 5/5/23. Dr. James noted that his cognitive function remains average and has not declined over time.

Opinions

1. At the time of his charges, Mr. Bowman's brain development was not yet complete. The prefrontal cortex which is responsible for executive functions does not mature until the mid to late 20s. Brain maturation during adolescence is influenced by heredity, environment, and hormones. Teen brains have less white matter (myelin) in the frontal lobes compared to adults. Myelin allows for better flow of information between brain regions. The prefrontal cortex regulates behavioral responses. Maturation of the adolescent brain. Neuropsychiatric Disease and Treatment 2013; 9: 449-61. [ncbi.nlm.nih.gov](https://pubmed.ncbi.nlm.nih.gov/24111111/).
2. At the time of his charges, Mr. Bowman's cognition was further impaired by his extensive use of alcohol.

Alcohol and Adolescents

[Niaaa.nih.gov](https://www.niaaa.nih.gov/publications/brochures/alcohol-effects-health) Alcohol's Effects on Health: Alcohol and the Adolescent Brain, 2021. National Survey on Drug Use and Health reported that adolescents drink less than adults, but when they do drink, they tend to drink more. 8.3% of adolescents aged 12-20 reported binge drinking in the past month. The National Institute on Alcohol Abuse and Alcoholism (NIAAA) defines binge drinking as a pattern of drinking alcohol that brings Blood Alcohol Concentration to .08

grams/dl. Males would have five or more drinks in two hours. For adolescents, they need only three to five drinks. Adolescents are less sedated and have smaller impairments in coordination and balance which puts them at greater risk because they continue drinking and reach higher blood alcohol levels which further impair their decision making and impulse control.

Alcohol and Effects on Brain Function in Adolescents:

Alcohol misuse during adolescence has been linked to changes within and between brain regions. Researchers have found reductions in the size of the frontal lobe, hippocampus, amygdala, and corpus callosum. The adolescent brain is able to recover from some of the alcohol related changes.

3. Eight months before his charges, Mr. Bowman reported his third closed head injury which may have further impacted his cognitive function, he was not tested until after the TBI.

Adolescents and Traumatic Brain Injury

Adolescent traumatic brain injuries: Onset, mechanism, and links with current academic performance and physical injuries. [ncbi.nlm.nih.gov PLOS One. 2020 15 \(3\)](https://doi.org/10.1371/journal.pone.0201533).

Reports show that 15- to 19-year-olds have some of the highest emergency department visits, hospitalizations and deaths related to TBI. Studies show that 20-22% of adolescents sustain a TBI in their lifetime. As many as 5.5% have multiple injuries, as did Mr. Bowman (n=3). These injuries cooccur with alcohol use, binge drinking, other substance use, low grades, violence and antisocial behavior. They are particularly common among male athletes. Trauma to the head during adolescence has been shown to cause impairments in cognitive, social and behavioral development. Most studies find that greater deficits are observed right after the onset of the TBI. TBIs that occurred within twelve months were associated with poor academic performance.

“Concussion History and Cognitive Function in Large Cohort of Adolescent Athletes” American Journal Sports Medicine, 2018 Nov 46(113): 3262-70.

In a study of 5616 high school athletes, researchers found that adolescents suffering a concussion achieved lower scores on tests of multiple domains of cognitive functioning. The more recent the concussion, the worse the cognitive performance. Reduced cognitive performance appeared to persist for 1.5- 2 years after the concussion. Decreases in cognitive functioning were not large. The Initial effects of a concussion on cognitive function may last longer than generally thought.

4. Mr. Bowman was dealing with numerous legal stressors prior to his offense. He was charged with Possession of a Pistol during a traffic stop. Mr. Bowman reported he felt hopeless because the police officer told him he would serve five years. Mr. Bowman

reported the gun belonged to his cousin. Mr. Bowman stopped attending his probation appointments after this incident.

5. Mr. Bowman has spent 23 years in confinement. During this period of time, his brain completed maturation, he stopped drinking and using any illicit substances, and he has adapted to his incarceration.
6. Mr. Bowman's cognition was reassessed in 2022. His cognition remains stable. He has not had a decline in functioning. His achievement has increased. He has not sustained further head injuries. He denies use of alcohol in over 20 years. There is no evidence he has any kind of cognitive disorder that would progress over time and change his cognitive capacity to adapt to incarceration.
7. Despite research showing that younger persons with a family history are at higher risk for developing alcohol use disorder, Mr. Bowman denies drinking alcohol or using drugs. Review of his prison records do not indicate he has been suspected of substance abuse nor has he had any positive drug screens. The adolescent studies of substance abuse showed that the long-term effects were not substantial if alcohol use was stopped. Mr. Bowman's history is consistent with those findings.
8. Mr. Bowman has been a model death row inmate. He has not had any assaultive disciplinaries during his present incarceration. His only assaultive disciplinary occurred during his YOA sentence. Mr. Bowman did not initiate the fight, and his consequence was a two-week extension of his YOA sentence.
9. Mr. Bowman has not had any non-assaultive disciplinaries since 2016. He has been twice charged with damaging his toilet, with the last time being in 2016. He reported that during both instances, he was protesting conditions in the prison. Since that time, Mr. Bowman reports he uses nonaggressive methods of protest like hunger strikes when attention needs to be called to prison conditions.
10. Mr. Bowman is not mentally ill. He has the capacity to continue to adapt.
11. Mr. Bowman does not abuse alcohol or other substances.
12. Mr. Bowman is respected by staff and other inmates. He has been described as a calming influence. He has been described as a leader and has participated in Inmate Representation.

Donna S Maddox M.D.

Donna S. Maddox, MD
Consulting Forensic Psychiatrist

Exhibit 20

Curriculum Vitae
DONNA SCHWARTZ MADDOX, M.D.
donnamaddoxmd@gmail.com

POSITIONS: Owner, Donna S. Maddox, MD LLC

Contract Forensic Psychiatrist
Department of Mental Health

Affiliate Professor of Psychiatry
Medical University of South Carolina
Department of Psychiatry and Behavioral Sciences

Affiliated Clinical Associate Professor of Psychiatry
University of South Carolina School of Medicine-Greenville
Department of Psychiatry

Professor of Psychiatry
Edward Via College of Osteopathic Medicine
Carolinas Campus

PROFESSIONAL LICENSURE:

South Carolina Medical License # 16574

EDUCATION:

1981 - 1985 B.A. Psychology
Furman University
Greenville, South Carolina

1985 - 1989 Doctor of Medicine
University of South Carolina School of Medicine
Columbia, South Carolina

BOARD CERTIFICATIONS:

Diplomate, Psychiatry, (Board Certification #40726), January 1995,
recertified 7/2005- 12/2015
Added Qualifications in Forensic Psychiatry, July 1996 #471, recertified
7/2006-12/2016

POSTGRADUATE FELLOWSHIPS AND RESIDENCY POSITIONS:

1989 - 1993	Resident in General Psychiatry William S. Hall Psychiatric Institute Columbia, South Carolina
1993 - 1994	Fellowship in Forensic Psychiatry William S. Hall Psychiatric Institute Columbia, South Carolina

ACADEMIC POSITIONS/EMPLOYMENT/UNIVERSITY APPOINTMENTS:

8/2016-4/2018	Contract Psychiatrist Harris Psychiatric Hospital
8/2013-8/2016	Psychiatric Service Director(certified) Harris Psychiatric Hospital
7/2010-8/2013	Senior Psychiatrist Bryan Psychiatric Hospital
4/24/2013 to present	Clinical Professor of Forensic Psychiatry Medical University of South Carolina Department of Psychiatry and Behavioral Sciences
7/2010 to 2015	DMH Professor of Psychiatry University of South Carolina School of Medicine Department of Neuropsychiatry
7/2006 to 7/2010	Professor of Clinical Psychiatry Director, Forensic Psychiatry Services University of South Carolina School of Medicine Department of Neuropsychiatry and Behavioral Science 3555 Harden Street Extension, Suite 102 Columbia, South Carolina 29203 (803) 434-4698 (803) 434-2367 (fax)
	Consulting and Treating Forensic Psychiatrist South Carolina Department of Juvenile Justice
	Consulting and Treating Forensic Psychiatrist South Carolina Department of Corrections

11/98-6/2009	Consulting and Treating Forensic Psychiatrist Behavioral Disorders Treatment Program (Sexually Violent Predator Program: SC 44-48-110) South Carolina Department of Mental Health
6/1997- 7/2006	Associate Professor Director, Forensic Services Department of Neuropsychiatry University of South Carolina School of Medicine
1/2004-7/2004	Acting Assistant Director, Psychiatry Residency Program University of South Carolina School of Medicine Department of Neuropsychiatry and Behavioral Science
9/1995-5/1997	Forensic Residency Training Director University of South Carolina School of Medicine
7 /1996 – 6/1997	Psychiatrist C William S. Hall Psychiatric Institute Residential Treatment Director of NGRI Unit
1/1995 – 6/1996	Teaching Psychiatrist II William S. Hall Psychiatric Institute Outpatient Forensic Psychiatrist
1/1995 – 12/1997	Assistant Professor University of South Carolina School of Medicine Department of Neuropsychiatry
7/1994 –6/1995	Instructor University of South Carolina School of Medicine Department of Neuropsychiatry
7/1994 – 12/1994	Teaching Psychiatrist I William S. Hall Psychiatric Institute Inpatient and Outpatient Forensic Psychiatrist

MEDICAL STAFF APPOINTMENTS

Patrick B. Harris Psychiatric Hospital (current)
Bryan Psychiatric Hospital (current)

UNIVERSITY/ MEDICAL STAFF COMMITTEES:

2015-2016 Vice-President, Medical Staff Harris Psychiatric Hospital

2007-2010	Member, Appointments and Promotions Committee, USC
2002- 2009	Member, Alumni Committee, USC School of Medicine
1996- 2010	Member, Residency Selection Committee
1995- 2010	Member, Residency Training Committee
2002- 2003	Member, Search Committee, Chairman of Neuropsychiatry
2000-2001	Member, Committee on Women USC
1997	Member, Traditions Committee USCSM
1997	Member, Search Committee, Director Rehabilitation Counseling
1997	Physician Advisor, Environment of Care
1996	Member, Search Committee Chair of Department of Neuropsychiatry and Director of Hall Institute
1996	Member, Finance Committee, University Specialty Clinics
1994-1996	Member, Infection Control Committee
1993-1994	Member, Research Committee

HONORS AND AWARDS:

2017	Gold Humanism Award Greenville Hospital System
2016	Clinical Mentor Award, University of South Carolina School of Medicine, Greenville, South Carolina
2007	Outstanding Female Physician Mentor Award
2004-2005	Outstanding Forensic Teaching Award Presented by the USC SOM Forensic Fellowship Training Program
1992	Rapporteur Scholarship in Forensic Psychiatry Presented by the American Academy of Psychiatry and the Law
1989	Neurology Award, School of Medicine
1985	Cum Laude Graduate, Furman University Phi Beta Kappa, Furman University Alpha Epsilon Delta, Furman University

MEMBERSHIPS AND OFFICES IN PROFESSIONAL ORGANIZATIONS:

2019-present	University of South Carolina Board of Visitors
2002-2009	American Board of Psychiatry and Neurology Forensic Certification Committee
1999-2009	American Board of Psychiatry and Neurology 1999-2010 Board Examiner
1997-2003	Group for the Advancement of Psychiatry (GAP), General Member 1999 Chair
1992- 2014	American Academy of Psychiatry and the Law (AAPL)

1995-2000	Rappeport Committee (President appointed)
1995-2000	Education Committee (President appointed)
1998-2000	Program Committee (President appointed)
1999	Program Chair
1995-97	Mentor to Rappeport Fellow
1989-1998	American Psychiatric Association, General Member
1989-1998	South Carolina Psychiatric Association
1995-1998	Federal Legislative Representative (President appointed)
1995-1999	Executive Council
1996-1998	Secretary-Treasurer
1997	NAMI Advisory Board Physician Representative

PUBLICATIONS:

Dehart, D., Dwyer, G., Seto, M., Letourneau E., Schwartz-Watts, D. Internet solicitation of children. A proposed typology of offenders based on their chats, E-mails and social network posts. Journal of Sexual Aggression, 2016

Schwartz-Watts DM: "Commentary: Stalking Risk Profile." The Journal of the American Academy of Psychiatry and the Law, 34:455-457, 2006.

Schwartz-Watts DM, Frierson RL: "20: Crisis Stabilization in Correctional Settings." in Clinical Practice in Correctional Medicine, Second Edition, edited by Michael Puisis, D.O., S.C. Mosby, Inc affiliate of Elsevier, Inc 2005.

Schwartz-Watts DM. "Asperger's Disorder and Murder." Analysis & Commentary The Journal of the American Academy of Psychiatry and the Law 33:390-3, 2005.

Schwartz-Watts DM, Rowell CN. "Commentary: Update on Assessing Risk for Violence Among Stalkers." The Journal of the American Academy of Psychiatry and the Law 31:440-3, 2003.

Giorgi-Guarnieri D, Zonana HV, Schwartz-Watts DM. "Practice Guideline: Forensic Psychiatric Evaluation of Defendants Raising the Insanity Defense." Supplement to The Journal of the American Academy of Psychiatry and the Law 30:2, 2002.

Frierson R, Schwartz-Watts D, Malone T, Morgan D. "Capital Versus Noncapital Murderers" in revision The Journal of the American Academy of Psychiatry and the Law, 1998.

Schwartz-Watts D, Morgan D. "Violent Versus Nonviolent Stalkers," accepted, The Journal of the American Academy of Psychiatry and the Law, 1998.

Schwartz-Watts D, Morgan D, Barnes C. "Stalkers: The South Carolina Experience," The Journal

of the American Academy of Psychiatry and the Law, 1997, 24:541-545.

Schwartz-Watts D, Montgomery L, Morgan D. "Seroprevalence of Human Immunodeficiency Virus Among Pre-Trial Detainees," The Bulletin of the American Academy of Psychiatry and the Law, 1995, 23:285-289.

POSTERS:

Internet Chat Rooms: Who Solicits Children? R. Gregg Dwyer, MD, Ed. D, Donna Schwartz-Watts MD , William Burke, PhD, American Academy of Psychiatry and the Law 39th Annual Meeting, Seattle, WA October , 2008

PRESENTATIONS:

"Death Penalty and Competence to Be Executed" Medical University of South Carolina Department of Forensics, March 10, 2021

"Substance Abuse and Mental Health," South Carolina House of Representatives CLE Webinar, January 28, 2021.

"Mental Health and Substance Abuse", Attorney General's Ethics and Mental Health/Substance Abuse CLE Webinar, December 11, 2020

"What Experts Want Lawyers to Know" Columbia 2020 SC Bar Convention, Criminal Law part I, Columbia Metropolitan Convention Center, January 24, 2020

"Attorneys and Stress: Reactions and Healthy Ethical Coping" Attorney General's Ethics and Mental Health/Substance Abuse CLE, Blatt Building, Columbia SC December 13, 2019

"Handling Pressures of Judging", South Carolina Judicial Conference, Columbia, South Carolina, September 17, 2019.

"Mass Murderers", South Carolina Circuit Judges Conference, Spartanburg, South Carolina, May 2, 2019.

"PPG Testing in South Carolina Courts," South Carolina Circuit Court Judges Conference, Spartanburg South Carolina, May 2, 2019.

"Attorneys and Stress: Reactions and Healthy Ethical Coping" Attorney General's Ethics and Mental Health/Substance Abuse CLE, Blatt Building, Columbia SC December 7, 2018

"Mass Murderers and Mental Illness" Southeastern Symposium Mental Health, Greenville, South Carolina, May 18, 2018

"How To Make Your Expert Shine" Deep South Capital Defense Conference, Bay St. Louis Mississippi, February 7, 2018

“Communicating with Clients: Deep South Capital Defense Conference, Bat St. Louis , Mississippi, February 7, 2018

“Truths and Myths About Mass Murder” Department of Mental Health Day Long CME, Columbia South Carolina September 5, 2017

“How To Make Your Expert Shine” South Carolina Attorney General CLE, January 20, 2017
Columbia, SC

“Expert Testimony” Lecture to Medical University of South Carolina Forensic Residents,
Charleston, SC 1/13/16

“Death Penalty and South Carolina” Lecture to Medical University of South Carolina Forensic Residents, Charleston, South Carolina, February 6, 2013

“Autistic Spectrum Disorders; What Capital Lawyers Should Know.” Death Penalty 2013, Sheraton Four Seasons, Greensboro January 25, 2013

“Predators Among Us” University of South Carolina 2012 Mini Med School, October 2, 2012,
Columbia, South Carolina

“How Death is Different-Using ABA Guidelines to Meet the Standard of Care in Death Penalty Cases and Social History Investigations: The team Approach” with Joe VonKallist, Capital Case Workshop, September 19, 2012, Wilmington, North Carolina

“Protecting Mental Health” South Carolina Attorney General’s Continuing Legal Education Ethics Seminar, Blatt Building, Columbia, SC 12/2/11

“Autistic Spectrum Disorders and the Legal System “, DMH Annual CME, William S Hall
Psychiatric Institute 9/11

“Issues of Mental Competency” South Carolina Circuit Court Judges Conference, Spartanburg, South Carolina, May 4-6, 2011

Stalking in the New Millennium”: Department of Mental Health Day Long CME, Columbia SC,
October 2009

“Internet Predators”: South Carolina Psychiatric Association Annual Meeting, Myrtle Beach, South Carolina, 1/2009

“Internet Predators”: Panel Speaker, South Carolina Bar Association Annual Meeting, Myrtle Beach South Carolina, 1/2009

Internet Predators: ICAC Quarterly Meeting, Columbia, South Carolina 11/21/2008

Project Safe Childhood, Advanced Online Child Exploitation Seminar, National Advocacy Center
Columbia, SC, July 29, 2008

“Violent Crimes and the Commitment of Sexually Violent Predators, MUSC Judges and Attorneys
Substance Abuse and Ethics Seminar, Charleston, South Carolina, December 7, 2007

“Autistic Spectrum Disorders and Corrections” South Carolina Department of Corrections Mental
Health Seminar, Columbia, South Carolina, December, 2007

“Pitfalls in Sex offender Commitment Hearings” Panel Speaker, American Academy of Psychiatry
and the Law 38th Annual meeting, Miami, Florida, October 22, 2007

“Treating the Untreatable” Panel Speaker, American Academy of Psychiatry and the Law 38th
Annual Meeting, Miami, Florida, October 19, 2007

“Risk Assessment in General Psychiatry: Department of Mental Health Annual Day Long CME,
Columbia, SC September 21, 2007

“Mitigation in Noncapital Cases” SC Public Defender’s Conference, Myrtle Beach, SC October
2007.

“Nuts and Bolts of Sexually Violent Predator Proceedings” SC Bar CLE, Columbia, South Carolina
July 27, 2007

University of South Carolina School of Medicine Founder’s Day Speaker for Woman in Medicine,
Columbia, South Carolina, April 2007.

“Autistic Spectrum Disorders and Mitigation,” Washington DC March 2007

“Sex Crimes and their Aftermath II” Panel Discussion and Presentation, Jack Swerling
Moderator, South Carolina Bar Association Conference, Charleston, SC, January 25,
2007

“Psychiatry for the Brilliant Fact Finders” Invited Speaker, South Carolina Judges Conference,
Greenville, SC, May 12, 2006.

“Sex Crimes and their Aftermath” Panel Discussion and Presentation, Jack Swerling Moderator,
South Carolina Bar Association Conference, Charleston, SC January 27, 2006.

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice
National Institute of Trial Advocacy, Atlanta Georgia , June 4-5, 2005

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice
National Institute of Trial Advocacy, Atlanta Georgia , June 5-6, 2004

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice

National Institute of Trial Advocacy, New York, New York, June 20-21, 2003

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice, New York, New York. June 20-22, 2002.

South Carolina Probation, Paroles and Pardons Annual Conference. "A State of Mind". Myrtle Beach, SC. November 11, 2002.

American Academy of Psychiatry and the Law, "Difficult Case? Consult your Colleagues." Newport Beach, California. October 26, 2002

South Carolina Public Defender's Conference, "Issues and Concerns Regarding the Sexually Violent Predator Statute" Litchfield Beach, South Carolina, September 30, 2002

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice, New York, New York, June 28-30-2002.

American Academy of Psychiatry and the Law, "Death Penalty" Boston, MA, October 28, 2001

American Academy of Psychiatry and the Law, "Ask the Expert" and "The Difficult Case" Panel Discussions. Boston, MA, October 28, 2001

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice, New York, New York, June 14-17-2001.

Annual Capital Defense Training Seminar, "The Importance of Timing in the Presentation of Your Client's Story: Frontloading Mitigation" with John Blum, Attorney, Jekyll Island, Georgia, February 9, 2001

University of Texas, Department of Psychiatry Grand Rounds "Profile of a Stalker" San Antonio, Texas, December 19, 2000

Willford Hall Medical Center, Lackland Air Force Base, Texas, "Death Penalty Evaluations," December 18, 2000.

Willford Hall Medical Center, Lackland Air Force Base, Texas, "Texas Sexually Violent Predator Statute," December 18, 2000

American Academy of Psychiatry and the Law, "Juveniles Who Carry Weapons on School Grounds" Baltimore, Maryland, October 15, 1999

American Academy of Forensic Science, Workshop Presenter, San Francisco, 1998 "Classification and Typology of Stalkers."

Kansas City, Western Missouri Forensic Department, 1997 "Evaluation of Stalking."

University of South Carolina School of Medicine Women's Month Featured Presenter, 1997
"Stalkers: The South Carolina Experience."

American Academy of Psychiatry and the Law, Denver, CO, 1997 "Psychotic versus Nonpsychotic Stalkers."

American Academy of Psychiatry and the Law, Denver, CO, 1997 "Harassing Telephone Callers."

American Academy of Psychiatry and the Law, Denver, CO, 1997 Panel on Maintaining Competence sponsored by Education Committee

American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Violent Versus Nonviolent Stalkers",

American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Capital Versus Noncapital Murderers"

American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Treatment of Insanity Acquittes Across the United States."

William S. Hall Psychiatric Institute Forensic Forum, 1996 "Evaluation and Treatment of Sexual Offenders."

Georgia Regional Forensic Forum, 1996 "Evaluation and Treatment of Sexual Offenders."

American Academy of Psychiatry and the Law, Seattle, Washington, 1995 "Stalkers: The South Carolina Experience"

South Carolina Psychiatric Association, Hilton Head Symposium, 1995 "What General Psychiatrists Need to Know About Forensic Psychiatry."

American Academy of Psychiatry and the Law Annual Conference, San Antonio, Texas 1993
"Seroprevalence of HIV Among Inpatient Pre-trial Detainees"

American Medical Association, North Carolina 1990 "Tertiary Metastases Presenting As Panhypopituitarism"

Grants:

Internet Chat Room Solicitation of Children: A Study of Psychosocial and Criminal Justice Factors as They Relate to Public Safety Risk; American Academy of Psychiatry and the Law Institute for Education and Research (AIER) Grant; Principal Investigator: RG Dwyer; Co-investigators: D DeHart, DM Schwartz-Watts, W Burke & R Moran; 2009 - 2010
(Revised 12/16/24)

Exhibit 21

PRISON ADAPTABILITY / FUTURE DANGEROUSNESS EVALUATION

Examinee: Bowman, Marion

Date of Birth / SCDC#: [REDACTED]

Dates of Evaluation: February 3, 2023; and March 17, 2023

Examiner: Susan C. Knight, Ph.D., ABPP

IDENTIFYING DATA: Mr. Marion Bowman, Jr., is a 42-year-old, African American male, incarcerated in SCDC for Murder and Arson, 3rd Degree. His charges originated from Dorchester County, on February 16, 2001, when Mr. Bowman was 20 years old. After a trial by jury in May 2002, he was found guilty and sentenced to death on the Murder charge, and 10 years on the charge of Arson. Thus, Mr. Bowman has been incarcerated in SCDC for twenty-one years. His attorneys, Teresa Norris, Esq., and Lindsey Vann, Esq., requested an evaluation of Mr. Bowman's risk of 'future dangerousness' or adaptability, if transferred from death row to SCDC's general population housing. In response, the examiner assessed pertinent historical factors; psychosocial and disciplinary functioning over his incarceration; mental health/medical status; and risk for future violence within a correctional setting.

SUMMARY OPINION: Based on clinical interviews with Mr. Bowman; interviews with family members and extrafamilial individuals; consultation with evaluating and treating professionals; application of a violence risk assessment measure; utilization of relevant research on institutional violence; and review of legal, academic, psychosocial, medical and correctional records; the following was found as summarized.

Circumstances of the Homicide: The homicide involved the shooting death of an adult female, when Mr. Bowman was 20 years old. Given his age, it occurred within a period of neurobiological immaturity; and was preceded by months of very heavy alcohol consumption; family dysfunction, and lack of any prosocial structure. Factors contributory to the homicide are no longer present (e.g., immaturity, intoxication) and/or are not accessible (e.g., firearm).

Course of Incarceration: Mr. Bowman has had very few disciplinaries, all of minimal severity. He has a remote history of one minor assaultive infraction, at age 17, involving a fight with another inmate. He has kept very strong interpersonal relationships with family and others, and actively assists other inmates. He has heavily involved himself in spiritual and religious activities, through self-study of courses, and by meeting regularly with prison ministry staff.

Mental Health/Medical: Mr. Bowman has no history of mental illness. He is of average intelligence, with no cognitive disorder; and no personality disorder. Medically, he underwent emergent surgery for a laminectomy and microdiscectomy, in September 2019, with persistent numbness, pain and difficulty ambulating. He takes medication for chronic radiculopathy, hypothyroidism, and hyperlipidemia.

Violence Risk Assessment: Mr. Bowman is of mature age; is clinically stable; has no substance use or violence over his incarceration; has excellent coping and interpersonal skills; and is heavily involved in prosocial pursuits. Such factors, in addition to an empirically validated risk measure, and assessment of known correlates to prison violence, indicate Mr. Bowman's risk of violence within a correctional setting is very low, with excellent adaptability to his environment.

SOURCES OF INFORMATION: The following sources of information were reviewed in forming the opinions found in this report:

Psychosocial, Legal and Incarceration Records

- 1) Psychosocial records for Mr. Bowman's family, to include medical, social service, employment, and criminal, various dates;
- 2) Psychosocial records for Mr. Bowman, including birth, medical, academic, social service, youth treatment, legal, pre-trial correctional, marriage and employment, 1980 to 2002;
- 3) Select discovery documents and trial testimony, PCR Affidavits, SCDMH evaluation and test data [2001], neuropsychological raw test data [B. West, PhD., 2002], psychosocial assessment [J. Yungman, 2002], and cognitive testing [S. Asquith, 2002];
- 4) All prior legal/court decisions pertaining to Mr. Bowman's case;
- 5) Mr. Bowman's entire SCDC file from March 1998 to February 2023, to include his central record, warden's jacket, criminal history, legal documents, and medical records;
- 6) Various certificates and letters of accomplishment for Mr. Bowman, during incarceration;
- 7) Handwritten poems and writings from Mr. Bowman, throughout incarceration;
- 8) Fact Chronology of Listed Sources, by K. Fuhrmeister, MA, March 8, 2023;
- 9) Letter of neuropsychological testing results, by J. James, PhD., ABPP, April 12, 2023;
- 10) Report of Adolescent Development, by E. Cauffman, PhD., dated June 4, 2023;
- 11) Psychiatric Report by Donna Maddox, MD, dated June 5, 2023;

Interviews, Memorandum & Consultations

- 12) Clinical Interview with Marion Bowman, three hours, forty minutes, February 3, 2023;
- 13) Interview memo with former SCDC officer Darryl McGhee, March 8, 2023;
- 14) Interview memo with former SCDC Warden Stan Burt, from March 9, 2023;
- 15) Interview memo with former SCDC officer Eddie Berry [deceased], March 14, 2023;
- 16) Clinical Interview with Marion Bowman, four hours, on March 17, 2023;
- 17) Interview memo with former SCDC Major Fred Thompson, from April 14, 2023;
- 18) Interview memo with former SCDC Asst. Warden, V. Jackson, April 15 & 17, 2023;
- 19) Interview [phone] with Mr. Bowman's daughter, Marissa Bowman, April 29, 2023;
- 20) Interview [phone] with Mr. Bowman's mother, Denise Bowman, April 29, 2023;
- 21) Interview [phone] with Larry Tyree, ordained minister, May 3, 2023;
- 22) Interview [phone] with former Associate Warden Ralph Hunter, May 3, 2023;
- 23) Interview [phone] with Ernest Riddle, former death row inmate, May 4, 2023;
- 24) Interview [phone] with Mr. Bowman's father, Marion Bowman, Sr., May 4, 2023;
- 25) Interview [phone] with Bob McAlister, death row minister, May 4, 2023;
- 26) Interview [phone] with Gordon Manning, former death row minister, May 4, 2023;
- 27) Interview [virtual] with Robert Ellis, MD, death row psychiatrist, May 5, 2023;
- 28) Consultation [virtual] with J. James, PhD., evaluating neuropsychologist, May 5, 2023;
- 29) Consultation with D. Maddox, MD, evaluating forensic psychiatrist, May 5, 2023;
- 30) Interview [virtual] David Chudd, RN, SCDC nursing supervisor, May 9, 2023;
- 31) Interview [phone] with Mr. Bowman's maternal cousin, Quanisha Clark, June 3, 2023;

DISCLOSURE OF NON-CONFIDENTIALITY: Prior to the evaluation, Mr. Bowman was provided information regarding the purpose and non-confidential nature of the evaluation. He was informed that any information he provided would not be confidential and may be used to prepare a report for his attorneys, which, at his attorneys' discretion, may be distributed to third parties. He was also informed that treatment would not be provided. Mr. Bowman endorsed an understanding the parameters of the evaluation and provided his consent to proceed.

PERTINENT PSYCHOSOCIAL HISTORY: Mr. Bowman was born and raised in Branchville, South Carolina, with two sisters. His mother married at 15, and his father was physically abusive to his mother. They separated when Mr. Bowman was 1 years old, after which his mother was a single parent, as his father abandoned all parenting responsibilities. The family resided in poverty, subsisting on welfare. At age 8, his mother's boyfriend became involved in his life, as a stepfather figure, until age 17. When his stepfather left his mother, Mr. Bowman lost structure and authoritative guidance, at a crucial age during adolescence. Further, his mother had severe rheumatoid arthritis throughout his childhood, limiting her work and movements. Her illness placed Mr. Bowman in a caretaking role from a very young age, acting as a parent to his mother and siblings. He "cooked, cleaned, put food in the house, cut grass for cash." He discontinued schooling in the 10th grade due to poor performance. At age 19, in 1999, he was married, as it was "important to have a family." He has one child from this union, with his daughter born six months after his arrest. Mr. Bowman was arrested on February 16, 2001.

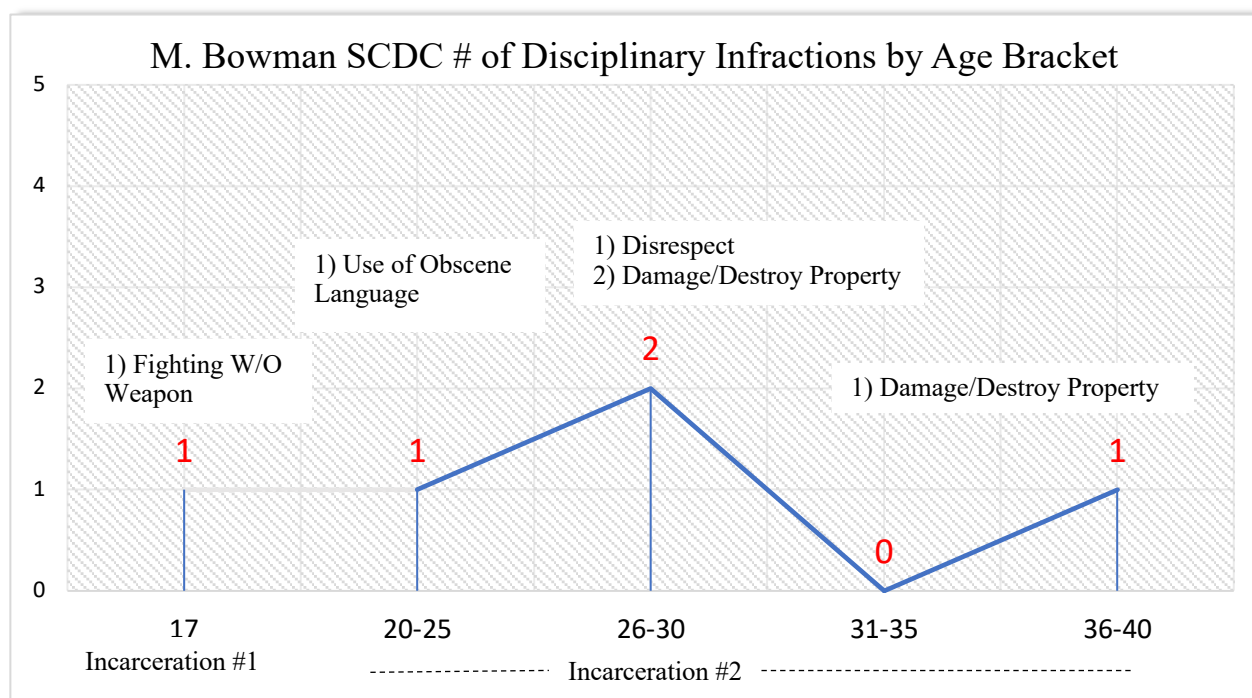
COURSE OF INCARCERATION: At age 21, on May 23, 2002, Mr. Bowman began his sentence in SCDC. He was placed on death row, where he presently remains. He was initially housed at Lieber CI, until February 2007, when he was transferred to administrative segregation [MSU] at Kirkland CI during the course of an investigation. He was cleared, and returned to Lieber CI in June 2007. In September 2017, he transferred to Kirkland when death row was relocated; and in July 2019, was transferred to Broad River CI when death row was again relocated, to its present location.

When Mr. Bowman came to death row in 2002, he "was the youngest person in the building, I was a scared kid, I thought I would be dead in 45 days." He experienced a "litany of emotion" which eventually gave way to "anger." He was "angry, mad, had bouts of self-pity." He would "hit the wall and my hand would swell up, cool off and then hit the wall again." After several years, the "other guys started encouraging me and I stopped punching walls." He realized, "I'm not helpless, I have hope, and God has a hand in it..." He reflects back to his earlier years on death row, stating, "some of the guys really helped me, and the positive they instilled in me, others are now withdrawing [positivity]," as he now helps the newcomers. He stated, "now I'm able to help the next group of guys, be a sounding board, offer encouragement." Around 2008, he "had an epiphany, I need to change, I was sitting in a shower cell at Lieber, and some sort of peace came. I still have ups and downs, but I'm able to get through." He stated, "I'm a better person for what I've been through, I'm glad for all the people who have invested in me and helped me see myself in a positive way."

Of note, from 2008 to 2020, he served on the Inmate Representative Council [IRC] as an "Inmate Rep." In this role, he served as the inmate liaison to the administration, bringing concerns, resolutions and ideas to the administration on behalf of the death row inmates. He "met in person with the warden or administration" and spoke with the other Inmate Reps. He "didn't sign up for it in 2021," and therefore, voluntarily relinquished this role to someone else, stating, "it's time for somebody else." He has also undertaken "six or seven hunger strikes" over his incarceration as a means of "peaceful protest" regarding treatment, conditions or other issues. He reasons that "I'm not harming anyone else by doing it" and it has worked to open a line of communication with the administration, which is the desired goal. He "does not encourage others to join," but "will advocate for my community." Of these protests, he stated, "I adapt to my living situation, because that's what I do, I'm a human, respect for respect."

When asked how he has matured past the 20 year-old who was arrested, he stated, “my thinking process has changed, even when I’m right, I no longer need to be right, it doesn’t matter, don’t need others’ validation, I’ve mellowed.” He has also vowed to “tell people I love them, I try to end my calls that way, with ‘I love you,’ or ‘peace, love and respect.’ I’m more appreciative, and very open to people. I try to take lessons from everything I’ve said or done. I start the day, ‘how can I be a better person today,’ when confronted with issues or questions, or helping others.”

Disciplinary Infractions: Per his February 2023 SCDC ‘Record Summary,’ Mr. Bowman has “no detainees;” “no escape history;” “no criminal charges while in custody;” and “no assaultive disciplinaries.” During his former incarceration, he had one fight; and during the present, he has incurred five ‘non-assaultive disciplinaries,’ with one dropped, as reflected by the chart below.



His disciplinary record reflects minimal infractions. During his YOA SHOCK sentence, at **age 17, in April 1998**, Mr. Bowman was charged with Fighting without a Weapon. Per the incident report, officers observed another inmate “push inmate Bowman” which started the fight. Officers pulled them apart, and “the fight came to an end” with no injuries. During the present evaluation, Mr. Bowman stated this other inmate “slapped me and we got into a fight,” which has been his “only fight” at SCDC. He “doesn’t solve problems by fighting.” *[A corrections expert testified at trial, that “on a scale of 1 to 10, this [fight] barely makes it to a 1”].*¹

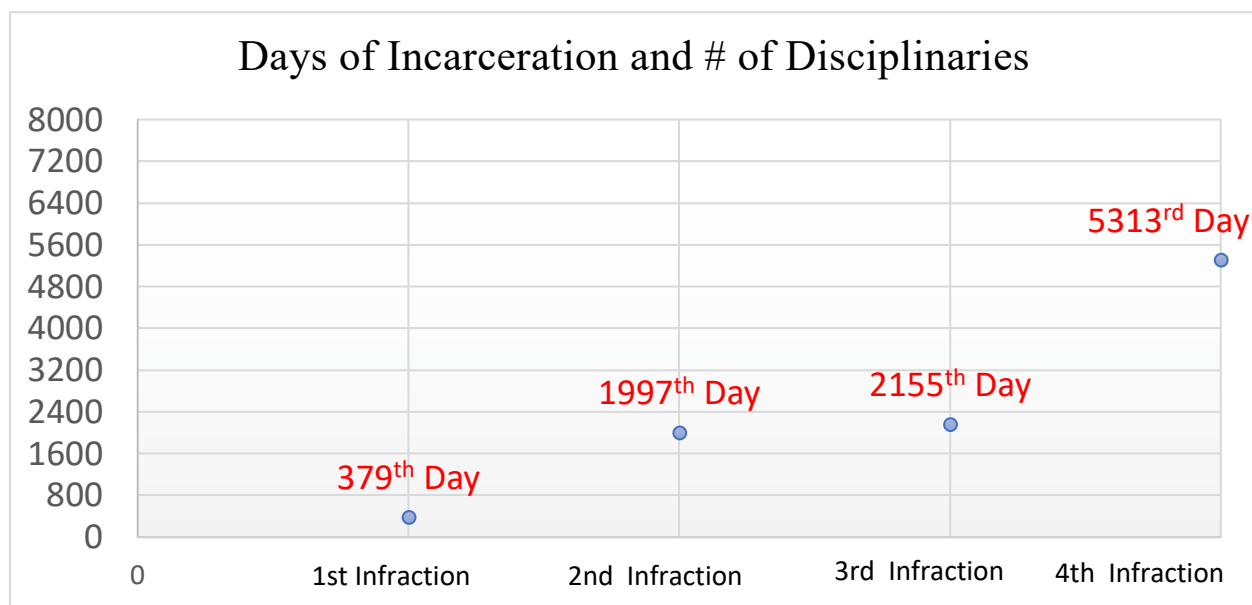
At **age 23, in 2003**, he was found guilty of ‘Use of Obscene Language’ during an interaction with an officer, and given an “oral reprimand.” At **age 27, in 2007**, he incurred an infraction of Disrespect. There is no documentation in SCDC records as to the details, and Mr. Bowman did not recall this incident. Of note, this infraction is not classified as either a Major or Minor infraction, and instead designated as ‘Other,’ which is the least serious classification.

¹ *Bowman v. State*, Testimony of James E. Aiken, Vol. 11, p. 4868.

At **age 27**, in **2008**, Mr. Bowman incurred an infraction of Damage, Loss, Destruction or Defacing Property valued at \$100 or more, classified as ‘Major.’ Per the incident report, Mr. Bowman, along with two other inmates “destroyed their toilets.” The only sanction issued was restitution. *[Mr. Bowman explained that inmates were not receiving rec due to staffing shortages, and they planned a peaceful protest. Instead, officers “stripped us and took all of our belongings” and did not listen to their side. Several months after this incident, Mr. Bowman “asked to be an Inmate Rep” so he would be in a better position to solve problems with staff].*

At **age 36**, in **2016**, Mr. Bowman incurred an infraction of Damage, Loss, Destruction or Defacing Property valued at \$100 or more, which was classified as ‘Major.’ Per the incident report, he “broke his toilet due to an incident where he could not receive his legal mail.” *[Mr. Bowman was awaiting an important legal reply at the time].* The sanction imposed was “window locked for several days” and restitution for the toilet. *[Mr. Bowman stated staff was opening his legal mail, and reading it, which bothered him. This also occurred at a time when he “had just lost at a hearing, or an appeal, I was feeling bad.” He regrets this action, and realizes it did not solve any issues. He paid the restitution promptly].*

In sum, Mr. Bowman has been incarcerated almost 8000 days during his present incarceration, with only four ‘convicted’ infractions. To illustrate the infrequency of these incidents via the chart below, each infraction is tied to the numbered day of his incarceration, with thousands of days in between infractions.



Unfounded Allegations: Of note, SCDC records indicate that in January 2007, officials received an anonymous tip via telephone that Mr. Bowman had devised an escape plan, along with several other death row inmates. The caller stated he/she “overheard a conversation in a bar” regarding the escape plan. The “caller” reported “cellphones were coming in through family members,” presumably of the implicated inmates, to plan the escape. Location of the cellphones was provided, however, no cell phone was ever found in or near Mr. Bowman’s possession. The “caller” also reported that the implicated inmates planned to use “wire cutters,” however, no wire cutters were ever found despite cell searches. Thus, no details of the plan were substantiated.

However, due to the anonymous call, on January 9, 2007, a cell search was conducted of Mr. Bowman's cell, and a "homemade ski mask" was found, with "holes for eyes, nose and mouth." He did not incur a charge for having this item. Due to the ongoing investigation, Mr. Bowman was transferred to Kirkland's MSU, and returned to death row in June 2007, after he was cleared, with no charges or infractions.

During the present evaluation, Mr. Bowman emphatically denied any involvement in an escape plan. He recalled the warden at the time informed him that the "investigation was fruitless." He realized another inmate had fabricated the report, falsely implicating him and several others, and was "upset." However, "at some point, you can't hold onto anger, and I'm not a bully." He did not want to settle the issue with an altercation, and eventually, "we became friends in the end." He acknowledged having the clothing item mistaken for a ski mask because "we went to rec early in the morning and it was cold outside, we had to sit outside in the cold, and another inmate made it for me out of a thermal top, and gave it to me." He received the clothing item "in the winter of 2002," which was his first winter at SCDC. At some point, he "just threw it in my box with my clothes and forgot about it" until it was found via the cell search in 2007.

Collateral Interview [Former Death Row Inmate]: Mr. Ernest Riddle, a former death row inmate, now released, served on death row with Mr. Bowman, from 2002 to 2006. Thus, he was contacted to ask about the "ski mask" found in Mr. Bowman's property during the 2007 investigation. Mr. Riddle recalled Mr. Bowman wearing a "toboggan hat" with "holes in it." He recalled Mr. Bowman wore this in the winter time, and when playing basketball, to keep his dreads from interfering with his vision. *[At that time, Mr. Bowman had long hair or 'dreads.']* Mr. Riddle was asked about the particular inmate Mr. Bowman stated made the hat for him. Mr. Riddle recalled this other inmate, and that he was known for creating clothing items, such as sewing pairs of gloves together for more warmth, and altering "sweatpants." He agreed this other inmate was 'crafty' with materials, and making items for other inmates. He also knew inmates to "sew together two hats for more warmth" given their thinness. When asked if a thermal top would have been available for use to make the hat, as reported by Mr. Bowman, he said "yes, off the canteen." Thus, Mr. Riddle was able to verify Mr. Bowman's report, that another inmate likely made a hat with holes in it; that it would have resembled a ski mask of sorts, in a readily available material; and that Mr. Bowman was known to wear this item for warmth on the row.

- SCDC officers familiar with Mr. Bowman's conduct were also contacted.

Officer Interview: Former Associate Warden Ralph Hunter worked at SCDC from 1995 to 2011, overseeing "max and death row" at Lieber CI. He recalled Mr. Bowman was a "dorm worker" in that he was allowed out of his cell. This was a "privilege," and reserved for inmates who were trusted by staff. AW Hunter also recalled Mr. Bowman was on the Inmate Representative Council [IRC]. Inmates on the IRC "brought needs to the warden and helped disseminate information to the inmates." He explained that GP inmates "would run for the position, but we didn't have any from max or death row at the time." Therefore, AW Hunter "picked a couple of inmates," including Mr. Bowman. In choosing Mr. Bowman, he "looked for someone who is non-confrontational, who could ask questions in a direct, but non-confrontational way. And Marion was very, very appropriate with his questions, getting information to people, pretty articulate and had a good way of presenting himself." In his role with IRC, AW Hunter stated Mr. Bowman was "pretty instrumental in directing the change we were doing."

AW Hunter also taught “character classes” on the row for some time, and Mr. Bowman was “big into it.” He consulted Mr. Bowman as to “what they [other inmates] wanted to work on.” He also recalled Mr. Bowman “would volunteer [for activities] and get out of his room.” Overall, he described Mr. Bowman as a “non-confrontational type, easy going, articulate” and good-natured, who worked well with both inmates and staff alike. He did not recall any type of behavior issues or aggression from Mr. Bowman, “no signs of that.” He did not recall any escape issue associated with Mr. Bowman. He believed Mr. Bowman had “adjusted well” to prison without significant issue. Warden Hunter stated that “at the time I knew him, he would have been appropriate for general population, he wouldn’t have any problems in GP at all, none, he would be a good candidate for GP.”

Officer Interview Memos: Former SCDC Officer Eddie Berry worked at SCDC from 2009 to 2014, spending two of those years on death row. He recalled Mr. Bowman well, stating he was “no trouble,” and did not remember any rule violations or disciplinary infractions associated with Mr. Bowman. He described Mr. Bowman as “very social,” having positive relationships with the other inmates, and with the officers. He recalled Mr. Bowman speaking about the Bible, as well as sports, and that he would “laugh and joke” in a good natured manner during their contacts.

Former SCDC Warden Stan Burt retired from SCDC in 2008. He “remembered that Marion was no trouble” and had no “memory” about an escape attempt. Former SCDC Deputy Warden Vaughn Jackson recalled Mr. Bowman as a “model inmate,” with good behavior. He also recalled Mr. Bowman as an “inmate rep” and a “leader on death row” who did a good job, and who would “probably do fine in general population.” Former SCDC Major Fred Thompson worked at SCDC from 1970 to 2017. He recalled Mr. Bowman “didn’t give him any trouble.” He did not recall any escape attempt from 2007, and did not recall Mr. Bowman associated with any escape attempt. He believes Mr. Bowman would do “fine” in general population. Former SCDC Lt. Darryl McGhee retired in 2018, and recalled Mr. Bowman as “nice and quiet” who was “no trouble,” and “followed the rules and got along with everyone.”

Mental Health: Mr. Bowman has not required mental health treatment while incarcerated in SCDC, and has no history of pre-incarceration mental health treatment. He has not been diagnosed with a mental disorder, has never taken psychiatric medication, and has no history of psychiatric hospitalization. He is not presently under mental health care.

Consultations: Both the chief psychiatrist for death row, and the evaluating forensic psychiatrist, confirmed that Mr. Bowman is clinically stable, not in need of psychiatric medication, and has no diagnosis of mental disorder.

Medical: On September 1, 2019, Mr. Bowman was emergently hospitalized due to severe back pain and difficulty urinating. He required immediate surgery, and underwent a decompressive lumbar laminectomy L4-5, with posterior microdiscectomy, L4-5. A catheter was placed for urinary retention. He was discharged on September 11, 2019, to SCDC’s infirmary, where he remained until September 12, 2019, before returning to death row. He had multiple follow-up appointments with neurosurgery, and urology. At present, he has recovered mobile function, with tolerable pain. He experiences “some back pain... numbness and tingling in my feet, sometimes nerve pain, sciatica, but I’m able to walk some, try to move and stretch.” He also has a “thyroid issue” and is in need of a repeat colonoscopy due to high risk factors.

As of the examiner's last visit in March 2023, he reported taking the following medications: Cymbalta [duloxetine] 30 mg, for chronic neuropathy; atorvastatin, 20 mg, for high cholesterol; and Synthroid [levothyroxine] 175 mcg, for hypothyroidism. Of note, SCDC records indicate at least nine 'outside' transports in recent years without issue, stemming from 2019 to 2022, including to the hospital, neurologist, urologist, and dentist.

Substance Use: Mr. Bowman drank heavily as a teenager, consuming malt liquor and gin daily. He infrequently used marijuana, as his only illicit substance. He reported no use of alcohol or drugs during his incarceration, with his last use of both prior to his arrest in 2001. SCDC records support his report, as there is no documentation of suspected or actual substance use in his records. Thus, his last use of any illicit substance or alcohol was 22 years ago.

Familial/Interpersonal Functioning: Mr. Bowman keeps very close relationships, and frequent contact, with family members and prior attorneys, stating "relationships are very important to me." He is particularly close with his daughter, now age 21, who was born during his current incarceration. He also keeps in close contact with his mother, his cousin Quanisha Clark, Quanisha's mother, Lena 'Cookie' Clark, and his father, along with various other relatives and friends. Additionally, he keeps close interpersonal relationships on the unit. He serves as a "sounding board" and "vault" for others to confide in, and "will get a smile out of you, love to laugh, poke at people and laugh at myself." He makes an extra effort to connect with inmates that are not well-liked by the others. He reported having a "rapport" with the staff, including officers, the psychiatrist, nursing staff, and unit counselor.

Collateral Interview [Daughter]: His daughter, Marissa Bowman, resides in Branchville, South Carolina. She graduated high school in 2020, and presently works full time as a cashier. She is pregnant with her first child, a daughter, due in August 2023. She has visited Mr. Bowman since she was "an arm baby, they told me he used to hold me," when contact visits were still allowed. However, she has "never been able to give him a hug" as rules changed when she was very young. She feels "sad to never touch dad or hug him." She can only "can hear his loud mouth through the glass," which was her affectionate way of teasing Mr. Bowman. Her first vivid memories are of "visiting him a lot in the 3rd grade, and we still go, me and Granny [Mr. Bowman's mother]." When death row was housed at Lieber, she saw him more frequently, but BRCI is farther away, which has reduced the frequency of visits. She "didn't get to see him during COVID," which was difficult. Now that COVID has lifted, she has returned to in person visits, last visiting him at a recent "cook-out, me and Granny went..." She has another visit planned in May.

She described her father as "outgoing, sweet, loving, caring, honest, he will give you his honest opinion." During her childhood, Mr. Bowman, "made sure we had Christmas every year, gave our names to the Angel Tree, he does try..." When asked what she and Mr. Bowman discuss in their daily phone calls, she stated, "school, he's real big on school, big on me getting my education, wants me to go to college, he keeps me on the right path." He "tells me to stay out of trouble, stay away from people who are no good...we talk about a lot of stuff, he makes sure I'm alright with my mom, she has brain cancer, and he tells me not to look at every situation as a negative situation." She has a "great bond with dad, even though he's in prison, we got a bond, he's spiritually here, virtually, I feel real close to him...when I get depressed and upset and he talks to me, he calls to make sure I'm not depressed."

He has also “sent me a Bible, helps me study the Bible, sent me a Bible with his name on it, put little notes in there. He is very spiritual, and he’s an active dad, he’s just not here physically, but he’s active, I really appreciate him and love him very much.” She noted he “loves Psalms, and he will tell me to see the positive, that everything is a brick, step up on it, and learn.”

She noted Mr. Bowman is very excited about her baby, and that he has spoken with the father of her child, “had a virtual visit with him.” Marissa plans to take her baby to see him, and is already planning to put the child’s name on his SCDC visitation list “as soon as I can.” She “wants dad to be part of her life.” She noted “my relationship with my dad is very important, I appreciate him, I worry about him, I will always love him, no matter how the world looks at him.”

Collateral Interview [Mother]: Mr. Bowman’s mother, Denise Bowman, also keeps in frequent contact. She is 60 years old, retired, and lives in Branchville, South Carolina. She is very close to her granddaughter [Marissa], Mr. Bowman’s daughter. His mother stated that when Mr. Bowman was at Lieber, she “would go every weekend if I could...” When the row moved to BRCI, the distance made it more difficult, but she still visits with regularity, last visiting a month ago. She stated “he calls me every morning to check on me, he’s supportive, a backbone.” During their calls, “he prays and tells me I’m not going crazy, he’s always telling me scriptures to read, quotes them from memory...he’s an important part of my life, even though he’s in prison, I miss my baby.” [Ms. Bowman was crying very heavily at this point]. She also noted Mr. Bowman “is always drawing and sending pictures to us, positive pictures, he’s more into it now than before.” She noted Mr. Bowman “wanted Marissa to finish school and be a nurse, before she had a baby, but he’s supportive, and excited, he’s always talking about the baby.”

Collateral Interview [Father]: Mr. Bowman’s father, Marion Bowman, Sr., is 66 years old and resides in Branchville, South Carolina. He speaks with Mr. Bowman at least twice weekly, and also receives cards and drawings from Mr. Bowman. He has visited in the past, but finds the in-person prison visits too emotionally difficult. During their phone calls, they “talk about the old times, the fishing we used to do, and spiritual stuff, he’s very into the church, and he always has some good advice.” His father believes Mr. Bowman has “changed tremendously” since his arrest at age 20, “he can really look at himself now, inside and out, now knows how to walk the right path, very much more mature now, in his conversations, lives by the right way.” He mentioned Mr. Bowman was very excited about his grandchild, and “plans to help all he can.” Of their calls, his father stated, they “open me up, make me emotional, he encourages me.”

Collateral Interview [Cousin]: Mr. Bowman’s maternal cousin, Quanisha Clark, is 26 years old, and resides in Florence, South Carolina. She has had a relationship with Mr. Bowman for the past four years. They speak multiple times per day, and she visits at least twice monthly. As a person, she described him as “very caring, gentle, attentive to everything and everybody, observant and supportive.” He is her “best friend, we depend on each other to get through the day.” Ms. Clark struggles with “anxiety around people” and Mr. Bowman “definitely helps me manage my anxiety to stay calm, to breathe, he’s reassuring, and positive.” Mr. Bowman also “pushes me to be my best” in terms of her life goals, and career. Ms. Clark described Mr. Bowman’s “faith” as having grown “stronger” over the years. He “believes in God very, very strongly and we talk about that, read scriptures with each other, pray.” Overall, she described their relationship as “very special, and unique, because we never met before he was locked up.” If he was not in her life, “I would feel empty, he’s my best friend, part of my daily routine.” She also noted he is “very active” in his daughter’s life, and is excited for his granddaughter’s birth.

Spiritual: In June 2005, SCDC records note Mr. Bowman submitted a form changing his religious preference to Rastafarian. In explanation, he stated, “I believe in Jesus Christ, our Lord and Savior...I wake up and give thanks to God to see another day.” He does not eat pork, or cut his hair unless per policy. He “wants to be in image of my Savior.” He “reads Psalms” in particular, and “uses prayer to lean on, to think to myself, ‘it’s just a moment, it will pass, it helps me cope on a day to day basis, I use my faith on a day to day basis.” He recited Psalm 30 as one of his ‘go-to’ verses. He reported long-term involvement in Christian activities on death row, through East Cooper Baptist Church, “they gave me a study Bible, with my name on it, and I sent it to my daughter.” He has completed “course after course” through various religious organizations. He has “done Kairos, participated in everyone I was allowed to, I like to sit and talk, have fellowship, Bible study, services.”

Collateral Interviews [Ministers]: Several death row ministers who have worked with Mr. Bowman over the years, and currently, were interviewed.

Minister Gordon Manning regularly visited death row as part of his volunteer work with East Cooper Baptist Church. He saw Mr. Bowman for about three years, at Lieber CI, anywhere from 2011 to 2016. He “would go from cell to cell” and speak with individuals, “I befriended a handful, Marion was one of those, I enjoyed talking to him, he was a delight of a person.” He thought Mr. Bowman was “so proud of his accomplishments” with regard to the Bible study course they offered, and worked very hard in completing the courses. He also described Mr. Bowman as eager, enthusiastic to learn, and was a “spiritual guy.” He was “inspired by Marion, he had a good spirit, was friendly and was a very content person, I enjoyed my visits with him.”

Minister Larry Tyree has been meeting with Mr. Bowman “for twenty years” in the course of his role as a volunteer chaplain on death row. He described Mr. Bowman as “affable, easy to talk to, we’ve become good friends.” Early in Mr. Bowman’s incarceration, Mr. Tyree established a book program on death row, “to make sure they were reading something of substance.” He stated Mr. Bowman was very responsive to this program. Mr. Tyree saw “a radical change” in him, “Marion was reading a lot, he was enjoying what he was reading.” Mr. Bowman appeared committed to learning new things, educating himself, and expanding his knowledge and viewpoint through the book program. Mr. Tyree also leads regular Bible study on death row “every other week.” He described Mr. Bowman as committed and participatory, “asking lots of questions.” Mr. Bowman “likes to be challenged,” enjoys learning and “nothing is left unspoken.”

Mr. Tyree also observed that Mr. Bowman is “completely adjusted to prison” in that he “is a shadow of the man he was before prison.” He “is good, and decent, gets along with everyone very well, and is focused.” Mr. Bowman tends to “be a leader,” but “also a follower as he doesn’t hesitate to ask questions.” He also “tries to see the positive and is very optimistic.” Mr. Tyree gave the example of Mr. Bowman finding inspirational or spiritual quotes on the wall of every cell he has been in, as a means of “seeing the positive.” He also mentioned that he and Mr. Bowman “hug” each other, with no fear of physical contact, as he might have with some of the other inmates. Mr. Tyree has never seen any sort of aggression or agitation from Mr. Bowman and stated that Mr. Bowman would be the one to intervene if other inmates were fighting.

Minister Bob McAlister has had a death row ministry “on and off for the past 35 years.” He has been working with Mr. Bowman since 2018 or 2019, after resuming his ministry. He is on death row “every other week” conducting Bible study, and religious discussions, as well as a “Christian worship service.” He stated Mr. Bowman is “always there, every time, he’s very quiet, and respectful, he doesn’t complain about his plight, he’s very polite.” He believes Mr. Bowman is “dedicated to Christ, a born again Christian” who is “absolutely!” sincere and genuine in his beliefs. Given his many years of working in corrections, Mr. McAlister was asked if he saw any concerns with Mr. Bowman, should he be transferred to general population. He stated, “no risk at all, none whatsoever, and I would go so far as to say that if he had the right infrastructure on the street, he would not be a risk to society, but certainly no risk in GP.” He sees characteristics in Mr. Bowman that would lend himself to “be successful” in a GP setting, such as Mr. Bowman’s humbleness, politeness, quiet nature, and pleasant demeanor.

Collateral Records [Spiritual Certificates]: Mr. Bowman has received several certificates from Prison Fellowship Ministries, to include the following. In the Fall of 2005, he was recognized for participation in a seminar, “Faith Lesson from the Promise Land;” in the Fall of 2006, he was recognized for participation in a seminar, “When I Don’t Desire God / How to Fight for Joy;” in August 2008, he received a certificate for participation in the ‘The Perfect Stranger,’ seminar; and in November 2008, received a certificate for his participation in the ‘Flywheel’ program.

In July 2014, he received a Certificate of Acknowledgment for participation in another religious endeavor. He has also received multiple certificates of completion from ‘The Mailbox Club’ for completing religious study guides and courses, including: “A Country and Heaven” [October 2014]; “My New Life in Christ 1, 2 and 3” [April 2015, June 2015, and November 2015]; “Practical Christian Living” [February 2016]; “God’s Great Salvation” [June 2016]; and “Light from the Old Testament” [September 2016]. In February 2015, he earned “recognition as an honored graduate” for completion of “Basic Bible Study Series” through Central Church. In July 2016, he received “recognition as an honored graduate” for completion of “Word Bible Study Series” through Central Church. In June 2019, Mr. Bowman received a certificate of completion, recognizing him as a “honored graduate for the Central Church Word Bible Study, New Testament.” The certificate “also marks successful completion of all available courses of study in the Central Church Correspondence Bible Study Program.” An accompanying letter indicates that he has completed “10 study guides, in the Basic Bible Study Services,” and “32 study guides in the Word Bible Study Series.”

Coping: In addition to his religious and spiritual endeavors, Mr. Bowman “copes by helping people, by doing something good, by writing out prayers for others” citing several examples. He gave an example of assisting a mentally ill inmate “to get him out of his head because he hears voices, I joke with him and talk to him.” He also “helps a 79 year old inmate, his eyes are bad so I read his letters and cards to him, help him call his sister, speak to medical staff for him, help him with his independence.” Mr. Bowman is also trying to assist a new inmate, “trying to help, help him come out of his shell, and help him build rapport with the community” as he can see this inmate is struggling with the new environment.

Mr. Bowman also copes through his writings. He “writes to cope, when I experience something in the moment, may be just a sentence or several lines, I get what I’m feeling out...it’s my way of venting, sometimes I tear them up, or keep them.” He also uses drawing to cope, sharing some of his drawings with the examiner.

Collateral Data [Writings]: Mr. Bowman's notebook of writings was reviewed. His writings are spiritual in nature. He often cites scripture or references God, and details his gratitude, praise and relationship with God. Writings also center on his significant relationships, serving as a conduit to express his emotions, which include love, longing, admiration, and anguish. Many writings express the importance of his relationships, including, *"tomorrow holds no promises, but today I take comfort in your friendship."* Others reference his situation and how he copes by focusing on the present, writing: *"tomorrow isn't here, yet we fret over the unknown, let the joys of today stand alone."* He writes about using words and language to solve issues, *"we create so much around us with the words we speak, so with your words create the world in which you seek...let's employ words that build up, unify and not destroy."*

Frustration, sadness and anger are also channeled through his writings, captured succinctly in a verse: *"what prison does to the heart is very slowly pull it apart..."* To cope with such anguish, he cites his religious beliefs as a salve and salvation, writing, *"the storms do not have to overcome us, we can allow God's power to lift us above them..."* In a similar vein, he wrote in another poem, *"the light that I seek protects me spiritually, a love that guides me unconditionally, the waves of bad thought tosses me to and fro, but through the light of faith and love I'm not alone anymore."*

PRESENT EVALUATION: For each interview, Mr. Bowman presented as neatly dressed in prison-issued attire, and with good attention to grooming and hygiene. He was polite, respectful, and cooperative. His mood was pleasant, with an agreeable and good-natured demeanor; and appropriate, and stable affect. His speech was of normal volume, rate and prosody. There were no abnormalities observed in his psychomotor functioning. His thought process was linear and organized, with no bizarre content. When responding to inquiries, he was thoughtful, and detailed, with a sincere and genuine demeanor. Judgment and insight appeared intact. There were no overt indicators of major mental disorder, cognitive deficits or personality disorder.

Present Clinical Functioning: Mr. Bowman reported no symptoms consistent with a mental disorder, including major mood instability related to depression, mania, hypomania, or anger dyscontrol; psychotic symptomatology; self-injurious conduct, suicide attempts, or suicidal or homicidal ideation; traumatic stress; chronic elevated anxiety, panic attacks, intrusive worry or phobias; or obsessive-compulsive symptoms. With regard to current functioning, he reported no dysregulation in mood, affect, appetite, sleep, energy level, concentration, memory or cognition. His mood was somewhat discouraged due to a recent court loss, however, he "believes in the power of words, if I speak negative, I get negative, if I speak encouragement, positives will happen." He reported keeping a regular and structured daily routine, which includes strict medication compliance, calls to family, TV programming, prayer and Bible study, socializing with other inmates, and exercise. He comes out of his cell anywhere from 6:00 a.m. to 9:00 a.m., staying out until 5:00 PM, during which time he is around other inmates, officers and staff. He is heavily involved in Bible study with volunteer chaplains. He "reads the prayer or scripture of the day on the tablet" and reads inspirational spiritual material. He also writes poems regularly, and draws pictures to send to his family.

- His clinical functioning was further assessed via interviews with the death row psychiatrist, former nursing supervisor of death row, and review of his SCDC records.

Collateral Interview [Death Row Psychiatrist]: Dr. Robert Ellis, chief psychiatrist for death row, has known Mr. Bowman for the past five years. He confirmed he is not treating Mr. Bowman for a mental disorder, and does not prescribe him medication for psychiatric reasons. However, he speaks with him frequently, and is familiar with his functioning. He stated Mr. Bowman was previously the “head member of the IRC, he brought issues to the forefront” via communication with the prison administration, including the associate wardens. He described Mr. Bowman’s work on the IRC as “excellent, proactive, he’s a born leader, looks out for people, looks out for his fellow inmates, he’s well respected from the staff’s perspective, and he wants the community to get along.” Several years ago, Mr. Bowman stepped down from the IRC, with Dr. Ellis noting, “it was his choice, he wanted to give someone else a turn, he wants to support and cultivate advocacy from his fellow inmates to take a role.”

Dr. Ellis has “never felt threatened” by Mr. Bowman, stating, “I’ve never seen him angry, he’s nothing but personable. I feel very comfortable sitting down with him. I’ve never wanted a CO present.” He “would have no concerns if he went to the yard, no threat, if anything, he would be an asset to others” referencing the GP inmates. He stated Mr. Bowman has a “calming presence” and has “been invaluable in helping me with people who are non-compliant.” Mr. Bowman will quietly speak with the mentally ill inmates who are not taking their medication, and is able to assist them with compliance. Dr. Ellis noted “he is sensitive to their perspective.” Dr. Ellis described Mr. Bowman as possibly the “most respected” inmate on death row. He “is calming, speaks in a low tone, clear-headed, he’s persuasive in a very mature way, can be very cool when talking about troubling things.” He “has interpersonal skills and leadership ability, no psychopathic traits, he thinks thing through...he’s a very different man than the boy who came in many years ago.” Dr. Ellis believes if there was ever a situation on death row, “I feel like Mr. Bowman would protect me, he would not want a bad situation to happen, in his home.”

Of note, prior to the consult, Dr. Ellis checked with the unit staff, including the Associate Warden, to ensure he was representing a consensus with his opinions. He stated “no one was apprehensive” and that he spoke for all who worked with Mr. Bowman.

Collateral Interview [Former Death Row Nurse]: Mr. David Chudd, RN, was a nursing supervisor on SCDC’s death row for years, and remains at SCDC in a different capacity. He treated and interacted with Mr. Bowman for approximately five and one half years, from 2017 to July 2022, when death row transitioned to Kirkland CI and then again to Broad River CI. For some time, Mr. Chudd was “the only medical staff member on death row,” and thus, was very familiar with Mr. Bowman. He “always had pleasant interactions” with Mr. Bowman, and held a “positive opinion” about him. He believed Mr. Bowman “always tried to be helpful, and he had a calming influence on the unit, with the other guys.” Mr. Chudd observed Mr. Bowman to “always have a positive attitude and willing to put the work in” to solve a problem. He also referenced Mr. Bowman’s work on the IRC, in that “a lot of the other inmates would bring him concerns, he was very eloquent, and he kept the peace with the other inmates.”

For help with his own issues, Mr. Bowman actively reached out to Mr. Chudd, “he was willing to speak with me” and used Mr. Chudd as an available coping resource. Mr. Chudd also directly observed Mr. Bowman’s ability “work through things, and deal with things” in an effective manner. He “has seen Mr. Bowman face physical and psychological challenges, and put in the work” to improve. He cited Mr. Bowman’s serious back condition, after which he “didn’t give up, was positive, put in a lot of work to rehab himself.”

Overall, he “enjoyed dealing with Mr. Bowman, we had interesting conversation, he has a perspective I don’t have. He was helpful in keeping the peace on the unit, he has a strong penchant for stepping up and keeping everyone stable, and taking on a peacemaking role...he was well received by the other inmates.” He “never felt uncomfortable or threatened in any way” by Mr. Bowman and was “more at ease” when meeting with Mr. Bowman, than some of the other inmates. He believes Mr. Bowman would be able to “thrive and survive” in GP as long as he is stepped down appropriately, from the environment on death row (close custody) to the more open environment of GP.

Collateral Data [SCDC Records]: Due to his placement in death row housing, Mr. Bowman meets regularly with the unit counselor as a matter of protocol. Notes from these visits provide insight into his functioning. During the contacts, Mr. Bowman shares concerns about his family’s wellbeing and the unit dynamics, discusses his interests and daily activities, and conversates easily with the counselor. The following notations by the counselor, from 2019 to 2022, are representative of Mr. Bowman’s overall demeanor and functioning.

Notes include multiple references to Mr. Bowman’s interpersonal functioning, with the repeated documentation of “inmate relates well with staff and inmates.” Additional notations include: “inmate discussed the importance of everybody getting along with each other...or maintaining some distance from difficult people;” “wants to communicate better...and not say the wrong thing;” “noted people can disagree about events in the news without being disagreeable;” “often observed playing cards and socializing with other inmates;” “was respectful toward other group members;” “he said the inmates look out for each other, encourage each other and discourage disruptive behavior;” “other inmates have been very helpful and supportive toward him;” and he “socializes with other inmates throughout the day...often talks to neighboring inmates.”

Notes include references to Mr. Bowman’s demeanor and character, to include: repeatedly described as “calm” and “rational;” “positive and optimistic;” “he was very appreciative of my [counselor] efforts;” “thanked me several times for meeting with him;” “discussed an inmate he was concerned about;” “tries to set a positive example for other inmates;” “does take somewhat of a leadership role and sometimes counsels more impulsive inmates to think before they act;” “was very enthusiastic and positive that he was going to make some good changes;” “he discussed all the positive lessons he has learned over the years;” and “seems to examine situations with an open mind and sees various perspectives on the same news story.” Specific to his work on the IRC, it was noted, “he advocated for two inmates on the restricted cell block to come to the unrestricted cell block...[he believed] it is the holiday season and it would great if one or both of them could have privileges restored before Christmas;” and Mr. Bowman “advocated for another inmate who is on the restricted side to stay on the restricted side.”

Notes also reflect his concern and attachment to his family, illustrated by the following: “He said he is very proud of his daughter;” “Inmate always asks about my family and my well-being. He seems to be genuinely concerned. I allowed inmate to call his father to check on him. He seemed very respectful and caring toward his father;” “Inmate has been wanting to get some sketches of rabbits so he could give his nieces and nephews Easter-themed pictures;” “wanting to color pictures to send to his nieces, nephews and children of friends;” and “was wearing a necklace with some tags...said the tags were for inspiration and had inspirational notes on them, one tag had his daughter’s name on it.”

Present Neurocognitive Functioning: Mr. Bowman's present neurocognitive functioning was assessed via updated testing, and compared to prior testing results. During his pretrial SCDMH assessment, in 2001, IQ testing indicated a Full Scale IQ of 81; a Verbal IQ of 86; and Performance IQ of 80, with all scores falling into the 'Low Average' range of intellectual functioning. A neuropsychological screen was "adequate" in all domains. A head CT scan was without acute intracranial process, and an EEG study was normal. Defense neuropsychological testing in 2002 was without obvious deficit, with mostly average results across tests.

Updated Testing: In April 2022, updated testing was conducted by neuropsychologist, Dr. Joette James. On the Wechsler Adult Intelligence Scale, 4th Edition [WAIS-IV], Mr. Bowman obtained a Full Scale IQ of 84 [Low Average]; with a Verbal Comprehension Index of 95 [Average]; Working Memory Index of 92 [Average]; and Processing Speed Index of 92 [Average]. His Perceptual Reasoning Index [PRI] of 73, was notably lower, falling in the 'Borderline' range. In consultation with Dr. James, she described his overall intellectual functioning as essentially "average," with a notable weakness in visual spatial skills, as noted by the PRI. She described his language skills [verbal reasoning, verbal concept formation, vocabulary, and verbal abstractions] as "great."

Dr. James further noted that Mr. Bowman had improved his academic skills over time, in comparison to his testing from twenty-one years ago. While 2002 testing indicated 'Low Average' reading and spelling skills, 2022 testing with the WRAT-5, indicated his sight reading, reading comprehension, spelling, and math skills, all fell within the 'Average' range. This improvement is likely due to Mr. Bowman's heavy involvement in reading and writing over the years, both through his biblical studies, and through his own writings.

DIAGNOSTIC FORMULATION: The following diagnoses are rendered on the bases of the above data and per the *Diagnostic and Statistical Manual for Mental Disorders, 5th Edition, Text Revision [DSM-5-TR]*.

- **Diagnosis:** No Diagnosis of Mental Disorder
- **Medical Conditions:** Hypothyroidism
Chronic radiculopathy
Morbid obesity
Status post laminectomy and microdiscectomy [2019]

Mr. Bowman does not meet criteria for a mental illness, cognitive disorder or personality disorder. Medical conditions are under sufficient treatment, with his musculoskeletal and obesity issues somewhat limiting mobility.

VIOLENCE RISK ASSESSMENT: To formally evaluate future violence risk, circumstances of the homicide were reviewed; factors correlative with institutional violence were assessed as applicable to Mr. Bowman; and a violence risk assessment measure was utilized.

Homicide Offense: The homicide involved the shooting death of an adult female victim, and occurred when Mr. Bowman was 20 years old.² The offense occurred within a period of heavy alcohol use; lack of prosocial structure; familial dysfunction; and easy access to firearms and drugs [crack cocaine], the latter of which was peripherally related. In consideration of his violence risk within a correctional setting, such contributory dynamics no longer exist, and/or are no longer viable. He has aged past the youthfulness, and related neurobiological immaturity associated with his age of 20, and is now a mature individual at the age of 42. He has not engaged in alcohol use, nor accessed crack cocaine, in his 21 years of incarceration. He has no access to firearms, given his environment, nor unsecured access to adult females.

In part, given that such contributory factors are not found within a correctional environment, research finds that community violence (e.g., the homicide offense) is not predictive of institutional violence. Additionally, any violence is a function of the individual, within the context of one's environment, and the restrictive setting of prison, is vastly different than society. Thus, a history of community violence is not a strong or reliable predictor of prison violence.³ Relatedly, homicide offenders, such as Mr. Bowman, are no more violent than other types of offenders in a correctional environment.⁴ Further, "a conviction for a capital murder has not been associated with disproportionate likelihood of assaultive prison misconduct as compared to other inmates in high-security classifications."⁵ Finally, former death row inmates now serving life, as would be the status of Mr. Bowman should he be transferred to GP, have disproportionately lower rates of misconduct, including violence, than other types of inmates.^{6,7}

Known Correlates of Prison Violence: Although base rates of serious prison violence are low, compared to society, research has identified associated correlates when it does occur.⁸ The most predictive correlate is young age, found to be "the strongest and most consistent finding," with the majority of prison violence committed by youthful inmates.⁹

² Mr. Bowman maintains his innocence for the capital offense; however, given his convictions, the risk assessment was conducted as if he were culpable of the crime.

³ Thomas Reidy et al., *Community Violence to Prison Assault: A Test of the Behavioral Continuity Hypothesis*, 36 LAW HUM. BEHAV. 356 (2012).

⁴ Jon Sorenson et al., *Conviction Offense and Prison Violence, A Comparative Study of Murderers and Other Offenders*, 56 CRIME AND DELINQUENCY 103 (2010).

⁵ M. Cunningham et al., *Correlates and Actuarial Models of Assaultive Prison Misconduct Among Violence-Predicted Capital Offenders*, 38 CRIM. JUSTICE BEHA. 5, 8 (2011).

⁶ John Edens et al., *Predictions of Future Dangerousness in Capital Murder Trials: It is time to 'Disinvent the Wheel,'* 29 LAW HUM. BEHAV. 55 (2005).

⁷ M. Cunningham et al., *Life and Death in the Lone Star State: Three Decades of Violence Predictions by Capital Juries*, 29 BEHAV. SCI. LAW 1 (2011).

⁸ M. Cunningham & T. Reidy, *Integrating base rate data in violence risk assessment at capital sentencing*, 16 BEHAV. SCI. LAW 71 (1998).

⁹ M. Cunningham & J. Sorenson, *Predictive Factors for Violent Misconduct in Close Custody*, 87 PRISON JOURNAL, 241, 241 (2007).

Inmates who are only a few years into their sentence, and serving a shorter sentence, also commit higher rates of prison violence.¹⁰ Having served a prior prison term is also somewhat predictive of higher rates of violence, although the literature is mixed on this factor.¹¹ Membership in a prison gang is a potent risk factor for misconduct, and violence.¹² Finally, prior prison violence, is associated with higher rates of future prison violence.¹³

Applicability to Examinee: The majority of these factors do not apply to Mr. Bowman. He is not of young age; is not a few years into his sentence, nor serving a shorter sentence; and is not a member of a prison gang. He has served a prior term, albeit for less than a year; and has one incident of prior ‘prison violence,’ but this involved a minor fight at age 17, and he was not the instigator of this violence. Thus, Mr. Bowman does not flag for, or very weakly flags for, known correlates of prison violence.

Risk Assessment Measure: The **HCR-20^{V3}** is a formal interview and assessment tool designed to assess an individual’s risk of future violence. The HCR-20^{V3} is comprised of twenty items in three domains, *Historical*, *Clinical* and *Risk Management*. Thus, the measure captures past, present, and future risk variables. Items are assessed for the *presence* of the risk factor, and the *relevancy* (*low, moderate or high*) of the item to address future violence for the individual.

HCR-20^{V3} variables have been demonstrated via research to correlate with an individual’s risk of violence. This tool has been subject to rigorous empirical validation, and is used routinely in risk assessments for psychiatric institutions, consideration of bond and/or probationary sentences, and parole evaluations for those serving life sentences.¹⁴ The HCR-20 has also been established to have “high predictability” of violence in correctional settings.¹⁵ The updated version, the HCR-20^{V3}, has also been found to have “large” and good predictive validity in correctional samples,^{16 17} with “moderate to good predictive validity for physically violent misconduct” in prison settings.¹⁸ Of note, research has found that the HCR-20^{V3}’s Clinical and Risk Management items are more predictive, than the Historical items.¹⁹ Risk management items in particular, were associated with good predictive validity of institutional violence.

¹⁰ *Id.*

¹¹ Robert G. Morris et al., *Institutional Misconduct and Differential Parole Eligibility Among Capital Inmates*, 37 CRIM. JUSTICE BEHA. 417 (2010).

¹² R. A. Berk et al., *Forecasting dangerous inmate misconduct: An application of ensemble statistical procedures*, 22 J. QUAL. CRIM. 131 (2006).

¹³ Cunningham *supra* note 8.

¹⁴ Laura S. Guy et al., *Influence of the HCR-20, LS/CMI, and PCL-R on Decisions About Parole Suitability Among Lifers*, 39 LAW HUMAN BEHAV. 232 (2015).

¹⁵ Henrik Belfrage, et al., *Prediction of violence using the HCR-20: A prospective study in two maximum-security correctional institutions*, 11 J. FORENSIC PSYCHIATRY 167, 2000.

¹⁶ Mats Presson, et al. *Violence During Imprisonment, Forensic Psychiatric Care and Probation: Correlations and Predictive Validity of the Risk Assessment Instruments COVR, LSI-R, HCR-20^{V3}, and SAPROF*, 16 INT. J. FORENSIC MENT. HEALTH 117 (2017).

¹⁷ Alicia Nijdam-Jones et al. *Predictive Validity of the HCR-20^{V3} with Incarcerated Males in Mexico City*, 48 CRIM. JUSTICE BEHA. 1450 (2021).

¹⁸ Milena Abbiati, et al., *Predicting physically violent misconduct in prison: A comparison of four risk assessment instruments*, 37 BEHAV. SCI. LAW 61, 72 (2019).

¹⁹ Belfrage *supra* note 14.

This finding supports the consensus that ‘static’ risk variables are less predictive in correctional environments, than ‘dynamic’ variables, or variables subject to change with intervention.

- Information on the HCR-20^{v3} variables was obtained through in-depth clinical interviews with Mr. Bowman, collateral interviews, and review of collateral sources.

HISTORICAL variables are considered over an individual’s lifetime and include history of: 1) *violence*; 2) *antisocial behaviors*; 3) *substance use*; 4) *traumatic experiences*; 5) *instability of employment*; 6) *instability of relationships*; 7) *violent attitudes*; 8) *major mental illness*; 9) *personality disorders*; and 10) *problems with treatment response*.

Item 1 – History of violence. With regard to any ‘history of violence,’ Mr. Bowman’s homicide offense, at age 20, is his most significant act of violence. Prior to this offense, Mr. Bowman was only involved in minor school fights, with no injuries, and he has no convictions for any other violent acts. With regard to any prison violence, Mr. Bowman was involved in one minor fight, at age 17, in 1998, with another inmate. The incident report is clear that the other inmate hit Mr. Bowman first. No weapons were used, no injuries resulted, and no medical attention was needed.

Therefore, primarily due to the homicide, this factor is considered historically present. However, it is low relevance, given the remoteness of the act, that it was an act of community violence and thus not predictive of institutional violence, and that he has had no violence of any kind in over 22 years. Further, his youth at the time of the offense contributed to this violence, given that youth are inherently more impulsive and reckless, without forethought or consideration of consequence. Such youthful traits reflect the immaturity of adolescent brain development, and is why violence spikes in late adolescence, and declines thereafter.²⁰ His mature age is therefore a strong argument against the possibility of future violence.

Item 2 – History of antisocial behaviors. Considering a pattern of ‘antisocial behaviors’ (criminal activity other than violence), Mr. Bowman had no childhood or adolescent history of fire-setting, animal cruelty, vandalism, gang activity, or assaultive conduct. He had several school altercations which resulted in suspension and juvenile charges (e.g., Simple Assault, Disturbing Schools). However, all charges were dismissed, and he had no juvenile adjudications.

Per his adult ‘rap sheet,’ Mr. Bowman has convictions of Burglary 3rd Degree, and Petit Larceny, Two Counts, at age 17, for which he served a YOA SHOCK sentence in 1998. He had a subsequent conviction for Driving Under Suspension, in 1999. In the year prior to his arrest, Mr. Bowman was implicated, but not convicted, in several property crimes, including burglary, grand larceny, receiving stolen goods, and a weapons law violation. While none of these alleged incidents involved violence of any kind, they represented a pattern of antisocial conduct, prior to prison. In prison, his SCDC disciplinary record indicates only 4 [non-violent] infractions over his present incarceration (ages 21 to 42). Two of these infractions would not be considered illegal or antisocial if he were in society (e.g., disrespect, and use of obscene language). Two others may be considered antisocial as they involved property destruction. However, two such infractions do not constitute a “pattern.” Therefore, this factor is historically present, based on implicated activities prior to prison, but of low relevance, as he has not demonstrated such pattern in prison.

²⁰ See E. Cauffman, *Report of Adolescent Development*, June 4, 2023.

Item 3 – History of substance abuse. Mr. Bowman consumed alcohol as a teenager, with daily and heavy drinking in the years to months prior to his arrest. He also reported very infrequent use of marijuana as a youth, with no other substance use. He reported his last alcohol and/or substance use prior to his arrest, in February 2001, with no substance use in prison. Thus, he has not used illicit substances, or alcohol, in 22 years, despite widespread prevalence in SCDC. Therefore, this factor is considered historically present but due to the remote nature, and no use in prison, this factor is of low relevance to risk management strategies.

Item 4 – Traumatic experiences. As defined by the HCR-20^{V3}, Mr. Bowman did not experience significant developmental trauma, such as childhood physical or sexual abuse, extreme neglect, or pervasive violence exposure. He has not experienced such trauma during his incarceration (e.g. sexual assault, physical assault, riot exposure); and he has no history of a traumatic stress disorder (e.g., PTSD). Thus, this factor is not present.

Item 5 – Instability of employment. Prior to his incarceration, Mr. Bowman had multiple, short-term jobs, of varying duration, of which he either quit, or was fired. Thus, this factor was present in his late adolescence. On SCDC's death row, there are no employment options, thus, there is no opportunity to demonstrate or disprove this factor. Therefore, this factor is historically present, but of low relevance in risk management strategies.

Item 6 – Instability of relationships. Mr. Bowman was married age 19, and remains married. Over the years, he has also maintained close, positive and healthy connections to his family members, and significant others. Thus, he does not exhibit 'instability of relationships,' and this factor is not present.

Items 7 to 10 – History violent attitudes, mental illness, personality disorder or problems with treatment response. Mr. Bowman did not flag for any additional historical factors, as there is no evidence of 'violent attitudes;' and he has no history of 'mental illness;' 'personality disorder;' or 'problems with treatment response.' Thus, these factors are not present.

▪ **CLINICAL** risk factors are considered over the past six months and include recent problems with: 11) *degree of insight*; 12) *violent ideation or intent*; 13) *symptoms of major mental disorder*; 14) *instability of functioning*; and 15) *treatment or supervision response*.

Item 11 – Degree of insight. Mr. Bowman is very insightful regarding his circumstance, surroundings and functioning, which is illustrated by his communications and his writings. He has also involved himself in spiritual programming, which has increased insight into his choices, situation and judgment. Therefore, he has no problems with 'degree of insight,' and this factor is not present.

Items 12 to 15 – Symptoms of major mental disorder; violent ideation or intent; instability of functioning; treatment or supervision response. There is no indication over the past six months, or during his entire 22 years of incarceration, that Mr. Bowman has held any violent ideation or intent; had any symptoms of mental disorder; or exhibited instability of functioning; and he has no evidence of poor treatment or supervision response. Thus, these factors are not present.

- **RISK MANAGEMENT** factors represent an assessment of future variables over the next six months and include future issues or problems with: 16) *professional services and plans*; 17) *treatment or supervision response*; 18) *level of personal support*; 19) *living situation*; and 20) *level of stress and coping*.

Items 16 to 19 - Professional services and plans; living situation; level of personal support; and treatment or supervision response. Regarding future variables, it is not anticipated that Mr. Bowman will need any new, or different professional services for mental health, medical or other issues. If so, no problems would be anticipated with his response to such treatment given his full compliance with medical treatment, and unit counseling, thus far. Relatedly, no difficulties would be anticipated with his response to supervision (e.g., correctional supervision), based on an exceptionally consistent and compliant prison record. He has very strong personal support, from his family, present and former attorneys, and ministers, which would continue into the future. Further, if transferred to general population over the next six months, his proposed ‘living situation’ would likely be an SCDC ‘Step Down’ unit as per policy, which would be stable, and intended to reduce risk when transitioning to GP.²¹ Thus, none of these factors are present.

Item 20 – Stress and coping. If transferred from death row to general population, Mr. Bowman would be housed in a different environment. The unit would be comprised of a greater number of inmates; have inmates that rotate through, versus familiarity with the same group; and he would almost certainly have a roommate. Activity level of the unit would be greater, including activity from other inmates involving disciplinaries; and he would likely have more freedom of movement. Thus, adjustment to this environment is a consideration, within the context of his stress level and coping skills.

First, SCDC has the option of a formal ‘Step Down’ procedure and unit(s) for inmates who transfer from closed custody housing, to general population.²² This procedure has been utilized in the past for transfer of death row inmates, to general population. If utilized, success in this ‘Step Down’ procedure is required before placement in GP. In addition, as outlined above, Mr. Bowman has strong coping skills, developed over the past 21 years of his incarceration. He has strong interpersonal relationships, from which he draws support. As such, his privileges, such as visitation, are very important to him, and he would not risk jeopardizing his visits with misconduct. He engages in regular spiritual study and meets with religious volunteers, as a form of coping; in addition to his writing, which discharges his emotion and assist with stability. Further, over his 21 years of incarceration, he has managed significant stressors on death row, without resorting to negative coping (e.g., substances or violence). Instead, he has reached out to unit medical staff; and written detailed, rational, and respectful letters to the administration; and/or engaged in “peaceful protests” with a hunger strike. His relatively strong cognitive and intellectual skills assist in this process.

As any transition of this magnitude would create some level of stress, this risk factor is considered present, but of low relevance, given Mr. Bowman’s support system, coping skills, history of managing stress, and SCDC’s established procedure in managing such transitions.

²¹ <https://www.doc.sc.gov/policy/OP-22-38.htm.pdf>, issued August 12, 2022. Accessed May 5, 2023.

²² *Id.*

M. Bowman - Summary of HCR-20^{V3} Risk Factors, Presence and Relevance.

HCR-20^{V3} Risk Factor	Presence	Relevance to Risk Management
HISTORICAL [4]		
History of Violence	Historically Present No Violence in 22 Years	<i>Low</i> – Remote history – Well managed via age; maturity; clinical stability; stable temperament; and psychosocial support
History of Substance Abuse	Historically Present No alcohol or substance use in 22 Years	<i>Low</i> – Remote use – Continued complete abstinence from all substances is recommended
History of Employment Instability	History of multiple short-term jobs prior to arrest 22+ years ago	<i>Low</i> – Remote circumstance, no opportunity to demonstrate employment stability on death row
History of Pattern of Antisocial Conduct	Historically present 22+ years ago	<i>Low</i> – Remote history, no pattern of antisocial conduct in prison
CLINICAL [0]		
None	None	None
RISK MANAGEMENT [1]		
Future Stress and Coping	Present [Future] - Re: Transition to GP after restrictive housing	<i>Low</i> – Strong coping skills, and support, with prison procedures in place to effectively address transition

In sum, based on application of the HCR-20^{V3} risk factors to Mr. Bowman's specific history and situation, it is opined that 5 out of 20 risk factors are *present*. Four of these factors are historical, of remote significance, and with no evidence in decades; and one future variable, which is associated with strong mitigators. All factors are deemed of '*low*' *relevance* as defined by the measure. Of note, as discussed above, research with the HCR-20^{V3} has demonstrated that the Historical factors have lower predictive power of prison violence than the Clinical or Risk Management factors, which is in line with research on known correlates of prison violence.

Taken together, in consideration of his individual, case-specific details, and available risk management strategies, data from the HCR-20^{V3} indicates Mr. Bowman represents a very low risk for future violent acts within a correctional setting.

SUMMARY: Based on clinical interviews with Mr. Bowman; interviews with family members and extrafamilial individuals; consultation with evaluating and treating professionals; application of a violence risk assessment measure; utilization of relevant research on institutional violence; and review of legal, academic, psychosocial, medical and correctional records; the following was found.

Circumstances of the Homicide: The homicide involved the shooting death of an adult female, when Mr. Bowman was 20 years old. Given his age, it occurred within a period of neurobiological immaturity; and was preceded by months of very heavy alcohol consumption; family dysfunction, and lack of any prosocial structure. Factors contributory to the homicide are no longer present (e.g., immaturity, intoxication) and/or are not accessible (e.g., firearm).

Course of Incarceration: During his incarceration, Mr. Bowman has had very few disciplinarys, all of minimal severity. He has a remote history of one minor assaultive infraction, during a prior incarceration at age 17, involving a fight with another inmate. There were no injuries, or weapons used. He has maintained very strong interpersonal relationships with family and others, through daily calls, letters and in-person visits. For 12 years, he served on the Inmate Representative Counsel, acting as liaison between the administration and death row inmates. The Associate Warden who chose him for the “IRC” described him as “instrumental” in this role, by effecting positive change. He has heavily involved himself in spiritual and religious activities, through self-study courses, and by meeting regularly with prison ministry staff.

Mental Health/Medical: Mr. Bowman has no history of mental illness or mental health treatment. He is of average intelligence, with no cognitive disorder; and no personality disorder. Medically, he underwent emergent surgery for a laminectomy and microdiscectomy, in September 2019, with persistent numbness, pain and difficulty ambulating. He takes medication for chronic radiculopathy, hypothyroidism, and hyperlipidemia.

Violence Risk Assessment: Using an empirically validated risk assessment, and factors correlative to prison violence, Mr. Bowman’s risk of future violence within a correctional setting is very low; and he has proven excellent adaptability to circumstance. He is of mature age; is clinically stable; has no substance use or violence over his incarceration; has excellent coping and interpersonal skills, and is heavily involved in prosocial pursuits. SCDC personnel who have worked with Mr. Bowman expressed no concerns about a potential transfer to GP, referring to him as a “model inmate,” who was “no trouble;” the “non-confrontational type;” had “adjusted well;” “followed the rules and got along with everyone;” and would be “a good candidate for GP.” The chief psychiatrist would have “no concerns” if Mr. Bowman were transferred to GP, and believes he would be an “asset” to other inmates in general population. A longstanding prison minister, with decades of correctional experience, believes Mr. Bowman poses “no risk at all, none whatsoever” and that Mr. Bowman has the tools to be “successful” in such a transition.

Such consensus mirrors the opinion of the corrections expert from 21 years ago, who predicted at Mr. Bowman’s sentencing, “I don’t anticipate him being disruptive. I anticipate him getting up and going to work. I anticipate this individual obeying rules and regulations and orders,” with “no reservations” about this opinion.²³ Subsequent data regarding Mr. Bowman’s correctional functioning, over two decades, have now confirmed his opinion.

²³ *Bowman v. State*, Testimony of James E. Aiken, Vol. 11, p. 4844, 4863.

In sum, relying on data from multiple and varied sources, results indicate Mr. Bowman is at significantly low risk for future violence in a prison setting, with proven adaptability.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "h C. Knight", with a stylized flourish at the end.

Susan C. Knight, Ph.D., ABPP
Licensed Clinical Psychologist
Board-Certified Forensic Psychologist

June 5, 2023

Date Signed

Exhibit 22

SUSAN C. KNIGHT, PH.D, ABPP

Telephone: (843) 637-5729; **Facsimile:** (843) 410-2802

Electronic Mail: knight@apsforensic.com

Mailing Address: 1941 Savage Rd., Ste. 100A-606, Charleston, SC 29407

EDUCATIONAL HISTORY:

- | | |
|-------------------------------------|---|
| September 2004 - August 2005 | Postdoctoral Fellowship in Forensic Psychology
University of Southern California
Keck School of Medicine
Dept. of Psychiatry & Behavioral Sciences
USC Institute of Psychiatry & Law
P.O. Box 86125
Los Angeles, CA (ACGME Accredited) |
| September 2003 - August 2004 | Pre-doctoral Internship in Forensic Psychology
U.S. Department of Justice (USDOJ)/Bureau of Prisons
Federal Correctional Complex and Medical Center
Butner, NC (APA Accredited Internship) |
| August 1999 - August 2004 | Doctorate of Philosophy, Clinical Psychology
University of Louisville, Louisville, KY
Department of Psychological and Brain Sciences
(APA Accredited Program) |
| August 1999 - May 2002 | Master of Arts, Clinical Psychology
University of Louisville, Louisville, KY
Department of Psychological and Brain Sciences
[Degree embedded within the Clinical Psychology
Doctoral program, APA Accredited] |
| August 1994 - May 1998 | Bachelor of Arts, Psychology, <i>Magna Cum Laude</i>
Trinity University, San Antonio, TX |

PROFESSIONAL LICENSURE:

- Psychologist, State of California, License #20901 [June 2006 - Inactive]
- Psychologist, State of North Carolina, License #3407 [June 2007 - Active]
- Psychologist, State of South Carolina, License #1053 [May 2007 - Active]

BOARD CERTIFICATION:

- ABPP- Board certification in Forensic Psychology awarded by the American Board of Professional Psychology (ABPP) [April 2009]

PROFESSIONAL EXPERIENCE

**Clinical and Forensic Psychologist
Applied Psychological Services, LLC
1941 Savage Rd., Ste. 100A-606
Charleston, SC 29407**

August 2013 - Present

Responsibilities: Conduct comprehensive forensic psychological evaluations on a wide variety of criminal and civil issues, to include, but not limited to, competency to stand trial, criminal responsibility, violence risk assessments, sexual behavior assessments, sentencing/mitigation, and fitness for duty evaluations. Provide clinical therapeutic services to an adult outpatient population.

**Clinical Assistant Professor of Forensic Psychiatry
Community and Public Safety Psychiatry Division
Department of Psychiatry and Behavioral Sciences
Medical University of South Carolina
29-C Leinbach Drive
Charleston, SC 29407**

August 2013 - April 2014

Responsibilities: Conduct comprehensive forensic psychological evaluations on a wide variety of criminal and civil issues, and provide consultation to the county, state and federal court systems as necessary. Types of evaluations include competency to stand trial, criminal responsibility, violence risk assessments, sexual behavior assessments, and fitness for duty assessments for health care, public safety and transportation personnel. Provide instruction, teaching and supervision to forensic post-doctoral fellows, medical residents, interns and students on forensic and general clinical psychological issues.

**Assistant Professor of Forensic Psychiatry
Associate Director of the Forensic Psychiatry Fellowship
Director - Progressive Professionals Program (PPP)
Department of Psychiatry and Behavioral Sciences
Medical University of South Carolina
29-C Leinbach Drive
Charleston, SC 29407**

**January 2008-August 2013
July 2008-August 2013
November 2010-August 2013**

Responsibilities: Conduct comprehensive psychological forensic evaluations on a wide variety of criminal and civil issues, and provide consultation to the county, state and federal court systems as necessary. Types of evaluations include competency to stand trial, criminal responsibility, violence risk assessments, sexual behavior assessments, and fitness for duty assessments for health care, public safety and transportation personnel. Provide clinical therapeutic services (therapy and psychological assessment) to a general outpatient population as needed. Provide instruction, teaching and supervision to forensic post-doctoral fellows, medical residents, interns and students on forensic and general clinical psychological issues.

Clinical Psychologist
Grew, Morter and Hartye, P.A.
3141 John Humphries Wynd, Ste. 275
Raleigh, NC 27612

April 2007- November 2007

Responsibilities: Provided mental health services in a private practice setting to an outpatient population. Clinical duties included providing short and long term individual therapy, and conducting psychological assessments addressing a wide range of psychological issues. Forensic duties included conducting psycho-legal evaluations and providing consultation as needed for forensic issues.

Clinical Psychologist
Los Angeles County Department of Mental Health
Century Regional Detention Facility- Los Angeles County Jail
Women's Forensic Outpatient Program (WFOP)
11705 S. Alameda St.
Lynwood, CA 90262

September 2005-December 2006

Responsibilities: Provided mental health services to a correctional population, including diagnostic intake interviews, brief therapy, crisis intervention services and psychological assessments. Forensic duties included managing patients in the Misdemeanant Incompetent to Stand Trial (MIST) program, including competency restoration and consultation with the mental health court system.

Forensic Psychologist (Contract Basis)
Metropolitan Detention Center- Los Angeles
Federal Bureau of Prisons
535 N. Alameda St.
Los Angeles, CA 90012

September 2006- December 2006

Responsibilities: Conducted pre-trial and post-trial psychological forensic evaluations for the Federal Bureau of Prisons on a contract basis. Evaluations covered a variety of psycho-legal issues, including competency to stand trial, criminal responsibility, dangerousness evaluations and sentencing issues. Duties included interviews, psychological assessment, report writing and providing consultation and/or testimony to the Federal Court system as needed.

Forensic Psychologist
USC-Keck School of Medicine
Institute of Psychiatry, Law and Behavioral Science
Los Angeles, CA 90086-0125

September 2006- December 2006

Responsibilities: Conducted forensic evaluations for the juvenile court system in Los Angeles addressing a variety of psycho-legal issues. Duties included evaluations, report-writing and providing consultation to the Juvenile Court System.

Postdoctoral Fellow in Forensic Psychology
University of Southern California/Keck School of Medicine
Institute of Psychiatry, Law & Behavioral Science
P.O. Box 86125
Los Angeles, CA 90086-0125

September 2004 –August 2005

Responsibilities: Conducted psychological and legal evaluations for attorneys and courts related to criminal delinquency and dependency issues; evaluation, psychological assessment, and treatment of mentally disordered offenders, including outpatient sex offender treatment. Received specialized training on how to conduct psychological autopsies for the Los Angeles County Coroner's Office.

Pre-doctoral Clinical Psychology Intern
Federal Correctional Complex- Butner
Old N.C. Hwy 75
Butner, NC 27509

August 2003 - September 2004

Responsibilities: Worked in the forensic evaluation program at the Federal Medical Center and conducted federal pre-trial forensic evaluations which involved comprehensive psychological evaluation and report writing. Provided expert testimony to federal court. Worked in the Sex Offender Treatment Program (SOTP), an intensive, residential therapeutic program for male sexual offenders. Employed specialized assessment, didactic, and cognitive-behavioral techniques to evaluate, treat, and manage sexual offenders. Also conducted individual and group therapy, and assisted in managing the special needs of mental health inmates.

Graduate Student Therapist
Outpatient Psychiatry/Ambulatory Care Building
550 S. Jackson St.
Louisville, KY 40202

May 2002- May 2003

Responsibilities: Conducted individual and group psychotherapy as well as psychological testing with a variety of patients presenting at a local hospital for psychological treatment. Conducted initial intake interviews with potential patients presenting for medication and therapy; provided diagnosis, case formulation and treatment recommendations.

Clinic Assistant
University of Louisville/Psychological Services Center
Davidson Hall, Suite 210, Louisville, KY 40292

August 2000- June 2002

Responsibilities: Conducted initial assessment intake interviews with potential clients for the psychology clinic. Assisted in diagnosis, treatment recommendations, and disposition of clients to specialty clinic teams. Maintained client database and records for clinic operation. Coordinated clinic in-services (professional presentations) for students and psychological community at large. Maintained subject records and billing for ongoing research project.

Research Assistant
Central State Hospital/Dept. of Psychology
10510 La Grange Rd.
La Grange, KY 40223

August 1999 - July 2000

Responsibilities: Collected and analyzed data related to program evaluation from all disciplines (nursing, medical staff, psychologists, social workers and pastoral staff). Created and maintained comprehensive research database tracking all patients with a diagnosis of Mental Retardation and all patients with guardians

Caseworker / Case Manager
Crosspoint, Inc.
605 Augusta St.
San Antonio, TX, 78215

May 1998 - December 1998

Responsibilities: This facility provided a structured program of re-socialization for female adults primarily referred from federal correctional and health care facilities. Responsibilities included administration of direct services provided to clients on an individual and/or group basis. Consulted with, and managed interface to local support agencies when and where necessary on behalf of the client.

CLINICAL PRACTICA/PSYCHOTHERAPY EXPERIENCE

Graduate Student Therapist
University of Louisville/Psychological Services Center
Louisville, KY 40292

August 1999 - May 2003

Responsibilities: Conducted individual therapy sessions and a wide variety of full psychological assessments with outpatient clients (adults and children).

Doctoral Practicum Student (Assessment & Therapy)
Kentucky State Reformatory
La Grange, KY 40032

August 2000 - September 2002

Responsibilities: Conducted psychological testing and individual therapy for adult male inmates housed in the Correctional Psychiatric Treatment Unit at a medium security state prison. Compiled and analyzed sex offender data in the Sex Offender Risk Assessment Unit (SORA) at Kentucky State Reformatory.

ACADEMIC APPOINTMENTS:

- **Clinical Instructor** **August 2004 - September 2005**
University of Southern California
Keck School of Medicine
Department of Psychiatry and Behavioral Sciences
Los Angeles, CA 90033
- **Adjunct Faculty** **August 2006 – December 2006**
University of Southern California
Department of Psychology
Los Angeles, CA 90089
- **Assistant Professor** **January 2008 – August 2013**
Medical University of South Carolina
Department of Psychiatry, Charleston, SC 29425
- **Clinical Assistant Professor** **August 2013- June 2015**
Medical University of South Carolina
Department of Psychiatry, Charleston, SC 29425
- **Adjunct Professor** **May 2011- Present**
Charleston School of Law
Charleston, South Carolina
- **Adjunct Professor** **January 2015- Present**
Cornell University Law School
Ithaca, New York

PROFESSIONAL AFFILIATIONS

- American Psychological Association (APA) [1999 to Present]
- American Psychology-Law Society (APLS) [2003 to Present]
- South Carolina Psychological Association (SCPA) [2008 to Present]
- American Board of Professional Psychology (ABPP) [2009 to Present]
- Association for the Treatment of Sexual Abusers (ATSA) [2012 to Present]
- Association of Threat Assessment Professionals (ATAP) [2015 to Present]
- Society of Clinical Child & Adolescent Psychology (SCCAP) [2017 to Present]

SELECTED PRESENTATIONS

1. Knight, S.C. & Einstein, G. (1996). *Aging and Retrieval Inhibition in Prospective Memory*. Paper presented at the National Convention of Undergraduate Research (NCUR) in the Spring of 1997 in Austin, TX.
2. Weaver, C.M., Bock, P., Knight, S. & Gretarsdottir, E. (1999, November). *Demographic Study of 1998 Jefferson County Kentucky Guardianship Population*. Poster presented at the annual meeting of the Kentucky Psychological Association, Louisville, KY. Poster was awarded second prize for graduate research.
3. Knight, S.C., Scanish, J., Fintel, T., & Meyer, R.G. (2002, August). *Characteristic of the Female Sex Offender*. Poster presented at the 2002 APA conference in Chicago, Illinois in the APLS (Division 41) of research.
4. Knight, S.C. (2006). *The Sex Offender's Brain: A review of the etiological evidence towards a neurobiochemical basis*. Lecture presented to faculty, staff and students at the University of Southern California, Department of Psychology, as part of the Continuing Education (CE) colloquia.
5. Mulbry, L. W. & Knight, S.C. (March 2008). *Competency to Stand Trial, Criminal Responsibility and Capacity to Conform*. Presentation to the Charleston County Solicitor's Office.
6. Knight, S.C. (September 2008). *Psychological Autopsy: Determining the Manner of Death Through Investigative Psychological Analysis*. Lecture presented to the Medical University of South Carolina, Department of Psychiatry, Division of Forensic Psychiatry, Day of Discovery conference.
7. Stroud, Z., Knight, S.C., Halavonich, R.H., & Mulbry, L.W. (October 2008). *Mass Shooters: An Antihero of our Time*. Presentation presented at the national American Academy of Psychiatry and Law (AAPL) conference in Seattle, WA.
8. Knight, S.C. (July 2009). *The MMPI-2: Fundamentals of Interpretation*. Lecture to the Medical University of South Carolina Psychology Internship Program
9. Knight, S.C. (November 2009). *The Disruptive Professional*. Presentation given to the Senior Medical Leadership Council of the South Carolina Hospital Association. Columbia, South Carolina.
10. Knight, S.C. (November 2009). *South Carolina Mental Health Law: How to Proceed with a Mentally Disordered Defendant*. Presentation to the South Carolina Bar Association Distance Learning Division. Columbia, South Carolina.

11. Knight, S.C. (November 2009). *Psychiatric Malpractice: A review of select South Carolina cases*. [Invited Speaker]. Presentation given at the Medical University of South Carolina, Forensic Interest Group Meeting. Charleston, South Carolina.
12. Knight, S.C. (January 2010). *South Carolina Mental Health Law: How to Proceed with a Mentally Disordered Defendant*. Workshop on competency to stand trial and criminal responsibility presented to attorney participants at the Medical University of South Carolina. Charleston, South Carolina.
13. Knight, S.C. (April 2010). *The Mentally Ill Offender: An Epidemic in Courts and Corrections*. [Invited Speaker]. Presentation at the 2010 Mental Health Professionals Collaboration held at the Medical University of South Carolina for mental health professionals statewide. Charleston, South Carolina.
14. Knight, S.C. & Mulbry, L.W. (October 21, 2010). *Automatism: A 15-year review of criminal appellate case law*. Scientific paper presentation at the national American Academy of Psychiatry and Law (AAPL) conference in Tucson, AZ.
15. Knight, S.C. (October 29, 2010). *South Carolina Mental Health Law: How to Proceed with a Mentally Disordered Defendant*. Workshop on competency to stand trial and criminal responsibility presented to the Berkeley County Public Defender's Office.
16. Knight, S.C. & Mulbry, L.W. (January 30, 2011). *School Shooters: A Unique Class of Violent Offenders*. [Invited Speaker]. Presentation to the South Carolina Psychiatric Association (SCPA) statewide conference in Charleston, SC.
17. Knight, S.C. (June 2011). *Legal Insanity and Competence*. [Invited Speaker]. Update in Psychiatry-Mental Illness, Victimization and Criminal Justice. A Forum for Clinicians, Policymakers, Judges, Attorneys and Law Enforcement. Charleston, South Carolina.
18. Knight, S.C. (June 2011). *Relationship Between Mental Illness and Criminal Behavior. Update in Psychiatry-Mental Illness, Victimization and Criminal Justice*. [Invited Speaker]. A Forum for Clinicians, Policymakers, Judges, Attorneys and Law Enforcement. Charleston, South Carolina.
19. Beck, B., Knight, S.C., & Mulbry, L.W. (October 2012). *Robotripping: Dextromethorphan's Link to Violent Crime, Rising Use and Emergent Legislation*. Poster presented at the national meeting of the American Academy of Psychiatry and Law (AAPL), Montreal, Canada.
20. Knight, S.C. (December 2012). *Sexual Predators: Pathology and the Law*. [Invited Speaker]. Judges and Attorneys Substance Abuse and Ethics Seminar, Medical University of South Carolina, Charleston, South Carolina.

21. Knight, S.C. (December 2012). *Legal Competence*. [Invited Speaker]. Judges and Attorneys Substance Abuse and Ethics Seminar, Medical University of South Carolina, Charleston, South Carolina.
22. Knight, S.C. (April 2013). *Legal Competence: Civil Competencies*. [Invited Speaker]. South Carolina Association of Probate Judge's Conference. Columbia, South Carolina.
23. Beck, B., Knight, S. C. & Mulbry, L.W. *Revisions in Gun and Mental Health Laws in the Wake of Newtown*. Poster accepted for presentation at the October 2013 national meeting of the American Academy of Psychiatry and Law (AAPL), San Diego, California.
24. Knight, S.C. (September 2013). *Workplace Violence: Assessment, Intervention and Prevention*. [Invited Speaker]. A Psychiatric Update: Annual conference held by the South Carolina Department of Mental Health.
25. Knight, S.C., Mulbry, L.W., Mullis, D. & Fields, C. (October 2013). *Guns and Psychiatry: Disarming the Mentally Ill*. Grand Rounds Presentation, Medical University of South Carolina, Department of Psychiatry and Behavioral Science.
26. Knight, S.C. (December 2013). *Ethical Considerations in Forensic Evaluations*. [Invited Speaker]. Judges and Attorneys Substance Abuse and Ethics Seminar, Medical University of South Carolina, Charleston, South Carolina.
27. Knight, S.C. (June 2014). *The Mentally Ill Offender: An Epidemic in Courts and Corrections*. [Invited Speaker]. National Judges Association: 35th Annual Education Conference. Charleston, South Carolina.
28. Knight, S.C. (October 2015). *Sentencing re: Miller: Perspective of a Forensic Psychologist in Juvenile Life Without Parole Hearings*. [Invited Speaker]. Columbia, South Carolina.
29. Knight, S.C. (August 2016). *Psychological Assessments in Juvenile Sentencing and Resentencing Cases*. [Invited Speaker]. Representing a Juvenile Facing Life Without Parole Conference. South Carolina Commission on Indigent Defense, Columbia, South Carolina.
30. Knight, S.C. (March 2017). *Navigating the Psycholegal Nexus: The Role of Forensic Psychology*. [Invited Speaker]. Southeastern Psychological Association (SEPA) – National Meeting. Atlanta, Georgia.
31. Knight, S.C., Young, L. & Jones, Z. (March 2017). *Structure and Substance in Sentencing: Legal, Psychological & Mitigation Elements of Miller Proceedings*. [Invited Workshop]. American Psychology-Law Society (AP-LS) – National Meeting. Seattle, Washington.

32. Knight, S.C. (March 2019). *Introduction to Mental Health Disorders, Signs & Symptoms Relevant to Mitigation*. [Invited Speaker]. Sixteenth National Seminar on the Development and Integration of Mitigation Evidence – Annual Meeting. Philadelphia, Pennsylvania.
33. Knight, S.C. (March 2019). *An Appropriate Framework for Assessing (the lack of) 'Future Dangerousness.'* [Invited Speaker]. Sixteenth National Seminar on the Development and Integration of Mitigation Evidence – Annual Meeting. Philadelphia, Pennsylvania.
34. Knight, S.C. (August 2019). [Invited Speaker]. *Working with Traumatized Clients and Vicarious Trauma*. 24th Annual National Federal Habeas Corpus Seminar – Annual Meeting. Pittsburgh, Pennsylvania.
35. Knight, S.C. & Paavola, E. (August 2019). [Invited Speaker]. *Mental Health Issues in Post-Conviction Investigation*. 24th Annual National Federal Habeas Corpus Seminar – Annual Meeting. Pittsburgh, Pennsylvania.
36. Knight, S.C. (August 2019). [Invited Speaker]. *JLWOP Psychological Assessments*. JLWOP CE – Justice 360. Columbia, South Carolina.
37. Knight, S.C. (March 2020). [Invited Speaker]. *Vicarious Trauma*. Habeas Assistance & Training Counsel Project. Seventeenth National Seminar on the Development and Integration of Mitigation Evidence – Annual Meeting. Philadelphia, Pennsylvania.
38. Knight, S.C. (March 2020). [Invited Speaker]. *Introduction to Mental Health Disorders, Signs & Symptoms Relevant to Mitigation*. Habeas Assistance & Training Counsel Project. Seventeenth National Seminar on the Development and Integration of Mitigation Evidence – Annual Meeting. Philadelphia, Pennsylvania.

PUBLICATIONS

1. Oliver, J. M., Knight, S.C., Weaver, C.M., Boyd, A.R. & Meyer, R.G. (2000). Attitudes of board certified forensic psychologists toward critical issues in forensic psychology and the legal system. *Bulletin of the American Academy of Forensic Psychology*, 21 (1), 8-10.
2. Oliver, S.C., Knight, S.C., Weaver, C.M. & Meyer, R.G. (2001). Attitudes of forensic practitioners about competency to stand trial evaluations: Theoretical and practical considerations. *Bulletin of the American Academy of Forensic Psychology*, 22 (1), 20-22.
3. Knight, S.C. & Meyer, R.G. (2003). Gender Identity Disorder: The Case of Bruce/Brenda. In R.G. Meyer's, *Case Studies in Abnormal Behavior* (6th ed.), (pp. 134-140). Boston: Allyn & Bacon.

4. Knight, S.C. & Meyer, R.G. (2007). Forensic Hypnosis. In A. M. Goldstein's (Ed.) *Forensic Psychology: Emerging Topics and Expanding Roles*, NY: Wiley.
5. Gomez, A. & Knight, S.C. (2013). Disclosure of Mental Health Records in Court-Mandated Outpatient Treatment Proceeding and the Health Insurance Portability and Accountability Act (HIPPA). *Journal of the American Academy of Psychiatry and Law*. Vol. 41: 460-641.

Exhibit 23

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

)
)

AFFIDAVIT

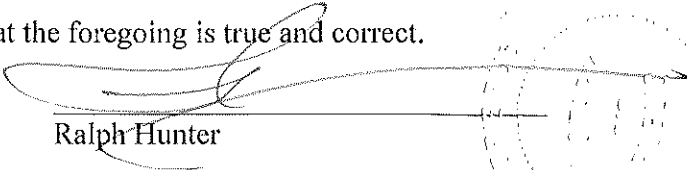
Ralph Hunter, who appeared personally before me, affirms and states the following:

1. I, Ralph Hunter, am retired from the South Carolina Department of Corrections. I started with SCDC in 1986 and retired in 2011 as an Associate Warden at Lieber. I was assigned at Lieber from 2009 to 2011.
2. As an associate warden, I did not always interact with the death row inmates on a day-to-day basis, but I did develop professional relationships with some of the inmates. Marion Bowman was one of those inmates who I had a professional relationship with over the years. If I ran into Marion again, I would be excited to see him and would want to give him a hug.
3. I made Marion a dorm keeper, which was a job where the inmate is allowed out of his cell to sweep, clean the shower, and collect the food trays. Death row was mostly locked down and all the inmates wanted out of their cells, so the job was coveted. Getting the job was a privilege and Marion Bowman earned the trust to be assigned the job.
4. As a dorm keeper, Marion worked hard. He was always jovial. Not one person expressed concern about Marion being out of his cell. Even though Marion was a big man, no one was concerned about him causing trouble. Rather than cause trouble, Marion would help the officers interact with the inmates and explain the context of inmate concerns.
5. While I was associate warden, I offered a character class to the officers and even the death row inmates to try to motivate people to model good behavior. The class only lasted for 2-3 months but Marion took the class and did well in it.
6. Marion's behavior was already that of a model inmate before he took the class, but he always welcomed any means of filling his time constructively. He adjusted well to prison and helped others to adjust, as well. Marion was low key, easy going, and likeable by staff and inmates alike.
7. Marion was selected to be a part of the Inmate Representative Committee (IRC). The purpose of the IRC was for the prison staff and the inmates to have an open line of communication about issues like safety, food, interactions with staff members, and conditions of the prison, among other issues. As a member of IRC, Marion was reasonable, fair, and someone I could trust.
8. In my position at Lieber, I experienced the process of death row inmates being sent from Lieber to Broad River to be executed. Executions were taxing on my staff members as it was hard to watch inmates my staff had known for many years drive off knowing they would never return.



9. I support a conversion or commutation of Marion's sentence to a life sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.


Ralph Hunter

Sworn to and subscribed before me
This 7th day of October, 2023

Brian Rust
Notary Public for the State of South Carolina
My commission expires: 3/24/27

Exhibit 24

)

)

)

1. I, Darryl McGhee, have been retired since 2018. I previously served as a Lieutenant for the South Carolina Department of Corrections. I worked on death row at Lieber for five years.
2. I got to know all of the guys on death row during my 12-hour shifts. Marion Bowman was a nice, quiet guy, who liked playing basketball. Marion was no trouble. He followed the rules and got along with everyone. Marion also had a job cleaning up on the row.
3. Marion's mother used to visit every Sunday. She was lively and fun.

I affirm, under the penalty of perjury, that the foregoing is true and correct.


Darryl McGhee

Sworn to and subscribed before me
This 26 day of October, 2023

Notary Public for the State of South Carolina
My commission expires: 3/24/27

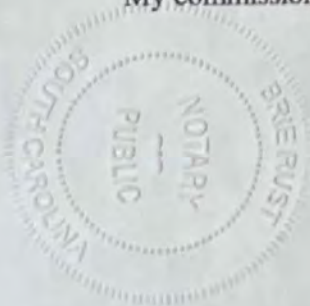


Exhibit 25

(

(

(

AFFIDAVIT

Marissa Bowman, who appeared personally before me, affirms and states the following:

1. I, Marissa Bowman, am over the age of 18 years old.
2. I am Marion Bowman's only child.
3. I was born eight months after my father was incarcerated, despite that, my father has been a consistent presence in my life. I rely on him for support, advice, and to pick me up whenever I am feeling down. Growing up I always dreamed about the day my dad would walk out of prison and come home to us. I dreamed that when I would be having a big moment in my life that I would turn around and he would be there. As the years went on, I had to face the fact that my dad wasn't going to be able to be physically present in my life.
4. We have a very strong bond that I know most people with incarcerated dads don't have. My mom and grandmother tell me that I have been going to visit him since I was "an arm baby," meaning I was about the length of his arm when he held me. Obviously, I don't remember that, and it hurts that I have never been able to give him a hug since my memories started forming, as contact visits have been discontinued.
5. I remember when I was in 3rd grade my mom was struggling a lot to keep our family together. She and her boyfriend at the time were fighting and arguing all the time. My siblings and I all ended up having to go live with different relatives and my mom chose to stay with her boyfriend. My first actual memory of visiting my father in prison was that same year. I told him about everything that was going on in our house and how I had to go live with my uncle. He talked to me about how we cannot always control the things that happen to us, but we can do our best to stay positive and do the best we can with what we have. He reminded me that I could call my maternal-half-siblings any time I wanted and that our family would make sure that we all got to visit him and each other regularly.
6. I have had a difficult and strained relationship with my mother over the years. She has three other children besides me and, at times, has chosen men over all of us. I did not really understand what was happening at the time, but looking back it is very clear to me now. When I talk to my dad, he helps me process everything that is going on, encourages me to focus on the positive and on the things that I have control over to make sure negativity does not get the best of me. I have struggled with depression over the years, and he has always helped me regain focus, hope, and drive. My mother has been struggling with multiple health problems over the last few years and my dad could soon be the only parent I have to help guide me through adulthood. Most significantly, she has been receiving treatment

for a brain tumor the last few months at MUSC and her condition remains unstable. My family lives in fear that each day may be her last. He may not physically be present, but spiritually he is always with me, and our visits and calls help get me through the days.

7. Growing up, I have strong memories of my dad always reminding me that doing well in school was totally up to me and that is where I should focus my efforts. Sometimes I started to lose faith in school and I wanted to give up, but then my dad would call and say "what's up with school?" I would always try to beat around the bush, but he always had an intuition about whatever I was going through; he can read me like a book. He helps me get through school, but also through life.
8. Because of his encouragement I was able to graduate from high school and then begin taking college courses. In fact, the main focus of our conversations throughout my life has been about school. He is really big on school and he wants me to get the most I can out of my education. He keeps pushing me to further my education in nursing and to keep me on the right path. He always reminds me to stay out of trouble and away from people who are up to no good. I know we have a really strong bond and that he will always guide me the best he can from where he is.
9. All the long talks we had, and still have, help keep my spirits up. He is my best friend, but he is a father first. It was also important to him to be there for my brothers, even though they are not his biological children. He would always tell them when they were going down the wrong path and he would encourage them to do better. He taught us how to take care of ourselves and what signs to look out for in order to keep ourselves safe.
10. My dad never missed a beat. I played sports in school and he would call me every game night, he would call me after every award ceremony, and also after every family gathering. Any little thing that is going on in my life, he wants to know about it and he will call to see how it went. Now that I'm older when he knows that I've been out with my friends, he will call me late at night and say "it's dad, I'm just calling to make sure that you're safe." Knowing that I am safe makes him the happiest person ever. He will also call just to say "I wish I could be there," and "you are in my heart and my mind during every milestone, through the good and the bad."
11. Not having my dad here in person has always been extremely difficult. My dad was not there when I learned to drive, or for my high school graduation, or even for the birth of my child. That has been an extreme punishment to us both, but it has been so helpful to be able to talk to him about all the things that lead up to those moments and the moments that have passed since. When I was younger, I had hate and anger in my heart because my dad wasn't physically present in my life. As I got older, I began to understand that it isn't about him being with me physically, but it is about the support that he gives me. Taking him entirely from this Earth would be more than I can take. The emptiness I have often felt when I have

physically wanted him to be present could only be made worse if I couldn't ever hear his voice again.

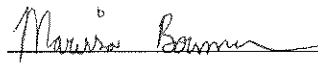
12. I need my dad, his sisters need him, his aging parents need him. He has always maintained a positive attitude and has brought so much light to all of us when we feel there is nothing but darkness. I am not sure how I would have made it through the sadness of my brother's death last year without his calming presence and constant guidance. He brings so much happiness and guidance through every conversation and at every visit.
13. My dad is a critical part of my life and I look to him for advice on everything, especially now that I have a child of my own. He is my best friend and my dad. He always hears me out and lets me tell him about anything going on in my life before giving me advice or telling me not to make a mistake. We talk everything through and talk about consequences, and when I was younger the house rules. He pushed me to stay in school and to apply for nursing school so that I will be able to have a more stable and successful life than my mother has been able to provide for me. There was constant pressure on me to help provide for my siblings, but my dad helped me to stay focused and push through school so that I can have a better life.
14. I know that my dad has a similar impact on everyone else around him. He has a positive influence on the other guys that he has lived with for so many years on death row. Through those connections he finds strength, hope, and fulfillment because he is able to help and serve others. My dad is outgoing, sweet, loving, caring, and will always give everyone his honest opinion. He will give you the shirt off his back, the last of his canteen, or anything else he can do to help.
15. Religion is another thing that is very important to my dad and something that he often shares with me. He believes in putting God first and he has taught me that it is important to have faith in God. Even when I wasn't able to tell him something, he would tell me that I should get on my knees, pray to God, and talk it out with God. This helped me process the hate and anger in my young heart, because of his physical absence. Now I understand it is all about the support from my dad and God that lead me forward.
16. After participating in a Bible Study Course, my dad was given a Bible. He immediately gave it to one of the lawyers on his team to deliver to me. He has always encouraged me to read and study the Bible. We talk about everything, we read, and we pray together. Since my daughter was born, we decided that we should pass his Bible along to her when she is old enough, and that it should continue to be passed down to future generations. He loves Psalms and reminds me to see the positive, that everything is a brick that I need to step up onto, and learn. He is a very active father in every part of my life.
17. It was really difficult for me when they suspended visits for so many months during COVID. Not being able to see my dad with everything else that was going on in our

community, and in the world, was heartbreaking. Because of that experience, I am very aware of how devastating it would be not to be able to visit my dad in prison.

18. I need my dad now just as I have needed him in the past and will continue to need him in the future. I can't imagine my life without my dad or my daughter's life without her grandfather. I do not know how we will survive without his guidance, love, and support. I cry whenever I think about it, so I try not to. I beg that you allow my father to be in my life forever, understanding that he will always be incarcerated remains difficult but being able to call him and visit him drastically improves my life. I appreciate him, I care about him, and I will love him forever.

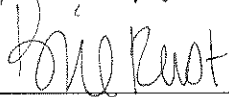
19. I am in support of a conversion or commutation of my father's sentence to a life in prison sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.



MARISSA BOWMAN

Sworn to and subscribed before me
This 9th day of November, 2023



Notary Public for the State of South Carolina
My commission expires: 3/24/27

Exhibit 26

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

AFFIDAVIT

Denise Bowman, who appeared personally before me, affirms and states the following:

1. I, Dorothy Denise Bowman, am over the age of 18 years old.
2. I am Marion Bowman, Jr.'s mother. He is my only son and the brother of my two daughters, Kendra and Yolanda. I affectionately call my son J.R., but I will refer to him as Marion here.
3. Even as a child, Marion has always been someone who I have relied upon. When he was young I struggled with health issues that sometimes caused me to be unable to work for days. When Marion was a child, I filed a workman's compensation claim after an injury that I suffered at work. The claim took so long to process that I lost our apartment and was out of work for months. Without the support of Marion's father, from whom I was estranged, I struggled to provide for our family; I really had nothing. Even though he was too young to work, Marion stepped in to help by earning money through odd jobs, such as raking yards, so that we could afford to buy soap and laundry detergent. He was only 9 years old when he started washing cars, hanging Christmas lights, and mowing yards, all so that we wouldn't go without the basic essentials. When I was unable to care for myself, Marion would make sure that we had food and then prepare meals for me and his sisters. He waited on me hand and foot. He was truly our maid and personal chef. This is who Marion is and has always been. For birthdays and Christmas, Marion would always make sure that we had something. One time, for my birthday, all he could afford to buy was a pack of bubble gum, but he bought it in order to make sure that I had something to open on my birthday. To this day he continues to make sure that we feel special on our birthdays.
4. Unfortunately, Marion didn't have a strong father figure to rely upon. Marion often witnessed his father push, shove, punch, and hit me. I now have to wear dentures as the result of having my front teeth knocked out by brass knuckles at the hands of Marion's father. I remember wearing makeup, sunglasses, long sleeves, and oversized clothing in hopes that no one would notice what was happening inside of our home. It was a very abusive relationship and it was Marion's number one priority to not have any other child experience the home environment that he experienced.
5. As an adult, Marion continued to be a committed caregiver. He married, Dorothy "Dot" Bowman, and took her two children in as his own. He wanted to make sure that they had a better and more stable childhood than what he was able to experience. He made sure that they had food, shelter, clothing, and anything else they needed to survive. He did not want his stepsons, Corijoin and Teijion, to have to suffer through living in extreme poverty.

DB

6. Marion is someone who constantly uplifts everyone in our family. He sends cards and letters for the holidays. He has developed an impressive talent for art and is always sending us beautiful drawings with positive images to make us smile. He makes sure to remind us of when we have follow-up doctors' appointments and reminds us that we need to get flu and COVID vaccinations in order to protect ourselves. He does whatever he can to make sure that we can live long and happy lives. I do not know what I would do without his love and support.
7. Our family has suffered many losses since Marion has been incarcerated. Despite his own pain surrounding those losses, Marion remains strong for each and every one of us, including my sisters, his sisters, and for me. He helps us through the depressing moments by sending cards with uplifting messages. Those messages bring joy to us all, even in the hardest of times. No one in our family can even imagine what it would be like to never be able to hear Marion's voice again and never again be able to visit him. There are no words to describe the physical and mental pain that I would suffer if Marion was taken from this earth.
8. Marion always makes sure to call to check in on everyone in our family. He encourages his nephews to stay out of the streets by talking to them about the mistakes that he made and the choices that led to his incarceration. He wants his nephews to stay safe, so he always tries to help them through their struggles and help them to see a safe and healthy way of life. His advice and listening ear are so important to us all, and I know there isn't anyone in our family who could imagine not being able to turn to Marion in their times of need.
9. Marion has the greatest impact on his daughter, Marissa. He has been there for her since the day she was born, even though he was already incarcerated at the time of her birth. He encourages her to do well in school and to pursue a higher education. He truly wants everyone to have the best life they can have. When things are hard for Marissa, Marion helps her to see the positive and he helps her to maintain hope for a better future. Although he has expressed frustration about not being able to be physically present for the big life events in Marissa's life, he continues to try to be there spiritually for her in those moments. Marissa has a strained relationship with her mother, who has struggled to keep her family together. Dot suffers from significant health issues and Marion will likely soon be the only parent that Marissa has.
10. Part of the influence that Marion has on Marissa, is a spiritual one. He shares with her his strong commitment to his faith and has done so throughout her life. Since being incarcerated, Marion has only become closer to the Lord. He studies, prays, and shares quotes from scripture with me. He is even able to recite scripture from memory.
11. Throughout my life, I have had to endure several debilitating health conditions. In 1990, when I was 28 years old, I woke up one morning and fell out of the bed. Soon after I was diagnosed with rheumatoid arthritis and a bulging disc. I had to have three surgeries when Marion was growing up. I know this was a traumatic experience for all of my children, because it completely changed everything; I couldn't walk, shower, cook, clean,

PS

or anything else. Even after three surgeries, I have remained in constant pain and still deal with a bulging disc today. At my age recovery will be extremely difficult and I am reliant on help from others. Although, Marion is not able to physically help me, I rely on his calls for support and love.

12. I speak to my son every morning. He calls to check in on me and he provides me with support that only he can give. My great-grandson is living with me and he speaks with Marion regularly as well. He is our backbone and our greatest source of support.
13. Marion serves others on death row as a leader, a mentor, and a physical assistant. Marion lifts the spirits of those around him. He has close relationships with many of the other guys on death row. He helps them in times of need and works to lift their spirits every day. Some of the men are elderly and in need of extra assistance. Marion helps them get around, helps them get the medical attention that they need from staff, and in general he tries to make their lives as easy as he can. He also helps bring those around him closer to God. Most importantly, Marion works together with others to keep peace on the row. He helps staff and other inmates communicate and work together through positive communication and compromise. This is the type of gift that he brings to the world.
14. I have visited my son every chance I get since the day of his arrest. When death row was located at Lieber, I was able to visit almost every Sunday and I would take Marion's daughter, Marissa with me. Since death row moved to Columbia, the distance and my medical issues have made it more difficult for me to visit. I still try to go as often as possible, because our visits are so special to me. I have had to watch my son grow up behind bars, but being able to see him has helped me get through the pain of not being able to hug him.
15. Although I physically watched him grow up in the community, I have seen him mentally and emotionally mature behind bars. I wish that he would one day have the opportunity to celebrate big life events with us in person, but I know that he will never be on the streets with us again. He has grown from a 19-year-old boy into a mature, loving, empathetic, and caring man. He demonstrates this to every person that he encounters, including guards, inmates, family, clergy, and friends. I know that he poses no risk to anyone, rather he brings light to the lives of everyone he meets. So much has changed and he has truly developed into a wonderful man.
16. Marion continues to have a large impact on his daughter's life. I have truly enjoyed watching and listening to Marion be the best father he can be, and I now enjoy watching him become a wonderful grandfather. He is, and will continue to be, a source of inspiration for the next generation.
17. To lose Marion would be devastating to me. He is a very important part of my daily life and I truly miss my baby. Speaking with him every day is the best way to start the day. Together we process the challenges we are facing and we grow closer to God through our conversations. He lifts my spirits and reminds me to stay positive, regardless of the obstacles I encounter. No mother should have to bury her child, especially when that can

DB

easily be prevented. I know that there is another family that has lost their child, but taking Marion's life would serve no purpose. Regardless of the wrongs that one may have committed, the taking of a life is painful to everyone involved, and it is unnecessary. I beg that you can find it in your heart to spare Marion's life. He means so much to so many people and we would be lost without him. I need him in my life and I hope that you can find it in your heart to allow Marion to live out his natural life in prison rather than end his life through execution.

18. I am in support of a conversion or commutation of my son's sentence to a life in prison sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.

Dorothy D. Bowman
DOROTHY DENISE BOWMAN

Sworn to and subscribed before me
This 11 day of February, 2024

Prile Kest

Notary Public for the State of South Carolina
My commission expires: 3/24/27

Exhibit 27

STATE OF SOUTH CAROLINA)

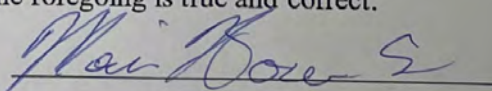
COUNTY OF ORANGEBURG)

AFFIDAVIT

Marion Bowman Sr., who appeared personally before me, affirms and states the following:

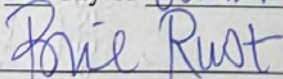
1. I, Marion Bowman, Sr., am over the age of 18 years old and live in Orangeburg County.
2. I am Marion Bowman, Jr.'s father. This case has been very hard for me. I feel torn down, heartbroken, and as if there is nothing that I can do. I have been diagnosed with colon cancer and fear that I do not have long to live. I know that if Marion were at home, he would do anything I asked and would help to take care of me, especially while I go through chemo. We all need somebody to lean on and Marion would be that person for me. He is always encouraging me not to give up, to stay strong.
3. Since he has been on death row, I talk to Marion about 2-3 times per week and I know that Marion has become a more spiritual person. He has been trying to keep younger people on the right track and I know that he wants to prove that he is a better person. I hope that he will continue to have the opportunity to help other people in the future.
4. If Marion were executed, it would rip my heart out. I would be losing my child. I have lost a lot of sleep over this throughout the years. It is even hard for me to visit my son, because when I do I become afraid that I won't be able to make it home. Visitation was so hard on me that I felt like committing suicide. If Marion were to be executed it would make it even more difficult for me. No man could stand to watch their child die.
5. I love my son and I would do anything I could to save my child. It would be devastating for me to lose Marion. I hope that his life can be spared, so that I can continue to have a relationship with him.
6. I am in support of a conversion or commutation of Marion, Jr.'s sentence to a life in prison sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.



MARION BOWMAN, SR.

Sworn to and subscribed before me
This 26 day of October, 2023



Notary Public for the State of South Carolina
My commission expires: 3/24/27

Exhibit 28

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

)
)
)

AFFIDAVIT

Quanisha Clark, who appeared personally before me, affirms and states the following:

1. I, Quanisha Clark, am over the age of 18 years old.
2. I am Marion Bowman's maternal cousin; our mothers are first cousins.
3. I was only four years old when Marion went to jail, but we reconnected in 2019. I now regularly speak and visit with him. Although visitation at the prison is uncomfortable for me, it is very important to me to be able to see my cousin, so I visit anyways.
4. Marion keeps in touch with all of his family and plays a very important role in their lives. He encourages everyone to spend time together and to take care of one another. I know that Marion's father is unreliable and sometimes tells him that he is going to visit and then does not show for the visit. This has been a pattern throughout Marion's life. Despite that Marion continues to maintain a relationship with his father.
5. I would describe Marion as a gentle giant, or a giant teddy bear. He supports me in every way. He is the best support system that you could ever ask for and the best person to have in your corner. He is reassuring, positive, and I depend on him. Even when he is feeling down, he doesn't complain. He relates his disappointment to stories in the Bible and that helps him maintain his faith.
6. Marion keeps a calendar so that he never forgets someone's birthday, anniversary, or even their doctor's appointment. He always sends cards to celebrate special occasions. He reminds his loved ones of their doctors' appointments and then follows up with them to see how the appointment went. Recently, his mother, his daughter, and I were all in the hospital at the same time. He called many times before I was able to answer the phone, because he wanted to be on the phone when the doctor came in to explain what was going on. I know it hurts him deeply to not be able to be there for his loved ones in person. He worries about those he loves and wants to know what is going on with them, so that he knows how best to be supportive.
7. Marion supports me in every way. He encourages me in my endeavors to start a business, he gives me advice when I talk to him about my financial situation, and is always ready to lend an ear whenever I need to talk through various things that are happening in my life. I own a make-up business. Marion supports me in that by encouraging me to do things like make and sell t-shirts, he started a log all on his own to keep track of my inventory, and whenever he sees a relevant commercial on tv, he takes notes and then tells me about it when we talk. He does the same thing when I mention that I need a couch, or something like that, he will watch tv and then let me know when there are stores that are advertising sales. In this way, he stays involved in my life, helping me however he can.

1 ac

8. I know that Marion frequently helps out the other guys on death row as if they were his own family members. He supports them emotionally and will share what little he has with them. Even when Marion doesn't want to play a card game, he will play when asked because he knows how helpful that is to the other guys' mental health. He will buy them chips, socks, headphones—whatever they need even when he doesn't necessarily have extra to give. There is an older gentleman, named Mr. Fred, on the row who Marion checks on frequently. He makes sure that the older man eats and will put him on the phone when we talk so that I can also encourage him to eat too. Marion even follows up with the deputy warden when Mr. Fred needs new glasses or treatment for the gout in his feet. Marion notices when the other guys stay in their room, or seem down, and he will go to check on them. He is a call-to-action type of person.
9. Faith is very important to Marion. He never misses a Bible study, no matter what. When we talk in the morning, he always reads to me from his Bible. In the evenings we pray together. Whenever he is starting to doubt the journey, he will refer to a story in the Bible. For example, we talked about the story of Jonah and the whale. Scientifically speaking, Jonah should not have survived inside of the whale, but he is proof that miracles do happen.
10. We talk several times a day, and through our phone calls, Marion has created close relationships with other family members. For example, whenever Marion calls, my four-year-old niece always wants to talk to him and she ends up taking over the conversation. In fact, she will refuse to eat breakfast until after she has talked to him. He is a thoughtful person and will draw pictures of all of my niece's favorite things for her. He has also given me some of his art, which I have framed and hung on my walls. I think of him whenever I catch a glimpse of the pictures. Marion also has a close relationship with my mom and has maintained contact with her through letters since long before he and I reconnected. He talks to her on the phone as well.
11. Marion checks in with me throughout the day. When we talk in the morning, we break down the stories in scripture to find meaning relevant to our lives and talk about my plans for the day. We don't do this as often now because Marion was able to get a job serving food in the morning. He checks in with me at lunchtime. When we talk in the evening, we talk about my day, about cooking, and about motorcycles. He also checks to make sure I have gas in my car, because I'm bad about that. He gets nervous whenever I have to stop for gas at night and will stay with me on the phone to make sure that I am ok. On the weekends, we talk on the phone during football games. We both root for the Dallas Cowboys. When Marion isn't able to watch the game, he will call so that I can fill him in on how it is going.
12. If Marion were to be executed, it would greatly impact my life in a negative way. Our calls are a huge part of my daily routine. I don't know what I would do if I did not have him around to talk to. I would be disappointed in the justice system if I were to lose my cousin to an execution. I remember when Marion lost his last appeal and I felt that there was a dark cloud over my head. I couldn't sleep and I found it hard to talk. It is important to me that his life is spared because he means so much to me.

13. I am in support of a conversion or commutation of Mr. Bowman's sentence to a life in prison sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.

Quanisha Clark
QUANISHA CLARK

Sworn to and subscribed before me
This 26 day of October, 2023

Dore Rust

Notary Public for the State of South Carolina
My commission expires: 3/24/27

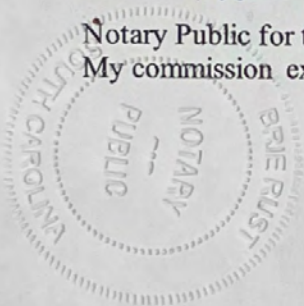


Exhibit 29

STATE OF SOUTH CAROLINA

COUNTY OF ORANRGEBURG

)
)
)

AFFIDAVIT

Lorraine Johnson, who appeared personally before me, affirms and states the following:

1. I, Lorraine Johnson, am over the age of 18 years old and live in Orangeburg County.
2. I am Marion Bowman's maternal aunt; his mother, Denise, is my sister. I have known him all of his life. As a child, Marion was just a normal young boy and never created any problems. He was close with all of his cousins, and they regularly spent time together at my mother's house.
3. Marion is someone who would do anything for someone else if he is able. He has been a kind hearted person ever since he was a child and I would describe him as a gentle giant. Despite his current situation, Marion always asks about what is going on in my life and tries to build me up when I am down.
4. Marion sends cards that are inspirational and include Bible verses. He is always trying to uplift you. He never complains, not even when it comes to his case. Rather, he is always asking about everyone else and encouraging them to be upbeat.
5. I know that Marion provides his mother with a lot of support as well. I am concerned about my sister's health. Marion's situation hangs heavy over my sister's head and it definitely has a negative impact on her health. She has changed a lot because of this. For example, Denise always used to be the life of the party, but now she keeps to herself. While she used to always love to dance, now she sits in the corner and keeps to herself at family functions. It has torn our family apart to have Marion be on death row. If Marion were to be executed it would only further divide our family. I do not think that Marion's mother would recover if he were to be executed.
6. Marion's daughter, Marissa, is also very close with her father. Marissa recently gave birth to her first child in August and I know that Marion is enjoying being a grandfather. Marissa relies on Marion a lot and frequently goes to him when she needs to talk through the things that happen in her life. Despite his incarceration, they have maintained a close father daughter relationship. Marissa visits her father regularly and he helps her maintain her mental health through those visits. I know that he is very supportive of her and that she would be devastated if Marion were to be executed. He would do anything he could in order to make a difference for Marissa and his granddaughter.
7. In addition to providing support to his family, I know that Marion would be a good mentor to younger men. He would teach them to learn from his mistakes and help them to stay on the right path. I know that he volunteers and dedicates his time to others.
8. I love my nephew and I do not want him to be executed. I have already lost my own child and I would be devastated to lose my nephew as well. Although I would love for him to

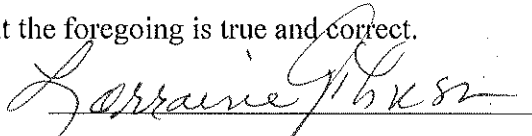


come home one day, I know that even in prison, that he would stay out of trouble and have a positive impact on those around him. A life in prison sentence would also allow him to continue to have a relationship with the family that loves him so much. Commuting his sentence would be like giving him a second chance. A chance to be there for his daughter and for his new granddaughter.

9. My child, Marion's cousin, disappeared in 2018 and I fear that he may be dead. Even if someone was able to find my son's killer, I would not want that person to be executed. I do not believe that an execution would bring me any sense of justice that a life sentence couldn't provide.

10. I am in support of a conversion or commutation of Marion's sentence to a life in prison sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.


LORRAINE JOHNSON

Sworn to and subscribed before me
This 3 day of October, 2023



Notary Public for the State of South Carolina
My commission expires: 8.24.27

Exhibit 30

COUNTY OF ORANGEBURG
STATE OF SOUTH CAROLINA

AFFIDAVIT OF DOROTHY BOWMAN

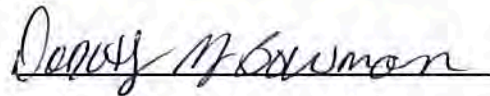
Comes now Dorothy Bowman, before the undersigned officer duly licensed to administer oaths and swears or affirms as follows:

1. My name is Dorothy Bowman. I live in Branchville, South Carolina and I am over the age of eighteen. The information contained in this affidavit is within my personal knowledge and I am competent to testify to the matters herein. *DMB*
2. I married Marion Bowman Jr. on December 6, 1999. I had two young sons when I married him. Even though Marion was not their father, he always treated them like they were his own boys. Marion's father wasn't very involved in his life, even when he was young, so it was important to Marion that my boys have a father in their lives. *D.M.B.*
3. Marion was a good husband and a good father. He always provided for us financially and made sure we all had what we needed. He also spent a lot of time with his family - he wasn't always out running in the streets. *D.M.B.*
4. I was pregnant with our daughter when Marion was arrested and charged with murder. Marissa was born September 20, 2001, just two months after he was served with notice that the State was seeking the death penalty against him. Marion has been as good of a father as he could be from prison. He and Marissa have corresponded regularly through letters and phone calls. She used to visit when Marion was located in Ridgeville, but now that he is in Columbia she doesn't get to

see him as often, but she still goes. Marissa will graduate from high school this year and Marion is very proud of her. He has always encouraged her to do well in school and stay out of trouble. D.M.B

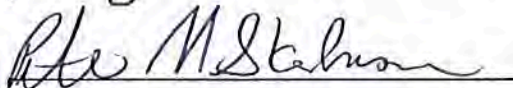
5. I was interviewed by someone on Marion's case before his trial, but no one ever asked me to testify for him. I don't know why. I would have liked to share with the jury what a good father Marion was to my boys. D.M.B

Further affiant sayeth naught.



Dorothy Bowman

Sworn to me this 7 day of
January, 2019.



Notary Public

My commission expires: 2-26-2023

Exhibit 31

STATE OF SOUTH CAROLINA

)

AFFIDAVIT

COUNTY OF ORANGEBURG

)

)

Francis Bruce, who appeared personally before me, affirms and states the following:

1. I, Francis Bruce, am over the age of 18 years old and live in Atlanta, Georgia.
2. I am Marion Bowman's maternal aunt; his mother, Denise, is my sister. I have known him all of his life.
3. Marion was a good kid, I never heard of anyone having any trouble with him, and I know that he was a good listener. He especially loved my mother. He would always check on her and would do anything that my parents asked of him. That is just who he is.
4. About four years ago, I lost my own son. It is so hard to imagine losing another young man in our family. I would rather visit my nephew in prison, rather than have to visit him in a graveyard.
5. I know that Marion's execution would really affect my sister, Denise, Marion's mother. It affects your heart to lose a son and I know that firsthand. Losing a son is like losing your heart. I have already seen changes in my sister. Denise isn't as joyful as she once was. She puts on a front and does the best that she can, but when she is able to let her guard down it is clear how much she is hurting. This has also impacted her health. Denise has a lot of medical issues and I am very concerned about her.
6. Marion has changed for the better. I know that religion has become really important to Marion. He participates in the prison ministry and has talked to me about how God and religion gives him hope. We always talk about the Lord together.
7. I lead two prayer lines, one at one o'clock in the afternoon and then another one at seven in the evening. Prayer lines are conference calls that anyone is able to call into in order to receive support and inspiration. We often share scripture with each other, ask for prayers for our loved ones who are suffering, and then we pray together. Marion really wanted to be a part of the prayer line, but we weren't able to arrange that since it would go against prison policy for Marion to participate in a three way or conference call. Instead, Marion always sends scripture to us, so that we can read it during the prayer line phone calls.
8. Marion still plays an important role in our family. He is always calling around to check on everyone. When we talk, he makes sure to ask about my son, Darnell, and my daughter, Angel. If Marion's sentence was commuted to life in prison, then it would give him an opportunity to continue to be present in the lives of his family members. He would still be able to call to check on them and he would be able to provide support from the inside of the prison.

FMB

9. I believe that Marion would do very well if his sentence was commuted to life in prison. I think he would become a better person than he is already. It would further strengthen his faith and he would have a deeper understanding of the power of God. I believe that he would be a good example to others and would share his faith with them.

10. I am in support of a conversion or commutation of Marion's sentence to a life in prison sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.

Francis Bruce

FRANCIS BRUCE

Sworn to and subscribed before me
This 3 day of October, 2023

Bone Rust

Notary Public for the State of South Carolina
My commission expires: 8.24.27



Exhibit 32

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

)
)
)

AFFIDAVIT

Yolanda Bowman, who appeared personally before me, affirms and states the following:

1. I, Yolanda Bowman, am 42 years old and live in Orangeburg, South Carolina.
2. I am Marion Bowman's younger sister. Marion is an incredible, loving, and fun person. He is such a positive presence in our lives.
3. I miss my brother so much. As children, I remember that Marion had to step up to the plate, because of my mother's illness. He always took odd jobs, like helping those in the community do yard work. He always did anything that he could to help his family and those in the community. He always made sure to check on my mother, make sure that she took her medicine, and would make sure that she had food to eat. Because of my mother's health condition, Marion sometimes had to carry her from room to room when she was not able to walk on her own. That is who Marion is as a person. I wish I could have him in my life, but I understand that he will never be able to come home and will never be able to attend family functions with us no matter how badly we want him to be there.
4. We need Marion around as a male father figure. Even though Marion has never had the opportunity to meet my children, he has been influential in their lives. They get excited to talk to him and they listen to him and the advice that he gives them. He always encourages them to do the right thing and stay away from bad influences. He consistently repeats, "the streets have nothing to offer you." When they were younger, Marion always encouraged my children to stay in school, continue their education, and get jobs to help take care of the family. My children are now 18 and 23 years old and still benefit from Marion's advice and support.
5. I know that Marion is very important to his daughter, Marissa. They have a very strong bond that is important to Marissa's life. Even though Marissa was born after Marion went to prison, they have always had a bond that helps Marissa to take care of herself and make important decisions. His advice always has to do with how to be the best person she can be and I know that it has made a positive impact on her life. She always tells me "my daddy says" and "I love my dad." I'm so glad that she can talk to my brother and maintain their relationship. He is a great father even despite the distance between them and has always pushed Marissa to do well in school and work hard.
6. Marissa just had a child and Marion is so excited to be a grandfather. I know he will be a great grandfather and will have a positive impact on his granddaughter's life the way he has had in all our lives.

YB

7. My father has withdrawn since Marion has been gone. They were very close when we were growing up and that has been a significant loss for my father. It really bothers my mother that Marion has been in prison for so long and I fear that she is close to having a nervous breakdown. I have noticed the negative impact that this has had on her health. Similarly, whenever I try to talk to my sister about this, she cries uncontrollably and is also close to an emotional breakdown. I can see that she struggles to face the reality of the situation and misses him tremendously.
8. Marion's attitude is a lot different from before he was detained. He has changed so much and has become a better person. He is now very family oriented and always checks in with us to stay involved in our lives. I have changed in similar ways and know that as you age you mature. He is also always a positive person. Our conversations are always uplifting and I cannot imagine life without hearing his voice.
9. Marion talks about praying and the Lord all the time. This is something that I have noticed as a positive change in his life. He always shares his faith with us when we talk on the phone. He ends our calls with "stay prayed up, keep your head up."
10. I have also noticed the effort that Marion has put into developing as a person and his dedication to continuing to learn and grow. His communication skills and vocabulary have improved so much over the years.
11. Marion also draws and sends me and my family pictures that he knows will make us feel special. He always sends cards to celebrate our birthdays and special events. He writes to us whenever he can, which means so much to me.
12. I believe that Marion has been punished significantly and I feel that a life sentence would be an appropriate punishment for my brother. It's hard for me to watch the news and see that other people who are guilty of similar crimes and are able to go home to their families. Although, I understand that Marion will never be released from prison, if Marion was given a life sentence that would at least allow me to hug my brother, something I have not been able to do in over 20 years. I cannot imagine the joy he would have from a simple hug with me, my mother, his daughter, and granddaughter.
13. It has been emotionally difficult for me to visit my brother in prison, because I can see how hard it is for him and I hate that I am not able to be in the same room as him. I always try to stay strong for him, but it is difficult since it is so painful for me to not be able to just invite him over to spend time with me and my children.
14. I love and miss him so much. I am begging you to find it in your heart to commute my brother's sentence to life in prison. He is so important to us and we would be devastated to lose him. It would be a loss that I'm not sure that I could recover from.

I affirm, under the penalty of perjury, that the foregoing is true and correct.

Yolanda Bowman
YOLANDA BOWMAN

Sworn to and subscribed before me
This 26 day of October, 2023

Brian
Notary Public for the State of South Carolina
My commission expires: 3.24.27

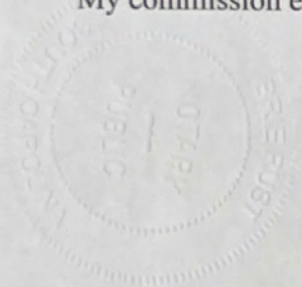


Exhibit 33

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

)
)
)

AFFIDAVIT

Lena Clark, who appeared personally before me, affirms and states the following:

1. I, Lena Clark, am over the age of 18 and live in Orangeburg County.
2. I am Marion's second cousin on his mother's side.
3. Marion is a nice person who loves to laugh and loves to smile. He is friendly to everyone and I know that his family is very important to him.
4. Marion always writes letters to us, he calls, and makes sure to stay in contact with all of us. When he calls he is always asking about everyone else and checks in to make sure that we are all doing well. We write regularly, a few times per month, and we talk on the phone. When we talk he often shares verses that he has read in the Bible and mentions how important God is to him.
5. Marion is especially close to my daughter, Quanisha. Marion always makes sure to give her good advice. I know that they talk and visit with each other regularly. They each encourage each one another and I believe that they support each other in many different ways. If Marion were to be executed I know that my daughter would be devastated. She would cry a lot and I fear that she would become very depressed. They are best friends and I know that he means a lot to her. I am extremely worried about how his execution would impact her.
6. If Marion were executed it would hurt and be very sad for all of our family. Marion was young when this happened and I know that he has grown a lot since then. Over the years I have noticed that Marion has become more humble and patient. He is more loving and cares very much about how his family is doing. He is very concerned about making sure that no one in his life makes the same mistakes that he made. He has used his experience to encourage others to make better choices.
7. I fear that Marion's death would affect his mother, my cousin, Denise in a very bad way. She is in poor health and I am not sure that she could survive that. Denise is a very loving and caring person and I have seen how important her family has become to her in the face of potentially losing her son.
8. I know that Marion is a good person and not someone who should be executed. Although he will never be able to come home, I would much rather be able to talk to him and visit him, something I would not be able to do if he were executed. I hope that you can find it in your heart to spare his life.
9. I am in support of a conversion or commutation of Marion's sentence to life in prison.



I affirm, under the penalty of perjury, that the foregoing is true and correct.

Lena J. Clark
LENA CLARK

Sworn to and subscribed before me

This 26 day of October, 2023

Brie Rust
Notary Public for the State of South Carolina
My commission expires: 3/24/27



Exhibit 34

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

)
)
)

AFFIDAVIT

Gordon Manning, who appeared personally before me, affirms and states the following:

1. I, Gordon Manning, am over the age of 18 years old.
2. I met Marion Bowman through my volunteer work with the East Cooper Baptist Church. We provide ministry to those who are housed on death row. I have been involved in this work since before death row moved away from Lieber in September 2017.
3. I met Marion when he was at Lieber. I visited the prison every Monday night and facilitated a Bible Study session from 6:00 – 8:00/8:30 p.m., but I was only able to interact with the men on death row about once a month.
4. Whenever I see Marion, he always jumps up and comes to the door eager to speak with me. We talk about the Bible, his life, and his workouts. He is always excited about reading and learning. Despite being on death row, Marion never appears to be angry or depressed, which differentiates him from the other men on the row.
5. Marion stands out amongst his peers. While others tend to have a negative outlook when it comes to prison, Marion has always been a positive person. It is easy to connect with Marion and I always look forward to seeing him.
6. Marion is a good guy. He is well behaved and kind to others. It is apparent to me that Marion is very proud of all of his accomplishments. He skips to his desk in order to get his work for our Bible Study sessions and then skips back to the door in order to share his work with me.
7. Unfortunately, due to the COVID virus, our Bible Study sessions were suspended and have not yet resumed at this time.
8. I am in support of a conversion or commutation of Mr. Bowman's sentence to a life in prison sentence.

I affirm, under the penalty of perjury, that the foregoing is true and correct.


GORDON MANNING

Sworn to and subscribed before me
This 6 day of September, 2023

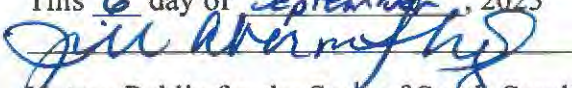

Notary Public for the State of South Carolina
My commission expires: 3-21-24

Exhibit 35

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

)
)
)

AFFIDAVIT

Larry Tyree, who appeared personally before me, affirms and states the following:

1. I, Larry Tyree, am an ordained minister. I am 67 years old. I have served as a volunteer chaplain for the death-sentenced inmates in South Carolina for the last 14 or 15 years. I met Marion Bowman early in my death row ministry and I consider him a friend. We talk about ministry and religion but we also talk about just about everything.
2. When the row was at Lieber, the warden there allowed me to bring in books for the guys to read. I started a reading program and brought in all sorts of books, including a lot of history books about WWII. I also brought in Lauren Hillenbrand's Unbroken and books by Hampton Sides. They were so popular there was a waiting list for guys to get the books. When I visited the guys on the row, they would talk with me about the books. It was through the discussions around the reading program that Marion and I became good friends.
3. When death row transferred from Lieber to the Maximum Security Unit at Kirkland, I continued to visit there, even though the conditions were about as close to hell as you can get. I have also continued my visits since the transfer of death row from Kirkland over to Broad River. My visits have been pretty regular on a weekly basis except for brief periods where I might miss a couple of weeks due to health problems or other issues.
4. Other volunteers who visit death row when I do are James Bradham, Ken Ritchie and Bob McCallister.

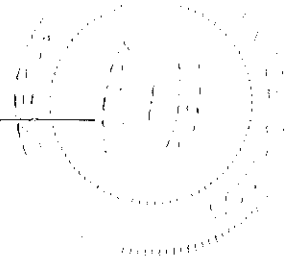
I really enjoy talking to Marion. He is one of the funniest people I know. We talk about just everything without secrets. When I visit, Marion will always hug me and we'll talk about 2 hours each time. While I like most of the guys on the row, I don't hug them and there are a few that I won't even shake hands with because they might have a razor blade in their hand. Marion is not one of them. I also hug him.

5. I consider Marion to be a good friend and a good person. He likes to talk about basketball and just about everything going on in his life. Marion is the first person to step in to break up a fight.
6. I whole heartedly support a conversion or commutation of Mr. Bowman's sentence to a life sentence.



I affirm, under the penalty of perjury, that the foregoing is true and correct.


Larry Tyree



Sworn to and subscribed before me
This 12 day of October, 2023

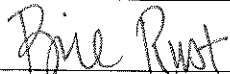

Notary Public for the State of South Carolina
My commission expires: 3/24/27

Exhibit 36

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

)
)
)

AFFIDAVIT

Bob McAlister, who appeared personally before me, affirms and states the following:

1. I, Bob McAlister, am the President of McAlister Communications. For the past thirty-five years, I have volunteered at the South Carolina Department of Corrections, leading Christian Bible studies with inmates in various facilities in the Department. My ministry has included volunteering on South Carolina's death row. Currently, I volunteer on death row every other week, conducting a Bible study, leading religious discussions, and holding Christian worship services.
2. Through this death row ministry, I met Marion Bowman approximately five years ago, in 2018 or 2019.
3. Marion Bowman faithfully attends the Bible study and worship services every time I am there. Mr. Bowman is very quiet and respectful. He does not complain about his plight (like many others do) and is very polite. He is, instead, focused on the present and the Lord. Through our interactions, I have come to recognize Mr. Bowman as a humble man who is a born again Christian.
4. Mr. Bowman is very dedicated to the worship service and is an active participant. He often leads us in singing at the end of the service. I regularly ask him to close the service by singing *Amazing Grace*.
5. Talking to Mr. Bowman is like talking to anyone outside the Department of Corrections. I have not detected any major psychiatric problems or issues in my interactions with him.
6. I do not believe Mr. Bowman would be a risk if he were transferred to the general population. I would go so far as to say that, if he had the right infrastructure on the street, he would not be a risk to society, but certainly no risk in the Department of Corrections general population. In fact, Mr. Bowman is one of the few people I've met in the Department of Corrections who, if he were released, I would invite over to spend time with my family.
7. Mr. Bowman is thoughtful of others. My wife sends birthday cards to the men on death row. Though Mr. Bowman has never met her, he greatly appreciates her sending the cards and asks me how she is doing when I meet with him.
8. Overall, I would describe Mr. Bowman as a humble, sweet man. I believe he has characteristics that would lead to Mr. Bowman being successful in a general population setting, including humbleness, politeness, a quiet nature, and a pleasant demeanor.
9. I support a conversion or commutation of Mr. Bowman's sentence to a life sentence.

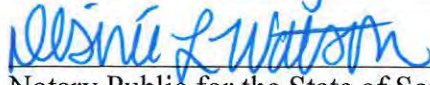
I affirm, under the penalty of perjury, that the foregoing is true and correct.



BOB MCALISTER

Sworn to and subscribed before me

This 11 day of July, 2023



Notary Public for the State of South Carolina

My commission expires: 9/8/2030



Exhibit 37

COUNTY OF BEAUFORT)
)
STATE OF SOUTH CAROLINA) AFFIDAVIT OF SHANNON BRADLEY BROWN

I, Shannon Brown, being duly sworn, do state:

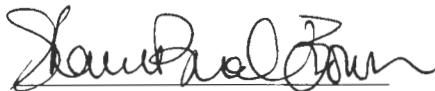
1. I am a currently a resident of Beaufort County, South Carolina.
2. I am at least eighteen years of age.
3. I currently work as a Reading Interventionist for Catapult Learning. I am a retired teacher and taught public school in South Carolina for 26 years.
4. I first met Marion Bowman when I was helping my husband at his law office in 2007. My husband represented Marion in his Capital PCR. I helped in the office doing small tasks such as answering the phone and organizing files.
5. Marion would call the office for updates and he and I would always talk about our families and our lives.
6. He was always very easy to talk with and had a great sense of humor. He and I had a common interest in football, so we would talk every week about what was happening with SEC football. We would catch up every week to lament about how bad Alabama football was that year.
7. Marion soon became an Alabama football fan and every year he sends me a Christmas card that says "Roll Tide!" It was very meaningful to me that he became an Alabama fan because I know there is no way he grew up in Branchville, South Carolina. rooting for Alabama. He is a people person with a huge heart and a positive attitude. He cheers for Alabama out of friendship for me.
8. Marion has a daughter who is the absolute love of his life. When she was just a little girl he told me that anything his daughter wants, he does what he can to get it for her. Once they were talking on the phone and she started begging him for a swimming pool. He said he finally told her, "Of course you can have a swimming pool." He has never for one second let prison walls keep him from doing everything he could to be a meaningful presence in her life. There is a saying that a man does not have to be a perfect person to be a perfect father. Marion Bowman has been the best father he could be given his situation.
9. Marion now has a granddaughter and being a grandfather means everything to him. He told me that one day I will understand how wonderful grandchildren are. He said things that he would never have told his daughter she could not have, but he would definitely let his granddaughter have anything. He says that his granddaughter is still a baby but she is

one of the smartest babies he has ever seen. He loves her and I know his daughter loves Marion if she brought him to death row to visit him.

10. Marion's daughter coming to visit him and bringing a baby speaks volumes about his kind and gentle nature. It also speaks volumes about the type of dad he was and still is to his own daughter.
11. One of the mitigation experts who worked for my husband gave me a little background information on Marion. When he and his sisters were very small children, his father was physically abusive to his mother. The final straw for his mother was when his father punched out her front teeth with brass knuckles. His mother gathered the children into their red wagon and left for good. She left with nothing except her children and the clothes they were wearing. Despite having a negative role model for a father, he is a loving and supportive father to his own child.
12. Marion attended GED classes before his arrest and his teacher told our mitigation expert that he would stay after every class and help her gather all the books and clean the room. For a teenage boy to ever stay at school longer than he has to and actually help organize and clean up is very rare. I taught school for many years and it's not common for teenage boys to even say, "Goodbye, have a nice day," much less stay late and help clean.
13. I met Marion's mother during a hearing and she told me Marion and the victim in this case (Kandee Martin) had been friends their entire lives. She said they were boyfriend and girlfriend as children and were always very close. She said Marion loved her.
14. Marion has always said he did not kill Kandee Martin. I am not a lawyer but I do know that Marion Bowman did not have very good representation at his trial. He had a lawyer who referred to him repeatedly as a "big black man" and to Kandee as "a little white girl." Marion is a tall man, but he was actually younger than Kandee. These descriptions were and are still inflammatory, racist and grossly inaccurate.
15. I went to visit Marion in November 2024, and he was just as funny and sweet as he always has been. He is extremely well spoken and articulate. I do believe his time in prison has actually given him the only stability he has ever had in his life. He took a horrible situation and made himself into the best person he could be. He has never said a negative thing about anyone to me ever. He is always happy and upbeat even though I know he has to be very scared right now.
16. Marion has somehow found a calmness in this situation; has a strong spirit and strong trust in the Lord. He has never shown self pity and is probably the most spiritually strong person I have ever met.
17. He is not a threat to anyone inside or outside of prison. He has friends incarcerated with him who love him. His family loves him, as well as his legal team. The warden and guards are also very fond of him and from what I saw at the prison last month, they treat

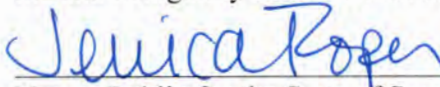
him with so much respect. This is a clear example of the kind of person Marion Bowman is.

18. I do not believe executing Marion Bowman will serve any real purpose except to upset all of us who love and care about him. Executing him will not bring anyone closure, it will only bring more discontent and sadness. I do not believe anyone, much less an imperfect legal system, should remedy violence with more violence. Please spare his life for all of us who care about him.
5. I make this statement of my own free will and accord, absent any coercion or duress.


Shannon Bradley Brown

December 16, 2024

On the 16th day of Dec, 2024, Shannon Bradley Brown appeared before me and being duly sworn executed the foregoing Affidavit.


Notary Public for the State of South Carolina
My Commission Expires: 01/08/2034

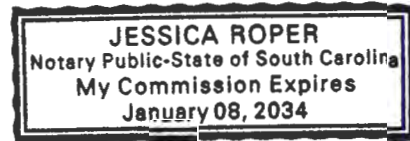


Exhibit 38

AFFIDAVIT OF KIMBERLY N. FUHRMEISTER

STATE OF NORTH CAROLINA

)

COUNTY OF MECKLENBURG

)

)

AFFIDAVIT

I, Kimberly Fuhrmeister, being first duly sworn, swear and affirm that the following is true to the best of my knowledge:

1. I am employed with the Federal Public Defenders Office for the Western District of North Carolina as an Investigator / Mitigation Specialist in the Capital Habeas Unit. I have held this position since July 2021.
2. In the regular course of my duties, I identify, locate, and interview witnesses.
3. On April 15, 2023, I spoke briefly with Vaughn Jackson at his home in Chapin, SC. Mr. Jackson was employed as the Deputy Warden at Kirkland Correctional Institution, and later worked at Broad River Correctional Institution. Mr. Jackson is now retired.
4. In the course of my April 15th conversation with Mr. Jackson, he told me that Marion Bowman Jr. was a model inmate and his behavior was good. It was not a good time for him to talk, so we agreed to follow up in the future.
5. On April 17, 2023, I followed up with Mr. Jackson via telephone. Mr. Jackson told me that Mr. Bowman served as an inmate representative and was one of the leaders on death row.
6. As the inmate representative, Mr. Bowman was tasked with representing the other inmates by discussing with the prison administrative staff about any problems, complaints, and issues the inmates were having on death row. Marion held this position for about two years and did a good job.

7. He described Mr. Bowman to me as the type of person to go out of his way to help anyone who needed it.
8. Mr. Jackson was aware that Mr. Bowman's family has always supported him and he knew that Mr. Bowman's family visited with him when they could.
9. Mr. Jackson told me that, in his opinion, Mr. Bowman would do fine in general population if his sentence were to be commuted to life in prison.
10. The information contained in this affidavit is an accurate representation of the information discussed during both of the conversations that I had with Mr. Jackson.

Further affiant sayeth naught.


KIMBERLY FUHRMEISTER

Sworn to and subscribed before
me this 16th day of December, 2024.


NOTARY PUBLIC FOR NORTH CAROLINA
My Commission Expires: 07/01/2029



Exhibit 39

AFFIDAVIT OF STACY FERRARO

STATE OF MISSISSIPPI

)

AFFIDAVIT

)

COUNTY OF HINDS

)

I, Stacy Ferraro, being first duly sworn, swear and affirm that the following is true to the best of my knowledge:

1. From August 2022 until March 2023, I was employed with the Federal Public Defender's Office for the Western District of North Carolina as an assistant federal defender in the Capital Habeas Unit for the Fourth Circuit. In March 2023, I took a position as a research and writing attorney at the Federal Public Defender for the Southern District of Mississippi in Gulfport, Mississippi. Currently, I am in private practice as an attorney and a mitigation specialist in Jackson, Mississippi.
2. While employed in North Carolina, I conducted several interviews of individuals who previously worked for the South Carolina Department of Corrections (SCDC). The purpose of the interviews was to determine the staff's observations of Marion Bowman Jr., who is currently on death row and facing execution. I also inquired about their opinions concerning how he would adapt to incarceration in general population.
3. On March 14, 2023, I met with Mr. Eddie Berry Jr. for a pre-arranged interview.
4. Mr. Berry told me that he was employed by SCDC from 2009-2014. He spent two of those years working on death row at Lieber Correctional Institution. Mr. Berry's duties as an officer included regular interactions with all of the men on death row, including my client Mr. Bowman.

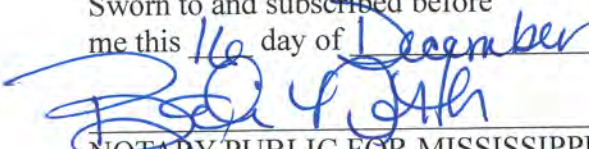
5. Mr. Berry told me that he enjoyed working on death row, partly because it was a quieter, and therefore, an easier environment in which to work.
6. Mr. Berry described Marion Bowman Jr. as no trouble. He did not recall any time when Mr. Bowman broke the rules, nor did he recall any disciplinary infractions.
7. Mr. Bowman, in his opinion, was social and got along well with other inmates and guards. He remembered that they would laugh, talk, and joke together. Some of their conversations were about the Bible and Mr. Bowman's dreams, which were religious in nature. They also talked about sports. Mr. Bowman exercised, and they would talk about their workouts together.
8. Mr. Bowman affectionately referred to Mr. Berry as "Big 400." Mr. Berry and Mr. Bowman stayed in contact after Mr. Berry left SCDC. During our interview, Mr. Berry told me that he spoke with Mr. Bowman as recently as two or three weeks ago.
9. Mr. Berry was aware of the circumstances of the crime for which Mr. Bowman received a death sentence.
10. Mr. Berry told me that he wanted to help Mr. Bowman however he could, and never expressed any concern over Mr. Bowman's ability to adapt to general population should his sentence be commuted to life in prison.
11. Unfortunately, Mr. Berry died on March 19, 2023.
12. The information contained in this affidavit is an accurate representation of the information discussed during my interview with Eddie Berry Jr.

Further affiant sayeth naught.


STACY FERRARO



Sworn to and subscribed before
me this 16 day of December, 2024.


NOTARY PUBLIC FOR MISSISSIPPI

My Commission Expires: 10-4-27



Exhibit 40

AFFIDAVIT OF STACY FERRARO

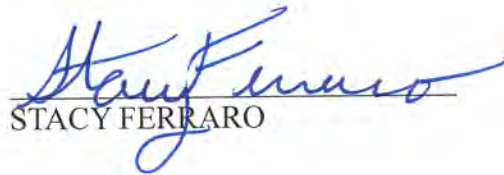
STATE OF MISSISSIPPI	)	
	)	
COUNTY OF HINDS	)	AFFIDAVIT

I, Stacy Ferraro, being first duly sworn, swear and affirm that the following is true to the best of my knowledge:

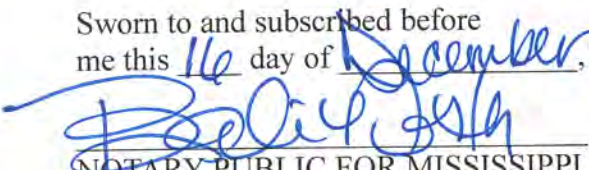
1. From August 2022 until March 2023, I was employed with the Federal Public Defender's Office for the Western District of North Carolina as an assistant federal defender in the Capital Habeas Unit for the Fourth Circuit. In March 2023, I took a position as a research and writing attorney at the Federal Public Defender for the Southern District of Mississippi in Gulfport, Mississippi. Currently, I am in private practice as an attorney and a mitigation specialist in Jackson, Mississippi.
2. While employed in North Carolina, I conducted several interviews of individuals who previously worked for the South Carolina Department of Corrections (SCDC). The purpose of the interviews was to determine the staff's observations of Marion Bowman Jr., who is currently on death row and facing execution. I also inquired about their opinions concerning how he would adapt to incarceration in general population.
3. On March 9, 2023, I spoke with Mr. Stanley Burt Jr. at his home in Summerville, South Carolina. Mr. Burt was employed with the South Carolina Department of Corrections until his retirement on January 2, 2008.
4. Mr. Burt worked with the death row population, including my client, Marion Bowman.

5. Although Mr. Burtt expressed that he did not remember much given the amount of time that had passed, he did remember Mr. Bowman as someone who was no trouble. He had no memory of Mr. Bowman ever attempting an escape.
6. The information contained in this affidavit is an accurate representation of the information discussed during my interview with Stanley Burtt Jr.

Further affiant sayeth naught.


STACY FERRARO

Sworn to and subscribed before
me this 16 day of December, 2024.


NOTARY PUBLIC FOR MISSISSIPPI

My Commission Expires: 10-4-27

