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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CALHOUN	)	Civil Action No. 09-CP-09-164
	)	
Mikal D. Mahdi, #5238,	)	
	)	
Applicant	)	ORDER OF DISMISSAL
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This is a capital post-conviction relief (PCR) case. Applicant, Mikal D. Mahdi ("Mahdi") filed a *pro se* Application for Post-Conviction Relief on August 18, 2009, and served it on Respondent on November 24, 2009. This action was brought pursuant to S.C. Code Ann. Section 17-27-160 and the South Carolina Supreme Court's July 23, 2009, Order, staying execution, allowing Mahdi to pursue potential state post-conviction relief, and assigning this Court with continuing jurisdiction regardless of assignment, with the authority to schedule such hearings as may be necessary. Respondent filed a Return denying the allegations of the application and moving to dismiss the application with prejudice. Applicant filed two amended PCR applications, and Respondent filed a Return to each, denying the allegations and moving to dismiss the applications with prejudice. The Application for Post-Conviction Relief, as amended, is DENIED and DISMISSED WITH PREJUDICE, for the reasons set forth below.

I. PROCEDURAL HISTORY

Mahdi was arrested on June 21, 2004, in the State of Florida and charged with a fugitive from justice warrant arising from the June 18, 2004, murder of James E. Myers. Mahdi waived extradition, was returned to South Carolina, and was charged with Myers's murder, the

grand larceny of Myers's truck, and the burglary of Myers's work shed.¹ Mahdi was indicted by the Calhoun County grand jury on August 23, 2004 for murder (2004-GS-09-243), grand larceny greater than \$5,000 (2004-GS-09-242), and burglary in the second degree (violent)(2004-GS-09-244). The State sought the death penalty. The South Carolina Supreme Court assigned the case to the Honorable Clifton Newman, Circuit Court Judge.

The Continuances

Attorneys Carl B. Grant and Glenn Walters, Sr., were appointed to represent Mahdi in 2004. The case was first scheduled for trial in January, 2006. Attorneys Grant and Walters moved for a continuance based on the need for more time to complete their mitigation investigation. (PCR Tr. 597-98; Respondent's Ex. 16). The Court granted the request, continuing the trial until early November 2006. (PCR Tr. 597-98; Respondent's Ex. 17). Meanwhile, in the spring of 2006, Mr. Grant was seriously injured in a motorcycle accident, whereupon Mr. Walters was substituted as first chair capital counsel, and attorney Joshua Koger, Jr., was appointed to represent Mahdi as second chair capital counsel. Shortly before trial, the case was continued again until November 26, 2006.

Jury Selection

On November 26, 2006, jury selection began before Judge Newman. General *voir dire*, individual *voir dire*, and jury selection were completed on November 29, 2006, with a jury and four alternates impaneled. Prior to the swearing of the jury, Mahdi waived his right to a jury trial and changed his plea to guilty. (R.123-1336).

The Guilty Plea

¹ The building described as the "shed" is actually more like a workshop or cabin. It is located on the victim's farm in Calhoun County. Myers and his wife were married there. Myers's wife had an office inside the "shed," which also

On November 30, 2006, Mahdi pled guilty before Judge Newman to murder, grand larceny over \$5,000, and burglary in the 2nd degree (violent). Prior to his guilty plea, Mahdi was re-examined by Dr. Michael Cross, whereupon Mahdi was determined to be competent for the second time. (R. 1254-59, 1336-43). Prior to the plea, Judge Newman found on the record that Mahdi was competent to plead guilty. (R. 1258-59, 1342-43). Judge Newman accepted Mahdi's guilty pleas to all charges and ensured that Mahdi's pleas were knowingly, voluntarily, and intelligently entered into by extensive and detailed questioning of Mahdi under oath. (R. 1259-84, 1343-68). After acceptance of the pleas, the impaneled unsworn jury and alternates were dismissed. Mahdi's guilty pleas concluded on the same day as entered, November 30, 2006.

The Sentencing Proceeding

After the statutorily required twenty-four hour waiting period, the sentencing proceeding began on December 1, 2006, with evidence concluding on December 5, 2006, and final arguments on December 6, 2006. On December 8, 2006, Judge Newman issued his sentencing decision by reading into the record his written sentencing order, filed on the same date. (R. 1726-42, 1810-26, 1842-53; Sentencing Order pp. 1-12) Judge Newman found the following statutory, aggravating circumstances had been proven by the State beyond a reasonable doubt: (1) the murder was committed during the commission of a grand larceny; and (2) the murder was committed during the commission of a burglary. (R. 1730-31, 1814-15, 1845; Sentencing Order p. 4). After considering all of the evidence in extenuation, aggravation, and mitigation of punishment, Judge Newman sentenced Mahdi to death for the murder of James Myers. (R. 1726-42, 1810-26) Mahdi was sentenced to fifteen (15) years for burglary second degree (violent), and ten (10) years for grand larceny, to run consecutively to one another and to the murder sentence. (R. 1741, 1825).

contained a television and chairs. (R. 1273-83, 1311-41, 1357-67, 1395-1425).

The Appeal

Mahdi appealed his death sentence to the South Carolina Supreme Court. Mahdi was represented on appeal by attorney Kathrine H. Hudgins of the Office of Appellate Defense. In his appeal, Mahdi raised only one issue: "Did the trial judge improperly consider Mikal Mahdi's initial exercise of his constitutional right to a trial by jury in imposing a death sentence?" (Final Brief of Appellant/Petitioner, p. 3). The State, represented by Assistant Attorney General Anthony Mabry filed a responsive brief. (See Final Brief of Respondent). On June 15, 2009, the Supreme Court affirmed Mahdi's conviction and death sentence. *Mahdi v. State*, 383 S.C. 135, 678 S.E.2d 807 (2009). The Remittitur was issued on July 1, 2009. Mahdi did not seek certiorari to the United States Supreme Court.

The Motion for a Stay of Execution

Mahdi, through attorney Hudgins, filed a Motion for a Stay of Execution on June 23, 2009, before the South Carolina Supreme Court, so that he could pursue potential post-conviction relief remedies. Pursuant to *In Re Stays of Execution*, the State filed a Return and did not oppose the Stay of Execution request to pursue potential post-conviction relief remedies. On July 23, 2009, the South Carolina Supreme Court issued its Order granting the stay request and assigning this Court to hear Mahdi's PCR application.

The Appointment of Collateral Counsel Hearing

On Tuesday, August 11, 2009, this Court convened a hearing in Beaufort, South Carolina pursuant to the Order of the Supreme Court, to determine Mahdi's desires concerning PCR counsel. Mahdi was present at the hearing. Respondent was represented by Assistant Attorney

General Mabry. At this Court's request, attorney Melissa "Lisa" J. Kimbrough was also present at the hearing.

This Court made inquiry of Mahdi, who desired appointed counsel in his PCR action. Mahdi requested that attorney Teresa L. Norris represent him in this matter, instead of Ms. Kimbrough. Ms. Kimbrough indicated that she would likewise prefer that Ms. Norris be appointed to represent Mahdi.

On August 19, 2009, this Court held a conference call with Ms. Norris, attorney Robert E. Lominack, and Assistant Attorney General Mabry, regarding Ms. Norris's and Mr. Lominack's qualifications and willingness to serve as PCR counsel and the timely scheduling and disposition of this matter. On August 24, 2009, this Court issued its Order of Appointment of Post-Conviction Relief Counsel and Scheduling Order appointing Ms. Norris and Mr. Lominack to represent Mahdi. The Order was filed August 28, 2009.

The PCR Application

Prior to the issuance of the Order of Appointment of Counsel, Mahdi filed a *pro se* Application. (2009-CP-09-00164). Mahdi filed two subsequent Amended PCR Applications. The State filed Returns to all three applications, denied the allegations in the applications, and moved to dismiss all three.

II. FACTS

Mahdi murdered James Myers, an off-duty police captain, on July 18, 2004, in Calhoun County, South Carolina, during a crime spree. (R. 1341-68). At the time of his murder, Myers had thirty-one years of service as both a fireman and as a police officer, with the rank of Captain. (R. 1357). Mahdi was a fugitive wanted for several crimes he committed outside South Carolina.

A. Crimes

Virginia

On July 14, 2004 in Lawrenceville, Virginia, Mahdi, a resident of Virginia, burglarized the home of Amanda Weaver, Mahdi's grandmother's neighbor, stealing a .380 caliber chrome pistol. (R. 1498-1527). On the same day, he stole Virginia license plates from a vehicle at a car rental agency in Lawrenceville, and then stole a Mercury Sable station wagon from a car lot about one-tenth of a mile from the car rental agency. (R. 1357-67). Mahdi then left Virginia, where homicide detectives were pursuing him for his involvement in the death of a drug dealer. (PCR Tr. 480-82, 513, 550, 604, 688-89). Mahdi would later indicate he was involved in another homicide in which the body was never discovered. (PCR Tr. 514).² Mahdi traveled to Florida, where he had friends. (PCR Tr. 689).

North Carolina

On July 15, 2004, around 7:05 p.m., Mahdi entered an Exxon station in Winston-Salem, North Carolina, armed with the stolen .380 caliber pistol. He took a beer from the store's cooler and placed it on the counter. While the store clerk verified Mahdi's age, Mahdi pulled out the .380 caliber pistol, shot the clerk, and then shot him again as he lay on the floor. (R. 1567-96). The event was captured clearly on surveillance video, and Mahdi's fingerprints were recovered from a mat that lay on the store's counter. (R. 1589). After shooting the victim, Mahdi attempted to rob the store's cash register, but was unable to open it. (R. 1483-98, 1567-82, 1693-94, 1777-78; State's

² This information was not presented at Mahdi's plea or sentencing proceeding. Mahdi's involvement in homicides in Virginia was developed at the PCR hearing as a result of Mahdi's allegations.

Exhibit 94) He then left the store with only the beer. (State's Exhibit 94). The store clerk, Christopher Jason Boggs, died from his wounds. (R. 1567-82, 1585).³

South Carolina

(Columbia)

At 3:30 a.m. on Sunday morning, July 17, 2004, Corey Pitts was sitting at a traffic light at the intersection of Bull and Washington Streets in Columbia, South Carolina, when Mahdi carjacked him of his red 2000 Ford Expedition. (R. 1528-40). Pitts's description of his assailant was consistent with Mahdi's physical appearance. Pitts told police the man who carjacked him was carrying a chrome pistol. Pitts identified Mahdi at the sentencing hearing as the man who stuck the chrome gun in his face, forced him out of his vehicle, and stole his vehicle.⁴ (R. 1532).

(Calhoun County)

Approximately thirty-five minutes after the carjacking, Mahdi drove the stolen red Ford Expedition to the Wilco Hess station at Exit 139 off I-26 in Calhoun County. (R. 1360). The Expedition now bore the license plates Mahdi stole from Lawrenceville, Virginia. (R. 1360-62). Mahdi's fingerprints were found inside the Expedition, and on the license tag and the frame surrounding the tag.

Mahdi attempted for forty-five minutes to an hour to use a credit card at one of the Wilco gas pumps to fuel the Expedition, but the pump would not accept the credit card. Due to this suspicious behavior, the Wilco store clerks notified police. Mahdi abandoned the stolen Expedition behind the station, and, as police arrived, fled into woods near the station. (R. 1361-

³ Subsequent to the instant PCR hearing, Mahdi pled guilty to first degree murder in the death of Christopher Jason Boggs, and received a life sentence.

⁴ The Mercury Sable station wagon stolen from Lawrenceville, Virginia was found in the parking lot of the Washington Street United Methodist Church near the scene of the car-jacking. (R. 1359).

62). The police searched unsuccessfully for Mahdi, and concluded he had obtained a ride from someone at a nearby Waffle House. Mahdi was, instead, on foot in the woods near the store, headed toward victim James Myers's farm.

James Myers owned a farm approximately one-quarter to one-half mile through the woods from the Wilco station. (R. 1362, 1399-1401). While fleeing on foot from police, Mahdi came upon Myers's work shed, and broke into it. (R. 1362, 1411). While there, he watched television, converted Myers's shotgun, sawed it off, and painted it black. (R. 1603). He went through SLED investigation files maintained by Myers's wife, a SLED agent. (R. 1414-16). He armed himself with Myers's .22 caliber rifle, which was kept in the shed with other guns. (R. 1604).

Myers was off work on June 18, 2004, having returned with his wife from Edisto Beach, where they celebrated the birthdays of his wife, sister, and daughter. (R. 1402-03). After returning home, Myers stopped by his father's home, as he routinely did, to visit and to help his father with the loss of Myers's mother, who had died two years earlier. (R. 1404). After visiting with his father, Myers left around 6:45 p.m. and headed to his farm, where Mahdi was lying in wait at the shed. (R. 1363-64, 1403-25). Mahdi confronted Myers at the shed, and shot him nine (9) times with the victim's own .22 caliber rifle, killing him. (R. 1364, 1541-66, 1696).⁵ After murdering Myers, Mahdi poured diesel fuel on and around the body and set it on fire. (R. 1364, 1696). He then stole Captain Myers's police-issued Dodge truck and a license plate from another vehicle located near the shed. (R. 1365, 1414, 1418). In addition to the .22 caliber rifle, Mahdi stole Captain Myers's police-issued Ruger assault rifle and the converted shotgun.

⁵ There is evidence that after Mahdi confronted Myers at the cabin, he forced Myers to empty his pockets on a table or chair inside the cabin. (R. 1419-21, 1774).

Myers's wife began missing him around 9:00 p.m., when he did not come home as expected. She called him several times and paged him, with no response. Finally, she contacted Myers's father and discovered what time he left his father's home. Mrs. Myers drove to the farm and, finding the gate to the property open, she drove to the shed and found her husband's truck missing. Mrs. Myers then went into the shed and found her husband's burned and bullet riddled body lying in a pool of blood. She knew immediately he was dead, and screamed for an unknown period of time. When she finally calmed down enough to use her phone, she contacted 911 and waited until the police arrived. (R. 1395-1425).

In the shop, within a few feet of Myers's body, police found the keys to Corey Pitts's stolen Ford Expedition. (R. 1365). Also found at the scene were multiple, fired .22 caliber shell casings and seven (7) fired .22 caliber bullets. (R. 1541-65). Police also found evidence that Mahdi had tried to hot-wire the victim's other truck. (R. 1413-14).

Florida

On July 21, 2004, in Satellite Beach, Florida, Mahdi was spotted by police in the victim's truck.⁶ He jumped out of the truck while it was moving, and fled. Mahdi ran for the beach, carrying the fully-loaded Ruger assault rifle. (R. 1377-94). Police were about to use deadly force when Mahdi dropped the gun and continued to run. He ran into a condominium complex and was apprehended on the fifth floor of the building with the use of a police dog.

While transporting Mahdi to the police station, the arresting officer thanked him for not shooting him with the assault rifle, to which Mahdi responded that the gun was "stuck on a three

⁶ By this time, police in Virginia and South Carolina had connected the crimes there and here to Mahdi. As a result, a nationwide BOLO was issued for Mahdi's arrest. (R. 1365-66). Florida police noticed Mahdi's erratic driving and thought Mahdi might be an impaired driver and began following him. Mahdi refused to stop for police. Mahdi eventually ran over a stop sign near the end of the pursuit. (R. 1379-82).

shot." Mahdi said with "cold eyes," "I don't think I could have got you - I couldn't have shot you, the other cop, and excuse my language, that fucking dog." (R. 1394).

After his arrest, police discovered the license plate on Myers's police-issued Dodge truck had been replaced with the license plate off Myers's personal GMC truck. (R. 1559-60). Clothing found by police inside the Dodge truck matched clothing Mahdi was seen wearing at the Wilco station in Calhoun County. Shorts found in the truck matched the shorts worn by Mahdi in the surveillance video of the murder at the Exxon station in Winston-Salem. Shoes found in the truck matched footwear impressions found near the scene of Myers's murder. The Ruger Mini 14 assault rifle was recovered, and the sawed off shotgun and ammunition were found in the truck, as was an Atlas taken from Myers's shop, with Mahdi's fingerprints on the Jacksonville, Florida, map. (R. 1394-95, 1561). This led police to two witnesses in Jacksonville, Florida, who purchased a .380 caliber pistol and a .22 caliber rifle from Mahdi shortly after Myers's murder. (R. 1366, 1565). The witnesses identified Myers's Dodge truck as the vehicle Mahdi was driving at the time, and identified Mahdi, in a photographic lineup, as the person who sold them the chrome .380 caliber pistol and the .22 caliber rifle. The only personal item belonging to Myers that was missing but never recovered was his police badge, which he kept in his truck or in the pocket of his pants. (R. 1418-21).

Ballistics testing confirmed the recovered .380 caliber pistol was the weapon used to murder the store clerk, Christopher Jason Boggs, in Winston-Salem, North Carolina, and that the .22 rifle was used on Myers. (R. 1562, 1592-96).

The autopsy determined Myers died from multiple gunshot wounds, after being shot nine (9) times, including four (4) in the chest and three (3) in the head. The pathologist, Dr. Janice Ross, opined that Myers was shot first in the chest and possibly once in the head. After he

collapsed to the floor of the shed, he possibly raised his head and was shot again, and then was shot again in the head while his head was lying on the floor. (R. 1702).

B. Aggravation Factors

(Mahdi's Prior Criminal Acts)

During the sentencing hearing, in addition to the facts and circumstances of the crime, Judge Newman heard evidence in aggravation, including Mahdi's prior criminal activity as a juvenile and as an adult. Mahdi's initial involvement with law enforcement stemmed from an arrest and adjudication for car-breaking, petit larceny, and escape from custody, for which he was placed on juvenile probation.

Mahdi was committed to Virginia's juvenile justice system at the age of fourteen for two counts of breaking and entering and two counts of grand larceny. (R. 1437). He admittedly was also involved in the sale of crack cocaine at the same age. (R. 1440). He was charged with assaulting and causing bodily injury to another inmate within the juvenile justice system. (R. 1441-42). While in the juvenile justice system, Mahdi told juvenile authorities that one of his strengths was "robbing people." (R. 1440). During one of the break-ins he committed, Mahdi stole a .44 magnum pistol. (R. 1428-29). When Brunswick County, Virginia police attempted to arrest Mahdi on a detention order for that charge, he and his father refused to come out of their home. An eight-hour standoff ensued, during which Sheriff James Woodley heard Mahdi say, "Them motherfuckers got guns." Mahdi also told police after he was finally arrested, "I'm going to kill a cop before I die." (R. 1431).

At the age of seventeen, Mahdi was arrested for slashing his mother's tires and for resisting arrest. During this arrest, Mahdi grabbed the holstered pistol of one of the investigating police

officers. He later told one of the officers that he should have killed "that bitch," referring to his own mother. (R. 1457-62). Mahdi was also convicted as a juvenile of contempt of court and obstruction of justice. (R. 1612).

As an adult, Mahdi was convicted and served three years in prison, for brutally stabbing Moises Rivera, a maintenance supervisor at an apartment complex in Richmond, Virginia, five times in the back with a knife, after Rivera investigated a disturbance at the complex and came upon Mahdi trying to break into an apartment on April 17, 2001. Rivera's lung was punctured, and he arrested in the ambulance but was revived by EMS personnel. Rivera was in the hospital for six days and was out of work for two months as a result of the assault. (R. 1473-75).

Mahdi was released from the Virginia prison system on May 12, 2004. At the time Myers was murdered, Mahdi was on supervised probation for the Rivera assault, with requirements that he not leave Virginia, violate any law, nor possess a firearm. (R. 1483-97). After his release, Mahdi tried to get his grandmother's neighbor, Amanda Weaver, to help him assemble a 9mm pistol. He bragged to her that he was dabbling in drug dealing to make money, and was going to knock off some drug dealers. (R. 1500-02). On June 14, 2004, the day before the .380 pistol disappeared from Ms. Weaver's home, Mahdi was required to submit to a urine drug screen administered by the Virginia Department of Probation and Parole. The test result showed he was using marijuana less than two months after being released from prison. (R. 1491). Thereafter, he stole the gun, the Mercury Sable, and the license plate and drove to North Carolina.

(Mahdi's Prison Conduct)

Judge Newman also received evidence regarding Mahdi's previous behavior inside prison. During Mahdi's juvenile incarceration, he assaulted another inmate causing bodily injury. (R.

1435-52; State's Exhibit 85). Mahdi was incarcerated again in the Virginia Department of Juvenile Justice from August, 1999, until May, 2000, for contempt of court and obstruction of justice. (R. 1612-13). His record while incarcerated was plagued by maladaptive behavior. (R. 1612-13; State's Exhibit 95). Records from the Department of Juvenile Justice also document Mahdi committing several assaults during his incarceration. (R. 1441-42; State's Exhibit 95).⁷

As an adult, Mahdi was incarcerated in the Virginia Department of Corrections from October 11, 2001, to May 12, 2004, repeatedly disobeying corrections officers' orders. (R. 1485-86). He had numerous disciplinary infractions, including repeatedly used profanity or vulgar language toward employees, and threatening an officer on November 25, 2002. Due to his poor institutional adjustment and increased security level, Mahdi was transferred from Nottaway Correctional Institution to Wallens Ridge State Prison, where his behavior did not improve. While in the Virginia prison system, Mahdi was charged with setting a fire, giving false information to an employee, destroying state property, and assaulting a non-inmate. (R. 1453-1456; State's Exhibit 86).

As a South Carolina pre-trial detainee on the instant charges, Mahdi was charged with assaulting a correctional officer, who sustained a mild concussion. (R. 1619). At the disciplinary hearing, Mahdi looked at the officer and said that, at the next chance he got, he would kill the "motherfucking officer." (R. 1616). During a search of Mahdi's prison cell, officers found a three-to four-foot piece of rope and some pieces of metal. (R. 1617). Mahdi was housed by himself. (R. 1618). He was caught damaging a conference room and hiding metal fragments from a wall socket on his person. (R. 1622-23). On another occasion, Mahdi was found with a fifteen-foot rope made

⁷ At the plea and sentencing hearing, the State did not introduce all of Mahdi's prison disciplinary violations while in the Virginia Department of Juvenile Justice. Only a very small number of those were introduced. At PCR, the State

of blankets. (R. 1624). Another piece of metal was found in his cell on a different occasion. (R. 1627-28). Mahdi also wrote a grievance in which he discussed killing Department of Corrections' employees. (R. 1629). Mahdi made additional threats toward a Department of Corrections' employee at the disciplinary hearing. (R. 1646-48).

Captain Gary Lane testified that at the time of trial, Mahdi was kept on the High D Wing of the super max portion of the Kirkland Correctional Facility. This facility houses the six most difficult to manage inmates in the entire South Carolina Department of Corrections. (R. 1652-53). According to the sentencing hearing testimony, these six inmates are kept differently than the other twenty-three thousand inmates in the Department of Corrections. (R. 1661-62). These six cells are even more secure than death-row. (R. 1662). While in one of these super-secure cells, Mahdi made a rope and somehow obtained two pieces of contraband metal, of which one was sharpened to a point. (R. 1656-57). Mahdi had been transferred to the High D Wing, from the High C Wing, because of his history of making objects and because a "hammer-like" weapon was found in Mahdi's cell. (R. 1653, 1655).

During jury selection before Judge Newman, a homemade handcuff key was found in Mahdi's possession, after he had persuaded his courthouse security detail to remove leg braces or irons and replace them with shackles. (R. 1319-21, 1664-65). Mahdi admitted he made the key in the Department of Corrections, kept it secreted in his mouth during the trial, and took it out of his mouth when he was away from guards for a meeting with his attorneys. (R. 1666-67). Mahdi had attempted to use it in the county jail but had not had an opportunity to use it in the courtroom, due to the guards' watchfulness. (R. 1319-21). Calhoun County Sheriff Thomas S. Summers, Jr., testified that he tried the handcuff key on three handcuff sets, and was able to open

introduced all of Mahdi's juvenile disciplinary violations while incarcerated. They totaled over forty.

two of the three sets of handcuffs with the key. (R. 1667). Summers testified Mahdi could have easily used the key to remove his restraints and assault someone in the courtroom. (R. 1670).

C. The Sentencing Order

On December 8, 2006, Judge Newman issued his twelve-page sentencing order, which he read into the record. Judge Newman found that the State proved two aggravating circumstances beyond a reasonable doubt: (1) the murder of James Myers was committed during the commission of a larceny, and (2) the murder of James Myers was committed during the commission of a burglary. (R. 1845; Sentencing Order, p. 4).

In addition to finding the State had established two aggravating circumstances beyond a reasonable doubt, Judge Newman found that while there was strong evidence of two other alleged aggravating circumstances, the State did not prove those other aggravating circumstances beyond a reasonable doubt.⁸ Therefore, Judge Newman did not consider or give any weight to those other alleged aggravating circumstances. (R. 1845-46; Sentencing Order, p. 4-5).

Judge Newman found the State presented compelling evidence of prior and subsequent bad acts of Mahdi which showed Mahdi's bad character, evil nature, and malignant heart. Judge Newman found these acts covered a period over eight years, and included housebreaking, stealing guns, robbing people, selling crack cocaine, vandalism, and malicious wounding of another human being. In his order, Judge Newman summarized these acts in detail. Judge Newman found that the State had established Mahdi's bad character and propensities by clear and convincing evidence. Judge Newman did not consider this evidence as proof of any aggravating circumstance. (R. 1846-48; Sentencing Order, p. 5-7).

⁸ These two alleged aggravating circumstances were that the murder was committed during the commission of an armed robbery and that Captain Myers was murdered because he was a police officer.

In his order, Judge Newman noted that he had considered all statutory mitigating circumstances and non-statutory mitigating circumstances argued by Mahdi, as well as other mitigating circumstances supported by the evidence. (R. 1848; Sentencing Order, p. 7).

Judge Newman considered Mahdi's age (twenty-one years) and mentality at the time of this murder. Judge Newman noted that the last time Mahdi's I.Q. was tested at age fourteen (14), his I.Q. was one hundred and eight (108), slightly above average. While he considered this statutory mitigating circumstance, he did not give it great weight because Mahdi began his criminal career at an early age, fourteen (14). Judge Newman found that at twenty-one (21) Mahdi was experienced in the world of crime. Judge Newman found that by the time Mahdi committed these crimes, he was well aware of the severity of his crimes and the possible consequences. Judge Newman found that given the evidence in this case, there was nothing in Mahdi's age or mentality that in any way mitigated, excused, or lessened his culpability, nor should it be given any significant weight in his ultimate decision as to the appropriate sentence. (R. 1848-49; Sentencing Order, p. 7-8).

Judge Newman also considered what the defense contended to be Mahdi's turbulent and transient childhood and upbringing. Judge Newman noted that there was no testimony from Mahdi's clinical social worker that Mahdi ever suffered any physical or sexual abuse. Additionally, records from Virginia's Department of Juvenile Justice showed Mahdi's father, brother, and grandmother continually expressed great care and concern for his well-being. Judge Newman found that while Mahdi's family life may have been less than ideal, particularly without the presence of a loving and caring mother, he did not find that Mahdi's difficult childhood and family life contributed in any significant way to his senseless criminal activities. Therefore, while he considered this non-statutory mitigating circumstance, he did not believe that it should be given

any significant weight in his ultimate sentencing determination. (R. 1849; Sentencing Order, p. 8).

Judge Newman also considered Mahdi's offered testimony of prison adaptability.

While Judge Newman considered the testimony of the defense expert James Aiken, Judge Newman pointed out that he had reviewed and considered Mahdi's records regarding his prior behavior in various correctional institutions. Judge Newman found that Mahdi had consistently been disruptive and uncooperative and had threatened to kill prison employees. Judge Newman found that prison officers had repeatedly found homemade weapons, ropes, and other contraband in Mahdi's cells. Judge Newman also found and pointed out that during this very trial, Mahdi brought a homemade handcuff key into the courthouse with the intent to use it, if possible, to escape, thus posing a serious threat to courtroom security. Judge Newman noted that Mahdi admitted to the Sheriff that he made the key while being housed and monitored at the State's highest security level facility. While Judge Newman believed Mr. Aiken was highly credentialed and gave impressive testimony, based on Mahdi's behavior in correctional institutions throughout his adolescence and adult years, Judge Newman did not believe that Mahdi was sufficiently adaptable to prison life for this non-statutory mitigating circumstance to be given any significant weight in his ultimate decision as to the appropriate sentence to be imposed. (R. 1849-50; Sentencing Order, p. 8-9).

Mahdi requested, and Judge Newman considered, Mahdi's guilty plea as a non-statutory, mitigating circumstance to determine the appropriate sentence to be imposed. Judge Newman noted that the plea occurred on the fourth day of the trial, following jury selection but prior to the jury being sworn. Judge Newman pointed out that this was one day following the discovery of Mahdi's homemade handcuff key. Additionally, Judge Newman found that Mahdi had failed to demonstrate any remorse for his actions. Therefore, while he considered the guilty plea, Judge

Newman concluded that no significant weight should be given to it in his ultimate decision as to the sentence to be imposed. (R. 1850; Sentencing Order, p. 9).

Judge Newman considered the impact of the crime upon the victim's family and the community. Judge Newman found that the victim, James Myers, was a husband, father, grandfather, son, and friend to many. Judge Newman also found that Myers was a well-respected police officer, an outdoorsman, a mentor, and a treasured member of humanity. Furthermore, Judge Newman found that Mahdi burglarized Myers's farm shed and stole his family's sense of security and serenity. Moreover, Judge Newman found Mahdi, by committing these crimes, robbed the Myers family and their friends of their right to peaceful enjoyment of life. (R. 1851; Sentencing Order, p. 10).

In his final decision, Judge Newman noted that he was acutely aware of the decision before him, and he stated that he did not take it lightly. Moreover, Judge Newman noted that he considered Mahdi's plea for mercy and the State's plea for justice. In evaluating these two ideals, Judge Newman also said that he was reminded of his sworn duty to preserve, protect, and defend the Constitution of this State and the United States of America. Furthermore, Judge Newman stated that this obligation was not only to Mikal Mahdi, but of equal importance, this was an obligation he had to the citizens of the State of South Carolina.

Judge Newman made the following poignant statements in concluding his Order:

My challenge and my commitment throughout my judicial career has been to temper justice with mercy and to seek to find the humanity in every defendant that I sentence. That sense of humanity does not seem to exist in Mikal Dean Mahdi. (R. 1824, 1851; Sentencing Order, p. 10).

In extinguishing the life, hope and dreams of Captain Myers in such a wicked, depraved, and conscienceless manner, the defendant, Mikal Dean Mahdi, also extinguished any justifiable claim to receive the mercy he seeks from this Court. (R. 1852; Sentencing Order, p. 11).

In considering all of the evidence in this case, I have concluded that the only appropriate punishment for the murder of Captain James E. Myers is death. (R. 1825, 1852; Sentencing Order, p. 11).

Judge Newman then stated, "I find as an affirmative fact that the evidence in this case warrants the imposition of the death penalty and that its imposition is not the result of prejudice, passion, or any other arbitrary factor." (R. 1852; Sentencing Order p. 11). Judge Newman then formally sentenced Mahdi to death. (R. 1853; Sentencing Order, p. 12).

D. Post Conviction Relief Applications

On August 18, 2009, with the assistance of counsel, Mahdi filed a *pro se* application for post-conviction relief (2009-CP-09-00164). In the Application, Mahdi alleged only one ground, as follows:

Ground: 10(a) Ineffective assistance of counsel

Supporting facts: 11(a) Trial counsel failed to object when the trial judge improperly based his decision to impose a death sentence on petitioner's assertion of his right to a jury trial, thereby effectively punishing him for exercising his constitutional right. Counsel's deficient performance in failing to preserve the issue for appellate review deprived petitioner of the right to effective assistance of counsel under the Sixth and Fourteenth Amendments and *Strickland v. Washington*, 466 U.S. 668 (1984).

The State filed its Return on December 3, 2009, denying the allegations and moving to dismiss Mahdi's Post Conviction Relief Application with prejudice.

On March 19, 2010, Mahdi, through collateral counsel, filed an Amended Application for Post-Conviction Relief. In this Application, Mahdi re-alleged Ground One above (see Ground 10(a)/11(a)(i) of the Amended Application) and alleged the following additional grounds:⁹

⁹ In his Amended Application in March, and in his Amended Application in July of 2010, Mahdi replaced his simple *pro se* allegation of "ineffective assistance of counsel," with the following language: "10(a)Applicant was denied the

Ground 10(a)/11(a)(ii): Counsel failed to adequately advise Applicant of the advantages of jury sentencing, which resulted in the Applicant pleading guilty and purporting to waive his right to jury sentencing. Ground 10(a)/11(a)(iii): Counsel failed to adequately investigate, develop, and present mitigation evidence concerning Applicant's family, social, institutional, and mental health history.

On July 29, 2010, complying with this Court's Scheduling Order, collateral counsel filed another (Second or Final) Amended Application for post-conviction relief, re-alleging Ground 11(a)(i) from his first *pro se* application, and Grounds 11(a)(ii) and (a)(iii) from his Amended Application of March 19, 2010, and adding and elaborating as follows:

10(a) Applicant was denied the effective assistance of counsel during the sentencing phase of his trial in violation of South Carolina law and Fourteenth Amendments to the United States Constitution;

11(a)(iv) Counsel failed to assert that applicant's death sentence violates the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution due to Applicant's developmental deficits.

Counsel's conduct in each instance, separately and cumulatively was both unreasonable and prejudicial in sentencing. *Strickland v. Washington*, 466 U.S. 668 (1984); *Wiggins v. Smith*, 539 U.S. 510 (2003); *Rompilla v. Beard*, 545 U.S. 374 (2005); *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008).

(10)(b) Applicant's death sentence violates the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution, due to Applicant's developmental deficits.

11(b) At the time of the offenses, Applicant was developmentally impaired such that he had the "mental age" of a juvenile due to his atrocious background of deprivation, neglect, abuse, and institutionalization. The Cruel and Unusual Punishment Clause precludes the infliction of the death penalty upon him, just as it precludes execution of those under the age of 18 at the time of the offenses, because of these grave developmental deficits. See *Roper v. Simmons*, 543 U.S. 551 (2005).

effective assistance of counsel during the sentencing phase of his trial in violation of South Carolina law and the Sixth and Fourteenth Amendments to the United States Constitution."

Respondent timely filed a Return and moved to dismiss the allegations in the final amended Application.

On March 4, 2011, Mahdi moved to amend his Final Application to include the following ground:

11(a)(v): Counsel failed to assert that S.C. Code Section 16-3-20 is unconstitutional in that it automatically precludes jury sentencing following a guilty plea in violation of the Sixth, Eighth, and Fourteenth Amendments as addressed in *Ring v. Arizona*, 536 U.S. 584 (2002). Moreover, this statute forces a capital defendant to choose between his right to a jury trial and his right to present mitigating evidence, namely that he has accepted responsibility for the crime. While this issue has been rejected by state courts, see *State v. Downs*, 361 S.C. 141, 604 S.E.2d 377 (2004), it has not been reviewed by federal courts and counsel were thus ineffective in failing to adequately preserve the record for subsequent litigation.

Respondent opposed and objected to the late amendment. This Court allowed the late amendment to the PCR application over Respondent's objection.

E. The PCR Merits Hearing

On March 9, 2011, an evidentiary hearing was convened at the Broad River Correctional Institution. Present were applicant Mahdi, Mahdi's attorneys, Ms. Norris and Mr. Lominack, representatives from the Attorney General's Office, and the victim's widow, Amy Myers.

Mahdi called twelve witnesses: Carson Burwell, Rose Gupton, Sophie Gee, Myra Harris, Carol Wilson, George Smith, Sharon Pond, Nicholas Cooper-Lewter, Lawanda Burwell, Drs. Craig Haney, DeRossett Myers, and Donna M. Schwartz-Watts. Mahdi submitted sworn affidavits of James Woodley, Dora Wynn, Doug Pond, and Sandra Wynn Burwell. Applicant Mahdi did not testify.

Respondent called the following witnesses: Carl Grant, Esq.; Glenn Walters, Esq.; Josh Koger, Esq.; Paige Tarr Haas; Dr. Thomas Martin; James Gordan; and Dr. Geoffrey McKee.

Exhibits were introduced by both sides, and this Court had the opportunity to view and hear the testimony of the witnesses and assess their credibility.

After reviewing the record, including the Record on Appeal and the trial exhibits, and after reviewing and assessing the credibility of all testimony and evidence submitted in this case, this Court finds the application for post-conviction relief to be without merit and denies and dismisses the application, with prejudice.

III. Standard of Review

In a post-conviction relief action, the applicant has the burden of proving his allegations by a preponderance of the evidence. SCRPC 71.1(e); *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); *Butler, supra*.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgement. *Butler, supra*. An applicant must overcome this presumption to prevail on PCR. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Second, counsel's deficient performance must have prejudiced the applicant, such that "there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625, citing *Strickland*.

"Surmounting *Strickland*'s high bar is never an easy task[.]" *Premo v. Moore*, 562 U.S. ____ , 131 S.Ct. 733, 178 L.Ed.2d 649 (2011) citing *Harrington v. Richter*, 562 U.S. ____ , 131 S.Ct. 770, 178 L.Ed.2d 624 (2011), quoting *Padilla v. Kentucky*, 559 U.S. ____ , 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010). "It is 'all too tempting' to 'second-guess' counsel's assistance after conviction or adverse sentence." *Harrington v. Richter*, 562 U.S. ____ (2011), citations omitted. "The question is whether an attorney's representation amounted to incompetence under 'prevailing professional norms', not whether it deviated from best practices or most common custom." *Id*; *Strickland*, 466 U.S. at 690.

In the context of a guilty plea, the applicant also must establish prejudice by proving "counsel's constitutionally-ineffective performance affected the outcome of the plea process." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). The applicant must show, but for counsel's ineffective assistance, there is a reasonable probability he would not have pled guilty but would have proceeded to trial. *Id*.

In the context of sentencing phase issues, the applicant must show deficient performance and prejudice. To show prejudice is to show that "there is a reasonable probability that . . . the sentencer - including an appellate court, to the extent it independently reweighs the evidence - would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." *Strickland*, 466 U.S. at 695; see also *Wiggins*, 539 U.S. at 537; *Jones v. State*, 332 S.C. 329, 344-45, 504 S.E.2d 822, 829-30 (1998). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Jones*, 504 S.E.2d at 823-824. The United States Supreme Court has made clear that the burden is *not on the State* to show the lack of prejudice, but the

burden is on the applicant to show prejudice. *Wong v. Belmontes*, 558 U.S. ___, 130 S.Ct. 383, 2009 WL 3805746 (2009), citing *Strickland*. The applicant must prove that had counsel acted competently there is a reasonable probability that a different sentence would have resulted. *Id.*; *Wiggins v. Smith*, 539 U.S. 510, 535, 536, (2003); see also *Terry v. State*, 394 S.C. 62, 714 S.E.2D 326 (2011). Such a showing “requires a substantial, not just conceivable, likelihood of a different result.” *Cullen v. Pinholster*, ___ U.S. ___, 131 S.Ct. 1388, 1403 (2011), citing *Harrington*, 131 S.Ct. at 791 (2011).

IV. Mahdi's Grounds Lack Merit

A. Ground 10(a)/11(a)(i) of the Final Amended Application

Trial counsel failed to object when the trial judge improperly based his decision to impose a death sentence on petitioner's assertion of his right to a jury trial, thereby effectively punishing him for exercising this constitutional right. Counsel's deficient performance in failing to preserve the issue for appellate review deprived petitioner of the right to effective assistance of counsel.

Mahdi had the burden of PROVING this allegation. *Butler, supra*. He offered no evidence, however, in support of this ground at his hearing. (PCR Tr. 20-710). Mahdi failed to prove counsel was ineffective in this regard. *Id.* Furthermore, Judge Newman did not base his death sentence decision on Mahdi's assertion of his right to a jury trial. At the plea and sentencing, Mahdi asked the Court to consider his guilty plea as a non-statutory mitigating circumstance. Judge Newman did consider the guilty plea as a non-statutory mitigating circumstance, but chose not to give this non-statutory mitigating circumstance great weight. (R. 1848, 1850; Sentencing Order, pp. 7, 9). In his sentencing order, Judge Newman stated:

The defense further argues a non-statutory mitigating circumstance that the Court should consider the defendant's guilty plea in determining the appropriate sentence to be imposed.

The defendant's guilty plea occurred during the fourth day of his trial following jury selection, but prior to the jury being sworn. This was one day following his attempted escape through the use of a homemade key. In addition, Mr. Mahdi has failed to demonstrate any remorse for his actions at any point in time known to this Court. Therefore, I conclude that no significant weight should be given to this non-statutory mitigating circumstance in the Court's ultimate decision as to the sentence to be imposed.

(R. 1738-39, 1822-23, 1850; Sentencing Order, p. 9).

Mahdi engages in a strained reading of one sentence of this one paragraph of a twelve-page capital sentencing order in an attempt to vacate his death sentence. In his direct appeal brief, Mahdi selected a single sentence from this paragraph and alleged the selected sentence evidenced the trial judge's consideration of Mahdi's initial exercise of his right to a jury trial as a circumstance supporting the imposition of the death penalty.¹⁰ (See BOA, p. 9, 11, 18-21).

A plain reading of the sentencing order and the paragraph in question shows that Judge Newman accurately recounted in his Order and for the South Carolina Supreme Court, or any reviewing court, when Mahdi's guilty plea occurred in the request to consider the guilty plea as a non-statutory mitigating circumstance. Judge Newman did not consider Mahdi's participation in *voir dire* and selecting a jury as an aggravating circumstance. See *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174-75 (1993)(trial judges are presumed to know the law and apply a narrowing definition to this state's death penalty statute), referencing *Walton v. Arizona*, 497 U.S. 639, 110 S.Ct. 3047 (1990).

Mahdi's allegation of ineffective assistance of counsel in this regard is without merit. Mahdi offered no evidence on this ground at the PCR evidentiary hearing, and Judge Newman did

¹⁰ The sentence reads, "The defendant's guilty plea occurred during the fourth day of his trial following jury selection, but prior to the jury being sworn." (See BOA).

not sentence Mahdi to death for participating in *voir dire* and selecting a jury. Mahdi's assertion is not supported by the sentencing order or the record. Mahdi was sentenced to death only for the appropriate reasons, the circumstances of the crime and his character. Therefore, counsel was not ineffective in failing to object to this portion of the sentencing order. Mahdi cannot show deficient performance or resulting prejudice from counsel's alleged failure to object. *Strickland*; *Wong*; *Wiggins*; *Jones*. This ground must be dismissed with prejudice.

B. Ground 10(a)/11(a)(ii)

Counsel failed to adequately advise Applicant of the advantages of jury sentencing, which resulted in the Applicant pleading guilty and purporting to waive his right to jury sentencing.

There is no merit to this second allegation. Mahdi does not specify the jury sentencing advantages to which he alludes, nor how counsel inadequately advised him of those advantages. This ground must be dismissed as vague and ambiguous.

Mahdi did not testify, and offered no testimony or other evidence at the merits hearing on this issue.¹¹ Mahdi did not question his former appointed attorneys on this issue. (PCR Tr. 587-710). Mahdi has failed to meet his burden of proof on this allegation, which must therefore be dismissed with prejudice. *Butler, supra*; *Hill, supra*. Furthermore, having offered no proof, Mahdi waived and abandoned this issue. *Parks v. Morris Homes Corp.*, 245 S.C. 461, 471, 141 S.E.2d 129, 134 (1965)(Further, it is a litigant's duty to bring to the court's attention any perceived error, and "the failure to do so amounts to a waiver of the alleged error."). *See also Gibbs v. Kimbrell*, 311 S.C. 261, 267, 428 S.E.2d 725, 729 (Ct. App. 1993)(discussing waiver).

¹¹ At the close of Mahdi's PCR case presentation, Respondent moved for a directed verdict due to lack of any evidence or proof offered by Mahdi on this ground. When asked for a response, collateral counsel gave none. This Court held the motion for a directed verdict in abeyance until the completion of the PCR merits hearing. At the conclusion of the merits hearing, there was still no evidence offered on this ground by applicant Mahdi. (PCR Tr. 1-719).

Furthermore, the record indicates Mahdi was fully advised of his rights to jury sentencing and the pros and cons of having a jury conduct his sentencing versus a judge determining his sentence. (See R. 1324-68). After Mahdi indicated a possible guilty plea, court recessed overnight, and Mahdi was given additional time to talk to his lawyers about whether he wanted to plead guilty and have the judge determine his sentence or proceed with a jury trial and have a jury determine his guilt and sentence. (R. 1332-36). The record reflects that discussions in this regard had already occurred before counsel indicated to the Court that Mahdi might change his plea to guilty. (R. 1329-32). Mahdi clearly understood his right to have a jury determine his sentence, because several days of individual *voir dire* and jury selection had been completed, and a panel of twelve (12) jurors and four (4) alternates had been seated but not sworn at the time Mahdi indicated he might plead guilty. (R. 1370-71). After the overnight recess, Mahdi told the Court he wanted to enter a plea of guilty. (R. 1336).

Additionally, prior to Mahdi's entry of a plea of guilty, Judge Newman conducted a *Blair* hearing to determine whether Mahdi was competent to plead guilty. (R. 1336-43). Dr. Michael Cross testified that Mahdi had a rational understanding of what a guilty plea meant, and the risks, benefits, and possible consequences. (R. 1340). Mahdi told the Court that he was competent to plead guilty, and he wanted to move forward with the guilty plea. (R. 1342). Judge Newman found on the record that Mahdi was competent to plead guilty. (R. 1343). Judge Newman's finding in this regard is fully supported by the record.

During a lengthy colloquy with the Court, Mahdi was placed under oath. (R. 1343). Mahdi testified that he understood that if he pled guilty in front of Judge Newman that the possible sentences were life in prison and the death penalty. (R. 1347). Mahdi testified under oath that he

understood he had the right to a jury sentencing, and that in order to sentence him to death all twelve jurors would have to unanimously agree that he should be sentenced to death. (R. 1347-48). Mahdi also stated under oath that he understood that if he pled guilty, the Judge would solely determine the sentence, not the twelve jurors. (R. 1349).

Mahdi told Judge Newman that he had had sufficient time to discuss with his attorneys and his family his decision to plead guilty. (R. 1351). Mahdi stated he had no complaints against his attorneys, was fully satisfied with them, and did not need any more time to discuss anything with them. (R. 1268). Mahdi acknowledged that, understanding the nature of the charges, the possible penalties, including death, the other possible consequences of his guilty plea, and his constitutional rights, he wanted to plead guilty. (R. 1356). The record shows Mahdi knowingly, intelligently, and voluntarily made the decision to enter a plea of guilty and have Judge Newman sentence him, rather than the jury he had selected and impaneled. (R. 1324-68). See *Boykin v. Alabama*, 395 U.S. 238 (1969); *Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994)(record of plea proceeding, including applicant's answers to the trial judge's questions, clearly establishes that applicant could not have had misconceptions regarding sentencing).

Additionally, counsel testified at the PCR hearing that Mahdi decided he wanted Judge Newman to sentence him rather than the jury he had selected and impaneled. (PCR Tr. 682-684). Mahdi offered no testimony on this issue and offered no evidence that contradicted counsel's sworn testimony on this issue. This Court finds counsel's testimony on this issue to be credible. This Court also finds that counsel's testimony on this issue is supported and corroborated by Mahdi's responses to Judge Newman's questions during the guilty plea itself. Given the vague allegations of this ground, the lack of any supportive evidence in the record, and the clear record

before this Court that Mahdi understood the advantages and disadvantages of jury sentencing, this ground must be dismissed with prejudice. *Strickland, supra; Hill, supra; Butler, supra*. There is no proof that counsel was deficient in any manner in this regard. *Strickland, supra; Hill, supra; Butler, supra*.

Additionally, as a result of this record, Mahdi cannot show prejudice. *Hill, supra*. Given this record, including counsel's credible testimony, the record of the plea proceeding, and the evidence that would have been submitted to the chosen jury, including the horrendous facts of Myers's murder, the murder of Christopher Boggs in North Carolina, and Mahdi's maladaptive prison behavior and atrocious criminal record, Mahdi has not met and cannot meet his burden of proof that there is a reasonable probability he would not have pled guilty, and would have proceeded to trial with a different outcome. This ground must be dismissed with prejudice.

C. Ground 10(a)/11(a)(iii)

Counsel failed to adequately investigate, develop, and present mitigation evidence concerning Applicant's family, social, institutional, and mental health history.

Duties of Trial Counsel

In capital cases, defense counsel have a duty to vigorously investigate and present mitigating evidence.¹² This duty requires that counsel "discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor." *Wiggins v. Smith*, 539 U.S. 510, 524 (2003); *see also Williams v. Taylor*, 529 U.S. 362, 393 (2000). In addition to the Supreme Court's jurisprudence regarding the standards governing

¹² Mitigating evidence encompasses all information about a person's background and characteristics, not simply information directly related to the offense itself. *See Lockett v. Ohio*, 438 U.S. 586, 608 (1978); *see also Bailey v. State*, 309 S.C. 455, 461, 424 S.E.2d 503, 507 (1992) ("[T]he [capital] defendant is entitled to produce evidence concerning

trial counsel, the American Bar Association promulgated guidelines, revised in 2003, that set out the standard of practice for defense counsel in capital cases. The United States Supreme Court and the South Carolina Supreme Court have recognized the ABA Guidelines as the standard of practice and as "guides to determining what is reasonable." *Wiggins, supra*; *see also Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008). These standards existed at the time of Mahdi's trial and governed the efforts of attorneys Grant, Walters, and Koger in this case.

Standard 1 - Counsel has a duty to investigate the client's social history.

"It is unquestioned that under the prevailing professional norms . . . , counsel had an 'obligation to conduct a thorough investigation of the defendant's background.'" *Porter v. McCollum*, 558 U.S. ___, 130 S.Ct. 447, 453 (2009), *quoting Williams v. Taylor*, 529 U.S. 362, 396 (2000). A thorough investigation requires an assessment of the following:

Medical history (including hospitalizations, mental and physical illness or injury, alcohol and drug use, pre-natal and birth trauma, malnutrition, developmental delays, and neurological damage).

Family and social history (including physical, sexual or emotional abuse; family history of mental illness, cognitive impairments, substance abuse, or domestic violence; poverty, familial instability); other traumatic events such as exposure to criminal violence, the loss of a loved one or a natural disaster; experiences of racism; cultural or religious influences; failures of government or social intervention.

Educational history and special educational needs.

Prior juvenile and adult correctional experience.¹³

[ABA Guideline 10.7, commentary at 81-82]

his childhood and family background in mitigation of his criminal conduct . . . "); *Tennard v. Dretke*, 542 U.S. 274 (2004) (emphasizing that the relevance standard concerning mitigation should be viewed in expansive terms).

¹³ Moreover, if - as was the case here - the client was incarcerated, either as a juvenile or an adult, trial counsel should investigate the "possible effect of the facility's conditions on the client's contemporaneous and later conduct." (ABA Guideline 10.7, commentary at 84).

A thorough social history is developed through witnesses - both expert and lay - and records. Therefore, counsel have a duty to locate witnesses and records, which will shed light on the defendant's childhood and, more generally, any other mitigating factors.

Standard 2 - Counsel must locate and interview all potential witnesses.

The United States Supreme Court and the South Carolina Supreme Court have both found counsel ineffective for their failure to locate relevant witnesses.

Williams v. Taylor, 529 U.S. 362 (2000). Among other things, trial counsel failed to locate and interview potential mitigation witnesses, including a witness who left a telephone message for counsel.

Porter v. McCollum, 130 S.Ct. 447 (2009). Trial counsel was ineffective for failing to investigate and present evidence of abusive childhood (including witnessing violence of father against mother), the defendant's long-term substance abuse, and his mental health.

Sears v. Upton, 130 S.Ct. 3259 (2010). The Court reiterated a superficially reasonable mitigation presentation at penalty phase is not sufficient, and agreed with lower court's finding of deficient performance where trial counsel failed to present evidence of the defendant's traumatic childhood and cognitive dysfunction.

Council v. State, 380 S.C. 159, 670 S.E.2d 356 (2009). In its case in aggravation, the state relied on the circumstances of the murder as well as the defendant's numerous disciplinary infractions while incarcerated as a juvenile and adult. In response, the defense offered one witness - his mother- who provided a general social history of the defendant, including that he had attended some type of mental health counseling. Trial counsel had hired a forensic psychiatrist but only provided him an incomplete set of the defendant's school records and some state mental health hospital records. The psychiatrist was primarily focused on the defendant's competency and criminal responsibility. The Court held that even the "limited information obtained should have put counsel on notice that [the defendant's] background, with additional investigation, could potentially yield powerful mitigating evidence."

Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009). Trial counsel presented the testimony of five witnesses, none of whom discussed the defendant's mental health. The state supreme court found trial counsel

ineffective for failing to present the defendant's social history and evidence of his mental illness.

In order to develop information about a client's social history, "it is necessary to locate and interview the client's family members ... and virtually everyone else who knew the client and his family, including neighbors, teachers, clergy, case workers, doctors, correctional, probation, and parole officers, and others." ABA Guideline 10.7, *commentary* at 83. These witnesses can provide first-hand accounts of the client's life. ABA Guideline 10.11, *commentary* at 109. In the end, defense counsel are obligated to locate witnesses who are relevant to the client's social history, including:

The client's friends, teachers, classmates, co-workers, employers, and those who served in the military with the client, as well as others who are familiar with the client's early and current development and functioning, medical history, environmental history, mental health history, educational history, employment and training history, military experience and religious, racial, and cultural experiences and influences upon the client or the client's family;

Social service and treatment providers to the client and the client's family members, including doctors, nurses, other medical staff, social workers, and housing or welfare officials;

Witnesses familiar with the client's prior juvenile and criminal justice and correctional experiences;

Former and current neighbors of the client and the client's family, community members, and others familiar with the neighborhoods in which the client lived, including the type of housing, the economic status of the community, the availability of employment and the prevalence of violence;

Witnesses who can testify about the adverse impact of the client's execution on the client's family and loved ones.

[ABA Guideline 10.11]

Standard 3 - Counsel must locate available and relevant records.

The Supreme Court has also recognized that an exhaustive records collection effort is vital to a thorough and reliable social history investigation. Records usually created prior to the crime can provide powerful corroboration to the witness accounts.

As with witnesses, courts have found counsel ineffective for their failure to obtain available records and provide the records to the appropriate experts.

Porter v. McCollum, 130 S.Ct. 447 (2009). Trial counsel did not obtain school, medical, or military service records.

Williams v. Taylor, 529 U.S. 362 (2000). Trial counsel found ineffective in part for failure to obtain records that described the defendant's childhood, that established that the defendant was borderline mentally retarded, and that described the defendant's good deeds while in jail.

Council v. State, 380 S.C. 159, 670 S.E.2d 356 (2008). The state supreme court found trial counsel ineffective in part for their failure to obtain relevant records. "[T]rial counsel[] only obtained the DJJ and state hospital records before trial; did not request certain background records until the day of jury selection; . . . and provided [the only defense expert] with only limited records." 380 S.C. at 172, 670 S.E.2d at 363. The Court held that counsels' "conduct fell below the standards set by the ABA." *Id.* (citing to 11.4.1(2)(C) (1989), requiring counsel to collect information relevant to medical, educational, family and social history, and prior adult or juvenile record). Particularly, the Court found it unreasonable for counsel not to obtain records relating to the defendant's family.

Von Dahlen v. State, 360 S.C. 598, 602 S.E.2d 738 (2004). The state supreme court found trial counsel ineffective for failing to provide records to a mental health expert. This failure resulted in an inaccurate and incomplete portrayal of the defendant's mental health which allowed the prosecutor to argue in closing that the defendant did not suffer from a mental illness.

Counsel should attempt to obtain the following records: School records, social service and welfare records, medical records, employment records military records, Family Court records, criminal and correctional records, and family birth, marriage, and death records. [ABA Guidelines 10.7, commentary at 84, and 10.11.(f)]

Standard 4 - Counsel have a duty to investigate and rebut the government's evidence in aggravation.

In addition to conducting a mitigation investigation, counsel must also investigate the state's case in aggravation. After discovery of the evidence that the prosecution intends to introduce, counsel must "thoroughly investigate to determine whether this evidence can be excluded, rebutted or undercut." ABA Guideline 10.11., commentary at 111. "The notion that defense counsel must obtain information that the State has and will use against the defendant is not simply a matter of common sense." *Rompilla v. Beard*, 545 U.S. 374, 387 (2005). As the ABA Guidelines make clear, counsel "must also investigate prior convictions, adjudications, or unadjudicated offenses that could be used as aggravating circumstances or otherwise come into evidence." ABA Guideline 10.7, commentary at 85.

The PCR hearing revealed that trial counsel were narrowly focused on Mahdi's competency to stand trial and a diminished capacity defense, rather than mitigation.¹⁴ Mr. Walters testified:

Every death penalty case you bring someone in to determine if there is an insanity defense, but in addition to that you want to know if this is any type of handicap that he suffered from. He was coherent. We went to the *Blair* hearing. He was reasonable. He was coherent. He had a clear understanding and there with [sic] no confusion. You could have a constructive dialogue and he understood the proceedings.

[PCR Tr. 610-11]

Mr. Koger testified: "[W]e didn't have any type of question about the competency of Mr. Mahdi and his ability to participate in his particular defense and it was nothing in those reports of record that would show a . . . sentencing judge that he had diminished capacity. So, [presenting mitigation] was not advantageous in this particular case." PCR Tr. 690.

The focus on Mahdi's competence and mental state at the time of the crimes was also evidenced in the work of the defense experts, who were retained but not called to testify in the trial proceedings. Dr. McKee, the psychologist hired by trial counsel, administered brief "screeners" tests geared towards addressing competency or detecting malingering with both being "relevant to and specific to a court procedures [sic] and being in court." (PCR Tr. 551, 557.) Dr. McKee admitted that he would not rely on these tests to learn everything about a person's life. (PCR Tr. 557). Dr. Martin, the psychiatrist hired by trial counsel, stated that his evaluation was focused on Mahdi's mental state at the time of the crime. (PCR Tr. 543). The records that the experts reviewed are consistent with a team focused on competency to stand trial or insanity issues. Drs. Martin and McKee principally reviewed discovery, police investigation file, necropsy and pathology reports provided by the prosecution. (PCR Tr. 511, 554). Neither doctor reviewed Mahdi's school records, including his special education records (complete with psychological testing) nor his juvenile or adult correctional records which had been provided to trial counsel. (PCR Tr. 530-32).

V. Failure of Trial Counsel

A. Trial counsel failed to obtain necessary and available records and provide them to expert witnesses focused on mitigation.

The records collection effort of trial counsel was narrow and incomplete. The collection of Mahdi's records was limited and, except for the school and employment records of Mahdi's brother, trial counsel did not attempt to gather records of any of Mahdi's family members. Some of the records trial counsel did gather were not reviewed by any defense expert, including the only testifying social history witness - Ms. Hammock. Trial counsel's failures in this regard were

¹⁴ See *Council v. State*, 380 S.C. at 173, 670 S.E.2d at 363 (trial counsel focused on competency to stand trial and criminal responsibility rather than a complete mitigation investigation).

threefold: (1) they failed to obtain relevant and available documents; (2) they failed to review documents that they did have; and (3) they failed to provide relevant documents in their possession to their experts.

Documents obtained by trial counsel included an incomplete set of Mahdi's school records, Walter Carter Center records documenting Mahdi's hospitalization, and Virginia DJJ and DOC records provided by the prosecution. Documents not obtained or not reviewed by anyone included school records¹⁵ (including special education records), criminal records regarding the applicant's father, Shareef Mahdi, psychiatric records regarding Shareef Mahdi, military records regarding Shareef Mahdi, Virginia DJJ and DOC Records.

A number of relevant records were never obtained. Even if the defense experts had reviewed all the mitigation records obtained by the defense, they would not have been well-informed. Ms. Hammock, the only witness to testify about Mahdi's social history, reviewed only a "synopsis" of Mahdi's school records and "a report" of his Walter Carter Center records. (R. 1747). Similarly, Drs. McKee and Martin reviewed only the Walter Carter Center records. They did not review his school records or his institutional records. (PCR Tr. 530-32, 547, 554).

Trial counsel failed to obtain available records, which were relevant to Mahdi's social history and were mitigating. It appears that trial counsel never obtained Mahdi's special education records. This file contained a full psychological assessment of Mahdi when he was in the fourth grade. On the basis of this assessment and teacher observations, Mahdi was eligible for special education because he was emotionally disabled. Ms. Hammock provided the Court with a "School Experience Summary" that purported to detail Mahdi's schooling, but it failed to note that Mahdi was placed in special education. Mahdi's school and psychiatric records portray him as depressed

and in need of significant assistance. Trial counsel never obtained criminal and military records regarding Shareef Mahdi, Mahdi's father. These records reveal that Shareef Mahdi was irrational, mentally ill to the point of being hospitalized, and violent.

B. Trial counsel failed to locate and interview available witnesses.

Trial counsel and the mitigation specialist did not conduct any interviews outside Mahdi's family. The family members that were interviewed by trial counsel and the defense team were Rose Gupton (maternal aunt), Nathan Burwell (paternal uncle), Carson and Lawanda Burwell (paternal uncle and aunt), Vera Artis (mother), Shareef Mahdi (father), Corliss Artis (maternal aunt), Sophia Gee (maternal aunt), and Nancy Burwell (paternal grandmother). Trial counsel and the defense team did not conduct any non-family interviews.

In preparation for the PCR hearing, the following non-family members were interviewed: Sheriff James Woodley, Dora Wynn, Myra Harris, Carol Wilson, Mayor Douglas Pond, George Smith, and Sharon Pond.

Based on the above, I find that counsel's performance was deficient and fell below the "reasonableness under professional norms" standard. *Cherry, supra*. Nonetheless, I find that counsel's deficient performance does not satisfy the second prong of the test articulated in *Cherry* and discussed hereinabove.

Considering the horrible facts of this murder and the aggravating circumstances, additional mitigation evidence would not have altered the resulting death sentence.

The convenience store clerk in North Carolina was shot point blank by Mahdi, not once but twice. Mahdi has a well-documented history of violence in and out of prison. Mahdi confronted Myers in his shed, where Mahdi had been lying in wait and shot him nine times. After

¹⁵ Drs. McKee and Martin did not review any school records. Dr. Hammock reviewed only a "synopsis" of the records.

murdering Myers, Mahdi poured diesel fuel on Myers and set him on fire. During his guilty plea, Mahdi admitted that he murdered Myers, burglarized his cabin before murdering him, and stole his guns and police-issued truck after murdering him.

It is important to note Chief Justice Toal's concurring opinion in the appeal. She wrote separately to record the facts of what she describes as a "particularly heinous crime." *Mahdi v. State*, 383 S.C. 135 at 137 (2009). After reciting the facts, Chief Justice Toal states, "in my time on this Court, I have seen few cases where the extraordinary penalty of death was so deserved." *Id.* at 138.

A careful review of Judge Newman's sentencing order in the underlying trial shows the careful thought and deliberation that he put into the decision.

While this Court finds that defense counsel's performance fell below the standards as required by the United States and South Carolina Supreme Courts and the ABA guidelines, the Court finds and concludes that there is not a reasonable probability that the sentencing judge would have decided against a death sentence even if presented with more mitigation evidence. Therefore, the Applicant fails to meet the second prong in *Cherry*. This ground must be dismissed with prejudice.

C. Ground 10(a)/11(a)(iv):

Counsel failed to assert that applicant's death sentence violates the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution due to Applicant's developmental deficits.

On this allegation, Applicant has failed to state a claim upon which relief may be granted. Assuming Mahdi is referring to his alleged "mental age" allegation in Ground 10(b)/11(b)[below], the record shows Mahdi was twenty-one (21) years old at the time of the crime. *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183 (2005)(Eighth Amendment prohibits execution of those under the

age of 18 at the time of the crime). The record also shows Mahdi is not mentally retarded. (See Blair hearing testimony and testimony of R&E evaluation).¹⁶ *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242 (2002) (Eighth Amendment prohibits the execution of mentally retarded); *State v. Laney*, 367 S.C. 639, 627 S.E.2d 726 (2006); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003)(defining mental retardation). There is no testimony in the record that Mahdi was insane at the time of the crime, is insane now, or is incompetent to be executed. *Ford v. Wainwright*, 477 U.S. 399 (1986) (Eighth Amendment precludes the execution of one who is insane); *Singleton v. State*, 313 S.C. 75, 437 S.E.2d 53 (1993) (setting forth the standard for competency to be executed). Mahdi has failed to show he fits under any class of persons recognized by the United States Supreme Court or the South Carolina Supreme Court as being excluded from application of the death penalty. See *Atkins*; *Roper*; *Ford*. Counsel could not have been ineffective in failing to object to his sentence on a ground not recognized by the law. The Court is unaware of any state or federal authority for such an objection by trial counsel. See, e.g., *State v. Irick*, 320 S.W.3d 284, 297-98 (Tenn. 2010); *Mays v. State*, 318 S.W.3d 368, 379-80 (Tex. Crim. App. 2010); *Johnson v. State*, 27 So.3d 11, 26-27 (Fla. 2010). See also, e.g., *Shisinday v. Quarterman*, 511 F.3d 514 (5th Cir. 2007); *In re Neville*, 440 F.3d 220, 221 (5th Cir. 2006), citing *In re Woods*, 155 Fed. Appx. 132, 136, 2005 WL 3087882, *3 (5th Cir., Nov. 17, 2005)(unpublished); *State v. Ketterer*, 111 Ohio St. 3d 70, 855 N.E.2d 48 (2006); *Matheney v. State*, 833 N.E.2d 454 (Ind. 2005); *Hall v. Brannan*, 284 Ga. 716, 670 S.E.2d 87 (2008); *Coleman v. State*, No. W2007-0267-CCA-R3-PD, 2010 WL 118696 (Tenn. Crim. App., Jan 13, 2010) (unpublished).

¹⁶ Mahdi's I.Q. was tested twice, with scores of 108 at age fourteen and 118 at an earlier age. (R. 1437-39). Mahdi introduced no other I.Q. scores at the PCR merits hearing and made no claim that he was mentally retarded.

Applicant has failed to show that he had, at the time of the murder, any mental impairment so severe that he is necessarily and categorically less morally culpable than those who are not mentally disabled. *Mays, supra*.

There is no merit to this ground factually. Counsel had Mahdi evaluated by order of the circuit court for competency. (R. 8-10). As a result of that examination, it was determined Mahdi had no mental illness and was not mentally retarded. (R. 131; Court's Exhibit 2). It was determined Mahdi was competent to stand trial. (R. 139-140). Mahdi was twenty-three (23) years old at the time of his guilty plea, had obtained his GED, and had attended some community college. (R. 1346). Mahdi had been previously employed in mostly roofing and brick laying. (R. 1346). Mahdi denied ever having been treated for abuse of alcohol, drugs or for any mental disease. (R. 1346). Ms. Hammock testified that Mahdi had been hospitalized on one occasion as an adolescent, a voluntary admission to a mental health facility, and was released. (R. 1747, 1756). Mahdi was competent to plead guilty. (R. 1342). He understood the charges he faced, including murder, and the legal consequences of a conviction, including the death penalty. (R. 1339-68). Mahdi denied any emotional or nervous problem that might prevent him from understanding what he was doing when he pled guilty. (R. 1347). Mahdi had a good understanding of the legal process and the legal system. (R. 1340-41).

Mahdi cannot show counsel was deficient in failing to object to the imposition of the death penalty against him for the above stated reason, given the law and the record, nor can he show prejudice under *Strickland* and *Wong*, because the law does not recognize Mahdi's contention and the record demonstrates Mahdi is educated, has an above average I.Q., is streetwise, was twenty-one (21) years old at the time of the murder, and has a criminal mentality. Mahdi cannot

show a reasonable probability that, had counsel objected to the sentence on the asserted grounds, the objection would have been sustained and there would have been a different sentence. The record and credible evidence demonstrates that Mahdi does not have a juvenile mentality, if this is what Mahdi is referring to in this ground, but an adult criminal mentality and bad character. This ground must be dismissed with prejudice.

D. 10(b)/11(b):

10(b) Applicant's death sentence violates the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution due to Applicants developmental deficits.

11(b) At the time of the offenses, Applicant was developmentally impaired such that he had the "mental age" of a juvenile due to his atrocious background of deprivation, neglect, abuse, and institutionalization. The Cruel and Unusual Punishment Clause precludes the infliction of the death penalty upon him, just as it precludes execution of those under the age of 18 at the time of the offenses, because of these grave developmental deficits. See *Roper v. Simmons*, 543 U.S. 551 (2005).

There is no merit to this ground. First, this is a claim of trial court error, and a direct appeal issue that was not preserved for appellate review because there was no objection at sentencing,¹⁷ not raised in the direct appeal, and, being a direct appeal claim, is not cognizable in a PCR action. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted) ("Allegations of trial court error are not cognizable on PCR. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel."); *Drayton v. Evatt*, 312 S.C. 4, 430 S.E.2d 517 (1993)(issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel), citing S.C. Code Ann. Section 17-27-20(b) (1985); *Hyman v. State*, 278 S.C. 501, 299 S.E.2d 330 (1983); *Peeler v. State*, 277 S.C. 70, 283 S.E.2d 826 (1981); *Simmons v. State*, 264 S.C. 417, 215

S.E.2d 883 (1975), also referencing *Cummings v. State*, 274 S.C. 26, 260 S.E.2d 187 (1979); *Ashley v. State*, 260 S.C. 436, 196 S.E.2d 501 (1973); *Sellers v. Boone*, 261 S.C. 462, 200 S.E.2d 686 (1973).

As a result, this ground is dismissed with prejudice.

Second, this ground was waived and abandoned at sentencing and on direct appeal. (See ROA & Brief of Appellant). *Parks v. Morris Homes Corp.*, 245 S.C. 461, 471, 141 S.E.2d 129, 134 (1965)(litigant's failure to bring to the court's attention any perceived error amounts to a waiver of the issue). Applicant waived this alleged error by failing to bring it to the attention of the sentencing court or the South Carolina Supreme Court in his appeal. See *Gibbs v. Kimbrell*, 311 S.C. 261, 267, 428 S.E.2d 725, 729 (Ct. App. 1993)(discussing waiver). As a result, this ground must be dismissed with prejudice.

Third, applicant has failed to state a claim upon which relief may be granted. The record shows Mahdi was twenty-one (21) years old and not mentally retarded at the time of the crime. As set forth above, there is no evidence in the record that Mahdi was insane at the time of the crime, is insane now, or is not competent to be executed, nor that he fits under any class of persons recognized by the United States Supreme Court or the South Carolina Supreme Court as being excluded from application of the death penalty. This ground must be dismissed.

No federal or state authority would support such an objection by trial counsel. See, e.g., *State v. Irick*, 320 S.W.3d 284, 297-98 (Tenn. 2010); *Mays v. State*, 318 S.W.3d 368, 379-80 (Tex. Crim. App. 2010); *Johnson v. State*, 27 So.3d 11, 26-27 (Fla. 2010). See also, e.g., *Shisinday v. Quarterman*, 511 F.3d 514 (5th Cir. 2007); *In re Neville*, 440 F.3d 220, 221 (5th Cir. 2006), citing *In re Woods*, 155 Fed. Appx. 132, 136, 2005 WL 3087882, *3 (5th Cir., Nov. 17, 2005)(unpublished);

¹⁷ See *Mahdi v. State*, 383 S.C. 135, 678 S.E.2d 807 (2009).

State v. Ketterer, 111 Ohio St. 3d 70, 855 N.E.2d 48 (2006); *Matheney v. State*, 833 N.E.2d 454 (Ind. 2005); *Hall v. Brannan*, 284 Ga. 716, 670 S.E.2d 87 (2008); *Coleman v. State*, No. W2007-0267-CCA-R3-PD, 2010 WL 118696 (Tenn. Crim. App., Jan 13, 2010)(unpublished). Furthermore, even if applicant could show he suffers from a mental illness, this would not prevent his execution, where our Supreme Court has rejected a similar argument and held that a defendant found guilty but mentally ill or who pleads guilty but mentally ill may be sentenced to death. *State v. Weik*, 356 S.C. 76, 587 S.E.2d 683 (2002), cert. denied June 16, 2003; *State v. Wilson*, 306 S.C. 498, 413 S.E.2d 19 (1992).

The record also shows Mahdi knew and understood that use of illegal drugs or possession of a weapon would result in a violation of his adult probation. (R. 1487-1491). The record shows he chose to engage in such conduct anyway. (R. 1492-1511). Mahdi's crimes in Virginia, North Carolina, and South Carolina, his acts surrounding the Myers murder, and his conduct as a pretrial detainee (including his homemade handcuff key) reveal that he has above-average intelligence, is streetwise, and has a keen criminal mentality. Mahdi does not have a juvenile mentality, as alleged, but an adult criminal mentality and bad character.

Mahdi was evaluated by two psychiatric or psychological experts retained by trial/plea counsel (the defense). Both Dr. Thomas Martin, a psychiatrist, and Dr. Geoffrey McKee, a psychologist, found Mahdi had antisocial personality disorder, which is not a mental illness. Both mental health professionals found Mahdi was not suffering from any mental illness at the time he committed the offenses against Myers. Both testified at the PCR hearing that Mahdi was very intelligent. Neither testified that Mahdi was immature or had a "juvenile mentality." (PCR Tr. 508-561).

This Court had the opportunity to view the testimony of Drs. Martin and McKee and to judge their credibility. This Court finds their testimony regarding Mahdi's mentality to be credible.

Mahdi was also examined by Dr. Donna Schwartz-Watts prior to the PCR hearing. While Schwartz-Watts testified Mahdi's immaturity was cross-referenced in the records, she did not testify Mahdi had a "juvenile mentality" nor did she testify to what mental age Mahdi was, nor his mentality at the time of Myers's murder. There is absolutely no evidence in the record Mahdi has a "juvenile mentality." Mahdi has failed to meet his burden of proof on this issue. *Butler, supra*.

Contrary to his assertion, the Virginia DJJ records reveal Mahdi had matured beyond his age, especially with regard to his criminal activities. As a teenager, Mahdi stated his friends were other fourteen- and fifteen-year olds, and he was a "leader among his peers," and was his "own person." (Va. DJJ Records M00431). At the Virginia DJJ, Mahdi admitted his criminal behaviors involved a great deal of thought and planning. (Va. DJJ records). A counselor noted: "He described his current criminal charges in a very calculated, almost professional way that is alarming." (Va. DJJ records M000410). "He is developing and behaving like a teenager much older." (See Va. DJJ records M000410). Mahdi was described as a teenager with many negative attitudes toward authority, rules, limits, and the rights and privileges of others. (See Va. DJJ records M00410).

While in the Virginia DJJ system, Mahdi planned an assault on another inmate and enlisted the support of other juveniles in this assault. (DJJ records M00425). The victim was injured in this assault. Mahdi exhibited a negative attitude with staff, and stated the attitude would continue until he got his way. Mahdi cursed staff profusely. (DJJ records M00425).

Mahdi was found to be age appropriate with regard to his maturity level during his intake evaluation. (See DJJ records M00418, line 4). Another record indicated that Mahdi's teachers

should be aware that "he has demonstrated the capacity to plot, and carry out, apparently unprovoked assaults on peers. He requires extraordinarily close supervision." (See DJJ records M00426).

Mahdi was tested in 1994 when he was in the fourth (4th) grade and his overall level of functioning was at a mid-fourth grade level. At that time, his current level of educational functioning fell in the average range. His mathematics equivalent yielded a grade equivalent of 5.8. Other tests showed his general information skills at a 6.8 grade level. Mahdi did struggle with reading during this time; however, psychological data revealed Mahdi's intellectual functioning was in the high average range. (See Brunswick County School Records).

Trial counsel testified at the PCR merits hearing, that Mahdi was very intelligent, recounting that Mahdi had informed him that he had hatched a plan when he lived in Virginia whereby he would eliminate all other drug dealers in his area, resulting in a "false drought" of drugs. As a result, Mahdi would make more money selling drugs because everyone would have to come to him for the illegal product. Mahdi also related to trial counsel that he left Virginia because homicide detectives were closing in on him for a homicide committed in the Richmond, Virginia area. Trial counsel testified they had no problems communicating with Mahdi. Counsel testified Mahdi was calculating and intelligent in being able to disguise himself as someone else. Counsel related Mahdi impersonated a homeless person in Columbia in order to gain entrance into the Oliver Gospel Mission when the car he originally stole from Virginia broke down. Counsel related Mahdi was able to pretend he was a homosexual in order to accomplish the carjacking. Counsel related that Mahdi impersonated a police officer while in Florida, including investigating a crime reported by a citizen. Trial counsel did not believe Mahdi had a "juvenile mind" or mentality. (PCR Tr. 592-593, 603-611, 688-690). This Court had an opportunity to view

counsel's testimony on this issue and judge their credibility accordingly. This Court finds counsel's testimony on this issue to be credible. This Court also finds counsel's testimony on this issue to be supported by the credible evidence in the record.

This Court finds Mahdi did not present any credible testimony or evidence on this issue, and therefore he failed to meet his burden of proof regarding this issue. *Butler, supra*. Mahdi has not convinced this Court by a preponderance of the evidence that he has a "juvenile mind" or mentality. In fact, the credible evidence shows, Mahdi has an adult mentality, and an adult criminal mentality. This ground has no merit and must be dismissed with prejudice.

E. Ground 10(a)/11(a)(v):

11(a)(v) Counsel failed to assert that S.C. Code Section 16-3-20 is unconstitutional in that it automatically precludes jury sentencing following a guilty plea in violation of the Sixth, Eighth, and Fourteenth Amendments as addressed in *Ring v. Arizona*, 536 U.S. 584 (2002). Moreover, this statute forces a capital defendant to choose between his right to a jury trial and his right to present mitigating evidence, namely that he has accepted responsibility for the crime. While this issue has been rejected by state courts, *see State v. Downs*, 361 S.C. 141, 604 S.E.2d 377 (2004), it has not been reviewed by federal courts and counsel were thus ineffective in failing to adequately preserve the record for subsequent litigation.

In this ground, Mahdi alleges trial counsel was ineffective for failing to assert that S.C. Code Ann. Section 16-3-20 is unconstitutional in that it automatically precludes jury sentencing following a guilty plea. There is no merit to this ground for several reasons.

The South Carolina Supreme Court has, on several occasions, rejected the claim that the statute is unconstitutional. *State v. Inman*, Shearouse Advance Sheets Opinion 27081 (filed December 28, 2011); *State v. Allen*, 386 S.C. 93, 687 S.E.2d 21 (2009), cert. denied; *State v. Crisp*, 362 S.C. 412, 608 S.E.2d 429 (2005); *State v. Downs*, 361 S.C. 141, 604 S.E.2d 377 (2004); *State v.*

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Wood, 362 S.C. 135, 607 S.E.2d 57 (2004).¹⁸ Therefore, counsel could not have been deficient in failing to preserve an issue that has no merit under the law. Mahdi has failed to show any prejudice because any such objection would have been overruled by Judge Newman and our state Supreme Court would have found this issue to be without any merit as it has on several occasions.

Furthermore, counsel testified at the PCR hearing that Mahdi did not want to plead guilty and have the jury sentence him. (PCR Tr. 682-684). Mahdi had selected twelve (12) jurors and four (4) alternates to hear his trial and decide his sentence. Mahdi decided to plead guilty because Mahdi believed he had a better chance of receiving a life sentence from Judge Newman than from the jury he had selected. (PCR Tr. 682-684). As counsel correctly testified at the PCR hearing, the jury, composed of ordinary citizens, would not have been accustomed to seeing murders, as Judge Newman, an experienced circuit judge, and when confronted with the brutality of Mahdi's murder of Myers, and the videotape of the murder in North Carolina and its brutality, would in all likelihood have sentenced Mahdi to death for the murder of Myers. Additionally, the jury would have heard Mahdi's extensive criminal record, both adult and juvenile; and, the jury would have heard Mahdi's horrible prison behavior record while in the Virginia Department of Juvenile Justice, the Virginia Department of Corrections, and the South Carolina Department of Corrections. This Court had the opportunity to view the witnesses and hear their testimony on this issue. This Court finds trial counsel's testimony on these issues to be credible. Mahdi offered no testimony to contradict trial counsel's testimony on these issues. This Court finds based on trial counsel's credible testimony and the record in this case, Mahdi wanted to be sentenced by Judge Newman, not the jury he had initially selected and impaneled. Therefore, it would have made no

¹⁸ The South Carolina Supreme Court recently recognized this issue has no merit and has been repeatedly rejected by the Court. *State v. Inman*, Shearhouse Advance Sheets, Opinion No. 27081 (Filed December 28, 2011).

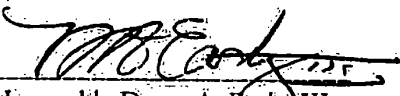
sense for Mahdi to have objected to the constitutionality of the statute and insist on pleading guilty and being sentenced by the jury, and counsel was not ineffective in failing to object to the constitutionality of Section 16-3-20. Mahdi has failed to show deficient performance or prejudice on the part of counsel in this regard. *Strickland*. This ground must be dismissed with prejudice.

VI. CONCLUSION

For the above stated reasons, the application for post-conviction relief is denied and dismissed with prejudice. Applicant Mikal D. Mahdi is remanded to the custody of Respondent for the completion or carrying out of his sentences.

December 18, 2012

AIKEN, SC


Honorable Doyet A. Barby, III
Circuit Court Judge

1 STATE OF SOUTH CAROLINA

2 COUNTY OF CALHOUN

CIRCUIT COURT
2009-CP-09-00164

3
4 MIKAL D. MAHDI,

5 -vs-

TRANSCRIPT OF RECORD

6 STATE OF SOUTH CAROLINA,
7 Defendant.

8
9 Heard on Tuesday, March 12, 2013

10 Aiken, South Carolina

11
12 BEFORE:

13 THE HONORABLE DOYET A. EARLY, III

14
15 APPEARANCES:

16 Counsel on Behalf of the Applicant:
17 Teresa L. Norris, Esq.

18 Counsel on Behalf of the State of SC:
19 J. Anthony Mabry, Esq..
20 Brendan J. McDonald, Esq.

21 Cheri L. Young, RPR
22 Circuit Court Reporter
23 P O Box 5232
24 Aiken, SC 29804-5232
25

1 ON TUESDAY, MARCH 12, 2013 AT 10:03 A.M.:

2 THE COURT: This is a motion to reconsider the case of
3 the State versus Mahdi.

4 MR. McDONALD: Yes, sir.

5 MR. MABRY: Mikal.

6 THE COURT: Mikal Mahdi. You've got the caption, do
7 you not, Madam Court Reporter?

8 THE COURT REPORTER: I do.

9 THE COURT: And as I understand from the
10 correspondence from the lawyers, y'all have waived his
11 appearance being here today; is that correct, Ms. Norris?

12 MS. NORRIS: Yes, Your Honor. And also Mr. Lominack,
13 my co-counsel, has been excused from this hearing as well.

14 THE COURT: That's correct. And I assume you
15 discussed with Mr. Mahdi that we were having a hearing
16 today, et cetera?

17 MS. NORRIS: I have not been able to see him since it
18 was scheduled, but I talked to him before, after the
19 motion was filed and let him know that there probably
20 would be a hearing outside of his presence.

21 THE COURT: Thank you very much.

22 MR. MABRY: Yes, sir, Your Honor. As the Court said,
23 Your Honor, this is a Rule 59 motion to alter, amend or
24 reconsider under Rule 59 of the South Carolina Rules of
25 Civil Procedure.

1 And as the Court is aware, the Court denied relief to
2 Mr. Mahdi but under ground 10A, 11A-iii, the Court found
3 that counsel was deficient in failing to investigate,
4 develop, present mitigation evidence about Applicant's
5 family, social, and mental health history.

6 The State disagrees, respectfully disagrees with the
7 Court's findings and -- in several respects. The first
8 would be, Your Honor, that in the Court's order the Court
9 cites several ABA guidelines, specific ABA guidelines for
10 counsel in capital cases. And basically the Court's
11 decision that counsel was deficient because they did not
12 follow those guidelines or comply with those specific
13 guidelines.

14 I believe that most of that language was taken from
15 the proposed order or post-trial brief of the defense in
16 this case, based on my recollection of the reading their
17 order.

18 What the Court was not aware of, may not have been
19 aware of, may have been aware of, in 2009, the US Supreme
20 Court subsequent to our State Supreme Court's decision in
21 Council and subsequent to the US Supreme Court case in
22 Wiggins, the US Supreme Court made it clear in a per
23 curiam opinion that the ABA guidelines for defense
24 attorneys in capital cases is not standard for ineffective
25 assistance of counsel. It's not. Simply because counsel

1 didn't follow a specific ABA guideline does not mean that
2 they were deficient.

3 THE COURT: It's not a per se deficiency.

4 MR. MABRY: Right. It's not per se --

5 THE COURT: But it's certainly something that the
6 Court can look at --

7 MR. MABRY: Correct.

8 THE COURT: -- in determining whether or not their
9 performance was not, or it was or it was not ineffective.

10 MR. MABRY: Right. It's -- I believe they term it a
11 guide --

12 THE COURT: Certainly

13 MR. MABRY: -- to the Court, but we believe the Court
14 considered it more as a, basically the standard.

15 THE COURT: So what you're saying, it's not like a
16 violation of a statute as negligence per se in our civil
17 arena. You're simply saying it's not negligence or not
18 ineffective per se but it's something I can consider in
19 determining whether or not counsel was ineffective.

20 MR. MABRY: Correct.

21 THE COURT: Did my order say that that was the
22 standard of care?

23 MR. MABRY: Yes, sir. I believe it does. I reviewed
24 it again coming down here this morning and it appears to
25 me that that, it says that is the standard of care.

1 THE COURT: So if I've said that, then I need to look
2 at that in connection with that case that you've cited to
3 me. Can you give us the cite on that, please?

4 MR. MABRY: Yes, sir. Van Hook is 558 US 4. And then
5 subsequent to Van Hook, the US Supreme Court came out with
6 Cullen versus Pinholster.

7 THE COURT: I'm sorry. Spell that first name.

8 MR. MABRY: Which one?

9 THE COURT: Cullen.

10 MR. MABRY: Yes. C-U-L-L-E-N.

11 THE COURT: Thank you.

12 MR. MABRY: Versus Pinholster, P-I-N-H-O-L-S-T-E-R,
13 which is 131 Supreme Court 1388. That's a 2011 case. It
14 also says that specific guidelines are not appropriate in
15 making an ineffective assistance determination. It is
16 basically, the issue is whether counsel conducted a
17 reasonable investigation under the facts and
18 circumstances.

19 And going back to Van Hook, that was the same thing.
20 The Sixth Circuit -- and it's not unusual to see this
21 because our Supreme Court in Council cites the same ABA
22 guidelines which was prior to Van Hook and prior to
23 Pinholster, but the US Supreme Court has made clear since
24 those decisions that that's not what they meant in
25 Wiggins, that you have to follow the specific ABA

1 guidelines.

2 THE COURT: They're simply guidelines.

3 MR. MABRY: Right. And the reason is because
4 everybody's not a member of the ABA and every lawyer in a
5 defense capital case, you've got to leave room for them to
6 make strategic decisions and make --

7 THE COURT: I understand. But you would agree with me
8 those guidelines are pretty good guidelines where someone
9 defending a capital case should look to.

10 MR. MABRY: I think they are good for somebody to look
11 at to get an idea if they've never handled a capital case
12 before.

13 But there are 131 pages of guidelines. And there's no
14 way you can do everything in those guidelines. For
15 instance, one of the guidelines says you should talk to
16 everybody that has ever known the defendant or known his
17 family.

18 Well, if I'm the capital defendant, there's no way you
19 could ever talk to everybody that has ever known me in my
20 life. Everybody in my first grade class, my second grade
21 class, every teacher I've ever had, everybody who ever had
22 any contact with me. That's simply impossible.

23 What collateral counsel has done is they cite those
24 guidelines that say you didn't follow that guideline, did
25 you. Well, no, we didn't talk to every single person that

1 ever knew him. Well, then you're deficient.

2 And that's why the Supreme Court has made it clear
3 that that's not the standard. It's reasonableness under
4 the facts and circumstances of the case. Did they conduct
5 reasonable mitigation investigation.

6 THE COURT: So I need -- you want me to go back and
7 revisit it under the two Supreme Court cases, US Supreme
8 Court cases that have been decided subsequent to our
9 Supreme Court case in Council wherein they stated that
10 those, they did, they being the guidelines, did set the
11 standard of care?

12 MR. MABRY: Yes, sir.

13 THE COURT: All right. That's a fair request.

14 MR. MABRY: Okay. The second ground, Your Honor, is
15 the order finds and specifically says in the order that
16 counsel conducted a superficial mitigation investigation
17 and one focused on competency and criminal responsibility.

18 And the record shows that is incorrect because what
19 counsel did was they -- the first thing they did was met
20 with the lawyers in North Carolina who were working on
21 another murder investigation in North Carolina. They got
22 everything that they had.

23 THE COURT: Well, he subsequently pled guilty to
24 that.

25 MR. MABRY: Right.

1 THE COURT: I think that was after the hearing we had
2 in Columbia.

3 MR. MABRY: Yes, sir. That was after that, but what
4 I'm talking about is their mitigation investigation.
5 Well, first counsel hired a forensic social worker which
6 didn't happen in the Council case. He hired a mitigation
7 investigator, hired a private investigator, and they went
8 and met with the North Carolina attorneys, got everything
9 that they had.

10 Then they go to Virginia and they interviewed the
11 defendant's mother, the defendant's two maternal aunts.
12 They also went to Philadelphia and interviewed a paternal
13 aunt and uncle. They also interviewed the grandmother and
14 another uncle in Virginia. They also interviewed the
15 father. They had trouble getting the mother and they
16 finally got her. She wouldn't talk to them except by
17 telephone. This whole case, the family wouldn't cooperate
18 with the --

19 THE COURT: But what -- didn't the defense counsel by
20 their own admission in the PCR hearing say that they were
21 concentrating more not on mitigation but on the mental
22 aspects of the case, of the defense?

23 MR. MABRY: I don't agree with that --

24 THE COURT: Okay.

25 MR. MABRY: -- assessment.

1 THE COURT: That's just my recollection. I may be
2 wrong.

3 MR. MABRY: They may have answered one question in the
4 PCR that way. But if you look at the totality of the
5 investigation, there's no question that they were not
6 focused simply on competency and whether he was insane at
7 the time of the crime.

8 Otherwise, why would they have gone to Virginia and
9 interviewed his family? Why wouldn't they have gone to
10 Pennsylvania and interviewed his family? Why wouldn't
11 they have gone to Baltimore? They were trying to develop
12 mitigation evidence from the family, but the only family
13 member who was willing to come and testify was the
14 grandmother. And the only thing she wanted to talk about
15 was what a great family they were and not explaining how
16 the defendant --

17 THE COURT: Well, if she was the only one willing to
18 come, how was the PCR counsel able to get all the family
19 members there?

20 MR. MABRY: Well, as typical in these cases, when the
21 crime is committed and the community is outraged, then so
22 is the defendant's family. They're embarrassed. They're
23 disappointed. They don't want to help him get out of
24 trouble.

25 THE COURT: But you don't know. You're just

1 speculating on that now.

2 MR. MABRY: I don't think I'm speculating on it
3 because the attorney said, you know, we went and talked to
4 these people. And at the PCR, if you'll remember his
5 mother didn't come, his brother didn't come, his father
6 didn't come and neither did the grandmother. Now she
7 supposedly has dementia now, but none of his immediate
8 family came to the PCR.

9 THE COURT: As I recall it was aunts and other members
10 of the family and community.

11 MR. MABRY: Yes, sir. But counsel in this case talked
12 to them. Not only did their mitigation investigator talk
13 to them, they went and talked to them. Mr. -- Uncle,
14 Mr. Burwell, Thomas Burwell and his wife came to the PCR
15 hearing. You'll remember she had a doctorate, I think a
16 PhD.

17 THE COURT: They were very impressive. He had lived
18 with them for some period of time.

19 MR. MABRY: Yes. He had lived with them, but at the
20 time of trial he told the North Carolina lawyers that
21 Mahdi was a demon and he faked child abuse and almost had
22 them locked up for child abuse.

23 And the trial counsel testified, they called us on the
24 phone and said we're not coming. We don't want to testify
25 and if we do, we're going to have bad things to say about

1 him.

2 So that, that's our second objection to the Court's
3 finding of deficient performance. This was not a
4 mitigation investigation that was focused solely on
5 competency to stand trial and mental insanity.

6 It was a mitigation investigation that was focused on
7 his life and how he got to where he was. In fact,
8 Ms. Hammock testified before Judge Newman at the
9 sentencing and that's what she laid out for him,
10 everything that those witnesses basically testified to at
11 the PCR; he came from a broken home, he witnessed domestic
12 violence, his father got in trouble with the law all the
13 time, his mother abandoned him when he was five years
14 old. And it went on and on and on as I've detailed in my
15 motion. That's our second basis.

16 And then our third basis, Your Honor -- if I could
17 have just a moment.

18 THE COURT: Certainly.

19 MR. MABRY: The Court found deficient performance as
20 far as the mitigation. That's what I was leading into.

21 Basically the same testimony that they brought out at
22 the PCR hearing is what was presented to Judge Newman but
23 it was presented through Ms. Hammock. They couldn't get
24 any of the family members to cooperate and come, and if
25 they did they said they were going to say bad things about

1 Mahdi.

2 So what they did was they used their social worker and
3 she presented everything, basically, that they presented
4 at the PCR hearing; broken home, abusive father, witnessed
5 domestic violence, was committed -- Mr. Mahdi was
6 committed to a psychiatric facility when he was nine after
7 he had to move in with his aunt and uncle, his mother
8 abandoned him, his father had all kind of troubles with
9 the law and could not raise him --

10 THE COURT: Hold on a second. All right. Young
11 couple on the back row, y'all step out. You two. That's
12 correct. Step out, please. Thank you.

13 Go ahead.

14 MR. MABRY: That's basically our third argument. It's
15 covered in the motion, Your Honor. And I detailed what
16 Ms. Hammock testified to before Judge Newman and it's
17 basically the same thing that they presented at the PCR,
18 but they presented it through live witnesses.

19 Counsel at the time didn't have that option. These
20 people wouldn't come to court. In fact, the aunt who had
21 the doctorate, she admitted she probably wouldn't -- she
22 was reluctant in 2006 to come but counsel said there's no,
23 none of them would come. Nobody wanted to come except the
24 grandmother. And then she didn't want to explain why
25 Mahdi had gotten to where he was. She wanted to talk

1 about what a great family he was from.

2 So they presented the mitigation the only way they
3 could present it, through Ms. Hammock.

4 THE COURT: Do you have an extra copy of your memo?

5 MR. MABRY: Yes, sir. I handed it up to you.

6 THE COURT: It apparently went to Saint Matthews. We
7 did not get it.

8 MR. MABRY: Can I approach?

9 THE COURT: You can just hand it right here, if you
10 would, please.

11 MR. MABRY: (Document handed to the Judge.)

12 THE COURT: Thank you. Ms. Norris?

13 MR. MABRY: I'm sorry. I'm sorry. Can I say one
14 other thing?

15 THE COURT: Sure. Absolutely.

16 MR. MABRY: I'm sorry. And other thing I addressed in
17 the motion, Judge, is they brought in several experts that
18 testified that like Ms -- Dr. Schwartz-Watts said, "I
19 think he was suffering from generalized anxiety disorder
20 at the time Ms. Mahdi killed Captain Myers."

21 Well, first of all, the only thing she said that led
22 her to that conclusion was Mr. Mahdi told her he was
23 anxious when Captain Myers was coming in the cabin, that
24 he had repented which is not, a pretty tenuous basis to
25 diagnose generalized anxiety disorder.

1 But regardless of that, it doesn't matter what
2 Dr. Schwartz-Watts or Dr. Hayne or one of these other
3 doctors they brought to the PCR hearing found seven, six
4 or seven years after the fact.

5 The cases that I've cited to the Court all say you can
6 always find an expert five, six, seven years after the
7 fact who's going to find something different. The issue
8 is: Did you investigate that question. And they have to
9 show that there was some record that counsel missed that
10 if they had provided that to their experts, they would
11 have come to a different diagnosis.

12 That's the Von Dohlen case. In Von Dohlen, the expert
13 said, yes, if I had these records I would have diagnosed
14 him differently and testified differently before the
15 jury.

16 That didn't happen here. In fact, they didn't call
17 any of the experts that counsel used. We called them. We
18 called Dr. McKey and Dr. Martin. And Dr. Martin said the
19 records that he saw at the PCR hearing would not change
20 his diagnosis. He had anti-social personality disorder.

21 Dr. McKey said he didn't need to see any other records
22 to make his diagnosis. So basically as far as their
23 experts, it's all impressive and pretty after-the-fact,
24 but that's not really the issue.

25 The issue is: Did counsel do something wrong that

1 would have found something that was missed. And both of
2 counsel's psychological and psychiatric experts testified
3 at the hearing. They didn't establish deficient
4 performance under Von Dohlen.

5 That's all I have, Your Honor.

6 THE COURT: All right, sir.

7 MS. NORRIS: Thank you, Your Honor.

8 THE COURT: Yes, ma'am.

9 MS. NORRIS: In Mr. Mahdi's capital sentencing his
10 defense counsel called only two witnesses.

11 THE COURT: That's correct.

12 MS. NORRIS: One of those was a corrections expert and
13 the other, as Mr. Mabry has said, was Ms. Hammock, a
14 social worker. But what Mr. Mabry characterizes as her
15 testimony going on and on and on was in fact 14 pages of
16 actual testimony that included vague conclusions based on
17 an incomplete investigation. For example, she said, "We
18 can only speculate that his childhood was full of a great
19 deal of conflict and neglect." She wasn't able to give a
20 single story.

21 Never mind, you know, what we heard at the PCR that
22 the father was --

23 THE COURT: Well, if the family members were reluctant
24 to come forward, as Mr. Mabry says, how else could counsel
25 have gotten that information in except through that

1 particular witness?

2 MS. NORRIS: Well, Your Honor, it is simply untrue
3 that the family was uncooperative. We called an aunt and
4 uncle on the paternal side, two aunts on the maternal side
5 in the PCR hearing in addition to other folks. The
6 witnesses that Mr. Mabry referred to, Carson and Lawanda
7 Burwell, they --

8 THE COURT: That was the parent -- or not the
9 parents. That was the aunt and uncle that he lived
10 with --

11 MS. NORRIS: Yes, sir.

12 THE COURT: -- in Norfolk?

13 MR. MABRY: Baltimore.

14 MS. NORRIS: Baltimore.

15 THE COURT: Baltimore. That's correct.

16 MS. NORRIS: They testified. And, yes, they were
17 reluctant. I don't know of any witness that isn't
18 reluctant. But they came for the PCR and they said, had
19 they been asked they would have come for the trial.

20 And even though their testimony include some bad
21 things like nine-year-old Mikal was a demon who was
22 hospitalized involuntarily for depression with psychotic
23 features, obviously they had a lot more mitigating
24 testimony.

25 As for the father and the mother, Mr. Mabry only

1 assumes that they refused to testify in the PCR. There
2 was plenty of evidence about their mental illnesses, their
3 impairments, not the kind of folks who make good
4 witnesses.

5 And a father -- there was lots of testimony about his
6 home schooling of the children and his paranoid rants
7 about white people and the system. So, you know, they
8 weren't necessary as witnesses.

9 The witnesses we did call, though, made a difference.
10 Judge Newman said in his sentencing order that he always
11 tried to temper justice with mercy and to seek to find the
12 humanity in every person that he sentenced. But he
13 specifically said, that sense of humanity does not seem to
14 exist in Mikal Deen Mahdi.

15 In the PCR we had 12 mitigation witnesses, four
16 affidavits. There were eight lay witnesses. And all of
17 those were from Maryland and Virginia. And Your Honor is
18 aware, we have no subpoena power over them in common
19 pleas. These folks came voluntarily, including the family
20 that Mr. Mabry says is uncooperative. We had a school
21 teacher, Carol Wilson, who taught him in the fifth grade,
22 his last grade in school before the father took him out
23 because they, the school wanted to offer him counseling
24 due to emotional handicaps. The father saw that as the
25 white man system, even though most of his counselors and

1 teachers were black, took him out of school.

2 This lady 17 years later said, "I will never forget
3 him." That's a quote from the PCR. She had taught in
4 schools and prisons and juvenile facilities and she said,
5 "just never met anybody else that had no chance in life
6 from childhood."

7 And her testimony was emotional. Your Honor may
8 recall that she was even crying. The record doesn't show
9 that. It shows that I offered her some tissue. Your
10 Honor offered her water and offered her a break. She was
11 emotional.

12 Another third grade teacher said that she would have
13 been willing to foster him if she had been asked.

14 That speaks to humanity. All of those lay witnesses
15 brought the humanity that Judge Newman found lacking in 14
16 pages of dry, social worker, vague, conclusive testimony.

17 As for the focus on competence, Mr. Mabry is mixing
18 apples and oranges. What Your Honor found and what the
19 record shows is that the mental health evaluation, the two
20 experts retained by the trial attorneys were focused on
21 competence and capacity at the time of the crime.

22 Trial counsel said that. Your Honor even quotes their
23 testimony in your order. Those experts said that. They
24 weren't looking for mitigation. The mitigation going to
25 Virginia and Maryland, that's a separate story. But, as

1 in Council, the mental health experts weren't focused on
2 mitigation. And those experts were only provided very
3 basic discovery information, not even all the records that
4 the trial attorneys had.

5 Ms. Hammock wasn't given all the records. She realied
6 on a synopsis of school records which was incomplete.
7 They never got his special education records including
8 psychological testing showing that he had emotional
9 handicaps in the fourth grade. She did not see the actual
10 records of his involuntary hospitalization as a child.
11 She only saw a report or a synopsis of that from Paige
12 Tarr and of course with all the information available,
13 Dr. Watts says he has major depression, anxiety disorder,
14 paranoid personality disorder and attachment disorder in
15 addition to anti-social. With all the information it
16 makes a difference.

17 Counsel also did not obtain any records for anyone
18 other than Mr. Mahdi, didn't get anything on the father
19 when of course there was criminal records, psychiatric
20 records and military records showing much mitigation
21 information. This man was mentally ill and violent
22 throughout his life.

23 And, you know, there's substance there. It's not
24 just, yes, the jury heard that he may have been abusive.
25 They didn't hear what came out in PCR that he tied his own

1 mother to a tree and beat her. Her offense? She stopped
2 him from beating his wife when she wanted to take the kids
3 away to escape the violence. He beat his own sister.

4 Even the sheriff corroborates that. The sheriff who
5 testified in sentencing but trial counsel didn't bother to
6 ask him that information. The sheriff grew up next to the
7 father. He knew this. Everybody in the community knew
8 it.

9 Counsel didn't interview a single person outside of
10 Mr. Mahdi's family even though counsel testified the
11 family wasn't cooperative, they wasn't helpful. He didn't
12 try to talk to anybody else.

13 And whether you argue about it's impossible to find
14 everybody that ever knew him, you certainly can find
15 neighbors, school teachers. Ms. Tarr, their investigator,
16 testified at the PCR that she couldn't remember
17 specifically, she had no file, she thought she had gone to
18 interview schoolteachers but he only went to school for
19 five years. There weren't that many of them.

20 We called the fifth grade teacher, the third grade
21 teacher, had an affidavit from the first grade teacher.
22 They're still in the same place. They're not hard to
23 find. She just didn't do it.

24 And Carson and Lawanda Burwell, Mikal lived with them
25 for a year. Ms. Hammock said he stayed there a brief

1 period. There was no description of that. These were --
2 as Your Honor recalls were very articulate, very
3 impressive lay witnesses. It's rare that you find lay
4 witnesses in the family with a master's degree, the uncle,
5 and the aunt, a Ph.D. from Harvard. They were able to lay
6 all of this out in a way that humanizes him. They
7 described the neglect from the father and why Mikal was
8 taken from the home. All of that wasn't explained in the
9 vague, conclusive testimony that the jury heard in
10 sentencing.

11 With respect to the ABA guidelines, Your Honor did say
12 in the order that they're the standard of practice and as
13 guides to determining what is reasonable. We can argue
14 about whether they're the standard of practice or not, but
15 it doesn't matter.

16 Your Honor cited numerous US Supreme Court cases and
17 South Carolina Supreme Court cases. So I submit that
18 doesn't matter.

19 The AG argues that Von Dohlen says that we can't show
20 deficient conduct if we can't show that the trial experts
21 would have changed their minds. Von Dohlen absolutely
22 does not say that.

23 In Von Dohlen, yes, it is true that the trial expert
24 came back with more information and changed his opinion.
25 That goes to prejudice. It doesn't go to deficient

1 conduct. I may be misreading it but I was the counsel in
2 Von Dohlen so I'm pretty sure it doesn't say that.

3 Mr. Mabry cites numerous times in his pleading that
4 we're saying that the trial counsel should have expert
5 shopped. They should have had a different social worker.
6 We're not saying that. We're also not saying that there
7 should have been different mental health experts. We're
8 saying those experts weren't given sufficient
9 information. It's not their fault. Counsel, it's
10 counsel's responsibility to investigate and provide that
11 information. They simply didn't do it.

12 As for the testimony being the same, if you look at
13 that 14 pages of testimony from Ms. Hammock, she says that
14 the father had limited parenting skills. He had no
15 parenting skills. The testimony about his home schooling,
16 there was no home schooling except his rant and his rave
17 against the white man's world, his paranoia that people
18 were going to come get him.

19 He had these kids out in the woods, training them for
20 some battle, some assault. That was fifth grade, 12-year-
21 old, 13, however-old Mikal Mahdi, that was his teaching.

22 Again, it was more than a brief stay in Baltimore.
23 Ms. Hammock said that the father had continuing depression
24 issues throughout his life. This man was mentally ill.
25 Even the sheriff, the civil rights leader who, if Your

1 Honor may recall, there was an incident where Mikal's
2 father jumped in the all-white pool in 1995. I don't know
3 how that happens, but it does in this county, but he
4 jumped in and he wouldn't get out. They called the civil
5 rights leader to get him out. He described the violence
6 and the mental illness.

7 There's a lot more than continuing depression. There
8 was nothing in the sentencing about the grandmother and
9 the grandmother is deceased now. Before she had dementia,
10 but she is deceased now. But she was present during his
11 sentencing.

12 And I don't disagree with trial counsel's testimony
13 that she only wanted to talk good about the family. We
14 had the testimony about that in the PCR from Aunt Lawanda
15 and Uncle Carson. This woman lived in her own delusional
16 world. She was a very light-skinned African-American.
17 She wanted to pass for white. She wanted her children to
18 pass for white to the extent that when they were children
19 she would pull their noses to straighten them. And Mikal
20 lived in her home as a child. So, of course, she would
21 not have made a good witness.

22 The other family members, again, some of them had bad
23 information. He's described as a demon child. Well, you
24 know, if you don't -- if you don't present the bad, you
25 don't get the good along with it in terms of mitigation.

1 The AG in their pleading argues that trial counsel had
2 a strategy not to present this evidence because they might
3 open the door to damaging evidence of criminal conduct in
4 the community and bad behavior and confinement, both DJJ
5 and the Department of Corrections.

6 They don't cite anything in the record though because
7 counsel didn't say that. They simply didn't say that.
8 And it's almost laughable to say that they didn't present
9 evidence in mitigation because his bad behavior and
10 confinement might come out because they called a
11 corrections expert. All of that information came out in
12 the sentencing anyway.

13 With respect to other homicides, there was testimony
14 in the sentencing from a neighbor that he boasted of a
15 plan to kill drug dealers. The sheriff of the county
16 testified in the sentencing in aggravation. Presumably
17 had there been any evidence that he was a suspect in an
18 ongoing investigation he would have testified about that.

19 And it doesn't add much to say that Mr. Mahdi told
20 trial experts that he did in fact kill several other
21 people. Well, where are the bodies? Where is the
22 investigation? Where is the evidence? It doesn't add
23 much.

24 With respect to the argument that the mental health
25 evidence was not tied to the crimes, it doesn't matter.

1 Tennard versus Dretke out of the US Supreme Court says
2 mitigation does not have to have a nexus to the crimes.
3 It is mitigating that he has all of these mental health
4 disorders, no matter how you look at it.

5 The rest of the AG's motion, and it's -- it goes on
6 close to 70 pages, much of that is simply repetitive
7 arguments about the crimes and what a bad character
8 Mr. Mahdi is. It's irrelevant to the question we're
9 addressing here; whether or not counsel's conduct was
10 deficient. All of that stuff goes to whether there was
11 prejudice or not.

12 Thank you, Your Honor.

13 THE COURT: Anything in response, Mr. Mabry?

14 MR. MABRY: Just briefly, Your Honor. Most of the
15 things Ms. Norris talked about are addressed in my
16 motion.

17 I would just point out to the Court, one of their
18 claims is they should have called the civil rights
19 activist from Virginia who would've testified that Mahdi's
20 father jumped in the all-white pool and wouldn't leave.
21 The testimony at the PCR was Mr. Mahdi was arrested, sent
22 to Richmond, evaluated and they found he had no mental
23 illness.

24 So how would that help the trial lawyers to present
25 evidence that Mahdi's father was not mentally ill when

1 Ms. Hammock testified before Judge Newman in the
2 sentencing that Mahdi's father did suffer from some mental
3 illness and an inability to care for the children because
4 of his personal problems.

5 Also, as the Court knows, there was specific testimony
6 that Mr. Mahdi related to counsel about the Virginia
7 crimes, the homicides that were committed there. Also he
8 related that to Dr. Martin and Dr. McKey. So, you know,
9 if you put them on the stand that comes out. You've got
10 not only the murder here and in North Carolina, you got
11 two more homicides in Virginia.

12 THE COURT: Are you saying that his background was so
13 atrocious, the killing in North Carolina, the killings in
14 Virginia coupled with the killing of the victim in this
15 case, everything is so bad that you just don't put up
16 anybody because all of that bad stuff will come out?

17 MR. MABRY: Well, no. Not that you don't put up
18 anybody. You put up who you can.

19 Their experts were going to testify he had -- their
20 experts, Dr. McKey and Martin, were going to testify he
21 had anti-social personality disorder. One of the things
22 that Dr. Schwartz-Watts found. And not only that, if you
23 put those specific witnesses on the stand and Solicitor
24 Pascoe gets up and says, well, what history did he give
25 you? Why did he leave Virginia in the first place?

1 Because he committed two murders in Virginia.

2 I mean, that just destroys your mitigation case.

3 Judge Newman never heard about that. All Judge Newman
4 knew about was the North Carolina murder and the South
5 Carolina murder.

6 But they presented the mitigation that they could
7 through Ms. Hammock. She laid out the whole family
8 history.

9 THE COURT: So when somebody's background is as
10 violent as Mahdi's was, you're saying that you just better
11 tiptoe through it and come up with a minimal amount so you
12 don't expose all the other stuff?

13 MR. MABRY: I think you just have to be careful. You
14 have to make a strategic decision as to each witness; what
15 is the good I'm going to get out of this witness, and what
16 is the potential bad that I'm going to get. I think that
17 is --

18 THE COURT: So if every witness has potential bad, you
19 just eliminate them and don't worry about the good?

20 MR. MABRY: No, sir. I didn't say that. I think you
21 have to weigh it according to the risks. What's the odds
22 that this is going to come out, and how bad do we need
23 this specific mitigation evidence.

24 But they made a reasonable decision in this case.
25 Their experts were just going to say anti-social

1 personality disorder. That was the best that they were
2 going to testify.

3 THE COURT: But that the opens the door to determine
4 why it was anti-social --

5 MR. MABRY: Correct.

6 THE COURT: -- disorder, hence the other murders come
7 in.

8 MR. MABRY: Correct.

9 THE COURT: All right. Well, I appreciate both of
10 you --

11 MR. MABRY: Yes, sir.

12 THE COURT: -- being here. I apologize, once again,
13 to you for being late. It just slipped our calendar.

14 Ms. Norris, can you give me your -- I think everything
15 went to Calhoun County. I don't know that we got
16 everything. Can you give me a copy of your motion, memo,
17 whatever?

18 I'll take it under advisement and get back with you
19 all shortly.

20 MS. NORRIS: Yes, sir. We did not file a written
21 reply to --

22 THE COURT: Very well.

23 MS. NORRIS: -- this, but we filed a post-hearing
24 memorandum. Is that what you want?

25 THE COURT: I got that. Thank you both very much.

IH CAROLINA)
 ALHOUN)
 #5238,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS

C/A No. 09-CP-09-164

AMENDED ORDER OF DISMISSAL

FILED
 2010 AUG 20 P 1:00
 KENNETH HASTY
 CLERK OF COURT
 CALHOUN COUNTY
 ST. MARYS, SC

This is a capital post-conviction relief (PCR) case. Applicant, Mikal D. Mahdi ("Mahdi") filed an application for PCR on August 18, 2009 pursuant to *S.C. Code Ann. Section 17-27-160* and the S.C. Supreme Court's July 23, 2009 Order staying execution, allowing Mahdi to pursue potential PCR relief, and assigning this Court with continuing jurisdiction of this action. Respondent filed a Return denying the allegations of the application and moved to dismiss with prejudice. Mahdi filed two amended applications on March 19 and July 29, 2010, and Respondent filed a Return to each as above. On March 4, 2011, Mahdi moved to amend his Final Application to include an additional ground, which was formally objected to by Respondent, and this Court granted the late amendment over Respondent's objection. On March 9, 2011, an evidentiary hearing was held. On December 18, 2012, this Court issued an Order of Dismissal, filed January 8, 2013, denying and dismissing the allegations of the Final Application with prejudice.

The State subsequently filed a timely Rule 59, SCRCP Motion to Alter or Amend one (1) of the findings in the Order of Dismissal.¹ On February 11, 2013, this Court heard argument on

¹ In its Rule 59, SCRCP Motion, the State objected to the Court's finding of deficient performance under Ground 10(a)/11(a)iii. The State's reasons for the Motion are fully set forth in its Motion to Alter or Amend. The State did not object to the Court's finding that Petitioner had not established prejudice under Ground 10(a)/11(a)iii.

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the State's Rule 59 Motion. After careful consideration of the entire record, the arguments of Respondent and Mahdi, and after careful reconsideration of the law and all of the evidence and testimony in the case, this Court grants the State's Rule 59 Motion as to that one (1) portion of the Order of Dismissal and enters this Amended Order of Dismissal as the Final Order in this case. The Application for PCR, as amended, is DENIED and DISMISSED WITH PREJUDICE, for the reasons set forth below.

I. PROCEDURAL HISTORY

Mahdi murdered James E. Myers on June 18, 2004 in Calhoun County. Mahdi was arrested on June 21, 2004 in Florida on a fugitive from justice warrant. He waived extradition, was returned to South Carolina, and charged with Myers's murder, the grand larceny of his truck, and the burglary of his work shed.² Mahdi was indicted by the Calhoun County grand jury on August 23, 2004 for murder, grand larceny greater than \$5,000, and burglary 2nd degree (violent) (2004-GS-09-243 through 244). The State sought the death penalty. The South Carolina Supreme Court assigned the case to the Honorable Clifton Newman, Circuit Court Judge.

The Continuances

Attorneys Carl Grant and Glen Walters were appointed to represent Mahdi in 2004. The case was first scheduled for trial in January, 2006. Attorneys Grant and Walters moved for a continuance based on the need for more time to complete their mitigation investigation. (PCR Tr. 597-98; Respondent's Ex. 16). The Court granted the request, continuing the trial until early November 2006. (PCR Tr. 597-98; Respondent's Ex. 17). Meanwhile, in the spring of 2006, Mr. Grant was seriously injured in motorcycle accident, whereupon Mr. Walters was substituted

²The building described as the "shed" is actually more like a workshop or cabin. It is located on the victim's farm in Calhoun County. Myers and his wife were married there. Myers' wife had an office inside the "shed". A television and chairs were also located inside the "shed." (R. 1357-67, 1395-1425).

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as first chair capital counsel, and attorney Joshua Koger, Jr., was appointed to represent Mahdi as second chair capital counsel. Shortly before trial, the case was continued again until November 26, 2006.

Jury Selection

On November 26, 2006, jury selection began before Judge Newman. General *voir dire*, individual *voir dire*, and jury selection were completed on November 29, 2006, with a jury and four alternates impaneled. Prior to the swearing of the jury, Mahdi waived his right to a jury trial and changed his plea to guilty. (R. 123-1336).

The Guilty Plea

On November 30, 2006, Mahdi pled guilty before Judge Newman to murder, grand larceny over \$5,000, and burglary 2nd degree (violent). Prior to his guilty plea, Mahdi was re-examined by Dr. Michael Cross, whereupon Mahdi was determined to be competent for the 2nd time. (R. 1254-59, 1336-43). Prior to the plea, Judge Newman found on the record that Mahdi was competent to plead guilty. (R. 1258-59, 1342-43). Judge Newman accepted Mahdi's guilty pleas to all charges and ensured Mahdi's pleas were knowingly, voluntarily, and intelligently entered into by extensive and detailed questioning of Mahdi under oath. (R. 1259-84). After acceptance of the pleas, the impaneled unsworn jury and alternates were dismissed. Mahdi's guilty pleas concluded on the same day as entered, November 30, 2006.

The Sentencing Proceeding

After the statutorily required 24 hour waiting period, the sentencing proceeding began on December 1, 2006, with evidence concluding on December 5, 2006, and final arguments on December 6, 2006. On December 8, 2006, Judge Newman issued his sentencing decision by reading into the record his written sentencing order, filed on the same date. (R. 1726-42, 1810-26, 1842-53; Sentencing Order pp. 1-12). Judge Newman found the following statutory

aggravating circumstances had been proven by the State beyond a reasonable doubt: (1) the murder was committed during the commission of a grand larceny; and (2) the murder was committed during the commission of a burglary. (R. 1730-31, 1814-15, 1845; Sentencing Order p. 4). After considering all of the evidence in extenuation, aggravation, and mitigation of punishment, Judge Newman sentenced Mahdi to death for the murder of James Myers. (R. 1726-42, 1810-26). Mahdi was sentenced to 15 years for burglary 2nd degree and 10 years for grand larceny, to run consecutively to one another and to the murder sentence. (R. 1741, 1825).

The Appeal

Mahdi appealed his death sentence to the South Carolina Supreme Court. He was represented by attorney Katherine Hudgins of the Office of Appellate Defense. On appeal, Mahdi raised one issue: "Did the trial judge improperly consider Mikal Mahdi's initial exercise of his constitutional right to a trial by jury in imposing a death sentence?" (Final Brief of Appellant/Petitioner, p. 3). The State, represented by Assistant Attorney General Anthony Mabry, filed a responsive brief. (See Final Brief of Respondent). On June 15, 2009, the South Carolina Supreme Court affirmed Mahdi's death sentence. *Mahdi v. State*, 383 S.C. 135, 678 S.E.2d 807 (2009). The Remittitur was issued July 1, 2009. Mahdi did not seek certiorari to the United States Supreme Court.

The Motion for Stay of Execution

Mahdi, through attorney Hudgins, filed a Motion for a Stay of Execution on June 23, 2009 before the South Carolina Supreme Court, to pursue potential PCR remedies. Pursuant to *In Re Stays of Execution*, the State filed a Return and did not oppose the Stay request to pursue potential PCR remedies. On July 23, 2009, the Supreme Court issued its Order granting the stay and assigning this Court to hear Mahdi's PCR application.

The Appointment of Collateral Counsel Hearing

On August 11, 2009, this Court convened a hearing pursuant to the Order of the Supreme Court to determine if Mahdi desired PCR counsel. Mahdi was present at the hearing, along with Assistant Attorney General Mabry, and attorney Melissa "Lisa" Kimbrough, who was there at this Court's request. Mahdi desired to have counsel appointed to represent him, indicating he wished to have Teresa Norris, Esq., represent him. On August 19, 2009, this Court held a conference call with Ms. Norris, attorney Robert Lominack, and Mr. Mabry, regarding Norris' and Lominack's qualifications and willingness to serve as PCR counsel and the timely scheduling and disposition of this matter. On August 24, 2009, this Court issued its Order of Appointment of PCR Counsel and Scheduling Order, filed August 28, 2009, appointing Norris and Lominack to represent Mahdi.

The PCR Application

Prior to the issuance of the Order of Appointment of Counsel, Mahdi filed a *pro se* PCR Application. (2009-CP-09-00164). Mahdi filed two subsequent Amended Applications. The State filed Returns to all three applications, denied the allegations, and moved to dismiss. Mahdi also moved to amend his final application, which was formally objected to by the State by the filing of a formal objection, which served as a Return to this final allegation. This Court granted Mahdi's motion to amend his final application to add one additional allegation, over the State's formal objection.

II. FACTS

Mahdi murdered James Myers, an off-duty police captain, on July 18, 2004 in Calhoun County, South Carolina, during a crime spree. (R. 1341-68). At the time of his murder, Myers had thirty-one years of service as both a fireman and as a police officer, with the rank of Captain. (R. 1357). Mahdi was a fugitive wanted for several crimes he committed outside South

Carolina.

A. Crimes

Virginia

On July 14, 2004 in Lawrenceville, Virginia, *Mahdi*, a resident of Virginia, burglarized the home of Amanda Weaver, Mahdi's grandmother's neighbor, stealing a .380 caliber chrome pistol. (R. 1498-1527). On the same day, he stole Virginia license plates from a vehicle at a car rental agency in Lawrenceville, and then stole a Mercury Sable station wagon from a car lot about 1/10th of a mile from the car rental agency. (R. 1357-67). Mahdi then left Virginia, where homicide detectives were pursuing him for his involvement in the death of a drug dealer. (PCR Tr. 480-82, 513, 550, 604, 688-89). Mahdi would later indicate he was involved in another homicide in which the body was never discovered. (PCR Tr. 514).³ Mahdi was traveling to Florida, where he had friends. (PCR Tr. 689).

North Carolina

On July 15, 2004, around 7:05 p.m., Mahdi entered an Exxon station in Winston-Salem, North Carolina armed with the stolen .380 caliber pistol. He took a beer from the store's cooler and placed it on the counter. While the store clerk verified Mahdi's age, Mahdi pulled out the pistol, shot the clerk, and then shot him again as he lay on the floor. (R. 1567-96). The event was captured clearly on surveillance video, and Mahdi's fingerprints were recovered from a mat that lay on the store's counter. (R. 1589). After shooting the victim, Mahdi attempted to rob the store's cash register, but was unable to open it. (R. 1483-98, 1567-82, 1693-94, 1777-78; State's Ex. 94). He then left the store with only the beer. (State's Ex. 94). The store clerk,

³This information was not presented at Mahdi's plea or sentencing proceeding. Mahdi's involvement in homicides in Virginia was developed at the PCR hearing as a result of Mahdi's allegations.

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Christopher J. Boggs, died from his wounds. (R. 1567-82, 1585).⁴

South Carolina

(Columbia)

At 3:30 a.m. on Sunday morning, July 17, 2004, Corey Pitts was sitting at a traffic light at the intersection of Bull and Washington Streets in Columbia, South Carolina, when Mahdi car-jacked him of his red 2000 Ford Expedition. (R. 1528-40). Pitts's description of his assailant was consistent with Mahdi's physical appearance. Pitts told police the man who car-jacked him was carrying a chrome pistol. Pitts identified Mahdi at the sentencing hearing as the man who stuck the chrome gun in his face, forced him out of his vehicle, and stole his vehicle.⁵ (R. 1532).

(Calhoun County)

Approximately thirty-five minutes after the car-jacking, Mahdi drove the stolen red Ford Expedition to the Wilco Hess station at Exit 139 off I-26 in Calhoun County. (R. 1360). The Expedition now bore the license plates Mahdi stole from Lawrenceville, VA. (R. 1360-62). Mahdi's fingerprints were found inside the Expedition, and on the license tag and the frame surrounding the tag.

Mahdi attempted for forty-five minutes to an hour to use a credit card at one of the Wilco gas pumps to fuel the Expedition, but the pump would not accept the card. Due to this suspicious behavior, the Wilco store clerks notified police. Mahdi abandoned the stolen Expedition behind the station, and, as police arrived, fled into woods near the station. (R. 1361-62). The police searched unsuccessfully for Mahdi and concluded he had obtained a ride from someone at a

⁴ Subsequent to the instant PCR hearing, Mahdi pled guilty to 1st degree murder in the death of Christopher J. Boggs, and received a life sentence.

⁵ The Mercury Sable station wagon stolen from Lawrenceville, VA was found in the parking lot of Washington Street United Methodist Church near the scene of the car-jacking. (R. 1359).

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nearby Waffle House. Mahdi was, instead, on foot in the woods near the store, headed toward victim James Myers's farm.

James Myers owned a farm approximately a ¼ to ½ a mile through the woods from the Wilco station. (R. 1362, 1399-1401). While fleeing on foot from police, Mahdi came upon Myers's work shed and broke into it. (R. 1362, 1411). While there, he watched T.V., converted Myers's shotgun into a sawed off shotgun, and painted it black. (R. 1603). He went through SLED investigation files maintained by Myers's wife, a SLED agent. (R. 1414-16). He armed himself with Myers's .22 caliber rifle, which was kept in the shed with other guns. (R. 1604).

Myers was off work June 18, 2004, having returned with his wife from Edisto Beach, where they celebrated the birthdays of his wife, sister, and daughter. (R. 1402-03). After returning home, Myers stopped by his father's home, as he routinely did, to visit and help his father with the loss of Myers's mother, who had died two years earlier. (R. 1404). After visiting with his father, Myers left around 6:45 p.m. and headed to his farm, where Mahdi was lying in wait at the shed. (R. 1363-64, 1403-25). Mahdi confronted Myers in the shed, and shot him nine times with the victim's own .22 caliber rifle, killing him. (R. 1364, 1541-66, 1696).⁶ After murdering Myers, Mahdi poured diesel fuel on and around the body and set the body on fire. (R. 1364, 1696). He then stole Captain Myers's police issued Dodge truck and a license plate from another vehicle located near the shed. (R. 1365, 1414, 1418). In addition to the .22 rifle, Mahdi stole Captain Myers' police issued Ruger assault rifle and the converted shotgun.

Myers's wife began missing him around 9:00 p.m., when he did not come home as expected. She called him several times and paged him, with no response. Finally, she

⁶ There is evidence that after Mahdi confronted Myers at the cabin, he forced Myers to empty his pockets on a table or chair inside the cabin. (R. 1419-21, 1774). It is also possible Mahdi emptied Myers's pockets after he murdered him.

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contacted Myers's father and discovered what time he left his father's home. Mrs. Myers drove to their farm, and finding the gate to the property open, she drove to the shed and found her husband's truck missing. Mrs. Myers then went into the shed and found her husband's burned and bullet riddled body lying in a pool of blood. She knew immediately he was dead and screamed for an unknown period of time. When she finally calmed down enough to use her phone, she contacted 911 and waited until the police arrived. (R. 1395-1425).

In the shop within feet of Myers's body, police found the keys to Corey Pitts's stolen Ford Expedition. (R. 1365). Also found at the scene were multiple, fired .22 caliber shell casings and 7 fired .22 caliber bullets. (R. 1541-65). Police also found evidence Mahdi had tried to hot-wire the victim's other truck. (R. 1413-14).

Florida

On July 21, 2004, in Satellite Beach, Florida, Mahdi was spotted by police in the victim's truck.⁷ He jumped out of the truck, while it was moving, and fled. Mahdi ran for the beach, carrying the fully-loaded Ruger assault rifle. (R. 1377-94). Police were about to use deadly force when Mahdi dropped the gun and continued to run. He ran into a condominium complex and was eventually apprehended on the fifth floor of the building with the use of a police dog.

While transporting Mahdi to the police station, the arresting officer thanked him for not shooting him with the assault rifle, to which Mahdi responded that the gun was "stuck on a three shot." Mahdi said with "cold eyes," "You don't think I could have got you - - I couldn't have shot you, the other cop, and excuse my language, that fucking dog." (R. 1394).

⁷ By this time, police in Virginia and South Carolina had connected the crimes there and here to Mahdi. A nationwide BOLO was issued for Mahdi's arrest. (R. 1365-66). Florida police noticed Mahdi's erratic driving and thought he might be an impaired driver and began following him. Mahdi refused to stop for police. He eventually ran over a stop sign near the end of the pursuit. (R. 1379-82).

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After Mahdi's arrest, police discovered the license plate on Myers's police-issued Dodge truck had been replaced with the license plate off Myers's personal GMC truck. (R. 1559-60). Clothing found by police inside the Dodge truck matched clothing Mahdi was seen wearing at the Wilco station in Calhoun County. Shorts found in the truck matched the shorts worn by Mahdi in the surveillance video of the murder at the Exxon station in Winston-Salem. Shoes found in the truck matched footwear impressions found near the scene of Myers' murder. The Ruger Mini 14 assault rifle was recovered, and the sawed off shotgun and ammunition were found in the truck, as was an "Atlas" taken from Myers's shop, with Mahdi's fingerprints on the Jacksonville, Florida map. (R. 1394-95, 1561). This led police to two witnesses in Jacksonville, who purchased a .380 caliber pistol and a .22 rifle from Mahdi shortly after Myers' murder. (R. 1366, 1565). The witnesses identified Myers's Dodge truck as the vehicle Mahdi was driving at the time, and identified Mahdi in a photographic lineup, as the person who sold them the chrome .380 pistol and the .22 rifle. The only personal item belonging to Myers that was missing but never recovered was his police badge, which he kept in his truck or in the pocket of his pants. (R. 1418-21).

Ballistics testing confirmed the recovered .380 caliber pistol was the weapon used to murder the store clerk, Christopher J. Boggs, in Winston-Salem, and the .22 rifle was used on Myers. (R. 1562, 1592-96).

The autopsy determined Myers died from multiple gunshot wounds, after being shot nine times, including four in the chest and three in the head. The pathologist, Dr. Janice Ross, opined Myers was shot first in the chest and possibly once in the head. After he collapsed to the floor of the shed, he possibly raised his head and was shot again, and then was shot again in the head while his head was lying on the floor. (R. 1702).

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B. Aggravation Factors

(Mahdi's Prior Criminal Acts)

During the sentencing hearing, in addition to the facts and circumstances of the crime, Judge Newman heard evidence in aggravation, including Mahdi's prior criminal activity as a juvenile and as an adult. Mahdi's initial involvement with law enforcement stemmed from an arrest and adjudication for car-breaking, petit larceny, and escape from custody, for which he was placed on juvenile probation.

Mahdi was committed to the Virginia's Department of Juvenile Justice (DJJ) at age fourteen for two counts of breaking and entering and two counts of grand larceny. (R. 1437). He admittedly was also involved in the sale of crack cocaine at the same age. (R. 1440). He was charged with assaulting and causing bodily injury to another inmate in Virginia's DJJ. (R. 1441-42). While in Virginia's DJJ, Mahdi told authorities one of his strengths was "robbing people." (R. 1440). During one of the break-ins he committed, Mahdi stole a .44 magnum pistol. (R. 1428-29). When Brunswick County, Virginia police attempted to arrest Mahdi on a detention order for that charge, he and his father refused to come out of their home. An eight hour standoff ensued, during which Sheriff James Woodley heard Mahdi say, "Them motherfuckers got guns." Mahdi also told police after he was finally arrested, "I'm going to kill a cop before I die." (R. 1431).

At the age of seventeen, Mahdi was arrested for slashing his mother's tires and for resisting arrest. During this arrest, Mahdi grabbed the holstered pistol of one of the investigating police officers. He later told one of the officers that he should have killed "that bitch," referring to his own mother. (R. 1457-62). Mahdi was also convicted as a juvenile of contempt of court and obstruction of justice. (R. 1612).

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As an adult, Mahdi was convicted and served three years in prison, for brutally stabbing Moises Rivera, a maintenance supervisor, at an apartment complex in Richmond, Virginia, five times in the back with a knife, after Rivera investigated a disturbance at the apartment complex and came upon Mahdi trying to break into an apartment on April 17, 2001. Rivera's lung was punctured, and he arrested in the ambulance but was revived by EMS personnel. Rivera was in the hospital for six days and was out of work for two months as a result of the assault. (R. 1473-75).

Mahdi was released from the Virginia prison system on May 12, 2004. At the time Myers was murdered, Mahdi was on supervised probation for the Rivera assault, with requirements that he not to leave Virginia, violate any laws, or possess a firearm. (R. 1483-97). After his release, Mahdi tried to get his grandmother's neighbor, Amanda Weaver, to help him assemble a 9 mm pistol. He bragged to her he was dabbling in drug dealing to make money, and was going to knock off some drug dealers. (R. 1500-02). On June 14, 2004, the day before the .380 pistol disappeared from Ms. Weaver's home, as a condition of his supervised probation, Mahdi was required to submit to a urine drug screen administered by Virginia's Department of Probation and Parole. The test result showed he was using marijuana less than two months after being released from prison. (R. 1491). Thereafter, he stole the gun, the Mercury Sable, and the license plate and drove to North Carolina.

(Mahdi's Prison Conduct)

Judge Newman also received evidence regarding Mahdi's previous behavior inside prison. During Mahdi's juvenile incarceration, he assaulted another inmate causing bodily injury. (R. 1435-52). Mahdi was incarcerated in Virginia's DJJ from August 1999 until May 2000, for contempt of court and obstruction of justice. (R. 1612-13). His record while

incarcerated was plagued by maladaptive behavior. (R. 1612-13; State's Ex. 95). Records from Virginia's DJJ also document his committing several assaults during this incarceration. (R. 1441-42; State's Ex. 95).⁸

As an adult, Mahdi was incarcerated in the Virginia Department of Corrections (DOC) from October 11, 2001, to May 12, 2004, repeatedly disobeying corrections officers' orders. (R. 1485-86). He had numerous disciplinary infractions, including repeatedly using profanity or vulgar language toward employees, and threatening an officer on November 25, 2002. Due to his poor institutional adjustment and increased security level, Mahdi was transferred from Nottaway Correctional Institution to Wallens Ridge State Prison, where his behavior did not improve. While in Virginia's DOC, Mahdi was charged with setting a fire, giving false information to an employee, destroying state property, and assault on a non-inmate. (R. 1453-56; State's Ex. 86).

As a South Carolina pre-trial detainee on the instant charges, Mahdi was charged with assaulting a correctional officer, who sustained a mild concussion. (R. 1619). At the disciplinary hearing, Mahdi looked at the officer and said that, at the next chance he got, he would kill the "motherfucking officer." (R. 1616). During a search of Mahdi's cell, officers found a three to four foot piece of rope and some pieces of metal. (R. 1617). Mahdi was housed by himself. (R. 1618). He was caught damaging a conference room and hiding metal fragments from a wall socket on his person. (R. 1622-23). On another occasion, Mahdi was found with a fifteen-foot rope made of blankets. (R. 1624). Another piece of metal was found in his cell on a different occasion. (R. 1627-28). Mahdi also wrote a grievance in which he

⁸At the plea and sentencing hearing, the State did not introduce all of Mahdi's prison disciplinary violations while in Virginia's DJJ. Only a very small number of those were introduced. At PCR, the State introduced all of Mahdi's juvenile disciplinary violations while incarcerated. They totaled over 40.

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discussed killing DOC employees. (R. 1629). Mahdi made additional threats toward a DOC employee at the disciplinary hearing. (R. 1646-48).

Captain Gary Lane testified that at the time of trial, Mahdi was kept on the High D Wing of the super-max portion of Kirkland Correctional Facility. This facility houses the six most difficult to manage inmates in the entire South Carolina DOC. (R. 1652-53). These six inmates are kept differently than the other 23,000 inmates in the DOC. (R. 1661-62). Their six cells are even more secure than death-row. (R. 1662). While in one of these super-secure cells, Mahdi made a rope and obtained two pieces of contraband metal, of which one was sharpened to a point. (R. 1656-57). Mahdi had been transferred to the High D Wing, from the High C Wing, because of a history of making objects and because a "hammer-like" weapon was found in Mahdi's cell. (R. 1653, 1655).

During jury selection before Judge Newman, a homemade handcuff key was found in Mahdi's possession, after he had persuaded his courthouse security detail to remove leg braces or irons and replace them with shackles. (R. 1319-21, 1664-65). Mahdi admitted he made the key in the DOC, kept it secreted in his mouth during the trial, and took it out of his mouth when he was away from guards for a meeting with his attorneys. (R. 1666-67). Mahdi had attempted to use it in the county jail but had not had an opportunity to use it in the courtroom, due to the guards' watchfulness. (R. 1319-21). Calhoun County Sheriff Thomas S. Summers, Jr., testified that he tried the handcuff key on three handcuff sets, and was able to open two of the three sets with the key. (R. 1667). Summers testified Mahdi could have easily used the key to remove his restraints and assault someone in the courtroom. (R. 1670).

C. The Sentencing Order

On December 8, 2006, Judge Newman issued his twelve page sentencing order, which he

read into the record. Judge Newman found that the State proved two aggravating circumstances beyond a reasonable doubt: (1) the murder of James Myers was committed during the commission of a larceny; and (2) the murder of Myers was committed during the commission of a burglary. (R. 1845; Sentencing Order, p. 4).

In addition to finding the State had established two aggravating circumstances beyond a reasonable doubt, Judge Newman found that while there was strong evidence of two other alleged aggravating circumstances, the State did not prove those other aggravating circumstances beyond a reasonable doubt.⁹ Therefore, Judge Newman did not consider or give any weight to those other alleged aggravating circumstances. (R. 1845-46; Sentencing Order, p. 4-5).

Judge Newman found the State presented compelling evidence of prior and subsequent bad acts of Mahdi, which showed Mahdi's bad character, evil nature, and malignant heart. Judge Newman found these acts covered a period over eight years and included housebreaking, stealing guns, robbing people, selling crack cocaine, vandalism, and malicious wounding of another human being. In his order, Judge Newman summarized these acts in detail. Judge Newman found the State had established Mahdi's bad character and propensities by clear and convincing evidence. Judge Newman did not consider this evidence as proof of any aggravating circumstance. (R. 1846-48; Sentencing Order, p. 5-7).

In his order, Judge Newman noted that he had considered all statutory mitigating circumstances and non-statutory mitigating circumstances argued by Mahdi, as well as other mitigating circumstances supported by the evidence. (R. 1848; Sentencing Order, p. 7).

Judge Newman considered Mahdi's age (21 years) and mentality at the time of this murder. Judge Newman noted the last time Mahdi's I.Q. was tested, at age fourteen, his I.Q.

⁹ These two alleged aggravating circumstances were that the murder was committed during the commission of an armed robbery and that Captain Myers was murdered because he was a police officer.

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was 108, slightly above average. While he considered this statutory mitigating circumstance, he did not give it great weight because Mahdi began his criminal career at an early age, fourteen. Judge Newman found that at twenty-one Mahdi was experienced in the world of crime. Judge Newman found that by the time Mahdi committed these crimes, he was well aware of the severity of his crimes and the possible consequences. Judge Newman found that given the evidence in this case, there was nothing in Mahdi's age or mentality that in any way mitigated, excused, or lessened his culpability, nor should it be given any significant weight in his ultimate decision as to the appropriate sentence. (R. 1848-49; Sentencing Order, p. 7-8).

Judge Newman also considered what the defense contended to be Mahdi's turbulent and transient childhood and upbringing. Judge Newman noted that there was no testimony from Mahdi's clinical social worker that Mahdi ever suffered any physical or sexual abuse. Additionally, records from Virginia's DJJ showed Mahdi's father, brother, and grandmother continually expressed great care and concern for his well-being. Judge Newman found that while Mahdi's family life may have been less than ideal, particularly without the presence of a loving and caring mother, he did not find that Mahdi's difficult childhood and family life contributed in any significant way to his senseless criminal activities. Therefore, while he considered this non-statutory mitigating circumstance, he did not believe that it should be given any significant weight in his ultimate sentencing determination. (R. 1849; Sentencing Order, p. 8).

Judge Newman also considered Mahdi's offered testimony of prison adaptability. While he considered the testimony of defense expert James Aiken, Judge Newman pointed out that he had reviewed and considered Mahdi's records regarding his prior behavior in various correctional institutions. Judge Newman found Mahdi had consistently been disruptive and uncooperative and had threatened to kill prison employees. Judge Newman found prison officers had repeatedly

found homemade weapons, ropes, and other contraband in Mahdi's cells. Judge Newman also found and pointed out that during this very trial, Mahdi brought a homemade handcuff key into the courthouse with the intent to use it, if possible to escape, thus posing a serious threat to courtroom security. Judge Newman noted that Mahdi admitted to the elected Sheriff of Calhoun County that he made the key while being housed and monitored at the State's highest security level facility. While Judge Newman believed Mr. Aiken was highly credentialed and gave impressive testimony, based on Mahdi's behavior in correctional institutions throughout his adolescence and adult years, Judge Newman did not believe Mahdi was sufficiently adaptable to prison life for this non-statutory mitigating circumstance to be given any significant weight in his ultimate decision as to the appropriate sentence to be imposed. (R. 1849-50; Sentencing Order, p. 8-9).

Mahdi requested, and Judge Newman considered Mahdi's guilty plea as a non-statutory, mitigating circumstance to determine the appropriate sentence to be imposed. Judge Newman noted that the plea occurred on the fourth day of the trial, following jury selection but prior to the jury being sworn. Judge Newman pointed out that this was one day following the discovery of Mahdi's homemade handcuff key. Additionally, Judge Newman found that Mahdi had failed to demonstrate any remorse for his actions. Therefore, while he considered the guilty plea, Judge Newman concluded that no significant weight should be given to it in his ultimate decision as to the sentence to be imposed. (R. 1850; Sentencing Order, p. 9).

Judge Newman also considered the impact of the crime upon the victim's family and the community. Judge Newman found the victim, James Myers, was a husband, father, grandfather, son and friend to many. Judge Newman found Myers was a well-respected police officer, an outdoorsman, a mentor, and a treasured member of humanity. Furthermore, Judge Newman found Mahdi burglarized Myers's farm shed and stole his family's sense of security and serenity.

Moreover, Judge Newman found Mahdi, by committing these crimes, robbed the Myers family and their friends of their right to peaceful enjoyment of life. (R. 1851; Sentencing Order, p. 10).

In his final decision, Judge Newman noted that he was acutely aware of the decision before him, and he stated that he did not take it lightly. Moreover, Judge Newman noted that he considered Mahdi's plea for mercy and the State's plea for justice. In evaluating these two ideals, Judge Newman also said that he was reminded of his sworn duty to preserve, protect, and defend the Constitution of this State and the United States. Furthermore, Judge Newman stated that this obligation was not only to Mikal Mahdi, but of equal importance, this was an obligation that he had to the citizens of South Carolina.

Judge Newman made the following poignant statements in concluding his Order:

My challenge and my commitment throughout my judicial career has been to temper justice with mercy and to seek to find the humanity in every defendant that I sentence. That sense of humanity does not seem to exist in Mikal Dean Mahdi. (R. 1824, 1851; Sentencing Order, p. 10).

In extinguishing the life, hope and dreams of Captain Myers in such a wicked, depraved, and conscienceless manner, the defendant, Mikal Dean Mahdi, also extinguished any justifiable claim to receive the mercy he seeks from this Court. (R. 1852; Sentencing Order, p. 11).

In considering all of the evidence in this case, I have concluded that the only appropriate punishment for the murder of Captain James E. Myers is death." (R. 1825, 1852; Sentencing Order, p. 11).

Judge Newman then stated, "I find as an affirmative fact that the evidence in this case warrants the imposition of the death penalty and that its imposition is not the result of prejudice, passion, or any other arbitrary factor." (R. 1852; Sentencing Order p. 11). Judge Newman then formally sentenced Mahdi to death. (R. 1853; Sentencing Order, p. 12).

III. PCR ALLEGATIONS/GROUNDS

Based on Mahdi's PCR application, amended applications, and Motion to Amend, Mahdi

alleges the following grounds entitle him to post-conviction relief:

Ground 10(a)/11(a)(i): Trial counsel failed to object when the trial judge improperly based his decision to impose a death sentence on petitioner's assertion of his right to a jury trial, thereby effectively punishing him for exercising this constitutional right.¹⁰

Ground 10(a)/11(a)(ii): Counsel failed to adequately advise Applicant of the advantages of jury sentencing, which resulted in the Applicant pleading guilty and purporting to waive his right to jury sentencing.

Ground 10(a)/11(a)(iii): Counsel failed to adequately investigate, develop, and present mitigation evidence concerning Applicant's family, social, institutional, and mental health history.¹¹

10(a)/11(a)(iv): Counsel failed to assert that applicant's death sentence violates the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution due to Applicant's developmental deficits.¹²

(10)(b)/11(b): *Applicant's death sentence violates the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution due to Applicant's developmental deficits.* At the time of the offenses, Applicant was developmentally impaired such that he had the "mental age" of a juvenile due to his atrocious background of deprivation, neglect, abuse, and institutionalization. The Cruel and Unusual Punishment Clause precludes the infliction of the death penalty upon him, just as it precludes execution of those under the age of 18 at the time of the offenses, because of these grave developmental deficits. *See Roper v. Simmons*, 543 U.S. 551 (2005).

11(a)(v): Counsel failed to assert that S.C. Code Section 16-3-20 is unconstitutional in that it automatically precludes jury sentencing following a guilty plea in violation of the Sixth, Eighth, and Fourteenth Amendments as addressed in *Ring v. Arizona*, 536 U.S. 584 (2002). Moreover, this statute forces a capital defendant to choose between his right to a jury trial and his right to present mitigating evidence, namely that he has accepted responsibility for the crime. While this issue has been rejected by state courts, *see State v. Downs*, 361 S.C. 141, 604 S.E.2d 377 (2004), it has not been reviewed by federal courts and counsel were thus ineffective in failing to adequately preserve the record for subsequent litigation.

¹⁰ Mahdi alleged under this ground counsel's deficient performance in failing to preserve this issue for appellate review deprived petitioner of the right to effective assistance of counsel under the Sixth and Fourteenth Amendments and *Strickland v. Washington*, 466 U.S. 668 (1984).

¹¹ Mahdi alleged under this ground counsel's conduct in each instance separately and cumulatively was both unreasonable and prejudicial in sentencing. *Strickland v. Washington*, 466 U.S. 668 (1984); *Wiggins v. Smith*, 539 U.S. 510 (2003); *Rompilla v. Beard*, 545 U.S. 374 (2005); *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008).

¹² Mahdi alleged under this ground counsel's conduct in each instance, separately and cumulatively was both unreasonable and prejudicial in sentencing. *Strickland v. Washington*, 466 U.S. 668 (1984); *Wiggins v. Smith*, 539 U.S. 510 (2003); *Rompilla v. Beard*, 545 U.S. 374 (2005); *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008).

The PCR Merit's Hearing

On March 9, 2011, an evidentiary merits hearing was convened at the Broad River Correctional Institution. Present at the hearing were Mahdi, his collateral attorneys, along with representatives from the Attorney General's Office and the victim's widow, Amy Myers. Mahdi called several witnesses to testify at the hearing: Carson Burwell, Rose Gupton, Sophie Gee, Myra Harris, Carol Wilson, George Smith, Sharon Pond, Nicholas Cooper-Lewter, Lawanda Burwell, Drs. Craig Haney, DeRossett Myers, and Donna M. Schwartz-Watts. Mahdi also submitted sworn affidavits of James Woodley, Dora Wynn, Doug Pond, and Sandra Wynn Burwell. Mahdi did not testify at the PCR hearing. Respondent called the following witnesses at the evidentiary hearing: Carl Grant, Esq., Glenn Walters, Esq., Josh Koger, Esq., Paige Tarr Haas Munn, Dr. Thomas Martin, James Gordan, and Dr. Geoffrey McKee. Additionally, exhibits were introduced by both sides. At the evidentiary hearing, this Court had the opportunity to view and hear the witnesses who testified in person, and make a credibility assessment with regard to each witness.

After reviewing the record, including the Record on Appeal and the trial exhibits, and after reviewing all of the evidence submitted in this case, including the testimony of each witness and the exhibits introduced at the PCR hearing, and after making a credibility assessment regarding the witnesses and evidence introduced, this Court finds the application for post-conviction relief to be without merit and denies and dismisses the application with prejudice.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Standard of Review

In a PCR action, the applicant has the burden of proving his allegations by a preponderance of the evidence. *Rule 71.1(e), SCRPC; Butler v. State*, 286 S.C. 441, 334 S.E.2d

813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); *Butler, supra*.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler, supra*. An applicant must overcome this presumption to prevail on PCR. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Second, counsel's deficient performance must have prejudiced the applicant, such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625, citing *Strickland*.

"Surmounting *Strickland*'s high bar is never an easy task[.]" *Premo v. Moore*, 131 S.Ct. 733 (2011) citing *Harrington v. Richter*, 131 S.Ct. 770 (2011), quoting *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010). "It is 'all too tempting' to 'second-guess counsel's assistance after conviction or adverse sentence.'" *Harrington v. Richter*, 562 U.S. ___, (2011), citations omitted. "The question is whether an attorney's representation amounted to incompetence under 'prevailing professional norms,' not whether it deviated from best practices or most common custom." *Id.*; *Strickland*, 466 U.S., at 690.

In the context of a guilty plea, the applicant also must establish prejudice by proving "counsel's constitutionally-ineffective performance affected the outcome of the plea process."

Hill v. Lockhart, 474 U.S. 52, 59 (1985). The applicant must show, but for counsel's ineffective assistance, there is a reasonable probability he would not have pled guilty but would have proceeded to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

In the context of sentencing phase issues, the applicant must show deficient performance and prejudice. To show prejudice is to show that "there is a reasonable probability that ... the sentencer—including an appellate court, to the extent it independently reweighs the evidence--would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." *Strickland*, 466 U.S. at 695; *see also Wiggins*, 539 U.S. at 537; *Jones v. State*, 332 S.C. 329, 344-45, 504 S.E.2d 822, 829-30 (1998). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Jones*, 504 S.E.2d at 823-824. The United States Supreme Court made clear that the burden is *not on the State* to show the lack of prejudice, but the burden is *on the applicant* to show prejudice. *Wong v. Belmontes*, 130 S.Ct. 383 (2009), *citing Strickland, supra*. The applicant must prove that had counsel acted competently there is a reasonable probability that a different sentence would have resulted. *Id.*; *Wiggins v. Smith*, 539 U.S. 510, 535, 536 (2003); *see also Terry v. State*, 394 S.C. 62, 714 S.E.2d 326 (2011). Such a showing "requires a substantial, not just conceivable, likelihood of a different result." *Cullen v. Pinholster*, 131 S.Ct. 1388, 1403 (2011), *citing Harrington*, 131 S.Ct. at 791 (2011).

IV. Mahdi's Grounds Lack Merit

A. Ground 10(a)/11(a)(i)

Trial counsel failed to object when the trial judge improperly based his decision to impose a death sentence on petitioner's assertion of his right to a jury trial, thereby effectively punishing him for exercising this constitutional right. Counsel's deficient performance in failing to preserve the issue for appellate review deprived petitioner of the right to effective assistance of counsel.

Mahdi had the burden of proving this allegation. *Butler, supra*. He offered no evidence, however, in support of this ground at his hearing. (PCR Tr. 20-710). Mahdi failed to prove counsel was ineffective in this regard. *Id.* Furthermore, Judge Newman did not base his decision to sentence Mahdi to death on Mahdi's assertion of his right to a jury trial. At the plea and sentencing, Mahdi asked the Court to consider his guilty plea as a non-statutory mitigating circumstance. Judge Newman did consider the guilty plea as a non-statutory mitigating circumstance, but chose not to give this non-statutory mitigating circumstance great weight. (R. 1848, 1850; Sentencing Order, pp. 7, 9). In his sentencing order, Judge Newman stated:

The defense further argues a non-statutory mitigating circumstance that the Court should consider the defendant's guilty plea in determining the appropriate sentence to be imposed. The defendant's guilty plea occurred during the fourth day of his trial following jury selection, but prior to the jury being sworn. This was one day following his attempted escape through the use of a homemade key. In addition, Mr. Mahdi has failed to demonstrate any remorse for his actions at any point in time known to this Court. Therefore, I conclude that no significant weight should be given to this non-statutory mitigating circumstance in the Court's ultimate decision as to the sentence to be imposed.

(R. 1738-39, 1822-23, 1850, Sentencing Order, p. 9).

Mahdi engages in a strained reading of one sentence of this one paragraph of a twelve page capital sentencing order in an attempt to vacate his death sentence. In his direct appeal brief, Mahdi selected a single sentence from this paragraph and alleged the selected sentence evidenced the trial judge considered the initial exercise of Mahdi's right to a jury trial as a circumstance supporting the imposition of the death penalty.¹³ (See BOA, p. 9, 11, 18-21).

Judge Newman did not consider Mahdi's participation in *voir dire* and selecting a jury as an aggravating circumstance. See *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174-75

¹³ The sentence reads, "The defendant's guilty pleas occurred during the fourth day of his trial following jury selection, but prior to the jury being sworn." (See BOA).

(1993) (trial judges are presumed to know the law and apply a narrowing definition of this state's death penalty statute), *referencing Walton v. Arizona*, 497 U.S. 639 (1990).

Mahdi's allegation of ineffective assistance of counsel in this regard is without merit. Mahdi offered no evidence on this ground at the PCR evidentiary hearing, and Judge Newman did not sentence Mahdi to death for participating in *voir dire* and selecting a jury. Mahdi's assertion is not supported by the sentencing order or the record. Mahdi was sentenced to death only for the appropriate reasons, the circumstances of the crime and his character. Therefore, counsel was not ineffective in failing to object to this portion of the sentencing order. Mahdi cannot show deficient performance or resulting prejudice from counsel's alleged failure to object. See, *Strickland, supra*; *Wong, supra*; *Wiggins, supra*; *Jones, supra*. This ground must be dismissed with prejudice.

B. Ground 10(a)/11(a)(ii)

Counsel failed to adequately advise Applicant of the advantages of jury sentencing, which resulted in the Applicant pleading guilty and purporting to waive his right to jury sentencing.

There is no merit to this second allegation. Mahdi does not specify the jury sentencing advantages to which he alludes, nor how counsel inadequately advised him of those advantages. This ground must be dismissed as vague and ambiguous.

Mahdi did not testify, and offered no testimony or other evidence at the merits hearing on this issue.¹⁴ Mahdi did not question any of his former appointed attorneys on this issue. (PCR Tr. pp. 587-710). Mahdi has failed to meet his burden of proof on this allegation, which must therefore be dismissed with prejudice. *Butler, supra*; *Hill, supra*. Furthermore, having offered no

¹⁴ At the close of Mahdi's PCR case presentation, Respondent moved for a directed verdict due to lack of any evidence or proof offered on his ground. When asked for a response, collateral counsel gave none. This Court held the motion for a directed verdict in abeyance until the completion of the PCR merits hearing. At the conclusion of the merits hearing, there was still not evidence offered on this ground by applicant Mahdi. (PCR Tr. 1-719).

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proof, Mahdi waived and abandoned this issue. *Parks v. Morris Homes Corp.*, 245 S.C. 461, 471, 141 S.E.2d 129, 134 (1965) (Further, it is a litigant's duty to bring to the court's attention any perceived error, and "the failure to do so amounts to a waiver of the alleged error."). See also *Gibbs v. Kimbrell*, 311 S.C. 261, 267, 428 S.E.2d 725, 729 (Ct. App. 1993) (discussing waiver).

Furthermore, the record indicates Mahdi was fully advised of his rights to jury sentencing and the pros and cons of having a jury conduct his sentencing verses a judge determining his sentence. (See R. 1324-68). After Mahdi indicated a possible guilty plea, court recessed overnight, and Mahdi was given additional time to talk to his lawyers about whether he wanted to plead guilty and have the judge determine his sentence or proceed with a jury trial and have a jury determine his guilt and sentence. (R. 1332-36). The record reflects that discussions in this regard had already occurred before counsel indicated to the Court that Mahdi might change his plea to guilty. (R. 1329-32). Mahdi clearly understood his right to have a jury determine his sentence, because several days of individual *voir dire* and jury selection had been completed, and a panel of twelve jurors and four alternates had been seated but not sworn at the time Mahdi indicated he might plead guilty. (R. 1370-71). After the overnight recess, Mahdi told the Court he wanted to enter a plea of guilty. (R. 1336).

Additionally, prior to Mahdi's entry of a plea of guilty, Judge Newman conducted a *Blair* hearing to determine whether Mahdi was competent to plead guilty. (R. 1336-43). Dr. Michael Cross testified that Mahdi had a rational understanding of what a guilty plea meant, and the risks, benefits, and possible consequences. (R. 1340). Mahdi told the Court that he was competent to plead guilty, and he wanted to move forward with the guilty plea. (R. 1342). Judge Newman found on the record that Mahdi was competent to plead guilty. (R. 1343). Judge Newman's finding in this regard is fully supported by the record.

During the lengthy colloquy with the Court, Mahdi was placed under oath. (R. 1343).

Mahdi testified that he understood that if he pled guilty in front of Judge Newman that the possible sentences were life in prison and the death penalty. (R. 1347). Mahdi testified under oath that he understood he had the right to a jury sentencing, and that in order to sentence him to death all twelve jurors would have to unanimously agree that he should be sentenced to death. (R. 1347-48). Mahdi also stated under oath that he understood that if he pled guilty, the Judge would solely determine the sentence, not the twelve jurors. (R. 1349).

Mahdi told Judge Newman that he had had sufficient time to discuss with his attorneys and his family his decision to plead guilty. (R. 1351). Mahdi stated he had no complaints against his attorneys, was fully satisfied with them, and did not need any more time to discuss anything with them. (R. 1268). Mahdi acknowledged that, understanding the nature of the charges, the possible penalties, including death, the other possible consequences of his guilty plea, and his constitutional rights, he wanted to plead guilty. (R. 1356). The record shows Mahdi knowingly, intelligently, and voluntarily made the decision to enter a plea of guilty and have Judge Newman sentence him, rather than the jury he had selected and impaneled. (R. 1324-68). See *Boykin v. Alabama*, 395 U.S. 238 (1969); *Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (record of plea proceeding, including applicant's answers to the trial judge's questions, clearly establishes that applicant could not have had misconceptions regarding sentencing).

Additionally, counsel testified at the PCR hearing that Mahdi decided he wanted Judge Newman to sentence him rather than the jury he had selected and impaneled. (PCR Tr. 682-84). Mahdi offered no testimony on this issue and offered no evidence that contradicted counsel's sworn testimony on this issue. This Court finds counsel's testimony on this issue to be credible. This Court also finds that counsel's testimony on this issue is supported and corroborated by Mahdi's responses to Judge Newman's questions during the guilty plea itself.

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Given the vague allegations of this ground, the lack of any supportive evidence in the record, and the clear record before this Court that Mahdi understood the advantages and disadvantages of jury sentencing, this ground must be dismissed with prejudice. See *Strickland, supra*; *Hill, supra*; *Butler, supra*. There is no proof that counsel was deficient in any manner in this regard. See *Strickland, supra*; *Hill, supra*; *Butler, supra*.

Additionally, as a result of this record, Mahdi cannot show prejudice. *Hill, supra*. Given this record, including counsel's credible testimony, the record of the plea proceeding, and the evidence that would have been submitted to the chosen jury, including the horrendous facts of Myers's murder, the murder of Christopher Boggs in North Carolina, and Mahdi's maladaptive prison behavior and atrocious criminal record, Mahdi has not met and cannot meet his burden of proof that there is a reasonable probability he would not have pled guilty, and would have proceeded to trial with a different outcome. This ground must be dismissed with prejudice.

C. Ground 10(a)/11(a)(iii)

Counsel failed to adequately investigate, develop, and present mitigation evidence concerning Applicant's family, social, institutional, and mental health history.

At the merits hearing, under this ground, Mahdi raised several different specific allegations of ineffective assistance of counsel:

- a) Counsel should have interviewed and called at sentencing several of Mahdi's extended family members and also community members to testify to his family, social, scholastic, and mental health history.
- b) Counsel should have presented the testimony collateral counsel presented [at PCR] through a different forensic social worker than the one counsel used at sentencing.
- c) Counsel should have introduced testimony from an expert regarding the effect of Mahdi's life of incarceration on Mahdi.

- d) Counsel failed to adequately investigate, develop, and present evidence concerning his mental health history or mentality; specifically, counsel should have discovered and presented the testimony Mahdi presented through Drs. Schwartz-Watts and Myers at PCR, and counsel failed to provide certain records to their own psychiatric/psychological experts;
- e) Finally, counsel failed to introduce certain documents at sentencing such as certain school records, his DJJ records, records from his commitment to the Walter Carter Center at age nine, his father's records, and counsel failed to call school officials.

This Court finds there is no merit to these allegations for the reasons set forth below.

Our Supreme Court has analyzed claims of failure to investigate, discover, and present mitigation evidence under *Strickland*, *Wiggins v. Smith*, 539 U.S. 510 (2003) and its progeny. See *Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009); *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008) (relying on *Wiggins* and *Rompilla v. Beard*, 545 U.S. 374 (2005), finding counsel deficient and defendant prejudiced by failure to investigate, develop, or present any mitigation evidence regarding defendant's violent upbringing, abuse at home, and mental illness other than limited testimony by his mother); *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007); *Nance v. Ozmint*, 367 S.C. 547, 557 n. 8, 626 S.E.2d 878, 883 n. 8 (2006) (citing *Wiggins* and concluding counsel should have investigated and presented evidence of adaptability to prison and mitigating social history evidence outlining defendant's troubled childhood and mental illness); *Von Dohlen v. State*, 360 S.C. 598, 606-07, 602 S.E.2d 738, 742-43 (2004) (concluding counsel was ineffective in failing to adequately prepare and present evidence in penalty phase defendant suffered from severe, chronic depression at time of murder given counsel failed to provide expert witness with crucial medical records and related information which prevented that witness from conveying an accurate diagnosis of defendant's mental condition to the jury); *Simpson v. Moore*, 367 S.C. 587, 605-07, 627 S.E.2d 701, 711-12 (2006) (reversing PCR court's conclusion capital defendant suffered prejudice from failure to offer sufficient social history evidence in

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mitigation where record showed counsel did in fact do adequate investigation and presented similar mitigation evidence); *Jones v. State*, 332 S.C. 329, 344-45, 504 S.E.2d 822, 829-30 (1998) (fancier mitigation case does not establish ineffective assistance of counsel).

To establish deficient performance, a person challenging a conviction or sentence must show that “counsel’s representation fell below an objective standard of reasonableness.” *Strickland*, 466 U.S. at 688. A court considering a claim of ineffective assistance must apply a “strong presumption” that counsel’s representation was within the “wide range” of reasonable professional assistance. *Id.* at 689. The challenger’s burden is to show “that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Id.* at 687.

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. *Id.* at 689-90. It is “all too tempting” to “second-guess counsel’s assistance after conviction or adverse sentence.” *Id.* at 689. The question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. *Id.* at 690. *Strickland* does not guarantee perfect representation, only a “reasonably competent attorney.” *Id.* at 687; *Harrington v. Richter*, 131 S.Ct. 770 (2011).

This standard is necessarily a general one. *Bobby v. Van Hook*, 558 U.S. 4 (2009). “No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant.” *Strickland*, 466 U.S. at 688-689. “Restatements of professional standards, we have recognized can be useful ‘guides’ to what reasonableness entails, but only to the extent they describe the professional norms prevailing when the

representation took place.” *Bobby v. Van Hook; Strickland*, at 688. The ABA Guidelines for Appointment and Performance of Defense Counsel in Death Penalty Cases are not the definition of what reasonableness means under *Strickland*, and they are not “inexorable commands with which all capital defense counsel must comply.” *Van Hook, supra*.¹⁵ In fact, as Justice Alito pointed out in his concurring opinion in *Van Hook*:

I join the Court’s *per curiam* opinion but emphasize my understanding that the opinion in no way suggests that the American Bar Association’s Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (rev. ed. 2003) (2003 Guidelines or ABA Guidelines) have special relevance in determining whether an attorney’s performance meets the standard required by the Sixth Amendment. The ABA is a venerable organization with a history of service to the bar, but it is, after all, a private group with limited membership. The views of the association’s members, not to mention the views of the members of the advisory committee that formulated the 2003 Guidelines, do not necessarily reflect the views of the American bar as a whole. It is the responsibility of courts to determine the nature of the work that a defense attorney must do in a capital case in order to meet the obligations imposed by the Constitution, and I see no reason why the ABA Guidelines should be given a privileged position in making that determination.¹⁶

While the ABA Guidelines provide noble standards for legal representation in capital cases and are intended to improve that representation, they are not minimum constitutional standards, which defense counsel must follow or they are ineffective. *Yarborough v. Johnson*, 520 F.3d 329 (4th Cir. 2008); *Walker v. True*, 401 F.3d 574, 583 n. 7 (4th Cir. 2005) (the *Strickland* inquiry

15 As the United States Supreme Court pointed out in *Bobby v. Van Hook*, the original ABA standards were very brief and described defense counsel’s duty to investigate both the merits and mitigating circumstances in general terms. However, the 2003 ABA Guidelines were quite different: they were 131 pages long, were directives that expanded what had been a broad outline of counsel’s duties in all criminal cases into detailed prescriptions for legal representation of capital defendants. They discuss the duty to investigate mitigating evidence in exhaustive detail, specifying what attorneys should look for, where to look, and when to begin. They include, for example, the requirement that counsel’s investigation cover every period of the defendant’s life from the moment of conception and that counsel contact *virtually everyone* who knew the defendant and his family and obtain records concerning not only the client, but also his parents, grandparents, siblings and children. If the 2003 ABA Guidelines were the standard of effective assistance of counsel, few would be the capital defense attorney who would be found effective.

16 Chief Justice Toal and Justice Burnett noted similarly in their dissenting opinion in *Ard*, the ABA Guidelines are not the standard for ineffective assistance of counsel, but the standard remained reasonableness under *Strickland*. Their position has been supported by recent decisions of the United States Supreme Court. See also generally *State v. Blakely*, 402 S.C. 650, 742 S.E.2d 29 (Ct. App. 2013), citing *Rompilla*, 545 U.S. at 400, citing *Strickland*. See also *Medlin v. State*, 276 S.C. 540, 544, 280 S.E.2d 648, 650 (1981) (Littlejohn and Gregory, JJ, concurring in part and dissenting in part) (ABA Standards are not controlling or dispositive of an issue).

“does not entail the application of *per se* rules derived from ABA standards), *vacated on other grounds*, 546 U.S. 1086 (2006). See *Roe v. Flores-Ortega*, 528 U.S. 470, 479 (2000); *Strickland*, 466 U.S. 688-89 (cautioning against the fallacy of treating guidelines as a “checklist for judicial evaluation of attorney performance”).

Subsequent to *Van Hook*, the United States Supreme Court handed down *Cullen v. Pinholster*, 131 S.Ct. 1388 (2011) in which the Court reiterated the determination of whether counsel’s performance was deficient and ultimately ineffective cannot be made based on specific guidelines. *Id.* In fact, the Court pointed out in *Pinholster* that “[b]eyond the general requirement of reasonableness, ‘specific guidelines are not appropriate.’” *Id.*, citing *Strickland* at 688. The *Pinholster* Court went on to state: “No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions...” *Id.*, quoting *Strickland*, at 688-89. The *Pinholster* Court went further in stating:

Strickland itself rejected the notion that the same investigation will be required in every case. *Id.*, at 691, 104 S.Ct. 2052 (“Counsel has a duty to make reasonable investigations *or* to make a reasonable decision that makes particular investigations unnecessary” (emphasis added)). It is “[r]are” that constitutionally competent representation will require “any one technique or approach.” *Richter*, 562 U.S. at ___, 131 S.Ct. at 779. The Court of Appeals erred in attributing strict rules to this Court’s recent case law. [FN 17 The Court of Appeals was not necessarily wrong in looking to other precedents of this Court for guidance, but “the *Strickland* test ‘of necessity requires a case-by-case examination of the evidence.’” *Terry Williams*, 529 U.S. 362, 391, 120 S.Ct. 1495, 146 L.Ed. 389 (2000) (quoting *Wright v. West*, 505 U.S. 277, 308, 112 S.Ct. 2482, 120 L.Ed. 225 (1992)(KENNEDY, J., concurring in judgment).]

As a result, it is clear that since the decisions by the United States Supreme Court and the South Carolina Supreme Court referencing the ABA guidelines, the United States Supreme Court has made clear that the mere fact that an attorney did not follow the ABA Guidelines in general or specific ABA Guidelines does not mean counsel’s performance was deficient in

performing a mitigation investigation in a capital case. See *Pinholster, supra*; *Van Hook, supra*; *Strickland, supra*.

What the Sixth Amendment requires is counsel in a capital case conduct a reasonable and thorough investigation into mitigation evidence. *Wiggins v. Smith*, 539 U.S. 510 (2003); *Williams v. Taylor*, 529 U.S. 362, 296 (2000); *Strickland*, 466 U.S. 668 (1984).

This Court has reviewed Mahdi's allegations in this ground under the above-cited standards. This Court finds Mahdi has failed to show deficient performance, and Mahdi has also failed to show prejudice for the reasons set forth below. As a result, there is no merit to this ground.

(a) The Alleged Failure to Present Family Member and Community Witnesses

At the PCR hearing, Mahdi called several aunts and one uncle to testify to Mahdi's background and that of his family. Mahdi also offered the affidavit of another aunt. He offered the testimony of two community witnesses and the affidavits of two community witnesses on the same issue. Mahdi contends counsel was deficient in failing to call these family members and community witnesses at sentencing, and he alleges he was prejudiced by this alleged deficient performance. At PCR, Mahdi called the following family members as mitigation witnesses: Carson Burwell (a paternal uncle), Rose Gupton (a maternal aunt), Sophie Gee (a maternal aunt), and Lawanda Burwell (a paternal aunt and Carson's wife). Mahdi also offered the affidavit of Sandra Burwell (a paternal aunt). Mahdi also called a community activist, George Smith, and Virginia Pond, another member of Mahdi's community. Mahdi also offered affidavits from James Woodley and Douglas Pond, two more members of Mahdi's community.

Carson Burwell testified as follows. His brother, Shareef Mahdi [Mahdi's father], was an unwanted child who also experienced problems when attending integrated schools, and

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eventually converted to Islam and changed his name from Thomas Burwell to Shareef Mahdi. Mahdi's father and mother's marriage was an arranged marriage, and Mahdi's mother left Mahdi's father when Mahdi was a small child leaving Mahdi and his brother with Mahdi's father. Mahdi's father lacked supervision and parenting skills, and Mahdi's father was unable to hold a job. Carson and his wife, Lawanda, attempted to help Mahdi by taking him into their home when he was eight years old. Mahdi could not read, and Carson taught Mahdi how to read. Mahdi made a false accusation of child abuse against Carson's wife, and Carson and Lawanda were almost arrested based on this accusation. Mahdi also asked the responding police officer for his pistol so he could kill himself, which resulted in Mahdi's commitment to the Walter Carter Center [a psychiatric center] at age nine. Carson testified to Mahdi's manipulative behavior in Carson's home both before and after the commitment to the Carter Center, and Mahdi's misbehavior while in the Carter Center. He testified to Mahdi's disruptive behavior at school after being released from the Carter Center and after Mahdi found out his brother had re-united with their father, which forced Carson and Lawanda to return Mahdi to live with his father. Carson also testified to Mahdi's being asked to leave his uncle Nathan's home as an adult because Mahdi would not abide by the rules of that home. Finally, Carson testified he could not recall ever meeting with any defense attorneys or mitigation investigators from South Carolina prior to trial, and if they had asked him to appear as a witness he would have and asked the Court to spare Mahdi's life. (PCR. 21-77).

Rose Gupton, a maternal aunt, testified she was one of ten children, and her sister, Mahdi's mother, was very timid and withdrawn because of verbal abuse by their father. Gupton's mother converted to Islam after separating from Gupton's father [Mahdi's maternal grandfather]. Mahdi's mother and father's marriage was an arranged marriage, which Mahdi's mother did not really want. Mahdi's mother was seventeen when she married Mahdi's father.

Gupton claimed Mahdi's mother later told her Mahdi's father raped her on their wedding night; however, there is no evidence Mahdi ever knew of this accusation or was told of it until his PCR counsel related it to him. (PCR. 84). Mahdi's mother lived with Gupton for several months after she left Mahdi's father. Mahdi came and stayed with his mother during this time, and he was angry and would throw bowls and hit his mother. Mahdi's mother did not want to leave the children with Mahdi's father, but she was afraid of him because he had threatened her. There was no contact between Mahdi and his mother, after she left Mahdi's father, until Mahdi was a teenager, when he lived with her. Gupton said she was not talked to prior to Mahdi's death sentence. If she had been, she would have testified in his behalf and asked for mercy. Gupton could not explain why her sisters, Sophie Gee and Corliss Artis, who were interviewed by the defense team, did not tell her about Mahdi's arrest for murder until after he was convicted and sentenced to death. She claimed they must not have known about the trial because she talks to her sisters every day, and they never told her of an impending trial. (PCR. 77-92).

Sophie Gee, a maternal aunt, testified she is a registered nurse and is one of ten children. Mahdi's maternal grandfather was verbally abusive to Mahdi's mother. Mahdi's mother was shy and withdrawn. Gee's mother and four of her siblings converted to Islam, which was restrictive regarding clothing and socialization. She was not allowed to date and neither was her sister, Mahdi's mother, but she recalled two teenage friends Mahdi's mother had while growing up. Mahdi's mother was seventeen when she married Mahdi's father. Mahdi's mother interacted with her family the same when married as before. Mahdi's mother is an introvert and doesn't like socializing. Mahdi's mother was very protective of her children, dressed them in all white, and was afraid to let them play when they were small because they would get dirty. Mahdi's mother lived with Gee for a time after she left Mahdi's father. She did not want to leave her children, but Mahdi's father threatened her life. Mahdi's mother left

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Mahdi's father because he was physically abusive and controlling. Mahdi's mother tried to maintain contact with the boys and sent toys and clothes, but Mahdi's father would not let her see them. Gee did not think Mahdi's father was stable. Gee saw the boys again when they were about seventeen, and Mahdi wanted to meet his mother. She claimed Mahdi thought his mother was dead. Gee admitted she and her sister Corlis Artis were interviewed by Mahdi's defense team prior to trial. Gee claimed had she been asked to testify she would have. She stated she loved Mahdi and would have asked the judge to spare his life. Gee admitted she was aware Mahdi slashed his mother's tires after reuniting and living with her; he slashed her tires because she would not let him use the car, and he was arrested for this crime. Gee stated this incident ended the relationship between Mahdi and his mother. Gee admitted she knew counsel's forensic social worker and mitigation investigator were in Virginia acting on Mahdi's behalf; she answered their questions, and there was nothing that prevented her from telling them any other information that might be helpful to Mahdi. (PCR. 92-108).

Lawanda Burwell, Carson's wife, testified to Mahdi's family background. She described Mahdi's paternal grandparents and how their marriage was not particularly a happy one. The paternal grandparents were both educators. Mahdi lived in a modular home with his father on his grandmother, Nancy's farm. Mahdi's grandmother received government subsidies from tobacco allotments, and she owned a house in Lawrenceville and another on the family farm. There were six children by Mahdi's paternal grandparents. One child was a nutritionist in Texas, and one was a stewardess who had lived all over the United States. Carson has a master's degree in education, and Lawanda has a doctorate from Harvard. None of the other children or grandchildren have been involved in criminal conduct like Mahdi. Mahdi's brother, Saleem, was in the United States Army and served two tours in Afghanistan. Mahdi came to live with Lawanda and Carson because his father was unable to take care of the boys. Mahdi

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fabricated a claim of physical abuse against Lawanda and told a police officer he wanted to kill himself, which resulted in his being placed in the Carter Center. Mahdi had made similar statements in the past regarding shooting himself, but Lawanda did not believe he was suicidal. Lawanda was not impressed with the Carter Center. After Mahdi's release from there, he began to misbehave and eventually had to be returned to his father. Lawanda attributed this misbehavior to Mahdi's attempt to force his return to his father. She admitted she would have been reluctant to testify at trial, because she had not seen Mahdi since he was a small child but claimed she probably would have come around and testified as she did at PCR. (PCR. 239-95).

Sandra Burwell submitted an affidavit. She averred she was previously married to Nathan Burwell, Mahdi's paternal uncle. Mahdi's family was highly regarded in the black community in Lawrenceville, Virginia. Mahdi's great grandfather was caucasian. While Mahdi's grandmother Nancy could be "snooty" and put on airs, his grandfather Nathan was a sweet man. After finishing the day teaching agriculture, Nathan would visit and help black-owned Brunswick County farmers and consequently was rarely home to spend time with his children. The grandfather's first marriage ended when his wife and child died in childbirth. He then married Mahdi's grandmother after getting her pregnant and being forced to marry her. All of the Burwell children are intelligent and well-educated; however, none of the men have accomplished much on their own. According to Sandra, the men in the family were supported by their spouses, as she did Nathan. Mahdi's father is Nathan's brother. His problems started when he was forced to attend an all-white school when integration was voluntary. She recalled an incident in high-school when Madhi's father stood up for himself and other black students, but Mahdi's grandparents and the black community did not support him because of possible repercussions, even though he was in the right. Mahdi's father then went to live with a paternal uncle and aunt in New Jersey but had to leave because of his behavior. Not long after, Mahdi's

father joined the Marines. When he returned from service, he joined the Nation of Islam and married Mahdi's mother. He brought Mahdi's mother to Lawrenceville and moved in with his parents. They lived in the one bedroom finished basement. Mahdi's mother would come upstairs basically to eat. Mahdi's mother was very timid and difficult to engage in conversation. Mahdi's father was very domineering with her. While Mahdi's mother never spoke of any unhappiness, Sandra believed Mahdi's mother was making moves to provide her a way out of her situation. She finished high school/got her GED. She then gave birth to Mahdi. She enrolled in a nursing program in a junior college. After completing it, she convinced Mahdi's father, who had no job, the best plan would be for her to join the military. When she came home, she informed him she wanted a divorce and had only returned for the children. Mahdi's father would not allow this, and, according to Sandra, ultimately tried to kill Mahdi's mother with the sons watching. Mahdi's father constantly told Mahdi and Saleem that their mother abandoned them and did not love them. Sandra also recalled when Mahdi was first sent to jail as a juvenile, she was in the courtroom, and after being released, Mahdi was to report to his probation officer. He did not report. She alleged he was a juvenile and had no way of getting there, and he was under his father's custody. When he did not report, he was picked up and the standoff with police occurred. She feels the failure to report was not his fault. She wanted to visit Mahdi when he was confined, but Mahdi's father had to approve visitors and would not allow her to visit. She felt so bad for Mahdi she even considered adopting him, though she never did. (Affidavit of Sandra Burwell).

At PCR, Mahdi also presented the testimony of a community activist George Smith, an affidavit of James Woodley, an affidavit of Vernon Pond, and the testimony of Sharon Pond, who all testified to Mahdi's father's behavior in the community. Both Smith and Pond testified to an incident where Mahdi's father jumped into a segregated [all white] swimming pool and

would not leave in protest. He was arrested and began throwing items at the jail. As a result, he was sent for a mental evaluation. The evaluation eventually determined Mahdi's father had no major mental illness. Mr. Woodley averred to Mahdi's father's conversion to Islam, his defiant behavior in the community, and his physically abusive behavior toward his wife and his mother. (PCR. 166-86, & Affidavits of James Woodley and Vernon Pond).

Counsels' Mitigation Investigation

At the PCR merits hearing, Respondent called the following witnesses in response to this specific allegation: Carl Grant, Esq., Glenn Walters, Esq., Josh Kroger, Esq., Paige Tarr Haas Munn, James Gordon, Dr. Thomas Martin, and Dr. Geoffrey McKee. Respondent also offered in evidence the testimony of Marjorie Hammock from the sentencing proceeding before Judge Newman, several exhibits introduced through Hammock in Mahdi's sentencing proceeding, and several exhibits generated during counsel's mitigation investigation.

The record shows counsel (Mr. Grant and Mr. Walters) retained a mitigation investigator (Paige Tarr Haas Munn), a forensic social worker (Marjorie Hammock), and a private investigator (James Gordon), to investigate and develop Mahdi's family and social history for mitigation evidence to be presented at sentencing. Counsel also retained two psychiatric or psychological experts, Dr. Thomas Martin (a forensic psychiatrist) and Dr. Geoffrey McKee (a forensic psychologist), to investigate Mahdi's psychiatric history and mentality at the time of the crime *and* uncover any mental deficiencies or disorders that would mitigate punishment. (PCR. 503-710). The record shows the mitigation investigator and forensic social worker interviewed numerous members of Mahdi's family, and counsel also interviewed potential mitigation witnesses themselves. (R. 1746-47, PCR. 503-710). Counsel and the investigators also consulted with Mahdi's North Carolina defense team [on the Boggs murder] and obtained from

them mitigation evidence or information they had uncovered. (PCR. 503-710). Counsel also moved for and obtained a continuance for almost one year in order to completely and thoroughly investigate and develop the mitigation case on Mahdi's behalf. (PCR. 597-98, Resp. Ex. 16[Continuance Motion], Resp. Ex. 17[Continuance Order]).

Ms. Tarr Haas Munn (hereinafter "Tarr"), the mitigation investigator, was retained by attorney Carl Grant on the recommendation of Jeff Bloom, an experienced capital defense attorney. (PCR. 589). She had previously served as mitigation investigator or specialist in thirty to forty capital cases. (PCR. 562-63). As a result, she was thoroughly familiar with the necessity of, and how to conduct a capital mitigation investigation. Tarr investigated Mahdi's social, family, school, institutional, and mental health history by interviewing Mahdi, his father, mother, grandmother, paternal uncle Carson, paternal aunt Lawanda, paternal aunt Kathy Burwell, maternal aunt Sophie Gee, maternal aunt Corlis Artis, paternal uncle Nathan, and school officials, and by obtaining records of Mahdi's background including his DJJ records, his school records, and his records of commitment to a psychiatric facility (the Walter Carter Center) in Baltimore at age nine. (PCR. 563-75; Resp. Ex. 12). Tarr also summarized these particular psychiatric records for counsel and their retained experts. (PCR. 565-66). Tarr also summarized Mahdi's school records for counsel and the retained experts. Tarr also traveled to North Carolina and met with Mahdi's attorneys representing him on the Boggs murder; because, they had conducted a mitigation investigation themselves on Mahdi's behalf, and their information was shared with Tarr. (PCR. 569-75, Resp. Ex. 12).¹⁷ Tarr also traveled to Lawrenceville, Virginia and made contact with Mahdi's grandmother Nancy and uncle Nathan, and traveled to Baltimore, Maryland and made contact with Mahdi's aunt Lawanda, uncle

¹⁷Mahdi's North Carolina defense attorneys were present at the PCR evidentiary hearing and did not contradict this testimony.

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Carson, and aunt Kathy. Tarr also located Mahdi's maternal aunts Corliss Artis and Sophie Gee in Richmond, Virginia. Tarr also located Mahdi's mother Vera. Tarr also attempted to speak with Mahdi's brother, Saleem, however, he was repeatedly unavailable to speak with Tarr. (PCR. 563-75). Tarr provided counsel with summaries of these witnesses' potential testimony and relayed to counsel the information collected by her. (PCR. 574). She returned to Virginia, Maryland, and Pennsylvania with the forensic social worker where they were able to interview members of Mahdi's immediate and extended family. As of November 6, 2006, a month before Mahdi's sentencing, Tarr had spent approximately 170 hours interviewing witnesses, collecting documents, and producing data in her quest to put together an appropriate mitigation presentation at sentencing. At that time, she anticipated working an additional seventy-five hours in preparing the case for trial. (Resp. Ex. 10).

The record shows Marjorie Hammock, a forensic social worker, retained by Carl Grant, had previously worked as a forensic social worker in numerous capital cases in several states including South Carolina. At the time of sentencing, Hammock had testified and been qualified as an expert in clinical social work in approximately fourteen cases, worked on twenty-five capital cases, and, was working on another five capital cases, here, in Florida, and Alabama. (R. 1739-63). Hammock traveled with Tarr on the second occasion to Lawrenceville, to meet with Mahdi's paternal grandmother Nancy and uncle Nathan. She interviewed both. Hammock also traveled to Richmond and attempted to speak in person with Mahdi's mother, who was not cooperative, and was finally able to speak with her but only by phone. Hammock also interviewed a family friend. She also interviewed Mahdi's maternal aunts Sophie Gee and Corlis Artis. She also traveled to Baltimore where she met and interviewed Mahdi's uncle and aunt, Carson and Lawanda Burwell. She also interviewed Mahdi's father, Shareef Mahdi, while in Philadelphia, Pennsylvania. (R. 1739-63, PCR. 563-75).

Counsel also participated in the mitigation investigation. Counsel traveled to North Carolina and met with Mahdi's defense attorneys and mitigation investigators in the Boggs murder case, who shared with counsel the results of their investigation. Counsel testified there were team meetings at which their own mitigation investigator, forensic social worker, retained psychiatric and psychological experts, and counsel were present, and each person shared what their investigation had uncovered. (PCR. 595-97, 612).

Counsel testified they also interviewed Mahdi with regard to mitigation information or evidence. Counsel also traveled to Virginia and spoke with Mahdi's grandmother Nancy and uncle Nathan. Mahdi's uncle Nathan was not cooperative in their mitigation investigation, and counsel was hesitant to call Nathan as a witness because he assisted police in identifying Mahdi from the video of the North Carolina murder and was proud of that fact.¹⁸ Counsel testified Mahdi's grandmother was cooperative in their mitigation investigation, and they had her present at sentencing to testify, but she was unwilling to assist Mahdi regarding mitigation testimony, stating she was there [at sentencing] to defend the Burwell family name.

Counsel also talked with Mahdi's uncle Carson and aunt Lawanda. While Carson and Lawanda were cooperative in providing background information on Mahdi and his family, Carson informed counsel he would not be helpful to Mahdi if he testified in the case. Carson informed counsel Mahdi was defiant and manipulative in their home. Counsel testified Carson and Lawanda's position was they were glad Mahdi was out of their home. Carson also told counsel he and his wife were not going to help Mahdi. Carson told counsel prior to the sentencing proceeding if he were called to testify he would have bad things to say about Mahdi. Lawanda testified at PCR she would have been reluctant to testify at Mahdi's sentencing

¹⁸ Ms. Tarr also related to this Court that Mahdi's uncle Nathan was not helpful in the mitigation investigation. (PCR. 576).

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proceeding in 2006. Carson admitted at PCR he may have told Mahdi's North Carolina attorneys Mahdi was a "demon" because of Mahdi's disruptive conduct in their home. Counsel also interviewed Mahdi's aunt Kathy Burwell, and she indicated she did not wish to participate in Mahdi's sentencing hearing, because she was still angry and resentful at Mahdi's brother for almost burning her house down. Counsel also interviewed Mahdi's brother, Saleem; however, he was not particularly helpful or interested in testifying.¹⁹ Counsel testified Mahdi's father was not cooperative ("standoffish") and did not want to be involved. (PCR 636). Counsel testified Mahdi himself indicated to them he did not want his father involved in his trial or sentencing proceeding. Counsel testified Mahdi's mother was completely uncooperative and did not want to participate in Mahdi's sentencing proceeding. (PCR. 602-710). Neither Mahdi's mother, nor father or brother testified at the PCR hearing or offered any affidavits. (PCR. 1-720).

Both Dr. Martin and Dr. McKee, counsel's psychiatric and psychological experts, also took a social history from Mahdi, and also a psychiatric history. Both Martin and McKee were aware of Mahdi's commitment to a psychiatric facility when he was age nine and reviewed those records in detail. Dr. Martin also reviewed Tarr's interview summaries with Mahdi's family members. Both experts were also aware Mahdi had been placed in special education classes in elementary school. Both Martin and McKee were present at defense team meetings where information was shared regarding the joint investigation into Mahdi's past. Both Dr. Martin and Dr. McKee found separately that Mahdi was not suffering from any major mental illness at the time he committed Myers' murder, and they diagnosed him with anti-social personality disorder at the time of this murder. While Dr. Martin testified he found Mahdi had suffered

¹⁹ Collateral counsel's forensic social worker, Nicholas Cooper-Lewter, admitted at PCR that Mahdi's brother, Saleem, would not talk to him either. (PCR. 317-18).

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from some recurrent depression in his life, he did not find any evidence Mahdi was suffering from any depression at the time he committed Myers' murder. Dr. Martin testified at the PCR hearing the records introduced by Mahdi at PCR would not change his diagnosis. Dr. McKee testified at the PCR hearing he did not need additional records to make his diagnosis or issue his report. Neither Dr. Martin nor Dr. McKee changed their diagnosis based on records shown them by applicant at PCR. (PCR. 508-61).

Counsel testified they wanted someone at the sentencing hearing to testify on Mahdi's behalf regarding his family and social history mitigation; however, the only person who was willing to come and testify was Mahdi's grandmother Nancy; the rest of the family, including aunts, were not willing to participate. (PCR. 636, II. 12-25, 638, II. 10-21, 649-50, 693-94, 696-97, 691). Counsel testified they had the grandmother present at trial to testify and worked with her; however, she did not want to discuss Mahdi and how he came to be where he was; she wanted to talk about all of the accolades of the family, and even though Mahdi committed these horrible crimes, the Burwell family was still a good family. (PCR. 620-21, 691-92). As a result of the lack of cooperation from the family, counsel presented the mitigation evidence including Mahdi's family and social history through their forensic social worker. (PCR. 624, II. 17-22).

The Mitigation Presentation at Sentencing

Marjorie Hammock conducted a bio-social assessment of Mahdi's life and family history and presented the same in the sentencing proceeding. (R. 1739-63). Hammock informed Judge Newman she interviewed Mahdi's grandmother Nancy, his uncle Carson, his uncle Nathan, his aunt Lawanda, his mother Vera Telea Artis, his aunt Sophie Gee, another aunt Corliss Artis, Mahdi's father Shareef, and a family friend. (R. 1746-47). She conducted her bio-social assessment by interviewing family members, reviewing records, interviewing Mahdi, and taking

information from anyone who would give information about him, his life, and his development. (R. 1762). She also reviewed a synopsis of Madhi's school records and reviewed a report from his admission in Baltimore to the Walter Carter Center psychiatric facility at age nine. (R. 1747). Hammock presented, through her testimony and the exhibits introduced through her, the following mitigation evidence at sentencing before Judge Newman:

Like the family witnesses presented at PCR, Hammock informed Judge Newman of the problems within Mahdi's family. Mahdi's family looked like an intact family, but there were problems under the surface. There was alcoholism in the family, and there was some neglect on the part of Mahdi's grandfather. (R. 1750). Mahdi's grandmother, Nancy Burwell, was not allowed to have her fallopian tubes tied after the birth of 1 of the siblings born before Mahdi's father was born. (Def. Ex. 2/Resp. Ex. 5). Mahdi's grandmother, Nancy, was not emotionally available to Mahdi's father or his father's younger sister, Kathy. (Def. Ex. 2). Mahdi's father considered himself an unwanted child. (R. 1750).

Mahdi's father, like Mahdi, was extremely troubled as a child. (R. 1749-50). Mahdi's father was described as disturbed as a young child, and he threw tantrums. Mahdi's father's childhood was difficult, and he grew up in a situation feeling alienated from everyone around him. (R. 1750).

Mahdi's father was traumatized by his attending desegregated schools as a young child. (R. 1750). This experience was destructive to Mahdi's father; he was ridiculed, isolated, challenged physically by classmates, ignored, or received negative feedback from some of the instructors at the desegregated school. (Def. Ex. 2).

Mahdi's father was unable to get along with his own family and others in the community and was constantly in conflict with those around him. (R. 1750). Mahdi's father had committed assaults on some of his own family members. (R. 1433). Mahdi's father did not finish high

school; he was the only sibling not to graduate, and this was a source of consternation between him and his family. (R. 1750). Mahdi's father was unable to hold a job, and he eventually converted to Islam. (R. 1750-51). His conversion to Islam and changing his name from Thomas Burwell to Shareef Mahdi brought grief to the Burwell family. (R. 1750). Mahdi's father was suffering from depression as early as 1971. (Def. Ex. 2). Mahdi's father was discharged from the Marines under less than honorable conditions. (R. 1750). Mahdi's father was not able to function well, and there was some description of Mahdi's father suffering continuing depression. (R. 1751). There were a number of incidents involving Mahdi's father with local law enforcement. (R. 1751, 1433). He was involved in a series of misdemeanors, all said to be racially motivated. (Def. Ex. 2). And, Mahdi's father's involvement in the 8 hour stand-off with police.

Mahdi's mother was different. She was *very, very withdrawn* and did not want to participate in Hammock's interview at all. (R. 1756). It appeared Mahdi's mother was frightened about being involved with the family again because of her previous experiences with Mahdi's father. (R. 1757). While Mahdi's mother did eventually educate herself, join the military, and at the present time worked and took care of herself, she was totally isolated from her own family, as well as Mahdi's father's family. (R. 1757). While she may occasionally speak to some members of the family, there was a disconnection. (R. 1757). The information regarding Mahdi's mother came from Mahdi's mother, her siblings, and the Burwells and was all consistent. (R. 1757).

Mahdi's parent's marriage was a pre-arranged marriage to which Mahdi's mother did not agree, and Mahdi's father was much older at the time of the marriage than Mahdi's mother, who was just sixteen. (R. 1751). The marriage was arranged by Mahdi's maternal grandmother, and Mahdi's father was twenty-seven at the time. (Def. Ex. 2). Mahdi's mother had no choice but to

join the marriage, and there was conflict in the marriage from its beginning. (R. 1751). After the wedding, Mahdi's father changed Mahdi's mother's birth name, Vera, to Tilea (Def. Ex. 2). Mahdi's father was physically abusive to Mahdi's mother, and Mahdi's mother eventually left to escape from the abuse. (R. 1751). Mahdi's mother was in what she described *and others described* as an abusive relationship, with Mahdi's father, and she decided to leave because she could no longer stay with Mahdi's father even though it meant leaving her own children. (R. 1757).

Mahdi's childhood was chaotic. (R. 1751). Mahdi's brother and Mahdi were born into a very unstable family. (R. 1751). The two boys were born within a twenty-four month period of time. (R. 1757). Mahdi's father could not provide for or take care of the family. (R. 1751). The family moved several times, ultimately ending up back in Lawrenceville living with Mahdi's grandmother. Once again, Mahdi's father was unable to sustain himself. (R. 1751).

There was a great deal of conflict between Mahdi's father and mother, and Mahdi and his brother witnessed this. (R. 1751). Mahdi and his brother witnessed domestic violence committed by their father against their mother. (Def. Ex. 2). Mahdi's mother eventually left Mahdi's father and her children trying to get away from the abuse committed by Mahdi's father. (R. 1751). Mahdi's mother was forced to leave because of the abuse. (R. 1757-58). And, Mahdi's mother left Mahdi and his brother when Mahdi was just 4 or 5 years old. (R. 1751-52).

After Mahdi's mother left, the chaos continued. (R. 1752). Mahdi's father tried to take care of the children, and the grandmother, Nancy, also tried to provide assistance during this time, but the relationship between Mahdi's father and the grandmother and the rest of the family was constantly confrontational. (R. 1752). Mahdi and his brother witnessed their father commit domestic violence on their grandmother, Nancy. (Def. Ex. 2). During this period of time, there were several moves in terms of schooling for Mahdi from Lawrenceville to Richmond and back

to Lawrenceville. (R. 1752).

Judge Newman was aware of the incident described by family members at PCR where Mahdi's father forced Mahdi's mother to return to Lawrenceville and assaulted her. (R. 1752). After Mahdi's mother left to escape from the abuse, she was literally forced to return from Richmond to Lawrenceville, ostensibly to see the boys, but this ultimately resulted in physical conflict, and she left again not to see her children for a number of years. (R. 1752). Mahdi's mother was taken from Richmond to Lawrenceville by Shareef Mahdi, who then abused Mahdi's mother. Mahdi's uncle Nathan actually rescued Mahdi's mother, but as a result of this incident, Mahdi witnessed more abuse and violence. (Def. Ex. 2). After this incident, Mahdi's mother moved to Pottsdale, without the children, in order to escape from Shareef. (Def. Ex. 2).

Ultimately, Mahdi's father was unable to take care of Mahdi at all. (R. 1753). Mahdi's father suffered from depression. (Def. Ex. 2). At this point in time, when he was age eight, Mahdi is sent to live with his aunt and uncle in Baltimore, and his brother was sent to live with another aunt in Texas. (R. 1753). As a result, Mahdi and his brother were separated from each other, and from their father. (R. 1753, Def. Ex. 2).

Mahdi had to live with his aunt and uncle because of his father's inability to care for him. Lawanda and Carson related Mahdi was a bright and energetic young boy, but very, very troubled, who had difficulty in school. (R. 1753). Carson related that when Mahdi came to live with them he could not read. (R. 1753). And, there was conflict at this time in getting Mahdi to deal with the fact he had these academic limitations. (R. 1754).

Mahdi was hospitalized, psychiatrically, in Baltimore. (R. 1747-49, 1756). This admission lasted approximately two months at a mental health facility, and Mahdi was released.

(R. 1756).²⁰ Mahdi was committed involuntarily to the Walter Carter Center psychiatric facility, after being separated from his brother and father, where he was diagnosed with Major Depression with suicidal ideation, adjustment disorder, R/O Adjustment Disorder, Developmental Reading Disorder, and history of right arm and leg fractures.²¹ (Def. Ex. 1). Mahdi spent sixty days in the facility. After Mahdi was released from the mental health facility, he stayed only a short time with Carson and Lawanda, because he was anxious to be reunited with his father and brother. (R. 1756). Mahdi's behavior in Carson and Lawanda's home was defiant and became even more defiant when Mahdi learned his brother had already re-united with his father. As a result, Mahdi had to be returned to live with his father. (Def. Ex. 2).

Mahdi, his brother, and his father were re-united on the Burwell family property, an isolated place in the country. They often had no food, heat, or money. (Def. Ex. 2). Mahdi had difficulty in his adolescence, which eventually resulted in his incarceration. (R. 1749). Mahdi re-united with his mother after being released from DJJ after his 1st stint of incarceration. (Def. Ex. 1). While they reunited, it was not a successful or good reunion. Mahdi and his mother did not get along and both had very different ideas about his living with her. (R. 1758). They eventually parted ways, and Mahdi and his mother had not spoken to each other since. (R. 1758).

Mahdi's education was disrupted many times. (R. 1752, 1756). This was reflected in the school records. (R. 1752). The records also noted lateness and absences, but this was not consistent through the whole record. (R. 1756). Mahdi also had to change residences several

²⁰The testimony at the original *Blair* hearing was that Mahdi was not suffering from any mental illness. (R 131). Mahdi also stated at his guilty plea under oath, that he had not been previously treated for alcohol abuse, drug abuse or mental illness. (R 1346). When asked if he had any physical, emotional or nervous problem that might keep him from understanding what he was doing, Mahdi stated "I have none of those problems, Your Honor." (R 1347).

²¹Mahdi suffered broken bones as child while riding a bicycle and falling off of monkey bars. There was no contention at PCR that Mahdi was ever physically or sexually abused by anyone. (PCR. 571-72).

times. (Def. Ex. 2). Mahdi was forced to change elementary schools five times. (Def. Ex. 3).²² Even in his pre-teen years there was a lack of stability in terms of Mahdi's attending school, and it was reflected in the kinds of reports he received. (R. 1760-61).

Mahdi constantly had difficulty in school academically. (R. 1752). He was considered bright, but did not perform well. (R. 1752-53). He was a particularly poor reader. (R. 1753). Both Carson and Lawanda reported Mahdi had difficulty in school, could not read, and there was constant conflict in getting Mahdi to deal with his academic limitations. (R. 1753-54). The school records during this time were consistent with this report. (R. 1754). Mahdi had uneven skills in school. (R. 1755). He was in the average math program, but in the below average reading program. (R. 1755). While he excelled in science, his reading, vocabulary, and spelling remained below average. (R. 1756). When he was involuntarily committed to the Carter Center, Mahdi's initial diagnosis included "Developmental Reading Disorder." (Def. Ex. 2). Mahdi's difficulties in reading and writing remained at or below grade level throughout elementary school. (R. 1755, Def. Ex. 3). Mahdi needed improvement in a number of areas, including standards for behavior and showing respect for authority. (R. 1755). And, Mahdi had poor self-esteem throughout his academic time. (R. 1753). It was noted several places in the records Mahdi had poor self-esteem and had difficulty in relationships with others. (R. 1756). Mahdi had numerous absences in school, and Mahdi's father removed him from school in the fifth grade to home school him; however, there was no information the home schooling actually occurred. (Def. Ex. 3). In summary, Mahdi's educational history was one of poor school progress. (R. 1762).

²² Mahdi started out kindergarten at Sister Clara Muhammad School in Richmond, and he completed part of kindergarten at Totoro Elementary School in Lawrenceville. He was moved back to Richmond and attended Chamberlayne Elementary School for part of that year. Then he was removed from there and sent to Baltimore where he attended Scotts Branch Elementary School for two years. Then he was removed from that school while in the Carter Center, and ultimately returned to Lawrenceville to live with his father. (R. 1754-56).

Mahdi did not receive proper parenting while growing up. (R. 1759). Mahdi's father was not equipped to provide consistency, positive reinforcement, support, care giving, to teach social values in the community, and how to develop relationships with others, i.e. those things a child needs to grow up healthy. (R. 1759). Mahdi's father had his own personal issues, which prohibited him from being a good father. (R. 1759). Mahdi's father and mother were not really available to Mahdi on any kind of consistent basis while growing up. (R. 1760). Mahdi was exposed to a lot of conflict and chaos. (R. 1760). In his preteen years, Mahdi was exposed to more chaos, more movement, more change, a lack of stability even in terms of his attending school, and this was reflected in the school reports he received. (R. 1760). In his adolescent years, Mahdi was exposed to more chaos. (R. 1761). He was exposed to his father's outbursts and problems. (R. 1761). His father was known to be at odds with people in the community, with his own family, and with law enforcement. (R. 1761). While Mahdi cares about his father, he wanted more than anything else to have an intact family and an ongoing relationship, it simply did not happen. (R. 1761). Mahdi did not receive from his mother or father consistent help in growing up, developing good skills, or a sense of value. (R. 1761). While some people in Mahdi's life tried to provide these things, it was not consistent enough for him to learn how to do these types of things. (R. 1761).

Mahdi had been traumatized throughout his early life, and this had an impact on his ability to make good choices. This affected his ability to have a good sense of himself and others. And, it impacted his ability to behave according to societal norms. (R. 1762).

During her investigation of Mahdi's life, Hammock assessed whether certain risk factors were present or not. She testified before Judge Newman certain risk factors were present. Mahdi had been abused and neglected. Mahdi suffered from abandonment. Mahdi was never exposed to the right kind of socialization. And, he has poor self-esteem. He also has a poor

history of school progress and a poor sense of self. (R. 1762). Mahdi was someone who had been neglected, abandoned, suffered from poor parenting, and as a result was likely to end up in a situation where he was out of control and did damage to himself and others. Mahdi fit the typical profile of persons who end up in the kind of situation before Judge Newman, because Mahdi never really had a chance to develop appropriately. (R. 1762-63)

The State did not cross-examine Hammock or challenge her mitigation testimony. (R. 1763). The State did not challenge the accuracy of the exhibits introduced through Hammock. (R. 1739-63). All of this evidence was before Judge Newman [the sentencing court] uncontested.

Furthermore, while the State introduced portions of Mahdi's DJJ records during sentencing as evidence of Mahdi's character, the records also confirmed much of what Hammock testified to before Judge Newman regarding Mahdi's upbringing and family. The records indicated Mahdi lacked appropriate parental discipline and support, and he was not supervised as a child or given appropriate structure and guidelines. (State's Ex. 85 & See R. 1440, 1442, 1869-70, 1873-74). Mahdi began smoking marijuana at age twelve, had been smoking marijuana every day since, and he began selling crack cocaine at age fourteen. (R. 1440). Mahdi needed self-esteem training, family services, and values clarification. Mahdi suffered from the lack of a mother. (R. 1446). Mahdi's father was not involved in his life; his father had a criminal record for malicious damage to property and escape; Mahdi had no supervision, no curfew, and Mahdi's father did not care about Mahdi's criminal behavior. (R. 1869-70, 73-74). Mahdi came from a dis-functional one-parent family. Mahdi's father believed the criminal justice system was prejudiced, and he also voiced his belief there were many white supremacists in the area. (R. 2146). And, a young Mahdi also made similar racial comments. (R. 2154).

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The Lack of Merit of this Allegation

This Court has carefully reviewed the mitigation evidence presented *at the PCR hearing* with regards to this particular allegation in comparison with the mitigation evidence presented *at the sentencing hearing*, and considered counsels', their mitigation specialists', private investigator's, and experts' testimony regarding their mitigation investigation, and counsels' testimony why they presented the mitigation evidence they did present, and why they did not present other mitigation evidence. The record supports counsel in this case conducted a reasonable and thorough mitigation investigation and presented what mitigation they could that was favorable to Mahdi at the time of the sentencing proceeding. *See Van Hook, supra; Pinholster, supra; Wiggins, supra; Rompilla, supra; Williams, supra; Rosemond, supra; Council, supra; Simpson, supra; Jones, supra.* Contrary to Mahdi's assertion, the record shows counsel's investigation was based on more than just guilt/innocence. Based on the entire record, and the credible evidence presented, this Court finds Mahdi has not met his burden of proof to show counsel's performance was deficient in this regard. *See Van Hook, supra; Pinholster, supra; Strickland, supra; Wiggins, supra; Rompilla, supra; Wong, supra; Rosemond, supra; Council, supra; Simpson, supra; Jones, supra.*

This Court viewed the witnesses in this case, listened to their testimony, observed their demeanor, and judged their credibility accordingly. This Court finds the testimony of counsel and their defense team on this allegation *to be credible* and the present testimony of Mahdi's witnesses regarding their previous willingness to testify *to be not credible*. Accordingly, this Court finds Mahdi has failed to meet his burden of proof on this particular allegation, and has failed to show counsel was deficient. *See Butler, supra; Wiggins, supra; Council, supra.*

This Court does not find Carson Burwell's testimony credible regarding his willingness to come and testify on Mahdi's behalf at the time of sentencing for several reasons. First,

Carson could not recall talking to any attorneys or investigators from South Carolina prior to Mahdi's sentencing proceeding. The implication from his testimony was counsel and their investigators did not speak with him, and therefore, they were deficient in their mitigation investigation. However, the record clearly shows counsel's forensic social worker spoke to Carson before Mahdi's sentencing proceeding and obtained background information from him. The mitigation investigator also confirmed at PCR she spoke with Carson on more than one occasion. Tarr also confirmed Hammock traveled with her to Baltimore and interviewed Carson. Counsel also testified Carson was interviewed prior to trial. Additionally, at PCR, Tarr produced her notes which detailed exactly what Carson told her, that Mahdi was manipulative *and* the incident which led to Mahdi's commitment to the Carter Center was more of Mahdi's manipulative behavior, not a real suicide attempt. (PCR. 572-74). Counsel also testified they spoke with Carson prior to the sentencing, and Carson told them if he were called as a witness he would have bad things to say about Mahdi. Carson also informed them he and Lawanda, were not going to help Mahdi in his sentencing proceeding. (PCR. 618-20, 627-28, 649-50, 693-97). As a result, this Court finds Carson's testimony regarding his willingness to come and testify at the time of sentencing is not credible.

Likewise, this Court does not find credible Carson's wife's testimony that even though she was reluctant to testify at the time of trial, she could have been coaxed into coming to South Carolina to testify at sentencing. Again, counsel's mitigation investigator and social worker had met with Lawanda Burwell, and counsel also talked to her as well. Carson and Lawanda had indicated to counsel they did not want to be involved. Carson indicated to the North Carolina defense team that when Mahdi lived with them he was a "demon." Carson and Lawanda had communicated to counsel they were glad Mahdi was out of their home. Carson admitted Mahdi was defiant and manipulative. Both Lawanda and Carson admitted Mahdi

made a false claim of child abuse against Lawanda. This false claim of abuse also accompanied Mahdi's statement to the responding officer that led to his commitment to the Carter Center. Carson communicated to counsel prior to the sentencing hearing he and his wife Lawanda were not going to help Mahdi. As a result, this Court does not find credible Lawanda's claim, several years after sentencing, she could have been coaxed into coming to South Carolina to testify on Mahdi's behalf even though she was admittedly reluctant to do so at the time.

Similarly, this Court does not find credible Rose Gupton's testimony she did not know about Mahdi's criminal charges for this murder or his trial until after he was sentenced to death. Counsel or their mitigation experts interviewed two of her sisters, Sophie Gee and Corliss Artis, regarding this very case, and Gupton testified she spoke with those sisters every day. This Court does not find credible her claim that if she had known about the sentencing proceeding she would have testified, because her claim that she did not know about Mahdi's charges is simply not credible. Furthermore, counsel's credible testimony at PCR was that even Mahdi's aunts were not willing to assist in testifying. As a result, this Court finds that Mahdi's aunts and uncles were not willing to come to South Carolina and testify on Mahdi's behalf in 2006.

The circumstances counsel faced are similar to those faced by counsel in *Rutherford v. Crosby*, 385 F.3d 1300 (11th Cir. 2000). In that case, the defendant's family was uncooperative at the time of trial. This Court notes the behavior of Mahdi's family is understandable in this type of case. When the crime has been recently committed and the community and those who knew the victim are still outraged, the defendant's family and friends are likewise shocked, angry, embarrassed, and disappointed in the defendant's behavior. In this case, as in others, they are in no mood to assist the defendant in escaping responsibility for his crimes at the time of trial. (See PCR. 619, II. 19-24, 636, II. 20-25). It is only after the passage of many years, when the case is on post-conviction relief, and the case is no longer in the forefront of the community's

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or the victim's family's mind, and the defendant's family's anger and embarrassment has dissipated, that witnesses become cooperative and insist they would have cooperated at the time of trial, when in fact they were originally hesitant, did not want to be involved, or refused to testify. Along the same lines, the record in this case shows Mahdi had engaged in conduct within his own family which would have caused and did cause family members to be reluctant to assist him in his mitigation case. Mahdi had faked a claim child abuse against Carson and Lawanda, almost resulting in their arrest. Furthermore, Mahdi had slashed his own mother's tires and was involved in the destruction of another aunt's automobile.

Mahdi's family's reluctance to testify is further demonstrated by what occurred at the PCR hearing. Mahdi's mother did not testify. His father did not testify. Mahdi's brother did not testify. Mahdi's grandmother did not testify, apparently because she now has dementia; however, there was no contention by Mahdi counsel should have called the grandmother at sentencing. At the time of the sentencing proceeding, she was only interested in defending the family name, not helping Mahdi. None of Mahdi's immediate family testified at the PCR merits hearing; nor were any affidavits offered by them. (PCR. Tr. 1-720).

Mahdi offered the testimony of one aunt by affidavit, therefore she was not subject to cross-examination about what she communicated to counsel prior to the sentencing proceeding and negative things she knew about Mahdi. One of Mahdi's relatives who did testify at PCR, Lawanda, admitted she would have been reluctant to testify at the time of sentencing. Counsel's credible testimony at PCR was Carson specifically told them if called to testify he would have bad things to say about Mahdi. Additionally, counsel testified Carson informed them he and his wife Lawanda would not be coming to South Carolina to testify and help Mahdi, and Carson was speaking for both he and his wife. Counsel furthermore testified Kathy Burwell informed them she did not want to be involved in Mahdi's sentencing proceeding either.

This Court finds counsel, its mitigation investigator, and forensic social worker attempted to develop live mitigation evidence witnesses from Mahdi's family but were unable to do so due to the family members' reluctance and/or refusal to testify at the time of trial, or refusal or inability to testify in a helpful fashion. (PCR. 503-710). This Court further finds counsel and their investigators conducted a reasonable mitigation investigation, including talking with all of Mahdi's immediate family, and several members of his extended family, including several aunts and uncles, regarding Mahdi's family and social background. *See Pinholster, supra; Van Hook, supra; Wiggins, supra; Rompilla, supra.*

Based on the record, this Court also finds Mahdi has failed to demonstrate deficient performance here because much, if not all, of the evidence Mahdi offered at PCR regarding his family and social history, whether through family or community witnesses, was cumulative to the evidence presented in Mahdi's capital sentencing proceeding. The forensic social worker presented through her testimony and the exhibits introduced through her basically the same information before Judge Newman presented at PCR through Mahdi's extended family and community members. In fact, the mitigation evidence presented by Hammock was from many of the same people who testified at PCR. *See generally Huffington v. Nuff*, 140 F.3d 572 (4th Cir. 1998) (even if counsel was ineffective for failing to contact impeachment witnesses identified by defendant, there was no prejudice in part because testimony was cumulative); *Simpson v. Moore*, 367 S.C. at 605-07, 627 S.E.2d at 711-12 (counsel did in fact do adequate investigation and presented similar mitigation evidence); *Jones v. State*, 504 S.E.2d 822 (S.C. 1998) (mitigation evidence presented at PCR was not that different from evidence presented at trial). This allegation must be dismissed with prejudice.

Furthermore, if counsel did not present certain evidence Mahdi presented at PCR, there was an objectively reasonable strategic reason for not doing so. *See Strickland, supra; Council,*

supra. Mahdi presented several family members at the PCR hearing who were interviewed by Tarr, Hammock, and/or counsel prior to the sentencing proceeding, but not called before Judge Newman. Counsel testified that at the time of the sentencing proceeding these witnesses were not cooperative or were unwilling to testify at the sentencing proceeding. Further, counsel testified the witnesses related or their investigation uncovered the witnesses would say bad things about Mahdi. Carson Burwell related to Mahdi's North Carolina defense team Mahdi "was a demon." This fact was established by a document generated by Tarr after meeting with the North Carolina attorneys and shared with counsel in this case. (PCR. 503-05, Resp. Ex. 7). Carson also related to counsel if he were called to testify he would have bad things to say about Mahdi. (PCR. 618-19). Carson indicated Mahdi was manipulative and faked abuse and suicidal gestures. (PCR. 572-74, 64). Both Lawanda and Carson admitted Mahdi almost had them arrested by police when he made a false claim of child abuse and manufactured false evidence of that abuse. (PCR. 572-74, 58-61, 63-64, 266-67, 287-88, 290). They also related Mahdi acted out while at the Carter Center, and had to be placed in isolation. (PCR. 66-67, 292). Carson also related to Tarr that Mahdi was manipulative. (PCR. 572-74). Both Carson and Lawanda related Mahdi acted out after being released from the Carter Center and had to be returned to live with his father. (PCR. 68-69, 293-94, 618-619). Both related Mahdi would only talk about suicide when he did not get his way or did something wrong. (PCR. 572-74, 64-66, 288-89, 618-19). Carson also related the incident which led to Mahdi's commitment to the Carter Center was more of Mahdi's manipulative behavior and was not a real suicide attempt. Lawanda also testified at PCR she did not believe Mahdi was actually suicidal and made similar statements in their home when he did not get his way or got in trouble. This testimony from Carson and Lawanda would have directly undercut the mitigation evidence presented before Judge Newman regarding Mahdi's commitment and diagnosis at the Carter Center. (See Def. Ex.

2). Carson was also aware of an incident where Mahdi, his brother, and father were involved in maliciously destroying Carson's sister's car. (PCR. 69). Carson and Lawanda also related that when Mahdi lived with his uncle Nathan as an adult, he could not abide by the rules of the home, and was forced to leave. (PCR. 70, 278).

At PCR, Mahdi also called an aunt, Sophie Gee, to testify as to mitigation. Gee was aware of the incident where Mahdi slashed his mother's tires. Gee testified Mahdi slashed his mother's tires because she would not let him use the car. She was also aware Mahdi was arrested for this incident. (PCR. 105-06). If she had been called at sentencing, she would have been questioned about this incident, further underscoring this incident to the sentencing court, and also informing the court Mahdi slashed his mother's tires simply because she would not let him use her car.

Counsel was not ineffective in failing to call witnesses from whom bad things could be elicited about Mahdi, or who indicated they were not going to be helpful to Mahdi. This Court finds it was an objectively reasonable trial strategy decision for counsel not to call Carson or Lawanda Burwell or Sophie Gee, who could be asked on cross-examination about instances of bad conduct by Mahdi and would have been required to answer truthfully to such questions. *Reed v. Florida Department of Corrections*, 393 F.3d 1217 (11th Cir. 2010) (attorneys not ineffective in failing to call family members who would have opened the door to bad things about defendant's past); *Rutherford, supra* (attorneys' strategic decision not to call witnesses on alcoholism of defendant was objectively reasonable where it would have opened door to prior violent behavior of defendant the jury had not heard). See *Bell v. Kelly*, 260 Fed. App. 599 (4th Cir. 2008) (*Unpublished*) (state court's determination petitioner failed to prove prejudice was not unreasonable where he alleged counsel was ineffective for failing to investigate and present family members mitigation evidence where family members could have been cross-examined

about defendant's prior bad conduct such as infidelity, abandonment of his children, wife, and girlfriend, domestic abuse, and failure to pay child support), *citing Barnes v. Thompson*, 58 F.3d 571 (1995) (counsel not ineffective in capital case in failing to offer family members who constituted "cross-purpose evidence."); *Moody v. Polk*, 408 F.3d 141, 154 (4th Cir. 2005) (to the extent affidavits presented new information, they were "double edged.").

Further, calling Mahdi's family members as mitigation witnesses during the sentencing proceeding would have exposed Mahdi to testimony that none of Mahdi's cousins had engaged in violent criminal activity against another. (PCR. 278-82, 284-85). *See Reed, supra* (similar). In fact, Mahdi's own brother Saleem grew up in the same household as Mahdi, under similar circumstances, and had not engaged in, been arrested for, or convicted of any violent behavior toward other persons during his life. (PCR. 284-85, 318-19). *Id.* Further, the record shows Mahdi's family is well-educated with many family members employed as professionals or educators, and one distant relative having graduated from Harvard. If Mahdi's family members had been called as witnesses, the State could have contrasted Mahdi's criminal history with other family members who were successful and did not engage in criminal conduct.

This Court had the opportunity to view the witnesses' testimony at the merits hearing, and make a credibility assessment accordingly, and finds the testimony of counsel to be credible on this issue. Counsel's testimony on this issue is also supported and corroborated by the evidence and testimony introduced at the PCR hearing. Counsel made an objectively reasonable trial strategy decision to not present witnesses who were uncooperative, refusing to testify, or had bad things to say about Mahdi or from whom bad information about Mahdi could have been elicited on cross-examination. *Strickland, supra* (objectively reasonable trial strategy decisions are not subject to claims of ineffective assistance of counsel); *Wong, supra* (it was an objectively reasonable trial strategy decision for counsel not to call witnesses who would expose

on cross-examination bad character evidence about the defendant); *Council, supra* (counsel's strategic decisions will be judged on an objective standard of reasonableness).

This Court finds Mahdi has not shown that counsel was deficient in failing to investigate, develop, or present mitigation evidence from his family members or community witnesses. Counsel conducted a reasonable investigation regarding mitigation evidence and presented what evidence it could at the sentencing proceeding that was favorable to Mahdi through Hammock and other witnesses or evidence without exposing Mahdi to negative character evidence. *See Van Hook, supra; Pinholster, supra; Wiggins, supra; Rosemond, supra.* This allegation is without merit.

(b) The New Social Worker

At the PCR hearing, Mahdi called Nicholas Cooper-Lewter, Ph.D. who was qualified as an expert in clinical social work and psycho-social assessment, and who testified to his psychosocial assessment of Mahdi. (PCR. 187-89). In conducting the same, he testified he spoke with Carson and Lawanda Burwell, Frances Read, Rose Gupton, Sophia Gee, Sandra Burwell, Debra Gray, Pastor Myra Harris, Gerald Wilson, George Smith, and Sharon Pond, to name a few. (PCR. 190-91). Others were listed on the second page of his report. Cooper-Lewter also indicated he reviewed two notebooks of documents provided by PCR counsel. He testified unlike a psychologist or psychiatrist, he does not do testing. (PCR. 193). As a social historian, he makes no diagnoses. He also consulted with deRossett Myers, Ph.D. and Donna Schwartz-Watts, M.D., two of Mahdi's PCR experts. (PCR. 193-94).

In Cooper-Lewter's opinion, Mahdi was born into a very fragile family with toxic relationships between husband and wife, and there were unpredictable repeated losses that would destabilize. He also saw an issue with Mahdi's relationship with his father, who had issues with depression and anger. According to Cooper Lewter, Mahdi's flawed father was Mahdi's role

model and the person to whom he was most attached. (PCR. 194-95). Cooper-Lewter believed Mahdi's mother enjoyed Mahdi in the beginning. (PCR. 196). Mahdi's mother left him when he was around four or five, and it was a traumatic experience for Mahdi. (PCR 196-97).

Cooper-Lewter believed Mahdi was not comforted by his father regarding his mother's abandonment; instead, he was exposed to physical violence in his father's home. (PCR. 197-98). Cooper-Lewter indicated Mahdi attached to his father at a young age, which was not helpful. (PCR 199). Cooper-Lewter claimed Mahdi's father admitted he did not supervise his children as he should have and acknowledged he placed Mahdi in a situation where he was looking after his father and brother. (PCR. 200-201). According to Cooper-Lewter, when Mahdi was about age eight, he was both shocked and excited to discover his mother was alive. (PCR. 202). When Mahdi's father attempted to kidnap Mahdi's mother, Mahdi and his brother attempted to intervene. (PCR. 202-03). Mahdi was further traumatized when his mother left again. (PCR. 203). Cooper-Lewter testified Mahdi attended five different schools between pre-kindergarten and the eight grade and it would have been difficult for Mahdi to connect with peers or teachers as a result of his frequent moves. (PCR. 204-05, 207). According to Cooper-Lewter, Mahdi did not receive the type of intensive treatment he needed when he was at the Carter Center. (PCR. 208-09). He testified the documents from the Carter Center indicated Mahdi blamed himself for his family breaking up, and Mahdi wanted was his family back together. (PCR. 211-12). Mahdi was diagnosed with major depression recurrent with suicidal ideation; adjustment disorder and developmental reading disorder were both ruled out. (PCR. 212). Cooper-Lewter testified that while the records indicated that Mahdi never stopped looking for or wanting his mother, he did not know how to accomplish a reunion. (PCR. 218). Cooper-Lewter believed Mahdi did not have a lot of structure in his life, particularly between ages five and eight. (PCR. 219). In his opinion, after Mahdi was released from the Carter Center, there may have been

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some brief improvement in his behavior, but the same issues existing before would have re-emerged. (PCR. 220-21). The structure and stability provided for Mahdi in Baltimore was not available when returned to his father's home. (PCR. 222-23). Cooper-Lewter noted it was a matter of months between Mahdi's return to his father and the Brunswick County School's assessment he should be enrolled in special education classes. (PCR. 224-25).

According to Cooper-Lewter, after Mahdi was withdrawn from school by his father, Mahdi became responsible for taking care of his father and his brother. (PCR. 225-27). While he was home-schooled by his father, Mahdi was taught how to shoot, use knives, move around the countryside, and distract others. (PCR. 228). Cooper-Lewter alleged Mahdi essentially fell through the social network. (PCR. 229-30).

Cooper-Lewter noted when Mahdi went to DJJ, he was diagnosed with conduct disorder, which Cooper-Lewter alleged DJJ assessed was the result of incompetent parenting and lack of supervision. (PCR. 234-35). Two weeks lapsed between Mahdi's first stint in DJJ and his second stint. (PCR. 299). Cooper-Lewter claimed the incident leading to Mahdi's second stint in DJJ would have been a major betrayal because Mahdi's father blamed Mahdi for the standoff that led to his incarceration. (PCR. 300-01). Cooper-Lewter alleged Mahdi's mental status declined during his second stint in DJJ, culminating in Mahdi threatening to commit suicide. (PCR. 302-07).

Cooper-Lewter contended Mahdi's mental state continued to decline. When Mahdi was released from DJJ at age seventeen, Cooper-Lewter argued Mahdi did not get better. (PCR. 308-09). Mahdi attempted to reconnect with his mother, but the attempt did not go well. (PCR. 309). Cooper-Lewter pointed to the fact Mahdi was incarcerated in adult prison within a month of his release. (PCR. 309). Cooper-Lewter maintained Mahdi continued going downhill during his adult incarceration. (PCR. 309). Cooper-Lewter opined some of the incidents Mahdi

witnessed in Wallens Ridge gave credence to the ideas Mahdi was taught by his father. (PCR. 309-11).

Cooper-Lewter admitted he did not include any details of Mahdi's employment history in his report, asserting he did not do so because he did not believe it important in terms of impacting Mahdi's psycho-social history. (PCR. 315-17). Cooper-Lewter did not review Hammock's notes, Dr. McKee's notes, or Dr. Martin's notes. (PCR. 328-29). Cooper-Lewter did not interview Mahdi's brother, Saleem. (PCR. 317-18). He admitted Saleem had the same mother and father, and lived with the father during the same periods of time as Mahdi. (PCR. 318-19). He admitted Saleem went to the Job Corps, but Mahdi ended up in DJJ. (PCR. 319). Cooper-Lewter also testified he was only asked to assess Mahdi's history until he was released from Wallens Ridge. (PCR. 319-21). Cooper-Lewter also did not talk with Nathan Burwell, Mahdi's uncle. (PCR. 329-30). He also did not review the videotaped statement of Nancy Burwell, Mahdi's grandmother, made by trial counsel. (PCR. 330). He could not say why Mahdi left the State of Virginia, or what psycho-social stressors Mahdi was under, if any, when he left shortly before Christopher Boggs's murder in North Carolina or Myers's murder in South Carolina (PCR. 321).

Cooper-Lewter acknowledged when Mahdi was in Virginia's DJJ, Mahdi had threatened to hurt others and act crazy if he was not released from DJJ on time. (PCR. 322-23). Cooper-Lewter also acknowledged Mahdi admitted he made one suicide threat because he wanted to go to special housing because he believed he would receive more recreational time there. (PCR. 324). He recalled Mahdi's aunt Lawanda stating Mahdi would say similar things [suicidal threats] in her home when he did not get his way. (PCR. 325-27). Similarly, Mahdi had informed personnel at the Carter Center he only wanted to hurt himself when he could not get his way. (PCR. 327). Cooper-Lewter also admitted Mahdi indicated to him he was embarrassed by

his father's "rantings." (PCR. 331-32). He noted Mahdi indicated his father's rants would go on and on, and there was a point where Mahdi just stopped listening to his father. (PCR. 332).

The Lack of Merit of this Allegation

Mahdi alleges counsel should have called a different social worker, Cooper-Lewter, and related to Judge Newman what Cooper-Lewter related to this Court. However, Mahdi ignores counsel did retain and call a qualified forensic social worker who conducted a psycho-social assessment of Mahdi and interviewed Mahdi, Mahdi's immediately family, a family friend, and many members of Mahdi's extended family. As previously set forth above, Hammock testified in detail before Judge Newman to her psycho-social assessment, the problems in Mahdi's family including his father's difficulties in life, including depression, criminal arrests, inability to keep a job, inability to support the family, and inability to get along with the community and even with his own family. (R. 1734-63 & Def. Ex. 2). She also testified to Mahdi's life of deprivation, including transience, lack of proper support, abandonment by his mother, witnessing domestic violence committed by his father on his mother and grandmother, lack of a proper male role model, poverty, and psychiatric commitment at the age of 9. (R. 1734-63 & Def. Ex. 2). She also testified to the risk factors Mahdi was exposed to as a child and adolescent and how that affected the rest of his life. (R. 1734-63). She also testified to Mahdi's numerous school disruptions, difficulties in school, and lack of any evidence Mahdi was home-schooled by his father. (R. 1734-63, Def. Ex. 2 & 3). The DJJ records introduced at sentencing also detailed Mahdi came from a dysfunctional one parent family, Mahdi was provided with no structure or guidelines as a child, Mahdi's father did not care about Mahdi's criminal behavior, Mahdi's father attributed his problems to white supremacists in the area, and Mahdi made similar statements as his father. Cooper-Lewter admitted at PCR this information was all before Judge

Newman. (PCR. 328-40). This Court does not find counsel was deficient in failing to introduce the testimony of a different forensic social worker.

This Court finds Mahdi has failed to show deficient performance in failing to present the information presented by Cooper-Lewter because much of Cooper-Lewter's testimony was also testified to by Hammock and/or introduced through the exhibits during her testimony. *Simpson*, 367 S.C. at 605-07, 627 S.E.2d at 711-12 (counsel did in fact do adequate investigation and presented similar mitigation evidence); *Jones v. State*, 677 S.E.2d 20, 382 S.C. 589 (2009) (mitigation evidence presented at PCR was not that different from evidence presented at trial). Furthermore, the fact that one forensic social worker testified differently at PCR than the one who testified at sentencing, does not prove deficient performance of trial counsel. *Reed v. Florida Dept. of Corrections*, 593 F.3d 1219 (11th Cir. 2010) (fact that expert retained at trial and expert retained later at PCR differed, does not prove trial counsel was ineffective); *Davis v. Singletary*, 19 F.3d 1471, 1475 (11th Cir. 1997) ("the mere fact that a defendant can find, years after the fact, a mental health expert who will testify favorably for him does not demonstrate that trial counsel was ineffective for failing to produce that expert at trial."). Counsel is not required to expert shop. See *Poyner v. Murray*, 964 F.2d 1404, 1419 (4th Cir. 1992) (petitioner could not establish ineffective assistance because counsel did not "expert shop" until one could be found who would testify favorably). In order to show deficient performance, it was incumbent upon Mahdi to show that had counsel provided additional documents or information to their expert, Hammock, she would have come up with a different opinion or result in her psycho-social assessment. *Von Dohlen v. State*, 360 S.C. 598, 606-07, 602 S.E.2d 738, 742-43 (2004) (holding counsel was ineffective in failing to adequately prepare and present evidence in penalty phase defendant suffered from severe, chronic depression at the time of the murder given counsel failed to provide *their expert* witness with crucial medical records and related information which

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prevented *that witness* from conveying accurate diagnosis of defendant's mental condition to the jury). Specifically, at PCR, Mahdi did not call Hammock and prove had she been provided with certain additional records or information, her opinion or the result of her psychosocial assessment would have been different. *Von Dohlen, supra.*²³ Hammock was simply not called at PCR. Mahdi had failed to meet his burden of proof on this issue. *Id.; Butler, supra.*

Additionally, Cooper-Lewter's testimony was not all beneficial to Mahdi. If counsel had called Cooper-Lewter, the Solicitor would have impeached Cooper-Lewter or introduced many bad things about Mahdi as the State did at PCR. Cooper-Lewter specifically relied on Mahdi's DJJ records in forming his assessment. Mahdi committed over forty disciplinary violations in the Virginia DJJ including assaulting a teacher, assaulting guards on numerous occasions, assaulting other inmates, leading an escape attempt, refusing to follow orders, refusing to be disciplined, cursing staff, and damaging and destroying property. Mahdi was diagnosed at DJJ with conduct disorder, a pre-cursor to anti-social personality disorder. Mahdi faked a suicide attempt at DJJ in order to manipulate the system to gain better conditions of confinement. Mahdi's aunt Lawanda informed Cooper-Lewter that in their home Mahdi would threaten to harm himself when he did not get his way. Mahdi also informed personnel at the Carter Center he only wanted to hurt himself when he did not get his way. Mahdi told Cooper-Lewter he never should have been placed in special education in elementary school, because he did not belong there. Cooper-Lewter basically agreed. Mahdi had numerous disciplinary violations within the Virginia adult DOC, including assaulting staff, setting fire to his cell, and possession

23 This includes Mahdi's assertion counsel was deficient for failing to provide their expert Hammock with Mahdi's father's military, medical/psychiatric, and criminal records. Further, Mahdi cannot demonstrate deficient performance with regard to these records because Hammock testified before Judge Newman to the information contained in those records, i.e. Mahdi's father's less than honorable discharge from the military, his suffering from depression, inability to hold a job, support his family, parent his children, get along with others, and his record of assaults and misdemeanors. Mahdi's father's criminal record was also contained in the DJJ records introduced at sentencing, and a State's witness testified to Mahdi's father's criminal assaults on family members.

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of contraband. Mahdi's brother grew up in the same home as Mahdi, and Mahdi's brother did not commit violent criminal offenses against others. Mahdi held several different jobs during his life and even obtained college credits. Mahdi had never been physically or sexually abused by his father, mother, Uncle Carson, or Aunt Lawanda. (PCR. 340-341).

Cooper-Lewter was also impeached at the PCR hearing. He did not review any records on Mahdi after he was released from Virginia's DOC. He did not review Dr. Martin's notes, he did not review Dr. McKee's notes, and he did not even review Hammock's interview notes even though these notes dealt with Mahdi's life history, including before he was released from Virginia's adult DOC. Cooper-Lewter could not opine what stressors, if any, Mahdi was under or caused him to commit the murder of Christopher Boggs or Captain Myers. Cooper-Lewter admitted he did not include any details regarding Mahdi's employment history in his report, and he asserted he did not do so because he did not believe it was important in terms of impacting Mahdi's psycho-social history.

Given all of these factors, this Court does not find counsel was deficient in failing to call another forensic social worker, Cooper-Lewter, at sentencing before Judge Newman. See *Pinholster, supra*; *Van Hook, supra*; *Rompilla, supra*; *Wiggins, supra*; *Strickland, supra*.

(c) Dr. Haney

Craig Haney, Ph.D, who was qualified as an expert in social psychology with specific expertise in prison systems and the effects of incarceration on inmates, [and who is also an attorney] testified at PCR he reviewed Mahdi's school records, psychiatric records, DJJ records, and Virginia DOC records. (PCR. 362-63). Haney testified Mahdi was identified early as someone with a significant psychological/psychiatric disorder when he was diagnosed with depression at age nine and treated as an inpatient at the Walter Carter Center. (PCR. 364-66). Haney opined there was no indication Mahdi was cured when released; instead, there was a

recommendation he receive follow-up treatment or therapy, and according to Haney, Mahdi received limited treatment and was not medicated. (PCR. 366-67). While Mahdi was in DJJ, he did receive some contact with therapists, but Haney believed that was in the context of the correctional institution whose primary purpose was not to provide therapy. (PCR. 368). Haney alleged in Virginia's DJJ, Mahdi would have experienced victimization akin to what Mahdi saw when his father victimized his mother. (PCR. 370). Haney asserted the records indicated Mahdi projected a tough exterior as a defense to avoid being victimized by others in the institution. (PCR. 371-72). According to Haney, Mahdi's inability to deal with his anger resulted in a record replete with incidents of impulsive acting out, though some of his actions were done out of stupidity. (PCR. 373). Haney opined Mahdi's problems were deeper than DJJ understood them, and in light of the fact the problems Mahdi had in his first stint were reoccurring in his second stint, DJJ should have considered using a different approach in handling his problems. (PCR. 378-79). Haney contended Mahdi was released from this second stint with a record arguably indicating his behavior was getting worse, and in Haney's opinion, Mahdi left DJJ with many of the same problems he had when entering the system. (PCR. 377-80). Haney agreed some of the records indicated Mahdi's expression of suicidal thoughts could be viewed as attempts to manipulate his situation, but Haney alleged it was not inconsistent for someone to express suicidal thoughts and be manipulative. (PCR. 374-75).²⁴ Haney agreed Mahdi began acting out after his release from the Carter Center when he learned his brother was living with his father. (PCR. 398). He understood Lawanda Burwell as stating Mahdi had said "why don't you shoot me" or "just shoot me" on a number of occasions, but Haney was not sure what that meant. (PCR. 399). Haney noted in Mahdi's stint in Virginia's

²⁴ Haney contended that sometimes juveniles have problems talking about wanting to end their lives, so they occasionally articulate a secondary purpose for making threats to commit suicide. (Tr. 375).

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adult prisons, he had almost no psychological or psychiatric contact and characterized the overwhelming majority of Mahdi's infractions leading to his placement in Virginia's super-max as relatively minor. (PCR. 381-82). In reviewing the records from Wallens Ridge, Haney alleged Mahdi's pattern of behavior of acting out in irrational and impulsive ways evident in DJJ records continued. (PCR. 391). Haney claimed a connection between those actions and Mahdi's alleged underlying, untreated, psychological issues. (PCR. 392). Haney contended the overwhelming majority of offenses for which Mahdi was written up were impulsive, and Haney claimed Mahdi was *not one who devised elaborate plans or victimized others*. (PCR. 393). Haney alleged none of Mahdi's alleged lifelong mental health issues were addressed while he was in adult prison, and no effort was made by the prison system to ease Mahdi's transition to society. (PCR. 393-94). Haney did recall extensive testing was done on Mahdi when he entered DJJ, and DJJ recommended he be placed in an anger management program. (PCR. 400-01). Haney admitted Mahdi was kicked out of the anger management program. (PCR. 401). Haney also admitted Mahdi did have periodic visits with one or two different psychologists while he was in DJJ. (PCR. 401-02). Haney also acknowledged he was aware a psychologist diagnosed Mahdi with intermittent explosive disorder and antisocial personality disorder when admitted to the Virginia DOC. (PCR. 395). Haney testified he only examined Mahdi's institutional history. He did not examine Mahdi's employment history. (PCR. 410-11). While he talked with Mahdi, Haney did not discuss anything occurring after Wallens Ridge with him. Thus, he was not aware of what exactly may have influenced Mahdi when these present crimes were committed. (PCR. 403-05). Haney admitted he had not seen any of Mahdi's prison records from South Carolina (PCR. 402). Haney admitted Mahdi has a high I.Q. (PCR. 403). Haney contended Mahdi's prior untreated problems led him to engage in a lot of irrational, immature, and impulsive things he should not have done. (PCR. 407-09). Haney asserted Mahdi's choices

were impaired by virtue of the experiences preceding them. (PCR. 408).

The Lack of Merit of this Allegation

Mahdi alleges counsel should have called Dr. Haney or a similar expert at sentencing to elicit the testimony above and underscore the impact of Mahdi's confinement on him. There is no merit to this allegation. This Court observed Dr. Haney's testimony. This Court finds his testimony is not credible or persuasive, nor are his conclusions supported by the evidence in the record. This Court does not accept Haney's attempt to place the blame for Mahdi's criminal conduct on the criminal justice system, be it juvenile, adult, or both, or on *alleged* untreated psychological issues. This Court finds this testimony is not credible on this record. Nor does this Court believe Judge Newman would have found this testimony credible or persuasive.

Haney completely ignores the fact Mahdi made personal choices to engage in criminal conduct repeatedly after being arrested or confined. Haney also ignores the fact Mahdi engaged in criminal conduct knowing it was wrong, but having no remorse for the commission of those crimes or empathy for the victims. Haney also ignores the fact Mahdi committed numerous criminal acts simply because he wanted to.

The sentencing Court was aware Mahdi was committed to the Carter Center after being separated from his father and brother. The Court was aware of the diagnosis of Mahdi while there and of his discharge diagnosis. The Court was also aware of the dis-function in Mahdi's family from the testimony of Hammock, the exhibits introduced by counsel, and the DJJ records introduced by the State. However, to accept Haney's position, that Mahdi's criminal conduct was not his fault because the system failed him, is simply not credible on this record, and Judge Newman would not have accepted it either.

The record shows the following. Mahdi stole items from victims because he wanted to

and did not think he would get caught. Mahdi stabbed Moises Rivera because Rivera caught him breaking into an apartment as an adult. Mahdi murdered drug dealers in Virginia to create a false drought so he could make more money selling drugs. Mahdi burglarized a home in Lawrenceville so he could steal a gun. Mahdi stole a license plate and a car to leave Virginia because police were closing in on him for one of the homicides he committed there. Mahdi murdered Christopher Boggs to rob the Exxon in Winston-Salem. Mahdi car-jacked a car in Columbia, South Carolina because his other car, the one stolen in Virginia, had broken down. Mahdi murdered Captain Myers because Mahdi had burglarized Myers' shed, and Myers came in on Mahdi inside the shed. Mahdi attempted to burn Myers' body to destroy evidence. Mahdi also stole Myers' truck to escape from South Carolina. The record shows Mahdi is willing to commit crimes and committed crimes if necessary for his own personal benefit.

Nor does this Court accept Haney's testimony Mahdi is just an impulsive actor and does not victimize others. Mahdi's Virginia DJJ and DOC records show without question he is a person who victimizes others and manipulates the system for his own benefit. Mahdi repeatedly assaulted guards in both DJJ and adult prisons in Virginia. Mahdi almost killed Moises Rivera. Further, Mahdi's records from the South Carolina DOC, which Dr. Haney did not review, show Mahdi has repeatedly assaulted guards and threatened to assault guards. Additionally, Mahdi's conduct in murdering Christopher Boggs in North Carolina shows his plan was to murder Boggs simply so he could rob the store's cash register. Furthermore, counsels' testimony, along with that of Dr. Martin and Dr. McKee at PCR, shows Mahdi plans out criminal behavior when necessary to benefit himself. As a result, this Court does not accept Haney's testimony as credible on this point and so finds.

Nor does this Court accept Haney's testimony Mahdi's incarceration in DJJ and in adult prison led to his later criminal conduct. Haney misses the point. The elephant in the

courtroom is Mahdi's bad character and characteristics that led him to be confined, and which led him to be confined in the institutions in which he was confined. And, when released from confinement, Mahdi did not change his conduct so he would not go back to a harsh prison environment but committed even more and more violent offenses. Mahdi was not confined after his first brush with the law. He was arrested at age fourteen after breaking into a car, stealing a purse, and escaping from police custody. Mahdi admitted to DJJ staff he had no problem in stealing and felt no remorse about it. He was placed on *juvenile probation* for this offense. (PCR. 342-343, Va. DJJ Records). Mahdi did not adjust his behavior. He broke into two homes and stole firearms, one a .44 magnum pistol. As a result, he was confined at Virginia's DJJ. While there, Mahdi led a pre-meditated assault on another inmate, in which he enlisted the support of other juveniles, resulting in this inmate's injury and medical treatment. While there, Mahdi complained he should not be confined at all because he did not have a lengthy record. Mahdi admitted one of his strengths was robbing people. During this confinement, Mahdi engaged in other disruptive behavior and committed other disciplinary violations. After his release from DJJ, Mahdi was confined again after engaging in an eight-hour standoff with police. During this incident, Mahdi was heard to say "them mother-fuckers' got guns" and "I'm going to kill a police officer before I die." While Mahdi attempts to blame his father for this stand-off, Mahdi could have walked out of his home at any time during the standoff. When the stand-off ended, police found Mahdi in a back room of the house watching television. He was recommitted to DJJ for obstruction of justice and contempt of court. While incarcerated this second time, Mahdi assaulted other inmates, destroyed property, assaulted staff, threatened staff, and generally refused to follow orders or comply with discipline. Mahdi threatened if he was not released from DJJ on time (i.e. when he expected to be released), he would "go around acting crazy" and assaulting people. True to his word, Mahdi fashioned a

sheet into a noose and tied it around his neck, causing him to be placed on suicide watch. Later, Mahdi admitted to a staff counselor this suicide attempt was not genuine, and he only wanted better living conditions, specifically more recreation time, and was attempting to manipulate the system by the suicidal gesture. After this incident, Mahdi incurred other disciplinary violations, including an assault.

Mahdi was eventually released from DJJ. Rather than maintaining good behavior so he would not to return to prison, he slashed his mother's tires either because she would not come to the door of her residence, or she would not let him use her car. At that time, Mahdi stated to police he should have killed "the bitch," referring to his own mother. Subsequently, as an adult, Mahdi attempted to break into an apartment. When caught in this act, he severely stabbed Moises Rivera, a maintenance worker at the complex. Mahdi fled the scene and was apprehended by police using dogs. He was sentenced to adult prison for this brutal assault. While in prison, Mahdi engaged in the same behavior he had in DJJ. He disobeyed direct orders, was found in possession of contraband, set fire to his cell, and committed other disciplinary violations. As a result of his prison misconduct, Mahdi was assigned to a Super-Max facility, Wallens' Ridge. There, Mahdi engaged in similar conduct including assaulting a non-inmate and other disciplinary violations.

After being released from Wallens's Ridge, Mahdi did not change his behavior so he would not go back to a harsh prison environment. He initially lived with his uncle and grandmother, but would not live by the rules of the home and was asked to leave. Rather than obeying the law, Mahdi engaged in numerous criminal acts while on supervised probation knowing they could result in revocation of probation and return to prison. Mahdi possessed a 9 mm handgun, sold drugs, and was involved in the murder of a drug dealer. Mahdi told Dr. Martin he was involved in another murder in which police had yet to discover the body. Mahdi

burglarized the home of Amanda Weaver and stole a .380 pistol, which he was not supposed to have under the conditions of his probation. He stole a car and a license plate and left the State of Virginia because detectives were closing in on him for one homicide. Under his probation, Mahdi was not supposed to leave Virginia. Shortly thereafter, Mahdi murdered Christopher Boggs in North Carolina so he could rob the store's cash register. He then drove to South Carolina, car-jacked a vehicle in Columbia, and attempted to pass a stolen credit card in Calhoun County. Mahdi then burglarized Myers's shed, murdered Myers, and stole Myers's truck and firearms and drove to Florida. While there, he impersonated a police officer and fled from police in Myers's police issued truck.

While incarcerated pre-trial, Mahdi assaulted a guard resulting in the guard having a concussion. Mahdi later threatened the life of this guard. He also threatened the life of a female guard. Mahdi has repeatedly been found in possession of contraband. Because of his behavior while being incarcerated pre-trial, he was kept on the High C Wing of the Super-Max portion of Lieber Correctional Facility. Mahdi also tried to escape during his trial.

As a result, this Court does not find Haney's testimony on the impact of prison on Mahdi to be credible or persuasive. Nor would it have been to Judge Newman. Quite the opposite is true. The record shows Mahdi has had an impact on each prison or institution he has been in, not the reverse.

Additionally, contrary to Haney's testimony, the record shows Mahdi was violent before being incarcerated at Wallens Ridge. According to school records, Mahdi was physically aggressive toward other children. Mahdi threatened to kill a police officer when he was a juvenile. He grabbed a police officer's gun during another arrest as a teenager. He also slashed his mother's tires as a teenager and told an officer he should have killed his own mother. He threw a cement block through an aunt's windshield as a teenager. In 1998, Mahdi stated his

only strength was robbing people. Mahdi assaulted inmates while incarcerated in DJJ including on April 11, 1999 by hitting the victim in the head with a broom. Mahdi had twelve major institutional violations and twelve moderate violations while at Culpepper Juvenile Institution. Mahdi had anger management training in DJJ but did not practice what he learned. Mahdi committed several assaults on guards in DJJ including punching a guard in the face on September 29, 1999, assaulting a staff person on November 18, 1999, and another staff person on December 5, 1999. Mahdi also threatened to assault individuals on several occasions while a juvenile. Mahdi stabbed Moises Rivera multiple times. The record shows Mahdi was violent even at a young age. This Court finds Haney's testimony is not credible on this issue.

Nor does this Court accept Haney's theory Mahdi's incarceration caused him to commit crimes. Mahdi engaged in criminal behavior before ever being incarcerated. He had no remorse for stealing even as a juvenile. After being released from Wallens' Ridge, Mahdi began to sell drugs and bragged to his grandmother's neighbor about his drug dealing. He also bragged he was going to kill drug dealers. The evidence produced at PCR shows he did exactly that, becoming involved in the murder of two drug dealers in Virginia.

This Court finds counsel was not deficient in failing to investigate, develop, and present the testimony presented by Dr. Haney. See *Pinholster, supra*; *Van Hook, supra*; *Rompilla, supra*; *Wiggins, supra*; *Strickland, supra*; *Rosemond, supra*. The evidence is not credible, nor would it have been to Judge Newman, the sentencing court. Haney's position is refuted by the evidence and Mahdi's record. Further, if counsel had called Haney as a witness, the State would have been able to highlight Mahdi's lengthy criminal career including his commission of crimes before he was ever incarcerated as a juvenile and his assaultive and predatory behavior while in juvenile and adult prisons.

(d) Dr. Schwartz-Watts's and Dr. Myers's testimony

Mahdi alleges counsel did not adequately investigate his mentality both before and at the time of the crime. He asserts counsel should have discovered what Dr. Schwartz-Watts (a psychiatrist) and Dr. Myers (a psychologist) found, that Mahdi was suffering from serious mental illnesses during his life and at the time of the murder of Captain Myers.²⁵

Dr. Donna Schwartz-Watts, a psychiatry expert, testified at PCR she reviewed two notebooks of records, transcripts of Mahdi's prior hearings, and records from Dr. McKee. (PCR. 458-60). She interviewed Mahdi three times; however, Mahdi did not trust her or provide her much information. (PCR. 460, 478). She obtained more information regarding Mahdi's thought process after he left Wallens Ridge from Dr. Martin's and Dr. McKee's notes. (PCR. 478-80). Dr. Schwartz-Watts diagnosed Mahdi as suffering from major depression, anxiety disorder, paranoid personality disorder, reactive attachment disorder, and antisocial personality disorder. (PCR. 460-61). She opined the depression was in remission at the PCR hearing. (PCR. 462). She alleged Mahdi's depression went into remission between the times she spoke with him. She opined Mahdi was suffering from these diagnoses when he went on the crime spree that included the murder of Myers. (PCR. 468-71). She also disagreed with the Virginia DOC's diagnosis Mahdi met the criteria for intermittent explosive disorder. (PCR. 473). Contradicting Dr. Haney, she stated Mahdi was not an impulsive person by nature. (PCR. 473).

Dr. Schwartz-Watts testified reactive attachment disorder was a very rare disorder not seen in a lot of adults. (PCR. 463). She opined Mahdi suffered from the inhibited type of attachment disorder, noting the records indicate Mahdi was typically described as being

²⁵ Dr. Schwartz-Watts evaluated Mahdi beginning approximately one year before the merits hearing in this case. She issued her report approximately three days before the merits hearing. Absent from her report is any discussion of the crimes against Captain Myers, Christopher Boggs, or the drug dealer in Virginia and how Mahdi's alleged mental illnesses could have caused Mahdi to commit any of these crimes.

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detached. (PCR. 463). She noted the reactive attachment disorder would have been the result of numerous disruptions in relationships he had in his childhood. (PCR. 464). There was little stability in his early life; Mahdi's mother left when he was young, his father had some mental illness, was available to Mahdi only at times, Mahdi lived with his aunt and uncle for some time, and he moved six times in that period. (PCR. 464-65).

Dr. Schwartz-Watts testified that while the illnesses were in effect when Mahdi shot Myers, she did not see them diminishing his capacity in the sense of his being entitled to a statutory mitigator. (PCR. 475). She indicated Mahdi had expressed to her some remorse for the crimes. (PCR. 476).

Dr. Schwartz-Watts did not ask Mahdi about the murder in North Carolina, but she believed he would have been suffering from major depression at that time. (PCR. 482-83). The last documentation she saw evidencing Mahdi's depression was a statement from Mr. Crutchfield, Mahdi's co-defendant [in a homicide] from Virginia. (PCR. 483-85). She also asserted other documentation regarding Mahdi's depression dated back to 2001, when Mahdi denied he had been treated for mental illness and denied he had attempted suicide in his evaluation in the Virginia DOC. (PCR. 486). Dr. Schwartz-Watts admitted there was no evidence in any of Mahdi's adult prison records indicating he either complained of or received treatment for depression. (PCR. 487-90). Dr. Schwartz-Watts stated Mahdi may not have been suffering from major depression on the day he shot Myers, but Mahdi would still have been affected by the condition. (PCR. 493-94). She noted the only illness that probably had anything to do with the crime was Mahdi's anxiety disorder. (PCR. 496-97).

deRossett Myers, Ph.D., a clinical psychologist qualified as an expert in child and adolescent psychology, evaluated Mahdi for developmental concerns he alleged were evident from his life as a juvenile. (PCR. 419). Myers was struck by the extent of poverty of Mahdi's

family, the number of times Mahdi moved in a short period of time, and the amount of violence in the family. (PCR. 420). Myers indicated these were factors that put Mahdi at risk for mental health problems. (PCR 421). He opined Mahdi suffered from major depression and severe attachment disorder. (PCR 421).

Myers noted Mahdi was first formally diagnosed with major depression, single episode, when admitted to the Carter Center in Baltimore. (PCR. 424, 428-29, 442). Post-traumatic stress disorder was ruled out. (PCR. 428-29). He testified a diagnosis of major depression in a nine year old was rare. (PCR. 426, 429). Myers also indicated there was evidence to support a diagnosis of oppositional defiant disorder, and he interpreted the Carter Center's decision not to diagnose Mahdi as such indicated the staff believed Mahdi's behavior was symptomatic of depression. (PCR. 442-43). He noted Mahdi was not treated with medication. (PCR. 430). In Myer's opinion, the diagnosis of major depression was consistent with the records; (PCR. 430). He believed Mahdi would have been a good candidate for a group home or going back to the Burwells with a lot of support. He added he would have prescribed antidepressant medication to Mahdi even though he was nine years old. (PCR. 439-40).

Myers testified that Mahdi was found eligible for special education, but there was not much evidence Mahdi received mental health intervention after he left the Carter Center. (PCR. 443-45). His review of the records indicated Mahdi's home environment with his father was highly unstructured and un-nurturing. (PCR. 440). Additionally, Mahdi's father took him out of public school. (PCR. 446).

Myers noted a psychologist during Mahdi's first stint at DJJ recommended Mahdi be placed in an out-of-home placement like a group home or residential treatment facility. Myers believed Shareef Mahdi's home did not comport with the recommendations. (PCR. 447-48). Myers believed the observations made in the psychological testing during Mahdi's second stint

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at DJJ were consistent with attachment disorder and depression. (PCR. 450-52). He recalled in the DJJ records, someone indicated Mahdi would be very difficult to deal with in the future unless he got the treatment he needed. (PCR. 457). Myers noted the same individual indicated an untreated Mahdi would likely end up in adult prison, and Mahdi had aged well beyond his years in terms of some of his criminal behaviors. (PCR. 457).

Myers's focus in reviewing the records was on Mahdi's life as a juvenile. (PCR. 455-56). He did not review Mahdi's adult prison records carefully. (PCR. 456). Myers stated the Virginia DOC's diagnosis Mahdi had antisocial personality disorder was justifiable at that time but alleged it would not provide a full picture of what Mahdi was like before adult prison. (PCR. 455-56).

The Lack of Merit of this Allegation

This Court finds counsel was not deficient in failing to call Dr. Schwartz-Watts or Dr. Myers. First, Dr. Schwartz-Watts admitted during her testimony that Mahdi's history of depression had nothing to do with the murder of Myers. (PCR. 495-96). Additionally, she testified the only illness he suffered from that could have had anything to do with the murder of Myers was the generalized anxiety disorder she diagnosed him as having. (PCR. 495-97). She based this determination mainly on the fact Mahdi told her he was anxious at the time he murdered Myers. However, she admitted Mahdi had broken into Myers's cabin, and it would be expected he would be anxious when he saw Myers entering his cabin and about to discover Mahdi unlawfully inside his shed. (PCR. 496-97). This Court does not find this significantly mitigating given the circumstances. Further, while Dr. Martin's notes indicate Mahdi told him he was anxious and paranoid in Virginia, because he was being investigated for a homicide he committed, he stated he was no longer anxious or paranoid after he left Virginia. (Resp. Ex. 8). Dr. Martin took a detailed history from Mahdi, which Dr. Schwartz-Watts relied on, and Martin

did not diagnose Mahdi with generalized anxiety disorder. Additionally, at the time of the PCR hearing, the record showed Mahdi had been in the South Carolina DOC for six to seven years and had not been treated for any anxiety disorder or any mental illness including depression. (PCR. 488-91). Mahdi had received no psychotropic medications or attempted suicide since his arrest in 2004. (PCR. 488-91). Mahdi did go on a hunger strike prior to trial, but this was due to his objection to being kept as a safe-keeper prior to trial, i.e. his conditions of confinement. (PCR. 489-90). Mahdi also denies he has any mental illness. (PCR. 490). Mahdi was also examined by Dr. Michael Cross and Dr. Randy Pickens prior to trial for competency to stand trial. Dr. Cross found no evidence of any mental illness. (R. 131, 136 & Court's Ex. 2). Dr. McKee also ran tests on Mahdi and took a history from him and did not diagnose him with generalized anxiety disorder.

Dr. Schwartz-Watts admitted Mahdi did not provide her with a lot of information and was not as forthcoming with her as he was with Drs. Martin and McKee. (PCR. 479). She was forced to admit there are no records from the South Carolina DOC where Mahdi has been treated for depression or any mental illness since his arrest for Myers's murder. (PCR. 488-491). Dr. Schwartz-Watts claimed there was evidence in the DOC records Mahdi was suffering from depression; however, there are other reasons to explain his behavior. She was forced to admit Mahdi's hunger-strike was related to his being kept as a safe-keeper prior to trial, i.e. his conditions of confinement. (PCR. 489-90). Furthermore, his physical complaint was for just not feeling well, i.e. tired and run down. (PCR. 488-89). This Court does not find Mahdi's aggressive and threatening conduct is definitive evidence of depression, because it is also consistent with Mahdi's repeated diagnoses of anti-social personality disorder. (PCR. 489). Dr. Schwartz-Watts also admitted Mahdi has stated over the past six years there is nothing wrong with him. (PCR. 491-92). She further admitted he has not been given any medications for any

mental illness. (PCR. 491). This Court would also note at his guilty plea on the current charge, Mahdi told Judge Newman he was not suffering from any mental illness. Dr. Cross found no evidence of any mental illness. (R. 131, 136; Court's Ex. 2). Dr. Schwartz-Watts also admitted that upon entry to Virginia's DOC in 2001, Mahdi was not diagnosed as suffering from depression but intermittent explosive disorder and anti-social personality disorder. (PCR. 486-487). She admitted there was nothing in Mahdi's adult prison records from Virginia, where he resided from 2001 to 2004, showing Mahdi was suffering from or was being treated for depression. (PCR. 487). She also admitted there was no documentation by a doctor, psychologist, parole officer, or any professional that Mahdi was suffering from depression before he left Virginia and committed this current crime. (PCR. 487). She further admitted there was no record of Mahdi being treated for depression or complaining of depression from his arrest in Florida until his return to South Carolina to face these charges. (PCR. 487-488). She also admitted that Mahdi admitted his suicidal gesture in Virginia's DJJ was manipulative behavior on his part in order to obtain better living conditions and more recreation time. (PCR. 490; Resp. Ex. 4). Dr. Schwartz-Watts further admitted it did not appear Mahdi was depressed the day of Myers's murder, based on his actions, and he may not have been depressed at all. ²⁶ (PCR. 493).

In addition to the facts cited above, Mahdi's cold, calculated, and intelligent actions over several days from Virginia, to North Carolina, to Columbia, to Calhoun County, and finally to Florida, do not indicate Mahdi was depressed. Mahdi burglarized a neighbor's home in Virginia and stole a gun. He then stole a license plate from one establishment, a car from another, and

²⁶Dr. Schwartz-Watts relied in large part in her diagnosis of depression at the time of the crime on the statements Mahdi made to a co-defendant in one Virginia homicide. The co-defendant stated Mahdi stated "he didn't have shit to live for," and Mahdi had a belief in a foreshortened future. Again, if these statements of this co-defendant are even credible, they are due to Mahdi's involvement in a robbery and a murder in Virginia and his belief that he was about to be arrested for his criminal activities while on supervised probation. This Court does not find this significantly mitigating and this Court finds Judge Newman would not have found this mitigating either.

left Virginia to escape police who were investigating him for a homicide. Mahdi drove the stolen vehicle to Winston-Salem, North Carolina, entered a convenience store and pretended to be a patron, and when the clerk was distracted checking his I.D. to buy alcohol, Mahdi drew the stolen pistol and shot the clerk. He then shot the clerk again to render him helpless and attempted to rob the store's cash register. Mahdi then drove to Columbia, South Carolina. While here, he pretended to be a homeless person and stayed at the Oliver Gospel Mission. Mahdi then pretended to be a homosexual person so he could car-jack a vehicle and did so. He then switched the license plate on the car-jacked vehicle with the license plate he stole from Virginia. He then drove to Calhoun County and attempted to pass a stolen credit card, but the card had been cancelled. Mahdi then fled when he realized police were going to apprehend him. He then burglarized Myers's shed and while there altered a shotgun into a sawed off shogun and painted it black. Mahdi then murdered Myers and attempted to burn his body to destroy evidence of the crime. He then stole Myers's truck, but switched license plates on the vehicle before fleeing to Florida. He then drove all the way to Jacksonville, Florida where he sold the murder weapons used in North Carolina and South Carolina; however, Mahdi retained the assault rifle and sawed-off shotgun he had stolen from Myers's shed. He then impersonated a police officer when approached by a citizen in Florida. Mahdi then attempted to flee from police in Satellite Beach, Florida, and was arrested only after the use of a police dog.

Further, Dr. Martin and Dr. McKee, based in part on their interviews with Mahdi, found Mahdi was not suffering from any mental illness at the time of Myers's murder. They diagnosed Mahdi as having anti-social personality disorder. This Court finds their testimony credible given this record. While Mahdi may have suffered some recurrent depression in his childhood and adolescence, this Court finds Mahdi was not depressed at the time of Myers's murder.

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Additionally, this Court does not find counsel was ineffective in failing to retain Dr. Myers, a clinical psychologist, or elicit the testimony he provided. Dr. Myers testified to many things that were not favorable to Mahdi and would not have helped his case in mitigation before Judge Newman. Specifically, Dr. Myers testified the Carter Center records reflected either a *diagnosis* of oppositional defiant disorder or a *rule out* oppositional defiant disorder, which Meyers admitted was a precursor to antisocial personality disorder. (PCR. 442-43). Myers also noted Mahdi had a history of being oppositional and a history of behaviorally acting out with aggression. (PCR. 443). While Myers testified his interpretation of the Carter Center records was the staff attributed Mahdi's oppositional behavior to his depression, Myers admitted a diagnosis of conduct disorder/oppositional defiant disorder is based exclusively on observation of overt behavior. (PCR. 443). Myers also related that when Mahdi returned to school in Lawrenceville he was tested because he was not doing well in school and his behavior wasn't particularly good at school. Myers also admitted that after Mahdi was committed to Virginia's DJJ, Mahdi was described as an angry, alienated, tough youth. (PCR. 447). Myers testified that at that time Mahdi had already been involved in an altercation in a cottage he was housed in. (PCR. 447). Myers testified the DJJ psychologist noted Mahdi had a lot of negative attitudes towards authority, did not like rules, did not like limits, was poorly socialized, and was not sensitive to the rights and privileges of others. (PCR. 447). Myers related the psychologist termed Mahdi's problem a *conduct disorder*. (PCR. 447). Mahdi only stayed out of DJJ two weeks before he was involved in a stand-off with police and was recommitted to DJJ where he was diagnosed with *conduct disorder*. (PCR. 449-450). Myers further admitted Mahdi was noted to be disruptive at DJJ and also engaged in oppositional defiance. (PCR. 451). Myers also admitted it was noted in DJJ records Mahdi had aged well beyond his years in terms of his criminal behaviors. (PCR. 457). Myers testified Mahdi's diagnosis of anti-social personality

disorder in the adult DOC was justified at the time based on the record. (PCR, 456). Myers also agreed Mahdi's I.Q. of 118 was an accurate level of his intelligence. (PCR, 457).

More importantly, it is not what Dr. Schwartz-Watts or Dr. Myers allegedly found six to seven years after trial that is critical to the issue before this Court. *Reed v. Florida Dept. of Corrections*, 593 F.3d 1219 (11th Cir. 2010) (fact that expert retained at trial and expert retained later at PCR differed, does not prove trial counsel was ineffective); *Davis v. Singletary*, 19 F.3d 1471, 1475 (11th Cir. 1997) ("the mere fact that a defendant can find, years after the fact, a mental health expert who will testify favorably for him does not demonstrate that trial counsel was ineffective for failing to produce that expert at trial."). This Court notes none of Mahdi's appointed attorneys, Mr. Grant, Mr. Walters, or Mr. Koger are psychiatrists or psychologists. They retained qualified experts to investigate this area of mitigation on Mahdi's behalf and relied on what their experts told them. Counsel had a right to rely on what their experts told them. See *Poyner v. Murray*, 964 F.2d 1404, 1419 (4th Cir. 1992) (Petitioner cannot establish ineffective assistance because counsel did not expert shop until one could be found who would testify favorably).

Counsel retained Dr. Thomas Martin, a forensic psychiatrist, who has testified in several capital cases, to evaluate Mahdi and determine if he suffered from any mental illness that would serve as mitigation. Dr. Martin found Mahdi had some history of recurrent depression, but there was no evidence he suffered from a mental illness at the time of the commission of the crimes against Myers. The only thing Dr. Martin found was Mahdi has anti-social personality disorder. That diagnosis is fully supported by the record. When Mahdi was admitted to Virginia's DOC, he was diagnosed with intermittent explosive disorder and anti-social personality disorder. At PCR, Dr. Martin testified Mahdi had no difficulty talking about killing people if necessary in order to achieve independence, and he appeared to have no remorse

regarding any of his past violent acts. Dr. Martin related to counsel on several occasions what his findings were and they would not be helpful to Mahdi. Additionally, in conducting his evaluation, Dr. Martin took a history from Mahdi. Martin discussed with Mahdi the circumstances of the crimes against Myers and why Mahdi left Virginia in the first place. Mahdi related to Dr. Martin he left Virginia because he was involved in the homicide of a drug dealer, and detectives there were closing in on him. Mahdi also related to Martin he was involved in another homicide in which police had yet to find the body. Mahdi also related to Martin he shot Myers in the chest and head, and after Myers was on the floor of his cabin, Mahdi shot him several more times in the head to make sure he was dead. (PCR. 508-23).

Counsel also retained a *forensic psychologist*, Dr. Geoffrey McKee, to evaluate Mahdi with regard to mental health mitigation. Dr. McKee took a detailed history from Mahdi, conducted tests on Mahdi, and reviewed records including Mahdi's psychiatric records from when he was age nine. McKee found Mahdi was very intelligent and he suffered from no major mental illness at the time of the crime. McKee found, independent of Dr. Martin, Mahdi had anti-social personality disorder. McKee found nothing else. Mahdi also related to McKee he left Virginia because he was involved in the homicide of a drug dealer and police were closing in on him for that crime. (PCR. 545-561). McKee also related his findings to counsel. (PCR. 689-90, 626-27).

Counsel testified they made a strategic decision not call either psychiatric or psychological expert in the sentencing hearing before Judge Newman, because their testimony would not be helpful and damaging information would have come out if these witnesses were subject to cross-examination. (PCR. 689-90, 626-27). This Court finds this was an objectively reasonable strategic decision under the circumstances and is not subject to a claim of ineffective

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assistance of counsel. *See Strickland, supra; Wong, supra; Council, supra.*²⁷ This Court finds had either of these experts been called to testify, they would have been cross-examined by the Solicitor on the fact they took a history from Mahdi and what Mahdi related about why he stole a car and left Virginia and about the murder of Myers. Each expert's testimony would not have been helpful but would have been devastating to Mahdi's mitigation case because it would have revealed other homicides Mahdi had committed in addition to the Boggs's murder and Myers's murder. The testimony would have also revealed Mahdi shot Myers again after he was helpless on the floor. *Wong, supra* (calling mitigation witness would have exposed defendant to admission of evidence of other homicide not previously before the sentencing authority). Additionally, the experts would had to have related they found Mahdi was suffering from no major mental illness and had anti-social personality disorder. This would not have been helpful to the defense mitigation case. *See Cullen, supra* (it was a reasonable penalty phase strategy to pursue evoking sympathy for mother where psychiatrist found defendant had no signs or symptoms of mental disorder other than his "psychopathic personality traits"); *Byrum v. Ozmint*, 339 F.3d 203, 210 (4th Cir. 2003) (counsel not ineffective in failing to present testimony by a psychiatrist and psychologist because the suggestions of antisocial behavior which experts found could have been harmful to the defense); *Satcher v. Pruett*, 126 F.3d 561 572 (4th Cir. 1997) (counsel not ineffective for not presenting testimony by a psychologist and psychiatrist who examined defendant for purpose of developing mitigating evidence where they found no

²⁷The fact Mahdi committed another homicide would clearly have been admissible at sentencing before Judge Newman. *See State v. George*, 476 S.E.2d 903, 913 (fact defendant had attempted to commit similar crime in past was proper as evidence of individual characteristics and pre-disposition to commit similar crimes); *State v. Owens*, 552 S.E.2d 745 (2001) (confession to another murder during 24 hour waiting period was admissible in penalty phase since it went to defendant's character); *State v. Ray*, 498 S.E.2d 640, 641-42 (photographs of prior victim in ABIK admissible in penalty phase); *State v. Green*, 392 S.E.2d 157, 162-63 (1990) (prior crimes of defendant admissible in penalty phase); *State v. Howard*, 369 S.E.2d 132, 295 S.C. 462 (1988) (*rev. denied*, 490 U.S. 1113).

psychiatric or neurological disorders, but also found antisocial personality disorder that might make defendant a "future danger"); *Reed v. Florida Dept. of Corrections*, 593 F.3d 1217 (11th Cir. 2010) (counsel made objectively reasonable trial strategy decision not to offer antisocial personality disorder diagnosis); *Fulks v. United States*, Slip Copy, 2010 WL 3069390 (D.S.C. 2010)²⁸ (attorneys not ineffective in avoiding testimony defendant met criteria of anti-social personality disorder); see *Truesdale v. Moore*, 142 F.3d 749, 755 (4th Cir. 1998) (mental health evidence is a "double edged sword that might as easily condemn a defendant to death as excuse his actions."); *St. Pierre v. Walls*, 297 F.3d 617, 633 (7th Cir. 2002) (facts showing defendant has a condition or proclivity toward violence are often aggravating, not redeeming or mitigating factors).²⁹

Once Mahdi's psychiatric and psychological experts returned to counsel with their opinion regarding Mahdi, counsel was under no obligation to expert shop and find another psychiatrist or psychologist who might find something more palatable to a sentencing court. *Poyner*, 964 F.2d at 1419 (4th Cir. 1992) (petitioner could not establish ineffective assistance because counsel did not "expert shop" until one could be found who would testify favorably). Counsel was under no duty to search out and find Drs. Schwartz-Watts or Myers. See *Harrington*, *supra* 562 U.S. ____ (2011) (slip op. at 17) ("Counsel was entitled to formulate a strategy that was reasonable at the time and to balance limited resources in accord with effective

²⁸In *Fulks*, U.S. District Judge Joseph Anderson cited several articles written by attorney John Blume discussing antisocial personality disorder being a diagnosis to be avoided. See John H. Blume & David Voisin, *Avoiding or Challenging a Diagnosis of Antisocial Personality Disorder*, 24 *Champion* 69 (Apr. 2000) (antisocial personality disorder diagnosis "can be the kiss of death, because to many people, and most judges, this means that the defendant is little more than a remorseless sociopath."). *Fulks*, at p. 18, n. 21.

²⁹This Court recognizes a diagnosis of anti-social personality disorder would entitle a defendant to a jury charge on certain statutory mitigating circumstances. See *State v. Caldwell*, 308 S.C. 494, 388 S.E.2d 816 (1990). However, as the above cited authority shows, that does not mean counsel is deficient for failing to offer testimony their client suffers from anti-social personality disorder. Furthermore, there was no real contention at PCR, counsel was deficient in failing to call Dr. Martin or Dr. McKee in this regard.

trial tactics and strategies."'). Mahdi has failed to show deficient performance on the part of counsel. *See Strickland, supra; Wong, supra.*

Furthermore, even if counsel had retained and called Drs. Schwartz-Watts and Myers at sentencing, the devastating evidence of Mahdi's involvement in the Virginia homicides would have been elicited at trial, as it was at PCR. Dr. Schwartz-Watts's report lists Dr. Martin's and Dr. McKee's records as part of the materials she relied upon in conducting her evaluation. She admitted at PCR she relied, in part, and reviewed Dr. Martin's and Dr. McKee's files in rendering her opinion. She admitted Mahdi told Dr. Martin and Dr. McKee the reason he left Virginia was because police were closing in on him for a homicide he was involved with there. (PCR. 481). This would have been devastating to any mitigation case counsel was trying to present. *Wong, supra.*

Finally, Dr. Schwartz-Watts and Dr. Myers also diagnosed Mahdi with antisocial personality disorder. As previously discussed, this testimony would not have been helpful to the mitigation case. *Cullen*, 131 S.Ct. 1388 (reasonable penalty phase strategy to pursue evoking sympathy for mother where psychiatrist found defendant had no signs or symptoms of mental disorder other than "psychopathic personality traits"); *Byrum*, 339 F.3d at 210 (counsel not ineffective in failing to present testimony by psychiatrist and psychologist because the suggestions of antisocial behavior which experts found could have been harmful); *Satcher*, 126 F.3d at 572 (counsel not ineffective for not presenting testimony by psychologist and psychiatrist who examined defendant for the purpose of developing mitigating evidence where they found no psychiatric or neurological disorders, but found antisocial personality disorder that might make him a "future danger"); *Reed*, 593 F.3d 1217 (counsel made objectively reasonable strategy decision not to offer antisocial personality disorder diagnosis); *Fulks, supra* (no ineffective assistance in avoiding testimony defendant met criteria of antisocial personality disorder). *See*

Truesdale, 142 F.3d at 755 (mental health evidence is a “double edged sword that might as easily condemn a defendant to death as excuse his actions.”); *St. Pierre*, 297 F.3d at 633 (fact that a defendant has a condition or proclivity toward violence is often aggravating, not redeeming or mitigating).³⁰

Furthermore, this Court finds Mahdi has failed to prove counsel was deficient in failing to have Dr. Martin or Dr. McKee diagnose Mahdi with depression, generalized anxiety disorder, or paranoid personality disorder.³¹ While Mahdi called two new experts who said Mahdi suffered from depression, one in his childhood, and the other in his childhood and as an adult, and Dr. Schwartz-Watts testified Mahdi had paranoid personality disorder and generalized anxiety disorder, this was not sufficient to prove counsel was deficient in this regard. *Reed*, *supra* (fact that expert retained at trial and expert retained later at PCR differed, does not prove trial counsel was ineffective); *Davis*, 19 F.3d at 1475 (“mere fact that a defendant can find, years after the fact, a mental health expert who will testify favorably for him does not demonstrate that trial counsel was ineffective for failing to produce that expert at trial.”). It was incumbent upon Mahdi to show, had counsel provided additional documents or information to their experts, they would have reached a different diagnosis. *Von Dohlen*, 360 S.C. at 606-07, 602 S.E.2d at 742-43 (counsel was ineffective in failing to adequately prepare and present evidence in penalty phase defendant suffered from severe, chronic depression at the time of the murder given counsel

³⁰ Again, this Court recognizes testimony of an expert that a defendant suffers from antisocial personality disorder would entitle a defendant to a charge on certain statutory mitigating circumstances. *Caldwell*, *supra*. However, as the above authority shows, this does not mean counsel is deficient in failing to offer such testimony. This Court finds this testimony would have been harmful to the defense mitigation case had this testimony been presented before Judge Newman and counsel made an objectively reasonable trial strategy decision not to offer this evidence from their retained psychiatrist and psychologist. *See Strickland*, *supra*; *Council*, *supra*.

³¹ Dr. Martin did diagnose Mahdi as having some recurrent depression during his life but not at the time of the offense. Counsel could not call Dr. Martin because of the other negative things he would had to have related to Judge Newman, including his diagnosis of antisocial personality disorder and things Mahdi had told him including committing two homicides in Virginia.

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failed to provide their expert witness with crucial medical records and related information which prevented *that witness* from conveying accurate diagnosis of defendant's mental condition to the jury). Specifically, at PCR, Mahdi did not call Dr. Martin or Dr. McKee and prove, had they been provided with certain additional records or information, their diagnosis would have been different, i.e. they would have diagnosed Mahdi with depression, paranoid personality disorder, and/or generalized anxiety disorder. *Von Dohlen, supra*. In fact, the State called Dr. Martin and Dr. McKee at the PCR hearing, and Mahdi did not establish through either expert that if they had been shown certain additional records or information their diagnosis would have been any of the above. *Id.* As a result, Mahdi has failed to meet his burden of proof to show ineffective assistance in this regard. *Id.* In fact, Dr. Martin testified based on the records he saw and what he had heard at the PCR hearing, his diagnosis would not have been any different. Dr. McKee also testified he did not need any further records to make the diagnosis he made. Neither expert testified their opinion had changed. As a result, this Court finds Mahdi has failed to meet his burden in this regard. *See Butler, supra; Von Dohlen, supra; Reed, supra* (fact that expert retained at trial and expert retained later at PCR differed, does not prove counsel was ineffective); *Davis, supra* (mere fact a defendant can find, years after the fact, a mental health expert who will testify favorably for him does not demonstrate counsel was ineffective for failing to produce that expert at trial).³²

Furthermore, this Court finds Mahdi has failed to prove counsel deficient in failing to

32 This finding includes Mahdi's allegation counsel was deficient in failing to provide their experts Dr. Martin and Dr. McKee with Mahdi's father's military, medical/psychiatric, and criminal records. *See Von Dohlen, supra; Butler, supra*. Further, Dr. Martin and Dr. McKee testified they were present at team meetings with counsel, the mitigation investigator, the forensic social worker, and the private investigator where the information gathered in the mitigation investigation was shared with them. This would have included the information contained in these particular records, i.e. that Mahdi's father had been discharged from the military under less than honorable conditions, Mahdi's father suffered from depression and could not get along with others including members of his own family, Mahdi's father could not hold a job or support his family or parent his children, and Mahdi's father had a criminal record of assaults. Mahdi has failed to show deficient performance in this regard. *Id.*

have Dr. Martin or Dr. McKee diagnose Mahdi with reactive attachment disorder. Mahdi called two new experts, Dr. Schwartz-Watts and Dr. Myers, who testified Mahdi either had reactive attachment disorder or the evidence indicated Mahdi had reactive attachment disorder. This Court first notes that this diagnosis is questionable. The DSM IV TR provides that onset of reactive attachment disorder must be before age five. There is no evidence in this case that there was onset of reactive attachment disorder before the age of five. DSM-IV-TR, 4th edition, pp. 127-130.

More importantly, Mahdi did not prove *counsel* did not provide *their experts* with records or information that would have led *them* to diagnose Mahdi as having reactive attachment disorder. *Von Dohlen*, 360 S.C. at 606-07, 602 S.E.2d at 742-43. Specifically, Mahdi did not call Dr. Martin or McKee and prove had they been provided with certain additional records or information, their diagnosis would have been different, i.e. reactive attachment disorder. *Von Dohlen, supra*. In fact, the State called Dr. Martin and Dr. McKee at the PCR hearing, and Mahdi did not establish through either expert that if they had been shown certain additional records or information their diagnosis would have been reactive attachment disorder. *Id.* As a result, Mahdi has failed to meet his burden of proof to show ineffective assistance in this regard. *Id.* In fact, Dr. Martin testified that based on the records he saw and what he had heard at the PCR hearing, his diagnosis would not have been any different. McKee also testified that he did not need any further records to make the diagnosis he made. Neither testified, if they had been shown additional records, they would have diagnosed reactive attachment disorder. This Court finds Mahdi has failed to meet his burden in this regard. *See Butler, supra; Von Dohlen, supra; Reed, supra* (fact expert retained at trial and expert retained at PCR differed, does not prove counsel was ineffective); *Davis, supra* (mere fact a defendant can find, years after the fact, a mental health expert who will testify favorably for him does not demonstrate counsel was

ineffective for failing to produce that expert at trial.). As a result of the above, counsel was not deficient in failing to investigate, develop, and present mental health mitigation evidence. See *Pinholster, supra*; *Van Hook, supra*; *Rompilla, supra*; *Wiggins, supra*; *Strickland, supra*; *Rosemond, supra*.

(e) The DJJ Records

Mahdi alleges counsel should have introduced Mahdi's records from Virginia's DJJ at sentencing. He argues these records contained some mitigating evidence, that he was noted to be suffering from depression while in DJJ. Mahdi introduced these DJJ records at the PCR hearing, and the State did as well, and this Court has reviewed them carefully. Counsel was not deficient in failing to introduce these records.

The Lack of Merit of this Allegation

At Mahdi's sentencing hearing before Judge Newman, the State introduced a minimal amount of Mahdi's DJJ records. (See R., Vol. IV. and IV.). Those records document just a few of Mahdi's disciplinary violations; however, they do not document the extensive and aggravated nature of his disciplinary violations while in Virginia's DJJ.

The record shows counsel obtained Mahdi's DJJ records through the efforts of their mitigation investigator Ms. Tarr. (PCR. 585). Mahdi had over forty disciplinary violations within Virginia's DJJ including assaults on guards, teachers, and inmates. (PCR. 684). He was also involved in destroying property on several occasions. Mahdi also led an escape attempt by assaulting a female guard, taking her radio away from her, and demanding keys from another guard. Mahdi also threatened if he was not released from DJJ when he thought he should be released, he would go around "acting crazy." The records show Mahdi later admitted faking a suicidal gesture in an attempt to manipulate the DJJ prison system into gaining more recreation

time. The records, if admitted at sentencing, would also have shown Mahdi did not think he should have been incarcerated for any of his offenses, and threatened to assault other inmates or guards or harm himself if he was not released from DJJ when he thought he should be. The records also show Mahdi received various treatment programs provided to inmates by Virginia's DJJ, but he did not practice what he had learned such as anger management. In fact, Mahdi was kicked out of the anger management program for disruptive behavior. In the same records, on January 14, 1998, it was reported Mahdi described his own criminal behavior "in a very calculated, almost professional way that is alarming." The records indicated Mahdi "is behaving and developing like a teenager much older" than he was. Mahdi also admitted to DJJ staff he had difficulties in school adjustment, had been frequently suspended, had a history of verbal and physical aggression, conflicts with educational authorities, and difficulties getting along with classmates. (DJJ record M00416). He also admitted he had injured someone in a fight, and hit or attacked someone who was not in his family. (DJJ record M00495). One DJJ official indicated Mahdi was very dangerous *if he did not get his way*. (DJJ record M00511). Counsel was not deficient in failing to introduce Mahdi's DJJ records. *Wong, supra*. There were numerous unfavorable reports about Mahdi that would have been revealed to Judge Newman if these records had been introduced. If counsel had introduced only select portions of the records, the State would have introduced all of Mahdi's DJJ records, which included his numerous disciplinary violations and his admission to faking a suicide gesture to manipulate the prison system. This Court also finds counsel's not introducing Mahdi's DJJ records was an objectively reasonable trial strategy decision. *See Strickland, supra; Council, supra*. This evidence would have further advanced the State's argument Mahdi has a bad character and further advanced proof of his future dangerousness. *State v. Hughes*, 336 S.C. 585, 521 S.E.2d 500 (1999) (behavior in prison is admissible in capital sentencing because it bears on defendant's

character and future dangerousness); *State v. Whipple*, 324 S.C. 43, 476 S.E.2d 683 (1996). It would also have further undercut Mahdi's prison adaptability expert's testimony. See *Hughes, supra*; *State v. Woomer*, 278 S.C. 468, 299 S.E.2d 317 (1982) (prior escape refuted evidence of good conduct while in prison).

This allegation has no merit. Counsel was not deficient in failing to introduce Mahdi's DJJ records. See *Pinholster, supra*; *Van Hook, supra*; *Rompilla, supra*; *Wiggins, supra*; *Strickland, supra*; *Rosemond, supra*.

Mahdi also alleges counsel was ineffective in failing to provide his psychiatric and psychological experts with his DJJ records because there was some evidence in those records he suffered from depression while he was in DJJ. This allegation also has no merit for several reasons.

Both Dr. Martin and Dr. McKee had reviewed Mahdi's psychiatric records of his commitment to the Walter Carter Center. Both knew Mahdi had been diagnosed with major depression as a child. Dr. Martin testified he also interviewed Mahdi, and based on his interviews with Mahdi and his participation in the mitigation team meetings where the other experts shared their background information on Mahdi, he determined Mahdi had a history of recurrent depression in his life.³³ However, even with this determination, Dr. Martin testified he found that Mahdi was not suffering from any mental illness at the time the crime was committed. Therefore, even with this information from DJJ, Dr. Martin's diagnosis would not change because he was already aware Mahdi had a history of recurrent depression during his life.

Additionally, as previously set forth above, this Court does not find credible the claim that Mahdi was suffering from depression at the time of Myers's murder. The evidence

³³Ms. Tarr testified at the PCR hearing that she received the DJJ records.

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introduced at trial and the PCR does not support a conclusion Mahdi was depressed or was suffering from depression at the time he murdered Myers.

Additionally, even if counsel had provided these documents to their psychiatric experts, they could not call either Dr. Martin or Dr. McKee in the sentencing phase because of what Mahdi told both doctors that would have come out on cross-examination and their diagnosis of antisocial personality disorder. *Wong, supra*. Counsel could not call Dr. Martin to testify to Mahdi's history of recurrent depression for several reasons: (1) Martin did not find Mahdi was suffering from depression at the time of the crime; (2) Martin diagnosed Mahdi with antisocial personality disorder, and (3) Mahdi told Dr. Martin he had committed two homicides in Virginia, and he fled from Virginia to get away from detectives who were closing in on him for one of the homicides. Again, this was an objectively reasonable trial strategy decision under the circumstances, and providing the DJJ records to Dr. Martin would not have changed these negative factors that led to this strategic decision. Mahdi has failed to show deficient performance here.

Additionally, Dr. McKee also diagnosed Mahi with antisocial personality disorder. Mahdi also informed McKee that he left Virginia to escape from homicide detectives who were closing in on him. Counsel did not and could not call Dr. McKee to testify for these two reasons, which this Court finds were objectively reasonable trial strategy decisions under the circumstances. Providing the DJJ records to Dr. McKee would not have changed these negative factors that led to this strategic decision. Mahdi has failed to show deficient performance here.

Finally, Mahdi failed to meet his burden of proof with regard to this specific allegation. Both Dr. Martin and Dr. McKee testified at the PCR hearing. Mahdi did not show either Dr. Martin or Dr. McKee the DJJ records and ask them if these records would have changed their

opinion in this case.³⁴ *Von Dohlen, supra.* As a result, Mahdi has failed to meet his burden of proof to show counsel was deficient in this regard. *Butler, supra.*

(f) The School Records and School Witnesses

Mahdi also alleges counsel was ineffective for failing to introduce Mahdi's school records and in not calling elementary school officials. At PCR, Mahdi introduced school records, called several school officials, and provided the affidavit of another school official. These individuals either taught Mahdi or were involved in the decision to place him in special education. This Court has carefully reviewed the school records submitted, the testimony of the school officials who testified at PCR, and the one witness who submitted an affidavit. There is no merit to this allegation.

The Lack of Merit of this Allegation

The record and credible evidence at the merits hearing shows counsel retained a qualified mitigation investigator, Ms. Tarr, to investigate and develop mitigation in this case. Tarr had previously been a mitigation investigator in thirty to forty capital cases. Tarr testified as part of her investigation she requested school records of Mahdi. (PCR. 565). Although she no longer had her file in this case, she testified it was her common practice to request records from any school Mahdi or his family informed her Mahdi had attended. (PCR. 565). She also testified she went to the schools Mahdi attended. (PCR. 585). She also testified she spoke with teachers in Lawrenceville who were familiar with Mahdi; however, these teachers had not spent a lot of time with Mahdi. (PCR. 586). She also testified she spoke with individuals from a school

³⁴In fact, Dr. Martin testified that based on what he saw and heard discussed at the PCR hearing, his opinion regarding Mahdi's mental state had not changed. Dr. McKee testified he did not need to see any additional records to make his diagnosis in this case. Neither testified that had they been shown the DJJ records their diagnosis would have been different.

Mahdi attended in Baltimore. (PCR. 586). Tarr testified she routinely provides summaries of school records in capital cases. (PCR. 587). She also testified if she had done a summary of school records in this case, she would have included all pertinent information she thought was helpful to Madhi. (PCR. 586-87). The record shows a summary of the school records was done in this case and introduced at the sentencing hearing before Judge Newman. Counsel testified they relied on Tarr and also Hammock, the forensic social worker, to get all of the information with regards to Mahdi's school and education. (PCR. 629-30). Counsel also testified there were team meetings where the mitigation investigator and social worker shared with them and their experts what they had found in their investigation. (PCR. 631, 700). Counsel testified he was aware Mahdi was in special education. (PCR. 629). Dr. Martin and Dr. McKee also testified they were aware Mahdi was in special education. Counsel also testified they would have forwarded any records they received to their experts.

At Mahdi's sentencing proceeding before Judge Newman, Hammock testified to Mahdi's difficulties in school. She testified in her expert opinion Mahdi's education was disrupted many times, and this was reflected in the school records. (R. 1752, 1756). Mahdi had to move several times. (Def. Ex. 2). Mahdi was forced to change elementary schools five times. (Def. Ex. 3). The records also noted lateness and absences. (R. 1756). Mahdi started kindergarten at Sister Clara Muhammad School in Richmond and completed part of kindergarten at Totaro Elementary School in Lawrenceville. Mahdi then moved back to Richmond and attended Chamberlayne Elementary School for part of a year. Then he was removed from there and sent to Baltimore, where he attended Scotts Branch Elementary School for two years. Then he was removed from that school while in the Carter Center, and ultimately returned back to Lawrenceville to live with his father. (R. 1754-56). Even in his pre-teen years there was a lack of stability in terms of Mahdi's attending school, and it was reflected in the kinds of reports he

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received. (R. 1760-61).

Hammock testified Mahdi constantly had difficulty in school. (R. 1752). He was considered bright but did not perform well. (R. 1752-53). He was particularly a poor reader. (R. 1753). Both Carson and Lawanda Burwell reported Mahdi had difficulty in school. (R. 1753). Carson reported Mahdi could not read when he came to live with them at age 8. Carson and Lawanda reported there was constant conflict in getting Mahdi to deal with his academic limitations. (R. 1754). When Mahdi was involuntarily committed to the Carter Center his initial diagnosis included "Developmental Reading Disorder." (Def. Ex. 2). Mahdi's had difficulties in school particularly in reading, and writing, which remained at below grade level throughout elementary school. (Def. Ex. 3, R. 1755). Mahdi had numerous absences while in school. (Def. Ex. 3). School records during this time were consistent with this report. (R. 1754). Mahdi had uneven skills in school. (R. 1755). He was in the average math program, but in the below average reading program. (R. 1755). While he excelled in science, his reading, vocabulary, and spelling remained below average. (R. 1756). Mahdi needed improvement in a number of areas, including standards for behavior and showing respect for authority. (R. 1755). Mahdi was described as having poor self-esteem throughout his academic time. (R. 1753). It was noted several places he had poor self-esteem and had difficulty in relationships with others. (R. 1756). Mahdi's father removed him from school in the 5th grade to home school him, but there was no information this home schooling had ever occurred. (Def. Ex. 3). Mahdi's educational history was one of poor school progress. (R. 1762). While counsel did not introduce the records themselves, counsel conducted a reasonable investigation of Mahdi's school history and presented the same before Judge Newman. See *Pinholster, supra*; *Van Hook, supra*; *Rompilla, supra*; *Wiggins, supra*; *Strickland, supra*; *Rosemond, supra*; *Simpson, supra*.

The school records themselves reveal damaging information about Mahdi and his

character, even at an early age. Mahdi was referred for special services not because he was mentally retarded, but because of “..behavior problems. He exhibits inappropriate and disruptive behavior.” (Brunswick County Public Schools, 3/25/99). The same record also indicates Mahdi had a negative attitude about being corrected, did not always get along with other children, his behavior with adults was inappropriate at times, and most of his problems seemed to be getting along with people. The records indicate Mahdi had an I.Q. of 118, but had episodic acting-out behavior and an unwillingness to deal with difficult school tasks. (Confidential Psychological Evaluation). The records also indicate Mahdi was referred for special services because of “*behavioral difficulties; such as leaving his seat inappropriately, physically and verbally aggressive towards others at times, talks out of turn, preoccupied, anxious, easily frustrated or angered, lacks respect for authority, and daydreams*” (Educational evaluation)(emphasis added). A Burk’s Behavior Rating Scale revealed very significant factors for poor impulse control, poor anger control, and excessive resistance. (Appendix Y). The records also indicate Mahdi’s “intellectual functioning” was “in the high average range.” (M000065). Introducing Mahdi’s school records would have introduced unfavorable information about Mahdi to Judge Newman. It would also have introduced before Judge Newman that Mahdi’s intellectual functioning was not impaired. This Court finds counsel was not deficient in failing to introduce Mahdi’s school records. Counsel introduced, through Hammock’s testimony and through *exhibits*, Mahdi’s problems in school without introducing the bad things he did while in school. Counsel’s performance was not deficient in this regard. *Wong, supra.*

Mahdi further argues counsel should have introduced Mahdi’s school records and called school witnesses to show Mahdi was diagnosed by school officials in the fourth grade as emotionally disturbed. However, the record shows Mahdi’s emotional disturbance diagnosis

was based in large part on his inappropriate behavior in school such as defiance and aggressiveness toward other students. Further, there was expert testimony in this case that a diagnosis of emotional disturbance many times means simply a misbehaving child. (PCR. 542). This testimony would have further exposed testimony regarding Mahdi's oppositional defiant disorder/intermittent explosive disorder and his conduct disorder, which is a pre-cursor to antisocial personality disorder, which would not have been favorable to Mahdi. Additionally, Mahdi was also referred for special education services because of his inability to read, which Judge Newman already knew about through Hammock's testimony and the exhibits counsel introduced.

Additionally, the records contain information that would have undercut counsel's attempt to present mitigation. The records themselves indicate Mahdi was living in his grandmother Nancy Burwell's home, a modern three bedroom brick home with all facilities. The home was equipped with a stereo, television, and other educational materials for family use. There was a family support system for Mahdi's immediate family including grandparents and other relatives and friends. Mahdi met all developmental milestones at the appropriate age. Mahdi received prompt medical attention for any physical problems growing up. Mahdi's father was a high-school graduate who completed two years of community college, and Mahdi's mother had completed two years of college. Mahdi's father was involved in Mahdi's school evaluation process and believed Mahdi's behavior problems in school were due in large part because he was behind in reading, i.e. he became frustrated when he tried to read. Mahdi's father was willing to work with the public schools for his son's benefit. There were several notations in the records Mahdi's father was supportive, involved, and was seeking to help his son overcome his problems. The the records also indicate Mahdi's relationship with his father was excellent. (Resp. Ex. 1 & 2). In essence, the records do not portray Mahdi's home life in as bad a light as

counsel was able to portray Mahdi's childhood home life before Judge Newman at sentencing.

Furthermore, Mahdi's own mitigation witnesses undercut the validity of Mahdi's being placed in special education. Dr. Cooper-Lewter testified Mahdi himself informed him that he should not have been placed in special education. Mahdi informed Cooper-Lewter that after being placed in special education he put forth no effort, because he did not belong there. Cooper-Lewter basically agreed with Mahdi's assessment. Lawanda Burwell, Mahdi's aunt, and a credentialed school administrator, also testified she did not believe Mahdi should have been in special education.³⁵ This ground has no merit. Counsel was not deficient under this allegation. See *Pinholster, supra*; *Van Hook, supra*; *Rompilla, supra*; *Wiggins, supra*; *Strickland, supra*; *Rosemond, supra*; *Simpson, supra*; *Jones, supra*.

As previously discussed, Mahdi also claims counsel was ineffective in failing to provide his psychiatric/psychological experts, Dr. Martin and Dr. McKee with records from Mahdi's school history, specifically the records regarding Mahdi being placed in special education classes. However, both Martin and McKee testified these records would not have changed their ultimate diagnosis. (PCR. 544, 561). Dr. Martin also testified at the PCR hearing that Mahdi informed him he had been placed in special education. (PCR. 515). Dr. Martin also testified Mahdi told him he should not have been placed in special education. (PCR. 515). Mahdi told Dr. Martin he begged the school principal to take him out of special education, but this was unsuccessful. (PCR. 516). He also asked his father to take him out of special education, and his father eventually pulled him out of public school and home schooled him. (PCR. 516). Dr. Martin also testified students are classified as emotionally disturbed and placed in special

³⁵ Mahdi also told Drs. Martin and McKee that he should not have been in special education. Mahdi also told Dr. Martin he became ODD (Oppositional Defiant Disorder) after being placed in special education because he did not belong there. (Respondent's Ex. 8).

education classes because they are behavioral problems. (PCR. 542). Dr. Martin testified that sometimes this behavior is fueled by depression, sometimes its incorrigible behavior, or sometimes they are truant or having problems with conduct disorder. (PCR. 542). Dr. Martin also testified Mahdi's acting-out behaviors such as irritability, talking back to teachers, and disrespectful attitude were in other reports he did review and also in information Mahdi provided to him. (PCR. 542). This Court had the opportunity to view the testimony of Dr. Martin and Dr. McKee and finds their testimony on this issue to be credible. Mahdi has failed to show counsel was deficient in failing to provide Dr. Martin or Dr. McKee with Mahdi's school records. *See Von Dohlen, supra.*

Mahdi also claims counsel was ineffective for failing to provide their experts with these specific records of Mahdi being placed in special education because they showed evidence of Mahdi's depression. This ground has no merit for several reasons.

Dr. Martin testified he extensively reviewed Mahdi records from the Walter Carter Center that documented his diagnosis of major depression at age nine. He reviewed the summary prepared by Ms. Tarr of these records *and* the records themselves. Dr. McKee likewise reviewed Mahdi's commitment records from the Walter Carter Center at age nine. Both experts knew Mahdi had been diagnosed with major depression as a child. The special education records were generated approximately eighteen months after Mahdi's release from the Carter Center. Dr. Martin further testified he interviewed Mahdi about his life. Mahdi informed him he had been placed in special education classes. Mahdi also indicated he had suffered from recurrent depression in his life. Dr. Martin further testified he participated in several team meetings where the findings of other members of the mitigation team were shared with him, including Mahdi's developmental and social history. Dr. McKee testified likewise. As previously stated, Ms. Tarr had subpoenaed Mahdi's school records and interviewed

individuals who worked at two different elementary schools Mahdi attended. Based on his interviews with Mahdi regarding his life, and his review of the Carter Center records, along with the information he received from the mitigation investigators, Dr. Martin determined Mahdi had suffered from recurrent depression during his life. Dr. Martin further testified at PCR that the records Mahdi presented at PCR, the special education records, would not change his opinion in this case. Dr. McKee also testified he was aware Mahdi had been placed in special education as a child. Dr. McKee also testified he did not need any further records to make his diagnosis in this case. (PCR Tr. 508-45, 545-61). As a result, Mahdi has not shown deficient performance on the part of counsel for failing to provide Dr. Martin or Dr. McKee with Mahdi's school records regarding special education. *Von Dohlen, supra*.

Additionally, Mahdi cannot show deficient performance from the failure to provide these records because counsel could not call either of these witnesses because they found Mahdi had antisocial personality disorder, and Mahdi had related to both Dr. Martin and Dr. McKee that he had been involved in at least one homicide in Virginia. Mahdi also related to Dr. Martin other damaging things: (1) Dr. Martin noted Mahdi had no difficulty talking about killing people if necessary to achieve independence; (2) Mahdi informed Dr. Martin of another homicide he had committed in Virginia, where police had yet to find the body; (3) Dr. Martin testified Mahdi's outlook on life was quite violent and his interactions with others were hostile, aggressive, and sometimes quite violent. (PCR. Tr. 508-61). As previously stated above, this Court finds counsels' decision not to call these witnesses in mitigation was an objectively reasonable trial strategy decision under the circumstances, and providing these experts with Mahdi's special education records would not change the negative factors that motivated this decision. See *Strickland, supra*; *Council, supra*.

Dr. Martin also testified there was no evidence Mahdi was depressed at the time he

committed Myers' murder. Mahdi did not state he was depressed or psychotic at the time. There was no evidence of depression from the way Mahdi described the events surrounding Myers's murder. Mahdi's description of the events of Myers's murder were quite coherent. He described very clearly to Dr. Martin what he was feeling and perceiving at the time of Myers's murder. Mahdi described extensive details regarding his actions during Myers's murder. Mahdi described murdering Myers because Myers discovered Mahdi in Myers's cabin, and Mahdi thought Myers's was going to shoot him. Mahdi also described burning Myers's body to cover-up or destroy evidence. Mahdi was coherent and had no problem remembering events. As a result, Dr. Martin opined at the time of the offense, Mahdi only had a personality disorder, antisocial personality disorder. Likewise, Dr. McKee found no evidence Mahdi was suffering from depression at the time of Myers's murder. Dr. Martin testified the special education records would not change his opinion in this case. Dr. McKee testified that he did not need to see any other records to make his diagnosis in this case. (PCR. Tr. 508-561).

Finally, Mahdi has failed to meet his burden of proof with regard to this specific allegation. *See Butler, supra*. Dr. Martin was shown Mahdi's special education records at PCR and testified they would not change his opinion in this case. Additionally, Mahdi did not show Dr. McKee the special education records and even ask him if they would have changed his opinion in this case. As a result, Mahdi has failed to show counsel was deficient in failing to provide the special education records to their psychiatric/psychological experts. *See Von Dohlen, supra; Reed, supra* (fact expert retained at trial and expert retained later at PCR differed, does not prove trial counsel was ineffective); *Davis, supra* (mere fact a defendant can find, years later, a mental health expert who will testify favorably for him, does not demonstrate counsel was ineffective for failing to produce that expert at trial.); *Poyner, supra* (petitioner cannot establish ineffective assistance because counsel did not expert shop until one could be found who

would testify favorably).

As a result of all of the above, this Court finds Mahdi has failed to show deficient performance in counsel's failure to introduce Mahdi's school records, failure to call school officials as witnesses, or failure to provide his school records to his psychiatric/psychological experts. See *Pinholster, supra*; *Van Hook, supra*; *Rompilla, supra*; *Wiggins, supra*; *Strickland, supra*; *Rosemond, supra*; *Simpson, supra*; *Jones, supra*. As a result, this ground must be dismissed with prejudice.

(g) The Walter Carter Center Records

Mahdi also alleges counsel was ineffective for failing to introduce Mahdi's records from the Walter Carter Center. There is no merit to this ground.

The Lack of Merit of this Allegation

First, the record shows counsel had possession of these records, and Ms. Tarr summarized them for counsel and the experts. (**Resp. Ex. 11; PCR. 565-66**). Counsel's experts, Dr. Martin and Dr. McKee, also had the actual records from the Carter Center. (**PCR. 511-12, 553-54**). They reviewed them in conducting their evaluation of Mahdi. (**PCR. 511-12, 553-54**).

The sentencing phase record shows, Ms. Hammock testified regarding Mahdi's commitment to the Walter Carter Center, his diagnosis there, and his discharge diagnosis. An exhibit introduced detailed Mahdi's involuntary commitment and diagnosis at the Carter Center. Judge Newman was well aware Mahdi was committed to the Carter Center at age nine for depression and suicidal ideation. Judge Newman was also well aware Mahdi was diagnosed with major depression at this age, and it came on the heels of his being separated from his family, and being forced to move to Baltimore to live with his aunt and uncle. Judge Newman was also

well aware Mahdi was confined at the Carter Center for sixty days, and he was discharged to his aunt and uncle. Counsel chose not to introduce the records themselves. (R. 1739-63, Def. Ex. 2). This Court has reviewed the Carter Center records thoroughly. The records themselves are cumulative to the testimony of Hammock at sentencing and the exhibit introduced through her.

Additionally, the records themselves contain damaging information about Mahdi. Mahdi was placed in isolation several times at the Carter Center due to his disruptive or inappropriate behavior. The records also show Mahdi assaulted other patients, assaulted staff, was verbally threatening or aggressive towards staff, and attempted to escape from the facility. On several occasions, Mahdi threw chairs or tables and attempted to damage property of the hospital. On one occasion, Mahdi falsely pulled a fire alarm. Mahdi also cursed staff members. On another occasion, Mahdi threatened to suffocate a staff member with a pillow. Additionally, the records detail Mahdi's making a false claim of child abuse against his aunt Lawanda, a fact Judge Newman was not aware of. The records show the claim of child abuse against Lawanda was determined to be unfounded, and Mahdi admitted he only threatened suicide when he didn't get his way. The records also show the aunt reported Mahdi only talked about suicide when he didn't get his way or did something wrong, and Mahdi also admitted threatening suicide as a way of getting attention. These records would have undercut the mitigation value of and brought into question the diagnosis of major depression at the Carter Center that was testified to before Judge Newman. The records also indicate Mahdi had antisocial behavior and conduct disorder. Counsel was not deficient in failing to introduce the records themselves when unfavorable things were contained within the records that would have been damaging to their client. (See **Walter Carter Center Records & Resp. Ex. 7**). *Wong, supra*. Counsel appropriately presented the Carter Center mitigation information to the sentencing court through Hammock, without the negative information about Mahdi that would

have been before the sentencing court had the records themselves been introduced. *Id.*; *Strickland, supra*. This allegation has no merit must be dismissed with prejudice. *See Pinholster, supra; Van Hook, supra; Rompilla, supra; Wiggins, supra; Rosemond, supra; Simpson, supra; Jones, supra.*

(h) The Father's Records

Mahdi alleges counsel was deficient in failing to introduce his father's military, medical/psychiatric, and criminal records.

The Lack of Merit of this Allegation

To the extent counsel did not obtain these records, counsel's mitigation investigation revealed, and counsel presented the main information contained in these records at sentencing through Ms. Hammock. Judge Newman was aware Mahdi's father had been discharged from the military under less than honorable conditions; Mahdi's father had a history of mental illness, i.e. depression during his lifetime, and he could not hold a job, support his family, get along with others, and effectively parent; and, Mahdi's father had a criminal record for assaults on his own family including his wife and his mother. Additional records and testimony at sentencing established Mahdi's father had been arrested for assaults on his family, escape, and malicious damage to property. (See DJJ records introduced at sentencing & Testimony of Sheriff James Woodley at sentencing). The State did not contest any of this information. Therefore, Mahdi has failed to prove deficient performance, and there is no merit to this allegation. *See Van Hook, supra; Simpson, supra; Jones, supra.*

Conclusion to Deficiency Analysis

For the reasons stated above, this Court finds Mahdi has not met his burden of proof to

show deficient performance under this ground. See *Strickland, supra*; *Pinholstre, supra*; *Van Hook, supra*; *Wong, supra*. Counsel conducted an adequate, thorough, and reasonable investigation of mitigation evidence, and presented what mitigation evidence counsel could present that was favorable to Mahdi under the circumstances at the time of sentencing. See *Pinholster, supra*; *Van Hook, supra*; *Strickland, supra*; *Rompilla, supra*; *Wiggins, supra*; *Rosemond, supra*; *Council, supra*; *Simpson, supra*; *Jones, supra*.

THE PREJUDICE PRONG

Regardless, Mahdi has not met the second prong of the test articulated in *Strickland* and *Cherry* and discussed hereinabove. Considering the horrible facts of this murder, the aggravating circumstances, the mitigation presented at sentencing, the additional mitigation evidence presented at the PCR hearing, and the aggravating evidence that would almost certainly have come in with the new mitigation, this Court finds there is no reasonable probability Judge Newman would have returned with a different sentence. See *Wong, supra*; *Jones*, 332 S.C. at 333, 504 S.E.2d at 823.

When determining if want of mitigation evidence resulted in prejudice, the Court must determine whether the mitigation evidence, taken as a whole, might well have influenced the judge's appraisal of Mahdi's culpability. *Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009), quoting *Wiggins*, 539 U.S. at 538, quoting *Williams*, 529 U.S. at 398; see also *Rompilla*, 545 U.S. at 393. Accordingly, if counsel's failure to present mitigation evidence undermines confidence in the outcome, then Mahdi suffered prejudice. *Rosemond, supra* (finding counsel's complete failure to present mitigation evidence undermined confidence in the outcome where the jury deliberated over two days before reaching a death sentence).

The United States Supreme Court made clear in *Wong, supra*, the burden is not on the

State to show the lack of prejudice, but the burden is on *the applicant* to show prejudice. *Id.* To establish prejudice, Mahdi must show a reasonable probability that had Judge Newman been confronted with the new mitigating evidence, there is a reasonable probability he would have returned with a different sentence. *Id.*, quoting *Wiggins*, 539 U.S. at 535-36. "In evaluating that question, it is necessary to consider *all* the relevant evidence that [the judge] would have had before [him]" if Mahdi "had pursued the different path - not just the mitigation evidence" Mahdi could have presented, but also" the aggravating evidence "that almost certainly would have come in with it." *Id.*, referencing *Strickland*, at 695-696, 700 (emphasis in original). See also *Porter v. McCollum*, 558 U.S. ____ (2009); *Sears v. Upton*, 130 S.Ct. 3259 (2010), quoting *Porter*, 130 S.Ct. at 453-54; *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008), citing *Jones*, 332 S.C. at 333, 504 S.E.2d at 824.³⁶ This Court has analyzed Mahdi's claims of prejudice under this ground pursuant to the above cited standards and finds Mahdi has not met his burden of proof to show prejudice.

The Evidence in Aggravation

The amount of evidence in aggravation the State presented at the guilty plea and in the penalty phase was overwhelming. See *Plath v. Moore*, 130 F.3d 595, 602 (4th Cir. 1997) (considering the sheer magnitude of the aggravating evidence, defendant failed to show prejudice from counsel's failure to present certain mitigating evidence). As detailed in the record, and Judge Newman's sentencing order, the evidence of Mahdi's guilt, the aggravating circumstances (both statutory and non-statutory) of this murder; and Mahdi's bad character, characteristics, prison misconduct, and propensities for violence was overwhelming.

³⁶ "That same standard applies-and will necessarily require a court to 'speculate' as to the effect of the new evidence-regardless of how much or how little mitigation evidence was presented during the initial penalty phase. Indeed, it is exactly this kind of probing inquiry that ... the [lower court] failed to do. In all circumstances, this is the proper prejudice standard for evaluating a claim of ineffective representation in the context of penalty phase mitigation investigation." *Sears v. Upton*, 130 S.Ct. 3259 (2010).

The Guilty Plea

First, Mahdi admitted he murdered James Myers, burglarized his cabin before murdering him, and stole his guns and police issued truck after murdering him. There is no question Mahdi is the person who murdered Myers; he was alone when he murdered him, and he acted completely alone. Mahdi also admitted he murdered Myers during the entering or remaining in the cabin after the burglary and stole his guns and truck. Mahdi also admitted the facts surrounding the murder as recited by the Solicitor were correct. (R. 1254-84, 1336-43).

The Sentencing Proceeding

In the sentencing phase, the State established the following evidence in aggravation. Mahdi burglarized the home of Amanda Weaver in Virginia and stole a chrome .380 pistol. Mahdi then stole a license plate from a car rental agency and a station wagon from a nearby car lot. He drove this vehicle eventually to Columbia, South Carolina, where he abandoned it in a church parking lot. Mahdi then car-jacked a Ford Expedition at gunpoint and drove to the Wilco Plaza in Calhoun County. He replaced the tag on the Expedition with the tag he stole in Virginia. He attempted to use a stolen credit card at the Wilco station and fled into some nearby woods when he believed police were about to apprehend him. Mahdi came upon Myers' shed/cabin and burglarized it using some type of tool. While inside, Mahdi manufactured a sawed-off shotgun, painted it black, and also armed himself with Myers's loaded .22 rifle. When Myers went to his cabin/shed, late on the evening of June 16, 2004, Mahdi was lying in wait. Mahdi murdered Myers by shooting him nine times with the .22 rifle. Mahdi shot Myers several times in the head after he was helpless on the floor of the cabin/shed. Mahdi stole Myers's truck keys, his guns, and his police issued truck and fled South Carolina. Before leaving, Mahdi attempted to burn Myers's body and his shed to conceal evidence.

Myers's wife had the unfortunate circumstance of finding her husband's burned and bullet riddled body; she screamed for an unknown period of time before she was able to call 911, and she remained at the cabin, with her husband's body for approximately thirty minutes waiting on police and emergency workers to arrive.

Mahdi drove to Jacksonville, Florida and sold the .380 caliber pistol he stole from Virginia and the .22 rifle he used to murder Myers; however, Mahdi retained several other weapons including the assault rifle and the sawed-off shotgun. Mahdi was not captured until an extensive police chase, after which he fled from Myers's stolen truck, and the use of a police dog, and Mahdi considered shooting officers before being arrested. Myers's stolen assault rifle and stolen shotgun were recovered in or near the truck Mahdi had been driving before his capture.

The State also established Mahdi's bad character and characteristics. Mahdi had previously been adjudicated delinquent as a juvenile for car-breaking, petty larceny, escape from custody, breaking and entering (two counts), obstruction of justice, and contempt of court. As an adult, Mahdi was convicted of malicious wounding, for the brutal stabbing of Moises Rivera, after Mahdi tried to burglarize an apartment in the complex where Rivera worked. Mahdi stabbed Rivera approximately five or six times and severely injured Rivera. Rivera's heart actually stopped in the ambulance, and he had to be revived. He was hospitalized for several days and out of work for approximately six weeks because of Mahdi's actions.

The State also established the murder of Myers was not Mahdi's first murder. Mahdi had murdered Christopher Boggs, a convenience store clerk, on his way to South Carolina from Virginia. Mahdi brutally murdered Boggs by shooting him in the face, and then shooting him again in the head after Boggs fell helpless on the floor. Store surveillance video portrays the heinousness of this murder, with Mahdi leaning over the counter to fire another bullet into

Boggs's head. After murdering Boggs, Mahdi tried to rob the store's cash register. There is no question Mahdi committed this murder because his actions were captured clearly on the store's video-camera, his fingerprints were found on the store's counter, Mahdi's friends and relatives identified him in the videotape, and the weapon used to murder Boggs, the .380, was sold by Mahdi in Jacksonville and forensically matched to Boggs's murder by ballistics testing.

The State also established Mahdi's bad prison behavior by introducing some of Mahdi's disciplinary violations while in Virginia's DJJ and all of Mahdi's disciplinary violations while in Virginia's adult DOC. The State also introduced Mahdi's disciplinary violations in the South Carolina DOC, including assaulting a guard and threatening other guards. Finally the State introduced Mahdi's escape attempt during the trial itself by the use of a homemade handcuff key Mahdi had fashioned while in maximum security and which he kept secreted in his mouth during the trial.

The State also introduced extensive victim impact testimony regarding Myers as a human being and valued member of the community. Judge Newman heard from Myers's widow, his father, Myers's daughter, and Myers's best friend.

The PCR Evidence

Mahdi's PCR mitigation presentation centered on family members' testimony, community member testimony mainly regarding Mahdi's father, expert witnesses' testimony regarding Mahdi's mentality, and documents not introduced by counsel at his sentencing proceeding.

(Family Members and Community Members)

Mahdi's family members and community members testified to the history of the family, particularly with regard to Mahdi's father, and his difficulties in life, and the difficulties Mahdi

had to overcome in life. With regard to the family member testimony, it was largely cumulative to the testimony presented by counsel before Judge Newman through their forensic social worker. The family and community members described the difficulties Mahdi's father had in growing up, particularly that he was unwanted by his mother, he was forced to go to an integrated school that was traumatic, and he suffered from depression after his wife left he, Mahdi, and Mahdi's brother Saleem. The family and community members also described Mahdi's father's inability to get along with others, to parent effectively, to obey the law, and to hold a job. The family and community members also testified to the domestic violence within Mahdi's immediate family committed by Mahdi's father on both his wife and mother. This same evidence was presented at the sentencing hearing through Hammock's testimony before Judge Newman, and the time-line of Mahdi's life introduced through her. (R. 1739-63; Def. Ex. 2). In fact, many of the details testified to by family members at PCR were related by Hammock in her sworn testimony or are set forth in the Exhibit detailing Mahdi's family history. Her testimony was not challenged by the Solicitor at sentencing, nor was the Exhibit chronicling Mahdi's family and life history.

The family members at PCR also described how Mahdi was abandoned by his mother at a young age, around 4 or 5 years of age, and Mahdi's father was unable to care for Mahdi and his brother. They described how Mahdi had to fend for himself at a young age, and eventually was separated from his father and brother because of his father's inability to care for the children. They also testified to Mahdi witnessing domestic violence committed by their father on Mahdi's mother and on their grandmother. The family and community members also described Mahdi's father's defiant behavior in the community. They also described Mahdi's difficulties in school and his commitment to the Walter Carter Center at age nine.

This same evidence was also presented at the sentencing hearing before Judge Newman

through Hammock in her sworn testimony and in the Exhibits chronicling Mahdi's family's life and his own life, and chronicling his school difficulties. Judge Newman was well-aware Mahdi had a life of deprivation, including being abandoned by his mother around the age of five. Judge Newman was also aware Mahdi's father could not provide for the children, and as a result Mahdi and his brother were sent to live with different aunts and uncles. Judge Newman was fully aware Mahdi's family was split up because of these difficulties, and shortly thereafter, Mahdi was committed to the Walter Carter Center and diagnosed as suffering from major depression and suicidal ideation. Hammock also testified to Mahdi's father's defiant behavior in the community and the fact he had converted to Islam at a young age. Judge Newman was also fully aware Mahdi and his brother witnessed their father assaulting their mother and their grandmother. Judge Newman was also aware Mahdi had difficulties in school, and he had particular difficulty in learning to read. Hammock also testified to Mahdi's lack of a proper role model, and Judge Newman was aware Mahdi's father suffered from depression and had a criminal record. (R. 1739-63, Def. Ex. 2). The evidence presented by Mahdi from his family and community members was largely cumulative and would not entitle Mahdi to relief. *Wong*, 130 S.Ct. at 387-88 (when substantial mitigation case was presented, evidence that is merely cumulative to the evidence actually presented fails to demonstrate the prejudice necessary to meet the prejudice prong of *Strickland*); *Buckner v. Polk*, 453 F.3d 195, 206 (4th Cir. 2006) (counsel's failure to present merely cumulative mitigating evidence does not prejudice a defendant's case); *Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006) (finding where substantial mitigation case was presented, applicant had failed to show prejudice from failure to call other mitigation witnesses that were in essence cumulative); *Jones v. State*, 332 S.C. 329, 504 S.E.2d 822 (1998) (holding that "fancier mitigation case" does not render the prior case inadequate).

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Furthermore, this Court cannot divorce from its prejudice analysis the unfavorable information that would have come in through the family witnesses, had they been called at the sentencing hearing as Mahdi proposes. *Wong, supra* (in making prejudice determination, the Court must consider the bad information that in all likelihood would have come in with the good mitigation evidence). Mahdi's family members were aware of bad things regarding Mahdi, and this Court finds these bad things in all likelihood would have come in on cross-examination or reply. Carson and Lawanda Burwell were aware that as an adult Mahdi had to move out of his grandmother's home because he would not abide by the rules of the home set down by his uncle Nathan. This occurred shortly after Mahdi's release from adult prison and while he was on supervised probation. Carson related to Mahdi's North Carolina attorneys Mahdi "was a demon." Carson also related to counsel here, if he were called to testify, he would have bad things to say about Mahdi. Since this was Carson's mind-set at that time, these bad matters would have come out on the stand as they did at PCR. Both Lawanda and Carson admitted Mahdi almost had them arrested by making a false claim of child abuse and manufacturing false evidence of the abuse. Both also related Mahdi acted out at the Carter Center and had to be placed in isolation. Carson related to Tarr that Mahdi was manipulative in their home. Lawanda related Mahdi acted out and had to be returned to live with his father. Both related Mahdi would only talk about suicide when he did not get his way or did something wrong, more manipulative behavior. Carson also related to counsel Mahdi's statement to the responding officer that led to his commitment to the Carter Center was not real but more of Mahdi's manipulative behavior. Lawanda likewise testified she did not believe Mahdi was suicidal.

These negative things about Mahdi would not have been helpful to Mahdi's mitigation case. If counsel had called Carson and Lawanda as Mahdi contends, then Mahdi's manipulative behavior, specifically making a false claim of child abuse to police, which almost had Carson

and Lawanda Burwell arrested, would have been admitted. Further, Mahdi's disruptive behavior at the Carter Center, would have been brought out, such as Mahdi hitting other patients, attempting to escape from the facility, cursing staff, falsely pulling a fire alarm, and throwing chairs. Due to Mahdi's disruptive behavior at the Carter Center, he had to be placed in isolation on several occasions. Additionally, testimony that Mahdi talked about suicide only when he didn't get his way or did something wrong, and was about to be punished, would have been brought out, i.e. additional manipulative behavior on Mahdi's part. Further, Mahdi's disruptive behavior within the Burwell home, which Mahdi wanted to cause, and which eventually did cause his return to his father, would have been elicited on cross-examination, further underscoring Mahdi's manipulative behavior and nature. Testimony would also have been elicited from Carson that Mahdi could not obey the rules of Nathan's home when he resided there as an adult, and was eventually asked to leave. Carson was also aware of an incident where Mahdi, his brother Saleem, and their father were involved in maliciously damaging an aunt's motor vehicle. Mahdi through a cement block through the aunt's car window. It is clear this negative testimony would have been elicited. The State had introduced this event through one of the police officers during the penalty phase. Further, emphasis before Judge Newman would not have helped the mitigation case. *Wong, supra.* Mahdi's aunt, Sophie Gee, was also aware of Mahdi slashing his mother's car tires. She testified at PCR Mahdi slashed his mother's tires simply because she would not let him use the car. This information would have been brought out on cross-examination had she testified at sentencing and would have further emphasized this incident before Judge Newman. *Wong, supra.*

(The New Social Worker)

Dr. Nicolas Cooper-Lewter's testimony would have been before Judge Newman;

however, most of the information related by Cooper Lewter was before Judge Newman through Hammock's testimony and the exhibits introduced through her. This Court finds the information related by Cooper-Lewter that was not presented by Hammock does not change the sentencing equation. *See, Wong, supra; Rosemond, supra.* Further, if counsel had called Cooper-Lewter, on cross-examination the State would have introduced Mahdi's numerous disciplinary violations [over 40] within Virginia's DJJ. *Wong, supra.* Cooper-Lewter specifically relied on these records in forming his assessment and was cross-examined about these at the PCR hearing. The violations included Mahdi assaulting a teacher, assaulting guards on numerous occasions, assaulting other inmates, leading an escape attempt, refusing to follow orders, refusing to be disciplined, cursing staff, and damaging and destroying property. Cooper-Lewter would also have been cross-examined about Mahdi's numerous disciplinary violations within Virginia's adult DOC including setting fire to a cell, possession of contraband, failure to follow orders, and assaulting a non-inmate. Cooper-Lewter admitted at the PCR hearing, Mahdi was confined to Wallens's Ridge Prison in Virginia because of his behavior in other facilities. Cooper-Lewter could also have been questioned about Mahdi's statements to Cooper-Lewter that he never should have been placed in special education in elementary school, because he did not belong there. Cooper-Lewter also admitted Mahdi had an I.Q. of 118, obtained his GED after his release from adult prison, had held several jobs, and obtained college credits from a local college in Lawrenceville, Virginia.

(Mahdi's Father's Records)

Mahdi's father's military, medical/psychiatric, and criminal records would have been before Judge Newman; however, the main information contained in those records was presented to Judge Newman in Ms. Hammock's sentencing proceeding testimony. Judge Newman was

aware Mahdi's father had been discharged from the military under less than honorable conditions. Judge Newman was aware Mahdi's father had a history of depression and inability to get along with others, including his own family. Judge Newman was aware Mahdi's father could not hold a job or support his family, and he was not equipped to parent because his personal issues. Judge Newman was aware of Mahdi's father's history of criminal assaults and racially motivated crimes, including assaulting his wife on several occasions and assaulting his own mother. (See also DJJ records introduced at sentencing & Testimony of James Woodley at sentencing). Further, Mahdi failed to establish at the PCR hearing that any of these records would have changed his experts' opinions at sentencing. *Von Dohlen, supra*.

(Dr. Haney's testimony)

Haney's PCR testimony would have been before the sentencing Court; however, as set forth in the deficiency section under this ground, Haney's claim Mahdi is an impulsive actor who does not victimize others or that Mahdi is a product of his incarceration at Wallens Ridge, and to a lesser extent, at other facilities, would have been impeached. The testimony is simply not credible or supported by the record.

The record shows Mahdi is not an impulsive actor but committed many criminal offenses in a premeditated and planned fashion simply because he could and to benefit himself. Furthermore, Mahdi repeatedly victimized others in premeditated assaults or attacks.

Further, Mahdi was a violent, manipulative, and disruptive individual before he was incarcerated at Wallens Ridge. He was violent, disruptive, and manipulative when he was incarcerated the first time in Virginia's DJJ. He was violent, disruptive, and manipulative during his second incarceration in DJJ. He continued his violent behavior after being released from DJJ, seriously wounding Moises Rivera during a burglary attempt. After this incident, as in

the present case, Mahdi had to be captured with the use of a police dog. Mahdi continued his violent and disruptive behavior in the adult prison system resulting in his eventual incarceration at Wallens Ridge and he continued to violate institutional rules at Wallens Ridge. Rather than conforming his behavior when he was released from Wallens Ridge, so he would never have to go back to a maximum security prison, Mahdi repeatedly violated, not only the law, but the rules of his supervised probation. Mahdi sold drugs, possessed handguns, used marijuana, and committed two homicides in Virginia. Mahdi burglarized a home, stole a handgun, stole a car and a license plate, and left Virginia. Mahdi then committed two additional murders during his flight through the southeastern United States. In addition, Mahdi has engaged in the same or similar conduct while incarcerated in South Carolina, over and over again.

Further, Mahdi engaged in criminal conduct before he was ever incarcerated. In fact, he was placed on juvenile probation for his first series of crimes and continued to engage in criminal conduct, burglarizing a home and stealing firearms. After each incarceration, he committed even more violent offenses. While Mahdi was incarcerated he attacked guards and inmates. The record shows Mahdi has had an impact on each institution he has been detained in, not the opposite. Mahdi has not changed his conduct to avoid going back to a harsh prison environment, but engaged in more serious and violent offenses.

Additionally, Haney's attempt to blame all of Mahdi's criminal behavior on alleged undiagnosed or untreated mental illnesses or the failures of the criminal justice system would also have been impeached and is not credible. Mahdi informed Judge Newman he had no mental illnesses. Dr. Michael Cross also found Mahdi had no mental illnesses. The record shows Mahdi engaged in criminal activity such as stealing because he could and believed he would not get caught. Mahdi assaulted other individuals because it was in his own self-interest. Mahdi was not victimized in DJJ as Haney contends, but Mahdi victimized others including

inmates and guards and attempted to manipulate the juvenile prison system. Mahdi's actions over several days from Virginia, to North Carolina, to South Carolina, and to Florida, show he was not suffering from any mental illness.

Further, if Haney had testified at sentencing, the State would have brought out through him all of Mahdi's disciplinary violations in Virginia's DJJ and re-emphasized all of Mahdi's disciplinary violations in Virginia's adult DOC along with his numerous disciplinary violations in the South Carolina DOC. *Wong, supra.*

(The Virginia DJJ Records)

Additionally, had Mahdi's juvenile records been introduced as Mahdi alleges they should have been, Mahdi's long list of forty disciplinary violations in Virginia's DJJ would have been before Judge Newman. As previously stated, those records indicate Mahdi repeatedly assaulted other inmates, assaulted staff, destroyed property, led an escape attempt, and engaged in manipulative behavior. (Resp. Ex. 6). While there was some indication in these records that Mahdi was treated for depression while at DJJ, the records also indicate Mahdi later admitted he fabricated a suicidal gesture in order to gain additional privileges in DJJ, i.e. was attempting to manipulate the DJJ prison system. Furthermore, Mahdi failed to establish at the PCR hearing that these records would have changed any of his experts' opinions at sentencing. *Von Dohlen, supra.*

(The School Records and School Officials)

This Court carefully reviewed Mahdi's school records and the testimony of school officials. It must be first noted Judge Newman was familiar with Mahdi's school difficulties through the testimony of the forensic social worker and the exhibit chronically his school difficulties. Judge Newman was aware Mahdi's schooling was interrupted several times, Mahdi

had many absences, and his father pulled him out of school after the fifth grade to home school Mahdi, and there was no indication this had occurred. Judge Newman was also aware Mahdi had difficulty in reading throughout his school history. While the records show he was placed in special education, Mahdi was not mentally retarded but had an I.Q. of 118 and functioned on grade level or higher in all classes except reading, spelling, and writing. While the records indicate Mahdi was diagnosed as emotionally disturbed, and had some depressive symptoms at that time, the records also show Mahdi was placed in special education or classified as emotionally disturbed based in large part on his misconduct and aggressive behavior in school, including toward other students, and his inability to read. Judge Newman already knew of Mahdi's inability to read. Judge Newman was also already aware Mahdi had been committed to a psychiatric facility approximately eighteen months before for major depression, and Mahdi told the sentencing court at his guilty plea that he was not suffering from any mental illness. Further, the mitigating impact of these records is minimal given Dr. Cooper Lewter testified Mahdi should not have been in special education and this had a negative impact on Mahdi's school performance. Lawanda Burwell also testified she did not believe Mahdi should have been placed in special education. Importantly, the records also included negative things about Mahdi. Had Mahdi's school records been introduced or the school officials testified, further evidence of Mahdi's bad behavior would have been before Judge Newman, including Mahdi's misbehavior and aggressiveness and assaults on other children and resistance to authority. Furthermore, Mahdi failed to establish at the PCR hearing that his experts' opinions would have changed at sentencing if they had been provided these records. *Von Dohlen, supra*

(The Walter Carter Center Records)

While the Walter Carter Center records themselves would have been before Judge

Newman, Judge Newman already knew of Mahdi's commitment there, diagnosis, and length of stay. The records themselves detail Mahdi's disruptive and manipulative behavior. Mahdi assaulted other patients, attempted to escape, admitted he fabricated a child abuse claim, damaged property, and used profanity against staff of the hospital. Mahdi also threw furniture at hospital staff, falsely pulled a fire alarm, and threatened to suffocate a staff member with a pillow. These records also indicate Mahdi's anti-social behavior and conduct disorder. Mahdi's commitment to the Walter Carter Center, the reason for his commitment there, and his length of commitment was before Judge Newman, without the negative and damaging information contained in those records. Furthermore, Mahdi failed to establish at the PCR hearing that his experts' opinions would have changed if they had been provided with these records. *Von Dohlen, supra.*

Dr. Schwartz-Watts's and Dr. Myers's testimony

If Dr. Schwartz-Watts and Dr. Myers had testified at Mahdi's sentencing proceeding before Judge Newman, Schwartz-Watts's diagnosis of depression, reactive attachment disorder, paranoid personality disorder, and generalized anxiety disorder and Myers's diagnosis of major depression in childhood or adolescence and reactive attachment disorder would have been before the sentencing Court; however, Mahdi's commission of the Virginia drug dealer homicide would have been brought out before Judge Newman. Dr. Schwartz-Watts admitted she reviewed Dr. Martin's notes, and Mahdi told Martin he left Virginia because he was involved in a homicide there. This would have been devastating to the mitigation case. *Wong, supra.*

Furthermore, Dr. Schwartz-Watts's diagnosis of anxiety disorder at the time of this murder would have been impeached by the Solicitor. Dr. Schwartz-Watts's diagnosis that Mahdi had depression but was not suffering from it at the time of Myers's murder would have

been impeached by the State and contradicted by the evidence and testimony. Additionally, her diagnoses would have been contradicted by Mahdi's sworn testimony before Judge Newman during his guilty plea, and the testimony of Dr. Cross during the *Blair* hearings. (R. 1329-39, 1343-68, 125-40, 1339-43). Further, Dr. Schwartz-Watts admitted Mahdi's mental illnesses or personality disorders did not rise to the level of a statutory mitigator. Additionally, Dr. Myers's testimony regarding bad characteristics of Mahdi contained in the DJJ records, including conduct disorder, would have been brought out on cross-examination. Mahdi's previous diagnosis of intermittent explosive disorder and anti-social personality disorder in the Virginia DOC would also have been emphasized before Judge Newman with either of these two witnesses. Finally, both Dr. Schwartz-Watts and Dr. Meyers concurred in the diagnosis of Mahdi having anti-social personality disorder. This information would not have been helpful before Judge Newman.

Considering the evidence in aggravation, which was overwhelming, along with all the evidence in mitigation Mahdi alleges should have been presented, along with the aggravating evidence that would have almost certainly come in on cross-examination, rebuttal, or contained within the evidence itself, and the mitigation evidence presented at the sentencing hearing before Judge Newman, this Court finds there is no reasonable probability Judge Newman would have returned with a different sentence. *See Wong, supra; Seasr, supra; Strickland, supra; Rosemond, supra; Council, supra; Jones, supra.* Mahdi has failed to prove prejudice. *Id.* This ground must be dismissed with prejudice.

Ground 10(a)/11(a)(iv).

11(a)(iv) Counsel failed to assert that applicant's death sentence violates the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution due to Applicant's developmental deficits.

On this allegation, Applicant has failed to state a claim upon which relief may be granted. Assuming Mahdi is referring to his alleged "mental age" allegation in Ground

10(b)/11(b)[below], the record shows Mahdi was 21 years old at the time of the crime. *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183 (2005) (Eighth Amendment prohibits execution of those under the age of 18 at the time of the crime). The record also shows Mahdi is not mentally retarded. (See *Blair* hearing testimony and testimony of R&E evaluation).³⁷ *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242 (2001) (Eighth Amendment prohibits the execution of mentally retarded); *State v. Laney*, 367 S.C. 639, 627 S.E.2d 726 (2006); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003) (defining mental retardation). There is no testimony in the record that Mahdi was insane at the time of the crime, is insane now, or is incompetent to be executed. *Ford v. Wainwright*, 477 U.S. 399 (1986) (Eighth Amendment precludes the execution of one who is insane); *Singleton v. State*, 313 S.C. 75, 437 S.E.2d 53 (1993) (setting forth the standard for competency to be executed). Mahdi has failed to show he fits under any class of persons recognized by the United States Supreme Court or the South Carolina Supreme Court as being excluded from application of the death penalty. See *Atkins, supra*; *Roper, supra*; *Ford, supra*. Counsel could not have been ineffective in failing to object to his sentence on a ground not recognized by the law. The Court is unaware of any state or federal authority for such an objection by trial counsel. See e.g. *State v. Irick*, 320 S.W.3d 284, 297-98 (Tenn. 2010); *Mays v. State*, 318 S.W.3d 368, 379-80 (Tex. Crim. App. 2010); *Johnson v. State*, 27 So.3d 11, 26-27 (Fla. 2010). See also e.g. *Shisinday v. Quarterman*, 511 F.3d 514 (5th Cir. 2007); *In re Neville*, 440 F.3d 220, 221 (5th Cir. 2006) citing *In re Woods*, 155 Fed. Appx. 132, 136, 2005 WL 3087882, *3 (5th Cir. Nov. 17, 2005) (unpublished); *State v. Ketterer*, 111 Ohio St. 3d 70, 855 N.E.2d 48 (2006); *Matheney v. State*, 833 N.E.2d 454 (Ind. 2005); *Hall v. Brannan*, 284 Ga. 716, 670 S.E.2d 87 (2008); *Coleman v. State*, No. W2007-0267-CCA-R3-PD, 2010 WL

³⁷ Mahdi's I.Q. was tested twice, with scores of 108 at age fourteen and 118 at an earlier age (R. 1437-39). Mahdi introduced no other I.Q. scores at the PCR merits hearing and made no claim that he was mentally retarded.

118696 (Tenn. Crim. App. Jan 13, 2010) (unpublished).

Applicant has failed to show that he had, at the time of the murders, any mental impairment so severe that he is necessarily and categorically less morally culpable than those who are not mentally disabled. *Mays, supra*.

There is no merit to this ground factually. Counsel had Mahdi evaluated by order of the circuit court for competency. (R. 8-10). As a result of that examination, it was determined Mahdi had no mental illness and was not mentally retarded. (R. 131; Court's Exhibit 2). It was determined Mahdi was competent to stand trial. (R. 139-140). Mahdi was twenty-three years old at the time of his guilty plea, had obtained his GED, and had attended some community college. (R. 1346). Mahdi had been previously employed in mostly roofing and brick laying. (R. 1346). Mahdi denied ever having been treated for abuse of alcohol, drugs or for any mental disease. (R. 1346). Ms. Hammock testified that Mahdi had been hospitalized on one occasion as an adolescent, a voluntary admission to a mental health facility, and Mahdi was released. (R. 1747, 1756). Mahdi was competent to plead guilty. (R. 1342). He understood the charges he faced, including murder, and the legal consequences of a conviction, including the death penalty. (R. 1339-68). Mahdi denied any emotional or nervous problem that might prevent him from understanding what he was doing when he pled guilty. (R. 1347). Mahdi had a good understanding of the legal process and the legal system. (R. 1340-41).

Mahdi cannot show counsel was deficient in failing to object to the imposition of the death penalty against him for the above stated reason, given the law and this record, nor can he show prejudice under *Strickland* and *Wong*, because the law does not recognize Mahdi's contention and the record demonstrates Mahdi is educated, has an above average I.Q., is streetwise, was twenty-one years old at the time of the murder, and has a criminal mentality. Mahdi cannot show a reasonable probability that, had counsel objected to the sentence on the

asserted grounds, the objection would have been sustained and there would have been a different sentence. The record and credible evidence demonstrates that Mahdi does not have a juvenile mentality, if this is what Mahdi is referring to in this ground, but an adult criminal mentality and bad character. This ground must be dismissed with prejudice.

10(b)/11(b)

(10)(b) Applicant's death sentence violates the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution due to Applicant's developmental deficits.

11(b) At the time of the offenses, Applicant was developmentally impaired such that he had the "mental age" of a juvenile due to his atrocious background of deprivation, neglect, abuse, and institutionalization. The Cruel and Unusual Punishment Clause precludes the infliction of the death penalty upon him, just as it precludes execution of those under the age of 18 at the time of the offenses, because of these grave developmental deficits. See *Roper v. Simmons*, 543 U.S. 551 (2005).

There is no merit to this ground. First, this is a claim of trial court error, and a direct appeal issue that was not preserved for appellate review because there was no objection at sentencing,³⁸ not raised in the direct appeal, and, being a direct appeal claim, is not cognizable in a PCR action. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001)(citations omitted) ("Allegations of trial court error are not cognizable on PCR. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel."); *Drayton v. Evatt*, 312 S.C. 4, 430 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal cannot be raised in a PCR application absent a claim of ineffective assistance of counsel), citing *S.C. Code Ann. Section 17-27-20(b)* (1985); *Hyman v. State*, 278 S.C. 501, 299 S.E.2d 330 (1983); *Peeler v. State*, 277 S.C. 70, 283 S.E.2d 826 (1981); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975), also referencing *Cummings v. State*, 274 S.C. 26, 260 S.E.2d 187 (1979); *Ashley v. State*, 260 S.C. 436, 196 S.E.2d 501

³⁸ See *Mahdi v. State*, 383 S.C. 135, 678 S.E.2d 807 (2009).

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(1973); *Sellers v. Boone*, 261 S.C. 462, 200 S.E.2d 686 (1973). As a result, this ground is dismissed with prejudice.

Second, this ground was waived and abandoned at sentencing and on direct appeal. (See ROA & Brief of Appellant). *Parks v. Morris Homes Corp*, 245 S.C. 461, 471, 141 S.E.2d 129, 134 (1965) (litigant's failure to bring to the court's attention any perceived error amounts to a waiver of the issue). Applicant waived this alleged error by failing to bring it to the attention of the sentencing court or the S.C. Supreme Court in his appeal. See *Gibbs v. Kimbrell*, 311 S.C. 261, 267, 428 S.E.2d 725, 729 (Ct. App. 1993) (discussing waiver). As a result, this ground must be dismissed with prejudice.

Third, applicant has failed to state a claim upon which relief may be granted. The record shows Mahdi was twenty-one years old and not mentally retarded at the time of the crime. As set forth above, there is no evidence in the record that Mahdi was insane at the time of the crime, is insane now, or is not competent to be executed, nor that he fits under any class of persons recognized by the United States Supreme Court or the South Carolina Supreme Court as being excluded from application of the death penalty. This ground must be dismissed.

No federal or state authority would support such an objection by trial counsel. See e.g. *State v. Irick*, 320 S.W.3d 284, 297-98 (Tenn. 2010); *Mays v. State*, 318 S.W.3d 368, 379-80 (Tex. Crim. App. 2010); *Johnson v. State*, 27 So.3d 11, 26-27 (Fla. 2010). See also e.g. *Shisinday v. Quarterman*, 511 F.3d 514 (5th Cir. 2007); *In re Neville*, 440 F.3d 220, 221 (5th Cir. 2006), citing *In re Woods*, 155 Fed. Appx. 132, 136, 2005 WL 3087882, *3 (5th Cir. Nov. 17, 2005)(unpublished); *State v. Ketterer*, 111 Ohio ST. 3d 70, 855 N.E.2d 48 (2006); *Matheney v. State*, 833 N.E.2d 454 (Ind. 2005); *Hall v. Brannan*, 284 Ga. 716, 670 S.E.2d 87 (2008); *Coleman v. State*, No. W2007-0267-CCA-R3-PD, 2010 WL 118696 (Tenn. Crim. App. Jan 13, 2010)(unpublished). Furthermore, even if applicant could show he suffers from a mental illness,

this would not prevent his execution, where our Supreme Court has rejected a similar argument and held that a defendant found guilty but mentally ill may be sentenced to death. *State v. Weik*, 356 S.C. 76, 587 S.E.2d 683 (2002), *cert. denied* June 16, 2003; *State v. Wilson*, 306 S.C. 498, 413 S.E.2d 19 (1992).

The record also shows Mahdi knew and understood that use of illegal drugs or possession of a weapon would result in violation of his adult probation. (R. 1487-91). The record shows he chose to engage in such conduct anyway. (R. 1492-1511). Mahdi's crimes in Virginia, North Carolina, and South Carolina, his acts surrounding Myers's murder, and his conduct as a pretrial detainee (including his homemade handcuff key) reveal that he has above-average intelligence, is streetwise, and has a keen criminal mentality. Mahdi does not have a juvenile mentality, as alleged, but an adult criminal mentality and bad character.

Mahdi was evaluated by two psychiatric or psychological experts retained by trial/plea counsel (the defense). Both Dr. Thomas Martin, a psychiatrist, and Dr. Geoffrey McKee, a psychologist, found Mahdi had anti-social personality disorder, which is not a mental illness. Both mental health professionals found Mahdi was not suffering from any mental illness at the time he committed the offenses against Myers. Both testified at the PCR hearing that Mahdi was very intelligent. Neither testified that Mahdi was immature or had a "juvenile mentality." (PCR Tr. 508-61).

This Court had the opportunity to view the testimony of Dr. Martin and Dr. McKee and to judge their credibility. This Court finds their testimony regarding Mahdi's mentality to be credible.

Mahdi was also examined by Dr. Donna Schwartz-Watts prior to the PCR hearing. While Dr. Schwartz-Watts testified Mahdi's immaturity was cross-referenced in the records, she did not testify Mahdi had a "juvenile mentality" nor did she testify to what mental age Mahdi

was, nor his mentality at the time of Myers's murder. There is absolutely no evidence in the record Mahdi has a "juvenile mentality." Mahdi has failed to meet his burden of proof on this issue. *Butler, supra*.

Contrary to his assertion, the Virginia DJJ records reveal Mahdi had matured beyond his age, especially with regard to his criminal activities. As a teenager, Mahdi stated his friends were other fourteen and fifteen year olds, and he was a "leader among his peers," and was his "own person." (Va. DJJ Records MOO431). At the Virginia DJJ, Mahdi admitted his criminal behaviors involved a great deal of thought and planning. (Va. DJJ records). A counselor noted: "He described his current criminal charges in a very calculated, almost professional way that is alarming." (Va. DJJ records M000410). "He is developing and behaving like a teenager much older." (See Va. DJJ records M000410). Mahdi was described as a teenager with many negative attitudes toward authority, rules, limits, and rights and privileges of others. (See Va. DJJ records M00410).

While in the Virginia DJJ system, Mahdi planned an assault on another inmate and enlisted the support of other juveniles in this assault. (DJJ records M00425). The victim was injured in this assault. Mahdi exhibited a negative attitude with staff, and stated the attitude would continue until he got his way. Mahdi cursed staff profusely. (DJJ records M00425).

Mahdi was found age appropriate with regard to his maturity level during his intake evaluation. (See DJJ records M00418, line 4). Another record indicated that Mahdi's teachers should be aware that "he has demonstrated the capacity to plot, and carry out, apparently unprovoked assaults on peers. He requires extraordinarily close supervision." (See DJJ records M00426).

Mahdi was tested in 1994 when he was in the fourth grade and his overall level of functioning was at a mid-fourth grade level. At that time, his current level of educational

functioning fell in the average range. His mathematics equivalent yielded a grade equivalent of 5.8. Other tests showed his general information skills at a 6.8 grade level. Mahdi did struggle with reading during this time; however, psychological data revealed Mahdi's intellectual functioning was in the high average range. (See Brunswick County School Records).

Trial counsel testified at the PCR merits hearing, that Mahdi was very intelligent, recounting that Mahdi informed him that he had hatched a plan when he lived in Virginia whereby he would eliminate all other drug dealers in his area, resulting in a "false drought" of drugs. As a result, Mahdi would make more money selling drugs because everyone would have to come to him for the illegal product. Mahdi also related to trial counsel that he left Virginia because homicide detectives were closing in on him for a homicide committed in the Richmond, Virginia area. Trial counsel testified they had no problems communicating with Mahdi. Counsel testified Mahdi was calculating and intelligent in being able to disguise himself as someone else. Counsel related Mahdi impersonated a homeless person in Columbia in order to gain entrance into the Oliver Gospel Mission when the car he originally stole from Virginia broke down. Counsel related Mahdi was able to pretend to be a homosexual in order to accomplish the carjacking. Counsel related that Mahdi impersonated a police officer while in Florida, including investigating a crime reported by a citizen. Trial counsel did not believe Mahdi had a "juvenile mind" or mentality. (PCR Tr. 592-93, 603-11, 688-90). This Court had an opportunity to view counsel's testimony on this issue and judge their credibility accordingly. This Court finds counsel's testimony on this issue to be credible. This Court also finds counsel's testimony on this issue to be supported by the credible evidence in the record.

This Court finds Mahdi did not present any credible testimony or evidence on this issue, and therefore he failed to meet his burden of proof regarding this issue. *Butler, supra*. Mahdi has not convinced this Court by a preponderance of the evidence that he has a "juvenile mind" or

mentality. In fact, the credible evidence shows, Mahdi has an adult mentality, and an adult criminal mentality. This ground has no merit and must be dismissed with prejudice.

Ground 10(a)/11(a)(v):

11(a)(v) Counsel failed to assert that S.C. Code Section 16-3-20 is unconstitutional in that it automatically precludes jury sentencing following a guilty plea in violation of the Sixth, Eighth, and Fourteenth Amendments as addressed in *Ring v. Arizona*, 536 U.S. 584 (2002). Moreover, this statute forces a capital defendant to choose between his right to a jury trial and his right to present mitigating evidence, namely that he has accepted responsibility for the crime. While this issue has been rejected by state courts, see *State v. Downs*, 361 S.C. 141, 604 S.E.2d 377 (2004), it has not been reviewed by federal courts and counsel were thus ineffective in failing to adequately preserve the record for subsequent litigation.

In this ground Mahdi alleges trial counsel was ineffective for failing to assert that S.C. Code Section Ann. Section 16-3-20 is unconstitutional in that it automatically precludes jury sentencing following a guilty plea. There is no merit to this ground for several reasons.

The South Carolina Supreme Court has, on several occasions, rejected the claim that the statute is unconstitutional. *State v. Inman*, Shearhouse Advance Sheets Opinion 27081 (filed December 28, 2011); *State v. Allen*, 386 S.C. 93, 697 S.E.2d 21 (2009), cert. denied; *State v. Crisp*, 362 S.C. 412, 608 S.E.2d 429 (2005); *State v. Downs*, 361 S.C. 141, 604 S.E.2d 377 (2004); *State v. Wood*, 362 S.C. 135, 607 S.E.2d 57 (2004).³⁹ Therefore, counsel could not have been deficient in failing to preserve an issue that has no merit under the law. Mahdi has failed to show any prejudice because any such objection would have been overruled by Judge Newman and our state Supreme Court would have found this issue to be without any merit as it has on several occasions.

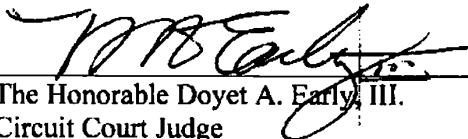
Furthermore, counsel testified at the PCR hearing Mahdi did not want to plead guilty and

³⁹ The South Carolina Supreme Court recently recognized this issue has no merit and has been repeatedly rejected by the Court. *State v. Inman*, Shearhouse Advance Sheets, Opinion No. 27081 (Filed December 28, 2011).

have the jury sentence him. (PCR Tr. 682-84). Mahdi had selected 12 jurors and 4 alternates to hear his trial and decide his sentence. Mahdi decided to plead guilty because Mahdi believed he had a better chance of receiving a life sentence from Judge Newman than from the jury he had selected. (PCR Tr. 682-84). As counsel correctly testified at the PCR hearing, the jury, composed of ordinary citizens, would not have been accustomed to seeing murders, as Judge Newman, an experienced circuit judge, and when confronted with the brutality of Mahdi's murder of Myers, and the videotape of the murder in North Carolina and its brutality, would in all likelihood have sentenced Mahdi to death for the murder of Myers. Additionally, the jury would have heard Mahdi's extensive criminal record, both adult and juvenile; and, the jury would have heard Mahdi's horrible prison behavior record while in the Virginia DJJ, the Virginia DOC, and the South Carolina DOC. This Court had the opportunity to view the witnesses and hear their testimony on this issue. This Court finds trial counsel's testimony on these issues to be credible. Mahdi offered no testimony to contradict trial counsel's testimony on these issues. This Court finds based on trial counsel's credible testimony and the record in this case, Mahdi wanted to be sentenced by Judge Newman, not the jury he had initially selected and impaneled. Therefore, it would have made no sense for Mahdi to have objected to the constitutionality of the statute and insist on pleading guilty and being sentenced by the jury, and counsel was not ineffective in failing to object to the constitutionality of *Section 16-3-20*. Mahdi has failed to show deficient performance or prejudice on the part of counsel in this regard. *Strickland, supra*. This ground must be dismissed with prejudice.

VI. CONCLUSION

For the above stated reasons, the application for post-conviction relief is denied and dismissed with prejudice. Applicant Mahdi is remanded to the custody of Respondent for the completion and carrying out of his sentences.


The Honorable Doyet A. Early, III.
Circuit Court Judge
1st Judicial Circuit

August 18, 2014

SW

STATE OF VIRGINIA

)

AFFIDAVIT

)

COUNTY OF BRUNSWICK

)

James R. Woodley, being first duly sworn, swears and affirms that the following is true to the best of his knowledge:

1. I was born in Brunswick County, Virginia, and have lived in the county all my life. Brunswick County is in central southern Virginia and is a rural area with only small towns. I worked in law enforcement for 34 years and served as Sheriff of the County from 1991 to 2007.

2. As I was growing up, I knew Nathan and Nancy Burwell. Mr. Burwell taught agriculture at the high school and college. Mrs. Burwell also taught at the high school. The two of them had six children.

3. I went to school and played sports with Carson and Nathan Burwell. My younger brother was good friends with their brother, Thomas, who is now known as Shareef Mahdi. My father-in-law lived near the Burwell's and he was an excellent cook, who also had an ability to improvise and stretch meals to feed unexpected guests. The Burwell family, all eight of them, frequently dropped by at dinner time he would find a way to feed them all.

4. I did not know Thomas as well as I did Carson and Nathan growing up, but he seemed easy going and relatively normal until he was sent to integrated schools when state law still allowed voluntary rather than mandatory integration. This experience seemed to change him. I recall that he had some conflicts there. After that time he went into the military. When he returned to Brunswick County, he became a Muslim and changed his name to Shareef Mahdi

5. After her retirement, Mrs. Burwell would often talk about writing a book and taking acting classes in New York City. I always suspected that she made a lot of that up as she is the kind of person I use the phrase "all the lights are on but nobody's home" to describe. Her sons generally are well-educated and dress well, but don't really work productively. Nathan, Jr., still lives with his mother even though he is in his 60's. Carson is a barber. Shareef never really held down any steady job.

6. I recall when Shareef got married. His wife was much younger than him. He always seemed dominant and demanding with her and women in general. He had no respect for women including his mother, Nancy Burwell. I recall an instance when Mrs. Burwell came to me expressing concerns that he was "sick" and saying that he needed help. I suspected at the time that he had been abusive to her and asked her about it. She showed me bruises on her legs and thighs and told me that he had beaten her with the buckle end of a belt while his sons, Saleem and Mikal, watching. Mrs. Burwell did not want to press charges, but wanted to get help for Shareef. I arrested him and referred him for mental health treatment. Following the evaluation, which included Sharon Pond of Southside Community Services, he was returned to the jail and charges were dismissed because Mrs. Burwell



1

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refused to testify.

7. Around this same time, I learned, mostly directly from Shareef and Mrs. Burwell, that he had kidnaped and beaten his wife after she left him. Shareef took Saleem and Mikal to Petersburg to visit their mother. He used a pretense of taking her and the boys to get ice cream or something, but once she got in the pickup truck Shareef told her he was going to take her back to Lawrenceville and kill her. Once they were back at the house in Brodnax, Shareef and his wife remained outside while the boys went in the house with their grandmother and a female relative visiting from Maryland. Mrs. Burwell, the other woman, and the boys heard screaming and ran outside to see Shareef trying to kill the boys' mother. I am not sure how her escape happened exactly, but Shareef's wife managed to escape and Mrs. Burwell's visiting relative drove her back to Petersburg. Mrs. Burwell begged Shareef's wife not to call the police or press charges. When I learned of this incident later, I had a deputy to contact Mrs. Mahdi. She declined to press charges and indicated that she just wanted to put the incident, as well as Shareef and the boys behind her.

8. I also recall occasions when Shareef threw a brick at his sister Kathy through the door of the house. On another occasion, he damaged his sister Loretta's car and put a cinder block through her car windows.

9. One of the reasons that Shareef is estranged from his brothers and sisters is that Mrs. Burwell seemed to favor him over the other children. This may have been because Shareef stayed with her and cared for his father during his extended illness prior to his death. Whatever the reason, after Shareef's wife left him, Mrs. Burwell built a modular home on her property in Brodnax for Shareef and the boys and she paid all the bills and provided food for them.

10. One of the few jobs that Shareef did hold for a while was as a substitute teacher in the Brunswick County Schools. He was teaching even after he took his own sons out of school saying that he would home school them because he believed that the schools were not good enough for his children. I personally made a complaint to the Brunswick County Department of Social Services and the School Board because I knew Shareef was not actually home schooling the boys. He was not even home to do so as he was working as a substitute teacher during part of that time period. Nothing was ever done by Social Services or the School Board, except that Shareef did end up losing his job as a substitute teacher.

11. I recall the incident when Shareef jumped into the all white swimming pool at the country club in Lawrenceville and refused to get out. He was being devilish and trying to make a point that he should be allowed to swim in the pool.

12. I recall the "standoff" incident on June 30, 1998, involving Shareef and Mikal Mahdi. This event was big news in our small community. The news article of the event is attached.

13. I testified about this event for the prosecution in Mikal's capital sentencing trial in December 2006. During the incident, we never saw any guns and were never told that they had guns inside the

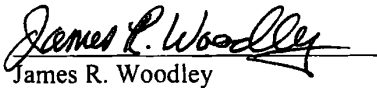
house, but I believed they probably did have guns. I tried to talk to Shareef who had an attitude like "I'm the big dog." The whole thing seemed like a joke to him. I allowed his mother and a cousin to approach the house and talk with him. About four hours into the standoff, a guy with long braided hair came out of the house. He said he had been asleep on the couch. Because we were in a standoff, I called in the Virginia State Police to get assistance from their negotiator, who tried to negotiate with Shareef using a loud speaker. They asked him to answer the phone and talk with him but he threw the phone out the window. The State Police sent an armored truck and their full tactical team in to surround the home, but ultimately determined that they would not enter the home because Mikal had been charged only with misdemeanors. The incident ended when I entered the home with my team using a battering ram to knock the front door down. There was no resistance to the entry. Shareef was upstairs then. Mikal was in a back room. No one was even watching the entrance to the house. There were no weapons in the house.

14. As Mikal was apprehended he said "I'm going to kill a cop before I die." He probably got this from his father who had no respect for authority and who had begun the standoff that day.

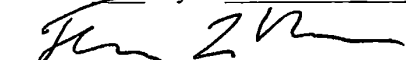
15. I was not interviewed by Mikal Mahdi's defense lawyers or anyone on his behalf prior to testifying in his trial. If I had been interviewed, I would have provided the information that I have provided here.

16. I was surprised that the only member of Mikal Mahdi's family present in court during his capital trial was his grandmother, Nancy Burwell.

Further affiant sayeth naught.


James R. Woodley

Sworn to and subscribed before
me this 5th day of March, 2011.


NOTARY PUBLIC FOR VIRGINIA SC - Signed in
My Commission Expires: 1/31/15 Richmond County

Sheriff's move bold in holdout

By JERRY MATTERS
News Editor

MAYFIELD — By storming through the front door of a Mayfield residence and arresting the man and son who were barricaded inside, Brunswick County Sheriff's Officers ended an eight-hour standoff, but began a firestorm of citizen reaction.

Police used a battering ram to gain entry to the home of Shareef Mahdi about 8:30 p.m. on June 30. No one was injured in the arrest.

Mahdi, 45, and his 15-year-old son were not armed, but police had reason to believe weapons were in the house.

Mahdi's son had been arrested earlier this year in Mecklenburg County for breaking and entering and possession of stolen goods. One of the stolen goods was a .44 magnum handgun that was never recovered, said Brunswick County Sheriff James Woodley.

Neither Mahdi nor his son appeared in court at Mecklenburg on the day the young man was to be sentenced, so Brunswick County deputies arrived at Mahdi's residence about noon to

serve arrest papers. The son had been released in the custody of his father.

Father and son backed into the house and refused to comply with police demands that they come out and surrender.

"While I was standing at the door asking them to come out, the boy cursed and threw some liquid out at me through the window," said Woodley.

A state tactical team was called in to assist as state, county and Lawrenceville town police surrounded the house. Negotiations were attempted by three state mediators through a loudspeaker.

Again and again the mediators asked Mahdi to answer the phone which they rang through a linkup. Instead, Mahdi would at times open a window to shout what sounded like religious slogans.

Finally, in response to a mediator's call, he threw the telephone out the window.

As the afternoon wore on, a throng of neighbors lined the houses and yards on the other side



READY FOR ANYTHING. State police are preparing for a possible entry into a Mayfield house where a man and his son are barricaded inside.

of Route 46.

None of the neighbors wanted their names used, but several were eager to talk to the press about what was going on. Some described Mahdi as "a disturbed man who had every opportunity to do well."

One neighbor said that Mahdi physically abused his mother, Nancy Burwell, a retired

Brunswick County schoolteacher who lived with him.

Mahdi was, however, described as a person who could be pleasant "when he wanted to be," according to a Mayfield man who said Mahdi grew up with his son.

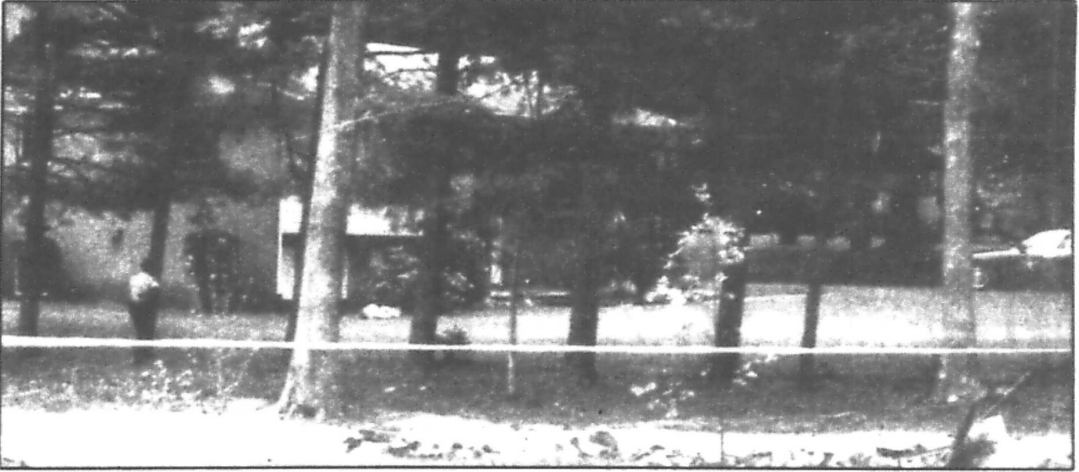
"Sheriff Woodley grew up with Shareef," one woman said. "We all grew up together. It's real pathetic because he had the best.

This is something you would see in a ghetto, not in Brunswick County."

The house Mahdi had barricaded himself and his son in belonged to Burwell, who had taken refuge in a neighbor's house.

Some neighbors grew angrier at

■ See **HOLDOUT**, Page 3



A LONG WAIT. This Brunswick County officer has been standing for hours watching the residence of Shareef Mahdi where, with his son, he is holding off a police arrest.

Holdout leads to arrest

Continued From Page 1

police, however, when Mahdi yelled out the window, apparently to talk to a neighbor he knew, who was then stopped by police from taking part in the negotiations.

Woodley said he tried every means to get Mahdi to talk. At one point, the sheriff walked with Mahdi's cousin up to the window in hopes that he would speak to her.

"She had talked to him before. I had wanted to give him every opportunity to surrender peacefully," Woodley said.

At about 8:30 p.m., Woodley decided the police would have to risk going into the house.

"In Brunswick County, I don't have the manpower to watch the house 24 hours a day and wait for him to come out," Woodley said.

"I used all resources to bring him out peacefully, but because it was getting dark and we were going in on their turf, I had to be concerned about the safety of the police officers and the public.

"One of the concerns I had was with the son who was arrested and convicted for breaking and entering and stealing guns. This young man said that he would kill a cop before he died. We could

not simply back off. This is why we provided every offer for him to surrender peacefully. I went in with my deputies. I would never ask them to do something I would not do. But I had to take responsibility for the situation."

The state tactical team, a highly trained and equipped police unit, secured the perimeter. Only the sheriff, his deputies and Lawrenceville police officers entered the building, which was dark because power had been shut off about 7 p.m. In three rapid strokes of the battering ram, the door was burst off its hinges.

Using a shield in front as protection, the officers entered and subdued Mahdi and his son within seconds.

Mahdi was taken to Mecklenburg County jail where he is being held without bond for failure to appear in court and obstruction in justice. His son was taken to a secure juvenile detention facility in Danville.

Still, the incident exacerbated tensions between police and citizens. An Alberta woman was alarmed that the highway was not closed while she drove past with her young child.

"The police were all hunched down hiding behind trees and an armored truck as if ready for a major shootout and people are

driving down the road right past the house," she said.

Mahdi's residence was within 30 yards of Route 46.

"The police," she concluded, "didn't take care of public safety."

Woodley explained that no weapon had been seen brandished by those inside.

"If we would have seen a weapon, we would have had VDOT (Virginia Department of Transportation) shut down the road. VDOT was on standby. You cannot just shut down a major highway. It's not as if traffic could be as easily re-routed there as it would have been in town."

The state tactical team did not go in but not because there was some disagreement with the sheriff on entering the building.

"We advise local law enforcement officials on resources available but they are the lead agency and the local sheriff makes the decisions," said state police spokesman Tammy Van Dame.

"We are only there to provide assistance and advise. And our advisement does not include any one way to do things. Every hostage or siege situation is different," Van Dame said.

As for the man who had to make the decision, the event was summed up this way:

"In this situation," Woodley said, "you are darned if you do and darned if you don't."



STATE OF VIRGINIA)

CITY OF RICHMOND)

AFFIDAVIT

Sandra Wynn Burwell, being first duly sworn, swears and affirms that the following is true to the best of her knowledge:

I am Mikal Mahdi's aunt. I was married to his uncle, Nathan Burwell, Jr., from 1972 to 1983. I currently live in Richmond, Virginia and I own a driver training school.

I grew up on a farm in Brunswick County. Nathan Burwell, Sr., and his wife, Nancy, were highly regarded in the black community in and around Lawrenceville because of their education. Nancy Burwell's grandfather was white and Nancy would often try to pass for white. Even after I married her son, she was "kind of snooty" to me, as I think she did not like me because my skin is too dark for her liking.

My former father-in-law, Nathan, was a sweet man. After he finished a day of teaching agriculture he went out to help black-owned Brunswick County farmers, and consequently was rarely home for dinner or to spend time with his children. Mr. Burwell was married prior to his marriage to Nancy, but his wife and baby died during childbirth. From my understanding, he married Nancy only after getting her pregnant and pretty much being forced by her father to marry her.

Even though all of the Burwell children are intelligent and well-educated, none of the males have accomplished much on their own. The men in the family were supported by their spouses, as I supported Nathan, Jr., during our marriage.

Thomas Burwell, who later changed his name to Shareef Mahdi, was my ex-husband, Nathan's, younger brother. His problems started when his parents decided to send him to an all white school under "Freedom of Choice" when integration was voluntary. Most of the black students that entered the all white schools during that period were from the upper echelons of the black community.

I recall an incident that occurred when Shareef was in high school, during which he stood up for himself, as well as the other black students. Because of this he received repercussions. The black community and Shareef's parents did not support him even though he was right.

Sometime after that incident, Shareef was sent to live with a paternal uncle and aunt in New Jersey, who had no children of their own. He eventually had to leave their home because of his behavior. It was not long after that that Shareef decided to join the Marines.

After he returned to Brunswick County after the Marines, Shareef joined the Nation of Islam and married Tilea Artis. After the marriage, Shareef brought her back to Lawrenceville and they

moved in with Mr. and Mrs. Burwell. They lived in the one-bedroom finished basement. Tilea would come upstairs basically to eat. Tilea was very timid and difficult to engage in conversation. She would hardly talk at all.

Shareef was very domineering with her. While Tilea never spoke of her unhappiness to anyone in the family, she seemed to be making moves that would provide her with a way out of her situation. She managed to finish high school or get her GED. After she had Mikal, Tilea enrolled in a nursing program in Junior college. After she completed the program, she convinced Shareef, who had no job, that the best plan would be for her to join the military. When she came home, she informed Shareef that she wanted a divorce and had only returned in order to get the children. Shareef would not allow this and ultimately tried to kill Tilea with their sons watching.

Shareef constantly told Mikal and Saleem that their mother abandoned them and didn't love them.

I recall when Mikal was first sent to jail as a juvenile. I was in the courtroom that day. After being released, he was to report to his probation officer as scheduled. He did not report to the probation officer as scheduled. He was a juvenile and had no way of getting there. And he was under his father's custody. When he did not report to the probation officer the authorities picked him up at his house and that's when the standoff with police occurred. I felt the failure to report was not his fault. He had no driver's license, no car, no money, and no means of getting there.

I wanted to visit Mikal when he was in confinement, but Shareef had to approve his visitors and would not allow me to visit. I felt so bad for Mikal that I even considered adopting him after that.

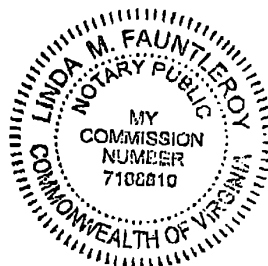
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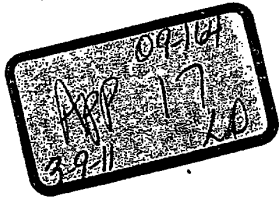

Sandra Wynn Burwell

Sworn to and subscribed before
me this 4th day of MARCH, 2011.


NOTARY PUBLIC FOR VIRGINIA

My commission Expires 6-30-2011





M000063

(APPENDIX Y)

BRUNSWICK COUNTY PUBLIC SCHOOLS
ELIGIBILITY MINUTES (4-6-94)

STUDENT: Mikal Mahdi	SS NO.: Redacted
SCHOOL: Totaro Elementary	DOB: Redacted
PARENTS: Mr. Shareef Mahdi	GRADE: Fourth
ADDRESS: Redacted	SPECIAL PROGRAMS:
Lawrenceville, Virginia	Emotionally Disabled
23868	
PHONE: Redacted	

EVIDENCE OF DELIBERATIONS: The following reports were presented by school personnel representing the discipline providing the assessment components. The major points of discussion were:

MEDICAL: Dr. Etrie examined Mikal Mahdi on March 17, 1994. Vision was 20/20 bilaterally without glasses while hearing was at 25 db bilaterally for the frequencies of 250-4000 htz. Dr. Etrie indicated that Mikal was overweight and anemic the day of the exam. All other medical systems were within normal limits.

PSYCHOLOGICAL: Mr. A.J. Veca, school psychologist, stated that Mikal was initially non-compliant, but warmed up as time ensued. Once again, Mikal was explained the purpose of assessment and then put forth excellent effort. The Weschler Intelligence Scale for Children-III was administered with scores as follows: Verbal 114, Performance 119, and Full Scale 118. All subtest scores ranged from 10-19. The Bender Gestalt Test revealed factors for psychological blocking and characteristics of children who present academic problems, particularly in language arts. Projectives revealed depressive and victimization themes, feelings of helplessness, withdrawal, denial, and lack of self-esteem.

SOCIOCULTURAL: Mikal is the youngest of two children born to Shareef and Vera Mahdi. Mr./Ms. Mahdi are separated with the children residing with Mr. Mahdi in Lawrenceville, Virginia. Mr. Mahdi is a high school graduate, completed two years of college, and currently is employed as a substitute teacher with Brunswick County Public Schools. Ms. Mahdi completed high school, has two years of college, and currently resides and works in Richmond, Virginia. Mr. Mahdi and children reside with the paternal grandmother in a three-bedroom brick home near the city limits of Lawrenceville, Virginia. The Mahdi family has numerous educational resources such as various books, magazines, television, radio, etc. Mr. Mahdi stated there were no problems during the pregnancy. Developmental milestones were achieved at age appropriate times. Mr. Mahdi did indicate that Mikal had difficulty during early childhood with repeated ear infections (age 3-6 years). Mr. Mahdi feels that Mikal's main difficulty is with reading and the frustration it causes with other academics.

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EDUCATIONAL: A review of Mikal's Cumulative Folder revealed that he attended Sister Clare Mohammed School in Richmond, Virginia for kindergarten. Mikal attended the first grade at Totaro Elementary and then transferred back to Richmond City Public Schools for the second grade. Mikal transferred to Baltimore City Public Schools for grade three with transfer back to Totaro Elementary in September 1993. Ms. Janet Roberts, educational diagnostician, assessed Mikal on two occasions. During the first day, Mikal was non-compliant for assessment. On the second day, Mikal was explained the essence of assessment and put forth excellent effort. The Peabody Individual Achievement Test and Kaufman Test of Educational Achievement were administered with results as follows: (1) General information skills 6.8 grade level, (2) Reading skills 3.3 grade level, (3) Math 5.6 grade level, and (4) Spelling 3.3 grade level. Mikal used contextual and pictorial clues to assist him in the area of comprehension. Some letter substitutions were noted in spelling such as m/n and m/w. Mikal also transposed letters within words and demonstrated difficulty with consonant clusters and digraphs. A sample of Mikal's written expression revealed similar spelling errors as well as difficulties with capitalization, run on sentences, and punctuation. In math, Mikal demonstrated knowledge of basic addition, subtraction, multiplication, and division. Mikal also computed problems that required addition with regrouping and multiplication of three and four digit numbers by a one digit number.

ED REPORT: Ms. Carole Wilson, teacher of LD/ED, observed Mikal during various academic classes and requested of his academic teacher to complete the Burk's Behavior Rating Scale. Periodically, Mikal will refuse to complete any classwork. This could be perceived as a facade to prevent frustration incurred with classwork. Recently, Mikal's attitude about completing classwork has improved and he seeks the instructor's assistance when encountering frustration with academics. Ms. Lucas, classroom teacher, stated that she uses alternative measures in the classroom to accommodate Mikal's difficulty with reading and related content. Results of the Burk's revealed very significant factors for poor impulse control, poor anger control, and excessive resistance.

SUMMARY STATEMENT:

Medical data revealed that vision, hearing, and other medical systems were within normal limits. Dr. Etrie did indicate that Mikal was overweight and anemic for his height and weight. Sociocultural data revealed that both parents are high school graduates with two years of college each. The parents are currently separated with Mikal and his older brother being reared by Mr. Mahdi. Ms. Mahdi currently lives and works in Richmond, Virginia. Mr. Mahdi sees Mikal having frustrations with reading and its effect on other academic areas. Educational data revealed that Mikal had general information skills at the 6.3 grade level. Contextual and pictorial clues were used as

improve reading comprehension skills. Transpositions were noted in the spelling sample. Written expression samples revealed difficulty with capitalization, run on sentences, and punctuation. Psychological data revealed that Mikal's intellectual functioning falls in the high average range. Extreme strengths were noted in subtest areas such as block design and digit span. Projectives revealed difficulty with feelings of helplessness, withdrawal, and lack of self-esteem. The ED Report revealed Mikal's inconsistency in attempting classroom assignments. Ms. Lucas, classroom teacher, has modified classroom intervention strategies to coax Mikal into completing assignments and has established rapport with him. Results of the Burk's Behavior Rating Scale revealed difficulty with poor impulse control, poor anger control, and excessive resistance.

DESCRIPTION OF ELIGIBILITY COMMITTEE ACTION STIPULATING TYPE AND QUANTITY OF SERVICES NEEDED: The Eligibility Committee found Mikal Mahdi eligible for the emotionally disabled program with recommended assistance in the area of reading. Furthermore, the Committee recommended of Mr. Mahdi to continue counseling sessions for Mikal through Brunswick County Mental Health.

LEA PERSONNEL AGREEING OR DISAGREEING WITH ELIGIBILITY STATEMENT SUMMARY AND COMMITTEE ACTION. Please indicate with a check mark for agreement or disagreement. If disagreement, the LEA member must submit in writing a dissenting opinion before exiting the meeting.

AGREE	DISAGREE	NAME/POSITION	DATE
☒	☐	Lernwood Cohen / Asst. P.M.	4-6-94
☒	☐	Janet P. Roberts / Educational Diagnostician	4-6-94
☒	☐	Joshie Stephens / School Nurse	4-6-94
☒	☐	Christie J. Sunday / Classroom Teacher	4-6-94
☒	☐	Beverly H. White / Guidance Counselor	4-6-94
☒	☐	Bob R. Brown / Director of Pupil Personnel	4-6-94
☒	☐	Cathy Wilson / 3rd Grade Teacher	4-6-94
☒	☐	Arlene School Psych	4-6-94

OTHER PARTIES PRESENT: (NAME AND POSTION)

(1) Sharon Mahdi / Father (2) _____
 (3) _____ (4) _____

**AN IEP IS DUE ON THE ABOVE MENTIONED STUDENT TO THE DEPARTMENT OF PUPIL PERSONNEL SERVICES BY 4-29-94.

BRUNSWICK COUNTY PUBLIC SCHOOLS
ED OBSERVATION FORM

Name Mikal Mahdi DATE 4/6/94
Observer C. Wilson L.D. Reours TIME 9:45 A.M.
Setting Homeroom Class SCHOOL Totaro

Incident: (Describe in detail) Mikal was observed during
testing for the ITBS. He was gazing around the
classroom. He would look at his test booklet and
flip through the pages. Then he would pick up
his pencil and mark a few answers. This was his
pattern throughout this observer's presence.

On the Burks' Rating Scale Mikal scored "very
significant." in excessive self-blame, poor impulse
control, and excessive resistance. Mikal has also
exhibited periods of extreme sadness at times.

Interpretation: Mikal appears to be unable to cope
with these feelings of low self-esteem. This makes
him unable to function and effectively learn
in school.

BRUNSWICK COUNTY PUBLIC SCHOOLS
ED OBSERVATION FORM

Name Mikal Mahdi DATE 4/6/94
 Observer C. Wilson LD Resource TIME 9:45 A.M.
 Setting Homeroom Class SCHOOL Totaro

Incident: (Describe in detail) Mikal was observed during testing for the ITBS. He was gazing around the classroom. He would look at his test booklet and flip through the pages. Then he would pick up his pencil and mark a few answers. This was his pattern throughout this observer's presence.

On the Burks' Rating Scale Mikal scored "very significant" in excessive self-blame, poor impulse control, and excessive resistance. Mikal has also exhibited periods of extreme sadness at times.

Interpretation: Mikal appears to be unable to cope with these feelings of low self-esteem. This makes him unable to function and effectively learn in school.

*Nicholas Cooper-Lewter, MSW, PHD, LISW-CP
Cooper-Lewter Consulting LLC*

Mikal Deen Mahdi Social History Assessment

Defendant: Mikal Deen Mahdi Interviewed

DOB: Redacted

POB: Petersburg, Virginia

Ethnicity/Race: African American

County: Petersburg

Location: Crime- SC; Incarcerated- Broad River, Columbia, SC

Vital Statistics Reviewed

Birth Certificate

School Records Reviewed

School Records – Henrico County Schools (Elementary)

School Records – Baltimore County Schools (Elementary)

School Records -- Overby Sheppard – Richmond Public Schools

Certificate of Award for Academic Achievement – Baltimore/Scotts Branch Elementary

Certificate for Outstanding Achievement in Art – Baltimore/Scotts Branch Elementary

Brunswick County Public Schools Lawrenceville Virginia

Commonwealth of Virginia Department of Correctional Education - Hanover

Employment History

Credit History

Military Records Reviewed

Not Accepted by Marines

Arrest/Jail Records Reviewed

Incident Report Regarding Vandalism of Car

Court Record – Felonious Assault

Court record – Break and Enter

Crutchfield Statement

Brunswick County Sheriff's Office Consent to Search



Parole/Probation and Prison Records Reviewed

SCDC Grievance and Discovery Records

Juvenile Records Reviewed

Virginia Department of Corrections

DJJ Reception & Evaluation

Virginia DJJ Records

Kembridge Youth Development System Records

Virginia DJJ Correspondence

120 Wildewood Park Dr., Columbia, SC 29223

A004177

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Mikal Deen Mahdi Social History Assessment

Medical Records Reviewed

Brunswick County Public School Sociocultural Report
DHMH Walter P. Carter Center Baltimore, Maryland
Virginia Department of Youth and Family Services
VA Documents Mental Health Screening
SC Department of Mental Health

Media Records

News Article regarding Police Standoff

Additional Records Reviewed

Court Records – Obstruction of Justice (Shareef Mahdi)
Psychological Records (Shareef Mahdi)
Criminal Court Records (Shareef Mahdi)
Military Records (Shareef Mahdi)
VA Hospital Records (Shareef Mahdi)
McGuire VA Medical Center Records (Shareef Mahdi)
Miscellaneous Information (Shareef Mahdi)
School Records – Brunswick Elementary and High School (Shareef Mahdi)
School Records (Saleem Mahdi)
Job Corps Records (Saleem Mahdi)

Immediate Family

MOTHER: Vera (Tilea) Annette Artis (Maiden Name) Interviewed

FATHER: Shareef Mahdi Interviewed

Carson Burwell – Paternal Uncle Interviewed
Lawanda Green Burwell – Wife of Paternal Uncle Interviewed
Frances Reid – Maternal Aunt Interviewed
Rose Gupton – Maternal Aunt Interviewed
Sophia Artis Gee – Maternal Aunt Interviewed
Sandra Wynn Burwell – Paternal Aunt by Marriage Interviewed
Deborah Grey, LCSW – Interviewed Paternal Grandmother Nancy Burwell Interviewed

Teacher's, Family and Friends

Pastor Myra Harris – Former Elementary School Teacher Interviewed
Carol Wilson -- Learning Disability Teacher Totaro Elem. School 4th/5th grades. Interviewed

Community and Demographic Profiles Reviewed:

Lawrenceville, Virginia (Including Saint Paul College)
Richmond, Virginia
Petersburg, Virginia
Baltimore, Maryland

Mikal Deen Mahdi Social History Assessment

SUMMARY OF FINDINGS

Mikal Deen Mahdi

I examined the life history of Mikal Deen Mahdi until his release from Wallens Ridge, Virginia.

I found evidence that Mikal's social history paints a picture of emotionally damaging experiences of severe "unpredictable" repeated losses and destabilizing "unexplained" repeated changes at key developmental times in his childhood.

Among the most damaging experiences were the abandonment by his mother around the age of five and the persistent disregard for Mikal's emotional needs for comfort, affection, and physical needs by his father. These risk factors were made worse by inter-generational alcoholism, major depressions, domestic violence, interpersonal brutality, child molestation, rape and bitter resentments about unfair issues of race.

Family and Cultural Context:

Mikal was born into an extended family of fragile people who were often overwhelmed by their efforts to find acceptance in society, especially in light of racial and socioeconomic issues. Beyond racial necessities, Mikal's extended and immediate family had their own traumas and damaged pasts, which impacted on their abilities to properly care for Mikal.

The Greatest Love and Loss in Mikal's Early Years – Age 5 Mother's Abandonment.

*"Exposure to trauma causes a rupture, a possible regression, and a state of being 'stuck' ...
(Danieli, 1998)*

*"Children under 8 years old tend to interpret most events in relation to the self.
(Black & Newman, 2000)*

Mikal's mother's "abandonment" of him and his brother overwhelmed a developmentally fragile Mikal (between four and almost five years of age). Too young to understand the loss of his mother, Mikal was devastated and yearned for his mother's return. The impact of these severe losses at key developmental times in Mikal's life was increased by the emotional instability and economic difficulties of his father. His father's unstable state of mind and inability to provide financially could be characterized as "a lack of regard for Mikal's emotional needs for comfort and affection." Too often, the physical needs of Mikal were left to Mikal. For example, Mikal from the ages of 5-8 years old was virtually unsupervised and responsible for taking care of, and figuring out life (comforting) himself. He was physically and emotionally isolated by a severely and chronically depressed father who would slide into suicidal ideation and rants of rage. This resulted in failed attempts to provide the resources to overcome Mikal's unresolved grief, and to create an environment of emotional safety and uplifting nurturance expected in healthy parenting. The frequent repeated changes that followed would not give Mikal

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time to resolve his sense of loss and form new relationships.

The four almost five year old Mikal felt “robbed” of love from those who were supposed to love him (i.e. his mother and father) . He yearned for a solution to the chaos and trauma of witnessing abuse (e.g. beatings, and seeing his father pull his mother’s hair out). He went through predictable “changes,” of feeling angry, becoming hypervigilant, numb (ambivalent), avoidant and resistant to comforting while yearning and searching for what would bring his mother back and cement the family back together.

At age 8, Mikal was surprised to find his mother was alive, but witnessed the kidnapping and possible “attempted murder” of his mother by his father. Mikal was further traumatized by the beating of his grandmother by her son, his father for “helping his mother escape.”

Emotionally overwhelmed, Mikal started putting up a barrier to others, especially adults (and authority figures). He tried hard to please his father and gain his father’s respect. He tried to protect his mother, and keep the family together. Traumatically, Mikal was unable to protect his mother, keep the family together or save himself from the pain of feeling “stupid” in the process. At the Walter Carter Psychiatric Center, at age 9, Mikal was asked to list three wishes. He listed one, “ I want my family to be together, that’s all I wish for.”

One Bright Hope - Missed

At age 10, Mikal went to Baltimore to stay with his father’s brother Carson and his wife Lawanda. Remarkably, Mikal who was still hurt and angry began to feel and do better. He had a teacher, Ms. Myra Harris whose specialty was working with challenged children. Ms. Harris listened to him and encouraged him without labeling and lecturing him. His best year in school and the possibility of future success ended when finding out his brother had returned home and wanting to be with his brother and father, he acted up until he was allowed to return to his father. Home schooling by his father meant growing up isolated and being lectured to by his father religiously and passionately about the “unfairness” of white people.

Disregard for Emotional Needs of Mikal – Emotional Abandonment & Betrayal by Father

By the age of 10 and clearly by age 13 he experienced a role reversal when he was “drafted” by his father and his father’s inability to parent effectively to become the “provider and protector” for his father and older brother. Not feeling acceptable because of his race, emotionally deserted and betrayed by his father, isolated without consistent adult care, preached to religiously about the unfairness of white people, and abandoned by his mother at an early age, a severely grieving Mikal began to feel there were no solutions - only problems. He retreated from any situation or relationships that threatened to open him up for possible hurt, abandonment or betrayal.

Being a man, being tough, being a warrior against unfairness and injustice and not letting people take advantage of you and your family were common themes his father intensely taught on sometimes a daily basis. Yet, the teacher, his father Shareef repeatedly let his son down. The first time Mikal was to report to court as a juvenile, his father failed to take him. At age 15, the second juvenile justice encounter for Mikal in which he was being arrested for a crime he had

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already served time resulted in a stand-off between his father and Mikal and law enforcement. Eventually, Mikal was arrested and his father told the authorities the stand-off was his son's idea. Again abandonment and betrayal were at the hands of those who are supposed to love you and you should be able to trust.

Socially Rejected -- Abandoned & Betrayed & Alone

In January of 2003, Mikal was transferred to Virginia's Wallens Ridge State Prison, known for harsh techniques to control the inmates. Wallens Ridge is a supermax facility in rural Appalachia. Mikal describes Wallens Ridge as an isolated rural place with a blighted local economy. The guards were largely locals, white men who had never dealt much with urban life or minorities. The overwhelming majority of the inmates were minorities while the overwhelming majority of the officers were white. The atmosphere was charged with racial tension. Mikal recalled that officers would often use racial epithets towards the inmates. Mikal would hear officers routinely say things like, "I can't wait to kill me a nigger." [*Mikal Mahdi*]. Wallens Ridge taught Mikal that everything his father had taught him was true. It became clear, there was little or no hope for Mikal. There would be no jobs waiting for him. Abandoned by his mother, betrayed by his father and fighting daily against all odds to survive, Mikal experienced the worse of the incarcerated life - repeated torture for infractions imagined and real by racist guards. His father's ranting and raging was correct. The world was not fair and did not want Shareef's son, Mikal.

What to look for in a child (initial trauma pre-school) "abandoned and betrayed," forced to watch violence against mother by father, desire to stop violence witnessed but impotent to stop beatings, broken family dynamics, a persistent disregard for Mikal's emotional needs for comfort, and affection, and physical needs and taught to hate and rage over racial and domestic "unfairness."

Low self-esteem, low self-worth, and a lack of self-efficacy
Hypervigilant, irritable, overly reactive - being "on the lookout" for danger, difficulty concentrating or paying attention, inability to trust others, fearful
Depression, social withdrawal, ambivalence, resistive, avoidant, and profound sadness
No outlet for anger often results in aggression, stealing, lying, self-harm, engaging in risky behaviors
Intense inner or emotional pain resulting in suicidal ideation or attempts at suicide
Upsetting emotional or physical reactions to reminders of the abuse experience.
Efforts to avoid talking, thinking, and having feelings about traumatic events, and avoiding any reminders of the event, numb feelings of detachment, social withdrawal.
Stunted emotional development.

Mikal's life was filled with risk factors that can explain how a child can be failed by family.

Full social history

A detailed social history assessment for Mikal and his family follows:

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I. Mikal Deen Mahdi

Mikal Mahdi was born in Petersburg, Virginia on Redacted to 29 years old Shareef Mahdi (aka Thomas Lockwood Burwell) and 19 years old Vera Annette Artis (aka Tilea Mahdi). He has one older brother, Saleem Mahdi, who was born Redacted

According to his mother, Mikal "was a good and perfect baby, was her favorite, and was the happiest baby." Vera gave an example of the strength of their relationship and of how happy Mikal was as a baby. "He'd sing while he was eating, and I [would] sing along with him."

Family Culture and Societal Context:

Mikal Deen Mahdi was born into an extended family whose daily realities were over and over again overwhelming. Beyond the social limitations and frustrations of their cultural and racial relations growing up in the Jim Crow South, the family often lacked resources, such as enough money to buy goods and services. The daily realities also included dealing with chronic and severe depressions, alcoholism, inter-generational legacies of domestic disputes and violence, keeping secrets of interpersonal brutality, and bitter resentments.

Simply, Mikal was born into a family of fragile people who were often overwhelmed. His extended and immediate family had their own traumas and damaged pasts, which impacted on their abilities to properly care for Mikal.

II. Maternal Family History

Mikal's mother, Vera, is the daughter of George and Julia Mae Artis both of Sussex County, Virginia; however, it is widely believed in the family that George is not Vera's

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biological father. He was incarcerated for alcohol related offenses during the time she would have been conceived. To make matters worse, on a daily basis George told everyone – including Vera – that she was not his child. [*Rose Gupton, Sophia Gee*]. For a time, Vera was sent to live with her grandmother in Pottsville, Virginia. She was staying there, when at about age five, she was sexually assaulted by a teenage boy from the neighborhood. [*Vera Mahdi*].

Vera's family was extremely impoverished much of the time, although circumstances improved for a few years when George was able to obtain a decent job and the family was able to buy a home. After only a few years, however, due to George's continued alcoholism, the family lost the home and returned to their impoverished life. Julia, fed up with life with George, divorced him when Vera was about 12 and moved the family to Petersburg, where she converted to Islam and did what she could to support the family, including "seeing men" and arranging the marriage for Vera. [*Rose Gupton, Sophia Gee*].

Vera is described by her own sisters as always being "odd and peculiar," "reclusive," and very much "a loner and stand offish," although she was "very smart and very artistic." [*Rose Gupton, Sophia Gee*].

III. Paternal Family History

Mikal's father was born Thomas Burwell on Redacted His maternal great-grandmother was a white woman from Brodnax, Virginia. She was impregnated by the family's black gardener who is believed to have been subsequently murdered by her family. The great-grandmother took her son, William Anderson "Buck" Thomas to live in Boston. He was well educated and attended Harvard University. He returned to Brodnax where he bought land and worked as a farmer and a veterinarian. It was reported that he had medical training but could not

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get medical license so he settled on practicing as a veterinarian. One of his daughters, Nancy, is Shareef's mother. [*Nancy Burwell, Mikal Mahdi*].

Shareef's father, Nathan Burwell, Sr., was a high school and then college professor at St. Paul's college in Lawrenceville. Nathan married, but his wife and child died in childbirth. He was devastated by this loss. Ultimately he ended up with Nancy who was 20 years younger and had been his high school student. Nancy would later inform her children and their spouses that he coerced her into sex or raped her. Regardless, Nancy became pregnant and her family insisted she and Nathan marry. [*Carson Burwell, Lawanda Burwell*]. Nathan initially resisted and moved to New York City where he worked as a butler for a year. He missed the prestige of life as a professor, however, and returned to Virginia where the school rehired him only on condition that he marry Nancy. [*Carson Burwell*]. From all accounts their marriage was always an unhappy one with each of the children born to them conceived in rape. [*Carson Burwell, Lawanda Burwell*].

Shareef was the fifth of six children born to Nancy and Nathan. Nancy had never wanted children and requested a hysterectomy only moments after Shareef was born. But Nathan would not allow it. [*Carson Burwell*]. Some people in the family believed that Nathan was trying to kill Nancy through childbirth. [*Lawanda Burwell*]. Nevertheless and despite having small children, Nancy completed college at St. Paul's, she later earned a Master's Degree from the University of Virginia, and taught junior and senior high school for 25 years. [*Carson Burwell, Lawanda Burwell*].

Nathan taught agriculture at St. Paul's. In the evenings he went out to help black Brunswick County farmers, and consequently was rarely home for dinner or to spend time with his children. [*Lawanda Burwell*]. When he was home, he had a toxic relationship with his wife, with the two barely speaking to each other, except to argue. Nathan always compared Nancy

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unfavorably to his first wife, while degrading her and being disrespectful in every possible way. Nancy's children, particularly her sons, generally shared their father's views of Nancy and all are still openly critical of her even in her presence. [*Carson Burwell, Lawanda Burwell*]. Not surprisingly, Nancy left Nathan several times taking the children with her to Baltimore but always returned to his house, because she could not support the children on her own. [*Shareef Mahdi*].

Nancy was also unavailable, at least emotionally, to the children. Her maternal grandmother and paternal grandfather were Caucasian – Nancy is very light skinned. In the Jim Crow South, a light or near white skin often meant privilege – “having a pass.” Nancy tried to pass for white, and wanted her children to pass for white. This caused resentment in some people in the community and she was labeled “color struck”. Intent to pass on “the privilege,” she pulled her children's noses and pinched their nostrils together in an attempt to keep them from widening. Nancy insisted that her children not spend time in the sun for fear that their skin would darken. Some of her children resented the idea that they were encouraged “to pass.” Nancy was extremely invested in status within the local community and spent a great deal of energy and time cultivating a “near white” proper image. Nancy would spend hours in front of the mirror practicing her diction, posture, and mannerisms so that she would always appear “proper.” [*Carson Burwell*]. She often talked about her family's emphasis on education and was very proud of the fact that her father had attended Harvard University. According to her children, she was far more consumed with blending in and being respected in the social scene than anything pertaining to her own home and family. [*Carson Burwell, Lawanda Burwell*].

Nancy was very depressed after Shareef's birth. Shareef's mother often ignored his cries for attention. Nancy was withdrawn and did not seem interested in nurturing Shareef. Shareef's

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reaction to being “rejected” was to constantly act out and throw tantrums to get attention. He became hypervigilant and extremely sensitive to perceived insults and rejection. [*Carson Burwell*]. In addition to having an emotionally distant mother, Shareef also suffered a number of traumas during his childhood. When he was only seven years old he witnessed the rape of his five-year-old sister, Kathy, by his friend. Witnessing this violence – and not doing anything to stop it -- was demoralizing to Shareef. [*Shareef Mahdi*]. Indeed, in 2003 he reported to mental health counselors that he wanted to kill himself when he was 7 years old. The personal shame and blame continued for Shareef throughout his high school years, which were also troubled by the same friend entering the home eight years later when he knew Kathy would be alone and raping her again. Shareef blamed himself for this event, and Kathy blamed Shareef too. Aside from his struggles within the family, Shareef also found constant conflict in the school system. At the age of 10, he was forced to participate in the integration of schools. Virginia law at the time gave families the option of integrating. Shareef wanted to continue attending the same (segregated) schools as his older siblings. Nancy and Nathan insisted that he enter the all-white school when he was in the fifth grade. There were very few black children attending the integrated school at that time. He was taunted and beaten by white students which increased his anger at how unfair “certain” people and life could be. [*Carson Burwell, Shareef Mahdi*]. Shareef was the only child in his family not to finish school. When he was 15 years old and around the time of Kathy’s second rape, Shareef had a confrontation with the school principal on the first day of *mandatory* integration. Although many in the family and a number of white people in the community agreed with the reason Shareef was upset and believed that he was “in the right” in confronting the principal’s racism, his parents did not support Shareef. They refused

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to support him because they believed it was more important to blend in and get along. [*Carson Burwell, Sandra Burwell*].

After experiencing the unfairness of the principal's racism and humiliation of being "in the right" but unsupported, Shareef welcomed being transferred to a school in Baltimore. His mother's reason for moving was another attempt to leave her husband Nathan. Nancy returned to Brunswick County with Shareef when he was 18. He was informed that he would have to attend one more semester to graduate. Shareef experienced this as another example of "the unfairness of things." He was sure he really had enough credits to graduate and was simply being "wronged." Believing things would never be fair, Shareef quit school and went to New Jersey where he stayed with relatives. "Racism and the 'unfairness' seemed to be everywhere." Shareef found himself involved in a standoff with frightened blacks on one end of a field and an angry white crowd on the other end separated only by law enforcement. Shareef remembered a helicopter with a machine gun pointed at the blacks. Hoping to escape the unfairness of racism, and strengthen his sense of self, he joined the Marine Corps months later. [*Shareef Mahdi*].

Shareef adapted well and enjoyed the experience of his first tour in the Marines. He remained in the Marines for 2 years before being honorably discharged. Returning home, Shareef described himself as being very depressed. Depressed and very upset about the status quo which supported "unfairness," he rejected the family traditions and their "do anything to blend in and get along ideals. One answer was to convert to Islam, and get rid of his "slave name" Thomas Burwell. He changed his name to Shareef Mahdi.

In 1976 – two years after being discharged – Shareef enlisted in the Marines again. This enlistment did not go well. Within only a few months, Shareef was court-martialed for disrespect and disobeying orders. After less than a year Shareef was discharged "Under Other than

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Honorable Conditions/Good of the Service” in 1977. This stint in the Marines was marked by Shareef’s disobedience and his complaints about the atmosphere of the Marines, which according to him was filled with profane language, drug abuse and “barbaric mannerisms.” Shareef admitted that his outlook on life had changed drastically since his last enlistment. “I found my mental and spiritual thinking had changed drastically since [my] first enlistment.” Four years after his discharge, Shareef was not content with the status of his discharge status. He applied for a review of the discharge status. He argued that he had been the target of religious and racial discrimination. His request to amend his discharge status was denied. [*Shareef Mahdi Military Records*].

IV. Shareef and Vera Meet

Shareef met his future wife and her family in the small Muslim community of Petersburg, Virginia. Shareef was 23 when he met the Artis family. Vera, who was around fourteen at the time, was one of ten siblings and was third from the youngest. Shareef wanted to marry Doris, who was Vera’s older sister, but Doris declined. Shareef then arranged with Vera’s mother to marry Vera. [*Shareef Mahdi, Rose Gupton, Sophia Gee*].

Shareef and Vera Artis were married in 1980. Vera’s hope was to escape her family’s poverty and daily struggle to make ends meet. [*Vera Mahdi*] Vera’s sister described the wedding ceremony as the “saddest wedding” she has ever witnessed. Vera kept her head down the entire ceremony, not even a hint of a smile graced her face. According to her sister, Vera reported Shareef raped her on their wedding night. Vera told a number of her sisters and Shareef that she never wanted him sexually after that. [*Rose Gupton*].

After the marriage, Shareef changed his wife’s name to Tilea. Shareef immediately moved her to Lawrenceville to live in his mother’s home in Brunswick County. [*Shareef Mahdi*,

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Vera Mahdi]. Vera was shocked and distraught as she would not have married Shareef if she had known his plan. [*Vera Mahdi*] They lived in the one-bedroom finished basement and Vera came upstairs only to eat. Shareef became known to all in the county, including law enforcement, as “radicalized” in his dislike and distrust of white people and for his domineering behavior particularly with women. Vera, was very timid and her reputation of being difficult to engage, increased. In spite of this she did continue her education, obtaining her GED and entering a nursing program at the local community college. [*Sandra Burwell, Lawanda Burwell*]. Her “outside interests” of education did not sit well with her husband. Shareef believed his wife should stay home even though he found it hard to find work and was not consistently providing for his family. He isolated Vera from her own family. Her family had so little interaction with her during her marriage to Shareef that they were not aware she was expecting a child and first learned of Saleem – Mikal’s older brother – when she visited the family after his birth. [*Rose Gupton, Sophia Gee*]. After Saleem was born, Vera left school to care for him. A year and a half later, Mikal was born. He was described by both parents as a happy baby. [*Shareef Mahdi, Vera Mahdi*].

IV. Mikal’s Childhood

Mikal’s Toddler Years: Repeated Trauma, Unexpected Severe Loss, Confusion, Chronic Domestic Violence

The family continued living in the Burwell’s basement until Mikal was around two years old. They then moved to an apartment in Lawrenceville. By February 1988, Shareef was not maintaining steady employment. Vera joined the Army, hoping for a better life. However, she did not complete her basic training. Vera was discharged for failing to perform required tasks satisfactorily. [*Vera Mahdi*].

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After Vera's return to Virginia when Mikal was barely five years old, the family moved back into the Burwell's basement. Things deteriorated quickly. Mikal recalled occasions when his parents would argue. One occasion vividly recalled by Mikal, he saw his father pulling his mother's hair. His father then picked his mother up and body slammed her into their glass kitchen table, which shattered. His father was shouting "bitch you wanted the goddamn table, you got it." Mikal and his brother Saleem were screaming "don't hurt mom." Shareef responded, "Shut the hell up, ya'll are soft." Shareef left and was gone for several days. Gone most of a week, he only returned briefly at night. [*Mikal Mahdi*].

Vera Attempts to Leave Shareef

Eventually, Vera informed Shareef that she was leaving him and taking her sons. Mikal recalled his mother going around the house and gathering her Mikal and Saleem's clothes to pack them. Then an "argument abruptly started." Arguments eventually became violent and were "always physical." [*Mikal Mahdi*]. The boys watched their father beat their mother. Shareef told Vera that if she left, he would find her and bring her back. Shareef promised he would kill his sons before allowing her to take them. Taking him at his word, Vera left the boys with Shareef and made her escape. Free of Shareef, she abandoned Islam and changed her name back to Vera. [*Rose Gupton, Sophia Gee*].

Vera first stayed with her sister Doris in Reading, Pennsylvania for about six months. She then moved in with her sister, Rose, in Richmond. Shareef called constantly, day and night, insisting that she return. They would block the numbers he used, but he would just keep using different phones. While Vera wanted no contact with Shareef, she did attempt to send cards and letters and wanted to have contact with her children, but Shareef insisted that if she wanted contact with her children, she should return. He refused the cards and letters. [*Rose Gupton,*

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Sophia Gee]. After Vera left, Shareef constantly told Mikal and Saleem that their mother abandoned them, she did not love them, and eventually that she was dead. [*Rose Gupton, Sophia Gee, Sandra Burwell*].

As a toddler, one of Vera's sisters recalled how Mikal would be dressed up in all white and made to sit still quietly. Sitting still and being quiet was more important in the presence of others than allowing Mikal, the toddler, to play. Mikal's mother had always provided basic care. As he grew older, the care was not always warm. This did not interfere with Mikal's hunger for his mother's love and attention. His mother just seemed to enjoy him more as an infant.

Mikal's mother's "abandonment" of him and his brother overwhelmed Mikal (between four and almost five years of age) who was developmentally fragile. Too young to understand the loss of his mother, Mikal was devastated and yearned for his mother's return. The impact of these severe losses at key times in Mikal's development was deepened by the emotional instability and economic difficulties of his father. The depth of his father's state of mind and inability to provide financially could be described as a lack of regard for Mikal's emotional needs for comfort and affection. Too often, the physical needs of Mikal was left to Mikal. For example, Mikal from the ages of 5-8 years old was virtually unsupervised and responsible for taking care of, figuring out life (comforting) himself. He was physically and emotionally isolated by a severely and chronically depressed father who failed to provide the resources to overcome Mikal's unresolved grief, and create an environment of emotional safety and uplifting nurturance expected in healthy parenting. The frequent repeated changes that were to follow would not give Mikal time to resolve his sense of loss and form new relationships.

Mikal understood his mother and father fought, but her leaving and not returning for he and his brother was an unfathomable personal loss from which he could not recover without damage

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to his sense of fairness and trust in people. The four almost five year old Mikal felt “robbed” of love from those who were supposed to love him (i.e. his mother and father) . He yearned for a solution to the chaos and trauma of witnessing abuse (e.g. seeing his father pull his mother’s hair out). He went through predictable “changes,” of feeling angry, becoming hypervigilant, numb (ambivalent), avoidant and resistant to comforting while yearning and searching for what would bring his mother back and cement the family back together.

At age 8, Mikal was surprised to discover his mother was alive, but witnessed the kidnapping and potential attempted “murder” of his mother by his father. Mikal was further traumatized by the strapping to a tree and beating of his grandmother by her son, his father for “helping his mother escape.

Mikal’s brother Saleem was considered “his father’s son” and Mikal was considered “his mother’s child.” Some in the family believed Mikal took the loss of mother and family the hardest. Emotionally overwhelmed, he started putting up a barrier to others, especially adults (and authority figures). He tried hard to please his father and gain his father’s respect. He tried to protect his mother, and keep the family together. Mikal was unable to protect his mother, keep the family together or save himself from the pain of feeling “stupid” in the process. At the Walter Carter Psychiatric Center, at age 9, Mikal was asked to list three wishes. He listed one, “ I want my family to be together, that’s all I wish for.” [*Mikal Mahdi, Shareef Mahdi, Carson Burwell, Lawanda Burwell*])

After Vera left, Shareef was consumed with depression and despair. He did not attend to the children, did not send them to school regularly and they were often left to fend for themselves. Mikal was grieved by the changes (losses), hopelessness, powerlessness, confusion and chronic

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preachments of his angry and depressed father. The constant preaching and raging of Shareef repeatedly begged one question, "What to do with righteously felt anger when dispossessed of outlets?" Mikal like his father before in his own childhood began to "act out." [Shareef Mahdi, Carson Burwell, Mikal Mahdi].

Mikal's Experiences with School - Tumultuous

Shareef and the boys moved to Richmond. Shareef enrolled them in the Sister Clara Mohammed School, a Nation of Islam School. Mikal was in kindergarten. Before Mikal completed a year of school, Shareef returned with the boys to Brunswick County and enrolled them in school at Totaro Elementary School. Shareef often did not have a vehicle or the emotional energy to get them to school, subsequently, the boys had a number of absences. During his partial year of kindergarten at Totaro, Mikal missed 23 days of school. [Mikal Mahdi School Records].

In January of 1990 – in the middle of what would be Mikal's first grade year – Mikal transferred to Chamberlayne Elementary School back in Richmond. According to his teachers, Mikal seemed to be struggling emotionally and academically.

We're pleased to have Mikal at Chamberlayne. I do wish he were happier here. Mikal is making steady progress in math. His rate of achievement in reading makes it difficult for him to keep up with the class. If he does not improve in his reading we may need to discuss the possibility of retention. We need to work on self control. This lack of self control is affecting him adversely both academically and socially.

Shortly after this notation was written on his progress report, Mikal was withdrawn from school following fifteen days of consecutive absenteeism. Mikal was transferred to the University of Islam for a short time before transferring to Short Pump Elementary School in November 1990. Both of these schools are in the Richmond area. Mikal was still in the first

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grade at this point and it appears that he only remained at this school until February 1991.

Teachers noted his significant reading struggles. [*Mikal Mahdi School Records*].

Mikal then transferred to Overby-Sheppard Elementary School in Richmond. His records there reveal that Shareef was “self-employed” and the family had a DSS caseworker as they lived on “welfare.” Following only a portion of one semester at this school, Mikal left school and apparently did not attend school at all from the beginning of the summer session until late October 1991. [*Mikal Mahdi School Records*].

Mikal goes to live with relatives

In October 1991, Shareef’s siblings intervened to care for his two sons because they became aware that Shareef did not have the boys in school and was not caring for them as they felt a father should. Saleem went with an aunt in Texas and Mikal went to Uncle Carson and Aunt Lawanda Burwell in Baltimore. Prior to this move, Shareef, Saleem, and Mikal were living in Section 8 housing and on welfare in Richmond. [*Carson Burwell, Lawanda Burwell*].

Mikal’s physical circumstances improved a great deal. Carson and Lawanda were a middle class family with Carson making a decent living as a barber and Lawanda as a school administrator and educator. Mikal’s bedroom was set up in a room that Lawanda also used as an office. Carson and Lawanda tried to help Mikal, who had trouble reading at that time. They provided the structure that was missing in Shareef’s household. Mikal, however, wanted to be with his father and brother. [*Carson Burwell, Lawanda Burwell*].

Carson and his family insisted that Carson wanted Mikal and that Lawanda was resentful of Mikal’s presence. Lawanda recalled it differently, as does Mikal. Mikal remembered Carson often told him, “I don’t want you here.” Lawanda and Mikal agree, Lawanda was the person who really tried to help him. [*Mikal Mahdi*]. Lawanda recalled Mikal as “an angry and hurt little boy”

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when he arrived and she attempted to treat him as her own. When her children were sent to summer camp, Mikal went as well. He was included in family vacations. When school officials sought a parent conference, Lawanda responded. The problem from her view was that Mikal “was a runner.” Anytime he became upset with a situation, he would run away. He would run out of the school, the house, or a restaurant. Lawanda reported that the Burwell men did not really know how to have a warm relationship with a woman. The Burwell men grew up with their father belittling and degrading their mother. The Burwell men treated their own spouses similarly. This was the atmosphere from which Mikal came. From Lawanda’s view, Mikal was doomed to this fate if no one intervened. Mikal became worse after his mother left and did not return. While Lawanda tried to fill the void, Mikal “wouldn’t have it” and did not want her to be motherly (“his mother”). [*Lawanda Burwell*].

Lawanda recalled that Mikal talked about his dad all the time but mentioned his mother only once. Mikal believed his mother left the family because “I was too dumb.” Mikal had lost his mother and became consumed with wanting his father. He thought “the sun and moon rose on Shareef” and he desperately wanted to be reunited with him. He constantly pined for him and repeatedly asked why he couldn’t be with his father and his brother, Saleem. [*Lawanda Burwell*].

Although he should have been in the third grade, Mikal was enrolled as a second grader in Scott’s Branch Elementary School in Baltimore in the fall of 1991. School officials wanted to test him and place him in special education courses but his Aunt Lawanda believed that his problems were only gaps in his learning due to the repeated moves and school changes. She also believed that Mikal, who already believed his mother did not want him because he “was dumb,” would be traumatized and stigmatized by labeling him as a special education student. [*Lawanda Burwell*]. Mikal’s reading struggles continued and he received Ds in language arts throughout

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the year. He also was described as needing to improve his behavior. The school became sufficiently concerned about Mikal's behavior and reading problems that it referred him for an Educational Management Team assessment.

In March of that school year the principal at Mikal's elementary school informed Carson and Lawanda that he had said, "Why doesn't somebody just shoot me? If I had a gun, I would shoot myself." School officials recommended psychiatric treatment, but the family did not pursue any treatment or counseling. [*Mikal Mahdi School Records*]. For about a month during the summer of 1992, Mikal returned to Brunswick County, Virginia, to visit his father, who was then living out in the country at a home provided for him by his mother. During this time, Shareef was also fixated on Vera's departure from the family and wanted to punish her and make her suffer as he and the boys had. He used the boys as bait to get Vera to come out of her sister's house in Richmond to his truck. She came out in her pajamas and was barefooted. He forced her into his truck by threatening her with a gun. The gun was a toy gun but no one but Shareef knew it was a toy. He drove her back to the family home in Brodnax. He hit her and verbally assaulted her throughout the drive with the boys begging their father not to hurt their mother. After they arrived at the family home, Shareef told the boys to go inside with their grandmother and took Vera into the woods near a creek. He tied her hands and was assaulting her, choking her, and drowning her until a family member intervened allowing Vera to escape to Shareef's cousin's car before Shareef could catch up with her. Mikal ran out of the house trying to save his mother. He was trying to pull her toward him while his father was pulling her out of the driver's seat through the passenger side of the car. She was finally able to escape when a family member drove her away. [*Shareef Mahdi*]. Although Vera was battered and bruised and her family encouraged her to report the incident to police, she did not. [*Sophia Gee*]. During this same visit home, with

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Mikal observing, Shareef assaulted his own mother by beating her legs with a leather belt. Some family members believe this was caused, in part, by Nancy helping Vera to escape from him. [Sandra Burwell]. Nancy filed charges against him and Shareef was taken to jail for a few weeks before his mother chose to dismiss the charges.

Mikal returned to his aunt and uncle's house soon after this incident and, according to Mikal's mental health records, his aunt noticed that he was noticeably sadder than before the visit and that he blamed himself for his family's break up.

Mikal is placed in a psychiatric hospital

Just two weeks after returning to his aunt and uncle's house, a police officer responded to the home to investigate Mikal's self-report of potential child abuse. Carson and Lawanda confirm that Lawanda had whipped Mikal with a belt for disobeying her and going outside, but both deny abuse. Mikal used some Halloween makeup to make sure he was believed by trying to create the appearance of bruises. [Carson Burwell, Lawanda Burwell]. While the officer was there, Mikal said that he had "nothing to live for and would like to die." He went on to ask the officer for his gun so that he could shoot himself. Mikal's uncle and aunt admitted to the officer that Mikal was frequently talking about suicide. [Mikal Mahdi School Records]. Mikal was admitted to a psychiatric hospital. After being admitted Mikal told the psychiatrist, "I will jump off a bridge, shoot myself or kill myself with my bow and arrows." When the psychiatrist asked him to list three wishes he had, he listed one – "I want my family to be together, that's all I wish for." [Walter Carter Center Records].

Psychological testing revealed a very sad boy who was suffering from "profound depression, significant losses, and preoccupation with death, anxiety and . . . some unconventional loose and disorganized thinking and the possibility of past experiences with

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trauma . . .” Indeed, Mikal’s depression and anxiety were significant enough that the psychologist believed that his IQ score – full scale of 95 – underestimated his ability. During the clinical interview “Mikal showed such a lack of self confidence and level of frustration. He easily became overwhelmed to the point that he would be openly oppositional and refuse to proceed.” But even when Mikal would act out, the interviewer noted that the underlying themes of depression and anxiety were prominent. For example, he refused to draw his dream house saying, “No, it will never happen.” It was noted that Mikal was at risk for impulsively acting out his sadness and anger because of possibly misinterpreting environmental cues and his negative thoughts about himself. Mikal was diagnosed with Major Depression, Single Episode; Oppositional Defiant Disorder; Post-Traumatic Stress Disorder, and; Bipolar Disorder. [*Walter Carter Center Records*].

Mikal leaves the hospital and goes back to school

After Mikal was discharged from the psychiatric hospital, he returned to Scott Branch in the third grade. In November of 1992, he was suspended for being disrespectful and openly defiant. Mikal was hypervigilant and sometimes ambivalent or avoidant or resistive and “always watchful”. His teacher, Myra Harris, took time with him and routinely spent lunch time listening to his concerns. Consistently she would take him out of detention after he reacted negatively to the lecture style of other teachers. Mikal had not liked his father’s unyielding preaching style lectures either. Mikal began to come around after school to see Ms. Harris. Ms. Harris said that behaviorally and academically Mikal was just like the other children in her care. She never brought up his past or previous hospitalization. He earned at least two certificates of achievement during his time in her class. Ms. Harris continued being firm, fair and listened to Mikal, subsequently he showed remarkable improvement. [*Myra Harris*]. His grades improved and his

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teacher commented that she was pleased with Mikal's "leaps and bounds in progress," Mikal was turning in assignments neat and accurate, that he was warm and pleasant, and worked well in small groups. [*Mikal Mahdi School Records*]. Lawanda also recalled being very proud of Mikal and his progress. In her view, he had transformed from a disruptive student to a fully engaged and enthusiastic student. In fact, she has a photo of a very happy looking Mikal dressed up for his third grade prom in this time period. [*Lawanda Burwell*]. When Mikal returned to school in the fall, he was placed in a class with a teacher who had only one year's experience. While Mikal did act out more than he had in the previous year, he still was progressing and behaving fairly well. When Saleem was sent home from Texas by his aunt to Shareef, the progress stopped. Although Mikal had always felt to some extent that neither parent wanted him, he was convinced then that his father did not want him but clearly wanted his brother, Saleem. Mikal began to display disruptive, angry and hurt behaviors. [*Carson Burwell, Lawanda Burwell*]. In the fall of 1993 Mikal was suspended for leaving the classroom without permission, disrupting the class, and refusing to cooperate. [*Mikal Mahdi School Records*]. The records indicate that Mikal would not be permitted back to school until a conference was held. Despite his behavior problems, a note indicated that "Mikal is an intelligent student who appears to be stifling his potential. He has the capacity to contribute and participate as an active learner but doesn't always appear motivated. Mikal began the year appearing more interested but seems to be in a rut . . ." [*Mikal Mahdi School Records*].

Rather than try to deal with the situation, Carson decided then, much to Lawanda's dismay, to send Mikal back to Shareef. [*Lawanda Burwell*]. He was withdrawn from school mid-semester in Baltimore and returned to Brodnax, Virginia, around Thanksgiving 1993 to live with

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his father and Saleem. He was re-enrolled at Totaro Elementary School where Shareef was actually teaching as a substitute teacher.

Dora Wynn, Mikal's kindergarten teacher, recalled that when his mother was still in the picture, Mikal was a "*cute little boy who was shy at first.*" She described him as a bright child and "more of an observer" who had to be encouraged to engage with other children. When he returned to Totaro in the fourth grade, Wynn was the school principal. *Mikal had changed.* He had developed emotional difficulties and was frequently brought to Wynn's office. Wynn recalled that upon his return he was withdrawn and had trust issues. On rare occasions she could get him to smile, but he would quickly return to his rigid stance. According to her, Mikal refused to do his work, refused to eat, and often just walked away from school. She recalled at least one occasion when she was in her car driving alongside Mikal while trying to get him to get into the car. He was always headed down the road to his grandmother's house. Wynn could never figure out why Mikal was "so angry." [Dora Wynn].

Mikal is found eligible for special education

In the spring of 1994 school records place Mikal in the Fifth Grade at Totaro Elementary School. [Mikal Mahdi School Records]. Mikal was referred for a special education assessment because of academic difficulties and behavioral problems. Psychological testing revealed a full scale IQ score of 118. The sociocultural report noted that Mikal had an outgoing personality when he was younger but that this had been replaced with low self-esteem and adjustment problems. The evaluators also noted the following tendencies in Mikal: negative attitude about being corrected; a preference to be with family rather than others; inappropriate behavior around adults; lack of fear and a failure to recognize dangerous situations, and; a decreased ability to retain information. [Mikal Mahdi School Records].

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Psychological testing administered as part of this assessment corroborated their observations. "Test findings indicate that Mikal is a very bright child who presents certain adjustment difficulties. These latter difficulties, engendered by family separation, various relocations, etc. have in turn reduced his feelings of self efficacy." [*Mikal Mahdi School Records*]. Projective testing consistently pointed to "depressive tendencies, lack of self esteem and feelings of hopelessness." In addition to the testing, a teacher, Carol Wilson, observed Mikal in the classroom. During the first couple of days of the observation, Mikal drew a picture of someone hanging himself. According to Wilson, Mikal was "just depressed, there was no reaching him," and he was "emotionally flat." Wilson noted that "Mikal has also exhibited periods of extreme sadness at times." [*Mikal Mahdi School Records*]. Mikal was recommended for special education and counseling. Despite his many problems, the staff believed that special education would be successful because of Mikal's intelligence and his positive personality traits. [*Carol Wilson*].

Based on the assessment Mikal was found to be eligible for the emotionally disabled program. Educators recalled that Shareef did not like hearing that Mikal had a severe emotional disturbance. Shareef was described as "difficult to deal with and disturbed." He responded to the view that Mikal needed special services as "bullshit" and stormed out of a meeting with school officials and teachers.

Rather than allow Mikal the special services and classes as recommended by school officials, teachers, and mental health experts, Shareef took Mikal out of school to "home school" him. [*Carol Wilson, Dora Wynn*]. Mikal left school at the end of the 5th grade when he was only 11 years old.

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Around the same time Mikal left school, Shareef was fired from his teaching position. Mikal recalled Shareef's teaching experience specifically as one of "ranting and raving" at students about anti-government, race, as well as what Mikal called "psychologically breaking them down." The other students would tell Mikal of the events and laugh about his "crazy" father. Mikal recalled three specific instances. One was a student who always had body odor. Shareef yelled and belittled him until he cried and a complaint was filed. Second was a girl that Shareef yelled at about "acting like an animal, defecating on the floor." Third was Shareef yelling at a lady who worked in the cafeteria about the salad being "bad." Mikal recalled that a big topic for a while was Shareef ranting "how do you fuck up a salad?" [Mikal Mahdi]. Carol Wilson, one of Mikal's teachers at the school, recalled that Shareef was terminated because Shareef yelled at some fifth grade girls, calling them "bitches" and "whores" and telling them to use birth control. [Carol Wilson].

Shareef's increasingly, unstable, bizarre behavior lands him in jail and a psychiatric hospital

When Mikal began his "home schooling," Shareef and his sons lived on Nancy Burwell's property in a home she provided in rural Brodnax, Virginia. Mikal describes Shareef generally as always "ranting and raving." That was "his thing." To Mikal and Saleem, "that's what father's did." He raved about the "New World Order" and "white folks coming to kill them." He did that before the move to an isolated, rural area and the "home schooling," but it intensified afterwards. He took the boys on trips to the woods to prepare them for this "New World Order." He taught them how to shoot guns, fight with knives, and how to fist-fight and box. [Shareef Mahdi, Mikal Mahdi].

Shareef did this ranting and raving and was "out of it all the time" throughout Mikal's childhood. It seemed to get worse when Mikal was around 11 and being "home schooled," which

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was more indoctrination of Shareef's beliefs than actual "schooling." Mikal does not know if it actually was worse or whether he just didn't notice it or think so much about it when he was younger. But from age 11 to 15, Mikal described a month as his father "being out of it 25 days and trying to be super dad the other 5 days." [*Mikal Mahdi*].

Within only a few months of Mikal leaving school, , Shareef was referred for mental health treatment following an incident when he jumped in an "all-white" private pool at an elite country club in the county. Law enforcement officers were called and they attempted to talk Shareef out of the pool. They considered draining it to get him out but ultimately got a respected black leader in the community to talk him out. At the jail, Shareef was noted to be "disoriented," "agitated and verbally abusive," and "paranoid and delusional." The Sheriff referred him for mental health evaluation. [*Central State Hospital Records*]. While the evaluators note that he engaged in delusional and paranoid behavior, they ultimately found that Shareef suffered from a personality disorder and discharged him back to the jail. [*Central State Hospital Records*].

Of the pool incident generally, Mikal recalled Shareef being on a "crusade" claiming that the pool was paid for by public money being funneled into private hands. He was raving about a corrupt county board and going to the newspapers about it, although they weren't printing it. As Mikal described it, they were "already socially isolated as Muslims and it just got worse" when Shareef became known basically as "the crazy guy" in town. [*Mikal Mahdi*].

While Shareef was in the jail/hospital, Mikal stayed with Ms. Dillworth, a friend of the family because his grandmother was renting out her house then and was staying in Baltimore or Philadelphia with family members. When Shareef got out of the hospital, Mikal went back to him and the "home-schooling." [*Mikal Mahdi*]. Although the sheriff of the county, who testified for the state in Mikal's capital sentencing hearing, recalled that he made a referral to the

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Department of Social Services due to the lack of any schooling and his concerns about Shareef's mental health, no record can be found of DSS or school officials ever following up on the situation. [*James Woodley*].

The remainder of Mikal's home-schooling experience

Aside from "learning" about the "New World Order" and how to use guns and knives, Mikal described the "home-schooling" experience as basically hours upon hours of Shareef's "ranting and raving" and giving him religious materials to read and digest. Shareef would constantly tell Mikal what he did wrong, but would provide him with no solutions. While he lectured on work ethic, he had no job and made no attempt to work. The family lived on public assistance, what his grandmother provided, and ultimately what Mikal could steal. While Shareef would spend hours lecturing Mikal about stealing being wrong, he would then "thank him" and keep the stolen property or funds. [*Mikal Mahdi*]. "My son took care of me and his brother."

[Shareef Mahdi]

Shareef recalled the "home-schooling" as going for walks in the forests or woods with Shareef teaching the boys "about the evil empire of robber barons" who stripped the land and stripped the poor and people of color of everything. He also taught Mikal about Islam –Radical Islam at first. [*Shareef Mahdi*].

Shareef's mental state deteriorates

Shareef's mental state continued its downward spiral. In April 1997, he was arrested following an argument with his sister Loretta during which he smashed out her car windshield and her back window with a cinderblock. Mikal recalled that Loretta had been staying with them for about a month and a half prior to the incident, as she was separated from her husband in Georgia. Loretta was used to a different lifestyle and complained about things that were routine

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to Shareef and the boys. She complained about them not having a phone. She also complained about “livestock” (goats and cattle) roaming freely around the yard and property. She complained generally about the “backwoods” nature of the way they lived and Shareef would retort by yelling about her “bourgeoisie lifestyle.” As Mikal describes it, “the situation was bound to blow up” and the cinder block incident was the blow up. [*Mikal Mahdi*].

Following his arrest for the damage to Loretta’s property, **Shareef also attempted escape from the jail**. He thus stayed in confinement for a few months. While he was confined on this occasion, Mikal stayed with the Prescotts, a Rastafarian family, on a nearby farm. When Shareef got out, things went back to “normal” with Mikal staying with Shareef. As Mikal described it though, he was basically on his own, stealing to survive and continuing to get the preaching/lectures from Shareef, followed by Shareef keeping the property and thanking him. [*Mikal Mahdi*].

Mikal is arrested for the first time

When Mikal was just 14 years old he was charged with grand larceny and tampering with a vehicle. This appears to be the first time Mikal was arrested or criminally charged. Although Shareef was instructed to bring him to court, Shareef failed to bring him to court on several occasions, which resulted in a detention order being issued for Mikal, who was then placed in confinement prior to his actual adjudication due as much to Shareef’s behavior as his own. Mikal’s intake evaluation suggested that he had a poor attention span, poor impulse control, and poor anger control. Psychological testing indicated that he was sullen, aggressive, withdrawn, and had a flat affect. This evaluation established that Mikal was still suffering from depression but it also suggests – as is common in boys who suffer from depression at a young age – that his depression manifested itself in inappropriate behavior. The court evaluation emphasized

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Shareef's lack of engagement and his detachment from Mikal as a father, in addition to his failure to even ensure Mikal's court appearance in order to avoid incarceration prior to his adjudication. "Mr. Shareef Mahdi has attempted to exert minimal control over his son and seems content to stay detached and uninvolved as long as Mikal is not causing problems for him. . . . Mr. Mahdi let his son drop out of school ostensibly under the pretense of allowing for home school instruction which apparently was never followed up with." [*Virginia DJJ Records*]. Indeed, Shareef refused to assist DJJ as they conducted their evaluation and eventually a show cause was issued. Despite Mikal's behaviors the evaluators believed that he "would respond well to a structured setting." [*Virginia DJJ Records*].

As the evaluation of Mikal continued over the next 10 days, the degree of problems he had endured became evident. He reported that he smoked eight cigarettes each day and drank alcohol twice per week. Moreover, he reported that he had previously smoked marijuana on a daily basis. Evaluators also noted that he described his parents in a "detached manner" and demonstrated "depressive tendencies, feelings of hopelessness, [and] problems with self-esteem." [*Kenbridge Youth Development School Records*]. Not surprisingly the evaluators also noted conduct disorder, which they traced to "incompetent parenting and poor guidance, supervision and monitoring in an unstable nomadic dysfunctional family." [*Kenbridge Youth Development School Records*].

Mikal was scared when he went into DJJ. He was small and was placed in confinement with older, bigger kids, some with gang affiliations and many with violent offenses. Because his father had always taught him to "be a man" and to establish himself, he believed that he had to do something early to make sure no one would think he was weak. Within just several weeks of entering DJJ, he had some words with a 17 year old who told Mikal that he would "fuck him up

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later.” Mikal waited for his opportunity and jumped the older kid first. Mikal took quite a beating with the older, larger juvenile slamming his head into the floor, but in Mikal’s view, he had established himself as “crazy” such that other “cadets” would leave him alone. In DJJ, he also “learned” that if he acted out, “they” as in the staff wouldn’t attack the “act.” Rather, they would attack his “character” in an effort to convince him that he was “nothing.” After a while, the fighting and reacting due to fear, lack of respect and character “assassination,” just became “a lifestyle.” [*Mikal Mahdi*].

Mikal is incarcerated again

Following Mikal’s release from DJJ on June 14, 1998, at age 15, Mikal returned to his father’s home. He was determined to go back to school and to try to refocus himself but his renewed energy and focus was short-lived as he went back into confinement only two weeks later on June 30, 1998, when officers came to his home with a failure to appear warrant saying that he had failed to appear for court on the offenses for which he had just been released from confinement. Shareef insisted that they were going to have a “standoff” and they stayed in the home for eight hours while law enforcement remained outside unsure of whether there were any weapons in the home. [*Mikal Mahdi*]. Neighbors interviewed by the local newspapers described hearing Shareef yelling religious “slogans” in response to attempts by officers to negotiate a resolution. Neighbors also described Shareef as “disturbed.” Shareef recalled that Mikal was “frantic” during “the siege,” constantly reading religious materials and praying. [*Shareef Mahdi*].

Mikal recalled this event as the occasion when his father “betrayed” him and “threw him under the bus” because when officers entered the home, Shareef blamed the whole event on Mikal and claimed that he (Shareef) had been asleep in the bedroom. Mikal felt betrayed by him and by the system as he had already served time on the charges for which he was being arrested.

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[*Mikal Mahdi*]. When he was arrested after the “standoff,” he reportedly told the officer that he would kill a police officer one day.

Mikal was convicted of obstruction of justice and again incarcerated at DJJ for an indeterminate sentence. Despite being written up for failure to comply on several occasions, Mikal was reportedly cooperative with his counselor though he minimized his behavior. Moreover, he claimed that he had failed to appear in court because he had already been tried on that charge. [*Dep’t of Youth and Family Services Records*]. As it turns out, Mikal’s claim appears to be true and the evaluator – recognizing that Mikal did not seem to have any new charges – seemed to agree. This evaluation came to many of the same conclusions as the prior assessment. Testing indicated an “emotionally immature” adolescent who experienced emotional states “in a global, poorly differentiated manner.” The evaluator also noted that Mikal relied on denial and repression to deal with his unresolved feelings of abandonment and rejection. Over the next year, Mikal received numerous write-ups for refusing to obey orders, threatening officers, or fighting. Nevertheless, Mikal was apparently progressing well in Anger Control Group until he was terminated from the group because of one of his disciplinary charges. [*Dep’t of Youth and Family Services Records*].

In October 1999, Mikal was placed in protective custody on suicide watch because he was threatening to harm himself. According to his records, he was not seen by the prison’s behavioral services unit until a month later. During this assessment two psychologists noted that Mikal’s thought patterns were distorted and that he frequently perceived everyone to “be against him and tend[ed] to minimize and rationalize his negative behavior.” Moreover, much like Shareef and in keeping with the indoctrination of Shareef’s “home-schooling,” Mikal was

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preoccupied with “conspiracy theories along racial and institutional lines, [which] seemed to have a paranoid quality to them.” [*Dep’t of Youth and Family Services Records*].

The juvenile officials at one point placed Mikal on 15 minute watch status. One day later Mikal tried to electrocute himself. However, the officials noted a positive change in his emotional state – which they characterized as “brighten[ed]” – when Mikal was placed in a cell with a window. Indeed, during this time Mikal talked “more fluently,” smiled occasionally, and engaged in constructive activities. [*Dep’t of Youth and Family Services Records*]. But then Mikal began to engage in destructive behavior – covering up the camera in his room and breaking the desk off his wall. Eventually, Mikal was taken out of protective custody despite his desire to remain. It appears that only one day later Mikal indicated suicidal thoughts, which the staff took as an attempt to get back to protective custody. However, the examiner did note that Mikal had described an “unusual sensory experience,” during which time he saw paint peel up from the wall and then return to its place. In response medication was suggested but Mikal declined.

During this assessment, the evaluators believed that Mikal’s symptoms were consistent with a diagnosis of major depression. As for Mikal’s irrational thoughts, the evaluators opined that their origins could be psychotic features associated with his depression or immaturity associated with his youth or a mild thought disorder suggestive of an emerging paranoid personality disorder. Later one of the evaluators noted that “during times of increased stress, Mikal’s ability to think coherently and logically was compromised. At these times, his thinking became acutely paranoid and unavailable to therapeutic intervention.” [*Dep’t of Youth and Family Services Records*]. Mikal was released in May 2000.

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Mikal sees Vera

Around the time Mikal was released from DJJ the second time, Mikal's aunt, Sophia Gee, ran into Shareef in a store and gave him her number asking that the boys call her. To her surprise, Mikal did contact her and she attempted to reunite him with Vera. The reunion with Vera did not go well. [Sophia Gee]. What Mikal recalled of their brief reunion as most notable was that his mother showed almost no emotion. In fact, the only time he remembers her displaying any emotion occurred when they were going to the store and encountered a stray dog. Vera – rather than protecting Mikal – jumped behind him for protection. He was in disbelief, because she never protected him and this was the only time he ever saw any emotion from her. [Mikal Mahdi].

Mikal ended up being arrested for slitting Vera's car tires and damaging her car when Vera would not let him into her home after he ran up her credit cards. According to testimony by the Officer, Michael Koehler, after his hands were cuffed during the arrest, Mikal repeatedly asked the officers to kill him.

Mikal's friend is murdered

Also, around this time, Mikal's "good friend" was killed. Terrell Goodnight was a friend Mikal met while at DJJ. They had classes together and lived in the same unit. Terrell was released only a few weeks after Mikal and joined him back in Richmond, which is where Terrell was from. They partied and hung out together. Terrell had been a star tight end at Hermitage High and had college prospects, but he was "into the street mentality" and acting like "tough guys." As Mikal understands it from what he heard from Terrell then and others later, Terrell "jipped" some guys from D.C. in a drug deal and bought a used Cadillac with the profits. A few weeks later he was found dead from gunshots in an abandoned complex in a closet wrapped in plastic. [Mikal Mahdi].

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Mikal is incarcerated at Wallens Ridge State Prison

Five months after his release from DJJ, Mikal was charged with assaulting Moises Rivera. He was sentenced to 15 years in the Virginia Department of Corrections. There he continued with the same behavior as his prior incarceration and seemed to get even less attention or counseling. In January of 2003 –approximately a year and a half into his sentence – Mikal was transferred to Virginia’s Wallens Ridge State Prison, known for employing harsh techniques to control the inmates. [Mikal Mahdi].

Wallens Ridge is a supermax facility in rural Appalachia. Mikal describes Wallens Ridge as an isolated rural place with a blighted local economy. As a result, the guards were largely locals, white men who had never dealt much with urban life or minorities. The main local industry was a coal mine and the mine recruited directly from the prison. [Mikal Mahdi].

While Mikal was housed there, the overwhelming majority of the inmates were minorities while the overwhelming majority of the officers were Caucasian. The atmosphere was charged with racial tension. Mikal recalled that officers would often use racial epithets towards the inmates. Mikal would hear officers routinely say things like, “I can’t wait to kill me a nigger.” “We ought to round all you niggers up and put you in a concentration camp.” [Mikal Mahdi].

During his time at Wallens Ridge, Mikal was disciplined on numerous occasions for rules infractions, including: disobeying orders, throwing food, possession of contraband, and simple assault. In most instances, Mikal was punished with a fine and time in isolation. Indeed, Mikal spent a substantial amount of his time at Wallens Ridge in some form of isolation.

During the time when he was not isolation, Mikal experienced and witnessed extreme brutality. For example, he witnessed officers beat another inmate to the point where Mikal

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believed he was dead. The inmate was from New Mexico, which had a contract with Virginia to house inmates at Wallens Ridge. He was shackled up for transport back to New Mexico and was being walked by Mikal's cell when officers began subduing the inmate. Even after the inmate was down, the officers stomped, kicked, and beat the inmate until the floor and their boots were covered with blood and the inmate lay there unconscious and seemingly lifeless. He was taken out of the cellblock on a stretcher, but then left on the floor just outside the block for a while due to inmate movements. Mikal assumes the inmate was killed and heard rumors that that was the case, but he does not know for sure as he never saw anything in the news about the incident.

[*Mikal Mahdi*].

On as many as 14 to 15 occasions, lasting by his description for up to 10 minutes each time if not more, Mikal was "tasered" by officers, whose shields provided electric jolts. He would be called names and taunted, including officers calling him "camel monkey" and "towelhead" saying he looked like he was from Afghanistan. He would try not to cry, which extended the incidents. When he could not take it anymore and would scream, the tasing would stop and then he would just be belittled and berated. At least some of the events occurred with Mikal already cuffed and restrained. [*Mikal Mahdi*].

One of these tasing incidents occurred because Mikal spoke up for a disabled inmate. The inmate was housed in a nearby cell. He was in his 60's and had a tracheostomy speaking valve, which required a battery to operate. Without the battery, the inmate could not speak. When his battery died and he was attempting to get a replacement battery, officers just laughed at him and said he "didn't need a voice." When he became agitated due to this behavior, the inmate was extracted from his cell and tasered with electric shields until he defecated on himself.

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Following this event, he was strapped down and restrained on his bed for several days, during which officers continued to refuse to provide a replacement battery. [*Mikal Mahdi*].

Mikal also observed and experienced being shot with rubber pellets while on the floor. The pods all had guards placed in glass overhangs in the ceiling: these overhangs were equipped with slits through which the guards would aim rifles loaded with rubber pellets. The guards were supposed to fire off a warning round if they were going to fire the rifles but often they would just start firing. The rounds would start for a variety of infractions, from stepping on the line in recreation, to pushing something outside your cell, to pushing another inmate. The rifles could also be loaded with bullets and they were all aware that live rounds could and would be fired if anyone attempted to escape. Mikal recalled at least one occasion where rival gangs caused a disturbance on the recreation yard. Without warning officers began firing indiscriminately into all the inmates in the yard, including those not involved in the disturbance, and continued firing even after all of the inmates were laid prone on the ground as they had been instructed to do. [*Mikal Mahdi*].

Mikal was released from Wallens Ridge on May 12, 2004, after spending about a year and a half in that facility. Little more than two months later, Mikal was arrested and charged with the present offenses.

Shareef finally receives treatment for his mental illnesses

While Mikal was incarcerated at Wallens Ridge, Shareef finally sought mental health treatment at the McGuire VA Medical Center in Richmond. His records reflect that he was enrolled in the psychiatric day program due to chronic depression and social anxiety. Examiners noted that his "longest job has been for only 3 yrs in his life and he fails to get along with others well." He was "very paranoid as he describes his small town and even here in Richmond, that

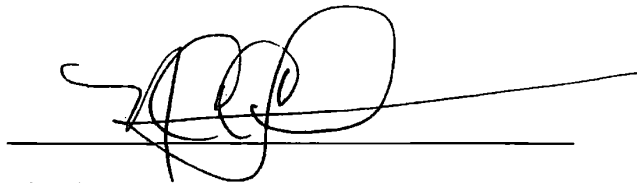
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‘they are looking for him. Seems focused on the Masons and white supremacist [sic] groups.’

[*McGuire VA Medical Center Records*].

Shareef left Richmond, where he was staying at the Salvation Army shelter, and moved to Philadelphia to stay with his Imam. The VA Hospital in Philadelphia records reflect treatment for depression and schizophrenia. [*Philadelphia, PA VA Medical Center*].

Shareef currently believes that if he had been a good father and husband to the mother of his two boys, things would be different. Shareef reminded the interviewers, “My son took care of me and his brother. It should have been the other way around. Mikal never got over losing his mother. All he wanted was – a family.” [Shareef Mahdi]

A handwritten signature in black ink, appearing to read 'N. Cooper-Lewter', is written over a horizontal line.

Nicholas Cooper-Lewter, MSW, PHD, LISW-CP

Mikal Mahdi v. South Carolina

Records Chronology

Date & Time	Age	Fact Text	Source and Bates
10/??/1942		Nathan and Nancy Burwell marry	
Tue Redacted		Daughter Loretta born to Nathan and Nancy	
Fri Redacted		(year??) Son Nathan III born to Nancy and Nathan	
Tue Redacted		Carson Burwell born to Nathan and Nancy	
Wed Redacted		Thomas Lockwood Burwell, aka Shareef Mahdi born; ; mother Burwell not allowed to have her tubes tied.	
Wed Redacted		Daughter Carolyn born to Nathan and Nancy	
??/??/1960		Shareef Mahdi is described as having an "indifferent attitude" in school and while improving still unable to get along with others. There is also a notation indicating that he was enrolled on a "case study."	School Records - Brunswick High School (incl elementary)- Shareef Mahdi (Tab 25) at 3641
??/??/1965		Shareef Mahdi enters desegregated school, 5th grade. The experience was destructive. He was ridiculed, isolated, challenged physically by classmates. Felt traumatized by the experience. He was the only child in his family to not finish school. Shareef Mahdi is described by others as disturbed as a young child, threw tantrums; mother was not emotionally available to Shareef Mahdi or Kathy.	
??/??/1968 - ??/??/1969		Shareef Mahdi high school grades were consistently low.	School Records - Brunswick High School (incl elementary)- Shareef Mahdi

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Date & Time	Age	Fact Text	Source and Bates
			(Tab 25) at M003642
??/??/1971		Mrs. Burwell moves to Maryland	
Fri 03/03/1972		Shareef Mahdi enlisted in the Marine Corps. On 2/19/74 Shareef Mahdi is fined for "appearing at morning inspection without proper haircut" [M003321].	Military Records-Shareef Mahdi (Tab 21) [M003315]
Fri 03/01/1974		Shareef Mahdi is honorably discharged from the Marine Corps. He is put on in-active reserve.	Military Records-Shareef Mahdi (Tab 21) [M003317]
??/??/1975		Shareef Mahdi converts to Islam Shareef Mahdi is involved in a series of misdemeanors locally, all said to be racially motivated.	
Fri 07/30/1976		Shareef Mahdi enters the US Marine Corps for a period of 2 years. Initial service is to be in the pay grade of private [M003307]. On 9/27/76 Shareef Mahdi was disrespectful, willfully disobeyed a lawful order given by his Captain. [M003322]. Shareef Mahdi did not render a hand salute to his Captain or address him as Sir and contemptuously turned from him and left while he was talking to him [M003323]. 9/29/76 Shareef Mahdi is "counseled by CO regarding his application for discharge as a conscientious objector and conduct standards expected of him until he is discharged, i.e., no less than expected of every Marine". 12/3/76 Shareef Mahdi is charged with disrespect to a Captain [M003355]. 4/3/76 Shareef Mahdi is listed as a prisoner with the Marine Corps [M003310]. 4/25/77 Shareef Mahdi requests a discharge from the Marine Corps stating "I am serving my second enlistment in the Marine Corps after being out for two years. I have found that my mental and spiritual thinking has changed drastically since that first enlistment. I can no longer tolerate to be in the company of the Marines that I have to serve with. Their profane language, drug abuse and barbaric mannerisms do not agree with me. I also am not able to react to orders and other military requirements the way I did before. This has caused many problems during this second enlistment. In	Military Records-Shareef Mahdi (Tab 21) [M003301]

Date & Time	Age	Fact Text	Source and Bates
		December 1976, I was convicted at a Special Courts-Martial for offenses which resulted from my current state of mind. I reject the Marine Corps and the situation I am in. I think both the Marine Corps and myself would benefit from this requested separation." [M003355]. 5/10/77 Shareef Mahdi has a medical examination and it is noted that he has an identifying body mark, scar and/or tattoo "CIRC VSULA". [M003385].	
Fri 05/20/1977		Private Shareef Mahdi is again discharged from the Marine Corps. This time "Under Other Than Honorable Conditions/Good of the Service (Escape Trial)." "Due to disciplinary actions and frequent involvement of a discreditable nature with Military Auth." [M003320]. "DD Form 214 issued 20 May 1977 showing character of separation as UNDER OTHER THAN HONORABLE CONDITIONS is hereby canceled as of its effective date and has been superseded. Authority: Title 10, U.S. Code, Section 1552" [M003349].	Military Records- Shareef Mahdi (Tab 21) [M003304]
1979-1980		Vera Artis (Mahdi) completed the 10 th grade. There are no records of her attending school beyond this grade. At Petersburg High School she made mostly As and Bs with some Cs and an occasional D.	Mahdi, Vera Artis - School Records - Petersburg High School [M004258]
??/??/1980		Shareef Mahdi (age 27) and Vera Vera Tilea (age 16) marry. The marriage is arranged by Vera's mother, who is raising 16 children. Shareef Mahdi changes Vera Tilea's name to Tilea. They move to Lawrenceville and lives with Mrs. Burwell. Vera Tilea attends adult education classes.	
Mon 05/11/1981		Shareef Mahdi applies to the Marine Corps for review of discharge status. "I had a prior Honorable Discharge, ASWAUTH. During this two-year tour of duty, I had one NJP for not maintaining a proper haircut. 2. My conduct and efficiency ratings/behavior and proficiency marks were mostly pretty good, ASWAUTH. My final ratings were 4.2 conduct and 4.1 duty and proficiency. 3. I suffered religious discrimination and that impaired my ability to serve, ASWAUTH. I was mocked at by officers and NCO f S for being a Muslim. I was often insulted and was under great strain.	Military Records- Shareef Mahdi (Tab 21) [M003356]

Date & Time	Age	Fact Text	Source and Bates
		4. I faced racial discrimination and that impaired by ability to serve, ASWAUTH. Many white NCO'S and SNCO'S stereotyped blacks in my company. The gave blacks the impression that they only could excell in atheletics. The KKK was very active on California bases at the time also. 5. My command abused its authority when it decided to discharge me and decided to give me a bad discharge, ASWAUTH. They resented my pride and my being a Muslim, and a conspiracy seemed to evolve. I was not guilty of the offenses." The board concluded that "the applicant intentionally set about to extract himself from the service and that his misconduct was perpetrated toward that end".	
09/13/1981		Saleem Mahdi is born to Shareef Mahdi and Vera Tilea	
Sun 03/20/1983		Mikal Mahdi born in Petersburg, VA. Birth certificate shows parents as Shareef Mahdi, age 29 and mother Vera Annette Artis (age 19).	
??/??/1985	2 years	Paternal grandfather, Nathan II dies	
??/??/1986	3 years old	Vera Artis Mahdi leaves Shareef Mahdi and the boys. Shareef Mahdi lives in Burwell home with the boys. Shareef Mahdi took the boys to Richmond to live, but could not keep a job, could not supervise or provide care for the boys Shareef Mahdi moves back to Lawrenceville. Shareef Mahdi cannot take care of himself or of the boys. (Mikal Mahdi believes his mother is dead)	
??/??/1986		Dekalb County Health Department Immunization Record for Saleem Mahdi	School Records-Saleem Mahdi (Tab 26) [M001648]
Wed 07/30/1986		Saleem Mahdi Registration Form at Totaro Elementary School signed by Vera Artis Mahdi. Notes that Shareef Mahdi worked at Southside Virginia Training Center.	School Records-Saleem Mahdi (Tab 26) [M001644]
Tue 12/09/1986		Totaro Elementary School records enrolling Saleem Mahdi in the Hospital's Education Program at the Medical	School Records-Saleem Mahdi

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Date & Time	Age	Fact Text	Source and Bates
		College of Virginia Hospital.	(Tab 26) [M001644]
Fri 12/26/1986		Handwritten note from "Bob" to Ms. Mahdi stating that since Saleem Mahdi had been enrolled in the Hospital Education Program that he needed to be withdrawn from Totaro	School Records- Saleem Mahdi (Tab 26) [M001665]
??/??/1987		KINDERGARTEN STUDENT EVALUATION REPORT (hard to read). Saleem Mahdi seems to receive mostly Satisfactory marks and a teacher notes that "Saleem continues to do well in school" in the third quarter. He is promoted to the first grade	School Records- Saleem Mahdi (Tab 26) [M001657]
03/??/1987		Skills Evaluation Test records from Totaro Elementary School for Saleem Mahdi	School Records- Saleem Mahdi (Tab 26) [M001661]
02/24/1988	4 years old	Vera Mahdi enlists with Army. She is discharged less than two months later.	Mahdi, Vera – Military Records (Tab 30) [M004345]
Thu 09/15/1988	5 years old	Totaro Elementary School ELEMENTARY SCHOOL KINDERGARTEN 1988-89 (Lawrenceville, VA) Absences: 23 Registered Totaro 9/15/88; came from Sister Clara Mohammed School Immunization record shows 45" height and 45.5 lbs.	
Thu 06/15/1989		Saleem Mahdi STANDARDIZED TEST DATA	School Records- Saleem Mahdi (Tab 26) [M001659]
Thu 01/18/1990	6 years old	Release of information from Totaro Elementary School to Chamberlayne Elementary School is signed by Shareef Mahdi	School Records- Mikal Mahdi (Tab 2) [M000017]
Thu 01/18/1990	6 years old	Chamberlayne Elementary School FIRST GRADE 1989-90 (Richmond, VA)	School Records- Mikal Mahdi (Tab 2) [M000018]

Date & Time	Age	Fact Text	Source and Bates
		Mrs. Yates (Third quarter only is shown) "We're pleased to have Mikal at Chamberlayne. I do wish he were happier here. Mikal is making steady progress in math. His rate of achievement in reading makes it difficult for him to keep up with the class. If he does not improve in his reading we may need to discuss the possibility of retention. We need to work on self control. This lack of self control is affecting him adversely both academically and socially." D. Yates 04/90	
Wed 05/09/1990	7 years old	Withdrawn after fifteen days of consecutive absence.	School Records- Mikal Mahdi (Tab 2) [M000020]
08/??/1990	7 years old	Attended "University of Islam, 1300 Hull Street Road"	School Records- Mikal Mahdi (Tab 2) [M000015]
Mon 11/26/1990	7 years old	Short Pump Elementary School FIRST GRADE 1990-1991 (Richmond, VA) Mikal is shown entering in second quarter - does not show grades for a third quarter. He was present 33 days, absent 1 and tardy 4. "Mikal has made a good adjustment to Short Pump. He has made many new friends. Mikal is a strong math student. He needs to practice his reading skills. Mikal has difficulty sounding out new words." J. Wash Third quarter (02/21/91): "Mikal is a very hard worker. He is quick to grasp new math concepts. Mikal is having a difficult time learning to read. He needs lots of practice and review of vowel sounds." J Wash	School Records- Mikal Mahdi (Tab 2) [M000021]
Mon 11/26/1990		School Enrollment Form for Saleem Mahdi signed by Shareef Mahdi. Notes last school was University of Islam.	School Records- Saleem Mahdi (Tab 26) [M01669]
??/??/1991		Short Pump Elementary School Elementary Report Card for MahdiSaleem-4th Grade	School Records- Saleem Mahdi (Tab 26) [M01669]

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2025APP 1513

Date & Time	Age	Fact Text	Source and Bates
		Receives mostly Bs and Satisfactory remarks. Teacher was P. Cantone	
Thu 02/21/1991	7 years old	"Pupil transfers to a public school in another state or county or city within Virginia." He is shown as receiving free lunch.	School Records- Mikal Mahdi (Tab 2) [M000025]
03/07/1991	7 years old	Mikal Mahdi transfers to Overby Sheppard Elementary School. There are no grades or progress reports in the school records.	Mahdi, Mikal – School Records – Overby Sheppard Elementary at M003745
10/??/1991	8 years old	Saleem Mahdi is sent to Texas to live with his aunt. Mikal Mahdi sent to Baltimore to live with Uncle Carson and Aunt Lawanda (Green) Burwell. Carson describes Mikal as very smart but unable to read at 8 years old	
Sun 10/27/1991	8 years old	Shareef Mahdi signs notarized statement giving custody of Mikal Mahdi to Carson and Lawanda Burwell. Also in the home are a fifteen year old cousin from Mr. Burwell's previous marriage; a fourteen month (male) and five years old (female) cousins.	School Records- Mikal Mahdi (Tab 2) [M000026]
Thu 10/31/1991	8 years old	SCOTTS BRANTCH ELEMENTARY SCHOOL SECOND GRADE 1991-1992 (Baltimore, MD) Entered school 10/31/91 33 tardies, 20 between 10/30 and 1/16/92 Teacher: Mrs. Nelson Grades: B's and C's with D's in English School entrance information: Birth Certificate Redacted Doctor: Dr. Anchalee, Garwyn Medical Center (947-2460) Noted to be entering from Richmond, VA, living with aunt and uncle, coming from a single parent home unable to handle two children; negative health history. No grades first term; places in average math group, below	

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2025APP 1514

Date & Time	Age	Fact Text	Source and Bates
		average reading group English Language Arts - D throughout year "Needs Improvement" in Meets Standards for Behavior and Shows Respect for Authority Teacher comments: Indicated growth, participation and attempting new skills. "However his reading and written language skills remain below grade level expectation. I know that you are helping him. We appreciate your support and cooperation this year." Maryland EIIP Recommendation (Form used to determine child's need for or against Educational Management Team (EMT) referral) Grade Two Baltimore County school System: "Mikal is not meeting his grade level in reading; he does not have adequate classroom behavior to be successful in school. An EMT review is needed to discuss concerns about this child's progress and identify appropriate instructional interventions." (10/20/91) School nurse: Notes that Mikal is repeating Second Grade. "Coming from a single (father) parent home - unable to handle two boys - neg. health history." (01/16/92) Late 20 times since October entrance absent x2.	
Fri 03/06/1992	8 years old	Letter from Joan Brown, principal to Mr. and Mrs. Burwell: "This letter is a follow up of my phone conversation with Mr. Burwell on 3/4/92. During our conversation I shared with Mr. Burwell that Mikal said 'Why doesn't somebody just shoot me? If I had a gun I would shoot myself.' We are concerned for such a strong comment is not expected from a second grader . . ."	
Tue 07/28/1992		Shareef Mahdi Brunswick County Warrant of Arrest for battery of Nancy Burwell, his mother. Nancy Burwell's affidavit states, "I feel that Shareef has gotten out of control. He hit me his mother and used a leather belt on the upper part of my legs of which was very painful for a while. MHe uses foul language most of the time." On August 6, 1992 Nancy Burwell drops the charges against Shareef Mahdi [M003086].	Criminal Court Records -Shareef Mahdi (Tab 20) [M003083]

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2025APP 1515

Date & Time	Age	Fact Text	Source and Bates
Sun 08/23/1992	9 years old	Walter Carter Center (Baltimore MD) Petition for Emergency Evaluation: (Petitioner Officer Jeffrey Edward Collins #3254) "While on a call for a possible child abuse (92-236-0654) the evaluatee stated to this officer that he has nothing to live for and would like to die. At one point he asked this officer for his gun to shoot himself. After talking to the guardians of the evaluatee I found that he talks about killing himself all the time." Taken to Baltimore County General. Application for admission of a minor completed by LCSW. 8/31/92 Certification: Found to have a mental disorder, in need of institutional in-patient care or treatment; a danger to himself or to others; unable or unwilling for voluntary admission. 9/2/92 Certification for In-Patient Psychiatric Hospital Primary Diagnosis: Major Depression Certified to have a mental disorder 9/2/92 8/23/92 Admission Data Sheet: Noted to be living with Lawanda Burwell. Diagnosis: Major Depression Recurrent with suicidal ideation.(296.33) Emergency Record: (NOTE: difficult to read) notes Diagnosis of Major Depression: suicidal ideation History and Psychosocial Evaluation (9/1/92) Noted to be in third grade, Scotts Branch Elementary; born Petersburg VA; religion: Muslim. Others in household are aunt and uncle. He is noted to use alcohol, tobacco and substance use; small scar on back Admission Flow Sheet: "I called 911. I wanted to kill myself." No hallucinations or delusions noted. Admission-Discharge Sheet: Admission Diagnosis: Major Depression Recurrent with suicidal ideation Discharge Diagnosis: Major Depression Single Episode Initial Summary or In Patient Admission Note: Chief complaint: "Life is not worth living for me- It's boring, dull!" Notes reason for admission as suicidal ideation secondary to abuse. Describes Mikal as one of	Walter Carter Center Psychiatric Records -Mikal Mahdi (Tab 3) [M00094]

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2025APP 1516

Date & Time	Age	Fact Text	Source and Bates
		two children whose parents are divorced/separated. Mother was living in Virginia and father was incarcerated. Both Mikal and his 11 year old brother had lived with his grandmother until she felt it was too much and sent Mikal to live with the Burwells, with whom he had lived for the past 11 months. He stated his aunt beat him every couple of months and his uncle had beat him twice. He stated that "My mother doesn't care for me" and that she had abandoned him at four years old. Since his parents separation, he had lived in a variety of relatives' homes. He stated he had no close friends. He described an incident a couple of years ago when he "was trying to kill himself by jumping off a bridge." A friend talked him down. The precipitating event was being warned about going outside to play and then "being allegedly beaten on the legs with a belt." He called 911 to report abuse and then told the police "The only solution is for me to kill myself" and asked the officer for his gun. Description of Presenting Problems and History of Present Illness: Mikal had been taken to the Baltimore General Hospital ER by police following their response to an incident of alleged child abuse. He was warned against going outside, went outside anyway and when he came back in, was allegedly beaten on the legs with a belt. (NOTE: This is what apparently had happened to his grandmother two weeks prior.) He called 911 to report "abuse." "When the police arrived he stated that "The only solution is for me to kill myself" and asked for the officer's gun to execute the wish. Reportedly his aunt and uncle confirm the story." Social history section notes that Saleem was living with grandmother and that Mikal had been there as well until GM decided it was too much to look after Mikal as well. "Mikal is then shunted to his aunt and uncle's where he has been living for the last eleven months." He claims his aunt has beaten him every couple of months and his uncle has beaten him twice. "The father is currently incarcerated possibly for assault/abuse of Mikal's mother.... Since his parents separated, Mikal has been living in a series of relatives homes. He states that he has no close friends but a couple of years ago when he was trying to kill himself by jumping off a bridge, a friend saw him and talked him down to save him." He noted	

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2025APP 1517

Date & Time	Age	Fact Text	Source and Bates
		problems with school and claimed he was forced to study too much and not allowed to play as much as he would like. Noted that Mikal had been receiving counseling for the past year from the school counselor. He told MD, "I will jump off a bridge, shoot myself or kill myself with my bow and arrows." His wishes (NOTE: typically asked for three wishes) "I want my family to be together.- that's all I wish for. Main theme: "There's only one solution to my problem- get out of this world." Admission Diagnosis: Major Depression, Recurrent with Suicidal Ideation; R/O Adjustment Disorder; R/O Developmental Reading Disorder Discharge Summary: (Recounts reasons for admissions.) His aunt states that Mikal has been verbalizing suicidal ideations such as "Why not shoot me, there is no reason to live" ever since he came to live with her and her husband, 10/91. "Two weeks prior to admission, Mikal had returned from a month long stay with his biological father and his paternal grandmother in... Virginia. During that stay, he observed his father beat up his grandmother who subsequently called the police and his father was incarcerated. He also knew that when his biological mother came to visit, his father also beat up his mother at that time. It was after the incident where father beat up grandmother that he returned to Baltimore.... because of the chaos in Virginia." After he returned, he told his aunt, "You only have to give someone \$200 to kill yourself." His aunt stated that he has had increased sadness since his return; that he is afraid of failing the third grade and that he blames himself for his family's break-up. Notes that Mikal had been seeing the school counselor because of his suicidal statements- the school had recommended seeking psychiatric help, which had not been done. Medical history included a fracture arm from bicycle and a fracture leg from fall in the home. Notes history of depression in Shareef Mahdi after after his wife left, when Mikal was four. Notes that parents had an arranged marriage, lived with paternal grandmother before and after trying unsuccessfully to live independently. "Mikal's mother left the household when Mikal was four years old and he had no contact with her until April 1992, thinking she was dead. His father has been unable to care for	

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2025APP 1518

Date & Time	Age	Fact Text	Source and Bates
		Mikal and his older brother and the grandmother was also unable to care for him so Mikal was sent to live with his paternal uncle. "Mikal's academic history is somewhat confusing because reportedly the father did not have enough energy to take Mikal and his brother to school. Mikal also reportedly had behavioral problems in the school system in Virginia.... Mikal repeated the second grade when he came to MD and is now scheduled to start the third grade. (NOTE: School records show he had repeated and possibly never completed the first grade before coming to MD.) Hospital course: Mikal had three seclusions while in the hospital because of throwing furniture and and fighting with peers and staff. After the first couple of weeks he began to identify some of the sources of his sadness. He was given a battery of psychological testing, to which he was oppositional resistive- and performance anxiety was noted. The Wecshler Intelligence Scale for Children - III showed a FSIQ of 95. Psychologist thought that emotional factors may have contributed to a lowering of IQ scores. He shows significant strength in abstract thinking. Bender Gestalt consistent with 9 years old indicating adequate perceptual motor skills. Projective testing suggested, "profound depression, significant losses, and preoccupation with death, anxiety and occasional expansiveness, some unconventional loose and disorganized thinking and the possibility of past experiences with trauma, home mechanisms for coping with internal and external stress and underlying anger and suggested Mikal could be at risk for harming himself without appropriate structure.. The Diagnosis indicated by the testing was Major Depression and R/O Bipolar Disorder. Notes that the aunt participated in a family meeting; the uncle was very opposed to the idea of psychiatric intervention, "got somewhat anxious and upset during the meeting so it was halted." The family opposed the use of any psychiatric medications. Mikal was discharged after several successful passes to the Burwell home. Discharge Diagnosis: Major Depression, Single Episode; R/O Post Traumatic Stress Disorder Beverly Allen, MD Aftercare Plan: Mikal was discharged home to his aunt and uncle and referred to University of Maryland	

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2025APP 1519

Date & Time	Age	Fact Text	Source and Bates
		Hospital, Out-Patient Clinic for follow up. Notes that Paternal aunt refuses to release records to school until further notice.	
Mon 08/24/1992	9 years old	Walter Carter Center Psychological Testing: (Recounts past history and adds) Mikal was given a battery of tests including Wechsler Intelligence Scale for Children - III (VIQ- 98; PIQ - 94; FSIQ - 95- notes it is possible that depression and anxiety lowered his performance and that this is an under estimate of his ability.) WIAT (Grade equivalents ranged from 2.1 - Reading- to 3.3 for written expression- given his intelligence scores were deficient) Bender-Gestalt (Good perceptual motor skills) Draw A Person Kinetic Family Drawing Incomplete Sentences Children's Depression Inventory Thematic Apperception Test Rorschach Clinical Interview Mikal showed such a lack of self confidence and level of frustration that it would overwhelm him to the point he would be openly oppositional and refuse to proceed. The behavior was the most noticeable on tests that aroused his performance anxiety, "Even in these instances his underlying themes of depression and anxiety were evident." For example, he refused to draw his dream house, saying, "No, it' will never happen." Projective testing showed: (a) profound depression, significant losses and preoccupation with death; (b) anxiety and occasional expansiveness; (c) some unconventional, loose and disorganized thinking; (d) the possibility of past experiences with trauma (e) poor mechanisms for coping with external and internal stresses; (f) underlying anger and a potential for impulsively acting out his feelings." "This testing suggests	Walter Carter Center Psychiatric Records -Mikal Mahdi (Tab 3) [M00127]

Date & Time	Age	Fact Text	Source and Bates
		that Mikal experiences a need for more nurturance and protection from caregivers. Loss of significant objects leaves him feeling deeply depressed and suicidal. Further he experiences anxiety about his identity, his unstable world, his location within a family, and his ultimate well being. Mikal is extremely sensitive to cues off personal inadequacy, loss or danger. However, these themes are so pervasive for Mikal that he often distorts and misinterprets the original stimulus so that it fits with his negative view of himself and his world. When he is faced with what he perceives to be an affectively charged situation, he initially tries to cope through withdrawal, then oppositionality, then fantasy. However, his creativity often gives way to primitive, runaway thinking, such that his reality testing is compromised. In fact his responses to the unstructured stimuli of the Rorschach were unconventional (eccentric rather than bizarre), loose and disorganized. Occasionally during testing sessions, he exhibited flight of ideas..... A Diagnosis of depression is supported by Mikal's behavior (and responses to testing).... However, his idiosyncratic thinking and cognitive slippage in the face of affect laden situations raise the question about the possibility of an additional psychotic process or even Bipolar Disorder, assessment of which will require ongoing Evaluation. Mikal's potential for misinterpreting environmental cues and his negative thoughts about himself, his world, and his future put him at risk for impulsively acting out his sadness and anger by hurting himself or others..." There were indicators of anxiety, experience with trauma and preoccupation with sexual themes. Recommendations: "Mikal needs highly structured and safe residential and educational environments in which he can experience protection, nurturance and appropriate limit setting." Diagnosis: Major Depression, Single Episode; Oppositional Defiant Disorder; Post Traumatic Stress Disorder; Bipolar Disorder, NOS Stephanie Leedy Ellis, PhD Interim Psychiatric Evaluation:	

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2025APP 1521

Date & Time	Age	Fact Text	Source and Bates
		(Repeats information from Discharge Summary up until Recommendations) Recommended a start on tricyclic antidepressant; individual and family therapy and return placement to aunt and uncle. Neuro Pediatric Speech Language Screening: (Handwritten note) Mikal showed some difficulties and recommendation was made to retest hearing and to receive a complete speech and language assessment and receive treatment if necessary. Social history: (Social history repeats information that is found in other reports. It elaborates slightly on period after mother's abandonment, when Mikal thought she was dead: "The father reportedly became severely depressed after the mother left the family. He did not attend to the children, did not send them to school regularly and they were apparently left to fend for themselves in many ways...psychosocial stressors for this child have been severe to extreme and enduring... He told me that he wants his family back together and if he cannot have that, his 2nd choice is to kill himself." The aunt was very reluctant for Mikal to remain in the hospital, stating she would take him to therapy every day if need be- she lacked the authority to have him discharged, however. Handwritten notes from social worker indicate Mikal stated he had done poorly in school, "I must be dumb", that other children made fun of him and that he felt like his aunt's family hated him. Mikal questioned, "Why is it I'm still alive and people who wish to live get to die?" When asked what he felt might help him, he stated, "Death is the only solution. No one understands." Social worker contacts Debbie Riley of CPS (832-7263) to report allegations of abuse. Ms. Riley stated she would check with Officer Collins. (NOTE: there appear to be two social workers, Sylvia Dolgoff, LCSW and Sh(illegible) Kern, LCSW.	
Sun 09/13/1992		Shareef Mahdi charged with Assault and Battery (by threats with knife) of Nathan Burwell	Criminal Court Records-Shareef Mahdi (Tab 20)

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2025APP 1522

Date & Time	Age	Fact Text	Source and Bates																				
			[M003069]																				
Tue 09/22/1992		Shareef Mahdi sentenced to 60 days with 50 suspended for the Assault and Battery of Nathan Burwell																					
Thu 10/22/1992	9 years old	Scott Branch Elementary School THIRD GRADE 1992 - 93 (Baltimore MD) Absences: 6 Tardies - 9 in second term Teacher: Mrs. Nelson Grades: First term not enough time for grades; second term shows 3 A's; 3 B's; 2 C's (reading and language arts)- all show satisfactory or outstanding effort Needed improvement in Written Composition, Letter formation, Vocabulary, Written Work and Showing Respect for Authority. Teacher comments she is pleased with the leaps and bounds in progress, turning in assignments neat and accurate, science is incredible, warm and pleasant, works well in small groups. Noted a need for more phonics to assist in decoding words while reading. 3/93: Failed hearing test and had wax removed 4/93: Baltimore County Public Schools Comprehensive Test of Basic Skills: <table><tr><td>Test Name</td><td>Grade Equivalent</td></tr><tr><td>Total Reading</td><td>2.7</td></tr><tr><td> Reading Vocabulary</td><td>2.6</td></tr><tr><td> Comprehension</td><td>3.0</td></tr><tr><td>Total Language</td><td>3.4</td></tr><tr><td> Mechanics</td><td>4.3</td></tr><tr><td> Expression</td><td>2.8</td></tr><tr><td>Total Math</td><td>3.7</td></tr><tr><td> Computation</td><td>3.6</td></tr><tr><td> Concepts/Applications</td><td>3.8</td></tr></table>	Test Name	Grade Equivalent	Total Reading	2.7	Reading Vocabulary	2.6	Comprehension	3.0	Total Language	3.4	Mechanics	4.3	Expression	2.8	Total Math	3.7	Computation	3.6	Concepts/Applications	3.8	School Records- Mikal Mahdi (Tab 2) [M000035]
Test Name	Grade Equivalent																						
Total Reading	2.7																						
Reading Vocabulary	2.6																						
Comprehension	3.0																						
Total Language	3.4																						
Mechanics	4.3																						
Expression	2.8																						
Total Math	3.7																						
Computation	3.6																						
Concepts/Applications	3.8																						
Fri 10/23/1992	9 years old	Mikal Mahdi is discharged from Walter Carter Center with a diagnosis of Major Depression Single Episode. The primary admission diagnosis had been Major Depression	Walter Carter Center Psychiatric Records -Mikal																				

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Date & Time	Age	Fact Text	Source and Bates
		Recurrent with Suicidal Ideation	Mahdi (Tab 3) [M00145]
Mon 11/09/1992	9 years old	Notice of Temporary Suspension by Joan Brown: Disrespect, not following directions; openly defiant. Reinstatement conference to be held 11/11/92.	School Records- Mikal Mahdi (Tab 2) [M000036]
??/??/1993		Virginia Literacy Testing Program-Individual Student Performance Report for Saleem Mahdi -Fall 1993	School Records- Saleem Mahdi (Tab 26) [M01660]
Thu 07/22/1993		Shareef Mahdi Brunswick County Warrant of Arrest for "Maliciously throw or hurl a missile at a dwellinghouse, when occupied by one or more persons whereby their life or safety were put in peril"	Criminal Court Records-Shareef Mahdi (Tab 20) [M003073]
Thu 07/22/1993		Shareef Mahdi Brunswick County Warrant of Arrest for "battery Kathy Rene Burwell, his sister, by striking her with a rock"	Criminal Court Records-Shareef Mahdi (Tab 20) [M003076]
Tue 09/14/1993		Shareef Mahdi's charge of hurling a missile was not prossed.	
Tue 09/14/1993		Shareef Mahdi receives time served (with remaining jail time suspended) for charge of battery against Kathy Rene Burwell	
Wed 10/20/1993	10 years old	Notice of suspension at Scott Branch Elementary School. Reasons: "left class without permission, chronic disruptions of the class, refuses to cooperate."	School Records- Mikal Mahdi (Tab 2) [M000046]
11/??/1993		J.S. Russell Junior High School report card for Saleem Mahdi (appears to be 7th grade). Received mostly B's and is promoted.	School Records- Saleem Mahdi (Tab 26) [M01656]
Mon 11/29/1993	10 years old	Scott Branch Elementary School FOURTH GRADE (Baltimore MD) Teacher: Mrs. Clements (10/20/93) Notice of Required Parent Conference Reason: Left class without permission; chronic disruptions of the class; refuses to cooperate	School Records- Mikal Mahdi (Tab 2) [M000047]

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Date & Time	Age	Fact Text	Source and Bates
		Administrator: R. Wayne Law "Mikal may not return to school until a conference is held." 11/29/93- Withdrawn from school (nurse's note) "Mikal is an intelligent student who appears to be stifling his potential. He has the capacity to contribute and participate as an active learner but doesn't always appear motivated. Mikal began the year appearing more interested but seems to be in a rut...."	
03/??/1994	11 years old	Totaro Elementary School FIFTH GRADE 1994 - 1995 (Lawrenceville, VA) Absences: 35 Grades: All B' and 1 C in Spelling "U" in citizenship. Testing: Total grade equivalent was 5-0: range went from a low of 4-2 GE in spelling and a high of 5-6 in visual.	School Records- Mikal Mahdi (Tab 2) [M000050]
Fri 03/25/1994	11 years old	Sociocultural Report (information obtained from Mikal's father, who was working as a substitute teacher within the system) NOTE: There is no mention of Mikal failing a grade. Mikal was referred because of academic difficulties and behavioral problems. ("inappropriate and disruptive behavior"). The father believes the problems are largely because he is behind in reading, "becoming depressed because of the repeated difficulty he is having with reading." (There is no mention of the family being Muslim; or of Mikal's' hospitalization.) Noted to have had an outgoing personality when younger but had lost some of this lately with the problems he had encountered, especially with reading. He has low self esteem at present; there have been a lot of problems in adjustment. Father seldom has to discipline him. Interpretation of Social Behavior Checklist: Checklist showed several problems: negative attitude about being	School Records- Mikal Mahdi (Tab 2) [M000051]

Date & Time	Age	Fact Text	Source and Bates
		corrected; prefers family to the company of others; behavior with adults inappropriate at times; difficulty with school beginning to improve. He has no fear and does not always recognize dangerous things that may hurt him.... He does not deal with failure well; does not retain information as well as he did in the past. "He has been suffering from depression and becoming forgetful due to that problem." He has trouble sticking to things; communication skills are weak and rarely understands and remembers instructions given orally, unable to follow detailed instructions given orally. "The father wants him to grow up to be a decent human being. Mikal says that he wants to have money." Conclusions and Recommendations: Mikal has been having difficulties adjusting to the school situation and has had some behavior problems. He has been in several schools. The Child Study Team had referred him to ascertain what the problem is in his school related difficulties. The father appeared supportive and wanted him to be successful in school. "The main problem that he is having appears to be adjustment and behavior. He appears to exhibit a number of inappropriate behaviors. Most of the problems seem to be getting along with people." He appears to have some problems with reading which may contribute to his lack of self confidence and self esteem. Recommendation was a special class to catch up in school work and continue in the counseling that had begun.	
Mon 03/28/1994	11 years old	Psychological Evaluation Tests given: Wechsler Intelligence Scale for Children - III Bender Visual Motor Gestalt Test Thematic Apperception Test Projective Drawings He was reluctant and uncooperative at first and had to be persuaded by his father to cooperate at which point continued to be cooperative throughout testing. "Test findings indicate that Mikal is a very bright child who presents certain adjustment difficulties. These latter difficulties, engendered by family separation, various re-locations, etc. have in turn reduced his feelings of self	School Records- Mikal Mahdi (Tab 2) [M000056]

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Date & Time	Age	Fact Text	Source and Bates
		efficacy. All contribute to impaired school adjustment and impaired learning in the language arts domain particularly in spelling. IQ Estimates Wecshler Intelligence Scale for Children - III: Verbal.....114 Performance.....119 Full scale.....118 Verbal Comprehension.....110 Perceptual Organization.....120 Wecshler Intelligence Scale for Children - III would appear to indicate that his reading difficulties are "evidently not related to cognitive impairment..." He earned approximately a 10 year equivalent visual motor integration on the Bender Visual Motor Gestalt Test; "His performance on this measure would not help to explain his aforementioned academic shortcomings. The errors he does make may be attributed to emotionally relevant variables. His teacher indicates that Mikal has excellent artistic abilities, further substantiating adequacy of fine motor skills." "The projective measures consistently point to depressive tendencies, lack of self esteem and feelings of hopelessness. While Mikal has realized considerable behavioral and attitudinal improvement of late, he is still experiencing personal adjustment problems which require address. Projectives point to psychological blocking and expansive behavior under duress, which may help to account for his episodic acting out behavior and difficulties and/or unwillingness to deal with difficult (for him) school tasks. Summary and Recommendations: While improvement had been noted in school adjustment, "he presents persistent personal adjustment difficulties which suggest the need for special education and mental health intervention. Given his good intelligence, other positive personality traits and the strong concern by his father, he presents a good prognosis for school success."	
04/??/1994	11 years old	Carol Wilson - as part of an IEP assessment - observed Mikal Mahdi in his homeroom. The IEP team found Mikal	

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Date & Time	Age	Fact Text	Source and Bates
		Mahdi to be eligible based on emotional disability. Psych testing revealed a very poor self image. Shareef Mahdi was at the meeting; he told everyone there that the assessments were bull shit and then stormed out of the meeting. Mikal Mahdi was in Carol Wilson's reading and language class every day. During his first couple of days Mikal Mahdi drew a picture of someone hanging himself. According to Williams, "He was just depressed, there was no reaching him." She described him as "emotionally flat." Shareef Mahdi attended other meetings and behaved the same way. At one point Shareef Mahdi was hired as a substitute but was fired after yelling at girls, calling them bitches and telling them to use birth control. Bobby Browder and Dora Wynn may remember more about these events. She thinks there was a major incident with Shareef Mahdi when Saleem Mahdi was a student at Brunswick High School.	
Tue 04/05/1994	11 years old	Education Evaluation: Concerns related to behavioral difficulties such as leaving his seat inappropriately, being physically and verbally aggressive towards others at times, talking out of turn, anxious and easily frustrated or angered; lacks respect for authority and daydreams. "Mikal has been transferred between many schools and has been retained once while in MD" His report card indicates that his classroom performance in Reading English and Spelling was failing while his other subject areas were above average." Kaufman Test of Educational Achievement Subtest Grade Equivalent General Information.....6.8 Reading Recognition.....3.1 Reading Comprehension.....3.7 Total Reading.....3.3 Math.....5.6 Spelling.....3.3 Total Test.....4.4 Current overall level of functioning was mid fourth grade,	School Records- Mikal Mahdi (Tab 2) [M000060]

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Date & Time	Age	Fact Text	Source and Bates
		placing him in the average range with some variability in functioning; greatest weaknesses were in Spelling and Written Expression. Reading Recognition was on third grade level as were spelling and written expression. Recommended considering placement in Learning Disabled Program if additional reports warrant.	
Wed 04/06/1994	11 years old	Brunswick Co. Public School IEP Eligibility Minutes: Psychological testing revealed "depressive and victimization themes, feelings of helplessness, withdrawal, denial, and lack of self-esteem." Burke's Behavior Rating Scale indicated "poor impulse control, poor anger control, and excessive resistance." Found eligible for emotional disabled program.	School Records- Mikal Mahdi (Tab 2) [M000063]
Wed 04/06/1994	11 years old	Carol Wilson observed Mikal Mahdi in the classroom. She noted that on Burke's Rating Scale Mikal scored "very significant" in excessive self-blame, poor impulse control, and excessive resistance. "Mikal has also exhibited periods of extreme sadness at times."	School Records- Mikal Mahdi (Tab 2) [M000066]
Sat 07/09/1994	11 years old	Shareef Mahdi is admitted to the Central State Hospital in Petersburg from Brunswick County Jail for a trespassing arrest. He was swimming in a private pool and became upset and agitated with the police while in jail. Physical Examination: Notes "Talk of depression" Shareef Mahdi is placed on suicide watch because of concerns about his depression. Cynthia Chambers is listed as a friend (M003005). Intake report notes that Shareef Mahdi was brought from the jail because he was "agitated" and "somewhat delusional." Also notes a hx of depression after divorce. Seen as outpatient at McGuire Hospital. Notes two previous occurrences of being jailed for domestic violence. (M003009). Psychological Services Appraisal and Treatment Plan (M003011): Notes delusion and paranoid behavior as reason for being seen. No evidence of thought disorder or neurological signs. In military from 1972-1974 and discharged as Cpl. Previous treatment for depression at VAH Richo.	Psych Records - Central State Hospital-Shareef Mahdi (Tab 19) [M003000]

Date & Time	Age	Fact Text	Source and Bates
Mon 07/11/1994	11 years old	Shareef Mahdi is discharged from Central State Hospital. Discharge Diagnosis (M003007): Axis I: No mental illness; Axis II: Personality disorder NOS; GAF 75-80. Referred to Southside Brunswick Mental Health Center Psychiatric Evaluation and Discharge Summary (M003014): "Mr Mahdi was arrested for swimming in a private pool. He stated that he felt hot and saw a pool and decided to go swim in it. He was arrested and while in jail he became upset, agitated and was throwing water at the deputies. The jail records state that he was disoriented sometimes. He is agitated and verbally abusive and paranoid and delusional. He was prone to be violent. He was noted to be exhibiting impaired impulse control."	Psych Records - Central State Hospital-Shareef Mahdi (Tab 19) [M003007]
Wed 07/20/1994	11 years old	Memorandum to the Sheriff of Brunswick County from Clarence E. L. Wall, Forensic Unit Program Director of Central State Hospital regarding Shareef Mahdi. States his time at Central State Hospital should be credited as time served in jail towards his sentence and that commitment was denied as inpatient care was not deemed necessary. Pending charges of "trespassing; past history of assault and rape".	Psych Records - Central State Hospital-Shareef Mahdi (Tab 19) [M003052]
Tue 05/30/1995		Mikal Mahdi is given the Burks Behavior Test at Brunswick and the results indicate he has poor ego strength, poor attention, poor impulse control, poor reality contact, poor anger control, poor social conformity, excessive assistance and excessive aggressiveness.	Kembridge Youth Development System Recs-Mikal Mahdi (Tab 10) [TC001237]
Sat 09/30/1995	12 years old	Agreement between Shareef Mahdi and Nancy Burwell giving custody of Saleem Mahdi to Nancy Burwell	School Records- Saleem Mahdi (Tab 26) [M01666]
Tue 04/01/1997		Shareef Mahdi Brunswick County Warrant of Arrest for "destroy, deface, damage, property belonging to Loretta Gilead (his sister) with the value of, or damage to, such property being less than \$1,000." Loretta Gilead Criminal Complaint against Shareef Mahdi stating he "became angry following an argument went outside and picked up a cinderblock and smashed my 88 celebrity, destroying the windshield and the back window completely. As I left with my 11 yr. old son who is ill, he	Criminal Court Records-Shareef Mahdi (Tab 20) [M003078]

Date & Time	Age	Fact Text	Source and Bates
		was still throwing the cinderblock inside the car." [M003080]	
Thu 04/03/1997		Shareef Mahdi charged with Escape with force by prisoner awaiting trial in Brunswick, VA	Misc. Info re Shareef Mahdi (Tab 24) [TC001021]
07/??/1997		Shareef Mahdi is given a 30 day charge in Mecklenburg County for vandalism. While incarcerated he attempted to escape by force and was given additional time to serve	DJJ Reception and Evaluation-Mikal Mahdi (Tab 7) [TC001346]
Fri 07/04/1997	14 years old	VA Department of Youth and Family Services Juvenile Offense history Charged with Grand Larceny; Escape from Custody; Curfew Violation. Given community service work (9/30/97). Reception and Diagnostic Center face sheet notes also Tamper with Vehicle	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00354]
Thu 07/10/1997	14 years old	VA Department of Youth and Family Services Juvenile Offense history Charged with B&E; Grand Larceny; committed to Department of Juvenile Justice (12/2/97). 7/29/97: Subject did not appear - father instructed to have him in court 8/5/97. 8/5/97: Neither subject nor father appeared.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00354]
Mon 09/08/1997		Mikal Mahdi is charged with breaking and entering and grand larceny in VA	Virginia Dept of Corrections Education Recs-Mikal Mahdi (Tab 11) [TC001454]
Tue 09/09/1997	-	Neither Mikal Mahdi or his father appear in court again for the 7/4/97 charges. Another detention order was issued. He was picked up again on 9/16/97 and detained at Crater Detention Center.	DJJ Reception and Evaluation-Mikal Mahdi (Tab 7) [TC001339]
Tue	14 years	Mikal Mahdi placed at Crater Detention Center.	Virginia Dep't of

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Date & Time	Age	Fact Text	Source and Bates
09/16/1997	old		Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00354]
Tue 09/30/1997	14 years old	Subject & Attorney present; Plea of not guilty entered to all charges; Charge of tampering with vehicle dismissed. Grand Larceny reduced to petit larceny; Found guilty of petit larceny and escaping from custody and violation of curfew.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00354]
Tue 09/30/1997		Harpers Ferry Job Corps Center Saleem enters Job Corps at age sixteen. Highest grade completed: ninth. He stays until 4/17/99 and has a "regular" separation with readmittance recommended. He is trained as a nurse assistant. Testing that he is given places him at sixth - eighth grade level for math	Job Corps Records-Saleem Mahdi (Tab 27) [M01679]
Tue 12/02/1997	14 years old	Mikal Mahdi committed to DJJ for indeterminate period of time for two counts of breaking and entering and two counts of grand larceny. States upon evaluation that he has poor attention span, poor impulse control, poor anger control and excessive resistance and aggression in the school setting. His attitude is resistive and he can become rebellious and difficult when given instructions he does not agree with what he wants to do.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00355]
Tue 12/02/1997	14 years old	Psychological Information: Indicates "yes" to the following, inter alia: sullen, blunt/flat, appropriate to situation, provokes others, aggressive, withdrawn." GAF score of 70. Social history information provided and medical examination conducted.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00362]
Tue 12/02/1997		Court Evaluation of Mikal Mahdi states that there is "minimal discipline from the subject's father" "Mr. Shareef Mahdi has attempted to exert minimal control over his son and seems content to stay detached and uninvolved as long as Mikal is not causing problems for him. Mr. Mahdi describes his son as having 'a lot of spunk'. He stated that he has been very liberal in dealing with his children and that he tries to give Mikal his freedom...Mr. Mahdi let his son drop out of school ostensibly under the pretence of allowing for home school instruction which apparently was never followed	DJJ Reception and Evaluation-Mikal Mahdi (Tab 7) [TC001348]

Date & Time	Age	Fact Text	Source and Bates
		up with". "Major negative factors are the inappropriate supervision provided within the home setting for the subject and the emotional turmoil in the subject's life as a result of this circumstance. This appears to be a child who would respond well to a structured setting. It should be noted that preparation for this report was hampered by the lack of cooperation by Mr. Mahdi in the missed appointments, failure to respond to letters sent to him and it was finally necessary to have a show cause issued against him for his lack of assistance".	
Thu 12/04/1997	14 years old	Intake at DYFS: "Mikal reports that he fractured his right leg at age nine and his right arm at age six. He reports that he was hospitalized after these fractures. The youth says he smokes eight cigarettes per day and drinks alcohol twice a week. He says he has smoked marijuana daily in the past."	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00346]
Sun 12/14/1997	14 years old	Mikal Mahdi charged with a fight at R&D Center. Appears that someone pushed him in the back first.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00387]
Tue 12/16/1997		Psychological evaluation of Mikal Mahdi performed at Kembridge indicates he reported stealing over 50 guns for re-sale, anti-social personality, described parents in a detached manner, depressive tendencies, feelings of hopelessness, problems with self-esteem. "Conduct disorder probably traced to incompetent parenting and poor guidance, supervision and monitoring in an unstable nomadic dysfunctional family".	Kembridge Youth Development System Recs-Mikal Mahdi (Tab 10) [TC001212]
Thu 12/18/1997	14 years old	Mikal Mahdi charged with Failure to Comply with order to march at R&D Center.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00390]
Mon 12/29/1997	14 years old	Mikal Mahdi charged with Abusive Language / Obscene Gestures for drawing "obscene pictures of women" while at R&D Center.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00394]

Date & Time	Age	Fact Text	Source and Bates
Wed 12/31/1997	14 years old	Mikal Mahdi administered psychological testing (SASSI) at DYFS.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00351]
Wed 12/31/1997	14 years old	Mikal Mahdi administered psychological testing (SASSI) at DYFS.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00395]
Tue 01/06/1998	14 years old	Mikal Mahdi charged with Failure to Comply at Hanover JCC: During debriefing he "was wearing his pants nearly off his buttocks...had been given a demerit for not wearing his pants properly earlier in the day..."	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00402]
Tue 01/13/1998	14 years old	Mikal Mahdi charged with Failure to Comply: "Refused to take part in school activities, standard Mikal, gestures & comments after prompted."	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00405]
Wed 01/14/1998	14 years old	Psychological testing and evaluation: [Test results and clinical impressions describe an impulsive undersocialized angry and alienated young man. Mikal described his criminal offending quite remorsefully and admitted that a great deal of thought and planning was involved. Basically, this is a teenager with many negative attitudes toward authority, rules, limits, and the rights and privileges of others. Rather poorly socialized in a significantly dysfunctional family, he is developing a serious conduct disorder. Records suggest a history of peer relationship problems and a tendency to associate with other similarly disaffected children. Mikal suggested that he discontinued his schooling as a seventh grader: "I had other, better things to do ... walk around town." The etiology of this youth's conduct disorder probably can be traced to incompetent parenting and poor guidance, supervision and monitoring in an unstable nomadic dysfunctional family. The youth himself described his father as emotionally unstable, he seems to have only a distant relationship with his mother, and the	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00408]

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Date & Time	Age	Fact Text	Source and Bates
		unavailability of other appropriate role models has resulted in unmet dependency needs leading toward criminal affiliations. Mikal is behaving and developing like a teenager much older. He has been using drugs. He discontinued schooling two years ago and has not been required to return by family. He described his current criminal charges in a very calculated, almost professional way that is alarming.	
Wed 01/14/1998	14 years old	Educational Evaluation was conducted. Noted that Mikal Mahdi was deemed eligible for ED services through special education. Includes descriptions of testing and behavioral observations.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00424]
Wed 01/14/1998	14 years old	DYJJ Evaluation Profile Section Two Socialization: Notes that Mikal was living with his father who was unemployed and reported to have a criminal record for vandalism and escape with no evidence that his father is a substance abuser. Mikal stated that he had a good relationship with his father, who rarely had to discipline him. Mikal indicated mother was a nurse in Richmond. He reported living with parents together until age ten then living with them alternately although living with father for past several years. Notes, "Mikal is the product of a dysfunctional single parent family characterized by a lack of involvement with his mother, an absence of a positive male role model, instability, unemployment and a lack of structure and supervision. While Mikal advised that he and father have a positive relationship, it appears that his father has placed little emphasis on supervision of Mikal and has even provided a poor adult role model for his son. Information provided by the court and by Mikal would indicate that his father has made little attempt to reinforce Mikal's receiving an education and his father refused to comply with court requests during Mikal's court involvement. Reports note that court workers were required to have a show cause issued in order to compel his fathers cooperation. While Mikal claimed that he viewed his family as nurturing and supportive, it appears that Mikal has not been closely involved with either parent and has not been held accountable for his behavior. Mikal advised this counselor that his father	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00428]

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Date & Time	Age	Fact Text	Source and Bates
		showed minimal reaction when he learned that Mikal was involved with larceny of firearms. Mikal stated, 'He really didn't do nothing. He told me to sell it or something.' Mikal remained very guarded when discussing his family or his relationships with family members and shared very little in the way of personal information." Mikal described himself as a quiet person who is always up to something and denied any strengths "except for robbing people." He denied low frustration tolerance and claims he has few confrontations with others. He stated he "needed to find something else to do and stop joking around all the time." Mikal was very vague when discussing comings and goings in his home.	
Tue 01/20/1998	14 years old	Mikal Mahdi received at Hanover JCC.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00355]
Thu 01/22/1998	14 years old	Mikal Mahdi charged with Failure to Comply at Hanover JCC: Refused to do morning PT. Said, "I'm not doing this bull-shit at 5:00 in the morning!"	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00441]
Thu 01/29/1998	14 years old	Mikal Mahdi charged with Resisting Removal at Hanover JCC. Refused to do PT, refused to go to his room, refused push-ups, "Sgt. Baylor had to assist him to his room."	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00448]
Tue 02/17/1998	14 years old	Mikal Mahdi charged with aggressive physical contact. He pushed and shoved Cadet Holley during wake-up and dressing stating "he was tired of Cadet Holley getting to tell everyone what to do". Cadet Holley volunteered to lead PT.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00452]
Tue 03/10/1998	14 years old	Mikal Mahdi charged with Failure to Comply at Hanover JCC. He refused to comply with the routine PT run or do alternative exercises.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00463]
Fri	15 years	Mikal Mahdi charged with being late for class at Hanover.	Virginia Dep't of

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Date & Time	Age	Fact Text	Source and Bates
04/10/1998	old	Mikal Mahdi stated he was held up by his previous teacher when he wasn't.	Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00469]
Tue 04/21/1998	15 years old	Progress report. Notes limited family contact and fair adjustment to the program.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00461]
Mon 04/27/1998	15 years old	Transferred to Kenbridge Youth Development School	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00477]
Thu 06/11/1998	15 years old	Released from Hanover JCC.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00355]
Fri 06/12/1998		Mikal Mahdi is discharged from Kenbridge Youth Development School. His discharge summary notes by CraigB- "most of Mikal's conversation/behavior indicated disturbance within himself and within the family. He was a very aggressive/abusive individual both verbally and physically. Mikal was a very uncooperative/disruptive individual who purposely disobeyed rules and ignored authoritative figures." FAMILY INVOLVEMENT: "No visits were made by family members while individual was incarcerated. To my knowledge phone contact was very limited."	Kenbridge Youth Development System Recs-Mikal Mahdi (Tab 10) [TC001206]
Fri 06/19/1998	15 years old	Kenbridge Youth Development School summary report. Notes Mikal Mahdi was uncooperative and disruptive. Also notes that he had no family visits and limited phone contact.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00477]
Tue 06/30/1998	15 years old	Attempt was made by Brunswick Sheriff's Dept. To serve a capias on SharifMahdi/subject's father. Subject was in the home and apparently engaged in activities to help the father evade the police. Subject shouted out of the	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab

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Date & Time	Age	Fact Text	Source and Bates
		window he had a gun and always wanted to kill a cop.	4) [M00355]
Tue 06/30/1998	15 years old	Mikal Mahdi charged with obstruction of justice.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00481]
Tue 06/30/1998		News article re standoff: No weapons in-house; Shareef Mahdi yelled religious "slogans" in response to attempts to negotiate; neighbors described him as "disturbed" and one neighbor mentioned his abuse of his mother.	News Article re Police Standoff (Tab 6) at M003638-40
Tue 07/07/1998		Newspaper clipping of standoff Mikal Mahdi and Shareef Mahdi had with Lawrenceville Police in VA.	Misc. Info re Shareef Mahdi (Tab 24) [TC0001015]
Wed 07/08/1998		Another newspaper clipping of the standoff between police and Mikal Mahdi and Shareef Mahdi. It is noted that Mikal Mahdi stated he would kill a cop before he died and a neighbor states that Shareef Mahdi is a disturbed man and abused his mother who lived with him. The standoff was for 8 hours. Police initially visited the house because Mikal Mahdi missed a court date for breaking and entering charges.	Misc. Info re Shareef Mahdi (Tab 24) [TC001031]
Wed 07/15/1998	15 years old	Reception and Diagnostic Center Face sheet: Subject found guilty Disposition: Transferred to Brunswick J & DR Court; subject held in WW Moore Detention Center in Danville	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00356]
Wed 07/15/1998		Nancy Burwell wrote a letter to the editor re the standoff. She praised J.R. Woodley and the police for how they handled the situation.	News Article re Police Standoff (Tab 6) at M003640
Tue 08/11/1998	15 years old	Mikal Mahdi's second commitment to Virginia Department of Juvenile Justice	
Tue	15 years	Social History Report completed. Notes, inter alia: Mr.	Virginia Dep't of

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Date & Time	Age	Fact Text	Source and Bates
08/11/1998	old	Mahdi has attempted to exert minimal control over his son and seems content to stay detached and uninvolved as long as Mikal is not causing problems for him. Mr. Mahdi described his son as having "a lot of spunk. He stated that he has been very liberal in dealing with his children and that he tries to give Mikal his freedom. The subject has not been attending school for the past two school years. Mr. Mahdi let his son drop out of school ostensibly under the pretence of allowing for home school instruction which apparently was never followed up on. Mr. Mahdi stated that he has not involved Mikal in any kind of structured home school program and that he has no confidence in the public schools in Brunswick County. In spite of this, the subject has not come to the attention of Brunswick School officials and no efforts have been made to have the subject return to the school system. Mr. Mahdi noted that Mikal had gone to live with an uncle in Baltimore several years ago. It was at that time that Mikal began to display difficult behavior. Mr. Mahdi stated that he has considered moving to Philadelphia where there are more community resources so that Mikal could enter a vocational program. He stated that he felt Job Corps would be a good prospect for Mikal and noted that his older son is entering that program. Includes results of Plutchik Feelings and Acts of Violence Scale.	Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00483]
Tue 08/11/1998		Woodrow Harris of DJJ Letter to Donald W. Driscoll regarding Mikal Mahdi's commitment to DJJ on 8/11/98	DJJ Reception & Evaluation-Mikal Mahdi (Tab 7) [TC000099]
Thu 10/22/1998	15 years old	Psychological Information: Notes numerous impairments and a GAF score of 60. Social History Report also completed.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00507]
Thu 10/22/1998		Mikal Mahdi is found guilty of obstruction of law enforcement and ordered to be committed to the Department of Juvenile Justice for an indeterminate period of time.	Virginia Dept of Corrections Education Records-Mikal Mahdi (Tab 11)

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Date & Time	Age	Fact Text	Source and Bates
			[TC001453]
Fri 10/23/1998	15 years old	Intake report: "The youth reports that he fractured his right tibia in a bicycle accident at age ten. He also says that he fractured his right arm as a young child. He denies any hospital admissions or operations. The youth denies any history of substance abuse. He says he is sexually active with three or four partners and inconsistent condom use. He denies any history of sexually transmitted diseases. On review of systems, he complains of extreme tiredness and reports that he has lost twelve pounds since he was placed in detention."	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00366]
Fri 10/23/1998	15 years old	Mikal Mahdi charged with abusive language towards PDI Glover and PDI Tate.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00517]
Tue 10/27/1998	15 years old	Mikal Mahdi charged with FTC at Reception and Diagnostic Center	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00533]
Tue 10/27/1998	15 years old	Mikal Mahdi charged with Failure to Comply. Mikal Mahdi was talking in the mess hall when talking was not allowed.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00535]
Tue 11/03/1998	15 years old	Evaluation Profile Update noted that Mikal Mahdi "stated age of approximately 15 years and 8 months. He has been relatively cooperative with this counselor in terms of casework contacts but has not always been completely disclosing. He had some tendency to minimize his behavior and currently he is generally denying any type of behavior that would result in his being charged with obstruction of justice although did admit he failed to appear in court because he related they were trying to retry him on a charge that had already been disposed of. There may be some fact to this as it does not appear there are any new charges other than those that resulted in the commitment in his history. Mikal seems to enjoy portraying himself as a victim of the system while	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00551]

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Date & Time	Age	Fact Text	Source and Bates
		declining to accept any responsibility for his own behavior. Mikal is more than willing to deflect blame and deny and minimize his own culpability. He seems to feel that the local authorities have singled him out for abuse and that charges against him are at times trumped up." Also stated that "Mikal is currently undergoing an updated evaluation here at the Diagnostic Center after being recommitted on charges of obstruction of justice and contempt of court resulting from failure to appear. Mikal had previously been committed on two counts of breaking and entering and two of grand larceny. Mikal has been quite vehement about expressing himself regarding the unfairness of this current commitment. It is noted that he appealed to circuit court where it was upheld. Mikal feels local authorities are simply victimizing him because they are able. Mikal has been through the LEADER program previously here at the Diagnostic Center and certainly knows the expectations placed upon him. It was noted that he did not successfully graduate from LEADER the last time he came through the system. Hopefully he will do a better job this time. He has so far avoided any problems with regard to his behavior. Mikal continues to have need for anger management. It is obvious when one talks to him that he is quite an angry youth. He had previously acquired a number of hostile charges while in direct care and is here at least in part for making verbal threats when police attempted to serve a capias on his father. His overall demeanor and conversation indicates anger as well. Mikal also needs to become involved with an education program and participate in career planning. Mikal could benefit from learning to respect those in authority and accept responsibility for his own behavior also. With regard to supervision, Mikal should be considered a control problem. He needs some fairly close supervision in this area as he has a past history of acting out behavior. It should also be noted that although Mikal is not thought to be a security risk he did on one occasion abscond from a police car after he had been apprehended and handcuffed."	
Thu 11/05/1998	15 years old	Mikal Mahdi charged with Failure to Comply and Cursing at Hanover JCC. Mikal Mahdi was asked to stack extra chairs for guests and he refused stating he didn't" care	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab

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Date & Time	Age	Fact Text	Source and Bates
		about the mother f----- guests".	4) [M00539]
Wed 11/11/1998	15 years old	Mikal Mahdi was charged with verbal assault at Hanover JCC. He was upset when another cadet had court papers and he could not see his. Called Officer Officer Jones a "mother fucking nigger" and the incident was called in.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00541]
Wed 11/18/1998	15 years old	Psychological evaluation: Mikal presented for the assessment appropriately dressed and well groomed. He was compliant with the examiner. His verbalizations were logical, fluid, and goal-directed. He was oriented to person, place and time. His range of affect was appropriate. However, his voice became louder whe(n he addressed the issue of his commitment. His overall mood throughout the interview was mildly depressed. There were no indicators of major mental illness such as delusions or hallucinations. He denied suicidal or homicidal ideation. He reported having feelings of helplessness and diminished energy; however, his sleep and appetite patterns were within normal limits. Mikal expressed limited insight into his pattern of misconduct. He often projected blame on the court system for his incarceration and stated that the police were "out to get him." This statement was considered in a cultural context in which Mikal's perception that his race and socioeconomic status prompts a certain amount of unjust scrutiny from police officials, rather than the statement reflecting paranoid, delusional thinking. Test Results: On the WISE-III, (Shumate, 1114/98), Mikal had achieved a Verbal IQ of 100, a Performance IQ of 116 and a Full Scale IQ of 108. This placed Mikal in the upper end of the Average range of intellectual functioning. The examiner noted the decline in scores from previous testing (Vera, 3/28/94) when Mikal had achieved a VIQ of 114, a Performance IQ of 119, and a Full Scale IQ of 118. He noted that the discrepancy could possibly be due to institutionalization. According to the most recent test indices, it appears that Mikal has a weakness in visual motor skills and attentional skills. In contrast, Mikal had a strength in perceptual organization skills. Personality assessment revealed a dysphoric, emotionally immature	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00554]

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Date & Time	Age	Fact Text	Source and Bates
		adolescent with a conduct disorder. Mikal experiences his emotional states in a global, poorly differentiated manner. He has not developed the ability to self-soothe and does not use his emotional states to inform his decision making. Interpersonally, Mikal tends to be guarded and mistrustful of others. He views the world as a place where he is likely to be attacked and therefore responds by challenging and manipulating others, especially those in authority. He has a poor self concept that is often manifested in his limited motivation to achieve. In addition, he defends against unresolved feelings of abandonment and rejection, that appear to be related to instability in his home life, by employing denial and repression.	
Wed 12/02/1998	15 years old	Mikal Mahdi charged with Failure to Comply at Hanover JCC for refusing to do PT	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00563]
Sat 12/05/1998	15 years old	Mikal Mahdi charged with Failure to Comply at Hanover JCC for disrupting class and having a negative attitude. He was removed to his room.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00566]
Sun 12/06/1998	15 years old	Mikal Mahdi charged with verbal threat, fighting and simple assault at Hanover JCC after being verbally enticed by two other cadets.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00570]
Tue 12/08/1998	15 years old	Mikal Mahdi charged with fighting at Hanover JCC.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00576]
Fri 12/18/1998		Comprehensive Service Plan for Mikal Mahdi at Culpepper JCC states "Mikal continues to have problems maintaining self control, as evident of him being cited for fighting". "Mikal is easily influenced and he has problems ignoring negative comments from peers".	Virginia DJJ Recs- Mikal Mahdi (Trial Counsel's File) (Tab 8) [TC000340]

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Date & Time	Age	Fact Text	Source and Bates
??/??/1999		Mikal Mahdi removed from TV room using "handle with care". No further incidents or injuries	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00626]
Thu 01/07/1999	15 years old	Mikal Mahdi charged with FTC at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00590]
Wed 01/20/1999	15 years old	Mikal Mahdi was charged with sexual gestures and FTC at Hanover JCC after making gestures with his hand and penis.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00594]
Thu 01/21/1999	15 years old	Mikal Mahdi charged with resisting removal, abusive language, assault on staff and FTC at Hanover JCC after throwing a chair at Ms. Wooldridge.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00597]
Fri 01/22/1999	15 years old	Mikal Mahdi was charged with Threat to Institutional Security at Hanover JCC after refusing to comply. "handle with care was used to remove the cadet"..."no injuries reported".	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00600]
Mon 02/08/1999	15 years old	Mikal Mahdi charged with FTC at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00608]
Thu 02/11/1999	15 years old	Mikal Mahdi was charged with threat to institutional security and destruction of state property at Hanover JCC after pushing the TV off its stand.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00612]
Tue 02/16/1999	15 years old	Mikal Mahdi charged with FTC at Hanover JCC	Virginia Dep't of Youth and Family

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Date & Time	Age	Fact Text	Source and Bates
			Services Records-Mikal Mahdi (Tab 4) [M00615]
Tue 02/23/1999	15 years old	Mikal Mahdi was charged with class disruption and FTC at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00625]
Fri 02/26/1999	15 years old	Mikal Mahdi charged with Destruction of State Property at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00633]
Thu 03/04/1999	15 years old	Mikal Mahdi charged with Threat to Institutional Security at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00639]
Tue 03/23/1999	16 years old	Mikal Mahdi charged with FTC and Abusive Language at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00641]
Thu 04/01/1999	16 years old	Mikal Mahdi charged with Assault on Staff at Hanover JCC after throwing a broom at Mr. Mr. Wilkins.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00646]
Thu 04/01/1999		Mikal Mahdi charged with FTC at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00640]
Thu 04/08/1999	16 years old	Mikal Mahdi charged with Destruction of State Property at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4)

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Date & Time	Age	Fact Text	Source and Bates
			4) [M00655]
Sat 04/10/1999	16 years old	Mikal Mahdi charged with Assault on Staff at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00658]
Sun 04/11/1999	16 years old	Mikal Mahdi charged with assault at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00676]
Sat 04/17/1999	16 years old	Mikal Mahdi charged with FTC at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00679]
Tue 04/27/1999	16 years old	Mikal Mahdi charged with simple assault at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00682]
Thu 04/29/1999	16 years old	Mikal Mahdi charged with FTC, Threat to Institutional Security and Destruction of Property at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00687]
Wed 05/05/1999	16 years old	Mikal Mahdi charged with Threat to Institutional Security at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00694]
Fri 06/11/1999	16 years old	Mikal Mahdi charged with Threat to Institutional Security at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00698]
Wed	16 years	Contact note indicated: Mikal is an angry, hypervigilant	Virginia Dep't of

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Date & Time	Age	Fact Text	Source and Bates
06/16/1999	old	youth, who tends to act out preemptively when he feels threatened. He takes little responsibility for his behavior, using minimization and rationalization to justify his actions. He is suspicious of others (in particular, authority figures) and is likely to react impulsively before carefully considering the consequences.	Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00709]
Wed 06/16/1999	16 years old	Report of Contact noted: "Currently Mikal is very guarded and oppositional with most authority figures. He has a strong belief that as a minority and a Muslim he will continue to be abused by the "larger system." It appears relatively unlikely that Mikal will continue in this location and his own continuing oppositional behavior may well immerse him in more punitive parts of the Department of Juvenile Justice. It is probably very important for Mikal to have an identified ongoing contact that will persist in working with him in a therapeutic fashion even though he is highly oppositional. He is unlikely to respond over the short haul to any type of support or investment. However, if we are unable to engage him and begin to help him reconstruct his perception of the world, we will likely be working with a very angry and potentially violent, long-term correctional client. I would recommend as much as possible that we continue to try and engage him in a therapeutic fashion. Certainly all efforts to provide this type of service should be documented as part of his ongoing incarceration.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00772]
Tue 06/22/1999	16 years old	Mikal Mahdi charged with Threat to Institutional Security at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00711]
Wed 06/23/1999	16 years old	Mikal Mahdi charged with Vandalism and Threat to Institutional Security at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00715]
Thu 06/24/1999	16 years old	Mikal Mahdi charged with Threat to Institutional Security at Hanover JCC. He is taken to the infirmary because his right shoulder was injured by staff during altercation.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab

Date & Time	Age	Fact Text	Source and Bates
			4) [M00720]
Sun 06/27/1999	16 years old	Mikal Mahdi charged with Threat to Institutional Security/Physical Threats at Hanover JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00729]
Tue 06/29/1999	16 years old	Mikal Mahdi transferred from Hanover JCC to Culpepper JCC	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00734]
Thu 07/29/1999		Mikal Mahdi is promoted to Cadet 1st Class at Culpepper JCC	Virginia DJJ Recs-Mikal Mahdi (Trial Counsel's File) (Tab 8) [TC000335]
Thu 09/09/1999	16 years old	Mikal Mahdi charged with Threat to Institutional Security at Culpepper JCC: "I asked the cadet to come out of the pod to talk to me, he exited the pod and was agitated. He would not talk to me except to say he was not going to isolation (PHD) he took his socks off and said if im gonna catch a charge, I'm gonna catch another one."	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00775]
Thu 09/09/1999	16 years old	Mikal Mahdi was charged with Threat to Institutional Security when he "reached across [the desk] and yanked the report away, balled it up and threw it in the toilet." He received an abrasion to the forearm during take down.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00781]
Thu 09/09/1999	16 years old	Mikal Mahdi, who was housed in the special housing unit, refused to put hand in tray slot when being served lunch. He then filled his milk carton up with toilet water and began slinging it. Eventually, his cell was opened and he was taken down by several officers.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00793]
Mon 09/13/1999		Mikal Mahdi is removed from the Anger Control Group because of his aggressive and inappropriate behavior. He became very upset and threatened that if he does not get released on 9/23/99 he's going to "fuck people up and go around acting crazy" and that he is not responsible for his	Virginia DJJ Recs-Mikal Mahdi (Trial Counsel's File) (Tab 8) [TC000318]

Date & Time	Age	Fact Text	Source and Bates
		actions.	
Tue 09/14/1999	16 years old	Mikal Mahdi was still in SHU and was charged with Destruction of State Property. Mikal Mahdi was in isolation and began trying to destroy the "cell monitor." Officers in riot gear entered the cell.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00797]
Thu 09/16/1999		Counselor at Culpepper JCC speaks with Shareef Mahdi about Mikal Mahdi's recent behavior and offenses and Shareef Mahdi states that he feels "we are trying to break Mikal's spirits. Assured him we are only holding Mikal accountable for his actions"	Virginia DJJ Recs-Mikal Mahdi (Trial Counsel's File) Tab 8) [TC000317]
Fri 09/17/1999	16 years old	Anger control report notes indicate that Mikal Mahdi was progressing well and completing mandatory journal assignments. Was terminated from group after receiving charges.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00805]
Wed 09/22/1999	16 years old	Mikal Mahdi was charged with Threat to Institution Security, Resisting. Officers attempted to talk to Mikal Mahdi about "isolation time" (12 hours) and he refused to go to his cell and force was used. Found not guilty because "time elapsed." His left knee was swollen after the take down and he was given Motrin for pain	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00806]
Sat 09/25/1999	16 years old	Mikal Mahdi was charged with Threat to Institutional Security for throwing an open container of orange drink. Sentenced to 72 hours isolation.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00818]
Wed 09/29/1999	16 years old	Mikal Mahdi charged with hitting an officer after also refusing to go to his cell. Force was used to control Mikal Mahdi.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00823]
Sat 10/02/1999	16 years old	Mikal Mahdi charged with vandalism while housed in Culpepper JCC SHU. He was seen pulling a camera off a wall.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00836]

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Date & Time	Age	Fact Text	Source and Bates
Sat 10/02/1999	16 years old	Mikal Mahdi placed on suicide watch.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00840]
Sun 10/03/1999	16 years old	Mikal Mahdi charged with Threat to Institutional Security for refusing to place arm back through the tray slot. Sentenced to 48 hours isolation. He was placed in soft restraints	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00843]
Wed 10/20/1999	16 years old	Mikal Mahdi removed from suicide watch.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00846]
Fri 10/22/1999	16 years old	While being escorted back to cell, Mikal Mahdi threw a shower shoe at an officer and had to be restrained. Sentenced to 16 hours isolation.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00849]
Tue 10/26/1999		Mikal Mahdi threatens to "stab someone hit someone, whatever" if he doesn't leave Culpepper JCC once he completes anger control.	DJJ Recs -Mikal Mahdi (Solicitor's File) Tab 9) [SOL000048]
Sat 10/30/1999	16 years old	Attempt to circumvent security.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00859]
Mon 11/08/1999	16 years old	Initial Contact and Monthly Note indicate the following: Identifying Information & Reason for Referral Mikal was referred to the Behavioral Services Unit (BSU) for emergency services due reports that he was threatening to harm himself. He was also referred to assess his amenability for treatment in effort to decrease his disruptive and assaultive institutional behavior.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00866]

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Date & Time	Age	Fact Text	Source and Bates
		Background The following information was obtained from Mikal's institutional record. This is Mikal's second commitment to the Department of Juvenile Justice (DJJ). He was first committed from 12/2/97 to 6/14/98, which he served at various facilities including Hanover JCC and Kenbridge Youth Development School, for breaking and entering (2 counts) and grand larceny. He began his current commitment on 8/11/98 and received an indeterminate sentence for obstruction of justice and contempt of court. He was transferred from Hanover to Culpeper JCC on 6/29/99. Mikal has a history of poor adjustment in many settings, as well as a history of verbally abusive and physically aggressive behavior. At the time of this report, he had received over 40 institutional charges during his current commitment for a variety of disruptive behaviors including failure to comply, abusive language, fighting, destruction of property, and assaults on staff. Mikal comes from a reportedly unstable and fairly impoverished family background. His parents were married in 1980 and have been separated since 1990. While in the community, Mikal has resided with an uncle in Baltimore; a family (the Prescotts) in Broadnax, Virginia; and alternately with his grandmother and father in rural Virginia. Throughout these various placements, he also received periodic visits from his mother. Records report that Mikal's father is not employed and receives public assistance amounting to \$122 per month. In addition, records indicate that Mr. Mahdi "has attempted to exert minimal control over his son and seems content to stay detached and uninvolved as long as Mikal is not causing problems for him" (Social History Investigation Report, dated 8/11/98, p. 6). For example, Mikal was allowed to quit school while in his father's care. It is also noteworthy that Mikal's father has also been incarcerated several times in the past and was involved in Mikal's current offenses. Past BSU Involvement According to Mikal's records, he had no BSU contacts during his first commitment and two BSU contacts while at Hanover during his current commitment. Psychologists Gerald Boynton and Cathy Cheeks each saw Mikal separately in June 1999. Both noted that Mikal's thought patterns were greatly distorted in self-serving ways. For	

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Date & Time	Age	Fact Text	Source and Bates
		example, he frequently perceives everyone to be against him and tends to minimize and rationalize his negative behavior. With regard to intellectual abilities, Mikal was evaluated by a school psychologist in the Brunswick county public school system in 1994. On the WISC-III, he obtained a VIQ=114, PIQ=119, and FSIQ=118, which placed his intellectual functioning in the Above Average range. He was re-evaluated in January 1998 at ROC. His WISC-III results were as follows: VIQ=100, PIQ=116, and FSIQ=108. These scores were significantly lower than his previous scores, but were still in the Average to Above Average (on nonverbal tests) range. His lower test scores at RDC were attributed to Mikal's decreased motivation and other effects of incarceration. Current Mental Health Services and Issues Mikal has had ten contacts with BSU Psychologist Marnita Floyd and one with Glen Skoler during the month of October. At least three of these contacts were crisis calls in response to Mikal's suicidal threats and gestures. When initially seen on the isolation side of the Special Housing Unit (Mikal was serving time for assaulting an officer), he appeared moderately depressed with markedly slowed speech and motor movements, a negativistic outlook, and overall melancholic presentation. The content of his speech reflected a significant amount of irrational and distorted thoughts characterized by minimizing his responsibility for negative events, blaming others, and catastrophizing about his future. His preoccupation with conspiracy theories along racial and institutional lines also seemed to have a paranoid quality to them. Mikal reported that he had thoughts to kill himself and that he had several plans that he would not disclose; therefore, he was placed on Level I (15 minute checks) suicide precautions on 10/11/99. The next day, he tried to electrocute himself in his cell and was placed on Level II (5 minute checks) suicide precautions. Most of the first sessions focused on ensuring Mikal's safety. Next, the focus switched to finding ways to elevate his mood. In addition to a blend of supportive and cognitive-behavioral approaches to therapy, a trial of antidepressants was suggested, but Mikal declined taking any medication. His emotional state appeared to brighten around 10/8/99 when he was placed in a cell with a window. He was observed to talk	

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Date & Time	Age	Fact Text	Source and Bates
		more fluently, smile occasionally, and to engage in some constructive activities such as reading and exercising in his cell. On 10/13/99, his suicide precaution status was decreased to Level I (15 minute checks) because he reported that he had not had any thoughts to hann himself since 10/6/99. As Mikal's mood elevated,,he also began to act out in destructive ways by covering up the camera in his room with toilet paper, writing on the window with soap, and breaking a desk off of the wall in his cell. When he was confronted about these behaviors, he took little to no responsibility for them. We discussed differences between the level of structure he received at home and that which he receives at Culpeper and he was encouraged to comply with the program here to improve his adjustment and ensure -a timely return home. Despite comments to the contrary, Mikal seemed a little bit ambivalent about returning home due to financial circumstances there. Toward the end of October, Mikal continued to deny any thought, plans, or urges to harm himself. However, he became defiant verbally issuing ultimatums that he would either go to the general population or remain in protective custody instead of going to the School of Cadet (SOC) as the LEADER program rules dictated. Nevertheless, all suicide precautions were removed on 10/20/99 and he was transferred to the School of the Cadet. I responded to another crisis call one day after his arrival to the SOC at which point Mikal was complaining and demanding to go back to protective custody. I told him he needed to do his time according to the rules and that he should rule out using threats or gestures to harm himself as a option to get his desires met. Of note, he described one unusual sensory experience. He reported that he saw and heard some paint peel up from the wall and then return to its place. Again, I suggested that he undergo a trial of medication, but he declined. His adjustment to the School of the Cadet continues to be marginally adequate at the end ofthis reporting period. Assessment & Recommendations Mikal is a 16 year old African-American male with a recent history of melancholic depressive symptoms, suicidal gestures, disruptive behavior, oppositional defiance of selected authority figures, and irrational	

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		thought patterns. His symptoms seem most consistent with a diagnosis of major depression of at least moderate severity. It is unclear whether his irrational thought patterns constitute psychotic features associated with his mood disorder, or egocentricity and immaturity associated with youth, or a mild thought disorder suggestive of an emerging paranoid personality disorder. Making differential diagnoses in adolescence can be complicated, not only because of typical emotional and psychological changes that accompany normal development, but also because some psychological disorders are only beginning to present themselves and have not completely emerged. Formal psychological evaluation and continued therapeutic contact should help to clarify such diagnostic issues. A diagnosis of oppositional defiant disorder was considered, but was superseded by him meeting criteria for conduct disorder. As mentioned in Mikal's RDC evaluation dated 11/14/98, there appear to be multiple factors contributing to his disruptive behavior. Numerous placements and insufficient parental guidance and supervision in the community seem to have imbued Mikal with little regard for authority figures. Moreover, Mikal has become quite accustomed to doing whatever he wants whenever he feels like it. The irrational thought patterns that Mikal frequently engages in also play a large part in his disruptive behavior cycle. If he is in a negative emotional state like feeling bored or powerless, he will act out destructively. He then minimizes his responsibility for his actions, and when appropriate consequences are meted out, he feels as though he is being treated unjustly. He then uses this perception of unfair treatment towards him to justify further lashing out in his environment. It is recommended that Mikal receive individual psychotherapy at least twice weekly at first, using a cognitive-behavioral approach to help him identify and correct his irrational thoughts, further develop his self-control and increase his participation in constructive activities. Ongoing monitoring of Mikal's mood and psychological functioning will also be accomplished during individual sessions.	
Tue	16 years	Mikal Mahdi placed on suicide watch at Culpepper JCC	Virginia Dep't of Youth and Family

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Date & Time	Age	Fact Text	Source and Bates
11/16/1999		because of threats to hang himself with a sheet.	Services Records-Mikal Mahdi (Tab 4) [M00870]
Thu 11/18/1999	16 years old	Mikal Mahdi while at Culpepper JCC was charged with Assault on Staff. Officers entered cell while he was sleeping and removed a jumpsuit he wasn't supposed to have b/c he was suicide watch. Mikal Mahdi jumped off the bed and rushed at the officer and hit and kicked him. Sentenced to 96 hours isolation.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00871]
Mon 11/29/1999	16 years old	Mikal Mahdi removed from suicide watch.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00882]
Sun 12/05/1999	16 years old	Mikal Mahdi charged with hitting an officer who had taken a hat given to Mikal Mahdi by a visitor. Sentenced to 24 hours isolation.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00887]
Fri 12/10/1999		Counselor meets with Mikal Mahdi at Culpepper JCC and asks about his recent offense-MahdiM says that Officer Waller "spit on him and that's why he hit him". Mikal Mahdi was told that his father called to check his status and that seemed to put him in a good mood.	Virginia DJJ Recs-Mikal Mahdi (Trial Counsel's File) (Tab 8) [TC000298]
Mon 12/13/1999	16 years old	Monthly progress note indicates: Mikal has had six BSU contacts in November and one contact in December with psychologist Mamita Floyd. Mikal's emotional state was more cheerful with few depressive symptoms endorsed or observed this period. Nonetheless, Mikal was placed on suicide precautions on 11/16/99 as a result of him threatening to kill himself and tying a sheet around his neck. When I asked Mikal about this incident, he reported that he did not really intend to harm himself, he just wanted to go to special housing because he believed he could receive more recreation time there.	Virginia Dep't of Youth and Family Services Records-Mikal Mahdi (Tab 4) [M00892]
Tue 12/21/1999	16 years old	Mikal Mahdi charged with circumventing security and fighting. Mikal Mahdi was fighting with another inmate.	Virginia Dep't of Youth and Family

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Date & Time	Age	Fact Text	Source and Bates
		Sentenced to 24 hours isolation.	Services Records-Mikal Mahdi (Tab 4) [M00893]
Tue 12/28/1999		Shareef Mahdi attended a" treatment team for a monthly progress review, he continues to show inappropriate and non-complaint behavior. Also, he displays aggressive/assaultive behavior."	Virginia DJJ Recs-Mikal Mahdi (Trial Counsel's File) (Tab 8) [TC000281]
Fri 01/14/2000		Mikal Mahdi had a session and said he wanted his counselor changed because he felt his current counselor was trying to keep him at Culpepper JCC.	Virginia DJJ Recs-Mikal Mahdi (Trial Counsel's File) (Tab 8) [TC000278]
Fri 01/21/2000		Mikal Mahdi is charged with Threat to Institutional Security at Culpepper JCC	Virginia DJJ Recs-Mikal Mahdi (Trial Counsel's File) (Tab 8) [TC000245]
Mon 01/24/2000		Letter sent to Shareef Mahdi from the Virginia DOC requesting permission to place Mikal Mahdi in the special education program at Culpepper JCC. Shareef Mahdi did not respond.	Virginia Dept of Corrections Education Recs – Mikal Mahdi (Tab 11) [TC001388]
Tue 01/25/2000		An Individualized Education Program (IEP) Evaluation is performed on Mikal Mahdi by the Virginia DOC at Culpepper JCC	Virginia Dept of Corrections Education Recs – Mikal Mahdi (Tab 11) [TC001389]
Wed 01/26/2000		Mikal Mahdi is charged with FTC at Culpepper JCC and also writing obscenities on his wall with pudding	Virginia DJJ Recs-Mikal Mahdi (Trial Counsel's File) (Tab 8) [TC000245]
Fri 01/28/2000		Shareef Mahdi has missed two weeks of visits with Mikal Mahdi at CulpepperJCC-one because of car trouble and the other because of the weather.	Virginia DJJ Recs-Mikal Mahdi (Trial Counsel's File) (Tab 8)

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Date & Time	Age	Fact Text	Source and Bates
			[TC000275]
Mon 01/31/2000		Mikal Mahdi is charged with throwing objects at Culpepper JCC	Virginia DJJ Recs- Mikal Mahdi (Trial Counsel's File) (Tab 8) [TC000252]
Tue 02/01/2000	16 years old	Monthly note indicates: Depressed mood and angry, hostile affect characterized Mikal's presentation during this time period. His level of frustration which fluctuated from moderate to very high, greatly affected his mood and affect. His frustration was directly related to Mikal learning that he would be maintained at CICC until a street charge he incurred at Hanover ICC was resolved. During times of increased stress, Mikal's ability to think coherently and logically was compromised. At these times, his thinking became acutely paranoid and unavailable to therapeutic intervention.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00905]
Tue 02/01/2000		Mikal Mahdi is charged with vandalism at Culpepper JCC	Virginia DJJ Recs- Mikal Mahdi (Trial Counsel's File) (Tab 8) [TC000252]
Thu 02/24/2000	16 years old	Hanover Juvenile Domestic Relations District Court Commitment Order Mikal found guilty of Assault and Battery, committed to Department of Juvenile Justice for an indeterminate period.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00929]
Thu 02/24/2000		Mikal Mahdi is placed back in general population at Culpepper JCC because he had only received two moderates and no major violations in the past 30 days.	Virginia DJJ Recs- Mikal Mahdi (Trial Counsel's File) (Tab 8) [TC000251]
Sat 03/04/2000	16 years old	Mikal Mahdi charged with assault on staff. Mikal Mahdi got into an argument with an officer and threw water on the officer. After being restrained, Mikal Mahdi got free and hit the officer. Sentenced to 120 hours isolation.	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab

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Date & Time	Age	Fact Text	Source and Bates
			4) [M00953]
Thu 03/16/2000		Mikal Mahdi is demoted and placed in the school of cadet at Culpepper JCC because of continued violations. It states that his committing offense was he "threatened a judge, and shouted at deputies who were trying to serve a warrant on his father, that he 'had a gun and always wanted to kill a cop'".	Virginia DJJ Recs- Mikal Mahdi (Trial Counsel's File) (Tab 8) [TC000237]
Sun 03/26/2000		Shareef Mahdi visits Mikal Mahdi at Culpepper JCC even though he is not eligible for visitors at that time	Virginia DJJ Recs- Mikal Mahdi (Trial Counsel's File) (Tab 8) [TC000287]
Mon 05/01/2000	17 years old	Monthly progress note indicates that: This month started with Mikal apologizing to this writer for escalating and throwing food in his cell at the end of last month. This interchange set the tone for the remaining six contacts during this reporting period. For the most part, Mikal allowed himself to be more open to very direct interventions from this writer and also to be appropriately challenging of this writer's style. The content of the sessions was Mikal's preoccupation with the idea that there is a conspiracy against him and that CICC staff are active and knowing participants in this process. Therapeutic interventions attempted to cognitively disassemble his delusional thought processes by challenging various aspects of Mikal's theory. For example, Mikal is prone to use the term "they" to describe the vague, unidentified entity that is out to get him. Unless Mikal could identify the "they" he was referring to, he was not allowed to use that term. Mikal quickly became aware that he was frequently unsure of to whom he was referring when he was making his allegations. Other interventions focused on Mikal's tendency to make negative predictions based on limited information. These and similar cognitive interventions had the most positive, albeit typically fleeting, success with Mikal. There were times, however, when he was completely unresponsive and instead insisted that his view of the world was indeed accurate. One such example occurred around Mikal's court appearance regarding a street charge he incurred at his previous	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00965]

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Date & Time	Age	Fact Text	Source and Bates
		placement. Mikal was convinced that this writer knew what the outcome of the court proceedings was going to be. This session, however, was an exception to the general tone of the interactions.	
Thu 05/04/2000	17 years old	Discharged from Culpepper JCC: "Mikal was committed to the Department of Juvenile Justice on August 11, 1998. He was transferred to Hanover Juvenile Correctional Center on November 23, 1998, and later transferred to Culpeper Juvenile Correctional Center on June 29, 1999. Mikal's overall progress was plagued by his maladaptive behavior. During his stay at Culpeper JCC, Mikal received a total of twelve moderate and twelve major institutional offenses. Although Mikal made it to General Population, he spent most of his time in the School of Cadet due to the display of consistent inappropriate and non-compliant behavior. It appeared that Mikal had a feeling of entitlement; if things did not immediately go his way, he felt he had the right to become aggressive and/or assaultive and often times he did. Although Mikal successfully completed his mandatory Anger Control treatment objective, he seldom "practiced" what he learned. He consistently displayed a lack of respect for authority figures, rules, and limits, thereby failing to comply with program guidelines. In addition, Mikal received psychological services while at Culpeper. At one time, he displayed suicidal and homicidal ideations and was therefore placed on Suicide Alert. During therapy sessions, Mikal reportedly focussed on the Destructive Behavior Style and Common Thinking Errors in order to correct his irrational thoughts, develop his self-control, and increase his participation in constructive activities. Mikal's behavior eventually improved; he received his last institutional offense on March 4, 2000. Further, Mikal was encouraged to pursue his education upon release, as he did not obtain a diploma or GED certificate prior to his release."	Virginia Dep't of Youth and Family Services Records- Mikal Mahdi (Tab 4) [M00966]
Thu 11/23/2000		Mikal Mahdi visits his mother, Vera Artis Mahdi, and when she does not answer the door for him he goes in the parking lot and slashes her tires and also damages the driver side door to her vehicle. Michael Koehler was the officer that went to Vera Artis Mahdi's house.	Incident Report re Vandalism of Car- Mikal Mahdi (Tab 13) [TC001135]

Date & Time	Age	Fact Text	Source and Bates
Thu 11/23/2000		Shareef Mahdi charged with Obstruction of Justice; found guilty and sentenced to 30 days.	Court Recs - Obstruction of Justice-Shareef Mahdi (Tab 18) [M003560-64]
Fri 11/24/2000		Officer Michael Koehler and Officer Charles Taylor go to Shareef Mahdi and Mikal Mahdi's residence to serve a summons for vandalism on Mikal Mahdi for slashing his mom's, Vera Artis Mahdi's tires. Mikal Mahdi resisted arrest and had to be pepper sprayed and hit with the baton in the calf and Shareef Mahdi assisted Mikal Mahdi in resisting arrest and was also pepper sprayed and hit with a baton. Mikal Mahdi grabbed Officer Charles Taylor's gun also. They were able to get him under control and arrest him without further incident. Mikal Mahdi admitted to slashing his mother's tires and calling her a bitch and said that "he should have killed her".	Incident Report re Vandalism of Car-Mikal Mahdi (Tab 13) [TC001136]
Tue 04/17/2001		Mikal Mahdi charged with malicious wounding of Moises Rivera.	Court Recs - Felonious Assault-Mikal Mahdi (Tab 14) at M003586
Tue 04/17/2001		Daytime B&E of house belonging to John Broach.	Court Recs - Break and Enter-Mikal Mahdi (Tab 15) at M003630
Mon 07/16/2001		Mikal Mahdi sentenced for Malicious Wounding to 180 months, with 141 months suspended for 15 years.	Court Recs - Felonious Assault-Mikal Mahdi (Tab 14) at M003566
Sun 09/23/2001		Shareef Mahdi at VA hospital: HOSPITAL COURSE: 47 Y/O BLACK MALE W/O SIGNIFICANT MEDICAL HX PRESENTED TO VAMC ER AFTER 1 DAY H/O VOMITING(X1 AT 7PM), WEAKNESS, NUMBNESS & CRAMPS IN BOTH HANDS & FEET. PT WAS WORKING AS GROUNDSKEEPER ALL DAY TODAY AND DRANK 4-5 SODAS BUT HAD NO URINE, NO SWEATING AND FELT DEHYDRATED ALL DAY. PT SAYS HE FELT BETTER AFTER EMESIS BUT BECAME PROGRESSIVELY WEAKER AND CRAMPS BECAME MORE BOTHERSOME, SO HE CAME TO ER. PT SAYS HE HAD NO BREAKFAST, LUNCH	McGuire VA Med Ctr Recs-Shareef Mahdi (Tab 23) [M003429]

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Date & Time	Age	Fact Text	Source and Bates
		OR DINNER TODAY. HE DOES NOT USUALLY GO ALL DAY W/O EATING, "BUT I WAS WORKING SO HARD I DIDN'T HAVE TIME. AND I DRANK SODAS, SO I WASN'T VERY HUNGRY ALL DAY". PT ALSO C/O OCCASIONAL DIZZINESS THROUGHOUT THE DAY--"I DIDN'T PASS OUT, BUT I SOMETIMES I THOUGHT I WOULD FAINT". PT DENIES SUBJECTIVE FEVER, CHILLS, HEADACHE, ABDOMINAL PAIN/CRAMPS. PT ALSO REPORTS H/O MELANOTIC STOOLS FIRST SEEN APPROX. 6 MONTHS AGO. HE STILL HAS OCCASIONAL MELANOTIC STOOLS AND BRIGHT RED BLOOD DROPS IN TOILET WATER, BUT DENIES PAIN UPON DEFECATION. LIVES W/ 20 Y/O SON. CURRENTLY DRAWING UNEMPLOYMENT BUT WORKING AS GROUNDSKEEPER P/T.. SMOKES CIGARS SINCE 4/01, DENIES ETOH/IVDA. NEVER TESTED FOR HIV.	
Wed 10/24/2001		VADOC Mental Health Screening of Mikal Mahdi Reasons for leaving school: "10th grade. Quit school. 'Made too much money' - robbery, drug dealing" "Offered self- serving solutions to judgment scenarios, nil insight to cause and effect, no remorse, absence of remorse discussing crimes." "Happy with my life." Diagnostic Impression: Intermittent Explosive Disorder; Antisocial Personality Disorder "Inmate stated that robbery was a 'seasonal' job - referred to crimes as business or occupation stated he hated doing the same thing everyday. Made him angry and 'feel less of a man.'"	VA.DOC mental health screening – Mikal Mahdi (Tab 16) [TC000985]
Mon 11/05/2001	18 years old	VADOC SRCC Disciplinary Offense Report: Offense Title: Being in Unauthorized Area (found in movie room) Outcome: Reprimand	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01348]
Tue 11/06/2001	18 years old	VA DOC	Virginia Dep't of Corrections

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Date & Time	Age	Fact Text	Source and Bates
		SRCC Disciplinary Offense Report: Offense Title: Failure to Follow Institutional Count Procedure (did not stand for count) Outcome: 8 days rec restriction	Records-Mikal Mahdi (Tab 5) [M01351]
Wed 11/14/2001	18 years old	VA DOC SRCC Disciplinary Offense Report: Offense Title: Vulgar or Insolent Language to Employee (sent request form using vulgar language) Outcome: 10 days cell restriction	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01356]
Tue 11/27/2001	18 years old	VA DOC SRCC Disciplinary Offense Report: Offense Title: Possession of Contraband (radio) Outcome: 15 days isolation; confiscate radio	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01360]
Wed 11/28/2001	18 years old	VA DOC SRCC Disciplinary Offense Report: Offense Title: Failure to Follow Count Procedure (not standing) Outcome: 15 days isolation	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01364]
Thu 12/06/2001	18 years old	VA DOC SRCC Disciplinary Offense Report: Offense Title: Disobeying an Order (refused to return to cell when told) Outcome: 15 days isolation	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01366]
Fri 12/07/2001	18 years old	VA DOC SRCC	Virginia Dep't of Corrections Records-Mikal

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Date & Time	Age	Fact Text	Source and Bates
		Disciplinary Offense Report: Offense Title: Using Vulgar Language Directed Towards an Employee (made statement, "all it takes is fifty dollars. I'll suck the juice out of that pussy." Mikal denied it happened, asking, "Do you write people up out of hate? Was this false charge hate motivated?" Outcome: 12 days isolation- suspended 1/23/02 due to transfer	Mahdi (Tab 5) [M01368]
Sat 12/15/2001	18 years old	VA DOC SRCC Disciplinary Offense Report: Offense Title: Being in Unauthorized Area - in C hallway without permission Outcome: 30 day loss visitation	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01372]
Tue 06/04/2002	19 years old	VA DOC Nottaway Correctional Disciplinary Offense Report: Offense Title: Disobeying Direct Order (to tuck in shirt tail- kept on walking) Outcome: \$6 fine	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01391]
Tue 09/24/2002	19 years old	VA DOC Nottaway Correctional: Disciplinary Offense Report: Offense Title: Disobey Order (told to get a haircut- out of compliance) Outcome: 10 days isolation Reporting officer - Haskins.	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01405]
Thu 10/24/2002	19 years old	VA DOC Nottaway Correctional: Disciplinary Offense Report: Offense Title: Setting a Fire Not Resulting in Actual Damage- (Setting bags of trash on fire and pushing them	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01417]

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Date & Time	Age	Fact Text	Source and Bates
		through slot into control room) Outcome: 15 days isolation	
Thu 10/24/2002	19 years old	VA DOC Nottaway Correctional: Disciplinary Offense Report: Offense Title: Disobey Order (did not get out of shower when told) Outcome: (10 days isolation)	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01418]
Tue 11/12/2002	19 years old	VA DOC Nottaway Correctional: Disciplinary Offense Report: Offense Title: Disobey Order (refused to pass tray through tray slot) Outcome: \$12 fine	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01427]
Mon 11/25/2002	19 years old	VA DOC Nottaway Correctional: Disciplinary Offense Report: Offense Title: Threatening Bodily Harm (Sent complaint form that said, "Read this bitch the day you die. Fuck all ya'll and suck some musty balls yah hoe." Signed "Thuged (sic) out killa" Outcome: 10 days isolation Reporting officer: CO McMillion	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01432]
Tue 01/28/2003	19 years old	VADOC Mikal is housed at Wallens Ridge (through 5/12/04; he is recommended for general population.	
Thu 02/27/2003	19 years old	VA DOC Wallens Ridge Disciplinary Offense Report: Offense Title: Disobeying an Order Outcome: Was told to pick up his tray lid, which he did and then threw it saying "How do you like that mother	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01451]

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Date & Time	Age	Fact Text	Source and Bates
		fucker? You tell head to come and get me." Outcome: 8 days isolation Reporting officer: CO Williams	
Wed 04/23/2003	20 years old	VA DOC Wallens Ridge Disciplinary Offense Report: Mikal Mahdi charged (by CO [Deleted Object]) with disobeying a direct order for failure to come out of cell dressed for meal; penalty was a \$2 fine.	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01461]
Tue 04/29/2003	20 years old	VA DOC Wallens Ridge Disciplinary Offense Report: Offense Title: Disobey Direct Order (given 5 minutes to change clothes was still changing five minutes later) Outcome: \$2 fine Reporting officer: Phipps	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01466]
Thu 05/01/2003	20 years old	VA DOC Wallens Ridge Disciplinary Offense Report: Offense Title: Intentionally Throwing Food or Other Substances (threw tray out of cell to bottom tier) Outcome: 10 days isolation Reporting Officer: CO Shepard	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01472]
Wed 06/25/2003		Shareef Mahdi at McGuire Hospital: PROGRESS NOTE VET WAS SEEN BY THIS WRITER ON 6/24/03, VET APPEARED TO BE VERY TROUBLE AND SOMEWHAT DETACHED. VET IS OR WAS BEING SEEN AT THE DAILY PLANET FOR AN ADJUSTMENT DISORDER. THIS VET LONGEST JOB HAS BEEN ONLY FOR 3 YRS IN HIS LIFE AND HE FAILS TO GET ALONG WITH OTHERS WELL. WRITER HAS RECOMMENDED THAT THIS VET SEE A DR HERE AT THIS VAMC AND THAT HE ENROLL IN THE PSYC. DAY TX PROGRAM.	McGuire VA Med Ctr Recs-Shareef Mahdi (Tab 23) [M003513] ---

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Date & Time	Age	Fact Text	Source and Bates
Thu 07/10/2003		Shareef Mahdi at McGuire Hospital: Reason for consult: Pt with chronic depression request day treatment program.	McGuire VA Med Ctr Recs-Shareef Mahdi (Tab 23) [M003437]
Thu 07/24/2003		Shareef Mahdi at McGuire Hospital: o-Veteran got into a verbal altercation with another veteran in reference to the volume of the radio. He claims he was threaten by this veteran (J.D.) and he is going to make a threat report to the VA. Police. Someone from the "Mason", must have sent him to get rid of me. I am tired of people threatening me..I do not know what he is going to do to me while I am out there waiting for the bus. I have been threaten so much in the past." P-Encouraged veteran, he is safe here. Inappropriate behavior will not be tolerated.	McGuire VA Med Ctr Recs-Shareef Mahdi (Tab 23) [M003502]
Mon 07/28/2003		Shareef Mahdi at McGuire Hospital: Mr. Mahdi is being treated for depression and social anxiety. Mr. Mahdi was on time for his appointment and neatly groomed. Mr. mahdi had some difficulty with eye contact today but seemed to feel more comfortable as the session went on. Began social assessment and building rapport and trust. Mr. Mahdi was willing to share his history to some degree. Mr. Mahdi feels the "masons" are stalking him to do him harm. He also believes they are responsible for his inability to get and retain a job. He attributes this to his race and his religion. Mr. Mahdi is currently living at the Salvation Army. Mr. Mahdi denies alcohol or drug use since he was 21 when he became Muslim. Mr. Mahdi was born in Lawrenceville, VA, the 5th of 6 children. Mr. Mahdi recalls that he wanted to kill himself at the age of 7 following a sexual attack on his 6 y/o sister which he witnessed. This sister was raped at the age of 13 and Mr. Mahdi blames himself for that as well "I should have been able to stop it". The veteran's parents were teachers and both worked. He described his relationship with both as distant. Father is deceased and mother is still living. Mr. Mahdi is closest to his youngest sister though he is currently estranged from all his family. He says he doesn't want to burden them any further. The veteran has been married one time. The marriage lasted 16 years and produced two sons. Their mother left them when they were young and Mr. Mahdi said he tried to raise them as	McGuire VA Med Ctr Recs-Shareef Mahdi (Tab 23) [M003501]

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Date & Time	Age	Fact Text	Source and Bates
		best he could. He feels he has failed in this respect. Mr. Mahdi has had various relationships since Mr. Mahdi is currently does not have a significant other. Mr. Mahdi quit school at age 18 and joined the Marines. He worked as a file clerk and a truck driver. PLAN: continue assessment at next meeting. skills: assessment/supportive psychotherapy GAF: 42	
Tue 08/05/2003	20 years old	VA DOC Wallens Ridge Disciplinary Offense Report: Offense Title: Disobey Direct Order (Orders around taking a shower, returning to cell) Outcome: \$5 fine Reporting Officer: CO Robinson	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01481]
Thu 08/07/2003		Shareef Mahdi at McGuire Hospital: Patient attended the peer support group on 8/6 at 10am. Patient participated in the group discussion, listening attentively while others were talking. Patient still appears very paranoid as he describes his small home town and even here in Richmond, that "they" are looking for him. Seems focused on the Masons and white supremacist groups. Difficult to redirect.	McGuire VA Med Ctr Recs-Shareef Mahdi (Tab 23) [M003492]
Mon 08/11/2003		Shareef Mahdi at McGuire Hospital: Reason For Request: Non-Formulary and Restricted Drug Request (NFRDR) Form NF or Restricted Drug: Provigil Dose and Schedule : 200mg QD Reason for request (be specific): Pt with history of chronic depression, tx with many antidepressants but still lethargic, fatigued, sedated	McGuire VA Med Ctr Recs-Shareef Mahdi (Tab 23) [M003433]
Mon 08/11/2003		Shareef Mahdi at McGuire Hospital: SOCIAL WORK CASE MANAGEMENT Mr. Mahdi is being treated for depression. Mr. Mahdi	McGuire VA Med Ctr Recs-Shareef Mahdi (Tab 23)

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Date & Time	Age	Fact Text	Source and Bates
		reports feeling somewhat better overall but is still feeling very paranoid. He says he feels somewhat uncomfortable about a couple of people in the group who are from his home town. Mr. Mahdi expressed appreciation for the program and for his place at the Salvation Army. Mr. Mahdi was pleased that he has been given some responsibility at the Salvation Army now. The veteran complained of feeling unconnected to the present. He says he does not feel a part of the world. Mr. Mahdi said "I feel like my heart is broken" He referenced back to when his wife left him and the children. He continues to carry some guilt that he did not provide better for his sons. PLAN: pt to begin journaling feelings. continue with weekly sessions for the time being. skills: supportive psychotherapy GAF:43	[M003490]
Wed 09/03/2003		Shareef Mahdi at McGuire Hospital: Veteran with the diagnosis of depression was discussed in treatment team rounds rounds, 8-27-03. Veteran got into a verbal altercation with another veteran during group. He is been seen on a one on one basis as veteran appears to be dealing with a lot of issues. He is working with Mr. Bell in the homeless program also.	McGuire VA Med Ctr Recs-Shareef Mahdi (Tab 23) [M003480]
Thu 10/02/2003		Shareef Mahdi at McGuire Hospital: Shareef isn't connected with anyone. He became very angry as he discussed the feeling of betrayal by his former wife. He stated that he had wanted to harm her. He became so emotional that he walked out of the room. The group was concerned about his reaction. The group leader did convey to the group that a clinician will followup with Shareef.	McGuire VA Med Ctr Recs-Shareef Mahdi (Tab 23) [M003455]
Sun 10/05/2003	20 years old	VA DOC Wallens Ridge Disciplinary Offense Report: Offense Title: Attempting a Simple Assault on a Non-Inmate" Mahdi threw his tray through the slot towards the officer. He was placed on "restricted Feeding Status." He was subsequently instructed to submit to a strip	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01489]

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Date & Time	Age	Fact Text	Source and Bates
		search. He was then handcuffed, placed in leg irons and placed in "Pre-Hearing Detention Status." "There was no force utilized as Mahdi offered no resistance." Outcome: Not documented	
Mon 10/20/2003		Shareef Mahdi at McGuire Hospital: Veteran was in the process of telling the group about his weekend, when he became extremely angry. Said, "he hated all of his enemies and pray they will die and then he would urinate on their graves. He began using profanity and stormed out of the room. He has not return to MHC/DTC since this incident.	McGuire VA Med Ctr Recs-Shareef Mahdi (Tab 23) [M003453]
Wed 10/22/2003	20 years old	VA DOC Wallens Ridge Disciplinary Offense Report: Offense Title: Possession Contraband (altered adapter and Sony radio) Outcome: 15 day loss of commissary	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01492]
Thu 10/23/2003	20 years old	VA DOC Wallens Ridge Disciplinary Offense Report: Offense Title: Possession of Sharpened Instrument (Bare razor from a security razor, 3 X 3 square cut out of foam on bed.) "Mahdi stated that SGT Younce told him that if he did not write a statement that SGT Fields did not assault him that he would write him a weapons charge "and make sure I'll be in segregation here for a real long time." He also stated that he did write a statement and was written a charge anyway..." (NOTE: Mikal had a witness statement to this effect.) Outcome: Found guilty as weapon was found in room- 30 days isolation	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01494]
Thu 10/23/2003	20 years old	VA DOC Wallens Ridge Disciplinary Offense Report:	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5)

January 14, 2011
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A004279

2025APP 1569

Date & Time	Age	Fact Text	Source and Bates
		Offense Title: Lying or giving false information to employee. Mahdi wrote an emergency grievance alleging that SGT Fields assaulted and threatened him on 10/22/03. SGT Younce interviewed inmate who "willingly admitted he had lied about being assaulted and threatened as a means of retaliation for SGT Fields confiscating an altered Walkman adapter during cell search." (There is a written statement from Mahdi that he was not assaulted.) Outcome: \$5 fine	[M01495]
Fri 10/24/2003	20 years old	Keane Pernell signed a witness statement indicating that Younce had threatened Mikal Mahdi into retracting his allegation against Fields.	
Sat 11/22/2003	20 years old	VA DOC Wallens Ridge Disciplinary Offense Report: Offense Title: Disobey Direct Order (did not remove things from his window when told) Outcome: \$2 fine.	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01507]
Wed 11/26/2003	20 years old	VA DOC Wallens Ridge Disciplinary Offense Report: Offense Title: Simple Assault Upon Non-Inmate - Officer claimed that when he went to get Mahdi to sign a property inventory form, that Mahdi had grabbed him by the left wrist when he was reaching through the tray slot. Mahdi claimed that Officer was eating Mahdi's commissary food and got mad when he would not sign form and Officer then sprayed him with pepper spray. Hearing Committee said Mahdi's statements "Made no sense" and found him guilty of simple assault. Statement goes on to say, "...grabbed Officer Shepard by his left wrist. Officer Shepard immediately removed his MK-4 from his holder and administered 1 burst for 1/2 second in an attempt to strike the inmate in the face area but due to the struggle missed and the OC hit the inmate in the chest area. The inmate released his arm	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01509]

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A004280

2025APP 1570

Date & Time	Age	Fact Text	Source and Bates
		and the officer immediately closed the tray slot." Additional staff arrived to decontaminate Mahdi but he refused saying he was not hit by the gas. He was then placed in ambulatory restraints. Outcome: 15 days isolation Mullins (nurse) conducted medical assessment; also present were Officer East and Franklin; Restraining process was filmed by Officer Greer.	
Wed 11/26/2003	20 years old	VA DOC Wallens Ridge Disciplinary Offense Report: Offense Title: Destroying State Property (when given notice of hearing, Mahdi tore it up and said 'There I signed it.' Outcome: 5 days isolation	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01519]
Fri 12/19/2003		Shareef Mahdi seen at the VA Hospital in Philadelphia for a refill of his hypertension and depression prescriptions and ear pain. He has been out of his medication for 3 weeks. States he has been on Paxil and Seroquel for treatment of schizophrenia.	VA Hospital Records, Philadelphia- Shareef Mahdi (Tab 22) [M003087]
Tue 12/23/2003		Shareef Mahdi seen at the VA Hospital in Philadelphia for follow-up of an ear infection; requesting more pain medication	VA Hospital Records, Philadelphia- Shareef Mahdi (Tab 22) [M003095]
Sun 12/28/2003		Shareef Mahdi seen at VA Hospital in Philadelphia for continued ear pain, asking for more pain medication. States that he also went to another hospital for the same.	VA Hospital Records, Philadelphia- Shareef Mahdi (Tab 22) [M003099]
Wed 01/14/2004		Wallens Ridge monitoring form again notes no signs of mental disorder.	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5)

Date & Time	Age	Fact Text	Source and Bates
			[M01321]
Wed 02/04/2004		Wallens Ridge monitoring form again notes no signs of mental disorder.	Virginia Dep't of Corrections Records-Mikal Mahdi (Tab 5) [M01322]
Thu 05/06/2004		Shareef Mahdi is treated at the VA Hospital in Philadelphia states he thought his BP was up, because whenever he has a disagreement with his wife, he gets a dull, bifrontal headache and "tingling in my fingers (both hands)". Wants a refill of his blood pressure medicine.	VA Hospital Records, Philadelphia- Shareef Mahdi (Tab 22) [M003103]
Wed 05/12/2004	21 years old	Released from 15 year prison sentence	

INTERIM PSYCHIATRIC EVALUATION

IDENTIFYING INFORMATION:

PATIENT NAME: MADHI, MIKAL
ADDRESS: Redacted
CASE NO:
DATE OF ADMISSION: 08/23/92
UNIT INFORMATION: Childrens Unit, 4E
TYPE OF ADMISSION: Certified
DATE OF BIRTH: Redacted
AGE: 9
DATE OF EVALUATION:
RACE/NATIONAL ORIGIN: Black
SEX: Male

HISTORY OF PRESENT ILLNESS: Mikal is a 9 year-old black male who was admitted to the Walter P. Carter Center on August 23, 1992, because of suicidal statements made to the Police after he called them to report alleged child abuse. Reportedly that day, his aunt had asked him to practice his reading and he stated that he wanted to go outside, so after she told him that he could not go outside, he went out anyway. After he returned, his aunt beat him on his behind and his legs with a belt. His aunt, Ms. Burwell, states that Mikal has been verbalizing suicidal ideations such as "Why do not shoot me, there is no reason to live.", since he came to live with her and his biological paternal uncle in October, 1991. Usually these statements were said after he did not get his way or he made a mistake.

Two weeks prior to admission, Mikal had returned from a month long stay with his father and his paternal grandmother in South Hill, Virginia. During that stay, he observed his father beat up his grandmother who subsequently called the Police and his father was incarcerated. He also knew that when his biological mother came to visit, his father also beat up his mother at that time. It was after the incident where the father beat up his grandmother that he returned to Baltimore, to stay with his paternal uncle because of the chaos in South Hill, Virginia.

After his return, Ms. Burwell states that Mikal, out of the blue, one day stated "You only have to pay someone \$200.00 to kill yourself.". This statement was said without any precipitating events as stated previously.

Mikal reported some trouble sleeping. He also stated that over the past year his appetite has not been as good as previously and he states that he thought that he had lost about a pound or two. He also reports some trouble sleeping at night. Ms. Burwell, his aunt states that he has had increased sadness after his return from Virginia. She also states that he is scared of failing the third grade and he blames himself for his family's breakup.

INTERIM PSYCHIATRIC EVALUATION

MADHI, MIKAL

CASE NO: Redacted

DATE:

PAGE 2

PAST PSYCHIATRIC HISTORY: Mikal has been followed by his school counselor since October, 1991, once a week. He has had no prior psychiatric hospitalizations.

PAST MEDICAL HISTORY: Significant for, at age 5, having a right arm fracture, and at age 4 of having a right leg fracture secondary to a fall in the home. He is not on any medication and reportedly has no drug allergies.

FAMILY PSYCHIATRIC HISTORY: Significant for reported depression in his father after Mikal's biological mother left him when Mikal was four years old. There is a question of him taking antidepressant medication, but he has refused counseling.

FAMILY HISTORY: Mikal is a 9 year-old, black male who is the second child of a Muslim couple whose marriage was arranged in the Islamic Faith. He has an older brother who is 11 years old and is residing with a paternal aunt in Texas. Reportedly, when Mikal's parents were together they lived with the grandmother and then tried to live by themselves but were unable to support themselves since both the father and the mother had low paying menial jobs which necessitated a return to the grandmother's residence. Mikal's mother left the household when Mikal was 4 years old and he had no contact with her until April, 1992, thinking that she was dead. His father was unable to care of Mikal and his older brother and the paternal grandmother was also unable to care for him so Mikal was sent to live with his paternal uncle, Mr. & Mrs. Burwell in Maryland. In the Burwell household he lives with Mr. & Mrs. Burwell, a 15 year old cousin and a 5 and 1 year old cousins.

EDUCATIONAL HISTORY: Mikal's academic history is somewhat confusing because reportedly the father did not have enough energy to take Mikal and his brother to school. Mikal reportedly also had behavioral problems in the school system in Virginia. Mikal repeated the second grade when he came to Maryland and is now scheduled to start the third grade.

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ADMISSION MENTAL STATUS EXAMINATION: Mikal is well developed, light complexion, 9 year-old black male with sad eyes. He looked his stated age and no abnormal movements or mannerisms were noted. He was cooperative with the interview, even though he said that he is kind of tired because he had already spoken to about 15 different people on the day of admission. He described his mood as sad. His affect was restricted but appropriate. His speech was soft and his eye contact was poor, preferring to look away from the interviewer. He was oriented to date and place. He had no psychotic symptoms noted. He did have suicidal ideation stating

INTERIM PSYCHIATRIC EVALUATION

MADHI, MIKAL

CASE NO: Redacted

DATE:

PAGE 3

"I will jump off a bridge, shoot myself and kill myself with my bow and arrows." He denied any homicidal ideation. His wishes were: 1) "I want my family to be together and that is all I ask for." He denied any plans of what he wants to be when he grows up. The animal he wanted to be was crayfish because it can live both in water and on land. He stated that the things he likes to do are play with his Nintendo, his chemistry set and with his bicycle. The main theme of his interview was "the only solution to my problems is to get out of this life". His judgement and insight were poor, because the only way he could think of either solving or improving his problems is to die.

PHYSICAL STATUS ON EXAMINATION : Reveals a well developed, well nourished black male. There were no abnormalities seen, no bruises seen.

LABORATORY DATA: EKG: shows normal sinus rhythm with a PR interval of .176. Ventricular rate of 92 beats a minute. QRS duration of .08. QT interval corrected of .44. BILIRUBIN: .4. ALKALINE PHOSPHATASE: 193. SGOT: 19. SGPT: 12. LDH: 183. TOTAL PROTEIN: 7.6. ALBUMIN: 5.1. GLOBULIN: 2.5. GLUCOSE: 107. BUN: 13. CREATININE: 7. URIC ACID: 3.6. CHOLESTEROL: 198. TRIGLYCERIDES: 86. SODIUM: 146. POTASSIUM: 4.3. CHLORIDE: 108. CALCIUM: 10.3. PHOSPHORUS: inorganic was 5.7. TOTAL IRON: 109. CO2: 25. WHITE BLOOD COUNT: 3.9. HEMOGLOBIN: 12.4. HEMATOCRIT: 37. MCV: 87.6. MCH: 79.9. MCHC: 33.5. PLATELETS: 409,000. His urine ratio to specific gravity > than 1.0030 no white blood cells, red blood cells or bacteria was seen. THYROID FUNCTION TESTS: pending as of this dictation. All of the above labs were within normal limits.

ADMISSION DIAGNOSIS:

Axis I	Major Depression, Recurrent with suicidal ideation	296.33
	R/O Adjustment Disorder	
Axis II	R/O Developmental Reading Disorder	315.00
Axis III	History of right arm and right leg fractures.	

HOSPITAL COURSE: Mr. Madhi adjusted well to the unit. After approximately 72 hours he started testing limits but was easily verbally redirected. He has gone to the quiet room once because he refused to follow directions but no other severe behavioral problems were noted.

CONFIDENTIAL

A meeting was held with his aunt on August 26, 1992 where a lot of family history was obtained and history of Mikal was obtained.

M00130

A004410

INTERIM PSYCHIATRIC EVALUATION

MADHI, MIKAL

CASE NO: 24428

DATE:

PAGE 4

August 31, 1992: a certification hearing was held and the results were that Mikal was retained at hearing. Mikal has been involved in individual therapy with me, Dr. Allen, in group therapy and in milieu therapy. His medical work-up is complete except for his Thyroid Profile. After the results are obtained, we recommend that he start on tricyclic antidepressants for treatment of his Major Depression.

RECOMMENDATIONS:

1. The patient, Mikal, is to be started on tricyclic antidepressants to treat his Major Depression with Suicidal Ideation.
2. He will need continued individual therapy to address his feelings about the dysfunction of his natural family. He will also need individual therapy to help him adjust to living with his aunt and uncle.
3. Family therapy is also recommended with Mr. & Mrs. Burwell to help them get used to Mikal and Mikal get used to them and help them address problems that will come up in this adjustment period.
4. For placement we recommend that after this hospitalization he returns to live with Mr. & Mrs. Burwell in their home.

CURRENT DIAGNOSIS:

Axis I	Major Depression, Single Episode	296.22
	R/O Post Traumatic Stress Disorder	309.89
Axis II	Deferred	
Axis III	History of broken right leg and right arm.	


BEVERLEY ALLEN, M.D.
Child Fellow
Childrens Unit, 4E

SUSHMA JANI, M.D.
Unit Director, 4E

SJ/BA:medts/lmg
R:09/09/92 T:09/15/92



M00353

COMMONWEALTH of VIRGINIA

SHEILA HILL-CHRISTIAN
DIRECTOR

DEPARTMENT OF JUVENILE JUSTICE

Reception & Diagnostic Center

December 10, 1997

Mr. John H. Weigel, III, Court Ser. Unit Dir.
DYFS - 6th Court Service Unit
Hopewell Courts Facility
Suite G05, 100 East Broadway
Hopewell, Virginia 23860

OFFICE OF THE
SUPERINTENDENT

1601 BON AIR ROAD
BON AIR, VIRGINIA 22135
TEL: 323-2600
FAX: 323-2312

RE: MAHDI MIKAL DEEN
DOB: Redacted

SF # Redacted

Date Committed: 12/2/97 BY Brunswick Co. Court
Caseworker: Linda Coulson Phone: 804/323-2681

Dear Mr. Weigel:

The above named youth will be staffed at the Reception and Diagnostic Center on January 14, 1998. Input from the court service unit is required by minimum standards and may be in the form of a letter, phone call followed by written documentation, or attendance at staffing. Determining primary needs and parole plans is essential in order for the Department to sufficiently outline the youth's treatment objectives during commitment.

The Basic Training portion of the LEADER military school style program begins at RDC on November 3. Youths will participate in four weeks of Basic Training concluding with a graduation exercise prior to transfer to their assignment. During this Basic Training, parental visitation is not permitted nor are parents/guardians allowed to attend staffing. They will be invited to attend the Basic Training graduation for their son or daughter. If you wish to attend staffing, please contact the youth's caseworker for information on the scheduled time.

Effective November 3 with the beginning of the LEADER program, it will be necessary for parents/guardians to retain all personal belongings for their son or daughter except the clothing they wear to RDC. Please advise parents of this requirement as the RDC transportation officers will no longer bring additional belongings to RDC.

If you have questions or concerns or need additional information, please contact us. Thank you.

Sincerely,


Linda J. Morris
Acting Superintendent

A004637

"To Reduce Juvenile Delinquency and Recidivism"

2025APP 1578

JURISDICTION: BRUNSWICK
DOB: Redacted

PROBATION OFFICER: Woody Harris

DATE:	OFFENSE/COURT APPEARANCE:	DISPOSITION/PLACEMENT
=====	=====	=====

11/25/97 (1-4) Cont. to 12/2/97

M00356

FACE SHEET

NAME: MAHDI, Mikal Deen
Page 4

JURISDICTION: BRUNSWICK
DOB: Redacted

7/15/98 (9) Subject found guilty.

Disposition transferred to
Brunswick J & DR Court;
Subject held in WW Moore
Detention Center in
Danville.

7/28/98 (10) Obstruction of Justice

7/28/98 (9 & 10) Subject present; Attorney
waived; Case cont. 8/11/98.

A004640

2025APP 1581



M00407

COMMONWEALTH of VIRGINIA

SHEILA HILL-CHRISTIAN
DIRECTOR

DEPARTMENT OF JUVENILE JUSTICE Reception & Diagnostic Center

January 14, 1998

OFFICE OF THE
SUPERINTENDENT

1601 BON AIR ROAD
BON AIR, VIRGINIA 23235
TEL: 323-2600
FAX: 323-2312

Mr. F. Woodrow Harris, Parole Officer
Sixth District Court Service Unit
420 S. Main Street
Emporia, Virginia 23847

RE: Mikal Mahdi
DOB: Redacted
SF#: Redacted

Dear Mr. Harris:

The Evaluation and Staffing Team met on 1/14/98 to review Mikal's case. Enclosed please find the results of our evaluation. It was recommended that he be placed at Hanover Juvenile Correctional Center, PO Box 507, Hanover, Virginia 23069, telephone: (804) 537-5316. He will be transferred to that facility the week of 1/19/98.

While at the juvenile correctional center, Mikal will address the following issues: substance abuse services, anger control, values clarification, self-esteem, mental health, parole placement, special education, problem solving skills, and behavior management.

A summary sheet of Hanover's visitation information along with a copy of this letter has been forwarded to his family/guardian(s). We hope the enclosed information will be helpful in your future work with Mikal and his family. Please feel free to contact us if you have any questions.

Sincerely,

Linda Coulson
Linda L. Coulson, MSW
Counselor

Robert E. Clarke
Counselor Supervisor

vs
Enclosure
xc: Mr. Sheif Mahdi

NAME: MIKAL DEEN MAHDI **DOB:** Redacted **SC#:** Redacted **R/S:** BM

VII. PSYCHOLOGICAL INFORMATION:

Mikal Deen Mahdi, a 14 year old who reportedly quit school as a seventh grader, was examined and tested psychologically on 16 December 1997 for routine intake and diagnostic purposes by the Behavioral Services Unit at the Department of Juvenile Justice's (DJJ) Reception and Diagnostic Center for Children. Mikal was committed to DJJ on December 2, 1997 by the Brunswick County Juvenile and Domestic Relations Court for breaking and entering (2) and grand larceny (2).

ASSESSMENT TECHNIQUES:

Wechsler Intelligence Scale for Children - Third Edition (WISC-III)
Bender Visual-Motor Gestalt Test
House-Tree-Person Projective Technique
Incomplete Sentences Blank - High School Form
Clinical Interview
Record Review

BACKGROUND INFORMATION:

Mikal suggested that he was committed by the Brunswick County Court for "stealing a gun, tampering with a vehicle." However, in explaining his charges further he admitted "I stole about four or five handguns - we stole a bunch! about 50...they never got them back." He related a long story of how he and co-defendants were stealing weapons from a gun store for resale purposes.

Although Mikal denied any previous convictions he was noted by file review to have received community service work punishment for petty larceny, curfew violation and escape in September 1997.

This youngster was living with his father at the time of his commitment. Born in Petersburg, reared in Richmond, Baltimore and elsewhere, his parents separated perhaps seven years ago and he lived "back and forth" with his parents. He denied any adjustment problems with either parent although he tended to have a rather detached view of both. Older brother, Saleem, now attends Job Corps. Apparently, this youngster's father has a very uneven history himself and maybe receiving disability benefits ("he kind a crazy"). Mikal admitted historical use of marijuana and alcohol but denied any hard drug use. He denied any psychiatric history. Academic history has been poor.

Referred for psychological evaluation in early 1994, Brunswick County Public Schools conducted a confidential psychological evaluation at that time, results yielding very high intelligence in

NAME: MIKAL DEEN MAHDI DOB: Redacted SC#: Redacted R/S: BM

VII. PSYCHOLOGICAL INFORMATION:

the high average range (Veca, School Psychologist; 3/28/94; WISC-III: V-114, P-119, FS-118). Projective findings suggested depressive tendencies, feelings of hopelessness, and problems with self-esteem although he is likely to exhibit psychological blocking or expansive behavior under stress. Apparently, he was seen as having 'personal adjustment' problems as long ago as three years.

BEHAVIORAL OBSERVATIONS:

Mikal presented as a 5'8" 140 pound 14 year old, a well developed, well nourished, alert and correctly oriented youngster in no acute distress. Initially, he was quite blunted and constricted affectively but over time as rapport grew he became somewhat more open, easy going, and talkative. Still, he rather quickly impressed as an angry alienated tough youth and noted that he has already been charged in his cottage for one altercation.

Speech was normal for rate, rhythm and volume. Essentially, mood was euthymic. Thought processes were free of any signs of disorganization or contamination. Thought content was quite appropriate. No delusions were elicited. Hallucinations were denied. Suicidal or homicidal ideas or plans were denied.

TEST RESULTS:

WISC-III

Verbal Subtest Scores

Information	10
Similarities	10
Arithmetic	12
Vocabulary	9
Comprehension	9
(Digit Span) (12)	

Performance Subtest Scores

Picture Completion	16
Coding	6
Picture Arrangement	12
Block Design	11
Object Assembly	17

Verbal IQ = 100, Performance IQ = 116, Full Scale IQ = 108 (Average = 100, Sub Scale Average = 10)

On the WISC-III, Mikal achieved a Full Scale WISC-III IQ of 108, a 70th percentile score that is almost significantly lower than findings dating three years ago. These lower scores may be attributed to the interference of incarceration on test performance but still highlight this youngsters high average mental ability. Despite quitting school in the seventh grade because his father was incapable of or disinterested in making him attend class work, this

NAME: MIKAL DEEN MAHDI DOB: Redacted SC#: Redacted R/S: BM

VII. PSYCHOLOGICAL INFORMATION:

youngster still tests within the average range on school-related measures of intellectual functioning. Interestingly, on nonverbal measures of intelligence, he tests well within the very superior range but on one measure that tends to highlight motivation and sustained effort he scored within the borderline range. Basically, this might also suggest lower motivation at present. He denied any depressive feelings that would interfere with his psychomotor output.

Bender reproductions were quite well reproduced and free of any signs of central nervous system problems or perceptual motor dysfunction.

Test results and clinical impressions describe an impulsive undersocialized angry and alienated young man. Mikal described his criminal offending quite remorsefully and admitted that a great deal of thought and planning was involved.

Basically, this is a teenager with many negative attitudes toward authority, rules, limits, and the rights and privileges of others. Rather poorly socialized in a significantly dysfunctional family, he is developing a serious conduct disorder. Records suggest a history of peer relationship problems and a tendency to associate with other similarly disaffected children. Mikal suggested that he discontinued his schooling as a seventh grader: "I had other, better things to do...walk around town."

The etiology of this youth's conduct disorder probably can be traced to incompetent parenting and poor guidance, supervision and monitoring in an unstable nomadic dysfunctional family. The youth himself described his father as emotionally unstable, he seems to have only a distant relationship with his mother, and the unavailability of other appropriate role models has resulted in unmet dependency needs leading toward criminal affiliations.

Mikal is behaving and developing like a teenager much older. He has been using drugs. He discontinued schooling two years ago and has not been required to return by family. He described his current criminal charges in a very calculated, almost professional way that is alarming.

RECOMMENDATIONS:

Mikal would benefit from a highly structured, carefully supervised, thoroughly monitored environment. He has already been involved in one fight at RDC. Substance abuse education is indicated. Remedial academic training should be offered for he might be able

M00411

NAME: MIKAL DEEN MAHDI DOB: Redacted SC#: Redacted R/S: BM

VII. PSYCHOLOGICAL INFORMATION:

to obtain a GED now. It is recommended that he be placed outside of the family from which he came when he is returned to the community on parole in hopes of stabilizing, maintaining, and generalizing any treatment gains made through treatment through DJJ.

Michael Shumate
Michael Shumate, Ph.D /abb
Psychologist
Behavioral Services Unit
1/14/98

A004695

2025APP 1586

DEPARTMENT OF JUVENILE JUSTICE
CULPEPER JUVENILE CORRECTIONAL CENTER
BEHAVIORAL SERVICES UNIT

Initial Contact & Monthly Note

CONFIDENTIAL: For Professional Use Only

Name: Mikal Mahdi

DOB: Redacted

Juvenile File Number: Redacted

Date of Contacts: 10/1/99, 10/5/99, 10/6/99, 10/8/99, 10/12/99, 10/13/99, 10/18/99, 10/20/99, 10/21/99,
10/27/99

Date of Report: November 8, 1999

Identifying Information & Reason for Referral

Mikal was referred to the Behavioral Services Unit (BSU) for emergency services due reports that he was threatening to harm himself. He was also referred to assess his amenability for treatment in effort to decrease his disruptive and assaultive institutional behavior.

Background

The following information was obtained from Mikal's institutional record. This is Mikal's second commitment to the Department of Juvenile Justice (DJJ). He was first committed from 12/2/97 to 6/14/98, which he served at various facilities including Hanover JCC and Kenbridge Youth Development School, for breaking and entering (2 counts) and grand larceny. He began his current commitment on 8/11/98 and received an indeterminate sentence for obstruction of justice and contempt of court. He was transferred from Hanover to Culpeper JCC on 6/29/99. Mikal has a history of poor adjustment in many settings, as well as a history of verbally abusive and physically aggressive behavior. At the time of this report, he had received over 40 institutional charges during his current commitment for a variety of disruptive behaviors including failure to comply, abusive language, fighting, destruction of property, and assaults on staff.

Mikal comes from a reportedly unstable and fairly impoverished family background. His parents were married in 1980 and have been separated since 1990. While in the community, Mikal has resided with an uncle in Baltimore; a family (the Prescotts) in Broadnax, Virginia; and alternately with his grandmother and father in rural Virginia. Throughout these various placements, he also received periodic visits from his mother. Records report that Mikal's father is not employed and receives public assistance amounting to \$122 per month. In addition, records indicate that Mr. Mahdi "has attempted to exert minimal control over his son and seems content to stay detached and uninvolved as long as Mikal is not causing problems for him" (Social History Investigation Report, dated 8/11/98, p. 6). For example, Mikal was allowed to quit school while in his father's care. It is also noteworthy that Mikal's father has also been incarcerated several times in the past and was involved in Mikal's current offenses.

A005150

Past BSU Involvement

According to Mikal's records, he had no BSU contacts during his first commitment and two BSU contacts while at Hanover during his current commitment. Psychologists Gerald Boynton and Cathy Cheeks each saw Mikal separately in June 1999. Both noted that Mikal's thought patterns were greatly distorted in self-serving ways. For example, he frequently perceives everyone to be against him and tends to minimize and rationalize his negative behavior.

With regard to intellectual abilities, Mikal was evaluated by a school psychologist in the Brunswick county public school system in 1994. On the WISC-III, he obtained a VIQ=114, PIQ=119, and FSIQ=118, which placed his intellectual functioning in the Above Average range. He was re-evaluated in January 1998 at RDC. His WISC-III results were as follows: VIQ=100, PIQ=116, and FSIQ=108. These scores were significantly lower than his previous scores, but were still in the Average to Above Average (on nonverbal tests) range. His lower test scores at RDC were attributed to Mikal's decreased motivation and other effects of incarceration.

Current Mental Health Services and Issues

Mikal has had ten contacts with BSU Psychologist Marnita Floyd and one with Glen Skoler during the month of October. At least three of these contacts were crisis calls in response to Mikal's suicidal threats and gestures. When initially seen on the isolation side of the Special Housing Unit (Mikal was serving time for assaulting an officer), he appeared moderately depressed with markedly slowed speech and motor movements, a negativistic outlook, and overall melancholic presentation. The content of his speech reflected a significant amount of irrational and distorted thoughts characterized by minimizing his responsibility for negative events, blaming others, and catastrophizing about his future. His preoccupation with conspiracy theories along racial and institutional lines also seemed to have a paranoid quality to them. Mikal reported that he had thoughts to kill himself and that he had several plans that he would not disclose; therefore, he was placed on Level I (15 minute checks) suicide precautions on 10/1/99. The next day, he tried to electrocute himself in his cell and was placed on Level II (5 minute checks) suicide precautions.

Most of the first sessions focused on ensuring Mikal's safety. Next, the focus switched to finding ways to elevate his mood. In addition to a blend of supportive and cognitive-behavioral approaches to therapy, a trial of antidepressants was suggested, but Mikal declined taking any medication. His emotional state appeared to brighten around 10/8/99 when he was placed in a cell with a window. He was observed to talk more fluently, smile occasionally, and to engage in some constructive activities such as reading and exercising in his cell. On 10/13/99, his suicide precaution status was decreased to Level I (15 minute checks) because he reported that he had not had any thoughts to harm himself since 10/6/99. As Mikal's mood elevated, he also began to act out in destructive ways by covering up the camera in his room with toilet paper, writing on the window with soap, and breaking a desk off of the wall in his cell. When he was confronted about these behaviors, he took little to no responsibility for them. We discussed differences between the level of structure he received at home and that which he receives at Culpeper and he was encouraged to comply with the program here to improve his adjustment and ensure a timely return home. Despite comments to the contrary, Mikal seemed a little bit ambivalent about returning home due to financial circumstances there.

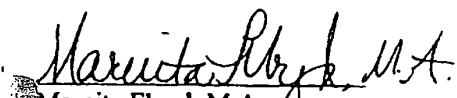
Toward the end of October, Mikal continued to deny any thought, plans, or urges to harm himself. However, he became defiant verbally issuing ultimatums that he would either go to the general population or remain in protective custody instead of going to the School of Cadet (SOC) as the LEADER program rules dictated. Nevertheless, all suicide precautions were removed on 10/20/99 and he was transferred to the School of the Cadet. I responded to another crisis call one day after his arrival to the SOC at which point Mikal was complaining and demanding to go back to protective custody. I told him he needed to do his time according to the rules and that he should rule out using threats or gestures to harm himself as a option to get his desires met. Of note, he described one unusual sensory experience. He reported that he saw and heard some paint peel up from the wall and then return to its place. Again, I suggested that he undergo a trial of medication, but he declined. His adjustment to the School of the Cadet continues to be marginally adequate at the end of this reporting period.

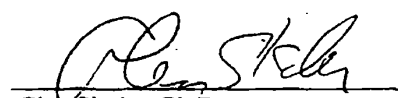
Assessment & Recommendations

Mikal is a 16 year old African-American male with a recent history of melancholic depressive symptoms, suicidal gestures, disruptive behavior, oppositional defiance of selected authority figures, and irrational thought patterns. His symptoms seem most consistent with a diagnosis of major depression of at least moderate severity. It is unclear whether his irrational thought patterns constitute psychotic features associated with his mood disorder, or egocentricity and immaturity associated with youth, or a mild thought disorder suggestive of an emerging paranoid personality disorder. Making differential diagnoses in adolescence can be complicated, not only because of typical emotional and psychological changes that accompany normal development, but also because some psychological disorders are only beginning to present themselves and have not completely emerged. Formal psychological evaluation and continued therapeutic contact should help to clarify such diagnostic issues. A diagnosis of oppositional defiant disorder was considered, but was superseded by him meeting criteria for conduct disorder.

As mentioned in Mikal's RDC evaluation dated 1/14/98, there appear to be multiple factors contributing to his disruptive behavior. Numerous placements and insufficient parental guidance and supervision in the community seem to have imbued Mikal with little regard for authority figures. Moreover, Mikal has become quite accustomed to doing whatever he wants whenever he feels like it. The irrational thought patterns that Mikal frequently engages in also play a large part in his disruptive behavior cycle. If he is in a negative emotional state like feeling bored or powerless, he will act out destructively. He then minimizes his responsibility for his actions, and when appropriate consequences are meted out, he feels as though he is being treated unjustly. He then uses this perception of unfair treatment towards him to justify further lashing out in his environment.

It is recommended that Mikal receive individual psychotherapy at least twice weekly at first, using a cognitive-behavioral approach to help him identify and correct his irrational thoughts, further develop his self-control, and increase his participation in constructive activities. Ongoing monitoring of Mikal's mood and psychological functioning will also be accomplished during individual sessions.


Marnita Floyd, M.A.
Psychologist Senior


Glen Skoler, Ph.D.
Psychology Supervisor

poster, Transfer, medical, BSU (2 copies)
A005152

M00870

Department of Juvenile Justice
Culpeper Juvenile Correctional Center
Behavioral Services Unit

Status of Suicide Risk/Alert Precautions
Redacted

Ward Name:

Mikal Mahdi

DOB:

Living Unit:

SHU-PC

Change in Suicide Precautions Status

- ☒ Initiate Suicide Precautions or Continue Officer Initiated Precautions
☐ Change Suicide Precautions Status Level
☐ Remove Suicide Precautions At This Time

Current Level of Suicide Precautions Status

- ☐ Level 1 (15 minute checks)
☒ Level 2 (5 minute checks)
☐ Level 3 (constant observation) Pending further BSU evaluation
☐ Mental Health Restraints Authorized for Self-Injurious Behavior ONLY by the Attached Written Protocol

AUTHORIZED ITEMS IN CELL

BOXERS	(Y)	N	PILLOW / MATTRESS	(Y)	N
T-SHIRT	(Y)	N	SHEETS	Y	(N)
SOCKS	(Y)	N	BLANKET	(Y)	N
JUMPER	Y	(N)	CHAIR	Y	(N)
ORANGE SHORTS	(Y)	N	*HYGIENE ITEMS	(Y)	N
SHOES	(Y)	N	*TOWEL & WASH CLOTH	(Y)	N
FLIP FLOPS	(Y)	N	PERSONAL ITEMS (letters, papers, etc.)	(Y)	N
BELT/SHOELACES	Y	(N)	RETAINED FOOD ITEMS	(Y)	N
CRUSHED MEDICINES	(Y)	N	*CLEANERS, TOXIC SUBSTANCES	Y	(N)

*Monitor During Use & Remove After Use

Supervised only
Supervised only

COMMENTS AND OBSERVATIONS

Two staff members reported that Mikal threatened to hang himself with a sheet. The above precautions are deemed necessary to ensure his safety at this time.

***Note: Inform the Behavioral Service Unit by Page of Any Change or Increase in Suicidal or Self-Harm Threats or Behavior

Marcia Hoyle
Authority of (Name/Signature)

Date:

11/10/99

Time:

3:58

a.m./p.m.

cc: Transfer File & ~~Medical~~ BSU File-2 Copies, Nursing/Medical, Shift Commander & Housing Unit Supervisory Sergeant

A005154

2025APP 1590

Progress Notes

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depression
HTN

All:
asa

Meds:
paxil
quetipine
BP med

FH:
NC

SH: quit tob 3yr/ago, 5yrs 5cigs/day; etoh, distant heavy etoh, no ivda

PE:
af vss
nad
eomi, perrl, cn 2-12 grossly intact
neck soft, no masses, no lad, trachea midline
tm/eac clear b/l
oc/op- fom soft without lesions, tongue soft without mass palpated at bot-
soft, long uvula

NPL- nasal passages, NP, OP, SupraG, G, subG clear without evidence of mass,
vallecula clear, uvula seen to rest on base of tongue and goes almost all the
way down to vallecula, vc mobile and with good closure, patent airway, b/l
arytenoid erythema and edema of interarytenoid tissue

a/p 51 y/o M with foreign body sensation at base of tongue; difficulty
speaking, and dysphagia x several months. Pt has symptoms of gerd and changes
seen on exam. Recommend starting PPI therapy and then may need uvulectomy in
future if can not be treated medically

- 1) prilosec qd
- 2) decrease coffee/caffeine, alcohol; elevate head of bed
- 3) f/u in ENT in 4 wks

/es/ LUV RAM JAVIA
ENT RESIDENT
Signed: 03/29/2005 14:57

/es/ DUANE SEWELL
MD
Cosigned: 04/18/2005 12:24

LOCAL TITLE: MHC FOLLOW-UP VISIT

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

MAHDI, SHAREEF
Redacted
PHILADELPHIA, PENNSYLVANIA 19131
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GU
Surg Onc

TYPE OF VISIT:

consult x
Followup
Pre-Op (Teaching)
Post Op
Nurse Clinic

VS: Wt:175.5 BP:134/82 P:54 R:18 Temp:98.5 Pain:0

Pain: -----

0	1	2	3	4	5	6	7	8	9	10
no pain		mild		moderate		severe		very		worst
								severe		possible

Chief Complaint: THROAT

Pt is 51 yr old Male consult for dysphagia. States "He has a mass in the throat". Also states "He had a barium swallow". Education material made available. Ambulatory.

/es/ GRACE L WALKER, LPN
STAFF LPN 4192
Signed: 03/29/2005 14:43

LOCAL TITLE: OTOLARYNGOLOGY (ENT) FOLLOW-UP VISIT

STANDARD TITLE: OTOLARYNGOLOGY E & M NOTE

DATE OF NOTE: MAR 29, 2005@14:04

ENTRY DATE: MAR 29, 2005@14:05:06

AUTHOR: JAVIA, LUV RAM

EXP COSIGNER: SEWELL, DUANE

URGENCY:

STATUS: COMPLETED

Pt is a 51 y/o M who was seen in ER on 2/24 for dysphagia and mass at base of tongue. Pt first noticed mass couple months ago and it has been getting larger. Pt now has trouble speaking and swallowing. Able to drink and eat solid foods, but has a "constricting" sensation and the sensation of food getting stuck. No odynophagia. Pt denies wt. loss, respiratory distress. When eats gritty/grainy foods sometime spits up small amount of bleed. Pt does have sx of GERD with heartburn, sour taste in mouth. Pt had normal barium swallow and CT neck without masses. Pt denies sinus symptoms.

PMH:

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

MAHDI, SHAREEF
Redacted

PHILADELPHIA, PENNSYLVANIA 19131
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****If patient has a diagnosis of Cancer, please add to the Problem List. (Screening no longer required.)****

PHI LIPID PROFILE:

Lipid Profile ordered now.

HTN Lifestyle Education:

The patient was counseled on the importance of regular exercise and/or physical activity in the control of blood pressure.

The patient was instructed to try to exercise at least 30 minutes 3 times per week if possible and that any increase in physical activity may be useful in controlling BP.

The patient was counseled on the importance of diet and weight control in the control of blood pressure.

The patient was counseled to reduce their weight to within 10 percent of their ideal body weight. The possible improvement in BP control with even 5 to 10 pounds of weight loss was reviewed.

The contribution of dietary sodium to elevated blood pressure was reviewed. The patient was counseled to limit sodium intake to no more than 2.4g of sodium or 6g of sodium chloride.

The patient was counseled to reduce intake of dietary saturated fats and cholesterol, and that a diet rich in fresh fruits and vegetables and low in dietary saturated fats and cholesterol is also beneficial in lowering blood pressure.

/es/ DONZELLA MCLAUGHLIN

Signed: 03/31/2005 09:35

LOCAL TITLE: NURSE - SURGERY CLINIC*

STANDARD TITLE: NURSING OUTPATIENT E & M NOTE

DATE OF NOTE: MAR 29, 2005@14:39

ENTRY DATE: MAR 29, 2005@14:39:27

AUTHOR: WALKER, GRACE

EXP COSIGNER:

URGENCY:

STATUS: COMPLETED

Name: MAHDI, SHAREEF

Redacted

Age: 51 Sex: MALE

Allergies:

ASPIRIN

CLINIC:

Vascular

General

Ortho

Neurosurg

ENT x

Eye

PATIENT NAME AND ADDRESS (Mechanical imprinting, if available)

MAHDI, SHAREEF
Redacted

PHILADELPHIA, PENNSYLVANIA 19131
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PSH test 50-69 (3/31/2005)
 Flu vaccine > 65 yo/high risk (declines)
 Pnsumovax > 65 yo/high risk (declines)
 Last Td. (q 10 yr) (within 10 years)

PE:

BP:115/80 P:54 R:16 T: 97.8po

WD/WN in NAD 0x3

SKIN: warm, dry

HEENT: wnl; PERRLA, EOMI, sclera anicteric, conjunctiva pink, fundi benign; nose and throat ok.

NECK: no enlarged, masses/bruits/JVD

LYMPH: no nodes felt

CHEST: atraumatic

BREASTS: no gynecomastia, masses, discharge

LUNGS: clear, no rales/rhonchi/wheezes

HEART: RRR, no murmurs/gallop/rubs; PMI MCL

ABDOMEN: BS+; soft, nontender, no l/s; no masses; no CVA tender

RECTAL: prostate wnl, no masses

testes both descended, no masses/lesion/hernia; heme neg

EXTREMITIES: no c/c/e; FROM; nontender; pulses good and equal

NEURO: CN II to XII intact; muscle tone and strength good and equal;
 sensory intact; cerebellar intact; Romberg neg; DTR's +2/+6 bilaterally equal

Lab: reviewed

Assessment: Hypertension
 GERD

Plan:

/es/ NINA M CHYCHULA HUD

NP

Signed: 04/01/2005 14:19

LOCAL TITLE: HEALTH MAINTENANCE 2005

DATE OF NOTE: MAR 31, 2005@09:31

ENTRY DATE: MAR 31, 2005@09:31:27

AUTHOR: MCLAUGHLIN, DONZELLA EXP COSIGNER:

URGENCY:

STATUS: COMPLETED

Prostate Cancer Screening Education:

Patient received Prostate Cancer education during the encounter.

Level of Understanding: Good

PSA ordered to be drawn today.

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

MAHDI, SHAREEF
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INPT MEDICATIONS: NONE

PMH: no DM, SZ, Asthma, syphilis
 no heart, lung, kidney disorders
 no med/surg hospitalizations
 Hypertension for 5 years treated by the ER at PVAMC
 otitis media about one year ago that was treated outpatient
 GERD diagnosed about 5 years ago

PPH: being treated with Paxil for depression and reports feeling speedy with it

ROS: no changes/problems in vision/h/a/tinnitus/pain in the ears, sore throat. Problems with swallowing secondary to tonsils and GERD
 no SOB, DOE, palpitations, c.p.,
 no n/v/d, problems with bowels, melena, BRBPR
 no problems with urination, nocturia, blood, frequency, changes in stream, hesitation
 no wt loss, no muscle aches/pains except low back pain; no changes in skin
 no anesthesia/parathesia/difficulty walking/incoordination

Social Hx: divorced and living alone. Lives on pension

Family Hx: mother is alive and in good health. Father is deceased 1985 from aneurysm. Two brothers and three sisters in good health. Veteran is the 5th child

No drug or alcohol history.
 Stopped smoking about 3 years ago.

Health Maintenance:

Diet counseling q 2 yrs	(3/31/2005)
Counseling on weight control	(3/31/2005)
Counseling on exercise	(3/31/2005)
Use of D & A	(3/31/2005)
CAGE	(non drinker)
Cigarette smoking yrly	(non smoker)
Referral to smoking cessation	(non smoker)
Depression screening	(3/31/2005)
Height	(3/31/2005- 5'8")
Weight	(3/31/2005 - 179 lbs)
Safe sex	(3/31/2005)
Seat belt use	(3/31/2005)
Smoke detectors	(3/31/2005)
Cholesterol	(3/31/2005)
Digital rectal exam	(2000)
Fecal occult blood	(2000)
PSH counseling 50-69	(3/31/2005)

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

MAHDI. SHAREEF
 Redacted

PHILADELPHIA, PENNSYLVANIA 19131
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his one son would not be in prison. Began to start processing some of his feelings regarding this, and using some cognitive therapy techniques to challenge him to look at matters in a less judgemental way. Vet states the Paxil he was prescribed felt too strong for him. He felt "wired, jumpy" when on full prescribe dosage. so he only takes half the dosage. Vet states he will likely look for a part-time job in the future, perhaps being a waiter.

MSE: Alert and oriented x3. Pleasant and cooperative. Good eye contact. Well-groomed and casually dressed. Mood is low. Affect slightly restricted. Thought content- Denies suicidal/homicidal ideation. Denies aud./ visual hallucinations. Thought process- Linear. Organized. Judgement and insight are fair.

A. Dysthymic Disorder

P. RTC on 04/27/05 @ 12:30 with undersigned for on-going evaluation and therapy.

/es/ MARIE F WOJCIK, MSN APRN BC
CNS
Signed: 03/31/2005 17:11

LOCAL TITLE: BH INITIAL PRIMARY CARE
STANDARD TITLE: PSYCHIATRY INITIAL EVALUATION NOTE
DATE OF NOTE: MAR 31, 2005@10:03 ENTRY DATE: MAR 31, 2005@10:03:04
AUTHOR: HUD.NINA M CHYCHULA EXP COSIGNER:
URGENCY: STATUS: COMPLETED

Name: MAHDI, SHAREEF
SS#: Redacted
DOB:
Date: MAR 31, 2005

HPI: 51 year old AA male comes for primary care.

Allergies: NKDA
ASPIRIN

Meds:

OUTPT MEDICATIONS:

DRUG	STATUS
QUETIAPINE FUMARATE 100MG TAB	ACTIVE
SIG: TAKE ONE TABLET BY MOUTH AT BEDTIME	
OMEPRAZOLE 20MG SA CAP	ACTIVE
SIG: TAKE ONE CAPSULE BY MOUTH EVERY DAY	

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

MAHDI, SHAREEF
Redacted
PHILADELPHIA, PENNSYLVANIA 19131
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Brief Hx: 51 y.o. divorced Afro- American vet referred to writer for therapy by Dr. Wolman. History is both from vet and from his Feb. 23, 2005 BH Central Intake note. Vet has a diagnosis of dysthymic disorder. Also has a hx of being diagnosed with paranoid schizophrenia and social anxiety disorder. Has chronic problems with energy and motivation. Hx of depressive symptoms date back to the late 1980's, which he claims were his worst time- after the end of his marriage in 1987. States he was probably depressed a long time before that.

Vet states he was the "black sheep" of the family. Hx of verbal abuse as a child. Converted to Islam in the 1970's. Was the only Islamic man in a small Southern Community, and experienced ridicule and harassment.

Has been hospitalized for depression in the past. Hx of taking paroxetine and quetiapine, but ran out of meds after moving to Philadelphia in January 2004.

In January 2005, vet's 21 y.o. son, who is in prison on homicide charges in South Carolina, was threatening suicide; and this was a source of anxiety and sadness for vet. At that time, vet felt he needed to get back on medications, and came to the ER requesting that they fill his medication. He was given enough to last him until he could be evaluated at the MHC.

In-patient treatment: 3 wks. hospitalization (Richmond, VA 1995)

Out-patient treatment, including psychotherapy: while in Virginia, some individual therapy and group therapy.

Previous suicide attempts: none, but reports he used to have homicidal thoughts that he never acted on or had plans to go through with.

Social History: Married 1980-1987. Calls it a "bad marriage". Two sons from this marriage, ages 23 and 21. Younger son is incarcerated. Older son is in military in Afghanistan. Vet writes letters to both sons. Vet lives in a townhouse associated with a religious community (Islamic).

Legal History: Some misdemeanors for verbal fights and "acting up". Says all conflicts were verbal, not physical. Last issue was in 2000, for resisting arrest after conflict with brother.

Dx: Dysthymic Disorder

cc.: "depression, fatigue, and guilt complex about his son being in prison"

Procedure: 45 min, individual psychotherapy

Tx goal(s): To be specifically formulated in next session.

S. Vet: " I was referred for therapy. My main problems are depression and fatigue. I also have a guilt complex about my son being in prison."

O. Vet presented on time for session. Had appt. with primary care prior to this session. Reviewed with vet the clinic's guidelines regarding psychotherapy- "talk therapy". Vet 's chief complaints are depression and fatigue. Living in the townhouse associated with a religious community provides support to him. Vet states he moved to Philadelphia about 14 months ago, and has found this city friendlier and easier to live in compared to Baltimore or Washington, DC. Vet has a guilt complex that somehow he could have been a better parent, and maybe

PATIENT NAME AND ADDRESS (Mechanical Imprinting, If available)

MAHDI, SHAREEF

Redacted

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Progress Notes

Printed On Aug 04, 2010

Signed: 04/28/2005 14:03

LOCAL TITLE: MHC FOLLOW-UP VISIT

STANDARD TITLE: MENTAL HEALTH OUTPATIENT NOTE

DATE OF NOTE: APR 27, 2005@14:20

ENTRY DATE: APR 27, 2005@14:20:40

AUTHOR: WOLMAN, THOMAS S

EXP COSIGNER:

URGENCY:

STATUS: COMPLETED

MAHDI, SHAREEF

Redacted

Last GAF Score: 48 on MAR 31, 2005 by WOJCIK, MARIE F

He is doing a little better than last time. He tells me he is only taking the meds intermittantly because "I feel better". MS: alert and composed. No SI/HI. His reality sense is ok. His "mood disorder NOS" is stable. Plan: continue therapy and assess his MS in two months. At this time he is disinclined to take his med except on prn basis.

/es/ THOMAS S. WOLMAN

MD

Signed: 04/27/2005 14:22

LOCAL TITLE: MEDICATION RENEWAL*

STANDARD TITLE: PHARMACY MEDICATION MGT NOTE

DATE OF NOTE: APR 08, 2005@10:16

ENTRY DATE: APR 08, 2005@10:17:09

AUTHOR: LOGAN, MICHAEL A

EXP COSIGNER:

URGENCY:

STATUS: COMPLETED

MAHDI, SHAREEF, Redacted presents to primary care requesting medication refills. Follow up appointment scheduled for and confirmed with patient. See action profile.

/es/ MICHAEL A. LOGAN, RN

STAFF NURSE

Signed: 04/08/2005 10:17

LOCAL TITLE: MHC FOLLOW-UP VISIT

STANDARD TITLE: MENTAL HEALTH OUTPATIENT NOTE

DATE OF NOTE: MAR 31, 2005@10:50

ENTRY DATE: MAR 31, 2005@10:50:42

AUTHOR: WOJCIK, MARIE F

EXP COSIGNER:

URGENCY:

STATUS: COMPLETED

MAHDI, SHAREEF

Redacted

Last GAF Score: 48 on MAR 16, 2005 by WOLMAN, THOMAS

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

MAHDI, SHAREEF

Redacted

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Redacted

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Exertional dyspnea
Dyspepsia
Nausea
Dry hair
Dry nails
Dry facial hair
Headache
Crying episodes
Excessive worry that interferes with sleep
Inability to relax that interferes with sleep
Watching the clock that interferes with sleep
Fear of nightmares that interferes with sleep
Fear of dyspnea that interferes with sleep

PHYSICAL EXAMINATION:

Height: 68
Weight: 180
Neck Circumference: 14
BMI: 27.43
MAP Score: 0.98

MEDICATIONS:**OUTPT MEDICATIONS:**

DRUG	STATUS
----	-----
QUETIAPINE FUMARATE 100MG TAB	ACTIVE
SIG: TAKE ONE TABLET BY MOUTH AT BEDTIME	
OMEPRAZOLE 20MG SA CAP	ACTIVE
SIG: TAKE ONE CAPSULE BY MOUTH EVERY DAY	
METOPROLOL TARTRATE 50MG TAB	SUSPENDED
SIG: TAKE ONE-HALF TABLET BY MOUTH TWICE A DAY FOR BLOOD PRESSURE.	
CODEINE 30/ACETAMINOPHEN 300MG TAB	ACTIVE
SIG: TAKE 1 TABLET BY MOUTH EVERY 4 TO 6 HOURS AS NEEDED	

INPT MEDICATIONS: NONE

ALLERGIES: ASPIRIN

PFSH: (0,0,1,2,2)

Relevant past history:

☒ Reviewed computerized PMH

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

MAHDI, SHAREEF
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Schizophrenia
Panic Attacks
Generalized Anxiety Disorder

SOCIAL HISTORY:

Lives with: family or friends
Education: college
Employment: disabled
Night Shift:
Use of alcohol as a sleep aid: never
Use of prescription or non-prescription sedative medication: never
Cigarettes: 1 pack-year history
Current smoker: No
Caffeine (drinks per day): 3
Illicit drugs: Admits to use of:

Sedatives-Hypnotics
Analgesics

Driving History:

The patient does not drive
Time spent driving per day:
History of MVA: Yes
History of fall-asleep accident: denies
History of single-vehicle accident: Yes

REVIEW OF SYSTEMS

In the past month, the patient reports experiencing:

Sleep-talking
Nocturnal angina
Nocturnal cough
Dry skin
Muscle pain
Joint pain
Feeling sad, down or blue
Feeling hopeless about the future
Mind racing that interferes with sleep
Vivid dreams
Increase or decrease in dreaming
Nightmares

Denies (in the past month):

Sleep-walking
Lower extremity edema
Nocturnal palpitations
Nocturnal wheezing
Nocturnal post-nasal drip
Orthopnea

PATIENT NAME AND ADDRESS (Mechanical imprinting, if available)

MAHDI. SHAREEF
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Nightmares of past event:	Less than once per week
Re-experiencing past trauma while awake:	Never
Awakening with anxious feeling:	Never
Feeling tense, on edge, keyed up during the day	Less than once per week
Suggestive of a Depressive Disorder:	
Irritability:	Less than once per week
Guilty feelings:	Less than once per week
Indecisiveness:	Never
Anhedonia:	Less than once per week
Concentration or memory problem:	Never
Anergia:	Less than once per week
Suggestive of Mania or Hypomania:	
Elevated mood:	Never
Increased energy and plans:	Never
Decreased need for sleep:	Less than once per week
Suggestive of Narcolepsy:	
Cataplexy:	Never
Sleep paralysis:	Never
Hypnagogic/hypnopompic hallucinations:	5 - 7 times per week
Suggestive of Parasomnias:	
Awoken outside of bed:	Never
Makes groaning, moaning, or squealing noises while sleeping:	Less than once per week
Suggestive of Night-Eating Syndrome:	
Morning anorexia:	Never
Arises from bed to eat:	Less than once per week
Sleep Hygiene:	
Maintains a regular bedtime and rise time	
Room temperature:	not disruptive to sleep
Noise in room:	not disruptive to sleep
Bed-partner:	not disruptive to sleep
PAST MEDICAL HISTORY	
Hypertension	
Sleep Apnea	
The patient denies having a prior sleep study.	
Gastroesophageal Reflux Disease	
PAST PSYCHIATRIC HISTORY	
Post-Traumatic Stress Disorder	
Depression	

PATIENT NAME AND ADDRESS (Mechanical imprinting, if available)

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gasping or snorting

Falls back asleep in less than 10 minutes

Final awakening occurs at 4:00 a.m.

Is out of bed at 4:00 a.m.

Upon awakening, feels completely unrefreshed

Reports napping at least once a week

EPWORTH SLEEPINESS SCALE:

Sitting and reading:	3
Watching TV:	0
Sitting inactive in public place:	1
As a passenger in a car for an hr w/o break:	3
Lying down to rest in the afternoon:	3
Sitting and talking to someone:	0
Sitting quietly after lunch without alcohol:	1
In a car, while stopped for a few minutes in traffic:	1

TOTAL: 12

The patient reports the following symptoms of the following disorders for at least the past month:

Suggestive of Obstructive Sleep Apnea Syndrome:

Reports weight gain of 10 pounds in the past year.

Reports weight loss of 10 pounds in the past year.

Snoring:	5 - 7 times per week
Loud Snoring:	5 - 7 times per week
Snorting or gasping during sleep:	5 - 7 times per week
Feeling of choking during sleep:	1 - 2 times per week
Perceived or witnessed apneas:	Less than once per week
Morning headache:	Never
Morning dry mouth:	Never
Morning nasal congestion:	Never

The patient denies having a prior sleep study.

Suggestive of Restless Legs Syndrome:

Paresthesias in extremities	
relieved by movement:	5 - 7 times per week

Suggestive of Insomnia:

Initial Insomnia:	3 - 4 times per week
Middle Insomnia:	5 - 7 times per week
Terminal Insomnia:	3 - 4 times per week

Suggestive of Post-Traumatic Stress Disorder or other anxiety disorder:

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

MAHDI. SHAREEF
Redacted

PHILADELPHIA, PENNSYLVANIA 19131
Redacted

VISTA Electronic Medical Documentation

Printed at PHILADELPHIA, PA VAMC

Progress Notes

Printed On Aug 04, 2010

PRIMARY PROVIDER: Psychiatry - Hubbard

CHIEF COMPLAINT:

This a 51 year old patient presents to the sleep clinic with a chief complaint of excessive daytime somnolence.

HPI: 51 y/o male was self referred to address his sleeping problems. He reports that for the past 10 years he has been very tired during the day. He takes a nap every afternoon. He normally goes to bed at 11pm and wakes at 4am if he has mosque duties or at 9am on other days. In either case, he wakes up unrefreshed. He wakes every 2 hours due to nocturia, though occasionally he finds himself gasping for air at night - a symptom that resolves quickly. He has a good routine and sleeps at 11pm with no difficulty falling asleep. He does not drink alcohol. He drinks 3 caffeinated beverages (soda) during the day. He does not smoke and does not have any h/o pulmonary disease. He does not wake due to nightmares. He has never fallen asleep while driving. People he lives with and people in the past have told him he is a loud snorer.

Philadelphia VAMC Sleep Center
Electronic Questionnaire Results

Date of Questionnaire: 8/24/2005
Patient Social Security: Redacted
Date of Birth:
Age: 51 years
Sex: Male
Telephone #: (0) -

*****CHIEF COMPLAINTS*****

Excessive Daytime Sleepiness
Restless sleep
Snoring
Hypertension

Referred by: Self

*****HISTORY OF PRESENT ILLNESS*****

Sleep Schedule during the past month:

Goes to bed at 11:00 p.m.
Falls asleep quickly
Wakes up
Due to:
nocturia

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

MAHDI, SHAREEF
Redacted

PHILADELPHIA, PENNSYLVANIA 19131
Redacted

VISTA Electronic Medical Documentation

Printed at PHILADELPHIA, PA VAMC

Report on Connecticut Department of Correction Inmate Transfer to Virginia



Issued by:

The Connecticut Commission on
Human Rights and Opportunities

February 8, 2001

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**REPORT ON THE TRANSFER OF CONNECTICUT INMATES
TO WALLENS RIDGE STATE PRISON**

PRESENTED BY THE CONNECTICUT

COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

FEBRUARY 2001

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I. EXECUTIVE SUMMARY

Beginning in October 1999, in response to the growing increase in Connecticut's prison population, the Connecticut Department of Correction (CDOC) transferred approximately five hundred inmates to Virginia pursuant to a contract with the Virginia Department of Corrections (VDOC). The majority of Connecticut inmates in Connecticut are minorities and from urban areas as are those sent to Wallens Ridge State Prison (WRSP). WRSP is one of the few so-called super-maximum security prisons in the United States. It is located in Big Stone Gap, Virginia, a predominately White rural community.

Almost from the very beginning of the transfer, inmates and family members voiced their opposition. As complaints mounted about the use of force and disparate treatment of minorities, the Commission on Human Rights and Opportunities (CHRO) began its probe of the issues raised. The CHRO gathered extensive data regarding the transfer of Connecticut inmates to WRSP. The CHRO spent two days at WRSP meeting with VDOC and CDOC officials and Connecticut inmates.

There were a number of reported incidents of racial harassment and abuse. The CHRO finds these reports deeply troubling, but the CHRO cannot, with precision, determine the scope of this problem. However, given the number of reported incidents of use of racial slurs, the CHRO cannot pass this off as embellishments of disgruntled inmates. Even assuming that some of the reports are inaccurate or not true, there are sufficient numbers to recommend action. Although sought by CHRO, the VDOC did not provide any information regarding specific complaints against VDOC staff regarding the use of racial slurs or racial harassment.

On the other hand, the statistical data included herein include few grounds for findings that there is much disparate impact against minorities at WRSP. This means that documentary evidence supplied by CDOC indicates that inmates who are racial minorities that were transferred to WRSP were: (1) disciplined, and (2) subjected to the use of force in approximately the proportion one would expect, given their representation in Connecticut's inmate population.

Additional issues that drew CHRO's concern include: communication problems for Hispanic inmates; lack of diversity in WRSP staff; limited religious programming and other prison programs; and delayed and often inadequate medical care for inmates with physical and mental health issues.

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Therefore, the CHRO has made a number of recommendations to the Governor, the General Assembly, and the CDOC in an effort to ensure proper treatment of minorities while at WRSP. The CHRO recommends that the CDOC not support or seek a renewal of the current contract with the VDOC at the end of the contract period.

II. INTRODUCTION

A. CHRONOLOGY OF EVENTS

On October 12, 1999, the CDOC and the VDOC entered into a contract for the transfer of Connecticut inmates to Virginia.¹ The contract called for the transfer of 484 Connecticut inmates to WRSP in Virginia. Transfers of Connecticut inmates began shortly after the execution of the contract in several prisoner transports.² All the Connecticut inmates had arrived at WRSP by early 2000.

Although Connecticut inmates have historically been transferred to out-of-state prisons, the large number of Connecticut inmates transferred to Virginia caused heated debate.³ Concerns were raised that mostly minority inmates were being sent to Virginia and that the predominantly White WRSP prison staff would be ill equipped to properly manage the diverse inmate population. Members of the Connecticut General Assembly toured the WRSP in February 2000, and had an opportunity to talk to inmates about their experiences at WRSP.

Then came the death of Connecticut inmate David Tracy on April 5, 2000.⁴ On April 18, 2000, the legislature's Judiciary and Public Safety Committees conducted a joint informational public hearing to receive information about this incident from the CDOC.⁵ Thereafter, members of the Tracy family and other concerned groups attended Commission meetings to seek involvement by the CHRO. At the June 8, 2000, Commission meeting, CDOC Commissioner John J. Armstrong (Commissioner Armstrong) provided written responses to previously requested information and responded orally to questions from the Commissioners.⁶ As a result of questions raised by the Commission at the June 8, 2000 meeting, the CDOC provided further information on June 15, 2000.⁷ At a special Commission meeting on June 15, 2000, the Commission voted not to renew the contract compliance exemption previously granted to the CDOC and to issue a Commission initiated complaint.⁸

Although a vote was taken to issue a complaint, the CHRO decided to issue this report initially in order to release details of the information collected and to facilitate legislative action. At its January 11, 2001 meeting, the CHRO announced its intention to submit this report. The CHRO's authority to issue this report derives from Connecticut General Statutes and Regulations:

The Commission shall . . . (2) compile facts concerning discrimination in employment, violations of civil liberties, and other related matters.⁹ "The Commission shall have the following powers and duties: . . . (7) To recommend policies

and to make recommendations to agencies and officers of the state and local subdivisions of government to effectuate the policies of this chapter.⁹

In early July 2000, Lawrence Frazier, a Black Connecticut inmate died at WRSP. On August 9, 2000, the CHRO staff met with Commissioner Armstrong and other CDOC officials to collect further information on the transfer of inmates to WRSP. On August 16, 2000, the CHRO wrote to the CDOC requesting additional documents.¹⁰ On September 12, 2000, the CDOC submitted documents responsive to the CHRO's request for information.¹¹ On September 19, 2000, the CHRO staff conducted a tour of the Northern Correctional Institution, Connecticut's "super-maximum security prison". On October 20 and 21, 2000, Commission Chairperson Amalia Vazquez Bzdyra, Commissioner Vivien Blackford, Executive Director Cynthia Watts Elder, and four CHRO Staff members visited WRSP.

B. METHODOLOGY FOR GATHERING INFORMATION

The October 2000 visit to WRSP took place over two days and included interviews with forty inmates. Either one or two people from the Commission interviewed inmates for an average of 20-30 minutes. Some of the inmates who were interviewed had been chosen randomly from lists of inmates while others were chosen because the Commission had received prior information from or about them. (A few inmates declined to be interviewed.)

The interviews were conducted in private. The inmates who were in segregation were interviewed through a glass partition via a telephone connection. They were shackled and handcuffed. The inmates who were in general population status were interviewed in closed offices with corrections officers outside. Some interviews were conducted in Spanish.

In addition to the interviews, the visit to WRSP included:

- Presentations by Commissioner Angelone of VDOC and Commissioner Armstrong of CDOC;
- A prison tour led by Commissioner Angelone;
- Informal discussions with senior managers from CDOC, VDOC and WRSP;
- Viewing a videotape that WRSP made of CDOC prisoners who declined to transfer to the VDOC prison at Greensville;

- Document collection and review; and
- Fifteen minutes of informal interaction with Connecticut prisoners of one "pod" at the prison.

C. INFORMATION REQUESTED BUT NOT PROVIDED BY THE VDOC

As a result of its trip to WRSP, the CHRO submitted follow-up questions and requests for further information to the CDOC and VDOC on November 13, 2000.¹² On November 28, 2000, Chairperson Vazquez Bzdyra, Commissioner Vivien Blackford, and Executive Director Watts Elder met with Commissioner Armstrong and CDOC staff. The focus of the meeting was to communicate CHRO concerns as a result of its visit to WRSP and the data it had collected to date. On December 8, 2000, the CHRO wrote to the CDOC as a follow up to the CDOC and CHRO meeting regarding the CHRO's concerns.¹³ In early January 2001, the CHRO received responses, by letter dated December 20, 2000, from the CDOC to the CHRO's November 13, 2000 request for further information.¹⁴

As of late December 2000, the VDOC did not transmit responsive information to the CDOC.¹⁵ The CDOC represented that the VDOC intended to respond, but the VDOC was not going to commit to a response date.¹⁶ Executive Director Watts Elder wrote to Commissioner Armstrong on January 12, 2001, indicating that if the CHRO did not receive the responses from the VDOC by the close of business on Thursday, January 18, 2001, the CHRO could not include that information in this report.¹⁷ The CDOC received the responses from the VDOC on or about five o'clock the afternoon of January 18, 2001. The CHRO received those responses the morning of January 19, 2001. The CHRO has reviewed and included those responses in this report. The CHRO notes, however, that the *VDOC did not provide the following information:*

- The identity, number, and disposition of any complaints made against WRSP staff for using racial slurs or in any other way harassing inmates because of their race/color.
- A request for authority to support the VDOC's claim that it is not subject to the Americans with Disabilities Act.¹⁸
- A request for information as to the VDOC's efforts to recruit a diverse workforce at WRSP.

- A request for information regarding documents describing the diversity training provided to WRSP staff. The VDOC responded that it does provide cultural diversity training to all new employees at their academy but did not specifically respond to request for details of the nature of such training.
- In reply to a request by the CHRO for a copy of the WRSP employee handbook, the VDOC responded: "No copy of the Wallens Ridge Employee Handbook is provided as it deals with personnel, not operational, matters."¹⁹
- In reply to the CHRO request for a copy of the video of inmates who wanted to remain at WRSP rather than transferring to Greenville prison, which was shown to the CHRO during its visit at WRSP, the VDOC stated it would provide that videotape at a later date.

The Commission received no explanation for the lack of response to the request for information regarding efforts to recruit a diverse workforce at WRSP or the number and disposition of complaints of racial slurs or harassment.²⁰

III. SCOPE AND LIMITATIONS OF REVIEW

The name "Commission on Human Rights and Opportunities" suggests a sweeping jurisdictional reach. As a creation of statute, however, its governing statutes define and limit the CHRO's existence and jurisdiction. Specifically, the Commission is charged with enforcement of the state's antidiscrimination laws. CONN. GEN. STAT. §§ 46a-51 *et. seq.* grants CHRO jurisdiction over issues of differential treatment of certain specifically defined protected classes.²¹

It is important to note that inmates, as inmates are not an identifiable protected class under the CHRO's governing statutes. Thus, matters such as the use of particular types of force, availability of prison programs, and access to the courts, for example, do not invoke the CHRO's jurisdiction unless related to discrimination against one or more of the statutorily identified protected classes.²² This is not to say, however, that the Commission has turned a blind eye to issues that may lie at the periphery or beyond its technical ability to investigate and adjudicate.

It is also important to note that this report does not contain legally enforceable findings of discrimination. To conclusively find any legally enforceable finding of discrimination would require a lengthy quasi-judicial process (which may include judicial appeals). In addition, the adjudicatory process is fraught with uncertainty. Therefore, at the end of that judicial process, Connecticut inmates may still not be returned to Connecticut. Although the Attorney General correctly opined that CHRO may be able to (after a formal determination of discrimination) seek the return of Connecticut inmates, it is important for the reader to understand that the CHRO cannot unilaterally make that decision.

A few further limitations may also be noted. Lacking requested documentation from VDOC on the processing of complaints at WRSP concerning racial harassment and abuse, CHRO could not verify the claims by CDOC and VDOC that those complaints are dealt with fairly and thoroughly. Some inmates claimed otherwise. VDOC also declined to permit CHRO to view videotapes, which it has of specific alleged incidents. Moreover, the CHRO did not pursue follow-up meetings except with Commissioner Armstrong. Although letters from inmates, family members, and prisoner advocates were read, no follow-up was conducted with respect to these documents.

Over the past several months, the CHRO collected extensive data regarding the transfer of Connecticut inmates to WRSP. The CHRO presents in this report the information gathered and the CHRO's recommendations based upon its findings and conclusions.

IV. BACKGROUND

A. WALLENS RIDGE STATE PRISON

WRSP opened in April 1999, as a super maximum-security prison. It is a level 6 prison in the VDOC, 6 being the highest security level. Generally, WRSP is intended to house inmates with long sentences or those who may have shorter sentences, but had behavioral problems in other prisons. In addition to Virginia inmates, WRSP has inmates from New Mexico and Connecticut.²³ Some inmates from Connecticut assert that they were sent to WRSP in spite of having sentences as short as three years and no history of violence inside or outside of prison.

Unlike other super-maximum security prisons, most WRSP inmates have more than one-hour out-of-cell time per day. Depending on inmates' security classification levels, they have anywhere from one to eight hours per day out-of-cell time. Nonetheless, control is the focus at WRSP. The use of gun posts in all areas within the prison attests to this fact.

On October 20, 2000, the inmate population at WRSP was 986 with 66 security staff on duty.²⁴ Commissioner Angelone stated WRSP has fewer staff than a medium security facility because staff is not used as the primary method of control.²⁵

B. THE CONTRACT BETWEEN CDOC AND VDOC

The Interstate Corrections Compact, CONN. GEN. STAT. §§ 18-105 - 107 inclusive, allows for contracts between states for out-of-state transfer of inmates. Article I states:

The party states, desiring by common action to fully utilize their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on the basis of cooperation with one another, thereby serving the best interests of such offenders and of society in affecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders with the most economical use of human and material resources.²⁶

Exercising his authority under § 18-107 of the Interstate Corrections Compact, Commissioner Armstrong entered into a contract with the VDOC.²⁷ Article 2 of the contract, entitled DESCRIPTION OF SERVICES, outlines the nature of the contract as follows:

Subject to the terms and conditions of this contract, the Commonwealth of Virginia, through the VDOC, and in accordance with any and all applicable laws, including, but not limited to, those of the State of Connecticut, the Commonwealth of Virginia and the United States, shall provide for the confinement and supervision of certain Connecticut Inmates. The VDOC shall provide care, incarceration, and access to services to Connecticut Inmates on the same basis as a similarly situated inmate of the VDOC pursuant to Virginia Laws. The VDOC shall provide necessary care and treatment, to include food, clothing, appropriate housing, education, and all necessary medical care except as provided under section 4.3. The VDOC shall provide adequate facilities to meet the physical needs of Connecticut Inmates, and provide programs of education, training, and treatment consistent with the same programs provided to Virginia Inmates with similar needs. The VDOC shall provide safe, supervised confinement and maintain proper discipline and control. The VDOC shall faithfully execute the sentences and orders of the committing courts.²⁸

The Interstate Corrections Compact Article IV also provides:

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact, shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.²⁹

One issue that has been raised by Connecticut inmates at WRSP and their families is whether the Connecticut inmates transferred to WRSP are entitled to similar programs and services offered by the CDOC. The above contract and statutory language provide that Connecticut inmates at WRSP are entitled to the same services and programs and general treatment provided to similar inmates of the VDOC ("receiving state"). Court cases support the proposition that inmates transferred pursuant to contracts under the Interstate Corrections Contract are not entitled to the exact conditions they had at the sending state, rather they are entitled to similar treatment as inmates in the receiving state.³⁰ Nonetheless, Connecticut inmates at WRSP are entitled to any legal rights, as opposed to privileges, that they had as Connecticut inmates. In a number of significant respects, the policies and practices regarding

inmates at WRSP are very different from policies and practices in Connecticut prisons.

C. SELECTION CRITERIA FOR TRANSFER

The general criteria that CDOC says it uses to select inmates for transfer to WRSP may be summarized as follows:

- High security;
- General population offenders;
- Administrative segregation offenders;
- Security risk group threat member (e.g. gang members); and
- Offenders with chronic disciplinary problems.³¹

The CDOC reported that there are additional screening factors:

- No medical or mental health level 4 or 5 inmates;
- No pending trials on criminal charges;
- Must be 18 or older;
- No Immigration and Naturalization Services detainees for deportation;
- No HIV or PPD (tuberculosis) positive inmates;
- No known pending litigation that is to take place within the next six months;
- No known scheduled court appearances; and
- No individualized education program active.³²

The CDOC makes classification decisions regarding Connecticut inmates in WRSP. Many factors are utilized to assess risk factors and to assign security levels for inmates. In addition to risk, the CDOC assigns inmates a rating of one to five (one being the least severe/restrictive/ needy) in areas such as:³³

- Risk;
- Medical and health care need;

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- Mental health care need;
- Education need;
- Substance abuse treatment need;
- Vocational training/work skills;
- Sexual offense treatment need; and
- Family/residence/community resource need.

In the area of medical and health care needs, for instance, the CDOC assesses inmates by assigning a rating of one to five. An assessment of one is an individual with no physical problems limiting capacity and no acute illnesses or health needs requiring special consideration in placement in a correctional facility. An assessment of five, on the other hand, is an inmate with a severely limited physical capacity or acute/chronic illness.

In the area of risk classification, the CDOC considers the following in assigning an overall risk level (again 1 to 5):

- Escape profile;
- Severity/violence of current offense;
- History of violence;
- Length of sentence;
- Presence of pending charges and/or detainees;
- Discipline history; and
- Security Risk Group membership.

The CDOC has been criticized for the types of inmates selected for transfer to WRSP. Many inmates (and families of inmates) have expressed concern that the method of choosing inmates for transfer to WRSP was both arbitrary and incorrect. The debate is whether a given inmate appropriately requires the level of security present at WRSP. However, the CHRO did not review this issue. It is not the CHRO's role to substitute its judgment for that of correctional officials. Absent specific evidence of discrimination against the protected classes enumerated in Connecticut General Statutes, the CHRO is without power and authority to review the general issue of classification decisions.

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Courts generally defer to classification decisions of correctional officials.³⁴

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IV. FINDINGS

A. ISSUES RAISED CONCERNING CONNECTICUT MINORITY INMATES AT WRSP

1. *What is the population and racial composition of inmates in Virginia, Connecticut, and at WRSP?*

The CHRO collected a substantial body of data to determine whether there was a disproportionate number of minority inmates transferred to WRSP. The following is the result of the CHRO's analysis.

The first table illustrates the racial breakdown of Virginia's inmate population as of September 30, 2000.³⁵ The information includes out-of-state inmates:

Virginia's Total Inmate Population Broken Down by Race

TABLE 1

RACE	TOTAL	MALE	FEMALE
White	9,959	9,314	645
Black	20,287	19,175	1,112
Hispanic	146	144	2
Other	118	115	3
Total	30,510	28,748	1,762

The VDOC's total population was 33,422 as of December 1, 2000.

Virginia Minority Inmate Population as Compared to White Inmates

TABLE 2

RACE	NUMBER	PERCENTAGE
White	10,335	30.92%
Black	22,626	67.70%
Other	458	1.37%
Total	33,419	99.99%

Wallens Ridge State Prison as of December 1, 2000:³⁶

TABLE 3

RACE	NUMBER	PERCENTAGE
White	241	24.46%
Black	620	62.94%
Other	124	12.59%
Total	985	99.99%

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Connecticut Compared with WRSP

As of May 30, 2000, the racial composition of Connecticut inmates in Connecticut and at WRSP was as follows:³⁷

TABLE 4

RACE	IN CONNECTICUT		AT WRSP	
Black	7,826	46.12%	233	48.54%
Hispanic	4,436	26.14%	127	26.46%
White	4,604	27.13%	120	25.00%
Other	102	0.60%	0	0%
Total	16,968	99.99%	480	100%

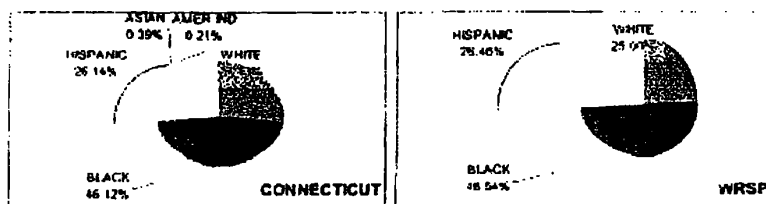


FIGURE 1

The CHRO also collected information regarding the racial composition of Connecticut inmates, and Connecticut inmates at WRSP, classified as a level four and five, including security risk group threat members.³⁸ For comparison, data was collected on June 1 and November 28, 2000.

As of June 1, 2000, the racial composition of Connecticut general population inmates classified overall level four in Connecticut and at WRSP:³⁹

TABLE 5

RACE	IN CONNECTICUT		AT WRSP	
Black	2,466	47.52%	211	49.53%
Hispanic	1,412	27.21%	108	25.35%
White	1,266	24.40%	107	25.12%
Other	45	0.87%	0	0.0%
Total	5,189	100%	426	100%

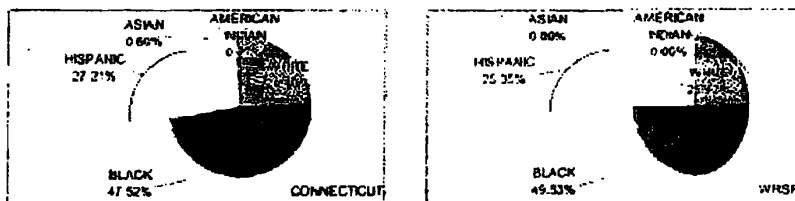


FIGURE 2

As of November 28, 2000, the racial composition of Connecticut general population inmates in Connecticut and at WRSP classified overall level four:⁴⁰

TABLE 6

RACE	IN CONNECTICUT		AT WRSP	
Black	2,329	49.15%	104	50.48%
Hispanic	1,174	24.77%	47	22.82%
White	1,201	25.34%	54	26.21%
Other	35	0.74%	1	0.49%
Total	4,739	100%	206	100%

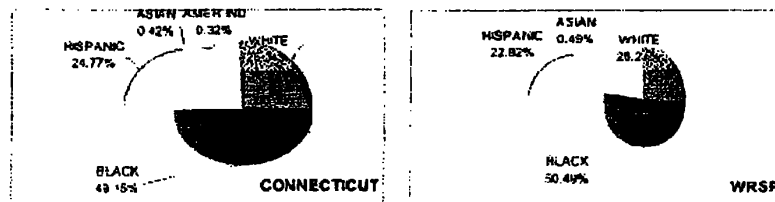


FIGURE 3

As of June 1, 2000, the racial composition of Connecticut inmates classified overall level five in Connecticut and at WRSP:⁴¹

TABLE 7

RACE	IN CONNECTICUT		AT WRSP	
Black	96	56.47%	20	40.82%
Hispanic	34	20.00%	18	36.73%
White	39	22.94%	11	22.45%
Other	1	0.59%	0	0.00%
Total	170	100%	49	100%

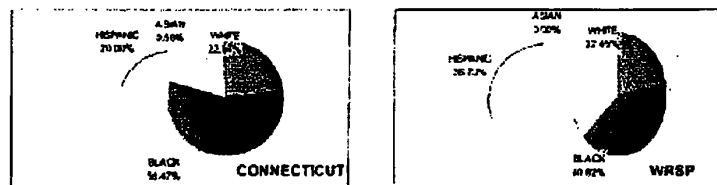


FIGURE 4

As of November 28, 2000, the racial composition of Connecticut inmates in Connecticut and at WRSP classified overall level five:⁴²

TABLE 8

RACE	IN CONNECTICUT		AT WRSP	
Black	78	46.15%	20	46.51%
Hispanic	52	30.77%	14	32.56%
White	39	23.08%	9	20.93%
Total	169	100%	43	100%

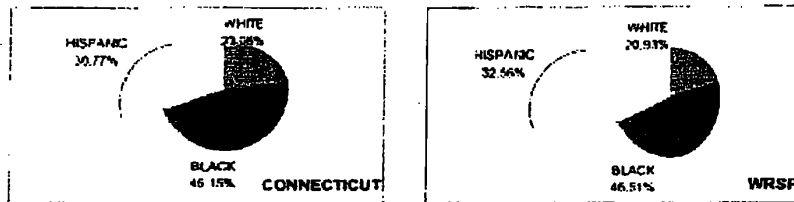


FIGURE 5

As of June 1, 2000, the racial composition of Connecticut inmates identified as security risk group threat members and classified overall level four in Connecticut and at WRSP:⁴³

TABLE 9

RACE	IN CONNECTICUT		AT WRSP	
Black	69	27.94%	33	35.48%
White	32	12.95%	12	12.90%
Hispanic	146	59.11%	48	51.61%
Total	247	100%	93	99.99%

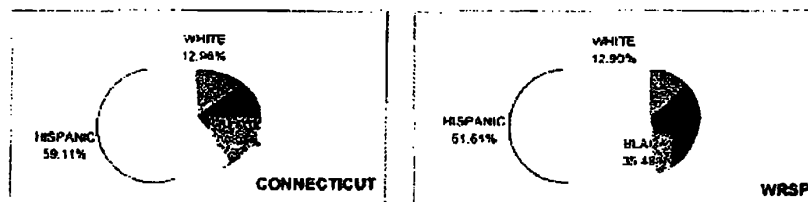


FIGURE 6

As of November 28, 2000, the racial composition of Connecticut inmates identified as security risk group threat members classified overall level four in Connecticut and at WRSP:⁴⁴

TABLE 10

RACE	IN CONNECTICUT		AT WRSP	
Black	67	28.63%	17	36.96%
Hispanic	142	60.68%	24	52.17%
White	25	10.68%	5	10.87%
Total	234	99.99%	46	100%

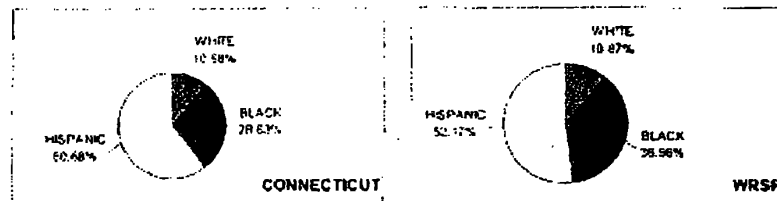


FIGURE 7

As the information depicted above indicates, CHRO found little evidence that a disproportionate number of minority inmates were transferred to WRSP as compared to Whites.

2. How many disciplinary reports have been issued, and what is the racial composition of inmates receiving these reports?

A review of the total disciplinary reports issued to Connecticut inmates at WRSP for the period January through July 2000 revealed the following:

TABLE 11

RACE	NUMBER	PERCENTAGE
Black	214	50% ⁴⁵
Hispanic	116	27%
White	101	23%
Total	431	100%

Number of inmates issued disciplinary reports at WRSP:

TABLE 12

RACE	NUMBER	PERCENTAGE
Black	88	50%
Hispanic	43	24%
White	45	26%
Total	176	100%

As the information depicted above suggests, in the area of meting out disciplinary reports, the data does not show a disparate impact on

minority inmates. *Disciplinary reports, analyzed by race, were issued in proportion to the overall racial composition of the inmate population.*

3. How often is the use of force and type of force reported by race?

The CHRO reviewed reports from CDOC regarding use of force by WRSP Correction Officers for the period January through August 2000. The number of individuals involved in serious incidents analyzed by race are shown in Table 13:

TABLE 13

RACE	NUMBER	PERCENTAGE
Black	64	54%
Hispanic	28	24%
White	26	22%
Total	118	100%

**RACIAL BREAKDOWN OF TYPES OF FORCE
USED IN SERIOUS INCIDENTS:**

TABLE 14

Type of Force	Black	Hispanic	White	Total
Warning Shots	32	11	10	53
Rubber Bullets	7	3	-	10
Ultron®/I.C.E.®	8	3	5	16
Taser®	-	4	4	8
Pepper Spray	-	2	4	6
5 pt. Restraint	25	13	11	49
Regular Restraint	1	1	1	3
Total	77	37	35	149
Total Percentage	52%	25%	23%	

The data from Table 14 does not support the assertion that there was a disparate impact on minority inmates in the use of force in serious incidents.

The Commission emphasizes, however, that Connecticut does not employ the use of force such as firing rounds of live rubber bullets, stun guns, Tasers®, punitive use of five-point restraints, or other such methods of control in its prisons. *Indeed, Virginia is only one of three states in the nation that use firearms within the confines of the prison.*⁴⁶

The Commission is concerned by allegations of the use of five-point restraints for punishing inmates for conduct such as kicking their cell

door.⁴⁷ Although the data does not indicate disparate treatment in the use of such methods, CHRO's concern is heightened where inmates have been maintained in five-point restraints for periods up to 48 hours and, at times, allowed to lie in their own urine and feces.⁴⁸

The Commission also reviewed data from CDOC regarding the length of time inmates were held in five-point restraints, broken down by race.⁴⁹ For the period January through August 2000, the CHRO found the following regarding the use five-point restraints:

Average Hours By Race

TABLE 15

RACE	TIME
Black	45.8
Hispanic	47.7
White	45.9

The information in Table 15 does not suggest that five-point restraints, when employed, were used for disproportionately longer periods on minority inmates than on White inmates.⁵⁰

4. Are racial slurs and harassment occurring at WRSP?

The CHRO has received many complaints of the use of racial slurs and harassment by WRSP staff. For example, *of the approximately 40 inmates interviewed during the CHRO trip to WRSP, 29 of the inmates reported experiencing or witnessing use of racially derogatory language or racial harassment by WRSP staff.* This information is in the form of letters from inmates (and interested persons or organizations) and through interviews conducted by CHRO staff with inmates during its visit to WRSP in October 2000. Some inmates report that incidents of racial slurs have decreased from the time of the initial transfer, but others maintain that the slurs and harassment continue unabated. While many of the reported incidents of racial harassment lacked specificity, a number were specific. During the Commission's interviews at WRSP in October 2000, as noted above, 29 minority inmates reported such incidents, while others reported not experiencing or witnessing such incidents.⁵¹ Significantly, some White inmates reported witnessing instances of racial slurs or harassment of minority inmates.

The following are a few examples of complaints of use of racial slurs or harassment:

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- Use of the words "spic", "nigger", "porch monkey", "coon", "boy";
- Inmate heard guard say "sit your Black ass down";
- Inmate heard Correction Officer say, "get your Black ass moving";
- Inmate heard Correction Officer say to Black inmate, "do you want a job outside so people can find you in the snow?";
- Inmate heard Correction Officer say, "can you still do a job bending over and picking things?";
- Blacks and Hispanics subject to more cell searches and pat-down searches;
- Blacks and Hispanics fired upon without warning shot for things such as walking too fast or not walking in a straight line;
- Blacks and Hispanics harassed by being told to do things such as tuck in their shirts, while White inmates are not required to do so;
- At night, Correction Officers kicked doors of Black and Hispanic inmates;
- Black inmate handcuffed for staring at Correction Officer;
- Hispanic inmate warned by Connecticut onsite monitor to beware of Correction Officers' retaliation;
- Regarding December 3, 2000 "riot" incident in recreation yard; Black and Hispanic inmates targeted and ordered to crawl on all fours to Correction Officers, two Black and two Hispanic inmates were sent to segregation after all other inmates cleared the yard;
- Black inmate told he wasn't going back to Connecticut alive;
- Correction Officers singing racial songs about hanging people;
- Hispanic inmate told by a Correction Officer "we have places where we can put you.";
- Inmate heard Correction Officer refer to Black inmates as "kunta kinte";

- Black inmate heard Correction Officer say: "You ever been shot by a White man, you ever been stunned by a White man?" also, "Yo, Black boy, you in the wrong place. This is White man's country";
- Inmate heard Correction Officer refer to a Puerto Rican inmate as a "stinking Mexican";
- Hispanic inmate heard Correction Officer say "Mexican faggot, piece of shit, spic, you belong to us now, you not in Connecticut"; and
- Black inmate placed in five-point restraints for 48 hours in a cell with a picture of a hangman's noose with the words "Coming soon". A Correction Officer also told him: "We're going to hang you, boy, and that picture should give you something to think about".

The fact that White inmates - who were not the targets of such harassment - reported instances of racial harassment adds credibility to the allegations made by minority inmates about such harassment. The CHRO acknowledges that it cannot determine the extent of this issue except to reasonably infer that the number of reported uses of racial slurs supports the veracity of the general claim. Human Rights Watch, in its report, noted similar problems at the Red Onion State Prison, WRSP's sister facility:

Unfortunately, White and Black inmates alike at Red Onion describe an atmosphere of pervasive and blatant racism. Inmates claim that officers routinely use such terms as "boy" and "nigger".⁵²

WRSP's administration emphatically states that it is not aware of any widespread use of racially derogatory language and that if it was, such incidents would be dealt with severely. The Commission was unable to verify that assertion because VDOC refused to convey to the Commission any documentation regarding complaints of harassment or abuse, and any records of how those complaints were investigated and addressed. The CDOC and VDOC state in a letter from Commissioner Armstrong:

Based on our dialogue with Virginia and a review of our completed grievances, we have nothing to indicate a problem of the magnitude that one might infer based upon the list of names that you have provided to us in your letter of December 8, 2000. It should be noted that our onsite monitors have never witnessed any racial comments to

inmates by staff. Due to the attention surrounding the allegations of discrimination and the investigation thereof, we believe there has been an increase in correspondence routinely using race as the cause of problems regardless of the actual circumstances surrounding the issue.⁵³

Review of internal grievances filed by Connecticut inmates confirms that Connecticut inmates filed few formal complaints. However, it is not surprising that inmates would be reluctant to complain about a staff member's use of racially derogatory language. Some inmates complained of retaliation in response to complaints, with measures allegedly including five-point restraints. In addition, some inmates conveyed a belief that proceeding with the formal grievance process was futile since the CDOC and VDOC would not investigate. Nor is it surprising that WRSP staff would be more circumspect in the presence of the Connecticut onsite monitor.

At its meeting with CDOC officials on November 28, 2000, the CHRO conveyed to the CDOC that it had received a number of complaints during interviews with inmates regarding the use of racial slurs and harassment. Although the CDOC asked, the CHRO declined to provide specific information such as the inmate's name and the details of the reported incident. The CHRO did not want to expose inmates to any possible retaliation.

During the CHRO's visit to WRSP, VDOC administrators reported on the protocol for investigating complaints of racial slurs/harassment. Essentially, the protocol is to interview the inmate and the Correction Officer. Results of an investigation depend on credibility, and Commissioner Angelone stated that VDOC administrators defer to their staff's version of events.⁵⁴

5. Are language interpreter services for Spanish-speaking Connecticut inmates available at WRSP?

WRSP poses special challenges for Hispanic inmates. The CDOC does have one Spanish-speaking onsite monitor at WRSP.⁵⁵ Moreover, the CDOC translated into Spanish VDOC documents such as rules, regulations, and inmate handbooks. However, other than the CDOC onsite monitor, there is no other Hispanic staff.⁵⁶

A serious problem arises when staff issue orders in English that Hispanic inmates may not understand. WRSP staff may in a matter of seconds employ force such as firing weapons for noncompliance with direct orders. An inmate may incur disciplinary sanctions for disobeying a direct order that he could not understand. Of course, if an inmate were in Connecticut and not at WRSP, the same problem could occur. The

difference, however, is that in Connecticut he would not be shot at and would have the benefit of Spanish-speaking Correction Officers and other staff.

6. What treatment or accommodations are available to African-American Connecticut inmates with the medical condition "pseudo folliculitis"?

Another issue, a hybrid of medical and racial issues, is a condition known as pseudo folliculitis. Pseudo folliculitis is a condition found in some African-American males. Their skin is extremely sensitive and painful skin irritation results when the face is shaved with a razor. The condition can advance from injured skin to infection. The rule at WRSP is that inmates are to have close-cropped hair and be clean-shaven.⁵⁷ No special razors, such as those offered in CDOC prisons, are available. Some inmates complained of this condition and requested a so-called "no shave order" in order to be excused from the shaving requirement. However, a number of inmates reported difficulties in obtaining the order, or in having it renewed after it expires. An inmate refusing to shave, is subject to being charged with Major Offense Code 201 "disobeying a direct order" and placed on prehearing detention. If found guilty of the offense, the mandatory penalty is five days isolation for the first offense. If the inmate does not comply with the order, he could receive a penalty of up to fifteen days of isolation. If continuing not to comply, consecutive isolation sentences could be imposed. Also, continued failure to comply could result in the inmate being reclassified to a higher security level and being maintained in segregation status. Recently, the CDOC reported to the CHRO:

With respect to the issue of shaving, we have looked into this issue and have come to a resolution. . . We will continue our efforts to address these pertinent issues.⁵⁸

Attached to that response was a letter dated December 18, 2000, from John M. Jabe, Deputy Director, VDOC, to Brett S. Rayford, Director of Health, Mental Health and Addiction Services, CDOC, addressing resolution to this problem:

With respect to allowing inmates affected with pseudo folliculitis not to shave, as noted in your letter, that is already permitted by our DOP 864, paragraph 7.3. We have had a number of grievances not about the policy itself, but about the way it has been implemented

...

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After reviewing the way this policy is being implemented, we have concluded that it should be possible to achieve the aims of the policy with fewer re-examinations of the affected inmates. We also concluded that once the condition is found to exist, a co-payment ought not be required for subsequent examinations. Therefore, DOP 864 will be amended to include an implementation procedure for inmates affected with skin problems, which are contra-indications for shaving. . . 59

At this writing, the CHRO has not had an opportunity to review the efficacy of this policy modification.

B. MEDICAL ISSUES

The CHRO also received complaints about inadequate medical care. In the area of denial of requested medical treatment, a summary of sample complaints follows:

- Inmate with broken leg did not receive his medication on three separate occasions and his grievances were denied.
- Inmate denied hypertension medication on several occasions.
- Inmate with painful toothache went three months without treatment.
- Inmate had a cyst on his neck removed before transfer to WRSP. While at WRSP the incision became infected twice, requiring two further surgeries and the inmate had problems receiving treatment and medication.
- Inmate with a severely deviated septum experienced delays in seeing an ear, nose, and throat (ENT) specialist. Once he saw the ENT specialist, his records were not sent to the specialist. The prescription issued by WRSP was not the prescription ordered by the ENT.
- Inmate complaining of chest pains was not promptly examined.
- Inmate complaining of stomach pains was seen by a doctor and given a rectal exam with a Correction Officer present holding a stun gun at inmate's back.
- Inmate with asthma experiencing lengthy delays in receiving a non-smoking cell.

- Inmate not given proper treatment for skin condition, then given wrong medicine, and the condition worsened.
- Inmate shot in the eye area with rubber bullet waited three hours for medical treatment.
- Inmate with hepatitis denied care because of cost.
- Inmate's glasses taken and not replaced for 76 days; glaucoma eye drops withheld for 156 days.
- Inmate in apparent diabetic shock, Correction Officers employed stun guns, and staff delayed in responding to emergency call.
- Inmate denied treatment for abscessed tooth for ten weeks and given no pain medication.
- Inmate with diabetes had 19 low blood-sugar counts in three months.
- Inmates denied required medication and accused by medical staff of refusing it.

Another area of complaint was the lack of confidentiality regarding medical treatment. A sample summary of these allegations follows:

- A Correction Officer present during medical visits.
- Inmate given hepatitis test results by a doctor and nurse in a separate cell, but Correction Officer present.
- Inmate given AIDS test results within hearing distance of other inmates and Correction Officers.
- Inmates overhearing Correction Officers talk about other inmates' medical problems.
- Inmate receiving therapy for a mental disability, Correction Officers present at the session.
- Mental health workers speaking to inmates about their mental health conditions through cell doors within hearing distance of other inmates.
- Mental health counseling and doctor exams performed through cell doors within visual and hearing distance of other inmates.

- Inmate complained that he received mental health records that had been opened.

During its visit to WRSP, the CHRO inquired as to the confidentiality of medical information. WRSP officials reported that if an inmate requested to speak to a medical person in confidence, it would be arranged. The problem, however, is that it is not clear that inmates are aware that they can make such a request, or if they may be dissuaded from doing so because of the busy schedules of medical personnel. Inmates do not give up their right to confidential medical information absent some important overriding penological interest.⁶⁰ To the extent that security staff are required to be present during any medical examination or consultation, this should be accomplished in the least restrictive manner possible, with minimal infringement on the inmate's right to confidentiality. Any discussion of the inmate's medical issues for the purpose of taunting or teasing should not be tolerated. WRSP staff must be trained and instructed in the importance of maintaining the confidentiality of inmates' medical treatment, which must be reinforced and reiterated by the administration through ongoing review, monitoring, and training.

Considerable attention has been directed at the medical service provider contracted by the VDOC. Substantial fines were imposed on the medical services contractor as reported in an official audit by Virginia for the year ending June 30, 1999.⁶¹ Reportedly, the fines amounted to approximately \$1,000,000.⁶² The VDOC has apparently opted not to renew its contract with Correctional Medical Services.

C. REHABILITATION AND EDUCATION PROGRAMS

The CHRO also reviewed the issue of lack of adequate rehabilitative programs at WRSP. Inmates reported that they had been involved in various programs while in Connecticut and that WRSP lacked meaningful programs. In Connecticut, inmates reported participating in programs such as:

- General Educational Development (GED);
- Taking college courses;
- Anger management classes;
- Alcoholics Anonymous and Narcotics Anonymous classes;
- Work programs;
- Vocational programs (e.g. carpentry);

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- Gang Renunciation Program;
- Alternative to Violence program; and
- Optical Assistants program.

The Commission recognizes that WRSP maintains a highly structured and strict environment. Thus, it has limited programs available. The few available programs and the limited number of spaces available in existing programs elevates security and control over rehabilitation and inmates' self-worth.

Essentially the programs at WRSP are:

- Custodial Maintenance program;
- Anger Management program;
- Breaking Barriers (7 week course on behavior control);
- Five levels of educational programs culminating in a GED via television (no interactive educational classes);⁶³ and
- A limited number of jobs (e.g., houseman, kitchen worker).

As of December 12, 2000, there were 31 Connecticut inmates enrolled in the GED program at WRSP. As of the same date, there were 63 Connecticut inmates on the GED *waiting list*. The Commission also reviewed the racial composition of inmates enrolled in and awaiting entry into the GED program. Of those enrolled and those on the waiting list, the racial composition was:

TABLE 16

Race	Enrolled	On Waiting List
Black	19	27
Hispanic	8	27
White	4	9
Total	31	63

Again, the racial breakdown of inmates in the GED program (refer to Table 16) and on the waiting list roughly correlates with the racial composition of Connecticut inmates at WRSP. The only difference is that there are more minority inmates by percentage both in the program and on the waiting list:

TABLE 17

Inmates in GED Program		Inmates on GED waiting list	
Black	61%	Black	43%
Hispanic	26%	Hispanic	43%
White	13%	White	14%
Total	100%	Total	100%

Regarding the Custodial Maintenance program at WRSP, there were, as of December 12, 2000, eleven inmates in the program. Eighteen inmates were on the waiting list.

TABLE 18

Inmates in Cust. Maint. Program			Inmates on Cust. Maint waiting list		
Black	3	(27%)	Black	12	(67%)
Hispanic	1	(10%)	Hispanic	5	(28%)
White	7	(63%)	White	1	(5%)
Total	11	(100%)	Total	18	(100%)

The data depicted in Tables 16, 17, and 18 demonstrates a disproportionate number of White inmates involved in the program and a disproportionate number of minorities on the waiting list. Although the CHRO is not aware of any specific selection criteria for this program, these numbers suggest that there may be racial barriers to acceptance into this program. This is particularly troubling since this is one, if not the only, vocational program WRSP offers.

This is a very desirable program because it offers job training. Inmates are given hands on training in the use of various cleaning equipment. They are taught how to manage their own business. If an inmate is to have a chance to become a productive member of society, job skills are imperative. Thus, minority inmates should have increased access to this program.

D. RELIGIOUS PROGRAMS

WRSP provides its religious programs through an agreement between the VDOC and Chaplain Services of the Churches of Virginia, Inc.⁶¹ Because WRSP is in a fairly isolated area, it appears that only Christian religious leaders have visited through this arrangement. A summary of some of the salient complaints by Connecticut inmates at WRSP regarding access to religious programs include:

- Lack of congregate religious services;
- Inability to receive Holy Communion;

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- Lack of religious literature (especially Muslim);
- Native American inmate - no religious services provided, but inmates can practice their religion in their cells;
- Muslim inmates requesting to grow facial hair are required to comply with the 'clean-shaven' requirement;
- Muslim inmate complaining that not able to wear Kufi hats at certain times;
- Religious services only provided by television; and
- Inmates who do not have a television do not have access to religious services.

WRSP states that it only allows inmates to congregate for religious purposes during recreation. There is a sign-up process for participation in such group activity.⁶⁵ These are group meetings comprised of inmates of various religions. They are not, however, congregate services, or meetings led by religious leaders. The VDOC applies this rule consistently without regard to any particular religion (or other protected class).

WRSP states that it permits inmates to have religious items such as a Bible or Koran, religious necklace, prayer rug for Muslim inmates, religious hats/head covering such as kufi/yarmulke/fez (if required by religion), and small religious items approved on a case-by-case basis (includes rosaries).⁶⁶ The use of religious hats is restricted in certain areas in the prison for security purposes, but there is no blanket ban on such items.

In response to inquiries by the CHRO, the CDOC and VDOC report that the shaving/grooming policy of the VDOC is the same throughout Virginia and that there are no accommodations for religious reasons:⁶⁷

There are no accommodations to this shaving/grooming policy of the Department for religious reasons. The policy is based on security considerations which are equally valid regardless of religion.⁶⁸

The CHRO has no reason to dispute that the VDOC applies the shaving/grooming policy equally. A question remains, however, when Connecticut permits, for example, Rastafarian inmates to have dreadlocks but the VDOC does not. This may constitute a *right* (religious freedom) which the CDOC and VDOC may not abrogate through an Interstate Corrections Compact contract.

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On January 10, 2001, the CDOC reported to the Commission that it has taken expeditious steps to diversify the types of religious materials available to Connecticut inmates at WRSP.⁶⁹ The CDOC was not specific as to the particulars regarding these steps except to say that arrangements had been made to have the Connecticut Imam visit WRSP to speak with Muslim inmates. The CDOC represented that it would continue its efforts to address these issues. The CHRO has not had the opportunity to review the results of these efforts because the CHRO was just informed of these changes on January 10, 2001.⁷⁰

E. INMATES REQUESTING TO REMAIN AT WRSP

The CDOC provided the CHRO with correspondence from Connecticut inmates wishing to remain at WRSP. These inmates are clearly a small minority of the overall group of inmates at WRSP. That they want to stay does not mean that the reported incidents described in this report did not occur. Rather, there were overriding interests that moved these inmates to request to remain at WRSP. The reasons to remain at WRSP were, for example:

- inmate fears for his life in Connecticut jails because of his crime;
- family lives in Virginia area, and family member's health is failing;
- inmate had problems with staff and inmates at Connecticut's Northern Correctional Institution;
- inmate requesting to stay since sentence completed in a few months;
- inmate has job as a houseman at WRSP;
- no family in Connecticut: relatives in neighboring state;
- inmate did not want to return to Northern Correctional Institution to participate in the Gang Renunciation Program;
- inmate working as a tutor; and
- closest family lives in Tennessee.

In the list provided by the VDOC, dated August 1, 2000, there were 46 inmates expressing a desire to remain at WRSP. Of those, almost half were White (22) and the remaining were 18 Blacks and six Hispanics. Therefore, although there were minority inmates in this microcosm, of

the inmates who wished to remain at WRSP 50 percent were White. In contrast, White inmates constitute only 25 percent of the overall Connecticut inmate population at WRSP.

The VDOC provided a subsequent list of 24 Connecticut inmates requesting to remain at WRSP revised to October 19, 2000. The reasons for requesting to stay were similar to those recited above (e.g. family members within close proximity). In addition to the letters from inmates, also attached to the list of names were several thank you notes from family members for visits they had with inmates. Seven of the inmates were duplicates of names on the August 1, 2000 list. Moreover, the CHRO notes that some of the inmates requested to stay at WRSP rather than being transferred to another Virginia facility, however, they ultimately wanted to be transferred back to Connecticut.

Of these 24 inmates, 13 were White, five were Black, and six were Hispanic. Thus, as in the August 1, 2000 list, approximately 50 percent of the inmates requesting to remain at WRSP were White.

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VI. RECOMMENDATIONS TO THE GOVERNOR, THE GENERAL ASSEMBLY AND THE CDOC

The CHRO makes the following recommendations to the Governor, the General Assembly, and the CDOC as part of an effort to address the impact of the transfer of Connecticut inmates to WRSP on minority inmates.

A. THE CDOC SHOULD MAKE ALL EFFORTS TO REMOVE CONNECTICUT INMATES FROM WRSP

The CHRO recommends that the CDOC proceed as expeditiously as practicable to remove all Connecticut inmates from WRSP. This should be done in the short term prior to the expiration of the current contract. The CDOC has moved in this direction by arranging with the VDOC for the transfer of inmates from WRSP to the Greensville Correctional facility in Virginia. Subsequent steps should be taken to remove the remaining inmates from WRSP.

B. DEVISE AND OFFER A DIVERSITY TRAINING PROGRAM TO THE VDOC

The CHRO recommends that the CDOC strongly urge that the VDOC provide its staff with more extensive diversity training. The CHRO offers its services and volunteers to be a partner in developing and providing such services. This recommendation should be implemented promptly if Connecticut inmates are to remain at WRSP for the balance of the contract period.

The CHRO notes that the General Assembly recently enacted legislation (P.A. 99-180) that requires standardized diversity training for all state employees. Future contracts involving out-of-state transfers of inmates should require equivalent training for staff in the receiving state.

If, for any reason, Connecticut inmates are transferred to another out-of-state facility, the CHRO recommends diversity training at those facilities. All future contracts should require such training.

C. IMPLEMENT AN EFFECTIVE MONITORING PROGRAM

In addition to the onsite monitors at WRSP, the CHRO recommends that a more effective monitoring program be developed and adopted by the legislature. A full-time monitor must be independent of the CDOC and VDOC, and have authority to investigate complaints by inmates and to issue recommendations to the CDOC and VDOC. The monitor should be able to speak Spanish.

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D. CONTINUE TO EXPAND RELIGIOUS PROGRAMMING

The CHRO recommends that the CDOC continue its efforts to expand access to meaningful religious programming for Connecticut inmates at WRSP.

E. EXPAND VOCATIONAL AND OTHER PROGRAMS AT WRSP

The CHRO recommends that the CDOC make efforts to expand the current availability of the custodial maintenance program to Connecticut minority inmates. Moreover, the CHRO recommends that the CDOC take positive steps to increase the availability of vocational, work, and educational programs available to Connecticut inmates at WRSP.

F. CHRO RECOMMENDS THAT THERE BE MORE CAREFUL SCREENING OF INMATES' PHYSICAL AND MENTAL HEALTH BEFORE TRANSFER TO WRSP

CHRO recommends that there be more careful screening of inmates' physical and mental health before transfer to WRSP. Moreover, it is recommended that any inmate in Virginia who is not receiving prompt and appropriate medical care for treatment of any major medical condition be returned to Connecticut. In addition, the CHRO recommends that the CDOC carefully monitor the availability, quality, and confidentiality of medical services provided by the VDOC. This should include:

- ongoing monitoring of inmate medical complaints;
- timing of treatment;
- maintaining confidentiality of personal medical information,;
- appropriate referral to specialists when warranted; and
- training of WRSP staff regarding confidentiality issues.

G. THE CDOC SHOULD REPORT ITS PROGRESS TO THE CHRO

The CHRO recommends that the CDOC submit quarterly reports to the CHRO on progress on each of the above recommendations.

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VII. ENDNOTES

- ¹ Document No. 6; see also Appendix Document No. 1.
- ² Inmates were transported in six groups of approximately eighty inmates each beginning October 25, 1999 and ending January 24, 2000. Document No. 140.
- ³ Transfers historically have been small in number and done on a one-for-one exchange basis. The purpose of these transfers is not to ease overcrowding, but to remove inmates who need protection or are extremely dangerous. For the years 1996 through 1998, for example, approximately 60-70 inmates on the average were transferred to other state or federal prisons pursuant to the interstate compacts. Document No. 142.
- ⁴ David Tracy, a White inmate, allegedly committed suicide by hanging himself in his cell at WRSP.
- ⁵ The legislature considered a number of initiatives to address prison overcrowding and the transfer of inmates to out-of-state facilities.
- ⁶ Document No. 21.
- ⁷ Document No. 23.
- ⁸ The Commission previously granted the CDOC an exemption to the contract compliance requirements for the VDOC contract on September 23, 1999. Document No. 17.
- ⁹ See CONN. GEN. STAT. § 46a-56(a)(2); CONN. GEN. STAT. § 46a-54(7); Regulations of Connecticut State Agencies Section 46a-54-16.
- ¹⁰ Document No. 36; see also Appendix Document No. 9.
- ¹¹ Document No. 39.
- ¹² Document No. 59; see also Appendix Document No. 16.
- ¹³ Document No. 63; see also Appendix Document No. 17.
- ¹⁴ Document No. 65.
- ¹⁵ Id.
- ¹⁶ Id.
- ¹⁷ Document No. 70; see also Appendix Document No. 20.
- ¹⁸ This claim was made by the VDOC when CHRO staff visited WRSP in October 2000.
- ¹⁹ Document No. 71; see also Appendix Document No. 21.

20 Id.

21 See CONN. GEN. STAT. § 16a-60(a)(1) (race, color, national origin, sex, religious creed, marital status, age, national origin, ancestry, present or past history of mental disorder, mental retardation, learning disability, or physical disability.)

22 Review of the *Human Rights Watch* report regarding Red Onion State Prison provides an example of an organization with a wider scope of review. Document No. 3.

23 The VDOC previously had contracts with Michigan and Iowa for housing of inmates from those states in the VDOC. Inmates from those states were not incarcerated at WRSP, however. The Michigan and Iowa contracts ended because new prisons being built in those states were completed and ready for occupancy. No other states' inmates have been at WRSP, although the VDOC has a total of approximately 3400 out-of-state inmates housed in various prisons throughout the state. Comments of Director Angelone, October 20, 2000.

24 There are six Black and no Hispanic security staff at WRSP.

25 The preceding information derived primarily from comments of Director Angelone during the CHRO tour of WRSP on October 20, 2000.

26 Document No. 10.

27 Document No. 6; see also Appendix Document No. 1.

28 Id.

29 Document No. 10.

30 See e.g., Stewart v. McManus, 924 F.2d 138 (8th Cir. 1991) (Under Interstate Corrections Compact adopted by Iowa and Kansas, prisoner had to be treated equally with inmates of receiving state and not similarly with Kansas inmates.)

31 Document No. 22.

32 Id.

33 Document Nos. 122, 123, 124, 125, 126 and 127.

34 See e.g., Meachum v. Fano, 427 U.S. 215 (1976) (No constitutional violation where inmate transferred from a medium-security facility to a maximum-security facility within the state); Olim v. Wakinekona, 461 U.S. 238, 248 (1982) (Interstate prison transfer from Hawaii to California does not deprive an inmate of any liberty interests protected by the due process clause.)

35 As described by the VDOC: "The data includes all institutions, but not state responsible inmates in jails." Document No. 71; see also, Appendix Document No. 21.

36 Document No. 71; see also, Appendix Document No. 21.

37 Document Nos. 96 and 97.

38 As stated earlier, the CDOC classifies Connecticut inmates by rating them on a scale of 1 - 5. Inmates classified level 4 or 5 in the risk category are given the most restrictive housing assignments.

39 Document No. 93.

40 Document Nos. 157 and 161.

41 Document No. 94.

42 Document Nos. 159 and 162.

43 Document No. 95

44 Document Nos. 158 and 160.

45 Percentages rounded off.

46 California and Nevada are the other two.

47 The CHRO received information where WRSP admitted employing five-point restraints on an inmate for kicking his door. Document No. 30.

48 Document No. 44.

49 There were just under fifty incidents of use of five-point restraints. The Commission had insufficient information regarding three incidents to make a conclusion as to the length of time.

50 WRSP regulations limit the use of five-point restraints to 48 hours. Longer periods require further administrative permission and review. For the most part, when five-point restraints were ordered, the full 48 hours were used.

51 Some inmates reported that most officers do not bother Black and Hispanic inmates and that most Correction Officers are fair and do not discriminate.

52 Document No. 3, Section VII. Staff-Prisoner Relations. Red Onion State Prison was built and open just prior to WRSP. As noted earlier, Red Onion is also a level 6 super-maximum security prison. It is located not far from WRSP in a rural, predominantly White area of Virginia.

53 Document No. 68.

54 WRSP Warden Stan Young mirrored this statement on October 20, 2000 during CHRO's visit to WRSP. In such an instance, "I believe my officers".

55 The onsite monitor is a CDOC employee who stays in Virginia and works full-time at WRSP. See Document No. 163. There now are apparently two onsite monitors at WRSP on a rotating basis.

56 There are only a few black and Hispanic staff members at WRSP.

57 See Document No. 165.

58 Document No. 68.
59 Id.
60 Powell v. Shriver, 175 F.3d. 107 (2d Cir., 1999).
61 Document No. 136.
62 Id.
63 Document No. 82.
64 Document No. 90.
65 Document No. 86.
66 Document Nos. 1, 82, 85, 86, and 88.
67 Document No. 166.
68 Document No. 71.
69 Document No. 68.
70 Id.

VIII. LIST OF DOCUMENTS

1. Wallens Ridge State Prison (WRSP) orientation packet for new arrivals.
2. Standards for Health Services in Prisons, National Commission on Correctional Health Care (1997).
3. *Red Onion State Prison; Super-Maximum Security Confinement in Virginia*, Human Rights Violations in the United States, HUMAN RIGHTS WATCH (April 1999).
4. November 12, 1999, New Mexico Legislature; Courts, Corrections and Criminal Justice Committee Meeting Notes.
5. November 4, 1999, Amnesty International, Press Release.
6. Correctional Services Contract between the Connecticut Department of Correction and the Virginia Department of Corrections.
7. CONN. GEN. STAT. § 18-86a. Contracts with Other States for Confinement of Connecticut Inmates.
8. CONN. GEN. STAT. § 18-86b. Contracts with Governmental and Private Vendors for Supervision of State Inmates Outside the State.
9. CONN. GEN. STAT. §§ 18-102 through 104. New England Interstate Corrections Compact.
10. CONN. GEN. STAT. §§ 18-105 through 107. Interstate Corrections Compact.
11. CONN. GEN. STAT. § 46a-51 *et seq.*
12. Summary of Sanders v. LaFleur lawsuit.
13. Summary of facts in complaint of Christopher Lee Fry, a New Mexico prisoner sent to WRSP.
14. VA CODE ANN. §§ 2.1-714 through 2.1-724 (West 2000)(Code of Virginia, Chapter 43-Virginia Human Rights Act).
15. Executive Order of the Governor of Virginia No. 2 (1998) Re: Equal Opportunity.

16. June 25, 1996, letter from Commission Counsel Philip A. Murphy, Jr. to Commissioner John Armstrong regarding contract compliance requirements.
17. September 23, 1999, letter from Executive Director Cynthia Watts Elder to Commissioner Armstrong regarding contract compliance requirements.
18. December 1, 1999, letter from Christina M. Polce, Public Information Officer, Connecticut Department of Correction (CDOC) regarding transfer of inmates to WRSP with attached list of inmates.
19. May 19, 2000, letter from Executive Director Watts Elder to Commissioner Armstrong regarding transfer of Connecticut inmates to Virginia.
20. December 1, 1999, letter from Christina M. Polce, CDOC Public Information Officer, to Barbara Potopowitz, Permanent Commission on the Status of Women, FOI request regarding transfer of inmates to WRSP.
21. June 7, 2000, letter from Commissioner Armstrong to CHRO Commission Counsel Murphy regarding CHRO request for information.
22. June 15, 2000, memo from Commission Counsel Murphy, to the Commission regarding transfer of inmates to Virginia.
23. June 15, 2000, letter from Commissioner Armstrong to CHRO Commission Counsel Murphy regarding information request.
24. July 13, 2000, OLR Research Report, *Correction Contract's Affirmative Action Provisions*, by Sandra Norman-Eady, No. 2000-R-0713.
25. July 14, 2000, letter from Executive Director Watts Elder to Commissioner Armstrong regarding contract exemption.
26. July 14, 2000, letter from Commissioner Armstrong to Executive Director Watts Elder regarding contract exemption.
27. July 18, 2000, letter from Commissioner Armstrong to CHRO Executive Director.
28. July 24, 2000, letter from Executive Director Watts Elder to Commissioner Armstrong regarding WRSP.