

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Case No. 2025-000136

Weldon W. Stewart, Jr., #295095 Petitioner,

v.

State of South Carolina, Respondent.

SUPPLEMENTAL APPENDIX

Weldon W. Stewart, Jr. #295095
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He reported that Ms. Allen and the mother of his daughter were not amicable, and he stated that the concept of fathering a child with another woman appeared to cause Ms. Allen great distress due to her own allegedly “forced” abortion experience. He reported an incident at church in which Ms. Allen held his daughter and became reticent to let anyone else hold her. She was reportedly fussing over her and “acting as if my daughter was hers.” He reported that Ms. Allen would not allow her mother to “touch the child, and kept calling her a baby killer.” He reported that Ms. Allen repeatedly brought up the topic of the abortion while holding his daughter, and noted that she would cry. He reported that Ms. Allen became more fixated on having children following this interaction. He reported that he engaged in sex with Ms. Allen on the day of her death based on Ms. Allen’s request to become pregnant again. He reported believing at the time that this would be “a good solution to help her get past losing the other baby.” He reported that Ms. Allen appeared very happy before and after they engaged in sex on the day of her death. He reported that, on the way to return her home, she returned to the topic of the lost baby and became morose and tearful. He reported that she became difficult to mobilize (“I was trying to get her home and I couldn’t get her to move. She was just like dragging”). He reported that she collapsed while they were walking together very shortly after this shift in mood and affect. He reported a belief that this change in mood, coupled with Ms. Allen having asked for water shortly preceding the apparent emotional shift, are indicators that she may have taken a pill to harm herself. Mr. Stewart Jr. indicated a belief that Ms. Allen’s death was attributable to her experience around the abortion and the distress following that experience.

In the clinical interview with Mrs. Virginia Stewart, dated 05/12/2022, Mrs. Virginia Stewart independently reported Ms. Allen confided in her about her mother’s intent to obtain an abortion of the pregnancy. Mrs. Virginia Stewart reported that she called and spoke with the mother to request that the child be born and stated that she (Mrs. Virginia Stewart) would take full custody and responsibility for the child after birth. Per Mrs. Stewart’s report, the mother denied knowledge of the pregnancy, despite other persons in the community reportedly being known to have advised the mother of the pregnancy, such as Ms. Allen’s peer in whom Ms. Allen confided about the pregnancy; the parent of the peer whom the peer told about the pregnancy, who in turn told Ms. Allen’s mother; Ms. Allen who was spoken to about the pregnancy by this point in time by her mother; and Mr. Stewart Jr.’s mother, Mrs. Virginia Stewart, independently reported that Ms. Allen spoke to her following the abortion and stated that Ms. Allen was crying while she shared the details of holding the fetus following the abortion. Mrs. Stewart reported that Ms. Allen consistently had a “blank stare” and “was always in a trance after that.” Mrs. Virginia Stewart independently reported recalling that Ms. Allen wanting to hold and be around Mr. Stewart Jr.’s child at church, appearing “very hurt,” going back into the events of the abortion and becoming tearful, and “walking around with that hurt on her face and the churchgoers noticing her in a trance.” In reference to Ms. Allen’s emotional and mental state following the abortion, Mrs. Virginia Stewart stated that, I saw it in my son after the attempted drowning, so I recognized it in [Ms. Allen].” Mrs. Virginia Stewart reported that Ms. Allen had written a letter shortly before her death that indicated her extreme depression and distress around the loss of her child.



In the clinical interview with Mrs. Lori Stewart, dated 05/03/2022, Lori Stewart reported providing the letter to a handwriting expert.

In the Forensic Document Report, dated 05/16/2022, the forensic document examiner concluded that it was “probable” that the letter was written by [REDACTED] Allen, and that there were no indications that the letter was written by a different person.

In the clinical interview with Mr. Stewart Jr., dated 05/04/2022 and 05/09/2022, Mr. Stewart Jr. reported not recalling the letter until Mrs. Lori Stewart provided it to him and he reread it. He reported the “memories and feelings of the letter and [Ms. Allen] flooding back after I reread it.”

Mr. Weldon Stewart Jr. reported one significant relationship that occurred at age 15 with a 27-year-old woman, who “played with me and threw me away.” Mr. Weldon Stewart Jr. reported one other significant romantic relationship around age 15 with female who was “a senior in high school.” He reported that the relationship that he was told at the time resulted in one pregnancy, for which the woman allegedly self-induced a miscarriage by “drinking castor oil.” Per Mr. Weldon Stewart’s report, the woman then took pictures of the miscarriage and those pictures were allegedly sent to Weldon in an envelope by a boy from his neighborhood. Mr. Stewart Jr. reported subsequently learning that the child was actually fathered by another male in the community, and he added the note that this male served on Mr. Stewart Jr.’s trial.

Mr. Weldon Stewart Jr. reported having no other significant relationships outside of the aforementioned romantic relationships. He reported that he has only one child (his daughter), with whom he is close, and who is currently being cared for by his parents due to her recent medical deterioration. He reported one grandson that passed away at four days old on December 3rd, 2021. He has one living 3-year-old grandson. He reported that he had one close friend, named Bo, with whom he spent time daily “until he testified against me at trial” (for the key incident). Mr. Weldon Stewart Jr. reported that he historically made friends easily and is generally extroverted and independent of personality. He reported that he is more introverted in prison due to restrictions and personal safety concerns.

Educational History

Mr. Weldon Stewart Jr. obtained his high school diploma prior to his conviction and incarceration in prison. He reported that he was a straight A student prior to the attempted drowning incident that occurred between his 4th and 5th grade school years by peers “who saw me as a nerd.” From grade 3rd through 8th, he was reportedly in the gifted program. However, he reported that his grades dropped following the attempted drowning incident, “because I wanted to be more like the people who tried to drown me in order to survive. I tried to fit in so that they would leave me alone.” He reported that the drop in his grades reached a point of him “barely passing.” He stated, “I would enough work to get by, but not much.” Mr. Stewart Jr. reported that he had difficulties focusing on school, studying, and doing homework following the attempted drowning incident. He described himself as becoming “the class clown.” He reported that his decline in grades resulted in more punitive actions on the part of his parents. He reported



one incident in which his mother made him “dress like a clown and go to school, saying that if I was going to act like a clown, then she would dress me like a clown.” He reported another incident in which he scored a 15 on a test and elected to forge the signature on the documentation of the grade in order to avoid his parents learning about the score. Reportedly the teacher caught the forgery and advised his parents, which resulted in his mother allegedly sitting on top of Mr. Stewart Jr.’s head while beating him with an extension cord. Mr. Stewart Jr. reported having difficulty breathing and “flashing back to the attempted drowning experience.” He reported struggling during the beating, which resulted in him being allegedly made to strip down to his underwear, hug the toilet in the bathroom, and being beaten further with the extension cord. He alleged that he was made to count the lashes and to start the count over again any time that he turned around or moved from hugging the toilet. Mr. Stewart Jr. alleged that the beating left marks that were noticed by the teacher the next day, who then stated that social services would be called in the event that such punishments occurred again. He reported that his mother still beat him after this incident, but “never as bad.” Mr. Stewart Jr. alleged that he was not taken by his parents to receive medical attention for the marks on his body. The teacher in this incident was not interviewed for this psychological evaluation, thus, the details of this incident could not be corroborated for the purpose of this report. Mr. Weldon Stewart Jr. also reported that he was scared of his mother following this beating and would flinch when around her. Mr. Stewart Jr. reported that his father was present for corporal punishments and would often make statements about “how it was my fault and I needed to sit still and take it or it would start over or keep going.” Mr. Stewart Jr. reported that his father sometimes engaged in the provision of corporal punishment, but the punishment was most often carried out by his mother. Mr. Stewart Jr. excused his mother’s abusive behaviors at multiple times during his clinical interview, and attributed it to his mother’s own past trauma experiences. Mr. Stewart did not provide excuse or other statements regarding his father’s level of responsibility in these abusive behaviors.

At age 16, Mr. Stewart Jr. was court-ordered to attend a therapy boarding school based (Hidden Lake School) following a series of events that included bring a knife to school and cutting one of the 10-15 kids that had threatened to “jump him”; being placed on probation for cutting the student; and then breaking curfew and stealing food while on probation for that cutting incident. He reported that he had been accepted at that time to a government school for science and mathematics, but the acceptance was rescinded following Mr. Stewart being arrested for cutting another student with a knife.

Mr. Weldon Stewart Jr. reported a desire to continue his education. He has recently obtained information to participate in correspondence courses while in prison.

Occupational History

Mr. Weldon Stewart Jr. reported some work history prior to being convicted and incarcerated in prison. He reported working for Burger King, working with his father at a plant, and briefly working at another plant. He denied any history of disciplinary or behavioral problems in the workplace. He reported one difficult incident involving finding a partial fetus in the trash cans



outside of the Burger King during his work shift. He reported that the experience was particularly difficult because he had received pictures of a miscarriage from a former romantic partner claiming that she was pregnant and the child was Mr. Stewart Jr.'s. He reported that seeing the partial fetus during that stressful time period made the experience feel worse. He reported engaging in self-injurious behaviors in the form of cutting to "try to get over that after it happened," as well as starting to use marijuana "to cope."

Mr. Stewart Jr. has not worked since becoming incarcerated in prison. He was recently approved for a work program through the prison through which he will receive a minimum wage salary and a paycheck. He reported having been sworn into the Army National Guard about one month prior to Ms. Allen's death. He is not currently in the military.

Substance Use History

Mr. Weldon Stewart Jr. reported a history of substance use that includes use of marijuana (he also used the term "weed") as a teenager, some social drinking of alcohol as a teenager (mostly beer), creation of alcohol "a couple of time" early in his prison sentence, and use of cigarettes beginning as a teenager and ceasing sometime between 2007 to 2008. He reported that he began using marijuana following the receipt of pictures of a miscarriage by a former romantic partner at age 15 as a method of coping. His use of marijuana resulted in him reportedly becoming the victim of a robbery at age 16 by an individual aware of Mr. Weldon Stewart having marijuana on him at the time. He denied any other history of substance use or abuse of prescription drugs. He reported that he used weed on the day of Ms. Allen's death, but stated that he was not feeling effects of substance use at the time of her death. He denied any other substance use on the day of Ms. Allen's death. He reported recalling "that I wanted [a cigarette] after to calm my nerves, and I couldn't find my cigarettes. I had some on me and they ended up falling and they were still where she collapsed."

Legal History

Mr. Weldon Stewart Jr. reported a history of having been arrested four times, including two juvenile charges occurring close together at age 16 (cutting another student with the knife; stealing food while on probation), one charge of contributing to the delinquency of a minor at age 19, and one charge for the murder of Ms. Allen. He reported pleading guilty to the first juvenile charge and receiving probation. He reported that the second charge resulted in his court order to be placed in a therapy boarding school (Hidden Lake school in 1998). He reported that both adult charges resulted in incarceration; the first in incarceration at a jail for a few months in 2000, and the second in his current incarceration in prison. He was arrested for his suspected involvement in Ms. Allen's death on December 6th, 2000; reportedly about 5 months after his release from jail on the charge of contributing to the delinquency of a minor involving that decedent.



Trauma History

Mr. Weldon Stewart Jr. reported multiple trauma experiences occurring prior to, and subsequent to, the key incident involving Ms. Allen's death. Prior to Ms. Allen's death, Mr. Weldon Stewart Jr. alleged being physically and emotionally abuse (e.g., made to dress like a clown in public) by his parents, being nearly drowning between his 4th and 5th grade year by male peers in his neighborhood; being molested by an older male youth at his church; the receipt of pictures at age 15 of a miscarriage from a female claiming that he fathered her child around the same time as he discovered the partial fetus in the trash can during his Burger King work shift; cutting himself in attempt to recover from these incidents; being robbed for marijuana he was carrying at age 16, followed by being "jumped" by peers the following day at the request of the robbery perpetrator; and Ms. Allen's death. Additional stressor experiences reported that may not rise to the level of traumas, or have not yet been identified by Mr. Stewart Jr. as traumas, but would be otherwise more distressing than the typical stressful experience, include being involved in an inappropriate relationship at age 15, which is likely to have been manipulative, and in which Mr. Weldon Stewart Jr. represented a vulnerable youth; his two juvenile incarcerations, running away with Ms. Allen, being made aware of his child with Ms. Allen being allegedly aborted by "force," and being incarcerated for contributing to the delinquency of a minor. Following Ms. Allen's death, Mr. Weldon Stewart Jr. reported trauma experiences that include an attempted suicide in prison via wrist cutting, alleged abuse by prison staff (not elaborated on), his grandson's death at 4 days old, and his daughter's rapid and severe medical deterioration and need for constant care by his parents.

Medical History

Mr. Weldon Stewart Jr.'s reported medical history includes no current health issues. He reported loss of appetite with noticeable, insomnia with nightmares during periods of sleep, changes in smell (i.e., could not smell the burning flesh of Ms. Allen at the crime scene), and difficulty with concentration and focus around the time of the crime. He denied any history of concussion, loss of consciousness, head injury, surgeries, overnight hospitalizations, car accidents involving injury, problems with his own gestation or birth, difficulty hitting developmental milestones, sexual dysfunction, hearing or vision problems, ambulation issues, migraines, or chronic pain. He reportedly some "normal aches and pains," which he attributed to a lack of outdoor recreation at his prison related to short-staffing. He reported looking forward to reaching a Level 1 custody in November 2022, granting removal to a better facility with better recreation access. His prior difficulties with sleep, appetite, olfactory sensing, and focus/concentration have remitted. He reports no other issues with olfactory sensing. He had seasonal allergies as a child. He is not currently on prescriptions.

**Mental Status:**

Mr. Weldon Stewart Jr.'s performance on the Oxford Medical Education Mini Mental Evaluation (OME MMSE) placed him in the range of no cognitive impairment (score 29 out of possible 30). The missing point was due to an omitted assessment item that cannot be provided to individuals completing examinations over the Zoom video (copying a figure onto another piece of paper). However, when shown the picture of the figure, Mr. Stewart Jr. was able to identify and describe the geometrical figure. He was fully oriented x4 (person, place, time, and situation). He was able to easily complete computation and verbal assessment items, identify presented items, recall three items verbally provided by the examiner both immediately and after a 5-minute delay, and to follow a provided three-step direction. His performance on the OME MMSE indicated intact reality and cognitive processes. His performance was indicative of good working memory and abstract thinking, evidenced by his ability to hold provided information in his short-term memory and manipulate the information to provide the desired answer to the task/question posed.

Mr. Stewart Jr. was cooperative and polite throughout the evaluation. He responded to all of the examiner's questions openly and did not demonstrate reticence or resistance to evaluation. His scores on the Balanced Inventory of Desirable Responding (BIDR) did not indicate any attempt to engage in socially desirable responding behaviors, or to manage the examiner's impression of him. His behaviors during responding suggest that he was being genuine and most likely believed that the details he was reported are true. He was a generally good historian for details that could be corroborated by ancillary sources, which was evidenced in his reports about those details being generally congruent with the reports of ancillary sources. His accuracy for responding on details that could not be corroborated through ancillary sources cannot be assessed via psychological evaluation.

His mood was reported as "nervous." His affect was slightly anxious, with periods of tearfulness when discussing emotionally-laden details, such as Ms. Allen's death. His speech was within normal limits with production and prosody. He reported difficulty formulating thoughts and speech, and interacting reciprocally with others at the time of Ms. Allen's death. His communication was concise and topical throughout the process. No tangentiality or oddness of thought process was observed during the clinical interview. He reported some past extreme hypervigilance that may have risen to the level of paranoia in the face of incontrovertible evidence (e.g., believing his food was poisoned in prison despite assurances by staff and strict procedures maintained around food in prisons). He demonstrated a tendency to give more weight to the opinions and advice received throughout his life from his mother, with many of those messages being religiously related. He also demonstrated a tendency to rationalize his mother's alleged abusive behavior toward him in childhood as being the product of her own past abuse experiences. He did not make any statements of rationalization attempts related to his father's alleged abusive behavior towards him in childhood. He denied any current concerns related to bizarre behaviors, hallucinations, or delusions. He did not demonstrate any bizarre behaviors, hallucinations, or delusions at the time of the examination. He reported a history of auditory and tactile hallucinations around the time of Ms. Allen's death related to "hearing something physical



in my room that would jump on me and throw me around,” and having “felt her spirit go through my body,” both of which he attributed to religious content. He reported a history of detaching from people and events around himself at the time of Ms. Allen’s death. He demonstrated no odd movements, repetitive behaviors, or physical behaviors during the examination process. His cognitive level of intelligence appeared to be at least average. His history of participation in, and acceptance to, gifted programs suggest above average intelligence. He reported a history of disturbed sleep (insomnia) and reduced appetite with weight loss at the time of Ms. Allen’s death. He reported a history of nightmares related to his near drowning prior to Ms. Allen’s death, and nightmares related to Ms. Allen following her death.

Mr. Stewart Jr. has no formal prior mental health diagnosis. He attended a therapy boarding school (Hidden Lake School in 1998, around age 16-17) as a legal requirement of his juvenile charge of stealing food while on probation for prior charges. His attendance at the facility was offered in lieu of being incarcerated at a juvenile detention facility. He remained at the therapy boarding school for the period of one year. He reported that he recalled the childhood attempted drowning event while working with a therapist at Hidden Lake. Per Mr. Stewart Jr.’s report, “the therapist interviewed parents, and then therapist asked specifically if I remembered being drowned, and that is when it came back to me. I didn’t recall before.” Mr. Stewart Jr. has no history of inpatient psychiatric treatment. He reportedly has undergone psychological evaluation once previously in order to determine competency to stand trial for the key incident. The evaluation reportedly determined that he was competent to stand trial. Mr. Stewart Jr. reported a history of morbid ideation involving thoughts like, “I don’t want to be here.” He denied having any history of intent, plans, or action, and stated that he is “scared of that, because my Mom always told me about the religious consequences;” however, he also reported having engaged in one suicide attempt via wrist cutting while in prison. He reported that he cannot recall all of the details around the suicide attempt, including what motivated the attempt, taking up the object used to cut himself, or engaging in the cutting process. He stated, “I remember that it happened because I see that my wrist is cut and because other people tell me it happened, but I cannot actually remember doing it.” He denied any history of homicidal ideation, plan, or action. He stated, “I don’t really think of hurting people. I am not violent. I would just defend myself if someone wanted to hurt me and I couldn’t get away.” He reported a history of self-injurious behaviors prior to Ms. Allen’s death, around the time of discovering the partial fetus in the trash at his work and being sent pictures of babies by a woman claiming that he fathered her child. He denied any intent, plan, or actual engaging in current self-injurious behaviors.

Review of Provided Records:

Bennettsville Police Department Juvenile Incident Report, dated 09/25/1997

The examiner was provided with the Bennettsville Police Department Juvenile Incident Report, dated 09/25/1997. Per the incident report, on 09/25/1997, Mr. Weldon Stewart Jr. had left a



restaurant (Huddle House) after having eaten an \$8.00 and not paying for the meal. Per the incident report, Mr. Weldon Stewart Jr. was located walking down the road and transported back to the incident location by the responding police officer. Per the incident report, Mr. Weldon Stewart Jr. “refused to go with father” after the father had been called to the scene of the incident by the responding officer. Per the incident report, the Department of Juvenile Justice was advised, and Mr. Weldon Stewart Jr. was transported to a juvenile facility in Columbia. The incident report cited Mr. Weldon Stewart Jr. with the following violations: (1) Petty Larceny, (2) violation of curfew, and (3) Incurable juvenile behavior.

The details of the Bennettsville Police Department Juvenile Incident Report, dated 09/25/1997 are congruent with Mr. Weldon Stewart’s independent report during his clinical interviews on 05/04/2022 and 05/09/2022. In Mr. Stewart Jr.’s clinical interviews, he stated, “I refused to go home with him [his father]. I didn’t want to. I was too afraid of what would happen.” Mr. Stewart Jr. reported being fearful at the time that he would be physically punished for the juvenile incident on 09/25/1997 if he returned home.

County of Marlboro Family Court Rule to Show Cause, dated 07/29/1997

The examiner was provided the County of Marlboro Family Court Rule to Show Cause, dated 07/29/1997. Per the Rule to Show Cause, Mr. Weldon Stewart Jr. was alleged to have violated the terms of his existing probation in the following particulars: “You have had several disciplinary problems at school and your parents state that you do not listen at home and that you stay out until all hours of the night. You have not been complaint with your drug education program and you have received additional charges.” Per the Rule to Show Cause, Mr. Stewart Jr. was ordered to appear before Family Court at Dillon, SC on 09/26/1997.

The details of the Bennettsville Police Department Juvenile Incident Report, dated 09/25/1997 are mostly congruent with Mr. Weldon Stewart’s independent report during his clinical interviews on 05/04/2022 and 05/09/2022. In Mr. Stewart Jr.’s clinical interviews, he reported his past use of cannabis (“weed”), as well as the incident in which he was robbed for marijuana and threatened to be “jumped” by others the next day at the request of the perpetrator of the robbery. Mr. Weldon Stewart Jr. did not report being court ordered to participate in a drug program during his clinical interview.

County of Marlboro Family Court Affidavit, dated 09/23/1997

The examiner was provided the County of Marlboro Family Court Affidavit, dated 09/23/1997. Per the Family Court Affidavit, Mr. Weldon Stewart Jr. appeared before Jill Douglas and was alleged to have violated the terms of his probation as ordered by the family court of Chesterfield County, SC on July 29, 1997. The Family Court Affidavit reported that Mr. Stewart Jr. “was



placed under a suspended commitment to the Department of Juvenile Justice by the Honorable Judge Spruill and ordered 1 year probation to include that he complete 50 hours of community service, participate in a Drug Education Program, attend either a Choices or Conflict Management Group, as well as abide by all other stipulations listed on the probation order. Since being placed on probation Weldon has had several disciplinary problems at school and his parents state that Weldon does not listen at home, stays out all hours of the night. Has not been compliant with his drug education program, and has received additional charges, thus charging Weldon Stewart Jr. with Probation Violation.”

The details of the County of Marlboro Family Court Affidavit, dated 09/23/1997 are mostly congruent with Mr. Weldon Stewart’s independent report during his clinical interviews on 05/04/2022 and 05/09/2022. He reported having been on probation at the time of the charged violation detailed in the Family Court Affidavit. He reported having been court ordered to complete community service. Mr. Weldon Stewart Jr. did not report being court ordered to participate in a Drug Education Program or a Choice or Conflict Management Group during his clinical interview.

Hidden Lake Academy Counselor Report, dated 05/1998

The examiner was provided the Hidden Lake Academy Counselor Report, dated 05/1998. The report described Mr. Weldon Stewart Jr.’s behavior and treatment response to the program at the time of the document’s creation. The Counselor Report stated the following: “Weldon is struggling. He is working to understand that his actions not only affect himself but others around him.” In regards to a Wilderness Adventure trip to be taken by the program participants at the time, Mr. Stewart Jr. was reported to have “refused to begin the trip and found it very difficult to verbalize his fears about going. Staff delayed the departure from campus, which frustrated others and prompted them to encourage Weldon [to] resolve the issue. Staff pointed out to Weldon that his actions were affecting the group and that it is important to take risk and trust others with his feelings. Weldon shared a time in his past that brought up fear that he wouldn’t be safe on this trip. He was able to find encouragement and trust from his mother that he couldn’t find within himself to continue. This scenario has been a pattern for Weldon. He appears distant and frustrated but when confronted, Weldon becomes very angry and hostile. He struggles to ask for what he needs in appropriate ways and resorts to blaming others for his actions. Weldon’s parents may continue to share with him the importance of relying on others. He has reported trusting the vision and intuition of his mother more than his own. Weldon may greatly benefit from his mother’s encouragement to find the same abilities within himself and to understand that trust is an issue which involves perceived risks. Weldon is very insightful and is very interesting to talk to on a one-on-one basis.” The Counselor Report was signed by Tom Sisk, PhD, Meredith Burns, PsyD, and Denny Beatty, BA.



In Mr. Weldon Stewart Jr.'s clinical interview, dated 05/04/2022 and 05/09/2022, he independently reported having attended Hidden Lake Academy as a consequence of his probation violation. He reported that his engagement with the counselor at Hidden Lake is when he "recovered" his memory of his attempted drowning by male peers in his childhood (age 10). Mr. Stewart Jr. reported that the counselor had interviewed his parents who brought up the attempted drowning incident. Per Mr. Stewart Jr.'s report, the counselor asked him if he recalled the incident, "and that is when it all came flooding back to me." In his clinical interview, Mr. Stewart Jr. reported highly valuing his mother's opinions and advice throughout his life. He demonstrated repeated attempts to excuse her alleged abuse of him as a child, which he attributed to her own alleged past experience of abuse. These attempts to rationalize the alleged abuse by his mother were unprompted by the examiner, and appeared to be motivated by internalized distress or pressure for Mr. Stewart Jr. to ensure that his mother was conceptualized as a "good person." He made no statements to excuse the alleged abusive behaviors of his father, nor did he demonstrate any distress when describing his father's role in those alleged abuse incidents.

In the clinical interview with Mrs. [REDACTED] "Lori" Stewart, dated 05/03/2022, Mrs. Lori Stewart independently reported that Mr. Weldon Stewart Jr. "He has a lot of trust in what his mother says, so he often listens to her advice."

Bennettsville Police Department Incident Report, dated 12/06/2000

The examiner was provided the Bennettsville Police Department Incident Report, dated 12/06/2000, and created by Officer Crosland who was a responding officer to the key incident. The report described the incident type as (1) murder and (2) discretion of a human body, as related to the death of [REDACTED] Allen (Ms. Allen in the incident resulting in Mr. Stewart Jr.'s conviction and current incarceration). According to the Incident Report, dated 12/06/2000, officers responded to the scene of the incident in reference to Mr. Stewart Jr. having called 911 for a "deceased body." Per the report, upon arrival on the scene, officers observed Mr. Stewart Jr. "standing on the front porch in a confused state." The Incident Report, dated 12/06/2000 described Mr. Stewart Jr. as answering questions "in his confused state" and noted that "the questions asked were answered with little effort." According to the Incident Report, dated 12/06/2000, Mr. Weldon Stewart Jr. "made statements as to being involved in a verbal altercation with the victim. The subject further stated that the victim tried to cut him in which she fell to the ground and heard a cracklike sound. [Mr. Stewart Jr.] stated that he didn't know what to do and wanted to bury her but set the victim on fire." Per the Incident Report, dated 12/06/2000, when asked by officers where the body was, Mr. Weldon Stewart Jr. reported that the body of Ms. Allen was in the back yard. The Incident Report, dated 12/06/2000 indicated that the body was found by Officer Worsley still burning. The document indicated that Mr. Stewart Jr. was arrested and transported to the Bennettsville Police Department for questioning. The document indicated that the following "proper officials were called to the scene": Captain Tention, Lt. Frazier, Lt. Boston, Detective Dallas Burley, Narcotics Agents Valdaliso & Turner,



Officer Worsley, Officer Lucas, Sgt. Horton, Officer Pelham, Officer Covington, City Administrator Max Aldeihan, and the Officer Crosland. The South Carolina Law Enforcement Division (SLED) was reportedly contacted in reference to the incident, and the Marlborough County Coroner Office (Tim Brown) was notified.

The details of the Bennettsville Police department Incident Report, dated 12/06/2000 were mostly congruent with the independent report of Mr. Weldon Stewart Jr. in his clinical interview, dated 05/04/2022 and 05/09/2022. He demonstrated difficulty recalling what responding officers said when speaking to him at the scene of the incident. He also did not report during his clinical interview that Ms. Allen attempted to pull a knife at any point in time. His description of feeling “confused and out of it, like I was watching it happen to me” is congruent with the responding officer’s report of Mr. Weldon Stewart Jr.’s confused mental state at the scene of the incident.

Trial Transcript Excerpt with statements from Mr. Weldon Stewart, Jr., the Court, and Mr. Blake

The examiner was provided the Trial Transcript Excerpt with statements from Mr. Weldon Stewart Jr., the Court, and Mr. Blake. In the Trial Transcript Excerpt, Mr. Weldon Stewart Jr. stated, “Just my grades started slipping lower in fifth grade. Other than that, I did pretty good. Was doing good at home. Got older. When I got about 15, I started dating this older lady. She was 27, and she kind of played with my - - played with me a little bit and kind of threw me away. So that was that. But in school I was pretty good. Shortly after that relationship, I got with another girl, and got - - she became pregnant. She was older - - she was a little bit older than me. I was still 15. She was like a high school senior or something. She became pregnant, and she forced herself into an abortion by - - not an abortion, but forced herself into a miscarriage by drinking castor oil, something like that. And had the baby out on the floor and took pictures of it and sent it to me. So that’s what happened. Shortly after that, I started - - I had problems with. That - - that really bothered me. Just seeing the pictures and stuff, so I really - - I started - - not getting in trouble, but just to be honest, what I said I was going to do in my opening statement, so I started using a little marijuana. That was how I coped with my pain and stuff like that.”

The details of Mr. Weldon Stewart Jr.’s statements made in this Trial Transcript Excerpt are congruent with his independent report in his clinical interview, dated 05/04/2022 and 05/09/2022. He independently reported in his clinical interview, dated 05/04/2022 and 05/09/2022, that his grades and behaviors changed subsequent to the attempted drowning incident that he experienced between the fourth and fifth grade school years (around age 10). He also independently reported that he was sent pictures of a miscarried baby by a former romantic partner. During his clinical interview, he reported “having troubles” emotional and mentally following the receipt of these photos, including intrusive unwanted thoughts of the images, difficulty sleeping, and increased anxiety and general distress. He attributed his response to the subsequent incident, in which he discovered a partial fetus in the trash can behind Burger King during his work shift, to the prior experience of receiving these pictures from this former



romantic partner. His response was described as “going out of it and not really knowing what to do or what was going on.”

In the clinical interview with Mrs. Virginia Stewart, dated 05/12/2022, Mrs. Virginia Stewart independently reported that she was called Mr. Stewart Jr.’s supervisor from Burger King, at the time of incident involving discovery of the partial fetus, to pick him up from work following the incident. Mrs. Virginia Stewart reported that, upon her arrival, Mr. Stewart Jr. appear to be, “standing up like a person who had just seen a bad wreck like he was in a trance.”

Marlboro County Detention Facility Inmate Incident Report, dated 01/22/2001

The examiner was provided the Marlboro County Detention Facility Inmate Incident Report, dated 01/22/2001. The Incident Report, dated 01/22/2001, described the incident type as “Cutting at his wrist.” Per the report, Officer Bostic observed Mr. Weldon Stewart Jr. “sitting on the floor cutting at his wrist.” Per the report, Officer Bostic asked Mr. Stewart Jr., “why was he trying to hurt himself, he just looked at me and continued to cut at his wrist.” Per the report, Officer Bostic noticed that Mr. Stewart Jr. was using a stapler to cut his wrists. Per the report, Officer Bostic stated, “I asked him a number of times to stop and let me get the stapler, he just continued.” The reported indicated that Mr. Stewart Jr. was placed in handcuffs and leg irons to secure his safety. The report includes a subsequent written account from 01/23/2001 (unknown writer; signature illegible), which indicated that Mr. Weldon Stewart Jr. requested that the cuffs and leg irons be left on for his own safety. The report includes the following statements: “[Mr. Weldon Stewart Jr.] wanted to talk to me and stated that he was scared and that he had ‘blackened out’ twice, once when he flooded out and again when he scratched up his wrists last night. He said that it was not like him to harm himself. He said he thought someone had poisoned his food. I told him that this was impossible, that the food is watched all the time. He said again that he had ‘blackened out’ and he was scared.” The reported also included that statement, “At [Mr. Weldon Stewart Jr.’s] request, handcuffs and leg irons were put back on. Inmate Stewart stated that he wanted them because he could not trust himself.” The report also indicated that personal items were removed from Mr. Weldon Stewart following this wrist cutting incident, and required him to “earn things back” over time. The report indicated that, on 01/25/2001, Mr. Weldon Stewart Jr. complained of “black outs”. The report also indicated that, on 01/27/2001, Mr. Weldon Stewart Jr. “refused to return his breakfast tray.

In his clinical interview, dated 05/04/2022 and 05/09/2022, Mr. Weldon Stewart Jr. independently reported a suicide attempt while incarcerated in the year following the death of the [REDACTED] Allen. His independent report was mostly congruent with the details outlined in the Marlboro County Detention Facility Inmate Incident Report, dated 01/22/2001. He independently reported that he “blackened out,” and that he requested to remain in handcuffs and leg irons due to “not being able to trust myself.” In his clinical interview, he reported an inability to recall the details of engaging in



self harm. He stated, “I know that I cut myself because they told me I did and I have a scar on my wrist, but I cannot actually remember cutting myself.”

Transcription of Interview with Officer Sammy Crosland, dated 07/03/2003

The examiner was provided the Transcript of Interview with Officer Sammy Crosland, dated 07/03/2003. Officer Sammy Crosland was one of the responding officers to the key incident involving [REDACTED] Allen’s death. Per the Transcript of the Interview, Officer Sammy Crosland was interviewed in the Marlboro County Detention Facility multi-purpose room. Present were Officer Crosland and Weldon W. Stewart Jr., pro se defendant. Per the document, Officer Crosland signed a consent to interview form. In response to Mr. Weldon Stewart Jr.’s questions in the interview, Officer Crosland reported that he stated in his incident report that Mr. Stewart Jr. was observed to be in a “confused state.” Officer Crosland was asked to defined “a confused state,” which he described as, “you were looking like...I mean you had this strange look on your face like you were out of it or something. I mean you were just standing on the porch and you weren’t moving. At first we [the responding officers] hesitated to get out of the car. We just sat there and looked at you for a minute like...(demonstrates how he was looking at Weldon Jr.) Okay?” In response to Mr. Stewart Jr.’s question of whether he appeared angry or in a rage, Officer Crosland stated, “no, you looked more or less like something happened...A look like I don’t know what to do. I mean, people don’t usually stick around when they do a crime. It may have been the effect that you did something but didn’t mean to do it.” In response to Mr. Weldon Stewart Jr.’s question about whether he had been responsive to Officer Crosley’s inquiry about the body in question, Officer Crosley stated, “Well, not really. It was like you were trying to tell me something but you weren’t making any sense.” Mr. Weldon Stewart Jr. asked what statement he had made to the officer at the scene. Officer Crosley responded, “You made statements about your girlfriend trying to cut you with a knife. You were making statements like ‘I didn’t anticipate doing that’, or ‘what the hell did I just do,’ you were trying to tell me what happened but it seemed like you couldn’t get it all out or something. The other officer went in the house looking for the body. You said something about the backyard. I went to the backyard and found the body.” In response to Mr. Weldon Stewart Jr.’s question of whether the officers had difficulty placing him under arrest, Officer Crosland stated, “No.” Officer Crosland indicated a belief that Mr. Weldon Stewart was not “trying to run or anything.” In response to Mr. Weldon Stewart Jr.’s question about why the section labeled *weapon type* was left blank on the incident report, Officer Crosland stated, “At the time we did not know what type of weapon was used. We didn’t know how she passed. I did observe a gas jug or kerosene jug or something.” Per the interview, Officer Crosley stated that he wrote the incident report at the scene while waiting for the SLED team to arrive, “so it would be fresh in my mind.” Officer Crosley also indicated that the description of incident type being (1) murder and (2) desecration of remains was filled out by Lt. Boston on the date of the incident (12/06/2000).



Officer Crosley's answers during the interview, dated 07/03/2003, regarding Mr. Weldon Stewart Jr.'s behaviors at the incident scene are congruent with Mr. Weldon Stewart Jr.'s report during his clinical interview, dated 05/04/2022 and 05/09/2022, of his behaviors and experiences at the time of incident. In his clinical interview, Mr. Weldon Stewart Jr. reported being "out of it, like I was watching it happen to me." He reported having difficulty understanding what the others were saying to him, and with being able to formulate thoughts and sentences in response to questions. He reported time passing and feeling immobile and "distant from everything happening around me."

Motion for New Trial, dated 04/06/2015

The examiner was provided the Motion for New Trial, dated 04/06/2015, which was signed by Mr. Weldon Stewart Jr. The details and statements discussed within the Motion for New Trial are congruent with Mr. Weldon Stewart Jr.'s report at the time of his clinical interview dated 05/04/2022 and 05/09/2022 and represent the same set of events described in the clinical interview when Mr. Stewart Jr. was asked to describe his experiences on the date of the [REDACTED] Allen's death. The information contained within the Motion for New Trial, dated 04/06/2015, is as follows:

Weldon disclosed to Lori Stewart, in June 2014, new facts in reference to how [REDACTED] Allen died. Weldon stated that Mrs. Allen was emotional on the morning of December 6th, 2000; she kept making references to her abortion and to a baby Weldon had by another girl while he was still in the relationship with Mrs. Allen. As Weldon and Ms. Allen were walking through a path in the backyard of the home of Weldon's parents, Ms. Allen suddenly collapsed into his arms. She then spoke her final words: "I'm happy now; I'm back with my baby."

Weldon dropped to his knees with Ms. Allen in his arms. He noticed that Ms. Allen was bleeding from her mouth. Weldon tried to revive Ms. Allen by giving her CPR, but to no avail. The blood that was coming from Ms. Allen's mouth got into Weldon's mouth as he was trying to give her CPR. He wiped the blood from his mouth with his undershirt.

Weldon recalls that "my mouth was on her mouth as she took her last breath; I felt her spirit leaving her body." Weldon then heard of bunch of dogs howling. It is not clear whether this was real or imagined. The whole experience unnerved Weldon, and was very traumatic for him. "I have never been that afraid in my life."

Weldon quickly left and went to find his friend, Stanton Wright. Wright testified that Weldon looked "afraid and confused" at this point. Weldon took Wright to see Mrs. Allen's body. When Wright saw the body, he abruptly left.

Weldon was too "spooked" by what happened to return to Ms. Allen's body while it was still dark outside, so he went into his parents' residence. He took the longer route around the block rather than take the shorter route through the path in which Ms. Allen's body was laying. Weldon stayed in the house until daylight, and then returned to Ms. Allen's body. He sat there and held her dead body in his arms for hours.



Weldon finally got up and went into his parent's home for the purpose of calling police. He looked at the caller ID and noticed that Ms. Alen's parents had called a couple of times. This sent Weldon into a blind panic. "It was something about the fact that [REDACTED] parents were looking for her and I knew that she was dead in the backyard that made my panic level go through the roof." Weldon raced out the front door and the first thing he saw was a gas can sitting on the front porch. It was at this moment that Weldon's thoughts turned towards attempting to dispose of Ms. Allen's body. "My mind completely shut down when [REDACTED] died; I wasn't thinking at all, just moving on autopilot. Everything seemed unreal."

Weldon took the gas can and went to the store to purchase some gas. He returned home and then burned the body. Weldon changed his mind about taking this course of action and was about to retrieve the fiery cloth he had placed on the body at the exact moment that Ms. Allen's body caught on fire. Weldon stood helplessly frozen in place as he witnessed the fire reduced his girlfriend to charred skeleton. "Seeing what I saw shattered me; I have never been the same after that."

Robert Moore walked up as Weldon was standing in front of the fire. Moore testified that Weldon was "nervous acting" and "shaking." Moore abruptly fled the scene, once he discovered a body was burning.

Weldon then went into his parent's residence and called 911. The first officers to arrive on the scene described Weldon as being in a "confused state" and "in a daze."

Also included in the Motion for a New Trial are the following statements:

Weldon, as part of his disclosure, stated that Ms. Allen's death was the result of suicide. He stated that Ms. Allen was increasingly depressed, during the year preceding her death, due to her undergoing a traumatic abortion in which Ms. Allen claimed she was forced to hold the aborted fetus for the purposes of dissuading her from getting pregnant again. Ms. Allen's father, Tony Allen, confirmed that Ms. Allen had an abortion a year prior to her death. The timing of Ms. Allen's death, the one-year anniversary of the traumatic experience, is consistent with Weldon's disclosure that Ms. Allen's death resulted from suicide.

Several witnesses testified to having personal knowledge that Weldon had never harmed Ms. Allen, during their almost two-year relationship, even when the two of them were engaged in arguments.

Ms. Allen's father, Tony Allen, testified that he had monitored his daughter very closely, and that he had never seen any injuries on her that would indicate that Weldon was being violent towards her. Stanton Wright testified that he had eye witnessed Ms. Allen "swinging" at Weldon. Wright testified that Weldon's normal reaction, during these situations, was to "try to calm her down and talk to her," or "to hold her."

Deneka Harrington, Ms. Allen's friend, testified that she had eye witnessed arguments between Weldon and Ms. Allen. She testified that Weldon's response, during these situations, was to "sit there and hold her." Anastasia Love, mutual friend of Weldon and Ms. Allen, testified that she witnessed Ms. Allen become upset with Weldon, and that Weldon's response was to "hold her and try to calm her down."



There was also testimony from several witnesses that established Weldon's non-violent character. Ms. Allen's brother, Anthony Allen, testified that he had never known Weldon to be violent. Stanton Wright testified that he had known Weldon for a decade and had been around Weldon on almost a daily basis during this time period.

Forensic Document Examination Report, dated 05/16/2022

The examiner was provided the Forensic Document Examination report, dated 05/16/2022, which was completed by James A Green, a forensic document examiner. According the report, Mr. Green was tasked with determining if a letter demonstrating suicidal tendency on the part of [REDACTED] Allen at the time of her death was actually written by Ms. Allen. Per the report, Mr. Green was provided several writing samples reported to have been created by [REDACTED] Allen prior to her death. Per the report, Mr. Green concluded that, "It is probable the writing of the letter in question was written by Ms. Allen. The opinion was appropriate based on the conformity of the questioned writing to the known writing samples of hers." Mr. Green further concluded, "It is probable the signature in question was genuine. The numerous individualizing features noted in common between the writing in question, and the known writing specimens, compelled the conclusion stated. There were no significant differences to indicate a different writer was responsible for the letter."

In his clinical interview, dated 05/04/2022 and 05/09/2022, Mr. Weldon Stewart Jr. Independently reported that [REDACTED] Allen demonstrated low mood and withdrawn behaviors following her "forced" abortion. He also independently reported that a letter was shown to him following his incarceration that supported [REDACTED] Allen's poor mental state and suicidal tendency at the time of her death. Per his report, Mr. Weldon Stewart Jr. did not recall the letter until he was provided it following Ms. Allen's death and had reread it.

In a clinical interview with Mrs. Virginia Stewart, dated 05/12/2022, Mrs. Virginia Stewart independently described [REDACTED] Allen as declining in mental health after the "forced" abortion. Mrs. Virginia Stewart described [REDACTED] as being "in a trance," having a "blank stare," having a low mood and being tearful, ruminating on the loss of her baby, and being "broken" and "never the same after that."

Detailed Case Timeline created by [REDACTED] "Lori" Stewart

The examiner was provided a Detailed Case Timeline created by [REDACTED] "Lori" Stewart. Per the document, Mrs. Lori Stewart recorded her first introduction to Mr. Weldon Stewart Jr. occurring on 03/03/2014 through an online social network site called 'Tango.' Per Mrs. Lori Stewart's recording on the document, Weldon Jr. told her at that time that his name was Ben and that he



lived in California and worked for a real estate company. Per Mrs. Lori Stewart's recording on the document, Weldon Jr. told her his real name and that he was incarcerated on 03/17/2022. Per Mrs. Lori Stewart's recording on the document, she elected to continue corresponding with Weldon Stewart Jr. Per Mrs. Lori Stewart's recording on the document, Weldon Jr. reported to her on 06/01/2014 "that [REDACTED] [Allen] died as a result of suicide and he did not remember this fact prior to disclosing it to me."

In Mr. Weldon Stewart Jr.'s clinical interview, dated 05/04/2022 and 05/09/2022, he provided a congruent timeline of the events surrounding how and when he met Mrs. Lori Stewart and when he disclosed [REDACTED] Allen's death as a suicide.

Results of Evidence-Based Screeners & Measures:

Generalized Anxiety Disorder-7 (GAD-7)

Mr. Weldon Stewart Jr. completed the Generalized Anxiety Disorder – 7 (GAD-7) in order to assess his level of anxiety at the time of the evaluation as an aspect mental health status and as a potential differential diagnosis to attempts at desirable responding behaviors that can arise in forensic cases during evaluation. The GAD-7 is a widely-used, evidence-based self-report instrument that is designed to measure the severity of anxiety and presence of generalized anxiety disorder (GAD). Items are set to a Likert scale, with the individual responding to the rate of severity of his or her symptoms over the past two weeks. Response options include "not at all", "several days", "more than half the days", and "nearly every day." Research has shown that the GAD-7 has strong internal consistency (whether several items that propose to measure the same general construct produce similar score), strong criterion validity for identifying possible cases of GAD, strong construct validity through substantiate 1-dimensional structure of the GAD-7 and its factorial invariance for gender and age (degree to which a test measures what it claims, or purports, to be measuring), strong concurrent validity with other measures that have been previously validated, and strong convergent validity with higher scores correlating with greater disability and functional impairment.⁸ Resulting scores fall on a range from 0-21, with scores in the range of 0-4 representing no to mild anxiety severity, 5-9 representing mild anxiety, 10-14 representing moderate anxiety, and 15-21 representing severe anxiety. The GAD-7 was designed for use in patient care settings to identify and track key symptoms in real time. It is limited in reliability when used in forensic settings due to its poor face validity, meaning that it is easy for the examinee to determine what diagnostic criteria the measure is seeking to assess. This presents the ability to malingering or respond in a manner that fulfills any potentially desirable clinical outcome for clients seeking secondary gain through clinical diagnosis. As such, the GAD-7 was used following the gathering of information from the examinee through open-ended clinical interviewing designed to avoid leading questions. The subsequent use of the GAD-7 was intended as a more structured assessment of symptoms that the examinee had previously

⁸ Spitzer, Kroenke, Williams, & Lowe, 2006; Spitzer, 2006; Lowe et al., 2008; Ruiz et al., 2011.



independently reported. In the current psychological evaluation for forensic purposes, any clinical determinations or opinions contained within this report will not be based on findings of the GAD-7 without also having clearly demonstrated and corroborating evidence.

On the GAD-7, Mr. Weldon Stewart Jr. scored a 16, which places him in the severe anxiety range at the time of the current psychological evaluation. This score suggests the presence of anxiety at the time of the evaluation and is indicative of a high likelihood that Mr. Stewart Jr. is currently suffering from Generalized Anxiety Disorder.

At the time of the evaluation, Mr. Stewart Jr. attributed his current severity of reported anxiety to his status as an incarcerated individual and to the daily “dangers” inherent in his surrounding environment. Mr. Stewart Jr. also reported having felt this same level of anxiety around the time of the crime in question.

For a more definitive forensic assessment of Mr. Weldon Stewart Jr.’s anxiety symptoms, it would be appropriate to employ an evidence-based, broadband psychological test such as the Minnesota Multiphasic Personality Inventory (MMPI) and/or the Personality Assessment Inventory (PAI). In the forensic setting, it is common to employ both psychological tests as a safeguard in the event that the examinee invalidates one of the tests.

Patient Health Questionnaire-9 (PHQ-9)

Mr. Weldon Stewart Jr. completed the Patient Health Questionnaire – 9 (PHQ-9) in order to assess his level of depression at the time of the evaluation as an aspect mental health status and as a potential differential diagnosis to attempts at impression management behaviors that can arise in forensic cases during evaluation. The PHQ-9 is a widely-used, evidence-based, self-report diagnostic tool designed to assess patients in the primary care setting for the presence and severity of depression. Items are set to a Likert scale, with the individual responding to the rate of severity of his or her symptoms over the past two weeks. Response options include “not at all”, “several days”, “more than half the days”, and “nearly every day.” The PHQ-9 showed strong reliability, validity, and strong psychometric properties in research, primary care, and mental health settings. Scores greater than 10 on the PHQ-9 have a demonstrated 88% sensitivity and 88% specificity diagnosable Major Depression Disorder.⁹ Resulting scores fall on a range from 0-27, with scores in the range of 0-4 representing no to minimal depression severity, 5-9 representing mild depression, 10-14 representing moderate depression, 15-19 representing moderately severe depression, and 20-27 representing severe depression. The PHQ-9 was designed for use in patient care settings to identify and track key symptoms in real time. It is limited in reliability when used in forensic settings due to its poor face validity, meaning that it is easy for the examinee to determine what diagnostic criteria the measure is seeking to assess. This presents the ability to malingering or respond in a manner that fulfills any potentially desirable

⁹ American Psychological Association. (2020). Patient Health Questionnaire (PHQ9 & PHQ2).



clinical outcome for clients seeking secondary gain through clinical diagnosis. As such, the PHQ-9 was used following the gathering of information from the examinee through open-ended clinical interviewing designed to avoid leading questions. The subsequent use of the PHQ-9 was intended as a more structured assessment of symptoms that the examinee had previously independently reported. In the current psychological evaluation for forensic purposes, any clinical determinations or opinions contained within this report will not be based on findings of the PHQ-9 without also having clearly demonstrated and corroborating evidence.

Mr. Weldon Stewart Jr. scored a 15 on the PHQ-9, which places him in the moderately severe range of depression at the time of the current evaluation. This score suggests the presence of depression at the time of the evaluation and is indicative of a high likelihood that Mr. Stewart Jr. is currently suffering from a depressive disorder.

At the time of the evaluation, Mr. Stewart Jr. attributed his current severity of reported depressive symptoms to his status as an incarcerated individual, daily restriction related to being incarcerated, and his separation from family during current family crises (e.g., his daughter's serious medical illness and need for ongoing care). Specifically, Mr. Stewart Jr. reported current low self-esteem and low mood related to "letting my family down and not being there for them." Low self-esteem and low mood are assessed through specific items on the PHQ-9 and is a symptoms commonly included in the diagnostic criteria of depressive disorders. Mr. Stewart Jr. also reported having felt this same level of depression (with self-deprecating beliefs) around the time of the crime in question.

For a more definitive forensic assessment of Mr. Weldon Stewart Jr.'s depressive symptoms, it would be appropriate to employ an evidence-based, broadband psychological test such as the Minnesota Multiphasic Personality Inventory (MMPI) and/or the Personality Assessment Inventory (PAI). In the forensic setting, it is common to employ both psychological tests as a safeguard in the event that the examinee invalidates one of the tests.

Quality of Life Scale (WHO QOLS)

Mr. Weldon Stewart Jr. completed the Quality of Life Scale (QOLS) to assess his current perception of life satisfaction and areas of greatest dissatisfaction. The QOLS is a non-diagnostic self-report instrument designed to assess perceived quality of life across patient groups and cultures and is conceptually different from health status of other causal indicators of quality of life. The WHO QOLS assesses perceived quality of life in the following conceptual domains: material and physical well-being, relationships with other people, social, community and civic activities, personal development and fulfillment, and recreation. The WHO QOLS has research demonstrated high internal consistency and test-retest reliability across both healthy populations and groups with defined chronic illnesses and disabilities. Convergent and discriminant validity is evidenced through high correlations with other previously validated measures (e.g., Life Satisfaction Index-Z). The QOLS has been used in studies of healthy adults and patients with



rheumatic diseases, fibromyalgia, chronic obstructive pulmonary disease, gastrointestinal disorders, cardiac disease, spinal cord injury, psoriasis, urinary stress incontinence, posttraumatic stress disorder, and diabetes. The QOLS scores are summed so that a higher score indicates higher quality of life, with the lowest possible score being 16 and the highest being 112. Average total score for healthy populations is about 90. For rheumatic disease groups, the average score ranges are 83 for rheumatoid arthritis, 84 for systemic lupus erythematosus, 87 for osteoarthritis, and 92 for young adults with juvenile rheumatoid arthritis. Average total scores for other conditions range from 61 for patients with posttraumatic stress disorder, to 70 for fibromyalgia, to 82 for psoriasis, urinary incontinence and chronic obstructive pulmonary disease. All of these means come from descriptive studies or experimental pretest data.¹⁰

Mr. Weldon Stewart Jr. scored a 64 on the QOLS, which places him well below the range of healthy populations and situates him in the same range as patients who have been diagnosed with PTSD. His areas of reported dissatisfaction spanned all domains of the measure, with his lowest levels of satisfaction being related to the following measure items: *having and rearing children*; *participating in active recreation*; and *independence, doing for yourself*. Mr. Stewart attributed his lowered perception of quality of life to his current status as an incarcerated individual, and the daily restrictions (e.g., “not given recreation time in the prison I am at”), separation from family, and lack of allotted independence that accompany this status.

As the QOL is non-diagnostic and no clinical determinations are being rendered based on its qualitative data, it would not be necessary to provide Mr. Weldon Stewart Jr. with a different quality of life scale if additional evaluation of the current forensic case occurs within a reasonably close timeframe, and so long as no major life changes occur to Mr. Weldon Stewart Jr. within that timeframe.

Adverse Childhood Experiences Screener (ACE)

Mr. Weldon Stewart Jr. completed the Adverse Childhood Screener (ACE) to more strategically assess his reported historical exposure to adversity and trauma experiences in his childhood. The ACE is a ten-question, non-diagnostic, self-report assessment that was developed by the Centers for Disease Control and Prevention and Kaiser Permanente, and cumulative scores are correlated with increased risk of psychological and medical disease and social and emotional problems. Scores range from 0-10, with each item affirmed by the examinee counting for 1 point. Scores of 1-3 on the ACE are associated with at least one ACE defined health condition. Scores of 4 or more on the ACE indicate a “high risk for toxic stress” in the individual and the following increase levels in health conditions: four-fold increase in likelihood of becoming an alcoholic; tripled chance from chronic depression and suicidality; tripled chance of having a serious

¹⁰ National Institute of Health. (2003). The Quality of Life Scale (QOLS): Reliability, Validity, and Utilization.



problem at work; doubled chance of having serious financial problems; doubled chance of heart disease; and doubled chance of having a stroke.¹¹

Research has demonstrated that toxic stress from ACEs can adversely effect brain development and how the body responds to stress. The presence of ACEs is directly linked to the onset of mental health illness, with the increase in amount, duration, and severity of childhood trauma and adverse experiences resulting in risk for more severe mental health illness development.¹² Research has linked ACEs with depression and suicidality (three times as likely to develop), PTSD (strong positive correlation in research), and dissociative disorders. In research, participants reporting childhood abuse of neglect also reported a higher incidence of dissociation behaviors.¹³ Moreover, researchers found diagnosable dissociative disorders in 47.4% of the participants with a score of 4 or higher on the ACEs.¹⁴

Mr. Weldon Stewart Jr. obtained a score of 6 on the ACE, which if shown to represent accurate reporting of personally experienced trauma events, indicates a high risk for toxic stress based on his reported historical experiences. His score is aligned with the range normally seen in individuals who are diagnosed with severe mental health disorders, including depression, suicidality, PTSD, and dissociative disorders. Given his verbally reported history of childhood trauma and his score on the ACE measure, Mr. Stewart Jr. is at elevated risk for having experienced brain changes and subsequent onset of mental health illness, which may include depression, PTSD, and dissociative disorders.

It is important to note that the ACE is merely a non-diagnostic, information gathering tool that may be unreliably applied in forensic settings due to its poor face validity and vulnerability to malingering for secondary gain. The results of the information gathered on the ACE for Mr. Weldon Stewart Jr. is entirely dependent upon the accuracy of his reports regarding his personal trauma experiences. For a more definitive forensic assessment of Mr. Weldon Stewart Jr.'s trauma symptoms or experiences, it would be appropriate to employ an evidence-based, broadband psychological test such as the Trauma Symptom Inventory (TSI), or the Clinically-Administered PTSD Scale for DSM-5 (CAPS).

PTSD Checklist for the DSM 5 (PCL-5)

Mr. Weldon Stewart Jr. completed the Posttraumatic Stress Disorder Checklist for the DSM 5 (PCL-5), which is an evidence-based, 20-item, self-report measure that is designed to assess the

¹¹ KnowledgeWorks Foundation. (2022). What is the Adverse Childhood Experiences (ACE) Assessment and How Is It Used? [REDACTED]

¹² Centers for Disease Control and Prevention. (2019). Adverse Childhood Experiences (ACEs): Prevention Early Trauma to Improve Adult Health [REDACTED]

¹³ Hughes et al. (2017). The effect of multiple adverse childhood experiences on health: A systematic review and meta-analyses. National Institute of Health. DOI: 10.1016/S2468-2667(17)30118-4

¹⁴ Davis, S. (2018). Complex posttraumatic Stress Disorder, Adverse Childhood Experiences, and their Association with Mental Health Disorder. Retrieved from [REDACTED]



presence and severity of trauma symptoms. Measure items are set to a Likert scale that ranges from 1-5 (“Not at all”; “A little bit”; “Moderately”; “Quite a bit”; and “Extremely”), and cover symptoms across all criteria domains required to obtain a clinical diagnosis of PTSD. Total score can range from 0-80, with a cut-off score of 33 being required to render a diagnosis of PTSD according to DSM 5 criteria. The PCL-5 has been demonstrated through research to have good internal consistency (.96), test-retest reliability (r .86), and convergent and discriminant validity when compared to previously validated measures assessing trauma symptoms and trauma diagnoses (e.g., CAPS).^{15,16}

Mr. Weldon Stewart Jr. obtained a score of 41 on the PCL-5, which places him above the cut-off point for clinically diagnostic PTSD. His scores on this symptoms measure are congruent with verbal reports of past trauma experiences. His score is above the midpoint on the range of possible scores for this measure, thus, suggesting the moderately-strong presence of trauma symptoms and the high likelihood that he will meet diagnostic criteria for PTSD according to the DSM 5.

It is important to note that the PCL-5 was designed for use in patient care settings to identify and track key symptoms in real time. It is limited in reliability when used in forensic settings due to its poor face validity and vulnerability to malingering for secondary gain. The results of the information gathered on the PCL-5 for Mr. Weldon Stewart Jr. is entirely dependent upon the accuracy of his reports regarding his personal trauma experiences. For a more definitive forensic assessment of Mr. Weldon Stewart Jr.’s trauma symptoms or experiences, it would be appropriate to employ an evidence-based, broadband psychological test such as the Trauma Symptom Inventory (TSI), or the Clinically-Administered PTSD Scale for DSM-5 (CAPS).

Dissociative Experiences Scale, Second Edition (DES-II) - *retroactive and current perspectives*

Mr. Weldon Stuart Jr. completed the Dissociative Experience Scale, Second Edition (DES-II), which is a 28-item, evidence-based, self-report measure that is designed to assess for dissociative experiences such as derealization, depersonalization, absorption and amnesia. In a meta-analysis showed DES has good convergent validity with other dissociative experiences questionnaires and interview schedules. The scale also showed impressive predictive validity, in particular concerning dissociative disorders, traumatic stress disorder and abuse. Another meta-analysis found that the DES was a useful tool across many disorders.¹⁷ Items are measured along a scale of 0% to 100%, in increments of 10. The total scores can be between 0 and 100, where high

¹⁵ Blevins et al. (2015). The Posttraumatic Stress Disorder checklist for DSM 5 (PCL-5): Development and Initial Psychometric Evaluation. National Institute of Health, 28(6):489-98. 10.1002/jts.22059

¹⁶ National Center for PTSD. (2022). PTSD Checklist for DSM 5 (PCL-5). Retrieved from [REDACTED]

¹⁷ IJzendoorn & Schuengel, 1996; Lysenko et al., 2018; Saggino et al., 2020. Improving the Psychometric Properties of the Dissociative Experiences Scale (DES-II): A Rasch validated Study. [REDACTED]



levels of dissociation are indicated by scores of 30 or more, and scores under 30 are considered to be low levels of dissociative experience. High scores on the DES-II do not prove that an individual has a dissociative disorder. The tool is intended for the identification and tracking of dissociative symptoms in patients in current and real-time. Diagnosis of dissociative disorders may only be rendered through observation of symptoms that meet diagnostic criteria by a trained mental health professional. Given its lack of diagnostic power, the DES-II was employed in the current psychological evaluation as a targeted method for identifying potential dissociative symptoms in Weldon Stewart Jr., both currently and at the time of the crime in question. In order to avoid cueing false memories, helping to develop confabulations, or to direct the client to answer in a desired manner, the provision of the DES-II was not provided until the client was asked to generally describe his experiences, perceptions, and emotions at the time of the crime in question. The results of the retroactive DES-II may be used to further define his verbally reported symptoms occurring at the time of the crime in question.

On the retroactive report of the DES-II, Mr. Weldon Stewart Jr. obtained a score of 67.86, which places him in the high level of dissociation according to his report of his experiences around the time of the key incident. If his retroactive reporting of dissociative experiences is accurate, then he would fall above the normative scores seen in research for populations diagnosed with PTSD (average score = 31), those diagnosed with Dissociative Disorder, not otherwise specified (average score = 36), and those diagnosed with Dissociative Identity Disorder (average score = 48). He reported high rates on 3 out of the 6 measure items that assess amnesia factors (item 8 = 60%; item 25 = 100%; item 26 = 100%). These items involve being sometimes told that you do not recognize friends and family (item 8), finding evidence that you have done something that you do not remember doing (item 25), and finding drawings, notes, or writings among your belongings that you must have done but cannot remember doing. Mr. Stewart Jr. reported high rates on 4 out of 6 measured items assessing for depersonalization/derealization factors (item 7 = 90%; item 12 = 100 %; item 27 = 70 %; item 28 = 100%). These items involve having out of body experiences (item 7); feeling as though other people, objects, and the world around you are not real (item 12); sometimes hearing voices inside your own head telling you what to do or commenting on things you have done (item 27); and sometimes feeling like you are going through the world in a fog, so that people seem far away and unclear (item 28). Mr. Stewart Jr. reported high rates on all 6 measure items that assess for absorption factors (item 2 = 100%; item 14 = 100%; item 15 = 100%; item 17 = 100%; item 18 = 50%; item 20 = 100%). These items involve listening to someone talk and suddenly realizing that you did not hear part or all of what was said (item 2); sometimes remembering a past event so vividly that it feels as if they were reliving that event (item 14); having the experience of not being sure whether things that they remember happening really did happen or whether they just dreamed them (item 15); finding that when you watch television or a movie that you become so absorbed in the story that you are unaware of other events happening around them (item 17); finding that you become so involved in a fantasy or daydream that it feels as though it were really happening to you (item 18); and sometimes sitting and staring off into space, thinking of nothing, and not aware of passing time (item 20).



On the current perspective report of the DES-II, Mr. Weldon Stewart Jr. obtained a score of 18.93, which suggests low levels of current dissociative experiences. Scores in this range are below those of persons diagnosed with PTSD and dissociative disorders. Scores in this range align with the normative scores seen in research for populations diagnosed with Borderline Personality Disorder or Schizophrenia. Mr. Weldon Stewart Jr. reported current symptoms on 14 out of the 28 measured items, with no item being rated for current amnesia factors, one item being rated for depersonalization/derealization factors (item 7 = 10%), and 5 items being rated for absorption factors (item 2 = 50%; item 14 = 100%; item 15 = 30%; item 17 = 20%; item 20 = 30%). Item 7 for depersonalization/derealization factors involves having out of body experiences. Items rated on the absorption factors scale involve sometimes listening to people talk and suddenly realizing that you did not hear all of part of what was said (item 2); sometimes remembering a past event so vividly that it feels as if they were reliving that event (item 14); having the experience of not being sure whether things that they remember happening really did happen or whether they just dreamed them (item 15); finding that when you watch television or a movie that you become so absorbed in the story that you are unaware of other events happening around them (item 17); and sometimes sitting and staring off into space, thinking of nothing, and not aware of passing time (item 20).

It is important to note that the DES-II was designed for use in patient care settings to identify and track key symptoms in real time. It is limited in reliability when used in forensic settings due to its poor face validity and vulnerability to malingering for secondary gain. The results of the information gathered on the DES-II for Mr. Weldon Stewart Jr. is entirely dependent upon the accuracy of his reports regarding his personal dissociative experiences, both currently and at the time of the key incident. Furthermore, the DES-II is not designed for retrospective assessment of symptoms. For a more definitive forensic assessment of Mr. Weldon Stewart Jr.'s dissociative symptoms or experiences, it would be appropriate to employ the Structured Clinical Interview for DSM-IV Dissociative Disorders – Revised (SCID-D-R), which is the gold-standard, comprehensive tool for assessment of dissociative symptoms. The SCID-D-R assesses five symptom clusters (depersonalization, derealization, identity confusion, identity fragmentation, amnesia).

Shutdown Dissociation Scale (Shut-D) – *retroactive and current perspectives*

Mr. Weldon Stewart Jr. completed the Shutdown Dissociation Scale (Shut-D), which is a brief structured interview for assessing the vulnerability to dissociate as a consequence of exposure to traumatic stressors. The Shut-D Scale assesses biological symptoms associated with freeze, fight/flight, fright, and flag/faint responses, and is based on the defense cascade model. The scale consists of 13 items. Responses to all items are given on a Likert scale ranging from 0 to 3, (“not at all”; “once a week or less”; “2–4 times a week”; “5 or more times a week”). Summed scores can range from 0 to 39. Higher scores are associated with more trauma- and dissociation-related behaviors and may be compared with research normative scores in populations diagnosed with certain disorders. The scale demonstrates high-quality psychometric properties (internal consistency = 0.89; test-retest = 0.87; convergent validity = 0.74), strong predictive validity for



trauma-related and dissociative behaviors and disorders, and may be useful for researchers and clinicians in assessing shutdown dissociation as well as in predicting the risk of dissociative responding.¹⁸ However, this tool cannot be used to diagnose dissociative disorders. Its intended purpose is to help identify potential dissociative and trauma-related experiences and behaviors occurring within the 6 months preceding and 6 months following the use of the measure. Given its lack of diagnostic power, the Shut-D was employed in the current psychological evaluation as a targeted method for identifying potential dissociative symptoms and trauma-related behaviors in Weldon Stewart Jr., both currently and at the time of the crime in question. In order to avoid cueing false memories, helping to develop confabulations, or to direct the client to answer in a desired manner, the provision of the Shut-D was not provided until the client was asked to generally describe his experiences, perceptions, and emotions at the time of the crime in question. The results of the retroactive Shut-D may be used to further define his verbally reported symptoms occurring at the time of the crime in question.

On the retroactive report of the Shut-D, Mr. Stewart Jr. obtained a score of 20. When compared with research normative scores of populations with certain diagnoses, Mr. Stewart self-report places him slightly above the range of persons who have been diagnosed with PTSD (average score = 17) and Dissociative Identity Disorder (average score = 19.2). If his retroactive reporting of dissociative experiences is accurate, then Mr. Stewart Jr. exhibited a high level of trauma- and dissociative-related behaviors around the time of the key incident, with the level of those symptoms being similar to persons who are formally diagnosed clinical PTSD and Dissociative Identity Disorder. Specific symptoms that Mr. Stewart Jr. reported on the Shut-D as being experienced around the time of the crime in question include feeling dizzy and/or having your vision go black; feeling as though you could not hear for a while or as though you were deaf; feeling as though your body or part of your body has gone numb; feeling as though you were paralyzed; feeling as though part or all of your body was insensitive to pain; having your body become stiff for a while; feeling nauseous and as though you were about to throw up, or breaking out in a cold sweat; having an out of body sensation; having moments in which you were unable to speak, or could only speak or whisper with great effort; and having felt suddenly weak and warm.

On the current perspective report of the Shut-D, Mr. Weldon Stewart Jr. obtained a score of 3. When compared with research normative scores of populations with certain diagnoses, Mr. Stewart is in the same range as healthy populations (average score = 2.02). He is below the lowest scoring clinical population of persons who are diagnosed with Schizophrenia Spectrum Disorder (average score = 3.5). His score indicates that he reports currently experiencing little to no trauma- or dissociation-related behaviors. Specific symptoms that Mr. Stewart Jr. reported on the Shut-D as being experienced currently include having been in a state in which your body

¹⁸ Schalinski et al. (2015). The Shutdown Dissociation Scale (Shut-D). National Institute of Health. European Journal of Psychotrauma, 6. doi: 10.3402/ejpt.v6.25652



suddenly feels heavy or tired; having experienced your body becoming stiff for a while; and having felt nauseous and as though you were about to throw up, or breaking out in a cold sweat.

It is important to note that the Shut-D was designed for use in patient care settings to identify and track key symptoms in real time. It is limited in reliability when used in forensic settings due to its poor face validity and vulnerability to malingering for secondary gain. The results of the information gathered on the Shut-D for Mr. Weldon Stewart Jr. is entirely dependent upon the accuracy of his reports regarding his personal dissociative experiences, both currently and at the time of the key incident. Furthermore, the Shut-D is not designed for retrospective assessment of symptoms. For a more definitive forensic assessment of Mr. Weldon Stewart Jr.'s dissociative symptoms or experiences, it would be appropriate to employ the Structured Clinical Interview for DSM-IV Dissociative Disorders – Revised (SCID-D-R), which is the gold-standard, comprehensive tool for assessment of dissociative symptoms. The SCID-D-R assesses five symptom clusters (depersonalization, derealization, identity confusion, identity fragmentation, amnesia).

Balanced Inventory of Desirable Responding (BIDR; a.k.a. Paulhus Deception Scale)

Mr. Weldon Stewart Jr. was assessed using the Balanced Inventory of Desirable Responding (BIDR), also known as the Paulhus Deception Scales. The BIDR is an evidence-based, 40-item, self-report inventory with one scale that assesses a deliberate socially desirable response style and another scale that assesses a nondeliberate socially desirable response style. The BIDR measures a respondent's tendency to distort his/her self-report responses in order to reflect socially desirable responses rather than accurate answers about the self. It is common to employ the BIDR in psychological evaluations of forensic nature and/or in which secondary gain for managing others' impression of oneself as the examinee is a potential confounding factor to evaluative results. The BIDR has proven to be a valid and reliable instrument for identifying socially desirable responding in various samples including forensic samples, with reliability coefficients ranging from .70 to .86.¹⁹ The BIDR items are dichotomously scored, with responses of 6 or 7 are scored 1, and responses of 1 to 5 are scored 0. Scores are then summed within two scales: (1) Impression Management (IM), and (2) Self-Deceptive (SDE). Summed scores for each scale are then converted to T scores on scales for either a general population or prison population, dependent on the status of the examinee. For the purposes of the current psychological evaluation, the prison population conversion scale was utilized). Generally accepted cut-off scores are 12 for "faking bad" and 8 for "faking good" answering styles. Profiles with scores falling outside of the identified cut-off for the BIDR are considered to be invalid and are evidence of the examinee engaging in socially desirable responding, or in responding behaviors designed to achieve secondary gain.

¹⁹ Li, Andrew & Bagger, Jessica. (2007). The Balanced Inventory of Desirable Responding (BIDR) A Reliability Generalization Study. Educational and Psychological Measurement - EDUC PSYCHOL MEAS. 67. 525-544. 10.1177/0013164406292087.



On the BIDR, Mr. Weldon Stewart Jr. obtained a total score of 10, with a score of 5 on the IM scale and a 5 on the SDE scale. His scores are within the acceptable range for responding style and the results of his BIDR are considered to be valid. When converted on the scale for prison populations, his total score of 10 is equal to a T Score of 57. This places him in the Average range for responses when compared to other incarcerated individuals. His scores indicate that, at the time of the psychological evaluation, he was making no attempt to appear more favorably or unfavorably to the examiner, in order to achieve secondary gain. His response style indicates that he was very likely portraying himself accurately at the time of the evaluation. Given his results on the BIDR, couple with his observed apparent genuineness in response style during the clinical interview, it is highly likely that Mr. Weldon Stewart Jr. believes that what he is reporting is accurate.

It is important to note that the BIDR is not intended to assess for attempts to malingering or feign. While Mr. Weldon Stewart Jr. appeared, at the time of his clinical interview, to be responding genuinely and to believe in his self-report, the BIDR cannot eliminate the possibility of feigning or malingering, either intentionally or unintentionally, in this case. For a more definitive forensic assessment of whether or not Mr. Weldon Stewart Jr.'s is engaging in feigning or malingering behaviors, it would be appropriate to provide an evidence-based psychological test of feigning or malingering, such as the Miller Forensic Assessment of Symptoms Test (MFAST) and/or the Structured Inventory of Malingered Symptomology (SIMS). In the forensic setting, it is common to employ both psychological tests as a safeguard in the event that the examinee invalidates one of the tests.

Diagnosis:**309.81 (F43.10) Posttraumatic Stress Disorder, Moderate****300.40 (F34.1) Persistent Depressive Disorder, Moderate, with Anxious Distress**

R/O 300.12 (F44.0) Dissociative Amnesia

Summary and Interpretation of Results:*Traumatic Shock*

If demonstrated to be accurate, Mr. Weldon Stewart Jr.'s self-reported experiences around the time of the key incident are indicative of traumatic shock,²⁰ which is a state also known as acute stress disorder under the Diagnostic Statistical Manual, 5th Edition (DSM 5). It is the body's defense mechanism or response to the overwhelming emotions post trauma. In some cases of traumatic shock, "the brain is unable to fully process or respond to the traumatic event, therefore

²⁰ Gupta, S. (2022). What is Traumatic Shock? Very Well Mind. Retrieved from [REDACTED]



the mind and body freeze or dissociate to protect the psyche.”²¹ Across his verbal report in the clinical interview and his responses on self-report measures, Mr. Weldon Stewart Jr. reported having experienced, at the time of the key incident, symptoms of difficulty moving or functioning, cognitive fog and confusion characterized by an inability to understand or respond appropriately to others and to situations occurring around himself, disconnection from events happening around himself (“out of bod” sensations), denial for the events that occurred during the key incident (e.g., that Ms. Allen had died and that he burned the body), a feeling of being numb, withdrawal from others, a feeling of anxiety and panic, and the inability to concentrate and cope with emotions following the key event.

His self-reported symptoms of confusion, being “out of it” or disconnected from the world around himself and withdrawn state, and the inability to respond to others appropriately were observed by the officers responding to the scene of the key incident, as evidence in the Incident Report, dated 12/06/2001. Per the Motion for A New Trial, dated 04/06/2015, these symptoms were also observable to other witnesses present at different points in time during the key incident, and which were reportedly testified to in court: Stanton Wright testified that Weldon looked “afraid and confused” when he came to find Mr. Stanton following [REDACTED] Allen’s death; and Robert Moore testified that he walked up as Weldon was standing in front of the fire (burning the body) and observed Mr. Stewart Jr. as “nervous acting” and “shaking.”

Given the corroboration of eye witness accounts as to Mr. Weldon Stewart’s emotional state and behaviors at the time of the key incident, it is highly probable that Mr. Stewart Jr. was suffering from traumatic shock following the death of [REDACTED] Allen on December 6th, 2000.

Mr. Weldon Stewart Jr.’s mother, Mrs. Virginia Stewart, reported observing similar behavioral responses in Mr. Weldon Stewart Jr. following both the incident of attempted drowning when Mr. Weldon Stewart Jr. was age 10, and following the incident involving Mr. Weldon Stewart Jr. discovering a partial fetus in the trash can behind his work at the Burger King at age 15. Following the attempted drowning, Mrs. Virginia Stewart reported observing Mr. Stewart Jr. as appearing to be “distant, like things were happening to him,” and as “not talking much, like he just wasn’t there.” She reported that he exhibited a change in demeanor, began to internalize his thoughts and feelings and talking less to his parents openly, and began engaging in acting out behaviors. She reported that Mr. Stewart Jr. was, “out of it a bit, and then just went into a state like nothing happened. It was like in his mind that it didn’t happen. He just seemed to shut it off, but he was never the same.” Following the incident involving the discovered partial fetus, she reported observing Mr. Weldon Stewart Jr. as, “standing up like a person who had just seen a bad wreck like he was in a trance.”

²¹ Gupta, S. (2022). What is Traumatic Shock? Very Well Mind.



Posttraumatic Stress Disorder (PTSD)

In cases where initial traumatic shock does not wear of, and the individual's functioning does not return to its prior level, posttraumatic stress disorder is defined.²² Per Mr. Weldon Stewart Jr.'s report, he continued to experience symptoms related to trauma for years following his attempted drowning as a child, as well as following the key incident involving [REDACTED] Allen's death. Furthermore, Mr. Weldon Stewart Jr. appears to have minimized the impact that other reported and identified traumatic experiences may have played in his trauma responses over time. He reported both psychological and behavioral difficulties that carried across life spheres, including social, educational, and home environments. Under the DSM 5 criteria for PTSD, one must have death, threatened death, actual or threatened serious injury, or actual or threatened sexual violence; at least one form of persistent re-experiencing of the trauma; at least one manifested avoidance behavior; at least two manifestations of alteration in mood; alterations in arousal and reactivity; and adverse effect on functioning. Symptoms must have lasted for more than one month and not be better explained by substance use.

Per Mr. Weldon Stewart Jr.'s report, he has been exposed directly to actual and threatened harm a multitude of times since early childhood, with harm involving physical abuse, sexual abuse, violent attacks and crimes by others with him being in the role of the victim (e.g., being nearly drowned; being robbed; being "jumped"), and allegedly witnessing the death of a close person (██████████ Allen). He reported having intrusive memories of the attempted drowning and of ██████████ Allen's death that still have not remitted at present. He reported having nightmares for the trauma event following both the attempted drowning and the death of ██████████ Allen. He reported that nightmares have since remitted. He reported that he experiences an increase in physiological arousal in the form of ongoing anxiety, and emotional arousal in the form of sadness and tearfulness following reminders of the key incident (this was observed by the examiner at the time of the clinical interview, dated 05/04/2022 and 05/09/2022). He reported that, due to the distress related to remembering events surrounding the key incident, Mr. Weldon Stewart Jr. attempts to avoid thoughts or external reminders of ██████████ Allen or her death. He reported that he is currently experiencing greater distress due to the reminders generated by his appeal and the processes involved in that appeal. He reported negative alterations in cognition and mood in the form of inability to recall key features of both the attempted drowning, the key incident involving ██████████ Allen's death, or at the time of his suicide attempt via wrist cutting while incarcerated in 2001. He also demonstrated decreased interest in activities, a tendency to isolate or withdrawal from others following both the attempted drowning and Ms. Allen's death, and difficulty experiencing positive affect (low mood) after both of those incidents. Mr. Weldon Stewart Jr. also reported alterations in arousal and reactivity following his attempted drowning in the form of irritability and aggression toward others while at school, which is characterized by low frustration tolerance on being on edge due to hypervigilance of others,

²² National Institute of Mental Health (NIMH). (2020). Post-Traumatic Stress Disorder. Retrieved from



both at school, at home, and in his current environment in prison; difficulty concentrating; difficulty sleeping; engagement in risky or destructive behavior, such as ceasing to participate fully in school activities/homework with a decline in school performance, taking up marijuana, engaging in promiscuous sexual relations with different women of inappropriate age when compared to Mr. Stewart Jr., poor compliance with authority figures and court-ordered programs, running away from home, engaging in altercations with peers, engaging in theft and other petty crimes as a juvenile, seeking to be arrested (e.g., his attempt to be arrested for food theft to avoid going back home), and engaging in self-injurious behaviors (cutting). Mr. Weldon Stewart Jr. reported that his hypervigilance became severe following his current incarceration, resulting in his belief that others were poisoning his food. He reports still being hypervigilant in his environment. He reported that self-injurious behaviors also increased following his incarceration and resulted in one attempt at suicide by wrist cutting in 2001. Based on the duration of his symptoms, and their presence during periods of time when he was closely monitored for substance use (e.g., being incarcerated, attending therapy boarding school), his reported symptoms are not better explained by substance use.

His reported exposure to actual or threatened harm is documented and/or reported by all ancillary sources appearing in this psychological evaluation report. His reported inability to recall key events of his attempted drowning was evidenced by his inability to report this event that was evidenced to have happened and known by several parties, including his caretakers, when it occurred. His severe hypervigilance to a level of possible paranoia and his escalated self-injurious behaviors were observed by prison staff treating him following his suicide attempt in 2001 and is documented in the Prison Incident Report, dated 01/22/2001. His engagement in self-destructive and risky behaviors were observed and independently reported by his mother, Mrs. Virginia Stewart, during her clinical interview. These various behaviors were also recorded throughout the following provided documents: Bennettsville Police Department Juvenile Incident Report, dated 09/25/1997; County of Marlboro Family Court Rule to Show Cause, dated 07/29/1997; County of Marlboro Family Court Affidavit, dated 09/23/1997; Hidden Lake Academy Counselor Report, dated 05/1998; Bennettsville Police Department Incident Report, dated 12/06/2000; Trial Transcript Excerpt with statements from Mr. Weldon Stewart, Jr., the court, and Mr. Blake; and Marlboro County Detention Facility Inmate Incident Report, dated 01/22/2001. The duration of occurrences and symptoms enumerated in the provided documents, and reported across included clinical interviews, span from Mr. Weldon Stewart Jr.'s childhood to present. As such, the symptoms exceed the required duration of one month required for a PTSD diagnosis. Given the confluence of evidence obtained through the examiner's observations during Mr. Weldon Stewart Jr.'s clinical interview dated 05/-04/2022 and 05/09/2022, his subsequent self-report on measures, the independent reports of ancillary sources who were eye witnesses to his behaviors over time, and the information found in provided documents reviewed for the purpose of this psychological evaluation, Mr. Weldon Stewart Jr. appears to meet the criteria for Posttraumatic stress disorder.



If his report of the number of trauma events is accurate, then he would meet the criteria for complex PTSD.

Depression

Based on the above discussed independent reports by Weldon Stewart Jr., his mother, and prison staff, Mr. Stewart Jr. has elicited depressive symptoms since the incident of attempted drowning at age 10. Based on these ancillary reports of Mr. Weldon Stewart Jr.'s presentation, he has demonstrated low mood, withdrawal from others and internalization of emotions that he would previously share with close loved ones (reported after the attempted drowning), periods of tearfulness when triggered by trauma reminders, use of substances to aid in coping, difficulties with concentration and focus, sleep disturbance following trauma events (reported as insomnia), low frustration tolerance (particularly when feeling threatened), and engagement in self-injurious behaviors and one suicide attempt. The ongoing nature of his symptoms exceed the timeframe allowable for the diagnosis of Major depressive Disorder, and is more appropriate for a Persistent Depressive Disorder, under the DSM 5 criteria. Research had demonstrated that it is common for depressive disorders to be comorbid with PTSD²³. Given the confluence of evidence across independent reports, ancillary sources, and provided documents, it appears that Mr. Weldon Stewart Jr. meets the criteria for Persistent Depressive Disorder.

Dissociation

Mr. Weldon Stewart Jr. reported having various experiences and symptoms that are similar to those characterizing dissociation at the time of the key incident involving Ms. Allen's death. He reported having an "out of body" experience, and feeling as if events were happening to him, or if he were observing those events from outside himself. He reported feeling numb and detached from the events occurring around him and the persons in his environment. He reported altered sense of smell (e.g., could not reportedly smell the burning flesh of the decedent). He reported having an altered sense of time, characterized as periods of time passing without realizing it, and "snapping back in" to realize that he was not where he last recalled being. He reported feeling immobile, like he could not move. He reported feeling as though he were "in a fog" and having difficulty understand and communicating with others at the scene of the key incident. He also reported subsequent hallucinations, including "hearing something physically in my room that jumped and me and tossed me around." Mr. Weldon reported subsequent experiencing of "black outs" without memory for his actions, which occurred during his attempted suicide while incarcerated in 2001.

Mr. Weldon Stewart Jr. was observed by the officers responding to the key incident as appearing to be "in a trance," being "confused," having difficulty communicating with them, appearing immobile, appearing distant, and appearing "out of it." Officers reported these observations across the following documents provided: Bennettsville Police Department Incident Report, dated 12/06/2000 and Transcript of Interview with Officer Sammy Crosland, dated 07/03/2003.

²³ Flory, J. D., & Yehuda, R. (2015). Comorbidity between post-traumatic stress disorder and major depressive disorder: alternative explanations and treatment considerations. *Dialogues in clinical neuroscience*, 17(2), 141–150.



Per the Marlboro County Detention Facility Inmate Incident Report, dated 01/22/2001, prison staff reported observing Mr. Weldon Stewart Jr. as being unresponsive to attempts to stop him from cutting his wrists. They reported that Mr. Stewart Jr. complained of multiple “black outs” during the incident and that he wished to remain in handcuffs and leg irons due to a lack of trust in his ability to maintain his own safety.

Independent of Mr. Weldon Stewart Jr.’s reports, his mother, Mrs. Virginia Stewart, reported that, following the attempted drowning, he appeared “distant, like things were happening to him,” and as “not talking much, like he just wasn’t there.” She reported that he exhibited a change in demeanor, began to internalize his thoughts and feelings and talking less to his parents openly, and began engaging in acting out behaviors. She reported that Mr. Stewart Jr. was, “out of it a bit, and then just went into a state like nothing happened. It was like in his mind that it didn’t happen. He just seemed to shut it off, but he was never the same.” Following the incident involving the discovered partial fetus, she reported observing Mr. Weldon Stewart Jr. as, “standing up like a person who had just seen a bad wreck like he was in a trance.”

It is noted that not all of Mr. Stewart Jr.’s potentially dissociative behaviors described in his self-report during the clinical interview dated 05/04/2022 and 05/09/2022 and on subsequent self-report measures can be verified by eye witness accounts reviewed for the purpose of this psychological evaluation. Furthermore, some level of dissociation is difficult to externally observe, as the symptoms are inherently internally experienced by the individual. However, given the accumulation of evidence across independent eye witness accounts of Mr. Weldon Stewart Jr.’s behaviors following traumatic events, it appears to be probable that Mr. Weldon Stewart Jr. has demonstrated some dissociative behaviors during, and shortly following, traumatic experiences.

Dissociative Amnesia

With regard to the main task of this psychological evaluation, which was to determine Mr. Weldon Stewart’s potentiality for experiencing dissociative amnesia after past trauma experiences, none of his self-reported hinderance of memory during the key incident involving Ms. [REDACTED] Allen’s can be corroborated. Mr. Weldon Stewart Jr. reported some difficulties with episodic memory surrounding the key incident involving Ms. [REDACTED] Allen’s death. He reported recalling the details of the traumatic event in incomplete segments, with the greatest memory deficit occurring before the date of July 1st, 2014 when he disclosed a belief that he had “recovered” memories of Ms. Allen dying as a result of suicide. He also reported still experiencing difficulty with recalling memories of Ms. Allen when she was living (“I can no longer picture her alive”). He also reported subsequent periods of “black outs” during his suicide attempt while in prison in 2001. While his report of black outs at the time were recorded by prison staff, they cannot be corroborated by the information within that report. He reported experiencing memories of trauma details “flooding back to me” following his interaction with the therapist at Hidden Lake, at which time he reportedly recalled the prior attempted drowning,



as well as when talking to Mrs. Lori Stewart on July 1st, 2014, at which time he reportedly recalled the details surrounding [REDACTED] Allen's death.

The only corroboration for a potential experience of dissociative amnesia is through Mrs. Virginia Stewart's independent report that, subsequent to the attempted drowning incident in around age 10, Mr. Weldon Stewart Jr. appeared to be highly distressed for a brief period of time, followed by a shift toward behaving "as if it never happened." Per Mrs. Virginia Stewart's report, she had told Mr. Stewart Jr.'s former therapist at Hidden Lake School about the attempted drowning incident, because, "Weldon did not seem to remember it." If Mrs. Virginia Stewart's report is evidenced to be accurate, then Mr. Weldon Stewart Jr.'s behavior would suggest that he "forgot" the details of the attempted drowning due to its emotional and traumatic impact on his psyche. This type of forgetting would be beyond the typically expected level of forgetting that has been associated with dissociative amnesia. However, it would be difficult to indicate if this forgetting occurred through a subconscious motivated "suppression" of traumatic information on the part of Mr. Stewart Jr., or if the details were hindered from long-term memory encoding due to traumatic shock and subsequent trauma responding. If Mrs. Virginia Stewart's report is determined to be accurate, then this would suggest that Mr. Weldon Stewart Jr. has had at least one experience in his past that is similar to those had by persons who have been observed and diagnosed with dissociative amnesia. If Mrs. Virginia Stewart's report is evidenced to be accurate, then this would suggest that Mr. Weldon Stewart's psychological profile in the time surrounding the attempted drowning was similar to those persons who have been observed and diagnosed with having dissociative amnesic experiences. It is important to note that the presence of a potential dissociative amnesic experience during one trauma for an individual does not, in isolation, suggest that dissociative amnesic experiences will or have occurred during other traumas for that individual. In this specific case, the potential that Mr. Stewart Jr. experienced a dissociative amnesic episode following his attempted drowning does not, in isolation, suggest that he experienced a dissociative amnesic episode following any of his other identified traumas in general, or during the key incident involving [REDACTED] Allen's death in particular.

CONCLUSIVE STATEMENT:

The potential occurrence of dissociative amnesia at the time of the key incident involving Ms. [REDACTED] Allen's death can neither be ruled in or ruled out, as there was no trained mental health professional to identify and document any such occurrence at the time of the event. There are corroborated reports from several sources that indicate that Mr. Weldon Stewart Jr. was exhibiting dissociative symptoms and traumatic shock at the time of the key incident. There are also corroborated reports of Mr. Weldon Stewart Jr. demonstrating dissociative symptoms and traumatic shock following other reported traumas, as well as at least one possible occurrence of trauma-related forgetting following the incident of near drowning, with the occurrence being similar in nature to that seen in person diagnosed with dissociative amnesia. Persons with at least one dissociative amnesic episode are at increased risk for experiencing dissociative amnesia following subsequent traumas. Although dissociative amnesia cannot be ruled in or ruled out for



the time of the key incident, the probability of experiencing dissociative amnesia at the time of a trauma increases with the demonstrated evidence dissociative symptoms in Weldon's past and at the time of the key incident, as well as with the probability that dissociative amnesia occurred for Weldon following his near drowning incident. Given this past evidence of dissociative symptoms and the probability that dissociative amnesia occurred for Mr. Weldon Stewart Jr. following his near drowning incident, it is very possible that Mr. Weldon Stewart Jr. experienced dissociative amnesia following subsequent traumas, including the trauma identified as the key incident involving the death of Ms. [REDACTED] Allen.

In this context the following recommendations are made for Mr. Weldon Stewart Jr.:

1. Mr. Stewart Jr. requires further evaluation using a highly researched, evidence-based psychological test to better define his psychological profile surrounding generally reported symptomology. Results of such testing would offer more definitive data regarding traumatic experiences, while also including or excluding potentially comorbid or differential diagnoses. Appropriate psychological tests for forensic settings that meet these criteria are the Minnesota Multiphasic Personality Inventory (MMPI) or Personality assessment Inventory, which are highly researched, evidence-based psychological tests of adult psychopathology and personality with strong validity and reliability, as well as imbedded scales for detecting random, inconsistent, overreporting, and underreporting answering behaviors. In the forensic setting, it is common to employ both psychological tests as a safeguard in the event that the examinee invalidates one of the tests. As such, the use of both tests to obtain more definitive results regarding Mr. Weldon Stewart Jr.'s symptom profile is highly recommended.
2. Mr. Stewart Jr. requires further evaluation using a highly researched, evidence-based psychological test to better define his trauma profile. Such testing would provide necessary data to outline trauma symptomology and response behaviors related to trauma experiences. Appropriate psychological tests for forensic settings that meet these criteria are the Trauma Symptom Inventory (TSI) or the Clinician-Administered PTSD Scale for DSM-5 (CAPS-5). In the forensic setting, it is common to employ both psychological tests as a safeguard in the event that the examinee invalidates one of the tests. As such, the use of both tests to obtain more definitive results regarding Mr. Weldon Stewart Jr.'s symptom profile is highly recommended.
3. Mr. Weldon Stewart Jr. requires further evaluation using a highly researched, evidence-based psychological test to better define his potential tendency toward dissociative behaviors, as well as to offer more concrete details related to dissociative history that is



not well defined by verbal reports of persons interviewed. For a more definitive forensic assessment of Mr. Weldon Stewart Jr.'s dissociative symptoms or experiences, it would be appropriate to employ the Structured Clinical Interview for DSM-IV Dissociative Disorders – Revised (SCID-D-R), which is the gold-standard, comprehensive tool for assessment of dissociative symptoms. The SCID-D-R assesses five symptom clusters (depersonalization, derealization, identity confusion, identity fragmentation, amnesia).

4. Mr. Weldon Stewart Jr. requires further evaluation using a highly researched, evidence-based psychological test to better assess for the potential presence of feigning or malingering in the case, whether intentional or unintentional. Such testing would be important to more strongly demonstrate Mr. Stewart Jr.'s intentions surrounding his reported experiences. For a more definitive forensic assessment of whether or not Mr. Weldon Stewart Jr.'s is engaging in feigning or malingering behaviors, it would be appropriate to provide an evidence-based psychological test of feigning or malingering, such as the Miller Forensic Assessment of Symptoms Test (MFAST) and/or the Structured Inventory of Malingered Symptomology (SIMS). In the forensic setting, it is common to employ both psychological tests as a safeguard in the event that the examinee invalidates one of the tests.
5. Mr. Stewart Jr. would benefit from participating in targeted trauma-based therapy, at least once per week with an identified trauma-trained psychologist, particularly one who has experience and training in working with complex trauma cases. He may benefit from participation in a cognitive behavioral treatment designed to address trauma, such as cognitive processing therapy (CPT), trauma informed cognitive behavioral therapy (TI-CBT), or similar treatment.
6. Mr. Stewart Jr. would benefit from his therapy focusing on building adaptive coping skills and distress tolerance skills that he can employ in anxiety-provoking situations, such as triggers for anxiety or depressive emotional states. Mr. Stewart Jr. should demonstrate effective, autonomous use of these skills and the ability to identify situations appropriate to use these skills in at least 75% of the time prior to the conclusion of treatment.
7. Mr. Stewart Jr. would benefit from his therapy focusing on behavioral activation and similar skills that he can employ to combat low moods. Given his current lack of access to consistent recreation at his current prison site, it would be advisable that he be considered for alternative prison locations that can better support his need for behavioral activation interventions. Mr. Stewart Jr. should demonstrate effective, autonomous use of these skills and the ability to identify situations appropriate to use these skills in at least 75% of the time prior to the conclusion of treatment.



8. Mr. Stewart Jr. would benefit from therapy interventions that target his response to crisis escalation and involves the development of a readily usable safety plan that Mr. Stewart Jr. can employ to avoid engaging in self-harming behaviors. Mr. Stewart Jr. should demonstrate the ability to effectively employ this safety plan in arising crises 100% of the time prior to the conclusion of treatment.
9. Mr. Stewart Jr. would benefit from consulting with a prescriptive authority (e.g., psychiatrist, psychiatric nurse, or medical doctor) to discuss medication management options for symptoms management, so that he may better engage in the therapeutic process. His medication management discussion should address his symptoms across PTSD, anxiety, and depression. Mr. Stewart Jr. would benefit from taking medications as prescribed, and following the regimen as directed by his identified prescriptive authority. He would benefit from meeting with his prescriptive authority at least once per month to ensure that medication management services are continuing to support his treatment and therapeutic needs.

Thank you for your referral. Please do not hesitate to contact me with any questions or comments that you may have about the outcome and results.

Andi McDaniel, PhD
Clinical & Testing Psychologist

05/24/2022

Date

Shea Lott,
Supervising Licensed Clinical Psychologist

05/27/2022

Date

Andrea N. McDaniel, Ph.D.

Clinical & Testing Psychologist/ Psychological Associate

[REDACTED]
Annapolis, MD 21403

O: [REDACTED] C: [REDACTED]

EDUCATION

Doctor of Philosophy	Fielding Graduate University, Santa Barbara, CA Clinical Psychology 2020
Master of Arts	Fielding Graduate University, Santa Barbara, CA Clinical Psychology 2018
Master of Science	Capella University, Minneapolis, MN Counseling Psychology 2013
Bachelor of Arts	Saint Leo University, Saint Leo, FL Psychology 2011
Associate of Arts	Hillsborough Community College, Tampa, FL Liberal Arts 2006

PROFESSIONAL LICENSURE

Psychology Associate Licensure in DC <i>Currently active</i>	<i>Jan 2021</i>
Psychology Associate Licensure in VA <i>Currently active</i>	<i>Jan 2021</i>
Psychology Associate Licensure in MD <i>Currently active</i>	<i>Dec 2021</i>
*Maryland Jurisprudence Exam - completed	<i>Passed on 08/05/21</i>

***EPPP Independent Licensure Exam** –*pending receipt of license number*

March 2022

CERTIFICATIONS/CONSULTIVE TRAINING PROGRAMS

Cognitive Behavioral Therapy – Easterseals

Oct 2020

Cognitive Processing Therapy & Consultation – Easterseals

Nov 2020 – Feb 2021

Emotion Focus Therapy for Couples & Consultation – Easterseals

Apr 2021 – July 2021

*Many additional trainings completed throughout course of education and employment, related to a variety of areas including (but not limited to) forensic, neuropsychological, military, substance abuse, CBT-based treatments, attachment-based treatments, grief therapy, trauma therapy, diagnosis, treatment planning, diversity and inclusion, and counseling individuals, couples, groups, and families.

CLINICAL EXPERIENCE

LUCID CLINICAL SERVICES, INC. – Rockville, MD

Nov 2021 - Current

Setting: Private Practice

Position: Clinical & Testing Psychologist / Clinical Practicum Supervisor

Consulting Supervisor – Shea Lott, PhD

Clinical Director – Crystal Shelton, DSW

Primarily providing psychological evaluation and testing to clients from ages 4 – 99 years old for a variety of purposes, including but not limited to psychological diagnosis, forensic, risk assessment, neuropsychological, academic, achievement, vocational rehabilitation, disability benefits eligibility, and mental status examination purposes. Also providing psychotherapeutic services to adult individuals, couples, and groups. Evidence-based measurement, treatment planning, risk assessment, safety planning, and resource identification all incorporated into therapy and documented throughout episode of care.

**THE STEVEN A. COHEN MILITARY FAMILY
CLINIC AT EASTERSEALS – Silver Spring, MD**

Sept 2020 – Dec 2021

APA Accredited Post-Doctoral Fellowship

Position – Postdoctoral Fellow Psychologist

Supervisors – Anneke Vandenbroek, Ph.D. / Shea Lott, Ph.D.

Provision of outpatient therapy services to active and veteran members of the military, as well as their families. Therapy services include psychological evaluation, diagnosis, level of care triage and appropriate referrals, crisis evaluation and management, civil commitment when deemed clinically necessary, treatment planning, and discharge planning. Services are provided for individuals, couples, families, and groups under an evidence-based, brief therapy model. Position also involves the supervision of masters and doctorate-level students completing their practicum at the clinic. Additionally, I

developed and disseminated psychoeducational materials for clinical use on and organization-wide scale.

HOLCOMB BEHAVIORAL HEALTH SYSTEMS – Exton, PA**Aug 2019 – July 2020***APA Accredited Doctoral Internship – 6 ROTATION PROGRAM**Position – Psychological Resident*

Training Program Director - Natalie Bilynsky, PhD

Outpatient & Rotational Supervisor - Bethany Dudash, PsyD

Outpatient Rotation – *Full Year Rotation (Aug 2019 – Jul 2020)*

Holcomb Behavioral Health Systems – Exton, PA

Supervisor – Bethany Dudash, PsyD

Psychological Residents maintain 10 outpatient mental health clients at all times throughout the internship year. Duties on this rotation include providing mental health outpatient services from an integrated systems approach to a diverse set of clientele; conducting diagnostic evaluations, providing diagnoses, providing an appropriate POMS assignment per state and federal regulations, and writing diagnostic reports; conducting risk screenings and suicide assessments; developing, carrying out, and revising treatment plans; developing and revising crisis resolutions plans; completing discharge evaluations; writing treatment progress notes; assessing for and filing mandated reports with the ChildLine Abuse Registry; coordinating care with other providers; and completing additional documentation required to effectively carry out outpatient rotation duties.

Mental Health Court Rotation – *Full Year Rotation (Aug 2019 – Jul 2020)*

Chester County Prison – West Chester, PA

Supervisors – Bethany Dudash, PsyD

Sarah Windfelder, PsyD

Psychological Residents conduct psychological and mental health status evaluations to determine a client's fit for Mental Health Court based on psychiatric or substance dependency history. Evaluations are conducted either within the Chester County Prison or at Holcomb Behavioral Health Systems (Exton, PA). Psychological Residents produce psychological evaluation reports for use by clients and their legal representatives to seek reassignment of their case to Mental Health Court. Psychological Residents request and incorporate documentation from ancillary sources, provide appropriate POMS assignments, and provide level of care recommendations based on ASAM regulations.

Assessment Rotation – *Full Year Rotation (Aug 2019 - Jul 2020)*

Holcomb Behavioral Health Systems – Exton, PA

Supervisor – Jenna Dubbs, PsyD

Psychological Residents conduct psychological assessments and produce reports of results to inform outpatient mental health therapy treatment. Most commonly utilized assessments include the WAIS - IV, WISC - IV, MMPI-2, MCMI, Vineland – III, and Achenbach Measures.

Substance Abuse & Addiction Treatment Rotation – 4 Month Rotation (Aug – Nov 2019)

Open Door, Inc. – Newark, DE

Site Supervisors – Eymorfia (“Viky”) Karaoglanis, MA, LCDP, ICAADC

Erin Barker, LCDP, MHS

Psychological Residents provide outpatient and group counseling to clients Delaware residents who received DUI charges and have been mandated to complete the Open Door DUI Treatment Program to gain knowledge and resources regarding substance abuse and addiction. Residents conduct chemical dependency evaluations and biopsychosocial diagnostic evaluations, develop treatment plans, provide treatment progress reviews to clients at discharge sessions, and complete random urinalysis tests. Residents also make recommendations to the state of Delaware based on either a client’s successful completion of the program, or their early discharge into a higher levels of care due to program noncompliance or ongoing at-risk status.

Crisis & Residential Treatment Unit Rotation – 4 Month Rotation (Dec 2019 – Mar 2020)

Valley Creek Crisis Center – Exton, PA

Site Supervisors – Sarah McFarland, M.S. Clinical Coordinator for Crisis Residential

Margot Bullotta, LPC Clinical Coordinator for Valley Creek Crisis

Psychological Residents conduct crisis evaluations and counseling over the phone, in the office, and within the community in the Crisis Intervention side of the Valley Creek Crisis Center. Evaluations are conducted for the purposes of determining level of care up to and including involuntary hospitalization. Psychological Residents are also responsible for completing processes and documentation associated with the chosen level of care.

Psychological Residents provide individual and group therapy to patients receiving partial hospitalization level of care in the Residential Treatment side of the Valley Creek Crisis Center. Residents are also responsible for conducting diagnostic evaluations and writing diagnostic reports.

Truancy Rotation – 4 Month Rotation (Apr – Jul 2020)

Chester County, PA

Site Supervisor – Isabelle Gauthier, LMFT

Psychological Residents provide mobile therapy to children (and their families) who have been flagged for truancy within Chester County, PA. Duties also involve, advocating for the client within the school system, conducting psychological evaluations, and completing appropriate documentation to facilitate the client's successful reintegration into school.

**ESTEEM OUTPATIENT NEUROREHABILITATION PROGRAM at WINTER HAVEN
HOSPITAL – Winter Haven, FL*****Mar 2018 – Aug 2018***

Position: Doctoral Clinical Psychology Practicum, 835.75 hours

Supervisors: Jeffrey Reddout, PhD

- Provided psychodiagnostic assessments to adolescents, adult, and geriatric patients.
- Provided neuropsychological assessments to adolescents, adults, and geriatric patients.
- Conducted neuropsychological intake sessions.
- Conducted spinal cord stimulator evaluations to determine cognitive fitness for clients to participate in surgery to implant the spinal cord stimulator device.
- Completed psychological evaluation reports for the purpose of treatment planning and providing recommendations.
- Completed integrative reports for clients completing therapy and assessment.
- Administered the following assessments (some in multiple editions/versions): CAARS; PRIME-MD; Supplemental Support Inventory; WAIS-IV; MSE; Shipley-2; DKEFS (Tower Test, Verbal Fluency, Color-Word Interference, 20 Questions, Trail Making Test); Grooved Pegboard; Grip Strength Test; MoCA; Rey-Osterrieth Complex Figure; Trail Making Test A and B; WCST; WMS-IV; Booklet Category Test; Bells Test; Judgment of Line Orientation Test; Peabody Picture Vocabulary Test, Third Edition; Rey Auditory Verbal Learning Test; Seashore Rhythm Test; Tactile Form Recognition Test; WRAT-4; MMPI-2 and MMPI-2-RF; MBMD; and TOMM.

**COMPREHENSIVE PSYCHOLOGICAL & ASSESSMENT SERVICES (CPAS) –
Orlando/Tavares, FL**

Nov 2016 – Oct 2017

Position: Doctoral Clinical Psychology Practicum, 670 hours
Supervisor: Maxine A. Ruddock, PhD

- Conducted psychological evaluations and mental status exams for therapy clients, cases referred by the Department of Children & Families, the Social Security Department of Disability Services, Vocational Rehabilitation Services, and military veterans.
- Provided individual, group, couples, and family therapy to children, adolescents, and adults in a community mental health setting.
- Administered a range of psychological batteries that include: WAIS-IV, WJ III ACH, MMPI-2, MCMI-2, 16PF, BAI, BDI, BHS, TSI, CAPI, SASSI-4, AUI, PDS, and Thematic Apperception Test.
- Scored, interpreted, and composed integrative reports on results of these assessments.
- Composed integrative psychological reports for purposes of forensic cases and disability benefits applications.
- Utilized evidenced-based practices which included CBT, exposure therapy, DBT, REBT, family-systems therapy, coping skills training, and motivational interviewing.
- Provided therapeutic interventions for the treatment of PTSD, depression, anxiety, ADHD, autism spectrum disorders, substance abuse, etc.
- Developed and facilitated group therapy programs:
 - Group Therapy Program for Female Survivors of Military Sexual Trauma.
 - Parental Skills Training Program for Parents of Children with Behavioral Problems.
- Conducted chart reviews, self-billing procedures, SOAP Notes, treatment planning, and

psychodiagnostic reports.

- Assisted in JCAHO accreditation process and personally drafted the application materials.
- Facilitated CPAS high school internship program and supervised high school student interns.
- Attended clinical trainings for music therapy, OSHA, PTSD, SASSI-4 assessment, behavioral activation, SAMHSA, SUD assessment and treatment, self-esteem training, treatment program development, Baker Act and Marchman Act Procedures, and Crisis Intervention.

RESEARCH EXPERIENCE

Dissertation: *Comparing Altruism and Attitudes Towards Organ Donation in Military and Civilian Populations.*

Position: Principal Investigator, Study Coordinator, Data Collector, Primary Author, Revised Organ Donation Questionnaire.

Dissertation Chair: Elaine Hanson, PhD

Open: 6/2017 – current

- Dissertation Defense scheduled on 01/14/20

Mental Health Issues and Military Psychology

Position: Research Assistant

Supervising Faculty: Mimi (Alayne J.) Ormerod, Ph.D.

Open: 6/2018 – Current

- Data collector
- Collaborating on grant proposal

Interaction Behaviors of Mothers of Children with Autism, *Dissertation of Keri Herlan*

Position: Lead Research Assistant

Supervising Faculty: Tiffany Field, PhD

Dissertation Student: Keri Herlan

Open: 11/2017 – current

- Coded videos of mother-child interactions and collected data related to coding.
- Rated mother-child interactions of a scale provided by Keri Herlan.

Organ Donation Project

Position: Research Assistant

Supervising Faculty: Laura Thompson, PhD; Maureen Lassen, PhD

Open: 12/2016 - current

- Data collector
- Collaborating on paper for publication

Religion/Spirituality and Suicide Ideation in Troops

Position: Research Assistant

Supervising Faculty: April Harris-Britt, PhD

Team Lead Researcher: David Gray, M.A.

Open: 1/2015 - current

- Researched, analyzed, and critiqued scholarly journals and peer-reviewed articles related to factors for suicidality in military personnel and prior reported religious and spiritual affiliations.
- Researched Department of Defense existing database for correlations.
- Collected and input relevant data.

TEACHING/SUPERVISION EXPERIENCE

The Steven A. Cohen Military Family Clinic at Easterseals

Position: Post-Doctoral Fellow Psychologist

Supervisor: Shea Lott, Ph.D. / Anneke Vandenbroek, Ph.D.

9/2020 – current

- Supervision of masters level and doctoral level psychology and counseling students, who were completing practicum through Easterseals.
- Developing and leading seminars for fellow colleagues and professionals in community.
- Developing and publishing psychoeducational resource materials for use in clinical settings. Disseminated to full Cohen Clinic system.

Holcomb Behavioral Health Systems

Position: Pre-Doctoral Resident Psychologist

Supervisor: Bethany Dudash, PsyD

8/2019 – 7/2020

- Developed and lead webinars and didactics for organization, community, psychological schools, and professional events.

Hillsborough Community College – Honor's Institute

Position: Teaching Assistant for Writing Lab

Supervisor: Kathleen King

1/2004 – 1/2006

- Assist students in revision of academic papers.
- Tutor students in coursework related to English, Literature, and Technical Writing courses.

GENERAL EMPLOYMENT EXPERIENCE

Global Performer/Disney Ambassador

Walt Disney World Resort & Theme Parks, Orlando, FL

Supervisor: All Hollywood Studios Base Entertainment Managers

10/2009 – present

- Interact with individuals from all over the world daily.
- Perform for guests as a variety of characters in shows, parades, dining locations, and conduct improvisational guest relations at outdoor meet & greet venues.
- Organize and perform magical moments for Make-A-Wish foundation guests, as well as other disadvantaged or disabled guests.
- Participated in community programs in which characters visited hospitals, child service centers, veteran's centers, and retirement homes and interact personally with disadvantaged and disable individuals.

Administrative Assistant to Registrar – Student Worker

Florida School of Professional Psychology, *Dept of Registrar*, Tampa, FL

Supervisor: Susan Beecroft

1/2013 – 5/2014

- Completed all administrative duties related to registering students for courses, monitoring scholastic process, and handling graduation processes.
- Worked closely with advisors and the registrar to develop student academic plans.
- Organize and oversee all school activities and events led by student services department.
- Create and disseminate school-related information, create and lead presentations, and act as a liaison between students and faculty/staff.

Sesame Street Performer/Howl-O-Scream Actor

Busch Gardens Theme Parks, Tampa, FL

Supervisor: Scott Swenson

6/2010 – 4/2014

- Performed daily in the Sesame Street stage show *A is for Africa*, MC for the *Dine with Elmo & Friends* show, performer and guest relations attendant for meet and greets with guests of all ages.
- Participated in special meet & greet events for underprivileged and disabled guests.
- Performed in community events, such as the Gasparilla Children's Parade in Tampa, FL.
- Required to adapt to different personalities and ensure customer satisfaction.
- Participated in community programs in which characters visited hospitals, child service centers, veteran's centers, and retirement homes and interact personally with disadvantaged and disable individuals.
- Performed a secondary role in the *Cirque Dreams* show.
- Involved interaction with guests from across the nation as an "audience planted acrobat".
- Responsible for meet and greets after each show, as well as in special events for special needs guests.
- Performed as a scare actor in the annual *Howl-O-Scream* event.
- Required to study the behaviors of each guest who came through my scare location and judge the best scare tactic to achieve the best fright response.

- Interacted daily with guests from diverse backgrounds.

Contracted Figure Skating Performer/Media Representative/Disney Ambassador

Feld Entertainment's Disney On Ice World Tour, *based out of* Vienna, VA

Supervisors: Judy Thomas

7/2008-7/2009

- Responsible for bringing the magic of Disney to individuals in parts of the world that will never have the financial ability to visit an actual Walt Disney theme park by performing in daily shows for Feld Entertainment's *Mickey & Minnie's Magical Journey* ice skating tour show.
- Participated in several media promotions as a Disney Ambassador to discuss the Walt Disney viewpoint of tolerance for diversity.
- Responsible for quick adaptation to changes in routines and company plans.
- Participated in community programs in which characters visited hospitals, child service centers, veteran's centers, and retirement homes and interact personally with disadvantaged and disabled individuals.

PROFESSIONAL MEMBERSHIPS AND AFFILIATIONS

Florida Psychological Association (Student)	August 2013 – Present
American Psychological Association (Associate)	August 2014 – Present
American Psychological Association- Division 19 (Student)	January 2015 – Present
○ <u>Position</u> : Communications Officer (2016 – Present)	
Mental Health Association of Central Florida (Member)	November 2016 - Present
Children's Cabinet of Orange County (Member)	November 2016 – Present
Psi Chi – Fielding Graduate University Chapter (Student)	January 2016 – Present

AWARDS, SCHOLARSHIPS

Fielding Graduate University Magic Feet Scholarship	2015
Who's Who Among American College Students Award	2004, 2005, 2006
PHI Theta Kappa Community Service Member Award	2004, 2005
Harvard Model United Nations Accomplished Delegate Award	2004

PUBLICATIONS AND PRESENTATIONS

McDaniel, A. (2020, May). *The Sociopath and the Psychopath: Discerning Between & Treating Emotionally Deficient and Court-Mandated Clients*. PowerPoint Presentation for Chester County Professional Seminar, Exton, Pa.

McDaniel, A. (2019, November). *Outpatient Community Mental Health Treatment of the Amish*. PowerPoint Presentation for Chester County Professional Seminar, Exton, Pa.

McDaniel, A. (2013, January). *The Pennsylvania Dutch Amish: Providing Psychological Care to Closed Communities*. Poster session presented at the Florida School of Professional Psychology Diversity Conference, Tampa, FL.

McDaniel, A. (2013, April). *Traumatic Brain Injuries in Athletes and Military Personnel*. Poster session presented at the Florida School of Professional Psychology Trauma Conference, Tampa, FL.

VOLUNTEER ORGANIZATIONS

Orange County Public Schools System	2016 – Present
Second Harvest Food Bank of Orange County	2016 – Present
Orlando VA Medical Center (<i>Service Dog Handler</i>)	2015 – Present
Harbor House, Orlando, FL	2015 – Present
Strides for Breast Cancer	2014 – Present
Gift Kids the World	2010 – Present
Disney VoluntEARS	2010 - Present
Make-A-Wish Foundation	2008 – Present
Special Skater's Society	1998 – 2004

PROFESSIONAL REFERENCES

Anneke Vandenbroeck, PhD

The Steven A. Cohen Military Family Clinic at Easterseals, Silver Spring, MD

Licensed Clinical Psychologist; Board Certified Clinical Psychologist

[REDACTED]
[REDACTED]

Relationship: current supervisor / clinical director at Easterseals

Shea Lott, PhD

The Steven A. Cohen Military Family Clinic at Easterseals, Silver Spring, MD

Licensed Clinical Psychologist

[REDACTED]
[REDACTED]

Relationship: current supervisor / lead clinician at Easterseals

Bethany Dudash, PsyD

Holcomb Behavioral Health System, Exton, PA

Licensed Psychologist

[REDACTED]
[REDACTED]

Relationship: Predoctoral residency training supervisor

Sarah Windfelder, PsyD

Holcomb Behavioral Health System, Exton, PA

Licensed Psychologist

[REDACTED]

Relationship: Predoctoral residency mental health court rotation supervisor

Lauren Lawson, PsyD

Holcomb Behavioral Health System, Exton, PA

Clinical Coordinator

[REDACTED]

Relationship: Predoctoral residency clinical coordinator

Erin Barker,

Open Door, Inc. – Substance Abuse & DUI Treatment Program

Licensed Substance Abuse Counselor

[REDACTED]

Relationship: Predoctoral residency Substance Abuse Treatment rotation supervisor

Maxine A. Ruddock, PhD

Comprehensive Psychological & Assessment Services (CPAS), Orlando/Tavares, FL

Licensed Clinical Psychologist

[REDACTED]

Relationship: previous clinical practicum supervisor

Jeffrey Reddout, PhD

ESTEEM Outpatient Neurorehabilitation Program at Winter Haven Hospital (BayCare) –

Neuropsychological Unit, Winter Haven, FL

Licensed Clinical Psychologist, Neuropsychologist, Clinical Practicum Supervisor
[REDACTED]

Relationship: previous clinical practicum supervisor

April Harris-Britt, PhD

Fielding Graduate University, Santa Barbara, CA

Clinical Psychologist, Fielding Graduate University (FGU) Faculty Member
[REDACTED]

Relationship: professor at FGU; pervious research practicum supervisor

Tiffany Field, PhD

Fielding Graduate University, Santa Barbara, CA

Clinical Psychologist, Fielding Graduate University (FGU) Faculty Member
[REDACTED]

Relationship: faculty advisor at FGU; pervious research practicum supervisor

Elaine Hanson, PsyD/JD

Fielding Graduate University, Santa Barbara, CA

Clinical Psychologist, Fielding Graduate University (FGU) Faculty Member
[REDACTED]

Relationship: FGU dissertation chair

Anthony Greene, PhD

Fielding Graduate University, Santa Barbara, CA

Licensed Clinical Psychologist, Fielding Graduate University (FGU) Faculty Member
[REDACTED]

Relationship: residency cluster leader at FGU

forensX, LLC**"To strive, to seek, to find – and not to yield."**

Medicolegal Consultants

Forensic Pathology & Lab Services

Courtroom Illustrations & Exhibits

Training & Continuing Education

[REDACTED] office
[REDACTED] fax**BIOGRAPHY**

2 June 2021

James Claude Upshaw ("Jamie") Downs MD (ABP-AP/CP/FP, F-CAP, F-ASCP, F-AAFS, F-NAME, D-ABMDI, IACME) has been a Medicolegal Consultant & practicing Forensic Pathologist/Medical Examiner for over 31 years. His medical practice includes serving as the Medical Director of the Physician Assistant Program at Charleston Southern University. Dr. Downs also serves as Associate Medical Examiner for Gwinnett County Georgia and as a Forensic Pathologist for the Charleston County SC Coroner's Office. His service work includes the Cold Case foundation, examining unresolved complex cases. He routinely consults in clinical and postmortem cases, including those involving traumatic force & the vulnerable. Dr. Downs was Director of the Alabama Department of Forensic Sciences, leading Alabama's statewide forensic laboratory system while also serving as the state's first Chief Medical Examiner. Downs was graduated from the University of Georgia (*magna cum laude* & *Phi Beta Kappa*). He received his Doctor of Medicine degree, Medical Residency training in Anatomic & Clinical Pathology, & Fellowship in Forensic Pathology from the Medical University of South Carolina (in his hometown of Charleston). The latter included a rotation at the Metropolitan Dade County Florida (Miami) Medical Examiner Department. Dr. Downs completed Peace Officers Standards & Training at the Southwest Alabama Police Academy, receiving distinction as class president, top academic student, & best defensive driver. Downs has been a Medical Examiner for Charleston County South Carolina/the Medical University of South Carolina, the state of Alabama, & the Georgia Bureau of Investigation. He completed an internship at the Behavioral Sciences Unit, FBI Academy in Quantico, Virginia & was named as a Consultant for the FBI Behavioral Sciences Unit, for whom he authored *"The Forensic Investigator's Trauma Atlas."* Downs was senior editor & author for *"Ethics in Forensic Science"* — the preeminent treatise on the subject. He has appeared in numerous national television broadcasts (multiple televised trials, *Secrets of the Morgue*, *National Geographic*, *C-SPAN*, *The New Detectives: Case Studies in Forensic Science*, *Forensic Files*, *Street Stories*, *Dateline*, & *48 Hours*) & consulted on forensic movies, television (*Rosewood*), & books (including best-selling author Patricia Cornwell). Significant cases have included the Georgia tristate Crematory case (where he personally identified over 330 sets of decomposed remains) & the *H.L. Hunley* autopsies (the first successful combat submarine in world history). Dr. Downs was the Pathologist on South Carolina's first ever capital murder DNA trial. His professional activities have included service on numerous professional boards & committees. For over a decade, Dr. Downs taught Forensic Autopsy Pathology for the Mercer University School of Medicine & South University Savannah, the latter for whom he also taught the Clinical Pathology course. Downs also serves as a Clinical Laboratory Director. He is widely regarded for his ability to convey complex medicolegal findings & concepts, via both testimony & courtroom illustrations. Dr. Downs has worked extensively on national forensic political issues, including directly with former US Senator & US Attorney General Jeff Sessions to create & pass the Paul Coverdell Forensic Science Improvement Act. At the then Senator's request, Downs testified in support of the bill before Congress. He testified (twice) before the US National Academy of Sciences Committee on Science, Technology, & the Law's Forensic Science Committee regarding medicolegal death investigation & forensics in what became their groundbreaking report: *Strengthening Forensic Science in the United States: A Path Forward* (2009) & before the National Commission on Forensic Science. Dr. Downs has lectured hundreds of times & has presented at numerous national & international meetings in the fields of Forensic Pathology & scene interpretation/reconstruction, including at the National Forensic Academy & at the FBI's National Academy. His audiences have included law enforcement, social services, attorneys (prosecution & defense), judges, university undergraduate & pre-professional students, medical personnel, & graduate medical audiences. His areas of special interest include ethics, asphyxiation, child/elder abuse/neglect, the vulnerable, & police use of force. He has testified hundreds of times, including before state & federal courts, the US Military Justice system, committees of both the US Senate & House of Representatives, & the National Commission on Forensic Sciences. He has been qualified as an expert in numerous areas, including forensic pathology & scene reconstruction.

CURRICULUM VITAE

2 June 2021

NAME: James Claude Upshaw "Jamie" Downs, M.D.

ABP-AP/CP/FP, F-CAP, F-ASCP, F-AAFS, F-NAME, D-ABMDI, IACME

OFFICE: **forensX**, LLC

Medicolegal Consultants
Forensic Pathology & Lab Services
Courtroom Illustrations & Exhibits
Training & Continuing Education

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EDUCATION:

1966-1979 Elementary - High School	Porter-Gaud School Charleston, South Carolina
1979-1983 Bachelor of Science	University of Georgia Athens, Georgia <i>Biochemistry (major)/French (minor)</i> <i>(magna cum laude, Phi Beta Kappa)</i>
1983-1988 Doctor of Medicine	Medical University of South Carolina Charleston, South Carolina
1988-1991 Anatomic Pathology (Residency)	Medical University of South Carolina Charleston, South Carolina
1991-1992 Forensic Pathology (Fellowship)	Medical University of South Carolina Charleston, South Carolina <i>(Metro Dade Medical Examiner Department)</i> <i>Miami, Florida, March, 1992)</i>
1992-1994 Clinical Pathology (Residency)	Medical University of South Carolina Charleston, South Carolina
1992 Working Internship	Behavioral Science Unit <i>(Overkill - behavioral analysis)</i> FBI Academy, Quantico, VA
1996 Peace Officer Standards and Training (POST) certification	Southwest Alabama Police Academy Class 123 Bay Minette, Alabama
2016-2017	Education for Ministry St. Thomas Episcopal Church Isle of Hope, Georgia (University of the South, Sewanee, Tennessee)

Stewart v. S.C. - 2025-090136*Curriculum Vitae - JCU Downs, MD***Supplemental Appendix 272****SPECIALTY CERTIFICATION:**

National Board of Medical Examiners – 1991

American Board of Pathology

Anatomic Pathology – 1994

Clinical Pathology – 1994

Forensic Pathology – 1995

OTHER:

ABMDI-D (American Board of Medicolegal Investigators) – 2014

POST (Peace Officer Standards & Training) – 1996

MEDICAL LICENSURE:

South Carolina #15063

Alabama #17880

Georgia #051874

MAJOR PROJECTS:

State of Alabama - Forensic Science Bond issue (1998-2002)

\$17.5 million bond issue for the construction of two new forensics laboratories

Birmingham – \$10 million facility

Montgomery – \$7.5 million facility

Planning and site selection

State of Alabama – Forensic Science Annex

Planning and construction of annex to State Crime Lab section

Statewide DNA Database laboratory

Forensic Biology laboratory

Medical Examiner Administrative space

Conference facility

State of Alabama – Implied Consent (Breath Analysis Program)

Planning and construction statewide service facility

State of Alabama – Crime Laboratory Certification (ASCLD/LAB)

Planning & implementation of accreditation state-wide process

Preparatory pre-inspection process (through NFSTC)

State of Georgia – Coastal Regional Medical Examiner Office

Final design/implementation and staffing new combined use laboratory

Medical Examiner and Administrative Offices

Toxicology Laboratory and Administrative Offices

Conference facility

State of Georgia – Medical Examiner Statewide Accreditation

Preparatory phase consultation

Pre-inspection Operations Manual preparation

Operational timeline

Pre-accreditation facilities/operations documentation

State of Georgia – Operation Noble Cause (“Tri-State Crematory incident”)

Final identification multiple (>330) variably decomposed/skeletonized remains

State of South Carolina – *H.L. Hunley* Project (135 year-old scene)

Sole Forensic Pathologist consultant

Examination/processing eight sets co-mingled remains (historical context)

Assemble/coordinate interdisciplinary forensic/archeology expert team

Research consultant to Patricia Cornwell (author)

National Academies of Science

Identifying the Needs of the Forensic Science Community

Views of Major Forensic Science Organizations:

Issues & Challenges - NAME (1/25/07)

Medical Examiner/Coroner System – NAME (6/5/07)

Medical Examiner Forensic Training

(“Crime Lab 101 for Forensic Pathology Fellows”)

National Forensic Science Technology Center, Largo, Florida, 10/13-17/08

Curriculum planning & development

Instructor – Courtroom Testimony

Medicolegal Death Investigation Training Program

(Forensic Pathology Fellows & Medicolegal Death Investigators)

National Forensic Science Technology Center, Largo, FL, 2010-2011 (4 sessions)

Curriculum planning & development

Instructor – Applied Toxicology & Medicolegal Improving Death

Standards and Protocols Interagency Working Group

Investigation Systems Advisory Member (2010-2011)

National Science and Technology Council, Subcommittee on Forensic Science

Reports & Testimony Subcommittee

Executive Office of the President of the United States

Grant Reviewer

National Institute of Justice/Bureau of Justice Assistance

National Association of Medical Examiners – Annual Meeting 2007

Savannah, Georgia

Scientific Program & host

Harvard Associates in Police Science – Annual Meeting 2007

Savannah, Georgia

Scientific Program & host

Investigation for Identification – Annual Meeting 2012

Savannah, Georgia

Scientific Program & host

Vulnerable Victims: From Cradle to Cane – Medicolegal Seminar 2017

Charleston, SC

Scientific Program, Presenter, & host

PROFESSIONAL ORGANIZATIONS - MEMBERSHIP:

1990-1994	Lowcountry Pathology Society
1990-present	College of American Pathologists, Fellow
1991-present	National Association of Medical Examiners, Fellow
1992-present	American Society of Clinical Pathologists, Fellow
1993-present	American Academy of Forensic Sciences, Fellow
1994-2002	Alabama State Association of Forensic Sciences
1995-present	American Association for the Advancement of Science
1995-present	US and Canadian Academy of Pathology
1998-present	Harvard Associates of Police Science
1998-2000	International Wound Ballistics Association
1999-2002	Alabama Peace Officers' Association
1999-2016	Homicide Research Working Group
2000-2002	Alabama Chiefs of Police Association
2000-2002	American Society of Crime Lab Directors
2001-2002	Alabama State Employees Association
2001-present	American Association of Clinical Chemistry
2003-2017	International Association of Chiefs of Police Forensic Subcommittee
2003-2013	Consortium of Forensic Science Organizations Vice Chair 2007-2013
2011-present	Ray. E. Helfer Society <i>"A society of physicians dedicated to ending child maltreatment"</i>
2020-present	The Cold Case Foundation Consulting Forensic Pathologist
2021-present	International Association of Coroners and Medical Examiners

Stewart v. S.C. - 2025-090136*Curriculum Vitae - JCU Downs, MD***Supplemental Appendix 275****ADMINISTRATIVE APPOINTMENTS:**

1992-present Consultant Forensic Pathologist, Forensic Examiners/forensX, LLC

1990-1994 Deputy Medical Examiner, Charleston County, South Carolina

1994-2002 State Medical Examiner
State of Alabama, Department of Forensic Sciences

1994-2002 Clinical Assistant Professor, Pathology, University of South Alabama

1994-1998 Morgue Safety Officer
Department of Forensic Sciences, Mobile, AL

1996 Chair, Citizens' Support Group for Forensic Sciences Study Committee

1996-1997 Supervisor, Autopsy Technicians
Department of Forensic Sciences, Mobile

1996-1997 Chief, Autopsy Service, Department of Forensic Sciences, Mobile, AL

1997-1998 Chief, Investigative Services, Department Forensic Sciences, Mobile, AL

1998-present Consultant, Behavioral Sciences Unit, FBI Academy, Quantico, Virginia

1998-2002 Director, State of Alabama, Department of Forensic Sciences

1998-present Visiting Instructor, National Forensic Academy, University of Tennessee

1998-2018 Board of Advisors, Law Enforcement Innovation Center, Univ. of Tenn.

2000-2002 Chief Medical Examiner, State of Alabama
Department of Forensic Sciences

2000-2005 Major, Civil Air Patrol, USAir Force Auxiliary, Legislative Wing

2000-present Forensic Pathology Consultant, C.S.S. *H.L. Hunley* Project,
The Hunley Commission, Charleston, South Carolina

2001-2007 Board of Directors, National Association of Medical Examiners

2002-2016 Coastal Regional Medical Examiner, Georgia Bureau of Investigation

2002-2012 Coastal Regional Death Investigation Section
Supervising Medical Examiner

2003-2017 Forensic Committee of the International Association of Chiefs of Police

2002-2003 Identification of all Remains - "Tri-Sate Crematory case"
Operation Noble Cause, Walker County, GA

2003-2017 Clinical Instructor - Anatomic & Clinical Pathology
Physician Assistant Program
South University, Savannah, Georgia

2003-2017 Clinical Instructor - Toxicology
Pharmacy Program, South University, Savannah, Georgia

2004 NIJ Technical Working Group for
Education & Training in Forensic Science

2007-2019 Advisory Council, American Board of Medicolegal Death Investigation

2007-2013 Board of Directors, National Forensic Science Technology Center

2009-present Medical/Investigational Advisory Board
Sudden Unexplained Death in Childhood Program

2009-2010 Clinical Instructor - Pathology
Mercer Univ. School of Medicine, Savannah

2009-2010 Steering Committee (Chair)
NIJ inaugural Forensic Death Investigation Symposium

2010 Keynote Address
NIJ inaugural Forensic Death Investigation Symposium

Stewart v. S.C. - 2025-000136*Curriculum Vitae - JCU Downs, MD***Supplemental Appendix 276**

2010-2012 R.O.C.K. (Raising Our Children Kindly) Group Board
 2010-2017 Clinical Assistant Professor, Pathology & Director, Autopsy Program
 Mercer Univ. School of Medicine, Savannah
 2011-2014 Board of Editors, Academic Forensic Pathology
 (Journal of the National Association of Medical Examiners)
 2013-2014 NIJ Forensics Training Task Force
 2017-present Medical Director, Physician Assistant Program
 Charleston Southern University, Charleston, South Carolina
 2017-present Associate Medical Examiner, Gwinnett County, Georgia
 2021-present Forensic Pathologist
 Charleston County SC Coroner's Office

American Academy of Forensic Sciences

2012-13 Pathology-Biology Program Chair

2013-14 Pathology-Biology Section Secretary

2014-15 Pathology-Biology Section Chair

2018 Plenary Session Co-Chair

2019 Plenary Session Chair

Other:

Educational Sessions – breakfast presenter

Educational Sessions – luncheon presenter

Workshops – coordinator & presenter

Session Moderator

Student Academy

(high school student introductory forensic training program)

Ethics Committee

Young Forensic Scientists Forum – seminar speaker

Forensic Science Foundation Board

Education Committee (chair)

Bring Your Own Slides (Co-moderator)

Stewart v. S.C. - 2025-090136**Supplemental Appendix 277****BIBLIOGRAPHY:**

Downs JCU

Autopsy Dissection Manual (manuscript in planning)

Downs JCU and Kerns J

Anatomy Dissection Manual (working title) (manuscript in preparation)

Downs JCU

Medicolegal Forensic Investigator's Trauma Atlas (manuscript in preparation)

Downs JCU & Barsley R

Ethical issues in Forensic Science & Odontology
in *Forensic Odontology: Principles and Practice*

Thomas J. David, Jim Lewis, Academic Press

Capital Litigation Initiative: Crime Scene to Courtroom Forensics Training

Webinar 3: Forensic Pathology Essentials, Thursday, October 13, 2016

<http://www.ncstl.org/education/Capital-Litigation-2016-Webinar-3-Forensic-Pathology-Essentials>

The A-Z of Death and Dying Social, Medical, and Cultural Aspects

Michael Brennan, Editor

ABC-Clio, 2014

Coroner

Causes of Death

Death Certification

Downs JCU & Swienton A, Editors

Ethics in Forensic Science (2012) Elsevier Publishing

Willoughby W, Thompson E, & Downs JCU

Religion: The Forensic Practitioner's Quest for Truth

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Ethical Codes in Other Organizations – Authority & Enforcement

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Testimony

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Whistleblowers

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Media

Downs, JCU

Forensic Medicine

McGraw Hill Encyclopedia of Science & Technology, 2011

Downs JCU

Death Investigation

Crime Scene Investigation, Second Edition

Jacqueline T. Fish, Larry S. Miller, and Michael C. Braswell

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Homicide

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Downs JCU

Medical Examiner

Lori Frasier L, Alexander R, Parrish R, & Downs JCU

*Abusive Head Trauma in Infants and Children:**A Medical, Legal & Forensic Reference*

GW Medical, 2007

Lori Frasier L, Alexander R, Parrish R, & Downs JCU

*Abusive Head Trauma in Infants and Children:**A Medical, Legal & Forensic Reference – Supplementary CD-ROM*

GW Medical, 2007

JCU Downs & Bill Harris

The Role of Coroners

In Alexander R & Case ME

Child Fatality Review - An Interdisciplinary Guide & Photographic Reference

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The Role of Medical Examiners in Law Enforcement

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Downs JCU

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The Encyclopedia of Forensic Medicine, 2015

Downs JCU

Forensic Science Education and Mentorship: Our Path Forward

Pathology/Biology: The Mentor/Mentee Relationship

Academy News, American Academy of Forensic Sciences, May 2013

Withrow AG, Sikorsky J, Downs JCU, Fenger T

*Extraction & Analysis of Human Nuclear & Mitochondrial DNA**from Electron Beam Irradiated Envelopes*

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Downs JCU

The Autopsy

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Medical Examiner/Coroner

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Forensic Investigator's Trauma Atlas

Managing Death Investigation Volume II, FBI National Academy, U.S.

Department of Justice, FBI, Arthur E. Westveer, MLA, Ed., 2003

Cina SJ, Downs JCU and Conradi SE.

Hydrogen peroxide: A source of lethal oxygen embolism.

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Handling and Interpretation of Crossbow Injuries.

The Journal of Forensic Sciences 39(2): 42.8-45, 1994.

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Suicide by Environmental Hypoxia (Forced Depletion of Oxygen).

The American Journal of Forensic Medicine & Pathology 15(3): 216-223, 1994.

Downs JCU and Nichols CA.

Suicidal Ingestion of Barium Sulfide Containing Shaving Powder.

The American Journal of Forensic Medicine and Pathology 16(1): 56-61, 1995.

Downs JCU, Riddick L, Nichols CA, Scala-Barnette D, and Lifschultz BD.

Crossbow Injuries - An Unusual Form of Sharp Force Injury.

American Society of Clinical Pathologists Check Sample, October 1995.

Downs JCU

Sexual Homicide in Managing Death Investigation

FBI National Academy, U.S. Department of Justice, FBI,

Arthur E. Westveer, MLA, Ed., 1998 & 2002

Downs JCU

Asphyxiation in Managing Death Investigation

FBI National Academy, U.S. Department of Justice, FBI,

Arthur E. Westveer, MLA, Ed., 1998 & 2002

Downs JCU

Sharp Force Injury in Managing Death Investigation

FBI National Academy, U.S. Department of Justice, FBI,

Arthur E. Westveer, MLA, Ed., 1998 & 2002

Downs JCU

Blunt Force Injury in Managing Death Investigation FBI National Academy,
U.S. Department of Justice, FBI,
Arthur E. Westveer, MLA, Ed., 1998 & 2002

Downs JCU

Under Investigation: The World of Forensic Pathology, MUSC Alumni Today,
Alumni Magazine of the Medical University of South Carolina, Nov 1999

Downs JCU

Date Rape Drugs, Alabama Coroners' Association Newsletter, May 2000

Hornfeldt CS, Lothridge K, and Downs JCU

Forensic Science Update: Gamma-Hydroxybutyrate (GHB)
Forensic Science Communications, January 2002

Downs JCU and Ostroff D.

Videography- A primer Alabama Coroners' Association Newsletter, Sept 2000

Titford M and Downs JCU

Case Histories in Forensic Histotechnology
The Journal of Histotechnology, 2001;24(1):23-27

Downs JCU

Shaken Baby Syndrome - A primer
Alabama Coroners' Association Newsletter, 2001

Downs JCU

Forensic Improvement and Medical Examiners,
National Association of Medical Examiners News, Vol. 9, No. 4, August 2001

Downs JCU

The Paul Coverdell National Forensic Sciences Improvement Act,
The American Academy of Forensic Sciences Newsletter, Summer 2002

Cheng TC and Downs JCU.

Intracellular Acid Phosphatase and Lysozyme Levels
in Subpopulations of Oyster, Crassostrea virginica, Hemocytes
Journal of Invertebrate Pathology 52: 163-167, 1988.

LECTURES/SPEAKING:

Hundreds of invited presentations at local, regional, national, and international levels on the subjects of Medicolegal Death Investigation, Forensic Pathology, Child abuse/neglect Elder abuse/neglect, Forensic Investigation & the vulnerable, Police Use of Force, and Teamwork, to audiences ranging from pre-graduate to post-doctoral and active practitioner levels. Audiences have included law enforcement, social services, attorneys, judges, university undergraduate & pre-professional students, medical personnel (all levels), and graduate medical personnel.

He has testified in numerous state and federal courts, the Military Justice System, as well as before committees of both the United States Senate and the House of Representatives

AWARDS/SERVICE:

Presidential Iceberg Award, National Association of Medical Examiners, 2004

Thomas Park Food Pantry, Savannah, GA, 2006-present

Presidential STAR Award, National Association of Medical Examiners, 2007

Volunteer of the Year, R.O.C.K. (Raising Our Children Kindly) Group Board 2008

President's Award, National Association of Medical Examiners, 2010

Board Member of Year, R.O.C.K. (Raising Our Children Kindly) Group Board, 2011

No. 21-278

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

IN RE: WELDON W. STEWART, JR.,

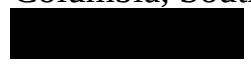
Movant.

**RESPONSE BRIEF
OPPOSING MOTION FOR AUTHORIZATION
PURSUANT TO 28 U.S.C. § 2244**

ALAN WILSON
Attorney General of South Carolina

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General


Columbia, South Carolina 29211


Counsel for Respondent

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<i>Commonwealth v. Barky</i> , 383 A.2d 526 (Pa. 1978).....	30
<i>Dusky v. United States</i> , 362 U.S. 402 (1960)	28
<i>Harrington v. Richter</i> , 562 U.S. 86 (2011)	22
<i>Hayden v. State</i> , 299 S.E.2d 854 (S.C. 1983).....	15, 16, 18
<i>In re Stevens</i> , 956 F.3d 229 (4th Cir. 2020).....	22, 23, 32
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<i>State v. Bennett</i> , 5th Dist. Stark No. 2004CA00369, 2006-Ohio-5632, 2006 WL 3042955	29
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<i>State v. Emerson</i> , 375 N.W.2d 256 (Iowa 1985).....	19, 20, 29
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<i>State v. Lyman</i> , 776 N.W.2d 865 (Iowa 2010).....	29

<i>State v. Massey</i> , 86 N.E.3d 30 (Ohio App. 11 Dist. 2017)	29
<i>State v. Niles</i> , 772 S.E.2d 877 (S.C. 2015)	12
<i>Strickler v. Greene</i> , 527 U.S. 263 (1999)	34
<i>United States v. Al-Hamdi</i> , 356 F.3d 564 (4th Cir. 2004)	21
<i>United States v. Bagley</i> , 473 U.S. 667, 682 (1985)	34
<i>Williams (Michael) v. Taylor</i> , 529 U.S. 420 (2000)	25

Statutes

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ISSUES PRESENTED

Movant, Weldon W. Stewart, Jr., (“Stewart”), seeks authorization under 28 U.S.C. § 2244(b), to file a successive 28 U.S.C. § 2254 habeas action in the District Court of South Carolina. Stewart submits that if authorized, he will file a petition alleging he is in state custody in violation of federal law as a result of the following:

- 1) Newly discovered *Brady* violation committed by the State by concealing evidence establishing that the injury alleged by the State to have caused Victim’s death was an injury created after death.
- 2) Newly discovered evidence establishing that the State failed to correct false testimony given by the State’s pathologist and that the State suppressed evidence proving that this testimony was false.
- 3) Newly discovered *Brady* violation committed by the State by withholding notes written by the State’s crime scene investigator detailing observations made by the investigator while on the scene which contradicted the State’s case against Stewart at trial.

(Doc. 2 at 6).

In his application, “Stewart asserts that these constitutional errors resulted in the conviction of a person who is innocent.” (Doc. 2 at 6). Stewart, who admitted being with the victim at her death and to burning her body, asserted that he repressed memories that she actually died by suicide. *Id.* In appointing counsel to argue for Stewart, this Court directed briefing on the following issue:

Whether the movant’s allegation of recovered memory qualifies as newly-discovered evidence warranting authorization to file a successive petition.

(Doc. 12).

STATEMENT OF THE CASE

Stewart was indicted in October 2002 for desecration of human remains and murder. He pled to the desecration charge and was later convicted of voluntary manslaughter. He is currently in state custody.

A. The Defense at Trial.

As Stewart admits in his motion for authorization, “From the onset of the case, there has been no dispute that (1) Stewart was present at the time of Victim’s death, and (2) Stewart set Victim’s body on fire a few hours after death.” (Doc. 2 at 6-7). Stewart also asserts that “[t]he sole dispute in this case from the beginning revolved around how the Victim died.” *Id.* Stewart presented a defense of accident.

Stewart opted to represent himself at his jury trial held July 28-August 1, 2003. The local public defender acted as standby counsel. Prior to trial, on October 17, 2002, Stewart was arraigned on both charges, and pled guilty to the desecration charge.¹ Stewart also at that time challenged the wording of the murder indictment which included “burning” as a possible method of death, asserting that the autopsy report reflected “death was caused by blunt trauma to the head.” (J.A. 62; 66-67). No action on the murder indictment challenge was taken at the October 2002 proceedings.

During pre-trial proceedings in December 2002, Stewart moved to interview

¹ None of Stewart’s claims challenge the validity of his plea to that charge.

the autopsy pathologist. Stewart indicated that he had reviewed the autopsy report and noted the stated cause of death was blunt force trauma. It did not indicate anything about a possibility that the cause of death was burning, yet, he argued, that the prosecutor had indicated that possibility in the indictment. (J.A. 82-87). The judge inquired whether Stewart would like to re-think having counsel, “who could not only interview this pathologist, but seek out another pathologist?” (J.A. 88). Stewart declined, and the judge ordered that Stewart be provided an opportunity to personally interview the autopsy pathologist concerning his opinion on the cause of death. (J.A. 82-89).

In a June 2003 hearing, Stewart again asserted that he had reviewed the autopsy report and it reflected an opinion of death by blunt force trauma, but that the indictment still included burning, which he argued was inconsistent. (Response Brief Attachment, at 22-26).² Stewart declared: “it is the contention of the defense that the victim’s death was unintentional.” (Response Brief Attachment, at 26). He moved for a forensic pathologist to assist him. (Response Brief Attachment, at 22-23). The prosecution noted Stewart had not yet spoken to the autopsy pathologist but would be able to do under the prior order of the court. (Response Brief

² This attachment is a copy of the official state court transcript from the proceedings before the Honorable John M. Milling on June 26, 2003, and is submitted pursuant to Rules 28(b) and 28(f) of the Fourth Circuit Local Rules.

Attachment, at 24). While the judge denied Stewart's motion at the time, the judge cautioned that he would "not ... contend that [Stewart] cannot bring it back up but," rather, he thought it was prudent to wait for Stewart to complete the interview. He explained that after Stewart interviewed the autopsy pathologist, that "may or may not leave [Stewart] needing to come back and renew [the] motion" (J.A. 29-30). Stewart did not renew the motion.³

At trial, Stewart repeatedly told the jury he was the only surviving witness to what happened which he described *in detail* to be an *accident*. (J.A. 232-33 (opening statement); 522-31 (testimony); 735 (letter to S. Allen); 761 (closing argument)).⁴ The jury, during deliberations, even requested to rehear Stewart's very descriptive opening statement that included statements and assertions such as:

- "I'm going to show you that on the morning of December 6, 2000, my girlfriend's death was accidental";
- That, though the minor victim's parents had tried to stop her contact with Stewart, she had quietly left her house that night voluntarily to clandestinely meet with Stewart for sex;
- That Stewart admitted that they "did get into a little argument that night" prior to her death;

³ Stewart admits in his motion for authorization that he later interviewed the pathologist and that, because the State removed the allegation in the indictment subsequently, Stewart "believed that the matter for which he had requested a forensic pathologist had been resolved." (Doc. 2 at 19).

⁴ Consistently, Stewart also argued to the trial court in challenging the admission of certain evidence: "The only issue is whether the death of Ms. Allen was intentional or unintentionally caused by myself." (J.A. 454).

- That the victim resisted leaving him and that “[s]he never wanted to go back home when it was time for her to go back home”;
- That Stewart “was just trying to convince [his] girlfriend that she needed to go back home ... but she was upset,” and he eventually “picked [victim] up to try to carry her” but “she was twisting and turning. She wasn’t ready to go back home” then Stewart “tripped and fell with her in [his] arms over one of the sticks in the path.” Stewart told the jury he “fell on top of her. This was an accident” a serious accident, “and she lost her life as a result of this accident.”

(J.A. 814-20).

In his trial testimony, Stewart further asserted that the victim had previously been pregnant by Stewart but had an abortion that she regretted. (J.A. 915). He claimed they were attempting to have another child. (J.A. 916). However, he asserted that on the night of her death, victim became morose when Stewart showed her a “memorial” to the child she had aborted. (J.A. 930). Stewart testified he was in the process of taking the young victim back home, and, while walking down a wood-lined path, the two began to argue. According to Stewart, the victim pulled out a box cutter and swung it towards him a couple of times. He grabbed her arm, spun around behind her and picked her up. (J.A. 930-34). He claimed he was attempting to carry her, but she was not calming down and she began to twist around. (J.A. 934-35). He claimed he caught his right foot “on something” then “stumble[d]” and eventually fell. According to Stewart, the victim fell out of his arms and he fell on top of her. (J.A. 936). He testified that “she turn[ed] over and she [sat] up.” (J.A.

936). He asserted that though she would “usually just jump[] right back up” if she fell, this time she did not stand. He testified that instead, she twice called his name and asked for help, but, thinking it to be a “hard to get” ploy, Stewart did not respond. (J.A. 936-37). He testified that “the third time ... when she called my name it sounded like – it sounded like she’s getting scared, but her voice was low” then, “she was like Stew, I’m happy. I’m happy. I’m happy ... back to my baby,” at which point she fell over, making “strange sounds” that “didn’t sound human.” (J.A. 937). He testified that he saw blood coming from her mouth, “realized something was wrong with her,” and started toward a nearby home. (J.A. 937-38). As he carried her, he smelled urine and a bowel movement, then laid her back down. (J.A. 937-38). He testified he was dazed, then began to shake her, and “bent down to her mouth and tried to blow in it,” but stopped as blood came into his mouth. (J.A. 939). He left to find his friend “Bo” (Stanton Wright). He had a beer and was looking for his cigarettes when he saw Wright driving nearby. (J.A. 940). When he connected with Wright, he took him to see the body. (J.A. 940-42). He claimed that he told Wright that he had tripped in explanation of what happened. (J.A. 943).

B. Evidence from the 2003 Jury Trial on Cause of Death:

Forensic pathologist, Dr. Russell Harley, testified at trial concerning the

findings from the autopsy.⁵ Dr. Harley testified that the body was “badly charred on the outside” but he could examine the remains internally for signs of trauma. Though there were multiple broken bones, he could differentiate from those caused by the fire or inflicted before the fire because he could look for signs of bleeding. (J.A. 278). Dr. Harley ruled out injury for certain fractures due to the lack of bleeding, attributing the brokenness to the heat of the subsequent fire. (J.A. 278). However, in the skull, he found evidence of trauma:

In the skull, in the right-hand side under the parietal bone ... There was a fracture here that was epidermal hemorrhage, which is hemorrhage on top of the heavy lining of the surface of the brain. And there was a subdural hemorrhage as well so there was a big blood clot in the ear.

(J.A. 278-79). He agreed that this finding contributed to his finding of blunt force trauma, but he could not opine on what “hit her head or” what “her head hit.” (J.A. 279). He opined “something cracked her skull” and she had internal bleeding. (J.A. 279). Because her body was so charred and damaged from the fire, he could not opine on external bleeding, bruises, or defensive wounds. (J.A. 279-80). He found, however, that the hyoid bone and structures around that area were intact or revealed no abnormalities, so there was no evidence of strangling. (J.A. 280). He concluded

⁵ At the time of trial Dr. Harley testified that he had 30 years of experience with the Pathology Department at the Medical University of South Carolina, and had been qualified as an expert in forensic trials multiple times, and, specifically, approximately 6 times in “forensic homicide trial[s].” (J.A. 274-75). Stewart did not object to Dr. Harley being qualified as an expert in forensic pathology. (J.A. 276).

that his opinion of cause of death was “blunt force trauma to the right parietal.” (J.A. 281).

Under cross-examination by Stewart, the doctor agreed that it was possible that the skull fracture could have occurred as a result of a fall. (J.A. 282-83). He explained that even though the body was burned such that they could not see the surface, he did see a fairly sizable skull fracture. It may have been enlarged because of the heat, he stated, but the fracture was caused by something hitting the victim’s skull. (J.A. 283).

On redirect, the pathologist stated the victim would have had to fall on something hard enough like a root or a rock for such injury, but did not think “ordinary turf” would have caused it. He opined a branch may have be able to cause that type of injury, noting the victim had “a small, thin skull, and it wouldn’t take a whole lot of force to fracture it.” (J.A. 284).

On re-cross by Stewart, Dr. Harley confirmed that victim had to fall hard to fracture the skull. He stated it was unlikely, but possible, that it would be caused if she fell by herself, but acknowledged that it would be more probable if she were to fall and Stewart fell on top of her. He opined that the victim would have had to hit something “fairly large” to cause a fracture the size of a lemon, as observed, and most likely “something about six inches wide by six or more inches long.” (J.A. 284-86).

C. Other Relevant Trial Evidence.

Stanton Wright testified and confirmed that Stewart called him and that he went to meet Stewart at Stewart's request. Wright recalled that Stewart provided two flashlights, and together they walked toward the wood-lined path. Wright testified that on the way, Stewart asked if Wright was his "homeboy, right?" (J.A. 307-309). Stewart shined a light on the victim's body, and Wright became upset. (J.A. 308 and 312). Wright, who was demonstratively hesitant at trial, was asked to read his prior statement to police which reflected, "As we walked towards the path, he told me that [the victim] said that she had sex with another dude before she had sex with him and she didn't shower. And then he - - and then he said that he flipped." (J.A. 311). Wright testified that Stewart asked him to help Stewart move the victim's body. (J.A. 316). On cross-examination by Stewart, Wright agreed that the victim appeared to want to see Stewart when they were initially meeting that night, did not appear "upset about anything." (J.A. 322-23). Though on cross-examination, Wright also agreed with Stewart when asked if Stewart could have said "tripped" instead of "flipped," (J.A. 327), when pressed on redirect, Wright testified, "If I recall, he said he flipped." (J.A. 334). He testified that he did not see the victim's "head area" when Stewart showed him the body. (J.A. 336). He further testified that he never saw victim with a box cutter. (J.A. 337).

Anthony Watson, who was in school with the victim at the time, was in a

relationship with the victim round the time of her death. He testified not only that Stewart had threatened him (calling multiple times), but also that he heard Stewart on a phone call threaten the victim should she see another man. (J.A. 417-18; 420-21). Watson stated Stewart was angry because victim was seeking another man. (J.A. 419-20). Watson confirmed that he had been intimate with the victim for a “[m]onth or longer” before she died. (J.A. 422). Watson testified that he also received threatening calls after Stewart was in jail indicating Watson was “next and all that.” (J.A. 420-21).

Deloris Watson, Anthony’s mother, similarly testified about phone calls to her son. She testified that on one occasion she picked up the home phone, heard an announcement from a correctional institution or detention center, and heard “you next.” She testified that she listened to several of Stewart’s calls to her son where “he was fussing about the next time, you’re on your way, too,” and also heard in one call, “[t]he next time you leave the house, you better tell your mother you won’t see her no more. ... You better kiss her before you leave.” (J.A. 431-33; 437; 440). She clarified on redirect that she received calls from Stewart at her home both before and after the victim’s death. (J.A. 443).

Officer John Boston testified Stewart first told him that Stewart and the victim “got into an argument” at approximately 4 a.m. while on a path behind Stewart’s house, and “that she pulled a knife on him.” (J.A. 491). As he tried to hold her, the

victim fell and Stewart heard a “popping sound,” then he fell on top of her. When he tried to pick the victim up, she was “limp,” was not moving and was unresponsive. (J.A. 491). “He mentioned something about she had got mad about another female.” (J.A. 491). In a written statement, Stewart claimed the victim had a razorblade but reiterated they had struggled. He then claimed he tripped and fell on top of the victim. (J.A. 496). The officer testified that Stewart stated that after he went home and got a flashlight, he had assumed she was dead because he had “checked her heartbeat and pulse before [he] left where she was lying.” (J.A. 496-98).

Officer John Valdaleso testified that he spoke to Stewart when he responded to a call for police aid at Stewart’s house after Stewart burned the body. According to the officer, Stewart insisted that he wanted to tell Officer Valdaleso what happened, and Stewart declared that he and victim had an argument, that she fell and made “funny sounds,” he then walked to his house, but, when he later returned, she was no longer breathing. Stewart told the office he panicked and tried to dispose of the body. (J.A. 517-20).

Officer Dallas Gurley testified to one writing from Stewart mailed to her and one Stewart hand-delivered. The mailed document indicated Stewart was enraged over the victim’s involvement with another man. (J.A. 573). The other document indicated the possibility of shifting blame to another; and suggestions on how to interview for favorable facts even though Stewart had not previously indicated

someone else may have killed the victim. (J.A. 579; 584-89).

Also of note, Stewart questioned Monique Bright, who was in the car with Stewart and Wright when they picked up the victim, about the victim's mood. Bright testified, in response to Stewart's own questioning, that victim was "happy," she and Stewart "were playing around." (J.A. 352).

The jury ultimately found Stewart guilty of the lesser included offense of voluntary manslaughter.⁶ The trial judge sentenced Stewart to thirty years imprisonment, and nine years on the discretion of human remains charge.

D. Pursuit of Prior State and Federal Remedies:

After sentencing, Stewart pursued a direct appeal and state post-conviction relief (PCR) proceedings including an appeal from the denial of relief. (See J.A. 962-63). After completing ordinary state remedies, on March 31, 2009 Stewart filed his first federal habeas action in the District Court of South Carolina. That action was denied on the merits in March 2010. (See J.A. 982-98).

Stewart then filed a motion for a new trial in his general sessions case on or about February 9, 2015. He alleged only a claim of juror misconduct. (J.A. 999-1001). He later alleged the pathologist who testified a trial was not adequately qualified. (See J.A. 1013). Stewart filed another motion for new trial on April 13,

⁶ In South Carolina, the offense is defined as "the intentional and unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." *State v. Niles*, 772 S.E.2d 877, 880 (S.C. 2015).

2015, and alleged repressed memories, first shared in June 2014, that the victim died not by his hand but by suicide. (See J.A. 1009.1).⁷ He alleged that he had “completely repressed the memory of how Ms. Allen died” and only recalled in June 2014. (J.A. 1009.5). He did not, however, allege by what means or provide any detail.

Counsel for the new trial motion focused only on the first two allegations, noting at a May 26, 2016 hearing:

In [speaking with] Mr. Stewart and *advising him about the merits of these motions we’ve agreed to only go forward on two motions which is the first and the second.* The first alleging juror misconduct and the second one as to the qualifications of the forensic pathologist.

(J.A. 1013) (emphasis added).⁸

Counsel further clarified that as to the pathologist, “it’s not a Brady violation that he is alleging. I guess the best way of putting it is the information he researched recently caused him to question the doctor’s qualifications and that there may have

⁷ Stewart alleges the third motion was not actually filed, (Doc. 33 at 14)); however, the copy in the Joint Appendix bears a filed date stamp from the Marlboro Clerk of Court, showing a date within one week of the date on the motion, and indicating it was actually filed. (See J.A. 1009.1).

⁸ Stewart argues in his brief to this Court that “counsel advised that he was willing to pursue only the first two arguments” citing this page of the Joint Appendix, and further argues “as such the third argument was not filed with the court,” citing J.A. 1009.1. (Doc. 33 at 14). As explained in note 7 above, the documents submitted actually does show a clerk of court stamp. Further, the record shows, as quoted, an agreement between Stewart and counsel, not a unilateral decision by counsel as suggested in Stewart’s brief. Stewart’s assertions do not square with the record.

been an alternative explanation for why the victim's skull was fractured." (J.A. 1050-51). The trial judge denied the motion. (J.A. 1051-52).

In 2018, Stewart filed a successive PCR action claiming:

- (a) Newly discovered evidence of Brady violation (Pathologist)
- (b) Newly discovered evidence of Due Proces[s] violation (Pathologist)
- (c) Newly discovered evidence of Brady violation (SLED Files)

(J.A. 1228-29).⁹ He mentioned "repressed memories" as part of the reason for additional investigation into the pathology report. (See J.A. 1128). Stewart also requested discovery regarding, specifically information from and pertaining to the autopsy. (J.A. 1234-35). The State moved to dismiss the action arguing that Stewart failed to show new evidence of material facts, and his application was untimely, barred by laches and improperly successive. (J.A. 1236-49).

After a hearing held August 22, 2019, the PCR judge denied additional discovery and dismissed the application, concluding:

The Court finds that Applicant has failed to allege facts sufficient to support his claim of newly discovered evidence. Each of Applicant's allegations involve "facts" that were, *or could have been*, discovered before his trial, and are founded in part upon speculation as to what further investigation might produce. Concordantly, Applicant's motion

⁹ Stewart filed another motion for a new trial on or about May 7, 2018, and alleged substantively identical grounds as those alleged in the 2018 PCR action. (See J.A. 1289). The Marlboro County Public Index still lists that motion as pending. Respondents note that Rule 29(b), South Carolina Rules of Criminal Procedure requires filing within one year of discovery. The 2018 filing clearly violates that time requirement in addition to be duplicative.

or discovery must be denied.

As to the pathologist's findings, Applicant himself concedes that *more than a year* prior to trial, the State moved to amend the indictment on the basis that the autopsy report included some conjecture and could not definitively conclude whether [REDACTED] Allen was killed by a blow to the head or by the burning of the body. As the State *explicitly stated* the potential grounds for impeachment of the autopsy in a pre-trial hearing with Applicant present, Applicant needed only exercise the barest minimum of diligence to discover that issue: he only had to listen. Applicant did listen, as he indicates again in his own application that he pled guilty to desecration of human remains by burning Allen's body, then sought to quash the amended murder indictment on the basis that the autopsy report stated Allen was killed by blunt force trauma, not burning, at which time the State *again* stated in no uncertain terms that Victim could have died from blunt force trauma *or* burning.

....

(J.A. 1292-93) (*See also* J.A. 1292, "This Court, in determining the applicability of procedural bars and the *prima facie* validity of a claim of after-discovered evidence, is first concerned with whether the 'evidence' relied upon for the claim was known or knowable at the time of trial. The answer in the present matter is indisputably that the potential ambiguity in the pathologist's findings was known to Applicant at the time of trial, and he attempted to pursue it.").

Additionally, the PCR court considered and rejected any possibility that the purported "new evidence" could have reasonably impacted¹⁰ the probable result:

¹⁰ Under South Carolina law, a defendant seeking a new trial on assertion of new evidence is required to demonstrate that the evidence to be offered: "(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered

... Assuming *ad arguendo* that another pathologist would rule the fractures to the side of the skull were thermal injuries and not the result of blunt force trauma, other substantial evidence existed in the record to show that Allen perished from such trauma. Indeed, Applicant's own testimony at trial insisted that her passing was the result of accidental blunt force trauma. A pathological finding to the contrary would arguably impeach *Applicant* as much as the State's case against him. That Applicant now seeks to change his story and assert that Allen perished from suicide, and not in the fashion testified to at trial, is inconsequential. Whether newly-discovered evidence is material, and whether it would change the outcome at trial, is considered in the context of the other evidence presented *at trial*, and not in the context of the self-serving, unsupported, and vague "alternative facts" presented by the convicted individual long after trial. Given Applicant's conspicuous lack of detail, it is evident to this Court that he seeks to secure a different pathological finding, and amend his memory to fit it, so many years beyond the original killing that the State would struggle to disprove him.

As to the pathologist's testimony, the testimony was known to Applicant when it was given, and as set forth above, the question of whether Allen's injuries were the result of blunt force trauma or the burning was known to Applicant more than a year before trial. Any issues Applicant may have had with the accuracy or credibility of the pathologist's testimony could have and should have been raised at trial. Furthermore, there is no indication of deception in the pathologist's testimony: he observed epidermal hemorrhage and subdural hemorrhage those observations contributed to a finding of blunt force trauma. That the same observations could support an alternative theory as to how Allen died does not cast the pall of deception upon the pathologist's testimony, such that the State had any obligation to "correct" it. Furthermore, Applicant's "discovery" of other instances where the pathologist misdiagnosed the cause of death of a person is merely impeaching.

(J.A. 1296-97).

before the trial; (4) is material to the issue of guilt or innocence; and, (5) is not merely cumulative or impeaching." *Hayden v. State*, 299 S.E.2d 854 (S.C. 1983).

Additionally, the PCR court found the SLED investigators' notes appeared to have been turned over by the prosecution in 2003; even so, the judge reviewed the specific notes submitted and resolved "the notes do not reveal anything which would either change the result if a new trial were conducted, nor anything material to the question of guilt or innocence, nor anything beyond the thinnest possible basis for impeachment." (J.A. 1297). The PCR judge noted that Stewart depended upon an argument of what was not found, not new evidence. (J.A. 1297).¹¹ The judge reasoned Stewart "*did* argue and argumentatively question the inadequacy of the investigation in his lengthy closing argument at trial." (J.A. 1297). The judge resolved that Stewart could not credibly contend he was unaware of "what the State's case against him lacked." (J.A. 1297). The PCR judge noted that, consistent with the record evidence, "the State argued any deficiencies in the investigation were the consequence of [Stewart]'s own efforts to destroy evidence and mess up the crime scene." (J.A. 1297).¹²

¹¹ According to the assertions in his motion for authorization, Stewart also misreads the notes to assert Agent Stuckey recorded that the agent was "instructed not to collect other potential evidence..." (Doc. 2 at 23). The note actually reflects there were "no further requests" and Agent Stuckey left the scene. (J.A. 1223).

¹² Indeed, at trial, one issue arose on recovery of the victim's glasses days after the initial investigation, with an officer testifying that the glasses were not likely "missed" as suggested: "If anything, they would have been broke from somebody stepping on them. When we found them on the 13th, they were just lying there on top of lea[ves], no moisture on them as if they stayed there overnight or been there for a couple of days. (J.A. 578-79). The trial judge subsequently asserted that an

Having shown no exception for actual “newly discovered evidence,” the PCR court found the action barred by the state statute of limitations, laches, and the statutory prohibition against improperly successive applications. (J.A. 1298-1301). On appeal, the Supreme Court of South Carolina determined that Stewart, who was represented by counsel, “failed to show there is an arguable basis for asserting the determination by the lower court was improper” and dismissed the notice of appeal.¹³ (See Appellate Case No. 2020-000900, Supreme Court of South Carolina).

SUMMARY OF THE ARGUMENT

The focus of this action is narrow. The question: can Stewart make a prima facie showing that he may meet the limited exceptions that would allow a successive federal habeas action to challenge his state conviction? Stewart has failed to show he does, and the petition should be denied.

Whether the Court may allow a successive action is governed by 28 U.S.C. § 2244(b). Stewart specifically relies upon the “new facts” provision of (b)(2)(B) to show he should be allowed to file in the district court. (Doc. 2 at 11). Stewart faces

investigation should be opened “for the obstruction of justice and tampering with evidence” citing the need to determine “why those glasses appeared out there the way they did....” (J.A. 582-83).

¹³ Rule 243(c) of the South Carolina Appellate Court Rules requires that when a PCR action is disposed of “as successive or ... untimely,” in order to secure appellate review, the applicant must present an explanation with the notice demonstrating “an arguable basis for” claiming error. *Id.*

an immediate and insurmountable hurdle to any relief – he fails to present a “new factual predicate” *for the three claims*. Rather, Stewart submits he has repressed memories (first recalled in 2014) that the victim actually committed suicide by some unidentified method. Whether or not repressed memories may form some basis for a federal court reviewing an authorization motion to make a finding of “new” evidence as contemplated by the statute, there is no new evidence here. Essentially, Stewart’s alleged new memory that his victim committed suicide merely leads him to wish to challenge (again) the pathologist’s testimony given at the 2003 trial on the cause of death. He seeks permission for a hearing in federal court to show cause to excuse the default, and to expand the state court record for purposes of the claims regarding the cause of death (claims one and two). He can do neither under the limitations of 28 U.S.C. § 2254(e). *Shinn v. Martinez Ramirez*, 596 U.S. ___, ___, 142 S. Ct. 1718, 1730 (2022).

Further, to obtain authorization, Stewart must show that “but for constitutional error, no reasonable factfinder should have found the applicant guilty of the underlying offense.” § 2244(b)(2)(B)(ii). Stewart submits that his “inability, due to a cognizable mental disorder, to participate at trial and defend himself ... constitute constitutional error” under § 2244(B)(ii). (Doc. 33 at 37). He fails to show a constitutional error as allegations regarding lack of memory of the crime do not automatically render a defendant unable to stand trial. *See, e.g., State v. Emerson*,

375 N.W.2d 256, 261–62 (Iowa 1985). But again, Stewart’s assertion of repressed, though clearly vague, memories does not go to the claims presented, but only to his basis to excuse the procedural bars to review the pathologist-related claims on the merits. Therefore, he cannot meet the terms of § 2244(2)(B).

Finally, this Court may review the claims individually, in limited fashion, both for procedural and merits viability. The state court record shows that Stewart raised the repressed memory assertion in prior state litigation *but with advice of counsel withdrew that claim(s) related to that allegation*. (J.A. 1013). Stewart is at fault for not developing facts in state court. Further, there is nothing “new” about Stewart’s request to challenge the pathologist’s opinion on cause of death. Stewart previously challenged the findings on cause of death in his trial, and he has not shown any change in the opinion of the evidence upon which the pathologist based his opinion. Stewart has failed to show anything actually suppressed that could possibly make out a *Brady* claim or any purported false that could support the presentation of false evidence claim. Lastly, as to the investigative notes claim, the state PCR court found that investigative notes were provided to Stewart in 2003; and, even had the precise notes Stewart references not been included, there was nothing of material value in the notes. Stewart failed to show a *Brady* error, and further here, on this record, he fails to show anything in the notes “clearly and convincingly outweigh the ... untainted evidence....” *In re Williams*, 330 F.3d 277, 284 (4th Cir. 2003). In short,

Stewart's claims are time-barred, defaulted and fail to show viability. It would be futile for Stewart to return to the district court.

ARGUMENT

Whether the Court may allow a successive action is governed by 28 U.S.C. § 2244(b).¹⁴ Stewart relies on the “new factual predicate” portion of the statute. (Doc. 2 at 11). Stewart essentially contends he has shown a prima facie case that “the factual predicate for the claims could not have been discovered previously through the exercise of due diligence; and” that “the facts underlying the claim, if proven and viewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense,” as required under § 2244(b)(B)(i) and (ii). However, the “new facts” he seeks to explore go to excuse for the procedural default for each of the three claims he wishes to present.¹⁵ Though Stewart spends much time on the theoretical argument of

¹⁴ There is no contest that Stewart's requested application would be a successive application. He seeks to challenge his August 1, 2003 state conviction for voluntary manslaughter. His first § 2254 action was denied on the merits in March 2010. (*See* J.A. 982-98). There was no issue raised in that action regarding the autopsy findings or the cause of death. (*See* J.A. 989-98).

¹⁵ The proposed application submitted with the motion for authorization includes a fourth issue, (*see* Doc. 2 at 55), but that issue was not addressed in the motion or the brief and should be presumed abandoned for purposes of this litigation. *United States v. Al-Hamdi*, 356 F.3d 564, 571 n. 8 (4th Cir. 2004) (appellant's failure to raise an argument in the opening brief may be deemed abandonment).

whether repressed memories could show facts sufficient to meet the prima facie showing under § 2244(b)(2)(B), the only adequate answer to the query would be it depends on the nature of the memory alleged in relation to the other facts in the case, and the actual claim at issue. Here, there is no new memory supporting a new and specific cause of death. Consequently, Stewart assuredly cannot show a new factual predicate for a claim. As to Stewart's argument that his alleged new memory shows cause to excuse any default or timeliness issue, factually, Stewart finds himself in the same boat. He fails to allege anything actually new describing a cause of death different than that presented at trial. Even so, the statute does not recognize such an argument for mere procedural bar avoidance.

- I. The new "factual predicate" referenced in 28 U.S.C. 2244(b)(2)(B) expressly refers to "the factual predicate for the claim," thus, Stewart's alleged repressed memory offered as a basis to avoid procedural limitations does not meet the narrow statutory exception.

"When Congress supplies a constitutionally valid rule of decision, federal courts must follow it." *Brown v. Davenport*, 142 S. Ct. 1510, 1520 (2022). "In [the Antiterrorism and Effective Death Penalty Act of 1996,] AEDPA, Congress announced such a rule." *Id.* Congress intended the AEDPA review provisions to be difficult to meet. *See, e.g., Harrington v. Richter*, 562 U.S. 86 (2011). The provisions limiting authorization for successive actions are no different. *In re Williams*, 364 F.3d 235, 238 (4th Cir. 2004) ("Congress enacted § 2244(b) as part of ... (AEDPA) in order to raise the threshold that a prisoner must cross to obtain review of claims

presented in a successive application for collateral review”). AEDPA generally limits “every state prisoner to one federal habeas challenge.” *In re Stevens*, 956 F.3d 229, 232 (4th Cir. 2020). “For any successive federal habeas application, AEDPA requires a prisoner to meet strict procedural and substantive gate-keeping requirements before federal courts can reach the merits of that successive application.” *Id.* The Supreme Court, in context of other AEDPA provisions, has found it inappropriate to apply an equitable exception to a clear limitation in the text of the statute. *See Shinn v. Martinez Ramirez, supra.*

Stewart asserts that he has “recovered memories ... that the victim died by suicide,” (Doc. 33 at 10, brief at p. 1), but offers no new allegation of fact or even indication of *how* the victim would have committed suicide. He asserts not only that this Court should grant the authorization to file “and remand the case” for “factual development,” but also to allow “for additional exculpatory information to be considered.” (Doc. 33 at 11). However, he expressly argues that his “recovered memory” should allow him to avoid the procedural default and timeliness bars, and supports a claim of actual innocence sufficient to excuse those bars. (Doc. 2 at 26; Doc. 33 at 28-25). Again, it is inescapable that no new fact has been introduced for discussion at all.

It is the application *claims* that must meet the new factual predicate exceptions, not the development of cause to excuse the default. *In re Williams*, 364

F.3d at 239 n. 1 (citing § 2244(b)(3)’s reference to “the prima facie showing that *the application* satisfies the requirements of this subsection”) (italics in original). The proposed claims are truly at issue, not Stewart’s “gateway” claim of “repressed memory.” *See Schlup v. Delo*, 513 U.S. 298, 314 (1995) (claims of actual innocence offered as excuse for a default makes the claim “procedural, rather than substantive” in nature).¹⁶ A review of claims one and two shows that Stewart ultimately wishes to challenge the pathology report, or failure to provide certain notes from the investigation. As to the cause of death, such facts were not only available in the prior state and federal litigation, Stewart challenged the opinion at his trial. As to the remaining claim on investigative notes, Stewart does not show any connection between “repressed memory” and the issue of the disclosure. As such, if repressed memories could be considered as part and parcel of the § 2244 analysis, Stewart does not make a “prima facie” showing of the necessary predicate for authorization. *See* § 2244 (b)(3)(C). Further, under the restriction of 28 U.S.C. § 2254(e), he cannot present new evidence on the claims raised.

¹⁶ Moreover, though Stewart apparently seeks to claim “actual innocence” as a request to excuse the late filing, nothing offered in this latest filing “exonerate[s]” him. If for the sake of argument one assumes his assertion of “repressed memory” is true, and the victim committed suicide (by means which have yet to be revealed in his theory), he is left with his own multiple statements to the contrary and no explanation of how the purported “suicide” could have been accomplished, or why he would “panic” and burn the victim’s body because of her suicide.

II. Evidence of Stewart’s alleged new memory may not be submitted in district court under the restrictions of 28 U.S.C. § 2254(e) making his request for additional proceedings futile.

Stewart wishes to develop his “repressed memories” excuse for the default of the underlying claims/actual innocence assertion, and then have the district court accept “new evidence” of his changed, but far from specific, theory of cause of death. His documents, as attached to the brief, reflect assertions going to not only mental state generally,¹⁷ but also substantive assertions reflective of a new theory for a defense *contrary to that presented by this Petitioner acting as his own counsel at trial*. It would be inappropriate in habeas review to accept any of these offered documents to show a new factual basis for a new claim where such documents have not been at least offered to the state court. *Shinn v. Martinez Ramirez*, 142 S. Ct. at 1730 (“only rarely may a federal habeas court hear a claim or consider evidence that a prisoner did not previously present to the state courts in compliance with state procedural rules”); *see also Williams (Michael) v. Taylor*, 529 U.S. 420, 437 (2000) (“For state courts to have their rightful opportunity to adjudicate federal rights, the

¹⁷ The documents contain numerous instances of hearsay and irrelevant assertions but significantly, the lead document, a “Confidential Psychological Evaluation,” repeatedly notes that the evaluation is admittedly limited – it reflects several references to the failure to give “standard psychological tests” generally necessary for forensic evaluation, and notes malingering tests were not given or testing declined. (See Doc. 34 at 13-53). This instantly calls into question the reasonableness of relying on the evaluation for any purpose. Further, there are multiple factual allegations on personal background or perceptions reflected in the document that are wholly irrelevant to guilt or innocence.

prisoner must be diligent in developing the record and presenting, if possible, all claims of constitutional error. If the prisoner fails to do so, himself or herself contributing to the absence of a full and fair adjudication in state court, § 2254(e)(2) prohibits an evidentiary hearing to develop the relevant claims in federal court, unless the statute's other stringent requirements are met.”). *Accord Shoop v. Twyford*, 596 U.S. ___, ___, 142 S.Ct. 2037, 2046 (2022) (“[r]eviewing Twyford’s request for transportation under the proper standard is straightforward, because his motion sheds no light on how he might persuade a court to consider the results of his testing, given the limitations AEDPA imposes on presenting new evidence”).

The allegation of “new facts” from “repressed memory” is not raised for the first time here. Stewart raised the claim in state court and then waived the presentation and development of the claim in state court in his new trial proceedings. (J.A. 1009.1 and 1013). Stewart failed to develop the facts. § 2254(e) bars him from submitting new evidence to a federal court.¹⁸ But again, the alleged “new evidence” has never been specific as to even effectively challenge the death by blunt force trauma.

¹⁸ Neither does Stewart show that he can meet (e)(2)(B), which is similarly required. Stewart offers a new theory, but no new specific recollection. This is far from “clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.” § 2254(e)(2)(B). Moreover, Stewart fails to show a constitutional error in regard to his memory allegation for cause to excuse the procedural deficiencies. This is more fully addressed below in the following section.

III. Stewart's assertion of a Due Process violation based on alleged memory lapse as affecting his competency to stand trial does not show a constitutional violation as required under 28 U.S.C. § 2244(b)(2)(B)(ii).

Stewart argues the "constitutional error" that satisfies 28 U.S.C. § 2244(b)(2)(B)(ii) is his inability to recall "facts that would have exonerated him or advise his standby counsel." (Doc. 33 at 36). He asserts that his "inability, due to a cognizable mental disorder, to participate at trial and defend himself ... constitute constitutional error" under § 2244(B)(ii). Stewart's argument fails factually and legally.

The argument fails factually because Stewart was evaluated prior to trial and found competent. On June 24, 2002, the trial court conducted a competency hearing and received testimony and a report on the evaluation. (*See* J.A. 1). The examiners detected no major mental illness. (J.A. 11). However, Stewart did display:

... an ongoing or at least onset of a pattern of maladaptive behavior characterized by things like a failure to plan ahead, a reckless disregard of the safety of self or others, irritable in recollection, deceitfulness, irresponsibility, failure to conform to social norms and so forth.

And based on the information he was able to give us, he was able to give us sufficient information to qualify him for this diagnosis. In other words, he gave us an account of symptoms that fit the profile of somebody that is diagnosed with an anti-social personality disorder according to the DSM-4.

That diagnosis is not indicative of a mental illness, per say. It is more a pattern of behavior that clusters into something that is clearly diagnosable.

(J.A. 11-12).

Former counsel, then standby counsel, also offered, with Stewart's permission, an independent evaluation that demonstrated no concern. (J.A. 23-24).

Considering the information received at the hearing, the state court found:

... that at the time of the alleged event, December 6, 2000, that Mr. Stewart was able -- did understand right from wrong and that he was understand -- he understood the nature of the charges at that time.

And that he did have the capacity to conform his conduct to the requirements of the law. Further, this date, and at all times in between, that Mr. Stewart understands the nature of the charges and is able to represent himself in this matter and is mentally competent to do so.

And, therefore, he is competent to stand trial on these matters. ...

(J.A. 24).

Stewart has not directly challenged that determination. Instead, he relies on the allegation of "repressed memories." This, too, is insufficient and shows the legal error in Stewart's argument.

The Supreme Court has established the test for competency to stand trial as whether the defendant " 'has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings.' " *Dusky v. United States*, 362 U.S. 402, 402 (1960) (per curiam). It is not a requirement that a defendant be able to admit recollection of the crime.¹⁹ See, e.g., *State v. Hill*, 604 S.E.2d 696 (S.C. 2004)

¹⁹ While not enough to call into doubt competency, repressed memories may be argued as a basis for new proceedings depending on the details of the disclosure and

(resolving capital defendant's head injury and claimed memory loss insufficient for finding him not competent to stand trial). Simply, "[a]mnesia on its own will not render a criminal defendant incompetent to stand trial." *State v. Lyman*, 776 N.W.2d 865, 874 (Iowa 2010); *State v. Brooks*, 25 495 N.E.2d 407, 413 (Ohio 1986) ("Assuming, *arguendo*, appellant does suffer from psychogenic amnesia, this fact alone would not render him incompetent to stand trial. Numerous jurisdictions have considered the question and are virtually in unanimous agreement that amnesia alone is not sufficient to render the accused incompetent to stand trial."); *State v. Emerson*, 375 N.W.2d 256, 261–62 (Iowa 1985) ("It seems to be a nearly unanimous view among the jurisdictions which have considered the question that amnesia alone will

the facts of the prior proceedings. For example, in *State v. Massey*, 86 N.E.3d 30 (Ohio App. 11 Dist. 2017), the Ohio Court of Appeals considered whether a defendant should be allowed to withdraw his guilty plea to murder upon the allegation that "after psychiatric treatment in prison, he now knows the events resulting in [the victim's] death were an accident." *Massey*, 86 N.E.3d at 34. The Court of Appeals found no error in the trial court's having denied the motion finding that the existing record did not support a theory of accident. The Court of Appeals specifically noted that Massey had not claimed an absence of memory during his statement to police, but claimed was scared of the victim and stabbed him after stomping him to ensure the victim "would not hurt him." *Id.* Further, the Court of Appeals distinguished an opinion from the Fifth District in Ohio, *State v. Bennett*, 5th Dist. Stark No. 2004CA00369, 2006-Ohio-5632, 2006 WL 3042955, because the defendant had consistently claimed a lack of recollection of the driving event that resulted in the death of another among other crimes, and evidence at trial indicated a question on the identity of the driver. *Massey*, 86 N.E.3d at 34. Here, the record shows Stewart is more like Massey than Bennett. Stewart never asserted a lack of memory, and instead actively pursued a defense of accident, describing the event in detail in argument and testimony.

not render an accused incompetent to stand trial.”); *Commonwealth v. Barky*, 383 A.2d 526 (Pa. 1978) (“appellant’s amnesia alone” insufficient to find denial of ability “to present a defense”).

Stewart has failed to show there is a constitutional violation based on challenging his competency to stand trial, and has not met this § 2244(b)(2)(B)(ii) requirement.

IV. The record shows that Stewart has failed to offer claims that are procedurally viable and possibly meritorious.

In reviewing an application for authorization to file a successive 28 U.S.C. § 2254 application, while this Court remains principally concerned with whether the movant may make the *prima facie* showing required under § 2244, the Court may also consider the procedural viability of the claims. *In re Vassell*, 751 F.3d 267, 271 (4th Cir. 2014). Viability is a logical concern as “[t]he statute ... simply does not require ... an exercise in futility.” *Id.* The review may even include lightly considering the possible merits of the claim as that would relate to the *prima facie* showing. *In re Williams*, 330 F.3d 277, 282 (4th Cir. 2003) (“While this determination may entail a cursory glance at the merits—for example, an applicant cannot show that he would not have been convicted “but for constitutional error” without adequately alleging some constitutional violation—the focus of the inquiry must always remain on the § 2244(b)(2) standards.”).

If Stewart would be allowed back into district court, the habeas corpus petition

would not be timely. Stewart's first two assertions rest upon speculation that the pathologist's testimony that the victim died as a result of blunt force trauma to the head was wrong and therefore a *Brady* violation exists because he was not told the conclusion was wrong. Stewart mischaracterizes this speculation as a constitutional violation. Contrary to the claim, the trial record definitively shows the autopsy pathologist's opinion was not suppressed. As argued in the Response opposing Stewart's motion, (Doc. 9 at 10), Stewart's current position shows, at most, a lack of due diligence on his part as he failed to pursue a request for an independent pathologist after he met with Dr. Harley prior to the trial. Critically, these same assertions concerning a possible other cause of death were available to Stewart at the time of his trial, appeal, or during his first PCR proceeding, and certainly his first habeas corpus action. There is nothing new, false or suppressed that would allow Stewart to make a *prima facie* case here.

Further, these assertions are *inconsistent* with Stewart's own prior statements. From the time of his arrest throughout the trial, he claimed that the death of the victim was accidental. Those statements do not evaporate simply because of Stewart's belated assertion of another theory.

Essentially, Stewart has mischaracterized the pathologist claim as a *Brady* violation and Dr. Harley's opinion testimony as false. At bottom, Stewart merely disagrees with the opinion (as he did at trial and later state actions). Stewart has not

shown that “the factual predicate for [any such] claims could not have been discovered previously through the exercise of due diligence.” 28 U.S.C. § 2244(b)(2)(B)(i). Similarly, attempts to raise the first and second claims in district court would be barred by the one-year statute of limitations in 28 U.S.C. § 2244(d)(1)(A).²⁰

As to Agent Stuckey’s notes, this claim was not only previously available, it was raised in a prior state action and found without merit. (J.A. 1297). In particular, the PCR court found investigative notes were disclosed in 2003, and even if these particular notes were not, the basis of Stewart’s argument for materiality was that “certain articles and refuse identified at the crime scene were not collected,” which the PCR court found “merely impeaching at best.” (J.A. 1297).²¹ And that little value, if any, was harmlessly omitted as Stewart “did argue and argumentatively question the inadequacy of the investigation in his lengthy closing argument at trial”

²⁰ Stewart’s reliance on *In re Stevens*, 956 F.3d 229 (4th Cir. 2020), is misplaced. Stewart offers “[t]here is no meaningful difference between the timeline of *In re Stevens* and that which exists here.” (Doc. 33 at 35). Consequently, his actions show diligence and timeliness not unlike Stevens. (Doc. 33 at 35). However, these matters are not comparable. In *Stevens*, a box of material was not disclosed until 2016, and within the box was an FBI report that reflected an estimate of the possible movement of the body through the river which was in tension with other testimony at trial. 956 F.3d at 235. Here, Stewart has of yet not disclosed any fact that is new, but relies on a vague assertion of suicide which is in direct contrast to the detailed story he told during the investigation and at trial.

²¹ Also of note, the Agent referenced his notes *during his testimony at trial*. (J.A. 257).

(which also, incidentally confirmed that he was aware of purported deficiencies in investigation). (J.A.1297). The PCR court also noted the State's counter to that argument was effective, as it highlighted Stewart's admitted destruction of the body and evidence of obscuring facts at the crime scene. (J.A. 1297). Further, Stewart does not actually tie the "repressed memory" allegation to excuse for failing to raise the investigative notes issue, and understandably so. There is no logical connection to this separate issue not involving what Stewart may or may not recall concerning the victim's death.²² There is no argument present that could avoid the statute of limitations regarding this claim.

Further still, Stewart merely wishes again to argue there was no evidence of a vicious struggle. Of course the large hole in his theory is that there need not be a vicious, prolonged or intensely bloody struggle to inflict head trauma. Further, the testimony at trial revealed that Agents Elvington and Stuckey took crime scene photographs when they arrived at the scene. (J.A. 247, 260). Most importantly, Stewart utilized the admitted photos of the crime scene to support his claim about the scene being covered with leaves, the existence of bloodstains and areas where

²² Again, while Stewart asserts that Agent Stuckey recorded he was "instructed not to collect other potential evidence," (Doc. 2 at 23), the note actually reflects there were "no further requests" and Agent Stuckey left the scene. (J.A. 1223). Stewart misreads the text of the note. *See* note 11, *supra*. When the plain text is reviewed, it is not clear how the handwritten notes show any exculpatory material.

they were located, and other items in the scene including boards on the path, a pack of cigarettes, a limb and a strip of metal and a stick, a number of roots near what he called a bloodstain. (See J.A. 621-25). Lastly, Stewart's suggestion that the notes reflect "no 'signs of a struggle' observed at the scene," (Doc. 33 at 31), he (again) misreads and/or misapprehends the note. (See note 22, *supra*). The note reflects that in "no part of the house was there any sign of a struggle," (J.A. 1222), but there was no allegation that there was a struggle inside the house.

Even assuming that the evidence in question was both withheld and favorable, Stewart would still need to show that "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." See *Strickler v. Greene*, 527 U.S. 263, 280-81 (1999). A *Brady* violation requires a defendant demonstrate that: (1) the evidence is favorable, *i.e.*, exculpatory or impeaching; (2) the evidence was suppressed by the prosecution; and was (3) material. (citing *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). To show the evidence is "material" means the defendant must establish there is a "reasonable probability" of a different result had the evidence not been suppressed. *Id.*, at 280. (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)).

Further, this Court must consider the prejudice requirement of § 2244(b)(2), and the "higher showing" of "whether, viewing the evidence as a whole, there is clear and convincing evidence that no reasonable juror would have convicted Blount

had the report been disclosed.” *In re Williams*, 330 F.3d at 282. If Stewart has not shown that the evidence in the report was material for purposes of *Brady*, he has even less chance for success in satisfying the higher standard under Section 2244(b)(2)(B)(ii). Simply put, the notes do not “clearly and convincingly outweigh the ... untainted evidence.” *In re Williams*, 330 F.3d at 284. The claim is not viable.

CONCLUSION

The motion for authorization to file a second or successive petition for habeas corpus should be denied.

Respectfully submitted,

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s/Melody J. Brown

By: _____

August 29, 2022

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), in that it contains **9,606** words according to the word count function of Microsoft Word and excluding parts exempted by Rule 32(f).

This brief also complies with the requirements of Fed. R. App. P. 32(a)(5) and (6), as it has been prepared in 14-point, Times New Roman, a proportionally spaced typeface.

s/Melody J. Brown

By: _____.

August 29, 2022

No. 21-278

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

IN RE: WELDON W. STEWART, JR.,

Movant.

ATTACHMENT TO RESPONSE BRIEF
(June 26, 2003 Transcript of Record)

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 INDICTMENT NOS.: 02-GS-34-1918
3 COUNTY OF MARLBORO) 02-GS-34-1919

4 THE STATE OF SOUTH CAROLINA,)
5)
6 PLAINTIFF,)
7)
8 -VS-)
9)
10 WELDON W. STEWART, JR.,)
11)
12)
13 DEFENDANT.)
14)

TRANSCRIPT OF RECORD

June 26, 2003
Darlington, S. C.

11 B E F O R E:

12 HONORABLE JOHN M. MILLING, Judge.

14 A P P E A R A N C E S:

15 DANIEL L. BLAKE, ESQUIRE
16 Assistant Solicitor, Fourth Judicial Circuit
17 Attorney for the State

17 WELDON STEWART, JR., DEFENDANT
18 PRO SE

19 AND

20 WADE R. CROW, JR., ESQUIRE
21 STANDBY COUNSEL
22 Public Defender for Marlboro County

23 LINDA W. MCCALL
24 OFFICIAL REPORTER
25

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1

EXHIBITS

2

NONE

INTRODUCTION BY THE COURT

4

THURSDAY, JUNE 26, 2003

INTRODUCTION BY THE COURT

THE COURT: This is the case of The State v. Weldon Stewart. There are two indictment numbers. They are 01-GS-34-120 charging this defendant with murder and 01-GS-34-121 charging this defendant with desecration of human remains.

Mr. Stewart is proceeding in a pro se fashion. However, Mr. Ronnie Crow, Public Defender for Marlboro County, has been appointed as his standby counsel.

Present at this hearing are Mr. Dan Blake on behalf of the State, Mr. Stewart, the pro se defendant, Mr. Crow, his standby counsel.

I had a hearing in this matter, I believe in Marlboro County, some motion hearings back in May. I do not recall the date as I do not have the notes from that term but I do recall that I was going to issue an order providing that certain individuals that Mr. Stewart wanted to meet with as potential witnesses, could have their names listed and I could give that information to the Department of Corrections where he is being housed but I'd also said that I needed to have that list of people either furnished that day or within ten days by someone, and nobody ever got me the list. So, I have not prepared an order to that effect.

I've been told by Mr. Blake since that time when he inquired about the order that the Department of Corrections won't allow anybody to come forward in that capacity. Is that my

RULING - TRANSFERRING DEFENDANT TO MARLBORO COUNTY

5

1 understanding, Mr. Blake?

2 MR. BLAKE: Yes, Your Honor. Talking to the legal
3 department at the South Carolina Department of Corrections, they
4 will not allow for witness interviews by someone who is in safe-
5 keeping.

6 THE COURT: Alright. Trial date on this is when?

7 MR. BLAKE: July 28th.

8 Now, I have spoken to - - or at least communicated with Earl
9 Hood at the Marlboro County Detention Center and, you know, it
10 seems like a good solution to this problem is having Mr. Stewart
11 taken back to the Detention Center now.

12 RULING - TRANSFERRING DEFENDANT TO MARLBORO COUNTY

13 THE COURT: Yeah, we are within thirty days of trial. So
14 I would ask that you prepare an appropriate order to have him
15 transferred from the Department of Corrections facilities back to
16 Marlboro County Detention Center facility so that his ability to
17 communicate with individuals will be enhanced by his being in a
18 smaller facility that doesn't have quite the restraints that the
19 other facility has.

20 MR. BLAKE: And I think in that regard that the list of
21 witnesses, while probably helpful logistically for the Warden, is
22 not the same kind of strict requirement that it was at SCDC.

23 THE COURT: Alright. That resolves that issue.

24 Now, you also indicated to me that you felt that Mr. Stewart
25 had some other issues that he wanted to bring to the Court. You

MOTION FOR FUNDS FOR WITNESS SUBPOENAS

6

1 requested that this hearing be arranged for today's date so
2 whatever that was could be handled.

3 MR. BLAKE: Thank you, Your Honor.

4 Mr. Stewart has a number of written motions that he has
5 presented to me, I believe it was last week, that he would like to
6 go forward on.

7 THE COURT: Alright. Very good.

8 Mr. Stewart, before we begin discussing each of your motions,
9 how many motions do you have?

10 MR. STEWART: I have five, sir.

11 THE COURT: Do you have a copy that I could follow along
12 with and look at your motions so that I know what's going on when
13 you're making the motions?

14 MR. STEWART: Yes, sir.

15 THE COURT: Alright. If you'd just hand it to Mr. Crow so
16 that he can bring it up so I can take a look at it.

17 (Mr. Crow hands copy listing motions to the Court.)

18 MOTION FOR FUNDS FOR WITNESS SUBPOENAS

19 THE COURT: Thank you.

20 Alright. The first request is a movement - - is a motion by -
21 - and I'm just going to go through them sort of as I have them in
22 front of me, Mr. Stewart - - is your motion to pay for funds to pay
23 for the service of subpoenas to defense witnesses.

24 In looking at Rule 13 of the South Carolina Rules of Criminal
25 Procedure, whereas there is a fee required and the payment of

RULING OF THE COURT

7

1 mileage and \$25 and such things as that in the civil side, I don't
2 see any requirement for money on the criminal side.

3 Mr. Blake, are you aware?

4 MR. BLAKE: No, Your Honor, and many witnesses bear witness
5 to the fact that we don't pay.

6 Certainly having Mr. Stewart at the Marlboro County Detention
7 Center would make things much easier, and the Solicitor's Office,
8 if need be, is certainly willing to cooperate and assist in any way
9 to get those subpoenas served. The Sheriff's Office is, obviously,
10 the agency that does that.

11 RULING OF THE COURT

12 THE COURT: So there won't be any money for the Sheriff to
13 serve your subpoenas, and the State says that if you need some
14 assistance in filling out those subpoena forms, they will assist
15 you in doing that but if you just want a group of subpoena forms,
16 ah, since Mr. Crow's standby counsel, I'll let him work with you on
17 getting the subpoena forms prepared, and then he can get them to
18 the Sheriff's Department for service.

19 Any problem with that?

20 MR. CROW: Your Honor, I will - - I will prepare the
21 subpoena forms for him, and I will deliver them to the Sheriff's
22 Department, and they make no charge to the Public Defender's Office
23 for serving.

24 They're a little slow about serving them but I'll - - I'll
25 give them to Sheriff's Department. I'm sure they might give them

RULING OF THE COURT

8

1 to the City but we'll get the subpoenas prepared and signed.

2 THE COURT: You need to get that information as to who you
3 wish to have subpoenaed to Mr. Crow as soon as you can, Mr.
4 Stewart, so that he can get those subpoenas prepared and start the
5 process. Since we know it's going to be on July 28th, he can go
6 ahead and start the process of getting the subpoenas prepared and
7 served as soon as you get him the names.

8 MR. STEWART: Sir, the only problem with that is that I do
9 have some out-of-state witnesses, one being from Connecticut, the
10 other from North Carolina.

11 THE COURT: Well, the problem that you have there is this
12 Court in South Carolina does not have jurisdiction over somebody in
13 another state. So a normal subpoena is not going to work to make
14 somebody from Connecticut come back to South Carolina.

15 Um, I'm trying to remember. There may be a - - -

16 MR. BLAKE: There is a quite complicated procedure, Your
17 Honor, that requires filing an Affidavit, going before the judge up
18 there but - - -

19 THE COURT: Do you have to go before the judge in - - and
20 he has to bring the person before him and make a determination as
21 to whether it's proper to issue a requirement that that person come
22 from out-of-state to another state?

23 MR. BLAKE: What we often do is mail or fax that subpoena
24 to the law enforcement officer, say, in Maryland, and, of course,
25 they will serve it. It's voluntary whether that person comes or

RULING OF THE COURT

9

1 not but that's often how we get witnesses here from out of the
2 area, and I would assume that these are for Mr. Stewart. I mean,
3 they are - - -

4 MR. STEWART: These are defense witnesses who have no problem
5 with coming to testify. The only thing that to be relieved from
6 their jobs, they would need subpoenas to say that they have to come
7 to court.

8 MR. BLAKE: Well, I'm sure Mr. Crow and his large office
9 staff will be able to coordinate that.

10 MR. CROW: If I may, Your Honor, I've had this problem to
11 come up before, and it's most difficult, and we get a subpoena, a
12 normal subpoena, and we present it to the District Court or the
13 Superior Court of North Carolina, and the Clerk up there has to
14 serve a Rule to Show Cause and bring the person in and then,
15 usually, the District Judge will direct the person to honor the
16 subpoena but it's a process that takes ten days to two weeks.

17 I think - - I think he's saying they will come if they have a
18 subpoena. We will prepare whatever subpoenas he needs using a
19 regular subpoena and have our Clerk of Court sign it and put a seal
20 on it, and, hopefully, that will work.

21 THE COURT: Alright.

22 MR. CROW: If he just wants someone to be relieved from a
23 job - - -

24 THE COURT: It may be - - it sounds like what you're doing
25 is you're trying to get some documentation so that the person won't

MOTION FOR PROFESSIONAL COPIES OF CRIME SCENE PHOTOGRAPHS

10

1 get fired for coming to court.

2 MR. STEWART: Yes, sir.

3 THE COURT: Alright. Well, Mr. Crow can - - as soon as
4 you give him those names, he'll work on getting that done but that
5 person will have to, of course, go to their employer and say, "I
6 have this subpoena to appear in court."

7 And if the employer goes along with a South Carolina issued
8 subpoena, you won't have any problems but if the employer says, "I
9 don't care. I'm not going - - I'm not going to have you honor a
10 South Carolina subpoena", then Mr. Crow may have to go through that
11 more complicated process that take some period of time. So,
12 particularly, as to anybody out-of-state, you're going to have to
13 get him that information as quickly as you can.

14 You know, if you've got names and addresses of those people,
15 give it to him today so he can go ahead and begin that process.

16 THE COURT: I think I do. If not, I can get it.

17 MR. STEWART: I think he already has that information from
18 the last time that we spoke.

19 MOTION FOR PROFESSIONAL COPIES OF CRIME SCENE PHOTOGRAPHS

20 THE COURT: Alright. Very good.

21 Alright. That takes care of a, um, that motion.

22 What is the - - when you have been provided with copies of
23 crime scene photographs, are these just, ah, photostatic copies or
24 do you have actual glossy copies like a duplicate copy of the crime
25 scene photograph? And what I'm looking at now is your motion for

RULING OF THE COURT

11

1 professional copies of the crime scene photographs. What have you
2 actually gotten?

3 MR. STEWART: I have - - I have copies of the photographs
4 with me, sir.

5 THE COURT: Alright.

6 MR. BLAKE: They are - - they are photocopies, Your Honor,
7 and the State has, upon receipt of this motion, spent about \$90,
8 something like that, for getting copies. I'm still getting this
9 together from the various agencies, and we certainly agree to
10 provide Mr. Stewart with those.

11 THE COURT: Do you have any at this time?

12 MR. BLAKE: We do, Your Honor. I would prefer to - - I
13 mean, I can show them to the Court but we would prefer to get them
14 a little more organized because we're getting - - I want to make
15 sure that it's complete.

16 And I do have a question in that regard. I have been in
17 contact with MUSC pathology. They do have slides from the
18 autopsy, and I guess I wanted a ruling from the Court whether we
19 should get a copy of those for Mr. Stewart also.

20 RULING OF THE COURT

21 THE COURT: MUSC has the ability to take its slides and
22 turn them into 8 1/2 by 11 type photographs. So, yes, I would
23 think that that would be the way is to have them converted to
24 photographs and provided as well.

25 MR. BLAKE: And can we make a motion for Indigent Defense

MOTION FOR PSYCHIATRIST & ADMISSION OF EVIDENCE

12

1 to be paying for the cost of these photographs?

2 THE COURT: I have no problems about Indigent Defense
3 paying for that. If you'll fix me up a little order that
4 provides for that, and if you could if you - - put in that order
5 that this be provided to him by July 10th so that any outstanding
6 agencies will know that they need to go ahead and get it in.

7 MOTION FOR PSYCHIATRIST & ADMISSION OF EVIDENCE

8 THE COURT: Alright. I am looking at a motion to obtain
9 a psychiatrist.

10 Alright. The alleged incident date is when? When is this
11 crime suppose to have occurred?

12 MR. BLAKE: December 6, 2000.

13 THE COURT: And you are asking for a psychiatrist for what
14 purpose - - a psychiatric evaluation for what purpose?

15 MR. STEWART: The State is trying to introduce evidence, ah,
16 it is my understanding that the State is trying to introduce
17 evidence of desecration of the victim's body at my trial, and I
18 feel this evidence is irrelevant, and if any relevance can be shown
19 for this evidence, I feel the probative value would substantially
20 outweigh the danger that this evidence will create an unfair
21 prejudice at my trial.

22 However, should the Court rule otherwise, then being that the
23 desecration of the victim's body was approximately eight hours
24 after her death, then my mental state at the time of this other
25 crime, desecration of human remains, as well as things that put me

MOTION FOR PSYCHIATRIST & ADMISSION OF EVIDENCE

13

1 in that mental state, I think these will be a relevant issue.

2 THE COURT: Such as what?

3 MR. STEWART: Ah - - I'm not - - -

4 THE COURT: What do you think the psychiatrist is going to
5 say about your mental condition?

6 MR. STEWART: Well, sir, the reason that I would want a
7 psychiatrist is to give expert testimony as to how an individual's
8 past, the environment and circumstances surrounding a situation,
9 things of that nature, affects - - tends to affect the way that an
10 individual will react to certain situations, and once I provide the
11 psychiatrist with information as to my past, the circumstances
12 surrounding the two incidents, the things that occurred during the
13 eight hours between the victim's death and the desecration, ah, for
14 the psychiatrist to give their opinion.

15 THE COURT: Alright. The desecration is a crime to which
16 you have already pled guilty.

17 MR. STEWART: Yes, sir.

18 THE COURT: Your mental status as to whether or not you
19 were competent or incompetent at the time you committed that crime
20 I do not find to be an issue to another crime committed earlier.

21 Whether or not the trial judge allows that evidence to come in
22 will have to be something that he'll have to deal with or she will
23 have to deal with.

24 Who is the trial judge?

25 MR. BLAKE: Judge Burch.

RULING OF THE COURT

14

1 RULING OF THE COURT

2 THE COURT: Judge Burch will have to deal with, um, but I
3 am going to deny your request for psychiatric evaluation.

4 MR. BLAKE: And, Your Honor, for the record the Blair
5 hearing was held on June 24, 2002, in front of Judge Lockemy. Mr.
6 Stewart had the evaluation handled at the State Hospital, and he
7 also had an independent evaluation by Dr. Clayton. I'm passing
8 both of these documents up so Your Honor can see them.

9 So he's actually - - the State's already paid for an
10 independent psychiatric evaluation.

11 THE COURT: Alright. Very good but as to that motion - -
12 let me - - Mrs. Hyatt, if you'll return this to Mr. Blake. As to
13 that motion, I am denying your request for additional psychiatric
14 evaluation.

15 Mr. - - does anybody know where Judge Burch is going to be
16 holding court over the next several weeks?

17 MR. BLAKE: I know on the 14th he'll be in Chesterfield.
18 I do not know about the 7th. This week he's in Lancaster.

19 THE COURT: Alright. The 14th he's in Chesterfield. The
20 21st - - don't know where he is.

21 CLERK OF COURT: I'll check that for you, Judge.

22 MR. BLAKE: Your Honor, may I address the Court for a
23 moment?

24 THE COURT: Yes.

25 MR. BLAKE: We have had a number of different motions

RULING OF THE COURT

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1 hearings in this case. As you know, the Court Reporters have
2 transcribed all of them. We're missing one but that should be to
3 us soon.

4 Back in November, Judge Lockemy said that the end of motions
5 would be in December. Now, I think that was probably contingent
6 upon a trial in January but the State would certainly like to have
7 some idea of when the onslaught of motion will kind of stop here.

8 Obviously, we will have motions during the trial, prior to
9 trial.

10 MR. STEWART: Sir, if I may comment on that.

11 THE COURT: Yes, sir.

12 MR. STEWART: As far as the motion hearing that we are
13 having, I am representing myself, and I am currently incarcerated,
14 and while I realize that I deserve no special treatment for that,
15 I think that that is something that the Court should take into
16 consideration. There are certain things that need to be arranged
17 for the preparation of my defense that I cannot do on my own.

18 The only thing - - the only the way the provisions will be
19 made is through the Court, sir, and that - - that is mainly the
20 reason that we have had so many motion hearings.

21 CLERK OF COURT: Okay. He's going to have Common Pleas Non
22 Jury/Fourth Circuit. That's 7/7. 7/14 he's going to have
23 Genesal Sessions in Chesterfield. On 7/21 he's got General
24 Sessions in York County, and 7/28 he has General Sessions in
25 Marlboro County, Judge.

MOTION TO PRODUCE COLLECTED STANDARDS - HANDWRITING

16

1 THE COURT: With respect to the issue about the, ah,
2 relevance of the desecration plea, the evidence of that particular
3 crime, this plea as to that as to whether or not it's relevant and
4 as to whether or not its prejudicial affect will outweigh its
5 probative value is something that the trial judge is going to be
6 the one to really need to make a decision on.

7 Um, I would ask that you contact Judge Burch since he's going
8 to be close by during the week of the 14th and put him on notice
9 that that is a motion that is outstanding and see whether he wants
10 to treat that as something to be disposed of during the week of the
11 14th or whether he wants to wait and dispose of it during a trial
12 setting as things will be introduced but he at least needs to be
13 put on notice that is something he's going to have to deal with so
14 that he can have the choice of whether he wants to deal with it
15 during the week of the 28th.

16 That issue will be brought forward to the trial judge. So I'm
17 just going to defer a ruling on that, Mr. Stewart, because I think
18 the one who is trying the case, and he's the one who's going to be
19 in the pits, so to speak, along with you and the State as the
20 testimony is being presented is going to be in a better position to
21 determine whether or not that is or is not something that they feel
22 needs - - that he feels needs to be presented to the jury.

MOTION TO PRODUCE COLLECTED STANDARDS - HANDWRITING

24 THE COURT: Tell me about how the handwriting sample is a
25 part of this case, Mr. Blake.

MOTION TO PRODUCE COLLECTED STANDARDS - HANDWRITING

17

1 MR. BLAKE: Certainly, Your Honor.

2 There were a number of letters allegedly written by Mr.
3 Stewart to members of law enforcement and the victim's family. We
4 took those letters and had them analyzed by SLED for his
5 handwriting and, also, had them submitted for finger prints, and I
6 believe Mr. Stewart's contention is that he did not write those
7 letters.

8 There is a separate legal issue. In one of those letters he,
9 essentially, writes a little story which might be viewed as a
10 confession, and the State intends to admit it as such. I think Mr.
11 Stewart is - - -

12 THE COURT: Does he have a copy of those letters?

13 MR. BLAKE: Absolutely.

14 THE COURT: There's also something in here where he is
15 saying that, ah, he wants to see copies of the three pages of quote
16 "collected standards". Does he have copies of those pages?

17 MR. BLAKE: He has - - they are in the papers that were
18 submitted. His letter sent to us that we then copied and gave back
19 to him but we certainly could, also, have SLED mail us a copy of
20 those standards. They come out of the pile of letters that he
21 wrote that he has a copy of.

22 THE COURT: Alright. Well, if he says they are being used
23 as - - if the State contends that they are standards, that they
24 are, in fact, written by him as known handwriting by him, then I do
25 think it is proper that he have a copy of what he is alleged to

MOTION TO PRODUCE COLLECTED STANDARDS - HANDWRITING

18

1 have written, and you, Mr. Stewart, contend that, at least at this
2 point in time, with respect to that letter, are you contending
3 that's not written by you?

4 MR. STEWART: Sir, the only thing that I haven't - - I
5 haven't really addressed that, the issue of the letters or
6 anything. The only thing that I would - - I would - - the only
7 issue that I am addressing as far as this motion is, and I think
8 that included with that motion is the SLED Laboratory Evidence
9 Inventory Sheet, ah, I think that you have a copy of that - - -

10 THE COURT: Yes, sir.

11 MR. STEWART: - - - up there if I'm not mistaken.

12 The thing - - my - - the only issue that I am raising here is
13 that as you can see on this Inventory Sheet the items that are
14 numbered 21 through 24 and beside that section is a place for the
15 description of the evidence. As you can see on this sheet, all of
16 these items, 21 through 24, and the description of the evidence, it
17 gives some type of indication as to the contents of each item but
18 when you get to item #25, there - - there isn't any indication as
19 to what these collected standards are, and I do have 21 through 24
20 but I have no way of knowing if I have the collected standards
21 since, of course, there was no description given of the contents.

22 MR. BLAKE: Your Honor, I'm not sure if Mr. Stewart is
23 missing the second page that has item 25 but I simply do not
24 understand how these papers have not been described. The - - in
25 the description of evidence column it goes on for sometimes three

RULING OF THE COURT

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1 or four lines describing it.

2 We certainly have no problem in getting SLED to give us a copy
3 of that. I'm not sure what the complaint is.

4 MR. STEWART: Sir, as we see, ah, in the description column
5 for items 21 through 24 it does say - - it does describe the - -
6 the document. Some of these are envelopes, and it does tell, "This
7 document begins with this. Ends with that."

8 THE COURT: What is it you say is deficient about 25?

9 MR. STEWART: I don't - - I don't see section 25, my copy of
10 the motion but I do have that here.

11 Section 25 is merely labeled "collected standards submitted as
12 known writings of Weldon W. Stewart, Jr." There is no indication
13 as to what these collected standards.

14 THE COURT: So you want copies of these quote "collected
15 standards" so you can see what they're talking about?

16 MR. STEWART: Yes, sir.

17 RULING OF THE COURT

18 THE COURT: Alright. You can have those.

19 MR. BLAKE: The State would be very happy to provide that,
20 Your Honor.

21 MR. STEWART: And - - and - - and, ah, sir, if I may be
22 allowed to address another thing concerning these.

23 THE COURT: Alright.

24 MR. STEWART: It is my understanding that these collected
25 standards were used by the examiner to supposedly identify other

MOTION FOR HANDWRITING EXPERT

20

1 writings as being mine. I have no way of knowing that whatever
2 collected standards that will be disclosed to me are actually the
3 collected standards that were submitted to the department since no
4 description was given of them as was the other items 21 through 24.

5 THE COURT: Well, that's something that you'll have to
6 handle under cross examination of the person who says that they
7 believe it is yours. You can ask them if what you are submitted
8 is the same thing that was submitted to them but I can't - - I
9 can't get in there and go and look and - - and - - you know, the
10 State is, in essence, submitting to you what they say they
11 submitted to their expert, and if they submitted something
12 different to their expert, that will be a wonderful piece of cross
13 examination.

14 Now, if the SLED expert - - is there a report from the SLED
15 expert as to the handwriting analysis?

16 MR. BLAKE: Yes, Your Honor. I believe the defendant has
17 been provided that though.

18 And, Your Honor, I would like to say that this afternoon I'm
19 going to be doing a file review with Detective Gurley to make sure
20 that I have everything that is in her file, and once I have done
21 that then I will be sending a copy of all - - -

22 MOTION FOR HANDWRITING EXPERT

23 THE COURT: Alright. Now, at this particular point in time
24 - - -

25 MR. BLAKE: - - - these papers to Mr. Stewart.

MOTION FOR HANDWRITING EXPERT

21

1 THE COURT: - - - Mr. Stewart, they are saying that they've
2 looked at things which are your known handwriting, and based upon
3 that they determined that something else is your handwriting as
4 well. Are you contending that the documents that have been
5 identified by SLED as having been written by you have not been
6 written by you?

7 MR. STEWART: Sir, I'm not prepared to address this issue at
8 this time.

9 THE COURT: Well, I don't know whether to give you a
10 handwriting expert or not unless I know that you are contending
11 that these are not your writings or that they, you know, if they're
12 not your writings, if that's your contention, the handwriting
13 expert might have some validity but if what has been claimed to be
14 your handwriting, written documents by you are, in fact, written by
15 you, then an expert is not going to be necessary if you are saying,
16 "These are my written documents."

17 So, I'm trying to find out before I spend money for the State
18 what your position is. You've asked for a handwriting expert but
19 there's no point in giving you a handwriting expert if the
20 documents were written by you.

21 So what's your problem with the documents? Why do you need
22 a handwriting expert?

23 MR. STEWART: My only problem is with the process of these
24 documents being identified whether or not this process was done
25 correctly. Ah - - -

RULING OF THE COURT

22

1 RULING OF THE COURT

2 THE COURT: If there is something about these exemplars or
3 known collected items, get those to him if you would, Mr. Blake, by
4 say, the 7th, so he can go ahead and look at it.

5 But if there is never - - if an issue does not arise as to
6 whether it is or it isn't your handwriting, then I'm not going to
7 call for the State to spend money on an expert for a document that
8 you don't contest as being your handwriting but I will have those
9 items that are identified in #25 as the "collected standards", I
10 will have copies of those given to you.

11 If I do that, ah, you'll have to make a decision later about
12 the question of whether they are your handwriting or not.

13 MR. STEWART: Yes, sir.

14 MOTION FOR FORENSIC PATHOLOGIST

15 THE COURT: Alright. That looks to bring us to a motion
16 to obtain a forensic pathologist.

17 Tell me about your motion to obtain the forensic pathologist.
18 What are you concerned with there?

19 MR. STEWART: Sir, ah, I have the autopsy report that was
20 signed by Dr., excuse me, Dr. Debra Curry, M. D. and Dr. Russell A.
21 Harley, M. D. They did give their opinion as to the cause of
22 death both on the title page, "probable cause of death - blunt
23 force trauma to the head", and on page six they did give their
24 opinion, "blunt force trauma to the head".

25 THE COURT: Alright. You may pass it - - pass it up but

MOTION FOR FORENSIC PATHOLOGIST

23

1 I'm accepting as true what you're telling me.

2 (Defendant passes autopsy report to the Court.)

3 THE COURT: Alright. So - - and for what - - what are you
4 wanting your own forensic pathologist for?

5 MR. STEWART: Sir, the problem is that I have this autopsy
6 report. This is all that I can go by. I have the opinion here
7 that says, "blunt force trauma to the head". However, on the
8 indictment for the murder indictment, that being Indictment # 02-
9 GS-34-1919, it also has burning included as a possible cause of
10 death, and when I objected to the terminology of this indictment in
11 an October 17, 2002, hearing held before Judge Burch, the State did
12 indicate that the pathologist, Dr. Harley says that it is a
13 possibility that the victim died as a result of burning.

14 Now, I do not have this - - I do not see this reflected
15 anywhere in the autopsy report.

16 Therefore, I originally made a motion to interview the
17 pathologist during a December 11th, I think it was 2002, hearing
18 held before Judge Lockemy. He granted this motion stating that I
19 do have to interview the pathologist at least 21 days before my
20 trial if I'm not mistaken.

21 Sir, the problem is that the autopsy report says one thing.
22 My indictment says another, and the State has indicated that the
23 pathologist at times has said another thing. So I'm not sure as to
24 the accuracy of the pathologist's opinion. They certainly aren't
25 consistent.

MOTION FOR FORENSIC PATHOLOGIST

24

1 Therefore, I am - - -

2 THE COURT: Well, the only opinion that you know at this
3 point in time of the pathologist is what is contained in their
4 report. The State has said something about burning. Where do you
5 get that from, Solicitor?

6 MR. BLAKE: Discussions with the pathologist, Your Honor.

7 THE COURT: So that you're saying that there may be things
8 in the - - that the pathologist is saying that have not been
9 included in the report?

10 MR. BLAKE: No, I think, actually, it's talked here about
11 the primo oxi - - there's a measurement that was done that talks
12 about whether it could have been caused by burning. He certainly
13 has an opportunity to interview the pathologist. The Court has
14 already ordered us to take him down to Charleston to do that. I
15 don't - - really do not know if an independent pathologist could
16 reconstruct this from simply the slides, etc.

17 THE COURT: Well, when there are competing expert opinions,
18 ah, I think the second pathologist pretty much has to do it from
19 the slides, etc. because usually by the time it gets to the latter
20 stage, the body has been buried. So it would either have to be
21 done in that way.

22 MR. BLAKE: And, Your Honor, of course, there's already
23 been two pathologists.

24 MR. STEWART: I - - sir, I - - if I may be allowed to speak?

25 THE COURT: Yes, sir.

MOTION FOR FORENSIC PATHOLOGIST

25

1 MR. STEWART: I am a layman to the law, and I have never
2 dealt with a case before but all that I have here everywhere that
3 there was a probable cause of death, the pathologist opinion as to
4 the cause of death says here on the last paragraph of page 6 of the
5 autopsy report, "that in light of the information, gross
6 microscopic and toxicological autopsy findings that it is the
7 opinion of the decedent, [REDACTED] Allen, died as a result of blunt
8 force trauma to the head", and listen to what the possibility of
9 the victim dying as a result of burning, I see that nowhere in the
10 autopsy report. So since the pathologists, both Dr. Curry and Dr.
11 Harley, did sign this autopsy report, I would assume all their
12 opinions are included therein.

13 And I will - - this - - it's my understanding that this
14 autopsy was conducted on December 7th at 9:00 a.m., and I haven't
15 received another report or any report of another autopsy being done
16 where they could reach other conclusions or opinions.

17 MR. BLAKE: Your Honor, may I address the Court?

18 THE COURT: Yeah.

19 MR. BLAKE: I believe the issue here is more the
20 indictment. This is something that Mr. Stewart has come back to,
21 now, at least in three or four different motions hearings, and he's
22 very concerned by the language in the indictment which, of course,
23 has already gone through the Grand Jury and has been true-billed.

24 It says, "by striking, pushing and/or burning her". Those are
25 alternative possibilities because Mr. Stewart is the - - was the

MOTION FOR FORENSIC PATHOLOGIST

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1 only one there when it did happen.

2 Um, the State is certainly willing to try to fashion an
3 amendment to the indictment to take out the actual factual
4 predicate or use more general terms. I think this is really what
5 Mr. Stewart is concerned about.

6 THE COURT: I think what he is saying is if you're going to
7 charge him with the possibility of death by burning, ah, or have
8 that as a manner of proof, he's trying to figure out how to defend
9 against it when the autopsy report defines the manner of death as
10 being blunt force trauma.

11 You've indicated that there is some indication in talking with
12 a pathologist that there is some test that was run that indicated -
13 - blood gas or something, I guess - - that burning was a
14 possibility, and so he's looking on how to defend that.

15 I don't know what his defense is. I don't know whether he is
16 saying he wasn't there, whether she died of natural causes or he
17 died of natural causes. I don't know the race of the victim.

18 MR. STEWART: Sir, the defense is not intending any - -
19 anything dealing with this case other than the fact that the
20 defense - - it is the contention of the defense that the victim's
21 death was unintentional. That is the only thing that - - -

22 THE COURT: Alright.

23 MR. STEWART: And, sir, if I may be allowed to speak to an
24 issue - - about an issue that is relevant to this motion?

25 THE COURT: I'm - - I'll - - I'll allow you to speak.

MOTION FOR FORENSIC PATHOLOGIST

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1 MR. STEWART: Ah, on October 17, 2002, the State served upon
2 me an amended indictment for South Carolina Code Section 16-17-600,
3 destruction, desecration or removal of human remains.

4 Let me pass this up.

5 (Defendant passes copy of indictment to the Court.)

6 THE COURT: That's the indictment you've already pled to?

7 MR. BLAKE: Yes, sir.

8 MR. STEWART: Yes, sir.

9 Ah, this indictment alleges that Weldon Stewart, Jr. in the
10 County of Marlboro on or about December 6, 2000, did willfully and
11 knowingly and without proper legal authority desecrate the human
12 remains of one [REDACTED] Allen; to-wit: by setting her body on fire.

13 I was arraigned on this indictment October 17, 2002, and
14 pleaded guilty to it. This was before Judge Burch, and he
15 accepted my guilty plea but, ah, deferred my sentencing.

16 And, sir, if I may with the Court's permission request
17 clarification of a few issues dealing with this?

18 THE COURT: Alright. I'm not sure what this s relevant to
19 but go ahead.

20 MR. STEWART: Ah, the elements included in the desecration
21 indictment that I have just passed up, by the State bringing an
22 indictment against me for this defense by my plea of guilty to this
23 indictment and by the Court accepting my plea, this means that we
24 are all in agreement that the things alleged in that indictment are
25 true. Is that correct, sir?

MOTION FOR FORENSIC PATHOLOGIST

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1 THE COURT: Well, I'm not offering legal opinions this
2 morning. Just keep on speaking.

3 MR. STEWART: Ah, this indictment was brought against me
4 under South Carolina Code Section 16-17-600, Subsection (a) for the
5 burning of the victim's body, and I have here with me Section 16-
6 17-600, and if I may read from Subsection (a), it says here that it
7 is unlawful for a person willfully, knowingly and without proper
8 legal authority to destroy or damage the remains of a deceased
9 human being.

10 Ah, now, I feel that since the State has presented upon me an
11 indictment # 02-GS-34-1918, and I have pleaded guilty to it. The
12 Court has accepted my guilty plea. I feel this tends to show that
13 we are all in agreement that the things alleged in that indictment
14 are true, and the indictment alleges that I violated South Carolina
15 Code Section 16-17-600, Subsection (a) by burning the victim's
16 body.

17 Now, in my opinion, according to the provisions of Section 16-
18 17-600, by my indictment for desecration of human remains and my
19 plea of guilty thereto, I think this shows that the State has
20 already acknowledged just quoting Judge Lockemy from a December, I
21 think it was 11, hearing the State has already acknowledged that
22 the victim was deceased prior to the burning of her body simply by
23 presenting me with an indictment for the desecration of human
24 remains for this offense.

25 Therefore, I cannot understand the legality of the State

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1 including burning in the murder indictment as a possible cause of
2 death.

3 MR. BLAKE: Your Honor, this was addressed in the October
4 17th hearing by Judge Burch. Judge Burch said that that did present
5 an interesting conundrum and that it would be dealt with at trial.

6 MR. STEWART: Sir - - sir, if I may be allowed to - - justice
7 - - -

RULING OF THE COURT

9 THE COURT: I am at this time going to deny your request
10 for an independent pathologist. I am not going to contend that you
11 cannot bring it back up but you have not yet interviewed the
12 pathologist who did this - - who prepared the report, rather. You
13 have not had a chance to ask that pathologist, you know, "Are you
14 going to testify that you think I burned this person as a manner of
15 causing death or are you going to testify like the indictment I
16 pled to that she was dead at the time that I burned her?"

17 Depending on what response you get may depend on what needs to
18 be done thereafter. So I would ask the State to go ahead and make
19 those arrangements to get him down to talk to the people who
20 performed the pathology or performed the autopsy, rather, so that
21 this issue can be cleared up.

22 It may be that Mr. Blake's understanding of what was going to
23 be testified to or what the pathologist meant by his findings was
24 in error, and so you may - - you will find out after you interview
25 the pathologist as to, you know, "Why would the State be trying to

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1 contend that I burned the person as a manner of causing death? The
2 State's already had me plead to burning her as a manner of
3 desecration."

4 MR. STEWART: Yes, sir.

5 THE COURT: And once you get your answer there, it may or
6 may not leave you needing to come back and renew your motion but at
7 this point in time, I'm going to deny it.

8 MR. STEWART: Sir, my concern, why I continue to raise this
9 issue is that this being included in the indictment for murder,
10 once this indictment is presented to the - - to the prospective
11 jurors, I think it that it will create an unfair prejudice in that
12 it will - - it will tend to cause them to think that simply because
13 I pleaded guilty to desecration of human remains, I'm also guilty
14 of murder.

15 THE COURT: Not necessarily. The State's going to have to
16 prove. You could have run across the body some four or eight to
17 six hours later, whatever the time frame is, and have burned the
18 body.

19 You've told me at this point in time that the death was
20 unintentional, not murder. I'm not so sure that you don't need to
21 talk some with Mr. Crow as your standby counsel to see what has to
22 be - - to see what elements constitute accident, ah, to talk with
23 him to insure that if you're trying to - - will be asking the Court
24 for a lesser included charge of voluntary manslaughter to see if
25 elements exist for that but sometimes the State makes allegations

1 that it can't prove, and when it can't prove those allegations,
2 then the jury is told that the State has to prove, you know, things
3 beyond a reasonable doubt, and what it can't prove, you're not
4 guilty of.

5 So, I'm not going to strike the - - use this as a method for
6 striking the language of the indictment but I am telling the State
7 to go ahead and make the arrangements to get you down within the
8 next week or ten days to talk with these people so that you'll know
9 what they are going to say, if anything, about burning being a
10 possible cause of death and what you will, perhaps, need to do in
11 response to that.

12 Let me give, ah, your copy of the indictment back to you.

13 (The Court returns copy of indictment to defendant.)

14 THE COURT: I've got somebody's autopsy report here. Is
15 that just something that was handed up?

16 MR. STEWART: Yes, sir. I'll take it.

17 (The Court returns autopsy report to defendant.)

18 MR. STEWART: Thank you.

19 THE COURT: Alright. I have dealt with the motion to
20 obtain a psychiatrist. I have dealt with motion for professional
21 copies of crime scene photographs. I've dealt with the motion for
22 funds to pay for the service of subpoena, motion to obtain a
23 forensic pathologist and motion for the State to disclose the
24 exemplars that it use to contend.

25 I think that takes care of all the motions that were presented

MOTION - WITNESS INTERVIEWS

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1 to me for consideration. Do you have another one?

2 MOTION - WITNESS INTERVIEWS

3 MR. STEWART: No, sir. I have a - - I have a list of the
4 witnesses.

5 THE COURT: Oh, great.

6 (Defendant passes witness list to the Court.)

7 MR. STEWART: They are - - we did have this list filed with
8 the Clerk of Court. However, we did neglect to put two names on
9 there.

10 I don't know if I need to add those on.

11 THE COURT: Who are the other two?

12 MR. STEWART: It is Pastor Jerry B. Corbett.

13 THE COURT: Jerry B. Corbett?

14 MR. STEWART: Yes, sir. Corbett, C-o-r-b-e-t-t.

15 THE COURT: Alright.

16 MR. STEWART: And Andrienna Sutherland. Andrienna spelled A-
17 n-d-r-i-e-n-n-a Sutherland.

18 THE COURT: A-n-d-r-i

19 MR. STEWART: e.

20 THE COURT: e.

21 MR. STEWART: n-n-a.

22 Sutherland.

23 THE COURT: S-u-t-h-e-r-l-a-n-d?

24 MR. STEWART: Yes, sir.

25 THE COURT: Alright. Ah, I see where these have been in

MOTION - WITNESS INTERVIEWS

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1 the Clerk's Office. I simply added these names, and you've got
2 those names?

3 MR. BLAKE: I do not have them.

4 THE COURT: Alright.

5 I'm going to give this document back to you so that you and
6 Mr. Crow can be sure. Now, I won't be the trial judge. So, um,
7 we've got personnel here. Have we got any - - let me have that
8 order back. Let me have that back.

9 MR. BLAKE: Your Honor, and for the record, I believe that
10 on the hearing date, May 21st, that Mr. Stewart and his mother
11 created some sort of handwritten list, and I think it was - - it
12 may have been handed up to the Court or Law Clerk. I'm not sure
13 but - - -

14 THE COURT: I did not get it.

15 MR. BLAKE: However, we've got it straight now.

16 MR. STEWART: Ah, I did hand that list up. I'm not sure, ah,
17 exactly how the interviews with my witnesses are going to be
18 handled at the county - - the county jail. However, I - - I will
19 need to interview some of these witnesses in a place where I can
20 record our conversations.

21 THE COURT: Well, you'll have to get permission of the
22 person who is going to be talking with you as to whether they'll
23 agree to a recorded interview or not.

24 MR. STEWART: Sir?

25 THE COURT: Yes, sir.

MOTION - WITNESS INTERVIEWS

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1 MR. STEWART: In reference to when I will be allowed to begin
2 conducting my interviews of the witnesses, ah, - - -

3 MR. BLAKE: Your Honor, I would like to just include, if we
4 could, in that order some language to the Marlboro County Detention
5 Center kind of letting them know what's going to take place, and I
6 don't see any problems with those interviews beginning immediately.
7 That was one of the reasons that Your Honor wanted to see Mr.
8 Stewart transferred back to the Detention Center.

9 Mr. Stewart has a little bit more to add.

10 MR. STEWART: And, sir, in a place in the county jail - -
11 this will be impossible to do in the regular visitation room - - in
12 a place where I can with the witness' permission record our
13 conversation.

14 MR. BLAKE: Well, Your Honor, the State's not in any way
15 prepared to take Mr. Stewart off-site to some other place for
16 recordings.

17 Mr. Crow, of course, has interviewed witnesses numerous times
18 there at the jail as have I, and those facilities are quite
19 adequate for interviews.

20 MR. STEWART: Ah, if I may be allowed to speak, sir?

21 THE COURT: Yes, sir.

22 MR. STEWART: Ah, as far as being at the county jail, also,
23 my mother who is working with Mr. Crow and my father, they do - -
24 they get my legal papers from me or whatever has to go to Mr. Crow
25 or if Mr. Crow has something to give to me, usually, my mother and

MOTION - WITNESS INTERVIEWS

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1 father, they have been assisting us. If you - - if you would,
2 please, indicate somewhere in the order that my mother and father
3 be allowed to bring legal papers to me and for me to be able to
4 give legal papers to my mother and father either to give to Mr.
5 Crow or Mr. Blake or where ever they have to go.

6 THE COURT: Mr. Crow, from your standpoint, if he's at the
7 Marlboro County Detention Center, what would be your normal way of
8 handling any legal papers back and forth that need to be received
9 by you or - - -

10 MR. CROW: I just usually carry them and present them to
11 him personally. Rarely do I ever leave anything at the jail and
12 say, "Give this to Mr. Stewart."

13 I take him down - - when he was there before, it was my
14 routine to see him early in the morning, 7:30 - 8:00, and give him
15 papers.

16 MR. STEWART: My mother brings it to me.

17 MR. CROW: Well, your mother brought you some stuff later
18 but what I give you - - what you asked of me, I personally carried
19 to you.

20 And I don't know if the Marlboro County Detention Center- -
21 when you were back the last time, they did not deny you any of your
22 papers or anything, did they?

23 MR. STEWART: No, sir.

24 MR. CROW: And we have two - - as Mr. Blake said, we have
25 two areas there, a multi-purpose room which is very large that he

MOTION - WITNESS INTERVIEWS

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1 can interview witnesses in if they will go into the Detention
2 Center and also the Judge's Chamber which is right there, and both
3 chambers are private.

4 So, I mean, it's much better facility than Bishopville.

5 But, now, as far as the recording device, I - - I don't know
6 how you going to get that in there to do that?

7 THE COURT: Has your family got a tape player and some
8 tapes if people are willing to do it?

9 MR. STEWART: Ah, we - - we will get those things, sir.

10 THE COURT: Well - - I'm trying to think of a mechanism
11 whereby if a tape is prepared so that the tape doesn't get left but
12 I don't want Mr. Crow to have to go every time - - -

13 MR. CROW: It would be impossible with the time frame and
14 the number of people I represent. I couldn't - - plus, I don't
15 have the means to transcribe them either if he wants transcripts of
16 all these interviews.

17 THE COURT: They'd have to be, I guess, the tape if there
18 was some contradiction would have be simply played in the courtroom
19 as to what somebody said previously.

20 What is your reason for wanting to tape your conversations
21 with potential witnesses?

22 MR. STEWART: Ah, just to have - - should a witness make an
23 inconsistent statement or anything just to have evidence of that.

24 Other than just saying, "Well, you said something else."

25 It would be my word against theirs.

MOTION - WITNESS INTERVIEWS

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1 THE COURT: You could get into some pickles if you go to
2 want to have a portion of a tape played that you contend is
3 inconsistent and that witness makes the statement, "Well, I told
4 you on another part of that tape exactly what I'm telling you now."

5 And then you end up getting the judge to rule that that part
6 of the tape comes in, too. So it can be a two-edged sword. You
7 understand that?

8 MR. STEWART: Yes, sir.

9 THE COURT: And I'm trying to deal with the mechanics if I
10 allow you to make a tape of somebody's conversation with you as to
11 what would be done with that tape.

12 MR. STEWART: Ah, I do think that we - - some - - some of my
13 family members might have access to a machine that can copy a few
14 tapes at a time, and, certainly, I would be willing to make copies
15 for myself to keep and provide whoever with the original - -
16 whoever would need to be provided with that.

17 MR. BLAKE: I would just say that the State's concern, Your
18 Honor, is one of logistics. He plays a portion of the tape, and as
19 you said, under Rule 106, Rule of Completeness, the rest of the
20 tape gets played, and, you know, we turn into an O. J. Simpson
21 trial, and I already see that the number of witnesses that the
22 defendant may be calling, I'm just concerned that the Court's not
23 going to have enough time to deal with all of this.

24 One alternative is for Mr. Stewart to get a statement from
25 these people that he talks to. That's normally what the State is

RULING OF THE COURT

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1 limited to, and then if they testify differently at trial, he can
2 cross examine them on that written statement.

3 THE COURT: Is there a problem with your having written
4 statements from these individuals that you keep as a part of your
5 legal papers?

6 MR. STEWART: I - - I would not mind getting written
7 statements also but I do want to record conversations also - - not
8 only for purposes of inconsistency but also to prepare my cross
9 examination while I'm reviewing the tapes and the interviews and
10 things of that nature.

11 I do have quite a number of them to conduct.

RULING OF THE COURT

12 THE COURT: I'm going to deny the use of tape recorders.
13 I think you can adequately prepare for cross examination and for
14 impeachment purposes by obtaining written statements from those
15 individuals as to their testimony.
16

17 If somebody refuses to give you a written statement, I'm
18 satisfied that person would also not consent to be interviewed on
19 tape.

20 If you tape somebody without their knowledge of it, that's a
21 violation of the law as well. So I am denying your request as to
22 that matter. I feel that the notes that you make during the
23 interviews as well as written statements will be sufficient for
24 purposes of conducting cross examination and impeaching witnesses.

25 If it's necessary that a Notary be provided so that a

PLEA OFFER BY THE STATE

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1 statement is simply notarized, ah, I will provide that somebody at
2 the jail who is a Notary perform that service for you if you need
3 a Notary in connection with the statements that you take.

4 I have written on the witness list that it is ordered that the
5 defendant shall have an opportunity to interview these individuals
6 while incarcerated at the Marlboro County Detention Center
7 beginning as soon as he is transferred back.

8 So that you can show to the jail.

9 MR. BLAKE: Thank you, Judge.

10 THE COURT: And they'll know that those people are to be
11 interviewed.

12 MR. CROW: Did you add the other two names?

13 THE COURT: I added those in my handwriting.

14 PLEA OFFER BY THE STATE

15 THE COURT: Are there any offers that have been made by the
16 State to the defendant in connection with, ah, any potential pleas
17 in this matter?

18 MR. BLAKE: Your Honor, there had been a previous plea
19 offer before Mr. Stewart pled to the burning. Ah, at this point
20 the State has - - we haven't been discussing this at this point but
21 the State's offer is twenty-five years, voluntary manslaughter.

22 THE COURT: Now, that is an offer that has been made to
23 you. Um, you can, of course, accept an offer that's made by the
24 State or reject the offer but I wanted to at least have us a record
25 that an offer had been made so that you would have the opportunity

PLEA OFFER BY THE STATE

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1 to offer it such consideration as you felt it appropriate.

2 You can if you have a counter-offer communicate that either
3 directly to the Solicitor or you can use Mr. Crow as a vehicle
4 through which you can communicate any counter-proposal that you may
5 have.

6 I do not know whether you want to consider any type of plea or
7 you do not want to consider any type of plea, and, of course, as
8 standby counsel Mr. Crow can offer you advice as to why pleas are
9 good in certain instances and why they should be rejected in other
10 instances but, of course, you are your own attorney. So any
11 decision that you make with respect to any plea or whether you do
12 or do not enter into any plea would, of course, be your own
13 decision but Mr. Crow will offer you any advice, if any, you
14 request from him in connection with that.

15 MR. STEWART: Sir, if I may be able to just - - I know that
16 you have already denied this but if I may be able to just say
17 something again about these - - the recording of the interviews,
18 there may be some witnesses such as maybe law enforcement officers
19 or something like that that don't have to necessarily or do not
20 care to sit down and write a statement that may be more willing to
21 allow me to record the conversation.

22 THE COURT: If you've got an officer or a witness who
23 specifically tells you that they don't want to give you a
24 handwritten statement but they would give you a recorded statement,
25 make a list of those people, and we'll deal with it if we have to

PLEA OFFER BY THE STATE

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1 deal with it.

2 Thank you.

3 MR. BLAKE: Thank you.

4 MR. STEWART: Thank you, sir.

5 (After reviewing documents, the defendant addresses the Court
6 again.)

7 MR. STEWART: Your Honor, sir?

8 THE COURT: Yes, sir.

9 MR. STEWART: The issue has just been brought to my attention
10 that as part of my defense witnesses and/or maybe State witnesses
11 for confidentiality purposes, who is going to be - - these
12 interviews, is it just going to be me, witness and whoever else
13 they allow to come into the interview.

14 THE COURT: Well, the State will not be entitled to have a
15 representative while you conduct your defense preparations.

16 MR. STEWART: Yes, sir.

17 THE COURT: So, they will simply have you in a secured
18 area. To the extent that Mr. Crow may be there for somebody, he
19 may be there but, I mean, I would allow Mr. Crow to be there
20 because he's your standby counsel but we're not going to have, um,
21 we're not going to have State's representatives in earshot of
22 what's taking place while you interview your witnesses.

23 I think the Court has recently had some situations where it's
24 dealt with that, and that would be highly inappropriate.

25 MR. CROW: Yes, sir.

PLEA OFFER BY THE STATE

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1 THE COURT: You will have your confidentiality.

2 MR. STEWART: Yes, sir.

3 Thank you.

4 THE COURT: Yes, sir.

5 Alright. We're going to be in recess for about twenty
6 minutes.

7 (Court adjourns this matter for a short recess and then
8 addresses other matters before the Court.)

9 - - - END OF TRANSCRIPT - - -

CERTIFICATE OF COURT REPORTER

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF MARLBORO)

3
4 I, the undersigned Linda W. McCall, Official Court
5 Reporter for South Carolina Court Administration, do hereby
6 certify that the foregoing is a true, accurate and complete
7 Transcript of Record of all the proceedings had and evidence
8 introduced in the hearing of the captioned case, relative to
9 appeal, in the Court of General Sessions of Darlington County,
10 South Carolina.

11 I do further certify that I am neither of kin, counsel,
12 nor interest to any party hereto.

13 July 2, 2003

14 

15 Linda W. McCall

16 Official Reporter
17

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 21-278Caption: In re Weldon W. Stewart, Jr.

Pursuant to FRAP 26.1 and Local Rule 26.1,

STATE OF SOUTH CAROLINA (Including Donnie Stonebreaker, Jr., Warden, Evans Correctional Inst.)
 (name of party/amicus)

who is RESPONDENT, makes the following disclosure:
 (appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☒ NO
2. Does party/amicus have any parent corporations? ☐ YES ☒ NO
 If yes, identify all parent corporations, including all generations of parent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☒ NO
 If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐ YES ☒ NO
If yes, identify entity and nature of interest:
5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☒ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:
6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☒ NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.
7. Is this a criminal case in which there was an organizational victim? ☐ YES ☒ NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: s/Melody J. BrownDate: August 29, 2022Counsel for: Respondent

NO. 21-278

In The
United States Court Of Appeals
For The Fourth Circuit

In re: WELDON W. STEWART, JR.,
Movant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AT ANDERSON

MOVANT'S REPLY BRIEF
IN SUPPORT OF MOTION FOR AUTHORIZATION
PURSUANT TO 28 U.S.C. § 2244

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Counsel for Movant

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NO. 21-278

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In re

Weldon Stewart, Jr.,

Movant.

MOVANT’S REPLY BRIEF
IN SUPPORT OF MOTION FOR AUTHORIZATION
PURSUANT TO 28 U.S.C. § 2244

ARGUMENT

The State’s response is noteworthy for what it fails to contest. The State does not dispute that dissociative amnesia is a cognizable mental disorder, ECF #33 at *11-13, that courts have long-recognized dissociative amnesia and admitted testimony concerning whether an individual may possess this mental disorder, *id.* at *13-16, that Movant, Mr. Weldon Stewart, Jr., satisfies several of the diagnostic criteria for dissociative amnesia, *id.* at *16-17, that a clinical, forensic, and neuropsychological assessment psychologist preliminarily determined that it is

“very possible” that Mr. Stewart suffered from dissociative amnesia following the victim’s death, *id.* at *18, that a forensic document examiner concluded that there is a “high probability” that the victim wrote a suicide letter, *id.* at *21-22, that a forensic pathologist’s new report found that suicide cannot be ruled out as a cause of death, *id.* at *21, or that these professionals assert that further evaluation would be appropriate, *id.* at *22.

In its argument section, the State’s direct response to the merits of these specific points is located in a single, solitary footnote in which the State contends that the professionals’ reports contain “hearsay,” include information on “personal background and perceptions,” and are based on “limited” testing. ECF #40 at *27 n.17. But, as this Court has stressed, a 28 U.S.C. § 2244 determination must be made in consideration of “all the evidence” “unbounded by the rules of admissibility that would govern at trial” and “without regard to whether it would necessarily be admitted under evidentiary rules.” *United States v. MacDonald*, 641 F.3d 596, 612 (4th Cir. 2011) (internal quotes, citations, and brackets omitted); *see also* ECF #33 at *20 (stating this proposition in the opening brief). That the reports may contain some background or contextual information does not call for the entire reports to be disregarded or otherwise negate the existence of information in the reports—including whether Mr. Stewart may suffer from dissociative amnesia, whether the victim authored a suicide note, and whether suicide may be a possible cause of

death—that are unquestionably material and bear significantly on the question of guilt or innocence. Indeed, even if the State was correct in its characterization of parts of the reports, courts routinely identify what matters should be excluded and permit the remainder of testimony or reports to be introduced. *See, e.g., Scott v. Sears, Roebuck & Co.*, 789 F.2d 1052, 1055 (4th Cir. 1986) (holding that some testimony was within common knowledge and therefore should not have been admitted, whereas other testimony was not within common knowledge and was correctly admitted); *Ford v. United States*, No. GJH-11-3039, 2015 WL 11070248, at *2 (D. Md. Nov. 12, 2015) (ordering that an expert’s report be amended to remove or redact only those portions of the report that may confuse the jury). Relatedly, the preliminary nature of the reports corresponds with the limited time available, *see, e.g.,* ECF #20 at *1-2 (noting that the psychologist was engaged, conducted an evaluation, and prepared her report in just one-month), reflects the preliminary nature of this particular stage of the Section 2244 process, *see In re Thomas*, 988 F.3d 783, 788 (4th Cir. 2021) (explaining that a Section 2244 movant need not make a definitive showing), and fulfills nonetheless the overarching objective of a Section 2244 inquiry, to demonstrate that “fuller exploration” is warranted, *id.*; *see also* ECF #33 at *22 (citing two professionals suggesting that further evaluation would be appropriate).

As explained below, the State launches four affirmative arguments against pre-filing authorization, each of which land wide of the mark. Because of these gaping omissions and erroneous arguments, Mr. Stewart’s opening position emerges unscathed and warrants pre-filing authorization.

I. Mr. Stewart Has Raised Viable Constitutional Claims for Purposes of 28 U.S.C. § 2244.

The State argues that Mr. Stewart has offered no new facts other than a general statement that the victim committed suicide, that there is no connection between any new facts and any constitutional claims, and that any such facts would be put forward only strategically to “excuse” any procedural deficiencies. *See* ECF #40 at *26-28.

With respect to the new facts, Mr. Stewart’s recovered memories clearly reveal the means of and circumstances surrounding the suicide: the victim began talking about her abortion and losing her baby, was subsequently in physical and emotional distress, had asked for water, and apparently ingested a pill. *See* ECF #34, App. A at *14, *16; *see also* J.A. at 1009.1 (“I’m happy now; I’m back with my baby,” were the victim’s last words according to Mr. Stewart).¹

With respect to the relationship between the new facts and the constitutional claims, the recovered memories—which were not available at the time of trial and that indicate that Mr. Stewart was not responsible for the victim’s death—necessarily

¹ Mr. Stewart already has explained why he burned the victim’s body. *See, e.g.*, J.A. at 231 (admitting that he panicked and was scared).

raise two constitutional claims.² *First*, it is unconstitutional for an individual to be convicted of a crime where the individual was unable due to a cognizable mental disorder to defend himself against the charges at trial. *See Dusky v. United States*, 362 U.S. 402, 402 (1960) (holding that due process requires that the defendant be able to “consult with his lawyer” and have a “factual understanding of the proceedings against him”). It is not possible for Mr. Stewart to have mounted a proper defense or meaningfully consulted with his lawyer, as he could not access memories that would have urged the defense to pursue an alternate theory of the death and that would have forced the State to contend with this theory and meet its burden despite this theory. Nor was it possible for Mr. Stewart to have had the requisite factual understanding, because at trial he only understood the incident to

² The State seems eager to limit consideration of Mr. Stewart’s motion to the three claims that Mr. Stewart identified as grounds for relief, in an apparent effort to leave out the repressed memories issue and any claims stemming from it. *See e.g.*, ECF #40 at *23. But this Court has properly exercised its duty to liberally construe a pro se litigant’s pleadings, a duty that extends to construing claims without resorting to magic words. *See Jehovah v. Clarke*, 798 F.3d 169, 176 (4th Cir. 2015); *see also United States v. Elam*, 930 F.3d 406, 409 (5th Cir. 2019) (“It is the substance of the relief sought by a pro se pleading, not the label that the petitioner has attached to it, that determines the true nature and operative effect of a habeas filing.”). Mr. Stewart and the State already have briefed whether any of these three claims merit habeas relief. *See* ECF #2 (motion); ECF #9 (response); ECF #10 (reply). Counsel for Mr. Stewart was appointed to address a specific question—whether Mr. Stewart’s repressed memories warrant pre-filing authorization for habeas purposes, ECF #13—and as such does not add to arguments made by Mr. Stewart in his papers, *see* ECF #2, #10, or address the corresponding arguments that the State had the opportunity to present, and should have presented, in its earlier response, *see* ECF #9, and has recycled in its response, *see* ECF #40 at *34-39.

be an accident. He could not access memories that would have shifted his reality from accident to suicide.

Second, it is unconstitutional to imprison an individual who makes a prima facie showing of actual innocence, where a mental disorder precluded that individual from establishing his actual innocence at trial. The writ of habeas corpus is “the fundamental instrument for safeguarding individual freedom” against “all manner of illegal detention,” designed to “insure that miscarriages of justice within its reach are surfaced and corrected.” *Harris v. Nelson*, 394 U.S. 286, 290-91 (1969). An individual is actually innocent, and is entitled to habeas relief, where the defendant is able to show that the State would be unable to prove an essential element of the offense of conviction. *See Sawyer v. Whitley*, 505 U.S. 333, 343 (1992).

Here, Mr. Stewart was convicted of voluntary manslaughter in violation of South Carolina law. In South Carolina, the essential elements of murder are: (1) the death of a human being and (2) the criminal act of another causing the death. *See Brown v. State*, 415 S.E.2d 811, 812 (1992). Voluntary manslaughter is a lesser-included offense of murder and is defined specifically as “[1] the unlawful killing of a human being [2] in sudden heat of passion [3] upon sufficient legal provocation.” *State v. Sams*, 764 S.E.2d 511, 514 (S.C. 2014) (internal quotes and citations omitted). Mr. Stewart’s recovered memories reveal that the victim died by suicide; as he is not responsible for the death of the victim, the State would be unable

to prove that he “caused” the victim’s death or that he “unlawful[ly] kill[ed]” the victim. In short, the repressed memories show that the State cannot satisfy an essential element of murder or voluntary manslaughter, and that Mr. Stewart is therefore actually innocent according to prevailing law. That Mr. Stewart’s mental disorder prevented him from making that showing at trial provides a sound basis for this Court to grant pre-filing authorization. *Cf. United States v. Mason*, 52 F.3d 1286, 1289-92 (4th Cir. 1995) (holding that new, post-conviction affidavits suggesting that the defendant suffered from affective disorder and alcohol use disorder during trial authorized new competency hearing, despite finding of competence at trial).

With respect to motive, Mr. Stewart seeks pre-filing authorization to vindicate his constitutional rights in good faith. That a claim of actual innocence overcomes procedural deficiencies, *see McQuiggin v. Perkins*, 569 U.S. 383, 392-93 (2013), is a by-product of the claim and not its goal. Further, and relatedly, the State has put forward no evidence that Mr. Stewart is trying to abuse the writ. *Panetti v. Quarterman*, 551 U.S. 930, 947 (2007).

Accordingly, Mr. Stewart has offered, in good faith, new facts related to viable constitutional claims as required by Section 2244(b)(2)(B).

II. Contrary to the State’s Argument, Competency Determinations Are Not Frozen at Trial.

Relatedly, the State argues that Mr. Stewart’s mental disorder cannot be raised because he was deemed competent to stand trial. *See* ECF #40 at *31. But

subsequent information may call into question the results of an original competency evaluation and may justify a subsequent, post-conviction evaluation. *See Mason*, 52 F.3d at 1298-92; *United States v. Kendrick*, 331 F.2d 110, 113 (4th Cir. 1964) (en banc) (granting habeas relief where defendant was deemed competent to stand trial, but defendant alleged that he had regained memories while incarcerated). In the same vein, the State argues that Mr. Stewart is bound to his original statements at the trial phase. *See* ECF #40 at *28 n.16 (stating that with Mr. Stewart's uncovered memories, Mr. Stewart will be "left with his own multiple statements to the contrary"); *see also id.* at *29 (complaining that Mr. Stewart seeks to offer "a new theory for a defense *contrary to that presented by this Petitioner acting as his own counsel at trial.*") (emphasis in original); *id.* at *35 (same). But as Mr. Stewart previously explained, dissociative amnesia is such that the individual's understanding of events will evolve as the new memories are uncovered. *See* ECF #29 at *7-9. This does not mean that an individual with this mental disorder has strategically changed their views. *See id.* at *9 ("the very nature of repressed memories is that new memories give the individual a new understanding as to what occurred prior; Movant's story changed no more than a victim of sexual assault's story 'changed' once recalled memories revealed the sexual assault.") (citing *Shahzade v. Gregory*, 923 F.Supp. 286, 287 (D. Mass. 1996)). Thus, the State attempt to anchor the Court's understanding of Mr. Stewart's mental condition to a

trial phase evaluation is inconsistent both with applicable law that authorizes new, post-trial competency determinations and with the nature of dissociative amnesia under which memories may be uncovered post-trial.³

The State argues that amnesia alone does not alone constitute incompetence, conceding, however, that whether amnesia may justify new competency proceedings is a case-by-case determination. *See* ECF #40 *32-33 n.19; *see also id.* at *26 (“the only adequate answer . . . would be that it depends”).⁴ Here, the State’s case is

³ The State’s position reflects a mistaken view that individuals cannot change and, even if they do, the law should not catch up with those developments. The Anglo-American tradition recognizes, however, that individuals change over time and that the operation of criminal law must respond to cognizable changes. *See, e.g.*, 1 M. Hale, *Pleas of the Crown* 35 (1736) (indicating that the justification of punishment may change if the mental state of the individual in prison has changed); 4 W. Blackstone, *Commentaries* *388-*389 (same). This foundational principle runs throughout the course of American law. *See, e.g.*, *Concepcion v. United States*, 142 S. Ct. 2389, 2396 (June 27, 2022) (holding that, for purposes of resentencing, the district court may consider intervening factual and legal developments).

⁴ For its answer, the State curiously turns to two cases from intermediate Ohio courts. *See* ECF #40 at *32-33 n.19 (comparing *State v. Massey*, 86 N.E.3d 30 (Ohio App. 2017) (denying relief), with *State v. Bennett*, No. 2004CA00369, 2006 WL 3042955 (Ohio App. Jan. 23, 2006) (granting relief)). *Massey* is easily distinguishable in that the defendant there alleged a new theory that lacked any support. *See* ECF #40 at *32-33 n.19 Here, by contrast, Mr. Stewart has provided support both for his dissociative amnesia and the suicide theory. *See* ECF #33 at *29-31. The State suggests that, for repressed memories to justify further proceedings, Mr. Stewart, as with the defendant in *Bennett*, would have to “consistently claim[] a lack of recollection.” ECF #40 at *33 n.19. But an individual with dissociative amnesia may not know, until memories are later recovered, that there was any issue with respect to their memory. *See* DSM-V at 299 (“Individuals with dissociative amnesia are frequently unaware (or only partially aware) of their memory problems.”); *see also* ECF #34 App. A at *49 (describing Mr. Stewart’s recall as “episodic” and occurring in “incomplete segments”). The State thus would put individuals with

undermined by the recovered memories as the State's case relies heavily on Mr. Stewart's flawed statements and testimony, the State produced no direct evidence (e.g., murder weapon), and the State's investigator did not find any evidence of a struggle between Mr. Stewart and the victim, J.A. 1222, which would be consistent with death by suicide as opposed to death at the hands of Mr. Stewart. At the same time, Mr. Stewart's recovered memories raise a new theory that establishes his actual innocence, and this theory is supported by the reports of independent professionals. *See* ECF #33 at *29-31; *see also Wilson v. United States*, 391 F.2d 460, 464 (D.C. Cir. 1968) ("If there is any substantial possibility that the accused could, but for his amnesia, establish an alibi or other defense, it should be presumed that he would have been able to do so."). Accordingly, there is more than a bare assertion of incompetence, but several material factors that cut in favor of ordering new proceedings to further investigate the repressed memories and the claims flowing from them.

III. The Repressed Memories and Suicide Theory Were Raised in State Court.

The State next argues that Mr. Stewart cannot raise any new evidence concerning the suicide theory because Mr. Stewart "waived the presentation and

dissociative amnesia in the untenable position of diagnosing a mental disorder that may not present itself until decades later. *See id.* In effect, the State's standard would make it impossible for such individuals with dissociative amnesia to obtain habeas relief.

development of the claim in state court[.]” ECF #40 at *30. It is true that, in 2016, Mr. Stewart’s substitute counsel did not press the repressed memories issue. ECF #33 at *14; *see also* J.A. 1045 (“I . . . have advised [Mr. Stewart] that one of the motions regarding suppressed memories I can think of no merit to bring before the Court and advised him not to go forward on that.”). Generally, the strategic decisions of counsel may be imputed to the client. *See Link v. Wabash R. Co.*, 370 U.S. 626, 633-34 (1962) (“Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent.”). This proposition has less force, however, in light of considerations of equity, *see Alexander v. Local 496, Laborers’ Intern. Union of N. Am.*, 177 F.3d 394, 404 (6th Cir. 1999), or where counsel was not chosen, *cf. Pigford v. Veneman*, 292 F.3d 918, 926 (D.C. Cir. 2002). Here, counsel’s strategic choice in a criminal case deprived Mr. Stewart of an earlier opportunity to raise repressed memories and thereby receive possible relief from a criminal prosecution and from continued incarceration. In addition, Mr. Stewart’s counsel was appointed, not “freely selected.” That counsel also was new counsel with whom Mr. Stewart had a limited relationship. *See* J.A. 1013 (counsel stating that he has taken over representation from an attorney who left the office, and that he spoke to Mr. Stewart only “today” about the pending motion). And this Court has recognized that the *Link* rule is not absolute. *See, e.g., In re Willis Towers Watson*

plc Proxy Litigation, 937 F.3d 297, 309 (4th Cir. 2019). Nor should the Court apply it strictly here.⁵

Even setting aside the 2016 filing, Mr. Stewart did put forward the repressed memories and suicide theory before the state court in a different proceeding. *See* J.A. 1128. Indeed, the State itself has conceded at that proceeding that Mr. Stewart raised both recovered memories and the theory of suicide. *See* J.A. 1269 (“[Movant] raises this new argument that . . . the victim actually committed suicide. . . . And that he didn’t remember this at the time of trial and he didn’t remember this before because it was a repressed memory[.]”). Moreover, in its response, the State itself provides a blockquote from the eventual state court ruling in which the court dismissively stated that Mr. Stewart “now seeks to change his story and assert that [Ms.] Allen perished from suicide, and not in the fashion testified to at trial[.]” ECF #40 at *20 (quoting J.A. 1296). The state court concluded that “it is evident to this Court that he seeks to secure a different pathological finding, and amend his memory to fit it[.]”

⁵ As repressed memories may be gradually recovered over time, one cannot discount the possibility that, in May of 2016, counsel was of the view that the state of Mr. Stewart’s memories at that point were insufficiently developed or corroborated to warrant presentation before the court. *See* American Psychiatric Association, Diagnostic & Statistical Manual of Mental Disorders 299 (5th ed. 2013) (“DSM-V”) (observing that “[s]ome individuals may gradually recall the dissociated memories years later.”). Indeed, according to the record, the suicide letter was not discovered until July of 2016. JA 1130. Given the nature of the mental disorder, including how the mental disorder has presented here, the Court may not wish to insist that the clock starts as soon as a repressed memory reappears.

Id. (quoting J.A. 1296). Accordingly, the new repressed memories and suicide theory were raised, considered, and rejected at the state-court level. The State's contention that Mr. Stewart has prematurely jumped to federal court is without merit.

This adverse ruling was filed in 2019, and Mr. Stewart has filed the current motion in 2021. As Mr. Stewart has pointed out, this Court in *In re Stevens* granted pre-filing authorization where the gap was far greater, specifically 2016 and 2019. ECF #33 at *34-35 (discussing *In re Stevens*, 956 F.3d 229 (4th Cir. 2020)). The State seeks to distinguish *In re Stevens* on the irrelevant ground that Mr. Stewart “relies on a vague assertion of suicide which is in direct contrast to the detailed story he told during the investigation and at trial.” ECF #40 at *36 n.20. First, what is relevant is that, in *In re Stevens*, there was a three-year window between the discovery of the new evidence and the filing of the second or successive habeas petition. See ECF #33 at *34-35. Second, even if factual detail was a relevant distinction, Mr. Stewart, as noted above, has provided specifics as to the manner and circumstances of death. Accordingly, the State's attempt to argue that this case should not receive the same treatment as *In re Stevens* falls short.

The State suggests that the attachments to Mr. Stewart's opening brief may not be considered, because they were not part of the record at the state-court level. See ECF #40 at *29-30. But Mr. Stewart raised the repressed memories and suicide theory before a state court in an application for post-conviction relief, see J.A. 1128, Mr. Stewart

subsequently moved for discovery, *see* J.A. 1234, the repressed memories and suicide theory were discussed at the corresponding hearing, *see* J.A. 1269, and the state court dismissed the application, expressly referencing and summarily rejecting the repressed memories and suicide theory, without ordering any discovery, *see* J.A. 1296.

It cannot be said that Mr. Stewart, having raised repressed memories and the suicide theory, and having affirmatively sought discovery thereafter, did not seek to develop these claims at the state court level. Any absence of such development is attributed to the court, which denied discovery and summarily rejected the possibility that Mr. Stewart may have repressed memories that reveal a suicide cause of death. *Cf. Murray v. Carrier*, 477 U.S. 478, 488 (1986) (noting that procedural default may be excused where an “objective external factor” prevented the petitioner from complying with procedural requirements); *Williams v. Taylor*, 529 U.S. 420, 432 (2000) (“a failure to develop the factual basis of a claim is not established unless there is . . . some greater fault, attributable to the prisoner or the prisoner’s counsel.”); *Winston v. Kelly*, 592 F.3d 535, 555 (4th Cir. 2010) (“when a state court forecloses further development of the factual record, it passes up the opportunity that exhaustion ensures.”). Because of the denial of discovery, the record is materially incomplete—for example, it does not address whether there is any independent and objective support for Mr. Stewart’s allegations of repressed memories—and an expanded record at the federal level therefore would be justified. *See Winston*, 592

at 555-56. Where the denial is unreasonable, the record need not be limited to that which was considered at the state court. *See Winston v. Pearson*, 683 F.3d 489, 496 (4th Cir. 2012). Here, the denial was unreasonable. Under South Carolina law, the newly discovered evidence would likely change the result by creating reasonable doubt as to the State's theory, the evidence was discovered post-trial, could not have been discovered before trial, is material to guilt or innocence, and would not have been cumulative or impeaching. *See* J.A. 1242-43 (identifying factors for post-conviction relief stemming from newly discovered evidence) (citing *Hayden v. State*, 299 S.E.2d 854, 855 (S.C. 1983)). The repressed memories satisfy each of the relevant factors and as such this Court need not limit its consideration to the record below but instead may consider additional, new evidence, including the attachments to Mr. Stewart's opening brief.

In any event, Mr. Stewart's assertion of actual innocence overcomes any procedural deficiencies. *See McQuiggin*, 569 U.S. at 392-93.

IV. Mr. Stewart Has Made a Prima Facie Case for Pre-filing Authorization.

At the end of the day, Mr. Stewart has met his burden of making a prima facie case that the repressed memories merit pre-filing authorization under Section 2244. First, it is not disputed that Mr. Stewart may suffer from dissociative amnesia, the mental disorder that accompanies a traumatic event and that encompasses repressed memories. Those uncovered memories point to a different theory of the victim's

death, one that suggests that he is not legally responsible for the victim's death under relevant South Carolina murder statutes, and that he is therefore actually innocent. It is not disputed either that it is highly probable that the victim penned a suicide note. These considerations, taken together, help distinguish bona fide from opportunistic presentations of new evidence, cast serious doubt as to the State's theory, amount to a credible preliminary alternative theory of the case, and would justify further factual development at the district court. Moreover, Mr. Stewart has identified viable constitutional claims related to his repressed memories—that without access to his memories due to a mental disorder, he could not participate effectively in his defense, and that the repressed memories indicate that he is imprisoned despite being ineligible for voluntary manslaughter under South Carolina law. All told, Mr. Stewart has mounted a *prima facie* case within the meaning of Section 2244, and deserves at least the opportunity for additional factual development to occur.

* * *

Mr. Stewart also acknowledges that the issue raised before the Court—whether repressed memories qualify as newly discovered evidence warranting pre-filing authorization—is novel. Mr. Stewart humbly suggests that, in charting course in this new area of law, the Court look to whether there is any independent professional support for the allegation of dissociative amnesia under the DSM, such

as through an evaluation by a relevant professional, whether there is any independent factual support for the exculpatory aspects of the repressed memories, such as a suicide note, whether the State's case depends on circumstantial evidence provided by a defendant who did not have access to memories due to dissociative amnesia, whether there is direct evidence that clearly establishes the prosecution's theory, and whether there is any evidence of abuse on the part of the movant.

Mr. Stewart respectfully urges the Court to avoid the backwards path proposed by the State: that an individual appearing in court is permanently bound to past statements or writings, notwithstanding a professional finding that it is probable that the individual responding to a traumatic event—whether it be death, sexual assault, or other violent event—lacked access to material memories at trial and those memories have since been recovered. The implications of the State's position, rendering dissociative amnesia a nullity for legal purposes despite contrary medical opinion, cannot be understated given the serious, traumatic cases that invariably populate the criminal docket and that will make their way up to the federal appellate courts. The State's efforts to effectively foreclose consideration of new evidence emerging from repressed memories—functionally shutting the door to individuals who experienced traumatic events and lost access to memories through no fault of their own—should be rejected in particular and in this case as well. See ECF #33 at *24 (“courts allow those differences of opinion [as to

repressed memories] to be fleshed out in the adversarial process through competing testimony and information, instead of categorically excluding such evidence altogether”) (citations omitted).

CONCLUSION

For the foregoing reasons, and those set forth in the opening brief, the motion for authorization to file a second or successive habeas petition should be granted.

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September 14, 2022

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