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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case Number: 2025-001377

RICKY LEE BLACKWELL, SR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A finding of intellectual disability exempting a person from the death penalty requires satisfaction of three criteria: (1) subaverage intellectual functioning, meaning a full-scale IQ of approximately 75 or less; (2) significant deficits in at least one of three areas of adaptive behavior–conceptual, social and practical skills; and (3) onset of the disability prior to adulthood. *See Atkins v. Virginia*, 536 U.S. 304 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003).

Prior to Ricky Blackwell's capital trial, he presented evidence of two adult full-scale IQ scores of 63 and 68, evidence of adaptive deficits and childhood onset at a pretrial hearing. Nevertheless, the trial court rejected Blackwell's *Atkins* claim, relying heavily on testimony from Dr. Gordon Brown, who evaluated Blackwell for the State. The trial court's decision turned on several factual conclusions, including the court's mistaken belief that his childhood test scores, which were not IQ tests, were inconsistent with ID, the fact that Blackwell had once obtained a commercial driver's license, and concerns that potential "intervening factors," such as a head injury, chemotherapy, and treatment for depression, could have had an adverse effect on Blackwell's IQ as an adult.

Despite being on notice that these issues stood to impact Blackwell's *Atkins* claim (both when they received Dr. Brown's report prior to the *Atkins* hearing and again after the trial court issued its written pretrial order), trial counsel did nothing to collect and present additional evidence on these topics at either the pretrial hearing or the penalty phase of Blackwell's trial. Instead, they offered only a single witness to repeat the same testimony that counsel unsuccessfully relied on prior to trial. The jury, like the trial court, rejected a finding of intellectual disability.

In post-conviction, Blackwell presented newly discovered evidence that he has a genetic mutation known to cause intellectual disability in most cases in which it is present. *See* S.C. Code § 17-27-20(A)(4). He also presented new evidence demonstrating that trial counsel was ineffective in their handling of his *Atkins* claim at trial, including testimony from Dr. Brown who, once apprised of additional relevant facts, changed his opinion and agreed with Blackwell's two other experts that Blackwell fully satisfies the criteria for intellectual disability.

Following the PCR hearing, and over Blackwell's objections, the PCR Court instructed counsel for the State to draft an order denying relief on all claims but provided no guidance other than that Blackwell was "unable to maintain his burden under *Strickland*." The State prepared an order finding all three expert witnesses lacked credibility, rejecting Blackwell's genetic evidence as "immaterial," and relying on numerous other factual findings that are contrary to the record. The PCR Court signed the State-drafted order verbatim approximately half an hour after receiving it, despite the numerous errors.

The questions presented are:

I. Whether the PCR Court erred by finding that Blackwell is not a person with intellectual disability where all three experts who evaluated him opined that he meets the criteria, including the State's own trial expert.

II. Whether the PCR Court erred by finding that newly discovered evidence cannot be "material" under S.C. Code § 17-27-20(A)(4) unless the new evidence, standing alone and without consideration of the totality of the evidence, dictates a different outcome.

III. Whether the PCR Court erred by finding that trial counsel was not ineffective in their handling of petitioner's *Atkins* claim at trial.

IV. Whether the PCR Court erred by finding that trial counsel was not ineffective in their investigation and presentation of mitigating evidence.

V. Whether this case should be remanded to the PCR Court for compliance with *Fishburne v. State*, 427 S.C. 505, 832 S..E.2d 584 (2019), or alternatively, whether this Court should hold that *Fishburne* is inadequate in the capital PCR setting and require judges to write their own order in those cases.

STATEMENT OF THE CASE

Petitioner, Rickey Lee Blackwell, was convicted and sentenced to death in Spartanburg County. *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017). On direct appeal, this Court affirmed the conviction and sentence. *Id*. Blackwell subsequently sought post-conviction relief ("PCR"), and an evidentiary hearing was held on his PCR claims on March 27-31, 2023; July 31-August 21, 2023; and December 15, 2023. Relief was denied by the PCR Court. This petition follows.

STATEMENT OF FACTS

I. Pretrial *Atkins* Hearing

In July 2012, after three years of representation, trial counsel requested that Blackwell's IQ be tested by Dr. Ginger Calloway. Blackwell obtained an IQ score of 63. App. 6947. Lead counsel Bill McGuire notified the court and solicitor that Blackwell was pursuing "what appears to be a very strong potential claim pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002)." App. 7947–48.

Dr. Ginger Calloway concluded Blackwell is a person with intellectual disability. App. 7057–7104. Dr. Gordon Edgar Brown, Jr., an evaluator from the Department of Disabilities and Special Needs ("DDSN"), opined that Blackwell did not meet the criteria for intellectual disability. App. 4189. Specifically, Dr. Brown's report identified three risk factors—"a diagnosis of and treatment for cancer, head injury, and significant depression and/or anxiety"—which occurred in adulthood that Dr. Brown believed could have caused cognitive deficits after the end of the developmental period.[1] App. 7116.

[1] At the PCR hearing, Dr. Brown explained that he included these in his report as areas he would have liked more information on for his evaluation. App. 7116, 6347–48, 6712–13.

Pursuant to *Franklin v. Maynard*, the trial court conducted a pretrial hearing to determine intellectual disability. 356 S.C. 276, 279, 588 S.E.2d 604, 606; App. 3765–4323. In preparation, mitigation investigator Kara Richards-Baker reviewed the experts' reports and prepared a list of anticipated State arguments that she advised trial counsel to prepare to rebut to "strengthen" the defense presentation. App. 5369–75, 6962. These included concerns about childhood scores of 86 and 87 on the California Test of Mental Maturity ("CTMM"), reliance on perceived adaptive strengths (such as the fact that Blackwell once obtained a commercial driver's license ("CDL")), and arguments attributing deficits to later-life events like cancer, head injury, or seizures. App. 6962, 5374–76.

Dr. Calloway testified for the defense. App. 3827–4133, 4249–89. She administered the WAIS-IV, yielding a full-scale IQ of 63, found no malingering, and agreed with Dr. Brown that the score fell within the intellectual disability range. App. 3850–53, 3901.

She also concluded that Blackwell exhibited significant deficits in adaptive functioning in the areas of communication, home living, social, community use, self-direction, and functional academics. App. 3862–68. Developmental records showed consistently poor academic functioning: Blackwell failed all of his ninth-grade classes and was required to repeat the grade in adjunct courses—precursors to special education designed for students not expected to follow a traditional academic track—and, at age eighteen, scored at approximately a 5.8-grade level in reading and 5.6 in math on the Adult Basic Learning Exam, with additional standardized testing placing him in just the 8th percentile. App. 3890–98.

On cross-examination, the State focused heavily on Blackwell's work history, which involved truck driving and a CDL. Dr. Calloway testified that individuals with mild intellectual disability can "drive a truck," "have a driver's license," and "get a CDL." App. 3838–40. However,

she acknowledged she had limited information about the specifics of Blackwell's employment at Hess and did not know how he navigated routes or obtained the CDL. App. 4010–11. She also testified that her understanding of CDL requirements came primarily from information provided by the State. App. 4083.

The State presented testimony from Dr. Kimberly Harrison and Dr. Brown. App. 3774–3827, 4135–4247. Dr. Harrison, who evaluated Blackwell for criminal responsibility, opined that based on childhood testing, he "likely did not have an intellectual disability." App. 3784, 3786.

Dr. Brown reviewed Blackwell's detention center, medical, driving, employment, and hospital records, as well as Dr. Harrison's and Dr. Calloway's reports; interviewed Blackwell twice; and administered the WAIS-IV and malingering testing. App. 4143–45. He testified that Blackwell received a full-scale IQ score of 68 on the WAIS-IV he administered in 2013, and that this score was more reliable than scores of 86 and 87 from short-form testing because "those are not IQ scores" but "measures of scholastic aptitude," and he would not "trust these scores…as being necessarily an indication" that Blackwell was not a person with intellectual disability. App. 4183. As to adaptive functioning, Dr. Brown testified he "didn't have clear data from [the developmental] period" regarding adaptive deficits—such as "educational placement in a program for the intellectually disabled"—and, based on the totality of the data, concluded Blackwell was not a person with intellectual disability. App. 4189–4190.

II. Trial Court's Order Denying *Atkins* Relief

The trial court found Blackwell failed to prove intellectual disability and identified several deficiencies with counsel's pretrial presentation. App. 7117–30.

First, the court relied heavily on what the court labeled as childhood "IQ scores"—a 68, 87, and 86 derived from the California Test of Mental Maturity Short Form ("CTMM"), and a 72

from the Short Form Test of Academic Aptitude—treating them as "the most reliable measures of Blackwell's IQ prior to age 18" because "they were in fact given during that stage of his life" and noting it had "received no evidence concerning either the [childhood] tests themselves or their administration which would discredit them." App. 7123–24.

Second, the court found insufficient evidence of adaptive deficits during the developmental period. App. 7126. In doing so, it focused on Blackwell's employment history and ability to obtain and maintain a commercial driver's license, treating these as evidence of adequate adaptive functioning. [2] App. 7124–25.

Third, the court attributed Blackwell's lower adult IQ scores to intervening events occurring after age eighteen, including a four-wheeler accident involving a head injury, cancer treatment requiring chemotherapy, and major depressive disorder treated with Thorazine. App. 7123–24. The court reasoned that these factors could have reduced Blackwell's intellectual functioning later in life. *Id.*

Based on these findings, the court denied *Atkins* relief and the case proceeded to trial.

III. Jury Trial

Trial began ten days after the *Atkins* hearing. Counsel conceded guilt during the guilt phase, and the jury quickly convicted Blackwell of murder and kidnapping. At sentencing, the defense re-presented the intellectual disability claim but called only Dr. Calloway, who offered essentially

[2] Along with this finding, the trial court also critiqued the overall adaptive deficits presentation, finding that Blackwell had "very little difficulty with his family relationships," despite recognizing that his wife "handled the management of the household." App. 7126. The court also discredited the rest of Dr. Calloway's adaptive functioning evaluation, including finding there were "serious questions as to whether or not a sufficient matrix with adequate information," was used in adaptive behavior testing that Dr. Calloway relied on for her evaluation, as she had only spoken to "6 individuals, most of whom did not have sufficient information," across the domains of adaptive functioning. App. 7126–27.

the same testimony she gave during the pretrial hearing. App. 2799–2960. Trial counsel made no effort to call any additional witnesses, offer any further documentary evidence, or have Dr. Calloway obtain additional information from Blackwell in preparation for her trial testimony. The rest of the defense's penalty phase presentation consisted of testimony from Blackwell's treating psychiatrist, Dr. Donna Maddox, who testified about her medication management of Blackwell's anxiety and depression, and other lay witnesses who knew Blackwell and described him as a loving father and consistent worker. App. 2989–3107. No additional witnesses were called, and the State presented no expert rebuttal (declining to call Dr. Brown or Dr. Harrison), relying instead on cross-examination. App. 2918–45, 2955–60.

The jury found that Blackwell is not intellectually disabled and sentenced him to death. App. 3258.

IV. Post-Conviction Evidence

In post-conviction, Blackwell investigated and presented new evidence establishing all three prongs of intellectual disability, including newly discovered genetic evidence and evidence demonstrating that trial counsel ineffectively handled the *Atkins* claim at trial.

Dr. Gregory Olley testified as a teaching expert, explaining that the accepted diagnostic framework for intellectual disability requires a showing of: (1) "significant impairment in intellectual functioning, which means intelligence"; (2) "significant impairment in adaptive behavior, which means everyday life"; and (3) "that these impairments originated during the developmental period, which is to say childhood." App. 5918–19.

A person meets the significantly subaverage intellectual functioning prong if his intellectual functioning—measured by a properly administered, comprehensive standardized IQ

test—is two standard deviations below the mean. App. 5937–38, 7385; DSM-5-TR at 39. In practice, this corresponds to a full-scale IQ score of approximately 75 or below. App. 5939–40.[3]

Adaptive behavior refers to typical activities of everyday living in a community setting. AAIDD-12 at 29. To satisfy this criterion, an individual must demonstrate deficits in one of three skill areas of adaptive behavior: conceptual, social, or practical.[4] AAIDD-12 at 31; DSM-5-TR at 37. A deficit exists when at least one domain "is sufficiently impaired that ongoing support is needed for the person to perform adequately across multiple environments, such as home, school, work, and community." DSM-5-TR at 42.

Prong three requires that deficits in both intellectual and adaptive functioning manifest during the developmental period. DSM-5-TR at 37. A formal diagnosis in childhood is not required; rather, the evidence must show that the condition originated in the developmental period. *Brumfield v. Cain*, 576 U.S. 305, 308–10 (2015); *Blackwell*, 420 S.C. at 172–73, 801 S.E.2d at 737 (Pleicones, J., dissenting).

[3] *Atkins*, 536 U.S. at 309 n.5 ("It is estimated that between 1 and 3 percent of the population has an IQ between 70 and 75 or lower, which is typically considered the cutoff.").

[4] The current clinical standards conceptualize adaptive behavior as these three domains or skill areas. App. 5922–23, 5925. Prior standards listed ten skill areas and required deficits in at least two. App. 5923, 7377. Dr. Olley testified that these changes "cover the same area," and "get at the core meaning of what adaptive behavior is. But the change . . . is a reflection of more recent research." App. 5922–23.

All three experts who evaluated Blackwell—Dr. Susan Knight,[5] Dr. Gordon Brown,[6] and Dr. George Corvin[7]—testified at the PCR hearing that he meets these criteria. App. 5997–98, 6241, 6245–48, 6277–82, 6353–54, 6739–40. Blackwell also presented affidavits from teachers, employers, and others describing his lifelong limitations. App. 6940–46.

A. *Significantly Subaverage Intellectual Functioning*

Blackwell presented extensive evidence of "significant impairment in intellectual functioning." App. 5918–19. Two comprehensive IQ evaluations using the Wechsler Adult Intelligence Scale, 4th Edition ("WAIS-IV") yielded full-scale scores of 63 (Dr. Calloway, 2012) and 68 (Dr. Brown, 2013). App. 6001–05, 6648, 7072, 7113–14, 7486–87.[8] Both scores fall at least two standard deviations below the mean, squarely within the range for significantly subaverage intellectual functioning. App. 6006–07, 7114, 7486–89. Drs. Knight, Brown, and Corvin all agreed that this prong is satisfied. App. 6013, 6245–46, 6351–52.

The PCR record also included school-based testing from the developmental period, including the California Test of Mental Maturity ("CTMM"), a group-administered, school-based screening measure of academic achievement. App. 7528–48. Drs. Olley, Knight, and Brown uniformly testified that such "short-form" tests are not appropriate for diagnosing intellectual

[5] Dr. Susan Knight is a board certified clinical and forensic psychologist and evaluated Blackwell for intellectual disability in these PCR proceedings. App. 5989–95.

[6] Dr. Gordon Brown is a forensic psychologist who conducted the DDSN intellectual disability evaluation prior to trial. App. 6341–44.

[7] Dr. George Corvin is a board-certified general and forensic psychiatrist and evaluated Blackwell's mental state at the time of the offense. App. 6170, 6174.

[8] Both Dr. Brown and Dr. Calloway found that Blackwell put forth good effort on his test; that the tests were valid measures of his intellectual functioning; and that Blackwell was not malingering. App. 6002–6006, 6648, 7113–14, 7116, 7486–89.

disability.[9] App. 5945–5947 (Dr. Olley testified such tests are "not [for] diagnosis" and do "not meet the criteria for [an] intelligence test"); App. 6008–09, 6024 (Dr. Knight described them as "screening measures" or "achievement testing," not "full scale intelligence tests"); App. 6648–49, 6653, 6716–18 (Dr. Brown testified such tests are not equivalent to full-scale IQ tests for diagnostic purposes). Dr. Olley explained that the DSM requires "a current reliable, valid, individually administered, comprehensive, and standardized test that yields a full-scale IQ score." App. 5937. Consistent with that standard, Dr. Knight testified that the tests Blackwell took measured only limited aspects of functioning, were not full-scale intelligence tests, and therefore were not relevant to her assessment of intellectual functioning. App. 6008–09.

B. ***Deficits in Adaptive Behavior***

Blackwell also established significant deficits in adaptive functioning—"everyday life." App. 5919. Dr. Olley explained that adaptive deficits are shown by significant impairment in at least one of three domains: conceptual, social, or practical. App. 5925–26. This assessment requires a "big picture" evaluation of functioning across settings, relationships, and time, focusing on "typical performance" during the developmental period. App. 5947–49. The evidence established deficits in all three domains. App. 6044–45, 6247–48, 6351–52, 6739–40.

[9] This is in accordance with the clinical standards and relevant law. Short form tests, group tests, or screening tests are clinically inappropriate for determining whether someone has significantly subaverage intellectual functioning as they do not provide sufficient data for the evaluation or a full-scale IQ score. App. 5937–39. Courts have consistently found, when testing IQ, it is inappropriate to use "noncomprehensive screening or group IQ tests." *Ex Parte Moore*, 470 S.W.3d 481, 518–19 (Tex. Crim. App. 2015); *see also* Order Granting Post-Conviction Relief in *Bell v. State*, 03-CP-04-1857, at 17 n.8 (Ct. Comm. Pleas Nov. 16, 2016); *Pruitt v. Neal*, 788 F.3d 248, 266–67 (7th Cir. 2015).

1. Conceptual Skills

Conceptual functioning involves abstract reasoning, problem-solving, planning, and judgment. App. 5950–51, 6014. Blackwell struggled in school from a young age, showing declining performance and advancing through multiple "social promotions" rather than by meeting academic standards. App. 6016–17, 6730–31, 7494–7503. After failing ninth grade, Blackwell was placed in adjunct ("remedial", App. 6940, ¶ 5) classes—described as "special education-like"—that taught simplified material at roughly a 4th–6th grade level, and often "were not expected to read" or do homework. App. 6018–20, 6940–41, 7494–98. He was part of a group of "lower performing students" who "received passing grades primarily on coming to class, App. 6020–21, and was placed in "vocational programming" for students who struggled academically. App. 6021, 6940, 7495.

He ultimately repeated ninth grade, dropped out in eleventh grade, and was ranked last in his class when he did so (113/113).[10] App. 6021–23, 7528. Dr. Brown testified this ranking "would certainly be consistent with" intellectual disability. App. 6734. Testing at age 17½ showed functioning at approximately a 5th-grade level in reading and computation and 6th-grade level in problem solving. App. 6021–22. Teachers and peers described him a "not real smart," "a slower student," "on the outer flank of the slow learning group," quiet, withdrawn, and unable to handle "novel situations," which would "paralyze" him and cause him to "shut down." App. 6024–26, 6074, 7496–98.

[10] Teachers in the school system at the time reported that this ranking would have been based on his grades at the time he dropped out and he would not have automatically been placed at the bottom of the class because he left school. App. 6023, 6940. This ranking would have been reflective of his ranking among his class year at that point in time. App. 6023–24.

These conceptual deficits persisted into adulthood. Blackwell worked only in "not very complicated," labor-based jobs not requiring academic or conceptual skills and never completed high school or obtained a GED. App. 6026–27, 7504–11, 7528–48. He was described as having a "[l]imited vocabulary" and as the "[s]implest guy I ever met," and even used a children's Bible because "he couldn't read the other type of Bible." App. 6027, 6945–46, 7503–04. Dr. Knight and Dr. Brown concluded he has significant conceptual deficits. App. 6026, 6044–45, 7515–16.

2. Social Skills

Blackwell was consistently described as "quiet," "shy," "socially awkward," and "withdrawn." App. 6029–30, 7497–98. He avoided extracurricular activities and "skilled social activities," had a "very small social network," and "didn't form new social relationships or seek out new social experiences," App. 6029–30.

He was also highly vulnerable—"gullible," easily influenced, and frequently exploited or bullied. App. 5844, 6029–30, 7493. As a child, he brought his matchbox cars to give to bullies "to leave [him] alone," App. 5844, once losing his entire collection, App. 5845. He struggled with decision making and problem solving, App. 7492–93, 7496, becoming overwhelmed by even minor choices, such as "choosing another peer for a kickball game," and would instead "sit on the base unable to make a decision," App. 5368, 6029–30, 6958. Dr. Knight concluded these reflect significant social deficits. App. 6029–31, 6044–45, 7516.

3. Practical Skills

Practical skills include everyday living abilities such as self-care, money management, and independent functioning. App. 5952–53, 6032. The record demonstrates substantial deficits. Dr. Knight found clear deficits in practical skills but had insufficient information to determine whether the deficits existed during the developmental period. App. 6032–33, 6045, 7516–18.

Blackwell never lived independently. App. 5354. He lived with his parents until age 23, when he married his wife Angie, then with her family, and then moved into a trailer on land owned by and near to Blackwell's parents. App. 6033, 6112–13, 6681, 7514. After Angie left him, Blackwell was "unable to maintain self-management, keep a household, or reside independently," App. 7517, and his parents ensured he bathed, did his laundry, and arranged cleaning. App. 5864, 5873, 7210.

Angie handled all household responsibilities, including finances, childcare, medical care, and daily functioning—even scheduling and attending his doctors' appointments and ensuring he took his medication. App. 6113, 6681–82, 7517, 8142–44, 8166. Blackwell "never independently managed his finances," "didn't know how to write a check," and relied on others to manage his money and handle his bills—eventually falling behind on his payments and losing his trailer when he no longer had support. App. 5355, 5872, 6033, 6297, 6703–04, 7503, 7513–14.

Blackwell's employment consisted primarily of short-term, "very entry level" jobs obtained through family or friends that involved "basic" and "repetitious" tasks like "packing peaches" into boxes or looking for bad spots on cans at a can factory and throwing them out. App. 5355, 6033, 6090–95, 6350, 7504–12. He struggled with job demands, quit when frustrated, and was fired multiple times for accidents and rule violations. App. 6090–92, 6098–6101, 7549–7620. Dr. Brown testified this pattern is consistent with intellectual disability. App. 6357, 6661.

Although Blackwell could drive and worked in trucking, Dr. Olley testified that a regular or commercial driver's license does not rule out a diagnosis of intellectual disability because "we don't rule out ID on the basis of accomplishments."[11] App. 5967. Proper assessment of this

[11] Several courts have found individuals with driver's licenses or commercial driver's licenses, like Blackwell, were people with intellectual disability and therefore ineligible for the death penalty. *See, e.g.*, Order Finding Defendant Intellectually Disabled in *State v. Brown*, 2011-GS-

behavior requires evaluating how the license was obtained, what preparation to obtain the license was required, and whether accommodations or supports were provided on the job. App. 5967.

Dr. Knight testified that Blackwell learned to drive a truck through "rote repetition"—by "observ[ing] his father driv[e] the truck for many hours on end" for years. App. 6035–36, 7492, 7504. Blackwell's first employer at K & S Trucking, Ken White, described his hiring requirements at the time as being able to "breath[e]," "climb in the cab," and "drive around the block without hitting anybody." App. 6038, 7506. At the time, only a public chauffeurs license was required—which did not require testing like a CDL. App. 6038–39; *see also* App. 5365–66, 6957.

Dr. Knight reviewed Blackwell's trucking records and employment records from Belue Trucking from 1984–86. App. 6036, 6040-42; 7508, 7551–7620. Blackwell's last trucking job ended in 1986 when he was diagnosed with cancer. App. 7509, 7553, 6101. Records indicate Blackwell obtained his CDL in 1992—several years after his last trucking job—right as the licensing law changed. App. 6105–06, 6111, 6164, 7605. He had no trucking jobs after he obtained his CDL. App. 6105–06, 6164, 6957, 7506–12, 7549–50, 7584. The records also indicate some of the requirements for Blackwell to obtain this license were satisfied by submitting waiver of skill forms signed by former employers. App. 6106–6107, 7584–7614.[12]

30-152 (Ct. Gen. Sess. Apr. 14, 2016); *Commonwealth v. Vandivner*, 644 Pa. 655 (2018); *Pruitt v. Neal*, 788 F.3d 248 (7th Cir. 2015).

[12] The PCR evidence established that at least some of Blackwell's requirements for his CDL were not legitimately fulfilled. During his time at Belue, the company conducted internal evaluation of his driving. App. 6041–42, 7508, 7556–60, 7600–02. On a "Driver's Road Test Examination," Blackwell received an "OK" rating. App. 7556. The records also include a two-page "Commercial Driver Written Examination," which is neither signed nor graded, App. 7600–01, leaving no "indication if the [answers] are correct," or who completed it. App. 6042. Sonya Stott, whose name appears on some of the testing forms, stated in an affidavit that her signature was forged on the Certification on Blackwell's Commercial Driver Written Examination: "My name appears on the examination form, but I did not put it there. I am certain the signature is not my handwriting." App. 6942, 7600–02.

Dr. Knight testified that despite maintaining employment, Blackwell "wasn't particularly successful or skilled" at it. App. 6035, 7549. Despite making the same "local runs," mainly driving routes that were "straight shots", and "always ha[ving] someone in the cab with him," App. 6037–38, 6163–64, 7506–08, Blackwell was involved in multiple accidents, including four in a single year at Belue Trucking, App. 6040, 7508, 7549, 7566, 7604. He was also repeatedly disciplined for failing to keep his trucking logs properly, allowing family members in the truck, and failing report absences, and was fired from at least three trucking jobs for accidents or serious rule violations. App. 6098–6101, 7507–08, 7549–50, 7553, 7584.

Dr. Knight concluded that Blackwell's relative "strength" in trucking did not detract from the significant practical deficits, and Blackwell met the adaptive criteria. App. 6035; *see also* App. 6044–45, 7515–18. Dr. Brown agreed, testifying that Blackwell's trucking history actually supports poor adaptive functioning, and that he meets the adaptive deficit prong. App. 6675, 6678, 6735, 6739.

C. Onset During the Developmental Period

The evidence overwhelmingly established that Blackwell's intellectual and adaptive deficits originated during the developmental period. Drs. Knight, Brown, and Corvin all agreed this prong is satisfied. App. 6044–45, 6246–48, 6352, 6739–40.

Dr. Knight explained that IQ is generally stable over time, making adult IQ scores reliable indicators of earlier functioning absent evidence of decline. App. 6007–08. Blackwell's scores of 63 and 68 are consistent with his longstanding academic deficits. App. 6734. As Dr. Brown explained, the absence of childhood IQ testing does not preclude diagnosis; clinicians instead assess whether any later-occurring factor could account for lower scores. App. 6719.

The experts systematically ruled out such factors, including chemotherapy, head injury, depression, and substance use, concluding none could account for Blackwell's intellectual functioning decades later. App. 6009–13, 6217–22, 6229–31, 6351-54.

First, regarding chemotherapy for Hodgkin's lymphoma, Dr. Knight—after consulting a lymphoma specialist—testified that any cognitive effects are temporary and typically resolve within a year. App. 6009–10. Because Blackwell's treatment ended in 1987 and his IQ testing occurred decades later, she concluded it did not affect his scores. App. 6009–10, 6013, 7519. Dr. Corvin likewise found no evidence that the cancer or its treatment affected Blackwell's brain or central nervous system. App. 6229–31.

Second, the 4-wheeler accident at age 43 resulted in a mild traumatic brain injury, with a normal CAT scan and no evidence of lasting impairment. App. 6011–12, 7520–21. Both Drs. Knight and Corvin testified that such injuries may cause short-term cognitive issues but do not produce long-term declines, particularly more than a decade later. App. 6011–13, 6221–22. Dr. Knight therefore found no impact on Blackwell's IQ scores. App. 6012–13, 7521.

Third, although Blackwell experienced major depressive episodes—and was hospitalized twice for resulting suicidal or self-injurious behavior—any associated cognitive effects are transient and resolve with treatment. App. 6010–11. At the time of testing, his depression was treated, and neither examiner observed active symptoms affecting performance. *Id.* Dr. Knight consulted with a psychiatrist regarding the effects of the medication at the jail during the pretrial IQ testing and consulted with a psychiatrist regarding its effect, concluding that it did not negatively impact Blackwell's intellectual functioning given the low dose he was receiving. App. 6004. Dr. Corvin further testified that Blackwell's medication likely improved, rather than impaired, his testing performance. App. 6217–20.

Finally, Dr. Knight explicitly testified that she considered Blackwell's drug use, which he reported to her, but found it was not relevant to her opinion based on the level of his usage and because "[m]arijuana historically has not been a type of drug that would reduce someone's cognitive functioning." App. 6130.

Each concluded that none of these factors could account for Blackwell's intellectual functioning decades later. App. 6009–13, 6217–22, 6229–31. Thus, his adult IQ scores reflect his developmental-period functioning. Consistent with this, all three experts agreed that Blackwell had significantly subaverage intellectual functioning during the developmental period. App. 6013, 6244–6426, 6351–6352, 6739–6740.

The PCR evidence likewise established that Blackwell's adaptive deficits manifested during the developmental period. His academic struggles, placement in remedial settings, and eventual dropout reflect early conceptual deficits, while contemporaneous accounts describe him as "socially awkward," "gullible," "withdrawn," and easily manipulated—hallmarks of social deficits present in childhood. App. 7516. Based on school records and collateral sources, Dr. Knight concluded that Blackwell had developmental-period deficits in the conceptual and social domains, and Drs. Brown and Corvin agreed. App. 6044–6045, 6242–6248, 6350–6353, 6739.

D. Evidence of CAMTA1 Gene Abnormality

Blackwell also presented genetic evidence confirming developmental onset. Dr. Christopher Cunniff[13] a geneticist, testified about genetic testing he ordered for Blackwell and his parents. The testing revealed that Blackwell had a genetic abnormality in his *CAMTA1* gene. App.

[13] Dr. Cunniff is a board-certified pediatrician and medical geneticist, who has worked in clinical, governmental, and academic settings, and was qualified by the PCR Court as an expert in medical genetics. App. 5763–67, 7400–27.

5767–73, 7428–69. Dr. Cunniff testified that the abnormality was "particularly significant" because it is "very commonly associated with intellectual disability." App. 5773–74. Though having the genetic abnormality alone is not sufficient to diagnose a person with intellectual disability, when a psychological expert diagnoses a person with intellectual disability and the person has the *CAMTA1* genetic variation, geneticists have determined that "the genetic change is causative of intellectual disability." App. 5774.

In sum, the uncontroverted expert testimony and corroborating record evidence establish that Blackwell's deficits originated during the developmental period. App. 6013, 6247–50, 6351–52, 6739–40.

In response, the State called Dr. Nelson, who did not evaluate Blackwell, did not interview witnesses, and acknowledged that he "cannot make a diagnosis" without examination. App. 6880–81, 6887. He offered no opinion as to whether Blackwell meets the criteria for intellectual disability.

V. Post-Hearing PCR Procedure

Following the hearing, the parties submitted post-hearing briefs. On January 28, 2025, the PCR court issued a summary order dismissing all twenty-four claims, stating only that "[a]fter careful consideration, Applicant is unable to maintain his burden under *Strickland* and his PCR application is DISMISSED in the entirety." App. 8455–8457. The court provided no analysis and did not address non-IAC claims. Instead, it directed the State to draft a proposed order with findings and conclusions pursuant to *Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019) (Allowing party drafted proposed orders in PCR cases when a copy of the proposed order is provided to opposing counsel for their review, time is given for opposing counsel to review the

order to identify deficiencies, and the judge carefully reviews the proposed order to ensure it includes appropriate findings of fact and conclusions of law).

Blackwell objected and requested that the court either draft its own order or provide specific guidance, noting that not all claims were governed by *Strickland v. Washington*, 466 U.S. 668 (1984) and that the court failed to identify which prong of *Strickland* was not met. App. 8458–62. Although a status conference was scheduled, it was canceled, and the court directed the State to submit the proposed order by March 15, 2025. App. 8604–14. After the PCR Court granted a short extension, the proposed order was sent to Blackwell and the PCR Court on March 21, 2025. Thirty-one minutes later, without allowing time for response, the court requested a hard copy and subsequently signed the order verbatim on April 7, 2025. App. 8601. Blackwell timely moved to alter or amend, raising *Fishburne* concerns on April 17, 2025. App. 8560–8702, The PCR Court denied the motion in a one-sentence order on June 10, 2025. App. 8714. This appeal follows.

ARGUMENT

I. The PCR Court Erred in Finding That Blackwell Is Not a Person with Intellectual Disability Where All Three Experts Who Evaluated Him—Including the State's Trial Expert Who Withdrew His Prior Opinion—Opined That He Meets The Diagnostic and Legal Criteria.

Persons with intellectual disability are categorically ineligible for the death penalty. *See Atkins v. Virginia*, 536 U.S. 304 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003). This exemption reflects diminished culpability, including reduced ability to make "calculated judgments," to "control impulses," and "to abstract from mistakes and learn from experience." *Atkins*, 536 U.S. at 316–20; *Hall v. Florida*, 572 U.S. 701, 708–09 (2014).

The PCR Court erred in finding that Blackwell is not a person with intellectual disability. All three evaluating experts—Dr. Knight, Dr. Brown, and Dr. Corvin—independently opined that

he meets the diagnostic criteria for intellectual disability.[14] App. 5998–6168, 6170–6341, 6341–6371, 6627–6744. Their opinions were grounded in comprehensive testing, extensive record review, and corroborating life-history evidence, and were unrebutted by any contrary diagnosis. Despite the overwhelming weight of the evidence, the PCR Court rejected Blackwell's claim by signing, verbatim, a State-drafted order that rejected Dr. Knight's opinion in full based on a purported finding that her analysis was biased and insufficiently detailed. The order rejected Dr. Brown's opinion because it was allegedly based "solely from review" of Dr. Knight's report. App. 8498. The order made no mention of Dr. Corvin's opinion. Because the PCR Court's decision is not supported by the unanimous opinions of the evaluating experts, this Court should grant *certiorari* and reverse.

A. *The PCR Court's Credibility Findings are Contrary to the Record.*

The PCR Court rejected the uncontroverted expert opinions only by mischaracterizing all three experts' testimony and selectively disregarding the record. Although credibility findings are generally afforded deference, *Frierson v. State*, 423 S.C. 257, 262, 815 S.E.2d 433, 435–36 (2018), this Court has declined to do so where those findings are unsupported or contradicted by the record. *See*, *e.g.*, *Goss v. State*, 425 S.C. 101, 107–08, 820 S.E.2d 373, 375–76 (2018); *Thompson v. State*, 423 S.C. 235, 247, 814 S.E.2d 487, 493 (2018). This is such a case.[15]

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[14] Dr. Ginger Calloway did not testify at the PCR hearing but evaluated Blackwell pretrial. She also opined that Blackwell is a person with intellectual disability. *See* App. 7057–7104. For the reasons developed at the hearing and discussed more thoroughly below, Blackwell asserts trial counsel were ineffective in developing and presenting evidence of intellectual disability, including failing to provide available information to Dr. Calloway, particularly after the pre-trial *Atkins* hearing. *See infra* Section II.

[15] As discussed below, this feature of the Court's order is, in large part, the result of the process relied on by the PCR Court which allowed the State to draft the order denying PCR relief writ large without any guidance whatsoever regarding the credibility of any of the evidence or witnesses before it at the hearing. This weighs in favor of this Court giving no deference to these credibility

1. Dr. Knight

The PCR Court discounted Dr. Knight's opinion on the ground that she engaged in a "selective omission of data," asserting that she ignored information that should have been considered. App. 8476 n.4. The record shows the opposite. Dr. Knight expressly considered potential countervailing evidence, including alleged adaptive strengths and alternative explanations, and explained why those data did not undermine her diagnosis. App. 5999–6013, 6024–45.

Where information was insufficient, she said so. For example, she declined to find deficits in the practical domain because she "didn't have enough information to find deficits in that area." App. 6033. She likewise addressed evidence previously cited against intellectual disability, including Blackwell's CDL and driving history. App. 6034–45. She noted he "wasn't terribly successful" in that work and identified concerns about the testing underlying his licensure, ultimately concluding it was not inconsistent with intellectual disability. App. 6044.

Dr. Knight also considered intervening factors the PCR Court suggested she ignored. The Order stated that, "[i]n this Court's opinion having observed closely Dr. Knight, Dr. Knight during cross-examination appeared closed to any new information or at least would quickly discount its potential impact." App. 8497. The Order discredited Dr. Knight's assessment and findings simply because she did not immediately agree with every question posed by the State, and instead qualified and explained her answers during cross-examination. *E.g.*, 6127–29. One of the State's principal complaints about Dr. Knight's testimony was her refusal to change her opinion regarding the significance of drug use in the intellectual disability analysis when presented, during cross-

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determinations in its examination of the evidence presented at PCR as the PCR Court did not actually reach any of these conclusions about witnesses on its own.

examination, with studies that were not relevant to the drug use at issue in Blackwell's history. App. 8497, 6127–29. The State claimed that Blackwell could not have an intellectual disability because he used marijuana in the past. Yet, in support, it relied on studies that were not relevant to Blackwell because they involved marijuana with substantially higher potency than what Blackwell would have used. App. 6127–32.

Not only did Dr. Knight evaluate Blackwell's marijuana use and explain that it would not reduce cognitive functioning, App. 6130, she also consulted an oncologist regarding Hodgkin's lymphoma, who confirmed any cognitive effects would have resolved years before IQ testing. App. 6010. She further found no indication in the medical literature that Blackwell's Chronic Obstructive Pulmonary Disease (COPD) affected his cognitive functioning. App. 6133. This is not a case of "discard[ing] that which did not fit the narrative," App. 8497, but of weighing and explaining contrary evidence.

The Court's further assertion that her opinion was "sorely lacking" in detail is equally unsupported. App. 8497. Dr. Knight conducted a multi-year evaluation, reviewed 86 sources—including transcripts, ten collateral witness interviews, prior evaluations, and extensive social history materials—and produced a 47-page report. App. 5988–6168, 7481–7527. Her testimony at the PCR hearing was expansive—spanning 180 pages of the transcript—and reflects a comprehensive review of all IQ and achievement testing in the record. App. 5999–6003, 6024. The Court's characterization of her evaluation as cursory misrepresents the record.

2. Dr. Brown

The PCR Court discounted Dr. Brown's opinion as carrying "little weight" because he purportedly changed his view "based on Dr. Knight's opinion." App. 8476, n.4. That finding misstates the record.

During the PCR hearing, Dr. Brown did not testify that he blindly relied on Dr. Knight's report. He testified that he revised his opinion after reviewing substantial additional information—including Dr. Knight's report, Dr. Andrews's social history report, Dr. Maddox's (formerly, Dr. Schwartz-Watts') report, and Dr. Calloway's report, App. 6349—not provided to him at the time of his pretrial evaluation, including expanded records and contextual explanations of Blackwell's functioning. App. 6349–54, 6734–35. Specifically, Dr. Brown highlighted there was information about terminology on Blackwell's school records that Dr. Brown previously had "no idea" what their meaning was, but Dr. Knight's report provided a more complete description of the school records and how to interpret them. App. 6734. Her report also provided more information about his work history. App. 6734. He did not adopt Dr. Knight's conclusions wholesale; he independently reassessed the expanded record, including additional context for Blackwell's school performance and work history, and concluded it demonstrated adaptive deficits during the developmental period. [16] App. 6214–31, 6246–48.

The PCR Court's assertion that Dr. Brown changed his opinion "solely" based on Dr. Knight's report, App. 8498, finds no support in the record.

[16] Dr. Brown testified that his current opinion was based on the new information he received during PCR proceedings, which was sufficient to demonstrate deficits in adaptive deficits during the developmental period—the diagnostic information he specifically noted was missing during his pre-trial evaluation. *See, e.g.*, App. 6349–50 (discussing information provided to him showing he misjudged some of the school records, including that Blackwell was in adjunct classes and was given an accurate school ranking of 113 out of 113); App. 6350 (discussing information clarifying Blackwell's early job history, revealing that Blackwell tends to overrate his abilities and really only had "very basic jobs, repetitious jobs that required . . . very little, if any, skill" or "learning"); App. 6352 (indicating he thought intellectual disability was "a very close call" during his pretrial evaluation and that "[w]ith this additional information" he finds Blackwell is a person with intellectual disability).

3. Dr. Corvin

The PCR Court largely ignored Dr. Corvin's testimony altogether. *See, e.g.*, App. 8479–80. Dr. Corvin independently reviewed the available records, found Blackwell's IQ scores valid and reflective of lifelong functioning, rejected alternative explanations for cognitive impairment, and concluded that Blackwell meets all diagnostic criteria for intellectual disability. App. 6214–31, 6246–48.

The court's failure to meaningfully engage with this uncontroverted opinion further undermines its conclusion. A credibility determination that omits an entire expert opinion cannot be reconciled with the record.

4. Dr. Nelson

Finally, the PCR Court afforded "heightened credibility" to Dr. Nelson, App. 8499 n.20, even though he did not evaluate Blackwell and expressly testified that he could not render a diagnosis without doing so. App. 6880–81, 6887. [17]

Dr. Nelson's testimony also conflicted with governing clinical standards. He incorrectly asserted that intellectual disability must be diagnosed during the developmental period, rather than requiring only onset during that period. *Compare* App. 6881; *with* DSM-IV-TR at 49; DSM-5 at 33; DSM-5-TR at 42; AAIDD-12 at 41. Courts must be guided by the medical community's diagnostic framework in determining intellectual disability. *Moore v. Texas*, 581 U.S. 1, 12–13 (2017) (quoting *Hall*, 572 U.S. at 719). Dr. Nelson's testimony—non-diagnostic and inconsistent with those standards—cannot support a finding of "heightened credibility," much less justify rejecting unanimous expert opinions.

[17] *See also State v. Brown*, 2011-GS-30-152, at 7–8 (Ct. Gen. Sess. Apr. 14, 2016) (finding Dr. Nelson in an *Atkins* case "could not offer any legally sufficient conclusions: and was "significantly burdened by [his] lack of personal observation of, and interaction with, the defendant").

In sum, the PCR Court rejected uncontroverted expert testimony through credibility findings that misstate, ignore, and contradict the record. This Court should grant certiorari and reverse.

II. The PCR Court Erred by Finding That Trial Counsel Was Not Ineffective in Their Handling of Petitioner's *Atkins* Claim During the Pretrial and Penalty Presentation.

The PCR Court erred in concluding that Blackwell failed to establish ineffective assistance of counsel and resulting prejudice. In doing so, the court applied improper legal standards and failed to meaningfully engage with the record demonstrating that trial counsel rendered constitutionally deficient performance in their handling of Blackwell's intellectual disability claim—both at the pretrial *Atkins* hearing and in their presentation to the jury.

A. Legal Standard

To assess the merits of Blackwell's underlying ineffective assistance of counsel claim, the Court must consider both *Strickland* components: "that counsel's performance was deficient, and that the deficiency prejudiced the defense." *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (citing *Strickland*, 466 U.S. at 687). Counsel's performance is deficient where it falls below an objective standard of reasonableness under prevailing professional norms. *Strickland*, 466 U.S. at 688. Although courts defer to reasonable strategic decisions, such deference applies only where those decisions are informed by an adequate investigation. *Wiggins,* 539 U.S. at 527.

Counsel has a duty to investigate and present reasonably available mitigation evidence, including intellectual functioning and adaptive behavior. *Id.* at 524; *Porter v. McCollum*, 558 U.S. 30, 39–40 (2009). Counsel may not ignore "red flags" requiring further investigation. *Rompilla v. Beard*, 545 U.S. 374, 390–92 (2005).

Prejudice exists where there is a reasonable probability that, but for counsel's errors, the outcome would have been different, requiring a reweighing of the totality of available evidence. *Strickland*, 466 U.S. at 694; *Wiggins*, 539 U.S. at 534.

B. *Trial Counsel Rendered Deficient Performance by Failing to Address Known Deficiencies in Their Atkins Presentation.*

Trial counsel were placed on notice of deficiencies in their *Atkins* presentation through Dr. Brown's pretrial report and the trial court's written order denying relief. App. 7105–30. Despite these warnings, counsel failed to investigate and correct identified weaknesses, falling below constitutional standards. *See Rompilla,* 545 U.S. at 390–92 (counsel was ineffective for failing to examine readily available files they knew the State would rely on); *Wiggins,* 539 U.S. at 527 (failure to expand investigation after red flags constitutes deficient performance); *Porter,* 558 U.S. at 40-41 (counsel was deficient for failing to uncover and present any evidence of mental health or family background).

1. Short-Form Test Scores

In denying *Atkins* relief, the trial court relied heavily on childhood "IQ" scores, finding that "the most reliable measures of Blackwell's IQ prior to age 18 are the exams that were in fact given during that stage of his life" while simultaneously noting that it had received "no evidence" undermining those tests or their administration. App. 7124. That statement put counsel on direct notice that the court was treating those scores as valid measures of intellectual functioning—and that no one had explained otherwise.

Yet those scores were not full-scale IQ scores at all. As the PCR record established, they were derived from short-form, group-administered screening and achievement measures that assess only limited cognitive domains and are not clinically appropriate for diagnosing intellectual

disability. App. 5937–39, 5946–47, 6008–09. Without explanation, however, the court predictably treated them as equivalent to full-scale IQ testing.

Trial counsel did nothing to correct that misunderstanding. They presented the raw scores but failed to explain that these instruments: do not yield full-scale IQ scores; measure only discrete or partial abilities rather than global intelligence; and are not reliable indicators of intellectual functioning for purposes of an intellectual disability determination. Nor did they present the well-established clinical principle—confirmed at PCR—that individuals with intellectual disability may obtain higher or even average scores on such limited or achievement-based measures, particularly in structured or group-testing environments. App. 5938–40, 5945–47, 5973–74. 6024, 6086. The information necessary to correct the court's misunderstanding was readily available at the time of trial. The test manuals themselves, which existed for decades, would have confirmed the nature and limitations of these instruments. App. 7528–48. Yet counsel neither investigated these materials nor prepared their expert to explain them. Counsel's failure to provide the court with basic information about the nature of the tests allowed the court to rely on invalid measures as if they were full-scale IQ scores. This failure to investigate and explain critical evidence—after the court expressly identified the issue—falls squarely within the type of unreasonable performance condemned in *Wiggins* and *Rompilla*.

2. Evidence of Developmental Onset.

Trial counsel's handling of the developmental onset prong reflects the same pattern of notice followed by inaction. The trial court expressly found that Blackwell failed to establish adaptive deficits during the developmental period. App. 7126. That ruling made clear that the evidence counsel presented—primarily school records—was insufficient.

Despite that clear signal, counsel did not supplement the record with the most basic and readily available forms of developmental evidence. They failed to identify or present witnesses with firsthand knowledge of Blackwell's functioning as a child, failed to develop testimony from family members or teachers, and failed to provide this information to their own expert. Instead, the defense case relied largely on post-developmental information, leaving a significant evidentiary gap precisely where the State and the court focused their analysis.

The deficiency is underscored by what was later accomplished at the PCR hearing. Through routine investigative steps—interviews, records collection, and collateral sources—Dr. Knight was able to reconstruct a detailed and coherent account of Blackwell's developmental functioning. Not only did Dr. Knight interview ten collateral witnesses, including witnesses who knew Blackwell during the developmental period, but PCR counsel also provided affidavits from five additional witnesses, including teachers, employers, and a family friend, providing information regarding Blackwell's functioning at various points in his life. App. 6940–46. That evidence was not newly created; it was readily available at the time of trial. Trial counsel simply failed to pursue it. This was not a strategic limitation—it was an incomplete investigation that counsel never corrected, even after the court identified the deficiency. *See Weik v. State*, 409 S.C. 214, 217, 761 S.E.2d 757, 758 (2014) (finding trial counsel ineffective due to their "troubling inattention towards the mitigation phase of trial," despite a "wealth of social mitigating information defense investigators uncovered.").

Under *Wiggins*, *Porter*, and South Carolina precedent, this failure to develop and present available developmental evidence constitutes deficient performance.

3. CDL and Driving History

The CDL evidence presents perhaps the clearest example of counsel's failure to act on a known risk. Before the *Atkins* hearing, Dr. Brown explicitly identified Blackwell's commercial driver's license as a significant concern, noting he believed it would be "very difficult" for a person with intellectual disability to obtain one. App. 7115–16. That clear "red flag" required investigation and careful presentation. *See Rompilla*, 545 U.S. at 390–92 (counsel must investigate evidence they know will be central to the State's case).

Despite this warning, trial counsel failed to obtain employment records, interview employers or coworkers, or investigate how Blackwell obtained and performed under his CDL. *See Weik*, 409 S.C. at 236, 761 S.E.2d at 768 ("[d]ecisions made in ignorance of relevant, available information cannot be characterized as strategic"). They also failed to provide this information to Dr. Calloway, leaving her unprepared and forced to concede on cross-examination that she lacked basic knowledge about Blackwell's driving abilities. App. 4010–11, 4083; *see also Council v. State*, 380 S.C. 159, 176-79, 670 S.E.2d 356, 365-66 (2008) (finding prejudice where counsel failed to provide the trial evaluator sufficient mental health and life history records for a criminal responsibility assessment). When asked about how he was able to navigate while driving a truck, Dr. Calloway responded: "I don't know how he found his way to all those places because I didn't have this at the time that I interviewed him," App. 4011, and when asked about the difficulty of obtaining a CDL and driving a truck, Dr. Calloway responded that she was only familiar with the requirements based on information the State provided her. App. 4083.

This failure left the State free to present a distorted picture of Blackwell as a highly capable and independent truck driver—an image that directly undermined his claim of adaptive deficits. *See* App. 2919–25. Between the pretrial hearing and trial, trial counsel did nothing to correct that

impression, either through additional witnesses; providing Dr. Calloway with an opportunity to interview Blackwell about his history driving trucks; providing her with the requirements to obtain a CDL; or even addressing it in closing argument. Instead, they relied on a generalized assertion that individuals with intellectual disability can drive trucks, without providing the factfinder any basis to understand how Blackwell's actual functioning fit within that framework. *See* App. 3201.

The PCR record demonstrates that such evidence was readily available at the time of trial. PCR counsel uncovered and presented extensive information showing that Blackwell struggled significantly as a driver: he required assistance, had multiple accidents, committed repeated workplace violations, and relied on others for navigation and paperwork. App. 6036–44. The evidence further showed that he may not have independently completed the requirements for obtaining his CDL and that aspects of the licensing process were irregular or supported by others. App. 6036–44, 7551–7620.

The PCR evidence demonstrates how consequential that failure was. While at the time of trial Dr. Brown viewed Blackwell as a "quite competent truck driver" and placed "great faith" in his apparent ability to obtain a CDL, when presented with the full record—including accidents, workplace violations, and reliance on others—he reassessed his earlier view and acknowledged significantly greater deficits. App. 6350–51. Had trial counsel given this information to Dr. Brown during his pretrial evaluation or at the time of the *Atkins* hearing, his opinion would have changed, as his postconviction testimony establishes.[18]

This is not a case where counsel made a reasonable strategic choice and no strategic reason was offered by counsel at the PCR hearing. *See* App. 5486–93, 5627–28, 6460–62. It is a case

[18] Appellate counsel also testified that it would have been helpful to have a better record on the CDL: "Anything they could have had to rebut the notion that getting your CDL means you're not intellectually disabled would have helped." App. 6417.

where they ignored a known, outcome-determinative issue and failed to investigate it at all. Under *Rompilla*, that is constitutionally deficient performance.

4. Intervening Factors

Trial counsel were likewise on notice that the State and the trial court would rely on alleged "intervening factors" to explain Blackwell's low adult IQ scores. The trial court expressly identified those factors—chemotherapy, head injury, and depression—as potential causes of diminished functioning in adulthood. App. 7123–24. Dr. Brown had flagged the same concerns in his pretrial report. App. 7116.

Despite this, counsel presented no meaningful evidence to rebut those alternative explanations. They did not consult appropriate experts, did not investigate the medical record, and did not present testimony explaining why these events could not account for Blackwell's intellectual functioning. Instead, they left the court with unrebutted speculation that adult-acquired conditions explained his low IQ.

At PCR, readily available expert consultation resolved each issue. Oncology review established that any cognitive effects of chemotherapy would have been temporary and long resolved before testing. App. 6009–10. Neurological evidence showed the head injury was mild and not associated with long-term cognitive decline. App. 6011–13. Psychiatric evidence established that Blackwell's depression was controlled and that his medication likely improved, rather than impaired, test performance. App. 6217–20. All experts agreed these factors did not affect his IQ scores.

This was not new science—it was basic, available investigation that trial counsel failed to undertake despite explicit notice that these issues were central to the court's reasoning. Their

failure allowed the trial court to rely on unsupported alternative explanations that competent counsel would have rebutted.

Trial counsel provided no strategic justification for failing to investigate or present this information. App. 5486–93, 5627–28, 6460–62. Moreover, where counsel is alerted to specific deficiencies in their case and fails to take basic steps to correct them, their performance falls below constitutional standards. *See Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) ("Counsel must articulate a *valid* reason for employing a certain strategy.") (emphasis in original).

Taken together, these failures reflect a consistent pattern: counsel identified the issues, were warned about their significance, and then failed to act. That is not reasonable professional judgment—it is deficient performance under *Strickland*, as repeatedly recognized by both the Supreme Court and South Carolina courts.

C. *Trial Counsel's Failures Prejudiced Blackwell Because They Produced a Fundamentally Distorted Atkins Determination*

Prejudice under *Strickland* is established where there is a reasonable probability that, but for counsel's errors, the result would have been different—a determination that requires reweighing the totality of the available evidence. 466 U.S. at 694; *Wiggins*, 539 U.S. at 534. Trial counsel did not merely omit evidence of intellectual disability; they affirmatively skewed the evidentiary picture and prevented the factfinder from accurately evaluating the clinical evidence of intellectual disability. *See Porter*, 558 U.S. at 41 (prejudice where omitted evidence "might well have influenced the jury's appraisal").

The trial court's finding that Blackwell was not a person with intellectual disability rested on misunderstandings that competent counsel would have corrected: it treated invalid childhood screening scores as dispositive IQ evidence, discounted valid adult testing based on unchallenged

speculation about intervening factors, inferred adaptive competence from misleading CDL evidence, and rejected developmental onset based on an undeveloped record. App. 7123–26.

The PCR record demonstrates that each of those premises was wrong and readily rebuttable at the time of trial through basic investigation and expert explanation. When that evidence is considered, the evidentiary picture changes fundamentally: the only reliable IQ testing places Blackwell in the range of intellectual disability, the alleged intervening causes are medically unsupported, the CDL evidence reflects significant adaptive deficits rather than strengths, and substantial developmental evidence confirms early-onset limitations. *See Rompilla*, 545 U.S. at 393 (finding prejudice where counsel failed to uncover readily available evidence that would have altered the evidentiary picture). Indeed, every expert who evaluated Blackwell concluded that he meets the diagnostic criteria. On this record, there is at least a reasonable probability that, had the factfinder been presented with an accurate and complete account of Blackwell's intellectual functioning and adaptive behavior, the outcome of the *Atkins* determination would have been different. *See Wiggins*, 539 U.S. at 534 (prejudice must be assessed cumulatively).

D. *The PCR Court Erred By Concluding Trial Counsel Was Not Ineffective.*

The PCR Court's analysis of Blackwell's *Atkins*-related IAC claim rests on three conclusions. First, the PCR Court held that trial counsel was not deficient in how they handled the depression medication factor because they had elicited testimony from Dr. Calloway at trial that Blackwell was on Thorazine, an anti-depression medication, at the time of his adulthood IQ testing. App. 8519. Second, the PCR Court discredited the importance of the PCR evidence about Blackwell's head injury and cancer treatment because the court found that no information from outside of the developmental period would be relevant in any way to the court's analysis. App. 8520. Finally, the PCR Court erroneously found no prejudice from counsel's failure to investigate

and present developmental onset evidence, reasoning that Blackwell's poor academic performance and low achievement scores—already before the court through school records—were sufficient to address the onset prong. App. 8521–22.

These analyses fail in several regards. First, the PCR Court's analysis ignores the lack of information before the trial court about the potential effects of the depression medication on Blackwell at the time of the IQ testing in contrast to the PCR record evidence about the medication. Second, ignoring post-developmental period evidence is contrary to the clinical and legal guidance allowing for retrospective diagnosis of intellectual disability. As is well established, IQ is generally static and relatively stable over the course of someone's life. App. 5973, 6007–08. The clinical standards, which must inform the court's analysis of whether the diagnostic and legal criteria for intellectual disability are satisfied, explicitly recognize the need in certain circumstances for retrospective diagnosis of intellectual disability. *E.g.*, AAIDD-11 at 95–96 (recognizing "[i]t is sometimes necessary to assess the functioning of the individual in his or her past in those situations where a diagnosis of ID becomes relevant, even though the individual did not receive an official diagnosis of ID during the developmental period"). When the need for a retrospective diagnosis occurs, as is common in *Atkins* cases, the appropriate clinical protocol is to assess incidents outside of the developmental period to ensure they had no effect on functioning levels as assessed in adulthood.[19] Finally, as discussed in more detail above, there was clearly prejudice here as the

[19] This was explicitly recognized by the evaluators who testified at the PCR hearing. *E.g.*, App. 5959, 6719 (Dr. Brown: "[w]e can't penalize someone because they weren't given a test. There . . . are lots of people who never had a reason to be tested during the developmental period. So if someone's in their 50s, the first time they get a test, we basically have to look back and see has anything changed that would make us believe the score would have been significantly higher back then."). This is not limited to IQ scores, which is why all the evaluators at PCR assessed Blackwell's intellectual and adaptive functioning both in the developmental period and post-developmental period to ensure the onset of deficits in both functioning areas before reaching their

court-appointed evaluator before trial considered the evidence as presented in PCR and testified that he would have changed his opinion about Blackwell's intellectual disability if he had the information at the time of trial.

III. The PCR Court Applied an Incorrect Legal Standard for Materiality Under S.C. Code § 17-27-20(A)(4) by Requiring Newly Discovered Evidence to Independently Establish a Dispositive Fact Warranting Vacatur.

The PCR Court erred as a matter of law by applying the wrong materiality standard to newly discovered evidence—specifically, genetic evidence showing that Blackwell has a CAMTA1 abnormality strongly associated with intellectual disability. Instead of asking whether this evidence, considered alongside the trial record, would probably change the outcome of a resentencing proceeding, the court required the evidence to independently prove a dispositive fact entitling Blackwell to relief. That standard conflicts with S.C. Code § 17-27-20(A)(4) and this Court's precedent.

The PCR Act authorizes relief where "there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). Although "material" is not statutorily defined, this Court applies the five-part newly discovered evidence test.[20] *See State v. Caskey*, 273 S.C. 325, 329, 256 S.E.2d 737, 739 (1979). In capital sentencing, evidence is material if it "probably would change the result" of a resentencing proceeding. *State v. South*, 310 S.C. 504, 508, 427 S.E.2d 666, 671 (1993); *see*

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opinions that Blackwell is a person with intellectual disability. App. 6007–13, 6214–33, 6343– 54, 6661–62, 6685–86, 6711–15, 6719.

[20] In review, an applicant must show the following: the evidence (1) "[i]s such as would probably change the result if a new trial is had"; (2) "[h]as been discovered since the trial"; (3) "[c]ould not by the exercise of due diligence have been discovered before the trial"; (4) "[i]s material to any mitigating or aggravating circumstances"; and (5) "[i]s not merely cumulative or impeaching." *South*, 310 S.C. at 507, 427 S.E.2d at 670.

also McCoy v. State, 401 S.C. 363, 368 n.1, 370, 737 S.E.2d 623, 625 n.1, 627 (2013) (recognizing this five-factor test as the "standard test governing newly discovered evidence" in the PCR context).

The PCR Court did not apply that standard. It held the CAMTA1 evidence was not material because "[g]enetic evidence *alone* does not prove a person is intellectually disabled," App. 8483 (emphasis added), and because there was no "specific causation and no credible diagnosis of intellectual disability in the first instance," *id.* at n.12. In doing so, the court required the new evidence—standing alone—to conclusively establish the ultimate fact requiring vacatur of Blackwell's death sentence. That is not the law.

There is no dispute the CAMTA1 evidence is newly discovered. It was "discovered since the trial," *Caskey*, 273 S.C. at 329, 256 S.E.2d at 739, as testing identifying the abnormality was completed on November 16, 2020—more than six years after trial. It also "could not by the exercise of due diligence have been discovered before the trial," *id.*, because genetic testing was not a recognized or recommended component of intellectual disability evaluations at the time. App. 6692–93, 6867–69. Advances in genetic science and diagnostic standards—recognizing the "identification of genetic and non-genetic etiologies" as part of a comprehensive evaluation—postdated trial. App. 6120–21. Due diligence "looks not to what the litigant actually discovered, but what he or she could have discovered." *Lanier v. Lanier*, 364 S.C. 211, 220, 612 S.E.2d 456, 460 (Ct. App. 2005); see also *State v. Spann*, 334 S.C. 618, 621–22, 513 S.E.2d 98, 100 (1999). Nor is the evidence "merely cumulative or impeaching." *Caskey*, 273 S.C. at 329, 256 S.E.2d at 739. Although it bears on intellectual disability, it is "of a different kind" because it establishes a genetic cause—a "new and distinct fact"—rather than repeating prior psychological

testing. *Johnston v. Belk-McKnight Co.*, 188 S.C. 149, 157, 198 S.E. 395, 399 (1938). Thus, the only disputed issue is materiality.

Under the correct standard, the evidence is plainly material. Dr. Cunniff testified that Blackwell has a CAMTA1 genetic abnormality, which is "very commonly associated with intellectual disability." App. 5772–74. In fact, seventy-five to eighty percent of persons affected by this genetic defect also have intellectual disability. App. 5773–74, 5797. Where intellectual disability is present, the variation is causative—what Dr. Cunniff described as "a CAMTA1 related intellectual disability." App. 5798. For Blackwell—whom four experts diagnosed as intellectually disabled—the CAMTA1 variation provides a biological cause for that diagnosis. App. 5801–02.

Critically, this evidence addresses the precise deficiency identified by the trial court: lack of proof that intellectual disability manifested during the developmental period. App. 7122, 7126, 7129. A genetic cause originates at conception, thereby establishing onset during the developmental period and eliminating concerns about later-arising impairment.

This Court's cases require a cumulative analysis of the evidence, evaluating the new evidence alongside the trial record to determine whether the result would probably change. *See State v. Wakefield*, 443 S.C. 123, 126, 903 S.E.2d 489, 490 (2024) (courts must "*weigh the new [evidence] against that provided at the prior trial*") (emphasis added). By requiring the CAMTA1 evidence to independently establish causation, the PCR Court imposed a far more demanding standard than *South* permits.

The ruling also conflicts with the PCR Act's text. S.C. Code Ann. § 17-27-20(A)(4) authorizes relief where new evidence requires vacatur "in the interest of justice." By treating "requires" as demanding conclusive proof from the new evidence alone, the court effectively reads

the "interest of justice" language out of the statute, collapsing a balancing inquiry into a categorical rule favoring finality. *See Jamison v. State*, 410 S.C. 456, 765 S.E.2d 123 (2014).

That error is especially consequential in capital cases, where heightened reliability is required and rigid rules are disfavored. *See Gregg v. Georgia*, 428 U.S. 153, 188 (1976); *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976); *Hall*, 572 U.S. at 704.

The PCR Court erred by applying an erroneous legal standard for materiality under S.C. Code § 17-27-20(A)(4). This Court should grant review to reaffirm that newly discovered evidence is "material" when it would probably change the outcome—not only when it conclusively proves the fact entitling the applicant to relief.

IV. The PCR Court Erred by Finding that Trial Counsel Was Not Ineffective for Failing to Investigate and Present Mitigating Evidence, Where Such Mitigation Was Materially Different from the Evidence of Intellectual Disability Presented at Trial.

A. The Mitigation Evidence Developed at PCR Was Materially Different and Provided the First Coherent Explanation of the Offense

Other than Dr. Calloway's testimony regarding intellectual disability, the defense's mitigation case consisted largely of disconnected and superficial facts. Dr. Donna Maddox—a psychiatrist retained "to actually treat" Blackwell during pretrial detention and prescribe medication because he was "extremely anxious and depressed," App. 5665—briefly addressed his history of depression, including two psychiatric hospitalizations. App. 2975–87, 2985. The remaining witnesses—family members and former employers—offered only lay observations, describing Blackwell as a hardworking father affected by his wife's departure, without any ability to explain his mental impairments or their functional consequences. App. 2757–71, 2989–3111.

As a result, the jury was never given a meaningful framework to understand how Blackwell's intellectual and mental health limitations impaired his judgment, coping abilities, and

decision making at the time of the offense. The mitigation case lacked any cohesive narrative connecting his deficits to his conduct. By contrast, the PCR evidence provided the first integrated and clinically grounded account of Blackwell's life and functioning. The PCR Court erred in dismissing that fundamentally different showing as merely a more polished version of the trial presentation—it was qualitatively different in kind, not degree.

This failure did not stem from a lack of available mitigation, but from counsel's failure to develop and present it. Trial counsel recognized Blackwell's serious mental illness. App. 6461. They retained Dr. Maddox to treat him and prescribe medication, App. 5665, and mitigation investigator Kara Richards-Baker to develop his life history and mental health mitigation, App. 5347, 5448. That investigation revealed significant red flags: following the loss of his wife, Blackwell "decompensated," "suffer[ed] from a major depressive episode," and "was really not functioning" independently. App. 5377. He "spent all his time crying," required care, App. 5377, and had a documented history of major depression and anxiety, App. 6461, schizophrenia and schizoaffective disorder, App. 5382, suicidality, and psychiatric hospitalization, App. 423, 5537, including one shortly before the offense. Records also reflected a family history of serious psychiatric disorders. App. 5521, 5585. Although counsel were aware of—and presented fragments of—this evidence, they failed to develop or contextualize it in a way that explained Blackwell's deteriorating mental state or its relevance to his functioning at the time of the offense.

Recognizing the need for such evidence, Richards-Baker recommended retaining Dr. George Corvin, a forensic psychiatrist, to evaluate Blackwell's mental state at the time of the offense. App. 5377–78. Counsel obtained funding, and Dr. Corvin reviewed records, App. 6181, and conducted a clinical interview, App. 5383–84, 6183–84, 6963–73, 7171. He then warned—

through Richards-Baker—that his findings "raise[d] [his] index of suspicion" for neurological or organic impairment and that "[t]here will be much to discuss." App. 6969.

Despite this warning, counsel failed to follow through. They did not provide materials, consult with Dr. Corvin, or ensure completion of his evaluation. App. 6202–04. As a result, no expert testimony addressed Blackwell's mental state at the time of the offense, and counsel could not explain why. App. 2985–86, 5531, 5536, 6527–28. This was not strategy; it was inattention. *See Wiggins*, 539 U.S. at 526.

Although counsel recognized their duty "to tell [their] client's life story," App. 5512–13, in a case that "was gonna mostly be about mitigation," App. 6493, they presented no expert explaining how Blackwell's impairments affected his conduct. Instead, they relied on Dr. Donna Maddox, who disclaimed any opinion on Blackwell's "psychiatric state at the time of this incident," App. 2973, 2985, and Dr. Calloway, whose evaluation was limited to intellectual disability, App. 2985. The result was a presentation that identified conditions but failed to explain them to the jury.

The same pattern affected other mitigation. Counsel developed evidence that Blackwell would adapt well to prison, App. 5389–90, 5541, and retained an expert, App. 5538, 6470–71, 7171–77, but presented none of it to the jury and offered no strategic reason for the omission, App. 5540–41, 6560. Likewise, although Blackwell "showed the most remorse of anybody" McGuire had represented, App. 5544, and "cried every time [Richards-Baker] met with him," App. 5390, counsel failed to present available witnesses to testify about his remorse, App. 5390–5391—despite recognizing that such evidence would have prevented the State from arguing there was "no evidence [of] remorse." App. 5550.

As a result, the jury heard only a skeletal case: intellectual disability, generalized testimony about depression, and lay descriptions of Blackwell as a "gentle" and "kind" person. App. 2759, 2990, 3020, 3031, 3057, 3072. It heard nothing explaining his psychological collapse, mental state at the time of the offense, lack of future dangerousness, or remorse.

The PCR evidence filled those gaps. Dr. Arlene Andrews provided a comprehensive social history, synthesizing records and interviews into a unified account of Blackwell's development and functioning. App. 5813–15, 7190–7213. She explained that Blackwell functioned for nearly fifty years "as a responsible citizen," remaining "very dependent" on his parents and wife while "adapt[ing] to what seemed to be intellectual limitations." App. 5816. He "lived a very balanced life that was predictable for him," but the predictability "shattered" when his wife left, App. 5818, leading to "excessive dependency," "unrelenting prolonged grief," App. 5817, and a "crippled" ability to manage stress, App. 5818. Blackwell "didn't know how to face life," App. 5871, without a dependency and was "unable to fully comprehend or adapt" to the change, App. 5816–5817. By early July 2009, "[h]is social functioning had completely deteriorated," leaving him "completely overwhelmed with his anxiety" despite available support. App. 5874.

Dr. Corvin provided the first offense-specific mental health explanation. He identified multiple interacting conditions—intellectual disability, major depressive disorder, generalized anxiety disorder, and executive functioning deficits—and concluded Blackwell's mental health conditions were "completely out of control," App. 6262–63, and "tremendously impaired" his judgement and capacity for "deliberative contemplation," App. 6264, 6266.

Additional PCR evidence addressed future dangerousness. Pretrial detention records showed only minor, non-violent infractions, App. 6387–88, and Dr. James F. Austin testified that Blackwell did not "fit [the] profile" of someone difficult to manage, App. 6392, and would function

adequately in a structured prison environment, App. 6269–71. This forward-looking evidence of a low risk of future dangerousness is directly relevant to sentencing.

Finally, Reverend Abigail Moon testified that Blackwell was "visibly in pain and upset" and "struggling with the guilt" of his actions, App. 6548–49, and Reverend Victoria Hess testified he "was tearful and sad," prayed for the victim's family with her, App. 6593–94, and that she "observed remorse," App. 6595. Both were available to testify at trial but were never contacted by counsel. App. 6549–50, 6595–96.

This evidence did not merely add detail to the trial evidence. Taken together, it transformed the sentencing picture by providing the first integrated, causal account of Blackwell's life, impairments, and conduct. Counsel's failure to present it deprived the jury of the information necessary for individualized sentencing. This was the product of inattention, not strategy.

B. The PCR Court Applied an Incorrect Legal Framework and Failed to Properly Assess Prejudice.

The governing standard is clear. To prove ineffective assistance of counsel, a petitioner must show deficient performance and prejudice. *Strickland*, 466 U.S. 668. Deficiency arises where counsel fails to conduct a reasonable investigation or pursue known leads. *Wiggins*, 539 U.S. at 521–23. Prejudice requires a court to reweigh "the totality of the available mitigation evidence—both that adduced at trial, and the evidence adduced in the [postconviction] proceeding"—against the aggravating evidence and determine whether there is a reasonable probability that at least *one* juror would have reached a different result "if competent counsel had presented and explained the significance of all the available evidence." *Williams v. Taylor*, 529 U.S. 362, 397, 399 (2000); *see also Wiggins*, 539 U.S. at 534. Courts have found mitigation less persuasive where "it is not causally related to the murder[]." *Thornell v. Jones*, 602 U.S. 154, 169 (2024). Conversely,

evidence that explains a defendant's conduct at the time of the offense carries heightened mitigating force. *Id.*

The PCR Court did not apply this framework. Its analysis collapsed both prongs. It treated counsel's failures as reasonable so long as some mitigation was presented and dismissed omitted evidence as duplicative. App. 8537, 8539. That is inconsistent with clearly established law.

As to deficiency, the record reflects a failure to act on known information. Counsel were alerted over a year before trial that Dr. Corvin's findings "raise[d] [his] index of suspicion" for neurological or organic impairment and that "[t]here will be much to discuss." App. 6969. Yet they failed to follow through, and no offense-specific mental health testimony was presented. App. 6202–04. The same pattern applied to evidence of prison adaptability, App. 5538, 5540–41, 6470–71, 6560, 7172–77, and remorse, despite acknowledging that Blackwell "showed the most remorse of anybody" counsel had represented, App. 5544, and "cried every time [Richards-Baker] met with him," App. 5390. Counsel identified no strategic reason for these omissions. App. 5532, 5536, 6527–28. Under *Strickland* and *Wiggins*, abandoning known mitigation without investigation constitutes deficient performance.

The PCR Court's prejudice analysis likewise failed by treating distinct mitigation evidence as duplicative or cumulative, ignoring that each category served a distinct function.

The error is most apparent in its treatment of prison-adaptability evidence. The PCR Court dismissed Dr. Austin's testimony as duplicative of "good character" evidence, concluding that "the basic substance of the information was presented" at trial. App. 8539. It ignored the distinct role of this evidence in a capital case—to help a jury "predict a convicted person's probable future conduct." *Skipper v. South Carolina*, 476 U.S. 1, 5 (1986). By collapsing the distinction between

forward-looking evidence demonstrating a lack of future dangerousness and backward-looking character evidence, the PCR Court disregarded the mitigating weight of Dr. Austin's testimony.

The court made the same error in its treatment of the social history and mental health evidence. The court characterized Dr. Andrews's testimony as "merely recasting the background information" already "investigated and considered" and found that "ample" mitigation evidence was presented at trial. App. 8537. But as established in Section I, the trial presentation consisted of fragmented facts, while the PCR evidence provided an integrated account of Blackwell's life, functioning, and psychological deterioration. It also concluded Drs. Maddox and Calloway "relay[ed] identical information" to that provided by Dr. Corvin, App. 8535, ignoring that the jury never heard his offense-specific explanation that Blackwell's conditions were "completely out of control" and "tremendously impaired" his judgment and capacity for "deliberative contemplation." App. 6262–64, 6266. Evidence that explains conduct—particularly by connecting a defendant's life history to his mental state at the time of the offense—carries significantly greater mitigating weight than uncontextualized background because it provides the jury with a framework for understanding culpability and for making the moral judgment required at sentencing.

The court also minimized the mitigating force of remorse evidence the jury never heard, despite its availability. App. 6549–50, 6595–96. Evidence that Blackwell was "visibly in pain and upset," "struggling with the guilt," "tearful and sad," and demonstrated remorse, App. 6549–50, 6593–95, bore directly on moral culpability and the jury's sentencing determination.

Taken together, this evidence did not simply add detail—it altered how the jury would have assessed Blackwell's culpability and future risk. The Supreme Court has repeatedly found prejudice where omitted mitigation "might well have influenced the jury's appraisal" of moral

blameworthiness, even in the face of substantial aggravation.[21] *Williams*, 529 U.S. at 398; *Wiggins*, 539 U.S. at 536–37; *Rompilla*, 545 U.S. at 390–93; *Porter*, 558 U.S. at 40–44.

The PCR Court did not perform the required reweighing. By minimizing materially different mitigation and ignoring its distinct mitigating force, it applied the wrong legal framework. Had the totality of this evidence been presented, there is a reasonable probability that at least one juror would have struck a different balance between life and death. This is not the kind of untethered background mitigation discounted in *Thornell*; it is precisely the type of offense-connected evidence that shapes a jury's moral judgment.

C. The PCR Court's Factual Findings Rest on Mischaracterizations of the Record That Further Undermine Its Decision.

The PCR Court's legal errors were compounded by mischaracterizations of the facts in the record and obscure the extent of counsel's deficiencies.

First, the court attributed the failure to present Dr. Corvin to strategy—avoiding "very damaging information," App. 8535—but the record shows otherwise. Counsel contacted Dr. Corvin approximately one month before trial to secure his testimony, App. 5385, 6200–02, 6971, but he declined to testify because he was unprepared, due to counsel's failure to provide necessary materials—including discovery and Dr. Calloway's *Atkins* evaluation—to follow up, or facilitate the completion of his evaluation. App. 5385, 6200–04, 6963–73. Counsel identified no strategic reason for this omission. App. 5528–31, 5632–33, 6469. This was inattention.

[21] *Rompilla v. Beard*, 545 U.S. at 390–93 (repeated stabbing, arson, and violent history); *Wiggins v. Smith*, 539 U.S. at 536–37 (robbery, ransacking, and drowning of elderly victim); *Williams v. Taylor*, 529 U.S. at 398 (pickaxe murder over minor dispute and brutal assaults on elderly victims); *Weik v. State*, 409 S.C. 214, 216 n.1, 239, 761 S.E.2d 757, 758 n.1, 770 (kicked in door and fatally shot ex-girlfriend); *Council v. State*, 380 S.C. 159, 162–63, 670 S.E.2d 356, 357–58 (hog-tying, forced ingestion of cleaning fluids, sexual assault, and murder of elderly victim).

Second, the court minimized Dr. Andrews as "yet another mitigation specialist," App. 8537, but she was qualified as a social history expert, App. 5812, and provided the only integrated account of Blackwell's life and functioning based on comprehensive review and specialized analysis. App. 5813–15, 7186–7213.

Finally, the court mischaracterized the remorse evidence by concluding that counsel reasonably declined to call Reverend Moon and Reverend Hess because they "did not remember" whether Blackwell expressed remorse. App. 8547–8548, but the testimony cited to support this proposition only reflects a lack of memory as to specific words:

> Q: Okay. Do you remember telling the defense team that you don't remember if Rickey ever said he was sorry for what he's done? Do you remember that?
>
> A: I don't remember — I don't remember the conversation with the defense team.
>
> Q: Okay.
>
> A: And I don't remember if he said that or not.
>
> Q: Okay. Nothing further.

App. 6552–53. This does not demonstrate a lack of memory of Blackwell's remorse at all, particularly when both chaplains provided testimony demonstrating the complete opposite: Reverend testified that Blackwell was "visibly in pain," "upset," and "struggling with the guilt," while Reverend Hess testified that he was "tearful and sad," prayed for the victim's family, and demonstrated remorse. App. 6548–49, 6593–95. Nor does counsel's vague recollection that the chaplains' memories may have been "a little fuzzier" provide a reasonable strategic basis for omitting their testimony—particularly where Richards-Baker confirmed this evidence was available and knew of no reason it was not presented. App. 5391.

The PCR Court's decision rests on both an incorrect legal framework and a misreading of the record. By treating materially different mitigation as cumulative and failing to reweigh the totality of the evidence, it reached a result contrary to *Strickland* and its progeny. Its order should be reversed.

V. The Order Denying PCR Should Be Vacated As It Was Not The Product Of an Impartial and Independent Judicial Mind.

Blackwell filed an application for post-conviction relief ("PCR") raising approximately twenty-four (24) claims for relief, including an *Atkins* claim and multiple claims of ineffective assistance (IAC) of trial and appellate counsel. Following the conclusion of the PCR hearing, the parties submitted post-hearing briefs. The PCR judge subsequently issued an order purporting to dismiss the PCR action in full, but stating only that "[a]fter careful consideration, Applicant is unable to maintain his burden under *Strickland* and his PCR application is DISMISSED in the entirety." App. 8455–57. He offered no further guidance regarding his analysis of Blackwell's multiple *Strickland* claims, nor did he address any of the non-IAC claims. He directed the State to draft a proposed order "includ[ing] findings of fact and conclusions of law as to all issued raised by [] applicant" in accordance with *Fishburne*, 427 S.C. at 516, 832 S.E.2d at 589. *Id.* As this Court established in *Fishburne,* party-drafted proposed orders can be permissible when "[a] copy of the proposed order [is] transmitted to opposing counsel" for their review, time is provided for opposing counsel to review the order so they can identify deficiencies in the order, and "the PCR judge carefully review[s] the proposed order to ensure it includes appropriate findings of fact and conclusions of law as to all issues raised." *Fishburne*, 427 S.C. at 516, 832 S.E.2d at 589. As will be set forth below, *Fishburne*'s requirements were not adhered to, and even if they had been, this Court should grant certiorari and rule that, in capital PCR cases, judges are required to write their own orders.

A. The Requirements of Fishburne Were Not Met.

The requirements set forth in *Fishburne* were not met. The PCR judge did not wait for Blackwell to review the proposed order before asking the Attorney General for a hard copy to sign, and the weight of the evidence establishes that the PCR judge did not review, and certainly did not "carefully" review, the proposed order.

After receiving the terse January 28 order, PCR counsel objected and specifically requested that the PCR Court draft its own order denying relief or, at a minimum, provide more specific guidance for its reasons for denying relief as to all claims in Blackwell's PCR application. App. 8458–62. PCR counsel noted that not every claim was raised as an ineffective assistance of counsel claim and the Court did not provide guidance about which prong(s) of the *Strickland* analysis Blackwell failed to satisfy for any of the ineffective assistance of counsel claims. *Id.* The PCR court scheduled a status conference to discuss this matter, but then abruptly canceled the conference shortly before it was set to occur and directed the State to submit a proposed order. App. 8604–14. The Attorney General's Office subsequently sent the proposed order to Blackwell and the PCR Court on March 21, 2025. Just thirty-one minutes later, the PCR court requested that a hard copy be mailed to chambers without any changes and without waiting for Blackwell's input. App. 8601.

The proposed order submitted by the State was 97 pages long and it was impossible for the PCR court to engage in any meaningful review in half an hour. Further evidence that the court did not "carefully review" the order is that, in addition to misstatements of law previously mentioned, numerous errors including inaccurate dates, typos in witness names, and misstatements of witness testimony were not corrected. *E.g.*, App. 8569–70. After the PCR Court signed the proposed order without a single change to the text, Blackwell filed a Motion to Alter or Amendment the Judgment

pursuant to SCRCP 59(e), setting forth the PCR Court's failure to comply with *Fishburne*. App. 8560–8702. Without holding a hearing on the motion, or amending the order in any way, the PCR court denied the motion. App. 8714. Given these facts, the PCR Court's failure to comply with *Fishburne* is clear, and the order denying PCR should be set aside and the case remanded for a new order to be drafted by the court.

B. Fishburne Should Not Apply in Capital Cases.

While the *Fishburne* requirements for proposed orders may suffice in non-capital cases, the higher stakes of capital cases require additional protections. Here—in addition to the *Fishburne* requirements not being met—the verbatim adoption of the State's proposed order violates S.C. Code § 17-27-160, established rules of judicial and attorney conduct, South Carolina's separation of powers jurisprudence, and basic principles of fundamental fairness.

In capital PCR cases, S.C. Code § 17-27-160(D) requires that "the hearing judge in writing shall make specific findings of fact and state expressly the judge's conclusions of law relating to each issue." It is for this reason that this Court has "strongly encourage[d] PCR judges to draft their own findings of fact and conclusions of law in death penalty cases." *Hall v. Catoe*, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004). Since *Hall,* that "strong encouragement" has mostly been honored in the breach, and this Court should now make it a mandate.

Requiring judges to draft their own findings of fact and conclusions of law in capital PCR cases is consistent with South Carolina law's mandate that *courts*—not parties—independently assess the evidence and law, and render even-handed conclusions based on sound, impartial judgment. *See* S.C. Code § 17-27-160(D). South Carolina's Code of Judicial Conduct establishes that the state's legal system is "based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us." S.C. Code of Jud. Conduct R. 501

(2024). The Code affirms the importance of an "independent and honorable judiciary," noting that deference to the rulings of courts "depends upon public confidence" in the "independence of judges." *Id.* It also requires judges to be the ones to "hear and decide" the matters assigned to them. *Id.* The Code reflects South Carolina's directive that judges themselves must be the ones to make factual determinations and conclusions of law, thus bolstering public confidence in the legal system.

Orders prepared by the prevailing party, even when adopted by the PCR court, do not equate to a court's impartial judgment as they are not the product of an independent judicial mind. This is particularly evident when, as here, a PCR court adopts a party-proposed order verbatim. ABA Rule 1.3 requires attorneys to "act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf." Similarly, South Carolina Rule of Professional Conduct 407 expects that attorneys "zealously assert[] the client's position." It is simply not reasonable to expect prevailing parties to set aside their inherent loyalties to their employer/client and adopt a judicial mindset. Any such order will inevitably be, as the order was in this case, advocacy-based and not reflective of a court's independent reasoning.

In addition to violating S.C. Code § 17-27-160(D), the process followed in this case violates the separation of powers required by S.C. Const. Art. I, § 8, which mandates that "the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." The separation of powers "prevents the concentration of power in the hands of too few, and provides a system of checks and balances." *State ex rel. McLeod v. McInnis*, 278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982). As this Court has recognized, "[v]esting a member of the executive branch with the exclusive authority to perform an inherently

judicial function unquestionably is a violation of separation of powers." *State v. Langford*, 400 S.C. 421, 435, 735 S.E.2d 471, 478 (2012) (holding that a statute that gave solicitors the power to prepare court dockets violated the separation of powers)*; see also State ex rel. Condon v. Hodges*, 349 S.C. 232, 250, 562 S.E.2d 623, 633 (2002) ("the office of attorney general is part of the executive branch"); S.C. Code Ann. § 1-1-110. By failing to provide any guidance to the Attorney General's office regarding the court's findings of fact and conclusions of law, the PCR Court not only failed to render an independent judgment but also delegated its judicial function to the executive branch. The executive branch through the Attorney General was given the power to make whatever legal conclusions, factual findings, and credibility determinations it chose, impermissibly intruding on the roles and responsibilities of another branch of government. This delegation of an inherently judicial function constitutes a violation of the separation of powers required by South Carolina's Constitution.

The considerations outlined above are of the utmost importance in the context of capital cases due to the potential "downstream consequences" of treating such orders as equivalent to one drafted by the court. The first is the highly deferential "any evidence" standard of review, which "mandates [] affirmance of the PCR judge's decision if there is any probative evidence to support it." *Council*, 380 S.C. at 368 n.7, 670 S.E.2d at 182 n.7. Where credibility determinations are involved, the PCR court "gives great deference to a judge's findings, because this Court lacks the opportunity to directly observe the witnesses." *Foye v. State*, 335 S.C. 586, 589, 518 S.E.2d 265, 267 (1999). Thus, the ability to smuggle misleading or unsupported factual and/or credibility determinations into an order gives the Attorney General an unfair advantage on appeal from the denial of PCR. This problem is especially pertinent in this case because, as discussed previously, *see supra* Section I, the proposed order made credibility findings regarding the expert witnesses

that are contrary to the record, and which the PCR Court did not make at the PCR hearing or include in its initial January 28 order instructing the Attorney General to write a proposed order.[22]

In addition to giving the Attorney General an unwarranted leg-up in PCR appeals, allowing the inclusion of credibility determinations and factual findings not guided by the PCR court unfairly stacks the deck against a death sentenced inmate in federal habeas corpus proceedings. Current federal habeas doctrine gives great deference to a state PCR court's factual and legal conclusions. A habeas petitioner has the burden to prove by clear and convincing evidence that any state court factual findings are clearly erroneous and that the decision of the state court rejecting a constitutional claim was so off the mark that no reasonable judge could have decided the case the way the PCR court did. *Harrington v. Richter*, 562 U.S. 86, 101(2011) (finding that habeas relief is barred unless "all reasonable jurists" would reject the state court's adjudication of the claim). And, fact development in federal habeas court has been severely restricted thus almost all cases will be decided based on the state PCR record. *Shinn v. Ramirez*, 596 U.S. 366 (2022). Given the obstacles a person sentenced to death faces when attempting to subsequently undo an adverse PCR decision, it is fundamentally unfair to turn the drafting of such an order to the Attorney General's Office.[23]

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[22] In other contexts, appellate courts have failed to recognize credibility determinations that were not specifically approved by the trial/hearing judge. *McGahee v. Alabama Dept. of Corrections*, 560 F.3d 1252, 1260 (11th Cir. 2009) (In denying a *Batson* motion, the trial court did not assess the prosecutor's proffered reasons for strikes and thus the court was "unable to tell which of the several reasons asserted by the prosecutor were relied on by the trial court and thus it refused to credit any particular assertion by the prosecutor").

[23] In PCR cases where this Court denies certiorari, the decision of the PCR court is the last reasoned state court decision and the order the federal court must defer to. *Wilson v. Sellers*, 584 U.S. 122 (2018).

Thus, this Court should require PCR courts to follow the law set out in S.C. Code §§ 17-27-80 and 17-27-160(D) and write their own orders. This would not be significantly demanding given this Court's procedure of assigning capital PCR cases to specific judges. Circuit judges virtually never have more than one capital PCR case on their docket at any given time. This is especially true now as the number of capital cases pending in state PCR at the pre-hearing stage is both small and shrinking. Additionally, it is routine practice for parties to submit post-hearing briefing at the conclusion of capital PCR hearings. The purpose of this briefing is, in part, to provide the court with material to use when writing its order. PCR judges also have access to the transcripts of the trial and the PCR hearing, and law clerks to assist in record review, research and drafting. Given these tools, it would not be a significant burden to require PCR courts to write their own order Per S.C. Code §§ 17-27-80.

While the Court could issue another opinion requiring strict adherence to *Fishburne* and making clear that detailed guidance should be given before allowing a party to draft an order, or hold that in cases where the PCR Court does not draft the order the "any evidence standard is not applicable on appeal, the solution that best cuts to the heart of the matter is to require PCR judges to draft their own orders in capital cases. Given the qualitative difference of the death penalty to all other punishments, there is a heightened need for reliability in cases where a death sentence is imposed. *Woodson*, 438 U.S. at 305 ("Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two;" due to that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case"). Given the importance of a PCR Court's decision, it is not too much to ask that in cases where someone's life is at stake, that a court, not a partisan advocate, adjudicate the claims raised by a death sentenced inmate.

CONCLUSION

For the reasons set forth above, the PCR Court's conclusions and order denying relief are governed by errors of law and are unsupported by the record evidence. Therefore, this Court should grant certiorari to correct those errors.

Respectfully submitted,

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