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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.

APPENDIX
VOLUME **9** OF **18**

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appears to be?
A Oh, that's complicated. I don't know how to answer that.
Q Would that help development of IQ?
A It would help development of cognitive ability. IQ is measured by an IQ test.
Q IQ is basically -- well, the achievement test, it's a test of what he's learned. The IQ test is a test of his ability to learn.
Correct?
A That -- that's a good description, yes, sir.
Q Okay. Now, with respect to the test given in 1967, by that time he'd been in school for, let's see, he was in the third grade?
A I believe that's -- yes, it says here Grade 3, uh-huh. (Affirmative).
Q All right. So, in that test, let's start with the achievement test, and, if you would, please look again to the norms. Top left-hand. 1963.
A Yes, sir.
Q And he is tested at that time for upper primary, correct?
A Yes, sir.
Q Tell us what grades that would cover.
A It says Grades H2-3-L4.

Q So, that would be high second grade, third grade, and low fourth grade?
A That's what I would understand that to mean, yes, sir.
Q Okay. And on that test, his, again, it's the same sort of thing, reading, arithmetic, and language, correct?
A Yes, sir.
Q And his reading vocabulary seems to have come down a bit, 37 to 29.
A I'm sorry.
Where's the 37 that you're reading?
Oh, 37's back over here and we have 29. That's a raw score, yeah.
Q Okay. And---
A I'm not sure if that means it came down really when you adjust it to a standard score.
Q Okay.
A But yes, it did come down a few points.
Q But reading comprehension went from five to 23, did it not?
A Reading comprehension, let's see.
Yes, uh-huh. (Affirmative).
Q And his total reading then was 42. It went from 42 in the first grade to 52 in the third grade.
A Yes.
Q Arithmetic, again, it's reasoning and fundamentals?

A Uh-huh. (Affirmative).
Yes.
Q He -- his reasoning was eight in the later test. His total was, for reasoning, was 21 in the older test, correct?
A Yes, uh-huh. (Affirmative).
Q The fundamentals in terms of what he was able to do, the total in the first test was 48.
What was it in the test in the third grade?
A Eighty-four.
Q And in terms of language, his total in terms of mechanics, in the first grade?
A Let's see. In the first grade, his total for mechanics here. I think -- I believe it's 15.
Q And---
A Yeah, 15.
Q His total for mechanics in the third grade was?
A Oh, okay. I was waiting for you to finish your question.
Q I'm sorry.
A Is 16.
Q So, it went up.
And the raw score went from 106 to 163, did it not?
A That is correct.
Q Definite improvement.
And let's go to the IQ score.

You've got that?
A Oh, are you now flipping to the next page?
Q Yes, ma'am.
A Oh, okay.
Q I'm sorry. I apologize. The California Short Form Test of Mental Maturity, again, administered the same day, it was graded apparently by a teacher, it had been handed out to the class, and, again, what is the IQ reported?
A Eighty-seven.
Q That is well beyond any margin of error or whatever for mentally retarded, is it not?
A I don't know about that because A, I -- they're just so many variables to consider here in terms of how did he take it, was he given any help, did he copy any other peoples' work, and this is still a measure of mental maturity, ie achievement, not so much an individually administered IQ test. But I will agree that he did go up and that he does have what is reported here as an 87 IQ.
SOLICITOR GHENT: Your Honor, if I may have a moment?
THE COURT: Yes, sir.
(Pause.)
Q Okay. Doctor, I've attempted to address the history of the IQ test that you say that the supplement removed, typographical errors that included IQs that would of been favorable, by and large, to the State, correct?

A The supplemental report---
Q The original IQs. A number of IQs that you reported in the original test that were taken out would of shown that he was above -- generally above a level of mental retardation?
A If they were correct figures, that would be true, but since that were errors---
Q And this would of been before 18?
A If those were correct figures, your statement is correct.
Q All right. Let me ask you, the test you administered were the Wechsler.
Is that pronounced right?
A Wechsler.
Q Okay. Adult Intelligence Test.
This is the test that you gave him in 2012?
A That's correct.
Q Have you given him any other tests?
A They're all listed---
Q No, no, I mean any other IQ test.
A No, the -- all the test that I've given him are listed on Page 2 of the psychological report.
Q Right. I'm merely asking that, since that report, this is the most -- this is the newest, the only IQ, to your knowledge, that he's been given?
A No, that's not true. Doctor Brown tested him. So, I

know about that.
Q Okay.
A But I, I -- you asked -- your first question was---
Q That you've given.
A Have I given him any additional, I think you meant IQ test?
Q Yes.
A Uh-huh. (Affirmative).
So, the answer to that is no.
Q All right. On direct you testified about your examination, interview with the defendant, and you also testified about his work history, correct?
A Yes.
Q His problems in terms of driving trucks, the wrecks that he had, all of this was part of your testimony, correct?
A Yes.
Q And with respect to that testimony, I believe you said his father said anybody can drive a truck?
A No, it wasn't his father. It was Mr. Bagwell, who was one of the people that I administered the ABAS to.
Q And his father is one of the individuals that you chose on the ABAS as an informant, is that correct?
A Correct.
Q All right. But the bottom line is you gave the

impression or set out right that this is not someone, you gave him a map test, this is not someone who could of driven any kind of large truck long places?

Wasn't that the impression that you gave?

A No, what -- and I didn't give an impression. What I stated was that he had these accidents, and I also stated that he drove a large truck several times.

SOLICITOR GHENT: All right. May I approach, Your Honor?

THE COURT: You may.

Q I show you an application for employment.

Have you seen that before?

A I was given this and I have not completely reviewed it. There's still some records I have not reviewed.

Q All right.

A But yes, I was given this.

Q When were you given that?

A I believe I was given that -- I -- well, I don't, I don't think I listed it on my supplemental report. So, I wouldn't have read it and had it by then. Let me, let me make sure that I'm telling you correctly cause I don't want to be---

Q Let me just ask you.

You do recognize it though?

A I do recognize it.

SOLICITOR GHENT: Then I would ask to have it marked for identification, counsel.

THE COURT: It can be marked for ID purposes.

SOLICITOR GHENT: Could the record show I'm handing a copy to counsel for---

THE COURT: Yes, sir.

SOLICITOR GHENT: ---their review?

Your Honor, at this time I'd ask to have it marked for identification.

THE COURT: All right. I've allowed that.

(WHEREUPON, the application was marked as State's Exhibit No. 3 for identification purposes only at this time.)

Q Doctor, with respect to the State's Exhibit 3, is that an application for employment?

A Yes.

Q And who does it appear to be an application from?

A Ricky Blackwell.

Q Does that appear to be his signature at the top?

A I couldn't testify if it is or isn't, but it appears to be a signature and it is -- it does say Ricky Blackwell, yes.

Q And there's all kinds of information appearing below filled in in the various spaces that ask for it, which---

A Yes.

Q ---is information consistent with this having been Ricky Blackwell, correct?
A Yes, sir.
Q And what position is he applying for?
A Truck driver.
Q And on the next page, who does it say his last employer was?
A Cherokee Textile.
Q And what does it say the position held was?
A Press operator.
Q And the second to the last employer, who is that?
A John Brannon.
Q And, again, that's handwritten and apparently it appears that all of this is in the same handwriting, correct?
I mean you can at least say that it does appear to be?
A Yes, it does appear to be.
Q All right. And it says that, for Mr. Brannon, what was the position the defendant held?
A It says here truck driver.
Q And what does it say the reason for leaving was?
A Had to have something. I can't read it.
Q Well, it doesn't say he was fired, correct?
A Had to have -- oh, maybe it says had to have full-time job. I think that's what it says.

Q Okay. Now, with respect to the driver's license again, he has a Class Three driver's license, that would be a commercial driver's license, a CDL, correct?
A I don't know that, but I'll accept it if you say it.
Q All right. And down at the bottom where it says driving experience, what type of equipment does it say he is operated?
A It says tractor and semitrailer and then it has type, van and tank.
Q All right. And a tanker, that would of been based on your previous testimony perhaps while he was working for Hess?
A Let me look back at that chart. I went to that. Let's see. Hess, 1982 to 1983, he was a truck driver.
Q All right. And a tanker truck would be a truck loaded with gasoline, would it not?
A I would assume, since Hess is a, a gas company, that that's correct.
Q And while I understand that counsel went through very effectively somebody retarded can do this, somebody retarded can do that, it's your testimony that Hess put this man, not once, but twice behind the wheel of tanker trucks and out the road -- out on the road, correct?
A I don't know what they did, but he worked for Hess Corporation as a truck driver, and he has listed here that

he drove a tanker truck, yes.
Q And at the bottom it asks lists the states operated in for five, the last five years.
What is the answer there?
A Texas, Oklahoma, Tennessee, New York, and New Jersey.
Q That's not exactly something that that map of South Carolina that he couldn't find anything on, that would not be consistent with that, would it?
A 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. What I had, when I interviewed him, was some information about his jobs and I asked him about how he learned to go from one place to another and that's what I testified about yesterday.
SOLICITOR GHENT: All right. Your Honor, I believe this is been offered, but I offer it.
THE COURT: Any objection?
MR. McGUIRE: No objection.
THE COURT: It will be you admitted as marked.
SOLICITOR GHENT: Thank you.
(WHEREUPON, State's Exhibit No. 3 was received into evidence at this time.)
THE COURT: We're gonna take about a five minute break at this point in time, Mr. Ghent.
I'll caution the witness not to discuss her testimony

during that break.

Court will be in recess for a short period of time.

Thank you very much.

SOLICITOR GHENT: Thank you, Your Honor.

(WHEREUPON, a short recess was taken at this time.)

THE COURT: Thank you, ma'am.

(Witness returns to the stand.)

THE COURT: I appreciate your indulgence. I had a little technical problem up here. I think it's fixed now.

All right. You ready to proceed?

SOLICITOR GHENT: Yes, sir.

May it please the Court?

THE COURT: Defense ready?

MR. McGUIRE: Yes, sir.

THE COURT: All right. You may proceed.

SOLICITOR GHENT: Thank you, Your Honor.

CONTINUED CROSS-EXAMINATION

BY SOLICITOR GHENT:

Q Doctor, you've testified about your background and history. I want to go back to your -- some of the things you did earlier in your career.

You worked with troubled teens very early on, didn't you?

A Yes.

Q It was a program that you worked in?

A Uh-huh. (Affirmative).
Q I'm trying to remember, it had a first name, what was the first name again?
A I believe it was the Willie M. Program.
Q That's it and that was for troubled teens.
You also, in your practice, your private practice, for a number of years, focused on the Family Courts.
Is that not correct?
A Well, in my -- no, that's not quite correct. I think they're two things here maybe that you're putting together. In my early years of my private practice I worked with families and children, and then ultimately yes, I did work with the Family Court. That's correct.
Q Okay. So---
A So, clinically I worked with families and children and I had a fairly substantial adolescent practice for a number of years where I worked almost exclusively with adolescents.
Q And that was both clinical and forensic?
A No, the clinical portion is what I was speaking of.
Q Uh-huh. (Affirmative).
A And then I went into -- all this sort of took place at the same time. It wasn't like I had a break and then went into the forensic area. I sort of got into the forensic areas slowly, and it was, you're right, through the Family Court system, that's correct.

Q All right. And you worked with, in your counseling, your clinical work, again, you said juveniles, children who were having, obviously they were coming to you, some kind of problem?
A Yes, that's correct.
Q Were some of them referrals from school?
A Some were referrals from school. I also had a psychiatrist that I worked with closely. If you look at my CV, I had two psychiatrists from whom I received training, one for eight years, one for 12 years I think or ten years, and, so, I got a number of referrals from the child psychiatrist particularly for assessment of juveniles that were inpatient individuals.
Q And you -- did you do work with protective services on occasion?
A Yes, on occasion, uh-huh. (Affirmative). I certainly -- I would define that as I had one evaluation that I conducted at the request of DSS and certainly, in almost every evaluation that I did, there was a family evaluation that would of been -- that could of been some involvement with CPS or DSS, yes.
Q And as a psychologist, you, under North Carolina law, if something, you learned of some kind of abuse that was taking place in the home, you would be obligated to report it, would you not?

A Yes, that's correct.
Q And that whole protective services movement began like in the 70s or so?
A I don't know. I'll accept that if you say that.
Q Okay. Now, you've done a lot of work with trying to help people in trouble, young people in trouble, juveniles, custody disputes, homes breaking up, you would agree with that, wouldn't you?
A I would say that I've worked with a lot of kids and families in, in both the clinical realm as well as the forensic realm.
Q In short, you've worked with a number of individuals who, when I looked back, I have -- you worked with some individuals early who leave your domain and I get to see them later on, would you agree with that?
Troubled youth, a number of them wind up in criminal courts?
A That happens, yes.
Q Drugs, broken homes, any number of things?
A Yes.
Q What is your position on the death penalty?
A I was asked that in the Rouse case and it's hard for me to answer.
Q You said you didn't have a position, didn't you?
A I think that's what I said at that time. I probably

have more of a position now, which is that, for the most part, it seems that I question -- let's see.

How should I put it?

I question the expense for, for proceeding capitally with some cases. I understand that there are some people for whom in my mind it's a fair thing for our legal system to be looking at whether they should be executed or not.

Q But you've never testified for the State?

You've always testified for the defense?

A That's correct because the state, in our, in our state, the State has state employees that they can pull in from the various regional mental health hospitals, mental illness hospitals, you know, psychiatric hospitals, that they don't need to hire individual practitioners like myself.

Q You have read Atkins, you have read Franklin, but let me go to Atkins first.

You do realize that, notwithstanding all of the psychological factors that go into this, the reason why we're here is that Atkins overruled a case from a, ten years before and Atkins then relies on the two theories of punishment in a capital case?

You understand that, two theories of punishment upon which a death sentence can be imposed, they are deterrence and retribution. That is the reason Atkins says you don't execute the mentally retarded.

MR. McGUIRE: Objection. Calls for a legal conclusion.
THE COURT: Well, I didn't, I didn't hear a question yet. So---
MR. McGUIRE: Me either.
THE COURT: So, I'll ask you to formulate a question.
Q Would you not agree that Atkins is grounded upon, and you've read it, you've testified in Atkins hearings, hence the name Atkins hearings, the two bases upon which your testimony goes in is whether or not this guy is somebody deserving of retribution or deterrence, correct?
MR. McGUIRE: Your Honor, I'm gonna object regarding these legal issues and legal opinions.
THE COURT: I'll sustain the objection.
SOLICITOR GHENT: Yes, sir.
THE COURT: Not within her area of expertise.
MR. McGUIRE: Yes, sir.
SOLICITOR GHENT: Thank you, Your Honor.
THE COURT: Yes, sir.
Q Doctor, when you interviewed the defendant in 2012, you noted that he is taking Thorazine.
That is an antipsychotic drug, is it not?
A It is.
Q And it's pretty old school, isn't it?
A It was replaced by the newer SSRIs and other kinds of medications that are newer, yes. It was used in, in earlier

times I guess you could say.
Q Did you, when you found that out, choose a time when he was not taking his medication?
A No, I did not.
Q So, he was on Thorazine?
A To my knowledge, yes.
Q And doesn't Thorazine have some common side effects?
A It can. I'm not familiar with all those. I'm not a psychiatrist, but I am aware of some of them simply because of my exposure to some people who have taken Thorazine.
SOLICITOR GHENT: Your Honor, if I may approach?
THE COURT: You may.
Q I show you a document taken offline, downloaded on the -- I can't, I can't even pronounce the real name. I think it's Chlorpromazine.
Does that sound right?
A I think that's, that's good.
Q Okay. And basically this drug, some of the common side effects, if you'll turn the page, include drowsiness, dizziness, hypertension, restlessness?
A I -- what -- now, where are you reading cause I'm not following you?
Q Okay. Let me help you.
MR. McGUIRE: Judge, if I could see that document?
THE COURT: Please show the defense the document that

you're showing to the witness please.

SOLICITOR GHENT: Yes, sir.

THE COURT: Thank you.

(Pause.)

THE COURT: He's through.

MR. McGUIRE: Judge, I object to questions regarding drugs, their side effects, unless they're within the area of expertise of this witness.

THE COURT: He has not asked for an opinion at this point in time from her. So, I overrule that.

SOLICITOR GHENT: Thank you, Your Honor.

May I approach?

THE COURT: You may.

MR. McGUIRE: Your Honor, I object from---

THE COURT: She has a right to state whether she knows about it or doesn't know it.

MR. McGUIRE: Sure. And I'd also object to him just reading from any document. He's testifying. It's hearsay.

THE COURT: Well, at this time I'll overrule that and see where it goes.

MR. McGUIRE: Yes, sir.

Q The side effects include drowsiness, dizziness, is that correct?

MR. McGUIRE: Your Honor, I would object if it -- if he's asking what words on that page are, I would object to

that. It has to be from her own knowledge.

THE COURT: Well, he's asking is that what the document says. He's presented the document to her. She's not stating what her opinion is about that. Hadn't asked for her opinion at this point in time.

Now, it is a medicine that the defendant apparently was taking. That's been established. She did examine him, and this may apparently have some affect on his cognitive ability. I don't know. But I'm gonna allow him, on cross-examination, to look into it. I'll allow him to ask her what that document says on its -- I don't know what the document is at this point in time. But I'll allow him to ask what it says and see if she has any knowledge or that would affect her opinion in anyway.

MR. MCGUIRE: Thank you, Your Honor.

THE COURT: He has a right to examine her on that matter.

You may proceed, Mr. Ghent.

SOLICITOR GHENT: Thank you, Your Honor.

Q It does list side effects as drowsiness, dizziness, it affects hypertension, correct?

A I don't see drowsiness.

Q All right. It also -- excuse me. Blurred vision, mental confusion, is that correct?

A It does say blurred vision and mental confusion, yes.

Q Mental confusion, blurred vision, and does it also affect hypertension?

Are you aware, from the document, are you aware whether it does?

A I---

Q May I help you?

A Please, yes, cause I don't see the hypertension.

Q Thank you.

MR. McGUIRE: Judge, I just don't want to fail to protect the record. My objection would stand to all these questions. Just asking her does this document say this, does this document say this, I would object to all those questions. In essence it's basically -- basically that piece of paper is testifying and that is hearsay.

THE COURT: Rephrase your questions.

SOLICITOR GHENT: Yes, sir.

Q Doctor, Thorazine has side effects according to this document, is that correct?

MR. McGUIRE: Your Honor, I'm going to object for -- to him trying to solicit an answer from a witness just so he can authenticate his piece of paper. He's, he's---

THE COURT: I'll sustain your objection.

MR. McGUIRE: Thank you, Your Honor.

THE COURT: Rephrase the question.

Q He was on Thorazine, correct

A To my knowledge, yes, he was.
Q And did you inquire of the doctor who had prescribed that as to the dosage?
A No, I did not do that. I did comment to the attorneys about the use of the Thorazine, but I didn't ask the doctor about the dosage.
Q But it was no concern to you that he was taking Thorazine while on the test?
A Oh, it was of concern to me, yes, because it is, as you said, an older medication and I questioned why he was taking Thorazine. In fact, I believe I asked him about why he was taking Thorazine, and he told me that it was a substitute for the Seroquel he had been taking earlier.
Q And the Seroquel, he told you, had been something he had been hoarding?
A I don't think he used the word hoarding, but he did tell me that he had been keeping it in his cell, extra amounts. So, I don't think he used the word hoarding.
Q And do you know whether or not that drug is one that is used for sale in a jail or a prison?
A I don't know that.
Q But at any rate, he was on Thorazine, you did not call the doctor, you did not ask about his dosage?
A That's right.
Q You did not know how long he had been on it?

A I believe he told me and I have it in my notes. I think I'm right about that. I'd have to refer back to my notes.
Q Okay. And did you ask him what the schedule of taking the drug was?
A There is a section in the forensic client history and checklist where I asked about medicines and this would of been where we discussed his taking Seroquel. If my memory is correct, and I'm not gonna say it is absolutely, I think I asked him about the dosage. I would of -- let's say this. It would be typical for me to ask about dosage. I -- my memory is that he didn't remember the dosage.
Q Okay. And the forensic interviewer, this information, is, is that in one of these notebooks?
A I don't think so. The forensic client history and interview is material that I prepared and, and gave to Mr. McGuire to give to the State.
Q Okay. With respect to the Thorazine, in your report you state that he stared blankly during the period of your discussing informed consent with him.
Is that not correct?
A That is correct.
Q And he just nodded his head up and down in compliance or agreement, correct?
A That's correct.

Q And as you said, you were concerned about the Thorazine and mentioned it to the lawyers representing him?
A Correct.
Q Did you check to see if he was on other medications that might have interactions with it?
A Yes, I had -- I asked him about his medications.
Q Did he tell you that he was on Benicar?
A He could -- there were -- I know that there were medicines that he could not remember the name of. That one does not sound like -- I would -- I think I would of remembered that if I wrote that one down.
Q Well, that would be for high blood pressure or hypertension?
A Well, now, he might of told me that he was on medicine for hypertension, but he wouldn't -- he did not tell me that name.
Q Okay. And, again, the reason for the substitute of Thorazine for is it Seroquel --
A Seroquel.
Q -- was basically because he had been caught, I use the word hoarding, you chose a different one?
Do you have the jail records in that notebook?
A I don't think so.
Q Didn't you review the jail records?
A No, I haven't reviewed the jail records.

Q Not at all?
A No, I haven't.
Q You're unfamiliar with any disciplinary actions that may have been brought against him while he was in jail?
A That's correct.
Q Okay. You have been working with inmates and prisoners in criminal cases for some time, correct?
A Correct.
Q And you're familiar with procedures and protocol in prisons and jails, correct?
A Which procedures and which protocols?
Q Well, let's start with there -- the facilities right to search. There are lowered standards of search and seizures, lower standards of privacy.

You understand that?

A Yes.
Q And you also understand that there are administrative procedures where, when an inmate is caught doing something that violates the rules, he can be subject to discipline?

You understand that?

You're familiar with that?

A Yes.

SOLICITOR GHENT: All right. Your Honor, at this time I would first show a group of documents that I will ask to have marked.

MR. McGUIRE: Judge, I'd like to see it.

THE COURT: Allow, allow the defense to see it.

SOLICITOR GHENT: Yes, sir.

(Pause.)

SOLICITOR GHENT: Your Honor, counsel's gonna object, and I think we need to hear this outside the presence of the witness.

THE COURT: That's interesting. I've never excluded a witness from argument before.

SOLICITOR GHENT: Well---

THE COURT: I've excluded jurors from that. Not, not a witness. Maybe you ought to explain to me why that would be necessary.

SOLICITOR GHENT: Your Honor, the information that we received from defense counsel, and I, I've doubled checked this, was separated by these blue pages. This one is clearly marked as jail records, and from them being downloaded and given to me in a stack, it is, therefore, my understanding these were provided to us by counsel.

THE COURT: Yes, sir.

SOLICITOR GHENT: And if she was never given those, I'm curious about that because, if they're not in the notebook, I'm curious about that because I do think they bear on his IQ as well as his adaptive functioning.

THE COURT: We can argue that in front of the witness.

All right. Objection?

MR. ALLEN: Well, I mean I -- if the Court wants me to explain why I copied---

THE COURT: No, I don't want you to explain.

I assume you're wanting to introduce those records?

SOLICITOR GHENT: Yes, sir.

THE COURT: Well, you're gonna have to ask the witness whether she recognizes them and set some foundation. If she doesn't have any knowledge of it, then you may have to introduce them through some other witness, but I'll let you ask her whether she's ever seen those documents or is used them in formulating her opinion. Those are all valid questions. I'll let you ask that at this point in time. Of course, if she has no knowledge of them, then there's no foundation for them to be introduced through this witness.

SOLICITOR GHENT: Yes, sir.

THE COURT: You may proceed.

Does that address the concerns for the defense?

MR. McGUIRE: Yeah, I mean I think we have to get over the threshold of whether she's seen them or not.

THE COURT: Okay. All right. Let's proceed.

Q Have you seen those documents before?

A No.

Q I would ask you if disciplinary measures taken, such as that, would be something that you would describe as

maladaptive behavior and that you would not factor them into adaptive functioning?

A Okay. You asked me two questions. So, could you specify what you'd like for me to answer first?

Q Well, would you, if I were to question you about that, describe that as maladaptive behavior?

MR. McGUIRE: Your Honor, I would have an objection. My understanding of a hypothetical question posed to an expert has to be based on facts in the record. These facts are not in the record. I mean he can ask in general questions, but he can't testify that that event actually happened and ask questions as it did.

SOLICITOR GHENT: Your Honor, the problem I've got is that these were provided under circumstances that led me to believe that they were a part of her review. Now she is saying quite clearly no, I never looked at these. I'm trying to figure out whether they were withheld, overlooked, if they were withheld, would that have been because she said I don't want to see anything having to do with any kind of criminal act because that would be -- she has testified in other cases no, I didn't consider that.

THE COURT: Well, the point is though he's asking -- you're asking specifically about that information, which is not in the record at this point in time.

SOLICITOR GHENT: Exactly.

THE COURT: And, so, I'm gonna sustain his objection in that regard. Now, you certainly have the right to question her that if she had been told that a subject of an examination was in X, Y, or Z, would that be information that she would use in formulating opinions. You can ask that question.

SOLICITOR GHENT: Thank you, Your Honor.

THE COURT: All right.

Q Doctor, had you---

THE COURT: You can ask her about the behavior described in that document, but when it's not in the record at this point in time. It may come in through some other witness. I don't know. We'll see. She's, she's denied having ever seen those things or knowing -- have any knowledge of them.

SOLICITOR GHENT: But, hypothetically, just to clarify, my---

THE COURT: Ask your question. I'm sure we'll get an objection and then I'll deal with it.

Go ahead.

Q Had you known that this defendant, on one occasion, or any subject---

MR. McGUIRE: Objection. Assumes a fact in the record. It's not in the record.

THE COURT: Well, he's now rephrasing the question.

So, I'm gonna let him rephrase the question.
Q Are jail records something that you would use to consider in reaching your opinion?
A Not in an Atkins evaluation.
Q Okay. Doctor, you corrected counsel whenever he referred to Angela Blackwell as Mr. Blackwell's wife. You corrected and said ex-wife.
Correct?
A Yes.
Q And you have experience with the Family Courts, considerable experience, with the Family Courts in North Carolina?
A Yes.
Q I'm curious, do the Family Courts in North Carolina, are they all essentially like this and like they are in South Carolina where the judge is the fact type finder---
A The judge---
Q ---or do you have a jury?
A No, the judge is the fact finder.
Q All right. So, you're familiar with the Family Courts, Court orders, Court orders of custody, Court orders of just divorce, correct?
A Yes, sir.
SOLICITOR GHENT: Your Honor, at this time could the record reflect I'm providing a copy of a document to counsel

for his review?

THE COURT: All right.

(Pause.)

THE COURT: I believe he's completed his review.

You may proceed.

SOLICITOR GHENT: Thank you.

May I approach, Your Honor?

THE COURT: You may.

Q Doctor, I show you a copy of a divorce decree, Angela Blackwell versus Ricky Blackwell.

Did you review that?

A I didn't---

MR. MCGUIRE: Your Honor, if it could be marked for ID for the record.

THE COURT: Would you like to mark that for identification purposes?

SOLICITOR GHENT: Yes, sir.

THE COURT: All right. Let's do that.

(WHEREUPON, the divorce decree was marked as State's Exhibit No. 4 for identification purposes only at this time.)

SOLICITOR GHENT: My apologies, Your Honor.

THE COURT: That's all right.

It's State's---

SOLICITOR GHENT: Exhibit 4.

THE COURT: Thank you.

You may proceed.

Q Looking at State's Exhibit 4, is that document in the records that you reviewed?

A I don't see it in the records that I reviewed in either the psychological report or the supplemental.

Q You did not, to your recollection, at anytime look at that divorce decree?

A There've been a -- several records -- a number of records I've received recently. It could have been in there, but I don't recall and I did not review it, and if I reviewed it, for either one of these reports that I wrote, I would of written it in there.

Q Well, with the documents you've received since you wrote the reports, do you know whether or not that is one you might have looked out?

A I don't know that.

Q Thank you.

Going to the adaptive testing, the ABAS, you mentioned that I believe there are ten domains, correct?

A Ten areas, yes, of adaptive functioning.

Q You also talked about your mentor, Doctor Olley?

A Yes.

Q And did I misunderstand that, on occasion, you consult with him about your procedures for adaptive functioning?

A I consult with Doctor Olley on more than that, and I do consult with him on occasion, yes.
Q Did you consult with him on this occasion?
A I did.
Q With respect to the number of informants picked, you said Doctor Olley prefers ten to twenty?
A Yes, sir.
Q You are comfortable with six to twelve?
A I wouldn't say I'm totally comfortable with six to twelve, but that's all we could find.
Q Six to twelve?
A Correct, that were available and that would talk with us.
Q So, the individuals who you talked to, for purposes of the ABAS, were -- am I pronouncing that right?
A That's correct, uh-huh. (Affirmative).
Q Were essentially Cletus, Mildred, and Heather, all of whom you contend in your original and supplemental report are retarded?
A No, you don't have that right.
Q Okay. Well then correct me.
A I can -- I gave the ABAS to Mildred, Cletus, Heather, Ken Rice, Jean White.
Q Oh, well, I'm just talking about the first three. Okay. And you gave it to Ms. Scruggs. You gave it to

Ken Rice. I'm gonna -- but I wanted to ask about, first about Cletus, Mildred, and Heather.

A Okay. So you had---

Q Family members.

A ---two questions and of the or maybe -- well, let me not rephrase your question and let you rephrase it.

Q You talked to six subjects?

A (Witness nods affirmatively.)

Q Three of whom were members of Mr. Blackwell's family, correct?

A That is correct, uh-huh. (Affirmative).

Q You talked to Louise Scruggs, who was a former teacher?

A (Witness nods affirmatively.)

Q And you talked to---

A Yes.

Q ---Ms. White, who is a neighbor and friend of Cletus' mother?

A Yes.

Q And you talked to Ken Rice, a minister?

A Yes.

Q So, all of that would be correct?

A And to Mr. Bagwell and---

Q Former employer, right.

A Yes.

Q All right. With respect to Cletus, Mildred, and

Heather, in your first report, do I misunderstood or was it your conclusion that they all exhibit signs of mental retardation?

A Well, what I said was that we have IQ scores from tests that were administered to Cletus and to Heather. There's a blank for Mildred cause we don't have any scores from the school records because we have no school records for Mildred, and I don't believe that I said that, that she was retarded.

Q Okay. Did you say anything about her drug use?

A I did mention that she -- in my report, I mentioned that she takes a number of different, has taken a number of -- the record reflects about her, the records that we have from her doctors, reflect that she has taken a number of psychotropic medications.

Q All right. And Heather, his daughter --

A Yes.

Q -- she has also taken a number of drugs, used a number of drugs, elicit as well as illicit?

Would that be correct?

A The record reflects that. I'm not sure about the illicit. Frankly I don't remember that, but I do remember the number of -- I remember she took a number of psychotropic medications.

Q Did you, in the records you reviewed, look at Heather's

school history as well as her medical history?
A I did.
Q Did that not reveal that she was put in a juvenile facility, at one point, for criminal actions having to do with drugs?
A I honestly don't remember. I'm sorry.
Q Does it indicate she was incarcerated in a juvenile facility?
A I don't remember that.
Q Does it indicate that she was committed to Patrick Harris Hospital?
A Yes, I believe the records do indicate that.
Q And those would be in the records that you reviewed?
A Yes, sir.
Q And those records indicate a history of her drug use?
A I don't remember that. I -- when you say drug use, I assume you mean, you mean substance abuse.
Q Yes, ma'am.
A Okay.
Q That's exactly what I mean.
A Yes, I don't remember that. I'm sorry.
Q Okay. With respect to Heather, did you also indicate that she appears to be retarded?
A What I reported were the IQ scores that we have for her from the school records.

Q And what were those scores?
A Let me find that. On the Otis Lennon there was a 57 and on the Otis Lennon Second -- first Otis Lennon at 10 was 57. The second Otis Lennon at 12 was 71.
Q And based upon that, you concluded that she is retarded?
A No, sir, I did not conclude that. I did not give her a diagnosis. I, I reported that -- well, I don't know. I'd have to go back and look and see what the narrative is, but I didn't give a diagnosis of intellectual disability.
Q Well, I'm not asking you if you gave a diagnosis. I'm just asking you if it indicated she was retarded.
A Well, to reach a diagnosis that somebody is intellectually disabled or retarded would require looking at those three prongs, and I didn't do that for Heather because she's not the subject of this investigation or assessment.
Q With the father and Heather, and I believe the son, Ricky Junior --
A That comes in later in the supplemental report.
Q Right.
Am I mistaken or did you pursue what you said on direct, the fact that family members had a history of retardation, that there could be a genetic aspect to retardation, that you were attempting to use retardation in the family as further support for the fact the conclusion

that the defendant was retarded?
A I was using the fact that family members have scored in a range of mild I.D. on IQ tests to say that there is possibly some association from a familial point of view with low intelligence. That's what I was attempting to say.
Q But you chose, as three family members, three family members, who -- one of whom you have conceded had, has problems or takes a lot of drugs, Mildred, takes drugs, is on medication, antipsychotic medication in fact, correct?
A I don't---
MR. McGUIRE: Judge, I would object to the compound and confusing nature of the questions. Sometimes they're about six or eight facts in his questions, and they're all generally confusing. So, I don't object to the -- I don't---
THE COURT: I understand what you're objecting to, but he's on cross-examination, and I don't find that that question was unfair. You may ask the question.
SOLICITOR GHENT: Thank you.
MR. McGUIRE: Yes, sir.
Q Was Mildred on antipsychotic medication?
A I don't remember now what the medication was that she was on. I know she has been on antipsychotic medications. She's been on other psychotropic medications for the treatment of depression. I don't remember the specific one

that she is on now or even if she is on one.
Q But at the time that you gave her the ABAS or you administered the ABAS, was she on any kind of antipsychotic or psychotropic medication?
A I don't---
Q Did you ask her?
A I don't ask -- answer your first question. I don't remember. And to answer your second question, I don't remember if I asked her about the medications she was on. I'd have to look back at my notes or if, or if I mentioned it in the report.
Q Cletus, the father, your report indicates that testing revealed a low IQ, correct?
A Where is that sentence?
Q If you turn to Page 8 of 40?
A So, this is the first psychological report.
Q Yes, ma'am.
Does that, at Page 8 in the table of the Blackwell family members IQ scores, indicate what Cletus scored?
A Yes, it says he has an IQ -- he had, on the Otis test, he had an IQ score of 60.
Q All right. Mildred, there are no records other than the history in terms of psychotropic drugs---
A From her.
Q ---and antipsychotic drugs?

A The records of her physician said -- indicated a number of medicines that she took, yes.
Q The defendant had a brother, Donald?
A Yes.
Q Now deceased?
A Yes.
Q And does that table indicate an IQ test score for Donald?
A Yes.
Q What is the score or scores?
A At age 12, he had a score on the Short Form of -- Short Form Test of Academic Aptitude of 73, and at age 15 he had a score on the Short Form Test of Academic Attitude -- of Aptitude of 74.
Q And the daughter, Heather, at ten and 12, what were her scores?
A 57 and 71.
Q And a grandson, Caleb Bryant, what was his score?
A He had, on the Wechsler Intelligence Scale for Children, at age nine, a score of 52.
Q If you turn the page, what is the score for Allen Bryant?
A At age six on the Stanford-Binet he had an IQ score of 50, and at age eight, on the Reynolds Intellectual Assessment Scales, he had an IQ score of 46.

Q And what about a maternal cousin, Roger Bridges?
A Yes, in the records for the Newberry Center he was listed as having moderate mental retardation.
Q So, I will let you tell me, if you would, exactly what was the purpose -- what did you attempt to use these scores for in your original report?
A As I said previously, what I was doing was showing that there is a familial pattern of limited intellect.
Q All right. And---
A That's at the first full paragraph on Page 8.
Q Right.
A That's---
Q So, what---
A ---what it says right there.
Q So, in terms of genetics, you went through the entire family attempting to suggest that, because they were retarded, that there was a possibility that the gene for mental retardation---
A No, that's not what I said and that's not what I did.
Q Well then explain to me what the purpose in the original report was.
A Exactly as I said on Page 8, to show that there were other members in the family who have limited intellect, and that sometimes, in some cases of mild intellectual disability, there can be a familial association, ie, a

number of people in the family can have limited intellect.
Q Sometimes in some cases, but you're not saying that in this case?
A I'm saying, in this case, there appears to be a familial association here with a number of people in the family have limited intellect and scores that fall into a mild intellectually disabled range of functioning.
Q And what, if anything, does that have to do with Mr. Blackwell's situation?
A Because Mr. Blackwell also has an IQ score that falls into a mild range of intellectual disability.
Q And, therefore, you're suggesting a connection between the two?
A There may be is what I just said.
Q Possibly?
A Sometimes there is and there may be a connection here. There certainly is a strong association here for members of his family to have limited intellect, which he also exhibited on an IQ test.
Q I've got to ask you, just in passing, hasn't psychological been through this one before, the Genomics Movement in the 30s, 20s?
A I'm -- don't know how to answer that with regard to Mr. Blackwell.
Q Well, I'm just asking you hasn't there previously been

a movement that wound up being discarded, called the Genomics Movement in Psychology, trying to link genes to certain things like genes to criminal conduct?

A There have been those kind of scientific, "scientific studies" and some have definitely been disconfirmed, yes.

Q And as result, at some point, psychology was used to create laws that suggested there was a criminal gene, correct?

A I don't know about that.

Q Well, do you know where the Genomics Movement finally wound up going?

A What I, what I would be pulling from, sir, is probably like a first or a second year textbook that I may of -- that I read as a graduate student. So, I wouldn't want to -- I wouldn't want to give definitive sort of information that I, I can't, can't say very much about.

Q Well, with respect to the way you say they categorized things, they were used -- genetics was used by, and you said so called science, but it was people who were working in psychology to justify everything from racial inferiority to being used by the Germans, isn't that true?

MR. McGUIRE: Objection, Your Honor.

Q Genomics was the basis of that gene?

MR. McGUIRE: Objection. Relevance.

THE COURT: Well, she has indicated that in the report

there was a familial possibility. I'll allow him to explore it. He's on cross-examination.

A I can't tell you anymore than I've already said about what I know about what you're asking about. I simply don't know how to answer your question.

Q Okay. Well, let me just go back.

Cletus, Mildred, and Heather were the ones that you chose from the family. Not the only people. But let's go through. Cletus, Mildred, Heather, Louise Scruggs, Mr. Baldwin, Ken Rice, a minister, those were the people who you chose, Mr. Bagwell, is that right?

A Okay. When you say I chose them, you're talking now about the ABAS again?

Q Yes.

A Okay. Those are the people that were given the ABAS, yes.

Q All right. You chose three family members and a neighbor?

A Yes, that's correct.

Q Of those three family members, two have IQs that you've indicated reflect below the level for mental retardation, correct?

A They reflect a level of intellectual disability that falls within a mild range, yes.

Q All right. Mildred has taken psychotropic and other

drugs to control mental problems she has?
A Depression and other kinds of problems that she's had, yes.
Q The defendant had a brother named Donald who died?
A Yes.
Q He also had a history of mental illness, is that correct?
A Yes, I read that yesterday.
Q You read it yesterday?
A Well, what's today?
Yes, I read the -- what I meant was I read the diagnoses for Donald from the chart.
Q Oh, okay.
And Louise Scruggs, in your report and I'm gonna ask you to go back to it, just the original report, if you'll go to the page where Louise Scruggs is --.
A Do you know where that is?
Q It would be in the area of eight or so Page 8 or so or---
A I don't think it's there.
Q I mean---
A I think it's later.
Q Ms. Scruggs, did you find it?
A I'm not sure what you're referring to specifically. There, there is some information about Ms. Scruggs within

the section that is called specific findings regarding Mr. Blackwell's adaptive behaviors, and that starts on Page 21. I'm not sure if that's what you're referring to.

Q Okay. Let's go to that.

A Okay.

Q Ms. Scruggs was a former teacher.

Did she remember Mr. Blackwell?

A She remembered him after she was shown a picture of him in the year book.

Q Okay. Up until then, could not recall at all?

She looked at the year book, okay, now I know who you're talking about.

A I don't know that she didn't recall at all. I, I know that she was able to say yes, I definitely know him now that I see a picture of him.

Q Ken Rice, the minister, you, at Page 21, you mentioned him, if you'll drop down to specific findings, first paragraph, after Heather Blackwell, among those listed, his pastor, please read the rest of it?

A Okay. His pastor with whom he had frequent contact, Ken Rice.

Q And with respect to the pastor, when you turn over to Page 23, first sentence of the first full paragraph, what does it say?

A Mr. Blackwell's pastor, Mr. Rice, had limited

opportunities to observe Mr. Blackwell in performance of his adaptive deficits, and consequently, he primarily, primarily relied upon Mr. Blackwell's report of his adaptive skills and deficits.

Q That's my question.

A Okay.

Q Earlier, frequent contacts, and then when we turn to Page 23, he is had limited opportunities to observe him?

A He -- and remember from, from when I talked about the adaptive functioning area, I spoke about the areas that Mr. Rice felt he could answer questions. So, he did not answer questions for certain sections. If, if we can go to -- let's see.

Q Well, what I'm interested in just those two sentences appear, from a layman's term, to be somewhat incongruent.

A And I'm trying to explain to you how they're not.

Q Okay.

A Okay. Because the, the -- he had some -- he had frequent contact with him for a period of time.

Q How long?

A I forgot. It's in my notes somewhere. Could be in here, but I don't remember off the top of my head. So, he had frequent contact. He was not only -- remember I said he, he provided counseling services to Angie and to Ricky. He was his pastor for a period of time. He still has

contact with him now. He goes to the correctional center and visits with him. Remember yesterday I said he or maybe it was this morning, I don't remember---

Q That's a lot of information you recall about now.

What about previously?

Was he the pastor for Ricky for---

MR. McGUIRE: Your Honor, if the witness could finish asking the -- answering the first question.

THE COURT: Don't cut her off. Let her finish her answers.

SOLICITOR GHENT: Okay.

A So, he was his pastor. I don't remember exactly when that started, but I do know that Heather and her brother attended a school that he had, and I don't -- I think that, that -- I think that Angie and Ricky went to him before they had the children enrolled in the school. So, that's quite a few years and I think Heather's in her thirties perhaps. I've forgotten exactly.

So, there's this contact that he has had with him that was frequent for a period of time and more frequent when he was his pastor when he was providing counseling to Angie and to Ricky when he saw them frequently because of the children.

But his contact is also limited in the sense that he wasn't in Ricky's home. He couldn't observe whether Ricky

did cooking, for example. Now, he knew what Ricky told him and what Angie told him, but he didn't observe Ricky. So, that's where -- when -- that's, that's how, in one way, in which you can understand those things seem, being seemingly incongruent. When he took the ABAS, when it was given to him, when he was interviewed with the ABAS, then there were certain areas where he did not, either he did not feel that he could answer the area cause he didn't have enough personal experience with him or where, if he tried to answer, it became very clear that he was guessing and so I would put in the column that he was guessing, and then the number of guesses that he had exceeded what's accepted by the ABAS manual.

And, so, that would have been listed on this chart that appears on Page 24, 25, and 26 with regard to the areas that he could answer in a reliable way.

Q So, the pastor basically wound up being more or less discounted?

A No, I wouldn't say he was discounted. He had quite a few ratings in here that -- but where he couldn't rate is noted.

Q Okay. And with respect to Ms. Scruggs, what about her recollections, a lot of guessing?

A The -- where she did guess and where her ratings couldn't be added up, either because she didn't have enough

information to answer all the questions or she had too many guesses, then that's indicated in that third column of the table that occurs on Page 24, 25, and 26.

Q And Ms. White, the neighbor, I believe you mentioned that she recalled Ricky had trouble making eye contact.

This was a female friend of his mothers, correct?

A Yes, and he spent a, a fair bit of time at her house is what she told me in interviewing her.

Q He was respectful?

A Yes.

Q Shy?

A Uh-huh. (Affirmative).

Q Had trouble making eye contact with an older woman who is a friend of his mother, is that correct?

A Yes, I think that's correct.

Q You okay?

A I could use some water. That would be nice. Thank you.

SOLICITOR GHENT: May I approach, Your Honor?

THE COURT: You may.

A Thank you.

Q Yes, ma'am.

Are you ready?

A Uh-huh. (Affirmative).

Q Okay. Mr. Bagwell, he was a former employer?

A That's correct.
Q As his observations went into basically the job?
A Pretty much that's what he was able to do although I think that he was able to give -- he was. If you go back and look on Page 24, he was able to give sufficient ratings that were -- had enough information about Ricky to be able to, to give ratings in the, excuse me, in the communication area as well as in functional academics. No, I'm sorry. Not functional academics. Let's see. Not home rating. Not health and safety. Not leisure. Then he was able to give some ratings in self-care. Not in self-direction. Not in social, and then in work. That's correct.
Q The person who the defendant lived with, his wife, Angie, did you attempt to interview her?
A I asked to be able to interview her.
Q Who did you ask?
A I asked the attorneys.
Q And?
A I was told that she was not willing to talk with us. I believe also that the mitigation specialist had attempted to contact her and she was not -- she did not make herself available.
Q Leisure is one of the areas that you asked about?
A Yes.
Q And in terms of that, did any of the questions have to

do with games or activities, hobbies, anything like that?
A I believe so. I can't remember all the specific questions of the ABAS. There's a lot there. But yeah, I'm pretty sure they did.
Q Was there any talk by anybody about whether or not the defendant was pretty good at shooting pool?
A I believe he mentioned that.
Q Being in pool matches?
A I don't know about pool matches. I don't remember that. But I do remember Heather talking about him I believe playing pool with a cousin of his. I recall -- I think that is what I recall.
Q And she mentioned that he was a good pool player, didn't she?
I mean it was a comment on her daddy, and she was talking about her father and she said he was a good pool player, didn't she?
A I don't think that's in my report, and I don't remember that. I do -- if, if she thought he was a good pool player and there was a question that would pull for that information, she could of scored him a three if she thought he was a good pool player, but I don't remember her saying he was a good pool player.
Q You didn't follow-up on that?
A I don't know what you mean by didn't follow-up on that.

Q Well---
A What is that and what do you---
Q Do you shoot pool?
Have you ever shot pool?
A Yes, I -- yes, I do.
Q Okay. Well, one of keys to it is geometry.
That's what it's all about, isn't it, the angles?
A I couldn't tell you. I'm not good enough to know that.
Q Okay. Well then let's move to any, any discussion with respect to games about gin, gin rummy, him playing gin rummy with friends or family.
A If those -- if, if, if, in the course of interviewing about leisure, that came up, I would have asked about it because it would of, it would of been brought up and this was the point of or one of the points of interviewing the person with the ABAS in an interview fashion is to elicit as much information as possible. So, if it had been brought up by Heather say, for example, or if one of the parents had brought it up yes, it would be in my notes. I don't recall that about.

But if -- the other thing that I think that you're kind of losing sight of here is that for leisure, it's not as if -- you're sort of taking and picking and choosing sort of okay, he was good at this, he was good at this, he was good at this. But what leisure does is ask a number of questions

about all kinds of leisure activities, and then there's a summation of that area into a raw score that then gets translated to a standard score that compares the individual to people of his same age.

Q Would games, as recreation activity, come into any of these leisure social -- I'm just wanting to know, did, did you ask Heather or any of the other informants about the fact that her father played gin rummy?

A What I did was to---

Q Did you -- please just answer yes or no and then explain.

MR. McGUIRE: Objection, Your Honor. She can explain her answers, judge.

THE COURT: Well, she needs to be responsive to the question, and then she can explain her answer. So, I'll allow her to be responsive and explain.

You may proceed.

Q Yes or no, did she mention the fact that he liked to play gin rummy?

A I don't remember. I would have to look at my notes. I simply don't remember. There's a lot of information there.

Now, what I did, okay, I think I mentioned this when I talked about how I evaluate for adaptive functioning. I took the ABAS. It was administered to the person in an interview form. I also have extra questions that I give in

an interview form to the subject, the informant, and leisure is one of those areas.

So, if Heather mentioned that to me, it would be on that information that -- it would be on that form. I would of written it down in that form about leisure and I just---

Q How hard would it be for you to check your notes?

A Well, if you have a copy of them, which I think you do now, I, I would be able to---

Q I don't yet.

They only came in I believe yesterday, is that correct, to us?

A I gave them, I gave them to the defense attorneys yesterday.

Q I understand that. The State has been asking for them since November. We got them yesterday. You keep referring to notes that just came yesterday.

A I don't have any control over that, sir. I, I provided what I was asked to provide.

Q Well, you knew that there was an order by Judge Couch that said all of your information was to be turned over to the State and to the State's -- DDSN.

A I didn't -- I think we've been through this, and I, I don't want to impugn myself by saying the wrong thing so I'll just say I've answered that before, and I don't recall what I said exactly. I don't remember when I was -- at this

particular point you're asking me this question, I don't remember when I became aware of the State's request. It certainly was not in November.

Q How about poker?

A Pardon?

Q Did Heather mention the fact that her father liked to play poker?

A Again, I do not remember the specifics without looking at my notes.

Q How about---

THE COURT: I'm gonna declare a recess at this time for lunch. We'll take a break until two o'clock.

I will mention to the witness that you do have the right to refresh your memory from your notes. You can bring them back to the stand with you if you'd like when you return. You, however, can not discuss your testimony with anyone during the break.

So, we'll be in recess until two o'clock for lunch.

Thank you very much.

SOLICITOR GHENT: Thank you, Your Honor.

(WHEREUPON, Court was in recess for the lunch hour.)

THE COURT: Ms. Calloway may resume the stand.

(Witness returns to the stand.)

THE COURT: Thank you.

Mr. Ghent, you may continue with your

cross-examination.

SOLICITOR GHENT: Thank you, Your Honor.

THE COURT: Thank you.

CONTINUED CROSS-EXAMINATION

BY SOLICITOR GHENT:

Q Doctor Calloway, just to verify, the case I was referring to, the sexual harassment case, was Walton versus North Carolina Department of Agriculture, and it was, in fact, you and Doctor Corvin who were appointed by the Court.

A Oh, I was on contract to the attorney general, the assistant AG, who was representing the Department Of Agriculture. I was appointed by the Court.

Q You were not appointed as a special witness for the Court?

A I, I was -- I had a contract with the assistant AG who represented the Department of Agriculture.

Q Okay. The records that you have reviewed, which are now in evidence, did you review the Social Security summary records of earnings paid in?

A I believe I did. Let me double-check my report.

Q Thank you, ma'am.

A Uh-huh. (Affirmative).

A Yes, I have, I have those.

Q Okay.

A I have that.

Q And do you have the summary?
Might be easier for us just to start with the break-out that appears regarding earnings and employers.
A I don't have that document that you're looking at in front of me.
Q Have you looked at it?
A I have written down here that I looked at Social Security Administration records for Mr. Blackwell. That's listed in my report, yes.
SOLICITOR GHENT: All right. And, Your Honor, can the record reflect I'm showing the summary to counsel?
THE COURT: All right. So reflected.
SOLICITOR GHENT: May I approach the witness?
THE COURT: You may.
Q Is this the summary that you looked at?
Does it appear to be?
A I, I thought it was more like a -- I thought it was more of like a record from the Social Security. So, I am not -- I'm not sure I looked at this. I did look at a number of summaries, yes.
Q Okay. It's possible that could of been one of them?
A Yes, it is possible.
Q All right. If I may?
A Uh-huh. (Affirmative).
SOLICITOR GHENT: Thank you, ma'am.

Your Honor, at this time, I would move to have this marked as State's Exhibit 5 and would also offer it into evidence.

THE COURT: Any objection?

MR. McGUIRE: No objection, Your Honor.

THE COURT: All right. Without objection, it will be received into evidence and so marked.

SOLICITOR GHENT: Thank you.

Doctor, I'm providing you with the notebook.

A Okay.

Q And it is---

THE COURT: That document is in. So, it needs to be marked. Just give her a second to do that.

SOLICITOR GHENT: Yes, sir.

THE COURT: Thank you.

(WHEREUPON, the Social Security records were marked as State's Exhibit No. 5 and received into evidence at this time.)

THE COURT: All right. You may proceed.

SOLICITOR GHENT: Thank you, Your Honor.

Q The record -- the summary shows a man who worked from 16 to 51, ages 16 to 51 up at the top, correct?

A Yes, sir.

Q And it goes through by year, employer, address, and earnings?

A Yes.
Q Correct?
A Uh-huh. (Affirmative).
Q First job '76, 1976. James L. Belue.
A Yes.
Q Earnings $89, correct?
A Yes. Correct.
Q Now, I'm gonna go through, and if it -- if need be, I will go through all of these, but I want to hit some highlights if I may just to speed things along.

He was employed in '76, three different employers, James Belue, United Overton Corporation, Community Cash Stores.

A Yes.
Q And, 1976, I believe he would of been 18 years old?
A I don't remember what year he was born now, but that -- I think that sounds rights.
Q Well so do I, but my math isn't so hot.
A '58 he was born, 18, yes.
Q Okay. And 1977, he worked at Community Cash, correct?
A Correct.
Q Crown Cork & Seal, Inc., correct?
A Yes.
Q And he worked at White Bag Company, did he not?
A Yes.

Q Now, in 1978, he went to work for Milliken & Company and really started earning some money.

That is -- what were his earnings?

A Milliken & Company, for 1978, is $3,506.35.

Q By the way, have you been to Chesnee?

A Yes, I have.

Q Do you know what approximately the population is?

A It's small. I don't know the exact number.

Q Okay. You're aware that people in Chesnee generally find jobs in either Spartanburg or someplace else?

They have to.

A I would imagine that's true.

Q Okay. Newspaper Management -- in 1978, Newspaperman Management Production Company, Inc., $1,285, is that correct?

A That's correct.

Q In 1978, Phillips Fibers Corporation, he earned how much?

A 286.96.

Q In 1979, he was employed by three different employers. Southern Piedmont Ice, M&C Farm & Feed Mill, American Fast Print, correct?

A Yes.

Q And is it also correct that his earnings were approximately $3,000?

He worked three jobs and earned $3,000, correct?
A Yes.
Q 1980, Southern Piedmont Ice Company, how much did he earn?
A $5,571.09.
Q 1980, Oneida Industries, Inc., how much did he earn?
A $2,100.31.
Q 1981, he worked for two different employers, correct?
A Yes.
Q This was a man who looked for work, found work, and did work, correct?
A That is correct.
Q 1982, Hess Corporation $5,498, correct?
A Yes.
Q Now, with respect to the Hess Company, Hess Corporation, that, we've already been over it, that would be driving tanker trucks?
A It's my understanding it would be.
Q Okay. And are you aware -- have you ever really studied the commercial driver's license test, the CDL test?
A If I'm not mistaken, the State provided that information and I received that fairly recently, the, an example of that test.
Q Oh, okay. But other than that, prior to this, were you familiar with that?

A I may have heard of that term, but not study -- not looked at a test.
Q Okay. So, you're unaware of how difficult a test that is?
A I'm aware of what the tests look like that was provided by the State.
Q Okay. Hess Corporation, 1982, are you aware whether or not he was laid off or fired?
A Let me look at my notes from that, and that's in a table on Page 11. Let's see. Hess Corporation.
What I have here is lost job after being in an accident.
Q All right. He was, in other words, you're saying he was fired?
A That is my understanding.
Q Where did you get that information from?
A In either an interview or a -- from some of the records that were reviewed about him.
Q Who would the interview have been with?
A Perhaps Cletus. I don't recall now.
Q All right. And your records just don't say?
A It doesn't say here, no.
Q And, in 1982, he went to work for BNR Transports?
A Yes.
Q And how much did he earn there?

A $2,304.10.
Q Now, looking to 1983, who is the employer?
A Oh, you know what?
Okay. I want to make sure I told you accurately here. '83 is Hess Corporation. Okay. I see on my, on my table I collapsed it to 1982 to 1983. So, I didn't have it broken out like this does. And, in 1983, to answer your question, the Hess Corporation is his employer.
Q And how much did he earn?
A $8,141.58.
Q Doctor, I want to ask you, just to be fair, if you understand the nature of commercial trucking liability?
Have you ever testified in a case, read anything about it, been involved in mitigation?
A Oh, no, I'm not an expert in that area.
Q So, essentially what you are telling the Court is that Hess, which is a major corporation, correct?
A I think it is. I would -- I don't know what you mean by major, but --.
Q A large corporation?
A Yes.
Q You, you can see their stations all over?
A Uh-huh. (Affirmative).
Q You're saying that Hess Corporation fired him for a wreck in 1982 and then rehired him after that?

Notwithstanding the dangers concerning say liability insurance, any kind of questions at all concerning further problems, they rehired him and paid him $8,000?
A No, that's not what I'm saying. What I'm saying here on Page 12 of my report is that, from 1982 to 1983, he worked with Hess Corporation as a truck driver, and he lost his job after being in an accident. I don't remember when that accident took place, but --.
Q Well, in, in collapsing the two together, it does appear that what you are saying is that he was continuously employed by Hess and terminated because of an accident, rather than something that is rather significant in terms, in terms of credibility, Hess, according to you, would of had to have laid him off or fired him, let's assume fired him, and then they turn around and rehire him a year later?
A That is not what I said in my report.
Q I understand that. But that is not as what -- that is not what is in this table, which you reviewed, correct?
A I don't see anything in this table about why he lost his job.
Q My point is that, 1982, he worked for Hess, earned $5,000, 1982 he then worked for BNR Transports, which sounds like another trucking company, earned $2,300, and in 1983, Hess hired him back?
A That is what it looks like here. In my table I have

collapsed his working for Hess from '82 to '83.

Q Very well.

And, in 1984, he worked for Charles P. Belue, is that correct?

A 1984, yes.

Q And he worked -- he earned how much?

A $4,640.72.

Q And in that same year he went to work for Cherokee Textiles, correct?

A Yes.

Q Do you have down what he did for Cherokee Textiles?

A In my table, on Page 12, I have that he worked as a hopper and a bale press.

Q Hopper?

A Hopper.

Q And a -- that's working machinery?

A Yes.

Q Do you know the level of complexity of that machinery?

A No, I don't.

Q Do you know the rate at which individuals have had accidents working textile machinery before the textile business basically left South Carolina?

A No, I don't.

Q You don't know whether it's significant or insignificant, do you?

A Whether what is significant or insignificant?
Q The, the rate of injuries from the machinery.
A Oh, no, I don't know anything about the rate of injuries from machinery.
Q And you don't know anything about complexity?
A I am not aware of exactly what that job is, no.
Q Okay. Self-employed in 1985.
Earned how much?
A Let's see. Self-employment, $1,480.
Q And 1985, went back to work for Charles Belue?
A Yes.
Q How much did he earn?
A $3,562.94.
Q Again, are you suggesting that a man who is laid off by a trucking company or fired by a trucking company would rehire him if he had accidents?
MR. McGUIRE: Your Honor, I'm gonna object to the speculation it calls for on the part of this witness. She doesn't know the thought process of the hiring company. She can't testify---
SOLICITOR GHENT: But---
MR. McGUIRE: ---as to what---
THE COURT: That may be the point that he's trying to make. So, I'll allow him to explore that.
A So, what is your question?

Q My question is why -- do you know why Charles Belue, if he had had an accident in '84, would of rehired him in 1985?
A I interviewed the man at Belue and I do see in my records that he lost his job after being in an accident and then they retired him, and I believe I talked to him about that. I'm not remembering the detail of that, but, no, I don't remember what the thinking process was --
Q All right.
A -- to answer your question.
Q When you say an accident, was it an accident with his truck?
A Yes.
Q All right. K&S Trucking, 1985, he worked their briefly, correct?
A Let's see. I'm not sure about briefly, but he did work there.
Q 1985, Peeler Rug Company, Inc.
Now, a rug company such as -- we're -- essentially we're not talking little mats. We're talking rugs that have to be transported, correct?
Would you know?
A I don't know and I don't have what he did there on my chart --
Q Okay.
A -- on Page 12.

Q And he earned $2,600 there?
A $2,650.24, yes.
Q Okay. 1986 -- well, previously you hit me for rounding off. So, I should of known better and I apologize.
1986, who was he hired by?
A Let's see. 1986. I don't have that in my chart other than---
Q How about in the record from the Social Security Administration?
A Charles Belue.
Q Okay. That would be the same Charles Belue that hired him in '84 and '85 and here in '86 he is being rehired?
A I believe that's true.
Q And how much was he paid that time?
A Ten thousand dollars eighty-three -- $10,083.72.
Q And 1986, Peeler Rug Company hires him yet again, isn't that correct?
A That's what it looks like although I didn't have that in my records.
Q Okay. Now---
A Oh, I'm sorry, I do cause I collapsed it again. 1985 to 1986.
Q All right. Now, 1987 and 1997 is the longest period, and I won't call it unemployment, in fairness to the defendant, the man had cancer, did he not?

A That is my understanding, yes.
Q And he had emotional difficulties with that cancer, did he not?
A Yes.
Q And in your records, did you review the admission in March, March 12th, 1990, of Mr. Blackwell after what I believe would be called a suicidal gesture?
A Admission to --?
Q To Patrick B. Harris Hospital.
A I'm pretty sure I did. Let me see.
Yes, uh-huh. (Affirmative), Patrick B. Harris Psychiatric Hospital records.
Q And, again, right there it's for a suicidal gesture, correct?
A What are you looking at?
I'm not sure.
Q I'm looking at the summary, but you used the term gesture earlier. I'm at least trying to be consistent.
A It would help if I could know where you were pointing me to in my report.
Q Well, in -- I'm not referring to your report now. What I'm referring to is the fact that you took it into consideration and he did, in fact, isn't that in those records, 1990 medical records?
The medical records are the entire notebook.

Have you looked at that?
A It says here in my report that I did look at that. So, yes.
Q Okay. And with respect to that gesture, do you have information -- do you not have information in your report that indicates he shot a .357 magnum into the ceiling of his trailer?
A I believe that is correct. What I have here are the psychiatric diagnoses that occur on Page 9.
Q And that was a diagnosis for depression, correct?
A Major depressive disorder.
Q And there was, at that time, no physical injury to him, is that correct?
A That is my understanding.
Q The people who handled the admission were his mother, Mildred, and his wife?
A I believe that's correct.
Q And you've been through the medical records, correct, because I mean you're reporting on this?
You looked at them, did you not?
A If those are in my report, yes, then I did look at them.
SOLICITOR GHENT: All right. Your Honor, at this time I am showing counsel a copy of nursing admission notes dated March 12th, 1990, for their review.

(Pause.)

SOLICITOR GHENT: May it please the Court.

Judge, I'm really on my horse now. I'm trying to get this thing moved.

THE COURT: I'm, I'm here till we're done.

SOLICITOR GHENT: Yes, sir.

Q Doctor, if you would, do you have the medical summary of Mr. Blackwell?

A If it's in this book somewhere, but I'm not sure which tab it would be.

SOLICITOR GHENT: Your Honor, may I---

THE COURT: You may proceed.

SOLICITOR GHENT: May I approach?

THE COURT: You may.

Q Doctor, this is the record I'm asking you to look for just to confirm that you did review it. It would be one of the earlier documents in the 1990 commitment.

A Okay. It's gonna be Tab 15.

Q All right.

A Is that what -- is that what this means I think?

Q I believe.

A Oh, I'm---

Q I didn't make the notebook. So, let me look for you.

A I didn't either.

SOLICITOR GHENT: May I assist her, Your Honor?

THE COURT: Certainly.

A This doesn't have a Tab 15. So, I'm thinking it might be this book.

Q Yes.

A Okay.

Q I'll let you look for it.

A Yeah, sure. No problem.

And I'm looking for this particular page, the nursing admission, correct?

Q Yes, ma'am.

A Okay. There it is right here.

Q Oh, great.

A Uh-huh. (Affirmative).

Q Thank you, ma'am.

Your Honor, at this point I'm a little unclear because those are one big piece of evidence, but I'd still find it easier, when I'm referring to just one, to go ahead and have it marked as a State's Exhibit.

THE COURT: Any objection to him having that marked and introduced?

MR. McGUIRE: No objection, You Honor.

THE COURT: All right. It will be marked in and introduced as an exhibit --

SOLICITOR GHENT: Thank you, Your Honor.

THE COURT: -- the document.

(WHEREUPON, the nursing note was marked as State's Exhibit No. 6 and received into evidence at this time.)

THE COURT: It is---

SOLICITOR GHENT: May I approach?

THE COURT: Plaintiff's 5, 6?

COURT REPORTER: State's 6.

THE COURT: Six.

SOLICITOR GHENT: May I?

THE COURT: Yes, sir.

SOLICITOR GHENT: Thank you.

THE COURT: Yes, sir, you may approach.

Q Doctor, just to check, we've got the same page. I'm gonna hold -- I'm gonna ask from this and you can respond from that.

A That will be fine.

Q Doctor, he was admitted at first to the Spartanburg County. H&P not yet completed or rather from Spartanburg County.

Does it have a quote as to his statement for admission?

A It does.

Q And would you please read that quote allowed?

A Yes. "I quit taking my antidepressant pills because I couldn't afford them. I get depressed about this cancer I've got", and in parentheses says Hodgkins disease, end of parentheses. "I start drinking and smoking pot. I think

I'm going to die anyway. So why not go ahead to kill myself. I shot a .357 magnum twice in my house tonight thinking I would get up the nerve to blow my head off."

Q Thank you, doctor.

With respect to the language used there, that's a pretty fair summary, assuming he said it, of what's troubling him, is it not?

A Yes. Yes, they quoted what his words were when he came in.

Q All right. With respect to the commitment to Patrick Harris, did he, in those notes, discuss his use of marijuana and I would ask you specifically in the notes of March 12th, 1990?

A And this is gonna be in this section. Okay.

Q Yes, ma'am.

A And the date again, March the --?

Q Twelfth.

A All right.

Q I believe it's probably gonna be the same document.

A You mean the piece of paper, the exhibit you just handed me that you were having me read?

Q Nursing admission to lodge.

Does it discuss his appearance?

A Yes, it does.

Q What is it?

A It says that his behavior was anxious and restless. His affect was sad. He was worried and tearful. His speech is hurried but coherent. His appearance is -- I'm not -- I think clean.

Q Yes, ma'am.

A Conversation is logical. Denies allergies. Oriented to person, place, time, and situation. Level zero for now.

Q And he -- did he sign a non-suicide contract?

A Yes.

Q Would that contract have been explained to him according to routine protocol for a hospital?

A Yes, I think so.

Q They would of gone over it with him, explained it to him, and you're familiar with this I assume?

A Yes, I've had suicide contracts with patients.

Q And it's, it's a somewhat sophisticated form, is it not?

I don't mean it's a, a will or a deed, but it, it's a little bit more complicated than just a paragraph, correct?

A It requires some conversation between the clinician and the patient, yes.

Q All right. Doctor, I want to return to his employment history.

His -- are, are you aware whether or not his cancer went into remission?

A I believe it did.
Q And do you have this graph back?
A Where did we put that?
I don't have it in front of me. I'm not sure where it ended up.
Q Well, I seem to recall the agreement was that I would read from this and you would read from the one in your notebook.
May I approach, Your Honor?
THE COURT: You may.
A And it was a tab---
Q Let me see if I can assist you. I think it was Tab 25. Is that possible?
A Or was it 15?
No, that's 15 is that. Okay. Let's see. This is 25. No, this is Spartanburg Regional Healthcare System.
Q Okay.
A Let's see if it lists it here.
Q There it is. Twenty-two.
A Twenty-two.
Q My apologies.
A Okay.
Q We're back to the second page, State's Exhibit 5. The notebook would be Tab 22. Second page down to 1987 through 1997.

He was dealing with Hodgkins and depression, correct?
A Yes, sir.
Q And, in 1998, this was a man who was on SSI, Social Security, correct?
A I believe that's right.
Q He chose to go back to work?
A Yes, that is correct.
Q And he went to work for Springs Industries, correct?
A That is correct.
Q He worked for them in 1998, 1999, 2000, correct?
A Yes, sir.
Q Tell me what he earned in each of those years if you would please.
A 1998, he earned $1,502.09. In 1999 he earned $15,418.77, and in 2000 he earned $17,641.52.
Q And what did he do?
What was his job there?
A Let's see. Springs, he drove a forklift and loaded materials is what I have on Page 12 of my report.
Q A forklift is essentially a small tractor that moves things from one place to another?
A Yes, that's correct.
Q Are you aware of whether or not courses are taken on how to operate forklifts safely?
A I believe that Ms. Shook told -- I interviewed her and

I believe she did say that there was a course that the employees were expected to take.

Q And that is offered at Spartanburg Community College, Community College?

A Well, unless I misunderstood her, I, I had the impression or, or understood her to be saying he took the course there --

Q Okay.

A -- at the site of employment is what I mean.

Q And she, I believe, commented that she could use -- she wished every employee was as good as him?

A Yes, that's correct.

Q Now, you've said and made something of the fact that, in none of his jobs, did it require supervision or whatever?

A I think what he, what I said was that he, he never rose to the level of a supervisor, and he, he required some supervision.

Q Well, there, as a practical matter, psychology or whatever, there are chiefs in the world and there are Indians, correct?

We can't all be judges?

A Yes, that's correct.

Q Okay. Somebody's got to be the boss?

A Uh-huh. (Affirmative).

Q Okay. And in a practical vein, to relate back to what

you do so much, there's an entire area of psychology that looks at nothing but jury selection to help people who are defending cases sort out leaders from followers, correct? Have you heard of that?

A I know that area of psychology exist and I know some people who, who are, who practice in that area. I don't know what the job itself entails.

Q All right. There was a brief period in 2000 when he appears to have also worked for Broadspire National Services, correct?

A That's correct.

Q And, in 2001, he worked for Springs and he worked for Broadspire?

A Yes.

Q And based upon the income between those two, does it appear that Broadspire could of been a second job?

A That's what it looks like because it was only $200 that he had that he received there.

Q Okay. And in terms of Springs for 2001, what did he earn operating a forklift?

A I think that's what I read before, in 2001 with Springs?

Q Right.

A Okay. That was the 19,093.09.

Q All right. And in 2002 for Springs?

A Then he earned 17,252.68.
Q And in 2002 for Broad, Broadspire?
A 542.87.
Q In 2003, for Springs, how much did he earn?
A 23,195.03.
Q 2005, Springs Industry?
A Springs Industry, 2005 was 3,393.18.
Q 2005, Jacobson Staffing?
A 6,614.39.
Q Jacobson Warehouse, 2005?
A 3,038.07.
Q 2006, Jacobson Warehouse?
A 28,690.27.
Q 2007, Jacobson Warehouse?
A 32,799.70.
Q 2008, Jacobson Warehouse?
A 9,994.74.
Q An it was in 2008 when his wife began having an affair, correct?
A Yes.
Q Now, with respect to these jobs, doctor, this in an individual, according to the -- his pay records as well as you've reviewed his employment records, correct?
A Yes.
Q He received raises regularly, did he not?

A I don't see that indicated in here.
Q Well, let me ask you, when you compare year-to-year what he is making from Springs, it would appear that he is making more over time, correct?
A Yes, it appears that way.
Q So, it would, it would stand to reason that he is being paid more?
A Yes, uh-huh. (Affirmative).
Q Per hour?
A Uh-huh. (Affirmative).
Q That's a raise?
A I don't know if it was in the form of a raise or a cost of living adjustment. I don't really know.
Q Okay. Are you familiar with the textile industry and their employees?
A Somewhat. But I've not ever worked in one. So, I don't know it---
Q Okay.
A ---intimately.
Q Springs Industry, over a period of time, as has been indicated, raises apparently or cost of living increases.

Very quickly, at Jacobson Warehouse, in two years, he went from $28,690.27 to $32,799.70.

That is not exactly a cost of living increase. That would suggest a raise, would it not?

A It could be overtime as well. I don't know what it consists of.
Q Well, was there any kind of second job or anything else at Jacobson Warehouse?
A What I meant when I said overtime is overtime at Jacobson.
Q Okay. But you -- the bottom line is you don't know whether or not---
A That's correct.
Q ---he received raises?
A I don't know if he got a raise or if it was overtime or cost of living. I really don't know the reason for the increase. I can say, in looking at this, yes, he -- there were increases.
Q The remark about anybody can drive a truck, again, you're not familiar with CDLs, commercial driver's license test?
A Only what the State provided.
Q Okay. You really don't know how difficult they may be, how demanding they may be?
A Well, what I reviewed I'm aware of what they asked.
Q What about the driving aspect of it?
A I, I don't know the details of that.
Q The complexity of a truck?
A I have some idea of the fact that -- of how trucks

operate, but I'm, I'm not a specialist. I wouldn't --.
Q Well, a big rig, for example, would you know whether or not it might have as many as 17 gears?
A I think today they do have a number of, of gears. I think, at the time he was driving one, I'm not so sure they did, but I am aware that trucks have a number of gears.
Q Number of gears both reverse and forward, correct?
A Yes.
Q And, again, where did you get the information about these wrecks?
A From the, from the -- I believe it was a combination of looking at his employment records and him giving us information and his family giving us information.
Q You make reference to a accident where he was injured in 2002---
A Where is---
Q ---and was---
A Where is that in my report?
Q Give me just a moment.
(Pause.)
While I am asking this question, would you look to the medical records of 2002, the accident of 2002?
A Do you know what that would of -- would it have been within again Westgate records?
Do you know?

Q I think it would of been within Spartanburg Regional Medical Center.
A Okay.
Q Any medical records for 2002.
A Well, this -- I was looking -- did you want me to look at the table of contents in this book to try to find that?
Q Yes, if you would.
A Okay. They're not organized by year. They're organized by the name of the facility.
Q Okay. Well, let's go with Spartanburg Regional Medical Center.
A Okay.
(Pause.)
A All right. I found those records.
Q Would you please review them and confirm that he was checked, in 2002 while at Spartanburg Regional, for a head injury?
A I found -- oh, I found 2000. I haven't found 2002 yet.
Q Doctor, just, just to help you with what you said in your report, Page 13 of 40, first full paragraph. Let me know when you're there.
A I am.
Q All right. First full paragraph, if you drop down several sentences, Mr. Blackwell also sustained an injury from an accident driving a four wheeler during which he lost

consciousness for 15 to 20, to 20 minutes and remained confused for an hour.

A Yes.

Q That is what he says?

A It, it could of been what he said as well as what came from the record.

Q Okay. Well, that's the reason why I asked you if you reviewed your records and been able to find whether or not it was, in fact, an injury to a clavicle and his head, it turned out, was fine?

Do you recall that?

A I don't recall that and I was trying to find that record that you asked me to find --

Q Uh-huh. (Affirmative).

A -- and I haven't found it yet.

Would you like me to keep looking for it?

Q If you like.

Doctor, I apologize. I didn't -- I had no idea that, but---

A If you have the 2000 report --?

Q No, I don't.

A Okay. And you're sure it was 2002?

Q That's what I have in terms of a summary, yes, ma'am.

A And if you have that summary, is that something I also have?

Maybe that would be easier for us to work from. These are -- this is a huge set of records.

Q Give me a moment. I have moved on to my next -- I'm trying to wrap it up. So, I have moved on.

A I saw a summary at the beginning here, but it didn't go through 2002. Now, my memory is that, that Mr. Blackwell is the one who told me that he had an accident on the four wheel, and he described losing consciousness for 15 to 20 minutes and said he remained confused.

Q All right.

A If you have a record from 2002 that shows he broke his clavicle, and that's part of what I reviewed, I'm happy to look at that.

Q Well, I have a summary.

A Okay.

Q But let me ask you, first of all, if you can find it, and later on you want to make a comment on it during your testimony, if counsel wants to point out where it is, these are y'all's records, the defense's records. So, I'll leave it to counsel to help you with that.

Okay?

A That will be fine.

Q I---

THE COURT: Excuse me.

Were you asking where it is in the report?

SOLICITOR GHENT: No, sir, it's in the report at Page 13.

THE COURT: Yes, sir.

SOLICITOR GHENT: I'm asking---

THE COURT: You're trying to find it in the medical summaries?

SOLICITOR GHENT: Yes, sir.

THE COURT: Okay. Excuse me. Go ahead.

SOLICITOR GHENT: Your Honor, at this time could the record reflect that I'm showing counsel copies of a hospital admission in I believe 2005.

While counsel's looking, doctor, the bottom line is that it would appear that you were relying on what Mr. Harris told you, correct --

A Mr.---

Q -- from the way it's phrased in the report?

If you want to turn back to Page 13.

A Do you---

Q Excuse me. Mr. Blackwell.

A Yes.

Q What he told you.

A Yes, I think that's right.

SOLICITOR GHENT: okay. Your Honor, may I approach?

THE COURT: You may.

Q Doctor, I show you -- we're gonna do it the easy way.

We're gonna stay away from that notebook. I show you---
A That sounds like a good idea.
Q ---a record---
MR. McGUIRE: Judge, if it could be marked for ID?
THE COURT: Beg your pardon?
SOLICITOR GHENT: True.
MR. McGUIRE: If it could be marked for ID.
SOLICITOR GHENT: True. My apologies.
THE COURT: Please mark it.
(WHEREUPON, the medical record was marked as State's Exhibit No. 7 for identification purposes only at this time.)
Q You found it. We'll go back to that one first.
May it please the Court?
THE COURT: Yes, sir.
Q Doctor, the medical records --
A Yes, sir.
Q -- do they reveal a broken clavicle?
A They reveal a, a -- that they did something with regard to looking at a -- they did a CT Scan it looks like of his brain.
Q Right. And it was normal, was it not?
A Yes, and then it looks like that they looked at his cervical spine and this says examination done after an accident on a four wheeler. The spine appears to be normal.

No fracture. Subluxation or whatever that is. I don't know what that means.
Q Subluxation?
A Okay. Yeah. And soft tissue swelling is evident. So, then they talk about the lungs. So, the impression is, under ventilation of the lungs, no acute injury evident in the cervical spine or chest.
Q And the, the CT Scan, does it say anything in terms of a physical sign of injury to the head?
A It says negative unenhanced head, CT Scan, without interval changes.
Q All right. Nothing though about the external area of the head looking bruised, scars, or anything like that?
A There's no, there's no impression written that would have that kind of language.
Q Is there anything in there where he says he was walking around, lost consciousness, or anything like that?
A No, I don't see anything of that. I don't see anything about that at all. The -- you did ask about a fracture of the clavicle.
Q Uh-huh. (Affirmative).
A And that is here in a note and it says three views of the left shoulder, a fracture of the distal end of the clavicle that also disrupts the articular surface of the AC joint, offset of the fracture, bla, bla, and then the

impression then is oblique fracture through the distal end of the clavicle.

Q Thank you, doctor.

Let me ask you, the accident he referred to, it occurred while he was operating sort of a recreational vehicle, a four wheeler?

A That's my understanding.

Q Those are dangerous, right?

A To me they are. I don't know how to operate them.

Q Well, injuries occur, but it takes a certain degree of ability to work them, does it not?

Would it not?

A Well, you need to drive to be able to know how to drive.

SOLICITOR GHENT: Okay. Your Honor, if I may approach?

THE COURT: You may.

Q If you would just take a moment to look over State's Exhibit marked for identification No. 7. That's a medical admission I believe in 2005.

A Yes.

Q And my questioning from there is gonna be brief. So you can scan it if you'd like.

A All right.

(Pause.)

A Okay.

Q Doctor, I'll be very brief. I'm just gonna ask you if I -- may, may I approach, Your Honor?

THE COURT: You may.

Q He was in for an operation, is that correct?

A It looks like a, a procedure, uh-huh. (Affirmative).

Q And, on admission, there are notes at Pages 3 and 4 as to observations of neurologic and psychiatric.

Would you please just publish those, read those please?

A Yes, neurologic gate, gate and station examination reveals midposition without abnormalities. Coordination, coordination is good. Psychiatric orientation, oriented to person, place, and time. Mood and affect, mood and affect normal and appropriate to situation. Speech, speech is appropriate with regular rate and rhythm. Memory, recent and remote memory is in tact. Thought processes, stream of thought is spontaneous. Patient exhibits associations which are normal. Patient awareness and current events, past history and vocabulary is good. Patient does not exhibit abnormal or psychotic thoughts.

Q All right. Doctor, these are notes that were taken -- may I approach, Your Honor?

THE COURT: You may.

Q These are notes that were taken down as the defendant was preparing to undergo a surgical procedure, correct?

A Correct.

Q So, there's a good bit of detail about him, his speech, his thought processes, how he appeared, that, in 2005, appear normal?
A He certainly did the day of that procedure, correct.
Q As a matter of fact, doctor, I will just ask, throughout the records of his hospitalizations, his injuries, his attempted suicide, there was one in 19 -- no, excuse me. In 2008 or 2002 or was it eight?
A I think it was 2008 --
Q All right.
A -- when he and Angie --
Q Right.
He overdosed on some pills?
A Yes.
Q I think it was Xanax, correct?
A Yes.
Q And, in 1990, when there was the suicide attempt, in 2002, when there was the accident on a four wheeler, and in, 2005, all the times that he was observed, can you point me to anything where someone notices that he appears not to understand, he appears to be having problems talking, he appears to have an impediment or a problem communicating his thoughts, anything?
A I, I don't think he has any difficulty with, with communication in that way that you've described.

Q But in your report --
A Uh-huh. (Affirmative).
Q -- at Page 2, as you were explaining informed consent, he stared blankly at you and nodded his head up and down?
A Yes, that's correct.
Q That's the extent of it, and in terms of his interviews with you on Page 7 --
A Yes.
Q -- first two paragraphs, would you please read those for the judge?
A During interviews, other examples of this dependency included the following comments: He described receipt of his check payments would work in the following manner: He said quote "she" meaning his former wife, did that." With repeated questioning, he clarified that his former wife deposited checks to a checking account. When asked twice what he did with work payments before his marriage, Mr. Blackwell eventually stated "I cashed them."

Additional questions eventually resulted in these statements. "I never fooled with nothing but cash money. No money order." When asked why not, he replied, quote, "I would of been in all kind of trouble." When prompted to explain, he added, quote, "probably would of gotten messed up trying to keep up with all of it."

And going to the next one?

Q Yes, ma'am, please.
A Okay. During interviews, Mr. Blackwell exhibited a lack of information expected of an average person such as an understanding of the legal system and the various roles of those within it. In addition, he was simplistic in general in his answers. For example, he did not understand the word defense counsel, and was not sure what this individual does. For solicitor, he remarked he's the one persecuting them I guess. He stated he was in jail for "murder and kidnapping" and knew that a "defendant" is "me."

For possible consequences stated as "do you know what the punishment is for these crimes, Mr. Blackwell said "death or life."

Q Thank you. Thank you, doctor.

Several times you made reference to the fact that the wife handled his finances, kept the checkbook, all of that.

To end this on a lighter note, do you want me to ask those men in this courtroom who do the same thing to stand and would you like to see how many probably would stand?

I don't know the answer to that, do you?

A No, I don't know these people.
Q You want to try it?
A I'm not really that interested in it---
Q Okay.
A ---because it's not relevant for what I did.

Q Thank you, doctor.

Thank you, Your Honor. That's all I have.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. MCGUIRE:

Q Doctor Calloway, I guess we'll continue on the lighter note a little bit longer. What happened -- you made the comment that it wasn't relevant, whether, for instance, if, if my wife writes the checks for the power bill, the water bill, insurance, whatever.

Could you expound on that a little bit?

A To take an isolated incident or an isolated behavior or even an isolated set of behaviors, writing checks, paying bills, and so forth, is only one aspect of adaptive functioning. One of the aspects of adaptive functioning that we're looking at when we're doing these kind of evaluations has to do with what is the individual's typical performance, and another aspect of adaptive functioning is, is the able -- is the individual -- does the individual perform these kinds of task that constituted adaptive functioning across a number of tasks, across several domains, does he do it -- does he or she do these things in a way that we can compare to the normative sample.

So, it's not isolated behaviors. It's typical behavior and it's behavior that is done without support.

Q Okay.
A So, if you're, if your wife or anyone else's wife who does the check writing became ill, couldn't check -- write checks, then I imagine you could and probably the other men in this room too.
Q Right. I mean I'm relatively certain Mr. Ghent's not mentally retarded without regard to his writing checks or not, but if his wife left him we would assume he'd start writing some checks?
A Correct.
Q And he wouldn't let say, his house go into foreclosure?
A That's correct.
Q What happened to Ricky when Angie, his support system, left him with regard to his trailer?
A Oh, what happened to his trailer was that it went into arrears. Ultimately had to -- his father ultimately brought it up, paid for it to, to come out of arrears to rescue, salvage rather I guess would be the appropriate word, the trailer. Ricky was not cooking for himself. He was not cleaning his clothes. He was not -- he wasn't -- he wasn't paying the bills. So, the electricity wasn't staying on, and ultimately his mother moved in with him to try to assist him at first. That didn't work so well. So, he moved back in with Cletus and Mildred.
Q And never left them?

A Never left them until he was incarcerated.
Q Right.
I'm gonna go over just sort of the main topics here with regard to what appeared to be sort of the impeachment of, of you or attempt impeachment, attempted impeachment of your report and testimony.
One seems to be an area of bias, that you testified only for the defense, and that you, you've testified for me actually in another case, State versus Robert Nelson in Dillon County, and that you're also biased or potentially biased because you're a helping person and you want to help people in trouble, and that if you personally disagree with somebody being selected for punishment for the death penalty, that you would also kind of go to bat for them.
Are any of these things influencing the data that you report?
A No, I'm looking at the data. It has nothing to do with the sort of things that were brought up.
Q Okay. And, in fact, aside from even your conclusion, it's really not a personal opinion or an expert opinion. It's just a reflection of data gathered.
Is that correct?
A It's an expert opinion in the sense that I am an expert and am offering it. But you're right. It's a report of what the data says. I, I engaged in this process of

providing an evaluation, according to certain scientific standards, methodology, and collected the data in that way, and that data collection resulted in the findings that I reported.

Q Okay. And another attempt to impeach your data was the fact that three of your reporters had IQ scores in the mild M.R. range. That would be Otis, Heather, and -- well, no Otis and Heather. Cletus and Heather rather, and we didn't have a score for Mildred.

A That's correct.

Q So, you were -- the -- you were essentially attacked for allowing them to be reporters. Let me ask you a little bit about that.

If you go to your ABAS chart, are there -- are there instances where we had folks that were not in his family give his marks that were actually lower than his family?

A Correct.

Q And that would be, of course, Minister Ken Rice. That would be Jean White, neighbor, and Louise Scruggs, teacher.

A Yes.

Q Mr. Bagwell, employer, and Ms. Shook, another supervisor from work.

Were there instances in the ABAS where they, and you don't have any reason to suspect that they're in -- that they would score in the mild M.R. range on an IQ test, do

you?
A No, I don't have any reason to think that.
Q Okay. And are there instances where, on occasion, they would actually score Ricky's skill set as lower than say Heather and Cletus?
A Yes.
Q And could you tell the judge about that?
A Well, you know, I'm not sure what you're asking me to tell the judge. If you could clarify for me.
Q Okay. Let me, let me be a little bit more specific.
For instance, for instance, Louise, on community use, scores Ricky at a two and Cletus also scores on a two.
A Yes. Okay. I wasn't sure if you wanted the specific numbers or if you wanted some more general explanation. I understand now.
Q Okay. Well we can do the numbers first and then a more general explanation.
A All right. So, yes, on Mr. Bagwell, on communication, scored Ricky at a one where Mildred, for example, gave him a three and Heather gave him an eight, yes. And then -- let's see.
Q I tell you what.
A Okay.
Q If you would, if you would, I don't mean to cut you off.

A That's all right.
Q If you would, let's group -- when we, when we address these, let's do Mildred, Cletus, and Heather cause there seemed to be some attack with regard to Mildred because she was taking some medication and had a depressive disorder.
A Okay.
Q So, if you would, just indicate when either Pastor Rice, the minister --
A Yes.
Q -- Ms. White, Scruggs, Mr. Bagwell, and Ms. Shook had occasion to rate lower than those people -- than Cletus---
A Okay.
Q ---Mildred and Heather.
A Got you.
All right. So, on communication, both Jean White and Mr. Bagwell did. On community use --.
Q I believe Louise---
A Yes, Louise---
Q ---is the same as Cletus.
A Uh-huh. (Affirmative). Yeah, and lower than Mildred and Heather. Functional academics, Ms. Scruggs rated him lower than Mildred, Cletus, or Heather. On home living -- let's see.
Q What about Jean White on functional academics?
A Yes, Jean White also on functional academics.

Q Okay. Also lower than Heather?
A Yes, lower than Heather, yes.
Q Okay.
A And then on -- let me see here. Louise Scruggs, on health and safety, rated him lower than Heather, and Reverend Rice, on leisure, rated him lower than Mildred, Cletus, or Heather. Not lower than Cletus. Sorry.
Q The same as Cletus?
A The same as Cletus, correct. On -- let's see. Self-care, Jean White rated him lower than Heather.
Q Did---
A On---
Q Did Mr. Rice, the pastor, also rate lower than Heather on self-care?
A On self-care, yes, and on self-direction, Mr. Bagwell rated him lower than either Cletus, Heather, or Mildred.
Q I, I think that's Ms. Shook.
A Is it?
All right.
Q I think, on self-direction, I think Ms. Shook was the lowest rater.
A Oh, yes, yes. Ms. Shook is a two. You're right.
Q And, again, she was a former---
A Former employer.
Q Right.

A Yeah, or supervisor is what I believe she was. Okay.
Q On social?
A Social, Reverend Rice rated him lower than Mildred or Heather, and, on work, Reverend Rice and Mr. Bagwell rated him lower than Ms. Shook if that's important. There were no ratings that Cletus, Mildred, or Heather made---
Q Sure.
A ---on work.
Q Okay. So, with regard to that you're using informants that are rating too low because they're have -- they have intellectual functioning in the mild M.R. range just based on an IQ test.

What do you say about that?

A Well, a couple of different things. We don't have a perfect situation. Anytime I've ever done a, a, a, an Atkins evaluation, and Doctor Olley has certainly said this in, in many places different times, that these are imperfect sorts of evaluations. The people who are expected to know the most about the, the subject of the evaluation are the, are family members because they're the ones that have spent the most time with him or her. They're the person -- people that are with the subject day in and day out.

So, imperfect or not, I think it would be an oversight, I think it would be not particularly informative to include -- to exclude family members, and then what you just

did, to have me go through and compare what family members did in terms of scoring relative to other people, shows that sometimes they were higher than other people, sometimes they were lower than other people. So, there's not a consistent pattern there to show that they had some bias in the way that they were responding, for example.

But I think all of those things have to be mentioned. The other thing that didn't get mentioned here at all, to my knowledge or recollection, is the fact that what we have is retrospective analysis here.

Q And tell the judge about that.

A Yeah, well, we have people going back and trying to remember what this man was like when he was younger, what he was like the last time he lived with them. Memory is influenced by so many variables, and the person that these individuals in his life know now is a person who's incarcerated, and that's not the same individual who lived in their home. That's not the same individual that Reverend Rice was counseling, for example.

So, so, we have to look at that fact that, again, it goes to the imperfectness of our dataset, and that's what we have, and that's the best that we can do in that. And the other reason for having the number of informants that we have is in order to try to counteract any of these effects of what we call intervening variables. You know, the fact

of, of them being his parents, of Heather being his daughter, and so forth and so on.

So, we try to look at all that in a way to counter balance any of these effects that may be happening, and in addition to that, then it isn't just the ABAS scores that are being relied upon for, for the data that leads to the conclusion that there is a deficit. So, it's, it's other pieces of information that come from these records and that come, that come from the records, yes.

Q Okay. And---

A Let me stop there.

Q Ricky is now 55 years old?

A Yes.

Q So, when you say a retrospective analysis, how far back are you asking people to think?

A Well, you're asking -- I'm asking people to go back sometimes as much as forty years to when he was a teenager.

Q Okay. And you say that the person in jail, Ricky in jail, is different from Ricky outside?

A Correct.

Q And behavior can change?

A Yes.

Q For instance, somebody might become a, a letter writer whose never really written a letter in their life?

A Well, the other thing that's different about being in

jail, of course, is that all of his needs are met. He's on a highly structured routine. He does the same thing day in and day out. So, it's a routinized environment. Other people are responsible for meeting his needs. So, that is the most ideal situation for someone with a mild intellectual disability to be able to function at their best if all of their needs are being cared for by other people.

Q Is it fair to say not a whole lot of free will exercised in jail?

A Correct. And the other aspect of his behavior in jail is that it's really not relevant, of course, for adaptive functioning because adaptive functioning we're looking at comparing him to his peers in his community and a jail is not a---

Q Sure.

A ---his community.

Q This not being my first rodeo, I didn't give you the jail records expecting that. In fact, you didn't get the jail records in Nelson's case either.

A Right.

Q With regard to playing some, some poker, a little pool, mastering the geometry of pool, we can agree that leisure wasn't a deficit that you found?

A Yes, I think that's correct.

Q I mean we can concede that he does like to play some

cards and shoot pool?
A Yes, and I did, I did go back to my notes, as the judge suggested I might want to do, to refresh my memory and it was actually Mildred who talked about the pool playing. I think Heather talked about his -- my specific notes says, on the ABAS, Heather said he played Rook once.
Q Okay. And another area where they seem to want to try to impeach the data would be to use the school records to show some kind of improvement from the -- I believe the 68 IQ score to an 87 within a year on the same California test.
A Correct.
Q What I want to ask you to do is to look at continuity.
SOLICITOR GHENT: Your Honor, I'd object to that. That's a misstatement of the facts. It's within two years. First and third grade were compared. Thank you.
MR. McGUIRE: Stand corrected.
THE COURT: Thank you.
MR. McGUIRE: Thank you, sir.
Q With -- so, so, we're talking about improvement over a, apparently a three year period, and I want to talk, if you look at Page 17 of your report, you discussed the giving of what I believe is generally referred to as a WRAT-4.
A Correct.
Q And if you could tell the judge what WRAT stands for?
A Wide Range Achievement Test.

Q Okay. And, again, that's on Page 17 of, of your report. I want you to look at what you found in the WRAT and then compare it to when he was 18 years old and still in high school, the results of his adult basic learning exam, and, and tell the judge your opinion with regard to the consistency or continuity of that information.
A Okay. Let me find where that -- do you remember which page the educational chart was on?
Q It's Table 3-A. Page 5 of the supplemental report.
A Oh, all right. Thank you.
Q And the WRAT discussion is -- the Wide Range Intelligence---
A Yeah, got that.
Q The WRAT-4 is on Page 17---
A Yes.
Q ---of the initial report.
A Right.
Okay. So, on Page 17, these are the WRAT scores, WRAT-4 scores. Word reading, he is functioning at Grade Level 7.4. Sentence comprehension, he's functioning at Grade Level 5.3. Spelling, he's functioning at Grade Level 6.8. Math computation, he's functioning at Grade Level 4.6. Reading composite does not yield a grade level. But it yields a percentile rank, which is the fourth percentile. Then on Table---

Q And to cut you off there, the fourth percentile, 96 percent of the population would of scored better?
A Correct.
Q And this is when he's fifty how many years old?
A Fifty-three I think when I tested him.
Q Uh-huh. (Affirmative).
A And then going to was it Page 5, Table 3-A?
Q Yes, ma'am.
A Okay. And here the adult basic learning examination, he was 18 years old. His reading was at Grade Level 5.8. Arithmetic problem solving was at Grade Level 6.6. Arithmetic computation, Grade Level 5.2, and total arithmetic Grade Level 5.6.
Q And can you tell the judge if you have any opinion as to the significance of, of those measures of performance when he's 18 and when he's 53 years old.
A I think they're consistent with one another. They're roughly in the same range of, of fifth to, at best, seventh grade level.
Q Okay. So, most of, most around 12 years old---
A Yes.
Q ---functional?
A Eleven, twelve years old, yes.
Q Okay. Apparently another effort to impeach your testimony was that Ricky's apparently able to be checked

into hospitals for accidents or psychiatric problems and able to use the English language and communicate.

Mildly mentally retarded people can do that?

A Yes, absolutely. That's what I meant when I responded the way that I did. Of course he can do those things.

Q Okay. I mean that's a pretty low bar?

A Very.

Q My kid's been to the doctor. They seem to be able to communicate.

A Well, think about a 12 year old child. A 12 year old child could, you know, take a mother's instruction, go to the window of the ER, and tell them what your name and address is.

Q Right.

There was some effort, and it was rather confusing to me, with regard to a typographical or clerical error in your report.

The scores and the information listed on Table 3-A, that's accurate?

A Correct.

Q And---

A Well, yes, you know, 3-A now -- yes, 3-A, that's accurate. Yes. Sorry.

Q Table 3 is a reprint of the first---

A That's right.

Q ---the first report, and 3-A is the correct report?
A Corrected table, that is right.
Q And the, the only thing I want to clear up is that I don't want the Court to think that there are actual tests or scores out there that have just been excised from a report.
The clerical error you're talking about, you just inadvertently had extra information on a chart that just shouldn't have been there?
A That's correct.
Q Okay.
A It does not -- the point I was trying to make is that those scores that are listed on Table 3 that were in the original report simply don't exist. They're not in the school records. So, I made a clerical error, and I'm not sure how I did that or exactly in what way I did that. But I clearly made an error.
Q Okay. But your analysis is actually based on Table 3-A, the accurate information?
A Correct. And, and what confused me when I, when I was looking at why that table didn't make any sense to me, as I was trying to explain, was that, in my narrative, I didn't talk about those IQ scores.
Q Right.
A And normally I would of said these are outliers or these are different. You know, I wouldn't have excused away

information that was there. So, that was what was confusing to me when I went back to read it, and then I just honestly can not figure out how I made that clerical error except that I think I was working on two reports at the same time.

Q Okay. So, fair to say that the information in your report and your testimony here today is actually based on accurate information?

A Correct.

Q Okay. I'm not going to ask you too much about genetics and Nazis and the final solution, but I will ask you, you did note in the report the fact that Cletus, Ricky's father, was tested and had an IQ score of 60?

A Correct.

Q Ricky's IQ score is 63 on a WAIS given by you, 68 on an IQ test given by Doctor Brown. Donald had two IQ scores. I believe 70 and 72. Also in the mild M.R. range. Heather's were 57 and---

A Seventy-one.

Q ---seventy-one and then all of Ricky's grandchildren have, have tested in the mild M.R. range as well?

A Mild to moderate.

Q And, and, and any expert in the field, in your field, clinical psychology, forensic psychology, and certainly in the context of an Atkins investigation, you'd be remiss if you didn't put that in the report?

A That's correct.
Q Okay. Cause it does have some significance?
A It has some significance.
Q And then the last thing is we keep coming back to it, and it's really Ricky's work history. It sounds like we can all agree, it sounds like the State would readily agree with me when I make this statement, Ricky was a hard worker. He wanted to work, and I think, in your investigation, you found that not only did he want to hold a job, but he would work overtime, and that his temperament was so good that people like Ms. Shook said she wished she had a hundred of him.

So, hard work, working very hard, willing to work overtime, temperament fantastic, that he was always, as Mr. Ghent would say, an Indian. I'm wondering what was holding him back.

I'll withdraw the last question.

THE COURT: Recross.

SOLICITOR GHENT: Briefly.

THE COURT: Yes, sir.

SOLICITOR GHENT: Thank you, Your Honor.

RECROSS EXAMINATION

BY SOLICITOR GHENT:

Q Doctor, very briefly.

First of all, I used the wrong word for -- I didn't

mention Nazi Germany, but that's what we were talking about. I think I called it Genomics. It was Eugenics is when I asked you about.

Let me ask you, in the notebook, this thing about defaulting on the home, is -- are judgments, copies of judgments against the Blackwell's included in the materials that you reviewed?

A I don't---

Q Would you please check?

A I don't remember if, if they were or not. I believe the information I got about that came from Cletus and Mildred.

Q Okay. But would you check the -- because we received copies of judgments and I was gonna ask a little bit about that.

A I don't see anything in this book.

Q Okay. I was provided information. We're not gonna go back through. If you didn't, if you didn't receive it, I'm not gonna ask you about it.

With respect to the data, are you saying that the data is not subject to interpretation?

A No.

Q So, you agree that one examiner could interpret the results one way. I'm not saying markedly, but I'll -- I heard you say almost saying the data doesn't lie. I'm not

suggesting that.

But can two different examiners interpret the data differently?

A I think the, the -- I think what you're remembering that I said -- so, let me answer, let me answer your question yes or no so I can get that off the table and then I'll do an explanation if you don't mind.

Q Okay.

A Different examiners -- different examiners might emphasize different parts of the data, but the dataset converges in a particular way. And I think that another examiner, looking at this very same dataset, the entire dataset, okay, would come to similar conclusions.

Now, I -- you know, people are different. Examiners are different. And, so, yes there could be differences. But one would hope that if you've done an evaluation, an assessment in a particular way, following certain methodology, that it would be -- the data that would lead you to the conclusions, and that you, as a person, are, are a reporter more than anything else, and I think what I was trying to say about that is, is, is that's sort of one of the foundational pieces -- I'm not sure I said it exactly like this before.

But what I was trying to communicate before is that, that that reliance on scientific methodology for both

gathering data and using the same procedures time in and time out, multiple reporters, multiple sources of information, reliance on the literature, et cetera, et cetera, all those pieces that I named, that that is a foundational piece of forensic psychology and one would hope that someone reviewing that dataset would see the same convergence because the data is what we would hope would, would lead us to the conclusions. Not---

Q Might, might reach a similar result?

A Yes. Correct.

Q Not identical, but at least a similar?

A Correct. That's exactly -- that's a, that's a very good way to say it because you wouldn't be identical, you're absolutely right. But it might emphasis different pieces of the data, but, but we would hope it would come to the same result, yes.

Q I also want to clarify this questioning about impeachment with respect to your having only represented the defense, testified for the defense in these cases.

Actually what I was thinking about was what, in your manual, I think they call thinking errors.

You're familiar with that?

A Are you -- which manual are you talking about?

Q The manual of the AAIDD.

A Oh, oh, okay. Yeah, you're, you're calling it my, my

manual. I wasn't sure what you were talking about. The AAIDD manual. Okay.
Q Right.
A And thinking errors?
Q Thinking errors, those are basically things that can, for example, you go through and you find what you're looking for?
A Exactly. Confirmatory bias.
Q Right.
A They're some excellent articles by Randy Otto and also by David Martindale on that whole -- a whole topic of conversation.
Q I mean there's a whole area discussed that these are different ways that a good experienced professional might engage in what they call thinking errors.
A Correct.
Q All right. Finally, with respect to the informants and the information, I certainly don't want to go back to a great deal about the three prongs, but the onset, the onset of the intellectual disability under the AAIDD manual, as well as DSM-IV and V, is suppose to be before age 18, correct?
A Yes, sir.
Q And that has to be with respect to both intellectual as well as adaptive functioning, correct?

A You don't -- I think what I was trying to clarify with you it has to be with regard to seeing evidence for impaired intellectual functioning. So, we don't have to have an IQ test before age 18. We don't have adaptive -- we don't have to have adaptive measures available to us before age 18. But we have to have evidence that there was a developmental disability and that it was intellectual in nature.

Q So, again, going back, you've got, between the first and third grade during a period when, for the first time he probably was receiving regular nurturing in terms of learning, stimulation, he went from an IQ that was borderline I.D. in the first grade to an IQ that was clearly, I believe you referred to it as low average, in the third grade?

A According to that particular test, what is -- which is not a, a measure of IQ, it's a measure of cognitive ability. It includes achievement.

Q I'm not referring to the achievement part. I'm just talking about the---

A No, there are two---

Q ---score.

A No, there are two tests that you had me look at, achievement and the, and the California Short Test of Mental Maturity. The Short Test of Mental Maturity is a measure of cognitive ability. That is not equal to IQ and intellect

despite the fact that an IQ score is reported.
Q But in your reports, your original and your supplemental, you still put IQ down and---
A Yes.
Q And, so, I mean you'll pardon me, but is it IQ or not?
A It's IQ as reported by that test, yes. But it is a measure of cognitive ability, and that's how those test publisher -- if you read to -- if I could read you what I wrote on the supplemental report?

I tried to give that a little bit more explanation.

Okay. Let me find it.

Okay. Okay. Yes, when I went back and looked at those records again -- and this is on Page 7---
Q Right.
A ---of the supplemental report. It's the second paragraph. At one point in the development of IQ tests, and the Binet uses a mental age to talk about IQ tests or did, mental age -- IQ was calculated as mental age over chronological age.

Okay. That's not how it's calculated any longer because we have more sophisticated statistical ways of figuring an IQ score. But when I went back and looked at these tests that were given in the first and the third grade, and I think they're separated by about a year and a half --

Q Yes.
A -- chronologically --
Q Yes.
A -- which brings up another point about performance effect---
Q But there was a full year in-between in terms of a school year. First grade test. Second grade, we don't have one. Third grade, we have one, and it's a different test.
A Okay. If you'll let me finish with my answer please.
Q Yes, ma'am.
A The, the, the first test was given in the first grade at the end of first grade. So, it puts it in the Spring of first grade.

Okay?

Q Yes, ma'am.
A So, we go for a year to the end of second grade. Nothing happens. You're right. And then in the Fall of the third grade is when he gets the next test. That's about a year and a half. So, we have to look at performance effect there. There's a, there's a potential that taking the very same test could of had an inflation on his test score because of performance effect. So, that's one aspect of what we have to look at.

Now, the other thing that I looked at here with regard to those tests, and what I was about to read is that they --

the publishers list the chronological age, they list the mental age, and they list the IQ. That makes me wonder if they might have used this old method for calculating IQ because I went back and I used his chronological age at the time, I used his mental age, and I came up with the exact IQ they had.

Q Okay. But my point is, first of all, we've already been over this, but these tests, regardless of how they're put in your report, they would not meet the requirements of an individualized standardized test in this day and age, correct?

A That is correct.

Q And that is, that is what is required by --?

A That, that is one prong of the AAIDD definition of IQ and we have that. We have a score of 63. We've met that prong.

Q But we're looking at a score of 63 in 2012?

A And?

And?

Q And that is well beyond the age of 18.

A Correct. And what I've said to you about the Atkins evaluations, I don't know how more clearly to say this to you.

Q No, I understand they're retroactive. I mean that -- I use that term in -- I mean you said I didn't ask. I

understand that. I understand how difficult it is.

But the simple fact is, in terms of testing a man at 53 years old for an IQ where he is facing the death penalty, getting an IQ of 63, and then relating that back to what he was at the age of six or seven or what he was at the age of 18, you said it's tough.

You know, what are you gonna do, go back to when he was a teenager?

A Yeah. Okay. Let me say one other thing.

Okay. What I'm saying about his current IQ is that the IQ score of 63 is consistent with the IQ score at age seven of 68. It's also consistent with the IQ score of 72 at age 14. The only outlier IQ score that we have prior -- and granted it's not perfect and granted it's not the same as the individually administered IQ test, but the only outlier we have is the IQ of 87, which we have to take into effect the performance effect, and everything else that I said.

Q What about the one in 1986?

Excuse me. The '86 is when -- are you talking about your original report now?

A No, I'm talking about the Table 3-A. He has an IQ score of 68 at age seven and he has an IQ score of, of 87 at age eight years. Okay. There's about a year and a half between those two administrations of the same test. At age 14 he has an IQ of 72.

SOLICITOR GHENT: May I approach, Your Honor?

THE COURT: You may.

Q Your table. California Maturity 70.

A Yes, I don't know what those, those are because these are -- this is a California Test of Mental Maturity, and I, again, I don't -- language, nonlanguage, these look like achievement test scores, and that's why I'm putting the question mark there. But you're right, 84---

Q Eighty-four, total IQ of 86.

A That's correct. So, we have two IQ scores of 86 and 87 if we look at the full scale, and then the 68 and the 72.

Q Thank you, doctor.

THE COURT: The Court has some questions.

MR. McGUIRE: I'll stand down.

THE COURT: Ma'am, and I'm back to the ABAS test.

In looking at your report, it indicates that you use a scale score, the average being ten, and you look to standard deviations, and it says that a score that is two standard deviations below the mean, below the mean, should be -- which is the criteria for significant impairment is four?

THE WITNESS: Yes.

THE COURT: Is that the scale that you're using?

THE WITNESS: Yes, sir, that's correct.

THE COURT: All right. What I did was I went and looked at the scores that you reported and did an average of

those scores, and a couple of things confused me.

First of all, in your testimony you said you simply gathered information and reported the information, but when I read your conclusions, each of them says that, based on the preceding scores, I assume that's the scores in the ABAS test, comments and multiple hours of interviewing a number of collateral sources.

When you talk about collateral sources, are you talking about people other than the reporters?

THE WITNESS: No, sir, I'm talking about the informants.

THE COURT: You're talking about the informants?

THE WITNESS: Yes, sir.

THE COURT: The people that you listed in the -- so, you're not talking about any source outside of them?

THE WITNESS: Well, there were a couple of people that were not given the ABAS that I did interview, but---

THE COURT: Did you consider them in arriving at the score?

THE WITNESS: Yes, uh-huh. (Affirmative).

At the, at the conclusion.

THE COURT: The conclusion?

THE WITNESS: Right, not the score.

THE COURT: So, it's not simply reporting data then. It's -- there are some sources then that were outside of the

dataset.

THE WITNESS: The collateral sources of information would include those other people that were interviewed and I also called collateral sources of information all these records I reviewed.

THE COURT: All right.

THE WITNESS: So, some information would come from records.

THE COURT: A couple of them then confused me. Item Number 3, home living, the average score on that was 5.6, but you indicate that that's an area of significant deficit in adaptive functioning. That's above the four.

Why is that?

THE WITNESS: Because we, we don't use the ABAS scores that way to average across people. We, we take, like in home living, he had one, two -- two scores that were significantly low and -- yeah, two scores that were significantly low, and then two that were very significantly low. So, I looked at each individual like that, and then---

THE COURT: So, you interpreted the scores?

You didn't simply report them?

THE WITNESS: Well, I'm not sure I understand. I---

THE COURT: Well, seems to me you're maybe saying some of them you may of discounted cause they were too high or they may of been too low.

THE WITNESS: No, like in home living, there was one that was an eight and the others were either significantly lower---

THE COURT: There was one that had a ten and had some very low too.

THE WITNESS: Well, the tens -- I see a ten in communication.

THE COURT: I said one of them. I got a ten.

THE WITNESS: Okay.

THE COURT: I'm just trying to get a handle on this ABAS test. It's new to me and I'm trying to get an understanding. So, I've done some looking at it. Then I go to---

THE WITNESS: Would it help you at all to see what an ABAS looks like?

THE COURT: Not right now. Let me finish my questioning.

THE WITNESS: Okay.

THE COURT: Then I go to -- just a second. The area of self-direction, the average scores there was 5.33. Yet again it says that this is an area of great difficulty and impairment for Mr. Blackwell. Then the next item, which is health and safety where the average score was 3.8, that particular section says that Mr. Blackwell exhibits a significant, on the basis of these scores -- okay. That was

a significant deficit. I, I was looking at the wrong one.

The one, the one I want to look at was the area of functional academics. The average there was 3.5, and you found a, a deficit, but the one right after that, leisure, 6.8, and you said Mr. Blackwell has a significant deficit in this area. 6.8 would be substantially above the four.

So, I'm just trying to get a concept because the way you described it to me was that you simply gathered data and report it, but it seems to me, in looking at those scores and the averages, there's apparently some interpretation going on when the test -- when your reports says that a four is the area at which there's a significant impairment.

THE WITNESS: Yes.

THE COURT: So, is there something going on besides simply reporting data?

THE WITNESS: Well, it wouldn't be just saying okay, the ABAS shows, you're right. You're absolutely right. It wouldn't be -- if I was simply saying okay, the ABAS shows this, and, so, therefore, you know, it -- he has a deficit or he doesn't. So, it is a -- the -- I think what -- one of the things I said earlier on about the area of adaptive functioning, it is the most difficult part of the Atkins evaluation because it's so nuanced, and it is---

THE COURT: Well, it's new to me too. That's the reason I'm concentrating on this somewhat.

THE WITNESS: Right. And here's another thing that I know that I've learned from Doctor Olley that, unlike the -- the IQ is fairly straightforward, and it's straightforward---

THE COURT: Well, I've learned today that that may not be the case. But go ahead.

THE WITNESS: Well, that's true too. That's true too. But the IQ score from an individually administered scientifically recognized intelligence test, like the Wechsler, is straightforward. You have an IQ that falls within a certain range, and that indicates a level of mild or moderate or borderline or whatever it falls into. So, that's a straight one-to-one correspondents if you will, and that's one of the prongs. So, that's easy to knock that one out or, or, you know, you have it or you don't.

With adaptive functioning, because adaptive functioning is looking at life skills across so many domains of behavior, you don't have one score. So, you don't just say oh, because there was this score, that means he has a deficit. So---

THE COURT: Well, again, but in listening to your testimony, you talked in terms that I simply gathered the data and report it when you were doing that, and it seems to me that there's more to it than that.

THE WITNESS: Well, I think---

THE COURT: That's what I was asking.

THE WITNESS: I think you're right particularly with regard to adaptive functioning. I was trying to give the overview of that this is done in particularly, in a particular way with a certain methodology.

THE COURT: Okay. You answered my question.

Anything further from the witness?

MR. McGUIRE: Just very briefly.

REDIRECT EXAMINATION

BY MR. McGUIRE:

Q I just want to make sure we're being clear.

These tests, California Short Test or the Mental Maturity Test, I think we've been a little loose with our language, and we'll point to a page and say he has an IQ of this year, he has an IQ of this year.

We're not actually saying he actually had an IQ go up and then come back, are you?

A No, I'm not saying that, and I, I, I apologized to, to you-all, the State, and you. I'm sorry that I can't remember your name. I apologize.

But that if I misled you by the way that I, and the Court, if I misled anyone by the way that I responded, I was trying to -- it's a very complicated situation because we -- you know, it's wonderful when you do have IQ scores for, for kiddos when they're young, and then, you know, later,

they're facing execution. There's great. But we don't, in nine-tenths of the cases that I have, we don't and it becomes very difficult to explain all this. So, thank you. I've been loose with the way I've talked about it---

Q Okay.

A ---as well.

Q So, so, when we say, kind of offhand, we're looking at this table, and with regard to this task, at this age, he had an IQ of 87, we're not actually -- your testimony is not he actually had that IQ. It was just that test reflected that numeric value.

A Correct.

Q Okay. And we don't have a narrative with that test, exactly how it was given, who gave it -- well, sometimes who give it.

But there's no narrative for the validity of the number reported?

A Correct. Correct.

Q And clearly it's not a, a WAIS-IV or a standardized individual test?

A That's right.

Q And then I just -- I want to make sure that I don't, I don't fail Mr. Blackwell and, and leave the Court with questions about the ABAS. I mean this is not like the Olympics where you throw out the high one and the low one

and -- or you just take a look at information and say I don't like that, that doesn't fit with the conclusion I'm trying to get to, so I'm gonna disregard it.

A Okay.

Q With regard to all of the information on the ABAS -- oh, and by the way, judge, you indicated that leisure was a significant deficit. It's actually reported not a deficit, and, and that was the sixth---

THE COURT: I realize that now. But, again, there, there were a couple of them that didn't follow the four -- that's -- the thing starts off with saying you look at ten, two standard---

MR. McGUIRE: And you---

THE COURT: ---deviations of six. It comes down to that four, and that's the number you look for for a significant problem, and then I've got some here that fell in threes that were not considered problems, and some that fell at an average of five that were considered problems, and it seemed to me that there's more to it than simply reporting numbers.

MR. McGUIRE: Okay.

THE COURT: And I think I've got my answer on that.

MR. McGUIRE: I just want to make sure you're satisfied.

For instance, one of the reporters is Heather, his

daughter, and I think, in your interviews with her, you discovered that she loves her dad very much, and she thinks he can hang the moon, and I think she was consistently a high reporter.

A Correct.

Q And you'd have to take that into account when, when doing an ABAS?

A Correct.

Q And that's part of a clinician's judgment?

A That, that's correct. That's absolutely correct.

Q And that is an accepted best practice in the field is to interview people in person, get as much -- many people as you can, can interview them all in person, and there is some clinician judgment that goes into the reporting?

A Yes.

Q Okay. But, but overall, you're looking at a consistency and a convergence of all the information from all the people including teachers, supervisor, family members, correct?

A Correct.

Q And what did the consistency and convergence of that data tell you?

A Well, that led me to the conclusion about the diagnosis.

Q Okay. And, for instance, somebody might use the

subject or the defendant as a self-reporter and that's fraught with problems, correct?

A Yes, it is.

Q And if you just average it, without taking into account the clinician's judgment, that person with mild M.R. or I.D. would overinflate their abilities, exaggerate -- if you don't use the clinician's judgment, you'll fall into a trap?

A Correct.

Q And, so, it's actually required?

A Yes.

Q Okay. Thank you.

THE COURT: Wish to follow-up with any questions?

SOLICITOR GHENT: No, sir.

THE COURT: All right, ma'am. You may step down. Thank you very much.

THE WITNESS: Thank you.

THE COURT: Defense wish to call its next witness?

MR. McGUIRE: That will be our last witness.

THE COURT: All right. Is the State ready to proceed?

SOLICITOR GHENT: Can we have a short break, Your Honor?

THE COURT: Yes.

We'll take about a five to ten minute break.

Thank you very much.

MR. McGUIRE: Oh, Your Honor, before we all leave---

THE COURT: Yes.

MR. McGUIRE: ---can I ask you a quick question?

THE COURT: Yes.

MR. McGUIRE: My understanding is that it's likely that Doctor Brown will be one of the State's witnesses.

THE COURT: Uh-huh. (Affirmative).

MR. McGUIRE: And we would offer to call Doctor Calloway in rebuttal to information brought up obviously by Doctor Brown.

Am I allowed to talk to her now?

She's not yet heard -- I don't know what your ruling was to be on that.

THE COURT: Well, generally, when people are in the process of testifying, and you intend to call them, you probably should not discuss their testimony.

MR. McGUIRE: Okay. I just wanted to make sure we're not in a foul of the Court's ruling.

THE COURT: That's the way I understand it.

MR. McGUIRE: Thank you.

THE COURT: Yes, sir.

(WHEREUPON, a short recess was taken at this time.)

THE COURT: All right. State ready to call its witness?

SOLICITOR BULSA: Yes, sir.

THE COURT: You may do so.

SOLICITOR BULSA: State calls Doctor Gordon Brown.

THE COURT: Sir, if you'll come forward to my left and be sworn please.

And just for counsel's information, we'll go till 5:00 and we'll stop this afternoon.

DOCTOR GORDON BROWN, being first duly sworn, testified as follows:

THE COURT: Have a seat, sir. Once you're seated, state your name please.

THE WITNESS: My name is Gordon Edgar Brown, Jr.

DIRECT EXAMINATION

BY SOLICITOR BULSA:

Q And, Doctor Brown, what is your profession?

A I'm a forensic psychologist.

Q And who are you employed with?

A At this point I'm employed by the South Carolina Department of Mental Health in the sexually violent predators program. I began that job the first of this month.

Q Okay. And what is the -- can you give us the benefit of your education?

A Okay. I have a Bachelor's Degree in Psychology and Sociology from Carson Newman College in 1974, Ph.D. from the University of South Carolina in 1983. Completed a one year clinical internship at Eisenhower Army Medical Center in

'83.
Q While you're testifying about your expertise, let me ask you first do you recognize this Court Exhibit?
A I do.
Q This is Court's Exhibit No. 2.
What would that be?
A That's my vitae.
Q Okay. And I believe it's actually two separate items.
A Correct. One's more extensive and one's more specific Court related items.
Q Okay. All right. I've already shown it to the defense counsel.
Do you have any objection as to the admission of these, of these?
MR. McGUIRE: No objection.
THE COURT: Any objections?
MR. McGUIRE: No.
THE COURT: Without objection, it will be admitted as marked as Court's Exhibit No. 3.
(WHEREUPON, Court's Exhibit No. 3 was received into evidence at this time.)
Q Continuing on with your experience, would you tell us any further education that you might have obtained in this field?
A The first formal education I had in forensic psychology

was when I was working at August State Medical Prison as a psychologist in the prison system, and at that point began attending some training by the American Academy of Forensic Psychology. I think it was a four day intensive introductory course at that point, and have continued with more than a hundred additional hours through that organization. So, most of it is come from that. A great deal also through the Georgia Department of Corrections and the Georgia Department of Human Resources as you call it, and more recently through DDSN and DMH in South Carolina.

Q Have you ever had an occasion to testify in Court?

A I have.

Q In what field?

A Psychology.

Q Okay. And were you declared an expert in the field of forensic -- clinical forensic psychology?

A Correct.

Q Approximately how many times?

A That's on the Court vitae. I've written a lot more reports than I have testified. Altogether I would estimate, estimate about 25 times.

SOLICITOR BULSA: Okay. Your Honor, State would offer Doctor Brown as an expert in the area of clinical forensic psychology.

THE COURT: Objections?

MR. MCGUIRE: I just wanted one or two voir dire questions.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. MCGUIRE:

Q Doctor Brown, when I use the phrase Division 33, do you know what that means?

A I know it's one of the divisions of APA. I'm not sure exactly which one.

Q If I told you it was, it was the one regarding intellectual disabilities, developmental disorders, would that ring a bell?

A I would believe that.

Q Okay. It seems, based on your position at DDSN, that that's the one you would or certainly -- that one is one you'd belong to?

A Well, I did consider that. I am a member of Division 41, which is the American Psychology Law Society---

Q Sure.

A ---Forensic Psychology Division. I'm also a member of AAIDD.

Q Okay.

A And part of it is just a financial thing. I can't join everything I want to join.

Q And I know DDSN is not willing to pay for you?

A But that's part of it too.
Q All right. That's all. That satisfies me. That's a very logical answer.
THE COURT: Any other questions?
MR. MCGUIRE: No, sir.
THE COURT: Any objections?
MR. MCGUIRE: No, sir.
THE COURT: All right. He'll be qualified as an expert in the field of forensic psychology.
You may proceed, Mr. Bulsa.
SOLICITOR BULSA: Thank you, Your Honor.
CONTINUED DIRECT EXAMINATION
BY SOLICITOR BULSA:
Q Doctor Brown, we've mentioned DDSN.
What exactly is that?
A DDSN stands for Department of Developmental -- pardon me. I'm just a little bit nervous here.
Department of Disabilities and Special Needs.
Q Okay. Is that a division of the State Mental Hospital?
A It's a state agency. It's a separate agency from the Department of Mental Health.
Q Okay.
A And it's basically a service coordination agency that coordinates with local service agencies in the different communities.

Q And is that agency called upon to assess mental retardation---
A It is.
Q ---in individuals?
Okay. And in this case, were you specifically asked to evaluate Mr. Blackwell?
A I was.
Q How long were you employed with DDSN?
A About eight and a half years.
Q And you just recently left to go to mental health?
A Correct.
Q Okay. And what was the reason for switching?
A Increase in pay.
Q Okay. Now, in the eight and a half years that you were with DDSN, approximately how many -- I guess would you call them patients, people that you examine?
A Well, typically defendants is---
Q Okay.
A ---is what we're examining.
Q Okay. Do you consider yourself a State's witness?
A No, I don't.
Q How do you consider your testimony?
A In almost all cases -- well, in all cases I have been appointed by the Court as an unbiased expert witness.
Q Okay. And that's, that's the case in this situation---

A Correct.
Q ---isn't that true?
So, you weren't actually selected by Spartanburg County to evaluate Mr. Blackwell, were you?
A No.
Q In fact, you received a, a Court order to evaluate him?
A That's correct.
Q In -- rather your agency did?
A Correct.
Q How did you get selected to be in the hot seat?
A When I first joined DDSN eight and a half years ago, Doctor Culley was in the position that I have just recently left as the lead psychologist in the agency, and one of her responsibilities was doing all of the Atkins evaluations for the department.
Q Okay.
A So, when she left, and no one else wanted to take the job, I finally agreed to, to take the job and take over those responsibilities. It involved a little bit more administration than I wanted at the time, but I decided that it was something I could do and wanted to do. So --.
Q So, it was by nature of your position?
A It's by nature of the position.
Q Okay. So, you obviously performed these kind of examinations in the past?

A Atkins evaluations?
Q Yes, sir.
A I have.
Q Approximately how many times?
A I've been involved, to some extent, in a total of seven. Two of those only involved a preliminary opinion. The other five were for the evaluations.
Q How times did you have to come to Court and testify?
A This is the second time.
Q And where was the first time?
A The first time, where was it?
Q Well, which case if you recall.
A Ellis Franklin.
Q That's, that's, that's what gave us the Franklin opinion?
A Franklin v. Maynard, correct.
Q Okay. Okay. There was some talk about a Dillon defendant I believe.
A Correct.
Q Did you -- you didn't have to testify in that case?
A I did not testify in that case.
Q But you did examine that individual?
A I did.
Q And that individual was actually represented by Mr. McGuire?

A That's correct.
Q Okay. Now, in conducting an examination of Mr. Blackwell, how many times did you meet with him?
A I met with him twice.
Q Okay. And do you, do you have a copy of your report with you?
A I do.
Q And when did you examine him?
A I'm sorry?
Q When did you examine him?
A November 5th and November 14th of 2001.
Q Okay. And how long did you interview him on November the 5th or did you examine him I should say?
A About 90 minutes on the 5th.
Q Okay. And on the, the 5th, did you conduct any tests with him or---
A I'm sorry. I interviewed him for about 90 minutes on the 5th, and then after that I gave the ABAS I think it was. That, that's right.
Q And how long did the ABAS take?
A The total time together was about three hours.
Q Okay. So, approximately three hours on the 5th and half that being the actual interview and then half being the actual ABAS?
A A little more than half being the interview because,

after he completed the ABAS, I did ask a few follow-up questions.

Q Okay. And for the Court record, what is the ABAS?

A The Adaptive Behavior Assessment System Version II.

Q And why did you give him that test?

A There are two reasonable choices that I'm familiar enough with to use in a case like this. The Vineland is the one that has been more typically used by DDSN and seems to be preferred by DDSN, but the ABAS, for me, in a case like this, having the ten different areas parallels more directly what we're looking for according to the DSM-IV criteria, and it just seems to be a little bit easier to deal with conceptually than the Vineland is. Plus, it's easier to give.

Q So, that was a matter of your professional choice?

A That plus the fact that the Vineland does not have norms past the age of 18. So, for someone who's in his fifties, it would really be stretching it to use the Vineland at that point.

Q Okay. So, it seemed more appropriate to do it based on his age?

A That would be one factor, yes.

Q Okay. Now, in the second interview or the second examination or interview took place on what date?

A November 14th.

Q And how long was that interview?
A That was also about three hours.
Q So, you spent approximately six hours with the defendant?
A That's correct.
Q And on the 14th, did you give him any exams?
A I did. I used the WAIS-IV and the TOMM.
Q And what is the WAIS-IV?
A WAIS-IV is individually administered intelligence test, Wechsler Adult Intelligence Scale Fourth Edition.
Q And that is meant to measure what?
A Intelligence. It gives us an IQ score.
Q WAIS gives IQ.
Does the ABAS give adaptive functioning?
A That's a test that's designed to get at that, and, you know, one administration by itself is not gonna be adequate, but it does a measure of adaptive functioning.
Q Okay. Now, you sat through all the testimony, right?
A I have.
Q Okay. And there's been talk about the three prongs regarding mental retardation?
A Correct.
Q Give us your -- and your knowledge and expertise of what those three prongs are.
A I don't know that I can say it any differently than

it's already been said. There have to be significantly subaverage deficits in intellectual functioning typically defined as an IQ of 70 or below. They have to be concurrent significant deficits in adaptive functioning, and there has to be an age onset prior to the age of 18.

Q So, not just a deficit, but a significantly subaverage deficit?

A Correct.

Q Okay. Intellectual functioning which IQ goes towards?

A Correct.

Q And the adaptive functioning, which is a more broad term, but the ABAS helps you to determine that, is that correct?

A Correct.

Q Okay. All right. So, you spent approximately six hours with the defendant and you gave him the ABAS, the WAIS-IV, and then you also said the TOMM?

A TOMM, Test---

Q What is that?

A Test of Memory Malingering. It's a measure that we use to look at whether or not a person is malingering or faking deficits in memory.

Q Is that a common practice, to give the TOMM in conjunction with other tests?

A I wouldn't say it's a common practice, but it's a

common practice when you believe that the person may be malingering or when there's a really good reason for wanting to rule it out.

Q Okay. And but for the sake of this kind of case, he's facing the death penalty?

A Exactly.

Q You might want to check whether he's trying to fake it or malingering?

A Right.

Q Okay. So, did you have any other documents or items available to you during the first interview?

A Other documents to review?

Q Yes, sir.

Prior to meeting -- well, let me ask you this way.

Did you review any materials prior to meeting with Mr. Blackwell?

A I did.

Q What were those if you recall?

A I'm sure at this point I had not reviewed all of the records, and I guess all of the records weren't available before I saw him. But certainly at the time I saw him I had the legal documents that were relevant to the current charges. I think, at that point, I had the detention center medical records, some of the driving records, some of the employment records. I had Doctor Harrison's report. I

think I had the records from Patrick Harris Hospital, and I don't remember at this point exactly which ones I had---

Q Okay. So, you had---

A But I had reviewed enough to feel like I had enough information to at least begin the process.

Q So, you didn't have everything before the first interviews, some other item came in afterwards?

A Correct.

Q Okay. Do you feel you had everything you needed prior to the second interview?

A Well, I don't think, in a case like this, I ever feel like I have everything that I need.

Q Right.

A But I think everything that would reasonably be available and I had reason to believe would be available.

Q That's fair to say cause it's an important decision?

A Right.

Q Right.

Okay. And at the conclusion of reviewing those documents, meeting with the defendant, giving him those tests, did you then prepare a report?

A I did.

Q Okay. Let me show you -- may I approach, Your Honor?

THE COURT: You may.

Q Let me show you what's been marked Court's Exhibit No.

4 for identification.
A Okay.
Q Is that a copy of your report?
A It is.
Q And did the Court order directing you to examine Mr. Blackwell order you to provide a copy of that report to the Court?
A I don't recall, but I'm sure it would.
Q Okay. And in your normal practice, is that what you do?
A Typically we provide the report to the Court, to the defense attorney, and to the solicitor.
Q Okay. So, it's safe to say this might already be in the record, but if it's not, I would offer it at this time, Your Honor, Court's Exhibit 4.
THE COURT: You want to take a look at it?
Take a look at it.
SOLICITOR BULSA: I showed it to Mr. Allen prior.
THE COURT: All right.
Any objection?
MR. McGUIRE: No, sir.
THE COURT: Without objections, it will be received as marked.
(WHEREUPON, Court's Exhibit No. 4 was received into evidence at this time.)

THE COURT: You may proceed.

SOLICITOR BULSA: Thank you, Your Honor.

Q Now, the way I want to work your testimony, doctor, is kind of walk you down through this report touching on some high points if I may.

The report itself is self-explanatory, but when you're setting out to determine if somebody is mentally retarded, what process or procedure do you follow?

A Are you talking specifically in an Atkins case or just---

Q Let's -- we've -- I kept hearing that phrase and I know it's the name of a case.

Why is an Atkins case any different than any other mental retardation situation?

A The evaluation itself should not be any different in terms of the criteria we're looking at. The methods using -- the differences and the outcome is so extreme that we just have to be extra careful in these cases to, to try to do it right.

Q Okay. That's, that's fair to say.

You want to make sure you get to the right result?

A Correct.

Q Would that be fair?

So, you want to have the most information available?

A Correct.

Q Okay. And you collected information that was provided to you from which resources?
A I think, in this case, some case from the State. Some came from the defense.
Q Okay. And specifically you listed those items that you received and reviewed on Page 2 of your report, is that right?
A That's correct.
Q Okay. And I'm gonna go -- since Doctor Calloway's testified and you've heard her testimony, you actually had her report.
Did you have it prior to the first interview?
A No, I think that came much later.
Q Okay. But you put in parentheses that you've got -- you received her report including raw test data.
Do you recall what that raw test data was?
A It was the results of the WAIS-IV, the TOMM, the CAST-MR, the ABAS for all various family members and other informants.
Q Okay. Would it have been a document that defense referenced and introduced through two volumes, 9-A and 9-B?
A I haven't seen those.
We're talking about the raw data at this point?
MR. MCGUIRE: Judge, if I could be of some assistance. That's the type of data that would go from one psychologist

to another. It wouldn't go through us, and that's the form I believe that Doctor Brown got it in --

THE COURT: Okay.

MR. McGUIRE: -- or the manner in which he got it.

THE WITNESS: Correct.

MR. McGUIRE: So, it wouldn't be in those two -- I don't want you hunting forever in those two notebooks.

THE WITNESS: Okay. I didn't see any indication it would be. So, that's why I was asking.

Q I'm trying to make that distinction. The raw data would be tests and test results.

A Right. The test protocols that she actually used in doing the evaluation.

Q Okay. So would -- they would basically be test forms --

A Correct.

Q -- with, with answers?

Okay. And we've heard a lot about this ABAS that you actually gave to the defendant himself.

A Correct.

Q And you received some ABASs from Doctor Calloway regarding her informants?

A That's correct.

Q Do you have a record of which ones of those ABASs you received?

A There was one that was missing. I don't remember which one was missing.
Q Okay. Do you have copies of reports?
A I don't have that in here, no.
Q Okay. Let me show you what I've -- Your Honor, I've shown this. This is a -- I'm gonna mark for identification.
(WHEREUPON, the notebook was marked as State's Exhibit No. 8 for identification purposes only at this time.)
Q I show you what's been marked State's Exhibit No. 8 for identification. They're various tabs in that.
Would you look through those tabs and see if you recognize what they show, what's behind them?
A Just looking at the names and relationships, I think I had all of these.
Q Okay.
A But I'm thinking one more was missing. There was one that I did not feel would be significant enough to, to get.
Q Okay. We're gonna get into those specific names in just a second.
Would you read for the Court the names on each tab that are contained in State's Exhibit 8 for identification?
A Ricky Blackwell, Ricky Bagwell, Cletus Blackwell, Mildred Blackwell, Ken Rice, Jean White, Gail Shook, and Heather Bryant.
Q Okay. Now, other than Ricky Blackwell, look at that

one, if you would, the first one, and can you confirm that that is the test that you gave to Mr. Blackwell?

A That's correct.

Q Okay. Now, the other -- how many were there, six, seven?

A Seven.

Q The other seven, that would of been the raw data, part of the raw data that Doctor Calloway provided to you?

A Correct.

SOLICITOR BULSA: Your Honor, the State would offer these into evidence.

THE COURT: Any objection?

MR. McGUIRE: If I could have just a second?

(Pause.)

MR. McGUIRE: Judge, I would object. My understanding is that, that is the ABAS, the instrument, and my understanding is copyright concerns and proprietary issues would prevent that document from just going into the public domain. So, I would object on that basis.

SOLICITOR BULSA: We can have it sealed after this Court hearing, Your Honor.

THE COURT: If that's a concern, I'll admit it and see that it's sealed and not released by the Court.

MR. McGUIRE: Thank you, judge.

THE COURT: You may proceed. It is admitted --

SOLICITOR BULSA: Thank you.
THE COURT: -- under -- with that stipulation.
SOLICITOR BULSA: Thank you, Your Honor.
(WHEREUPON, State's Exhibit No. 8 was received into evidence at this time.)
Q So, did you receive an ABAS from the defendant from Doctor Calloway?
A On the defendant himself?
Q Yes, sir.
A No, I did not.
Q Did you receive a Vineland -- is that the other type of test?
A Correct.
Q Did you receive any test from her relating to Mr. Blackwell?
A No, I did not.
Q Okay. You said, in your practice, you give one or the other to someone you're trying to determine is mentally retarded?
A If I said that that was probably a bit of a misstatement. We, we wouldn't, in most cases, give it to the subject himself. There, for example, DDSN is trying to determine whether or not someone's eligible for services, the interview would be with family members, teachers, people that knew the defendant well or the subject well in that

case.
Q Okay. But you chose to use one of those exams and yet Doctor Calloway did not?
A Correct.
Q Okay. Fair enough.
And do you have copies of these with you --
A No, I don't.
Q -- that you can refer to?
A No, I don't.
Q Okay.
A They're in my bag if I need to get them.
SOLICITOR BULSA: Can I bring his bag to him, Your Honor, cause I would like the Court to---
THE COURT: Sure.
SOLICITOR BULSA: ---to review these documents---
THE COURT: Yes, sir.
SOLICITOR BULSA: ---as we go along.
THE COURT: He has a right to look at his notes and documents to refresh his memory.
SOLICITOR BULSA: Your Honor, I would hand this up to Your Honor so you can review it as we go along in his testimony.
THE COURT: Thank you.
Q Have you located them, doctor?
A Yes.

Q Okay. Now, if you would, kind of give the judge an overview of what these tests are and how they're conducted.
A Well, again, I'm not sure what I can add to what's already been said. The, the---
Q Let me ask you a specific question then about Mr. Blackwell.
A Okay.
Q How did you give him that test?
A In his case I had him complete it himself, make sure that he can read the first two or three items, understood them, made sure he understood how the test was to be understood, and then had him complete it himself.
Q And when you say complete it himself, you handed him the document and left the room?
A No, I didn't leave the room. I was sitting there.
Q Okay. Okay. So, you were available for any questions he might have---
A Right.
Q ---regarding any of the---
A Right.
Q Okay. And did he understand what he was doing?
A He seemed to.
Q Okay.
A And I, you know, told him to ask any questions that he had along the way.

Q Okay. And the first, first page is sort of a cover sheet listing the information and the rater information, is that right?

So, in Mr. Blackwell's case it's gonna be Ricky Lee Blackwell, age 54?

A Correct.

Q Both adult information and the rater information, and then Page 2 is the actual directions.

Did you go over the directions with him?

A I'm sorry.

Would you repeat the question?

Q Did you go over the directions of this test with Mr. Blackwell?

A I did.

Q Okay. And did he understand what he was to do?

A He did.

Q And, and then he went, he went through these ten areas by himself answering and circling the numbers that he felt were appropriate---

A He did.

Q ---to himself?

A He did.

Q Okay. And it took him about how long?

A I'm thinking something over an hour. Close to an hour.

Q Is that a normal amount of time?

A I don't know that I can answer that question. It's not one that I've given in that way enough to, to have a --.
Q Okay. In any event, he didn't seem to have a problem taking or answering those questions?
A No.
Q Okay. All right. And then Page 11 reads supplemental analysis.
What is that suppose to show us?
I'm not sure that anything's filled out.
A Well, and -- this is sometimes helpful. Sometimes it's not. In this case I didn't feel like it would add anything to fill that sheet out. We look at the mean or the average scale scores in the top part. The second, the middle part of the page gives us an area where we're gonna look at relatives strengths and weaknesses, and then, in the last part, we can look at whether or not discrepancies between different areas are significant.
Q Okay. But you didn't complete that page?
A No, not, not in this way.
Q I'll go through each one.
Now, the summary page, Page 12, has the skilled areas and raw scores and scaled scores?
A Correct.
Q Give us an understanding of what that is.
A Well, again, the raw score just adding up the numerical

responses on each item on each scale. So, for example, on communication, you add up the raw scores, all the threes, all the twos, plus all the ones, you get a raw score of 64. We then look at the table and this is where you find a scaled score that's going to go somewhere from one to nineteen with the mean for everyone being ten.

So, the raw score of 64 on communication for him translates into a scaled score of seven. We do that for all of the different areas. Then we sum up the scaled scores in the different areas, go back to the table, and come up with the composite scores.

Q Let me just pick one here. Home living, his raw score was 66 out of a 69. You scaled it at a ten.

Is there some chart you use to get those scaled numbers?

A There is.

Q Okay. So, what would a 69 out of 69 be?

A I'm sorry.

Which one are you looking at?

Q Home living. I just, I just picked one.

A What would 69 out of 69 be?

Q Yeah.

What would a perfect score be?

A I'd have to look in the chart to see.

Q Okay. It would be over a ten.

How high can it get?
A Well, the highest is 19.
Q Okay. So -- but three under would just be a ten?
A In this case, apparently so.
Q Okay. All right. Now, you -- in your report on Page 10 -- excuse me. Not on Page 10. Page 11. You set out the summary of psychological test results of adaptive functioning. You listed out the ABAS-2 for five people -- actually four -- yeah, five people plus the defendant.
A Correct.
Q And you listed those scores and the GAC, the conceptual, the social, and the practical.
A Correct.
Q Why did you choose to do it that way instead of listing out the ten?
A Part of it is it's, it's easier to look at the results and make comparisons when you're using a smaller number of scores. If you have ten scores, for each of fourth -- six different people, that makes a large chart and it becomes very confusing, and the AAIDD, in looking at adaptive functioning, tends to focus more on the general adaptive composite, conceptual and social and practical skill areas as opposed to the ten separate areas. It could be done either way.
Q Okay. I'm not gonna go through all of these ABAS, but

I'm gonna go through a couple. Let's start with Mr. Blackwell. This is one that -- excuse me. Mr. Bagwell, Ricky Bagwell, communication, that'd be the first one. If you would, look at, per Page 12, she gives you a raw score and---

A Okay. Give me just a minute. Mine are in a different order---

Q I'm sorry.

A ---than yours.

Q I'm sorry.

Did you find it?

A I've got it.

Q Okay. Look first at Page 12 of the summary page. She, she gives two raw scores. One for communication and one for work.

Okay. Communication, she tells you a raw score of 37.

Doctor Brown, if you look at the actual area, communication with the questions, I guess they're not really questions, but comments, several of those are not even circled. The numbers are not even circled.

How can you give a raw score if all the questions are not answered?

You look back on Page 3 and 4 in the communication section.

A Okay. It looks to me, looking at where the response

was actually circled, that one should not have been scored.
Q Okay. So, that's not reliable?
A I would say not.
Q Okay. All right. I'm gonna set these aside and we might come back to them in a minute.
Okay. In addition to the raw data, these tests that you were provided, did you have the report from the State Mental Health Department from Doctor Kimberly Harrison?
A I did.
Q And what time -- at what point did you receive her report?
Was it prior to the first interview or the second interview?
A As soon as we got the Court order we requested the report from DMH. So, I'm sure I would of had that one before the first interview.
Q Okay. And are you familiar with Doctor Harrison?
A I am.
Q You worked with her in the past?
A I have.
Q Have you collaborated with her in determining mental retardation or I guess competency issues?
A I -- competency issues, yes, we'd done a few evaluations together, had phone conversations about cases.
Q Okay. And tell us what that process would be if

somebody's sent down for a competency evaluation.
A Okay. In South Carolina, the person requesting the evaluation has to determine whether they want it done by DMH, in the case of mental illness, or by DDSN, in the case involving intellectual disability or related disability. Whichever agency gets the order, then begins the evaluation, and if DMH gives the evaluation, sees no sign of intellectual disability, they go ahead and complete the evaluation. If they see signs of intellectual disability, but no signs of mental illness, then they write a report and defer that evaluation to DDSN. If they see indications of both mental illness and, and intellectual disability, in that case, the two agencies do a joint evaluation.
Q All right. And, in this case, do you recall when she would of conducted her evaluation?
A I don't recall, but I have her report.
Q Would you reference that?
We have it up here somewhere.
A Here it is. She saw him in -- on April 24th of 2013.
Q Just so we're -- the record's clear, I'm gonna show you Court's Exhibit No. 2.
Is that the report from Kimberly Harrison?
A That's the report.
Q Okay. So, that's a, that's the copy that you've got before you to reference?

A Correct.
Q Okay. Now, when she was directed to evaluate Mr. Blackwell for competency, was she aware of the special nature of this type of case?
A She was.
Q Meaning that this man was facing a capital case?
A Correct.
Q Okay. So -- and you testified that, in your practice in these types of cases, you take extra caution and care in your analysis, is that --?
A That's correct.
Q And in your dealings with Doctor Harrison, would she follow the same practice?
A With Doctor Harrison and with any of the mental health examiners, if they had any indication of mental retardation, intellectual disability, they would discuss it with their supervisor. Many times they pick up the phone and call me and ask if the person's already a client of ours or I think there's a need for an evaluation. So, if they had any question about it they would give us a call.
Q Would that call come directly to you cause you were the head of that unit?
A Most likely.
Q Okay. Did you receive any calls of that nature?
A Not about this case, no.

Q Okay. So, you got this in response to a second Court order --
A Correct.
Q -- specifically for mental retardation, and then you reviewed her report?
A Correct.
Q And what -- what, if any, significance did you give to her report?
A Well, I gave it a great deal of significance to it.
Q Why so?
A Because in the referral information section she points out that there may be a strong possibility of mental retardation issue in this case, and the defendant's been served a death penalty notice in this case. So, it's very clear that she was aware of the states involvement, and despite that, was comfortable in her decision that he did not meet the criteria.
Q Okay. All right. So, you performed your examination and analysis of Mr. Blackwell by yourself?
A Correct.
Q Okay. With all the data and information that was provided to you?
A Correct.
Q Did you do any independent investigation into Mr. Blackwell's background?

A No, I did not.
Q Okay. And did you normally do that?
A We typically don't have time to do that or time or resources to do that.
Q Okay. So, you rely on what's provided to you?
A Correct.
Q In this case, you were aware that Doctor Calloway had already done an extensive background.
Is that true?
A Correct.
Q As well as Doctor Harrison had -- there had been a social history work-up I believe?
A Correct.
Q Okay. So, it's not like you're going into this blind?
A Right.
Q You got two separate and independent groups doing some background work, and you're taking that information along with your analysis and investigation of Mr. Blackwell making your decision?
A Correct.
Q All right. In your interview of Mr. Blackwell, did you discuss the nature of the charges with him?
A Not other than just to verify that he knew what he was charged with. But nothing beyond just what the charges were.

Q So, you didn't go into any facts of the case?
A No.
Q But you had the police reports?
A I did.
Q You were aware of what he was accused of?
A I did.
Q Okay. So, your history and discussion with him that you set out in your report does not contain any of the basic underlying facts of the case?
A That's correct.
Q In fact, in your -- in giving the history of Mr. Blackwell, you go first into his family history, is that correct?
A I think that's correct.
Q And you got that information, I'm looking at Page 2 of your report, which would be Page 2 at the bottom.
A Okay.
Q And that information is what was gathered by DMH via his mother?
A Some of it came from that. Some of it came from the interview with him.
Q Okay. So, you had a combination of the information.
Then as far as the educational history, where did you principally get that information?
A Well, that, again, came from several sources. I put in

there some of what he said. There was some information I think based on the interview with his mother by the DMH social worker and her social history assessment, and then the school education records themselves that we have.

Q So, you actually reviewed those school records that have been much subject in this case?

A I did.

Q Okay. Including the labeling of the IQ numbers?

A Correct.

Q Okay. All right. And let me direct your attention to Page 3 of the last paragraph specifically relating to the junior rank of 113 in a class of 113.

Was that significant or important to you?

A It's significant, but at the same time, with just that notation and no other data to explain how it came to be that way, I don't really know what to do with it. So, while it's significant, I can't really draw any conclusions from it.

Q Did you look further into the transcript to kind of determine if that might of been accurate?

A Well, I think, in, in the next sentence or so, I said it would also be interesting to know what his ranking would of been at the end of the tenth grade.

Q Why so?

A But we don't have that information. By the time he gets the junior rank of 113 out of 113, he's already dropped

out.
Q Based on your---
A So---
Q Let me ask you this.
Based on your review of his educational records, had he not dropped out, would he have graduated?
Did it appear that he was on track to graduate?
A That was my---
MR. McGUIRE: Objection. Speculation.
THE COURT: Well, he's allowed to give opinions concerning matters. I'll allow him to give his opinion. You certainly can cross-examine him on it.
A That was my impression that he was on track to graduate.
Q Okay. Based on the number of credits identified on the transcript?
A Correct.
Q Okay. Would that have been an important factor in whether he was able to adapt functionally?
A That would be one important factor.
Q Okay. All right. And then we move to his vocational history, which you gave considerable coverage to in your report being on Page 4, 5, and 6.
Where did you get most of that information that you provided?

A I think at least the first paragraph or so I asked him in interview what his various jobs were, and some of that includes the information that he gave about what the jobs were. Later in that section I'm talking about information that came from specific work records and Social Security records.

Q Okay. And I'm gonna draw your attention to a couple of specific items. The last paragraph of Page 4, you referenced some information from a John Brannon, and there was notations that Mr. Blackwell had custody of monies or valuables, is that correct?

A I'm not seeing that.

Q Okay. Page 4. Apparently you were -- what were you reviewing to, to note that in your report?

A That was a form that was apparently titled for request for information from previous employer the date of 7/11/1984.

Q Okay. And was completed by John Brannon?

A Uh-huh. (Affirmative).

Q And it's referenced that he was employed as a tractor trailer driver?

A Right.

Q And that he had custody of monies and valuables?

A They were check marks indicating that, yes.

Q Okay. And also that his accounts were properly kept?

A Correct.
Q Does that suggest to you he had some responsibility?
A It would.
Q Okay. Now moving onto another specific area of his work history, moving on to Page 5, the third paragraph, the last portion where you reference a performance review summary dated 5/23/07.
What was significant about that performance review summary to you?
A I'm sorry. I'm not seeing where you are.
Q Page 5, the third paragraph towards the end of that paragraph where you have in parentheses -- excuse me. Yeah, in parentheses performance review summary --
A Okay.
Q -- or quotes. Not parentheses. Quotes.
A It indicates that Mr. Blackwell met expectations in the areas of initiative and communication and that he exceeded expectations in the areas of knowledge and understanding, quality, safety, attendance, and appearance, and then improvement was needed in using proper lifting techniques and in communicating with peers and supervisors.
Q Comments noted he's always looking for ways to help the team?
A Correct.
Q Okay. I heard Doctor Calloway comment about being a

reporter of information.

I mean do you consider yourself a reporter?

A To some degree, but I, I think when we're writing any report about test data, there's some interpretation of the data that we report.

Q Okay.

A So, I think we are reporters, but I think it goes beyond that.

Q You're pulling out the significant parts of that data to include in your report?

A Correct.

Q And your opinion, expert opinion, that's significant information about Mr. Blackwell's work history, is that correct?

A That's correct.

SOLICITOR BULSA: Okay. I think I can finish on the work part before 5:00, Your Honor.

THE COURT: All right.

Q Page 6 of 12 you listed -- what is that list on Page 6?

A That is a list that comes from the Social Security earning statement, and I tried to summarize those by calendar year so that would have rather than a lot of different numbers from different employers, you know, there's, there's one total for each year with a list of which employers he had income from during that year.

Q Why did you consider that chart important enough to put in your report?
A Well, that was not the initial intent. When I made this chart I, I wanted to see what was the progression of salary. Did he move into progressively higher and higher salary jobs, was he making, was he making more year after year. And after putting it together, I thought well, it fit nicely in the report as an example of his entire work history and that progression.
Q Okay. Is the fact that he's able to hold a job, multiple jobs, and go out and find multiple jobs, is that evidence of his ability to learn and grow as a person?
A I would say it is.
Q Okay. And, in fact, in 1986 when he was reported to have cancer, he stopped working for approximately ten years.
Is that unusual for someone to leave Social Security income and go back on the payroll?
A I don't know.
Q Okay. Okay.
A I could speculate, but I don't know.
Q Okay. It seems a little odd.
But he, he chose to go back to work, is that correct?
A Correct.
Q In fact, he actually increased his earnings after that unfortunate incident, is that true?

A True.

SOLICITOR BULSA: Okay. I think it's 5:00, Your Honor, if you want me to stop at this point. This might be a good place.

THE COURT: Yes, sir, that would be fine.

SOLICITOR BULSA: Yes, sir.

THE COURT: All right. We will take the afternoon break at this point in time or for tomorrow. We'll start at nine o'clock in the morning.

I'll caution Doctor Brown he should not discuss his testimony with anyone during our break.

Court will be in recess until nine o'clock.

Thank you very much.

(WHEREUPON, Court was in recess for the evening.)

Friday, February 21st, 2014

THE COURT: Let's see. Doctor Brown, you can resume the stand.

(Witness returns to the stand.)

THE COURT: State's ready?

SOLICITOR BULSA: Yes, sir.

SOLICITOR BARNETTE: Yes, sir.

THE COURT: Defense ready?

MR. McGUIRE: Yes, sir.

THE COURT: All right. You may proceed, Mr. Bulsa.

SOLICITOR BULSA: Thank you, Your Honor.

May I approach the Court?

THE COURT: Yes, sir, you may.

SOLICITOR BULSA: I'm gonna hand the documents back up to Your Honor that we've been referring to.

THE COURT: Yes, sir. Thank you.

SOLICITOR BULSA: It's Doctor Brown's report, Doctor Harrison's report, and the ABAS.

GORDON BROWN, having been previously sworn, testified as follows:

CONTINUED DIRECT EXAMINATION

BY SOLICITOR BULSA:

Q Doctor Brown, we were going through your report and I believe we got through Page 6, the end of Page 6 regarding

the summation of his -- the numerous jobs that he's held over his lifetime.

Now, just moving on down, you briefly reference his relation history, which I think is not in question. Then you get into his medical history, and it appears, from your review of the records and your notations in the report, he had quite a number of hospitalizations?

A That's correct.

Q Okay. Would that be for medical conditions or mental conditions?

A For both.

Q Okay. In fact, I believe that the defense introduced two volumes, Defense Exhibits 9-A and 9-B, and 9-B consists of approximately two to three inches of just medical records. I'm not gonna ask you to review them, but would you just acknowledge that that's what those appear to be under Tab 25?

A That's what those appears to be.

Q Okay. Now, in your review of those hospitalization records, both medical and mental, did you, did you identify or notice any reference to any indication that Mr. Blackwell might be mentally retarded?

A I did not.

Q And as part of your review of his records, you reviewed the type of medications he was currently under?

A Correct.
Q All right. Based on your understanding, when were those medications prescribed?
A The Thorazine was begun after the incident and I don't remember the details, but there was some notation about there being a better medication, but towards him the one being prescribed in the jail setting. I think Paxil -- either Paxil and an antidepressant.
Q So, what are the -- what were these medications suppose to do?
A Well, Thorazine is an antipsychotic, and it's typically used to help people who are having problems with audio or visual hallucinations or having psychotic thought processes to help control those, and Paxil is an antidepressant as treatment for depression.
Q Now, is there a way to treat mental retardation?
A There's -- I wouldn't say there's a way to treat it. There's a way to provide supports to help a person to be able to function better in society.
Q Okay. But you can't actually prescribe a medication for it?
A Correct.
Q Okay. So, any medication would of been for some physical or mental---
A Correct.

Q ---other mental issue?

Okay. All right. Now, you reference, on Page 7, some substance abuse by Mr. Blackwell.

A That's correct.

Q Can you expound on that a little bit?

A Well, he told me that he smoked cigarettes for about 12 years before he quit in 1985. It said he smoked a pack a day at the most. Said he used no other tobacco products. He stated he did not drink a lot of alcohol. He said sometimes he might drink a 12 pack of beer on the weekend while watching racing. Began using alcohol at 18. Most recently drank it just prior to being incarcerated.

He said he loved to smoke marijuana. Said he quit using it when he was diagnosed with cancer because of fear that the marijuana might make the cancer come back. Said he started at the age of 17 with typically using a quarter bag per week.

He said he tried cocaine, but didn't fool with it because it was too addicting. He said he would take Valium occasionally, but other than Valium, denied any use of prescription medications. Said he tried huffing paint once and denied any use of any other illicit drugs.

Q Okay. So, we had several experimentations with illegal substances?

A Correct.

Q And, in fact, used marijuana over an extensive timeframe?
A By his report, yes.
Q Okay. Would any of those usages affect his mental status or---
MR. McGUIRE: Objection to speculation.
SOLICITOR BULSA: Well, he's an expert.
In your expert opinion, would they --
A They could. I can't say that in this case they specifically did or did not, but it's possible that it could.
Q And in his -- in the history he gave you, the usage of those didn't begin until maybe age 17 when he began using marijuana?
A Correct, 17.
Q Okay. So, his developmental age, he didn't have any use except marijuana?
A Assuming his self-report is accurate, yes.
Q Okay. Okay. But in your examination of the other information you were given, did you see any other?
A I don't remember seeing anything significantly different from that. There might be some minor variations, but nothing that would be a significant difference.
Q Okay. And then you reference the evaluation, the previous evaluations, which we talked briefly about

yesterday, Doctor Harrison's and Doctor Calloway's reports, but -- and you gave great weight to Doctor Harrison's report based on your work and history with her?

A Correct.

Q And the connection between the Department of Mental Health and DDSN. Not the connection, but the working relationship.

A Well, correct, yes.

Q And she would have brought you into the interview process or evaluation process had she recognized any mental retardation issue?

A Correct.

Q All right. Now, you, you have a title here listed on Page 8, behavioral observations and mental status examination.

Is that part of the interview that you conducted with him?

A It is and this is pretty much a standard part of interview, any interview that we would do for almost any clinical reason.

Q Would that have been the initial interview on November 5th?

A The information here is from that interview. If I see anything differently in a subsequent interview, then, then I would note that. But this is from the first interview.

Q Okay. But the majority of this information would of been obtained prior to you handing him the ABAS and having him fill that out?
A Correct.
Q Okay. So, you had a good understanding of his mental abilities prior to giving him the ABAS?
A Yes.
Q Okay. And based on your observations and that examination, did you note any issues with him?
A Can you be more specific?
I'm not sure---
Q Did anything stand out as being suspicious?
A I don't remember anything that I would, I would say was out of the ordinary in that case. Nothing, nothing that caused me great concern.
Q Okay. All right. Well -- and then on Page 9 you go into the psychological test results where you begin describing the three areas or three criteria --
A Correct.
Q -- to determine if someone's mentally retarded, and you go through each one of them individually beginning with intellectual functioning, and you -- I believe you testified you gave him an IQ test yourself --
A That's correct.
Q -- as well as reviewing the school records which listed

the previous IQ test?
A Correct.
Q And I think you would agree that the individual exam you gave is probably more accurate than any school exam?
A Correct.
Q Okay. But the school number's certainly support or could, could there be an argument that they support that he is not mentally retarded or did not suffer intellectual functioning, difficulties?
A Well, again, I think that goes back to what's been discussed in previous testimony regarding the fact that those are not really IQ scores. They're more measures of scholastic aptitude, more measures of achievement. They can be roughly equivalent to an IQ score, but as a psychologist, I can't say that I would trust these scores of I think 86 and 87 as being necessarily an indication that he would not be.
Q Does a school give tests to determine if people are learning?
A That would be one of the reasons.
Q Okay. What would be another reason?
A One of the typical reasons for doing testing in a school environment is to see where a person can best be served within the education program.
Q Okay.

A So, for example, if we're looking at special education, are they better serving in that program for those who are intellectually disabled, for those who are learning disabled, for those who are emotionally disturbed --

Q Okay.

A -- where are they best going to fit, and, yeah, for aptitude, if they're eligible for gifted and talented programs for other kinds of resources.

Q Okay. Now, you reviewed those records?

A I did.

Q And you've heard the testimony, and you've heard some comments about an abbreviation ADJ.

A Correct.

Q And, in your experience, what does that mean?

A In my experience, that would, I think, adjunct is the term that I saw written out somewhere that that would indicate, and my understanding is that would roughly be equivalent to what we would call today resource classes.

Q Does that mean he has a deficit in intellectual functioning?

A Not necessarily, no.

Q Okay. Now, let's move to the adaptive functioning. How do you best assess that?

A In the best of all worlds, you, you best assess it with something like the ABAS or the, the Vineland. When you're

dealing with a situation where there's, where someone is past 50 years old and you're having to look back at adaptive functioning over a lifetime, there's not a really good way of doing that. So, we look at the standardized instruments that are available, in this case the ABAS, as well as trying to look at the records and see how they address those areas, and when possible, getting interviews with other people and we can address those areas to, to assess how he's performed in those areas throughout his life and particularly referring to the developmental period.

Q Okay. And Doctor Calloway used the ABAS test in her examination, is that correct?

A Correct.

Q Okay. And she provided the raw data that we've talked about yesterday?

A Correct.

Q For all except one person?

A That's correct.

Q Okay. So the Court can understand which one is missing, I believe it's on Page 21 of her report. This is Defense Exhibit No. 8. This would be the report of Doctor Calloway.

I'm gonna show you this doctor and the specific findings. She actually list the people that she gave these tests to. I think she actually referenced six individuals,

but, if you count the names, it's actually eight individuals that she provided those to.

A I think Louise Scruggs is the one that I did not have.

Q Okay. Louise Scruggs would be the school teacher, is that right, the way you read that paragraph?

A I'm trying, I'm trying to look at the order. Former school teacher, Louise Scruggs, that's correct.

Q Okay. All right. Now, in her report she puts two separate charts. On Page 22 she does it with the four columns.

What's the GAC mean?

A General Adaptive Composite.

Q Conceptual, social, and practical. If we look on Page 12 I believe of any one of these ABASs, you've got the categories. She, in essence, ruled out the results of three of those individuals.

Does that seem accurate?

A That's what I would take that chart to mean, yes.

Q Okay. So, on your Page 11, you used those persons that she actually had numbers in those columns being the father, the mother, the neighbor, the daughter, and the minister?

A Correct.

Q All right. And you wrote a statement in your report that while scores can be presented from those assessments all are problematic.

Would you expound upon that comment?

A I think the nature of any instrument like this, whether we're talking about the ABAS or any other similar instrument, they are really designed to look at adaptive functioning so that agencies like DDSN can develop from that a plan of supports. What's gonna best help this person to succeed and overcome these, these deficits.

So, we're using it for a purpose that it really wasn't developed for. I don't think when these tests were developed there was any thought that they might be used in death penalty cases to determine whether somebody would be eligible for that. Nevertheless, it's the best that we have, but when we're asking someone to rate someone like Mr. Blackwell who is 53, 54 years old at the time, first of all, we've got the issue of dealing with current level of adaptive functioning and then trying to extrapolate from that how does that relate back to his functioning prior to the age of 18.

And then if you do go back, and if, for example, they teach you to rate him related to how he was functioning at age 16 or 17, relying on the memory that's almost 40 years old at that point, so, I think the nature of the instrument, in most cases, is gonna make the data problematic.

Q Okay. I'm gonna point out one specific comment and ask you to show us in the ABAS, the third paragraph below the

chart, you referenced that form used by his mother indicates she allowed his father to complete the form for her.

Do you have your copy of her ABAS?

I direct the Court to the ABAS of Mildred Blackwell.

A I do.

Q That's in State's Exhibit No. 8 I believe it is.

And it -- does the language you referenced on Page 3 of that ABAS, is that the comment that you're referring to?

A Correct. Yes.

Q If you would, read that into the record for me so the Court can see what you're talking about.

A I got---

Q Explain where it is on the page and read what it is.

A It's about halfway down the page just above where the communication section begins, and it reads, quote, "I got him (Cletus) to fill" and there's something, a line with a check through it, "form for me."

Q Okay. And that gave you some pause as to whether that form was accurate?

A Well, based on that comment, I would question whether Cletus or Mildred filled this out. I would also question how was it administered. Is it something that was handed to them and they were asked to fill it out or is it something that was done in the interview where Cletus or Mildred or whoever would have to actually answer the questions.

Q Okay. In your comments you actually wrote made it unlikely that the ratings by his mother and father were independent of each other.
A If, indeed, the father did fill it out for the mother I would, I would have that concern.
Q Okay. Okay. All right. Now, let's move on to the age of onset.
Give us your impressions as to how that applies in Mr. Blackwell's case.
A Well, as we've discussed from the beginning, the age of onset has to be prior to the age of 18 or in the developmental period, and the difficulty in Mr. Blackwell's case, as with a lot of the Atkins cases we have, is we don't have clear data from that period. Ideally I'd like to have some school psychological evaluation including a test of intelligence, test of adaptive functioning, educational placement in a program for the intellectually disabled. But we, we don't, we don't have records that will give us that.
So, we have to go back and look at what records are available, and for most people, it's going to be school records when we can get them. That's gonna give us the most useful information in that regard.
Q Why importance is all the -- his adaptive functioning throughout the course of his life?
Isn't that some indication as to how he functions?

A Sure.
Q I mean he's held numerous jobs. He's had a family life, raised children.
Isn't that -- can't we extrapolate backwards and say he had no adaptive function disability?
A I think that's one thing we look at, and that's part of what we do, but I don't think this, in itself, is sufficient.
Q Based on the totality of the data that you had in his life history, what is your opinion, doctor, of his mental retardation if he is mentally regarded?
A It is my opinion that he does not meet the criteria.
Q Okay. Thank you. That's all I have.
THE COURT: Mr. McGuire.

CROSS-EXAMINATION

BY MR. McGUIRE:

Q Morning, Doctor Brown.
A Morning.
Q I hadn't seen you since the Nelson case sometime ago.
How are you doing?
A I'm doing fine.
Q Good to see you again.
Let me talk a little bit about, about -- let's just start with the IQ test, the---
A Okay.

Q ---WAIS that you gave Mr. Blackwell. It was a standardized individually administered test.
A Correct.
Q It meets the criteria of the DSM-IV, the AAMR, AAIDD standard of measuring intelligence?
A It does.
Q And the test that you gave has Mr. Blackwell in the mild M.R. range?
A As far as intellectual functioning, yes.
Q Right. And that's two standard deviations from the mean?
A Correct.
Q Mean being a hundred?
A Correct.
Q Standard deviation being 15?
A Correct.
Q And 15 plus 15 is 70 and he's two points below 70, right?
A (Witness nods affirmatively.)
Q Despite being a lawyer, my math is actually okay.
And the test is valid. Your test is valid.
A In my opinion, it is, yes.
Q Okay. No evidence of malingering?
A None.
Q No evidence of any interference or environmental

condition or anything like that?
A Right.
Q You would of noted that if that existed?
A I'm sorry?
Q You would of noted if there was a problem?
A Yes, I would have.
Q And you didn't note anything?
A Correct.
Q Okay. So, so, we have an IQ test. It clearly puts, your IQ test given with a full scale IQ score of 68, clearly puts Mr. Blackwell in the M.R. range?
A Correct.
Q Okay. Now, you're a member of Division 41 of the APA?
A Correct.
Q That's psychology and law?
A Right.
Q Most forensic examiners are a member of that division?
A I don't know if most are. Many are.
Q Well most should be.
A Should be.
Q Fair enough.
Despite DDSN not coming up with the money to get you enrolled in everything you need to be, that's the one, at least, you should be enrolled in?
A Well, I, I should perhaps clarify that. DDSN did pay

my APA dues including Division 41. So --.
Q But they wouldn't go to Division 33?
A I don't know if they would have or not.
Q Okay.
A I, I didn't ask that question.
Q Okay. But we can agree that Division 33 is developmental disorders?
A I'll take your word for it.
Q Okay. All right. You need to look into that.
So, so, with regard to being a member of Division 41 and stepping into the forensic role, and there are specialty guidelines or forensic examiners that are different from general practitioners, correct?
A Correct.
Q Okay. And there's a heightened standard for forensic practice?
A I would agree with that.
Q Okay. And as a matter of fact, the literature in your field necessarily has reacted to Atkins as requiring a heightened degree of reliability in Atkins cases, Atkins assessments?
A I would agree with that.
Q Okay. And there's a requirement that you be generally familiar with some legal principles and precedents?
A Correct.

Q Okay. And would you agree with me that the body of law in the Fourth Circuit where we are presumes, as a matter of law, that IQ remains relatively constant through life?

SOLICITOR BULSA: Objection, Your Honor, as to knowledge. He's not a lawyer. I don't know if he's gonna---

THE COURT: Well, he hasn't been qualified as an expert. He can state whether he's aware of that or not aware of that. So, I---

A I'm not aware of that, no.

Q Would you agree with that?

A I would agree with that, yes.

Q Okay. So, we can agree, as a matter of science, that that's a presumption that is safe to rely on?

A In general, yes.

Q Okay. Absent some evidence of say trauma?

A Correct.

Q Okay. And if I told you that the body of law in this area rejects speculation with regard to something affecting IQ later than 18, you would agree with that?

A Again, regarding the law, I, I don't know.

Q Okay. And maybe -- that was, that was a rather bad question.

When it comes to doing an Atkins assessment or an assessment with regard to intellectual disability, would you

agree that speculating without evidence that something may have affected IQ is improper?

A I, I don't know that I would say it's completely improper. I obviously can't rely completely on speculation. But I, I think, in the absence of solid data, there -- I would think, almost by definition, there has to be some speculation.

Q Okay. Well, specifically you mentioned a couple of environmental factors, chemotherapy, four wheeler accident, and alcohol and drug use, and you kind of -- you seem to speculate that they could have some cause of Mr. Blackwell's IQ?

A I'm saying they could have.

Q And you have absolutely no evidence of that though?

A That's correct.

Q Okay. For instance, you didn't go and interview anybody to see if there was a change in his personality after the four wheeler accident?

A No, I did not.

Q And that's a -- that's common, in head injuries, to see if there's an effect with somebody, see if their, their mood or temperament has changed, for instance?

A Correct.

Q You could do, right?

A Correct.

Q And, of course, in this case, there is no evidence of any change in Mr. Blackwell after the four wheeler accident?
A Not that I'm aware of, no.
Q Right.
And there's no evidence in the record that his IQ was affected or, or affected negatively by chemotherapy?
A No evidence, no.
Q Okay. Or alcohol and drug use, there's no evidence that we can rely on to say that that negatively affected his IQ?
A That's correct.
Q Okay. So, with regard to these environmental factors, we really only have speculation with regard to did it possibly affect his IQ?
A I would agree with that.
Q Okay. Let me ask you this, the -- obviously Doctor Calloway gave the WAIS and you gave the same test and there's a phenomena called a practice effect.
Tell me how that may of affected his performance on your test.
A Typically they say wait at least a year before regiving the same test, and, in this case, I don't remember exact dates, but there was at least a year between the --
Q Okay.
A -- dates. So, we would expect no practice effects.

Q Okay. But there is a phenomena called a practice effect?
A Yes, there is.
Q And he did slightly better on yours?
A Including the standard area of measurement, I don't know that I would say that. I think the scores are, are roughly the same.
Q Okay. So, the---
A So, I would not say that mine is significantly different from, from hers.
Q Okay. And the standard error of measurement being five points?
A Typically five.
Q Okay. So, basically they're roughly the same?
A Right.
Q The performance that he exhibited with regard to Doctor Calloway's measurement of intelligence, his performance on yours, roughly the same?
A Correct.
Q Okay. On Page 2 of your report, are you there?
A I'm there.
Q Okay. The second to last paragraph you indicate that although, although, prior to his arrest, he was living with his mama and daddy or his parents is how you phrased it, he indicated that he had lived alone for a little while after

his wife left him?
A Correct.
Q Can you describe to me the living circumstances when he was living alone?
A I, I can not.
Q Do you know where he was living?
A I don't remember if I asked him that or not.
Q Okay. Do you know, for instance, if the building that he was living in had say a refrigerator or a stove?
A I, I don't know.
Q Okay. Or a microwave?
A I don't know.
Q Or furniture?
A I don't know. I would of, I would of made some assumptions about that.
Q Yeah.
A But I honestly don't know.
Q But we know, we know what happens when we make assumptions, right?
A Correct.
Q Okay. Would you be surprised to learn that, when his wife left him, his mama moved in with him?
Did you know that?
A I've read that in other sources, yes.
Q Okay. So, he wasn't alone for that period.

We can agree on that?
A I don't know that I have a way to know that for sure.
Q Okay. But---
A No.
Q Well, if, if his mom moved in with him and they were living in the same structure together, we can agree that that's not alone?
A Correct.
Q Okay. You can't verify whether she was there or not?
A Correct.
Q Is that your answer?
A That's correct.
Q And if I told you that Angie, shortly after leaving, took all the furniture from that building, which was a trailer by the way in the country, would that surprise you?
Did you know that?
A Again, I'm thinking I've seen that somewhere else. I did not know that at the time that I did the interview, but I have read that since.
Q Where did you see that?
A I don't recall.
Q There's no record of that.
Did you know that?
A I may be mistaken, but I---
Q I'm gonna need you to find a piece of paper, if you say

you looked at it, that said that cause there is no---
A I certainly would not have that here, here with me.
Q I can tell you that it -- my understanding is you've never seen that information.
Would you agree with me?
A I obviously can't point to where I've seen it. My, my memory is having seen it. I can't assure you that that's a correct memory.
Q Okay. So, you, you believe that somewhere you heard or saw some information that Angie came back and took the furniture?
A That would be my memory.
Q Okay. And you don't know if that includes the refrigerator, stove---
A I don't know.
Q ---the microwave?
If I told you that Mr. Blackwell was basically sleeping on a mattress on the floor in an empty trailer, would that surprise you?
A Would it surprise me?
Q (Nods affirmatively.)
A Not necessarily.
Q Okay. But we can agree that the phrase he said he lived alone for a while in a report, in an official report that's used in an Atkins assessment, that information would

of been helpful to supply?
A It would of been.
Q Cause -- cause this is, when you say lived alone, we can agree you made some assumptions about the living environment, right?
A Correct.
Q And because we do make assumptions, if I say I lived in a trailer in -- on Ridings Road, you would assume it was a functional trailer, right?
A I would.
Q But that's not the case in, in Mr. Blackwell's case.
If you knew that, would you have put that in the record?
A I would have.
Q Okay. Because that certainly qualifies the phrase living alone, doesn't it?
A It would.
Q Did you know that he lived there sleeping on that mattress on the floor until the power got cut off?
A No, I did not.
Q Okay. Did you know that his wife always paid the power bill?
A I can't say that I knew she paid the power bill. I knew that she took care of most of the bills.
Q Okay. Would it surprise you to know that, that we have

hundreds and hundreds of canceled checks and that Mr. Blackwell never wrote one?

A Would that surprise me, not necessarily.

Q Okay. And that is -- that does coincide with your understanding that Angie Blackwell basically took care of the household bills?

A Correct.

Q Okay. And you don't have any information with regard to when the power got turned back on, do you?

A No.

Q Okay. Well, would it surprise you to know that, that Mr. Blackwell went with his daddy to the power company to get it turned back on?

A Would that surprise me, no.

Q Okay. And that his daddy helped him get it turned back on?

Did you know that?

A No.

Q Okay. Did you know that, despite getting the power turned back on -- well, did you know that that was when Mr. Blackwell -- it seemed likes we can agree that you didn't know that the power got turned off?

A Correct.

Q Okay. And you don't know that was the catalyst or the reason for Mr. Blackwell leaving that building and going to

live with his mama and daddy?
A No, I did not know that.
Q Okay. And -- but you do know that he was living with his mama and daddy at the time of arrest?
A That's what he told me, yes.
Q Okay. So, we have a period where he, going way back now, lived with his mom and dad when he was a child and a teenager, correct?
A Correct.
Q He married Angie at some point?
A Yes.
Q Okay. You have to say yes or no cause she has to write it down. Okay. Otherwise it just sounds like I'm justing talking to myself.

So, we can agree that he married Angie at some point?
A Yes.
Q And he was fairly young, early twenties?
A Yes.
Q And she was, she was in her late teens?
A She was younger. I don't remember how much, but yes.
Q Okay. And then they moved in with Angie's mama and daddy?
A Correct.

THE COURT: Mr. McGuire, we're falling back into where you're testifying and not asking questions. These need to

be questions.

MR. McGUIRE: Okay.

THE COURT: I've been paying attention and---

MR. McGUIRE: Sure. Sure. Sure.

THE COURT: ---you're not asking questions. You're talking about things and asking him to agree to your statement, and that's not the proper way of examining a witness.

MR. McGUIRE: Fair enough.

THE COURT: So, let's make questions.

Q And then after, after some period of living with Angie's parents, did they move out together?

A Yes.

Q Do you have any -- do you know how much help they got from their parents in setting up that first trailer?

A I don't know.

Q Okay. When they got their trailers, do you know who, who was in charge of paying the mortgage, the note?

A Do I know, no.

Q Okay. Do you know who did the shopping?

A No.

Q Bought Mr. Blackwell's clothes?

A No.

Q Who was the primary caretaker of their children?

Do you know that?

A Do I know, no.
Q Okay. Now, in your report you indicate that Mr. Blackwell was ranked 113 out of a class of 113, is that right?
A That's correct.
Q But you say that we can't really give great weight to that figure. We really don't know what it means cause he could of had a row of zeros after dropping out.
A Correct.
Q Okay. But you know that he was in adjunct classes?
A Correct.
Q I'll -- let me -- I want to try to do that a little bit better.
Do you know that he was in adjunct classes?
A I'm sorry?
Q Do you know that he was in---
A Yes, I do.
Q I'm trying not to run a foul of the judge here.
THE COURT: You won't run too far. The issue was raised earlier, and I noticed it again.
MR. McGUIRE: Sure. Thank you, judge.
THE COURT: You may proceed.
MR. McGUIRE: Thanks, judge.
Q And in your experience, based on your position at DDSN, you know that that was the name of classes that were sort of

the -- they were the pre-runner to special ed classes?
A Correct.
Q Okay. Do you know -- now we can agree that Ricky failed the ninth grade?
A We can agree that he repeated the ninth grade.
Q Okay. What were his scores in his classes?
A In the ninth grade?
Q (Nods affirmatively.)
A The first time in the ninth grade, the scores, just going down the list, were 65, 74, 70, 80 and 90, and then for the second semester 61, 69, 60, 80, and 90.
Q Okay. And there are a couple higher scores there, and my memory sometimes fails me, and I thought he actually failed all of his classes in that last semester, but he actually had two higher grades than failing, right?
A Correct, and I don't know what the grading standard was as far as whether those are As, Bs, Cs, or---
Q Sure.
A ---or exactly what those numbers mean.
Q All right. In my day, it was below 70 was an F, but I think that's changed nowadays. At least that's what they told me.
And did he take a class called agriculture something or other?
A Now, I'll be honest, I used my magnifying glass when I

was looking at these the first time.
Q They are hard to read.
A Yes, I -- agriculture.
Q Did you ask him about the, the details of some of his classes?
I mean we can -- let me let you ask that -- let me let you answer that first.
Did you ask him about sort of the nature, details of any of his classes just beyond looking at the school records?
A Not that I recall. I don't think I asked anything specific about classes.
Q Okay. I mean we're talking about a high school in, in very rural South Carolina, correct?
A Correct.
Q We know he's in adjunct classes, correct?
A Correct.
Q And in some of his classes, the titles of them look like they're definitely not college preparatory, is that correct?
A Well, except for the adjunct prefix, I don't, I don't know that I could draw that conclusion.
Q Okay. That's fair enough.
Did you know what he did in the agriculture class?
A I don't know.

Q What it, would it surprise you to know that they let him cut the grass at the school?
A For an agriculture class, that would surprise me.
Q That would surprise you?
A Yes.
Q And that they let him smooth out the dirt on the baseball diamond. That was part of what they let him do in agriculture class.
Did you know that?
A No, I didn't know that.
Q Okay. And obviously, despite growing up around farms and his daddy being a farmer for a little while, Mr. Blackwell wasn't in FFA, was he?
A Not as far as I know.
Q Okay. And FFA stands Future Farmers of America, right?
A That's my understanding.
Q I have to say right or correct at the end of these things.
In fact, there was no engagement whatsoever in extracurricular activities on Mr. Blackwell's part?
A I think that's what he told me.
Q Okay. Do you -- did you ask him how many students were in his adjunct class?
A I don't recall asking that.
Q And I know you didn't want to give weight to the 113

rank out of 113 students, but of the, of the people in his little adjunct group, do you know how many got held back and had to repeat the ninth grade?

A I don't know.

Q That would of been a good question to ask him, wouldn't it?

A It would be.

Q And you didn't ask him?

A I did not.

Q Would you be surprised to know that he was only the one in his adjunct class left back?

SOLICITOR BULSA: Your Honor, I'm gonna object to these facts that Mr. McGuire keeps introducing. There's -- none of this is in the record. We have no, no interviews. Nothing setting out that everybody else was above him.

THE COURT: I have not heard that in the record myself, Mr. McGuire.

MR. McGUIRE: In fact, I'd agree with that, judge. That's why I'm gonna call Doctor Calloway on rebuttal to put these facts in.

THE COURT: Well, you may do that, but it leaves -- you're gonna have to ask him about things that are in the record I think. I mean---

MR. McGUIRE: Well, I'm just asking would he be surprised, based on his evaluation---

THE COURT: I know you're asking the question, and I'll -- so, let's be careful in that regard.

MR. MCGUIRE: Sure.

THE COURT: I have not heard any of the facts that you've mentioned recently as being in the record already.

Q Now, you were -- we're gonna move on to another subject, and this might be a little bit lighter, lighter subject.

Were you here for the cross-examination involving Genomics or Eugenics and Nazis and that criminal, criminal genes and stuff?

A I was.

Q Okay. I took that as some sort of attack on listing the familial -- the family members IQ scores and Doctor Calloway's report, but you do the same, don't you?

A Not to the same extent, but yes.

Q Okay. And we can agree that, that Mr. Blackwell -- well, why would you do that?

A Because they're often is a family history of intellectual disability, and if there's a history of intellectual disability within the family, then it makes it more likely that a particular individual might also have that diagnosis.

Q Exactly.

And you would be remiss, as a forensic examiner, if you

left that out of your report?
A If I knew that and left it out, yes.
Q Sure.
And you have almost an obligation, if you're doing a thorough report, you have an obligation to include that information?
A That's correct.
Q Because it's significant?
A Yes.
Q And we can agree that Mr. Blackwell's father, Cletus, received an IQ score of 60 on an Otis self-administered test?
A Well, again, I wouldn't call that an IQ, but I can, I can agree that I saw that number in a record.
Q Sure. I agree with you that some of these tests, they don't fully and accurately measure an IQ like a Wechsler. I agree with you.
But you saw a score reported of 60 for Cletus?
A Correct.
Q Okay. And I believe it's 70 and 72 with Donald, Mr. Blackwell's brother?
A I don't recall, but I do remember seeing a low score.
Q Okay. I'm sorry. I misspoke. Donald was 73 and 74.
Does that ring a bell?
A I remember something in that range.

Q Okay. His daughter Heather, 57, 71?
A Again, yes, I remember seeing that.
Q Okay. Mr. Blackwell's grandson, Caleb, Heather's, Heather's son, 52?
A I don't remember the exact scores, but I remember seeing reference to that.
Q Sure.
And with regard to the grandchildren, some of these were actually Wechsler individually administered test?
A Correct.
Q Okay. Not the short form test?
A Correct.
Q And do you recall, I may of just asked you, Caleb, 52?
A Right.
Q That's about right.
I mean that's -- that sound familiar to you?
A Correct.
Q And Allen, 50 and 46?
A Again, I don't remember the exact scores, but that sounds familiar.
Q Okay. And I think, while you said you didn't have the information to authenticate the relationship between Mr. Blackwell and Mr. Roger, Roger Bridges, as a cousin, there was information indicating that Mr. Bridges was moderately retarded?

A Correct.
Q And I think we -- the records that we gave you, we just indicated that that was, in fact, his cousin, but we didn't -- there was no records supporting that?
A I had records on someone with that name.
Q Right. Right. I think you were just going on our word that that was his cousin.
A Correct.
Q Okay. But without regard to the familial relationship, he was -- there was records indicating he was moderately retarded?
A Correct.
Q Okay. With regard to the ABAS being administered to Mr. Blackwell, obviously you need to be somewhat familiar with literature in this area, right?
A Correct.
Q Okay. And I would imagine you know who Doctor Greg Olley is?
A Yes.
Q Okay. Did you know that he actually chaired the committee at Division 33 regarding the implementation, implementation of Atkins principles and procedures?
A I knew he had been very actively involved in, in that process, yes.
Q All right. We can agree he's a well respected leading

researcher, prolific publisher in this area?
A Yes.
Q And, and very well respected?
A Yes.
MR. McGUIRE: Okay. You all right?
SOLICITOR GHENT: Yes, I apologize.
MR. McGUIRE: That's all right. I'll give you as much time as you need.
Would you agree that -- and you, you seem to concede that the report, that obviously giving an ABAS to the subject does have some qualifications that need to come with it?
A Correct.
Q And that is there's a general understanding in the field that somebody with mild M.R. or, or I.D., many folks have a tendency to exaggerate their abilities and skills?
A Correct.
Q Okay. And that's that -- are you aware that Doctor Olley has written that if you give the ABAS solely to the subject, that that would not be a valid source with regard to adaptive deficits?
A Yes, I am aware of that.
Q Okay. And it appears to me that your Atkins investigation didn't require you to leave the building at DDSN.

Can with agree on that?
A I'm sorry?
Q You didn't, you didn't go out into the field to investigate this case?
I mean all of your activity on the case was in -- within the four walls of DDSN, correct?
A Well, at an evaluation cite at our Midlands Centers. So --
Q Okay.
A Yes, at a DDSN facility.
Q Okay. And despite being provided, and I know you're shorthanded at DDSN, and I know that the government doesn't have the resources that we all want because I think you even testified that normally you would give the ABAS to family members and friends?
A Correct. If I had the opportunity to do that I would.
Q Okay. And part of the opportunity is limited time and resources?
A Correct.
Q Okay. And, for instance, there were employment records you had, school records, they do name teachers, employers, people he worked with---
A Correct.
Q ---friends, family members, correct?
A Correct.

Q And we can agree you didn't talk to them?
A Correct.
Q Either in person?
A Correct.
Q On the telephone?
A Correct.
Q No correspondents, electronic or otherwise?
A That's correct.
Q Okay. And you didn't task anybody underneath you or a social worker or anybody else to, to do these things?
A I wouldn't have anyone to do that.
Q Right. That's kind of my point.
But in a better world you would have?
A Correct.
Q And you would of wanted to?
A And I would add that at about the time I was doing this we were in the process of hiring a social worker with the idea that, in the future, you know, she could perhaps do some of that.
Q Sure.
A So, we, we were working on a plan to, to make it better in the future.
Q I understand.
And when I'm being critical about some of this, I'm not being critical of you personally.

A I understand.
Q And -- okay. So just so we're clear about that. I'm certainly -- I'm not attacking either your credentials or your skills.
Okay. Just with regard to resources, you are limited?
A Right.
Q And you do have a plan now, it appears in the future, to actually do a little bit more investigation --
A Correct.
Q -- in these situations?
A Correct.
Q Correct.
And the, the literature is clear that more information is always better?
A Absolutely.
Q And that -- but there's also a qualification in the literature in the field that all of these sources, and you kind of touched on it briefly earlier, they're all imperfect?
A Correct.
Q Okay. But that doesn't mean we don't interview them?
A Correct.
Q For instance, we're asking people to rely on their memory and sometimes think back pretty far and, and there are problems with that?

A Right.
Q But that's what we're stuck with, right?
A Correct.
Q And there's an assumption that all sources, with regard to adaptive deficit functioning, they're all gonna be a little imperfect?
A I would agree with that.
Q We don't have a video of somebody's life, right?
A Right.
Q And there was one person that we actually didn't list as a person that we gave the ABAS to who actually I think would of been a pretty got reporter or at least, you know, given it a shot and that was his wife, ex-wife, Angie Blackwell.
A Correct.
Q She wouldn't talk to us, but did you make any attempt to talk to her?
A No, I did actually discuss with the DDSN attorney and with my supervisor that I would like to be able to do that, and she was the first person that came to mind as one person that's not on the list that could probably provide some really useful information.
Q Sure.
A And, you know, I would have some ethical concerns about doing that and would want to discuss it with colleagues and

see, one, if we really wanted to pursue it. So, that, that issue was discussed as a possibility, but with the time limitation we weren't able to even try to get it approved.

Q Okay. And that, again, is just a resource problem at DDSN, limited time?

A Well, I don't think it's just DDSN. I think most state agencies that deal with those kind of issues would have the same restraints.

Q I agree. I agree. I'm not picking on DDSN.

But, but the, the, the fact of not interviewing Angie was related to just logistics and---

A Correct.

Q ---lack of resources?

A I wouldn't say just. That was a major factor.

Q Okay. I'm gonna take, take you to task on a little bit on a phrase that you used. You indicated that Mr. Blackwell was on track to graduate high school.

Can we agree that, when he was 18 years old, he had already repeated the ninth grade or was repeating the ninth grade?

A Correct.

Q He failed a number of classes, correct, or had scores below 70 in a lot of classes?

A He had scores that would make that likely. Again, I can't---

Q But you---
A From this record, I don't know what was failing and what was not.
Q Right.
And the -- all the classes were adjunct, correct?
A Not all, but some.
Q Right.
Okay. But a number of classes were adjunct classes, correct?
A Correct.
Q And, and we've already agreed that's the pre-runner to special ed classes?
A Correct.
Q And his scores in some of those classes are below 70?
A Correct.
Q Okay. And that, that, when he was 18 years old and he got the adult basic learning test I believe is what it was called or examination, that he scored in elementary, at an elementary school level.
Do you remember that?
A I don't remember that specifically, but I remember that he didn't do very well on it.
Q Okay. And I don't want to misstate anything with regard to that. So, if you would bear with me just one second.

(Pause.)
Q What I'm gonna do is go to Table 3-A, Doctor Calloway's supplemental report, which is Page 5. I know that you reviewed that report. You indicated that was one of the documents you reviewed in your evaluation.
A Well, the supplemental report came after the evaluation.
Q True.
A But I did review it, yes.
Q Okay. And, so, at the bottom of Page 5 on the supplemental report, they're the results of the Adult Basic Learning Examination. They indicate -- well, could you tell the Court what they indicate with regard to his performance in reading, arithmetic, problem solving, and arithmetic computation and total arithmetic.
A Reading Grade 5.8, arithmetic problem solving Grade 6.6, arithmetic computation Grade 5.2. Total arithmetic, Grade 5.6.
Q Okay. So, in those -- okay. So, with, with that test marking his, his performance at an elementary school level, the fact that he's in adjunct classes, and is repeating the ninth grade, that doesn't sound to me like on track to graduate high school. I don't know how, I don't know how that information goes to DDSN, DDSN and comes out he's on track to graduate.

Was that, was that---
A The way you've presented that I would agree then that does not seem to indicate that he was on track toward high school graduation.
Q Okay. Now, with regard to his, his work, we can agree he's a pretty hard worker?
A Yes.
Q And always tried to work, and even the State prosecutors have expressed some, some shock that he would go off the public dole and return to work.
A Yes.
Q That's the kind of guy he was, right?
A Correct.
Q And, and you've got a chart, and you've got -- you've kind of broken it down chronologically in years, and the first thing I want to, I want to make sure that we know is he didn't walk out of high school and become a truck driver, correct?
A Right.
Q Okay. And, in fact, it was -- was it five years before 23?
He's born in '58. November '58.
How many years was it after high school before he got to get behind the wheel of a truck?
A I don't know that I remember that. I -- five years is

what comes to mind.
Q Okay.
A But I don't know that.
Q Okay. That sounds about right, five years? Sounds about right?
A Yeah.
Q Now, obviously people with mild M.R. or I.D., they, they do things so they seem smarter and they call it the Cloak of Competence?
A Correct.
Q Okay. And, in fact, if, if Ricky was to say well, I left high school cause I wanted to be a truck driver, that's, that's a statement that somebody like that would make, right?
A I would take that as his memory at age 54 of why he left high school.
Q Okay.
A But yes, that, that would be consistent.
Q Okay. That -- cause it makes it sound like he made a choice. It wasn't failure that pushed him out. It was I want to do something else. It's kind of a big deal to be a truck driver to him.
A Correct.
Q Okay. And, and we can agree that he certainly didn't go from high school to truck driving?

A Correct.
Q In fact, he went to sort of menial labor jobs?
A Correct.
Q Okay. And they didn't earn a whole lot right off the bat?
We agree on that, right?
A I would agree with that.
Q Okay. In fact, he doesn't get -- he doesn't get over $10,000 a year until he's 28 years old.
Does that sound about right?
A That looks right.
Q Does it look right that he never breaks $20,000 until he's 45 years old?
That would be about 2003?
A I'm, I'm not sure I understand what you're asking.
Q The, the first year that he ever makes over $20,000 seems to be 2003.
A Correct.
Q And he would of been 45 years old.
Is that, is that about right?
A I think that's correct.
Q And he was almost 50 years old in his last three years of employment?
A Correct.
Q Is that about right?

And your review of the records, do they indicate that he was ever a supervisor?
A No.
Q Did he ever have the opportunity to train a new employee?
A I don't think so.
Q Teach a class in workplace safety, anything like that?
A I didn't specifically ask about that. I didn't see any reference to that.
Q Okay. And Ricky did work overtime, you're aware of that?
A He did.
Q And that's, that's reflected in the records?
A Yes.
Q In fact, I would say substantial overtime.
Would you agree?
A I would agree.
Q Okay. And he did get some raises when he was working, right?
A He did.
Q Got a .75 raise in 2005.
Does that sound about right?
A I don't remember the exact amounts or dates, but that sounds about right.
Q When he was at Jacobson Warehouse, and he -- when he

got the job first, I believe he was a temporary employee, is that correct?
A That sounds correct.
Q Okay. And then moved when they moved him on full-time staff and he went from temporary to full-time, got a .75 raise?
A Correct.
Q Let's see. I think he got a .50 raise after a performance review summary -- I'm trying to think where that was. That may of been at Jackson too.
But he got another .50 raise, right?
A I don't remember the exact dates or amounts, but I remember several raises in that range.
Q Okay. But we can agree he never made it to middle management?
A Correct.
Q Trainer, supervisor, anything like that?
A Correct.
Q He was, as the prosecutor's put it, always an Indian, never a chief?
A Correct.
Q Okay. With regard to the trucking jobs, do you know how many accidents he had?
A I didn't count them. I know they were a few.
Q Okay. And those are documented in the records?

A Correct.
Q And, in fact, would you agree that an employment application, when he's applying to be a truck driver, actually documents a wreck that he had at Hess?
Do you remember seeing that document?
A I don't remember seeing that.
Q Yeah, I'll let you take a look at State's Exhibit 3. It's kind of faint and I'll point that out.
A Oh, sure.
Q I think, if you look in there, it's like reason left job, American Hess, got in accident.
A Okay. I see it.
Q Okay. So, he's applied to be a truck driver, but he's admitting that he's been in accidents in the past and that one that's documented there is American Hess, is that correct?
A Yes.
Q Okay. And then, of course, he, he was in several other accidents and I think one's documented in a discharge form from Belue Trucking.
Does that ring a bell?
A I'm sorry?
Q There, there are a couple more accidents aside from, from that?
A That's correct.

Q Okay. And I believe one of them is documented in a, a discharge form from Belue Trucking saying that he got in an accident and he is actually not eligible for rehire?
A I don't recall seeing that.
Q Okay. But nonetheless, you agree that some of these trucking jobs involved accidents and termination because of accidents?
A I, I don't recall seeing anything that indicated termination because of accidents.
Q Okay. You don't remember that in the Belue records?
A I don't.
Q Okay. I'll see if I can find them for you.
A There were a lot of records and I, and I may have just missed that looking through them. I don't specifically recall seeing that.
Q Okay. With regard to the -- I'm gonna shift back now to the time period of Ricky's life when Angie left him, and he's living in a trailer.

Okay. Are you -- did you know that Angie always paid the mortgage?

I think I may of already asked you that.
A Well, again, I'm not aware of any specific bills that she did or did not pay. It's my understanding she took care of the bills.
Q Okay. Did you know that she always paid it at a

Western Union at a grocery store?
A No.
Q That shocked me. That surprised me too.
Did you know that Mr. Blackwell stopped paying --
Judge, if I could have just one second.
(Pause.)
MR. McGUIRE: Judge, I want to ask to show Doctor Brown a record to see if it jogs his memory, and if I need to I'll print it out later and mark it for ID. Well, first off, I can show him anything that jogs his memory. That's settled law.
THE COURT: If it's a document he's reviewed. You can ask him some questions about facts that he didn't testify to or had in his report.
SOLICITOR BULSA: May I see it?
MR. McGUIRE: Yeah.
(Pause.)
MR. McGUIRE: If I could approach the witness, judge?
THE COURT: You may.
Q I want to show you a document and you just, just tell me if you've ever seen it before and we'll start there.
A Well, the document, first of all, looks familiar.
Q Okay. And is it entitled employee termination?
A It is.
Q Okay. And does it appear to be for---

SOLICITOR BARNETTE: Your Honor, I know it's not my witness, but I'm gonna object. I mean we got to have the document to ID it or something like that. I mean is he gonna provide this later or how, how do we do it?

THE COURT: He hasn't tried to introduce it yet. He's asking this question if he saw it or reviewed it, and the witness so far just said it's familiar to me.

SOLICITOR BARNETTE: I know, but from there---

THE COURT: I don't disagree with you.

SOLICITOR BARNETTE: I understand.

THE COURT: So far he hasn't tried to introduce it. So, it's nothing for me to rule on. He's asking if this witness is familiar with these documents. I'll let him see if the witness is seen it or reviewed it.

SOLICITOR BARNETTE: I know, but I meant it's on his computer, just for the record, and---

THE COURT: Oh, it's an unusual process that we're going through right now, and this is without a jury. So --

SOLICITOR BARNETTE: Yes, sir.

THE COURT: -- I would allow him to start down this road. I don't know if he'll get all the way down it or not. We'll see.

Mr. McGuire.

MR. MCGUIRE: Thank you, Your Honor.

Q Have you had a chance to, to review this document?

A I have.
Q Okay. Does it -- and it looks familiar?
A The document looks familiar. I can't absolutely for sure say I've seen that exact one, but --.
Q Okay. Does it, does it, does it jog your memory that Ricky Blackwell was, in fact, terminated from a trucking company for rear-ending -- getting in an accident and rear-ending somebody?
A Again, I don't specifically recall that --
Q All right.
A -- and I may have missed that in looking through the records. I was looking specifically for things like that, but my memory was not seeing any.
Q Okay. Not seeing --?
A Not seeing any indication that he had been terminated from a job because of accidents.
Q Oh, okay. Sure.
But you remember the accidents?
A Yes.
Q Okay. Now, I want to -- I'm gonna go back to the period of time where Ricky's living in the trailer that we talked about after his wife, Angie, left him, okay, and ask you if you knew she was making the mortgage payments, and I believe what you said was you knew that she was basically paying all the bills, and you didn't know that -- my

understanding is you didn't know that she was actually paying the mortgage at a Western Union?

A That's correct.

Q Yeah.

And did you have -- did you -- did you have any discussions with Ricky about what happened to the trailer and the mortgage payments after Angie left?

A No.

Q Did you know that he stopped making payments?

A Again, I remember seeing a reference to that. I don't know at what point I knew that or how I knew that.

Q Okay. And actually I used -- I was inarticulate.

To say he stopped making payments would indicate that maybe he made one.

Do know that he, after Angie left, never made a payment on the trailer?

A I did not know that specific fact, no.

Q Okay. Did you know that the trailer was in jeopardy of being seized by a repossession company?

A I remember seeing a reference to that.

Q Okay. And do you, do you know that his daddy bailed him out and bought the trailer from the repo -- well, the -- I guess the -- let me ask you this.

Do you know that a trailer actually has a title like an automobile?

A I did.
Q Okay. I didn't know that.
A I don't know how that I knew that, but I did.
Q So, so, it's not like a bank taking a house. It's kind of like repossessing an automobile, right?
A Right.
Q And, and that -- are you aware that his daddy bailed him out and paid what was necessary to get the trailer back?
A Again, I saw a reference to that.
Q Okay. And just did you know -- it, it sounds like you did know that, despite Ricky's daddy making arrangements to get the trailer back, get the power back on, he never moved back?
A Well, that's my understanding.
Q I'm gonna ask you a couple questions about the DMH report, the competency evaluation, done by Doctor Harrison.
You've, you've indicated that you placed great weight on that?
A That's correct.
Q And we can agree that she didn't use any test to measure intelligence with regard to Ricky Blackwell?
A That's correct.
Q She didn't -- even though it would have validity problems, she didn't administer anything like an ABAS to Mr. Blackwell?

A That's correct.
Q She didn't, she didn't give any short form test of performance or achievement?
A That's correct.
Q Or cognitive ability?
A That's correct.
Q Her interview seems to be limited to reviewing some records, correct, reviewing -- a review of some records?
A I'm sorry. You said the interview seemed to be limited to a review of records.
Q Yeah, yeah, I was -- that's my fault.
Her interview with Mr. Blackwell or her conclusions in a report seem to have involved a review of some records?
A Correct.
Q The same school records that we've been talking about the last couple of days?
A I don't know if they're exactly the same, but.
Q Okay. And then, in fact, let me -- on Page 8 of your report you actually used the word noteworthy. That it was noteworthy that DMH didn't find indications of an intellectual disability, and then you actually -- you quote from them and the quote is "the possibility of mental retardation was described as the basis for this current evaluation. Although an IQ score of 68 from 1966, when Mr. Blackwell was seven years old, suggests possible

intellectual impairment, a later IQ of a score of 87 from 1967 when he was eight years old, indicates he functions in a low average range of intellectual ability. His employment history, ability to live independently, observe reading ability and communication language skills, and his observed ability for abstract thought, do not indicate the presence of an intellectual ability," and I assume that's a typo and should of been disability.

A That's correct.

Q Okay.

A Yes.

Q And abstract thought, that's -- what I -- and tell me if I'm wrong.

What I've seen pretty much is a simple examination involving questions like can you tell me the similarity between a car and a train.

That would be a good question for that, right?

A That would be part of it, yes.

Q Okay. And the answer would be forms of transportation?

A Correct.

Q Okay. And that's, that's -- those, those similar questions would be asked of Mr. Blackwell to determine if he had abstract thought capabilities?

A Correct.

Q And they are pretty simple.

A Yes.
Q Okay. And we can agree that the, the reported IQ scores that Doctor Harrison relies on, these are the short form tasks. They're not individually administered test that would, that we would use in an Atkins investigation.
A Correct, and I did not, did not mean to imply in the quote that I agree those are IQ scores.
Q Right.

But we can agree that she didn't really, aside from asking about can he engage in abstract thought, really it's just he can read, he can communicate, he's worked, and lived independently, and I think we can now, after you've learned some more information or will learn some more information, that to live independently should really be qualified.

She really didn't do anything to test Mr. Blackwell, did she?
A That's correct. Excuse me. That's correct.
Q And we can agree that certainly it would not -- can we agree that what she did was, instead of just reporting out some signs of M.R. cause there were signs, he's in adjunct classes, repeated the ninth grade, was tested with, with the adult -- when he was 18, when he engaged, engaged in performance ability, and elementary school range, can we agree that those are signs of M.R. or could be?
A It could be, yes.

Q Okay. So, instead of just listing these things and reporting out there are signs of M.R., we can agree that she engaged in at least some form of analysis to make a, a decision whether or not M.R. was there or not, that she weighed evidence?

A Well, again, I can't address what Doctor Harrison did or didn't do in terms of her thinking processes.

Q Right.

A But that's a logical conclusion, yes.

Q Okay. And we can agree, we can agree that what she did was not a thorough Atkins investigation?

SOLICITOR BULSA: Your Honor, I think he's asking him to speculate about Doctor Harrison. She's already testified. Her testimony is in the record.

THE COURT: You're asking him to speculate as to what she did?

MR. McGUIRE: Absolutely not.

THE COURT: Then I'm not gonna allow you to ask---

MR. McGUIRE: No, no, no.

THE COURT: ---speculation. Maybe you ought to ask him if he knows what she did and if that would constitute---

MR. McGUIRE: Sure.

THE COURT: ---what she did.

Q You wouldn't indicate that you -- you wouldn't indicate to the Court that you relied significantly on her results

unless she knew a little bit about what she did, correct?
A Correct.
Q Okay. And we -- in knowing that, we can agree that what she did was not a thorough Atkins evaluation, correct?
A Correct.
Q Okay. But later in your report you do indicate that Doctor Calloway actually did conduct a thorough Atkins investigation?
A Correct.
MR. MCGUIRE: Okay. May I have just one second, judge?
THE COURT: Yes, sir.
(Pause.)
Q That's all I have for you, sir. Thank you. Good to see you again.
THE COURT: Redirect.
SOLICITOR BULSA: Just briefly.

REDIRECT EXAMINATION

BY SOLICITOR BULSA:

Q Doctor Brown, do you know when Doctor Calloway did her Atkins evaluation?
A Only from the date on her report.
Q Which was?
Do you have that document?
A June 29th, 2012, is the date on the report.
Q Okay. And that -- do you know when this crime

occurred?
A I don't recall.
Q July of 2009?
A Yes, sir, that sounds right.
Q Okay. And your exam was conducted January of this -- November of---
A November of last year.
Q Okay. All right. Now---
A And if we say exam, that's typically an interview date. The evaluation is obviously an ongoing process involving much more time than just one date.
Q And we -- I believe you actually dated your report, did you not?
A The letter went to the Court on January 21st of this year.
Q Okay. And we're not sure when Doctor Calloway submitted her report. We just have the dates of her evaluation.

Now, Mr. McGuire talked first with you about the IQ and it sounds to me like he was running everything together when he talked about the IQ remaining constant.

IQ just tests what portion of this criteria?
A It would be the first prong, intellectual ability.
Q Intellectual ability or functioning -- intellectual ability?

A Correct.
Q Okay. All right. And you reference -- he referenced some risk factors that you addressed in your summary on Page 12, and those risk factors you addressed were what?
A Okay. Noted risk factors in Mr. Blackwell's case occurred during adulthood, but rather than in the developmental period. Those include a diagnosis of and treatment for cancer, head injury, and significant depression and/or anxiety.
Q And those risk factors would of affected which of these three prongs, would of impacted which of these three prongs?
A Well, again, I can't say for sure that they did affect---
Q Well---
A ---that they did or did not affect anyone.
Q If they did, which of the three?
A They would, they would -- they could affect cognitive abilities, which would correlate with the intellectual prong. It could also -- in the -- have a negative impact on adaptive functioning. So, it could affect the first two prongs.
Q So, when he's asked you if IQ remains constant, you said it could have absent any kind of trauma?
A Correct.
Q Okay. So, just because he's scored a 63 and a 68 when

he was 53 doesn't mean he's scored -- he would of scored that when he was under 18?
A That's correct.
Q And, in fact, we have school records, even though they're not complete and as accurate as you would like, they show numbers well higher than 63 and 68?
A Correct.
Q Mr. McGuire asked you several questions about the defendant's actions after his wife left him.
Do you remember those questions?
A I do.
Q Okay. Do you remember what actually occurred after his wife left him?
What did he first try to do?
A I'm---
Q Did he try to overdose on some kind of medication in 2008?
A I don't know if that was the first thing he did, but I remember that happening at about that time.
Q Okay. But it was -- would you -- would that have been in response to his wife leaving him?
A Well, I can't say for sure it would have been.
Q Would it be a likely response?
A It would be a likely response.
Q Okay. So, is it -- what, what was his emotional state

have been, been like?

I mean how long was he married to his wife?

Q I think on page -- you reference his family history. Actually his relationship history on Page 6. You referenced he was married for 27---

A Okay.

Q ---28 years.

A Twenty-seven years, yes.

Q Okay. And then she leaves him. For what reason, you don't know, and he attempts suicide and he was actually hospitalized.

That was part of the records you reviewed, right?

A Correct.

Q Okay. So, all those activities that he might not have done, could that have been as a result of depression?

A Sure.

Q Okay. And just because his wife ran the household, does that mean he could not adapt, could not function?

A No, not necessarily.

Q Okay. In fact, a lot of women run the household, right?

A I think I would agree with that.

Q Okay. A lot of women pay the bills, a lot of women take care of the kids. My wife, in fact, homeschools my four children. She does a whole lot of work.

He did contribute to the household, did he not?
MR. McGUIRE: Objection to leading.
THE COURT: Rephrase the question.
Q Did he contribute to that household?
A Certainly.
Q Okay. In fact, his work history, does that show support of that?
A It does.
Q Now, Mr. McGuire asked you about the ABAS you gave to the defendant.
You didn't rely solely on that one ABAS, did you?
A No, I did not.
Q Okay. You had the other ABASs that Doctor Calloway provided you?
A Not at the time that I gave the ABAS, but very shortly afterwards.
Q But in, but in coming up to your conclusion and writing your report, you had all that additional information?
A Yes.
Q Okay. And I didn't want the Court to be mislead about just the sole defendant's ABAS.
Mr. McGuire talked to you about your language in your report about the defendant being on track to graduate.
Can I direct you to Page 3 of your report?
The last paragraph, you actually go into an explanation

of why you thought that.
A Correct.
Q You talk about the number of units he's had.
A Correct.
Q The number he needed and had towards graduation.
A Correct.
Q Okay. Is that why -- is that the reason you made that reference that he was on track to graduate?
A Yes, looking at the number of units he had versus what he would have needed had he stayed in school. Mathematically he could of even graduated --
Q Okay.
A -- I wouldn't say early since he repeated the ninth grade, but earlier than he might otherwise would have.
Q Mr. McGuire went into and tried to bring up issues of terminations, job terminations.
Even if he had been terminated, would that affect his ability to get another job?
A It doesn't seem to have.
Q Would that have affected your analysis of whether he could function?
A I'm sorry?
Q Would that affect your analysis -- your determination as to whether Mr. McGuire could function, meet the second prong?

A That one incident, no.
Q Okay. All right. Thank you, doctor. That's all I have.
THE COURT: Recross.
MR. McGUIRE: Just briefly, Your Honor.
RECROSS EXAMINATION
BY MR. McGUIRE:
Q I think we agreed earlier that, and tell me if this is wrong or right, that a person's IQ, their intellectual functioning, is measured by an IQ score, that, that remains pretty constant through life and certainly starts to plateau out after 16?
A Well, I don't know if you can say after 16.
Q Okay.
A But certainly, at some point, an adult -- and that doesn't mean that I can measure someone today and their IQ is 68 and you're gonna get 68 the next year and the year after, but within a range.
Q So---
A Sort of like the standard area of measurement. We do expect them to stay generally in the same range of scores.
Q Okay. Relatively constant would be a good phrase to use?
A Correct.
Q Okay. And he got a 63 and -- a 63 on Doctor Calloway's

WAIS?
A Right.
Q Sixty-eight on yours?
A Correct.
Q Can we agree they're roughly similar?
A Yes.
Q They're in the mild M.R. range?
A Correct.
Q Is that correct?
A That's correct.
Q And we don't have any evidence that his IQ is negatively, negatively affected by any environmental factor, chemo, four wheeler accident, anything like that, right?
A No evidence. Correct.
Q And that would just be pure speculation because it's possible these things could negatively affect a person's IQ, but we have no evidence of that, of that in Mr. Blackwell's case?
THE COURT: Is that a question?
Q Is that correct?
THE COURT: Thank you.
A That's correct.
Q Okay. And what we do have in Mr. Blackwell's case is really only the ability to point at these events and just speculate they may of had something to do with his

intelligence, is that correct?
A I guess where I'm a little bit uncomfortable is not just pulling things out of the air and saying that these are things that could of affected it. They're, you know, they're scientific data to suggest that these kinds of things can affect it.
Q Okay.
A But, no, I certainly can't say that in this case they did.
Q Sure. You know, let's, let's do it like that.
Can -- assuming that they're certain environmental factors that could affect a person's intellectual functioning including a head injury, for instance, there's still no data, no evidence to indicate that any event negatively affected Mr. Blackwell's intellectual functioning?
A Correct.
MR. McGUIRE: If I could have just one second, judge?
THE COURT: Yes, sir.
(Pause.)
Q That's all I have. Thank you.
THE COURT: All right, sir. You may step down.
Does the State intend to call additional witnesses?
SOLICITOR BULSA: Your Honor, I believe Doctor Brown would like to be excused.

THE WITNESS: I can---
THE COURT: Any objection to him being excused?
THE WITNESS: I can stay if you need me to.
SOLICITOR BULSA: He wants to stay.
THE COURT: Is he okay?
SOLICITOR BULSA: Yes, sir.
THE COURT: All right. He's okay then.
MR. McGUIRE: We have no objection.
THE COURT: Does the State intend to call additional witnesses?
SOLICITOR BARNETTE: No, sir, not at this point.
THE COURT: All right. We'll take a short break then. We'll take a break for about five to ten minutes.
Thank you.
(WHEREUPON, a short recess was taken at this time.)
THE COURT: All right. State wish to offer any additional evidence?
SOLICITOR BARNETTE: No, sir, not at this time.
THE COURT: All right. Defense.
MR. McGUIRE: Defense calls Doctor Ginger Calloway in rebuttal.
THE COURT: All right. Come forward please, ma'am.
Ma'am, I'll remind you that you've been placed under oath in this case and that you remain under oath at this time.

Do you acknowledge that?

THE WITNESS: Yes, sir.

THE COURT: Have a seat please.

DOCTOR GINGER CALLOWAY, having been previously sworn, testified as follows:

THE COURT: You may proceed, Mr. McGuire.

MR. McGUIRE: Thank you very much, judge.

THE COURT: Yes, sir.

(WHEREUPON, the employment records were marked as Defendant's Exhibit No. 12 for identification purposes only at this time.)

DIRECT EXAMINATION

BY MR. McGUIRE:

Q Doctor Calloway -- judge, if I could approach?

THE COURT: You may.

SOLICITOR BARNETTE: Your Honor, may we see that document before he presents it to the witness?

MR. McGUIRE: My mistake.

THE COURT: Yes, sir, you may proceed and you can approach.

MR. McGUIRE: Thank you, Your Honor.

THE COURT: Yes, sir.

Q Doctor Calloway, I want to show you what's been marked for ID as Defense No. 12.

If you can just tell me, is that one of the records

that you reviewed in the course of your Atkins investigation?

A Yes.

Q And what is that?

A It's an employee termination is what it says at the top.

Q Okay. Is it regarding Mr. Ricky Blackwell?

A Yes.

Q And does, does that document corroborate other evidence that you had that he was getting in accidents as a truck driver?

A Yes.

Q In fact, was he terminated from that truck driving job?

A Yes, he was removed from the payroll on 7/15/85.

Q And it was -- he rear-ended another vehicle.

Is that true?

A Yes, and he -- it also says he's not eligible for rehire.

Q Yes, ma'am.

Judge, move that into evidence.

THE COURT: Any objection?

SOLICITOR BARNETTE: No objection, Your Honor.

THE COURT: Without objections it will be admitted as marked.

(WHEREUPON, Defendant's Exhibit No. 12 was received

into evidence at this time.)
Q Doctor Calloway, I'm just gonna go over a couple points that were raised in Doctor Brown's testimony. First there was an issue with regard to Mrs. Mildred Blackwell and completing out -- completing some forms.
Doctor, I believe -- did you hear Doctor Brown's testimony regarding his concern that Mr. Blackwell may have assisted in completing that ABAS?
A I heard that.
Q Okay. Can you, can you tell me how you administered the ABAS to Mildred Blackwell?
A Mildred was interviewed separate from Cletus. I read the questions to her, she had a copy of the response choices, and she told -- would tell me zero, one, two, and three, and I recorded that.
Q Okay. Was Cletus Blackwell filling out the form?
A No, he was not filling out the form.
Q Or participating in anyway in the execution of that ABAS?
A That's correct.
Q Okay. With regard to---
A If I could---
Q Sure.
A ---add. I understand why Doctor Brown might have thought that that -- that it happened the way he reported

it.
Q Yeah, I think he referenced the note on the form.
Can you tell the judge what the note is and what it means?
A Yes, it says I get him, and brackets, Cletus, to fill out forms for me. So, what typically happens, when I do these kind of interviews, is I say now I'm gonna -- I explain, you know, that, if possible, I would like for her to have the form in front of her, and if she had questions, you know, as we go through it, she can ask me or whatever. But she's -- and she spontaneously offered, during this explanation of how we're going to proceed, that she usually gets Cletus to fill out forms for her.
Q Okay. But not that form?
A But not that form. I administered it to her myself.
Q Okay. In Doctor Brown's report, and in his testimony, he indicates there can be events that can negatively affect IQ. For instance, a head injury.
Is it, is it accepted -- is it an accepted methodology or practice, in, in your field, to speculate in that manner within the context of an Atkins evaluation?
A Well, I heard his response and I didn't really hear it as speculation. What I heard it as is that we do place into a report, as I did, that this man was involved in a four wheeler accident. There's -- as Doctor Brown stated it

correctly, there's no evidence to support that there was any impact to his IQ and that's what I would add to that.

Q Okay. Okay. With regard to Doctor Brown's report and his testimony regarding Ricky's education and his schooling, I think he indicated that, in his report, he mentions that Ricky was, in fact, 113 out of 113 with regard to class rank.

Do you remember that testimony?

A I do.

Q Okay. But he indicated that he couldn't place much importance on that cause he didn't have additional information.

Did you hear that?

A I did.

Q Okay. With regard to Ricky's group of students, his little group of adjunct students, when he was in the ninth grade and had to repeat the ninth grade, how many adjunct students with him had to stay back?

A None.

Q He was the only one?

A Correct.

Q With regard to these allegations of independent living can you describe Ricky's living conditions after Angie left?

My understanding is his mom -- did his mom move in for a little while?

A He lived there for maybe a couple of days or I think it was by himself. He was not cooking for himself. He was -- there was no furniture in the home, and he was not cooking for himself. He was not purchasing groceries for himself. He was not -- he was not, according to Mildred and Cletus, keeping very clean with regard to his hygiene.

So, after a few days, Mildred, his mother, moved in with him and she stayed there with him and cooked with him, cooked for him rather, and provided for him and encouraged him to bathe and so forth and so on.

Q Okay. Eventually did the power go out?

A Yes.

Q And why is that?

A Because he didn't -- Ricky never paid any bills, and he didn't know how to pay the bill. His father went with him when they went to turn the power back on because Ricky was unable to do that alone.

Q How about mortgage payments, did Ricky make mortgage payments?

A No.

Q What happened to the---

THE COURT: Mr. McGuire, this was brought out in your case in chief.

MR. MCGUIRE: Well, these are the facts that Doctor Brown said he had no knowledge of it. Some of these facts,

some of these facts are new that we're bringing out in response to Doctor Brown's not knowing them.

THE COURT: That's an interesting way of doing rebuttal.

MR. McGUIRE: Well, what it's doing is it's impeaching Doctor Brown's investigation.

THE COURT: Well, you've already had this information in your case in chief.

MR. McGUIRE: Not all of this.

THE COURT: Well, let's get to the new stuff then cause I've heard about the fact he didn't pay his bills and I've heard about the fact that the mortgage was in arrears.

MR. McGUIRE: Sure.

THE COURT: So---

MR. McGUIRE: I'll be more specific about the exact information.

THE COURT: Let's do that.

MR. McGUIRE: Okay. Thank you.

THE COURT: Let's, let's restrict it to what is proper rebuttal---

MR. McGUIRE: Okay.

THE COURT: --or reply testimony.

Q Did Angie pay the mortgage at the Western Union?

A Correct.

Q Did, did Ricky continue to make payments after Angie

left?
A No.
Q Was---
THE COURT: Let me ask one question here.
MR. MCGUIRE: Sure.
THE COURT: Was this information supplied to Doctor Brown?
MR. MCGUIRE: Well, he had it available to him cause he could of asked Mr.---
THE COURT: Was it supplied to him according to my order?
MR. MCGUIRE: This would be just from verbal conversations from Mr. Blackwell.
THE COURT: So, this information was not supplied to Doctor Brown --
MR. MCGUIRE: I think that's a fair statement.
THE COURT: -- pursuant to my order?
MR. MCGUIRE: Well, it's -- I mean I'm not sure we can transmit verbal conversations.
THE COURT: Well, I asked, I asked that all Atkins information be turned over to Doctor Brown.
Wasn't that my order?
MR. MCGUIRE: Well, I -- if that would include verbal comments, then I guess so.
SOLICITOR GHENT: Well, if you're gonna -- if it's

gonna be placed in the record in the case, I'd consider that interesting -- important information. I would.

You didn't?

MR. McGUIRE: I didn't consider verbal conversations to be part of the, the order. I considered any kind of documents produced.

THE COURT: Well, I have a little problem with, when I order that all Atkins information be turned over to Doctor Brown, and he's examined on information he didn't receive, and now there's rebuttal testimony being placed up for that information. So, I'm asking a question.

Was it given to him or not?

MR. McGUIRE: The answer -- the short answer is no and a lot of this information came after he did his report.

THE COURT: Well---

SOLICITOR BARNETTE: Well, Your Honor, I'll do it -- I'll probably argue at the end of it, but I think they had plenty of -- we had several opportunities and we've had several hearings and we keep asking the same question, do we have all the Atkins material and they keep saying yes, and obviously we haven't.

THE COURT: I have a real problem with allowing you to continue this line of questioning when I feel like you didn't follow my order.

MR. McGUIRE: Well, it certainly wasn't deliberate. I

can tell you that. It would just be a -- well, I'll do whatever the Court wants me to do.

THE COURT: Well, again, I have a problem if I ordered information given to a witness so he can prepare for trial --

MR. McGUIRE: Sure.

THE COURT: -- then he's examined on facts apparently that were not supplied to him, and now there's rebuttal testimony being offered as to those same facts that were not supplied to him. The Court has a problem with whether or not its order was complied with.

MR. McGUIRE: And I don't---

THE COURT: So, I'm gonna restrict your scope of rebuttal testimony to items that were supplied to him pursuant to my order. Otherwise it's a violation of my order. I don't know how else I enforce my order.

MR. McGUIRE: Okay. And, Your Honor, I think I'd still have to proffer what I would do.

THE COURT: Well then make your proffer.

This is -- if this now is a proffer, I'll allow you to proffer it.

MR. McGUIRE: Yes, sir.

Q And to proffer for the record, what happened with regard to the trailer?

Did it -- tell me what happened with the trailer when

Ricky stopped making payments.
A It went into arrears.
Q And was it in jeopardy of being seized?
A Correct.
Q Did his father bail him out?
A Yes.
Q And what did his father do?
A He went to the company or went to -- contacted the company that held the mortgage and ultimately paid the arrears so that the trailer could be redeemed.
MR. MCGUIRE: Okay. And that, that would conclude the proffer, judge.
THE COURT: Thank you.
Q Doctor Brown testified that he, his administration of the ABAS was to actually go over the instructions and just to hand it over to Mr. Blackwell.
Did you hear that?
A Yes.
Q Would that be -- is that contrary to accepted methods in the field?
A Yes.
Q And why is that?
A There was no indication of what the grade of the -- the reading level was and whether Mr. Blackwell actually understood these questions. They're somewhat difficult for

people to follow frankly, and I've attempted to find out what the reading level is of the ABAS, and I have not been able to find that anywhere.

Q Okay. Now, when you gave the ABAS, did you administer it personally?

A Correct. As an interview, yes.

Q Okay.

A So, in other words, I asked the question, the subject had the rating scale in front of them, and then they selected from one of four choices.

Q Okay. And if somebody had a question, could you address that?

A Correct.

Q We've mentioned several times the Cloak of Competence. What is that when we refer to that?

A It's a -- it was coined by Doctor Edgerton who wrote a book about that, wrote a book, I'm sorry, not about that. He wrote a book in which he looked at individuals with varying levels of intellectual disability in terms of their accomplishments in life, in terms of their sort of demographics, if you will, I guess, were they married, were they not, where they live, so -- and so on. And he coined the term the Cloak of Competence to describe the way in which, particularly mild intellectually disabled people, attempt to what he called pass as normal because of the, the

sense of great shame that is attached to being intellectually disabled.

Q Does that include a reluctance to ask questions or ask for help?

A Yes.

MR. MCGUIRE: Judge, if I could have one second?

THE COURT: Yes, sir.

(Pause.)

Q That's all I have for you, ma'am. Thank you.

THE COURT: Cross.

SOLICITOR BARNETTE: Yes, sir, if I could have just a minute to set up?

It's not gonna take me long, Your Honor.

THE COURT: That will be fine.

CROSS-EXAMINATION

BY SOLICITOR BARNETTE:

Q Doctor, let me ask you real quick.

I believe one of ABASs was not turned over to Doctor Brown, is that correct?

A That is incorrect.

Q Okay.

A I have an email -- I have an email on 1/16/13 from Doctor Brown in which he says he got everything, and that is recorded, and I prepared it on a thumb drive in case you or the defense or this Court wanted that. On 11/5/13 I was

told by the defense attorneys that I was to -- that there was going to be a motions hearing. On 11/5/13 I turned over, started turning over my data to Doctor Brown. I was told to turn over raw data only.

Q You said---

A And I -- and, at that point, I began sending faxes. Doctor Brown and I had difficulties. The faxes were so large, the mega-bites were so large, and I use an Internet fax. So, we had quite a bit of time -- we had quite a bit of emails back and forth, and on 11/16/13 he wrote me that he got everything.

Q Let me ask you.

You said you talked to the defense on November 5th, 2013?

A November the 5th of 2013 I was informed that you, the State, were making motion to have materials turned over, and I began turning over my raw data to Doctor Brown on that day.

Q And you said you completed this by November 16th?

A November 16th he indicated to me he had received everything. I'm not certain of the day that everything was transmitted as a final note to Doctor Brown.

Q But you realize Doctor Brown didn't have it for his testimony here today or yesterday and today?

A I realized it when he said it yesterday, correct.

Q Did you -- do you have a copy of that now with you?
A I do.
Q Could I please look at it please?
A Yes, this is the, the one he said he did not get. This -- let me explain to you how this worked because -- look how this is -- these are double-sided. So, my assistant and I took them and copied every page, and then they were scanned, and I attempted to send them by email. That's when we were having trouble, and then they were also sent by fax. So, this is the one he says he did not receive.
Q Is that a copy I can have in your---
A This is a copy you can have, yes, sir.
Q Thank you, ma'am. Appreciate that.
A Uh-huh. (Affirmative).
Q Do you---
A And for -- for the record, sir, the first time I saw your memorandum to produce records was on 11/16/14 (sic) when I requested it after meeting with the attorneys on 1/15/14 during which time that memo was mentioned to me.
Q And why was the memo mentioned to you?
A Because we were discussing my report, which had been turned over, by the way, to Mr. Allen on 11/20/13.
Q Okay. When did you turn it over to Doctor Brown?
A My report?

Q Yes, ma'am.
A I'm not sure. I know I turned over the raw data on -- during that time period in November. I don't know if that's the point at which I turned over -- the, the report was written on 11/20. I'm not sure when that was turned over.
Q So, your testimony now is you turned over the raw data in November?
A Yes, November the 16th was the email where Doctor Brown said he received all the raw data.
Q Now, this is raw data on the testing and everything?
A I wasn't asked for notes. I wasn't told to turn over notes. I was told to turn over the raw data from testing and I did exactly that.
Q Okay. Now, you, you was talking about these oral conversations that you, that you were asked by, by defense counsel.
A I---
Q Did you write notes on these, on these oral conversations?
A I usually keep notes. I didn't search for that cause I was searching in my email for these dates. I do have -- one thing I have that's, if you want it, is the fax where I attempted to send some of the raw data to Doctor Brown, a fax cover sheet, if you'd like to have that.
Q Now, these are just -- let me mark this for ID

purposes.
A It's partial because they went in groups, you're right. But that, that -- I'm just offering that to you as the time at which I started turning over the raw data that I was asked to turn over.
SOLICITOR BARNETTE: Your Honor, I'd like to mark this as, I guess, State's Exhibit, I guess, whatever the next number is.
State's Exhibit 9, Your Honor, for ID purposes.
THE COURT: It can be marked as that.
(WHEREUPON, the fax was marked as State's Exhibit No. 9 for identification purposes only at this time.)
A And also, if you're still making notes, on 2/14/14, this is when I was asked to turn over my entire record at 2:36 in the afternoon, and on 2/18, after being in Court this week, I made a copy and provided that. Following up but just said.
Q Following up with what was just said, just to follow-up with what you just said there, ma'am, you didn't turn everything over, did you?
A That's correct, I did not. I was, I was told to turn over the raw data from testing and that is what I turned over. I did not receive a copy of this memorandum until 1/16/14, and I was asked to turn over the -- I was told to turn over the remaining records on 2/14/14 at 2:36.

Q Okay. And did you ever get a copy of the Court's order requiring everything to be turned in this Atkins hearing from November 21st -- at -- on November 21st, 2013?
A That's what I'm referring to on 2/14/14 -- I'm sorry. 1/16/14 is when I received that memorandum, yes.
Q No, that's not what I'm asking.
A Oh.
Q Did you receive the Court's order requiring you to turn over all the Atkins materials by November 21st, 2013?
A I don't think so because what I understood as the order is this memorandum to, to turn over the materials.
Q You realize this memorandum was to enforce the Court's order to turn over these materials?
A I think it was---
Q They had -- our position was they had not been turned over. That's the reason why we filed the memorandum concerning that.
A Okay. No, I did not receive that Court order.
Q And publishing Defense Exhibit No. 8, you listed the materials that you've looked at in this case, is that right, in your report, ma'am?
A Which report, sir?
Q It's your original report. It's Defense Exhibit No. 8. I believe they've got both reports, the supplemental and that connected to it.

A The -- if -- could I have a copy of that?
I'm not looking at that.
Q I was gonna put it up on the screen so you can follow along with me.
A Okay. I apologize. Here's my copy right here.
Q No problem.
And I'm showing the supplemental here. See if I can get it the right way there. There we go.
These are additional records that you reviewed, is that right?
A Yes, that's correct.
Q And you did put the memorandum in support of motion to enforce the agreement order?
A Yes, I did.
Q So, you reviewed that order from that standpoint?
A I did. I received that on 1/16.
Q So, you knew there was issues about, and I guess that's when you learned about the problems with the, the chart that you had with, in your original report?
A No, the -- when I learned about the issues with the charts, that was on 1/15 when we were discussing my report, and it was brought to my attention by both attorneys for the defense that you had raised the issue about some of the, what I'm calling outlier IQ scores or the discrepancies in the IQ scores, and I -- when I was looking over, that's when

I noticed that they didn't look right to me.
Q Well, do you realize we never discussed any of that in front of the Court on that?
We just wanted the information at the time. We didn't discuss the IQ scores and all that. We put it in the memo, but we didn't discuss it in Court.
A I don't know that. What I was told by counsel was that there were some issues there, and I was looking at that table and, for me, I can see that there were problems.
Q So, they pointed out that you had -- they had issues with your table?
A No, they, they -- what they said to me was that you had brought up that there were issues with the differing IQ scores, and when I was looking at that chart it became apparent to me that there were errors in that chart and there was -- it was not a correct rendering of the school records.
Q Okay. But obviously it was -- you didn't correct it -- you didn't do a corrected report until after the memo was given to you?
A I asked specifically for the memo so I could see what the issues were, yes, sir.
Q Okay. And I could, I could go through the report with you and everything from there, but did you ever consider anything involving the crime in this case?

A I don't usually consider---
MR. McGUIRE: Objection, Your Honor. Beyond the scope of rebuttal.
THE COURT: Sustained.
You have the right to cross-examine on the new matters that were brought up.
SOLICITOR BARNETTE: OKAY.
THE COURT: I'll sustain that objection.
MR. McGUIRE: Thank you, Your Honor.
SOLICITOR BARNETTE: Yes, sir.
Q But in your report, it just has what you looked at, is that correct, ma'am?
A Yes, sir, I would like to point out that we only looked at four pages yesterday. They're five pages of appendices and that's where one of the problematic areas is.
Q So -- well, you would admit though, in your report, you've made mistakes in your report?
A I admit to making clerical errors, yes, sir.
Q Okay. And this is a very serious case, isn't it?
A Yes, sir, it is.
Q And to -- and obviously a mistake like that shouldn't be made in a case like this?
MR. McGUIRE: Same objection, Your Honor.
THE COURT: Let's restrict ourselves to the new matters that were brought out in the cross-examination of Mr. Brown

that he touched on in his rebuttal testimony.

SOLICITOR BARNETTE: Okay.

THE COURT: Sustained.

Q Going back to the school records that he had asked you about, and I believe this is Defendant's Exhibit No. 6, we talk about the freshman year, the first freshman year, ma'am.

He did pass three of his five classes, is that right, and I can, I can make that closer so we can actually see it better.

A Okay. Could you point to the ones that you're saying he passed?

I think I see where you are, but I want to make sure we're on the same page.

Q Yes, ma'am, he received a credit for this one, which is adjunct math. Received a credit for prevention. Received a credit for phys ed.

A Yes.

Q Okay. And we don't know what the score -- I know some schools, for example, it's a -- 90 to 100 is an A, 80 to 89 is a B, and then there's some schools that's 94 to 100 is an A and so forth.

Obviously in some schools, I guess, the 60s would of been passing, but they were not passing in Chesnee at that time cause he did not receive credit for those two, is that

right?
A That's what -- that's the way I interpreted it, yes.
Q But he did receive three units for the year?
A Yes, I see that.
Q Okay. And then the next year, they do have him repeating ninth grade and he did get five credits for that at that point, is that correct?
A Yes, sir, that's what it looks like, yes, sir.
Q Okay. And in looking at this, one of the issues, the reason why, if I understand right, he got upset because they -- he didn't think he got the full amount of credit for his units, for the units that he had used towards graduation, is that correct?
A I don't remember that. I'm sorry. I don't, I don't recall that.
Q Okay. But obviously he went on and he got credit for the, the next year, which is this tenth grade year, he received four credits?
A Yes.
Q And he was actually in eleventh grade at that time, is that right, from the record's then?
A That's what the -- up at the top, does that say ten or does it say eleven where you have your pen?
Q It says eleven, and I apologize.
A Okay. That's right. I was back on the other side,

Year '75, '76. It does say eleventh grade right there where they're no credits. But when you were asking me the question about the credits, that looks like it was for tenth grade in '75, '76.

Q Uh-huh. (Affirmative).

That's for tenth grade, the four -- the five credits is actually for the ninth grade -- second ninth grade year, isn't it?

A '74, '75, yes, sir.

Q Okay. So, he actually received -- it looks like it should of been 12 units, but they only gave him eleven units towards graduation for whatever reason, but it looks like it should of been 12 if that's -- if my notes -- if I'm reading that correctly, ma'am.

A What are you adding together?

Let me make sure I'm following you.

Q The three, the five, and the four, and it says 12 units of points to date, 12.

A Okay. I see.

Q And it looks like -- somebody said eleven units towards graduation, and I -- obviously we don't know whose handwriting that is.

A Right.

Q But isn't it -- isn't it true one of the issues was that he was upset about the amount of credits that they were

crediting towards his graduation?
A I don't remember that.
Could you show me where that is in a record cause I don't recall that?
Q From what I was -- I just -- from my examination, I thought that came up in one of the discussions and so forth.
A It may have. I just am not remembering it.
Q Okay. Let me show you State Exhibit No. 5. I know we talked -- Mr. McGuire asked you about some of the IQ scores.
A Yes, thank you. That, that is one I was wanting to clarify. So, thank you for bringing that up.
Q Okay. Is the 86 the IQ score that you're talking about?
A Okay. Show me where you are so we've got -- I've got the same thing right here in front of me which is easier to read.
Okay. That -- those -- if you go to my Table 3-A in the supplemental report, that's what your ADA we call them in North Carolina was, assistant defense attorney, was asking me about that, that I was trying to make clear. The reason I put question marks by that column I believe it was 1970 and those three scores are on this particular copy that I have, I think that says IQ, but I'm not totally sure. And, so, I put a question mark and I definitely inserted the materials so that the reader can decide for him or herself,

you know, what the conclusion is to that information.

That's the reason for incorporating that, but I put a question there because I had to say that I didn't know for sure that that's what was -- that this, that this reads as an IQ score. But I did include them, yes, sir.

Q Okay. And one thing you keep asking about, and correct me if I'm wrong, that after his wife, Angie, left, that his father started doing everything for him, Cletus, is that right?

A His father and his mother.

Q And his mother.

Okay. But his mother, if I remember right in your testimony, says that he -- that Cletus filled out everything for her except I know you said the ABAS sheet, but that's what she told you when the -- during your interview?

A Yes, she's talking about forms. I assume your question meant did everything for him meant daily living as in cooking, cleaning, budgeting, grocery shopping, those sorts of things.

Q Okay. But in your report, correct me if I'm wrong, you used something referenced -- trying to argue the genetics of the situation, that IQ scores are affected by genetics basically by -- in your report if I understand right.

A No, sir, I wasn't trying to argue about genetics. I was trying to show that -- Doctor Brown said it very well

this morning, that there's an association between individuals who are in a family having similar IQs and that is considered a risk factor. Your associate solicitor, I think you call them here, brought up from the AA -- brought up the AAIDD manual several times in crossing me yesterday, and in that manual there's a table in there, I don't remember exactly where in the book, that talks about risk factors for intellectual disability and familial factors are one of them, and that's why I included that table in my report.

Q Well, my point is you find Cletus, you found a score of 60 for his IQ, and this is the man you're saying that's taking care of the defendant, taking care of his wife, I guess, helping fill her out -- I mean fill out her information and stuff?

A Yes, sir.

Q That's what you're submitting to this Court?

A Yes, sir, and I'm glad you brought that up because Edgerton that I just mentioned a few minutes ago, and the Cloak of Competence has a wonderful table that shows how the level of IQ doesn't always correlate one-on-one with the achievements in life. So, for example, they're people on that, on that -- in that chart who accomplished very little who have IQs around 79. But they're, they're other people who have IQs around 55 that are accomplishing quite a bit.

So, it is not a one-to-one correspondence, and you're right, I did bring up about his IQ being 60.

Q Well, my point is this, doctor. You're trying your cake and eat it too. You're trying to say well, the IQ scores are this and they're low and everything, but they -- you can't be adapted or whatever. This is a gentleman that's drove a truck. He's went all the way to Texas, to New York, to New Jersey driving through that traffic I can't imagine. Obviously he has adaptability to handle that. If you're saying his father can take care of things for him and him have to be---

MR. McGUIRE: Object to the form of the question. We've already had two questions.

THE COURT: Well, he hasn't finished the question, but he is on cross-examination and you're allowed to lead on cross-examination.

MR. McGUIRE: Yes, sir.

THE COURT: You may proceed.

SOLICITOR BARNETTE: Thank you, Your Honor.

Q So, here, here now you're saying Cletus has had all these life experiences, and he's taking care of all these things for the defendant and everything. Well, the defendant did the same thing. He took care of a family. He took care of, you know, through trucking. He obviously worked, came up to a salary of 32,000 at one point.

Increase his salary over the years. This is a gentleman that obviously has adapted very well if we believe the IQ scored and what you've submitted.

A I don't---

MR. McGUIRE: Objection. That's testimony. Lack of question.

THE COURT: Is that a question?

SOLICITOR BARNETTE: Yes, sir.

THE COURT: All right. You may answer it.

A I don't agree with you that he's adapted very well. I do agree with you that he's adapted very well in the work area, and I think about that. So, I, I simply agree with you that he's done very well in the work area, and it's also true that people with mild intellectual disability have strengths and they have limitations, and the way that I have arrived at this Atkins evaluation is to approach this topic in both a scientific way and a way that meets the standards of the field. So, I don't take one area and say work is very good for him, he has a strength, therefore, he's not intellectually disabled.

Q But you would agree there's no question he's adapted to that?

A He has adapted to the work area. I would not agree with you that he adapted to the other areas that are mentioned with regard to adaptive functioning in my report.

SOLICITOR BARNETTE: One moment, Your Honor, please.

(Pause.)

Q Let me show you what's been marked Court's Exhibit 1 and -- well, I'll actually just put it on the screen since it's already been put in. Well, not gonna -- Court Exhibit 2. Excuse me.

Your Honor, do you have Court Exhibit 2 by chance, the doctor's---

THE COURT: I do.

SOLICITOR BARNETTE: May I have it please?

THE COURT: Yes, sir.

SOLICITOR BARNETTE: Thank you.

Your Honor, I'm trying to find Court Exhibit 2. I apologize. That's 4.

Thank you, Your Honor. I apologize.

THE COURT: All right.

Q Showing you Court Exhibit No. 2 to show -- you looked at Doctor Harrison's report, did you not?

A Yes, uh-huh. (Affirmative).

Q And in her report, and I'll just read it for -- it says according to Mr. Blackwell's mother, she was previously employed at the school, she said he dropped out of school during eleventh grade upon disagreement over the number of credits he earned. She stated that he was enrolled in regular classes through his schooling.

A Yes.
Q So, obviously that, that was an issue too and the reason why he dropped out of school was an argument over his credits?
A I'll agree that's what that says, yes.
SOLICITOR BARNETTE: Okay. Thank you, Your Honor.
Your Honor, just one other thing too, just for clearing the record up, make this, I guess, State Exhibit No. 10. This is the missing ABAS and I guess it will be sealed by the Court's order.
THE COURT: Any objection to it being admitted?
MR. McGUIRE: Well, no, Your Honor.
THE COURT: It will be admitted, but it would be subject to being sealed.
Mark it, State's Exhibit.
SOLICITOR BARNETTE: And may we have a copy of it, Your Honor, just---
THE COURT: Certainly. Now, if you seal it you can't have a copy. So, if you're gonna seal it, we can't give that to you.
SOLICITOR BARNETTE: Well---
THE COURT: Sealed is sealed.
SOLICITOR BARNETTE: Can we move it in in a little bit? I know we have copies of---
THE COURT: Well, we need to talk about the sealing of

those records and we'll deal, we'll deal with that later.

SOLICITOR BARNETTE: Yes, sir. Well, I'll go ahead and mark it at this point in time.

THE COURT: Okay.

(WHEREUPON, the ABAS was marked as State's Exhibit No. 10 and received into evidence at this time.)

SOLICITOR BARNETTE: Thank you, Your Honor.

THE COURT: You wish to ask any other questions?

SOLICITOR BARNETTE: No, sir.

THE COURT: Mr. McGuire.

MR. McGUIRE: Just very briefly, Your Honor.

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. McGUIRE:

Q Doctor Galloway, I want to -- I want to go ahead and beat the horse completely to death here regarding timing of, of you turning over notes.

In our conversations, are you aware that the prosecutor asked me about your, your notes at one point?

A Vaguely.

Q Okay. And my response to him, via email, was I don't have them and nor have I seen them.

Do you remember us talking about that?

A Oh, I do recall that, yes.

Q Okay. Sometimes people have stuff I don't know about.

So, I was -- in our conversation, it came known to you that I didn't know you had these notes, is that correct?
A I'm not following that.
Q Yeah, it's a bad question.
SOLICITOR BARNETTE: Your Honor, I'm gonna, I'm gonna object. He's starting to lead the witness. It's his witness.
MR. MCGUIRE: Yeah, fair enough. I'll rephrase.
When it came to producing all of your data, did you produce everything that sort of in the normal course of business and everything that you were specifically asked for?
A I prefer to go back to what I just answered a few minutes ago --
Q Sure.
A -- which is that on 11/5/13 I had an email saying that you-all are going to Court and you're gonna be talking about turning over the data. On then -- and then I started submitting, at your direction---
MR. MCGUIRE: Fellows, shh. I can't hear.
A At your direction---
Q Yes, ma'am.
A ---or Mr. Allen's, I'm not sure which one, I started turning over my raw data is what I understood I was to turn over. You directed me to turn over my raw data to Doctor

Brown. Raw data means testing. Raw data doesn't mean notes. Raw data means testing and that's what I did. I complied with that.

Q All right. And to completely kill the horse, did you hold back anything to be deceptive or to, to gain an advantage over Doctor Brown or anything else?

A Absolutely not and it is routine, standard procedure, in every Atkins evaluation I've ever done, I've turned over everything to the State. One of the cornerstones of forensic psychology is transparency. So, I'm not into the business of being deceptive. I never would of issued a supplemental report if that were the case. No one noticed that mistake. It was not pointed out as a mistake until I pointed it out as a mistake, and Doctor Brown read my report as well and he didn't notice that there was an error. I'm the one that noticed it was an error, and I stated to you it's an error, and I think I need to issue a supplemental report, and that's what I did.

Q Fair enough. Thank you very much.

THE COURT: Yes, sir, Mr. Barnette.

SOLICITOR BARNETTE: Just one question, Your Honor.

RECROSS EXAMINATION

BY SOLICITOR BARNETTE:

Q You had this conversation on November the 5th, 2013? I just want to make sure we're specific.

A Which conversation?
Q The one you had about turning the raw data and everything over.
A Correct. I was told on November the 5th, 19 -- 2013 to turn over the raw data from testing to Doctor Brown. That's correct.

SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

THE COURT: Ma'am, the Court has a couple of questions.

THE WITNESS: Yes, sir.

THE COURT: Is it true that, and I think it's true, I just want to be sure that it's correct, that the defendant, when he was admitted to the hospital after the separation between he and he wife, what was the diagnosis at that time?

THE WITNESS: Let me look it up, Your Honor. I believe it was major depressive disorder. But let me just make sure. That's in my report. I've got my report right here I believe.

THE COURT: I think that's what Doctor Brown testified to, but I want to be sure that you agree.

THE WITNESS: That's my memory. But I would rather not trust my memory when I'm under oath.

THE COURT: Sure.

THE WITNESS: Okay. Here it is.

Okay. So, that would of been in 2008. He was committed involuntarily and the discharge diagnosis, yes,

was major depressive disorder recurrent, severe, and without psychosis.

THE COURT: All right. Tell me what the symptoms are for that diagnosis.

THE WITNESS: With major depressive disorder, it's more than just, you know, I feel bad because something bad happened in my life. Major depressive disorder is an Axis I disorder in the DSM. So, that means it's a major mental illness. It's usually accompanied by disturbances in thinking, the mood fluctuations are ones that I would call endogenous. In other words, they're inherent to the person. They're not external, caused by external circumstances. They're a part of the person's makeup. So, an event can trigger the major depression, but the major depression is an endogenous sort of condition, and then it usually has these disturbances in thinking. But being diagnosed as major depressive disorder means he has a mood disorder that is a mental illness.

THE COURT: And it was recurrent?

THE WITNESS: And it was recurrent.

THE COURT: Meaning he had had that on another occasions.

Do you remember when that was before?

THE WITNESS: I believe it's in this. Let's see. That would have been in 1990 and at that point that diagnosis was

also major depressive disorder recurrent and partial remission at discharge.

THE COURT: So, is that, that, though, a mental illness that apparently people can get over and they recover from that even though they still have the propensity to have that problem---

THE WITNESS: That's a good---

THE COURT: ---or is that something they suffer with over a long period of time?

THE WITNESS: That's a good question. I would say they suffer with it pretty much and management is the key issue. But people do have periods of recovery where they may not be exhibiting the mood fluctuations. They may not be exhibiting the thinking disorder part of that or they may not have the anxiety that can go along with it at times. But -- and it can be -- and usually medication is the best way to help someone resolve their symptoms, and it would be a medication like Seroquel, for example, or something like that that could be used.

THE COURT: So, what would you expect though -- what -- you say they have major difficulty in thinking or they have problems with their thinking?

What would be the symptoms of that?

How would -- if I were observing someone, what would I notice about someone who was suffering from that condition?

THE WITNESS: From -- what would you notice as far as their thinking?

THE COURT: Or that -- no, their actions, what they're doing.

THE WITNESS: Their mood.

THE COURT: How would I know someone had -- what are the symptoms, outward symptoms that someone exhibits when they have that condition?

THE WITNESS: Well, you might not note it -- notice it if you met them on the street or if you met them even in the courtroom, for example. But usually there's a significant amount of -- the affect, the emotion that they're exhibiting is quite sad. They look depressed. They look lethargic. They look exhausted, fatigued, those sort of things. They -- it could be -- it could be an agitated type depression. So, in that case they would exhibit a number of anxiety symptoms.

THE COURT: So, it could be one or the other?

THE WITNESS: Correct. It could be either one or the other, correct.

THE COURT: All right.

THE WITNESS: And at different times, Your Honor, on the same individual, you could -- I've had people that, when I was seeing patients, that, at one point in their major depression they might be exhibiting the anxiety. At another

point they might be exhibiting the sadness.

Usually they're fairly significant sleep disturbances to the point sometimes where people flip around what is called their diurnal cycle, and that's why I think, at times, people sometimes get confused -- sometimes are diagnosed also with a bipolar disorder because that would be characteristic of a bipolar disorder.

THE COURT: All right. And now that occurred in November I think you said of '08?

THE WITNESS: The one that you asked me about first?

THE COURT: First.

THE WITNESS: Yes, sir. No, I'm sorry. That was in December.

THE COURT: December of '08.

THE WITNESS: Of '08, yes, sir.

THE COURT: Okay. That's when the diagnosis -- that's when he was being discharged?

THE WITNESS: Correct.

THE COURT: So, he actually went in with that before that period?

THE WITNESS: That's correct and I don't remember the exact time period he was there, but it was longer than a few days. So, you're probably right. It was probably like mid to end of---

THE COURT: Now, is that problem quite apart from any

problem that he may have exhibited concerning his mental retardation or intellectual deficits?

That would be a different problem than they're -- those, those are two different problems?

THE WITNESS: Yes, sir, that's called co-morbidity. In other words, you can have both and rather than either or. So, you can have -- one of the problems that we've had in North Carolina is trying to educate the State experts about the fact that you can also have an antisocial personality disorder and have mental retardation or intellectual disability. There's co-morbidity, which means that you can have two diagnoses or possibly more at once. So, the mental retardation/intellectual disability falls into the developmental disorders cluster if you will.

THE COURT: Uh-huh. (Affirmative).

THE WITNESS: And then the major depression falls into the mood regulation and thinking disturbance.

THE COURT: You called it a mental illness?

THE WITNESS: Yes, that's correct.

THE COURT: Okay.

THE WITNESS: Yes, sir.

THE COURT: All right. That's it for me.

Anything to follow up on that with the witness?

MR. MCGUIRE: No, sir.

SOLICITOR BARNETTE: No, sir.

THE COURT: All right. Ma'am, you may step down.

THE WITNESS: Thank you, sir.

THE COURT: Defense wish to call other witnesses in reply?

MR. McGUIRE: Nothing further, Your Honor.

THE COURT: All right. You wish to make oral argument?

MR. McGUIRE: Yes.

THE COURT: All right. It's your opportunity.

MR. McGUIRE: Judge, what I would do is actually come out of the gate saying that I think, based on some of the shortcomings of Doctor Brown's investigation and methodology, that, as the gatekeeper with regard to scientific evidence, that you actually should reject his testimony and his report, and, in essence, you really only have one report or one expert testifying before you.

The reason I say that is because -- and I like Doctor Brown, and I'm not criticizing him personally, but he's got some limitations on him. As he indicated, logistics, resources, manpower, and time. And that's not his fault. That's just not his fault. But -- and in the notebook that I passed up with all of the journal articles, with regard to the best practices in the field, you have an over---

THE COURT: Now, those, those were put into evidence as information that your expert relied upon in formulating her opinion.

MR. McGUIRE: Oh, sure.

THE COURT: That was the basis on which that came into the record---

MR. McGUIRE: Sure.

THE COURT: ---for information.

MR. McGUIRE: But it's information, it's information the Court can certainly consider. And when you look at the, the practice in the field, it's clear more information is better, and as some -- as some of these cases have come through the legal system, some of the best practices are now being incorporated into the law, and we can actually say, as a matter of law, people should be doing A, B, and C.

And in the United States versus Davis case, which is in the first volume of those two large notebooks, you can pretty much read that case and decide this case. When you look at the recognized -- the Court recognizes the best practices in the field and says that the Court's gonna analyze that case through that lense. This is an Atkins case. It has the requirement to the highest degree of reliability and the best practices in the field should prevail and that's how the Court judged that case, and, in fact, Doctor Greg Olley testified in that case, and there's a---

THE COURT: Now, he's the guy that said you had to have a matrix of ten to twenty people for an ABAS score to be

valid, wasn't he?

MR. McGUIRE: Well, no, ideally.

THE COURT: Well, that's what he -- I mean that's what I took from the testimony.

MR. McGUIRE: I didn't take quite that. I took as many as, as you can get.

THE COURT: Well, he said ten to twenty. I saw that. I read it in some of the materials.

MR. McGUIRE: Okay. Well, then I might -- I can be wrong on that.

THE COURT: I'll go back and look at it.

MR. McGUIRE: Fine.

But I think, but I think what we can agree on is that when the numbers are set that high, that that's what you strive for.

Now, in some cases, a person's world is just so restricted that you're gonna have just limited numbers of people to be historical reporters. I mean that's kind of where you get stuck, and I think that's also an indication of having mild I.D. or mild M.R. is that your world is so constricted, and you're gonna have a lack of valid reports.

Also, we have the case where we had a 50 year old man. We were trying to talk to people about his skills in high school and growing up and work and everything else. Now, you can see, and Doctor Brown agreed, we did a thorough

Atkins investigation. We went out and talked to everybody we possibly could. Everybody that had relative information we included.

Now---

THE COURT: And that information was turned over to Doctor Brown?

MR. McGUIRE: Absolutely. Sure.

THE COURT: Okay.

MR. McGUIRE: And he -- but now he does agree that using the defendant is fraught with some problems, and Doctor Olley has written it's not a valid source of information.

THE COURT: On the ABAS?

MR. McGUIRE: Correct.

Oh, yeah, on his IQ score, I will embrace that cause it clearly satisfies prong one. But -- so, with -- and, in fact, I'm not even arguing about prong one. I think we can all agree we're -- we, we satisfied that. So, I don't think I need to take the Court's time. So, I'm really just -- well, now you're making me think that I need to.

THE COURT: I saw a lot of different scores.

MR. McGUIRE: Okay. Well, let me go back. Then I am gonna address it. So---

THE COURT: Well, didn't I see it as high as 86 and it's as low as 63 maybe?

MR. McGUIRE: Okay. Well, that definitely tells me that we need to address it.

THE COURT: All right. I'm just saying what was in the record.

MR. McGUIRE: Sure.

THE COURT: Okay.

MR. McGUIRE: Well, what we have in the record, we have tests that test different things, and they, they turn out a -- they turn out a score that's equivalent to an IQ. And now, when I was examining Doctor Calloway in redirect, I actually brought out the fact we were a little loose with our language, and we were not saying that he had an IQ of 87 when people were referencing that test. It's just that that test reported out that number.

Now -- and I'm gonna pass up some case law in a little bit, but what you'll see in the, in the legal field is that, absent a narrative from the test regarding exactly what the test is, is measuring, and the conditions of, of how it's given, and does it comport with, like I say, a WAIS, and then the fact is, without a narrative bringing that kind of test up to a WAIS, it's -- they're generally discounted by the Courts and that's where we are.

I mean the gold standard is an individually administered standardized valid and reliable IQ test. None of the tests that you saw from school records are those kind

of tests.

THE COURT: Well, we don't have any of those from back when -- the relevant timeframe, which is before his 18th birthday.

MR. McGUIRE: Except when---

THE COURT: According to you then, there's no relevant IQ test before that we -- that we have any scores before his 18th birthday.

MR. McGUIRE: I'm not sure I'd go so far as to say no relevant tests because these are---

THE COURT: Well, that's what I -- well, I wouldn't say that either, but that's what you're saying though I'm saying.

MR. McGUIRE: Well, if you're leaning one way or the other, then not relevant is the way to lean, and that's because, and that's because those are not IQ tests.

THE COURT: Okay.

MR. McGUIRE: They're just not IQ tests. If you look at Doctor Brown's report, he also says that you can not equate those IQ tests with an individually administered standardized reliable valid IQ test.

THE COURT: I understand that, but they have some probative value.

MR. McGUIRE: They have some probative value.

THE COURT: Probably shouldn't have been put in the

record if they didn't.

MR. McGUIRE: Sure. They have some probative value in that they are sort of blunt screening instruments, and, of course, he scored a 68 on one.

Are there one or two outliers?

Sure.

And that's -- that's also addressed in what's called variance, and there's an article in that notebook, and I can -- actually Doctor Calloway talked about variance. With mild M.R. people, you do see variance a little bit. But, again, those are not IQ tests per se. They are, they are blunt screening instruments. They do measure some cognitive functioning, but they're not IQ tests, and Doctor Brown agrees, and that's in his report as well, and I do want to go back, back to what I was talking to Doctor Calloway that we were being loose in our language when we said IQ of 87, and, for instance, one of those outliers was IQ of 68, the first IQ test given at seven years old.

I need -- what I did was I clarified the point that nobody was actually vouching saying that was, in fact, his IQ. That is just an approximate number that's turned out by those tests. They're -- many of them are obsolete, they're different now, and none of them come with a narrative saying that they are something that you should rely on with regard to IQ.

Now, we have two IQ tests given later in life. One's a 63, one's a 68. They're in the mild M.R. range and Doctor Brown considers them roughly similar in, in score, and, again, the case law I'm gonna pass up to you, there's a presumption in the law that, an IQ -- in science and in the law that IQ remains relatively constant throughout life, that intellectual disabilities are a lifelong condition, and you can test it later in life and reasonably say that yeah, that was constant in life and you can go back before 18.

There's -- the Courts -- the criminal courts have not dealt with mental retardation to the extent that other courts have. For instance, the Federal Courts, with regard to Social Security benefits, I want to hand you up cases with regard to what are called 12.05 claims, and, as a matter of law, in the Fourth Circuit, they have come to the position that there's a rebuttable presumption that an IQ tested later in life is a reflection of an IQ that's constant throughout life. You would have to have evidence of some sort of event negatively affecting IQ to point and say that it's not constant, and speculation doesn't cut it. That's been condemned in all the case law.

So, we're -- with regard to prong one, I can tell you that there's no doubt that he's -- he's satisfied prong one. You'd have to speculate otherwise. You'd have to speculate that something must have happened to him to bring his IQ

down to the mid sixties, and speculation is forbidden in all of the Social Security cases. It's not allowed. Even when you have an event with some evidence that affected a persons's brain, you would actually have to have additional evidence that it affected their intelligence quotation.

For instance, one of the cases I'll pass up, there was an event with carbon monoxide, and there was some testimony that it actually affected a person's, person's cognitive ability, but there was no testimony or evidence that it affected his IQ, and mere speculation that an accident can affect someone's IQ is soundly rejected, and that's what -- that's what you have to do in this case. You would have to speculate that somehow this, this IQ, these IQ scores, which represent a constant condition in life, were somehow affected, and speculation is been condemned and forbidden as a matter of law in all Social Security cases.

I mean I've got -- I mean if you're -- I mean I don't know how to say that otherwise. You, you---

THE COURT: I'm not asking you to say it otherwise.

MR. McGUIRE: I mean I'll move on.

THE COURT: Yes, sir.

MR. McGUIRE: And with regard to the adaptive deficits, again, the reason I say that you reject Doctor Brown's report and testimony, and really just look at the unilateral presentation is that what you should do is go out and get

the best information you can, and get a number of people, and interview them in person, and, and get the very -- the best information and as much of it as you can, and that's what we did. That's what Doctor Calloway did.

Now, Doctor Brown gave the ABAS to Mr. Blackwell, which he agreed that Doctor Olley would say is not a valid source of information with regard to adaptive deficits. So, we're starting with one source of information that we all agree, even the State's expert agrees is not a valid source of information.

So then you look at the ABAS information conducted by Doctor Calloway, and while Doctor Brown sort of speculates that, you know, you can always have bias in reporters, the fact of the matter is that's a minister---

THE COURT: Yes, sir, that's the reason you need more reporters.

MR. McGUIRE: Sure. I agree. But we got as many as we could, and I'm not sure they're any more out there to talk to. This is it.

THE COURT: This is what we have.

MR. McGUIRE: It's what we have, and, you know, when I got Doctor Brown's report and it didn't agree with Doctor Calloway's, I was disappointed, but I knew that was not gonna be because there was any information counter to what she found. That just wasn't out there.

So, really -- well, actually let's look at that.

THE COURT: Well, now, the ABAS, the score, when I finally got down to it, that's a component of determining this prong. But if it was simply doing an ABAS test and come up with a number, there wouldn't be any reason to talk about it any further.

MR. McGUIRE: Right.

THE COURT: There's more. There's a subjective element to it.

MR. McGUIRE: There is. There is and---

THE COURT: And I think Mr. Calloway -- Doctor Calloway indicated that to me when I asked about that, that there is a subjective element.

MR. McGUIRE: Sure. And let's look at that subjective element with regard to the ABAS.

THE COURT: All right.

MR. McGUIRE: And I think what she testified to is that she placed some weight on the fact that Heather was a, was a high rater, and her IQ scores were in the in -- one of them was 57, and she loves her dad, and she thinks he can hang the moon. And she, she used her clinical judgment to place different weights on, on those reports, and she went with the consistency and the convergence of the information from school teacher, employer, supervisor, mom, and dad.

And when you look at all that, and you look at the

people even outside the family who, on some occasions, rated Mr. Blackwell lower in functioning than his own family did, you can see that, when you gathered the information from all those different sources and it comes together and it's consistent in a line pointing to adaptive deficits, that -- she was required to find adaptive deficits if she's gonna follow the best practices in the field, that she could abandon her role as an expert, and not apply any kind of clinical judgment and just go with numbers. But then she'd be putting her head in the sand that---

THE COURT: Well, I wouldn't expect someone to do that, but the testimony initially was well, I just do the numbers and record them, but there's, there's more to it than that.

MR. McGUIRE: There is a little bit more to it.

THE COURT: There's a lot more to it than that.

MR. McGUIRE: Well, well, in the sense that you have to---

THE COURT: From what I've heard in this courtroom the last few days.

MR. McGUIRE: Sure. Well, in the sense that you have to apply some judgment in---

THE COURT: Yes, sir.

MR. McGUIRE: I mean you can't -- what you can not do is place your head in the sand and have a man's daughter, who has an inflated view of his abilities, to come in and

skew a -- the instrument. And, and if she didn't apply her clinical judgment in that, at that moment, she would of been -- she would of not been following best practices in the field, and she would of put her head in the sand and then just putting the numbers out in front with no judgment, no quality control whatsoever, and she'd be remiss. And I think that was sort of the way -- that's the -- I think that's her testimony.

THE COURT: Okay.

MR. McGUIRE: So, when you look at the ABAS, and the adaptive deficits, and the, the, the finding of adaptive, of adaptive deficits, the only thing to counter it is a little speculation on the part of Doctor Brown that there could be some bias. But I think that's quickly taken away, and anyone can find that, that Heather is a high reporter. So, she's not biased by painting any kind of deficit, and then his own family was rating him higher than people in the community, a neighbor, a school teacher, an employer, and a supervisor.

So, the -- when you look at the -- when you look at those -- that work, it is genuine and it is objective and it's coming from all the available sources and is it all consistent and does it all point to one direction and the answer is yes. And the only thing you have to counter it is a little speculation from Doctor Brown, and the fact that he

had some information from a not valid source, which is Ricky Blackwell.

So, his methodology is not consistent with the best practices in the field, and he speculates in his report, and the case law indicates that that's condemned and improper. So, part of his report is contrary to the law.

Now, the other thing---

THE COURT: Say that again.

MR. McGUIRE: Part of his report is contrary to some holdings in the law, which is that speculation is not allowed in, in Atkins cases. Well, in M.R. cases.

THE COURT: South Carolina cases say that?

MR. McGUIRE: Yes, District Court of South Carolina.

THE COURT: District Court?

MR. McGUIRE: Yes, sir, and the other thing that we need to discuss is the great reliance on Doctor Harrison's competency report. There's a case in, in the notebooks I passed up Evins, and when you look at Evins, and you look at the Court's discussion of the statute that, that we used to do competency evaluations and M.R. evaluations, it indicates---

THE COURT: Is that a South Carolina case?

MR. McGUIRE: Yes, it's a South Carolina case, a state case.

When you look at that case, it indicates that the -- if

there is merely a sign of M.R., the reporter should report that back out to the Court, and that they should not continue their evaluation. Now, what -- and that's the, the one factor in that case was a low IQ score from school records of 68.

Now, it's clear what Doctor Harrison did was she engaged in an analysis and weighted different information to come to a conclusion, and actually the statute forbids that. As a matter of law, it says preliminary indications of M.R., that's the statutory language, and when you look at the Court in Evins, they interpreted that as a sign, merely a sign of mental retardation. Based on the school records that we know she had, the, the scores that are reflected out in the records, including his elementary level abilities when he was 18 years old, and his failure to complete school, these are all -- this is, this is all considered, quite frankly, evidence of M.R. in the totality of the circumstances none -- much less signs.

So, she actually has misinterpreted the statute. The -- and she said if we referred everybody to DDSN that had some sort of low IQ score in the records, we would be referring everybody, but that's not enough to DMH to, to decide. It says if there are signs of M.R., you report out to the Court and you cease the evaluation.

So, her report actually, as a matter of law, she should

of said I'm reporting out signs of M.R. and we're not continuing this evaluation until further clarification from the Court.

So, the fact that Doctor Brown is placing this great reliance on these conclusions by Doctor Harrison, he's actually relying on something that's incorrect as a matter law. If you read Evins and look at the evidence in this case, this -- a similar result should of been reached, and that is that no evaluation should of been completed to that end and she should of reported out signs of M.R. So, he actually should of been saying I have a report from DMH saying signs of mental retardation if the statute is followed.

So, anything in Doctor Brown's report placing great reliance on Doctor, what Doctor Harrison, what Doctor Harrison did is, is misplaced as a matter of law. And even if you don't consider it misplaced as a matter of law, let's look at what she did. She didn't do anything. She talked to him and asked him some questions. He could talk and he could communicate and she looked at some records and said he could work and live independently and now we know that he really can't live independently.

So, she really did nothing. So, he relied on almost nothing, and just kind of a clinician's gut just from eyeballing somebody. I can tell you that's not gonna pass

muster in a capital case when the Atkins standard and the Eighth Amendment requires heightened reliability.

She, she gave no tests, no screening tests, no short form tests, no WRAT, no WRAT-4. I mean there are a number of short form tests she could of given just to see and did nothing. Did nothing. He relied on nothing except a clinician's judgment, and that's not gonna pass muster, and, you know, that's it. That's Doctor Brown's report.

I mean everything in the report -- it's not just a road of red flags. It's an island of red flags. There's nothing but red flags in it, and, you know, going back to a case that I mentioned previously, U.S. v. Davis, if you read Davis, you can pretty much decide this case on the reasoning followed in Davis. You have to look at the best practices, were they followed, and then when you -- and they weren't in this case, and you have -- actually I'm just kind of repeating myself. I mean the evidence is overwhelming. You really have almost no choice. There's no room really for decision.

THE COURT: Anything else?

MR. McGUIRE: Oh, and, judge, you know, I'll just -- what I'll do is, with regard to the third prong, onset before 18, they're a number of cases and, and they all just say that you can take adaptive deficits that are observed and go back and extrapolate back. I say on the IQ test,

test you can do that, and the evidence of M.R. is being, being in special ed classes, adjunct classes, struggling and failing high school. That's all evidence of M.R. It's all evidence before, onset before 18, and that's, that's in all these cases.

And what I'll do is, you know, you know, before I started doing these cases, if somebody would of described Mr. Blackwell's condition to me, and the facts of this case, I would of said there's no way that person could possibly have an intellectual disability.

But you know what?

That's because I was applying my definition of M.R., the definition of Bill McGuire had that I never learned from anybody. It's kind of my gut feeling, but I was wrong.

When you look at the definition, he clearly meets it. Not only -- just he absolutely meets it, and obviously what the trap is to look at a skill or a success. And when you go to the AAMR manual, and there's an excerpt in your notebook, but there's an assumption right off the bat that says with this definition they're assumptions. One of the assumptions is that a person with deficits, with M.R., mild M.R. will have skills coexisting with weaknesses, and that's also assumptions that's recognized in the law in the U.S. v. Davis case.

And there are a number of cases that I was able to

find, without too much difficulty regarding truck drivers and I'll, and I'll quote them for the record. It's, it's Muntzer v. Astrue, and I've got a -- I've got all this case law for the State.

Muntzer v. Astrue, 502 FSupp.2d 1149, 2007. That person -- now, these are admittedly Social Security type cases, and when they're appealed they go up to the Federal District Court.

THE COURT: What's the test for Social Security?

MR. McGUIRE: It's the same. It's the exact same except---

THE COURT: Exactly the same?

MR. McGUIRE: Exactly the same, and all the, all the cases contain that in here. It's exactly the same except you have to show not just mild M.R. You also have to show a severe disability that would also prevent you working. So, actually when Doctor Harrison's said that she saw that when he was, he was receiving benefits, that it was for physical, not for mental reasons, and that she relied on that, that piece of information, she was actually wrong. You can't get mental -- you can't get disability for being mild M.R. without showing a coexisting severe disability. So, she was actually wrong in making that assumption.

But in the, the Muntzert v. Astrue case, the claimant in that case went to the truck drivers, truck driver

training school, had the CDL, had a long work history, he was a high school grad, but his testing indicated he was about sixth grade level, and that case goes on to cite another skills with regard to work that are not inconsistent with being M.R. They would include painting, wallpapering, landscaping, a factory line worker, another truck driver case with specific ability to read and navigate with a road atlas, a person going two semesters at a college, a seamstress. That case also mentions the presumption that IQ is constant through life. Just speculating that it might be lower now is improper.

There's another case, Smith v. Astrue, 2011 WL 846833. That person had a sixth grade education, was a bartender, was a customer service rep. And, again, regarding speculation that events later in life could of affected IQ is condemned in that case as well.

Maresh v. Barnhart, 438 F.3d 897, 2006. They said that struggling in special education classes and dropping out in the ninth grade, having some trouble reading and math and an IQ of 70 is evidence of M.R. Also they embrace the presumption that IQ is constant over time.

Brown versus Secretary of Health and Human Services, 948 F.2d 268, 1991, in that case the person's a truck driver. He had a driver's license, had some significant living skills, could use a road atlas, and the Court found

these skills were not inconsistent with M.R.

Radford v. Astrue. That person was a high school graduate, had employment as a seamstress, a day care worker, had some minimal math and reading skills, and was in special education classes. The Court quoted "mild M.R. is not inconsistent with maintaining a home, caring for children, obtaining a GED and being able to read and write." They also concluded that most mild and mentally retarded people will, in fact, work.

Maybank v. Astrue, 209 WL 2855461, that's a District of South Carolina case. The claimant had a commercial driver's license, tenth grade education, could read a little bit, his sister helped him with his mail. He could write, add, substract, and he quit school because he couldn't keep up with the rest, and he failed two or three grades in school. He worked as a stacker before driving a truck. All that was not inconsistent with M.R.

Shaw v. Astrue, 2009 WL 2486932, from the Eastern, Eastern District of North Carolina. That -- in that case, the claimant had an IQ of 75. Worked 12 years as a machine repairman at a tobacco plant. He was in special education classes in school, completed the 12th grade, and could write pretty good, do addition, subtraction, but had difficulty with change, and he could not multiple or divide. All of these skills were found not inconsistent with being mildly

M.R.

Grenham v. Astrue, 209 WL 1209026 -- 26, District of Massachusetts, the claimant worked as a janitor, had a job unloading trucks, worked in a paper mill, was also a grave digger and worked for an alarm system company. He's married, had three children, had an IQ of 69. All, all of these work skills, not inconsistent with mild M.R. Also the Court deemed speculation as to IQ being affected later in life is forbidden and that this case also notes in the Fourth Circuit, our circuit, has a rebuttable presumption that IQ is fairly constant through life.

Lombard v. Barnhart, 203 WL 22466178, District of Maine. Claimant was a forklift driver, similar to this case, was in special ed -- was in special ed classes, but got As and Bs in those classes, graduated second from bottom in the class, could not read or write very well, and all of that not inconsistent with mild M.R. Also embraces the presumption that IQ is stable through life.

Mace v. Astrue, 2008 WL 4876857, District of Maine. Claimant worked 21 years at a lumber company, was a cook, a cleaner, had an IQ of 69, graduated high school at 20, repeated fourth grade several times, entered the Army, but failed to complete training. All that not inconsistent with mild M.R. Speculation of IQ being affected by events after 18 condemned in that case.

Dye v.---

THE COURT: Do you want, do you want to submit a brief?

MR. McGUIRE: Only got a couple more, and it's for the record. It's for the record, judge, and I just be allowed to cite maybe four more cases for the record.

SOLICITOR BARNETTE: I would love to have copies of all that. I'm sure that's not all in that of what I just got.

MR. McGUIRE: Yeah, they're all right there.

SOLICITOR BARNETTE: Okay.

MR. McGUIRE: And, judge, Number 11 and I've only got about five more.

Dye v. Astrue. Claimant -- that's Southern District of West Virginia. Claimant had a driver's license, was a farm worker for 28 years, and worked briefly on an oil rig, did laundry, paid bills, went shopping, went hunting. At 46 he was determined to have a reading ability at a fifth grade level, similar to this case, spelled to a second grade level, performed math at a sixth grade level, very similar to our case, and also embraces the fact that IQ is presumed to remain relatively constant in life.

Rivers v. Astrue, District of South Carolina. Claimant had a GED, went to the ninth grade. Long work history as a skilled cement finisher. Also worked as a security guard. And the quote, the quote from the case that's notable is "reliance on claimant's work history to reject IQ scores is

rejected in the Fourth Circuit." Directly out of that case.

Strong v. Astrue cites Atkins v. Virginia regarding the definition of adaptive deficits. In that case the claimant had a driver's license, was once married, had a, had a new girlfriend, had worked years of gainful employment, but there was some evidence -- held back in school. You know, in that case, they actually go through an analysis, an analysis of, of how to weight different examiner's opinions. They actually say somebody's who's a non-examiner who didn't actually look at the, the claimant in regard to disability, that that person's opinion should be discounted or given less weight.

And in an Atkins situation, what you're actually looking at is a condition that's observed by other people. I think failure to examine the other people is fatal to Doctor Brown's report. Just to review it, I say that his, his opinion should carry the same weight I think would be an error of law in the case.

Owens v. Astrue, in that case the claimant trained as a welder. He was a graduate of high school. He had a driver's license. He worked as a logger and mechanic in the cold mines. What was notable in that case was that he -- they, they addressed the fact that he was able to work, had to do mechanic work because it was so hands-on much like just being in a truck and learning how to drive a truck.

That would be similar to our case. In that case, the claimant had an IQ of 65. Showed performance at seventh -- fourth grade for reading and math. Similar to our case. They do indicate that evidence, the evidence of, of M.R. may not be rejected for no reason or the wrong reason. They embrace the idea that IQ is presumed relatively constant over time, and they quote the Fourth circuit has held that the administrative law judge may not rely on previous work history, history to prove non-disability where the criteria are met.

Harrell v. Colvin, 2013 WL 3200661, Eastern District of North Carolina. Work ability is not inconsistent with M.R. AJL can not speculate to reject IQ scores that are not called into any question by experts and which are not inconsistent with level adaptive functioning.

I mean when you look at the body of case law, and the, the standards in the field, you really do have only one decision to make, and this is a unilateral presentation of reliable evidence. And, again, I mean I like Doctor Brown, but his report, it's a little island of red flags, and there's, there's nothing, nothing to impeach the data from Doctor Calloway.

She's not biased. The report is not biased. The information is what it is. Well, let me rephrase that. I think Heather was biased. I think she loves her dad and she

inflated his scores. I think she had some bias to her. But when you look at Cletus Blackwell, Mildred Blackwell, mom and dad, and you look at a man of God, the minister, I mean he was rating Mr. Blackwell lower than Cletus and Mildred Blackwell, and the minister was being, I'm sure, not biased, and you have a school teacher and two people that he worked with.

Again, when you, when you look at Doctor Calloway's report, the only way that you can not decide that we've met the burden by the more likely than not standard is to find some flaw in it, and the only, the only thing that even tries to find a flaw in it is Doctor Brown's report and it's a little island of red flags. You really only have one decision to make and it's, it's borne out both, both in the literature in regard to the field and the case law.

Thank you.

THE COURT: Thank you.

Mr. Barnette.

SOLICITOR BARNETTE: May it please the Court, Your Honor.

Obviously, I don't think they've met the burden from that standpoint. The interesting thing was he mentions all of these cases. One of the cases he mentioned, the work history is not relevant. Well, obviously it is relevant. I mean it comes in the testimony -- it comes on through there.

But the thing that bothers me is, and I know, as the trier of fact, you know this, the credibility of the witnesses. If you look at Doctor Calloway, you talking about red flags. She admits she made mistakes in her report.

One thing that when Mr. Ghent questioned her or whatever, she said, not one, but twice, she cut and paste.

So, what's she doing cutting and pasting out of these reports and everything from there, and it's in the record cause I remember making notes on it, she's going through and picking and choosing. It's like what Mr. McGuire does. He wants to pick and choose what he wants.

They get to hire their own expert. Obviously we approached the Court about experts and everything. You appointed a Court expert, Doctor Brown, which is a neutral person in here. He's not working for us. He's not -- I know Mr. McGuire says he's a state expert. Well, he's not. He's the Court's expert from that standpoint.

And both him and Doctor Harrison went through and listened to them, and if you went through all the medical records, everything, nobody mentions anything about mental retardation. He's been through psychiatric treatment. He's been through medical treatment. He's been through all these years going through there.

He's had instances where he's had to go to Patrick

Harris. Nobody has mentioned this. Nobody's even looked at it from that standpoint. It's no indication of it.

The first time it comes in the case is when he's given a death notice and his attorneys go hire an expert and the expert says, oh, by the way, he's mentally retarded now, and the thing they want you to do, they want you to discard the school work that he did. They want to discard all the IQ scores from there, and there's ranges from 68 to 87 and through there. And, of course, you'll have those in front of Your Honor from there, and I submit they are irrelevant just like any other score especially when we're looking at before 18 from there.

And one thing they kept saying well, he's 113 out of 113. Well, he dropped out. Usually they take the last person that dropped out, and that's the score they go from. That's what I would submit to you being an ex-school teacher myself.

The next thing that was interesting in the record, he probably got mad because of what they did with his credits. He wanted to graduate on time. You have to have a certain number of credits and they were taking one away from him, and he said well, if I'm not gonna graduate on time, I might as well just go ahead and drive a truck, and I think his mama's telling him in the interview when the social worker called for Doctor Harrison from there.

And another thing I thought was interesting too, she said she didn't review the jail records. She didn't want to look at any of that. That stuff is pertinent to him right now from there. That's stuff that he is doing now to show what his adaptability was, what he may do, or whatever. They just totally disregard that. They don't want to deal with that. They don't want to deal with the crime itself, what happened that day. That's probably the best example of what he was doing that day.

His availability to form the crime, to do the crime, and so forth from that. They don't -- they just totally disregard that. They just want a circle on this ABAS test and the interesting thing about the ABAS test, I know the report that we did not get, and I thought it was interesting -- I appreciate the Court asking about that. Obviously Doctor Brown didn't have all the information. One form or the other he didn't have, and I know Doctor Calloway says it's a mistake on one of the ABAS test talking about Louise Scruggs.

But if you look at that, she rated in four areas. Communication, ten. Self-care, 13. And then they had community use two and functional awareness one. She answered all the questions of communication and self-care. Several questions was left blank in the other two areas, and I think you noticed on one of the other tests, I believe it

was the employer, it was left blank.

So, it's left to the, the subjective examiner's opinion on these items, and obviously her opinion is that -- and I disagree with it obviously, and I think most people would disagree from what she found on the ABAS test. If you go through those and look, and I think the Court was very appropriate to ask her questions about her direct examination the first time around, is that she submitted these items and, you know, it's her subjective opinion. But if you look, it just doesn't add up to what her evaluation was, and they knew that was probably the most crucial part to this. They had to try to knock that out and try to figure out reasons.

Cause you look at his work history, I mean it's amazing, and he did, he came back and worked. He is a hard worker. There's no question about that. But if -- you go through and he started out at a low amount. He wound up making $32,000 a year. He was working as a fork lifter (sic). He had a CDL license. He was traveling to Texas, New York, Oklahoma, Tennessee. There wasn't anybody with him when he was traveling with that truck down there.

Obviously he had to take care of himself to get through there and he worked through it, but he was a worker doing that, and, to me, that shows no question he has adaptability. He meets those prongs.

They can argue on the IQ test, the 63 and the 68 or whatever. But that was well after he was 18. Well before -- and well after this crime occurred, two or three years.

He's been on Thorazine, different drugs from there. I think even Doctor Calloway admitted, when she questioned him and was talking to him in his interviews, that he's kind of staring out. Obviously he could of been on Thorazine from there, and obviously it's a very powerful psychotic from there.

The main thing I think, Your Honor, I know they keep throwing this case law and everything else, but I think the credibility of the witnesses are in itself. Doctor Harrison saw no examination. They keep saying by law she had to do this or whatever. No, she did an examination. She didn't see any evidence of it. Even if she considered the 68 and the 87, of course, they say well, she needed to do this. Well, they got a chance to call experts.

This is not a competency issue. This is a mental retardation issue from there. And she did her examination. Doctor Brown got to do an examination. Went through and he went through the different areas. Right, he may of been limited in some areas, but he got to talk to Mr. Blackwell. He got to do the best. He got to look at the ABAS that he could have. He -- like I say, he didn't have one, which I

don't think would of been that helpful because it had blank spots on it from there.

But if you look at the evidence as a whole, they have not met their burden of proof in this case. I know he keeps talking about Social Security tests, things, and all this stuff and everything, we're talking about a criminal case here in South Carolina, and I think if you look at all the law and all the situations we're dealing with, basically they did not meet their burden of proof.

This is a situation a jury needs to decide this. Obviously they can introduce that as mitigating factors, but I think, I think that it's a situation where it, at best, it's a wash for them. I don't even think it's a wash. I think if you look at all the factors, there's no question he is not mentally retarded or I.D. in this situation.

Thank you, Your Honor.

THE COURT: Thank you.

The cases that you gave the solicitor---

MR. McGUIRE: Yes, sir.

THE COURT: ---I want you to separate those, if you would for me, into those that are criminal cases and those that are, I guess, Social Security cases. Heard a lot of mention of the admin judge. I'm not an admin judge.

MR. McGUIRE: Sure.

THE COURT: So, I'd---

MR. McGUIRE: I would---

THE COURT: I'd like them separated.

MR. McGUIRE: I'm sorry. I didn't mean to cut you off.

THE COURT: That's all right.

MR. McGUIRE: I would submit them as persuasive authority.

THE COURT: I didn't say you couldn't submit them. I want them separated so that I know what I'm looking at when I, when I want to pick up a stack and read it.

Can you do that for me?

MR. McGUIRE: I was gonna hand you this notebook.

THE COURT: I want them separated when you hand them in.

MR. McGUIRE: All right. Fair enough.

THE COURT: If you want me, if you want me to consider them, I'm asking that you submit them in that fashion. It shouldn't be that hard for you to go through and pick those out.

MR. McGUIRE: Yes, sir, I'll do that.

SOLICITOR BARNETTE: There is one other thing, Your Honor, I wanted to mention to you, which I thought was in there, and I just want to make sure, Doctor Calloway said she talked to defense attorneys about raw data and everything on November the 5th. We didn't have the hearing until November 6th. I wanted to put that on the record

cause I had checked to make sure on my computer that was the correct date, and it was November 6th.

So, I don't know why that discussion would of been held before that cause obviously they weren't in agreement to give us any materials before that hearing, and I think you'll remember that's the reason why we agreed to the continuance to begin with.

THE COURT: Thank you.

SOLICITOR BARNETTE: And that's just for credibility issues.

THE COURT: Oh, I understand. Thank you.

SOLICITOR BARNETTE: Thank you.

THE COURT: Court's adjourned.

* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 19th, 20th, and 21st day of February, 2014.

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

February 27th, 2014

PAMELA E. GREEN, Court Reporter

Computer

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG State of South Carolina, vs. Ricky Lee Blackwell, Sr., Defendant.	IN THE COURT OF GENERAL SESSIONS SEVENTH JUDICIAL CIRCUIT Indictment No.(s): 2009-GS-42-3609, 2009-GS-42-3610 **ORDER**

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 FEB 25 AM 8:42
M. HOPE BLACKLEY

The Defendant has filed a post-trial motion to exclude the report and testimony of Dr. Gordon E. Brown, Jr. in the above captioned matter.

The Court notes that Dr. Brown was qualified as an expert in the case without objection by the defendant. Thereafter, the testimony of Dr. Brown and his report which had been previously made available to the Defendant were entered into the record without objection by the Defendant. The Motion to exclude was given to the Court after the adjournment of the court in the case.

This Court finds that the Motion was not made in a timely fashion and therefore it is denied.

Also, this Court notes that a consent Order was entered into by both parties whereby all Atkins material to be used by the Defendant were to be turned over to Dr. Brown for his review

SCANNED

as he did his investigation. Dr. Brown and this Court had a right to rely on the fact that all Atkins material was given to him for use in preparing his opinion in this matter. Therefore, his opinion would include the review of all materials and testing available to the Defendant's expert Dr. Ginger Calloway in formulating her opinion. This Court would expect that the opinions of all experts in this case involve certain subjective judgments by the experts, based upon their training and expertise.

Motion denied.

(SEAL)

Roger L. Couch, Circuit Judge

Spartanburg, SC

February 24, 2014

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 FEB 25 AM 11:42
M. HOPE BLACKLEY

FOR USE WITH 1963 NORMS

California Achievement Tests

Lower Primary · GRADES 1 and 2 · Form

DIAGNOSTIC PROFILE SHEET

DEVISED BY ERNEST W. TIEGS AND WILLIS W. CLARK

Name (Last, First, Middle): Blackwell, Rickey Lee

Date of Test (Year, Month, Day): 1966 May

School: Cooley Springs City: Rt 2, Chesnee

Date of Birth: [redacted]

Boy / Girl (Circle one) Grade: First Teacher or Examiner: E Bishop

Pupil's Age: 7 Years 5 Months (89) Total Mos.

	READING							ARITHMETIC						LANGUAGE								
	1. READING VOCABULARY					2. READING COMPREHENSION			3. ARITHMETIC REASONING			4. ARITHMETIC FUNDAMENTALS				5. MECHANICS OF ENGLISH			6. SPELLING			
	A. Word Form	B. Word Recognition	C. Meaning of Opposites	D. Picture Association	TOTAL (A + B + C + D)	TOTAL READING COMPREHENSION	TOTAL READING		A. Meanings	B. Problems	TOTAL (A + B)	C. Addition	D. Subtraction	TOTAL (C + D)	TOTAL ARITHMETIC	A. Capitalization	B. Punctuation	C. Word Usage	TOTAL (A + B + C)	TOTAL SPELLING	TOTAL LANGUAGE	TOTAL BATTERY	
Grade Placement					1.3	1.6	1.4				1.4			1.4	1.4			1.0	1.2	1.2	1.3	1.8 AGP
AAGP*					1.4	1.3	1.4				1.3			1.4	1.4			1.4	1.4	1.4	1.4	78 ISI
Other Scores†																						86 GCA
Raw Score	14	8	7	8	37	5	42		15	6	21	15	12	27	48	2	0	13	15	1	16	106 89 CA
Possible Score	25	20	15	15	75	15	90		30	15	45	25	20	45	90	20	20	25	65	20	85	265

Grade Placement

*Anticipated Achievement Grade Placement; based on Intellectual Status Index (I.S.I.); see Manual. †Percentile, standard score, stanine (circle score used).

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DEFENDANT'S EXHIBIT NO.

4326

4327

CALIFORNIA SHORT-FORM TEST OF MENTAL MATURITY

1963 S-FORM/LEVEL 1

DEVISED BY E. L. SULLIVAN, W. W. CLARK, AND E. W. TIEGS

Name Blackwell, Rickey Lee (Last, First, Middle)

School Cooley Springs City Pl½, Chesnee

Boy / Girl (Circle one) Grade First Teacher or Examiner Elizabeth Bishop

Date of Test 1966 Apr. 19 (Year, Month, Day)

Date of Birth [redacted] (Year, Month, Day)

C.A. 7 Years 5 Months (89) Total Mos.

TEST/FACTOR	I. OPPOSITES	II. SIMILARITIES	III. ANALOGIES	IV. LOGICAL REASONING	V. NUMERICAL VALUES	VI. NUMBER PROBLEMS	VII. NUMERICAL REASONING	VIII. VERBAL CONCEPTS (6. VERBAL COMPREHENSION)	IX. MEMORY (7. DELAYED RECALL)	LANGUAGE (Tests 5, 6, 7)	NON-LANGUAGE (Tests 1, 2, 3, 4)	TOTAL	I.S.I.*
POSSIBLE SCORE	12	12	12	36	14	10	24	25	15	50	50	100	178
RAW SCORE	5	1	6	12	7	4	11	12	6	22	19	41	ACTUAL G.P. 1.8
PERCENTILE*				4			31	14	21	14	7	7	GRADE C.A. 8.6

	LANGUAGE	NON-LANGUAGE	TOTAL	
M.A.†	80	73	74	M.A.†
RAW SCORE	22	19	41	RAW SCORE
I.Q.†	73	67	68	I.Q.†

STANDARD SCORE

PERCENTILE BAND

STANINE

INTELLIGENCE QUOTIENT

*Unless otherwise indicated, national norms appropriate for pupil's chronological age are used.

Intellectual Status Index; see Manual.

†Must be obtained from table in Manual.

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DEFENDANT'S EXHIBIT NO. 2

4327

CALIFORNIA SHORT-FORM TEST OF MENTAL MATURITY

1963 S-FORM/LEVEL 1H

DEVISED BY E. T. SULLIVAN, W. W. CLARK, AND E. W. TIEGS

Name Blackwell Rickeylee (Last, First, Middle) Date of Test 67-10 3rd (Year, Month, Day)

School Crosley Springs City Chrome Date of Birth [redacted] (Year, Month, Day)

(Boy) Girl (circle one) Grade 3 Teacher or Examiner Emily Shields C.A. 8 Years 11 Months (107) Total Mos.

TEST/FACTOR	1. OPPOSITES	2. SIMILARITIES	3. ANALOGIES	I. LOGICAL REASONING	4. NUMERICAL VALUES	5. NUMBER PROBLEMS	II. NUMERICAL REASONING	III. VERBAL CONCEPTS (6. VERBAL COMPREHENSION)	IV. MEMORY (7. DELAYED RECALL)	LANGUAGE (Tests 5, 6, 7)	NON-LANGUAGE (Tests I, 1, 2, 3, 4)	TOTAL	I.Q.*
POSSIBLE SCORE	13	13	15	41	14	10	24	25	20	55	55	110	91
RAW SCORE	1	10	8	19	6	5	11	3	4	12	25	37	ACTUAL G.P. 3.1
PERCENTILE*				24			66	14	37	24	31	24	GRADE C.A. 102

	LANGUAGE	NON-LANGUAGE	TOTAL	
	96	99	96	M.A.*
	12	25	37	RAW SCORE
	87	90	87	I.Q.*

STANDARD SCORE

STANINE

INTELLIGENCE QUOTIENT

*Unless otherwise indicated, national norms appropriate for pupil's chronological age are used.

Intellectual Status Index; see Manual.

(Must be obtained from table in Manual.

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DEFENDANT'S EXHIBIT NO. 3

4328

4328

FOR USE WITH 1963 NORMS

California Achievement Tests

Upper Primary · GRADES H2-3-L4 · Form ☐

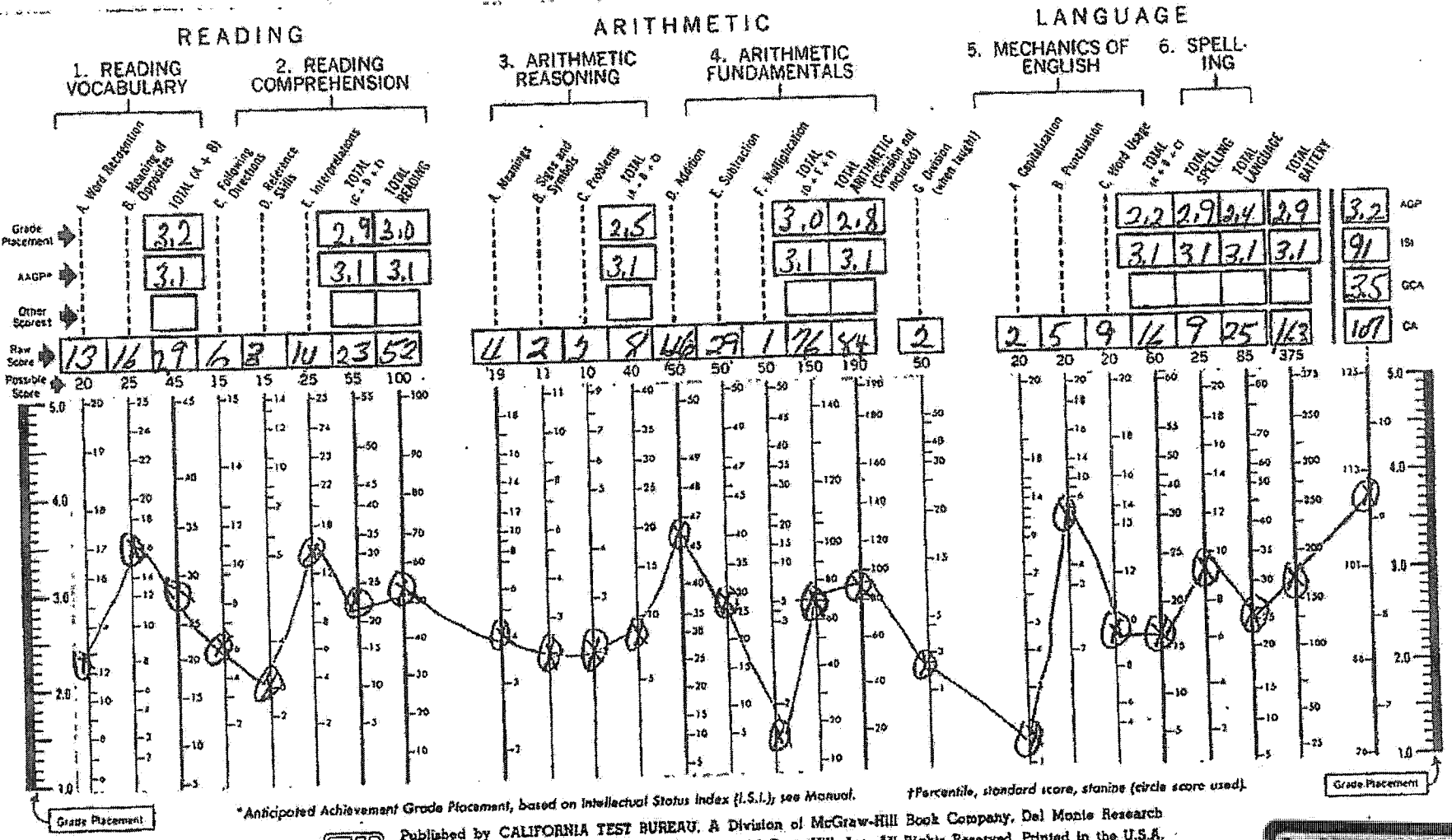
DIAGNOSTIC PROFILE SHEET

DEVISED BY ERNEST W. TIEGS AND WILLIS W. CLARK

Name Blackwell, Rickey (Last, First, Middle) Date of Test 67-11-6 (Year, Month, Day)

School Cooley Springs City Cleaner Date Birth [redacted] -18 (Day)

(Boy) Girl (circle one) Grade 3 Teacher or Examiner Emily B. Shields Pupil's Age 8-11 107 (Years, Months, Total Mos.)



*Anticipated Achievement Grade Placement, based on Intellectual Status Index (I.S.I.); see Manual.

†Percentile, standard score, stanine (circle score used).

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DEFENDANT'S EXHIBIT NO. 4

4329

Cumulative Record

SUGGESTIONS FOR ADDITIONAL DATA WHICH MAY BE FILED IN THIS FOLDER

1. SCHOOL HEALTH AND PHYSICAL RECORD CARD
2. CORRESPONDENCE WITH PARENTS
3. RECORD OF HOME VISITS, PARENT INTERVIEWS
4. [illegible]
5. [illegible]
6. [illegible]
7. COPIES OF PUPILS LONG-RANGE COURSE ELECTIONS
8. PROFILE SHEETS FROM INTEREST INVENTORIES
9. PERSONALITY RATING SHEETS
10. VOCATIONAL THEMES, CAREER BOOKLETS, ETC.

NAME	CTBS		READING VOCAB	READING COMPR	READING TOTAL	LANGUAGE MECH	LANGUAGE EXPR	LANGUAGE SPELL	LANGUAGE TOTAL	ARITHMETIC/MATHEMATICS COMPU	ARITHMETIC/MATHEMATICS CNCPTS	ARITHMETIC/MATHEMATICS APPLI	ARITHMETIC/MATHEMATICS TOTAL	TOTAL BATTERY	REFR	SCIE	S.S.
BLACKWELL R L E1C9-002-015	FORM/LEVEL S4 GE	▶	4.4	3.0	9.4	3.2	6.7	6.5	5.3	5.2	3.0	7.5	4.9	6.7	4.5		
	GRADE 11.7 SS	▶	404	678	562	406	509	488	458	421	353	502	405	469	434		
	DATE 04/77 NP	▶	2	60	23	5	14	11	8	6	1	16	3	8	5		
		NS	▶	1	6	4	2	3	3	2	2	1	3	1	2	2		

XVII.

Date	To Whom Sent	Reason

XVIII. ADDITIONAL ITEMS OF INTEREST

			RV	RC	TR	AR	AF	TA	ME	SP	TL	TOTAL BATTERY
CAT 63	GRADE 62	G.G.P.	35	45	41	50	60	57	47	20	42	47
ELE LEVEL 1170	RANK	PCT	02	14	05	14	46	31	12	01	05	05
CAT 63	GRADE 62	G.G.P.	35	45	41	50	60	57	47	20	42	47
ELEM LEVEL 1170	RANK	PCT	02	14	05	14	46	31	12	01	05	05

CTBS FORM/LEVEL	DATE	I.S.I.	C.A.	LANG. MA.	NON-LANG MA.	TOTAL MA.	L. IQ.	NL IQ.	T. IQ.	L	NL	T
SE2 LEVEL	10/70	88	11-11	9-11	10-09	10-03	84	90	86	18	31	21	0

CTBS FORM/LEVEL		READING VOCAB	READING COMPR	READING TOTAL	LANGUAGE MECH	LANGUAGE EXPR	LANGUAGE SPELL	LANGUAGE TOTAL	ARITHMETIC COMPU	ARITHMETIC CNCPTS	ARITHMETIC APPLI	ARITHMETIC TOTAL	TOTAL BATTERY	STUDY SKILLS REF	STUDY SKILLS GRAPH	STUDY SKILLS TOTAL
Q/3	▶	4.0	6.2	5.2	6.1	4.1	5.8	5.4	6.4	8.1	6.2	6.9	5.8	6.7	5.9	6.3
1.1GE	▶	08	38	22	36	15	31	24	39	70	37	47	28	46	32	37
GRADE																
DATE 10/71 NP	▶															

TEST/LEVEL	DATE		CA	LANG MA	NON-LANG MA	TOTAL MA	LANG	NON-LANG	TOTAL		LANG	NON-LANG	TOTAL
							10	76	76	72 NPR ▶	7	6	4
FTAA-5	10/73	RS ▶ 38	14-11								REFR	GRPH	R+G

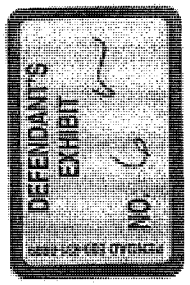
CTBS FORM/LEVEL		READING VOCAB	READING COMPR	READING TOTAL	LANGUAGE MECH	LANGUAGE EXPR	LANGUAGE SPELL	LANGUAGE TOTAL	ARITHMETIC/MATHEMATICS COMPU	ARITHMETIC/MATHEMATICS CNCPTS	ARITHMETIC/MATHEMATICS APPLI	ARITHMETIC/MATHEMATICS TOTAL	TOTAL BATTERY	REFR	SCIE	S.S.
Obtained		5.6	7.0	6.5	13.6	7.8	5.9	8.3	2.0		2.0					
04 06		5.4	5.0	5.3	6.1	5.0	6.1	6.0	6.1		5.4					
GRADE 09-1	AG ▶				+7.5	+2.8		+2.3	-4.1		-3.4					
DATE 10/73	DF ▶								1		1					
	NP ▶	12	27	19	88	39	15	41								
anticipated																

NAME	CTBS FORM/LEVEL		READING VOCAB	READING COMPR	READING TOTAL	LANGUAGE MECH	LANGUAGE EXPR	LANGUAGE SPELL	LANGUAGE TOTAL	ARITHMETIC/MATHEMATICS COMPU	ARITHMETIC/MATHEMATICS CNCPTS	ARITHMETIC/MATHEMATICS APPLI	ARITHMETIC/MATHEMATICS TOTAL	TOTAL BATTERY	REFR	SCIE	S.S.
BLACKWELL R I	S3 OG	▶	2.0	4.0	3.0	2.7	4.5	3.8	3.6	7.5	3.2	6.0	6.1	4.3	6.8	3.0	3.5
7216-005	09-1 SS	▶	253	417	343	375	465	422	408	484	362	457	448	381	506	364	385
GRADE			3	15	18	6	14	11	31	24	6	10	40	89	12	9	10
DATE 10/74	RS ▶																
	NP ▶	1	12	3	7	20	12	10	34	5	21	19	7	33	5	8

SCHOOL SPECIALTY SUPPLY, SALINA, KANSAS, FORM 7387
APPROVED KANSAS STATE BOARD OF VOCATIONAL EDUCATION, JULY 18, 1942
ADOPTED CHIEFLY FROM MAINE AND MICHIGAN CUMULATIVE RECORD FORMS

DEFENDANT'S EXHIBIT NO. 5

4330


DEFENDANT'S
EXHIBIT
NO.

4332

I. NAME Blackwell, Rickey Lee (LAST, FIRST, MIDDLE) MALE ☒ FEMALE ☐ DATE OF BIRTH [redacted] PLACE OF BIRTH Cowpens, S.C. (TOWN, STATE) NATIONALITY

DATE*	LOCAL ADDRESS*	PHONE*	DATE OF ATTENDANCE*	NAME OF SCHOOL*
5-30-66	Rt #2 Chesnee SC		1965-1966	Cooley Springs
1972	Route 4	461-2681		

II. DROP-OUT AND RE-ENTRY RECORD

DATE	SCHOOL AND GRADE LEFT	REASON	DATE RE-ENTERED	SCHOOL AND GRADE RE-ENTERED
May 31st	Chesnee High			

CODE FOR REASONS FOR LEAVING SCHOOL

TR—TRANSFERRED EP—EMPLOYMENT PERMIT D—DEAD

PI—PERMANENT ILLNESS OA—OVER LEGAL AGE M—MARRIED

DATE AND GRADE RECORD STARTED 9/0/65 First

NUMBER CHILDREN IN FAMILY* 2

BOYS* 2 GIRLS*

REMARKS REGARDING HOME CONDITIONS:

DATE	

IV. PHOTOGRAPH

DATE Oct 19:5

AGE 6

GRADE 1

III. FAMILY DATA

	MOTHER	FATHER
NAME OF PARENTS	Mildred Allene Bridges	Cletus Franklin
HOME ADDRESS*	Rt. #4, Chesnee, S.C.	
NATIONAL DESCENT		
DATE NATURALIZED		
LANGUAGE IN HOME		
OCCUPATION*	Textile	Hess oil co. Sptbg.
EDUCATION*		
MARITAL STATUS*		
DECEASED		
WITH WHOM DOES CHILD RESIDE*	Parents	

V. ELEMENTARY SCHOOL RECORD

	YEAR		1965-66	1966-67	1967-68	1968-69	1969-70	1970-71	1971-72		
	SUBJECTS	KDG.	1ST GRADE	2ND GRADE	3RD GRADE	4TH GRADE	5TH GRADE	6TH GRADE	7 GRADE		GRADE
ARITHMETIC			76	70	78	74	82	77	78	79	75
READING			80	76	90	93	79	83	85	88	59
ENGLISH	LANGUAGE GRAMMAR				78	77	67	77	78	75	72
	HANDWRITING		75	75	84	94	87	90	89	86	
	SPELLING				96	96	93	97	96	95	97
SOCIAL STUDIES	Soc. Studies						63	70	75	77	78
SCIENCE	GENERAL SCIENCE		76			78		78		74	
	AGRICULTURE										
	PHYSIOLOGY HYGIENE										
	Health				75	80		76		76	
ARTS AND CRAFTS	HOUSEHOLD ARTS		C								
	INDUSTRIAL ARTS										
	ART										
	MUSIC										
	Promoted									Yes	
DAYS PRESENT			85	90	90	81	87	83	90	94	88
DAYS ABSENT			5		0	9	3	4	0	5	2
TIMES TARDY									0	0	

REMARKS

VII.

VI. SECONDARY SCHOOL RECORD

YEAR 7TH GRADE

WEEKS IN SCHOOL YEAR—— SUBJECTS	MARK 1ST	MARK 2ND	UNITS
UNITS FOR THE YEAR			
HALF DAYS ABSENT			

YEAR 1972-73 8TH GRADE

WEEKS IN SCHOOL YEAR—— SUBJECTS	MARK 1ST	MARK 2ND	UNITS	
Eng.	76	70	73	
Hist.	72	70	71	
Math	70	70	70	
Science	70	75	73	
Phy. Ed.	90	90	90	
UNITS FOR THE YEAR				
Half DAYS ABSENT			6	

YEAR 1973-74 9th GRADE

WEEKS IN SCHOOL YEAR—— SUBJECTS	MARK 1ST	MARK 2ND	UNITS	
Adj. English	65	61	0	63
Adj. Math	74	69	1	72
Adj. Science	70	60	0	65
Pre vocations	80	80	1	79
Phy Ed.	90	90	1	90
UNITS FOR THE YEAR			3	
DAYS ABSENT				17

YEAR 1974-75 9th GRADE

WKS. IN SCH. YR.—— SUBJECTS	HRS. PER WEEK	MARK 1ST	MARK 2ND	UNITS	POINTS
Adj. English I		87	87	1	87
Adj. Math II		76	62	1	70
Adj. Science		65	74	1	70
Preparation		74	78	1	79
Physical Ed.		85	88	1	84
Days Absent					25
UNITS AND POINTS FOR YEAR				5	
UNITS AND POINTS TO DATE				8	

YEAR 75-76 10th GRADE

WKS. IN SCH. YR.—— SUBJECTS	HRS. PER WEEK	MARK 1ST	MARK 2ND	UNITS	POINTS
Adj Engl II		95	F		F
Civics/Econ		91	85	1	88
[illegible]					
Agriculture		78	82	1	80
P.E.		80	90	1	85
Adjust Child		70	80	1	75
Days absent		22			
UNITS AND POINTS FOR YEAR				4	
UNITS AND POINTS TO DATE				12	

YEAR 1976-77 11th GRADE

WKS. IN SCH. YR.—— SUBJECTS	HRS. PER WEEK	MARK 1ST	MARK 2ND	UNITS	POINTS
Adj English II		55			
Health		50			
Agriculture II		74			
Family Living		90			
B Consumer		84			
UNITS AND POINTS FOR YEAR					
UNITS AND POINTS TO DATE					

* USE PENCIL

11 units toward graduation

4332

XIV. Year	Educational Plans	Vocational Plans	Interests and Hobbies	Special Talents
72-73	Finish high school	undecided	horseback riding	
1973-74				
197				
1976-77	High School	Tech		

XV. Work Experience Record (while attending school and after leaving school)

Grade if in School	Age	Year	Length of Job	Name and Address of Employer	Type of Work	Wages or Salary	Remarks

XVI. Other Significant Experiences

Other Work Experiences			Home Duties		Exceptional Experiences (Travel, Etc.)	
Year	Type of Work	Time Spent	Year	Type of Duty	Year	Places, Etc.

4333

4334

DATE	GRADE	INTELLIGENCE TESTS	C. A.	M. A.	I. Q.
4-19-66	1	Calif. Short form 1944	89	74	68
10-20-67	3	Calif. Short form 1963	107	96	87

DATE	GRADE	ACHIEVEMENT TESTS	C. A.	SCORE	NORM.
5-10-66	1	Calif Lower P. 1963	89	1.3	1.9
11-6-67	3	Calif Upper P. 1963	107	2.9	32
May 7th 10		ABLE Voc.		—	
		Reading		5.8	
		Spelling		—	
		Arith Total		5.6	

DATE	GRADE	INTEREST AND APTITUDE TESTS	C. A.	RAW SCORE	COM. SCORE

Finished ranked 113 in a class of 115

YEAR	GRADE	WKS. IN SCH. YR.	HRS. PER WEEK	MARK 1ST	MARK 2ND	UNITS	POINTS
SUBJECTS							
		UNITS AND POINTS FOR YEAR					
		UNITS AND POINTS TO DATE					

YEAR	GRADE	WKS. IN SCH. YR.	HRS. PER WEEK	MARK 1ST	MARK 2ND	UNITS	POINTS
SUBJECTS							
		UNITS AND POINTS FOR YEAR					
		UNITS AND POINTS TO DATE					

VIII. HEALTH RECORD

CHECK—GIVING YEAR OF SICKNESS WHEN POSSIBLE.	DIPHTHERIA	SCARLET FEVER	MEASLES ✓	WHOOPING COUGH
	MUMPS	SMALLPOX	TYPHOID	TONSILITIS

IMMUNIZING AND DIAGNOSTIC PROCEDURES RECORD

YEAR AND RESULT	DIPHTHERIA	SMALLPOX	T-B TESTS	X-RAY	RESULT OF X-RAY

IX. GRADUATION FROM SENIOR HIGH SCHOOL

GRADUATION DATE	NAME OR SIGNATURE OF HIGH SCHOOL PRINCIPAL

NO. IN CLASS	RANK IN CLASS	NO. OF RANKS	COURSE COMPLETED

CODE OF BIRTH INFORMATION — CERTIFIED COPY OF BIRTH CERTIFICATE=BC; CHURCH RECORD=CR; FAMILY BIBLE=FB; SCHOOL RECORD=SR; PASSPORT=PP; PARENT'S STATEMENT=PS; LIFE INSURANCE POLICY=LI; IMMIGRATION CERTIFICATE=IC

X. EXTRA CURRICULAR ACTIVITIES

GRADE	8	9	10	11						
PUBLICATIONS										
BAND										
VOCAL MUSIC										
ORCHESTRA										
DRAMATICS										
STUDENT COUNCIL										
SAFETY PATROL										
CLASS OFFICER										
CLUBS										
Drama Arena	✓									
AUDITORIUM ACTIVITIES										
ATHLETICS										

XI. EVALUATION OF PERSONAL AND SOCIAL ASSETS

GRADE	1	2	3	4	5	6	7	8	9	9	10	11
COOPERATION	B	N	N	B	N			N	N	N	N	N
COURTESY	N	N	N	N	N			N	N	N	N	N
DEPENDABILITY	B	N	N	N	N			N	N	N	N	N
INDUSTRIOUSNESS	B	N	N	N	N			N	N	N	N	N
INITIATIVE	B	B	B	B	N			N	N	N	N	N
LEADERSHIP	B	B	B	B	B			N	N	N	N	N
EMOTIONAL MATURITY	B	N	N	N	N			N	N	N	N	N
PERSONAL APPEARANCE	N	N	N	N	N			N	N	N	N	N
SELF CONTROL	B	N	N	N	N			N	N	N	N	N
HONESTY	N	N	N	N	N			N	N	N	N	N
PERSEVERANCE	N	N	N	N	N			N	N	N	N	N
SERVICE TO SCHOOL	N	N	N	N	N			N	N	N	N	N
NAME OF TEACHER	Eliz B. Shupe	M. Radford	E. Shields	G. Alexander	L. Mease			A. Gallup	B. Carl	B. Carr	Graham	Hedlund

CODE: B - BELOW; N - NORMAL; A - ABOVE

XII. EDUCATIONAL FOLLOW-UP RECORD

RECORD SENT: DATE ____ TO: SCHOOL ____

NAME OF SCHOOL ____ DATE ENTERED ____

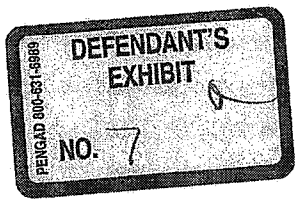
COURSE OF STUDY ____

REPORTED PROGRESS ____

XIII. RECORD OF COMMUNICATIONS FOR EMPLOYMENT

DATE	TO WHOM SENT	REASON

4334



CURRICULUM VITAE

Ginger C. Calloway, Ph.D., HSP-P
855 Washington Street
Suite 200
Raleigh, NC 27605
(919) 834-8033

EDUCATION:

1969	Queens College, Charlotte, NC BA in Psychology
1972	North Carolina State University, Raleigh, NC 60-Hour MS in School Psychology
1975 - 1976	Smokey Mountain Mental Health Center, Cullowhee, NC General Clinical Predoctoral Internship
1980	North Carolina State University, Raleigh, NC Ph.D. Degree: School Psychology
1982	Wake County Mental Health Center, Raleigh, NC Supervised Postdoctoral Clinical Psychology Internship

CERTIFICATION:

North Carolina Licensed Practicing Psychologist - License # 935
Health Services Provider Licensed Psychologist (HSP-P)

INTERNSHIPS, ASSISTANTSHIPS AND SUPERVISED STUDY

General Clinical Psychology Predoctoral Internship -- Community Mental Health Center in rural Appalachian mountains; Smokey Mountain Mental Health Center, Cullowhee, NC; Supervisor: Roger A. Meyer, MD

Postdoctoral Clinical Psychology Internship -- Two years supervised experience as a Practicing Psychologist, Temporary. Part-time in Wake County Mental Health Center, Raleigh, NC and part-time in private practice, Raleigh, NC. Supervision of individual

and group psychotherapy with children, adolescents, and adults and of psychological evaluations of children, adolescents, and adults. Supervisors: Lee Walker, Ph.D.; Lily W. Oatfield, Ph.D.; Esta Thomas, MS; and Brenda C. Ball, Ph.D.

Eight years supervised study of long term, private patients including children, adolescents and adults with psychodynamic and psychoanalytic orientation focusing on dynamic formulations and intervention of neurotic and characterlogical patterns of conflict. Supervisor: Thomas Cornwall, M.D. Certified Psychoanalyst and Training Analyst.

Four years supervised study of long-term private patients with substance abuse disorders or related substance abuse dysfunctions including children and grandchildren of alcoholics and "enablers" or "co-dependents." Study of dysfunctional families. Supervisor: John Howie, MD, Certified Psychoanalyst, Medical Director, Alcoholism Treatment Center of Wake County, Raleigh, NC

Sixty hours of training in attachment theory, attachment relationships, analysis of attachment relationships, classifications of attachment style, and treatment interventions for parents and children. Supervisor and instructors: Robert S. Marvin, Ph.D., Director, and William Whelan, Co-Director, Mary Ainsworth Child Parent Attachment Clinic, University of Virginia, Charlottesville, Virginia.

EMPLOYMENT HISTORY

1983 - Present	Clinical forensic practice. Assessment of clients in forensic settings including custody and related issues of parenting and child development, termination of parental rights, personal injury, and limited criminal. Expert witness re: issues about child development, assessment, mental retardation.. Supervision of other psychologists with regard to assessment and forensic practice. Consultation with attorneys, judges, and other psychologists regarding a clinical and forensic psychology practice. Consultation to North Carolina psychologists on issues relating to ethics.
1982 – 1997	Clinician, general private practice -- Individual and family therapy with adolescents and adults, limited practice with latency aged children; diagnostic evaluations of children, adolescents, and adults for other psychologists and psychiatrists for treatment planning and clarification of diagnostic issues; affiliate staff of Holly Hill Hospital, Raleigh, NC., treatment of eating disorders, anxiety disorders and trauma related disorders.

Private practice of general clinical and school psychology. Psychological, educational, and vocational evaluation of children, adolescents, and adults referred from agencies and individual psychologists.

1985 - 1987 Consultant, Juvenile Treatment System -- Supervision of Masters' and Ph.D. level psychologists working with children identified as seriously emotionally impaired through a class action suit brought against the State of NC and referred to as "Willie M." Program providing services to children whom may have any of the following: learning disabilities, neurological impairments, and aggressive behavior.

1983 - 1988 Consultant, Wake County Schools -- Educational evaluation of children referred for special learning programs, reevaluation of children receiving special services, and evaluation of emotionally disturbed and learning disabled children with recommendations for placement and treatment strategies in educational and/or other appropriate settings. Arranged on contractual basis with Wake County School System, Carol Rahmani, Ph.D., Chief, Psychological Services.

Consultant, Division of Services for the Blind, Department of Human Resources, State of NC, Raleigh, NC -- Diagnostic and vocational evaluation, program planning, psychotherapy, and referral to state agencies for comprehensive care with visually impaired children, adolescents, and adults.

1980 - 1984 Staff Psychologist, part-time, Western Wake Mental Health Center, Cary, NC -- Duties: Psychological assessment of children and adults. Individual therapy with aftercare, adults, adolescents, and children.. Family therapy with children, adolescents and parents. Coordination with community agencies for comprehensive treatment planning.

Psychological Associate, full-time, Children's Services, Wake County Mental Health Center, Raleigh, NC -- Duties: Treatment, diagnosis, and psychological assessment of emotionally disturbed children, ages 6 - 18; group and individual therapy with

children; consultation with schools, social services, Dorothea Dix Hospital (state inpatient hospital), group homes, and courts regarding comprehensive treatment program; family therapy and parental counseling; insight-oriented group therapy with adults and adolescents; individual therapy with adults; diagnosis and treatment of adults and children in Western Wake Satellite Center two days per week.

1978 - 1980 Psychological Associate, part-time, Raleigh Lion's Clinic for the Blind, Raleigh, NC -- Duties: Individual and group therapy, development and implementation of assertiveness training course, cognitive training, supervision of new graduate students, consultation with other professionals regarding comprehensive treatment plans for visually impaired, diagnosis of psychological disorders and vocational evaluation of adolescent and adult blind and visually impaired.

Psychological Associate, Alamance, part-time, County Schools, Graham, NC -- Duties: Diagnostic evaluation of school children for exceptional children's programs and recommendations to teachers for children not served by special education programs. Consultation with teachers and social service agencies.

1975 - 1976 General Clinical Psychology Predoctoral Internship, Smokey Mountain Mental Health Center, Cullowhee, NC

1971 - 1974 Supervisor of Testing, Psychological Examiner, and Research Assistant, Division TEACCH, Department of Psychiatry, NC Memorial Hospital, UNC-CH, Chapel Hill, NC -- Duties: Diagnosis and ratings of psychosis, psychological evaluation of autistic and communication handicapped children; member of interdisciplinary diagnostic team for weekly diagnostics; supervision of therapists (paraprofessionals) and psychology interns from Department of Psychology, UNC-CH on psychological evaluations of autistic children; collection and analysis of research data; report writing; development of codes, forms, and scales for research and clinical use; consultation with statisticians, writing of research results for publication.

1969 - 1971 Research Assistant, North Carolina State University -- Duties: Psychological evaluation and diagnosis of blind adults,

adolescents, and children; collection and analysis of research data; development of codes, forms, and scales for research use; led groups for cognitive training for use with the blind; supervised new graduate students in learning cognitive training; counseling with clients of the Raleigh Lion's Clinic for the Blind.

AREAS OF EXPERTISE AND/OR INTEREST:

1. Expert testimony re: child development, mental retardation, trauma, and personal injury. Court ordered evaluations, consultation with attorneys and judges, supervision of and consultation to other psychologists re: forensic issues and evaluations. Mediation, Parent Coordinating and Special Mastering services provided.

2. Assessment. Personality, treatment planning, diagnostic, learning problems, mental handicap, and psychological trauma. Expertise and advanced training in the Rorschach Interpretive Method, supervision of and consultation to other psychologists in learning the Rorschach method and in interpretation.

3. Substance Abuse Disorders and related areas.

4. As a member of the Ethics and Professional Standards Committee of the N.C. Psychological Association for eight years, I reviewed and investigated complaints about members involving custody evaluations, forensic issues, sexual abuse of clients, substance abuse, multiple roles and other areas related to the practice of psychology. I was Chair of this Committee subsequent to the former Chair's recent election to the APA Ethics and Professional Standards Committee. I answer questions of psychologists relative to ethics for the North Carolina Psychological Association and consult to the public regarding ethical behavior of psychologists.

PROFESSIONAL ASSOCIATIONS:

-- North Carolina Psychological Association – 1985 – 2000; 2002-2005; 2006 - 2009

Member of the Membership Committee -- 1986 - 1988
Member of the Legislative Committee -- 1988 - 1991
Member of the Child Abuse Collaborative Task Force
Member of the Ethics and Professional Standards Committee -- 1992 - 1999

Vice Chair of the Ethics and Professional Standards Committee – 1997 - 1999
Chair, Ethics and Professional Standards Committee – 1999

-- Division of Professional Psychology (part of NCPA with separate membership status and dues), Member – 1988 - 2000

-- American Psychological Association, Member
Division 41: Psychology and Law
Division 53: Clinical Child Psychology
Division 5: Evaluation, Measurement and Statistics
Incoming chair, Assessment Committee (3 year commitment) 2010-2013
Division 12, Section 9: Clinical assessment
Secretary
Member, Advisory Committee to Task Force on Guidelines for Parent Coordination

-- Society for Personality Assessment, Fellow
Representative-at-Large to Board (2007- 2008)
Task Director, Committee for application to APA for proficiency in assessment; Awards Chair
Representative-at-large to Board (2008-2010)
Chair, C.E. committee

-- Association of Family and Conciliation Courts, Member

-- American Professional Society on the Abuse of Children, Member

-- American Council of Family Relations, Member

-- Council of Family and Juvenile Court Professionals and Judges, Member

WORKSHOPS AND CONTINUING EDUCATION

March 2000	Advanced Clinical Interpretation with the MMPI-2 Forensic Use of the MMPI-2 MMPI-2 Workshops & Symposia of the Department of Psychology, University of Minnesota Faculty: James N. Butcher, Ph.D. John Graham, Ph.D. APA credits: 12
May 2000	Advanced Assessment of Children with the

		Rorschach Inkblot Method. Rorschach Workshops, San Francisco, CA. Phil Erdberg, Ph.D. APA Credits: 22
November 2000		Pre-Symposium Institute: Association of Family, Court and Community Professionals. Custody Evaluations and the Alienated Child. Joan B. Kelly, Ph.D., Nancy Olesen, Ph.D., and Matthew Sullivan, Ph.D.
		Symposium on Child Custody Evaluations: Association of Family, Court and Community Professionals. Parenting Coordinators and Special Masters: Conflict Management for the Long Haul. Christine A. Coates, M. Ed., J.D., Matthew Sullivan, Ph.D., and the Honorable Lynda Munro.
		The Non-adversarial Parenting and Custody Evaluation Panel. Chris McIsacc, M.S.W., and Hugh McIssac, M.S.W.
		Symposium: Alienation and/or Abuse: Leslie M. Drozd, Ph.D., Toby Kleinman, J.D., and Nancy Olesen, Ph.D.
February 2001	San Francisco, CA	Essentials of Mediation and Divorce Mediation. Sponsored by the Northern California Mediation Center. [40 hours of mediation training]. Nancy J. Foster, J.D. and Jessica Notini, J.D. 40 C.E. credits.
March 2001	Philadelphia, PA	The Rorschach: A Developmental Perspective. 7 C..E. credits. Martin Leichtman, Ph.D., Menninger Clinic, Topeka, KS. Mid-winter Meeting of the Society for Personality Assessment.
		Symposium: "Daubert/Kumho: Protecting the Integrity of Rorschach Expert Witness Testimony." Chair: Barry Ritzler, Ph.D. Presenters: Robert Erard, Ph.D. and Joseph McCann, Ph.D., J.D. Discussant: Barry Ritzler, Ph.D.

	Symposium: "More Data on the Current Rorschach Controversy." Chair: Bill Kinder, Ph.D. Presenters: Ronald Ganellen, Ph.D. and R.F. Bornstein, Ph.D. Discussant: Irving Weiner, Ph.D.
	Symposium: "When I Turns Against Thou: A Rorschach Inquiry into Violence and the Pathological Internalization of Self and Other." Chair: Michael Bridges, Ph.D. Presenters: S.J. Russo, Ph.D., R.A. Murphy, Ph.D., B.Barile, Ph.D., D. Ingellis, Ph.D., Michael Bridges, Ph.D.
June 2001 Charlotte, NC	Special Masters, Parent Coordinator Program, Developmentally Appropriate Visitation. Sponsored by the National Council of Juvenile and Family Court Judges. 6 C.E. credits.
June 2001 Greenbrae, CA	Developing Effective Parenting Plans Using Child Development and Divorce Research. Sponsored by the Northern California Mediation Center. Joan B. Kelly, Ph.D. 6 C.E. credits.
September 2001	Rorschach Workshop #3001, A Program Focusing on the Use of the Rorschach to Illustrate a Variety of Personality Styles, Diagnostic Issues, and Treatment Problems in Order to Decide Diagnosis, Consider Intervention Targets, and/or Disposition Recommendations. Instructors: John E. Exner, Ph.D., S. Phillip Erdberg, Ph.D., Ronald J. Ganellen, Ph.D., Anthony D. Sciara, Ph.D., and Barry Ritzler, Ph.D. 24 C.E. Credits.
March 2002 San Antonio, TX	Workshop G, Psychological Assessment of Trauma-Related Distress: Standarized Self-Report Measures, San Antonio, TX. Mid-winter Meeting of the Society for Personality Assessment. John Briere, Ph.D. 3.5 C.E. Credits
	Symposium: "Reflections Upon and Responses

	to Recent Rorschach Criticisms." Chair: P. Lerner. Presenters: B. Smith, Ph.D, J. Exner, Ph.D., R. Ganellen, Ph.D. and P. Lerner, Ph.D. 2 C.E. Credits
June 2002	Association of Family, Court and Community Professionals, 39th Annual AFCC Conference, "Looking Over the Rim: New Horizons for Families, Courts and Communities."
	Pre-conference Institute: Association of Family, Court and Community Professionals, "Relocation Cases Involving Young Children: Current Developmental and Legal Issues." Joan B. Kelly, Ph.D, Leslie Ellen Shear, J.D. 3 C.E. Credits.
	Pre-conference Institute: Association of Family, Court and Community Professionals, "Group Interventions for Children from High Conflict, Violent and Separating Families." Janet R. Johnston, Ph.D., Bettina Gentner, LCSW. 3 C.E. Credits.
September 2002	Annual Rorschach Workshop, Asheville NC. Rorschach Workshop #3001, A program focusing on the use of the Rorschach to illustrate a variety of personality styles, diagnostic issues, and treatment problems in order to decide diagnosis, consider intervention targets and/or disposition recommendations. John E. Exner, Jr., Ph.D., S. Philip Erdberg, Ph.D., Ronald J. Ganellen, Ph.D., Anthony D. Sciara, Ph.D., Barry Ritzler, Ph.D. 24 C.E. Credits
November, 2002	Fifth International Symposium on Child Custody Evaluations. Association of Family and Conciliation Courts. Tucson, Arizona.
	Custody Evaluations and Domestic Violence. Doneldon Dennis, Leslie Drozd, Ph.D., Leslie Shearer, J.D., and Susan E. Hanks, Ph.D. 6 C.E. credits.

	Addressing Allegations of Abuse: Early Intervention. Toby Kleinman, J.D., Kathryn Kuehnle, Ph.D., the Honorable Susan Snow. Moderator: Johnathan Gould, Ph.D., 3 C.E. credits.
November, 2002	Legal and Ethical Risks and Risk Management in Professional Psychological Practice: Sequence I: General Risk Management Strategies Including Information on HIPAA. Eric A. Harris, Ed.D., J.D., Consultant to the APA Insurance Trust. 6 C.E. credits.
February, 2003	HIPPA Compliance: Where You Need to be at This Point. Charles Cooper, Ph.D., and Sally R. Cameron, NCPA Executive Director. 3 C.E. credits.
March, 2003	HIPPA for Psychologists. APA Practice Directorate Tutorial. 3 C.E. credits.
March, 2003	Society for Personality Assessment Midwinter Meeting, San Francisco, CA. Master Lecture: *Indirect Personality Assessment of the Violent True Believer.* Reid Meloy, Ph.D. 1 C.E. credit.
	SPA Midwinter Meeting, San Francisco, CA. Workshop #1: *When Is It Complex Psychological Trauma.* Judith Armstrong, Ph.D. and Nancy Kayser-Boyd, Ph.D. 7 C.E. credits.
May, 2003	AFCC Annual Conference, Ottawa, Canada. Pre-Conference Institute: "Working with High Conflict Families: Child Alienation and Parenting Coordination. Robin Deutsch, Ph.D. and Joan Kelly, Ph.D. 6.5 C. E. credits
	Plenary session: Change and Challenge: 40 Years of Evolution in Families. Paul R. Amato, Ph.D., Robert Glossop, Ph.D., David Popenoe, Ph.D., and the Honorable Arline Rotman.

	Workshop #8: Sexual Abuse Allegations: Responding to *Pendente Lite* Motions. Jonathan Gould, Ph.D., Kathryn Kuehnle, Ph.D., and David A. Martindale, Ph.D.
	Plenary Session: Domestic Violence and Child Custody Disputes: Clinical and Legal Dilemmas. Joan Kelly, Ph.D., Justice V. Jennifer Mackinnon, Jeffery Wilson, and Mary O'Connell, J.D.
	Attachment in Divorcing Families: Problems and Solutions: Leslie Drozd, Ph.D. and Nancy Olesen, Ph.D. Conference hours: 13.5 C.E. credits. Total C.E.credits: 20 hours.
September, 2003	Annual Rorschach Workshop, Asheville NC. Rorschach Workshop #3001, A program focusing on the use of the Rorschach to illustrate a variety of personality styles, diagnostic issues, and treatment problems in order to decide diagnosis, consider intervention targets and/or disposition recommendations. John E. Exner, Jr., Ph.D., S. Philip Erdberg, Ph.D., Ronald J. Ganellen, Ph.D., Anthony D. Sciara, Ph.D., Barry Ritzler, Ph.D. 24 C.E. Credits
October 13-14, 2003	Conference on Enhancing Early Attachments: Theory, Research, Intervention, and Policy. Duke University
February 19-21, 2004	Identifying Children's Healthy and High Risk Attachment Behaviors: An Evidence Based Clinical Training Course: Child Assessment. Robert Marvin, Ph.D. and William Whelan, Psy.D., The Mary D. Ainsworth Child-Parent Attachment Clinic, University of Virginia School of Medicine. 13 C.E. hours.
March, 2004	Master Lecture: Issues of Risk Assessment, Society for Personality Assessment Mid-Winter Conference, Miami, Florida, 1 C.E. unit.

	An Introductory Workshop on the Personality Assessment Inventor (PAI), Leslie Morey, Ph.D. Society for Personality Assessment, Mid-Winter Meeting, Miami, Florida, 3.5 C.E. credits
	Psychological Damage Examinations: Personal Injury Evaluations, Reports and Testimony. Stuart Greenberg, Ph.D. Society for Personality Assessment, Miami, Florida. 3 C.E. credits.
July, 2004	Ethical and Legal Issues for Psychologists: An Update. William V. Burlingame, Ph.D., North Carolina Psychological Association, UNC-W, Wilmington, N.C. 3 C. E. credits.
September, 2004	Annual Rorschach Workshop. Rorschach Workshop #3001, A Program to Illustrate a Variety of Personality Styles, Diagnostic Issues, and Treatment Problems in Order to Decide Diagnosis, Consider Intervention Targets and/or Disposition Recommendations. Faculty: John E. Exner, Ph.D., S. Philip Erdberg, Ph.D., Anthony D. Sciara, Ph.D., and Barry Ritzler, Ph.D. 24 C.E. Credits
October, 2004	Identifying Parents' Healthy and High Risk Caregiving Behaviors: An Evidence Based Clinical Training Course. William Whelan, Psy.D., The Mary D. Ainsworth Child-Parent Attachment Clinic, University of Virginia School of Medicine. 13 C.E. hours.
November, 2004	Treatment of High Risk Attachment Caregiving Behaviors: An Evidence Based Clinical Training Course: Treatment Considerations. William Whelan, Psy.D. The Mary D. Ainsworth Child-Parent Attachment Clinic, University of Virginia School of Medicine. 13 C.E. hours.
March, 2005	"The Adult Attachment Projective: Measuring Adult Attachment and Its Contributions to Personality and Psychopatholoy." Carol George, Ph.D., Society for Personality Assessment Mid-winter Meeting, Chicago, IL. 7 C.E. credits

Master Lecture: "Attachment Disorganization: Assessment and Contribution to Personality." Carol George, Ph.D., Society for Personality Assessment Mid-winter Meeting, Chicago, IL., 1 C.E. credit.

Master Lecture: "Implications of MMPI-A Findings for Understanding Adolescent Development and Psychopathology." Robert Archer, Ph.D., Society for Personality Assessment Mid-winter Meeting, Chicago, IL., 1 C.E. credit.

September, 2005

Annual Rorschach Workshop, Advanced Issues. Faculty: John Exner, Ph.D., Phil Erdberg, Ph.D., Roger Greene, Ph.D., Anthony Sciara, Ph.D., Barry Ritzler, Ph.D. 24 C.E. Credits.

March, 2006

Society for Personality Assessment, Mid-Winter Meeting, San Diego, California.

"The Ethics of Psychological Assessment in Clinical and Forensic Practice: An In-Depth Examination." Robert Erard, Ph.D., Workshop Instructor. 7 C.E. Credits

"Assessment of Competence to Proceed in the Criminal Process." Randy Otto, Ph.D., Workshop Instructor, 3.5 C.E. Credits.

"Master Lecture: Therapeutic Assessment: Definitions, Distinctions and Current Developments." Stephen E. Finn, Ph.D., Instructor. 1 C.E. Credit.

"Forensic Applications." Robert Archer, Ph.D., Chair. 2 C.E. Credits

"Categorical and Dimensional Personality Disorder Diagnosis: Implications for Psychological Assessment." Stephen Huprich, Ph.D., Symposium Chair, 1.5 C.E. Credits

"Case Discussion I: Malingering: Battered Woman or Faker?" Nancy Kayser-Boyd, Ph.D., Case Discussion Chair, 1 C.E. Credit.

"Sex, Lies, and Scale 8: Assessing Sexual Abuse Allegations in a Custody Dispute." Jacqueline Singer, Ph.D., Symposium Chair.

"How Attachment Relationships Inform Custody Evaluators: Uses and Misuses of Attachment Literature." Ginger Calloway, Ph.D., Symposium Chair, 2 C.E. Credits

June, 2006 — Association of Family and Conciliation Courts, Annual Conference, Tampa, Florida

Institute: "The Research Says.....Effective Use of Social Science Research in Family Law Cases." Jan Johnston, Ph.D., Chair. 6.5 credits.

"How Attachment Relationships Inform Custody Evaluators." Ginger Calloway, Ph.D., Chair. 1.5 credits.

"Custody Evaluation and Parenting Plans for Relocation: Risk Assessment for High Conflict or Partner Violence." Leslie Drozd, Ph.D. and William Austin, Ph.D. 1.5 credits.

"Expert Testimony and the Admissibility of Psychological Testing." David Medoff, Ph.D., Chair. 1.5 credits.

"Criteria for Psychopathy or Dangerousness." Lawrence Fong, Ph.D. and Arnold Sheinvold, Ph.D., 1.5 credits

June, 2006 — Parent Coordination: Helping High Conflict Parents Resolve Disputes. Joan Kelly, Ph.D., 26 credits

February, 2007 — AFCC - California Chapter Conference:
Pre-conference Institute: "Domestic Violence: Recent Research and Implications for Custody, Access and Parenting Plans."

Joan Kelly, Ph.D. and Jan Johnston, Ph.D.
4 C.E. credits

"Handling Borderlines and Narcissists: Seven Skills for Family Court Professionals."
William A. Eddy, LCSW, Esq., C.E.:1.5 hours

"Re-thinking Domestic Violence."
Donald Dutton, Ph.D., C.E.: 2 hours

"Interventions with Alienated Children and Their Parents: If, When and How Does It Work?"
Marjorie Walters, Ph.D., Steven Friedlander, Ph.D., and Matthew Sullivan, Ph.D. C.E.: 1.5 hours

"Presumption for Equal, Shared Parenting."
Michael McCormick, Matthew Sullivan, Ph.D., the Honorable Robert Schneider. C.E.: 2 hours

"Dilemmas and Solutions: Allegations of Sexual Abuse in Young Children in Custody Disputes – Therapists and Attorneys Working Together." Toni Cavanaugh-Johnson, Ph.D. and Kathleen M. O'Connor, Esq..C.E.: 1.5 hours

March 12-16, 2007

The Circle of Security Coding System: A 5 Day Evidence-Based Training Course on Child Parent Attachment Behaviors.
Robert Marvin, Ph.D., University of Virginia, Mary Ainsworth Attachment Center. 27.50 hours.

May, 2007

Rorschach Reunion Program: An Advanced Program Focusing on Research, Test Integration, and Difficult Clinical Cases Utilizing the Rorschach Test. Asheville, N.C. Phillip Erdberg, Ph.D., Anthony Sciara, Ph.D., Barry Ritzler, Ph.D., Anita

Boss, Psy.D., Roger Greene, Ph.D., Gregory Meyer, Ph.D., Allyson Harrison, Ph.D. 21 C.E. credits.

March, 2008

"Integrating Attachment in Adolescent Assessment and Clinical Cases. Carol George, Ph.D., 2 C.E. credits

Attachment and Child Custody: A Sensible Marriage. 2008 Annual Conference of the Society for Personality Assessment., 7 C.E. credits

"Master Lecture I: Heisenberg, Kandinsky and the Heteromethod Convergence Problem: Lessons from Within and Beyond Psychology." Robert Bornstein, Ph.D., 1 C.E. credit.

"Disorganized Attachment in Young Children: Manifestations, Etiology, and Implications for Child Custody." Margaret Lee, Ph.D., Robert Kaufman, Ph.D., and Carol George, Ph.D., 2 C.E. credits.

"Roundtable F: Child Custody Evaluations: Is the Use of Psychological Testing Being Threatened?" Megan Lehmur, Ph.D., Robert Erard, Ph.D., Alex Caldwell, Ph.D., and Nancy Olesen, Ph.D., 2 C.E. credits.

Mid Winter meeting of the Society for Personality Assessment, New Orleans, La.

April, 2008

"New Frontiers in Trauma Development." 2 day workshop presented by Bessel van der Kolk, M.D.

May, 2008

18th World Congress of the International Association for Child and Adolescent Psychiatry and Allied Professions, Istanbul, Turkey.

November 8, 2008	The Dependent Patient: Assessment and Treatment. Robert F. Bornstein, Ph.D. The 15th Annual Irving Schulman Symposium, Widener University, Chester, PA. 3 credit hours.
February, 2009	California Chapter of Association of Family and Conciliation Courts, San Franciso, CA. 12.5 credit hours.
	Preconference Institute: Domestic Violence in Custody Disputing Families: Debates and Dilemmas of Differential Disposition: Presenters: the Honorable Jerilyn Borack, Janet R. Johnston, Ph.D., Sharon Kalemkiarian, J.D., 4 C.E.
	Plenary Address: Understanding Domestic Violence Allegations in Child Custody Disputes: From the Great Debate to a Framework for Action. Presenters: Peter G. Jaffe, Ph.D., Janet R. Johnston, Ph.D., Nancy W. Olesen, Ph.D. (moderator). 2 C.E.
	Workshop: Research Update: Presenter: Joan B. Kelly, Ph.D., 1.5 C.E.
	Plenary Address: Listening to Children's Voices in Divorce Processes. Presenter: Joan B. Kelly, Ph.D., 1.5 C.E.
	Involving Mental Health Professionals in Settlement Conferences. Presenters: The Honorable Verna Adams, Mauna Berkov, J.D., Robert L. Kaufman, Ph.D., A.B.P.P., Margaret Lee, Ph.D., 1.5 C.E.
	Young Children and Domestic Violence: Risk & Resilience. Presenter: Patricia Van Horn, Ph.D., 2 C.E.
March, 2009	SPA Annual Meeting: Chicago, Illinois. The Media and Psychology: Communicating

Complex Ideas about Personality. Nancy Kaser-Boyd, Ph.D. 1 C.E. credit

Symposium B: Attachment Measures in Child Custody Evaluations. Marla Isaacs, Ph.D., Carol George, Ph.D. and Lorie Nachlis, J.D., 2 C.E. credits.

Hertz Memorial: In memory of John E. Exner, Jr., Ph.D. Don Viglione, Ph.D., Greg Meyer, Ph.D., Barry Ritzler, Ph.D., and Irving Weiner, Ph.D. 1 C.E. credit.

Master Lecture I: Detecting Malingering on Personality Tests. John R. Graham, Ph.D., 1 C.E. credit.

Presidential Address: Postmodern Redux and the Personality of the Assessor. Virginia Brabender, Ph.D., 1 C.E. credit.

Workshop #8: The Application of Attachment Related Research to Child Centered Evaluations. Ginger Calloway, Ph.D. 3.5 C.E. credits.

Cho: Descent into Madness. Jerry L. Brittain, Ph.D. 1 C.E. credit.

Symposium E: Attachment Disorganization and the Alienated Child: Current Research and Clinical Implications for Personality Assessment. Robert Kaufman, Ph.D. and S. Margaret Lee, Ph.D. 2 C.E. credits.

Symposium F: The Psychodynamic Manual and Its Implications for Personality Assessment. Steven Huprich, Ph.D., Marshall Silverstein, Ph.D., Thomas Shaffer, Ph.D., Irving Weiner, Ph.D. 2 C.E. credits.

May, 2009

Rorschach Reunion Program: An Advanced Program Focusing on Research, Test Integration, and Difficult Clinical Cases

Utilizing the Rorschach Test. Asheville, N.C. Phillip Erdberg, Ph.D., Roger Greene, Ph.D., Anthony Sciara, Ph.D., Barry Ritzler, Ph.D., Anita Boss, Psy.D. 21 C.E. credits.

March, 2010

SPA Annual Meeting: San Jose, CA.
Legal and Ethical Risks and Risk Management: Risk Management in Specific High Risk Areas. Jeffrey Younggren, Ph.D. 6 C.E. credits

Bruno Klopfer Award – Roger Greene, Ph.D. 1 C.E. credit

Symposium F: Introducing Key Features of the Rorschach Performance Assessment System. Greg Meyer, Ph.D., 2 C.E. credits

Master Lecture I: The Assessment of Trauma Related Symptomatology. John Briere, Ph.D., 1 C.E. credit.

Master Lecture II: Giving Personality Assessment Away. Phil Erdberg, Ph.D., 1 C.E. credit.

Symposium E: Recent Advances in Clinical and Diagnostic Uses of the MCMI-III. Gina Rossi, Ph.D., 2 C.E. credits.

Hertz Memorial Presentation: In memory of Jane Loevinger. 1 C.E. credit.

Symposium A: Advances in Rorschach Performance Assessment: Part I. Greg Meyer, Ph.D. 2 C.E. credits

Roundtable K: Wither the Rorschach: Revolution, Evolution or Status Quo? Bruce Smith, Ph.D. 2 C.E. credits

June, 2010

Traversing the Trail of Alienation: Rocky Relationships, Mountains of Emotions, Mile High Conflict. Annual Conference,

	Association of Family and Conciliation Courts.
	Addressing Allegations of Alienation:Judicial Dilemmas. 1.5 C.E. credits
	Attachment Relationships in the Courtroom. 1.5 C.E. credits.
September, 2010	Rorschach Training Programs, Advanced Reunion Program. Anita Boss, Psy.D., James C. Fowler, Ph.D., Barry A. Ritzler, Ph.D., Anthony Sciara, Ph.D., and Irving Weiner, Ph.D. 21 C.E. credits.
October, 2010	Northern California chapter, American Academy of Marital Lawyers, symposium on use of experts in family law
March, 2011	Society for Personality Assessment Annual Conference, Boston, MA
	The Rorschach Performance Assessment System: Overview and Case Illustration. Greg Meyer, Ph.D., Joni Mihura, Ph.D., Donald Viglione, Ph.D., and Robert Erard, Ph.D. 7 C.E. credits
	Master Lecture II: Adolescent Assessment: Are We Good Enough? Nancy Kayser-Boyd, Ph.D. 1 C.E. credit
	Master Lecture I: Assessment of Pretend Play: Why It is Important Sandra Russ, Ph.D 1 C.E. credit

PRESENTATIONS AND PUBLICATIONS

September 2000	Guest instructor, Duke University Department of Psychology, Durham, N.C., eight hours of class instruction on scoring and interpretation of the Comprehensive System for use with the Rorschach Inkblot Method to graduate students.
September 2001	"Choosing a Custody Evaluator Based on a Philosophy of Settlement." Power Point Presentation for C.L.E. credits, given to attorneys at the Academy of Trial Lawyers, Raleigh, N.C.
October 2001	Presentation to Family Law Section of Orange County, N.C. Bar Association regarding a philosophy of settlement in conducting custody matters.
November 2001	Presentation to mediators in training on developmental stages of children, Carolina Dispute Settlement, Raleigh, N.C.
February 2002	Ethics presentation to staff and interns at the Child Trauma and Maltreatment Team, Department of Psychiatry, University of North Carolina at Chapel Hill, Chapel Hill, N.C.
March 2002	Presentation to Society for Personality Assessment. Symposium: Custody Evaluations: Balancing Forensic Rigor and Clinical Expertise, San Antonio, T.X. M. Lee, Ph.D., G. Calloway, Ph.D., A. Aloia, Ph.D., B. Ritzler, Ph.D.
November, 2002	Presentation to AFCC Conference on Custody, Tucson, AZ. "Balancing Forensic Rigor and Clinical Expertise." N. Olesen, Ph.D. and G. Calloway, Ph.D.
May, 2003	Presentation to AFCC Annual Conference: Child Abduction: Risk Factors, The Trauma, and Preventative Interventions. Ginger Calloway, Ph.D., Marla B. Issacs, Ph.D., and Stephen J. Anderer, J.D.

	Presentation to AFCC Annual Conference: The Rorschach Test in Custody Evaluations. G. Calloway, Ph.D. and Margaret Lee, Ph.D.
March, 2004	Chair, Presentation to Society for Personality Assessment Mid-Winter Meeting: The Incremental Value of the Rorschach and Assuring Its Inclusion in Child Custody Evaluations. 2 C.E. credits for participants.
October, 2004	Presentation to attorneys and psychologists for National Business Institute: Custody and Shared Parenting. Ginger Calloway, Ph.D., Judith Guibert, J.D. and Miles Williams, J.D. 6 C.L.E. Credits for attorneys and licensed counselors.
November 3, 2004	Presentation to attorneys and psychologists: The Alienated Child. Ginger Calloway, Ph.D. and Nancy Grace, J.D. CLE credits for attorneys.
November, 2004	"Use of the Rorschach in Child Custody Evaluations." Journal of Child Custody. Ginger C. Calloway, Ph.D.
July, 2005	"Sex, Drugs & Porn: Dealing with Addictions." Presentation to Family Law Specialists, N.C. Bar Association. Myrtle Beach, S.C.
July, 2005	Delegate from Society for Personality Assessment to International Rorschach Congress, Barcelona, Spain.
Summer, 2005	"Use of the Rorschach in Child Custody Evaluations." Journal of Child Custody and Psychological Testing in Child Custody Evaluations.
November, 2005	Presentation to Senior Seminar, Queens University, "Forensic Psychology – Entrance Requirements and Pathways."
January, 2006	Guest Lecturer, UNC-CH Law School. "The Value of Joint Custody, Effect of Conflict on Children in Divorcing Families, Management of High Conflict Families."

	Contribution to Understanding Parent Child Relationships." Day long presentation at Widener University, Philadelphia, PA.
May 20, 2010	Presentation on Domestic Violence to custody mediators for North Carolina Administration of the Courts.
June 3, 2010	"Attachment in the Courtroom." Symposium presented at the annual meeting of the Association of Family and Conciliation Courts. Denver, Colorado. With Margaret Lee, Ph.D., Robert Marvin, Ph.D. and Lorie Nachlis, J.D.
March, 2011	Paper presentation at Society for Personality Assessment, Boston, MA. "Who Is This Child? With Margaret Lee, Ph.D. and Sandra Russ, Ph.D.

PSYCHOLOGICAL REPORT

In the matter of

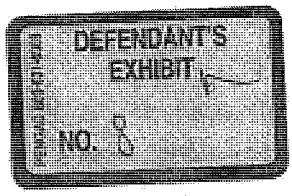
State of South Carolina
County of Spartanburg

Versus

Ricky Lee Blackwell

Indictment Number 2009-GS-42-3610
07 GS 42-2778

Name:	**Ricky Lee Blackwell**
Date of birth:	[redacted]
Date of evaluation:	**06/29/12**
Age at evaluation:	**53 years**
Location of evaluation:	**Spartanburg County Detention Facility** **Spartanburg, South Carolina**
Examiner:	**Ginger C. Calloway, Ph.D., HSP-P** **Licensed Psychologist** **N.C. License #935** **S. C. Temporary Permit License #29**



Reason for Referral

Ricky Lee Blackwell is a 54 year old, Caucasian male who was referred by his attorneys, William McGuire and Clay T. Allen for an evaluation of his intellectual and adaptive behavior functioning. The mitigation specialist who collected information regarding Mr. Blackwell suspected he might be intellectually impaired. Upon receipt of this information, Mr. Blackwell's attorneys sought a full psychological evaluation.

Mr. Blackwell's attorneys asked me to review his case in order to render an opinion about mental retardation, now called "intellectual disability." This review involved evaluation of Mr. Blackwell, review of various, substantially voluminous records, and interview of multiple collateral sources familiar with Mr. Blackwell's daily functioning prior and subsequent to the age of 18. The attorneys specifically asked me to opine regarding whether Mr. Blackwell meets the criteria for mental retardation as outlined in South Carolina statute.

I met with Mr. Blackwell on two occasions at the Spartanburg County Detention Center, Spartanburg, South Carolina where he is incarcerated for an alleged homicide, for which the state of South Carolina is seeking the death penalty. During the evaluation with him, I sought informed consent from him, which he gave. I questioned his understanding

of this in light of the fact that he stared blankly at me when I explained informed consent and nodded his head up and down in compliance or agreement.

I met with Mr. Blackwell for roughly 7 hours, during which time I interviewed him with the Forensic Client History and Checklist, administered a Wechsler Adult Intelligence Test, version 4 (WAIS-IV), Wide Range Achievement Test – version 4 (WRAT-IV), Competence Assessment to Stand Trial for Defendants with Mental Retardation (CAST-MR) the Test of Memory Malingering (TOMM), and asked him additional questions to determine general knowledge about specific matters and to inquire further about his mental illness. Mr. Blackwell has a history of Hodgkin's' lymphoma and mental illness, variously diagnosed as Major Depressive Disorder, without psychosis and Anxiety Disorder. He has had periods of depression resulting in suicide attempts, most notably at the time his marriage dissolved and at the time of the instant offense. At the time of the initial evaluation, he was taking Thorazine, an antipsychotic medication.

For assessment of adaptive functioning, multiple interviews with nine collateral sources or informants were conducted over a period of several months and included roughly 26 hours of interviewing.

Standards for Determination of Intellectual Disability (aka mental retardation)

In Franklin v Maynard, The Supreme Court of South Carolina held that (1) the definition of mental retardation, established in statute providing for mental retardation as a mitigating circumstance in (MR) capital cases, applied in making mental retardation determination in capital cases; (2) procedures for making mental retardation determination were established; and (3) procedures for cases where defendant was sentenced to death prior to *Atkins* already existed. A defendant in a capital case has the burden of proving he or she is mentally retarded by a preponderance of the evidence.

South Carolina code defines mental retardation as "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period."

In *Atkins v Virginia,* the Supreme Court of the United States held that execution of mentally retarded individuals violates the 8th Amendment's ban on cruel and unusual punishment. The Court embraced the definitions provided by the American Association on Intellectual and Developmental Disabilities (AAIDD) and by the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR). This decision of the Court required that professional standards be applied in the diagnosis of mental retardation (MR), now called intellectual disability (ID).

The American Association on Mental Retardation (AAMR), now called the American Association of Intellectual and Developmental Disability (AAIDD), defines

mental retardation or intellectual disability (Manual of the AAIDD, 2010, p. 1, p. 5 and p. 27) as:

- A disability characterized by significant limitations in both intellectual functioning and adaptive behavior as expressed in conceptual, social and practical skills (factors extracted from a previous list of 10 areas of adaptive deficits). This disability originates before age 18. The following 5 assumptions are essential to the application of this definition:

    1. Limitations in present functioning must be considered within the context of community environments typical of the individual's age peers and culture.

    2. Valid assessment considers cultural and linguistic diversity as well as differences in communication, sensory, motor and behavioral factors.

    3. Within an individual, limitations often co-exist with strengths.

    4. An important purpose of describing limitations is to develop a profile of needed supports.

    5. With appropriate personalized supports over a sustained period, the life functioning of the person with intellectual disability will generally improve.

- Significant limitations in intellectual functioning are evidenced by scores from professionally recognized and accepted, individually administered intelligence tests. Limitations in intellectual functioning are indicated by an I.Q. that is approximately two standard deviations below the mean, considering the standard error of measurement for the specific instrument used and the instrument's strengths and limitations.

The DSM-IV-TR defines mental retardation (2000, pp. 41-49) as a disorder identified in childhood or adolescence and characterized by:

- Significantly subaverage, general intellectual functioning, an I.Q. of approximately 70 or below on an individually administered I.Q. test that is

- Concurrent with deficits or impairments in present adaptive functioning (i.e., the person's effectiveness in meeting the standards expected for his or her age by his or her cultural group) in at least 2 of the following areas: communication, self care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, and health and safety. And

- The onset is before 18 years.

In the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), the DSM-5 the authors note that intellectual disability (intellectual developmental disorder) as a DSM-5 diagnostic term replaces "mental retardation" used in previous editions of the manuals. In addition, the parenthetical name ("intellectual developmental disorder") is included in the text to reflect deficits in cognitive capacity beginning in the developmental period. Together, these revisions make the DSM classification system more congruent with terminology used by the World Health Organization's International Classification of Diseases, other professional disciplines and organizations, such as the American Association on Intellectual and Developmental Disabilities, and the U.S. Department of Education.

The authors continue with: DSM-5 emphasizes the need to use both clinical assessment and standardized testing of intelligence when diagnosing intellectual disability, with the severity of impairment based on adaptive functioning rather than IQ test scores alone. By removing IQ test scores from the diagnostic criteria, but still including them in the text description of intellectual disability, DSM-5 ensures that they are not overemphasized as the defining factor of a person's overall ability, without adequately considering functioning levels. **This is especially important in forensic cases where I.Q. test scores may vary and where functional capacities are crucial for a complete understanding of the individual.**

Additionally, the authors of DSM-5 add: It is important to note that IQ or similar standardized test scores should still be included in an individual's assessment. In DSM-5, intellectual disability is considered to be approximately two standard deviations or more below the population, which equals an IQ score of about 70 or below.

It is also of note that intellectual disability is used interchangeably with intellectual developmental disorder in the DSM-5 nomenclature. The authors of DSM-5 use these terms interchangeably, whereas expert professionals familiar with intellectual disability and who are part of the American Association on Intellectual and Developmental Disabilities refer to this disability as a disability. This is an important distinction because disorder implies a medical condition whereas disability indicates difficulty in functioning. There is no medical disorder in intellectual disability. It is, however, a disability that involves functioning that is disabled, deficient, and substantially unlike other, average individuals.

In summary, as noted in the Manual of the AAIDD (2010, p. 27), professionals are in agreement that the three elements to a diagnosis of mental retardation include: (1) significant limitations in intellectual functioning, (2) significant limitations in adaptive functioning, and (3) age of onset of the disability before age 18.

Assessment Methods and Records Reviewed

- Forensic Client History and Checklist (FCHC)
- Wechsler Adult Intelligence Scale, revision 4 (WAIS-IV)
- Wide Range Achievement Test – 4th edition (WRAT-IV)
- Assessment of map skills through interview and use of South Carolina map
- Competence Assessment to Stand Trial for Mentally Retarded Defendants (CAST-MR)
- Test of Memory Malingering (TOMM)
- Adaptive Behavior Assessment System – II (ABAS 2) – administered to:
    - Mildred Blackwell, Rickey's mother
    - Cletus Blackwell, Rickey's father
    - Heather Bryant, Rickey's daughter
    - Ken Rice, Rickey's former pastor and counselor
    - Jean White, neighbor and friend to Mildred
    - Louise Scruggs, Rickey's former teacher
    - Ricky Bagwell, Rickey's former employer
    - Gail Shook, Rickey's former work supervisor
- Ex Parte Motion to Retain a Licensed Psychiatrist and attached Exhibits:
    - Arrest Record
    - Notice Seeking Death Penalty
    - Correspondence from Clay Allen accepting a plea of Life without Parole and admission of guilt from Rickey Blackwell
    - Interview with Cheryl Ponder
    - Memo re: Rickey Blackwell school records from Kara Richards, mitigation specialist
    - Otis Self Administering Test of Mental Ability for Cletus Blackwell
    - Clinical Assessment, mental health treatment records and physician's orders for Heather B[redacted]t age 14
    - Spartanburg County School District #2 Records Digest for "Mark Allen B[redacted]" son of Heather, grandson of Rickey
    - Spartanburg County School District #2 School Records Digest for "Kaleb E[redacted] son of Heather and grandson of Rickey
    - Progress Notes of Michelle A. Keene, M.D. for Mackenzie Nichole H[redacted]daughter of Heather Blackwell Bryant and granddaughter of Rickey
    - Psychiatric Evaluation for Roger Bridges, cousin to Rickey Blackwell
    - Interview with Jean Bradley White by Kara Richards
    - Psychiatric History and Mental Status Examination from 1990 for Rickey Blackwell
    - Inpatient Psychiatric Assessment, Carolina Behavioral Health, 2008 for Rickey Blackwell
    - Westgate Family Physicians, 6/09 for Rickey Blackwell

  - Palmetto Hematology Oncology, 5/09 for Rickey Blackwell
- Records of treatment for Mr. Blackwell at Westgate Family Physicians
- Records for Mr. Blackwell from Carolina Center for Behavioral Health
- Patrick B. Harris Psychiatric Hospital for Rickey Blackwell
- Records for Mr. Blackwell from Spartanburg County School District 2
- Spartanburg Regional Healthcare System records for Rickey Blackwell
- Patrick B. Harris Psychiatric Hospital, records for Heather Blackwell Bryant and for Donald Blackwell, brother of Rickey Blackwell
- Spartanburg Area Mental Health Center, records for Heather Bryant and for Donald Blackwell
- Spartanburg County School District 2 records for Cletus Blackwell
- Chesnee High School Records, Heather Bryant
- Spartanburg Regional Healthcare System records for Donald Blackwell
- Carolina Family Physicians records for Mildred Blackwell
- Psychiatric Evaluation of Roger Bridges, cousin to Rickey
- Spartanburg County Coroner's Office records, Donald Blackwell
- Social Security Administration records for Rickey Blackwell
- Spartanburg County School District 2 records for Kaleb B[redacted] and for Mark "Allen" B[redacted] grandsons of Rickey

Behavioral Observations

Rickey Lee Blackwell is a 54 year old, Caucasian male who was shackled and handcuffed, with one hand free during evaluation. He was noticeably anxious and his hands shook during evaluation. At various times, his eyes filled with tears and he cried easily and frequently. He appeared very limited with regard to use of language, ability to provide details, elaboration of his answers, and general demeanor that caused him to appear naïve and like a young child. At times, Mr. Blackwell said, "Oh, I can't do that" (with regard to completing certain items on the intelligence test) and seemed embarrassed about his general lack of knowledge and fund of information. He was routinely polite and deferential and consistently answered questions with, "Yes ma'am or no ma'am." He was cooperative and compliant and clearly accustomed to accepting direction from others.

In describing various time periods and events in his life, it was obvious from his simple manner that Mr. Blackwell was highly dependent on his former wife and his parents to assist him with many daily routines. Prior to the instant offense, Mr. Blackwell was spending time daily, for example, with his former wife's family, including meals. He described his typical day in terms of routines that were continuously the same day in and day out. When his former wife left him and the marriage in 2008, his mother moved in with him at first and subsequently, he moved in with his mother and father in their home. Also when his former wife left him, Mr. Blackwell routinely pled with her to return to the marriage, despite the obvious fact that she did not intend to do so.

During interviews other examples of his dependency included the following comments. He described receipt of his check payments from work in the following manner. He said, "She [his former wife] did that." With repeated questioning, he clarified that his former wife deposited checks to a checking account. When asked twice what he did with work payments before his marriage, Mr. Blackwell eventually stated, "I cashed 'em." Additional questions eventually resulted in these statements. "I never fooled with nothing but cash money – no money order." When asked why not, he replied, "I would have been in all kind of trouble." When prompted to explain, he added, "Probably would have gotten messed up, trying to keep up with all of it."

During interviews, Mr. Blackwell exhibited a lack of information expected of an average person, such as an understanding of the legal system and the various roles of those within it. In addition, he was simplistic and general in his answers. For example, he did not understand the word "defense counsel" and was not sure what this individual does. For "solicitor," he remarked, "He's the one persecuting them, I guess." He stated he was in jail for "murder and kidnapping" and knew that a "defendant" is "me." For possible consequences, stated as, "Do you know what the punishment is for these crimes?" Mr. Blackwell said, "Death or life."

Mr. Blackwell does not have a criminal history and stated that the first time he was in a courtroom was "with Bill [Mr. McGuire, his attorney]." He added, "He went over some things." I asked Mr. Blackwell if he understood the "things" Mr. McGuire "went over" and he said, "No." When asked what a "plea bargain" is, Mr. Blackwell said, "Can plead guilty, whatever the plea is I can choose. They not going to give me no plea." When asked "Why?" he responded, "They want me dead. Clay [his attorney] said the public wants it. Somehow they in it, I don't know."

Relevant History and Background

Mr. Blackwell was born in Cowpens, South Carolina. His family moved to Chesnee where he spent his childhood. When he and his former wife married, they lived on land owned by Mr. Blackwell's father, in close proximity to Mr. Blackwell's parents. He attended public schools at Cooley Springs elementary and Chesnee High School, where he dropped out of school in 11th grade. He reported that he was in special education classes, where he was removed from mainstream class and taught separately on specific subjects. This special education started roughly at the time he was 10-11 years old.

In interview with Ms. Louise Scruggs, who taught Mr. Blackwell in 8th grade, she explained that the county in which Mr. Blackwell resided had no funding for special education classes. Children with special needs were placed in "adjunct classes." She explained that these classes were for those children who would be tracked to a technical

rather than academic level, were for children achieving "at a lower level," were smaller classes "in order to get more individual attention" and essentially provided what special education classes typically provide, i.e., individually designed and implemented instruction geared to the individual's specific level of functioning. Ms. Scruggs reported that she later achieved certification as a special education teacher when this became available. Ms. Scruggs described Mr. Blackwell as someone who "spoke if spoken to." She added that he was "not a troublemaker and just kind of blended in." Ms. Scruggs identified Mr. Blackwell from a yearbook provided to her.

It is of note that Mr. Blackwell has several family members with limited intellect who also received special education services. His father, Cletus, for example, was administered an intelligence test on which he scored in a mild range of intellectual disability. Mr. Blackwell's deceased brother, Donald, repeated several grades in school, scored in a mild range of intellectual disability on measures of intelligence, and was "socially promoted" on occasion, according to school records for him. Mr. Blackwell's daughter, Heather, also received intelligence testing, scored in a similar range, and received exceptional children's services. Heather's children have intellectual deficits and receive special services for those. Heather's son Allen scored in a moderate range of intellectual disability on standardized intelligence tests administered to him in school and in a similar range on measures of adaptive functioning. Her son Kaleb scored in a mild range of intellectual disability on similar intelligence tests and scored similarly on measures of adaptive functioning. Heather's daughter suffers from obvious language and intellectual delays.

Blackwell Family Members' IQ Scores

NAME	RELATION	DATE	AGE	TEST	SCORE
Cletus [redacted]	Father	8/31/50	14	Otis Self-Administering Test of Mental Ability (school records)	IQ = 60
Mildred Blackwell	Mother			School system unable to locate her records	
Donald B[redacted]	Brother	10/75 4/78	12 15	Short Form Test of Academic Aptitude Short Form Test of Academic Aptitude (school records)	IQ = 73 IQ = 74
Heather [redacted] B[redacted]	Daughter	1994 1996	10 12	Otis-Lennon School Ability Test Otis-Lennon School Ability Test (school records)	IQ = 57 IQ = 71
Kaleb B[redacted]	Grandson	8/18/10	9	Wechsler Intelligence Scale for Children – IV	IQ = 52

				(WISC-IV) (school records)	
Allen B[redacted]	Grandson	2/17/09 12/8/11	6 8	Stanford-Binet Intelligence Scale - V Reynolds Intellectual Assessment Scales (school records)	IQ = 50 IQ = 46
Roger Bridges	Maternal cousin	4/29/05	54	(Newberry Center records)	Moderate mental retardation

Of note as well is that Mr. Blackwell and his brother Donald suffered from seizures as children, for which they frequently received treatment in emergency rooms. He and his brother both suffered from mental illness. His brother was diagnosed with Schizoaffective Disorder, bipolar type, Schizophrenia with paranoia, Panic Disorder, and cannabis abuse. He was administered a variety of antipsychotic medications throughout his life. Mr. Blackwell's mother, Mildred, also suffers from mental illness that includes depression, frequent weepiness, and extreme anxiety. Mildred was prescribed a number of psychotropic medications, documented in medical records from 1996 to 2012. Both Mr. Blackwell and his brother were hospitalized in psychiatric hospitals and both attempted suicide on several occasions. Mr. Rickey Blackwell received diagnoses of Major Depressive Disorder, a diagnosis indicating major mood disorder, and he also received diagnoses of anxiety, depression and insomnia. He was committed involuntarily on one occasion to a psychiatric hospital. After his wife left him, he suffered from various diagnoses and was prescribed a variety of psychotropic medications.

Psychiatric Diagnoses for Rickey and Donald Blackwell

NAME	DATE	AGE	FACILITY	DIAGNOSIS
Rickey	3/12/1990	31	Patrick B. Harris Psychiatric Hospital (inpatient)	Major Depressive Disorder, recurrent, in partial remission at discharge
Donald	7/18/1992	29	ER and Patrick B Harris Psychiatric Hospital	Depression, suicidal attempt
Donald	2/24/94	30	Inpatient hospital	Schizoaffective Disorder,

				possible panic disorder; rule out atypical bipolar disorder or anxiety disorder
Donald	1/9/1995 3/8/1995 11/25/1995	31 31 32	Inpatient hospital Inpatient hospital Inpatient hospital	Schizophrenia Schizophrenia, paranoid type, chronic with acute exacerbation Schizoaffective Disorder, panic disorder
Donald	1/25/1996 3/11/1996	32 32	Inpatient Inpatient	Schizoaffective disorder
Donald	1/21/1997	33	Inpatient	
Donald	3/4/1998	34	Inpatient	
Rickey	3/14/2000	42	Westgate Family Physicians	Acute anxiety, depression, insomnia
Donald	10/2/2000	37	Inpatient	Schizoaffective disorder, bipolar type
Rickey	9/20/05	47	Westgate Family Physicians	Anxiety and depression
Rickey	12/11/08	50	Carolina Center for Behavioral Health	Committed involuntarily Discharge Diagnosis: Major Depressive Disorder, recurrent, severe, without psychosis

Rickey Blackwell reported that he left school in the 10th grade (school records indicate he left in the 11th grade) because he wanted to become a truck driver. His father purchased his first truck for him, which Cletus reported Rickey wrecked when he followed someone too closely. Rickey was following the individual in order to arrive at a work site and make a delivery. Consistent with a diagnosis of mild intellectual disability, Rickey learned new tasks and skills, such as learning to drive a truck on the same routes to routine destinations, through repetition and assistance from others.

Once he left school, Mr. Blackwell lived with his parents who separately and jointly reported that they purchased several vehicles for him and took care of his daily needs like meal preparation, meal planning, grocery shopping, house cleaning, home repair and the like. They described him as easily influenced by friends. They gave as one example some friends who took advantage of him by taking his car away from him, throwing him out of the car, and ruining the car on one occasion. From the time he left school until the time he married at age 23, Mr. Blackwell lived continuously with his parents who routinely provided a home, meals, meal preparation, grocery shopping, assistance with purchasing vehicles, assistance with obtaining work and other daily life needs. After his wife left him, his mother moved in with him to assist him in daily routines and ultimately, he returned to his parents' home to live.

Other employment in which Mr. Blackwell engaged included stacking bags on an assembly line, bagging ice at an ice house, identifying damaged cans on an assembly line and feeding hoppers with waste cotton at a textile plant. His father reports that Mr. Blackwell drove a truck for Hess corporation for 2 months and lost the job due to an accident where he ran off the road due to lack of sleep. During interview with Mr. Blackwell, he appeared to confuse this job with another he had working for a trucking company called Blue. With regard to the trucking job he had with Blue, Mr. Blackwell and his father reported separately that Mr. Blackwell kept logs of distances he drove, after receiving direction about how to do this, and did not handle money. His report of the driving he did included routes that were primarily local and that he learned to navigate by having someone else ride in the truck with him repeated times until the route became familiar to him. This ability to learn over time and with repetition is consistent with a diagnosis of mild intellectual disability. Mr. Blackwell reported he lost this job after he followed too closely behind another car and hit the car. He obtained his next job at Springs textile when his wife "got that for me." He worked there driving a forklift, a task he apparently did ineptly at times, due to confusion that resulted in several accidents. He was unemployed for several months prior to the time of the instant offense.

RICKEY LEE BLACKWELL
EMPLOYMENT

YEAR	EMPLOYER	JOB DESCRIPTION	COMMENTS
1976	James L. Belue	Put lids on boxes of peaches	Lasted one season
1976	United Overton Corporation		

1976-1977	Community Cash Stores Inc.		
1977	Crown Cork & Seal Co. Inc.	Inspected cans for defects	Fired from job
1977	White Bag Co.	Stacked pallets	Quit after about 6 months
1978	Milliken & Company		
1978	Newspaper Management Production Co Inc.		
1978	Phillips Fibers Corporation		
1979-1980	Southern Piedmont Ice Co	Bagged ice	Quit after a year
1979-1981	M& C Farm & Feed Mill Inc.		
1979	American Fast Print		
1980-1981	Oneita Industries Inc.		
1982	B&R Transports Inc.	Truck driver	In an accident and quit shortly after
1982-1983	Hess Corporation	Truck driver	Lost job after being in an accident
1984-1986	Charles P. Belue	Truck driver	Lost job after being in an accident
1984	Cherokee Textiles	Worked the hopper & bale press	Quit after about a year
1985	Self employed	Truck driver	Wrecked his truck
1985	K&S Trucking	Truck driver	
1985-1986	Peeler Rug Company Inc.		
1987-1997	Unemployed		
1998-2005	Springs Industries Inc.	Drove a forklift; loaded materials	
2001	Broadspire National Services		
2005-2008	Jacobson Warehouse Co Inc.	Drove a forklift; pulled orders	

Mr. Blackwell married one time to Angie Blackwell when he was roughly 23 years of age and she was 17. The two met in church. Mr. Blackwell and his wife lived with her parents briefly and subsequently moved into a singlewide mobile home that Cletus and Mildred Blackwell, Mr. Blackwell's parents, purchased for them and placed on their land. At some point, Angie and Mr. Blackwell purchased a double wide, with Cletus' help, a home that was subsequently lost to bankruptcy. Mr. Blackwell did not know how to make the payments on this home and thus, it went into foreclosure after his wife left him. Mr. Blackwell and his former wife had two children who are 28 and 26 years old. According to family members and documents reviewed, Angie left Mr. Blackwell for a man who was her manager at work. When asked the reason for his marriage failing, Mr. Blackwell remarked, "Don't know to tell you the truth." When

asked "What did she [Angie] say to you about why she was leaving," Mr. Blackwell responded, "Gave her a bill one day and she took off." Mr. Blackwell stated when asked that he had no other significant relationships other than his former wife.

Mr. Blackwell's medical and mental health history is significant in several ways. As a child, he suffered from frequent seizures that were typically treated by his mother, family members and neighbor taking him to an emergency room. Frequent seizures may have affected his intellectual functioning. He suffered from Hodgkin's' lymphoma in 1986, a condition that may have affected his intellectual functioning. Mr. Blackwell also sustained an injury from an accident driving a four wheeler, during which he lost consciousness for 15 – 20 minutes and remained confused for an hour. This, too, may have affected his cognitive functioning. In summary, there are several insults to his cognitive functioning that may have impacted his intellectual ability.

In addition, Mr. Blackwell suffered from mental illness that was diagnosed as Major Depressive Disorder, severe, without psychosis and with extreme anxiety. His first episode of suicide attempt and suicidal ideation occurred in 1990 when he was admitted to Patrick B. Harris Psychiatric Hospital. At this time, it was reported that his mother was "nervous" and suffered from depression, while his maternal grandfather and paternal aunt were also hospitalized for psychiatric reasons. At the time of this hospitalization, it was reported by his wife and mother that he was depressed due to the Hodgkin's' lymphoma, financial problems in the marriage, recent suicide of a friend and alcohol use.

In 2008, he was involuntarily committed to Carolina Center for Behavioral Health for taking an overdose of pills. This followed the breakup of his marriage. During interviews, Mr. Blackwell remembered this hospitalization and did not recall the prior one. He said of the hospitalization in 2008 and his suicide attempt, "Took a bunch of Xanax and had to go to that place in Greer. Took an overdose." When asked why he took this overdose, he replied, "When she [Angie] come up there talking about her and that man and I got upset." Mr. Blackwell was prescribed a number of psychotropic medications by the inpatient hospital where he was admitted. After discharge, his primary care physician discontinued use of some of these psychotropic medications and prescribed Xanax, a highly addictive medication advised against and discontinued by inpatient hospital physicians. At the time of the instant offense, Mr. Blackwell shot himself in the stomach requiring surgery to remove his spleen and parts of his colon.

In summary, Mr. Blackwell has a number of risk factors for intellectual disability (AAIDD manual, 2010, page 60) that include multiple family members with intellectual disability, parental cognitive disability without supports, seizure disorder in childhood, Hodgkin's' lymphoma, head injury with loss of consciousness, and the interaction of these factors. In addition to intellectual disability, Mr. Blackwell also suffers from mental illness that impacts his cognitive functioning as well.

History of School Performance

Evidence for Impaired Functioning before the age of 18

Mr. Blackwell has a history of subaverage performance in school, with regard to grades, scores on achievement tests, and scores on tests of mental maturity. As early as 7 years of age, he scored in a mild range of intellectual impairment on measures of mental maturity. At age 15, he scored in a mild range of intellectual impairment on a measure of academic aptitude. Also at age 15, he failed the 9th grade. At age 18, on a measure of adult learning, Mr. Blackwell obtained scores ranging from 5th grade level on arithmetic computation to 6th grade level on arithmetic problem solving. He dropped out of high school in 11th grade, when he was 18 years old, and his class rank was 113 in a class of 113. His scores on these various measures are presented below in chart form.

Scores on standardized measures given during school years

Measure or Test	Date	Rickey's Age	Results
California Test of Mental Maturity	4/19/66	7 years old	IQ = 68 (mild ID)
California Test of Mental Maturity	10/20/67	8 years old	IQ = 87 (low average)
California Achievement Test	11/70	11 years old	5th percentile = IQ of 75 (mild ID)
Comprehensive Test of Basic Skills	10/71	12 years old	28 percentile = IQ of 90 (average)
Short Form Test of Academic Aptitude	10/73	14 years old	IQ = 72 (mild ID)
Comprehensive Test of Basic Skills	10/73	14 years old	Reading = 19th percentile = IQ of 87 (low average); total language = 41st percentile = IQ of 96 (average)
Comprehensive Test of Basic Skills	10/74	15 years old	Total battery = 7th percentile = IQ of 78 (borderline range of ID)
Adult Basic Learning Examination	4/77	18 years old	Reading: grade 5.8 Arithmetic problem solving – grade 6.6 Arithmetic computation – grade 5.2

			Total arithmetic – grade 5.6
Comprehensive Test of Basic Skills	4/77	18 years old	Total battery = 8th percentile = IQ of 79 (borderline range of ID)

According to one of his teachers, there were no identified exceptional children's services offered in the school district in which Mr. Blackwell was enrolled at the time he attended school. He was, however, given special education training by way of being educated in "adjunct classes" which predated exceptional children's classes in that school district. By being educated in this way, he was given instruction in small group settings, separate from mainstream classes. It is noteworthy that although he was educated in a smaller group setting than other children, with more individual attention to his academic needs, he nevertheless failed the 9th grade, ultimately dropped out of school, and continued to obtain scores on various measures of achievement and mental maturity that were subaverage.

There are some differences among the various scores obtained by Mr. Blackwell on the measures listed above, although these are insignificant from a functional and statistical point of view. With regard to the differing scores obtained, there are several explanations for these in the literature on intellectual disability. Individuals like Mr. Blackwell who score at the lower end of the normal curve for intelligence (below 80) exhibit greater variability in I.Q. scores than individuals who score within other areas of the normal curve (Whitaker, S., 2008 and 2009). If one examines the standardization process, it becomes evident that the bulk of individuals tested for standardization purposes obtain scores in the middle of the normal curve, with fewer individuals at the extremes (Whitaker, S., 2009). This makes logical sense since the majority of individuals in any sample of intelligence will cluster around the mean IQ score. That is to say, the majority of people have average intelligence and hence average I.Q. scores, roughly standard scores of 90 to 110.

In a meta analytic study (Whitaker, S., 2008) of 18 studies of I.Q., Whitaker found that subjects in the lower range of I.Q. (below 80) exhibited greater changes in I.Q. scores on repeat testing than other individuals. Whitaker explains that changes may be due to random errors such as differences in test administration and scoring, level of distraction present, and state of person being assessed on that particular day. Another reason for changes in I.Q. scores lies with systematic error, the most obvious source being practice effect. This refers to the fact that a subject will do better on a test the second time, having practiced on the test the first time. An additional systematic error is norm obsolescence (Flynn, J., 1985), the tendency for measured I.Q. to increase by 0.3 points per year.

Norm obsolescence is a scientific phenomenon that occurs due to test obsolescence. Studies have shown that the IQ scores of the population drift upwards over time (Flynn, 1984, 1998, 2006; Kanaya, Scullin, & Ceci, 2003). This is an artificial rather than a true increase in IQ. It occurs because an individual's IQ score is a standard score derived by comparing the individual's raw score to the raw score performance of an initial test norm group at the time the test was developed. It is very much like being graded on a curve, just like when a student takes the GRE or the LSAT. Over time people gather more experience, education and exposure to the environment, advantages that the initial standardization group on any given IQ test did not have at the time the test was standardized, when the population's average IQ was sampled like a snapshot in time.

An analogous situation would be to take the bar exam after being in practice for 20 years, rather than having to take it right after graduating from law school like the rest of the students before they could practice law. Theoretically, attorneys should score higher after 20 years of practice due to being exposed to the field and the law for that much longer than the standardization group from 20 years earlier. Thus, the older a test is, the more experience an examinee has relative to the norm group, and this causes I.Q. scores to artificially increase over time as tests themselves age. To adjust for this problem, Flynn published a peer reviewed adjustment formula (Flynn, 2006) that adjusts scores 1/3 of a point per year for every year out from the date the test was developed to the year of an examinee's sitting for the test. .

"I.Q. scores are not exact, precise measurements; rather, they are estimates in which there is an expected range of fluctuation between one performance and the next" (Groth-Marnat, G., 2003, p.16). Simply stated, human performance varies over time and conditions and a certain amount of variability in scores is to be expected.

Current Test Results

On the WAIS-IV, Mr. Blackwell obtained a full scale I.Q. of 63, which lies within an intellectually disabled range of intelligence. His other composite scores, with the exception of Working Memory, also lie within an intellectually disabled range of intellect. These Composite scores include Verbal Comprehension on which he obtained a score of 63, Perceptual Reasoning on which he scored 69, and Processing Speed for which he obtained a score of 68. His score of 77 on Working Memory lies within borderline limits for intellectual functioning. These scores are highly similar to scores he obtained on measures of mental maturity that were administered during his school years and that appear earlier in this report. **On the basis of this combined data from prior to age 18 and the current time, Mr. Blackwell has scores on standardized testing that contribute to and confirm a diagnosis of Intellectual Disability.**

On the WRAT-IV, Mr. Blackwell obtained grade levels that are similar to those obtained during his academic years. suggesting that he has acquired little in the way of

knowledge since he was in school some 35 years ago. His scores on the WRAT-IV are as follows. Comparison to prior scores obtained during his school years is provided previously in this report.

Summary of Scores on the WRAT-4

Subtest Composite	Percentile Rank	Grade Level
Word Reading	10	7.4
Sentence Comprehension	2	5.3
Spelling	12	6.8
Math Computation	5	4.6
Reading Composite	4	N/A

On the CAST-MR, Mr. Blackwell scored in a range that was lower than subjects without intellectual disability, yet within limits of competency for intellectual disability. His various answers reflect his lack of or limited knowledge, yet do not occur within limits that suggest lack of competency to proceed. This finding should not be considered in isolation as multiple factors contribute to a determination of competency, just as multiple factors and data contribute to a finding of intellectual disability and response consistency.

On the TOMM, Mr. Blackwell obtained scores that improved from Trial 1 to Trial 2 and were within acceptable limits for this measures. Although this measure has not demonstrated its usefulness through research in assessment of individuals with intellectual disability (Salekin, K., and B. Doane, 2009), it was nevertheless administered due to usual practice within the field of forensic psychology as regards *Atkins'* evaluations. Measures of effort are typically employed in forensic evaluations due to the need to assess effort or to what degree the subject is cooperating with the examiner and is not feigning his or her answers. It is expected that subjects evaluated in forensic settings might distort or seek to influence their responses on psychological measures. due to possible outcomes in forensic settings. External incentives exist in all forensic examination contexts and include criminal sanctions, monetary awards or custody of children as examples.

On page 108 of their article, Salekin and Doane (2009) note, "Clearly more research is needed to determine the possible reasons behind disparate outcomes on the use of the TOMM for individuals with ID [intellectual disability]." These authors continue, "Effort tests or embedded indicators are typically relied upon in other areas of forensic psychology practice, yet it is evident these measures have not been proven useful for individuals suspected of intellectual disability (ID)." In order to accurately and reliably assess individuals suspected of ID in forensic settings, "it is clear that historical factors should play a critical role in the assessment process, because, unlike many other disorders, **ID does not have a sudden onset. By definition ID is a developmental**

disorder that begins during the developmental period and persists into adulthood (Salekin and Doane, 2009)."

"This is important because this time period, the developmental period, is prior to the commission of the index offense and as such, the current external incentive (i.e., avoiding the death penalty) did not exist. It is true that the disorder can go undetected or that the deficits in functioning can be misconstrued by professionals as a problem solely due to poverty, lack of access to education, limited intellectual stimulation, and/or problems in conduct. However, collateral data that is gleaned from multiple sources can assist in putting together the history of the individual that, when properly integrated, will lead to a clinical opinion that is formulated on a constellation of relevant information, rather than gut instinct or an over emphasis on a few variables that do not capture the full clinical presentation" (Salekin, K. and B. Doane, 2009, p. 111).

Everington and Olley (2008) concur with this statement that multiple sources of information, including performance on current and previous standardized tests should be carefully considered before concluding that the individual is feigning or not putting forth sufficient effort. A conclusion that insufficient effort has not been exerted should not be made based solely on one source – performance on one test or on observation in one setting (Everington & Olley, 2008, p. 18). While clinical observation is an essential part of any evaluation for *Atkins'* purposes, it can never take the place of an individually administered intelligence measure and judgments that issue from clinical observation must be based on a foundation of scientific knowledge (Everington, C. and G. Olley, 2008, p.7).

ADAPTIVE FUNCTIONING

The preceding two paragraphs are particularly critical to keep in mind as one examines adaptive functioning for any individual, since adaptive functioning is a more nuanced, sometimes less well understood prong for definition of MR or ID than intellectual functioning. "Any assessment of intellectual disability must demonstrate both a low (subaverage) level of intelligence (two standard deviations below the mean) and **evidence that the person cannot function independently or deal effectively with day-to-day life problems**" (Groth-Marnat, G., 2009, p.176).

A person's adaptive behavior is what a person has done rather than what he or she may have done if raised in more ideal conditions or if he or she were more motivated (Schalock, 1999; Stevens & Price, 2006; Bonnie & Gustafson, 2007; Schalock et al., 2007 in Olley, G. and A. Cox, 2008). Adaptive behavior is the individual's actual performance and is not ability or potential. Further, it is the individual's *typical* performance in his/her community setting (Everington & Olley, 2008; Olley, personal communication, 2011). Details of a crime, for example, cannot be considered a sample of typical behavior. Due to the emphasis on typical performance, assessment of adaptive

behavior is different than assessment of intellectual ability, where an examiner is securing maximum performance. Adaptive behavior is the individual's typical performance, not his or her best or maximum performance (AAIDD manual, 2010). Because assessment of adaptive behavior evaluates typical performance, it follows that limitations co-exist with strengths. Typical performance is "documented within the context of community and cultural environments typical of the person's age peers and tied to the person's needs for individualized supports" (AAIDD Manual, 2010, p. 45).

In addition, the presence of maladaptive behavior does not negate adaptive deficits. Maladaptive behavior and adaptive deficit are independent constructs and are not opposite poles of a continuum. The behaviors comprising these independent constructs co-exist and are separate from one another. They are conceptually distinct. "Behaviors that interfere with a person's daily activities or with the activities of those around them should be considered problem behaviors, rather than the absence of adaptive behavior" (AAMR, 2002, p. 79 in Olley, G. and A. Cox, 2008). "Evidence of impaired adaptive behavior may reflect a co-morbid condition or be interpreted as evidence for another diagnosis (e.g., conduct disorder, antisocial personality disorder) or simply as laziness or lack of motivation, not as evidence for [or against] mental retardation. In fact, mental retardation can co-exist with these and other diagnoses; they are not mutually exclusive" (Fletcher, et.al, 2007 in Olley, G. and A. Cox, 2008, p. 387).

In the assessment of adaptive behavior, adaptive behavior scales are used, are administered to multiple informants who know or knew the individual in a variety of settings, and are supplemented by structured interviews of the informants. "None of the generally accepted scales of adaptive behavior rely on direct observation of the person nor upon his own self-report of what he is capable of doing. Rather, the clinician is to gather adaptive behavior information from third parties. In selecting the informants, it is essential that people interviewed about someone's adaptive behavior be well-acquainted with the typical behavior of the person over an extended period of time, preferably in multiple settings. Very often, these respondents are parents, older siblings, other family members, teachers, employers, and friends. Observations made outside of the context of community environments typical of the individual's age peers and culture warrant severely reduced weight. The informants should also be asked to provide information about the person's day-to-day level of functioning, as well as data on the amount of support the person needs in order to carry out any of the relevant functions" (US vs Smith, 2011; AAMR Manual, 2002; AAIDD Manual, 2010) "There is a place for clinical judgment in the diagnosis of ID or MR but that judgment must be based on a foundation of scientific knowledge, not simply seat of the pants impressions" (Schalock & Luckasson, 2005 in Everington, C. and G. Olley, 2008).

"Schalock and Luckasson (2005) have provided a thorough guide to clinical judgment in the diagnosis of mental retardation. They emphasized that clinical judgment is more than an impression. Clinical judgment in the diagnosis of mental retardation requires a clinician to have experience with the diagnostic process and the population of

people with mental retardation and to consider scientific evidence applicable to this population. The following considerations should be included in the assessment of adaptive behavior for the diagnosis of mental retardation in criminal cases (Olley, G. and A. Cox, 2008, p. 386)."

- The nature of adaptive behavior: actual functional performance, not speculation
- The issue of retrospective assessment
- Reliance on multiple sources

Division 33 of the American Psychological Association, a division devoted to scientific inquiry about and understanding of developmental disabilities, and the AAIDD promote a set of recommendations for evaluation of adaptive behaviors that include the following:

1. Conduct a thorough social history
2. Conduct a thorough review of school records
3. Recognize that self ratings have a high risk of error with regard to adaptive behavior
4. Conduct a longitudinal evaluation of adaptive behavior
5. Do not use past criminal or verbal behavior in assessing adaptive behavior

AAMR 2002 and AAIDD 2010 manuals dictate that whenever possible, a combination of standardized measures and structured interviews with informants is used. By following a recommended set of "best practices" and by adhering to accepted evaluation methods, the problems particular to evaluation of capital defendants, particularly those having to do with retrospective evaluation of adaptive functioning and typical community functioning, can be reduced. Some key problems with regard to retrospective evaluation include third party informants whose information is influenced by memory. Correction for this phenomenon is created by use of multiple informants and congruency of results and information that result. Emphasis on typical community functioning clarifies the nature of adaptive behavior, i.e., the individual is compared with others in his/her typical community, not the community afforded by incarceration. Reliance on multiple sources, carefully selected to cover the range of individuals most likely to be familiar with the individual being assessed, review of archival information, and use of standardized measures of adaptive functioning minimize subjective decision making and conclusions that exceed objective information or data.

Greater confidence in findings, enhanced reliability of findings, and improved validity regarding findings can thus be achieved when a standard battery is used for assessment of adaptive functioning. This standard battery should contain the elements discussed previously, to wit: measures of adaptive functioning, multiple informants who know the individual well in a variety of settings and over time, supplemental interviews for informants, thorough analysis of records to create a picture of development over time, direct examination of the individual with interview and achievement measures, and

consideration of the individual's behavior over time and in a variety of settings, rather than one observation or time period.

An additional comment has to do with reliance upon the individual being assessed for mental retardation. Individuals with MR have a strong tendency for acquiescence (Finlay & Lyons, 2001 and 2002 in Everington & Olley, 2008) and a strong desire to hide their disability to "pass" as normal (Edgerton, 1993). Reliance on self-report alone is therefore discouraged. With regard to the notion of "passing as normal" discussed in the Cloak of Competence (Edgerton, 1993), individuals with I.Q. levels in the 50's and 60's are sufficiently cognizant to be aware of their deficiencies when they compare themselves to peers and others with average levels of intelligence. Therefore, they engage in a number of behaviors to "pass" as normal, including but not limited to exaggeration of their actual abilities, dependence upon others to assist them, pretending to understand when they do not really comprehend questions or instructions, and use of vocabulary words that "sound smart" yet are inaccurately applied. For example, then, with Mr. Blackwell, he and his father gave varying reports of his skill in truck driving. Mr. Blackwell emphasized his competency with this skill, congruent with "passing" as brighter than he actually is.

Specific Findings Regarding Mr. Blackwell's Adaptive Behaviors

For this evaluation, I used the Adaptive Behavior Assessment System, 2nd edition (ABAS-II) with 6 individuals who have known Mr. Blackwell well at different stages of his life, including his childhood. These include his father and mother, Cletus and Mildred Blackwell, his daughter, Heather Blackwell, his pastor with whom he had frequent contact, Ken Rice, his neighbor who spent considerable time with him, Jean White, his former school teacher, Louise Scruggs, his former employer, Ricky Bagwell and his former work supervisor, Gail Shook. The ABAS yields a general composite score (GAC = general adaptive composite), 3 factor scores (conceptual, social and practical) and 10 skill areas (communication, community use, functional academics, home living, health and safety, leisure, self-care, self-direction, social and work).

Prior methods of assessing adaptive behaviors (AAMR Manual, 2002) relied upon providing examples of deficits in the 10 theoretical skill areas listed in the previous paragraph. The development of the ABAS relied on factor analytic studies that yielded four clusters or composite scores encompassing the 10 previously identified, theoretical skill areas. This factor analysis reduced the 10 skill areas to four composite areas of adaptive functioning. The GAC area includes all 10 previously identified, theoretical skill areas. The Conceptual composite score includes the skill areas of communication, functional academics, and self-direction. The Social composite score includes the skill areas of leisure and social skills. The Practical composite score includes the skill areas of community use, home living, health and safety and self-care skills.

In the AAIDD Manual (2010. p. 43) the following is recommended in determining adaptive deficits. "Significant limitations in adaptive behavior should be established through the use of standardized measures normed on the general population, including people with disabilities and people without disabilities. On these standardized measures, significant limitations in adaptive behavior are **operationally defined as performance that is approximately two standard deviations below the mean of either (a) one of the following three types of adaptive behavior: conceptual, social or practical or (b) an overall score on a standardized measure of conceptual, social and practical skills.** The assessment measure's standard error of measurement must be considered when interpreting the individual's obtained scores."

The composite scores obtained for Mr. Blackwell on the ABAS are as follows.

Respondent	**GAC (mean=100)**	**Conceptual (mean = 100)**	**Social (mean = 100)**	**Practical (mean = 100)**
Mildred	61 = ID	65 = ID	84 = low average	61 = ID
Cletus	54 = ID	59 = ID	68 = ID	51 = ID
Heather	79 = borderline ID	84 = low average	102 = average	78 = borderline ID
Ken	75 = borderline ID	75 = borderline ID	72 = ID	86 = low average
Jean	62 = ID	69 = ID	78 = borderline ID	67 = ID
Louise	Insufficient information to score	Insufficient information	Insufficient information	Insufficient information
Mr. Bagwell	Insufficient information to score	Insufficient information	Insufficient information	Insufficient information
Ms. Shook	Insufficient information	Insufficient information	Insufficient information	Insufficient information

Ratings provided by Ms. Scruggs were limited in use, due to the number of omissions and guesses that she made while responding to this measure. In addition, she could only rate Rickey in 4 areas (communication, community use, functional academics and self-care), which provided insufficient information for arriving at composite scores. Mr. Bagwell and Ms. Shook rated Mr. Blackwell in a few areas only, also insufficient for calculating the composite scores. Regardless, Ms. Scruggs, Mr. Bagwell and Ms. Shook provided ratings sufficient for individual skill areas to be scored and they provided valuable descriptions of Rickey's adaptive deficits.

From examination of this table, the individuals who knew him best and who had the most information about him over his entire age span included his mother, father and neighbor, all of whom rated him mostly within limits of intellectual disability with regard to his adaptive deficits. These ratings are highly consistent with his level of intellect as

measured by the WAIS-IV and as indicated by measures of mental measurement administered before the age of 18. They are also highly consistent with measures of achievement, which correlate with the skill area of functional academics, included within the conceptual factor from the ABAS.

Mr. Blackwell's pastor, Mr. Rice had limited opportunities to observe Mr. Blackwell in performance of his adaptive deficits and consequently he primarily relied upon Mr. Blackwell's report of his adaptive skills and deficits. For reasons listed previously regarding "cloak of competence" and "passing" as average, frequently exhibited by individuals with intellectual disability, some caution is warranted in interpretation of the results from Mr. Rice. Regardless, Mr. Rice rated Mr. Blackwell as clearly below average and usually borderline with regard to his adaptive behaviors. He, too, provided valuable descriptions of Rickey's adaptive deficits.

Mr. Blackwell's daughter, Heather, is herself intellectually disabled, as indicated by testing during her school years and placement in exceptional children's classes. During interview with her, it was necessary to administer the ABAS to her verbally, due to her lack of understanding. It was also necessary to frequently remind her of test instructions, which she generally ignored. It was obvious she admires her father greatly, feels sympathy for him, and genuinely believes he has considerable strengths. Her ratings of him are at odds with others who knew him well and for longer periods of time over the developmental period.

For example, during interview Heather remarked that she lived with her parents even after her marriage. After moving into her home with her husband, she continued to rely on her parents for financial support and social times together. During interview, she remarked that she "cooked for him (her father), took care of him even when he was dying of cancer (from which he obviously did not die)." Her score for home living when she rated Mr. Blackwell in this area was a scaled score of 7, which is a significantly low score, though not a very significantly low score. Mr. Blackwell's parents and his neighbor, Jean, had scores (scaled scores of 4 and 5) that were significantly low, spent more daily time with him over a longer period of time, and gave more detailed examples of his deficits in this area of home living.

For the area of communication, Heather rated Mr. Blackwell, resulting in a scaled score of 8, which is low average. Mr. Blackwell's parents, Ms. White and Mr. Rice, however, all rated him with scores of 1-4, which are significantly low scores indicating significant deficits in this area of communication. In interview, Heather stated, "Daddy argued with Mama when she didn't keep up with the bills but he couldn't keep up with her. My daddy is like me – real nervous, couldn't talk but so much. She drove him crazy." When asked to explain this further, Heather said, "Mama would make him lose focus because she would get him confused." Her explanation about the similarity between her and her father makes it obvious that both have deficits in communication, yet her rating of him does not illustrate an understanding of her explanation in interview.

This again reflects the tendency of individuals with intellectual disability to "cloak" their deficits in an effort to appear average or like others who are not intellectually disabled.

Areas of Adaptive Functioning

The Adaptive Behavior System (ABAS-II) yields scaled scores for each of the 10 areas of adaptive behavior. Scaled Scores have a mean of 10 and standard deviation of 3. Thus, a score that is two standard deviations below the mean (the criterion for significant impairment) is 4. The following scores on the ABAS-II should be interpreted using this metric.

Scaled Scores for Individual Skill Areas of the ABAS-II

Scaled score of 10 = average
Scaled score * = significantly low score
Scaled score ** = very significantly low score

Individual Rater Name	Skill Area	Scaled Score
Mildred Blackwell	**Communication**	3**
Cletus		1**
Heather		8
Ken Rice		4**
Jean White		2**
Louise Scruggs		10
Mr. Bagwell		1**
Ms. Shook		5*
Mildred	**Community Use**	3**
Cletus		2**
Heather		3**
Ken		7*
Jean		4**
Louise		2**
Mr. Bagwell & Ms. Shook		No rating
Mildred	**Functional Academics**	4**
Cletus		2**
Heather		5*
Ken		5*
Jean		4**
Louise		1**
Mr. Bagwell & Ms. Shook		No rating
Mildred	**Home Living**	4**
Cletus		4**
Heather		7*
Ken		8

Jean		5*
Louise		No rating
Mr. Bagwell & Ms. Shook		No rating
Mildred	**Health & Safety**	2**
Cletus		2**
Heather		6*
Ken		6*
Jean		3**
Louise		No rating
Mr. Bagwell & Ms. Shook		No rating
Mildred	**Leisure**	7*
Cletus		5*
Heather		11
Ken		5*
Jean		6*
Louise		No rating
Mr. Bagwell & Ms. Shook		No rating
Mildred	**Self Care**	5*
Cletus		1**
Heather		9
Ken		6*
Jean		5*
Louise		13
Mildred	**Self Direction**	4**
Cletus		5*
Heather		7*
Ken		7*
Jean		7*
Louise		No rating
Mr. Bagwell		No rating
Ms. Shook		2**
Mildred	**Social**	7*
Cletus		3**
Heather		11
Ken		5*
Jean		6*
Louise		No rating
Mr. Bagwell & Ms. Shook		No rating
Mildred	**Work**	No rating
Cletus		No rating
Heather		No rating
Ken		4**
Jean		No rating
Louise		No rating

Mr. Bagwell		2**
Ms. Shook		9

1. *Communication:* *Skills include the ability to comprehend and express information through symbolic behaviors (e.g., spoken word, written word/orthography, graphic symbols, sign language, manually coded English) or non-symbolic behaviors (e.g., facial expression, body movement, touch, gesture). Specific examples include the ability to comprehend and/or receive a request, an emotion, a greeting, a comment, a protest, or rejection. Higher-level skills of communication (e.g., writing a letter) would also relate to functional academics.*

   For the area of communication, 6 of the 8 raters provided scores that were in a significantly low to very significantly low area of adaptive functioning, indicating an adaptive deficit for Mr. Blackwell in the area of communication. Several raters described Mr. Blackwell as shy, retiring, and not highly communicative. Ms. Scruggs described him as "blending in," while Ms. Shook described him as "not obnoxious, not stand offish, he just wasn't talkative – he didn't talk a lot, he was kind of quiet." Mr. Bagwell remarked, "Our conversations were short."

   During current interview with him, Mr. Blackwell was limited, seldom elaborated on his answers, was content to give illogical or incomplete answers to questions, and often appeared "blank" or lacking in comprehension. His answers were frequently concrete. Ms. White reported that Mr. Blackwell did not speak clearly or distinctly, did not make eye contact while talking, and often looked off in various directions when carrying on conversations. Ms. White remarked there was "no way" one could ask Mr. Blackwell to name 20 objects in a room and expect him to be successful.

   Reverend Rice reported about Mr. Blackwell that as he read the Bible and would come across words he did not know, his wife Angie would look them up for him and explain their meaning. Mr. Rice remarked that he provided Mr. Blackwell with an "easy reader" Bible and noted further that Mr. Blackwell reads the book of Proverbs once a month because there are 30 chapters in it. Mr. Rice reported that a translation of the Bible he provided to Mr. Blackwell after his incarceration is "one step above a child's Bible. Rickey said he did not understand that Bible."

   Reverend Rice stated that he provided some marital counseling to Mr. Blackwell and his former wife. He noted that Mr. Blackwell "let Angie do all the talking." Mr. Blackwell's daughter, Heather, reported similarly when she remarked that when her parents argued, her father "couldn't keep up with her [her mother, Angie]. She got him all confused like telling him the Discover card wasn't being used when it was." Reverend Rice added that when he continued providing counseling after Angie left the marriage, Mr. Blackwell was "repetitious in everything he talked about during sessions. It was the same content each time. I gave him the same recommendations each time."

Heather added that Mr. Blackwell "always" had his daughter or wife with him when visiting people outside the home, adding that he "pretty much always relied on others."

On the basis of the preceding scores, comments and multiple hours of interviewing a number of collateral sources, it is evident that Mr. Blackwell exhibits a significant deficit in the adaptive functioning area of Communication.

2. *Self Care: skills involved in toileting, eating, dressing, hygiene, and grooming.*

The various raters provided scores for Mr. Blackwell in the area of Self Care that ranged from very significantly low to above average. His daughter and former school teacher rated him average to above average in this area of adaptive functioning. His father rated him very significantly low while his minister, mother, and neighbor rated him significantly low.

Most of these informants characterized Mr. Blackwell as "neat and clean." Like Ms. Scruggs, they generally noted that he was not a "preppy" dresser, yet he was clean, neat and attentive to his appearance. Reverend Rice added, however, that during a time when Angie repeatedly compared Mr. Blackwell's lack of sexual prowess to her boyfriend, frequently said that her boyfriend's children were more attractive than her own children, and "bled" Mr. Blackwell for money, Mr. Blackwell was less attentive to his physical appearance, lost weight, would not eat, and generally appeared more unkempt than previously.

In direct observation of him, Mr. Blackwell appeared somewhat unkempt, although he did not smell badly and he appeared generally attentive to his appearance. It should be remembered, however, that as he is incarcerated, his life is quite simplified and structured, making adaptive functioning behaviors easier to accomplish than if he were in a less highly structured environment outside of the jail.

On the basis of the preceding scores and the substantial number of hours spent with multiple informants, it does not appear that Mr. Blackwell has an adaptive deficit in the area of Self Care.

3. *Home-Living: skills related to functioning within a home, which include clothing care, housekeeping, property maintenance, food preparation and cooking, planning and budgeting for shopping, home safety, and daily scheduling. Related*

skills include orientation and behavior in the home and nearby neighborhood, communication of choices and needs, social interaction, and application of functional academics in the home.

The informants who are most familiar with Mr. Blackwell, specifically his parents, daughter and neighbor, all rated Mr. Blackwell as significantly low or very significantly low in this area. Those who knew him less well included his former teacher, his minister and counselor, and his former employers. These latter 4 individuals had little or no opportunity to observe Rickey in his home with regard to exhibiting these behaviors.

Rickey reported that his former wife "paid the bills" and added that he "never did write no check." When asked how he paid any bills after Angie left him, Rickey stated that he "paid everything in cash." His parents reported that his home went into foreclosure when Angie Blackwell no longer paid the various bills she and Rickey had. Cletus and Mildred paid the mortgage on Rickey and Angie's home, in order to salvage it from foreclosure because Rickey did not understand how to take care of this financial obligation. His parents reported that Rickey "lost all his furniture after Angie left – it was repossessed when he didn't pay the bills."

His parents reported Rickey did not wash or dry his own clothes, did not cook for himself, did not budget his money and did not routinely shop on his own without assistance for clothes or groceries. After Angie left him, Mildred moved in to his home with him and subsequently, Rickey returned to live with Cletus and Mildred in their home so they could care for him and assist him in daily living activities. They remarked Rickey "could maybe make a sandwich for himself. He bought snacks at Wal Mart." They added Angie did all the cooking and grocery shopping for him. After she left, they said, Rickey ate meals with them, with Heather or with his former in-laws.

During interview with Heather, she corroborated that she, her mother or her grandmother washed and dried Rickey's clothes for him. Heather remarked that her father "didn't know how to get out the streaks or creases." She added that on one occasion, Rickey "used too much soap and had suds coming out" of the machine. Heather added that Rickey "was too scared something was going to happen [with the machines] that he asked her or her grandmother to wash and dry his clothes for him."

During separate interviews with them, Heather and her grandparents agreed that "maybe" Rickey "would take out the trash if you told him to." They described his way of making up his bed as "thrown together – he just pulled the covers up" with no attempt at making the bed look presentable. Mildred and Cletus reported that Rickey learned to accomplish some property maintenance, such as changing the oil in the car, which Cletus taught him how to do. On one occasion, Mildred reported that Rickey was so forgetful or lacking in understanding about changing the oil for the lawn mower that he left the oil plug out of the motor. When the

mower rattled and subsequently stopped running, Rickey did not know what to do to fix this and simply walked away from the mower.

On the basis of the preceding scores, comments and multiple hours of interviewing a number of collateral sources, it is evident that Mr. Blackwell exhibits a significant deficit in the adaptive functioning area of Home Living.

4. *Social: skills related to social exchanges with other individuals, including initiating, interacting, and terminating interaction with others; receiving and responding to pertinent situational cues; recognizing feelings; providing positive and negative feedback; regulating one's own behavior; being aware of peers and peer acceptance; gauging the amount and type of interaction with others; assisting others; firming and fostering of friendships and love; coping with demands from others; making choices; sharing; understanding honesty and fairness; controlling impulses; conforming conduct to laws; violating rules and laws; and displaying appropriate socio-sexual behavior.*

On the ABAS given to multiple informants, Mildred, Jean, and Reverend Rice all rated Rickey as significantly impaired on the Social subtest while Cletus rated him as very significantly impaired. Heather rated Rickey as average in social skills. His former teacher and employers provided insufficient information for ratings in this area and their descriptions of Rickey were general and not specific for how he behaved with regard to this area of adaptive functioning.

Taking the domain area of Social which includes the Social and Leisure subareas, Mr. Blackwell obtained scores ranging from average (Heather) and low average (Mildred) to impaired (Rev. Rice and Cletus) and borderline impaired (Jean). There may have been some "halo" effect with regard to ratings of Mr. Blackwell, in part due to his polite, deferential, and submissive manner and in part due to a lack of thorough understanding on the part of some informants.

Several collateral sources noted Mr. Blackwell's dependency on others for social interactions. After the demise of his marriage, Mr. Blackwell spent his days first with his ex-wife's family for the mornings, spent his afternoons with his ex-wife's brother and went to Reverend Rice's home in the evenings for counseling. In his own description of how he spent his days, Mr. Blackwell elaborated few details of specific activities in which he engaged, giving an impression of passive interactions and sparse activities. This impression was consistent with reports of those who knew him. Mildred and Cletus said, "He was like a loner after Angie left him. He worked on his job but didn't do much else."

Ms. Shook, Rickey's former supervisor at his place of employment, described him as "crying like a baby" after Angie left him and said that he appeared totally devoted to Angie. Mr. Rice described Rickey similarly noting that he "saw him 4 days a week for many months" after the breakup with Angie. "He was crying all

the time, repeating and relating all the details. He gave her [Angie] all the furniture, the TV, rent money. Before that he was easygoing – never raised his voice to anyone. Just a big old redneck boy. There was no initiative to him, he was a homebody. Angie talked about Bobby's sexual prowess to Rickey plus she talked about how much more attractive Bobby's children and grandchildren were than hers and Rickey's. He was giving her his check, buying her food, paying her rent – even though she was working. I told him he had to stop that. I tried to tell him she had no reason to return to him if he paid for everything. I pointed this out repeatedly but he had trouble understanding that." Reverend Rice added that he did not know of any friends Rickey had.

Cletus and Mildred reported that Rickey's friends sometimes "used" him. Mildred was not sure if Rickey thought he was being taken advantage of and added, "He went along because of being intimidated and afraid." Cletus and Mildred reported an incident when Rickey's friends or acquaintances took his car, threw him out of the car, and spray painted the car, apparently trying to disguise it. Cletus found the car some days later with assistance from law enforcement. They added that Rickey "loaned the car out to someone he met in a pool hall." They said they "looked everywhere" for Rickey, could not find him, and eventually called "the law" to assist them. When law enforcement found Rickey some 6 days or so after his friends took him away, he "looked like a bomb," Mildred and Cletus reported. They explained this with, "The boy didn't know where he was he was so messed up. He got a job at Community Cash in Chesnee and they wouldn't let him cut the meat because he was shaking so bad."

Jean added about Rickey, "He would give his toys and things away just to have a friend." Heather remarked, "He didn't have many friends – mostly Dale. He only had one close friend, his cousin. Not a big group of people that he went out with or did things with. There was one couple my parents were friends with for awhile." Ms. Scruggs commented about Rickey and friends, "He would have been fine with a friend or fine if not." She added she was "not sure about the kind of friends he might have had." Mr. Bagwell responded similarly, noting that Rickey seemed to "get along" with others in the work environment without difficulty.

On the basis of the preceding scores, comments and multiple hours of interviewing a number of collateral sources, it appears that Mr. Blackwell has a significant deficit in the adaptive functioning area of Social. This area generally appears as a relative strength for Mr. Blackwell, although compared to the general population, it is an area of deficit for him.

5. *Community Use: skills related to the appropriate use of community resources, including traveling in the community; grocery and general shopping at stores and markets; purchasing or obtaining services from other community businesses (e.g., gas stations, repair shops, doctor and dentist's offices); attending church or*

synagogue; using public transportation and public facilities, such as schools, libraries, parks and recreational areas, and streets and sidewalks; attending theaters; and visiting other cultural places and events. Related skills include behavior in the community, communication of choices and needs, social interaction, and the application of functional academics.

For the area of Community Use, all raters with the exception of the work supervisors and his daughter provided very significantly impaired scores for Mr. Blackwell. Heather's rating of her father was a significant impairment for this area.

Reports about Mr. Blackwell were consistent in describing him as a "homebody" who rarely strayed far from his immediate family, his and their routines, and their homes, all of which were within walking distance of one another. His lifestyle was routinized and isolated, in the context of a rural community with few community amenities. He attended church some with his family and it was not reported that he was an active volunteer there.

Heather reported that he "never went anywhere without someone along," usually her mother. She stated that Rickey routinely had someone go with him in the examining room when he visited doctors to assist him with these visits. She said additionally that he "never purchased appliances" on his own and "always had" her mother's assistance for these. Reverend Rice noted Rickey's reliance on Angie to look up words for him that he did not know from the Bible. Mildred reported similarly, noting that Rickey did not make appointments for himself and instead relied upon Angie to make these for him. Cletus remarked that he, Mildred or Angie called repair people when needed and generally managed Rickey's affairs for him.

On the basis of the preceding scores, comments and multiple hours of interviewing a number of collateral sources, it is evident that Mr. Blackwell exhibits a significant deficit in the adaptive functioning area of Community Use.

6. *Self-Direction: skills related to making choices; learning and following a schedule; initiating activities appropriate to the setting, conditions, schedule, and personal interests; completing necessary or required tasks; seeking assistance when needed; resolving problems confronted in familiar and novel situations; and demonstrating appropriate assertiveness and self-advocacy skills.*

For the area of Self-Direction, raters provided scores that primarily fell within significant areas of impairment and only one rater (Mildred) provided a score that fell within a highly significant area of impairment.

Although Ms. Shook provided incomplete information for a score to be calculated

in this area, her comments about Rickey's self direction are helpful in creating a picture of how he behaved and responded in the work environment. Ms. Shook noted that Rickey "was the kind of employee you'd want more of." She explained that she could ask him to do many different tasks in the work environment, with which he was fully compliant. Rickey was frequently described as passive, cooperative, compliant and "not a behavior problem." He was easily directed, as indicated by Ms. Shook, to do a variety of tasks. He learned to drive a forklift while working with Ms. Shook, a task that required repetition to learn and to perform. This learning is consistent with what is possible for individuals who are diagnosed with mild intellectual disability.

Because of his compliance and politeness, Rickey was given opportunities to learn these kinds of skills. In addition, his older age and therefore greater work experiences, relative to some individuals assessed in *Atkins'* evaluations provided him with more opportunities for learning and acquiring more adaptive skills. A critical, central point to be made is that while Rickey acquired a number of adaptive skills, he rarely performed these skills without assistance. This is a significant point in the assessment of adaptive functioning (AAIDD Manual, 2010), where stress is placed on those adaptive skills an individual routinely or typically exhibits ***without supports.*** Ms. Shook's descriptions of Rickey's adaptive functioning clearly indicate his dependence upon her and his wife in the work environment to successfully complete the tasks he completed.

Mr. Bagwell's descriptions of Rickey's self-direction evidence an assumption of autonomous self-direction from Rickey. Descriptions by his family, former neighbor and ministerial counselor, however, indicated considerable dependence and reliance on others in order for Rickey to appear for doctor appointments, show up at work, assert himself with regard to his needs, and operate in novel circumstances. Mr. Bagwell, for example, noted that Rickey drove a truck from one place to another and presumably managed on his own to follow directions and arrive at the correct location. Mr. Bagwell, however, did not work directly with Rickey and reported that Rickey's direct supervisor was deceased. Mr. Bagwell assumed Rickey could find directions on his own yet in discussion during interview with him, Rickey reported that he typically and repeatedly drove to known locations.

Mildred and Cletus reported that Cletus signed a loan for Rickey and Angie to acquire a single wide mobile home to put on a piece of land that Cletus owned. Heather and Reverend Rice reported that Angie typically made decisions for Rickey with regard to everyday matters. Cletus reported further that he purchased a truck for Rickey to drive when working for Belue, a truck Rickey ultimately wrecked when he followed someone too closely. His reason for following this person was because he did not know where he was going and was relying on the individual for direction. With regard to acquiring employment, Rickey was assisted by his father and his former wife to find these jobs.

On the basis of the preceding scores, comments and multiple hours of interviewing a number of collateral sources, it is evident that Mr. Blackwell exhibits a significant deficit in the adaptive functioning area of Self-Direction. The subarea of Self-Direction falls into the Conceptual domain area of the ABAS, an area of great difficulty and impairment for Mr. Blackwell.

7. *Health and Safety: skills related to maintenance of one's health in terms of eating; illness identification, treatment, and prevention; basic first aid; sexuality; physical fitness; basic safety considerations (e.g., following rules and laws, using seat belts, crossing streets, interacting with strangers, seeking assistance); regular physical and dental check-ups; and personal habits. Related skills include protecting oneself from criminal behavior, using appropriate behavior in the community, communicating choices and needs, participating in social interactions, and applying functional academics.*

   Three of the raters (Mildred, Cletus and Jean) provided scores on the ABAS for this area that are within highly significant levels of impairment for Mr. Blackwell. Two of the raters (Heather and Rev. Rice) indicated significant impairment for Mr. Blackwell in this area.

   From various descriptions of him, Mr. Blackwell was compliant with rules and safety issues. He does not have a history of criminal behavior prior to the instant offense and hence he has protected himself from this kind of illegal behavior. He routinely attended doctor appointments, participated in recommended courses of medical treatment such as the necessary treatment for his cancer and his mental illness, and complied with recommendations from these treatment providers. He had some accidents that appeared to result from a lack of attention, yet these accidents do not appear routine for him. While he was routinely reliant on others for assistance in various matters, he also learned over time and through repetition how to keep himself safe through adherence to rules, regulations and routine safety matters.

   On the basis of the preceding scores, comments and multiple hours of interviewing numbers of collateral sources, it does not appear that Mr. Blackwell exhibits a significant deficit in the area of Health and Safety.

8. *Functional Academics: cognitive abilities and skills related to learning at school that also have direct application in one's life (e.g., writing; reading; using basic practical math concepts, basic science as it relates to awareness of the physical environment and one's health and sexuality; geography; and social studies). It is important to note that the focus of this skill area is not on grade-level academic achievement but, rather, on the acquisition of academic skills that are functional in terms of independent living.*

Four of the raters who provided information for the ABAS (Mildred, Cletus, Jean and Ms. Scruggs) placed Mr. Blackwell in a significantly impaired range for this adaptive deficit. Two of the raters (Heather and Rev. Rice) provided ratings placing Mr. Blackwell in a significant range of deficit. It is noteworthy that the area of Functional Academics falls within the Conceptual domain of adaptive functioning on the ABAS. This Conceptual domain is one of Rickey's most impaired areas of functioning on the ABAS.

Mildred and Cletus reported that Rickey did not handle money while working for Belue trucking and further reported that his log of travel was a simple one that indicated miles driven only. Mr. Bagwell and Rickey reported that Rickey drove trucks on local routes only, where repetition dictated his routes. Mr. Bagwell added that Rickey did not load the trucks and that Rickey retrieved the trucks only. Mr. Bagwell noted, "If you could drive at all, you could drive those trucks." He said later, "You don't need a Ph.D. or college degree to drive a truck." Mr. Bagwell thought that Rickey did not drive tanker trucks, which required a greater amount of paperwork to be completed by the driver.

Several collateral sources that include Mildred, Cletus, Heather and Rev. Rice reported that Rickey did not handle money in the way of checks. He routinely turned his paycheck over to Angie who deposited these and who paid bills. Rickey did not write checks and according to his own report, he was fearful of "messing up" if he did so. He did not use credit or debit cards, did not use weekly or routine budgets, and did not purchase large items like his home without support or help from others. Heather reported that he used Pay pal, an account that was set up for him such that he was required to hit "send" only from his email to activate it. In short, he did not function independently with regard to managing or planning finances.

Ms. Scruggs described Rickey as being placed in "adjunct classes," wherein he was identified as requiring special assistance in completing academic courses. She reported there was no funding for special education or exceptional children's classes at the time Rickey attended school and added that adjunct classes were for "those children on a technical level, a lower level." They "would have had special education had that been provided," she added. She noted that the subject areas covered in these classes "focused on basic survival skills." From school records, it seems Rickey participated in a program called "Project Succeed." Ms. Scruggs explained that this program was developed for children whom school administrators were concerned might not graduate from high school. Records for Rickey indicate and he reported that he did not graduate from high school. It is of note that despite receiving special education training or assistance in the way of adjunct classes and Project Succeed, Rickey nevertheless did not achieve an independence of functioning characteristic of individuals with average adaptive functioning abilities. Instead, he routinely and typically relied upon family and others for support in applied areas of functional academics.

On the basis of the preceding scores, comments and multiple hours of interviewing a number of collateral sources, it is evident that Mr. Blackwell exhibits a significant deficit in the adaptive functioning area of Functional Academics. The subarea of Functional Academics falls into the Conceptual domain area of the ABAS, an area of great difficulty and impairment for Mr. Blackwell.

9. *Leisure: the development of a variety of leisure and recreational interests (i.e., self-entertainment and interactional) that reflect personal preferences and choices and, if the activity will he conducted in public, age and cultural norms. Skills include choosing and self initiating interests, using and enjoying home and community leisure and recreational activities alone and with others, playing socially with others, taking turns, terminating or refusing leisure or recreational activities, extending one's duration of participation, and expanding one's repertoire of interests, awareness, and skills. Related skills include behaving appropriately in the leisure and recreation setting, communicating choices and needs, participating in social interaction, applying functional academics, and exhibiting mobility skills.*

   Four raters provided scores for Mr. Blackwell that placed his functioning in this area within a significant, though not highly significant, area of deficit. One (Heather) placed his functioning in an average area of functioning.

   Mr. Blackwell's leisure activities were described as gardening, riding 4-wheelers and cutting grass. When his family went on vacations, Heather reported her mother made arrangements for hotel rooms and planned the activities in which the family participated. Jean stated that Rickey watched TV when younger and often "stared at the screen even when the program was over." Mildred reported that Rickey liked to "ride dirt bikes, shoot pool with his cousin, liked to play putt putt and liked to play basketball."

   On the basis of the preceding scores and a lack of information from the numerous collaterals interviewed for the area of Leisure, it does not appear that Mr. Blackwell has a significant deficit in this area of adaptive functioning.

10. *Work: skills related to holding a part or part-time job or jobs in the community in terms of specific job skills, appropriate social behavior, and related work skills (e.g., completion of tasks; awareness of schedules, ability to seek assistance, take criticism, and improve skills; money management, financial resources allocation, and the application of other functional academic skills; and skills related to going to and from work, preparation for work, management of oneself while at work; and interaction with coworkers).*

There were 3 raters with sufficient knowledge of Mr. Blackwell's work habits and skills to provide information on the ABAS. Reverend Rice and Mr. Bagwell provided ratings of significantly impaired functioning in this area while Ms. Shook provided a rating of average functioning for Work skills.

In their descriptions, Cletus and Mildred described Mr. Blackwell as requiring considerable assistance from others to get to and from work, to obtain vehicles for use in work, to obtain various jobs and to engage in basic work activities. Nevertheless, they had insufficient information to provide meaningful ratings of his work activities, as defined by the questions on the ABAS.

Reverend Rice employed Rickey at his church for a period of time. He noted that Rickey routinely turned his paycheck over to Angie for management of his money received from work. He noted that Rickey's compromised health resulted in an unstable work situation for him, where he was routinely "laid off" due to cutbacks. Reverend Rice described Rickey as "not a person with great ambitions." Mr. Bagwell stated that Rickey was terminated from Belue due to his illness, identified as Hodgkin's lymphoma. At first, he reported, the firm decided not to re-hire him when he recovered from his cancer, due to his accidents on the job. At a later point, however, the firm decided to re-hire him.

As mentioned previously, Ms. Shook described Rickey as "the kind of employee you'd like to have more of." He was dependable, she remarked, and "you could tell he'd been raised right – he said yes ma'am and no ma'am. He helped the ladies if they had trouble getting rolls on to the machines." She assigned Rickey a number of different kinds of tasks while he worked under her supervision, all of which he willingly and compliantly performed, she reported. She noted, "He didn't seem 'buddy buddy' with anyone at work, although he was friendly to others. He was a homebody – loved his home, talked about his home, talked about his mother and father and his grandchildren."

During the time he worked under her supervision, Ms. Shook remarked that Rickey drove a forklift. She described this as moving materials (bolts of textiles) from one place to another. She provided written instructions to him for completing these movements. These instructions told him where the bolts of cloth were located and where they were to be taken. She remarked when asked that the task of moving these bolts was repetitive and said that Rickey performed this task for 8 hours each day. His other jobs included: (1) "re-handling" which involved opening packages and packaging the materials in a different way and (2) taking out trash. Ms. Shook noted that she kept Rickey's time card, said his attendance was routine and predictable, and added he had no accidents while working for her for about a year to a year and a half.

On the basis of the preceding scores, multiple raters and numerous hours of interviewing multiple informants, it is unclear whether Mr. Blackwell has a

significant deficit in the area of Work. The kinds of tasks he performed were repetitive in nature, required limited training, and were generally supervised by others. He did not obtain supervisory positions nor did he move beyond a limited set of skills in this area, despite many years of working. Nevertheless, Work represents an area of relative success for him, when compared to other areas of adaptive functioning. Therefore, it is concluded that the area of Work does not represent an area of significant deficit for Mr. Blackwell.

SUMMARY AND CONCLUSIONS

Rickey Lee Blackwell is a 53 year old, white male currently awaiting trial in Spartanburg County. This evaluation was conducted consistent with evaluations where a defendant is suspected of intellectual disability, a condition that could affect the disposition of the charges against defendants with such disabilities. Mr. Blackwell was evaluated during roughly 7 hours of direct testing, interviewing and observation of him in the county jail where he is incarcerated. He was further evaluated by way of numerous collateral sources of information that included multiple informants who were interviewed with regard to his adaptive deficits. Substantial numbers of documents were reviewed for evidence of adaptive deficits and subaverage intellectual functioning. Review of these considerable numbers of documents, multiple trips to South Carolina to interview multiple informants and to administer these informants measures of adaptive functioning were completed over roughly a year and considerable numbers of hours. After this substantial review and work were completed, the following is concluded, consistent with practice in this area regarding the diagnosis of intellectual disability.

The elements for determination of intellectual disability are:

1. Evidence for subaverage intellectual ability as indicated by performance on a standardized, scientifically recognized measure of intelligence. Rickey Blackwell obtained an I.Q. score of 63 on the Wechsler Adult Intelligence Scale, revision 4, a score which lies within limits of intellectual disability.

2. Deficits in adaptive functioning. Mr. Blackwell exhibited unequivocal deficits in adaptive functioning in Communication, Home Living, Social, Community Use, Self-Direction and Functional Academics. He exhibited deficits on the ABAS measure in all 4 domain areas.

3. Age of onset for adaptive deficits and subaverage intellectual functioning existed prior to age 18. Extensive review and testing indicated that Mr. Blackwell exhibited these deficits and subaverage functioning prior to the age of 18 years.

Respectfully submitted,

Ginger C. Calloway, Ph.D.

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Licensed Psychologist

Cc: files
Mr. Allen
Mr. McGuire

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SUPPLEMENTAL PSYCHOLOGICAL REPORT

In the matter of

State of South Carolina
County of Spartanburg

Versus

Ricky Lee Blackwell

Indictment Number 2009-GS-42-3610
07 GS 42-2778

Name:	**Ricky Lee Blackwell**
Date of birth:	[redacted]
Date of evaluation:	**06/29/12**
Age at evaluation:	**53 years**
Location of evaluation:	**Spartanburg County Detention Facility** **Spartanburg, South Carolina**
Examiner:	**Ginger C. Calloway, Ph.D., HSP-P** **Licensed Psychologist** **N.C. License #935** **S. C. Temporary Permit License #29**

- **Date of Supplemental Report: 1/24/14**

Additional Records Reviewed

- School records for Ricky Lee Blackwell, Jr.
- Bank and loan records of Rickey Lee and Angela Blackwell (2006-2008)
- Memorandum in Support of Motion to Enforce Agreement/Order
- Diagnostic Report of Gordon Brown, Ph.D.
- South Carolina Department of Mental Health Forensic Evaluation Service Report
- Interview of Rickey Lee Blackwell, June 2013 by Lee Connelly
- Certified Copy of 10 Year Driver Record and CDL Test Sheets
- 10 Year Driver Record and CDL sheets
- South Carolina Commercial Driver License Manual
- Belue Trucking Records

Additional Information

With the addition of school records for Mr. Blackwell's son, the chart on page 8 - 9 of the Psychological Report regarding Mr. Blackwell requires updating to include this additional information. The updated chart is provided below.

Blackwell Family Members' IQ Scores
or scores on other indicators of academic performance

NAME	RELATION	DATE	AGE	TEST	SCORE
Cletus B[redacted]	Father	8/31/50	14	Otis Self-Administering Test of Mental Ability (school records)	IQ = 60
Mildred B[redacted]	Mother			School system unable to locate her records	
Donald B[redacted]	Brother	10/75 4/78	12 15	Short Form Test of Academic Aptitude Short Form Test of Academic Aptitude (school records)	IQ = 73 IQ = 74
Rickey Lee B[redacted] J[redacted]	Son	Spring 2000 Spring 2001	13 14	Palmetto Achievement Challenge Tests Grade 6 Palmetto Achievement Grade 4	Below basic. Did not meet state standards Below Basic
Heather Blackwell E[redacted]	Daughter	1994 1996	10 12	Otis-Lennon School Ability Test Otis-Lennon School Ability Test (school records)	IQ = 57 IQ = 71
Kaleb E[redacted]	Grandson	8/18/10	9	Wechsler Intelligence Scale for Children – IV (WISC-IV) (school records)	IQ = 52
Allen E[redacted]	Grandson	2/17/09 12/8/11	6 8	Stanford-Binet Intelligence Scale - V Reynolds Intellectual Assessment Scales (school records)	IQ = 50 IQ = 46
Roger Bridges	Maternal cousin	4/29/05	54	(Newberry Center records)	Moderate mental

					retardation

In addition to previous comments in the Psychological Report, it is noted in records received regarding Rickey Lee Blackwell, Jr. that he did receive special education services and was classified as Learning Disabled (LD). As a result of this placement, it appears he was given accommodation to take the Palmetto Achievement Test at a lower grade level than where he was placed. This happened in 2000 and again in 2001, with the result both times being he was below basic standards for the state of South Carolina, despite accommodations provided.

In the Psychological Report previously provided, note was made that Heather's daughter suffers from obvious language and intellectual delays. In review of records, it is noted that this child was diagnosed with Smith-Magenis Disorder, a developmental disorder that is a consequence of chromosomal defect. Individuals with this disorder typically exhibit mild to moderate intellectual disability and have distinctive facial and dental characteristics that are obvious to the average lay person.

The chart on page 9 of the Psychological Report was re-arranged such that entries for Rickey Blackwell's are placed in chronological order, followed by entries for Donald Blackwell.

Psychiatric Diagnoses for Rickey and Donald Blackwell

NAME	DATE	AGE	FACILITY	DIAGNOSIS
Rickey	3/12/1990	31	Patrick B. Harris Psychiatric Hospital (inpatient)	Major Depressive Disorder, recurrent, in partial remission at discharge
Rickey	3/14/2000	42	Westgate Family Physicians	Acute anxiety, depression, insomnia
Rickey	9/20/05	47	Westgate Family Physicians	Anxiety and depression
Rickey	12/11/08	50	Carolina Center for Behavioral Health	Committed involuntarily Discharge Diagnosis: Major Depressive

				Disorder, recurrent, severe, without psychosis
Donald	7/18/1992	29	ER and Patrick B Harris Psychiatric Hospital	Depression, suicidal attempt
Donald	2/24/94	30	Inpatient hospital	Schizoaffective Disorder, possible panic disorder; rule out atypical bipolar disorder or anxiety disorder
Donald	1/9/1995 3/8/1995 11/25/1995	31 31 32	Inpatient hospital Inpatient hospital Inpatient hospital	Schizophrenia Schizophrenia, paranoid type, chronic with acute exacerbation Schizoaffective Disorder, panic disorder
Donald	1/25/1996 3/11/1996	32 32	Inpatient Inpatient	Schizoaffective disorder
Donald	1/21/1997	33	Inpatient	
Donald	3/4/1998	34	Inpatient	
Donald	10/2/2000	37	Inpatient	Schizoaffective disorder, bipolar type

On pages 14 – 15 of the Psychological Report is a chart listing scores from standardized testing administered to Mr. Blackwell during his years in school. This table appears to have typographical errors that have been corrected in the table below, labeled Table 3-a. Additionally, the table as it appears in the Psychological Report did not

include one set of scores that are difficult to interpret and that are now included. For the reader's ease in examining these two tables, the original table from pages 14 – 15 of the Psychological Report is called Table 3 and is presented after the re-constructed table that immediately follows and that is called Table 3-a. Where changes are made from Table 3 to Table 3-a, an asterisk appears before the test name. Supporting pages from Mr. Blackwell's educational records containing these scores are appended to this Supplemental Report as Appendices 1 – 5.

Table 3-a
Scores on standardized measures given during school years, revised

*** = indicates changes differing from Table in Psychological Report**

Measure or Test	Date	Rickey's Age	Results
California Test of Mental Maturity	4/19/66	7 years old	IQ = 68 (mild ID)
California Test of Mental Maturity	10/20/67	8 years old	IQ = 87 (low average)
*California Achievement Test	11/70	11 years old	5th percentile
* California Test of Mental Maturity SF2 ?	10/70	11- 11 years old	Language IQ ? = 84 (low average) Non language IQ ? = 90 (average) Total IQ ? = 86 (low average)
*Comprehensive Test of Basic Skills	10/71	12 years old	28th percentile
Short Form Test of Academic Aptitude	10/73	14 years old	IQ = 72 (mild ID)
*Comprehensive Test of Basic Skills	10/73	14 years old	Reading = 19th percentile) total language = 41st percentile
*Comprehensive Test of Basic Skills	10/74	15 years old	Total battery = 7th percentile
Adult Basic Learning Examination	4/77	18 years old	Reading: grade 5.8 Arithmetic problem solving – grade 6.6 Arithmetic

			computation – grade 5.2 Total arithmetic – grade 5.6
*Comprehensive Test of Basic Skills	4/77	18 years old	Total battery = 8th percentile

Table 3 from Psychological Report

Scores on standardized measures given during school years

Measure or Test	Date	Rickey's Age	Results
California Test of Mental Maturity	4/19/66	7 years old	IQ = 68 (mild ID)
California Test of Mental Maturity	10/20/67	8 years old	IQ = 87 (low average)
California Achievement Test	11/70	11 years old	5th percentile = IQ of 75 (mild ID)
Comprehensive Test of Basic Skills	10/71	12 years old	28 percentile = IQ of 90 (average)
Short Form Test of Academic Aptitude	10/73	14 years old	IQ = 72 (mild ID)
Comprehensive Test of Basic Skills	10/73	14 years old	Reading = 19th percentile = IQ of 87 (low average); total language = 41st percentile = IQ of 96 (average)
Comprehensive Test of Basic Skills	10/74	15 years old	Total battery = 7th percentile = IQ of 78 (borderline range of ID)
Adult Basic Learning Examination	4/77	18 years old	Reading: grade 5.8 Arithmetic problem solving – grade 6.6 Arithmetic computation – grade

			5.2 Total arithmetic – grade 5.6
Comprehensive Test of Basic Skills	4/77	18 years old	Total battery = 8th percentile = IQ of 79 (borderline range of ID)

The reader will note on examination of Appendices 1-5 that no I.Q. scores were provided for the Comprehensive Test of Basic Skills. These I.Q. scores that were reported for the Comprehensive Test of Basic Skills in the Psychological Report were omitted from Table 3-a of the Supplemental Report. They appear to be typographical errors in the Psychological Report. Although it is unclear that the line for CTMM SF2 from the Cumulative Record page (Appendix 1) actually contains clearly identified I.Q. scores, they are listed nonetheless for the reader's convenience.

If one calculates MA (mental age), which is listed for this test, the CTMM SF2, as 10 years 3 months, divided by CA (chronological age), listed as 11 years, 11 months, one arrives at an estimated I.Q. score of 86, a number that appears in the line for this test or measure. This rough way of estimating I.Q. is no longer used in arriving at I.Q. scores, although this formula for obtaining an I.Q. score might have been used by some test publishers in the 1970's when Mr. Blackwell took these academic tests or measures.

Comments made previously in the Psychological Report apply to this section regarding scores on standardized measures administered during Mr. Blackwell's school years. What is not known from examination of these records is who the examiner(s) was administering the measures, the examiner's experience in administering such measures, whether the same form of the measure was administered multiple times to Mr. Blackwell thus possibly creating a "practice effect," and the age of the normative sample for the particular tests used, such that norm obsolescence could possibly be considered.

The state's Solicitor provided records indicating that Mr. Blackwell successfully obtained a Commercial Driver's License (CDL). At this writing, not all materials from the state that were recently received have been reviewed. During interview, Mr. Blackwell's employer indicated CDL licenses did not exist at the time Rickey worked for Belue Trucking. It also appears from review of records that employees of trucking firms were allowed to administer some type of test designed to give individual truckers a special license. It is not clear what type of test Mr. Blackwell took, under what conditions he took it, how many times he may have taken before passing if he did pass, and if he received any "coaching" in order to pass, if he did pass. What is known from his driving record is his clear pattern of accidents and damage to trucks sufficient to

warrant the job of truck driver fruitless. Although it was suggested that he dropped out of high school to pursue a career in truck driving, he obtained his first truck driving employment 5 years after high school and engaged in that same employment for 5 of the 20 years in which he was employed. His driving record and accomplishment in this area is not indicative of great success. Regardless, the area of Work is clearly an area of strength for Mr. Blackwell, relative to his other areas of adaptive functioning, as previously noted in the Psychological Report.

Review of the Diagnostic Report submitted by Edgar Brown, Ph.D. and the South Carolina Department of Mental Health Forensic Evaluation Service Report submitted by Kimberley Harrison, Ph.D. raise questions and concerns for standard practice in assessment when conducting *Atkins'* evaluations (AAIDD Manual, 2010; Everington, C. and G. Olley, 2008; Olley, G. and A.W. Cox, 2008; Olley, J.G. and K. Salekin, 2011; US vs Smith, 2011 in Olley, J.G. and K. Salekin, 2011; American Psychological Association, 2011; Schalock, R.L., et.al., 2012; Olley, G., S. Greenspan, & H. Switzky, 2005; Bonnie, R.J., 2004; Olley, J.G., 2009; Olley, J.G., 2014).

Respectfully submitted,

Ginger C. Calloway, Ph.D., HSP-P
Licensed Psychologist

Cc: Mr. McGuire
Mr. Allen

EMPLOYEE TERMINATION

JOB TITLE Lease Driver (Lease Driver)

EMPLOYEE _____

EMPLOYMENT DATE 7-12-84

NAME Ricky L. Blackwell S.S.# [redacted] EFFECTIVE 7-12-84

ADDRESS Rt 4 Box 318 Chesnee, SC 29323

ENTER ON PAYROLL ✓ RATE $ Lease Driver PERMANENT ✓ PART TIME _____

REMOVE FROM PAYROLL ✓ VOLUNTARY ____ INVOLUNTARY ✓ DATE 7/15/85

REASON Lease Exp. ~~Fired~~

WORKED NOTICE N/A FROM N/A TO N/A WORKED OUT NOTICE N/A

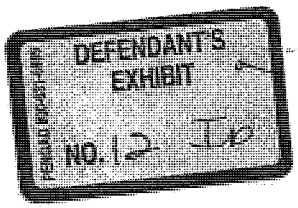
LEFT OWING NO AMOUNT N/A ELIGIBLE FOR REHIRE NO

ARRANGEMENTS FOR REPAYING _____

EMPLOYEE SIGNATURE _____

WITNESS Ken Duncan

WITNESS _____



4407

4407

FOR USE WITH 1963 NORMS

California Achievement Tests

Lower Primary · GRADES 1 and 2 · Form

DIAGNOSTIC PROFILE SHEET

DEVISED BY ERNEST W. TIEGS AND WILLIS W. CLARK

Name (Last, First, Middle) Blackwell, Rickey Lee

Date of Test 1966 May

Date of Birth [redacted]

School Cooley Springs City Rt 2 Chesnee

Boy / Girl (Circle one) Grade First Teacher or Examiner E Bishop

Pupil's Age 7 Years 5 Months (89) Total Mos.

	READING						ARITHMETIC						LANGUAGE							
	1. READING VOCABULARY					2. READING COMPREHENSION			3. ARITHMETIC REASONING			4. ARITHMETIC FUNDAMENTALS			5. MECHANICS OF ENGLISH			6. SPELLING		
	A. Word Form	B. Word Recognition	C. Meaning of Opposites	D. Picture Association	TOTAL (A + B + C + D)	TOTAL READING COMPREHENSION	TOTAL READING		A. Readiness	B. Problems	TOTAL (A + B)	C. Addition	D. Subtraction	TOTAL (C + D)	TOTAL ARITHMETIC	A. Capitalization	B. Punctuation	C. Word Usage	TOTAL (A + B + C)	TOTAL SPELLING	TOTAL LANGUAGE	TOTAL BATTERY
Grade Placement	1.3					1.6	1.4				1.4			1.4	1.4			1.0	1.2	1.2	1.3	1.8 AGP
AAGP*	1.4					1.3	1.4				1.3			1.4	1.4			1.4	1.4	1.4	1.4	78 ISI
IQ or Score†																						86 GCA
Raw Score	14	8	7	8	37	5	42		15	6	21	15	12	27	48	2	0	13	15	1	16	106 89 CA
Possible Score	25	20	15	15	75	15	90		30	15	45	25	20	45	90	20	20	25	65	20	85	265

Grade Placement

*Anticipated Achievement Grade Placement; based on Intellectual Status Index (I.S.I.); see Manual. †Percentile, standard score, stanine (circle score used).

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STATES

CALIFORNIA SHORT-FORM TEST OF MENTAL MATURITY

1963 S-FORM/LEVEL 1

DEVISED BY E. L. SULLIVAN, W. W. CLARK, AND E. W. TIEGS

Name Blackwell, Rickey Lee (Last, First, Middle)

School Cooley Springs City Old Chesnee

(Boy) Girl (Circle one) Grade First Teacher or Examiner Elizabeth Bishop

Date of Test 1966 Apr. 14 (Year, Month, Day)

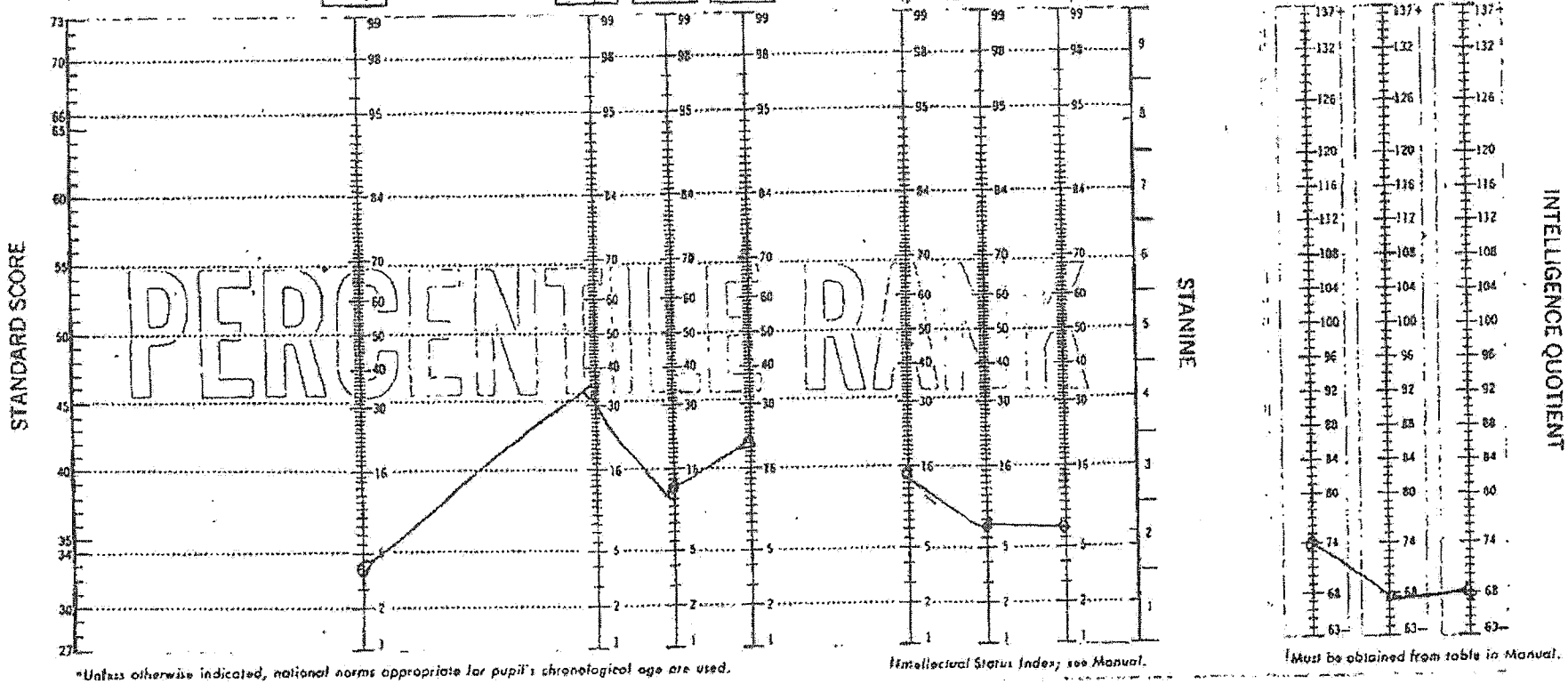
Date of Birth [redacted]

C.A. 7 Years 5 Months (89) Total Mos.

8014

TEST/FACTOR	1. OPPOSITES	2. SIMILARITIES	3. ANALOGIES	I. LOGICAL REASONING	II. NUMERICAL REASONING	III. VERBAL CONCEPTS (& VERBAL COMPREHENSION)	IV. MEMORY (7. DELAYED RECALL)	LANGUAGE (Tests 5, 6, 7)	NON-LANGUAGE (Tests 1, 2, 3, 4)	TOTAL	I.S.I.*
POSSIBLE SCORE	12	12	12	36	14	10	24	25	15	50	50	100	78
RAW SCORE	5	1	6	12	7	4	11	12	6	22	19	41	ACTUAL G.P. 1.8
PERCENTILE*				4			31	14	21	14	7	7	GRADE C.A. 8.6

	LANGUAGE	NON-LANGUAGE	TOTAL
M.A.†	80	73	74
RAW SCORE	22	19	41
I.Q.†	73	67	68



*Unless otherwise indicated, national norms appropriate for pupil's chronological age are used.

Intellectual Status Index; see Manual.

†Must be obtained from table in Manual.

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4408

4409

4409

FOR USE WITH 1963 NORMS

California Achievement Tests

Upper Primary • GRADES 2-3-4 • Form ☐

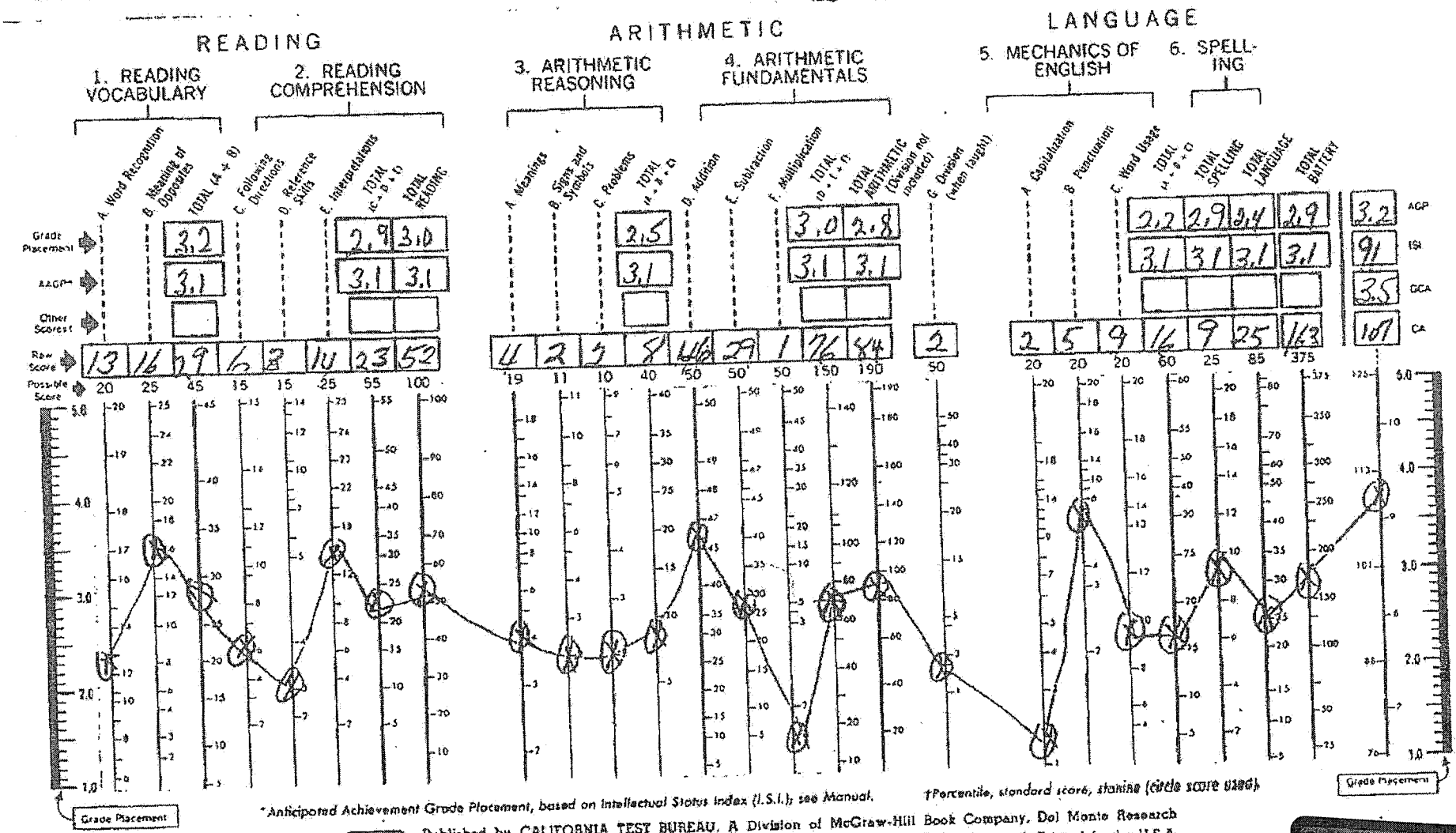
DIAGNOSTIC PROFILE SHEET

DEVISED BY ERNEST W. TIEGS AND WILLIS W. CLARK

Name Blackwell, Rickey Lee (Last, First, Middle) Date of Test 67-11-6

School Cooley Springs City Chesnee Date of Birth [redacted]

Boy / Girl (circle one) Grade 3 Teacher or Examiner Leigh Shields Pupil's Age 8 Years - 11 Months (107 Total Mos.)



*Anticipated Achievement Grade Placement, based on Intellectual Status Index (I.S.I.); see Manual. †Percentile, standard score, stanine (circle score used)

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STATE'S EXHIBIT

CALIFORNIA SHORT-FORM TEST OF MENTAL MATURITY

1963 S-FORM/LEVEL 1H

DEVISED BY E. L. SULLIVAN, W. W. CLARK, AND E. W. TIEGS

Name Blackwell Rickey Lee (Last, First, Middle) Date of Test 62-10-25 (Year, Month, Day) 4410

School Cuesta Verde City Chamise Date of Birth [redacted]

(Boy) Girl (Circle one) Grade 3 Teacher or Examiner Emily Shields C.A. 8 Years 11 Months (107) Total Mos.

TEST / FACTOR	1. OPPOSITES	2. SIMILARITIES	3. ANALOGIES	I. LOGICAL REASONING	II. NUMERICAL REASONING	III. VERBAL CONCEPTS (6. VERBAL COMPREHENSION)	IV. MEMORY (7. DELAYED RECALL)	LANGUAGE (Tests 3, 6, 7)	NON-LANGUAGE (Tests 1, 2, 3, 4)	TOTAL	I.S.I.*
POSSIBLE SCORE	13	13	15	41	14	10	24	25	20	55	55	110	91
RAW SCORE	1	10	8	19	6	5	11	3	4	12	25	37	ACTUAL G.P. 3.1
PERCENTILE*				34			66	14	27	24	31	24	GRADE C.A. 102*

	LANGUAGE	NON-LANGUAGE	TOTAL	
	96	99	96	M.A.†
	12	25	37	RAW SCORE
	87	90	87	I.Q.†

STANDARD SCORE

STANINE

INTELLIGENCE QUOTIENT

*Unless otherwise indicated, national norms appropriate for pupil's chronological age are used.

†Intellectual Status Index; see Manual

†Must be obtained from table in Manual.

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4410

MARY BLACK MEMORIAL HOSPITAL
Spartanburg, South Carolina

Patient Name	ACCT#	SS#	A/D	NSCL	D/D
BLACKWELL, RICKY	1605039	[redacted]	11/09/2005	ED	

OPERATIVE NOTE:

DATE OF OPERATION: 11/09/2005

PCRSC#: 6029.

[redacted]

PREOPERATIVE DIAGNOSIS:

1. Weight loss.
2. Diarrhea.

POSTOPERATIVE DIAGNOSIS:

1. Renal lithiasis, one of them large.
2. Slightly enlarged hiatal, otherwise normal stomach and duodenum.

OPERATION: Esophagogastroduodenoscopy. Antral biopsy for CLOtest and biopsies in three different areas of the inlet patches.

ANESTHESIA: Versed 2 milligram intravenous. (Post colonoscopy).

SPECIMEN REMOVED: Mucosa from the antrum. Mucosa from the edge of the inlet patches and from the center of the inlet patch or the large inlet patch.

ESTIMATED BLOOD LOSS: None.

PROCEDURE: With the patient in the left lateral Sims position, throat was sprayed with Cetacaine prior to giving any anesthetic. At this stage, conscious sedation was given and mouth piece was already positioned. The scope was lubricated with Xylocaine and inserted into the mouth piece and flexed around the tongue and then straightened as it was advanced. The patient was asked to swallow and the scope passed straight into the esophagus. The esophagus looked normal upon entry. The gastroesophageal junction was at a little bit of an angulation and was tied and there were no erosions there. The stomach looked normal. There was a little bit of bilious fluid that was suctioned from the stomach and then stomach was reinflated. Biopsies were taken at the antrum for CLOtest. The pyloric channel was normal. Duodenum including bulb, first and second portion looked normal with a view of the third portion. Scope withdrawn into the stomach and retroflexed. Although there seem to be a tiny bit of large amount of the hiatal size, there didn't seem to be any prolapse. Scope straightened and withdrawn and contents evacuated from the stomach as the scope was pulled back through the esophagus. The esophagus was normal. All the way to the very beginning of the esophagus where there was a large patch with edges slightly raised of denuded mucosa that looked like there was a large pinkish color patch with the mucosa all around it just slightly accentuated. Biopsy was taken with some difficulty at the edge of the ulcerated area and then in

(Continued to next page)

REVIEWED
NOV 10 2005
BY: _____

Printed: 11/09/2005 12:51:59

MARY BLACK MEMORIAL HOSPITAL
Spartanburg, South Carolina

Patient Name	ACCT#	SS#	A/D	NSCL	D/D
BLACKWELL, RICKY	1605039	[redacted]	11/09/2005	ED	

OPERATIVE NOTE:

PAGE 2

the middle and also a biopsy was taken at a little satellite ulcer. Apparently these were inlet patches. I do not see any Barrett's esophagus over here but biopsies will tell us what is happening. The scope was reinserted into the stomach. On the way out air was evacuated. Equipment removed. Vocal cords were normal. Mouth suctioned and mouth piece returned. The patient returned to recovery room in stable condition.

The patient was stable throughout the procedure as monitored by electrocardiogram, pulse oximeter and vital signs. The patient will be observed in the usual manner and followed on an outpatient basis. Findings, diet, activities, precautions discussed with the patient's family. Return to the office in one week.

Pictures are as follow. Four pictures taken with four frames.

Picture 1
1. Antrum.
2. Distal duodenum.
3. Proximal duodenum.
4. Retroflexed view.

Picture 2
1. Upper part of the stomach that looks mildly irrigated on the greater curvature.
2. Attempt to make a picture of the gastroesophageal junction.
3. Gastroesophageal junction again.
4. Lower esophagus with contraction.

Picture 3
1. Basically demonstrating the inlet patch.

Picture 4
1. One frame showing again the inlet patches with the biopsy as it was done.
2. Repeated pictures.

DD: 11/09/05/951
DT: 11/09/05/1220
BY: ns

SIGNATURE: _____
Gabor F. Sovenyhazy, M.D. (04)

cc: Robert E. Jackson, M.D. (46)

REVIEWED
NOV 10 2005
BY:

Printed: 11/09/2005 12:51:59

Chart 6029

HISTORY AND PHYSICAL
PIEDMONT COLON AND RECTAL SURGERY CENTER

Patient Name: Mr. Rickey Blackwell
Patient Address: 248 Ridings Rd
Chesnee, SC 29323
Social Security #: [redacted]
Chart #: 6029
Date Of Birth: [redacted]1958
Refering physician: Robert Jackson, M.D.
Family physician: Robert Jackson, M.D.
10/25/2005.

This 46 year old Caucasian male presents C/O: family history of colon polyps. He also presents for evaluation of weight loss. He lost 10 pounds in 6 months. He also presents for evaluation of diarrhea and Cholecystectomy was performed in 2003. His grandmother had colon cancer. He was diagnosed with Hodgkins's at the age of 28.

Allergies: Patient has allergy to NKDA.

Medication History: Patient is currently using Centrum Silver, Xanax, Serzone, hctz tablets 20/25, Lotensin.

Past Medical History: Psychiatric Hx: depression,, **Cardiovascular Hx:** hypertension, **GI Hx:** cancer, Hodgkin's.

Past Surgical History: Patient admits past surgical history of Cholecystectomy, hiatal hernia repair, appendectomy, tonsillectomy, splenectomy.

Family History: Unremarkable.

Social History: Patient does not drink, Patient does not smoke.

Polyp/cancer history:
Colon Polyps History: Confirms family history of colon polyps father.
Colon Cancer History: admits to family history of colon cancer grandmother.
Other Cancer History: Uncle has cancer of the lung and pancreas.

Review of Systems: Respiratory: (+) NONE, **Psychiatric:** (+) depression, (+) nervousness, **Neurological:** (+) NONE, **Musculoskeletal:** (+) NONE, **Integumentary:** (+) NONE, **Hematologic / Lymphatic:** (+) NONE, **Genitourinary:** (+) NONE, **Gastrointestinal:** (+) bowel problems, (+) diarrhea, **Eyes:** (+) NONE, **Endocrine:** (+) NONE, **Ears, Nose, Mouth, Throat:**

(+) NONE, **Constitutional Symptoms:** (+) decreased appetite, (+) weight loss, unintentional, (+) tiredness, **Cardiovascular:** (+) hypertension, **Allergic / Immunologic:** (+) NONE.

BOWEL FUNCTION/TESTS: Patient has bowel movements 3 times a day. The consistency of the stool is diarrhea. He denies the use of laxatives.
Mr. Blackwell denies any recent change in bowel habits. .

PHYSICAL EXAM: Patient is a well developed, well nourished 46 year old Caucasian male in no apparent distress.

VITAL SIGNS: BP Sitting: 125/79 Resp: 20 HR: 58 Weight: 189 lbs. 0 oz.

SKIN: Inspection of skin outside of affected area reveals no abnormalities.

HEAD: Inspection of head and face shows no abnormalities.
Scalp: Examination of scalp shows no abnormalities.

EYES:
Lids: Conjunctiva and lids reveal no signs or symptoms of infection.
Conjunctiva: Conjunctiva white and quiet bilaterally.
Pupils: Pupils are PERRLA.
Lens: Lens are transparent and in normal position bilaterally.

ENT:
Hearing: Gross hearing test reveals normal hearing.
Ear Inspection: Inspection of ears reveals no abnormalities.
Nose: Inspection of nose reveals no abnormalities.
Mouth: Inspection of lips, teeth, gums, and palate is grossly normal.
Oral Mucosa: Inspection of oral mucosa and tongue reveals no abnormalities.
Tongue: Inspection of the tongue reveals normal color, good motility and midline position.
Throat: Examination of oropharynx reveals no abnormalities.

NECK: Neck exam reveals no abnormalities.
Thyroid: Thyroid is smooth and symmetric with no enlargement, tenderness or masses noted.
Lymphatics: Neck lymph nodes are normal. Supraclavicular lymph nodes are normal.
Carotids: Carotid pulses are palpated +2, equal and bilaterally.
Jugulars: Jugular veins examination reveals no distention or abnormal waves.

CHEST: Assessment of respiratory effort reveals normal respiratory effort.
Inspection: Chest inspection reveals chest configuration non-hyperinflated and symmetric expansion.
Palpation: Chest palpation reveals no abnormal tactile fremitus.
Percussion: Chest percussion reveals resonance.
Auscultation: Auscultation of lungs reveal clear lung fields and no rubs noted.

BREAST: Breasts are symmetrical without discharge. Breasts show no palpable masses or

tenderness. No axillary lymphadenopathy noted.

CARDIOVASCULAR:

Auscultation: Heart auscultation reveals rhythm is regular and no murmurs, gallop, rubs or clicks.

Pulses: Radial pulses are 2+, equal bilaterally. Femoral pulses are 2+, equal bilaterally. Pedal pulses are 3, Same as Left.

ABDOMEN:

Inspection: Abdominal contour is flat. Abdomen inspection reveals cholecystectomy scars from laparoscopy, laparoscopic scar of Nissen fundoplication, inguinal scar(s), midline scar upper and lower and no scars.

Palpation: Abdomen soft, nontender, without palpable masses.

Auscultation: Bowel sounds are normal.

Liver: Palpation of liver reveals no abnormalities with respect to size, tenderness or masses.

Spleen: Palpation of spleen reveals no abnormalities with respect to size.

Hernia: Examination for a hernia is negative.

Groin Lymph Nodes: Groin lymph nodes are normal bilateral.

EXTREMITIES:

Varicosities: Varicosities are not observed.

Edema: No edema present bilateral lower extremities.

Scars: Examination of lower extremities shows no abnormalities. Upper left extremity shows no abnormalities. Upper right extremity shows no abnormalities.

GENITOURINARY:

Bladder: Examination over the bladder reveals no masses or tenderness.

Male: Examination of male reproductive system reveals no abnormalities

Digital rectal examination of prostate gland shows that the gland is of normal size and symmetry without nodules or tenderness.

MUSCULOSKELETAL:

Inspection/Palpation: Inspection and palpation of bones, joints and muscles is unremarkable.

Strength/Tone: Muscle tone is normal.

Spine: Examination of the back reveals no abnormalities.

NEUROLOGIC:

Gait: Gait and station examination reveals mid-position without abnormalities.

Coordination: Coordination is good.

PSYCHIATRIC:

Orientation: Oriented to person, place and time.

Mood & Affect: Mood and affect normal and appropriate to situation.

Speech: Speech is appropriate with regular rate and rhythm.

Memory: Recent and remote memory is intact.

Thought Processes: Stream of thought is spontaneous. Patient exhibits associations which

are normal. Patient awareness of current events, past history and vocabulary is good. Patient does not exhibit abnormal or psychotic thoughts.

TEST & X-RAY RESULTS:
X-rays performed,
Diagnostic and Lab Results

EVALUATION FOR SEDATION AND INTUBATION:
Mallampati's Airway Classes: reveals Class II.
Airway & Physical Evaluation: Normal.
ASA Classification: II Mild Systemic Disease.

IMPRESSION:

Inspection: Inspection: anal area is normal.
Examination of the perineum shows no abnormalities.
Digital: Digital exam reveals normal sphincter tone, normal reflex and normal contraction..
Anoscopy: Anoscopy. hemorrhoids: 2nd degree. ... mucosal friability.
Flexible Fiberoptic Sigmoidoscopy: Deferred.

CONCLUSION: Patient has finding/history: Other: hypertension,
Bleeding: GI unspecified,
Cancer related: family history of colon cancer grandmother,
Diarrhea 3 times daily,
Other: Hodgkin's disease and
Polyp: family hystory of colon polyps: father.

RECOMMENDATION:

Diet, anal care instructions given.
Medical treatment: Medical treatment: Questran 1 pack TID.
Surgical procedures: Surgery: Colonoscopy, snare polypectomy and EGD, biopsies for Clo test, possible biopsies for pathology.
Informed Consent obtained: The procedure and it's complications were explained in detail and the patinent's questions were unswered to his understanding On the basis of our discussion, the patient understands his prognosis and the risks if he decides not to have the procedure., The dignosis and the general nature of the procedure was discussed with the patient and I gave the patient time to ask questions, which I answered to patient's understanding., The possible alternatives to the procedure were mentioned, The risks and benefits of the procedure were discussed and possibility of bleeding, perforation, need for operation and/or hospitalisation, cautery related problems and burns, possibility of explosion, sedation related problems like aspiration, oversedation, hypoxia, heart attack, stroke and so on explained in detail.
Diagnostic & Lab Orders:

BLACKWELL, RICKEY 10/25/2005 - 6029 Gabor F. Sovenyhazy M.D., F.A.C.S.

Prescriptions:
Questran (regular) Dosage: 4 gm powder for reconstitution Sig: 1 Packet, mix into large glass of water and drink QD Dispense: 1 Box Refills: PRN Allow Generic: Yes

_____ Gabor F. Sovenyhazy, M.D., F.A.C.S.

6029

MARY BLACK MEMORIAL HOSPITAL

Dr Robert Larson

PHYSICIAN ENDOSCOPY NOTES

MB-358

Date / Time: 11/9/05

Indications: Wt. loss, diarrhea
Father had polyps
Grandmother had CA.

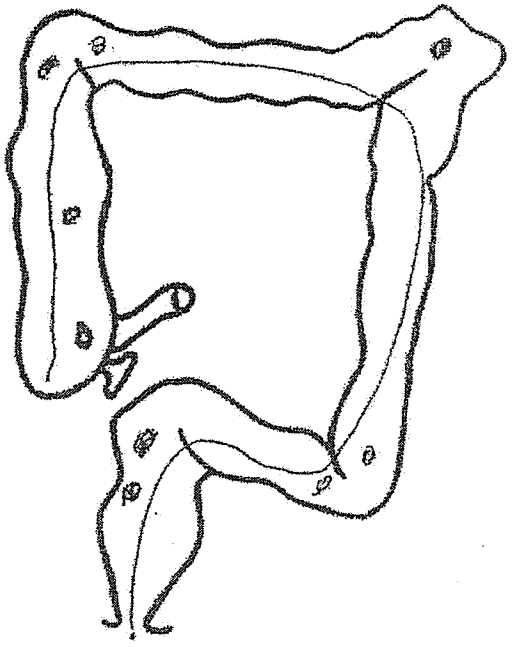
Findings: 8 polyps

Estimated Blood Loss: 0

Procedure: T. colonoscopy, hot bx polypectomies.

Specimen(s): polyps

Anesthesia: Demerol 100 mg IV Versed 10 mg IV



[redacted] M 046Y
BLACKWELL, RICKY L
DOB: [redacted]
SOVENYHAZY, GAB
1605039 Y

Physician Signature _____ Date/Time _____

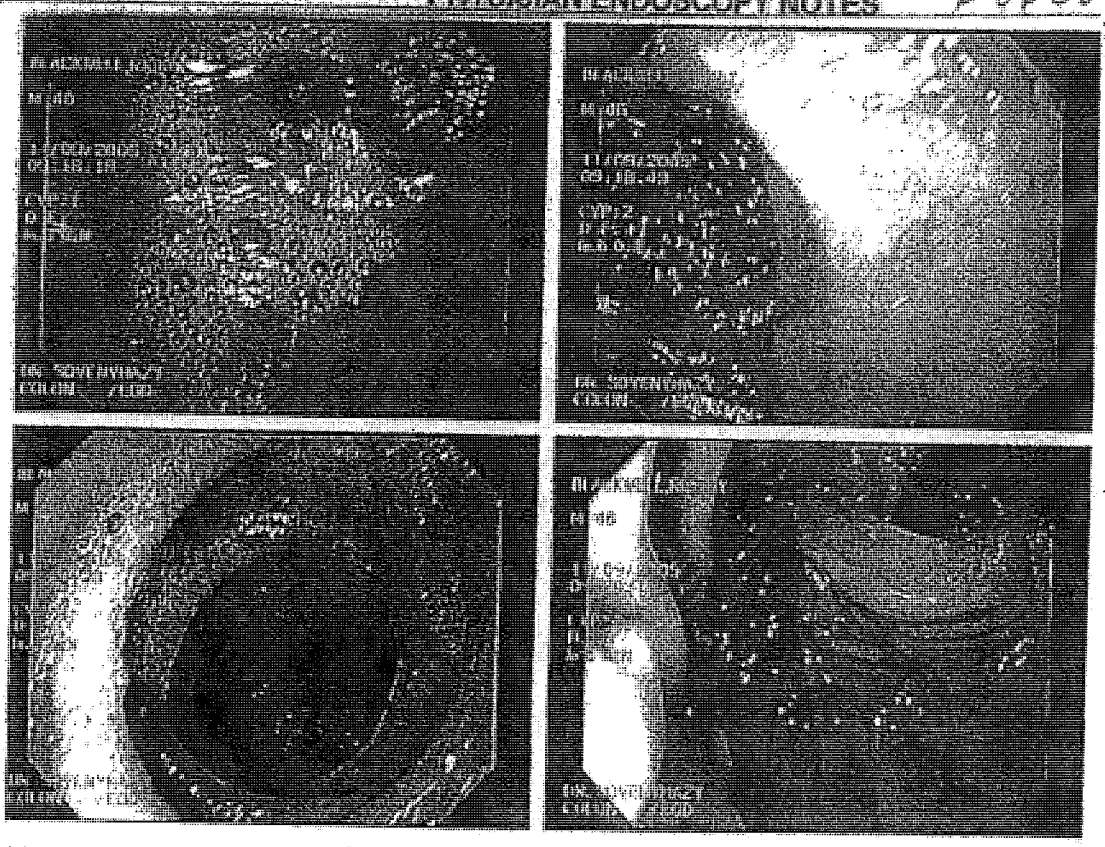
To OR

6029

MARY BLACK MEMORIAL HOSPITAL
PHYSICIAN ENDOSCOPY NOTES

Dr Robert Jackson

MB-118-05/05/03



Distal
Wrap

11/9/05

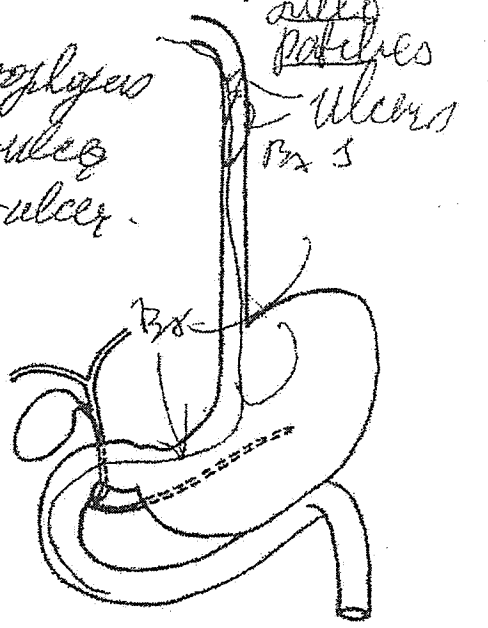
Procedure:
EGD, antral Bx for Clo, Bx esophagus

Indications:
Diarrhea, wt. loss.

Anesthesia:
Versed 2 mg Demerol 80 (X)

Estimated Blood Loss:
0

Findings/Specimen(s):
1 large and 1 smaller ulcers on proximal esophagus
Normal stomach



Duke patches
2 ulcers
Bx x 3
① edge of ulcer
② mid-ulcer.

11/09/05 [redacted] M 046Y
BLACKWELL, RICKY L
DOB: [redacted]
SOVENYHAZY, GAB

1605039 Y

Physician Signature

Date

KIMBERLY S. HARRISON, Ph.D.
LICENSED PSYCHOLOGIST
(South Carolina #1123, Texas #36630)

Forensic Evaluation Service
7901 Farrow Rd., Building 6
Columbia, SC 29203

Phone: 803.935.6589
Fax: 803.935.5544
Email: kimsharrison@gmail.com

Current Positions

10/2008-Present
Chief Psychologist
South Carolina Department of Mental Health Forensic Evaluation Service
Columbia, SC

- Conducting inpatient and outpatient criminal forensic evaluations.
- Conducting Precommitment Evaluations and Annual Reviews for the Sexually Violent Predator Program.
- Administering intellectual, achievement, neuropsychological, personality, malingering, and risk assessments measures to forensic clients.
- Providing expert witness testimony in court.

08/2009-Present
DMH Assistant Professor, Department of Neuropsychiatry & Behavioral Science
University of South Carolina School of Medicine
Columbia, SC

- Supervising medical students, psychiatry residents, and forensic psychiatry fellows in forensic mental health evaluations.
- Presenting lectures on topics pertinent to forensic psychology.

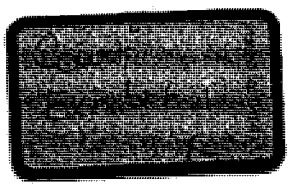
05/2010-Present
Private Practice Psychologist
University of South Carolina School of Medicine Neuropsychiatry Specialty Clinic
Columbia, SC

- Conducting psychological evaluations involving Social Security disability claims, suitability for medical procedures, impaired professionals, and forensic issues.

Education

12/2007
Doctorate of Philosophy (Ph.D.) in Clinical Psychology
University of North Texas, Denton, TX
Major Professor: Richard Rogers, Ph.D., ABPP
Dissertation Title: *Totality of the circumstances: Factors affecting competence to waive Miranda rights*

05/2005
Master of Science (M.S.) in Psychology
University of North Texas, Denton, TX
Major Professor: Richard Rogers, Ph.D., ABPP
Thesis Title: *Validation of clinical screens for suicidality and severe mental disorders for jail inmates*



SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE

Name: BLACKWELL, RICKY

Type of Evaluation: Competency to Stand Trial

Date of Evaluation: 4/24/13

Date of Report: 5/6/13

Evaluators: Kimberly S. Harrison, Ph.D. (Presiding)
Cassandra Sims, LMSW (Second)

Referral Information

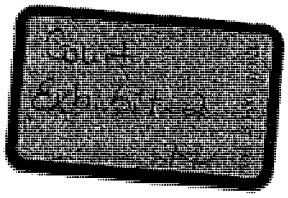
Mr. Blackwell is a 54-year-old (date of birth: [redacted]'58) male who was ordered by the Spartanburg County Court to undergo an evaluation of his competency to stand trial, pursuant to S.C. Code Ann §44-23-410. The court order specifies the basis for the evaluation as, "The defense has stated that the competency of the defendant may be in question during a hearing in front of this Court on August 8, 2012. The defense has also stated in the August 8, 2012 hearing and a letter to this court dated July 13, 2012 that the defendant may have a 'strong possibility' of a mental retardation issue in this case. The defendant has been served a death penalty notice in this case. The defense agreed to the examination by the Department of Mental Health at the August 8, 2012 hearing." Mr. Blackwell is currently charged with Murder and Kidnapping.

Notification

The nature and purpose of this evaluation were explained to Mr. Blackwell at the beginning of the interview. He was notified that the information obtained during this evaluation would not remain confidential, and that anything he disclosed could be included in a report to the Court, solicitor, and defense counsel. Mr. Blackwell demonstrated an adequate understanding of the purpose of the evaluation and the limits of confidentiality. He voluntarily signed an evaluation information form and agreed to proceed with the evaluation.

Sources of Information

1. Interview with Mr. Blackwell on 4/24/13 for approximately one hour and 20 minutes
2. State of South Carolina, County of Spartanburg, Order for Competency to Stand Trial Evaluation Pursuant to *State v. Blair*, dated 3/1/13
3. Records from Patrick B. Harris Psychiatric Hospital, dated 3/12/90 to 3/16/90
4. Records from Spartanburg Regional Healthcare System, dated 6/29/02 to 7/15/09
5. Records from Spartanburg County Schools, dated 1966 to 1977
6. Commercial Driver Written Examination, dated 7/9/84
7. Various employment records, sources unknown, dated 1984 to 2000
8. Records from Westgate Family Physicians, dated 3/24/98 to 6/30/09
9. Records from Carolina Center for Behavioral Health, dated 12/10/08 to 12/15/08
10. Records from Spartanburg County Detention Center, dated 7/16/09 to 3/31/13
11. Defendant's NCIC criminal history record
12. Phone interview with Mildred Blackwell, the defendant's mother, by Cassandra Sims, LMSW, on 4/18/13
13. Information from Spartanburg County pertaining to Mr. Blackwell's current charges, including:



a. Two Arrest Warrants, dated 7/8/09
b. Incident Report by Bill Meyer, dated 7/8/09
c. Supplemental Narrative by D. Hogsed, dated 7/8/09
d. Investigation Report by R. Talanges, dated 7/8/09
e. Forensics Report by S. Nix, dated 7/8/09
f. Investigation Report by Jason Bryant, dated 7/8/09
g. Investigation Report by Joseph Bohon, dated 7/8/09
h. Investigation Report by M.B. Letterman, dated 7/8/09
i. Investigation Report by M.B. Letterman, dated 7/9/09
j. Investigation Report by M.B. Letterman, dated 7/15/09
k. Investigation Report by M.B. Letterman, dated 8/26/09
l. Investigation Report by Lorin Williams, dated 7/8/09
m. Investigation Report by M. Horton, dated 7/8/09
n. Investigation Report by W.R. Foster, dated 7/13/09
o. Supplementary Report by B.L. Turner, dated 7/9/09
p. Supplementary Report by Barry Pridgeon, dated 7/9/09
q. Supplementary Report by C. Terry, dated 7/8/09
r. Supplementary Report by C.A. Stowe, dated 7/8/09
s. Supplementary Report by C.L. Leso, dated 7/8/09
t. Supplementary Report by D.W. Taylor, dated 7/9/09
u. Supplementary Report by J. Tate, dated 7/8/09
v. Supplementary Report by John D. Smoak, dated 7/10/09
w. Supplementary Report by Michael Turner, dated 7/9/09
x. Supplementary Report by Tim [last name illegible], dated 7/9/09
y. Voluntary Statement of Angela Blackwell, dated 7/8/09
z. Voluntary Statement of Jerry Wayne Blackwell, dated 7/8/09
aa. Voluntary Statement of Mark Anthony Bryant, dated 7/8/09
bb. Voluntary Statement of Vernon Kimbrell, dated 7/8/09
cc. Coroner's Investigative Notes, dated 7/8/09
dd. Spartanburg Regional Medical Center Autopsy Report, dated 7/9/09

Background Information

Developmental History

Mr. Blackwell reported he was born in Cowpens, SC, and raised in Cooley Springs, SC, by his married parents. He stated he had one younger brother. He denied a history of abuse as a child. He said he married in 1982 and divorced in 2010. He and his wife have a 29-year-old daughter and a 26-year-old son.

Educational History

The defendant stated he discontinued his education after the 10th grade because he wanted to go to work. He said he has not earned a GED. He reported he was in special education classes throughout his schooling and had difficulty learning. He said he repeated the 9th grade. He denied problems with attention in school. He described his behavior in school as "good," although he reported he was suspended on one occasion for hitting another student on the bus.

According to Mr. Blackwell's mother, he was frequently bullied in school. She said he dropped out of school during the 11th grade "following [a] disagreement over the number of credits he had earned." She stated he was enrolled in regular classes throughout his schooling.

Records from Spartanburg County Schools indicate Mr. Blackwell underwent testing on 4/19/66 (7 years old) that yielded an IQ score of 68. On 10/20/67 (8 years old) his IQ was reported as 87.

Employment History

According to Mr. Blackwell, he has been employed as a truck driver, forklift driver, and a dyer at a textile plant. He said his longest period of employment was seven years as a forklift driver. He stated he has never been fired from a job. He reported he last worked as a forklift driver at a plant. That job ended in 2008 when the plant closed. He stated he received disability benefits for 12 years, beginning in 1986, when he was diagnosed with cancer.

Medical History

Mr. Blackwell reported he suffered from "convulsions" as a child until he was 11 years old. He said he has not had any seizures since that age. According to his mother, he had seizures as a baby but "grew out of them."

The defendant stated he was diagnosed with cancer throughout his body (e.g., lungs, stomach, bones) in 1986. According to records from Westgate Family Physicians, he had Hodgkin's lymphoma. He had his spleen removed and underwent chemotherapy. He stated the cancer went into remission in 1987, and he has remained cancer-free. Documentation from Westgate Family Physicians in 1998 indicates that the lymphoma was "considered cured by the Oncologist."

According to Mr. Blackwell, he suffered a head injury with loss of consciousness sometime in the 2000s from a four-wheeler accident. Records from Spartanburg Regional Medical Center indicate he was taken to the emergency department on 6/29/02 after a four-wheeler accident. He was found to have a fractured clavicle; a head CT scan was described as normal. Mr. Blackwell denied a history of other serious head injuries.

Mr. Blackwell reported he had his gallbladder removed due to problems with gallstones, and he had part of his colon removed subsequent to his self-induced gunshot wound immediately prior to his arrest. He said he currently has high blood pressure, for which he takes Benacor and Norvasc. He stated he also has COPD and uses a Spireva inhaler.

Substance Use History

Mr. Blackwell stated he began drinking alcohol at the age of 16. He said, "I never did have a bad history [of alcohol use]" and reported he would occasionally drink a case of beer over the course of a weekend if he was watching auto racing on television. He denied a history of daily alcohol use or problems associated with his drinking. He said he began using marijuana at the age of 17 and "smoked it every day if I had it," typically three or four joints per day. He denied symptoms of tolerance or withdrawal or other problems associated with his marijuana use. He said he stopped using marijuana in 1993 "because of the cancer, afraid I would get it back." The defendant reported he used Valium that was not prescribed to him on weekends for one or two years. He said he used cocaine on two or three occasions. He denied using other illegal drugs. He stated he has never participated in substance use treatment.

Legal History

According to the defendant's NCIC criminal history record, in 1981 he was convicted of "breaking into gasoline truck and petty larceny" and sentenced to six months confinement and one year probation. In Tennessee in 1982 he was convicted of DWI and fined. Mr. Blackwell reported his only prior arrest

occurred in 1977 when he was "with a boy who had marijuana in his car." He said he was sentenced to probation for one year.

During his current incarceration, Mr. Blackwell has been charged with two disciplinary infractions. On 11/4/10 he was charged with possession of contraband because he was found to have Clorox in a baby oil bottle. He pled guilty to the charge and said he used the Clorox to clean surfaces in his cell. On 11/6/10 he was charged with possession of unauthorized medication after five Seroquel tablets were found in his possession. He pled guilty to the charge and "claimed that the medication (Seroquel) was given to him in his morning medicines, when he only take [*sic*] it at night, and he saved the medication."

Mental Health History

Mr. Blackwell was admitted to Harris Psychiatric Hospital on 3/12/90 subsequent to "suicidal gesture . . ., shot gun inro the air." At the time of admission, he "report[ed] a history of depression since he was diagnosed as having Hodgkins disease in 1986 with worsening depression over the past year with and [*sic*] 8-lb weight loss, persistent initial and middle insomnia, irritability and anxiety. In addition, the Pt [patient] has continued to drink beer every week, at least a 12-pack per week and continued to smoke marijuana." A provisional diagnosis of "Dysthymia vs major depression, recurrent" was noted. He was treated with Ativan (an anti-anxiety medication) and Sinequan (an antidepressant) and discharged on 3/16/90. A final diagnosis was not listed in the discharge summary.

There is no indication from available records that Mr. Blackwell received further mental health treatment until 2000. On 10/16/00, he informed his physician at Westgate Family Physicians that he was "having problems with his nerves. Over the last 4 days he is suddenly very anxious. Pacing the floors and having trouble sleeping at night. Having frequent crying spells and very significant loss of appetite. . . . Is not sure why he is having problems. . . . Wife thinks things have just built up. Said the Pt [patient] worries all the time and worries about his CA [cancer] coming back. . . . Pt is noted to be very anxious. He is pacing the floor a little bit. Not wanting to sit. . . . Pt does seem to have good insight and is very coherent." He was prescribed the antidepressant Serzone. He saw his physician the next day, at which time he reported he was "Still unable to sleep at night. . . . Decreased libido. Can't concentrate. Very irritable. Wants to cry all the time. Had several accidents on the job yesterday driving a forklift. Even fell asleep on the job. . . . Patient tearful. Obviously very anxious." The physician noted he was experiencing "situational anxiety and depression mostly related to his teenage daughter running off to be married." He was continued on Serzone, and the anti-anxiety medication Ativan was also prescribed.

At his doctor's appointment on 10/31/00, Mr. Blackwell reported that his "mood is much more stable. Still not back to his normal self. Concentration is better. No longer crying. Irritability better. Still very anxious." The dosage of his Serzone was increased. According to a physician's note dated 11/29/00, Mr. Blackwell "states that he did well on the Serzone but about 3 days ago he had a sudden deterioration in his emotional status. Began to have crying spells, constant nervousness. Can't sleep at night. Feels panicky." He was continued on Serzone and Ativan, and the antidepressant Effexor was added. On 12/20/00 the defendant reported "that his mood has been dramatically better. He and his wife agree it has a lot to do with the improvement in his spiritual life. Doesn't feel nearly as anxious or fearful as he had been. No longer feeling panicky. . . . Sleeping well at night." He was continued on the Serzone, Effexor, and Ativan.

Over one year later, on 1/16/02, Mr. Blackwell's physician noted, "Depression is well controlled on current regimen [Serzone and Effexor]." However, at an appointment on 7/10/02 his physician indicated, "Main concern is that he's become to be very depressed w/crying spells." The dosages of the Serzone and Effexor were increased. On 8/8/02 he reported that "his mood is stable on the Serzone and Effexor combination."

At some point, Mr. Blackwell apparently discontinued the antidepressants. According to a physician's note dated 10/1/03, "Tells me that he's been off the Serzone and Effexor for 4 mos and has had no problems w/his mood."

Mr. Blackwell apparently remained psychiatrically stable until 2/8/05, at which time he reported to his physician that "his depression has gotten worse. He's been out of a job and he's become very irritable and cranky, poorly motivated, crying spells." He requested to re-start Serzone, and that medication was prescribed. At an appointment on 9/20/05, he described several stressors in his life. He reportedly "walked off the job a couple of days ago which he's never done before at any job. States he was so anxious he couldn't really perform his responsibilities. . . . Patient is trembling. Obviously very anxious. Doesn't finish his sentences. Not thinking clearly." He had reportedly stopped taking Serzone for several months, so that medication, along with Xanax (an anti-anxiety agent) were prescribed. On 9/28/05 he reported that "within 24 hours of starting back on the Serzone and Xanax that his mood was much more stable. He slept a good night's sleep and was able to return to work the next day without excessive anxiety. He was able to focus and concentrate, and performed his job responsibilities without difficulty. . . . The patient is much calmer than he was last week. He is not trembling and does not appear anxious or depressed."

Records from Westgate Family Physicians indicate that Mr. Blackwell continued to take Serzone and Xanax until 2008, and his symptoms of depression and anxiety were "well-controlled" during those years. On 8/6/08 he "complain[ed] that Serzone causes excessive sedation. . . . Has been off the Serzone for several weeks without any deterioration in his mood." He continued taking Xanax. On 12/5/08 Mr. Blackwell was described as "very emotional today since his wife of 30 years left him for another man recently."

On 12/9/08 Mr. Blackwell was admitted to Spartanburg Regional Hospital after he took an overdose of approximately 30 Xanax tablets. According to hospital documentation, his "wife [had] left him recently," and he was "recently given prescription for Xanax due to [increased] anxiety & poor sleep." According to the Initial Psychiatric Evaluation, dated 12/10/08, he "report[ed] he had not planned out OD [overdose], just wanted to sleep. Fixated on thoughts of wife & her infidelity. Financial stressors." He was diagnosed with "MDE [Major Depressive Episode]." On 12/10/08 he was transferred to Carolina Center for Behavioral Health. Upon admission he stated, "My wife left me and I overtook my medication." According to the treating psychiatrist, he "admit[ted] to significant depression, anhedonia, decreased sleep, decreased appetite, crying spells daily, very distraught, vague suicidal ideations, no homicidal ideations, increased amounts of anxiety, some shortness of breath and tremors. No other panic symptoms. No psychotic symptoms. No PTSD symptoms. . . ." He was treated with the antidepressant Remeron and the anti-anxiety medication Klonopin. Final diagnoses were listed as Major Depressive Disorder, Recurrent, Severe without Psychotic Features, and "Mixed personality traits." He was discharged on 12/15/08.

On 3/20/09 his doctor at Westgate Family Physicians noted, "Patient continues to have significant emotional difficulties dealing with his wife's departure." He was continued on Remeron, and Xanax was prescribed. At an appointment on 6/30/09 Mr. Blackwell reported "that he cannot sleep at night. Continues to have overwhelming anxiety since his wife left him." He was apparently taking Xanax and the antidepressant Desyrel but was described as "anxious, moderately depressed affect."

Mr. Blackwell was seen by mental health staff at the detention center on 8/18/09. At that time, he "state[d] he is depressed, cries all the time, can't sleep, bad dreams . . ., depressed and lots of anxiety . . ., claims he is not suicidal now." Jail records indicate he began receiving the antidepressant Paxil on 8/20/09. According to jail documentation, on 4/7/11 Mr. Blackwell was prescribed Seroquel (an antipsychotic medication) by Donna Schwartz-Watts, M.D. of the University of South Carolina Department of Neuropsychiatry.

Records note, "If [jail] MD does not want to give Seroquel because of horting [*sic*] Dr. Donna Schwartz-Watts, wants to give . . . Thorazine and Cogentin," which he was prescribed on 4/22/11 and continues to take. He is also currently prescribed the antidepressant Paxil.

Current Mental Status

Mr. Blackwell is a 54-year-old Caucasian male. He was dressed in a jail uniform, and his hygiene and grooming appeared adequate. He was alert and oriented. No abnormalities in gait or posture were noted. His affect (i.e., observed emotional expression) was broad and appropriate. His mood appeared euthymic (i.e., normal, non-depressed). His speech was normal in rate, tone, and volume. His thought processes were organized, linear, and goal-directed. He did not express thoughts or beliefs indicative of delusions. He did not appear to be responding to internal stimuli (e.g., auditory hallucinations) at any time during the evaluation.

Mr. Blackwell described his current mood as "O.K." When asked about feelings of sadness or depression, he said, "Just [about] my charges." He described feeling "stressed out" about his legal situation. He denied recent or current suicidal or homicidal ideation. He stated his sleep and his appetite have been "fair." He said he sleeps better during the day than at night but is currently sleeping an adequate amount. He reported he "forget[s] a lot," such as "what I need to get from the canteen." He said he has noticed this problem with his memory for the last year and said, "I've been locked up too long." He denied other problems with his memory or thinking. He reported he is housed in a cell by himself, which he prefers. He denied having problems with detention center staff. He said he has received frequent visits from several family members and friends. He said he currently takes Thorazine "for flashbacks of what happened, to keep me calmed down", Cogentin "for reactions of Thorazine", and Paxil "for depression."

In a brief mental status exam, Mr. Blackwell was oriented to person, place, date, and day of the week. His fund of knowledge appeared adequate. He demonstrated intact abilities for short-term memory by correctly recalling two of three items after a brief delay and intervening tasks. He recalled the third item with a category prompt. His concentration and attention were within normal limits, as indicated by his abilities to spell a word backward and to solve a change-making problem. He demonstrated abilities for abstract reasoning by identifying similarities between two pairs of objects and correctly interpreting a proverb. His judgment to two hypothetical situations was appropriate.

Diagnostic Impressions

Based on a review of available records and an interview with Mr. Blackwell, a diagnosis of Major Depressive Disorder, Recurrent, in Full Remission, is assigned. This disorder involves a history of two or more Major Depressive Episodes, which are characterized by depressed mood, diminished interest or pleasure in most activities, weight change, insomnia or hypersomnia, psychomotor agitation or retardation, fatigue or loss of energy, feelings of worthlessness or excessive guilt, diminished ability to think or concentrate, and/or suicidal ideation. Mr. Blackwell was hospitalized in 1990 due to depressive symptoms. He has apparently experienced a few major depressive episodes since that time, with symptoms including depressed mood, insomnia, weight change, poor concentration, and suicidal ideation. He denies current symptoms of depression, and no symptoms were observed during the evaluation.

Mr. Blackwell's history is also consistent with a diagnosis of Generalized Anxiety Disorder. This disorder is characterized by excessive anxiety and worry about a number of events or activities that is difficult for the individual to control. Symptoms include restlessness, fatigue, difficulty concentrating, irritability, and sleep disturbance. Available records indicate Mr. Blackwell began experiencing symptoms of anxiety in 2000, including worrying, restlessness (e.g., frequent pacing), insomnia, concentration problems, and feeling

irritable. He apparently experienced these symptoms intermittently over the next nine years. Currently, Mr. Blackwell denies symptoms of anxiety, and no symptoms were observed during the evaluation.

The possibility of mental retardation was described as the basis for this current evaluation. Although an IQ score of 68 from 1966 (when Mr. Blackwell was 7 years old) suggests possible intellectual impairment, a later IQ score of 87 from 1967 (when he was 8 years old) indicates he functions in the low average range of intellectual ability. His employment history, ability to live independently, observed reading ability and communication and language skills, and his observed ability for abstract thought do not indicate the presence of an intellectual disability.

Information Relevant to Competence to Stand Trial

The legal criteria for determining competence to stand trial from the S.C. Code Ann. §44-23-410 is: ". . . a person . . . is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity. . ."

Mr. Blackwell described the role of the judge as, "He does the sentencing." He said the judge is on the side of "who's in the right." He reported the role of his defense attorney as, "To fight for me on my case." He stated his attorney's goal is "try to get me as less time as he can." He identified his attorneys as Bill McGuire and Clay Allen. He stated the solicitor "presses the charges on me." He said the solicitor's goal is "get me as much time as he can." He stated he should not speak to the solicitor about his case because "he can press charges." The risk of self-incrimination was explained to him, and later in the evaluation he correctly stated he should not speak to the solicitor because "I'd hurt myself . . ., say the wrong thing to him. . . . He could put evidence against me." He stated the job of a jury is "to make a verdict . . ., whether I'm guilty or not" by "listening to everything." He said there are 12 people on a jury, they "ain't really on nobody's side," and "all of them" must agree on a verdict.

The defendant reported he is currently charged with "murder and kidnapping." He stated the police allege he "murdered her . . ., Heather Brooke Center . . ., saying I shot her." He correctly identified his charges as felonies, which are "bigger charges" compared to misdemeanors, which are "light charges." He said if he is found guilty, he could "get sentenced to prison" for "life, or maybe death."

Mr. Blackwell described the plea of guilty as telling the court "that I done the crime." He stated that, subsequent to entering a guilty plea, "they'd sentence me," referring to "the judge." He described the plea of not guilty as telling the court, "that I didn't do it." He stated that, after entering a not guilty plea, "they'd try to prove me guilty," referring to the solicitor and "the judge or the jury" would determine his guilt. He described a plea agreement as, "Where you can take a plea. They give you a sentence and you can take it or not." He said a defendant could benefit from a plea bargain because "you might get less time." He correctly said a defendant would have to plead "guilty" to accept a plea bargain. He described the best possible outcome in his case as "probably life [in prison]" and the worst possible outcome as "death." He correctly identified potential evidence and witnesses in his case. He demonstrated abilities to rationally reason about his case; for example, he identified reasons for opting for a jury trial, and he logically assessed the strength of the evidence against him.

Regarding appropriate courtroom conduct, Mr. Blackwell stated a defendant should "listen to the judge and do what he says." He said he should "let the attorney know" if a witness lied about him in court. He reported his attorney should do most of the speaking for him in court. During the current evaluation, he did not display any disruptive behaviors, such as agitation or verbal outbursts, which would be problematic in court.

JEM

Mr. Blackwell demonstrated no delusional thoughts that would interfere with his ability to consult with his attorney. He said he has met with his attorneys on "maybe a dozen" occasions. Regarding his attorneys, he stated, "I like them" and said he believes they will help him with his case and work in his best interest. He stated he has not had any disagreements with his attorneys about his case, but if he did, he "could fire them." He said he can assist his attorneys with his case by "tell[ing] them the truth, everything that happened." He identified his attorneys as the people with whom he would consult regarding issues about his case, such as deciding if he should have a jury trial. He demonstrated an understanding of attorney-client privilege and the advocacy role of the defense attorney.

Conclusions and Recommendations

Based on a clinical interview, observations, and a review of available records, it is the opinion of the undersigned that Mr. Blackwell is currently competent to stand trial. He demonstrated an adequate factual understanding of courtroom personnel and legal procedures and the ability to learn new information relevant to his case. He appeared to have an adequate rational appreciation of his legal situation and the ability to evaluate his options in a logical manner. He has the ability to assist his attorney in his defense. He did not exhibit any overt difficulties with memory, attention, or concentration. There is no indication that the defendant's behaviors, thought processes, or ability to communicate are currently influenced by a mental disorder.

In summary, Mr. Blackwell currently possesses the capacity to understand the legal proceedings against him and to assist in his own defense.

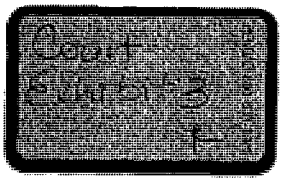
Kimberly Harrison, Ph.D. — 5/6/13

Kimberly S. Harrison, Ph.D.
Chief Psychologist

Date

September 2013

VITA



Gordon Edgar Brown, Jr., Ph.D.

Clinical Psychologist

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EDUCATION

1974	Bachelor of Arts, Psychology and Sociology Carson-Newman College, Jefferson City, Tennessee
1983	Doctor of Philosophy, Clinical-Community Psychology University of South Carolina, Columbia, South Carolina
1983	Clinical Psychology Internship Dwight David Eisenhower Army Medical Center, Fort Gordon, Georgia

POSTDOCTORAL EDUCATION

1995	Basic Clinical Training Course in Couples Therapy The Institute for Relationship Therapy, New York, New York

PROFESSIONAL CREDENTIALS

Licensed as a Psychologist in Georgia, # 1039
Licensed as a Clinical Psychologist in South Carolina, # 429
Member, National Register of Health Care Providers in Psychology, # 34791
Certified Imago Relationship Therapist

SCIENTIFIC AND PROFESSIONAL SOCIETIES

American Psychological Association
American Psychology-Law Society
International Association of Forensic Mental Health Services
Imago Relationships International
Southeastern Psychological Association
Georgia Psychological Association
Augusta Area Psychological Association

PREVIOUS EMPLOYMENT

2003-2005	Forensic Services Director East Central Regional Hospital Augusta, Georgia
1999 – 2003	Clinical Director Mental Health/Mental Retardation Program Augusta State Medical Prison Grovetown, Georgia
1996 – 1999	Psychologist Washington State Prison Davisboro, Georgia
1990 – 1996	Director of Psychological Services Assistant Professor of Family Medicine Student Health Service, Medical College of Georgia Augusta, Georgia
1987 – 1990	Psychologist Child and Adolescent Lodge, Patrick B. Harris Psychiatric Hospital Anderson, South Carolina
1987	Officer in Charge, Psychopathology Section Behavioral Science Specialist Branch, Behavioral Sciences Division U. S. Army Academy of Health Sciences, Fort Sam Houston, Texas
1983 – 1986	Third Armored Division Psychologist Third Armored Division, U. S. Army Federal Republic of Germany

PREVIOUS PROFESSIONAL ACTIVITIES

2002 – 2004	U. S. Army Reserve Officer/Clinical Psychologist Lieutenant Colonel, Medical Service Corps 1493d Medical Detachment (Combat Stress Control) Durham, North Carolina
1993 – 2002	U. S. Army Reserve Officer/Clinical Psychologist Lieutenant Colonel, Medical Service Corps 55th Medical Company (Combat Stress Control) Indianapolis, Indiana
1996 – 1997	Clinical Psychologist U. S. Army Health Clinic-Baumholder, Germany (Active duty in support of Operation Joint Endeavor/Joint Guard)
1987 – 1993	U. S. Army Reserve Officer/Clinical Psychologist Medical Service Corps/Individual Mobilization Augmentee Teaching Section Chief and Instructor Behavioral Science Specialist Branch, Behavioral Sciences Division U. S. Army Academy of Health Sciences, Fort Sam Houston, Texas (Included five months active duty during Operation Desert Storm)

1995 – 2005	Private Practice Psychological Specialists of Augusta Augusta, Georgia
2004 – 2005	Behaviorist The Wellness and Weight Loss Center Evans, Georgia
1990 – 2003	Behaviorist, Comprehensive Weight Management Program Nutrition Center, University Hospital Augusta, Georgia
1995 – 1996	Psychology Consultant Georgia Bariatrics, Augusta, Georgia
1989 – 1990	Group Leader, The OPTIFAST Program Anderson Memorial Hospital, Anderson, South Carolina
1989 – 1990	Therapist Charter Winds Counseling Center, Anderson, South Carolina
1989 – 1990	Staff Psychologist, The Vitality Center Saint Francis Hospital, Greenville, South Carolina
1987	Assistant Professor of Psychology and Sociology Erskine College, Due West, South Carolina

RECENT PRESENTATIONS

Brown, G. E. *Intellectual Disability.* Presented at *Capital Litigation for Prosecutors: Advanced Training,* South Carolina Commission on Prosecution Coordination, Prosecution CLE Series, Isle of Palms, South Carolina, 2013.

Brown, G. E.; Kahan, J. B.; and Schools, S. *Handling Claims of Intellectual Disability.* Presented at *Capital Litigation for Prosecutors: Advanced Training,* South Carolina Commission on Prosecution Coordination, Prosecution CLE Series, Isle of Palms, South Carolina, 2013.

Brown, G. E. *Competency to Stand Trial Evaluations.* Presented at *Competency to Stand Trial and the Intellectually Disabled,* South Carolina Commission on Prosecution Coordination, Prosecution CLE Series, Columbia, South Carolina, 2012.

Brown, G. E. *What is Mental Retardation?* Presented at *Competency Hearings and Commitments: Mental Health and Mental Retardation Issues,* South Carolina Commission on Prosecution Coordination, Prosecution CLE Series, Columbia, South Carolina, 2010.

Brown, G. E. *Mental Retardation: What Examiners Look For during Competency [to Stand Trial] Evaluations.* Presented at *Competency Hearings and Commitments: Mental Health and Mental Retardation Issues,* South Carolina Commission on Prosecution Coordination, Prosecution CLE Series, Columbia, South Carolina, 2010.

Brown, G. E. *Mental Retardation, aka Intellectual Disability.* Presented to MUSC Forensic Psychiatry Fellows, Medical University of South Carolina, Charleston, South Carolina, 2010.

PUBLICATIONS

Wagner, P. J., Hornsby, J., Talbert, S., Hobbs, J., Brown, G., and Kenrick, J. Publication productivity in academic family medicine departments. Family Medicine, 1994: 26(6):366-369.

COURT VITA

Gordon Edgar Brown, Jr., Ph.D.

September 2013

Chief Psychologist/Forensic Psychology
SC Department of Disabilities and Special Needs

Licensed Clinical Psychologist, South Carolina License # 429 (issued May 1988)
Licensed Psychologist, Georgia License # 1039 (issued October 1985)
Member, National Register of Health Service Providers in Psychology, # 34791 (December 1986)

Education

1983	Ph.D., Clinical Psychology, University of South Carolina, Columbia, SC
1974	BA, Psychology/Sociology, Carson-Newman College, Jefferson City, TN

Internship

1982 – 1983	Clinical Psychology, Dwight David Eisenhower Army Medical Center, Fort Gordon, GA

Forensic Specific Training

2012	AAIDD 136th Annual Meeting, Charlotte, North Carolina, including two sessions related to legal and clinical issues in "Atkins" cases and a six-hour workshop, "The Assessment of ID in Capital Cases."
2002-2012	Approximately 105 hours of training through the American Academy of Forensic Psychology
2003 – 2005	Training provided on a regular basis within the Georgia Department of Human Resources.

Employment

2005 – Present **Chief Psychologist/Forensic Psychology**, SC Department of Disabilities and Special Needs, Columbia, SC.

- Conduct Competency to Stand Trial evaluations for the Court of General Sessions and the Family Court, including joint evaluations with DMH.
- Assign Competency to Stand Trial evaluations to other DDSN Examiners and review reports they write.
- Consult with other DDSN staff, other state agencies, and court personnel regarding forensic issues concerning intellectual disability.
- Conducted three PCR evaluations to determine whether death row inmates are intellectually disabled (mentally retarded) and therefore ineligible for the death penalty.
- Conducted two pretrial evaluations to determine whether defendants are intellectually disabled (mentally retarded) and therefore ineligible for the death penalty.
- Conducted some criminal responsibility/capacity to conform evaluations for the Family Court, including joint evaluations with DMH.

2007 – Present **Forensic Psychologist** (part-time), East Central Regional Hospital, Augusta, GA

Conduct approximately one evaluation per week, including competency to stand trial and criminal responsibility for the Georgia State Court and Superior Court.

2003 – 2005 **Forensic Program Director**, East Central Regional Hospital, Augusta, GA

Supervised 2 Ph.D. forensic evaluators of adult defendants.
Supervised 2 Ph.D. forensic evaluators of children and adolescents.
Served as director of an inpatient forensic unit housing pre-trial defendants as well as consumers found IST or NGRI and committed by the Probate or Superior Courts.
Supervised the inpatient competency restoration program.
Conducted some competency and criminal responsibility evaluations for Superior Court, State Court, and Family Court.
Conducted some "Study and Report" evaluations for Family Court.

1999 – 2003 **Clinical Director**, Mental Health/Mental Retardation Program, Augusta State Medical Prison, Grovetown, GA.

Supervised care of 100 inpatient psychiatric beds and 75 outpatient prisoners.
Supervised a 7-bed crisis stabilization unit supporting numerous prisons.
Performed many competency/responsibility evaluations for disciplinary hearings.
Conducted some psychological evaluations.
Conducted some parole evaluations.
Performed/supervised numerous evaluations for involuntary medication hearings.
With Psychiatry Residents evaluated inmates for involuntary hospitalization upon release.

1995 – 1999 **Staff Psychologist**, Washington State Prison, Davisboro, GA

Performed many competency/responsibility evaluations for disciplinary hearings.
Conducted some psychological evaluations.
Conducted some parole evaluations.

1995 – 2003 **Private Practice** (Part-time), Psychological Specialists of Augusta, Martinez, GA.

Conducted many psychological evaluations, including a few child custody evaluations.

1990 – 1995 **Director of Psychological Services**, Student Health Service, Medical College of Georgia, Augusta, GA.

No forensic work.

1987 – 1990 **Staff Psychologist**, Child and Adolescent Unit, Patrick B. Harris Psychiatric Hospital, Anderson, SC.

Served as DMH Designated Examiner for Probate Court Commitment Hearings.
Conducted many psychological evaluations.

1983 – 1986 **Division Psychologist**, Third Armored Division, Germany.

Occasionally conducted evaluations for military courts.
Conducted many psychological evaluations.

Professional Memberships:

American Psychology-Law Society (Division 41 of APA)
American Psychological Association
Southeastern Psychological Association
Georgia Psychological Association
Augusta Area Psychological Association
International Association for Forensic Mental Health Services

Approximate # of Evaluations:

>500 Evaluations of Competency to Stand Trial for the South Carolina Court of General Sessions, South Carolina Family Court, Georgia Superior Court, and Georgia State Court

300 Georgia, Adult Competency/Responsibility Evaluations of Inmates for Disciplinary Hearings within the Department of Corrections

200 Georgia, Adult Criminal Responsibility Evaluations for State and Superior Courts

25 Georgia, Juvenile Study and Report Evaluations for Family Court

25 South Carolina, Juvenile Criminal Responsibility/Capacity to Conform Evaluations for Family Court

15 South Carolina, Adult Criminal Responsibility/Capacity to Conform Evaluations for Court of General Sessions

3 Evaluation for Presence of Mental Retardation in a Death Penalty Case in Post-Conviction Relief Proceedings in the South Carolina Court of Common Pleas

2 Evaluation for Presence of Mental Retardation in pretrial evaluations in capital cases.

Court Testimony, Qualified as Expert Witness:

US District Court, Augusta, Georgia, circa 1985
US Army Courts Martial, Third Armored Division, 1986-1989
Georgia Superior Court, 2003 to present
Georgia State Court, 2003 to present
Georgia Family Court, 2003-2005
South Carolina Court of General Sessions, 2005 to present
South Carolina Court of Common Pleas, 2011
South Carolina Family Court, 2005 to present
South Carolina Probate Court, 1987-1990, 2009

Beverly A. H. Buscemi, Ph.D.
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David A. Goodell
Associate State Director
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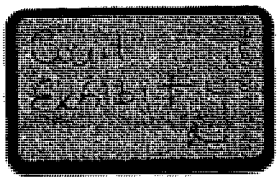
DIAGNOSTIC EVALUATION

Name:	**Ricky Lee Blackwell, Sr.**	**Gender:**	Male
Dates of Interviews:	11/5/2013 and 11/14/2013	**Race:**	Caucasian
Place of Interviews:	DDSN Midlands Center Columbia, SC	**Age:**	55 years

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



PURPOSE OF EVALUATION:

This evaluation was conducted pursuant to an order dated 10/17/2013 (received 10/22/2013) and signed by the Honorable Roger L. Couch, Circuit Court Judge, Spartanburg County. The order required that Mr. Blackwell be evaluated by the Department of Disabilities and Special Needs "to render an opinion whether defendant has an Intellectual Disability Disorder or not, if that can be determined." The order was issued because "the Defendant's attorneys . . . are asserting the Defendant is mildly mentally retarded and should be excluded from a sentence of death."

LIMITS OF CONFIDENTIALITY:

Before each interview started, Mr. Blackwell was advised of the purpose of the evaluation, and that the results and content of the evaluation would be communicated to his attorney(s), the solicitor, and the judge. In addition, he was informed of the possibility that the examiner might be called to testify regarding the content and results of the evaluation.

TERMINOLOGY:

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

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

EVALUATION PROCEDURES:

Mr. Blackwell was interviewed for approximately ninety minutes on 11/5/2013 by the undersigned. The ABAS-II was also administered on that date, requiring approximately one hour. A second session was necessary to conduct intelligence testing, and Mr. Blackwell was seen again on 11/14/2013 for approximately three hours. That session included some follow-up interview questions but was primarily used to administer the WAIS-IV and the TOMM.

In addition, the following documents were reviewed:

Order for Evaluation of the Defendant by State for the Defendant's Intellectual Ability, dated 10/17/2013.
Psychological Report by Dr. Ginger C. Calloway [including raw test data], date of evaluation 6/29/2012.
Competency to Stand Trial Evaluation Report, SCDMH Forensic Evaluation Service, date of evaluation 4/24/2013.
Social Work Assessment, SCDMH Forensic Evaluation Service, date of evaluation 4/24/2013.

Documents were also reviewed in the following categories:

Legal Documents Relevant to Current Charges
Detention Center Medical Records
Detention Center Visitation and Disciplinary Records
Inmate Phone Records
Employment Records form Hess, Springs Industries, Belue Trucking, and Jacobson Companies
Driving Records
Law Enforcement Reports from Public Records
School Records
Records from Carolina Center for Behavioral Health Services
Records from Spartanburg Regional Health Care
Records from Patrick B. Harris Hospital
Records from Spartanburg County Sheriff
Records from Social Security Administration
Civil Legal Records for Ricky and/or Angela Blackwell
Medical, Psychiatric, and School Records for other family members

TESTS ADMINISTERED:

Wechsler Adult Intelligence Scale, 4th Edition (WAIS-IV)
Adaptive Behavior Assessment System, 2nd Edition (ABAS-II)
Test of Memory Malingering (TOMM)

RELEVANT HISTORY:

Mr. Blackwell has been incarcerated at the Spartanburg County Detention Center since his arrest for his current charges. He said that prior to his arrest he was living with his parents, although he said he lived alone for a while after his wife left him.

Family History: Mr. Blackwell reported that he was born in Cowpens and was raised in Cooley Springs, and said he had lived in that area his entire life. He said he is the oldest son of Cletus and Mildred

Blackwell. He said he had one brother who was four years younger than he. He said his brother died in 2001; his explanation was somewhat unclear as he tried to explain that his brother "had a seizure" and "strangled to death." Mr. Blackwell said that he was called when his son (Ricky, Jr.) found his brother's body.

The DMH Social History indicates that Mr. Blackwell's mother reported that he was late in meeting developmental milestones, although the only specific example given that he did not walk until he was 13-14 months old; that is actually within normal limits and would not be considered delayed. It was also reported that he was "very quiet" as a child and that "he was bullied a lot because he was quiet and would not fight back." Mr. Blackwell's mother reported that both he and his brother experienced seizures early in life.

Mr. Blackwell said he has never been a victim of physical or sexual abuse.

It is noted that Mr. Blackwell's immediate family includes individuals who also have intellectual impairments. Mr. Blackwell's father was noted to have an "IQ" of 60 in school records. Records indicate that his daughter, Heather, and two of his grandsons, Kaleb and Allen, have been identified as having an intellectual disability. While records are insufficient for the undersigned to confirm the relationship, it is also reported that a male maternal cousin has a diagnosis of "moderate mental retardation."

Educational History: Mr. Blackwell reported that he attended elementary school in Cooley Springs through the seventh grade and then attended Chesnee High School through the tenth grade. In this evaluation he emphasized that he did not know why he stopped going to school and said he "just wanted to drop out" and "didn't want to go." He added that he "wanted to drive a truck," which is consistent with the DMH report which indicates that he said he quit school to go to work. The DMH social history indicates that Mr. Blackwell's mother said he quit school because there was a discrepancy over the number of credits he had toward graduation; his mother also reported that he had been bullied while in school. In the current evaluation Mr. Blackwell said he wishes he had completed school and explained that he believes he would have been better able to keep up with technological advances (specifically those requiring computer skills) if he had stayed in school. Mr. Blackwell reported no extracurricular activities during school. He said his vocational goal was to become a truck driver; he said he has received no further education or training beyond what was offered on the job.

Limited school records are available for Mr. Blackwell, and those records contain no psychoeducational evaluations; there are no special education records. Some standardized test data are available and will be discussed in a later section as they pertain to intellectual functioning.

A hand-written notation indicates a "junior rank of 113 in a class of 113." Without additional information, it is impossible to interpret the significance or accuracy of that notation. Because he apparently did not complete the eleventh grade, that ranking may have been skewed by grades of zero during that year. A more relevant factor would be his class rank at the end of his tenth grade year, but that information is not available. It is also noted that at the end of the tenth grade Mr. Blackwell had accumulated 12 "units and points to date" with a notation that he had "11 units toward graduation." Another document in school records indicates that (in 1976-77) students needed 4 units of credit for promotion to the tenth grade (Mr. Blackwell had 8 at that time after having spent two years in the ninth grade); and 8 units of credit for promotion to the eleventh grade (Mr. Blackwell had 12 at that time). When he entered the eleventh grade, Mr. Blackwell needed only one additional unit applicable toward graduation to be eligible for promotion to the twelfth grade. That data seems to indicate that Mr. Blackwell was on track toward graduation. However, it is noted that many of his subjects in school were preceded by "Adj.," likely indicating "adjunct" classes which today would be consistent with resource or special education classes [based on the undersigned's experience with school records in other cases; this is consistent with information provided in Dr. Calloway's report as well].

Vocational History: Mr. Blackwell reported having had several different employers over the years, and he seemed to have some difficulty putting some of the earlier ones in the correct order. He said his first job after high school was with Crown Cork and Seal, and said in that job he was responsible for inspecting cans. He said that job lasted for six or seven months and said he was fired because he was caught with someone who had some contraband drinks. He said his second job was at an ice house, Piedmont Ice or Triangle Ice, where he "bagged ice." He said he did that for "over a year, close to two years," and said he left that job for one that paid more. He said his next job was with the Herald Journal newspaper, where he "got ads and other things ready to go" into the completed newspaper; he described preparing the inserts. He said he worked at that job for "close to a year" and left for better pay. He said his next job was at White Bag, a company that "makes bags," such as those for dog food. He said his job involved putting the bags on pallets and getting them ready to ship. He said his next job was at Cherokee Textile where he worked as a "hopper feeder," and his job was to "feed waste cotton" into the hopper. He said he did that for "a little over a year" and left that job when he had the opportunity to drive a truck.

Mr. Blackwell said his first job driving a truck was with Ken White at KNS Trucking. He said that involved mostly "over the road" driving and said he traveled as far as El Paso and Canada driving an eighteen-wheeler, usually with a van-type or "boxed" trailer. No records are available from that employment. Mr. Blackwell said he left that job to work at Hess where the driving would be local rather than long-distance. He said that, starting in about 1983, he drove an "eighteen-wheeler tanker" truck for about two years. A letter (dated 8/27/2012) from the Office of the Solicitor indicates that dates of employment may have been "approximately January 23, 1982, through May 7, 1983." A response (dated 9/11/2012) indicates "no record of Ricky Lee Blackwell, Sr. being employed by Hess Corporation"; records from the Social Security Administration do indicate earnings from Hess in 1982 and 1983.

Mr. Blackwell said he left Hess to go to Belue Trucking and said he worked there for about two years and left there when he was diagnosed with cancer in 1986. Records are available from Belue Trucking, although the application for employment was a poor copy which could not be read.

A "request for information from previous employer" (dated 7/11/1984) was completed by John Brannon, who responded that Mr. Blackwell had been employed as a "tractor trailer – driver." Checkmarks indicated that he did "have custody of money or valuables" and that "his accounts [were] properly kept." Checkmarks also indicate that Mr. Blackwell resigned his previous employment, that his conduct was satisfactory, and that he was qualified for the position and that he would be re-employed. On 7/6/1984 Mr. Blackwell successfully passed the Driver's Road Test Examination, driving a Ford tractor with a flat trailer for approximately twenty-five miles. On 9/27/1984, after two and a half months of employment, Mr. Blackwell sustained a "crushing injury to left hand" while "chaining load down to trailer." He was out of work for about six weeks due to that injury. On 11/28/1984 Mr. Blackwell "failed to come in" and "did not call in," and the explanation given was that "because it was raining he thought . . . loads would be cancelled." Records indicate that on 12/18/1984 Mr. Blackwell drove for 10 ½ hours when he was only allowed to drive for ten hours. On 12/28/1984, there was an accident in which Mr. Blackwell was reported to have been "backing into dock at Crown Cork Seal hit another trailer"; estimated damage to the other vehicle was $500. An incomplete accident report indicates that on 4/3/1985 Mr. Blackwell was responsible for an accident in which a septic tank caved in when he drove over it. (It is noted that Cletus Blackwell was listed as the registered owner of the vehicle). A warning dated 4/17/1985 indicates that Mr. Blackwell failed to prepare daily logs as prescribed, specifically noting that he was "not showing your unloading time on line 4." Records indicate that in May 1985 there was an issue regarding Mr. Blackwell allowing others, including his wife and his brother, to ride in a "truck leased to Belue trucking." (It is noted that other records indicate that Cletus Blackwell had leased at least one vehicle to Belue trucking).

Records indicate that on 6/19/1985 Mr. Blackwell was giving a warning letter for "missing logs" on 6/8 and 6/9. On 7/10/1985 he received a speeding ticket in North Carolina, and an accident report for that date gives no details but indicates $500 in damages to the "mudd flap" of the other vehicle, which was also owned by Belue Trucking.

Mr. Blackwell said he was unemployed and receiving disability payments from 1986 until 1998 when he went to work at Springs Industries. He said that at Springs he was a forklift operator and his job involved such things as pulling rolls of cloth and putting them on rollers, and unloading trucks. He said he worked there for about eight years until the mill closed; he said he liked that job and would have stayed if possible. Correspondence (dated 8/14/2012) from Springs Industries indicates that "personnel records have been destroyed." However, some medical records were provided. Records indicate that Mr. Blackwell was hired on 11/19/1998 and that he was terminated from employment on 2/4/2005 with explanation that "job eliminated." He received several pay increases during that time, and one of those was indicated as a promotion. His starting salary was just under $18,000 per year and his salary at termination was just under $23,000 per year. He was hired as a "service person" and promoted to "lift truck operator."

Records from Jacobson Warehouse indicate that in November 2005 Mr. Blackwell moved "from temp. status to full time" and was hired at $12 per hour (a pay raise from $11.25 per hour). An "Employee Coaching Session Record" dated 1/2/2007 notes that "Ricky picked 60 bags of Rhodaquat, it was to be all the same lot #. Ten box's were a different lot #." It was further noted that "This is your first major mistake. I will absorb this error and it will go away." On 2/9/2007 Mr. Blackwell apparently inhaled Rhodia (sodium metasilicate) when a bag burst open and covered him "with a cloud of dust." The MSDS indicates that the chemical "causes severe burns" and is "corrosive to skin, eyes and respiratory tract." On the "Employee Statement of Incident/Injury, in response to the question "What could be done so that this type of incident does not happen in the future?", Mr. Blackwell responded "I don't know." Mr. Blackwell was evaluated at Spartanburg Regional Medical Center, and records indicate that "Your chest xray looks fine. You should not have any further problems." On 5/27/2007 Mr. Blackwell was given a pay raise from $12.35 to $12.85 per hour. A "Performance Review Summary" dated 5/23/2007 indicates that Mr. Blackwell met expectations in the areas of initiative and communication and that he exceeded expectations in the areas of knowledge and understanding, quality, safety, attendance, and appearance. Improvement was needed in "using proper lifting techniques" and in communicating with peers and supervisors. Comments noted that "Rickey is always looking for ways to help the Team" and that he "needs to speak up and tell other Team members when they are not following procedures."

A record from Jacobson indicates that Mr. Blackwell earned a total of $84,040 from that company between September 2005 and June 2008. Included in that amount was $15,531 in overtime pay as well as some pay for holiday and vacation hours. It is noted that his net pay was $37,944 for that time period. Deductions included $23,271 for "savings," $2,019 for "401k," and $2216 for "6." It is also noted that $237 was withheld as a "tax levy," elsewhere noted as for SC Revenue. Records from Jacobson indicate significant overtime, indicating that he was willing to work and allowed to work for overtime pay. Records indicate that Mr. Blackwell was "discharged by company" on 5/2/2008 due to "employment reduction." He was "eligible for rehire" and was due pay for 92 vacation hours.

The most concise summary of Mr. Blackwell's employment history perhaps comes from Social Security Records, which can be summarized as follows:

1976 $610 total earnings from 3 employers (James L. Belue, United Overton Corporation, and Community Cash Stores)
1977 $2260 total earnings from 3 employers (Community Cash Stores, Crown Cork and Seal, and White Bag Company)
1978 $5079 total earnings from 3 employers (Milliken, Newspaper Management Production, and Phillips Fibers)
1979 $3138 total earnings from 3 employers (Southern Piedmont Ice, M&C Farm and Feed Mill, and American Fast Print)
1980 $2150 total earnings from 2 employers (M&C Farm and Feed Mill, and Oneita Industries)
1981 $1120 total earnings from 2 employers (M&C Farm and Feed Mill, and Oneita Industries)
1982 $7802 total earnings from 2 employers (Hess Corporation and B&R Transports)
1983 $8142 total earnings from Hess Corporation
1984 $9029 total earnings from 2 employers (Charles P. Belue and Cherokee Textiles)
1985 $7891 total earnings from 4 employers (Self-employment, Charles P. Belue, K&S Trucking, and Peeler Rug Company)
1986 $10,918 total earnings from 2 employers (Charles P. Belue and Peeler Rug Company)
1987-1997 No earnings reported
1998 $1502 total earnings from Springs Industries
1999 $15,419 total earnings from Spring Industries
2000 $17,842 total earnings from 2 employers (Spring Industries and Broadspire National Services)
2001 $19,322 total earnings from 2 employers (Spring Industries and Broadspire National Services)
2002 17,796 total earnings from 2 employers (Spring Industries and Broadspire National Services)
2003 $23,195 total earnings from Spring Industries
2004 $20,576 total earnings from Spring Industries
2005 $13,046 total earnings from 3 employers (Spring Industries, Jacobson Staffing, and Jacobson Warehouse)
2006 $28,690 total earnings from Jacobson Warehouse
2007 $32,800 total earnings from Jacobson Warehouse
2008 $9995 total earnings from Jacobson Warehouse

Relationship History: Mr. Blackwell reported that he was married for twenty-seven or twenty-eight years and said his divorce was finalized in April 2010, after he was incarcerated. He and his wife had one son and one daughter, who are now ages 29 and 27. Mr. Blackwell said he met his wife, Angie, at church; he said she is about six years younger than he. He reported no other significant intimate or romantic relationships.

Medical History: Mr. Blackwell was diagnosed with cancer in 1986 and he said it has been "in remission" since 1987. He said he was unemployed and receiving disability payments for about twelve years, from 1986 until 1998.

Mr. Blackwell said he was in the hospital for "a few days" when he had his gall bladder removed in 2003 or 2004. Although he seemed unsure of the treatment or the reason for it, he described a "wrap" being put around his neck because of a problem with his esophagus. He reported having broken one finger in an accident while strapping down a load on a truck. He described one head injury in which he lost consciousness for twenty to twenty-five minutes after a four-wheeler accident in 2003 or 2004. He said

he experienced "convulsions" as a child, but was unclear about the details and said they ceased sometime between ages 9 and 11.

Records indicate that part of Mr. Blackwell's colon was removed after he shot himself in 2009. Mr. Blackwell complained that he currently has a hernia and that he is unable to get it checked or treated while incarcerated. Mr. Blackwell said his current medications include Benicor and Norvasc for "blood pressure" and Spiriva as an inhaler for "COPD." He said he is prescribed Paxil (20 mg) for "depression," Thorazine (25 mg every morning and 50 mg every night) for "flashbacks and stuff," and Benztropine for "side effects."

Psychiatric History: Mr. Blackwell has some history of mental health treatment. He was hospitalized at Patrick B. Harris Psychiatric Hospital for about four days in 1990. In interview he was vague about the reason for that hospitalization, explaining only that he "had a shotgun in the house" and saying that he went to the hospital voluntarily. He said he did not believe he was helped in any way during that hospitalization. Records indicate that he was hospitalized in March 1990 after a "suicidal gesture" of shooting a gun into the air. He complained of depression which began in 1986 when he was given a diagnosis of Hodgkins disease. He was treated for depression, and medications included an anti-anxiety medication as well as an antidepressant.

Mr. Blackwell apparently received prescription medications for anxiety and depression from his family physician beginning in 2000. He was admitted to Spartanburg Regional Hospital in December 2008 after he took an overdose of Xanax tablets; he was transferred to Carolina Behavioral Health and remained there for five days.

Following his arrest for his current charges Mr. Blackwell was seen by mental health staff and soon after that was prescribed Thorazine (antipsychotic medication) and later was also prescribed Paxil (antidepressant medication). A more complete summary of Mr. Blackwell's psychiatric history is available in the DMH evaluation of competency to stand trial.

Substance Abuse: Mr. Blackwell said he smoked cigarettes for about twelve years before quitting in 1985. He said he smoked about a pack per day at most and said he has used no other tobacco products. He said he did not drink a lot of alcohol, but said he would sometimes drink a twelve-pack of beer on a weekend. He said he first used alcohol at age 18 and most recently drank alcohol just prior to his incarceration. Mr. Blackwell said he "loved to smoke" marijuana and said he quit using it when he was diagnosed with cancer because of a fear he "would get cancer back." He said he first used marijuana at the age of 17 and would typically use "a quarter bag" per week. Mr. Blackwell said he "tried cocaine," but "didn't fool with it" because it is too "addicting." He said he "would take valium" occasionally but otherwise denied any abuse of prescription medications. He said he also "tried huffing paint" once. Mr. Blackwell denied use of any other illicit drugs. He said he has never had treatment for substance abuse and said it has never been suggested that he needed such treatment.

PREVIOUS EVALUATIONS:

Mr. Blackwell has not previously been evaluated by DDSN. He has never been referred to DDSN for an evaluation of eligibility for services, nor has he been evaluated regarding competency to stand trial.

Mr. Blackwell's records contain no reports of evaluations of intelligence or adaptive functioning which were conducted prior to his current incarceration. Two relevant evaluation reports are available from within the past year.

On 4/24/2013 Mr. Blackwell was evaluated at the SC Department of Mental Health Forensic Evaluation Service. That evaluation of competency to stand trial was conducted by Kimberly S. Harrison, Ph.D. (Psychologist), and Cassandra Sims, LMSW (Social Worker). Dr. Harrison's report quoted the court order

as saying, "The defense has stated that the competency of the defendant may be in question during a hearing in front of this Court on August 8, 2012. The defense has also stated in the August 8, 2012 hearing and a letter to this Court dated July 13, 2012 that the defendant may have a 'strong possibility' of a mental retardation issue in this case. The defendant has been served a death penalty notice in this case. The defense agreed to the examination by the Department of Mental Health at the August 8, 2012 hearing."

It is noteworthy that the Department of Mental Health was requested to conduct the evaluation of competency to stand trial, as those orders specify that the Department of Mental Health is to conduct the evaluation if the defendant is suspected of having a mental illness and the Department of Disabilities and Special Needs is to conduct the evaluation if the defendant is suspected of having intellectual disability (mental retardation) or a related disability. The order further requires that if the Department of Mental Health performs the initial evaluation and finds indication of intellectual disability (mental retardation) the evaluation must then include the Department of Disabilities and Special Needs.

The DMH examiners assigned diagnoses of Major Depressive Disorder, Recurrent, in Full Remission; and Generalized Anxiety Disorder. It was noted that Mr. Blackwell denied current symptoms of depression or anxiety and that no symptoms of those disorders were observed during the evaluation. The DMH examiners addressed the referral issue of mental retardation as follows: "The possibility of mental retardation was described as the basis for this current evaluation. Although an IQ score of 68 from 1966 (when Mr. Blackwell was 7 years old) suggests possible intellectual impairment, a later IQ score of 87 from 1967 (when he was 8 years old) indicates he functions in the low average range of intellectual ability. His employment history, ability to live independently, observed reading ability and communication and language skills, and his observed ability for abstract thought do not indicate the presence of an intellectual ability." Dr. Harrison's report concludes with the opinion "that Mr. Blackwell is currently competent to stand trial" and that "there is no indication that the defendant's behaviors, though processes, or ability to communicate are currently influenced by a mental disorder."

The other recent evaluation was conducted by Ginger C. Calloway, Ph.D., a psychologist who was requested to evaluate Mr. Blackwell and "render an opinion about mental retardation." After a thorough evaluation of intellectual and adaptive functioning, Dr. Calloway concluded that Mr. Blackwell does meet the criteria for a diagnosis of intellectual disability. Results presented by Dr. Calloway will be discussed in more detail in later sections of this report.

BEHAVIORAL OBSERVATIONS/MENTAL STATUS EXAMINATION:

Mr. Blackwell was interviewed for approximately ninety minutes on 11/5/2013 and for approximately thirty minutes on 11/14/2013 at the DDSN Midlands Center in Columbia; additional time was spent in the administration of tests. Cooperation was good. Mr. Blackwell appears to be a reasonably reliable historian, although his memory of dates and of the precise order of events (such as early jobs) was questionable. Mr. Blackwell was attired in an orange detention center uniform; he was wearing handcuffs and shackles. One handcuff was removed for the session on 11/5/2013, both handcuffs were removed for the session on 11/14/2013. Grooming and hygiene were adequate. Sensory systems appeared intact, with the exceptions that he wore glasses while reading and he sometimes asked that questions be repeated; the latter typically occurred when the examiner was not looking directly at him while asking a question. Eye contact was good. He was alert and oriented in all spheres. Speech was normal in rate and volume and articulation was clear. Attention and concentration skills appeared to be adequate in interview. There was no indication of psychomotor agitation or slowing, and no unusual mannerisms were noted. Affect was generally congruent with the topic of conversation, although the range of affect was somewhat limited consistent with the purpose of the interview. Mood appeared to be normal; he described his current mood as "alright" and his usual mood as "always pretty good." He reported no suicidal or homicidal ideation or intent. No current perceptual distortions were reported and none were evident in interview. No delusional material was elicited. Thought processes appeared to be

logical and coherent. Insight and judgment by history appear to have been generally fair to good. Mr. Blackwell described sleep as variable, saying that he sleeps "good" some nights and can't sleep other nights. He described appetite as "okay," saying that he eats regular meals and also eats a lot of canteen snacks.

Mr. Blackwell spelled his first name as *Rickey*, which is consistent with the way he has signed his name but is not consistent with other available records. He was able to spell his middle and last names. He was able to report his complete previous address on Ridings Road, including the town as Chesnee and the zip code as 29323.

Mr. Blackwell knew his birthdate and age. He knew the current date and day of the week, although he initially said it was "November 6th" before self-correcting to correctly say it was the fifth. He knew there are seven days in a week and twelve months in a year. He said it is "fixing to be winter" and correctly named the current season as fall; he was also able to name the remaining seasons. He was able to quickly identify our current location as the city of Columbia in the state of South Carolina and the country of the United States. He was easily able to name other states and cities. He knew that the capitol of South Carolina is Columbia but needed a hint before correctly naming the capitol of the United States. He was able to name the nearest ocean as the Atlantic and to name the Pacific as another ocean. He correctly said that one would go south to Florida and west to California, but said one would go east to New York; he added that New York is "on the east coast." He was able to correctly name the current president. He said that Bush was the previous president. He initially said that Reagan preceded Bush, but self-corrected to say that Clinton was president before Bush; he then named Reagan as the president who preceded Clinton. He said he did not know who Albert Einstein was.

Mr. Blackwell was able to correctly read the time on an analog watch without numbers at 10:33. He was able to register and immediately recall three words. After a delay with intervening tasks he was able to recall only one of the three words, but quickly recalled the other two when provided cues. He was able to spell the word *world* forward and backward. He was easily able to count backward from 100 by three's. He was able to read a simple sentence and to write it in cursive. He was able to correctly name a circle, square, and triangle. He was able to copy a drawing of overlapping polygons with reasonable accuracy. He was able to perform simple addition, subtraction, and multiplication. He seemed unable to correctly solve a simple division problem. He said there are twenty nickels in a dollar, twelve items in a dozen, twenty cigarettes in a pack, and twenty-four beers in a case. He was quickly and easily able to identify similarities between objects but seemed to have difficulty interpreting simple proverbs, indicating some possible impairment in abstract thinking. He was able to demonstrate adequate judgment in a hypothetical situation involving finding a small child playing on railroad tracks.

PSYCHOLOGICAL TEST RESULTS:

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

Intellectual Functioning:

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

Summary of Psychological Test Results of Intellectual Functioning:

Wechsler Adult Intelligence Scale-IV	6/29/2012	11/14/2013
Full Scale IQ	**63**	**68**
Verbal Comprehension	63	68
Perceptual Reasoning	69	75
Working Memory	77	83
Processing Speed	68	68

It appears that Mr. Blackwell was first administered a comprehensive intelligence test in 2012 as a part of the current legal proceedings. At that time he was 53 years old. There are no special education records available. School records do include references to "IQ" scores, but those scores are on screening measures and cannot be considered equivalent to scores obtained on more comprehensive tests such as the Wechsler. Handwritten notations in the school record indicate that on 4/19/1966, at the age of 89 months [7 years, 5 months] while in the first grade Mr. Blackwell obtained an "IQ" of **68** on the "Calif. Short Form 1964." The following year, on 10/20/1967, at the age of 107 months [8 years, 11 months] while in the third grade, he obtained an "IQ" of **87** on the "Calif. Short Form 1963." Also in the school record is a "Cumulative Record" page which includes "IQ" score. In October 1970 Mr. Blackwell obtained an "IQ" of **86** on the "CTMM SF2" and in October 1973 he obtained an "IQ" of **72** on the "SFTAA-5." The scores in 1967 and 1970 fall within the low average range of intellectual functioning; the score in 1973 falls within the borderline range of intellectual functioning; and the score in 1964 is within the range of mild mental retardation.

Mr. Blackwell was administered the Wechsler Adult Intelligence Scale, Fourth Edition, in 2012 and again in 2013. Scores did not differ significantly between the two administrations and fall within the range consistent with intellectual disability.

Adaptive Functioning:

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

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

Summary of Psychological Test Results of Adaptive Functioning:

ABAS-II	Father 11/2012	Neighbr 11/2012	Mother 11/2012	Daught 11/2012	Min. 11/2012	Defndnt 11/2013
GAC	**54**	**62**	**61**	**79**	**75**	**90**
Conceptual	59	69	65	84	75	90
Social	68	78	84	102	72	99
Practical	51	67	61	78	86	89

Adaptive functioning is much more difficult to quantify than is intelligence. In Mr. Blackwell's case, there is no record of a formal assessment of his level of adaptive functioning prior to the age of 54. The ABAS-II was used by the undersigned as a measure of adaptive functioning, with Mr. Blackwell serving as the informant. Dr. Calloway had earlier used the same instrument with several other informants. While scores can be presented from those assessments, all are problematic.

While as a self-informant Mr. Blackwell obtained results which indicate generally average levels of adaptive functioning, those results cannot suffice to rule out deficits in adaptive functioning. Those results are generally consistent with information Mr. Blackwell provided in interview. However, individuals who are aware of their own deficits sometimes attempt to present themselves as more competent and capable than they really are.

Dr. Calloway's evaluation included an evaluation of adaptive functioning using other informants. Results obtained using Mr. Blackwell's daughter as an informant are most similar to those obtained by the undersigned using Mr. Blackwell as an informant. However, it is noted that his daughter is intellectually disabled and may also overestimate his abilities. Results obtained using a neighbor and a minister can be questionable because it is unlikely that either would know Mr. Blackwell well enough to provide reliable ratings of his daily activities. His parents would obviously be the best source of information regarding Mr. Blackwell's level of adaptive functioning, particularly during his developmental years. However, the form used by his mother indicates that she allowed his father to complete the form for her, making it seem unlikely that the ratings by his mother and father were independent of each other. It is unknown what bias his parents may have had in rating his adaptive functioning.

While the ABAS-II ratings depend on summary scores, it may be helpful to look at some individual items to assess the accuracy of the ratings. For this purpose, a few items will be used from the form completed by his father. It was noted that Mr. Blackwell never states his home address, including zip code; he was easily able to do so in interview. It was noted that he never names 20 or more familiar objects, but he was easily able to do so during the course of interview. It was reported that he never ends conversations appropriately; he was quite appropriate in interview. It was reported that he never listens closely for at least five minutes when people talk; he was easily able to do so in interview. It was noted that he never states the general address of a travel destination; he was easily able to do so in interview in describing where events occurred.

Age of Onset:

The third prong which must be satisfied is age of onset, which must be within the developmental period and specifically before the age of 18. It is clear that Mr. Blackwell did not receive a formal diagnosis of intellectual disability prior to the age of 18, nor is there a record of any evaluations prior to the age of 18. The absence of records indicating a diagnosis of intellectual disability prior to the age of 18 cannot suffice to rule out such a diagnosis. However, it appears that in Mr. Blackwell's case he was on track to graduate high school. One of the reasons he gave for dropping out of school was to pursue his goal of becoming a truck driver, and he did achieve that goal. It is difficult for many intellectually disabled persons to pass the examination to get a regular driver's license, and it would be very difficult for someone who is intellectually disabled to pass the written test or the practical test to obtain a commercial

license. Mr. Blackwell passed the examination, including additional tests for a tanker, for hazardous materials (he said in interview he had to take that part twice to pass), and for combination vehicles.

Malingering:

Mr. Blackwell appeared to cooperate fully with this evaluation. There was no indication of malingering during interview or during testing. To the contrary, on the ABAS-II he self-rated his level of adaptive functioning as quite adequate rather than as impaired. He was administered the Test of Memory Malingering (TOMM) by the undersigned. Results were consistent with those obtained by Dr. Calloway when she administered the same test earlier and do not indicate a clear effort to malinger.

DIAGNOSTIC SUMMARY AND CONCLUSIONS:

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

There is no doubt that Mr. Blackwell currently demonstrates significant deficits in intellectual functioning, and an argument can be made that he also currently demonstrates significant deficits in adaptive functioning. The third diagnostic criterion requires that those deficits be present prior to the age of 18, establishing intellectual disability as a developmental disability. It is not clear that Mr. Blackwell met the criteria prior to the age of 18. Three significant risk factors in Mr. Blackwell's case occurred in adulthood rather than in the developmental period—those include a diagnosis of and treatment for cancer, head injury, and significant depression and/or anxiety. All of those factors can have a significant impact upon intellectual and adaptive functioning. Excessive use of alcohol can likewise have a significant impact, although it is unclear whether that would be a significant factor in Mr. Blackwell's case.

It is very significant that the DMH examiners did not see any indication of intellectual disability during the course of an evaluation of competency to stand trial; the specific court order mentioned a "strong possibility of mental retardation," and the standard court order requires that DDSN be included when there are indications of such. Mr. Blackwell has received several psychiatric diagnoses and has been prescribed psychiatric medications. There is within the available records no mention of the possibility of intellectual disability prior to Mr. Blackwell's incarceration.

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

Gordon E. Brown, Jr., Ph.D. **Date signed:** 1/21/2014

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SCDDSN Central Office

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
vs.)
)
RICKY LEE BLACKWELL,)
)
DEFENDANT.)

TRANSCRIPT
OF
RECORD
2009-GS-42-3609
2009-GS-42-3610

June 13th, 2012
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE ROGER L. COUCH, Judge, and a jury.

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

BARRY BARNETTE and DERRICK BULSA
SOLICITOR and DEPUTY SOLICITOR
Attorneys for the State

CLAY ALLEN and WILLIAM S. McGUIRE
PUBLIC DEFENDER and ESQ.
Attorneys for the Defendant

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

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(There were no exhibits marked or testimony taken during this hearing.)

PROCEEDINGS

THE COURT: All right. We're on the record in the case of the State of South Carolina versus Ricky Lee Blackwell. The purpose of my meeting with counsel today is to go over the status of the case and be sure that we have certain understandings concerning this matter.

Before we begin, I would like the attorneys who are involved to identify themselves on the record.

First of all, for the State.

SOLICITOR BARNETTE: Your Honor, Barry Barnette. Derrick Bulsa and Russell Ghent will be representing the State

THE COURT: Thank you.

And for defense.

MR. McGUIRE: Thank you, Your Honor.

Bill McGuire from Columbia. I'll note for the record that my client's present to my left.

THE COURT: Thank you.

MR. ALLEN: Clay Allen, Circuit Public Defender of the Seventh Circuit.

THE COURT: All right. Thank you very much.

I want to make counsel aware that I have set aside on my calendar for this trial the dates beginning October 22nd. I have two weeks set aside. The third week

is currently scheduled as a week in Cherokee County for General Sessions. Obviously if this case were to go longer than that we could use that, and the following week after that is a week in General Sessions in Spartanburg County. So, we have at least a four week window, if we had to have it, to get the case done.

I do also want to note to you that the first week in October I'm also scheduled in General Sessions in Spartanburg County, and I would anticipate pretrial motions being scheduled sometime during that week before we go, before we actually try the case. So, we would want pretrial motions in the case all filed and ready to be heard prior to that week if at all possible.

Also, I would like to go over with you, I've reviewed the file. I note that there are several motions concerning discovery, concerning some subpoenas that have been filed. I don't see that they've been resolved. But I also have not had any request for me to hear those motions. So, I need to find out a little bit about the status of those motions, what is still opened, and what we may need to schedule prior to that time so that we can clear up any discovery issues that might be existing at the present time.

I also note that there was a motion concerning an order on pretrial publicity. I did not see that anyone opposed that motion in the file. It would be my intention, unless I

hear otherwise, to issue an order shortly restricting pretrial publicity in the usual fashion that we do that in this state. So, I don't expect any special orders unless someone thinks that might be necessary.

So, first of all, I'm gonna call on the State concerning any matters or motions that you feel ought to be scheduled prior to our pretrial motion period.

SOLICITOR BARNETTE: May it please the Court, Your Honor.

THE COURT: Yes, sir, Mr. Barnette.

SOLICITOR BARNETTE: Your Honor, we filed a motion to collect non-testimonial evidence. It was filed actually August 17th, 2009. We need to give that to the defense and ask, probably have a hearing prior to October 1st.

THE COURT: Has that been served on the defense at this time?

SOLICITOR BARNETTE: I don't think -- I don't know if it's been served or not. I need to---

THE COURT: All right.

SOLICITOR BARNETTE: ---give them a copy of that, Your Honor.

THE COURT: I'll ask you to do that as soon as possible. What in -- just, just for my information, are you seeking DNA evidence or other evidence?

SOLICITOR BARNETTE: DNA evidence from the defendant in

this case.

THE COURT: I see.

SOLICITOR BARNETTE: There was blood found on his shirt. That was found at the time shortly after it occurred and --.

THE COURT: So, we're gonna need sufficient time to get that tested and the results---

SOLICITOR BARNETTE: Yes, sir.

THE COURT: ---in.

Okay. All right.

SOLICITOR BARNETTE: Your Honor, we did notice the statutory aggravating circumstances evidence in support. I don't know if you have a copy of that. It was filed.

THE COURT: That's in the file.

SOLICITOR BARNETTE: And we gave that to the defense. It was actually filed June 8th, 2012. We also -- and I think you can tell from the information, they had originally filed a Rule 5, the defense had, back on July 24th or July 15th, 2009. Mr. Allen had.

THE COURT: And they've been withdrawn though at this time, is that right, Mr. Allen?

I think I saw that you'd withdrawn that.

MR. ALLEN: That is correct, Your Honor. They are withdrawn.

THE COURT: All right.

SOLICITOR BARNETTE: That's correct. But, out of an abundance of caution, we went ahead and handed over several materials to them. We've listed that -- we put it on a disk, gave a copy to Mr. Allen. Obviously he'll be able to show that to Mr. McGuire from that standpoint since this is a death penalty case --

THE COURT: Oh, I understand.

SOLICITOR BARNETTE: -- in this situation.

Your Honor, we're gonna be -- we, today, filed a third party guilt motion. We'll be -- I'll be handing that over to them right now. Mr. Bulsa will be handing it to them. I'll just hand them---

THE COURT: That would be something I would expect to be done at the pretrial motion period in October.

Do you anticipate that being correct, Mr. Barnette?

SOLICITOR BARNETTE: Yes, sir, if I can -- we can handle it at that time I believe, Your Honor.

THE COURT: All right.

SOLICITOR BARNETTE: That issue from there, and -- okay. Your Honor, we also are gonna have a motion in limine, Your Honor. Based off -- and I think you saw the subpoenas that had been filed, Freedom of Information Act filed by the defense, which we filed a notice of protective or modifying order under the South Carolina Criminal Rules 5 Subsection D-1, and the remedies basically -- I think the

motion speaks for itself. They have not requested anything since we filed that motion from that standpoint, not followed up on it.

THE COURT: Well, I'm gonna give them a chance to tell me their positions on these motions in just a moment, but---

SOLICITOR BARNETTE: Right, and there's no need for me -- I don't know if I may follow-up and just tell---

THE COURT: I noted that was in the file and it did not appear to have been resolved.

SOLICITOR BARNETTE: Yes, sir, and -- but they're -- in that motion in limine they're gonna be handing to them is they make reference in the subpoena about a suspicious fire that occurred on April 10th and April 11th of 2011, and also kind of hinting possibly to the father's character and so forth. We will be filing a motion in limine concerning those two issues.

We don't think it's relevant. Obviously if it's relevant, it's highly prejudicial under the evidence rules. So, we filed a motion concerning that to be heard in front of the Court.

THE COURT: That appears to be something I could decide in the pretrial motion period in October.

SOLICITOR BARNETTE: That's correct, Your Honor, and also, Your Honor, if I may approach the Court, and give copies to Mr. McGuire, we did a questionnaire, Your Honor.

We'd ask that it be submitted as our draft or our proposed one. This is actually based off State versus Torres. I believe Your Honor presided over that. It's the very same motion I mean.

THE COURT: To being provided to the jurors?

SOLICITOR BARNETTE: Yes, sir.

THE COURT: All right.

SOLICITOR BARNETTE: And I'm handing those to both counsel now.

If I may approach the bench?

THE COURT: Well, I anticipated bringing that up as the, as we would need to get submissions from both sides as to the questionnaire, and, of course, the Court will make a determination as to the appropriate questionnaire to be submitted.

SOLICITOR BARNETTE: And, Your Honor, one other thing we noticed is that the defense is not asked for a mental health evaluation or mental retardation and have not put that issue on the record from any of the findings we have seen. We'd ask the Court to ask them about that cause obviously that would be an issue for the trial coming up as well as any issues that may come up posttrial from there -- because, obviously, any argument of mental retardation has to be heard by the Court pretrial, and that's actually determined by the Court, and then mental health issues, if

there is any, obviously we need to have an evaluation done as soon as possible so it won't be an issue for the trial.

THE COURT: All right.

SOLICITOR BARNETTE: And, Your Honor, we're also gonna file a State's motion for an insanity defense. We believe, under the rules, that we have a right to ask for a notice of insanity defense even though they have not with it, they withdraw their Rule 5 in that situation. So, we're gonna ask to file that motion also, Your Honor, and that may be heard as a pretrial motion. It may need to be heard earlier than October 1st. I'll leave that at the Court's discretion from there.

THE COURT: All right.

SOLICITOR BARNETTE: I believe that's it. If I can hand this up to the Court as well as to the Rule 5 motion or Rule 3 motion. I mean third party guilt motion on that. Your Honor, I'm handing the third party guilt motion and there's an amendment along with it to both defense counsel on the record.

THE COURT: All right.

SOLICITOR BARNETTE: If I can approach the bench?

I'd like to hand this up to the Court.

THE COURT: You may.

SOLICITOR BARNETTE: And, Your Honor, I'm also gonna file a, the amendment concerning the motion in limine that I

spoke about earlier concerning the previous subsequent fire that they've talked about in this area as well as any character involvement. I'd like to hand that to both parties also.

Hand that up to the Court, and, Your Honor, we also got the request for, request for notice of alibi or insanity defense or plea of guilty but mentally ill. We're gonna hand that to both Mr. McGuire and Mr. Allen, and I'll hand that up to the Court also.

Your Honor, if I may approach with these three items to the bench?

THE COURT: Okay.

SOLICITOR BARNETTE: Thank you, Your Honor.

THE COURT: All right.

SOLICITOR BARNETTE: That would be all the matters we would need to put on the record at this time.

THE COURT: All right. And from the defense?

MR. MCGUIRE: Thank you, Your Honor.

With regard to discovery matters, we do have several issues. One is, as the Court noted, we, we filed a Rule 5. We took it back within 24-hours before there was any discovery provided to us. We've not opted in to reciprocal requirements of Rule 5. We're standing on our right to receive Brady evidence, Kyles evidence, notice of statutory and nonstatutory aggravation.

We've just recently, on disks, received some amount of discovery. We haven't had the opportunity to look at it. So, I'm a little flat footed with regard to what might still be out there. I will---

THE COURT: Well, I'm trying to put you on notice as to what the time frames are so that if you need to make motions let me know.

MR. McGUIRE: We'll do that as soon as, as quickly as possible. The other issue with, regarding discovery is that we did file a motion to inspect critical material physical evidence in the case. We, we made a request to go and inspect it, and we were told that we could only do so if there were representatives of the prosecutor's office there to observe or be in the room with us when we examine the evidence, and we consider those conditions to be inappropriate.

We'd like -- we have no objection to the evidence custodian being there. It's his evidence. He has to protect the chain. He has to protect the integrity of the evidence. We have no objection to the custodian being there. But to have our investigation observed and having people where they can eavesdrop on what we say we would consider to be inappropriate.

THE COURT: All right.

SOLICITOR BARNETTE: Your Honor, if I can respond.

One thing, as the State, we have -- we're responsible to saying if everything has been given to the defense or anything's been viewed or whatever. Obviously the Sheriff's Department does not work for us, and what we usually do is send an investigator, and it's been our procedure all along. Investigations usually go just to watch, observe on certain cases when that's -- obviously cases with substantial notice and this is.

THE COURT: Yes, sir.

SOLICITOR BARNETTE: And Investigator Tom Smith would be the individual. I asked him to come in the courtroom. He would be the individual. He'd be there just to make sure merely what they observed, what they looked at and so forth so we can represent to the Court, a representative from our office saying that what had been provided and what had not been provided from that standpoint.

THE COURT: Well, is your concern, counsel, that you would like to be able to discuss the evidence freely without someone present?

MR. McGUIRE: Yes, sir, and---

THE COURT: But you wouldn't have an objection to a representative being present observing it being handed over to you and then perhaps leaving the room?

MR. McGUIRE: We have no objection to that. If they want to look at a log sheet and get a copy of it and have

the evidence custodian to say this is everything we have, here's the log sheet, if you want I'll check off everything as they view it to make sure that we've been provided everything, we've seen everything, we have no objection to that.

THE COURT: Does that satisfy your concern?

SOLICITOR BARNETTE: Yes, sir, just as long as we have a representative. Of course, I know the custodian will have to be there the whole time.

THE COURT: The custodian's gonna be present at all times cause he's got to testify to the chain, chain of custody. But as far as someone from your office, I have no problem with that person being present when it's handed over, receiving some kind of check-off sheet as to what was observed for your file. But while they're observing it and discussing it, I think it would be inappropriate for one of your officers to be present.

SOLICITOR BARNETTE: And I understand, Your Honor. I just wanted to make sure we could verify with the Court down the road in any matters that may be---

THE COURT: All right. I'll ask that we proceed in that fashion. I don't know if that requires a formal order. If you have difficulty I certainly will make it a formal order. And, so, if there's any problem in that regard, please let me know.

MR. McGUIRE: Yes, sir, and we'll take care of that as soon as possible.

The other issue regarding discovery is I did serve a subpoena on the Sheriff's Department for their investigation regarding the arson of my client family member's homes, and it's really best characterized as an attempted murder. I interviewed the people who were in the home, who -- one gentleman, in particular, barely escaped with his life. His son was up watching TV, and he was dozing, he was sleeping, and if his boy didn't come and pull him out of bed he'd be dead right now, and that really is best characterized as attempted murder. There's a clear link to this case to suggest that there's retaliation. There's graffiti tagged on the corner of the trailer that nearly burned to the ground, and the, the phrase was this is for the girl, and it was about 20-feet from the scene of the incident.

I believe we have an absolute right to, to have everything that was turned up in that investigation. We, we've uncovered evidence, pieces of evidence, to indicate that Mr. Bobbie Center, the father of the victim in this case, is a known biker, has got a reputation for violence. There's evidence of threats of retaliation have been made multiple times either by Mr. Center or his colleagues.

We take very serious this attempted murder on our client's family, and we do believe that---

THE COURT: Well, I'm not sure what that -- that all occurred after this, this incident that we're here on, is that right?

MR. McGUIRE: It probably---

THE COURT: Is that right?

That's post-event?

MR. McGUIRE: It would corroborate, it would corroborate earlier events prior to the incident.

THE COURT: Okay.

SOLICITOR BARNETTE: I don't -- I agree with the Court. I don't see -- I've not seen anything concerning that. This occurred 22 months after the fact, the events he's talking about. I know of nothing that happened prior to what happened to this poor girl.

THE COURT: I don't know that they have to reveal anything to you that they don't have.

SOLICITOR BARNETTE: I don't.

THE COURT: But---

SOLICITOR BARNETTE: If, Your Honor, if I could just briefly -- the problem we had is they moved under Rule 5 motion---

THE COURT: I wasn't intending to hold a hearing today---

SOLICITOR BARNETTE: Yes, sir.

THE COURT: ---and I'm not holding a hearing today.

But this sounds like something we do need to hold a hearing on though. So, I'll schedule that before the October meetings so that we can get that resolved well in advance, and any information required to be exchanged can be exchanged.

MR. McGUIRE: Yes, sir.

Judge, that leads into the fact that we are gonna file a request to change venue in this case. I can file it -- I'm actually leaving town this Sunday, but I can put the Court on notice and the prosecutor on notice what the basis would be.

Obviously there is a lot of publicity. The former solicitor, Mr. Tray Gowdy, who was running for Congress at the time, and there are numerous, numerous appearances in the press, both, both television, media, and print media. There's also been a lot of Internet traffic on this case, and at the funeral 500 bikers showed up at the funeral. A year later, at a memorial ride, another 500 bikers showed up.

Given all of this, and especially when you look at the attempted murder of my client's family, I think we got a real security issue. We can -- and we also can't predict -- you know, we always have a problem with the media, but that's generally not the worst problem. If this trial starts, and 300 bikers circle this courthouse, we're gonna

have to ask for a mistrial, probably have to start over. I think safety is a real concern. We're gonna ask for a very comprehensive security plan and passed on by the Court including security for us.

We, we take it very seriously, these threats, to our client's family. We see no reason why they wouldn't apply to us and, our client, potential witnesses. It's a very chilling effect on witnesses if they have to march through bikers to get here or if they just throw file footage about the fact that there was an attempted murder on my client's family.

We don't want to have any of our witnesses chilled. We don't want to have them be resistant to come to Court. We want them to give forthright testimony, and we think it's best and appropriate to actually pick up stakes and try this case someplace else.

THE COURT: I'm not asking you to respond.

You -- are you gonna file that motion as soon as possible?

MR. McGUIRE: Yes, sir, I just wanted to put---

THE COURT: That's something that we need to consider and have that taken care of well in advance of the jury summonings and that sort of thing. So, I'm gonna ask that you have that filed within the next seven days, and then we'll -- are you prepared to argue it shortly thereafter?

MR. McGUIRE: Shortly thereafter. I'll be, I'll be in Arizona until the 22nd. But I can, I can try and file it Friday or Monday, and then I'll be gone obviously for about a week.

THE COURT: All right.

MR. McGUIRE: But, yeah, we can---

THE COURT: I'd ask -- I want to give them an opportunity to be prepared as well, but I would anticipate that I'd want to hold a hearing on that within a couple of weeks of filing it.

MR. McGUIRE: Yes, sir. And regarding that issue, we did file a motion to have the State respond in writing to legal issues, and we think now would be a good time to rule on that.

SOLICITOR BARNETTE: Your Honor, obviously a lot of motions we'd responded in writing and so forth. But I don't know if we should be required to respond to every one of them in writing. I think the record speaks for itself when we come to Court and---

THE COURT: What, what -- I didn't notice that. Tell me what this is about, Mr. McGuire.

MR. McGUIRE: Okay. Generally, Your Honor, if there's a, a legal issue -- obviously we wouldn't expect a response to say a Biggers motion or a Jackson versus Denno motion. We'd come to Court, the witnesses will testify, and we'd

argue it.

However, if there's a particularly legal issue that can be pretty much decided on briefs, we'd ask the State respond in writing to that.

SOLICITOR BARNETTE: Your Honor, we generally respond. I know, of course, we've been before the Court several times. I think, if it's an appropriate motion, we will respond in writing and obviously some motions we won't. Like I say, Jackson v. Denno, Biggers, or anything like that, obviously it can be heard in Court. We may, of course, have to put the Court on notice if they're gonna have this hearing.

THE COURT: If you wish to require responses in writing to any particular motion, make that request with your motion --

MR. McGUIRE: I'll do that.

THE COURT: -- and I'll consider that.

MR. McGUIRE: Yes, sir.

THE COURT: Based on the motion. I don't know what the motions are at this point in time exactly.

MR. McGUIRE: Sure.

THE COURT: So, I'll take that on a motion-by-motion basis.

MR. McGUIRE: And then, judge, with regard to the State's request for, alibi, NGRI, NGBI information, we would

just, based on the fact that we're not in Rule 5, anything that's reciprocal to Rule 5 we would say that we don't have an obligation to provide.

With regard to mental health issues, which we would have some obligation to put the Court on notice if we have, for instance, Atkins claim, or if we were going to present evidence that would require what might be referred to as a Bigsby evaluation based on the Bigsby case that was recently decided, I would say that right now we're not in a position to actually know what we have, and it would be inappropriate for me to turn that over at this point.

THE COURT: I understand. As soon as it is apparent you need to do that.

MR. McGUIRE: Yes, sir, we actually have an ex parte funding matter on one of those issues you said we could take up after Court.

THE COURT: All right.

SOLICITOR BARNETTE: Your Honor, if I could, I know the Court's inquiring into that. At this point, do I understand there's no mental health or mental retardation issues at this point cause obviously that would---

THE COURT: He said they haven't completely made a decision as to how they wish to proceed. So --

SOLICITOR BARNETTE: I understand. I know we're fourth -- we're four months out. That's the only reason I

mentioned that. So --.

THE COURT: All right. I indicated that needs to be done quickly, and it needs to be done quickly.

SOLICITOR BARNETTE: Yes, sir.

THE COURT: All right. Anything else from the defense's prospective?

MR. McGUIRE: That's all we have at this time, Your Honor.

THE COURT: All right. On the mental health questions, when do you anticipate being in a position to take a position concerning those matters that you do have to disclose?

MR. McGUIRE: I'd say in about four weeks.

THE COURT: Thirty days be sufficient, Mr. Barnette, if I put that limit on it?

SOLICITOR BARNETTE: Yes, sir.

THE COURT: All right. Then I'll put that limit on it. Thirty days you need to make whatever disclosures are required to be made concerning those issues.

MR. McGUIRE: Yes, sir.

THE COURT: All right. Anything else that we need to -- I asked about the pretrial publicity. I think you -- part of that's gonna come up in the motion for change of venue. But at any rate, I do intend to, unless I hear someone objecting, I'm going to issue a order restricting

pretrial publicity.

Any objection from the State?

SOLICITOR BARNETTE: No objection from the State. Only thing is I know Fox News is called up. We told them we will not comment on this case. So, I know they're doing something, but I don't know what it is exactly. So --.

THE COURT: I don't control the press. I do control the participants in this case though.

SOLICITOR BARNETTE: Yes, sir, and I'm telling the Court we had -- we told them we had no comment.

THE COURT: I appreciate your position in that regard, sir.

SOLICITOR BARNETTE: Yes, sir.

THE COURT: Defense have any objection to limitation on pretrial publicity?

MR. McGUIRE: I asked for it. So, no.

THE COURT: Okay. All right.

SOLICITOR BARNETTE: Your Honor, the only other thing may be -- I know the filings -- sometimes the press will come look at those. I don't know if there's any way that we both can agree to seal them until obviously after the trial is over or at least the jury is selected from that standpoint.

THE COURT: I've never, I've never restricted notice on filing, but does the defense have any position in regard to

that?

MR. McGUIRE: Judge, right now our position would be that those are public documents, and that issue would be accessible.

THE COURT: I think that would be difficult to do that.

From the clerk's prospective, when do you anticipate summonings jurors if we go the last week, second to last week in October?

CLERK: About the first of October.

THE COURT: So, first of October is when the notices would go out?

CLERK: (Nods affirmatively.)

THE COURT: All right. I'm going to -- if you can get your questionnaire suggestions to me. Again, I'll say 30 days. If you have any suggestions to the questionnaires. I've already gotten yours. So that I'll -- from the defense, if there's any questions.

MR. McGUIRE: Yes, sir, and, judge, just one point. In speaking with the Clerk of Court, just briefly, my understanding, before the hearing, my understanding is that a request for security is probably gonna have to come from Your Honor before they submit a plan or can -- the last time I tried a capital case in Anderson County, and at the time SLED was not providing officers. I don't know what, to what extent they are providing manpower.

THE COURT: The last time I tried one of these that wasn't a problem. If it is now, we'll check into that.

MR. McGUIRE: Yes, sir.

THE COURT: I wasn't aware that it was a problem.

MR. McGUIRE: Yes, sir.

SOLICITOR BARNETTE: One other matter, Your Honor. I know they did not agree to seal the record and so forth from there, but I don't want them going back and saying, you know, changing venue, this publicity came out or anything like it. Unfortunately we've been involved in cases that just haven't, death penalty cases did so before that. But it was in the paper all the time. So, we went under seal.

THE COURT: Well, again, I'm going to issue that order. I'll issue it this week. In the mean time, from the bench, I will issue an order restricting the participants in this trial from disclosing any information to the press in regards to this case.

MR. McGUIRE: Yes, sir.

THE COURT: I'll issue a written order this week.

SOLICITOR BARNETTE: Yes, sir.

THE COURT: Anything further, gentlemen, before we break up on this occasion?

I'll schedule a -- you're gonna file your motion on venue?

MR. McGUIRE: Yes, sir.

THE COURT: And then I've said -- we'll give it a few weeks. I'll probably be scheduling something then towards the end of July for another, for a motion period before we do the pretrial motions in October.

All right. Thank you very much.

MR. McGUIRE: Thank you, Your Honor.

MR. McGUIRE: Judge, we just have the funding issue.

THE COURT: Yes, sir, I think you said you wanted to take that up in chambers?

MR. McGUIRE: Yes, sir.

THE COURT: I'll see you in chambers on that.

MR. McGUIRE: Yes, sir.

* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 13th day of June, 2012.

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

August 5th, 2012

Pamela E. Green

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

THE STATE)
)
-vs-) TRANSCRIPT OF RECORD
) 2009-GS-42-03609
RICKY LEE BLACKWELL,) 2009-GS-42-03610
SR.,) AUGUST 8, 2012
GAFFNEY, SOUTH CAROLINA
DEFENDANT.

B E F O R E:

THE HONORABLE ROGER L. COUCH, JUDGE.

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

BARRY BARNETTE, SOLICITOR
DEREK BULSA, DEPUTY SOLICITOR
RUSSELL GHENT, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

CLAY ALLEN, PUBLIC DEFENDER
WILLIAM MCGUIRE, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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WITNESSES	PAGE
(NO WITNESSES CALLED)	

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
(NO EXHIBITS MARKED)			

(PROCEEDINGS, AUGUST 8, 2012)

THE COURT: All right, we are on the record in the case of State versus Ricky Lee Blackwell.

I believe we have a State's motion at this time.

All parties are present and represented.

Mr. Barnette?

MR. BARNETTE: May it please the court, Your Honor?

THE COURT: Yes, sir.

MR. BARNETTE: Your Honor, I apologize for filing this motion, but based off the letter we received from Mr. Allen on July 13th, 2012, it's been almost three years -- or actually it's been over three years when we received the letter, and they brought up the Atkins claim that he's mentally retarded, possibly M.R., in this case, and we haven't received anything. I haven't received any reports, or anything from experts, or anything from that, but we did receive the letter, and we felt like we needed to make this motion at this point if they have any chance of having him evaluated concerning that issues, and we include the Blair issues in there, because obviously we are trying not to delay this trial. October 22nd is the trial date, but we have some real concerns with the issues they brought up, because obviously M.R. is a bar to the death penalty. And we really don't understand why it's been three years,

because that should have been an issue dealt with a couple years ago, in our opinion, but we thought we needed to bring the motion to the court's attention, and we appreciate you hearing the motion.

THE COURT: All right. Well, I do note the cases on that do require that the court hold a pretrial hearing on that issue as being raised, and the recent correspondence did bring that to the attention of the court as well.

You are asking specifically for what, Mr. Barnette?

MR. BARNETTE: Your Honor, we are specifically -- obviously DSM would have to do the mental retardation part of it, and then we would --

THE COURT: You want permission to do testing on the defendant?

MR. BARNETTE: Yes, sir, through the state hospital, since this became an issue, and we thought that the competency issue may be something, that we would just deal with both, because a lot of times when these motions are done, sometimes both are done. And to avoid any issues, since it is a death penalty case, to avoid any PCR appeal issues down the road is to just go ahead and ask for both of them to be done. That way there won't be any issue from that case.

I know they have not alleged competency being an

issue in the letter. They just raised the M.R. issue possibly be a strong possibility, according to their information.

THE COURT: All right, I'll hear from the defense.

Mr. McGuire, do you want to speak to the defense?

MR. MCGUIRE: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. MCGUIRE: In the letter that the court received, you know, we felt compelled in spirit of the status conference that we had and disclosed the fact that we were pursuing the Atkins facts.

THE COURT: Yes.

MR. MCGUIRE: The -- you know, we wish we could have gotten to this a little bit sooner as well.

Our client is nearly 53 years old and the documents that put us on notice that we had this claim were school records, and we have been trying literally for three years to get school records. We were told for several years they just didn't exists. We were eventually told there were four pages of school records and we didn't accept that answer. And only through the perseverance of my litigation investigator were we able to secure approximately 25 pages, or so, of school records. I summarized those schools records, or Mr. Allen did, in the letter to the court.

THE COURT: Yes.

MR. MCGUIRE: I think it's fairly self-explanatory. I think that would put anybody on notice that it's almost a prima facie case of an Atkins claim.

At this point our expert has not issued a report regarding M.R. and that investigation is still ongoing.

As Your Honor knows, it's a three-prong task. It's intellectual functioning issue, which is measured by an IQ intelligence. There are adoptive functioning issues, which are generally measured by an instrument by ABAS or an ILS. These are instruments that a psychologist would use to measure daily living skills.

It's difficult -- once you are on notice of an M.R. claim, it's difficult to jump right into these indexes. You have to find the best historian, the best reporter. And to be quite honest with the court, it's been difficult in this case for a number of reasons, but we are not finished. We are in there. We -- we have begun, and at this point our expert doesn't have an opinion as to M.R. or not M.R.. So I think any evaluation from DDSN would be inappropriate at this point. It's not ripe.

Now --

THE COURT: Obviously you have an expert working on this. Do you have any kind of indication from that expert as to when that opinion might be forthcoming?

MR. MCGUIRE: We have obviously addressed those

issues. And I think -- I think it's likely that it would be finished in September.

THE COURT: Well, the State obviously -- I don't know. You wanted to have your evaluation done after that report has been received?

MR. BARNETTE: No, we had asked before this. I think the problem is with them doing it so late, it's put us in a position for the October 22nd trial date --

THE COURT: That concerns me as well, because obviously I don't know how long your evaluation will take, but it will take some time.

MR. BARNETTE: Yes, sir.

THE COURT: And I am concerned with whether or not we can meet the trial deadline that we had originally anticipated meeting, so any help with that, Mr. McGuire?

MR. MCGUIRE: Well, I mean, obviously the critical question is do we want to deal with this now or at a PCR, and I think we all agreed we want to do it now.

THE COURT: Oh, I would rather do it as right as we can the first time.

MR. MCGUIRE: Right.

THE COURT: Yes, sir.

MR. MCGUIRE: And, you know, I would like to be able to guarantee that an investigation and a report would be completed as soon as possible, but I can't.

THE COURT: Well, what objection specifically do you have to the State beginning their investigations, since they are on notice that this is a potential defense?

MR. MCGUIRE: My objection would be that very often in the evaluation, whether it be for GMI, or NGRI, competence, or an Atkins claim, it would contain a significant amount of information that would go straight to our mitigation case.

In essence, my client would be forced to turn over names, information that would actually the State could use to defend our mitigation case, and I would have to instruct my client not to cooperate, if that's the situation.

THE COURT: Well, you know, if this defense is raised, obviously I have to hold a pretrial hearing on this particular issue --

MR. MCGUIRE: Yes, sir.

THE COURT: -- at which the point the State has the right to put its expert testimony in as well, so I -- I'm not going to keep them from being prepared for that hearing, obviously, so --

MR. MCGUIRE: No, sir, and I wouldn't want to. What I would like -- what I would suggest is the moment that my expert says she's of the opinion that my client is M.R., I think the State has an absolute right to have an evaluation, independent evaluation. My understanding is

that they would use DDSN, and specifically probably Dr. Ed Brown. I would absolutely no objection to that. I believe that's their right, but I would just ask that we go under the umbrella of the Bixby case, which is any --

Let me -- let me just say what I propose to the court and see if we can --

THE COURT: Why don't you do that and we will talk about that. That would be fine.

MR. MCGUIRE: Okay. In the letter that we wrote, Your Honor, we did mention competency as an issue.

I don't know if Your Honor is familiar with what's called a cast M.R., but it's an instrument used to gauge competency. We used that instrument with Mr. Blackwell. I reviewed some of the raw data with my expert. And while we are not completely -- she's not of the final opinion yet that he's not competent. However, I will tell the court this, and I'll be very candid, I'm not sure I would have to share this, but I will, that there are some red flags there. So we would not object to a competency evaluation with DMH for starting out. We will get an order signed today ordering that, we would have no objection.

THE COURT: All right.

MR. MCGUIRE: I would ask that it be sealed and go just to the court, because obviously if it comes back competent and my expert agrees, there is no issue.

If it comes back not competent, I would ask that I have five days to respond what our position would be and we would get that issue.

THE COURT: Yes, sir.

MR. MCGUIRE: So --

THE COURT: Any objection to that proposal, as far as that issue is concerned, Mr. Barnette?

MR. BARNETTE: Well, I appreciate them letting us do a competency evaluation, Your Honor.

The first thing, if I read the letter, they wasn't alleging competency was an issue, in the letter I read.

THE COURT: Well, apparently he's just made that statement, and so that's -- it's on the table, and you were anticipating that, so I think we are probably not surprised.

MR. BARNETTE: Yes, sir.

THE COURT: Go ahead.

MR. BARNETTE: And I disagree with sealing the record on it. Maybe sealing it and obviously not being released outside, but I think as being part of the process, I think that we are entitled to the competency evaluation that's made by --

THE COURT: Oh, I think what he's talking about is not being released to anyone, other than the parties involved in the litigation. Is that what you are talking about?

MR. MCGUIRE: No, sir, I would actually ask that it be disclosed to the State, because if the report comes back competent and our expert agrees, there is no issue and there is to be no reason to have the report. Beyond being alerted that the report concludes that Mr. Blackwell is competent, there would be no need for the State to have any further details in that report.

And my fear is, and I can state it from personal experience, I mean, I have had prosecutors use these evaluations as road maps to investigate the mitigation case, because it does contain historical information. For instance, my client might have to give a history, self-reported history, regarding mental illness. For instance, if he ever saw a psychiatrist or a psychologist; if he ever sought mental health counseling from a county; was he ever in a mental hospital involuntary.

THE COURT: I understand your position.

MR. MCGUIRE: You see where I'm going?

THE COURT: Yes.

MR. MCGUIRE: And I absolutely object to having any of this historic information disclosed to the State.

Also you would have family members, teachers --

THE COURT: But obviously if it comes back in your expert's opinion is that he's not competent, then you have no objection to that being released?

MR. MCGUIRE: Correct, because I knew we would have to litigate it.

MR. BARNETTE: The only problem I got, Your Honor, I don't know when his expert is going to come to an opinion. I would like to be prepared, like I'm trying to prepare for --

THE COURT: Well, he's willing to let you go forward with your expert, so I think you would be prepared as you could be at this point in time.

MR. MCGUIRE: Yes, sir, we would have no objection to an order signed today ordering a DMH competency evaluation, just that it be disclosed only to the court. And, judge, I wouldn't even ask for it.

THE COURT: Anything else, Mr. Barnette?

MR. BARNETTE: Your Honor, we would just like a copy. I understand the court's position there and we would like a copy of it, obviously.

THE COURT: Oh, I'm going to -- I'll sign an order, as you suggested, on that particular point.

Now, as to the mental retardation issues, I would like something from your expert to address to the court giving me a time frame, an anticipated time frame for that report --

MR. MCGUIRE: Yes, sir.

THE COURT: -- to be generated. I'm not making a

decision on that today. I would like to have that information sent directly to me.

In the meantime, Mr. Barnette, if you could check with whoever would be doing your evaluation and give me the same information, anticipated time frame for them to do an evaluation, once I sign an order allowing it. If you could get that information to me.

MR. BARNETTE: Yes, sir.

THE COURT: That will give me some idea as to what we are looking at and perhaps what I need to do to get the case in some type of orderly fashion so we can get it moving as quickly as possible.

MR. BARNETTE: Yes, sir.

THE COURT: So if you don't mind giving me that from whoever you propose to use, and if you would have your expert do that, and I would like that within the week.

MR. MCGUIRE: Sure, and I have already discussed with my expert the possibility of an affidavit outlining -- outlining time issues, and we have already discussed this, so I think it's something that we can get to you by Friday.

THE COURT: All right. I would like it -- by Friday would be fine.

Mr. Barnette, can you get me that information by Friday?

MR. BARNETTE: I will, Your Honor.

Let me ask the court this question.

THE COURT: Yes, sir.

MR. BARNETTE: When you are talking about the State's expert, can it be any expert?

THE COURT: Well, you indicated that you would use somebody with the State Department, so anybody that's qualified, obviously, but I would like to have -- I'm looking for a time frame more than I'm concerned about who the expert is.

MR. BARNETTE: Yes, sir.

THE COURT: That -- you choose the experts. I don't choose those folks.

MR. BARNETTE: Yes, sir.

THE COURT: If you can give me some idea of what we are looking at, as far as them being able to do whatever evaluations they need to do and come up with the results and then be prepared for a hearing on the issue, if that becomes necessary.

MR. BARNETTE: Yes, sir.

THE COURT: I'm just trying to anticipate it. If it becomes an issue and -- I'm trying to stick to my end of October time frame, if at all possible. If it appears we can't go there, then maybe I need to be making some other plans, so that's what I'm looking at.

MR. BARNETTE: Yes, sir.

Thank you, Your Honor.

THE COURT: Okay. Any other thing else we need to address today, Mr. Barnette?

MR. BARNETTE: No, sir.

MR. MCGUIRE: Not today, Your Honor.

THE COURT: And are you going to prepare the order for the examination, or would you like the State to do that?

MR. MCGUIRE: I will let the State do it.

THE COURT: Mr. Barnette, you will need to go ahead and do an order authorizing the competency evaluation. Of course, submit a copy to them before you give it to me and let me know if there is any objection.

MR. BARNETTE: Yes, sir. What I will do is probably use the copy that's on the website, just modify what the additional is.

THE COURT: I understand, but if you would, please, have them check it and be sure there is no objection before submitting it to me.

MR. BARNETTE: Yes, sir.

THE COURT: Okay.

MR. BARNETTE: Thank you, Your Honor.

THE COURT: Thank you very much.

That concludes the hearing.

(END OF REQUESTED TRANSCRIPT OF RECORD)

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for SPARTANBURG County, South Carolina, on the 8th day of August, 2012.

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

May 16, 2014

Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA **COURT OF GENERAL SESSIONS**

COUNTY OF SPARTANBURG **2009-GS-42-3609, 3610**

The State of South Carolina, Plaintiff, -vs- **Ricky Lee Blackwell,** Defendant.	**TRANSCRIPT OF RECORD**

May 22, 2013
Spartanburg, South Carolina

Ordered: April 21, 2014

Delivered: June 1, 2014

B E F O R E:

The Honorable Roger L. Couch, Presiding Judge.

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

Mr. Derrick Bulsa, Esquire
Deputy Solicitor Appearing for the State

Mr. William Mcquire, Esquire
Mr. Clay Allen, Esquire
Attorneys Appearing for the Defendant

Pamela Faucette, CVR-M
Circuit Court Reporter

I N D E X

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E X H I B I T S

State's Exhibits:	**Marked:**	**Received:**
(None)		

Defendants' Exhibits:	**Marked:**	**Received:**
(None)		

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REPORTER'S NOTES: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

REPORTER'S NOTES: Some of the names in this transcript are spelled phonetically.

1 **May 22, 2013** **9:02 A.M.**

(Off-The-Record Comments)

THE COURT: Thank you very much. You may be seated.

(All in courtroom comply.)

(Off-the-Record Comments)

THE COURT: All right. It's been some time since we've had a status conference on this case. And I wanted to bring myself up-to-date.

I am aware that there has been certain testing and things like that going on. And so I –- I would kind of like to know where we are with a view of setting this case for trial in the –- in the not too distant future.

So I guess I'll start with the State first. And, then, I'll hear from the Defense.

MR. MCQUIRE: Yes, sir.

THE COURT: Mr. Bulsa, can you bring me up-to-date as to where we are in this matter?

MR. BULSA: Yes, sir. It –- it was our understanding that, when we last met –- there was an issue regarding the Defendant's competency.

THE COURT: Yes, sir.

MR. BULSA: That testing has been conducted by the Department of Mental Health. The evaluation did come back early this month stating that he was competent to stand trial.

THE COURT: All right.

MR. BULSA: I think there was also mention that, at one point, that he had some mental retardation issues.

THE COURT: Yes, sir.

MR. BULSA: I didn't see that commented on –- on the mental

health report. So I don't know the status of that.

THE COURT: Well, is the State –- is the State, then, ready to proceed should the Defense raise that –- that defense ----

MR. BULSA: Yes, sir.

THE COURT: ---- of –- of both his mental competency and/or his –- the question of whether or not he may have some retardation?

MR. BULSA: We would –- we would have to see what they've got, in regard to the retardation, as to whether or not there's for ourselves. We have not seen anything as of yet.

THE COURT: All right.

MR. BULSA: And in the competency evaluation, there's not an mention of an issue with that. So...

THE COURT: Okay. And for the Defense?

MR. MCQUIRE: Your Honor, we're still completing what would be referred to as an Atkins (phonetic) investigation.

THE COURT: Right.

MR. MCQUIRE: We intend to finish that in the near future.

THE COURT: Well, give me –- give me some time frame.

MR. MCQUIRE: Okay.

THE COURT: Near –- near future is interesting.

MR. MCQUIRE: Yeah, it is.

THE COURT: I'm –- I'm getting to the point where I"m going to start setting some definite time frame.

MR. MCQUIRE: Sure. And –- and I don't want to bid against myself, but since you may be the lowest bidder, I think I will. We need about

60 more days.

THE COURT: All right. So after 60 days you would be ready to proceed?

MR. MCQUIRE: With regard to an Atkins hearing if necessary. I do have a trial scheduled in September. Ten, we can be heard.

THE COURT: I understand. Now, after September, are –- are there any problems?

MR. MCQUIRE: No. And what I was going to suggest to the Court is that I think it's very likely that we'll find ourselves in a position to be able to try this case in late spring after the new year. And have a Franklin (phonetic) hearing perhaps February or so.

THE COURT: All right.

MR. BULSA: We're actually going to request a court date of October, Your Honor. And I think last year at this time we set it for October 2012 and it's been going on for another year. And the State is ready to proceed with this matter.

THE COURT: All right. Well, I'm –- I'm going to check my schedule. And you need 60 days to have your testing completed; is that correct?

MR. MCQUIRE: Yes, sir.

THE COURT: And, if the State were to be of a mind to present an expert for the Atkins hearing, what ----

MR. BULSA: Your Honor**,** I think ----

THE COURT: —- time would it take for the State to be ready?

MR. BULSA: I think we could get that accomplished very quickly,

Your Honor.

THE COURT: All right. Okay. Then, what I'm going to do, I'm –- I'm going to take a look at my –- my schedule. I anticipate trying to set this within the fall, probably late fall.

So I'll –- I'll look at my schedule and the other Court's schedules to see what we can do to make arrangements to set aside sufficient time.

If the case were to go for trial, what length of time is the State estimating for trial?

MR. BULSA: We estimate two –- two weeks.

THE COURT: Does the Defense have any?

MR. MCQUIRE: I would say it was a little bit longer than that.

THE COURT: So perhaps three?

MR. MCQUIRE: My last two were three and a half weeks, so -----

THE COURT: All right.

MR. MCQUIRE: -— I would say about there.

THE COURT: All right. Anything else that you feel the Court should be aware of from the State's perspective?

MR. BULSA: Your Honor, I brought the court calendar if Your Honor would like to look at it now or ----

THE COURT: Well, I'm going to have to, obviously, put a few weeks together. That'll mean probably some other judges adjusting their schedules. So, when I look at that calendar, more will go into it than just my schedule. So...

MR. BULSA: Well, I got it —

THE COURT: I understand. But you –- they –- they don't gave to

change their schedule.

MR. BULSA: I hear you, sir.

THE COURT: I –- I have not found it very easy to overrule another Circuit Judge.

MR. MCQUIRE: And, Judge, just so I'm clear, you're talking about late fall would be a Franklin (phonetic) hearing, a mental retardation hearing?

THE COURT: Yeah.

MR. MCQUIRE: And, then, in the spring for trial?

THE COURT: Well, I may –- may be able to work out that hearing on –- on the retardation issue before that. You said 60 days you'll be ----

MR. MCQUIRE: Yes, sir.

THE COURT: ----- you'll be done with your testing and be ready to go?

MR. MCQUIRE: Yes, sir.

THE COURT: Okay. So 60 days would take us to the end of July.

MR. MCQUIRE: And, then, we'll just have to see what the State wants to do.

THE COURT: Okay. All right. So I'm –- I'm planning to get this case ready for trial.

MR. MCQUIRE: Yes, sir.

THE COURT: So we're going to try to move it along.

MR. BULSA: Your Honor, one other thing the State would ask is that we be provided with any information, expert reports, as soon as they're ----

THE COURT: All right. Any problem with you providing them the

report once it's been developed?

MR. MCQUIRE: No, absolutely not, Judge. We're –- we're of the mind set that we're going to turn everything over; if they have an expert, we'll make our experts available. And we're going to turn over all of our material if that'll –- that'll be helpful.

THE COURT: All right. Anything further we need to discuss from the State's perspective?

MR. BULSA: I have nothing, Your Honor.

THE COURT: Defense?

MR. MCQUIRE: No, Your Honor.

THE COURT: All right. Then, I'll be in touch with you, as far as scheduling, in the very near future.

MR. BULSA: I'm —- I', sorry, Your Honor. I did –- there were some motions regarding change of venue. Can we address that as the same time as the ----

THE COURT: Are you ready for those to be argued?

MR. MCQUIRE: No, Your Honor.

THE COURT: Okay. When would you be ready?

MR. BULSA: Not today.

(Brief Pause)

MR. MCQUIRE: Actually it sort of depends on what Your Honor would want to do. I've –- I've been in situations where the Court has requested that we try to pick a jury, where we sent out summons to come to court and try to see if we can give it a college try and see how it goes.

THE COURT: I would be of a mind that, that's what we should do

in this case. This –- this case has been –- you know, this event occurred some time ago.

MR. MCQUIRE: Sure.

THE COURT: It's not as fresh on the minds of the public as other events might be.

MR. MCQUIRE: True.

THE COURT: And I believe that a good college try, again, as you've described it, in getting a jury picked would probably be successful. I don't know; but we'll find out.

MR. MCQUIRE: And we're not necessarily opposed to that --- that procedure.

And the only other issue we have is that the Department of Mental Health, for whatever reason, sent the competency evaluation to the prosecutor's office. And it was supposed to go just to the Court.

So we've requested that they purge their file of the evaluation and return it to the Court.

MR. BULSA: And we would object to that, Your Honor. We've also been provided that —

MR. MCQUIRE: Well, Your Honor, there's –- there's a court order that's signed by Your Honor specif –- we litigated that.

THE COURT: Uh-huh (affirmative).

MR. MCQUIRE: We spent a –- a great time, with regard to that issue, not only in court, but also correspondence between myself, Mr. Allen, and Mr. Barnette; numerous emails going back and forth regarding the language.