

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case Number: 2025-001377

RECEIVED

May 04 2026

S.C. SUPREME COURT

RICKY LEE BLACKWELL, SR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
VOLUME 11 OF 18

ROSALIND S.D. MAJOR

BRIANNA L. CRUZ

Justice 360

900 Elmwood Ave., Suite 200

Columbia, SC 29201

(803) 765-1044

Counsel for Petitioner

MELODY BROWN

TOMMY EVANS JR.

Office of the Attorney General

P.O. Box 11549

Columbia, SC 29211

Counsel for Respondent

INDEX

INDEX	i
DIRECT APPEAL RECORD ON APPEAL	1
TRIAL TRANSCRIPT DATED MARCH 3-8, 2014 AND MARCH 10-16, 2014	1
QUALIFICATION OF ENTIRE JURY PANEL	32
QUALIFICATION OF JURY PANEL FOR TRIAL	84
INDIVIDUAL JUROR QUALIFICATIONS	168
MARTIN KIMMONS	
Examination by the Court.....	169
Examination by Mr. McGuire.....	182
OBJECTION TO DEFENSE COUNSEL MR. MCGUIRE “STRIKING OUT”	184
OBJECTION SUSTAINED	195
MARTIN KIMMONS	
Examination continued by Mr. McGuire	196
Examination by Mr. Barnette.....	221
Examination by Mr. McGuire.....	224
Juror Qualified.....	226
LONNY SMITH	
Examination by the Court.....	228
Examination by Mr. McGuire.....	241
Examination by Mr. Barnette.....	246
Examination by Mr. McGuire.....	250
Examination continued by Mr. McGuire	257
Examination continued by Mr. McGuire	268
Examination by Mr. Barnette.....	278
Examination by Mr. McGuire.....	281
Juror Qualified.....	283
AMANDA TINKER	
Examination by the Court.....	290
Juror Excused	296
MICHAEL ESTES	
Examination by the Court.....	297
Examination by Mr. Young.....	313
Examination by Mr. Bulsa	323

Examination by Mr. Young.....	332
Examination by Mr. Balsa	335
Juror Qualified	339
JOHNSON KONG	
Examination by the Court.....	344
Examination by Mr. Barnette.....	362
Examination by Mr. McGuire.....	369
Examination continued by Mr. McGuire	376
Examination by Mr. Barnette.....	378
Juror not qualified.....	380
DAVID GIMBEL	
Examination by the Court.....	381
Juror Excused	382
LORI BUTEHORN	
Examination by the Court.....	383
Juror Excused	387
RONALD UNGER	
Examination by the Court.....	387
Examination by Mr. Balsa	405
Juror Excused	415
ROBERT MARTIN	
Examination by the Court.....	417
Examination by Mr. McGuire.....	432
Examination continued by Mr. McGuire	446
Examination continued by Mr. McGuire	457
Examination by Mr. Barnette.....	467
Juror Qualified.....	475
ERIC MCCRAW	
Examination by the Court.....	478
Examination by Mr. Young.....	495
Examination by Mr. Barnette.....	508
Juror Qualified.....	511
MACKENZIE ROLLINS	
Examination by the Court.....	514
Juror Excused	518
TOMMY L. WILLIAMS, SENIOR	
Examination by the Court.....	518
Examination by Mr. McGuire.....	536

Examination continued by Mr. McGuire.....	544
Examination by Mr. Bulsa	546
Examination continued by Mr. Bulsa	553
Juror Qualified.....	557
DONALD LOWE	
Examination by the Court.....	560
Examination by Mr. Barnette.....	576
Examination by Mr. Young.....	579
Examination by Mr. Barnette.....	592
Juror Qualified.....	594
DONALD PATTERSON	
Examination by the Court.....	597
Examination by Mr. Bulsa	613
Examination by Mr. Young.....	616
Examination by Mr. Bulsa	627
Juror Qualified.....	628
DONALD LEITER	
Examination by the Court.....	633
Continued examination by the Court.....	652
Examination by Mr. Barnette.....	652
Examination by Mr. McGuire.....	654
Juror not qualified.....	658
URSULA REESE	
Examination by the Court.....	659
Examination by Mr. Barnette.....	675
Juror not qualified.....	677
DONNA CHAMPION	
Examination by the Court.....	677
Examination by Mr. Young.....	699
Examination by Mr. Barnette.....	715
Juror Qualified.....	720
DIANNE MARCOTTE	
Examination by the Court.....	720
Examination by Mr. McGuire.....	742
Examination by Mr. Barnette.....	749
Examination by Mr. McGuire.....	759
Examination by Mr. Barnette.....	760
Juror Qualified.....	761
ROBERT P. BLASINGAME	

Examination by the Court.....	765
Examination by Mr. Young.....	782
Examination by Mr. Barnette.....	791
Juror not qualified.....	794
STEPHANIE PARTRIDGE	
Examination by the Court.....	797
Examination by Mr. McGuire.....	816
Examination by Mr. Bulsa	825
Juror Qualified.....	832
GEORGE LAMB	
Examination by the Court.....	836
Examination by Mr. Barnette.....	854
Examination by Mr. McGuire.....	858
Examination continued by Mr. McGuire	876
Examination by Mr. Barnette.....	884
Juror Qualified.....	886
SAVANNAH MURRIEL	
Examination by the Court.....	890
Examination by Mr. McGuire.....	906
Juror not qualified.....	912
ANGELA BRADLEY	
Examination by the Court.....	913
Examination by Mr. Bulsa	931
Examination by Mr. Young.....	935
Examination by Mr. Bulsa	949
Examination by Mr. Young.....	950
Juror Qualified.....	952
VICKI SMITH	
Examination by the Court.....	954
Juror not qualified.....	962
ANDREA DINDY	
Examination by the Court.....	972
Examination by Mr. McGuire.....	989
Examination by Mr. Barnette.....	1001
Juror Qualified.....	1008
DIEGO CELINA ARANGURE	
Examination by the Court.....	1011
Examination by Mr. McGuire.....	1031
Juror not qualified.....	1033

BONNIE WATSON	
Examination by the Court.....	1034
Juror not qualified.....	1050
ALICE MOORE	
Examination by the Court.....	1055
Examination by Mr. McGuire.....	1074
Juror not qualified.....	1078
CAROLINE FRITCH	
Examination by the Court.....	1079
Examination by Mr. Barnette.....	1097
Examination by Mr. McGuire.....	1103
Examination by Mr. Barnette.....	1109
Examination by Mr. McGuire.....	1115
Examination by the Court.....	1115
Examination by Mr. McGuire.....	1121
Examination by Mr. Barnette.....	1125
Examination by the Court.....	1128
Juror Qualified.....	1139
JOHN DOUGLAS	
Examination by the Court.....	1142
Juror not qualified.....	1146
RICHARD ANDERSON	
Examination by the Court.....	1146
Examination by Mr. Bulsa	1169
Examination by Mr. McGuire.....	1175
Examination by Mr. Bulsa	1179
Examination continued by Mr. Bulsa	1189
Examination by Mr. McGuire.....	1190
Examination by the Court.....	1193
Examination continued by Mr. McGuire.....	1196
Juror Qualified.....	1200
FERRALL ERICKSON	
Examination by the Court.....	1203
Examination by Mr. Bulsa	1219
Examination by Mr. Young.....	1223
Examination by Mr. Bulsa	1132
Juror Qualified.....	1234
LINDA JEFFRIES	
Examination by the Court.....	1237

Examination by Mr. Young.....	1252
Juror not qualified.....	1256
WILLIAM VAN DE PLAAT	
Examination by the Court.....	1258
Examination by Mr. Young.....	1282
Examination by Mr. Barnette.....	1297
Juror Qualified.....	1305
ALFRED JONES	
Examination by the Court.....	1311
Juror not qualified.....	1323
STEPHANIE MITCHELL	
Examination by the Court.....	1324
Juror not qualified.....	1329
ROBERT STEPHENS	
Examination by the Court.....	1330
Examination by Mr. Barnette.....	1352
Examination by Mr. McGuire.....	1356
Examination by Mr. Barnette.....	1369
Juror Qualified.....	1371
MICHAEL MCINTYRE	
Examination by the Court.....	1374
Examination by Mr. Barnette.....	1391
Examination by Mr. McGuire.....	1398
Examination by Mr. Barnette.....	1405
Juror Qualified.....	1410
PATRICK CONT	
Examination by the Court.....	1412
Juror not qualified.....	1425
FRANCES VENSEL	
Examination by the Court.....	1426
Examination by Mr. Barnette.....	1445
Examination by Mr. McGuire.....	1451
Examination by Mr. Barnette.....	1459
Juror not qualified.....	1460
BARBARA COLLINS	
Examination by the Court.....	1461
Examination by Mr. McGuire.....	1483
Examination by Mr. Barnette.....	1498

Juror Qualified.....	1499
CICELY WHITE	
Examination by the Court.....	1503
Examination by Mr. Young.....	1521
Juror not qualified.....	1523
ELIZABETH PETTY	
Examination by the Court.....	1524
Juror not qualified.....	1534
TERRANCE RICHARDSON	
Examination by the Court.....	1535
Examination by Mr. Young.....	1554
Examination by Mr. Balsa.....	1570
Juror Qualified.....	1574
LAURA MATHERLY	
Examination by the Court.....	1578
Examination by Mr. Barnette.....	1598
Examination by Mr. McGuire.....	1603
Juror Qualified.....	1620
CORY CHEEKS	
Examination by the Court.....	1623
Examination by Mr. Barnette.....	1641
Examination by Mr. McGuire.....	1649
Juror Qualified.....	1654
MICHAEL BERRY	
Examination by the Court.....	1659
Examination by Mr. Barnette.....	1682
Examination by Mr. McGuire.....	1687
Examination by Mr. Barnette.....	1692
Examination by the Court.....	1695
Examination by Mr. McGuire.....	1699
Juror not qualified.....	1701
MATHEW PERRY	
Examination by the Court.....	1702
Juror not qualified.....	1707
TODD DANIELSON	
Examination by the Court.....	1708
Examination by Mr. McGuire.....	1728
Examination by Mr. Barnette.....	1741

Juror Qualified.....	1743
SONIA WRIGHT	
Examination by the Court.....	1746
Juror not qualified.....	1753
STACY FULLENWINDER	
Examination by the Court.....	1754
Examination by Mr. McGuire.....	1773
Examination by Mr. Bulsa	1779
Juror Qualified.....	1785
RAY ROTHENBURG	
Examination by the Court.....	1787
Examination by Mr. McGuire.....	1809
Examination by Mr. Bulsa	1819
Juror Qualified.....	1824
KAREN TREJO	
Examination by the Court.....	1829
Examination by Mr. Barnette.....	1847
Examination by Mr. Allen	1855
Examination by Mr. Barnette.....	1861
Juror Qualified.....	1862
KEITH SANDERS	
Examination by the Court.....	1865
Examination by Mr. Barnette.....	1882
Examination by Mr. McGuire.....	1889
Examination by Mr. Barnette.....	1897
Juror Qualified.....	1900
REGINALD FOWLER	
Examination by the Court.....	1902
Examination by Mr. McGuire.....	1920
Juror not qualified.....	1920
EDWARD GRABARKIEWCZ	
Examination by the Court.....	1921
Examination by Mr. Bulsa	1943
Examination by Mr. Allen	1948
Juror Qualified.....	1957
KIMBERLY HENSON	
Examination by the Court.....	1960
Examination by Mr. Barnette.....	1987

Examination by Mr. McGuire.....	1992
Examination by the Court.....	1994
Juror not qualified.....	1995
DAPHNE BILLINGS	
Examination by the Court.....	1995
Juror not qualified.....	2004
JOHN LINDSEY	
Examination by the Court.....	2004
Examination by Mr. McGuire.....	2029
Examination by Mr. Barnette.....	2038
Juror Qualified.....	2041
JENNIFER SALLEY	
Examination by the Court.....	2048
Juror not qualified.....	2052
DAVID LONG	
Examination by the Court.....	2052
Examination by Mr. Barnette.....	2073
Examination by Mr. McGuire.....	2080
Examination by Mr. Barnette.....	2088
Examination by Mr. McGuire.....	2090
Juror not qualified.....	2090
CHRISTOPHER GUENTHER	
Examination by the Court.....	2091
Examination by Mr. Bulsa.....	2110
Examination by Mr. McGuire.....	2116
Juror Qualified.....	2128
PAMELA PRUITT	
Examination by the Court.....	2130
Examination by Mr. Bulsa.....	2153
Examination by Mr. McGuire.....	2160
Examination by Mr. Bulsa.....	2173
Juror Qualified.....	2175
WENDELL WHITE	
Examination by the Court.....	2177
Examination by Mr. McGuire.....	2197
Examination by Mr. Barnette.....	2204
Examination by the Court.....	2206
Examination by Mr. McGuire.....	2209
Examination by Mr. Barnette.....	2211

Juror not qualified.....	2213
VERONICA FLOWERS	
Examination by the Court.....	2215
Juror not qualified.....	2232
DAVID BLACKSTONE	
Examination by the Court.....	2232
Examination by Mr. McGuire.....	2251
Examination by Mr. Barnette.....	2268
Juror Qualified.....	2271
MOTION TO EXCLUDE EVIDENCE OF MOTIVE BY MR. ALLEN	2280
MOTION TO COMPEL PRODUCTION OF THE REPORT OF DR. DONNA SCHWARTZ- WATTS	2281
MOTION FOR DISCOVERY	2282
RULING BY THE COURT ON MOTION TO COMPEL PRODUCTION OF THE REPORT OF DR. DONNA SCHWARTZ-WATTS.....	2299
RULING BY THE COURT ON MOTION TO EXCLUDE EVIDENCE OF MOTIVE BY MR. ALLEN	2300
RENEWAL OF ALL OF STATE’S MOTION FOR CAUSE WITH REGARD TO THE JURORS AND RENEWAL OF MOTIONS WITH REGARD TO THE ONES THAT WERE EXCUSED OVER OUR OBJECTION	2304
RENEWAL OF DEFENSE OBJECTIONS TO JURORS EXCUSED OVER OBJECTIONS	2305
RULING BY THE COURT ON RENEWAL OF BOTH STATE’S AND DEFENSE MOTIONS	2305
JURY SELECTION	2308
BATSON MOTIONS BY DEFENSE.....	2309
RULING BY THE COURT	2319
RENEWAL OF BATSON MOTIONS.....	2322
RULING BY THE COURT	2323
SWEARING OF THE JURY	2331

COURT’S OPENING COMMENTS	2331
OPENING STATEMENT BY MR. BULSA	2345
OPENING STATEMENT BY MR. MCGUIRE	2349
GUILT PHASE TESTIMONY	
WILLIAM “BILL” MEYER	
Direct examination by Mr. Barnette	2355
Cross examination by Mr. Allen	2374
ANGELA DAVIS	
Direct examination by Mr. Barnette	2378
Continued direct examination by Mr. Barnette	2385
Cross examination by Mr. McGuire	2394
MOTION TO STRIKE TESTIMONY REGARDING MENTAL HEALTH RECORDS.....	2409
RULING BY THE COURT	2410
MOTION IN LIMINE	2415
RULING BY THE COURT ON MOTION IN LIMINE	2417
DEFENSE MOTION REGARDING MENTAL HEALTH RECORDS AND IMPEACHMENT	
.....	2435
RULING BY THE COURT	2436
ANGELA DAVIS	
Continued cross examination by Mr. McGuire	2440
Redirect examination by Mr. Barnette.....	2446
Recross examination by Mr. McGuire.....	2448
Redirect examination by Mr. Barnette.....	2450
Proffered testimony by Mr. McGuire	2451
SCOTT FRANCES	
Direct examination by Mr. Barnette	2467
MARK BRYANT	
Direct examination by Mr. Bulsa.....	2470
Cross examination by Mr. McGuire	2481
Redirect examination by Mr. Bulsa	2487

JOHN SMOAK	
Direct examination by Mr. Bulsa.....	2492
Cross examination by Mr. Allen.....	2504
Redirect examination by Mr. Bulsa	2512
SEAN NIX	
Direct examination by Mr. Bulsa.....	2516
Cross examination by Mr. Allen.....	2529
DAVID WREN	
Direct examination by Mr. Barnette	2533
ROBERT TALANGES	
Direct examination by Mr. Barnette	2542
Cross examination by Mr. Allen.....	2552
SUZANNE CROMER	
Direct examination by Mr. Barnette	2555
STATE RESTS.....	2566
MOTION FOR DIRECTED VERDICT.....	2566
RULING BY THE COURT	2566
COLLOQUY ON DEFENDANT’S RIGHT TO TESTIFY	2567
DEFENSE RESTS.....	2574
CLOSING ARGUMENT BY MR. BARNETTE	2575
CLOSING ARGUMENT BY MR. MCGUIRE.....	2578
CHARGE ON THE LAW	2579
VERDICT	2602
JOINT MOTION TO INCORPORATE EVIDENCE FROM THE GUILT PHASE INTO THE SENTENCING PHASE	2608
RULING BY THE COURT	2608
OPENING COMMENTS BY MR. BULSA CONCERNING PENALTY PHASE	2611
OPENING COMMENTS BY MR. MCGUIRE CONCERNING PENALTY PHASE.....	2616

PENALTY PHASE TESTIMONY

JOHN SLOAN

Direct examination by Mr. Barnette 2625

ELIZABETH SIMA

Direct examination by Mr. Bulsa..... 2632

GAIL MOFFITT

Direct examination by Mr. Barnette 2645

Cross examination by Mr. McGuire 2647

MICHAEL JONES

Direct examination by Mr. Barnette 2649

Cross examination by Mr. Allen 2652

Redirect examination by Mr. Barnette..... 2656

IRENE BLACKWELL

Direct examination by Mr. Barnette 2657

Cross examination by Mr. McGuire 2664

Redirect examination by Mr. Barnette..... 2666

MICAH HORTON

Direct examination by Mr. Bulsa..... 2667

Cross examination by Mr. Allen 2670

TIM TIMMONS

Direct examination by Mr. Bulsa..... 2673

Cross examination by Mr. Allen 2677

LORIN WILLIAMS

Direct examination by Mr. Barnette 2680

Cross examination by Mr. McGuire 2686

Redirect examination by Mr. Barnette..... 2690

DR. DAVID WREN

Direct examination by Mr. Barnette 2709

DAVID HOGSED

Direct examination by Mr. Barnette 2725

AMY NUNNARY

Direct examination by Mr. Barnette 2730

DEBBIE ALTON

Direct examination by Mr. Barnette 2735

STATE RESTS	2747
GAIL SHOOK	
Direct examination by Mr. McGuire	2757
Cross examination by Mr. Barnette	2770
OBJECTIONS TO DR. CALLOWAYS POWER POINT PRESENTATION AND REPORT	2773
RULING BY THE COURT	2797
DR. GINGER CALLOWAY	
Direct examination by Mr. Allen	2799
Cross examination by Mr. Ghent	2806
Direct examination by Mr. Allen	2810
Continued direct examination by Mr. Allen	2889
Cross examination by Mr. Barnette	2919
Redirect examination by Mr. Allen	2946
Recross examination by Mr. Barnette	2955
STATE’S OBJECTION TO DEFENDANT’S EXHIBIT EIGHT AND TESTIMONY OF GRACIE WILLIAMS	2960
RULING BY THE COURT	2965
GRACIE WILLIAMS (PROFFER)	
Direct examination by Mr. McGuire	2966
DR. DONNA SCHWARTZ-WATTS	
Direct examination by Mr. McGuire	2973
SHERRY WOFFORD	
Direct examination by Mr. McGuire	2989
HEATHER BRYANT	
Direct examination by Mr. McGuire	3000
Cross examination by Mr. Barnette	3020
BRITTANY FOWLER	
Direct examination by Mr. McGuire	3025
NORM UBER	
Direct examination by Mr. McGuire	3030
Cross examination by Mr. Bulsa	3034

CLETUS BLACKWELL	
Direct examination by Mr. McGuire	3037
Cross examination by Mr. Barnette	3048
Redirect examination by Mr. McGuire.....	3052
Recross examination by Mr. Barnette.....	5053
JAMES HAMRICK	
Direct examination by Mr. McGuire	3056
MARY YOUMANS	
Direct examination by Mr. McGuire	3061
Cross examination by Mr. Bulsa.....	3070
KEN RICE	
Direct examination by Mr. McGuire	3071
Continued direct examination by Mr. McGuire.....	3077
Cross examination by Mr. Barnette	3087
MILDRED BLACKWELL	
Direct examination by Mr. Allen	3101
CLETUS BLACKWELL (PROFFER)	
Direct examination by Mr. Barnette	3115
DEFENSE RESTS	3120
STATE’S REBUTTAL.....	3120
CLETUS BLACKWELL	
Direct examination by Mr. Barnette	3121
Cross examination by Mr. McGuire	3123
REGGIE FRYE	
Direct examination by Mr. Barnette	3126
Cross examination by Mr. McGuire	3128
STATE RESTS.....	3136
CHARGE AND VERDICT FORM REQUESTS	3139
RULING BY THE COURT	3160
CLOSING ARGUMENT BY MR. BARNETTE	3164
CLOSING ARGUMENT BY MR. MCGUIRE.....	3187

CHARGE ON THE LAW	3217
RENEWAL OF MOTIONS	3244
RULING BY THE COURT	3244
NOTE FROM THE JURY	3251
REQUEST FROM THE JURY FOR WHITEBOARD OR CHALKBOARD	3251
NOTE FROM THE JURY	3252
VERDICT	3257
SENTENCE OF DEATH ON MURDER CHARGE	3258
POLLING OF THE JURY	3259
SENTENCE FOR KIDNAPPING	3262
TRIAL COURT’S EXHIBIT #3 (STATEMENT OF ANGELA BLACKWELL).....	3265
MOTION FOR CHANGE OF VENUE BASED ON THE RETALIATORY ATTEMPTED MURDER OF THE DEFENDANT’S FAMILY MEMBERS AND THE POTENTIAL THREATS OF VIOLENCE AND INTIMIDATION FROM OTHERS, INCLUDING LOCAL BIKER GANGS	3266
MOTION FOR CHANGE OF VENUE BASED ON PRE-TRIAL PUBLICITY AND POTENTIAL PRESENCE OF BIKER GANGS WHICH WILL INFLUENCE JURORS AND DENY THE DEFENDANT’S RIGHT TO A FAIR AND IMPARTIAL TRIAL	3275
STATE’S RETURN TO DEFENDANT’S MOTIONS FOR CHANGE OF VENUE	3285
FOIA OBJECTIONS; MOTION FOR PROTECTIVE OR MODIFYING ORDER UNDER SCRCrP 5(d)(1), AND REMEDIES	3288
DEFENDANT’S EXHIBIT # 8 (HOSPITAL RECORD FOR APPELLANT).....	3386
NOTICE OF MOTION AND MOTION IN LIMINE	3387
STATE’S RETURN TO DEFENDANT’S MOTION IN LIMINE (DEFENDANT’S PLEADINGS # 23 & 25).....	3390
JURY STRIKE LIST FOR TRIAL WITH RACE AND GENDER STRIKES INCLUDED...	3391

COURT’S EXHIBIT # 16 “JUROR RAP SHEETS” ON THE SITTING AND STRUCK JURORS (INCLUDING JUROR CHAMPION QUESTIONNAIRE)	3393
COURT’S EXHIBIT # 9 (JUROR QUESTIONNAIRES)	3496
STATE’S RETURN TO DEFENDANT’S MOTION TO PRESERVE VOIR DIRE ANALYSIS FOR DEFENDANT’S USE IN FUTURE PROCEEDINGS	3708
STATE’S RETURN TO DEFENDANT’S MOTION TO PRESERVE NOTES, ET AL.	3710
COURT’S EXHIBIT # 11 (DEFENDANT’S PROPOSED JURY INSTRUCTIONS)	3711
COURT’S EXHIBIT # 12 (DEFENDANT’S PROPOSED MITIGATING CIRCUMSTANCES FINDINGS)	3729
COURT’S EXHIBIT # 13 (DEFENDANT’S PROPOSED VERDICT FORM ON INTELLECTUAL DISABILITY)	3734
JURY’S FINDING AS TO INTELLECTUAL DISABILITY	3735
MOTION TO EXCLUDE TESTIMONY OF DR. GINGER CALLOWAY	3736
STATE’S RETURN TO DEFENDANT’S DISCOVERY MOTION TO DENY MEANINGFUL ACCESS TO <i>ATKINS</i> SENTENCING INFORMATION	3746
STATE’S RETURN TO DEFENDANT’S MOTION TO EXCLUDE EVIDENCE OF EVALUATION BY DR. BROWN	3760
<i>ATKINS</i> HEARING TRANSCRIPT DATED FEBRUARY 19-21, 2014	3765
REQUEST FROM STATE TO BE ALLOWED TO GO FORWARD WITH DR. HARRISON’S TESTIMONY OUT OF ORDER	3773
DR. KIMBERLY HARRISON	
Direct examination by Mr. Barnette	3775
Cross examination by Mr. Allen	3778
Direct examination by Mr. Barnette	3779
Cross examination by Mr. Allen	3790
Redirect examination by Mr. Barnette	3821
Recross examination by Mr. Allen	3824
DR. GINGER CALLOWAY	
Direct examination by Mr. McGuire	3828
Continued direct examination by Mr. McGuire	3913
Continued direct examination by Mr. McGuire	3942
Continued direct examination by Mr. McGuire	3961

Cross examination by Mr. Ghent.....	3964
Continued cross examination by Mr. Ghent	4012
Continued cross examination by Mr. Ghent	4057
Redirect examination by Mr. McGuire.....	4096
Recross examination by Mr. Ghent	4113
Redirect examination by Mr. McGuire.....	4129
 DR. GORDON BROWN	
Direct examination by Mr. Bulsa.....	4135
Cross examination by Mr. McGuire	4138
Continued direct examination by Mr. Bulsa.....	4139
Continued direct examination by Mr. Bulsa.....	4176
Cross examination by Mr. McGuire	4190
Redirect examination by Mr. Bulsa	4238
Recross examination by Mr. McGuire.....	4245
 DR. GINGER CALLOWAY (REBUTTAL)	
Direct examination by Mr. McGuire	4249
Cross examination by Mr. Barnette	4261
Redirect examination by Mr. McGuire.....	4280
Recross examination by Mr. Barnette.....	4282
 ARGUMENT BY MR. MCGUIRE.....	 4289
 ARGUMENT BY MR. BARNETTE	 4314
 <i>ATKINS</i> ORDER DATED FEBRUARY 24, 2014.....	 4324
 <i>ATKINS</i> HEARING EXHIBITS	
DEFENDANT’S EXHIBIT # 1 (TESTS).....	4326
DEFENDANT’S EXHIBIT # 2 (TESTS).....	4327
DEFENDANT’S EXHIBIT # 3 (TESTS).....	4328
DEFENDANT’S EXHIBIT # 4 (TESTS).....	4329
DEFENDANT’S EXHIBIT # 5 (TESTS).....	4330
DEFENDANT’S EXHIBIT # 6 (RECORDS).....	4331
DEFENDANT’S EXHIBIT # 7 (CURRICULUM VITAE)	4335
DEFENDANT’S EXHIBIT # 8 (DR. CALLOWAY’S REPORT AND HER SUPPLEMENTAL REPORT).....	4358

DEFENDANT’S EXHIBIT # 12 (EMPLOYMENT RECORDS)	4406
STATES’S EXHIBIT # 1 (REPORT)	4407
STATES’S EXHIBIT # 2 (REPORT)	4409
STATES’S EXHIBIT # 7 (MARY BLACK RECORD)	4411
COURT’S EXHIBIT # 1 (CURRICULUM VITAE).....	4420
COURT’S EXHIBIT # 2 (DMH REPORT).....	4421
COURT’S EXHIBIT # 3 (CURRICULUM VITAE).....	4429
COURT’S EXHIBIT # 4 (REPORT)	4436
TRANSCRIPT DATED JUNE 13, 2012	4448
TRANSCRIPT DATED AUGUST 8, 2012	4475
TRANSCRIPT DATED MAY 22, 2012	4492
TRANSCRIPT DATED AUGUST 30, 2013	4504
PRETRIAL MOTIONS HEARING TRANSCRIPT DATED NOVEMBER 6, 2013	4528
LORIN WILLIAMS	
Direct examination by Mr. Barnette	4536
Cross examination by Mr. McGuire	4542
Redirect examination by Mr. Barnette.....	4548
MOTION TO WITHDRAW PREVIOUSLY FILED RULE 5 MOTION	4549
RULING BY THE COURT	4552
MOTION FOR AN ORDER ALLOWING THE DEFENDANT TO EXAMINE CRITICAL EVIDENCE	4552
RULING BY THE COURT	4553
DEFENDANT’S ASSERTION OF FIFTH AND SIXTH AMENDMENT RIGHT AND REVOCATION OF ANY PRIOR WAIVER	4553
RULING BY THE COURT	4553

MOTION FOR AN ORDER TO PRESERVE ALL EVIDENCE TO PRECLUDE ANY STATE TESTING OR EXAMINATION OF EVIDENCE THAT WOULD ALTER, REDUCE, OR DESTROY EVIDENCE WITHOUT NOTICE TO THE DEFENSE WITHOUT PRIOR COURT APPROVAL.....	4554
RULING BY THE COURT	4555
MOTION FOR AN ORDER TO PRESERVE COMPARATIVE JUROR ANALYSIS	4555
RULING BY THE COURT	4560
MOTION TO REQUIRE THE STATE TO RESPOND IN WRITING TO EACH MOTION WHICH IS CONTESTED.....	4560
RULING BY THE COURT	4560
MOTION FOR A GAG ORDER	4561
RULING BY THE COURT	4561
MOTION TO REQUIRE INVESTIGATIVE AGENCIES TO PRESERVE NOTES ON ALL INTERVIEWS AND INVESTIGATIVE ACTIONS	4561
RULING BY THE COURT	4562
MOTION TO SHOW CAUSE	4563
RULING BY THE COURT	4574
MOTION FOR AN ORDER PROMULGATING THE DEFENDANT’S JUROR QUESTIONNAIRE	4576
RULING BY THE COURT	4576
MOTION TO CHANGE VENUE BASED ON PRETRIAL PUBLICITY	4580
MOTION IN LIMINE TO ADMIT DATA LIFE EXPECTANCY.....	4581
RULING BY THE COURT	4586
MOTION TO COMPEL DISCLOSURE OF JUROR’S CRIMINAL HISTORY DATA	4586
MOTION FOR CONSTUTIONALLY ADEQUATE VOIR DIRE	4593
MOTION FOR DISCLOSURE OF PSYCHIATRIC HISTORY OF STATE’S WITNESSES	4601

MOTION THAT JURY NOT BE SEQUESTERED.....	4605
RULING BY THE COURT	4609
MOTION IN LIMINE TO PREVENT INTRODUCTION OF EVIDENCE OF ATTEMPTED MURDER OF DEFENDANT’S FAMILY MEMBERS	4610
MOTION IN LIMINE TO SUPPRESS CERTAIN PHYSICAL EVIDENCE (KNIFE)	4613
RULING BY THE COURT	4623
<i>JACKSON V. DENNO</i> HEARING	4636
MICHAEL HORTON	
Direct examination by Mr. Bulsa.....	4637
Cross examination by Mr. McGuire	4641
Redirect examination by Mr. Bulsa	4646
Recross examination by Mr. McGuire.....	4647
JOSH GILLESPIE	
Direct examination by Mr. Barnette	4649
Cross examination by Mr. McGuire	4651
JASON BRYANT	
Direct examination by Mr. Barnette	4660
Cross examination by Mr. McGuire	4662
Redirect examination by Mr. Barnette.....	4692
Recross examination by Mr. McGuire.....	4693
TIM TIMMONS	
Direct examination by Mr. Bulsa.....	4702
Cross examination by Mr. McGuire	4706
TRANSCRIPT DATED JANUARY 6, 2014.....	4717
STATE’S MOTION TO COMPEL	4720
RULING BY THE COURT	4728
TRANSCRIPT DATED JANUARY 28, 2014.....	4738
TRANSCRIPT DATED FEBRUARY 28, 2014	4757
JURY SELECTION TRANSCRIPT DATED MARCH 11, 2014	4802

TRANSCRIPT DATED MARCH 20, 2014	4812
INDICTMENTS	4829
SEALED MATERIALS FROM THE DIRECT APPEAL RECORD ON APPEAL ARE EXCLUDED FROM THIS APPENDIX BUT ARE ON FILE WITH THE COURT IN THE SEALED VOLUME 10 OF THE RECORD ON APPEAL FOR CASE NUMBER 2014-000610 (ROA PAGES 4833-4986)	
POST-CONVICTION RELIEF PROCEEDINGS.....	4833
MOTION FOR A STAY OF EXECUTION AND FOR THE APPOINTMENT OF A POST-CONVICTION RELIEF JUDGE DATED FEBRUARY 27, 2018	4833
RETURN TO MOTION FOR A STAY OF EXECUTION AND FOR APPOINTMENT OF A POST-CONVICTION RELIEF JUDGE DATED MARCH 2, 2018	4839
ORDER STAYING EXECUTION FOR POST-CONVICTION RELIEF AND ASSIGNING JUDGE DATED MARCH 29, 2018.....	4843
APPLICATION FOR POST-CONVICTION RELIEF DATED MARCH 12, 2018	4845
RETURN TO APPLICATION FOR POST-CONVICTION RELIEF DATED APRIL 23, 2018	4850
ORDER APPOINTING COUNSEL DATED MAY 2, 2018	4893
AMENDED APPLICATION FOR POST-CONVICTION RELIEF DATED FEBRUARY 19, 2019	4898
SECOND AMENDED APPLICATION FOR POST-CONVICTION RELIEF DATED FEBRUARY 20, 2019	4905
RETURN TO SECOND AMENDED APPLICATION AND MOTION FOR A MORE DEFINITE STATEMENT DATED MARCH 22, 2019	4913
THIRD AMENDED APPLICATION FOR POST-CONVICTION RELIEF DATED NOVEMBER 10, 2021	5025
MEMORANDUM CLARIFYING STATUS OF AMENDMENTS TO APPLICATION FOR POST-CONVICTION RELIEF AND PROVIDING DISCOVERY DATED SEPTEMBER 7, 2022	5033
APPLICANT’S NOTICE OF INTENT TO RELY ON AFFIDAVITS DATED MARCH 13, 2023	5167

STATE’S OBJECTION TO APPLICANT’S INTENT TO RELY ON AFFIDAVITS DATED MARCH 20, 2023	5179
RETURN TO THIRD AMENDED APPLICATION FOR POST-CONVICTION RELIEF AND MOTION TO DISMISS CLAIM PREVIOUSLY LITIGATED DATED MARCH 27, 2023	5200
ORDER ALLOWING THE DEPOSITION OF DR. GORDON BROWN DATED MAY 30, 2023	5290
APPLICANT’S MOTION TO EXCLUDE OR LIMIT TESTIMONY OF DR. ROBERT NELSON OR IN THE ALTERNATIVE TO COMPEL DISCLOSURE OF DR. NELSON’S OPINIONS DATED JULY 27, 2023	5292
APPLICANT’S RESPONSE TO MOTION TO DISMISS CLAIM PREVIOUSLY LITIGATED DATED JULY 27, 2023	5299
POST-CONVICTION RELIEF EVIDENTIARY HEARING TRANSCRIPTS	
POST-CONVICTION EVIDENTIARY HEARING TRANSCRIPT DATED MARCH 27- 31, 2023	5315
PREHEARING MATTERS	5329
APPLICANT’S CASE IN CHIEF	5333
KARA RICHARDS-BAKER	
Direct examination by Ms. Vann	5346
Cross examination by Mr. Evans	5393
Redirect examination by Ms. Vann.....	5429
Recross examination by Mr. Evans	5431
MOTION TO WAIVE APPLICANT’S PRESENCE AT HEARING.....	5432
WILLIAM SEAN MCGUIRE	
Direct examination by Mr. Grose	5437
Cross examination by Mr. Evans	5557
Redirect examination by Mr. Grose.....	5649
Recross examination by Mr. Evans	5657
DR. DONNA MADDOX	
Direct examination by Mr. Grose	5659
Cross examination by Mr. Mabry	5689
Redirect examination by Mr. Grose.....	5738
Recross examination by Mr. Mabry	5751
Redirect examination by Mr. Grose.....	5758

DR. CHRISTOPHER CUNNIFF	
Direct examination by Mr. Grose	5763
Cross examination by Ms. Brown	5766
Continued direct examination by Mr. Grose	5767
Cross examination by Ms. Brown	5783
Redirect examination by Mr. Grose.....	5801
Recross examination by Ms. Brown.....	5802
DR. ARLENE BOWERS ANDREWS	
Direct examination by Ms. Vann	5806
Continued direct examination by Ms. Vann	5848
Cross examination by Mr. Evans	5875
Redirect examination by Ms. Vann.....	5898
RESPONDENT’S OBJECTION TO THE TESTIMONY OF DR. OLLEY	
5901	
DR. JOHN GREGORY OLLEY	
Direct examination by Ms. Vann	5913
Cross examination by Ms. Brown	5968
RESPONDENT’S OBJECTION TO THE TESTIMONY OF DR. KNIGHT	
5982	
DR. SUSAN KNIGHT	
Direct examination by Ms. Vann	5989
Cross examination by Mr. Evans	5994
Continued direct examination by Ms. Vann	5995
Cross examination by Mr. Evans	6047
Continued cross examination by Mr. Evans	6137
Redirect examination by Ms. Vann.....	6157
Recross examination by Mr. Evans	6166
DR. GEORGE PATRICK CORVIN	
Direct examination by Mr. Grose	6170
Cross examination by Mr. Evans.....	6272
Redirect examination by Mr. Grose.....	6322
Recross examination by Mr. Evans	6337
DR. GORDON EDGAR BROWN, JR.	
Direct examination by Ms. Vann	6341
Cross examination by Mr. Evans.....	6355
PARTY DISCUSSION ABOUT THE TESTIMONY OF DR. BROWN	
6371	
DR. JAMES FRANK AUSTIN	
Direct examination by Ms. Vann	6384

Cross examination by Mr. Evans	6392
Redirect examination by Ms. Vann.....	6400
Recross examination by Mr. Evans	6401
DAVID ALEXANDER	
Direct examination by Mr. Grose	6407
Cross examination by Ms. Brown	6424
Redirect examination by Mr. Grose.....	6432
ROBERT DUDEK	
Direct examination by Mr. Grose	6437
CLAY T. ALLEN	
Direct examination by Mr. Grose	6449
Cross examination by Mr. Mabry	6477
REVEREND ABIGAIL MOON	
Direct examination by Ms. Vann	6547
Cross examination by Mr. Evans	6550
CLAY T. ALLEN	
Redirect examination by Mr. Grose.....	6553
Recross examination by Mr. Mabry	6577
REVEREND VICKI HESSE	
Direct examination by Ms. Vann	6593
Cross examination by Mr. Evans	6596
DISCUSSION ABOUT NEXT STEPS AMONG PARTIES AND COURT	
	6598
POST-CONVICTION EVIDENTIARY HEARING TRANSCRIPT DATED JULY 31, 2023	
.....	6614
PREHEARING MATTERS	
	6617
ROBERT DUDEK	
Direct examination by Mr. Grose	6619
DR. GORDON BROWN	
Cross examination by Mr. Evans	6627
Continued cross examination by Mr. Evans	6700
Redirect examination by Ms. Vann.....	6734
Recross examination by Mr. Evans	6740
APPLICANT RESTS CASE IN CHIEF.....	
	6744

STATE’S CASE IN CHIEF	6744
DISCUSSION ON RESPONDENT’S MOTION TO DISMISS AND APPLICANT’S MOTION TO EXCLUDE OR LIMIT DR. NELSON’S TESTIMONY	6744
POST-CONVICTION EVIDENTIARY HEARING TRANSCRIPT DATED AUGUST 1, 2023	6767
JUDY SHIELDS	
Direct examination by Mr. Mabry	6770
Cross examination by Ms. Vann	6776
Redirect examination by Mr. Mabry.....	6777
BARRY BARNETTE	
Direct examination by Mr. Mabry	6779
Cross examination by Mr. Grose	6802
Redirect examination by Mr. Mabry.....	6814
Recross examination by Mr. Grose.....	6816
CONTINUED DISCUSSION ON MOTION TO EXCLUDE OR LIMIT DR. NELSON’S TESTIMONY	6817
POST-CONVICTION EVIDENTIARY HEARING TRANSCRIPT DATED AUGUST 2, 2023	6824
DR. ROBERT CHARLES NELSON	
Direct examination by Mr. Evans	6827
Cross examination by Mr. Grose	6837
CONTINUED DISCUSSION ON MOTION TO EXCLUDE OR LIMIT DR. NELSON’S TESTIMONY	6838
DR. ROBERT CHARLES NELSON	
Redirect examination by Mr. Evans	6854
Recross examination by Mr. Grose.....	6880
Redirect examination by Mr. Evans	6888
DISCUSSION ON AVAILABILITY OF DR. ROBERT JACKSON	6891
POST-CONVICTION EVIDENTIARY HEARING TRANSCRIPT DATED DECEMBER 15, 2023	6900
DR. ROBERT E. JACKSON	
Direct examination by Mr. Evans	6904
Cross examination by Mr. Grose	6915
Redirect examination by Mr. Evans	6924

RESPONDENT RESTS CASE IN CHIEF	6928
APPLICANT REPLY CASE	6929
KARA RICHARDS-BAKER	
Direct examination by Ms. Vann	6931
Cross examination by Mr. Evans	6933
APPLICANT RESTS REPLY CASE	6936
COURT CONCLUDES COLLECTION OF EVIDENCE	6938
POST-CONVICTION RELIEF MARCH 27-31, 2023 HEARING EXHIBITS.....	6940
APPLICANT’S EXHIBIT # 1 (AFFIDAVIT OF BEVERLY DAVES)	6940
APPLICANT’S EXHIBIT # 2 (AFFIDAVIT OF WILLIAM HAYES)	6941
APPLICANT’S EXHIBIT # 3 (AFFIDAVIT OF SONYA STOTT)	6942
APPLICANT’S EXHIBIT # 4 (AFFIDAVIT OF GERALDINE WHITE)	6943
APPLICANT’S EXHIBIT # 5 (AFFIDAVIT OF GLENDA WOOTEN)	6945
APPLICANT’S EXHIBIT # 6 (RICHARDS-BAKER <i>ATKINS</i> EMAILS)	6947
APPLICANT’S EXHIBIT # 7 (RICHARDS-BAKER WITNESS INTERVIEW SUMMARIES)	6954
APPLICANT’S EXHIBIT # 8 (RICHARDS-BAKER MEMO ON STATE ARGUMENTS AGAINST ID)	6962
APPLICANT’S EXHIBIT # 9 (RICHARDS-BAKER PSYCHIATRIST EMAILS).....	6963
APPLICANT’S EXHIBIT # 10 (RICHARDS-BAKER NOTES – ISSUES FOR POST- CONVICTION)	6974
APPLICANT’S EXHIBIT # 11 (EX PARTE FUNDING MOTION – MITIGATION INVESTIGATOR DATED 12-22-2010)	6975
APPLICANT’S EXHIBIT # 12 (EX PARTE FUNDING ORDER – MITIGATION INVESTIGATOR DATED 12-22-2010)	6981
APPLICANT’S EXHIBIT # 13 (EVELYN PHILLIPS WITHDRAWAL LETTER DATED 04-18- 2011)	6983

APPLICANT’S EXHIBIT # 14 (EVELYN PHILLIPS INVOICE)	6984
APPLICANT’S EXHIBIT # 15 (EX PARTE FUNDING MOTION – MITIGATION INVESTIGATOR DATED 01-23-2012)	6986
APPLICANT’S EXHIBIT # 16 (EX PARTE FUNDING ORDER – MITIGATION INVESTIGATOR DATED 01-31-2012)	6992
APPLICANT’S EXHIBIT # 17 (EX PARTE FUNDING MOTION – MITIGATION INVESTIGATOR DATED 06-07-2012)	6994
APPLICANT’S EXHIBIT # 18 (EX PARTE FUNDING ORDER – MITIGATION INVESTIGATOR DATED 06-12-2012)	7000
APPLICANT’S EXHIBIT # 19 (EX PARTE FUNDING MOTION – MITIGATION INVESTIGATOR DATED 08-14-2012)	7002
APPLICANT’S EXHIBIT # 20 (EX PARTE FUNDING ORDER – MITIGATION INVESTIGATOR DATED 08-14-2012)	7008
APPLICANT’S EXHIBIT # 21 (EX PARTE FUNDING MOTION – MITIGATION INVESTIGATOR DATED 01-22-2014)	7010
APPLICANT’S EXHIBIT # 22 (EX PARTE FUNDING ORDER – MITIGATION INVESTIGATOR DATED 01-22-2014)	7016
APPLICANT’S EXHIBIT # 23 (EX PARTE FUNDING MOTION – DR. CALLOWAY DATED 06-14-2012)	7018
APPLICANT’S EXHIBIT # 24 (EX PARTE FUNDING ORDER – DR. CALLOWAY DATED 06-16-2012)	7025
APPLICANT’S EXHIBIT # 25 (EX PARTE JAIL ACCESS MOTION – DR. CALLOWAY DATED 06-25-2012)	7027
APPLICANT’S EXHIBIT # 26 (EX PARTE JAIL ACCESS ORDER – DR. CALLOWAY DATED 06-25-2012)	7029
APPLICANT’S EXHIBIT # 27 (EX PARTE FUNDING MOTION – DR. CALLOWAY DATED 11-30-2012)	7031
APPLICANT’S EXHIBIT # 28 (EX PARTE FUNDING ORDER – DR. CALLOWAY DATED 11-30-2012)	7038

APPLICANT’S EXHIBIT # 29 (EX PARTE FUNDING MOTION – DR. CALLOWAY DATED 01-22-2014)	7040
APPLICANT’S EXHIBIT # 30 (EX PARTE FUNDING ORDER – DR. CALLOWAY DATED 01-22-2014)	7047
APPLICANT’S EXHIBIT # 31 (EX PARTE FUNDING MOTION – DR. CALLOWAY DATED 02-27-2014)	7049
APPLICANT’S EXHIBIT # 32 (EX PARTE FUNDING ORDER – DR. CALLOWAY DATED 02-27-2014)	7055
APPLICANT’S EXHIBIT # 33 (DR. CALLOWAY PSYCHOLOGICAL REPORT & SUPPLEMENTAL REPORT)	7057
APPLICANT’S EXHIBIT # 34 (DDSN DIAGNOSTIC EVALUATION REPORT OF DR. GORDON BROWN)	7105
APPLICANT’S EXHIBIT # 35 (TRIAL COURT ORDER DENYING <i>ATKINS</i> RELIEF)	7117
APPLICANT’S EXHIBIT # 36 (EX PARTE FUNDING MOTION – TREATING PSYCHIATRIST DATED 07-24-2009)	7131
APPLICANT’S EXHIBIT # 37 (EX PARTE FUNDING ORDER – TREATING PSYCHIATRIST DATED 07-24-2009)	7137
APPLICANT’S EXHIBIT # 38 (EX PARTE FUNDING ORDER – DR. SCHWARTZ-WATTS DATED 06-08-2010)	7139
APPLICANT’S EXHIBIT # 39 (EX PARTE FUNDING MOTION – DR. SCHWARTZ-WATTS DATED 02-25-2014)	7141
APPLICANT’S EXHIBIT # 40 (EX PARTE FUNDING ORDER – DR. SCHWARTZ-WATTS DATED 02-24-2014)	7146
APPLICANT’S EXHIBIT # 41 (LETTER FROM DR. SCHWARTZ-WATTS TO CLAY ALLEN DATED 12-12-2010)	7148
APPLICANT’S EXHIBIT # 42 (REPORT OF PSYCHIATRIC EVALUATION FROM DR. SCHWARTZ-WATTS DATED 03-05-2014)	7149
APPLICANT’S EXHIBIT # 43 (EX PARTE FUNDING MOTION – DR. CORVIN DATED 10-26-2012)	7156
APPLICANT’S EXHIBIT # 44 (EX PARTE FUNDING ORDER – DR. CORVIN DATED 10-26-2012)	7165

APPLICANT’S EXHIBIT # 45 (EX PARTE JAIL ACCESS MOTION – DR. CORVIN DATED 11-13-2012)	7167
APPLICANT’S EXHIBIT # 46 (EX PARTE JAIL ACCESS ORDER – DR. CORVIN DATED 11-14-2012)	7169
APPLICANT’S EXHIBIT # 47 (DR. CORVIN INVOICE)	7171
APPLICANT’S EXHIBIT # 48 (EX PARTE FUNDING MOTION – JAMES AIKEN DATED 02-21-2014)	7172
APPLICANT’S EXHIBIT # 49 (EX PARTE FUNDING ORDER – JAMES AIKEN DATED 02-21-2014).....	7174
APPLICANT’S EXHIBIT # 50 (JAMES AIKEN INVOICE)	7176
APPLICANT’S EXHIBIT # 51 (CHAPLAIN NOTES – DEFENDANT’S EXHIBIT 8 FROM TRIAL)	7178
APPLICANT’S EXHIBIT # 52 (DR. ARLENE ANDREWS CURRICULUM VITAE)	7179
APPLICANT’S EXHIBIT # 53 (DR. ARLENE ANDREWS SOURCE LIST)	7186
APPLICANT’S EXHIBIT # 54 (DR. ARLENE ANDREWS REPORT).....	7190
APPLICANT’S EXHIBIT # 55 (DR. ARLENE ANDREWS FAMILY TREE)	7214
APPLICANT’S EXHIBIT # 56 (PATRICK B. HARRIS PSYCHIATRIC HOSPITAL RECORDS FOR RICKEY BLACKWELL).....	7216
APPLICANT’S EXHIBIT # 57 (CAROLINA CENTER FOR BEHAVIORAL HEALTH RECORDS FOR RICKEY BLACKWELL)	7272
APPLICANT’S EXHIBIT # 58 (DR. GREGORY OLLEY CURRICULUM VITAE).....	7358
APPLICANT’S EXHIBIT # 59 (DR. GREGORY OLLEY POWERPOINT)	7376
APPLICANT’S EXHIBIT # 60 (DR. CHRISTOPHER CUNNIFF CURRICULUM VITAE)	7400
APPLICANT’S EXHIBIT # 61 (DR. CHRISTOPHER CUNNIFF SWORN STATEMENT)	7428
APPLICANT’S EXHIBIT # 62 (DR. SUSAN KNIGHT CURRICULUM VITAE)	7470

APPLICANT’S EXHIBIT # 63 (DR. SUSAN KNIGHT REPORT)	7481
APPLICANT’S EXHIBIT # 64 (RICKEY BLACKWELL SCHOOL RECORDS).....	7528
APPLICANT’S EXHIBIT # 65 (CHART SUMMARIZING RICKEY BLACKWELL TRUCKING RECORDS AND HISTORY)	7549
APPLICANT’S EXHIBIT # 66 (RICKEY BLACKWELL TRUCKING RECORDS)	7551
APPLICANT’S EXHIBIT # 67 (DR. GEORGE CORVIN CURRICULUM VITAE)	7621
APPLICANT’S EXHIBIT # 68 (LETTER FROM BARRY BARNETTE TO COUNSEL REGARDING LORIN WILLIAMS DATED 01-28-2019)	7623
APPLICANT’S EXHIBIT # 69 (FINAL BRIEF OF APPELLANT, 03-07-2016 REDACTED COPY)	7624
APPLICANT’S EXHIBIT # 70 (FINAL BRIEF OF RESPONDENT, 03-07-2016 REDACTED COPY)	7735
APPLICANT’S EXHIBIT # 71 (FINAL REPLY BRIEF OF APPELLANT, 03-07-2016 REDACTED COPY).....	7841
APPLICANT’S EXHIBIT # 72 (SUPPLEMENTAL CITATION LETTER FROM DAVID ALEXANDER DATED 09-12-2016).....	7866
APPLICANT’S EXHIBIT # 73 (SUPPLEMENTAL CITATION LETTER FROM DAVID ALEXANDER DATED 03-29-2017).....	7890
APPLICANT’S EXHIBIT # 74 (SUPPLEMENTAL CITATION LETTER FROM DAVID ALEXANDER DATED 05-05-2017).....	7928
APPLICANT’S EXHIBIT # 75 (DR. JAMES AUSTIN CURRICULUM VITAE)	7930
APPLICANT’S EXHIBIT # 76 (ARREST WARRANT)	7944
APPLICANT’S EXHIBIT # 77 (NOTICE OF INTENT TO SEEK THE DEATH PENALTY DATED 07-09-2009)	7945
APPLICANT’S EXHIBIT # 78 (LETTER FROM CLAY ALLEN TO TREY GOWDY INDICATING BLACKWELL’S DESIRE AND OFFER TO PLEA TO LIFE WITHOUT PAROLE DATED 06-18-2010)	7946
APPLICANT’S EXHIBIT # 79 (LETTER FROM CLAY ALLEN TO COURT NOTIFYING COURT ON <i>ATKINS</i> CLAIM DATED 07-13-2012)	7947

APPLICANT’S EXHIBIT # 80 (LETTER FROM BARRY BARNETTE TO CLAY ALLEN REGARDING <i>ATKINS</i> DISCOVERY DAETD 07-16-2012)	7949
APPLICANT’S EXHIBIT # 81 (LETTER FROM CLAY ALLEN TO JAMES AIKEN NOTIFYING OF TRIAL DATED 02-18-2014).....	7950
APPLICANT’S EXHIBIT # 82 (DR. SUSAN KNIGHT POWERPOINT).....	7951
APPLICANT’S EXHIBIT # 83 (DR. GEOFFREY MCKEE INVOICE).....	7962
RESPONDENT’S EXHIBIT # 1 (RICHARDS-BAKER MEMORANDUM FROM INTERVIEW WITH RICK BAGWELL DATED 02-26-2014)	7963
RESPONDENT’S EXHIBIT # 2 (RICHARDS-BAKER MEMORANDUM FROM INTERVIEW WITH ABI MOON DATED 07-25-2012)	7965
RESPONDENT’S EXHIBIT # 3 (RICHARDS-BAKER MEMORANDUM FROM INTERVIEW WITH VIRGINIA HESS DATED 07-16-2012)	7966
RESPONDENT’S EXHIBIT # 4 (RICHARDS-BAKER MEMORANDUM FROM INTERVIEW WITH DR. JACKSON DATED 02-26-2014)	7967
RESPONDENT’S EXHIBIT # 5 (RICHARDS-BAKER MEMORANDUM FROM INTERVIEW WITH GAIL SHOOK DATED 08-02-2012).....	7969
RESPONDENT’S EXHIBIT # 6 (RICHARDS-BAKER MEMORANDUM FROM INTERVIEW WITH NEAL WATERS DATED 07-13-2012).....	7971
RESPONDENT’S EXHIBIT # 7 (RICHARDS-BAKER MEMORANDUM FROM INTERVIEW WITH HEATHER BRYANT AND GINGER CALLOWAY DATED 11-06-2012)	7973
RESPONDENT’S EXHIBIT # 8 (RICHARDS-BAKER MEMORANDUM FROM INTERVIEW WITH DR. BRIAN DALTON DATED 10-12-2012).....	7976
RESPONDENT’S EXHIBIT # 9 (REPORT OF PSYCHIATRIC EVALUATION FROM DR. SCHWARTZ-WATTS DATED 03-05-2014).....	7978
RESPONDENT’S EXHIBIT # 10 (RICHARDS-BAKER MEMORANDUM FROM INTERVIEW WITH CHERYL PONDER DATED 07-11-2012)	7986
RESPONDENT’S EXHIBIT # 11 (EX PARTE FUNDING ORDER – DR. MCKEE DATED 08-14-2012).....	7987

RESPONDENT’S EXHIBIT # 12 (RICHARDS-BAKER MEMORANDUM FROM INTERVIEW WITH DR. JACKSON DATED 02-26-2014 AND ATTACHED EMAIL FROM RICHARDS-BAKER DATED 02-28-2014)	7989
RESPONDENT’S EXHIBIT # 13 (RICHARDS-BAKER MEMORANDUM FROM INTERVIEW WITH DR. BRIAN DALTON DATED 10-12-2012 AND ATTACHED MEMORANDUM FROM INFO, INC. INVESTIGATIONS DATED 11-09-2012)	7992
RESPONDENT’S EXHIBIT # 14 (CASE FUNDING SPREADSHEET DATED 02-25-2014)	7995
RESPONDENT’S EXHIBIT # 15 (EMT RECORDS FROM BLACKWELL OVERDOSE)	7996
RESPONDENT’S EXHIBIT # 16 (RICHARDS-BAKER MEMORANDUM FROM INTERVIEW WITH LOUISE SCRUGGS DATED 06-21-2012)	8001
RESPONDENT’S EXHIBIT # 17 (DR. GEORGE CORVIN HANDWRITTEN NOTES)	8003
POST-CONVICTION RELIEF JULY 31, 2023 HEARING EXHIBITS	8036
RESPONDENT’S EXHIBIT # 1 (DR. GORDON BROWN EVALUATION NOTES)	8036
RESPONDENT’S EXHIBIT # 2 (DEPOSITION OF WILLIAM MCGUIRE AND CORRESPONDENCE REGARDING DEPOSITION BETWEEN COUNSEL DATED JULY 28, 2023)	8044
COURT’S EXHIBIT # 1 (BLACKWELL WAIVER OF APPEARANCE)	8074
POST-CONVICTION RELIEF AUGUST 2, 2023 HEARING EXHIBITS	8075
APPLICANT’S EXHIBIT # 1 (RESPONDENT’S DISCOVERY DISCLOSURES FILED ON OCTOBER 17, 2022)	8075
RESPONDENT’S EXHIBIT # 3 (DR. ROBERT NELSON CURRICULUM VITAE)	8086
POST-CONVICTION RELIEF DECEMBER 15, 2023 HEARING EXHIBITS	8093
APPLICANT’S EXHIBIT # 1 (DR. ROBERT JACKSON MEDICAL RECORDS FOR RICKEY BLACKWELL)	8093
POST-EVIDENTIARY HEARING FILINGS AND ORDERS	8180
APPLICANT’S POST-HEARING BRIEF DATED JULY 8, 2024	8180
RESPONDENT’S POST-HEARING BRIEF DATED NOVEMBER 5, 2024	8283

APPLICANT’S POST-HEARING REPLY BRIEF DATED JANUARY 15, 2025	8407
ORDER DISMISSING POST-CONVICTION RELIEF APPLICATION DATED JANUARY 28, 2025	8455
APPLICANT’S MOTION TO ALTER OR AMEND JUDGEMENT DATED FEBRUARY 6, 2025	8458
ORDER DENYING POST-CONVICTION RELIEF DATED APRIL 7, 2025	8463
APPLICANT’S AMENDED MOTION TO ALTER OR AMEND JUDGEMENT DATED APRIL 17, 2025	8560
RESPONSE TO APPLICANT’S MOTION TO ALTER OR AMEND JUDGEMENT DATED MAY 16, 2025	8703
ORDER DENYING APPLICANT’S MOTION TO ALTER OR AMEND JUDGEMENT DATED JUNE 10, 2025	8714
TRANSCRIPT DATED SEPTEMBER 8, 2022	8716
TRANSCRIPT DATED OCTOBER 19, 2022	8735

took affirmative steps to acquire his firearm prior the victim's murder. Therefore, there can be no finding of ineffectiveness of appellate counsel the testimony of [REDACTED] was both permissible under SCORE 613(b) and relevant to the level of applicant's malice and culpability. Applicant's claims as to the adequacy of appellate counsel are without merit and should be dismissed.

OTHER CLAIMS OF ERROR

To the extent the application may be read as raising additional claims of error not addressed in this return, Respondent denies same, and would demand clarification in a more definite statement pursuant to Rule 12(e), SCRCP.

FUTURE AMENDMENTS TO RESPONDENT'S RETURN

Respondent reserves the right to amend the above return as discovery proceeding progress and new evidence comes to lights.

CONCLUSION

WHEREFORE, having made its return, Respondent submits the issues currently presented are without merit. Applicant is unable to maintain his burden under *Strickland* and the application in the entirety should be summarily dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 MAR 26 AM 11:16

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

SAMUEL M. BAILEY
Assistant Attorney General
S.C. Bar No. 103131

By: 

SAMUEL M. BAILEY
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-6305

ATTORNEYS FOR RESPONDENT

March 22, 2019
Columbia, South Carolina.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 MAR 26 AM 11:16

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 MAR 26 AM 11:16

ATTACHMENT NO. 11



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

RECEIVED

SEP 12 2016

September 12, 2016

S.C. SUPREME COURT

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: The State v. Ricky Lee Blackwell, Appellate Case No. 2014-000610

Dear Mr. Shearouse:

Enclosed are eight (8) copies of the Florida Supreme Court's recent decision in Hall v. Florida, Op. No. SC10-1335, ___ So.3d ___ (September 8, 2016). Pursuant to Rule 208(b)(7) SCACR, I am advising the Court that Hall represents pertinent and significant authority for Issue 3—whether the trial court erred in finding that appellant is not intellectually disabled.

Specifically, the Florida Supreme Court found that the defendant was intellectually disabled and ineligible for the death penalty after applying the standards in the United States Supreme Court's opinion after remand from that Court. The United States Supreme Court's opinion remanding the case is Hall v. Florida, 134 S.Ct. 1986 (2014) and is cited and argued extensively in both parties' briefing.

If the Court has any further questions or requires any additional information, please do not hesitate to contact me.

Sincerely,

David Alexander
Appellate Defender

cc: Robert M. Dudek, Esquire
Melody J. Brown, Esquire
Patricia Standaert Ravenhorst, Esquire
Meliha Bowers Jefferson, Esquire
Client



ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 29, 2017

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

MAR 29 2017

S.C. SUPREME COURT

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 MAR 26 AM 11:16

Re: The State v. Ricky Lee Blackwell, Appellate Case No. 2014-000610

Dear Mr. Shearouse:

Enclosed are eight (8) copies of the United States Supreme Court's recent decision Moore v. Texas, Op. No. 15-797, ___ U.S. ___ (Mar. 28, 2017). Pursuant to Rule 208(b)(7) SCACR, I am advising the Court that Moore represents pertinent and significant authority for Issue 3—whether the trial court erred in finding that appellant is not intellectually disabled.

The United States Supreme Court found that the Texas appellate court erred in holding the defendant was not intellectually disabled. The Court held that the Texas court improperly rejected the views of medical experts and used factors that were its own "invention" that were "untied to any acknowledged source." Moore at 2. The Court also criticized the state court for its conclusion that Moore did not suffer significant adaptive deficits, holding that the state court "overemphasized Moore's perceived adaptive strengths. . . among them, Moore lived on the streets, mowed lawns, and played pool for money." Moore at 12.

If the Court has any further questions or requires any additional information, please do not hesitate to contact me.

Sincerely,

David Alexander
Appellate Defender

cc: Robert M. Dudek, Esquire
Melody J. Brown, Esquire
Patricia Standaert Ravenhorst, Esquire
Meliah Bowers Jefferson, Esquire
Client



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

May 4, 2017

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED
MAY 04 2017
S.C. SUPREME COURT

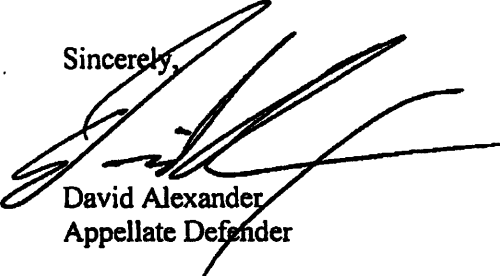
Re: The State v. Ricky Lee Blackwell, Appellate Case No. 2014-000610

Dear Mr. Shearouse:

Enclosed are eight (8) copies of the United States Supreme Court's recent decision in Taurus J. Carroll v. Alabama, No. 16-7685, 581 U.S. ___, (May 1, 2017). Pursuant to Rule 208(b)(7), SCACR, I am advising the Court that Carroll represents pertinent and significant authority for Issue 3—whether the trial court erred in finding that appellant is not intellectually disabled. In Carroll, the Court granted certiorari, vacated the judgment, and remanded the case to the Alabama Court of Criminal Appeals “for further consideration in light of Moore v. Texas, 581 U.S. ___ (2017).”

If the Court has any further questions or requires any additional information, please do not hesitate to contact me.

Sincerely,


David Alexander
Appellate Defender

cc: Robert M. Dudek, Esquire
Melody J. Brown, Esquire
Patricia Standaert Ravenhorst, Esquire
Meliah Bowers Jefferson, Esquire
Client

FILED
CLERK OF COURT
SPARTANBURG COUNTY
MAY 15 2017
AM 10:16

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2019 MAR 26 AM 11:16

ATTACHMENT NO. 12

ORIGINAL

VOLUME I OF II

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY

Roger L. Couch, Circuit Court Judge

RECEIVED

MAR 2 2016

SC SUPREME COURT

THE STATE,

RESPONDENT,

V.

RICKY LEE BLACKWELL,

APPELLANT

APPELLATE CASE NO. 2014-000610

SUPPLEMENTAL RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211-1549
(803) 734-6305

BARRY BARNETTE
Solicitor, Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street, 3rd Floor
Spartanburg, SC 29306-2335
(864) 596-2575

Attorneys for Respondent

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 MAR 26 AM 11:16

PAGES 1 - 500

5008

INDEX

INDEX	i
<u>ATKINS</u> ORDER DATED FEBRUARY 25, 2014.....	1
<u>ATKINS</u> HEARING DEFENDANT'S EXHIBIT # 11 (FINANCIAL RECORDS).....	15
CERTIFICATE OF COUNSEL.....	572

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 MAR 26 AM 11:16

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

2014 FEB 25 PM 1:23
M. HIGLEY BLACKWELL

This matter is before this Court for an Atkins hearing on the question of whether or not the Defendant Ricky Lee Blackwell, Sr. should be subject to a possible sentence of death in the State's prosecution of him for the crimes of murder and kidnapping.

Present at the hearing was the State of South Carolina, represented by Solicitors Barry Barnette, Derrick Bulsa and Russell Ghent. The Defendant was present with his attorneys, William McGuire and Clay Allen.

This Court recognizes that the condition referred to in the South Carolina Code as "mental retardation" is now commonly referred to in a clinical setting as "intellectual disability." Since our statute still uses the term "mental retardation" I will refer to that condition in the same terms as used in our statute in writing this Order.

[Handwritten signature]

CONCLUSIONS OF LAW

In 2002, the United States Supreme Court decided the cases of Atkins v. Virginia, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002), and Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002). Those cases held that it was contrary to the Constitution's prohibition against cruel and unusual punishment to subject persons classified as mentally retarded to the death penalty. In those cases, the United States Supreme Court said, "[t]o the extent there is serious disagreement about the execution of mentally retarded offenders it is in determining which offenders are in fact retarded... Not all people who claim to be mentally retarded will be so impaired as to fall within the range of mentally retarded offenders about whom there is a national consensus." *Id.* at 317, 122 S.Ct. at 2250. In Atkins, the United States Supreme Court left "the task of developing appropriate ways to enforce the constitutional restrictions upon [the] execution of sentences" to the states.

Thereafter, the South Carolina Supreme Court provided a framework for deciding the issues presented in an Atkins hearing in the case of Franklin v. Maynard, 588 S.E.2d 604, 356 S.C. 276, (S.C. 2003). At that time our Supreme Court said, concerning the definition of a mentally retarded person to be used in Atkins hearings in this state, "We find it inappropriate to create a definition of mental retardation different from the one already established by the legislature in S.C. Code Ann. § 16-3-20(C)(b)(10) (2003). Section 16-3-20(C)(b)(10) defines mental retardation as: 'significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. Altering this definition is a matter for the legislature.'"

2014 FEB 25 PM 1:23
H. HOPE STANLEY

Our Supreme Court in Franklin went on to provide for the procedural framework to be followed in holding an Atkins hearing. It provided, "Regarding the procedures to be used in making the mental retardation determination in post-Atkins cases, we conclude the trial judge shall make the determination in a pre-trial hearing, if so requested by the defendant or the prosecution, after hearing evidence, including expert testimony, from both the defendant and the State. The defendant shall have the burden of proving he or she is mentally retarded by a preponderance of the evidence." In Footnote # 3 of Franklin, it states, "(FN3) defendant bears burden of proving incompetence by preponderance of evidence" Cf. State v. Reed, 332 S.C. 35, 503 S.E.2d 747 (1998); State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998).

Finally, Franklin, set forth the meaning of the possible results of an Atkins hearing. It said, "If the judge finds the defendant to be mentally retarded by a preponderance of the evidence in the pre-trial hearing, the defendant will not be eligible for the death penalty. If, however, the judge finds the defendant is not mentally retarded and the jury finds the defendant guilty of the capital charge, the defendant may still present mitigating evidence that he or she had mental retardation at the time of the crime." See S.C. Code Ann. § 16-3-20(C)(b)(10) (2003). "(FN5) If the jury finds this mitigating circumstance, then a death sentence will not be imposed."

Our Supreme Court has not elaborated on the definition of mental retardation as used in the statute in greater detail since the Franklin case. However, in State of S.C. v. Stanko, the Court affirmed a finding that the Defendant in that case was not mentally retarded. It did so based on the degree of planning and thought that went into the commission of the crime for which he was being tried. The Defendant in that case had a mental abnormality and did not suffer from mental retardation. In that case they decided that Defendant's "mental abnormalities do not demonstrate an inability to communicate or care for himself adequately, or sub-average

Pls
13

intellectual functioning.” State v. Stanko, 402 S.C. 252, 741 S.E. 2d 708 (S.C. 2013). Also, in Stanko, our Supreme Court seemed to embrace what they referred to as the “clinical definition of intellectual disability which required not only sub-average intellectual functioning, but also significant limitations in adaptive skills, such as communication, self-care, and self-direction that manifest before age eighteen.” Stanko, 402 S.C. at page 286.

As previously stated, our Supreme Court adopted the definition of mental retardation as contained in the death penalty statute. It has not gone so far as to adopt the exact definition of mental retardation (intellectual disability) as contained in the DSM even though the following definition existed at the time of the Franklin and later cases. The Diagnostic and Statistical Manual, Fourth Edition, Text Revision (DSM-IV-TR) (2000, pp.41-49) sets out a three pronged test for a diagnosis of mental retardation. The three criteria are: (a) There must be a significantly sub-average general intellectual functioning; (b) the significantly sub-average general intellectual functioning must exist concurrently with limitations in adaptive functioning; and (c) the onset of the conditions in a & b must have been prior to the age of 18 years.

Dr. Calloway, in her report, used definitions of mental retardation provided by the American Association on Mental Retardation which defines mental retardation using ten areas of possible adaptive deficits. In her report she claims that this method of determining the condition of mental retardation was “embraced” by the United States Supreme Court in Atkins. See Calloway’s report Def. Exhibit # 8 at pages 2 and 3 of 40. To the contrary, it is clear to this Court that the Atkins court refused to adopt or embrace any particular definition of or method of determining mental retardation. It specifically said on the subject of making such a determination, “we leave to the State[s] the task of developing appropriate ways to enforce the

2014 FEB 25 PM 1:23
RECEIVED
CLERK

4 *Call*
14

constitutional restriction upon [their] execution of sentences." Atkins v. Virginia, 122 S. Ct. at page 2250.

FINDINGS OF FACT

Pursuant to the directions contained in Franklin, this Court held an Atkins hearing on February 19, 20 and 21, 2014, and received testimony from experts selected by the State, the Court and the Defendant. Based on this testimony this Court makes the following findings of fact.

1. Ricky Lee Blackwell, Sr. was born [REDACTED] He spent his entire life as a resident of Spartanburg County.

2. He had one brother who was four years younger than him and is now deceased. They were raised by their mother [REDACTED] their father [REDACTED] in the family home.

3. He attended Cooley Springs Elementary School and Chesnee High School both of which are in his home community. School records indicate that he completed the 10th grade and appears to have earned credits toward his 11th grade year.

4. His mother stated that he left school because he felt he had been cheated out of a credit he had earned, and the school records do bear out that he had earned 12 credits, but was credited for only 11 toward graduation as of the time that he dropped out.

5. While in high school Blackwell attended some courses that were designated as adjunct classes. These classes were described to the court as courses designed for students not pursuing an academic track. They may have been considered as special education courses. There is no record of his participation in extra-curricular activities.

File
15

2014 FEB 25 PM 1:23
RICKY LEE BLACKWELL

6. There were no school records during Blackwell's school years describing his "special education" status nor any psycho-educational matters. However, his 8th grade teacher, Ms. Louise Scruggs, reported to Dr. Calloway that Blackwell was referred to adjunct classes which were designed for non-academic students. She stated that the school district did not have funds for "special education classes" so adjunct classes were designed for students who would be tracked into vocational or technical fields, rather than academic pursuits. She further described him, according to Dr. Calloway's report, Def. Ex. # 8 at page 8, as a student who spoke if spoken to and was not a "troublemaker"; he just kind of blended in.

7. Blackwell repeated the ninth grade. He did earn credits toward graduation in both of his ninth grade years. There was no information given to the court to allow the court to infer whether or not he was held back voluntarily that year or if he failed that grade.

8. Blackwell was receiving credit for courses up until he dropped out in the eleventh grade. During his secondary education he earned the following credits:

Ninth grade 1973-74: 3 credits

Ninth grade 1974-75: 5 credits

Tenth grade 1975-76: 4 credits

2014 FEB 25 PM 1:23
M. HURK BLACKLEY

In looking at the numerical grades for the courses reported on Defendants Exb. #6: Blackwell made reasonably sufficient grades during his school career. It is noted that he had a 90 average for Family Living for the 1st semester of his 11th grade year.

There was a hand written note on his permanent record that he was 113 out of 113 in his class that year, but this Court was offered no evidence to indicate whether or not that number was skewed by the fact that he may have received zero's in all courses that year because of the fact that he dropped out without completing his course load.

9. During his educational years Blackwell was tested for the determination of an intelligence quotient (IQ) on several occasions. These are summarized in Table 3-a of Dr. Calloway's report as follows:

At age 7, in the spring of his first grade year (4/19/66) his IQ was reported as 68. At age 8, in the fall of his 3rd grade year (10/20/67) his IQ was reported as 87. In the fall of his 6th grade year (10/70) his IQ was reported as 86 and in the fall of his ninth grade year (10/73) his IQ was reported as 72. These were the only IQ scores that were reported in his school records in the time period before his 18th birthday.

10. It is generally accepted by psychological professionals that an IQ level of 70 or below is an indicator of mild mental retardation. It appears that during the time of his education Blackwell was borderline to above borderline.

11. Between Blackwell's 18th birthday and his later IQ testing in his 50's, he experienced several factors which could have had an adverse effect on his IQ levels. Specifically, he suffered a head injury in a four-wheeler accident in 2003 or 2004. In that accident he suffered a head injury and lost consciousness. Also, he was diagnosed with cancer and was required to undergo chemotherapy in 1987. Additionally, because of major depressive disorder which has manifested itself on at least two occasions in his life, he currently takes an anti-psychotic, Thorazine. The

factors surrounding his major depressive disorder could also have an effect on his intellectual functioning later in life.

12. Blackwell was administered IQ tests during the Court Ordered evaluation by Dr. Brown and by the Defense's Expert Dr. Calloway. These were administered during the time he has been incarcerated. He scored an IQ of 63 on Dr. Calloway's test on June 29, 2012, at age 54 and an IQ of 68 on Dr. Brown's test on November 14, 2013 at age 55. While most experts agree that a person's IQ remains relatively constant throughout their life, because of the uncertainties surrounding the events that could have had an adverse effect on his IQ, I find that the most reliable measures of Blackwell's IQ prior to age 18 are the exams that were in fact given during that stage of his life. While I cannot assume that the intervening factors directly affected his later IQ testing, I cannot rule them out either.

In weighing the evidence concerning his IQ, I find that the tests given in his formative years were the standard of that day by which he and his peers were measured. There appears to have been no intervening factors during the time that those tests were given. Further, the court received no evidence concerning either the tests themselves or their administration which would discredit them.

13. After Blackwell left school he began a work history as summarized in Dr. Brown's report on page 6. That history reveals that during the first five years from 1976 to 1981 he held various rather menial jobs at various employers. He had stated a goal at the time that he left school to become a truck driver. Within five years of leaving school he had achieved his vocational goal of getting his commercial driver's license and gotten a job driving trucks. It seems to have realized that goal in the early 1980's. In doing so, Blackwell was required to take

2014 FEB 25 PM 2:23
RECEIVED
BLACKWELL

Blk
18

and pass the exam for a Commercial Driver's License. Also, he took and passed the additional exam to obtain his license to drive tankers of hazardous materials. Those exams require extensive reading writing and practical skills. A commercial driver must be able to not only operate the truck, but is responsible for being able to perform inspections of his vehicle and recognize defects in the vehicle for safety purposes.

14. Mr. Blackwell drove trucks for KNS Trucking, Hess Corporation, and Belue Trucking. The record related by Dr. Brown indicates that Blackwell was cited for such work related problems as failing to keep proper logs, letting family members ride in a leased truck and failing to come to work on one occasion. Also, it appears that he may have been terminated by Hess and Belue for accidents, but it was not shown to this Court that they were at-fault accidents of Mr. Blackwell. Also, those employers later rehired Blackwell. Blackwell reported that he traveled while driving a commercial truck as far west as El Paso, Texas and as far north as Canada. In a job application, Blackwell wrote that he had experience in driving semi-tractor-trailers, and tanker trucks in several other states which included Texas, Oklahoma, New York, and New Jersey.

15. His work history was interrupted by a diagnosis of cancer. As a result of the disease and its treatment he was out of work from 1987 to 1997.

16. Blackwell returned to work in 1998 with Springs Industries as a fork lift driver.

17. Throughout his working career Blackwell moved from job to job but always seemed to increase his earnings in doing so. After his illness with cancer, Blackwell's earnings steadily increased. In 1999, his first full year upon returning to work, he earned \$15,419.00. In his last full year of work in 2007, his earnings were \$32,800.00.

Asl
09

18. Blackwell seemed to have very little difficulty with his family relationships until just before his arrest. He was married to and lived with the same woman, Angela, from August 23, 1982 until their separation on November 11, 2008. Blackwell lived with Angela for 26 years. He had two children who were raised in his and Angela's home. During his marriage he worked and turned his earnings over to Angela who handled the management of the household by paying all the bills and writing all checks. It appears that Angela did most of the household chores such as washing clothes and cooking. He seemed to have had a good relationship with his parents who lived nearby.

19. This Court received little or no evidence concerning the second prong of the test for mental retardation, that being "deficits in adaptive behavior" that existed prior to Blackwell's eighteenth birthday or his developmental period. What I do find from the record is that he was able to attend school through the 10th grade. His former teacher said that he was quiet and just blended in. Upon leaving school he entered the work force and was able to seek employment and obtain employment immediately. Within a relatively short period of time he married and began a 26 year relationship.

20. Dr. Calloway attempted to quantify the area of Adaptive Behavior using the Adaptive Behavior Assessment System (ABAS-II). This system uses questions asked of informants that relate to 10 areas of adaptive behavior. It does appear to this Court that this information, based on a sufficient matrix of informants who have sufficient information to provide clear and informed responses to the questions could be useful in making a determination as to a person's adaptive functions. However, in this case, the Court has serious questions as to whether or not a sufficient matrix with adequate information was used in this testing. Dr. Calloway indicated that a matrix of 10-20 individuals was necessary to obtain the best results. Here, the matrix was 6

Rel
p10

2014 FEB 5 PM 1:14
M. HOPE CLARK

individuals, most of whom did not have sufficient information to adequately complete all of the questions asked in the ABAS-II. In addition to those difficulties, the Court finds that in several instances, Dr. Calloway substituted her subjective opinions for the responses of the informants. Also, Dr. Calloway testified on direct examination that she was simply merely giving the test, gathering the information from the informants and reporting the scores. However, on examination by the Court, Dr. Calloway acknowledged that her function was more than that. She did use her subjective expertise in weighting some of the results of the ABAS-II. This inconsistency in her view of her role causes the Court to somewhat question the credibility of that evidence.

In this case, this information was helpful to the Court, but the Court finds that the results are not determinative of the questions surrounding Blackwell's adaptive behavior. I make this finding because of the fact that in reviewing the results of Dr. Calloway's ABAS-II it is clear that she has made subjective determinations concerning the results obtained and weighted the responses of various informants differently. On the ABAS-II a score of 4 or below indicates significant impairment. An example of the subjectivity of Dr. Calloway's interpretation of the results was in the area of Home Living. The average score of the informants in that area was 5.6. This was 1.6 points above the level of a 4. Yet in that area, Dr. Calloway found Blackwell to "exhibit(s) a significant deficit in the adaptive functioning area of Home Living." The Court determined that she failed to reach the same conclusion as the average of her informants in the following areas of adaptive living that she reported: Communication, Home Living, Health and Safety, and Self-Direction.

21. The Defense offered evidence of Mr. Blackwell's failure to live independently after the breakup of his marriage as evidence of his failure in the area of adaptive living. I find that he

did have great difficulty in living alone and handling personal affairs after his wife left. She had been the manager of the household. However, I also find that at that time Blackwell suffered a relapse of his Major Depressive Disorder which can result in confused thinking and an inability to handle the pressures of daily living. I find it impossible to relate that episode to deficits in adaptive behavior which manifested during the developmental period.

22. Blackwell had suffered from Major Depressive Disorder (which was described as a mental illness) during his adulthood. It manifested itself on two occasions which required hospitalization; once about the time of his diagnosis with cancer (Hodgkin's Disease in 1986) and once when his wife left him (he was admitted less than 30 days after the breakup on December 9, 2008). When examined by the Court, Dr. Calloway acknowledged that this depression was not a result of any mental retardation, but was rather a mental illness which resulted in confused thinking and an inability to function normally.

23. Blackwell was never diagnosed with Mental Retardation prior to the preparation for this hearing and he never received such a diagnosis prior to the age of 18. A review of the medical records that were made available to this court as well as a review of Dr. Harrison's records did not reveal any finding or concern on the part of health professionals that Mr. Blackwell may have suffered from mental retardation.

CONCLUSION

The inquiry for this Court is to determine whether or not the Defendant has proven to this Court by the preponderance of the evidence that he fits the legal definition of mental retardation as established by the courts of this state and the legislature in S. C. Code Section 16-3-20(C)(b)(10), which defines mental retardation as: "significantly sub-average general

Roll
012

2014 FEB 25 PM 3:20
M. HOPE BLACKWELL

intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period."

Concerning the first prong, significantly sub-average general intellectual functioning: Ricky Blackwell had numerous test administered to him which purport to measure his intelligence quotient (IQ). In his school years, the tests began in the first grade at age 7 with an IQ score of 68. His other scores were age 8, IQ=87; at age 11, IQ=86; at age 14, IQ = 72. Most of these scores are above the score of 70 which is generally accepted as the level at which a finding of mild mental retardation would be possible. Mr. Blackwell was tested for achievement at age 18 and was found to read at the 5.8 level; complete arithmetic problem solving at 6.6 and arithmetic computation score of 5.2. His more recent IQ tests, given in preparation for this hearing, with scores of 63 and 68 both carry with them the possibility that they may have been adversely affected by events occurring in his adult life. These events which are described above have been found in other cases to adversely affect a person's intelligence functioning.

Concerning Ricky's adaptive functioning during his developmental period I find that certain factors are true. He was able to attend school on a regular basis. He progressed satisfactorily through the ninth grade. There is no evidence that he was unable to adapt to life in the school. While he was placed in the technical track of courses, he was able to take most subjects and had earned 11 credits toward graduation as of the time he left school in the middle of his 11th grade year. At the time of his departure he appeared to be passing three five courses. He left school at age 18 with the goal of becoming a truck driver. This was a goal that he worked toward and was able to achieve. I find no evidence that he was unable to function at his home during the time before his eighteenth birthday. Events that happened near that time appear to show that he was adapting well to life. He was able to get employment and move up in

ASL
P13

2014 FEB 25 3:24 PM
FBI - BUREAU
RECEIVED

his work life. He was able to develop a relationship which resulted in a twenty-six year marriage and the raising of two children. His jobs took him far away from home which he seems to have been able to manage.

I find that both reports have weaknesses, as you would expect in reports that contain subjective findings. I give greater weight to the report of Dr. Brown because I find that it relies more heavily on factors which we know to be true and is more directed in its inquiry toward Mr. Blackwell's formative years. Dr. Brown's report, to me, also gives greater weight to Mr. Blackwell's functional adaptations as is required by our state's statutory definition of mental retardation. I have already explained the credibility issues that I have with Dr. Calloway's report. Also of great concern is the fact that Dr. Calloway was required to issue a supplemental report to correct glaring errors in her initial report.

I agree with the defense that there are several factors in Ricky Blackwell's life which would raise the possibility of mental retardation, but the burden of proof requires that the Defendant prove the condition by the preponderance of the evidence. I find that the defendant has failed to provide that level of proof to the court to satisfy the statutory requirements as stated above.

IT IS SO ORDERED.


 Roger L. Couch, Circuit Court Judge

Spartanburg, SC

Date: 2/25/14

(SEAL)

2014 FEB 25 PM 1:24
 HCP L BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
IN THE SEVENTH JUDICIAL CIRCUIT

2018-CP-42-00928

Ricky Lee Blackwell, #6033,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

State of South Carolina,

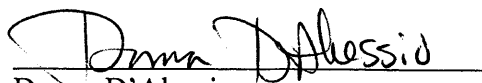
Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Second Amended Application for Post-Conviction Relief**, with attachments, in the above-captioned matter on the following persons by depositing same in the United States mail, postage prepaid:

E. Charles Grose, Jr., Esq.
The Grose Law Firm
404 Main Street
Greenwood, South Carolina 29646

Lindsey S. Vann, Esq.
Justice 360
900 Elmwood Ave., Suite #200
Columbia, South Carolina 29201

DATED this 22nd day of March, 2019.


Donna D'Alessio
Legal Assistant to Samuel M. Bailey
Assistant Attorney General

2019 MAR 26 AM 11:05
CLERK OF COURT
SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

Ricky Lee Blackwell, #6033,)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No. 2018-CP-42-00928

**THIRD AMENDED APPLICATION FOR
POST-CONVICTION RELIEF**

1. Place of Detention: Broad River Secure Facility, 4460 Broad River Rd, Columbia, SC 29210.
 2. Name and location of Court which imposed sentence: Spartanburg County Court of General Sessions.
 3. Name(s) of co-defendant(s) (if any): Not applicable.
 4. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed: 2009-GS-42-3910—murder; 2009-GS-42-3609—kidnapping.
 5. The date upon which sentence was imposed and the terms of the sentence: March 12, 2014 – death sentence for murder; kidnapping sentenced subsumed in death sentence.
 6. A finding of guilty was made: after a plea of not guilty.
 7. The applicant did appeal from judgment of conviction and sentence.
 8. The Courts to which applicant appealed:
 - (a) The Supreme Court of South Carolina.
 - (b) The Supreme Court of the United States.
- The result in each Court to which applicant appealed:
- (a) Sentence and conviction affirmed.
 - (b) Petition for Writ of Certiorari denied.
- The date of each result:
- (a) May 31, 2017.
 - (b) February 20, 2018.

FILED
2021 NOV 12 AM 9:02
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

Citations of any written opinion or orders entered pursuant to such results:

- (a) *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (S.C. 2017).
- (b) *Blackwell v. South Carolina*, 138 S. Ct. 491 (2017).

9. Not applicable.

10 & 11 GROUND**S** FOR RELIEF WITH SUPPORTING FACTS

10(a) **Applicant’s death sentence violates the Eighth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution due to the fact that Applicant is a person with intellectual disability.** *Moore v. Texas*, 137 S. Ct. 1039 (2017), *Hall v. Florida*, 572 U.S. 701 (2014), *Atkins v. Virginia*, 536 U.S. 306 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003).

11(a) **Supporting Facts:** Because Applicant has significantly subaverage intellectual functioning, existing concurrently with deficits in adaptive functioning, both of which manifested during the developmental period, he is ineligible for capital punishment. *Atkins v. Virginia*, 536 U.S. 306 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003); S.C. Code § 16-3-20(C)(b)(10). Specific facts supporting this claim, include, but are not limited to, the following:

- (1) Material facts not previously presented and heard, S.C. Code § 17-27-45(C), that Applicant is a person with intellectual disability that results from a genetic abnormality of his *CAMTA1* gene, which he inherited from his mother.

10(b) **Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during his pre-trial and sentencing phase *Atkins* (intellectual disability) hearings.**

11(b) **Supporting Facts:** Counsel failed to investigate, develop, and present a constitutionally adequate case that Applicant is a person with intellectual disability who could not be executed pursuant to the Supreme Court’s decision in *Atkins v. Virginia*, 536 U.S. 304 (2002). Counsel’s performance was both unreasonable and prejudicial, *see Strickland v. Washington*, 466 U.S. 668 (1984). Counsel’s specific unreasonable and prejudicial acts or omissions, include, but are not necessarily limited to, the following:

- (1) Counsel failed to investigate and present all relevant evidence on the issue of intellectual disability including evidence of Applicant’s significantly subaverage intellectual functioning, deficits in adaptive functioning, and onset before the age of 18, *Atkins v. Virginia*, 536 U.S. 304 (2002); *Wiggins v. Smith*, 530 U.S. 412 (2000);
- (2) Counsel failed to object to the trial judge’s reliance on stereotype and deviation from clinical consensus and practice in the determination that Applicant was not a

FILED
2021 NOV 12 AM 9:06
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

person with intellectual disability, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 572 U.S. 701 (2014);

- (3) Counsel failed to investigate and present evidence that some of Applicant's purported IQ test scores in the developmental period were not legitimate, individualized measures of general intellectual functioning and thus were not inconsistent with intellectual disability, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 572 U.S. 701 (2014); *Wiggins v. Smith*, 583 U.S. 510 (2003);
- (4) Counsel failed to investigate and present the circumstances under which Applicant obtained a commercial driver's license and other certifications to refute the trial judge and jury's reliance on the certifications in finding that Applicant was not a person with intellectual disability, *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- (5) Counsel failed to investigate and present evidence to the trial judge and jury that Applicant's depression and cancer treatment (including chemotherapy) had no demonstrable effect on IQ scores establishing significantly subaverage intellectual functioning;
- (6) Counsel failed to investigate and present evidence that Applicant is a person with intellectual disability as a result of a genetic abnormality of his *CAMTA1* gene, which he inherited from his mother
- (7) Counsel failed to adequately inform and educate the trial judge and jury about potentially prejudicial and preconceived misconceptions and stereotypes related to intellectual disability, *see Moore v. Texas*, 137 S. Ct. 1039 (2017);
- (8) Counsel failed to object to the Solicitor's sentencing phase closing argument endorsing improper stereotypes toward people with intellectual disability when the Solicitor stated: "I mean it's an insult to people that had truly – have a mental disability for them to bring this kind of defense up to try to spare his life trying to use that excuse," Tr. 3169, and "He's not disabled, and, like I say, it's an insult to people that's mentally – I mean that truly has that kind of condition." Tr. 3171. *See Moore v. Texas*, 137 S. Ct. 1039 (2017); *Brown v. State*, 383 S.C. 506, 680 S.E.2d 909 (2009); *State v. Northcutt*, 372 S.C. 207, 641 S.E.2d 873 (2007); *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2007), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d (2004).

10(c) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during pre-trial proceedings.

11(c) Supporting Facts: Counsel failed to adequately question prospective jurors in voir dire to identify prospective jurors with pre-formed beliefs about and stereotypes and biases

against a defendant with an intellectual disability. Trial counsel's performance during pre-trial proceedings was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984).

10(d) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during the penalty phase of the proceedings.

11(d) Supporting Facts: Trial counsel's performance during the sentencing phase was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's specific unreasonable and prejudicial acts or omissions are

- (1) Counsel failed to adequately investigate and present the full range of mitigating evidence concerning Applicant's social and life history, *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- (2) Counsel failed to adequately investigate and present all available mitigating evidence concerning Applicant's mental health prior to and at the time of the capital offense, *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- (3) Counsel failed to investigate and present mitigating evidence concerning Applicant's lack of future dangerousness, adaptability to confinement, and good character, *see Skipper v. South Carolina*, 476 U.S. 1 (1986);
- (4) Counsel failed to adequately investigate and present scientific evidence demonstrating that the fact the victim urinated on herself was a natural result of death as opposed to resulting from fear while alive during the incident;
- (5) Counsel failed to object to misleading jury instructions, in violation of the Sixth and Eighth Amendments to the United States Constitution, which did not properly advise the jurors that whatever sentence they recommended would be the sentence imposed by the court rather than a recommendation to the court about the sentence to be imposed, *see Hurst v. Florida*, 572 U.S. 701 (2016); *Ring v. Arizona*, 536 U.S. 584 (2002); *Caldwell v. Mississippi*, 472 U.S. 320, 328-29 (1985); *see also State v. Bellamy*, 293 S.C. 103, 259 S.E.2d 63 (1987), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991);
- (6) Counsel failed to investigate and present evidence of remorse and acceptance of responsibility including, but not limited to, failure to call a hospital chaplain to testify regarding Applicant's remorse shortly after the crime when the chaplain's records documenting the remorse were excluded by the trial judge as inadmissible hearsay;
- (7) Counsel failed to object to the Solicitor's closing argument that Applicant did not have any remorse for killing Brooke Center, including but not limited to Tr. 3169

(“not once did he cry about Brooke. Not once did he show any remorse for Brooke. Doesn’t even show one concern about Brooke.”), Tr. 3180-81, under circumstances where the Solicitor successfully objected to trial counsel introducing evidence of Applicant’s remorse, *see Simmons v. South Carolina*, 512 U.S. 154 (1994); *Skipper v. South Carolina*, 476 U.S. 1 (1986); *State v. Blurton*, 342 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000), *reversed on other grounds by State v. Blurton*, 352 S.C. 203, 573 S.E.2d 802 (2002);

- (8) Counsel failed to object to the Solicitor’s improper closing arguments, including but not limited to the following:

“Everything they rolled out yesterday, I mean, I got mad. I tried to keep my composure over there, but here he is, he’s saying he’s mentally retarded.” Tr. 3168.

“He’s not mentally retarded, and the reason why I’m going so much over this, and the judge is going to charge you about mental retardation, that if you make a finding that he is mentally retarded from there, it’s a bar to the death penalty if it’s by a preponderance of the evidence. They have to show it by that amount. Preponderance means by the greater weight of the evidence.” Tr. 3171-72.

See, e.g., Brown v. State, 383 S.C. 506, 680 S.E.2d 909 (2009); *State v. Northcutt*, 372 S.C. 207, 641 S.E.2d 873 (2007); *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2007), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d (2004);

- (9) Counsel failed to adequately raise and argue all legal and factual grounds for finding Applicant’s death sentence was not “warranted under the evidence of the case” pursuant to S.C. Code § 16-3-20, and is “disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant” pursuant to S.C. Code § 16-3-25(C)(3), *see State v. Dickerson*, 395 S.C. 101, 125 n.8, 716 S.E.2d 895, 908 n.8 (2011).

10(e) Applicant’s right to due process of law—guaranteed by the Fourteenth Amendment to the United States Constitution—was violated as a result of the knowing presentation of false or misleading information by a state agent. *See Kyles v. Whitley*, 514 U.S. 419 (1995); *Napue v. People of State of Ill.*, 360 U.S. 264 (1959); *see also Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006); *Alcorta v. State of Texas*, 355 U.S. 28, 78 (1957).

11(e) Supporting Facts: Spartanburg County Sheriff Office Investigator Lorin Williams testified Mr. Blackwell did not have remorse for killing Brooke Center. Tr. 2679-86. During closing argument, the Solicitor relied on the testimony of Investigator Williams to argue Mr. Blackwell “[d]idn’t show any remorse” for Brooke Center’s death, Tr. 3180-81, despite evidence from hospital chaplains and others present that Applicant did show

remorse. Investigator Williams's testimony was false, and even if the Solicitor did not knowingly solicit such false evidence, the Solicitor allowed it to go uncorrected. *See Kyles v. Whitley*, 514 U.S. 419, 115 S. Ct. 1555, 131 L.Ed.2d 490 (1995); *Napue v. People of State of Ill.*, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed 1217 (1959); *see also Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006); *Alcorta v. State of Texas*, 355 U.S. 28, 78 (1957).

10(f) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during the appellate proceedings.

11(f) Supporting Facts: Appellate counsel's performance during the appellate phase was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984); *see also Evitts v. Lucey*, 469 U.S. 387 (1985); *Southerland v. State*, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Counsel's specific unreasonable and prejudicial acts or omissions are:

- (1) Appellate counsel failed to adequately raise and brief all legal and factual grounds for challenging the trial court's ruling that Applicant was not intellectually disabled, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 572 U.S. 701 (2014); *Atkins v. Virginia*, 536 U.S. 304 (2002); *Patrick v. State*, 349 S.C. 203, 562 S.E.2d 609 (2002);
 - (2) Appellate counsel failed to raise the issue that the trial court erred in admitting prejudicial autopsy photographs and close-up photographs from the crime scene, including a photograph of the victim after she her body was moved, U.S. Const. amends. V, VIII; Rule 403, SCRE;
 - (3) Appellate counsel failed to raise the issue that the trial court erred in allowing Reggie Frye to testify during the penalty phase of Applicant's trial when Frye's testimony was not relevant and impermissible hearsay, Rule 401, SCRE; Rule 613(b), SCRE; Rule 802, SCRE.
 - (4) Appellate counsel failed to adequately raise and brief all legal and factual grounds for finding Applicant's death sentence disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant, pursuant to S.C. Code § 16-3-25(C)(3), *see State v. Dickerson*, 395 S.C. 101, 125 n.8, 716 S.E.2d 895, 908 n.8 (2011).
12. (a) Applicant has not filed any petition in state court other than the mandatory appeal to the South Carolina Supreme Court.
- (b) Applicant has not previously filed an application for post-conviction relief nor a petition for a writ of habeas corpus in State or Federal court.
- (c) Applicant has not filed any petitions to the United States Supreme Court other than the petition already specified *supra* in (8).
- (d) Applicant has not filed any motions, petitions, or applications in this or any other Court.
13. Not applicable.

14. Applicant has not raised any ground set forth in (10) in this or any other court.
15. Not Applicable.
16. These grounds rely on additional facts outside the record which was before the previous courts.
17. Applicant was previously represented by counsel.
18. Applicant was represented at trial by William Sean McGuire, South Carolina Commission on Indigent Defense, 1330 Lady St., PO Box 11433 Columbia, SC, 29211; Clay T. Allen, Spartanburg Circuit Public Defender, 366 N. Church St. Ste. 3000, Spartanburg, SC 29349, and Boyd Young, South Carolina Commission on Indigent Defense, 1330 Lady St., PO Box 11433 Columbia, SC, 29211.

On direct appeal applicant was represented by Robert M. Dudek and David Alexander, of the South Carolina Office of Appellate Defense, 1330 Lady Street, Columbia, SC 29201.

19. Applicant seeks relief from his conviction and sentence.
20. Applicant is not under sentence from any other court that he has not challenged.

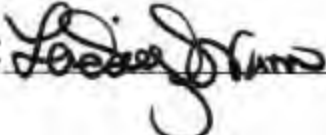
Respectfully prepared by,

E. CHARLES GROSE

Grose Law Firm
404 Main Street
Greenwood, SC 29646
(864) 538-4466

LINDSEY S. VANN

Justice360
900 Elmwood Avenue, Suite 200
Columbia, South Carolina 29201
(803) 765-1044

BY:  _____

November 10, 2021.

FILED
2021 NOV 12 AM 9:02
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

Ricky Lee Blackwell, #6033,)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)
_____)

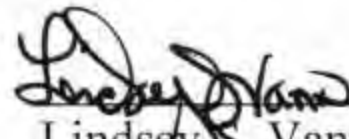
IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No. 2018-CP-42-00928

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Third Amended Application for Post-Conviction Relief was served was served by email to the AIS email addresses, pursuant to Section (e) of this Court's August 25, 2021 Order, this 10th day of November, 2021, upon the following:

Melody Brown, mbrown@scag.gov
Tommy Evans, Jr., tommyevansjr@scag.gov



Lindsey S. Vann

FILED
2021 NOV 12 AM 9:02
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

I. HISTORY AND STATUS OF AMENDMENTS TO PCR APPLICATION.

On March 14, 2018, Mr. Blackwell filed his PCR Application (Ex. 1) alleging his trial counsel were ineffective during the *Atkins* hearing for “fail[ing] to investigate and present evidence that purported IQ scores in the developmental period were not valid measures of intellectual functioning,” “fail[ing] to investigate the circumstances under which [he] obtained a commercial driver’s license and other certifications relied upon by the State to argue he was not a person with intellectual disability,” and “fail[ing] to investigate, develop and present [his] case for intellectual disability,” which renders him ineligible for the death penalty pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002) and *Hall v. Florida*, 572 U.S. 701 (2014). *See also Moore v. Texas*, 581 U.S. 1 (2017); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003).

On April 23, 2018, the State submitted a 41-page return that recited the procedural history of Mr. Blackwell’s capital trial and appeals to the Supreme Court of South Carolina and the Supreme Court of the United States (Return at 1-7), the State’s version of the facts presented at trial (*id.*, at 7-11) and the penalty phase (*id.*, at 11-27), and addressed the PCR allegations (*id.*, at 28-41). The final page of the return states, “To the extent the application may be read as raising claims of error not addressed in this return, respondent denies the same, and would demand clarification in a more definite statement pursuant to Rule 12, (e), SCRCP.”²

This Court issued scheduling orders on April 19, 2018 and September 18, 2018. The September 18, 2018 order provided Mr. Blackwell “should file an amended PCR application not later than February 20, 2019.” *Id.* (emphasis original).

² Rule 12(e), SCRCP states: “If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading.” Here, the State was able to file a detailed response before filing interposing a request for a more definite statement.

On February 19, 2019, Mr. Blackwell served his First Amended PCR Application (Ex. 2) alleging he is ineligible for the death penalty because of intellectual disability. He further alleged his trial counsel were ineffective during the pre-trial and sentencing phase *Atkins* hearings in the following manners:

- (1) Counsel failed to investigate and present all relevant evidence on the issue of intellectual disability including evidence of Applicant's significantly subaverage intellectual functioning, deficits in adaptive functioning, and onset before the age of 18, *Atkins v. Virginia*, 536 U.S. 304 (2002); *Wiggins v. Smith*, 583 U.S. 510 (2003);
- (2) Counsel failed to object to the trial judge's reliance on stereotype and deviation from clinical consensus and practice in the determination that Applicant was not a person with intellectual disability, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 134 S. Ct. 1986 (2014);
- (3) Counsel failed to investigate and present evidence that some of Applicant's purported IQ test scores in the developmental period were not legitimate, individualized measures of general intellectual functioning and thus were not inconsistent with intellectual disability, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 134 S. Ct. 1986 (2014); *Wiggins v. Smith*, 583 U.S. 510 (2003);
- (4) Counsel failed to investigate and present the circumstances under which Applicant obtained a commercial driver's license and other certifications to refute the trial judge and jury's reliance on the certifications in finding that Applicant was not a person with intellectual disability, *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- (5) Counsel failed to investigate and present evidence to the trial judge and jury that Applicant's depression and cancer treatment (including chemotherapy) had no demonstrable effect on IQ scores establishing significantly subaverage intellectual functioning;
- (6) Counsel failed to adequately inform and educate the trial judge and jury about potentially prejudicial and preconceived misconceptions and stereotypes related to intellectual disability, *See Moore v. Texas*, 137 S. Ct. 1039 (2017).
- (7) Counsel failed to object to the Solicitor's sentencing phase closing argument endorsing improper stereotypes toward people with intellectual disability when the Solicitor stated: "I mean it's an insult to people that had truly – have a mental disability for them to bring this kind of defense up to try to spare his life trying to use that excuse," Tr. 3169, and "He's not disabled, and, like I say, it's an

insult to people that's mentally – I mean that truly has that kind of condition.” Tr. 3171. *See Moore v. Texas*, 137 S. Ct. 1039 (2017); *Brown v. State*, 383 S.C. 506, 680 S.E.2d 909 (2009); *State v. Northcutt*, 372 S.C. 207, 641 S.E.2d 873 (2007); *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2007), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d (2004).

Id., at 2-3. He also alleged his trial counsel were deficient during jury selection for not “adequately question[ing] prospective jurors in voir dire,” and during the sentencing phase in the following manners:

- (1) Counsel failed to adequately investigate and present the full range of mitigating evidence concerning Applicant’s social and life history, *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- (2) Counsel failed to adequately investigate and present all available mitigating evidence concerning Applicant’s mental health prior to and at the time of the capital offense, *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- (3) Counsel failed to investigate and present mitigating evidence concerning Applicant’s lack of future dangerousness, adaptability to confinement, and good character, *Skipper v. South Carolina*, 476 U.S. 1 (1986);
- (4) Counsel failed to adequately investigate and present scientific evidence demonstrating that the fact the victim urinated on herself was a natural result of death as opposed to resulting from fear while alive during the incident;
- (5) Counsel failed to object to misleading jury instructions, in violation of the Sixth and Eighth Amendments to the United States Constitution, which did not properly advise the jurors that whatever sentence they recommended would be the sentence imposed by the court rather than a recommendation to the court about the sentence to be imposed, *see Hurst v. Florida*, 136 S. Ct. 616(2016); *Ring v. Arizona*, 536 U.S. 584 (2002); *Caldwell v. Mississippi*, 472 U.S. 320, 328-29 (1985); *see also State v. Bellamy*, 293 S.C. 103, 259 S.E.2d 63 (1987), *overruled by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991);
- (6) Counsel failed to investigate and present evidence of remorse and acceptance of responsibility including, but not limited to, failure to call a hospital chaplain to testify regarding Applicant’s remorse shortly after the crime when the chaplain’s records documenting the remorse were excluded by the trial judge as inadmissible hearsay;
- (7) Counsel failed to object to the Solicitor’s closing argument that Applicant did not have any remorse for killing Brooke Center, including but not limited to Tr.

FILED
202 SEP 13 PM 12:30
CLERK OF COURT
SOUTH CAROLINA
JAMES L. HANCOCK

3169 (“not once did he cry about Brooke. Not once did he show any remorse for Brooke. Doesn’t even show one concern about Brooke.”), Tr. 3180-81, under circumstances where the Solicitor successfully objected to trial counsel introducing evidence of Applicant’s remorse. *See Simmons v. South Carolina*, 512 U.S. 154 (1994); *Skipper v. South Carolina*, 476 U.S. 1 (1986); *State v. Blurton*, 342 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000), *reversed on other grounds by State v. Blurton*, 352 S.C. 203, 573 S.E.2d 802 (2002);

- (8) Counsel failed to object to the Solicitor’s improper closing arguments, including but not limited to the following:

“Everything they rolled out yesterday, I mean, I got mad. I tried to keep my composure over there, but here he is, he’s saying he’s mentally retarded.” Tr. 3168.

“He’s not mentally retarded, and the reason why I’m going so much over this, and the judge is going to charge you about mental retardation, that if you make a finding that he is mentally retarded from there, it’s a bar to the death penalty if it’s by a preponderance of the evidence. They have to show it by that amount. Preponderance means by the greater weight of the evidence.” Tr. 3171-72.

See, e.g. Brown v. State, 383 S.C. 506, 680 S.E.2d 909 (2009); *State v. Northcutt*, 372 S.C. 207, 641 S.E.2d 873 (2007); *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2007), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d (2004).

Id., at 3-5. He further alleged a due process violation because the Solicitor did not correct the false testimony of former Spartanburg County Sheriff’s Office Investigator Lorin Williams. *Id.*, at 5.

On February 20, 2018, Mr. Blackwell served his Second Amended PCR Application. Ex.

3. This pleading is identical to the First Amended PCR Application but adds allegations his appellate counsel were ineffective for not “adequately rais[ing] and brief[ing] all legal and factual grounds for challenging the trial court’s ruling that [Mr. Blackwell] was not intellectually disabled,” “fail[ing] to raise the issue that trial court erred in admitting prejudicial autopsy photographs and close-up photographs from the crime scene,” and “fail[ing] to raise the issue that

the trial court erred in allowing Reggie Frye to testify during the penalty phase . . . when Frye's testimony was not relevant and impermissible hearsay."

On March 22, 2019, the State filed a 90-page Return and Motion for a More Definite Statement reciting the procedural history (*id.*, at 1-7), the State's version of the facts presented at trial (*id.*, at 7-11) and the penalty phase (*id.*, at 11-27), and addressed the PCR allegations (*id.*, at 28-89). Like the return to Mr. Blackwell's initial PCR Application, this return states, "To the extent the application may be read as raising claims of error not addressed in this return, respondent denies the same, and would demand clarification in a more definite statement pursuant to Rule 12, (c), SCRCF." *Id.* at 89.

On November 10, 2021, Mr. Blackwell served his Third Amended PCR Application. Ex. 4. This application pleads the same grounds for relief as the Second Amended PCR Application but adds paragraph 11(a)(1) stating:

Material facts not previously resented and heard, S.C. Code Ann. § 17-27-45(C), that [Mr. Blackwell] is a person with intellectual disability that results from a genetic abnormality of his *CAMTA1* gene, which he inherited from his mother.

The State has not filed a return to Mr. Blackwell's Third Amended PCR Application; nor has it filed another motion requesting a more definite statement pursuant to Rule 12(c), SCRCF. As discussed in Section II, Mr. Blackwell provided the State additional information about his PCR claims outside of the PCR applications.

II. STATUS OF PROVIDING DISCOVERY.

The State served interrogatories and request for production of documents on July 25, 2018—just 91 days after this Court's order appointing undersigned counsel. On August 27, 2018, Mr. Blackwell served his initial discovery responses on the State. Ex. 5.

FILED
2022 SEP 13 PM 12:30
CLERK OF COURT
JAMES L. HARRIS, JR.
JAMES L. HARRIS, JR.
JAMES L. HARRIS, JR.

On December 10, 2018, Mr. Blackwell produced large portions of Bill McGuire's file (co-counsel for Mr. Blackwell's jury trial), the entirety of Kara Richards-Baker's file (mitigation investigator for Mr. Blackwell's jury trial), and the entirety of Dr. George Corvin's file (forensic psychiatrist consulted prior to Mr. Blackwell's jury trial). Ex. 6.

On April 14, 2021, Mr. Blackwell produced additional portions of Bill McGuire's file, significant portions of Clay Allen's files (co-counsel for Mr. Blackwell's jury trial), and the entirety of Dr. Ginger Calloway's file (Atkins evaluator who testified at Mr. Blackwell's jury trial). Ex. 7. Mr. Blackwell additionally identified portions of trial counsel's files that are protected by the attorney-client privilege. *Id.*

At a status conference on June 15, 2021, the State raised for the first time its position that trial counsel's jury selection materials should be produced. Although not conceding this issue, Mr. Blackwell agreed to produce trial counsel's jury selections materials on June 16, 2021 (Ex. 8) and produced them thereafter.

On August 10, 2022, the State wrote this Court and enquired:

Due to our inability to meet last month to discuss scheduling we would like to request a scheduling conference to be held any day next week either virtually or in person. Time and where the hearing would be conducted we would be in the court's discretion. With the Fourth Circuit Court of Appeals now scheduling matters for the fall, we like to discuss the if a hearing for the week of the October 31st remains a possibility.

Ex. 9. Undersigned counsel responded we are "on track for an October 31st hearing date, and we believe a status conference is not necessary." *Id.* This Court confirmed, "This case is scheduled for trial in Spartanburg the week of October 31st." *Id.*

Following this Court's clarification about the hearing date, the State wrote undersigned counsel and mischaracterized our position regarding completion of our investigation and discovery. Ex. 10. Undersigned counsel responded, clarified the status of our investigation and

discovery, advised that the “experts are in the process of completing their work,” agreed to review our files regarding additional discovery responses, and represented, “[W]e do not anticipate any additional amendments to the PCR application.”³ *Id.* Following this email exchange, the State renewed its request for a status conference, *id.*, which this Court scheduled for August 31, 2022, Ex. 11.

On August 30, 2022, Mr. Blackwell produced additional discovery, providing the State with additional records obtained during counsel’s investigation and a report from Dr. Christopher Cunniff. Ex. 12. On September 1, 2022, Mr. Blackwell formally disclosed the experts he expects to call during the evidentiary hearing and provided copies of the materials these experts will be relying upon to form the basis of their opinions. Ex. 13. As discussed in the September 1st letter, “much of these materials are duplicative of each other and large portions of the materials we have already provided.” *Id.* Mr. Blackwell also provided descriptions of what each expert is expected to testify about:

- **Dr. Arlene Andrews** – a social historian, who will testify regarding Mr. Blackwell’s life history. She is currently preparing a social history report, which is not yet complete. Undersigned counsel will provide it to other experts and the State upon receipt.
- **Dr. James Austin** – an expert in prison adaptability, who is conducting an evaluation of Mr. Blackwell’s adaptability to prison. Dr. Austin has not prepared a report, and counsel have not requested a report from him as of this production.
- **Dr. Christopher Cunniff** – an expert in genetics, who specializes in the evaluation and treatment of people who have or at risk for genetic conditions, birth defects, and developmental disabilities, will testify regarding genetic testing that revealed an abnormality of the *CAMTA1* gene. A Sworn Statement from Dr. Cunniff was provided to you in the discovery production made on August 30, 2022.
- **Dr. George Corvin** – a forensic psychiatrist, who is conducting an evaluation of Mr. Blackwell’s mental state at the time of the offense. Dr. Corvin has not prepared a report, and counsel have not requested a report from him as of this production.

³ *But see* Rule 15, SCRPC and *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), allowing for liberal amendments to PCR applications.

- **Dr. Susan Knight** – a forensic psychologist, who is completing an intellectual disability evaluation of Mr. Blackwell. Dr. Knight has not prepared a report, and counsel have not requested a report from her as of this production.

Id. As will be discussed in Section III, Mr. Blackwell provided notice of three of these experts on December 7, 2021.

III. OTHER NOTICE TO THE STATE OF MR. BLACKWELL'S PCR CLAIMS.

Amended PCR applications and formal discovery responses are not the only manner in which Mr. Blackwell provided the State notice of his PCR grounds for relief.

On September 19, 2018, in his Motion to Amend the Scheduling Order (Ex. 14), undersigned informed this Court and the State that our “preliminary investigation has uncovered significant deficiencies in trial counsel’s investigation of Mr. Blackwell’s Intellectual disability” (*id.* at 8-11) and “significant deficiencies in trial counsel’s mitigation investigation apart from the *Atkins* claim” (*id.* at 11-14).

On December 7, 2021, in the Motion to Continue the Evidentiary Hearing and Enter a New Scheduling Order (Ex. 15),⁴ undersigned counsel disclosed to this Court and the State the status of our investigation into Mr. Blackwell’s life history investigation and the status of Dr. Arlene Andrew’s social history evaluation (*id.*, at 11-13, 19-20), the status of our investigation of Mr. Blackwell’s mental health and the status of Dr. Corvin completing the mental health evaluation he started prior to Mr. Blackwell’s jury trial (*id.*, at 13-14, 20), the deficiencies in trial counsel’s *Atkins* investigation and the status of Dr. Susan’s Knight’s *Atkins* evaluation (*id.*, at 15-16, 20). In these disclosures, undersigned counsel informed this Court and the State that Dr. Corvin and Dr. Knight would be relying on the written social history evaluation being prepared by Dr. Andrews.

⁴ Note, the exhibits to this Motion are not included in Ex. 15 as they relate to the COVID-19 pandemic, not counsel’s discussion of the claims and evidence in this case.

the State has all the written materials Dr. Andrews will rely upon to form her opinions. Undesigned counsel has not requested any of the other experts to prepare written reports. Other than Dr. Andrews written social history report, the State has all the written materials Dr. Corvin and Dr. Knight will rely upon to form their opinions.

As undersigned counsel informed the State on August 10, 2022 (Ex. 10) and this Court during the August 31st status conference, Mr. Blackwell does not anticipate further amendments to his PCR application. The State, accordingly, has all the materials necessary to prepare for the evidentiary hearing, except for Dr. Andrews forthcoming social history report.

For the forgoing reasons, this Court should deny the State's request for a discovery deadline and final amended PCR application.

Respectfully Submitted,

By s/ E. Charles Grose, Jr.

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
Email: charles@groselawfirm.com

By s/ Lindsey S. Vann

Lindsey S. Vann
S.C. Bar No. 101408
Executive Director, Justice 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201
(803) 765-1044
Email: lindsey@justice360sc.org

September 7, 2022.

Attorneys for Ricky Lee Blackwell

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Ricky Lee Blackwell, #6033,)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)
_____)

Case No. 2018-CP-42-00928

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Memorandum Clarifying Status of Amendments to Application for Post-Conviction Relief and Providing Discovery was served by email to the AIS email addresses, pursuant to Section (b) of the Supreme Court of South Carolina's May 6, 2022 Order, this 7th day of September, 2022, upon the following:

Melody Brown, mbrown@scag.gov
Tommy Evans, Jr., tommyevansjr@scag.gov

s/ Lindsey S. Vann

FILED
2022 SEP 13 PM 12:33
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

September 7, 2022

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
PO Box 3483
Spartanburg, SC 29304

RE: Ricky Lee Blackwell, SK6033 v. State of South Carolina

Dear Ms. Cox,

Please find enclosed for filing, with certificate of service, the original and one copy of the Memorandum Clarifying Status of Amendments to Application for Post-Conviction Relief and Providing Discovery in regards to the above referenced case. If you can, please clock-in the extra copy and return it to me in the enclosed self-addressed stamped envelope.

If you should have any questions, please do not hesitate to contact me.

Sincerely,



Cierra Negron-Saullo
Legal Assistant

Enclosure

cc: The Honorable Judge Daniel Hall
Charles Grose, Esq.

RECEIVED
CLERK OF COURT
SPARTANBURG COUNTY
SEP 13 2022

2022 SEP 13 PM 12:30

09/13

Exhibit 1

FILED

2022 SEP 13 PM 12:33

CLERK OF COURT
COMMONWEALTH OF MASSACHUSETTS
JULY 14, 2022

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
 Ricky Lee Blackwell, #6033,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

Case No. 2018CP4600928

APPLICATION FOR POST-
 CONVICTION RELIEF

CLERK OF COURT
 SPARTANBURG COUNTY
 2018 MAR 14 PM 2:23
 RICKY LEE BLACKWELL

1. Place of Detention: Kirkland Correctional Institution, 4344 Broad River Rd, Columbia, SC 29210.
2. Name and location of Court which imposed sentence: Spartanburg County Court of General Sessions.
3. Name(s) of co-defendant(s) (if any): Not applicable.
4. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed: 2009-GS-42-3910—murder; 2009-GS-42-3609—kidnapping.
5. The date upon which sentence was imposed and the terms of the sentence: March 12, 2014 - death sentence for murder; kidnapping sentenced subsumed in death sentence.
6. A finding of guilty was made: after a plea of not guilty.
7. The applicant did appeal from judgment of conviction and sentence.
8. The Courts to which applicant appealed:
 - (a) The Supreme Court of South Carolina.
 - (b) The Supreme Court of the United States.

The result in each Court to which applicant appealed:

- (a) Sentence and conviction affirmed.
- (b) Petition for Writ of Certiorari denied.

The date of each result:

- (a) May 31, 2017.

(b) February 20, 2018.

Citations of any written opinion or orders entered pursuant to such results:

(a) *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (S.C. 2017).

(b) *Blackwell v. South Carolina*, 138 S. Ct. 491 (2017).

9. Not applicable.

10 & 11 **GROUND FOR RELIEF WITH SUPPORTING FACTS**

10(a) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during his *Atkins* (intellectual disability) and sentencing hearings.

11(a) Supporting Facts: Counsel failed to investigate, develop, and present a constitutionally adequate case that Applicant was a person with intellectual disability who could not be executed pursuant to the Supreme Court's decision in *Atkins v. Virginia*, 536 U.S. 304 (2002). Counsel's performance was both unreasonable and prejudicial, *see Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's specific unreasonable and prejudicial acts or omissions are:

- (1) Counsel failed to investigate and present evidence that purported IQ scores in the developmental period were not valid measures of intellectual functioning, *see Hall v. Florida*, 134 S. Ct. 1986 (2014); *Wiggins v. Smith*, 583 U.S. 510 (2003);
- (2) Counsel failed to investigate the circumstances under which Applicant obtained a commercial driver's license and other certifications relied upon by the State to argue he was not a person with intellectual disability; *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- (3) Counsel failed to investigate, develop and present applicant's case for intellectual disability through a thorough investigation of Applicant's significantly subaverage intellectual functioning, deficits in adaptive functioning and onset before the age of 18, including but not limited to objecting to the trial judge's deviation from clinical consensus and practice in the determination that Applicant was not a person with intellectual disability. *See Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 134 S. Ct. 1986 (2014).

10(b) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during the capital trial proceedings.

11(b) **Supporting Facts:** Trial counsel's performance during the sentencing phase was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's specific unreasonable and prejudicial acts or omissions are:

- (1) Counsel failed to call hospital chaplains to testify regarding Applicant's remorse shortly after the crime where records from the chaplains were excluded by the trial judge as inadmissible hearsay;
12. (a) Applicant has not filed any petition in state court other than the mandatory appeal to the South Carolina Supreme Court.
- (b) Applicant has not previously filed an application for post-conviction relief or petition for a writ of habeas corpus in State or Federal court.
- (c) Applicant has not filed any petitions to the United States Supreme Court other than the petition already specified *supra* in (8).
- (d) Applicant has not filed any motions, petitions, or applications in this or any other Court.
13. Not applicable.
14. Applicant has not raised any ground set forth in (10) in this or any other court.
15. Not Applicable.
16. These grounds rely on additional facts outside the record which was before the previous courts.
17. Applicant was previously represented by counsel.
18. Applicant was represented at trial by William Sean McGuire, South Carolina Commission on Indigent Defense, 1330 Lady St., PO Box 11433 Columbia, SC, 29211; Clay T. Allen, Spartanburg Circuit Public Defender, 366 N. Church St. Ste. 3000, Spartanburg, SC 29349, and Boyd Young, South Carolina Commission on Indigent Defense, 1330 Lady St., PO Box 11433 Columbia, SC, 29211.
- On direct appeal applicant was represented by Robert M. Dudek and David Alexander, of the South Carolina Office of Appellate Defense, 1330 Lady Street, Columbia, SC 29201.
19. Applicant seeks relief from his conviction and sentence.
20. Applicant is not under sentence from any other court that he has not challenged.

Respectfully prepared by,

E. CHARLES GROSE
Grose Law Firm
404 Main Street

5049

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Ricky Lee Blackwell, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Ricky L Blackwell
Applicant

SWORN or affirmed to and subscribed before me this
12th day of March, 2018.

Lesley J. Lane
Notary Public

My Commission Expires: 2/21/2024

CLERK OF DISTRICT COURT
SPARTANBURG COUNTY
2018 MAR 14 PM 2:23
M. HOPE BLACKLEY

Exhibit 2

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Ricky Lee Blackwell, #6033,)
)
Applicant,)

Case No. 2018-CP-42-00928

**AMENDED APPLICATION FOR POST-
CONVICTION RELIEF**

vs.)
)
)

State of South Carolina,)
)
Respondent.)
_____)

1. Place of Detention: Kirkland Correctional Institution, 4344 Broad River Rd, Columbia, SC 29210.
2. Name and location of Court which imposed sentence: Spartanburg County Court of General Sessions.
3. Name(s) of co-defendant(s) (if any): Not applicable.
4. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed: 2009-GS-42-3910—murder; 2009-GS-42-3609—kidnapping.
5. The date upon which sentence was imposed and the terms of the sentence: March 12, 2014 — death sentence for murder; kidnapping sentenced subsumed in death sentence.
6. A finding of guilty was made: after a plea of not guilty.
7. The applicant did appeal from judgment of conviction and sentence.
8. The Courts to which applicant appealed:
 - (a) The Supreme Court of South Carolina.
 - (b) The Supreme Court of the United States.

The result in each Court to which applicant appealed:

- (a) Sentence and conviction affirmed.
- (b) Petition for Writ of Certiorari denied.

The date of each result:

- (a) May 31, 2017.
- (b) February 20, 2018.

Citations of any written opinion or orders entered pursuant to such results:

- (a) *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (S.C. 2017).
- (b) *Blackwell v. South Carolina*, 138 S. Ct. 491 (2017).

9. Not applicable.

10 & 11 **GROUND FOR RELIEF WITH SUPPORTING FACTS**

10(a) Applicant's death sentence violates the Eighth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution due to the fact that Applicant is a person with intellectual disability. *Moore v. Texas*, 137 S. Ct. 1039 (2017), *Hall v. Florida*, 134 S. Ct. 1986 (2014), *Atkins v. Virginia*, 536 U.S. 306 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003).

11(a) Supporting Facts: Because Applicant has significantly subaverage intellectual functioning, existing concurrently with deficits in adaptive functioning, both of which manifested before he was eighteen years old, he is ineligible for capital punishment. *Atkins v. Virginia*, 536 U.S. 306 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003); S.C. Code § 16-3-20(C)(b)(10).

10(b) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during his pre-trial and sentencing phase *Atkins* (intellectual disability) hearings.

11(b) Supporting Facts: Counsel failed to investigate, develop, and present a constitutionally adequate case that Applicant is a person with intellectual disability who could not be executed pursuant to the Supreme Court's decision in *Atkins v. Virginia*, 536 U.S. 304 (2002). Counsel's performance was both unreasonable and prejudicial, *see Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's specific unreasonable and prejudicial acts or omissions, include, but are not necessarily limited to, the following:

- (1) Counsel failed to investigate and present all relevant evidence on the issue of intellectual disability including evidence of Applicant's significantly subaverage intellectual functioning, deficits in adaptive functioning, and onset before the age of 18, *Atkins v. Virginia*, 536 U.S. 304 (2002); *Wiggins v. Smith*, 583 U.S. 510 (2003);
- (2) Counsel failed to object to the trial judge's reliance on stereotype and deviation from clinical consensus and practice in the determination that Applicant was not a person with intellectual disability, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 134 S. Ct. 1986 (2014);
- (3) Counsel failed to investigate and present evidence that some of Applicant's purported IQ test scores in the developmental period were not legitimate,

individualized measures of general intellectual functioning and thus were not inconsistent with intellectual disability, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 134 S. Ct. 1986 (2014); *Wiggins v. Smith*, 583 U.S. 510 (2003);

- (4) Counsel failed to investigate and present the circumstances under which Applicant obtained a commercial driver's license and other certifications to refute the trial judge and jury's reliance on the certifications in finding that Applicant was not a person with intellectual disability, *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- (5) Counsel failed to investigate and present evidence to the trial judge and jury that Applicant's depression and cancer treatment (including chemotherapy) had no demonstrable effect on IQ scores establishing significantly subaverage intellectual functioning;
- (6) Counsel failed to adequately inform and educate the trial judge and jury about potentially prejudicial and preconceived misconceptions and stereotypes related to intellectual disability, *See Moore v. Texas*, 137 S. Ct. 1039 (2017).
- (7) Counsel failed to object to the Solicitor's sentencing phase closing argument endorsing improper stereotypes toward people with intellectual disability when the Solicitor stated: "I mean it's an insult to people that had truly – have a mental disability for them to bring this kind of defense up to try to spare his life trying to use that excuse," Tr. 3169, and "He's not disabled, and, like I say, it's an insult to people that's mentally – I mean that truly has that kind of condition." Tr. 3171. *See Moore v. Texas*, 137 S. Ct. 1039 (2017); *Brown v. State*, 383 S.C. 506, 680 S.E.2d 909 (2009); *State v. Northcutt*, 372 S.C. 207, 641 S.E.2d 873 (2007); *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2007), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d (2004).

10(c) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during pre-trial proceedings.

11(c) Supporting Facts: Counsel failed to adequately question prospective jurors in voir dire to identify prospective jurors with pre-formed beliefs about and stereotypes and biases against a defendant with an intellectual disability. Trial counsel's performance during pre-trial proceedings was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984).

10(d) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during the penalty phase of the proceedings.

11(d) **Supporting Facts:** Trial counsel's performance during the sentencing phase was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's specific unreasonable and prejudicial acts or omissions are

- (1) Counsel failed to adequately investigate and present the full range of mitigating evidence concerning Applicant's social and life history, *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- (2) Counsel failed to adequately investigate and present all available mitigating evidence concerning Applicant's mental health prior to and at the time of the capital offense, *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- (3) Counsel failed to investigate and present mitigating evidence concerning Applicant's lack of future dangerousness, adaptability to confinement, and good character, *Skipper v. South Carolina*, 476 U.S. 1 (1986);
- (4) Counsel failed to adequately investigate and present scientific evidence demonstrating that the fact the victim urinated on herself was a natural result of death as opposed to resulting from fear while alive during the incident;
- (5) Counsel failed to object to misleading jury instructions, in violation of the Sixth and Eighth Amendments to the United States Constitution, which did not properly advise the jurors that whatever sentence they recommended would be the sentence imposed by the court rather than a recommendation to the court about the sentence to be imposed, *see Hurst v. Florida*, 136 S. Ct. 616(2016); *Ring v. Arizona*, 536 U.S. 584 (2002); *Caldwell v. Mississippi*, 472 U.S. 320, 328-29 (1985); *see also State v. Bellamy*, 293 S.C. 103, 259 S.E.2d 63 (1987), *overruled by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991);
- (6) Counsel failed to investigate and present evidence of remorse and acceptance of responsibility including, but not limited to, failure to call a hospital chaplain to testify regarding Applicant's remorse shortly after the crime when the chaplain's records documenting the remorse were excluded by the trial judge as inadmissible hearsay;
- (7) Counsel failed to object to the Solicitor's closing argument that Applicant did not have any remorse for killing Brooke Center, including but not limited to Tr. 3169 ("not once did he cry about Brooke. Not once did he show any remorse for Brooke. Doesn't even show one concern about Brooke."), Tr. 3180-81, under circumstances where the Solicitor successfully objected to trial counsel introducing evidence of Applicant's remorse. *See Simmons v. South Carolina*, 512 U.S. 154 (1994); *Skipper v. South Carolina*, 476 U.S. 1 (1986); *State v. Blurton*, 342 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000), *reversed on other grounds by State v. Blurton*, 352 S.C. 203, 573 S.E.2d 802 (2002);

- (8) Counsel failed to object to the Solicitor's improper closing arguments, including but not limited to the following:

"Everything they rolled out yesterday, I mean, I got mad. I tried to keep my composure over there, but here he is, he's saying he's mentally retarded." Tr. 3168.

"He's not mentally retarded, and the reason why I'm going so much over this, and the judge is going to charge you about mental retardation, that if you make a finding that he is mentally retarded from there, it's a bar to the death penalty if it's by a preponderance of the evidence. They have to show it by that amount. Preponderance means by the greater weight of the evidence." Tr. 3171-72.

See, e.g. Brown v. State, 383 S.C. 506, 680 S.E.2d 909 (2009); *State v. Northcutt*, 372 S.C. 207, 641 S.E.2d 873 (2007); *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2007), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d (2004).

10(e) **Applicant's right to due process of law—guaranteed by the Fourteenth Amendment to the United States Constitution—was violated as a result of the** knowing presentation of false or misleading information by a state agent. *See Kyles v. Whitley*, 514 U.S. 419 (1995); *Napue v. People of State of Ill.*, 360 U.S. 264 (1959); *see also Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006); *Alcorta v. State of Texas*, 355 U.S. 28, 78 (1957).

11(e) **Supporting Facts:** Spartanburg County Sheriff Office Investigator Lorin Williams testified Mr. Blackwell did not have remorse for killing Brooke Center. Tr. 2679-86. During closing argument, the Solicitor relied on the testimony of Investigator Williams to argue Mr. Blackwell "[d]idn't show any remorse" for Brooke Center's death, Tr. 3180-81. despite evidence from hospital chaplains and others present that Applicant did show remorse. Investigator Williams's testimony was false, and even if the Solicitor did not knowingly solicit such false evidence, the Solicitor allowed it to go uncorrected. *See Kyles v. Whitley*, 514 U.S. 419, 115 S. Ct. 1555, 131 L.Ed.2d 490 (1995); *Napue v. People of State of Ill.*, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed 1217 (1959); *see also Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006); *Alcorta v. State of Texas*, 355 U.S. 28, 78 (1957).

12. (a) Applicant has not filed any petition in state court other than the mandatory appeal to the South Carolina Supreme Court.
- (b) Applicant has not previously filed an application for post-conviction relief nor a petition for a writ of habeas corpus in State or Federal court.
- (c) Applicant has not filed any petitions to the United States Supreme Court other than the petition already specified *supra* in (8).
- (d) Applicant has not filed any motions, petitions, or applications in this or any other Court.

13. Not applicable.
14. Applicant has not raised any ground set forth in (10) in this or any other court.
15. Not Applicable.
16. These grounds rely on additional facts outside the record which was before the previous courts.
17. Applicant was previously represented by counsel.
18. Applicant was represented at trial by William Sean McGuire, South Carolina Commission on Indigent Defense, 1330 Lady St., PO Box 11433 Columbia, SC, 29211; Clay T. Allen, Spartanburg Circuit Public Defender, 366 N. Church St. Ste. 3000, Spartanburg, SC 29349, and Boyd Young, South Carolina Commission on Indigent Defense, 1330 Lady St., PO Box 11433 Columbia, SC, 29211.

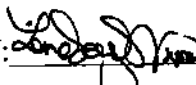
On direct appeal applicant was represented by Robert M. Dudek and David Alexander, of the South Carolina Office of Appellate Defense, 1330 Lady Street, Columbia, SC 29201.

19. Applicant seeks relief from his conviction and sentence.
20. Applicant is not under sentence from any other court that he has not challenged.

Respectfully prepared by,

E. CHARLES GROSE
Grose Law Firm
404 Main Street
Greenwood, SC 29646
(864) 538-4466

LINDSEY S. VANN
Justice360
900 Elmwood Avenue, Suite 200
Columbia, South Carolina 29201
(803) 765-1044

BY: 

February 19, 2019.

2019 FEB 21 PM 1:11

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Ricky Lee Blackwell, #6033,)
)
Applicant,)

Case No. 2018-CP-42-00928

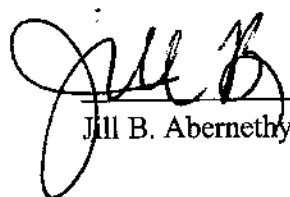
CERTIFICATE OF SERVICE

vs.)

State of South Carolina,)
)
Respondent.)
_____)

The undersigned certifies that a copy of the Amended Application for Post-Conviction Relief was served by first class United States mail, postage prepaid, this 19th day of February 2019, upon the following:

Melody Brown
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211


Jill B. Abernethy

2019 FEB 21 PM 1:11

February 18, 2019

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
180 Magnolia Street, Suite 500
Spartanburg, SC 29306

2019 FEB 21 PM 1:11

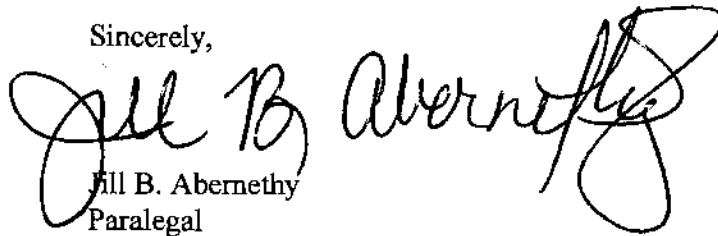
RE: *Ricky Lee Blackwell, SK6033 v. State of South Carolina*

Dear Ms. Cox:

Please find enclosed for filing, with certificate of service, the original and one copy of the Amended Application for Post-Conviction Relief in regards to the above referenced case. If you can please clock-in the extra copy and return it to me in the enclosed self-addressed stamped envelope.

If you should have any questions, please do not hesitate to contact me.

Sincerely,


Jill B. Abernethy
Paralegal

Enclosure

cc: The Honorable Judge Daniel Hall
Melody Brown, Esq.
Charles Grose, Esq.

Exhibit 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Ricky Lee Blackwell, #6033,)
)
Applicant,)

Case No. 2018-CP-42-00928

**SECOND AMENDED APPLICATION
FOR POST-CONVICTION RELIEF**

vs.)
)
)

State of South Carolina,)
)
Respondent.)
_____)

1. Place of Detention: Kirkland Correctional Institution, 4344 Broad River Rd, Columbia SC 29210.
2. Name and location of Court which imposed sentence: Spartanburg County Court General Sessions.
3. Name(s) of co-defendant(s) (if any): Not applicable.
4. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed: 2009-GS-42-3910—murder; 2009-GS-42-3609—kidnapping.
5. The date upon which sentence was imposed and the terms of the sentence: March 12, 2014 – death sentence for murder; kidnapping sentenced subsumed in death sentence.
6. A finding of guilty was made: after a plea of not guilty.
7. The applicant did appeal from judgment of conviction and sentence.
8. The Courts to which applicant appealed:
 - (a) The Supreme Court of South Carolina.
 - (b) The Supreme Court of the United States.

The result in each Court to which applicant appealed:

- (a) Sentence and conviction affirmed.
- (b) Petition for Writ of Certiorari denied.

The date of each result:

- (a) May 31, 2017.
- (b) February 20, 2018.

2019 FEB 22 PM 4:31
CLERK OF COURT
SPARTANBURG COUNTY

Citations of any written opinion or orders entered pursuant to such results:

- (a) *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (S.C. 2017).
- (b) *Blackwell v. South Carolina*, 138 S. Ct. 491 (2017).

9. Not applicable.

10 & 11 GROUNDS FOR RELIEF WITH SUPPORTING FACTS

10(a) Applicant's death sentence violates the Eighth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution due to the fact that Applicant is a person with intellectual disability. *Moore v. Texas*, 137 S. Ct. 1039 (2017), *Hall v. Florida*, 134 S. Ct. 1986 (2014), *Atkins v. Virginia*, 536 U.S. 306 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003).

11(a) Supporting Facts: Because Applicant has significantly subaverage intellectual functioning, existing concurrently with deficits in adaptive functioning, both of which manifested before he was eighteen years old, he is ineligible for capital punishment. *Atkins v. Virginia*, 536 U.S. 306 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003); S.C. Code § 16-3-20(C)(b)(10).

10(b) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during his pre-trial and sentencing phase *Atkins* (intellectual disability) hearings.

11(b) Supporting Facts: Counsel failed to investigate, develop, and present a constitutionally adequate case that Applicant is a person with intellectual disability who could not be executed pursuant to the Supreme Court's decision in *Atkins v. Virginia*, 536 U.S. 304 (2002). Counsel's performance was both unreasonable and prejudicial, see *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's specific unreasonable and prejudicial acts or omissions, include, but are not necessarily limited to, the following:

- (1) Counsel failed to investigate and present all relevant evidence on the issue of intellectual disability including evidence of Applicant's significantly subaverage intellectual functioning, deficits in adaptive functioning, and onset before the age of 18, *Atkins v. Virginia*, 536 U.S. 304 (2002); *Wiggins v. Smith*, 536 U.S. 510 (2003);
- (2) Counsel failed to object to the trial judge's reliance on stereotype and deviation from clinical consensus and practice in the determination that Applicant was not a person with intellectual disability, see *Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 134 S. Ct. 1986 (2014);
- (3) Counsel failed to investigate and present evidence that some of Applicant's purported IQ test scores in the developmental period were not legitimate,

individualized measures of general intellectual functioning and thus were not inconsistent with intellectual disability, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 134 S. Ct. 1986 (2014); *Wiggins v. Smith*, 583 U.S. 510 (2003);

- (4) Counsel failed to investigate and present the circumstances under which Applicant obtained a commercial driver's license and other certifications to refute the trial judge and jury's reliance on the certifications in finding that Applicant was not a person with intellectual disability, *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- (5) Counsel failed to investigate and present evidence to the trial judge and jury that Applicant's depression and cancer treatment (including chemotherapy) had no demonstrable effect on IQ scores establishing significantly subaverage intellectual functioning;
- (6) Counsel failed to adequately inform and educate the trial judge and jury about potentially prejudicial and preconceived misconceptions and stereotypes related to intellectual disability, *See Moore v. Texas*, 137 S. Ct. 1039 (2017).
- (7) Counsel failed to object to the Solicitor's sentencing phase closing argument endorsing improper stereotypes toward people with intellectual disability when the Solicitor stated: "I mean it's an insult to people that had truly – have a mental disability for them to bring this kind of defense up to try to spare his life trying to use that excuse," Tr. 3169, and "He's not disabled, and, like I say, it's an insult to people that's mentally – I mean that truly has that kind of condition." Tr. 3171. *See Moore v. Texas*, 137 S. Ct. 1039 (2017); *Brown v. State*, 383 S.C. 506, 680 S.E.2d 909 (2009); *State v. Northcutt*, 372 S.C. 207, 641 S.E.2d 873 (2007); *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2007), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d (2004).

10(c) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during pre-trial proceedings.

11(c) Supporting Facts: Counsel failed to adequately question prospective jurors in voir dire to identify prospective jurors with pre-formed beliefs about and stereotypes and biases against a defendant with an intellectual disability. Trial counsel's performance during pre-trial proceedings was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984).

10(d) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during the penalty phase of the proceedings.

11(d) **Supporting Facts:** Trial counsel's performance during the sentencing phase was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's specific unreasonable and prejudicial acts or omissions are

- (1) Counsel failed to adequately investigate and present the full range of mitigating evidence concerning Applicant's social and life history, *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- (2) Counsel failed to adequately investigate and present all available mitigating evidence concerning Applicant's mental health prior to and at the time of the capital offense, *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- (3) Counsel failed to investigate and present mitigating evidence concerning Applicant's lack of future dangerousness, adaptability to confinement, and good character, *Skipper v. South Carolina*, 476 U.S. 1 (1986);
- (4) Counsel failed to adequately investigate and present scientific evidence demonstrating that the fact the victim urinated on herself was a natural result of death as opposed to resulting from fear while alive during the incident;
- (5) Counsel failed to object to misleading jury instructions, in violation of the Sixth and Eighth Amendments to the United States Constitution, which did not properly advise the jurors that whatever sentence they recommended would be the sentence imposed by the court rather than a recommendation to the court about the sentence to be imposed, *see Hurst v. Florida*, 136 S. Ct. 616(2016); *Ring v. Arizona*, 536 U.S. 584 (2002); *Caldwell v. Mississippi*, 472 U.S. 320, 328-29 (1985); *see also State v. Bellamy*, 293 S.C. 103, 259 S.E.2d 63 (1987), *overruled by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991);
- (6) Counsel failed to investigate and present evidence of remorse and acceptance of responsibility including, but not limited to, failure to call a hospital chaplain to testify regarding Applicant's remorse shortly after the crime when the chaplain's records documenting the remorse were excluded by the trial judge as inadmissible hearsay;
- (7) Counsel failed to object to the Solicitor's closing argument that Applicant did not have any remorse for killing Brooke Center, including but not limited to Tr. 3169 ("not once did he cry about Brooke. Not once did he show any remorse for Brooke. Doesn't even show one concern about Brooke."), Tr. 3180-81, under circumstances where the Solicitor successfully objected to trial counsel introducing evidence of Applicant's remorse. *See Simmons v. South Carolina*, 512 U.S. 154 (1994); *Skipper v. South Carolina*, 476 U.S. 1 (1986); *State v. Blurton*, 342 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000), *reversed on other grounds by State v. Blurton*, 352 S.C. 203, 573 S.E.2d 802 (2002);

- (8) Counsel failed to object to the Solicitor's improper closing arguments, including but not limited to the following:

"Everything they rolled out yesterday, I mean, I got mad. I tried to keep my composure over there, but here he is, he's saying he's mentally retarded." Tr. 3168.

"He's not mentally retarded, and the reason why I'm going so much over this, and the judge is going to charge you about mental retardation, that if you make a finding that he is mentally retarded from there, it's a bar to the death penalty if it's by a preponderance of the evidence. They have to show it by that amount. Preponderance means by the greater weight of the evidence." Tr. 3171-72.

See, e.g. Brown v. State, 383 S.C. 506, 680 S.E.2d 909 (2009); *State v. Northcutt*, 372 S.C. 207, 641 S.E.2d 873 (2007); *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2007), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d (2004).

10(e) Applicant's right to due process of law—guaranteed by the Fourteenth Amendment to the United States Constitution—was violated as a result of the knowing presentation of false or misleading information by a state agent. *See Kyles v. Whitley*, 514 U.S. 419 (1995); *Napue v. People of State of Ill.*, 360 U.S. 264 (1959); *see also Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006); *Alcorta v. State of Texas*, 355 U.S. 28, 78 (1957).

11(e) Supporting Facts: Spartanburg County Sheriff Office Investigator Lorin Williams testified Mr. Blackwell did not have remorse for killing Brooke Center. Tr. 267-86. During closing argument, the Solicitor relied on the testimony of Investigator Williams to argue Mr. Blackwell "[d]idn't show any remorse" for Brooke Center's death, Tr. 3180-81, despite evidence from hospital chaplains and others present that Applicant did show remorse. Investigator Williams's testimony was false, and even if the Solicitor did not knowingly solicit such false evidence, the Solicitor allowed it to go uncorrected. *See Kyles v. Whitley*, 514 U.S. 419, 115 S. Ct. 1555, 131 L.Ed.2d 490 (1995); *Napue v. People of State of Ill.*, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed 1217 (1959); *see also Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006); *Alcorta v. State of Texas*, 355 U.S. 28, 78 (1957).

10(f) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during the appellate proceedings.

11(f) Supporting Facts: Appellate counsel's performance during the appellate phase was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984); *see also Evitts v. Lucey*, 469 U.S. 387 (1985); *Southerland v. State*, 337 S.C. 610, 615, 524

S.E.2d 833, 836 (1999). Counsel's specific unreasonable and prejudicial acts or omissions are:

- (1) Appellate counsel failed to adequately raise and brief all legal and factual grounds for challenging the trial court's ruling that Applicant was not intellectually disabled, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 134 S. Ct. 1986 (2014); *Atkins v. Virginia*, 536 U.S. 304 (2002); *Patrick v. State*, 349 S.C. 203, 562 S.E.2d 609 (2002);
 - (2) Appellate counsel failed to raise the issue that the trial court erred in admitting prejudicial autopsy photographs and close-up photographs from the crime scene, including a photograph of the victim after she her body was moved, U.S. Const. amends. V, VIII; Rule 403, SCRE;
 - (3) Appellate counsel failed to raise the issue that the trial court erred in allowing Reggie Frye to testify during the penalty phase of Applicant's trial when Frye's testimony was not relevant and impermissible hearsay, Rule 401, SCRE; Rule 613(b), SCRE; Rule 802, SCRE.
12. (a) Applicant has not filed any petition in state court other than the mandatory appeal to the South Carolina Supreme Court.
- (b) Applicant has not previously filed an application for post-conviction relief nor a petition for a writ of habeas corpus in State or Federal court.
- (c) Applicant has not filed any petitions to the United States Supreme Court other than the petition already specified *supra* in (8).
- (d) Applicant has not filed any motions, petitions, or applications in this or any other Court.
13. Not applicable.
14. Applicant has not raised any ground set forth in (10) in this or any other court.
15. Not Applicable.
16. These grounds rely on additional facts outside the record which was before the previous courts.
17. Applicant was previously represented by counsel.
18. Applicant was represented at trial by William Sean McGuire, South Carolina Commission on Indigent Defense, 1330 Lady St., PO Box 11433 Columbia, SC, 29211; Clay T. Allen, Spartanburg Circuit Public Defender, 366 N. Church St. Ste. 3000, Spartanburg, SC 29349, and Boyd Young, South Carolina Commission on Indigent Defense, 1330 Lady St., PO Box 11433 Columbia, SC, 29211.

On direct appeal applicant was represented by Robert M. Dudek and David Alexander, of the South Carolina Office of Appellate Defense, 1330 Lady Street, Columbia, SC 29201.

19. Applicant seeks relief from his conviction and sentence.
20. Applicant is not under sentence from any other court that he has not challenged.

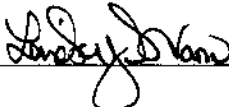
Respectfully prepared by,

E. CHARLES GROSE

Grose Law Firm
404 Main Street
Greenwood, SC 29646
(864) 538-4466

LINDSEY S. VANN

Justice360
900 Elmwood Avenue, Suite 200
Columbia, South Carolina 29201
(803) 765-1044

BY: 

February 20, 2019.

2019 FEB 22 PM 1:31
COURT
CLERK
CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

Ricky Lee Blackwell, #6033,)
Applicant,)

vs.)

State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

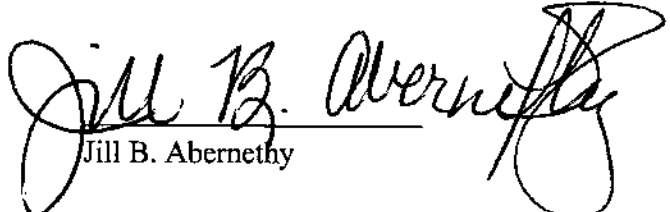
Case No. 2018-CP-42-00928

CERTIFICATE OF SERVICE

2019 FEB 22 PM 1:31
CLERK OF COURT

The undersigned certifies that a copy of the Second Amended Application for Post-Conviction Relief was served by first class United States mail, postage prepaid, this 20th day of February 2019, upon the following:

Melody Brown
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211


Jill B. Abernethy

February 20, 2019

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
180 Magnolia Street, Suite 500
Spartanburg, SC 29306

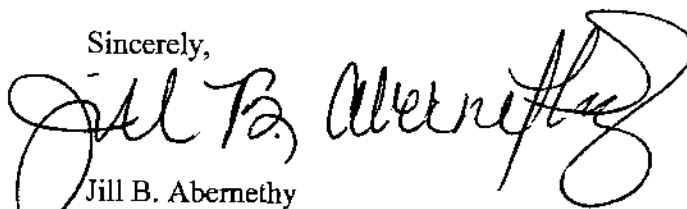
RE: *Ricky Lee Blackwell, SK6033 v. State of South Carolina*

Dear Ms. Cox:

Please find enclosed for filing, with certificate of service, the original and one copy of the Second Amended Application for Post-Conviction Relief in regards to the above referenced case. If you can please clock-in the extra copy and return it to me in the enclosed self-addressed stamped envelope.

If you should have any questions, please do not hesitate to contact me.

Sincerely,


Jill B. Abernethy
Paralegal

Enclosure

cc: The Honorable Judge Daniel Hall
Melody Brown, Esq.
Charles Grose, Esq.

2019 FEB 22 PM 1:31

Exhibit 4

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Ricky Lee Blackwell, #6033,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No. 2018-CP-42-00928

**THIRD AMENDED APPLICATION FOR
POST-CONVICTION RELIEF**

1. Place of Detention: Broad River Secure Facility, 4460 Broad River Rd, Columbia, SC 29210.
2. Name and location of Court which imposed sentence: Spartanburg County Court of General Sessions.
3. Name(s) of co-defendant(s) (if any): Not applicable.
4. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed: 2009-GS-42-3910—murder; 2009-GS-42-3609—kidnapping.
5. The date upon which sentence was imposed and the terms of the sentence: March 12, 2014 – death sentence for murder; kidnapping sentenced subsumed in death sentence.
6. A finding of guilty was made: after a plea of not guilty.
7. The applicant did appeal from judgment of conviction and sentence.
8. The Courts to which applicant appealed:
 - (a) The Supreme Court of South Carolina.
 - (b) The Supreme Court of the United States.

The result in each Court to which applicant appealed:

- (a) Sentence and conviction affirmed.
- (b) Petition for Writ of Certiorari denied.

The date of each result:

- (a) May 31, 2017.
- (b) February 20, 2018.

Citations of any written opinion or orders entered pursuant to such results:

- (a) *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (S.C. 2017).
- (b) *Blackwell v. South Carolina*, 138 S. Ct. 491 (2017).

9. Not applicable.

10 & 11 GROUNDS FOR RELIEF WITH SUPPORTING FACTS

10(a) Applicant's death sentence violates the Eighth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution due to the fact that Applicant is a person with intellectual disability. *Moore v. Texas*, 137 S. Ct. 1039 (2017), *Hall v. Florida*, 572 U.S. 701 (2014), *Atkins v. Virginia*, 536 U.S. 306 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003).

11(a) Supporting Facts: Because Applicant has significantly subaverage intellectual functioning, existing concurrently with deficits in adaptive functioning, both of which manifested during the developmental period, he is ineligible for capital punishment. *Atkins v. Virginia*, 536 U.S. 306 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003); S.C. Code § 16-3-20(C)(b)(10). Specific facts supporting this claim, include, but are not limited to, the following:

- (1) Material facts not previously presented and heard, S.C. Code § 17-27-45(C), that Applicant is a person with intellectual disability that results from a genetic abnormality of his *CAMTA1* gene, which he inherited from his mother.

10(b) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during his pre-trial and sentencing phase *Atkins* (intellectual disability) hearings.

11(b) Supporting Facts: Counsel failed to investigate, develop, and present a constitutionally adequate case that Applicant is a person with intellectual disability who could not be executed pursuant to the Supreme Court's decision in *Atkins v. Virginia*, 536 U.S. 304 (2002). Counsel's performance was both unreasonable and prejudicial, *see Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's specific unreasonable and prejudicial acts or omissions, include, but are not necessarily limited to, the following:

- (1) Counsel failed to investigate and present all relevant evidence on the issue of intellectual disability including evidence of Applicant's significantly subaverage intellectual functioning, deficits in adaptive functioning, and onset before the age of 18, *Atkins v. Virginia*, 536 U.S. 304 (2002); *Wiggins v. Smith*, 530 U.S. 510 (2000);
- (2) Counsel failed to object to the trial judge's reliance on stereotype and deviation from clinical consensus and practice in the determination that Applicant was not a

person with intellectual disability, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 572 U.S. 701 (2014);

- (3) Counsel failed to investigate and present evidence that some of Applicant's purported IQ test scores in the developmental period were not legitimate, individualized measures of general intellectual functioning and thus were not inconsistent with intellectual disability, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 572 U.S. 701 (2014); *Wiggins v. Smith*, 583 U.S. 510 (2003);
- (4) Counsel failed to investigate and present the circumstances under which Applicant obtained a commercial driver's license and other certifications to refute the trial judge and jury's reliance on the certifications in finding that Applicant was not a person with intellectual disability, *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- (5) Counsel failed to investigate and present evidence to the trial judge and jury that Applicant's depression and cancer treatment (including chemotherapy) had no demonstrable effect on IQ scores establishing significantly subaverage intellectual functioning;
- (6) Counsel failed to investigate and present evidence that Applicant is a person with intellectual disability as a result of a genetic abnormality of his *CAMTA1* gene, which he inherited from his mother
- (7) Counsel failed to adequately inform and educate the trial judge and jury about potentially prejudicial and preconceived misconceptions and stereotypes related to intellectual disability, *see Moore v. Texas*, 137 S. Ct. 1039 (2017);
- (8) Counsel failed to object to the Solicitor's sentencing phase closing argument endorsing improper stereotypes toward people with intellectual disability when the Solicitor stated: "I mean it's an insult to people that had truly – have a mental disability for them to bring this kind of defense up to try to spare his life trying to use that excuse," Tr. 3169, and "He's not disabled, and, like I say, it's an insult to people that's mentally – I mean that truly has that kind of condition." Tr. 3171. *See Moore v. Texas*, 137 S. Ct. 1039 (2017); *Brown v. State*, 383 S.C. 506, 680 S.E.2d 909 (2009); *State v. Northcutt*, 372 S.C. 207, 641 S.E.2d 873 (2007); *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2007), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d (2004).

10(c) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during pre-trial proceedings.

11(c) Supporting Facts: Counsel failed to adequately question prospective jurors in voir dire to identify prospective jurors with pre-formed beliefs about and stereotypes and biases

against a defendant with an intellectual disability. Trial counsel's performance during pre-trial proceedings was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984).

10(d) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during the penalty phase of the proceedings.

11(d) Supporting Facts: Trial counsel's performance during the sentencing phase was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's specific unreasonable and prejudicial acts or omissions are

- (1) Counsel failed to adequately investigate and present the full range of mitigating evidence concerning Applicant's social and life history, *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- (2) Counsel failed to adequately investigate and present all available mitigating evidence concerning Applicant's mental health prior to and at the time of the capital offense, *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- (3) Counsel failed to investigate and present mitigating evidence concerning Applicant's lack of future dangerousness, adaptability to confinement, and good character, *see Skipper v. South Carolina*, 476 U.S. 1 (1986);
- (4) Counsel failed to adequately investigate and present scientific evidence demonstrating that the fact the victim urinated on herself was a natural result of death as opposed to resulting from fear while alive during the incident;
- (5) Counsel failed to object to misleading jury instructions, in violation of the Sixth and Eighth Amendments to the United States Constitution, which did not properly advise the jurors that whatever sentence they recommended would be the sentence imposed by the court rather than a recommendation to the court about the sentence to be imposed, *see Hurst v. Florida*, 572 U.S. 701 (2016); *Ring v. Arizona*, 536 U.S. 584 (2002); *Caldwell v. Mississippi*, 472 U.S. 320, 328-29 (1985); *see also State v. Bellamy*, 293 S.C. 103, 259 S.E.2d 63 (1987), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991);
- (6) Counsel failed to investigate and present evidence of remorse and acceptance of responsibility including, but not limited to, failure to call a hospital chaplain to testify regarding Applicant's remorse shortly after the crime when the chaplain's records documenting the remorse were excluded by the trial judge as inadmissible hearsay;
- (7) Counsel failed to object to the Solicitor's closing argument that Applicant did not have any remorse for killing Brooke Center, including but not limited to Tr. 3169

("not once did he cry about Brooke. Not once did he show any remorse for Brooke. Doesn't even show one concern about Brooke."), Tr. 3180-81, under circumstances where the Solicitor successfully objected to trial counsel introducing evidence of Applicant's remorse, *see Simmons v. South Carolina*, 512 U.S. 154 (1994); *Skipper v. South Carolina*, 476 U.S. 1 (1986); *State v. Blurton*, 342 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000), *reversed on other grounds by State v. Blurton*, 352 S.C. 203, 573 S.E.2d 802 (2002);

- (8) Counsel failed to object to the Solicitor's improper closing arguments, including but not limited to the following:

"Everything they rolled out yesterday, I mean, I got mad. I tried to keep my composure over there, but here he is, he's saying he's mentally retarded." Tr. 3168.

"He's not mentally retarded, and the reason why I'm going so much over this, and the judge is going to charge you about mental retardation, that if you make a finding that he is mentally retarded from there, it's a bar to the death penalty if it's by a preponderance of the evidence. They have to show it by that amount. Preponderance means by the greater weight of the evidence." Tr. 3171-72.

See, e.g., Brown v. State, 383 S.C. 506, 680 S.E.2d 909 (2009); *State v. Northcutt*, 372 S.C. 207, 641 S.E.2d 873 (2007); *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2007), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d (2004);

- (9) Counsel failed to adequately raise and argue all legal and factual grounds for finding Applicant's death sentence was not "warranted under the evidence of the case" pursuant to S.C. Code § 16-3-20, and is "disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant" pursuant to S.C. Code § 16-3-25(C)(3), *see State v. Dickerson*, 395 S.C. 101, 125 n.8, 716 S.E.2d 895, 908 n.8 (2011).

10(e) **Applicant's right to due process of law—guaranteed by the Fourteenth Amendment to the United States Constitution—was violated as a result of the knowing presentation of false or misleading information by a state agent.** *See Kyles v. Whitley*, 514 U.S. 419 (1995); *Napue v. People of State of Ill.*, 360 U.S. 264 (1959); *see also Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006); *Alcorta v. State of Texas*, 355 U.S. 28, 78 (1957).

11(e) **Supporting Facts:** Spartanburg County Sheriff Office Investigator Lorin Williams testified Mr. Blackwell did not have remorse for killing Brooke Center. Tr. 2679-86. During closing argument, the Solicitor relied on the testimony of Investigator Williams to argue Mr. Blackwell "[d]idn't show any remorse" for Brooke Center's death, Tr. 3180-81, despite evidence from hospital chaplains and others present that Applicant did show

remorse. Investigator Williams's testimony was false, and even if the Solicitor did not knowingly solicit such false evidence, the Solicitor allowed it to go uncorrected. *See Kyles v. Whitley*, 514 U.S. 419, 115 S. Ct. 1555, 131 L.Ed.2d 490 (1995); *Napue v. People of State of Ill.*, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed 1217 (1959); *see also Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006); *Alcorta v. State of Texas*, 355 U.S. 28, 78 (1957).

10(f) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during the appellate proceedings.

11(f) Supporting Facts: Appellate counsel's performance during the appellate phase was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984); *see also Evitts v. Lucey*, 469 U.S. 387 (1985); *Southerland v. State*, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Counsel's specific unreasonable and prejudicial acts or omissions are:

- (1) Appellate counsel failed to adequately raise and brief all legal and factual grounds for challenging the trial court's ruling that Applicant was not intellectually disabled, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 572 U.S. 701 (2014); *Atkins v. Virginia*, 536 U.S. 304 (2002); *Patrick v. State*, 349 S.C. 203, 562 S.E.2d 609 (2002);
 - (2) Appellate counsel failed to raise the issue that the trial court erred in admitting prejudicial autopsy photographs and close-up photographs from the crime scene, including a photograph of the victim after she her body was moved, U.S. Const. amends. V, VIII; Rule 403, SCORE;
 - (3) Appellate counsel failed to raise the issue that the trial court erred in allowing Reggie Frye to testify during the penalty phase of Applicant's trial when Frye's testimony was not relevant and impermissible hearsay, Rule 401, SCORE; Rule 613(b), SCORE; Rule 802, SCORE.
 - (4) Appellate counsel failed to adequately raise and brief all legal and factual grounds for finding Applicant's death sentence disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant, pursuant to S.C. Code § 16-3-25(C)(3), *see State v. Dickerson*, 395 S.C. 101, 125 n.8, 716 S.E.2d 895, 908 n.8 (2011).
12. (a) Applicant has not filed any petition in state court other than the mandatory appeal to the South Carolina Supreme Court.
- (b) Applicant has not previously filed an application for post-conviction relief nor a petition for a writ of habeas corpus in State or Federal court.
- (c) Applicant has not filed any petitions to the United States Supreme Court other than the petition already specified *supra* in (8).
- (d) Applicant has not filed any motions, petitions, or applications in this or any other Court.
13. Not applicable.

14. Applicant has not raised any ground set forth in (10) in this or any other court.
15. Not Applicable.
16. These grounds rely on additional facts outside the record which was before the previous courts.
17. Applicant was previously represented by counsel.
18. Applicant was represented at trial by William Sean McGuire, South Carolina Commission on Indigent Defense, 1330 Lady St., PO Box 11433 Columbia, SC, 29211; Clay T. Allen, Spartanburg Circuit Public Defender, 366 N. Church St. Ste. 3000, Spartanburg, SC 29349, and Boyd Young, South Carolina Commission on Indigent Defense, 1330 Lady St., PO Box 11433 Columbia, SC, 29211.

On direct appeal applicant was represented by Robert M. Dudek and David Alexander, of the South Carolina Office of Appellate Defense, 1330 Lady Street, Columbia, SC 29201.
19. Applicant seeks relief from his conviction and sentence.
20. Applicant is not under sentence from any other court that he has not challenged.

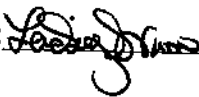
Respectfully prepared by,

E. CHARLES GROSE

Grose Law Firm
404 Main Street
Greenwood, SC 29646
(864) 538-4466

LINDSEY S. VANN

Justice360
900 Elmwood Avenue, Suite 200
Columbia, South Carolina 29201
(803) 765-1044

BY: 

November 10, 2021.

Exhibit 5

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Ricky Lee Blackwell, #6033,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)

Case No. 2018-CP-42-00928

**APPLICANT'S ANSWERS TO
RESPONDENT'S FIRST SET OF
INTERROGATORIES**

Applicant received service of Respondent's First Set of Interrogatories on July 26, 2018. Responses are due thirty (30) days after service of the interrogatories, on August 27, 2018. Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, Applicant Ricky Lee Blackwell, submits the following responses. The answers set forth herein are subject to the following reservations and qualifications:

- a) Applicant does not waive any objection to any interrogatory that seeks information in excess of Rule 33(B), SCRCP.
- b) Applicant does not waive the right to assert privileges—i.e. the attorney-client privilege, the work-product doctrine, the physician-patient privilege, or any other confidentiality privileges, notwithstanding the submission of these answers.
- c) Applicant is continuing with trial preparation and will supplement these responses as required and allowed by the Rules and court orders.
- d) Applicant's answers are in some instances over-inclusive and some persons who are listed may have information relevant to the proceedings but may not be called as witnesses.

ANSWERS TO INTERROGATORIES

1. **Give the names and addresses of the persons known to the parties or counsel to be witnesses concerning the facts of the case [i.e. the post-conviction relief case], and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.**

Answer: Applicant directs Respondent's attention to the official transcript of record of Applicant's Spartanburg County trial and direct appeal for a complete list of fact witnesses, participating attorneys, and court personnel. This information is readily available to Respondent and the burden of deriving it or ascertaining the answer to this interrogatory from these records is substantially the same for Respondent as it is for Applicant. *See* Rule 33(c), SCRPC.

In the event Applicant becomes aware of additional witnesses and/or takes a written or recorded statement from such witnesses, he will provide a supplemental response to this interrogatory in accordance with the applicable discovery rules and court orders.

2. **Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to any claim or defense in the case [i.e. the post-conviction relief case].**

Answer: At this time, Applicant does not possess any photographs, plats, sketches, or other prepared documents that relate to any claim or defense in this case. In the event that Applicant comes to possess any such documents, he will provide a supplemental response to this interrogatory in accordance with applicable discovery rules and court orders.

3. **[Standard interrogatory referencing personal injury cases not applicable].**

Answer: No response required.

4. **[Standard interrogatory referencing liability insurance not applicable].**

Answer: No response required.

5. **[Standard interrogatory regarding itemized statement of damages not applicable].**

Answer: No response required.

6. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of this case [i.e. the post-conviction relief case].

Answer: At this time, Applicant is not aware of any expert witness that he proposes to use as a witness in this case. Applicant continues to investigate and prepare this case for hearing. In the event Applicant does become aware of such witnesses, he will provide a supplemental response to this interrogatory in accordance with applicable discovery rules and court orders.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case [i.e. the post-conviction relief case], set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Answer: Applicant directs Respondent's attention to the official transcript of record of Applicant's Spartanburg County trial and direct appeal for a complete list of fact witnesses, participating attorneys, and court personnel. This information is readily available to Respondent and the burden of deriving it or ascertaining the answer to this interrogatory from these records is substantially the same for Respondent as it is for Applicant. *See* Rule 33(c), SCRCF. In the event Applicant becomes aware of additional witnesses, he will provide a supplemental response to this interrogatory in accordance with the applicable discovery rules and court orders.

Respectfully submitted,

E. CHARLES GROSE

Grose Law Firm
404 Main Street
Greenwood, SC 29646
(864) 538-4466

LINDSEY S. VANN

Justice360
900 Elmwood Avenue, Suite 200
Columbia, South Carolina 29201
(803) 765-1044

BY: Lindsey J. Vane

August 27, 2018.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by U.S. Mail on August 27, 2018
upon the following parties:

Melody J. Brown
Samuel M. Bailey
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

By: Lindsey J. Vane

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Ricky Lee Blackwell, #6033,)
)
Applicant,)

Case No. 2018-CP-42-00928

vs.)

**RESPONSES TO RESPONDENT'S
FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

State of South Carolina,)
)
Respondent.)
_____)

Applicant received service of Respondent's First Set of Requests for Production of Documents on July 26, 2018. Responses are due thirty (30) days after service of the request, on August 27, 2018. Pursuant to Rule 26 and 34 of the South Carolina Rules of Civil Procedure, Applicant Ricky Lee Blackwell submits the following responses.

1. **Any and all documents or correspondence provided to Applicant which relate to a claim or defense which has been raised or will be raised in this case. Documents or correspondence which have been provided to Applicant from the Office of the Attorney General are excluded from this request.**

Response: Applicant objects to this request to the extent that it seeks the discovery of privileged attorney/client communications and attorney work product. Applicant further objects to this request to the extent that it is overbroad and seeks irrelevant information related to claims that "will be raised in this case" or to the state's "defenses," of which Applicant is not aware. Subject to these objections, Applicant responds that he will produce any non-privileged documents in his possession that relate to a claim raised in this post-conviction relief case. Applicant will produce all responsive documents in electronic format as soon as practicable and prior to any discovery deadline imposed by the Court.

2. **Any documents or correspondence provided pursuant to a Freedom of Information Act or similar request made by Applicant of any government agency, subdivision, or political entity whether state or federal.**

Response: Applicant objects to this request to the extent that it is overbroad and seeks irrelevant information not related to any claim in this post-conviction relief case. Subject to this objection, Applicant responds that he will produce responsive documents related to any claim in this post-conviction relief case. *See* Applicant's Response to Request for Production No. 1.

3. **The reports or summaries of the experts retained and consulted in preparation for Applicant's capital trial or his post-conviction relief case, who are expected to testify at the post-conviction relief hearing, and any all documents, notes, files, reports, tests and or written or recorded materials upon which the expert has relied in reaching his or her opinion.**

Response: Applicant objects to this request to the extent that it is overbroad and seeks irrelevant information not related to any claim in this post-conviction relief case. Applicant further objects to this request to the extent that it seeks information related to experts consulted by not expected to testify for Applicant at the post-conviction relief hearing. Subject to these objections, Applicant responds that he will produce any documents on which an expert he intends to call at the post-conviction relief hearing will rely in reaching his or her opinion. At this time, Applicant is not aware of any expert witness that he proposes to call as a witness in this case. Applicant continues to investigate and prepare this case for hearing. In the event Applicant does become aware of such witnesses, he will provide a supplemental response to this request in accordance with applicable discovery rules and court orders.

4. **A current *curriculum vitae* of all experts expected to testify at the post-conviction relief hearing.**

Response: Applicant responds that he does not possess any responsive documents at this time, as he is not aware of any expert witness that he proposes to call as a witness in this case. Applicant continues to investigate and prepare this case for hearing. In the event Applicant does become aware of such witnesses, he will provide a current *curriculum vitae* for each expert.

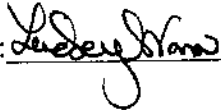
Respectfully submitted,

E. CHARLES GROSE

Grose Law Firm
404 Main Street
Greenwood, SC 29646
(864) 538-4466

LINDSEY S. VANN

Justice360
900 Elmwood Avenue, Suite 200
Columbia, South Carolina 29201
(803) 765-1044

BY: 

August 27, 2018.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by U.S. Mail on August 27, 2018
upon the following parties:

Melody J. Brown
Samuel M. Bailey
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

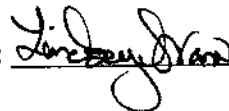
By: 

Exhibit 6

December 10, 2018

Melody J. Brown, Esquire
Samuel Bailey, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211

Re: *Ricky Lee Blackwell v. State of South Carolina*
Case Number 2018-CP-42-00928

Dear Ms. Brown and Mr. Bailey:

Please allow this letter to supplement Mr. Blackwell's response to the State's interrogatories and request to produce. Additionally, please consider the information provided below to be a privilege log of the materials that are being withheld from the files of Bill McGuire, Kara Richards-Baker, and Dr. George Corvin.

Bill McGuire's File

Mr. McGuire's paper file consists of four boxes. We are producing the following materials with the exceptions that are listed below:

Box 1

- 1) **001_Redweld_001.pdf** – This PDF file consists of 1027 pages. We are withholding 28 pages that are medical or mental health records of Angela Blackwell. All other pages are being produced.
- 2) **002_Redweld_002.pdf** – We are producing the entire PDF file (93 pages).
- 3) **003_Redweld_003.pdf** – This PDF file consists of 625 pages. We are withholding 53 pages that are medical or mental health records of Angela Blackwell and 2 pages of handwritten notes, which appear to have been made by Bill McGuire. All other pages are being produced.

- 4) **004_Redweld_004.pdf** – We are producing the entire PDF file (822 pages).

Box 2

- 1) Box 2 contains 137 PDF files regarding juror information. These files contain juror returns, juror questionnaires, documents generated by the Clerk of Court regarding jury selection, and typed and handwritten notes of the trial team regarding jury selection. We are not producing any of these documents because we are not presenting a claim of ineffective assistance of counsel for jury selection. Also, it would be an enormous burden to separate the documents that are available to the State through the Clerk of Court's office from the documents that contain the work product of the trial team.
- 2) **138_Misc_037.pdf** – We are producing the entire PDF file (127 pages).
- 3) **139_Misc_038.pdf** – We are producing the entire PDF file (512 pages).
- 4) **140_Ricky Lee Blackwell & Funding --** We are producing the entire PDF file (341 pages).
- 5) **00002155.pdf** – We are producing the entire PDF file (118 pages).

Box 3

- 1) **001_R;Blackwell.pdf** – We are producing the entire PDF file (786 pages).
- 2) **002_Blackwell Motions.pdf** – This PDF file consists of 180 pages. We are withholding 1 page of handwritten notes. All other pages are being produced.
- 3) **003_10.4_Defesne Motions.pdf** – We are producing this entire PDF (68 pages).
- 4) **004_Blackwell Status Conference.pdf** – We are producing this entire PDF (338 pages).
- 5) **005_Table of Contents.pdf** – We are producing this entire PDF (826 pages).
- 6) **006_1.pdf** – We are producing this entire PDF (479 pages).

Box 4

- 1) **001_Misc_001.pdf** – This PDF file consists of 942 pages. We are withholding 343 pages that are medical or mental health records of Angela Blackwell. All other pages are being produced.

- 2) **001_Misc_002.pdf** – This PDF file consists of 925 pages. We are withholding this entire PDF. Pages 1-470 that are medical or mental health records of Angela Blackwell. Pages 471-925 that are juror information. Please see the explanation provided above regarding juror information.
- 3) **003_Blackwell Jury Panels.pdf** – We are producing this entire PDF (515 pages). Despite the label for this PDF, the file does not contain juror and information.
- 4) **004_Juror Information.pdf** – This PDF file consists of 301 pages. We are withholding this entire file because it pertains to juror information. Please see the explanation provided above regarding juror information.
- 5) **005_Misc_003.pdf** – This PDF file consists of 40 pages. We are withholding 34 pages that pertain to juror information. Please see the explanation provided above regarding juror information.

Please allow this letter to confirm our discussions regarding the medical and mental health records of Angela Blackwell. We are not opposed to producing those records, provided the Court enters the appropriate protective order. We understand your position is the State is not entitled to those records without proper notice to Ms. Blackwell and the appropriate protective order.

Mr. McGuire also provided us with a copy of his electronic files, which are still being reviewed. We will supplement this production once that review is complete.

Kara Richards-Baker's File

Kara Richards-Baker provided us with her electronic files and one box of paper files (which we had professionally scanned in its entirety). We are providing the entirety of her file with the exception of:

Electronic File

- Richards-Baker, Kara > Electronic Files > Emails > 2014.02.11 Emails and Attachments – This folder contains five PDF attachments we are withholding, which are medical records for Angela Davis Blackwell (see explanation above). The names of the files withheld are:
 - DOC (4 pages)
 - DOC000 (3 pages)
 - DOC001 (5 pages)
 - DOC002 (100 pages)
 - DOC003 (101 pages)

Paper File

- 1 – Richards Blackwell Notebook – This PDF file consists of 138 pages. We are withholding 12.5 pages of the notebook in which Kara Richards-Baker made handwritten summaries of Angela Blackwell's mental health records.
- 8 – Correspondence – This PDF file consists of 102 pages. We are withholding 9 pages of the file which refer to and summarize Angela Blackwell's mental health records.
- 22 – Misc. (Pleadings, divorce and MH records for Angie) – This PDF file consists of 123 pages. We are withholding 89 pages of the file which include a summary of Angela Blackwell's mental health records and Angela Blackwell's mental health records.

Dr. George Corvin's File

Dr. Corvin's provided us with his file, which consists of a scan of his handwritten notes about the case and records he reviewed. We are producing the entirety of his file as provided by Dr. Corvin.

We have also received files from Clay Allen and Dr. Ginger Calloway and are in the process of reviewing those files. We will supplement our production with those files (and any necessary assertions of privilege) once we have completed our review of the files.

Thank you for your attention to this matter. Please let me know if you have any questions.

With kindest regards, I am

Yours very truly,



Lindsey S. Vann

cc: E. Charles Grose, Esquire

Exhibit 7

April 14, 2021

Melody J. Brown, Esquire
Tommy Evans, Jr., Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211

Re: *Ricky Lee Blackwell v. State of South Carolina*
Case Number 2018-CP-42-00928

Dear Ms. Brown and Mr. Evans:

Please allow this letter to supplement Mr. Blackwell's response to the State's interrogatories and request to produce. Additionally, please consider the information provided below to be a privilege log of the materials that are being withheld from the files of Bill McGuire, Clay Allen, and Dr. Ginger Calloway.

Generally, the materials being withheld fall into two broad categories:

- 1) Trial counsel's jury research and selection work product. We are not producing any of these documents because we are not presenting a claim of ineffective assistance of counsel for jury selection.
- 2) Angela Blackwell's medical and mental health records and related attorney work product. Please allow this letter to confirm our discussions regarding the medical and mental health records of Angela Blackwell. We are not opposed to producing those records, provided the Court enters the appropriate protective order. We understand your position is the State is not entitled to those records without proper notice to Ms. Blackwell and the appropriate protective order.

Bill McGuire's Electronic File

Mr. McGuire's electronic file consists of 1,167 files in a folder called "Trial Unit Electronic Files". We are producing the file as provided to us, with the exception of the items listed below which contain either trial counsel's jury selection work product or Angela Blackwell's records and/or related notes. *Please note:* many of the folders in the

- 2) **020_Jury Study** – This PDF file consists of 139 pages. We are withholding 135 pages that are notes on the jury pool and research on jury selection at other trials. All other pages are being produced.

Box 3

Box 3 contains 36 scanned files numbered 001–036. All files are being produced in their entirety.

Box 4

Box 4 contains 43 scanned files numbered 000–042. All files are being produced in their entirety.

Box 5

Box 5 contains 84 scanned files numbered 001–084. All files are being produced in their entirety.

Clay Allen's Electronic File

Mr. Allen's Electronic file consists of 13 electronic folders and 69 files not contained in a subfolder. We are producing the following materials with the exceptions that are listed below:

Background Info (folder)

The folder contains 2 subfolders and 12 files. We are producing all folders and files, except:

- 1) **Angie Records** – Subfolder containing Angela Blackwell's Spartanburg Mental Health Center records, which we are withholding in their entirety.
- 2) **Spartanburg Area MNC – Angie** – A Word document containing a summary of Angela Blackwell's Spartanburg Mental Health Center records, which we are withholding in its entirety.

Blackwell Supp (folder)

This folder contains 2 subfolders and 3 files. All folders and files are being produced in their entirety.

Discovery from Solicitor (folder)

This folder contains 1 subfolder and 17 files. All folders and files are being produced in their entirety.

Ex Parte Matters (folder)

This folder contains 24 files. We are producing all files, except:

- 1) **Order for records of A. Blackwell (signed)** – This PDF file contains an order for Angela Blackwell's medical and mental health records. We are withholding the file in its entirety.

Funding Orders (folder)

This folder contains 43 files. We are producing all files, except:

- 1) **Order for Carolina Center Records** – This Word document contains a draft order for funds to obtain Angela Blackwell's mental health records.

ID Issues (folder)

This folder contains 3 subfolders and 28 files. All folders and files are being produced in their entirety.

Invoices (folder)

This folder contains 27 files. All files are being produced in their entirety.

Jail Calls (folder)

This folder contains 2 files. All files are being produced in their entirety.

Jury Info (folder)

This folder contains 26 files. All files are being produced in their entirety.

Med Records (folder)

This folder contains 8 files. All files are being produced in their entirety.

Penalty Requests (folder)

This folder contains 4 files. All files are being produced in their entirety.

Pretrial Motions (folder)

This folder contains 49 files. We are producing all files, except:

- 1) **Angie Blackwell-Medical Records** – This Word document contains a draft

order for Angela Blackwell's medical and mental health records. We are withholding the file in its entirety.

Subpoenas (folder)

This folder contains 15 files. All files are being produced in their entirety.

69 Miscellaneous Files

We are producing all 69 miscellaneous files in their entirety.

Dr. Ginger Calloway's File

Dr. Calloway provided us with her file, which consists of six electronic folders and a file called "Calloway - Timeline of Events." We are producing the entirety of her file as provided by Dr. Calloway.

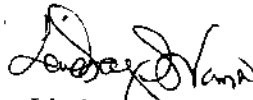
Post-Conviction Relief Experts

Our currently expert evaluations are underway, but the experts have not completed their evaluations or any reports. We will provide discovery related to those experts as it becomes available.

Thank you for your attention to this matter. Please let me know if you have any questions.

With kindest regards, I am

Yours very truly,


Lindsey S. Vann

cc: E. Charles Grose, Esquire

Exhibit 8

The Grose Law Firm, LLC

404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.
Phone: 864-538-4466 Fax: 864-538-4405
E-mail: charles@groselawfirm.com
Web: GroseLawFirm.com

June 16, 2021

Via Email and US Mail

The Honorable Daniel Dewitt Hall
Moss Justice Center
1675-1J York Highway
York, SC 29745
dhallsc@sccourts.org

Re: *Ricky Lee Blackwell v. State of South Carolina*
Case Number 2018-CP-42-00928

Dear Judge Hall:

Please allow this letter to follow up on the two discovery questions the State raised at the status conference on June 15, 2021.

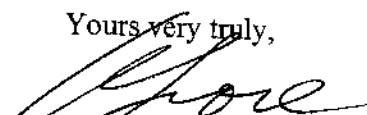
First, the State requested access to the jury selection materials from trial counsel's files. Although the State is correct that the Second Amended PCR Application, ¶¶ 10(c)&11(c), raises ineffective assistance of trial counsel issues regarding juror *voir dire*, Ms. Vann and I believe this claim is a record-based claim and trial counsel's juror information is not relevant; however, out of an abundance of caution, Ms. Vann and I agree to provide these materials to the State. Given our schedules right now, we respectfully request 30 days to prepare a flash drive with the materials.

Second, the State requested access to the *Ex Parte* Order to Produce Medical and Mental Health Records Angela Diane Blackwell. After our status conference, Ms. Vann and I reviewed the order, which was issued *ex parte* and filed under seal by order of the Court. Enclosed is a proposed order unsealing this order and authorizing Ms. Vann and I to provide a copy to the counsel for the State.

Thank you for your attention to this matter. Please let us know if the Court has any questions or requests additional information.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

Exhibit 9

cc: Lindsey S. Vann, Esquire (via email)
Melody J. Brown, Esquire (via email and US Mail)
Tommy Evans, Jr., Esquire (via email and US Mail)
Clerk of Court, Spartanburg County

“Trial Unit Electronic Files” are empty, not because we removed files from those folders, but because the folders were empty upon receipt from Mr. McGuire.

Electronic File Not Produced:

Information Relating to Jury Data, which includes:

- The entirety of subfolder labeled “19.2 Venire List, Juror Pool, which was originally found in “19. Voir Dire”
- The entirety of subfolder labeled “19.5 Excusals, which was originally found in “19. Voir Dire”
- The entirety of subfolder labeled “8.2 List of Members, which was originally found in “8. Jury Challenges/8.5. Census Data”
- The entirety of subfolder labeled “Jury Data from Spartanburg,” which was originally found in “8. Jury Challenges/8.5. Census Data”
- Special Verdict Form - McGriff EDNY.pdf, which was originally found in “8. Jury Challenges”

Information Relating to Angela Blackwell’s medical and mental health records, which includes:

- The entirety of subfolder labeled “Angie’s Records,” originally found in “36. Mitigation Summaries/Records”
- SRHS digest – Angie, which was originally found in both “36. Mitigation Summaries/Mitigation-Kara/Family/Medical Digests” and “36. Mitigation Summaries/Mitigation-Kara/Medical Memos-Digests”
- Spartanburg Area MNC - Angie.docx, which was originally found in both “36. Mitigation Summaries/Mitigation-Kara/Family/Medical Digests”
- SRHS-Angela Blackwell.docx, which was originally found in Spartanburg Area MNC – Angie, “1. Administration/1.7. Subpoenas/1.7.1. Pre-Trial/1.7.1.1. Witness Subpoenas”
- SMHC-Angela Blackwell, which was originally found in Spartanburg Area MNC – Angie, “1. Administration/1.7. Subpoenas/1.7.1. Pre-Trial/1.7.1.1. Witness Subpoenas”
- CCBH-Angela Blackwell, which was originally found in “1. Administration/1.7. Subpoenas/1.7.1. Pre-Trial/1.7.1.1. Witness Subpoenas”

- Angela Blackwell- Hearing Angela Blackwell-Hearing Jan. 28, 2014, which was originally found in "1. Administration/1.7. Subpoenas/1.7.1. Pre-Trial/1.7.1.1. Witness Subpoenas"
- Order for Records of A Blackwell, which was originally found in "3. Orders/Pleadings/Orders"
- Angie Blackwell-Medical Records, which was originally found in "3. Orders/Pleadings/Orders"

Clay Allen's Paper File

Mr. Allen's paper file consists of five boxes. We are producing the following materials with the exceptions that are listed below:

Box 1

Box 1 contains 86 scanned files numbered 001–086, excluding:

- 1) **053_Angela Blackwell.pdf** – This PDF file consists of 55 pages. We are withholding 13 pages that are medical or mental health records for Angela Blackwell and attorney and/or investigator emails and notes made about the records. All other pages are being produced.
- 2) **063_Funding Order (Carolina Center for Behavioral Health Records)** – This PDF file consists of 2 pages. We are withholding the entire file, which is a funding order to pay for Angela Blackwell's mental health records.
- 3) **064_Misc. Pleadings** – This PDF file consists of 11 pages. We are withholding 2 pages that are a funding order to pay for Angela Blackwell's mental health records. All other pages are being produced.
- 4) **067_Handwritten Notes (Voir Dire & ID)** – This PDF file consists of 34 pages. We are withholding 28 pages that are notes about juror voir dire.
- 5) **085_Angela Davis Medical & Psychiatric Records** – This PDF file consists of 85 pages. We are withholding the entire file, which contains medical and psychiatric records for Angela Davis Blackwell.

Box 2

Box 2 contains 33 scanned files numbered 000–032, excluding:

- 1) **019_Misc Mitigation & Angie's Records** – This PDF file consists of 284 pages. We are withholding 189 pages that are Angela Blackwell's medical and mental health records and 10 pages that are notes on jury selection.



Lindsey Vann <lindsey@deathpenaltyresource.org>

Ricky Lee Blackwell v. State of South Carolina

3 messages

Tommy Evans, Jr. <TommyEvansJr@scag.gov>

Wed, Aug 10, 2022 at 11:21 AM

To: "dhallsc@sccourts.org" <dhallsc@sccourts.org>

Cc: Melody Brown <MBrown@scag.gov>, Charles Grose <charles@groselawfirm.com>, "Lindsey S. Vann" <lindsey@justice360sc.org>

Dear Judge Hall;

Due to our inability to meet last month to discuss scheduling we would like to request a scheduling conference to be held any day next week either virtually or in person. Time and where the hearing would be conducted we would be in the court's discretion. With the Fourth Circuit Court of Appeals now scheduling matters for the fall, we like to discuss the if a hearing for the week of the October 31st remains a possibility.

If there are any questions or concerns regarding this matter please do not hesitate to contact me.

Thank you for your time and attention to this matter, it is greatly appreciated.

Sincerely,

Tommy Evans, Jr.

Assistant Attorney General

Office of the Attorney General

Charles Grose <charles@groselawfirm.com>

Wed, Aug 10, 2022 at 1:10 PM

To: "Tommy Evans, Jr." <TommyEvansJr@scag.gov>, "dhallsc@sccourts.org" <dhallsc@sccourts.org>

Cc: Melody Brown <MBrown@scag.gov>, "Lindsey S. Vann" <lindsey@justice360sc.org>

Dear Judge Hall,

Ms. Vann and I are on track for an October 31st hearing date, and we believe a status conference is not necessary. Also, next week, I will be involved in a three-co-defendant trial that is expected to run into the week of August 22nd. So, I am not sure when I might be available.

Thank you for your attention to this matter. Please let us know if the Court has any questions or requires additional information.

Best,
Charles

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
Phone: 864-538-4466
Fax: 864-538-4405
Web: GroseLawFirm.com
Email: charles@groslawfirm.com
[Quoted text hidden]

Hall, Daniel D. Secretary (Renee Graham Barker) <dhallsc@sccourts.org>

Wed, Aug 10, 2022 at 3:09 PM

To: "Tommy Evans, Jr." <TommyEvansJr@scag.gov>

Cc: Melody Brown <MBrown@scag.gov>, Charles Grose <charles@groslawfirm.com>, "Lindsey S. Vann" <lindsey@justice360sc.org>

Good Afternoon, Mr. Evans:

This case is scheduled for trial in Spartanburg the week of October 31st, as agreed by all parties.

Thank you.

Judge Daniel D. Hall
Resident Judge
of the Sixteenth Judicial Circuit

From: Tommy Evans, Jr. <TommyEvansJr@scag.gov>
Sent: Wednesday, August 10, 2022 11:22 AM
To: Hall, Daniel D. Secretary (Renee Graham Barker) <dhallsc@sccourts.org>
Cc: Melody Brown <MBrown@scag.gov>; Charles Grose <charles@groselawfirm.com>; Lindsey S. Vann <lindsey@justice360sc.org>
Subject: Ricky Lee Blackwell v. State of South Carolina

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

[Quoted text hidden]

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

# **Exhibit 10**

You email to Judge Hall did not mention anything about the status of the investigation, discovery, or amended pleadings. My response to your email, therefore, did not address those issues. Mr. Blackwell's investigation is ongoing, and our experts are in the process of completing their work.

Ms. Vann and I will review our materials and determine whether there is any discovery we have not sent the State. As you are aware from my email to the Court, I will be in trial next week and possibly the following week. As you might also be aware, Ms. Vann has a proposed order due on Monday in the expedited execution methods litigation. These other professional obligations will impact the timing of our response.

At this time, we do not anticipate any additional amendments to the PCR application, but we cannot rule out that possibility.

We trust this email clarifies the status of the investigation and discovery.

Best,

Charles

E. Charles Grose, Jr.

The Grose Law Firm, LLC

404 Main Street

Greenwood, SC 29646

Phone: 864-538-4466

Fax: 864-538-4405

Web: GroseLawFirm.com

Email: charles@groselawfirm.com

[Quoted text hidden]

---

Tommy Evans, Jr. <TommyEvansJr@scag.gov>

To: "dhallsc@sccourts.org" <dhallsc@sccourts.org>

Cc: Charles Grose <charles@groselawfirm.com>, "Lindsey S. Vann" <lindsey@justice360sc.org>, Melody Brown <MBrown@scag.gov>

Wed, Aug 10, 2022 at 4:58 PM

Dear Judge Hall;

I would like to offer our appreciation for your quick response addressing the hearing date set for October 31.

However, there are a few matters that we feel should be brought to the court's attention prior to the commencement of this hearing.

First, there are two motions that have yet to be addressed. A motion for a more definite statement, and a February 8, 2022, motion to unseal and disclose. We request that these motions be heard and decided prior to the October 31 hearing date.

Second, on June 22, 2022 Mr. Grose disclosed to the South Carolina Supreme Court that his pre-investigation was still ongoing. He reiterated this to me in an email sent today. (See below). To ensure that we have proper time to prepare for any defense allegations we would request this court to order a final date of the completion of discovery. This case has been ongoing for over 3 years. We feel that discovery should be completed soon, so to order a date of completion should have no effect on defense preparation.

We are requesting the court order a date of completion so the State can have time to be able to address all defense allegations.

Thank you for time and attention to this matter, it is greatly appreciated. If the court has any further questions or comments regarding this matter please do not hesitate to contact me.

With kind regards I remain,

Sincerely,

Tommy Evans, Jr.

Assistant Attorney General

9/7/22, 12:58 PM

Justice 360 Mail - Ricky Lee Blackwell

## Office of the Attorney General

[Quoted text hidden]

# **Exhibit 11**





Lindsey Vann &lt;lindsey@deathpenaltyresource.org&gt;

---

**Status Conference**

---

**Hall, Daniel D. Law Clerk (Andre Coaxum)** <dhallc@sccourts.org>

Mon, Aug 22, 2022 at 11:01 AM

To: "Lindsey S. Vann" &lt;lindsey@justice360sc.org&gt;, Charles Grose &lt;charles@groselawfirm.com&gt;

Cc: "Tommy Evans, Jr." &lt;TommyEvansJr@scag.gov&gt;, Melody Brown &lt;MBrown@scag.gov&gt;, "Hall, Daniel D. Secretary (Renee Graham Barker)" &lt;dhallsc@sccourts.org&gt;, Angela Brown &lt;abennett@scag.gov&gt;, Donna D'Alessio &lt;DDAlessio@scag.gov&gt;

Greetings,

We have scheduled this Status Conference to be in front of Judge Hall virtually on August 31, at 2PM.

**Andre Coaxum, Esq.****Law Clerk to the Honorable Daniel D. Hall**

Resident Judge for the Sixteenth Judicial Circuit

Moss Justice Center

1675-1J York Highway

York, SC 29745

(o) 803-818-6806

(f) 803-628-3139

[Quoted text hidden]

# **Exhibit 12**

August 30, 2022

Melody J. Brown, Esquire  
Tommy Evans, Jr., Esquire  
S.C. Attorney General's Office  
PO Box 11549  
Columbia, SC 29211

Re: *Ricky Lee Blackwell v. State of South Carolina*  
Case Number 2018-CP-42-00928

Dear Ms. Brown and Mr. Evans:

Please allow this letter to supplement Mr. Blackwell's response to the State's interrogatories and request to produce. This is Mr. Blackwell's fourth production of discovery and is Bates Labeled: Blackwell-4-1 to Blackwell-4-2744. Below is a listing of the materials provided in this subsequent production:

| Bates Label                             | Description                                 |
|-----------------------------------------|---------------------------------------------|
| Blackwell-4-1 to<br>Blackwell-4-2545    | Spartanburg County Detention Center Records |
| Blackwell-4-2546 to<br>Blackwell-4-2694 | Court Records                               |
| Blackwell-4-2695 to<br>Blackwell-4-2700 | Property Records                            |
| Blackwell-4-2701 to<br>Blackwell-4-2702 | Pharmacy Records                            |
| Blackwell-4-2703 to<br>Blackwell 4-2744 | Dr. Christopher Cunniff Sworn Statement     |

Thank you for your attention to this matter. Please let me know if you have any questions.

With kindest regards, I am

Yours very truly,



Lindsey S. Vann

cc: E. Charles Grose, Esquire

# **Exhibit 13**

September 1, 2022

Melody J. Brown, Esquire  
Tommy Evans, Jr., Esquire  
S.C. Attorney General's Office  
**Via Hand Delivery**

Re: *Ricky Lee Blackwell v. State of South Carolina*  
Case Number 2018-CP-42-00928

Dear Ms. Brown and Mr. Evans:

Please allow this letter to supplement Mr. Blackwell's response to the State's request to produce numbers 3 and 4. Mr. Blackwell intends to call the following experts at the evidentiary hearing in this matter:

- **Dr. Arlene Andrews** – a social historian, who will testify regarding Mr. Blackwell's life history. She is currently preparing a social history report, which is not yet complete. Undersigned counsel will provide it to other experts and the State upon receipt.
- **Dr. James Austin** – an expert in prison adaptability, who is conducting an evaluation of Mr. Blackwell's adaptability to prison. Dr. Austin has not prepared a report, and counsel have not requested a report from him as of this production.
- **Dr. Christopher Cunniff** – an expert in genetics, who specializes in the evaluation and treatment of people who have or at risk for genetic conditions, birth defects, and developmental disabilities, will testify regarding genetic testing that revealed an abnormality of the *CAMTA1* gene. A Sworn Statement from Dr. Cunniff was provided to you in the discovery production made on August 30, 2022.
- **Dr. George Corvin** – a forensic psychiatrist, who is conducting an evaluation of Mr. Blackwell's mental state at the time of the offense. Dr. Corvin has not prepared a report, and counsel have not requested a report from him as of this production.
- **Dr. Susan Knight** – a forensic psychologist, who is completing an intellectual disability evaluation of Mr. Blackwell. Dr. Knight has not prepared a report, and counsel have not requested a report from her as of this production.

A CV for each expert is provided on the enclosed flash drive. In addition, we have provided you with copies of all materials provided to each expert in the format in which they were provided. We recognize much of these materials are duplicative of each other and large portions of the materials we have already produced; however, to ensure you know what materials each expert has received and relied on, we are producing them to you in

their entirety. The following is an index of the materials provided on the flash drive:

**Blackwell Files for Dr. Corvin**

- Discovery - Crime Related (subfolder containing 41 files and 2 subfolders)
  - 911 Calls 070809 (subfolder containing 2 files)
  - Crime Scene Photos (subfolder containing 5 files)
- Other Mental Health Evaluations (subfolder containing 4 files)
- Transcripts (subfolder containing 2 subfolders)
  - Atkins Hearing – Pretrial (subfolder containing 2 files)
  - Trial (subfolder containing 4 files)
- 2 files not continued in subfolders

**Blackwell Materials for Arlene Andrews**

- 2019.06 - Preliminary Materials Provided (subfolder containing 7 files)
- Court Records (Provided 7.21.22) (subfolder containing 10 files)
- Discovery - Crime Related (subfolder containing 41 files and 2 subfolders)
  - 911 Calls 070809 (subfolder containing 2 files)
  - Crime Scene Photos (subfolder containing 5 files)
- Family Records (subfolder containing 13 files)
- Property Records (subfolder containing 4 files)
- Rickey Criminal (subfolder containing 1 file)
- Rickey Driving Records (subfolder containing 3 files)
- Rickey Financial Records (subfolder containing 6 files)
- Rickey Medical Records (subfolder containing 14 files)
- Rickey Mental Health Records (subfolder containing 2 files)
- Rickey School Records (subfolder containing 3 files)
- Rickey Work Records (subfolder containing 8 files)
- Trial Transcript (subfolder containing 3 files)
- 4 files not contained in subfolders

**Blackwell Materials for Dr. Cunniff**

- 2 files not contained in subfolders

**Blackwell Materials for Susan Knight**

- Affidavits (subfolder containing 3 files)
- Mental Health & ID Evaluations (subfolder containing 7 files)
  - Calloway Raw Data (subfolder containing 8 files)
- Record on Appeal (subfolder containing 7 files)
  - *Note:* Dr. Knight also has 3 sealed volumes of the record on appeal (Volumes 8–10). We have not included those here. Our longstanding offer to release the sealed materials to you stands. Please let us know if you would like us to produce these materials.
- Records (subfolder containing 3 files and 8 subfolders)
  - Family Records (subfolder containing 12 files)
  - Rickey Criminal (subfolder containing 1 file)

- Rickey Driving Records (subfolder containing 3 files)
- Rickey Financial Records (subfolder containing 6 files)
- Rickey Medical Records (subfolder containing 13 files)
- Rickey Mental Health Records (subfolder containing 2 files)
- Rickey School Records (subfolder containing 3 files)
- Rickey Work Records (subfolder containing 8 files)
- 4 files not contained in subfolders

**Blackwell Materials for Dr. Austin**

- 4 files not contained in subfolders

**Expert CVs**

- 5 files not contained in subfolders

Please note, in response to Interrogatory #1, Dr. Knight's materials include statements from the following individuals:

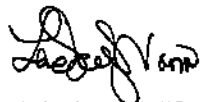
- Beverly Daves
- William Hayes
- Sonya Stott

Dr. Knight and Dr. Corvin's materials also include neuropsychological testing report from Dr. Kristine Herfkens.

Thank you for your attention to this matter. Please let me know if you have any questions.

With kindest regards, I am

Yours very truly,



Lindsey S. Vann

cc: E. Charles Grose, Esquire

# **Exhibit 14**



THE STATE OF SOUTH CAROLINA )

COUNTY OF SPARTANBURG )

Ricky Lee Blackwell )

vs. )

State of South Carolina )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2018-CP-42-00928

**Motion to Continue Evidentiary Hearing**

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
SOUTH CAROLINA  
SEP 17 AM 9:20  
RICKY LEE BLACKWELL

Ricky Lee Blackwell moves this Court for an order continuing the evidentiary hearing beyond November 5, 2018 to allow counsel sufficient time to adequately investigate, develop, and present evidence in support of Mr. Blackwell's claims for post-conviction relief ("PCR"). See S.C. Code § 17-27-160 (C) (contemplating continuance for "good cause").

#### I. PROCEDURAL HISTORY.

For an incident occurring on July 8, 2009, the State charged Mr. Blackwell with the kidnapping and murder of eight-year-old Heather [REDACTED]. The State sought the death penalty. The Honorable Roger L. Couch presided by special assignment of the South Carolina Supreme Court. Barry Barnette, Derek Balsa, and Russell Ghent represented the State. William McGuire and Clay Allen represented Mr. Blackwell.

From February 19-21, 2014, Judge Couch convened a hearing to determine whether Mr. Blackwell has an intellectual disability, which would make him ineligible for the death penalty, pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002) and *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003) (hereinafter "*Atkins* Hearing"); see also *Hall v. Florida*, 572 U.S. 701 (2014) (Although decided after Mr. Blackwell's jury trial, *Hall* provides important guidance about applying reliable medical practices to an *Atkins* determination.). By written order dated February

25, 2014, the trial judge ruled trial counsel failed to meet their burden of proving Mr. Blackwell is a person with intellectual disability. Suppl. R. 1-14. In reaching this conclusion, the trial judge placed significance on “tests given in [Mr. Blackwell’s] formative years [that] were the standard of that day by which he and his peers were measured,” *id.* at ¶¶ 9, 12, Mr. Blackwell obtaining “his commercial driver’s license and [getting] a job driving trucks,” *id.* at ¶ 13, and Mr. Blackwell’s adult medical history including “a head injury in a four-wheeler accident in 2003 or 2004,” being “diagnosed with cancer” and undergoing chemotherapy in 1987,” and his “major depressive disorder which has manifested itself on at least two occasions in his life,” *id.* at ¶ 13. The trial judge also noted, “This Court received little or no evidence concerning the second prong of the test for [intellectual disability,] that being ‘deficits in adaptive behavior’ that existed prior to Blackwell’s eighteenth birthday or his developmental period.” *Id.* at ¶ 19.

The case proceeded to a death penalty trial and on March 12, 2014, the jury convicted Mr. Blackwell of kidnapping and murder. R. 2602. On March 16, 2014, the jurors found, as aggravating circumstances, the murder involved a child under the age of eleven and was committed during a kidnapping. *See* S.C. Code Ann. § 16-3-20(C)(a)(1)(b), (a)(10). Just as the trial judge had done pre-trial, the jurors found trial counsel failed to meet the burden of proving Mr. Blackwell has an intellectual disability. The jurors recommended the death penalty, and the trial judge followed that recommendation. R. 3257-63, 3734-35.

Mr. Blackwell appealed to the South Carolina Supreme Court. Robert M. Dudek and David Alexander represented Mr. Blackwell. Donald J. Zelenka and Melody Brown represented the State. On May 31, 2017, our Supreme Court affirmed the convictions. *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017). On September 1, 2017, our Supreme Court issued a stay of execution so Mr. Blackwell could seek review by the Supreme Court of the United States. On

February 20, 2018, the Supreme Court denied Mr. Blackwell's petition for a writ of *certiorari*. *Blackwell v. South Carolina*, \_\_\_ U.S. \_\_\_, 138 S. Ct. 985 (2018).

On February 27, 2018, through appellate counsel, Mr. Blackwell petitioned the South Carolina Supreme Court, pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 544, 471 S.E.2d 140 (1996), for a stay of execution to pursue post-conviction relief. By return filed March 2, 2018, the State did not oppose the stay.

On March 14, 2018, through undersigned counsel, Mr. Blackwell filed the current PCR application. The PCR application alleges trial counsel rendered prejudicial, deficient performance during the *Atkins* hearing by failing "to investigate and present evidence that purported IQ scores in [Mr. Blackwell's] developmental period were not valid measures of intellectual functioning," failing "to investigate the circumstances under which [Mr. Blackwell] obtained a commercial driver's license and other certifications relied upon by the State to argue he was not a person with intellectual disability," and failing to properly investigate, develop, and present Mr. Blackwell's case that he has an intellectual disability, "including but not limited to objecting to the trial judge's deviation from clinical consensus and practice in the determination that [Mr. Blackwell] was not a person with intellectual disability." PCR Application ¶¶ 10(a) and 11(a). The PCR application also alleges trial counsel rendered prejudicial, deficient performance during the sentencing phase of Mr. Blackwell's capital sentencing procedure by failing "to call hospital chaplains to testify regarding [Mr. Blackwell's] remorse shortly after the crimes where records from the chaplains were excluded by the trial judge as inadmissible hearsay." PCR Application ¶¶ 10(b) and 11(b). On April 23, 2018, the State served its return.

By written order dated March 29, 2018, our Supreme Court granted the stay of execution and assigned the Honorable Daniel D. Hall exclusive jurisdiction to preside over Mr. Blackwell's

PCR. On April 16, 2018, Judge Hall convened a hearing, confirmed Mr. Blackwell remains indigent, and appointed Charles Grose and Lindsey Vann to represent Mr. Blackwell. By written order dated April 26, 2018, Judge Hall confirmed the appointment of counsel. By written order filed April 27, 2018, Judge Hall set a telephone status conference for September 17, 2018 and the evidentiary hearing for the week of November 5, 2018.

## II. LEGAL BASIS FOR GRANTING A CONTINUANCE.

In South Carolina, the Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10, *et. seq.*, is the first opportunity for a person convicted of a crime to investigate, develop, and present allegations of ineffective assistance of trial counsel. In all PCR cases involving “questions of law or fact which will require a hearing,” an indigent person is entitled to appointed counsel. Rule 71.1(d), SCRCP; *Odom v. State*, 337 S.C. 256, 523 S.E.2d 753 (1999). After appointment, “[c]ounsel shall be given a reasonable time to confer with the” client and “shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.” Rule 71.1(d), SCRCP; *see also* S.C. Code Ann. § 17-27-90 (expressly contemplating supplemental or amended PCR application). As our Supreme Court recently reminded, “the Sixth Amendment guarantee of effective assistance of counsel is a ‘bedrock principle in our justice system.’” *Mangal v. State*, 421 S.C. 85, 99, 805 S.E.2d 568, 575 (2017) (citing *Martinez v. Ryan*, 566 U.S. 1 (2012) and *Simmons v. State*, 416 S.C. 584, 788 S.E.2d 220 (2016)). “[T]he interests of justice require PCR courts to be flexible with procedural requirements *before* PCR applicants suffer procedural default on substantial claims. Such flexibility is consistent with the purpose and spirit of our Rules of Civil Procedure.” *Id.* (emphasis supplied by court). Our Supreme Court, accordingly, “encourage[s] trial courts in PCR cases to use the discretion [it] grant[s] them on procedural matters to find reasonable ways—within the flexibility of our Rules—to reach the

merits of substantial issues.” *Id.* 421 S.C. at 100, 805 S.E.2d at 576.

In a capital PCR case, two attorneys must be appointed to represent a person who is indigent. S.C. Code Ann. § 17-27-160(B). Appointed counsel are compensated by the South Carolina Commission on Indigent Defense. *Id.* (incorporating the funding provisions of S.C. Code § 16-3-26 which provides that the court shall order the payment of fees and expenses “[u]pon a finding in *ex parte* proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant”); *see also* Rule 602(g)(6), SCACR (“In post-conviction relief matters, expenses related to representation and fees of appointed counsel may be paid where permitted and as prescribed in these Rules and the Defense of Indigents Act”).<sup>20</sup> A showing of “good cause” requires continuing the evidentiary hearing to provide appointed counsel sufficient time and resources to investigate all available grounds for relief and amend the PCR application. S.C. Code Ann. § 17-27-160(C); *see also Winkler v. State*, 418 S.C. 643, 659, 795 S.E.2d 686, 695 (2016) (“PCR court abused its discretion in not granting Winkler additional time” to investigate evidence of brain damage as mitigation evidence).

The right to file an application for post-conviction relief, and the right to the assistance of counsel when doing so, are hollow in the absence of the concomitant right of an indigent person to receive adequate resources, including time and funding for utilization of expert and investigative services where appropriate. *Williams v. Martin*, 618 F.2d 1021, 1025 (4th Cir. 1980) (explaining that “[t]he quality of representation at trial may be excellent and yet valueless to the defendant if his defense requires . . . the services of a[n] . . . expert and no such services are provided”) (citing ABA Standards, Providing Defense Services, commentary, 22-23 (App. Draft 1968)). The state is required to “provide the ‘basic tools’ for an adequate defense to an indigent defendant.” *Bailey v. State*, 309 S.C. 455, 459, 424 S.E.2d 503, 506 (citing *Ake v. Oklahoma*, 470 U.S. 68 (1985)).

Namely, it is the state's duty to "ensure that the defendant has . . . [funding for] the services of experts necessary to a meaningful defense." *Id.* This duty extends to the post-conviction context as well. Indeed, the United States Supreme Court specifically recognized that "the right to counsel [in federal post-conviction proceedings] necessarily includes a right for that counsel meaningfully to research and present a defendant's habeas claims." *McFarland v. Scott*, 512 U.S. 849, 858 (1994).

The ability to retain the services of experts and investigative assistance in various areas is particularly essential in capital cases. A capital case "is an extraordinary proceeding" where "the attorney is charged with the awesome responsibility of defending a person's life." *Bailey*, 309 S.C. at 460, 424 S.E.2d at 506. To prepare for the guilt or innocence phase of a capital trial, an attorney must vigorously and thoroughly investigate the facts and circumstances of the alleged crime, which often requires the assistance of various experts. *See id.* (recognizing that unlike the solicitor, the defense attorney does not have "the entire array of state, county, and municipal law enforcement" at his disposal). Just as assistance is imperative in the guilt or innocence phase of a capital case, it is equally necessary during the sentencing phase where counsel is challenged by novel and complex issues. *See id.* at 461, 424 S.E.2d at 506-07. Due to the finality and irrevocability of the penalty of death, the United States Supreme Court has stressed the "need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). In order to ensure that the appropriate sentence is chosen, the Court has emphasized the importance of presenting to the sentencing body the fullest information possible concerning the defendant's life and characteristics. *See Lockett v. Ohio*, 438 U.S. 586, 605 (1978) (plurality opinion) (holding that preventing the sentencer in a capital case from considering the defendant's characteristics "creates the [unacceptable] risk that

the death penalty will be imposed in spite of factors which may call for a less severe penalty”); see also *Jurek v. Texas*, 428 U.S. 262, 271 (1976) (asserting that the sentencing body must have before it all possible relevant information about the individual whose fate it must determine).

Thus, in capital cases, defense counsel has a duty to vigorously investigate and present mitigating evidence. See *Sears v. Upton*, 561 U.S. 945, 951 (2010); *Williams v. Taylor*, 529 U.S. 362, 393 (2000). This duty requires that counsel’s investigations into mitigating evidence “should comprise efforts to discover *all reasonably available* mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor.” *Wiggins v. Smith*, 539 U.S. 510, 524 (2003) (quoting ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 11.4.1(C), p. 93 (1989)); see also *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010) (“We long have recognized that prevailing norms of practice as reflected in American Bar Association standards and the like . . . are guides to determining what is reasonable,” (internal quotation marks omitted)).

Post-conviction counsel must “continue an aggressive investigation of all aspects of the case.” ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 10.15.1(E)(4); see also *id.* 10.15.1(E)(4) commentary (“[C]ollateral counsel cannot rely on the previously compiled record but must conduct a thorough, independent investigation.”). Post-conviction counsel must review the record and conduct investigation to determine whether the applicant’s conviction or sentence are “in violation of the Constitution of the United States or the Constitution or laws of this state.” S.C. Code § 17-27-20(A)(1). This responsibility necessarily includes determining whether the applicant received ineffective assistance of counsel during his trial. See *Strickland v. Washington*, 466 U.S. 668 (1984). If trial counsel’s decision to end investigation, including mitigation investigation, was inconsistent with professional standards or

unreasonable because known information should have led counsel to investigate further, a capital defendant may have a valid claim of ineffective assistance of counsel. *See Sears*, 561 U.S. at 951; *Wiggins v. Smith*, 539 U.S. 510, 533-34 (2003); *Strickland*, 466 U.S. at 690-91. When evaluating *Strickland* claims, courts “evaluate the totality of the evidence—‘both that adduced at trial, and the evidence adduced in the habeas proceeding[s].’” *Wiggins*, 539 U.S. at 536 (quoting *Williams*, 529 U.S. at 397-98).

### III. ARGUMENT.

This Court should continue the evidentiary hearing because (a) counsel’s preliminary investigation has uncovered significant deficiencies in trial counsel’s investigation of Mr. Blackwell’s intellectual disability, (b) counsel’s preliminary investigation has further uncovered significant deficiencies in trial counsel’s mitigation investigation apart from the *Atkins* issue, (c) undersigned counsel have retained a mitigation expert who states she needs additional time to complete an adequate mitigation investigation, and (d) counsel’s other professional responsibilities do not, and will not, allow adequate time to prepare for a hearing in November 2018.

#### A. Counsel’s Preliminary Investigation Has Uncovered Significant Deficiencies in Trial Counsel’s Investigation of Mr. Blackwell’s Intellectual Disability.

Trial counsel presented a claim that Mr. Blackwell is intellectually disabled and, therefore, ineligible for the death penalty pursuant to *Atkins*. In support of the intellectual disability claim, trial counsel presented Dr. Ginger Calloway during a pre-trial *Atkins* hearing. The trial court discredited Dr. Calloway’s opinion that Mr. Blackwell is intellectually disabled because the court found deficiencies in her intellectual disability evaluation, including that she improperly inserted her own subjective determinations when witnesses provided information about Mr. Blackwell’s limitations. Also, “inconsistency in her view of her role [in administering the Adaptive Behavior Assessment System (ABAS-II)] caused[d] the [trial] Court to somewhat questions the credibility



of that evidence.” *Atkins* Order ¶ 20. Dr. Calloway had to supplement her report because of glaring errors in her initial report. *Atkins* Order ¶ 20. A preliminary review of the trial transcripts, court exhibits, trial counsel’s files, interviews with Mr. Blackwell and his immediate family, and interviews with jurors indicates trial counsel’s performance was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984). Specifically, trial counsel failed to investigate, develop, and present Mr. Blackwell’s case for intellectual disability through a thorough investigation of his intellectual disability as required by *Atkins* and *Hall*.

As seen above, the trial judge placed significance on Mr. Blackwell obtaining “his commercial driver’s license and [getting] a job driving trucks” and “pass[ing] the additional exam to obtain his license to drive tankers of hazardous materials.” *Atkins* Order at ¶ 13. Trial counsel failed to adequately investigate Mr. Blackwell’s Commercial Driver’s License (“CDL”) and Hazmat License. A preliminary investigation reveals Mr. Blackwell obtained these licenses through significant outside assistance, which trial counsel failed to investigate and present. Trial counsel additionally failed to investigate the requirements for obtaining a CDL. *See id.* (noting “those exams require extensive reading, writing, and practical skills”). A preliminary investigation discovered the requirements for obtaining a CDL were less stringent in the 1980s, when Mr. Blackwell obtained his, than they are today. Trial counsel failed to distinguish past requirements from today’s requirements.

Also, as seen above, the trial judge placed significance on “tests given in [Mr. Blackwell’s] formative years [that] were the standard of that day by which he and his peers were measured.” *Atkins* Order at ¶¶ 9, 12. A preliminary investigation reveals Mr. Blackwell’s scores from his developmental period came from substandard, group-administered tests. Early investigation and research reveal such tests are inaccurate, misleading, and inappropriate for use in a court

proceeding. *See Hall, supra*. The record reveals Dr. Calloway did not explain that the California Short-Form Test of Maturity is not considered to be an indicator of a test taker's IQ and told the judge at the pretrial hearing she was not really familiar with that test. R. at 2861-63, 3797. Undersigned counsel's initial investigation reveals that such short-form, group-administered tests are not reliable indicators of the test subject's IQ. *See American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders* 37 (5th ed. 2013) ("Invalid scores may result from the use of brief intelligence screening tests or group tests."); *see also* American Association on Intellectual and Developmental Disabilities, *Intellectual Disability: Definition, Classification, and Systems of Supports* 41 (11<sup>th</sup> ed. 2010) ("For evaluating whether or not a person meets the significant limitations on intellectual functioning criterion for a diagnosis of intellectual disability, one should employ an *individually*-administered, standardized instrument that yields a measure of general intellectual functions." (emphasis added)). Trial counsel failed to investigate any of this readily available evidence discounting the very tests that the trial judge used as evidence finding trial counsel failed to prove Mr. Blackwell's intellectual disability. *See Atkins* Order ¶ 9.

Also, as seen above, the trial judge placed significance on Mr. Blackwell's adult medical history including "a head injury in a four-wheeler accident in 2003 or 2004," being "diagnosed with cancer" and undergoing chemotherapy in 1987," and his "major depressive disorder which has manifested itself on at least two occasions in his life." *Atkins* Order at ¶ 11. In addition to not presenting evidence that the short-form, group-administered tests are not reliable indicators of the test subject's IQ, trial counsel did not investigate, develop, and present any evidence demonstrating Mr. Blackwell's intellectual disability existed prior to his adult trauma and illnesses.

Finally, as seen above, the trial judge noted, "This Court received little or no evidence concerning the second prong of the test for [intellectual disability,] that being 'deficits in adaptive

behavior" that existed prior to Blackwell's eighteenth birthday or his developmental period." *Atkins* Order at ¶ 19; see S.C. Code § 16-3-20(C)(b)(1) (defining intellectual disability<sup>1</sup> as "significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period"). Current counsel, therefore, have professional and ethical obligations to investigate, develop, and present this evidence. See *Hall*, *Atkins*, and *Wiggins*.

Trial counsel's deficient performance resulted in the trial judge, during the pre-trial *Atkins* hearing, and the jurors, during the sentencing phase, rejecting Mr. Blackwell's *Atkins* claim. It is apparent these determinations were based on incomplete information resulting from trial counsel's inadequate investigation and undersigned counsel must now complete a full investigation of Mr. Blackwell's intellectual disability. Mr. Blackwell, therefore, has shown "good cause" to continue the evidentiary hearing beyond November 5, 2018.

**B. Counsel's Preliminary Investigation Has Uncovered Significant Deficiencies in Trial Counsel's Mitigation Investigation Apart from the *Atkins* Claim.**

In addition to the deficient *Atkins* investigation, trial counsel failed to investigate, develop, and present mitigating evidence in addition to Mr. Blackwell's intellectual disability. See *Wiggins*, 593 U.S. 510 (2003); see also *Skipper v. South Carolina*, 476 U.S. 1 (1986). Trial counsel failed to investigate the full range of available mitigating evidence regarding Mr. Blackwell's life history and background, including testimony from appropriate lay and expert witnesses about how Mr. Blackwell's social history, medical history, mental health history, and background affected his behavior, mental state, and functioning over the course of his life and at the time of the crimes.

<sup>1</sup> South Carolina's statute refers to intellectual disability as "mental retardation." The Supreme Court has instructed that the term "intellectual disability" replaces and has the same meaning as what was previously referred to as "mental retardation." *Hall*, 134 S. Ct. at 1990 (citing *Rosa's Law*, 124 Stat. 2643).

See *Wiggins*, 476 U.S. at 521-22. Counsel further failed to adequately present all available mitigating evidence concerning Mr. Blackwell's lack of future dangerousness, adaptability to confinement, and good character. See *Skipper*, 476 U.S. at 4.

Mr. Blackwell's trial counsel retained Dr. Donna Schwartz Maddox<sup>2</sup> to treat Mr. Blackwell at the Spartanburg Detention Center for his depression and anxiety. Dr. Maddox evaluated Mr. Blackwell a number of times. She also reviewed records of Mr. Blackwell's prior treatment, which included two psychiatric hospitalizations and opined Mr. Blackwell has a history of Major Depression, requiring treatment with medication. At various times, his symptoms included suicidal ideations and gestures and auditory hallucinations. R. 2975-81. Trial counsel called Dr. Maddox as a witness during the sentencing phase. The trial judge qualified her as an expert in general psychiatry. Trial counsel asked Dr. Maddox, "[T]ell the jury what your opinion is as to Mr. Blackwell's psychiatric state at the time of this incident," meaning at the time of the crimes. Dr. Maddox testified:

I didn't look at that. I need to qualify that, and part of my job that sometimes that is my job to look somebody's mental state, what they were thinking as an act was committed.

My role was different here. My role was to treat Mr. Blackwell, and so, as a general psychiatrist, I treated his depression and his anxiety and helped to manage that in the detention center. So, the only opinion I'm able to give today would be that, in my opinion, he's had a history of major depression before. He's had two episodes before when he was hospitalized, and it's clear, from looking at Dr. Jackson's records, that he remained depressed before this incident, and it is very clear that, since I treated him at the jail, he had symptoms of depression as well.

So, the opinion that I could offer to you-all was that he was suffering from a major depression at that time.

---

<sup>2</sup> Dr. Maddox's name appears in the record as Dr. Donna Schwartz-Watts. Her name changed after remarrying. Dr. Maddox has been qualified by the circuit courts of South Carolina over 700 times as an expert in general and/or forensic psychiatry. R. 2973-75.

R. 2984-87.

Dr. Maddox provided undersigned counsel with an affidavit, a copy of which is attached, detailing what is necessary to conduct a proper, complete evaluation for mitigation in a capital case. She states:

Evaluating Mr. Blackwell's state of mind at the time of the crimes would require reviewing his complete medical, psychiatric, and social history, which would include reviewing all of the mitigation evidence developed by the defense team and the records and reports of other experts that evaluated Mr. Blackwell for competency to stand trial and intellectual disability. Although I have reviewed some of those records, my role as a general psychiatrist treating Mr. Blackwell did not require reviewing all of these records.

A complete evaluation of Mr. Blackwell's state of mind at the time of the crimes would also include reviewing the State's discovery, including but not limited to incident reports, witness statements, photographs, autopsy report, and forensic science reports.

In addition to reviewing these records, a proper evaluation of Mr. Blackwell's state of mind at the time of the crimes would include interviewing Mr. Blackwell, likely on multiple occasions over time, about the underlying incident. In many cases, a complete evaluation includes interviewing witnesses who are familiar with the individual's medical, mental health, legal, and social history and/or functioning around the time of events.

A complete evaluation of Mr. Blackwell's state of mind at the time of the crimes likely would include consulting other experts and recommending diagnostic testing. In other capital cases, I have consulted with neuropsychologists, neurologists, psychologists and social workers with expertise in trauma, psychiatrists and psychologists with expertise in sexual disorders, and intellectual disability experts. In other capital cases, I have recommended MRIs, PET scans, neuropsychological testing, and other medical tests. Consultations needed in an individual case depend on the person's unique medical history, symptoms, and evidence developed during the evaluation.

Only after completing a comprehensive evaluation would I be able to offer a complete opinion about Mr. Blackwell's state of mind at the time of the crimes. Such an opinion would include whether certain statutory mitigating circumstances exist, including Mr. Blackwell's mentality at the time of the crimes, whether he suffered from a mental or emotional disturbance at the time of the crimes, and whether his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired at the time of the crimes. A comprehensive evaluation might also develop non-statutory mitigation

FILED  
CLERK OF COURT  
STATE OF MISSISSIPPI  
2018 SEP 17 AM 9:21  
M. H. GALEY

such as Mr. Blackwell's potential adaptability to incarceration.

Based on Mr. Blackwell's medical and mental health history, my experience treating him, and my limited knowledge of the facts and circumstances of the crimes, it is my opinion that a complete evaluation to assess Mr. Blackwell's state of mind at the time of the offenses would likely develop statutory and non-statutory mitigation.

Maddox Affidavit at ¶¶ 6-11.

As discussed in more detail in Subsection C below, a proper, complete mitigation investigation requires sufficient time. See Affidavit of Pamela Leonard, a copy of which is attached, at ¶ 13 ("It is not possible to perform a competent mitigation investigation in the absence of adequate time and resources."). Mr. Blackwell, therefore, has shown "good cause" to continue the evidentiary hearing beyond November 5, 2018.

**C. Undersigned Counsel Have Hired a Mitigation Expert Who Needs Additional Time to Conduct an Adequate Investigation.**

In accordance with their professional and ethical obligations in capital PCR cases, undersigned counsel retained Pamela Leonard<sup>3</sup> as a mitigation investigator on May 17, 2018. She needs additional time to adequately investigate Mr. Blackwell's intellectual disability and other mitigation evidence. See Leonard Affidavit. Since being retained, she has "reviewed life history records collected by trial counsel, identified additional records to request, and conducted preliminary interviews with Mr. Blackwell and his family." *Id.* at ¶ 12. Based on her training and experience, "trial counsel's intellectual disability investigation and evaluation and mitigation investigation were incomplete and significant additional investigation must be completed as a

<sup>3</sup> Ms. Leonard is a certified private investigator in Georgia with additional training in criminal investigation and death penalty mitigation. She has a BA from Queens College, a BA from Georgia State University, *summa cum laude*, a master's degree from the University of North Carolina at Greensboro, and a master's degree from Eastern Mennonite University. She has investigated capital cases in Alabama, Georgia, South Carolina, and Virginia. Leonard Affidavit at ¶¶ 1-4.

result.” *Id.*

In her “capacity as Chief Investigator at Multi County Public Defender Office and as Deputy Director for Mitigation and Investigation at Georgia Capital Defender, [she] reviewed and consulted on scores of capital cases with potential [*Atkins*] claims.” Leonard Affidavit at ¶ 4. Ms. Leonard needs to investigate the specific tests Mr. Blackwell took during his developmental period, including but not limited to identifying, locating, and interviewing the teachers and test administrators. She also will need to identify, locate, and interview witnesses that can provide detailed information about Mr. Blackwell’s adaptive functioning during his developmental period. She also must investigate Mr. Blackwell’s adulthood functioning. Of particular importance will be the investigation of Blackwell’s employment as a truck driver, as the trial judge based the *Atkins* claim largely on the grounds that Mr. Blackwell obtained a CDL.

Based on Dr. Maddox’s recommendations, Ms. Leonard will also need time to conduct a thorough social history investigation and to compile a multigenerational family chronology. This process involves the collection of multiple records from all aspects of Mr. Blackwell’s life, including birth, childhood, all medical records, educational records, employment records, and mental health records. Mr. Blackwell had multiple employers and has received treatment from various healthcare providers for medical and mental health disorders. Thus, this part of the mitigation investigation will require a significant amount of time to complete the investigation. Ms. Leonard has already identified additional records that must be requested. Leonard Affidavit at ¶ 12.

The trial record demonstrates that several of Mr. Blackwell’s family members suffer from multiple impairments including potential intellectual disability. Mr. Leonard notes:

Locating and interviewing lay witnesses, especially family members, is a sensitive endeavor that requires sufficient time and skill by the mitigation specialist to build

the trust needed to compile a reliable social history. Often, a client's family members suffer from multiple impairments, including intellectual disability, mental illness, and substance abuse. Further, in many cases, lay witnesses are reluctant to talk about the client and family history due to fear of harming the client or embarrassing family members. Consequently, a significant amount of time must be spent not only effectively evaluating and overcoming various impairments, but also in demonstrating the mitigation specialist's commitment to assisting the client. These factors necessitate multiple interviews of the client and significant family members and associates in order to obtain valid and reliable information.

Leonard Affidavit at ¶ 11.

In Ms. Leonard's professional experience, "a thorough social history and intellectual disability investigation cannot be completed in less one year and work with appropriate experts must follow that investigation." Leonard Affidavit at ¶ 13. Mr. Blackwell, therefore, has shown "good cause" to continue the evidentiary hearing beyond November 5, 2018.

**D. Undersigned Counsel's Other Case Responsibilities Do Not Allow for Adequate Preparation for a Hearing in November.**

Finally, undersigned counsel's other professional obligations support continuing the evidentiary hearing.

Co-counsel Grose is sole practitioner with a statewide trial, appellate, and post-conviction practice. Since being appointed to represent Mr. Blackwell, he has prepared for and tried the evidentiary hearing in *Sammie Lee Gerrick v. State*, Bamberg County Case Number 2016-CP-06-00111, a PCR case involving a murder conviction, on May 9, 2018 (in this case, he also submitted a post-hearing brief on June 15, 2018 and a reply to the State's post-hearing brief on June 20, 2018); the jury trial in *State v. Charles Dent*, Beaufort County Case Numbers 2014-GS-07-01671 to 01674, a first-degree criminal sexual conduct with a minor case, from May 21-24, 2018; and the evidentiary hearing in *Jerry Inmon v. State*, Pickens County Case No. 2012-CP-39-00918, a capital PCR case, from August 20-23, 2018. He filed the Initial Brief of Appellant in *State v. Ontavious Derenta Plumer*, Appellate Case No. 2017-000481, on May 9, 2018; the Petition for

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2018 SEP 17 AM 9:21  
M. HOPE BLACKWELL



Writ of *Certiorari* in *Joseph R. Graddick v. State*, Appellate Case No. 2018-000193, on June 11, 2018; the Petition for Writ of *Certiorari* in *Jerome J. Noone, Jr. v. State*, Appellate Case No. 2018-000095, on July 17, 2018; and the Petition for Writ of *Certiorari* in *Jennifer McSharry v. State*, Appellate Case No. 2018-000096, on August 24, 2018. In *J.R. Jones v. South Carolina Republican Party*, Appellate Case No. 2017-002583, an election case expedited by our Supreme Court, he filed the Initial Reply Brief of Appellants on May 21, 2018 and the Final Briefs of Appellants on July 2, 2017. In *State v. Nakia Johnson*, Appellate Case No. 2018-001355, pursuant to the expedited procedure set forth in S.C. Supreme Court Order No. 2014-07-16-01, he filed the Petition for Writ of *Certiorari* to review the Court of Appeals opinion on July 23, 2018, the Return to the State's cross-Petition for Writ of *Certiorari* on August 27, 2018, and the Reply to the State's Return to Mr. Johnson's Petition for Writ of *Certiorari* on August 28, 2018. In *State v. Preston Shands, Jr.*, Appellate Case No. 2015-001199, he filed the Petition for Rehearing on June 28, 2018 (denied on August 16, 2018) and is preparing the Petition for Writ of *Certiorari* to review the Court of Appeals opinion, pursuant to the expedited procedure set forth in S.C. Supreme Court Order No. 2014-07-16-01. On August 29, 2018, along with co-counsel, he filed the Petition for Writ of *Certiorari* to review the opinion of the South Carolina Supreme Court in *Michael Vernon Beaty, Jr. v. South Carolina*, Supreme Court of the United States Case No. 18-298. He also prepared for oral arguments in *State v. Trey C. Brown*, Appellate Case No. 2016-000526, scheduled for September 11, 2018 in the Court of Appeals but cancelled because of Hurricane Florence, and *Tommy S. Adams v. State*, Appellate Case No. 2017-000739, scheduled for September 19, 2018 in the Supreme Court. Finally, he is preparing the Brief of Petitioner in *Kory Lamar Love v. State*, Appellate Case No. 2016-00223, and for the evidentiary hearing in *Stephen Cory Bryant v. State*, Sumter County Case No. 2016-CP-43-00828, a capital PCR case, scheduled

FILED  
CLERK OF COURT  
SOUTH CAROLINA  
SEP 7 AM 9:21  
2018  
HARRISBURG

for October 1, 2018.

Co-counsel Vann is the Executive Director of Justice 360. In her practice, she represents individuals facing the death penalty and juveniles facing life without parole throughout the State. Since being appointed to represent Mr. Blackwell, Ms. Vann has prepared for a resentencing hearing in *State v. Northcutt*, No. 2001-GS-32-880, a capital case scheduled for resentencing on July 23, 2018 but was delayed after two days of hearings due to the Lexington County Solicitor's Office withdrawing from the case. She prepared and filed petitions for writ of certiorari (on September 6, 2018 and September 7, 2018) in two cases for capital sentenced inmate Stephen Stanko, Nos. 2017-002281, 2018-001623, in which she is appointed counsel. Ms. Vann is appointed counsel in the capital federal habeas proceedings for (1) Richard Moore and has been preparing an opening brief for filing in the Fourth Circuit Court of Appeals, No. 18-4, due to be filed on September 21, 2018, and (2) Anthony Woods and has been investigating and preparing to file a petition for writ of habeas corpus in the District Court, No. 5:18-cv-00144-DCN-KDW, due to be filed on September 21, 2018. Ms. Vann has also been retained as a mitigation specialist in the pretrial capital case of Jerome Jenkins, No. 2015-GS-26-01767, and has conducted significant investigation in preparation for trial. In her juvenile casework, Ms. Vann has prepared and filed a motion to alter or amend (on May 25, 2018) in a resentencing case for Eric Dale Morgan, a juvenile sentenced to life without parole, No. 2000-GS-42-2680; a return in opposition to a petition for writ of certiorari (on August 16, 2018) on behalf of Nicholas Geer, No. 2018-001225, determined to be parole ineligible by the South Carolina Department of Probation, Parole and Pardon Services for offenses committed as a juvenile.

Given undersigned counsel's significant other case responsibilities, counsel cannot adequately prepare for a hearing on the merits of Mr. Blackwell's PCR claims by November 5,

2018. Mr. Blackwell, therefore, has shown "good cause" to continue the evidentiary hearing beyond November 5, 2018.

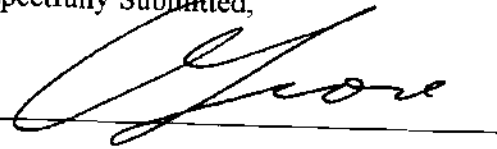
#### IV. CONCLUSION.

For the foregoing reasons, this Court should issue an order continuing the evidentiary hearing beyond November 5, 2018.

IT IS SO MOVED.

Respectfully Submitted,

By



E. Charles Grose, Jr.  
S.C. Bar Number 66063  
The Grose Law Firm, LLC  
404 Main Street  
Greenwood, SC 29646  
(864) 538-4466  
(864) 538-4405 (fax)  
Email: charles@groselawfirm.com

Lindsey S. Vann  
S.C. Bar No. 101408  
Executive Director, Justice 360  
900 Elmwood Avenue, Suite 200  
Columbia, SC 29201  
(803) 765-1044  
Email: lindsey@justice360sc.org

*Attorneys for Ricky Lee Blackwell*

September 14, 2018.

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2018 SEP 17 AM 9:21  
M. HOPKINS-ACKLEY

STATE OF SOUTH CAROLINA    )  
                                                  )  
COUNTY OF ANDERSON         )

Affidavit of Dr. Donna Schwartz Maddox

Donna Schwartz Maddox, being first duly sworn, swears and affirms, under penalty of perjury, that the following is true to the best of my knowledge:

1) I am a physician licensed to practice medicine in the State of South Carolina. I have testified in the circuit courts of South Carolina over 700 times as an expert witness in the field of general psychiatry and/or forensic psychiatry. I have conducted numerous evaluations for competency to stand trial, criminal responsibility, and to assist courts with sentencing.

2) I am familiar with the statutory mitigating factors set forth in S.C. Ann. § 16-3-20(C)(2), as well as the concept of non-statutory mitigation. I have conducted numerous evaluations in capital cases to assist defense counsel in investigating, developing, and presenting mitigation. Additionally, I have consulted with Solicitors in capital cases regarding potential mitigation that might be presented by the defense.

3) Ricky Blackwell's defense lawyers retained me to treat Mr. Blackwell at the Spartanburg Detention Center for his depression and anxiety. I evaluated Mr. Blackwell a number of times. I also reviewed records of Mr. Blackwell's prior treatment, which included two psychiatric hospitalizations. Mr. Blackwell has a history of Major Depression, requiring treatment with medication. At times, his symptoms included suicidal ideations and gestures and auditory hallucinations.

4) I also reviewed records from Mr. Blackwell's primary care physician, so I am aware of his general medical history, including but not limited to his history of Hodgkin's lymphoma, high blood pressure, back pain, and small bowel obstruction, which developed as a side effect to his psychiatric medications.

2018 SEP 17 PM 9:51  
CLERK OF COURT  
SPARTANBURG COUNTY  
J. HUPP  
BLACKWELL

5) The defense called me as a witness during Mr. Blackwell's capital sentencing hearing. The trial judge qualified me as an expert in general psychiatry. Defense counsel asked me to "tell the jury what [my] opinion is as to Mr. Blackwell's psychiatric state at the time of this incident," meaning at the time of the crimes. I responded:

I didn't look at that. I need to qualify that, and part of my job that sometimes that is my job to look somebody's mental state, what they were thinking as an act was committed.

My role was different here. My role was to treat Mr. Blackwell, and so, as a general psychiatrist, I treated his depression and his anxiety and helped to manage that in the detention center. So, the only opinion I'm able to give today would be that, in my opinion, he's had a history of major depression before. He's had two episodes before when he was hospitalized, and it's clear, from looking at Dr. Jackson's records, that he remained depressed before this incident, and it is very clear that, since I treated him at the jail, he had symptoms of depression as well.

So, the opinion that I could offer to you-all was that he was suffering from a major depression at that time.

6) Evaluating Mr. Blackwell's state of mind at the time of the crimes would require reviewing his complete medical, psychiatric, and social history, which would include reviewing all of the mitigation evidence developed by the defense team and the records and reports of other experts that evaluated Mr. Blackwell for competency to stand trial and intellectual disability. Although I have reviewed some of those records, my role as a general psychiatrist treating Blackwell did not require reviewing all of these records.

7) A complete evaluation of Mr. Blackwell's state of mind at the time of the crimes would also include reviewing the State's discovery, including but not limited to incident reports, witness statements, photographs, autopsy report, and forensic science reports.

8) In addition to reviewing these records, a proper evaluation of Mr. Blackwell's state of mind at the time of the crimes would include interviewing Mr. Blackwell, likely on multiple occasions over time, about the underlying incident. In many cases, a complete evaluation includes

interviewing witnesses who are familiar with the individual's medical, mental health, legal, and social history, and/or functioning around the time of events.

9) A complete evaluation of Mr. Blackwell's state of mind at the time of the crimes likely would include consulting other experts and recommending diagnostic testing. In other capital cases, I have consulted with neuropsychologists, neurologists, psychologists and social workers with expertise in trauma, psychiatrists and psychologists with expertise in sexual disorders, and intellectual disability experts. In other capital cases, I have recommended MRIs, PET scans, neuropsychological testing, and other medical tests. Consultations needed in an individual case depend on the person's unique medical history, symptoms, and evidence developed during the evaluation.

10) Only after completing a comprehensive evaluation would I be able to offer a complete opinion about Mr. Blackwell's state of mind at the time of the crimes. Such an opinion would include whether certain statutory mitigating circumstances exist, including Mr. Blackwell's mentality at the time of the crimes, whether he suffered from a mental or emotional disturbance at the time of the crimes, and whether his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired at the time of the crimes. A comprehensive evaluation might also develop non-statutory mitigation such as Mr. Blackwell's potential adaptability to incarceration.

11) Based on Mr. Blackwell's medical and mental health history, my experience treating him, and my limited knowledge of the facts and circumstances of the crimes, it is my opinion that a complete evaluation to assess Mr. Blackwell's state of mind at the time of the offenses would likely develop statutory and non-statutory mitigation.

FILED  
CLERK OF COURT  
2018 SEP 17 AM 9:21  
H. HOPE BLACKLEY

**Further affiant sayeth naught.**

Sworn to and subscribed before me

\_\_\_\_\_  
Donna Schwartz Maddox

this \_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: \_\_\_\_\_

FILED  
CLERK OF COURT  
MYRTLE BEACH COUNTY  
2018 SEP 17 AM 9:21  
M. HOPE BLACKLEY

RICKY LEE BLACKWELL V. STATE OF SOUTH CAROLINA

STATE OF NORTH CAROLINA  
COUNTY OF DAVIDSON

AFFIDAVIT OF PAMELA BLUME LEONARD

I, Pamela B. Leonard, first being duly sworn do depose and say:

1. I, Pamela Blume Leonard, reside in Lexington, North Carolina. I was certified as a Private Investigator in the State of Georgia with additional training in criminal investigation and death penalty mitigation. I have four academic degrees: a BA from Queens College; a BA from Georgia State University [summa cum laude] a master's degree from the University of North Carolina at Greensboro, and a master's degree from Eastern Mennonite University.
2. I have practiced in legal settings since 1992 as an Investigator and Death Penalty Mitigation Specialist. In January 1995, I was staff Investigator and Death Penalty Mitigation Specialist with Multicounty Public Defender Office (the death penalty trial unit of Georgia Indigent Defense Council) in Atlanta, Georgia. From January 1996 until June 1998, I held the position of Senior Investigator with responsibilities in both phases of capital trials as well as the position of Senior Death Penalty Mitigation Specialist. In June 1998, I became Chief Investigator and Chief Death Penalty Mitigation Specialist. In this position, I provided advanced investigative services, training and consultation to attorneys throughout the state of Georgia who represent capital defendants. In addition, I had duties related to the direct representation of capital defendants by that office, which included attendance in court throughout the pre-trial and trial periods. Another aspect of my responsibilities is to monitor capital cases throughout Georgia. In that regard, I have reviewed jury selection as well as the preparation and presentation of evidence in scores of capital trials throughout the State of Georgia. In 2004, I was appointed Deputy Director for Mitigation and Investigation of the Office of the Georgia Capital Defender Office. Since 2005, I have maintained a private practice in mitigation and defense-initiated victim outreach.
3. Since 1992, I have worked on capital cases; these cases have been at the trial level and post-conviction level, and in federal court as well as state court. I have conducted extensive criminal investigations and sentencing phase investigations and assisted attorneys in presenting both phases of capital trials. I have worked on capital cases in Alabama, Georgia, South Carolina, Texas, and Virginia. I have been qualified as an expert in matters of investigation and mitigation in death penalty trials by judges in the State of Georgia.
4. In 1988, Georgia became one of the first states to bar execution of persons with mental retardation. Investigation of mental retardation, now known as Intellectual Disability ("ID"), was a major thrust of my work in Georgia. In my capacity as Chief Investigator at Multi County Public Defender Office and as Deputy Director for Mitigation and



Investigation at Georgia Capital Defender, I reviewed and consulted on scores of capital cases with potential ID claims. Over the past twenty years, I have served as the mitigation specialist on approximately 20 cases involving ID. In addition, I have made numerous CLE approved presentations on identifying, investigating, and developing ID claims. In my experience, the most common thread among post conviction ID claims is the failure of trial counsel to identify and investigate ID.

5. The role of the mitigation specialist is to assist attorneys in many areas related to the preparation of mitigation evidence for the penalty phase of the trial or in support of claims for post-conviction relief. The primary role of the mitigation specialist in a capital murder case is, in part, to assist the attorneys by conducting a thorough social history investigation, thereby assuring coordination of the strategy for the guilt/innocence phase with the strategy for the penalty phase; identifying potential penalty phase witnesses; working with the client and his or her family while the case is pending; and investigating aggravating factors alleged by the state, as well as all other matters relating to the offense. In post-conviction proceedings, a mitigation specialist must investigate to determine if the trial team did a thorough and adequate investigation of these issues. All of these tasks mandate that the mitigation specialist be involved in a case at the earliest possible time and be given adequate time to conduct the necessary investigation.
6. The death penalty mitigation specialist must obtain all records related to the client and his or her family, including records of a sensitive confidential nature. In addition to the records described above, the death penalty mitigation specialist must interview the client, his or her family and collateral witnesses to obtain detailed and intimate social history information and to ascertain the names or identities of collateral sources of information. Family relationships, including the nature and quality of the client's relationship with each parent, sibling and other relatives, as well as the relationship between the parents and other significant personal experiences and relationships had by the defendant and his family must be explored in depth.
7. The importance of a mitigation investigation flows from the constitutional requirement that there be individualized determination as to whether death is the appropriate penalty in any given case. In making the determination, the jury and the judge are required to consider not only the circumstances of the offense, but also all aspects of the client's life and personal attributes, including the milieu in which he or she was raised and the effects of the environment, his or her abilities and/or contributions to society, and the nature and extent of any mental and medical impairments. The purpose of the mitigation investigation is to identify such factors.
8. The death penalty mitigation specialist should be retained and should begin work on the case at the inception of the case and must maintain ongoing consultation with the attorneys on the case, keeping them informed of his or her findings. Information obtained in the sentencing investigation vitally affects considerations at all stages of litigation, including but not limited to competency, criminal responsibility for the offense, plea negotiations, investigating for potential categorical bars to the death penalty and

claims for post-conviction relief, as well as assisting the defense team to communicate and interact effectively with their client.

9. In cases involving intellectual disability, additional investigation must be completed. A diagnosis of intellectual disability requires proof of three criteria: (1) significantly subaverage intellectual functioning, (2) deficits in adaptive behavior, and (3) onset during the developmental period. Investigation of intellectual disability, therefore, requires significant investigation into the individual's functioning across many domains (including school, work, home living, self-direction, etc.) during the developmental period. This requires significant time to locate and interview witnesses who knew the individual when they in the developmental period, specifically family members, teachers, coaches, employers, neighbors, friends, and anyone else with relevant knowledge.
10. Cases involving intellectual disability also require working with an expert to conduct a clinical evaluation of the individual. The mitigation investigators findings must be reported to the expert to ensure the expert has access to the full breadth of evidence relevant to intellectual disability.
11. Locating and interviewing lay witnesses, especially family members, is a sensitive endeavor that requires sufficient time and skill by the mitigation specialist to build the trust needed to compile a reliable social history. Often, a client's family members suffer from multiple impairments, including intellectual disability, mental illness, and substance abuse. Further, in many cases, lay witnesses are reluctant to talk about the client and family history due to fear of harming the client or embarrassing family members. Consequently, a significant amount of time must be spent not only effectively evaluating and overcoming various impairments, but also in demonstrating the mitigation specialist's commitment to assisting the client. These factors necessitate multiple interviews of the client and significant family members and associates in order to obtain valid and reliable information.
12. I was retained in Ricky Blackwell's case on May 17, 2018. Since then, I have reviewed life history records collected by trial counsel, identified additional records to request, and conducted preliminary interview with Mr. Blackwell and his family. Based on my experience and training, it is apparent to me that trial counsel's intellectual disability investigation and evaluation and mitigation investigation were incomplete and significant additional investigation must be completed as a result.
13. In my professional experience, a thorough social history and intellectual disability investigation cannot be completed in less one year and work with appropriate experts must follow that investigation. It is not possible to perform a competent mitigation investigation in the absence of adequate time and resources.

3 PBL

FILED  
CLERK OF COURT  
JANUARY COUNTY  
2018 SEP 17 AM 9:21  
M. HOPE BLACKLEY

I affirm, under the penalty of perjury, that the foregoing is true and correct to the best of my knowledge. Further Affiant sayeth naught.

Pamela Blume Leonard  
Affiant, Pamela Blume Leonard

September 13, 2018  
Date

Sworn to and subscribed before me  
this 13 day of September, 2018

Christopher M. Lineberry  
NOTARY PUBLIC FOR  
NORTH CAROLINA County of Davidson

My Commission Expires:

August 16, 2021



FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2018 SEP 17 AM 9:21  
M. HOPE BLACKLEY

4 PL

# **Exhibit 15**

THE STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

Rickey Lee Blackwell

vs.

State of South Carolina

IN THE COURT OF COMMON PLEAS  
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2018-CP-42-00928

**Motion to Continue Evidentiary Hearing and  
Enter a New Scheduling Order**

2021 DEC 14

11:10:17

Applicant Rickey Lee Blackwell, an indigent death-sentenced inmate, moves this Court to continue the post-conviction relief (“PCR”) evidentiary hearing currently scheduled to commence on January 31, 2022. Good cause exists to justify the continuance because the COVID-19 pandemic has prevented Blackwell’s counsel and experts from completing the necessary investigation and evaluations to present evidence in support of many of his claims for post-conviction relief. *See* S.C. Code § 17-27-160 (C) (contemplating continuance for “good cause”). Blackwell also moves this Court to enter a new scheduling order.<sup>1</sup>

## I. INTRODUCTION

This Court issued scheduling orders on April 19, 2018 and September 18, 2018. The second scheduling order did not schedule any events after February 20, 2019. Since then, this case proceeded without a scheduling order. During a June 15, 2021 status conference, this Court and the parties discussed scheduling an evidentiary hearing for early 2022; however, no scheduling order issued. On October 27, 2021, when the State requested a status conference “[s]o that each

<sup>1</sup> On December 7, 2021, undersigned counsel contacted opposing counsel by email to inquire about the State’s position regarding this motion but have not received a response. Counsel believes it important to provide this Court with this motion in advance of the December 10, 2021 status conference.

party can assess this case and determine if a scheduled date of early 2022 is possible,” it appeared to undersigned counsel that the State was not aware an evidentiary hearing had been scheduled to of January 31, 2022. Exhibit A. Undersigned counsel learned of “what appear[ed]” to be a January 31<sup>st</sup> hearing date only by checking the Judicial Branch website. *Id.* Not having received notice of a hearing date, undersigned counsel were unable to request Mr. Blackwell’s expert witnesses save the date for the hearing.

Additionally, in status reports to the South Carolina Supreme Court dated April 14, 2020, June 15, 2020, August 14, 2020, October 15, 2020, December 15, 2020, February 16, 2021, and April 15, 2021, undersigned counsel reported, “While Mr. Blackwell’s pre-hearing investigation is still ongoing, the COVID-19 pandemic has limited our investigation. To comply with social distancing guidelines, we have postponed all activities that require travel or in person interviews.” Exhibit B. In a status report dated June 15, 2021, Mr. Blackwell indicated, “Although the COVID-19 pandemic limited his in-field investigation, Mr. Blackwell will be resuming in-field investigation activities.” Exhibit C. In status reports dated August 13, 2021 and October 18, 2021, undersigned counsel reported:

Mr. Blackwell’s pre-hearing investigation is ongoing. Although the COVID-19 pandemic limited his in-field investigation, Mr. Blackwell has resumed some in-field investigation activities. We continue to monitor the COVID-19 situation from the perspective of safety to our team, experts, and the witnesses.

Exhibit D.

As will be discussed in Section IV below, Mr. Blackwell requires additional time for his experts to complete their *Atkins*,<sup>2</sup> mental health, and social history investigations.

---

<sup>2</sup> *Atkins v. Virginia*, 536 U.S. 304 (2002).

## II. PROCEDURAL BACKGROUND

For an incident occurring on July 8, 2009, the State charged Mr. Blackwell with the kidnapping and murder of eight-year-old Heather [REDACTED]. The State sought the death penalty. The Honorable Roger L. Couch presided by special assignment of the South Carolina Supreme Court. Barry Barnette, Derek Balsa, and Russell Ghent represented the State. William McGuire and Clay Allen represented Mr. Blackwell.

From February 19-21, 2014, Judge Couch convened a hearing to determine whether Mr. Blackwell has an intellectual disability, which would make him ineligible for the death penalty, pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002) and *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003) (hereinafter “*Atkins Hearing*”). See also *Hall v. Florida*, 572 U.S. 701 (2014) (Although decided after Mr. Blackwell’s jury trial, *Hall* provides important guidance about applying reliable medical practices to an *Atkins* determination.). By written order dated February 25, 2014, the trial judge ruled trial counsel failed to meet their burden of proving Mr. Blackwell is a person with intellectual disability. Suppl. R. 1-14. In reaching this conclusion, the trial judge placed significance on “tests given in [Mr. Blackwell’s] formative years [that] were the standard of that day by which he and his peers were measured,” *id.* at ¶¶ 9, 12, Mr. Blackwell obtaining “his commercial driver’s license and [getting] a job driving trucks,” *id.* at ¶ 13, and Mr. Blackwell’s adult medical history including “a head injury in a four-wheeler accident in 2003 or 2004,” being “diagnosed with cancer” and undergoing chemotherapy in 1987,” and his “major depressive disorder which has manifested itself on at least two occasions in his life,” *id.* at ¶ 11. The trial judge also noted, “This Court received little or no evidence concerning the second prong of the test for [intellectual disability,] that being ‘deficits in adaptive behavior’ that existed prior to Blackwell’s eighteenth birthday or his developmental period.” *id.* at ¶ 19.

The case proceeded to a death penalty trial and on March 12, 2014, the jury convicted Mr. Blackwell of kidnapping and murder. R. 2602. On March 16, 2014, the jurors found, as aggravating circumstances, the murder involved a child under the age of eleven and was committed during a kidnapping. See S.C. Code Ann. § 16-3-20(C)(a)(1)(b), (a)(10). Just as the trial judge had done pre-trial, the jurors found trial counsel failed to meet the burden of proving Mr. Blackwell has an intellectual disability. The jurors recommended the death penalty, and the trial judge followed that recommendation. R. 3257-63, 3734-35.

Mr. Blackwell appealed to the South Carolina Supreme Court. Robert M. Dudek and David Alexander represented Mr. Blackwell. Donald J. Zelenka and Melody Brown represented the State. On May 31, 2017, our Supreme Court affirmed the convictions. *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017). On September 1, 2017, our Supreme Court issued a stay of execution so Mr. Blackwell could seek review by the Supreme Court of the United States. On February 20, 2018, the Supreme Court denied Mr. Blackwell's petition for a writ of *certiorari*. *Blackwell v. South Carolina*, \_\_\_ U.S. \_\_\_, 138 S. Ct. 985 (2018).

On February 27, 2018, through appellate counsel, Mr. Blackwell petitioned the South Carolina Supreme Court, pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), for a stay of execution to pursue post-conviction relief. By return filed March 2, 2018, the State did not oppose the stay. On March 14, 2018, through undersigned counsel, Mr. Blackwell filed a PCR application initiating these proceedings. On March 29, 2018, the Supreme Court granted Mr. Blackwell a stay of execution to pursue post-conviction relief and assigned this Court exclusive jurisdiction to preside over his PCR case. On April 16, 2018, this Court convened a hearing, confirmed Mr. Blackwell remains indigent, and appointed undersigned counsel to represent Mr. Blackwell. On April 23, 2018, the State served its return to Mr. Blackwell's PCR



application. By written order dated April 26, 2018, this Court confirmed the appointment of counsel. By written order filed April 27, 2018, this Court set a telephone status conference for September 17, 2018 and the evidentiary hearing for the week of November 5, 2018.

On September 14, 2018, Mr. Blackwell moved to continue the evidentiary hearing. On September 18, 2018, this Court issued an order finding good cause to continue the November 5, 2018 evidentiary hearing, scheduling a status conference for December 4, 2018, and requiring Mr. Blackwell to amend his PCR application no later than February 20, 2019. This order did not schedule a date for an evidentiary hearing. Mr. Blackwell amended his PCR application on February 19, 2019 and February 20, 2019. On March 22, 2019, the State served its return and motion for a more definite statement. By letter dated April 23, 2019, the State filed an additional attachment to its return.

On June 15, 2021, this Court convened an in person status conference at the Greenville County Courthouse. Undersigned counsel Grose appeared for Mr. Blackwell. Tommy Evans appeared for the State. During the status conference, the parties discussed discovery matters,<sup>3</sup> allowing the State to have access to Judge Couch's *ex parte* order allowing Mr. Blackwell access to Angela Blackwell's mental health records,<sup>4</sup> and the possibility of scheduling an evidentiary hearing in early 2022. Following this hearing, this Court did not issue a new scheduling order.

By emails dated October 27, 2021, the State requested this Court convene a status conference "[s]o that each party can assess this case and determine if a scheduled date of early

---

<sup>3</sup> By letter dated June 16, 2021, undersigned counsel agreed to provide the State additional discovery within thirty days.

<sup>4</sup> On June 22, 2021, this Court issues an order unsealing Judge Couch's *ex parte* order. Mr. Blackwell provided the State a copy of Judge Couch's order immediately upon receipt of this Court's order.

2022 is possible.” Exhibit A. Undesigned counsel “agree[d] the Court should convene a status conference” and observed “the Judicial Branch Calendar lists a hearing for what appears to be Mr. Blackwell’s case for the week of January 31, 2022.” *Id.* On November 12, 2021, via WebEx, this Court convened a status conference, expressed a preference to convene the evidentiary hearing on January 31, 2022, and scheduled another status conference for December 10, 2021. This motion to continue follows.

### III. LEGAL STANDARD

In South Carolina, the Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10, *et. seq.*, is the first opportunity for a person convicted of a crime to investigate, develop, and present allegations of ineffective assistance of trial counsel. In all PCR cases involving “questions of law or fact which will require a hearing,” an indigent person is entitled to appointed counsel. Rule 71.1(d), SCRPC; *Odom v. State*, 337 S.C. 256, 523 S.E.2d 753 (1999). After appointment, “[c]ounsel shall be given a reasonable time to confer with the” client and “shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.” Rule 71.1(d), SCRPC; *see also* S.C. Code Ann. § 17-27-90 (expressly contemplating supplemental or amended PCR application). As our Supreme Court reminded, “the Sixth Amendment guarantee of effective assistance of counsel is a ‘bedrock principle in our justice system.’” *Mangal v. State*, 421 S.C. 85, 99, 805 S.E.2d 568, 575 (2017) (citing *Martinez v. Ryan*, 566 U.S. 1 (2012); *see also Robertson v. State*, 418 S.C. 505, 522, 795 S.E.2d 29, 38 (2016) (applying *Strickland* standard to performance of PCR counsel). “[T]he interests of justice require PCR courts to be flexible with procedural requirements *before* PCR applicants suffer procedural default on substantial claims. Such flexibility is consistent with the purpose and spirit of our Rules of Civil Procedure.” *Mangal*, 421 S.C. at 99, 805 S.E.2d at 575 (emphasis supplied by court). Our

Supreme Court, accordingly, “encourage[s] trial courts in PCR cases to use the discretion [it] grant[s] them on procedural matters to find reasonable ways—within the flexibility of our Rules—to reach the merits of substantial issues.” *Id.* 421 S.C. at 100, 805 S.E.2d at 576; *see also Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019) (denial of motion to amend application for post-conviction relief was abuse of discretion).

In a capital PCR case, two attorneys must be appointed to represent a person who is indigent. S.C. Code Ann. § 17-27-160(B). Appointed counsel are compensated by the South Carolina Commission on Indigent Defense. *Id.* (incorporating the funding provisions of S.C. Code Ann. § 16-3-26 which provides that the court shall order the payment of fees and expenses “[u]pon a finding in *ex parte* proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant”); *see also* Rule 602(g)(6), SCACR (“In post-conviction relief matters, expenses related to representation and fees of appointed counsel may be paid where permitted and as prescribed in these Rules and the Defense of Indigents Act.”).

A showing of “good cause” requires continuing the evidentiary hearing to provide appointed counsel sufficient time and resources to investigate all available grounds for relief and amend the PCR application. S.C. Code Ann. § 17-27-160(C). For example, in *Winkler v. State*, the PCR court authorized “funding for consultation with a neuropsychologist” who “informed counsel ‘it would be very helpful to have neuroimaging.’” 418 S.C. 643, 660, 795 S.E.2d 686, 695-96 (2016). After finding the neuroimaging “reasonable and necessary” for investigation of the PCR claims and authorizing funding, the PCR court ultimately “denied counsel’s request to extend the discovery deadline and the PCR trial date” after the neuroimaging could not be completed because Winkler’s “blood glucose level was 272 mg/dl—almost three times the normal level.” *Id.*, 418 S.C. at 660-61, 795 S.E.2d at 696. Our Supreme Court held, “[T]he PCR court abused its discretion in

denying Winkler's second motion for additional time. This ruling [denying a continuance] left PCR counsel in a position from which they could not present evidence to support the claim that trial counsel was ineffective for failing to investigate Winkler's brain damage." *Id.*, 418 S.C. at 663, 795 S.E.2d at 697.

The right to file an application for post-conviction relief, and the right to the assistance of counsel when doing so, are hollow in the absence of the concomitant right of an indigent person to receive adequate resources, including time and funding for utilization of expert and investigative services where appropriate. *Williams v. Martin*, 618 F.2d 1021, 1025 (4th Cir. 1980) (explaining that "[t]he quality of representation at trial may be excellent and yet valueless to the defendant if his defense requires . . . the services of a[n] . . . expert and no such services are provided") (citing ABA Standards, Providing Defense Services, commentary, 22-23 (App. Draft 1968)). The state is required to "provide the 'basic tools' for an adequate defense to an indigent defendant." *Bailey v. State*, 309 S.C. 455, 459, 424 S.E.2d 503, 506 (citing *Ake v. Oklahoma*, 470 U.S. 68 (1985)). Namely, it is the state's duty to "ensure that the defendant has . . . [funding for] the services of experts necessary to a meaningful defense." *Id.* This duty extends to the post-conviction context as well. Indeed, the United States Supreme Court specifically recognized that "the right to counsel [in federal post-conviction proceedings] necessarily includes a right for that counsel meaningfully to research and present a defendant's habeas claims." *McFarland v. Scott*, 512 U.S. 849, 858 (1994).

The ability to retain the services of experts and investigative assistance in various areas is particularly essential in capital cases. A capital case "is an extraordinary proceeding" where "the attorney is charged with the awesome responsibility of defending a person's life." *Bailey*, 309 S.C. at 460, 424 S.E.2d at 506. To prepare for the guilt or innocence phase of a capital trial, an attorney

must vigorously and thoroughly investigate the facts and circumstances of the alleged crime, which often requires the assistance of various experts. *See id.* (recognizing that unlike the solicitor, the defense attorney does not have “the entire array of state, county, and municipal law enforcement” at his disposal). Just as assistance is imperative in the guilt or innocence phase of a capital case, it is equally necessary during the sentencing phase where counsel is challenged by novel and complex issues. *See id.* at 461, 424 S.E.2d at 506-07. Due to the finality and irrevocability of the penalty of death, the United States Supreme Court has stressed the “need for reliability in the determination that death is the appropriate punishment in a specific case.” *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). In order to ensure that the appropriate sentence is chosen, the Court has emphasized the importance of presenting to the sentencing body the fullest information possible concerning the defendant’s life and characteristics. *See Lockett v. Ohio*, 438 U.S. 586, 605 (1978) (plurality opinion) (holding that preventing the sentencer in a capital case from considering the defendant’s characteristics “creates the [unacceptable] risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty”); *see also Jurek v. Texas*, 428 U.S. 262, 271 (1976) (asserting that the sentencing body must have before it all possible relevant information about the individual whose fate it must determine).

Thus, in capital cases, defense counsel has a duty to vigorously investigate and present mitigating evidence. *See Sears v. Upton*, 561 U.S. 945, 951 (2010); *Williams v. Taylor*, 529 U.S. 362, 393 (2000). This duty requires that counsel’s investigations into mitigating evidence “should comprise efforts to discover *all reasonably available* mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor.” *Wiggins v. Smith*, 539 U.S. 510, 524 (2003) (quoting ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 11.4.1(C), p. 93 (1989)); *see also Padilla v. Kentucky*, 559 U.S. 356, 366

(2010) (“We long have recognized that prevailing norms of practice as reflected in American Bar Association standards and the like . . . are guides to determining what is reasonable.” (internal quotation marks omitted)).

Post-conviction counsel must “continue an aggressive investigation of all aspects of the case.” ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 10.15.1(E)(4); *see also id.* 10.15.1(E)(4) commentary (“[C]ollateral counsel cannot rely on the previously compiled record but must conduct a thorough, independent investigation.”). Post-conviction counsel must review the record and conduct investigation to determine whether the applicant’s conviction or sentence are “in violation of the Constitution of the United States or the Constitution or laws of this state.” S.C. Code § 17-27-20(A)(1). This responsibility necessarily includes determining whether the applicant received ineffective assistance of counsel during his trial. *See Strickland v. Washington*, 466 U.S. 668 (1984). If trial counsel’s decision to end investigation, including mitigation investigation, was inconsistent with professional standards or unreasonable because known information should have led counsel to investigate further, a capital defendant may have a valid claim of ineffective assistance of counsel. *See Sears*, 561 U.S. at 951; *Wiggins v. Smith*, 539 U.S. 510, 533-34 (2003); *Strickland*, 466 U.S. at 690-91. When evaluating *Strickland* claims, courts “evaluate the totality of the evidence—‘both that adduced at trial, and the evidence adduced in the habeas proceeding[s].’” *Wiggins*, 539 U.S. at 536 (quoting *Williams*, 529 U.S. at 397-98).

#### IV. GROUNDS FOR CONTINUANCE

Following their appointment and review of the trial record, undersigned counsel began investigating Blackwell’s case with the assistance of mitigation specialist Pamela Leonard. This investigation soon revealed viable claims of ineffective assistance of counsel related to

Blackwell's life history, mental illness, and intellectual disability that required further investigation and evaluation. Counsel pled these claims in Blackwell's PCR application, most recently in claims 10 & 11(a), 10 & 11(b), and 10 & 11(d) in Blackwell's Third Amended Application for Post-Conviction Relief filed on November 10, 2021. The investigation, evaluation, and preparation of each of these claims require numerous witness interviews by Blackwell's legal team and experts and coordination between the experts to complete their evaluations. These processes have been substantially hindered by the ongoing COVID-19 pandemic, creating good cause for a continuance so counsel have sufficient time to adequately investigate, develop, and present evidence in support of Blackwell's PCR claims.

*a. Investigation and Preparation Completed to Date.*

*i. Life History Investigation and Evaluation.*

The trial record revealed the majority of the defense sentencing presentation at trial focused on Blackwell's claim that he is intellectually disabled. Only a handful of witnesses were called to testify about Blackwell as a caring father and friend who was hurt when his wife left him. PCR investigation on the contrary revealed substantial information about Blackwell's life history that was not presented during the trial.

According to the PCR investigation, Blackwell's life and family history were filled with chaos, stress, and near-constant issues related to mental illness and poor cognitive functioning suffered by Blackwell and his close family. Blackwell and his brother both suffered from seizures as infants and later developed mental illness. His brother was diagnosed with schizophrenia and died in 2001 due to aspiration secondary to a possible seizure, and Blackwell's parents struggled with depression and anxiety following their son's death. Blackwell had two children of his own who suffered from mental health and behavioral problems, causing stress for Blackwell and this

then-wife. While struggling to raise his children, Blackwell was diagnosed with Hodgkin's Lymphoma, was unable to work for approximately a decade, suffered from depression, and attempted suicide. Then, at the age of fifty (50) his wife left him, and Blackwell struggled to cope with the loss of the woman who had been his support and partner for more than half his life. Blackwell was unable to manage his life or cope with the stress after losing his wife.

Based on this information, undersigned counsel requested and received authorization to retain Dr. Arlene Andrews, a licensed social worker "with specialized knowledge of . . . physical, emotional and sexual maltreatment, trauma and the effects of such factors on [a] client's development and functioning," to conduct a social history evaluation. See ABA Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases 10.11(E)(1)(a) (2008). The South Carolina Supreme Court has recognized the importance of a social history investigation and evaluation in capital cases because "[i]mportant sentencing considerations include a defendant's 'medical history, educational history, employment and training history, *family and social history*, prior adult and juvenile correctional experience, and religious and cultural influences.'" *Weik v. State*, 409 S.C. 214, 234, 761 S.E.2d 757, 767 (2014) (quoting *Wiggins*, 539 U.S. at 524); ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 4.1, commentary ("[T]he defendant's psychological and social history and his emotional and mental health are often of vital importance to the jury's decision at the punishment phase.")). This type of investigation and evaluation involves reviewing social history records, interviewing witnesses who knew the client at various stages of his life, and consulting with other experts and counsel to develop an understanding of how the client's life history effected his development and functioning, both in general and around the time of the capital offense.



Following authorization of her work, Dr. Andrews reviewed voluminous records related to Blackwell's life history, including school, financial, employment, divorce, mental health, and medical records. Dr. Andrews also conducted in-person interviews with Blackwell, his parents, his daughter, a pastor, and several family friends. However, since March of 2020, Dr. Andrews has not been able to conduct the additional necessary interviews to complete her evaluation due to the COVID-19 pandemic.

ii. *Mental Illness Investigation and Evaluation.*

Early PCR investigation revealed that, at the time of the capital offense, Blackwell was 50 years old with no history of committing violent acts but that he did have a significant history of mental illness that included multiple diagnoses of major depression, suicide attempts, and admissions for inpatient psychiatric services. Trial counsel recognized Blackwell's depression and hired Dr. Donna Maddox (formerly Dr. Donna Schwartz-Watts) to treat Blackwell pretrial and ensure he received appropriate medication to address his depression. Trial counsel, through their mitigation specialist, also engaged forensic psychiatrist Dr. George Corvin who met Blackwell and began an assessment of Blackwell's mental illness at the time of the offense. During his pretrial work, Dr. Corvin reviewed some materials, met with Blackwell once, and made recommendations for additional steps to complete his evaluation. Trial counsel did not follow up on his recommendations and the trial team had no contact with Dr. Corvin again until the mitigation specialist emailed him his availability to testify a month before the trial was set to begin. At that point, Dr. Corvin indicated he would be out of the country between then and trial and was also scheduled to testify in two other cases. He was not prepared to testify because he had not received additional records from trial counsel, had not completed a report, and had never been contacted by the attorneys themselves (as opposed to the trial mitigation specialist). There is no evidence trial

counsel later reached out to Dr. Corvin to complete his evaluation or prepare to testify, and Dr. Corvin was not called to testify at Blackwell's trial.

At trial, instead, trial counsel unsuccessfully attempted to use Dr. Maddox in his place. During the sentencing phase of the trial, counsel asked Dr. Maddox, "[T]ell the jury what your opinion is as to Mr. Blackwell's psychiatric state at the time of this incident," meaning at the time of the capital crimes. Dr. Maddox testified:

I didn't look at that. I need to qualify that, and part of my job that sometimes that is my job to look somebody's mental state, what they were thinking as an act was committed.

My role was different here. My role was to treat Mr. Blackwell, and so, as a general psychiatrist, I treated his depression and his anxiety and helped to manage that in the detention center. So, the only opinion I'm able to give today would be that, in my opinion, he's had a history of major depression before. He's had two episodes before when he was hospitalized, and it's clear, from looking at Dr. Jackson's records, that he remained depressed before this incident, and it is very clear that, since I treated him at the jail, he had symptoms of depression as well.

So, the opinion that I could offer to you-all was that he was suffering from a major depression at that time.

R. 2984-87.

Based on this evidence identified during the PCR investigation, undersigned counsel requested and received authorization to retain Dr. Corvin to complete the evaluation he recommended prior to trial to allow him to opine on Blackwell's state of mind at the time of the offense. To that end, Dr. Corvin reviewed additional records, including all discovery related to the offense, and met with Blackwell again. Completion of his current evaluation is in part dependent on completion of the social history evaluation which will provide him with more details about Blackwell's life history and functioning, especially in the time leading up to the offense.

iii. *Intellectual Disability Investigation and Evaluation.*

Although trial counsel raised a claim that Blackwell was a person with intellectual disability, undersigned counsel's PCR investigation revealed deficiencies in trial counsel's investigation and presentation of Blackwell's intellectual disability. In light of these deficiencies, the trial court and jury rejected Blackwell's allegation that he was ineligible for the death penalty pursuant to *Atkins*. See § 16-3-20(C)(b)(10) (defining intellectual disability as "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period").

Examples of counsel's deficiencies are laid out in Blackwell's Third Amended PCR application, claims 10 & 11(a) and 10 & 11(b). For instance, undersigned counsel's investigation revealed trial counsel failed to investigate and present evidence that would have shown Blackwell's IQ scores from the developmental period were not legitimate, individualized measures of general intellectual functioning. This is because the tests administered were unreliable group tests and they should not be relied upon in an intellectual disability diagnosis. Additionally, trial counsel failed to investigate and present evidence available to contradict the State's arguments that Blackwell's work history and commercial driver's license ("CDL") disproved deficits in adaptive behavior. Undersigned counsel's investigation has revealed that Blackwell obtained his CDL prior to the CDL requirements becoming more onerous and was grandfathered in when the rules changed. Perhaps most significantly, as the trial court found, Blackwell's trial counsel did not present evidence that Blackwell's deficits existed during the developmental period as required by South Carolina's statute. See S.C. Code § 16-3-20(C)(b)(10).

Based on these deficiencies, undersigned counsel sought and received authorization to retain Dr. Susan Knight to conduct an evaluation for intellectual disability following a thorough

investigation by PCR counsel and their experienced mitigation investigator. Since retaining Dr. Knight, she has reviewed voluminous records relevant to Blackwell's intellectual and adaptive functioning (including school records, work records, mental health and medical treatment records) conducted multiple interviews with Blackwell, and conducted multiple collateral interviews with witnesses who observed Blackwell's functioning, especially during the developmental period. However, since March of 2020, Dr. Knight has not been able to conduct the additional necessary interviews to complete her evaluation due to the COVID-19 pandemic. Completion of her evaluation is also dependent, in part, on the completion of Dr. Andrews's social history evaluation, which will include information about Blackwell's functioning over the course of his life.

b. *Continued Impact of COVID-19.*

As seen in the sixty-day status reports, Mr. Blackwell's legal team continuously monitors the COVID-19 situation. After COVID vaccines became available to everyone and the courts reopened earlier in 2021, Mr. Blackwell's legal team "resumed some in-field investigation activities." Exhibits C & D. Beginning in January 2021, new COVID cases began a "steady decline." Exhibit E.<sup>5</sup> Over the summer, the Delta variant "reversed" this trend. *Id.* According to the Center for Disease Control and Prevention ("CDC"):

In late June, the 7-day moving average of reported cases was around 12,000. On July 27, the 7-day moving average of cases reached over 60,000. This case rate looked more like the rate of cases we had seen before the vaccine was widely available.

*Id.* "[N]ew data began to emerge that the Delta variant was more infectious and was leading to increased transmissibility when compared with other variants, even in some vaccinated

---

<sup>5</sup> Delta Variant: What We Know About the Science, August 26, 2021 (found at [https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html?s\\_cid=11512:cdc%20delta%20variant:sem.ga:p:RG:GM:gen:PTN:FY21](https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html?s_cid=11512:cdc%20delta%20variant:sem.ga:p:RG:GM:gen:PTN:FY21) (last viewed Dec. 7, 2021)).

individuals. By August 26, 2021, the Delta variant was “the predominant variant of the virus in the United States.” The CDC continued to urge people to get vaccinated and recommended, “Everyone who is able, including fully vaccinated people, should wear masks in public indoor places in areas of substantial or high transmission.” *Id.*

“The resurgence of the pandemic due to the Delta variant has caused not only very real health and safety concerns, but also has exacerbated the uncertainty, confusion, and trauma experienced by Americans nationwide due to events of the last 17 months.” Declaration of Elizabeth Vartkessian, Ph.D., regarding Impact of COVID-19 Pandemic on Capital Mitigation Investigation, Exhibit F, at 1. “These conditions create grave concern that any interviews conducted may miss important information, risking the integrity of the investigation.” *Id.* Throughout Dr. Vartkessian’s declaration regarding the impact of COVID on investigation, she cautioned capital defense teams

not to attempt to engage in substantive interviewing of these witnesses over the phone for the many reasons . . . including the inability to ensure the conversation was being carried out in private and that attempting to do so would risk producing unreliable results; foreclosing future discussions; and leading to less trust and rapport, both of which are necessary to the development of sensitive mitigation information.

*Id.*, at 4. “Capital defense teams seeking to continue field work while the Delta variant makes its way through the country must take a broad view of the kind of investigation required.” *Id.*, at 12. “The client and team may be in a moderate risk area, but the investigation cannot be sufficient if key witnesses in high risk areas cannot be interviewed.” *Id.* “[C]apital mitigation investigation cannot be effectively conducted while wearing a mask” because of “the need to eliminate barriers to communication, enhance the ability to observe facial expressions between the mitigation specialist and witness, and to engage in rapport building activities.” *Id.*, at 11. In short, a

“mitigation investigation cannot proceed until it can be done in complete safety for both witnesses and capital defense team members.” *Id.*, at 39.

The COVID-19 pandemic impacted Mr. Blackwell’s team in at least four significant manners. First, Mr. Blackwell is at high risk for COVID-19 because of his prior medical history. On October 15, 2020, undersigned counsel reported that Mr. Blackwell “tested positive” for COVID-19 and “was temporarily hospitalized at an outside medical facility.” Exhibit B. His underlying health conditions, including COPD, make him particularly susceptible infection by COVID-19 and its variants.

Second, most of Mr. Blackwell’s mitigation witnesses live in Spartanburg County. As of December 7, 2021, Spartanburg County along with most of the Upstate is rated by the CDC as having the highest risk of community transmission of Covid-19. *COVID Data Tracker* for Spartanburg County, Center for Disease Control and Prevention (Accessed on December 7, 2021), <https://covid.cdc.gov/covid-data-tracker/#county-view>. Spartanburg also has one of the lower vaccination rates across South Carolina, with only 40.8% of the county being fully vaccinated. *Id.* Like everywhere else, the pandemic has affected Spartanburg in waves. The last peak for Spartanburg was just over a month ago, and it reached more than 400 daily cases. *Id.* The only time with worse numbers was January 2021. *Id.*

Third, members of Mr. Blackwell’s family are at high risk for COVID. His parents are elderly and have preexisting medical conditions. His father Cletus Blackwell, daughter Heather Blackwell, and Heather’s fiancé are vaccinated. His mother Mildred Blackwell and Heather’s children are not vaccinated.

Fourth, as will be discussed in more detail in subsection c, Mr. Blackwell’s social historian, although vaccinated, is a caretaker for her unvaccinated grandchildren.

c. *Expert Evaluation Delays Resulting from COVID-19.*

The global pandemic has impeded, and continues to impede, completion of the necessary evaluations in Blackwell's case. Both Dr. Andrews and Dr. Knight have been unable to complete necessary interviews. This is especially hindering because Dr. Andrews's social history evaluation is necessary and relevant to both the mental health and intellectual disability evaluations.

Although Dr. Andrews was able to conduct some interviews prior to the COVID pandemic, she has identified (in consultation with undersigned counsel and the mitigation specialist) at least a dozen additional witness with whom interviews are essential to develop an adequate understanding of how Blackwell managed life stressors as he developed. These witnesses include older family members who observed and interacted with Blackwell from an early age, one of his children and his former partners who observed and interacted with Blackwell as an adult and in the time leading up to the offense, former co-workers and supervisors. Dr. Andrews has reminded counsel that as additional interviews are completed, further information may emerge to indicate other witnesses who must be contacted or records that must be collected and reviewed.

Dr. Andrews cannot complete these interviews at this time. Some of the witnesses remain to be located by the mitigation specialist, which cannot safely be done because without having a prior relationship with the witness, it is impossible to know their vaccination status and/or individual health risks. Even for the witnesses who have been previously located, Dr. Andrews is unable to conduct the interviews due to the risk of harm those interviews pose to Dr. Andrews and her family. Although Dr. Andrews is vaccinated, she has caregiving responsibilities for her grandchildren who have not been vaccinated. Some are under the age of 12 and may be vaccinated soon, but others of her grandchildren are under the age of 5 and cannot yet be vaccinated. Given the CDC's indication that vaccinated individuals may transmit the Delta variant to others, this have

been particularly concerning since the summer. *See* Exhibit E, at 2. Additionally, Dr. Andrews's caregiving responsibilities will increase around the end of 2021 when she will be caring for two of her grandchildren while their mother is in labor and caring for a newborn due on January 2<sup>nd</sup>. The risk of conducting in-person interviews with witnesses who may or may not be vaccinated, while more dangerous variants such as the Delta variant are spreading, prohibits Dr. Andrews from completing the interviews necessary to complete her social history evaluation.

Dr. Knight, in addition to needing the completed social history evaluation from Dr. Andrews, has similarly been unable to conduct the interviews necessary for her to complete her intellectual disability evaluation. Dr. Knight (through consultation with undersigned counsel and the mitigation specialist) has identified approximately ten additional witnesses she must interview to complete her evaluation. Several of the additional witnesses have not yet been located, but Dr. Knight's interviews and record review indicate that those additional witnesses likely have substantial relevant information regarding Blackwell's functioning, especially during the developmental period. In addition to the risks associated with locating witnesses at this time, Dr. Knight has been unable to conduct interviews with previously located witnesses during the pandemic and cannot complete them at this time given the risks that remain, especially with the emerging variants.

Dr. Knight's schedule from December and January would also inhibit her ability to prepare for a hearing in this matter beginning on January 30<sup>th</sup>. Dr. Knight is testifying in a trial the week of December 6<sup>th</sup> and a *Jackson v. Denno*<sup>6</sup> hearing and trial the week of January 3. Dr. Knight is also scheduled to be in Ithaca, New York for teaching duties from January 25-30, 2022.

---

<sup>6</sup> 378 U.S. 368 (1964).



Similarly, in addition to needing the completed social history evaluation, Dr. Corvin has scheduling conflicts that make it impossible for him to complete his evaluation and testify during the scheduled hearing at the end of January 2022. Dr. Corvin is scheduled to testify as an expert in a capital trial during the first two weeks of January. He is also traveling out of the country during the first two weeks of February. His availability is further limited by his service as an expert in the Pittsburgh Synagogue shooting case in Pennsylvania federal court.

### CONCLUSION

Altogether, the COVID risks and scheduling conflicts of Blackwell's experts will prohibit counsel for adequately preparing and presenting evidence related to his claims for post-conviction relief in this capital case. This constitutes good cause for granting a continuance in this action.

IT IS SO MOVED.

Respectfully Submitted,

By s/ E. Charles Grose, Jr.

E. Charles Grose, Jr.  
S.C. Bar Number 66063  
The Grose Law Firm, LLC  
404 Main Street  
Greenwood, SC 29646  
(864) 538-4466  
Email: charles@groselawfirm.com

By s/ Lindsey S. Vann

Lindsey S. Vann  
S.C. Bar No. 101408  
Executive Director, Justice 360  
900 Elmwood Avenue, Suite 200  
Columbia, SC 29201  
(803) 765-1044  
Email: lindsey@justice360sc.org

*Attorneys for Ricky Lee Blackwell*

December 7, 2021.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
Ricky Lee Blackwell, #6033 )  
Applicant, )  
 )  
vs. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

Case No. 2018-CP-42-00928

**APPLICANT'S NOTICE OF INTENT TO  
RELY ON AFFIDAVITS**

Applicant, Ricky Lee Blackwell, hereby informs the Court and opposing counsel that he intends to offer proof in support of his post-conviction relief claims through affidavits of certain witnesses in lieu of direct examination of those witnesses at the evidentiary hearing scheduled to commence March 27, 2023. In support of this notification, applicant apprizes this Court of the following relevant facts:

1. Applicant is an indigent, death-sentenced inmate in South Carolina. He was convicted and sentenced to death in Spartanburg County. *See State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017). Applicant filed a Third Amended Application for Post-Conviction Relief on November 10, 2021, in which he asserts he is ineligible for the death penalty as a person with intellectual disability, *see Atkins v. Virginia*, 536 U.S. 304 (2002), and various claims of ineffective assistance of counsel, *see Strickland v. Washington*, 466 U.S. 668 (1984).

2. In support of his claims, Applicant intends to rely upon affidavits provided by Beverly Daves, William Hayes, Sonya Stott, Geraldine White, and Glenda Wooten. This procedure is authorized pursuant to S.C. Code § 17-27-80, which provides that, in a hearing on an application for post-conviction relief, all rules and statutes applicable in civil proceedings are available to the parties. The court may receive proof by affidavits, depositions, oral testimony or other

FILED

evidence and may order the applicant brought before it for hearing.” The South Carolina Supreme Court has endorsed this process. *See Simpson v. Moore*, 367 S.C. 587, 607–08, 627 S.E.2d 701, 712 (2006) (rejecting the State’s argument that it was error for the PCR court to consider over forty depositions and twenty-two affidavits in lieu of live testimony), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018); *Beckett v. State*, 278 S.C. 223, 224, 294 S.E.2d 46, 47 (1982). Accordingly, courts across the state have received affidavits in lieu of testimony in numerous capital post-conviction cases. *See, e.g., Louis Michael Winkler, Jr. v. State*, 11-CP-26-03907 (Horry County); *Kevin Mercer v. State*, 09-CP-32-5465 (Lexington County); *Kenneth Simmons v. State*, 05-CP-18-1368 (Dorchester County); *Herman Lee Hughes v. Michael Moore*, 98-CP-09-101 (Calhoun County); *Joseph M. L. Gardner v. Michael Moore*, 98-CP-18-453 (Dorchester County); *Keith L. Simpson v. Michael Moore*, 97-CP-42-1911 (Spartanburg County).

3. Entering affidavits and prior testimony is not prejudicial to the State’s case and introducing affidavits in lieu of live testimony will expedite the hearing. Moreover, because Applicant has provided counsel for Respondent all of these materials, the State will have a better opportunity to consider their statements and make informed decisions about whether to cross-examine those witnesses than if the witnesses were called for direct examination at the evidentiary hearing.

4. Applicant hereby provides both counsel for the Respondent and the Court with copies of the affidavits of Beverly Daves, William Hayes, Sonya Stott, Geraldine White, and Glenda Wooten attached cumulatively hereto as Attachment A.

5. Of course, Applicant acknowledges that the Attorney General has the prerogative to call any or all witnesses who have provided affidavits or other documentary evidence for

2023 MAR 16 PM 12:09

FILED

purposes of cross-examination. Whether to do so is completely within the Attorney General's discretion.

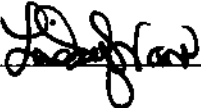
WHEREFORE, applicant requests that the Court accept the affidavits provided by certain defense witnesses in lieu of a direct examination of those witnesses at trial.

**E. CHARLES GROSE**

Grose Law Firm  
404 Main Street  
Greenwood, SC 29646  
(864) 538-4466

**LINDSEY S. VANN**

Justice 360  
900 Elmwood Avenue, Suite 200  
Columbia, South Carolina 29201  
(803) 765-1044

BY:  \_\_\_\_\_

March 13, 2023.

CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

2023 MAR 16 PM 12:09

FILED

# Exhibit A

CLERK OF COURT  
SPARTANBURG COUNTY  
AMY M. COOK

2023 MAR 16 PM 12:09

FILED

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

AFFIDAVIT

Beverly Daves, who appeared personally before me, affirms and states the following:

1. I reside in <sup>Cherokee</sup> Spartanburg County in South Carolina. B.D.
2. I was Ricky Lee Blackwell's homeroom teacher at Chesnee High School for his two ninth grade school years, 1973-74 and 1974-75.
3. Ricky was a quiet student who did not cause trouble.
4. During the years Ricky was in school, I taught a Family Living class. It was an easy class about how to survive in your environment. I was not Ricky's teacher. B.D.
5. During the years Ricky was in school, teachers who taught regular level courses also taught adjunct courses. Adjunct courses were remedial courses in which students were placed based on test scores and grades. After Ricky's time in school, there were separate adjunct teachers. Eventually, "adjunct" became "special education."
6. Students like Ricky would go to pre-vocational classes at Foster's Grove. That would take up two class periods, one for traveling and one for the pre-vocational class.
7. Ricky's class rank of 113 out of 113 would have been based on his grades at the time of dropping out. He would not have automatically been placed at the bottom of the class due to dropping out; instead, his grades would have been "frozen" at the time of dropping out.

I affirm, under the penalty of perjury, that the foregoing is true and correct to the best of my knowledge. Further affiant sayeth naught.

Beverly Daves  
BEVERLY DAVES

Sworn to and subscribed before me  
This 10<sup>th</sup> day of October, 2018

[Signature]  
Notary Public for the State of South Carolina  
My commission expires: 2/24/2024

CLERK OF COURT  
SPARTANBURG COUNTY  
SOUTH CAROLINA

2023 MAR 16 PM 12:09

Page 1 of 1

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

AFFIDAVIT

William "Bill" Hayes, who appeared personally before me, affirms and states the following:

1. I reside in Spartanburg County in South Carolina.
2. I was a teacher at Chesnee High School from 93 to 203
3. Before teaching at Chesnee High, I taught at Foster's Grove from 70 to 73.
4. Foster's Grove was a vocational school in Chesnee. Students traveled back and forth between Foster's Grove and Chesnee High.
5. I was a history teacher at Chesnee. I primarily taught U.S. History. I also taught an "adjunct history" class at Chesnee High. The adjunct courses were remedial, special education-like classes.
6. The adjunct history course was a remedial course. It was a very simplified version of a history class. Students were given passing grades based primarily on coming to class.
7. In the adjunct history course, I mainly read stories to the students about heroes, including stories about historical figures like Abraham Lincoln.

I affirm, under the penalty of perjury, that the foregoing is true and correct to the best of my knowledge. Further affiant sayeth naught.

William Bill Hayes  
WILLIAM "BILL" HAYES

Sworn to and subscribed before me  
This 7 day of MARCH, 2019

[Signature]  
Notary Public for the State of South Carolina  
My commission expires: 2/21/2024

SPARTANBURG COUNTY  
CLERK OF COURT  
2023 MAR 16 PM 12:09

FILED

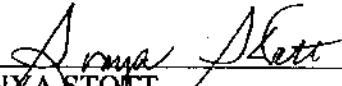
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

AFFIDAVIT

Sonya Stott, who appeared personally before me, affirms and states the following:

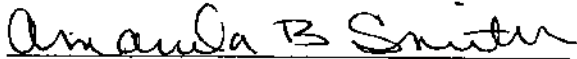
1. I, Sonya Stott, worked in the front office at Belue Trucking when Rickey Blackwell was hired by the company in 1984.
2. I remember meeting Rickey Blackwell at the time of his hiring in 1984, but did not have a role in supervising or working with Mr. Blackwell through the course of his employment.
3. I rarely had interaction with the drivers other than setting up personnel files when they were hired.
4. I did not sign the Certificate of Written Examination in Rickey Blackwell's Belue Trucking employment file. My name appears on the examination form, but I did not put it there. I am certain the signature is not my handwriting.
5. The signature on the Commercial Driver Written Examination in Rickey Blackwell's file appears to be in Ken Duncan's handwriting. Mr. Duncan was the Operations Manager for Belue Trucking at the time of Rickey Blackwell's employment. Mr. Duncan is now deceased.

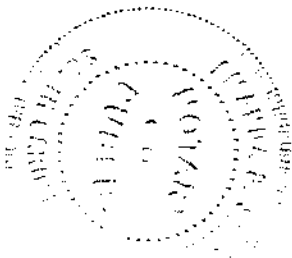
I affirm, under the penalty of perjury, that the foregoing is true and correct.

  
\_\_\_\_\_  
SONYA STOTT

Sworn to and subscribed before me

This 30 day of Jan, 2020

  
\_\_\_\_\_  
Notary Public for the State of South Carolina  
My commission expires: 10-23-2026



CLERK OF COURT  
SPARTANBURG COUNTY  
AMY M. DODD

2023 MAR 16 PM 12:09

FILED



STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

)  
)  
)

AFFIDAVIT

Geraldine "Jean" White, who appeared personally before me, affirms and states the following:

1. I reside in Spartanburg County, South Carolina.
2. I am a close family friend of the Blackwells and have known Rickey Blackwell since he was a baby. I knew Cletus Blackwell when we were children because kids from the area would meet up at a spot near the river. Later, my husband was a truck driver and struck up a friendship with Cletus. Cletus his family would come over to help harvesting and canning from my family's large garden during the summers.
3. Rickey and his brother Don both had convulsions as children. I recall one convulsion episode when Rickey was about four years old. I had to drive Rickey and Mildred to the hospital as Mildred was rubbing him down with alcohol. Rickey had a fever of 105 when we arrived at the hospital.
4. Rickey was a good boy, and I have never known anything bad about him, except for this crime.
5. The Blackwells are good people, but they all seem retarded. Even though Rickey was a good looking man, he never thought he would get a wife because the Blackwells are all off. They are all slow. It seems like there is something in the gene pool because it is five generations.
6. Even though the Blackwells were limited, they worked hard and made a living. They were raised right and are good people.
7. Mildred was intensely jealous of Cletus. She would not go to the beach with him, but she said she would cut off her own head before she would let him go to the beach alone. When Cletus had to take his mandatory one hour breaks while trucking, Mildred would insist on him staying on the phone with her so that he would not stray. I told Mildred that was absurd, especially as Cletus aged, but Mildred insisted that a woman would steal him away for his money.

CLERK OF COURT  
SPARTANBURG COUNTY  
SOUTH CAROLINA  
2023 MAR 16 PM 12:09  
FILED

GJW  
1

8. I got frustrated with Mildred's habit of screaming. I tried to get Mildred to stop yelling, especially at me. But I can understand why Mildred would be frazzled, especially when taking care of her great-grandchildren (Heather's children).

I affirm, under the penalty of perjury, that the foregoing is true and correct to the best of my knowledge. Further affiant sayeth naught.

Geraldine Jean White  
GERALDINE "JEAN" WHITE

Sworn to and subscribed before me  
This 20<sup>th</sup> day of September, 2022

[Signature]  
Notary Public for the State of South Carolina  
My commission expires: 2/2/2024

GTW

2

Page 1 of 2

CLERK OF COURT  
SPARTANBURG COUNTY  
SOUTH CAROLINA

2023 MAR 16 PM 12:09

FILED

2

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

)  
)  
)

AFFIDAVIT

Glenda Wooten, who appeared personally before me, affirms and states the following:

1. I reside in Spartanburg County, South Carolina.
2. I was Rickey Blackwell's primary supervisor on the third shift at Springs Industries. I held the third shift supervisor position from 2000-2005.
3. At Springs, Rickey drove a forklift and was called a "trucker." His job required him to bring rolls of fabric from the first floor where we stored the fabric to the third floor machines. As the supervisor, I gave Rickey a piece of paper with the location of the fabric roll. Using the forklift, he was to pull and deliver the fabric to a specific machine. The rolls were about five or six feet wide. Once it was delivered, he put the sheet of paper I gave him in the end of the roll of fabric, and the machine operator would enter the fabric's identifying number into a computer. The forklift did not have a screen, and Rickey was not responsible for recording the fabric number.
4. The forklift job was not very complicated. It was mostly manual work. Finding the location of the fabric was the most difficult part. The fabric was stored on racks in aisles. Each rack had a number and the aisles were designated by letters.
5. Rickey's training to use the forklift would have involved other drivers showing him how to drive it.
6. I previously worked on second shift and drove a forklift. I never had any structured training to do so. I then taught another female employee how to use the forklift.
7. Rickey was a good worker who was reliable and trustworthy.
8. Rickey never presented any problems. I could not believe it when I heard about the crime. He was very low key and stayed around his wife a lot. His wife, Angie, also worked at Springs and filled out Rickey's paperwork at the end of the shift. The paperwork required name, date, social security number, the number of the forklift driven that shift, and reporting of any mechanical problems he had during the shift.
9. Rickey was very much in love with Angie. She was more dominant. Whatever she said, Rickey was all for it.
10. Rickey was a simple man who was devastated when Angie left him.
11. Rickey was slow, but despite that, he was careful at work and I do not remember him having any accidents.

2023 MAR 16 PM 12:09

FILED

I affirm, under the penalty of perjury, that the foregoing is true and correct to the best of my knowledge. Further affiant sayeth naught.

Glenda Wooten  
GLENDA WOOTEN

Sworn to and subscribed before me  
This 27<sup>th</sup> day of September, 2022

[Signature]

Notary Public for the State of South Carolina  
My commission expires: 2/21/2024

CLERK OF COURT  
SPARTANBURG COUNTY  
2023 MAR 16 PM 12:09

FILED

STATE OF SOUTH CAROLINA )

COUNTY OF SPARTANBURG )

Ricky Lee Blackwell, #6033, )

Applicant, )

vs. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

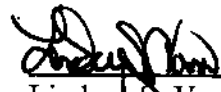
Case No. 2018-CP-42-00928

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the Notice of Intent to Rely on Affidavits was served was served by email to the AIS email addresses, pursuant to Section (b) of the Supreme Court of South Carolina's May 6, 2022 Order, this 13<sup>th</sup> day of March, 2023, upon the following:

Melody Brown, mbrown@scag.gov

Tommy Evans, Jr., tommyevansjr@scag.gov

  
Lindsey S Vann

CLERK OF COURT  
SPARTANBURG COUNTY  
MAR 14 2023

2023 MAR 16 PM 12:09

FILED

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
COUNTY OF SPARTANBURG )

Ricky Lee Blackwell, SCDC# 6033, ) **Case No.: 2018-CP-42-00928**  
 ) **\*CAPITAL PCR\***  
Applicant, )  
vs. ) **OBJECTION TO APPLICANT'S INTENT**  
 ) **TO RELY ON AFFIDAVITS**  
The State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

By notice served on March 13, 2023, Applicant asserts he will seek to offer and rely on 5 affidavits at the March 27, 2023 hearing, specifically, affidavits from Beverly Daves, William Hayes, Sonya Stott, Geraldine White, and Glenda Wooten. Respondent objects to receipt of affidavits and submits in these circumstances it would be an abuse of discretion to accept the affidavits in that acceptance would unfairly prejudice Respondent and would be contrary to a reliable fact-finding process in these circumstances. *See* S.C. Code § 17-27-80 (requiring the PCR court to “make specific findings of fact” in its final order). Respondent submits these affidavits are made by individuals who would not be allowed to testify as they lack personal knowledge; and/or make general assertions based on non-scientific and rejected stereotypical observations concerning intellectual disability (which actually goes against Applicant’s own allegation(s) that stereotypical observations or opinions should *not* be used in determining intellectual disability); and fail to offer any fact or circumstance not covered in trial counsel’s investigation. Applicant should not be allowed to avoid the Rules of Evidence by offer of affidavits. In sum, the affidavits contain inadmissible assertions and invalid assertions that cannot, medically or legally, be relied upon, and should be rejected.

In support of its objection, Respondent would respectfully show the Court:

CLERK

1

1. S.C. Code § 17-27- 80 contemplates the potential for use of affidavits during post-conviction relief proceedings: “The court *may* receive proof by affidavits, depositions, oral testimony or other evidence and may order the applicant brought before it for hearing.” (emphasis added). The Supreme Court of South Carolina has underscored the decision whether to admit affidavits is committed to the sound discretion of the PCR judge. *Simpson v. Moore*, 367 S.C. 587, 607, 627 S.E.2d 701, 712 (2006) (citing *Beckett v. State*, 278 S.C. 223, 224, 294 S.E.2d 46, 47 (1982)). “The decision to admit affidavits, depositions, oral testimony, or other evidence at a PCR hearing is within the PCR court’s discretion and will not be reversed absent an abuse of discretion resulting in prejudice to a party.” *McKnight v. State*, 378 S.C. 33, 56, 661 S.E.2d 354, 365 (2008).

*Simpson* is instructive. The South Carolina Supreme Court found no cause to reverse the discretionary ruling admitting a mix of depositions and affidavits “in lieu of live testimony,” where such admission did not prejudice the respondent. *Id.* at 607-08, 627 S.E.2d at 712. Of note, the Court observed that “[m]ost of the relevant witnesses testified at the PCR hearing and were cross-examined by the State.” *Id.* at 608, 627 S.E.2d at 712 (emphasis added).<sup>1</sup> Absent from the opinion, however, is a suggestion that the allegations in the affidavits admitted lacked personal knowledge or were otherwise inadmissible.

2. Respondent submits that acceptance of the referenced affidavits in this case would be an abuse of discretion and cause undue and unfair prejudice to Respondent because the affiants admit a lack of personal knowledge and offer patently infirm lay opinions on the issue of

---

<sup>11</sup> Further, the *Simpson* Court noted that the PCR judge allowed “the State the opportunity to submit *additional testimony and affidavits* countering the evidence presented by Simpson.” *Id.* (emphasis added). This ability to allow additional affidavits from the State has been referenced not only in *Simpson* but also recently in *Aleksey v. State*, C/A 2015-cp-38-764; however, that option may unnecessarily prolong the proceeding by holding the record open to obtain affidavits after the hearing and makes the litigation undesirably piecemeal.

intellectual disability. Applicant simply asks the Court to accept these inadmissible and unreliable assertions without opportunity for challenge on admissibility and/or testing that adversarial proceedings provide. Even when other methods apart from testimony may be used to offer evidence, there is always a preference for live testimony. *See, for example*, Rule 32 (a)(3) (E), SCRCF (deposition may be accepted by the trial court in certain limited circumstances, in lieu of live testimony, including where there are “exceptional circumstances” shown to admit the deposition “in the interest of justice ... *with due regard to the importance of presenting the testimony of witnesses orally in open court*”) (emphasis added).<sup>2</sup> Even so, the Rules of Evidence apply to post-conviction relief proceedings regardless. *See, e.g., Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (“[A] PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony *in accordance with the rules of evidence* at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.” (emphasis added)); *Glover v. State*, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (“In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses’ testimony in a manner *consistent with the rules of evidence*.”). *Accord Lynch v. Carolina Self Storage Centers, Inc.*, 409 S.C. 146, 154, 760 S.E.2d 111, 116 (Ct. App. 2014) (finding the trial court did not err in refusing to consider an affidavit that did not, on its face, show a basis for admissibility under Rule 606(b), SCRE).

---

<sup>2</sup> In his notice, Applicant suggests that the State is free to call the affiants as their witnesses. (Notice of Intent, pp. 2-3). It is not the State’s burden to produce Applicant’s witnesses. The burden is always on the applicant in a post-conviction relief action. *See* Rule 71.1 (e), SCRCF; *see also Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813 (1985). Applicant is attempting to relieve and/or lessen his burden by circumventing not only the Rules of Evidence but the hearing process itself. This should not be allowed.

FILED



3. Again, Applicant has noticed an intent to offer affidavits from these individuals, Beverly Daves, Williams "Bill" Hayes, Sonya Scott, Geraldine "Jean" White, and Glenda Wooten. A cursory review shows these inadmissible traits:

a. *Beverly Daves.* Ms. Daves claims she was Applicant's home room teacher in his two ninth grade school years. Although she admits that she *never taught Applicant*, Ms. Daves makes assertions regarding a class Applicant took under another teacher while Applicant was in the eleventh grade – two years after Ms. Daves was his homeroom teacher. Further, she speculates about "[s]tudents like Ricky" going to certain classes and the travel for classes. Ms. Daves also makes assertions regarding Applicant's class rank and how it was calculated. She should be required to explain her personal knowledge of classes and ranking calculations as would apply directly to Applicant before the matters could be deemed admissible and relevant. Further, Ms. Daves makes assertions regarding the definition and functionality of "adjunct" classes at or near the time Applicant attended. The assertion in the affidavit speaks to the change of title of classes "eventually," but not what specific change occurred or for that matter what "eventually" is intended to mean to his case, much less the potential ramification(s) of the change as to Applicant, if any. The only justiciable issue in this action that the allegations could possibly go to would be an ineffective assistance/failure to properly investigate claim. However, Applicant's trial counsel investigated the meaning of "adjunct classes" with mixed results. (Attachment 1, including a memo from an interview of one of Applicant's actual teachers who recalled Applicant was "capable," and did not recall him being "exceptionally slow" ; and, another memo of general information reflecting adjunct classes were not for the mentally retarded).<sup>3</sup> The affiant does not

<sup>3</sup> Respondents have moved to dismiss the free-standing claim of intellectual disability based on the fact that the issue of intellectual disability was raised to the trial court and rejected; presented to the jury and rejected; and challenged on direct appeal and the Supreme Court of South Carolina

admit or deny contact with trial counsel or trial counsel's team for the trial investigation.<sup>4</sup> The affiant's inadmissible speculation cannot show any relevant information for purposes of the ineffective assistance claim.

b. *William "Bill" Hayes.* Mr. Hayes admits he never taught Applicant. Mr. Hayes makes assertions regarding how adjunct history was taught at Chesnee High School. Since Mr. Hayes never taught Applicant, he has no personal knowledge of the requirements made by Applicant's actual teacher. Again, the only justiciable issue this could go to would be ineffective

---

found that the trial court's determination was not contrary to the preponderance of the evidence. *See State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2018). S.C. Code § 17-27-20 does not allow the claim to be raised again in post-conviction relief. *Al-Shabazz v. State*, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (2000) ("In PCR, the focus usually is upon alleged errors made by trial or plea counsel. Therefore, when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel."); *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 519 (1993) ("Under the doctrine enunciated in *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975), errors which can be reviewed on direct appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings."); *See also State v. Hewins*, 409 S.C. 93, 106 and 111-12, 760 S.E.2d 814, 821 and 823 (2014) ("Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same," and, though it is a civil doctrine, collateral estoppel may even be applied in general sessions matters in discrete circumstances)(quoting *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct.App.2009)); *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) ("Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." (emphasis added)); *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court."); *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) ("The law of the case applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case.").

<sup>4</sup> Another troubling issue is that PCR counsel notarized the affidavit, and the affidavit contains modifications in the text. To determine the context of the changes, counsel may have become a witness subject to being called if the affidavits are admitted.

assistance, and Applicant's counsel investigated the meaning of "adjunct classes" with mixed results. (See Attachment 1).<sup>5</sup>

c. *Sonya Scott*. Ms. Scott asserts she worked in the front office of Belue Trucking while Applicant was a truck driver. She asserts that she never worked with Applicant. She further asserts that though her signature appears to be on a certificate of written examination regarding Applicant, she now asserts that is not actually her signature. As with the adjunct classes above, counsel also investigated Applicant's employment at Belue Trucking, (see ROA 3884), but importantly, this attempt to raise doubt on local "certification" does not go to any issue with *the Department of Motor Vehicle Commercial Driver's License* which is a wholly different, and more difficult and individual testing circumstance. It is the difficulty of passing such testing that was

---

<sup>5</sup> Courts have recognized the importance of presenting witnesses who would opine on adaptive functioning so that the courts may accurately and carefully assess credibility:

Many courts have noted, correctly, that "[a]daptive behavior is a broader category, and more amorphous, than intellectual functioning." Because of the relative subjectivity of the adaptive behavior analysis, the importance of clinical judgment becomes greater under prong two than under prong one. When assessing adaptive behaviors, therefore, courts must make their own independent determinations of the clinicians' judgment and credibility.

*United States v. Candelario-Santana*, 916 F. Supp. 2d 191, 211–12 (D.P.R. 2013) (citations omitted). Consequently, vague assertions of "might be" evidence could very well be (or perhaps even should be) rejected by an actual clinician required to objectively assess the offered information. Indeed, our Supreme Court *in this case on direct appeal* has noted the difference credibility can make when considering the presentation of two expert witnesses with different conclusions on adaptive functioning:

...the court explained why it gave greater weight to Dr. Brown's report, noting that the report was directed at an evaluation of Blackwell's "formative years" and was consistent with the "functional adaptations" required by the statutory definition of "mental retardation." The court also discounted some of [Blackwell's expert] Dr. Calloway's findings as it questioned whether "adequate information" was used and believed Dr. Calloway improperly "made subjective determinations concerning the results obtained and weighted responses of various informants differently."

*State v. Blackwell*, 420 S.E.2d 127, 141–42, 801 S.E.2d 713, 720 (2017).

one of the expanded areas of cross-examination during trial level proceedings. (See Attachment 2, ROA 2921-25). The assertion here that a signature was or was not valid on a separate local test (whatever that might have been) not only adds nothing to the known and more difficult testing explored at trial, but also cannot be settled easily without litigation of separate collateral issues. And, at the end of the day, even if the court determines that the signature was forged and/or the test or results incomplete, it simply matters not when there is evidence of specific, difficult testing by the Department of Motor Vehicles upon which is more informative and arguably more reliable.

d. *Geraldine "Jean" White*. Ms. White was interviewed for the trial level evaluation conducted by the defense.<sup>6</sup> (ROA 3862, 3864, 3906, 3917, 4034, 4050 and 4099-4102). New material would be inherently suspect, but, at any rate, Ms. White asserts in the affidavit, consistent with the information relied upon at the trial level, that she was a neighbor and close friend of Applicant's family. Ms. White thereafter makes a rather bold assertion that Applicant's entire family "all *seem* retarded," and opines something must be "in the gene pool because it is five generations." She references no qualifications in forensic psychology, genealogy, or genetics. These assertions go beyond any personal knowledge she has concerning diagnoses or real indicators of intelligence levels, and it strains understanding that she would have personal knowledge to testify as to "five generations" back in another family's history. At any rate, these new allegations of an "appearance" of being mentally retarded, and "gene pool" issues stretching back "five generations," have no place in an intellectual disability evaluation and counsel could

<sup>6</sup> In the pre-trial *Atkins* hearing, Ms. White was described as a neighbor and friend to Applicant's mother. (Feb. 18, 2014 Tr. 286).

not use them consistent with medical, professional diagnosis in an *Atkins*-related challenge.<sup>7</sup> The allegations are based on soundly rejected reliance of stereotyping – and poor substitute for acceptable inquiry and an opinion soundly rejected in legal precedent for a basis of showing intellectual disability. Indeed, Applicant alleges in this action that this type of error, *i.e.*, reliance on stereotype opinion, was prejudicially referenced by the State during closing argument, and that such error violates Supreme Court precedent, *Moore v. Texas*, 581 U.S. 1, 137 S.Ct. 1039 (2017).<sup>8</sup> In *Moore*, the Court vacated a Texas determination that relied in part on “lay perceptions of intellectual disability” noting “the medical profession has endeavored to counter lay stereotypes of the intellectually disabled. Those stereotypes, much more than medical and clinical appraisals, should spark skepticism.” 581 U.S. at 18, 137 S. Ct. at 1052 (internal citation to amicus briefs omitted).

Though the record shows that the State did not actually make the error, the fact that Petitioner attempts to rely on *a type of error of which he is aware* only supports a conclusion that it is without legal disagreement that the affidavit assertions are not relevant and not admissible. Further, the prejudice to Respondent is heightened by accepting affidavits into the record that are plainly not relevant as Respondent will be saddled with addressing the assertions in briefing to this court and beyond when those assertions that should never have been admitted into the record at

---

<sup>7</sup> Additionally, our Rules of Evidence do not allow lay opinion on issues that require “special knowledge, skill, experience or training.” Rule 701, SCRE. Such an opinion as offered here is not allowed under Rule 701.

<sup>8</sup> The *Moore* opinion was issued after Applicant’s trial, but before the direct appeal opinion. Our Supreme Court found that the trial judge’s determination on intellectual disability did not suffer from the ills identified in the Texas case, nor was the determination contrary to the instructions in the subsequent opinion in *Blackwell*, 420 S.C. 143 at n. 11, 801 S.E.2d at 721 n. 11.

all. This distracts from properly presented issues and evidence, and the reliability of the fact-finding proceeding.

e. *Glenda Wooten*. Ms. Wooten asserts she was Applicant's "primary supervisor" for work at Spring Industries. She explains his work with a forklift at Spring Industries. Like the above affiants, Ms. Wooten opines Applicant was "slow" (admittedly, she does not specify whether she indicates in his work or some other presentation) and "simple" (admittedly, she does not specify whether she is indicating sophistication or tastes, or some other meaning). She also indicates Applicant was "devasted" at the time his wife left (which is not a fact in controversy), and opines his wife "was more dominant" and Applicant was "all for" the direction she gave (admittedly, she does not specify whether that was due to inability, deference or preference). Again, to the extent Applicant would intend to offer these vague assertions as lay opinions on intellectual disability, this affidavit is as equally infirm as those listed above and for the same reasons.

### CONCLUSION

Allowing Applicant to present inadmissible evidence in affidavits shown to be contrary to the Rules of Evidence undermines the fairness and reliability of the proceeding. Respondent respectfully submits it would be an abuse of discretion to allow these affidavits in light of the foregoing.

Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

CLERK OF COURT  
JANUARY 20 2010

7023113 24 PM 3:03

FILED 9

ANTHONY MABRY  
Senior Assistant Attorney General

TOMMY EVANS, JR.  
Assistant Attorney General

By: s/ Melody J. Brown.

By: s/ Tommy Evans, Jr..

Office of the Attorney General  
P.O. Box 11549  
Columbia, South Carolina 29211-1549  
(803) 734-6305

ATTORNEYS FOR RESPONDENT

March 20, 2023

CLERK OF COURT  
SPARTANBURG COUNTY  
ANTHONY MABRY

2023 MAR 24 PM 3:03

FILED

# **OBJECTION TO APPLICANT'S INTENT TO RELY ON AFFIDAVITS**

## **ATTACHMENT 1**

FILED  
2023/MAR 24 PM 3:03  
CLERK OF COURT  
SPRINGFIELD COUNTY  
MASSACHUSETTS



**MEMO TO THE RICKEY BLACKWELL FILE**

**TO:** File  
**FROM:** Kara  
**RE:** Interview with Cheryl Ponder  
**DATE:** 7/11/12

**CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT**

Cheryl Ponder was a teacher at Chesnee High School when Rickey was a student. I had stopped by Ms. Ponder's house on 6/29/12 to speak with her about Rickey. She wasn't home, and I left a card. Ms. Ponder sent me an email on 7/6/12 stating she does not remember Rickey.

On the above date, I called Ms. Ponder to follow up on her email. Ms. Ponder taught 11<sup>th</sup> grade English at Chesnee High. She stated she does not remember Rickey. She went on to say she has never been good at remembering names and faces. Over the years she has had prior students come up to her, and she never remembers them. Rickey's name is familiar, but she cannot remember him.

Ms. Ponder taught school for 27 years. She graduated from college in 1972 and began teaching at Chesnee High that fall. I ask Ms. Ponder about the adjunct classes. Ms. Ponder stated, "They started those classes to help kids who wouldn't be successful in general classes. They were for kids who went to vocational school. They were for kids who weren't able to do." Ms. Ponder doesn't think students who were mentally retarded were in adjunct classes. There were special education classes that the mentally retarded students would have been in.

Ms. Ponder remembered she had to teach an adjunct English class soon after she came to Chesnee High School. Ms. Ponder commented, "I hated teaching that class. There were no materials, no requirements, no guidelines for the class. I didn't know what to do." Ms. Ponder remembered going to the administration and asking for some materials or guidelines on how to teach the class.

Ms. Ponder said Louise Scruggs taught special education. Lynn Burnett also taught special education. Ms. Burnett has since married, and Ms. Ponder does not know her married name.

Beverly Cash (now Beverly Daves) was probably Rickey's homeroom teacher since she taught psychology and French.

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 03-03-2003 BY 60320

2023 MAR 24 PM 3:03

FILED

MEMO TO THE RICKEY BLACKWELL FILE

TO: File  
FROM: Kara  
RE: Interview with Ginger Calloway and Louise Scruggs  
DATE: 11/7/12

CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT

On the above date, Ginger Calloway and I meet with Louise Scruggs at her home in Chesnee. Ms. Scruggs was Rickey's adjunct English teacher at Chesnee High School. Ginger and Ms. Scruggs talk for a while before Ms. Scruggs completes the ABAS. Ms. Scruggs reviews a copy of Rickey's school records while we talk.

Ms. Scruggs thinks she taught Rickey for only one year. After looking at Rickey's school records, Ms. Scruggs thinks she taught Rickey adjunct English during the 1974-1975 school year when Rickey was in 9<sup>th</sup> grade for the second time. At that time, the school system did not have funding for special education. Instead, they had adjunct classes which were for the kids working at a lower level. Adjunct classes were smaller so the students could get more attention. Adjunct classes were "the closest thing to special education then." Ms. Scruggs thinks they got special education classes in the early 1980s.

Ms. Scruggs went to Chesnee High School as a special education teacher. She was certified in special education; that is how she got to teach adjunct classes. Decisions about which students were placed in adjunct classes were made in the guidance department. The two guidance counselors from that time are deceased. Preston Bailey was the psychologist who did the testing back then. Mr. Bailey currently works at the district office.

Ms. Scruggs describes students in the adjunct classes as the following: "They were the slower, more backward kids, the country kids. They were from homes that didn't encourage education. They were workers where the farm came first."

There were 15-18 students in an adjunct class as compared to 25 students in a regular class. Ms. Scruggs did not have an assistant. The students in adjunct classes could have been working at different levels. Rickey was like the rest of the other students in Ms. Scruggs' adjunct class. In regards to the rest of the school population, Rickey was "lower, didn't interact with the other kids."

Ms. Scruggs remembers, "If you spoke, Rickey spoke back. He wouldn't initiate conversations." Rickey was not a troublemaker. He was "very quiet, not rowdy, not boisterous. He blended in."

Once a student was placed in adjunct classes, that student stayed in those classes. Rickey could earn a credit for his adjunct English unit. Adjunct status applied to English, math, science and prevocation classes. Students usually took adjunct classes in 9<sup>th</sup> and 10<sup>th</sup>

FILED

grades and then went on to Swofford to learn a trade in 11<sup>th</sup> and 12<sup>th</sup> grades. Swofford may not have been available when Rickey was a student. Swofford was the technical school. Ms. Scruggs does not remember what Rickey was moving toward.

Ms. Scruggs' class focused "a lot on applications, reading basic instructions, basic checking, and survival skills." Adjunct civics and history classes would teach a student about voting. Basic consumer class taught check writing, filling out applications and how to function in society.

Rickey looked normal. He was not dirty.

Ginger asks Ms. Scruggs how Rickey did socially. Ms. Scruggs replies, "In my opinion, he would be fine if he had a buddy to run with or he would be fine if he did not." Ms. Scruggs does not remember any friends Rickey had at the time. Ms. Scruggs comments, "He was just kind of there." Rickey knew how to follow class rules and he knew right from wrong at the time. Ms. Scruggs does not remember if Rickey was interested in girls. There were mostly boys in Ms. Scruggs' adjunct classes.

Ms. Scruggs recalls the adjunct program was "geared to showing the students what options they had no matter how limited they were. It was geared to showing them what they could do, basic skills they might want to pick up. It fell to the teacher to feel out which way the child might want to go."

Rickey does not stand out in Ms. Scruggs' memory as being exceptionally slow. Ms. Scruggs notes, "I thought he was capable." Ms. Scruggs states, "Rickey would not impress me as someone who was interested in current events. He was in his own cocoon. That would be way beyond him."

Rickey was in Project Succeed when he was in the 11<sup>th</sup> grade. Project Succeed was a program that pulled out the lower kids to try to mentor them. It was for students who looked like they wouldn't graduate. Sadie Frey was the Project Succeed teacher, but she is deceased.

Cheryl Ponder probably taught Rickey adjunct English the first time he was in 9<sup>th</sup> grade. Susan Cash may have taught 10<sup>th</sup> or 11<sup>th</sup> grade adjunct English. Craig Smoak may have taught adjunct English.

In regards to Rickey's current charges, Ms. Scruggs states, "I can't see that in him, but I don't know him as an adult."

CLERK OF COURT  
SPRINGFIELD COUNTY  
ANNEX 100

2023 MAR 24 PM 3:03

FILED

# **OBJECTION TO APPLICANT'S INTENT TO RELY ON AFFIDAVITS**

## **ATTACHMENT 2**

FILED  
2023 MAR 24 PM 3:03  
CLERK OF COURT  
SPRINGFIELD COURT TX  
AMN WL OOK

Ginger Calloway - Cross-examination  
By Solicitor Barnette

1 evidence at this time.)

2 SOLICITOR BARNETTE: May I publish to the jury, Your  
3 Honor?

4 THE COURT: well, has it been identified by her?

5 SOLICITOR BARNETTE: Oh, I'm sorry. Your Honor, this  
6 is an application for employment with Belue Trucking.

7 THE COURT: okay. It's been admitted.

8 You may publish.

9 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.  
10 okay. This is his application for employment at Belue  
11 Trucking, is this right Ms. -- doctor?

12 A Yes.

13 Q okay. And she talks about the -- it talks about the  
14 position he was applying for was truck driver, is that  
15 right?

16 A Yes.

17 Q And he goes through his different employees or  
18 employers that he had worked for?

19 A Yes.

20 Q Matter of fact, he talks about the driver's license  
21 he's got, is that correct, ma'am?

22 A Yes, that's correct.

23 Q And showing you what's been entered -- already been  
24 entered into evidence as State Exhibit 33-C. This is his  
25 present driver's license, I guess, at the time the incident

2020 MAR 24 PM 3:03

2921

FILED

Ginger Calloway - Cross-examination  
By Solicitor Barnette

1 occurred?

2 It actually expired in 2010.

3 Is that the commercial driver's license and I'll be  
4 glad to blow that up for you?

5 A Thank you.

6 Q That was what we call a CLD license, right, commercial  
7 driver's license?

8 A That would be indicated on the Class A.

9 Q Right.

10 And up top, is that right?

11 A Driver's license.

12 Q Matter of fact, on the back of it he was endorsed to  
13 drive a tank vehicle, wasn't he?

14 A Thank you.

15 Q I'll try to blow it up.

16 A Okay.

17 Q I'm trying to get this---

18 A Yes.

19 Q Okay. There we go. A little bit better.

20 So, he was endorsed to drive a tractor -- tank vehicles  
21 too?

22 A Yes.

23 Q Matter of fact, Hess is a -- they usually don't get --  
24 we see Hess all the time, the gas stations and so forth.

25 Those are gasoline type tanker -- I mean tanker trucks

2023 MAR 24 PM 3:03

2922

FILED

Ginger Calloway - Cross-examination  
By Solicitor Barnette

1 usually, correct?

2 A That's correct.

3 Q And on the bottom he had driven to Texas, Oklahoma,  
4 Tennessee, New York, and New Jersey, correct?

5 A That's what he reports there, yes.

6 Q And he worked for Belue and for Hess in the 80's, is  
7 that right?

8 Let me show you what's been -- Defendant's Exhibit 5  
9 entered into evidence.

10 He worked for the Hess Corporation in 1982/1983, is  
11 that right, ma'am?

12 A Yes, that's correct.

13 Q And he worked for Belue Trucking, if I'm reading this  
14 correctly, this is Page 2 of it, in 1984 and 1986, correct?

15 A Yes, and 1985.

16 Q And 1985. Thanks for correcting me on that.

17 But back in the 1908's, I know my wife, I buy GPS  
18 systems for her because she hates to read maps, trying to  
19 drive, keep track of all those things.

20 MR. ALLEN: Objection to the form of the question as it  
21 sounds like he's---

22 THE COURT: He's on -- he hasn't finished the question  
23 and he -- I'm not sure exactly what the question is to be  
24 honest with you.

25 What's your objection?

2023 MAR 24 PM 3:03

2923

FILED

Ginger Calloway - Cross-examination  
By Solicitor Barnette

1 MR. ALLEN: Well, my objection is he's talking about  
2 his wife. I mean it doesn't sound like he's even starting  
3 out with a question, and I would---

4 THE COURT: Well, I don't know what -- I'll let him  
5 finish and then we'll see where that goes.

6 Go ahead and finish, Mr. Barnette.

7 SOLICITOR BARNETTE: Thank you, Your Honor.

8 Q Back in the 80's we didn't have a GPS system, did we?

9 A I didn't have one.

10 Q No, and I don't think I -- I don't think anybody had  
11 one back then. They might -- NASA might of had one back  
12 then, but I don't think anybody else did.

13 So you had to use maps and other things to keep track  
14 of where you were going, isn't that correct, ma'am?

15 A That would be one way.

16 Q Yes, ma'am.

17 So, here's an individual that went to Texas, New  
18 Jersey, New York. Going to Texas, I'm assuming you have to  
19 go through Atlanta to get to Texas from here. Oklahoma,  
20 places like that.

21 You're taking a tanker through those type of areas,  
22 having to keep track where you're going and things like  
23 that, isn't that correct, ma'am?

24 A There would be different routes for going where you've  
25 mentioned. So, I'm not sure where he went, but it's

2023 MAR 24 PM 3:03

FILED



Ginger Calloway - Cross-examination  
By Solicitor Barnette

1 reasonable to think about Atlanta, yes, of course.

2 Q And he definitely looked like he drove tanker trucks  
3 with gasoline, different things in them if he drove for Hess  
4 Corporation, isn't that right?

5 A That's correct.

6 Q Okay. And he was also a forklift operator, correct?

7 A Yes, that's correct.

8 Q And he also, I believe, the lady before, that testified  
9 before you, Ms. Shook, he had to pass tests in order to be a  
10 forklift operator, correct?

11 A That's what she explained to me in an interview.

12 Q And he also had to pass safety tests concerning that,  
13 correct?

14 A I don't know about that. She didn't relay that.

15 Q Well, did you hear her testimony here the other day?

16 A I don't remember that, no --

17 Q Yesterday.

18 A -- that part of it.

19 Q I believe she answered that he has to pass safety tests  
20 in order to operate that equipment, but you didn't hear  
21 that?

22 A I didn't hear that.

23 Q Okay. You testified about Thorazine when you went to  
24 interview the defendant in the jail concerning your

25 evaluation.

2023 MAR 24 PM 3:03

2925

FILED

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS

Jerome Jenkins, # 6034 )

2018-CP-42-00928  
\*Capital PCR Action\*

Applicant, )

v. )

AFFIDVAIT OF SERVICE

State of South Carolina, )

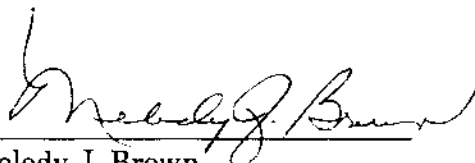
Respondent. )

1. I am counsel for Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Objection to Applicant's Intent to Rely on Affidavits**, in the above-captioned matter on the following attorneys via email and by depositing same in the United States mail, postage prepaid:

E. Charles Grose, Jr., Esquire  
305 Main Street  
Greenwood, South Carolina 29646  
[charles@groselawfirm.com](mailto:charles@groselawfirm.com)

Lindsey S. Vann, Esquire  
900 Elmwood Avenue, Suite 200  
Columbia, South Carolina 29201  
[lindsey@justice360sc.org](mailto:lindsey@justice360sc.org)

DATED this 20<sup>th</sup> day of March, 2023.



Melody J. Brown  
Senior Assistant Deputy Attorney General

CLERK OF COURT  
SPARTANBURG COUNTY  
SOUTH CAROLINA

2023 MAR 24 PM 3:03

FILED

|                             |   |                                       |
|-----------------------------|---|---------------------------------------|
| STATE OF SOUTH CAROLINA     | ) | IN THE COURT OF COMMON PLEAS          |
|                             | ) | SEVENTH JUDICIAL CIRCUIT              |
| COUNTY OF SPARTANBURG       | ) |                                       |
|                             | ) |                                       |
| Ricky Lee Blackwell, #6033, | ) | C/A No. 2018-CP-42-00928              |
|                             | ) | (Capital PCR)                         |
| Applicant,                  | ) |                                       |
| v.                          | ) | <b>RETURN TO THIRD AMENDED</b>        |
|                             | ) | <b>APPLICATION; MOTION TO DISMISS</b> |
| State of South Carolina,    | ) | <b>CLAIM PREVIOUSLY LITIGATED</b>     |
|                             | ) |                                       |
| Respondent.                 | ) |                                       |
|                             | ) |                                       |

Applicant, Ricky Lee Blackwell, is a death-sentenced inmate currently housed in the Secure Facility at Broad River Road Correctional Institution. Respondent makes this Return to Applicant's third amended application<sup>1</sup> for post-conviction relief (PCR). Respondent will address each of the issues in detail below; however, Respondent first provides a summary of its arguments as follows:

#### **SUMMARY OF RESPONDENT'S MOTION AND POSITION ON THE CLAIMS**

**CLAIM 10(a):** Applicant first attempts to re-litigate the claim that he is intellectually disabled and exempt from capital punishment pursuant to *Atkins v. Virginia*, 536 U.S. 304, 317 (2002). This claim has been previously litigated in the trial court and reviewed on the merits in the direct appeal. *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017). The jurisdictional limitations of the PCR statute, case law, and the doctrines of collateral estoppel, *res judicata*, and law of the case prohibit re-litigation of this issue as it has been previously litigated, determined and affirmed. Respondent moves to dismiss the free-standing claim for all the asserted reasons.

---

<sup>1</sup> Applicant filed an initial application on March 15, 2018; an amended application on February 21, 2019; a second amended application on February 22, 2019; and a third amended application on November 12, 2021. After discovery on the issues, and without further amendments, Respondent construes the Third Amended Application as the final amended application for purposes of this action, taking the place of all prior applications and amendments.

**CLAIM 10(b):** Applicant next claims ineffective assistance of trial counsel in counsel's treatment of the intellectual disability issue, alleging counsel failed to 1) investigate and present "all relevant evidence on the issue of intellectual disability"; 2) correct misapprehension by the trial court concerning intellectual disability; 3) investigate and present evidence to discount school IQ testing measures as "not legitimate" to determine intellectual functioning; 4) investigate and present circumstances surrounding Applicant's testing for and obtaining of a commercial driver's license and "other certifications" ; 5) investigate and present evidence to challenge later-in-life depression and chemotherapy affecting IQ; 6) investigate and present evidence of a gene abnormality as to *CAMTA* as a cause of intellectual disability; 7) to inform the trial court and jury of "potentially prejudicial and preconceived misconceptions and stereotypes related to intellectual disability" ; and, 8) object to a closing argument "endorsing improper stereotypes."

Respondent submits that the trial court record shows no Sixth Amendment violation and that Applicant cannot carry his burden under *Strickland v. Washington*, 466 U.S. 668 (1984). Respondent further submits that trial court record along with evidence adduced at the PCR evidentiary hearing will show trial counsel had more than adequate training and experience to represent Applicant,<sup>2</sup> gathered a team of investigators and experts to aid and guide in the

---

<sup>2</sup> Trial counsel's qualifications were presented on the record. (R. 4787 -89). On the specific point of relevant qualifications for death penalty litigation, the qualifications recited include, for Mr. McGuire:

I was a capital defender in Georgia where I handled nothing but capital cases all over the State of Georgia and a number of them. I came back to South Carolina. I run the trial division, the Capital Trial Division of the South Carolina Commission of Indigent Defense. I've probably tried four or five capital cases all the way to the end, and I've been involved in a couple dozen of them I guess.

(R. 4788).

And for Mr. Allen:

development of evidence and arguments, and thoroughly investigated. Further, the trial court record demonstrates that counsel presented not simply a constitutionally adequate case, but a meticulously crafted case for intellectual disability.<sup>3</sup> The backwards-looking posture of capital cases (usually decades after the relevant period to evaluate), naturally results in some difficulties in investigation and determination of such condition; however, what is clear is that “[n]ot all people who claim to be mentally retarded will be so impaired as to fall within the range of mentally retarded offenders” and exempt from capital punishment. *Atkins*, 536 U.S. at 317. Equally clear is that the exemption is a legal matter which requires a factual determination. That determination is informed by, but not controlled by, clinical opinions that may be offered. *Hall v. Florida*, 572 U.S. 701, 721 (2014) (“The legal determination of intellectual disability is distinct from a medical diagnosis” however, “it is informed by the medical community’s diagnostic framework.”).<sup>4</sup> Even

---

In December of 2003 ... I received my certification to serve as lead counsel in death penalty cases from the South Carolina Supreme Court. I’ve also attended CLE’s in criminal, not only in criminal law, but also for the past several years live attended CLE’s dealing solely with death penalty cases and death penalty defense.

(R. 4789).

<sup>3</sup> That counsel did not persuade the court and/or jury is a different matter. An unsuccessful defense is not the same as ineffective assistance. *See, e.g., Bell v. Evatt*, 72 F.3d 421, 429 (4th Cir. 1995) (“Standing alone, unsuccessful trial tactics neither constitute prejudice nor definitively prove ineffective assistance of counsel.”).

<sup>4</sup> The caution that the “diagnostic framework” is not suspended in making the legal determination was emphasized in *Moore v. Texas*, 581 U.S. 1 (2017). Our Supreme Court considered *Moore* in Applicant’s direct appeal opinion, (though *Moore* was issued *after* the trial in this case), and found that the trial court’s consideration and weighing of the evidence “comports with” the caution in *Moore* noting specifically, in regard to evaluation of the adaptive function prong, “that any significance assigned to these adaptive strengths was based on the court’s assessment and credibility determination of the expert testimony.” *Blackwell*, 420 S.C. at 143 n.11, 801 S.E.2d at 721 n. 11. *See also United States v. Candelario-Santana*, 916 F. Supp. 2d 191, 211 (D.P.R. 2013). (“Because of the relative subjectivity of the adaptive behavior analysis, the importance of clinical judgment becomes greater under prong two than under prong one. When

so, none of the evidence expected to be presented at the evidentiary hearing will do anything more than retread old ground, with the possible exception of certain genetic testing. However, nothing appears to support that such testing was requested much less required by the qualified defense expert(s), and, such testing and results cannot be shown to be necessary to or dispositive of the question of intellectual disability under accepted and established medical community standards.

As to the failure to correct or object to reliance on improper “stereotypes,” the trial court record shows this claim to be without merit. There was no reliance on stereotypes evident in the adjudication, and, as our Supreme Court has already found, the trial court properly engaged in a careful consideration of the credibility of the defense expert’s opinion concerning adaptive functioning. *Blackwell*, 420 S.C. at 143 n.11, 801 S.E.2d at 721 n. 11. Applicant also cannot rely on reference to closing argument to show error and prejudice. The State based its closing argument on the evidence and argued that the evidence did not support the conclusion Applicant suffered from intellectual disability – an argument that the prosecution is allowed to make. *See, e.g., Sigmon v. State*, 403 S.C. 120, 128, 742 S.E.2d 394, 398 (2013) (argument not improper where it “stay[s] within the record and reasonable inferences to it.”).

Lastly, Applicant includes an alleged violation of S.C. Code § 17-3-20 in this ground. That statute simply sets out that indigent murder defendants are to be provided “qualified and

---

assessing adaptive behaviors, therefore, courts must make their own independent determinations of the clinicians’ judgment and credibility.”).

In light of our Supreme Court’s ruling there is no issue as to consideration of *Moore*. However, it is of note that a consensus has emerged that the cases following *Atkins* such as *Moore* merely applied *Atkins* and did not establish new law or rights. *See State v. Lotter*, 311 Neb. 878, 905, 976 N.W.2d 721, 740 (2022), *cert. denied*, No. 22-6191, 2023 WL 2563351 (U.S. Mar. 20, 2023) (“Most state and federal courts to have considered the question have concluded that neither *Hall* nor *Moore I* announced new substantive rules of constitutional law which must be applied retroactively to cases on collateral review.”) (collecting cases).

experienced counsel.” The trial court record conclusively shows that there was no violation of this statute. The trial court appointed qualified and experience counsel. (See R. 4788-89). Even so, the allegation of error does not fall under the jurisdictional limitations of the PCR statute – it simply is not a challenge to whether the *conviction or sentence* violates the state or federal constitution, or state law. See S.C. Code § 17-27-20 (A). But if possibly cognizable, which Respondent contests, any challenge to the appointment should have been made during the trial proceedings; thus, the allegation is not appropriate for PCR under the Simmons Doctrine.

The ground will be shown to be without merit.

**CLAIM 10(c):** Applicant claims ineffective assistance in the adequacy of *voir dire* questions. Respondent submits that the trial court record shows no Sixth Amendment violation and that Applicant cannot carry his burden under *Strickland v. Washington*. Respondent further submits that evidence adduced at the evidentiary hearing will show counsel was experienced and able in regard to capital *voir dire* procedures, and that the trial court allowed not only an expanded juror questionnaire, but also ample questioning of the potential jurors. Again, Applicant will not be able to carry his burden of proof.

Additionally, the inclusion of an alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above.

The ground will be shown to be without merit.

**CLAIM 10(d):** Applicant claims ineffective assistance of counsel in failing to 1) “investigate and present the full range of mitigating evidence” based on “social and life history”; 2) to “investigate and present all available” evidence as to “mental health prior to and at the time of the murder; 3) to “investigate and present mitigating evidence” going to “lack of future dangerousness, adaptability to confinement, and good character” ; 4) to challenge whether the

child victim urinated on herself from fear or as a result of death; 5) to challenge jury instructions that “did not properly advise the jurors” that their sentence would be imposed; 6) “investigate and present evidence of remorse and acceptance of responsibility”; 7) object to argument that Applicant lacked remorse; 8) object to closing argument against finding intellectual disability; and 9) “raise and argue all legal and factual grounds” a death sentence was not warranted under S.C. Code §§ 16-3-20 and 16-3-25(C)(3).

The failure to find “all” mitigation and present that mitigation is an oft alleged, broad issue that is not based on actual Sixth Amendment error. The Sixth Amendment simply does not require such absolutes. Rather, *Strickland* requires reasonable investigation. *Mahdi v. Stirling*, 20 F.4th 846, 902 (4th Cir. 2021), *cert. denied*, 214 L. Ed. 2d 345, 143 S. Ct. 582 (2023) (finding counsel’s investigation sufficient noting “[C]ounsel is only required to make a *reasonable*’—not exhaustive—“investigation for possible mitigating evidence.” (emphasis added))(quoting *Byram v. Ozmint*, 339 F.3d 203, 209 (4th Cir. 2003)). Further, presentation of evidence is distinct from investigation of evidence. *See Owens v. Stirling*, 967 F.3d 396, 417 (4th Cir. 2020) (“The Supreme Court has likewise rejected the notion that counsel must tell a defendant’s life history with elaborative detail, reasoning that where (as here) counsel put forth ‘substantial mitigation evidence,’ any cumulative evidence about the same circumstances heard by the jury offers ‘an insignificant benefit, if any at all.’”) (quoting *Wong v. Belmontes*, 558 U.S. 15, 23 (2009) (per curiam)). This allegation is self-defeating. Even so, should there be additional stories or facets from Applicant’s background and mental status presented, Respondent submits that Applicant will not be able to show *Strickland* deficiency and prejudice. The trial court record reflects a cohesive and broad presentation which would render additional detail of “insignificant benefit, if any all.”

AMANDA GILSON/MS  
*Wong, supra.*

67:8 11 17070002



As to future dangerousness and/or adaptability to prison, upon information and belief Respondent submits that evidence will be adduced that counsel retained and consulted with a recognized expert in the field, former warden James Aiken, before making a determination on witnesses to be called at sentencing. Consequently, counsel had appropriate information to make an informed decision. Further, as to "good character," the trial record shows counsel presented multiple witnesses to testify on that point. The omission of any additional witness testimony on the same point would be needlessly cumulative, and, critically for a *Strickland* claim, unable to support a finding of prejudice.

As to investigating whether a child would urinate in fear or as a process of death, Respondent submits that Applicant will not be able to show deficient performance as such information could not possibly be critical, nor its absence prejudicial, in light of the solid and uncontested evidence that Applicant repeatedly shot his eight-year-old victim for the purpose of hurting her father. The issue may be resolved either on lack of deficiency or lack of prejudice under *Strickland*.

As to possible missed evidence of remorse, again, our Supreme Court has already found potential additional information on remorse would only be cumulative, therefore its exclusion harmless, in light of the evidence of remorse actually offered by Applicant at trial. *Blackwell*, 420 S.C. at 160, 801 S.E.2d at 730 (if error "in excluding the chaplains' notes, we find the error harmless as the evidence was cumulative to other evidence in the record of Blackwell's remorse" listing testimony from Dr. Schwartz-Watts, Heather Bryant and Ken Rice). This would necessarily render additional evidence similarly cumulative such that *Strickland* prejudice could not be shown.

The claim the instruction on the jury's "recommendation" for the sentence was incorrect, and an objection warranted, is defeated by the trial court record and is simply against settled

67:8 IN LG 2013387

CLERK

precedent. *See, e.g., State v. Johnson*, 306 S.C. 119, 135, 410 S.E.2d 547, 556 (1991) (affirming charge with “recommendation” wording where jurors advised their decision would be the sentence of the court); *State v. Middleton*, 295 S.C. 318, 325-26, 368 S.E.2d 457, 461 (1988)(same).

The particular complaint of the failure to object to the State’s closing argument on lack of remorse can be resolved by review of the portion of the trial court record cited. Applicant references Tr. 3169 and 3180-81.<sup>5</sup> The record shows on R. 3169 (which appears to the quote Applicant wishes to rely upon), the argument actually goes to an absence of remorse *on the jail calls*. In short, the record shows there is no basis for objection. Similarly, Applicant cannot show on this record a basis to object to the solicitor arguing the evidence of intellectual disability was neither credible nor persuasive. That is not improper argument. *See generally Sigmon, supra*.

Additionally, the inclusion of an alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above.

Lastly, Respondent submits that Applicant cannot show, as a matter of law, trial counsel error in the proportionality review under S.C. Code § 16-3-25 (C)(3), as that review is, by statute, reserved to the Supreme Court of South Carolina as part of the direct appeal proceedings. *See Moore v. Stirling*, 436 S.C. 207, 214, 871 S.E.2d 423, 427 (2022) (referencing the Supreme Court’s review as set out in the statute). Likewise, he cannot show error and prejudice under S.C. Code § 16-3-20 which provides that “[t]he trial judge, before imposing the death penalty, shall find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion, or any other arbitrary factor.” Notably, Applicant raises only a challenge to whether death was “warranted under the evidence the case.” Respondent submits that

---

<sup>5</sup> These particular transcript page numbers are consistent with the page numbers in the Record on Appeal.

he will not be able to show *Strickland* deficiency or prejudice as, though Applicant may disagree, the evidence most certainly supports the harshest sentence available based on the record, and the Supreme Court's subsequent proportionality review at the direct appeal level similarly resolved that the sentence was not disproportionate to the crime. *Blackwell*, 420 S.C. at 168, 801 S.E.2d at 735. As such, in light of the trial court record and the direct appeal level proportionality review, Applicant cannot carry his burden of proof.

The ground will be shown to be without merit.

**CLAIM 10(e):** Applicant claims ineffective assistance for failure to challenge "the knowing presentation of false or misleading information by a state agent." Applicant claims Investigator Williams testimony regarding lack of remorse was false and uncorrected, and the state's closing argument on lack of remorse based on such false testimony prejudiced him. Applicant references no support for the assertion.

Respondent submits that the trial record shows no Sixth Amendment violation and Applicant cannot carry his burden under *Strickland v. Washington*. Respondent further submits that evidence adduced at the evidentiary hearing will show that trial counsel was aware of other evidence that Applicant did not show remorse at and around the time that Investigator Williams heard Applicant's statement tending to support the correctness of the testimony offered at trial.

The ground will be shown to be without merit.

**CLAIM 10(f):** Applicant claims ineffective assistance of appellate counsel in failing to 1) "adequately raise and brief all legal and factual grounds for challenging the trial court's ruling" on intellectual disability; 2) raise an issue on admissibility of autopsy photographs in the capital sentencing proceeding; 3) challenge Reggie Frye's reply testimony as irrelevant and hearsay; and 4) challenge proportionality review.

64:0 IN 12011007

CE 11

Respondent submits that the records from the direct appeal conclusively show Applicant cannot carry his burden of proof. Appellate counsel not only made a comprehensive argument in the briefing based upon then existing case law, but also timely updated the Supreme Court of South Carolina with cases decided after briefing, including *Moore v. Texas*. Further, appellate counsel filed a petition in the Supreme Court of the United States seeking review of the decision rejecting Applicant's case for intellectual disability. The record shows Applicant's allegation challenging the "adequacy" of appellate counsel's presentation of the issue to be without merit.

Respondent also submits that the appellate record supports that Applicant will not be able carry his burden of proof for the remaining issues. Those issues, in light of the trial court record and the prevailing case law, cannot be shown to be stronger than the issues actually raised; thus, Applicant cannot show deficiency and prejudice to support relief. Notably as to the alleged error based on a failure to brief a proportionality challenge, declining to raise an issue based on proportionality review did not deny Applicant proportionality review nor did it result in an inadequate proportionality review under S.C. Code § 16-3-25 (C)(3).

Additionally, the inclusion once again of an alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above but also most specifically here because the statute applies to appointment of counsel for "the trial of the action," not appeal.

The ground will be shown to be without merit.

#### PROCEDURAL HISTORY

Applicant was indicted by a Spartanburg County Grand Jury in July 2009 for the kidnapping and murder of eight-year-old Heather Brooke Center. (R. 4829 - 4832 [indictments 2009-GS-42-3609 and 3610]).<sup>10</sup> The State served and filed its notice of intent to seek the death

[10]

penalty on August 11, 2011. The State subsequently served and filed its notice of statutory aggravating circumstances on June 8, 2012.

William Sean McGuire, Esq., of the South Carolina Commission on Indigent Defense, Capital Trial Division, along with Clay T. Allen, Public Defender for the Seventh Judicial Circuit, represented Applicant on the charges. S. Boyd Young, Esq., also of the South Carolina Commission on Indigent Defense, Capital Trial Division, assisted during trial. The Honorable Barry J. Barnette, Solicitor of the Seventh Judicial Circuit, with Deputy Solicitor Derick B. Balsa, and Assistant Solicitor Russell Ghent represented the State. The South Carolina Supreme Court assigned the Honorable Roger L. Couch exclusive jurisdiction over the capital proceedings.

On February 19, 2014, a hearing began pursuant to *Franklin v. Maynard*, 356 S.C. 276, 279, 588 S.E.2d 604, 606 (2003), on Applicant's claim that he was mentally retarded and exempt from capital punishment.<sup>6</sup> Judge Couch heard competing opinions and arguments over three days. After detailed questions of his own, Judge Couch resolved Applicant had failed to carry his burden of proof of showing intellectual disability by a preponderance of the evidence. (Supp. R. 1-14 [February 25, 2014 Order]).

After expanded capital *voir dire* proceedings, a jury was selected and a capital trial began on March 11, 2014. The case for guilt (which Applicant did not contest) was sent to the jury on March 12, 2014. The jury began deliberations at 4:08 pm and returned a guilty verdict at 4:29 pm. (R. 2600, lines 18-20; 2602, lines 1-8). Applicant waived the statutory twenty-four (24) hour break

<sup>6</sup> Respondent acknowledges this specific condition is now termed "intellectual disability," but was previously known as "mental retardation." See *State v. Stanko*, 402 S.C. 252, 741 S.E.2d 708 (2013). As the term "mental retardation" was used throughout the trial and in Applicant's appellate brief, Respondent will occasionally use the prior term as it was previously used.

afforded between phases, and the penalty phase began at 1:30 pm on the afternoon of March 13, 2014. (R. 2603, line 15 –2604, line 18; 2606, line 21 – 2607, line 13).

At the conclusion of penalty phase deliberations on March 16, 2014, the jury returned and reported its findings. The jury's first finding reflected Applicant failed to show by a preponderance of the evidence that he was intellectually disabled. (R. 3257, lines 16-22). The jury's second finding reflected the State had proven beyond a reasonable doubt, the following two statutory aggravating circumstances making Applicant eligible to receive a death sentence:

- 1) The murder of a child eleven years of age or under; and,
- 2) The murder was committed while in the commission of the crime of kidnapping.

(R. 3257, l. 23 – 3258, l. 11).<sup>7</sup>

The jury made its binding recommendation that Applicant be sentenced to death. (R. 3258, lines 12-25). Judge Couch thereafter sentenced Applicant to death, noting the sentence for kidnapping was subsumed by statutory provisions. (R. 3262-63; 4823 and 4825). On March 20, 2014, Judge Couch denied post-trial motions. Applicant served his notice of intent to appeal on March 21, 2014.

Applicant originally filed an initial brief on January 8, 2015. The State moved to seal or strike his brief; moved to strike the designation of matter; moved for "An Order to Prohibit Inclusion of Privilege Medical Records of a Witness and/or Information from the Privileged Records in the Briefs and the Record on Appeal," and also for an order directing him to file an amended initial brief consistent with any such order. On May 20, 2015, the Supreme Court of South Carolina granted the State's motion in part and denied the motion in part. The Court directed

<sup>7</sup> See S.C. Code Ann. § 16-3-20 (C)(a)(10) and (C)(a)(1)(b).

Applicant to file a redacted brief omitting reference to privileged records, and to submit the records under seal.

On March 7, 2016, along with sealed copies pursuant to the directions of the Court, Applicant filed his redacted final brief of appellant, and his redacted final reply brief. (Attachments 2 and 4). He raised the following issues on appeal:

1.

[Redacted]

2.

[Redacted]

3.

Whether the trial court erred in finding that appellant was not mentally retarded at the pretrial hearing pursuant to *Atkins v. Virginia* and *Franklin v. Maynard*, and therefore sentencing appellant to death violates his rights under the Eighth Amendment?

4.

Whether the trial court erred in refusing to charge the jury that the state had the burden to prove appellant was not mentally retarded beyond a reasonable doubt and, alternatively, charging the jury that it was required to find appellant was mentally retarded by a preponderance of the evidence, all of which impermissibly shifted the burden of proof to appellant and resulted in verdict forms that were hopelessly confusing in violation of his rights under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution?

5.

Whether the trial court erred in refusing to admit evidence of appellant's remorse contained in the records of a hospital chaplain pursuant to Rule 803(6), SCRE, in mitigation, and in response to testimony from a police officer who claimed appellant said "the only thing that I'm sorry about is that I didn't do a better job on myself," since the exclusion of this relevant evidence violated appellant's Eighth Amendment rights?

6.

[13]

Whether the court erred by ruling the state presented racially neutral reasons for striking black male jurors Cheeks and Fullenwider where the state did not strike similarly situated white jurors who also had a criminal record, or had pending criminal charges in the same county, and the treatment of alleged “pro-life” black and white jurors by the solicitor was also disparate?

7.

Whether the court erred by qualifying Juror #43, Donna Champion, because her position that the defense had to prove appellant deserved a life sentence rather the death penalty was burden shifting, inconsistent with the law, and her entire voir dire showed she would not consider certain categories of mitigating evidence?

(Redacted Brief, Attachment 2, pp. 7-8).<sup>8</sup>

Respondent similarly filed sealed and a redacted brief in response on March 7, 2016.

(Redacted Brief, Attachment 3).

After submission of the briefs, and after hearing from the parties in oral argument, the Supreme Court of South Carolina affirmed the convictions and sentence by opinion issued on May 31, 2017. *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017). (See also Attachment 5). Applicant did not seek rehearing. Applicant next petitioned the Supreme Court of the United States for a writ of certiorari on October 27, 2017.<sup>9</sup> Applicant presented the following issues:

1.

In concluding that petitioner, whose IQ was scored at 63 and 68 by both sides’ expert witnesses, is not intellectually disabled and his execution not

---

<sup>8</sup> The redacted claims dealt with privileged records of Angie Blackwell.

<sup>9</sup> In the interim, Applicant moved in the Supreme Court of South Carolina to unseal the briefs and record on appeal. The State opposed the motion. By Order dated September 1, 2017, the Supreme Court denied the motion to unseal the briefs and record on appeal. For the convenience of this Court, Respondent notes all the publicly available filings may be accessed through the South Carolina Appellate Case Management C-Track database as made available on the S.C. courts judicial website, <http://ctrack.sccourts.org>. (Appellate Case No. 2014-000610).



forbidden by the Eighth Amendment, did the South Carolina Supreme Court's blatant disregard for expert opinion and methodology violate this Court's precedents in *Hall v. Florida* and *Moore v. Texas*?

2.

(Redacted pursuant to Motion to File Petition for Certiorari and Appendix Under Seal)

(Attachment 8, Petition for Writ of Certiorari, p. i).

Respondent filed a Brief in Opposition on December 27, 2017. (Attachment 9).

Respondent's restatement of the questions presented was as follows:

1.

Where a trial court critically examines the evidence presented by competing expert testimony on the issue of intellectual disability within the recognized clinical framework and assessing credibility based on same, does either *Hall v. Florida* or *Moore v. Texas* mandate that the capital defendant's expert be credited?

2.

Does the Confrontation Clause bestow the right to unfettered access and unconditional use of a witness's privileged mental health records for any reason? If so, did the Supreme Court of South Carolina err in establishing a procedure by which a defendant is to request the records, with notice to the individual who holds the privilege, for initial consideration by the court in order to balance the need for release with the privilege of privacy?

(Attachment 9, p. ii).<sup>10</sup>

---

<sup>10</sup> Respondent noted that it declined, again, to review the privileged materials submitted under seal to the Supreme Court and would rely upon matter in the published opinion:

In his petition to this Court, Petitioner attached another copy of the privileged mental health records and asked they be accepted under seal. (See Motion for Leave to File Petition for Certiorari and Appendix Under Seal). Respondent State of South Carolina has not reviewed those records either at trial or on appeal. Respondent has consistently maintained that would be a violation of the privilege that has been continually upheld. However, the legal issue is clearly before the Court and may be easily considered by reliance on the facts and summaries

Applicant's petition to the U.S. Supreme Court was denied February 20, 2018. (Attachment 10).

Respondent previously attached by prior return the following documents, which are currently before this court:

1. Redacted (non-sealed) volumes of Record on Appeal (Vols. 1-7);
2. Redacted Final Brief of Appellant;
3. Redacted Final Brief of Respondent;
4. Redacted Reply Brief;
5. Opinion No. 27722 (S.C. Sup. Ct. filed May 31, 2017);
6. June 16, 2017 Remittitur;
7. Order, Supreme Court of South Carolina, dated September 1, 2017 (denying motion to unseal);
8. Redacted, Petition for Writ of Certiorari (SCOTUS);
9. Brief in Opposition (SCOTUS);
10. Notice of Denial of Petition for Writ of Certiorari (to SCSC from SCOTUS), dated February 20, 2018;
11. Supplemental authority submitted by Division of Appellant Defense the South Carolina Supreme Court on September 12, 2016, March 29, 2017, and May 4, 2017;

---

contained in the direct appeal opinion which Petitioner did not challenge by way of a petition for rehearing. Thus, the uncontested summary is adequate and provides the essential facts. It is those facts which Respondent relies upon without further damage to the privilege.

(Attachment 9, p. 18).

Similarly, Respondent maintained this position at the initial hearing before this Court on April 16, 2018. Respondent advised the PCR court that there were privileged documents included in the direct appeal, and that Respondent would rely only on the public record in making its return.

12. Supplemental Record on Appeal, Vol. I, pp. 1-14 (Judge Couch's Order Denying Applicant's Intellectual Disability Claim);
13. Portions of sealed volumes of Record not subject to privilege—R. 3729-4483

### STATEMENT OF FACTS

A Spartanburg County jury found Applicant guilty of the kidnapping and murder of eight-year-old Heather Brooke Center ("Brooke"). After hearing all the evidence of the crime, and the evidence submitted in the separate sentencing proceeding, the jury, having rejected Applicant's intellectual disability claim, returned a sentence of death which was imposed by Judge Couch. The jury considered the following facts in guilt and sentencing:

#### *Guilt Phase*

On July 8, 2009, William Meyer, a patrol deputy with Spartanburg County Sheriff's Office, received a call at approximately 3:00 in the afternoon. He was advised a child had been shot at a home in the Chesnee area of Spartanburg County. When he arrived just minutes later, he saw a woman frantically trying to direct him to the child. The child was lying face down on the ground near the front of a vehicle. The child was not responsive. Deputy Meyer noticed a "red spot" on her back, then a "gaping wound ... on her left leg." While attempting to check her pulse, Officer Meyer "realized there was blood pouring out of [her] ear." There were no signs of life. He called for assistance. (R. 2357, lines 1-23; 2374, lines 4-11; 2376, lines 12-16). He then met the visibly shaken homeowner, Mr. Bryant, who informed Deputy Meyer that Ricky Blackwell was the shooter. (R. 2358, lines 1-21; 2363, lines 9-12). Deputy Meyer testified he was also informed of Applicant's "direction of travel" which was behind the residence and directed other responding deputies toward the area. (R. 2363, line 16- 2364, line 6).

6/13/12 12:51:00  
JUL 10 2009  
JUL 10 2009

CL 113

Deputy John Smoak testified that he arrived after Deputy Meyer. He testified that he also checked Brooke for signs of life and did not find any. (R. 2493, line 14 –2494, line 2). Armed with a description of Applicant, he then searched the area and was joined by other officers. (R. 2494, lines. 4-23; 2498, lines. 1-14). Applicant came out of the wood line toward the officers. He was still armed. (R. 2498, line 17 – 2499, line 10). He stayed behind a children's play set, out of sight of the officers. Applicant eventually placed the gun at his abdomen and shot himself. Though repeatedly instructed to drop the gun, he did not do so until the gun slipped from his hand after he shot himself. (R. 2500, line 4 –2501, line 23). Deputy Smoak retrieved and secured the gun. (R. 2501, lines 19-21; 2502, lines 5-17).

Ms. Angela Davis witnessed the shooting. Ms. Davis was formerly married to Applicant. Since their separation, Ms. Davis had been seeing Brooke's father, Bobby Center. (R. 2378, line 24 –2379, line 2; 2396, line 23- 2397, line 16). The day of the murder, Ms. Davis testified that she had Brooke with her, and had intended to pick up her grandchildren to return to Brooke's home for them to play. (R. 2381, lines 14 – 24). As she arrived at her daughter Heather's home, not seeing a car, she was turning to leave. She testified "Ricky jumped out and flagged me down, and he said I thought you was picking up the boys," and she replied she was, but her daughter's car was not there. (R. 2382, line 25 – 2383, line 4). She testified Applicant told her the grandchildren were with their father in the home "waiting for you." (R. 2383, lines 5-7). She turned back around and headed back toward the home. When stopped, she saw a small dog and turned to Brooke, saying, "Brooke, honey, don't get out of this car until I get this dog cause I don't want you to get dog bit." Brooke stayed in the car and Ms. Davis exited and grabbed the dog. As she "turned back around he had her." (R. 2383, lines 11-23). Applicant, still upset at the breakup of his marriage,

7:00 PM  
11/01/2011  
11:00 PM

6:18 PM 12/8/2011

05/11/12

grabbed the child, held her, and pointed a gun at the child's head. Ms. Davis testified that she pleaded with Applicant to take her instead of the child. (R. 2386, lines 1-11). Ms. Davis testified:

... he was walking around the car and I was screaming let her go, Ricky, please, its me you want, take me, and let Heather take her home, and he said no and he took the gun and pointed it toward - - on the car, and he said you've pushed this too far. You did this. You tell me what Bobby thinks of this, and then the gun went off, and then it went off again.

(R. 2386, lines. 9-15).

Ms. Davis testified she saw Applicant place the child on the ground and she ran into her daughter's home to call 911. She grabbed her granddaughter, who was crying, and ran out the back of the home. She heard another shot. She ran. Applicant followed. She testified a neighbor let her in and she called 911 once again. (R. 2386, line 17 - 2387, line 25). She identified not only Applicant, who had asked them to go to their daughter's home that day, but also the gun he used. It was a gun she had purchased for him "earlier in [their] marriage" as a gift. (R. 2388, lines. 14-15; 2392, lines. 9-18; 2393, line 22 - 2394, line 14).

Mark Bryant, the Blackwells' son-in-law, confirmed that Applicant was in the area around the home earlier that day. (R. 2471-72). He also confirmed he saw Ms. Davis pull into the yard and told his sons that their grandmother has arrived. He testified by the time he turned back around and went to the door, he saw Applicant with his arm around Brooke's neck/chest area and saw a gun. (R. 2474, line 14- 2475, line 25; 2487, line 24 - 2488, line 3). He tried to pull his children back into the home and heard two shots. (R. 2476-77). He testified his mother-in-law went in the house as he was trying to get his children inside, and she called 911. (R. 2477). He testified his mother-in-law ran out the back with his daughter and he picked up the phone and spoke to the 911 operator. She told him to check on the child, which he did. Brooke was face down and not moving. (R. 2477, line 12- 2479, line 15). He confirmed that Applicant ran after his mother-in-law across

the back of the home. (R. 2478 and 2483). Mr. Bryant testified that he told the responding officer that Applicant had shot Brooke and described Applicant. (R. 2480-81). He testified that he had been married to Applicant's daughter for approximately fifteen (15) years at the time of trial, (R. 2471, lines 1-7), and knew Applicant had a gun, but had only seen the gun two times – "when I first met my wife, and the day of the incident." (R. 2478, lines 16-18).

Pathologist David Wren testified that he conducted the autopsy on Brooke on July 9, 2009. (R. 2536). Dr. Wren recorded the following injuries:

... There were nine gunshot wounds to the body... some of them were through and through and the reentries. Specifically there was a gunshot wound to the right side of the head that exited in the left temple. There was a gunshot wound in the right che[e]k, a grazing gunshot wound and a deep grazing wound in the right neck that went under the skin and came back out and went in her left arm where it fractured her humerus and I recovered a bullet from that area, and then she had a gunshot wound in the back that communicated with the one on her cheek, and she had a through and through gunshot wound to the left leg.

(R. 2537, lines 3-15).

From tracking the injuries to the child's body, Dr. Wren opined there were four gunshots: "One to the head, one to the back, one to the leg and a grazing" wound to the cheek and neck which went into her arm. (R. 2540, line 13 – 2541, line 8). He opined:

... the immediately fatal wound was the one to the head. Any, any of those individually or collectively could of caused her death. If they're not immediately fatal, there are lots of complications that can occur. So, we actually assigned those as potentially fatal if they're not immediately fatal. So, I put down the cause of death as gunshot wounds to the head and body.

(R. 2541, lines 11-17).

Suzanne Cromer of the South Carolina Law Enforcement Division ("SLED") was qualified as expert in the field of ballistics and tool mark identification. (R. 2558, lines 4-7). She opined

67:8 WJ L2 07/10/09

01/10/09

the bullet recovered from the child's body was fired by the gun recovered from Applicant. (R. 2559, line 16 – 2561, line 13). That particular gun would require “three and a quarter to 4 pounds” for single action firing, and “ten and three-four[th]s pounds to eleven and fourth pounds of pressure” for double action firing. (R. 2562, line 1 – 2563, line 11).

The State argued not just that Applicant shot the child, but that he “finish[ed] off” the child, shooting her four times to ensure she was dead. (R. 2576, lines 9-11). The defense conceded guilt, but attacked Ms. Davis’ testimony, accusing her of using Applicant for money after their separation and embellishing her testimony to demonstrate her “heroic” action during the shooting. (R. 2578, line 10 - 2579, line 11).

The case was sent to the jury on March 12, 2014. The jury began deliberations at 4:08 pm and returned a guilty verdict at 4:29 pm. (R. 2600, lines 18-20; 2602, lines 1-8). The jury then turned their attention to sentencing.

#### *Penalty Phase*

As noted, the jury considered the above facts and found Applicant guilty of the kidnapping and murder of eight-year-old Brooke. The above evidence was also moved into the penalty phase. (R. 2608, lines 13-25). Additional presentation of evidence followed.

The State presented a glimpse of the young victim’s life. Brooke’s baseball coach, John Sloan, testified that “Brookie” was the only girl on the team, and had been friends with Mr. Sloan’s son. The eight-year-old was the son’s first “girlfriend,” and the two would “hold[] hands in the outfield.” (R. 2626, line 13- 2627, line 12). He described her play, and in particular her first run. (R. 2628-29). Mr. Sloan also described the memorial for her at the sports complex. (R. 2630-31).

The State also presented Ms. Elizabeth Sima, the principal at Reidville Elementary School, the elementary school eight-year-old Brooke attended. Ms. Sima testified that she had known

Brooke from kindergarten through the end of second grade, after which she was listed as “withdrawn” due to her death. (R. 2633, lines 6-18). Ms. Sima testified that Brooke was a loving child, with “a special spark and a special light that the children felt and knew,” a leader even at an early age, demonstrating “integrity ... kindness, and caring.” (R. 2633, line 6 – 2635, line 24). She testified that Brooke’s parents had been outstanding, “not a single bit of negativity and a whole heck of a lot of love,” even when going through a hard time personally (apparently referencing the couple’s separation), and that Brooke “saw that and felt that too.” (R. 2636, lines 5-25). Ms. Sima also testified Brooke’s murder was difficult for the faculty, especially in trying to begin a new school year without her, and they honored her memory in a ceremony at their science center, and in an annual event. (R. 2637 and 2638). She testified Brooke was an outstanding and loving student. (R. 2639-41).

As to Applicant, the State presented evidence of Applicant’s indictment for breaking into a gasoline tank and petty larceny, and his 1981 guilty plea to those charges, (R. 2647, lines 3-24), and two disciplinary actions in the Spartanburg County Detention Facility (possession of contraband – Clorox in a baby bottle – and possession of contraband – unauthorized medication, hoarding medication in a candy wrapper), (R. 2650, line 4 – 2651, line 21; 2655, lines 2-22).

As to the circumstances of the crime, in addition to the incorporated evidence, the State presented Ms. Davis’ mother, Irene Blackwell. Mrs. Blackwell testified that her daughter and Brooke were with her the morning of the crime, and she had fixed breakfast for them. Mrs. Blackwell testified Applicant initiated a conversation about insurance; Ms. Davis advised she intended to take a three month leave of absence and each of them would have to pay \$100.00 a month to keep the insurance active. She testified that Applicant then requested Ms. Davis “go over there and see the grandbabies today,” and Ms. Davis agreed to do so. Applicant left at that

67:9 IN 12011002

Q67:12

[22]



time stating he was “leaving to go pay some bills, and he was gonna go shopping.” She testified her husband, Jerry Wayne, asked Applicant to stay and play cards, but he declined citing other obligations. However, he promised to return. Mrs. Blackwell explained that her husband and Applicant often played rummy together. She also testified that it was not her impression that Applicant was “grieving” over the breakup of his marriage, and noted that he came over almost every day, and was “kidding with Jerry Wayne, laughing and joking and cutting up and playing cards and stuff.” (R. 2658, lines 2-9; 2662, line 19 – 2666, line 17).<sup>11</sup>

Deputy Micah Horton testified that he stood by Applicant at the crime scene while EMS treated him for his self-inflicted gunshot wound. He testified Applicant asserted, without questioning or prompting by anyone: “... I shouldn’t have done it, not to get back at him....” (R. 2669, lines 2-15).

Reserve Officer Tim Timmons testified that he was instructed to ride in the ambulance with Applicant. He testified that he consulted with the EMT to determine if Applicant was in jeopardy of dying and wanted to give him the opportunity to give a statement. He did so and Officer Timmons read Applicant his Miranda rights which Applicant acknowledged and waived.

---

<sup>11</sup> The defense objected to Mrs. Blackwell’s testimony on the basis that it corroborated Ms. Davis’ testimony from the first phase. However, as the State correctly argued, the testimony went to premeditation, essentially, the extent of malice, which is a proper sentencing phase consideration. *See, e.g., State v. Shuler*, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003) (“The purpose of the sentencing phase in a capital trial is to direct the jury’s attention to the specific circumstances of the crime and the characteristics of the offender.”). The State noted that the defense had essentially conceded guilt in the first phase and it was unnecessary to call all available witnesses at that time. The defense conceded the evidence was otherwise admissible, but objected at this point only because it had not been submitted previously. The judge rejected the argument and allowed the testimony. (R. 2659, l. 9 - 2662, l. 6). The defense also attempted to keep the photographs of Brooke away from the jury determining sentencing, arguing “all these photographs ... depicting these wounds on this very young child, they all invoke the Fourteenth Amendment, due process clause, because they’re so prejudicial and it renders the, the penalty phase fundamentally unfair” and, given “the concession of guilt,” they were “not necessary to prove anything at all.” (R. 2702, line 19 – 2703, line 17).

Officer Timmons asked what had happened and Applicant responded: "... my ex-wife drove up and I grabbed her boyfriend's little girl..." The officer asked Applicant to identify the little girl, to which he replied, "... I called her Brooke." (R. 2676, line 6 – 2677, line 10).

Investigator Lorin Williams testified he went directly to the hospital after receiving information Applicant was being transported. He testified, after checking with medical personal to ensure Applicant was stable and not heavily medicated, that he read Applicant his Miranda rights which Applicant acknowledged. (R. 2682, line 8 – 2684, line 17). He then asked Applicant what happened and why. Applicant responded:

... he and his wife had been having problems, and that he was trying to get her to reconcile their marriage. Basically that, that she was continuously throwing up her boyfriend to him, and he said that, that he had been having sour thoughts about how to get back at this man for breaking up his marriage.

...  
... he went on and I asked him about the sour thoughts. ... I told him, I said, well, you know, can you - - is there something that you can tell me, is there, is there a reason that you can give me to help me understand you know, how this could happened to a child of this age ...I need some help in helping me understand what, what would make you do this ... why this would happen. And he just basically said, again, you know, that ... it was his way of getting back at, at her dad for breaking up the marriage, and I said ... is there something you can tell me, tell me it was an accident, tell, tell me you were sorry, tell me anything like that. And he just looked at me, he said the only thing that I'm sorry about is that I didn't do a better job on myself.

(R. 2684, line 19 – 2685, line 25). The investigator testified that Applicant never asked about Brooke, "if Brooke was okay, what her condition was, had, had no concern and showed no concern whatsoever for anything but, but his condition at that point." (R. 2686, lines 1-6).

CLERK OF COURT  
SPRINGFIELD COUNTY  
JURY ROOM

2011 MAR 27 AM 8:19

FILED

[24]

The State also called Dr. Wren to further discuss the injuries to Brooke.<sup>12</sup> Dr. Wren discussed the nature of the wounds reflecting the details of the shots, including closeness of the shots and angles. (R. 2711, lines 15 – 2720, line 17). Dr. Wren opined the shot to Brooke's head was inflicted "probably very close, but not tight contact and most probably not loose contact." (R. 2713, lines 3-8). Dr. Wren testified the shot to the back had abrasion characteristics that indicated consistency with being shot while bent over and falling down. (R. 2715, line 20 – 2716, line 22). The shot to the neck area indicated charring which comes from a contact wound, "... the barrel gets immediately hot and it burns the skin where it goes in." (R. 2717, line 5 – 2718, line 14). The remaining shot was to Brooke's leg hitting "solid tissues" and exiting near her knee. (R. 2720, lines 8-19). Dr. Wren opined that given the nature of the wounds, Brooke would have been moving during some of the shots, with the inability to move after infliction of the head shot. (R. 2720, line 24; 2721, line 6). He confirmed that "these are not all exactly at the same time." (R. 2721, lines 10-11).

As further evidence of the details of the crime and how Applicant left Brooke, Sergeant David Hogsed identified and explained the pictures from the crime scene reflecting that (before being moved by EMS), Brooke was face down on the ground. He identified another photograph that showed "basically the mid section [sic] to the top of her knees" reflecting injuries and that the child had "urinated on herself at the incident...." (R. 2728, line 3 – 2729, line 20).

---

<sup>12</sup> The State carefully selected the additional photographs to be used in this phase in camera with the trial judge and defense counsel. (See R. 2692-63). The trial judge placed on the record: "I'll note, in making the ruling, that the State has shown restraint in presenting the photographs that they have presented by offering black and white photographs of the appropriate situations, and also not a seeking to introduce a rather large number of similar photographs in the case. The Court does note that in making its ruling." (R. 2707, lines 15-21).

Returning to Brooke, the State presented several other witnesses from the elementary school she attended. Amy Nunnary was the school nurse who administered Brooke's asthma medication and would sooth the child as she struggled to breath. Ms. Nunnary testified to Brooke's smile, her beauty, maturity and love of flowers. She also testified that "her mom and dad were, were always available ... [v]ery protective, very caring, very loving towards Brooke. Always, always there as soon as I needed them." (R. 2731, line 4 – 2732, line 23). Ms. Nunnary testified she could not "make it to the funeral. It was just really too hard for me," but she was able to go to the grave site and retrieve one of the flowers which she pressed and kept. (R. 2733, lines 13-20). She testified that Brooke's "dad painted [Brooke's] house bright yellow because that was her favorite color" and that "every morning [she would] pass Brooke's house going to work and I pass it in the afternoon and there's the bright yellow house," that "brings a smile to [her] face," reminding her of being "happy and cheerful," the "kind of child she was." (R. 2733, lines 21-25).

Ms. Debbie Alton, Brooke's second grade teacher, testified to her recollection of "just a precious, sweet, kind, loving little girl," and read a story that Brooke had written, a story with emphasis on family fun and inspiration. Ms. Alton testified that Brooke's own parents, Bobby and Kelly, "were very supportive, very loving," and she would see them not just at school but also at Brooke's baseball games. She testified Brook greatly enjoyed baseball, and she recalled seeing the memorial to Brooke at the field. (R. 2736-43). Ms. Alton also shared a letter Brooke wrote to a soldier to express thanks to the soldier as part of a class project. She testified she kept Brooke's letter to help other students the following year. She testified Brooke "wanted everybody to be friends and she was a peacemaker," and that "she holds a special place in [her] heart." (R. 2744, line 6 – 2745, line 23). She noted, "I feel like people that didn't know her were really robbed of a chance to get to know of a wonderful girl." (R. 2746, lines 3-5).

### *Defense Mitigation*

The defense called Ms. Gail Shook who testified she had been a work supervisor for both Applicant and his wife, Angie Davis. (R. 2757, line 18 – 2758, line 21). Ms. Shook described Applicant as “gentle, humble,” “very tender hearted,” “compassionate,” and a reliable compliant worker. (R. 2759, line 11 – 2760, line 2; 2770, lines 1-4). She described his “anguish” at the breakup of his marriage. (R. 2768, lines 12-24).

The defense also called Dr. Ginger Calloway to again make a presentation about intellectual disability. (R. 2810, lines 21-22). Dr. Calloway opined Applicant “fell into a mildly retarded range,” and “this disability was manifested before the age of 18....” (R. 2915, lines 2-6). She testified in her opinion, Applicant was intellectually disabled. (R. 2916, lines 1-5).

Also for the defense, Dr. Donna Schwartz-Watts, an expert in forensic psychiatry, testified that she “treated [Applicant’s] depression and his anxiety and helped to manage that in the detention Center.” (R. 2985, lines 7-10). She reviewed prior medical records treated Applicant at the Spartanburg County Detention Center, which included two psychiatric hospitalizations and a prior diagnosis of depression, testified:

... in my opinion, he’s had a history of major depression before. He’s had two episodes before when he was hospitalized, and it’s clear, from looking at Doctor Jackson’s records, that he remained depressed before this incident, and it’s very clear that, since I treated him at the jail, he had had symptoms of depression as well.

(R. 2985, lines 10-18). She noted when asked about his thoughts about the murder:

...the words that he usually uses with me are he can’t believe he’s done this. It’s very hard for him to accept what happened and what he’s done, and he, he has a lot of anxiety. He has nightmares about it. He has a difficult time dealing with what he’s done and he’s very sad about it.

(R. 2987, lines 5-16).

2023 MAR 27 AM 8:49

FILED

[27]

The defense also presented Applicant's cousin, Sherry Wofford, who testified Applicant was "like a brother" and was "loving," "gentle," and "always trying to help people." (R. 2990, line 17-23). She recounted kind gestures and family moments. She testified "we love him with all our hearts and need him. So, just understand he is a good man." (R. 2994, lines 1-3). Ms. Wofford described her reaction to having heard Applicant had murdered the eight-year-old child: "It wasn't Ricky. They wasn't our Ricky. It was no way that was our Ricky. Something went wrong. It was not our Ricky that did that." (R. 2994, lines 6-10).

The defense also called Heather Bryant, Applicant's daughter. She described her father as "a kind caring man" to her and the family, even taking in his son's "baby mama" when needed. (R. 3000, line 9- 3001, line 6). She testified Applicant loved his wife and treated her well, and that he loved and played with his grandchildren. (R. 3002). She testified that as her mother began to see Brooke's father, Bobby, her mother began to change: "... she started drinking, she started smoking, she started dressing more inappropriately...." (R. 3004, lines 5-15). She testified that Bobby had a Harley Davidson motorcycle, and her mother got a tattoo on her lower back with "a Harley Davidson logo that said Harley in the middle of it." (R. 3004, line 20 – 3005, line 2). Ms. Bryant testified they had had a loving household before, and provided "a little clip" from home movies, which she then explained. (R. 3007, line 2 – 3009, line 17). She testified her father remains a religious man and has studied the Bible, even while incarcerated at the county jail. (R. 3009-3010). She also reviewed multiple family pictures, explaining the events and people. (R. 3011– 3015). Ms. Bryant testified her father still loves her mother and would accept her back if he could. (R. 3015). She recalled when Applicant found out her mother was intimate with Bobby, Applicant left only to return minutes later with a "bottle of pills in his hand...." Both Ms. Bryant and her mother attempted to ensure he would not harm himself. (R. 3017, lines 1-9). She described

67:8 WA L2 8/16/03

06/11/03 [28]

her mother as “mean” to him, having “bragged about having sex with Bobby,” and Ms. Bryant would sympathize with Applicant. (R. 3017, line 22 – 3018, line 21). Ms. Bryant testified she had advised her mother to call before coming to Ms. Bryant’s house, and not to bring “Brooke or Dustin ... because it hurts daddy ... and she told me she would not do that.” (R. 3019, lines 3-8). When asked if it hurt Applicant to see her mother “paying so much attention to Bobby’s family and not you,” she responded, “Yes, sir, it did.” (R. 3019, lines 12-14). Ms. Bryant testified her mother would call Brooke her “new daughter,” her “perfect daughter,” and “angel.” (R. 3019, lines 15-21). She testified that her mother was not seeing her own grandchildren at that time. (R. 3019). She previously testified her daughter has special needs. (R. 3003). She concluded with telling the jury that Applicant:

... was always a kind, gentle, caring man. He was not the man that they’re trying to make him out to be today. My daddy would of never done that. My daddy was pushed to the extinct (sic) to do what he did, and he regrets what he had done. He suffers from that every day.

(R. 3020, lines 7-11).

When asked if he cries about what he has done, Ms. Bryant responded, “Yes, sir.” (R. 3020, lines 12-13).

On cross-examination, Ms. Bryant admitted her two sons witnessed the murder, the “oldest one witnessed it a little bit more,” but they both had to receive counseling, and that it still affects them. (R. 3021, lines 8-22). She also admitted upon questioning that he played pool very well, having won several tournaments. (R. 3022).

Brittany Fowler testified for Applicant, as well. She was the “baby mama” Applicant took in and helped. She testified Applicant helped with the baby “did everything for him ... changed diapers, fed him, whatever there was to be done.” (R. 3025, lines 17- 3026, line 13). She testified

64:8 IN 12 0000 0000

0000 0000

that she loves Applicant and described him as: "Amazing... great. Very kind hearted ... give the shirt off his back" kind of man. (R. 3026, lines 16-20). Ms. Fowler left to live with Irene Blackwell (Angie Davis's mother). Ms. Fowler testified that Applicant would come by to play cards with Jerry Wayne Blackwell and would express that he missed his wife and wanted her back. He was sad, and would plead with her to return. (R. 3027-28). She testified his wife would speak harshly to him in response. (R. 3028). Ms. Fowler testified Applicant was heartbroken over her leaving. (R. 3028). She testified Ms. Davis changed her appearance after leaving, "dressing more like she was a teenager with some short clothes, low cut shirts." (R. 3028, line 21 – 3029, line 2). She testified Ms. Davis "started drinking and things like that, going to the bars." (R. 3029, lines 3-4). She would "flirt" with Applicant, but it only "hurt him a lot because she ... gave him hope" she would return. (R. 3029, lines 7-12). She testified Applicant had "been there" for her, that he was great, and "very kind hearted." Ms. Fowler testified she was shocked and could not believe that he murdered eight-year-old Brooke. She had "never heard him argue with Angie...." (R. 3029, lines 15-25).

Norm Uber, a fellow church member with Applicant, testified Applicant was "a good friend, kind of easy going, laid back, but deliberate in his speech." He testified he "never knew him to be other than easy to get along with," and a gentle man. (R. 3031, lines 1-19). Mr. Uber testified Applicant loved his wife and treated her well. (R. 3031, line 20 – 3032, line 2). He recalled how Applicant "wept" in the parking lot while telling Mr. Uber about the breakup of his marriage, and Mr. Uber testified, "it jerked at my heart strings." (R. 3032, lines 7-10). Mr. Uber testified as to Applicant's religion, he "would say he was a good Christian believer in our midst." (R. 3033, lines 4-7). He, too, testified that he could not believe Applicant had murdered eight-

67:8 IN L2 800000

Q-113



year-old Brooke. He stated he did not think Applicant could be stirred to anger. (R. 3033, lines 10-15). He stated Applicant was in “anguish” over the breakup. (R. 3035, lines 11-14).

Applicant’s father, Cletus Blackwell, testified that Applicant was a “good boy when he was a kid ... never give us any trouble....” (R. 3037, lines 23-25). He described Applicant as “humble ... good ... never did bother nobody.” (R. 3038, lines 2-7). He testified Applicant loved his wife, his children and grandchild, and treated them well. He played with his grandchildren. (R. 3038-39). Mr. Blackwell testified Applicant was “real depressed” and spent days crying when his wife left. Mr. Blackwell testified “he wasn’t Ricky,” agreeing with defense counsel that “he just wasn’t the same man anymore.” (R. 3039, lines 9-16). Mr. Blackwell testified that when Ms. Davis would come around, “it would tear him up.” (R. 3039, lines 23-24). It would give him hope then cause despair. (R. 3040). He testified that when he learned Applicant had murdered the child, “it tore me up” and he “just couldn’t believe it.” (R. 3040, line 12). Mr. Blackwell also went through several photographs and explained their family and events. (R. 3041, line 6 –3046, line 20). Mr. Blackwell asked the jury to spare his son’s life, that he “was always a good boy” and “Ricky wasn’t Ricky when this happened. Ricky wouldn’t hurt nobody if he’s, if he was in his right mind.” He testified “Ricky wants to live till the Lord calls him home. I know it won’t be no pleasant life, but he wants to live, and my sympathy goes out for the little girl’s family.” (R. 3047, lines 13-22). On cross-examination, Mr. Blackwell admitted the gun Applicant used to murder Brooke had been locked in a gun case at Mr. Blackwell’s home. Applicant had to go to Mr. Blackwell’s home to retrieve the gun before he could use it in the murder. (R. 3048-52 and 3054).

The defense also presented James Hamrick, Applicant’s brother-in-law. Mr. Hamrick is married to Ms. Davis’s sister. He testified that Applicant was “always a really good person. Kind, gentle, like everybody said.” (R. 3057, lines 9-11). After Ms. Davis left Applicant, Applicant

would go by Mr. Hamrick's salvage yard and garage business. He would help out, and no one had a "mean word" to say about him, nor did he have a "mean word" to say about anyone else. (R. 3057, line 17 – 3059). However, Applicant was so distraught over the breakup of his marriage that he became a distraction to the work. Mr. Hamrick's son expressed that he considered not allowing Applicant to help in a later car sale event as Applicant's crying was a distraction. (R. 3059-60). Mr. Hamrick testified he could not believe Applicant had shot an eight-year-old child, indicating "I don't know what happened, and I mean he done a bad thing ... it just wasn't ... Ricky...." (R. 3060, lines 8-23).

Applicant also presented Mary Youmans, who had worked with Applicant and had grown close to both Applicant and Ms. Davis. (R. 3062). Ms. Youmans testified Applicant was distraught over the breakup.<sup>13</sup> (R. 3064). Ms. Youmans testified that, on the day of the shooting, "Angie" stopped by her house with Brooke. She introduced Brooke as her daughter, and insisted Ms. Youmans knew Brooke's father, Bobby, though Ms. Youmans could not recall Bobby. (R. 3064-67). She recalled that Ms. Davis's appearance changed after she left Applicant. She testified Ms. Davis lost weight and began wearing short "Daisy Dukes" and bared her midriff. She also changed her hair color. (R. 3067, line 12 – 3068, line 17).<sup>14</sup> Ms. Youmans then returned to describing Applicant's character. She noted that Applicant had been very good to her husband as he was dying from cancer. (R. 3069). She expressed that she "didn't believe it," when she heard Applicant had

---

<sup>13</sup> She would later testify in cross-examination that she did not know the cause of the breakup. (R. 3070, lines 15-20).

<sup>14</sup> This testimony was allowed over the objection of the State. (R. 3067, line 24 – 3068, line 2). The State argued the testimony "has nothing to do with mitigation. It's just poor mouthing Angie." (R. 3067, line 24 – 3068, line 1).

shot a child. (R. 3069, lines 18-21). She testified she “struggled” with the news as the “Ricky [she] knew” would not have hurt a little girl. (R. 3073, lines 1-5).

Ken Rice, Applicant’s pastor, also testified for the defense. Mr. Rice testified that Applicant had attended his church while his children were small, then began attending again when Angie left him. (R. 3072-73). (See also R. 3085-86 and 3088). Mr. Rice testified Applicant cried to him over the breakup and his emotional state began to deteriorate. Applicant lost weight and reported sleeping on the floor in his home. (R. 3073-74). Mr. Rice testified that he advised Applicant:

... if this is what she wants to do you’re not gonna win her back by chasing after her. She wanted money for rent, for an apartment that she had rented. He gave her money for food. I said you’re just helping the matter along. I mean she’s not gonna come back as long as you’re paying her way, and he finally went to his mom and dad’s to spend the night....

(R. 3074, lines 6-12). He also identified several pamphlets that the church would provide so its members could use it in study at home which had belonged to Applicant. He recalled that he once took material to Applicant’s home, and saw Applicant with a family Bible, and Applicant’s wife with a dictionary and pad of paper. He testified “she was looking up words they didn’t understand.” (R. 3081, line 9 – 3083, line 7). After Applicant was incarcerated, Mr. Rice sent Applicant a children’s Bible so he could better understand the scripture. (R. 3083). Mr. Rice testified he spoke with Applicant at the jail:

... the first time I went to the jail to talk with him, he honestly said, he said I did it, but I don’t remember doing it. Said I only - - the first I remember of what happened I was in the hospital, and I talked to him about forgiveness. I told him that God forgave David for murder, and God can forgive him, and I took him down the road of repenting, and prayed with him, and he said he’d - - the burden of guilt was gone. The next time I went to see him he said I’ve - - God’s forgiven me, but I can’t forgive myself.

67:13 17 L2 67:13

(R. 3084, lines 3-12). He testified that he was “surprised” to hear about the shooting. Mr. Rice testified: “I knew he was emotionally disturbed. He wasn’t the man that I first met and - - but I couldn’t believe he did it. I just couldn’t believe it.” (R. 3086, line 24 – 3087, line 1).

Lastly, Applicant called his mother, Mildred Blackwell who identified and presented more family photographs. (R. 3101-3104). She also testified that Applicant receives a multitude of letters and cards at the jail, and demonstrated a box full of items representing those items as a portion of the mail received. (R. 3105, lines 1-22). Further, she identified Applicant’s voice on a telephone recording from the jail, and testified the conversation was between Applicant and “Angie’s” father, Jerry Wayne Blackwell wherein he expressed concern over Mr. Blackwell’s failing health. (R. 3106, lines 2-6; 3192, lines 9-17). She asked for mercy for her son:

He’s a wonderful son ... if you only knew my son like I have for 55 years that he’s been here with me you would say he’s a wonderful son. I couldn’t of asked for a better son than what I’ve got, and ... I just love to ask you to spare his life because I know that something happened to him that day, and he would of never did that to that child cause he loved children too good and children love him too good, and I’d love for y’all to spare his life.

(R. 3110, line 22 – 3111, line 5).

#### *State’s Reply*

In reply, the State recalled Cletus Blackwell to clarify that he knew an individual by the name of Reggie Frye, though he denied knowing such an individual earlier believing his name to be Ritchie Frye. (R. 3121, lines 10-22). He did not recall telling Mr. Frye that he had taken possession of Applicant’s guns because he was afraid Applicant would hurt someone, or that Applicant had broken into the gun cabinet to obtain a gun. (R. 3122, lines 11-20).

Mr. Frye testified that he worked in trucking with Mr. Cetus Blackwell and went on many trips with him. He testified he was “very fond” of Mr. Blackwell and it was “extremely hard” to

6543 IN 12011001

testify at the trial. (R. 3126, lines 14-25). Even so, Mr. Frye testified concerning a conversation with Mr. Blackwell on one trip approximately three weeks after the murder:

Cletus and I had many discussions about Ricky, Ricky being in jail, his wife, you know, not sleeping, being upset. One occasion he told me that - - we were discussing what happened, how, and he said that Ricky had broke in and broke into his gun case, that they had got the guns from Ricky because he was afraid he was gonna hurt himself or someone, and said that Ricky had broke into the gun case, got the gun, and bang, you know, the next day or so it happened.

(R. 3127, lines 9-17). On cross-examination, he noted the surety of his recollection though he underscored the difficulty in testifying: "... when something happens to a child, I didn't want to say anything. It's eat on me for five years, and I know exactly because I went home and discussed it with my wife ... that day." (R. 3129, lines 10-17). He further testified *in camera* that Mr. Blackwell had talked about Applicant's relationship with Angie:

... that he was very possessive over her. He couldn't handle her leaving for another man, about how she brought that child to torment Ricky to go swimming that day, and it was her fault that the child was killed because she was getting back at Ricky. That's mainly what he discussed with me on many occasions.

(R. 3133, line 20 – 3134, line 1). Also *in camera*, the defense asked if Mr. Blackwell had said Applicant, "Ricky carried the gun because he was afraid of Bobby Center?" to which Mr. Frye responded, "he never talked about Ricky being afraid of anyone." (R. 3134, lines 13-15). Defense counsel also asked if Mr. Cletus Blackwell said anything about being afraid "his house was gonna burn down?" to which Mr. Frye answered, "No.... Never heard that." (R. 3134, lines 13-20). The State objected and no further questions were asked by defense counsel given the trial court's ruling that Mr. Frye was offered for "impeachment purposes because Cletus did not admit that he made a prior statement." (R. 3135, lines 12-16).

~~Charge on Aggravating Circumstances and Mitigating Circumstances~~

The judge instructed the jury that aggravating circumstances must be proven by the State beyond a reasonable doubt. Further, the judge instructed the jury it could consider only two circumstances: (1) murder of a child under eleven years of age; and (2) murder during the commission of the crime or act of kidnapping. (R. 3226, line 10- 3227, line 14). The judge instructed that only if one or both of the aggravating circumstances are found could the jury consider sentencing. (R. 3227, line 15- 3229, line 23). However, he also instructed that even if the jury found one or more statutory aggravating circumstances, they were not required to recommend death. (R. 3230, line 23 – 3231, line 19; 3239, lines 14-25; 3240, lines 12-18).

The judge also instructed the jury could consider any statutory mitigating circumstance supported by the evidence and charged the jury on five (5) such circumstances to consider: (1) no significant history of prior criminal conviction involving the use of violence against another person; (2) the murder was committed while the defendant was under the influence of mental or emotional disturbance; (3) the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired; (4) the age or mentality of the defendant at the time of the crime; and (5) evidence of mental retardation. (R. 3237, lines 5-24). He instructed that the jury could consider any non-statutory mitigating circumstance supported by the record. (R. 3238). He cautioned any mitigating circumstance, statutory or non-statutory, though it would need to have some support in evidence, that the jury “need not find the existence of such a circumstance by proof beyond a reasonable doubt or any other level of proof.” (R. 3239, line 13).

The judge also instructed that apart from statutory or nonstatutory mitigating circumstances, the jury could also return a life sentence as an act of mercy. (R. 3240, lines 1-18). (See also R. 3241, line 23- 3243, line 4). The judge cautioned, however, that the decision must

64:3 W L22 1134

Q13 1134

be made “without bias and without prejudice to any party” and may not “be governed by sympathy, prejudice, passion, public opinion, or any other arbitrary factor.” (R. 3243, lines 5-12). He instructed that “[b]oth the State and the defendant have the right to expect that each of you will carefully and impartially consider all of the evidence in the case, and that you will follow the law as ... explained ....” (R. 3243, lines 12-15).

### *Sentencing*

The jury considered and rejected, as Judge Couch had independently done before the trial, Applicant’s suggestion he was intellectually disabled. Next, the jury reported that it found, beyond a reasonable doubt, both of the submitted circumstances in aggravation – (1) murder of a child under eleven years of age; and (2) murder during the course of kidnapping – and recommended death.<sup>15</sup> (R. 3257-58). As noted, Judge Couch imposed a sentence of death. (R. 3262-63).

### **ALLEGATIONS**

As referenced above, Respondent construes the allegations in the Third Amended Applicant, filed November 12, 2021, having not be modified or amended further prior the hearing set to begin on March 27, 2023, to be the final amended application. The application presents the following claims:

10(a) Applicant’s death sentence violates the Eighth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution due to the fact that Applicant is a person with intellectual disability. *Moore v. Texas*, 137 S. Ct. 1039 (2017), *Hall v. Florida*, 134 S. Ct. 1986 (2014), *Atkins v. Virginia*, 536 U.S. 306 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003).

11(a) **Supporting Facts:** Because Applicant has significantly subaverage intellectual functioning, existing concurrently with deficits in adaptive functioning, both of which manifested during the developmental period, he is ineligible for capital punishment. *Atkins v. Virginia*, 536 U.S. 306 (2002);

<sup>15</sup> The jury was clearly instructed its recommendation will be followed by the sentencing court, leaving no doubt to their responsibility. (R. 3223, lines 20-22; 3250, lines 7-10).

*Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003); S.C. Code § 16-3-20(C)(b)(10). Specific facts supporting this claim, include, but are not limited to, the following:

(1) Material facts not previously presented and heard, S.C. Code § 17-27-45(C), that Applicant is a person with intellectual disability that results from a genetic abnormality of his *CAMTA1* gene, which he inherited from his mother.

10(b) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during his pre-trial and sentencing phase *Atkins* (intellectual disability) hearings.

**11(b) Supporting Facts:** Counsel failed to investigate, develop, and present a constitutionally adequate case that Applicant was a person with intellectual disability who could not be executed pursuant to the Supreme Court's decision in *Atkins v. Virginia*, 536 U.S. 304 (2002). Counsel's performance was both unreasonable and prejudicial, *see Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's specific unreasonable and prejudicial acts or omissions, include, but are not necessarily limited to, the following:

- 1) Counsel failed to investigate and present all relevant evidence on the issue of intellectual disability including evidence of Applicant's significantly subaverage intellectual functioning, deficits in adaptive functioning, and onset before the age of 18, *Atkins v. Virginia*, 536 U.S. 304 (2002); *Wiggins v. Smith*, 583, U.S. 510 (2003);
- 2) Counsel failed to object to the trial judge's reliance on stereotype and deviation from clinical consensus and practice in the determination that Applicant was not a person with intellectual disability, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 134 S.Ct. 1986 (2014);
- 3) Counsel failed to investigate and present evidence that some of Applicant's purported IQ test scores in the developmental period were not legitimate, individualized measures of general intellectual functioning and thus were not inconsistent with intellectual disability, *Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 134 S.Ct. 1986 (2014); *Wiggins v. Smith*, 583, U.S. 510 (2003);

RECEIVED  
JANUARY 10 2018  
6:13 PM LZU:JLJ

CLERK



- 4) Counsel failed to investigate and present circumstances under which Applicant obtained a commercial driver's license and other certifications to refute the trial judge and jury's reliance on the certifications in finding Applicant was not a person with intellectual disability, *see Wiggins v. Smith*, 583, U.S. 510 (2003);
- 5) Counsel failed to investigate and present evidence to the trial judge and jury that Applicant's depression and cancer treatment (including chemotherapy) had no demonstrable effect on IQ scores establishing significantly subaverage intellectual functioning;
- 6) Counsel failed to investigate and present evidence that Applicant is a person with intellectual disability as a result of a genetic abnormality of his *CAMTA1* gene, which he inherited from his mother
- 7) Counsel failed to adequately inform and educate the trial judge and jury about potentially prejudicial and preconceived misconceptions and stereotypes related to intellectual disability, *see Moore v. Texas*, 137 S.Ct. 1039 (2017);
- 8) Counsel failed to object to the Solicitor's sentencing phase closing argument endorsing improper stereotypes toward people with intellectual disability when the Solicitor stated: "I mean it's an insult to people that had truly – have a mental disability for them to bring this kind of defense up to try to spare his life trying to use that excuse," Tr. 3169, and "He's not disabled, and, like I say, it's an insult to people that's mentally—I mean that truly has that kind of condition." Tr. 3171. *See Moore v. Texas*, 137 S. Ct. 1039 (2017); *Brown v. State*, 383 S.C. 506, 680 S.E.2d 909 (2009); *State v. Northcutt*, 372 S.C. 207, 641 S.E.2d 873 (2007); *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2007), overruled on other grounds by *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d (2004).

10(c) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during pre-trial proceedings.

11(c) **Supporting Facts:** Counsel failed to adequately question prospective jurors in voir dire to identify prospective jurors with pre-formed beliefs about and stereotypes and biases against a defendant with an intellectual disability. Trial counsel's performance during pre-trial proceedings was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984).

10(d) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20— during the penalty phase of the proceedings.

11(d) **Supporting Facts:** Trial counsel's performance during the sentencing phase was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's specific unreasonable and prejudicial acts or omissions are

- 1) Counsel failed to adequately investigate and present the full range of mitigating evidence concerning Applicant's social and life history, *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- 2) Counsel failed to adequately investigate and present all available mitigating evidence concerning Applicant's mental health prior to and at the time of the capital offense, *see Wiggins v. Smith*, 583 U.S. 510 (2003);
- 3) Counsel failed to investigate and present mitigating evidence concerning Applicant's lack of future dangerousness, adaptability to confinement, and good character, *Skipper v. South Carolina*, 476 U.S. 1 (1986);
- 4) Counsel failed to adequately investigate and present scientific evidence demonstrating that the fact the victim urinated on herself was a natural result of death as opposed to resulting from fear while alive during the incident;
- 5) Counsel failed to object to misleading jury instructions, in violation of the Sixth and Eighth Amendments to the United States Constitution, which did not properly advise the jurors that whatever sentence they recommended would be the sentence imposed by the court rather than a recommendation to the court about the sentence to be imposed, *see Hurst v. Florida*, 136 S. Ct. 616 (2016); *Ring v. Arizona*, 536 U.S. 584 (2002); *Caldwell v. Mississippi*, 472 U.S. 320, 328-29 (1985); *see also State v. Bellamy*, 293 S.C. 103, 259 S.E.2d

63 (1987), *overruled by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991);

- 6) Counsel failed to investigate and present evidence of remorse and acceptance of responsibility including, but not limited to, failure to call a hospital chaplain to testify regarding Applicant's remorse shortly after the crime when the chaplain's records documenting the remorse were excluded by the trial judge as inadmissible hearsay;
- 7) Counsel failed to object to Solicitor's closing argument that Applicant did not have any remorse for killing Brooke Center, including but not limited to Tr. 3169 ("not once did he cry about Brooke. Not once did he show any remorse for Brooke. Doesn't even show one concern for Brooke."), Tr. 3180-81, under circumstances where the Solicitor successfully objected to trial counsel introducing evidence of Applicant's remorse. *See Simmons v. South Carolina*, 512 U.S. 154 (1994); *Skipper v. South Carolina*, 476 U.S. 1 (1986); *State v. Blurton*, 342 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000), *reversed on other ground by State v. Blurton*, 352 S.C. 203, 573 S.E.2d 802 (2002);
- 8) Counsel failed to object to the Solicitor's improper closing arguments, including but not limited to the following:

"Everything they rolled out yesterday, I mean, I got mad. I tried to keep my composure over there, but here he is, he's saying he mentally retarded." Tr. 3168.

"He's not mentally retarded, and the reason why I'm going so much over this, and the judge is going to charge you about mental retardation, that if you make a finding that he is mentally retarded from there, it's a bar to the death penalty if it's by a preponderance of the evidence. They have to show it by that amount. Preponderance means by the greater weight of the evidence." Tr. 3171-72.

*See, e.g. Brown v. State*, 383 S.C. 506, 680 S.E.2d 909 (2009); *State v. Northcutt*, 372 S.C. 207, 641 S.E.2d 873 (2007); *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2007), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d (2004).

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED

DATE 08-17-2010 BY 60322

CR 11-1

9) Counsel failed to adequately raise and argue all legal and factual grounds for finding Applicant's death sentence was not "warranted under the evidence of the case" pursuant to S.C. Code § 16-3-20, and is "disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant" pursuant to S.C. Code § 16-3-25 (C)(3), *see State v. Dickerson*, 395 S.C. 101, 125 n. 8, 716 S.E.2d 895, 908 n. 8 (2011).

10(e) Applicant's right to due process of law—guaranteed by the Fourteenth Amendment to the United States Constitution—was violated as a result of the knowing presentation of false or misleading information by a state agent. *See Kyles v. Whitley*, 514 U.S. 419 (1995); *Napue v. People of State of Ill.*, 360 U.S. 264, 79 S. Ct. 1173, 3. L. Ed 1217 (1959); *see also Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006); *Alcorta v. State of Texas*, 355 U.S. 28, 78 (1957).

**11(e) Supporting Facts:** Spartanburg County Sheriff Office Investigator Lorin Williams testified Mr. Blackwell did not have remorse for killing Brooke Center. Tr. 2679-86. During closing argument, the Solicitor relied on the testimony of Investigator Williams to argue Mr. Blackwell "[d]idn't show any remorse" for Brooke Center's death, Tr. 3180-81, despite evidence from hospital chaplains and others present that Applicant did show remorse. Investigator William's testimony was false, and even if the Solicitor did not knowingly solicit such false evidence, the Solicitor allowed it to go uncorrected. *See Kyles v. Whitley*, 514 U.S. 419, 115 S. Ct. 1555, 131 L.Ed.2d 490 (1995); *Napue v. People of State of Ill.*, 360 U.S. 264, 79 S. Ct. 1173, 3. L. Ed 1217 (1959); *see also Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006); *Alcorta v. State of Texas*, 355 U.S. 28, 78 (1957).

10(f) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, and S.C. Code § 17-3-20—during the appellate proceedings.

**11(f) Supporting Facts:** Appellate counsel's performance during the appellate phase was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984); *see also Evitts v. Lucey*, 469 U.S. 387 (1985); *Southerland v. State*, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Counsel's specific unreasonable and prejudicial acts of omissions are:

1) Appellate counsel failed to adequately raise and brief all legal and factual grounds for challenging the trial court's ruling that Applicant was not intellectually disabled, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 134 S.Ct. 1986 (2014); *Atkins v. Virginia*, 536 U.S. 304 (2002); *Patrick v. State*, 349 S.C. 203, 562 S.E.2d 609 (2002);

STATE OF SOUTH CAROLINA  
SHERIFFS ASSOCIATION  
ATTORNEY GENERAL

67-8-17-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000

CL 11

2) Appellate counsel failed to raise the issue that the trial court erred in admitting prejudicial autopsy photographs and close-up photographs from the crime scene, including a photograph of the victim after her body was moved, U.S. Const. amends. V, VIII; Rule 403 SCRE;

3) Appellate counsel failed to raise the issue that the trial court erred in allowing Reggie Frye to testify during the penalty phase of Applicant's trial when Frye's testimony was not relevant and impermissible hearsay, Rule 401, SCRE; Rule 613(b), SCRE; Rule 802, SCRE.

4) Appellate counsel failed to adequately raise and brief all legal and factual grounds for finding Applicant's death sentence disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant, pursuant to S.C. Code § 16-3-25 (C)(3), *see State v. Dickerson*, 395 S.C. 101, 125 n.8, 716 S.E.2d 895, 908 n. 8 (2011).

## DISCUSSION

### *Jurisdictional Limitations for PCR Actions*

The scope of this Court's jurisdiction for PCR matters is set out in S.C. Code Ann. § 17-27-20(A), which provides:

(A) Any person who has been convicted of, or sentenced for, a crime and who claims:

(1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

(2) That the court was without jurisdiction to impose sentence;

(3) That the sentence exceeds the maximum authorized by law;

(4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

(6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error

RECEIVED  
ALL COUNTY  
11/03/2010

64:8 W 17-27-20

01/11

heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

Section (B) further limits the jurisdiction of a PCR court as follows: “This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction.” S.C. Code Ann. § 17-27-20(B). It is intended that PCR “take[] the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence” and that PCR “shall be used exclusively in place of them.” *Id.*

Because a PCR action is not a substitute for other available proceedings and/or remedies, particularly those at trial and direct appeal, a PCR applicant cannot assert any issues in his PCR action that could have been raised at trial and on direct appeal. This prohibition has long been recognized. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“Errors in a petitioner’s trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings.”); *see also Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (“The Simmons rule gives effect to the Legislature’s clear intent that the post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”).

While previously heard or unheard freestanding trial or direct appeal issues are not cognizable, the general factual basis for the previously unheard issues may be reached by and through an allegation of ineffective assistance of counsel. *Drayton*, 312 S.C. at 9, 430 S.E.2d at 520 (“Issues that could have been raised at trial or on direct appeal cannot be asserted in an

application for post-conviction relief absent a claim of ineffective assistance of counsel.”). Ineffective assistance of counsel claims constitute the general nature of issues appropriate for post-conviction relief actions. *See, e.g., Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (discussing jurisdiction pursuant to S.C. Code § 17-27-20(A), and finding “A typical PCR claim of ineffective assistance of counsel falls into this category....”). Ineffective assistance claims are analyzed under the *Strickland* standard.

#### *Strickland v. Washington Standard*

To establish that Sixth Amendment counsel was ineffective, a PCR applicant must show that counsel’s representation fell below an objective standard of reasonableness, and but for counsel’s error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. *Strickland*, at 694. Relief will not be granted on a showing of mere error—prejudice must also be shown. *Id.* Prejudice may be found in capital sentencing only “when ‘there is a reasonable probability that, absent [counsel’s] errors, the sentencer—including an appellate court, to the extent it independently reweighs the evidence—would have concluded that the balance of aggravating and mitigating circumstances did not warrant death.’” *Jones v. State*, 332 S.C. 329, 333, 504 S.E.2d 822, 823 (1998) (quoting *Strickland*, 466 U.S. at 695). Again, “[a] reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* (quoting *Strickland*, 466 U.S. at 694).

To conduct a fair review of counsel’s performance, a reviewing court must “eliminate the distorting effects of hindsight” and attempt “to reconstruct the circumstances of counsel’s

2007 MAR 27  
APPELLATE DIVISION  
JUDGE: J. L. WILSON

6:18 PM 12/27/06

[45]

CLERK

challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689.

When reviewing Applicant's present claims under the above standards, the trial court record when considered in light of the relevant and controlling case law demonstrates that Applicant is not entitled to any relief.

*Argument in Response to the Claims*

***10 and 11(a) Applicant's death sentence violates the Eighth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution due to the fact that Applicant is a person with intellectual disability***

The instant claim is immediately shown to be without merit as the trial judge and Applicant's jury have found Applicant is not intellectually disabled, and our Supreme Court upon review of the issue on the merits as to whether the evidence supported the trial judge's determination *by a preponderance*, affirmed. *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017). Petitioner may not re-litigate this issue. S.C. Code § 17-27-20(b) specifically provides that the remedy of post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." The South Carolina Supreme Court has consistently and repeatedly held that issues that have been raised at trial and on direct appeal may not be raised again in PCR. *See, e.g., Simmons v. State, supra*. A good summary of the prohibition is in *Drayton v. Evatt*:

S.C. Code Ann. § 17-27-20(b) (1985) of the Uniform Post-Conviction Procedure Act provides that post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." The *Simmons* rule gives effect to the Legislature's clear intent that the post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal. *Peeler v. State*, 277 S.C. 70, 283 S.E.2d 826 (1981); *see also Cummings v. State*, 274 S.C. 26, 260 S.E.2d 187 (1979); *Ashley v. State*, 260 S.C. 436, 196 S.E.2d 671 (1979).



501 (1973); *Sellers v. Boone*, 261 S.C. 462, 200 S.E.2d 686 (1973). Issues that could have been raised at trial or on direct appeal cannot be asserted in an application for post-conviction relief absent a claim of ineffective assistance of counsel. *Hyman v. State*, 278 S.C. 501, 299 S.E.2d 330 (1983).

312 S.C. at 8–9, 430 S.E.2d at 520; *see also Al-Shabazz*, 338 S.C. at 363, 527 S.E.2d at 747 (“In PCR, the focus usually is upon alleged errors made by trial or plea counsel. Therefore, when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel.”)

This claim must be dismissed given it was presented to and rejected by the trial judge and the jury, then challenged on direct appeal and the Supreme Court of South Carolina found that the trial court’s determination was not contrary to the preponderance of the evidence. The statute and controlling case law together do not allow this claim to be litigated again.

Further, re-litigation is barred by a number of separate theories, each equally applicable, each underscoring the necessary principle that litigants simply cannot continue to litigate a claim that has been presented and ruled upon, particularly when the ruling was on the merits. *See also State v. Hewins*, 409 S.C. 93, 106 and 111-12, 760 S.E.2d 814, 821 and 823 (2014) (“Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same,”) and, though it is a civil doctrine, collateral estoppel may even be applied in general sessions matters in discrete circumstances)(quoting *Carolina Renewal, Inc. v. S.C. Dep’t of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct.App.2009)); *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (“Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the

subject of a prior action between those parties.” (emphasis added)); *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) (“Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court.”); *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) (“The law of the case applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case.”). For all these reasons in addition to the statutory and case law limitations as referenced above, the claim cannot be re-litigated.

Applicant suggests that he may find a reprieve from the procedural bar by reliance on S.C. Code § 17-27-45 (C); however, that provision speaks to a resetting of the one-year statute of limitations, not re-litigation. *Id.*, see also *Robertson v. State*, 418 S.C. 505, 513, 795 S.E.2d 29, 33 (2016) (explaining section in context of one-year time limitation). And, though the PCR jurisdictional portion of the statute contains a similar provision, Applicant can show no new, “material” fact to even consider as the genetic testing he relies upon is not dispositive to the issue or even necessary to opinions on intellectual disability under standard medical definitions and protocols. “As the Court noted in *Atkins*, the medical community defines intellectual disability according to three criteria: significantly subaverage intellectual functioning, deficits in adaptive functioning (the inability to learn basic skills and adjust behavior to changing circumstances), and onset of these deficits during the developmental period.” *Hall*, 572 U.S. at 710. Such testing as referenced by Applicant is neither dispositive, nor conclusive of the relevant diagnosis.

Respondent recognizes that our Supreme Court has allowed several successive actions that presented a claim of intellectual disability to proceed even in light of the State’s assertion of the statute of limitations and the statutory bar against successive applications; however, those

instances stand in stark contrast to the claim here as in those cases, a claim of intellectual disability had not be litigated and a fact-finding made. *See Terry v. State*, 2022-cp-924; *Woods v. State*, 2018-cp-14-382; *Stone v. State*, 2018-cp-43-1025; *Aleksey v. State*, 2015-cp-38-764, *Bryant v. State*, 2016-cp-43-828.<sup>16</sup> Here, there is a significant difference. The claim was *factually determined* – not only raised but adjudicated on the merits and challenged then affirmed on appeal. The issue of whether Applicant is intellectual disabled is settled. This claim should be dismissed.

***10 and 11 (b)(1) Counsel failed to investigate and present all relevant evidence on the issue of intellectual disability including evidence of Applicant's significantly subaverage intellectual functioning, deficits in adaptive functioning, and onset before the age of 18***

Applicant claims that his counsel was ineffective for failing to investigate and present an adequate case for intellectual disability. Applicant is unable to satisfy the required showing under *Strickland* to obtain relief. The trial court record supports that counsel provided constitutionally sufficient representation in regard to the claim of intellectual disability. Further, Applicant's claim rests on misapprehension of the correct and controlling law.

---

<sup>16</sup> Our Supreme Court has allowed these actions to go forward, but has not expressly addressed the claim in context of ordinary procedural bars in a published opinion to provide specific guidance to the bench and bar. But again, this case stands by itself in that it is the only case where the factual determination has been previously made and reviewed on appeal. That is a weighty distinction. Further, application of the bar is consistent with the Legislature's provisions in the PCR statute, and binding case law, as outlined above, and is not inconsistent with treatment in other jurisdictions, even when the claim was available but *not* adjudicated. *See, for example, State v. Lotter*, 311 Neb. 878, 902–03, 976 N.W.2d 721, 739–40 (2022), *cert. denied*, No. 22-6191, 2023 WL 2563351 (U.S. Mar. 20, 2023) (“we agree with the district court that Lotter could have discovered, through the exercise of due diligence, the factual predicate to support a constitutional claim of intellectual disability under *Atkins* long before March 2018. We therefore agree that Lotter's *Atkins* claim is not timely under § 29-3001(4)(b). And for the same reason, we also agree with the district court that Lotter's *Atkins* claim is procedurally barred, because he failed to raise it in his first postconviction motion after *Atkins* first announced the constitutional rule that those with an intellectual disability are ineligible for the death penalty.”) (footnotes omitted); *Prieto v. Zook*, 791 F.3d 465, 473 (4th Cir. 2015) (declining to excuse defaulted *Atkins* claim that had been procedurally barred in state litigation). L2 07/18/23

The failure to find “all” mitigation and present that mitigation is an oft alleged, broad issue that is not based on actual Sixth Amendment error. The Sixth Amendment simply does not require such absolutes. Rather, *Strickland* requires reasonable investigation. *Mahdi v. Stirling*, 20 F.4th 846, 902 (4th Cir. 2021), *cert. denied*, 214 L. Ed. 2d 345, 143 S. Ct. 582 (2023) (finding counsel’s investigation sufficient noting “[C]ounsel is only required to make a *reasonable*”—not exhaustive—“investigation for possible mitigating evidence.” (emphasis added))(quoting *Byram v. Ozmint*, 339 F.3d 203, 209 (4th Cir. 2003)). Further, presentation of evidence is distinct from investigation of evidence. *See Owens v. Stirling*, 967 F.3d 396, 417 (4th Cir. 2020) (“The Supreme Court has likewise rejected the notion that counsel must tell a defendant’s life history with elaborative detail, reasoning that where (as here) counsel put forth ‘substantial mitigation evidence,’ any cumulative evidence about the same circumstances heard by the jury offers ‘an insignificant benefit, if any at all.’”) (quoting *Wong v. Belmontes*, 558 U.S. 15, 23 (2009) (*per curiam*)). This allegation is self-defeating. Applicant does not raise an appropriate claim under the *Strickland* standard. Even so, should there be additional stories or facets from Applicant’s background and mental status presented at the PCR evidentiary hearing, Respondent submits that Applicant will not be able to show *Strickland* deficiency and prejudice. The trial court record reflects a cohesive and broad presentation which would render additional detail of “insignificant benefit, if any all.” *Wong, supra*.

Notably, counsel recognized the potential for such claim early in the representation. Counsel advised the trial court that a potential claim pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002) was being investigated. Counsel retained the services of forensic psychologist Dr. Ginger Calloway (who later testified) to assist in supporting Applicant’s intellectual disability claim, and also those of Dr. Geoffrey McKee. (*See* R. 4796). Evidence at the PCR evidentiary hearing is

67:3 HV L2 01/15/22

Q5712

[50]

expected to further show that counsel assembled a team of experts to aid in investigation and develop of the defense case, including in addition to the psychologists, mitigation investigators, fact investigators, and psychiatrists.

For trial, Dr. Calloway opined that Applicant was intellectually disabled, and issued a forty-page report, and later, an eight-page supplemental report, explaining her findings. (R. 4358-4405). She not only reviewed Applicant's medical records, school records, and testing results for Applicant and members of his family, but also conducted her own testing regarding intellectual functioning and adaptive behaviors. (See R. 4359 and 4362-63).

A pre-trial hearing was held pursuant to *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003). During the hearing, defense counsel called Dr. Calloway to present her findings and opinion that Applicant was intellectually disabled. Dr. Galloway defined intellectual disability as (1) "significantly subaverage general intellectual functioning;" (2) "the presence of adaptive deficits in two of ten areas identified by the DSM-IV-TR;" and (3) "onset of the disability before the age of 18." (R. 3834). She detailed her approach in reaching her determination on adaptive deficits, then presented her conclusion that Applicant displayed deficits in four to ten areas. (R. 3937). As to the final intellectual disability prong, Dr. Calloway testified that "a number of different sources" showed that Applicant's intellectual functioning was subaverage before the age of 18. (R. 3852-53).

Defense Counsel also called Dr. Calloway to testify at the penalty phase. Her testimony there was largely a repeat of the testimony offered during the *Atkins* hearing. However, Dr. Calloway adapted her testimony in order to address several issues that arose in the prior hearing. Dr. Calloway testified to the necessity of interviewing multiple individuals for purpose of determining social adaptability rather than confining the investigation to an interview with the

64:8 1W 17 8/11/2007

09:13

[51]

defendant. (R. 2825-26). This was in notable response to Dr. Brown's *Atkins* testimony regarding his social adaptability investigation which was shaped by Applicant's disclosures. (See R. 4398, 4405 and 4155-58). Dr. Calloway concluded her testimony to the jury by offering her opinion that Applicant was intellectually disabled under the clinical definition. (R. 2916).

The trial court record clearly supports that defense counsel investigated, developed, and presented a well-prepared case of intellectual disability with reliance on a credentialed expert. Counsel recognized the possible *Atkin's* claim, and with the help of investigators and experts, gathered voluminous records and interviewed numerous witnesses. The record supports counsel was not ineffective in regard to the intellectual disability claim.

Applicant cites to *Wiggins v. Smith*, 539 U.S. 510 (2003) in support of error, but his reliance on that case is misplaced. In concluding counsel was ineffective, the Court in *Wiggins* found that:

Counsel did not conduct a reasonable investigation. Their decision not to expand their investigation beyond a presentence investigation (PSI) report and Baltimore City Department of Social Services (DSS) records fell short of the professional standards prevailing in Maryland in 1989. Standard practice in Maryland capital cases at that time included the preparation of a social history report. Although there were funds to retain a forensic social worker, counsel chose not to commission a report.

*Wiggins*, 539 U.S. at 511.

The circumstances of Applicant's trial are immediately distinguishable from the error in *Wiggins*. As noted above, Applicant's counsel investigated with the help of multiple, qualified experts. There is ample evidence here to find counsel conducted a reasonable investigation.

Lastly, Applicant includes an alleged violation of S.C. Code § 17-3-20 in this ground, as well. That statute simply provides for indigent murder defendants to be provided "qualified and experienced counsel." The record shows this allegation to be without merit. The trial court appointed qualified and experienced counsel (See R. 4788-89). At any rate, the allegation does

not fall under the jurisdictional limitations of the PCR statute – it does not address a claim that the conviction or sentence violates the state or federal constitution, or state law. See S.C. Code § 17-27-20 (A). But if possibly cognizable, which Respondent contests, any challenge to the appointment should have been made during the trial proceedings; thus, the allegation is not appropriate for PCR under the Simmons Doctrine.

***10 and 11(b)(2) Counsel failed to object to the trial judge's reliance on stereotype and deviation from clinical consensus and practice in the determination that Applicant was not a person with intellectual disability***

Applicant is unable to meet his burden under *Strickland*. Respondent relies on the trial court record including the trial judge's order, (Supp. R. 1-14), and also the opinion of Supreme Court of South Carolina that affirmed the trial judge's ruling. Of note is that our Supreme Court considered *Moore*, though issued after the trial, and found that the trial court ruling did not offend the instructions in *Moore*. See *Blackwell*, 420 S.C. at 143 n. 11, 801 S.E.2d at 721 n. 11; see also note 4, *supra*. Indeed, the basic error Applicant makes in this claim may be refuted by the Supreme Court's decision:

[W]e note the trial court correctly identified and made its determination applying the statutory definition of "mental retardation." Moreover, contrary to Blackwell's claim, the trial court did not base its decision solely on the fact that Blackwell was able to successfully obtain a commercial driver's license and be employed as a truck driver. The court relied on other factors, including Blackwell's school performance and full employment history. Additionally, the court explained why it gave greater weight to Dr. Brown's report, noting that the report was directed at an evaluation of Blackwell's "formative years" and was consistent with the "functional adaptations" required by the statutory definition of "mental retardation." The court also discounted some of Dr. Calloway's findings as it questioned whether "adequate information" was used and believed Dr. Calloway improperly made subjective determinations concerning the results obtained and weighted responses of various informants differently."

05:08 PM 17 JAN 2007

GETT

We also find the trial court's factual determinations are supported by evidence in the record. Admittedly, it is concerning that Blackwell, at 54 years old, scored 63 and 68 on the I.Q. tests given in preparation of the *Atkins* hearing. However, in terms of "significantly sub-average general intellectual functioning," the trial court readily acknowledged the recent I.Q. scores but was persuaded by evidence that: (1) Blackwell, prior to the age of 18, scored between 68 and 87 on standard school I.Q. tests; (2) Blackwell made "reasonably sufficient grades during his school career"; (3) at the age of 18, Blackwell was found to read at the 5.8 grade level, completed arithmetic problem solving at the 6.6 level, and completed arithmetic computation at the 5.2 level; and (4) Blackwell dropped out of high school in the eleventh grade despite having earned significant credits toward graduation

*Blackwell*, at 142, 801 S.E.2d at 721.

The thoroughness of Judge Couch's order, supplemented by the conclusion reached by our Supreme Court in *State v. Blackwell*, leaves little doubt that the trial court's determination was not based on stereotypes but was instead fairly based on the evidence as presented during Applicant's *Atkins* hearing. Nothing in the cases cited and relied upon by Applicant requires that a fact-finder accept all clinical or forensic opinions without challenge. Applicant cannot show deficiency in representation. But if Applicant could show deficient performance, he still cannot carry his burden of showing *Strickland* prejudice in light of the fact that our Supreme Court has already found the trial court's determination was appropriate based in the evidence and credibility findings as to the expert's testing and opinion.

Additionally, Applicant again includes a vague, alleged violation of the appointment statute, S.C. Code § 17-3-20. That is also without merit for all the reasons presented above in discussion of the statute. Respondent incorporates the prior discussion regarding the appointment of trial counsel statute as if repeated verbatim.

CLERK OF COURT  
SOUTH CAROLINA  
JAN 27 2017

2017 JAN 27 11:08:50

FILED



***10 and 11 (b)(3) Counsel failed to investigate and present evidence that some of Applicant's purported IQ test scores in the developmental period were not legitimate, individualized measures of general intellectual functioning and thus were not inconsistent with intellectual disability***

Applicant next alleges that counsel was deficient in failing to adequately discredit IQ scores that reflected Applicant's higher intellectual capacity. However, the trial court record supports that counsel, with and/or through qualified experts, investigated the IQ tests that were administered to Applicant during his grade school years, and attempted to rebut their veracity.

During examination of Dr. Calloway at the *Atkins* hearing, counsel referenced several tests administered to Applicant during his grade school years which reflected an IQ level higher than that required for intellectual disability. Dr. Calloway acknowledged the testing but stated, "[i]t's used to go at IQ, but it's a group administered test, and group measures of IQ are typically not as accurate as individually administered measure of IQ." (R. 3872). Later, in regard to another similar test, Dr. Calloway testified "it's considered a measure of general aptitude, but that can include achievement as well. So, no, it's not strictly speaking an intelligence test that you would use for placement purposes." (R. 3891). During cross-examination, the State reference such testing and Dr. Calloway again responded, "this is still a measurement of mental maturity, i.e. achievement, not so much an individually administered IQ test," though she admitted one test reported an 87 IQ. (R. 4003-4004; *see also* R. 4118-4119).<sup>17</sup> She provided similar testimony during the penalty phase

---

<sup>17</sup> Further negating possible prejudice, the State's expert Dr. Brown provided a similar assessment:

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 measure 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 [intellectually disabled].

(R. 4189)

of trial. She testified that the tests administered to Applicant and family members during grade school were not accurate IQ determinations. (R. 2841-42; *see also* R. 2847-50 and 2861-62).

For these reasons, Respondent submits Applicant cannot show *Strickland* deficient performance or prejudice.

Additionally, the alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above. Respondent incorporates the prior discussion regarding the statute as if repeated verbatim.

***10 and 11(b)(4) Counsel failed to investigate and present circumstances under which Applicant obtained a commercial driver's license and other certifications to refute the trial judge and jury's reliance on the certification in finding Applicant was not a person with intellectual disability***

Applicant claims counsel was ineffective for failing to adequately investigate and address Applicant's acquisition of a commercial driver's license. However, the record shows that this was considered at trial, but was not the critical, decisive point as reflected in this passage from the direct appeal opinion:

...contrary to Blackwell's claim, the trial court did not base its decision solely on the fact that Blackwell was able to successfully obtain a commercial driver's license and be employed as a truck driver. The court relied on other factors, including Blackwell's school performance and full employment history. ***Additionally, the court explained why it gave greater weight to Dr. Brown's report, noting that the report was directed at an evaluation of Blackwell's "formative years" and was consistent with the "functional adaptations" required by the statutory definition of "mental retardation." ....***

*Blackwell*, 420 S.C. at 141, 801 S.E.2d at 72 (emphasis added).

In short, the fact that Applicant did obtain a commercial driver's license is not at issue, and there is no indication in the record of a failure to investigate this fact, but since it is only part of the relevant analysis, Applicant will not be able to carry his *Strickland* burden of proof.

Additionally, the inclusion of an alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above. Respondent incorporates the prior discussion regarding the statute as if repeated verbatim.

***10 and 11(b)(5) Counsel failed to investigate and present evidence to the trial judge and jury that Applicant's depression and cancer treatment (including chemotherapy) had no demonstrable effect on IQ scores establishing significantly subaverage intellectual functioning***

Applicant claims that counsel was ineffective in not discrediting that Applicant's depression and cancer treatment may affect IQ, but, as with the assertion above, there is evidence that these matters were discussed at trial. During cross-examination of Dr. Calloway in the *Atkins* hearing, the State called attention a particular antipsychotic medication Applicant was prescribed. It was explored whether the lower current IQ score may be a result of prescribed medication. (R. 4017-24). During examination of the State's expert, Dr. Brown, Applicant's counsel took the opportunity to counter the questions raised by the State as to the affect depression and cancer treatment could have had on Applicant's intellectual capacity:

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

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?

Q 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.

(R. 4195-96).

During the penalty phase, the defense adapted its intellectual disability presentation to further attempt to discredit this theory. During examination of Dr. Calloway, counsel questioned her on the possible affect Applicant's depression treatment, specifically Thorazine, could have on his IQ. She responded, in part:

A [Y]es, he was taking it and I was concerned not because of his behavior because when someone is overdosing on or if they have too much Thorazine, it's very obvious event to a lay person. Their words are slurred. They can't walk very well. They can, they can barely keep their eyes open. You know, they're - - just look not right.

2023/10/27 17:08:50

03/10/2023

But I was concerned because it is a medication that was popular 30 years, 40 years ago, a lot — some number of years ago, and it's been replaced by earlier medications. So, I, I was concerned about it from that point of view and I wanted to ask his attorneys about it.

I did, after I was here February 19th through the 21st, I went and consulted a forensic psychiatrist about the dosage that he was on at the time and he was actually on a very low dose, according to this forensic psychiatrist, of the Thorazine. So, I looked — a dose actually lower than what children are given in inpatient facilities. So — and this forensic psychiatrist also told me some other ways in which the Thorazine is being used, so, it's not maybe quite as uncommon as I had thought, but I was concerned and I brought it to the attorney's attention.

Q Now, based on what you've been able to do and, and what you know and your consult, do you believe the Thorazine affected his scores on the WAIS-4 or any of these scores?

A I don't think so. He, he did not look overmedicated to me. What I did learn, from the forensic psychiatrist, was that he's at such a low dose that the forensic psychiatrist would of expected, if anything, that dosage of Thorazine would of helped him to be more alert than be less alert.

(R. 2833-34).

The trial record supports that counsel, with and/or through the expert, had investigated and attempted to counter questions referencing medication and its role in testing performance, if any.

Again, the trial record supports that Applicant will not be able to show *Strickland* error and prejudice. Additionally, the inclusion of an alleged violation of the appointment statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above. Respondent incorporates the prior discussion regarding the appoint of counsel at trial statute as if repeated verbatim.

***10 and 11(b)(6) Counsel failed to investigate and present evidence that Applicant is a person with intellectual disability as a result of a genetic abnormality of his CAMTA1 gene, which he inherited from his mother***

In review of the transcript, it does not appear that genetics testing was referenced directly; however, without question, counsel noted a family connection in that several family members

appeared to have document history of lower functioning. Even so, there is nothing indicated from the testifying psychologist that genetic testing was required or even desirable in an evaluation for intellectual disability. Upon information and belief, Respondent submits that the evidence at the hearing will not show that genetic testing was requested by any of the experts retained or consulted. Even so, Applicant will not be able to show prejudice even if deficient performance could be shown. The genetic testing and results cannot be shown to be necessary to or dispositive of the question of intellectual disability under medical community standards. Indeed, the Supreme Court noted in *Atkins*, the medical community defines intellectual disability according to three criteria: significantly subaverage intellectual functioning, deficits in adaptive functioning (the inability to learn basic skills and adjust behavior to changing circumstances), and onset of these deficits during the developmental period.” *Hall*, 572 U.S. at 710. Further, the Court expressed, “It is not sound to view a single factor as dispositive of a conjunctive and interrelated assessment.” *Id.*, at 723.

Based on the foregoing, it appears that Applicant will not be able to show *Strickland* error and prejudice.

Additionally, the inclusion of an alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above. Respondent incorporates the prior discussion regarding the statute as if repeated verbatim.

***10 and 11 (b)(7) Counsel failed to adequately inform and educate the trial judge and jury about potentially prejudicial and preconceived misconceptions and stereotypes related to intellectual disability***

Applicant next faults counsel for failing to “educat[e]” the judge and jury about intellectual disabilities. Again, the record shows little support for this claim. Counsel took affirmative

CLERK OF COURT  
SOUTH CAROLINA  
JAN 20 10 50 AM '13

[60]

10 12 13

measure to educate both the judge and jury in regards to potential misconceptions and stereotypes.

During Dr. Calloway's *Atkins* hearing testimony, the following exchange occurred:

Q Can somebody be mild mentally retarded and drive a truck?

A Yes .

Q forklift?

A Yes .

Q Be a welder?

A Yes .

Q Get a GED?

A Yes.

Q Read?

A Yes.

Q Write?

A Yes .

Q Write letters?

A Yes.

Q Use the telephone?

A Yes.

Q Use an ATM machine?

A Yes.

Q Have a child?

A Yes.

Q Marry?

A Yes

6/13

[61]

Q Do household chores?

A Yes

Q Cook?

A Yes .

Q Shop?

A Yes.

Q Count money?

A Yes .

Q Make change?

A Yes.

Q Buy clothes?

A Yes.

Q Dress themselves?

A Yes.

Q Maintain hygiene?

A Yes.

Q Work?

A Yes .

Q Be a mechanic?

A Yes.

Q Be a pizza delivery driver?

A Yes.

Q Have a driver's license?

A Yes.

100-77-111  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED

DATE 03-27-2013 BY 60322

CONFIDENTIAL



Q Get a CDL?

A Yes.

Q Can you rule out mental retardation by pointing to these skills and say the person's not M.R.?

A No, because that's not the way, in our profession, that we go about assessing adaptive functioning. It's not a rule out. *It's looking at the entire picture of who the person is with regard to strengths and deficits and identifying those deficits in terms of these skill areas.*

(R. 3838-40) (emphasis added).

Further, Dr. Calloway presented a detailed analysis on how mental health professionals investigate and determine intellectual disability. (R. 3840-45). Dr. Calloway also cautioned on the "cloak of competency" exhibited by individuals with mild mental retardation:

For several reasons. People who are suspected of having intellectual disability, particularly people who fall within the mild range of intellectual disability, are people who are — have sufficient awareness to know that they are not as bright, if you want to put it that way, they're not as capable, they don't have as much intellect as other people, and this is for — this is a shameful thing in our society not to be bright, not to be capable, it's shameful.

So, there is a — there's a way in which people who have intellectual disability, particularly people with the mild form of it, will want to cover what they, what they don't know and pretend that they do know. There's a book called The Cloak of Competence in which this man did a study of a number of people in California with intellectual disability, and he came up with this concept of The Cloak of Competence.

So, this describes the way in which, if you will, like somebody would put on a coat to cover themselves, The Cloak of Competence is what people with mild M.R. or mild I.D. do in order to pass, in order to look like that they are average normal people.

(R. 3845-46).

Counsel also attempted to address the fact that Applicant had not just a license, but a Commercial Driver's License and had a career in trucking. Dr. Calloway detailed during the Atkins

hearing and trial Applicant's accident history and disciplinary records from his various employers. (R. 3884-90 and 2947-48). In addition, Dr. Calloway reflected on comments made by one of Applicant's prior employers:

But Mr. Bagwell said if you could drive at all you could drive those trucks, and this is down at the latter part of that paragraph. He said later you don't need a Ph.D or college degree to drive a truck, and he thought that [Applicant] didn't drive tanker trucks, which required a greater amount of paperwork to be completed by the driver.

(R. 3932).

Counsel also took several more opportunities to educate the jury during the penalty phase about the realities of intellectual disability. Dr. Calloway began her testimony by informing the jury that individuals with mild intellectual disabilities often appear normal. She again explained the "cloak of competence" intellectually disabled individuals often exhibit in order to maintain a normal appearance. (R. 2826). Dr. Calloway also agreed that individuals with mild mental retardation have the capability to both learn and read. (R. 2868). Similarly, counsel asked during presentation of Applicant's work history, whether the mildly mentally retarded could work. Dr. Calloway responded:

They can be - - they are in educable sorts of classes, educable classes for special ed children, and so they can be taught, and they can be taught through routines and they can be taught through assistance, and they can be - - they can work. There's no reason they shouldn't be able to work.

(R. 2876-77).

Dr. Calloway opined that a mildly mentally retarded individual could be trained to drive a commercial truck, a forklift, attain a commercial driver's license and to keep logs of their activities.

(R. 2877-78). She testified:

Again, I - - you know, the, the distinguishing thing about mildly mentally retarded people is that, just by looking at them and just by

*looking at some of their activities, would not be sufficient - - a sufficient way to diagnose mental retardation because they are capable of doing many things.*

(R. 2877) (emphasis added).

Again, the trial court record supports that Applicant is unable to satisfy his burden under *Strickland*.

Additionally, the alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above. Respondent incorporates the prior discussion regarding the statute as if repeated verbatim.

***10 and 11(b)(8) Counsel failed to object to the Solicitor's sentencing phase closing argument endorsing improper stereotypes toward people with intellectual disability***

Applicant next claims that counsel was ineffective for not objecting to Solicitor's closing arguments regarding the veracity of Applicant's intellectual disability claim and lack of remorse. Applicant is unable to show a proper objection could be made or that an objection was warranted.

"A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." *Von Dohlen v. State*, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004). "[I]ts content should stay within the record and reasonable inferences that may be drawn therefrom." *Id.*, at 609–10, 602 S.E.2d at 744.

The trial court record shows that there was no reliance on stereotypes in a medical opinion, and, as to the legal conclusion, as our Supreme Court has already found, the trial court engaged in a careful consideration of the credibility of the defense expert's opinion concerning adaptive functioning. *Blackwell*, 420 S.C. at 143 n.11, 801 S.E.2d at 721 n. 11. In other words, the decision was based on critical review of the evidence. There is no basis to find either deficient performance or prejudice. Simply, the State based its closing argument on the evidence and argued that the evidence did not support the conclusion Applicant suffered from intellectual disability – an

argument that he is allowed to make. *See, e.g., Sigmon v. State*, 403 S.C. 120, 128, 742 S.E.2d 394, 398 (2013) (argument not improper where it “stay[s] within the record and reasonable inferences to it.”).

Moreover, a criminal defendant is not entitled to relief based upon error in the closing argument of a prosecutor unless that argument “so infected the trial with unfairness as to make the resulting conviction a denial of due process.” *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974). *See also Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002) (“Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument”). Further, the Supreme Court in *Donnelly* admonished that “a court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury, sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations.” *Donnelly*, 416 U.S. at 647.

Applying this standard to the challenged comments, even if error, the error did not cause the required prejudice for relief. Applicant is unable to meet his burden deficient performance and prejudice under *Strickland*.

Additionally, the alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above. Respondent incorporates the prior discussion regarding the statute as if repeated verbatim.

***10 and 11(c) Counsel failed to adequately question prospective jurors in voir dire to identify prospective jurors with pre-formed beliefs about and stereotypes and biases against a defendant with an intellectual disability***

Applicant alleges that counsel was deficient in failing to question and identify specific jurors with beliefs and biases against persons with intellectual disability. There can be no finding of ineffective assistance as such questions would have been beyond the permissible scope of *voir*

*dire*. “[*Voir dire* is not to be used as a means of pre-educating or indoctrinating a jury or as a means of impaneling a jury with particular predispositions.” *State v. Poindexter*, 314 S.C. 490, 493 n. 2, 431 S.E.2d 254, 492 n. 2 (1993). “While the Sixth and Fourteenth Amendments to the United States Constitution provide a defendant with the constitutional right to a fair and impartial jury of his peers, this right does not entitle a defendant to handpick a jury. The Constitution, after all, does not dictate a catechism for *voir dire*, but only that the defendant be afforded an impartial jury.” *State v. Stanko*, 376 S.C. 571, 576, 658 S.E.2d 94, 96–97 (2008) (citing *Morgan v. Illinois*, 504 U.S. 719, 729 (1992)). “In *Morgan*[*v. Illinois*], the United States Supreme Court held the defendant was entitled to know if jurors would consider general mitigating evidence. The Court did not hold that the defendant was entitled to know if a juror would consider specific mitigating evidence.” *State v. Hill*, 331 S.C. 94, 103, 501 S.E.2d 122, 127 (1998).

Applicant would apparently have counsel question jurors for the purpose of seeking out those who were predisposed to find in favor of intellectual disability. This would be wrong. Counsel cannot be found deficient for failing to seek to ask improper question. Further, the record shows counsel was experienced and had obtained ample information for purposes of *voir dire* and selection. However, the controlling case law shows the claim is without merit.

Additionally, the alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above. Respondent incorporates the prior discussion regarding the statute as if repeated verbatim.

REC'D IN CIVIL  
JANUARY 20 2010  
CLERK OF COURT

2010 JAN 27 AM 8:50

CLERK

[67]

***10 and 11 (d)(1) Counsel failed to adequately investigate and present the full range of mitigating evidence concerning Applicant's social and life history***

***And-***

***10 and 11(d)(2) Counsel failed to adequately investigate and present all available mitigating evidence concerning Applicant's mental health prior to and at the time of the capital offense***

Applicant now claims that counsel performance was deficient for failing to investigate and present the full range of mitigating evidence, and Applicant's mental health prior to and at the time of the capital offense. Respondent reasserts its discussion above that Applicant overstates the Sixth Amendment's reach to make an "all evidence" complaint. *See Mahdi, supra.; Owens, supra.* Even so, the trial record shows that counsel presented a hefty case in defense based on mental health and life history.

Counsel utilized the services of investigators and forensic psychologists (among others) for the purpose of investigating Applicant's social and life history. The defense team conducted numerous interviews of family members, past employers, grade school teachers and acquaintances and collected school, employment and social security records, along with health records. (*See, for example* R. 4362-63, Dr. Calloway's listing of resources). Utilizing this information, counsel presented a detailed accounting of Applicant's social and family history during both the *Atkins* hearing and at trial. In addition, during trial counsel called forensic psychiatrist Dr. Donna Schwartz-Watts (now Dr. Maddox) to testify as to Applicant's history of depression and prior "suicidal gestures." (R. 2976-78). Dr. Maddox also confirmed Applicant's diagnosis of depression disorder. (R. 2979). In regard to Applicant's mental health at the time the murder, Dr. Maddox testified:

So, the only opinion I'm able to give today would be that, in my opinion, he's had a history of major depression before. He's had two episodes before when he was hospitalized, and it's clear, from looking at Doctor Jackson's records, that he remained depressed

before this incident, and it clear that, since I treated him at the jail, he had symptoms of depression as well.

So, the opinion that I could offer to you-all was that he was suffering from a major depression at that time.

(R. 2985).

Applicant is unable to meet his burden of showing *Strickland* deficient representation and prejudice.

Additionally, the alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above. Respondent incorporates the prior discussion regarding the statute as if repeated verbatim.

***10 and 11(d)(3) Counsel failed to investigate and present mitigating evidence concerning Applicant's lack of future dangerousness, adaptability to confinement, and good character***

Applicant claims that counsel was ineffective for failing to adequately investigate and present expert testimony regarding Applicant's lack of future dangerousness, his ability to adapt to incarceration, and his "good character." The trial court record shows the "good character" evidence compliance is without merit.

Counsel presented several character witnesses during the penalty phase of Applicant's trial, including a pastor, former employer, a church acquaintance, Applicant's cousin, daughter, father, and mother. These witnesses testified extensively to Applicant's good character and gentle demeanor. Applicant's former employer, Gail Shook, testified that Applicant was "the most gentle, humble man that I've ever met including my husband." (R. 2759). Applicant's cousin, Sherry Wofford offered that Applicant was "a loving man," and "[j]ust as gentle, always caring about everybody, doing everything he can for anybody." (R. 2990). Applicant's daughter testified that Applicant was "kind, gentle, caring man." (R. 3020). Brittany Fowler, the mother of Applicant's grandson, described Applicant as "[v]ery kind hearted," and stated that he "would give you the

shirt off his back.” (R. 3026). Norm Uber, an acquaintance from church, described Applicant as “a good friend, kind of easy going” and gentle. (R. 3031). Cletus Blackwell, Applicant’s father, testified that Applicant was “a good boy,” no trouble, and did not get into fights. (R. 3037-38). Applicant’s brother-in-law described Applicant as “a really good person,” and “[k]ind and gentle.” (R. 3057). Applicant’s pastor provided the following testimony regarding Applicant:

Well, Ricky is - - I summarize his personality as being phlegmatic maybe, laid back, easy going, did not like to be at any conflicts. He was always smiling, had a little grin all the time, easy going, very cooperative, gentle. Just a lot of good qualities.

(R. 3072).

As to dangerousness, that is arguably also addressed in the lengthy presentation from the character witnesses that the murder was inconsistent with the character previously shown. Moreover, when the State presented testimony from a detention officer concerning Applicant’s hoarding of bleach and medication, counsel conducted a thorough cross-examination for the purpose of minimizing any negative judgment on Applicant’s ability to adapt to prison. (See R. 2652-53). Evidence of adaptability can be shown by evidence of being “a well-behaved and disciplined prisoner.” See *Skipper v. South Carolina*, 476 U.S. 1, 7 n. 2 (1986). Arguably, counsel could reasonably depend on showing a misunderstanding rather than disregard of prison rules in these two instances. Further, upon information and belief Respondent submits that evidence will be adduced at the evidentiary hearing that counsel retained and consulted with a recognized expert in the field of corrections, former warden James Aiken, before making a determination on witnesses to be called at sentencing. Consequently, it would appear that counsel had appropriate information to make an informed decision specifically on evidence to present Applicant’s ability to adapt to prison. Applicant is unable to meet his burden of showing *Strickland* deficient representation and prejudice.

05:10 PM 12/21/2011

CE 11:1 [70]



Additionally, the alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above. Respondent incorporates the prior discussion regarding the statute as if repeated verbatim.

***10 and 11 (d)(4) Counsel failed to adequately investigate and present scientific evidence demonstrating that the fact the victim urinated on herself was a natural result of death as opposed to resulting from fear while alive during the incident***

Applicant is unable to show that counsel was ineffective for failing to contest the State's assertion that the victim urinated herself out of fear. Counsel can hardly be deemed deficient for seeking to avoid further attention to an already sensitive aspect of the case. *See Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 530, 531 (1992) (reasonable trial strategy will not be held ineffective). Further, Respondent submits that Applicant will be unable to show that the result of the proceeding would have been different but for counsel's alleged error. If the determination of fact could be made (which itself is very questionable) investigating and presenting evidence as to whether a child would urinate in fear or upon a process of death does little to aid Applicant. Respondent submits that Applicant will not be able to show deficient performance as such information could not possibly be critical, nor its absence prejudicial in light of the solid and uncontested evidence that Applicant repeatedly shot his eight-year-old victim for the purpose of hurting her father.

Additionally, the alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above. Respondent incorporates the prior discussion regarding the statute as if repeated verbatim.

***10 and 11 (d)(5) Counsel failed to object to misleading jury instructions, in violation of the Sixth and Eighth Amendments to the United States Constitution, which did not properly advise the jurors that whatever sentence they recommended would be the sentence imposed by the court rather than a recommendation to the court about the sentence to be imposed***

Applicant claims ineffective assistance for failure to object to the trial court's jury charge on the jury's recommendation. However, Applicant cannot show error in the charge given.

The record shows that the judge plainly informed the jurors that the recommendation would be followed by the court. (R. 3223, lines 20-22; 3250, lines 7-10).

Applicant's reliance on *Caldwell v. Mississippi*, 472 U.S. 320 (1985) is misplaced. In *Caldwell*, the Supreme Court found "it is constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere." 472 U.S. at 328-29. Our Supreme Court applied the *Caldwell* rule in *State v. Davis*, 306 S.C. 246, 411 S.E.2d 220 (1991). The *Davis* Court found reversal necessary based upon: (1) the trial court's *refusal* to tell the jury "its sentencing recommendation would be accepted by the judge and the sentence imposed accordingly;" and (2) the observance that "nowhere in the record does the trial judge refer to the jury's sentencing decision as anything more than just a recommendation." 306 S.C. at 250, 411 S.E.2d at 222.

In contrast, to avoid such error, the trial court here actually instructed the jury (twice) that it would follow the jury's recommendation which underscored the jury's duty and responsibility. The instruction was clear and completely consistent with established case law on this issue. *See State v. Sims*, 304 S.C. 409, 421-22, 405 S.E.2d 377, 384 (1991) (holding the instruction "whatever you recommend, will be the sentence that will be given to a defendant" informed the jury "that it was to make the ultimate decision as to [the defendant's] fate."); *State v. Middleton*, 295 S.C. 318, 325-26, 368 S.E.2d 457, 461 (1988) (concluding the instruction, "the ultimate punishment of the defendant will be in your hands if you as a member of the trial jury have found the defendant guilty" told the jury it was vested with making a decision as to the defendant's fate); *State v. Bellamy*, 293 S.C. 103, 107, 359 S.E.2d 63, 65 (1987) *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) ("The idea should be conveyed to the jury that its

05:08 AM 12/11/93

CE 113

[72]

sentencing recommendation will be followed.”); *State v. Linder*, 276 S.C. 304, 310-11, 278 S.E.2d 335, 338-39 (1981) (“To instruct the jury that it will recommend what sentence the convicted murderer will be given is not improper and does not mask the true nature of the jurors responsibility at this phase of trial”). Applicant’s allegation of ineffective assistance (or any error in regard to the charge) necessarily fails in light of the record and established case law.

Applicant’s citation to and reliance upon *Hurst v. Florida*, 136 S. Ct. 616 (2016) and *Ring v. Arizona*, 536 U.S. 584 (2002) does not help him to show error. *Hurst* applied *Ring* to invalidate a statutory scheme that allowed an advisory opinion by the jury for sentencing. 136 S. Ct. at 622 (“As with *Ring*, a judge increased Hurst’s authorized punishment based on her own factfinding. In light of *Ring*, we hold that Hurst’s sentence violates the Sixth Amendment.”). Imposing the sentence *could not violate Ring (or Hurst)* because it does not affect the finding of statutory aggravating circumstances. It is that finding that makes Applicant eligible. The actual sentence is selection of the penalty and is not based on a decision to increase the “authorized punishment.” Even so, though the word recommendation is used, it was underscored clearly to the jury that its determination would be followed and was in fact followed in sentencing. There is no error.

Additionally, the alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above. Respondent incorporates the prior discussion regarding the statute as if repeated verbatim.

***10 and 11 (d)(6) Counsel failed to investigate and present evidence of remorse and acceptance of responsibility including, but not limited to, failure to call a hospital chaplain to testify regarding Applicant’s remorse shortly after the crime when the chaplain’s records documenting the remorse were excluded by the trial judge as inadmissible hearsay***

The factual basis for this claim was developed at trial and addressed in the direct appeal. The record shows before the records custodian was called, counsel advised the trial judge of the State’s objection to the substance of the testimony regarding the notes. The trial judge held a

05:00 PM 10/11/2017  
[73]  
05:00 PM 10/11/2017

hearing on the objection outside the presence of the jury. Counsel advised that he would call Ms. Gracie Williams, a record custodian from the Spartanburg Regional Hospital. (R. 2960-61). He sought to introduce the notes of two hospital chaplains who spoke with appellant after his self-inflicted wound and relied upon the business records exception for admissibility. (R. 2962-65). The substance of the notes were described as follows:

... the patient was struggling with guilt, and wanted to tell his grandchildren he loved them...

...He was struggling with his actions and what had been done, and then the second indicates - - second statement . . . was sad, had some prayers in his heart, asked for prayers for the family. We prayed ... the Lord's Prayer together.

(R. 2961, line 25 - 2962, line 2; 2963, line 24 - 2964, line 6).

The State objected noting the information was not in the nature of a diagnosis; the witnesses were available; and, lastly, the notes were more prejudicial than probative. (R. 2962, line 20 - 2963, line 4; 2964, lines 14-23). The State relied upon *State v. Burroughs*, 328 S.C. 489, 501, 492 S.E.2d 408, 414 (Ct. App. 1997), which found statements not necessary to medical treatment or diagnosis were inadmissible hearsay. Counsel offered that "we interviewed the chaplains and ... [t]hey didn't have much memory actually of this event. So, their notes are actually the best evidence of it...." (R. 2963, lines 17-19). The trial judge found that the chaplain's notes were not admissible:

...I assume the pertinent portions are the parts that I discussed earlier that state the patient was struggling with guilt, grandchildren he loved them. He was struggling with his actions and what had been done, and another entry, the next day, by a different individual said but he was sad, had some prayers in his heart, asked for the family. We prayed the Lord's Prayer together.

The case cited by Mr. Barnette does appear to be on point. Also the exception to the hearsay rule for regularly kept business records states that matters which are in the nature of an opinion will

not be admitted as an exception to the hearsay rule from a regularly kept business record.

It appears that the quotes in here that describe the defendant would be in the form of opinions given by the individuals involved, and therefore, I'll grant the State's motion.

(R. 2965, line 15 - 2966, line 6).

On appeal, Applicant argued the trial judge erred in not allowing him to present his evidence of remorse. (Attachment 2, p. 93). Our Supreme Court disagreed. The Court found not only that the trial judge did not err, but even if the ruling had been error, it would only have been harmless in light of other evidence of record:

..we find the trial court correctly excluded the document as it contained inadmissible subjective opinions and judgments, in particular the notations that Blackwell was "struggling with guilt" and "struggling with his actions."

Nonetheless, even if the trial court erred in excluding the chaplains' notes, we find the error harmless as the evidence was cumulative to other evidence in the record of Blackwell's remorse. See *State v. Northcutt*, 372 S.C. 207, 221, 641 S.E.2d 873, 881 (2007) ("Although it was error to exclude the letter written from Appellant to Ms. Northcutt expressing remorse, the error was harmless. The record contains evidence of Appellant's remorse. Appellant was not prejudiced, nor was the outcome of the trial affected.").

Specifically, as mitigation evidence, Blackwell presented: (1) Dr. Donna Schwartz-Watts, a psychiatrist who evaluated Blackwell, who testified that "[i]t's very hard for [Blackwell] to accept what happened and what he's done," and "he's very sad about it"; (2) Heather Bryant, his daughter, who testified that "he regrets what he has done" and "suffers from that every day"; and (3) Ken Rice, his pastor, who testified that Blackwell told him "God's forgiven me but I can't forgive myself."

*State v. Blackwell*, 420 S.C. at 160, 801 S.E.2d at 730-31.

In short, whether counsel erred or not, given the omission could only have been harmless,

Applicant cannot satisfy his *Strickland* prejudice burden of proof.

Moreover, the record supports that Applicant would likely not even be able to carry his *Strickland* deficient performance burden of proof. Defense counsel explained their reason for not calling the witnesses – they possessed little to no memory of the counseling they had provided. Thus, counsel had specific, reasonable cause not to present the witnesses. This informed decision is unlikely to support a finding of deficient performance.

Additionally, the alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above. Respondent incorporates the prior discussion regarding the statute as if repeated verbatim.

***10 and 11(d)(7) Counsel failed to object to Solicitor's closing argument that Applicant did not have any remorse for killing Brooke Center, including but not limited to Tr. 3169 ("not once did he cry about Brooke. Not once did he show any remorse for Brooke. Doesn't even show one concern for Brooke."), Tr. 3180-81, under circumstances where the Solicitor successfully objected to trial counsel introducing evidence of Applicant's remorse***

This particular complaint can be resolved by review of the portion of the trial record cited. Applicant references the arguments at R. 3169 and 3180-81. The record shows that portion of R. 3169 (which appears to be the quote Applicant wishes to rely upon), actually goes to an absence of remorse *on the jail calls*. A closing argument must be viewed "in the context of the entire record." *State v. Copeland*, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). Here, when reviewing just the immediate context, there is a clear break to the nexus Applicant attempt to make to the inadmissible business records. The claim is without merit.

Additionally, the alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above. Respondent incorporates the prior discussion regarding the statute as if repeated verbatim.

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 03-20-2010 BY 60322

05:08 PM 12/27/2009

U.S. DEPT. OF JUSTICE

***10 and 11 (d)(8) Counsel failed to object to the Solicitor's improper closing arguments regarding a finding of intellectual disability***

Applicant complains counsel failed to object to these arguments:

“Everything they rolled out yesterday, I mean, I got mad. I tried to keep my composure over there, but here he is, he’s saying he mentally retarded.” Tr. 3168.

“He’s not mentally retarded, and the reason why I’m going so much over this, and the judge is going to charge you about mental retardation, that if you make a finding that he is mentally retarded from there, it’s a bar to the death penalty if it’s by a preponderance of the evidence. They have to show it by that amount. Preponderance means by the greater weight of the evidence.” Tr. 3171-72.

The record shows Applicant’s claim lacks merit. There is no basis to object to the Solicitor’s argument when the argument is essentially a comment on the lack of credible and persuasive evidence. Zealous advocacy based on the record is permissible. *State v. Busse*, No. 2021-000076, 2023 WL 2396783, at \*2 (S.C. Mar. 8, 2023) (“A prosecutor arguing forcefully during closing argument that the jury should believe a particular witness is well within her proper role as a zealous advocate, so long as the argument is based on evidence admitted during trial.”). Further, the solicitor did not give a personal opinion or infer personal knowledge, rather, he specifically reminded the jury that *they would be instructed to make the determination*. The Solicitor did not undermine the jury’s responsibility or suggest superior knowledge of the ultimate question.

At bottom, the argument and its rhetorical device was still specifically related to the failure of Applicant’s proof. Notably, this did not unfairly shift the burden to the Applicant as Applicant had the burden of proof in this discrete circumstance. *Franklin, supra*.

However, if one assumes error, Applicant cannot show the required *Strickland* prejudice. At most, the comment was more a rhetorical device, and the solicitor directly discussed the

evidence in and round these comments. (R. 3168-73). But if error, still, it is inescapable that the solicitor was discussing the admitted evidence. There was no prejudice. *People v. Woodruff*, 421 P.3d 588 (Cal. 2018), presented a remarkably similar comment and the Supreme Court of California's analysis in that case is instructive.

The prosecutor in *Woodruff*, in discussing whether the defendant had shown intellectual disability argued at one point that the "people's opinion" mattered, there would not be only reliance on "professions" to make the relevant determination otherwise the jury would irrelevant, and further addressed the jury: "...I submit this to you: If a person doesn't look retarded or act retarded, it's because they're not retarded. It doesn't take any professional to let you know that." 421 P.3d at 649. The state court noted that "[t]he prosecutor then went on to argue the evidence in the case...." *Id.* The court, first noting that intellectual disability "is a question of fact," and cannot be "measured according to a fixed intelligence test score or adaptive behavior deficiency," but requires a totality of "overall capacity" evaluation based on the evidence, resolved:

Assuming without deciding that the comment was erroneous, we conclude it was harmless because it was said in passing and the prosecutor went on to review the evidence, including the experts' findings, to support his contention that defendant was not intellectually disabled. Taking the prosecutor's comments as a whole, there is no "reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion."

421 P.3d at 649.

Respondent first notes that the *Woodruff* prosecutor's comments were geared more toward a "look" (though he tied that to analysis of the evidence) than the solicitor's comments here suggesting it is insulting to people who are. The solicitor's argument here reflects the strain of the evidence to reach intellectual disability, not an improper basis for viewing the evidence. At any



rate, there was no appeal to emotion for the victim, or vouching, or the like, which would normally warrant an objection.

Moreover, the California court was quite right that the legal exemption rests on a factual determination. And, again, in this case, that factual determination is settled. Applicant failed to prove intellectual disability. He failed to do so for the judge (who did not hear the argument prior to ruling), and the jury (that did hear the argument), but also found Applicant had failed in his burden of proof. On this record, where the comments highlight the failure with or without the argument, it is even more difficult for Applicant to show an error that infected the trial to such a degree that he was denied fundamental fairness. *Donnelly v. DeChristoforo*, *supra*. Consequently, Applicant cannot carry his burden of showing *Strickland* deficient representation and prejudice.

Additionally, the alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above. Respondent incorporates the prior discussion regarding the statute as if repeated verbatim.

***10 and 11(d)(9) Counsel failed to adequately raise and argue all legal and factual grounds for finding Applicant's death sentence was not "warranted under the evidence of the case" pursuant to S.C. Code § 16-3-20, and "is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant" pursuant to S.C. Code § 16-3-25 (C)(3)***

Applicant cannot show, as a matter of law, trial counsel error in the proportionality review under S.C. Code § 16-3-25 (C)(3), as that review, by statute, is reserved to the Supreme Court of South Carolina as part of the direct appeal proceedings. *See Moore v. Stirling*, 436 S.C. 207, 214, 871 S.E.2d 423, 427 (2022) (referencing the Supreme Court's review as set out in the statute). Notably, the Supreme Court of the South Carolina recently granted the State's petition for writ of prohibition and prohibited litigation on a successive PCR action to investigate and challenge the § 16-3-25(C)(3) review. The Order reads as follows:

05:08 PM 12/27/2022

05:08 PM 12/27/2022

[79]

This is a capital case in which Respondent was previously denied post-conviction relief (PCR), and this Court denied Respondent's petition for a writ of certiorari. Respondent has now filed a successive PCR application in the circuit court seeking a new comparative proportionality review of his death sentence pursuant to our decision in *Moore v. Stirling*, 436 S.C. 207, 871 S.E.2d 423 (2022). The State has filed a petition for a writ of prohibition seeking to prohibit Respondent's PCR action on the ground that PCR is not the proper forum for Respondent's claim.

Respondent's claim is properly the subject of a petition for a writ of habeas corpus in this Court's original jurisdiction, not PCR. See S.C. Code Ann. § 16-3-25(C)(3) (2015) (providing the Supreme Court shall determine "(w)hether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant"); *Moore*, 436 S.C. at 223, 871 S.E.2d at 432 (holding a "petition alleging an inadequate comparative proportionality review of [a] sentence presents a cognizable constitutional claim in the context of [a] state habeas proceeding" (citing *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990))). Therefore, the petition for a writ of prohibition is granted, and the circuit court shall not proceed with the PCR action.

(*Dickerson v. State*, Order of January 12, 2023, Appellate Case No. 2022-001398).

That Order underscores what the statute provides – that the particular proportionality review mandated by the statute is for the Supreme Court to conduct, not the circuit court. Applicant can show no basis for relief.

Applicant also cannot show error and prejudice under S.C. Code § 16-3-20 which provides that "[t]he trial judge, before imposing the death penalty, shall find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion, or any other arbitrary factor." Notably, Applicant raises only a challenge to whether death was "warranted under the evidence the case." Respondent submits that he will not be able to show *Strickland* deficiency or prejudice as, though Applicant may disagree, the evidence most certainly supports the harshest sentence available based on the record, and the Supreme Court's subsequent proportionality review at the direct appeal level similarly resolved that the

sentence was not disproportionate to the crime. *Blackwell*, 420 S.C. at 168, 801 S.E.2d at 735. As such, in light of the record and the direct appeal level proportionality review, Applicant cannot carry his burden of proof.

Additionally, the alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above. Respondent incorporates the prior discussion regarding statute as if repeated verbatim. And, because the proportionality review would be conducted at the appellate level by the Supreme Court, the statute could not apply because the statute only applies to appointment of counsel for “the trial of the action,” not appeal.

***10 and 11(e) Applicant’s right to due process of law was violated as a result of the knowing presentation of false or misleading information by a state agent***

Applicant’s claim has failed to present evidence indicating that the testimony given by Investigator Williams was false, much less that the State was aware of such falsity.

Respondent submits that the trial record shows no Sixth Amendment violation and Applicant cannot carry his burden under *Strickland v. Washington*. Respondent further submits that evidence adduced at the evidentiary hearing will show that trial counsel was aware of other evidence that Applicant did not show remorse at and around the time that Investigator Williams heard Applicant’s statement supporting the testimony offered at trial. The ground will be shown to be without merit.

***10 and 11(f)(1) Appellate counsel failed to adequately raise and brief all legal and factual grounds for challenging the trial court’s ruling that Applicant was not intellectually disabled***

Contrary to Applicant’s allegation, the records before this Court confirm that appellant counsel adequately raised and briefed the issue of Applicant’s intellectual capacity. “Generally, in analyzing a claim of ineffective assistance of appellate counsel, this Court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel.” *Bennett v.*

05:08 PM 12/27/2019

0111 [81]

*State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009) (citing *Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999)). “Thus, in this case, we ask 1) whether appellate counsel’s performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel’s deficient performance.” *Id.* In order to show that he was prejudiced by appellate counsel’s performance, a PCR applicant must show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625.

Chief Appellate Defender Robert Dudek and Assistant Appellate Defender David Alexander represented Applicant on appeal. In the Brief of Appellant, counsel raised seven separate and distinct issues spanning one hundred and eleven pages. One of the issues raised was:

The trial court erred in finding that appellant was not mentally retarded at the pretrial hearing pursuant to *Atkins v. Virginia* and *Franklin v. Maynard*, and therefore sentencing appellant to death violates his rights under the Eighth Amendment.

(Attachment 2). The argument thoroughly addressed the finding regarding intellectual disability. Counsel also provided supplemental authority as the authority became available, on September 12, 2016, March 29, 2017, and May 4, 2017, including *Moore v. Texas*. (Attachment 11).

Applicant’s direct appeal was dismissed upon review by the South Carolina Supreme. The Court found that the trial court’s credibility determination in regard to the experts and its critical and detailed review of the evidence as presented was appropriate and supported by the record. *State v. Blackwell*, 420 S.C. at 141–43, 801 S.E.2d at 720–22.

Applicant cites to *Patrick v. State*, 349 S.C. 203, 562 S.E.2d 609 (2002) in support of his claim of ineffective assistance of appellate counsel. It is easily distinguishable. In *Patrick*, our Supreme Court found ineffective assistance of appellate counsel after counsel “devoted three short paragraphs to [the issue on appeal], did not give any useful analysis, and only cited one case.” 349

S.C. at 208, 562 S.E.2d at 611. The appeal argument at issue clearly does not fit the same mold as that found in *Patrick*. Applicant's counsel on appeal devoted forty-five pages of analysis to the intellectual disability issue and cited to over thirteen different cases, including *Hall v. Florida*, which Applicant has also cited. And, again, he provided the Court with *Moore v. Texas* when it became available. Additionally, counsel raised the claim again in a petition to the Supreme Court of the United States. The appellate court record shows Applicant cannot carry his burden of proof.

Lastly, Applicant again includes reference to an alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20. That is also without merit for all the reasons presented above, which Respondent incorporates by reference, but also most specifically here because the statute applies to appointment for "the trial of the action," not appeal. Applicant can show no error at all.

***10 and 11(f)(2) Appellate counsel failed to raise the issue that the trial court erred in admitting prejudicial autopsy photographs and close-up photographs from the crime scene, including a photograph of the victim after her body was moved***

**-And-**

***10 and 11(f)(3) Appellate counsel failed to raise the issue that the trial court erred in allowing Reggie Frye to testify during the penalty phase of Applicant's trial when Frye's testimony was not relevant and impermissible hearsay***

"There can hardly be any question about the importance of having the appellate advocate examine the record with a view to selecting the most promising issues for review." *Jones v. Barnes*, 463 U.S. 745, 752 (1983). "A brief that raises every colorable issue runs the risk of burying good arguments ... in a verbal mound made up of strong and weak contentions." *Id.*, at 753. Consequently, appellate counsel is not required to raise all possible claims, but should exercise sound judgment. *Id.* at 754.

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 05-08-2010 BY 60322

05:08 PM 05/08/2010

CE 113

[83]

When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine “whether appellate counsel failed present significant and obvious issues on appeal.” *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the issues not raised are “clearly stronger than those” raised in the appeal. *Gray v. Greer*, at 646. To carry his burden of showing the required prejudice, an applicant must show “he would have prevailed on appeal.” *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). Applicant cannot carry his burden.

Regarding the first issue, during the punishment phase of Applicant’s trial, counsel moved pursuant to SCRE 403 to suppress State’s Exhibit No. 60-72, which consisted of photos that depicted the deceased victim. Applicant’s trial counsel argued that other photos of the victim had already been admitted and the current photos were taken after the body had been moved. (R. 2695-2698; 2704-2705). The trial court granted some of the Defense’s motion, excluding State’s Exhibit No. 61, 62, 63 and 64. (R. 2704-05). The trial court did not make a ruling on the autopsy photographs at that time. (R. 2705). The trial court noted that *State v. Torres*, 390 S.C. 618, 703 S.E.2d 226 (2010), *State v. Rosemond*, 335 S.C. 593, 597, 518 S.E.2d 588, 590 (1999); *State v. Burkhardt*, 371 S.C. 482, 487, 640 S.E.2d 450, 453 (2007) that establish that autopsy photographs of victim are admissible in the sentencing phase of a capital murder trial for use by the doctor who performed the autopsy for the purpose of illustrating the nature of the injuries. (R. 2705-06). He deferred ruling until he “heard the testimony of the doctor concerning what they might illustrate.” (R. 2706). The trial judge also noted that “the State has shown restraint in presenting the photographs ... offering black and white photographs of the appropriate situations, and also not ... seeking to introduce a rather large number of similar photographs in the case.” (R. 2707). Upon

hearing from the forensic pathologist that the photographs would explain the wounds and angles, the judge admitted the photographs, finding the probative value outweighed their prejudicial effect, and that they were relevant to show the circumstances of the crime. (R. 2709-11).

There can be no finding of deficiency or prejudice in failing to raise a claim based on the photographs, because the admission, based on the record, was not an abuse of discretion.

“The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court.” *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). “If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.” *Id.* “A trial judge’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances.” *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 207 (Ct. App. 2008) (internal quotation marks omitted). *See also State v. Collins*, 409 S.C. 524, 535, 763 S.E.2d 22, 28 (2014) (quoting *Nichols v. State*, 267 Ala. 217, 100 So.2d 750, 756 (1958) (“The mere fact that an item of evidence is gruesome or revolting, if it sheds light on, strengthens or gives character to other evidence sustaining the issues in the case, should not exclude it.”)).

In *State v. Torres* the Supreme Court of South Carolina held that “[i]n the sentencing phase of a capital murder trial, the scope of the probative value is much broader than the guilt phase. *Torres*, 390 S.C. at 623, 703 S.E.2d at 229 (citing *State v. Kornahrens*, 290 S.C. 281, 289, 350 S.E.2d 180, 186 (1986)). In addition, the Court held “that autopsy photographs may be presented to the jury in an effort to show the circumstances of the crime and character of the defendant.” *Torres*, 390 S.C. at 623, 703 S.E.2d at 229 (citing *Rosemond, supra; Burkhardt, supra*).

Here, in compliance with *Torres*, the State introduced the photographs during examination of Dr. Wren illustrating the number of injuries, location of the injuries, and manner in which the

injuries were committed. *See id.*, (“If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.”) (quoting *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353(1996)); *see also State v. Martucci*, 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct. App. 2008) (“Admitting photographs which serve to corroborate testimony is not an abuse of discretion.”); *State v. Kelsey*, 331 S.C. 50, 76, 502 S.E.2d 63, 76 (1998) (photographs of various bone and bomb fragments and clothing found at crime scene were admissible in murder prosecution to corroborate testimony concerning condition of victim’s body as first discovered by police at crime scene, and location of bone and bomb fragments supported testimony that bomb had been detonated in victim’s mouth). Applicant is unable to show appellate counsel was ineffective for failing to raise the admission of photographs as an issue in the appeal.

Applicant is also unable to show ineffective assistance for failure to raise the issue of Reggie Frye’s testimony. During trial, the defense called Applicant’s father to the stand. During cross-examination, he denied knowing Reggie Frye and claimed he did not recall having any such conversation about locking the gun in a cabinet at his house. (R. 3048-52). The State sought to offer testimony from Mr. Frye on the basis of the father’s inconsistent statement. Over objection, the trial court permitted Reggie Frye to testify as to his conversation. (R. 3119-20). Mr. Frye testified to a conversation he had had with Applicant’s father in which the father admitted that he had seized Applicant’s gun because he was afraid that Applicant was going to hurt himself or someone else. He testified further that the father also acknowledged that Applicant had broken into the gun case prior to the murder and retrieved the murder weapon. (R. 3127). Defense counsel had the opportunity to and did cross-examine the witness. (*See* R. 3128-35). There was no error in the ruling. *See* Rule 613 (b); *SECRET*; *see also State v. Stokes*, 381 S.C. 390, 398–99, 673 S.E.2d 434, 438 (2009) (“A prior inconsistent statement may be admitted as substantive evidence when

15:8 IN 17 8/11/08

08713

[86]



the declarant testifies at trial and is subject to cross-examination.”). Applicant’s claims as to the adequacy of appellate counsel are without merit and should be dismissed.

As to the inclusion of an alleged violation of the appointment of trial counsel statute S.C. Code § 17-3-20, that is also without merit for all the reasons presented above, which Respondent incorporated by reference, but also most specifically because the statute applies to appointment of counsel for “the trial of the action,” not appeal.

***10 and 11 (f) (4) Appellate counsel failed to adequately raise and brief all legal and factual grounds for finding Applicant’s death sentence disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant, pursuant to S.C. Code § 16-3-25 (C)(3)***

Again, Section 16-3-25(C)(3) proportionality review is reserved for the Supreme Court of South Carolina. There is no requirement that appellate counsel ask for the review, the review is mandated by statute. Further, Applicant has already received the review as part of the direct appeal proceedings:

#### **F. Proportionality Review**

Finally, we have conducted the requisite proportionality review pursuant to section 16-3-25 of the South Carolina Code. S.C. Code Ann. § 16-3-25(C) (2015); *see State v. Wise*, 359 S.C. 14, 28, 596 S.E.2d 475, 482 (2004) (“The United States Constitution prohibits the imposition of the death penalty when it is either excessive or disproportionate in light of the crime and the defendant.”). In conducting this review, we searched for similar cases in which the sentence of death has been upheld. *See* S.C. Code Ann. § 16-3-25(E) (2015) (providing that in conducting a sentence review the Supreme Court “shall include in its decision a reference to those similar cases which it took into consideration”).

After reviewing the entire record, we conclude the sentence of death was not the result of passion, prejudice, or any other arbitrary factor, and the jury’s finding of two statutory aggravating circumstances for the murder is supported by the evidence. Furthermore, a review of prior cases establishes that the death sentence in this case is proportionate to that in similar cases and is neither excessive nor disproportionate to the crime. *See State v. Downs*, 361 S.C. 141, 604

S.E.2d 377 (2004) (concluding death sentence was warranted where defendant was convicted of murder, kidnapping, and first-degree criminal sexual conduct with a minor); *State v. Rogers*, 338 S.C. 435, 527 S.E.2d 101 (2000) (affirming sentence of death for defendant convicted of murdering a nine-year-old child).

*Blackwell*, 420 S.C. at 168, 801 S.E.2d at 735.

Applicant has shown no error and no accrued prejudiced to support a finding of ineffective assistance of appellate counsel.

To the extent Applicant would suggest that *Moore v. Stirling*, 436 S.C. 207, 871 S.E.2d 423 (2022) made a mandatory change to proportionality review, one that appellate counsel should have requested, he is incorrect.

*Moore* did not strike down or otherwise modify the statutory directive to conduct a proportionality review in a new, particular way. Rather, the Court simply provided that a defendant could offer additional cases for the Court to review. The Court did not make the additional cases a necessary component of review. Indeed, in *State v. Jenkins*, 436 S.C. 362, 872 S.E.2d 620 (2022), issued the same day as *Moore*, the Court conducted the required proportionality review based on consideration of two similar cases where a death sentence was upheld. No other cases were required. In sum, simply because additional cases other than cases where a death sentence resulted may now be considered, nothing sets out the Court must consider cases where a death sentence did not result. See *Moore*, 436 S.C. at 230, 871 S.E.2d at 435 (“we clarify our holding in *Copeland* and hold this Court is not statutorily required to limit the pool of “similar cases” for comparative proportionality review to only those cases in which the death penalty was imposed”); see also *Jenkins*, *supra*. Thus, not presenting argument that additional cases should be considered does not undermine the fairness of the review and certainly does not prevent the review.

15:03 IN 12 MAR 27

CLERK OF COURT

Lastly, the inclusion of an alleged violation of the appointment of trial counsel statute, S.C. Code § 17-3-20, is also without merit for all the reasons presented above, which Respondent incorporates by reference, but also most specifically because the statute applies to appointment of counsel for “the trial of the action,” not appeal.

### CONCLUSION

WHEREFORE, having made its return, Respondent submits Applicant fails to carry his burden of proof and is not entitled to any relief on those claims that are cognizable in this action. The issues not cognizable should be summarily dismissed for that reason.

Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

ANTHONY MABRY  
Senior Assistant Attorney General

TOMMY EVANS, JR.  
Assistant Attorney General

By: s/ Melody J. Brown

By: s/ Tommy Evans, Jr.

Office of the Attorney General  
P.O. Box 11549  
Columbia, South Carolina 29211-1549  
(803) 734-6305

ATTORNEYS FOR RESPONDENT

CLERK OF COURT  
SOUTH CAROLINA  
JAN 27 2023

March 26 2023

CLERK

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

Ricky Lee Blackwell, #6033, )

2018-CP-42-928  
\*Capital PCR Action\*

Applicant, )

v. )

AFFIDVAIT OF SERVICE

State of South Carolina, )

Respondent. )

1. I am counsel for Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Respondent's Return to Third Amended Application; Motion to Dismiss Claim Previously Litigated**, in the above-captioned matter on the following attorneys via email at the as listed below:

E. Charles Grose, Jr., Esquire  
[charles@groscelawfirm.com](mailto:charles@groscelawfirm.com)

Lindsey S. Vann, Esquire  
[lindsey@justice360sc.org](mailto:lindsey@justice360sc.org)

DATED this 26<sup>th</sup> day of March, 2023.

*/Melody J. Brown*

Melody J. Brown  
Senior Assistant Deputy Attorney General

CLERK OF COURT  
COUNTY OF SPARTANBURG  
SOUTH CAROLINA

2023 MAR 27 AM 8:51

6-11-23

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
  
Ricky Lee Blackwell, #6033, )  
 )  
Applicant, )  
 )  
vs. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

THE COURT OF COMMON PLEAS  
Case No. 2018-CP-42-000928

**ORDER ALLOWING THE DEPOSITION  
OF DR. GORDON BROWN**

On May 25, 2023, this Court held a status conference for the above referenced death penalty post-conviction relief case. During this conference it was brought to this Court's attention that the Respondent wishes to depose Dr. Gordon Brown formerly a forensic psychologist of the South Carolina Department of Disabilities and Special Needs.

During the initial post-conviction relief hearing, Dr. Brown was called to testify. During his testimony Dr. Brown stated his opinion has changed and he now of the belief that the Applicant is intellectually disabled. At that time, it was brought to this Court's attention that prior to the hearing the Respondent was not made aware of this change of opinion. Therefore, this Court stopped Dr. Brown's testimony to allow the Respondent the opportunity to continue the discovery process relating to the Applicant's accusation of being intellectual disabled. During the proceedings this Court had ordered that no one speak to Dr. Brown regarding his testimony as he was at the time still on the stand.

With the consent of opposing counsel, the Respondent requests this Court lift their order regarding any contact with Dr. Brown only for the purposes of a deposition.

2023 JUN -9 PM 12:37

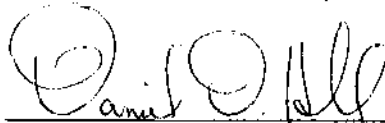
1 of 2

FILED

IT IS THEREFORE ORDERED that the order of this Court regarding no contact with Dr. Brown is hereby lifted only for the purpose of conducting a deposition.

IT IS ALSO ORDERED that there will be no further contact by the parties with Dr. Brown until after the completion of his testimony.

AND IT IS SO ORDERED this 30<sup>th</sup> day of May, 2023



The Honorable Daniel Hall  
Circuit Court Judge  
Specially Assigned by Order of the Supreme Court

Yock, South Carolina

CLERK OF COURT  
SPARTANBURG COUNTY  
JUN 14 2023  
2023 JUN -9 PM 12:37

FILED

2 of 2

|                             |   |                                         |
|-----------------------------|---|-----------------------------------------|
| THE STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS            |
|                             | ) | FOR THE SEVENTH JUDICIAL CIRCUIT        |
| COUNTY OF SPARTANBURG       | ) |                                         |
|                             | ) | Case No. 2018-CP-432-00928              |
|                             | ) |                                         |
| RICKY LEE BLACKWELL,        | ) | <b>APPLICANT'S MOTION TO EXCLUDE</b>    |
| <i>Applicant,</i>           | ) | <b>OR LIMIT TESTIMONY OF DR. ROBERT</b> |
| vs.                         | ) | <b>NELSON OR IN THE ALTERNATIVE TO</b>  |
|                             | ) | <b>COMPEL DISCLOSURE OF DR.</b>         |
| STATE OF SOUTH CAROLINA,    | ) | <b>NELSON'S OPINIONS</b>                |
| <i>Respondent.</i>          | ) |                                         |
| _____                       | ) |                                         |

Applicant, Ricky Lee Blackwell, by and through undersigned counsel, moves this Court to exclude or limit the testimony of Dr. Robert Nelson at the evidentiary hearing scheduled to commence on July 31, 2023 in this capital post-conviction relief proceeding. Respondent has disclosed that it intends to call Dr. Nelson to “testify as to his opinion regarding the intellectual disability of Mr. Blackwell.” Exhibit 1. Dr. Nelson’s testimony should be deemed inadmissible because it is not relevant or reliable. However, if the Court admits his testimony, it should be limited to the opinions he expressed during his deposition because any different or additional opinions have not been provided to Blackwell’s counsel and are based on information provided in late disclosures. Alternatively, this Court should compel the State to disclose the opinions of Dr. Nelson.<sup>1</sup>

#### **I. RELEVANT FACTUAL AND PROCEDURAL HISTORY**

This Court is familiar with the facts of this case up to and including the evidentiary hearing held in March of 2023. At the end of the hearing, Respondent indicated it would be disclosing to

<sup>1</sup> As discussed throughout this pleading counsel for Mr. Blackwell communicated extensively with counsel for Respondent in an attempt to resolve the need for this motion. With the evidentiary hearing resuming on July 31, 2023, further communications would serve no useful purpose.

FILED

counsel for Blackwell an expert retained by the Solicitor's office prior to the trial of this matter, who Respondent learned of during the March hearing. Six weeks later, on May 15, 2023, Respondent disclosed to counsel for Blackwell an additional witness: Dr. Robert C. Nelson. Exhibit 2. The disclosure provided only Dr. Nelson's name and address. It did not include any opinions or a summary of Dr. Nelson's anticipated testimony, nor did it include any materials that had been provided to Dr. Nelson. Despite multiple requests for additional information, Exhibit 3, another six weeks passed before Respondent supplemented its disclosure concerning Dr. Nelson. See Exhibit 1. On June 30, 2023, Respondent disclosed that Dr. Nelson was initially retained by the solicitor in advance of the 2014 trial in this matter and that Dr. Nelson sat through the trial and reviewed discovery, medical records, and reports as part of his work during the trial. *Id.* Respondent further indicated it expected to call Dr. Nelson as a witness at the PCR evidentiary hearing and that "[h]e will testify as to his opinion regarding the intellectual disability of Mr. Blackwell." *Id.* Again, the disclosure was not accompanied by any materials provided to Dr. Nelson by either the trial prosecutor or counsel for Respondent.

On June 30, 2023, Counsel for Blackwell noticed Dr. Nelson's deposition for July 12, 2023. Along with the deposition notice, counsel included a subpoena directing Dr. Nelson to produce his file, including materials provided to him by the Solicitor's and Attorney General's Offices.<sup>2</sup> Exhibit 4. At the deposition, which was rescheduled for July 13, 2023, Dr. Nelson failed to produce

---

<sup>2</sup> Undersigned counsel also issued a subpoena to the Solicitor's Office requesting it produce all materials in the Solicitor's file related to Dr. Nelson. The Spartanburg County Solicitor's Office provided documents responsive to that subpoena on July 21, 2023, but it indicated that a spyware attack made them unable to produce communications between Dr. Nelson and the prosecuting attorney.

FILED



any of his file, indicating that he did not see the subpoena before the deposition.<sup>3</sup> Also at the deposition, Dr. Nelson testified that it would be unprofessional and unethical of him to offer an opinion regarding Blackwell's intellectual disability because he has not met with Blackwell, and that he does not have an opinion regarding whether Blackwell is a person with intellectual disability. He further testified that the Attorney General's Office had provided him with Dr. Susan Knight's report on Blackwell's intellectual disability, but he had only read one or two pages of the report. In response to a question about what additional work he intended to complete before the hearing on July 31, 2023, he stated he planned to finish reading Dr. Knight's report, but he still did not know what he would be called to testify to.

Following Dr. Nelson's deposition, counsel for Blackwell again asked counsel for Respondent to produce the materials provided to Dr. Nelson. On Monday, July 24, 2023, Respondent produced approximately 100 files that appear to have been provided by Respondent to Dr. Nelson. Dr. Knight's report is included, but so are many records, transcripts, and other expert reports. These files were not known to, or remembered by, Dr. Nelson at the time of his deposition, and he did not indicate they would form the basis of his opinion.

## II. LEGAL STANDARD

"Evidence which is not relevant is not admissible." Rule 402, SCRE. Further, "[t]he decision to admit or exclude testimony from an expert witness rests within the trial court's sound discretion." *State v. Price*, 368 S.C. 494, 498, 629 S.E. 363, 365 (2006). The presentation of any expert testimony "under Rule 702, SCRE, imposes on the trial courts an affirmative and meaningful gatekeeping duty." *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009).

CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

<sup>3</sup> Dr. Nelson's deposition transcript has not yet been produced. Descriptions of his deposition testimony are undersigned counsel's summary of his testimony from the deposition.

FILED

When a party offers expert testimony, “the trial court [must] find not only that [the witness is] an expert based on his knowledge, skill, experience, training, or education, but also that the substance of his testimony [is] reliable.” *Watson v. Ford Motor Co.*, 389 S.C. 434, 449, 699 S.E.2d 169, 177 (2010). With respect to the question of reliability, the trial court must consider four factors:

(1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures.

*State v. Council*, 335 S.C. 1, 19, 515 S.E.2d 508, 517 (1999).

### III. ARGUMENT

a. *Dr. Nelson’s testimony is inadmissible because it is not relevant or reliable.*

Contrary to Respondents’ expert witness disclosure, Dr. Nelson testified at his deposition that he is not in a position to offer an “opinion regarding the intellectual disability of Mr. Blackwell” because it is unprofessional and unethical to render an opinion on someone he has not met. This is consistent with clinical guidelines, which require a mental health expert to conduct interviews with the individual being assessed and other witnesses in order to provide an opinion regarding intellectual disability. *See Order Granting Post-Conviction Relief, Bell v. State*, No. 2003-CP-04-1857, at 12 (S.C. Ct. Comm. Pleas Nov. 18, 2016) (finding Dr. Alicia Hall’s testimony regarding a PCR applicant’s intellectual disability “was not consistent with the diagnostic framework for a reliable evaluation for intellectual disability” where she did not interview the applicant or people who knew him); M. Tasse & J. Blume, *Intellectual Disability and the Death Penalty: Current Issues and Controversies*, 153 (2018). Because Dr. Nelson is being offered by Respondent to offer an opinion which he himself indicates he cannot render, his testimony is irrelevant to the question of whether Blackwell is a person with intellectual disability.

FILED

In the same vein, any opinion Dr. Nelson would render regarding Blackwell's intellectual disability would not be reliable because, without interviewing Blackwell or any other witnesses, his conclusion would not be consistent "with recognized scientific laws and procedures." *Council*, 335 S.C. at 19, 515 S.E.2d at 517. The unreliability of Dr. Nelson's opinion is further demonstrated by the fact that, at his deposition, he testified that he could not answer questions about Blackwell's intellectual disability without knowing more information. Nevertheless, he indicated he only intended to read Dr. Knight's report between the deposition and the hearing in this matter. There has been no request for Dr. Nelson to meet with Blackwell and no indication he intended to interview any collateral witnesses. Without more, his opinion is not reliable, and this Court should exercise its gatekeeping duty and exclude his testimony. *See White*, 382 S.C. at 270, 676 S.E.2d at 686.

- b. *If Dr. Nelson is permitted to testify, his testimony should be limited to his opinions at the time of the deposition.*

As described in the factual background section above, undersigned counsel have diligently worked to understand Dr. Nelson's opinions and their bases over the months since the initial hearing in this case. They have done so by requesting Respondent disclose the opinion and case files of Dr. Nelson, by subpoenaing Dr. Nelson's file, and by conducting a deposition of Dr. Nelson. Despite these efforts, undersigned counsel have not been provided with a "summary sufficient to inform the[m] of the important facts known to or observed by [the] witness." *See* Rule 33(b)(7), SCRPC; *see also* Rule 26(4)(A) ("Discovery of facts known and opinions held by experts . . . may be obtained by any discovery method . . ."). Though Respondent indicates Dr. Nelson will "testify as to his opinion regarding the intellectual disability of Mr. Blackwell," Dr. Nelson has testified that he cannot offer that opinion and does not know what opinion he has been asked to offer.

2023 AUG -1 AM 10:54

FILED

Perhaps Dr. Nelson will be offered to critique Dr. Knight's report, but he had not reviewed it at the time of the deposition, so undersigned counsel do not have a summary of what his opinions are regarding the report. Perhaps Dr. Nelson will be asked to offer his opinion on some of the 100 files produced by Respondent on July 24, 2023 (a week before the commencement of the hearing), but Dr. Nelson's deposition testimony was that he planned only to review Dr. Knight's report before the hearing, not the thousands of pages of reports, records, and transcript produced since his deposition. Simply put, despite months of efforts to understand Dr. Nelson's opinions, undersigned counsel have not been able to do so. Accordingly, Respondent and Dr. Nelson should not be allowed to present testimony regarding opinions developed since the July 13<sup>th</sup> deposition. *See* Rule 26(e), SCRCPP (providing that "a party is under a duty seasonably to supplement his response with respect to . . . the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony").

c. *Alternatively, this Court should compel Respondent to disclose the opinions of Dr. Nelson.*

In the alternative, this Court should compel the State to disclose the opinions of Dr. Nelson. Rule 26(b)(4), SCRCPP provides for "[d]iscovery of facts known and opinions held by experts." In addition to delaying disclosure of Dr. Nelson as an expert witness, the State failed to provide Dr. Nelson, prior to his deposition, with the materials necessary for him to form an opinion. The failure to provide Dr. Nelson with these materials in a timely manner prevented counsel for Mr. Blackwell from conducting a meaningful deposition, which is necessary to prepare for the resumption of the evidentiary hearing. If this Court declines to exclude or limit the testimony of Dr. Nelson, then this Court should issue an order compelling Respondent to disclose the opinions of Dr. Nelson, pursuant

to Rule 37, SCRCPP  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

2023 AUG -1 AM 10:54

FILED

## CONCLUSION

For the reasons stated above, Blackwell requests this Court bar or limit Dr. Nelson's testimony because it is irrelevant, unreliable, and its substance has not been provided in discovery.

Respectfully submitted,

By s/ E. Charles Grose, Jr.  
E. Charles Grose, Jr.  
S.C. Bar Number 66063  
The Grose Law Firm, LLC  
404 Main Street  
Greenwood, SC 29646  
(864) 538-4466  
(864) 538-4405 (fax)  
Email: charles@groslawfirm.com

By s/ Lindsey S. Vann  
Lindsey S. Vann  
S.C. Bar No. 101408  
Executive Director, Justice 360  
900 Elmwood Avenue, Suite 200  
Columbia, SC 29201  
(803) 765-1044  
Email: lindsey@justice360sc.org

July 27, 2023

*Attorneys for Ricky Lee Blackwell*

FILED  
2023 AUG -1 AM 10:54  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

|                             |   |                                       |
|-----------------------------|---|---------------------------------------|
| THE STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS          |
|                             | ) | FOR THE SEVENTH JUDICIAL CIRCUIT      |
| COUNTY OF SPARTANBURG       | ) |                                       |
|                             | ) | Case No. 2018-CP-432-00928            |
|                             | ) |                                       |
| RICKY LEE BLACKWELL,        | ) | <b>APPLICANT'S RESPONSE TO MOTION</b> |
| <i>Applicant,</i>           | ) | <b>TO DISMISS CLAIM PREVIOUSLY</b>    |
| vs.                         | ) | <b>LITIGATED</b>                      |
|                             | ) |                                       |
| STATE OF SOUTH CAROLINA,    | ) |                                       |
| <i>Respondent.</i>          | ) |                                       |
| _____                       | ) |                                       |

### INTRODUCTION

Capital post-conviction relief (“PCR”) Applicant, Ricky Lee Blackwell, through undersigned counsel, submits the following in opposition to Respondent’s Motion to Dismiss Claim Previously Litigated (“Resp’t Mot.”). Respondent argues that this Court should summarily dismiss Blackwell’s freestanding intellectual disability claim (hereinafter, “*Atkins* claim”)—claim 10 & 11(a) of his Third Amended Application for Post-Conviction Relief—because the issue was previously litigated at trial and reviewed on direct appeal.<sup>1</sup> However, Blackwell’s *Atkins* claim falls within the scope of exceptions to the general rule against review of previously litigated claims because the Constitution categorically bars the execution of individuals with an intellectual disability. Even if the Court finds the claim procedurally barred, it should still review the freestanding *Atkins* claim because it is based on newly discovered evidence of the CAMTA1 gene

<sup>1</sup> Respondent’s Motion, filed on March 26, 2023, moves to dismiss only one claim of Blackwell’s Third Amended Application for Post-Conviction Relief. The motion does not move to dismiss any of Blackwell’s claims of ineffective assistance of counsel, which allege *inter alia* that trial counsel were ineffective in the investigation and presentation of the trial *Atkins* claim. Thus, the bottom line of this motion is what standard applies to review of Blackwell’s PCR *Atkins* claim: *de novo* under the freestanding claim or through the lens of *Strickland v. Washington*, 466 U.S. 668 (1984), under the ineffective assistance of counsel claim.

abnormality. Given the unique circumstances of this case and the nature of the constitutional rights at stake, the Court should deny Respondent's Motion to Dismiss.

### **LEGAL STANDARD**

Motions to dismiss PCR applications are governed by Rule 12, SCRPC. The Supreme Court of South Carolina has severely restricted the circumstances under which a court is permitted to summarily dismiss an applicant's PCR application: "Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts, and (2) the applicant is not entitled to relief." *Robertson v. State*, 418 S.C. 505, 512, 795 S.E.2d 29, 36 (2016).

### **ARGUMENTS**

- I. Blackwell's *Atkins* claim is cognizable as PCR claim because his death sentence violates the Eighth Amendment of the United States Constitution and the corresponding provisions of state law.**

Respondent's argument that Blackwell's *Atkins* claim is procedurally barred and should be summarily dismissed fails because (a) *Atkins* claims fall within a PCR court's jurisdiction; and (b) Blackwell's *Atkins* claim is not precluded from re-litigation by statute, case law, or legal doctrine.

#### ***A. Atkins claims fall within a PCR court's jurisdiction as a matter of state and federal law.***

A death-sentenced PCR applicant alleging he is intellectually disabled is entitled to a hearing because executing an individual with an intellectual disability constitutes cruel and unusual punishment. In *Atkins v. Virginia*, 536 U.S. 304 (2002), the Supreme Court of the United States held that the Eighth Amendment to the United States Constitution bars the execution of individuals with intellectual disabilities. *Id.* at 321. The Court found that, "by definition, [individuals with an intellectual disability] have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in

FILED

logical reasoning, to control impulses, and to understand the reactions of others.” *Id.* at 318. This makes individuals with intellectual disability “less morally culpable.” *Id.* at 306. As such, imposing a death sentence on an individual with intellectual disability is excessive and constitutionally impermissible. *Id.* at 306.

In *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003), the South Carolina Supreme Court held that “[a] death row inmate who claims he is [intellectually disabled] and, as a result, not subject to the death penalty, may institute post-conviction (PCR) proceedings because his sentence is in violation of the Constitution and exceeds the maximum authorized by law.” *Id.* at 280, 588 S.E.2d at 606 (citing S.C. Code Ann. § 17-27-20(A)(1) & (3)). Thus, pursuant to S.C. Code Ann. § 17-27-20(A), as interpreted by the Supreme Court of South Carolina in *Franklin*, PCR courts may review *Atkins* claims asserted by death-sentenced inmates. *Id.*

**B. *Blackwell’s PCR Atkins claim is not precluded from re-litigation by statute, case law, or legal doctrine.***

Though *Franklin* addressed cases where an *Atkins* claim had not previously been litigated, Blackwell’s claim is not barred from review by this Court despite having been litigated in the trial court.

1. *Constitutional issues can be re-litigated in PCR proceedings, even absent an IAC claim.*

Respondent argues, in error, that S.C. Code Ann. § 17-27-20(B) and controlling case law together prohibit the litigation of Blackwell’s *Atkins* claim because the claim was previously presented and decided upon by a jury at trial and affirmed on direct appeal. See Resp’t Mot. at 46. While S.C. Code Ann. § 17-27-20(B) provides that the remedy of PCR “is not a substitute for nor does it afford any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction,” the Supreme Court of South Carolina has since interpreted this statute as

FILED



a general rule rather than a blanket prohibition on claims previously raised. *See Fortune v. State*, 428 S.C. 545, 837 S.E.2d 37 (2019). Respondent acknowledges this much, conceding that an exception to this general provision exists if a PCR applicant alleges ineffective assistance of counsel (“IAC”). *See* Resp’t Mot. at 46.

As a “good summary of the prohibition” on re-litigation and Respondent’s position on this matter, Respondent quotes *Drayton v. Evatt*, 312 S.C. 4, 430 S.E.2d 517 (1993), which provides that “[i]ssues that could have been raised trial or on direct appeal [or issues which *were* raised] cannot be asserted in an application for post-conviction relief absent a claim of ineffective assistance of counsel.” Resp’t Mot. at 47 (quoting *Drayton*, 312 S.C. at 8–9, 430 S.E.2d at 520). However, as the Supreme Court of South Carolina clarified in *Fortune*, this assertion understates the true scope of claims subject to PCR review. 428 S.C. at 559, 837 S.E.2d at 44–45 (recognizing that in some cases, “a claim not based on ineffective assistance of counsel is cognizable for PCR”).

In *Fortune*, the Court recognized situations in which “an inmate may present a claim for PCR based on constitutional violations other than ineffective assistance of counsel.” *Id.* at 559, 837 S.E.2d at 44. This is provided for by the PCR statute in which, “subsection 17-27-20(A) specifically provides this, ‘Any person who has been convicted of . . . a crime and who claims . . . the conviction . . . was in violation of the Constitution . . . may institute . . . a proceeding under this chapter to secure relief.’” *Id.* (omissions in original). Thus, the jurisdiction of a PCR court is not strictly limited to IAC claims and can extend to other, freestanding constitutional violations as well. This has been applied to various constitutional violations, including a Due Process violation based on improper prosecutorial arguments, *id.*, *Brady* violations for failure to disclose impeachment evidence, *Qualls v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006), and *Brady* violations even where the defendant pled guilty prior to trial, *Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320

FILED

(1999). The Supreme Court of South Carolina has indicated that an *Atkins* claim is a constitutional violation which can similarly be raised independent of an IAC claim, even when it was previously raised by the applicant. *See Woods v. State*, No. 2019-001713, 2019 WL 6898088, at 1 (S.C. Dec. 18, 2019); *infra* Section I.B.2. Such a rule makes sense, given that the alternative—providing for consideration of an intellectual disability claim only through the deferential IAC standard—risks allowing the unlawful execution of a person with intellectual disability.

Accordingly, because Blackwell has raised a claim that would categorically bar him from execution under state and federal law, Blackwell’s case “is one of the cases . . . in which a claim not based on ineffective assistance of counsel is cognizable for PCR.” *Fortune*, 428 S.C. at 559, 837 S.E.2d at 45.

2. *Five other South Carolina courts have found Atkins claims cognizable for PCR.*

At least five other courts in South Carolina have found PCR applications raising freestanding *Atkins* claims in capital cases cognizable and have granted the applicants evidentiary hearings on the matter, even where the issue of intellectual disability could have been (or was) litigated at trial or initial PCR proceedings. *See* Order Denying Motion to Dismiss, *Elmore v. State*, No. 2005-CP-24-1205 (June 18, 2007); Third 120 Day Status Report, *Aleksey v. State*, No. 2015-CP-38-00764 (June 7, 2017); Order, *Bryant v. South Carolina*, 2016-CP-43-828 (July 13, 2016); Order Granting Motion to Dismiss in Part and Denying in Part, *Stone v. State*, No. 2018-CP-43-01025 (February 20, 2019); *Woods v. State*, No. 2019-001713, 2019 WL 6898088 (S.C. Dec. 18, 2019). While these courts have granted review to *Atkins* claims raised in successive PCR applications, and Blackwell’s initial PCR application is currently pending before this Court, the nature of claims cognizable in an applicant’s initial PCR application and in successive PCR applications are the same.

FILED

In four cases, successive PCR applications alleging intellectual disability were allowed to proceed despite the fact that intellectual disability claims were not raised in their initial, post-*Atkins* PCR proceedings. See *Elmore v. State*, No. 2005-CP-24-1205 (June 18, 2007); *Aleksey v. State*, No. 2015-CP-38-00764 (June 7, 2017); Order, *Bryant v. South Carolina*, 2016-CP-43-828 (July 13, 2016) (finding claims of intellectual disability were not subject to procedural default because “[t]he constitutional prohibition against executing people with Intellectual Disabilities presents special considerations” and that the categorical bar set forth by *Atkins* “is qualitatively different from other kinds of constitutional violations at trial that may be subject to procedural default); *Stone v. State*, No. 2018-CP-43-01025 (February 20, 2019).

A fifth case warrants closer consideration. Anthony Woods filed a successive PCR application alleging he is a person with intellectual disability despite the fact the same claim had been raised, investigated, and voluntarily dismissed in his initial PCR proceedings. The trial court dismissed Woods’s *Atkins* claim, but the Supreme Court of South Carolina reversed the lower court’s decision and allowed Woods to raise his *Atkins* claim in a successive PCR application “[b]ecause there is a possibility that the Constitution categorically bars [the petitioner’s] execution . . . the successive PCR application in this case is permissible because of the extraordinary circumstances.” See *Woods v. State*, No. 2019-001713, 2019 WL 6898088, at 1 (S.C. Dec. 18, 2019). Thus, the Supreme Court of South Carolina has recognized the importance of full merits consideration of *Atkins* claims, even where they could have been, or were, raised previously.

AMY W. COX  
CLERK OF COURT  
SPARTANBURG COUNTY

2023 AUG -1 AM 10:54

FILED

3. *The doctrines of res judicata, collateral estoppel, and the law-of-the-case do not strictly prohibit a PCR court from hearing a claim previously litigated.*

a. Res judicata

Res judicata is based on the principle that “no one should be sued twice for the same cause of action,” and is intended to promote the public’s interest in the finality of judgments. *Judy v. Judy*, 393 S.C. 160, 173, 712 S.E.2d 408, 414 (2011). Based on this doctrine, Respondent contends Blackwell’s *Atkins* claim is barred. Resp’t Mot. at 47. However, “[e]ven when the defendant meets all of the required elements [of res judicata], res judicata will not be applied where it will contravene other important public policies; [in such cases,] the courts must weigh the competing public policies.” *Johns v. Johns*, 309 S.C. 199, 203, 420 S.E.2d 856, 859 (Ct. App. 1992) (internal citations omitted). Res judicata “may be precluded [when] unfairness or injustice results, or public policy requires it.” *Carrigg v. Cannon*, 347 S.C. 75, 81, 552 S.E.2d 767, 770 (Ct. App. 2001) (citing *State v. Bacote*, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998)).

In *Johns*, the court addressed whether the important public policy of “not recognizing bigamous marriages” overcame the public policy of res judicata. 309 S.C. at 203, 420 S.E.2d at 859. Ultimately, the Court found that the public’s interest in avoiding bigamy overrode the interest in promoting the finality of judgments; thus, res judicata did not apply. In Blackwell’s case, the public policy competing with the finality of judgments is the public policy of ensuring an individual with an intellectual disability is not executed in violation of the cruel and unusual punishment clause. If the public policy against recognizing bigamy overrides the public’s interest in the finality of judgments, then the public policy against the unlawful execution of an individual with an intellectual disability precludes res judicata from applying in Blackwell’s case.

2023 AUG - 1 AM 10:54

FILED

There is no question that capital cases present unique, heightened public policy interests absent in almost every other case. As is well recognized, “death is different in kind from any other punishment imposed under our system of criminal justice” in its finality. *Gregg v. Georgia*, 428 U.S. 153, 188 (1976). “Because of the qualitative difference [between a death sentence and any other sentence], there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.” *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976); *see also Sumner*, 483 U.S. at 72. This is especially true when an individual who is sentenced to death raises a claim of intellectual disability, categorically barring them from execution. In *Hall*, “the Supreme Court warned that courts should not enforce rigid rules which create an unacceptable risk that persons with intellectual disability will be executed.” 572 U.S. at 704. Dismissing Blackwell’s *Atkins* claim would require this Court to engage in the exact practice the Supreme Court of the United States sought to prevent, “creat[ing] an unacceptable risk” that Blackwell, an individual with an intellectual disability, will be executed. *Id.*

b. Collateral estoppel

For many of the same reasons, the claim is not precluded by the doctrine of collateral estoppel. In *State v. Bacote*, 331 S.C. 328, 503 S.E.2d 161 (1998), the Supreme Court of South Carolina explained that

[t]he doctrine of collateral estoppel is intended to reduce litigation and conserve the resources of the court and litigants and it is based upon the notion that it is unfair to permit a party to relitigate an issue that has already been decided. *Since it is grounded upon concepts of fairness, it should not be rigidly or mechanically applied.* Thus, even if all the requirements of issue preclusion are met, when unfairness or injustice results or public policy requires it, the doctrine's application may be precluded.

*Id.* at 331, 503 S.E.2d at 163 (internal citations omitted) (emphasis added).

Although the doctrine of collateral estoppel was intended to promote fairness, the Supreme Court of South Carolina has recognized that, under some circumstances, invoking the doctrine of

collateral estoppel would do just the opposite. Like res judicata, the doctrine of collateral estoppel "may be precluded [when] unfairness or injustice results, or public policy requires it." *Carrigg*, 347 S.C. at 81, 552 S.E.2d at 770 (citing *Bacote*, 331 S.C. at 331, 503 S.E.2d at 163). Here, Respondent advocates for the rigid application of the doctrine of collateral estoppel to preclude Blackwell's *Atkins* claim, risking the execution of an individual with an intellectual disability. Dismissing Blackwell's *Atkins* claim may not only result in a violation of the Eighth Amendment but would also undermine the basic principles of fairness and justice underlying the doctrine of collateral estoppel.

c. Law of the case

Finally, Respondent argues that Blackwell's *Atkins* claim is precluded by the law of the case. Resp't Mot. at 48. The "law of the case" doctrine is not an inexorable command" nor is it formally binding. *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 573, 776 S.E.2d 397, 404 (Ct. App. 2015) (citing *White v. Murtha*, 377 F.2d 428, 431–32 (5th Cir.1967)). The doctrine is intended to promote finality and efficiency. However, the doctrine does not need to be followed if "the evidence on a subsequent trial was substantially different, controlling authority has since made a contrary decision of the law applicable to such issues, or the decision was clearly erroneous and would work a manifest injustice." *Id.* While any one of these circumstances would preclude the law of the case from applying, Blackwell has demonstrated his *Atkins* claim satisfies two of these exceptions: (1) Blackwell presented "substantially different" evidence at the evidentiary hearing, including additional evidence regarding deficits during the developmental period, additional expert opinions, and genetic testing, that was not presented at the original trial; and (2) the evidence demonstrates that Blackwell is a person with intellectual disability whose unconstitutional

2023 AUG - 1 AM 10:54

FILED

execution “would work a manifest” injustice. For these reasons, the law of the case does not bar this Court’s review of Blackwell’s *Atkins* claim.

II. **Even if this Court determines Blackwell’s freestanding *Atkins* claim is barred from consideration on procedural grounds, the claim should not be dismissed because it is also based on newly discovered evidence of a genetic abnormality.**

Even if this Court finds that Blackwell’s *Atkins* claim is not subject to PCR consideration because the trial court previously found, in error, that Blackwell is not a person with intellectual disability, the claim is cognizable in PCR because it is also based on newly discovered evidence. An applicant is entitled to seek PCR when the applicant claims “[t]hat there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.” S.C. Code Ann. § 17-27-20(a)(4). To make out a claim of newly discovered evidence sufficient to warrant PCR, an applicant must show that the evidence (1) “[i]s such as would probably change the result if a new trial is had”; (2) “[h]as been discovered since the trial”; (3) “[c]ould not by the exercise of due diligence have been discovered before the trial”; (4) “[i]s material to the issue of guilt or innocence”; and (5) “[i]s not merely cumulative or impeaching.” *State v. Caskey*, 273 S.C. 325, 329, 256 S.E.2d 737, 739 (1979). In capital cases, “the factors in *Caskey* apply to motions for resentencing proceedings with a modification of the fourth factor, such that the newly discovered evidence must be material to any mitigating or aggravating circumstances.” *State v. South*, 310 S.C. 504, 507, 427 S.E.2d 666, 670 (1993). If an applicant makes a prima facie showing that an after-discovered piece of evidence satisfies all five of these requirements, the applicant must file a PCR application within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. See S.C. Code Ann. § 17-27-45(C). If the

CLERK OF COURT  
JAMES W. COX  
JANUARY 11, 2023

2023 AUG - 1 AM 10: 54

FILED

application is timely, the court must grant an evidentiary hearing on the newly discovered evidence. *See McCoy v. State*, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (2013).

In Blackwell's case, the after-discovered evidence is evidence of a pathogenic (disease causing) variant in Blackwell's *CAMTA1* gene. *See* Deposition of Dr. Christopher Cunniff, M.D., 18:8–11, 19:10–19 (February 22, 2023).<sup>2</sup> An abnormality in the *CAMTA1* gene “causes intellectual disability” in an estimated 75 to 80 percent of individuals diagnosed with the abnormality. Ex. 61; Dr. Cunniff Dep., 21, lines 6–8. During Dr. Cunniff's deposition, he stated that “if someone has a CMATA1 [sic] gene change, such as the one present in Mr. Blackwell and his mom, then my prediction is that that person's going to have an intellectual disability. And if they have the CAMTA1 change and intellectual disability, then . . . the geneticists' way of looking at that is that . . . the CAMTA1 change is the cause of the intellectual disability.” 26:3–12. As shown below, evidence of Blackwell's *CAMTA1* gene abnormality satisfies each of the *Caskey* prongs; thus, it constitutes newly discovered evidence that entitles Blackwell to consideration of his *Atkins* claim.

**1. Evidence of the CAMTA1 gene abnormality would probably lead to a sentence less than death in a resentencing proceeding.**

First, evidence of Blackwell's *CAMTA1* gene abnormality “probably would change the result” of Blackwell's capital trial, resulting in a sentence of less than death. *South*, 310 S.C. at 509, 427 S.E.2d at 670. Respondent contends that evidence of the CAMTA1 gene abnormality does not constitute newly discovered evidence because it “is not dispositive to the issue [of intellectual disability] or even necessary to opinions on intellectual disability under standard medical definitions and protocols.” Resp't Mot. at 48. However, the evidence of a genetic

<sup>2</sup> Dr. Cunniff testified at an evidentiary hearing held in this case in March 2023. However, a transcript of that hearing is not yet available (it has been ordered, but Court Administration has granted two extensions to the reporter to complete the transcript). Accordingly, cites for the purposes of responding to the motion to dismiss are made to Dr. Cunniff's deposition testimony.



abnormality causing intellectual disability—necessarily present since birth—provides the exact evidence the trial judge found lacking when he denied Blackwell’s *Atkins* claim. Following the pretrial *Atkins* hearing, Judge Couch found Blackwell was not intellectually disabled because there was insufficient evidence of intellectual and adaptive deficits prior to the age of 18. Dr. Cunniff opined that “the genetic testing identified an abnormality of the *CAMTA1* gene, which causes intellectual disability in those who have such genetic abnormalities, and is more likely than not the cause of intellectual disability in Mr. Blackwell.” Ex. 61. He concluded, to a reasonable degree of medical certainty, that the results of the genetic testing indicate that “Mr. Blackwell is a person with intellectual disability as a result of an abnormality of his *CAMTA1* gene, which was present at conception and has had lifelong negative effects on his intellectual functioning.” *Id.* This demonstrates that Blackwell’s intellectual disability is genetically caused and therefore must have an onset prior to the age of 18, which probably would have changed Judge Couch’s decision at the time of trial, making Blackwell ineligible for the death penalty.

**2. *Blackwell’s CAMTA1 gene abnormality was discovered more than six years after trial.***

Second, Blackwell’s *CAMTA1* gene abnormality was not discovered until after trial. Neither Blackwell, expert witnesses, lay witnesses, or even his mother Mildred, from whom Blackwell inherited the gene variation, were aware that Blackwell had a genetic abnormality before trial. Evidence of this abnormality could not have been discovered absent genetic testing, which was neither ordered nor considered by trial counsel. This evidence came to light after PCR counsel consulted with Dr. Cunniff, who then submitted a request for Whole Exome Sequencing (WES) to the University of Georgia Center, Molecular Diagnostic Lab. The WES test request was received by the lab on September 1, 2020, and the results of the test were reported on November

FILED

16, 2020. In sum, evidence of Blackwell's *CAMTA1* gene abnormality was discovered more than six years after his March 2014 trial.

**3. *Blackwell's CAMTA1 gene abnormality could not have been discovered before trial.***

Third, Blackwell's *CAMTA1* abnormality could not have been discovered before trial in the exercise of due diligence. The standard of due diligence “looks not to what the litigant actually discovered, but what he or she could have discovered.” *Lanier v. Lanier*, 364 S.C. 211, 220, 612 S.E.2d 456, 460 (Ct. App. 2005). To fulfill the due diligence required when investigating an *Atkins* claim, counsel must investigate, develop, and present evidence related to all three prongs of intellectual disability. *See Franklin*, 356 S.C. at 279, 588 S.E.2d at 605. Due to the advancements in genetic testing and research on the *CAMTA1* gene, trial counsel could not have discovered this evidence before trial. Despite recognizing a family history intellectual and adaptive deficits, neither the DDSN evaluator (Dr. Brown) nor the defense expert (Dr. Calloway) recommended trial counsel conduct genetic testing on Blackwell. Only following the trial and advances in technology and research did undersigned counsel obtained a genetic consultation, which resulted in the first advice to Blackwell's counsel to conduct the genetic testing that ultimately revealed the relevant abnormality.

This is similar to the case of *Spann* in which the Supreme Court of South Carolina discussed the standard of due diligence imposed on trial counsel. *State v. Spann*, 334 S.C. 618, 621–22, 513 S.E.2d 98, 100 (1999). In *Spann*, the PCR applicant raised a claim of newly discovered evidence based on the peculiar similarities between the murder for which Spann was convicted and two other murders that occurred around the same period, one of which took place after his arrest. *Id.* at 620, 513 S.E.2d at 99. In support of his claim, Spann presented the testimony of three expert witnesses: a pathologist, who opined that a single perpetrator was responsible for all three murders,

FILED

and two other experts, who opined that Spann did not fit the profile of the type of offender they would have expected to commit such crimes. *Id.* at 621, 513 S.E.2d at 100. Ultimately, the circuit court rejected the claim, “finding the evidence and science upon which [the experts’] opinions were based was all in existence at the time of appellant’s trial, and thus could have been discovered by his attorneys with the exercise of due diligence.” *Id.* at 621–22, 512 S.E.2d at 100. The South Carolina Supreme Court disagreed, finding:

In order for the attorneys to have pursued these types of experts, they would first have needed to recognize the similarities between the crimes, similarities not apparent at the time even to the experts (i.e. law enforcement investigators and the pathologist) involved in all three cases. We hold that the due diligence standard imposed upon trial attorneys cannot fairly be said to be this high. We find the circuit court judge committed an error of law, under the unusual facts of this case, in holding the newly discovered expert evidence could have been discovered by the exercise of due diligence.

*Id.* Similarly, evidence of Blackwell’s *CAMTAI* gene abnormality could not have been discovered by the exercise of due diligence prior to trial.

**4. The presence of the *CAMTAI* abnormality is material to the sentencing outcome.**

Fourth, the applicant must demonstrate that the newly discovered evidence is material to any mitigating or aggravating circumstances. *South*, 310 S.C. 504, 507, 427 S.E.2d 666, 670 (1993). As discussed above, evidence of the *CAMTAI* gene abnormality provides evidence that Blackwell’s intellectual disability manifested at the time of conception and thus, his intellectual and adaptive deficits were present before he reached the age of 18. Because a finding of intellectual disability in a capital case is outcome dispositive, evidence of the gene abnormality is not only material to a mitigating circumstance, but material to a threshold inquiry that if proven would bar Blackwell’s conviction. *State v. Laney*, 367 S.C. 639, 652, 627 S.E.2d 726, 733 (2006) (J. Pleicones, concurring) (“If the jury makes a finding of intellectual disability, ‘‘then the jury never

FILED

even reaches issues of aggravation and mitigation”). As such, the *CAMTA1* genetic abnormality is material to the sentencing outcome.

**5. *Evidence of the CAMTA1 gene abnormality is not merely cumulative or impeaching.***

Finally, the applicant must show that the evidence is not merely cumulative or impeaching. Evidence of the *CAMTA1* gene is neither being offered to discredit or undermine the credibility of a witness nor is it merely cumulative.

Newly discovered evidence, to be cumulative, must not only tend to prove facts which were in evidence at the trial, but must be the same *kind* of evidence as that produced at the trial to prove those facts. If it is of a different kind, though upon the same issue, or of the same kind on a different issue, it is not cumulative. Nor is evidence cumulative in the legal sense which, while tending to establish the same general result, does it by proof of a new and distinct fact.

*Johnston v. Belk-McKnight Co.*, 188 S.C. 149, 157, 198 S.E. 395, 399 (1938) (emphasis added).

Even though evidence of the *CAMTA1* gene abnormality goes towards intellectual disability, a defense previously raised at trial, it is not cumulative nor impeaching because it is evidence of a different kind than that produced at trial. As Judge Couch noted in his pretrial order, there was almost no evidence presented at trial that Blackwell’s intellectual disability had an onset before the age of 18. Thus, evidence of a genetic cause of his intellectual disability is a “new and distinct” fact in support of the *Atkins* claim. Because Blackwell has demonstrated that evidence of the abnormality is newly discovered evidence, he is entitled to review of this claim.

**CONCLUSION**

For the reasons set forth above, this court should deny Respondent’s motion to dismiss.

[Signature block appears on the following page.]  
AMY W. COX  
SPARTANBURG COUNTY  
CLERK OF COURT  
2023 AUG -1 AM 10:54

**FILED**

Respectfully submitted,

By s/ E. Charles Grose, Jr.

E. Charles Grose, Jr.

S.C. Bar Number 66063

The Grose Law Firm, LLC

404 Main Street

Greenwood, SC 29646

(864) 538-4466

(864) 538-4405 (fax)

Email: charles@grosclawfirm.com

By s/ Lindsey S. Vann

Lindsey S. Vann

S.C. Bar No. 101408

Executive Director, Justice 360

900 Elmwood Avenue, Suite 200

Columbia, SC 29201

(803) 765-1044

Email: lindsey@justice360sc.org

July 27, 2023

*Attorneys for Ricky Lee Blackwell*

CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

2023 AUG - 1 AM 10:54

FILED

1     STATE OF SOUTH CAROLINA                     )  
                                                           )  
2                                                     )  
COUNTY OF SPARTANBURG                     )  
3                                                     )  
                                                           )  
4                                                     )  
RICKEY LEE BLACKWELL,                     )  
5                                                     )  
                  Applicant,                     )  
6                                                     )  
                  vs.                             )  
7                                                     )  
STATE OF SOUTH CAROLINA,                     )  
8                                                     )  
                                                           )  
9                                                     )  
                  Respondent.                     )  
                                                           )

10     -----

11                                                     )  
                                                           )  
12                                                     )  
                                                           )  
                                                           )  
13                                                     )  
                                                           )  
                                                           )  
14                                                     )  
                                                           )  
                                                           )  
15                                                     )  
                                                           )  
16                                                     )  
                                                           )  
17                                                     )  
                                                           )  
18                                                     )  
                                                           )  
19                                                     )  
                                                           )  
20                                                     )  
                                                           )  
21                                                     )  
                                                           )  
22                                                     )  
                                                           )  
23                                                     )  
                                                           )  
24                                                     )  
                                                           )  
25                                                     )

March 27th-31st, 2023  
Spartanburg, South Carolina

13     B E F O R E:

14             HONORABLE DANIEL D. HALL, Judge.

15

16

17

18

19                                                     )  
                                                           )  
20                                                     )  
                                                           )  
21                                                     )  
                                                           )  
22                                                     )  
                                                           )  
23                                                     )  
                                                           )  
24                                                     )  
                                                           )  
25                                                     )

Julie A. Cendroski,  
Circuit Court Reporter III  
Seventh Judicial Circuit

20

21

22

23

24

25

1    A P P E A R A N C E S

2    E. CHARLES GROSE, JR., ESQUIRE  
3        For Applicant

4    LINDSEY S. VANN, ESQUIRE  
5        For Applicant

6    ANTHONY MABRY, SR. ASSISTANT ATTORNEY GENERAL  
7        For The State

8    TOMMY EVANS, ASSISTANT ATTORNEY GENERAL  
9        For The State

10    MELODY J. BROWN, SENIOR ASSISTANT ATTORNEY GENERAL  
11        For The State

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

## I N D E X

|    |                                                         |             |
|----|---------------------------------------------------------|-------------|
| 1  |                                                         |             |
| 2  |                                                         |             |
| 3  | <u>WITNESS</u>                                          | <u>PAGE</u> |
| 4  | ANNOUNCEMENT OF CASE BY THE COURT                       | 15          |
| 5  | PRETRIAL MOTIONS                                        | 15          |
| 6  | <u>KARA RICHARDS-BAKER</u>                              |             |
| 7  | DIRECT EXAMINATION BY MS. VANN                          | 32          |
| 8  | CROSS-EXAMINATION BY MR. EVANS                          | 79          |
| 9  | REDIRECT EXAMINATION BY MS. VANN                        | 115         |
| 10 | RECROSS-EXAMINATION BY MR. EVANS                        | 117         |
| 11 | MOTION TO RELIEVE APPLICANT FROM HEARING<br>BY MS. VANN | 118         |
| 12 | REPLY TO MOTION BY MS. BROWN                            | 119         |
| 13 | <u>WILLIAM SEAN MCGUIRE</u>                             |             |
| 14 | DIRECT EXAMINATION BY MR. GROSE                         | 123         |
| 15 | END OF DAY ONE                                          | 242         |
| 16 | CROSS-EXAMINATION BY MR. EVANS                          | 243         |
| 17 | REDIRECT EXAMINATION BY MR. GROSE                       | 334         |
| 18 | RECROSS-EXAMINATION BY MR. EVANS                        | 343         |
| 19 |                                                         |             |
| 20 | <u>DR. DONNA SCHWARTZ-WATTS MADDOX</u>                  |             |
| 21 | DIRECT EXAMINATION BY MR. GROSE                         | 345         |
| 22 | CROSS-EXAMINATION BY MR. MABRY                          | 375         |
| 23 | REDIRECT EXAMINATION BY MR. GROSE                       | 424         |
| 24 | RECROSS-EXAMINATION BY MR. MABRY                        | 437         |
| 25 | SECOND REDIRECT EXAMINATION BY MR. GROSE                | 444         |



## I N D E X

|    |                                           |             |
|----|-------------------------------------------|-------------|
| 1  |                                           |             |
| 2  | <u>WITNESS</u>                            | <u>PAGE</u> |
| 3  |                                           |             |
| 4  | <u>DR. CHRISTOPHER CUNNIFF</u>            |             |
| 5  | DIRECT EXAMINATION BY MR. GROSE           | 450         |
| 6  | VOIR DIRE TESTIMONY BY MS. BROWN          | 452         |
| 7  | CONTINUED DIRECT EXAMINATION BY MR. GROSE | 453         |
| 8  | CROSS-EXAMINATION BY MS. BROWN            | 469         |
| 9  | REDIRECT EXAMINATION BY MR. GROSE         | 487         |
| 10 | RECROSS-EXAMINATION BY MS. BROWN          | 488         |
| 11 | <u>DR. ARLENE BOWERS ANDREWS</u>          |             |
| 12 | DIRECT EXAMINATION BY MS. VANN            | 492         |
| 13 | END OF DAY II                             | 532         |
| 14 | CONTINUED DIRECT EXAMINATION BY MS. VANN  | 534         |
| 15 | CROSS-EXAMINATION BY MR. EVANS            | 560         |
| 16 | REDIRECT EXAMINATION BY MS. VANN          | 584         |
| 17 |                                           |             |
| 18 | <u>DR. JOHN GREGORY OLLEY</u>             |             |
| 19 | DIRECT EXAMINATION BY MS. VANN            | 599         |
| 20 | CROSS-EXAMINATION BY MS. BROWN            | 654         |
| 21 | <u>DR. SUSAN KNIGHT</u>                   |             |
| 22 | DIRECT EXAMINATION BY MS. VANN            | 675         |
| 23 | VOIR DIRE TESTIMONY BY MR. EVANS          | 680         |
| 24 | CONTINUED DIRECT TESTIMONY BY MS. VANN    | 681         |
| 25 | CROSS-EXAMINATION BY MR. EVANS            | 733         |

## I N D E X

|    |                                          |             |
|----|------------------------------------------|-------------|
| 1  |                                          |             |
| 2  |                                          |             |
| 3  | <u>WITNESS</u>                           | <u>PAGE</u> |
| 4  | <u>DR. SUSAN KNIGHT</u>                  |             |
| 5  | END OF DAY 3                             | 822         |
| 6  | CONTINUED CROSS-EXAMINATION BY MR. EVANS | 823         |
| 7  | REDIRECT EXAMINATION BY MS. VANN         | 843         |
| 8  | RECROSS-EXAMINATION BY MR. EVANS         | 854         |
| 9  | <u>DR. GEORGE PATRICK CORVIN</u>         |             |
| 10 | DIRECT EXAMINATION BY MR. GROSE          | 856         |
| 11 | CROSS-EXAMINATION BY MR. EVANS           | 958         |
| 12 | REDIRECT EXAMINATION BY MR. GROSE        | 1008        |
| 13 | RECROSS-EXAMINATION BY MR. EVANS         | 1023        |
| 14 | <u>DR. GORDON EDGAR BROWN, JR.</u>       |             |
| 15 | DIRECT EXAMINATION BY MS. VANN           | 1027        |
| 16 | CROSS-EXAMINATION BY MR. EVANS           | 1040        |
| 17 |                                          |             |
| 18 | <u>DR. JAMES FRANK AUSTIN</u>            |             |
| 19 | DIRECT EXAMINATION BY MS. VANN           | 1070        |
| 20 | CROSS-EXAMINATION BY MR. EVANS           | 1078        |
| 21 | REDIRECT EXAMINATION BY MS. VANN         | 1086        |
| 22 | RECROSS-EXAMINATION BY MR. EVANS         | 1087        |
| 23 | <u>DAVID ALEXANDER</u>                   |             |
| 24 | DIRECT EXAMINATION BY MR. GROSE          | 1093        |
| 25 |                                          |             |

## I N D E X

|    |                                   |             |
|----|-----------------------------------|-------------|
| 1  |                                   |             |
| 2  |                                   |             |
| 3  | <u>WITNESS</u>                    | <u>PAGE</u> |
| 4  | <u>DAVID ALEXANDER</u>            |             |
| 5  | CROSS-EXAMINATION BY MR. EVANS    | 1110        |
| 6  | REDIRECT EXAMINATION BY MR. GROSE | 1119        |
| 7  | END OF DAY 4                      | 1123        |
| 8  | <u>ROBERT DUDEK</u>               |             |
| 9  | DIRECT EXAMINATION BY MR. GROSE   | 1123        |
| 10 | <u>CLAY T. ALLEN</u>              |             |
| 11 | DIRECT EXAMINATION BY MR. GROSE   | 1135        |
| 12 | CROSS-EXAMINATION BY MR. MABRY    | 1163        |
| 13 | <u>REVEREND ABIGAIL MOON</u>      |             |
| 14 | DIRECT EXAMINATION BY MS. VANN    | 1233        |
| 15 | CROSS-EXAMINATION BY MR. EVANS    | 1236        |
| 16 |                                   |             |
| 17 | <u>CLAY T. ALLEN</u>              |             |
| 18 | REDIRECT EXAMINATION BY MR. GROSE | 123         |
| 19 | RECROSS-EXAMINATION BY MR. MABRY  | 1239        |
| 20 | <u>REVEREND VICKI HESSE</u>       |             |
| 21 | DIRECT EXAMINATION BY MS. VANN    | 1279        |
| 22 | CROSS-EXAMINATION BY MR. EVANS    | 1282        |
| 23 | END OF TRANSCRIPT                 | 1298        |
| 24 | COURT REPORTER'S CERTIFICATE      | 1299        |
| 25 |                                   |             |

|    |                                                                                  |               |                |
|----|----------------------------------------------------------------------------------|---------------|----------------|
| 1  | EXHIBITS                                                                         |               |                |
| 2  |                                                                                  |               |                |
| 3  |                                                                                  | <u>MARKED</u> | <u>ENTERED</u> |
| 4  |                                                                                  |               |                |
| 5  | APPLICANT'S EXHIBIT NUMBER 1,<br>Affidavit of Beverly Daves                      | 15            | 28             |
| 6  | APPLICANT'S EXHIBIT NUMBER 2,<br>Affidavit of William Hayes                      | 15            | 28             |
| 7  |                                                                                  |               |                |
| 8  | APPLICANT'S EXHIBIT NUMBER 3,<br>Affidavit of Sonya Stott                        | 15            | 28             |
| 9  | APPLICANT'S EXHIBIT NUMBER 4,<br>Affidavit of Geraldine White                    | 15            | 28             |
| 10 |                                                                                  |               |                |
| 11 | APPLICANT'S EXHIBIT NUMBER 5,<br>Affidavit of Glenda Wooten                      | 15            | 28             |
| 12 | APPLICANT'S EXHIBIT NUMBER 6,<br>Richards-Baker-Atkins E-mails                   | 15            | 44             |
| 13 |                                                                                  |               |                |
| 14 | APPLICANT'S EXHIBIT NUMBER 7,<br>Richards-Baker - Witness<br>Interview Summaries | 15            | 48             |
| 15 |                                                                                  |               |                |
| 16 | APPLICANT'S EXHIBIT NUMBER 8,<br>Richards-Baker - Memo,                          |               |                |
| 17 | State Arguments Against ID                                                       | 15            | 60             |
| 18 | APPLICANT'S EXHIBIT NUMBER 9,<br>Richards-Baker Psychiatrist E-mails             | 15            | 66             |
| 19 | APPLICANT'S EXHIBIT NUMBER 10,<br>Richards-Baker - Notes -                       |               |                |
| 20 | Issues for Postconviction                                                        | 15            | 74             |
| 21 | APPLICANT'S EXHIBIT NUMBER 11,<br>Ex Parte Motion - Mitigation                   |               |                |
| 22 | Investigator 12-22-2010                                                          | 15            | 136            |
| 23 | APPLICANT'S EXHIBIT NUMBER 12,<br>Ex Parte Order - Mitigation                    |               |                |
| 24 | Investigator 12-22-2010                                                          | 15            | 140            |
| 25 |                                                                                  |               |                |

|    |                                |               |                |
|----|--------------------------------|---------------|----------------|
| 1  | EXHIBITS                       |               |                |
| 2  |                                |               |                |
| 3  |                                | <u>MARKED</u> | <u>ENTERED</u> |
| 4  | APPLICANT'S EXHIBIT NUMBER 13, |               |                |
| 5  | Evelyn Phillips Withdrawal     |               |                |
| 6  | Letter 4-18-2011               | 15            | 141            |
| 7  | APPLICANT'S EXHIBIT NUMBER 14, |               |                |
| 8  | Evelyn Phillips Invoice        | 15            | 141            |
| 9  | APPLICANT'S EXHIBIT NUMBER 15, |               |                |
| 10 | Ex Parte Motion - Mitigation   |               |                |
| 11 | Investigator 01-23-2012        | 15            | 143            |
| 12 | APPLICANT'S EXHIBIT NUMBER 16, |               |                |
| 13 | Ex Parte Order - Mitigation    |               |                |
| 14 | Investigator 01-31-2012        | 15            | 144            |
| 15 | APPLICANT'S EXHIBIT NUMBER 17, |               |                |
| 16 | Ex Parte Motion - Mitigation   |               |                |
| 17 | Investigator 06-07-2012        | 15            | 146            |
| 18 | APPLICANT'S EXHIBIT NUMBER 18, |               |                |
| 19 | Ex Parte Order - Mitigation    |               |                |
| 20 | Investigator 06-12-2012        | 15            | 146            |
| 21 | APPLICANT'S EXHIBIT NUMBER 19, |               |                |
| 22 | Ex Parte Motion - Mitigation   |               |                |
| 23 | Investigator 08-14-2012        | 15            | 146            |
| 24 | APPLICANT'S EXHIBIT NUMBER 20, |               |                |
| 25 | Ex Parte Order - Mitigation    |               |                |
|    | Investigator 08-14-2012        | 15            | 146            |
|    | APPLICANT'S EXHIBIT NUMBER 21, |               |                |
|    | Ex Parte Motion - Mitigation   |               |                |
|    | Investigator 01-22-2014        | 15            | 146            |
|    | APPLICANT'S EXHIBIT NUMBER 22, |               |                |
|    | Ex Parte Order- Mitigation     |               |                |
|    | Investigator 01-22-2014        | 15            | 146            |
|    | APPLICANT'S EXHIBIT NUMBER 23, |               |                |
|    | Ex Parte Motion Calloway       |               |                |
|    | 06-14-2012                     | 15            | 156            |

|    |                                                                        |               |                |
|----|------------------------------------------------------------------------|---------------|----------------|
| 1  | EXHIBITS                                                               |               |                |
| 2  |                                                                        |               |                |
| 3  |                                                                        | <u>MARKED</u> | <u>ENTERED</u> |
| 4  |                                                                        |               |                |
| 5  | APPLICANT'S EXHIBIT NUMBER 24,<br>Ex Parte Order Calloway 06-14-2012   | 15            | 156            |
| 6  | APPLICANT'S EXHIBIT NUMBER 25,<br>Ex Parte Motion - Calloway           |               |                |
| 7  | 06-25-2012 - Jail Access                                               | 15            | 160            |
| 8  | APPLICANT'S EXHIBIT NUMBER 26,<br>Ex Parte Order - Calloway            |               |                |
| 9  | 06-25-2012 - Jail Access                                               | 15            | 160            |
| 10 | APPLICANT'S EXHIBIT NUMBER 27,<br>Ex Parte Motion Calloway 11-30-2012  | 15            | 163            |
| 11 |                                                                        |               |                |
| 12 | APPLICANT'S EXHIBIT NUMBER 28,<br>Ex Parte Order Calloway 11-30-2012   | 15            | 163            |
| 13 | APPLICANT'S EXHIBIT NUMBER 29,<br>Ex Parte Motion Calloway 01-22-2014  | 15            | 163            |
| 14 |                                                                        |               |                |
| 15 | APPLICANT'S EXHIBIT NUMBER 30,<br>Ex Parte Order Calloway 01-22-2014   | 15            | 163            |
| 16 | APPLICANT'S EXHIBIT NUMBER 31,<br>Ex Parte Motion Calloway 02-27-2014  | 15            | 163            |
| 17 |                                                                        |               |                |
| 18 | APPLICANT'S EXHIBIT NUMBER 32,<br>Ex Parte Order Calloway 02-27-2014   | 15            | 163            |
| 19 | APPLICANT'S EXHIBIT NUMBER 33,<br>Calloway Psychological Report        |               |                |
| 20 | And Supplemental Report                                                | 15            | 56             |
| 21 | APPLICANT'S EXHIBIT NUMBER 34,<br>McGuire - DDSN Diagnostic Evaluation | 15            | 167            |
| 22 |                                                                        |               |                |
| 23 | APPLICANT'S EXHIBIT NUMBER 35,<br>McGuire - Order Denying Atkins       | 15            | 167            |
| 24 | APPLICANT'S EXHIBIT NUMBER 36,<br>Ex Parte Motion -                    |               |                |
| 25 | Psychiatrist 07-24-2009                                                | 15            | 200            |

|    |                                      |               |                |
|----|--------------------------------------|---------------|----------------|
| 1  | EXHIBITS                             |               |                |
| 2  |                                      |               |                |
| 3  |                                      | <u>MARKED</u> | <u>ENTERED</u> |
| 4  | APPLICANT'S EXHIBIT NUMBER 37,       |               |                |
| 5  | Ex Parte Order -                     |               |                |
| 6  | Psychiatrist 07-24-2009              | 15            | 200            |
| 7  | APPLICANT'S EXHIBIT NUMBER 38,       |               |                |
| 8  | Ex Parte Order Maddox 06-08-2010     | 15            | 202            |
| 9  | APPLICANT'S EXHIBIT NUMBER 39,       |               |                |
| 10 | Ex Parte Motion Maddox 02-25-2014    | 15            | 1291           |
| 11 | APPLICANT'S EXHIBIT NUMBER 40,       |               |                |
| 12 | Ex Parte Order Maddox 02-25-2014     | 15            | 1291           |
| 13 | APPLICANT'S EXHIBIT NUMBER 41,       |               |                |
| 14 | 12-12-2010 Maddox to Allen           | 15            | 353            |
| 15 | APPLICANT'S EXHIBIT NUMBER 42,       |               |                |
| 16 | Schwartz-Watts Psychiatric Eval.     | 15            | 1291           |
| 17 | APPLICANT'S EXHIBIT NUMBER 43,       |               |                |
| 18 | Ex Parte Motion Corvin 10-26-2012    | 15            | 209            |
| 19 | APPLICANT'S EXHIBIT NUMBER 44,       |               |                |
| 20 | Ex Parte Order Corvin 10-26-2012     | 15            | 209            |
| 21 | APPLICANT'S EXHIBIT NUMBER 45,       |               |                |
| 22 | Ex Parte Motion Corvin               |               |                |
| 23 | Access to Jail                       | 15            | 213            |
| 24 | APPLICANT'S EXHIBIT NUMBER 46,       |               |                |
| 25 | Access to Jail                       | 15            | 213            |
|    | APPLICANT'S EXHIBIT NUMBER 47,       |               |                |
|    | Corvin Invoice                       | 15            | 215            |
|    | APPLICANT'S EXHIBIT NUMBER 48,       |               |                |
|    | Ex Parte Motion James Aiken          |               |                |
|    | 2-21-2014                            | 15            | 224            |
|    | APPLICANT'S EXHIBIT NUMBER 49,       |               |                |
|    | Ex Parte Order James Aiken 2-21-2014 | 15            | 224            |

| 1  | EXHIBITS                                                                          |               |                |
|----|-----------------------------------------------------------------------------------|---------------|----------------|
| 2  |                                                                                   |               |                |
| 3  |                                                                                   | <u>MARKED</u> | <u>ENTERED</u> |
| 4  | APPLICANT'S EXHIBIT NUMBER 50,<br>James Aiken Invoice                             | 15            | 225            |
| 5  |                                                                                   |               |                |
| 6  | APPLICANT'S EXHIBIT NUMBER 51,<br>McGuire Chaplain Notes                          | 15            | 235            |
| 7  | APPLICANT'S EXHIBIT NUMBER 52,<br>Andrews CV                                      | 15            | 495            |
| 8  |                                                                                   |               |                |
| 9  | APPLICANT'S EXHIBIT NUMBER 53,<br>Andrews - Source List                           | 15            | 500            |
| 10 | APPLICANT'S EXHIBIT NUMBER 54,<br>Andrews Report                                  | 15            | 501            |
| 11 |                                                                                   |               |                |
| 12 | APPLICANT'S EXHIBIT NUMBER 55,<br>Andrews Family Trees                            | 15            | 519            |
| 13 | APPLICANT'S EXHIBIT NUMBER 56,<br>Andrews Patrick B. Harris                       | 15            | 538            |
| 14 |                                                                                   |               |                |
| 15 | APPLICANT'S EXHIBIT NUMBER 57,<br>Andrews Center for Behavioral<br>Health Records | 15            | 552            |
| 16 |                                                                                   |               |                |
| 17 | APPLICANT'S EXHIBIT NUMBER 58,<br>Dr. Olley CV                                    | 15            | 602            |
| 18 | APPLICANT'S EXHIBIT NUMBER 59,<br>Dr. Olley PowerPoint                            | 15            | 1291           |
| 19 |                                                                                   |               |                |
| 20 | APPLICANT'S EXHIBIT NUMBER 60,<br>Cunniff CV                                      | 15            | 492            |
| 21 | APPLICANT'S EXHIBIT NUMBER 61,<br>Cunniff Sworn Statement                         | 15            | 466            |
| 22 |                                                                                   |               |                |
| 23 | APPLICANT'S EXHIBIT NUMBER 62,<br>Dr. Knight CV                                   | 15            | 680            |
| 24 | APPLICANT'S EXHIBIT NUMBER 63,<br>Knight Report                                   | 15            | 686            |
| 25 |                                                                                   |               |                |



|    |                                      |               |                |
|----|--------------------------------------|---------------|----------------|
| 1  | EXHIBITS                             |               |                |
| 2  |                                      |               |                |
| 3  |                                      | <u>MARKED</u> | <u>ENTERED</u> |
| 4  | APPLICANT'S EXHIBIT NUMBER 64,       |               |                |
| 5  | Knight - Blackwell School Records    | 15            | 704            |
| 6  | APPLICANT'S EXHIBIT NUMBER 65,       |               |                |
| 7  | Blackwell Trucking Summary Chart     | 15            | 723            |
| 8  | APPLICANT'S EXHIBIT NUMBER 66,       |               |                |
| 9  | Blackwell Trucking Records           | 15            | 723            |
| 10 | APPLICANT'S EXHIBIT NUMBER 67,       |               |                |
| 11 | Corvin CV                            | 15            | 861            |
| 12 | APPLICANT'S EXHIBIT NUMBER 68,       |               |                |
| 13 | Barnette Letter - Lorin Williams     | 15            | 1162           |
| 14 | APPLICANT'S EXHIBIT NUMBER 69,       |               |                |
| 15 | Final Brief Of Appellant             |               |                |
| 16 | 3-7-2016 Redacted                    | 15            | 1098           |
| 17 | APPLICANT'S EXHIBIT NUMBER 70,       |               |                |
| 18 | Final Brief of Respondent            |               |                |
| 19 | 3-7-2016 Redacted                    | 15            | 1098           |
| 20 | APPLICANT'S EXHIBIT NUMBER 71,       |               |                |
| 21 | Final Reply Brief Appellant 3-7-2016 | 15            | 1098           |
| 22 | APPLICANT'S EXHIBIT NUMBER 72,       |               |                |
| 23 | Supplemental Citation 9-12-2016      | 15            | 1098           |
| 24 | APPLICANT'S EXHIBIT NUMBER 73,       |               |                |
| 25 | Supplemental Citation 03-29-201      | 15            | 1098           |
|    | APPLICANT'S EXHIBIT NUMBER 74,       |               |                |
|    | Supplemental Citation 05-04-2017     | 15            | 1098           |
|    | APPLICANT'S EXHIBIT NUMBER 75,       |               |                |
|    | Austin Resume                        | 15            | 1072           |
|    | APPLICANT'S EXHIBIT NUMBER 76,       |               |                |
|    | Arrest Warrant Murder                | 15            | 130            |

| EXHIBITS |                                     |               |                |
|----------|-------------------------------------|---------------|----------------|
|          |                                     | <u>MARKED</u> | <u>ENTERED</u> |
| 1        | APPLICANT'S EXHIBIT NUMBER 77,      |               |                |
| 2        | Notice of Intent to Seek            |               |                |
| 3        | Death Penalty 07-09-2009            | 15            | 131            |
| 4        | APPLICANT'S EXHIBIT NUMBER 78,      |               |                |
| 5        | LWOP Offer Letter                   | 15            | 133            |
| 6        | APPLICANT'S EXHIBIT NUMBER 79,      |               |                |
| 7        | Allent To Court - Atkins Notice     | 15            | 152            |
| 8        | APPLICANT'S EXHIBIT NUMBER 80,      |               |                |
| 9        | Barnette To Counsel Regarding       |               |                |
| 10       | Atkins Claim                        | 15            | 153            |
| 11       | APPLICANT'S EXHIBIT NUMBER 81,      |               |                |
| 12       | Allen to Aiken Regarding Testimony  | 15            | 1157           |
| 13       | APPLICANT'S EXHIBIT NUMBER 82,      |               |                |
| 14       | Dr. Knight PowerPoint               | 15            | 1291           |
| 15       | APPLICANT'S EXHIBIT NUMBER 83,      |               |                |
| 16       | Dr. McKee 01-31-2014 Invoice        | 1158          | 1158           |
| 17       | STATE'S EXHIBIT NUMBER 1,           |               |                |
| 18       | 2-26-2014 Memo                      | 90            | 98             |
| 19       | STATE'S EXHIBIT NUMBER 2,           |               |                |
| 20       | 7/26/2012 Abi Moon Interview        | 92            | 98             |
| 21       | STATE'S EXHIBIT NUMBER 3,           |               |                |
| 22       | 7/16/2012 Virginia Hessee Interview | 92            | 98             |
| 23       | STATE'S EXHIBIT NUMBER 4,           |               |                |
| 24       | 2/26/2014 Dr. Jackson Interview     | 99            | 100            |
| 25       | STATE'S EXHIBIT NUMBER 5,           |               |                |
|          | 8/2/2012 - Gail Shook Interview     | 101           | 101            |
|          | STATE'S EXHIBIT NUMBER 6,           |               |                |
|          | 7/13/2012 - Neal Waters Interview   | 102           | 103            |
|          | STATE'S EXHIBIT NUMBER 7,           |               |                |
|          | 11/6/2012 Ginger Calloway Interview | 107           | 112            |

|    |                                   |               |                |
|----|-----------------------------------|---------------|----------------|
| 1  | EXHIBITS                          |               |                |
| 2  |                                   |               |                |
| 3  |                                   | <u>MARKED</u> | <u>ENTERED</u> |
| 4  | STATE'S EXHIBIT NUMBER 8,         |               |                |
| 5  | 10/12/2012 Brian Dalton Interview | 112           | 112            |
| 6  | STATE'S EXHIBIT NUMBER 9,         |               |                |
| 7  | Psychological Evaluation          | 113           | 1292           |
| 8  | STATE'S EXHIBIT NUMBER 10,        |               |                |
| 9  | Cheryl Ponder Interview           | 264           | 265            |
| 10 | STATE'S EXHIBIT NUMBER 11,        |               |                |
| 11 | Ex Parte Funds Expert             | 278           | 1292           |
| 12 | STATE'S EXHIBIT NUMBER 12,        |               |                |
| 13 | Dr. Jackson Interview             | 298           | 299            |
| 14 | STATE'S EXHIBIT NUMBER 13,        |               |                |
| 15 | Brian Dalton Interview            | 311           | 312            |
| 16 | STATE'S EXHIBIT NUMBER 14,        |               |                |
| 17 | Funding Order For Dr. Corvin      | 318           | 319            |
| 18 | STATE'S EXHIBIT NUMBER 15,        |               |                |
| 19 | Medical Records                   | 406           | 1292           |
| 20 | STATE'S EXHIBIT NUMBER 16,        |               |                |
| 21 | Memo Scruggs                      | 766           | 767            |
| 22 | STATE'S EXHIBIT NUMBER 17,        |               |                |
| 23 | Dr. Corvin's Notes                | 977           | 977            |
| 24 |                                   |               |                |
| 25 |                                   |               |                |

1       RICKEY LEE BLACKWELL VS. THE STATE OF SOUTH CAROLINA

2               (Applicant's Exhibit Numbers 1-82 were marked for  
3       identification.)

4               THE COURT: All right. We're on the record in  
5       2008-CP-42-00928. This is Rickey Lee Blackwell,  
6       Applicant, versus The State of South Carolina. This is  
7       a death penalty postconviction relief hearing.

8       Representing the State of South Carolina is Melody Brown  
9       and Tommy Evans. Representing the Applicant,  
10      Mr. Blackwell is Charles Grose and Lindsey Vann.

11              Mr. Blackwell is present here in the courtroom,  
12      and I think that everyone is ready, so it'll be -- is  
13      Mr. Blackwell ready to proceed, Mr. Grose?

14              MR. GROSE: Yes, sir.

15              THE COURT: Is the State ready to proceed, Ms.  
16      Brown?

17              MS. BROWN: Yes, Your Honor. I would like to  
18      bring to the Court's attention that we do have a pending  
19      motion to dismiss the freestanding claim of intellectual  
20      disability. We have raised this consistently. And just  
21      recently we raised it again in our return to the third  
22      amended application.

23              Your Honor, we invoke the Simmons Doctrine that  
24      this issue was fully litigated at the trial level. It  
25      went through Judge Couch, and also submitted to the

1 jury. A fact finding that Mr. Blackwell is not  
2 intellectually disabled has already been found. It has  
3 already been affirmed on appeal. The Supreme Court  
4 looked at Judge Couch's finding and found that it was  
5 supported by the preponderance of the evidence. So this  
6 has been fully litigated.

7 Your Honor, based on that, we invoke the Simmons  
8 Doctrine that says essentially you can't relitigate  
9 things again. Additionally, we would rely on collateral  
10 estoppel and res judicata and law of the case.  
11 Finality, Your Honor, has to be reached in fact finding.

12 Now, there is a separate, but related claim of  
13 ineffective assistance of counsel. And I understand  
14 that some of the evidence that would be presented today  
15 would go to that claim, but that is in a different  
16 posture as far as invoking the eighth amendment and  
17 attempting to show an exemption. That, however, is a  
18 claim that cannot be raised in a PCR.

19 So we did want to draw the attention -- to this  
20 Court's attention that we do have the motion pending.  
21 I'll be happy to argue that further, or I wasn't sure  
22 whether Your Honor wanted to reserve the motion, receive  
23 the evidence, as it would go to ineffective assistance  
24 of counsel.

25 THE COURT: Okay. Mr. Grose?

1           MR. GROSE: Your Honor, our position is we filed  
2           our third amended application on February 12th -- I'm  
3           sorry, November 12th of 2021, so a year-and-a-half ago.  
4           When we were looking at a trial last October, we pointed  
5           out to Your Honor, I think in pleadings and in court,  
6           that the State had not filed a return to the third  
7           amended application.

8           They did yesterday afternoon. Well, they served  
9           it yesterday afternoon around 3:40. So we've not had  
10          time to look at the return to the third amended  
11          application or what they're raising in this Motion to  
12          Dismiss.

13          I can get into the substance as to why we  
14          disagree with their motion, but our, our request would  
15          be for Your Honor to hold this motion in abeyance until  
16          after -- until at least the conclusion of this hearing  
17          and, perhaps, let us file a response to their Motion to  
18          Dismiss that they served yesterday afternoon.

19          THE COURT: Thank you.

20          Ms. Brown?

21          MS. BROWN: Just briefly, Your Honor. Just to be  
22          clear, we have consistently moved to dismiss the  
23          freestanding claims in our returns previously filed. We  
24          did file our return to the third amended application,  
25          and we have a footnote in that return that explains that

1     since the discovery has been concluded in this case and  
2     no further amendments have been filed after the third  
3     amended, then we did a return. It is substantially the  
4     same position. It is worded a little bit different.  
5     And the Simmons Doctrine is dispositive and it's been  
6     raised all through the litigation. I just wanted to  
7     point that out to Your Honor.

8             MR. GROSE: Okay. She says it's different.  
9     Well, we haven't had a chance to look at that. And we  
10    told them last ---

11            THE COURT: Here's the thing, I mean, it appears  
12    what she presented initially is they're not opposed to  
13    the Court preserving that issue to be dealt with later.  
14    And you all help me, procedurally, that appears to be  
15    the right thing. That appears to be what I'm gonna do  
16    in this case. Do any of you have an objection to that,  
17    at this point?

18            MR. GROSE: No, sir.

19            THE COURT: From the ---

20            MS. BROWN: No, sir. We just reserve the right  
21    to, to have that motion heard at some point and decided  
22    at some point.

23            THE COURT: All right.

24            MS. BROWN: We are not by -- we're not  
25    acquiescing to the freestanding claim by the Court

1 receiving evidence going to intellectual disability,  
2 because that may or may not go through the ineffective  
3 assistance of counsel claim.

4 THE COURT: All right. Well, I appreciate that.  
5 And, again, I'll note that that motion is being reserved  
6 and we'll hear argument, potentially, on that sometime  
7 at the more appropriate time later on.

8 MR. GROSE: Thank you, Your Honor.

9 MS. BROWN: Thank you, Your Honor.

10 THE COURT: All right. Tell me where we are  
11 procedurally. Are we ready to begin with the  
12 Applicant's case, Mr. Grose?

13 MR. GROSE: Yes, sir.

14 THE COURT: Have we resolved the issue of the  
15 black box?

16 THE DEPUTY: He said no.

17 THE COURT: He said no?

18 THE DEPUTY: (Nods head up and down.)

19 THE COURT: All right. Again, the Court defers  
20 to security on that particular issue. All right. If  
21 we're ready to proceed, Mr. Grose?

22 MR. GROSE: The first issue is we have an issue  
23 about admitting the affidavits. We filed a motion on  
24 that, and Ms. Vann is gonna argue that motion.

25 THE COURT: All right, thank you. Ms. Vann, I'll



1 be glad to hear from you.

2 MS. VANN: Good morning, Your Honor. Thank you.  
3 We filed a Notice of Intent to rely on affidavits. It  
4 is five affidavits, which if I could hand them up?  
5 Under the PCR statute, South Carolina code 17-27-80, it  
6 specifically provides that the Court may receive proof  
7 by affidavit, deposition, oral testimony, or other  
8 evidence.

9 In Simpson versus Moore, the South Carolina  
10 Supreme Court took up a case where the Applicant  
11 submitted 40 depositions and 22 affidavits in lieu of  
12 live testimony. The Supreme Court found that was an  
13 abuse of discretion because there was no prejudice to  
14 the State. The State had the opportunity to call  
15 additional witnesses to rebut the evidence in the  
16 affidavits and confront those at the hearing.

17 We have provided those affidavits before the  
18 hearing was supposed to come up in October, so the State  
19 has had those for many months. We provided notice of  
20 our intent to rely on them sometime ago, and I can't  
21 remember the exact date -- on March 13th of this year.  
22 And so, we have submitted those and we believe that they  
23 are proper for the Court to take up at this hearing.

24 THE COURT: All right. Let me note for the  
25 record, the Court has been provided with five, what's

1    been marked what's been marked Blackwell v. State  
2    Applicant's one, two, three, four, five, which appear to  
3    be affidavits from various witnesses in the case.

4           Mr. Evans, I'll be glad to hear from you.

5           MR. EVANS:   Thank you, Your Honor.   First of all,  
6    we argue that these affidavits bring to light evidence  
7    that either, one, the information in the affidavits is  
8    not known personally by the actual person that submitted  
9    the affidavits, or they don't have the ability to make  
10   conclusions within the affidavits.

11           If we look at the affidavits, Your Honor, Beverly  
12   Daves is a person who taught Mr. Blackwell in homeroom.  
13   She makes accusations regarding the class that Mr.  
14   Blackwell took two years later that she didn't teach Mr.  
15   Blackwell in.   And she also states that Mr. Blackwell  
16   finished last in his class and gave a calculation as how  
17   he finished last in that class.

18           Ms. Daves was not an administrator, she was a  
19   teacher, so I think she should be subject to  
20   cross-examination regarding, first of all, how did she  
21   come to that conclusion?   Did she work in the  
22   administrator's office to make these calculations?   And  
23   also, did she taught that -- teach that class or how did  
24   she have the idea of how Mr. Blackwell failed in that  
25   particular class.

1           Next is Bill Hayes, who is an individual who  
2   taught history class in the high school that Mr.  
3   Blackwell attended, but he never taught Mr. Blackwell.  
4   He taught a different history class than Mr. Blackwell  
5   was in. Of course, the Court would agree that different  
6   teachers teach classes differently. So I think Mr.  
7   Hayes should be subject to cross-examination also in  
8   order for us to find out how did he come to the  
9   determination of how Mr. Blackwell's class was done?

10           I think that this is an opportunity that Mr.  
11   Blackwell's counsel was trying to put in evidence of a  
12   person regarding knowledge of a certain subject that  
13   they don't have knowledge in, Your Honor. And I think  
14   that that person should be subject to cross-examination.

15           Also, Sonya Stott, another affidavit. Your  
16   Honor, she worked at Belue Trucking, a place that Mr.  
17   Blackwell worked at. Mr. Blackwell took a test, a  
18   couple tests for trucking in the actual company. It was  
19   signed by her, but she said she didn't sign it. Oddly  
20   enough, she said that the person who probably signed it  
21   is now deceased. So I would like to have the  
22   opportunity to cross-examine her also to make the  
23   determination of whether or not she did sign that form,  
24   how the actual procedures are done in that trucking  
25   company. And also, why her signature is on the

1 application or on the test when she didn't actually sign  
2 it, Your Honor?

3 And last, also Ms. Jean White was a personal  
4 friend of the Blackwell family. I think the main thing  
5 that they want to place on this affidavit is the  
6 statement she made in this affidavit that all the  
7 Blackwells seemed retarded and they go back five  
8 generations.

9 Ms. White is not an actual forensic psychologist.  
10 She doesn't have the ability to make that determination.  
11 This stems from a stereotype that the Blackwell's  
12 attorneys are arguing that the solicitor did himself,  
13 and that's an issue that was raised in the application.  
14 So, they are actually using an issue just straight from  
15 their case that they are arguing against in the  
16 application.

17 I think that we should have an opportunity to  
18 cross Ms. White. On that issue alone, she's made the  
19 allegations regarding how someone looks can make them  
20 seem retarded. We should know how did she come back  
21 with those conclusions, especially since she doesn't  
22 have the ability to make these conclusions as a  
23 psychologist.

24 Also, lastly Glenda Wooten was a -- she  
25 supervised Mr. Blackwell when he worked for Springs

1 Industries. I think that she should be subject to  
2 cross-examination regarding the job that he entailed.  
3 She said it was easy. I think that she should have --  
4 should go on the stand under oath and explain the actual  
5 job Mr. Blackwell did and how it was so easy.

6 We would argue that these affidavits undermines  
7 reliable fact finder that we have to address for the  
8 Court. Of course, under the statute, the Court has the  
9 ability to allow these affidavits in. It's the Court's  
10 decision. It's not nothing that is guaranteed under the  
11 statute. So, at this time we would ask that these  
12 affidavits not be admitted. That these people be placed  
13 under oath on the stand and be subject to  
14 cross-examination, Your Honor. Thank you.

15 THE COURT: All right. Thank you, Mr. Evans.

16 Any response, Ms. Vann?

17 MS. VANN: Yes. Just briefly, Your Honor. I  
18 think many of their arguments may go to the weight of  
19 the affidavits, but it's clear from the affidavits what  
20 interaction and what knowledge the witnesses had. So  
21 both are included in the affidavits. And it's proper to  
22 admit these as evidence under the statute. They  
23 admitted to that.

24 And, of course, we provided these to the State at  
25 -- in lieu of our direct testimony or our witnesses'

1 direct testimony. They are certainly able to call them  
2 as witnesses themselves to do the cross-examination, but  
3 it is a proper procedure to admit these under the PCR  
4 statute. I would also note that our experts have relied  
5 on these affidavits as part of their evaluation, and so  
6 there will be further testimony about each of these  
7 witnesses at the hearing.

8 THE COURT: All right, thank you.

9 MR. EVANS: Your Honor, I need to address it.

10 THE COURT: Yes.

11 MR. EVANS: First of all, saying that people  
12 having actual knowledge of circumstances, Jean White  
13 basically says that, that Mr. Blackwell's family is  
14 retarded goes back five generations. How would she have  
15 personal knowledge of that, first of all?

16 Second of all, she says something in her  
17 affidavit that it's in the gene pool. I think we should  
18 have an opportunity to cross-examine her, of ask her  
19 what was asked of her at that time? What did the person  
20 -- what kind of question was asked to her when she made  
21 that actual statement, Your Honor.

22 Second of all, I don't think it is -- it's not up  
23 to us to prove the case. It's up to Mr. Blackwell to  
24 prove his case, so we should not be obligated to call  
25 anybody to the stand. They should have the obligation

1 to call the person to the stand, to be under oath, and  
2 be subject to cross-examination, because these [sic]  
3 information in these affidavits go to subjects that they  
4 don't have personal knowledge of. They may have  
5 personal knowledge of the actual class, but they do not  
6 have personal knowledge of how Mr. Blackwell done in  
7 that class. They may have an idea that the family may  
8 be a little slow, but they don't have personal knowledge  
9 of the person being retarded because they don't have the  
10 ability to make those conclusions. Only way you can  
11 make a conclusion like that, you have to be trained as a  
12 forensic psychologist. They maybe have the knowledge of  
13 the actual trucking company, but they don't have  
14 knowledge of actual Mr. Blackwell's involvement in the  
15 actual company on these affidavits. I think it would be  
16 fair for us to put an individual -- to force them to put  
17 the individual on the stand to testify about their  
18 knowledge regarding Mr. Blackwell.

19 This is a hearing regarding Mr. Blackwell, not  
20 anybody else. Him, himself. So I think that they  
21 should have the obligation to go on the stand and be  
22 subject to cross-examination and testify under oath  
23 regarding subjects that they knew specifically regarding  
24 Mr. Blackwell and not actual conclusions of facts that  
25 do not relate to him specifically.

1           And, Your Honor, it is a relied upon -- it would  
2   be more important to determine the knowledge and  
3   credibility of these witnesses if they take the stand  
4   and are subject to cross-examination. We are, right  
5   now, we don't know how credible these individuals are  
6   other than a piece of paper. That's why we have  
7   hearings. That's why people are placed under oath.  
8   That's why we actually have testimony where both sides  
9   to actually cross-examine these individuals and make the  
10  -- and the Court to make a determination of how credible  
11  they are, how much knowledge they have of certain  
12  subjects. And also, it would help you to make your  
13  conclusion regarding the postconviction action of this  
14  case, Your Honor. So that's why we would ask the Court  
15  to make them obligated to call these individuals to  
16  testify. It is not up to us to prove the case, it's up  
17  to them, so they should have the obligation to call  
18  these individuals to testify and be subject to  
19  cross-examination.

20           THE COURT: All right. Thank you, Mr. Evans.  
21   Well, I was presented with the affidavits last week and  
22   the arguments for and, I believe against, those last  
23   week. I'm gonna rule that they are admissible. Will  
24   allow Applicant exhibits one through five in. Those are  
25   affidavits.



1           I find that they do go to the, ultimately, the  
2 weight on whether the, you know, each of them. It  
3 appears that in those affidavits that if the Court, you  
4 know, the Court relying on those, certainly there could  
5 be an argument made that they strengthen the State's  
6 position as they are. On the other hand, there may be  
7 an argument that they weaken the State's position and  
8 strengthen the Applicant's position. Again, those go to  
9 the weight. I'll allow those affidavits into evidence.

10           All right. What's next?

11           (Applicant's Exhibit Numbers 1-5 were entered  
12 into the record.)

13           MR. GROSE: I guess the next thing is, and I  
14 think we have an understanding on that between the  
15 lawyers, but there are, I think, five witnesses that we  
16 want to present through video testimony. One of them is  
17 Dr. Cunniff. We're planning on calling him tomorrow.  
18 He's a geneticist.

19           THE COURT: When you say video, not a deposition,  
20 but via Webex?

21           MR. GROSE: Via Webex, yes, sir.

22           THE COURT: All right.

23           MR. GROSE: Then there's two chaplains, both of  
24 them live out of state, and they've agreed to testify by  
25 video and the State doesn't have an objection. If this

1 week goes the way we anticipate it, they would be on  
2 Thursday. Also, as they do in most of the cases now,  
3 the office of Appellate Defense, Mr. Dudek and Mr.  
4 Alexander have requested to testify through the Webex  
5 courtroom. As a side note to that, Mr. Dudek has an  
6 oral argument in the Supreme Court on Thursday, so we're  
7 trying to accommodate him as much as possible on that.  
8 And I think we're all in agreement, at least among the  
9 lawyers, that they can testify in that manner.

10 THE COURT: Is that correct, Ms. Brown?

11 MS. BROWN: Yes, sir, we have no objection to  
12 that.

13 THE COURT: All right. We'll just be sure that  
14 we're -- the court reporter and the Court, we're all on  
15 the same page and you have your technology set up to do  
16 that, okay? I have lawyers request it, and then they  
17 come to court, you not personally, but I'll have my  
18 virtual courtroom up and available and we can work  
19 through that. You all just need to be sure that you all  
20 are on the same page electronically and the witness.

21 MR. GROSE: Yes, sir.

22 THE COURT: And I'm sure you're gonna be.

23 MR. GROSE: Yes, sir. Thank you.

24 The other issue, which pertains to scheduling,  
25 the forensic psychologist that we have that's gonna

1     testify is a Dr. Susan Knight. If scheduling goes the  
2     way we think it is, we anticipate calling her on  
3     Wednesday. The State has served her with a subpoena,  
4     which on its face, required her to be here with her  
5     complete file all week. You know, her file is  
6     voluminous, and we have no objection to her bringing her  
7     complete file, which she is going to do that.

8             The State agreed that she would not have to be  
9     here today, but they wanted to take up scheduling, and  
10    I'm not sure what their intent is, but it seems like  
11    they may be planning to recall her in their case,  
12    because they want to be able to know when to have her  
13    come back. And so, I would turn it over to them,  
14    because they had asked to be able to take that up today.

15            Is that correct?

16            THE COURT: Yes, Mr. Evans?

17            MR. EVANS: Well, I mean, if they don't -- if  
18    they don't plan on calling her until Wednesday, there's  
19    no need for her to be here until Wednesday. And at that  
20    time, depending on her testimony, we can make a decision  
21    at that time, whether or not we're gonna recall her to  
22    testify about the case. But right now we don't know if  
23    we're gonna call her to testify, because we don't know  
24    what her testimony will be --

25            THE COURT: All right.

1 MR. EVANS: -- at this time.

2 THE COURT: So where we are with Dr. Knight is  
3 simply she does not have to be here today for the  
4 subpoena, or tomorrow, but they are -- that you indicate  
5 that -- or at least when we get to her, she will be  
6 required to be here as the next witness, and then  
7 they'll make a determination about whether they intend  
8 to recall.

9 MR. GROSE: I just want to correct one thing.  
10 They have her report, which is lengthy, and they deposed  
11 her. So, they've had every opportunity to find out what  
12 her testimony is gonna be. How they proceed, whether  
13 they cross-examine her or call her in their case is  
14 fine. I just don't want the Court to think that they're  
15 totally in the dark about her.

16 MR. EVANS: I never said that. I never made that  
17 allegation. This is our case. I think we should have  
18 the ability to try it the way, you know --

19 THE COURT: All right.

20 MR. EVANS: -- we see fit.

21 THE COURT: The record is clear on that. The  
22 Court certainly did not perceive it as this was a  
23 surprise witness or they didn't know what she was going  
24 to say.

25 MR. EVANS: Thank you, Your Honor.

## DIRECT EXAMINATION OF KARA RICHARDS-BAKER BY MS. VANN

1 THE COURT: All right. All right, what's next?

2 MR. GROSE: I'm gonna turn it over to Ms. Vann.

3 THE COURT: All right. Yes, Ms. Vann?

4 MS. VANN: We are ready to call our first  
5 witness.

6 THE COURT: Okay.

7 MS. VANN: Applicant calls Kara Richards-Baker.  
8 (Witness comes forward.)

9 THE COURT: All right. We need to swear Ms.  
10 Baker. Ms. Baker ---

11 THE DEPUTY: Place your left hand on the Bible  
12 and raise your right. (Complies.)

13 Do you solemnly swear or affirm to tell the  
14 truth, the whole truth, and nothing but the truth so  
15 help you God?

16 THE WITNESS: I do.

17 (Takes a seat in the witness stand.)

18 MS. VANN: May it please the Court?

19 THE COURT: Yes.

20 KARA RICHARDS-BAKER,  
21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. VANN:

24 Q. Good morning. Can you please state your name for  
25 the record?

1       A.   It's Kara, last name is Richards-Baker.

2       Q.   Thank you.   How are you involved in Rickey  
3 Blackwell's case?

4       A.   I was mitigation investigator at the trial.

5       Q.   What is your current employment?

6       A.   I am self-employed and I do mitigation  
7 investigations.

8       Q.   Can you give me just a brief overview of how you  
9 were educated to do that and your history stemming from  
10 that?

11      A.   Sure.   I have a masters degree in social work,  
12 and then a licensed clinical social worker.   When I  
13 first got out of graduate school, I worked in the county  
14 mental health center for a while with severely and  
15 persistently mentally ill people.

16           Then I worked at the Department of Social  
17 Services in specialized foster care with children who  
18 had behavioral problems.   It was while working there  
19 that I met an attorney named Ken Rose, who ran the  
20 Center for death penalty in Durham, North Carolina.   And  
21 he hired me to be a mitigation investigator for his  
22 office.   I worked there for almost five years before I  
23 went out on my own.

24      Q.   How many capital cases have you been involved in  
25 as a mitigation specialist?

1       A.   Oh, gosh.  Well, I've been doing it for almost 25  
2   years.  I would -- it's well over 200.

3       Q.   And what states have you worked in?

4       A.   North Carolina, South Carolina, Virginia,  
5   Florida, Georgia, Texas, and South Dakota.

6       Q.   Are there any other types of cases that you do  
7   mitigation investigation for?

8       A.   I've done a couple juvenile cases for juveniles  
9   that are being resentenced now that the law changed  
10   about that.  And that's -- and I've done federal work,  
11   and that's it.

12      Q.   Can you just briefly describe what the role of a  
13   mitigation specialist in a capital trial?

14      A.   Sure.  You're part of the team and work with the  
15   attorneys and the experts that you hire on the case.  
16   And my job is to gather information about the defendant  
17   to be used at -- if you get to trial, has been used at  
18   trial for the jurors to help determine that there's a  
19   sentence less than death is appropriate.

20           So I investigate the defendant's background by  
21   interviewing as many people as I can who have known him  
22   throughout -- I say him, it could be a her, but  
23   generally him -- throughout his life from birth to the  
24   event.  And also gather background information about the  
25   family looking to see if there's any genetic issues, if

1   there's mental illness, if there's a history of  
2   substance abuse, there's trauma. I also interview  
3   witnesses and I collect records related to the client  
4   and his family members.

5       Q. Now, you're doing all of that. How does that  
6   information get to the lawyers on the team?

7       A. So after I read records, I summarize them and I  
8   send those to the attorneys. And after I do an  
9   interview, I summarize -- I take notes, copious notes  
10   while I'm interviewing somebody, and then I type them up  
11   and get those to the attorney.

12      Q. And you've worked with -- do you have meetings  
13   with attorneys in a typical case?

14      A. Yes.

15      Q. Do you help work with expert witnesses?

16      A. I do.

17      Q. Can you describe that?

18      A. I shared the information that I collected.  
19   Usually the records and my summaries and also in cases  
20   like when you have an intellectual disability claim, I  
21   take the, usually the forensic psychologist out to do  
22   interviews of people and to help administer the ABAS  
23   test.

24      Q. Under the best practices in a capital case, who's  
25   directing the investigation that you're doing?



1       A.   The attorneys.

2       Q.   About how long does it take to do a mitigation  
3   investigation in a capital case?

4       A.   Oh, goodness.  I would not think I could do a  
5   good job in less than a year.  I would think it usually  
6   takes on average two years to do a good investigation, a  
7   thorough investigation.

8       Q.   And how soon after the offense should the  
9   investigation be started?

10      A.   Oh, like immediately, especially if there's  
11   issues of mental health.  If there's questions of the  
12   defendant's mental health at the time of the crime, it's  
13   best to see them as soon as possible.

14      Q.   And how does the work that you do, the  
15   investigation that you do get worked into what becomes  
16   presented at trial?

17      A.   Well, I usually spend a lot of time with the  
18   attorneys talking about what I see is mitigating factors  
19   or what needed to be themes of the case.  I help decide  
20   what witnesses to call.  I usually go with the attorneys  
21   when they prep witnesses for the trial.

22           I talk about what records we need.  Often I write  
23   social history that the experts can rely on.  I help  
24   decide exhibits, get photographs, things from records  
25   that we would want to show with the trial.

1       Q.   Whose ultimate determination is it what gets  
2 presented at the trial?

3       A.   The attorneys.

4       Q.   I'd like to turn to Rickey Blackwell's case. Can  
5 you talk about who the main people were on Rickey's  
6 legal team before trial?

7       A.   It was Bill McGuire and Clay Allen.

8       Q.   And what was their role?

9       A.   They were the attorneys.

10      Q.   Do you know who lead counsel was?

11      A.   Oh, gosh. I assume it was Bill.

12      Q.   Were there any other investigators on the team?

13      A.   There was. They hired a private investigator  
14 named Lee -- and I do not know last names like that.

15      Q.   Were there any other mitigation investigators?

16      A.   There were two before I was on the case.

17      Q.   Do you know what happened that you became  
18 involved in the case?

19      A.   My memory is that one of them got sick, maybe  
20 with cancer, and I can't -- I don't remember what the  
21 other -- why the other woman left.

22      Q.   Okay. How did you actually get involved in the  
23 case?

24      A.   Mr. McGuire called me.

25      Q.   Had you worked with him before?

1       A.   I had worked with him once before.

2       Q.   And do you remember when Mr. McGuire called you  
3   about the Blackwell case?

4       A.   Well, I know it was four years after the offence.  
5   I think the time maybe was 2011, and then maybe he  
6   called me in 2009.  I don't -- I may not have those  
7   dates correctly.

8       Q.   Okay.  Would it sound right if the offense was in  
9   2009 and the trial was in 2014?

10      A.   Yes.

11      Q.   And so you ---

12      A.   So can just bump it all two years from there.

13      Q.   Okay.  So you think you got involved about two  
14   years after the offense?

15      A.   Yes.

16      Q.   Okay.  Could you tell how much mitigation  
17   investigation had already been completed when you ---

18      A.   Not much.  I think there that might have been  
19   some interviews with Mr. Blackwell, maybe with his  
20   family.  I don't -- there was not much to it.

21      Q.   Could you describe your interaction with trial  
22   counsel while you were working on this case?

23      A.   It was minimal.  I would send them my interview  
24   summaries.  I would send them records and then summaries  
25   of those records.  I would tell them things that I

1 thought we needed. For instance, Mr. Blackwell's father  
2 was deceased and I really wanted some medical records  
3 because there was some possibility he had some mental  
4 illness and I wanted to see about that. And I needed  
5 subpoenas to get those kind of records. So I asked them  
6 to get subpoenas. I would have asked them to go  
7 interview witnesses with me.

8 Q. All right. Were they directing your  
9 investigation in this?

10 A. No.

11 Q. Can you describe generally how you went about  
12 conducting the investigation in Mr. Blackwell's case  
13 specifically?

14 A. I met with Mr. Blackwell initially and had him  
15 sign releases and gather records. I met with Mr.  
16 Blackwell's family members. His parents, his daughter,  
17 Heather. And from what he told me and what they told me  
18 kind of led me to other witnesses and ideas of other  
19 records. I looked at his employment records.

20 I remember thinking very early on that there was  
21 gonna be an intellectual disability claim. I got  
22 records related to his daughter and her children's  
23 school records, and his father's school records, and  
24 there clearly was an issue of intellectual disability  
25 within the wider family.

1 Q. And at some point did you collect Mr. Blackwell's  
2 school records?

3 A. I did.

4 Q. Can you describe that process a little bit?

5 A. I get his and his father's mixed up. I know that  
6 both of them were very difficult. That initially I  
7 would have called the school system and ask who I should  
8 send the release to. And I sent it and I'm fairly  
9 certain I was told there weren't any records. And I  
10 made several trips to the actual school, the  
11 superintendent's office to get those records. And I  
12 think I remember asking if I can help look. It took a  
13 lot, but they were eventually -- I was told that they  
14 weren't -- didn't exist, but then they found them.

15 Q. So you said intellectual disability came up  
16 pretty early on in the case. How did you determine that  
17 that may be an issue in this case?

18 A. I can't specifically remember us meeting with Mr.  
19 Blackwell, but there certainly were some things that  
20 kind of clued me in just in that interaction. But what  
21 was clear was that he had a lot of social support that  
22 helped him manage his life.

23 When his -- he had -- either he never lived  
24 independently. He lived with his parents or he lived  
25 with his wife, Angie. It appeared that they did all of

1 the money management, making of food. He didn't do  
2 anything really independently. I'm trying to think what  
3 else.

4 Well, and then there was just the issue that it  
5 appeared that other people in the family were also  
6 intellectually disabled. And in terms of his -- I knew  
7 that he worked and that he had a stable employment, but  
8 what I heard when I talked to different people was that  
9 he -- his dad always helped him get his jobs and that  
10 there was a lot of support at the jobs as well.

11 And my other memory is the trailer that he lived  
12 in with his wife. I feel like that Mr. Cletus Blackwell  
13 was involved in helping buyback or restate. And the  
14 same thing with -- there was a period of time when  
15 Rickey Blackwell tried to have his own trucking company.  
16 And, I believe, Cletus Blackwell, bought a truck for  
17 him.

18 Q. So, taking a step back a little bit, why is  
19 intellectual disability important in a mitigation  
20 investigation in a capital case?

21 A. Oh, because the Supreme Court has ruled that we  
22 don't execute the mentally -- the intellectually  
23 disabled.

24 Q. How did that change your investigation when  
25 intellectual disability might be an issue?

1       A. Well, again, it means that you have to expand it  
2       a little bit in terms of looking at other family  
3       members. You need to look at maybe if there was  
4       something kind of in utero that might have happened to  
5       Mr. Blackwell. You have to interview people who can  
6       provide adaptive deficit information.

7       Q. So are you looking for information related to the  
8       diagnostic criteria for intellectual disability?

9       A. Correct.

10      Q. And just a recap, so there are three intellectual  
11      -- or I mean criteria for intellectual disability. So  
12      are you looking for information about his intellectual  
13      functioning?

14      A. Yes.

15      Q. And his adaptive behavior. And it's a  
16      developmental disorder, so the developmental period is  
17      important. Can you describe what that means for your  
18      investigation?

19      A. Well, you're looking from birth to 18, is what  
20      the diagnostics statistical manual says. But also,  
21      again like I said, you would look at were there some --  
22      was the mother exposed to something while she was  
23      pregnant that might have affected?

24      Q. So how is the evaluation of intellectual  
25      disability conducted in this case?

1       A. Well, I mean, I had a concern very quickly once I  
2 got involved. And I know that I let Mr. McGuire and Mr.  
3 Allen know that that was my concern. I remember that it  
4 wasn't something that they had considered and that they  
5 were surprised that I had that thought.

6       And the, I mean, I pretty much did the rest of it  
7 on my own. You know, I interviewed the witnesses. I  
8 figured out who the experts would be. And I took the  
9 psychologist out to meet collateral witnesses and to  
10 administer the ABAS.

11      Q. Who was the psychologist who did the evaluation?

12      A. Ginger Calloway.

13      Q. And how did she get involved?

14      A. I had worked with her in the past, and so I  
15 suggested her.

16      Q. And who was overseeing her admission?

17      A. I would say I was.

18      Q. And is that the best practice in a capital case?

19      A. No.

20      Q. Eventually, did Dr. Calloway find that he was a  
21 person with intellectual disability?

22      A. She did.

23      Q. And was there a hearing on that issue?

24      A. There was.

25      Q. Do you recall about when that was?



1       A.   It was shortly before the actual trial.  I want  
2   to say a week or two, maybe a little bit more, but not  
3   -- it was very close to the trial.

4       Q.   Okay.  I'd like to show you some e-mails related  
5   to the intellectual disability issue.

6       May I approach the witness?

7       THE COURT:  Yes, you may.

8       MS. VANN:  I have a copy for you also, if you  
9   would like.

10   BY MS. VANN:

11       Q.   Do you recognize these?

12       A.   I do.

13       Q.   Could you describe who and what they are?

14       A.   They're e-mails between myself and Mr. McGuire  
15   and Mr. Allen about an intellectual disability claim.

16       MS. VANN:  Your Honor, I would move to admit  
17   these as Applicant's Exhibit 6.

18       THE COURT:  Mr. Evans or Ms. Brown?

19       MR. EVANS:  No objection.

20       THE COURT:  Applicant's Exhibit 6 is in evidence.

21       (Applicant's Exhibit Number 6 was entered into  
22   the record.)

23   BY MS. VANN:

24       Q.   Thank you.  If we could start with page 1.

25       A.   Okay.

1 Q. It looks like there are two e-mails on that page.  
2 The bottom e-mail is probably the first one, and that's  
3 from Mr. McGuire.

4 A. Yes.

5 Q. Could you read just the first two sentences of  
6 that e-mail?

7 A. So "R" -- which would refer to Rickey -- scored a  
8 whopping 63 on his IQ test. We need to go all out in  
9 getting the appropriate records and the interviews to  
10 support adaptive deficits.

11 Q. And when was that e-mail sent?

12 A. July 2nd, 2012.

13 Q. Okay. And then if you could go to pages 3  
14 through 5.

15 A. Okay.

16 Q. What were these e-mails discussing?

17 A. I believe they have to do with Dr. Calloway had  
18 made a chart of Rickey's IQ scores and there was a  
19 mistake on the chart.

20 Q. And could you take a look at the first e-mail on  
21 page 3. I believe that's an e-mail from you?

22 A. Yes.

23 Q. And what did you determine about the chart?

24 A. I thought that she used a chart from another  
25 report as a template and that she didn't put Rickey's IQ

1 scores in the chart.

2 Q. So it may have been some scores related to  
3 another person --

4 A. Correct.

5 Q. -- that were in her initial report?

6 A. Correct.

7 Q. Do you recall how the issue was resolved?

8 A. I, I believe that Dr. Calloway realized that  
9 there was the -- that she had the wrong scores in the  
10 chart and she didn't really know how that had happened.

11 Q. Okay. And the e-mails on pages 6 and 7.

12 A. Yes.

13 Q. What is being discussed here?

14 A. Mr. Blackwell had had a four-wheeler accident  
15 after the age of 18, and I think there was some -- we  
16 wanted to make sure that that couldn't be something --  
17 one of the reasons for his intellectual disability.

18 Q. And so, this is the first e-mail on page 6,  
19 that's from Bill McGuire?

20 A. Uh-huh, correct.

21 Q. And what's the date of that e-mail?

22 A. February 11th, 2014.

23 Q. Okay. So that's how Mr. McGuire knew about the  
24 four-wheeler accident?

25 A. Correct.

1 Q. Okay.

2 A. And I'm speculating that I had -- that we had  
3 medical records related to the four-wheel accident, and  
4 I would have turned that information over as soon as I  
5 had gotten those. And I get those records as soon as I  
6 get involved in the case. So, we should have had that  
7 information for some time.

8 Q. Okay. I'd also like to talk to you about some of  
9 the specific interviews that you did in this case.

10 A. Okay.

11 MS. VANN: May I approach, Your Honor?

12 THE COURT: Yes, you may.

13 BY MS. VANN:

14 Q. I'd like to show you what's been marked as  
15 Applicant's Exhibit 7. What are these documents?

16 A. They are interview summaries of mine.

17 Q. And so, you wrote these up -- this is what you  
18 were talking about? After we did an interview with a  
19 witness, you wrote these up?

20 A. Correct.

21 Q. And would you have provided them to trial  
22 counsel?

23 A. Absolutely, as soon as I wrote them up.

24 Q. And there's a date on each of these interviews.  
25 What does that date reflect?

1       A.    The date is the day that I did the interview.  
2   And my practice is to document that within a day of  
3   doing the interview.

4           MS. VANN:   Your Honor, I would move to have these  
5   interview summaries admitted as Applicant's Exhibit 7.

6           THE COURT:   Ms. Brown -- I'm sorry, Mr. Evans?

7           MR. EVANS:   No objection.

8           THE COURT:   Applicant's Exhibit 7 is into  
9   evidence.

10          MS. VANN:   Thank you.

11               (Applicant's Exhibit Number 7 was entered into  
12   the record.)

13   BY MS. VANN:

14       Q.    Okay.   So, if we could start with the first  
15   interview summary of, I believe it says it's an  
16   interview with Bill Hayes.   Department of Social  
17   Services the interview.

18       A.    Correct.

19       Q.    Did he teach adjunct classes while Rickey was in  
20   school?

21       A.    He did.

22       Q.    And did he provide some information to you about  
23   what those adjunct class were?

24       A.    He did.

25       Q.    That last paragraph, could you just read what

1 information you got about the adjunct classes was?

2 A. Sure. The adjunct class Mr. Hayes taught wasn't  
3 really a social studies class. He recalls ---

4 MR. EVANS: Your Honor, I object. That's  
5 hearsay.

6 THE COURT: Yeah. What's ---

7 MS. VANN: It doesn't go to the truth of the  
8 matter asserted. It really goes to the question of  
9 whether she had provided trial counsel with this  
10 information from the witness.

11 THE COURT: All right. I'll overrule the  
12 objection. Go ahead.

13 MS. VANN: Thank you.

14 THE WITNESS: It was a real simple course with a  
15 real simple book. Mr. Hayes remembers the class. Used  
16 stories about people who weren't smart, yet made  
17 something out of themselves. Mr. Hayes thinks students  
18 with mental retardation could be in adjunct classes  
19 since those classes were available to anyone.

20 BY MS. VANN:

21 Q. Do you recall if Dr. Calloway spoke with Bill  
22 Hayes?

23 A. I, I do not remember.

24 Q. Okay. And the next one is an interview with  
25 Kenneth Lawter. And what was the date of that

1 interview?

2 A. 5-18-2012.

3 Q. Do you know -- or how did Mr. Lawter know Mr.  
4 Rickey Blackwell?

5 A. They were friends in elementary school and high  
6 school.

7 Q. So he would have known Rickey during the  
8 developmental period?

9 A. Correct.

10 Q. Do you recall if Dr. Calloway interviewed Kenneth  
11 Lawter?

12 A. I don't recall. I don't, I don't think so, but I  
13 don't recall.

14 Q. And the next interview summary is with Cheryl  
15 Ponder.

16 A. Correct.

17 Q. And what's the date of that interview?

18 A. July 11th, 2012. I think I saw her the same day  
19 I saw him, Mr. Hayes. Yes, I did.

20 Q. And in the last two paragraphs, does she provide  
21 information about other teachers at Mr. Blackwell's  
22 school?

23 A. She did.

24 Q. Is Beverley Cash one of those teachers?

25 A. She is.

1 Q. And did she provide an updated name for Ms. Cash?

2 A. She did.

3 Q. So Beverley Daves was her name at the time?

4 A. Correct.

5 Q. And do you recall if Dr. Calloway interviewed  
6 Beverly Daves?

7 A. I don't think so.

8 Q. Okay. The next interview summary is with Ken  
9 White. And when was that interview?

10 A. 10-11-2012.

11 Q. Okay. And about halfway down there is a  
12 paragraph that starts with Rickey did not -- I'm sorry.  
13 How did Mr. White know Rickey Blackwell?

14 A. He employed Rickey for about 30 years. Mr. White  
15 owned a trucking company.

16 Q. How long did you say he employed Mr. Blackwell?

17 A. I have in the summary approximately 30 years.  
18 Well, I know he worked for Ken White approximately 30  
19 years.

20 Q. Okay. In that paragraph, it says Rickey did not  
21 have a CDL. Could you read that paragraph?

22 A. Rickey did not have a CDL. At the time truck  
23 drivers only needed a class III driver's license. A CDL  
24 became required in 1992.

25 Q. Do you recall if Dr. Calloway ever interviewed



1 Ken White?

2 A. I remember taking her to interview an employer, I  
3 just don't remember which one.

4 Q. Okay. And the next interview summary is with  
5 Brandy Shields. What is the date of that interview?

6 A. February 21st, 2014.

7 Q. Do you recall how Randy Shields knew of Mr.  
8 Blackwell?

9 A. He had known Rickey since they were both little  
10 boys. They were peers.

11 Q. So this would be another witness who knew Rickey  
12 during the developmental period?

13 A. Correct.

14 Q. I think you have reviewed this interview summary  
15 recently. Is there information about adaptive deficit  
16 that's in this interview summary?

17 A. There's quite, quite a bit.

18 Q. If we could just talk about a couple of those.  
19 Does he ---

20 MR. EVANS: Your Honor, I would object. I think  
21 this is completely beyond the scope of her knowledge.  
22 She's not a forensic psychologist.

23 THE COURT: Well, her question simply is can you  
24 talk about something. I missed the last part.

25 MR. EVANS: Well, she wanted to go into adaptive

1 deficits, so I don't think that's her field. I think  
2 that has to be done --

3 THE COURT: All right.

4 MR. EVANS: -- by a forensic psychologist.

5 THE COURT: Ms. Vann?

6 MS. VANN: She is a trained investigator, who is  
7 trained to look for evidence regarding adaptive deficit.  
8 She is not opining on whether Mr. Blackwell has deficits  
9 in adaptive behavior, rather whether there's information  
10 that could have been provided to the expert from this  
11 witness about adaptive deficit.

12 THE COURT: All right. I overrule the objection.  
13 Go ahead.

14 BY MS. VANN:

15 Q. There's a story about three-quarters of the way  
16 down about Rickey smoking. What is the gist of that  
17 story?

18 A. The gist is that there's -- Rickey would  
19 sometimes smoke cigarettes during recess and that there  
20 was a particular teacher who watched for them and had  
21 told them to stop. And despite being told that, Rickey  
22 would stand in the open playground, instead of going and  
23 hiding somewhere, and smoke out in the open and get  
24 caught.

25 Q. And then that next paragraph, Mr. Shields talks

1 about Rickey playing softball. What did he say about  
2 that?

3 A. He said that they would play softball during  
4 recess time. And then Rickey had a hard time making a  
5 decision about whether he should run or stay on base.  
6 He said, he would sit on the base unable to make a  
7 decision. He went on to say, Rickey is not someone who  
8 sets priorities in his life.

9 Q. If we could go to page 3 of that interview. That  
10 last paragraph, what did Mr. Shields report about Rickey  
11 Blackwell?

12 A. Did you say the last paragraph?

13 Q. Yeah, the last paragraph on page 3.

14 A. Rickey could never come to a conclusion or  
15 finality. Rickey could get from point A to B, but don't  
16 interfere with the in between. He went on to say,  
17 Rickey is a good person. He isn't threatening. I would  
18 have a pleasant time going out to eat with him, although  
19 he isn't someone who would enrich your life. He is  
20 simple minded.

21 Q. Okay. And then on the last page of that  
22 interview, page 4, just the first sentence of that  
23 second paragraph.

24 A. Rickey isn't the type of person who thought about  
25 consequences.

1 Q. Okay. And in the last paragraph, did you report  
2 how Mr. Shields would be willing to be involved in  
3 Rickey's case?

4 A. He said that he did not want to testify. That he  
5 would help in any other way.

6 Q. Do you think that was meaning that he would be  
7 willing to talk to an expert in the case?

8 A. Yes.

9 MR. EVANS: Objection. That's speculation.

10 THE COURT: Yeah. I sustain the objection.

11 BY MS. VANN:

12 Q. Do you know if Mr. Shields was ever interviewed  
13 by Dr. Calloway?

14 A. He was not.

15 Q. I'd like to show you what's been marked as  
16 Applicant's Exhibit 33. Do you recognize this document?

17 A. I do.

18 Q. What is it?

19 A. It is Dr. Calloway's report.

20 Q. So this is what you were talking about that you  
21 had reviewed and there was some issues with the scores?

22 A. Yes.

23 Q. At first.

24 A. Okay.

25 MS. VANN: Your Honor, we would move to admit

1 this as Applicant's Exhibit 33.

2 MR. EVANS: I object, Your Honor. This is not  
3 her actual report. This is a report done by another  
4 doctor -- by a doctor. I think that's the actual  
5 doctor, she didn't want to testify, testify about the  
6 support that's been in her report for it to go into  
7 evidence with Dr. Calloway and not through this witness.

8 THE COURT: All right, Ms. Vann?

9 MS. VANN: I would note that this was admitted as  
10 Defendant's Exhibit 8 at trial. The sticker is still on  
11 there, and it actually has the page numbers from where  
12 it was in the record on appeal. I don't think there's  
13 any dispute that this is actually Dr. Calloway's report.

14 THE COURT: Okay. What do you intend -- how do  
15 you intend to use it through this particular witness?

16 MS. VANN: All I would ask her is about the  
17 sources that Dr. Calloway used to compare it to those  
18 interview summaries that we just talked about.

19 THE COURT: All right. I overrule the objection.  
20 I'll allow Applicant's Exhibit 33 into evidence.

21 MS. VANN: Thank you, Your Honor.

22 (Applicant's Exhibit Number 33 was entered into  
23 the record.)

24 BY MS. VANN:

25 Q. Ms. Richards-Baker, if you could turn to page 5

1 of that report.

2 A. Okay.

3 Q. Did that list the records, assessment, method,  
4 and records reviewed?

5 A. Yes.

6 Q. And there is a bullet point that is labeled  
7 adaptive behavior assessment system.

8 A. Correct.

9 Q. Do you recall Dr. Calloway completing those  
10 tests?

11 A. Vaguely. I mean, I know I went with her, but I  
12 don't remember them in detail.

13 Q. Okay. But she spoke to different witnesses to do  
14 that?

15 A. Correct.

16 Q. Can you list the witnesses that she had  
17 administered those too?

18 A. Sure. Mildred and Cletus Blackwell, Rickey's  
19 parents. Heather Bryant, Rickey's daughter. Ken Rice,  
20 who had been Rickey's pastor and counselor. Jean White,  
21 who was a neighbor and Mildred's friend. Louise  
22 Scruggs, who was Rickey's former teacher. Rickey  
23 Bagwell, Rickey's former employer. And Gail Shook,  
24 Rickey's former work supervisor.

25 Q. And then a little bit down it says there's an

1 interview with Cheryl Ponder.

2 A. Yes.

3 Q. And then four up from the bottom it says,  
4 interview with Jean Bradley White by Kara Richards.

5 A. Yes. And I would assume that interview with  
6 Cheryl Ponder is also by me.

7 Q. What do you mean by you?

8 A. I mean, I think she probably reviewed my  
9 interview with Ms. Ponder.

10 Q. Okay. Thank you. Do you recall the preparation  
11 for the pre-trial hearing on intellectual disability in  
12 this case?

13 A. Not particularly, because I don't think there was  
14 a lot. I don't recall. I know that I did not meet with  
15 any of the witnesses we were going to present to the  
16 attorneys.

17 Q. Did you feel that the team was prepared for the  
18 Atkins hearing?

19 MR. EVANS: Your Honor, I will object to that.

20 THE COURT: I'm sorry, repeat the question.

21 MS. VANN: I asked if she felt the team was  
22 prepared for the pretrial?

23 THE COURT: Yeah, I sustain the objection.

24 BY MS. VANN:

25 Q. I'd like to show you what's been marked as

1 Applicant's Exhibit 8. Do you recognize this document?

2 A. I do.

3 Q. What is it?

4 A. It's a list of concerns that I had that the State  
5 might argue -- might use to argue against ID in Rickey's  
6 case.

7 Q. And you prepared it?

8 A. I did.

9 Q. Do you recall when you prepared it?

10 A. Not specifically. I would imagine that I  
11 probably was working on it throughout the time, but once  
12 we got the State's expert's report, I would have  
13 definitely read their report with an eye to what we  
14 needed to be concerned about. So I would think that  
15 they maybe pulled some of that from that report.

16 Q. In relation to the Atkins hearing, when would you  
17 have prepared this?

18 A. Before.

19 Q. And what was the purpose of the memo?

20 A. So that we could strengthen our ID case and be  
21 prepared for arguments that the State would say that he  
22 wasn't ID.

23 Q. And did you provide it to trial counsel?

24 A. I did.

25 MS. VANN: Your Honor, we would move to admit



1 this as Applicant's Exhibit 8.

2 MR. EVANS: Your Honor, I will object to this  
3 being admitted. There's no date on it. We don't know  
4 when this was done. No signature, nothing on this. No  
5 possible arguments against ID.

6 THE COURT: Lay a ---

7 MS. VANN: She just testified that she prepared  
8 it, though she prepared it in advance of the Atkins  
9 hearing and that she provided it to trial counsel in  
10 preparation for the Atkins hearing.

11 MR. EVANS: That's not authenticated, Your Honor,  
12 because there's no date or signature.

13 MS. VANN: She's the witness who ---

14 THE COURT: Wait, hold on. Yeah. She's  
15 testified this is her work, this is what she prepared.  
16 She doesn't put a -- there is not a specific date on  
17 Applicant's Exhibit 8. However, she's indicated she's  
18 prepared it in preparation for a hearing. I'm gonna  
19 overrule it. I note your objection. I'll overrule it  
20 and allow Applicant's 8 into evidence.

21 MR. EVANS: Thank you, Your Honor.

22 (Applicant's Exhibit Number 8 was entered into  
23 the record.)

24 BY MS. VANN:

25 Q. What is the second item listed on this memo?

1       A.   IQ scores prior to '18 are two variables.   Some  
2   of them are way above ID range.

3       Q.   And why do you have IQ in quotation marks?

4       A.   My memory is that the the tests that were  
5   administered to Mr. Blackwell when he was in school are  
6   not ones that would qualify.

7           MR. EVANS:   Your Honor, I would object also to  
8   that.   It goes beyond the scope of her knowledge  
9   regarding the subject, Your Honor.

10       THE COURT:   Yeah.

11       MR. EVANS:   She's not a forensic psychologist.

12       THE COURT:   I sustain the objection.

13   BY MS. VANN:

14       Q.   And what is the third item listed?

15       A.   He is not in ID.   Any limitations would see a  
16   result of Rickey having cancer, being in a four-wheeler  
17   or an accident, having seizures, et cetera.

18       Q.   So these items are issues you think the State  
19   might raise?

20       A.   Correct.

21       Q.   And you provided it to trial counsel?

22       A.   I did.

23       Q.   What did you expect would happen once you  
24   provided this to trial counsel?

25       A.   That they would meet with our --

1 MR. EVANS: Your Honor, I think this is  
2 speculative also.

3 THE WITNESS: -- experts to combat this.

4 THE COURT: Yeah. I'll overrule the objection.  
5 She stated why she prepared it and it's stated it's her  
6 view of possible things the State would go into, so go  
7 ahead.

8 BY MS. VANN:

9 Q. Go ahead.

10 A. I'm sorry.

11 Q. Sorry. What did you expect would happen once you  
12 provided this?

13 A. That the attorneys would use it when they  
14 prepared for the Atkins hearing and that they would meet  
15 with the experts to talk about these concerns.

16 Q. Do you know if a meeting like that ever occurred?

17 A. I, I do not know. I know that they met with Dr.  
18 Calloway. I don't know that these were talked about.

19 Q. Do you recall what the outcome of the pretrial  
20 Atkins hearing was?

21 A. The judge ruled that he was not ID.

22 Q. Okay. Following that, did you ever witness trial  
23 counsel talking about changing their Atkins presentation  
24 before presenting it at trial?

25 A. No.

1 Q. Did they ask you to do anymore interviews after  
2 the pretrial Atkins hearing?

3 A. I don't think so.

4 Q. I'd like to switch gears a little bit to mental  
5 health. You mentioned that before. What did you  
6 uncover during your investigation about Mr. Blackwell's  
7 mental health?

8 A. Well, once his wife left him, he really  
9 decompensated, and I was concerned. He clearly was  
10 suffering from a major depressive episode after she  
11 left. He was really not functioning. Other people  
12 having to take care of him.

13 I was concerned about his mental state at the  
14 time of the crime because of what I had heard about how  
15 much he had fallen apart after she left. And then he  
16 spent all his time crying. And that was my experience  
17 with him.

18 Q. And what did you recommend trial counsel do as a  
19 result of that information?

20 A. That they hire a forensic psychiatrist to  
21 evaluate him for his medical competency at the time of  
22 the crime.

23 Q. Did you recommend a particular person?

24 A. I did.

25 Q. Who was that?

1       A.   Dr. George Covin.

2       Q.   And why did you recommend Dr. Corvin for this  
3 case?

4       A.   I had worked with him before.

5       Q.   Was there anything particular about this case  
6 that you thought that Dr. Corvin would be particularly  
7 useful for?

8       A.   Well, Dr. Corvin's from Alabama and I thought he  
9 would be -- likes Nascar, I think, and I thought maybe  
10 he would relate well to the Blackwells.

11      Q.   Could you describe what happened after you  
12 recommended Dr. Corvin be involved in this case?

13      A.   I know I talked with Dr. Corvin about my thoughts  
14 about the case. I would have sent him records. And I  
15 don't -- there wasn't really anything after that. There  
16 wasn't any followup. I know that I talked to him after  
17 he saw Rickey and he certainly had some concerns and  
18 thought that there was a mental illness part, but there  
19 wasn't anything that came of that until we were shortly  
20 before trial. I want to say maybe a month. And Mr.  
21 McGuire called me and told me to call Dr. Corvin and say  
22 we needed his report and we're gonna need him to  
23 testify.

24      Q.   So there's a period of time that there was no  
25 communication with Dr. Corvin?

1       A.   I would say after he initially saw Mr. Blackwell.  
2   And I might have had a phone call, and getting him  
3   records.  There was no more communication that I  
4   remember.  That I know of until I had to call him to say  
5   he had to testify.

6       Q.   And what happened when you called Dr. Corvin  
7   about testifying?

8       A.   He was furious.  He was very angry.  There wasn't  
9   -- it was a very difficult conversation.  He said that  
10   he was.  There was no way that he was gonna do it.  That  
11   nobody had followed up with him, and he had -- my memory  
12   is that he was going to be out of the country and he had  
13   other trials, and he just was furious.

14      Q.   I would like to show you another set of e-mails.  
15   I just showed you Applicant's Exhibit 9.  Do you  
16   recognize these communications?

17      A.   I do.

18      Q.   What are they generally?

19      A.   They're e-mails from me to Mr. McGuire and  
20   Mr. Allen or from Mr. McGuire.

21      Q.   And why ---

22      A.   They're team e-mails.

23      Q.   And what are they related to generally?

24      A.   Hiring Dr. Corvin.

25           MS. VANN:  I would move to have these admitted as

1 Applicant's Exhibit 9.

2 MR. EVANS: No objection, Your Honor.

3 THE COURT: Applicant's Exhibit 9 is into  
4 evidence.

5 (Applicant's Exhibit Number 9 was entered into  
6 evidence.)

7 BY MS. VANN:

8 Q. Okay. If we could walk through these. The first  
9 e-mail is dated July 16th, 2012. Is this the e-mail  
10 that you sent to trial counsel?

11 A. It is.

12 Q. To both Bill McGuire and Clay Allen?

13 A. Yes.

14 Q. And what did you recommend in this e-mail?

15 A. That we hire Dr. Corvin.

16 Q. Why did you make that recommendation?

17 A. Well, can I just read what I wrote?

18 Q. Sure.

19 A. I said: It seems to me that Rickey was in the  
20 midst of a severe major depressive episode in the months  
21 and days leading up to the homicide. Dr. Jackson, who  
22 was Rickey's primary care physician, told me he was not  
23 surprised Rickey had overdosed since he was so  
24 depressed.

25 I believe Dr. Jackson should have raised the

1 level of care Rickey was getting since he was so  
2 depressed, i.e., hospitalize him to stabilize him, meet  
3 with him weekly, refer him to a psychiatrist or  
4 therapist, et cetera. I'm not qualified to say whether  
5 Dr. Jackson was treating Rickey with the right  
6 medications for the severity of his depression;  
7 although, I doubt xanax is the best treatment for what  
8 Rickey was experiencing.

9 Also, Xanax is highly addictive and Dr. Jackson  
10 had Rickey on it for years and continually had to  
11 increase the dose. I think a forensic psychiatrist  
12 could address some of these questions/issues. And then  
13 I recommend Dr. Corvin.

14 Q. Great. At the beginning you say: I'm wondering  
15 if we need a forensic psychiatrist aside from Donna  
16 Schwartz - -- is that Donna Schwartz-Watts?

17 A. Yes, it is.

18 Q. Do you recall her role in the case?

19 A. She was treating Mr. Blackwell while he was in  
20 the jail. She was providing, I guess, the prescriptions  
21 for his medications.

22 Q. And so, here you're recommending that a  
23 psychiatrist, aside from the treating psychiatrist be  
24 involved?

25 A. Yes.



1 Q. Okay. If we could go to the next e-mail, dated  
2 July 18th, 2012.

3 A. Correct.

4 Q. Does this indicate that you had talked to  
5 Dr. Corvin?

6 A. Yes. I said that he's willing to help.

7 Q. Okay. And then the next set of e-mails, they  
8 appear to be the August 17th and 19th of 2012.

9 A. Uh-huh, correct.

10 Q. At the bottom of that page there's an e-mail from  
11 you on August 17th, 2012.

12 A. Yes.

13 Q. And you sent that to Clay Allen and Bill McGuire  
14 and Natasha Holiday. Do you remember who she was?

15 A. She was the paralegal in Mr. McGuire's office.

16 Q. Okay. And what are you generally recommending  
17 here or reporting here?

18 A. Well, I had received Rickey's brother's records  
19 from the Mental Health Center and -- yeah, from the  
20 Mental Health Center, and he had been diagnosed at times  
21 with schizophrenic and other times schizoaffective  
22 disorder. And he had been treated with very strong  
23 neuroleptics, including Prolixin, Clozaril, and  
24 Thorazine. Also Seroquel and xanax. And I thought that  
25 that was something that needed to be shared with our

1 doctors.

2 Q. And then at the bottom, you say: I think these  
3 records highlight the need for a psychiatrist on this  
4 team.

5 A. Yes.

6 Q. And if we can work our way back up, it looks like  
7 you got a response from Bill McGuire on August 19th?

8 A. Correct.

9 Q. And he says: I agree with the psychiatrist  
10 issue.

11 A. Correct.

12 Q. Okay. And then if we go back up one more, what  
13 did you respond to Mr. McGuire?

14 A. I told him that George Corvin is ready and  
15 willing.

16 Q. And we just need to steer him in the right  
17 direction?

18 A. Uh-huh.

19 Q. Okay. And if we could go to the next set, which  
20 appears to be on September 21st, 2012.

21 A. Correct.

22 Q. Is that an e-mail where Mr. McGuire is reaching  
23 out to Dr. Corvin?

24 A. It is.

25 Q. Then on the next page is an e-mail dated October

1 23rd, 2012?

2 A. Yes.

3 Q. Is this where you're setting up for Dr. Corvin to  
4 have that initial evaluation with Rickey?

5 A. Yes.

6 Q. And that was scheduled for November 20th of 2012?

7 A. Yes, it was.

8 Q. Okay. Did you talk to Dr. Corvin after that  
9 initial interview with Rickey?

10 A. I would imagine I did. I usually do.

11 Q. Okay. And then the next set are e-mails in  
12 November of 2012.

13 A. Uh-huh.

14 Q. On the bottom of that page there's an e-mail from  
15 you on November 26th, 2012?

16 A. Correct.

17 Q. And what are you asking?

18 A. I asked Dr. Corvin if he thinks we need a  
19 functional MRI in Rickey's case.

20 Q. And who's copied on that e-mail?

21 A. Mr. McGuire, Mr. Allen, and Casey Seagor  
22 (phonetic), who was another attorney in Mr. McGuire's  
23 office.

24 Q. Okay. And then could you just read the last few  
25 sentences of Dr. Corvin's response from where it says,

1     what I can say?

2           A.   Uh-huh.   What I can say is that my examination of  
3     him last week, coupled with what I know of his history,  
4     also raises my index of suspicion for such conditions.  
5     We can go into detail about that when we talk again.  
6     There will be much to discuss, I think.   George.

7           Q.   Do you recall if there was any communication with  
8     Dr. Corvin after -- immediately following that?

9           A.   No.

10          Q.   The next memo I have in here is dated Nov -- I'm  
11     sorry, January 9th of 2014.

12          A.   Correct.

13          Q.   Do you think there had been -- or do you recall  
14     if there had any communication with Dr. Corvin from  
15     November of 2012 until January of 2013?

16          A.   I don't believe so.

17          Q.   What is this memo on January 9th, 2014?

18          A.   Looks like I summarized a team meeting we had  
19     with the list of things that we need to do.

20          Q.   And what is number nine on that list?

21          A.   Care to contact Dr. Corvin to advise him of trial  
22     date and check to see if he has Rickey's mental health  
23     records.

24          Q.   And then on the next page, it looks like an  
25     e-mail from February 5th, 2014.

1       A.    Yes.

2       Q.    Is this where you reach out to Dr. Corvin about  
3   the trial?

4       A.    Yes.

5       Q.    And what was the response to that e-mail that you  
6   sent?

7       A.    I think he called me immediately and just laid  
8   into me.

9       Q.    Okay.  On the next page it looks like you sent an  
10   e-mail to Bill McGuire and Clay Allen.  What did you  
11   report there?

12       A.    We have problems with Dr. Corvin.  He is headed  
13   out of the country for ten days in February.  Then he  
14   has two capital trials scheduled in North Carolina in  
15   early March that he is subpoenaed to testify in.  He is  
16   concerned that he has not written a report in this case.  
17   Hasn't spoken with an attorney and isn't prepared.

18       Q.    Okay.  And then, the last e-mail is dated  
19   February 22nd.  Is that from Dr. Corvin?

20       A.    It is.

21       Q.    And what does he say?

22       A.    Kara, just checking in.  Any news with Blackwell?  
23   Saw some press on the Amar hearing.  Of course, I still  
24   have heard nothing from anyone about him ever except  
25   from you.  George.

1 Q. Did Dr. Corvin end up testifying at trial?

2 A. He did not.

3 Q. Was it because of scheduling?

4 A. I think he just wasn't willing to do -- I mean, I  
5 think he wasn't prepared, he wasn't willing to do it.  
6 There wasn't a report.

7 Q. Do you have any recollection of him having an  
8 opinion that would have been unhelpful to Rickey's case?

9 A. No.

10 Q. Okay. I have one last document I'd like to show  
11 you. Now, I've just handed you what's been marked as  
12 Applicant's Exhibit 10. What is this document?

13 A. It's a list I made of issues for postconviction.

14 Q. When would you have made this?

15 A. I either made it at some time before trial,  
16 during trial, after trial.

17 Q. And what was the purpose of you drafting this  
18 list?

19 A. Well, I had a lot of concerns about the way we  
20 were prepared or not prepared for trial, and you always  
21 think that your memory is going to be great and that  
22 that stuff will stand out, but I figured my memory might  
23 not be that great, and so I made a list of things that I  
24 was concerned about in case we ended up in  
25 postconviction and I needed to talk about them.

1 MS. VANN: Your Honor, I would move to have this  
2 admitted as Applicant's Exhibit 10.

3 MR. EVANS: No objection.

4 THE COURT: Applicant's Exhibit 10 is in  
5 evidence.

6 (Applicant's Exhibit Number 10 was entered into  
7 the record.)

8 BY MS. VANN:

9 Q. What is item number four on your issues with  
10 postconviction?

11 A. Lack of exploration of mental health defense.

12 Q. Thank you. And what is issue -- or item number  
13 one?

14 A. Team communication.

15 Q. And those are the issues that you've just spoken  
16 about here?

17 A. Correct.

18 Q. Okay. I'd like to change directions just a  
19 little bit. Do you recall if there was any discussion  
20 among the team on hiring a social historian to testify  
21 about Rickey's life history?

22 A. I don't believe so.

23 Q. Have you ever worked with a social historian  
24 before on a death penalty?

25 A. I have.

1 Q. And what would their role be?

2 A. The social historian provides kind of a  
3 comprehensive social history of the client and his  
4 family to explain different mitigating factors.

5 Q. And was there information you uncovered during  
6 your investigation that could have been presented by a  
7 social historian?

8 A. Absolutely.

9 Q. What types of things do you think?

10 A. Well, there -- again, the memory's not what it  
11 was, but I remember there was some trauma in the family.  
12 There was definitely the issue of intellectual  
13 disability. Just somebody who could explain Rickey. I  
14 mean, this was really abnormal behavior for Rickey, and  
15 just totally out of character and somebody who could  
16 have talked about what he had been like prior to the  
17 offense.

18 Q. And so, no social historian testified at the  
19 trial?

20 A. No.

21 Q. What about adaptability to a prison or future  
22 dangerousness, did you investigate that?

23 A. Well, I mean, I knew that Mr. Blackwell wasn't  
24 causing any problems in the jail. He did have an  
25 incident where he was hoarding his medications, but he



1 certainly was not a threat to the other inmates or the  
2 jailers. And I would have suggested that we have a  
3 jailer or somebody testify to his adaption to prison  
4 life.

5 Q. Do you recall James Aiken getting involved in  
6 this case?

7 A. Only because you showed me some things that he  
8 was. He did not testify. I would not have remembered  
9 that he was involved.

10 Q. Have you worked with James Aiken in other cases?

11 A. I have.

12 Q. And does he provide testimony about adaptability  
13 in prison?

14 A. He does.

15 Q. Do you recall why he didn't testify in the ---

16 A. I don't. I don't know.

17 Q. How about did you investigate remorse on behalf  
18 of Mr. Blackwell?

19 A. I did.

20 Q. Did you find any evidence that Rickey was  
21 remorseful for the crime?

22 A. I did. I mean, besides that he cried every time  
23 I met with him, I talked to other people who talked  
24 about his remorse.

25 Q. Were -- I'll just back up a little bit. Did

1 Rickey go straight to the jail after he was arrested or  
2 did he go to the hospital?

3 A. I think he went to the hospital.

4 Q. What -- do you recall if he interacted with any  
5 chaplains while he was there?

6 A. He did.

7 Q. And did you interview those chaplains?

8 A. I did.

9 Q. Did they have information that he was remorseful?

10 A. They did.

11 Q. Do you know if the chaplains testified in the  
12 trial?

13 A. They did not.

14 Q. Do you know of any reason why they should not  
15 have testified?

16 A. I do not.

17 Q. Okay. And then if we could just kind of talk  
18 about the trial. After the Atkins hearing was over, do  
19 you recall how much time there was to prepare for the  
20 trial?

21 A. I don't think there was a lot of time. Maybe a  
22 couple weeks.

23 Q. How did the attorneys go about deciding what the  
24 theory or the theme would be that they'd present at  
25 trial?

1       A.   I don't recall that we had a specific theory or  
2   theme.

3       Q.   Did, did the attorneys meet with the mitigation  
4   witnesses to prepare them for trial?

5       A.   I remember that Mr. McGuire met with  
6   Mr. Blackwell's mother.  I know that he had met with  
7   Heather, but I don't recall that he prepped her for  
8   trial.

9       Q.   Is there anything that stood out to you during  
10  the trial that you recall?

11      A.   Well, I remember being shocked that really the  
12  only person that I knew that Mr. McGuire had prepped was  
13  Mildred Blackwell, Rickey's mother.  And that right  
14  before she was set to testify, he turned her over to  
15  Mr. Allen to examine her.

16      Q.   Did you attend the trial after that?

17      A.   I don't think so.  I was pretty frustrated at  
18  that point, and I think we were close to done.

19      Q.   And what was the result of the trial?

20      A.   Mr. Blackwell got death.

21           MS. VANN:  Court's indulgence.

22  BY MS. VANN:

23      Q.   If I could just back up a little bit.  What role  
24  does James Aiken have when he is participating in a  
25  capital case?

1       A.   Well, he usually reviews the defendant's prison  
2 records, jail records, if they have prior prison or jail  
3 records. And then he speaks to what he thinks their  
4 adaptability will be in prison and any future  
5 dangerousness.

6           MS. VANN: I have nothing further, Your Honor.

7           THE COURT: All right, thank you. Let's take a  
8 -- this is probably an appropriate time to take a short  
9 break.

10          MR. EVANS: Yes, Your Honor.

11          THE COURT: Take ten, no more than ten minutes.  
12 Ms. Richards-Baker, you're still under oath. Don't  
13 discuss your testimony that you've given or any future  
14 testimony with anybody during the break. We'll be at  
15 ease for ten minutes.

16           (A recess was held from 11:06 a.m. - 11:18 a.m.)

17          THE COURT: All right. I believe everybody's  
18 back in place. Mr. Evans, this is your witness.

19          MR. EVANS: Thank you, Your Honor.

20                           CROSS-EXAMINATION

21 BY MR. EVANS:

22       Q.   Ms. Baker --

23       A.   Good morning.

24       Q.   -- you were the mitigation specialist in this  
25 case, correct?

1       A.   Yes.   Correct.

2       Q.   Okay.   And your job was to do interviews, make  
3 summaries, and give the summaries to the attorneys;  
4 isn't that correct?

5       A.   Well, it's more than that, but that's part of it.

6       Q.   That's part of your job?

7       A.   Correct.

8       Q.   Okay.   And that's what you did, you gave, you  
9 made summaries of interviews and then you give them to  
10 the attorneys.   And it's the attorney's job to make a  
11 decision whether or not to use those interviews; isn't  
12 that correct?

13      A.   Yes.   Usually it's with consultation with the  
14 mitigation investigator.   They decide as a team which  
15 witnesses they're going to call.

16      Q.   But you're not a lawyer?

17      A.   No.

18      Q.   Is that correct?

19      A.   Yes.

20      Q.   Okay.   So it will be ultimately the job or the  
21 decision of the lawyers --

22      A.   Correct.

23      Q.   -- to decide who they're gonna put up for the  
24 evidence?   Okay.   You say you worked for Bill McGuire  
25 before?

1       A.   I had worked a case with Mr. McGuire before.

2       Q.   Okay.

3       A.   And there was another attorney on that case who  
4 did most of the work on that case.

5       Q.   Okay. All right. And you recommended Dr.  
6 Calloway to Bill McGuire; isn't that correct?

7       A.   I did.

8       Q.   Okay. And Dr. Calloway is very efficient and  
9 very experienced in intellectual disability, right?

10      A.   She is.

11      Q.   By being in court -- I don't know if you know  
12 this, but according to her curriculum vitae, she's been  
13 doing work regarding mental retardation since 1983, yes  
14 or no?

15      A.   Yes.

16      Q.   Yes.

17      A.   I assumed.

18      Q.   Yes. Now, you said on direct that there were  
19 issues regarding past intellectual disability runs in  
20 the family that you have to certify.

21      A.   Correct.

22      Q.   And that his father had an IQ of 60; is that  
23 correct?

24      A.   I can't say exactly. I know that I got his  
25 school records and that there were concerns about his

1 IQ.

2 Q. Okay. And his brother, Don, had some mental  
3 health problems also; is that correct?

4 A. He had some mental illness and I believe he had  
5 some intellectual disability as well.

6 Q. Okay. And also his daughter had some --

7 A. Correct.

8 Q. -- mental problems?

9 A. Correct.

10 Q. And his grandchildren?

11 A. Correct.

12 Q. Okay. I will show you ---

13 If I may approach, Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. EVANS:

16 Q. -- Applicant's Exhibit Number 33 that is the  
17 report of Dr. Calloway.

18 A. Uh-huh.

19 Q. On page 4365 of the record, it states the IQ test  
20 of Don, Cletus, and also the children and the  
21 grandchildren?

22 A. Yes. Correct.

23 Q. Okay. All right. So that was presented to the  
24 Court?

25 A. Yes.

1 Q. Okay. I will also -- you also talked about the  
2 diagnosis about major schizophrenia disorders and  
3 certain things like that; isn't that correct?

4 A. Correct.

5 Q. I show you once again Applicant's Exhibit Number  
6 33. On page 4366, that's noted there also; isn't that  
7 correct?

8 A. Yes. Correct.

9 Q. Okay. So Dr. Calloway made sure she presented  
10 that to the Court also?

11 A. Correct.

12 Q. Okay. And you talked about the adaptive  
13 functioning tests that are given to individuals to make  
14 sure that they have limited adaptive function.

15 A. Correct.

16 Q. Okay. And these adaptive functioning tests are  
17 usually given to people that have frequent contact with  
18 the defendant; isn't that correct?

19 A. It's given to people who've known him at  
20 different points in his life.

21 Q. Right.

22 A. And usually, yes, they don't -- I mean they know  
23 him, yes, so they would have had contact. I don't know  
24 that it has to be frequent. A school teacher has a very  
25 limited amount of contact.



1 Q. Okay. But they have known him at different  
2 periods of his life; is that correct?

3 A. Right.

4 Q. Okay. And Dr. Calloway knew his parents; is that  
5 correct?

6 A. Correct.

7 Q. His daughter?

8 A. Correct.

9 Q. His pastor, Ken Rice, who had numerous amount of  
10 contact with the defendant?

11 A. Yes.

12 Q. Prior to the events. Also, teach him to show  
13 him, active talks in this matter?

14 A. Correct.

15 Q. Okay. And also Jean White who was a --

16 A. Correct.

17 Q. -- friend of the family?

18 A. Correct.

19 Q. Who knew Rickey since he was a little boy; isn't  
20 that correct?

21 A. Correct.

22 Q. And on page 4381, Applicant's Exhibit Number 33,  
23 she lists the actual results of the adaptive functioning  
24 tests?

25 A. She does.

1       Q.   This is it.   Okay.   So those tests were also  
2   given to the judge and notified to the judge also; isn't  
3   that correct?

4       A.   Correct.

5       Q.   Okay.   And you said earlier that Dr. Calloway  
6   made a mistake on the first reports, and listed an IQ  
7   test that wasn't Mr. Blackwell's?

8       A.   I believe so.   From looking at those e-mails,  
9   that's what I think happened.   It's hard to exactly  
10   remember it.

11      Q.   Do you remember Dr. Calloway doing the  
12   supplemental report listing the correct IQ test?

13      A.   I would assume she did, yes.

14      Q.   Okay.   And now I'm showing you Applicant's  
15   Exhibit 33, page 4402.   First of all, I will show you  
16   Applicant's Exhibit Number 33, page 4398.   That's the  
17   listing of the supplemental report done by Dr. Calloway;  
18   isn't that correct?

19      A.   It is.

20      Q.   And then I will show you page 4402.   Those are  
21   the IQ scores for Mr. Blackwell.   Are these his IQ  
22   scores?

23      A.   Yes.   Yes, it is.

24      Q.   Okay.   It also listed his grade levels also.

25      A.   It lists his age.

1 Q. No.

2 A. Show me where ---

3 Q. Reading grade 5.8.

4 A. Okay.

5 Q. Do you see that right there?

6 A. Uh-huh.

7 Q. Problem solving grade, 6.6?

8 A. Okay.

9 Q. Okay. So not only were the IQ scores in Dr.  
10 Calloway's report, also his grade levels, what he was  
11 learning as?

12 A. Correct.

13 Q. And that was given to the judge also.

14 A. Correct.

15 Q. Okay. Now, you said that you talked to Randy  
16 Shields, who was a friend of Mr. Blackwell's as a youth?

17 A. Yes.

18 Q. Okay. And you did a interview with Mr. Shields?

19 A. I did.

20 Q. Okay. And that's who's placed in the evidence  
21 part of Applicant's Exhibit Number 7. Okay? And you  
22 discussed the situation where Mr. Blackwell brought  
23 cigarettes to school and he smoked them in front of the  
24 teacher.

25 A. Right.

1       Q.   Okay.  I don't think you explained to Mr.  
2   Blackwell who told you, did you?

3       A.   Mr. Shields or Mr. Blackwell?

4       Q.   Mr. Shields, I mean.  Mr. Shields.

5       A.   No, I didn't read the whole memo.

6       Q.   Okay.  And could you follow me as I read with you  
7   right there?

8               Mr. Blackwell -- Mr. Bachelor watched a child in  
9   his window for a boy smoking during recess.  Despite  
10   this, Rickey smoked cigarettes right in the open of the  
11   playground instead of going behind a bin.  Mr. Bachelor  
12   caught Rickey smoking.  And Mr. Shields thinks Rickey  
13   was in fifth, sixth, or seventh grade when this  
14   happened.

15      A.   Yes.

16      Q.   Okay.  Said that, okay.  And above that you said  
17   in this memo:  I asked Mr. Shields to tell me about  
18   Rickey as a young boy.  Mr. Shields remembers a time  
19   when Rickey brought cigarettes to school to share with  
20   some of the other boys.

21      A.   Yes.

22      Q.   Okay.  So it looks like that Rickey knew what he  
23   was doing was wrong and didn't care, isn't it?

24      A.   I don't interpret that from that sentence.

25      Q.   Okay.  But he brought cigarettes to school to

1 share with other kids, correct?

2 A. He did.

3 Q. Okay. So he had to know that smoking cigarettes  
4 was something you have to do and wanted to share with  
5 his friends.

6 A. I mean, I can't speculate as to why Mr. Blackwell  
7 took cigarettes to school. I -- I ---

8 Q. Well, he took cigarettes to school and smoked it,  
9 correct?

10 A. Correct.

11 Q. Okay. Why would you have cigarettes if you're  
12 not gonna smoke?

13 A. Yeah, but I -- okay.

14 Q. Yes, okay. And he was in the fifth, sixth,  
15 seventh grade, correct?

16 A. Yes.

17 Q. So he is between the age of 12 and 14?

18 A. Yes.

19 Q. Okay. And according to Mr. Shields, everybody  
20 knew that Mr. Bachelor checked out people who smoked,  
21 correct?

22 A. Yes.

23 Q. But Rickey brought his cigarettes to school and  
24 smoked them anyway, correct?

25 A. Yes.

1 Q. Out in the open?

2 A. Correct.

3 Q. Okay. Even though he knew that Mr. Shields was  
4 gonna catch -- Mr. Bachelor was gonna catch him?

5 A. Yes.

6 Q. Okay.

7 A. Which I think indicates some limitations in his  
8 judgment.

9 Q. Or could it result in some not caring and it's  
10 just that he get caught or not get caught?

11 A. But there was no other evidence of that with  
12 other people I interviewed.

13 Q. Well ---

14 A. Nobody ever said Rickey didn't care about  
15 following the rules or being good.

16 Q. Okay.

17 A. Nobody ever said that.

18 Q. But this is an objective decision by you; isn't  
19 that correct? Yes or no?

20 A. What's an objective decision?

21 Q. That Rickey had limited --

22 A. It is, yes.

23 Q. -- mental ---

24 A. Well ---

25 Q. Because of the episode, correct?

1 A. Yes.

2 Q. Okay. I'm going to show you another line in Mr.  
3 Shield's affidavit. This is part of Appellate, is it  
4 number seven again? It says right here: In high  
5 school, Rickey ran with a rough crowd. Mr. Shields  
6 knows Rickey would let people take advantage of him  
7 maybe just to have friends. I don't know for certain.

8 A. Correct.

9 Q. All right. Do you remember speaking to Rick  
10 Bagwell, who was an employer of Rickey at Belue  
11 Trucking?

12 A. I don't remember it specifically.

13 Q. Oh.

14 Can I have that marked for identification?

15 (State's Exhibit Number 1, 2-26-2014 Memo, was  
16 marked for identification.)

17 BY MR. EVANS:

18 Q. I'll show you a copy of a memo you did on  
19 February the 26th, 2014, with Rick Bagwell.

20 A. Okay.

21 Q. Okay. Do you recognize that now?

22 A. I do.

23 Q. Okay. And that's an actual copy of a memo that  
24 you did on Mr. Bagwell?

25 A. Correct.

1 Q. Okay. And it says in the interview note that  
2 Rickey was playing smart enough to function, from what  
3 I've seen with his work. It says that, doesn't it?

4 A. It does say that.

5 Q. Okay. And Rickey -- Mr. Bagwell also said that  
6 Rickey wasn't much different than any other truckers.  
7 It didn't come directly of them, but most truckers  
8 don't; isn't that correct?

9 A. That's what it says, yes.

10 Q. Okay. On the next page it talks about the actual  
11 truck that Rickey was driving. It says: There are more  
12 gears on a long-distance truck than a regular truck.  
13 The brake system was different. The truck is bigger. A  
14 regular pickup hold 3500 pounds, but a long-distance  
15 truck holds 8 -- 80,000 pounds. Driving a long-distance  
16 truck involves judgments. Doesn't it say that?

17 A. It does.

18 Q. Okay. And you have to have judgment to drive it,  
19 correct, it says it there?

20 A. Correct.

21 Q. All right. Okay. Also, on the top of the  
22 statements you ask Mr. Bagwell about Rickey getting in  
23 trouble for having people in the cab. Said that at the  
24 top?

25 A. Correct.



1 Q. First paragraph?

2 A. Uh-huh.

3 Q. In a sense he knows that's just him being a boy.  
4 It wasn't uncommon. You can't have people in the cab  
5 for insurance purposes; isn't that correct?

6 A. Correct.

7 Q. Okay. Now, during direct you talked about the  
8 two pastors that counseled Rickey while he was in the  
9 hospital.

10 A. Correct.

11 Q. Abi Moon and Virginia Hesse, do you know their  
12 names?

13 A. I remember the names, yes.

14 Q. Okay. Now, on direct you said that -- I have to  
15 remember, and I may be saying this wrong, that they told  
16 you that Rickey had remorse, but that wasn't used by  
17 defense counsel.

18 A. I said that people, there were several witnesses  
19 I interviewed who said Rickey had remorse. I don't  
20 specifically remember what the two chaplain's said. I  
21 know they weren't used by defense counsel.

22 MR. EVANS: Okay. Beg the Court's indulgence.

23 (State's Exhibit Number 2, Abi Moon Statement,  
24 was marked for identification.)

25 (State's Exhibit Number 3, Virginia Hesse

1 Statement, was marked for identification.)

2 BY MR. EVANS:

3 Q. I will show you two separate statements that were  
4 made. Do you recognize those statements?

5 A. Yes.

6 Q. Okay. Those are statements by Abi Moon and  
7 Virginia Hesse; isn't that correct?

8 A. Correct.

9 Q. Could you read those statements for the record,  
10 please?

11 A. Sure. Virginia Hesse is identified as one of the  
12 chaplains at Spartanburg Regional Hospital who met with  
13 Rickey when he was hospitalized after shooting himself.

14 On the above date I spoke with Virginia (Vicki)  
15 Hesse, on the telephone about Rickey. Vicki is  
16 currently in school in Alexandria, Virginia, where she  
17 is studying to become an episcopal priest. Vicki  
18 remembers Rickey. She begins our conversation by  
19 telling me that generally her conversations with people  
20 are covered under clergy confidentiality, but nothing  
21 was said with Rickey that was confidential because there  
22 was a policeman in the room the whole time.

23 Rickey was placed in the neurotrauma unit at  
24 Spartanburg Regional. The neurotrauma wing was one of  
25 Vicki's floors. She visited every patient on the

1 floors.

2 Vicki remembers visiting Rickey. She walked into  
3 his room and introduced herself. Vicki could tell  
4 Rickey was in pain. Rickey was handcuffed to the bed.  
5 Vicki stood next to Rickey while the policemen watched  
6 them.

7 Vicki asked Rickey if she could hold his hand and  
8 he said yes. Rickey did not make eye contact with her.  
9 Rickey had his eyes closed. Vicki recalls, it seemed  
10 like he was trying to deal with his pain.

11 After several minutes of silence, Vicki asked if  
12 there was anything she could pray for. Rickey said, the  
13 family. Vicki interpreted this to mean the little  
14 girl's family. Rickey spoke very softly and it was hard  
15 to hear him. Rickey recalls, I told him I would. I  
16 reminded him he was loved by God. Rickey didn't say  
17 anything else.

18 I asked Vicki if she remembers saying the Lord's  
19 prayer with Rickey, since that is written in the medical  
20 record. She -- Vicki responds: It is highly possible I  
21 prayed the Lord's prayer. I don't remember it  
22 specifically, but I often did because most people no  
23 matter their religious background know the Lord's  
24 prayer.

25 The police officer never said anything, but he

1     seemed nervous when Vicki asked Rickey to hold his hand.  
2     Vicki doesn't recall if she was the chaplain who gave  
3     Rickey a Bible, but she may have been. This one  
4     interaction is the only interaction Vicki had with his  
5     family. He didn't say anything other than asking her to  
6     pray for the family.

7           Q.    Okay. So, this statement never -- okay. Now,  
8     and you read that from State's Exhibit Number 3?

9           A.    Correct.

10          Q.    Okay. In that statement he never said he was  
11     sorry for what he did; isn't that correct?

12          A.    That's correct.

13          Q.    He never mentions the victim's family?

14          A.    No. But he did ask to pray for her family.

15          Q.    Well, that was an assumption from Virginia Hesse,  
16     wasn't it?

17          A.    It was.

18          Q.    Okay. So he never said, please pray for the  
19     victim's family, never made that comment, did he?

20          A.    No.

21          Q.    Okay. Now, could you read the statement, I think  
22     it was Exhibit Number 2 from Abi Moon?

23          A.    On the above date I speak with Abi Moon on the  
24     telephone. Abi Moon is the associate rector at St.  
25     John's Episcopal Church in Tallahassee, Florida, and is

1     referred to as Mother Moon.

2             Mother Moon was one of the chaplains at  
3     Spartanburg Regional Hospital who met with Rickey when  
4     he was brought to the hospital after shooting Brooke and  
5     himself. Mother Moon remembers Rickey, although she  
6     never knew his real name. She only knew him by the  
7     alias the hospital was using.

8             Mother Moon remembers Rickey was distressed,  
9     feeling bad about what had happened. He was worried  
10    about what was going to happen next. He was distraught.  
11    Rickey was trying to figure out what was going on. He  
12    was tearful and distraught. Mother Moon thought Rickey  
13    was in shock.

14            Mother Moon remembers Rickey was worried about  
15    going to heaven. He was worried that what he had done  
16    would keep him from going to heaven. Mother Moon  
17    recalls Rickey asking her, does God still love me?  
18    Mother Moon talked with Rickey about who God is and  
19    God's forgiveness.

20            Mother Moon does not remember if Rickey said he  
21    was sorry for what he had done. Either the nursing  
22    staff or Rickey asked Mother Moon to visit with Rickey.  
23    She was on call at the time. Mother Moon remembers it  
24    was a difficult time for everyone on the floor. Rickey  
25    was on the -- was on a floor that was not one of Mother

1 Moon's regular floors, so Mother Moon doesn't know any  
2 of the nurses who were tending to Rickey.

3 Prior to Rickey's crime there had been a shooting  
4 up in Gaffney. The victim of that shooting was brought  
5 to Spartanburg Regional Hospital. The entire community  
6 had strong emotions about these shootings. Mother Moon  
7 thinks the nursing staff may have called her to see  
8 Rickey because she is from Tennessee and a neutral  
9 party.

10 There was a police officer in the room the entire  
11 time Mother Moon was with Rickey. Mother Moon was  
12 working at Spartanburg Regional as part of her clinical,  
13 pastoral education program. She worked at Spartanburg  
14 Regional Hospital for ten weeks.

15 Q. Okay. So, according to Mother Moon, Rickey, one  
16 -- Rickey was worried about the soul, wasn't he?

17 A. He was.

18 Q. He wasn't worried about the victim, according to  
19 this? According to the statement. I'm not saying  
20 you're speculating. According to the statement he was  
21 -- he didn't say he was worried about the victim?

22 A. Correct.

23 Q. Okay. So, Rickey was thinking about himself when  
24 Ms. Moon came in to talk?

25 A. I guess so.

1 Q. Okay.

2 A. I mean, she did say he was distraught and  
3 tearful.

4 Q. Okay. All right. But she also said that he was  
5 worried about getting to heaven.

6 A. He was, yes.

7 Q. Okay. And, and he asked if God still loves him.

8 A. Correct.

9 Q. Okay. So, like I said before, he was thinking  
10 about himself at that time?

11 A. At that moment, yes.

12 MR. EVANS: Okay. I don't think I've done this,  
13 Your Honor. I'd like to enter in defense or State's 1,  
14 2, and 3 into evidence.

15 THE COURT: Ms. Vann?

16 MS. VANN: No objection, Your Honor.

17 THE COURT: State's 1, 2, and 3 are into  
18 evidence.

19 MR. EVANS: Thank you, Your Honor.

20 THE COURT: Make sure Julie has those copies. Do  
21 you have those?

22 COURT REPORTER: I do.

23 THE COURT: Okay.

24 (State's Exhibit Numbers 1, 2, and 3 were entered  
25 into evidence.)

1 BY MR. EVANS:

2 Q. Now, during direct you said you spoke to Mr.  
3 Blackwell's physician, Dr. Jackson.

4 A. I did.

5 Q. And Dr. Jackson is his main primary physician at  
6 West Gate Family Health?

7 A. I believe so, yes.

8 Q. All right. And you -- do you remember speaking  
9 with Dr. Jackson on February the 26th, 2014?

10 A. I believe you if you tell me that was the date.  
11 (State's Exhibit Number 4, Dr. Jackson's  
12 Interview, was marked for identification.)

13 Q. Okay. Do you recognize that interview sheet?

14 A. I do.

15 Q. That's the interview sheet you made when you  
16 spoke to Dr. Jackson --

17 A. Correct.

18 Q. -- on February 26th, 2014?

19 A. Yes.

20 MR. EVANS: Your Honor, I'd also like to enter  
21 this into evidence, State's 4. I mean -- yes, State's  
22 4.

23 THE COURT: Ms. Vann?

24 MS. VANN: No objection, Your Honor.

25 THE COURT: State's Exhibit 4 is in the evidence.



1           (State's Exhibit Number 4 was entered into  
2 evidence.)

3 BY MR. EVANS:

4       Q.   Okay.  Now, Bill McGuire was with you when you  
5 spoke to him on this day; isn't that correct?

6       A.   He may have been, yes.

7       Q.   It says on the above date, Bill and I met with  
8 Dr. Jackson --

9       A.   Yes.

10      Q.   -- at his office.  Okay.  And on the second page,  
11 maybe the fourth paragraph, Dr. Jackson states several  
12 times:  Nor do I mean that Rickey has a borderline IQ.  
13 Rickey needed someone to help with his medication.  Bill  
14 mentioned Dr. Jackson is not really an expert on mental  
15 retardation.  Dr. Jackson takes exceptions to this and  
16 points out that he takes care of mentally retarded  
17 people every day and he is not.  It said that; isn't  
18 that correct?

19      A.   Yes.

20      Q.   Okay.  It also says, the next paragraph:  In  
21 regards to Rickey, Dr. Jackson notes there was a period  
22 of time when he was very depressed.  He was  
23 nonfunctional for a period of time.  It would not have  
24 resulted to his IQ.  It was his depression.  Doesn't it  
25 say that also?

1           A.    Correct.

2           Q.    Okay.  Do you remember that interview with Gail  
3   Shook, who was his teacher?

4           A.    Not specifically, but I know that I interviewed  
5   her.

6                   (State's Exhibit Number 5, Gail Shook Interview,  
7   was marked for identification.)

8           Q.    Okay.  State's Exhibit 5, that's the interview  
9   with then Ms. Shook?

10          A.    Yes.

11                 MR. EVANS:  Okay.  I'd like to enter this into  
12   evidence also.

13                 THE COURT:  Ms. Vann?

14                 MS. VANN:  I, I'm sorry?

15                 THE COURT:  State's Exhibit 5.

16                 MS. VANN:  Could I see it for a second?  I'm  
17   sorry.

18                 MR. EVANS:  Yeah, no problem.

19                 MS. VANN:  No objection --

20                 THE COURT:  All right.  State's 5 ---

21                 MS. VANN:  -- Your Honor.

22                 THE COURT:  State's 5 is entered into evidence  
23   without objection.

24                   (State's Exhibit Number 5 was entered into the  
25   record.)

1 BY MR. EVANS:

2 Q. Okay. Could you read this with me? It says:  
3 Ms. Shook was surprised to hear Rickey has a low IQ.  
4 She comments, I never saw any indication of it.

5 A. Correct.

6 Q. Okay. Now, you're the one that recommended Dr.  
7 Corvin -- wait a minute. Do you remember interviewing  
8 Neal Waters, who was Rickey's supervisor at Jacobsen?

9 A. Not specifically, but --

10 Q. Okay.

11 A. -- if you show it to me.

12 Q. Okay. But Mr. Blackwell did work at the Jacobsen  
13 plant with hazardous waste. Do you remember that?

14 A. Again, not specifically, but I believe you if you  
15 say that.

16 Q. Okay. So you don't remember getting records  
17 regarding Rickey having COPD because of an accident at  
18 this plant?

19 A. I know I would have gotten his medical records.  
20 I don't remember all of Rickey's medical issues.

21 (State's Exhibit Number 6, Neal Waters Interview,  
22 was marked for identification.)

23 Q. Okay. Do you recognize that --

24 A. Yes.

25 Q. -- as the actual memo?

1 A. Yes.

2 Q. Or the interview you did with Mr. Waters?

3 MR. EVANS: Okay. Your Honor, I'd also like to  
4 enter this into evidence --

5 THE COURT: All right.

6 MR. EVANS: State's 6.

7 THE COURT: State's 6?

8 MS. VANN: No objection.

9 MR. EVANS: Okay.

10 THE COURT: State's 6 is in evidence.

11 (State's Exhibit Number 6 was entered into the  
12 record.)

13 BY MR. EVANS:

14 Q. Okay. If you look at the fourth paragraph, Mr.  
15 Waters says he does not view Rickey as slow.

16 A. Correct.

17 Q. Okay. And mostly always did a good job working  
18 at the chemical warehouse. It is important you pull the  
19 right stuff. Rickey had to read and match it to the  
20 merchandise and then pull it, pull the merchandise.

21 A. Correct.

22 Q. Okay. Also, next paragraph it says: Rickey  
23 didn't have any problem with driving the forklift. Mr.  
24 Waters stated you wouldn't last if you made mistakes.

25 A. Correct.

1       Q.   Okay.  Now, you said during direct that you're  
2   the person that got Dr. Corvin involved in this case; is  
3   that correct?

4       A.   Correct.

5       Q.   Because you felt that it was necessary to hire a  
6   forensic psychiatrist involved in the case; is that  
7   correct?

8       A.   Correct.

9       Q.   Okay.  I don't know if it was your  
10   responsibility, but you're the person that had  
11   one-to-one contact with Dr. Corvin; is that correct?

12      A.   Initially, yes.

13      Q.   Okay.  Through the trial you had one-to-one  
14   contact with Dr. Corvin also?

15      A.   I can't -- I don't know.

16      Q.   Okay.

17      A.   Not that I'm aware of.  I mean, he would have  
18   submitted a bill to somebody, so that's contact.

19      Q.   Okay.  All right.

20      A.   But he clearly sent some e-mails that we were all  
21   copied on.

22      Q.   Okay.  And Dr. Corvin spoke to Mr. Blackwell, as  
23   far as you know, correct?

24      A.   Yes.  Yes.

25      Q.   And you said you talked to Dr. Corvin after he

1 spoke with Mr. Blackwell?

2 A. I can't say that for certain. I've -- I imagine  
3 I did. That's what I usually do is talk to them after,  
4 but I can't -- I'd have to look at a timesheet or  
5 something to see.

6 Q. Okay. So on direct you say he did, but now  
7 you're not quite sure? You could have or could have not  
8 talked with him?

9 A. I think I said on direct that that's my usual --  
10 that's the way I usually do it.

11 Q. Okay. Right. These are notes of Dr. Corvin from  
12 his meeting with Dr. -- Mr. Blackwell. Did you have a  
13 copy of these notes?

14 A. I did not.

15 Q. Do you know if he shared these notes with another  
16 attorney sitting at the table?

17 A. I do not know.

18 Q. You have no idea?

19 A. I have no idea.

20 Q. So it's possible that he did do this, you just  
21 don't know?

22 A. Correct.

23 Q. Okay. And when the defense team wanted Dr.  
24 Corvin to testify, they wanted Dr. Corvin to testify  
25 about how Xanax affects your mental state; isn't that

1 correct?

2 A. Well, I think they wanted to testify about his  
3 mental state at the time of the crime.

4 Q. So you never e-mailed Dr. Corvin --

5 A. No.

6 Q. -- and said ---

7 A. There was many concerns, but the reason would be  
8 to testify about his mental state at the time of the  
9 crime.

10 Q. But you never e-mailed Dr. Corvin and state that  
11 the defense wants you to talk about -- just talk about  
12 Xanax and how it would affect your mental stability?

13 A. I, I probably did e-mail that that was one of the  
14 things they -- we would want him to talk about.

15 Q. Okay. And then Dr. Schwartz and Donna Maddox  
16 testified about major depressive at the time of the  
17 crime?

18 A. I believe she did.

19 MR. EVANS: Okay. Beg the Court's indulgence.

20 BY MR. EVANS:

21 Q. You did talk with Mr. Blackwell's daughter,  
22 Heather, right?

23 A. Yes.

24 Q. Okay. And do you remember an interview you did  
25 with Heather on November the 6th, 2012?

1 A. Not specifically.

2 Q. Okay.

3 A. I talked to Heather many times.

4 (State's Exhibit Number 7, Ginger Calloway  
5 Interview, was marked for identification.)

6 Q. All right. I'll show you State's Exhibit Number  
7 7. Do you recognize that?

8 A. Yes.

9 Q. That's the interview sheet you did with Heather?

10 A. Yes. And with Dr. Calloway.

11 Q. Yeah. And Dr. Calloway was with you at that  
12 time.

13 A. Correct.

14 Q. Could you turn to, I think, page 2? And it says  
15 there that Heather believes that the chemo washed away  
16 his brain.

17 A. Yes.

18 Q. She's told you that?

19 A. She did.

20 Q. Okay. And you said earlier the social historian  
21 is the job of a person to discuss different mitigating  
22 factors; is that correct?

23 A. Correct.

24 Q. And usually a social historian would go back in  
25 the history of the family to show any type of abuse,



1 trauma, anything that was done --

2 A. Correct.

3 Q. -- on the actual defendant. Given the  
4 explanation of why that person is the way he is. Is  
5 this correct?

6 A. Correct.

7 Q. Okay. But Mr. Blackwell was never abused as a  
8 child, was he?

9 A. Not that I recall.

10 Q. Okay. You never found any evidence that Mildred  
11 or Cletus abused Mr. Jackson -- Mr. Blackwell?

12 A. No, I don't believe so.

13 Q. As a matter of fact, all the information you  
14 gathered, they pretty much spoiled him, didn't they?  
15 They let him do whatever he wanted?

16 A. That is probably accurate.

17 Q. Okay. And, also, everyone talked about how good  
18 of a person Rickey was.

19 A. Yes.

20 Q. An immaculate person he was.

21 A. Yes.

22 Q. Okay. And there were individuals that testified  
23 in the penalty phase to talk about what kind of  
24 character Mr. Blackwell had?

25 A. I assume so. I don't remember who testified, but

1 yes.

2 Q. Okay. So since there were no abuse and the  
3 intellectual disability was already presented to the  
4 court, a social historian wouldn't be necessary, would  
5 it?

6 A. No, I don't agree with that. There was  
7 definitely mental health issues in the family that  
8 needed to be explored more. And I, I can't remember the  
9 details of Mr. Blackwell's family at this point. I just  
10 don't know. I don't remember if there was some trauma  
11 maybe.

12 Q. Well, you never found it, did you?

13 A. I don't recall. I mean, I just don't, I don't  
14 remember.

15 Q. Okay. All right. And you said there were mental  
16 health issues that needed to be explored. What were the  
17 mental health issues?

18 A. Well, I know that Mr. Blackwell had a significant  
19 history of major depressive disorder. He was  
20 hospitalized for --

21 Q. Wasn't that ---

22 A. -- it at least once or twice.

23 Q. Wasn't that testified to by Dr. Schwartz-Watts?

24 A. I, I wasn't present for her testimony, so I  
25 don't, I don't know specifically.

1 Q. Okay. So if it was testified by Dr.

2 Schwarz-Watts that he had major depressive disorder,

3 would a social historian be needed?

4 A. Yes. There's other people in the family that had

5 mental health problems as well.

6 Q. Okay. If that was also presented by Dr.

7 Calloway, would a social historian be needed?

8 A. Yes.

9 Q. Why?

10 A. Because I think that there was -- there was more

11 than just Don and, and Mr. Blackwell. I remember that

12 Mildred had problems. I know that Cletus and Mildred

13 both came from, my memory is, pretty good sized

14 families, and I don't think that we ever explored all of

15 that.

16 Q. Well, isn't that your job to explore that, to

17 find any trauma regarding the families and the

18 background?

19 A. Yes. And ---

20 Q. Okay. And you didn't find anything, did you?

21 A. I, I don't, I don't recall.

22 Q. Out of any records that were presented to you --

23 A. I don't recall.

24 Q. -- in the record that showed this?

25 A. I don't ---

1 Q. There isn't, is there?

2 A. I don't recall.

3 Q. There wasn't no record showing by, by the  
4 Applicant that --

5 A. No. What I'm saying --

6 Q. -- showed this -- by the Applicant --

7 A. -- is I ---

8 Q. -- right?

9 THE COURT: Hold, hold on a minute. All right.

10 MR. EVANS: My apologies.

11 THE COURT: I can't listen to both of you at  
12 once. Let him finish asking his question and then you  
13 can answer.

14 BY MR. EVANS:

15 Q. You can't recall any evidence of trauma or abuse  
16 being done on Rickey Blackwell as a child?

17 A. On Mr. Blackwell, yes. What I don't recall is a  
18 broader picture of the family as a whole, of Cletus, of  
19 Mildred, of their families of origin. I don't re -- I  
20 don't remember the specifics about their families. And  
21 we know that trauma can be generational and it can be  
22 passed down, even if Mr. Blackwell wasn't specifically  
23 abused himself.

24 Q. Well, isn't Mr. Blackwell as a person, is the  
25 defendant in this case?

1 A. Yes.

2 Q. Okay. And so he wasn't abused?

3 A. Not that I recall.

4 Q. He wasn't being ---

5 A. Not that I recall, no.

6 Q. Okay. All the other mental health issues  
7 regarding his family was presented during trial.

8 A. I don't think so.

9 Q. What wasn't presented that you know of?

10 A. I can't -- I just don't -- I can't answer that  
11 question.

12 Q. All right.

13 A. I mean, I don't know everything that was  
14 presented. I don't remember.

15 Q. You didn't read the trial transcript prior to  
16 testifying?

17 A. No.

18 MR. EVANS: Okay. Beg the Court's indulgence. I  
19 think I put this into evidence, but I want to put in  
20 State's 7 into evidence.

21 THE COURT: I think you did, but let's make sure.  
22 Any objection to State's 7?

23 MS. VANN: No objection.

24 THE COURT: State's 7 is in the evidence.

25 (State's Exhibit Number 7 was entered into the

1 record.)

2 MR. EVANS: Two more things, Your Honor.

3 BY MR. EVANS:

4 Q. Now, you interview individuals at the hospital  
5 that treated Mr. Blackwell when he shot himself?

6 A. I don't recall.

7 Q. So you don't remember interviewing Dr. Brian  
8 Dalton, who was a physician at Spartanburg Regional  
9 Hospital?

10 A. Not specifically.

11 (State's Exhibit Number 8, Brian Dalton  
12 Interview, was marked for identification.)

13 Q. Do you recognize that interview sheet?

14 A. Yes.

15 Q. With Dr. Dalton?

16 A. Yes.

17 Q. Okay. And that's the actual interview that you  
18 made with him?

19 A. Correct.

20 MR. EVANS: Your Honor, I'd like to introduce  
21 that as State's Exhibit Number 8.

22 MS. VANN: No objection.

23 THE COURT: State's Exhibit 8 is in the evidence.

24 (State's Exhibit Number 8 was entered into the  
25 record.)

1 BY MR. EVANS:

2 Q. Okay. Now, on page 2 of this interview, maybe  
3 the fourth paragraph, Dr. Dalton did not view Rickey as  
4 being remorseful. It says that, doesn't it?

5 A. Yes.

6 Q. Okay. Dr. Schwartz-Watts did a report regarding  
7 her examination of her treatment of Mr. Blackwell.  
8 That's correct?

9 A. Yes, I assume so.

10 Q. You don't know?

11 A. I didn't see it.

12 Q. So you never saw her report?

13 A. I don't think so. I don't recall seeing it.

14 MR. EVANS: Can I have this marked for  
15 identification only?

16 (State's Exhibit Number 9, Psychological  
17 Evaluation, was marked for identification.)

18 BY MR. EVANS:

19 Q. That's Defense Exhibit 9.

20 A. Okay.

21 Q. That's the evaluation Dr. Schwartz-Watts do. Do  
22 you remember seeing that at any time?

23 A. I, I don't remember seeing this. I don't. I  
24 mean, I don't recall it.

25 Q. Okay.

1       A.   I mean, I know I saw Dr. Calloway's report.   I  
2   don't remember reading that one.

3       Q.   Okay.   I'll show you the last page, the page that  
4   got edited.   Do you know who would edit a report?

5       A.   Who would edit a report?

6       Q.   Yes.   Anyone on the trial team would do that?

7       A.   I have edited reports, yes.

8       Q.   Doctor's reports?

9       A.   I've re -- I've -- yeah.   I know I would have  
10   reviewed Dr. Calloway's report.

11           MR. EVANS:   Nothing further, Your Honor.

12           THE COURT:   Redirect?

13           MS. VANN:   Very briefly, Your Honor.

14                       REDIRECT EXAMINATION

15   BY MS. VANN:

16       Q.   Do you still have the interview of Rick Bagwell?  
17   I believe it is Exhibit 1.

18       A.   A defense exhibit or a State exhibit?

19       Q.   State exhibit.

20       A.   Here it is.   It's stuck.

21       Q.   Could you read the paragraph, the fourth  
22   paragraph, Mr. Bagwell tells us?

23       A.   Mr. Bagwell tells us Rickey rear-ended another  
24   vehicle when he worked for Belue.   He doesn't remember  
25   the details of the accident, but the company let Rickey



1 go because of it. Mr. Bagwell knows there was no excuse  
2 for it. It was a chargeable offense.

3 Q. And then just the first sentence of the next  
4 paragraph.

5 A. Mr. Bagwell remembers Rickey was not eligible for  
6 rehire after the accident.

7 Q. Thank you. And on the top of Page 2 of that  
8 summary, could you just read the first two lines.

9 A. Rickey got in trouble for a log violation, but  
10 that was common back then. Rickey had one or two log  
11 violations.

12 Q. And do you have Dr. Jackson's interview summary?  
13 That is State's Exhibit 4.

14 A. Yes.

15 Q. Could you just read the second paragraph on that  
16 first page?

17 A. Dr. Jackson reports after Angie left Rickey,  
18 Rickey was decompensating emotionally. Dr. Jackson  
19 thinks Rickey lost his job around the same time Angie  
20 left him. Dr. Jackson notes: All that was going on at  
21 the same time. He had also had an on-the-job injury at  
22 one time. He became very depressed, and that was  
23 aggravated by her leaving.

24 Q. Thank you. And on the second page could you read  
25 the second to last paragraph?

1       A.   Every time Dr. Jackson saw Rickey, Rickey was  
2       crying uncontrollably. Dr. Jackson remembers telling  
3       Rickey, you have got to pull yourself together or you  
4       will never get her back. She can't respect you.

5       Q.   And did you want Dr. Corvin to get information  
6       from Dr. Jackson?

7       A.   I did.

8       MS. VANN: Nothing further, Your Honor.

9       THE COURT: All right. Recross? Any recross?

10      MR. EVANS: One second, Your Honor. Beg the  
11      Court's indulgence.

12                                   RE CROSS-EXAMINATION

13      BY MR. EVANS:

14      Q.   You discussed the interview sheet you did with  
15      Rick Bagwell. He was Rickey's support at Belue Truck;  
16      isn't that correct?

17      A.   Yes.

18      Q.   Okay. And Rickey got fired, but he got rehired,  
19      didn't he, on mistake?

20      A.   Can you show me where it is in the memo?

21      Q.   It's Exhibit Number 1. Right there. Mr. Bagwell  
22      admits. It states: Mr. Bagwell admits that Belue  
23      rehired Rickey even though he wasn't --

24      A.   Yes.

25      Q.   -- eligible for rehire?

1 A. Yes.

2 Q. And it says: It's bad. We need the drivers, we  
3 need the warm bodies. Rickey was a capable driver.

4 A. Yes.

5 MR. EVANS: Nothing further, Your Honor.

6 THE COURT: All right, thank you.

7 Ms. Richards-Baker, you can step down, thank you.  
8 Call your next witness.

9 (Witness leaves witness stand.)

10 MR. GROSE: I will. The next witness is in the  
11 hall. I just want to let the Court know that he's going  
12 to be lengthy. Do you want me to start and take a  
13 lunch, or how do you want to handle it?

14 THE COURT: My preference is to run -- to go to  
15 about 1 o'clock.

16 MR. GROSE: Okay.

17 THE COURT: Are you all comfortable with that?

18 MR. GROSE: I'm comfortable, I just want to ---

19 THE COURT: The State?

20 MR. EVANS: Sure.

21 MR. GROSE: Yeah, I'll get the other witness.

22 Ms. Vann has something to take up with Your Honor.

23 THE COURT: All right. Yes, Ms. Vann?

24 MS. VANN: Your Honor, Mr. Blackwell is in pretty  
25 significant pain as a result of the restraint and he

1     also has some back issues. I have spoken to him. You  
2     may have seen him moving around, pretty uncomfortable.  
3     He would like to waive his presence for the rest of the  
4     hearing.

5             THE COURT: What's the State's position?

6             MS. BROWN: I believe the PCR statute leaves it  
7     in your discretion. Although, we have the Applicant  
8     here, if he wishes to waive, I think it's in your  
9     discretion to accept the waive.

10            THE COURT: All right. And you've discussed  
11    thoroughly with Mr. Blackwell his right to be present  
12    for the hearing?

13            MS. VANN: Yes, Your Honor. We have talked about  
14    his right to be here for the whole hearing. He  
15    generally knows, you know, what we're planning to  
16    present, but he's very uncomfortable and can't really  
17    sit still through the proceedings.

18            THE COURT: All right.

19            MS. VANN: We're happy if you want to do colloquy  
20    with him, you're welcome to.

21            THE COURT: Mr. Blackwell, let me talk to you  
22    just a little bit. You've heard what your lawyer has  
23    said in this case about you not being present for the  
24    rest of this hearing. He doesn't have to stand up.

25            MS. VANN: Okay.

1 THE COURT: He can keep his seat.

2 MS. VANN: Okay.

3 THE COURT: Have you, have you heard what your  
4 lawyer said?

5 MR. BLACKWELL: Yeah.

6 THE COURT: What is she asking the Court to do?

7 MR. BLACKWELL: Huh?

8 THE COURT: What is she asking the Court to do?

9 MR. BLACKWELL: She's asking to dismiss me.

10 THE COURT: And why?

11 MR. BLACKWELL: Cause of all the health problems  
12 that I've got.

13 THE COURT: All right. Do you understand that  
14 you have a right to be present, because this hearing is  
15 about you --

16 MR. BLACKWELL: Yes, sir.

17 THE COURT: -- and your postconviction relief?  
18 Do you understand that right?

19 MR. BLACKWELL: Yes. Yes.

20 THE COURT: Have you had plenty of time to talk  
21 to your lawyer, Ms. Vann, about, about giving up your  
22 right to be here?

23 MR. BLACKWELL: Yes, sir.

24 THE COURT: And is it your desire to not be  
25 present for the rest of this hearing?

1 MR. BLACKWELL: Uh-huh.

2 THE COURT: Is that a ---

3 MR. BLACKWELL: Yes, sir.

4 THE COURT: All right. And I assume practically  
5 what that means is that the Department of Correction  
6 employees are gonna take you back to -- where are they  
7 keeping you right now?

8 MR. BLACKWELL: Broad River.

9 THE COURT: They're gonna take you back to Broad  
10 River today and this hearing will go on the rest of this  
11 week or however long it takes and you will not be  
12 present. You understand ---

13 MR. BLACKWELL: Yeah, I'll be in touch with my  
14 attorneys.

15 THE COURT: All right. How do you stay in touch  
16 with them?

17 MR. BLACKWELL: Phone.

18 THE COURT: All right. Then I have no objection  
19 to him being -- to not requiring him to be present for  
20 the rest of this hearing and we will allow him to waive  
21 his presence. It appears that he has understood my  
22 questions. His lawyer's indicated that she has talked  
23 to him about his right to be here, and that she agrees  
24 with his right to not be present because of his health  
25 condition. So, therefore I will grant the motion for

1 him to be relieved from being here and he's waiving his  
2 presence.

3 MS. VANN: Thank you, Your Honor.

4 THE DEFENDANT: Thank you, Judge.

5 THE COURT: All right. Let's take a five-minute  
6 break. We'll allow him to -- allow them to take him out  
7 of the courtroom and I'll be back here and be on the  
8 bench in five minutes.

9 (A recess was held from 12:11 p.m. - 12:18 P.M.)

10 (The Applicant has left the courtroom.)

11 MS. BROWN: Your Honor, I called SCDC to make  
12 sure there wasn't a problem with transportation and to  
13 cancel the rest of the week.

14 THE COURT: All right. Are we ready to proceed?  
15 Will lawyers approach?

16 (Bench conference was held off the record.)

17 THE COURT: All right. I think we're ready to  
18 proceed. Mr. Grose, call your next witness.

19 MR. GROSE: Mr. McGuire.

20 (Witness comes forward.)

21 THE DEPUTY: If you'll place your left hand on  
22 the Bible and raise your right. (Complies.)

23 Do you solemnly swear or affirm to tell the  
24 truth, the whole truth, and nothing but the truth so  
25 help you God?

1 THE DEFENDANT: I do.

2 WILLIAM SEAN MCGUIRE,  
3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. GROSE:

6 Q. Mr. McGuire, if you would state your full name  
7 for the record and spell your last name.

8 A. Sure. It's William Sean McGuire. Last name is  
9 M-c-G-u-i-r-e. And the middle name is Irish, S-e-a-n.

10 Q. And are you an attorney?

11 A. Yes.

12 Q. And what states are you licensed to practice law  
13 in?

14 A. I'm active in South Carolina currently. And I've  
15 been a member of the Georgia bar, but I'm inactive now.

16 Q. Okay. And where did you go to law school?

17 A. South Carolina.

18 Q. What year did you graduate?

19 A. '95.

20 Q. And when you graduated in 1995, what did you do  
21 for employment?

22 A. I clerked for a Circuit Court judge in South  
23 Carolina.

24 Q. And who was that?

25 A. Rodney A. Peeples.



1 Q. And after clerking for Judge Peeples what did you  
2 do next?

3 A. I clerked for another judge, Daniel F. Pieper,  
4 for one more year.

5 Q. And after your second clerkship with Judge  
6 Pieper, what did you do as far as employment?

7 A. I was a public defender in Charleston County.

8 Q. All right. And how long did you do that?

9 A. About five years.

10 Q. All right. And so what years were those?

11 A. '97 to almost 2002.

12 Q. Okay. And was the public defender system  
13 organized differently during that period of time than it  
14 is now?

15 A. Yes.

16 Q. Okay. After spending five years with the public  
17 defender's office in Charleston, what was your next  
18 employment?

19 A. I worked with Andy Savage at Savage and Savage in  
20 Charleston.

21 Q. How long did you work for Mr. Savage?

22 A. It was about two years.

23 Q. All right. And after working for Mr. Savage for  
24 two years, what did you do next?

25 A. I was a sole practitioner for about two years.

1 Q. All right. And after that what did you do?

2 A. Then I took the Georgia bar and I went to Georgia  
3 and I was a capital defender.

4 Q. Okay. And can you explain what you mean by being  
5 a capital defender in Georgia?

6 A. Sure. Georgia went through an organization  
7 overhaul with regard to the public defender system  
8 there, as well as the capital defender's office. So we  
9 had a full-time capital defender and probably about 20  
10 -- 18, 20 lawyers. And we did trial level death penalty  
11 work across the state of Georgia.

12 Q. Okay. And other than the lawyers that were  
13 employed by the Georgia capital defender, were there  
14 other staff that was employed there?

15 A. Sure.

16 Q. And what type of staff was that?

17 A. We had a full-time mitigation investigators, some  
18 fact investigators, some paralegals.

19 Q. And how long did you work for the capital  
20 defender in Georgia?

21 A. About two years.

22 Q. All right. And what did you do next?

23 A. I came back to South Carolina to run the capital  
24 trial division at the South Carolina Commission on  
25 Indigent Defense.

1 Q. And what year was that?

2 A. 2008.

3 Q. All right. Now, earlier I asked you a question  
4 about the public defender system being organized  
5 differently when you worked in the Charleston office.

6 A. Uh-huh.

7 Q. And you mentioned that Georgia had gone through a  
8 reorganization. Are you familiar with the  
9 reorganization that South Carolina went through?

10 A. Yes.

11 Q. All right. And what -- and I know the judges as  
12 well, but what can you tell the Court about the  
13 reorganization as it had to do with the capital trial  
14 division?

15 A. Well, there, there was no capital defense office.  
16 Generally you had the public defender, who would take  
17 capital cases. Some would not, would ask not to. And  
18 then there would be a member of the private bar  
19 appointed as co-counsel. You always had two lawyers.  
20 Generally the practice was the judge would appoint  
21 either the public defender or a lawyer of the private  
22 bar, and we generally sort of defer to their wishes as  
23 to who their co-counsel might be.

24 Q. Okay. And how did that practice change with the  
25 Indigent Defense Act in 2007 and the creation of the

1 capital trial division?

2 A. Sure. I started in May of 2008. I hired another  
3 lawyer after Christmas, I believe, of that year. And we  
4 started taking cases. And it was sort of an informal  
5 route as to how cases found us. We kept our ear to the  
6 ground. We knew when something pretty bad happened.  
7 And we would receive phone calls from a public defender  
8 from time to time.

9 Q. Okay. And is it fair to say that that Indigent  
10 Defense Act was being implemented over 2008 and -- I  
11 mean 2007 and 2008?

12 A. Yes.

13 Q. All right. And was part of that design for your  
14 office to work with the circuit defender or a member of  
15 the circuit defender's staff?

16 A. Yes.

17 Q. Okay. Now, I take it from your answer that you  
18 were the first capital defender in South Carolina?

19 A. Yes.

20 Q. As far as being a part of that division?

21 A. Yes.

22 Q. Were you, in fact, the lead attorney at that  
23 time?

24 A. Yes.

25 Q. All right. And you mentioned hiring a lawyer

1 around Christmas time around 2008. Who was that lawyer?

2 A. That's Boyd Young.

3 Q. Um...

4 A. We've had a couple of different iterations of the  
5 office. Sometimes it was two lawyers and two full-time  
6 litigation investigators. Sometimes it would be three  
7 lawyers. We had effect. We've just gone through a  
8 couple of different iterations over the years.

9 Q. All right. And what -- I guess what I'm getting  
10 to is, is that you were one of the lawyers for Rickey  
11 Blackwell.

12 A. Yes, sir.

13 Q. All right. And if I tell you that that offense  
14 happened on or about July 8th of 2009, does that sound  
15 about right?

16 A. Yeah.

17 Q. All right. And his trial, Rickey's trial was in  
18 2014, would that sound right?

19 A. That sounds right.

20 Q. All right. And what was the organization of the  
21 office in 2009 when this case was heard?

22 A. I think it was two lawyers, Boyd Young, myself.  
23 I don't, I don't remember if we had a third lawyer at  
24 that time or not. I just can't remember. We, we've had  
25 third lawyers. The first was Casey Secor, I think.

1 Shane Goranson, Emily, Kuchar, and currently Bobby Bank  
2 is there.

3 Q. And when you initially started in 2008 and 2009,  
4 did you have mitigation investigators on staff at that  
5 point?

6 A. I know we started with two. We had two full-time  
7 to start. And then we decided to go with a three  
8 lawyer, a three lawyer office and we dropped the  
9 mitigation investigators.

10 Q. Okay. How did you first learn about Rickey  
11 Blackwell's case?

12 A. I don't know if I heard about it on the news or  
13 it ---

14 Q. Sorry, I said Bagwell, but I meant Blackwell.

15 A. Yeah, I know what you meant. I don't remember if  
16 we heard it ourselves or if Mr. Clay Allen called me.

17 Q. All right. And we all know who Clay Allen is,  
18 but what was his position at the time?

19 A. He was the circuit public defender for this  
20 circuit. And I knew, I knew that Mr. Blackwell was in  
21 the hospital from a self-inflicted gunshot wound, but I  
22 was in communication with Mr. Allen, who was at the  
23 hospital, where we were trying to get access to Mr.  
24 Blackwell to let him know that he would be represented.

25 Q. All right. I'm gonna hand you what's been marked

1 as Applicant's Exhibit Number 76.

2 A. Okay.

3 Q. Do you recognize that?

4 A. Yeah. It looks like Mr. Blackwell's arrest  
5 warrant for murder.

6 MR. GROSE: Your Honor, at this time I would move  
7 number 76 into evidence.

8 MR. EVANS: No objection, Your Honor.

9 THE COURT: Julie, do you need -- let's give her  
10 time to properly record it. Applicant's Exhibit 76 is  
11 in the evidence.

12 (Applicant's Exhibit Number 76 was entered into  
13 the record.)

14 THE COURT: All right, Mr. Grose?

15 BY MR. GROSE:

16 Q. And just looking at Applicant's 76, that confirms  
17 that the, the incident date was July 8th of 2009; is  
18 that correct?

19 A. That's what it says.

20 Q. Okay. And, of course, it's a murder charge that  
21 makes an accused eligible for the death penalty?

22 A. Sure, an aggravating circumstance.

23 Q. I'm gonna hand you what's been marked as  
24 Applicant's Exhibit 77. Do you recognize that?

25 A. Yes, sir.

1 Q. What is that?

2 A. That's the prosecutor's Notice of Intent to seek  
3 the death penalty.

4 MR. GROSE: All right. At this time I'd move  
5 number 77 into evidence, Your Honor.

6 THE COURT: Mr. Evans?

7 MR. EVANS: No objection.

8 THE COURT: Applicant's Exhibit Number 77 is in  
9 the evidence. We'll make sure Julie has an opportunity  
10 to properly record it.

11 (Applicant's Exhibit Number 77 was entered into  
12 the record.)

13 BY MR. GROSE:

14 Q. What is the date -- I'm sorry. On Applicant's  
15 Exhibit 77, what is the date that then Solicitor Trey  
16 Gowdy noticed he intends to seek the death penalty?

17 A. I think it was the next day, July 9th or 8th. It  
18 was filed the 9th.

19 Q. Okay. And in relation to those seeking the death  
20 penalty, were you aware of that as early as July of  
21 2009?

22 A. Yes.

23 Q. Okay. And at this point do you know if Mr.  
24 Blackwell was still in the hospital?

25 A. I believe he was.



1 Q. All right. Were you in communications with Mr.  
2 Allen?

3 A. Yes.

4 Q. I'm gonna hand you what's been marked for  
5 identification as Applicant's Exhibit Number 78.

6 A. Okay.

7 Q. Are you aware of what that is?

8 A. Yes, sir.

9 Q. And what is that?

10 A. It's a letter from Mr. Clay Allen to Trey Gowdy,  
11 wherein we offered to plead guilty to the charges if he  
12 would not seek the death penalty and plead to a life in  
13 prison sentence.

14 Q. All right. And were you in contact with Mr.  
15 Allen about making that offer?

16 A. Yes.

17 Q. And were either you or Mr. Allen in contact with  
18 Mr. Blackwell about making that offer?

19 A. Yes.

20 MR. GROSE: All right. At this time, Your Honor,  
21 I would move Exhibit 78 into evidence.

22 THE COURT: Mr. Evans?

23 MR. EVANS: No objection.

24 THE COURT: Applicant's Exhibit 78 is in the  
25 evidence. Again, give the court reporter an opportunity

1 to make sure it's properly recorded.

2 (Applicant's Exhibit Number 78 was entered into  
3 the record.)

4 THE COURT: All right, thank you.

5 BY MR. GROSE:

6 Q. And what is the date on that letter?

7 A. June 18th, 2010.

8 Q. Okay. And by that point, I guess, Mr. Blackwell  
9 had been out of the hospital?

10 A. Yes.

11 Q. All right. And I assume you were in contact with  
12 him about helping him out?

13 A. Yes.

14 Q. Okay. Now, earlier when you were talking about  
15 Georgia, you mentioned that the Georgia capital defender  
16 employed mitigation investigators.

17 A. Yes, sir.

18 Q. And you mentioned at a time or various times,  
19 your office, the capital trial division in South  
20 Carolina -- let me back up. How long were you with the  
21 capital trial division?

22 A. In South Carolina?

23 Q. Yes, sir.

24 A. 2008 until October of last year.

25 Q. All right. And where do you work now?

1       A.   I'm with a law firm in Charleston, Adams and  
2   Bischoff

3       Q.   Okay.   And so while you were there and during the  
4   times that a mitigation investigator was employed by the  
5   division, can you tell us what the role of a mitigation  
6   investigator is?

7       A.   Sure.   Collect records, school records, medical  
8   records, mental health records, family records, not just  
9   of the defendant but their family, friends, work  
10   history, school history.   Interview people that the  
11   defendant knew, had friendships with, relatives,  
12   daughters, sons, parents, uncles.

13      Q.   And what is the purpose of collecting those  
14   records and conducting those interviews?

15      A.   To present the defendant's life history to the  
16   jury.

17      Q.   And do you recall whether or not in this case you  
18   started off with a mitigation investigator from your  
19   office?

20      A.   I don't, I don't remember.   I know that we had --  
21   we had two mitigation investigators to start when we  
22   started the office.   I can't remember how how long they  
23   stayed.   And then we moved to a third lawyer.   I would  
24   assume we did start with mitigation, a mitigation  
25   investigator within the office.

1 Q. And as far as defending the capital case, do you  
2 try to -- or is it part of the practice that you  
3 formulate a defense team?

4 A. Yes.

5 Q. All right. And what is the purpose of doing  
6 that?

7 A. To, you know, do a competent job of presenting  
8 the defense, which is always there's only one story to  
9 tell and that is your client's life story.

10 Q. And when you say to do a competent job of  
11 presenting the client's life story, does that require an  
12 investigation?

13 A. Yes.

14 Q. And does it also require investigating the facts  
15 and circumstances of the offense?

16 A. Yes.

17 Q. All right. And in this case do you know if you  
18 had an investigator to investigate the facts of the  
19 offense?

20 A. I don't remember if we -- I don't remember if we  
21 hired an investigator to review the facts of the case.

22 Q. All right. Do you know whether or not at some  
23 point you hired a mitigation investigator?

24 A. Yes.

25 Q. Okay. And this was -- was this somebody that was

1 outside the office?

2 A. Yes.

3 Q. All right. And when you hire a mitigation  
4 investigator outside of the office, is there a process  
5 that you have to go through to do that?

6 A. Yes.

7 Q. And what is that?

8 A. I have to secure a funding order from the judge  
9 who's been assigned to the case.

10 Q. I'm going to hand you what's been marked as  
11 Applicant's Exhibit Number 11 and ask that you take a  
12 look at that, please.

13 A. Okay.

14 Q. Okay. And what is it?

15 A. It's a, it's a funding -- it's an ex parte motion  
16 for funds to hire a mitigation specialist.

17 MR. GROSE: Okay. At this time, Your Honor, I  
18 would move Exhibit Number 11 into evidence.

19 THE COURT: Mr. Evans?

20 MR. EVANS: No objection, Your Honor.

21 THE WITNESS: And ---

22 THE COURT: Exhibit 11 is in the evidence.

23 (Applicant's Exhibit Number 11 was entered into  
24 the record.)

25 THE WITNESS: And it looks like we filed it

1 January 4th.

2 THE COURT: All right. Let me make sure we have  
3 -- we're having to be sure of keeping track of these.

4 THE WITNESS: Sure.

5 MR. GROSE: Yeah, I think the court reporter  
6 needs to see it.

7 THE COURT: Yeah.

8 COURT REPORTER: I've got it.

9 THE COURT: She has it.

10 BY MR. GROSE:

11 Q. Okay. What I want to do is walk you through  
12 this. Is this the, the beginning of the caption, is  
13 this kind of a form that you used for your pleadings at  
14 the -- when you were at the capital trial division?

15 A. Yes.

16 Q. And as far as the factual background, by this  
17 point, even though it says potential death penalty case  
18 on the top, sort of under the factual background, in  
19 this order you indicate that the death notice had  
20 already been served?

21 A. Yes, sir.

22 Q. All right. And going to page 2 of the order,  
23 looking at where it says legal argument, you reference  
24 some cases or a case there. Which case is that?

25 A. Ake vs. Oklahoma.

1 Q. And what is the significance of that case?

2 A. It's a US Supreme Court case. The holding was  
3 that the defense has to have access to funds to build a  
4 competent defense.

5 Q. Okay. Then you referenced 16 through 26. Is  
6 that the procedure for the defense in a capital murder  
7 case in South Carolina?

8 A. Yes.

9 Q. All right. And then you referenced the ABA, is  
10 that the American Bar Association guidelines for the  
11 appointment and performance of defense counsel in  
12 capital cases in 2003?

13 A. Yes.

14 Q. All right. And what is -- well, let me go on.  
15 What is the significance of that case or that -- or not  
16 that case, but those ---

17 A. The guidelines?

18 Q. Yeah.

19 A. The guidelines have been cited with approval by  
20 the South Carolina Supreme Court, so we look to them for  
21 guidance as to what we should do.

22 Q. All right. How about the United States Supreme  
23 Court?

24 A. Yes.

25 Q. All right. I want to go to the next to last

1 page. In the final paragraph, does that indicate who  
2 the defense was hiring as a mitigation investigator at  
3 that time?

4 A. The second to last paragraph?

5 Q. On page 5. I'm sorry, the last paragraph on  
6 page 5.

7 A. Lynn Phillips.

8 Q. Okay. And who is Lynn Phillips?

9 A. Lynn Phillips was a person referred to me by John  
10 Delgado, who had done some litigation work in the past.

11 Q. I'm going to hand you what's been premarked as  
12 Applicant's Exhibit Number 12, and ask that you take a  
13 look at that, please.

14 A. Okay.

15 Q. All right. And what is Applicant's Exhibit  
16 Number 12?

17 A. It's an ex parte order for funds for expert  
18 services.

19 Q. All right. And specifically what is that order  
20 approving?

21 A. A mitigation specialist.

22 Q. All right. And does that correspond with the  
23 Applicant's Exhibit 11 that we discussed a moment ago?

24 A. Yes.

25 MR. GROSE: Okay. I would move Exhibit 12 into



1 evidence at this time.

2 THE COURT: Mr. Evans? Mr. Evans? I know you're  
3 looking at ---

4 MR. EVANS: Oh. No objection, Your Honor.

5 THE COURT: All right. Exhibit 12. All right.  
6 Exhibit 12 is in the evidence without objection.

7 MR. EVANS: My apologies, Your Honor.

8 (Applicant's Exhibit Number 12 was entered into  
9 the record.)

10 BY MR. GROSE:

11 Q. And, Mr. McGuire, I have just handed you what's  
12 been marked as Applicant's Exhibit 13 for  
13 identification.

14 A. Okay.

15 Q. What is that?

16 A. It's a letter from Ms. Lynn Phillips.

17 Q. Okay.

18 A. Addressed to me.

19 Q. Addressed to you. And what is that letter in  
20 regards to?

21 A. This is when Ms. Phillips let us know that she  
22 had some current health issues that would prevent her  
23 from continuing to work on the case.

24 MR. GROSE: All right. And I would move  
25 Applicant's 13 into evidence.

1 MR. EVANS: No objection.

2 THE COURT: Applicant's 13 is in the evidence  
3 without objection.

4 (Applicant's Exhibit Number 13 was entered into  
5 the record.)

6 BY MR. GROSE:

7 Q. All right. And what is the ---

8 THE COURT: Hold on. Let Julie -- are you all  
9 caught up?

10 COURT REPORTER: Just a moment. Okay.

11 THE COURT: All right.

12 BY MR. GROSE:

13 Q. Okay. And what is the date on that letter?

14 A. April 18th, 2011.

15 Q. So we're at this point in April of 2011, we're  
16 not quite there, but we're approaching two years as the  
17 date of the offense; is that correct?

18 A. Yes.

19 Q. Okay. I'm gonna hand you what's been marked as  
20 Applicant's Exhibit 14 for identification and ask if you  
21 can identify that.

22 A. It looks like an invoice from Lynn Phillips.

23 Q. And is that something that you received in the  
24 case?

25 A. I must have.

1 MR. GROSE: Okay. And at this time I would move  
2 Applicant's 14 into evidence.

3 MR. EVANS: No objection.

4 THE COURT: Applicant's 14 is in the evidence.

5 (Applicant's Exhibit Number 14 was entered into  
6 the record.)

7 BY MR. GROSE:

8 Q. And at the top, on the front page at the top it  
9 has December of 2011, but was that probably December of  
10 2010?

11 A. Yes.

12 Q. And does that reflect, I guess, the first time  
13 that Ms. Phillips came on to meet with you and  
14 Mr. Allen?

15 A. That's what it reflects.

16 Q. Okay. And to be clear, she might not have been  
17 your first investigator, but this would have been the  
18 first one that you sought funding for outside of the  
19 office; is that correct?

20 A. I think that's correct.

21 Q. Okay. And then it shows work that she did in  
22 January and also through February, March of 2011?

23 A. Yes.

24 Q. Is that correct?

25 A. Yes, sir.

1 Q. All right. And then that would have been, I  
2 guess, about the time that -- through the time she had  
3 withdrawn from the case?

4 A. Yes, sir.

5 Q. Okay. I'm going to hand you what's been marked  
6 as Applicant's Exhibit Number 15 and ask that you too  
7 take a look at that.

8 A. Okay.

9 Q. All right. And what is Applicant Exhibit 15?

10 A. It's an ex parte motion for funds to continue the  
11 mitigation investigation.

12 MR. GROSE: All right. At this time, Your Honor,  
13 I'd move number 15 into evidence.

14 MR. EVANS: No objection.

15 THE COURT: Applicant's 15 is in evidence.  
16 Again, let me make sure Julie has time to record it.

17 COURT REPORTER: Okay.

18 THE COURT: All right.

19 (Applicant's Exhibit Number 15 was entered into  
20 the record.)

21 BY MR. GROSE:

22 Q. All right. And I want to take you to the next to  
23 last page of that order, the final paragraph that  
24 carries over to the next page. Can you take a look at  
25 that?

1 A. Okay.

2 Q. And does this order reflect the change in  
3 mitigation investigator because of Ms. Phillips'  
4 illness?

5 A. Yes. I state in the motion that due to medical  
6 reasons, Ms. Phillips has had to withdraw from working  
7 on Mr. Blackwell's case. And I then request that we get  
8 funds for Kara Richards-Baker.

9 Q. Okay. And when was -- going to the last page,  
10 when was that motion dated?

11 A. 23rd day of January 2012.

12 Q. Okay. And it was filed shortly thereafter?

13 A. Filed January 31 of 2012.

14 Q. And I want to hand you what's been marked as  
15 Applicant's Exhibit Number 16.

16 A. Yeah, this would be the order. The ex parte  
17 order for the funds that we requested in the motion.

18 MR. GROSE: And at this time I would move  
19 Applicant's 16 into evidence.

20 MR. EVANS: No objection, Your Honor.

21 THE COURT: 16 will be in evidence.

22 (Applicant's Exhibit Number 16 was entered into  
23 the record.)

24 BY MR. GROSE:

25 Q. And what date was that order filed?

1       A.   It was filed January 31st of 2012.

2       Q.   What I'm going to do at this time is present you  
3   with several exhibits, which will be Applicant's  
4   Exhibits 17 through 22.  And I know I'm handing them to  
5   you out of order, but if you could keep those in order  
6   for ---

7       A.   These are in order.  These are 17 and 18.

8       Q.   Oh, okay.  And if you could just take a moment  
9   and look through those, we'll discuss those in a group  
10   in a minute.

11      A.   Okay.

12      Q.   All right.  I think -- well, do you recognize  
13   those?

14      A.   Yes, sir.

15      Q.   And what are those?

16      A.   These are additional either ex parte motions for  
17   funds to continue the mitigation investigation or  
18   they're the corresponding order for the funds requested  
19   in the motion.

20      Q.   And all of them pertain to the mitigation  
21   investigation?

22      A.   Yes.

23           MR. GROSE:  All right.  At this time I'd move 17  
24   through 22 into evidence, Your Honor.

25           THE COURT:  Mr. Evans?

1 MR. EVANS: No objection.

2 THE COURT: Applicant's Exhibit 17, 18, 19, 20,  
3 21, 22 are entered in evidence without objection. Give  
4 her a minute to get all these in. I'll tell you what,  
5 when you get them, just hand them to me.

6 (Applicant's Exhibit Number 17 through 22 were  
7 entered into evidence.)

8 THE COURT: All right, thank you.

9 Mr. Grose?

10 BY MR. GROSE:

11 Q. All right. And, Mr. McGuire, if you could look  
12 at 17 and 18 together.

13 A. Okay.

14 Q. Is that a corresponding order and motion, 17 and  
15 18?

16 A. Yes, sir. 17's the ex parte motion for funds to  
17 continue the mitigation investigation, and 18 appears to  
18 be the corresponding order.

19 Q. Okay. And what, what are those dated as when  
20 they were filed?

21 A. The ex parte motion was filed June 12th, 2012,  
22 and the order was signed the same day and filed the same  
23 day.

24 Q. Okay. And at this time I'd like for you to look  
25 at Exhibits 19 and 20, please.

1 A. Okay.

2 Q. What are Exhibits 19 and 20?

3 A. 19 is an ex parte motion for funds to continue  
4 the mitigation investigation, and 20 appears to be the  
5 corresponding order.

6 Q. Okay. And what are the dates on those?

7 A. The motion was filed August 14th, 2012, and the  
8 funding order was signed August 14th and filed the same  
9 day, August 14th.

10 Q. Okay. At this time, I'd like to get you to turn  
11 to Exhibits 21 and 22, please?

12 A. Okay.

13 Q. And what are those?

14 A. 21 is the ex parte motion for funds to continue,  
15 to continue the mitigation investigation. And 22  
16 appears to be the corresponding order.

17 Q. Okay. And what are those dates of those  
18 exhibits?

19 A. The motion was filed January, it looks like, 22nd  
20 of 2014, and the order was signed January 22nd, 2014,  
21 and filed the same day, so altogether.

22 Q. Would this be coming up on about the time of the  
23 Atkins hearing?

24 A. You'll have to tell me when the Atkins hearing  
25 was.



1 Q. If I told you it was in early 2014, would that be  
2 about right?

3 A. That sounds right.

4 Q. Okay. Now, let me ask you this. During this  
5 time from when we looked upon the order when Ms.  
6 Richards-Baker came on the case, did she remain on the  
7 case through the trial as a mitigation investigator?

8 A. Yes.

9 Q. Okay. And during that period of time did she  
10 present the defense team with evidence regarding  
11 Rickey's intellectual functioning?

12 A. Yes.

13 Q. All right. And what was that?

14 A. Well, I mean, pretty early on we felt like we had  
15 an Atkins defense. I don't remember exactly when, but  
16 it was pretty early on, and that would come from our  
17 conversations with her.

18 Q. Okay. Well, what is an Atkins defense?

19 A. It would be a finding made -- in South Carolina  
20 it would be a finding made by a court below that a  
21 defendant suffered from an intellectual disability,  
22 formerly referred to as mental retardation. And the  
23 defendant would have the burden by the preponderance  
24 then.

25 Q. Okay. And if the accused is successful in

1 proving that they have an intellectual disability, what  
2 is the significance of that?

3 A. It would be ineligible for the death penalty.

4 Q. And so is that something that's real important?

5 A. Yes.

6 Q. And you said in South Carolina. Atkins, is that  
7 a federal United States Supreme Court decision?

8 A. Yes. It came out of Virginia.

9 Q. Okay.

10 A. Then it went to the U.S. Supreme Court.

11 Q. Okay. I want to hand you what's already in  
12 evidence as Applicant's Exhibit Number 6 and ask if you  
13 can take a look at that.

14 A. Okay.

15 Q. And do you recognize any of those e-mails?

16 A. Well, they're addressed to me, so I assume I got  
17 them, but I didn't really have a recollection of them  
18 until seeing them.

19 Q. Okay. I want to call your attention to the first  
20 page of that exhibit, sort of at the bottom. Does that  
21 look like an e-mail that's from you?

22 A. Yes.

23 Q. And what is the date of that e-mail?

24 A. July of 2012.

25 Q. Is that July 2nd, 2012?

1 A. Yes.

2 Q. And who is copied on that e-mail?

3 A. Let's see. I sent it. It's directly addressed  
4 to Clay Allen, Kara Richards, Natasha Holiday, and it  
5 looks like I cc'd myself.

6 Q. Okay. And you often did that to a separate  
7 e-mail account to kind of keep track of everything,  
8 didn't you?

9 A. Yes.

10 Q. Okay. And Natasha Holiday, who was she?

11 A. She was the office paralegal.

12 Q. All right. In the capital trial division?

13 A. Yes, sir.

14 Q. Okay. And if you could read that first  
15 paragraph. What are you telling the team there?

16 A. So, so I say that -- so Rickey scored a whopping  
17 63 on his IQ test.

18 Q. Okay. And what else do you tell them?

19 A. So we need to go out and get all the appropriate  
20 records and interviews to support adoptive deficits.  
21 And say, Clay, the judge wanted us to give notice as to  
22 whether we were pursuing an Atkins claim. Our  
23 recollection is that he gave us about a month from our  
24 status conference, which is pretty much this week. I  
25 say we send something, like the following tomorrow. And

1 then there's a draft of a letter that I was  
2 contemplating sending to the judge.

3 Q. Okay. And that draft goes over onto page two; is  
4 that right?

5 A. It does.

6 Q. Okay. Going to that first paragraph, what is the  
7 significance to you of the 63 for Rickey's IQ test?

8 A. So to, to prevail on an Atkins claim, there are  
9 several prongs, and one is limited or subaverage  
10 intellectual functioning, is one of the prongs, which is  
11 generally measured by an IQ test.

12 Q. Okay. And then later on you say, we need to go  
13 all out in getting the appropriate records and  
14 interviews to support adaptive deficits.

15 A. Yes.

16 Q. And what do you mean by support adaptive  
17 deficits?

18 A. So, so it's not just an IQ test that carries the  
19 day in an Atkins claim. There has to be adaptive  
20 deficits, which is sort of generally functioning in  
21 society. Some people could have a lower IQ, but have  
22 very keen skills that they use to compensate for that.  
23 I didn't expect Rickey to have those.

24 Q. Is there a further thing that is -- could be  
25 considered? Sometimes we call it a third prong.

1 A. Sure. Onset before majority, age majority.

2 Q. Age majority or ---

3 A. 18.

4 Q. Or any developmental period?

5 A. Uh-huh, right.

6 Q. And then you indicated that what followed was a  
7 draft letter?

8 A. Yes, sir.

9 Q. I'm going to hand you what's been premarked as  
10 Applicant's Exhibit Number 79, and I would ask that you  
11 look at that, and also compare it with Exhibit 6.

12 A. Okay.

13 Q. All right. What is Applicant's Exhibit 79?

14 A. 79 is a letter signed by Clay Allen and addressed  
15 to Judge Couch. And it is essentially the draft that I  
16 wrote in the e-mail with some minor differences.

17 MR. GROSE: All right. At this time I'd move  
18 number 79 into evidence.

19 MR. EVANS: No objection, Your Honor.

20 THE COURT: 79 is into evidence.

21 (Applicant's Exhibit Number 79 was entered into  
22 the record.)

23 BY MR. GROSE:

24 Q. And so, 79 is a revised version of the draft  
25 e-mail that's in number six?

1       A.   Yes.   And it looks like we either -- it has more  
2       specific information with regard to, for instance,  
3       family IQ scores.

4       Q.   So it's revised and updated, would that be fair  
5       to say?

6       A.   That's fair to say.

7       Q.   I'm handing you what is marked at -- premarked as  
8       Applicant's Exhibit Number 80.

9       A.   Okay.

10      Q.   And what is that?

11      A.   This is a letter from the elected solicitor,  
12      Barry Barnette, to Clay Allen, and it's dated July 16,  
13      2012.

14      Q.   Are you copied on that letter?

15      A.   I am.

16           MR. GROSE:   All right.   At this time I would move  
17      number 80 into evidence.

18           MR. EVANS:   No objection.

19           THE COURT:   Applicant's 80 is in evidence.  
20      Julie, do you need both of those?

21           COURT REPORTER:   Just number 80.

22           THE COURT:   All right.

23           (Applicant's Exhibit Number 80 was entered into  
24      the record.)

25      BY MR. GROSE:

1 Q. On July 16, what was the status of the Atkins  
2 investigation at that point?

3 A. I really couldn't tell you exactly where it was,  
4 but I know it was, it was ongoing.

5 Q. Okay.

6 A. And I know that apparently, based on the e-mail I  
7 had sent, we had testing done. And Rickey scored a 63  
8 on the IQ test that we had administered to him.

9 Q. Okay. Was the -- what was the solicitor  
10 requesting of you all at this point when you were at  
11 Exhibit Number 8?

12 A. Pretty much everything that we had that touched  
13 on Atkins.

14 Q. Okay. And at this point is it fair to say that  
15 you all were about three years into the case?

16 A. Yes.

17 Q. All right. And at this point had there been any  
18 discussions about when the case would go to trial or  
19 anything like that?

20 A. There must have been. We had a status conference  
21 -- well, a status conference is referenced in, in one of  
22 these communications. And the draft letter that I  
23 proposed that we send to Judge Couch referenced some  
24 sort of timing. I was putting the Court on notice that  
25 we might need more time to fully develop the Atkins

1 claim.

2 Q. Okay. And was the solicitor at this point  
3 requesting the evidence that you had regarding the  
4 Atkins claim?

5 A. Yes.

6 Q. And I think the solicitor makes a reference to an  
7 independent evaluation.

8 A. Yes.

9 Q. At this time I'm going to hand you what's been  
10 marked as Applicant's Exhibit 23 for identification.

11 A. Okay.

12 Q. What is that?

13 A. It's an ex parte motion for funds to retain a  
14 licensed psychologist.

15 Q. And what date was that filed?

16 A. Filed July of 2012, or June. The stamp's a  
17 little, a little off. It looks like June 14th,  
18 actually.

19 MR. GROSE: Okay. At this time I would move  
20 Applicant's 23 into evidence.

21 MR. EVANS: No objection.

22 THE COURT: 23 is in the evidence. Do you need a  
23 -- well, if you're gonna follow it up with the order,  
24 let's go ahead and do it and we'll do both of them at  
25 the same time.



1 MR. GROSE: Okay.

2 THE COURT: Then that will be a perfect time to  
3 take a lunch break.

4 THE WITNESS: So Applicant's 24 appears to be the  
5 corresponding ex parte order for the funds so that we  
6 could retain a licensed psychologist. And it was also  
7 filed June 14, 2012.

8 MR. GROSE: All right. I'd move 24 into  
9 evidence.

10 MR. EVANS: No objection.

11 THE COURT: 24 is in the evidence.

12 (Applicant's Exhibit Number 23 and 24 were  
13 entered into the record.)

14 This is a good place for us to stop for lunch.

15 MR. GROSE: Well, do you want me to ask him about  
16 these before we break, or do you want me to do that when  
17 we come back?

18 THE COURT: Yeah, go ahead.

19 MR. GROSE: Yeah.

20 THE COURT: Let's -- yeah, go ahead. Well, hold  
21 on a minute. I need to make sure Julie has 23 and 24.

22 COURT REPORTER: I've got them.

23 THE COURT: You've got both?

24 MR. GROSE: It should just take a minute.

25 THE COURT: Okay, go ahead. She's ready.

1 BY MR. GROSE:

2 Q. Okay. If I could, could I have you turn to page  
3 two of that order?

4 A. Okay.

5 Q. And when -- do you see the paragraph that begins  
6 justifications for the necessity?

7 A. On the motion?

8 Q. On the motion, yes, sir. For the record, that's  
9 Exhibit 23.

10 A. Yes, I see that.

11 Q. All right. And at that point what are you  
12 telling the Court are the justifications for hiring a  
13 licensed psychologist?

14 A. I include in the motion that defense counsel has  
15 observed the defendant's intellectual limitations in our  
16 dealings with him. Our interviews and meetings with him  
17 since his time -- since the time of his arrest. Our  
18 mitigation investigator, Kara Richards, has reviewed  
19 school, medical, employment, mental health records  
20 relating to the defendant and his family and believe  
21 such records clearly show evidence of adaptive deficits  
22 and adaptive functioning. Ms. Richards' opinion has  
23 been further solidified through her interviews of  
24 several members of the defendant's family.

25 The fourth point is numerous. Recognized causal

1 triggers for the development for intellectual disability  
2 and vulnerable children were present in the defendant's  
3 childhood, including poverty, neglect, possible  
4 environmental toxins, and cultural depravation.

5 Q. And was this the first time that the team sought  
6 the services of a psychologist?

7 A. Yeah, I believe so. We had Dr. Donna  
8 Schwartz-Watts brought on at some point, but she's a  
9 psychiatrist. But I think this was the first time we  
10 got a psychologist.

11 Q. And who was that psychologist?

12 A. Dr. Ginger Calloway.

13 Q. And where is she from?

14 A. North Carolina.

15 MR. GROSE: Okay. That's all on these exhibits.

16 THE COURT: All right. That will be an  
17 appropriate place to stop for lunch. Mr. McGuire,  
18 you're under oath. Don't discuss your testimony during  
19 lunch with anybody.

20 THE WITNESS: Yes, sir.

21 THE COURT: We'll start back up at 2:30, an hour  
22 and 15 minutes. All right. We'll be at ease until  
23 2:30.

24 (Witness leaves witness stand.)

25 (Lunch recess was held from 1:15 p.m. - 2:27

1 p.m.)

2 THE COURT: All right. Mr. Grose, are you all  
3 ready to proceed?

4 MR. GROSE: Yes, sir.

5 THE COURT: Is the State ready to proceed?

6 MR. EVANS: Yes, Your Honor.

7 THE COURT: Let's see, Mr. McGuire. There he is.  
8 Mr. McGuire, if you'll come and re-take the stand. I  
9 keep thinking, all right, let's bring the jury in. It  
10 doesn't work that way.

11 All right. Mr. Grose, your witness.

12 MR. GROSE: May it please the Court?

13 THE COURT: (Indicating.)

14 (Witness resumes the witness stand.)

15 BY MR. GROSE:

16 Q. Mr. McGuire, we were, when we left off, we were  
17 talking about the funding order for Dr. Calloway.

18 A. Yes, sir.

19 Q. All right. And I believe we had showed you what  
20 was the first funding orders for her.

21 A. Yes, sir.

22 Q. All right. I want to hand you what has been  
23 premarked as Applicant's Exhibits 25 through 32.

24 A. Okay.

25 Q. Have you had a chance to review those?

1 A. Quickly, yeah.

2 Q. Okay. And let me turn your attention to Exhibits  
3 25 and 26 initially.

4 A. Okay.

5 Q. What are those?

6 A. 25 is an Ex Parte Motion for confidential access  
7 for our retained psychologist.

8 Q. And is that Dr. Calloway?

9 A. Yes.

10 Q. All right. And what is 26?

11 A. 26 is the corresponding order directing the,  
12 basically the detention facility and the other law  
13 enforcement personnel from disclosing order of death.

14 MR. GROSE: Okay. Your Honor, I'd move 25 and 26  
15 into evidence.

16 THE COURT: Mr. Evans?

17 MR. EVANS: No objection.

18 THE COURT: Applicant's 25 and 26 are in  
19 evidence.

20 (Applicant's Exhibit Numbers 25 and 26 are  
21 entered into the record.)

22 BY MR. GROSE:

23 Q. What was the purpose of that motion to obtain  
24 that order?

25 A. I mean, whenever we'd have any kind of team

1 member where their identity would necessarily leave the  
2 state to figure out what we were doing, we try to keep  
3 that confidential, like you flew and employed a  
4 polygraph examiner or anybody else.

5 Q. Okay. But the purpose of these particular or  
6 this particular order, pertained to the -- did that  
7 pertain to the Atkins evaluation?

8 A. Yes.

9 Q. Okay. And why would you not want the solicitor  
10 at this point knowing what was happening?

11 A. Well, I mean, lots of different reasons, but the  
12 main one is I didn't want to turn over our legal  
13 playbook. Like, what we were doing, what the strength  
14 of our defense was going to be. Didn't want to tell  
15 them to -- I didn't want to do their job for them and  
16 have them on notice to go out and beat the bushes and  
17 try to gather evidence that might not be helpful to an  
18 Atkins claim.

19 Q. And what was the date of this motion and order,  
20 as far as when they were filed?

21 A. It looks like the motion is June 25, 2012, and  
22 the corresponding order was filed the same day.

23 Q. I want to turn to Exhibits 27 through 32, and ask  
24 you what are those?

25 A. They are a series of ex parte motions for funding

1 for the continuation of the services of Dr. Calloway, a  
2 licensed psychologist, and then the corresponding orders  
3 that go with those motions.

4 Q. And if you can look at 27 and 28, what is the  
5 date of those motions? In order.

6 A. Okay. 27 is the Ex Parte Motion for funds for  
7 the continuation of the licensed psychologist. And it  
8 was filed November 30th, 2012.

9 Q. Okay.

10 A. And the corresponding order was also filed on the  
11 same day.

12 Q. All right. And if you can take a look at 29 and  
13 30, what were the dates of that motion and that order?

14 A. The motion was filed January 22nd, and the order,  
15 corresponding order was filed the same day.

16 Q. Okay. And if you could look at 31 and 32. What  
17 are the dates of the motions and orders or corresponding  
18 order?

19 A. The ex parte motion was filed February 27th,  
20 2014. And a corresponding order was filed February  
21 27th, 2014.

22 MR. GROSE: And if I haven't, Your Honor, I would  
23 move 27 through 32 into evidence.

24 THE COURT: You have not. Any objection?

25 MR. EVANS: No objection, Your Honor.

1 THE COURT: Exhibits 27, 28, 29, 30, 31, and 32  
2 are in evidence.

3 (Applicant's Exhibit Numbers 27, 28, 29, 30, 31,  
4 and 32 were entered in the record.)

5 BY MR. GROSE:

6 Q. I'm going to hand you what's been already  
7 admitted into evidence as Applicant's Exhibit Number 33.  
8 It's a large exhibit, but -- I think it's about 48  
9 pages, but does that look familiar to you?

10 A. Yes.

11 Q. And what is that?

12 A. This is the psychological report in the matter of  
13 The State versus Rickey Lee Blackwell. And it's Ginger  
14 Calloway's report.

15 Q. All right. And it has a defense exhibit sticker  
16 number 8 on that. Do you know what that is?

17 A. I'm assuming we moved it into evidence.

18 Q. Okay. Did Ginger, Dr. Ginger Calloway ultimately  
19 give you and the team an opinion regarding Rickey's  
20 intellectual disability?

21 A. Yes, sir.

22 Q. And what was that opinion?

23 A. That he did, in fact, suffer from an intellectual  
24 disability.

25 Q. Okay. And based on that, did you and your team



1 request that there be a hearing in front of a judge?

2 A. Yes, sir.

3 Q. Okay. And in preparing for that hearing, were  
4 there any issues that came up with regards to Dr.  
5 Calloway's report?

6 A. I remember -- I remember there was some argument  
7 from the solicitor about did she rely on some sort of  
8 scheduling order or something. There was some sort of  
9 perfunctory with that, but I don't, I don't remember  
10 exactly.

11 Q. Well, was there an issue that came up regarding  
12 her having an issue of a supplemental report?

13 A. That sounds right.

14 Q. And what do you recall about that?

15 A. I don't.

16 Q. If you could flip all the way through to the end  
17 of that exhibit and let me know whether or not that  
18 contains her supplemental report.

19 A. It looks like Notice of Supplemental Report  
20 that's eight pages long, about.

21 Q. Okay. And sitting here today, do you have any  
22 recollection as to what prompted that or not?

23 A. Not without reading it.

24 Q. Okay. I'm going to hand you what's been  
25 premarked Applicant's Exhibit 34 for identification.

1 A. Okay.

2 Q. And before we get to that, I want to go back to  
3 Applicant's Exhibit Number 80. And I have it on the  
4 screen. Can you see, I guess, that last paragraph?

5 A. (No response.)

6 Q. Did we -- I think we discussed earlier that  
7 Solicitor Barnette was gonna want to get an independent  
8 or a separate evaluation?

9 A. That sounds right.

10 Q. Okay. And so, going back to Exhibit 34, what is  
11 that exhibit?

12 A. It looks like it's Edgar Brown's report.

13 Q. All right. And who is Edgar Brown?

14 A. He worked for South Carolina and he was the -- he  
15 ultimately evaluated Rickey as well.

16 Q. Okay. And when you say he worked for South  
17 Carolina, do you know which agency he worked for?

18 A. I think it was Department of Disability and  
19 Special Needs.

20 Q. And sometimes we refer to that as DDSN via  
21 acronym?

22 A. That's one of the things we refer to it as.

23 Q. Okay. And there's also an exhibit sticker on  
24 that. It looks like it's Court Exhibit Number 4, do you  
25 see that?

1 A. I do.

2 Q. And do you know what that has to do with?

3 A. I'm assuming it was introduced at the Atkins  
4 hearing.

5 Q. Okay. And what did Dr. Brown ultimately find?

6 A. I haven't read his report in years and years and  
7 years. What I, what I recall is that I think he -- I  
8 don't remember the extent of his agreement with Rickey's  
9 below average sub-average intellectual functioning, but  
10 they speculated this was a cause, that it could be from  
11 a four-wheeler accident and then that he drank to  
12 excess. So I think -- and I think I asked him on the  
13 stand, would you agree with that that's just speculation  
14 on your part? I think he agreed with me.

15 Q. Okay. Ultimately -- well, let me ask you this,  
16 do you recall if Dr. Brown testified at the hearing? I  
17 think that's implicit in your last answer.

18 A. He did.

19 Q. Okay. And did Dr. Calloway testify?

20 A. Yes.

21 Q. Okay. And did Judge Couch ultimately issue an  
22 order?

23 A. Yes.

24 Q. Okay. I'm going to hand you what's been marked  
25 as Applicant's Exhibit 35 for identification, and while

1     you're looking at that, I would move number 34 into  
2     evidence, Your Honor.

3             MR. EVANS:   No objection.

4             THE COURT:   Exhibit 34 is in evidence.

5             (Applicant Exhibit Number 34 was entered into the  
6     record.)

7             THE WITNESS:   Okay.

8     BY MR. GROSE:

9             Q.   All right.   And what is Exhibit 35?

10            A.   It looks like it is Judge Couch's order.

11            Q.   And specifically the order on the Atkins hearing?

12            A.   Yes, sir.

13            MR. GROSE:   Okay.   I would move Exhibit 35 into  
14     evidence.

15            MR. EVANS:   No objection, Your Honor.

16            THE COURT:   Exhibit 35 is in evidence.

17            (Applicant's Exhibit Number 35 was entered into  
18     the record.)

19     BY MR. GROSE:

20            Q.   I imagine it's been a while since you reviewed  
21     this order as well?

22            A.   Yes, sir.

23            Q.   Okay.   What I would like to do is have you turn  
24     to page 5 of the order.   And, specifically, look at  
25     paragraph 5.   Take a second and read that.

1 A. Okay.

2 Q. All right. That first sentence referred to or  
3 references courses, high school courses that were  
4 designated as adjunct classes, do you see that?

5 A. Yes, sir.

6 Q. And the next sentence says that those were  
7 designed for students not pursuing an academic track?

8 A. Yes, sir.

9 Q. All right. And then the sentence after that says  
10 they may have been considered as special education  
11 courses?

12 A. Yes, sir.

13 Q. All right. Does it appear from that, that Judge  
14 Couch was able to determine whether or not it was  
15 special education courses or not?

16 MR. EVANS: Your Honor, I object to speculation.

17 MR. GROSE: Well, I'm asking him what the plain  
18 meaning is.

19 THE COURT: Yeah. I overrule the objection.

20 MR. GROSE: Thank you.

21 THE WITNESS: The answer is no.

22 BY MR. GROSE:

23 Q. The answer is no?

24 A. I -- yeah. I mean, I can, I can tell you that I  
25 remember talking to Kara Richards about her interviews

1 of the teachers. I think she found one teacher that was  
2 still around that had a recollection of this. And the  
3 way she described it to me was the teacher said these  
4 adjunct classes were activities for the kids who just  
5 couldn't do the work.

6 Q. Right.

7 A. And I think Rickey mowed the grass on the  
8 football field.

9 Q. And if more information was available about the  
10 adjunct classes, would you have wanted to know that?

11 A. Yes.

12 Q. If you could turn over to the next page, which  
13 would be on page six of the order.

14 A. Okay.

15 Q. I would ask that you look at paragraph number  
16 six.

17 A. Okay.

18 Q. All right. In the first part of that paragraph  
19 it represents a Ms. Louise Scruggs?

20 A. Yes.

21 Q. Is that the teacher you were referring to a  
22 moment ago?

23 A. Yes, sir.

24 Q. All right. And if you could look at the last  
25 sentence, could you read that last sentence into the

1 record?

2 A. She further described him, according to  
3 Dr. Calloway's report, which is Defense Exhibit Number 8  
4 on Page 8, as a student who spoke if spoken to and was  
5 not a troublemaker. He just kind of blended in.

6 Q. And in your investigation of this case, did you  
7 come across other evidence that Rickey was not a  
8 troublemaker?

9 A. Yeah. I mean, everybody we talked to.

10 Q. All right. And is it fair to say that from your  
11 investigation, this murder and associated charge was  
12 something that was not consistent with Rickey's  
13 character?

14 A. Completely not consistent --

15 Q. Okay.

16 A. -- with who Rickey was.

17 Q. All right. If you could turn over to page seven  
18 and I'd ask that you look at paragraph nine.

19 A. Okay.

20 Q. All right. Have you had a chance to look at  
21 that?

22 A. Yes, sir.

23 Q. All right. And in paragraph nine it says -- the  
24 first two sentence -- well, the first sentence says  
25 during his educational years, Blackwell was tested for

1 the determination of an intelligence quotient or IQ on  
2 several occasions.

3 A. I see that, but I don't, I don't think that's  
4 true.

5 Q. Okay. And why do you say that you don't think  
6 that that's true?

7 A. I mean, I remember struggling with the fact that  
8 we didn't have an IQ test before the age of majority.  
9 And that's why we tested later in life. If we would  
10 have had a 63 IQ for his school years, we would have  
11 gone with that, stayed with that.

12 Q. Okay. Well, in the next paragraph it references  
13 at age seven, the spring of his first-grade year, his IQ  
14 was reported at 68. At age eight, the fall of his third  
15 grade year, his IQ was reported as 87. Then in the  
16 sixth grade year he had 86. And the ninth grade year as  
17 72.

18 A. I don't, I don't think those are IQ scores or IQ  
19 tests.

20 Q. Okay. If I mentioned the California test for  
21 mental maturity, does that ring a bell?

22 A. Yeah, that's one that Dr. Calloway reviewed and  
23 it's not an IQ test.

24 Q. Okay. Do you know what it is?

25 A. Not really. I mean I'm not an expert. I know



1     that it has sort of a correlating potential or a  
2     projected IQ.

3             MR. EVANS:   Your Honor, I object.   That's beyond  
4     the scope of his knowledge.

5             THE COURT:   Yeah, I sustain the objection.

6     BY MR. GROSE:

7             Q.   Well, let me ask ask you this, you feel like what  
8     Judge Couch found in paragraph nine there may be an  
9     error?  If there was any more evidence regarding the  
10    exact nature of the test referred to in paragraph nine,  
11    would you have wanted to have that information?

12            A.   Yeah.  Yes.  I'm trying to think.  The short  
13    answer is yes, of course.  And I believe that I had  
14    conversations about with Dr. Calloway about getting some  
15    of the tests and protocol for some of the tests that are  
16    mentioned in Rickey's records, and I do not remember  
17    beyond that.  But I know that, I know that what was  
18    described to me at one point was that there was sort of  
19    like an archive of testing protocols and that the  
20    testing protocol would be out there, but I don't  
21    remember getting it.

22            Q.   Was there a strategic reason for not presenting  
23    that information to Judge Couch?

24            A.   No.

25            Q.   Okay.  If I could refer you down to paragraph 11,

1 can you take a look at that?

2 A. Sure.

3 Q. And that goes on over to page, page 7 on over to  
4 page 8?

5 A. Yes, sir.

6 Q. All right. And this is where Judge Couch talks  
7 about some of these intervening type factors; is that  
8 right?

9 A. Yes. These are -- yes.

10 Q. Okay. And he begins that paragraph 11 by saying:  
11 Between Blackwell's 18th birthday and his later IQ  
12 testing in his fifties, he experienced several factors  
13 which could have an adverse effect of on his IQ levels.  
14 And the first one that he mentions is a head injury in a  
15 four-wheeler accident in 2003 and 2004. And in that  
16 accident he suffered a loss of consciousness.

17 A. Yes, sir.

18 Q. And, of course, a head injury?

19 A. Yes, sir.

20 BY MR. GROSE:

21 Q. All right. And is it your understanding that  
22 that four-wheeler accident was one of the factors that  
23 Judge Couch considered that may have prevented the  
24 defense team from meeting its burden of proof in the  
25 Atkins hearing?

1 A. Yes.

2 Q. All right. And if there was more information  
3 about how that four-wheeler accident might have affected  
4 Rickey's childhood IQ, would you have wanted to know  
5 that?

6 A. Yes, sir.

7 Q. And if that exists, is there any strategic reason  
8 for not presenting that to Judge Couch?

9 A. I don't know that.

10 Q. And it says: Also, he was diagnosed with cancer  
11 and was required to undergo chemotherapy in 1987.

12 A. Yes, sir.

13 Q. Do you see that?

14 A. Yes, sir.

15 Q. And as part of your investigation, you did  
16 determine that Rickey is a cancer survivor and had  
17 chemotherapy?

18 A. Yes.

19 Q. All right. In the course of your preparation  
20 for the Atkins hearing, did you or anybody else from the  
21 defense team consult with somebody who is a cancer  
22 expert, medical doctor who's a cancer expert, or an  
23 expert on chemotherapy?

24 A. I don't think so. I mean, I know that I talk  
25 to -- I talked to Dr. Calloway about that and my

1 recollection is there wasn't a lot of -- she didn't have  
2 a lot of good information about that, other than she  
3 sort of emphasized what she referred to as the chemo  
4 brain, which seemed more in line with anger. And that's  
5 all the information I got from her.

6 MR. GROSE: Okay. Beg the Court's indulgence a  
7 moment.

8 BY MR. GROSE:

9 Q. Okay. I want to refer you back to Exhibit 14  
10 that's already in evidence. And this was Lynn Phillips'  
11 invoice. Do you recall seeing that?

12 A. I do.

13 Q. And you can just look at it on the screen. I  
14 want to -- if you can see it. Can you see it all right  
15 from there?

16 A. Yeah.

17 Q. All right. I want to refer you down to her entry  
18 on 116 for ten minutes. Do you see that?

19 A. Yeah. Conversation with George Woods?

20 Q. And what was that regarding?

21 A. Chemotherapy.

22 Q. All right. And do you know if George Woods ever  
23 talked to -- well, who is George Woods?

24 A. George Woods is a fairly well known psychiatrist  
25 who has testified in the past in capital cases and is

1     respected.

2           Q.   And if there was any information -- well, do you  
3     know if George Woods ever talked to Dr. Calloway?

4           A.   I don't know.   I would guess no.

5           Q.   And in support of that, this was a conversation  
6     that your prior mitigation investigator had with Dr.  
7     Woods?

8           A.   Yes, sir.

9           Q.   All right.   If there was somebody that was an  
10    expert on cancer and chemotherapy that could consult  
11    with a forensic psychologist, do you have any reason for  
12    not doing that, a strategic reason for not doing that?

13          A.   No.   My only recollection are my conversations  
14    with Dr. Calloway about chemotherapy and, I mean, she  
15    didn't really give me anything relevant that was  
16    helpful.

17          Q.   Okay.   And did you ever arrange for Dr. Calloway  
18    to consult with somebody who might have more of an  
19    expertise?

20          A.   I did not.

21          Q.   All right.   And if there was information that  
22    would have been helpful as far as the Atkins evaluation  
23    regarding Rickey's cancer and chemotherapy, would you  
24    have wanted to have that?

25          A.   Sure.

1 Q. All right. And going back to Exhibit 35, still  
2 in paragraph 11: Additionally, because of the major  
3 depressive disorder which has manifested itself on at  
4 least two occasions in his life, he currently takes an  
5 anti-psychotic, Thorazine.

6 A. Yes.

7 Q. Factors surrounding his major depression disorder  
8 could also have an effect on his intellectual  
9 functioning later in life. Do you see where he says  
10 that?

11 A. Yes.

12 Q. And when I say "he", Judge Couch says that.

13 A. Yes.

14 Q. But if there was information that was available  
15 with regard to how Rickey's major depression would or  
16 would not have affected his IQ later in life, would you  
17 have wanted to know that?

18 A. Of course.

19 Q. And is there a strategic reason for not  
20 presenting that type of information to Judge Couch?

21 A. No.

22 Q. All right. I want you to, still on Page 8 of  
23 Judge Couch's order, looking at paragraph 12, can you  
24 take a look at it? It's a two-part paragraph. Can you  
25 read all of that from there?

1 A. Yes.

2 Q. Okay. Let me know when you've had a chance to  
3 look at it.

4 A. Okay.

5 Q. All right. Focusing on that first paragraph  
6 towards the bottom -- well, before that, more towards  
7 the top. Judge Couch acknowledges a score of 63 on Dr.  
8 Calloway's test on June 29th, 2012. Do you see that?

9 A. Yes, sir.

10 Q. All right. Is that the 63 that you were talking  
11 about in that e-mail that we looked at earlier today?

12 A. It is.

13 Q. And he had an IQ on Dr. Brown's test on November  
14 14 of 2013. Do you see that?

15 A. Yes.

16 Q. Okay. And then he acknowledges: While most  
17 experts agree that a person's IQ remains relatively  
18 constant throughout their life, because of the  
19 uncertainty surrounding the events that could have had  
20 an adverse affect on IQ, I find the most reliable  
21 measures of Mr. Blackwell's IQ prior to age 18 are the  
22 exams that were in fact given during that stage of his  
23 life. Do you see that?

24 A. I do.

25 Q. And if I understand your previous testimony, you

1 have an issue as to whether or not the pre-18  
2 examinations were actually IQ tests?

3 A. As I sit here ---

4 MR. EVANS: Objection, Your Honor.

5 THE COURT: Yeah. I sustain the objection.

6 BY MR. GROSE:

7 Q. If there was more information that could have  
8 been provided about the pre-18 examinations, would you  
9 have wanted to know that?

10 A. Yeah. They were not IQ tests.

11 MR. EVANS: Objection, Your Honor. Strike that  
12 last statement.

13 THE COURT: Yeah. He can't testify to what they  
14 were or weren't at age 18. I order that stricken.

15 BY MR. GROSE:

16 Q. Would you have liked to have had somebody who  
17 could have answered the question about those pre-18  
18 examinations?

19 A. Yes.

20 Q. All right. And then he says, while I cannot  
21 assume that the intervening factors directly affected  
22 his later IQ testing, I cannot rule them out. Do you  
23 see that?

24 A. Yes, sir.

25 Q. If you could have provided him that information



1 and ruled it out, would you have wanted to do that?

2 A. Of course.

3 Q. Okay. I want you to look at paragraph 13, and  
4 it's on Page 8 and goes over to page 9 and 10.

5 A. Okay.

6 Q. All right. That paragraph deals with Rickey  
7 having a commercial driver's license.

8 A. Yes, sir.

9 Q. All right. Have you had a chance to review the  
10 PCR application?

11 A. Yes.

12 Q. All right. And I'm putting part of the PCR  
13 application up on the screen. And, specifically, I'm  
14 looking at page 3, which is paragraph 11(b) number 4.  
15 Can you see that up on the screen?

16 A. Yes, sir.

17 Q. And in that we're alleging that the defense team  
18 failed to investigate or present circumstances under  
19 which Rickey obtained a commercial driver's license and  
20 other certificates to refute the trial judge and jury's  
21 reliance on that certification and finding that Rickey  
22 was not a person with intellectual disability. Do you  
23 see that?

24 A. Yes, sir.

25 Q. All right. If there is, in fact, information

1 regarding the circumstances under which Rickey obtained  
2 that commercial driver's license that was not presented  
3 to Judge Couch, would you want to know that?

4 A. Sure.

5 Q. And do you have a strategic reason for not  
6 investigating that information?

7 A. No.

8 Q. All right. Have you ever participated in other  
9 cases where Atkins was an issue?

10 A. Yes.

11 Q. And have you ever represented another accused in  
12 a capital case who had a commercial driver's license,  
13 but was found ID?

14 A. Yes.

15 Q. And who was that?

16 A. Benny Brown. It was a case out of Clinton,  
17 Lorins. Lorins, I think.

18 Q. I'm going to show you what's marked, or what's  
19 previously in evidence as Applicant's Exhibit Number 8  
20 and ask if you've ever seen that before?

21 A. I don't, I don't recognize it.

22 Q. Okay.

23 A. I'm not saying I haven't seen it before, I just  
24 as I sit here now I don't remember it.

25 Q. Okay, fair enough. Were you surprised at Judge

1 Couch's Atkins order?

2 A. Yes.

3 Q. Okay. Can you tell the Court why?

4 A. I mean, all signs pointed to Rickey being ID.

5 Q. And ID is an abbreviation we use.

6 A. Having an intellectual disability, formerly  
7 referred to as mental retardation. Starting from  
8 school. He did have simple jobs. I mean, essentially  
9 he moved things from one place to another, sometimes  
10 with his hands, sometimes with a forklift, sometimes  
11 with a truck, but I don't think he ever made a dollar by  
12 using, you know, his brain.

13 The school records were poor. The anecdotal  
14 stories we had indicated that he didn't have any skills  
15 that would make me think that he was not ID. We had  
16 anecdotal evidence that, you know, like the teacher  
17 saying, you know, he was in these adjunct classes.  
18 Those were classes for kids who just couldn't do normal  
19 school work.

20 There was a familiar component with his father  
21 and his daughter. That, I believe, Calloway testified  
22 to that and Brown also believed that was the case. The  
23 one thing -- the only thing that we had that you could  
24 actually look at on paper to say that maybe he did not  
25 have some adaptive deficits were, if I remember

1     correctly, some answers given, given by his daughter,  
2     who very, very much loved Rickey, thought he hung the  
3     moon. And I believe she overestimated his abilities.  
4     And Judge Couch used her scores to come up with a new  
5     method of computing adaptive deficits, which was  
6     surprising to me.

7           Q.    Okay. And when you talk about his daughter, who  
8     are you talking about?

9           A.    Heather.

10          Q.    Okay. And did your investigation reveal whether  
11     or not Heather had any limitations of her own?

12          A.    Yes.

13          Q.    All right. And what were those?

14          A.    I think her IQ -- I think she did have an IQ  
15     score of 57. And, yeah, I mean, she fit the profile of  
16     somebody who would be limited with an intellectual  
17     disability.

18          Q.    All right. I want to take you back to Judge  
19     Couch's order, which is Exhibit 35. And I want to look  
20     at paragraph 19. You can take a moment and look at  
21     that.

22          A.    Okay.

23          Q.    In that first sentence, Judge Couch states: This  
24     Court received little or no evidence concerning the  
25     second prong of the test for mental retardation, that

1 being deficits and adaptive behavior that existed prior  
2 to Rickey's 18th birthday or during his developmental  
3 period. Do you see that?

4 A. Yes, sir.

5 Q. All right. And really in that sentence the judge  
6 is addressing two issues, prong two, which would be  
7 adaptive deficits.

8 A. Right.

9 Q. The prong three is the existence of those  
10 deficits during the developmental period; is that right?

11 A. That's right.

12 Q. All right. If there was evidence available that  
13 would have helped support the existence of the adaptive  
14 deficits during the developmental period, would you want  
15 to -- would you have wanted to know that information?

16 A. Sure.

17 Q. And is there a strategic reason for not finding  
18 that information, if it exists, and presenting it to  
19 Judge Couch?

20 A. Nope.

21 Q. I want to take you down to paragraph 12, which is  
22 on page 10 and 11 of Exhibit 35.

23 A. Okay.

24 Q. All right. At the very beginning of that  
25 paragraph, Judge Couch refers to the adaptive behavior

1 assessment, assessment system, in parenthesis, ABAS-II.

2 Is that what you've referred to as the ABAS?

3 A. Yes, sir.

4 Q. All right. And as far as your role as a lawyer  
5 in an Atkins case, what is your understanding of the  
6 role of the ABAS?

7 MR. EVANS: Your Honor ---

8 MR. GROSE: I'm limiting it to his role as the  
9 attorney, Your Honor.

10 MR. EVANS: I think he's trying to ---

11 THE COURT: Well, he hasn't made his objection  
12 yet. He's stood. Let me hear your objection.

13 MR. EVANS: Well, I think he's trying to bench in  
14 what ABAS is, and I think that's beyond the scope of a  
15 lawyer, who is not a psychologist.

16 THE COURT: Well, the question that he asked, I'm  
17 gonna overrule the objection. You can ask that question  
18 and we'll see where you go with that.

19 BY MR. GROSE:

20 Q. From what you understand, what is the role of the  
21 ABAS?

22 A. So, you can have tons of anecdotal pieces of  
23 evidence indicating people are limited. No library  
24 card, no voting, you know, can't use a telephone book.  
25 Can't find a mechanic in a telephone book. That's one

1     thing, but ---

2             MR. EVANS: Your Honor, I'm gonna renew my  
3     objection. I think he is describing ---

4             THE COURT: Yeah. I sustain the objection as far  
5     as any other further questions on it.

6     BY MR. GROSE:

7             Q. Okay. Towards the end of that page, the third  
8     line from the bottom. I want to say that's page 10. In  
9     this case the Court has serious questions as to whether  
10    or not it's sufficient matrix with adequate information  
11    was used in this testing. Dr. Calloway indicated that a  
12    matrix of 10 to 20 individuals was necessary to obtain  
13    the best results. Do you see that?

14            A. Yes, sir.

15            Q. All right. If there is information available  
16    that you do not have to have 10 to 20 informants through  
17    the ABAS, would you have wanted to know that  
18    information?

19            A. Of course.

20            Q. And would you have wanted to present that  
21    information to Judge Couch?

22            A. Yes.

23            Q. All right. If there was information, scientific  
24    information under the clinical standard of care there's  
25    times that an ABAS might not be appropriate, would you