

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Spartanburg County

Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case Number: 2025-001377

RICKY LEE BLACKWELL, SR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
VOLUME 13 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

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TRANSCRIPT DATED OCTOBER 19, 2022	8735

1 Power Point that she will use to walk through.

2 THE COURT: Do you have a ---

3 MS. VANN: I have a copy for you.

4 THE COURT: Thank you.

5 BY MS. VANN:

6 Q. Okay. I guess we should start with problem one.

7 If you could go to this line. Very briefly, we all
8 heard Dr. Olley testify. What are you looking at for
9 problem one of the intellectual disability assessment?

10 A. So really, how somebody reasons, how they problem
11 solve, especially to new problems. We're looking how
12 they community plan things, what their academic
13 learning, all of this kind of intellectual functionings
14 -- functions.

15 And then we are looking to see if it's measured
16 by individualized comprehensive intelligence tests
17 that's well norm, well standardized. And then we are
18 also looking from that test to see if there's a score to
19 standard deviations for, you know, around there, from
20 the mean to see if it qualifies as a score consistent
21 with ID.

22 Q. And did you identify any full scale IQ test that
23 had been administered to Rickey Blackwell?

24 A. Yes.

25 Q. And what were those?

1 A. So there -- he has had two episodes of full scale
2 individualized standardized IQ testing over his life.
3 That was Dr. Calloway in 2013. That was Dr. Brown as
4 well in 2013.

5 Q. When we walk through -- I'm sorry. And did you
6 rely on those IQ scores in coming to your opinion?

7 A. Yes.

8 Q. If we could start, we'd go through Dr. Calloway.
9 Move on to the next slide.

10 A. Okay.

11 Q. What type of tests did Dr. Calloway administer?

12 A. She gave the Wexler. We call them the WAIS-IV,
13 so the Wexler Adult Intelligent Scale Fourth Addition.
14 And that is an individualized comprehensive measure of
15 intelligence that's accepted within the field to assess
16 ID.

17 Q. What was Dr. Calloway's role in this case?

18 A. She was the defense retained psychologist
19 pre-trial when they were evaluating Atkins.

20 Q. Did you find Dr. Calloway's tests reliable?

21 A. Yes. She used what we would call volatile
22 standard measure. She's a qualified examiner. I
23 evaluated her testing protocols. I was able to look at
24 her raw test data. She also assessed for malingering.
25 She uses specific tests for malingering and she did not

1 find indication of malingering. So the full-scale of 63
2 to me was a valid score.

3 Q. And what do you mean by malingering?

4 A. Malingering is the intentional production or
5 exaggeration of mental health symptoms. In this case
6 we're most concerned with faint cognitive deficits. So
7 is somebody faking cognitive deficits.

8 Q. And her testing revealed that he was not faking
9 his cognitive deficits?

10 A. Correct.

11 Q. Could you just walk us through the results of her
12 IQ testing?

13 A. So she obtained a full scale IQ of 63, and that
14 fell within the first percentile rank, meaning when you
15 compare that score to similar aged individuals, Mr.
16 Blackwell was in the bottom 1 percent, 99 percent of the
17 bracket of individuals would obtain a higher IQ score.
18 And it's that 95 percent competence interval that
19 Dr. Olley talked about, is 60 to 68. So there's a 95
20 percent chance that his score is within that competence
21 interval. And then the Wexler gives us score
22 classifications and he falls within the extremely low
23 test classification.

24 Q. And that falls in the intellectual disability
25 range for someone?

1 A. Yes.

2 Q. Do you know where the test was administered?

3 A. This was administered at the Spartanburg County
4 Detention Center.

5 Q. And was Mr. Blackwell on any medications at that
6 time?

7 A. In Dr. Calloway's report she lists Thorazine,
8 which is an antipsychotic medication. It can be used
9 for mood sometimes. But she didn't list a dosage, so I
10 didn't know how much Thorazine Mr. Blackwell was taking,
11 but I did consult with a psychiatrist on the case, Dr.
12 Corvin, who had the amount and the dosage. And I
13 consulted with him about the effects of that medication
14 possibly on the testing. And it was his opinion that it
15 was a very low dose of Thorazine, and that if anything,
16 it may have worked to optimize Mr. Blackwell's
17 performance by reducing anxiety and just kind of
18 settling him down in order to focus on the test.

19 Q. Thank you. We could move on to Dr. Brown's
20 testing. What test did Dr. Brown administer?

21 A. He administered the same test, so the WAIS-IV.

22 Q. And that was in November of 2013?

23 A. Yes.

24 Q. And do you know what Dr. Brown's role is in this
25 case?

1 A. He was the psychologist who worked for DDSN, the
2 Department of Disabilities and Special Needs at the time
3 that did the State Atkins examination or the court
4 ordered examination.

5 Q. Did you find his testing was reliable?

6 A. Yes. For the same reasons. He's a qualified
7 examiner. He used a gold standard measure. The test
8 score was very consistent with the score obtained by Dr.
9 Calloway.

10 Dr. Brown also assessed for malingering. He did
11 not find evidence of malingering, so I -- given all of
12 that, his test score appeared valid. And I also
13 reviewed his testing protocols.

14 Q. What were the results of his testing?

15 A. He found a full scale IQ of 68, and that's in the
16 second percentile. So 98 percent of individuals in that
17 age bracket would obtain a higher score. Again, at the
18 extremely low range, according to the Wexler
19 classification. And, again, we have a confidence
20 interval that's 65 to 70 degrees.

21 Q. And did that fall within the intellectual
22 disability range?

23 A. Yes.

24 Q. Do you know where this testing was administered?

25 A. This was administered at the DDSN office, I

1 understand.

2 Q. Do you know if Mr. Blackwell was on any
3 medications at the time of the testing?

4 A. Yes. In Dr. Brown's report, he list the
5 medications Mr. Blackwell was on and he does list the
6 dosage. So he was on Thorazine, 75 milligrams. And
7 Paxil, 20 milligrams. He was also on a medication
8 called Colchicine, but he did not give the dosage of
9 that medication that is with the side effects of the
10 Thorazine.

11 I also consulted with Dr. Corvin about those
12 particular medicines, those dosages. And it was Dr.
13 Corvin's opinion that, again, that medication, taken
14 together would not have adversely impacted the testing.

15 Q. So we have a score of 63 and 68, and you said
16 those are consistent with each other?

17 A. Yes.

18 Q. And they're both within the intellectual
19 disability range?

20 A. Correct.

21 Q. And that is the examiner that was hired by Mr.
22 Blackwell's counsel and the examiner for DDSN agreed?

23 A. Yes.

24 Q. How do Mr. Blackwell's scores compare to the
25 general population?

1 A. So, this is the normative distribution. Dr.
2 Olley already went over that, so I won't review the
3 normative distribution, but you can see that 100 is the
4 average and that two standard deviations below the mean
5 is 70, and the bottom 2 percent is below 70. So the
6 bottom 2 percent of the population obtained scores below
7 70. And Mr. Blackwell's scores are on the graph there,
8 63 and 68, so they fall in the bottom 2 percent of the
9 population.

10 Q. Did you administer any additional IQ testing in
11 the course of your evaluation?

12 A. No.

13 Q. Why did you not perform them?

14 A. So, we had, you know, I had valid scores. They
15 were consistent with each. Malingering has been ruled
16 out each time. An appropriate measure was used by
17 qualified examiners. These were also scores that were
18 well outside of the developmental period where we --
19 where IQ's were subject to change.

20 Once somebody's an adult, it's usually static.
21 And then I would have used the same IQ test. So we do
22 not have WAIS-V out yet in the field. WAIS-IV is still
23 being used, so without the different IQ test.

24 Q. So if you had administered a test, so it would be
25 a third iteration of the same tests?

1 A. Correct.

2 Q. Of those tests you already found a reliable
3 source for them?

4 A. Correct.

5 Q. Do the two IQ tests from Dr. Calloway and Dr.
6 Brown provide any information about Mr. Blackwell's
7 intellectual functioning during the developmental
8 period?

9 A. Well, we do think of IQ as a relatively stable
10 construct to go over the life span.

11 Q. Did you identify any full-scale IQ tests that
12 were administered to Mr. Blackwell during the
13 developmental period?

14 A. No.

15 Q. And you reviewed his school records?

16 A. Yes.

17 Q. Did you identify any IQ tests listed in the
18 school records?

19 A. There were no IQ tests done.

20 Q. Were there other types of testing?

21 A. Yes.

22 Q. What other types?

23 A. There were achievement testing. So, measuring
24 somebody's reading level or math levels, spellings, or
25 academic skills. There was standardized testing too,

1 again, using those sorts of skills to compare him to
2 national populations of students. And there were some
3 tests that measured some aspects of intelligence, but
4 they weren't full scale intelligence tests.

5 Q. And so, those were not relevant to your
6 assessment of problem one?

7 A. Correct.

8 Q. You said that IQ is typically static over time.
9 Is it possible that intervening factors could lower
10 someone's IQ active developmental period?

11 A. Sure.

12 Q. And did you consider whether that happened here?

13 A. I did.

14 Q. What possible factors did you consider in this
15 case?

16 A. So there were three factors that were well
17 documented in the records. One was -- would you like me
18 to go into it?

19 Q. Yes, please.

20 A. One was his episode of chemotherapy. So, I
21 believe, in 1986 he was diagnosed with Hodgkin's
22 Lymphoma and he went through a particular type of
23 chemotherapy called lock chemotherapy. And the question
24 became, well, what is that chemotherapy? Does that
25 impact somebody's cognitive functioning? If so, is that

1 impact long-term? And because I'm not an oncologist, I
2 consulted with an oncologist about those issues.

3 Q. What was the result of that consult?

4 A. So that was Dr. Rutherford and she specializes in
5 Hodgkin's Lymphoma. She was familiar with this type of
6 chemotherapy. And she indicated that during the time of
7 chemo, he may have like a chemo brain kind of thing
8 where his thoughts are slower, there's some cognitive
9 clouding. And he can't process as well, but that should
10 clear within a year of the chemotherapy. And I believe
11 Mr. Blackwell was administered chemotherapy from 1986 to
12 1987 and not after 1987. So his last instance of
13 chemotherapy was in 1987.

14 Q. And then these tests were in 2012 and 2013?

15 A. Correct.

16 Q. Did you consider whether depression may have been
17 an intervening factor?

18 A. Yes.

19 Q. And what did you determine?

20 A. So for this factor, I consulted with Dr. Corvin,
21 who's a psychiatrist, and then drew from my own
22 experiences, a psychologist with depression. With
23 depression, when somebody is in a major depressive
24 episode, certainly their cognition can be impaired.
25 Their thoughts are slower. They're not gonna

1 concentrate as well. They may lose focus. And as a
2 psychologist, if somebody presents in a major depressive
3 episode, I would not administer an IQ test to them or
4 promote any kind of testing because the results is gonna
5 be in that divide at major depression.

6 But once the episode is treated or it lifts,
7 because depression is episodic, it comes and goes. Once
8 that depression lifts, the cognitive issues clear. So
9 depression does not permanently impact cognitive
10 function. Only during the time of the depressive
11 episode. And neither examiner, Dr. Calloway or Dr.
12 Brown described Mr. Blackwell as, you know, major
13 depressive episode during their testing.

14 Q. And what about a head injury? First of all,
15 which head injury were you -- can you describe the head
16 injury that you were looking at, and what did you
17 determine about that?

18 A. This head injury was well documented in his
19 medical records. I believe it was from 1992, maybe.
20 I'm not clear on the year, but it was sometime -- he was
21 in his early 40's, I believe. And he was on an ATV type
22 of vehicle and it flipped, pinned him underneath. EMS
23 came to the scene. He was confused. He did suffer a
24 concussion.

25 He was taken to the emergency room. He had

1 imaging done,. I believe a CAT scan of his brain that
2 was normal. They did not hold him overnight. They
3 discharged him. And so that's the, the emergency
4 department records that we have on that.

5 And then he went to his general practitioner for
6 several visits after the emergency, room, close in
7 contact. And he reported a pretty significant loss of
8 conscientiousness, but he did report first concussive
9 systems during those visits. So he doesn't report, but
10 he's still confused as to personality changes or memory
11 loss. Something that would indicate that the concussion
12 was still having an impact. So, taking all of that
13 together, it was a -- it was what we called a mild
14 traumatic brain injury or a concussive injury.

15 And what we know about those injuries -- and I
16 did reach out to Dr. Corvin about this as well. And so
17 we consulted on this issue. I consulted his expertise
18 that this type of head injury, usually the systems clear
19 within a year at the most. And all of the research on
20 concussions and lasting effects, the person is examined
21 a couple weeks after, a couple of months after. There
22 is no research that I could find where the individual
23 with a concussion was then evaluated many years later to
24 see if that impacted their IQ.

25 Q. And so overall, did you determine whether these

1 possible intervening factors had any impact on Rickey
2 Blackwell's cognitive functioning?

3 A. With the available data that I had, they did not
4 seem to impact post-developmental IQ's.

5 Q. In your opinion does Mr. Blackwell satisfy the
6 criteria for prong one, significantly sub-average
7 intellectual functioning?

8 A. Yes.

9 Q. And did his significantly sub-average
10 intellectual functioning manifest during the
11 developmental period?

12 A. Yes.

13 Q. If we could move on to prong two. What were you
14 assessing for adaptive behavior?

15 A. So adaptive behavior, again, Dr. Olley talked
16 about this, but essentially it is skills needed to
17 navigate everyday life. So to deal with the demands of
18 daily life and to do so in an independent manner. So
19 somebody with deficits and adaptive functioning needs
20 support to navigate the common demands of life. And
21 that's compared to their peers, their same-aged peers
22 within a typical community setting.

23 Q. And so did you assess all three domains that Dr.
24 Olley talked about, conceptual, social, and practical?

25 A. Yes.

1 Q. Could we start with conceptual? What were you
2 looking for, for conceptual?

3 A. So this is if somebody has deficits in the
4 conceptual domain, it's deficits in concepts, as far as
5 Dr. Olley was talking about. I think he used the, the
6 example of budgeting money, right? The concept of money
7 and how you use money and how you plan for money. So
8 that's a really good example, but it also includes
9 academic skills, language, reading, writing, math,
10 reasoning. It includes things like judgment in new
11 situations and thinking through what one might have to
12 do with a situation that they hadn't encountered before.

13 Q. I apologize, but I should back up and ask you,
14 generally, for your adaptive behavior assessment, what,
15 what did you do to go about coming to your opinion?

16 A. I used multiple sources of information,
17 collateral interviews, multiple types of psychosocial
18 records to assess his adaptive functioning.

19 Q. Did you administer any standardized tests of
20 adaptive functioning?

21 A. No.

22 Q. And why not?

23 A. Those tests, per their manuals, they're designed
24 for contemporaneous use. So, how is the person
25 functioning right now? And then those tests are given

1 to third-party informants. And those informants, it's
2 very clear in the manual that they have to have
3 frequent, prolonged daily, even hours a day, contact
4 with a person. So this would -- there was simply no
5 appropriate informant to use on those types of measures.

6 Q. Did you consider administering a standardized
7 measure to Rickey's parents?

8 A. I considered it, yes.

9 Q. And why did you decide not to?

10 A. I met with them and his mother was very anxious.
11 It was difficult to obtain information from her. There
12 were lots of things that she didn't remember. She was
13 easily confused on things between Mr. Blackwell and his
14 brother. She did not know basic things, such how did he
15 do in school. And so it just didn't -- these tests have
16 very detailed questions about the developmental period,
17 and it did not appear to me that she would have been a
18 valid reporter on such a scale, given her mental state,
19 her memory. And this would be asking her to go back in
20 time 50 years or so, 40 to 50 years. And she was in her
21 80's at the time that I saw her. And so it just didn't
22 seem like it would be a reliable measure to use with her
23 as an informant.

24 Q. What about his father?

25 A. Same with his father. His father is in his 80's.

1 When I met with his parents, his father did not say much
2 at all. He was gone a lot as a truck driver when the
3 children were growing up. The mother was the figure
4 that took care of them. And so, his memory was also
5 pretty poor for things, for these particular measures.
6 Again, they're very detailed questions.

7 Q. So without a measure, what did you rely on
8 instead?

9 A. Again, using what Dr. Olley talked about, as far
10 as the approach of using as many different sources that
11 you can obtain. So collateral interviews, records, and
12 certainly talk to Mr. Blackwell. But I relied more on
13 the collateral records.

14 Q. Okay. Now I think we can go into each of the
15 domains. I'm sorry.

16 A. It's okay.

17 Q. So what did you find in terms of Rickey
18 Blackwell's conceptual adaptive functioning during
19 the ---

20 COURT REPORTER: I'm sorry, can you repeat that?

21 BY MS. VANN:

22 Q. I'm sorry. What did you find regarding Rickey
23 Blackwell's conceptual adaptive functioning during the
24 developmental period?

25 A. So his school records were probably the most

1 helpful in this regard, and lots of academic and
2 learning issues in his school records. He, when you
3 plot his grades over time, he had decreasing performance
4 in his classes, even though he was moved to a special
5 education type of class, an adjunct class during high
6 school. He was placed in a special program for students
7 who struggle with conceptual skills.

8 Those students are placed onto a vocational track
9 to de-emphasize the conceptual skills. So he went to
10 pre-vocation classes. The testing was consistently the
11 low grade, the low pure level. He was last in his
12 class. And then he discontinued schooling early.

13 Q. I'd like to hand you what's been marked as
14 Applicant's Exhibit 64. And what is this document?

15 A. These are Mr. Blackwell's school records that
16 I've reviewed.

17 Q. And did you rely on them in the course of your
18 assessment?

19 A. Yes.

20 MS. VANN: Your Honor, we would move to have
21 these admitted as Applicant's Exhibit 64.

22 MR. EVANS: I have one issue with this. The last
23 year of his grades is covered by a sticker. So I have a
24 copy to show the whole, the whole thing, and I would
25 like that entered instead of his copy.

DIRECT EXAMINATION OF DR. KNIGHT BY MS. VANN

1 THE COURT: I'm sorry, what do you -- in other
2 words, you just need ---

3 MR. EVANS: The sticker covers his last year of
4 his grades.

5 THE COURT: Okay, I got ya.

6 MR. GROSE: And I can adjust that sticker --

7 THE COURT: Okay.

8 MR. GROSE: -- and we can substitute a copy to
9 you that shows that.

10 MR. EVANS: Or I can just give the court reporter
11 an actual copy that shows it myself, if that's better?

12 THE COURT: As long as the record has the first
13 page where the information that's under the sticker can
14 be seen. That's what you're asking for, right?

15 MR. EVANS: Yes, Your Honor. Yeah.

16 THE COURT: It appears you all can clear that up.

17 MR. GROSE: And I'll make that adjustment during
18 the recess, Your Honor.

19 THE COURT: All right. Applicant's Exhibit 64 is
20 in evidence.

21 MS. VANN: Thank you, Your Honor.

22 (Applicant's Exhibit Number 64 was entered into
23 the record.)

24 BY MS. VANN:

25 Q. And so I'd like to spend a little time walking

1 through the school records. First, you identified that
2 he was in adjunct classes; is that correct?

3 A. Correct.

4 Q. And is that noted on this first page of his
5 school records?

6 A. Yes.

7 Q. How is that denoted?

8 A. Abbreviation ADJ in front of the name of the
9 class.

10 Q. And what did you learn about the adjunct classes?

11 A. I talked to his teachers. I talked to a student
12 who had been through the adjunct classes. And, of
13 course, I talked to Mr. Blackwell. They were classes
14 for lower performing students. Students who are
15 struggling with the regular curriculum in their classes
16 at risk of dropping out, at risk of failing. And so
17 they -- those students required an easier curriculum.
18 And so, it would be what we think of special education
19 classes today.

20 Q. And it looks to me like an ADJ is mostly in front
21 of English, math, and science classes.

22 A. Yes.

23 Q. And then there are some other types of classes
24 that he was taking?

25 A. Yes. He had pre-vocation classes. He had

1 physical education class. He had a health class.

2 Agriculture. Family living. Consumer.

3 Q. Those are the core classes.

4 A. Core classes.

5 Q. The adjunct classes.

6 A. Yeah, English, math, and science and history, I
7 believe.

8 Q. Do you know what a passing grade in an adjunct
9 class means?

10 A. Well, the information I received about the
11 adjunct classes was you -- essentially if you showed up
12 you would receive a passing grade. The students were
13 not expected to read, so the material is played allowed
14 for them through a tape recorder, and so they weren't
15 expected to read. So if they showed up and they
16 listened to some material, they were not given homework,
17 then they could receive a passing grade.

18 Q. So would a passing grade created in an adjunct
19 class mean that a person could pass the regular class?

20 A. No. So the, the curriculum appeared to be very
21 different. The expectations and the demands appeared to
22 be very different. If you just showed up to a regular
23 class and didn't do anything else, I'm not sure you
24 would be given a passing grade.

25 Q. Do his school records also show that he repeated

1 ninth grade?

2 A. Yes.

3 Q. And is that -- so it looks like 1973 to '74.
4 He's in ninth grade and then again in 1974 to 1975
5 through the ninth grade?

6 A. Correct.

7 Q. I believe you mentioned another program that he
8 was involved in called Project Succeed. And I think
9 that's on the eighth page. I'm sorry that we don't have
10 page numbers. What is Project Succeed?

11 A. That appeared to have been a federal program
12 implemented by the states for students who were at risk
13 of dropping out. Students who are at risk for, you
14 know, not being able to succeed in their normal academic
15 coursework. And so, as I understand it, that program
16 diverted the students to vocational programming. So,
17 again, less emphasis on academic learning and putting
18 them in a more vocational type of setting where maybe
19 they could learn a skill that doesn't depend on their
20 academic skills.

21 Q. And on this page that describes him as being in
22 Project Succeed, does it say what grade he is in at the
23 time of this report?

24 A. It says 11(a), which I would interpret as the
25 11th grade, first semester.

1 Q. And in the middle of the page, does it describe
2 what grade level he's actually functioning in?

3 A. He was given a test and it has different domains.
4 So reading, it looks like reading was part of this
5 achievement test and he was reading at the fifth grade
6 level, late fifth grade level. His computation was at
7 the early fifth grade level. His arithmetic problem
8 solving was at the sixth grade, mid-sixth grade level.
9 And arithmetic total at the mid-fifth grade level.

10 Q. And what's the significance of those grade level
11 scores?

12 A. Well, it tells me he's in the eleventh grade and
13 he's obtaining -- he's performing academically in the
14 late elementary school level.

15 Q. Did you speak to any of Rickey's teachers about
16 his abilities while he was in school?

17 A. Yes.

18 Q. And what did they report?

19 A. A lower level student. Very slow in learning
20 things. Difficulty learning things. And neither
21 teacher described him as a behavior problem. And there
22 are conduct grades in Mr. Blackwell's records that
23 indicate his conduct was good, which they confirmed.

24 Q. When did Rickey leave high school?

25 A. I believe in the spring of '77. His -- in the

1 second semester of his 11th grade year.

2 Q. So he didn't graduate?

3 A. No.

4 Q. What was his class rank when he left?

5 A. It was 113 out of 113. I believe that's on the
6 front page of the school records.

7 Q. I had noted it as on the third page of his school
8 records.

9 A. Third page, okay.

10 Q. It looks like in the middle section.

11 A. Oh, yes. Correct.

12 Q. A two-year range, 113 in a class of 113?

13 A. Yes.

14 Q. And did you have any information about whether
15 that rank was affected by him dropping out or if it was
16 the place that he was in before he dropped out?

17 A. Right. So that was a question, because the
18 question was did they calculate it at the end of the
19 semester when he was -- wouldn't have been going for a
20 while and that's why it was lower or was it calculated
21 at the time of dropping out?

22 And I believe his homeroom teacher, Ms. Daves,
23 was able to answer that. She submitted an affidavit
24 stating that his grades would have been frozen at the
25 time. He dropped out, so the rank would have reflected

1 the time of dropping out. So it does appear that he was
2 actually last in his class when he dropped out.

3 Q. And also on page three in the top left-hand
4 corner, it describes, it looks like, 1966 and 1967
5 California short form says intelligence test. Are those
6 the tests that you were referring to that were not
7 relevant to your assessment of prong one?

8 A. Correct.

9 Q. What are these tests?

10 A. These are screening measures of intelligence, as
11 noted by the short form. And they were also group
12 administered measures of intelligence, you know,
13 providing the teachers with some indication of how the
14 student is functioning. I asked Ms. Shields about this,
15 who administered one of those testing and she was able
16 to confirm that information.

17 Q. And then just below that it has the achievement
18 tests and it lists a few things there. What are those
19 tests?

20 A. Those are the California tests of achievement.
21 Lower and upper primary. And those are achievement
22 measures, so they're assessing reading, writing,
23 language, math, that sort of thing.

24 Q. All right. And I think I interrupted you while
25 you were going through the slide about central

1 development. And I wanted to go through the school
2 records. We have some collateral descriptors here.
3 What are those and how are they important?

4 A. So this is -- these stood out to me as
5 descriptors from people who knew him at the time in his
6 developmental period. These are either teachers or a
7 friend of his. You know, he's described as a slower
8 student.

9 One of the individuals I spoke to stated he was
10 part of the slow learner group, but that Mr. Blackwell
11 was on the outer plank of the slow learner group, so he
12 was on that outer circle, even in a slow learner group.
13 Lowest level in everything. I believe one of his
14 teachers told me that. And that regular classes would
15 have been a struggle for him. Another teacher told me
16 that.

17 Q. And then you said he's also -- or someone
18 reported that he's indecisive and has, it looks like,
19 problems with problem solving ---

20 A. I think Mr. Randy Shields gave me some good
21 insight into that, in that Mr. Blackwell simply couldn't
22 think through novel situations, even if a very simple
23 situation. And that indecisiveness seemed to paralyze
24 him. In other words, he wasn't able to process, analyze
25 the situation, and come up with alternative options. He

1 just seemed to shut down and not do anything.

2 Q. And this is all during the developmental period?

3 A. Yes.

4 Q. And would this be before the age of 18?

5 A. Yes.

6 Q. In your opinion, does Rickey have deficits in the
7 conceptual domain of adaptive behavior during the
8 developmental period?

9 A. Yes.

10 Q. And based on the criteria requiring deficits in
11 only one of the three domains, could this have completed
12 your evaluation?

13 A. Technically, yes. If he met prong one and these
14 are prong two deficits within the developmental period,
15 yes. But best practices dictate that we would not stop
16 the evaluation at that point. We would go on to
17 evaluate the other two domains to be comprehensive.

18 Q. And did your evaluation demonstrate that Rickey's
19 conceptual problems continued after the developmental
20 period?

21 A. Yes.

22 Q. Okay. And what were those?

23 A. Once he dropped out of high school he didn't
24 pursue any kind of education degree and he worked in
25 areas that were simply not dependent on academic skills

1 or conceptual skills. He worked in jobs that were
2 dependent on labor like skills. So those vocational
3 skills I talked about.

4 I had other quotes from the post-developmental
5 period about Mr. Blackwell's functioning. He was slow,
6 simple. Simplest guy I ever met. I think that was one
7 of his former employers. He didn't initiate things
8 post-developmentally. I believe his pastor, who had
9 been in education for many, many years described him
10 with a low IQ. Limited vocabulary. He had given him a
11 child's Bible to read, because Mr. Blackwell couldn't
12 read a regular Bible.

13 And then in 2012, Dr. Calloway administered an
14 academic skills test and obtained a reading
15 comprehension level at the fifth grade.

16 Q. And here you've listed some characteristics of
17 mild deficits that had conceptual functioning. What is
18 the importance of this information?

19 A. So, there are specifiers to adaptive functioning.
20 Mild, moderate, severe, and profound. They used to be
21 tied to IQ level. They have now evolved to be tied to
22 the severity of the adaptive deficit. And that's so
23 individuals who work in the field can provide the
24 appropriate support for the individual if they know the
25 specifier, the severity of the adaptive deficits.

1 So there's a chart in DSM to give us an idea of
2 what does the field -- does DSM mean when it says mild
3 deficits? And, of course, we're talking about mild
4 deficits with Mr. Blackwell. And it provides that chart
5 in each domain of adaptive functioning.

6 So this is the chart from the DSM on mild
7 deficits. And looking at Mr. Blackwell's data, it maps
8 very well onto the mild chart in DSM. So, for example,
9 it says: For school aged children and adults,
10 difficulties in learning academic skills.

11 We know that he did have difficulties. So his
12 data that I found in the evaluation mapped onto the
13 chart in DSM for the mild deficits. And so I think
14 that's significant for me because it provides more of a
15 convergence of information with the DSM and with his
16 particular case.

17 Q. And I see you cited both the DSM and the
18 DSM-5-TR. So the DSM-5 would have been in place in
19 2013; is that correct?

20 A. DSM-5 came out in May of 2013. So it would have
21 been in place in 2014. I mean, since May of 2013,
22 yeah.

23 Q. Great, thank you. Now, if we can move on to the
24 social domain. What were you looking at there?

25 A. Socially, of course, Dr. Olley told us it's more

1 than having friends, right? It's the ability to
2 navigate social relationships to have reciprocal, equal,
3 kind of inner-personal interactions. It's the ability
4 to read social cues. Verbal and non-verbal social cues.
5 It's the ability to use social judgment, particularly in
6 new situations.

7 Q. And what did you determine about Rickey's social
8 functioning during the developmental period?

9 A. So, his social functioning also appeared to be
10 impaired. And this was from looking at kind of what
11 wasn't there and also talking to individuals who knew
12 him. So he did not hold any position. Leadership as a
13 child, he showed a lack of social initiation. I think
14 Mr. Shields told me that even choosing another peer for
15 a kickball game, that would be too much for him. He
16 wouldn't be able to do that in that social situation.

17 So, really unskilled, shy, unsure of himself.
18 Lot's of low self-esteem that came from persistent
19 bullying, which is common with children with
20 intellectual disability. He was not involved in any
21 sort of extracurricular activities, as far as any
22 skilled social activities.

23 And then I have some quotes from individuals who
24 knew him at the time, that he was socially awkward.
25 Almost backward, if they think -- that's from one of his

1 teachers. He was withdrawn. They never saw him
2 interacting in a group, so he was always sort of by
3 himself on the outer, outer flank of the group. And
4 that he would follow along with his peers. He was
5 easily led more gullible than other, other peers. So,
6 those are things that are significant to me in
7 evaluating his social functioning.

8 Q. And did those all exist prior to the age of 18?

9 A. Yes.

10 Q. And did you find that he has deficits in the
11 social domain of adaptive functioning during the
12 developmental period?

13 A. Yes.

14 Q. And then did you continue your evaluation to look
15 at post developmental social functioning?

16 A. Yes.

17 Q. And what did you determine there?

18 A. So really, post-developmentally he did not make
19 new friends. You know, his social group was very
20 closed. It was mostly his wife and his family. So he
21 didn't form new social relationships or seek out new
22 social experiences. Somebody described him as staying
23 mostly to himself. He didn't assert himself with
24 others. And someone else in his post-developmental
25 period told me he was backward and shy. And that was

1 significant to me because I had a teacher say that in
2 the developmental period, and then I believe I had an
3 employer say that in the post-developmental period.
4 These are completely independent sources describing his
5 social functions backward. So to me that implies
6 deficits. And then I believe Pastor Rice told me that
7 he was pretty easily manipulated. Called him an
8 overgrown boy, as far as his social functions. So those
9 were things that were significant in this, in this area
10 for me.

11 Q. And then did you look at the DSM chart on mild
12 deficits for social functioning as well?

13 A. Yes.

14 Q. And how is that important?

15 A. Again, that gives us a rubric by which to judge
16 Mr. Blackwell's data by, right? So the DSM is how we
17 diagnose. And his information fits very well onto this
18 chart. That his communication, particularly the
19 concrete communication conversation and language with
20 others. And that his social judgement's pretty immature
21 and that he's at risk to be manipulated. I think those
22 are the ones that stood out to me.

23 Q. I'm keeping score. You've now found deficits in
24 two of the three domains of adaptive functioning; is
25 that correct?

1 A. Correct.

2 Q. And those were both present during the
3 developmental period?

4 A. Correct.

5 Q. Even though you found those and you only -- you
6 found two and you only needed one, did you go on to
7 consider the practical domain?

8 A. Yes.

9 Q. And what were you looking at in the practical
10 domain?

11 A. These are kind of basic skills. So dressing
12 yourself, feeding yourself, toileting, and then all the
13 way up to job management. Those sorts of very practical
14 daily tasks.

15 Q. And what did you find about his practical
16 functioning during the developmental period?

17 A. So this area was challenging to asses, because
18 his mother repeatedly told me and she told Dr. Andrews
19 that she did everything for her children. These would
20 be her two boys. So they were not expected to do
21 anything around the house or take care of themselves or
22 have responsibilities as children. Now, she could have
23 been doing that because she had two special needs
24 children and they require that level of care, or -- and
25 if that's the case, then their deficits may have been

1 masked in that area. But she was not very reliable as
2 an informant in this area. So I didn't know if -- that
3 could have just been her parenting style and he was able
4 to do those things. So I didn't have enough information
5 to find deficits in this area.

6 Q. And does that undermine your diagnosis of
7 intellectual disability?

8 A. No. You need one, one prong.

9 Q. Okay. Did you assess his practical functioning
10 in the post-developmental period?

11 A. Yes.

12 Q. And what did you find there?

13 A. So this is where we get into his daily living.
14 He has never resided independently. He went from his
15 parents' house to his wife's parents' house to his wife
16 and then back to his parents over the course of decades.
17 And so, so he's never really lived independently.

18 He's never independently managed finances. She
19 seemed to have taken care of the household, as far as
20 the grocery shopping and the chores and the children.
21 He didn't seem to be -- he didn't seem to contribute to
22 those things. And then his jobs would also fall into
23 the post-developmental information here. And most jobs
24 involve very labor. Most jobs were obtained through
25 family and friends. And he was successful at some, not

1 successful at others.

2 And then the trucking, his trucking jobs would
3 also fall under this domain, which do represent a
4 relative strength for Mr. Blackwell. But he also had --
5 he also struggled as a trucker.

6 Q. And then, did you also look at the mild deficits
7 chart in the DSM?

8 A. Yes. And I've underlined here because he really
9 -- his information really does seem to map very well on
10 the mild deficits chart here. You can see that
11 individuals need support to make healthcare, legal
12 decisions. Support is typically needed to raise a
13 family, which is what he had. And then this chart also
14 emphasizes that competitive employment is possible, but
15 it's seen in jobs that do not emphasize conceptual
16 skills. So the conceptual skills are back to our
17 academic skills, which he really struggled in. So,
18 according to the DSM, somebody with mild deficits in
19 this area can work. They can work competitively as long
20 as it doesn't depend on the academic skills.

21 Q. So I would like to spend a little bit of time
22 talking about the truck driving. Did you look at that
23 in the course of your evaluation?

24 A. Yes.

25 Q. And why was that -- was that relevant?

1 A. Sure. So his --I'm evaluating his
2 post-developmental functioning, trucking is part of that
3 I need to evaluate. That was part of his work.

4 Q. And what did you determine about his trucking?

5 A. I think -- I believe he was a trucker or drove
6 trucks for about five years or so. He had multiple
7 different jobs. He was fired, I believe, maybe from
8 three of them. He had lots of accidents. So he wasn't
9 particularly successful in the trucking industry.

10 Q. All right. And I think you said that it's a
11 relative strength of his?

12 A. Correct.

13 Q. And is that inconsistent with intellectual
14 disability and have a relative strength?

15 A. No. Strengths are expected, in addition to
16 deficits. And as Dr. Olley talked about this morning,
17 we evaluate the deficits and the strengths do not
18 detract from the deficits that exist.

19 Q. And did you learn in the course of your
20 evaluation how Rickey learned to drive a truck?

21 A. His father was a truck driver for many years, and
22 so when he was a little boy, Mr. Blackwell would observe
23 his father driving the truck for many hours on end, and
24 sit right next to him. Sit in the cab, observe him.
25 And then, he was still very young.

1 His father began allowing him to drive back and
2 forth to the bar because his father was drinking at the
3 bar and Mr. Blackwell would drive him back and forth.
4 And so he learned from a much earlier age than most
5 people would learn just through that rote repetition and
6 observation of his, of his father.

7 Q. I'd like to show you two exhibits. I'll show you
8 what's been marked as Applicant's Exhibit 65 and 66.
9 And what are these documents?

10 A. 65 appears to be a trucking summary chart that
11 lists his employment, any relevant information from the
12 employment, any certification or licensing required, and
13 the source of that information.

14 Q. And what is number 66?

15 A. That appears to be on the front of his -- where
16 he works. So he worked for Belue Trucking, and the
17 records are included there. An affidavit from somebody
18 in the trucking industry, Sonya Stott. His DMV record,
19 his Social Security record. Applications for
20 employment, that sort of thing.

21 Q. And does the information in the chart reference
22 page numbers in the trucking records document?

23 A. I believe so. Yes.

24 MS. VANN: Your Honor, we would move these in as
25 Applicant's 65 and 66.

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1 MR. EVANS: No objections, Your Honor.

2 THE COURT: Applicant's 55 and 56 are in
3 evidence. I'm sorry, 65 and 66 are in evidence.

4 MS. VANN: Thank you.

5 (Applicant's Exhibit Numbers 65 and 66 were
6 entered into the record.)

7 BY MS. VANN:

8 Q. So I think you mentioned that the time period
9 that we're looking at that Rickey was driving trucks was
10 around 1979 to 1986?

11 A. That sounds right.

12 Q. If we could walk through the trucking summary
13 chart and the jobs that he had. Could you start with
14 the first trucking job that he had and what you learned
15 about that?

16 A. So this was with K&S Trucking. He started in
17 approximately 1979. He worked for Ken White and Ken
18 White was a friend or acquaintance of his father, and so
19 Ken agreed to hire Mr. Blackwell as a trucker at that
20 time. This was his very first job. Now, this -- I
21 don't think this appears on his Social Security earnings
22 because this was a kind of an under the table payment
23 opportunity.

24 I did speak with Mr. White about Mr. Blackwell's
25 employment and he did verify that Mr. Blackwell did not

1 make trucking runs by himself. There was always
2 somebody in the cab. Either himself or an individual
3 named Clarence who's deceased. And so, they would run,
4 make runs out of state, it sounds like, but there was
5 always somebody with Mr. Blackwell if he was driving,
6 helping him navigate where to go.

7 And then when I interviewed Mr. White, I asked
8 him what were the qualifications that Mr. Blackwell
9 would have had to have had at the time? And he
10 essentially told me -- well, this is as direct quote of
11 what he told me. That if he was -- if somebody was
12 breathing and they could climb in the cab, he would hire
13 them. Or if they could drive around the block without
14 hitting anybody, he would hire him.

15 And he did verify that Mr. Blackwell did not make
16 trucking runs by himself. There was always somebody in
17 the cab, either himself or an individual named Clarence,
18 who's deceased. And so, they would run -- make runs out
19 of state, it sounds like, but there was always somebody
20 with Mr. Blackwell if he was driving, helping him
21 navigate where to go.

22 Q. And did you learn anything about the licensing
23 requirements at the time of that job?

24 A. So Mr. White told me there would have been a
25 public chauffeurs license that cost about \$2, I believe,

1 but you just buy it with \$2. There's no texts.

2 Q. Thank you. And then his next job?

3 A. His next trucking job was at Hess. And he -- I
4 believe his father worked for Hess. And his father also
5 obtained Mr. Blackwell this job. And he worked there
6 briefly. A little over a year. Maybe a
7 year-and-a-half, in 1982 and 1983. And Mr. Blackwell
8 said that he hauled oil and gas. He was afraid to haul
9 the gas, so he stuck -- because it was obviously more
10 flammable and he didn't have good confidence in his
11 skills at that time. And so he stuck with the oil.

12 And then also, when he was employed with Hess, it
13 looks like he had multiple speeding tickets. And he
14 indicated to me that he was fired from Hess for an
15 accident.

16 Q. And did you know anything about the licensing
17 requirements at that time?

18 A. No. I had no records from Hess. I saw
19 documentation in the file that those records had -- I
20 believe the State at the time of his trial had tried to
21 obtain those records and were not able to. They had no
22 record of anybody named Rickey Blackwell. And so, it's
23 not known what the certification was or licensing was.

24 Q. And then you list D&R Transport. What did you
25 learn about that job?

1 A. Mr. Blackwell told me he applied here because
2 friends worked there. I believe this was pretty
3 short-lived. He was in an accident, admitted to the ER,
4 cited for speeding. And he said he was fired from here
5 for making an illegal u-turn.

6 Q. All right. And then Belue Trucking. We've heard
7 that name several times. So, if you could, walk us
8 through what did you learn about his experience working
9 there?

10 A. He was hired in 1984, around July, it looks like,
11 and left in 1986. And they did administer a driver's
12 test. And then something written in the records, if we
13 want to talk about that. But he also had accidents at
14 Belue, so he had a crushing injury of his hand that
15 required treatment in the ER. And I think he was out of
16 work for some time because of that.

17 And then he had some other infractions at work.
18 He didn't show. Called out of work. He got confused on
19 whether he was supposed to come in, because it was
20 raining at one point. I believe he had multiple other
21 infractions for not following the rules as he was
22 supposed to, as far as documentation and hours driven,
23 and having visitors in his truck.

24 So I believe he had his family in his truck at
25 one point, driving them around. That was against the

1 rules. So just multiple and varied infractions at the
2 company. And then he was terminated for an accident.
3 So I believe he rear-ended someone and he was
4 terminated.

5 Q. And you mentioned that they conducted some
6 testing. So what did you learn about the licensing or
7 certification requirements at Belue by the time that he
8 was at Belue?

9 A. Best I can tell, these were internal to Belue.
10 So they gave him a driver's test that they devised. And
11 then gave him a driver's certification through the
12 trucking company that was, I guess, just driving the
13 truck around. And then there was a written test.

14 Q. Okay. And if we can look at the driver -- the
15 trucking records, this is Applicant's Exhibit 66 on
16 page 5.

17 A. Yes.

18 Q. Is that the driving test that you were speaking
19 about?

20 A. Yes.

21 Q. As in, I can't really read the examiner. I don't
22 know if you can, but does it note the company?

23 A. On the third page?

24 Q. Page five. The road test examination.

25 A. Oh, page 5, sorry. So it says, driver's road

1 test examination?

2 Q. Yes.

3 A. This is -- it looks like they were checking off
4 things they had him do in the truck. Placing the
5 vehicle in operation using vehicle controls, turning the
6 vehicle, et cetera, and putting an okay to most of them.
7 And then signing that as a certification of a road test
8 on July 6th of '84.

9 Q. And then you mentioned written tests, which I
10 believe is on page 49 and 50.

11 A. Okay.

12 Q. And what have you learned about this written
13 examination?

14 A. So, his name is on it. And I believe that's the
15 address of the trucking company. And then the date of
16 the test. And then there are boxes checked for the
17 items, but I don't know if those are correct or not.
18 There's no answer key or indication if they are correct.
19 On the second page there's no signature of the person
20 taking the examination. And the organization is
21 identified as Belue. And then the person of the
22 examiner. The signature of the examiner is, looks like,
23 Sonya Stott.

24 Q. And did you learn anything additional about that
25 signature?

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1 A. So, Mr. Blackwell's legal team provided me an
2 affidavit for Ms. Stott saying that this signature was
3 forged. This was not her signature. And it was the
4 signature of Mr. Ken Duncan, who was his supervisor at
5 Belue.

6 MR. EVANS: Your Honor, I'm gonna object. I
7 don't see how this gets into her actual evaluation.

8 THE COURT: Yeah. I ---

9 MR. EVANS: I mean, she's citing a narrative
10 right now, at this point.

11 THE COURT: All right. Well, I've heard that. I
12 sustain the objection to anything further on this
13 particular line. Go ahead and ask your next question.

14 MS. VANN: On that particular test?

15 THE COURT: (No verbal response.)

16 BY MS. VANN:

17 Q. Okay. And then the last thing on trucking
18 summary chart, in 1992 it says CDL first issued. Did
19 you learn anything about that?

20 A. So they -- this is from his DMV records. And it
21 looks like he was first issued a CDL in 1992, April 1st.
22 Best I can tell from looking at trucking laws around
23 this time, legal sources, on April 2nd, 1992 ---

24 MR. EVANS: I object. I don't know if she has
25 the ability to ---

1 THE COURT: Yeah. I sustain the objection on her
2 testifying about the requirements of a particular
3 driving test and what the law may or may not have been
4 in 1992.

5 BY MS. VANN:

6 Q. From your interviews, did anyone tell you about
7 the requirements in 1992?

8 MR. EVANS: Your Honor, that would be hearsay,
9 Your Honor.

10 THE COURT: All right. I sustain the objection.
11 BY MS. VANN:

12 Q. Overall, what impact does Rickey's CDL and
13 driving history have on your evaluation?

14 A. Well, those were important areas for me to assess
15 as far as his adaptive functioning. So, the information
16 that I gathered goes to the post-developmental adaptive
17 functioning piece. It -- like I said, he struggled with
18 trucking. There's significant questions about the
19 testing. And it appears that he -- although it was a
20 strength for him, he wasn't terribly successful at this,
21 at this endeavor.

22 Q. So overall, what is your conclusion on prong two
23 adaptive behavior?

24 A. He had deficits in the conceptual and social
25 domains, both developmentally and post-developmentally.

1 And also, practical deficits in the post-developmental
2 period.

3 Q. I think we covered this, but I just want to
4 briefly touch on prong three. Did you find that
5 deficits in intellectual functioning and adaptive
6 behavior existed during the developmental period?

7 A. Yes.

8 Q. You mention when you were talking about the
9 different sources that you had that you consulted with
10 the State evaluators from trial. Can you describe those
11 briefly?

12 A. I consulted with Dr. Kimberly Harrison. She was
13 the State ---

14 MR. EVANS: Your Honor, I object to hearsay.

15 THE COURT: All right. The question was simply
16 who she consulted with, she said Dr. Harrison. What's
17 your next question?

18 MS. VANN: I was going to ask her about her
19 consultation to see if that undermined her opinion.

20 THE COURT: Yeah, I sustain the objection.

21 BY MS. VANN:

22 Q. In your opinion as a -- in clinical and forensic
23 psychology, to a reasonable degree of scientific
24 certainty, is Rickey Blackwell a person with
25 intellectual disability?

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1 A. Yes.

2 Q. If you had the same information that you have
3 today would you have made the same diagnosis in 2014?

4 A. Yes.

5 MS. VANN: I have no other questions.

6 THE COURT: All right.

7 MS. VANN: If you'll answer any questions from
8 the State.

9 THE COURT: Let's take a 10-minute break.

10 MR. EVANS: Okay. Yes, Your Honor.

11 (A recess was held from 3:37 p.m. - 3:55 p.m.)

12 THE COURT: All right. Cross-examination, Mr.
13 Evans?

14 MR. EVANS: Your Honor, at this time before I
15 begin my cross-examination, I would renew my objection
16 for Ms. Knight's -- Dr. Knight's testimony. I heard
17 nothing on direct that wasn't already raised during the
18 actual trial. I heard nothing on direct that wasn't
19 raised in the actual trial.

20 I heard no extra evidence that was presented,
21 that wasn't presented in the actual trial, Your Honor.
22 Her conclusions were the same as Dr. Calloway's, who was
23 also found to be an expert from the same field she was
24 an expert in. Therefore, I would appeal that this does
25 not raise an argument regarding ineffective assistance

1 of counsel. It would only be going to an argument that
2 was raised by counsel during trial.

3 It was decided by Judge Couch, not to be tried,
4 decided by the jury not to deal with that at trial, and
5 that decision was affirmed by the South Carolina Supreme
6 Court. So I'll renew my objections for her testimony
7 and ask that it be stricken.

8 THE COURT: All right, thank you. Again, I stand
9 by my prior ruling, and I overruled the objection.
10 Again, the Court has to determine what weight, as far as
11 any testimony to the ultimate issue of ineffective
12 assistance of counsel. And so you can proceed with your
13 cross-examination.

14 MR. EVANS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. EVANS:

17 Q. Dr. Knight, how are you doing?

18 A. Hi, Mr. Evans. How are you?

19 Q. Okay. You may not be able to hear me well. My
20 voice is not feeling -- I think I have a cold. I think
21 I'll try to fight through it.

22 Now, you were contacted ---

23 THE COURT: Mr. Evans, if you're more comfortable
24 pulling that table over and put your cup of water right
25 there. There's not enough room on that podium, but that

1 might keep you from having to keep diving back to the
2 table.

3 MR. EVANS: Thank you.

4 THE COURT: All right. There you go.

5 BY MR. EVANS: Dr. Knight, you were contacted by the
6 Appellate's counsel to make a determination regarding
7 whether or not Mr. Blackwell was intellectually
8 disabled, correct?

9 A. Correct.

10 Q. All right. And that opinion has to be like an
11 objective opinion. There's not no scan or x-ray or
12 anything like that, that might point to or show that he
13 is intellectually disabled; isn't that correct?

14 A. Correct.

15 Q. Okay. And another forensic psychologist might
16 disagree looking at the same factors as you; isn't that
17 true?

18 A. May disagree?

19 Q. Yes.

20 A. Correct.

21 Q. Okay. Now, you no longer work at Applied
22 Psychological Services; isn't that true?

23 A. That's my private practice. I do work there.

24 Q. Okay. That's the ---

25 A. Yes.

1 Q. The address is different than what is on your
2 report, your current address; isn't that correct?

3 A. The mailing address is different from my physical
4 office location.

5 Q. Okay.

6 A. So, the office hasn't changed.

7 Q. Okay. You're a sole practitioner?

8 A. Yes.

9 Q. Okay. And do you not only work on behalf of
10 individuals either on death row or facing the death
11 penalty?

12 A. Do I work on those cases?

13 Q. Is that the bulk of your work?

14 A. No.

15 Q. Okay. Now, you said earlier that you are a
16 member of the faculty at the Capital Punishment Clinic
17 at Cornell University; isn't that correct?

18 A. Yes, sir.

19 Q. Okay. And according to the website, it states
20 that the mission statement is that the Capital
21 Punishment Clinic provides representation and
22 consultation services in death penalty cases. Our
23 clients our prison inmates, usually from the American
24 South, who are challenging their convictions and
25 sentences in state and federal courts. Is that the

1 purpose of this clinic?

2 A. That might be the purpose of the attorneys
3 working in the clinic, but I'm not an attorney working
4 in the clinic. I teach psychology in the clinic.

5 Q. Okay. Are you against the death penalty in all
6 circumstance?

7 A. I have no opinion on the death penalty.

8 Q. Okay. So you just work for the clinic to provide
9 services for students with no actual feeling about the
10 issue at all?

11 A. Correct. We have students that go on to be
12 federal prosecutors, that go on to work for the State.
13 We have students that work in public defense. And so my
14 role in the clinic is to teach all aspects of relevant
15 mental disorder and psychological testing, just to
16 educate them and inform them in whatever career they
17 choose.

18 Q. Okay. You would say 90 percent of your work,
19 your testimony is for the defense; isn't that correct?

20 A. At this point. I used to be a State examiner
21 where that -- those percentages would have changed.

22 Q. And you were being brought in to -- you were
23 being brought in today to testify about Mr. Blackwell
24 not being -- being intellectually disabled; isn't that
25 correct?

1 A. I was asked to provide testimony on my opinion.

2 Q. Okay.

3 A. Correct.

4 Q. Okay. Are you being paid for those services
5 today?

6 A. Yes.

7 Q. Okay. And you're paid even more to testify?

8 A. Same rate.

9 Q. Same rate?

10 A. Yes.

11 Q. Okay. Now, in your report, you stated that you,
12 to prepare for this, for your evaluation, you read the
13 entire Atkins hearing transcript; is that correct?

14 A. Correct.

15 Q. Okay. And the entire record of appeal, you've
16 read that also?

17 A. Some time ago, but yes.

18 Q. Okay. You've read the report of Dr. Ginger
19 Calloway, Dr. Edgar Brown, and Dr. Donna Schwartz-Watts,
20 and she's now Maddox, and Dr. Kimberly Harrison also?

21 A. Correct.

22 Q. So, and the reason being the entire record of
23 appeal, you knew where the solicitor's offices were in
24 this case, correct?

25 A. Sure. That, that oriented me to the case, yes.

1 Q. Okay. All right. And you knew what the
2 solicitor argued in order to persuade the Court to find
3 Mr. Blackwell, that he was not intellectually disabled;
4 isn't that correct?

5 A. Sure.

6 Q. All right. And Dr. Calloway in no way knew this
7 because she did it at that time and not in the -- later;
8 isn't that correct?

9 A. That's right. We're evaluating it at two
10 different time points.

11 Q. Right.

12 A. Yes.

13 Q. So you kind of had a leg up with Dr. Calloway
14 when you did do your evaluations; isn't that true? You
15 knew what to look for when she didn't; isn't that
16 correct?

17 A. I knew some identified issues, yes.

18 Q. Now, when preparing for your evaluation, you also
19 read the psychiatric records of Mr. Blackwell and his
20 daughter from Patrick B. Harris hospital; is that
21 correct?

22 A. Yes.

23 Q. And also, you read the medical records from
24 Carolina Family Physicians for Mr. Blackwell and his
25 mother, Mildred?

1 A. Yes.

2 Q. Okay. Now, at the conclusion of your report, you
3 gave the same exact diagnosis as Dr. Calloway, that Mr.
4 Blackwell was intellectually disabled; isn't that true?

5 A. Correct.

6 Q. And that diagnosis by Dr. Calloway was made to
7 Judge Couch during the Atkins hearing, correct?

8 A. Yes.

9 Q. And also that diagnosis was made to the jury at
10 the end of the trial; isn't that correct?

11 A. Yes.

12 Q. And in that decision -- you read the opinion of
13 the South Carolina Supreme Court in this case; isn't
14 that correct?

15 A. Some time ago, yes.

16 Q. Okay. And that decision made by Dr. Calloway --
17 well, the decision made by Judge Couch to find that he's
18 not intellectually disabled and the jury find he's not
19 intellectually disabled was upheld by the South Carolina
20 Supreme Court; isn't that correct?

21 A. I believe so.

22 Q. Okay. Do you know Dr. Calloway personally?

23 A. No, I've never met her.

24 Q. All right. But Dr. Calloway was a very much
25 qualified forensic psychologist?

1 A. Sure.

2 Q. Okay. And she was qualified in her field to make
3 this diagnosis?

4 A. Yes.

5 Q. And she was found qualified by the Court during
6 the trial; is that correct?

7 A. Correct.

8 Q. And Dr. Calloway saw that Mr. Blackwell had
9 sub-average intellectual functioning, as indicated by
10 his IQ test. And that's the same exact diagnosis that
11 you came up with also?

12 A. Yes. We both arrived at a diagnosis of
13 intellectual disability.

14 Q. And Dr. Calloway also saw that Mr. Blackwell had
15 deficits in adaptive functioning by using adaptive
16 behavior assessment system?

17 A. Yes.

18 Q. Okay. And you also, you didn't use the same
19 system, but you also found him to have deficits in
20 adaptive functioning; isn't that correct?

21 A. Correct.

22 Q. Now, in using the adaptive behavior assessment
23 system, you have to ask multiple sources who are well
24 acquainted with the person being examined about their
25 behavior over an extended period of time; isn't that

1 correct?

2 A. Correct.

3 Q. And you said earlier you did read the transcript
4 of the Atkins hearing?

5 A. The Atkins hearing?

6 Q. Yes.

7 A. Yes.

8 Q. Okay. On page 3858 of the record of appeal, Dr.
9 Calloway stated that she was given this measure and
10 taught this measure by Dr. John Olley, who recently
11 testified earlier; isn't that correct?

12 A. I do remember that, yes.

13 Q. Okay. And you are familiar with Dr. Olley as
14 well; isn't that true?

15 A. Yes.

16 Q. Now, during her examination, Dr. Calloway took a
17 map and asked Mr. Blackwell questions about directions,
18 like where's the Atlantic Ocean. If you're going from
19 Columbia to Spartanburg, which direction you will go to
20 determine if Mr. Blackwell knew directions like
21 northeast, southwest. You didn't conduct those
22 questions, did you?

23 A. No.

24 Q. Okay. Did you read Dr. Gordon's report? You
25 read Dr. Gordon's report -- Gordon Brown's report,

1 excuse me.

2 A. Yes. Dr. Brown, yes.

3 Q. Now, Dr. Brown in his examination, according to
4 the testimony and his report, he asked Mr. Blackwell
5 about the days of the week, and how many months in a
6 year, the location of the state capitol, and the
7 lawyer's office and direction. You didn't ask Mr.
8 Blackwell those questions?

9 A. No.

10 Q. Dr. Brown also asks Mr. Blackwell to read the
11 time on an analogue watch, which he's able to do
12 correctly. He was also, Mr. Blackwell was also to
13 register immediately and recall three words. And he was
14 also given to spell the word world forward and
15 backwards. And he was able to count backwards from a
16 hundred by threes. Are those questions you asked Mr.
17 Blackwell?

18 A. I did not ask him those questions, no.

19 Q. Now, in your report you stated that the ABAS most
20 selected person that should have been in frequent,
21 recent, prolonged contact with an individual. And as an
22 example you state most days over the last two months or
23 several hours a day. Do you remember writing that in
24 your report?

25 A. Correct. That's from the manual.

1 Q. Okay. And Dr. Calloway decided these eight
2 people, who have had prolonged contact with Mr.
3 Blackwell, at different periods of his life; isn't that
4 correct?

5 A. I don't think they had prolonged contact with Mr.
6 Blackwell. I don't think she could score the ABAS with
7 some of these respondent's that she had.

8 Q. Okay.

9 A. So if she asked then some questions, but they
10 weren't able to generate enough information to score the
11 measure.

12 Q. But they did have some type of familiarity or
13 actual contact with him?

14 A. Sure.

15 Q. In certain areas?

16 A. In certain areas, yes.

17 Q. Okay. And through his life?

18 A. Yes.

19 Q. Including the age when he was young also?

20 A. Correct.

21 Q. And Dr. Calloway decided to use Cletus and
22 Mildred Blackwell, his parents; his daughter, Helen; his
23 pastor, Ken Rice, who had daily contact with him,
24 correct?

25 A. Correct.

1 Q. She also uses his former eighth grade teacher, Ms.
2 Louise Shruggs. Rickey Bagwell and Gail Shook, two of
3 his former employers also.

4 A. Correct.

5 Q. And these people match the criteria of the ABAS;
6 isn't that correct?

7 A. I wouldn't -- I don't think so as far as frequent
8 -- the ABAS or the ABAS, is what we would call it. It's
9 really for contemporaneous assessment. So how is the
10 person doing right now? It's not designed through
11 retrospective assessment, which is how she was using it.
12 So she's asking people to go back in time 30, 40, 50, 20
13 years, however long it was. And she's using the measure
14 in a retrospective manner. That's not how the manual
15 directs the measure to be used.

16 Q. Okay.

17 A. So, that's the first issue there. The second is,
18 some of these individuals would not have met that
19 frequent prolonged daily, hourly contact, even if it was
20 contemporaneous.

21 Q. But he's a -- and these are some of the same
22 people you'd use in your evaluation; isn't that correct?

23 A. Correct.

24 Q. All right.

25 A. But that's why I decided not to score the ABAS or

1 use the ABAS with these respondents because they didn't
2 fit the manual's instructions.

3 Q. Now, let's talk about people that you used in
4 your report. You interviewed Mr. Blackwell's parents,
5 Cletus and Mildred Blackwell?

6 A. Correct.

7 Q. Now, you spoke with Ms. Jean White, a long-time
8 friend.

9 A. That was an affidavit.

10 Q. That was an affidavit, okay.

11 A. Correct, yes.

12 Q. So you never actually spoke to her?

13 A. Correct.

14 Q. Okay. Okay. But the investigative team of
15 defense did speak to her and got an interview sheet from
16 her, correct?

17 A. Got the -- yes.

18 Q. Okay.

19 A. Had gotten -- sent me an affidavit.

20 Q. Right. You spoke with Kenneth Lawter --

21 A. Yes.

22 Q. -- who was a person -- and you said in your
23 report that you spoke with Kenneth Lawter?

24 A. Yes.

25 Q. And, and you said in your report that he was very

1 simple with obvious lower cognitive function.

2 A. He appeared that way, yes.

3 Q. Okay. But, of course, you couldn't tell if he
4 was actually mentally disabled because you'd need to do
5 actual testing. You can not tell that on someone, can
6 you?

7 A. I wouldn't diagnose him.

8 Q. Okay.

9 A. Yes, correct.

10 Q. And those are the stereo types the medical
11 community is trying to avoid.

12 A. Correct.

13 Q. Dr. Olley was speaking about that. Okay. And
14 Mr. Lawter was in adjunct classes also, but he did
15 graduate high school.

16 A. Correct.

17 Q. And he's informed that he works at school as a
18 maintenance man and he got his CDL also to drive a
19 school bus.

20 A. He -- well, I think it was just a special
21 driver's license to drive the school buses. And he said
22 his wife worked for the school system and gave him the
23 answers to the test to drive the buses.

24 Q. Okay. I'll show you Applicant's Exhibit Number
25 7. It's part of the actual interview sheet that the

1 defense counsel did with Mr. Lawter. Did you have time
2 to read that or look at that at any time?

3 A. It -- I think it's listed in my report. So just
4 -- May 18th. Yeah. This one is listed in my report,
5 yes.

6 Q. Okay. And as you can see on this, it says here
7 that it was difficult to get any information out of him;
8 isn't that correct?

9 A. U-huh.

10 Q. So, it wouldn't have been hard for the defense to
11 get an ABAS or have him testify at trial. He didn't
12 even want to step in it; isn't that correct?

13 A. I don't think he would have been a qualified
14 informant on the ABAS. I don't know about testifying.

15 Q. Okay. But that definitely showed that he didn't
16 want people to talk with him. It looks like he didn't
17 want people to ask too much information, according to
18 that interview; is that correct?

19 A. I don't know if I would characterize it like
20 that. What I -- when I met with Mr. Lawter, I believe I
21 asked him about speaking with people previously. And he
22 described at the time that he was -- I believe he was
23 taking opiates for a pain disorder and he was not in a
24 place where he wanted to really talk or engage at the
25 time.

1 Q. Okay, at the time?

2 A. Correct.

3 Q. So was it easier for him to communicate with you
4 and work with you as well as at the time of trial?

5 A. Yes.

6 Q. Okay. And I believe you said Mr. Lawter did not
7 know Mr. Blackwell. Only in passing after they got out
8 of high school.

9 A. Correct. They didn't keep up with each other.

10 Q. You also spoke with Ms. Emily Shields, Mr.
11 Blackwell's third grade teacher?

12 A. Yes.

13 Q. Who vaguely remembered Mr. Blackwell?

14 A. Correct. That's not uncommon with teachers.
15 They have a lot of students, so showing her the records
16 helped jog her memory.

17 Q. Your report states that Ms. Shields was shown the
18 scores of the CTMMSF?

19 A. Correct.

20 Q. And she said he was on the lower end. And those
21 were 87 scores that he got in third grade.

22 A. That would have been we showed her, her testing
23 protocol, correct.

24 Q. Okay. And she said there are no adjunct classes
25 at elementary school. All the kids took the same

1 classes, correct?

2 A. Correct. All of the children were, I believe she
3 said, high IQ, low IQ. They were all in the same class
4 together.

5 Q. Now, Ms. Shields taught Rickey in third grade,
6 correct?

7 A. Correct.

8 Q. And I'll show you Applicant's Exhibit Number 64.
9 Look at Mr. Blackwell's third grade classes. He didn't
10 do so bad in third grade, did he?

11 A. Let me see just for a second. He ---

12 Q. He had a failing grade. He had a 67 in one
13 class.

14 A. It looks like he had a 67 in grammar.

15 Q. 63.

16 A. And a 74 in arithmetic. He did a little better
17 in spelling with an 86. A little better in handwriting
18 with an 84. And then -- I think I'm on the wrong -- 79
19 in reading. So he, scores ranged.

20 Q. Okay.

21 A. Sure.

22 Q. He did average?

23 A. Well, he's got a failing score in there, so I'm
24 not sure that that would be considered average. He's
25 got a 67 in language, a 79 in reading.

1 Q. That's almost a B. That's almost 80. 79?

2 A. Yeah.

3 Q. Yes, okay. And he raised it from 67 to 77,
4 didn't he, in third grade?

5 A. Second semester it looks like, yes.

6 Q. Yes, he did?

7 A. Yes.

8 Q. Okay. And I think he got advanced to the fourth
9 grade.

10 A. He did, yes.

11 Q. Okay. Now, I think you said you've read the
12 affidavit of Mr. William Bill Hayes?

13 A. Yes.

14 Q. Okay. And he was a history teacher --

15 A. Correct.

16 Q. -- at Chesnee?

17 A. Correct.

18 Q. We taught adjunct classes at Chesnee.

19 A. That's right.

20 Q. But he never taught Mr. Blackwell; isn't that
21 correct?

22 A. That's my understanding, yes.

23 Q. So he gave an explanation of adjunct classes that
24 he taught; isn't that correct?

25 A. Correct.

1 Q. Okay. But Mr. Blackwell had another teacher,
2 isn't that correct, because he never taught Rickey?

3 A. He did not teach Mr. Blackwell.

4 Q. Okay. And you would agree certain teachers teach
5 classes differently; isn't that correct?

6 A. Sure.

7 Q. All right. And you never talked to Mr.
8 Blackwell's actual teacher of history?

9 A. Not of history. I've talked to his English, high
10 school English teacher.

11 Q. So the classes that Mr. Blackwell have taken
12 could have been harder than what Mr. Hayes taught?

13 A. Possibly. Although, I would imagine the adjunct
14 classes were all taught mostly the same.

15 Q. But you weren't there, of course --

16 A. No, I was not there.

17 Q. -- so that's an actual guess?

18 A. Sure.

19 Q. Okay. I mean, I'm sure that it was easier than
20 regular classes. They were adjunct classes.

21 A. Yes.

22 Q. But some classes could have been harder than
23 others; isn't that correct?

24 A. Sure.

25 Q. You also took an affidavit of Mrs. Beverly Daves,

1 who was Mr. Blackwell's homeroom teacher?

2 A. That was provided to me, yes.

3 Q. It was provided to you, okay. Now, homeroom is
4 about ten minutes long. There's no instructions in
5 homeroom, is there?

6 A. You know, I think homeroom varies from school to
7 school of how long they stay in homeroom and what the
8 teacher's role is in homeroom. I think it varies.

9 Q. All right. But she never said she taught Mr.
10 Blackwell in an actual academic class?

11 A. Don't think she had an academic role, no.

12 Q. Okay. So she doesn't know Mr. Blackwell's
13 performance in an actual class, does she? An actual
14 academic class.

15 A. I don't think that was included in her affidavit.

16 Q. And she talked about Mr. Blackwell's class
17 ranking. Did she ever give you an assessment of how
18 would that calculate?

19 A. No.

20 Q. So you said she said it was 113 out of 113, she
21 was told that.

22 A. That, that figure is included in his school
23 records.

24 Q. Okay. But she never said how is that calculated;
25 isn't that correct?

1 A. She never gave me a mathematical calculation, but
2 in her experience as a teacher at Chesnee High School
3 where he was a student, it was calculated when the
4 student stopped school.

5 Q. Okay. Was she an administrator?

6 A. No, she was -- well, I don't know. She
7 identified herself as a teacher.

8 Q. Okay. So she wouldn't possibly know the grades
9 of every student. Only administrators know that. She'd
10 know the grades of her students, but not every student;
11 isn't that correct?

12 A. Correct.

13 Q. Okay. And usually in schools, class rankings is
14 calculated by the administrators because they have all
15 the records of every class of every student; isn't that
16 correct?

17 A. Uh-huh. Yes.

18 Q. Okay. And you don't know how she -- I mean, did
19 you ask anybody or got any calculation of his class
20 ranking as of tenth grade?

21 A. I don't think so.

22 Q. Okay. And I'm not gonna remember. On the second
23 semester of his tenth grade year, he had an incomplete
24 in English. He didn't finish the class, correct?

25 A. Yes. He has an I which is, yes, incomplete.

1 Q. And that's pretty much a zero. He got no credits
2 for that.

3 A. Correct. Right.

4 Q. So shouldn't that have affected his class
5 ranking?

6 A. I would think so, yes. That was his tenth grade
7 year.

8 Q. So the fact that he quit affected that ranking.

9 A. The fact that he failed that class, yes.

10 Q. Okay. Well, incomplete means he quits. I won't
11 say failed. Failed is you try and you didn't make the
12 grade. Incomplete meaning you didn't do the work; isn't
13 that correct?

14 A. Yes. Although, Ms. Scruggs told me that would
15 equate to a failure.

16 Q. Okay. And I'm gonna show you what I'm sure
17 Applicant's attorney will correct the full record.

18 A. Okay.

19 MR. EVANS: I have a copy for the judge, if you
20 want, also, or you can wait until we put it in.

21 THE COURT: All right.

22 MR. EVANS: Would you like to see this?

23 THE COURT: Yes, please. You can have this one
24 back. I saw it.

25 MR. EVANS: Okay. I have it.

1 THE COURT: Right.

2 BY MR. EVANS:

3 Q. Now, in his last semester of school, he made a 55
4 and a 50 in English and health; isn't that correct?

5 A. Correct.

6 Q. And those were his two worst grades that he had
7 all through school.

8 A. I believe so. I would have to look.

9 Q. Okay. Even in years he got back in ninth grade,
10 he didn't make the 50's; isn't that correct?

11 A. I would have to look closer, Mr. Evans, but I
12 don't remember a 50.

13 Q. Okay. Do you remember interviewing Ms. Louise
14 Scruggs, Mr. Blackwell's English teacher?

15 A. Yes.

16 Q. Okay. And in your reports, she mentioned he's a
17 lower class of special education class for students, she
18 called, EMR, which means Educable Mentally Handicapped;
19 is that correct? Mentally Retarded, excuse me.

20 A. Correct.

21 Q. Okay. And according to Scruggs, these were
22 students very reluctant and difficult to teach, barely
23 functioning, trouble dressing. These students are very,
24 very limited. And Mr. Blackwell never had any of these
25 problems, did he?

1 A. Correct. So these were students who would
2 require -- usually in wheelchairs, would require very
3 basic needs, such as feeding themselves.

4 Q. And he wasn't in that class, was he?

5 A. No.

6 Q. Have you read the interview memo of Ms. Cheryl
7 Honda?

8 A. No.

9 Q. Another teacher. Okay. So you ---
10 Now, I believe you mentioned a Mr. Randy Shields.

11 A. Yes.

12 Q. An individual you spoke to. And Mr. Shields
13 talked about Mr. Blackwell being in adjunct classes
14 also?

15 A. Yes.

16 Q. Okay. Have you ever read the affidavit Mr.
17 Shields gave to defense counsel?

18 A. I have not seen an affidavit from Mr. Shields,
19 no.

20 MS. VANN: Objection, Your Honor. I object to
21 the characterization of it as an affidavit. It's --

22 MR. EVANS: I'm sorry.

23 MS. VANN: -- an interview.

24 MR. EVANS: I'm sorry. It's not an affidavit.
25 I'll rephrase, you're right.

1 BY MR. EVANS:

2 Q. This interview memo, you didn't read the
3 interview memo?

4 A. No, sir.

5 Q. Okay. I will show you Applicant's Exhibit 7.
6 This is the interview memo that Randy Shields actually
7 gave the defense counsel. If you look and read with me
8 the top two lines. It says: Mr. Shields tells me I'm
9 really against what he's done. The Bible clearly comes
10 down on the side of capital punishment. He never told
11 you that, did he?

12 A. No.

13 Q. Okay. And you interview him when, 2022?

14 A. I'll have to consult my report. I think it was
15 December 9th, 2019.

16 Q. 2019, okay. So it was about five years after the
17 trial?

18 A. Correct.

19 Q. Okay. Okay. This is another interview memo of
20 Cheryl Ponder. I asked you before, did you read that
21 and are familiar with it and you didn't.

22 A. I was not provided that.

23 Q. Okay. And she discussed the adjunct classes
24 also. She said, those classes were for kids, to help
25 kids who wouldn't be successful in general class. They

1 were for kids who went to vocational school. They were
2 for kids who weren't able to do so. But Ms. Ponder
3 doesn't think the students were meant for the retarded
4 and the adjunct classes. That says that, doesn't it?

5 A. It does. I haven't seen that before.

6 Q. You've never seen this though?

7 A. Correct.

8 Q. And then you weren't provided this, the interview
9 report?

10 A. Correct.

11 Q. Now, during trial, the defense called Mr.
12 Blackwell's cousin, Shirley Wofford. Did you ever speak
13 to her?

14 A. I did not.

15 Q. Okay. Defense also spoke to a Mr. Norm Hooper,
16 who was a good friend of Mr. Blackwell. You've never
17 spoken to him either?

18 A. No.

19 Q. The defense called Mr. James Hatter, who was Mr.
20 Blackwell's brother-in-law. Did you speak to him?

21 A. No.

22 Q. The defense called Ms. Mary Umis, who was a good
23 friend of Mr. Blackwell. Did you speak to her?

24 A. No.

25 Q. Now, you did speak to Cletus and Mildred

1 Blackwell?

2 A. Yes.

3 Q. And they were elderly, but they did remember some
4 things about Mr. Blackwell's upbringing.

5 A. Some things, but they did not remember an awful
6 lot of things and would confuse the children at times.

7 Q. To be honest, I do that myself. But most do
8 remember that Rickey was 8 pounds, 2 ounces when he was
9 born; isn't that correct?

10 A. Yes.

11 Q. Okay. And those that said that she did
12 everything for the boys. They never had to do any
13 chores.

14 A. That's correct.

15 Q. Okay. And she never taught Mr. Blackwell or his
16 brother how to do housework?

17 A. That's what it would seem like, yes.

18 Q. Okay. And she said she also remembered Don
19 hitting Mr. Blackwell in the head with a shovel.

20 A. Yes.

21 Q. When they were school-aged kids?

22 A. Yes.

23 Q. Yes, okay. So Mr. Blackwell didn't have to do
24 any household chores?

25 A. It seems like she did everything for them.

1 Q. She did everything. Now, Mr. Randy Shields told
2 you about how quiet Mr. Blackwell was when he was in
3 school.

4 A. Yes.

5 Q. Okay. He said something about it was hard for
6 him to make a decision and he never marked his
7 territory. Did he ever explain to you what he meant by
8 that?

9 A. I think with the other adolescent boys, that
10 meant that Mr. Blackwell wasn't standing up for himself,
11 wasn't asserting himself, as adolescent males tend to
12 do, and that he would just hang back from the group.

13 Q. Okay. So he wasn't very, what's the word I'm
14 looking for? Forthcoming. He was shy?

15 A. He was shy. He wasn't competitive, that sort of
16 thing.

17 Q. Okay. That describes a lot of kids in school,
18 doesn't it?

19 A. Sure.

20 Q. He told you the story about Mr. Blackwell
21 bringing his cigarettes to school in the sixth grade.

22 A. Yes.

23 Q. Could you explain that story?

24 A. I believe he said Mr. Blackwell had been caught
25 with some -- a cigarette and didn't know how to proceed

1 from there. In other words, he couldn't generate the
2 solution of throwing the cigarette away, hiding the
3 cigarette. He seemed paralyzed by that indecisiveness
4 and lack of problem solving ability.

5 Q. Okay. I'm gonna show you again part of
6 Applicant's Exhibit Number 7. This is the interview
7 memo done on February the 21st, 2014, with Mr. Shields.
8 And Kara Richards, who was the mitigation specialist,
9 she pretty much writes: I asked Mr. Shields about
10 Rickey as a young boy. Mr. Shields remembered the time
11 that Rickey brought cigarettes to school to share with
12 some of the other boys. The boys all knew the
13 principal, Mr. Bachelor would nail down whoever brought
14 cigarettes to school. We knew he was going to get
15 caught. Mr. Bachelor watched out of his window for boys
16 smoking during recess.

17 Despite this, Rickey smoked the cigarettes right
18 out in the open playground, instead of going behind the
19 barnyard. Mr. Bachelor caught Rickey smoking. Mr.
20 Shields thinks Rickey was in the fifth, sixth, or
21 seventh grade when this happens.

22 So it's kind of a different story he told defense
23 counsel at the time; isn't that correct?

24 A. He didn't go into all of that detail with me, but
25 now he did say Mr. Blackwell lacked any sort of cunning

1 or guile or any instincts to avoid situations, I guess,
2 as the administrator catching him. So that's kind of
3 consistent with what he told me, just not in the same
4 story.

5 Q. Well, he said in that story that he actually
6 brought the cigarettes to school to share with other
7 kids.

8 A. Correct. He didn't give me that detail.

9 Q. And this was in the fifth, sixth, seventh grade.
10 So he was between the ages of 10 and 12 maybe.

11 A. I don't know if he gave me an age. I'd have to
12 look back.

13 Q. All right. Okay. And you got a copy of Mr.
14 Blackwell's school records so you could review those
15 records to assist in your, in your examination; isn't
16 that correct?

17 A. Yes, that's correct.

18 Q. On page 19, you did actual charts of your report.
19 These are actual charts of his academic performance from
20 first grade until the time he left school in the 11th;
21 is that correct?

22 A. Correct.

23 Q. And the only failing year he had was ninth grade
24 he failed out of school --

25 A. That's what ---

1 Q. -- and repeated ninth grade?

2 A. Correct.

3 Q. Even the year he dropped out of school, he had a
4 71 average to pass.

5 A. At the time, yes.

6 Q. Okay. Mr. Blackwell was on track to graduate
7 high school if he kept going; isn't that correct?

8 A. If he had kept going and earning enough units,
9 yes.

10 Q. So although he was in an adjunct classes, he was
11 doing the work?

12 A. Well, I did receive some information that you
13 simply had to show up and you would be passed. So I'm
14 not quite sure if these -- the latter grades reflect
15 actual work or more just showing up to class.

16 Q. Okay. Now, his classes in elementary school,
17 some of them were 80's.

18 A. Uh-huh. Yes.

19 Q. Some high 70's; is that correct?

20 A. Correct.

21 Q. And those were not adjunct classes, correct?

22 A. Correct. Those were regular.

23 Q. Now, as he got older his grades dropped. Now,
24 Dr. Calloway explained it was because the work was
25 getting harder. Could it be that Mr. Blackwell stopped

1 caring about school?

2 A. There, there could have been some apathy
3 involved, but I do think the work was getting harder for
4 him.

5 Q. Well, that means he'd have to worker harder;
6 isn't that correct?

7 A. Sure.

8 Q. Okay. And it's possible he just wanted something
9 to do?

10 A. Yes. But it's also possible that the work had
11 reached -- overreached his abilities. That he could no
12 longer participate like he did.

13 Q. Now, Mr. Blackwell told you, toward the bottom,
14 his goal in life was to be a truck driver; isn't that
15 correct?

16 A. Yes.

17 Q. On page 14 of your report, you actually report
18 Mr. Blackwell saying, I wanted to be a truck driver. If
19 I learned how to change gears, I'd be fine.

20 A. That's what he told me, yes.

21 Q. Okay. And, and his father was a truck driver
22 also, Cletus?

23 A. Correct.

24 Q. And from all records that you have, failure
25 builds character, we talked about the expressions of

1 Cletus.

2 A. I don't have any of Cletus's work records.

3 Q. Okay. But did you interview anybody that you
4 know of Cletus when he grew up?

5 A. Mr. White, Ken White, would have known Cletus.

6 Q. Did he ever speak about Cletus's ability to drive
7 a truck?

8 A. Not his ability. They seemed friendly with each
9 other, but not his ability.

10 Q. And Cletus only had a ninth grade education;
11 correct?

12 A. Correct.

13 Q. Okay. So Mr. Blackwell knew that he can drive a
14 truck without a high school diploma, he knew that,
15 didn't he, because his dad did it?

16 A. Because of his father, yes. Uh-huh.

17 Q. Now, page 15 of your report Mr. Blackwell told
18 you that he placed adjunct classes because he had got
19 behind in English and they put him in the class because
20 he couldn't get ahead.

21 A. Correct.

22 Q. Okay. Now, on page 17 and 18, you mentioned a
23 teacher there by the name of Louise Scruggs?

24 A. Yes.

25 Q. Okay. And she stated that students were placed

1 in adjunct classes if their scores from previous jail
2 were below standard or the student would have to
3 socially promoted or if the student was too lazy to do
4 the work. Do you remember seeing that?

5 A. That's not in my interview.

6 Q. Okay, thank you. Beg the Court's indulgence.
7 Thank you.

8 (State's Exhibit Number 16, Memo Scruggs, was
9 marked for identification.)

10 I'll show you another interview memo, which is
11 State's Exhibit Number 16. See where it says: Adjunct
12 was a term to describe lower level classes. Students
13 were placed in adjunct classes if their scores from
14 previous years were below standard or if the student
15 hadn't been socially promoted or if the student was too
16 lazy to do the work.

17 A. So I cited this interview memo in my report.

18 Q. Okay. So you've seen this?

19 A. That's the same date as the one that I had.

20 Q. Okay. But you didn't include that in your ---

21 A. I think I asked Ms. Scruggs about that, and she
22 didn't communicate the same information to me.

23 MR. EVANS: Okay. I'd like to introduce this
24 into evidence, Your Honor.

25 THE COURT: State's Exhibit?

1 MR. EVANS: State's 16.

2 MS. VANN: No objection.

3 THE COURT: State's 16 is in evidence.

4 MR. EVANS: Thank you, Your Honor.

5 (State's Exhibit Number 16, Louise Scruggs
6 Interview Memo, was marked for identification.)

7 (State's Exhibit Number 16 was entered into the
8 record.)

9 BY MR. EVANS:

10 Q. Okay. So on Applicant's Exhibit Number 64, did
11 you look at his grade chart? In eighth grade English he
12 had a 76 and a 70 that year.

13 A. Correct.

14 Q. And the average was 71. In math he had two 70's
15 and that's an average of 70 --

16 A. Correct.

17 Q. -- in eighth grade. And in science he had a 70
18 and a 75, average was 73; isn't that correct?

19 A. Correct.

20 Q. And those were regular classes. Those weren't
21 the adjunct classes?

22 A. That's correct.

23 Q. Okay. And then he was placed in the adjunct
24 class that next year?

25 A. That's right.

1 Q. Okay. So, Mr. Blackwell was passing eighth not
2 as a class, but he couldn't pass ninth grade English
3 class so they put him in adjunct, according to him?

4 A. Right. So it looks like in eighth grade, even
5 though he passed, he's got a lot of grades that are very
6 -- he's struggling here, you can see, because these
7 grades are very close to failing. So I assume that's
8 why they, the next year put him in adjunct class.

9 Q. But he said he was struggling with English,
10 shouldn't he work harder not to go to another adjunct
11 class?

12 A. Well, he had a 73 in English, so I would
13 interpret that as struggling.

14 Q. Okay.

15 A. In regular classes.

16 Q. Okay. And he did even worse in ninth grade?

17 A. Correct.

18 Q. Okay. In adjunct ninth grade?

19 A. Correct.

20 Q. Okay. So, the classes were easier and he did
21 worse?

22 A. That's right.

23 Q. Okay. And he was around 14 years old by this
24 time, ninth grade?

25 A. Should be.

1 Q. Okay. And Mr. Blackwell told you that he tried
2 welding and he couldn't do it so he just stood outside
3 with other students and smoked.

4 A. That's correct.

5 Q. Okay. So it's another thing that it seemed like
6 he just quit doing because he couldn't do welding?

7 A. Yes. He could not do the welding there.

8 Q. Okay. So he just quit and stood outside and
9 smoked?

10 A. I don't know how much else there was to do at
11 Foster Grove.

12 Q. Okay.

13 A. I believe we attempted to get these records and
14 they no longer existed.

15 Q. Okay. Well, maybe what else to do was to try to
16 learn how to weld instead of just quit and smoking
17 outside. Wouldn't that be an option? And that was
18 around 14 when his grades started dropping in English in
19 the adjunct class; isn't that correct?

20 A. Fourteen, fifteen, yes.

21 Q. Okay. Now, I know you don't consider them an IQ
22 score, but I'm gonna call them that, but I know you're
23 saying it's not. That's fine.

24 A. Uh-huh.

25 Q. When he first entered ---

CROSS-EXAMINATION OF DR. KNIGHT BY MR. EVANS

1 MS. VANN: Objection, Your Honor. He just said I
2 recognize they're not IQ scores, but I'm going to call
3 them IQ scores. I object --

4 MR. EVANS: Okay. I won't call them IQ scores.

5 MS. VANN: -- to that.

6 MR. EVANS: I'll call them test scores, how about
7 that? Would that be fair?

8 THE COURT: I think we've all agreed that the
9 scores that were reported and the letters IQ behind the
10 -- on the grades were not actual IQ reports. I think
11 that's been well established, Mr. Evans. Don't call
12 them IQ scores.

13 MR. EVANS: I wanted to do that to kind of
14 separate the other test scores, but I will say tests.

15 THE COURT: There's another way, just don't call
16 them IQ.

17 MR. EVANS: Very well, Your Honor. My apologies.
18 BY MR. EVANS:

19 Q. His testing scores when he first entered school
20 was 68, correct?

21 A. On the California test, yes.

22 Q. Yes. And then he went up in third grade to 87.
23 And then at age 11 it was 86 also; is that correct?

24 A. Possibly. I'd have to go back.

25 Q. Okay.

1 A. I'll trust your scores there. I don't have the
2 testing in front of me.

3 Q. And the test scores at age 14 was 72, so it went
4 down?

5 A. Which test was that?

6 Q. I think it was short form STFAA544 for academic
7 aptitude, a 73.

8 A. Correct. So that's a different test, so that's
9 not comparing apples to apples like the other tests.

10 Q. Okay. So -- okay. So, according to your
11 records, was that an individual test or a group test?

12 A. That was a group test as well.

13 Q. Okay. But -- okay. The highest score, 87, 86,
14 does not count as a IQ scores because they were group
15 tests; is that correct?

16 A. In ---

17 Q. Given by the teacher.

18 A. Short-form also means screening, so it was a
19 screening test and a group test.

20 Q. Given by his teacher, correct?

21 A. What?

22 Q. Given by his teacher?

23 A. Given by his teacher.

24 Q. Because he obviously had columns.

25 A. Correct.

1 Q. But that lower score of 74, that counts as an IQ
2 test, correct?

3 A. I lost you there. Which 74?

4 Q. 72, I mean.

5 A. The 72 --

6 Q. The 72 test.

7 A. -- does not count as an IQ test.

8 Q. Okay. That doesn't count as an IQ test?

9 A. It's, if you look at the name it's a short form,
10 which means it's a screening test and it's academic
11 aptitude, which means it's measuring reading, writing,
12 math. It's not measuring constructs of intelligence.
13 So we wouldn't refer to that as an IQ score.

14 Q. And according to your report on page 22, you
15 stated in your report: Around the time of Mr.
16 Blackwell's testing, research was conducted comparing
17 the SFTAA to the Wechsler Intelligence full-scale (for
18 children-revised), which was a individualized
19 administered IQ test appropriate for diagnosis of ID,
20 correct?

21 A. Correct, yes.

22 Q. Okay. So another IQ test, you use that one for a
23 diagnosis of intellectual disability?

24 A. The Wechsler is the full test there, but he
25 wasn't given the Weschler.

1 Q. Okay. So the 72 does not count in your, in your
2 analysis?

3 A. No. It's a short form --

4 Q. Okay.

5 A. -- so that's a screening form.

6 Q. Okay. So my, my apologies.

7 A. It's okay. It's confusing.

8 Q. You can't fake a high test score, can you?

9 A. No.

10 Q. But you can fake a low one, can you?

11 A. Sure.

12 Q. And the 72 score was around the age of 14; is
13 that correct?

14 A. It was 1973 so, yes, approximately.

15 Q. Around the same time when he was allowed to an
16 opportunity to do welding and quits and smokes
17 cigarettes; isn't that correct?

18 A. Around that time, yes.

19 Q. Now, Mr. Blackwell told you that he couldn't get
20 the work and it was too hard for him, that's why he
21 dropped out of school?

22 A. Correct.

23 Q. But he was on tract to graduate if he just kept
24 going?

25 A. He kept accumulating units, yes.

CROSS-EXAMINATION OF DR. KNIGHT BY MR. EVANS

1 Q. He did, okay. But for some reason he left in
2 12th, not 11th.

3 A. That's a mystery.

4 Q. Yeah. And then another one needing explaining.

5 A. That's correct.

6 Q. Now on page 15 on your report states that during
7 school he skipped. He admits skipping with other kids
8 because he couldn't do the work?

9 A. Correct.

10 Q. I'll show you Applicant's Exhibit Number 7,
11 again, this is Randy Shields interview statement.

12 A. Okay.

13 Q. Shows that in high school Rickey ran with a rough
14 crowd. Mr. Shields noted Rickey wouldn't let people
15 take advantage of him, maybe just to have friends. I
16 don't know for certain.

17 A. Yes.

18 Q. So around that period of time in high school,
19 maybe he started hanging with rough guys and he started
20 cutting class; isn't that correct?

21 A. That's what Mr. Shields said. I didn't ask Mr.
22 Shields what a rough crowd meant at that time, so I'm
23 not quite sure.

24 Q. Did he tell you he ran with the wrong crowd?

25 A. He did not, no.

1 Q. He didn't tell you that?

2 A. No.

3 Q. Now, in tenth grade he had an incomplete for
4 English, but the semester before he had an 85 in English
5 class; isn't that correct?

6 A. First semester 85, yes.

7 Q. Okay. So it was obvious he could do the work at
8 85, or are you saying you just show up for class you get
9 the pass grade? At least he can show up for class?

10 A. Correct.

11 Q. And if he got an incomplete, that mean he didn't
12 show up for class?

13 A. And it looks like we do have the days absent for
14 that. So he did miss 22 days.

15 Q. Okay. And, as I said earlier, he had a 55 and 50
16 in English and Health. And looking at all the grades
17 he's had, those are the worst grades he ever got; isn't
18 that correct?

19 A. Yes.

20 Q. Okay. So he pretty much just quit?

21 A. He certainly discontinued his schooling, yes.

22 Q. That mean he quit?

23 A. Yes.

24 Q. Okay. Okay. You did extensive research on Mr.
25 Blackwell's employment history; isn't that correct?

1 A. I had employment records and they're all listed
2 in the report, correct.

3 Q. Okay. His first job out of high school, he was
4 working at the Peach Shed, he lift some boxes; isn't
5 that correct?

6 A. That's correct.

7 Q. And his father got him that job?

8 A. Yes.

9 Q. Okay. And that's gonna be a similar thing
10 through his life, Cletus getting him jobs and helping
11 him out; is that correct?

12 A. Yes.

13 Q. And Cletus had an IQ -- well, I won't say IQ. He
14 tested at a 60 in high school on one of these
15 step-by-step scores?

16 A. He had a very low test score, yes.

17 Q. Okay. And he dropped out of high school in ninth
18 grade?

19 A. Yes.

20 Q. But that first job he got was a seasonal job, so
21 he next went to work at a community cash store working
22 in the meat department.

23 A. Correct.

24 Q. Okay. And he worked there only less than a year
25 because he told you it was too cold in the freezer and

1 he quit.

2 A. Yes.

3 Q. Okay. So he worked in a meat freezer and it was
4 too cold, and so he decided to quit the job?

5 A. That's correct.

6 Q. Okay. The next job was at Crown Cork and Seal.
7 He was inspecting cans, checking them out for bad spots,
8 and then throwing them out?

9 A. Yes.

10 Q. Okay. Now, he told you he didn't like the job
11 because he did not get a promotion, so he quit, correct?

12 A. Correct.

13 Q. But the records show that he probably stole some
14 cans and got fired.

15 A. There was an interview memo that indicated, I
16 think from the defense investigator, that indicated he
17 may have been taking cans from the job site, correct.

18 Q. Okay.

19 A. It was unclear, but possibly.

20 Q. Okay. Because odds are somebody without a high
21 school diploma that's a teenager not to get a promotion
22 in less than a year working anywhere; isn't that
23 correct?

24 A. I guess it depends on the, on the company.

25 Q. Okay. His next job was at the White Bag Company

1 stacking pallets?

2 A. Yes.

3 Q. Okay. And he told you he couldn't do it, even
4 though they told him it would take time to learn. And
5 he didn't think he could do it, so he just quit in less
6 than a year.

7 A. He said, I couldn't make them stack on the
8 pallet. They would slide off. And he said, I quit
9 because I couldn't stack the bags. It looks like he was
10 trying to stack the bags and he could never quite get
11 it.

12 Q. Well, but your report also says that they told
13 him it would take time to learn?

14 A. That's correct.

15 Q. Okay. So he put -- it sound to me if he put in
16 the effort to learn it, he'd eventually learn it, but he
17 eventually learn it. He'd eventually learn it, but he's
18 decided to quit but he decided to quit and just move on
19 and not even try to learn it.

20 A. Well, it looks like he did try it, because it
21 says they couldn't make him stack on the pallet. So
22 he's attempting it. Now, how long that -- he didn't
23 have a lot of stamina to attempt jobs very long, so he
24 quit at some point.

25 Q. He was probably in his early '20's at the time.

1 A. Born in '58.

2 Q. Right. And he didn't have enough stamina to
3 stack bags. Is that what you're saying?

4 A. He, according to this, he said he had trouble
5 learning it and so he quit.

6 Q. But they told him that it takes time learn?

7 A. Correct.

8 Q. Okay. And he just, instead of trying harder,
9 going more, he just quit; isn't that correct?

10 A. He did quit, yes.

11 Q. The next job was at Milliken where he was a
12 creeler?

13 A. Yes.

14 Q. And he couldn't run it fast enough so they fired
15 him?

16 A. That's what he said.

17 Q. Okay. His next job was a newspaper manager
18 production company, printing certain ads to newspapers?

19 A. Correct.

20 Q. Okay. He didn't like that job, so in less than a
21 year he quit that job too.

22 A. That's right.

23 Q. His next job was a Phillips Fibers working at
24 textiles?

25 A. Yes.

1 Q. Okay. And then he quit that job because he
2 didn't like the swing shift?

3 A. Because -- yes.

4 Q. Okay. And his next job was at Piedmont Ice where
5 he bagged ice?

6 A. Correct.

7 Q. And he even told you himself his job was not
8 hard, it was just cold, so he quit because it was too
9 cold?

10 A. Correct, yes.

11 Q. So he went to get a job in the icehouse and he
12 quit because he was too cold?

13 A. That's correct.

14 Q. Okay. And wouldn't you expect the icehouse to be
15 cold if you're gonna work there?

16 A. One would think.

17 Q. Okay.

18 A. Yes.

19 Q. Then his father got him another job working at
20 Embassy Farm Feed, but that was a seasonal job, so after
21 the season that job was over?

22 A. Correct.

23 Q. His next job was at American Fast Print Company
24 doing home textiles?

25 A. Yes.

1 Q. And he quit in less than a year because he didn't
2 want to work third shift?

3 A. Correct.

4 Q. Okay. Now, it seems to be a pattern here for Mr.
5 Blackwell, he quits instead of keep trying.

6 A. He has quit a number of jobs.

7 Q. Okay. And most of them the reason being because
8 he doesn't like the shift or it's too cold --

9 A. Correct.

10 Q. Or he just couldn't do it, so he would quit;
11 isn't that correct?

12 A. That's what he's saying, yes.

13 Q. Now, his first trucking job was at KNS. I don't
14 know if you mentioned that one.

15 A. Yes.

16 Q. And he drove an 18-wheeler all over the east
17 coast and as far west as El Paso?

18 A. With somebody else, yes.

19 Q. Okay. All right. But he still had to drive the
20 trucks?

21 A. He was driving, yes.

22 Q. Okay. Now, on page 24 it states that Cletus told
23 you that, that I started teaching him around age 12. He
24 watched me change the gears. Can't remember when he
25 started to drive, maybe 15 or 16.

1 A. Yes. He didn't know for sure.

2 Q. Okay. So Mr. Blackwell was driving an 18-wheeler
3 at age 16?

4 A. Correct. Although, Cletus does say he can't
5 remember.

6 Q. Okay.

7 A. So we're not quite sure of the age.

8 Q. Well, he said 15 or 16. He said, I can't
9 remember when I started letting him drive.

10 A. Right. Maybe 15 or 16.

11 Q. And driving a truck was his dream since grammar
12 school, he told you this?

13 A. Yes.

14 Q. Okay. So he learned how to change gears by
15 watching his dad?

16 A. Yes.

17 Q. He learned how to drive a truck when his dad
18 taught him?

19 A. Yes.

20 Q. Okay. But he couldn't stack pallets?

21 A. That's what he said.

22 Q. Okay. He couldn't learn how to stack pallets,
23 but he can learn how to change gears and to drive a
24 truck off of somebody?

25 A. That's correct.

1 Q. Yeah. So it seems like Mr. Blackwell was willing
2 to learn something when it involved driving a truck and
3 nothing else?

4 A. He had a lot of attention and opportunity with
5 his dad to learn, yes.

6 Q. Okay. And he quit KNS, he was on the road too
7 much, and he went back to Southern Piedmont because he
8 was going to drive a truck. Did he tell you that?

9 A. Yes.

10 Q. But they had him back in the icehouse bagging the
11 ice. So instead of trying to stay and work, he decides
12 he's not driving the truck, so he's gonna quit; isn't
13 that correct?

14 A. Correct. He wasn't doing what he thought he
15 would do.

16 Q. Okay. After this he went back to a seasonal job
17 with M&C, correct?

18 A. Yes.

19 Q. All right. Now, his next job was Oneita
20 Industries, but he only worked there a year because he
21 was fired for smoking in the gray house with the

22 A. That's correct.

23 Q. Okay. Then that's when his father got him
24 driving for Hess in 1982?

25 A. Correct.

1 Q. Okay. Now, he told you he got his CDL in '82,
2 but the records don't reveal he got there until '92;
3 isn't that correct?

4 A. That's right. It appeared to have been an
5 internal process with Hess where he had to do a drive-in
6 exercise.

7 Q. Okay. Because a commercial driver's license can
8 only be given to you by the Department of Motor
9 Vehicles.

10 A. I think that term is used loosely --

11 Q. Yes.

12 A. -- in these years.

13 Q. Yeah. And he told you he carried on and he was
14 by himself in this one?

15 A. Yes.

16 Q. Okay. So he started with a guy who showed him
17 how to load and unload, and then he ran it by himself,
18 correct?

19 A. Yes.

20 Q. Okay. And according to your report, on page 27,
21 Hess runs were not overnight trips, but he always went
22 someplace in Georgia and come back. So he would not
23 stay on these runs?

24 A. Right. These were local runs.

25 Q. Okay.

1 A. Right.

2 Q. He didn't drove gas, but he did drive oil.

3 A. That's correct.

4 Q. Which is a flammable dangerous thing; isn't that
5 correct?

6 A. Sure.

7 Q. And Hess, I guess, trusted him to do these runs
8 by himself and unload and load on; isn't that correct?

9 A. Yes.

10 Q. Okay.

11 A. I mean, he probably had assistance with loading
12 and unloading, but yes.

13 Q. Okay. And after the job, he got laid off. So
14 his next job he worked on being a transport where he
15 hauled black tar or asphalt?

16 A. Correct.

17 Q. And this drive, he drove a trip to Charlotte,
18 Garden City, and Savannah. And he did all these trips
19 alone, correct?

20 A. After he learned the routes, yes.

21 Q. Okay. And that's, that's the job where he made
22 an illegal u-turn and got fired?

23 A. Yes.

24 Q. So his father got him a job back at Hess driving
25 a truck?

1 A. Yes.

2 Q. And then he fell asleep at the wheel and had an
3 accident?

4 A. Correct.

5 Q. His father got him his next job at Belue
6 Trucking. Is that true?

7 A. Yes.

8 Q. And he left them to go work for Cherokee Textiles
9 where he thought he'd be driving a truck, but he wasn't.
10 He's cleaning trash. So instead of staying, he decided
11 to quit that job; isn't that correct?

12 A. Yes. He left at Belue and he went to Cherokee,
13 Yes.

14 Q. Correct. And then he got a job with a guy named
15 John Brannon driving a truck and they drove as far as
16 Amarillo, Texas?

17 A. Yes.

18 Q. So that's another job he drove together?

19 A. Together, yes.

20 Q. That could have been a situation instead of him
21 driving with another person with directions, that other
22 person assist him with the driving. From here to
23 Amarillo, Texas is a long way, he's not alone.

24 A. I think there were -- I'm not sure what you mean,
25 Mr. Evans. I think they were in the cab together. One

1 person driving, one person navigating.

2 Q. Right. Right. But could it have been a
3 situation where -- cause I don't remember reading any
4 records that John Brannon rolled with him and he did all
5 the driving and John Brannon told him where to go?
6 Could it have been a situation where they switched and
7 you need two people?

8 A. Sure. That would make sense.

9 Q. All right. His next job he went to work for
10 Peeler Rug Company. He worked there for a year and then
11 quit because he wanted to drop charges?

12 A. Yes, I believe so.

13 Q. Then he was diagnosed with cancer, so he quit
14 Belue in '86; is that correct?

15 A. That's correct.

16 Q. Okay. Now, there was a time when Mr. Blackwell
17 owned his own truck that Cletus bought for him; isn't
18 that correct?

19 A. Yes. His father gave him a truck.

20 Q. Okay. Now, on page 58 of your report -- no,
21 excuse me. On page 31 of your report, you speak of
22 commercial driver written examination that was dated
23 July 9th of 1984.

24 A. Yes.

25 Q. Okay. And you talk about how the, the signature

1 of the person taking the test was left blank. And the
2 sun was compromised, name was signed on the test?

3 A. That's correct.

4 Q. Okay. Have you read an interview memo of Rick
5 Bagwell, who also worked at Belue?

6 A. If it's not listed in my report, I didn't have
7 it. I don't recall anything from Mr. Bagwell.

8 Q. I'll show you State's Exhibit Number 1. This is
9 the actual interview memo that Mr. Bagwell gave defense
10 counsel.

11 A. Okay.

12 Q. And he talks about that Rickey was plenty smart
13 enough to function, from what I've seen with his work.
14 Mr. Bagwell says Rickey wasn't pretty much -- wasn't
15 different from any other truckers. He didn't come to
16 work every day, but most truckers don't. Mr. Bagwell
17 goes on to say, his personal life, I don't know. He fit
18 in with the guys here. I didn't have day-to-day
19 dealings with him. So it says that here. But you never
20 got this?

21 A. No, sir.

22 Q. Okay. And it also talks about Rickey and when he
23 got in trouble. It said, Rickey got in trouble for a
24 log violation, but that was common back then. Rickey
25 had one or two log violations and Mr. Bagwell describes

1 Rickey as on the low end. I asked Mr. Bagwell about
2 Rickey getting in trouble for having people in his cab.
3 He knows that was just him being a boy. It wasn't
4 common. You just can't have people in the cab for
5 insurance purposes. That's written in there.

6 A. Okay.

7 Q. Yes, okay. And he also talks about that there
8 are more gears in the long distance truck. The brakes
9 are different and driving long distance requires
10 judgments.

11 A. Okay. I haven't seen that, Mr. Evans. I'm not
12 quite sure.

13 Q. So you were never provided with this?

14 A. No, sir.

15 Q. Okay. And once Mr. Blackwell recovered from
16 cancer, he didn't want to drive a truck?

17 A. Correct. He doubted his abilities.

18 Q. So he got a job at Springs?

19 A. Yes.

20 Q. And he worked there from '98 to 2005 when he got
21 laid off?

22 A. Yes, correct.

23 Q. And he got pay raises at Springs. He was making
24 \$8.64 an hour when he started, and when he left he was
25 making \$11 an hour.

1 A. Yes. Some of those could have been cost of
2 living increases. I'm not sure what they were based on.

3 Q. Mr. Blackwell next worked at Jacobson Warehouse
4 where he delivered hazardous chemicals; is that right?

5 A. Well, he didn't deliver them. I think he moved
6 them around.

7 Q. Moved them, yes.

8 A. Yes.

9 Q. Moved them around. Did you ever read or given --
10 made available an interview memo of Neal Walters who
11 worked also at Jacobson?

12 A. No. I've never heard of Neal Walters.

13 Q. And I'll show you State's Exhibit Number 6.

14 A. Okay. Mr. Waters said about Rickey -- Mr. Waters
15 says, he does not view Rickey as slow. He knows he's
16 always done a good job. He worked in a chemical
17 warehouse. It was very important he pulled the right
18 stuff. Rickey had to read the order and match it to the
19 merchandise and then pull that merchandise.

20 The lot number on the merchandise and the product
21 number on the merchandise had to match and Rickey was
22 able to match these numbers. And you never was given
23 this at all?

24 A. I've never heard of that individual. I've never
25 seen that memo.

1 Q. Okay. Now, you are aware that Rickey
2 accidentally dropped some chemicals --

3 A. Yes.

4 Q. -- and inhaled some of the --

5 A. Yes.

6 Q. -- hazardous waste or hazardous material and got
7 COPD?

8 A. Correct.

9 Q. And he eventually got laid off from his job also?

10 A. I believe, yes, they closed.

11 Q. Yes?

12 A. Yes.

13 Q. Now, we talked earlier about the test at Belue
14 Trucking that he took. That you don't know if he took
15 it or not because he didn't sign the actual test.

16 A. Correct. It had a forged signature on it. We
17 don't know if he took it or if the questions were
18 answered correctly. There's a lot of unknowns with that
19 test.

20 Q. Okay. But that wasn't for a CDL. He actually
21 this was a CDL in 1992; isn't that correct?

22 A. That was a federal document that looks like the
23 company was using internally.

24 Q. All right. Now, I'm gonna show you a portion of
25 Applicant's Exhibit Number 66. This is the actual

1 driving record from the highway department of Mr.
2 Blackwell; isn't that correct?

3 A. Okay. And it says on the record that it was
4 issued ---

5 MR. GROSE: What are you looking at? What page
6 are you looking at?

7 MS. VANN: There's a page number at the bottom.

8 MR. EVANS: Four.

9 BY MR. EVANS:

10 Q. And it says that he was first issued his CDL
11 license on April the 1st, 1992?

12 A. Correct.

13 Q. Okay. And the next page, it says, commercial
14 license driving certification waiver of skill test.

15 A. Correct.

16 Q. And that's dated April the 1st, 1992 also?

17 A. Yes.

18 Q. Okay. It has his name and his driver's license
19 number, his Social Security number, and his date of
20 birth on the top?

21 A. Correct.

22 Q. Okay. Now, I'm sure you probably know if it's
23 right or not, but this is listed on there?

24 A. Correct.

25 Q. Okay. And, and I would guess, from looking at

1 this test, he knew how to drive a truck, so he didn't
2 have to take the driving test, but you have to take the
3 written test. That's what it looks like on here.

4 A. Yeah. There's a set of waiver criteria in the
5 '92 laws.

6 Q. Okay.

7 A. And so I don't know if know how to -- there are
8 technical requirements, I believe he met one of them.

9 Q. Okay. All right. Now, the next page is -- has
10 some materials answer sheet. Has his name on the top,
11 his Social Security number. That date, April the 1st,
12 1992.

13 A. Correct.

14 Q. Okay. His driver's license number and his date
15 of birth. And out of 30 questions, he got four wrong;
16 isn't that correct?

17 A. Correct.

18 Q. Okay.

19 A. Now, he wasn't certified for Hazmat, otherwise
20 there'd be an H under endorsements, which is also in the
21 law.

22 Q. Okay.

23 A. So I don't know if he didn't pass this one or
24 didn't get enough correct.

25 Q. Okay. Well, but he only got four wrong out of 30

1 questions. That's pretty good, don't you think?

2 A. He wasn't endorsed to drive --

3 Q. No.

4 A. -- hazmat's.

5 Q. But he got four questions wrong out of 30.

6 A. Correct.

7 Q. Okay.

8 A. But I don't know what is passing or not, Mr.

9 Evans.

10 Q. Okay.

11 A. It could be that you could only miss one.

12 Q. I didn't say he passed, I just said he got a 4
13 out of 30, that's pretty ---

14 A. Yes.

15 Q. So you know he got 26 questions right out of 30
16 questions.

17 A. It appears so.

18 Q. Okay. All right. Next, a tanker test answer
19 sheet. It says, Rickey Blackwell security number,
20 Social Security Number on the top. Same date, April the
21 1st, 1992. Driver's license number and date of birth.
22 And he got 2 wrong out of 20 questions.

23 A. Correct.

24 Q. Yeah.

25 A. Now, I will say, if I could, that I requested

1 from the defense team these tests, because I wanted to
2 see how hard they were, what reading level they were
3 written at, and all of those things, and they were
4 unable to obtain the actual tests.

5 Q. Okay.

6 A. So I don't know how easy the questions were.

7 Q. Well, okay. All right. Next, the air brake test
8 answer sheet and it has Mr. Blackwell's name at the top.
9 The social, his driver's license number, date of birth
10 and a date of April 1, 1992.

11 A. Correct.

12 Q. And then he got 4 questions wrong out of 25.

13 A. Yes.

14 Q. Okay. The next one is combination vehicles test
15 answer sheet. It has his name at the top, the Social
16 Security number, Verifax number, date of birth, and also
17 the date, April 1st, 1992, correct?

18 A. Correct.

19 Q. Okay. And he got 4 out of 20 wrong on that one.

20 A. That's what it reflects, yes.

21 Q. Okay. And the general knowledge test answer
22 sheet has a name, Social, driver's license number, date
23 of birth. And, also, date of birth, and also April 1st,
24 1992. Same day?

25 A. Yes.

1 Q. He got three out of 50 wrong on this test; isn't
2 that correct?

3 A. Correct.

4 Q. Okay. And he got his CDL license on that day,
5 did he not?

6 A. According to his DMV records, yes.

7 Q. Okay. And on that day he took those tests. He
8 got 17 questions out of 145 questions wrong; isn't that
9 correct?

10 A. I haven't done that in math. I'll take your word
11 for it.

12 Q. Now, he told you that when he took the test his
13 father knew somebody at the Department of Motor Vehicles
14 and got him the answers?

15 A. He mentioned it. It could have been his father,
16 actually. He said: My dad got the test papers with the
17 answers on them.

18 Q. But Cletus never told you he did that, did he?

19 A. I don't think I directly asked Cletus about that.

20 Q. All right. But even if he got the answers to a
21 test, it takes some intelligence to memorize the answers
22 to over 120 questions; isn't that correct?

23 A. Well, the other thing that we don't know is the
24 testing conditions. So how supervised was he on these
25 tests? Was he allowed to bring them home, for example?

1 I don't think he would be able to do that today, but in
2 1992 -- and, again, this is right before the rules
3 changed. So April 2nd, 1992, the rules changed on how
4 one gets their CDL.

5 Q. But, but...

6 A. So he's coming in at the last minute.

7 Q. But all the dates are for April 1st.

8 A. That's right. That's right.

9 Q. That's the date he got it.

10 A. Before the laws became more rigorous on April
11 2nd.

12 Q. But he got the -- he took the test on April 1st.
13 That's -- they're all dated that day.

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

15 Q. He got the license on April 1st; is that right?

16 A. That's correct.

17 Q. Okay. And he got 17 questions wrong out of 145
18 questions.

19 A. Again, we don't have the tests to see how
20 difficult the questions are and we don't know the
21 testing conditions at that time.

22 Q. But he only got 17 --

23 A. I'll take your word for that.

24 Q. -- questions wrong out of 145 questions?

25 A. I'll take your word for that.

1 Q. Okay. Now, Mr. Blackwell first met his wife at
2 church; isn't that correct?

3 A. I believe so.

4 Q. All right. And he was 20 and Angie was 14 at
5 that time?

6 A. There was an age discrepancy, yes.

7 Q. So she was pretty much a minor when he first met
8 her?

9 A. Yes.

10 Q. Okay. And they dated for three years and they
11 got married. He was 23 and Angie was 17?

12 A. Correct.

13 Q. Now, when they first -- when they were dating, he
14 was living with his parents; is that correct?

15 A. Yes.

16 Q. And so Mildred did all the housework. He never
17 had to do any housework at the house?

18 A. Yes.

19 Q. And after they got married, they moved in for a
20 little while Angie's parents' house. But then Cletus
21 helped him get a loan to get a trailer?

22 A. Correct.

23 Q. Okay. And he -- they also put the -- they put
24 the trailer on some property that Cletus owned; is that
25 correct?

1 A. I think so.

2 Q. Okay. And it was near his parents' house,
3 correct?

4 A. Yes. Everybody's pretty near each other.

5 Q. And according to Mr. Blackwell, Angie at that
6 time took care of the housework, paid the bills --

7 A. Yes.

8 Q. He didn't do nothing, and eat.

9 A. That's correct.

10 Q. All right. So he still never had to learned how
11 to do housework?

12 A. He -- she was doing all of the work in the house,
13 correct.

14 Q. Okay. So he still never had to learn it, did he?

15 A. I guess he didn't learn it or ---

16 Q. Well, he didn't have to because Angie did it,
17 correct?

18 A. She -- that's what he said, yes.

19 Q. And he didn't have to learn to do laundry because
20 Mildred did it, correct?

21 A. Correct, yes.

22 Q. Okay. Now, you said earlier you read the
23 hospital reports of Patrick B. Harris?

24 A. Yes.

25 Q. For Mr. Blackwell to have them. And you read the

1 records from Westgate Family Physicians?

2 A. Yes.

3 Q. From Dr. Jackson, who was Mr. Blackwell's primary
4 physician?

5 A. Yes.

6 Q. Mr. Blackwell attempted suicide twice once he had
7 cancer. And once when Angie left him; isn't that
8 correct?

9 A. Correct.

10 Q. I don't remember you discussing, mentioning his
11 heavy drinking and his marijuana use or private
12 admissions or private first admissions, excuse me.

13 A. I spoke with Mr. Blackwell about that, and that's
14 noted in my report that I did talk to him about that.

15 Q. But you didn't note what was said in the medical
16 reports?

17 A. No. The, the focus on the medical reports, that
18 really wasn't the focus of the ID assessment. So the
19 medical reports, I reviewed them, but they didn't weigh
20 heavily into the ID appending.

21 Q. Okay. So, your cognitive functioning, your
22 health doesn't matter regarding your cognitive
23 functioning, how you feel?

24 A. Yeah, I didn't say it didn't matter.

25 Q. Okay.

1 A. I reviewed them. It didn't weigh heavily into
2 the opinion. So somebody can have major depression,
3 they can have anxiety, they can have suicide attempts,
4 they can have more than one suicide attempt and still be
5 intellectually disabled.

6 Q. Okay. Now, you also in your report discuss the
7 intellectual deficits of the family.

8 A. Yes.

9 Q. Like his father, Cletus, who tested scores of a
10 60, correct?

11 A. Low test scores, yes.

12 Q. All right. And he dropped out of school; isn't
13 that correct?

14 A. Yes.

15 Q. But he successfully held a trucking job for
16 years; isn't that correct?

17 A. Again, successfully. I have no idea if Cletus
18 was fired from jobs. I don't have his vocational
19 history or his work records.

20 Q. All right. But he was able to raise a family;
21 isn't that correct?

22 A. Sure.

23 Q. All right. Got Rickey numerous jobs; isn't that
24 correct?

25 A. Correct.

1 Q. Got him a loan for his first house; isn't that
2 correct?

3 A. Yes.

4 Q. Had property to put the house on; isn't that
5 correct?

6 A. That's right. That was in his family, I believe.

7 Q. Right. Mr. Blackwell's brother, daughter, and
8 grandchildren also had, you know, intellectual problems?

9 A. Yes.

10 Q. And you said you read Dr. Calloway's report?

11 A. I did.

12 Q. All of that was mentioned in the report, wasn't
13 it?

14 A. Yes, it was.

15 Q. Okay.

16 THE COURT: Do you all want to take a Judge
17 Newman and stand up for five minutes?

18 MR. EVANS: I've been standing all this time.

19 THE COURT: I'm not asking you. Let's stretch.
20 I learned a lot of things about trials.

21 MR. GROSE: If we're taking five minutes, can I
22 excuse myself?

23 THE COURT: We'll take five minutes.

24 MS. BROWN: Thank you, Your Honor.

25 (Recess was held from 5:24 p.m. - 5:29 p.m.)

CROSS-EXAMINATION OF DR. KNIGHT BY MR. EVANS

1 THE COURT: All right. It looks like everybody's
2 back in place. All right, Mr. Evans?

3 MR. EVANS: Thank you, Your Honor.

4 BY MR. EVANS:

5 Q. I'm gonna show you Applicant's Exhibit Number 33.
6 This is the psychological report of Dr. Calloway.

7 A. Okay.

8 Q. And on the record on page 4365 and 4366, it has a
9 detailed chart of the test scores of his family members.

10 A. Okay.

11 Q. Including his grandchildren and children.

12 A. Yes.

13 Q. So that was made available to the courts?

14 A. It's in her report, yes.

15 Q. Okay. So the Court was aware of these scores
16 when they made their decision, their decision -- well,
17 his decision, if it was in our court?

18 A. Sure. Yes.

19 Q. You said you read the Atkins hearing transcript
20 also?

21 A. Yes.

22 Q. And Dr. Calloway also mentioned the facts of
23 intellectual difficulties of Mr. Blackwell's family?

24 A. At the hearing, yes.

25 Q. And the present difficulties of his children and

1 grandchildren?

2 A. Yes.

3 Q. So the fact that there was some intellectual
4 disability among his family was nothing new? That was
5 no new fact during the Atkins hearing and the trial; is
6 that correct?

7 A. Correct.

8 Q. Now, on page 20 of your report you stated that
9 the California test of mental maturity short form or
10 CTMSF, was one of the group of intelligent tests more
11 frequently used in public schools to identify slow
12 learning or mentally retarded children; isn't that
13 correct, it says that?

14 A. I'm sure it does. I don't see your place, but...

15 Q. On the bottom, bottom paragraph.

16 A. Of page 20?

17 Q. Page 20.

18 A. Yes.

19 Q. Last paragraph?

20 A. Yes.

21 Q. Okay. Now, as, as I stated earlier, Ms. Shook
22 and Ms. Ponder did interviews to defense counsel stating
23 that there was a lower level of classes lower than
24 adjunct where incredibly mentally retarded children was
25 placed; isn't that correct?

1 A. Yes. Ms. Scruggs told me that, yes.

2 Q. And these were the type of tests they give to
3 separate the children to show which one -- which child
4 should go where; isn't that correct?

5 A. The description of those children were more
6 physical disabilities. So children that couldn't feed
7 themselves. They, they wouldn't be able to take an IQ
8 test, necessarily. These sounded like children with
9 cerebral palsy, children in wheelchairs that needed a
10 lot more physical attention, is how it was described to
11 me. So I don't know the answer, if they were all given
12 IQ tests to go into these classes or if it was just a
13 very obvious deficit.

14 Q. All right. Ms. Scruggs said the educably
15 mentally retarded, that means they can be educated,
16 sounds like to me, correct?

17 A. That's the, that's the terminology, but the way
18 that she's describing them is very low functioning
19 physically.

20 Q. Wow. Okay. That's your opinion?

21 A. Yes.

22 Q. Okay. But Mr. Blackwell wasn't placed in these
23 classes, was he?

24 A. That's correct.

25 Q. And he was never given an individual test for IQ?

1 A. No, sir.

2 Q. Until he got charged with murder --

3 A. Correct.

4 Q. -- and was facing the death penalty?

5 A. That's right.

6 Q. He was hospitalized twice with suicide attempts
7 and he was never diagnosed as mentally retarded, was he?

8 A. Not in those records, no.

9 Q. And he was never tested those times either, was
10 he?

11 A. No.

12 Q. Now, as part of your investigation you consulted
13 with Dr. Christopher Cunniff?

14 A. Yes.

15 Q. Which is a geneticist at Cornell Medical College?

16 A. That's correct.

17 Q. Okay. And Mr. Blackwell submitted samples so his
18 genes could be tested to find out if any gene changes
19 could be found.

20 A. Yes.

21 Q. Now, in your report you mentioned numerous times
22 DSM-5. And on page 44 of your report you mentioned the
23 DSM-5-TR mentions that a comprehensive evaluation
24 includes an assessment of intellectual capacity of
25 adaptive functioning to include identification of

1 genetic and non-genetic etiologies.

2 A. Sure. That's from the DSM.

3 Q. All right. And you came up with the conclusion
4 that Mr. Blackwell has a -- well, I'm not saying you.
5 Dr. Cunniff informed you that Mr. Blackwell had a CAMTA1
6 related to intellectual disability; isn't that correct?

7 A. That's what he told me, yes.

8 Q. Okay. I will show you page -- I'm gonna show you
9 page 39 of the DSM-5. Here's a copy. And at the bottom
10 it says a diagnosis of intellectual disability should
11 not be assumed because a political -- a particular
12 genetic or medical gene. It says that, doesn't it?

13 A. That -- correct. I think Dr. Cunniff was asked
14 that as well.

15 Q. Now you also consulted with Dr. Susan Rutherford,
16 an oncologist, also at Cornell Medical School?

17 A. That's correct.

18 Q. Okay. Is there any type of connection with this
19 medical school and the capital punishment clinic?

20 A. No, not that I know know of.

21 Q. But you went to Uptate New York in order to get
22 these consultations?

23 A. So, I don't choose the expert. I tell his legal
24 team that I would like to consult with a particular
25 expert in a particular field and then they find the

1 expert.

2 Q. So the legal team found experts for you?

3 A. Yes. Yes.

4 Q. It's not something you did on your own?

5 A. I don't know any geneticist to call.

6 Q. Okay. So you went to the same medical school to
7 get two experts that's at Cornell University; is that
8 correct?

9 A. So, I don't know how they find the experts.

10 Q. All right.

11 A. I don't know their process.

12 Q. Now, you consulted with Dr. Rutherford to get a
13 determination as to, as to chemotherapy --

14 A. Correct.

15 Q. -- not being an intervening factor?

16 A. Correct.

17 Q. Okay. And you informed Dr. Rutherford Mr.
18 Blackwell's type of treatment?

19 A. Yes.

20 Q. Did you show her any of Mr. Blackwell's medical
21 records from 1986?

22 A. So, during the consult she had them, so I believe
23 the legal team forwarded her some of the records.

24 Q. Okay.

25 A. So she was looking at the records as we spoke,

1 but I didn't provide her records.

2 Q. From 1986 or 1990?

3 A. '86.

4 Q. Okay.

5 A. And '87.

6 Q. '87, okay. Because you never consulted with Mr.
7 Blackwell's actual oncologist, Dr. Jamie Beardon?

8 A. No, sir.

9 Q. Okay. And he had Hodgkin's Lymphoma; isn't that
10 correct?

11 A. That's correct.

12 Q. And Hodgkin's Lymphoma is a type of cancer of the
13 lymph nodes; isn't that correct?

14 A. That's my understanding.

15 Q. And it builds up white blood cells in your body?

16 A. That's my understanding.

17 Q. Okay. And since it builds up white blood cells
18 you can get lymphoma anywhere in your body where blood
19 exists; isn't that correct?

20 A. So, I'm not a medical doctor and I --

21 Q. Okay.

22 A. -- certainly don't specialize in lymphomas, so I
23 don't think that I could adequately respond.

24 Q. Okay. All right. But in his medical records was
25 an oncology team. Mr. Blackwell stated Dr. Beardon told

1 him that the lymphoma was everywhere except his liver
2 and his bone marrow. Remember reading that?

3 A. I'll take your word for it.

4 Q. Okay.

5 A. I don't remember that sentence.

6 Q. Okay. So that means it was possibly in the brain
7 also?

8 A. I didn't read anything that the cancer had
9 reached his brain.

10 Q. Okay. But if he says it's in everywhere in his
11 body except his liver and his bone marrow, isn't the
12 brain part of your body?

13 A. Again, I don't think I'm qualified to answer that
14 question, Mr. Evans.

15 Q. You can't answer the question if the brain is
16 part of the body?

17 A. Well, yes.

18 Q. Okay.

19 A. But about lymphoma or Hodgkin's or how Hodgkin's
20 affected Mr. Blackwell, that's out of my area of
21 expertise.

22 Q. Of course it is. That's why you hired an
23 oncologist to ask him that question; isn't that correct?

24 A. Correct.

25 Q. And you never asked Dr. Rutherford about actual

1 cancer, how cancer would affect your brain, did you?

2 A. We may have had that discussion. I don't
3 remember exactly whether we had the exact discussion of
4 how it affected his brain.

5 Q. It's not in your report.

6 A. It's not. No, it's not in my report.

7 Q. Okay. And there's no mention nowhere that you
8 actually asked Dr. Rutherford about the actual cancer?

9 A. Correct.

10 Q. Okay. You just asked her about chemotherapy?

11 A. Correct.

12 Q. Okay. You just asked her about chemotherapy?

13 A. Correct.

14 Q. Okay. Now, I remember reading Mr. Blackwell's
15 statement that his depression began after his cancer
16 treatment from 1986?

17 A. Yes.

18 Q. Okay. And even in your report on page 39 you
19 stated that since his cancer treatment, he's been on
20 medication for depression, anxiety, and two
21 hospitalizations?

22 A. Correct.

23 Q. Okay. I'll show you State's Exhibit Number 7.
24 This is an -- this was an interview done by Ginger
25 Calloway with Heather Bryant, Mr. Blackwell's daughter,

1 and she states, if you read right there on page 2, that
2 Heather believed that her father's mind got washed away
3 with chemo.

4 A. Okay. I haven't seen that e-mail.

5 Q. You haven't seen this either?

6 A. No.

7 Q. Okay. You also consulted Dr. George Corvin.

8 A. Yes.

9 Q. And you talked to him relating to major
10 depressive disorder that Mr. Blackwell diagnosed after
11 the stay at Patrick Psychiatric Hospital?

12 A. Yes.

13 Q. And Dr. Corvin examined Dr. Black -- Mr.
14 Blackwell back in 2014.

15 A. So, I did not talk to him about that at all. I
16 don't know anything about that evaluation.

17 Q. Well, he did evaluate him. You know that part.

18 A. I know that from counsel, I guess, but that
19 wasn't -- I did not have a conversation with Dr. Corvin
20 about his 2014 evaluation.

21 Q. So he never talked to you about the notes he
22 wrote?

23 A. I've never seen those notes.

24 Q. Okay. So Dr. Corvin never told you that Mr.
25 Blackwell informed him in those notes that he was

1 smoking marijuana, two to three joints per day from 18
2 until 1993? You never knew about it?

3 A. I did not speak to Dr. Corvin about Mr.
4 Blackwell's cannabis use and I haven't seen those notes.

5 Q. Okay. Never asked him about any possibility of
6 drug use?

7 A. So I did my own interview with Mr. Blackwell
8 about those issues.

9 Q. Did he tell you that?

10 A. Yes.

11 Q. That he used marijuana every day?

12 A. Correct.

13 Q. But that's not in your report, is it?

14 A. There's a sentence in the report that I assessed
15 the substance use, but found that it was not impactful
16 for ID, so I didn't include it. Just like I didn't
17 include things, like his rap sheet, his divorce records.
18 Things that I reviewed that I determined not to be
19 relevant, did not go into the report, even though I did
20 review them or talked about them.

21 Q. Okay. So he started smoking marijuana maybe at
22 18, possibly 17. You told Dr. Brown he started smoking
23 marijuana at 17.

24 A. Correct.

25 Q. Okay. And that is prior to the age of -- you

1 mentioned 22.

2 A. Correct.

3 Q. Okay. And he smoked it every day for 17 years
4 and that had no, absolutely no effects on his cognitive
5 functioning?

6 A. So we don't -- and I know that Dr. Maddox was
7 asked this yesterday and talked about the respiratory
8 effects of cannabis. But the studies of cannabis, the
9 impact of cannabis on the brain are all very recent. So
10 we don't have studies from that time.

11 And the reason the recent research has been done
12 is because the potency of marijuana has greatly
13 increased over the last decade or so. And they're
14 starting to notice the impact on children and
15 adolescents. Those studies have mostly been done after
16 2010 or so. We don't have any studies from the time
17 that Mr. Blackwell was smoking marijuana when the
18 potency was much less.

19 Q. Okay. Well, there's a study from Harvard I
20 helped published and it pretty much states that -- and I
21 can show you part of it. The long-term cannabis IQ in
22 the class by 5.5 points on average from childhood and
23 there were deficits in learning and processes being
24 declared for people who did not use cannabis.

25 A. So I would ---

1 Q. Do you disagree with that?

2 A. I believe that's a recent study.

3 Q. Yes, it is.

4 A. And they started doing the recent studies because
5 the potency of cannabis is greatly increased. So Mr.
6 Blackwell was not using such a high potency of cannabis
7 that would have been studied in that research.

8 Q. Okay.

9 A. So it's apples to oranges.

10 Q. Okay. So it makes no difference that he used it
11 for 17 years?

12 A. Not that it makes no difference. It's just we
13 can't rely on that research.

14 Q. Okay. So if it makes no difference and it didn't
15 affect his cognitive functioning, why even put it in the
16 report?

17 A. It's not in my report.

18 Q. Why you didn't put it in your report?

19 A. The same way that I didn't put things like his
20 legal history, his rap sheet. I reviewed it. I see the
21 charge on his rap sheet. It's not really relevant to
22 IQ.

23 Q. Well, his rap sheet is very minor.

24 A. Sure.

25 Q. Smoking marijuana every day, two to three joints

1 a day, is not mild when you're talking about mental
2 functioning, isn't it?

3 A. Marijuana historically has not been a type of
4 drug that would reduce somebody's cognitive functioning.
5 Say, for example, if he was huffing gas or paint, we
6 have very good research on that, that shrinks the brain.
7 Marijuana at the time that he was using it was pretty
8 low on the potency scale, so we don't have good research
9 from that time.

10 Q. Okay. I'm glad you mentioned huffing paint. Do
11 you realize that Dr. Brown testified, who was at this
12 hearing today, that he admitted to huffing paint once
13 also?

14 A. I believe Mr. Blackwell told me he tried it once.
15 I don't know of any other information about that.

16 Q. And that's not in your report either.

17 A. Again, one time is not going to be relevant to
18 ID.

19 Q. All right. So the fact that he tried acid,
20 popped cocaine three or four times, and he only stopped
21 because he could not afford the shock cocaine, that
22 doesn't matter either?

23 A. That's ---

24 Q. You didn't mention it in your report either.

25 A. That's experimental drug use. To have an impact

1 on cognitive functioning long-term, the drug use has to
2 be something like paint or gasoline, something very
3 toxic over many years. And that, what you're describing
4 is experimental drug use.

5 Q. Okay. Dr. Brown testified that Mr. Blackwell
6 took Valium also. Are you aware of this?

7 A. He told me he took Valium when he was younger,
8 yes.

9 Q. Okay. And you read the medical records at
10 Palmetto Family Physicians. She would prescribe Valium
11 also?

12 A. Yes.

13 Q. You also read Heather's medical records?

14 A. Yes.

15 Q. Patrick Harris. And these records reflect that
16 she was taking Valium when she was 14.

17 A. Okay. I don't remember that, but I'll take your
18 word for it.

19 Q. And his continuous drug use is not mentioned
20 anywhere in your report because you say it doesn't
21 matter?

22 A. It was assessed. I considered it. I didn't give
23 it great weight because of the nature and kind of the
24 substance use. So I noted that it was assessed, but it
25 didn't go to my findings.

1 Q. You took Mr. Black -- you sent Mr. Blackwell to
2 Dr. Christine Herfkins? Is that how you pronounce her
3 name?

4 A. So I didn't send him there. I believe his legal
5 team --

6 Q. Okay.

7 A. -- had him assessed by Dr. Herfkins.

8 Q. Okay. For a neuropsychological evaluation?

9 A. Correct.

10 Q. But she was never informed of Mr. Blackwell's
11 drug use either, was she?

12 A. I have no idea what, what records she was
13 provided or what she was informed. I did not speak with
14 her.

15 Q. Okay. And there's another study I have in 2012
16 that states that present -- persistent cannabis is
17 associated with neurological decline broadly across
18 domains of functioning, even after controlling for years
19 of education. Is that true?

20 A. That, again, is using the cannabis of today. And
21 the reason they started doing that research is because
22 it's much more potent today and is starting to have
23 those affects. It was not near as potent in the '70's
24 and '80's when he was using.

25 Q. Okay. Well, this study basically states that:

1 Study members underwent numerous psychological testing
2 back in '85 and '86, so that's when the test started.

3 A. That they were children at hat time, I believe,
4 correct? I would have to look at that particular study.

5 Q. Okay. And Mr. Blackwell contacted COPD when he
6 was working at Jacobson?

7 A. Yes.

8 Q. Have you ever consulted a pulmonologist?

9 A. I did not.

10 Q. And so you couldn't find a pulmonologist that is
11 near Cornell Medical School to consult regarding its
12 effects of cognitive functioning?

13 A. I did not request to speak to a pulmonologist in
14 his case.

15 Q. But there are also studies that COPD can cause a
16 decline in cognitive functioning?

17 A. So I'm not aware of those studies.

18 Q. Now, in your report you stated that Angie paid
19 all the bills and that Mr. Blackwell paid no bills and
20 did not know how to pay bills. She took care of
21 everything?

22 A. Correct.

23 Q. You never mentioned with Dr. Corvin or Dr. Corvin
24 never mentioned that Rickey told him that he and Angie
25 paid out bills together? That was never discussed with

1 Dr. Corvin?

2 A. I did not discuss any of Dr. Corvin's 20 -- if
3 this is from the 2014 evaluation --

4 Q. It is.

5 A. -- any data gathered from that evaluation.

6 Q. Okay. And so, Dr. Corvin never mentioned to you
7 that Mr. Blackwell told him that Angie would get mad
8 that he wouldn't help pay bills?

9 A. I never heard that.

10 Q. Okay. Would that have made a difference if you
11 knew that?

12 A. I don't know. I think the best source for that
13 would be Angie, and I requested to speak with her
14 through the legal team.

15 Q. I think you mentioned on direct, I'm not sure,
16 that Mr. Blackwell got mad at some of the bills that
17 wasn't paid and he was aware of this.

18 A. I don't think that was me.

19 Q. Okay.

20 A. I don't have any information about that.

21 Q. So that was mentioned with Dr. Corvin also. He
22 mentioned that to Dr. Corvin and that was not mentioned
23 to you?

24 A. No.

25 Q. And you said that Mr. Blackwell never paid bills,

1 didn't pay bills. What happened to the bill paying
2 after Angie left him?

3 A. I believe, I believe he lost the trailer and
4 Cletus bought it back for him, but I think his mother
5 stepped in to do a lot of that kind of thing for him.

6 Q. Okay. On page 2381 of the trial testimony, Angie
7 testified that during that day her father wanted to play
8 cards with Mr. Blackwell. And Mr. Blackwell told them
9 that he has to do some shopping and get some bills paid
10 and run some errands, and then he'd be back to play
11 cards. So he was paying his own bills at the time,
12 wasn't he, according to that statement, that testimony?

13 A. It sounds like it from there. Now, I know he was
14 taking cash and carrying it down maybe down to an
15 electric company or something at that time.

16 Q. Well, don't a lot of people do that?

17 A. I don't know how many people do that.

18 THE COURT: All right. Where are we, Mr. Evans?
19 How much longer do you anticipate?

20 MR. EVANS: We still got a little bit longer,
21 Your Honor.

22 THE COURT: A little bit longer. I was hoping we
23 could get to the end of Dr. Knight's testimony today,
24 but it's almost 6 o'clock. All right. We're gonna
25 adjourn until 9 o'clock in the morning.

CROSS-EXAMINATION OF DR. KNIGHT BY MR. EVANS

1 MR. EVANS: Thank you, Your Honor.

2 (Court adjourned at 5:55 p.m.)

3 --- END OF DAY THREE OF PCR HEARING ---

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1 RICKEY LEE BLACKWELL VS. THE STATE OF SOUTH CAROLINA

2 DAY FOUR OF PCR HEARING

3
4 THE COURT: All right. Applicant ready, Mr.
5 Grose?

6 MR. GROSE: Yes, sir.

7 THE COURT: Is the State ready?

8 MS. BROWN: Yes, sir, Your Honor.

9 THE COURT: I believe we had Dr. Knight on the
10 stand. Dr. Knight, if you'd come on back up. All
11 right. We're back on the record.

12 MR. EVANS: Good morning, Dr. Knight.

13 THE WITNESS: Hey, good morning.

14 THE COURT: I believe we were at the point where
15 Dr. Knight was on cross-examination. Mr. Evans, this is
16 your witness.

17 MR. EVANS: Thank you, Your Honor. May it please
18 the Court?

19 (Witness resumes witness stand.)

20 DR. SUSAN KNIGHT,

21 Having been previously sworn, continued testifying as
22 follows:

23 CONTINUED CROSS-EXAMINATION

24 BY MR. EVANS:

25 Q. Dr. Knight, according to Dr. Calloway's report,

1 adaptive functioning is an assessment of typical
2 performance. Isn't that -- you would agree with that?

3 A. Yes.

4 Q. Okay. And typical performance is measured by the
5 context of the community and cultural divide. And
6 that's typical of a person with aged parents. That type
7 of person needs an individualized support. Do you agree
8 with that?

9 A. Yes.

10 Q. Okay. And according to your report and previous
11 testimony, Mr. Blackwell got married to his wife, Angie,
12 and she took care of everything.

13 A. Yes.

14 Q. The bills, the children, the housecleaning. Mr.
15 Blackwell really didn't have much to do.

16 A. She took care of everything, correct.

17 Q. She took care of everything. Now, when you spoke
18 to the men that you interviewed for this case, did you
19 ask them if they took care of the hospital bills?

20 A. I did not.

21 Q. Did you ask them if they would pay the bills?

22 A. I didn't ask them that, no.

23 Q. Okay. Did you ask them if they'd take care of
24 the children's needs?

25 A. No.

1 Q. Okay. So that typical behavior that Angie did,
2 it might be common for that community; isn't that
3 correct?

4 A. Sure.

5 Q. If you can go to page 34 of your report, it was
6 a ---

7 MR. GROSE: What page?

8 MR. EVANS: 34.

9 MR. GROSE: Thank you.

10 BY MR. EVANS:

11 Q. Page 34 of your report.

12 A. Yes.

13 Q. And you list Mildred saying that Angie did
14 everything for him like I did; isn't that correct?

15 A. That's correct.

16 Q. Okay. So, Mildred also did all the household
17 chores also?

18 A. Yes.

19 Q. And Don and Rickey didn't know household chores
20 or anything in that house when those were -- but they
21 were -- when they were growing up and when he was living
22 with them?

23 A. Correct.

24 Q. So, I would assume Cletus didn't do the household
25 chores either, did he?

1 A. Probably not.

2 Q. Okay.

3 A. I didn't specifically ask Cletus that, but...

4 Q. Now, on page 36 of your report, you explain that
5 Mr. Blackwell, as he was growing up, was socially
6 awkward and could not speak up. He kept to himself, was
7 made fun of, and had no self-esteem.

8 A. Yes.

9 Q. Okay. Now, doesn't that describe millions of
10 children in America?

11 A. Sure.

12 Q. Okay. On page 36 you stated that he was shy and
13 unsure of himself and never formalized any social
14 activity such as swimming. You say, he never learned to
15 swim good. He was scared of water. Is that pretty much
16 it?

17 A. That's correct.

18 Q. Isn't there a lot of people in this country that
19 can't swim?

20 A. Sure.

21 Q. You're looking at one. I'm not a good swimmer.
22 And most ordinarily, people who cannot swim are afraid
23 of water. They will not go in the deep end of water;
24 isn't that correct?

25 A. I would assume so, yes.

1 Q. Well, I can promise you I don't go in the deep
2 end of water.

3 A. Okay.

4 Q. He won't go into the deep end of pools. He won't
5 go to the deep ends of rivers. He won't do that,
6 because they're afraid of drowning; isn't that correct?

7 A. I would assume so, yes.

8 Q. So the fact that Mr. Blackwell would not go into
9 the deep ends of -- now, earlier in your report, early
10 on your report on page 10, he did say when he was
11 brought, he was going to the room with his friends.
12 It's on the third -- at the adaptive behavior
13 developmental. It's back on the third paragraph.

14 A. Yes.

15 Q. Okay. And going swimming across the river from a
16 cable on the tree. Never learned to swim good, scared
17 of water. I wouldn't go in the deep water. So he would
18 go into the river, he just wouldn't go into the deep
19 end; is that correct?

20 A. Yes, he was scared.

21 Q. Okay. And the fact that he would like to go
22 swimming, he would not go in the deep end, wouldn't that
23 be more like common sense, instead of a problem with
24 adaptive functioning?

25 A. Well, I think it's an example of how he lacked

1 confidence in his abilities and he lacked initiative to
2 try new things, and that could go to adaptive
3 functioning.

4 Q. So you think a person ---

5 A. So he didn't take a risk to try and learn how to
6 swim.

7 Q. Did you know if Cletus could swim?

8 A. I didn't ask Cletus.

9 Q. Okay. So how is he gonna learn how to swim, if
10 he didn't know if his father could swim?

11 A. Well, another adult could have taught him. I
12 didn't ask that.

13 Q. Okay. There is no YMCA in Chesnee, as you --

14 A. I don't --

15 Q. -- that you know at that time?

16 A. I don't know.

17 Q. Did they come in for summer camps?

18 A. I don't know. Probably not.

19 Q. Okay. And most children learn how to swim
20 through a YMCA or summer camp that way, wouldn't you
21 agree?

22 A. A lot of children learn that way, yes.

23 Q. And Rickey didn't have these available for him;
24 isn't that correct?

25 A. You know, I don't know about a YMCA in Chesnee,

1 Mr. Evans, but I'll take your word for it that there
2 wasn't one.

3 Q. Mr. Blackwell grew up in a fairly rural area in
4 Spartanburg County.

5 A. Yes.

6 Q. Okay. So there wasn't a lot of things available
7 to him, like say for my kids available to them in
8 Columbia; isn't that correct?

9 A. Correct.

10 Q. Okay. So it would be harder for him to be able
11 to learn to swim because there are not as much things
12 available for him like swimming class for him to learn;
13 isn't that correct?

14 A. I don't know if there were swimming classes in
15 Chesnee at that time. I just don't know.

16 Q. Okay. But he doesn't have as much things
17 available for him as the other children that are in,
18 say, Columbia or Greenville or even Spartanburg,
19 correct?

20 A. The rural-ness of his area would have precluded
21 some of that, yes.

22 Q. Okay. And even though he had -- there was adults
23 to help him learn to swim, that doesn't mean that he
24 would learn, would he? I mean, you would expect a small
25 child to go up to an adult and say, teach me how to

1 swim. That's not average.

2 A. Uh-huh.

3 Q. It's not ---

4 A. I don't, I don't understand your question.

5 Q. Okay. All right. But he didn't know how to swim
6 well. That's a fact.

7 A. He did not know how to swim good.

8 Q. Okay. And he didn't go in the deep end, due to
9 lack of confidence because he was afraid to go in the
10 deep end and swim; isn't that correct?

11 A. Correct.

12 Q. Okay. Isn't that ordinary for a person not to
13 drop down in the deep end if they cannot swim because
14 they're afraid of the drop?

15 A. That would be normal, yes.

16 Q. Okay. You also said that he would not
17 participate in formalized social or extracurricular
18 activities.

19 A. Correct.

20 Q. Okay. But on page 10 he told you that he and his
21 friends and cousins would ride dirt bikes to go to car
22 races.

23 A. Correct. He wasn't participating in the car
24 races, he was watching them.

25 Q. Well, I think you need to talk about dirt road

1 races or NASCAR race, something like that, wasn't he?

2 A. He said car races.

3 Q. Okay. Okay. But he told you he played football
4 and baseball in grammar school also.

5 A. Yes.

6 Q. Okay. So he did some things with his friends and
7 had some extracurricular activities?

8 A. Sure. These were, these were pretty simple
9 activities. He was watching motorcycle races. He was
10 riding dirt bikes. He was playing some sports.

11 Q. Okay. So he had a typical childhood?

12 A. Those things were probably pretty typical for
13 that, for where he was.

14 Q. Okay. Also, Mr. Blackwell was fired from Innent
15 Industries because he was caught smoking in the
16 warehouse. And it was flammable. People who were
17 afraid if they coughed it would burn.

18 A. Correct, it was flammable.

19 Q. Now, in your report you said that Mr. Blackwell
20 did not recognize there was a hazard. He never told you
21 that, did he?

22 A. I think we discussed that, yes.

23 Q. That's not in your report, though, is it?

24 A. I don't know if I put that detail in, but it was
25 my understanding that he didn't understand the material

1 was flammable at the time.

2 Q. Okay.

3 A. He might understand it now.

4 Q. Okay. But that's not in your report that he told
5 you that. That, actually, was a statement that you had
6 at the end of the report.

7 A. Again, I think I made that statement because I
8 had that conversation with Mr. Blackwell.

9 Q. Okay. But you didn't say that in your report,
10 Mr. Blackwell told me that he didn't understand that it
11 was flammable. That's not in your report, is it?

12 A. That quoted statement is not in my report.

13 Q. And also in your report, you state that most of
14 his job was of short duration due to poor stamina, poor
15 performance, seasonal in duration, or poor working
16 conditions.

17 A. What page are you on?

18 Q. I think that's 36 also. It's on page 37.

19 A. Okay.

20 Q. Mr. Blackwell didn't have a high school diploma,
21 did he?

22 A. He did not.

23 Q. Okay. And there's not a lot of jobs available to
24 individuals that didn't graduate from high school, is
25 there?

1 A. It would be limited.

2 Q. Okay. So most of the jobs that are available to
3 a person without a high school diploma are jobs
4 requiring physical labor?

5 A. Correct.

6 Q. The type of job that Rickey Blackwell had.

7 A. That's correct.

8 Q. Okay. Now you stated that he worked in poor
9 working conditions. I think that the only condition
10 that he considered poor was being cold in the icehouse
11 and then the meat freezer. Would you agree to that?

12 A. Those were two good examples. I would have to
13 look back to see, I think maybe the, the shifts, the
14 shift work, he would have considered that a poor
15 condition.

16 Q. Okay.

17 A. But I would have to look back at the job list.

18 Q. Okay.

19 A. But I would have to look back at the job list to
20 see if there's any others.

21 Q. But aren't there millions of people that work
22 third shifts in jobs?

23 A. Sure.

24 Q. Okay. And there was nothing stopping Rickey from
25 working these shifts, was there?

1 A. I don't think so, in those particular instances.

2 Q. Okay. He was a young man. He wasn't old. He
3 was a young man at the time he was working these jobs.
4 He would decide to quit them, correct?

5 A. Correct.

6 Q. Now, on page 30 of your report, you mentioned
7 people like Gail Shook, who described Mr. Blackwell as
8 simple and that the jobs he's done could be done by a
9 ten or twelve year old.

10 A. That's what she told me.

11 Q. Okay. Now, that was a job he had after he was
12 working -- after he had cancer.

13 A. Yes.

14 Q. Received chemotherapy.

15 A. Yes.

16 Q. I think I showed you State's Exhibit 1 earlier,
17 I'm not quite sure. The statement from Rick Bagwell,
18 you never saw -- you state you never saw that.

19 A. No, sir, I never had this.

20 Q. Okay. And I think I asked this earlier, but Mr.
21 Bagwell said that Rickey was plenty smart enough to
22 function from what I've see of his work.

23 A. You showed me that yesterday, yes.

24 Q. Okay. On Page 36 of your report, you quoted a
25 former work performance review that was given about Mr.

1 Blackwell at Jacobsen, and you stated the performance
2 review indicated that Mr. Bagwell added the
3 communication skills, that he was not inserting himself
4 with his co-workers.

5 A. I think there was a comment in the Jacobsen
6 records about not speaking up with co-workers.

7 Q. Okay. And that leads to the performance review
8 that you quoted on Page 31?

9 A. Correct.

10 Q. Okay. Now, in that review it states that Mr.
11 Blackwell, he is performing at or exceeding
12 expectations. However, he needed to improve his
13 communication with peers and supervisors in that Rickey
14 needs to speak up and tell other team members when they
15 are not following the procedures.

16 A. That's what it says, correct.

17 Q. Okay. So that review was more of not he doesn't
18 communicate with his co-workers is that he thinks
19 they're ratting them out for not following procedures;
20 isn't that correct?

21 A. Right. Taking initiative. Stepping up. Getting
22 involved, that sort of thing.

23 Q. But that was never his personality, was it?

24 A. No.

25 Q. Okay. Now, in your final diagnosis, you found

1 Mr. Blackwell to be intellectually disabled; is that
2 correct?

3 A. Correct.

4 Q. And that's the exact same diagnosis given to Dr.
5 Calloway; isn't that correct?

6 A. That's correct.

7 Q. The diagnosis that was related to Judge Couch and
8 the jury during this trial?

9 A. Correct.

10 Q. And they both rejected that diagnosis.

11 A. Correct.

12 Q. And you read the South Carolina report -- Supreme
13 Court opinion in this case?

14 A. Yes.

15 Q. And Judge Couch's decision was upheld by the
16 Supreme Court.

17 A. Yes.

18 Q. Now, you state in your report that your diagnosis
19 of Mr. Blackwell being intellectually disabled is
20 unspecified.

21 A. Correct.

22 Q. And according to the American Psychological
23 Association, specifies means that when an individual is
24 assumed to be intellectually disabled, but is too
25 severely impaired or uncooperative to be evaluated

1 through the standard intelligence.

2 A. So that's not what the DSM says about using the
3 unspecified label.

4 Q. Okay. What does the DSM say?

5 A. With the switch to DSM-5, they switched the
6 severity levels, mild, moderate, severe, and profound to
7 adaptive deficits. So they moved it from IQ. So before
8 we would diagnose intellectual disability mild, based on
9 an IQ of 55 to 70. With DSM-5, they switched those
10 specifiers to the adaptive deficit level. So if the DSM
11 with that switch, the DSM states that if you can't use
12 an adaptive functioning measure, then you have to use
13 the unspecified label. But for all practical purposes,
14 he's mild.

15 Q. Okay. Now, you said that you never retested Mr.
16 Blackwell because the gold standard was done eight years
17 before you accepted this case.

18 A. Correct.

19 Q. Okay. But things like his COPD and his cancer
20 were never considered by any doctor, was there?

21 A. Correct.

22 Q. Okay. So isn't it possible to retest him because
23 this fortifies it even more because of those conditions
24 impact it? Explain that.

25 A. That wasn't in my reasoning process.

1 Q. On direct you talk about three intervening
2 factors. Head injury, chemo, and depression.

3 A. Correct.

4 Q. Okay. You never considered the cancer itself or
5 COPD?

6 A. Correct.

7 Q. Okay. And that was never suggested to you by his
8 counsel, was it?

9 A. No.

10 Q. Okay. I counted 27 interview memos that we got
11 in discovery. Were you given that many memos, as far as
12 you know?

13 A. No, sir. Every ---

14 Q. Or are all the memos you got --

15 A. Every interview --

16 Q. -- you listed --

17 A. -- memo I have --

18 Q. -- is in your report?

19 A. -- that I reviewed --

20 Q. Okay.

21 A. -- is listed in my report.

22 Q. Okay. And you write very detailed reports,
23 right?

24 A. Yes.

25 Q. I must admit, it was very detailed. And you have

1 lots of experience testifying in courts before?

2 A. Some experience.

3 Q. Right. So every time you write a memo, I mean a
4 report, you give it to the counsel who's hired you, and
5 it's their responsibility to give it to the other side;
6 isn't that correct?

7 A. Correct.

8 Q. Okay. Every name that was mentioned in your
9 report, the State not only has the ability but a duty to
10 also talk to those people also; isn't that right?

11 A. Okay.

12 Q. Yes or no?

13 A. I'll agree with you.

14 Q. Okay. And so, certain individuals that's in the
15 report, like Randy Shields -- Randy Shields was
16 mentioned in your report --

17 A. Yes.

18 Q. -- that you did interviews in?

19 A. Yes.

20 Q. Okay. And I think I showed you this yesterday,
21 and you don't remember seeing that interview.

22 A. So you showed me --

23 Q. Memo.

24 A. -- that yesterday, and I said I'd never seen
25 that.

1 Q. Okay. This is part of Applicant's Exhibit Number
2 7. On the top part of this interview, Kara states that:
3 Mr. Shields tells me I'm really against what he's done.
4 The Bible clearly comes down on the side of capital
5 punishment. That's stated on here, isn't it?

6 A. So you read that to me yesterday.

7 Q. Okay. Wouldn't it be best for the individual --
8 the defense would not want to testify and say that in
9 front of a jury in a death penalty case defending Rickey
10 Blackwell?

11 A. I would imagine so.

12 Q. And you also stated the regular reports of Dr.
13 Jackson, who was his primary physician?

14 A. Yes.

15 Q. Okay. I'll show you State's Exhibit 12. This is
16 the interview done by Dr. -- on Dr. Jackson. Have you
17 ever seen that?

18 A. No.

19 Q. Okay. The third paragraph Dr. Jackson states:
20 McGuire asked Dr. Jackson if he has an opinion on what
21 Rickey's punishment should be. And Dr. Jackson replies:
22 He probably deserves the death penalty. He knew what he
23 was doing. It was premeditated. I love him. He's my
24 long-term friend.

25 A. Uh-huh.

1 Q. You didn't think that the defense would want a
2 doctor -- his doctor stating that in front of a jury in
3 a death penalty case, do you?

4 A. Probably not.

5 MR. EVANS: Okay. Beg the Court's indulgence.

6 BY MR. EVANS:

7 Q. Did you read the testimony of Rickey Fowler?

8 A. Who?

9 Q. Rickey Fowler. That is the mother of Rickey's
10 grandchildren who had children with her son?

11 A. I don't remember that off hand, no.

12 Q. Okay. Page 3025 of her testimony, it showed she
13 testified the Appellant -- well, that Mr. Blackwell
14 helped her with the baby, did everything for him.
15 Changed diapers, fed him, whatever there needs to be
16 done.

17 A. Uh-huh.

18 Q. Okay. So she was able to trust Mr. Blackwell
19 with a newborn child to help her take care of him.

20 A. Who is this again?

21 Q. Rickey Fowler, pretty much the baby's mother of
22 the son.

23 A. Okay. Okay.

24 Q. And we talked earlier about unspecified?

25 A. Yes.

REDIRECT EXAMINATION OF DR. KNIGHT BY MS. VANN

1 Q. And this is the DSM-5, page 37. It states at the
2 bottom, it says when standardized testing is difficult
3 or impossible because of a variety of factors, sensory
4 impairment, severe problem with behavior. The
5 individual may be diagnosed with unspecified
6 intellectual disability. It says that, doesn't it?

7 A. So the -- my report quotes the DSM-5-TR, because
8 that was the leading book when I did this evaluation.
9 So I didn't use the DSM-5 for that particular ---

10 Q. But at trial, that would have been the correct
11 manual, wouldn't it have been?

12 A. Yes. In 2014 the DSM-5 would have been the
13 correct manual. But now, Dr. Calloway used adaptive
14 measures, so she gave mild, and Mr. Blackwell falls in
15 the mild range.

16 MR. EVANS: Okay. Nothing further, Your Honor.

17 THE COURT: Thank you. Redirect?

18 REDIRECT EXAMINATION

19 BY MS. VANN:

20 Q. Good morning, Dr. Knight.

21 A. Good morning.

22 Q. I'm handing you Applicant's 33 and 34 and ask you
23 a few questions about those. If we could start with
24 Applicant's 34, which is Dr. Brown's report. You
25 reviewed this report as part of your investigation?

1 A. Yes.

2 Q. And when was it issued? I think it's the last
3 page.

4 A. He signed it on January 21st, 2014.

5 Q. And in the second paragraph under diagnostic
6 summary and conclusions, does he list three significant
7 risk factors that occurred in adulthood rather than
8 during the developmental period? That's on page 12.

9 MR. EVANS: Your Honor, I can't hear, I'm sorry.

10 MS. VANN: I'm sorry, I'll speak up.

11 THE COURT: I think we're on page 12.

12 MS. VANN: Yes, page 12, the second paragraph
13 under diagnostic summary and inclusions.

14 THE WITNESS: Three significant risk factors,
15 yes.

16 BY MS. VANN:

17 Q. And those are diagnosis and treatment of cancer,
18 head injury, significant depression and/or anxiety?

19 A. Yes.

20 Q. And did you consider each of those in your
21 review?

22 A. Yes.

23 Q. Thank you. Okay. Now, if we could turn to
24 Applicant's Exhibit 33, which is Dr. Calloway's report.
25 On page 5 of her report is a list of sources that she

1 relied on.

2 A. Yes.

3 Q. Are you familiar with that list of sources?

4 A. Yes.

5 Q. Now, you interviewed Kenneth Water.

6 A. Yes.

7 Q. And that was a person who knew Rickey during the
8 developmental period?

9 A. Yes.

10 Q. Is he one of the people on Dr. Calloway's list of
11 sources?

12 A. No.

13 Q. And you interviewed Emily Shields. Was she also
14 an informant with information about the developmental
15 period?

16 A. Yes.

17 Q. And was she listed as one of the on-list sources
18 that Dr. Calloway relied on?

19 A. No.

20 Q. And Randy Shields was someone you interviewed and
21 he had information about the developmental period?

22 A. Yes.

23 Q. And was he listed as one of the sources that
24 Dr. Calloway relied on?

25 A. No.

1 Q. You had an affidavit from Beverly Daves?

2 A. Yes.

3 Q. Did she have information about the developmental
4 period?

5 A. Yes.

6 Q. And is she listed as one of the sources Dr.
7 Calloway relied on?

8 A. No.

9 Q. And you had an affidavit from William Hayes?

10 A. Yes.

11 Q. And he had information about the developmental
12 period?

13 A. Yes.

14 Q. Is he listed as one of the sources that Dr.
15 Calloway relied on?

16 A. No.

17 Q. You also had an affidavit from Sonia Stott, and
18 that was post-developmental information, correct?

19 A. Yes.

20 Q. Was she one of the sources Dr. Calloway relied
21 on?

22 A. No.

23 Q. Ken White had information about
24 post-developmental period as well?

25 A. Yes.

1 Q. And you interviewed him?

2 A. Yes.

3 Q. Was he listed as one of the sources Dr. Calloway
4 relied on?

5 A. No.

6 Q. And Glenda Wooten is someone you interviewed with
7 post-developmental information?

8 A. Yes.

9 Q. Is she listed as one of the sources that
10 Dr. Calloway relied on?

11 A. Actually, I interviewed Gail Shook.

12 Q. Oh, I'm sorry.

13 A. Not Glenda Wooten.

14 Q. Okay. And you had a consultation with an
15 oncologist, Dr. Sara Rutherford?

16 A. Yes.

17 Q. Is she listed or is an oncologist listed as a
18 source that Dr. Calloway relied on?

19 A. No.

20 Q. You had a consult with a psychiatrist, Dr. George
21 Corvin. Did Dr. Calloway rely on a consult with a
22 psychiatrist?

23 A. No.

24 Q. You had a consult with a geneticist, Dr. Chris
25 Cunniff

1 A. Yes.

2 Q. Did Dr. Calloway have any consults with a
3 genetecist?

4 A. No.

5 Q. And you also relied on a report from Dr. Arlene
6 Andrews?

7 A. Yes.

8 Q. About Rickey Blackwell's social history?

9 A. Yes.

10 Q. And that included information about the
11 developmental period?

12 A. Yes.

13 Q. Did Dr. Calloway have a social historian --

14 A. No.

15 Q. -- report to rely on? Now, you interviewed Randy
16 Shields, and during your cross-examination you said you
17 didn't know that he supported capital punishment.

18 A. Correct.

19 Q. Is that a question that you asked him during your
20 interview with him?

21 A. No.

22 Q. Is that relevant to your evaluation?

23 A. No.

24 Q. You also reviewed the parts of the record on
25 appeal, correct?

1 A. Correct.

2 Q. Did that include the witnesses of the penalty
3 phase of the trial?

4 A. Yes.

5 Q. And if you saw something relevant to your
6 assessment in that review of the transcript, would you
7 have taken that into account?

8 A. Sure.

9 Q. Mr. Evans asked you about interview summaries
10 from Mary Youmans, Norm Uber, and Rick Bagwell.

11 A. Yes.

12 Q. Were those all sources from the
13 post-environmental period?

14 A. I believe so, but I'm not 100 percent sure.

15 Q. Okay. And if it were a post-developmental
16 period, I believe they were all -- and I can show you
17 the interview summaries if you would like -- they were
18 all supervisors of co-workers of Mr. Blackwell in his
19 work.

20 A. Okay.

21 Q. Would that have relevance to your findings that
22 he had developmental period conceptual deficits?

23 A. No.

24 Q. Would that be relevant to your finding that he
25 had developmental social deficits?

1 A. No.

2 Q. Is it common for someone with an intellectual
3 disability to get frustrated with his inability to keep
4 up with the demands of school?

5 A. Sure.

6 Q. Could that lead to someone dropping out because
7 of that frustration?

8 A. Yes.

9 Q. Or becoming truant in not attending classes?

10 A. Yes.

11 Q. Is it typical with someone with intellectual
12 disability to have trouble learning on a job?

13 A. Yes.

14 Q. Were there any jobs that Rickey Blackwell had
15 that were inconsistent with a person who had mild
16 intellectual disability?

17 A. No.

18 Q. In your cross-examination you talked about B&R
19 Trucking that he worked for and he had some routes to, I
20 think, Savannah and some other areas. And you said that
21 he drove those routes by himself?

22 A. I believe so.

23 Q. Do you have any information on how difficult
24 those routes were?

25 A. No. Other than he -- I believe he told me they

1 were straight shots and that he didn't know how to take
2 shortcuts, so he had to use the same direction, the same
3 path every time, even though the other truckers were
4 taking shortcuts.

5 Q. And did he have an accident while he was working
6 at that job?

7 A. At D&R?

8 Q. Yes.

9 A. Yes.

10 Q. And why did he end up leaving that job?

11 A. He was fired.

12 Q. Did he say what he was fired for?

13 A. He made an illegal U-turn.

14 Q. Thank you. And in 1992 when the CDL was issued,
15 you testified that he had gotten a waiver of skills?

16 A. Yes.

17 Q. And so he obtained that CDL over a decade after
18 he started driving?

19 A. Yes.

20 Q. And he was able to rely on, at least in part on
21 his prior experience, to waive part of the
22 requirements --

23 A. Correct.

24 Q. -- to get his CDL? Now, there were a lot of
25 questions about interview memos and whether you had

1 gotten all of the interview memos that were created at
2 the time of trial. Is it the best practice in an
3 evaluation such as yours to rely on interview memos
4 created by the defense team?

5 A. No. I would want to interview the person myself.

6 Q. And why would you want to do that interview
7 yourself?

8 A. Because I have a particular set of questions to
9 ask from my perspective and from my psychological
10 perspective, as far as the referral question.

11 Q. And when you were doing your evaluation in
12 post-conviction, did you tell Mr. Blackwell's legal team
13 people you wanted to interview?

14 A. Yes.

15 Q. And did they make attempts for you to be able to
16 interview those people?

17 A. Yes. Many people were deceased at this point.

18 Q. And you've listed in your report requests that
19 you made and then obituaries or summaries as to --

20 A. Yes.

21 Q. -- why you were not able to speak with them? Did
22 any of the information that Mr. Evans showed you during
23 your cross-examination undermine your opinion that
24 Rickey Blackwell is a person with intellectual
25 disability?

1 A. No.

2 MS. VANN: I have no further questions, Your
3 Honor.

4 MR. EVANS: Recross, Your Honor?

5 THE COURT: Yes.

6 RE CROSS-EXAMINATION

7 BY MR. EVANS:

8 Q. Doctor, you would agree that different
9 psychologists use different methods and just different
10 sources; isn't that correct?

11 A. Just in general in evaluations?

12 Q. Yeah, just in general.

13 A. Sure.

14 Q. Okay. So the way you do something, that may be
15 different than the way another doctor or Dr. Calloway
16 would do something, correct?

17 A. There could be some minor differences, but in an
18 intellectual disability assessment, we're both assessing
19 the three prongs through testing and interview data.

20 Q. And you would agree you read her report, correct?

21 A. I did read her report, yes.

22 Q. You would agree that she did test and evaluate in
23 the course of three prongs?

24 A. Yes.

25 Q. Okay. Now, in your report you said you

1 interviewed Ken Rice; isn't that correct?

2 A. That is correct.

3 Q. Okay. And he was post-developmental period,
4 right?

5 A. He was post, yes.

6 Q. Okay. And you had an affidavit from Gail Shook,
7 Glenda Wooten, and Ken White. Those are also
8 post-developmental period individuals?

9 A. So, I didn't have an affidavit from Ken White.

10 Q. Interviewed. Did you interview Mr. White?

11 A. Yes, sir. Yes.

12 Q. My apologies. You interviewed Mr. White and you
13 had interviews from Gail Shook and Glenda Wooten?

14 A. I had an affidavit from Glenda Wooten and I
15 interviewed Gail Shook, yes.

16 Q. Okay. And those were post-developmental period?

17 A. Yes.

18 Q. Now, you said earlier that you requested
19 individuals that you would like to interview.

20 A. Yes.

21 Q. Okay. Is that a normal practice of a
22 psychologist --

23 A. Sure.

24 Q. -- to say I'd like to interview this person, this
25 person, this person?

1 A. Sure.

2 Q. And then it's up to the attorney to find these
3 people?

4 A. Yes.

5 Q. Who initially finds the people that you select
6 from?

7 A. Who finds them?

8 Q. Yes.

9 A. Generally, their mitigation specialist.

10 MR. EVANS: Okay. Nothing further.

11 THE COURT: All right, thank you.

12 All right. Dr. Knight, you can step down.

13 THE WITNESS: Thank you, Your Honor. May I be
14 excused?

15 THE COURT: Any objection to Dr. Knight being
16 excused?

17 MR. EVANS: Yes, she can be excused, Your Honor.
18 We released her from her subpoena.

19 THE COURT: All right, thank you.

20 THE WITNESS: Thank you.

21 THE COURT: Dr. Knight, you're excused.

22 (Witness leaves witness stand and courtroom.)

23 MR. GROSE: We might have one short witness
24 before Dr. Corvin. We want to check and see if he's
25 here.

RE CROSS-EXAMINATION OF DR. KNIGHT BY MR. EVANS

1 THE COURT: All right, that's fine.

2 MR. GROSE: Judge, it does not appear that he's
3 here yet. I'm prepared to go with Dr. Corvin, but I
4 would, before we start, could I have five minutes to go
5 to the restroom?

6 THE COURT: Yes. Dr. Corvin is not virtual?

7 MR. GROSE: No he will be here in person.

8 THE COURT: All right. We'll take a five-minute
9 break.

10 MR. GROSE: Thank you, Your Honor.

11 (Recess was held from 9:36 - 9:41 a.m.)

12 THE COURT: Are we ready?

13 MR. GROSE: Yes, sir.

14 THE COURT: All right. Call your next witness.

15 MR. GROSE: Mr. Blackwell would call Dr. George
16 Corvin.

17 (Witness comes forward.)

18 THE DEPUTY: Raise your right hand. (Complies.)

19 Do you solemnly swear to tell the truth, the
20 whole truth and nothing but the truth so help you God?

21 THE WITNESS: I do.

22 THE DEPUTY: Have a seat.

23 THE WITNESS: Thank you.

24 DR. GEORGE PATRICK CORVIN,
25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. GROSE:

3 Q. Dr. Corvin, would you state your full name for
4 the record and spell your last name, please?

5 A. Yes, sir, I will. My name is George Patrick
6 Corvin, M.D. My last name is spelled C-o-r-v, as in
7 Victor, i-n.

8 Q. Thank you. And what is your profession?

9 A. I'm a general and forensic psychiatrist.

10 Q. And I assume that you had some training for that
11 profession. If you would, please summarize that for the
12 Court.

13 A. Yes, sir. I completed my undergraduate education
14 at Birmingham Southern College in Birmingham, Alabama.
15 I graduated from that institution in 1988, with degrees
16 in biology and psychology. I then attended the
17 University of Alabama School of Medicine in Birmingham,
18 Alabama. Graduated from there in 1992 with my medical
19 degree.

20 I then entered a four-year residency program in
21 general psychiatry at the Medical College of Georgia in
22 Augusta, Georgia. Spent my final year there as senior
23 resident for the institution, and left there in 1996
24 with board eligibility as a general psychiatrist.

25 At the completion of that phase of my training, I

1 decided to pursue an additional period of training
2 called a fellowship in forensic psychiatry. That
3 brought me to North Carolina where I was enrolled as a
4 forensic fellow with the United State Department of
5 Justice. I finished that program in 1997, at which time
6 I became eligible for certification in forensic
7 psychiatry and have subsequently become certified both
8 in general and forensic psychiatry continuously.

9 Q. Can you describe a little bit about your
10 fellowship with the Department of Justice?

11 A. Yes, sir. During the period of time I was with
12 the DOJ, I worked with a number of forensic
13 psychiatrists. It's actually a training program that's
14 affiliated with the University of North Carolina in
15 Chapel Hill but is operated essentially by the DOJ.
16 Some of the most experienced and well-known forensic
17 psychiatrists in the country worked there. One of my
18 mentors was Sally Johnson. And so it's really an
19 excellent program for training in the interface of
20 psychiatry and the law.

21 During my time there, I worked in a forensic
22 secure hospital as FCC in Buckner, but I also traveled
23 around the country to gather experience evaluating
24 individuals and testifying in various forensic
25 psychiatric matters in federal courts around the United

1 States.

2 Q. And after you completed your fellowship, what did
3 you do professionally?

4 A. So upon finishing my fellowship there, the
5 original plan was to go home to Alabama and practice
6 there, but North Carolina's a great place. South
7 Carolina too. And I decided to stay and entered a
8 practice there in North Raleigh Psychiatry. And for
9 years -- I'm still at North Raleigh Psychiatry.

10 During my career there, I worked for a decade or
11 so as an in-patient psychiatrist at a couple of
12 psychiatric hospitals in the Raleigh, North Carolina
13 area. For some years I was the president of the medical
14 staff for Charter Holly Hill Hospital in Raleigh. I was
15 the medical director for their dual diagnosis and
16 substance abuse treatment programs.

17 Throughout my career and currently I maintain an
18 active outpatient caseload, treating any variety of
19 psychiatric disorders. And about half of my time is
20 spent in various of forensic psychiatry where I use the
21 same skills and experience, same training. Same things
22 that I learned in training, but for very different
23 purposes.

24 Q. And what are those different purposes?

25 A. Well, so in forensic psychiatry, as opposed to my

1 clinical practice, my role is not to treat an
2 individual, but rather to use the same, sort of
3 diagnostic skills and knowledge of treatment to answer
4 questions that may come before court in any of a variety
5 of ways.

6 So some of the issues that forensic psychiatrists
7 routinely become involved in, would be issues like
8 whether somebody is capable of proceeding to litigation
9 in a case, as informed by jurisdictional law, but also
10 the Supreme Court of Dusky, in fact, the United States.
11 It would be in terms of assessing an individual's state
12 of mind at the time of a commission of an alleged
13 defense because, as you know, courts routinely sort of
14 assign just the levels of culpability based on the
15 degree of intent and other mental state factors that an
16 individual may or not possess the time of an alleged
17 offense.

18 But it also involves issues in other areas of
19 law. So, for example, standard of care in medical
20 malpractice claims. Degrees in sources of injury in
21 civil litigation regarding personal injury. And so,
22 testimony capacity in individuals who -- questions about
23 their ability to enter a last will and testament. And
24 so there are a lot of different areas where, for better
25 or worse, mental health expertise can hopefully on some

1 occasions help a trier of fact determine the best
2 disposition of a question that might come before a
3 court.

4 Q. And you're licensed to practice medicine, I
5 assume?

6 A. I am.

7 Q. And where?

8 A. Currently I have active licenses in Kentucky and
9 North Carolina. I think those are the only two active
10 licenses I have.

11 Q. All right. And earlier you mentioned something
12 about board certification?

13 A. Yes, sir.

14 Q. And are you board certified?

15 A. I am.

16 Q. And in both general and forensic psychiatry?

17 A. Yes, sir.

18 Q. And who is that board certification through?

19 A. Currently I'm board certified with the National
20 Board of Physicians and Surgeons. For the first 20
21 years of my career, I was certified with the American
22 Board of Psychiatry and Neurology through the Board of
23 Medical Specialties. I have -- I'm still eligible under
24 that board, but active under the NBPAS board.

25 Q. I'm gonna hand you what's been marked as

1 Applicant's Exhibit 67 for identification.

2 A. Yes, sir.

3 Q. And ask if you have -- if you can identify that?

4 A. Yes, sir. This is an updated and current copy of
5 my curriculum vitae.

6 MR. GROSE: Your Honor, at this time I would move
7 Applicant's 67 into evidence.

8 MR. EVANS: No objection, Your Honor.

9 THE COURT: Applicant's Exhibit 67 is in
10 evidence.

11 (Applicant's Exhibit 67 was entered into the
12 record.)

13 BY MR. GROSE:

14 Q. But before I get into the substance of your
15 testimony, I would sort of ask a methodology question.
16 Is it fair to say in -- well, what type of evaluation
17 were you asked to do in Rickey Blackwell's case?

18 A. Well, I may answer the question, but I'm gonna
19 tell you that I wasn't asked by the attorney directly to
20 do an evaluation in this matter, but my understanding
21 was that I was asked to perform a forensic evaluation
22 centering on Mr. Blackwell's state of mind during the
23 period of time leading up to an encompassing his
24 allegedly offense conduct.

25 Secondarily and part and parcel of that is that

1 an understanding of his current capacity in that, by
2 that I mean his capacity at the time of my evaluation in
3 2012 was undertaken.

4 Q. Okay. And before we get into the substance of
5 this evaluation, can you just tell Judge Hall what your
6 methodology is for this type of evaluation.

7 MR. EVANS: Your Honor, before he gets into that.
8 I don't think Dr. Corvin is qualified as an expert on
9 either ---

10 MR. GROSE: I'm sorry. I would move to qualify
11 Dr. Corvin as an expert in general and forensic
12 psychology.

13 MR. EVANS: No objection.

14 THE COURT: Psychology or psychiatry?

15 MR. GROSE: I'm sorry, psychiatry.

16 THE COURT: I find that he is qualified to
17 testify as an expert in the area of general and forensic
18 psychology -- psychiatry.

19 BY MR. GROSE:

20 Q. And then if you could pick up with your
21 methodology --

22 A. Sure.

23 Q. -- for this type of evaluation.

24 A. So the methodology, and I'll focus primarily on
25 the methodology involved in an MSO or mental state

1 offense evaluation.

2 (Dinging sound goes off in courtroom.)

3 I don't know what that was. Maybe it was me.

4 Anyway, so the methodology is really not that different
5 than the methodology undertaken when I see a new patient
6 in my office. So first and foremost, the work of a
7 forensic psychiatrist is the work of a clinical
8 psychiatrist.

9 So, I look at the individual. I assess the
10 individual. I complete a mental status examination of
11 the individual. I review relevant records, be that
12 mental health records, if questions about somewhat state
13 of mind retrospectively at the time of commission or the
14 offense is in question, then of course you want to
15 gather information regarding what happened at the time
16 of the offense. Other people's observations of the
17 defendant during that period of time.

18 But furthermore, it's sort of a psycho, social
19 and developmental history of that person, because that
20 will help inform who they were on the day in question.
21 And so you're looking at medical records, mental health
22 records, interviews that might exist regarding family
23 members and friends who knew the individual. And also,
24 the individual's examination itself.

25 And so, step one really is to ascertain not

1 whether they have a psychiatric illness, but whether
2 they had a psychiatric illness at the time of an alleged
3 offense. Because, really again, instead of -- my goal
4 is not to see where he is psychiatrically on the day
5 that I see him so that I can treat him, but rather to
6 see what his condition was on July 8, 2009, in this
7 case, so that I can help the trier of fact understand
8 who he was then, right?

9 And so, very different person, but the same set
10 of techniques are utilized. You look at discovery
11 materials to understand what happened. And incorporated
12 in that are all these other sources of information to
13 see how all those things come together at that time, at
14 the time in this case of the victim shooting.

15 Q. All right. And in doing a forensic evaluation of
16 this kind, is it common for you to consult or rely on
17 information from other experts?

18 A. It's almost universally the case. I mean, there
19 is situation specific, of course, but to answer your
20 question, it's certainly common.

21 Q. All right. What I'm gonna do is show you
22 Applicant's Exhibit Number 9, and this is previously in
23 evidence. And, if I could, direct your attention to
24 page 5 of that exhibit.

25 A. Is it numbered page 5.

1 Q. I don't believe it's numbered.

2 A. Oh, okay. Let me just count through there then.
3 September 21, 2012?

4 Q. Yes.

5 A. Got it.

6 Q. All right. And take a minute and look at that.

7 A. Yes.

8 Q. All right. And what do you recognize that to be?

9 A. It looks to be an e-mail from a Bill McGuire to a
10 bunch of people, including me at an old e-mail address,
11 asking me to -- saying that Kara recommended myself and
12 Dr. Calloway.

13 Q. Okay. And who is Kara?

14 A. Oh, Kara Richards is a mitigation expert that
15 I've worked with for decades in North Carolina.

16 Q. Okay. Have you ever met Bill McGuire?

17 A. No, sir.

18 Q. All right. Have you ever talked to him on the
19 phone?

20 A. No, sir.

21 Q. All right. One of the people that's copied on
22 that e-mail is somebody named Clay Allen.

23 A. Yes.

24 Q. Have you ever met Clay Allen?

25 A. No.

1 Q. Have you ever talked to Clay Allen on the
2 telephone?

3 A. I don't think so.

4 Q. Okay. All right. And what is that e-mail asking
5 you to do?

6 A. It doesn't say. It just basically -- it doesn't
7 really say. It just says: I have complete trust in
8 Kara Richards' judgment. Indicates that I would be
9 ideal for the case at bar. Please forward CV and rate
10 schedule.

11 Q. Okay. And did you do that?

12 A. I didn't, but my office at some point obviously
13 did forward my CV. And I don't have a rate schedule,
14 just call it a condition letter to that office because
15 they referenced by CV subsequently in terms of somebody
16 at the office in terms of scheduling my evaluation.

17 Q. And did you ultimately agree to work on Mr.
18 Blackwell's case?

19 A. With Kara I did, yes.

20 Q. Yes. I'm gonna hand you what's already in
21 evidence as Applicant's Exhibit Number 47.

22 A. Thank you.

23 Q. Take a second and review that.

24 A. Yes, sir, I've seen this. Yes.

25 Q. All right. And what is that?

1 A. This is a billing summary prepared by my office
2 in this matter -- well, in the State of South Carolina
3 it would be Rickey Blackwell. And it summarizes the
4 work undertaken by myself from November -- well, in
5 November of 2012.

6 Q. Okay. And does that indicate the work that you
7 did on the case in 2012?

8 A. Yes.

9 Q. All right. And what is the, the first, I guess,
10 four entries there?

11 A. So those first entries are mid-November.
12 November 9 through November 14th. And I spent a fairly
13 good number of hours reviewing a volume of records that
14 was sent to my office, I think, by FedEx at that time.

15 Q. Okay. And do you recall what records you had at
16 that?

17 A. I do have a record of that, yes.

18 Q. Okay. And could you tell the Court about that?

19 A. Yes. So, the records that were received in my
20 office were October 23, 2012. And very briefly, they,
21 they were comprised of a funding motion, some exhibits
22 to that funding motion, a -- some memos regarding the
23 defendant's school records testing, and mental health
24 records from Cletus and Heather Blackwell.

25 School records for Mark Allen Bryant. School

1 records regarding Caleb Bryant. Same for Mackenzie
2 Nicole Bryant. Records regarding Rogers Bridges, I
3 think. A memo from Kara Richards regarding Gene Bradley
4 White. Their records regarding Mr. Blackwell's
5 psychiatric admission in 1990.

6 His, the defendant's, records from Carolina
7 Center for Behavioral Health. The same for the
8 defendant. His primary care records from Westgate
9 Family Physicians. Records from -- let's see,
10 Spartanburg Regional Hospital. More from the Center for
11 Behavioral Health regarding the defendant, admission
12 there. DHEC vital records.

13 The defendant's divorce records. An Equifax
14 report. Henderson MD records. Some records for the
15 defendant from Palmetto Hematology Oncology clinic.
16 Spartanburg County school records for the defendant.
17 Spartanburg Regional Hospital Records in four or -- no,
18 excuse me, five volumes.

19 Additional Westgate Family records. Primary Care
20 records that is. Carolina Family physicians records for
21 Mildred Blackwell. Some genetic testing records for
22 Mackenzie Bryant. Patrick Harris Psychiatric Hospital
23 records from Donald Blackwell and Heather Blackwell
24 Bryant.

25 Another psychiatric admission, 1990. Additional

1 in-patient records for Rickey Blackwell. Additional
2 psychiatric records for Roger Bridges. Records from
3 Spartanburg area Mental Health Clinic and Spartanburg
4 School District for the defendant's family members, not
5 for the defendant. And that is, I believe the entirety
6 of those records.

7 Q. All right. I didn't hear anything in there about
8 the nature of the crime at that point?

9 A. So that is correct. So at this stage there was
10 one volume of records that were sent to me. Those were
11 the records. The entirety of my understanding of the
12 alleged offense conduct was personal communications with
13 the individuals involved with the case, I did
14 communicate with and an arrest warrant that was attached
15 as a funding motion exhibit. Yes, right.

16 Q. All right. And it looks like you had a lengthy
17 day on November 20th, 2012.

18 A. Yes, I did.

19 Q. All right. Can you tell the Court about what you
20 did that day?

21 A. So on that day, after going through some
22 logistical maneuvers to get this set up, I traveled from
23 my home in Raleigh to the Spartanburg County Detention
24 Center. And on that occasion I spent a number of hours
25 interviewing the defendant at that facility during a

1 contact visit. It was a bit over three hours.

2 Q. And what was the purpose of interviewing Mr.
3 Blackwell that day?

4 A. Well, it was the same purpose that I have for all
5 initial forensic evaluations. In capital matters, it's
6 almost universally the case that an individual is seen
7 on numerous occasions. And in some cases it has been
8 the case that if you add all the hours I spend with a
9 client together, it exceeds 24 hours. These are complex
10 matters. It can be difficult as a psychiatrist to
11 accurately ascertain where somebody's functioning
12 psychiatrically when I'm with them at that time. But to
13 do so in a retrospective analysis and they, you know,
14 catastrophically tragic and serious criminal matter can
15 be quite difficult.

16 And so in an initial forensic evaluation, the
17 main purpose is to get a good understanding where they
18 are then. So, you know, what is this person functioning
19 like cognitively? Are they psychotic? Are there going
20 to be questions regarding capacity? Is he gonna spit at
21 me? Is he gonna cuss me out? It happens a lot, you
22 know?

23 Do I need to have or can I even have a contact
24 visit with this individual? Is he going to cooperate?
25 Are there concerns regarding him fabricating or fainting

1 or exaggerating symptoms of psychiatric illness? And,
2 of course, we do and we did go through his recollection
3 of the alleged offense conduct.

4 His recollection of how he was functioning
5 leading up to that time. And so you start to develop an
6 understanding of his experience of that period of time
7 in his life, but it's not a complete understanding
8 because there's so many other things that have to be
9 done.

10 And it's part and parcel of forensic psychiatry
11 that we oftentimes will ask the same question on
12 separate different dates over and over again to make
13 sure we aren't missing things. But also it helps build
14 a better understanding of where they really were
15 functioning. If you ask the same question, even simple
16 questions to an individual a year apart, you might get a
17 little bit of a different answer or a more complete
18 answer. So there's a lot of that that's involved.

19 Q. All right. One of the things that you just
20 talked about was assessing the person's condition at
21 that time.

22 A. On the day that I saw him, yes.

23 Q. Yes, on the day that you saw him.

24 A. Yes.

25 Q. What was Rickey's mental condition on the day

1 that you saw him?

2 A. Well, I don't know that I see many people that
3 are in jails pending a capital prosecution that are
4 happy-go-lucky, but -- and I was already aware at that
5 time that he had a fairly substantial psychiatric
6 history marked by depression and anxiety. He was being
7 treated. He was cognitively intact. Very cooperative.

8 Q. What does cognitively intact mean?

9 A. Not confused.

10 Q. Okay.

11 A. Not delirious. Could understand why I was there.
12 Could give just reasonably organized answers -- I mean,
13 simple, but organized answers to questions about his
14 background that he provided.

15 Now, some of his questions were, I think I
16 already said, simple. They may not have carried with it
17 the great sophistication that would be available in
18 other records, but he was cooperative. He was, although
19 maybe not the most complete historian in the world,
20 given his cognitive limitations, but he was otherwise an
21 intact historian.

22 And, you know, while he's prone to depression and
23 anxiety, to say the least, he -- despite --
24 notwithstanding where he was, in his circumstances was
25 reasonably well treated.

1 Q. When you say reasonably well treated, do you mean
2 physically or medically?

3 A. Well, I would say psychiatrically.

4 Q. Psychiatrically?

5 A. Yes.

6 Q. Okay. All right. And I think you said he was
7 cooperative?

8 A. Yes.

9 Q. So he's not somebody that spit at you or anything
10 like that?

11 A. No. And it happens. No. In fact, my
12 impressions of him on that date and the date
13 subsequently, as he's very compliant, almost passive.
14 Comes across in a little bit of a -- I hate to keep
15 saying it, simplistic childlike manner in a way, kind of
16 naive. You know, and one of the things I always look at
17 is, well, okay, he's behaving well today, how's he been
18 doing? Well, based on the information I have, he's
19 always that way. Well, he's always been that way since
20 he entered custody. He is not a problematic person
21 there because he interacts with them apparently very
22 similarly to how he interacted with me, which is
23 respectful, pleasant, cooperative, polite. I don't know
24 how else to put it.

25 Q. All right. And did you detect any evidence of

1 lingering or failure to provide a good effort or
2 anything like that?

3 A. Nothing like that. And none has been noted
4 throughout the records I've seen, including diagnostic
5 testing with validity scales that are designed to assess
6 effort. And forward with someone with his intellectual
7 deficiencies would have a very difficult time feigning
8 effectively a psychiatric disorder, particularly over
9 any duration of time.

10 Q. Okay. As part of your interview, did you
11 interview Rickey about his life or social history?

12 A. I did.

13 Q. All right. And what can you tell the judge about
14 that portion of the interview?

15 A. So, in terms of his history -- well, first, I
16 will say that when you get a history from Mr. Blackwell,
17 it is very much in some respects like you're talking to
18 someone much younger in that his responses have a degree
19 of, I'll say, simplicity, lack of sort of complexity,
20 and a little bit of a concrete nature to them.

21 But what he did describe, and it's hard to sort
22 out what he told me versus what I've learned in records,
23 because he was raised -- his family history is replete
24 with substantial psychiatric illness, not limited to
25 numerous family members. And I think the Court may have

1 already heard, he was raised in an environment by people
2 who themselves, many of whom had either intellectual
3 disability or severe psychiatric illness or both.

4 And so one of the sort of data points as a
5 psychiatrist is this is an individual notwithstanding
6 his other psychiatric illness, which we may not have
7 heard much about in court yet that was -- although I
8 believe him to have significant intellectual disability
9 or intellectual limitations.

10 Many of his family members do as well, and so
11 that modifies the -- his upbringing. He's raised in an
12 environment by individuals, not all of whom, but many of
13 whom themselves suffer from significant psychiatric
14 illness. And it is a truism in psychiatry that
15 oftentimes fruit doesn't fall far from the tree,
16 particularly when we're talking about conditions that
17 are genetic.

18 Q. As part of your interview with Rickey, did you
19 ask him about any prior drug use?

20 A. I did.

21 Q. All right. And what can you tell the judge about
22 that?

23 A. So, Mr. Blackwell told me that he smoked, I think
24 he called it, a lot of marijuana while he was growing
25 up, starting around 18. And that he kept using that

1 most days, if not daily, until 1993. And he had been
2 smoking about two or three joints a day. He told me
3 that his wife did not like him smoking. That he used to
4 drink, but not heavy, and that he quit in 2008.

5 He said the last drink he had was the week before
6 his wife left him, because he was trying to get right
7 with the church. He did not consider himself to be an
8 alcoholic. He said that when he was much younger, about
9 age 18, he used to take, quote, pills; that he had acid
10 or LSD on one occasion; that he had tried powder cocaine
11 about three or four times when he was 18, but stopped
12 that because it was too expensive.

13 And then, once he had tried to shoot cocaine and
14 got a really bad headache, which is very ominous, and so
15 he never did that again. He said that he'd never used
16 heroin. Had tried speed or methamphetamine when he was
17 younger while he was driving a truck, I guess, which is
18 unfortunately not uncommon. And I think that's what he
19 told me during that 2012 interview.

20 Q. Okay. Were you here yesterday for Dr. Knight's
21 testimony?

22 A. Yes.

23 Q. All right. And did you hear some questions about
24 studies on the use of marijuana?

25 A. Yes, I did.

1 Q. And are you familiar with those studies?

2 A. Oh, very much so, yes.

3 Q. All right. And can you tell the Court about
4 those studies?

5 A. Sure. I can probably talk a couple of hours
6 about it. So I ran a chemical dependency program. So,
7 the studies on intellectual impact of chronic cannabis
8 use are interesting studies and they're ongoing. In
9 fact, there are a couple of large studies that are still
10 ongoing.

11 One of the -- but in terms of the studies that we
12 discussed -- I heard discussed yesterday, there's a
13 couple of take home points that I think are interesting.
14 I'm not a big fan of recreational cannabis legalization,
15 to be quite honest with you, because of these unanswered
16 questions, setting aside the issue of medicinal
17 marijuana legalization.

18 It is a fact that marijuana use in one way,
19 shape, form, or fashion is broadly becoming legal, and
20 so there's a need as a psychiatrist in our field to look
21 at what are the risks that we're encompassing here? So
22 there are already studies that have shown that chronic
23 many year cannabis use can have a measurable impact on
24 intellectual abilities, as tested, say, for example,
25 with the waste.

1 However, this is one of those things you've got
2 to really look close at the research. The first thing
3 that I'll tell you is that not all of those studies --
4 some studies of similar quality demonstrate otherwise.
5 And, for example, one of the paramount studies that was
6 mentioned yesterday, one of the really, I think, robust
7 studies ---

8 Q. Which one is that?

9 A. It's the New Zealand study. I can't remember the
10 primary author on it. But what it demonstrated was that
11 there was this decline, right? So they started looking
12 at these folks in adolescence. They tested them, and
13 then compared the guys that used marijuana, the
14 individuals that used marijuana for a long time from
15 those that didn't, and they saw this decline in
16 intelligence.

17 But the devil's in the details. What it also
18 showed is that the impact of the use of cannabis
19 occurred and was demonstrable only on the individuals --
20 primarily on the individuals who began using cannabis
21 during adolescence, right?

22 Q. And is that the developmental period?

23 A. That is very much the developmental period. For
24 those individuals who they had followed in their core
25 court that used during adulthood, and this, this was --

1 one of the authors did an interview later and it came up
2 in the interview. And what they said was that for
3 individuals who began a sustained use of cannabis after
4 the developmental period, no such decline was
5 observable. That makes sense. Use of any illicit
6 substance while your brain is still developing is
7 problematic, and THC actually has an effect on neuronal
8 migration during brain development. I won't get too ---

9 Q. A what?

10 A. Okay. So the substance can effect how a
11 developing brain continues to grow.

12 Q. Okay, I got you.

13 A. All right. And neurogenesis and the development
14 of the architecture of the brain actually continues up
15 until your early 20's, believe it or not. And then at
16 that point the ship turns around and it starts going
17 downhill, unfortunately for us, right?

18 And so, what it shows is that to the extent that
19 there is a decline, it seems to be centered on
20 individuals who use substances during the developmental
21 period that's scientifically feasible, given that it
22 would effect brain development. But from a forensic
23 standpoint, if we assume that that's a fact, and it's
24 not a settled fact, but if we were to assume that that
25 is, in fact, true, then what a forensic psychiatrist

1 would say is that, yes, use of cannabis during the
2 developmental period can lower IQ and can be a
3 contributing factor to intellectual disability, as
4 defined by the law and the DSM-MMAIDD.

5 So, now -- I'm gonna shut up about this in a
6 second, but there's one more thing that needs to be
7 said. There are also some twin studies, identical twin
8 studies that are still ongoing. Two big ones. One of
9 which seems to support, yeah, this does seem to affect
10 intellectual capacity. The other one does not, or has
11 not.

12 And what they're starting to realize is that it
13 may be -- there may be some confounding issues in terms
14 of correlation and causation. And so, for example,
15 people who use cannabis are frequently engaging in other
16 activities that are already known to potentially impact
17 intellectual capacity. And so, there -- it's a complex
18 issue, I guess is what I would say.

19 I don't think kids should be doing any of this
20 stuff, period, right? But the best of the research we
21 have right now is that if there is an impact on
22 intellectual capacity it's because of folks that are
23 using while they're still growing up.

24 Q. In the developmental period?

25 A. In the developmental period. That's where it

1 centers.

2 Q. I got ya. Did you, on November 20th of 2012, did
3 you interview Rickey about his crime?

4 A. I did.

5 Q. All right. And what can you tell the judge about
6 what Rickey told you about his crimes?

7 A. So, I'll try to sum up without going through the
8 play-by-play of this. But as a forensic psychiatrist,
9 what I was stricken by, not -- well, the first thing
10 that I was stricken by is that as he's describing what
11 happened on the day of the alleged offense, he was
12 fairly distraught.

13 He became tearful in describing it. His words
14 and his demeanor, what we will call his affect, were all
15 highly confirmatory that he is -- has on each of the
16 occasions. I see him mortified, horrified by what he
17 did.

18 In terms of my psychiatric understanding of how
19 he was functioning during that time leading up to this.
20 What became immediately observable was that he was
21 horrendously depressed. He was experiencing
22 considerable anxiety. We know that he had made an
23 attempt on his life not long before these events.

24 We know that he was seen by a primary care doctor
25 about a week or so before this and was described

1 similarly as psychiatrically far from baseline. And the
2 way he describes what actually happened on that day,
3 it's almost like he doesn't even remember it, right?

4 It was such an impulsive explosive outburst so
5 completely out of character for him that, while he
6 doesn't deny, of course, that he did this, he describes
7 it in a way this all -- we term it parrot associative,
8 which is he, for example, he says I heard the sound of
9 the gun firing, but I didn't know that it was, like, me.

10 And so he did it, he went through it. There was
11 purpose in, you know, in organization, if you want to
12 call it that and what he did and he doesn't deny that.

13 But what he describes is having been just
14 completely devastated by what his wife leaving him, more
15 so than one would expect if your wife of many years just
16 up and leaves you like this. And it would upset me, but
17 for reasons that you and I have discussed previously,
18 the impact for him was tremendously above and beyond
19 what would normally be experienced by an individual with
20 that kind of loss.

21 Q. All right. And you used a term in there. Was it
22 para ---

23 A. Para-dissociative, yes.

24 Q. All right. Can you explain what that term means?

25 A. Yeah. So dissociation, both clinically and

1 forensically or legally sort of describes a disconnect,
2 if you will, between conscious awareness and perception
3 in real time and one's conduct or behavior. So a fully
4 dissociative act would be someone who experiences --
5 well, parasomnias.

6 So I had a case some years back in North Carolina
7 with an individual with a weird sleeping illness who
8 would get up -- and it was sort of like sleepwalking
9 except on steroids, if you will. And so, they engage in
10 conduct and have no recall. None whatsoever. The part
11 of their brain that gets them moving, it's almost they
12 live out a dream and when they wake up it's not there.
13 That's full dissociation.

14 We all normally dissociate a little bit. So if
15 you drive in a familiar route for long distance, you may
16 go 20, 30 miles and really not have -- remember doing
17 that. You're sort of zoned out. You're somewhere else
18 and your body's just sort of doing what it does. All
19 right?

20 So, in some instances, though, there's a mix. So
21 in this case one of the things that can trigger a
22 dissociative episode is a sudden severe stressor on top
23 of a baseline of mental illness, right? And so what can
24 happen is that individuals have a distorted fractured
25 recall of an event, almost like they're trying to

1 remember a dream. And so in this case, he remembers the
2 events, but he doesn't remember some of the events. He
3 knows how many shots were fired because it was
4 determined in the investigation, but he doesn't remember
5 that many shots.

6 He remembers the sound of the shot, but doesn't
7 remember shooting -- well, he remembers shooting
8 himself, but he doesn't remember shooting the victim
9 specifically, right? And so there's this fracture, if
10 you will, of the recall. Things are not necessarily in
11 order. There are bits and pieces that aren't there.
12 And their recall of it is almost like they're just
13 looking at little snip-its, little photos from the
14 sequence of events. So there's a disconnect, if you
15 will, of the complete recall of the event.

16 Q. Okay. So despite this disconnect, did Rickey
17 accept responsibility to you for what he had done?

18 A. Yes. He still wishes he had died. He hoped --
19 he said that he hopes to be able to see the people that
20 he harmed, not just the victim, and apologize. He
21 hopes, I believe knows that the victim is in heaven.
22 And I may be calling this wrong, but I believe that dad
23 might have gotten killed in a crash or something along
24 those lines.

25 Q. And this is the child's father?

1 A. Child's father, yeah. I'm sorry. Child's father
2 had gotten killed in a crash and he told me that he
3 hopes that he's in heaven with his daughter. And so,
4 yeah, I'd say he does accept responsibility. He does.

5 Q. Is there anything else significant about your
6 November 20th interview that you want to share with
7 Judge Hall?

8 A. Well, looking through the notes, you know, what's
9 telling, I think -- and I'm just looking at this as a
10 psychiatrist, not as an officer investigating it, is
11 that his description of the period -- those weeks
12 leading up to this, it, it's almost like -- you know,
13 one of the things in forensic psychiatry you have to do
14 is not Monday morning quarterback, right? Because I
15 know what ended up happening.

16 But, you know, you start talking about what he's
17 doing and how he's doing. And he's spending time with
18 his family. And at some point you've got to start
19 thinking why? It would have been great had he been
20 readmitted to the psychiatric hospital, all right?

21 They were whipsawing his medicines back and
22 forth, including with mega doses of Xanax. He was
23 spending time with his pastor. He was spending time
24 with his wife's family and nothing -- there was nothing
25 getting better. And he was seen at Westgate Family

1 Medicine, I think, about a week before. I mean that was
2 pretty -- the description of that progress, though, is
3 not reassuring. He was, he was psychiatrically ill.
4 And I am going to Monday morning quarterback a little
5 bit. He was psychiatrically dangerous.

6 Now, not knowing what ultimately happened, I
7 would have probably surmised him at being in much
8 greater risk of killing himself. And I base that on his
9 known history. This is not an individual who has a long
10 history of predatory violent aggressive conduct, but he
11 certainly has a better than average history of trying to
12 end his own life.

13 Q. All right. After your interview on November
14 20th, what else did you do the rest of that month?

15 A. So, during -- after that -- so, I got -- I spoke
16 some with -- additionally with Kara Richards at some
17 point. And it looks like I had a telephone call with
18 Ginger Calloway at some point as well. And then it kind
19 of just got quiet, which is not unusual. That, that was
20 it.

21 Q. And why do you say that's not unusual?

22 A. Well, oftentimes in these cases, you know,
23 there's an initial flurry of activity. An initial set
24 of discovery or collateral records. Well, not in this
25 case discovery, but collateral records will come. And

1 that was fairly standard, right? At least in my
2 experience and the other state's I've worked in, it's
3 not at all unusual for the certified investigative
4 records take a very long time to become available, so
5 it's not unusual for that to occur.

6 I would not offer in a court of law an opinion on
7 mental state at the time of offense without having at
8 least some expectation of there being discovery
9 materials. So at any rate, to answer your question, it
10 is not unusual for there to be a very long period of
11 time, often in excess of a year, two years where I hear
12 nothing on a case. And eventually you start wondering
13 what's going on. And then probably about half of those
14 cases, if my office calls to see what's up, well, they
15 pled out a year ago. So it wasn't really -- it didn't
16 raise any red flags for me that I never heard anything
17 else for the longest time.

18 Q. Okay. And so, after November 11th until the time
19 of the trial in 2014, did you receive any other
20 information as far as records or collateral sources from
21 Mr. Blackwell's team?

22 A. You mean after 2014?

23 Q. No. No. After November 30th of '12 --

24 A. Oh, no.

25 Q. Between then and the trial in early 2014?

1 A. To my understanding, I had -- the only other
2 contact at all I had about this case, I think was on
3 February 5, 2014. It wasn't records, it was a call, I
4 think I've got that date right, from Kara
5 Richards-Baker.

6 Q. All right. If you -- do you still have Exhibit
7 Number 9 up there?

8 A. Yes.

9 Q. All right. If you could turn over to page 9, and
10 it's three from the end?

11 A. Three from the end of it? Okay. All righty.
12 I'm almost with you.

13 Q. All right.

14 A. Yes.

15 Q. Is that the same e-mail that's on the screen?

16 A. Yes.

17 Q. All right. Can you tell the Court what happened
18 on February 5th, 2014?

19 A. I don't need to look at the e-mail, I remember
20 this. So I was coming out of Charlotte in another case
21 and so I saw this, so I pulled over and I called Kara.
22 And I'll just put it the way I put it in my deposition.
23 I was really upset. I subsequently had to apologize to
24 Kara for cussing her out.

25 I was shocked. I pulled over on the side of the

1 interstate. Two years had gone -- well, roughly two
2 years had gone by. I hear nothing. I do not own
3 discovery. I have not shared opinions or had been asked
4 for specific questions by the trial counsel. I've not
5 been provided the standards utilized in your state for
6 assessing mental state at the time of offense and
7 applying it to applicable defenses.

8 I was completely floored. I was told that that
9 trial was a few weeks after that and oddly enough that
10 the attorney wanted me to talk about the effects of
11 Xanax. That question in and of itself floored me
12 because that's like if I'm an airplane crash
13 investigator and I'm investigating the cause of an
14 airplane crash, that's like my boss calling and asking
15 me to find out what they were serving for snacks that
16 day on the plane.

17 I'm not saying it's irrelevant, because Xanax is
18 relevant. It's a small, itty bitty piece of the pie.
19 And you can tell I'm getting worked up about this again.
20 I had no clue. I had no clue what was going on. I did
21 not own the discovery. I did not have contact with the
22 attorney. I did not know what the questions were. The
23 question he asked was largely incomplete. Not
24 irrelevant, but a small piece of the puzzle that I would
25 have known I would have been able because I have

1 received that information. At that time I wouldn't have
2 been able to answer the question. And plus I had two
3 trials calendared during his trial.

4 I sub -- I went back to my office. I printed the
5 e-mail. I wrote a note on it. And I never heard
6 another thing. I assumed that I was gonna hear from
7 counsel at that point and that I would tell him what I'm
8 telling you.

9 Q. Did you ever hear from them?

10 A. I did not.

11 Q. Based on what you had on February 5th, 2014, did
12 you have enough information to formulate your opinion?

13 A. Well, it would depend on what opinions he was
14 gonna ask me, but the answer to the question, if the
15 question were posed, the opinions I have today, no, not
16 even close. I could have talked about the affect of
17 Xanax on an individual, right, sure. So what?

18 But in terms of a mental state offense
19 evaluation, I didn't know what standards applied. I
20 didn't have the discovery. I didn't have -- I did not
21 have reports that had been discussed the last couple
22 days here regarding the intellectual assessment. I
23 didn't know the details that ABBAS interviews. I didn't
24 know any of it.

25 Q. Okay. And, obviously, you didn't testify at

1 Rickey's trial.

2 A. Didn't even know that it went to trial. I
3 assumed that -- I assumed that the guy -- that there
4 would be a continuance to regroup.

5 Q. All right. And after 2014 did Mr. Blackwell's
6 current team, legal team contact you?

7 A. The current legal team did contact me years
8 later, yes.

9 Q. Okay. And after we contacted you, have you
10 received more information?

11 A. Much more information, yes.

12 Q. All right. And can you tell the Court the
13 information that you received since we contacted you?

14 A. Yes, sir. So, I received the evaluation report
15 for Donna Schwartz-Watts. I think her name's different
16 now, but Donna -- Dr. Schwartz-Watts' evaluation. I
17 received the DMH forensic evaluation by Kim Harrison. I
18 received a DDSN, diagnostic evaluation from Gordon
19 Brown.

20 I've received Dr. Calloway's final work product
21 and report. I received transcripts or at least excerpts
22 of transcripts from the Atkins hearing that I did not
23 even -- I didn't know about in this matter. I received
24 some trial transcript or excerpts of the trial
25 transcripts relevant to an assessment of his

1 intellectual status or capacity.

2 And I received, if not the complete discovery or
3 investigative power in this matter, a lot of it. And a
4 lot of it to help me gather an understanding of the
5 events that occurred on that day, other than through the
6 eyes of the defendant.

7 I received a very thorough chart on the insanity
8 mitigation and mental health defense related statutes in
9 South Carolina, as compared to North Carolina. Then, I
10 received additional folders of the defendant's medical
11 and mental health records from the detention facility
12 that he's in. I received a social history prepared by
13 another expert in this matter. Received videos of
14 interviews with the defendant's parents, Mildred and
15 Cletus.

16 I received the affidavit or sworn statement of
17 Christopher Kenneth, I believe, on the genetic study
18 that was undertaken from the defendant. And an Atkins
19 report that are -- a report prepared by Dr. Knight, who
20 I was present for her testimony.

21 Q. Okay. You mentioned that you received a -- well,
22 before I get into that. Did you also have an
23 opportunity to interview Rickey?

24 A. I did.

25 Q. All right. And when was that?

1 A. I saw him on -- let's see here. I'll be right
2 with you. It looks like that interview was on December
3 23rd, 2019.

4 Q. Okay. And what, what did you interview Mr.
5 Blackwell about at that point?

6 A. So, several years had gone -- more than several
7 years had gone by, and so I really considered this a
8 re-initial evaluation. So we went through much of the
9 same history that I would in my office. I, again, went
10 through his recollection and response to a reaction to
11 the, the sequence of events that got him in prison.

12 But I also reviewed with him his own past mental
13 health history, his social history, medical history.
14 Psychiatric history. His substance abuse history. His
15 legal history. Very much --- and another mental status
16 examination at least targeted mental status examination
17 around his current functioning.

18 Q. What do you mean by targeted mental status
19 examination?

20 A. So, in these evaluations -- yeah, at this point
21 I'm fully aware of what his psychiatric history and
22 vulnerabilities are. And so, what we are looking at --
23 while I ask all kinds of questions, like are you
24 hallucinating, right? Those sorts of things. Really
25 what we're looking at is, well, how stable is your mood

1 and your anxiety condition right now, and how well are
2 you functioning in terms of orientation and cognition in
3 your current environment?

4 How are you getting along in the facility where
5 you are? He was in a -- they had moved him at that
6 point. And things of that nature. So that we're
7 looking to see how his known psychiatric illness, how
8 stable it is on that date in 2019 when I saw him?

9 Q. And what did you determine?

10 A. So therein again, you know, in his current
11 environment he's -- well, first of all, I think he's
12 behaviorally -- I wouldn't just say he's behaviorally
13 stable. He's sort of a -- I mean, I've worked in a
14 prison. He's a model inmate, right? That's not an
15 expert opinion, but I've worked in a prison. He causes
16 no trouble to anybody.

17 He -- his mood and anxiety conditions are treated
18 and reasonably stable. Although, it is worth noting
19 that when I drag him through the sequence of events in
20 question, it causes him considerable distress. Tears
21 up, got a shaky voice. Things of that nature.

22 Well, he says I cry. He says I cry all the time
23 about it. And I, just by chance I'm looking at it is
24 that we're talking about it and I put in the big
25 brackets he's crying. It's rough. I have to live with

1 this. And so, one of the -- he talks about how he just
2 can't believe that he did this. That he took that
3 young'n away. I'm paraphrasing, but are using his kind
4 of words. Away from her family. And so, he can't
5 explain it because he doesn't understand it himself.

6 Q. And is this the interview that he told you about
7 Brook's father having passed away?

8 A. I believe so, yes.

9 Q. Okay. Anything significant from that interview
10 that you want to add to what we just talked about?

11 A. Well, so there's -- yeah, the one thing I would
12 say. I mentioned earlier how it's important and useful
13 to sort of re-look at data over a period of time to see
14 what kind of consistency there is. And, you know, there
15 is. There was consistency in his mental status
16 examination. There's consistency in his understanding
17 of things.

18 That's not to say that he's a perfect historian
19 because he's absolutely not, right? He says things --
20 he has said things that are incorrect, incomplete. In
21 some instances I think it's just cause he doesn't
22 understand things correctly. But at no point have I
23 ever ascertained or gotten a hint of intentional efforts
24 to manipulate, fabricate things, feign, fake. And I
25 don't know of anybody else who has ever said that. So I

1 think that when he's presenting as, I mean, basically
2 crying and shaking and tremulous voice when he's
3 discussing what he did.

4 It's not that he just takes responsibility for
5 it. It truly is affecting him that way, cause it's just
6 not how he is. I mean, those of us in this courtroom
7 have all interacted with people who kill individuals.
8 And they may say they're sorry for it, but they'd do it
9 again. That is not my impressions psychiatrically of
10 this individual. This, this act that got him in here
11 was as abhorrent for an individual of his makeup as
12 anything.

13 And it's a scary thing, because it reminds me
14 that as a psychiatrist typically good people, people
15 that aren't sociopathic can, in a perfect storm of bad,
16 do things that are bad. It could be me.

17 Q. You mentioned consistency over time. Is that
18 consistency one of the ways that you can rule out
19 malingering or faking?

20 A. Yes. Especially on somebody who's already known
21 to have -- putting aside the argument about intellectual
22 disability, I think everybody who's examined this
23 individual mental health wise realizes that he's not
24 intellectually well situated. And so for individuals
25 that are intellectually not well situated, it becomes

1 more difficult for them to hold up a veneer of having an
2 illness that they don't have over a period of time.

3 Q. When you were talking about information that you
4 reviewed, did I hear you mention Dr. Harrison?

5 A. I did.

6 Q. All right. And what did you review regarding Dr.
7 Harrison?

8 A. So her report was, I think, dated May 6th, 2013.
9 And it was a -- I believe she offered an opinion that he
10 was competent. I believe that she gave him a diagnosis
11 of major depression, generalized anxiety disorder. And
12 offered an opinion that he was likely not intellectually
13 disabled.

14 Did note that during her assessment that he was
15 very emotional. And that's essentially -- yeah. She
16 sort of recapped his history of prior intellectual
17 assessment and things to that nature, but those were
18 opinions, at least from my notes.

19 Q. All right. And did that appear to be a
20 comprehensive forensic exam?

21 A. Reasonably so, yeah.

22 Q. Okay. Do you know whether or not she did an
23 intellectual disability assessment?

24 A. Well, I don't think that she did a pivot. I
25 wouldn't say that.

1 Q. Okay.

2 A. No. I mean she did not. Well, I don't know if
3 she -- if you're asking me if she ever did, I don't
4 know, but this wasn't one.

5 Q. No, in this case?

6 A. No. Huh-uh.

7 Q. Okay. Do you -- is Exhibit 33 up there?

8 A. Let me see. Yes, it is.

9 Q. Okay. So, turning your attention to Applicant's
10 Exhibit Number 33, is that a document that you've
11 reviewed before?

12 A. I have, yes.

13 Q. All right. And what is that?

14 A. So this is a psychological report, dated -- I
15 don't know what's the date, but it's prepared by Dr.
16 Calloway.

17 Q. Okay. And is that a report that you relied on to
18 some extent in your evaluation?

19 A. Well, not in 2012, I didn't, but I have now.

20 Q. No, I know. The current evaluation?

21 A. Yes. That's correct, yes.

22 Q. Okay. What can you tell us that's significant
23 about Dr. Calloway's report?

24 A. So, Dr. Calloway -- well, I've known Dr. Calloway
25 for many years, but Dr. Calloway's current testing of

1 him at that time, and this was in 2012, gave him a full
2 scale IQ of 63. His test of achievement that were
3 undertaken, formal test of academic achievement were
4 described as similar to those that while -- that were
5 observed while he was in school. In other words, in
6 terms of academic performance there wasn't an
7 improvement in his ability since departing school.

8 Test for effort and/or malingering were
9 reassuring. Not consistent with malingering and not
10 consistent with low effort. ABBAS scores were -- we've
11 talked about -- the Court's heard about ABBAS scores?
12 Okay. So scores demonstrated deficiencies in numerous,
13 certainly sufficient areas of adaptive functioning to be
14 consistent with a finding of intellectual disability and
15 she did, in fact, offer an opinion that he suffered from
16 intellectual disability of mild severity.

17 Q. Okay. And the IQ test that she administered --

18 A. Yes.

19 Q. -- you may have mentioned that, but did you find
20 any significance with that?

21 A. Well, so she did -- so currently, you know, we
22 don't really rely as much on those scores in assigning a
23 diagnosis of ID, as was once the case. We now focus
24 much more so on actual measurement of adaptive or
25 observations.

1 Interestingly, forensically, courts have kind of
2 gone that direction too, in the progeny of cases since
3 Atkins that there's been more of an emphasis on what's
4 their actual functioning as opposed to what these scores
5 are.

6 That being said, the WAIS scores that were
7 obtained were 63. These were in line with prior
8 psychological assessments of his inmate's intellectual
9 ability, that being a 68 when he was much younger. And
10 subsequently in 2013, another 68 that was administered
11 -- that was obtained on the test administered by Dr.
12 Brown in, I think, 2013. And so there's yet again,
13 consistency. He's consistently not doing well on real
14 IQ tests.

15 Q. Okay. And there were two real IQ tests for Dr.
16 Calloway's and Dr. Brown's reports?

17 A. That is correct.

18 Q. Okay. And the next is Exhibit -- Applicant's
19 Exhibit 34 up there?

20 A. Let's see. It is.

21 Q. Okay. And what is Applicant's Exhibit 34?

22 A. 34 is the report prepared by Gordon E. Brown,
23 Jr., PhD., on January 21, 2014.

24 Q. Okay. And if I could, could I get you to turn to
25 the last page of Dr. Brown's report?

1 A. Yes, sir.

2 Q. All right. Before we talk about, about this, you
3 mentioned the IQ test that Dr. Brown administered.

4 A. Yes.

5 Q. Was that the same test, the WAIS IV or the List
6 IV?

7 A. WAIS IV.

8 Q. Is that the same test that Dr. Calloway
9 administered?

10 A. I believe that to be the case, yes.

11 Q. All right. And Dr. Brown's score that he
12 obtained was a 68.

13 A. Yes.

14 Q. And you described that score as being consistent
15 with Dr. Calloway's?

16 A. Yes. I mean, they're within the sort of zone, if
17 you will, the five-point deviation. So, yes. They
18 are ---

19 Q. Going to the zone, is that the same standard
20 error of measurement?

21 A. Yes.

22 Q. All right. And, again, consistency over time is
23 one of the things that you look at to rule out
24 malingering?

25 A. Yes.

DIRECT EXAMINATION OF DR. CORVIN BY MR. GROSE

1 Q. And Dr. Calloway and Dr. Brown both administered
2 tests that are designed to look into malingering?

3 A. That is -- well, I know that -- yes, they both
4 did. I'm looking at my notes. They both did, yes.

5 Q. And they both obtained similar results?

6 A. Yes.

7 Q. Okay. All right. If you could look at that last
8 page of Dr. Brown's report. And I'm looking at that big
9 paragraph right there.

10 A. Yes, sir.

11 Q. Do you see where it says three significant risk
12 factors in Mr. Blackwell's case occurred in adulthood --

13 A. Uh-huh.

14 Q. -- rather than the developmental period?

15 A. Yes.

16 Q. Those included diagnosis and treatment of cancer,
17 head injury, and significant ---

18 MR. EVANS: Your Honor, I object. That's not his
19 expertise.

20 THE COURT: I'm sorry?

21 MR. EVANS: That's not his expertise.

22 MR. GROSE: It's not.

23 THE COURT: Well, he's asking if he's familiar
24 with Applicant's Exhibit 34, which is in evidence, which
25 is Dr. Brown's diagnostic evaluation. I overrule the

1 objection.

2 MR. GROSE: Thank you.

3 BY MR. GROSE:

4 Q. Do you see that part of the report?

5 A. I do.

6 Q. Okay. And, certainly, looking at that last part
7 of that sentence, significant depression and anxiety.
8 Is that within your area of expertise in general and
9 forensic psychiatry?

10 A. Yes, sir.

11 Q. Okay. And what can you say about that particular
12 risk factor that Dr. Brown identified?

13 A. Sure. So the existence of depression and
14 anxiety, it's correct to take note of, right? So, I'll
15 use depression as an example. There are some instances
16 in which individuals become so depressed that they look
17 like they have Alzheimer's disease. We term it pseudo
18 dementia. They call it pseudo dementia. They can look
19 so confused and disoriented that if you don't know
20 better you just think they have dementia, right? And
21 management of that depression cures that dementia.

22 And so, it is accurate to question, right,
23 whether an individual with depression or anxiety,
24 whether the depression and anxiety are severe enough
25 that they are impacting the testing. Now, I will say

1 that based on my own assessment and reading of these
2 records and the reports of the examiners, they also look
3 at that, right, when they do this? And, you know, on
4 the occasions I've seen him, and one of which was fairly
5 close to appear at a testing.

6 We know that he was being treated with medication
7 for his illness, these are mental health professionals.
8 And to the extent that -- you know, it would be my
9 opinion with a really strong degree of certainty that it
10 was -- he was being treated effectively to remit those
11 symptoms such that it did not negate the testing result.
12 In other words, let me put it more simply. His
13 depression and anxiety are real and they really didn't
14 impact that testing.

15 Q. All right. And so, in your review you were able
16 to -- your review of records, you were able to determine
17 how Rickey was being treated at the time of Dr.
18 Calloway's testing?

19 A. That is correct.

20 Q. All right. And it's your opinion that the
21 depression did not affect those test results?

22 A. That, that's my opinion, and I think it's hers as
23 well, yes.

24 Q. All right. And in the review of your records,
25 were you able to determine how Mr. Blackwell was being

1 treated for the depression at the time of Dr. Brown's
2 report on the test?

3 A. I know, but I don't -- I don't want to say it
4 wrong because there's been med changes over time. But I
5 do know that he was being treated and that his mental
6 status was unremarkable at that time.

7 Q. Okay.

8 A. I don't -- I'd have to go through the records to
9 see what the meds were at that time, because they
10 changed over time.

11 Q. But they were, they were consistent. Those two
12 exams were consistent?

13 A. Well, that's right. So, when I -- on the
14 occasions I've seen him, his -- I'm not -- again, I
15 don't want to suggest that he was happy, but he was
16 certainly not what I would call depressed or anxious to
17 a degree that -- well, that clouded his cognition,
18 right? His baseline cognition. And, you know, I have
19 to say examiners, they, they look for that too, right?

20 Q. All right. And, and Thorazine, was Mr. Blackwell
21 ever on Thorazine?

22 A. For a long time, yes.

23 Q. All right. And what type of dose of Thorazine
24 was he on?

25 A. Pretty low. Though, what I recall was he was

1 taking 25 milligrams in the morning and 50 in the
2 evening time, which is a pretty low dose of Thorazine,
3 which is an antipsychotic.

4 Q. And how high does the med go?

5 A. Oh, hundreds of milligrams. We give kids doses
6 higher than that.

7 Q. Okay. And would Thorazine at that level have any
8 effect on Rickey's ability to take an IQ test?

9 A. Yeah, I think it did. It probably improved it.
10 So in his case it's being used as sort of a calming
11 agent, and he's a very anxious individual. I mean, I
12 think he struggles to sort of get along and keep up with
13 everybody. Of course, it's anxiety provoking. And so,
14 you know, the question is would the Thorazine sedate him
15 such that it would negatively impact him? Well, if you
16 give him enough of it, it would. If you give him enough
17 -- if I give him enough Thorazine, then he won't be able
18 to stand up, right? So -- but, if used correctly, and I
19 think they were using it correctly, it actually would
20 arguably treat his underlying illness, which could
21 negatively impact testing in a way that you get a more
22 accurate picture of his functioning.

23 Q. All right. Sort of working backward in that
24 sentence, Dr. Brown identified head injury as a risk
25 factor?

1 A. Correct.

2 Q. All right. And as a general and forensic
3 psychiatrist, are you able to talk about head injuries?

4 A. Well, I do all the time. Yes, we work with folks
5 with head injuries, yes.

6 Q. All right. And what can you tell the Court with
7 regard to Rickey's adult head injury?

8 A. So, he, he was involved in a MVA, a four-wheeler
9 accident, I believe it was actually 2002. There's
10 strong clinical evidence from the record available that
11 he suffered a concussion on that date. He had
12 neuro-imaging. A non-contrasted head CT that was
13 unremarkable.

14 Q. What does unremarkable mean?

15 A. No abnormal findings. He -- that head injury,
16 the concussive impact, at least in terms of looking at
17 records, it would appear that he return to baseline,
18 which is the normal and anticipated course of a single
19 concussive injury. To be -- now, that's very different
20 for individuals to be completely -- complete in my
21 answer, if you have multiple concussive injuries like
22 that over a period of time, particularly if they're
23 close in nature, that's a whole different picture.

24 In those instances you can have a condition
25 called chronic traumatic encephalopathy, but that's

1 unrelated to this case. So a single concussive injury
2 typical mechanism of injury and a deceleration injury
3 and a four-wheel accident, you had a concussion, normal
4 imaging and it cleared.

5 Q. What do you mean by cleared?

6 A. He returned to baseline.

7 Q. Okay. And so, in your opinion to a reasonable
8 degree of certainty, did the head injury, adult head
9 injury affect Rickey's adult IQ scores?

10 A. No. You would not -- so, you would not expect,
11 and it is not -- it is not a normally encountered
12 clinical scenario that a concussive injury permanently
13 reduces an individual's intellectual capacity. It can
14 confuse you early on. I mean, my daughter got one
15 playing lacrosse in high school and she kept calling our
16 dog a cat for a few days, right? So it can certainly
17 happen in the short-term, but in the long-term the
18 normal anticipated course of recovery is recovery.

19 Now, a catastrophic brain injury is a totally
20 different thing. Avulsion injuries. Dolluble
21 (phonetic) anoxic events where people lose oxygen to
22 their brain for a long period. That's a totally
23 different thing, right? And but from a concussive
24 injury you anticipate that you're gonna get better.

25 Q. And have you seen any evidence that Rickey had a

1 traumatic brain injury?

2 A. Well, so there was neuropsychological -- yes. So
3 there was a neuropsychological assessment taken by --

4 Q. Dr. Herfkens?

5 A. -- Herfkens. Yeah. And I'm just looking for her
6 notes or my notes on her report. Well, from memory what
7 she -- she performed a neuropsychological assessment.
8 She found globally that her -- that the results obtained
9 were consistent with an intellectual disability. But
10 particularly noted that there were deficits in frontal
11 lobe functioning or executive functioning.

12 Now, individuals with intellectual disability can
13 have those deficits. Individuals without intellectual
14 disability can have those deficits. And so, it remains
15 potentially the case that above and beyond his baseline
16 intellectual deficits, that the -- that the blow to the
17 head impacted, if you will, no pun intended, his frontal
18 lobe or executive functioning, which would, among other
19 things, be expected to further impact his sort of
20 judgment, impulse control, things of those nature.

21 Q. But would that affect an IQ score?

22 A. No. No. And I think, you know, I'm looking --
23 I'm taking a step back from the trees to look at all of
24 this. No. The injury that is known would not be
25 expected to reduce scores on intellectual assessment.

1 Her assessment did not raise an index of suspicion for
2 that to have been the case. All things are possible.

3 There's a saying in medicine, when you hear a
4 hoof print, think horses, not zebras. The concussion
5 induced intellectual disability in a guy who's got a
6 genetic load for intellectual disability, a
7 documentation of impaired functioning consistent with
8 intellectual disability and the most severe penetration
9 of intellectual disability in any family I personally
10 examined, to think that the concussion did this is a
11 very weird albino zebra. It's just -- that's not my
12 opinion. It just didn't happen, in my opinion.

13 Q. Regarding Dr. Herfkens -- what is her background
14 area of expertise?

15 A. She's a neuropsychologist. I've known her for a
16 while too.

17 Q. Okay. And what was the date of her test?

18 A. Oh, that's a good question. Let's see if I can
19 find my notes real quick. Oh, here we go. January 16
20 -- well, the report was January 16, 2021. The
21 evaluation was January 31, 2020.

22 Q. Okay. Going back to Dr. Brown's report on page
23 12, the last sentence of that paragraph that we're
24 looking at, excessive use of alcohol can likewise have a
25 significant impact, although it's unclear whether that

1 would be a significant factor in Mr. Blackwell's case.

2 A. Right.

3 Q. Do you see that?

4 A. I do.

5 Q. Did I understand you earlier today to say that
6 you've run a treatment center before?

7 A. Yes.

8 Q. All right. And so in the field of general and
9 forensic psychiatry, were you able to talk about the
10 effects of alcohol on the brain?

11 A. Oh, absolutely.

12 Q. Okay. And in Mr. Blackwell's case, what do you
13 know about his use of alcohol?

14 A. So he gave me a history of his use of alcohol. I
15 think he did many years ago have one DUI. He told me
16 about his -- when he stopped drinking. And so I have --
17 I mean, I obviously wasn't with him during the time that
18 he was drinking, but I have a fairly reasonable
19 understanding that he was drinking, at least regularly,
20 on a reasonably sustained basis until he quit.

21 Q. Okay. And do you have an opinion as to whether
22 or not Mr. Blackwell's use of alcohol affected his IQ
23 score?

24 A. Sure. In a reasonably -- it would be my opinion
25 with a reasonable degree of medical certainty that it

1 did not affect, meaningfully affect his intellectual
2 capacity.

3 Now, let me go back and explain why. Use of
4 alcohol and severe alcoholics can, in fact, induce
5 dementia. It -- there's all kinds of very specific
6 neurological illnesses that can occur in such
7 conditions. I've seen them. One is encephalopathy,
8 outright dementia. It contributes to vascular or
9 multi-impart dementia. It can pickle your brain.

10 This is typically seen in individuals who are in
11 and out of rehab facilities, in and out of trouble with
12 law related to alcohol use. Chronic and severe alcohol,
13 medically related alcohol problems, such as pancreatitis
14 and things of that nature.

15 And so, while I don't think it was good for him
16 to drink, right? The fact of the matter is to the
17 extent I've developed an understanding of his alcohol
18 use history, it wouldn't even approach the degree that
19 would induce the deficits that were really present
20 before he started drinking anyway. So, you know, as a
21 doctor I've got to take a step back here and say, you
22 know, he was, he was intellectually slow well before he
23 ever tasted alcohol.

24 And so, you know, it's beta point. It's worth
25 observing. It's worth noting. I did, for that very

1 reason. I don't -- but it's not my opinion that that's
2 why.

3 Q. All right. And then I think you -- one of the
4 things that you mentioned was an individual who's in and
5 out of trouble with the law frequently.

6 A. Yes, sir.

7 Q. Is there evidence of that in Rickey's case?

8 A. No.

9 Q. Okay. As far as frequency?

10 A. No. All I know pre-existing is there was --
11 let's see, he might have got wrapped up in a possession
12 of marijuana case when he was a kid. The DUI I
13 mentioned. And I'm thinking there was a petit larceny
14 thing somewhere. That's it. That's all I know about.

15 Q. Okay. And was there any evidence -- well, of
16 course, there was evidence that Rickey was hospitalized
17 for mental illness.

18 A. Oh, yes.

19 Q. Is there any evidence that he was in and out of
20 treatment facilities for alcohol use?

21 A. No.

22 Q. Okay. I'm gonna go back to the paragraph that we
23 were talking about before. I think I overlooked asking
24 you about the diagnosis for treatment -- diagnosis and
25 treatment for cancer.

1 A. Oh, yes.

2 Q. And is that something that you can talk about as
3 a general and forensic psychiatrist?

4 A. Well, the psychological impact of it, yes.

5 Q. Okay. All right. And what do you know about
6 Rickey's cancer and the treatment?

7 A. So he had a Hodgkin's Lymphoma. It was diagnosed
8 in 1986 and was treated to remission. I heard somewhat
9 more details of the treatment yesterday, so I won't
10 recast that. But it's worth noting that his illness did
11 not -- was not observed to have CNS involvement or brain
12 involvement.

13 Q. What does that mean?

14 A. Oh, did not have metastatic or primary neoplastic
15 tissue observable in the brain.

16 MR. EVANS: Your Honor, I would object to that
17 portion. I think he's not an oncologist.

18 MR. GROSE: Well, he can testify about that,
19 having no relation to the ---

20 THE COURT: Go ahead.

21 MR. GROSE: Testify about that on the relation to
22 the brain as a general and forensic psychiatrist.

23 MR. EVANS: I think that goes to what kind of
24 diagnosis he had, not the function -- not function, but
25 the type of cancer, where the cancer was and that goes

1 beyond the scope of his expertise.

2 THE COURT: Well, he asked him the question would
3 he be able to talk about the effect of cancer in the
4 brain and the doctor answered that he could from a
5 psychiatry standpoint. I believe that's where we were.

6 MR. GROSE: Yes, sir.

7 THE COURT: So, I'll overrule the objection and
8 allow you to answer the question.

9 BY MR. GROSE:

10 Q. All right. I think you can pick back up with it.

11 A. Yes, sir. So, the oncology records, although not
12 definitive in this declaration statement, he didn't have
13 CNS or brain involvement.

14 Q. What does CNS mean?

15 A. Central Nervous System, I'm sorry.

16 Q. Okay.

17 A. Which is an unusual presentation. It can occur
18 in these conditions, but both -- it would be either
19 primary or secondary, is the way they look at it. And
20 it's not a common presentation for that tumor. But
21 above and beyond that, it's also worth noting in terms
22 of presence of neo -- or cancerous tissue that in,
23 again, 2002, so years after, right, he had a CT scan
24 which was normal. It was for a completely different
25 reason.

1 A completely different reason, but if you have a
2 mass occupying a lesion in your brain that has treated
3 effectively either by radiation therapy, chemotherapy,
4 or surgical debulking or removal, the brain doesn't grow
5 back in there. And so, if somebody's had a brain tumor
6 that has been treated to remission, even though the 2002
7 CT was for a different purpose, you almost always
8 uniformly are gonna see the term is ex vacuo dilatation,
9 but you'll see evidence, if you will, of their having
10 been a tumor there.

11 Above and beyond that, in individuals who do have
12 CNS or brain -- they actually call it brain lymphoma,
13 which I think is a weird term, but that's what it's
14 called. The symptoms that they typically have are focal
15 neurologic deficits, not an intellectual problem. They
16 are focal neurologic deficits. Often visual numbness,
17 because you can imagine that wherever that tumor's
18 pressing, that's where you're gonna get symptoms.

19 Well, intelligence is -- there's not an
20 intelligence lobe of the brain, it's everything, all
21 right? And so, typically, even if he did have brain
22 involvement, it's gonna present with binocular
23 blindness, paresthesias, headaches, fundoscopic changes
24 so you can go see your eye doctor and they can see the
25 disc in the back of your eye where the vasculature is

1 pushing out. He didn't -- there's nothing in the record
2 that suggests that.

3 Q. All right. And can you say to a reasonable
4 degree of certainty whether or not Rickey's cancer and
5 treatment of the cancer affected his IQ?

6 A. Yes. Well, I haven't talked about the treatment,
7 but it is my opinion with a reasonable degree of medical
8 certainty that while all things are possible in
9 medicine, that -- well, listen, his treatment, the
10 cancer that he had and the treatment for it did change
11 him psychiatrically, but I don't think it changed him
12 intellectually.

13 Q. Okay. Can you explain what you mean by that?

14 A. There's pretty strong evidence in a couple of
15 places where it was stated that Mr. Blackwell's
16 depression and anxiety kind of got a lot worse and
17 stayed a lot worse after diagnosis of that tumor, which
18 would have scared me too. So, so there is evidence that
19 it sort of got out of hand after that period in his life
20 when he had that cancer.

21 Q. The depression and anxiety?

22 A. The depression and anxiety, yes.

23 Q. But it would not have affected his IQ?

24 A. Not in my opinion, right.

25 Q. Okay. All right. With regards to the cancer

1 treatment, the head injury, the significant depression
2 and anxiety and the alcohol use, do you have an opinion
3 on whether or not those have an impact on his deficits
4 and adaptive functioning?

5 A. Let me put it -- let me answer it this way, and I
6 will answer this, if he had none of those things, the
7 intellectual disability would still be there. But with
8 those things, so say, for example, in July 2009, those
9 things -- so the intellectual disability is, is a static
10 thing. There's not a cure for that. Many of these
11 other things you just mentioned, the depression, the
12 anxiety, those are cyclical. They can be modified.
13 They can be remitted. They can return. And so, during
14 periods of time that his depression and anxiety are
15 worse, then you would, perhaps, see and have, in his
16 case, seen his adaptive functioning capacity in certain
17 areas be further impacted above and beyond his baseline
18 intellectual disability during periods of time that his
19 depression and anxiety were worse.

20 Stated similarly, in July of 2009 -- in July
21 2008, it would be my opinion that the defendant suffered
22 from intellectual disability and did possess these
23 deficits in adaptive functioning, consistent with a mild
24 form of intellectual disability.

25 In July 2009, that's still my opinion, but I

1 think his adaptive functioning was further worsened by
2 the fact that his other illnesses were out of control.

3 Q. Okay. And we'll come back to that a little bit
4 later. I want to show you Applicant's Exhibit Number
5 54.

6 A. Yes, sir.

7 Q. Have you seen that before?

8 A. Yes, sir, I have.

9 Q. And what is that?

10 A. This is the social history. My notes were
11 reviewed on a form of this report September 30, 2022,
12 and it was prepared -- yeah, same report. Prepared by
13 Arlene Bowers-Andrews, PhD.

14 Q. Okay. And did you have a consultation with Dr.
15 Andrews?

16 A. I did. I think by videoconference.

17 Q. Okay. And were you here for Dr. Andrews
18 testimony?

19 A. Part of it, I think.

20 Q. Okay. And is a social history report, such as
21 the one of Dr. Andrews, is something that you ordinarily
22 rely on as a general and forensic psychiatrist?

23 A. It is. Although, I'll tell you this is better
24 than most of them I get. Many of them I get. But, yes,
25 it is.

1 Q. Okay. And did you, in fact, rely on Dr. Andrews'
2 report in this case?

3 A. Oh, yes.

4 Q. And I want to focus on intellectual disability
5 right now. Was there things in Dr. Andrews report
6 regarding intellectual disability that you found
7 significant?

8 A. Sure. So, interestingly, I mean, maybe -- maybe
9 I think it's she prepared such a good report, because
10 the things that she thought were relevant and important
11 was right in line with what I had seen.

12 So, several things. One, is there's already the
13 descriptions in the social history of the defendant's
14 possessing -- long possessing impairments and adaptive
15 functioning. But, also, it's important to note how the
16 supports were put in place around him that enabled Mr.
17 Blackwell to nonetheless leave generally pro-social.
18 Odd for me to say that given where we are, but generally
19 pro social and reasonably productive existence.

20 But he would not be able to do that, nor has he
21 ever been able to do that, nor has he ever done that
22 absent sort of considerable benefactors. I like that
23 term. The primary ones being his wife and his family.

24 And so the other thing that's striking is the
25 family history of his sort of cohort family wise. It's

1 really quite striking the degree to which mental illness
2 and intellectual disability in particular sort of
3 penetrates his genetic background, but it also
4 penetrates his social and developmental history because
5 he's a fellow with an intellectual disability and
6 primary psychiatric illness raised in an environment
7 that is murky because of the presence of intellectual
8 disability and psychiatric pathology.

9 And so the social history really goes in great
10 detail about both of those things, like how -- what that
11 environment was like and how it was that Mr. Blackwell
12 was, nonetheless, able to work. You know, things of
13 that nature.

14 Q. And I think I understand your answer, but with
15 regard to Dr. Andrews' report --

16 A. Yes.

17 Q. Would there -- was there evidence in that
18 regarding significant deficits and adaptive function
19 during Rickey's developmental period?

20 A. Oh, sure. Sure.

21 Q. All right. And if you could summarize that?

22 A. So, from looking at my notes, so, you know, he --
23 so, I'm just gonna go through my notes and I think it'll
24 answer the question. So she described him as, again,
25 somebody who had been sort of socially responsible,

1 despite his low intelligence and psychological problems,
2 and all these psychosocial stressors that he had, and
3 she kind of summarized up his past history of
4 self-injury, but really no outwardly aggressive conduct
5 through the course of his life.

6 But then we start getting into sort of this idea
7 of how he lived as a child, his academic lack of
8 progress, if you will. The ways in which he sort of
9 lived a life that was sort of repetitive in nature. So
10 he would focus on things that were sort of simple,
11 didn't, didn't -- as a child, didn't require a lot of
12 abstract thinking. His relationships were sort of
13 limited in that way in that he's sort of passive and
14 withdrawn a little bit by nature, which you will often
15 see in such individuals because they -- because it's
16 hard for them to interact socially, right? It's harder
17 than it is for folks that function on a different level.

18 She described him as being very, very reliant and
19 dependent upon his wife, Angie, to sort of cover for the
20 deficits that he had had. The same thing during his
21 childhood and adolescence in terms of his relations with
22 his family. Were marked by this sort of tendency
23 towards -- his sort of whole world really kind of got
24 centered around them because that was the safe area, if
25 you will. So I know I'm probably not doing a good job

1 describing a really long report, but what she describes
2 is an individual who as a child and adolescent, sort of
3 found himself in a world that enabled him to walk around
4 with this sort of, we term it the veil of competence, if
5 you will. And I don't mean that in a legal term.

6 Q. Well, what do you mean by that term?

7 A. The veil of competence is that because people
8 don't like being uncomfortable and they don't generally
9 like being seen and proven to be stupid, pardon the
10 expression, but slow, that they will tend to, without
11 really intending to do so, surround themselves and
12 structure their lives in such a way that those deficits
13 are not encountered.

14 And so they center on social relationships that
15 are safe, manageable. They sede responsibility for
16 areas of their life to other individuals that might
17 otherwise cause them tremendous difficulty, like writing
18 checks, which is something I don't think Mr. Blackwell
19 ever did, and focusing more so on the things they are
20 able to learn and master and do to make them look like
21 they're doing okay. And so they -- the outward ---

22 Well, first of all, you can't tell by looking at
23 somebody whether they're at least mildly ID to start
24 with, but in these instances they kind of live a life
25 that enables them to hide behind it, right?

1 Q. And did you see evidence of that with Rickey?

2 A. I did. Although it's, I've gotta tell you, this
3 is such a long report, I don't know that I can come up
4 with great examples other than -- okay, well, as a truck
5 driver. He drove a truck. Well, okay, he did. But in
6 talking to him about driving a truck, a couple of things
7 stand out.

8 He could do it if he drove certain routes that he
9 knew, but he couldn't read a map. So if it involved
10 navigation, that would be something that somebody else
11 would have to do with him. And, you know, as evidence
12 of just this idea that how could, you know, people think
13 that don't understand these illnesses, how could
14 somebody have a CDL and a hazmat license and drive a
15 truck? Well, you know, Rickey's dad had an IQ in the
16 60's and drove a truck.

17 It's, when you get down in the dirt and work with
18 these folks, then you start realizing that people with
19 mild now, I'm talking about mild intellectual
20 disability, they can do things, but they've gotta do
21 them in a certain way or it all comes -- the veil comes
22 off. All right?

23 Q. All right. Now, I think you testified earlier
24 that you were here for Dr. Knight's testimony?

25 A. Yes.

1 Q. And I believe you also testified that you
2 received a copy of Dr. Knight's report?

3 A. Yes.

4 Q. All right. And that's Applicant's Exhibit 63.
5 Is that up there?

6 A. Let's see. I don't think it is, if I'm not
7 wrong. Let me look again.

8 Q. All right.

9 A. Did you get it?

10 Q. Yeah. I, I got it. It appears to be coming
11 apart.

12 A. Huh-oh. Yeah, it's kind of long.

13 Q. All right, thank you. We have found a clip to
14 try to keep this exhibit together.

15 A. Yes, sir.

16 Q. So at this time I'm handing you Exhibit 63 --

17 A. Yes, sir.

18 Q. -- which is Dr. Knight's report.

19 A. Right.

20 Q. As a general and forensic psychiatrist, do you
21 rely on reports of psychologists?

22 A. Oh, yes.

23 Q. Okay. And did you, in fact, rely on Dr. Knight's
24 report?

25 A. Yes.

1 Q. All right. And with regard to Dr. Knight's
2 report, what did you find significant?

3 A. So, here again, I think that most -- okay, first
4 of all, in terms of a diagnosis of intellectual
5 disability, especially for forensic purposes, I mean, I
6 can -- you know, if I'm working in the ER, and I have as
7 a physician before, and that somebody comes in and
8 they've got a visible deformity of their right forearm
9 from a bike crash, I know their arm's broken. I'm still
10 getting an x-ray.

11 So this -- but the same applies to intellectual
12 disability assessment, especially for forensic purposes.
13 So as a psychiatrist, you can certainly see part of the
14 picture of a presentation of an individual, the ID. But
15 to formally diagnose an individual, more is required
16 because of the definition of intellectual disability,
17 right? And so in terms ---

18 MR. EVANS: Your Honor, I would just renew our
19 objection regarding the use of that report. My previous
20 objection regarding the report being offered into
21 evidence. I would just like to renew my objection since
22 he's using the report as part of his testimony.

23 MR. GROSE: I think he's just renewing an
24 objection you've already overruled.

25 THE COURT: Yeah, I understand the objection and

1 I overrule the objection.

2 THE WITNESS: So, in these instances, there are
3 certain things that psychologists can do that I either
4 can't do or routinely don't do, and Dr. Knight did those
5 things. So Dr. Knight is one of the individuals who she
6 did not independently read through all of the record of
7 the intellectual testing. All right, it's there, we
8 have that.

9 But she did a very thorough, and I won't recount
10 her testimony, but she did a very thorough job going
11 through an assessment of both his historical and
12 adaptive functioning skills and deficits. And I was
13 really quite impressed looking at a pretty thorough
14 degree factors that could have been confounding in terms
15 of the source of those intellectual deficits.

16 She did a really good job, and I am relying on
17 her -- I mean, we all know what her opinion was, is that
18 he is intellectually deficient, disabled and was during
19 the developmental -- that that impairment existed during
20 his developmental period, and I certainly agree with
21 that.

22 BY MR. GROSE:

23 Q. Okay. I'm going to hand you what is already in
24 evidence as Applicant's Exhibit Number 61.

25 A. Yes, sir.

1 Q. Do you recognize that?

2 A. I do.

3 Q. And what is that?

4 A. This is the affidavit of Christopher Cunniff,
5 M.D., regarding the genetic assessment undertaken on the
6 defendant.

7 Q. All right. And as a general and forensic
8 psychiatrist, do you ever rely on reports, genetic
9 reports?

10 A. Oh, I've certainly done so in my forensic
11 practice. Less so, but increasing so in clinical
12 practice too, yes.

13 Q. Okay. And what do you find significant about Dr.
14 Cunniff's report?

15 A. So, his report, Dr. Cunniff undertook a genetic
16 assessment or study of the defendant in terms of looking
17 at potential genetic or familially inheritable
18 conditions that would ---

19 MR. EVANS: Your Honor, once again, I would
20 object. It's beyond the scope of his expertise.

21 THE COURT: Okay. I'll overrule the objection.

22 MR. GROSE: Thank you, Judge.

23 THE WITNESS: So, so he looked at things that are
24 known to be genetic flaws that can be ascertained on
25 genetic assessment, posing a risk of intellectual

1 disability. In the case of Mr. Blackwell's assessment,
2 he was discovered to have a deletion of one copy of the
3 cantor one gene. The cantor one gene is responsible for
4 production of a protein that is involved in normal brain
5 functioning and development. The absence of that one
6 gene impairs or reduces the availability of that protein
7 for normal brain function and development, placing him
8 at risk of the acquisition of an intellectual
9 disability. And the deletion of the cantor one gene has
10 been demonstrated in research to, in fact, be associated
11 with intellectual disability.

12 Q. And you're familiar with that research?

13 A. Oh, yes.

14 Q. Okay. Okay. And in addition to the genetic
15 casting, I think you made reference to evidence of
16 genetics in Rickey's family?

17 A. Oh, my goodness, yes. Yes, sir, I did.

18 Q. And I think he says that that was with family
19 that seemed to be most affected or something like that?

20 A. Families that I personally have been involved
21 with, I cannot think of one that has more thorough
22 penetration of intellectual disability in his
23 genetically -- genetic relatives in his bloodline.

24 MR. EVANS: I would object to that statement.

25 THE COURT: Yeah --

1 MR. EVANS: It goes beyond the scope ---

2 THE COURT: -- I sustain that objection.

3 BY MR. GROSE:

4 Q. What other ---

5 MR. EVANS: Your Honor, I move to strike that
6 statement also.

7 THE COURT: All right. I'd ask that you strike
8 the doctor's response to the last question.

9 BY MR. GROSE:

10 Q. All right. Are you aware of whether or not
11 there's other evidence of intellectual disability in
12 Rickey's family?

13 A. Yes, sir.

14 Q. And what are you aware of?

15 A. Let's see. I think -- I might have mentioned
16 some of this already. So I'll just focus on
17 intellectual disability. His father has been identified
18 as intellectually deficient. His brother had
19 intellectual incapacity or borderline intellectual
20 functioning. His two children have been identified as
21 having subnormal intellectual capacity. I think two of
22 his grandchildren have been identified as such. A
23 cousin has been identified as such. That might be --
24 I'm just looking at intellectual incapacity. Those may
25 be -- those are the ones that I took note of anyway.

1 Q. Okay. All right. And were you here for Dr.
2 Olley's testimony yesterday?

3 A. Yes.

4 Q. All right. And are you familiar with Dr. Olley?

5 A. Very much so.

6 Q. Okay. And Dr. Olley, as part of his testimony,
7 talked about the diagnostic criteria for intellectual
8 disability?

9 A. Yes.

10 Q. All right. And I assume as a psychiatrist you're
11 familiar with the DSM?

12 A. Yes.

13 Q. Okay. And with regard to intellectual
14 disability, what is the first prong for the diagnosis?

15 A. So from doing this from memory, the subnormal --
16 sub-average testing on intellectual so formal
17 standardized intellectual assessment.

18 Q. All right. And did you see evidence of that in
19 Rickey's case?

20 A. Oh, yes.

21 Q. And what was that?

22 A. So we know the two -- so, in 2012 full scale
23 assessment on the WAIS IV rendered a test score of 63.
24 In 2013, there was a 68 return on a -- from Dr. Brown's
25 testing. And there, there are other assessments that

1 have been done, but they're not utilized in this
2 fashion, but...

3 Q. All right. And did you see in Rickey's case
4 evidence of Prong 1 during the developmental period?

5 A. So, there -- so, you mean in terms of testing
6 results?

7 Q. Or just evidence of subaverage intelligence?

8 A. Oh, yeah, sure. Yes.

9 Q. And what was that?

10 A. So, first of all, there's the academic element of
11 that, if you will. Then there's also the assessments of
12 his adaptive functioning retrospectively looked at in
13 terms of the ABAS scores and just that plain interviews
14 with folks that knew him. Not all of which sort of
15 raised a red flag for intellectual disability, but many
16 of which did demonstrate sort of impairments or
17 compensatory measures being undertaken while he was a
18 kid and an adolescent, to manage, if you will, the
19 limitations that he has. So those were there.

20 Q. Okay. And, and of course, you have the genetic
21 testing.

22 A. Oh, and the genetic testing, right.

23 Q. All right. And with regard to Prong 2,
24 significantly -- significant deficits and adaptive
25 functioning --

1 A. Right.

2 Q. -- do you have an opinion whether or not Rickey
3 has -- meets that prong, that criteria?

4 A. So, I do. Now, that, that is formulated in large
5 part based on the research and evaluations of other
6 individuals, including Dr. Brown, Dr. Calloway, that
7 really did -- and Dr. Knight, that really did do a deep
8 dive in looking at those specific areas of functioning.
9 And that's really, in my view, all of it. Even the
10 individuals who -- one individual who said, well, he
11 might not have -- there's no evidence they had 418.
12 Even the individual's saying, well, he's got adaptive
13 function deficit now. So, in that term, yeah, I don't
14 know that anybody would say otherwise, that he doesn't
15 possess those deficits. So, I think that prong is met
16 as well.

17 Q. Okay. And do you see evidence of significant
18 deficits in adaptive functioning during the
19 developmental period?

20 A. So, I do. And, again, relying on the research
21 and the sort of, say, deep dive that these other
22 investigators have undertaken. Now, that evidence
23 wasn't so observable when I interviewed him in 2012 and
24 2019, because he wasn't in his developmental period
25 then. But if you look at the entirety of what's

1 available, yeah, I do think that that prong is also met.

2 Q. Okay. Do you have an opinion within a reasonable
3 degree of certainty in your field as to whether or not
4 Rickey Blackwell is a person with an intellectual
5 disability?

6 A. I do.

7 Q. And what is that opinion?

8 A. Based on the information available to me, I
9 believe that it, with a reasonable degree of medical
10 certainty, that Mr. Blackwell meets all diagnostic
11 criteria for, according to DSM criteria for an
12 intellectual disability T disorder of mild severity.

13 MR. EVANS: Your Honor, I object to that
14 assessment because I think that he's not a psychologist.
15 I don't know if that's a ---

16 THE COURT: He's a psychiatrist. He's indicated
17 he's testified as an expert many times in these types of
18 cases and given his opinion on that issue, so I'm gonna
19 overrule the objection.

20 MR. EVANS: Yeah. But, I mean, I don't know if
21 he -- he couldn't do the testing. He just doesn't do
22 testing, and he didn't write his own report regarding
23 this matter, so I will still object to his assessment.

24 THE COURT: Mr. Grose, do you wish to be heard?

25 MR. GROSE: No, sir.

1 THE COURT: All right. I overrule the objection.

2 MR. EVANS: Thank you, Your Honor.

3 BY MR. GROSE:

4 Q. The DSM, what does the DSM stand for?

5 A. Diagnostic and Statistical Manual. The complete
6 title is of Mental Disorders of the American Psychiatric
7 Association.

8 Q. American Psychiatric Association?

9 A. Yes, sir.

10 Q. And what is the American Psychiatric Association?

11 A. It is the national organization that represents,
12 if you will, the field of psychiatry in the United
13 States.

14 Q. All right. And the word diagnostic in the title
15 of the DSM --

16 A. Yes.

17 Q. -- what is that?

18 A. So the American Psychiatric -- this is the DSM.
19 And the APA spearheads the work of various committees
20 and sub groups that is always ongoing, it's probably
21 ongoing right now, towards developing a set of criteria,
22 a common language by which we define various psychiatric
23 disorders, including intellectual disability. It is the
24 standard diagnostic nomenclature utilized by
25 psychologists/psychiatrists/therapists in the United

1 States.

2 The diagnostic criteria are always evolving. We
3 are on the fifth full edition of that manual now. The
4 purpose, if you will, is so that when mental health
5 examiners are talking about patients with each other,
6 that we're using language that each other would know
7 we're talking about the same thing. These diagnoses are
8 also organized in a way to make sense in terms of how we
9 understand the cause, the epidemiology, the treatment
10 even of such conditions.

11 Q. And, Dr. Corvin, I don't want to insult your
12 intelligence, but can you explain what the role of the
13 DSM is in general and forensic psychiatry?

14 A. Sure. So it is a -- it is the mechanism by which
15 when we finish evaluating a patient, we go back to this
16 book and we use these criteria, not as a cookbook
17 specifically. Not as in cookbook fashion, but to
18 organize the way we see an individual's symptoms, right?
19 And so that enables us -- that's the -- that's the code,
20 if you will, that we use to assign a diagnosis based on
21 the mental status findings that we see in an evaluation.

22 Q. Okay. And, of course, you're using today the
23 diagnostic criteria of intellectual disability in the
24 DSM?

25 A. That is correct.

1 Q. All right. Now, and I think you mentioned this,
2 that that's evolving. The DSM has been through a number
3 of editions.

4 A. It is.

5 Q. All right. And with regard to those editions,
6 does it make any difference to your opinion which
7 edition of the DSM was in place in 2014?

8 A. I haven't thought about that. No, it wouldn't
9 make any difference, no.

10 Q. And why not?

11 A. Well, so while the, while the definition is
12 solely focusing on ID, there has been some change in
13 terms of how we arrive at different levels of
14 intellectual disability. We don't call it mental
15 retardation anymore. But where the rubber meets the
16 road, it's the same condition that we're talking about.
17 I think it is a good move to de-emphasize testing to the
18 extent we have been able to do that and look at the
19 phenomenology of it, the symptoms of it.

20 But regardless of that, and I'm thinking back in
21 terms of my own -- the DSMs I've been through. I don't
22 think that it would make any difference in terms of his
23 ID diagnosis. Also, I don't think it would make a
24 difference in terms of his other psychiatric diagnosis.

25 MR. GROSE: Your Honor, I'm getting ready to

1 shift gears. This would probably be a good place to
2 take a break, if you're so inclined.

3 Q. All right. Take a ten-minute break.

4 (Recess was had from 12:15 p.m. - 12:25 p.m.)

5 THE COURT: All right. Dr. Corvin, if you'll
6 take the stand.

7 THE WITNESS: Yes, sir.

8 COURT REPORTER: If I could get you to slow down
9 just a little bit.

10 THE WITNESS: I'll try. I'm impressed you
11 haven't already said that.

12 THE COURT: All right. Mr. Grose?

13 BY MR. GROSE:

14 Q. Dr. Corvin, as a general and forensic
15 psychiatrist, are you familiar with the term executive
16 functioning?

17 A. Yes.

18 Q. All right. And what is executive functioning?

19 A. Executive functioning sort of surmises a group of
20 functions that are understood to center primarily on
21 frontal lobe functioning of the brain. It encompasses
22 activities such as impulse control, judgement, stimulus
23 discrimination.

24 In many respects, intact executive functioning or
25 sort of some of the themes that set normal human

1 behavior apart from more primitive, if you will,
2 behavior responses that other animal species exhibit.
3 It is in some respects the functioning neurologically
4 that enables us to curb these more primitive responses
5 to contemplate, to discriminate again the sort of pros
6 and cons, if you will, to attend to that that is
7 important in the environment and ignore or discount
8 stimuli in the environment that are less relevant, if
9 you will. And so it's -- in some respects it's almost
10 difficult to describe what executive functioning is, but
11 I'll stop there.

12 Q. Okay. And can you give some examples of how
13 somebody uses executive functioning in their day-to-day
14 lives?

15 A. Sure. It becomes important and sort of chaotic
16 in confusing situations where sort of response, sort of
17 inhibition might be required. So, the impulse control
18 issue. So, intact frontal lobe or executive functioning
19 might -- an example might be in a situation where
20 somebody suddenly cuts you off and you react to that.
21 And on a primitive level there might be an impulse, if
22 you will, to react in a way that is not productive and
23 is inappropriate, if not even illegal. And intact
24 frontal lobe functioning, the impulse control aspect of
25 that allows us or gives us the ability to inhibit that

1 response to sort of act with the benefit of awareness of
2 the consequences of that to pull back and to inhibit
3 that impulsive act, to stop that.

4 Q. What can you say about an individual who meets
5 the criteria of a person with an intellectual disability
6 with regard to their executive functioning?

7 A. Well, individuals with intellectual disability,
8 and this is gonna vary, depending on the severity of the
9 illness, are certainly a tremendous risk for
10 encountering difficulties in these areas. Now, that's
11 not to say that impaired executive functioning defines
12 intellectual disability. It does not. But if you think
13 in terms of an individual with intellectual disability,
14 they may, perhaps from a different sort of etiology
15 experience difficulties with impulse control, stimulus
16 discrimination, appropriate responses to stressful
17 circumstances, because in a different fashion they
18 simply can't process that chaotic confusing data stream
19 as quickly. They may misinterpret a chaotic, confusing
20 data stream more -- they may be more prone to
21 misinterpret that because they just simply don't
22 understand it. And so they can have behavioral problems
23 that are essentially indistinguishable, if you will,
24 from individuals with executive functioning deficits.
25 But, be that as it may, psychiatrists see individuals

1 with frontal lobe impairment of executive functioning
2 impairments all the time that are otherwise
3 intellectually quite intact.

4 Q. All right. Now, earlier this morning I think you
5 testified that you relied on information from people
6 like Dr. Herfkens as part of your profession.

7 A. Yes.

8 Q. And I think you also testified that you reviewed
9 Dr. Herfkens' report?

10 A. Yes.

11 Q. Was there any evidence from the testing that Dr.
12 Herfkens did with regard to Rickey's frontal lobe?

13 A. Yes. So, there were two primary sort of
14 takeaways from that report from me. One was that the
15 results for assessment were supportive of a, sort of a
16 global baseline intellectual disability. But separate
17 and apart from that, she observed that he had executive
18 functioning deficits. I'm doing that from memory, but
19 those were sort of my takeaways from that.

20 Q. Okay. And what would be the cause of those
21 executive functioning deficits?

22 A. So, you know, based on her report, her notes, you
23 can't say. They're there, but we can't say why they're
24 there, right? So there's two potential explanations
25 that are sort of high on the differential. One would be

1 that they are a distinct element that for whatever
2 reason is more prominently observable as part of his --
3 or was observable on testing as a result of his
4 intellectual disability.

5 Secondly, it is possible that, for example, the
6 concussive injury that he experienced in 2002 did induce
7 a frontal lobe impact injury that it wasn't demonstrable
8 on imaging, but was nonetheless there. But, you know,
9 from the testing alone, it tells you what's there. It
10 doesn't tell you why it's there.

11 Q. Okay. So independent of Rickey's intellectual
12 disability, is it fair to say that he has impairment of
13 his frontal lobe that would affect executive
14 functioning?

15 A. That appears to be the case, yes.

16 Q. All right. So how would that impairment of the
17 frontal lobe interact with Rickey's intellectual
18 disability?

19 A. So, think of -- the way I explain this when I'm
20 talking to patients and teaching about this would be
21 that we have a cup of water that -- and that cup is our
22 ability to sort of keep up with and respond
23 appropriately to what's happening.

24 Now, individuals with intellectual disability,
25 their cup is gonna have some problems, right? And

1 individuals during -- with intellectual disability
2 during high and stressful situations, that's gonna
3 exacerbate that problem. And to the extent that Mr.
4 Blackwell has a particularly observable frontal lobe
5 deficit, that's gonna add further to that. And so,
6 sometimes I will offhand, will remark that the frontal
7 lobe of the brain is the forensic load of the brain
8 because that's the control.

9 And so, to the extent that those two things
10 already impact his control during periods of distress,
11 the extent to which his frontal lobes are not
12 functioning normally would make it more likely that his
13 actions are going to get ahead of his thinking.

14 By that I mean that he will not -- that in the
15 midst of a very chaotic, confusing, distressing hard to
16 understand situation, that he will then engage in
17 conduct absent thinking it through with the benefit of
18 what I would call deliberative contemplation, right?
19 That his cup runneth over, right? And that the ability
20 of the breaks or the brain, it got wiped out.

21 Q. Earlier this morning you testified about Rickey's
22 history of major depression.

23 A. Yes.

24 Q. All right. And was there anything in Dr.
25 Andrews' report that we talked about earlier that you

1 felt significant with regard to Rickey's major
2 depression?

3 A. So, in terms of -- well, so what we know
4 historically in terms of his depressive illness is that
5 he suffers from recurrent major depression. It is an
6 illness that is cyclical and tends to be recurring. We
7 know that history, he has been hospitalized due to
8 dangerous conduct stemming from his major depressive
9 illness, including shooting a gun inside his house,
10 overdosing on medicine. And then we also know that on
11 July 8th of 2009, he shot himself.

12 The -- it is also well understood, to me at
13 least, that on -- during the time in question, his
14 illness was quite acutely exacerbated. He was described
15 by numerous sources as just -- I'll just describe it,
16 coming out of his skin he was so depressed and anxious
17 and upset and distraught and not doing well after his
18 wife left him.

19 Q. Okay. And we're gonna come back to that in a
20 second. I want to show you what's already in evidence
21 as Applicant's Exhibit Number 42.

22 A. Thank you.

23 Q. Are you familiar with that?

24 A. Let's see here. Oh, right. Yes, I am. This is
25 the report -- it's been a little while since I've looked

1 at it. This is the report of March 5, 2014, prepared by
2 Donna Schwartz-Watts, M.D.

3 Q. All right. And, of course, she diagnosed Rickey
4 with major depression as well.

5 A. That's correct.

6 Q. All right. Other than the intellectual
7 disability and major depression, are there any other
8 diagnoses that you would assign to Rickey?

9 A. So my understanding of him from a diagnostic
10 perspective would be major depressive disorder
11 recurrent, generalized anxiety disorder. Intellectual
12 disability of mild severity.

13 COURT REPORTER: I'm sorry, could you repeat
14 that?

15 THE WITNESS: Right. Intellectual disability of
16 mild severity and remote history of cannabis and alcohol
17 abuse or use disorders and separately dependent traits.
18 Actually she gave him that too, dependent personality
19 traits.

20 BY MR. GROSE:

21 Q. All right. And so, are those your diagnoses?

22 A. They're very -- those were my diagnoses and
23 they're really close to hers.

24 Q. So you all are more or less in agreement?

25 A. Pretty close.

1 Q. All right.

2 A. She said borderline intellectual functioning
3 versus MR, but they're otherwise extremely close.

4 Q. Can you explain what major depression is?

5 A. Sure. So major depression is not being sad or
6 upset or down. Major depression is a primary mood
7 disorder. It is defined by a number of criteria
8 outlined and that DSM where we're talking about, it
9 causes clinically relevant distress or dysfunction. It
10 can be associated with dangerous conduct, including
11 suicide attempts and completed suicides.

12 It is amenable to treatment. In the vast
13 majority of cases it can be effectively managed, but
14 nonetheless can and in most instances pose a risk of
15 recurrence of illness. There are familial or genetic
16 aspects of the illness that are not completely
17 understood. And the illness can be associated with
18 psychotic symptoms over a brief period of time, as well
19 as pseudodementia that we mentioned earlier.

20 Q. Okay. And can major depression have an impact on
21 executive functioning?

22 A. Oh, yes.

23 Q. And can you explain that?

24 A. So, for the same reason we don't want to
25 necessarily test somebody psychologically, they're

1 innate in electrical capacity during a period of severe
2 unmanageable depression. You know, when I mention
3 clinically relevant distress or dysfunction stemming
4 from depression, you know, that's part and parcel of the
5 fact that your judgment can become impaired. Your
6 perceptions are impaired.

7 Your ability to make good judgments and decisions
8 and controlled impulses can be impaired. The most
9 extreme case being that an individual's judgment may
10 lead them to kill themselves during a period of major
11 depression, which is by most individuals and
12 inappropriate -- most everybody, I think, would
13 stipulate that's not a good thing. And so it does
14 impact negatively behavior in a variety of ways.

15 Q. Okay. And I think you already testified earlier
16 that you've had, in addition to talking to Rickey about
17 the crime, you've had the opportunity now to review
18 significant parts of the discovery?

19 A. I have.

20 Q. As well as the report of Dr. Andrews about the
21 circumstances leading up to the crime?

22 A. That's correct.

23 Q. All right. And based on your interviews and the
24 review of records in this case, are you able to offer an
25 opinion about Rickey's state of mind leading up to and

1 at the time of the crime?

2 A. I am now.

3 Q. Okay. When you say now, that's because of the
4 material that the current defense team provided?

5 A. That is correct.

6 Q. All right. And what is that opinion, Dr. Corvin?

7 A. Okay. I'll keep it brief and I'll put it in two
8 terms. First clinically. During the period of time
9 leading up to, and in particular the moments
10 encompassing the shooting death of the victim in this
11 matter in 2009, Mr. Blackwell suffered from several
12 discrete illnesses. Each impacted each other in ways
13 that are critical to understand.

14 First, the Court has heard a tremendous amount
15 about the impact of individual -- intellectual
16 developmental disorder. That's a static finding. He
17 had that. He had it in 2009, he's got it today.

18 Super imposed on that is the fact that during the
19 week leading up to this, Mr. Blackwell's prior, prior
20 established mood and anxiety disorders were -- I won't
21 use the clinical term -- completely out of control.
22 He'd been hospitalized for an overdose within a short
23 period of time. He's described by numerous individuals
24 as crying constantly, distraught, obsessed thinking
25 about his wife, engaging in poor sort of decisions that

1 really -- that people were trying to say move on, quit
2 giving her money, but he couldn't, he was stuck.

3 His wife was the benefactor. She was the primary
4 support in his life and the loss of her, in addition to
5 losing somebody that he'd been with for 27 years, that
6 not only you'd see he loved her; that they were bonded
7 to each other. And I gotta say, that's a pretty good
8 definition of what it was.

9 He was intimately dependent upon her. He loved
10 her, right? But also, even though he wouldn't put it
11 this way necessarily, was highly dependent on her for
12 his day-to-day living. I mean, we all feel like that I
13 -- okay, I'll speak first. Feel like I depend on -- I
14 need my wife and I do. Mr. Blackwell's need for his
15 wife was very different than most couples in that not in
16 addition to their love inherent in his relationship with
17 her, he needed her just to get by day-to-day.

18 And so, not surprisingly, there's considerable, I
19 would say, conclusive evidence that he cratered. I
20 mean, I guess it's not a very technical term but he
21 cratered. And so all these people that have been talked
22 to since that time describe him as being cratered. And
23 so now we have those two things sort of feeding into
24 each other.

25 And then the date of this offense comes around,

1 and he's described and the Court has heard before and
2 everybody knows what happened, except for maybe him. I
3 mean, he can't today, even as of when I last saw him,
4 doesn't understand why he did this, right? How he could
5 have done this. Doesn't question that he did it, even
6 though he doesn't entirely remember doing so.

7 So from a clinical standpoint you would say I
8 would be of -- am of the opinion that the combined
9 influence of these conditions, the frontal lobe
10 deficits, the intellectual deficits, the major
11 depression and the anxiety, the sudden catastrophic
12 stressor that he was experiencing with his wife, certain
13 elements of what happened during those weeks and the
14 experiences that he had, which I won't go into, all
15 tremendously impaired his judgment, his impulse control,
16 his ability to act with the benefit of what I mentioned
17 before, deliberative contemplation. He does not
18 describe the event as having occurred in a way that
19 encompassed any degree of deliberative contemplation
20 that I would view as relevant or meaningful as a
21 forensic psychiatrist.

22 So forensically, what does that all mean? Well,
23 then we go to the definitions that your state uses. And
24 did it mean that he lacked the ability to appreciate the
25 wrongfulness of his conduct? No.

1 Q. Okay. And that would be insanity or --

2 A. Insanity --

3 Q. -- or one of the mitigating factors?

4 A. Right. Right. Now, it's standard in terms of
5 statutory and non-statutory mitigating factors. I'm not
6 a lawyer and I'll leave that to you all and there's no
7 jury here, but of course he suffered from -- there was a
8 mental illness at the time of this offense. I am
9 unaware of anybody would suggest other -- I haven't --
10 I'm not seeing in the records anybody suggesting
11 otherwise.

12 Now, then we get to a separate discrete, I'll say
13 it from the defense or defensive statutorily define
14 defense in South Carolina would be this GBMI or guilty
15 but mentally ill. And I'm doing this from memory, even
16 though I have it here, is that was there a mental
17 illness that impaired his capacity to conform his
18 conduct to the requirements of law?

19 A. Yeah. Of course. I mean, this is all opinion
20 testimony, but my goodness yes. Tremendously so. And
21 not just the intellectual disability, and we hadn't even
22 talked about the medicine mess, but -- but, sure. And
23 what's important forensically is the sort of perfect
24 storm of them all coming to a head at the same time.

25 Q. Okay. Let me ask you this. Did you find

1 evidence that Rickey's capacity to conform his conduct
2 to the requirement of law was substantially impaired at
3 the time of the crime?

4 MR. EVANS: Your Honor, I'll object to leading
5 questions.

6 MR. GROSE: That's not a leading question.

7 MR. EVANS: Yes, it is.

8 MR. GROSE: That's a quote from the statute and
9 he can answer ---

10 THE COURT: All right. I'll ---

11 MR. EVANS: You asked the question suggesting the
12 answer.

13 THE COURT: All right. I overrule the objection.
14 You can answer.

15 THE WITNESS: So, yes, that's what I was trying
16 to do from memory. So, yes, there's sort of two sides
17 of that coin, illness and the impact of that illness.
18 The illness was there and that was the impact, in my
19 opinion, the impact of the illness, illnesses.

20 Q. You mentioned the medications.

21 A. Right.

22 Q. And you found medications that Rickey was on at
23 the time of the offense significant?

24 A. I did.

25 Q. Why?

1 A. Well, okay. So, so he was on Xanax, which is a
2 benzodiazapine sedative and a big dose of it, four
3 milligrams a day. He overdosed on it, not long before
4 this period of time. And they, I think I'm quoting the
5 psychiatrist there, obviously discontinued it because he
6 overdosed on it.

7 They just, they gave him -- they put on a
8 different treatment. He left the hospital. He did not
9 improve. He was seen twice, I think, by his physician
10 at Westgate Family Physicians in the weeks before this
11 and was not doing well. I mean, the notes describe him
12 as such. And the doctor decided to resume the Xanax,
13 one milligram four times daily.

14 And so when he was last seen, I think about a
15 week before this, he was on the Xanax and still doing
16 very poorly. And that's a bad scene. So let me explain
17 why that's a problem. First, I'm not being critical of
18 the doctor for making the decision, but in -- from where
19 I'm standing, first, you might want to think twice about
20 describing Xanax to somebody who has any history of
21 addictive behaviors. Any.

22 Xanax is not a treatment for major depression,
23 and it is not a good treatment to use chronically for
24 anxiety. It is intensely habit forming. But think of
25 Xanax -- I might have told -- I might have mentioned

1 this recently in this case. Xanax is really effective
2 at managing anxiety short-term and is quite good for
3 that, but it comes at a cost. So Xanax is, I always
4 tell people to think of it like alcohol and a pill.

5 So for all of the Anxiolytic, anxiety reducing
6 properties it has, it can also in and of itself be this
7 inhibiting in a dose dependent fashion, such that the
8 same with alcohol. One glass of wine might make you
9 feel a little less socially anxious and really not
10 impair you in any way. One bottle of wine might have a
11 very different effect.

12 And so, you know, Xanax, I don't want to
13 criticize, like from the standard of care perspective,
14 the use of the Xanax, but it certainly wasn't helping
15 him. And then there's a potential that the
16 disinhibiting impact of the Xanax, because he'd been off
17 of it -- well, he was on it for years, overdosed on it,
18 they stopped it. He was off of it for a while.

19 Then they resumed it at the full prior dose and
20 then a week after -- a couple weeks after that this
21 happened. It's a risk factor. People that are on Xanax
22 like that in that fashion, while it may help with the
23 anxiety, it also may disinhibit you. Does disinhibit
24 some people.

25 Q. All right. Are -- is Rickey's major depression

1 treatable?

2 A. Yes.

3 Q. And I think you testified earlier that you work
4 in a prison setting before?

5 A. Yes.

6 Q. All right. And are the prisons equipped to treat
7 major depression?

8 A. Yes. Oh, yes. The reason I'm hedging is some
9 are better than others, but yes.

10 Q. Okay. All right. And is prison a structured
11 environment?

12 A. To the extreme, yes.

13 Q. Okay. And can you explain what you mean by that?

14 A. Inmates in a prison setting have very few
15 decisions that they -- at least a well operated prison
16 -- have few decisions that they must make for
17 themselves. And so, there's a very strict structure, a
18 rigid and structured routine. It's not like you're
19 having to cook for yourself. It's not like you're
20 having to make decisions about what you're gonna do that
21 day.

22 Now, that's not to say that prison can't be an
23 intensely stressful place, it often is. But it is also,
24 at least in prisons that are well run, there's a lot --
25 there's not much complexity to it. You do what you're

1 told when you're told to do it.

2 Q. Okay. And for somebody like Rickey, who's a
3 person with an intellectual disability, how does those
4 people typically adapt with prison?

5 A. So, there are many people with intellectual
6 disability that are incarcerated. In prisons that are
7 run the way that I just mentioned, believe it or not,
8 they can, they can kind of thrive in that environment.
9 It can actually be anxiety reducing in some respects,
10 because they're not struggling with the day-to-day
11 adaptive functioning things that they otherwise would be
12 struggling with.

13 That's really why, I think the Court may have
14 already heard, it is a big no, no to try to assess
15 adaptive functioning with somebody in a correctional
16 environment. Why? Because they don't have functioning
17 to do, right? And so, so it can actually be, I'd almost
18 say therapeutic. That sounds weird, but less anxiety
19 provoking. Now, in a poorly run correctional
20 environment, such individuals get victimized a lot, but
21 that's a whole different check. That's a different
22 story.

23 Q. All right. And so based on your evaluation of
24 Rickey, would you predict that he's somebody who would
25 adapt well to incarceration?

1 A. Well, he has adapted well to incarceration. Yes,
2 I will predict that that will continue to be the case
3 that he has.

4 Q. And if you had been asked that question in 2014
5 before trial, would your answer be the same, as far a
6 predicting his future conduct?

7 A. So, it's in 2014 before trial based on what I
8 knew at that time, yes. The years that have intervened
9 made that give a lot more weight to that, but that would
10 have been my prediction then as well, yes.

11 Q. All right. Now, we've talked today about the
12 information that you had through November of 2012, when
13 you were first involved in the case.

14 A. Yes, sir.

15 Q. And we've also talked about the additional
16 information and the consults that you had since Rickey's
17 current legal team brought you back into this case?

18 A. Yes.

19 Q. All right. If you had had the information that
20 you have now, would you have been able to give opinions
21 -- if you had it in 2014, would you have been able to
22 give opinions in 2014?

23 A. If I had that information, I would have been able
24 to give those opinions in 2014 if they had not called me
25 when I was already under subpoena on two other trials,

1 but, yes, I would have.

2 Q. All right. And so, would those opinions had been
3 the same as they are today?

4 A. I believe that would be the case, yes. Oh, sure
5 it would be the case, it's the same information for
6 sure.

7 Q. Thank you, Dr. Corvin. At this time I don't have
8 any questions. At this time, I'd ask that you answer
9 any questions that Mr. Evans might have.

10 A. Yes, sir.

11 THE COURT: Mr. Evans?

12 MR. EVANS: Thank you, Your Honor. May it please
13 the Court?

14 CROSS-EXAMINATION

15 BY MR. EVANS:

16 Q. Good afternoon, Dr. Corvin.

17 A. Good afternoon.

18 Q. I haven't seen you since your deposition.

19 A. Yeah. Yeah.

20 Q. Okay. And you remember testifying at that
21 deposition, correct?

22 A. I did.

23 Q. And you all -- do you remember testifying?

24 A. Oh, yes, sir, I do. Yes, sir.

25 Q. Now, you said in your testimony that you were

1 first contacted by Kara Richards, to get involved in
2 this case?

3 A. That's what my recollection and records show,
4 yes.

5 Q. Okay. And you were asked to do a forensic for
6 Mr. Blackwell?

7 A. Correct.

8 Q. And you were asked to determine his mental
9 capacity, as well as his mental state at the time of the
10 offense?

11 A. That was my understanding, although I don't find
12 any records saying that, but that was my understanding.

13 Q. Your understanding, okay.

14 A. Yes, sir.

15 Q. And to the extent of any mental disease or
16 defect, they have impacted those areas?

17 A. Correct.

18 Q. Okay. And you was asked to do that so that you
19 can determine that Mr. Blackwell's capacity to move
20 forward was substantially impaired?

21 A. Well, yes and no. I didn't know what the
22 standards were then, so it never really got that far.

23 Q. Okay.

24 A. So...

25 Q. Now, you do know Ginger Calloway the doctor?

1 A. Oh, very well, yes.

2 Q. And you said you read her report and you were
3 aware she did an assessment of Mr. Blackwell?

4 A. Correct.

5 Q. And determined him intellectually disabled,
6 right?

7 A. Yes, sir.

8 Q. All right. And during the deposition you said
9 yourself that you couldn't make that assessment without
10 Dr. Calloways' results.

11 A. Right. I wouldn't do it, yes.

12 Q. Okay. As a matter of fact, you don't submit an
13 IQ test?

14 A. I don't. Don't know how to do it.

15 Q. Right. Now, during your deposition you said that
16 you consider Dr. Calloway the best in the world in terms
17 of knowledge of intellectual assessment?

18 A. She -- yeah. Certainly in the United States I
19 think she is, yes.

20 Q. Okay. All right. And that you rely on her
21 assessment, interview, and prior assessments to feed
22 data until you return, so you can rely or form an
23 opinion. You said that also?

24 A. Yes. That's happened many times over the years,
25 yes.

1 Q. Okay. And that you've called Dr. Calloway for
2 advice at times?

3 A. I do. Or, well, try to do better to get involved
4 in cases, yes, sir.

5 Q. Okay. As a matter of fact, you said you were
6 surprised she even takes your calls?

7 A. Yes. Yes, sir.

8 Q. So you would say that Dr. Calloway was very much
9 qualified?

10 A. Oh, I think she's quite qualified, yes.

11 Q. Okay. Now, to determine if a person's
12 intellectually disabled, you must find the person has
13 significant limitations and -- well, actually,
14 limitations in intellectual adaptive functioning?

15 A. Yes, sir.

16 Q. Okay. And you usually interview the people who
17 know the individual best at certain periods of his life?

18 A. That's right. I mean, it's not something I
19 typically get involved with --

20 Q. Right.

21 A. -- but you look for people meeting certain
22 qualifications, if you will.

23 Q. Okay. And then you actually take the person
24 being examined intense skill average, communications,
25 community use, functional academics, home living, health

1 and safety, these are the self-care, self-direction of
2 social work?

3 A. That is correct.

4 Q. Okay.

5 A. If you asked me to list that, I don't think I
6 could have, but yes.

7 Q. Right. No, I couldn't either. That's why I read
8 it.

9 A. Yes, sir. True.

10 Q. In order to come up with a fair and correct
11 assessment, you must select people that are well
12 acquainted with the subject's behavior in the
13 developmental period and maybe time afterward. There's
14 certain things you have to learn about that person.
15 Like work, things like that, that would happen later in
16 life.

17 A. I agree with that, yes.

18 Q. Okay. And Dr. Calloway chose as her informants
19 his parents, his daughter, his pastor, a neighbor,
20 friend of the family and knew him since he was a child
21 and watched her grow up. Two former employees and a
22 former teacher. Are you aware of that?

23 A. I think I was aware of that, yes.

24 Q. Okay. And upon completion Dr. Calloway found
25 that Mr. Blackwell had significant deficits in six of

1 the ten categories.

2 A. Yes.

3 Q. So that assessment with Dr. Calloway would make
4 him intellectually disabled, according to her?

5 A. That's correct.

6 Q. Okay. And Dr. Calloway came up with that
7 diagnosis, correct?

8 A. I believe so, yes.

9 Q. And that diagnosis was placed on her report?

10 A. Yes. Sorry. I know, I was like what did you do?

11 Q. Okay. And do you agree with that?

12 A. Do I agree with that diagnosis?

13 Q. Yeah.

14 A. I do. I do.

15 Q. Okay. And that diagnosis was relayed to the
16 Court during this trial; is that correct?

17 A. That's my understanding now. I didn't know it at
18 the time, but yes.

19 Q. Okay. And Dr. Calloway testified as to that
20 diagnosis, that's how she came up with that diagnosis
21 during the trial; is it accurate?

22 A. She did.

23 Q. Did you have a chance to read any testimony from
24 the penalty phase of the trial that was given to you?

25 A. I think I did. Yes.

1 Q. Dr. Calloway testified in the penalty phase also.
2 Are you aware of that?

3 A. Oh, you know, I know I've read some of her trial
4 testimony, but I don't recall whether it was from
5 penalty phase or guilt innocence.

6 Q. Okay.

7 A. I'm not 100 percent sure of that.

8 Q. All right. Okay. Now, you also read the report
9 of Dr. Schwartz-Maddox?

10 A. I did, yes, sir.

11 Q. Okay. And Dr. Schwartz-Maddox, while he was at
12 the detention center, was his teacher, physician?

13 A. That's correct. It's put her in a weird spot
14 because she's a forensic psychiatrist, but in this case
15 a treatment physician, yes.

16 Q. Okay. And Dr. Schwartz-Watts testified during
17 trial. You read that, correct?

18 A. Correct.

19 Q. Okay. And during her testimony, she stated that
20 Mr. Blackwell was hospitalized twice in mental
21 institutions. That's true, isn't it?

22 A. It is true, yes.

23 Q. Okay. And she stated in her testimony that he
24 was hospitalized the first time due to his depression
25 for Hodgkin's Lymphoma and financial problems.

1 A. I think that's right, yes.

2 Q. And at that time he was diagnosed with major
3 depression?

4 A. That, I do recall that, yes.

5 Q. Okay. And Dr. Schwartz-Maddox testified that
6 major depression is serious and requires medication and
7 treatment. Do you agree with that?

8 A. I agree very much with that, yes.

9 Q. Okay. Dr. Schwartz-Maddox testified that his
10 next hospitalization was due to an overdose of Xanax
11 because Angie left him; is that correct?

12 A. That, that's what happened and she did say that,
13 yes.

14 Q. Okay. Dr. Schwartz-Maddox also testified that in
15 those records, it revealed that he admitted -- when he
16 was admitted he was sobbing hysterically and that his
17 wife left him and they considered him a significant risk
18 to himself. Do you remember reading that in the mental
19 records?

20 A. Yes. Yes, that's consistent with my recall, yes.

21 Q. Dr. Maddox also testified that Mr. Blackwell was
22 having hallucinations of he and his wife. Did you find
23 that in his records also?

24 A. I did. She -- one of the admissions he could
25 hear the voice of his wife. And, actually, some hint of

1 a visual hallucination. But, yes, that, that's in the
2 records and I recall her seeing it as well.

3 Q. Okay. And Dr. Schwartz-Maddox also testified
4 that Mr. Blackwell was suffering from major depressive
5 disorder --

6 A. She did.

7 Q. -- at that time?

8 A. Yes, sir.

9 Q. And you agree with that assessment also?

10 A. I do.

11 Q. Now, Dr. Schwartz-Maddox testified during the
12 trial that with this disorder you can't sleep, you have
13 excessive worries, excessive guilt, suicide inclination,
14 you hear a voice and say you will hallucinate. Is that
15 true?

16 A. That's true and those are many of the criteria.
17 Although, most don't have psychotic symptoms, but yes,
18 it's all true.

19 Q. And she testified these are the things Mr.
20 Blackwell was going through when he was hospitalized.

21 A. That's true, yes.

22 Q. Dr. Schwartz-Maddox also testified that she
23 received reports from Dr. Jackson, Mr. Blackwell's
24 primary care physician.

25 A. If you would have asked me that, I wouldn't have

1 recalled it, but that certainly makes sense, yes.

2 Q. Okay. Did you ever read these reports?

3 A. The -- which one, Dr. ---

4 Q. From Dr. Jackson?

5 A. I believe -- let me make sure. I don't want to
6 tell you something wrong. What's Dr. Jackson's first
7 name?

8 Q. I don't have it.

9 A. It's okay. If I did remember -- I mean, if I
10 have read it, I don't remember it. So that's ---

11 Q. All right.

12 A. I may not have.

13 Q. Dr. Maddox noted that Dr. Jackson stated that
14 when he saw Mr. Blackwell he was upset with the loss of
15 his wife, who was crying uncontrollably and he tried to
16 counsel him, prescribe medication.

17 A. Oh, are you talking about Dr. Jackson at
18 Westgate?

19 Q. Westgate.

20 A. Oh, yes, I've read Dr. Jackson's records, yes,
21 sir.

22 Q. Okay.

23 A. Sorry.

24 Q. Okay. That's okay.

25 A. Yeah.

1 Q. Dr. Schwartz-Maddox testified that Mr. Blackwell,
2 when he went to see Dr. Jackson's upset of the loss of
3 his wife, quite uncontrollably, and he tried to counsel
4 him and prescribe medications. Are you aware of that?

5 A. That's correct. In fact, Dr. Jackson, one of the
6 things that the defendant liked about him is that he's
7 Christian based, and so that's -- that is what his
8 records reflect as well, yes.

9 Q. Okay. During your deposition, you basically said
10 that Angie was the glue that held them together.

11 A. Yes, sir.

12 Q. Okay. And Dr. Schwartz-Maddox testified that Dr.
13 Jackson noted that Angie always accompanied Mr.
14 Blackwell's doctor appointments, and played an active
15 role in his medical care.

16 A. Right.

17 Q. Okay. Is that your belief also?

18 A. So I don't know that I would have otherwise known
19 it, but that -- but I know it now from based on what
20 they said, yes.

21 Q. Okay. Dr. Maddox also testified to some poor
22 health of Mr. Blackwell, that he had a self-inflicted
23 gunshot wound.

24 A. Right.

25 Q. That happened at the time he commit the crime?

1 A. That's right. And it was -- he was hurt pretty
2 bad in that -- well, it goes without saying but, yeah,
3 he was really hurt.

4 Q. Okay. She also testified about Mr. Blackwell's
5 Hodgkin's Lymphoma that is occurred in '86 and '87?

6 A. The what? I'm sorry.

7 Q. The Hodgkin's Lymphoma --

8 A. Oh, I'm sorry, yes.

9 Q. -- occurred in '86 and '87?

10 A. Oh, yes. I'm sorry, yes.

11 Q. Okay. Now, Hogken's Lymphoma is a type of cancer
12 that affects the lymph nodes; is that correct?

13 A. Yes. It is in fact cancer.

14 Q. Yeah. And increased the white blood cells?

15 A. That is, that is correct.

16 Q. Okay. And white blood cells will grow out of
17 control?

18 A. Yeah, essentially, right.

19 Q. And it can spread all through the body?

20 A. It can go -- it can hit, I think it can be
21 anywhere, right.

22 Q. Do you remember reading in a report that Dr. --
23 Mr. Blackwell said that his -- and also told him that
24 his cancer was everywhere except his liver and bone
25 marrow? Do you remember reading that?

1 A. I do remember him saying that, yes.

2 Q. Okay. Now, you said earlier you had no
3 information that it spread to his brain, but is there a
4 possibility that it did?

5 A. Oh, is it possible? Sure. I mean, I'm not gonna
6 rule out such a possibility.

7 Q. Okay. Dr. Maddox also testified that this type
8 of cancer needed x-rays done through life. Read them
9 there if you'd like.

10 A. Yeah. I don't know about through life but, yeah,
11 there's surveillance that you do, right.

12 Q. Okay. Now, Schwartz-Maddox also testified that
13 Mr. Blackwell had disc problems in his back.

14 A. He does.

15 Q. COPD?

16 A. He does, but he's got a -- so it's a particular
17 form as a restrictive lung defect from the sodium
18 metabisulphite that he inherit -- so, yes, he does have
19 a restrictive lung disease.

20 Q. His gallbladder had to be removed.

21 A. Yep.

22 Q. He had a bile blockage in the detention center.
23 Are you aware of all his ailments?

24 A. Oh, yes. And the splenectomy and, yes.

25 Q. Okay. COPD, could you explain exactly what that

1 is?

2 A. Sure. They're -- it's actually not just an
3 illness. It's a group of illness, but it stands for
4 Chronic Obstructive Pulmonary Disease. There are two
5 main forms that you'll see in folks with these pulmonary
6 disease, they're called blue bloaters and pink puffers.
7 But in his case he has basically scarring from the
8 inhalation of this toxic chemical that reduced his
9 ventilatory capacity.

10 So when we say restrictive lung defect, he cannot
11 fully -- the mobility of his lungs, which are moved by
12 the diaphragm causing negative pressure is restricted by
13 this inhaled toxin. And so, his O2 and CO2 exchange
14 capacity is impaired by that and it gives him a
15 sensation of shortness of breath that's gonna be most
16 prominent with exerted efforts, physical efforts, so...

17 Q. And as you said before, this was from inhaling a
18 toxic chemical back in 2006?

19 A. That's correct. I couldn't remember the year,
20 but yes.

21 Q. And COPD is not curable, is it?

22 A. Generally not. I mean, there's ways of managing
23 it, but by -- I mean, it's not curable.

24 Q. So he had this condition when he took his IQ test
25 in 2012?

1 A. Yes.

2 Q. Okay. Now, there are studies that COPD can cause
3 some cognitive impairment.

4 A. Oh, right. Well, so it's not the COPD that can
5 cause the cognitive impairment, it's the impact of the
6 COPD. So, in some -- and I've -- you don't know this,
7 but I had worked in a pulmonary critical care unit for a
8 while as a real doctor.

9 Q. Right.

10 A. And so one of the things that can happen is that
11 you get recurrent or prolonged hypoxic episodes. Your
12 actual blood oxygen can drop so much that over a period
13 of years you can lose cells.

14 Q. Okay.

15 A. And it drops your intelligence. It sure can.

16 Q. Okay. And a pulmonologist would be the person
17 that would be able to talk to extensively, that would be
18 able to tell what kind of impairment can be caused by
19 COPD?

20 A. Oh, I think so. Of course, you have to be
21 hypoxic first.

22 Q. Okay.

23 A. But so -- but, yes, I agree with that.

24 Q. All right. Dr. Schwartz-Maddox also testified
25 that Dr. Jackson found that Mr. Blackwell was not

1 depressed, but more like a grief reaction beyond
2 consolation. Do you agree with that?

3 A. Do I agree that he wasn't depressed?

4 Q. No. That it was more of a grief reaction?

5 A. Oh, it was a grief reaction, yes.

6 Q. Okay.

7 A. I mean, those things are not mutually inclusive,
8 but think of the grief reaction on just steroids, right?

9 Q. Okay.

10 A. So...

11 Q. And Dr. Schwartz-Maddox was the treating
12 physician, so she did make a mental conclusion at the
13 time of trial, correct?

14 A. That's right. She was asked for a forensic
15 opinions and correctly, in my opinion, declined to offer
16 such opinions.

17 Q. But how, in her opinion, Mr. Blackwell had a
18 history of major depression and remained depressed
19 during the incident. And Mr. Blackwell was suffering
20 from major depression at the time of the crime. Do you
21 agree with that assessment?

22 A. Yes.

23 Q. Okay. And she stated during her testimony that
24 she diagnosed Mr. Blackwell's major depression. And you
25 agree with that also?

1 A. I do, yes.

2 Q. All right. Dr. Maddox also testified that Mr.
3 Blackwell told her that he could not believe what he had
4 done and he has to accept what he's done.

5 A. Right.

6 Q. And some of this is what he told you also?

7 A. Very much so.

8 Q. And Dr. Maddox testified Mr. Blackwell had very
9 much anxiety and nightmares about what happened and had
10 a difficult time for what he's done.

11 A. That is correct.

12 Q. Okay. And that's similar to what you said also?

13 A. Very similar, yes.

14 Q. Okay. Now, you stated earlier that you've never
15 spoke to an attorney in this case.

16 A. Yeah, I don't think I did.

17 Q. Okay.

18 A. I mean, it's been a long time, but I don't
19 remember ever talking to any attorneys.

20 Q. The e-mails were returned by attorneys, but
21 you've never spoke to one?

22 A. That's a good question. I remember the e-mail.
23 I saw that e-mail and I'm like I don't know if I've even
24 seen that e-mail because it's not my e-mail address,
25 but... But, yes, there were e-mails with that office,

1 yes.

2 Q. Okay. But you did speak to Kara --

3 A. Oh, yes.

4 Q. -- at times? Okay. About this case?

5 A. Yes.

6 Q. Okay. Now, according to -- now, you submitted a
7 bill for \$5,783.40?

8 A. I think so, yes. Yes, sir.

9 Q. And you were paid --

10 A. Yes.

11 Q. -- that money, of course?

12 A. Yes.

13 Q. Okay. Now, in this invoice, and I'm looking at
14 Applicant's Exhibit 47, you drove from Raleigh to
15 offices -- and that's where you live also, in Raleigh?

16 A. That's correct, yes, sir.

17 Q. Down to Spartanburg to interview Mr. Blackwell?

18 A. Yes, sir.

19 Q. And you did that on November 20th, 2012?

20 A. That's correct.

21 Q. And you did do an examination that lasted a
22 little over three-and-a-half hours?

23 A. About that. It was a little over three hours
24 that way. About three hours and 20 minutes on that day.

25 Q. Okay. And then you phone Ms. Baker on the same

1 day?

2 A. I think that I might have.

3 Q. Yes.

4 A. Yeah.

5 Q. According to this bill, that's what's --

6 A. Oh, okay.

7 Q. -- on here.

8 A. Okay.

9 Q. And you spoke with her for almost 30 minutes?

10 A. May well be the case, yes, sir.

11 Q. Almost an hour ---

12 A. Yeah, it was probably when I was driving -- while
13 I was driving back probably.

14 Q. Okay.

15 A. Yeah.

16 Q. Do you remember what you all talked about?

17 A. On that day? Probably just what I saw. Yeah,
18 just my -- I don't remember because I was driving,
19 but...

20 Q. Okay. Could it possibly be you were talking to
21 her about the interview you had with Mr. Blackwell?

22 A. Oh, I think it's likely, yeah.

23 Q. Okay. Now, you are testifying on these notes?

24 A. These here, yes, sir.

25 Q. Okay. Are these the actual copies of the notes

1 that you did?

2 A. That's the 2012 ones, yeah.

3 Q. 2012?

4 A. Uh-huh.

5 Q. These are actually a copy of the notes that you
6 made referring to the work that was done in 2012 with
7 Mr. Blackwell?

8 A. Yes, sir.

9 MR. EVANS: Can I have that marked?

10 (State's Exhibit Number 17, 2012 Notes of Dr.
11 Corvin, was marked for identification.)

12 MR. EVANS: Your Honor, I'd introduce these notes
13 as State's Exhibit Number 17.

14 THE COURT: Mr. Grose?

15 MR. GROSE: I have no objection.

16 THE COURT: State's Exhibit Number 17 are in
17 evidence.)

18 THE WITNESS: Thank you.

19 (State's Exhibit 17 was entered into the record.)

20 MR. GROSE: Well, let me just ask, is this Dr.
21 Corvin's actual copy of the notes?

22 MR. EVANS: Yes.

23 MR. GROSE: All right. I would just ask that he
24 be able to take his notes back with him when this is
25 over. They have a copy of the notes that was provided.

1 MR. EVANS: Well, I mean, if you want to make it
2 easy, this is a clean copy. You can mark this one.

3 MR. GROSE: Okay. Well, let's mark a copy so he
4 can keep his property.

5 MR. EVANS: Okay. All right.

6 THE COURT: What did we just mark?

7 MR. EVANS: His actual notes.

8 THE COURT: His actual notes?

9 MR. EVANS: Yes.

10 THE COURT: All right. Let's mark the copy
11 that's been stated in the record, State 's Exhibit 17.

12 MR. GROSE: Thank you, Your Honor.

13 THE WITNESS: Plus I've scribbled on this one a
14 little bit. Sorry.

15 BY MR. EVANS:

16 Q. That's my fault.

17 A. Oh, no worries.

18 Q. I should have used that one. That was my
19 intention at first. That's your copy.

20 A. I'm all good. Thank you.

21 Q. Thank you. Now, these are notes -- part of these
22 notes are from the interview you did with Mr. Blackwell;
23 is that correct?

24 A. Yes.

25 Q. First of all, I'm gonna ask you a question. On

1 the first page it says something about the biggest
2 cracker I've ever seen. Pathetic, pitiful --

3 A. Right.

4 Q. -- definitely, MR.

5 A. Right.

6 Q. Looks like a child.

7 A. Right.

8 Q. You didn't say that, did you?

9 A. No, those are quotes from -- I take those quotes
10 from Ginger Calloway. She says that sometimes, so yes.

11 Q. Okay. So Dr. Calloway might have said those
12 things, all right.

13 A. I think she might have said that and was being
14 quoted, yes.

15 Q. All right. So that's when you was actually
16 speaking to her pretty much?

17 A. Yeah. I think she called me.

18 Q. Okay.

19 A. Yeah.

20 Q. Okay. Now, definitely MR, you cannot tell that
21 by looking at someone, can you?

22 A. No.

23 Q. Okay. And that's something -- that's
24 stereotyping you on medical, professional ---

25 A. No. I mean, she had her -- and I don't know what

1 work she had done on the case yet, but no.

2 Q. She had already done some work on the case when
3 she called you and told you these things?

4 A. I think she'd done a fair amount, it looks like,
5 yes.

6 Q. Okay. All right. And in the notes it said to
7 show that you talked to Mr. Blackwell on November 20th,
8 2012?

9 A. Yes, sir.

10 Q. At 11:40 to 1500, so that would be to 3 o'clock?

11 A. Yeah, that's what I've got on here.

12 Q. Okay.

13 A. Yeah.

14 Q. All right. Now, you said that Mr. Blackwell
15 could remember the facts of the case that well?

16 A. I'm sorry?

17 Q. He could remember the facts of the case?

18 A. For the most part, yes.

19 Q. Okay. I'm gonna show you a portion of your
20 notes.

21 A. Yes, sir.

22 Q. Not numbered but I think like page 26 and
23 something.

24 A. Uh-huh.

25 Q. It says right there: I remember pulling the gun

1 out and ---

2 A. Uh-huh. I can read it, if you want.

3 Q. Yeah.

4 A. So it says: I remember pull gun out, got it out,
5 holler at Angie, she turn, starts hollering. Next thing
6 I know, the girl's shot. Think I pulled hammer back,
7 shot times two. I freaked out. Both shots hit her.
8 Brook shot times two head.

9 Q. Okay. And it says, what it says right there.

10 A. Oh. I don't know how the second shot fired.

11 Q. Okay.

12 A. Yeah.

13 Q. So it sounds like at that time he was saying it
14 was an accident that this had to happen?

15 A. Oh, no. He, he just -- no, he never really tried
16 to say it was an accident. He, just that, he doesn't
17 know how it happened. But he never, you know, he never
18 really tried to say it was an accident. He, just that,
19 doesn't know how it really happened. But he never, you
20 know, he never really tried to -- no, it was nothing
21 like that. That wasn't kind of my impression of what he
22 was saying.

23 Q. Okay. Now, do you remember in your notes them
24 telling you that him and Angie did the bills together?

25 A. I think so, yes.

1 Q. Okay. All right. And Angie would get mad when
2 he would help you with the bills?

3 A. I think what happened -- what she was getting mad
4 about was towards the end when she didn't want to do the
5 bills or something and he would want to work on it and
6 she got mad about it, I think. Right. I found the
7 section, yeah.

8 Q. Okay. And he also told you that he got upset
9 with Angie because of this bill from a check cashing
10 place; isn't that correct?

11 A. Correct.

12 Q. Okay. So he was kind of aware of the bills and
13 what was being paid, wasn't he?

14 A. I think he was, yes.

15 Q. Okay. All right. And he was kind of aware of
16 the money was being spent, or he became aware of the
17 money being spent.

18 A. Yeah. Right. I mean, the impression I got is
19 that in the aftermath, she really won't -- was maybe
20 trying to hide that a little bit and not deal with it,
21 but he did become aware of it, yes.

22 Q. Okay. So, it looks like that he was involved in
23 for payment of his bills, or at least he was concerned
24 about them; is that correct?

25 A. Right. He kind of paid bills. I mean, yes. If

1 he had to do it on his own, that would be a problem
2 because, you know, one thing would be as if she didn't
3 want to work on the bills with him and she got mad about
4 it, he could just do it, except he couldn't do it on his
5 own. And so, that became a big bone of contention, if
6 you will. Yeah. But he was aware that they weren't
7 getting paid.

8 Q. Did he tell you he couldn't do it on his own or
9 he just said that, you know ---

10 A. Well, no, he didn't say that.

11 Q. Okay. That's an inference based on what else we
12 know about him and what he's done in his life. He would
13 probably get in big -- there might be some accountant
14 problems if he tried to do it totally on his own. Plus
15 he don't know how to write a check, according to him.

16 Q. Well, a lot of people don't write checks; isn't
17 that correct?

18 A. I hardly ever write checks anymore, but I know
19 how to do it, so, yes, sir.

20 Q. You know how to do it, but you were a doctor.

21 A. Well, right. True that. True that. Good point.

22 Q. But a lot of people don't write checks?

23 A. That's -- I agree with that. I agree with that.

24 Q. Okay. Now, you also noted that Mr. Blackwell
25 followed Angie and Bobby to the mall around Christmas

1 time?

2 A. That's right.

3 Q. Okay. And he actually went to -- he said to you
4 he went to mall security, because he was there to catch
5 them at the mall?

6 A. Yeah. Yeah.

7 Q. Okay. So he actually followed Angie around?

8 A. He did. He did, yeah.

9 Q. And that was after she had left him in 2008 when
10 this happened?

11 A. I think she left in November -- on November 11th.
12 I think it was after.

13 Q. Okay. In your notes it also said that he still
14 loved Angie, but he wasn't mad at her, he was mad at
15 Bobby.

16 A. Correct.

17 Q. Okay. It also referenced that the day of the
18 actual incident he actually went by the house of the
19 victim and saw her with her mother.

20 A. That's right, yes.

21 Q. From all you read, was this information ever
22 raised at trial, that you mentioned?

23 A. I was not aware.

24 Q. You're not aware of that?

25 A. No. No. Yeah, I've only read just a little

1 bitty part of the trial transcript.

2 Q. Now, you mentioned the use of marijuana to smoke;
3 is that correct?

4 A. Yes.

5 Q. And you said that starting with 18, his drug of
6 choice was marijuana and he smoked two to three joints a
7 day.

8 A. Correct.

9 Q. From age 18 until 1993?

10 A. That's correct.

11 Q. So that's maybe like 17 years he smoked marijuana
12 every other day since 18?

13 A. Thereabouts.

14 Q. Okay. I'm gonna show you Applicant's Exhibit
15 Number 34. This is Dr. Brown's report.

16 A. Yes, sir.

17 Q. And doesn't it state there that Mr. Blackwell
18 said I love to smoke marijuana?

19 A. Oh, right.

20 Q. So when he quit using it, he was diagnosed with
21 cancer. He said he first used marijuana at age 17, and
22 typically used a quarter bag a week.

23 A. There you go, yes, sir.

24 Q. Okay. And you said earlier that the development
25 in your brain is as -- around that time of, I believe,

1 early 20's; isn't that correct?

2 A. Yeah. That's sort of -- well, it starts in
3 utero, but there's continued neurologic development, if
4 you will, through your early 20-ish, if you will.

5 Q. All right. There might have been a time Rickey
6 stopped using marijuana; is that correct?

7 A. I think so, right.

8 Q. Okay. And you said that studies show that early
9 use of marijuana at this time could affect the
10 development of your brain?

11 A. That's right.

12 Q. Okay.

13 A. It's an unsettled issue, and I won't restate
14 everything. There's still really no definitive on this,
15 but the research does paint a good degree of suspicion
16 on a conclusion that use of marijuana during the
17 developmental years, and in this case I mean the brain
18 development years --

19 Q. Right.

20 A. -- can adversely affect that.

21 Q. And that's chronic everyday use; isn't that
22 correct?

23 A. That's -- that would be -- well, that's what the
24 research focuses on.

25 Q. That's the research. And that's what Mr.

1 Blackwell was doing?

2 A. He was doing that.

3 Q. Okay. I think also it says he used to take
4 pills?

5 A. That's correct.

6 Q. Did he tell you he could take Valium or he just
7 said pills?

8 A. I don't think he told me Valium, but I understood
9 it to be sedatives or tranquilizers. He may have told
10 me Valium, but I don't remember that.

11 Q. You're not aware that his mother had a
12 prescription for Valium, at one time?

13 A. Not that I remember sitting here, no.

14 Q. Okay. You've prescribe Valium to people at
15 times, haven't you?

16 A. Oh, sure.

17 Q. Okay.

18 A. I try not to, but yes.

19 Q. Okay. When you prescribe Valium, do you
20 prescribe it as a every weekly thing, every two weeks
21 thing, or just like you give a prescription that should
22 last them more? How do you do that?

23 A. So typically it would be for a month's worth, but
24 I really try not to have people chronically on
25 Benzodiazepines. But it would be typically be a month.

1 Q. Okay. Now, so if, if Rickey Blackwell's mother
2 was given it every two weeks, that would be excessive,
3 wasn't it, giving the prescription ---

4 A. Depending on the amount of the script. So if
5 she's given -- if she's going through a 30-day supply
6 every two weeks, yeah, that's a problem.

7 Q. Okay. But if the script is low, it could be ---

8 A. It could be just a two-week supply.

9 Q. Two week supply?

10 A. Yeah.

11 Q. Blackwell told you he's tried acid once and he
12 didn't like it.

13 A. Correct.

14 Q. And he tried powder cocaine?

15 A. Yes.

16 Q. But it was too much money.

17 A. Yeah, it cost too much, right.

18 Q. Okay. So he didn't quit because he wanted to
19 stop and quit because he couldn't afford it; is that
20 right?

21 A. That's what he said, at least on the powder
22 cocaine, yes.

23 Q. And that somebody tried to shoot cocaine in his
24 arm and it caused headaches, so he never tried that
25 again.

1 A. Which is probably good, because that's a bad
2 thing to have happen, but, yes.

3 Q. Yeah. And he tried speed when he was young at a
4 drive-in?

5 A. Yeah. Yes, sir.

6 Q. Okay. Now, wouldn't you agree that if you are
7 under the influence of marijuana, it could impair your
8 ability to drive?

9 A. Oh, under the influence of -- yes.

10 Q. Okay.

11 A. There's like actually a growing body of research
12 on that too. Like what level of Serum THC is necessary
13 for there to be driving under the influence of marijuana
14 in states where it's now legal.

15 Q. Okay.

16 A. Right? But, but in a dose dependent fashion, THC
17 can impact the skills requisite that required him
18 driving.

19 Q. And Rickey's accidents he had driving his truck
20 could have been caused by him and his use of marijuana?

21 A. Yeah.

22 Q. If he was using marijuana on a daily basis at
23 that time, correct?

24 A. Well, it's a good point. So, I don't know -- I
25 mean, it's an inference, and so it's theoretically

1 possible that he crashed while smoking marijuana. I
2 mean, I just don't -- I don't have the evidence that
3 that's the case, but it could be.

4 Q. That could be quite possible? I mean, that's not
5 beyond a --

6 A. Yep. That's within the realm of possibility.

7 Q. -- possibility, correct?

8 A. You got it.

9 Q. Now, you said that -- you talked about Rickey and
10 his ATV accident and he got a concussion.

11 A. Right.

12 Q. Okay. Are you aware that when Mr. Blackwell
13 drove for Hess, he had another accident in the truck
14 when he fell asleep?

15 A. I knew he had another accident. I didn't know it
16 was from him falling asleep, but I knew there was
17 another accident.

18 Q. And I think this is an interview memo from
19 investigator Lee Connelly.

20 A. Uh-huh.

21 Q. And it says right here that his trailer
22 jackknifed, swang around -- the trailer jackknifed,
23 swinging the trailer around, hitting the cab of the
24 truck.

25 A. Uh-huh.

1 Q. Rickey did not have a seatbelt and was knocked
2 silly.

3 A. Oh, wow. That's just a weird term to put in
4 there, yeah.

5 Q. Yeah. And it says right here -- let me see. He
6 does not remember hitting his head, but he does remember
7 people pulling him out of the truck.

8 A. Got it.

9 Q. Okay. And he actually went to the hospital in
10 Columbia?

11 A. Right. Which I guess I don't think I have
12 records of that. I'm not sure.

13 Q. You wasn't given this interview?

14 A. Oh, I've not seen that interview.

15 Q. Yeah, you've never seen this?

16 A. No, sir.

17 Q. And that can possibly be another concussive
18 incident if he was---

19 A. It's, it's in the realm of possibility, yeah.

20 Q. And you said before that numerous concussions can
21 cause some type of cognitive functioning in the brain.

22 A. Yep. So there -- this has gotten to be very
23 forensically relevant. So CTE or chronic
24 encephalopathy. So numerous concussions over the years,
25 NFL players --

1 Q. Right.

2 A. -- tend to get it. And another risk factor is
3 getting multiple concussions back to back, which is why
4 we now have to clear athletes before they can return.

5 Q. Now, you said when you saw Mr. Blackwell, he was
6 simplistic.

7 A. Yeah.

8 Q. That's what you described him as?

9 A. Yeah. I don't -- I may -- yes. I think that's
10 an accurate description for him.

11 Q. Okay. And you grew up in Alabama?

12 A. Yes, sir.

13 Q. And I grew up in South Carolina.

14 A. Yes, sir.

15 Q. And so, people who grew up around here are very
16 casual.

17 A. Yeah.

18 Q. Very relaxed.

19 A. Yeah.

20 Q. And they live a simple life; is that correct?

21 A. True that.

22 Q. Okay. And they all say things like young'n?

23 A. Yep. Yes, sir.

24 Q. Kind of like the way Rickey was; isn't that
25 correct?

1 A. Yes, he is very much like that, and he grew up
2 very much in an environment like that.

3 Q. Okay. Okay. Now, you also talked of frontal
4 functioning, following normal function?

5 A. Yes, sir.

6 Q. Okay. It is possible that excessive use of drugs
7 can affect the development from ---

8 A. Oh, in the abstraction, yes, it can.

9 Q. Okay. And Dr. Herfkens, who was a neurologist or
10 neuro ---

11 A. Neuropsychologist.

12 Q. Neuropsychologist?

13 A. Yes, sir.

14 Q. Examined Mr. Blackwell. Her results could be
15 effective due to the chronic use of marijuana of Mr.
16 Blackwell?

17 A. Could it be? Sure. I mean, it's within the
18 realm of possibility. I mean, I don't want to speak for
19 her. The report, I don't know what she would say in
20 response to that answer --

21 Q. Right.

22 A. -- but typically speaking, neuropsychologists
23 will tell you the report is a picture of what the
24 functioning is. It doesn't really tell you the why.

25 Q. Okay. But can. Cannabis during the

1 developmental period affect someone's development of
2 their brain such that it would impact their frontal
3 functioning? Sure.

4 Q. Okay.

5 A. Sure.

6 Q. Wouldn't you think it would be wise to let her
7 know that he had slow, what it was described as, applied
8 to this testing?

9 A. I don't know that I have an opinion on that. It
10 might be preferable not to tell him anything about the
11 history so that it's a -- sort of a blinded test. The
12 test is what the test is. Now, I also don't know that
13 she didn't know that. I don't know.

14 Q. All right. I'm just saying it's not in the
15 report.

16 A. Oh, okay. Yeah.

17 Q. And there were no brain scans done that you know
18 of?

19 A. No. And I had actually recommended it at one
20 point.

21 Q. To who?

22 A. Kara asked me.

23 Q. Oh, Kara asked you?

24 A. Kara asked me, yeah.

25 Q. Okay. Now, you said that -- earlier that you

1 believe that Mr. Blackwell could basically function well
2 in a prison site.

3 A. Yeah. I mean, to the -- yeah.

4 Q. Okay.

5 A. Yes, sir.

6 Q. But also you said that the frontal lobe
7 functioning would make it more impulsive or made it more
8 impulsive.

9 A. That's right.

10 Q. Okay. So wouldn't it be difficult for an
11 impulsive person to be able to function in the general
12 population?

13 A. So, that's an excellent question. People that
14 had -- this is gonna sound weird. Prison actually might
15 be a good treatment for that. All right? In that, the
16 things that would trigger an impulsive outburst in a
17 well run general population setting are gonna be reduced
18 so that the need to control impulses is gonna be reduced
19 because things are controlled for you.

20 Now, that -- the flip side is for somebody like
21 him with an intellectual disability, if he's in a poorly
22 run correctional environment where you can be victimized
23 -- well, we've seen it. Being victimized and things are
24 out of control and you can't really tell who's the good
25 guys and the bad guys. And I've seen prisons like that,

1 that are shut down now. Then it could be -- become a
2 problem.

3 Now, with history as a guide, he's been sort of
4 an exemplary inmate, as far as I can tell. No real
5 disciplinary issues.

6 Q. Well, he's on death row, so he ---

7 A. Oh, right, I understand.

8 Q. He has to have no contact with any members of the
9 prison population.

10 A. Well, let me put it this way ---

11 MR. GROSE: Objection. Calls for speculation and
12 it's also not true.

13 THE WITNESS: Um -- oh, sorry.

14 THE COURT: Hold on a minute.

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. What was the question and
17 the answer that you're objecting to?

18 MR. EVANS: Well, Dr. Corvin stated that he's
19 done well in prison so far and I said but he's been on
20 death row, so he has not contact with the rest of the
21 prisoners in population and then he objected.

22 THE COURT: All right.

23 MR. EVANS: I can rephrase the question.

24 THE COURT: Well, here's the thing. Has he --
25 has he been on death row? I mean, what is the problem

1 about what Mr. Brown [sic] said?

2 MR. GROSE: Well, it's been years ago now. I
3 mean, he has contact with other people that are on death
4 row. The question that I heard that was asked was that
5 he didn't have any contact with any other inmates. And
6 the conditions on death row were substantially relaxed a
7 number of years ago ---

8 THE COURT: Okay. Well, we haven't gotten into
9 that, but his answer to the -- he, he couched it as,
10 which he's allowed to do on cross, and that's been
11 because he's been on death row. You objected at that
12 point.

13 MR. GROSE: Well, I mean, my objection was to the
14 implication that he hasn't had contact with any other
15 inmates.

16 THE COURT: Well, I didn't hear the doctor's
17 answer.

18 MR. GROSE: Okay.

19 THE WITNESS: You want me to -- oh, go ahead?

20 THE COURT: Yes.

21 THE WITNESS: Yes, sir. So what I would say is
22 that -- so he has done well. He hasn't always been on
23 death row since his arrest in this matter --

24 BY MR. EVANS:

25 Q. True.

1 A. -- so he's done well continuously in custody.
2 And, I want to say, not speaking about Mr. Blackwell
3 specifically, that individuals similarly situated,
4 diagnostically with intellectual disability, sometimes
5 can't function in the general population setting. They
6 have to be in a TVU -- Therapeutic Diversion Unit.

7 In his case, I suspect with a mild degree of
8 intellectual disability and appropriate treatment, and
9 giving his mental statement, I've seen him. And
10 assuming that South Carolina runs a general population
11 unit the way I think they do, he might need some special
12 supports or a particular case manager, but I don't think
13 there's a substantial -- the risk of him engaging in
14 additional criminal conduct, as compared to the rest of
15 people in prison is less, not more.

16 Q. Okay.

17 A. For what it's worth.

18 Q. All right. And you in direct stated, talked
19 about the low IQ scores of the rest of his family?

20 A. That's correct.

21 Q. Isn't that true? I'll show you Applicant's
22 Exhibit Number 33.

23 A. Yes, sir.

24 Q. That's Dr. Calloway's report. And it's stated on
25 that --in that section about the low IQ scores of his

1 family.

2 A. I've seen this before, yes.

3 Q. Okay. So that was relayed to the Court during
4 this trial?

5 A. I assume it was.

6 Q. If this was put into evidence ---

7 A. Oh, if it's in evidence, then it was relayed to
8 the Court, yes.

9 Q. You also talked about the psychiatric problems,
10 or did you mention the psychiatric problems of Mr.
11 Blackwell's brother Don?

12 A. I know I'm aware of, but I don't know if I
13 mentioned it or not.

14 THE COURT: I'll tell you what. Let's stop with
15 the psychiatric problems. It's a good place to break
16 for lunch.

17 MR. EVANS: Okay. Yes, Your Honor.

18 THE COURT: I can't experience psychiatric
19 problems because I don't have anything in my stomach.
20 All right. We'll break for lunch.

21 MR. EVANS: Yes, Your Honor.

22 THE COURT: We'll be back -- and I shouldn't jest
23 about that. It's very serious.

24 THE WITNESS: Understood.

25 MR. EVANS: Yeah, we understand, Your Honor.

CROSS-EXAMINATION OF DR. CORVIN BY MR. EVANS

1 THE COURT: Okay. All right. We'll be back --
2 we'll start back at 2:15. 2:15.

3 (Lunch recess was held from 1:01 p.m. - 2:16
4 p.m.)

5 THE COURT: Dr. Corvin, you can return to the
6 stand.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Thank you. Mr. Evans, your witness.

9 MR. EVANS: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. EVANS:

12 Q. I think the last thing I asked you was about the
13 intellectual -- not intellectual, mental health
14 problems.

15 A. Yes, sir.

16 Q. Mr. Blackwell and his brother Donald. You knew
17 his brother had some serious mental health issues also?

18 A. I do know that, yes.

19 Q. Okay. And I will show you Applicant's Exhibit
20 Number 33, page 434 -- 3366.

21 A. Yes, sir.

22 Q. And this is Dr. Calloway's report. And it shows
23 on here the different, the different mental health
24 problems --

25 A. Right.

1 Q. -- that existed between Donald and Mr. Blackwell?

2 A. Yes, sir.

3 Q. Okay. Now, you talked about the genetics
4 portion, speaking to Dr. Cunniff.

5 A. Yes, sir. Well, I didn't talk to him.

6 Q. You didn't talk to him?

7 A. No. I just read his --

8 Q. His affidavit?

9 A. -- affidavit. And I didn't see his testimony.

10 Q. Okay. You didn't watch his testimony, okay.
11 I'll show you a copy of the DSM-5. Now, DSM-5 was the
12 DSM that was being used at the time --

13 A. Right.

14 Q. -- of this hearing.

15 A. Got it.

16 Q. Okay. Could you read the highlighted question?
17 It's page 39 --

18 A. Yep.

19 Q. -- of the DSM-5?

20 A. You got it. So, it reads: A diagnosis of
21 intellectual disability should not be assumed because of
22 a particular genetic or medical condition.

23 Q. Okay. Are you aware that Mr. Blackwell once
24 spoke to an investigator from the defense team and
25 pretty much made it sound an accident? You're not aware

1 of that? You never ---

2 A. Said what now?

3 Q. Make this look like an accident. You're not
4 aware of anything?

5 A. Oh, no, I'm not aware of anything to that, to
6 that degree or to that nature.

7 Q. Okay. And you can have low intellectual
8 functioning and not be intellectual -- have intellect
9 disability?

10 A. Yes, sir.

11 Q. Okay. And you can have limitations on executive
12 function and not the intellectually disabled?

13 A. Absolutely. That is correct.

14 Q. Now, I asked you about any brain scans that was
15 done. Do you know if Dr. Maddox ever asked for a brain
16 scan to be done for Mr. Blackwell?

17 A. I don't know one way or the other. I don't
18 remember anything saying that it was requested.

19 Q. Okay. And you say you asked Kara for a brain
20 scan. Did you ever ask these attorneys for one to be
21 done on Mr. Blackwell?

22 A. Not at this point, no. She -- what happened was
23 she asked me if it would be helpful. Now, at that point
24 I didn't really know much about what we -- I'm not sure
25 I knew that we even had that scan. But, nonetheless,

1 she asked me, would functional imaging be a good idea?

2 And I said, yeah, it would be.

3 Q. Who asked you that?

4 A. Kara Richards.

5 Q. Kara asked you that?

6 A. Yes.

7 Q. Okay. And you said it would be a good idea. So
8 it was her idea to ask for one?

9 A. Yeah. She, she brought it to my attention.

10 Q. Okay. Anybody else? His attorneys never brought
11 that to your attention?

12 A. I don't think we've ever discussed it.

13 Q. Okay.

14 A. In terms of the forensic opinion, well, it's just
15 like what you read, an abnormal scan doesn't answer the
16 question.

17 Q. Okay.

18 A. All right.

19 Q. All right. Now, State's Exhibit 17 are in your
20 notes. And I think you said before that you were called
21 by Kara to testify about Xanax and the problem it's done
22 on the human body.

23 A. That's right. From my memory the call, I think
24 it was e-mail, she e-mailed me saying give me an update
25 on what had been happening for whatever time and said

1 that the attorney would like me to testify about the
2 Xanax, the effects of the Xanax.

3 Q. He didn't actually testify about nothing else but
4 Xanax, as far as you know?

5 A. That's -- as far as I know that was it, yeah.

6 Q. Okay.

7 A. It was third hand, but that's as far as I got.

8 Q. Right. Okay. And I think you -- I believe you
9 were saying during your deposition or maybe I read it
10 somewhere, that you got upset because you didn't have
11 any information. You didn't even have a chance to write
12 a report or anything, given no files; isn't that
13 correct?

14 A. Yeah. I was, I was really mad.

15 Q. Yeah, I understand.

16 A. Yeah.

17 Q. And writing a report is something you all do in
18 these types of cases?

19 A. Well, I -- yeah, normally, but I would never
20 write anything until an attorney asks for that.

21 Q. Okay.

22 A. And even if they called to ask, I would say,
23 well, you've gotta tell me what the questions are and I
24 need the framework and the context to answer the
25 questions. But normally I would, yeah.

1 Q. Okay. And when you write a report in a normal
2 case that you've testified to and you give a copy to the
3 defense, they are obligated to give a copy to the
4 prosecutors; isn't that correct?

5 A. That's always been my experience. What is it,
6 reciprocal discovery that it's called?

7 Q. Right. Uh-huh.

8 A. Yes.

9 Q. Okay. So if you -- if Barry Barnette, the
10 Seventh Circuit Solicitor, during cross and the
11 testimony you made, I asked you about Rickey telling you
12 that he was involved with bill payments, your answer
13 would be yes, wouldn't it?

14 A. Involved with?

15 Q. Bill payments.

16 A. Oh, yes.

17 Q. Yes?

18 A. It would be, it would be yes.

19 Q. Okay. And Mr. Barnette asked you a question
20 about Angie being concerned -- him, Mr. Blackwell
21 telling you that he was concerned by Anthony borrowing
22 money.

23 A. Yes.

24 Q. You would have to say yes? If Mr. Barnette asked
25 you questions about Mr. Blackwell following Angie and

1 Bobby separate and being mad at Bobby, your answer would
2 be yes?

3 A. It would, yes, sir.

4 Q. If Mr. Barnette asked you a question that Mr.
5 Blackwell told you that he went by the victim's house
6 the day of the incident and saw the victim with his
7 mother and her mother, you would have to say yes, he
8 said that?

9 A. Yep, he did say that.

10 Q. Okay. If Mr. Barnette asked you that Mr.
11 Barnette told you that he was using marijuana every day
12 since he was 18 until 1993, you would say yes?

13 A. Yep. I mean, yes, sir.

14 Q. Two to three joints a day?

15 A. That's what he told me.

16 Q. And also, if he asked you did Mr. Blackwell tell
17 you that he tried acid, cocaine, speed, and took pills,
18 you would say, yes, he did tell me that?

19 A. I would.

20 Q. Okay. Now, you came prepared to testify about
21 Mr. Blackwell's intellectual disability and his mental
22 state at the time; isn't that correct?

23 A. You mean today?

24 Q. Yes.

25 A. Yes.

1 Q. Okay. And if similar efficient information was
2 given to you back in 2014, you'd probably come to the
3 same results you have today; is that correct?

4 A. I sure hope I would have come to the same
5 results.

6 Q. Okay. But Dr. Calloway testified in 2014 about
7 his intellectual disability; isn't that correct?

8 A. That's my understanding. We -- she did.

9 Q. And she found him disabled, right?

10 A. She did.

11 Q. And Dr. Maddox testified about his suffering from
12 major depression?

13 A. She did.

14 Q. At the time of the incident?

15 A. She did.

16 Q. Is that true?

17 A. Yes.

18 MR. EVANS: Okay. Beg the Court's indulgence.

19 BY MR. EVANS:

20 Q. Now, you said earlier that you think that Mr.
21 Blackwell could adapt in a prison situation; isn't that
22 correct?

23 A. Yes. I mean, I guess it begs to the question as
24 to what we mean by adapt, but yes.

25 Q. Okay. And that's all a prediction. Of course,

1 you can't tell the future?

2 A. It is a prediction and I cannot predict the
3 future. There is a degree of uncertainty.

4 Q. All right. And you never would have predicted
5 someone like Rickey Blackwell killing a little child?

6 A. Not in a -- no, I wouldn't. I mean, it was --
7 right. Now, if I take a step back and look at what was
8 going on, I might say, ooh, this is bad, like I
9 mentioned. Like, I might have wanted him in the
10 hospital. But in his normal state of being, no way. I
11 would not think that.

12 Q. I have nothing further.

13 THE COURT: Thank you. Redirect?

14 MR. GROSE: Yes, sir. May it please the Court?

15 THE COURT: (Nods head up and down.)

16 REDIRECT EXAMINATION

17 BY MR. GROSE:

18 Q. Dr. Corvin, they asked you some questions about
19 Rickey Blackwell's report about cancer being everywhere
20 in his body but maybe one location.

21 A. Yes, sir.

22 Q. All right. You have reviewed the records about
23 the cancer and the treatment of the cancer?

24 A. I have. I think there was another set of records
25 that we -- that probably don't even exist anymore, but

1 I've read what's available, yes.

2 Q. All right. And would you place more significance
3 on the records that you read or Rickey's report of what
4 the doctor said?

5 A. Oh, absolutely the records.

6 Q. And why is that?

7 A. Mr. Blackwell is not a very sophisticated
8 individual and certainly is understanding of how the
9 cancer is going to be impacted by the things that we've
10 been talking about. And so the best reference in terms
11 of the diagnosis and treatment of the condition are the
12 records of the diagnosis and treatment.

13 Q. Okay. And if a statement was made by Rickey's
14 daughter, Heather, that the cancer treatment washed out
15 his brain, would you rely on Heather's statement more or
16 the records more?

17 A. Well, I'm gonna rely on both. And I think the --
18 and I'm gonna look at them in the context of what they
19 represent. So Heather's reference to it washing her --
20 his brain away or something like that. And what's
21 contained in the records are not -- they're not
22 contradictory. So -- Now, you've gotta remember that
23 Heather is not -- is very intellectually disabled
24 herself. And so, as a historian child, with
25 intellectual disability describing her dad's brain being

1 washed away after the -- by the cancer, there is some
2 truth to that.

3 Now, let's put it clinically though. It doesn't
4 mean that his intellectual disability got worse. What
5 the record does reflect, however, is that his underlying
6 depression and anxiety conditions did, in fact, get a
7 lot worse and stayed a lot worse after that. The
8 records say that -- and for what it's worth, Mr.
9 Blackwell kind of says that too --

10 Q. Okay.

11 A. -- that he did get more ill.

12 Q. So you're able to separate the effects of the
13 cancer and the treatment on intellectual disability
14 versus the major depression?

15 A. Yes, you can do that. And that's based on an
16 understanding of what the impact of the cancer is
17 medically in terms of intellect. But it's also
18 important to understand what the impact is of somebody
19 getting a cancer diagnosis. And somebody like him,
20 that's -- well, it's scary -- it would be scary and
21 upsetting to me. He's already a depressed and anxiety
22 prone individual. It messed him up. I mean, he --
23 there's several references to his depression and anxiety
24 kind of spiraling after that. And that's not shocking.

25 Q. Okay. They asked you some questions about

1 Rickey's COPD.

2 A. Yes.

3 Q. All right. And have you seen any evidence that
4 the COPD contributed to Rickey's intellectual
5 functioning?

6 A. No. So, COPD and people that have this
7 subjective shortness of breath, it -- you can imagine it
8 might not help with your anxiety. But COPD in itself,
9 though, wouldn't really affect sort of central nervous
10 system health, if you will, unless it was a source of
11 either chronic hypoxemia, low oxygen levels, or a
12 catastrophic global anoxic event, like you stop
13 breathing.

14 And I used to work in a pulmonary unit and did
15 have one instance of a guy who weighed like 700 pounds
16 who actually had to wear a ventilator at night, because
17 he would stop breathing so much and his ventilation was
18 so bad. He was a blue bloater, the other one we're
19 talking about. So he would stop breathing at night.
20 And he actually did have a definable intellectual
21 deficit, but his oxygenation was plummeting every night
22 until we got him treated in the hospital and on a
23 ventilator, so...

24 But in this instance, no, there's no evidence
25 that that would occur. And the vast majority of people

1 who have COPD from smoking don't become effectively
2 intellectually disabled from it, even after years and
3 years and years.

4 Q. All right. The conditions that might affect his
5 intellectual functioning, if I'm understanding you
6 right, that you saw no evidence that Rickey had either
7 one of those conditions?

8 A. So -- well, I mean, he has the COPD, right. But,
9 but that -- there's no evidence in the record of it
10 actually affecting his innate intellectual abilities.

11 Q. And one of them was acute hypoxia?

12 A. Yeah. So one would be, in terms of the COPD, if
13 somebody is poorly oxygenating recurrently -- so the
14 patient I was talking about, every night until we got
15 him on a nocturnal vent, he would desaturate a lot. I
16 mean, his oxygenation would fall below 70 percent and
17 stuff when you want it really at 95 percent. And that
18 over time does -- it can induce a neurocognitive -- we actually
19 call it a neurocognitive disorder from that, right?

20 And the other one would be an acute global anoxic
21 event. So he just stops breathing, codes, and for three
22 minutes he's got very little oxygenation. That would --
23 then you can wake up and be changed by that. But there
24 -- I don't see any evidence of either of those things
25 occurring in this instance. And the vast majority of

1 people who have COPD still adequately oxygenate.

2 Q. They asked you some questions about Rickey
3 inhaling some sort of toxin?

4 A. Yeah. It was sodium metasilicate.

5 Q. All right. Does that, the fact that he inhaled a
6 toxin, does that affect your opinion about Rickey's
7 intellectual disability?

8 A. Not really. I mean, no. It just gives us the
9 source of the restrictive lung defect that he had
10 subsequent to that injury.

11 Q. Okay. They asked you about Rickey having back
12 pain.

13 A. Yes.

14 Q. Did that affect your diagnosis on intellectual
15 disability?

16 A. No. But chronic pain can certainly exacerbate
17 underlying depression and anxiety, but it doesn't worsen
18 intellectual inability. Now, if you were in horrible
19 pain when somebody tests you, you shouldn't test
20 somebody who's grimacing in horrible pain because that
21 might affect performance in the short-term. But I've
22 never -- the times I've seen him he wasn't -- that
23 wasn't an issue.

24 Q. They asked you some questions about Rickey's
25 various drug use, and I think we covered that on direct.

1 Did anything that they asked you about his drug use
2 undermine the opinions you expressed on direct?

3 A. No. I mean they were already considered, so...

4 Q. All right. They asked you about a trucking
5 accident that you weren't aware of.

6 A. Right. Not the details anyway.

7 Q. Okay.

8 A. Yeah.

9 Q. And so it was more the details than the accident
10 itself?

11 A. That's right. I didn't know about the jack
12 knifing and all that kind of stuff.

13 Q. Okay.

14 A. Yeah.

15 Q. Do you know when Rickey's truck driving ended?

16 A. I probably have known at some point. It was a
17 number of years prior to this, though.

18 Q. All right. If it was before the cancer
19 diagnosis, would that sound right?

20 A. Yeah. I mean it sounds consistent. I mean, I
21 don't think he drove after that, that's for sure.

22 Q. Okay. And you mentioned on direct a normal CT
23 scan.

24 A. Right. In 2002, I believe.

25 Q. Okay. And so, if the evidence in the case

1 reflects that normal CT scan happened after Rickey was
2 no longer driving trucks, what can you say in regards to
3 the CT scan in relation to what they described about
4 that accident?

5 A. Sure. So, what it would suggest is that there
6 was no -- now. That's a structural imaging that they
7 got, so what it would suggest is that any traumatic
8 blows to the head he sustained were not sufficient
9 enough to cause a tissue disruption or death that was
10 discernable on a non-contrasted head CT. It doesn't
11 necessarily rule out -- I mean, some people have
12 neurocognitive disorders and structural imaging looks
13 okay. But it does relax, sort of a big subset of
14 traumatic brain injuries, resulting in neurocognitive
15 illness, so it makes it less likely.

16 Q. Okay. And that certainly is consistent with the
17 opinions that you expressed on direct?

18 A. I believe so, yes.

19 Q. Okay. And they asked -- they showed you a
20 portion that they highlighted in the DSM-5 regarding not
21 assuming an intellectual disability based on a
22 particular genetic condition.

23 A. Correct.

24 Q. All right. Are you assuming an intellectual
25 disability based on a genetic condition?

1 A. Oh, no. In fact, count to one deletion, I don't
2 know the stats but pretty certain that most of those
3 individuals don't have ID but it's an elevated risk
4 factor. I would assume the existence or a diagnosis of
5 ID based on any finding except for the stuff that we've
6 been talking about, the three prongs.

7 The testing deficit, the adaptive functioning
8 deficits, and the existence during the developmental
9 period. If those three things are present, that
10 supports the diagnosis. Some people could have
11 horrendous medical records and they don't meet those
12 three prongs and they're not intellectually disabled.

13 Q. They asked you at various times some questions
14 about Dr. Maddox, then going by Dr. Schwartz-Watts,
15 about her report and her testimony.

16 A. Yeah.

17 Q. Okay. What I want to do is, if you can see on
18 the screen page 2973 of the record.

19 A. Got it.

20 Q. And, you know, in that there's a discussion about
21 her qualifications. And Mr. McGuire begins a statement
22 on the bottom of page 2973 that continues over onto the
23 top of the next page.

24 A. Right.

25 Q. And she was qualified as an expert in general

1 psychiatry. Is that fair to say?

2 A. That's fair to say. She is essentially a fact
3 witness regarding treatment.

4 Q. Okay. And so, she wasn't qualified in this
5 particular jury trial as an expert in forensic
6 psychiatry. And so, in order to give an opinion in
7 forensic psychiatry, she would need to be qualified as
8 an expert in that regard?

9 A. Correct. That's my understanding.

10 Q. That's based on your experience as a, both
11 general and forensic psychiatry?

12 A. Yes, sir.

13 Q. Okay. You said, and correct me if I'm wrong, but
14 you said that she was put in a weird position; is that
15 the word you used?

16 A. I probably did say that, yes.

17 Q. Okay. And what was weird about the position that
18 she was put in?

19 A. So, so what's weird -- well, what's unusual about
20 it is that she was in a position as a treating -- she's
21 a forensic psychiatrist. Probably has, I think, more
22 experience than I do as a forensic psychiatrist. But in
23 this situation she was, if you want to call it, hired,
24 she was a treatment provider for a defendant, who was
25 certainly in a forensic setting, right? And so, here's

1 the, here's the problem.

2 As a fact witness and as a treater you're in,
3 you're in one role. And so she was allowed, I think,
4 correctly to testify about her treatment and her
5 diagnosis of the defendant.

6 What she didn't have an opinion and wasn't
7 qualified to offer an opinion for was the forensic
8 implications of the existence of the illness. So she
9 went so far to say that she had -- that he had this
10 condition at the time of the offense conduct. So that's
11 a little bit of a gray area, actually, because that's
12 not -- that's outside the scope of her treatment.

13 But she wouldn't -- and I agree with her not
14 doing so. She didn't go so far as to say, and this is
15 the impact. This is how it would affect GBMI. This is
16 how it would affect reasoning and cognition and impulse
17 control. This is how a trier of fact may want to view
18 this diagnosis present at the time of the alleged
19 offense in terms of culpability.

20 And it is correct because there's this dual
21 agency problem that forensic psychiatrists are required
22 to deal with. To offer expert opinions about
23 individuals we see, we have to tell them we're not here
24 to treat you. The stuff we're talking about is not
25 confidential and this is what could happen with it. And

1 it might help calm or might have no impact. So there's
2 things we have to tell them.

3 But if we're treating the individual, then the
4 dual agency is, well, we are treating you and we are
5 trying to help you. And there are some limitations on
6 confidentiality. And so, whenever possible we avoid
7 situations in which we treat somebody and give expert
8 opinions about that same person for all kinds of reasons
9 that I won't bore you with, but...

10 Q. Okay.

11 A. And so she stayed out of that.

12 Q. All right. And just to followup on that, I have
13 the bottom of page 2984 on the screen, and that's the
14 beginning of Mr. McGuire's question: If you would, tell
15 the jury what -- and on the next page -- your opinion is
16 as to Mr. Blackwell's psychiatric state at the time of
17 the incident.

18 A. Right.

19 Q. And the answer that he gave -- well, I think you
20 said you didn't disagree with him giving the answer in
21 the context of her role?

22 A. That is correct.

23 Q. And you, as part of that, you don't disagree with
24 her going further than what she did there in the context
25 of her role?

1 A. That's correct.

2 Q. And when you said she's not qualified to give
3 that opinion, you're not talking about her
4 qualifications as a professional --

5 A. Oh, no.

6 Q. -- you were talking about her qualifications as a
7 witness in this case?

8 A. Yeah. So her, her training and experience very
9 much would have enabled her to, you know, be able to do
10 that assessment, but her role in this case pro --
11 largely prohibited her ability to do that, and didn't --
12 she didn't do that.

13 Q. All right. And then in this case you've been
14 qualified as an expert in forensic psychiatry --

15 A. Right.

16 Q. -- as well as in general psychiatry. Is the
17 assessment that you did of Rickey Blackwell much broader
18 than the assessment that Dr. Maddox did?

19 MR. EVANS: You Honor, I would object to that
20 question. It's beyond the scope of my
21 cross-examination.

22 MR. GROSE: He asked about Dr. Schwartz-Watts,
23 and he's trying to use Dr. Schwartz-Watts to show that
24 all this information was presented at trial. The fact
25 of the matter is it wasn't.

1 MR. EVANS: Well, I asked the question ---

2 THE COURT: Well, I think the Court has a pretty
3 good handle on Dr. Schwartz-Watts, now Maddox, role at
4 trial and what she testified to here and there. I think
5 that the Court understands that the limitation was
6 because of her role, and not because of her training and
7 her expertise. So what is the objection?

8 MR. EVANS: That it's going beyond the scope --
9 that question is going beyond the scope of my
10 cross-examination. I asked him about the work that Dr.
11 Maddox did and the treatment. I asked him about her
12 statement during trial and what her final diagnosis ---

13 THE COURT: All right. And your question?

14 MR. GROSE: My question -- he also asked her --
15 him about Dr. Maddox's report. And the question is, did
16 the evaluation and assessment that Dr. Corvin did, is
17 that broader than what Dr. Maddox did?

18 THE COURT: Yeah, I, I overrule the objection.
19 I'll let him answer the question.

20 THE WITNESS: So let me answer this way, most --
21 almost -- with almost -- with near certainty I can say
22 that the answer is that the work I've done at this point
23 goes far beyond the work that she would have done
24 because it's for a very, very different purpose.

25 Now, the reason I'm hedging is I wasn't with her

1 while she did her work but, you know, I've been doing
2 this a long time, so has she. We know what we need to
3 do to treat somebody, but to answer questions for a
4 court of law regarding that same clinical assessment
5 years before, you know what I'm saying? That, that
6 encompasses a lot more work.

7 So, for example, if she interviewed a lot of
8 collateral witnesses I'd be shocked. If she reviewed
9 the discovery file, I'd be shocked. She was there to
10 treat him at the jail. And so that would be outside the
11 scope of that work, if you want to put it that -- I'm
12 using a legal term. But that would be not particularly
13 informative in terms of treating him at the jail, so I
14 doubt that she did that, but I just don't know for 100
15 percent that she didn't do that.

16 Q. And thinking back to cross-examination, both
17 before and after lunch, did they, the State, the
18 government present you with any information during the
19 cross-examination that undermines your opinion on
20 intellectual disability?

21 A. No, sir, that hasn't happened.

22 Q. Did the government present you with any
23 information during their cross-examination that
24 undermines your opinion with regards to major
25 depression?

1 A. No, sir, that hasn't happened either.

2 Q. All right. And has the government presented to
3 you with any information during their cross-examination
4 that undermines your opinion regarding Rickey
5 Blackwell's state of mind at the time of this crime?

6 A. No, sir, that hasn't happened.

7 MR. GROSE: I beg the Court's indulgence for a
8 moment.

9 Thank you, Dr. Corvin, I appreciate it.

10 THE COURT: Mr. Evans, any recross?

11 RE CROSS-EXAMINATION

12 BY MR. EVANS:

13 Q. Now, you stated you didn't have Mr. Blackwell's
14 cancer records.

15 A. I don't have them.

16 Q. You don't have them.

17 A. I don't think -- I don't know that anybody does.

18 Q. Okay. You never talked to his oncologist, did
19 you?

20 A. No, sir. No, sir.

21 Q. So you don't know what kind of particular cancer
22 or what kind of treatment or what was done for Rickey?
23 Mr. Blackwell, his treatment.

24 A. Yeah, not specifically.

25 Q. Not specifically?

1 A. I know some, but not specifically.

2 Q. Okay. Now, he got his COPD from not smoking but
3 inhaling toxic materials?

4 A. That's my understanding, yes, sir.

5 Q. And did you even read any records regarding his
6 treatment of COPD?

7 A. I don't know that I have.

8 Q. Okay. You didn't talk to his pulmonologist?

9 A. Oh, I definitely did not.

10 Q. Okay. Did you talk to a pulmonologist --

11 A. Did not.

12 Q. -- to review his case? Okay. And you said that
13 when a person's going through pain that person should
14 not be tested; isn't that correct?

15 A. That's right. Well, to the extent it interferes,
16 yeah.

17 Q. Okay. And isn't it true that somebody can be in
18 pain and you not know it, because you don't always see
19 it visually?

20 A. That's true. That's true.

21 Q. Okay. And you said earlier that, that -- I could
22 be misquoting you, but when the three prongs are
23 satisfied, you don't really need to go into the genetics
24 to determine intellectual disability?

25 A. Well, I wouldn't put it exactly like that. What

1 I would say is if the three prongs are there and they're
2 there to the examiners or the trier of fact's
3 satisfaction and there's not an exclusionary diagnosis,
4 the DSM talks about then ID exists, it's there.

5 Q. Okay.

6 A. All right. Now, the flip side is, these other
7 measures help build an increase in way of weight or
8 certainty about that diagnosis so it's helpful
9 information. But it's not -- most cases of intellectual
10 disability I've diagnosed or worked with, have never had
11 genetic testing.

12 Q. Okay.

13 A. If that helps answer it.

14 Q. Okay.

15 A. Yeah.

16 Q. So the fact that Dr. Calloway found three prongs
17 and found him intellectually disabled, there was nothing
18 wrong with her not suggesting you get a geneticist?

19 A. Oh, yeah. Yeah.

20 Q. Nothing wrong with --

21 A. Yeah. Yeah, so....

22 Q. -- getting one involved?

23 A. Yeah. So, right. There's no -- there's not a
24 step for that.

25 Q. Okay.

1 A. All right.

2 Q. And Dr. Maddox is -- was certainly qualified to
3 give her diagnosis that she gave at trial; isn't that
4 correct?

5 A. Yes, sir.

6 Q. And she gave a diagnosis that he was majorly
7 depressed at the time of the incident?

8 A. She did.

9 Q. He was suffering from major depression at the
10 time of the incident?

11 A. That's right.

12 Q. You would agree with that, wouldn't you?

13 A. I think I do, yes, sir.

14 MR. EVANS: Nothing further.

15 THE COURT: All right. Thank you, Doctor. You
16 may step down.

17 THE WITNESS: Released?

18 MR. GROSE: We would ask that Dr. Corvin be
19 excused for this time.

20 MR. EVANS: No objection.

21 THE COURT: Dr. Corvin, you're excused.

22 THE WITNESS: Thank you, sir.

23 (Witness leaves the stand and the courtroom.)

24 THE COURT: Mr. Grose, you may call your next
25 witness.

DIRECT EXAMINATION OF DR. BROWN BY MS. VANN

1 MS. VANN: Applicant calls Dr. Gordon Brown.

2 (Witness comes forward.)

3 THE DEPUTY: Put your left hand on the Bible and
4 raise your right. Do you swear to tell the whole truth
5 and nothing but the truth so help you God?

6 THE WITNESS: I do.

7 THE DEPUTY: All right. Be careful of the step.

8 DR. GORDON EDGAR BROWN, JR.

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. VANN:

12 Q. Good afternoon, Dr. Brown.

13 A. Good afternoon.

14 Q. Could you state your full name for the record and
15 spell your last name, please?

16 A. Gordon Edgar Brown, Jr., B-r-o-w-n.

17 Q. Thank you. Your ears may have been ringing for
18 the last couple of days. We're glad to meet you. We've
19 been talking a little bit about you. What was your
20 employment in 2014?

21 A. 2014 I was leading the Department of Disabilities
22 and Special Needs to begin working at the Department of
23 Mental Health.

24 Q. And could you give us your education and work
25 experience?

1 A. Sure. I'll try to do that briefly. Bachelor's
2 degree in psychology and sociology, Carson Newman
3 College in 1974. PhD. In clinical and community
4 psychology from the University of South Carolina in
5 1983. Did my internship, which would now be called a
6 residence, at Eisenhower Army Medical Center at Fort
7 Gordon from '82 to '83.

8 I spent three years as psychologist for the 3rd
9 Army division in Germany. Then I left active duty, went
10 to work at Harris Psychiatric Hospital at Anderson.
11 Worked there for like three years in the child and
12 adolescent unit. Sorry, got a cramp in my leg. Sorry.

13 When I left there, I went to become the
14 psychologist at the student health service at the
15 Medical College of Georgia and Augusta. I may be off
16 with the number of years. Did that for about five
17 years. And then when I left there, went to work for the
18 Georgia Department of Corrections or the company that
19 contracted with GDC. Did that for almost ten years,
20 serving the first part of that time at a women's prison
21 in Davisboro, Georgia.

22 And then from 1999 until 2003, served as a
23 clinical director of the mental -- it was then called
24 the Mental Health Mental Retardation Program at the
25 Augusta Medical Prison in Augusta. From there went into

1 a newly created position as a forensic program director
2 at Georgia Regional Hospital in Augusta. Decided that I
3 didn't want to be an administrator. Moved to South
4 Carolina to do work with DDSN as a forensic evaluator
5 there. And then at some point from my previous social
6 life, stepped up into the director of that program there
7 and began doing things like Atkins evaluations.

8 From there I left in 2014 to work at the
9 Department of Mental Health with the sexually violent
10 predator program. Did that and then I retired in 2018.
11 And currently I -- I call myself semi-retired. I do
12 some contract evaluations for DMH in their sexually
13 violent predator program.

14 Q. And DDSN is the Department of Disabilities and
15 Special Needs?

16 A. Correct.

17 Q. And is a State agency?

18 A. Correct.

19 Q. And can you give us a little information about
20 what types of evaluations you did at DDSN?

21 A. The primary evaluations were competency to stand
22 trial. When I first began working there, we did
23 criminal responsibility evaluations as well, but those
24 we eventually moved to DMH. And then I did a few Atkins
25 cases, some postconviction relief and a couple of

1 pretrial. And then every now and then we'd get some
2 unusual question from a solicitor or a defense attorney
3 for specific types of evaluations, so we would take
4 those on from time to time.

5 Q. And today are you here on behalf of any state
6 agency?

7 A. I am not.

8 Q. Are any opinions you offer today in your personal
9 capacity of forensic psychology?

10 A. That's correct.

11 MS. VANN: Your Honor, at this time we'd ask that
12 Dr. Brown be qualified as an expert in forensic
13 psychology.

14 MR. EVANS: No objection, Your Honor.

15 THE COURT: I find that he is qualified to
16 testify as an expert in forensic psychology.

17 MS. VANN: Thank you.

18 BY MS. VANN:

19 Q. Dr. Brown, how did you become involved in Rickey
20 Blackwell's capital case?

21 A. We received a court order to do an evaluation for
22 intellectual disability in a death penalty case.

23 Q. And how did you go about completing that
24 evaluation?

25 A. Reviewed all of the documentation that we had,

1 all of the records that we could get. Saw Mr. Blackwell
2 a couple of times for interview and for psychological
3 testing. And then put all that together to write a
4 report summarizing the findings.

5 Q. Do you know what you reviewed in this case?

6 A. At that time?

7 Q. At that time, yes, sir.

8 A. If I may refer to my report?

9 Q. Absolutely. Dr. Brown's report is Applicant's
10 Exhibit 34.

11 A. There were legal documents relating to the
12 charges at that time. Medical records from the
13 detention center. Inmate phone records. Employment
14 records from various places. Driving records. Law
15 enforcement reports. School records. Records from the
16 Carolina Center for Behavioral Health Services from
17 Spartanburg Regional Healthcare. From Patrick B. Harris
18 Hospital.

19 Records from the Spartanburg Sheriff's Office.
20 Records from the Social Security Administration. Civil
21 and legal records for Rickey Blackwell and his wife.
22 And then some psychiatric and school records for other
23 family members.

24 Q. And when you conduct evaluations in cases like
25 this, would you typically receive information from the

1 parties, the State and the defendant?

2 A. We could. In most cases that came through the
3 local solicitor's office but, yes, we would get records
4 for whatever sources we could.

5 Q. So if the defense attorneys provided you
6 information, you would consider that?

7 A. Correct.

8 Q. And do you recall if you received any information
9 from the defense in this case?

10 A. I remember receiving Dr. Calloway's report
11 directly from her. To the best of my memory, everything
12 else came through the solicitor's office. Again, that's
13 a ten-year-old memory, but I don't recall getting
14 anything else directly from the defense attorney.

15 Q. Great. And we have your report in evidence and
16 your testimony from 2014, so we don't need to go into
17 detail on this, but what generally was your opinion
18 regarding Mr. Blackwell and whether he was a person with
19 intellectual disability in 2014?

20 A. My opinion at that time was that he did not meet
21 the criteria for the diagnosis, based primarily on the
22 issue that I did not see enough demonstration of
23 adaptive function deficits during the developmental
24 period.

25 Q. Have you issued a report to that finding?

1 A. I did.

2 Q. And do you recall the date that it was issued?

3 A. It was January of 2014. January 21st, 2014.

4 Q. And what would you have done with the report once
5 you issued it?

6 A. Well, it would be reviewed by my supervisor,
7 DDSN, by general counsel at DDSN, and then sent to the
8 court, to the defense, to the solicitor.

9 Q. And that would have been provided to the Court
10 and the parties before any hearing on the matter on
11 intellectual disability?

12 A. Correct.

13 Q. If you could turn to the last page of your
14 report, which is page 12?

15 A. Okay.

16 Q. Under -- in the second paragraph under Diagnostic
17 Summary and Conclusions --

18 A. Uh-huh.

19 Q. -- in about the middle of that paragraph, it
20 looks like you list three significant risk factors in
21 Mr. Blackwell's case that occurred in adulthood rather
22 than the developmental period?

23 A. Correct.

24 Q. And what are those?

25 A. Diagnosis of and treatment for cancer. Head

1 injury and significant depression and/or anxiety.

2 Q. And you say that they can have an effect?

3 A. They potentially could, yes.

4 Q. So you didn't have information one way or the
5 other to determine if they had, in fact, had an effect?

6 A. I didn't have any information of that. And, in
7 fact, in rereading the transcript, the defense starts
8 with that point, asked specifically about that, and I
9 testified in court that I had no information that any of
10 those were, in fact, a factor.

11 Q. And on those particular factors, would you have
12 considered additional information if it had been
13 provided to you?

14 A. Sure.

15 Q. Were you contacted again about Mr. Blackwell's
16 case within the last year?

17 A. Yes, within the last year.

18 Q. Can you briefly describe who contacted you?

19 A. Well, the first phone call was from Dr. Knight,
20 who I had not heard from in -- well, since our DDSN, so
21 nine years, I guess. And she mentioned that she was
22 involved in the case and wanted to talk about my
23 evaluation. So I got the report and discussed it with
24 her and then was later contacted by your office.

25 Q. And did my office ask you if you would consider

1 any additional materials?

2 A. Yes.

3 Q. And did you agree to do that?

4 A. I did.

5 Q. And what have you reviewed since this more recent
6 contact?

7 A. I read Dr. Knight's report. Dr. Andrews social
8 work, social history report. Dr. Cunniff's genetic
9 testing report. The report that Dr. Schwartz-Watts did.
10 Dr. Calloway's report. My initial report. The Supreme
11 Court opinion affirming the death penalty. Your office
12 or the appellate attorney's PCR application. And the
13 transcript of my previous testimony.

14 Q. And if you had -- if you had this information in
15 2014, would your opinion have been different?

16 A. I believe it would have been.

17 Q. How so?

18 A. Based on a lot of the information that was
19 provided by and summarized by Dr. Knight in her report,
20 I think I misjudged some of the school records. I
21 wasn't sure. We didn't have a lot of school records.
22 And many of them I, at some point had to use a
23 magnifying glass to try to read some of them. You know,
24 very difficult to understand. Abbreviations like ADJ,
25 which I assume that it stood for adjunct. And Dr.

1 Knight was apparently later able to verify that.

2 But it sounds like what he was in at that time
3 was much more like what today we would call special
4 education. And I was thinking at the time that I did
5 that. He was given a class rank of 113 out of 113 in
6 his junior year.

7 In isolation, I wasn't sure what to do with that
8 data because I didn't know where that number came from.
9 And Dr. Knight's report provides a lot of additional
10 information. Looking at, and I think talking to the
11 teacher about how they would have done it at that point.
12 So that it does seem to be a reasonable rank. And even
13 if it's influenced by low scores in that last year,
14 well, it's clear he would still have been at or very
15 near the bottom of the class at that time.

16 The other thing that her report clarified was
17 some of the early job history. And Mr. Blackwell tends
18 to overrate his abilities. And in talking to him about
19 being a truck driver, for example, he seems like a quite
20 competent truck driver.

21 As you look at the records, his first few jobs
22 when he left high school were all very entry level, very
23 basic jobs, repetitious jobs that required, you know,
24 very little, if any, skill; very little, if any,
25 learning. I think I overrated his abilities as a truck

1 driver. It seems he had more problems driving a truck.
2 More wrecks driving a truck than I was aware of. I put
3 great faith in the fact that he -- in believing that he
4 had passed the CDL exam, which would be a difficult test
5 to pass. And even a hazardous materials test, which
6 I've had to take at some work I do with the state guard,
7 that's not an easy test.

8 And, again, looking at Dr. Knight's review of the
9 records, it looks like he may not actually have taken
10 and passed those tests after all. So I think the school
11 records certainly indicate more adaptive functioning
12 problems in school than I was thinking at the time. And
13 the work record indicates more in the practical area of
14 adaptive functioning skills that I was thinking at the
15 time.

16 Q. And so your opinion -- well, sorry. Before I ask
17 that question, was there also additional information on
18 those three potential intervening factors that you had
19 noted in your report, the head injury, the cancer and
20 cancer treatment, and the depression and anxiety?

21 A. Yes. Dr. Knight covered all of those very
22 thoroughly and indicated in her opinion, based on the
23 experts she talked to, those, those would not be
24 factors.

25 Q. And in 2014 if you had this information, would

1 you have found that he had significantly sub-average
2 intellectual functioning in the developmental period?

3 A. I believe I would have. I think in 2014 from me
4 it was a very close call.

5 Q. Uh-huh.

6 A. And we're looking at the preponderance of the
7 evidence and I just didn't see enough there for me to
8 think, yes, the preponderance of the evidence supports,
9 you know, that adaptive functioning prong. With this
10 additional information, I think that's enough for me to
11 say, yes, it does.

12 Q. Thank you. And is this the type of information
13 that you would have considered as part of your
14 evaluation if it had been provided to you in 2014?

15 A. Yes.

16 Q. Yesterday we heard some testimony that since 2014
17 the developmental period has actually, toward the end of
18 the developmental period has increased from 18 to 22.
19 Would that also have made any difference in your
20 evaluation?

21 A. It would. We always like to use a current
22 evaluation model, and I'm old enough to remember DSM-2,
23 which was about that thick (indicating), and you've seen
24 the DSM-5-TR.

25 Q. It's bigger now.

1 A. When I did my evaluation, we were using
2 DSM-IV-TR. The DSM-5 was published in 2013. I don't
3 know what the implementation date was, but apparently
4 some time after 2014 when I had completed and testified
5 about my evaluation. And my report mentioned several
6 times the cutoff of age 18.

7 I served as psychologist for the 3rd Army
8 division for three years, and we had young soldiers 18
9 to their early 20's. And they were clearly still in the
10 early developmental -- or still in the developmental
11 stages. And I think the DSM finally caught up with that
12 with DSM-5 and now 5TR and not assigning a specific
13 cutoff of 18. And I understand that more recently DDSN
14 has increased their age from 18 to 22, which has always
15 been the case as far as I remember for the other
16 developmental disabilities, the intellectual disability
17 they had cut off at age 18.

18 So if we're looking at that four years from the
19 time he left school through those first few jobs, then
20 that does provide more support for adaptive functioning
21 deficits during the developmental period. But even
22 without that extension, I think the information is
23 there. In doing these types of evaluations, we have to
24 backtrack.

25 I saw somebody who was in his 50's. His IQ was

CROSS-EXAMINATION OF DR. BROWN BY MR. EVANS

1 what it was at that time. His adaptive functioning was
2 what it was. So then we have to back up four years to
3 figure out what would it have been like at that time.
4 So I think whether we're talking 18 or 22, my opinion
5 would still be the same.

6 Q. And that opinion would be that Rickey Blackwell
7 is a person with intellectual disability?

8 A. I think with this new information, yes.

9 Q. I have no further questions, thank you. Please
10 answer any questions from the State.

11 A. Okay.

12 THE COURT: Mr. Evans?

13 MR. EVANS: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. EVANS:

16 Q. Good afternoon, Mr. Brown -- Dr. Brown.

17 A. Good afternoon.

18 Q. It looks like you relied heavily on Dr. Knight's
19 evaluation of Mr. Blackwell. Does it change your
20 opinion?

21 A. Yeah. As far as the information in her report,
22 yes, I did.

23 Q. Okay. And what if she was not given all the
24 information available to the defense, would that change
25 your idea of -- or mind regarding his intellectual

1 disability?

2 A. I'm sorry, but I'm not sure I follow the
3 question.

4 Q. I mean, what else -- what if there was
5 information that was left out, where she wasn't given
6 all that counsel had possession of, does that change
7 your idea of his intellectual disability?

8 A. What she provided that I did not have at the time
9 was a lot of additional information about the school
10 records, about the school history information that in my
11 opinion at this point would support those deficits. A
12 lot of additional information about the work history.

13 And a lot of information about the family
14 history, which I think that's sort of, we covered in
15 previous testimony that that doesn't, you know, lead to
16 the diagnosis, but certainly would increase the
17 likelihood of the family history and genetic reporting.
18 So there was -- it's not just a matter of agreeing with
19 Dr. Knight's opinion, it's a matter of looking at the
20 information that she provided, which led her to that
21 opinion.

22 Q. Okay. In your report it does say that you looked
23 at school records. What school records did you look at?
24 What school records were made available to you?

25 A. From ten years ago, I don't know. I would have

1 to pull out that box of information and, and look at
2 what we had then.

3 Q. It could have been the same school records you
4 reviewed afterwards, recently; isn't that correct?

5 A. I have not reviewed any recently.

6 Q. Okay. When you say -- you say your report. So
7 you didn't look at anything else? You just reviewed the
8 report, that's all, and changed your mind from the
9 report?

10 A. Well, my report, Dr. Knight's report, the other
11 things I listed, those are the things I looked at this
12 time. I did not look at any original documents, any
13 school records, or any other original documents.

14 Q. Okay. And you talked about his work history that
15 caused your mind to change. What about his work history
16 that caused you -- caused you to change your mind of his
17 intellectual status?

18 A. Well, again, in talking to Mr. Blackwell, he, he
19 presents himself as being, you know, very competent,
20 very capable. And, you know, that isn't necessarily
21 consistent with the, the work record. But the first few
22 jobs specifically, I remember he worked in an ice
23 packing plant loading ice, putting inserts in
24 newspapers.

25 And I remember a hopper feeder at a textile

1 plant. I did the same thing in high school and college
2 so, you know, those are, things that I'm familiar with.
3 You know, things that require really no skill and just
4 doing the repetitive task over and over.

5 And I remember at one point he was having trouble
6 with the putting, you know, the bags on the pallet
7 because they kept sliding off and he couldn't quite
8 figure out how to do that. It just doesn't seem like he
9 was quite as capable in those early jobs as, as I would
10 have given him credit for.

11 Q. Okay. Well, let's look at his jobs. You talked
12 about the community cash stores, grocery store he worked
13 at when he was working in the meat department and he
14 quit because it was cold.

15 A. Right.

16 Q. Okay. Did that show he was intellectually
17 disabled?

18 A. No. That doesn't mean he's intellectually
19 disabled, but it's consistent with some people who are
20 intellectually disabled tend to give up, rather than to,
21 to work through the circumstances and, and deal with it.

22 Q. All right. His second job, he worked for Crown
23 Cork and Seal, and he told Dr. Knight he could never get
24 the motive for a transfer so he quit. Also, he wasn't
25 getting promoted with no high school diploma; isn't that

1 correct?

2 A. I think that's probably correct.

3 Q. Okay. And it's also a belief that he was fired
4 because he was stealing cans. That doesn't show
5 intellectual disability, does it?

6 A. No. He told me he was fired because he was
7 caught with somebody that had contraband or something
8 like that, so in his version --

9 Q. So he told you the truth ---

10 A. I'm sorry?

11 Q. He actually told you the truth and did not tell
12 Dr. Knight the truth, is that what you're saying?

13 A. I, I don't know.

14 Q. Okay.

15 A. I don't know which is the truth.

16 Q. All right. His next job was at the White Bag
17 Company and he talked about stacking bags on the pallet.
18 And even though they told him that in time he would get
19 it, he decided to quit doing that job also.

20 A. Right.

21 Q. Okay. Then his next job was at Phillips Fibers
22 working in textiles. No, excuse me. His next job was
23 working at Milliken. A textile factory using a Creeler
24 and he wasn't fast enough at that job so he got fired.
25 Is that -- do you remember that?

1 A. I heard, yes.

2 Q. Okay. And then the next job was at Phillips
3 Fibers. And he said he quit that year because he didn't
4 like the swing shift. Do you remember that one?

5 A. I, I don't specifically remember the swing
6 shifts, but I'll take your word for it, yes.

7 Q. Okay. And then he worked at Piedmont Ice bagging
8 ice and it wasn't hard, it was just cold, he told Dr.
9 Knight. Okay. Does that show his inability to do the
10 job?

11 A. It doesn't show his inability to do the job, no.

12 Q. Okay. It just showed that he didn't want the job
13 because he was working at an ice plant and it was cold.
14 That's what it shows?

15 A. Correct.

16 Q. And he worked at M&C Farm, which is a seasonal
17 job dealing with turkeys. He worked at American Fast
18 Print. It was a fabric company. He didn't like the
19 third shift, so he quite that job also.

20 A. Uh-huh.

21 Q. So it sound to me he quit his job because he
22 doesn't like the conditions, so like when he's working.
23 It doesn't sound like to me he couldn't do the job;
24 isn't that correct?

25 A. I would agree with that.

1 Q. Okay. He was also -- I'm not gonna go into his
2 trucking job. Wasn't he also fired from a job for
3 smoking in the back area and they were afraid it would
4 catch on fire?

5 A. I remember some situation involving smoking. I
6 don't remember exactly what the details were.

7 Q. Okay. And you were never called to testify by
8 the defense, were you, in the case?

9 A. In the trial?

10 Q. In the trial.

11 A. No, I was not.

12 Q. Okay. Were you called to testify for the State?

13 A. I -- my only testimony was in the pretrial Atkins
14 hearing.

15 Q. Okay. And the defense had their own witness, Dr.
16 Calloway?

17 A. Dr. Calloway, yes.

18 Q. Okay. Who basically found Mr. Blackwell
19 intellectually disabled; is that correct?

20 A. That's correct.

21 Q. And she testified, not only doing the Atkins
22 hearing, but doing the trial also?

23 A. That's my understanding, yes.

24 Q. I'll show you Applicant's Exhibit Number 33, page
25 4368. It's Dr. Calloway's report, 4369. That was a

1 basic rundown of Rickey Blackwell's employment. That's
2 part of her report.

3 A. Okay.

4 Q. See it?

5 A. Yes, sir.

6 Q. Now, Dr. Atkins never -- you remember Rickey
7 obtained COPD because of an accident at a hazardous
8 factory, hazardous material factory?

9 A. Yes, I recall.

10 Q. Okay. You never looked into the fact that COPD
11 could cause cognitive dysfunction. You never looked
12 into that, did you?

13 A. I can't say I didn't think of it. I saw that as
14 being an unlikely correlation.

15 Q. But there are studies that say that that's
16 possible, are you aware of that?

17 A. That that would occur as an adult?

18 Q. Yes. But it occurred before his IQ test that you
19 gave him.

20 A. No. I mean, not in terms of intellectual
21 functioning.

22 Q. Right.

23 A. Right.

24 Q. Yes, okay. And in your report you talk about
25 his marijuana use. Do you remember that?

1 A. I remember it coming up, I don't remember exactly
2 what I said.

3 Q. Okay. So on Page 7 of your report?

4 A. I've got it.

5 Q. Okay. He basically told you, and this is
6 Applicant's Number 34, page 4442, he said he remembers
7 he smoked marijuana. He said he quit using it when he
8 was diagnosed of cancer because of fear that he would
9 get the cancer back. He said he first used marijuana at
10 age 18 and would typically use a quarter bag per week.
11 The report said that, correct?

12 A. Right.

13 Q. Okay. It also says that he tried cocaine.
14 Didn't fool with it because it was too addicting. He
15 said he would take Valium occasionally, but otherwise
16 denies any use of prescription medications. He also
17 tried huffing paint once. That's in the report also.

18 A. Right.

19 Q. Do you know if Dr. Knight ever considered the
20 fact -- assess the marijuana use in your final diagnosis
21 of intellectual disability?

22 A. I'm sorry, can you say that again?

23 Q. You or -- nor Dr. Knight ever considered
24 excessive marijuana use in your final diagnosis of
25 intellectual disability?

CROSS-EXAMINATION OF DR. BROWN BY MR. EVANS

1 A. Well, I can't speak for Dr. Knight. I ---

2 Q. It's not in her report, that's what I'm saying.
3 It doesn't mention it at all, does it?

4 A. But it's natural to think of all of those things
5 that could affect it and have been studied. It's not
6 necessarily something I would address directly in, you
7 know, giving the diagnosis or giving the opinion.

8 MR. EVANS: Beg the Court's indulgence.

9 BY MR. EVANS:

10 Q. Now, the only thing that's changed is, you read
11 Dr. Knight's report, nothing regarding evidence, as far
12 as you know, has changed? Nothing new has been
13 discovered?

14 A. Well, I see information that was provided in Dr.
15 Knight's report. Some from Dr. Andrews' report as well
16 that I think has changed.

17 Q. Okay. These are some interview memos that were
18 made during the defense's case by the defense mitigation
19 specialist that was not provided to Dr. Knight. I'm
20 gonna show you first a Rick Bagwell. Mr. Bagwell worked
21 with ---

22 THE COURT: Let's make sure the record's clear.
23 Has that been marked?

24 MR. EVANS: Yeah. State's Exhibit Number 1.

25 THE COURT: All right. State's 1.

1 BY MR. EVANS:

2 Q. My apologies. And this was from Rick Bagwell,
3 who worked with Mr. Blackwell at Belue Trucking. And
4 he states that, you know, Rickey was plenty smart enough
5 to function from what I've seen of the work.

6 Mr. Bagwell states, Mr. Bagwell wasn't much
7 different than any other truckers. He didn't come to
8 work every day, but most truckers don't. Mr. Bagwell
9 goes on to say: His personal life, I don't know. He
10 fit in with the guys here. I didn't have any big
11 dealings with him. If there was a problem or he did
12 something outstanding, I would have heard about it.

13 That was not provided -- well, Dr. Knight
14 testified that was not provided to her and that's not in
15 the report, that statement?

16 A. No, I haven't seen that in the report.

17 Q. This is an interview memo, State's Exhibit Number
18 15 from Gail Shook, and this states: Ms. Shook says
19 she's surprised to hear Rickey has a low IQ. I never
20 saw any indication of it. Ms. Shook never had any
21 problems with his performance. She always gave him good
22 evaluations. Rickey always did the job and got along
23 with co-workers. Rickey didn't need any extra help with
24 a job.

25 A. Yes, sir.

1 Q. You never remember seeing that?

2 A. Never.

3 Q. Okay. This was an interview memo, State's
4 Exhibit Number 6 from Neal Waters. This was also not
5 given to Dr. Knight. Mr. Waters worked with Mr.
6 Blackwell at Jacobson. And it says here: Rickey's job
7 was to pull the orders and fill the orders. The girls
8 in the office would get the orders together and, in the
9 morning, give Rickey his orders for the day. Rickey
10 would pull them out to -- pull them to be shipped out.
11 Rickey drove a forklift. He would go by his list of
12 orders with his forklift and put them on pallets. This
13 is the only job Rickey had at Jacobson. This is what he
14 did all day long.

15 Mr. Waters said: Rickey was a good employee. He
16 showed up on time and did not lay out of work. He said
17 he did what he was told and wasn't a discipline problem.
18 Mr. Waters never had to write up Rickey. Rickey usually
19 got along with his coworkers.

20 Mr. Waters states that he does not view Rickey as
21 slow. He notes, he's always done a good job. He worked
22 in a chemical warehouse. It was very important he
23 pulled the right stuff. Rickey had to read his order
24 and match it to the merchandise and then pull out the
25 merchandise. You've never seen this before?

1 A. I don't remember seeing that, no.

2 Q. Okay. There was another interview that was done
3 by Dr. Jackson, who was Rickey's primary physician at
4 Westgate Family Practice. Do you remember reports by
5 Dr. -- from Dr. Jackson?

6 A. Ten years ago, yes, sir.

7 Q. Okay.

8 A. It's a long time.

9 Q. And this is State's Exhibit Number 4. And Dr.
10 Jackson on here says: States several times during our
11 meeting that Rickey has a borderline IQ. Rickey needed
12 someone to help keep up those medications. Bill,
13 meaning Billy McGuire, mentions to Dr. Jackson that Dr.
14 Jackson really isn't an expert on mental retardation.
15 Dr. Jackson takes great exception to this and points out
16 he takes care of mentally retarded people every day, and
17 he is not. You don't remember seeing this?

18 A. I don't remember seeing that, no.

19 Q. Okay. And you say you never heard of any studies
20 regarding COPD and low brain functioning?

21 A. I probably have. That's not something that I've
22 dealt with in a while.

23 Q. Okay.

24 A. I don't recall that, no.

25 Q. Okay. And do you remember reading in Dr.

1 Knight's report about a teacher named Lee Scruggs?

2 A. I recall the name, yes.

3 Q. Okay. This is page 18 of Applicant's Exhibit
4 Number 63. In here it says: She described adjunct
5 classes lower level as smaller than the average class.
6 In addition, there was a special education class for
7 students who identified as mentally retarded in
8 elementary school who observed the students were not
9 able to function or live on their own. Adjunct class
10 was the next level up from EMR.

11 A. Right.

12 Q. And Rickey was not in that class?

13 A. That's correct.

14 Q. I'll show you State's Exhibit Number 7. This is
15 another memo. This is one was done by mitigation
16 specialist, Kara. Also, Ginger Calloway talked with
17 Heather, Blackwell's daughter.

18 And on page 2 Heather says: She believes her
19 father's mind got washed away with chemo. It says that,
20 right?

21 A. Right.

22 Q. That's not in Dr. Knight's report either?

23 A. No, it's not.

24 Q. All right.

25 Q. Now in your report you discuss the long-term

1 marijuana use by Mr. Blackwell; isn't that correct?

2 A. I'm sorry, in terms of?

3 Q. Long-time marijuana use by Mr. Blackwell.

4 A. Right.

5 Q. Okay. That he was using, and I want to use your
6 exact words. From the age of 17, he would typically use
7 a quarter bag per week; is that correct?

8 A. That's correct.

9 Q. And said he'd love to smoke marijuana. He told
10 you that also?

11 A. That's correct.

12 Q. Okay. And Dr. Knight's report, it doesn't state
13 any history of any drug use in her report, does it?

14 A. I don't recall what he said about substance
15 abuse.

16 Q. Do you remember reading anything about substance
17 abuse, any taking of any type of drug substance at all
18 in her report?

19 A. I, I don't recall what she said.

20 Q. Okay. So her report was incorrect regarding his
21 drug use?

22 A. Well, my report was based on what Mr. Blackwell
23 told me. I reported what he told me. Whether that's
24 true or not, I don't know.

25 Q. Okay. But her report doesn't mention that at

1 all.

2 A. I don't recall whether she did or not.

3 Q. Okay. And, and there are statements that I just
4 showed you that Dr. Knight did not have.

5 A. Correct.

6 Q. Correct. So, she did not have all the
7 information that was done by the defense prior to trial
8 that will show the possibility that Rickey Blackwell
9 does not have intellectual disability. Not all of them
10 think he has intellectual disability.

11 A. I, I really can't address what Dr. Knight did or
12 did not do.

13 Q. Well, I just read you like six statements that
14 she did not -- is not in her report; isn't that correct?

15 A. I believe you saying that, yes.

16 Q. Yes, okay. So if she wasn't given all the
17 information, her report is not accurate, is it?

18 A. In a situation like this we never have all the
19 information we'd like to have. I can't say that her
20 report wouldn't be accurate. Although, she could answer
21 whether or not that would change her opinion.

22 Q. Yeah. But you primarily focused your attention
23 on her report to change your opinion?

24 A. Correct. On the information provide in her
25 report.

1 Q. Okay. You didn't find any new information
2 yourself regarding ---

3 A. On my own, no, I did not.

4 Q. Okay. So everything you based your opinion on
5 was from her report?

6 A. Well, from her report or Dr. Andrews' report and
7 the other things I looked at there, yes.

8 Q. Okay. And she didn't have all the information.
9 The statements I read to you then was not in her report,
10 that was not mentioned, the people that spoke about Mr.
11 Blackwell and his intellectual ability, correct?

12 A. Well, again, I'm not comfortable addressing what
13 she did or didn't have. That would be for her to
14 answer.

15 Q. But the problem is that it seems like you only
16 used her report to change your mind regarding your
17 original documents. That was the major reason why you
18 changed your original diagnosis --

19 A. Correct.

20 Q. -- isn't that correct?

21 A. That's correct.

22 Q. Now, if she doesn't have all the information to
23 make a sufficient diagnosis, then your changing it would
24 be flawed, wouldn't it?

25 A. If I read Dr. Knight's report and felt I really

1 need to know more about this topic or this area, then I
2 would surely contact her or one of the attorneys and try
3 to get that information before making a decision.

4 Q. And you didn't ever done that? You just made a
5 decision regarding this report, correct?

6 A. Based on the information I had and believing that
7 was enough information, yes, sir.

8 MR. EVANS: Beg the Court's indulgence.

9 MS. BROWN: Your Honor?

10 THE COURT: Yes.

11 MS. BROWN: I know this is a bit unusual, but we
12 would like to request a small break. We were not
13 provided any information that there was a new opinion in
14 this case and we need a little bit of time so we're a
15 bit more focused for the Court.

16 THE COURT: You all were not aware that Dr. Brown
17 was going to testify that his opinion is in doubt and
18 that he did have a ---

19 MR. EVANS: No, Your Honor.

20 MS. BROWN: No, Your Honor, we were not. And we
21 didn't know, of course, what his basis would be. And
22 that's why we're a little at a loss, so we ask for a
23 break.

24 MR. MABRY: And he did -- and Dr. Brown did not
25 contact us. He was a State's witness.

CROSS-EXAMINATION OF DR. BROWN BY MR. EVANS

1 THE COURT: All right.

2 MR. MABRY: He didn't contact the State and tell
3 us he changed his view.

4 THE COURT: All right. Mr. Grose, what's your --
5 do you wish to be heard?

6 MR. GROSE: Well, Your Honor, you received our
7 pretrial brief at the same time that the government
8 received it. And in that brief we identified Dr. Brown
9 as an expert on intellectual disability. And he's
10 expected to testify regarding his pretrial evaluation of
11 Mr. Blackwell's intellectual disability and how
12 additional evidence may have impacted his opinion.

13 It's also my understanding, from information that
14 was provided to you at a hearing in Greenwood, that they
15 had been in contact with Dr. Brown. Dr. Brown hasn't
16 testified to this today, but Dr. Brown informed us that
17 the attorney general's office had contacted him at some
18 point within the last year. He could answer that better
19 than I could. So, I think they were certainly on notice
20 and he was certainly witness in this case.

21 THE COURT: Yes, Ms. Brown.

22 MS. BROWN: Yes, sir, Your Honor. And at that
23 hearing in Greenwood I think you may recall, we said
24 that Dr. Brown would be a fact witness and that, in
25 fact, I believe Mr. Grose suggested that we must know

1 something. That's our expert. Was there a change in
2 the opinion? And we said no. He's just a fact witness,
3 just like Dr. Calloway would be a fact witness. So, I
4 believe that Mr. Grose and the Applicant's team would
5 have known we didn't know anything about that.

6 I'll be happy to let you question Dr. Brown about
7 any contact he's had with us. Have I had contact with
8 him on a different case? I have. And I believe that
9 Dr. Brown asked me, or sent an e-mail, at one point and
10 asked about ---

11 THE COURT: Well, here's what I'm gonna do. I'm
12 gonna allow you to question him on that particular
13 issue. What is it you're asking the Court to do?

14 MS. BROWN: For fairness, Your Honor, we would
15 like to have a few minutes to talk about it, because we
16 are at a total loss. We had no idea this was coming.

17 THE COURT: All right. Let's take a 10 or 15
18 minute break.

19 MS. BROWN: Your Honor, I would appreciate that
20 very much.

21 THE COURT: All right. We'll take a 10 or 15
22 minutes break.

23 MR. EVANS: Thank you, Your Honor.

24 MS. BROWN: Thank you.

25 (A recess was held from 3:35 p.m. - 3:59 p.m.)

1 THE COURT: All right. Let's have Dr. Brown back
2 on the stand. And, Ms. Brown, no relation to Dr. Brown,
3 tell me where we are.

4 (Witness resumes witness stand.)

5 MS. BROWN: Yes, sir, Your Honor. Well, when we
6 broke, we were talking about this discovery violation.
7 And, Your Honor, we've had no notice of this at all. We
8 don't know when Dr. Brown's opinion changed. We don't
9 know exactly what he looked at and what he considered.
10 What he considered important.

11 We don't know anything. Your Honor, if we went
12 forward right now, our cross-examination would be
13 discovery. We just don't know. We have no preparation.
14 This kind of gross discovery violation does not lead to
15 reliable fact finding. Not at all. This surprise is
16 unconscionable. And I have an individual who saw child
17 shot and killed in the courtroom. I have the child's
18 mother in the courtroom. I was not able to prepare them
19 at all for this. Not at all.

20 I do this with great hesitation. Everybody wants
21 finality in here. But, Your Honor, I'm going to ask
22 that you suspend this hearing. If this witness will
23 testify. I think that it is incumbent on the State to
24 engage in the discovery that we should have had before
25 we came into this courtroom. Quite frankly, I feel like

1 a lot of the time this week before Your Honor has been a
2 waste. Our case needed to be more focused. And we
3 needed to focus that case based on information that the
4 applicant is obligated to disclose the case. We're the
5 State. We're in a civil case. Discovery rules are
6 there and they are intended to prevent exactly this kind
7 of surprise. Exactly this kind of delay.

8 I understand it'll be a delay, Your Honor, and I
9 know it will be very difficult to go -- to come back and
10 figure out how we're gonna restructure this case, but no
11 notice, Your Honor. None whatsoever that this was going
12 to occur. And I believe you made it quite clear that we
13 were going forward starting March 27th. The discovery
14 rules are to prevent the surprises, I've said, but
15 there's also a sentence in the rule that says whenever
16 some kind of information comes in that should be
17 disclosed, you do it promptly.

18 It is very important to know when this opinion
19 changed. This is an area of sanction, to come this far
20 in a capital case and not disclose this kind of
21 information? Again, I don't do this lightly. I don't
22 do this lightly at all. I'm hesitant to do that. I
23 know that there are people back here counting on this
24 thing going forward and coming to a fair resolution.
25 But, Your Honor, we can't have a fair resolution when

1 we're conducting discovery on cross-examination. It's
2 impossible. So I humbly ask Your Honor to consider
3 suspending the hearing at this point and allowing us to
4 do that, or striking this witness testimony.

5 THE COURT: All right. Let me hear from Mr.
6 Grose.

7 MR. GROSE: Your Honor, in our discovery
8 responses some time ago we identified all the trial
9 witnesses. And, of course, the State -- and Atkins
10 hearing witnesses. And, of course, the State, when they
11 sent discovery, I think when they sent their discovery
12 request, I assume they did it in this case. They
13 normally do, but they tell us that they're aware of the
14 materials that they're providing to us as part of the
15 return, which is the transcript of the case.

16 Dr. Brown, what he testified to today was based
17 on information that the State has had since last year.
18 And you'll recall we had objected to the continuance
19 back in October. But in the report that Dr. Knight
20 issued, she indicated that she had talked to Dr. Brown.
21 That Dr. Brown had indicated that he would be willing to
22 review additional information.

23 In preparation for this hearing, we got into
24 contact with Dr. Brown and asked if he would be willing
25 to review additional information and we sent it to him.

1 And our second conversation with him was last week,
2 probably on the exact same day that we mailed out or
3 e-mailed out the pretrial brief that stated in the brief
4 that we identified him as a witness. And I read it into
5 the record earlier. We identified him as a witness and
6 that he was expected to testify about how additional
7 information would change his opinion.

8 THE COURT: No, no, no. It says, may have
9 impacted his opinion.

10 MR. GROSE: Well, may have impacted his opinion.
11 And that's what we ---

12 THE COURT: At what point did the Applicant, did
13 you all learn that his opinion was different than what
14 his opinion at trial?

15 MR. GROSE: Last week. The same day we sent out
16 the pretrial brief.

17 THE COURT: And I'm not familiar -- I am familiar
18 enough with the civil rules and death penalty PCR's.
19 What do you believe your obligation was, if you had an
20 obligation, to inform the State that Dr. Brown, who was
21 the witness, testifying witness at the Atkins hearing is
22 now gonna issue a -- render an opinion different than
23 what he had at the Atkins hearing?

24 MR. GROSE: All right. I think we did that in
25 the pretrial brief. And just to develop the record a

1 little bit more today, Dr. Brown arrived here and Dr.
2 Corvin's testimony, as I understand it, Ms. Brown spoke
3 to him. And, I think, Ms. Vann overheard him saying
4 that he was expecting to be grilled by both sides. And,
5 certainly, Ms. Brown had an opportunity today to talk to
6 him about this.

7 THE COURT: Well, I'm not -- I'm not -- and I
8 understand that. My question is, was there a point at
9 which you would have been required to notify the State
10 that his opinion was different?

11 Now, what you -- what I received, and I assume
12 this is what the State received, in the pretrial brief
13 was that Dr. Brown is an intellectual disability expert.
14 Dr. Brown is expected to testify regarding some
15 pretrial. May question Blackwell for intellectual
16 disability. And how additional evidence may have
17 impacted his opinion.

18 Now, you believe that that is, what you're
19 telling the Court today, you believe that's the same
20 thing as saying to the State that his opinion is
21 different than what it was, what, nine years ago?

22 MR. GROSE: I believe that that put the State on
23 notice about that we were going to call Dr. Brown as a
24 witness and put them on notice as to what the subject
25 matter of his opinion was going to be.

1 THE COURT: Well, well that's -- well, you know,
2 I understand that, but you didn't -- it doesn't answer
3 the question about when you learned that he was now --
4 he would now say, based on the information that he had,
5 is that he would have found him to have suffered from an
6 intellectually disability and, therefore, he would not
7 have been eligible for the death penalty. Anything else
8 you want to put on the record?

9 MR. GROSE: I think it's important to say that
10 what Dr. Brown has done is reviewed additional records
11 that the State has, and that his testimony has been that
12 based on the review of those records, or the information
13 that are in those records, that that would likely have
14 changed his opinion. This is not a situation where he's
15 conducted an entirely new evaluation or anything like
16 that.

17 THE COURT: All right. Yeah, I understand that.
18 I mean, obviously his opinion is entirely different.
19 The basis for it may or may not be different, and that
20 can be argued what information was available and what
21 information is available now.

22 Here's what I think I propose to do. You all
23 help me work through this. What I propose is that we
24 stop Dr. Brown's testimony at this point. What I'd like
25 to do is, at least according to the witness list, is

1 we've got Dr. -- the rest of the witnesses appear to me
2 don't have any bearing on the, on the specific issue of
3 intellectual disability or the finding of intellectual
4 disability.

5 What I propose is that we ask him to step down.
6 We try to -- we get on through, however long it's gonna
7 take us, the rest of the witnesses. I'll continue the
8 hearing, give the State the opportunity to do what they
9 believe they need to do that's appropriate to either
10 respond or prepare for what Dr. Brown says.

11 And we'll just have to either, one, schedule --
12 we'll continue the hearing and we'll have to schedule a
13 time when the State can respond or whether we continue
14 with Dr. Brown's testimony where we are at this
15 particular point and whether the State would be in a
16 better position to be able to effectively cross-examine
17 him, and then possibly having their own witnesses that
18 they may need to -- so what I, what I believe is that
19 sort of a hybrid of what you're asking for, Ms. Brown, I
20 would like for us to take all the testimony that we can,
21 or however long it takes.

22 And then it appears that the only testimony that
23 the Court will need to hear at some point in the future
24 would be the resumption of Dr. Brown. And with you all
25 an opportunity to, to respond. And then we'll have to

1 pick up whatever witnesses you all intend to call. Does
2 that -- does anybody have any objection to that
3 procedure from the State?

4 MS. BROWN: No, sir, Your Honor. I think that's
5 as fair as we could do right now. We might have
6 additional witnesses, depending on the information we
7 get from Dr. Brown, but I have no problem with going
8 forward and getting as much done as possible to make
9 this as efficient as possible for the Court.

10 THE COURT: All right. Mr. Grose, what's your
11 position?

12 MR. GROSE: Well, we just defer to your judgment
13 on this, Your Honor.

14 THE COURT: All right. Then that's what I'd like
15 and I think that's what we'll do. We're gonna ask Dr.
16 Brown to step down. And at some point in the future, we
17 will -- you know, we could potentially do it -- well,
18 we're not gonna do it via affidavit or anything like
19 that. We need -- this is a death penalty PCR. He needs
20 to get back on the stand. He could be in open court
21 where everybody could see and hear. Everybody have a
22 fair opportunity.

23 But let's call the rest of the Applicant's
24 witnesses today and tomorrow. Hopefully we'll finish
25 tomorrow with those witnesses. Then we'll continue the

1 hearing and we'll get together and decide on how we
2 approach the next step.

3 MS. BROWN: May I ask one question, Your Honor?

4 THE COURT: Yes.

5 MS. BROWN: Would you like for us to also prepare
6 the rest of our case, or are we going to stop at the
7 applicant's case and come back?

8 THE COURT: Well, you tell me. If you believe
9 you can fairly present the rest of your case and the
10 only thing that we have left would be Dr. Brown and any
11 response to Dr. Brown. For finality and efficiency,
12 that would certainly be best.

13 MS. BROWN: Off the top of my head, Your Honor,
14 what I'm thinking is that we may have some witnesses who
15 we're gonna call, and depending on what we learn, we
16 might have to either recall them, if we call them now.
17 It seems like ---

18 THE COURT: Well, let's do this. Let's see where
19 we are after the presentation of the Applicant's
20 witnesses.

21 MS. BROWN: Yes, sir.

22 THE COURT: And then we'll reconsider where we
23 are and what we need to do next.

24 MS. BROWN: Thank you, Your Honor.

25 MS. VANN: Your Honor, Dr. Brown was under our

CROSS-EXAMINATION OF DR. BROWN BY MR. EVANS

1 subpoena to be here today. Is it okay if he's excused?

2 THE COURT: I don't know. They might want to
3 talk to him before he leaves the building.

4 MS. BROWN: Your Honor, we didn't get a copy of
5 the subpoena either.

6 THE COURT: Well, we're not gonna -- you got
7 notice that he was gonna be a witness on the pretrial
8 brief.

9 MS. BROWN: On the pretrial brief. We had no
10 copy of the subpoena, as required under the rules, as I
11 understand it. I think it's rule 45.

12 THE COURT: All right.

13 MR. GROSE: Well, we'll get you a copy of the
14 subpoena.

15 MS. BROWN: I don't think I need one now. We
16 know it exists, but I thank you for that.

17 THE COURT: Well, he's here. Do you all have any
18 objection to him being excused or do you want him to
19 stay?

20 MS. BROWN: I think at this point to excuse him
21 would be very good.

22 THE COURT: All right. Dr. Brown, you're
23 excused.

24 (Witness leaves witness stand and courtroom.)

25 All right. Mr. Grose, call your next witness.

DIRECT EXAMINATION OF DR. AUSTIN BY MS. VANN

1 MS. VANN: Applicant calls Dr. James Austin.

2 (Witness comes forward.)

3 THE DEPUTY: Place your left hand on the Bible
4 and raise your right. Do you swear to tell the truth,
5 the whole truth, and nothing but the truth so help you
6 God.

7 THE WITNESS: I do.

8 THE DEPUTY: Please have a seat and watch your
9 step.

10 DR. JAMES FRANK AUSTIN,
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. VANN:

14 Q. Good afternoon, Dr. Austin. Could you please
15 state your full name and spell your last name for the
16 record?

17 A. James Frank Austin, A-u-s-t-i-n.

18 Q. And can you tell the court what your current
19 employment is?

20 A. I'm with the JFA Institute.

21 Q. And I know you have a pretty lengthy employment
22 history, so I'll show you your CV. Is this a correct
23 copy of your CV?

24 A. Yes.

25 Q. And does this list your work history and

1 education?

2 A. It lists my education. It's just a selected
3 listing of my work experience.

4 Q. Could you give us just a brief overview of your
5 education?

6 A. I have a bachelor/masters degree and PhD in
7 sociology.

8 Q. And what work history do you have that is
9 relevant to corrections and risk assessment?

10 A. So, I'm known as a criminologist and a large
11 portion of my work is developing and installing prison
12 and jail classification systems that are used by
13 counties, states, and the federal government.

14 MS. VANN: Your Honor, we would move to have
15 Applicant's Exhibit 75, Dr. Austin's CV, entered into
16 evidence.

17 MR. MABRY: My objection, Judge, first of all, we
18 have a preliminary objection that his CV and testimony
19 is irrelevant. They're trying to call him as a prison
20 adaptability expert. Trial counsel had an adaptability
21 expert, James Aiken, not this witness, who did the work
22 in this case and they chose not to call him. We need to
23 hear from Mr. Aiken, not from another adaptability
24 expert.

25 THE COURT: Ms. -- all right. What's the

DIRECT EXAMINATION OF DR. AUSTIN BY MS. VANN

1 Applicant's position --

2 MS. VANN: We think Dr. Austin's --

3 THE COURT: -- Ms. Vann?

4 MS. VANN: -- opinion is certainly relevant to
5 this. He will testify that he has been given only
6 records that were available at the time of trial and he
7 will base his opinion based on the evidence that was
8 available at the time of trial.

9 THE COURT: All right.

10 MS. VANN: And for what it's worth, in another
11 case I know that defense counsel tried getting Dr. Aiken
12 to testify and he was unavailable because of medical
13 issues.

14 THE COURT: All right. Well, I'll overrule the
15 objection and I'll allow the Applicant's Exhibit 75,
16 which is the curriculum vitae, to be entered into
17 evidence.

18 (Applicant's Exhibit Number 75 was entered into
19 the record.)

20 BY MS. VANN:

21 Q. Dr. Austin, have you drafted or written any
22 publications related to corrections and classification?

23 A. Yes. I've offered a number. Probably the most
24 relevant is published by the U.S. Department of Justice.
25 Passion through corrections, entitled Objective Prison

1 Classification System. It's the basis for most of the
2 prison classifications that exist today.

3 Q. And what were you asked to do in this case?

4 A. I was asked to determine if, if Mr. Blackwell had
5 received a sentence of life and was committed to the
6 South Carolina Department of Corrections, how would he
7 be classified and manage within the prison system.

8 Q. And what did you review for that?

9 A. I reviewed the detention records on the Spartan
10 -- well, the detention center. The South Carolina
11 Supreme Court decision, and a rap sheet. And also, an
12 index which you prepared which showed all the various
13 entries in the detention center portion while he was
14 there.

15 Q. And so those are his pretrial detention center
16 records?

17 A. Yes. Up until 2014.

18 MS. VANN: All right. At this time we would ask
19 that Dr. Austin be qualified as an expert in prison risk
20 assessment and classification.

21 THE COURT: Mr. Evans?

22 MR. EVANS: Your Honor, I would renew our
23 objection to have Dr. Austin testify in this case, due
24 the fact he was never contacted by the previous counsel.
25 Therefore, I would say, I'd even say ineffective

1 assistance of counsel when this man may not even be
2 contacted by counsel. So we will renew our previous
3 objection by him testifying in this trial.

4 THE COURT: All right, thank you. I note your
5 objection. I overrule the objection. I'll allow he's
6 qualified to testify in prison adaptability expert.

7 MS. VANN: Thank you, Your Honor.

8 BY MS. VANN:

9 Q. Dr. Austin, based on your review of the pretrial
10 detention center records for Mr. Blackwell, what was
11 your opinion of his conduct in the detention center?

12 A. He had several, they call minor disciplinary
13 infractions while he was there over about a three, three
14 to four-year period. Typically, possession of
15 contraband, not following orders, but they were all
16 classified as minor disciplinary offenses.

17 Q. Did you identify any major disciplinary
18 infractions?

19 A. No, those were it.

20 Q. Any infractions involving violence?

21 A. None of them were violent.

22 Q. None for any other inmates?

23 A. No.

24 Q. Or any other staff?

25 A. No.

1 Q. What factors go into a risk assessment or a
2 classification when someone goes into the Department of
3 Corrections?

4 A. So, when someone is admitted to the Department of
5 Correction once they are sentenced, they will go --
6 undergo like a 45-day or so reception process where they
7 do a clear assessment of a person. And then they make a
8 determination on two major factors. One is, can a
9 person go to general population or do they have to go
10 through restricted housing situation?

11 Restricted housing population would be people
12 that need protective custody, have severe mental health
13 issues, or they're extremely violent and dangerous and
14 had to be put into a secure housing situation.

15 Q. Is the offense or the sentence considered in the
16 classification?

17 A. Yes. The, the sentence typically is used as a
18 means of restricting people from going from minimum
19 custody. So, for example, in almost any prison system,
20 including South Carolina, if you receive a life sentence
21 without the possibility of parole, you're not allowed to
22 ever get to minimum custody because you don't have a
23 release date.

24 If you're charged with a violent crime, like
25 murder, that will restrict you initially in terms of

1 going to maybe a medium security prison, but eventually
2 you could work your way down to medium because a lot of
3 people that are classified and have a life sentence with
4 and without the possibility of parole, generally are
5 good inmates and they can -- you know, he'd be eligible
6 for going down to a medium but secure facility.

7 Q. Does a person's age factor into that at all?

8 A. Yes. It's one of the scoring factors. You'll
9 see in every classification system, older inmates are
10 less violent, less dangerous. That's in their favor.
11 Mr. Blackwell would be about 55, 56, so he would fall in
12 that category.

13 Q. And based on the information that was available
14 to you at the time of the trial in this matter in 2014,
15 how do those criteria apply to Mr. Blackwell's risk
16 assessment at the time he was at the Department of
17 Corrections?

18 A. Well, the other thing that we take into account
19 is prior record. He did not have -- he had a
20 conviction, I think, in 1981, which he was put on
21 probation. It was a property crime. But up until the
22 murder he had no other arrests or convictions. So, he
23 doesn't have an extensive prior criminal record. He had
24 not been to state prison before, so he has no history of
25 misconduct in prison, he has no history of escape. He's

1 an older person.

2 Because, as I read, he tried to shoot himself, I
3 think, after the incident and there's references in the
4 materials I got in terms of his mental health status.
5 He could be a person that initially admitted to the
6 system, he might go into protective custody to see if he
7 cannot be taken advantage or isn't suicidal.

8 If he doesn't go into protective custody, then he
9 would go into the general population. And initially
10 he'd go into one of the higher security facilities
11 because of the charge and the length of the sentence.
12 But thereafter, like I said, you know, if his conduct is
13 good, he could work his way down to a medium security
14 facility.

15 Q. In your opinion would Mr. Blackwell be a
16 management problem for the Department of Corrections?

17 A. No. He would not be in terms of being a violent
18 or dangerous person towards staff and other inmates.
19 No, he doesn't fit that profile. The only management
20 issue would be you've got to protect the custody, that
21 he might need to be protected from other inmates or he
22 might have some suicidal tendencies.

23 Q. Is the Department of Corrections capable of
24 managing an inmate with intellectual disability?

25 A. Yes.

1 Q. Is the Department of Corrections capable of
2 managing an inmate with major depression?

3 A. Yes.

4 Q. And if you had been contacted and provided the
5 same information at the time of Mr. Blackwell's trial in
6 2014, would you have provided the same opinion?

7 A. Yes.

8 Q. I have no further questions. Please answer
9 questions from the State. Thank you.

10 THE COURT: All right. Cross-examination?

11 MR. EVANS: Thank you, Your Honor.

12 THE COURT: Mr. Evans?

13 CROSS-EXAMINATION

14 BY MR. EVANS:

15 Q. You've never worked in the prison system in South
16 Carolina, have you?

17 A. I've never worked -- I've never been an employee
18 of the South Carolina Department of Corrections.

19 Q. And you would say that different prison systems
20 do things differently; is that correct?

21 A. Sometimes they do, but oftentimes they do the
22 same things the same way.

23 Q. Okay. Now, you said that -- isn't it true that a
24 lot of inmates sell drugs in prison?

25 A. I wouldn't say a lot of them do.

1 Q. Some of them?

2 A. Some do.

3 Q. Isn't Seroquel a drug of choice in the prison
4 system?

5 A. I don't know.

6 Q. Okay. Didn't Mr. Blackwell plead guilty for
7 hoarding Seroquel in the county jail?

8 A. I couldn't read the document really well, but it
9 was a possession of medication, so that's what he
10 represented to the others about that.

11 Q. Okay. And he also had Clorox in a bottle. He
12 was caught with that and he pled guilty to that while in
13 jail?

14 A. Yeah. He had -- that was a bleaching thing, he
15 said to clean his cell.

16 Q. Okay. Now, you were not contacted by any
17 attorney regarding this case until now; isn't that
18 correct?

19 A. Until now?

20 Q. Yes.

21 A. I was contacted several months ago.

22 Q. I mean, but you were not contacted back in 2014
23 when this case went to trial?

24 A. No.

25 Q. Can you tell me what happens to people who have

1 child murders in prison?

2 A. Well, okay. So, I can't tell you the people that
3 have murdered children. There's about, at the time in
4 2014, I'll say in 2014, there were about 21,000 inmates.
5 About 4,000 of them are people convicted of murder. And
6 there's always about 1,000 to 1,200 that are sentenced
7 to life without the possibility of parole. So there's a
8 lot of people in the prison system here in South
9 Carolina that have that kind of a sentence, but I can't
10 tell you how many are there for a killing of a child.

11 Q. Okay. So you are an expert on adaptability-ness
12 in prison; is that correct?

13 A. Well, I'm an expert on prison classification
14 systems.

15 Q. Prison classification systems. And you have
16 worked in many prisons in your lifetime. Your
17 curriculum vitae is very long about your work in the
18 prison system.

19 A. Well, I worked in the Illinois prison system.
20 That's where I started out. I worked there for five
21 years and did classification there, but then I got hired
22 to be a consultant.

23 Q. Were you a correctional officer in the prison?

24 A. I was not.

25 Q. You weren't a correctional officer, okay. So you

1 wouldn't know basically what occurs inside the actual
2 prison among inmates?

3 A. I do know what happens.

4 Q. Oh, you do know. Okay. So, what usually happens
5 to people who kill children in prison? Is that taken
6 kindly in the prison system among the general population
7 of prison inmates?

8 A. Yeah. It all depends. It's a case-by-case kind
9 of situation. That's why I mentioned this person might
10 need protective custody --

11 Q. Okay.

12 A. -- initially, just for that reason.

13 Q. Okay. Initially, but he will not be in
14 protective custody for the rest of his life, would he?

15 A. It depends. It depends on -- protective custody
16 is an administrative kind of decision done by the
17 classification team and it's somewhat, you know, based
18 on their expertise. They have a duty to protect that
19 prisoner from other prisoners, so that's what they have
20 to take into account. There are some people that never
21 get out of protective custody, and then there are others
22 that do work their way up.

23 Q. Okay. You would agree that some prisoners are
24 assaulted in prison?

25 A. Pardon?

1 Q. Assaulted.

2 A. I didn't hear the full question.

3 Q. You would agree some prisoners are assaulted in
4 prison?

5 A. Oh, yes.

6 Q. And some are murdered in prison; isn't that
7 correct?

8 A. That is correct.

9 Q. Okay. And you say he'd be placed in high
10 security because of his charge at first?

11 A. Yeah. He would probably, you know, because of
12 the nature of the, of the charge, but in particular the
13 sentence of life, I would expect them to initially put
14 him in with what they would call their high or general
15 population security status. Prisons are then
16 reclassified each year. That's the typical routine, an
17 annual review.

18 That annual review looks at the person's conduct
19 in that year, based on an interview with them to see how
20 they're doing. And then they're gonna try to get him
21 down to a lower level if his conduct is good. But,
22 again, it would be restricted to only medium custody.
23 He could not -- he could never, ever get to a minimum
24 security facility.

25 Q. Okay. And the higher level security house other

1 people who murder also, correct?

2 A. Yes. You'll have a variety of people there.

3 Q. Also other murders?

4 A. Well, they have murderers but, again, if you look
5 at the 4,000 murderers in South Carolina's prison
6 system, probably the majority of them are in medium
7 security, because lifers generally have good conduct
8 records.

9 Q. Okay. Would you say that prison at times,
10 because of a situation and of surroundings changes a
11 person?

12 A. It depends on the person. It certainly can
13 change a person. I can.

14 Q. So right now Rickey Blackwell, you see, is a
15 model inmate and he never probably got into serious
16 trouble in his lifetime, isn't that correct, before this
17 incident?

18 A. As of 2014, are you saying?

19 Q. Yes.

20 A. Was he a model prisoner?

21 Q. Well, he was -- you said earlier that he was --
22 his criminal record wasn't severe, he didn't have a
23 substantial record until --

24 A. Correct.

25 Q. -- this incident; isn't that correct?

1 A. That's correct.

2 Q. Okay. And he has now been convicted of murder;
3 isn't that correct?

4 A. Yes.

5 Q. Okay. And he wasn't the type of individual that
6 you would expect would kill an eight-year-old child,
7 would you?

8 A. No, you would not predict that.

9 Q. Okay. So, you're saying now that you think Mr.
10 Blackwell in the Department of Corrections would be a
11 model prisoner?

12 A. Highly likely.

13 Q. Highly likely?

14 A. Highly likely.

15 Q. But ---

16 A. That's of 2014. That's what my opinion would
17 have been, that he would be not a management problem.
18 He would probably be somebody that doesn't have to go to
19 protective custody. He could function in the general
20 population.

21 Q. Okay. But you would agree that because of the
22 surroundings of a prison --

23 A. Uh-huh.

24 Q. -- it can change a person; isn't that correct?

25 A. It can change a person, yes.

1 Q. Okay. Are you aware of release modifications due
2 to a person's age or they are -- physical conditions
3 that they are -- that they die in the prison hospice?
4 Are you aware of that?

5 MS. VANN: Objection, Your Honor. This would not
6 be proper testimony or a proper question at the trial in
7 this matter.

8 THE COURT: I'm gonna overrule the objection. Go
9 ahead and ask the question.

10 BY MR. EVANS:

11 Q. Are you aware of any possible release mechanisms
12 of a person due to the geriatric age or pending death of
13 that prisoner?

14 A. Generally the governor can pardon people, and
15 that's the only release mechanism I could envision
16 that's legally possible for Mr. Blackwell.

17 Q. Well, actually, the governor cannot pardon anyone
18 in the state of South Carolina. You are aware of that?

19 A. I'm not aware of it.

20 Q. Okay. No, you're not aware ---

21 A. I'm not aware of any release mechanism that Mr.
22 Blackwell would be eligible for.

23 Q. Okay. But you're not aware of South Carolina law
24 regarding pardons or corrections regarding any type of
25 release that's available for an individual?

1 A. Well, I'm somewhat familiar with South Carolina.
2 Not the law like you are, but I'm -- because I have done
3 work with the Department of Corrections and they've
4 never mentioned to me the lifers without the possibility
5 of parole that there's a release mechanism for them due
6 to their age or their medical condition.

7 Q. You're not aware of that?

8 A. I'm not aware of that.

9 MR. EVANS: Beg the Court's indulgence.

10 BY MR. EVANS:

11 Q. You're aware that Mr. Blackwell had a marijuana
12 arrest and a DWI?

13 A. I did see that in the rap sheet from SLED.

14 Q. Okay. But that doesn't change your opinion about
15 this?

16 A. No.

17 MR. EVANS: Okay. Nothing further, Your Honor.

18 THE COURT: Any redirect?

19 MS. VANN: Briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. VANN:

22 Q. Dr. Austin, is it your opinion that Rickey
23 Blackwell would be more at risk from other people than
24 he would be a risk to other inmates and staff?

25 A. Yes.

RE CROSS-EXAMINATION OF DR. AUSTIN BY MR. EVANS

1 Q. I have no further questions, thank you.

2 MR. EVANS: I have one question.

3 THE COURT: Yes, Mr. Evans.

4 RE CROSS-EXAMINATION

5 BY MR. EVANS:

6 Q. So, you're saying that Mr. Blackwell would be
7 more of a risk to other people than him to others while
8 incarcerated [sic]?

9 A. He would be more of other inmates attacking him.

10 Q. To him, attacking him?

11 A. Yeah. Than him attacking other inmates or staff.

12 Q. Okay. Can you say that he can adapt to prison
13 when he's in fear for his life? Wouldn't it be more
14 dangerous because he has to protect himself?

15 A. Well, if he is fearful of other inmates attacking
16 him?

17 Q. Yes.

18 A. Then he's -- I mean, he would know quite well
19 what he has to do, which is asking for the protective
20 custody. These classification systems are designed to
21 allow that to happen as soon as we see that threat or
22 issue arise. So, I don't see that it would change
23 anything about how he would manage, except he might need
24 to go into protective custody.

25 But, you know, looking at his health, you know,

1 his lifespan is not gonna be, you know, lengthy at this
2 point, so I just don't see him becoming a target of
3 other inmates, quite frankly. Usually inmates who are
4 informants, who have gone into debt or something and are
5 involved gang situations are the ones fearful of being
6 attacked by other inmates.

7 Q. If the father of the victim was in Hell's Angels,
8 would that cause a risk to his life, Mr. Blackwell?

9 A. If the -- repeat that.

10 Q. If the father of the victim was in the Hell's
11 Angels, would that cause a risk to his life while
12 incarcerated?

13 A. It, it would have to be taken on a case-by-case
14 basis.

15 Q. I'm talking in general.

16 A. Well, I don't do generally. That's the whole
17 thing about classification. We classify people based on
18 individual factors. And I was just trying to understand
19 your question. The father?

20 Q. The father of the victim.

21 A. You're talking about Hell's Angels.

22 Q. No, was in Hell's Angels.

23 A. Was in -- the father. Okay.

24 Q. Was a member of Hell's Angels. Would that cause
25 Mr. Blackwell any danger while incarcerated?

1 A. I don't believe so.

2 MR. EVANS: That's all.

3 THE COURT: All right, thank you. You can step
4 down.

5 Call your next witness.

6 (Witness leaves witness stand and courtroom.)

7 MR. GROSE: Your Honor, our next witness and the
8 only other witness that we want to try to get to today
9 is David Alexander, who is one of the appellate counsel.
10 He's on standby to testify via the virtual courtroom.
11 We'll need just a few minutes to get that set up.

12 THE COURT: All right. Let me bring up my
13 virtual courtroom and we'll ---

14 MS. BROWN: Your Honor, is it a possibility that
15 we could start again tomorrow morning and have both
16 appellate attorneys testify at the same time? It may be
17 most expedient.

18 THE COURT: I don't know about expediency. Our
19 track record is we may spend all day on one attorney.
20 And if we get one done or a half a one done, or at least
21 now until 6 o'clock one done...

22 MR. GROSE: And just to answer her question, in
23 an ideal world would be yes, but Mr. Dudek asked not to
24 go today because he had the oral argument with Mr. Mabry
25 this morning.

RE CROSS-EXAMINATION OF DR. AUSTIN BY MR. EVANS

1 THE COURT: Mr. Mabry is tougher than Mr. Dudek
2 to do oral arguments and then drove up to Spartanburg
3 for this case.

4 MR. MABRY: Thank you, Judge.

5 MR. GROSE: And Mr. Alexander has a subpoena for
6 another non-capital PCR for tomorrow, so...

7 THE COURT: Well, all I know is whoever your next
8 witness is, we're gonna start him.

9 MR. GROSE: Yes, sir.

10 THE COURT: And we'll get as far as we can short
11 of 6 o'clock.

12 MR. GROSE: Yes, sir.

13 MS. BROWN: Your Honor, we may have a fairly
14 lengthy cross on it, too, just to let you know.

15 THE COURT: Well, we may not finish. I mean,
16 who's next, Mr. Alexander?

17 MR. GROSE: David Alexander, yes.

18 THE COURT: All right. Did you tell me, he's
19 occupied tomorrow?

20 MR. GROSE: He -- my understanding is he has a
21 subpoena for another PCR case and is not available
22 tomorrow.

23 THE COURT: All right. Well...

24 MS. BROWN: Your Honor, I was gonna offer, too,
25 that I'll be happy to call our PCR department and work

1 around that so it would be later in the morning for him
2 if we need to.

3 THE COURT: Yeah. Let's do what we can with him
4 between now and 6 o'clock, and then -- and then Mr.
5 Mabry can bring him up here tomorrow morning.

6 MR. MABRY: Yes, sir.

7 MS. BROWN: He could drive from Columbia too.

8 THE COURT: And he can drive him back to get him
9 back on time. He's already proven he has the ability to
10 do that.

11 MR. MABRY: That's right.

12 MS. BROWN: And, Your Honor, while we're on a
13 break, you had asked for the rule of civil procedure
14 that would control and I have it. It's Rule 26(e). And
15 it says: In addition, a party is under a duty
16 seasonably to supplement his response with respect to
17 any question directly addressed to the identity and
18 location of persons having knowledge discover -- of
19 discoverable matters, and the identity of each person
20 expected to be called as an expert witness at trial, the
21 subject matter on which he's expected to testify, and
22 the substance of his testimony.

23 MR. GROSE: We did that on the day we learned it.

24 THE COURT: Well, that's a -- may or may not be
25 taken up later. I know the rule and I'm not being asked

1 to necessarily interpret or apply the rule, other than I
2 am giving the State an opportunity to respond. And if
3 there are any other matters, we'll revise that. If I
4 have to deal with them, I will. That's where we are.

5 MS. BROWN: Thank you, Your Honor.

6 THE COURT: All right. We'll be at ease until we
7 get everything set up.

8 (Recess was held from 4:43-4:50 p.m.)

9 THE COURT: All right. We think we're ready to
10 proceed?

11 MR. GROSE: Yes, sir.

12 THE COURT: All right. I admit I'm muted and
13 knocked out. I think the reality if I'm not talking
14 it'll reduce the background.

15 Mr. Alexander, would you raise your right hand?
16 (Complies.) Do you solemnly swear or affirm your
17 testimony here in this case is the truth, the whole
18 truth, and nothing but the truth so help you God?

19 THE WITNESS: I do.

20 THE COURT: All right, thank you. David
21 Alexander is appearing virtually for this hearing. Mr.
22 Grose, this is your witness.

23 MR. GROSE: Thank you. Thank you, Your Honor.
24 And before we -- before we begin, I provided the State
25 with copies of the Applicant's Exhibits 69 ---

DIRECT EXAMINATION OF DAVID ALEXANDER BY MR. GROSE

1 THE COURT: Are you muted?

2 MS. BROWN: Yes, sir.

3 THE COURT: All right.

4 MS. BROWN: Both on my screen and on my laptop, I
5 believe.

6 THE COURT: All right. We're still getting a
7 little bit of echo. Go ahead, Charles. Let's see where
8 we are.

9 MR. GROSE: All right. Applicant's Exhibits 69,
10 70, 71, 72, 73 and 74 I provide to the State. I intend
11 to use these exhibits with this witness, so I'm going to
12 go ahead and provide the court reporter and Your Honor
13 with copies.

14 May it please the Court?

15 THE COURT: Yes.

16 DAVID ALEXANDER,
17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. GROSE:

20 Q. Mr. Alexander, would you please state your name
21 for the record?

22 A. David Alexander.

23 Q. All right. And what is your profession?

24 A. I'm an attorney at Appellate Defense.

25 Q. All right. And in order to become an attorney,

1 did you have to go through any training?

2 A. You mean from the beginning at law school or?

3 Q. Yes, sir, I'm sorry.

4 A. Yes, sir. Yes. I went to college then to law
5 school, passed the bar exam and became an attorney.

6 Q. Okay. And which law school did you go to?

7 A. Carolina.

8 Q. And what year did you graduate?

9 A. 2000.

10 Q. All right. And can you summarize your career as
11 an attorney?

12 A. Sure. I started as a law clerk for Judge Herlong
13 in Greenville. After that I worked at Nelson Mullins.
14 Then I worked at a small firm that did mostly real
15 estate and plan work and so forth. And then we split
16 off from that firm to form our own firm and then in 2012
17 I came to Appellate Defense.

18 Q. And have you been there ever since?

19 A. Yes.

20 Q. Okay. And were you one of the attorneys on
21 Mr. Blackwell's appeal?

22 A. Yes.

23 Q. Who was the other attorney?

24 A. Bob Dudek.

25 Q. All right. And if you could, could you describe

1 what the division of labor between you and Mr. Dudek
2 was?

3 A. Yes. Mr. Dudek is the chief public defender and
4 was lead counsel. He wanted me to focus on what we saw
5 as the big issue in the case, which was the intellectual
6 disability issue. That was my primary focus. I wrote
7 that portion of the brief. And I also assisted with a
8 few of the other issues and then selecting issues. I
9 think I wrote part of the chaplain issue.

10 Q. Okay. And prior to today, have I e-mailed you
11 premarked copies of Exhibits 69 through 74?

12 A. Yes, you did.

13 Q. And, if you could, could you tell us what Exhibit
14 69 is?

15 A. Give me one second please, Charles. Exhibit 69
16 is the redacted final brief.

17 Q. Okay. And was there a reason why the briefs were
18 redacted?

19 A. Yes. One of the issues we raised up was with
20 medical records that were placed under seal. And so the
21 Court, after the Attorney General made a recommendation
22 about it, it ultimately directed that we were to file
23 two versions of the brief, one redacted with the, the
24 mental health records issue out of it and then a sealed
25 version that contained the mental health records in the

1 rest of the brief.

2 Q. All right. And Exhibit 69 is the redacted
3 version of that brief?

4 A. Correct.

5 Q. All right. What is Exhibit 70?

6 A. That's the State's brief. The redacted State's
7 brief.

8 Q. Okay. And what is Exhibit 71?

9 A. That is our redacted final reply brief.

10 Q. Okay. Exhibit 72?

11 A. That is a letter I sent to the Supreme Court with
12 supplemental authority.

13 Q. Okay. Exhibit 73?

14 A. That is another supplemental authority letter I
15 sent to the Supreme Court.

16 Q. And Exhibit 74?

17 A. Another supplemental authority letter I sent to
18 the Supreme Court.

19 MR. GROSE: Okay. At this time, Your Honor, I
20 would move exhibits 69, 70, 71, 72, 73, and 74 into
21 evidence.

22 THE COURT: Ms. Brown?

23 MS. BROWN: No objection to 69 to 73. 74 appears
24 incomplete, so I do have an objection to that one.

25 COURT: All right. And what's your objection to

1 74?

2 MS. BROWN: It's incomplete, Your Honor. All we
3 have is these letter impact event. And it says that it
4 attaches an opinion. The only attachment that appears
5 to be with this exhibit is an order from the Supreme
6 Court.

7 THE COURT: Well, I mean, what's being admitted
8 is simply his letter, cover letter, and then the --

9 MR. GROSE: You can take the order list off.

10 THE COURT: And the list, and the list of orders.

11 MR. GROSE: Yeah, I'm not sure.

12 MS. BROWN: Well, Your Honor?

13 THE COURT: Well, he's not enclosing eight copies
14 of anything. All he's simply presenting is a cover
15 letter marked Applicant's Exhibit 74. Isn't that ---

16 MR. GROSE: And all I'm trying to introduce is
17 the cover letter.

18 MR. MABRY: You told us just to take the back
19 page off.

20 MR. GROSE: You can take the back page off.

21 MS. BROWN: It's all agreed with, Your Honor.

22 THE COURT: No objection to just the cover
23 letter?

24 MS. BROWN: No, nothing to object.

25 THE COURT: It was March '74.

1 MS. BROWN: Yes, sir.

2 THE COURT: All right. Then Court's Exhibit --
3 Applicant's Exhibits 69, 70, 71, 72, 73, and 74, no
4 objection is being evoked?

5 MS. BROWN: That's correct, Your Honor.

6 THE COURT: All right. Those are entered into
7 evidence. Thank you.

8 MR. GROSE: Thank you, Your Honor.

9 (Applicant's Exhibit Number 69-74, were entered
10 into evidence.

11 BY MR. GROSE:

12 Q. Mr. Alexander, I think you previously testified
13 that Mr. Dudek asked you to focus on -- not that that's
14 the only thing that you did, but he asked you to focus
15 on the intellectual disability issue?

16 A. Correct.

17 Q. All right. And can you describe to the Court,
18 what was the intellectual disability issue in the brief
19 with Appellate?

20 A. Correct. Basically the ruling, the trial judge
21 had a pretrial ruling in a death penalty case under
22 Franklin vs. Maynard, whether the defendant is eligible
23 for the death penalty under Atkins. And so they had a
24 lengthy Atkins hearing. Judge Couch issued a written
25 order finding that the defendant was not intellectually

1 disabled. And so, that was the order that we appealed.

2 Q. Okay. And what were -- what was the issue that
3 you presented?

4 A. That the judge's finding was against the weight
5 of the preponderance of the evidence.

6 Q. In appealing that order, did you cite a case
7 State -- or I mean, sorry, Hall vs. Florida?

8 A. Yes.

9 Q. And what was -- what is that case about?

10 A. That -- it's a long case about intellectual
11 disability, but the crux of Hall vs. Florida is that
12 expert opinions about intellectual disability are what
13 counts, and the Courts should pay close attention to
14 those. It also, and I think dispatched the State of
15 Florida with the seeking to execute somebody. I think
16 they had an IQ maybe one point over the 70 line and the
17 Supreme Court said that's not a hard and fixed line.

18 Q. And what did you -- why did you believe that this
19 was a good issue to present to the South Carolina
20 Supreme Court?

21 A. Well, I think that certainly after Dr. Brown,
22 which was the Court's expert that the State used in the
23 hearing, justified -- there really did not seem to be
24 much in dispute that he was intellectually disabled.
25 The Court's order, Trial Court's order focused on his

1 short and checkered career as a truck driver. And the
2 age of onset prong of Atkins, but after the
3 cross-examination of Dr. Brown, it certainly seemed to
4 me that the only thing that they had to go on was
5 speculation that these accidents late in life
6 contributed to his low intellectual functioning.

7 So that -- the way I tried to present it, take a
8 standard view of the account was, there really was no
9 disagreement among the two experts on these prongs. And
10 the only thing left was speculation. And the trial
11 judge went his own way in the adaptive functioning prong
12 and in the intellectual functioning prong, against what
13 the experts told him, which I thought was in error.

14 Q. And after you kind of argued the case, was there
15 another decision that came out?

16 A. Several. Those are the supplemental authority
17 letters.

18 Q. Well, let's start with Exhibit 71 -- or, I'm
19 sorry, 73, which I understand is the first supplemental
20 authority letter that you submitted.

21 A. It's Moore vs. Texas.

22 Q. And why did you submit this supplemental
23 authority regarding Moore vs. Texas?

24 A. Because I thought it was extremely relevant to
25 Mr. Blackwell's case. Again, the State's case here

1 really said -- it was very, I thought it was somewhat a
2 simplistic analysis that he was a truck driver and,
3 therefore, he cannot be intellectually disabled. And
4 then -- and Moore vs. Texas says you can't just use that
5 kind of simplistic comment since reasoning you have to
6 follow along with what experts tell you to do,
7 especially with -- well, to the adaptive functioning
8 trauma.

9 Q. Okay. And then at some point did you submit an
10 additional supplemental citation?

11 A. Yes.

12 Q. And the Exhibit 70 -- 74, was that -- I may have
13 missed one. The first one you submitted was Exhibit 72,
14 wasn't it?

15 A. Let me look at the dates. Correct. 72 was the
16 first I submitted.

17 Q. And what was that?

18 A. That was the State, the State Supreme Court of
19 Florida's decision after US Supreme Court reversed them
20 in Hall vs. Florida. So that's the State Court after,
21 after reversal and a remand. The Florida Supreme Court
22 found that the defendant in that case was intellectually
23 disabled after guidance from the U.S. Supreme Court.

24 Q. And why did you submit -- what was the -- what
25 were you hoping to obtain when you submitted that

1 supplemental citation?

2 A. Here's another. State Court, following the rules
3 laid out by the U.S. Supreme Court and Hall and
4 determining that someone was intellectually disabled and
5 eligible for the death penalty. It's good for our case.

6 Q. And then Exhibit 74. That was the third
7 supplemental citation that you submitted?

8 A. Correct. That was just a very short, what we
9 call an appellate parlance, GVR grant, vacate, remand
10 order from the U.S. Supreme Court. An Alabama State
11 Supreme Court decision in light of Moore vs. Texas,
12 because the Alabama decision had used the, kind of the
13 same improper simplistic analysis that the U.S. Supreme
14 Court found improper.

15 Q. Okay. And what did the South Carolina Supreme
16 Court ultimately decide with the intellectual disability
17 issue?

18 A. We lost that issue four to one.

19 Q. Okay. And why do you think you lost that issue?

20 A. I think the standard review ultimately is what it
21 came down to. The Court said that it just gave credence
22 to some of the things that Judge Couch had ruled, and
23 that was, that was the Supreme Court's decision.

24 Q. Okay. And if you had had a better record
25 regarding some of the things that Judge Couch ruled, do

1 you think the result might have been different?

2 A. Yes.

3 Q. And why?

4 A. Well, I mean, I think, if they -- if we had some
5 things to show that the age of onset was, was a little
6 bit better, I think that would have, would have helped
7 us. If we had some better records about what some of
8 the school testing was. I mean, I thought the record
9 was pretty clearly made. Because Judge Couch had
10 credited several scores that weren't real IQ tests from
11 when Mr. Blackwell was in school, was young.

12 And both experts testified that those weren't
13 real IQ tests, in the sense of the Wechsler that was
14 given later. And if we had some more records about
15 that, that would have been helpful. Anything they could
16 have had to rebut the notion that getting your CDL means
17 you're not intellectually disabled, that would have
18 helped.

19 Q. What about intervening ---

20 A. In the universe of things that could have helped,
21 I don't know.

22 Q. Okay. What about intervening factors, such as
23 cancer or cancer treatment?

24 A. Yes. I mean, a better record's always gonna
25 help. You know, without concrete examples, it's hard

1 for me to say.

2 Q. And would a better record have helped regarding
3 the head injury?

4 A. Yes.

5 Q. And regarding major depression?

6 A. Yes.

7 Q. All right. I think when you were talking about
8 the division of labor between you and Mr. Dudek, you
9 mentioned that you worked on the chaplain issue?

10 A. I did.

11 Q. All right. And could you describe for Judge Hall
12 what the chaplain issue was in regards to what you
13 presented in the appeal?

14 A. Yes. One of the more damaging pieces of evidence
15 that the State presented was the testimony of the, of
16 the sheriff who said Mr. Blackwell had no remorse. And
17 the defense attempted to present that it's a business
18 record. Some notes that a chaplain made that indicated
19 that Mr. Blackwell did, in fact, have remorse. And the
20 judge would not allow those records in, said those were
21 opinions, they weren't proper business records.

22 Q. Okay. Now, from the standpoint of the evidence
23 that the chaplains would have to offer, would you
24 consider that to be relevant and material evidence in
25 the sentencing phase of the capital case?

1 A. Absolutely.

2 MS. BROWN: Objection, Your Honor. That was
3 already ruled on.

4 THE COURT: I'm sorry, repeat the question, Mr.
5 Grose.

6 MR. GROSE: If the information from the chaplains
7 themselves would be relevant and material evidence in
8 the capital case. And, actually, to the extent that
9 Judge Couch ruled on that, I believe he ruled that it
10 would be relevant evidence, but the mechanism of
11 presenting it was not proper.

12 THE COURT: All right. I'll overrule the
13 objection.

14 BY MR. GROSE:

15 Q. So, I believe you started the answer to the
16 question, but would you consider the information from
17 the chaplains themselves to be relevant and material
18 evidence?

19 A. Yes.

20 Q. All right. And what was the problem with the
21 admissibility of that evidence in this particular trial?

22 A. Well, the defense counsel tried to get them
23 through a records custodian through the hospital instead
24 of through the chaplains.

25 Q. All right. And did you try, you and Mr. Dudek,

1 try to convince the Supreme Court that that was a proper
2 vehicle to admit those records?

3 A. We did. We followed arguments of trial counsel
4 that it was a business record, and the sentencing phase
5 of a capital trial and rules against hearsay are
6 supposed to be relaxed because they prevent them, and so
7 we made that argument as well, but it was not
8 successful.

9 Q. So the Supreme Court disagreed with you on that?

10 A. Correct.

11 Q. All right. You've seen the PCR application, I
12 believe.

13 A. I have.

14 Q. All right. There's an issue in there regarding
15 admitting prejudicial autopsy photos and close-up photos
16 from the crime scene, including the victim after her
17 body was moved. Did you have any involvement in
18 assessing that issue, whether that should be included in
19 the, the appeal?

20 A. No, not that I recall.

21 Q. All right. And there was an issue regarding --
22 that we raised in the application regarding Reggie Frye,
23 who testified at trial. We argued that that should have
24 been addressed on appeal. Did you have any role in
25 assessing whether that issue should be included in the

1 case?

2 A. I really don't have an independent recollection
3 of discussing that with Mr. Dudek. I've looked into
4 that issue since after speaking with you and the State.

5 Q. All right. And what -- when you looked at the
6 issue, what can you tell us about that?

7 A. It's a 613 issue. Did the State -- the question
8 really is did the State lay a right foundation to be
9 able to use that testimony. And our conclusion after
10 looking at it was there wasn't an error from the judge
11 on that.

12 Q. Okay. And the next issue we have is -- regards
13 for proportionality; that you did not raise and brief
14 the legal and factual grounds for finding that Rickey's
15 deficits was disproportionate to the penalty imposed in
16 similar cases.

17 A. We didn't raise that issue.

18 Q. And did you and Mr. Dudek give any consideration
19 to raising that issue?

20 A. I don't recall any consideration given to that.

21 Q. All right. And is it fair to say that Mr.
22 Blackwell's jury trial was after the case of
23 State vs. Dickerson?

24 A. I, I think so. I can't recall off the top of my
25 head.

1 Q. Well, if I told you that the cite for that was
2 395 S.C. 100, 716 S.E. 2d 895 in the year 2011, would
3 that help?

4 A. That would certainly be before Mr. Blackwell's
5 case.

6 Q. The Dickerson decision was before Mr. Blackwell's
7 trial?

8 A. Yes.

9 Q. And what is the significance of the Dickerson
10 opinion with regard to proportionality?

11 A. I can't recall that off the top of my head.

12 Q. Okay. Do you recall the footnote in Mr.
13 Dickerson's case?

14 A. I don't.

15 Q. All right. And did you -- I believe you
16 testified that neither you, or to your knowledge, Mr.
17 Dudek, consider briefing that issue?

18 A. Not to my knowledge.

19 MR. GROSE: Okay. Beg the Court's indulgence for
20 a moment.

21 THE COURT: All right.

22 BY MR. GROSE:

23 Q. Let me go back, Mr. Alexander, let me go back to
24 the Chaplain issue. If the Chaplains had been present
25 and testified at trial, do you believe that the business

1 record would have been admissible at that point?

2 MS. BROWN: Objection; speculation.

3 THE COURT: Yeah, I sustain the objection.

4 MR. GROSE: I'd like to proffer his answer for
5 the record.

6 THE COURT: Go ahead and proffer his answer.

7 BY MR. GROSE:

8 Q. The judge has said you could proffer the answer.

9 A. Okay. Could you repeat the question again,
10 Charles? I'm sorry.

11 Q. If the Chaplains had been present at trial and
12 testified, would the business record been admissible?

13 A. Um, probably. I mean, the way I would think most
14 trial lawyers would do it, would be to use those notes
15 to refresh the recollection of the chaplains and if they
16 could authenticate them, if their recollection was
17 refreshed, and they can attach the file to the notes.

18 So even if they couldn't, protect them and get
19 them in the record. If they could remember it, that
20 evidence could have gotten in the record just by
21 refreshing their recollection. And maybe not
22 necessarily introducing the notes themselves.

23 Q. Okay. Thank you, Mr. Alexander. That's all the
24 questions that I have. Please answer any that the
25 government might have.

1 THE COURT: Ms. Brown?

2 MS. BROWN: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. BROWN:

5 Q. Can you, can you hear me? Can you hear me?

6 A. Now I can, yes.

7 Q. Okay.

8 MR. GROSE: And give me a second to move this.
9 That might help.

10 BY MS. BROWN:

11 Q. Mr. Alexander, can you still hear me?

12 A. Yes, Ms. Brown, I can hear you.

13 Q. Good afternoon.

14 A. Good afternoon.

15 THE COURT: All right. Hold on a second. We
16 still have a -- keep talking on that.

17 BY MS. BROWN: We're just checking the audio for
18 a minute. We seem to have some kind of feedback. And I
19 can assure you, I don't like hearing my voice on the
20 recording the first time. I certainly don't want the
21 feedback. Are you okay? Can you hear me?

22 A. Yes.

23 Q. I've got ---

24 THE COURT: Hold on. Now we need to make sure
25 that the court reporter can hear, which means make sure

1 your volume is all the way up. All right. Go ahead and
2 ask your question and we'll see where we are.

3 MS. BROWN: Are we okay with the question?

4 THE COURT: Can hear you. I think the issue is
5 gonna be whether she can hear.

6 COURT REPORTER: I'm hearing him on this.

7 THE COURT: Okay. You've got him online? Good.
8 Great, we're good. Thank you.

9 BY MS. BROWN:

10 Q. Ah, technology. Just a little bit of a breakup
11 and we're back. Mr. Alexander, I'm gonna start where
12 you left off a little bit. You were asked the question
13 of whether if the chaplains were present at trial that
14 they would have been able to testify and have relevant
15 material. Remember that one?

16 A. Yes.

17 Q. Well, isn't it true that if a witness does not
18 have a recollection, they cannot testify?

19 A. Right.

20 Q. So if they did not have memory, then that would
21 not be admissible; is that correct?

22 A. Their testimony would not, because -- maybe it's
23 possible at that point that they could authenticate the
24 record itself, but if I was trying the case I would try
25 to refresh the recollection first.

1 Q. And, of course, the business record didn't come
2 in and the State Supreme Court explained to us why that
3 wouldn't come in, correct?

4 A. Right. It's, it's a lot easier now to know the
5 facts that they maybe try to get that evidence in after
6 the Supreme Court has already given an opinion.

7 Q. Okay. I want to go back a little bit and talk
8 about your process and receiving the transcript and what
9 you do to look for issues. I understand that you are
10 limited by the record because this is direct appeal,
11 correct?

12 A. Correct.

13 Q. So you need to review the transcript. Is it
14 correct that you would, of course, look for objections
15 and arguments that are presented in the record?

16 A. Yes.

17 Q. Okay. And you do some research on that, I'm
18 assuming, once you identify some of the objections and
19 arguments that you believe would be critical?

20 A. Yes.

21 Q. Okay. And you have the primary responsibility
22 for briefing the intellectual disability issue, correct?

23 A. Correct.

24 Q. Okay. Did you consult with anyone as you crafted
25 that argument?

1 A. Consulted with Mr. Dudek. I consulted with some
2 other appellate defenders here. I consulted with trial
3 lawyers and McGuire.

4 Q. Okay. And so you were quite familiar with Atkins
5 to be able to draft that issue, correct?

6 A. I became very familiar with Atkins during the
7 course of this case, yes.

8 Q. And isn't it correct that Atkins reflects that
9 while the decision on exemption is guided in part by the
10 medical community, it's still a distinct legal decision
11 that a judge and/or jury makes; is that correct?

12 A. I would agree with that.

13 Q. Okay. And I believe that's reflected in
14 Hall versus Florida as well, correct?

15 A. Correct. And it's actually in Moore versus Texas
16 as well, correct?

17 A. Correct.

18 Q. Okay. And after the opinion in the State Supreme
19 Court, who made the decision whether to present the
20 issue on intellectual disability to the Supreme Court of
21 the United States?

22 A. Ultimately that would have been Mr. Dudek's
23 decision.

24 Q. Okay.

25 A. But I certainly expressed my opinion that we

1 should raise that issue to the U.S. Supreme Court.

2 Q. And you did raise that in a petition, correct?

3 A. We did.

4 Q. And you did a reply as well?

5 A. At the U.S. Supreme Court?

6 Q. Yes.

7 A. May I look at my file?

8 Q. Of course.

9 A. I believe that's correct, but I don't want to
10 speak incorrectly. We did.

11 Q. So in your opinion that was fully presented to
12 the Supreme Court of the United States as well?

13 A. It was.

14 Q. And that was after the Moore decision?

15 A. It was.

16 Q. And the petition was denied, correct?

17 A. Correct.

18 Q. Okay. And you were asked a few questions about
19 the record. If you had a better record this, if you had
20 a better record that, do you remember that exchange?

21 A. Yes.

22 Q. Okay. What do you mean by a better record?

23 A. Well, I mean that if you I think -- I tried to
24 say this earlier, you always want a better record as an
25 appellate lawyer. We can't make the record. So we ---

1 Q. Yes, sir. And essentially what we're really
2 talking about is a different record than the one that
3 you received?

4 A. I'm not sure what evidence has been presented in
5 the PCR, so that's -- I'm not sure I understand your
6 question, Ms. Brown.

7 Q. Certainly. Certainly. Well, you have the record
8 that you have.

9 A. That is absolutely right.

10 Q. A better record is rather subjective. So if
11 something was favorable to Mr. Blackwell, his lawyers,
12 including you as an appellate lawyer, would think that
13 was a quote/unquote better record.

14 A. I agree with that.

15 Q. Okay. But if information exists that tended to
16 undermine the position that Mr. Blackwell wanted to
17 take, that would not be a better record for you?

18 A. That's correct.

19 Q. Okay. So then it's rather subjective what
20 constitutes a better record?

21 A. Well, I mean, I think objectively whatever piece
22 of evidence is that your dog would have is either gonna
23 be favorable or unfavorable. What you're saying is
24 generally subjectively evidence for both sides is gonna
25 weigh one way or the other to anyone who's presenting

1 it. There's a reason people take what they want to be
2 in the record. That's what the trial lawyers do.

3 Q. I think that's a good summary. I appreciate
4 that.

5 A. And I would like to answer your question.

6 Q. You have answered the question, I believe. And
7 assembling all the questions, did you and Mr. Dudek have
8 any disagreement?

9 A. About the Atkins issue or anything?

10 Q. In raising the issues in the appeal?

11 A. I don't recall any disagreement on which issues
12 to raise.

13 Q. In, I guess I should say, non-capital cases, it's
14 not very ordinary to raise seven issues, is it?

15 A. It is not.

16 Q. Okay. So seven issues, that's a fairly high
17 number of issues to raise on direct appeal, would you
18 agree with that?

19 A. In a non-capital case that would be, yes.

20 Q. Right. So -- well, you don't recall any
21 disagreements. My next question would be how you would
22 settle them, would one of you be able to overrule the
23 other?

24 A. Mr. Dudek would absolutely be able to overrule
25 me.

1 Q. Okay. Do you recall that he did that in any
2 respect?

3 A. I don't.

4 Q. Also, going back to that chaplain issue just a
5 moment, the issue was discussed in the opinion, but
6 wasn't there also a finding that even though it was kept
7 out, that was not prejudicial because of other evidence
8 of remorse in the record?

9 A. May I look at the opinion?

10 Q. Absolutely.

11 A. You're correct, Ms. Brown.

12 Q. So they found if it were to be error, it would be
13 harmless, correct?

14 A. Yes. Yes, Ms. Brown, it is.

15 Q. And you generally agree with whittling down
16 possible issues to the strongest issues that you have to
17 present to the Court?

18 A. Absolutely.

19 Q. Okay. And do you consider that best practice?

20 A. Absolutely.

21 Q. Okay. And do you exercise your professional
22 judgment in selecting the issues to present to the
23 Court?

24 A. Yes, but I would say within some constraints.
25 You're never going to omit an issue that you think is a

1 sure fire thing. In an appeal to omit a winning issue,
2 but if you have many issues that are borderline conduct,
3 this really comes up more. Like an anders brief or
4 something like that. Obviously that's not applicable
5 here, but you have some issues that are probably not
6 wholly frivolous but have some merit. That's where the
7 judgment -- you don't want to dilute your brief with bad
8 issues if you have a very strong issue, is my opinion.

9 MS. BROWN: Your Honor, may I have one moment,
10 please? Excuse me, Mr. Alexander, just a second. Thank
11 you, Mr. Alexander, I appreciate it. No further
12 questions, Your Honor.

13 THE COURT: All right. Mr. Grose?

14 MS. BROWN: Thank you, Mr. Alexander, I
15 appreciate it.

16 THE COURT: All right. Mr. Grose?

17 REDIRECT EXAMINATION

18 BY MR. GROSE:

19 Q. Mr. Alexander, Ms. Brown asked you some questions
20 about the chaplain issue.

21 A. Yes.

22 Q. And one of the questions she asked you about was
23 whether the testimony would have been admissible if they
24 didn't have memory.

25 A. Yes.

1 Q. Are you familiar with rules that allow a lawyer
2 to use a document to refresh a witness's memory or
3 recollection?

4 A. Yes.

5 Q. And if the chaplains were present at trial and
6 testifying, could the document have been used to refresh
7 their recollection?

8 A. Yes.

9 MR. GROSE: Beg the the Court's indulgence. Your
10 Honor, I don't have any other questions except that I
11 would make a motion to admit the proffered answer from
12 the direct examination because the State then followed
13 up and asked questions about it and waived their
14 objection.

15 THE COURT: Ms. Brown?

16 MS. BROWN: The problem is with the speculation,
17 is that the proffer?

18 MR. GROSE: The proffer had to do with the issue
19 of the chaplains, and if they had been present at trial,
20 would the records had been admissible? The judge
21 sustained your objection.

22 MS. BROWN: Yeah.

23 MR. GROSE: And then we were allowed to make the
24 proffer and then you immediately followed up and
25 elicited similar testimony.

1 MS. BROWN: Well, I disagree that it was similar.
2 I went by the opinion, actually, and what the Supreme
3 Court of South Carolina found, so nothing was
4 speculative in my questions.

5 THE COURT: All right. I'm going to allow that
6 that evidence in.

7 (Proffered answer entered into record.)

8 MR. GROSE: Thank you, Your Honor.

9 THE COURT: All right. Anything else?

10 MR. GROSE: I'm done.

11 THE COURT: All right. Okay. All right. Mr.
12 Alexander, I believe that concludes your testimony.
13 Thank you.

14 THE WITNESS: Thank you, Judge. I thank you for
15 allowing us to appear remotely.

16 THE COURT: Well, I just wanted to let you know
17 that you're appearing remotely, but Mr. Mabry has made
18 it to Columbia and back. He's a harder worker, some
19 might argue that.

20 THE WITNESS: I will tip my hat to Mr. Mabry, I
21 watched his argument this morning.

22 THE COURT: He might have just wanted to get out
23 of the office. All right, thank you.

24 THE WITNESS: Thank you, Judge.

25 (Webex was turned off.)

1 THE COURT: All right. Where are we, Mr. Grose?

2 MR. GROSE: Well, Your Honor, it's just short of
3 5:30. We have the two chaplains for tomorrow morning
4 and I told Mr. Allen, Clay Allen tomorrow morning,
5 because I suspected that if we tried to get him in today
6 we would be short on time. And, of course, Mr. Dudek's
7 availability for tomorrow. And those would be our final
8 four witnesses, and I believe that we can complete them
9 tomorrow.

10 THE COURT: All right. Is Mr. Allen's testimony
11 gonna be as long as his co-counsel's?

12 MR. GROSE: I do not anticipate asking him as
13 many questions. I'll be --

14 THE COURT: Well ---

15 MR. GROSE: I imagine it will be less than an
16 hour on direct.

17 THE COURT: All right. Well, we don't have
18 anybody else we can call today?

19 MR. GROSE: No, sir.

20 THE COURT: All right. Then we'll adjourn for
21 today. We'll start at nine in the morning. We'll go as
22 far as we can tomorrow. I'd like to be here no later
23 than three or four tomorrow, but we'll go to that. And
24 if we need to go into Monday, we'll go into Monday. All
25 right. See you all at nine in the morning.

1 MR. EVANS: Thank you, Your Honor.

2 (Court concluded at 5:30 p.m.)

3 --- END OF DAY FOUR OF PCR HEARING ---

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1 RICKEY LEE BLACKWELL VS. THE STATE OF SOUTH CAROLINA

2 DAY 5 OF PCR HEARING

3 THE COURT: All right. This is a resumption of
4 postconviction relief hearing in Rickey Blackwell versus
5 The State. This is 2018-CP-42-00928. We are at the
6 point in the death penalty postconviction relief that
7 the Applicant is calling their next witness.

8 Mr. Grose, if you'd formally call your next
9 witness.

10 MR. GROSE: At this time Rickey Blackwell calls
11 Mr. Bob Dudek.

12 (Witness appears by Webex.)

13 THE COURT: Mr. Dudek, would you raise your right
14 hand? (Complies.)

15 Do you solemnly swear or affirm the testimony
16 you're about to give in this matter will be the truth,
17 the whole truth, and nothing but the truth so help you
18 God?

19 THE WITNESS: I do.

20 THE COURT: Thank you. All right. Mr. Grose?

21 ROBERT DUDEK,

22 Having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. GROSE:

25 Q. Mr. Dudek, would you please state your full name

DIRECT EXAMINATION OF ROBERT DUDEK BY MR. GROSE

1 for the record and spell your last name?

2 COURT REPORTER: We can't hear you.

3 MR. GROSE: I was on mute, I apologize.

4 BY MR. GROSE:

5 Q. Mr. Dudek, would you please state your full name
6 for the record and spell your last name?

7 A. Robert M. Dudek, D-u-d-e-k.

8 Q. And what is your profession?

9 A. I'm the chief appellate defender for the office
10 of Appellate Defense ---

11 THE COURT: All right. Hold on just a second.
12 Are you all right?

13 COURT REPORTER: He's hard to hear.

14 MR. GROSE: I'm sorry.

15 THE COURT: Do you know where his microphone is?

16 MR. GROSE: Maybe this will help. All right.

17 Test. Mr. Dudek, can you say something to test our ---

18 THE WITNESS: Yes, sir. I'm here, if you can
19 hear me.

20 THE COURT: Is that better, Julie?

21 COURT REPORTER: Yes.

22 THE COURT: Okay, we're good.

23 BY MR. GROSE:

24 Q. All right. I think I had asked you your
25 profession and you stated that you're the chief attorney

1 at the Division of Appellate Defense; is that correct?

2 A. Correct. South Carolina Division Commission on
3 Indigent Defense.

4 Q. All right. And where did you go to law school?

5 A. University of South Carolina.

6 Q. And what year did you graduate?

7 A. 1984.

8 Q. And what did you do for employment after you
9 graduated in 1984 from South Carolina School of Law?

10 A. I originally was a public defender for State of
11 South Carolina.

12 Q. And how long did you do that?

13 A. Five years.

14 Q. And then what did you do next?

15 A. I became an assistant appellate defender.

16 Q. All right. And how long had you been -- well,
17 how long were you an assistant appellate defender?

18 A. From very late '89, 1989 until sometime in 2009.
19 So almost 20 years.

20 Q. All right. And in 2009, is that when you became
21 the chief defender?

22 A. Became the active chief in 2009, and then the
23 full-time chief of ---

24 Q. And what year? Can you say that again?

25 A. 2010.

1 Q. All right, thank you. And were you one of Rickey
2 Blackwell's attorneys on his direct appeal?

3 A. Yes, I was.

4 Q. All right. And can you tell us how Mr.
5 Blackwell's case came to your office?

6 A. It was a death penalty case. Obviously, Billy
7 McGuire, so it automatically came here. I assigned all
8 of the cases I assigned it to myself and David
9 Alexander.

10 Q. Is it usual for you to assign more than one
11 attorney in a capital case?

12 A. Yes. Yes. Since I became chief. We used to
13 have a capital division before I became chief. Our
14 chief assistant, Mr. Snyder, and myself. (Inaudible.)
15 Would be to handle one attorney, but I think I've almost
16 (inaudible.) I think. I could be wrong.

17 Q. Okay. And can you tell us ---

18 MS. BROWN: Your Honor, excuse me just a minute.
19 I'm having trouble hearing. Can I try -- there may be a
20 little feedback for a moment, but I wanted to try
21 something here.

22 COURT REPORTER: I'm having the same problem,
23 Judge.

24 MS. BROWN: Are you having a little problem too?
25 It's very low. Mr. Dudek, could you say something?

DIRECT EXAMINATION OF ROBERT DUDEK BY MR. GROSE

1 MR. DUDEK: Yes, ma'am. Can you hear me?

2 MS. BROWN: I can. It's still a little low and
3 there's a little feedback. Can everybody in the
4 courtroom deal with a little bit of feedback?

5 THE COURT: Well, let's see. How far are you
6 from -- how far away from your microphone?

7 THE WITNESS: I am right here, Judge. Right
8 ahead of me.

9 COURT REPORTER: Does it have a volume?

10 THE WITNESS: I can put it on my ---

11 THE COURT: Does your microphone have a volume?

12 THE WITNESS: Yes, sir, it does.

13 THE COURT: Make sure it's up.

14 THE WITNESS: Is that any better?

15 THE COURT: Not much.

16 THE WITNESS: Is that better?

17 MS. BROWN: It's like an eye exam. It's a little
18 different but it's not quite there.

19 THE COURT: Right.

20 MS. BROWN: I can try to listen, Your Honor. And
21 if I have another issue, I can just speak up.

22 THE COURT: All right. Let's see.

23 MR. GROSE: Can you hold it closer to you?

24 THE WITNESS: Does that help at all?

25 MS. BROWN: I think that helped some. I think

1 the court reporter's indicating it helped some.

2 MR. GROSE: All right. I think it does. Let's
3 try doing that.

4 MS. BROWN: Thank you.

5 THE WITNESS: Okay.

6 BY MR. GROSE:

7 Q. All right. As a general practice, when any
8 appeal comes to the office, how do you review that or
9 identifying issues?

10 A. Well, what I do, I have two legal pads. One is a
11 running legal pad of testimony of witnesses names, page
12 numbers. Most everything that the witness said, I take
13 good notes. And on the second legal pad I write down
14 all of the objections or most that's in the file unless
15 it's something totally insignificant, like (inaudible)
16 like that.

17 Q. Okay. And you indicated that Mr. Alexander was
18 your co-counsel on this appeal?

19 A. Correct.

20 Q. How did you and Mr. Alexander divide up the
21 responsibilities in the case?

22 A. Okay. Once intellectual disability was
23 identified as a major issue and one we thought was a
24 winning issue ---

25 COURT REPORTER: I can't hear.

DIRECT EXAMINATION OF ROBERT DUDEK BY MR. GROSE

1 THE COURT: Yeah, this isn't working.

2 MR. GROSE: The suggestion has been made that you
3 use David's computer because we didn't have any problem
4 with that yesterday.

5 THE WITNESS: I can do that. I'll have to go
6 down there and log in and come right back.

7 THE COURT: We'll take whatever time you need.
8 We're going to take whatever time it is for you to get
9 to another computer because this isn't working.

10 THE WITNESS: Okay. I'll go to David's office
11 and log in.

12 THE COURT: Mr. Brown, this is Judge Hall can you
13 hear me?

14 MR. BROWN: Yes, Judge, can you hear us?

15 THE COURT: Yes, that's much better.

16 MR. BROWN: Okay. Then I'm going turn it over to
17 Bob then.

18 THE WITNESS: I apologize profusely.

19 THE COURT: All right. Let's give it another
20 shot. Mr. Grose?

21 Mr. Grose: Thank you, Your Honor.

22 BY MR. GROSE:

23 Q. Mr. Dudek, when we left off I think was asking
24 you -- had asked you about the division of labor. How
25 do you and Mr. Alexander divide the labor in this case?

1 A. Okay. Once intellectual disability was decided
2 that that was a major issue and a winning issue, I
3 signed an affidavit for him to work on that.
4 Concentrate his efforts on that issue. Can you hear me?

5 Q. Yes. I think we're hearing you very well now.
6 All right. And why did you identify -- why do you say
7 that was a winning issue?

8 A. Well, I mean, certainly when talking to the trial
9 attorneys, my memory, it's obviously been a long time,
10 but my memory is Bill McGuire is very strong on taking
11 issue of one matter at the trial level. So, that was
12 one reason. And I, you know, I respected him, Bill's
13 abilities and opinions on the trial.

14 Q. Okay. What kind of process did you and Mr.
15 Alexander go through to identify the other issues in the
16 case?

17 A. Well, it would have just been -- I mean, again,
18 it's been a long time. In fact, the statute we have, I
19 don't recall what, out of my normal practice, is to just
20 thoughts being the potential issue in the case and
21 decide which of them without work or worked or anything
22 after kicking around weaknesses and strong points of
23 those issues.

24 Q. Okay. And what information can you provide about
25 the decision on how to brief and present the

1 intellectual disability issue?

2 A. Well, again, that issue was David's baby, if you
3 will. You know, it's to the strengths and potential
4 weaknesses of it. I know we talked about it. It's been
5 a long time and David would be the person for those
6 questions.

7 THE COURT: I'm not understanding a word he's
8 saying. Sometimes he can be a little soft. But explain
9 to him, he needs to speak up loud and clear. I don't
10 know.

11 MR. GROSE: Bob?

12 MS. BROWN: Your Honor, I missed it.

13 THE COURT: You're not hearing him either, are
14 you?

15 MS. BROWN: No, sir. Not at all.

16 BY MR. GROSE:

17 Q. Bob, if you could, lean in as close to the
18 microphone and speak up as much as possible. We're
19 occasionally missing some of what you're saying.

20 A. Okay.

21 Q. All right. If I understand you correctly, we
22 should defer to Mr. Alexander for any testimony about
23 the intellectual disability issue?

24 A. Yes, sir, that's correct.

25 Q. All right. What issues, other issues did you

1 identify as being meritorious for appeal?

2 A. The mental health records were one of the big
3 ones. I, frankly, thought that would be a winning issue
4 too. Obviously it did not turn out to be, but just the
5 refusal to allow for proffer and us not being allowed to
6 file his mental health records in support of our
7 defense, um ---

8 Q. And I understand those are sealed, and so I'm not
9 gonna ask you to go into any details about that issue.
10 What other issues did you identify?

11 A. We identified the Court's refusal to admit
12 evidence of remorse, Rickey Blackwell's remorse.

13 THE COURT: All right. This still isn't working.
14 We've got to have a record. Everybody's got to be able
15 to hear. I would suggest -- does that microphone work?
16 I think it's coming out here on Mr. Grose's computer,
17 which I can -- what I'm suggesting is it's coming
18 through there. Does that microphone work? All right.
19 Let's try the next question. All right. Mr. Grose?

20 BY MR. GROSE:

21 Q. All right. Can you hear us, Mr. Dudek?

22 A. Yes, I can.

23 MR. GROSE: Can you hear Mr. Dudek?

24 MS. BROWN: It's a little low for me, Your Honor.

25 MR. GROSE: Speak again.

DIRECT EXAMINATION OF ROBERT DUDEK BY MR. GROSE

1 MR. DUDEK: Can you hear me now?

2 MS. BROWN: That sounds better.

3 MR. GROSE: Yeah. I have the microphone closer
4 to the speakers, I think. Lindsay, can you bring me the
5 document on the podium?

6 THE COURT: Mr. Grose, do you have the volume up
7 on your laptop as well?

8 MR. GROSE: It is up as high as it will go.

9 THE COURT: All right.

10 BY MR. GROSE:

11 Q. You were, I think, testifying about the issue of
12 remorse. Does that go to the chaplain's records?

13 A. Yes, it does go to the chaplain's records.

14 Q. All right. And what did you find significant
15 about that issue?

16 A. Well, we were not allowed to get into evidence
17 that Rickey Blackwell told the police officers: The
18 only thing I'm sorry about is I didn't do a better job
19 on myself, end quote.

20 Q. So the State presented evidence of lack of
21 remorse. Is that what you're saying?

22 A. Yes. They presented evidence of lack of remorse,
23 and our argument was that ought to come in in their
24 response.

25 THE COURT: All right. This isn't gonna work.

1 I'm not comfortable with us creating any kind of record
2 with virtual courtroom. What I would suggest is, you
3 call your next witness. If we can't work this out,
4 we're gonna have to have Mr. Dudek appear in person. We
5 have to be sure we have a clean, accurate record of what
6 he says. Certainly, the State needs to have the
7 opportunity to hear everything for response.

8 Ms. Brown, I believe you have to hear.

9 MS. BROWN: Yes, sir. I was just ---

10 THE COURT: This isn't gonna work. So let's just
11 -- Mr. Dudek, for whatever reason, we're not able to
12 make a record and hear clearly. I think Julie has
13 probably been able to hear. The problem is that the
14 litigants have not been able to hear, hear you. I'm
15 gonna get out of my virtual courtroom and we're gonna
16 call the next live witness and we'll come back to you
17 and give it another shot. We'll hear the next witness
18 and see where we go from there.

19 MR. DUDEK: Judge, will I hear from Charles or
20 from you or do I just stay here on standby?

21 COURT REPORTER: Did you hear him, Judge?

22 THE COURT: No.

23 COURT REPORTER: Oh, he wanted to speak with you.

24 THE COURT: I got out.

25 COURT REPORTER: He wanted to know if he was on

DIRECT EXAMINATION OF CLAY ALLEN BY MR. GROSE

1 standby.

2 THE COURT: They need to call. That's their
3 witness, they need to communicate with him about that.
4 You all need to talk to Mr. Dudek, somehow or another
5 and let him know what's going on and what we can do
6 next. That's not my responsibility.

7 (Witness comes forward.)

8 THE COURT: Mr. Allen, if you will step forward
9 and the deputy will swear you in.

10 THE DEPUTY: Place your left hand on the Bible
11 and raise your right hand. (Complies.)

12 Do you swear to tell the truth and nothing but
13 the truth so help you God?

14 THE WITNESS: I do.

15 THE DEPUTY: All right. Be careful of your step.

16 CLAY T. ALLEN,
17 having been duly sworn, testified as follows?

18 DIRECT EXAMINATION

19 BY MR. GROSE:

20 Q. All right. Mr. Allen, if you would please state
21 your name for the record and spell your last name.

22 A. Clay T. Allen, A-l-l-e-n.

23 Q. And you are an attorney?

24 A. Yes, sir.

25 Q. And how long have you been practicing law?

1 A. I was admitted to the bar in 1979. I retired --
2 took retired status from the bar, I think, at the end of
3 2021.

4 Q. Okay. And what law school did you graduate from?

5 A. University South Carolina.

6 Q. And after you graduated from South Carolina, what
7 did you do as far as employment?

8 A. Until I was admitted to the bar, I was working as
9 a law clerk through the South Carolina Attorney
10 General's Office on a full-time basis. And after I was
11 admitted to the bar, I went onto active duty with the
12 United States Army, Judge Advocate General's Corps and
13 began my active duty on December 1st in 1979 at Fort
14 Riley, Kansas. And got off of active duty in November
15 of 1983.

16 Q. All right. And after leaving active duty with
17 the JAG, what did you do next?

18 A. I was employed by John Talley in Gaffney, South
19 Carolina. Became part of what became a three-person law
20 firm known as Talley, Aaron, and Allen. We were in
21 general practice law. A lot of domestic and a lot of
22 real estate closings and criminal.

23 Q. And how long did you do that?

24 A. Not quite a year. And we didn't have enough
25 business for three lawyers. And so, John asked me to

1 start looking for another job and I became an assistant
2 public defender in Richland County I think in September
3 of 1984.

4 Q. All right. And how long did you go that?

5 A. About four years.

6 Q. And then what did you do next?

7 A. I was an assistant solicitor for Greenville
8 County for approximately three years or thereabouts.

9 Q. And what did you do after that?

10 A. In 1991, I went into private practice for myself.
11 I opened up my own private law firm or law office, sole
12 practitioner in Greenville. Did that for about ten
13 years in general practice of law. But I also took, what
14 was then known as, one of the contracts with the
15 Indigent Defense office of Greenville County and I
16 became, what some people refer to, as a part-time public
17 defender or a part-time contractor.

18 Q. And that was under the, as I refer to it, the old
19 indigent defense system?

20 A. The old public defender system that was run by
21 the counties, yes, sir.

22 Q. Okay. And what did you do next in your career?

23 A. In 2001 I became the assistant public defender in
24 Spartanburg County.

25 Q. All right.

1 A. In March of 2001. And stayed with either the
2 Public Defender's Office or the circuit until I retired
3 in July of 2020.

4 Q. And eventually you became the chief public
5 defender for Spartanburg under the old county system?

6 A. Yes. I became chief public defender in 2006, and
7 I served as the chief public defender of Spartanburg
8 County until I was installed as the Seventh Judicial
9 Circuit Public Defender in 2008.

10 Q. And that was under the new state-wide, or newer
11 state-wide indigent defense system?

12 A. Yes.

13 Q. All right. As part of that state-wide indigent
14 defense system, was the Capital Trial Division also
15 created?

16 A. It was created at some point around that time,
17 yes, sir.

18 Q. All right. And you eventually -- or you were one
19 of Rickey Blackwell's attorneys; is that correct?

20 A. Yes. Yes, sir.

21 Q. All right. And I'm going to put Applicant's
22 Exhibit 76 on the screen, which is already in evidence
23 and it's a copy of the arrest warrant. What was the
24 incident date for Mr. Blackwell's crime? This is murder
25 warrant.

1 A. I can't read that very well, but...

2 Q. Okay. If I said it was July 8th of 2009, would
3 that sound right?

4 A. That would sound right.

5 Q. All right. And I'm gonna show you on the screen
6 Applicant's Exhibit 77, which is already in evidence,
7 which is the notice of intent to seek the death penalty.
8 How quickly did then Solicitor Gowdy decide to seek the
9 death penalty?

10 A. Within a day or two of his arrest.

11 Q. All right. And when you say "his" arrest, you
12 mean Rickey's arrest?

13 A. Yes.

14 Q. All right. Is that common or uncommon for the
15 Solicitor to serve notice in a case that quickly?

16 A. I think it's pretty uncommon.

17 Q. Okay. And once -- obviously, you realize this
18 was going to be a capital case very quickly?

19 A. Yes, sir.

20 Q. All right. And what did you do as far as
21 obtaining co-counsel in the case?

22 A. I can't remember if I have contacted capital
23 litigation or they contacted me. We both, I'm sure,
24 heard about it through the news, but I was in contact
25 with them pretty quickly. As a matter of fact, Morgan

1 Daniels, who was employed by them as a mitigation
2 investigator, I believe, came up and met with me and we
3 went to the Spartanburg Regional Hospital where Rickey
4 was then being treated for his gunshot wound.

5 Q. Do you know whether Solicitor Gowdy served on the
6 death notice or Notice of Intent to Seek the Death
7 Penalty on Rickey at the hospital?

8 A. My understanding was that he did, yes.

9 Q. And after you and Ms. Daniels met with Rickey,
10 what happened next as far as establishing representation
11 for Rickey?

12 A. At some point after that I did do a notice of
13 representation and I believe I had him interviewed by
14 our, you know, screener or interviewer prior to my going
15 there to make sure that he wanted our representation and
16 he qualified, which we felt that he would. At some
17 point I did serve notice of representation and, of
18 course, I've been in communication with Bill McGuire,
19 and I'm not sure when Bill filed his. Who knows when we
20 got an order appointing both of us essentially.

21 Q. All right. So ultimately there was an order of
22 appointment for both you and Mr. McGuire?

23 A. Yes.

24 Q. Okay. In your meetings with Rickey, did he show
25 remorse?

1 A. I believe so.

2 Q. All right. And I'm gonna show you what's already
3 in evidence as Applicant's Exhibit 78. At some point
4 did you write Solicitor Gowdy and offer -- let the
5 solicitor know that Rickey was willing to plead guilty
6 for a life sentence without the possibility of parole?

7 A. Yes, sir. Bill and I talked about it and Bill
8 suggested some of the language, but I prepared the
9 letter and signed it and forwarded it.

10 Q. All right. And did Solicitor Gowdy accept that
11 offer?

12 A. He did not.

13 Q. All right. And after -- well, let me ask you
14 this. At some point did Solicitor Gowdy leave the
15 solicitor's office because he was elected to congress?

16 A. That's correct.

17 Q. All right. And once he was elected to congress,
18 who became the new solicitor for this judicial circuit?

19 A. Barry Barnette, who was his deputy here in
20 Spartanburg, became the new solicitor. I believe he was
21 initially appointed for that position, and then he ran
22 for solicitor as well and was elected solicitor.

23 Q. All right. After Mr. Barnette became solicitor,
24 were there any efforts by the defense team to enter into
25 plea negotiations with Solicitor Barnette?

1 A. Yes. We -- I know we periodically reminded Mr.
2 Barnette of his, you know, desire to plead guilty and --
3 but he wouldn't accept that offer.

4 Q. All right. At some point did the defense team
5 identify intellectual disability as an issue in this
6 case?

7 A. Yes, sir.

8 Q. All right. And can you tell the judge about
9 that, please?

10 A. Well, we began to suspect it. I think Kara
11 Richards-Baker told us, you know, indicated that there
12 was some evidence, to follow that up, so we hired Dr.
13 Ginger Calloway to conduct some tests and to let us know
14 what she thought on that issue.

15 Q. Okay. And you said Kara. Is that Kara
16 Richards-Baker?

17 A. Yes, sir.

18 Q. Okay. All right. And I'm going to show you
19 what's already in evidence as Applicant's Exhibit 79.
20 Did you and Mr. McGuire ultimately -- it should be on
21 the screen now.

22 Did you and Mr. McGuire ultimately notify the
23 Court about the Atkins issue in the case?

24 A. We ultimately did, yes, sir.

25 Q. Okay. And if I told you that that letter was

1 dated July 13, 2012, would that sound right?

2 A. That would sound right.

3 Q. And I'm gonna put on the screen Applicant's
4 Exhibit 80, which is already in evidence. Did the
5 solicitor write back with regards to the notice, his
6 position on that?

7 A. Yes, sir.

8 Q. Okay. In 2012, was there any trial coming up at
9 that point?

10 A. No. The trial had not been scheduled.

11 Q. All right. I'm gonna show you Applicant's
12 Exhibit 8, and I'll hand you a copy of that. Have you
13 ever seen that document before?

14 A. I believe I have.

15 Q. Okay. And what do you recognize that document to
16 be?

17 A. I think this was -- I mean, it's a document
18 stating the possible arguments against the arguments
19 that Rickey was intellectually disabled or, as the
20 statute called it at that time, mentally retarded.

21 Q. And do you recall when you first saw this
22 document?

23 A. I do not.

24 Q. Okay. And this lists at least -- well, do you
25 know who prepared this document?

1 A. I believe it was prepared by Ms. Richards. I
2 can't say that for sure.

3 Q. But you saw this document before trial, is that
4 fair to say?

5 A. Yeah.

6 Q. All right. And ultimately, did Dr. Calloway give
7 a report or make a diagnosis about intellectual
8 disability?

9 A. Yes, sir, she did.

10 Q. Okay. And at some point did, I guess, the
11 solicitor request and evaluation by the Department of
12 Disabilities and Special Needs?

13 A. He did.

14 Q. Okay. And did you receive a report from Dr.
15 Calloway?

16 A. We did receive a report from Dr. Calloway, yes,
17 sir.

18 Q. All right. And do you recall there being an
19 issue with that report where she had the issue of
20 supplemental report?

21 A. Yes, sir. When Mr. McGuire and I met with her at
22 her office, I think, I think I detected some, some
23 problems. I need I -- I can't remember what the problem
24 was or error, the error was, or what the error was, but
25 I think I detected a more solvable error. I know we had

1 a discussion about what to do about that. And I thought
2 it was best that she issue a supplement report and
3 basically had to acknowledge or own the error and would
4 like to get it corrected as soon as possible.

5 Q. And at some point did you receive a report from
6 Dr. Brown?

7 A. Yes, sir.

8 Q. All right. And did Dr. Brown agree or disagree
9 in his report with a diagnosis of intellectual
10 disability?

11 A. I'd have to see his report. I don't remember.

12 Q. I'm gonna show you what's already in evidence as
13 Applicant's Exhibit 34.

14 A. Okay.

15 Q. Do you recognize Applicant's Exhibit Number 34 as
16 Dr. Brown's written report?

17 A. Yes, sir.

18 Q. And did he agree or disagree with the
19 intellectual disability diagnosis?

20 A. He disagreed.

21 Q. If I could, have you turn to the final page of
22 that report and there's a section called diagnostic
23 summary and conclusions. Do you see that?

24 A. Yes, sir.

25 Q. All right. And if you could, read that second

1 full paragraph under the diagnostic summary inclusions
2 section.

3 A. The one that begins with there is no doubt?

4 Q. Yes, sir. If you could just read that to
5 yourself and then I'll ask you some questions about
6 that. All right. Do you see about the fourth line down
7 where it says it's not clear that Mr. Blackwell met the
8 criteria prior to age 18?

9 A. Yes, sir.

10 Q. And then he says there's three significant
11 dispatchers in Mr. Blackwell's case that occurred in
12 adulthood, rather than the developmental period. He's
13 included the diagnosis and treatment of cancer, head
14 injury, and significant depression and/or anxiety. Do
15 you see that sentence?

16 A. Yes, sir.

17 Q. And then he says all these factors can have a
18 significant impact on intellectual and adaptive
19 functioning. Do you see that?

20 A. Yes, sir.

21 Q. All right. Did you and Mr. McGuire ever discuss
22 providing Dr. Brown with any information, additional
23 information about Rickey's diagnosis and treatment for
24 cancer?

25 A. I don't recall that we did.

1 Q. All right. Did you and Mr. Brown ever discuss
2 having Dr. Calloway consult with a medical doctor who
3 could provide her with a consultation about Rickey's
4 diagnosis and treatment for cancer?

5 A. I don't recall that we did.

6 Q. All right. The next one is head injury. Did you
7 and Mr. McGuire ever discuss providing Dr. Brown any
8 additional information about Rickey's head injuries?

9 A. I don't believe so.

10 Q. All right. Did you and Mr. McGuire ever consider
11 having Dr. Calloway consult with an expert who can
12 provide her more information about Rickey's head
13 injuries?

14 A. I don't believe so.

15 Q. The next one is significant depression and/or
16 anxiety. Do you see that?

17 A. Yes, sir.

18 Q. All right. And I believe that you and Mr.
19 McGuire were aware of Rickey's major depression and
20 anxiety; is that correct?

21 A. Yes, sir, I believe so.

22 Q. And I believe that you and Mr. McGuire retained
23 Dr. Donna Schwartz-Watts, now Dr. Maddox, to treat
24 Rickey in the jail?

25 A. We did.

1 Q. Okay. In the last sentence of that paragraph,
2 Dr. Brown also talks about excessive use of alcohol.
3 And, likewise, have a significant impact. Although, it
4 is unclear whether or not -- whether or not that would
5 be a significant factor in Mr. Blackwell's case. Do you
6 see that?

7 A. Yes, sir.

8 Q. All right. Did you and Mr. McGuire talk about
9 getting Dr. Brown any additional information about
10 Rickey's history of depression and anxiety?

11 A. I don't ---

12 Q. I'm sorry?

13 A. I don't believe so.

14 Q. Did you and Mr. McGuire ever consider getting Dr.
15 Brown any more information about Mr. Blackwell, Rickey's
16 use of alcohol?

17 A. I don't believe so.

18 Q. I want to shift gears and talk a little bit about
19 Rickey's mental health. I'm going to hand you what's
20 already in evidence as Applicant's Exhibit Number 9.
21 Take a look at that. And I'm gonna walk through it page
22 by page. So if you'll take a look at that first page?

23 A. Okay. Okay.

24 Q. All right. Do you recognize that e-mail?

25 A. Yes.

1 Q. And what is that e-mail?

2 A. It's an e-mail from Ms. Richards to Mr. McGuire
3 and me. She sent in July 16th of 2012, saying some of
4 her concerns about Rickey's psychiatric condition,
5 basically.

6 Q. Okay. And does she suggest hiring a forensic
7 psychiatrist aside from Dr. Schwartz-Watts?

8 A. She does. She does.

9 Q. And did she recommend somebody who she thought
10 would be useful for Rickey's case and appropriate?

11 A. She did.

12 Q. And who did she recommend?

13 A. Dr. George Corvin.

14 Q. Okay. If you can turn to the second page? I
15 don't see you copied on that e-mail. Did you ever
16 receive that e-mail or that information regarding Dr.
17 Dr. Corvin's contact information?

18 A. I'm sure I did.

19 Q. Okay. We could go to the next page. This is --
20 well, take a look at that for a second. And, actually,
21 that e-mail spans two pages.

22 A. Okay.

23 Q. All right. And did you receive -- were you on
24 that string of e-mails?

25 A. I believe I was. Yes.

1 Q. All right. And what is that string of e-mails
2 discussing?

3 A. This was discussing basically hiring Dr. Corvin,
4 a psychiatrist to assist us with this case.

5 Q. Okay. And I want to go over to what would be the
6 fifth page, which is the next e-mail. Were you copied
7 on that e-mail from Mr. McGuire to Dr. Corvin?

8 A. Yes.

9 Q. All right. And what is that e-mail discussing?

10 A. Bill was -- or Mr. McGuire was advising Dr.
11 Corvin that he was working on a case with Ms. Richards
12 and Dr. Calloway and -- well, ask for his CV and rate
13 schedule.

14 Q. So at that point, this is September 21 of 2012.
15 At that point, were you and Mr. McGuire taking steps to
16 retain Dr. Corvin?

17 A. We were.

18 Q. If you go to the next page, that's an e-mail
19 dated October 23 of 2012. Were you copied on that
20 e-mail?

21 A. Yes, sir.

22 Q. And on that e-mail were you discussing when Dr.
23 Corvin could come to Spartanburg to see Mr. Blackwell?

24 A. Ms. Richards was discussing with Dr. Corvin
25 coming to Spartanburg to see Rickey.

1 Q. All right. And were you copied on that?

2 A. I was.

3 Q. All right. If you go to the next page, November
4 19th. Did you see the e-mail that's at the top of the
5 page?

6 A. I'm sure I did.

7 Q. Okay. I want to ---

8 A. Yes, sir.

9 Q. I want to -- I want to hand you what's been
10 already admitted as Applicant's Exhibits 33 and 34.
11 You would, would you take a look at those?

12 A. Okay.

13 Q. And what are those 2 exhibits, 33 and 34?

14 A. Exhibit 33 is the ex parte motion that I signed
15 and prepared for a -- to retain a license of a
16 psychiatrist. Specifically Dr. Porter.

17 And Exhibit 44 is the ex parte order for funding
18 for Dr. Corvin's services.

19 Q. And when were those orders filed?

20 A. They're filed October 26th of 2012.

21 Q. All right. And I want to show you what's already
22 in the evidence as Applicant's Exhibits 45 and 46. If
23 you could take a look at those.

24 A. Okay.

25 Q. And what are Applicant's 45 and 46?

1 A. 45 is an ex parte motion for confidential access
2 to grant Dr. Corvin the confidential access to Rickey
3 while he was in the Spartanburg County Detention Center.
4 And 46 is the ex parte order for that confidential
5 access for Dr. Corvin.

6 Q. And on what dates were those documents filed?

7 A. November 14, 2012.

8 Q. All right. And let me ask you this. Between you
9 and Mr. McGuire, who was handling submitting vouchers
10 for investigators and experts to the office of indigent
11 defense?

12 A. That was me. I've worked with Bill on a couple
13 of cases, as well as calculable litigation. Well,
14 because I'm up here primarily. I've got access with the
15 ability to get to the judges to, to get to the ex parte
16 orders. And, also, I don't know if they had a rule or a
17 directive or whatnot, but because they were in the
18 office of indigent defense, they wanted me to handle the
19 payments, vouchers, and the reimbursements, and that
20 kind of thing.

21 Q. All right. I'm gonna hand you what's already in
22 evidence that's Applicant's Exhibit 47. If you could
23 take a look at that, please.

24 A. Yes, sir.

25 Q. All right. And I see that that's an interim

1 invoice for Dr. Corvin, is that fair?

2 A. It is.

3 Q. And because of what we just talked about, even
4 though that was addressed to Mr. McGuire, you would have
5 received that?

6 A. I would have. I would have. And when I reviewed
7 my file, the thing about Dr. Corvin, I did see these
8 orders, as well as realized that we did get
9 reimbursement for this voucher. So I was aware that we
10 paid him money.

11 Q. Okay. And if you could take a look at that, that
12 invoice, from -- on various dates between November 9th
13 of 2012 and November 14th of 2012, does it appear that
14 Dr. Corvin was reviewing records?

15 A. No. November 9th through?

16 Q. November 14th.

17 A. Yes, sir. That's correct.

18 Q. All right. And on November 20th, does it appear
19 that Dr. Corvin came to Spartanburg and had an
20 interview, clinical interview, with Rickey Blackwell?

21 A. Yes, sir.

22 Q. All right. And then on the 20th, the 26th, and
23 the 30th of November, does it appear that there was
24 various followups by Dr. Corvin?

25 A. Yes, sir.

1 Q. And if you could, go back to Applicant's Exhibit
2 Number 9 and go back to page 7, which was the last place
3 that we were looking at in that exhibit.

4 A. What page again, please?

5 Q. Page 7.

6 A. Okay.

7 Q. All right. And at that bottom of that page, is
8 there an e-mail dated November 26th of 2012?

9 A. Yes, sir.

10 Q. And is that e-mail from Dr. Corvin?

11 A. Yes, sir.

12 Q. And were you and Mr. McGuire copied on that
13 e-mail?

14 A. We were.

15 Q. If you go to the next page, do you recall seeing
16 that memorandum to the Rickey Blackwell file?

17 A. I'm sure I do.

18 Q. And what is the date on that memorandum?

19 A. January 9th, 2014.

20 Q. And does it appear that that memorandum was
21 following a team meeting?

22 A. Yes, sir.

23 Q. All right. If you could look at number nine on
24 that list. Does it reference Dr. Corvin?

25 A. It does.

1 Q. All right. Do you recall any contact between you
2 and Dr. Corvin between November of 2012 and this
3 memorandum on January 9th of 2014?

4 A. I'm not recalling any of it.

5 Q. All right.

6 A. I've looked for notes on that in my file there at
7 the time.

8 Q. All right. Do you know if you've ever met Dr.
9 Corvin?

10 A. I can't say that I did, but general practice
11 would be for me to take someone to the jail to at least
12 make the jail aware that he was our expert and covered
13 by that order of confidential acts service, but I don't
14 have any independent memory of doing that.

15 Q. If you could go to the next page. It doesn't
16 appear that you were copied on that e-mail on February
17 5th, 2014. Do you have any knowledge of that e-mail?

18 A. I don't specifically remember it, no.

19 Q. Okay. If you could flip to the next page.

20 MR. MABRY: Charles, what exhibit is this? I'm
21 sorry.

22 MR. GROSE: I'm sorry. This is Exhibit 9. We're
23 on page 10 now.

24 MR. MABRY: Thank you.

25 BY MR. GROSE:

1 Q. On page 10 there's an e-mail dated February 5th,
2 2014, at 5:29 p.m. from Kara Richards to you and Mr.
3 McGuire. Is that ---

4 A. Yes, sir.

5 Q. And what the does that e-mail state?

6 A. She was advising us that we had problems with Dr.
7 Corvin's, basically his ability to be in court when our
8 case was scheduled to begin, and his concerns that he
9 hadn't written a report or spoken with a lawyer and
10 wasn't prepared.

11 Q. I'm gonna shift gears. I want to talk about
12 James Aiken. And I'm gonna get exhibits 48, 49, and 50
13 for you to look at.

14 A. Okay.

15 Q. Looking at exhibits 48 and 49, what are those?

16 A. 48 is an ex parte motion to authorize funds for
17 an expert in prison and adaptability, specifically to
18 Mr. Aiken. 49 is the ex parte order authorizing those
19 funds. And 50 is the -- is Mr. Aiken's invoice. And
20 the second page of this is his tax preparer ID number
21 and information.

22 Q. Okay. And if you could take a look at Exhibit
23 Number 80 -- I'm sorry, number 50, Mr. Aiken's invoice.

24 A. Yes, sir.

25 Q. Does it appear that he did work on the case?

1 A. Yes, sir, he did.

2 MR. MABRY: No objection.

3 BY MR. GROSE:

4 Q. All right. I'm gonna show you what is at this
5 time Applicant's 81 for identification. Your Honor, I
6 believe I've already handed up a copy of this to you
7 earlier in the week.

8 THE COURT: And he's indicated that he's not
9 objecting to this. Applicant's Exhibit 81 is brought
10 into evidence.

11 (Applicant's Exhibit Number 81 is entered into
12 the record.)

13 MR. GROSE: Is it admitted at this point?

14 THE COURT: It's in the evidence. It's in the
15 evidence.

16 MR. GROSE: Thank you, Your Honor.

17 BY MR. GROSE:

18 Q. All right. Mr. Allen, what is Applicant's
19 Exhibit 81?

20 A. It's a letter from me to Mr. Aiken on February 18
21 of 2012 [sic], basically where I was telling him about
22 when the case was scheduled for trial, along with -- and
23 enclosed with that letter his detention center records
24 for him to look at and review.

25 Q. And in that letter of February 18th of 2014, did

1 you indicate to Mr. Aiken when he might be called as a
2 witness?

3 A. Right. I gave him a general idea that when the
4 case was to begin on March 3rd and jury selection will
5 take several days and do not anticipate him until the
6 week of March 10th.

7 (Applicant's Exhibit Number 83, Invoice From Dr.
8 McKee, was marked for identification.)

9 Q. I'm gonna hand you what's been marked as, for
10 identification, as Applicant's Exhibit Number 83.

11 MR. MABRY: No objection.

12 THE COURT: No objection?

13 MR. MABRY: Yes.

14 THE COURT: Are you moving --

15 MR. GROSE: Yes, I move it into the record.

16 THE COURT: -- Applicant's 83 into evidence?

17 MR. GROSE: Yes, sir.

18 THE COURT: Any objection to Applicant's 83?

19 MR. MABRY: No, sir, Your Honor.

20 THE COURT: Applicant's 83 is in the evidence.

21 COURT REPORTER: What is it, Judge?

22 MR. GROSE: It's -- I'll give it to you.

23 (Applicant's Exhibit Number 83 was entered into
24 the record.)

25 BY MR. GROSE:

1 Q. Mr. Allen, have you had a chance to review
2 Applicant's 83?

3 A. I have.

4 Q. And what is that?

5 A. It is a letter or invoice from Dr. McKee
6 addressed to Mr. McGuire for the services in this case.

7 Q. Okay. And what's the timeframe of where Mr.
8 McKee was working on the case?

9 A. January 7th through January 25th of 2014.

10 Q. All right. And in looking at that, what does it
11 appear that Mr. McKee was doing -- or, I'm sorry, Dr.
12 McKee, was doing for the defense?

13 A. He consulted with us and was reviewing
14 information for us, and specifically reports of Dr.
15 Calloway, Dr. Brown, and trying to assist us by giving
16 us ideas of what kind of questions to go into.

17 Q. I'm gonna hand you State's Exhibit 14, which is
18 already in evidence, and ask if you're familiar with
19 that document?

20 A. Yes, sir, I am. I think, I think I might have
21 created it.

22 Q. Okay. And what is that document?

23 A. It's a list of the funding or the approved
24 funding that we had gotten for a variety of reasons in
25 connection with this case.

1 Q. Okay. And does that document indicate how much
2 money was paid to Dr. McKee?

3 A. Yes, sir.

4 Q. And does that -- the amount that was paid to Dr.
5 McKee match the amount on his invoice --

6 A. Yes.

7 Q. -- which is Exhibit 83?

8 A. It does.

9 Q. Okay. And if you could go back and look at
10 Exhibit 50, which is Mr. Aikin's invoice, does the
11 amount of Mr. Aiken's invoice in Exhibit 50 match the
12 amount that was paid on State's 14?

13 A. We know -- I mean, there's no -- Mr. Aiken,
14 they're not showing any payments made to him.

15 Q. Okay.

16 A. Exhibit 14 -- State's Exhibit 14, it was noted on
17 here that it was updated February 25th.

18 Q. Okay. But would you have paid Mr. Aiken?

19 A. We did pay Mr. Aiken.

20 Q. Right. And the amount of his invoice, does that
21 match -- well, what I'm trying to get at -- well, let me
22 ask you this. Does -- did -- how much were -- when was
23 this -- well, let me ask you this. The time that Mr.
24 Aiken was in the case from the order, he was paid for
25 everything he did?

1 A. Yes, sir. Yes, sir.

2 MR. GROSE: Beg the Court's indulgence for a
3 moment.

4 BY MR. GROSE:

5 Q. All right. Let me ask you this, do you know who
6 Investigator Lorin Williams was or is?

7 A. I'm sorry?

8 Q. Lorin Williams?

9 A. Yes, sir.

10 Q. All right. And what was his role in this case?

11 A. He was one of the -- he was an investigator with
12 the Sheriff's Department, the Spartanburg Sheriff's
13 Department. And I think he was one of the lead
14 investigators or first investigator in connection with
15 this case.

16 Q. All right. And did he testify in Rickey's trial?

17 A. I believe he did.

18 Q. All right. And was his testimony significant for
19 the State regarding the issue of remorse?

20 A. I understood when I was being asked questions
21 that apparently he testified that Rickey was not
22 remorseful.

23 Q. And I'm gonna show you what's been marked for
24 identification as Applicant's Exhibit 68.

25 A. Yes, sir.

DIRECT EXAMINATION OF CLAY ALLEN BY MR. GROSE

1 Q. Do you recognize that?

2 A. Yes, sir.

3 Q. And what is that?

4 A. This is a letter from the solicitor, Barry
5 Barnette, dated January 28th, 2019, which indicates that
6 Mr. Williams, Lorin Williams, was basically dismissed
7 from the sheriff's office for giving false information
8 on a -- in connection with a search warrant.

9 MR. GROSE: I'd move Applicant's 68 into
10 evidence, Your Honor.

11 MR. MABRY: Without objection.

12 THE COURT: Applicant's 68 is in evidence. Thank
13 you.

14 (Applicant's Exhibit 68 was entered into the
15 record.)

16 MR. GROSE: Beg the Court's indulgence one
17 moment. Mr. Allen, thank you for answering my
18 questions. Please answer any questions that the
19 Attorney General's office might have.

20 THE COURT: All right. Let's take a 10-minute
21 break.

22 MR. MABRY: Yes, sir, I needed it. Thank you.

23 (Recess was held from 10:16 a.m. - 10:35 a.m.)

24 THE COURT: Thank you. Mr. Mabry, this is your
25 witness.

1 MR. MABRY: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. MABRY:

4 Q. Mr. Allen, good morning.

5 A. Good morning.

6 Q. Thank you for coming. All the way from Pickens,
7 correct?

8 A. Well, outside of Pumpkin Town, but yes, sir.

9 Q. Okay. At the time you were appointed on this
10 case you were the chief public defender, correct? 2000
11 -- the crime occurred in 2009.

12 A. At that point I was the Seventh Judicial Circuit
13 Public Defender.

14 Q. Right. The whole spew of the chief public
15 defender for the whole circuit.

16 A. For the whole circuit.

17 Q. Had you worked on cases with Mr. McGuire before
18 this case?

19 A. I don't think so.

20 Q. Okay. And when did you first find out about the
21 murder? Was it the same day as the crime?

22 A. I believe it was the day after.

23 Q. The day after?

24 A. Or it might have been the evening after. You
25 know, I don't know exactly when I heard it on a radio or

1 something like that, but it was probably the day after.

2 Q. And it was a well publicized -- this was a high
3 profile case --

4 A. Oh, yes.

5 Q. -- because of the facts of the case?

6 A. Yes, sir.

7 Q. And an eight-year-old girl had been murdered?

8 A. Yes, sir.

9 Q. And you went to, actually went to the hospital
10 and saw the defendant?

11 A. Yes, sir.

12 Q. How many days after the crime was that?

13 A. I believe that was the day after, you know, the
14 event. It could have been the day after that. I'm not
15 sure, but it was one of those two days.

16 Q. Sure. And the defendant, after he had shot the
17 little girl, he had shot himself?

18 A. That's correct, in the abdomen.

19 Q. Okay. And they had to remove basically a third
20 of his colon. Do you remember that?

21 A. I don't remember specifically what they did, but
22 yeah, he was operated on.

23 Q. Okay. And you had the autopsy in this case
24 through the discovery and isn't it a fact the little
25 girl was shot four different times?

1 A. I remember she was shot multiple times, but
2 whatever the autopsy says. But, yes, I did get a copy
3 of the autopsy.

4 Q. Okay. Once in the head. There was a wound that
5 went across her neck. There was a wound in her leg.
6 And then there was a wound right in the middle of her
7 back.

8 A. Okay.

9 Q. And there were -- isn't it true there were
10 eyewitnesses to the actual murder?

11 A. Yes, sir.

12 Q. Including Angie, the -- your client's wife?

13 A. That's correct.

14 Q. And she was present when the eight-year-old
15 victim was shot by the defendant?

16 A. Yes, sir.

17 Q. And she testified in the trial that he, he
18 actually spoke to her. He grabbed the little girl
19 around the neck and kind of pulled her back a little
20 bit. And Angie begged him to let her go.

21 A. Yes, sir.

22 Q. And he said -- he told Angie you've taken this
23 too far and he shot the little girl in the head.

24 A. I believe so.

25 Q. And then he shot her more times after that?

1 A. Yes, sir.

2 Q. And the son-in-law, Mr. Blackwell's son-in-law,
3 was also present when the shooting took place.

4 A. I believe that's correct.

5 Q. And two of his grandsons also witnessed at least
6 some part of the shooting, if not all of it.

7 A. Yes, sir, they were present.

8 Q. When you went to the hospital and spoke with the
9 defendant, what did he tell you about the defense, the
10 first time you spoke with him?

11 A. Okay. I presume I'm --

12 Q. Yeah. He's ---

13 A. -- allowed to say?

14 Q. Yeah. He's filed an application alleging
15 ineffective assistance of counsel.

16 A. Yeah.

17 Q. You can tell us, what did he tell you about the
18 shooting?

19 A. He -- I remember that he said that it was an
20 accident.

21 Q. He said it was an accident?

22 A. Yes, sir.

23 Q. Now, I'm trying to talk ---

24 A. I didn't really want to talk too much about the
25 facts of the case, but I remember that he told me it was

1 an accident. And we talked a little bit more about
2 that, but there was words to the effect that it wasn't
3 supposed to happen like that.

4 Q. Okay.

5 A. And I think that's what he meant, as opposed to a
6 specific legal defense of accident.

7 Q. Accident, right. Accident would not work in this
8 case --

9 A. No, sir.

10 Q. --- with four gunshot wounds.

11 A. No, sir.

12 Q. And eyewitnesses to the crime?

13 A. That's correct.

14 Q. Did he tell you he was angry at the little girl's
15 father?

16 A. No, sir, I don't recall that.

17 Q. He didn't tell you that. But the evidence you
18 developed in the case through your investigation, was
19 there was witnesses that were gonna testify he was angry
20 with the little girl's father, Bobby Center?

21 A. I don't specifically recall that. I thought he
22 was more angry about the breakup of the marriage and the
23 fact that his wife was seeing, dating, or whatever with
24 the --

25 Q. Right. She left --

1 A. -- little girl's father, Bobby Center.

2 Q. -- the home and she started seeing Bobby Center,
3 the little girl's father?

4 A. That's correct.

5 Q. But there were witnesses that you all uncovered
6 during the investigation, and some that came after the
7 trial, that he had been having bad thoughts about Angie
8 and Bobby Center; is that correct?

9 A. Probably correct. I don't recall specifically,
10 but I'm not gonna dispute it.

11 Q. Right. And he had told one person he wanted --
12 he was thinking about some way to hurt Bobby Center, the
13 man that was with his wife.

14 A. I don't recall that specifically, but I'm not
15 gonna dispute it either.

16 Q. Okay. He even told people that he had been
17 having dreams about shooting Angie and Bobby.

18 A. I think so.

19 Q. And he told people he had the gun in his truck.
20 He had been carrying it around and underneath the seat
21 of his truck.

22 A. I believe so.

23 Q. All right. And that's illegal to carry a gun
24 around. Unless you've got a permit, you can't carry a
25 gun underneath your seat; is that correct?

1 A. That's correct at that time, yes.

2 Q. If that's the truth. If that's where the gun
3 was.

4 A. Right.

5 Q. There was other evidence that came out in the
6 trial, he had broke into his father's gun cabinet and
7 stole the gun. Took it.

8 A. I believe I remember something like that, yes.

9 Q. Okay. And as you continued to meet with him, did
10 you go back to the hospital more times after the first
11 meeting?

12 A. I may have gone back to see him one more time at
13 the hospital. I don't ---

14 Q. What did he tell you on that occasion if he can
15 get it on?

16 A. Get it on is just basically trying to check up on
17 him, make sure he's being taken care of. I did not -- I
18 don't recall specifically what he told me about. I
19 wasn't trying to get an in depth information from him at
20 that time.

21 Q. Okay. When did you sit down with him and get --
22 to get the in depth information?

23 A. Some time after he was released and was in the
24 Spartanburg County Detention Center.

25 Q. Okay. Do you remember how long he stayed in the

1 hospital?

2 A. I don't, but it was several days. I just don't
3 remember.

4 Q. Okay. And eventually he was transferred to the
5 jail?

6 A. That's correct.

7 Q. All right. What did he tell you when you were
8 able to sit down with him and talk to him about the
9 facts? What did he tell you about the crime? I want
10 you to tell the judge about --

11 A. What?

12 Q. -- everything. Whatever he told you about the
13 crime, I want you to tell it to everybody.

14 A. I -- I mean, he didn't dispute that he had done
15 it. He still maintained that he didn't intend to shoot
16 her or to kill her. He did acknowledge that he went up
17 to her and helped her in the way that they described,
18 yes.

19 Q. Uh-huh, and then he shot her. He admitted he
20 shot her.

21 A. He admitted -- yeah. I mean, it was either that
22 he had shot her or the gun went off kind of thing, but
23 yes.

24 Q. Okay. Well...

25 A. But he was holding the gun. He was doing

1 something he wasn't supposed to do, yeah.

2 Q. Right. He had her around the neck and he had the
3 gun like this. (Indicating.)

4 A. Right.

5 Q. Did he ever explain how there were four gunshots?

6 A. He never did.

7 Q. And how she got shot in the back?

8 A. He didn't explain it.

9 Q. Okay. Did you explain to him what the autopsy
10 showed?

11 A. I'm sure we did.

12 Q. And what was his response to that?

13 A. I don't think he remembered much of that.

14 Q. Now, when did you and Mr. McGuire begin to have
15 concerns about mental retardation? When did that come
16 up? You said Kara came to you about concerns he might
17 be mentally retarded.

18 A. Well, we were attuned to it because of the Atkins
19 case. And brought, when Kara started developing
20 information that indicated that he was, you know, in
21 some people's description, slow.

22 Q. Uh-huh.

23 A. And whatnot, we began to think that. And,
24 especially, when she recommended that we go to a
25 psychiatrist involved.

1 Q. Okay. So when you talked to him at the hospital
2 twice and then when you talked to him at the jail
3 numerous times, you didn't think he was mentally
4 retarded when you first started representing him, did
5 you?

6 A. I knew that he wasn't -- I'm trying to figure out
7 how to say this -- very intelligent. I knew that he
8 wasn't very educated.

9 Q. Uh-huh.

10 A. But I'm not ---

11 Q. You took -- I'm sorry.

12 A. But, you know, because there are different
13 gradations, if you will, of mental retardation, you
14 know, mild mental retardation all the way to, I guess,
15 profound --

16 Q. Right.

17 A. But, no, I did not think he --

18 Q. Okay. That's what I read --

19 A. -- was profoundly --

20 Q. -- on direct you said --

21 A. -- mentally retarded.

22 Q. -- you first started having concerns about him
23 were when Kara came to you about that.

24 A. Right.

25 Q. And Kara was not the first mitigation

1 investigator on this case, was she?

2 A. No, she was not. I think she was the third.

3 Q. She was the third mitigation investigator. The
4 crime happened in 2009 and the trial was not until 2015
5 -- or '14.

6 A. '14.

7 Q. '14. I'm sorry, I misspoke. And so five years
8 after the crime; is that right?

9 A. Closer to two-and-a-half, I mean -- or
10 four-and-a-half.

11 Q. Four-and-a-half?

12 A. But be that as it may, yes.

13 Q. Okay. Did you have -- with four-and-a-half
14 years, did you have sufficient time to investigate this
15 case?

16 A. I think we did.

17 Q. And did you have sufficient experts and funding
18 for experts in this case?

19 A. I believe so.

20 Q. Did any -- did any judge turn you down for any
21 funding that you requested?

22 A. I don't believe -- it was Judge Couch.

23 Q. Uh-huh.

24 A. And I don't believe he turned us down for much of
25 anything. I think we had to explain a few things.

1 Q. Right.

2 A. But I, I can't recall a situation where he turned
3 us down.

4 Q. Okay. How soon within the time the crime was
5 committed were both -- well, when did you first speak
6 with Mr. McGuire about this case?

7 A. It must have been -- well, it had to have been
8 either the -- I mean, it must have been around the day
9 after because I think I mentioned, Morgan Daniels, who
10 was the first mitigation investigator we had was
11 actually an employee of the capital litigation division.

12 Q. Okay. So from, if not the day of the crime, the
13 day after the crime, you and the Center for Capital
14 Litigation, Capital Trial Division were working on this
15 case?

16 A. Yes, sir.

17 Q. And that's, that's unusual, isn't it? That
18 doesn't normally happen, does it?

19 A. It doesn't normally happen that fast, but --

20 Q. Right.

21 A. -- especially -- but then again the solicitor
22 doesn't normally --

23 Q. Announce that they had ---

24 A. -- seek the death penalty the day after, day or
25 two afterwards either, but yeah.

1 Q. I understand. Thank you. And what was Mr.
2 McGuire's position at that time?

3 A. I think he was a chief attorney for the Capital
4 Litigation Division.

5 Q. Okay. Who else worked there at the Capital
6 Litigation Division with him?

7 A. I know Boyd Young did. I think at that time they
8 were the only two attorneys with Capital Litigation.

9 Q. How many investigators? How many mitigation
10 investigators, if you know?

11 A. Well, obviously, I knew of Morgan Daniels. I
12 knew they had some clerical or administrative support
13 staff, but I don't know who else worked there at that
14 time.

15 Q. Had you worked on a capital case before this one?

16 A. I worked on two capital cases before this one.

17 Q. What were the cases you worked on? Do you
18 remember?

19 A. Eric Dale Morgan.

20 Q. Got you.

21 A. And Andres Torres.

22 Q. Okay. And were you aware of how many capital
23 cases had Mr. McGuire worked on?

24 A. I knew he worked on more than I had, but I do not
25 know specifically how many get worked on. I knew that

1 he had come from --

2 Q. Georgia?

3 A. -- capital litigation type thing in Georgia as
4 well, so I don't know how many cases he worked on.

5 Q. Do you know any attorney in the State that had
6 handled more capital cases than Mr. McGuire at the time
7 he was appointed in this case?

8 A. I don't, but I don't know how many capital cases
9 everybody -- I know David Bruck did a lot, but I don't
10 know if he was still practicing in South Carolina at
11 that time and...

12 THE COURT: You're gonna have to speak up.

13 THE WITNESS: Oh, I'm sorry.

14 BY MR. MABRY:

15 Q. You can move that mic up a little bit.

16 A. Excuse me.

17 Q. Yes, sir. You're soft spoken, so...

18 A. I knew David Bruck had done a lot. I knew John
19 Blume had done a lot.

20 Q. John Blume runs the Capital Litigation Center at
21 Cornell Law School, in that crowd.

22 A. I know he was associated with Cornell Law School.
23 I think he does, yes.

24 Q. And that's where Dr. Knight, who appeared in this
25 case, she is a professor there at Capital Litigation

1 Center in Cornell Law School.

2 A. Okay.

3 Q. Is that correct or do you know?

4 A. I did not know that.

5 Q. What does that Capital Litigation Center at
6 Cornell Law School do, if you know? What is its
7 purpose? What -- is it involving defense of capital
8 cases?

9 A. Right.

10 Q. I mean, in this state?

11 A. To help educate people, lawyers, about capital
12 defense and to provide support.

13 Q. They, they actually get involved in capital cases
14 and capital postconviction relief cases, correct?

15 A. Yes, sir.

16 Q. Numerous, numerous ones in this state.

17 A. Yes, sir.

18 Q. And their mission is to help those people on
19 death row in the south get off of death row. That's
20 their mission statement.

21 A. Okay. I have not read their mission statement.

22 Q. You haven't?

23 A. I did not know it was limited to the south.

24 Q. All right. Well, it said mostly the south.

25 A. Okay.

1 Q. Primarily the south. Did Boyd Young work on this
2 case?

3 A. Yes. He, he was never assigned to the case by an
4 order, as I recall. But, yes, he was assisting. I
5 think both Bill and Boyd work to some degree in tandem.
6 I think Boyd actually came up and assisted with the voir
7 dire of the jurors too.

8 Q. Okay. So there were three attorneys, actually,
9 working on this case getting ready for trial and at
10 least picking the jury?

11 A. Yes, sir.

12 Q. After Mr. McGuire and you were appointed, do you
13 remember how soon after the crime you were appointed?

14 A. A few days. I was appointed, I'm sure after a
15 few days. I don't recall when the order assigning Bill
16 or approving Bill was made.

17 Q. Did you and Mr. McGuire meet with the defendant
18 together?

19 A. I'm sure we did.

20 Q. I mean, when he first got appointed, did you go
21 together and meet with the defendant?

22 A. I don't remember when Bill first met with the
23 client, but it was pretty early on.

24 Q. After your meetings and Bill's meetings, was
25 there any question in your mind or Mr. McGuire's mind

1 that this defendant was not insane? You didn't have an
2 insanity defense to raise.

3 A. We didn't have an insanity defense. And I don't
4 believe that we had any information that would lead us
5 to believe that he was insane.

6 Q. And you didn't have a guilty but mentally ill
7 defense either, did you?

8 A. I don't think so.

9 Q. That was clear. If you had, you would have
10 raised it, correct?

11 A. Sure.

12 Q. So what did you do after both of you first got
13 appointed on a case? What do you do to screen capital
14 -- defense of capital cases?

15 A. I relied on Bill a good bit because he, I
16 believe, had more experience with this than I did. And
17 my other two cases, you know ended up in a death penalty
18 being sentenced. I wanted to learn more about it and
19 get somebody who was more experienced at it than I did.

20 But I knew that, especially in this case, it was
21 gonna mostly be about mitigation.

22 Q. That's what I was about to ask you. There was no
23 issue about guilt or innocence in this case.

24 A. That's correct. I mean, it was pretty -- I mean,
25 it was pretty obvious, you know, considering the fact

1 that, you know, members of his family would be
2 testifying against him on those issues, yes.

3 Q. In the guilt phase?

4 A. In the guilt phase, yes, sir.

5 Q. And the defendant basically admitted to you that
6 he did it, so he knew that to save his life you're gonna
7 have to present something in your penalty phase of the
8 trial?

9 A. Yes, sir.

10 Q. And, in fact, the jury in the guilt phase, you
11 all basically conceded guilt?

12 A. Yes, sir.

13 Q. And the jury didn't take but like 15 minutes in
14 the guilt phase to find him guilty of murder.

15 A. It was pretty quick. But then, again, we didn't
16 contest the guilt phase.

17 Q. All right. What, what was your theory of the
18 case that you were wanting to present to the jury? Is
19 that it? You know, tell him just concede guilt, don't
20 fight guilt and just present some kind of mitigation in
21 a penalty phase?

22 A. Basically, yes. We were conceding. Obviously,
23 we couldn't plead him guilty in order to get a -- you
24 know, in order for the jury to sentence him. So, I
25 mean, we had to go through that stage of the trial.

1 Q. Correct.

2 A. But we were not really contesting the guilt. So
3 it was mitigation.

4 Q. Bill -- I'm sorry, I interrupted you. Go ahead.
5 Bill conceded to the jury in that opening statement, you
6 know, you're gonna hear he murdered Brooke.

7 A. Okay. Yes. I mean...

8 Q. You couldn't really fight that.

9 A. No.

10 Q. You lose credibility with the jury if you ---

11 A. That's correct. That's very correct.

12 Q. So, you knew that, I guess when you started your
13 investigation in the case, you were looking for
14 mitigation.

15 A. Yes, sir.

16 Q. What did you uncover, at least early on? You
17 said MR didn't come up until later with Kara. What were
18 you looking at early on?

19 A. I don't really remember. I mean, I know that we
20 were, you know, that we had been led to a variety of
21 witnesses that talked to him, you know, as being
22 basically a good guy and he was, you know, employed
23 prior, you know, that kind of thing.

24 Q. Family man, quiet?

25 A. Yes, sir.

1 Q. He held jobs for -- you know, he didn't lay out
2 because he was sick, that kind of thing, initially?

3 A. Basically.

4 Q. Now, you all -- you hired Dr. Schwartz-Watts
5 because he was suffering from mental illness at the time
6 of the crime and when he went into the county jail; is
7 that correct?

8 A. I believe so.

9 Q. She was hired to actually treat him.

10 A. Right.

11 Q. She was not what we would call a hired gun
12 brought in from out of state. She was a doctor here ---

13 MR. GROSE: Objection to the characterization.

14 THE COURT: Yeah, I sustain the objection. She
15 was hired --

16 BY MR. MABRY:

17 Q. She was -- I'm sorry.

18 THE COURT: Go ahead.

19 BY MR. MABRY:

20 Q. She was an actual psychiatrist, an MD that was
21 treating him in the jail?

22 A. Yes, sir.

23 Q. And because he was sick?

24 A. Yes, sir.

25 Q. When did you decide that you needed Dr. Corvin or

1 somebody else, a forensic psychiatrist, rather than a
2 treating psychiatrist to look at it?

3 A. I believe that came on the recommendation of Ms.?
4 Richards or from Ms. Richards-Baker.

5 Q. So, your investigation uncovered he had a history
6 of mental illness; is that correct? The defendant. If
7 he had suicidal ideation, wouldn't -- he shot up in the
8 roof one time. Another time he had taken an overdose of
9 Xanax when his wife left him. He had been committed
10 several times.

11 A. Right.

12 Q. Okay. So you knew you had some psychiatric
13 mitigation in this case, correct?

14 A. Yes, sir.

15 Q. By the time you -- even before you hired Dr.
16 Corvin?

17 A. Okay. I don't remember specifically, but I'll
18 accept that.

19 Q. Did -- when you hired Dr. Corvin, did you all --
20 did you and Mr. McGuire or your team provide him with
21 everything that he requested, all the documents that he
22 requested or do you know?

23 A. I believe we did. I mean, if he requested it, I
24 think I would have made an effort to have gotten it to
25 him.

1 Q. And he did not come back with an insanity, I find
2 he's insane or he's guilty so mentally ill; isn't that
3 correct?

4 A. No. I don't think that was the purpose of him.
5 We weren't looking at the defense -- at a defense at
6 that time. Now, we didn't tell him not to do it, but we
7 were not expecting that, anything like that.

8 Q. Okay. You asked him to look at -- in fact,
9 there's an e-mail he was asked to look at the effects of
10 Xanax on the defendant at the time of the crime.

11 A. Okay.

12 Q. Do you recall that?

13 A. I don't recall that e-mail, but...

14 Q. Well, it was introduced a minute ago in that
15 e-mail.

16 A. Okay.

17 Q. And why was Xanax important in this case?

18 A. Well, he had been taking it for quite some time.
19 I remember one of these e-mails mentioned, I think,
20 Karen mentioned that it was habit forming or addictive.
21 So, yeah.

22 Q. You were looking at what effect that drug could
23 have had on him at the time of the crime?

24 A. Okay.

25 Q. He had overdosed on it six months or eight months

1 earlier for the crime. He had overdosed with Xanax. Do
2 you recall that?

3 A. I don't recall that specifically, but I do recall
4 that he had been admitted.

5 Q. You uncovered that in your investigation?

6 A. Yes, sir.

7 Q. Did you ever talk to Dr. Corvin over the
8 telephone?

9 A. I believe I must have. I mean, quite frankly,
10 when we had our discussion, you know, on Zoom --

11 Q. Correct.

12 A. -- a couple weeks ago, I mean, I didn't remember
13 him at all at that time. But that's why I was trying to
14 go back and --

15 Q. Sure.

16 A. -- look at what we had done.

17 Q. You told us you don't remember, but you went back
18 and looked at your file?

19 A. Yes, sir.

20 Q. Do you remember Dr. Corvin being involved now?

21 A. I remember he must have been because we, we
22 sought funding and he sent us a statement, which was
23 paid, so. And I made a file folder for him, but there
24 was nothing in it. I mean, I don't know why I didn't
25 have any notes on it.

1 Q. But you believe you must have talked to him?

2 A. I must that, you know, for at least parts for
3 coordinating the visit. And like I mentioned
4 earlier ---

5 Q. Would you have gone -- you said you would have
6 gone over to the jail with him?

7 A. I may have. I mean, typically I do, but because
8 I -- we get these orders for confidential access, we
9 want the jail to know they're not supposed to tell
10 anybody, especially the State, you know, who's coming in
11 to see him.

12 Q. Sure.

13 A. And so, I may have done that. But I also did
14 have a note in the file that I had gone over to talk to
15 Rickey about that the day before. You know, that a
16 doctor is going to come see him and to cooperate with
17 him and all that.

18 Q. Sure.

19 A. So, I can't tell you specifically if I took Dr.
20 Corvin over to the jail or not. That's my general
21 practice, but the fact that I had already gone to talk
22 to Rickey and tell him cooperate, I may not have.

23 Q. Okay.

24 A. I don't remember.

25 Q. If you sent, would you have sat in on the