

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case Number: 2025-001377

RECEIVED

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S.C. SUPREME COURT

RICKY LEE BLACKWELL, SR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
VOLUME 14 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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1 interview?

2 A. No, sir.

3 Q. You don't go in the interview at all?

4 A. No, sir.

5 Q. There's a -- in his bill, Dr. Corvin says he
6 spoke to Tara -- or Kara, I'm sorry, for some period of
7 time, correct?

8 A. Yes, sir.

9 Q. Would that have been about his interview? I
10 believe it says that.

11 A. Yes. It must have been because it came right
12 after that.

13 Q. So he would have talked, at least from looking at
14 the bill, he would have talked to Kara about his
15 interview with the defendant?

16 A. Yes, sir.

17 Q. She was your mitigation investigator?

18 A. Right.

19 Q. And she shared the information she got during an
20 investigation with you and Mr. McGuire?

21 A. I'm sure she did.

22 Q. Did -- is there a note on there about him talking
23 to a lawyer?

24 A. On Dr. Corvin's?

25 Q. Yeah.

1 A. Hold on.

2 Q. Ken Baker or someone like that. I thought I saw
3 a note when he talked to an attorney Ken Baker.

4 A. On the 26th there's an e-mail. It says e-mail
5 attorney/K. Baker. K. Baker must have been Kara Baker.

6 Q. Oh, so he sent an e-mail?

7 A. Right. And so she ---

8 Q. And so he talked to her in e-mails?

9 A. Well, he sent an e-mail apparently to attorney
10 and Ms. Baker.

11 Q. Oh, okay. So it's to Kara and an attorney?

12 A. That's the way I'm reading it, yes.

13 Q. Okay. I got ya. I misunderstood. Was Kara good
14 about sharing things with you when she uncovered
15 something, providing you with --

16 A. Yes, sir.

17 Q. -- information?

18 A. Yes, sir.

19 Q. And when you decided you all needed to
20 investigate the MR claim, did you attempt to contact
21 everyone that knew Rickey back then? Whether it was his
22 family, friends, work school?

23 A. I would -- yeah. We gave Ms. Baker basically
24 carte blanche, if you will, about as far as, you know,
25 contacting people. So, if we knew of somebody we would

1 have told her, but I don't know if I would have told her
2 about it. She was actually going out there and talking
3 to a lot of people, the family, and whatnot. Family,
4 co-workers, associates.

5 Q. Friends?

6 A. Right.

7 Q. Like supervisors at work. Is there anyone you
8 recall that you just completely missed or didn't contact
9 or had any contact with Rickey in his life?

10 A. When you say "you" are you talking about me
11 specifically or are you talking ---

12 Q. Well, I mean the team.

13 A. Yeah. Not that I know of. Obviously, some of
14 the teachers that he had were not able to be contacted
15 because they were retired and moved away. Nobody knew
16 where they lived or because they were deceased. But,
17 yeah, pretty much everybody that we could find.

18 Q. And he was, at the time of the crime, do you
19 remember how old he was?

20 A. I don't remember.

21 Q. But he was old enough that most of the teachers
22 that he would have had, like you said, were either
23 passed away or retired and you just couldn't find them?

24 A. Right. And he had an adult father, he had
25 grandchildren, but yeah.

1 Q. Did -- when she got those records, she did
2 interview summaries?

3 A. She did.

4 Q. And the prior investigators had done interview
5 summaries as well when they talked to Rickey; is that
6 correct?

7 A. Yes, sir.

8 Q. Did you give all of those interview summaries to
9 Dr. Calloway, the MR expert?

10 A. I don't remember if we did that. I mean, I know
11 we got her, you know, records, you know, that we could
12 find. I think Ms. Baker took Dr. Calloway out to talk
13 to a number of people when she was doing her study on
14 the adaptive functioning.

15 Q. Correct. That's what I was about to ask you.
16 One of the prongs of mental retardation or intellectual
17 disability is adaptive functioning.

18 A. Yes, sir.

19 Q. So you want to talk to people that knew him,
20 people that worked with him, friends, people who were
21 around, correct?

22 A. Yes, sir.

23 Q. And you would have shared that information with
24 Dr. Calloway, who was going to make the assessment of
25 adaptive functioning, correct?

1 A. Yes, sir.

2 Q. Do you know of any reason you would withhold that
3 information from Dr. Calloway? Interviews with people
4 that knew him or family members or co-workers?

5 A. We didn't think they were gonna be particularly
6 helpful on that area. We wouldn't give it to her. We
7 wanted to make sure that she got people that we thought
8 would --

9 Q. Would ---

10 A. Yes, sir?

11 Q. Go ahead and finish your answer.

12 A. That would help in that study.

13 Q. So you gave her -- are you telling us you would
14 give her information from people that you would have
15 thought would help in her finding him MR?

16 A. I think so.

17 Q. And if there were people out there that said that
18 he was not MR and they said he adapted well in the
19 community, you would not have given her that
20 information?

21 A. I don't think I would have, no. No, sir.

22 Q. You would not have given her that information?

23 A. I don't think so. If that is helpful.

24 Q. Okay. Well, how do you have an objective report
25 on mental retardation if she doesn't have all the

1 interviews of everybody that knew him and saw how he
2 interacted in the community? Do you see what I'm
3 saying?

4 A. I hear what you're saying, yes, sir.

5 Q. Right. You would have a skewed report; isn't
6 that correct?

7 A. We weren't trying to skew it, but we were trying
8 to get an accurate report. But at the same time, you
9 know, Rickey's world is kind of close, and so...

10 Q. Sure. I understand that. But if you're trying
11 -- you said you were trying to get an accurate report.

12 A. Yes, sir.

13 Q. Accurate, accurate would mean you had all the
14 information from every source available. Every family
15 member you talked to, every friend, every co-worker,
16 correct? People that were around him that could say
17 could he adapt or not adapt to have an accurate report.
18 She needed all the information you had on adaptive
19 functioning.

20 A. We wanted to give her, you know, people that saw
21 it. We did give her the family.

22 Q. Uh-huh.

23 A. Teachers. I think we provided her information
24 about his employers and all that. But as far as -- but
25 I don't know if we gave her all the co-workers and all

1 that.

2 Q. What I'm asking you is why would you withhold any
3 information that you had? If you're looking for an
4 accurate report, why would you not give her every
5 interview of every person that was around Rickey? Every
6 supervisor, every co -- every employee, friend and
7 family member? Why would you not give her all of that
8 information so you can get an accurate report?

9 A. I mean, I don't know, unless we just didn't think
10 it was gonna be particularly helpful in her making her
11 diagnosis.

12 Q. Okay. Well, let's say you had witnesses that
13 said he was not mentally retarded. He was not -- had no
14 deficits. Had no deficits when you were growing up.
15 You had those in your hand, for her to make an accurate
16 assessment of whether he's really mentally retarded, she
17 needs every source that you have, correct, to make an
18 accurate assessment?

19 A. I can see what you're saying.

20 Q. All right. And you would not have withheld those
21 from her if you had it, so she could make an accurate
22 assessment, or would you?

23 A. I don't know if we gave her every report of every
24 witness. I know Kara was working with her pretty
25 closely on that issue, so...

1 Q. I guess what I'm asking, when you say helpful,
2 sometimes witnesses aren't helpful to your theory of the
3 case. Do you withhold those interviews from the expert
4 or do you give those interviews to the expert if they're
5 not gonna help the expert reach -- do you see what I'm
6 saying?

7 A. I see what you're saying.

8 Q. I'm not accusing that you all did it, I'm trying
9 to find out.

10 A. I can't say we gave her every report from every
11 witness, but I do know that Kara was working with her,
12 "her" being Dr. Calloway, pretty closely. So exactly
13 what she gave, I can't say.

14 Q. I'm not accusing you all of doing that, I'm
15 saying -- I'm asking you is there any reason why as a
16 lawyer in a capital case you would not give your MR
17 expert all the interviews of all the people that knew
18 the defendant in his lifetime that had close contact
19 with him? Can you think of a reason why you would not
20 give those to an expert?

21 A. Again, the only thing I can say is that, unless
22 we thought that the witness didn't know him that well
23 or, or was not ---

24 Q. Not helpful?

25 A. Not helpful, not giving accurate information, you

1 know, I ---

2 Q. So a lawyer could, if he wanted to, what we call
3 spoon-feed his expert on interviews that help them --
4 that help you get a determination of mental retardation,
5 if they wanted to?

6 A. A lawyer could do that.

7 Q. And if they don't give them all the information,
8 then the report is not accurate and the witness can be
9 impeached with what they did not consider; is that
10 correct?

11 A. That's correct.

12 Q. Thank you. Do you remember talking to Dr.
13 Jackson in this case?

14 A. I don't remember. I'm not gonna say I didn't,
15 but I don't remember.

16 Q. He was the family doctor of the defendant.

17 A. Oh, okay.

18 Q. Do you remember that?

19 A. Yeah. I'm not sure if I have spoke to him
20 specifically, but I do know that Kara, I believe, talked
21 to him.

22 Q. Okay. He was treating the defendant for anxiety
23 and depression, and I can't remember what the
24 antidepressant was, but he was also -- he was the one
25 giving him Xanax.

1 A. Okay.

2 Q. Do you recall that?

3 A. (Witness nods head up and down.)

4 Q. You-all handed -- there was a witness list in the
5 file. You all had listed out who you were going to call
6 in the penalty phase and his name was on that list. Do
7 you remember why you did not call Dr. Jackson?

8 A. I do not.

9 Q. Do you remember -- would you have gotten this,
10 State's Exhibit 4 from Kara?

11 A. Yes, sir.

12 Q. Okay. So she talked -- if she talked to
13 somebody, you got a report like that or she told you
14 about it, correct?

15 A. Yes, sir. Mostly we got an e-mail or a report
16 like this, yes, sir.

17 Q. Do you remember Dr. Jackson telling her that he
18 treated Rickey and he treated mentally retarded people,
19 but Rickey was not mentally retarded?

20 A. I don't remember it, but if it's in his report
21 I'm not going to dispute it. Yes, sir, he said he was
22 not mentally retarded.

23 Q. Okay.

24 A. And he said he wasn't really an expert on mental
25 retardation.

1 Q. But he treated people, yeah --

2 A. Right.

3 Q. -- with mental retardation. Rickey was not
4 mentally retarded.

5 A. In his opinion, yes, sir.

6 Q. Okay. And that would be a reason not to call Dr.
7 Jackson in the penalty phase, in this case?

8 A. Yes, sir.

9 Q. He had some good things to say about Rickey's
10 mental illness and treatment, but then you've got this
11 doctor that knew him well that says, you know, I
12 converse with him, I treated him. He came in, I talked
13 with him, I counseled him, and Rickey's not mentally
14 retarded. You wouldn't want to call him that, right?

15 A. We don't want to get that out.

16 Q. No. I want to talk a little bit about do you
17 remember if Rickey was sick at the time that the murder
18 occurred. Do you recall that?

19 A. I don't remember that.

20 Q. Okay. Do you recall the medical records show he
21 had COPD?

22 A. Okay. I don't remember that, but if it's in the
23 medical records, then yeah.

24 Q. Okay. And he, he actually contracted it, we
25 believe or the doctors believe, around 2007 when a bag

1 of hazardous waste exploded in his face and he breathed
2 and burned his lungs.

3 A. Okay.

4 Q. Do you remember that at all?

5 A. I do not.

6 Q. Do you recall about a month before the murder
7 occurred, he couldn't even get out of his recliner? He
8 couldn't go out in the yard? He couldn't climb steps
9 because he couldn't breathe?

10 A. I don't remember that specifically, but I do know
11 he was not working at the time of the murder and was
12 staying mostly at home.

13 Q. Do you recall him continuing to be treated, not
14 only by Dr. Schwartz-Watts, but he was in the jail? He
15 was treated for medical conditions that he had prior to
16 trial. Well, from the time of his arrest until trial.

17 A. I'm sure he was, yes.

18 Q. All right. Do you remember what those were?

19 A. Other than the gunshot wound, I don't remember
20 specifically.

21 Q. So he had had a gunshot wound to the abdomen with
22 surgery, was told he had COPD, he had psychiatric
23 illness, correct?

24 A. Yes.

25 Q. Do you remember he had high blood pressure?

1 A. I don't remember that, but don't dispute it.

2 Q. He had all kinds of physical problems?

3 A. Yes, sir.

4 Q. Do you recall writing a letter to Judge Couch
5 shortly before the trial that Rickey, when he met with
6 him, couldn't even hold his head up? He would put his
7 head down on the table.

8 A. I know he had a medical problem right before
9 trial and I think it was actually in the hospital or had
10 just gotten out or something like that.

11 Q. He had obstructed bowel syndrome or something as
12 well?

13 A. Right.

14 Q. Okay. And you wrote Judge Couch and said, you
15 know, we're not even sure if he's gonna be able to make
16 it through trial.

17 A. That's correct.

18 Q. It was that bad.

19 A. Right.

20 Q. Did he sit during the trial, each day of the
21 trial? Was he able to do that or did he have to go out?
22 Do you remember?

23 A. I don't remember him going out. I think he was
24 in court every day, yes.

25 Q. Okay. I'm not trying to trick you. I just, I

1 don't know. I'm asking you.

2 A. I mean, I don't recall him not be in court or not
3 wanting to be in court necessarily.

4 Q. So that must have cleared up or something. He
5 got better or something for trial.

6 A. Or it was managed, but yeah.

7 Q. Okay. Do you recall that Rickey told Dr. Corvin
8 that he started smoking marijuana when he was 17 and he
9 didn't stop until 1993?

10 A. I don't remember that specifically, because I
11 don't remember much about Dr. Corvin, but if it's in the
12 records I don't dispute it.

13 Q. That's not something that you would want to come
14 out in front of a jury that he had -- he told him he
15 smoked two or three joints a day from 17 -- I'm sorry,
16 18 until 1993, so 17, 18 years of heavy marijuana abuse.

17 A. I don't -- I mean, it's not ideal, but it's not
18 -- I don't think that in 2014 it was viewed that bad. I
19 mean, you know, we certainly don't want to necessarily
20 bring it out necessarily, but I don't think it was -- it
21 wouldn't have shocked me as much as ---

22 Q. And I guess I'm really not asking about the drug
23 usage --

24 A. Uh-huh.

25 Q. -- but you're raising an MR claim and you have a

1 man that's abused his body for years and years with
2 marijuana. Are you aware that studies have shown that
3 that actually damages your cognitive function, long-term
4 marijuana abuse?

5 A. I was not aware.

6 Q. Okay. Have you ever met people that have used
7 marijuana for a long time?

8 A. I'm sure I have.

9 Q. How do they act? Fried?

10 A. I don't know. I ---

11 Q. Okay. If you don't know, that's fine. I'm just
12 asking. You've been a public defender and have
13 prosecuted for years.

14 A. Right.

15 Q. Rickey abused alcohol too.

16 A. Yes, sir.

17 Q. During his entire life; is that right?

18 A. Yes.

19 Q. If, if Dr. Knight's report says Rickey did not
20 abuse drugs or alcohol, that would be incorrect,
21 wouldn't it?

22 A. I believe it would be.

23 Q. And he told -- you're aware he told Dr. Brown he
24 started smoking marijuana when he was 17.

25 A. Okay.

1 Q. So that would have been during the developmental
2 period.

3 A. Yes, sir.

4 Q. And if her report says there was no drug or
5 alcohol abuse between the developmental period, that
6 would be incorrect, wouldn't it?

7 MR. GROSE: I'm going to object to the
8 mischaracterization of Dr. Knight's report.

9 THE COURT: All right. I overrule the objection.
10 BY MR. MABRY:

11 Q. If her report says there's no drug abuse or
12 alcohol abuse during the developmental period, and we've
13 heard that's up to 18 or up to 22, depending on which
14 expert, that would not be correct, would it?

15 A. Apparently it wouldn't be correct.

16 Q. Okay. Do you know why someone would put
17 something in a report that was incorrect? It didn't --
18 one supported by the record in this case. Why would an
19 expert do that?

20 A. The only reason I can think of would be if the
21 expert did not know or have other information or
22 accurate information.

23 Q. Okay. Well, if their report shows that they
24 reviewed all of the medical records in this case and
25 they reviewed Dr. Brown's report and it has that in

1 there, why would that leave out drug and alcohol abuse?

2 A. I don't know.

3 Q. Is it possible they're trying to persuade people
4 of their opinion?

5 MR. GROSE: Objection; speculation.

6 THE COURT: Yeah, I sustain that objection.

7 BY MR. MABRY:

8 Q. Did you have any problem with discovery in this
9 case from the State? Did they give you everything that
10 they had, as far as you can tell?

11 A. As far as I know, yes, sir.

12 Q. You and Mr. McGuire's defense played some jail
13 phone calls for the jury between the defendant and his
14 family members. Do you recall that?

15 A. Yes, sir.

16 Q. What was the purpose of playing those jail calls
17 in the penalty phase?

18 A. Trying to humanize him. That to show --
19 especially the phone call with his grandson, trying to
20 show that he wasn't generally a threat to children and
21 that he talks to young children. And really that he was
22 just being a grandfather as much as he could given the
23 circumstances. But, yeah, we wanted the jury to hear
24 him speak to this child.

25 As I recall, the grandson that he was talking

1 about also had learning issues or possibly mentally
2 disabled. And I also thought that the phone calls would
3 help show to the jury Rickey's, to some degree, his
4 intellectual disability.

5 Q. But the solicitor turned that around and asked
6 the jury to listen to the phone calls and listen to
7 Rickey talking. Not the child, but Rickey.

8 A. Right. I mean, I thought he did.

9 Q. Okay.

10 A. But if you're looking for someone to speak as if
11 they had, you know, like someone who has downs syndrome,
12 then no he doesn't. I thought that. I mean, I was
13 convinced, you know, once we did everything, I mean, I
14 was pretty convinced that Rickey was -- met the
15 definition of mental retardation or intellectual
16 disability.

17 Q. And you did everything you could to present that
18 to the jury, including calling a recognized expert, Dr.
19 Calloway?

20 A. Yes, sir.

21 Q. And giving her everything that you thought was
22 relevant to do that.

23 A. Yes.

24 Q. It's just the judge didn't buy it and the jury
25 didn't buy it, correct?

1 A. Apparently not.

2 Q. Okay. Dr. Brown didn't even testify in the
3 criminal case, did he?

4 A. I don't recall that.

5 Q. And there was another doctor from Columbia who
6 assessed him and didn't send him for an MR evaluation.
7 She did a competency evaluation before trial. She did
8 not think he was mentally retarded, so she did not send
9 him for a mental retardation evaluation; is that
10 correct? The State doctor.

11 A. Yeah. They did not send him to DDSN, you know,
12 to assist in the competency evaluation, yes.

13 Q. And she testified at the Atkins hearing before
14 the judge, but she did not testify in the penalty phase.

15 A. I don't recall that specifically, but I'm sure
16 that's -- I think you're stating the record accurately.

17 Q. At least it appeared the State didn't think they
18 needed Dr. Brown or Dr. Harrison in the penalty phase.
19 They just cross-examined your expert.

20 A. Yes.

21 Q. Your client's problem with the expert was he had
22 a long work history; is that correct?

23 A. He was -- yes, sir. He's been employed.

24 Q. He had been a truck driver, drove oil tankers,
25 correct?

1 A. Been a truck driver over the road, yes.

2 Q. And had gone long distances?

3 A. Had gone long distances.

4 Q. He also had been a forklift driver at two
5 different companies, do you recall that?

6 A. I don't recall that, but I don't dispute it.

7 Q. Right. It's been nine years, correct?

8 A. Right.

9 Q. And you also had the problem to deal with, what
10 caused his low IQ scores? He wasn't individually tested
11 until he was accused of murder and noticed for death,
12 correct?

13 A. That is correct. There were no actual IQ scores
14 in his education records. Only -- there were several
15 tests given, and I can't tell you what they are.

16 Q. Group tests?

17 A. But they were -- yeah, tests from which the
18 teachers, the school district would estimate IQ's. But,
19 as we learned through Dr. Calloway and others, that's
20 not a legitimate IQ test. It's just a general estimate.
21 And we had those scores and those estimates.

22 Q. To deal with?

23 A. Yes, sir. But, I mean, he had not specifically
24 been given an --

25 Q. An actual?

1 A. -- actual IQ test by someone qualified to give an
2 IQ test when he was under the age of 18.

3 Q. And you learned in this case -- you may have
4 already known it -- in school when they, they give a
5 group test, an assessment. Then if there's somebody
6 they think is mentally retarded, then they give them an
7 individual test, right?

8 A. I do not know that.

9 Q. All right. But nobody ever gave Rickey Blackwell
10 an individual test, even with all the group tests he
11 took.

12 A. We had no individual tests when he was in school,
13 no.

14 Q. And you had no doctor that treated Rickey
15 Blackwell during his lifetime, including psychiatrists,
16 psychologists, his family doctor. No one had ever said,
17 I'm concerned Rickey is mentally retarded.

18 A. That's my understanding, yes, sir.

19 Q. And the State used that against your claim of
20 mental retardation?

21 A. Yes, sir.

22 Q. And then you also had his history. He had a
23 history of head injuries, a history of drug and alcohol
24 abuse, correct?

25 A. Yes. He had at least one head injury and --

1 yeah, and he smoked marijuana and drank.

2 Q. Okay. Drank heavily? Do you recall that? And
3 he also had had Hodgkin's Lymphoma in his lifetime.

4 A. I don't recall that, but I think -- but now that
5 you mention it, I think, I think I might recall that.

6 Q. Okay.

7 A. Now that you've mentioned it.

8 Q. I'm not trying to mislead you. There's, in the
9 record, it's mentioned and the State used that --

10 A. Right.

11 Q. -- because he had chemo. And not only did he
12 have Hodgkin's Lymphoma, which the cancer goes, can go
13 everywhere in the body --

14 A. Uh-huh.

15 Q. -- but he had chemo --

16 A. Right.

17 Q. -- at 19, I think. Somewhere in the '80's. Old
18 kind of chemo.

19 A. Right. He was treated for cancer.

20 Q. Right.

21 A. Yes, sir.

22 Q. And he had been out of work, do you recall?
23 After he had cancer. He had been out of work for 12
24 years because of the cancer.

25 A. I don't recall how long he'd been out of work,

1 but I knew he wasn't -- had not been working at the time
2 that this occurred.

3 Q. Do you recall Kara and Ginger interviewing
4 Heather Bryant?

5 A. Yes. That would be his daughter.

6 Q. That's his daughter. And that's somebody that
7 would have seen him practically every day and been
8 around him a lot of, a lot of time.

9 A. That's correct.

10 Q. All right. Not every minute but she lived close
11 by?

12 A. Yes, sir. And she felt very highly of her --

13 Q. Her father.

14 A. -- her father.

15 Q. Correct.

16 A. Uh-huh.

17 Q. And she told Kara and Dr. Calloway: Heather
18 believes her father's mind got washed away with chemo.

19 A. I do not recall that specific line until you
20 showed it to me, but yes, it's there.

21 Q. Okay. Washed away. Not that it came back, but
22 it got washed away. That's what she told ---

23 A. That's apparently the -- yeah. I mean, that is a
24 direct quote. Got washed away was a direct quote from
25 Kara describing, you know, saying -- telling us that

1 that's the way Heather put it, yes.

2 Q. Okay. And, again, that problem -- one of the
3 problems in this case is you had -- all you had was
4 these group tests in school and then you had all these
5 things that happened in his life. And then he's not
6 tested until after the death penalty is sought,
7 independently tested.

8 A. That is -- yes, sir.

9 Q. And that's what -- and the State attacked your MR
10 case using all these things. In fact, Judge Couch,
11 that's what he found that it was always intervening
12 factors between when he was really tested.

13 A. Right. Well, I think Judge Couch's order was
14 along the lines of what we failed to prove by a
15 preponderance of the evidence.

16 Q. Okay. Right. You're correct, yes, sir.

17 A. That we could still present our --

18 Q. But he ---

19 A. -- evidence to the jury.

20 Q. I'm sorry. I didn't mean to interrupt you.

21 A. No. No. I don't think you did. I was pretty
22 much finished.

23 Q. Yeah, I thought so. He was -- but he
24 specifically mentioned, Judge Couch did, all of these
25 things that had happened during his lifetime. Head

1 injuries, I think drug use. Cancer, I know.

2 A. Yes.

3 Q. Hodgkin's Lymphoma and the chemo.

4 A. Right.

5 Q. Okay. Could have affected or caused his brain
6 function to decrease over his life.

7 A. Yes.

8 Q. And his adaptive functioning had demised.

9 A. Okay. Yes.

10 Q. After the developmental period.

11 A. Right.

12 Q. Okay. So it's after the developmental period.
13 It's not mental retardation.

14 A. That's my understanding of the definition, yes.

15 Q. Okay, thank you. Did doctor -- Dr. Calloway was
16 your expert?

17 A. Yes, sir.

18 Q. And how did you come to hire her? Was she
19 recommended by someone?

20 A. By Kara Richards-Baker.

21 Q. Okay. Dr. Knight. Did you know Dr. Susan Knight
22 at the time of this trial?

23 A. I don't remember. I don't think so.

24 Q. Okay, that's fine. I didn't have any information
25 that you did, I was just asking you. You didn't know of

1 Dr. Knight?

2 A. I -- right.

3 Q. Okay. You didn't know Dr. Calloway, but Kara had
4 been involved in capital cases and she recommended Dr.
5 Calloway.

6 A. Yes, sir, she did.

7 Q. Did Dr. Calloway ever ask you and Mr. McGuire to
8 have the defendant genetically tested?

9 A. I don't remember.

10 Q. If she had recommended that he be genetically
11 tested, would you had sought funding to have him
12 genetically tested?

13 A. I don't know. I mean, I thought at one point
14 Bill and I talked about that, because we did, and Dr.
15 Calloway did acknowledge, you know, when we were looking
16 at other family members --

17 Q. Sure.

18 A. -- that, yeah, they -- I can't remember exactly
19 how Dr. Calloway put it to us in a meeting that we had
20 with her one time, but that there is a genetic
21 correlation between intellectual disability and --

22 Q. Other family members.

23 A. You're right. And, of course, we had noticed
24 some of that. You know, with Heather's children, you
25 know, his grandchildren.

1 Q. But she didn't ask you to have him genetically
2 tested though?

3 A. I don't recall that. It would be written
4 somewhere in the file if she had.

5 Q. Okay. Mr. McGuire's testified she did not ask
6 him to have him genetic tested ---

7 MR. GROSE: Objection to any witness's ---

8 THE COURT: I'm sorry, the objection was?

9 MR. GROSE: Pitting witnesses.

10 MR. MABRY: I'm not pitting, I'm seeing if ---

11 THE COURT: Yeah. I overrule the objection.

12 BY MR. MABRY:

13 Q. Yeah. Mr. McGuire said she did not ask him to
14 have him genetically tested. Does that refresh your
15 memory at all?

16 A. I'm not -- I mean, it doesn't really, but I'm not
17 gonna dispute it.

18 Q. Okay. But if she had, would you have sought it
19 out, if your expert told you she needed it?

20 A. I would have hoped so that we would have done
21 that, yes.

22 Q. Okay. Do you recall discussing with Mr. McGuire
23 and the team why you didn't call? Not that you weren't
24 gonna call Dr. Corvin.

25 A. I really don't. I'm trying to piece it back

1 together, but obviously by the time we had a trial date
2 with getting ready, apparently he was not available to
3 us.

4 Q. Okay. If he -- if your client had told Dr.
5 Corvin that he was not -- at the time of the crime he
6 was not mad at Angie, but he was mad at the little
7 girl's father, would that have been something you wanted
8 to present to the jury? That at the time of the crime
9 when he shot Brooke, he was angry with her father, Bobby
10 Center, if he told Dr. Corvin that, would you want that
11 to come out in front of a jury?

12 A. I don't think we would have liked to have
13 presented that, no.

14 Q. Okay. And you can't control, if you call the
15 doctor, you can't control what comes out on
16 cross-examination, can you?

17 A. No.

18 Q. In fact, you would have had, in this case, the
19 judge had ordered you all to turn over all the
20 discovery, the State could serve you with discovery
21 requests on mental illness and mental retardation. You
22 would have had to turn over Dr. Corvin's notes to
23 Solicitor Barnette.

24 A. Yes, sir.

25 Q. If those notes reflect that your client told Dr.

1 Corvin he was angry with the little girl's father but
2 not Angie, the solicitor could have brought that out on
3 cross-examination?

4 A. He could have.

5 Q. That's not good, is it?

6 A. No.

7 Q. It's consistent with the State witness, like
8 Lorin Williams and there was, I think, an EMT that said
9 the defendant wished he killed himself better. He never
10 said anything about, you know, I took it out on the
11 little girl or I'm not -- he never said I'm sorry about
12 killing the little girl, it was about the little girl's
13 daddy. Do you remember that?

14 A. I don't recall specifically what he told the EMT.
15 You know, I don't think he ever said that he was happy
16 that he did it.

17 Q. No.

18 A. And that's not consistent with what --

19 Q. He let it go too far --

20 A. -- the interview told me.

21 Q. -- that he was angry at the girl's father.
22 That's consistent. It would be coming out through Dr.
23 Corvin exactly what the police testified to.

24 A. Okay.

25 Q. That wouldn't be good, would it?

1 A. Not be ideal, no, sir.

2 Q. Okay. And the long-term substance abuse that he
3 told Dr. Corvin about coming out wouldn't be good
4 either, would it?

5 A. It wouldn't be good, but I think that's
6 manageable because, I mean, we have in many cases
7 substance abuse issues. We had it in Andres Torres as
8 well, so... I mean...

9 Q. Right. But in this case you're raising MR,
10 intellectual disability.

11 A. Right.

12 Q. And you have an issue about intervening factor of
13 faking his IQ scores and his adaptive functioning.
14 Would you want the jury to hear he had abused marijuana
15 for 17 years, two or three joints a day?

16 A. I don't think we thought like that. I mean, that
17 we specifically decided not to put somebody up for that
18 reason, but...

19 Q. Okay.

20 A. I mean, I hear what you're saying.

21 Q. Right. But it could hurt you even more.

22 A. I guess it could, but I thought our MR, our IQ
23 scores were in line with many of his estimated IQ's in
24 his education records, so ---

25 Q. Did -- I'm sorry.

1 A. So we thought that was sort of in line with what
2 we had. There were some outliers, yes.

3 Q. All right. If he told Dr. Corvin he believed he
4 -- when the killing occurred, let me direct your
5 attention. He told Dr. Corvin at the time the killing
6 occurred, he believed he cocked the gun and the gun went
7 off. And then he could not remember why or how the
8 second shot went off. Would that be good?

9 A. It wouldn't be good that it showed that he cocked
10 the gun.

11 Q. All right.

12 A. But it's consistent with what -- of course, I
13 wasn't testifying against him, but it would have been
14 consistent with what he had previously or earlier told
15 me. I mean, because he did not -- my understanding is
16 he did not remember anything but the first shot.

17 Q. Consistent with what he told you, but what came
18 out in the guilt phase to the jury was he intentionally
19 shot, and the autopsy is he shot her four times.

20 A. Oh, yes. I mean, she was shot multiple times.

21 Q. And he told Dr. Corvin he cocked the gun and it
22 went off and then he couldn't remember how it went off
23 the second time, but he doesn't mention the third and
24 fourth time. That would not have been good when you're
25 trying to tell the jury he's sorry for what he did and

1 he's contrite, correct?

2 A. Yes, sir.

3 Q. It would show he's not an accurate historian when
4 he talks to his experts.

5 A. That could be argued, yes, sir.

6 Q. Excuse me just a moment. Oh, you hired James
7 Aiken --

8 A. Yes, sir.

9 Q. -- the prison adaptability expert, correct?

10 A. We did.

11 Q. You spent all that money. I can't remember how
12 much money he ran up, but he, he did all the work. I
13 assume he consulted with you all. Why did you not call
14 Mr. Aiken as an expert in prison adaptability?

15 A. That I can't remember. I mean, I know he did his
16 evaluation, reviewed the records. I think I actually
17 talked to him.

18 Q. Right. He would have told you this is what I'm
19 gonna testify to.

20 A. Sure. Sure. I mean, I used him before.

21 Q. Sure. He's a good witness, correct?

22 A. I thought so.

23 Q. Or can be.

24 A. I thought so, yeah.

25 Q. Right. But there's some reason you all chose not

1 to call him. You just didn't forget about it.

2 A. That's -- yes, sir, we didn't forget about him,
3 but I can't sit here today and tell you specifically why
4 we did not call him.

5 Q. Right. But you had -- there would have been a
6 strategic reason for not calling him?

7 MR. GROSE: Objection. Speculation based on the
8 prior answer.

9 THE COURT: I'll overrule the objection.

10 BY MR. MABRY:

11 Q. There would have been a strategic reason why you
12 didn't call him?

13 A. I would think so.

14 Q. Okay. And you wouldn't have made that on your
15 own. You would have talked to Mr. McGuire about it and
16 the team.

17 A. Yes.

18 Q. Could it have -- could it have had anything to do
19 with that decision that the father of the little girl
20 was in the Hells Angels gang, as far as whether he would
21 survive in the general population, your client?

22 A. Well, I don't think that would have entered into
23 it.

24 Q. Could it, could it have anything to do with he
25 murdered an eight-year-old child on whether he could

1 survive in the general population?

2 A. I don't think that would have had anything to do
3 with it.

4 Q. Sir?

5 A. I don't think that would have had anything to do
6 with it.

7 Q. Well, there had to be some reason. I'm just
8 trying to figure out what it was that you wouldn't
9 call ---

10 A. I can't remember now.

11 Q. Sure.

12 A. I, I don't know.

13 Q. I understand. I understand your answer. He did
14 have disciplinary violations in the jail, correct?

15 A. He had some disciplinary violations in the jail,
16 yes.

17 Q. And he had murdered a child.

18 A. Yes, sir.

19 Q. You're aware that causes problems in the prison
20 system, being a child murderer, with the other inmates?

21 A. I guess I didn't know. I mean, I know sexual
22 abuse --

23 Q. Sure.

24 A. -- you know, of children certainly does, but I
25 don't think I was specifically aware that killing a

1 child caused problems with prisoners in the Department
2 of Corrections.

3 Q. What about his health? Do you remember Mr. Aiken
4 saying anything about his health, that he wouldn't be
5 able to survive in the general population because of how
6 sick he was?

7 A. I don't remember that, no, sir.

8 Q. Do you have any idea what Mr. Aiken said that
9 caused you not to call him?

10 A. I really can't remember. I'm sorry.

11 Q. Do you remember in the file there is one mention
12 of he and Angie years ago had been members of the Hells
13 Angels?

14 A. That -- I'm sorry, by "he and Angie" I'm not sure
15 who you're ---

16 Q. Rickey Blackwell and his wife.

17 A. I don't recall that.

18 Q. One notation in the file. Years ago they were in
19 the Hell's Angels.

20 A. I don't recall that note.

21 Q. Okay. Would that be a reason that you wouldn't
22 call a prison adaptability expert?

23 A. I don't know if that would have ---

24 Q. Did Mr. Aiken talk to you about gangs in prison,
25 if you remember?

1 A. I cannot remember. I mean, if you've got it in
2 my notes, then yeah. I mean, but I can't remember.

3 Q. Did everyone agree with the decision? Do you
4 remember anybody dissenting from the decision not to
5 call James Aiken?

6 A. I can't remember at this time, no.

7 Q. Okay. And you all called Dr. Schwartz-Watts as a
8 witness in mitigation and she testified about his mental
9 illnesses and her treatment of him in jail. Do you
10 recall that?

11 A. I don't recall that, but the record -- but I
12 don't -- I thought that our purpose was not to have her
13 on the stand, but was to have her to treat him. So if
14 we called her, then obviously that would have shown the
15 record.

16 Q. Okay. Would it be better to call the doctor who
17 treated the defendant to testify in the penalty phase,
18 or just an expert you hire to render an opinion on his
19 mental illness? What do you think a jury would -- would
20 the jury think better or give more credence to a
21 treating physician about the defendant's illnesses or to
22 a paid expert who wasn't treating the defendant?

23 A. I really, I don't know if I can speak to that. I
24 mean, I have used Dr. Schwartz-Watts before as an
25 expert.

1 Q. Uh-huh.

2 A. I know the solicitor has used her before as an
3 expert. She's testified. She's a recognized expert,
4 you know, in this state in forensic psychiatry.

5 Q. Right. She comes across as very critical,
6 correct?

7 A. Yes.

8 Q. Juries like her?

9 A. Yes.

10 Q. Okay. But if you call her instead of Dr. Corvin,
11 you don't get the bad things that your client told Dr.
12 Corvin; is that correct?

13 A. If she was not aware of it, then no, you don't.

14 Q. Right. And that could have been the reason you
15 didn't call Dr. Corvin and still ---

16 MR. GROSE: Note the objection. The reason they
17 didn't call Dr. Corvin has already been established.

18 MR. MABRY: I overrule the objection. Answer the
19 question.

20 BY MR. MABRY:

21 Q. And that's the reason you didn't call Dr. Corvin,
22 you had a treating MD who was gonna testify about his
23 mental and physical condition, but you had an expert --
24 an outside expert who would -- the defendant had told
25 him numerous things that were not helpful to your case.

1 A. I don't recall that we had any specific
2 conversation along those lines.

3 Q. Okay. But you made a decision not to call Dr.
4 Corvin.

5 A. Apparently we did. I mean, we didn't followup
6 with him very well and, and he was not really available
7 at the time this trial was set to go off.

8 Q. But he, but he had talked with Kara about his
9 interview with the defendant at the jail, and she would
10 have shared with you what took place ---

11 MR. GROSE: Objection, speculation.

12 THE COURT: Yeah, I sustain that objection.

13 MR. MABRY: Okay. Thank you, Your Honor. One
14 moment, Your Honor.

15 BY MR. MABRY:

16 Q. Oh, Dr. McKee. He was also a psychologist,
17 correct?

18 A. A psychologist, yes, sir.

19 Q. Okay. And he was retained as well?

20 A. Yes, sir.

21 Q. Mr. Aiken spent thousands of dollars on him. And
22 you had Dr. Corvin charged \$5,300, but you chose not to
23 call him for some reason. And then you had Mr. McKee,
24 Dr. McKee.

25 A. Dr. McKee.

1 Q. He was never intended to be a witness, correct?
2 He was a consulting expert.

3 A. He became a consulting expert, yes, sir.

4 Q. Well, explain that to me, how he became a -- did
5 he start out as going -- as he was going to be an
6 expert?

7 A. We -- we were going to use him, I think, as, you
8 know, as part of the intellectual disability aspect.

9 Q. Uh-huh.

10 A. You know, possibly to corroborate Dr. Calloway.
11 During one of the pre-trial hearings, Bill surprised me
12 when he said we'll turn over our complete intellectual
13 disability file or investigation to the State. We do
14 not have any opinion from Dr. --

15 Q. McKee.

16 A. -- McKee, thank you, at that time.

17 Q. Yes, sir.

18 A. And we did not know, obviously, which way --

19 Q. Which way he was gonna go?

20 A. -- he was gonna go. So we didn't use him for
21 that purpose. And then, but we did use him to consult
22 with, to help us with some of the cross-examination --

23 Q. To get ready for trial.

24 A. -- and that kind of stuff, so...

25 Q. Right. So he didn't diagnose him with MR or

1 intellectual disability, did he?

2 A. He was not asked to, I don't think.

3 Q. But you retained him for that and he was in the
4 process of doing that when you decided to make him a
5 consultant.

6 A. I don't think he had started that yet.

7 Q. Okay. So why did you change from Dr. McKee to
8 Dr. Calloway? Was she more qualified than Dr. McKee?

9 A. We had Dr. Calloway.

10 Q. Okay.

11 A. This was -- you know, I think the thinking was to
12 get somebody else --

13 Q. Uh-huh.

14 A. -- in addition to Dr. Calloway, but we didn't --
15 but, you know, but we didn't know. At the time the
16 promise was made, we, you know, we, I felt, at least,
17 boxed in. If we give the State our complete ID file --

18 Q. Right.

19 A. -- and he comes down against him --

20 Q. Not MR.

21 A. -- no, we've got to give it to him.

22 Q. Okay.

23 A. So we didn't get any more evaluations.

24 Q. But he was used as a consultant.

25 A. That's correct.

1 Q. Okay. Does it help you prepare your examination
2 of your witnesses and the State's witnesses?

3 A. Yes, sir.

4 Q. You were handed this thing on Lorin Williams, a
5 letter from Mr. Barnette.

6 A. Yes, sir, I think it's up here somewhere.

7 Q. You got it? I'm sorry.

8 A. Here it is. This?

9 Q. Yes, sir.

10 A. Okay.

11 Q. This letter from Mr. Barnette is dated January
12 28th, 2019?

13 A. Yes, sir.

14 Q. And Mr. -- like you said, Mr. Williams got
15 accused of making a false statement in a search warrant
16 affidavit, a Franks violation; is that correct?

17 A. Yes, sir.

18 Q. All right.

19 A. It was ---

20 Q. The letter was 2019 from Mr. Barnette.

21 A. That is correct.

22 Q. And he's telling everybody about this accusation
23 against Mr. Williams.

24 A. Yes, sir. He's sending it out to me and other
25 people who regularly practice criminal defense.

1 Q. Right. So you know you can impeach Mr. Williams
2 or you've got cases with him that he's -- there's a word
3 for it. What do they call that letter? There's a
4 Giglio letter. Is that what it's called?

5 A. Giglio, yeah.

6 Q. Right. I just learned that last year, but I
7 didn't know about a Giglio letter. But he's telling
8 everybody that Lorin Williams is under investigation in
9 2019.

10 A. In here is that Mr. Williams was terminated.

11 Q. From the sheriff's office.

12 A. Was terminated because --

13 Q. Right.

14 A. -- he did not give truthful information on a
15 search warrant.

16 Q. Did you know he was later cleared of that by the
17 First Circuit Solicitor's Office?

18 A. I do not know that.

19 Q. All right. But you didn't get that letter until
20 2019?

21 A. That is correct, because my understanding is, it
22 didn't happen until sometime after, way after the trial.

23 Q. Yeah, that's what I wanted to ask you. This
24 trial was in 2014.

25 A. Right.

1 Q. And the misconduct was after this trial.

2 A. That's correct.

3 Q. There's no way Mr. Barnette could have known
4 during this trial that Mr. Williams was gonna do
5 something in the future.

6 A. That is correct.

7 Q. All right, thank you.

8 MR. GROSE: Your Honor, if I may? I reluctantly
9 do this, but one of our witnesses, the chaplain, is only
10 available until 12:15 and I was wondering if we
11 could ---

12 MR. MABRY: I'm almost done.

13 THE COURT: He's almost done.

14 MR. GROSE: Okay. Fair enough.

15 MR. MABRY: One moment, Your Honor.

16 BY MR. MABRY:

17 Q. Did Dr. Calloway recommend that you speak to an
18 oncologist about the effects of the chemo that Rickey
19 had?

20 A. I don't remember.

21 Q. If she had, would you have consulted one?

22 A. I would have hoped so.

23 Q. Okay. Did she ask you to consult a
24 pulmonologist?

25 A. I don't remember.

1 Q. If she had, would you have done that?

2 A. I would have hoped so.

3 Q. And you're not an expert in mental retardation,
4 are you?

5 A. No, sir.

6 Q. You hired an expert to do that and tell you what
7 she needed, correct?

8 A. That's correct.

9 Q. And you gave her everything that you had that she
10 asked for or you thought would help.

11 A. That we could find, yes, sir.

12 Q. And you did your best to find everything.

13 A. Yes, sir.

14 Q. Drug use not only affects the IQ, it also affects
15 your daily living, doesn't it? Your daily functioning,
16 if you're abusing alcohol and you're abusing drugs, it
17 could affect your daily functioning?

18 A. I suppose so.

19 MR. MABRY: That's all I have, thank you. Thank
20 you, Mr. Allen.

21 MR. GROSE: Your Honor, I would have some
22 redirect, but if we could take the chaplain and then
23 resume?

24 THE COURT: Any objection to interrupting this?

25 MR. MABRY: No, sir.

CROSS-EXAMINATION OF CLAY ALLEN BY MR. MABRY

1 THE COURT: All right. Then, Mr. Allen, you can
2 step down, but you're still under oath.

3 THE WITNESS: Yes, sir.

4 THE COURT: All right. Call your next witness.

5 MS. VANN: She is a virtual witness, so if we
6 could open it. I say that reluctantly.

7 THE COURT: I do too. I accept it reluctantly.

8 MR. MABRY: Mr. Allen can stay up there if he
9 wants to or take a break. Do you want a break? We
10 don't mind him breaking. Yeah, he needs to ---

11 THE COURT: All right. He can step down. You
12 can step down.

13 THE WITNESS: Oh, I thought we were finished with
14 me for right now.

15 THE COURT: No, no, they're not through with you.

16 THE WITNESS: But for right now.

17 THE COURT: You're under oath.

18 THE WITNESS: Yes, sir.

19 THE COURT: You're still under oath. You can
20 leave the courtroom, just be back here, you know, be
21 back here in 10 or 15 minutes.

22 THE WITNESS: Okay. Yes, sir. Thank you.

23 (Witness leaves witness stand.)

24 THE COURT: If you all want to step out while
25 we're setting this up, feel free to do that.

CROSS-EXAMINATION OF CLAY ALLEN BY MR. MABRY

1 MR. MABRY: Yes, sir. Thank you.

2 THE COURT: All right. My virtual courtroom is
3 open. Ms. Moon, this is Judge Hall. Can you hear me?
4 You're appearing on my screen, your name, but...

5 There you go. Ms. Moon, this is Judge Hall. Can
6 you hear me? I can't hear you. You may be muted on
7 your end.

8 COURT REPORTER: I can hear her.

9 THE COURT: I'm sorry. Ms. Moon, can you hear me
10 now?

11 THE WITNESS: Yes, sir. I can hear you just
12 fine, but can you hear me?

13 THE COURT: Yes.

14 THE WITNESS: Terrific.

15 THE COURT: All right. I need to step out.

16 THE WITNESS: Not a problem.

17 (Court leaves the bench from 12:01 p.m. -- 12:03
18 p.m.)

19 THE COURT: All right. It seems everybody is in
20 place. Ms. Moon, if you'd raise your right hand.

21 (Complies.)

22 Do you solemnly swear or affirm the testimony
23 you're about to give in this case is the whole truth,
24 nothing but the truth, so help you God?

25 THE WITNESS: Yes.

DIRECT EXAMINATION OF REVEREND MOON BY MS. VANN

1 THE COURT: All right. Thank you.

2 All right. Ms. Vann, your witness.

3 MS. VANN: Thank you.

4 REVEREND ABIGAIL W. MOON,
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. VANN:

8 Q. Hello, Reverend Moon. Thank you for joining us
9 today. Can you please state your full name for the
10 record and spell your last name?

11 A. Sure. My full name is Abigail W. Moon, and my
12 last name is spelled M-o-o-n.

13 Q. And what is your current employment?

14 A. Currently, the Senior Associate Rector at Trinity
15 Church in the city of Boston.

16 Q. And is that where you're appearing from today?

17 A. It is.

18 Q. What was your employment in July of 2009?

19 A. In 2009, in July of 2009, I was a clinical
20 pastoral education student at Spartanburg Regional
21 Medical Center, which is a component of curriculum that
22 is required for seminarians to complete before they are
23 ordained as priests in the Episcopal church. So it was
24 between my second and third year of seminar -- or first
25 and second.

1 Q. And what were you doing in that role at the
2 hospital specifically?

3 A. So in that role at the hospital we attend
4 classes, we also do visitations, checking in on patients
5 at the hospital itself. And then we are on call for
6 situations that are less routine and are paged to come
7 to certain situations.

8 Q. In your role as chaplain, did you interact with
9 Rickey Blackwell at the hospital in July of 2009?

10 A. I did. I did. I'm looking at my notes over to
11 the side that you guys have shared with me and it was by
12 page. I received a page on the, what was it, the 13th
13 at 5:45 to visit with Rickey in the hospital in his --
14 in the space that they had. I mean, it was after his
15 surgery where he would be.

16 Q. So how did he appear physically at that time?

17 A. He was in physical pain. He was curled up and
18 not stretched out in a peaceful or relaxed space. And I
19 think he was in anguish, is the word that comes to mind.
20 He is visibly in pain and upset.

21 Q. And what do you recall about your interactions
22 with him?

23 A. Mostly I was present with him and listened to
24 him. As I've spoken before, he was post-surgery, was in
25 pain, and wasn't making a lot of sense, so there were a

1 lot of words just sort of tumbling out. And looking at
2 my notes, he was struggling with the guilt and wanting
3 to tell his two children he loved them. And it was this
4 pervasive sort of shock, is really what I experienced
5 when I was at his side.

6 Q. And was it your understanding he was struggling
7 with the actions of what he had done before he arrived
8 at the hospital?

9 MR. EVANS: Your Honor, I object. That's
10 leading.

11 THE COURT: All right. I'll overrule the
12 objection. Go ahead and ask your question.

13 BY MS. VANN:

14 Q. Was it your understanding that he was struggling
15 with the actions of what he had done before he arrived
16 at the hospital?

17 A. Yes.

18 Q. And did you know anything about those
19 circumstances?

20 A. All I knew was there was a shooting and this
21 person was involved with the shooting.

22 Q. Were you ever contacted after this interaction by
23 Rickey Blackwell's trial team before 2014?

24 A. I don't remember.

25 Q. If you had been called to testify in 2014, would

1 you have?

2 A. I don't know.

3 Q. If you had been -- if you had testified, would
4 you have testified to the same thing you have said
5 today?

6 A. Yes.

7 Q. I don't have anything further, Reverend Moon.
8 Please answer any questions the State may have.

9 A. Thank you.

10 MR. EVANS: Your Honor, before I forget, could I
11 be included in the Webex?

12 THE COURT: Yeah.

13 MR. EVANS: You didn't accept my invitation.

14 THE COURT: I'll tell you what, everything's
15 working so fine, let's don't interject another piece.
16 Let's use the same equipment.

17 MR. EVANS: All right.

18 CROSS-EXAMINATION

19 BY MR. EVANS:

20 Q. Reverend Moon, my name is Tommy Evans. How are
21 you doing today?

22 A. I'm all right. How are you today?

23 Q. All right. I represent the State of South
24 Carolina in this case and I'm just gonna ask you a few
25 questions about this actual interaction.

1 A. Okay.

2 Q. You say you do not remember speaking to anyone on
3 Mr. Blackwell's defense team in the year 2012?

4 A. Right.

5 Q. Okay. But there is notes. There are notes we
6 have that you did speak with someone from the defense
7 team about this interaction. I'm gonna ask you from
8 these notes --

9 A. Okay.

10 Q. -- if you remember certain actions, certain
11 things you might have told them.

12 A. Okay.

13 Q. Now, according to these notes, Mr. Blackwell was
14 worried about whether he was going to heaven because of
15 these events. Do you remember that?

16 A. Uh-huh.

17 Q. Okay. And he asked you if God still loves him.

18 A. Uh-huh.

19 Q. Is that a yes or no?

20 A. Sorry, yes.

21 Q. Okay, thank you. Now, at the time you
22 interviewed Mr. Blackwell -- excuse me for one second.

23 A. Okay.

24 Q. Now, you didn't know Mr. Blackwell's name. He
25 was going by an alias; isn't that correct?

1 A. Right. He was referred to as Z Alias in, in the
2 hospital.

3 Q. Okay. And you didn't remember Mr. Blackwell
4 mentioning the victim's name when you talked to him?

5 A. I don't remember if he mentioned the names or
6 not.

7 Q. Okay. Do you remember telling the defense team
8 that you don't remember if Rickey ever said he was sorry
9 for what he's done? Do you remember that?

10 A. I don't remember -- I don't remember the
11 conversation with the defense team.

12 Q. Okay.

13 A. And I don't remember if he said that or not.

14 MR. EVANS: Okay. Nothing further.

15 THE COURT: Anything else? Any redirect?

16 MS. VANN: I have nothing further. Thank you.

17 THE COURT: All right. Thank you, Reverend Moon.
18 You are excused.

19 THE WITNESS: Thank you.

20 (Witness leaves virtual courtroom.)

21 THE COURT: All right. Who is our next witness
22 or are we going back to Mr. Allen?

23 MR. GROSE: We're gonna go back to Mr. Allen.

24 THE COURT: All right. Let's bring Mr. Allen in.

25 (Witness resumes witness stand.)

REDIRECT EXAMINATION OF CLAY ALLEN BY MR. GROSE

1 All right. We're back on the record with Mr.
2 Clay Allen, who's still under oath. And I believe where
3 we stopped was, in fact, the cross-examination had ended
4 by Mr. Mabry and now this is an opportunity for
5 redirect, Mr. Grose.

6 MR. GROSE: Thank you. May it please the Court?

7 CLAY T. ALLEN,
8 having been previously sworn, continued testifying as
9 follows:

10 REDIRECT EXAMINATION

11 BY MR. GROSE:

12 Q. Mr. Allen, during your cross-examination, you had
13 a number of -- there were a number of questions where
14 you answered that you couldn't recall.

15 A. Yes, sir.

16 Q. And I'm not trying to insult you or anything, but
17 why? Why is that?

18 A. Apparently I didn't keep as good of notes as I
19 thought I did, and it's been quite some time ago.

20 Q. All right. The trial, the trial until now has
21 been about eight years.

22 A. Nine years.

23 Q. Pardon, nine years. That's why I'm not a
24 mathematician. And so, they were asking, you know, you
25 about reasons for doing something or not doing

1 something. If I could, do you still have State -- I'm
2 sorry Applicant's Exhibit 83 and State's Exhibit 14 up
3 there?

4 A. Oh, and State's Exhibit 14. Yes, I have both of
5 them.

6 Q. Okay. And the Applicant's Exhibit 83, is that
7 Dr. McKee's invoice?

8 A. That is.

9 Q. And I think we established earlier on State's
10 Exhibit 14 that what you paid Dr. McKee matches that
11 invoice.

12 A. That is correct.

13 Q. And what is the first entry on Dr. McKee's
14 invoice?

15 A. Consultation with Mr. McGuire and Mr. Allen,
16 January 7th of 2014, for three hours.

17 Q. And I'll get you to speak up a little bit.

18 A. Okay. I'm sorry.

19 Q. How close in time was January 7, 2014, to the
20 Atkins hearing?

21 A. The Atkins hearing was held either the last week
22 of February or the next to last week of February, so it
23 was five to six weeks before that.

24 Q. Okay. And then there's an entry on January 13th,
25 2014, review volumes 1 and 2. And he spent six hours

1 doing that.

2 A. Yes, sir.

3 Q. Okay. Is it fair to say, based on Mr. McKee's
4 work on the case that January 13th of 2014, was the
5 first time that he ever reviewed any records regarding
6 Rickey Blackwell?

7 A. I think that's fair to say that, yes, sir.

8 Q. Okay. And then there's an entry for
9 January 22nd, 2014. What was that entry?

10 A. For the 22nd of January, he reviewed, notated
11 Dr. Calloway's report for two hours.

12 Q. Okay. And then there's an entry for the next
13 day, January 23rd, 2014, what is that?

14 A. Review, notate Dr. Brown's report also for two
15 hours.

16 Q. Okay. And then the final entry is January 25th,
17 2014. What was that?

18 A. Create, complete, type cross-examine questions
19 for seven hours.

20 Q. Okay. On Dr. McKee's bill, is there an entry for
21 interviewing Rickey Blackwell?

22 A. No.

23 Q. To your recollection, has Dr. McKee ever met
24 Rickey Blackwell?

25 A. I don't think so.

1 Q. It's certainly not reflected on his bill.

2 A. Not -- yeah, right. And not as part of what he
3 did for us.

4 Q. All right. And is there any entry on Dr. McKee's
5 bill for interviewing any members of Rickey's family?

6 A. No, sir.

7 Q. All right. And is there anything in the bill for
8 Dr. McKee interviewing any of Rickey's teachers?

9 A. No, sir.

10 Q. Is there any entry on Dr. McKee's bill for
11 interviewing any employers?

12 A. No, sir.

13 Q. All right. Dr. McKee never presented the defense
14 team with a diagnosis, did he?

15 A. No, sir.

16 Q. Not either Rickey is MR or Rickey's not MR?

17 A. No, sir.

18 Q. That never occurred.

19 A. That's correct.

20 Q. All right. So is it fair to say that Dr. McKee
21 did not have an adverse diagnosis that would have come
22 out in court if you had -- if he had been a witness?

23 MR. MABRY: Objection, leading.

24 THE COURT: I overrule the objection.

25 THE WITNESS: No, sir. We didn't ask him for a

1 diagnosis.

2 BY MR. GROSE:

3 Q. Okay. All right. So the reason for not calling
4 Dr. McKee had nothing to do with him giving the bad
5 opinion?

6 A. That is correct.

7 Q. Okay. In fact, and I think you testified to this
8 earlier, you decided to use Dr. McKee in a different
9 capacity.

10 A. Yes, sir.

11 Q. And that capacity was what?

12 A. Basically consultation to assist us with the
13 questions and, you know, understanding, I guess, via
14 consultation.

15 Q. And looking at the bill, it appears that he did
16 that.

17 A. Yes, sir.

18 Q. Do you have Exhibit Number 49 up there? I can't
19 remember if I showed you that one or not.

20 A. Yes, sir, I have it.

21 Q. All right.

22 A. Yes, sir I have it.

23 Q. And what is Applicant's Exhibit 49?

24 A. That's the ex parte order for authorization for
25 funding for the expert in prison adaptability. One for

1 Dr. -- excuse me, Mr. Aiken.

2 Q. Okay. And we may have gone over this before, but
3 what date was that filed?

4 A. Filed December 21st of 2014.

5 Q. Is it December or February?

6 A. Did I say December? I meant to say February, I'm
7 sorry.

8 Q. Okay. I do that sometimes myself. All right.
9 And do you have Exhibit 50 up there?

10 A. Yes, sir. Yes, sir.

11 Q. Okay. And that's Mr. Aiken's invoice; is that
12 correct?

13 A. That's a statement or his invoice.

14 Q. Okay. And does it appear that he began work the
15 day after that funding order was filed?

16 A. Yes, sir, February 22nd.

17 Q. All right. And what's his entry for
18 February 22nd, 2014?

19 A. Conducted a comprehensive review of the criminal
20 and confinement records of Mr. Blackwell. Conducted a
21 confinement adaptability analysis related to security
22 issues he may be exposed to as a result of his age,
23 criminal status, and mental health status, three hours.
24 And his rate and a total for that date.

25 Q. And then there's entries on February 25, 27th,

1 March 5th, March 8, March 9th, and March 13th; is that
2 correct?

3 A. Yes, sir.

4 Q. And do you have Applicant's Exhibit 81 up there?

5 A. Yes, sir.

6 Q. And is that -- that's a letter from you to Mr.
7 Aiken?

8 A. Yes, sir.

9 Q. All right. And at the time that you sent him
10 that letter, you were planning on calling him as a
11 witness?

12 A. Yes, sir.

13 Q. Okay. And you expected that that would be
14 sometime during the week of March 10th or possibly
15 later?

16 A. I think I specifically said until sometime during
17 the week of March 10th.

18 Q. Okay. All right. And I think you were at the
19 courthouse earlier this week; is that right?

20 A. Yes, sir.

21 Q. And what day was that?

22 A. Monday, the day it started.

23 Q. Okay. You were not here yesterday, were you?

24 A. No, sir.

25 Q. All right. So you do not know what Dr. Austin

1 testified about, do you?

2 A. No, sir.

3 Q. Okay. Mr. Mabry asked you about a reason for not
4 calling Mr. Aiken as a witness.

5 A. Yes, sir.

6 Q. Okay. Sitting here today, you cannot articulate
7 a strategic reason for not calling Mr. Aiken, can you?

8 A. I do not remember why we did not call him.

9 Q. Okay. And so you can't tell the judge why that
10 was?

11 A. I can't tell the judge or any of you why, I'm
12 sorry.

13 Q. Okay. The last thing that Mr. Mabry asked you
14 was whether or not you were an expert in intellectually
15 disability. Do you remember that question?

16 A. I remember that question.

17 Q. All right. And he also showed you an interview
18 from Dr. Jackson, I believe; is that right?

19 A. He showed me an interview from Dr. Jackson?

20 Q. Yeah. Sitting here today, do you remember who
21 Dr. Jackson is?

22 A. I remember Mr. Mabry said that he was a family
23 physician for Mr. Blackwell.

24 Q. Okay. And did he show you -- do you recall him
25 showing you an interview memorandum regarding

1 Mr. Jackson -- I mean, Dr. Jackson?

2 A. Oh, a memorandum?

3 Q. Yeah.

4 A. I believe so, yes, sir.

5 Q. Okay. Do you know what Dr. Jackson's
6 qualifications are?

7 A. Other than he's a medical doctor, I do not know.

8 Q. All right. Do you know whether Dr. Jackson is an
9 expert in mental retardation or intellectual disability?

10 A. I don't recall him having that expertise. I
11 think he was a family practitioner primarily.

12 Q. Okay. Do you know if Dr. Jackson had any IQ
13 scores for Rickey?

14 A. I don't think he did.

15 Q. Oh, and he really couldn't have because Rickey
16 was incarcerated before the first real IQ test was
17 given.

18 A. Yes, sir.

19 Q. Okay. I'm going to show you page 2973 of the
20 record on appeal. Can you see that well enough from
21 there?

22 A. I can see it well enough now, yes, sir.

23 Q. Okay. And it looks like Mr. McGuire handled
24 Dr. Schwartz-Watts.

25 A. Yes, sir.

1 Q. Okay. And do you see line 25 where it begins --
2 well, before you get to line 25, the solicitor offers to
3 stipulate to Dr. Schwartz-Watts qualifications?

4 A. Yes, sir.

5 Q. And the judge wants to know in what Field?

6 A. Yes, sir.

7 Q. And then Mr. McGuire, at line 25 says: While
8 generally she testifies as a -- and then going over the
9 next page at line 1 and 2 -- a forensic psychiatrist, it
10 would be in the field of general psychiatry today. Do
11 you see that?

12 A. I do see that.

13 Q. And you're familiar with Dr. Schwarz-Watts. I
14 think you said you used her before?

15 A. Yes, sir.

16 Q. And I think you said Solicitor Barnette has used
17 her before?

18 A. I think so. She -- yes.

19 Q. All right. And she, as Mr. McGuire said,
20 ordinarily testifies as a forensic psychiatrist.

21 A. Yes, sir.

22 Q. All right. And I believe you testified that her
23 role in this case was as a treating physician, not as a
24 forensic psychiatrist.

25 A. I think so, yes, sir.

1 Q. All right. I want to show you 2984 of the record
2 on appeal. And, again, if you look at line 25, you see
3 where it says: Now if you would, tell the jury what
4 your -- and I'm going to go to the next page -- opinion
5 is as to Mr. Blackwell's psychiatric state at the time
6 of the incident. Do you see that?

7 A. Yes, sir.

8 Q. Okay. And her -- she begins her answer by
9 saying: I didn't look at that. I need to qualify that,
10 and part of my job, sometimes that is my job to look at
11 somebody's mental state, what they're thinking when the
12 act was committed. Then she says, my role was different
13 here. My role was to treat Mr. Blackwell. And so, as a
14 general psychologist, I treated his depression and his
15 anxiety and helped him manage that in the detention
16 center.

17 So that the only opinion I'm able to give today
18 would be in my opinion, he has a history of major
19 depression before. He's had two episodes before when he
20 was hospitalized, and it's not clear from looking at a
21 doctor -- Dr. Jackson's records that he remained -- oh,
22 and it is clear from looking at Dr. Jackson's records
23 that he remained depressed before this incident. And
24 it's very clear that since I treated him at the jail, he
25 had symptoms of depression as well.

1 So the opinion I could offer you all was that he
2 was suffering from a major depression at the time; is
3 that right?

4 A. Yes, sir.

5 Q. All right. But that was all that Dr.
6 Schwartz-Watts was able to get.

7 A. I believe so.

8 Q. Okay. And that's certainly all that she
9 testified to in that case -- in this case; is that
10 right?

11 A. I believe so, yes, sir.

12 Q. And she was not even qualified as an expert in
13 forensic psychiatry, was she?

14 A. I don't think we attempted to do that.

15 Q. That's certainly what it appears that the record
16 states too. If you could, do you still have Exhibit
17 Number 9 in front of you?

18 A. Yes, sir.

19 Q. Okay. All right. And if you could go to page 6
20 of that exhibit.

21 A. Okay.

22 Q. All right. This is an e-mail from Kara Richards
23 to you and Mr. McGuire on October 23rd, 2012; is that
24 correct?

25 A. Yes, sir.

1 Q. Okay. And this is scheduling the -- confirming
2 the visit by Dr. Corvin on November 20th, at 11:30 a.m.

3 A. Yes, sir.

4 Q. Okay. And it says that Dr. Corvin would like to
5 meet with Rickey as long as possible. I warned him that
6 Rickey's attention span isn't great. Hopefully Rickey
7 will be able to last three to four hours. Maybe Clay
8 could go the day before and prep Rickey and make sure
9 Rickey doesn't have canteen and shower or a visit
10 scheduled for the 20th. Do you see that?

11 A. Yes, sir.

12 Q. All right. Do you know if that's what you did?

13 A. I think I did go see him the day before. I
14 wanted to make sure that he was gonna be cooperative
15 with Dr. Corvin. Sort of with all my clients I would
16 let them know that I would bring or bring the doctors to
17 them. I didn't want them talking to doctors except --
18 and this was true with all of my clients. I didn't want
19 them talking to doctors without me saying yes, it's --
20 this is the doctor that we've hired. This is the doctor
21 I want to talk to you kind of thing.

22 Q. All right. And so sitting here today, do you
23 have any specific recollection of going to the jail with
24 Dr. Corvin on November 20th?

25 A. I don't have a specific recollection as to that.

1 That's normally what I do is at least for the purpose of
2 getting them in, but I don't even know if I did that.
3 Excuse me.

4 Q. All right. And Exhibit -- Applicant's Exhibit
5 47, is it still up there?

6 A. 47?

7 Q. Yes, sir. Dr. Corvin's invoice.

8 A. Yes, sir, it's still here.

9 Q. All right. And it does reflect that he visited
10 Rickey on November 20th?

11 A. Yes, sir.

12 Q. All right. And on November 26th, it has an
13 e-mail to attorney/K. Baker. We've determined that was
14 Kara Richards-Baker; is that right?

15 A. Yes. Yes, sir.

16 Q. All right. If you go back to Applicant's Exhibit
17 Number 9, at the bottom of the page there is, in fact,
18 an e-mail from Dr. Corvin to Kara Richards that copies
19 you and Mr. McGuire, isn't it?

20 A. Okay. I'm -- what page are we talking?

21 Q. Page 7, I'm sorry. They're not numbered, but
22 it's the seventh page in the packet. And it's at the
23 bottom of the page.

24 A. Okay.

25 Q. That's at the bottom of the page, near the

1 bottom.

2 A. The bottom of the page I'm looking at, this is
3 the memo, the Rickey Blackwell file.

4 Q. This is what I'm looking at.

5 A. Okay, I'm sorry.

6 Q. And at that point Dr. Corvin is telling you that
7 there's some considerable clinical evidence that
8 Mr. Blackwell is functionally mentally retarded.

9 A. Yes, sir.

10 Q. All right. And it indicates that there probably
11 needs to be more work done; is that right?

12 A. I believe so.

13 Q. And he also indicates ---

14 MR. MABRY: Wait. That's not what he said. He
15 said it's not crystal clear either.

16 BY MR. GROSE:

17 Q. And he said that it could become a heated debate
18 for a battle in court; is that right?

19 A. Yes, sir.

20 Q. All right. And then he said that Rickey's
21 history is remarkable for considerable evidence of
22 genetic vulnerability, as well as risk factors for
23 intellectual issues.

24 MR. MABRY: Objection. That's not what it says.
25 It says ---

1 THE COURT: Mr. Grose, read exactly what's --
2 let's make sure the record is clear.

3 MR. GROSE: Yes, sir.

4 THE COURT: That you're reading exactly what is
5 in there.

6 MR. GROSE: I'm trying to.

7 THE COURT: Word-for-word.

8 BY MR. GROSE:

9 Q. All right. That said: His history is remarkable
10 for considerable evidence of genetic vulnerability, as
11 well as risk factors for organic intellectual issues
12 such as his history of Hodgkin's, hostile environmental
13 toxin exposures, et cetera. Do you see that?

14 A. Yes, sir.

15 Q. Okay. And if you could, turn over to the next
16 page, which is the memo following the team meeting; is
17 that right?

18 A. Yes, sir.

19 Q. All right. Again, number 9 is -- and this is two
20 years later or almost two years later. This is in
21 January of 2014.

22 A. Yes, sir. It's dated January 9th, 2014.

23 Q. And it says on number 9: Kara to contact Dr.
24 Corvin and advise him the trial date and check to see he
25 has Rickey's mental health records. Do you see that?

1 A. I do see that.

2 Q. Okay. The next page has an e-mail from Kara
3 Richards to Dr. Corvin. You're not copied on that, are
4 you?

5 A. It does not appear that I am.

6 Q. Okay. Mr. Mabry asked you some questions about
7 the decision to call or not to call Dr. Corvin. Do you
8 recall those questions?

9 A. Yes, sir, I remember him asking me about it.

10 Q. Okay. She says: Hi, George, I hope you're well.
11 I haven't seen or spoken with you in ages. Do you see
12 that?

13 A. Yes, sir.

14 Q. It says: I want to update you on the Blackwell
15 case. We're supposed to have an MR/ID hearing -- I'm
16 sorry. We were supposed to have an MR/ID hearing last
17 Thursday and Wednesday. It got delayed until next week.
18 Rickey was in the hospital last week for a small bowel
19 obstruction and pancreatitis.

20 Then the next paragraph says: We are scheduled
21 to go to trial beginning the first week of March. Bill
22 would like you to testify about the effects of taking
23 Xanax on Rickey's state of mind. Are you available the
24 second week of March? Do you see that?

25 A. Yes, sir.

1 Q. All right. And do you have anything to
2 contradict that on February 5th of 2014, the plan was to
3 call Dr. Corvin?

4 A. I can't think of anything.

5 Q. Now if you would go to the next page, which is a
6 memo from Kara Richards to you and Clay Allen -- I mean,
7 you and Bill McGuire. My apologies.

8 A. Yes, sir.

9 Q. All right. And it says: We have problems with
10 Dr. Corvin. He is headed out of the country for ten
11 days in February. Then he has two capital trials
12 scheduled in North Carolina in early March that he's
13 supposed to testify in. He is concerned that he has not
14 written a report in this case, hasn't spoken with an
15 attorney and isn't prepared.

16 A. I see that.

17 Q. And do you have anything here today to contradict
18 the fact that Dr. Corvin hadn't spoken with one of
19 Rickey's attorneys?

20 A. No, sir.

21 Q. And do you have anything here today to contradict
22 that Dr. Corvin wasn't prepared?

23 A. No, sir.

24 Q. And whose responsibility is it to prepare
25 somebody like Dr. Corvin to testify?

1 A. The attorneys.

2 Q. Okay. You mentioned a Zoom meeting that Mr.
3 Mabry was involved in?

4 A. Yes, sir.

5 Q. Okay. And that was part of the preparation by
6 the State for the hearing?

7 A. Yes, sir.

8 Q. Okay. And he asked you about Dr. Corvin -- or he
9 or Mr. Evans, one, asked you about Dr. Corvin.

10 A. I believe it was Mr. Evans.

11 Q. All right. And at that time did you have any
12 recollection of Dr. Corvin?

13 A. I did not. I think I told him I did not know who
14 that was.

15 Q. All right. You weren't here yesterday. I think
16 we established that.

17 A. Yes, sir, I was not here yesterday.

18 Q. Are you aware that Dr. Corvin testified
19 yesterday?

20 A. I was not aware he testified yesterday. I
21 suspected you were gonna call him, but I do not.

22 Q. Okay. So you're not aware of what Dr. Corvin
23 might have testified to ---

24 MR. MABRY: Objection.

25 MR. GROSE: I'm just asking if he's aware of it.

1 MR. MABRY: I'm sorry, this is reply to my cross
2 and he's asking about what Dr. Corvin testified to.

3 THE COURT: Yeah. This is redirect. I sustain
4 the objection.

5 MR. GROSE: Well, Your Honor, I think that they
6 had asked some questions about COPD and I want to ask if
7 he knows what -- because they're trying to say that
8 there's a strategic reason for not calling Dr. Corvin,
9 and I think I'm allowed to go through the list of things
10 that they went through. The COPD, the marijuana, the
11 alcohol, the cancer, the cancer treatment.

12 THE COURT: Well, this witness testified many
13 times so far that he doesn't know why they didn't call
14 Dr. Corvin.

15 MR. GROSE: If the State will stipulate that
16 there -- that the defense has no strategic reason --

17 MR. MABRY: I will stipulate --

18 MR. GROSE: -- no legitimate strategic ---

19 MR. MABRY: He said he doesn't recall.

20 THE COURT: Right.

21 MR. MABRY: There would have been a reason that
22 they didn't call him.

23 MR. GROSE: Well --

24 MR. MABRY: I'm not gonna just ---

25 MR. GROSE: -- then I need to ask the questions.

1 MR. MABRY: That's not -- but he's asking him
2 about what he testified to yesterday. He wasn't even
3 here.

4 MR. GROSE: Well, but the point is he can't -- I
5 don't think that Mr. Allen can testify that there's a
6 strategic reason for not calling Dr. Corvin unless they
7 can establish that they had the information that Dr.
8 Corvin had or would have had if they had not dropped the
9 ball. And they're gonna argue that there must have been
10 a strategic reason. And we asked him all of the, to me,
11 red herring questions in the record. And I need to have
12 information from Mr. Allen that he wasn't aware of these
13 types of what Dr. Corvin would testify ---

14 THE COURT: All right. I think he's already
15 answered all the questions that you've asked him, but go
16 ahead and ask.

17 BY MR. GROSE:

18 Q. Okay. Are you aware of what Dr. Corvin might say
19 about COPD?

20 A. No, sir.

21 Q. I'm gonna show you one of Rickey's medical
22 records from Westgate Family Practice. And the date of
23 service is 6/30/2009. Do you see that?

24 A. Yes, sir.

25 Q. And down here it gives a -- let me get down to

1 the right place. See where it says respiratory?

2 A. Yes, sir.

3 Q. It says breath sounds are hear bilaterally.

4 Normal respiratory effort. No -- I think that word is
5 fremitus. Fremitus, F-r-e-m-i-t-i-u-s.

6 A. Yes, sir.

7 Q. Do you see that?

8 A. I see that.

9 Q. Okay. They asked you some questions about Dr.
10 Corvin's notes. Do you recall that?

11 A. His notes?

12 Q. Dr. Corvin's notes.

13 A. I think so, yes.

14 Q. All right. Have -- did they provide you with Dr.
15 Corvin's notes before this hearing?

16 A. I have not -- no, sir.

17 Q. All right. And they asked you some questions
18 about marijuana and other drug abuse that might be
19 reflected in Dr. Corvin's notes; is that right?

20 A. Yes, sir.

21 Q. All right. You weren't here yesterday. You
22 don't have any information about what Dr. Corvin could
23 have told you in 2014 about Rickey's marijuana or drug
24 use if he had completed his evaluation?

25 A. No, sir. I don't -- I mean, I'm pretty sure we

1 didn't get a report from him because I don't have one in
2 the file, and I don't remember having any conversations
3 with him --

4 Q. Okay.

5 A. -- or being told much about the conversation.

6 Q. All right. And the same about alcohol, Rickey's
7 alcohol use. You don't know what Dr. Corvin would have
8 testified about regarding that if he completed his
9 evaluation, do you?

10 A. No, sir, I don't.

11 Q. All right. And do you know whether Dr. Corvin
12 had ever run a treatment, rehab type of facility?

13 A. I do not know.

14 Q. All right. They asked you some questions about
15 the cancer and the chemo therapy questions. Do you
16 remember that?

17 A. Yes, sir.

18 Q. And you don't know what Dr. Corvin would have
19 been able to testify regarding that, do you?

20 A. No, sir.

21 Q. They asked you some questions about Dr. Knight's
22 report.

23 A. Yeah, I think so.

24 Q. Have you ever seen Dr. Knight's Report?

25 A. I don't believe so.

1 Q. Did they provide it to you before this hearing?

2 A. They have not. I don't think so.

3 Q. All right. Did you see Dr. Knight when she
4 testified, I believe it was yesterday?

5 A. No, sir.

6 Q. All right. So if they asked you questions about
7 her report, are you really in a good position to talk
8 about her report without ever having read ---

9 MR. MABRY: Objection. I asked him if her
10 report contained his statement, his knowledge of the
11 file, and given this is the case, would the report be
12 incorrect? And he said, yes, it would be.

13 THE COURT: All right. I sustain the objection.
14 BY MR. GROSE:

15 Q. Okay. Have you ever read Dr. Knight's report?

16 A. I don't think so.

17 Q. Okay. Can you literally give an opinion about
18 the totality of Dr. Knight's report without ever having
19 read it?

20 A. Obviously not.

21 Q. Okay. They asked you some questions about
22 genetic testing.

23 A. Yes, sir.

24 Q. All right. Were you here on Tuesday when Dr.
25 Cunniff, the geneticists testified?

1 A. I was not here.

2 Q. Did they show you Dr. Cunniff's affidavit that he
3 prepared for this PCR?

4 A. No, sir.

5 Q. Okay. And so you couldn't comment about the
6 information in his report or affidavit without having
7 seen it, could you?

8 A. No, sir.

9 MR. GROSE: Okay. Beg the Court's indulgence for
10 a moment. Mr. Allen, again, thank you for being here
11 and thank you for your patience this week. That's all
12 the questions I have.

13 THE COURT: Recross?

14 MR. MABRY: Very briefly, Your Honor.

15 RE CROSS-EXAMINATION

16 BY MR. MABRY:

17 Q. Mr. Allen, who called you here as a witness here
18 today?

19 A. I've been subpoenaed by both sides, but I was
20 called specifically by Mr. Grose today.

21 Q. Okay. Well, we didn't know that you were gonna
22 be called until you were called, right?

23 A. Right.

24 Q. So we put a subpoena on you in case you were not
25 called by them.

1 A. Yes, sir.

2 Q. Okay. I'm gonna look at the e-mails you had from
3 Dr. Aiken, I believe it was two, just briefly.

4 A. The e-mails to?

5 Q. From James Aiken. I believe there was a bill
6 that Mr. McGuire went through. I have one right here.
7 No, that's Dr. McKee. I have one I'm sorry right here.

8 A. That's Dr. McKee.

9 Q. No. I need the ones from Mr. Aiken. There were
10 two, I believe.

11 A. It's two pages, but one exhibit.

12 Q. Okay.

13 A. And that's number 50, I think.

14 Q. Right. And then there's another one from Mr.
15 Aiken somewhere.

16 A. I think what I've got up here is just the order
17 and the motion for ---

18 Q. No. Okay, thank you.

19 Charles, what's the number of your exhibit?

20 MR. GROSE: It's Exhibit 50. I may have not have
21 handed it to him. That may have been on the screen.

22 MR. MABRY: No, I've got 50 and there's another
23 one.

24 MR. GROSE: For Aiken?

25 MR. MABRY: Yeah. An e-mail or something.

RE CROSS-EXAMINATION OF CLAY ALLEN BY MR. MABRY

1 MR. GROSE: There was a letter.

2 MR. MABRY: A letter from Aiken?

3 MR. GROSE: 81?

4 MR. MABRY: Okay. Let me find it.

5 THE WITNESS: Oh, 81 is right in front of me, I'm
6 sorry. A letter from ---

7 MR. MABRY: Oh, that's it. Thank you, sir.

8 BY MR. MABRY:

9 Q. Mr. Allen, looking at Applicant's Exhibit 50,
10 this is a bill from Mr. Aiken, and he did a
11 comprehensive review of criminal and confinement records
12 of Mr. Blackwell, conducted a confinement adaptability
13 analysis related to security issues he may be exposed to
14 as a result of his age. He was advanced in age. At
15 least in his 50's, correct?

16 A. Yes, sir.

17 Q. Criminal status, and that would be charged with
18 the murder of a child.

19 A. Okay.

20 Q. And then mental health status. You're aware he
21 had a history of psychiatric illness?

22 A. Yes, sir. He was taking medication.

23 Q. Do you remember what Mr. Aiken told you after
24 conducting that analysis of those -- I assume those are
25 risk factors to a prison inmate. His age, the crime

1 that he committed, and it gives his mental health
2 status. What did he tell you about what would happen to
3 Mr. Aiken [sic] if he was in a jail population, if you
4 remember?

5 A. I don't remember, but I don't remember him
6 telling me anything particularly alarming or concerning.

7 Q. And then he says: Continued review, continued
8 review, continued review, continued review, testimony
9 preparation, testimony preparation, and review analysis.
10 Continued review, analysis and testimony preparation.

11 And then on March 13th it says: Conduct an
12 interview with counsel. Concluded review analysis and
13 testimony preparation task. Correct? Does that sound
14 about right?

15 A. Yes, sir.

16 Q. So you were going to call him as a witness in the
17 case, at least on March 13th. And according to the
18 letter on February 18th, you had enclosed the detention
19 center records. And you said, I have not included the
20 CD's containing the jail phone calls because there are
21 over a thousand phone calls.

22 A. Yes, sir.

23 Q. That's a thousand phone calls from your client to
24 friends and family while he was in jail.

25 A. Over a thousand phone calls over the four years,

1 or something, he'd been in jail.

2 Q. Okay.

3 MR. GROSE: Objection. The phone calls are
4 beyond the scope of redirect.

5 MR. MABRY: We're talking about Mr. Aiken. He
6 went into why they didn't call Mr. Aiken.

7 THE COURT: Yeah. The question is related to
8 prison adaptability. I overrule the objection.

9 BY MR. MABRY:

10 Q. And you also said on February 18th, you were
11 gonna send information about the incident itself over
12 the next several days so you will be familiar with the
13 facts of the case. So you sent to Mr. Aiken the facts
14 about the murder itself.

15 A. I would think so.

16 Q. The murder of a child. And then sometime after
17 March 13th, after you conducted an interview with him,
18 preparing for trial, you decided -- the whole team did
19 now, not to call him as a witness.

20 A. I know Mr. McGuire and I decided not to call him
21 as a witness.

22 Q. Right. Well, I'm sorry. You and Mr. McGuire.
23 And if his testimony would have helped your client,
24 would you have called him as a witness?

25 A. Yes, but I don't -- I mean, again, I don't

1 remember specifically why we did not call him.

2 Q. Of course. And there must have been something in
3 his -- what he told you. It was not helpful because you
4 decided not to call him as a witness.

5 A. It was either that or we decided not to go into
6 the prison adaptability issue.

7 Q. Because there might be dangers involved in that,
8 or would be risky to him or something.

9 A. Well, I mean, yeah. I forgot specifically why,
10 but we decided not to go into that issue.

11 Q. Well, why would you not go into that issue if Mr.
12 Aiken was going to testify he was adaptable to prison
13 and he would be a model inmate? There would be no
14 reason not to go into that, would there?

15 A. Well, except, you know, potentially the solicitor
16 could just pull up every little write-up he got over the
17 four years and just parade those all in front of the
18 jury, asking Mr. Aiken about it in an attempt to impeach
19 him.

20 Q. And he had been hoarding medicine and he also had
21 Clorox in a bottle that he'd been caught with at the
22 jail, correct?

23 A. Yes. And someone I believe gave incorrect
24 information about the use of that Clorox.

25 Q. Okay.

1 A. And Mr. Blackwell had another explanation, et
2 cetera, but yeah.

3 Q. When they found the Clorox, somebody said he had
4 a shank but just never found it, right?

5 A. Someone accused him of having a shank, but I
6 don't think Mr. Blackwell ever acknowledged having a
7 shank or ---

8 Q. Right. They killed the file.

9 A. Or he never had one.

10 Q. Now, you were asked about Dr. Corvin and
11 psychiatric evidence. You did bring out through Dr.
12 Schwarz-Watts his psychiatric history and his treatment
13 before he went to prison, before he went to jail and on
14 the day of the crime, as I showed you.

15 A. I believe so.

16 Q. And she said he was suffering from severe -- and
17 she's his treating physician. She said he was suffering
18 severe depression at the time the crime was committed.

19 A. Okay.

20 Q. Is that correct?

21 A. That sounds right.

22 Q. All right. And did you request the judge charge
23 the jury on the mitigates two, six, and seven? You
24 know, the mental health mitigators.

25 A. I don't remember specifically, but I'm sure the

1 record will show whether we did or not.

2 Q. And did you also introduce his mental health
3 history and life history through Dr. Calloway to the
4 jury?

5 A. I believe, yes, sir.

6 Q. All right. And did you also introduce in the
7 penalty phase witnesses from his family that describe
8 what was going on in his life leading up to the day of
9 the shooting?

10 A. I believe that was a part of it, yes, sir.

11 Q. Okay. So basically you all were showing the jury
12 you have a mentally ill man and his wife had left him
13 and he was upset, he was falling apart, depression, and
14 he snapped and he killed the child. That was the basic
15 card played.

16 A. And that he was intellectually disabled.

17 Q. Disabled, right. Yeah, he had a very low
18 intellect. So you were trying to get a finding of MR,
19 but even if you didn't get that, you had a man of low
20 intellect basically having a severe mental breakdown
21 when he was shooting a girl.

22 A. Yes, sir.

23 Q. And you're hoping to get a mercy verdict?

24 A. Yes, sir.

25 Q. And you had sent an e-mail to Dr. Corvin. The

1 e-mail you saw said he -- you wanted to know how Xanax
2 affected him at the time of the crime. Do you remember
3 that e-mail?

4 A. Somewhat, yes, sir.

5 Q. Mr. McGuire needed to know. Do you know what he
6 told Kara about the influences Xanax had, whether it had
7 any effect or didn't have at the time of the crime?

8 A. I do not know.

9 MR. MABRY: All right. One moment, Your Honor.

10 BY MR. MABRY:

11 Q. You were summoned in an e-mail that was sent to
12 Dr. Corvin?

13 A. Uh...

14 Q. Did I see that? Mr. McGuire[sic] showed you.

15 MR. GROSE: I'm not Mr. McGuire.

16 MR. MABRY: I mean -- sorry.

17 MR. GROSE: Because he hasn't a recollection --

18 MR. MABRY: Mr. Grose, I'm sorry. I didn't mean
19 that.

20 MR. GROSE: A long week. So you were going ---

21 MR. MABRY: One moment, Your Honor.

22 BY MR. MABRY:

23 Q. Okay. Mr. McGuire [sic] showed you Applicant's
24 Exhibit Number 9, page 6. And it's Kara sent an e-mail
25 to Dr. Corvin telling him about the meeting schedule

1 between Dr. Corvin and Rickey; is that right?

2 A. Okay.

3 Q. I'm sorry. Kara sent an e-mail to you and Mr.
4 McGuire and Natasha and it's cc'd to Dr. Corvin.

5 A. Yes.

6 Q. Okay.

7 A. Explained, you know, what she had done to -- yes,
8 I'm gonna explain to us when Dr. Corvin would like to
9 meet with Rickey in the jail and that she had warned him
10 about Rickey's attention span and that type of thing.

11 Q. That's what I wanted to ask you about. She said,
12 hopefully, Rickey will be able to last three to four
13 hours. And explain to the judge why that was. Why did
14 she say that? Hopefully, he'd be able to last three to
15 four hours.

16 A. I presume because the evaluation or the
17 conversation between Rickey and Dr. Corvin would take
18 three to four hours and Rickey sometimes tires and
19 sometimes just doesn't have that long of attention span
20 or seems not to have that long of attention span with
21 us.

22 Q. Okay. And she said, I warned him Rickey's
23 attention span isn't great. How would a person with
24 that kind of attention span perform an IQ test?

25 A. To be honest with you, I don't know how long an

1 IQ test lasts.

2 Q. Well, I mean, if it lasted several hours ---

3 MR. GROSE: Objection, speculation.

4 THE COURT: I overrule the objection.

5 BY MR. MABRY:

6 Q. If it lasted several hours, it would be difficult
7 for Rickey Blackwell to do an IQ test, based on his
8 attention span.

9 A. Perhaps.

10 Q. Oh, let's see. I think I have one more question
11 on one topic. This is the same exhibit, Applicant's
12 Exhibit 9, and from Dr. Corvin to Kara. Mr. Grose
13 showed you earlier. Dr. Bryant -- I mean, Dr. Corvin
14 said to Kara: As you know, there's considerable
15 clinical evidence that Mr. Blackwell is functionally MR,
16 but the issue isn't crystal clear either. I can imagine
17 this could become a very heated debate/battle in court.

18 That said, his history is remarkable for
19 considerable evidence of genetic vulnerability, as well
20 as risk factors for organic, quote, organic intellectual
21 issues, such as his history of, H/O, history of
22 Hodgkin's, possible environmental toxin exposure, et
23 cetera; is that correct? Did I read that correctly?

24 A. Basically yes.

25 Q. Okay. Sorry.

1 A. Maybe not word-for-word.

2 Q. I'm doing the best I can.

3 A. Right.

4 Q. Right. I'm sorry. And then he said -- you
5 remember the toxin exposure we talked about earlier?

6 A. Right.

7 Q. A bag busted in Rickey's face --

8 A. Right.

9 Q. And he breathed it in. Okay. And then he said,
10 functional imaging, although not widely used in the
11 clinical practice, is increasingly used in forensic
12 settings and can help detect abnormalities not seen on
13 standard imaging, such as an MRI or CT. Did Dr.
14 Calloway or Dr. Schwartz-Watts -- even Dr. Corvin asked
15 you to have an MRI or a CT done on Rickey's head?

16 A. I don't recall that being asked. I mean,
17 obviously he seemed to be suggesting -- Dr. Corvin
18 seemed to be suggesting that there, but...

19 Q. Well, there may be some other, because he says,
20 not seen on standard imaging, MRI or CT. So he's
21 suggesting, apparently, no functional imaging. Was any
22 functional imaging, like an fMRI requested?

23 A. I don't think so.

24 Q. Okay. Did you conduct an MRI or a CT? Have one
25 done on Rickey?

1 A. I don't think we did.

2 Q. You didn't see one in the file?

3 A. No, sir.

4 Q. Did -- do you remember if Dr. Calloway requested
5 you have an MRI or a CT done?

6 A. I don't recall that. I don't think she did.

7 Q. And then he says: I also briefly talked to Dr.
8 Calloway today and she is gonna look over her data to
9 see if there is any, any noteworthy evidence of focal
10 deficits or other indicators for organic damage. So
11 there was a concern about organic damage to Rickey's
12 brain; is that correct?

13 A. There was concern about that to either rule it in
14 or rule it out, yes, sir.

15 Q. Right. Because that can cause his IQ scores to
16 be lower if he had organic brain damage.

17 A. I suppose so, yes, sir.

18 Q. And if it occurred between 18 and 53, then it
19 couldn't be mental retardation. He had some kind of
20 brain damage.

21 A. I think that would be correct.

22 Q. What I -- oh, and also, that note shows that Dr.
23 Calloway and Dr. Corvin were working together. They
24 were at least consulting with each other. Down here.
25 Dr. Corvin said he had spoken to Dr. Calloway, your MR

1 expert. Do you see that?

2 A. I don't see a specific mention that Dr. Corvin
3 and Dr. Calloway was talking. I see where he mentions
4 something and then -- and Kara mentioned -- talked.

5 Q. Okay.

6 A. Maybe I'm not seeing what you're seeing.

7 Q. Yeah. This is from George Corvin.

8 A. Oh, excuse me. Excuse me. Okay, so he talked
9 to ---

10 Q. I also talked to -- briefly talked to Dr.
11 Calloway today and she is going to look at her data to
12 see if there's any noteworthy evidence --

13 A. Okay.

14 Q. -- of focal deficits --

15 A. Yes, sir.

16 Q. -- or other indicators of organic brain damage.
17 So he's talking ---

18 A. You are correct.

19 Q. Okay. So you all somehow, somebody put Dr.
20 Corvin together with your MR expert?

21 A. Yes, sir.

22 Q. And they're looking at organic brain damage, like
23 from drugs, alcohol abuse, head injury, hazardous waste,
24 whatever.

25 A. It looks like it.

1 Q. Well, and then he says: What I can say is that
2 my examination of him last week, coupled with what I
3 know of his history, also raises my index of suspicion
4 for such conditions; is that correct?

5 A. Yes, sir.

6 Q. All right. Mr. Allen, thank you for reviewing
7 your file and I thank you for coming here today. I
8 appreciate it.

9 A. You're welcome.

10 THE COURT: All right. Mr. Allen, you may step
11 down.

12 THE WITNESS: Thank you.

13 MR. GROSE: Judge?

14 THE COURT: Yes.

15 MR. GROSE: If I may make a suggestion?

16 THE COURT: All right.

17 MR. GROSE: The only other witness that we have
18 is the other chaplain and she's on standby. And not
19 knowing what they're gonna do, I think it would be as
20 quick as the last one. Would you like ---

21 THE COURT: Yeah, let's do that. All right.
22 Then we need to go back and do Mr. Dudek?

23 MR. GROSE: Yes. We can do that after lunch.

24 THE COURT: Right. All right. Well, you can
25 step down, Mr. Allen.

RE CROSS-EXAMINATION OF CLAY ALLEN BY MR. MABRY

1 MR. GROSE: No objection.

2 MR. MABRY: No, sir.

3 (Witness leaves witness stand.)

4 THE COURT: All right. Let's -- let me pull up.
5 Let me set up and let's take this other witness and then
6 we'll talk.

7 MR. GROSE: I didn't mean to impose on your -- I
8 just wanted to let you know that information.

9 THE COURT: It's your case, we'll -- that's not a
10 problem.

11 My courtroom is open.

12 MS. BROWN: Sir, do you want us to log on or just
13 use the other?

14 THE COURT: Let's stick with them. Reverend
15 Hesse, this is Judge Hall. You appear to be un-muted,
16 can you hear me?

17 THE WITNESS: Yes, I can hear you.

18 THE COURT: There we go. Reverend Hesse, this is
19 Judge Hall. Can you hear me?

20 THE WITNESS: Yes, I can hear you, Judge Hall.

21 THE COURT: Okay, great. Would you raise your
22 right hand? (Complies.)

23 Do you solemnly swear or affirm the testimony
24 you're about to give in this matter is the whole truth,
25 nothing but the truth, so help you God?

DIRECT EXAMINATION OF REVEREND HESSE BY MS. VANN

1 THE WITNESS: Yes.

2 THE COURT: Thank you. Ms. Vann, this is your
3 witness.

4 REVEREND VICKI HESSE,
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. VANN:

8 Q. Thank you. Good afternoon, Reverend Hesse.
9 Could you please state your full name and spell your
10 last name for the record?

11 A. Reverend Virginia Hesse. Virginia Katherine
12 Hesse. V-i-r-g-i-n-i-a. The middle name is Katherine,
13 K-a-t-h-e-r-i-n-e. The last name is Hesse, H-e-s-s-e.

14 Q. Thank you, Reverend Hesse. And where are you
15 currently employed?

16 A. Currently employed at the Cathedral Bridge Camp
17 and Retreat Center in Woodland Park, Colorado.

18 Q. And is that where you're appearing from today?

19 A. Yes.

20 Q. What was your employment in July of 2009?

21 A. I was a chaplain intern at the Spartanburg
22 Regional Hospital.

23 Q. And what kind of interaction did you have with
24 patients in that role?

25 A. I have to visit patients, to pray with them, to

1 listen to their stories, and to offer a small bit of
2 help and companionship in their healing.

3 Q. In July 2009, in that role, did you encounter
4 Rickey Blackwell?

5 A. Yes, I did.

6 Q. Could you describe that interaction?

7 A. I was called to visit Mr. Blackwell in the
8 afternoon. And upon entry in the room I noticed that he
9 was bound by his hands and feet to the bed. His
10 interaction was very soft, I should say. He was not
11 talking at all. He was weepy.

12 I observed that he did not want to look at me in
13 the face. He welcomed my presence, which I could only
14 intuit. But I stood with him briefly and told him I was
15 there with him. Asked if there was anything he wanted
16 me to say or do, and he asked me to pray for them, and I
17 understood that to mean the family.

18 Q. Which family?

19 A. The family that he felt --

20 MR. EVANS: Your Honor, I would object.

21 THE WITNESS: -- he hurt ---

22 BY MS. VANN:

23 Q. Did you have a problem with ---

24 THE COURT: Hold on. I overrule the objection.

25 BY MS. VANN:

1 Q. I'm sorry. We had an objection in the courtroom,
2 which you couldn't see, but that's been overruled, so
3 you can answer that question. Which family?

4 A. The family of the person that he hurt.

5 Q. Do you recall saying the Lord's prayer with him?

6 A. Yes, I do. I asked if I could pray that and he
7 said yes. He mumbled along with me.

8 Q. Did you infer of any remorse from Rickey
9 Blackwell?

10 A. Yes. He was tearful and sad and I observed
11 remorse.

12 Q. Do you recall being contacted about this
13 interaction by Rickey Blackwell's trial team before
14 2014?

15 A. I did forget the phone call of 2012 from a woman,
16 whose name I can't remember. And it was a quite
17 surprising phone call because it had been so long ago.
18 And I was working in Arizona. It was a prank phone
19 call.

20 Q. If she had asked you or if anyone on Ricketts'
21 trial team had asked you to testify in 2014, would you
22 have been willing to do so?

23 A. Yes, I would have.

24 Q. And would you have offered the same testimony
25 that you offered here today?

1 A. Yes.

2 Q. I don't have any further questions, can you just
3 answer any questions that the State might have?

4 THE COURT: Mr. Evans?

5 MR. EVANS: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. EVANS:

8 Q. Good afternoon, Reverend Hesse. My name is Tommy
9 Evans. I represent the State of South Carolina in this
10 case. I just have a few questions to ask you regarding
11 those events that you had with Mr. Blackwell that day.
12 First of all, do you remember speaking with -- her name
13 is Kara Richards, on July 16th, 2012, about what
14 happened between the interaction between you and Mr.
15 Blackwell? Do you remember what you told her?

16 A. No, I don't specifically remember what I told
17 her.

18 Q. Okay. Well, according to Ms. Richards'
19 statements that she wrote -- well, I won't say
20 statements, memos she wrote after the actual contact
21 that you had with Mr. Blackwell, it says: You went in
22 the room and introduced yourself and you stood by his
23 bed. That's what happened, wasn't it?

24 A. Yes.

25 Q. Okay. And then Mr. Blackwell was handcuffed to

1 the bed; is that correct? That's what happened?

2 A. Yes.

3 Q. Okay. And then you asked to hold his hand and he
4 said yes; is that correct?

5 A. Yeah, that is correct.

6 Q. Okay. And then you asked him if there was
7 anything you can pray for. It wasn't his suggestion, it
8 was yours; isn't that correct?

9 A. Yes.

10 Q. Okay. And he said the family; is that correct?

11 A. Yes.

12 Q. He didn't mention any type of family or whose
13 family, his or the victim's. He just said the family,
14 correct?

15 A. Yes.

16 Q. Okay. So it's your assumption he meant the
17 victim's family, because he never said this, did he?

18 A. Right.

19 Q. Okay. And then the two of you did the Our Father
20 prayer together; isn't that correct?

21 A. Yes.

22 Q. Okay. He never said to you I'm sorry for what
23 I've done to the victim, did he?

24 A. He did not say that.

25 Q. Okay. Did he ever mention the victim's name to

1 you?

2 A. No.

3 Q. Okay. And you said that he looked remorseful,
4 but he never said anything about being remorseful, did
5 he?

6 A. He did not.

7 Q. Okay. So that's another assumption by you that
8 he was remorseful by the way he looked; isn't that
9 correct?

10 A. Yes.

11 MR. EVANS: Okay. Nothing further. Nothing
12 further, Your Honor. Thank you, Reverend Hesse.

13 THE WITNESS: You're welcome.

14 MS. VANN: I don't have any further questions.

15 THE COURT: All right, thank you. All right.
16 You're excused.

17 THE WITNESS: Okay, bye.

18 (Witness leaves virtual courtroom.)

19 THE COURT: All right. So we have Mr. Dudek. Is
20 he your last witness, Mr. Grose?

21 MR. GROSE: He would be our last witness, and I
22 do have sort of a scheduling thing that I need to ask.
23 I've gotten a request to be available between 11 and 1
24 for a status conference with a United States magistrate.
25 It's a civil case. And I don't know, there's been some

1 discussion about ---

2 THE COURT: Is it 11 to 1 today?

3 MR. GROSE: No, on Monday. And I don't know how
4 long they're planning on going this afternoon or if
5 we'll go into Monday, so I can fully answer their
6 question.

7 THE COURT: Well, right now it's how long Judge
8 Hall plans on going this afternoon, and that's what I'm
9 trying to figure out. We've got Mr. Dudek, which I
10 assume -- I'm not gonna assume. If we start back --
11 well, we've got Mr. Dudek. How are we -- are we in a
12 position to talk about how to resolve the issue with,
13 with Dr. Brown?

14 MS. BROWN: Your Honor, it would be the State's
15 position that we need time to conduct the discovery that
16 we were discussing earlier. I will tell you that I have
17 reached out to the solicitor and I have started
18 gathering some information. We are gonna have to have
19 some discovery depositions, that sort of thing.

20 THE COURT: Well, here's where I'm going with
21 that. We don't necessarily -- if we're gonna have to
22 have another hearing, which we are gonna have to have
23 before we can complete the evidentiary part of this PCR,
24 then it seems to me -- it seems to me like we'd be
25 better off not having Mr. Dudek either come in this

1 after -- appear this afternoon, while we have an issue
2 with the technology, or Monday. That we continue the
3 hearing and we'll set up a time or agree on a time when
4 you hear Mr. Dudek and we've got to finish Mr. Brown,
5 then Mr. Dudek, and then any responses.

6 And I don't know how many witnesses you all
7 intended to call. You know, I can do that next week.
8 It appears that I have a trial set for Monday that's a
9 civil case that's likely settling as we speak. On the
10 other hand, we just may have to -- I may just have to
11 carve out a time. Whatever you -- what are you --
12 what's the State's position on all that?

13 MS. BROWN: Your Honor, I would like to see if we
14 could set aside 30 days for the discovery and just
15 coordinate the schedules. Release the discovery, see
16 what else we need to do. They may have some depositions
17 once we get into this a little bit further. Again, this
18 derailed what we were doing, so we have to regroup a bit
19 on that.

20 THE COURT: Mr. Grose, what's your position?

21 MR. GROSE: I think our position would be, you
22 know, we'll do what you direct. I don't understand what
23 she said about us wanting to take depositions after we
24 see what they're doing, so I would have to -- before I
25 could answer that, I would have to know more

1 information.

2 THE COURT: Well, whether there's depositions or
3 not -- all right. I think then it seems to me like
4 where we are that we're certainly gonna continue it,
5 based on the issue with Dr. Brown. He will have to
6 testify. We have the issues with -- and then we had the
7 issue with Mr. Dudek and the technology. I don't know
8 that I'm gonna consent to Mr. Dudek appearing in the
9 future virtually.

10 Mr. Dudek's a good lawyer. Even when he's in
11 your presence, he mumbles a little bit. I don't --
12 we're not gonna go through that again with Mr. Dudek.
13 So I think Mr. Dudek needs to be subpoenaed or however
14 you all want to get him physically in here and we'll
15 just have to agree on a time.

16 I think what we'll do, we're gonna continue it.
17 Reserve everything for four-and-a-half full days. We're
18 gonna adjourn for today and we'll reconvene. And we may
19 have to have some status conferences in the meantime
20 sometime. And to have it next Thursday and we'll carve
21 out a time to continue where we left off. Any objection
22 to that from the Applicant, Mr. Grose?

23 MR. GROSE: No, sir, but before we adjourn I do
24 have a couple housekeeping things that should be quick.

25 THE COURT: All right. Anything -- well,

1 nothing's been quick ---

2 Any objection to following that procedure, Ms.
3 Brown?

4 MS. BROWN: No, sir. It seems like a good
5 procedure.

6 THE COURT: All right. Mr. Grose, I'd be glad to
7 hear from you.

8 MR. GROSE: Your Honor, there was an issue with
9 Applicant's Exhibit Number 64 with regards to the
10 location of the exhibit sticker, and we indicated that
11 we would reprint that with the exhibit sticker in a
12 different location. I've already shown this to Mr.
13 Evans.

14 MR. EVANS: Yeah. That was fine with us, Your
15 Honor.

16 MR. MABRY: Yeah.

17 MS. BROWN: We looked at it.

18 MR. EVANS: Yeah, we looked at it. I'm okay.

19 MR. GROSE: And the -- we have printed out, and I
20 know Your Honor had smaller copies of the PowerPoints,
21 but Exhibit 59, we've printed out a copy of Dr. Olley's
22 PowerPoint as Exhibit 82. Dr. Knight's Power Point.
23 And I talked with Mr. Evans and he's okay with us
24 placing those in the record as exhibits, so if any
25 future reader of record wants to look at the PowerPoint

1 slides while they're reviewing the testimony, they would
2 be able to do that.

3 MS. BROWN: Your Honor, actually Dr. Olley was my
4 witness, and I do have an objection to that. That one I
5 would object to under 803(18), because the majority of
6 those slides, as you'll recall, had text from manuals
7 Learned Treatises. And under 803(18), those treatises
8 may not be admitted.

9 MR. GROSE: Well, we've not admitted the
10 treatises, actually, but I think that goes to the
11 weight. And, certainly, I think any future reader of
12 the record should have the same benefit as Your Honor
13 did receiving ---

14 THE COURT: Yeah. I, I'm gonna overrule that
15 objection. I'll allow that in.

16 MS. BROWN: Your Honor, may I read one small
17 portion --

18 THE COURT: Yes.

19 MS. BROWN: -- of that provision, if you don't
20 mind?

21 THE COURT: Yes.

22 MS. BROWN: It says, of course, that we can read
23 into evidence, but may not be received as exhibits. And
24 I believe that those portions of the learned treatises
25 would violate the rule.

1 THE COURT: Let me see what it is.

2 MS. BROWN: Yes, sir.

3 THE COURT: Is it the same of what was passed up
4 to me?

5 MR. GROSE: It's just in a slightly larger format
6 for printing, and that's the prison records -- or, I'm
7 sorry, his school records. I misspoke.

8 MS. BROWN: And, Your Honor, what we were
9 concerned about were the actual excerpts that are just
10 reproduced that will violate the rule, would be our
11 position, Your Honor.

12 THE COURT: You mean, what's been labeled on page
13 two, the definition, I guess, of a ---

14 MS. BROWN: Yes, sir. On my copy that most of
15 the slides reverted exactly to the text or exactly to
16 examples from the text. And, again, we perceive that as
17 violating. Although they were read into the record to
18 the extent that Dr. Olley testified. And I don't object
19 to his testimony on them, I just believe that that
20 particular portion does offend 803(18).

21 THE COURT: Well, I'm gonna -- I note your
22 objection. I'm gonna overrule the objection.
23 Certainly, all of this has been presented to this Court.
24 I have the copies of the PowerPoint before me. Again,
25 if what appears to be just simply quotes to what you've

1 indicated is excerpts from the DSM, um -- and I'm gonna
2 allow it, I'm gonna allow it in. Thank you.

3 MR. GROSE: And I would just like to confirm with
4 the court reporter, but I believe at this point
5 Applicant's Exhibits 1 through 83 should be in evidence.
6 And those are your copies, Your Honor.

7 (Applicant's Exhibits 39, 40, 42, 59 and 82 were
8 entered into the record.)

9 THE COURT: Well, here's what I'm -- here's what
10 I'm -- I have a practical issue. Let's go ahead -- are
11 you through with whatever you need?

12 MR. GROSE: As long as she agrees everything's
13 in, yes, sir.

14 THE COURT: All right. Anything else you need to
15 put on the record?

16 MR. GROSE: No, sir.

17 MR. MABRY: We do.

18 THE COURT: Okay, go ahead.

19 MR. MABRY: I've got three exhibits that haven't
20 been moved in, 9, 11, and 15. Do you have those?

21 MR. GROSE: No objections to these.

22 MR. MABRY: Okay. Thank you, Your Honor.

23 THE COURT: Then those State's Exhibits 9, 11,
24 and 13?

25 MR. MABRY: Yes, sir.

1 MR. GROSE: Fifteen, I believe.

2 MR. MABRY: Nine is Dr. Schwartz-Watts report. I
3 think it's got edits in it in brackets, I believe. It
4 may not be. It may just be her report. And then --
5 well, let me make sure on that. Yeah, there's some
6 edits somebody typed in from the trial counsel's file.

7 THE COURT: Okay.

8 MR. MABRY: We provided this in discovery. And
9 then 15 is the hospital record. Oh, it's the PR report
10 responding to an overdose of Xanax. And then 11 is ex
11 parte order for funds for expert services for Dr. McKee.

12 THE COURT: All right.

13 MR. MABRY: That's it. Thank you, Your Honor. I
14 move those into evidence.

15 THE COURT: Okay.

16 (State's Exhibit Numbers 9, 11, and 15 were
17 entered into the record.)

18 All right. Now, that brings me to the next
19 issue. What do I take with me? It seems to me like I
20 don't even know the stuff you provided me. I need to be
21 holding on to the record, and that's what I need to
22 take, take with me. Does everybody agree with that?

23 MR. MABRY: Yes, sir, we do.

24 MS. BROWN: Yes. We do, yes, sir.

25 THE COURT: And I've never done a death penalty

1 PCR. You all have done -- all of you all have done
2 before. Does the presiding judge take the clerk's file
3 with him and stays in his possession while he's taking
4 it under advisement in reviewing all of that?

5 MS. BROWN: Yes, sir, you most certainly can.
6 The other option is to go ahead and put it in the
7 clerk's office and make copies directly from there and
8 have one kind of running file.

9 THE COURT: Well, they would shoot me if we do
10 that.

11 MR. GROSE: The copies that we provided to you
12 should be exactly the same thing.

13 THE COURT: And I'm confident they are, but on
14 the other hand, that appears to me could possibly create
15 a potential issue. I'll take possession of the clerk's
16 file.

17 MR. GROSE: Okay.

18 THE COURT: All right. Now, the other thing is,
19 I would propose that we try to have our final sometime
20 the week of July the 17th, as I have a chambers week.
21 And if we could go ahead and nail that down for the
22 conclusion of the evidentiary hearing in this case, and
23 that we have that here.

24 Let me see what Spartanburg -- we've got our
25 schedules yesterday, so we can --- how many courtrooms

1 do they have here?

2 COURT REPORTER: Three.

3 THE COURT: Three?

4 COURT REPORTER: Yes, sir.

5 THE COURT: Well, do we have to do it in
6 Spartanburg County? I mean, I'm sure your client waives
7 his presence.

8 MR. MABRY: We don't have to.

9 MS. BROWN: We do not have to. You have
10 statewide jurisdiction. The only thing that's sometimes
11 a little bit difficult for judges is if you're not
12 keeping the exhibits and the exhibits are up here, that
13 would be the only thing --

14 THE COURT: Right.

15 MS. BROWN: -- I could imagine would cause a
16 little problem for you.

17 THE COURT: Yeah, the week of the 17th in York, I
18 mean, there's not gonna be a problem with courtroom
19 space there. And I do think we need to be aware of
20 victim's rights be present. And I, and I don't know
21 that that is a particular -- if that's the issue in this
22 case, but they certainly cannot be required to go to
23 York County.

24 MS. BROWN: Yes, sir, Your Honor. I have just
25 spoken to our victim's advocate and the family is

1 willing to travel where they need to be.

2 THE COURT: Okay.

3 MS. BROWN: And that would not be a problem.

4 THE COURT: Well, we don't want to put the -- you
5 know, we don't want to put a hardship on any victim. I
6 mean, it's a Spartanburg County case. It's generally
7 heard here in Spartanburg County. That obviously would
8 be the easiest place for them to attend. However, if
9 I'm told that us holding the remainder of the hearing in
10 York County the week of July the 17th is something that
11 they can work with, and that's what I've been told.
12 Okay. All right. Let's, let's just go ahead and
13 schedule it for -- Mr. Grose, are you able to look at
14 your schedule, with it being that far out, the week of
15 July the 17th?

16 MR. GROSE: Yeah, we're both good.

17 THE COURT: Okay. And then the State, does that
18 suit you all's schedules?

19 MS. BROWN: Yes, sir.

20 MR. EVANS: That would be fine, yes.

21 MS. BROWN: I think we're all good on that.

22 THE COURT: We should be able to resolve all
23 these -- be in a position to move forward on all the
24 other issues. And then Mr. Dudek will need to be
25 physically present for his testimony on July the 17th.

1 All right.

2 MR. MABRY: I think I'll be in Edisto that week,
3 but I can drive.

4 THE COURT: Well...

5 MR. MABRY: That's all right.

6 THE COURT: I have authority over -- or I had
7 authority over a particular house on Edisto.

8 MR. MABRY: Yeah, I know. That would be fine.

9 THE COURT: If I can get you a room there.

10 MR. MABRY: Yes, sir.

11 THE COURT: Might even arrange for certain
12 drivers too.

13 MR. MABRY: Yeah. My father-in-law has a
14 timeshare there.

15 THE COURT: Are either of these witnesses -- is
16 Mr. Dudek your witness?

17 MS. BROWN: Yes, sir.

18 THE COURT: I mean, was that Mr. Mabry's witness?

19 MS. BROWN: No, it's my witness. I thought you
20 were looking at me.

21 MR. MABRY: Judge, I was just kidding you. I
22 don't know when that is. I was just joking.

23 THE COURT: All right. Okay.

24 MR. MABRY: Because I drove yesterday.

25 THE COURT: All right. We'll set it for the

1 remainder of this evidentiary hearing will be
2 rescheduled for Monday, July 17th, at the Moss Justice
3 Center in York.

4 MR. MABRY: Yes, sir.

5 MS. BROWN: Yes, sir.

6 THE COURT: All right? Thank you all.

7 MR. MABRY: Thank you.

8 MR. EVANS: And, hopefully, I'll be well by then,
9 Your Honor, so...

10 MS. BROWN: If he's not well, I may not bring
11 him, just so you know.

12 THE COURT: I appreciate everybody's patience
13 this week. This is serious for all of us, and I
14 understand that. But we're also in the business.

15 MR. MABRY: Thank you, sir.

16 MS. BROWN: Thank you very much.

17 THE COURT: All right, thank you.

18 MS. BROWN: We appreciate all your courtesies
19 too.

20 THE COURT: All right.

21 (Court concluded at 1:42 p.m.)

22

23 --- THIS ENDS REQUESTED TRANSCRIPT ---

24

25

1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Cendroski, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that to the
6 best of my ability the foregoing is a true, accurate,
7 and complete transcript of record of all the proceedings
8 and evidence introduced in the hearing and/or trial of
9 the captioned case, relative to appeal, in the Court of
10 COMMON PLEAS for Spartanburg County, South Carolina,
11 from the 26th - 31st of March, 2023.

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

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17
18
19 s/o *Julie A Cendroski*

20 _____
21 Julie A. Cendroski
22 Circuit Court Reporter III
23 Seventh Judicial Circuit
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STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 8
COUNTY OF LAURENS) DOCKET NO. 2018-CP-42-00928

RICKY LEE BLACKWELL,
Petitioner,
versus
STATE OF SOUTH CAROLINA
Respondent.

H E A R I N G

DATE: July 31, 2023
TIME: 9:31 a.m. - 1:08 p.m.
LOCATION: South Carolina Circuit Court 8
JUDGE: Daniel Hall
TRANSCRIBED BY: Jeanne Meldrim

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 APPEARANCES:

2 Charles Grose Jr., Esquire
3 Grose Law Firm
4 305 Main Street
5 Greenwood, SC 29646
6 Attorney for the Petitioner

7 Lindsey Vann, Esquire
8 Justice 360
9 900 Elmwood Avenue
10 Suite 200
11 Columbia, SC 29201
12 Attorney for the Petitioner

13 Melody Brown, Esquire
14 S.C. Attorney General's Office
15 PO Box 11549
16 Columbia SC 29211-1549
17 Attorney for the Respondent

18 Anthony Mabry, Esquire
19 S.C. Attorney General's Office
20 PO Box 11549
21 Columbia SC 29211-1549
22 Attorney for the Respondent

23 Tommy Evans, Esquire
24 S.C. Attorney General's Office
25 PO Box 11549
Columbia SC 29211-1549
Attorney for the Respondent

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STATE'S EXHIBITS

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2	Deposition	143	143

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT: All right. We're on the record in 2018
2 CP --- well, that's the wrong heading. CP-42-00928 is
3 the Ricky Blackwell versus State. This is PCR hearing.
4 This is a continuation or a resumption of PCR hearing
5 that was started on March 27th of this year here in ---
6 in --- well, it was in Spartanburg.

7 Representing the State is Melody Brown and Tommy
8 Evans. Representing the petitioner, Mr. Ricky Blackwell,
9 Charles Grose, and Lindsey Vann or Vann.

10 We had been through about five days of testimony in
11 Spartanburg. At the end of that day, I believe the ---
12 my notes don't reflect that but had the --- had the
13 petitioner rested?

14 MR. GROSE: No, sir.

15 THE COURT: There --- there was an issue about an
16 expert and some --- some surprise to the State. And so
17 bring me up to date where we are procedurally. Who's
18 next?

19 MR. GROSE: Well, here --- here's what we propose to
20 do. We had tried to call Bob Dudek (unintelligible) via
21 Webex and there was some technology --- technological
22 issues. So we --- and you asked that he ---

23 THE COURT: That's right. Okay.

24 MR. GROSE: --- be here in person. We propose to do
25 him first this morning. We believe it will be quick.

Proceedings

1 And then I think we're in the --- the State's
2 cross-examination of Dr. Brown. And once we finish be
3 with Dr. Brown, it would be our intent to rest at --- at
4 that point.

5 THE COURT: Okay. All right. So we're going to do
6 the --- we're going to call Mr. Dudek, take care of him
7 ---

8 MR. GROSE: If --- if that ---

9 THE COURT: --- then go back to Dr. Brown. Is
10 that --- the State agree with that, where we are
11 procedurally?

12 MR. EVANS: Yeah. In my file that's right.

13 THE COURT: Okay. All right. Then --- then let's
14 call your witness Mr. Grose.

15 MS. BROWN: Your Honor ---

16 THE COURT: Yes.

17 MS. BROWN: --- before we get to witness, may I also
18 add that Anthony Mabry is here for the State as well.

19 THE COURT: All right. I --- I remember Mr. Mabry.
20 Okay. And I did not put on the record that Mr. Mabry
21 participated and cross-examined some witnesses in
22 Spartanburg. He is also here on behalf of the State.

23 MR. MABRY: Thank you, Your Honor.

24 THE COURT: All right. Thank you.

25 Call Bob Dudek.

Direct exam Dudek

1 (Witness sworn)

2 ROBERT DUDEK, HAVING BEEN DULY SWORN, TESTIFIED AS
3 FOLLOWS.

4 DIRECT EXAMINATION

5 BY MR. GROSE:

6 Q. If you would, would you please state your full name for
7 the record, and spell your last name for the court reporter.

8 A. Sure, Robert Dudek, D --- Dudek is D-U-D-E-K.

9 Q. All right. And what is your profession?

10 A. I'm the chief appellate defender at the Office of
11 Appellate Defense.

12 Q. All right. And if you could, could you briefly summarize
13 your legal education and your court history leading up to your
14 current position.

15 A. Okay. Graduated from the University of South
16 Carolina School of Law in 1984. Passed the bar exam.
17 Started out my career doing civil legal services. Came
18 to appellate defense like late eight --- 1989, early
19 1990. Became the interim chief in 2009.

20 Oh, before that, I became the head of the death
21 penalty of division. Had a title for that.

22 Then interim appellate defense, chief appellate
23 defender 2009. Full time in 2010, since then.

24 Q. All right. And were --- did your office handle the
25 direct appeal of Ricky Blackwell's capital case?

1 A. Yes, we did.

2 Q. Okay. And who in the office worked on that?

3 A. That was me, and my co-counsel on that case was
4 David Alexander.

5 Q. Did you and Mr. Alexander divide up responsibilities for
6 the issues in the case?

7 A. Yes. David primarily the intellectual disability
8 issue was for lack of a better term, his "baby." I mean,
9 we talk about different aspects of it, but that was --- I
10 trusted David to --- to handle that. You know, still do.

11 Q. Okay. And did you handle the other issues?

12 A. Right. I had the --- I had the --- pretty much the
13 remainder of them. I remember David and I consulting
14 some specifically on the hospital chaplain's issues, but,
15 you know, the rest of it was pretty much mine.

16 Q. Okay. With regard to the hospital chaplain issues, what
17 was --- what was that issue about?

18 A. Well, the State put up evidence essentially that ---
19 that Ricky showed no remorse after the shootings. He was
20 concerned only for himself. As I recall, he said
21 something like, I wish I just done a better job on
22 myself. And showed no remorse.

23 So it was --- we thought that that was very
24 important evidence that the jury hear from what our
25 contention was should have come in as a business records.

1 The chaplain's notes that Ricky did express remorse and
2 was --- and was struggling with what he had done.

3 Q. All right. And did you brief that issue?

4 A. Yes.

5 Q. And what was the result?

6 A. The Court affirmed and stated that the records
7 held --- contained subjective opinions, and therefore
8 the --- the judge did not abuse his discretion in not ---
9 not allowing them in as a business record.

10 Q. If the chaplains had been there to testify, do you think
11 that that evidence would have been admissible?

12 A. Yes.

13 Q. And why is that?

14 A. Because, I mean, there would have been ---

15 MR. EVANS: Your Honor, I'll object to
16 (unintelligible). You know, the scope of knowledge
17 on ---

18 (Simultaneous speaking)

19 THE COURT: Yeah, I --- I sustained it. I sustain
20 the objection.

21 MR. EVANS: Okay.

22 MR. GROSE: All right.

23 BY MR. GROSE:

24 Q. Did you and Mr. Alexander go through a process of
25 identifying what issues were going to be briefed?

1 A. Yeah, sure. I mean, we would have --- we would
2 have --- you know, there --- there's usually in death
3 penalty cases, this one can --- also there are a bunch of
4 issues that can be raised and we tried to narrow it down
5 to what we thought were --- were the best ones.

6 Q. All right. I want to ask you --- I think you already
7 testified that Mr. Alexander was handling the intellectual
8 disability?

9 A. Correct.

10 Q. All right.

11 A. That's correct.

12 Q. There were --- we --- we have raised in the PCR
13 application, a claim about admitting autopsy photographs and
14 close-up photographs of the crime scene ---

15 A. Uh-huh.

16 Q. --- did --- did you consider raising that issue?

17 A. Yeah. My --- my memory --- my vague memory is that
18 in --- in my --- his --- I've done I don't know how many
19 death penalty cases, but a good number of them. And the
20 court seems to have, like, their standard language that
21 they will come out with while not pleasant to look at,
22 this is the way the defendant left his victim. And
23 pretty much with autopsy photographs if the pathologist
24 says they will assist his or her testimony, they're
25 going --- going to come in.

1 I mean, what's fresh in my mind now is --- is, you
2 know, I just finished up with Tim Jones --- Timothy
3 Jones, who had killed his five children. And the
4 photographs were just absolutely horrific.

5 MR. EVANS: Your Honor, I --- I will object again
6 (unintelligible) the record the Timothy Jones case, I
7 don't think that's relevant.

8 THE COURT: Yeah, I --- I sustain that objection as
9 well.

10 THE WITNESS: Anyway, we --- we did not --- you
11 know, we did not argue --- and argue and if I was wrong I
12 certainly don't want Ricky to suffer for that.

13 BY MR. EVANS

14 Q. We've raised an issue in the PCR application about
15 testimony of Reggie Fry during the penalty phase. Did you
16 consider raising that issue?

17 A. Can you refresh my memory? It's been a while.
18 Sorry.

19 Q. If I could, I want to just show you the transcript. I'll
20 begin it at page 3125 on the record on appeal.

21 A. Okay.

22 Q. (Unintelligible).

23 (Witness reading from transcript)

24 A. Okay. And vaguely remember it, Mr. Grose.

25 Q. All right. Did you consider raising an issue regarding

1 Reggie Fry's testimony?

2 A. Was this --- again, it's been --- I apologize to the
3 Court. It's been a long time since we talked in back in,
4 I guess, March. And I talked to the --- Ms. Brown also
5 and her co-counsel. But was that --- was that testimony
6 the one --- which what you're getting at that a --- his
7 father was concerned about Ricky getting ahold of the
8 guns and possibly committing suicide?

9 Q. That's --- yes, that --- that's --- that's --- Mr. Fry
10 was called to testify about a conversation that he had with
11 Ricky's father Cledus Blackwell.

12 A. Right. I --- I honestly, Mr. Grose, don't have a
13 clear memory of why we didn't raise that.

14 Q. Okay. The other issue that we raised in the PCR
15 application, is not raising an issue about the Ricky
16 Blackwell's death sentence being disproportionate?

17 A. Yeah --- go ahead. I'm sorry.

18 Q. Well, did you consider raising that issue?

19 A. We would have --- I mean, I'm sure it would have
20 come up, but back then and still to today, I --- I did
21 not think that that was really an issue because, you
22 know, it was a killing of a --- a child. And I just did
23 not think it was really a proportionality argument to be
24 made.

25 And again, if I'm wrong, I'm wrong, but we just did

1 not think that was possible.

2 Q. Were you --- at the time that you did Mr. Blackwell's
3 appeal, were you familiar with the footnote in State versus
4 Dickerson?

5 A. I believe we talked about that, but again, if you
6 refresh my memory. I was --- I was one of the attorneys
7 in Dickerson.

8 Q. It was --- it was footnote number eight with the --- the
9 Court indicated that they might reconsider how they analyzed
10 proportionality ---

11 (Simultaneous speaking)

12 A. Oh, okay. Now, if this is going to the --- that
13 proportionality wasn't raised that often, and that they
14 could consider cases in which death was not imposed as
15 part of the analysis?

16 Q. Potentially, yes.

17 A. Like I said, I was one of the attorneys in
18 Dickerson. I don't remember that well, but suffice it to
19 say we never seriously considered raising
20 proportionality --- disproportionality.

21 Q. And in your --- the past (unintelligible) as appellate
22 defender, have you had cases where you've handled appeals of
23 homicide by child abuse cases?

24 A. Yes.

25 Q. All right. And those cases aren't even eligible for the

1 death penalty, are they?

2 A. That's correct.

3 (Simultaneous speaking)

4 MR. EVANS: (Unintelligible).

5 THE COURT: I --- I sustain the objection.

6 MR. GROSE: That --- that's all I have at this time.

7 Thank you, Your Honor.

8 THE COURT: All right. Mr. Evans.

9 MR. EVANS: We have no questions.

10 THE COURT: All right. Thank you. Mr. Dudek, you
11 can step down.

12 THE WITNESS: May I be excused?

13 MR. EVANS: No objection.

14 THE COURT: You don't want to hang around for the
15 rest of the day?

16 THE WITNESS: I would, but ---

17 THE COURT: All right. We'll let you go back to
18 Columbia.

19 THE WITNESS: Thank you, Judge.

20 THE COURT: All right. Mr. Grose, call your next
21 witness.

22 MR. GROSE: I --- I think where this leads us is
23 with Dr. Brown, whether or not the State has any
24 additional cross-examination.

25 THE COURT: All right. So Dr. Brown was on the

1 stand and we had gotten to the point where there was the
2 information that the State has alleged they had not been
3 made aware of different testimony prior to the try ---
4 trial of this case. And that is where the Court
5 continued in allowing the State an opportunity to do if
6 needed further a discovery regarding Dr. Brown's position
7 in his statements that were --- indicated that were new
8 to the State.

9 And so we did that. And I think so we'll have Dr.
10 Brown come on up and we'll put him back on the stand.
11 And the State can continue --- let's see --- I believe
12 Mr. Evans, you were cross-examining; is that correct?

13 MR. EVANS: Yes, Your Honor.

14 THE COURT: Dr. Brown, let --- let me --- let's
15 swear you in again. I'm sorry. Let's go ahead and swear
16 you in.

17 THE WITNESS: Okay.

18 (Witness Sworn)

19 DR. BROWN HAVING BEEN DULY SWORN, TESTIFIED AS
20 FOLLOWS.

21 THE COURT: All right. Mr. Evans.

22 MR. EVANS: May it please the Court.

23 CROSS-EXAMINATION

24 BY MR. EVANS:

25 Q. Good morning, Dr. Brown. How are you?

1 A. Morning, Mr. Evans.

2 Q. Okay. Dr. Brown, you are currently retired, aren't you?

3 A. I'm mostly retired, yes, sir.

4 Q. Okay. "Mostly retired." So are you still working in
5 some capacity?

6 A. I have been doing off and on some sexually violent
7 predator evaluations for the Department of Mental Health.

8 I've had a couple of consultations with the Attorney
9 General's Office, but definitely not working full time.

10 Q. Okay. Are you doing any work regarding intellectual
11 disability?

12 A. No, not at this time. That's not to say that some
13 case may involve intellectual disability, but that's not
14 my focus.

15 Q. Okay. Now, at the time you did the initial evaluation of
16 Mr. Blackwell, he was working for the Department of
17 Disabilities and Special Needs; isn't that correct?

18 A. That's correct.

19 Q. Okay. And --- and part of paying --- Mr. Blackwell was
20 evaluated by Dr. Harrison --- Kimberly Harrison regarding his
21 competency to stand trial; isn't that true?

22 A. That's correct.

23 Q. Okay. And policy at the time was if Dr. Harrison or any
24 other doctor at the Department of Mental Health had any
25 inclination that an individual was possibly intellectually

1 disabled, they would contact you; isn't that correct?

2 A. That's correct.

3 Q. Okay. And at that time, if you were contacted, you would
4 recommend a joint evaluation, correct?

5 A. In this particular case?

6 Q. No, I'm talking in general.

7 A. Well, if --- if there's only mental illness then
8 Department of Mental Health will do the evaluation. So
9 only mental retardation or intellectual disability then
10 DDSN would do it. If there was indications of both, then
11 would be a joint evaluation.

12 Q. Okay. And Dr. Harrison never contacted you about this
13 case, did she?

14 A. She did not.

15 Q. Was that policy that you know of, of a doctor at the
16 Department of Mental Health to contact somebody at DDSN if
17 there's any suspicions of intellectual disability?

18 A. Yes, that --- that was the policy.

19 Q. That was the policy. Okay.

20 A. And if I'm --- remember correctly, that's actually
21 required in the statute.

22 Q. That's --- okay. And she never contacted you?

23 A. She did not.

24 Q. Okay. Now, you got involved in this case by a court
25 order ---

1 A. Correct.

2 Q. --- correct? You wasn't hired by the defense or the
3 State?

4 A. That's correct.

5 Q. And so you was hired --- or you were basically appointed
6 by the Court to be a neutral party to make a determination of
7 intellectual disability ---

8 A. Yes, sir.

9 Q. --- correct?

10 It wasn't through any request from DMH that you got
11 involved in this case, correct?

12 A. No, not at all.

13 Q. Now, you initially saw Mr. Blackwell on November 5, 2013?

14 A. I'd have to check the record, but that sounds right.

15 Q. Okay. Now, you completed a report ---

16 A. I did.

17 Q. --- upon your completion of the evaluation, correct?

18 A. I did.

19 Q. Okay. And within your report you mentioned the things
20 that you --- the records that you looked at prior to your
21 evaluation. And it says here on page 2 of your evaluation,
22 that you looked at the legal documents relevant to the current
23 charges. Is that the discovery of the actual trial --- the
24 actual case that happened?

25 A. That would be the discovery and any other legal

1 documents that we may have had access to. I --- I don't
2 recall exactly what those were ---

3 Q. Okay.

4 A. --- but basically, whatever legal records about the
5 incident that were provided.

6 Q. Okay. You also read detention center medical records?

7 A. I did.

8 Q. Correct? Also detention center visitation and
9 disciplinary records; you read those also?

10 A. I did.

11 Q. Okay. Inmate phone records and employment records,
12 correct?

13 A. I did. Yes, sir.

14 Q. Also it says here you read driver's records. Does that
15 include his CDL exam answer sheets?

16 A. I honestly don't recall. That was ten years ago.
17 I --- I would assume that it did, but I --- I can't say
18 for sure.

19 Q. Okay. Now, you have also records from the Carolina
20 Center of Spartanburg Regional Care and Patrick Harris. Now,
21 Patrick Harris was the hospital that he was in after his two
22 suicide attempts; isn't that correct?

23 A. I'm thinking he was at Patrick Harris for one, and
24 at the other place, Carolina Center for --- for the other
25 one. I may be mistaken ---

1 Q. Okay.

2 A. --- but I'm thinking there were --- there were two
3 separate hospitalizations.

4 Q. Now, also you have records from Spartanburg County
5 Sheriff; is that more discovery that was given to you?

6 A. I don't remember what those were.

7 Q. All right. And you have similar legal records for Ricky
8 and Angela Blackwell, were those like divorce records that you
9 read?

10 A. I know there were records about the divorce. And I
11 don't remember what else was in there.

12 Q. And medical, psychiatric, and school records from other
13 family members, meaning that the psychiatric record of his
14 daughter and her --- and her children?

15 A. Correct.

16 Q. And grandchildren. Okay.

17 How long was that first meeting that you had with Mr.
18 Blackwell?

19 A. I met with him for an interview for about 90 minutes
20 and then administered the ABAS2, which required about
21 another hour ---

22 Q. Okay.

23 A. --- during that first meeting.

24 Q. And in doing this meeting you took notes of the answers
25 he gave ---

1 A. I did.

2 Q. --- is that correct?

3 MR. EVANS: Your Honor, is this one, or is this we
4 start from where we left off?

5 THE COURT: We need to pick up where we left off
6 whatever you have.

7 MS. BROWN: I don't remember.

8 THE COURT: I tell you what. Let's do --- I'll mark
9 it Exhibit 1, and put today's date on it. That way we'll
10 be sure that ---

11 (Simultaneous speaking)

12 MR. EVANS: Makes sense, Your Honor.

13 THE COURT: And if y'all could at least ---
14 that's --- that --- that's the way we'll identify it.

15 (State's Exhibit 1 marked)

16 BY MR. EVANS:

17 Q. I show you defendant's response Exhibit 1 for the day
18 7/31/23. Are those the notes that you wrote down for Mr.
19 Blackwell (unintelligible)?

20 A. They do look like them, yes, sir.

21 Q. Does that accurately reflect the notes that you took ---

22 A. Yes, sir.

23 (Simultaneous speaking)

24 MR. EVANS: Your Honor, at this time I'd like to
25 move this as evidence.

1 THE COURT: Ms. Vann.

2 MS. VANN: No objection, Your Honor.

3 THE COURT: All right. This is marked State's
4 Exhibit 1 with today's date on it is in evidence.

5 (State's Exhibit 1 in evidence)

6 BY MR. EVANS:

7 Q. Now, you just said recently that you conducted a ABAS on
8 Mr. Blackwell ---

9 A. Correct.

10 Q. --- could you explain exactly what that is?

11 A. That is a measure of adaptive behavior, adaptive
12 functioning, adaptive behavior assessment system. And I
13 use second edition which was the current edition at that
14 time. But if I remember correctly, it's broken down into
15 about ten different areas of --- of adaptive functioning,
16 and we ask questions of the respondent relevant to each
17 of those areas.

18 And then there's also a ranking system --- a scoring
19 system, so that we can compare those scores with the
20 scores of others.

21 Q. And this is a form that he answered himself, correct?

22 A. It's --- it's not a form. I --- it's questions that
23 are asked from a form.

24 Q. Okay. Now, did you ask him those questions, or he just
25 looked at the form and read them and answered them?

1 A. It's been ten years ago, but I'm --- I'm almost sure
2 that I would have asked him the questions, and ---

3 Q. Okay.

4 A. --- I scored it with him providing oral --- oral or
5 verbal answers.

6 Q. Okay. Is it normal practice to give an ABAS to the ---
7 to a defendant?

8 A. It's not normal practice to use the ABAS with adults
9 past the developmental age. So I would say it's not
10 normal practice to give it to a defendant, but it's also
11 not normal practice to give to adults of that age in any
12 situation.

13 Q. Okay. Now, according to your notes, your notes are
14 broken down in different categories. (Unintelligible)
15 knowledge, registration and recall, attention and
16 concentrations. Are these categories normal when you do an
17 evaluation of intellectual disability?

18 A. Not necessarily for an evaluation of intellectual
19 disability.

20 Q. Okay. But you did it in this case?

21 A. I did it in this case, yes.

22 Q. The form that you used to write your notes down, is that
23 normal in this type of case?

24 A. I wouldn't say it's abnormal.

25 Q. Okay.

1 A. The first part of this is basically is mental status
2 exam, and that is a normal part of any evaluation. You
3 know, this happens to be one that DDSN had developed
4 specifically for their evaluations.

5 Q. Okay. Now, Mr. Blackwell dropped out of school in 11th
6 grade; isn't that correct?

7 A. That's correct.

8 Q. Okay. And if you're looking on page 3 of your report,
9 where it says educational history, he told you he just wanted
10 to drop out, he didn't want to go. And he added he wanted to
11 drive a truck; isn't that correct ---

12 A. Correct.

13 Q. --- that's in the report? So his reasoning for dropping
14 out of school is pretty much to drive a truck ---

15 A. That's what he said ---

16 Q. --- is that correct?

17 A. --- yes, sir.

18 Q. That's what he told you? Okay.

19 Also on page 3 he stated that he wished he complete ---
20 he had completed school and explained to you that he believes
21 he would have been better able to keep up with technological
22 advances, specifically those requiring computer skills; he
23 told you that also?

24 A. That's correct.

25 Q. Okay. And this situation about wanting to drive a truck,

1 according to your reports, is the same thing he told DMH Dr.
2 Harris?

3 A. I don't recall.

4 Q. Well, it's in your report. I ---

5 A. Okay.

6 Q. Well, it's consistent with the DMH report?

7 A. That's correct.

8 Q. Okay. So he told DMH the exact same thing?

9 A. Yes, sir.

10 Q. Okay. And Mr. Blackwell's father Cletus (phonetic) drove
11 a truck also?

12 A. He did.

13 Q. Is that correct? Okay.

14 And as far as you know, his father did not complete high
15 school either?

16 A. I don't think he did.

17 Q. Okay. So Mr. Blackwell knew that he was going to learn
18 how to drive a truck, he didn't need a high school education,
19 because his father did the same thing?

20 A. I can't say for sure what he knew or didn't know,
21 but that --- that would be a logical conclusion.

22 Q. Okay. Okay. And --- and you read the report of Dr.
23 Susan Knight's who was hired by the advocate to evaluate Mr.
24 Blackwell?

25 A. I did.

1 Q. Okay. As a matter of fact, her report is the reason you
2 changed your opinion regarding his intellectual disability; is
3 that correct?

4 A. I --- I think that's a fair statement.

5 Q. Okay. Do you have Dr. Blackwell's report up there with
6 you?

7 A. Dr. Knight?

8 Q. Dr. Knight's ---

9 (Simultaneous speaking)

10 A. Yes, sir. I do.

11 Q. Okay. Okay. On page 14 of Dr. Knight's report, on the
12 examining interview, he told Dr. Knight that I wanted to be a
13 truck driver. If I learn how to change gears, I'd be fine.
14 He wanted to be a truck driver since grammar school?

15 A. I'm --- I'm not seeing where you --- oh, I see it.
16 I'm sorry.

17 Q. It's the examining interview right under that. Academic
18 history developmental.

19 A. Okay.

20 Q. Okay. And it says I wanted to be a truck driver, if I
21 learn how to change gears, I'd be fine. He wanted to be a
22 truck driver since grammar school. It says that doesn't it?

23 A. It does.

24 Q. Okay. Now, according to your notes, you asked him
25 numerous questions that was not asked by Dr. Knight, or was

1 not reflected in her --- her reports that he asked --- that
2 she asked ---

3 A. I'm --- I'm sorry. I didn't hear the question.

4 Q. According to your notes, you asked Mr. Blackwell numerous
5 questions that was not asked by this Dr. Knight, or at least
6 weren't reflected in her report that she asked him?

7 A. I think we asked a lot of the same kinds of
8 questions, but I'm --- I'm sure we asked different
9 questions.

10 Q. Okay. Yeah. Well, go to your notes on page 7 --- well,
11 let's start on page 6 where it says orientation. And you
12 asked him to --- to date it the current date; isn't that
13 correct?

14 A. That's correct.

15 Q. And he said November 5, 2013? And that was correct
16 answer ---

17 A. Correct.

18 Q. --- is that correct? Okay.

19 He asked --- you asked him how many days in the week, he
20 said seven, correct?

21 A. Correct.

22 Q. And you asked him how many months in the year, he said
23 12?

24 A. Correct.

25 Q. Okay. Okay. On page 7, you asked him what's the season,

1 and he said fixing to be fall?

2 A. Fixing to be ---

3 Q. To be winter, excuse me.

4 A. --- winter.

5 Q. Yeah. And it was November, isn't it? So he was right,
6 it was fixing to be winter?

7 A. Correct.

8 Q. Okay. Also on page 7, you asked him what city he was in
9 and he said Columbia, correct?

10 A. Correct.

11 Q. And he was in Columbia doing his evaluation; isn't that
12 correct?

13 A. That's correct.

14 Q. Okay. And you asked him what country, and he said United
15 States ---

16 A. Correct.

17 Q. --- that's right also? Okay.

18 You told him name five states, and he named Texas,
19 Georgia, Alabama, Tennessee, Louisiana, and Mississippi; is
20 that correct?

21 A. Correct.

22 Q. Okay. All of which are states in the United States ---

23 A. That's correct.

24 Q. --- is that correct? Okay.

25 And you asked him to name five cities. Could you tell

1 the Court exactly what cities are those?

2 MR. EVANS: Do you need a copy this?

3 (Unintelligible)?

4 UNIDENTIFIED SPEAKER: No, I'm good.

5 MR. EVANS: All right.

6 BY MR. EVANS:

7 Q. Can you recite what cities he named?

8 A. If I can read them again. Dallas, San Antonio,
9 Pigeon Forge, and Gatlinburg.

10 Q. All are cities in the United States of America ---

11 A. Correct.

12 Q. --- correct? Okay.

13 You asked about capitals. He asked you --- you asked him
14 the capital of South Carolina, he said Columbia; isn't that
15 correct?

16 A. That's correct.

17 Q. Which is correct? That's correct?

18 A. That's correct.

19 Q. That's --- and you also asked him the capital of the
20 United States, and he said Washington?

21 A. Well, he initially said he didn't know and then he
22 responded Washington.

23 Q. Okay. You asked him who the current president of the
24 United States was and he said President Obama?

25 A. That's correct.

1 Q. Correct? And this is in 2013, Obama left office in 2017,
2 so that's correct?

3 A. That was correct.

4 Q. Obama was the president. You asked him about the
5 previous presidents, and he told you Bush, Clinton, and
6 Reagan, correct?

7 A. Correct.

8 Q. Okay. He left out HW Bush, but he got the others in
9 the ---

10 A. That's correct.

11 Q. --- proper order? Okay.

12 You asked him about the nearest oceans, and he asked ---
13 answered Atlantic and Pacific?

14 A. Well, the nearest ocean would be the Atlantic ---

15 Q. Yeah ---

16 A. --- then name another ocean and he said Pacific.

17 Q. Okay. So --- so he actually told you the Atlantic was
18 the nearest ocean ---

19 A. Correct.

20 Q. --- and then you asked him name another ocean, and he
21 said Pacific?

22 A. Correct.

23 Q. Okay. You asked him about directions by the --- on the
24 compass, and he said Florida was south, New York is east,
25 California is west; those are all correct also?

1 A. That's correct.

2 Q. Now, according to this he said --- asked him what time it
3 was and he told you 10:33, and the actual time was 10:33,
4 correct?

5 A. Correct. That's using an analog clock.

6 Q. That was a analog clock. So (unintelligible) the hands
7 on ---

8 A. Right.

9 Q. And he was able to tell time ---

10 A. Correct.

11 Q. --- with hands? Okay.

12 On page 8, you asked him to spell the word "world"
13 backwards and he did so, correct?

14 A. He did.

15 Q. Okay. And you asked him to do --- count from one hundred
16 by threes and he did so?

17 A. He did that. Yes, sir.

18 Q. Okay. Did you stop him at 70 or did he keep --- keep
19 going?

20 A. I don't know.

21 Q. Okay.

22 A. I --- I can't tell from my notes what I did at that
23 point, but he got at least to 70.

24 Q. Okay. Now, his calculations and there they were simple
25 math problems that you asked him, correct?

1 A. Correct.

2 Q. Only got one wrong and that's 10 divided by 2 and he said
3 20, which possibly could be he thought it was 10 times 2;
4 isn't that correct?

5 A. I can't make out what that word is I wrote in
6 between there, but that would be my guess.

7 Q. Okay. Okay. Also on page 8, you asked him how many
8 things are in a dozen, he said 12?

9 A. Correct.

10 Q. Correct? How many beers in a case, he said 24?

11 A. Correct.

12 Q. And how much cigarettes in the pack, he said 20?

13 A. Correct.

14 Q. Okay. And all those were correct answers?

15 A. That's right.

16 Q. Okay. On page 9, you asked him about similarities and
17 you asked the similarities between a apple and a banana and he
18 answered fruit, correct?

19 A. Correct.

20 Q. Similarity between chair and table, he answered
21 furniture?

22 A. Correct.

23 Q. And car and bicycle, he answered transportation, correct?

24 A. Correct.

25 Q. He actually told you the word transportation?

1 A. I'm sure he would have the way I wrote it down.

2 I ---

3 Q. Okay. Now, I'm sure you wouldn't have wrote nothing down
4 he didn't say, or that you said for him; isn't that correct?

5 A. Correct.

6 Q. There would be --- these were the answers he gave you ---

7 A. Correct.

8 Q. --- that's why you wrote them as notes?

9 Okay. Abstract reasoning. Can you read the answers
10 of --- of that one?

11 A. This was where we give them proverbs or sayings and
12 asked him what they mean. You can't judge a book by its
13 cover. He said he didn't know. He has a heart of gold.
14 He responded they're good, do anything for you. What
15 goes around comes around, he responded first that he
16 didn't know, and then said it's just a saying.

17 Q. Okay.

18 A. So he got one of those three correct.

19 Q. All right. And you asked him to do the recall. And
20 he --- did he recall the actual statements that you asked him
21 to recall?

22 A. That goes back to page 7 where I name baseball,
23 purple, happy, asked him to repeat those back. And then
24 after going through the other questions, I asked him what
25 were those three words I told you to remember. And he

1 said apple, happy, and feet. So he got --- I'm not sure
2 what that last word is. Apple, happy and --- and
3 something else.

4 Q. Okay.

5 A. So he got one of the three.

6 Q. All right.

7 A. And then I cued him. I said one was a sport. He
8 said baseball. One was a color, and he --- he said
9 purple.

10 Q. Okay. Now, the close your eyes portion, could you
11 explain that, please?

12 A. If I can find it here.

13 Q. I'll say on page 10.

14 A. It's in large print. It says, close your eyes. We
15 asked him to read it and do what it says, and would be
16 able to do that. And then we asked him to write that in
17 cursive and he was able to do that.

18 Q. Okay. All right. Now, you asked these questions to
19 determine his intellect at the time of this evaluation?

20 A. No, this is to determine mental status.

21 Q. Okay.

22 A. It says --- the heading is noted. It says
23 concentration, orientation. This is not by any stretch
24 an IQ test.

25 Q. Okay. But there was no reflection in Dr. Knight's report

1 that she asked Mr. Blackwell any of these questions, is there?

2 A. Dr. Knight would have done some type of mental
3 status exam. How much she detailed it in her report,
4 would --- would -- would be up to her, but I --- I don't
5 think she asked these kinds of questions.

6 Q. There was no reflection of any of these questions being
7 asked in her report, is there?

8 A. That's correct.

9 Q. Okay. And unlike Dr. Knight, you was not paid by the
10 defense for your evaluation; isn't that correct?

11 A. That's correct.

12 Q. And you was not paid by the State for your --- well, you
13 was paid by the State as ---

14 (Simultaneous speaking)

15 A. Well, I --- I had a salary ---

16 Q. Right.

17 A. --- as a DDSN employee ---

18 Q. Yes, but you were not ---

19 A. --- that's --- that's the only ---

20 Q. --- hired ---

21 A. Yeah ---

22 Q. --- you were not hired by the State ---

23 A. That's correct.

24 Q. --- you was neutral factor in this case, right?

25 A. That's correct.

1 Q. And you also met Mr. Blackwell again on November 14th?

2 A. November 14th, that's correct.

3 Q. Okay. And at that time you gave him the WAIS test ---
4 WAIS-IV test, which is a IQ test?

5 A. Correct.

6 Q. Okay. And the TOMM test to determine if he was
7 malingering?

8 A. Correct.

9 Q. And he scored a 68 on that test?

10 A. On the IQ test?

11 Q. Yes.

12 A. Correct. Full-scale IQ.

13 Q. All right. And took a test with Dr. Calloway and scored
14 a 63; isn't that correct?

15 A. That's correct.

16 Q. Now, neither one of these tests were done during the
17 developmental period; isn't that correct?

18 A. That's correct.

19 Q. Okay. He was in his 50s when these tests was ---

20 A. Correct.

21 Q. Okay. Matter of fact, these were the first IQ tests that
22 you know of that was ever administered to Mr. Blackwell in his
23 entire life?

24 A. These were the first individually administered IQ
25 tests. During school he had achievement tests that

1 included IQ test components. So we have some of those
2 scores that aren't called IQs. But this is the first
3 time he got a --- a gold standard-type of IQ test.

4 Q. Okay. And to determine intellectual disability, you must
5 use an actual individual IQ test; is that correct?

6 A. Correct.

7 Q. Okay. And at the time he took these IQ tests, he was
8 charged with murder and seeking --- and the State was seeking
9 the death penalty, correct?

10 A. That's correct.

11 Q. Okay. Okay. And on page 7 ---

12 A. Seven of my report, or ---

13 Q. Of your report. You have a section labeled substance
14 abuse; isn't that correct?

15 A. That's correct.

16 Q. Okay. And in this portion, you discuss different
17 substances that Mr. Blackwell used during his lifetime; isn't
18 that correct?

19 A. That's correct.

20 Q. Okay. And he told you that he smoked cigarettes for
21 about 12 years before quitting in 1985; isn't that correct?

22 A. That's correct.

23 Q. Okay. But in Dr. Knight's report on page 13, she --- a
24 friend of his mentioned him bringing cigarettes to school with
25 him in the 5th grade or 6th grade ---

1 A. Uh-huh.

2 Q. --- do you remember reading that?

3 A. I remember reading that, yes.

4 Q. Okay. So that's about what? On page 12 or 13? 5th or
5 6th grade?

6 A. I would think so, yes.

7 Q. Okay. So it's possible he was smoking since he was
8 12 years old?

9 A. I'm sorry?

10 Q. He --- it was possible he was smoking cigarettes since he
11 was 12?

12 A. That's true. And I never present substance abuse
13 history as --- as fact. This is what the person is
14 telling me at the time. And it's not unusual for
15 different evaluations to get slightly ---

16 Q. Okay. All right.

17 A. --- versus of substance abuse history.

18 Q. And he told you he drank a 12-pack on the weekends
19 watching racing?

20 A. Correct.

21 Q. Okay. He also told you he loved to smoke marijuana and
22 weed. Smoke until he was diagnosed with --- as with cancer in
23 1987? That's in the (unintelligible) correct?

24 A. Correct.

25 Q. But he started at 17 and he smoked a quarter bag a week;

1 that's in your report?

2 A. That's correct. Yes.

3 Q. Okay. He also told you he tried cocaine; isn't that in
4 your report?

5 A. I don't remember that, but ---

6 Q. Mr. Blackwell said he tried cocaine ---

7 A. Yes, sir. You're correct.

8 Q. --- but didn't fool with it because it's too addicting?

9 A. Yes.

10 Q. Okay.

11 A. He did say that.

12 Q. All right. He also he took Valium; isn't that in your
13 report?

14 A. Correct.

15 Q. Okay. And he tried huffing paint once ---

16 A. Correct.

17 Q. --- told you that also? Okay.

18 Now, Mr. Blackwell told you he began smoking marijuana at
19 age 17. That's during the developmental period; isn't that
20 correct?

21 A. That's correct.

22 Q. And they call it the developmental period because at that
23 period of time your brain is still developing; isn't that
24 correct?

25 A. That's correct.

1 Q. Actually your brain continues to develop until your
2 mid-20s; isn't that correct?

3 A. That's my understanding.

4 Q. Okay. And as I asked you before, you were a neutral
5 advisor in this evaluation ---

6 A. Correct.

7 Q. --- is that correct?

8 A. Yes, sir.

9 Q. So you asked questions about drug use because prior drug
10 use is important for any type of evaluation in this type of
11 case; isn't that correct?

12 A. That would be part of almost any evaluation I
13 would ---

14 (Simultaneous speaking)

15 Q. Okay.

16 A. --- yes.

17 Q. Dr. Knight who was hired by the applicant, she had no
18 reference to any drug use by Mr. Blackwell in her report, does
19 she?

20 A. I'd have to go back and look to be sure, but I --- I
21 don't recall anything specific.

22 Q. Okay. She never mentions the actual drug use that he
23 told you about; isn't that correct? You don't remember seeing
24 that in her report at all?

25 A. I don't remember seeing, but I'd have to go back and

1 look to be ---

2 Q. Okay.

3 A. --- to be sure.

4 Q. All right. Okay. In your report, you mentioned about
5 Mr. Blackwell's school records also?

6 A. I did.

7 Q. Okay. And when Mr. Blackwell first entered school, he
8 was given the California test of mental maturity, which is not
9 a IQ test; isn't that correct?

10 A. That's correct.

11 Q. Okay. Is a test to measure your ability to learn ---
12 determine where you're placed in school?

13 A. Correct.

14 Q. Okay. And when he entered school, he tested at a 67?

15 A. I --- I don't recall the score. If you can tell me
16 where you're looking at, I can --- I can respond to that.

17 Q. Okay. Page 10 --- excuse me it's 68 when he first
18 entered school?

19 A. I'm sorry?

20 Q. You have here 7 years and 5 months, he first --- in first
21 grade he obtained a IQ of 68. So he tested at 68.

22 A. Correct.

23 Q. Okay. But by third grade it rose to 87; isn't that
24 correct?

25 A. That's correct.

1 Q. Okay. That's a 20-point rise in that particular score;
2 isn't that correct? Almost a 20-point rise?

3 A. That would be correct.

4 Q. Okay.

5 A. Although there were different -- different editions
6 of that form.

7 Q. Okay. And Mr. Blackwell never --- Mr. Blackwell's
8 parents were not educated people were they?

9 A. They were not.

10 Q. So --- and he's never gone to kindergarten; is that
11 correct?

12 A. He did not.

13 Q. Okay. So it's --- say he didn't really get no formal
14 educational training until he started school?

15 A. That's correct.

16 Q. Is that correct? Okay.

17 And could it be that this rise in score shows a
18 ability --- an ability for him to learn?

19 A. There --- there's really no way to say what caused
20 the rise in score. I mean, it could be anything from
21 paying better attention, to scoring errors, to any number
22 of possibilities.

23 Q. Okay. But he never had any type of educational training
24 until he started school?

25 A. That's correct.

1 Q. First grade? Okay. And his scores was 68 in first grade
2 and then he went to a 87 by third?

3 A. Correct.

4 Q. Okay. So it could be that he had the capacity to learn;
5 isn't that true?

6 A. That's true.

7 Q. Okay. Have you ever seen the gray sheet on Mr.
8 Blackwell?

9 A. I have ---

10 Q. Okay.

11 A. --- but it's been a very long time.

12 Q. All right. Okay. And this was introduced earlier into
13 evidence. I can't tell you what number.

14 MR. EVANS: Your Honor, this gray sheet on Mr.
15 Blackwell.

16 BY MR. EVANS:

17 Q. I'm going to show you the gray sheet on Mr. Blackwell.

18 A. Okay.

19 Q. Now, looking at his gray, it was elementary school --- in
20 first grade, he made 70s and 80s; isn't that correct?

21 A. That's correct.

22 Q. And he never attended kindergarten?

23 A. That's correct.

24 (Simultaneous speaking)

25 A. That's correct.

1 Q. But by second grade his grades went up to 80s and 90s;
2 isn't that true?

3 A. Well, there's some 70s, 80s, there's one 90 and one
4 90 --- well a couple of 90 --- 93, 94, yes.

5 Q. And in third grade, his grades were okay, he passed the
6 rest of his classes; is that true?

7 A. I'm sorry, I missed it.

8 Q. Third grade?

9 A. Third grade?

10 Q. Yes. I --- I'm sorry.

11 A. Say --- I --- I didn't understand what you said.

12 Q. Okay. So third grade, he passed almost all his classes;
13 isn't that correct?

14 A. That's correct.

15 Q. And according to his school records, Mr. Blackwell didn't
16 attend adjunct classes until high school?

17 A. I think that's correct.

18 Q. Okay. And you stated earlier you were given Dr. Knight's
19 report to read prior to your previous testimony, isn't it
20 correct?

21 A. That's correct.

22 Q. All right. And her report is the reason why you changed
23 your mind regarding your diagnosis?

24 A. Well, to be clear, the information in her report is
25 the reason I changed my mind.

1 Q. Okay. All right. So the contents of her report got you
2 to change your mind ---

3 A. Correct.

4 Q. --- regarding that? Okay.

5 Okay. Own page 17 and 18 of Dr. Knight's report, it
6 shows a interview that she did with a teacher named Louise
7 Scruggs.

8 A. Okay.

9 Q. All right. Are you aware that Ms. Scruggs were
10 interviewed by the defense team prior to this interview? Were
11 you given the --- the actual interview sheet from that
12 interview?

13 A. I --- I was not.

14 Q. Okay. So you're not aware that Ms. Scruggs during that
15 interview stated that the kids that were placed in adjunct
16 class to score with a low standard, they got socially promoted
17 and they were too lazy to do the work; you're not aware of
18 that are you?

19 A. No.

20 Q. Okay.

21 A. I --- I can't say that I was. That's not
22 surprising, because I'm not ---

23 Q. Okay. And that's nowhere to be found in Dr. Knight's
24 report when she mentions his teacher, Louise Scruggs?

25 A. I'm --- I'm not following the question. I'm sorry.

1 Q. The statement that she made that kids were put in adjunct
2 classes because their scores were below standard, they got
3 socially promoted, or they were too lazy to do the work, that
4 is not mentioned in Dr. Knight's report, is it?

5 A. I don't recall seeing that, no.

6 Q. Okay. And according to Mr. Blackwell's school records,
7 he had a average of 75 in English in 8th grade. You can look
8 at the sheet if you want. And he made a 73 in English?

9 A. I'm --- I'm --- 73, correct.

10 Q. In 8th grade? Okay.

11 And that was not a adjunct class, was it?

12 A. It doesn't indicate adjunct.

13 Q. Okay. All right. So it's possible if Mr. Blackwell ---
14 it's showing Mr. Blackwell can do the work in regular class?
15 He made a 73, that's a passing grade; isn't that correct?

16 A. That would be one piece of evidence supporting that.
17 I --- I wouldn't go so far as to say it --- it shows that
18 he could ---

19 Q. Okay.

20 A. --- but that would one piece of evidence.

21 Q. All right. Okay.

22 Now, also in Dr. Knight's report on page 18, next to the
23 last paragraph, Ms. Scruggs stated that there was a
24 separate --- separate class for special ed, which was very
25 limited kids who were difficult to teach and behavior

1 problems. Ricky did not have behavior problems. These
2 students were barely functioning and had trouble dressing,
3 trouble with basic hygiene, following instructions. They were
4 very, very limited. It says that doesn't it?

5 (Simultaneous speaking)

6 A. Correct.

7 Q. Okay. And Ricky Blackwell was not in that special ed
8 class; isn't that correct?

9 A. He was not in ---

10 Q. That special ed --- that particular special ed class that
11 she's --- she's referring to?

12 A. I --- I think that's correct.

13 Q. Okay. All right.

14 A. That --- that was the assumption when I read it,
15 yes.

16 Q. Okay. There was another individual that spoke to the
17 defense and gave a interview sheet, a --- a teacher by the
18 name Cheryl Ponder. Are you aware of Ms. Ponder?

19 A. Aware of, but ---

20 Q. Okay. Ms. Ponder's not mentioned in Dr. Knight's report,
21 is she?

22 A. I don't recall that she was.

23 Q. Okay. And she also talked about the mentally retarded
24 kids in the lower level classes, but you don't remember seeing
25 any statement from Ms. Ponder in ---

1 A. I don't recall.

2 Q. --- Dr. Knight's report?

3 A. I don't recall. No.

4 Q. Okay. Now, on page 15, Mr. Blackwell went to vocational
5 school --- of Dr. Knight's report, top of page 15.

6 A. Oh, the top of page 15?

7 Q. Yeah. First paragraph. I'm sorry.

8 A. Correct.

9 Q. Okay. And he was bussed to a school called Foster Grove
10 for vocational training?

11 A. Correct.

12 Q. Okay. And that is typical for individuals that are doing
13 adjunct classes. They will try to be given some type of
14 vocational training?

15 A. I don't know that I can verify that, but that would
16 make sense.

17 Q. Okay. All right. And it says in Dr. Knight's report
18 that he tried welding and couldn't do it so he stood outside
19 with other guys and smoked; isn't that correct?

20 A. Correct.

21 Q. Okay. So he couldn't put any effort in this, so he just
22 quits; is that correct?

23 A. I don't know that I would say he --- he just quit.

24 Q. Well, he's not doing the work, he's outside smoking.
25 He's not doing --- so it's --- that's basically quitting,

1 isn't it? Either you're in doing the work, or you're outside
2 smoking. One or the other.

3 A. Well, that --- that's not unusual for anyone though,
4 when they can't succeed at something, to just give up and
5 go outside and ---

6 Q. Okay. So that's normal ---

7 A. --- smoke or --- or ---

8 Q. --- behavior, you're saying ---

9 A. --- whatever.

10 Q. --- that it's normal behavior can't to see
11 (unintelligible) to give up? That's normal behavior for
12 teenagers?

13 A. It's not abnormal.

14 Q. Okay. So that doesn't mean he's intellectually disabled,
15 because he does that; isn't that correct?

16 A. I --- that's correct.

17 Q. Okay. Now, during the deposition you said that the
18 statements in Dr. Knight's report regarding the developmental
19 period was one of the reasons why you changed your opinion; is
20 that correct?

21 A. Because the developmental period?

22 Q. Yes.

23 A. I'm --- I'm not sure what you're referring to.

24 Q. Well, you said, if I can recall during your deposition,
25 that Dr. Knight referred to some evidence and about Mr.

1 Blackwell the developmental period that caused you to change
2 your opinion; don't remember saying that?

3 A. I remember some discussion about the change from
4 DSM-IV to DSM-V where the age limit of 18 was dropped.
5 And that would support my change in opinion. I wouldn't
6 say that was the reason I changed it, but that would ---
7 that would support it.

8 Q. All right.

9 A. But it --- it was the information Dr. Knight
10 provided about his adaptive functioning during the
11 developmental period and shortly thereafter.

12 Q. Okay. But there are some missing statements about Mr.
13 Blackwell in developmental period that was not in the report;
14 isn't there?

15 A. Some missing statements?

16 Q. Yes, I just refer to you these statements that was not in
17 the report; isn't that correct?

18 A. Sure.

19 Q. Okay. Now, as we discussed earlier, on page 10 of your
20 report, Mr. Blackwell took a test for screening and placement
21 when he first entered school, correct?

22 A. I'm not sure I could say that he took the test
23 to --- to help with placement. That --- that -- that
24 type of testing was a standard part of what was
25 administered to ---

1 Q. Okay.

2 A. --- children in school during that time.

3 Q. But he was given that test?

4 A. He was given the test, yes.

5 Q. Okay.

6 A. But if was for placement or not, I --- I don't know.

7 Q. And he scored a 68 on that test but he --- by third grade
8 he tested and it was 87 ---

9 A. Correct.

10 Q. --- correct? Okay. And then in sixth grade he tested
11 and he got a 86; isn't that correct?

12 A. Correct.

13 Q. All right. By about age ---

14 A. But again, those were not necessarily the same
15 measure. Talking about scores across different types of
16 measures here.

17 Q. So by age 14 he scored a 72?

18 A. Correct.

19 Q. Okay. And around that time, according to Mr. Blackwell,
20 this time that he was outside smoking with other boys, and not
21 doing the work; isn't that correct ---

22 A. That would be correct ---

23 (Simultaneous speaking)

24 A. --- yes.

25 Q. Okay. So it's possible you can test lower because you

1 just won't try; isn't that correct?

2 A. Sure. Sure.

3 Q. You cannot fake a high score?

4 A. That's correct.

5 Q. Okay. But you can test low because of not putting
6 effort?

7 A. That's correct.

8 Q. Now, page 3 of your report you discussed that --- the
9 last paragraph that Mr. Blackwell had 12 units --- 11 toward
10 graduation?

11 A. Correct.

12 Q. All right.

13 A. Correct.

14 Q. Also on page 3 of your report, it states that in '76 or
15 '77, a student needed four units to be promoted to 10th grade
16 and Mr. Blackwell had eight because he spent two years in
17 (unintelligible)?

18 A. Correct.

19 Q. --- said that? Okay.

20 A. Correct. Yes, sir.

21 Q. And according to your report that Mr. Blackwell entered
22 11th grade, he needed only one additional unit to be promoted
23 to 12th grade?

24 A. That was my understanding (unintelligible).

25 Q. So according to your report, Mr. Blackwell was on track

1 to graduate high school?

2 A. Correct.

3 Q. Now, if you look at his grade sheet in 11th grade, he got
4 a 55 in English and a 50 in health.

5 A. That --- that's correct.

6 Q. Okay. Those are the lowest grades he has ever received
7 in school; isn't that correct?

8 A. Without looking at all of them that sounds right.

9 Q. Okay. So he pretty much --- that's when he quit school
10 pretty much in 11th grade, because he didn't return after the
11 first semester?

12 A. I'm sorry?

13 Q. He pretty much quit school then because he didn't return
14 after that first semester?

15 A. That --- yes --- yes, sir.

16 Q. In your report it shows that his junior ranking was 113
17 out of 113?

18 A. That's correct.

19 Q. But you don't know how those numbers were calculated do
20 you?

21 A. I --- I don't.

22 Q. Okay. And in 10th grade he had an incomplete for
23 English --- he just didn't finish the --- the class?

24 A. I --- I see the letter I, I'm not sure what that
25 means.

1 Q. Okay. All right. But he got no credits for that class,
2 did he?

3 A. It doesn't look like he did.

4 Q. Okay. So he essentially made a zero in that class
5 because he didn't finish?

6 A. Well, I --- I don't know what it means to make a
7 zero, but I don't know how those calculations are
8 done ---

9 Q. Okay.

10 A. --- so I --- I don't know if that's accurate or not.

11 Q. When then --- okay. In 11th grade he got two Fs in
12 health and English and never finished the next semester?

13 A. Correct.

14 Q. That's correct? All right. So after the calculations
15 were done after ninth grade when he completed all this work,
16 it could have been higher --- his --- his --- his class
17 ranking could have been higher?

18 A. It couldn't change very much. It --- it could be
19 higher, but I --- I don't think would --- we'd see a
20 great deal of --- of difference in the --- in the
21 ranking.

22 Q. Okay. And in regards of ranking, he was on track to
23 graduate, if he'd finished school?

24 A. Well, again, that was my understanding at the time.

25 Q. All right. Now, you read the employment records of Mr.

1 Blackwell?

2 A. I did.

3 Q. Okay. Okay. On page 6 it gives a basic rundown of
4 his --- his employment and his total earnings; isn't that
5 correct?

6 A. Correct.

7 Q. And ---

8 A. Correct.

9 Q. --- did you get this information from the Social Security
10 Commission?

11 A. That's right, I did.

12 Q. And in 1976 he received his first job out of high school?

13 A. That's correct.

14 Q. Okay. Working for James Bellu (phonetic). Did you know
15 he was putting peach --- working seasonal work putting boxes
16 of peaches ---

17 A. That --- that sounds right.

18 Q. Okay. In 1976 he also worked in a community ---
19 community case in the meat department?

20 A. Okay.

21 (Simultaneous speaking)

22 Q. --- okay?

23 A. Yes, sir.

24 Q. Okay. Are you aware he quit that job because he didn't
25 want to be in the freezer, it's too cold?

1 A. I may have known that. I --- I don't recall.

2 Q. (Unintelligible) that's --- that's what I'm ---

3 A. Okay.

4 Q. --- (unintelligible). Okay. In 1977 he worked at Crown
5 Cork & Seal. On page 4 of your report stated to you he was
6 fired, 'cause he with somebody taking contraband drinks?

7 A. Correct.

8 Q. --- (unintelligible) okay.

9 Okay. 1977 he worked with the White Bag Company that's
10 in your report also, correct?

11 A. Correct.

12 Q. All right. And are you aware that he was to stack
13 pallets, and he quit because he couldn't stack?

14 A. That was my understanding, yes.

15 Q. Okay. His next job in 1978, he worked for Milliken and
16 he did what you call a creeler; are you aware of that?

17 A. I'm sorry, he did what?

18 Q. He did what is call a creeler.

19 A. Oh. Yes, sir.

20 Q. Okay. And he got fired from that job because he couldn't
21 work fast enough?

22 A. Correct.

23 Q. Aware of that? Okay.

24 His next job in 1978 he worked for a newspaper called
25 Newspaper Management Production, inserting ads newspapers ---

1 A. Uh-huh.

2 Q. --- are you aware of that?

3 A. Right.

4 Q. Okay. And he quit that job because he just didn't like
5 it?

6 A. That's my understanding.

7 Q. Okay. Also in 1978 he worked for Phillips Fibers; that's
8 in your report also? 1978 he worked for Phillips Fibers?

9 A. Correct.

10 Q. Okay. And do you realize he quit that job because he
11 didn't want to work swing shift?

12 A. I don't remember that, but that ---

13 Q. Okay.

14 A. --- sounds correct.

15 Q. Next --- okay. In 1979 he worked for Southern Piedmont
16 Ice, that's in your report also?

17 A. Correct.

18 Q. Okay. And he quit that job because it was cold in the
19 freezers? I'm just telling what you told Dr. Knight.

20 A. That --- that sounds familiar. And --- and to be
21 clear, I did not look at employment records for all of
22 these places. This is just --- just the Social Security
23 summary ---

24 Q. Okay.

25 A. --- of where he did work. I didn't have access to

1 all of those employment records.

2 Q. Okay. But wouldn't you expect if you work for the ice
3 factory, that it could be cold?

4 A. Oh, absolutely.

5 Q. Okay. In 1979 he worked at M&C --- M&C Farm and Feed;
6 that's in your report also?

7 A. Correct.

8 Q. Okay. And then in 1979 he also worked at American Fast
9 Prints?

10 A. Correct.

11 Q. Okay. And are you aware he quit that job because he
12 didn't want --- want to work the third shift?

13 A. I don't recall that.

14 Q. Okay. All right. So these are 11 jobs in three years
15 that Mr. Blackwell had?

16 A. That sounds right.

17 Q. Okay. So he quit school --- he quits 11 jobs in three
18 years, doesn't this show a pattern of quitting by Mr.
19 Blackwell?

20 A. It does.

21 Q. Okay. Now, on page 7 of your report Mr. Blackwell told
22 you he smoked marijuana from age 17 until he got diagnosed
23 with cancer in 1987?

24 A. Correct.

25 Q. Okay. Now, page 24 of Dr. Knight's report where it says

1 mother and father interviews vocation, Mr. Blackwell's father
2 told her that I taught him how to drive. He's watched me
3 drive --- drive a tractor-trailer truck. I started teaching
4 him around 12. He's watched me change the gears. I can't
5 remember when I started letting him drive, maybe 15 or 16. He
6 said that on there ---

7 A. Correct.

8 Q. --- page 24. Okay.

9 A. Correct.

10 Q. So pretty much Mr. Blackwell learned how to drive a truck
11 from just watching his father?

12 A. Correct, on-the-job training basically.

13 Q. Okay. At age 12?

14 A. Correct.

15 Q. Okay. And he actually was taught how to drive a
16 18-wheeler by the time he was 16 ---

17 (Simultaneous speaking)

18 A. That sounds correct.

19 Q. Okay. And on page 11 of your report, you state that's
20 the reason why he dropped out of school, he wanted to be a
21 truck driver?

22 A. Correct.

23 Q. And on Dr. Knight's report on page 14, where it says
24 examining interview academic history developmental, he told
25 her I wanted to be a truck driver, if I learn how to change

1 the gears I'd be fine. He said that ---

2 A. Correct.

3 Q. Okay. So isn't it possible that he --- he could do the
4 work he just didn't want to? He wanted to drive a truck, he
5 knew that wasn't --- school wasn't important to him, that's
6 why he quit?

7 A. That's possible.

8 Q. Okay. I mean, his lifelong dream was to drive a truck,
9 isn't it?

10 A. Correct.

11 Q. Okay. And he achieved that; isn't that true?

12 A. He achieved that to some degree, yes, sir.

13 Q. Okay. Well, he drove trucks, correct?

14 A. Correct.

15 Q. That was part of employment. He eventually got a job
16 driving trucks, so he did achieve that, correct?

17 A. Correct.

18 Q. Okay. A lot of people don't achieve their lifelong
19 dream, do they?

20 A. That's true.

21 Q. My lifelong dream was to play pro basketball.

22 (Simultaneous speaking)

23 A. Good luck.

24 Q. Now, Mr. Blackwell's first trucking job was
25 (unintelligible) trucking? That's on page 4 of your report,

1 second paragraph.

2 A. That's correct.

3 Q. Okay. And this job required him to travel as far west as
4 El Paso, Texas, and as far north as Canada; isn't that true?

5 A. That's correct.

6 Q. Okay. Okay. His next trucking job, he worked for Hess,
7 driving tanker trucks?

8 A. Correct.

9 Q. Now, he had --- did have numerous accidents while he was
10 driving trucks?

11 A. He did.

12 Q. He had one in 1983 when he ran off the road and totaled
13 the truck. I know it's in Dr. Knight's reports, I don't know
14 what's in yours?

15 A. Correct.

16 Q. Okay. And he had another accident April 3rd, '85. Well,
17 let's go back here one on page 4 of your report, December 28,
18 1984?

19 A. Correct.

20 Q. Okay. And he had another accident on April 3, 1985;
21 isn't that correct?

22 A. That's in Dr. Knight's report? Is that ---

23 Q. I think that's in yours. April 3, 1985. Incomplete
24 accident report indicates on 4/3/85, Mr. Blackwell was
25 responsible for the accident ---

1 A. Okay, correct.

2 (Simultaneous speaking)

3 A. Yes, sir.

4 Q. All right. Now, during this time, Mr. Blackwell, he was
5 smoking marijuana; isn't that correct?

6 A. I don't recall the exact dates ---

7 (Simultaneous speaking)

8 Q. --- he smoked from 17 to '87?

9 A. Correct.

10 Q. Okay. All right. And marijuana impairs your ability to
11 drive, that's why it's illegal to do so, isn't it?

12 A. Sure.

13 Q. Okay. So these accidents could have been caused not by
14 any intellectual impairment, but because he was high?

15 A. It could be.

16 Q. Okay. On page 4 of your report, you also mention --- and
17 the records you got from an employer by the name of John
18 Brannon ---

19 A. Correct.

20 Q. --- is the fourth paragraph, top of the fourth
21 paragraph ---

22 A. On page 4?

23 Q. Page 4, yes. And it indicated here that he was employed
24 as a tractor-trailer driver and check marks indicated that he
25 had custody of money and valuables and his count was always

1 properly kept. It states that in your report; isn't that
2 correct?

3 A. Correct.

4 Q. Okay. Now, on the bottom of page 11 and continuing on
5 page 12 of your report, Dr. Brown, you state here that it's
6 difficult for many intellectually disabled persons to pass the
7 examination to get a regular driver's license, and it would be
8 very difficult for someone who was intellectually disabled to
9 pass the written test or the practical test to obtain a
10 commercial driver's license. Mr. Blackwell passed the
11 examination including two additional tests for tank work and
12 hazardous waste materials. He says in his interview they had
13 to take that part twice and for combination vehicles. That's
14 in the report isn't it?

15 A. That's correct.

16 Q. All right. Okay. Now in Dr. Knight's report she refers
17 to a supposedly CDL test that Mr. Blackwell didn't take?

18 A. Correct.

19 Q. Okay. Or however, a commercial driver's license can only
20 be administered and given by the South Carolina Highway
21 Department; isn't that correct?

22 MR. GROSE: Objection, Your Honor. I'm not sure he
23 knows the regulations, and Dr. Knight wasn't allowed to
24 talk about the CDL regulation when she testified.

25 MR. EVANS: I think she got --- yeah, I think she

1 was. I asked her about that.

2 (Simultaneous speaking)

3 MR. EVANS: I mean, it's common knowledge. I mean,
4 can you get a driver's license from anybody else other
5 than the ---

6 THE WITNESS: I wouldn't think so, but again ---

7 MS. BROWN: Okay.

8 THE WITNESS: --- I --- I don't ---

9 (Simultaneous speaking)

10 BY MR. EVANS:

11 Q. And a commercial driver's license is a commercial --- a
12 license to drive commercial vehicles, that's why it's called a
13 commercial driver's license? I mean, all this is common
14 sense; isn't that correct?

15 A. Correct. My one question would be if there might be
16 other agencies that are authorized to do that kind of
17 testing for DMH, but I don't know.

18 Q. Okay. All right. But the tests he was talking about was
19 a actual test given by the company, and not one given by the
20 Department of Corrections --- the Department of Motor
21 Vehicles; are you aware of that?

22 A. I think that was my assumption, although I can't say
23 that I --- I knew that for sure.

24 Q. Okay. On page 31 of her report, it says commercial
25 driver's written examination dated July 9, 1984, during his

1 employment with Value Trucking. Mr. Blackwell's name is on
2 top of the form, and his answers to these questions are marked
3 with a check mark at the bottom of the test. It's typically a
4 written examination second with signature of a person taking
5 exam --- examinations was left blank and unsigned. That was a
6 test given by Value Trucking; isn't that correct? Not a test
7 given by the Department of Motor Vehicles?

8 A. That would be by assumption based on the way Dr.
9 Knight reported it, yes, sir.

10 Q. All right. And on page 32, she mentions the actual test
11 that Mr. Blackwell did take from the Department of Motor
12 Vehicles and he got his CDL on April the 1st, 1992? Trucking
13 test and DMV records?

14 A. I'm sorry, I didn't understand the question.

15 Q. Okay. Now, in her report on page 32, where it says
16 trucking testing, DMV records, she mentions the tests that Mr.
17 Blackwell took from the Department of Motor Vehicles, when he
18 got his CDL license on April the 1st, 1992?

19 A. Correct.

20 Q. Okay. Were you made available to the answer sheets that
21 were --- that Ricky Blackwell filled out when he took this
22 test?

23 A. I don't recall.

24 Q. Okay. And her --- his answers on his examination, the
25 results are not mentioned in Dr. Knight's report; isn't that

1 correct?

2 A. That's correct.

3 Q. Okay. Do you realize that out of 145 questions taken on
4 that test, Ricky only got 17 incorrect; are you aware of that?

5 A. I --- I was not aware of that.

6 Q. Okay. And that's not in her report, is it?

7 A. Not that I recall, no.

8 Q. Okay. So according to your report, a intellectual
9 person --- intellectually disabled person could not do that,
10 could they?

11 A. I wouldn't say they couldn't. I --- I think my
12 word --- my phrasing, I believe, (unintelligible).

13 Q. Okay. Now, according to Dr. Knight's report on page 32,
14 Mr. Blackwell told her that his father got him the answers to
15 this --- to the test? My dad got the test papers with the
16 answers on them. I remembered the answers.

17 A. I --- I --- I don't see where you're reading from.

18 Q. Last paragraph.

19 A. The last paragraph.

20 (Simultaneous speaking)

21 Q. -- interview. Okay. Page W2. My dad got the test
22 papers with the answers on them. I remembered the answers.
23 He told her this ---

24 A. Correct.

25 Q. --- according to her report? Okay.

1 Even if that's true, out of 145 questions, and he got 17
2 wrong. That would take some intellect --- wouldn't it?

3 A. Of course she's referring to there specifically with
4 the hazardous materials test. That --- that would not be
5 the same as the CDL test.

6 Q. Okay.

7 (Simultaneous speaking)

8 Q. And he still passed that test, correct?

9 A. I'm sorry?

10 Q. He eventually passed the test, correct?

11 A. That's my understanding, yes.

12 Q. Okay. And on page 24 of her report ---

13 A. I'm sorry, 24?

14 Q. Yes. Fifth paragraph. At the bottom of the fifth
15 paragraph, it says his father believed Mr. Blackwell failed
16 the CDL test the first time, and got it on the second time.
17 He does not know any further details of how Mr. Blackwell
18 taking the CDL test of anyone assisting him. So according to
19 Cletus, he didn't assist him? According to his statement?

20 A. Correct.

21 Q. Right. Okay. Did he ever tell you he got the answers
22 from somebody else in this test?

23 A. I don't recall him saying anything like that.

24 Q. (Unintelligible) is it?

25 A. No.

1 Q. Okay. Matter of fact, he told you he had to take the
2 hazardous materials test twice?

3 A. I --- I do recall that, yes.

4 Q. Okay. Now, adaptive functioning is an assessment of
5 typical performance ---

6 A. Correct.

7 Q. --- is that correct? Okay.

8 And --- and through your evaluation, you used the
9 DSM-IV ---

10 A. Correct.

11 Q. --- for the evaluation? Okay.

12 A. Correct.

13 Q. Okay. Now, according to DSM-IV, adaptive functioning is
14 the person's effectiveness in meeting the standards expected
15 for his or her age by his or her cultural group?

16 A. Correct.

17 Q. Okay. And you are aware that while Mr. Blackwell was at
18 home, he wasn't responsible for doing any chores? His mother
19 did all the chores?

20 A. Correct.

21 Q. Okay. Matter of fact, Dr. Knight on her report, page 36,
22 stated that her mother --- his mother told her that she did
23 everything for him as far as personal (unintelligible). The
24 bottom of page 36. That's yes?

25 A. Correct.

1 Q. Okay. Now, Mr. Blackwell got married and he moved in
2 with his wife Angela? He never lived alone; isn't that
3 correct?

4 A. That's correct.

5 Q. Okay. And his wife Angie took care of the bills, the
6 cleaning, the household chores, doctor's appointments, and all
7 the needs and cares of the children?

8 A. That's correct.

9 Q. Correct? Okay. Did you or Dr. Knight ever speak to any
10 man in assessing Dr. --- Mr. Blackwell's adaptive behavior
11 that did cooking, cleaning, or taking care of children's
12 responsibilities?

13 A. No, I did not. I can't address whether or not Dr.
14 Knight ---

15 (Simultaneous speaking)

16 Q. And it's not mentioned ---

17 A. I don't recall anything ---

18 Q. --- Dr. Knight's report is it?

19 A. --- in her report that would indicate that she had.

20 Q. Okay. And Ricky Blackwell grew up in Chesnee, South
21 Carolina; isn't that correct?

22 A. Correct.

23 Q. And that's a rural area of Spartanburg County?

24 A. Correct.

25 Q. Okay. So the --- the jobs that Angie did for Mr.

1 Blackwell, that could be normal behavior for any wife
2 (unintelligible) couldn't --- couldn't it be?

3 A. Sure.

4 Q. All right. Was there any talk, or did you discuss this,
5 or is in the --- this --- Dr. Knight's report if she ever
6 discussed who pays the bills in the house from anybody else
7 other than Mr. Blackwell?

8 A. I'm --- I'm not understanding the question. That's
9 not something I addressed in --- in discussing anything
10 with anybody about it or ---

11 Q. Okay. And --- and it's not in Dr. Knight's report that
12 she spoke to any other man and they discussed about who pays
13 the bills in the house?

14 A. I don't think so.

15 Q. Okay. So it is possible that the wives in that community
16 are also their task is to pay the bills also, that --- what
17 Angie and Ricky did was not abnormal for that community, is
18 that?

19 A. I think maybe the extent to which she did it may be
20 a little bit unusual, but I --- I wouldn't say it's
21 extremely unusual.

22 Q. But that could be normal behavior in that community? It
23 could be that everybody in that --- all the men in that
24 community, their wives pay all the bills; isn't that true?

25 A. Are --- some of the husbands may pay all the bills,

1 I mean, that would not be an unusual division of labor
2 necessarily.

3 Q. Well, to determine adaptive function, you have to look at
4 normal behavior for people inside the person's community;
5 isn't that correct?

6 A. Well, not necessarily that specific community, but
7 the culture in general. We were not comparing him just
8 for the people in Chesnee, South Carolina. We were
9 comparing him with, you know, people his age ---

10 (Simultaneous speaking)

11 Q. But you can't compare somebody ---

12 A. --- in general.

13 Q. --- in Chesnee with --- with somebody that live in New
14 York, can you?

15 A. I'm sorry?

16 Q. You can't compare somebody living in Chesnee as the same
17 as the somebody living in New York, can you?

18 A. There would be differences.

19 Q. There would be differences? New York City compared to
20 Chesnee ---

21 A. Sure.

22 Q. --- there's going to be differences? That's what I'm
23 saying.

24 A. Sure.

25 Q. Oh, okay. Okay. All right. But when you get a

1 basic --- a better gage of his adaptive functioning looking at
2 people in his peer group that surrounds him in the same
3 community?

4 A. I --- I --- I --- I'm not sure I'm following the
5 question here. I'm sorry.

6 Q. Adaptive functioning is determined by a person's
7 effectiveness in meeting the standards expected by his or her
8 age by his or her cultural group. Ricky Blackwell's cultural
9 group is people in Chesnee; isn't that correct?

10 A. Correct.

11 Q. Okay. It's not anybody living in New York, or Boston, or
12 Chicago; isn't that correct?

13 A. Correct.

14 Q. Okay. So you would be get a better gage of adaptive
15 functioning if you look at the people in his peer group in his
16 community; wouldn't that be the case?

17 A. Correct.

18 Q. Okay. And you've never --- or Dr. Knight never spoke to
19 any man that lives in Chesnee or surrounding areas about what
20 they do and all their functions within their family, did you?

21 A. Okay. I did not, no. I don't recall anything in
22 Dr. Knight's report ---

23 (Simultaneous speaking)

24 Q. That's not in Dr. Knight's report, is it?

25 A. Correct.

1 Q. Okay. So it could be possible that the work Angie did
2 for Ricky was normal for that community?

3 A. I would say, yes.

4 Q. Okay. Do you know who Dr. George Corbin is?

5 A. I'm sorry?

6 Q. Dr. George Corbin; are you aware who --- who that is?

7 A. I recognize the name.

8 Q. Okay.

9 A. You have to refresh my memory.

10 Q. All right. He was a forensic psychiatrist hired by the
11 defense to examine Mr. Blackwell?

12 A. Okay.

13 Q. All right. And his name is mentioned in Dr. Knight's
14 report?

15 A. Correct.

16 Q. Matter of fact, on page 40 and 41 of Dr. Knight's report
17 she refers to a consultation she did with Dr. Corbin to see if
18 any depression or head injury could have an effect on his IQ
19 test?

20 A. Correct.

21 Q. Okay. And in calling the Dr. Knight's report, Dr. Corbin
22 stated these facts would not have (unintelligible) of his IQ
23 test?

24 A. That's correct.

25 Q. However, according to your report on page 12, on the

1 second paragraph after diagnostic summary and conclusions, you
2 state the three significant risk factors in Mr. Blackwell's
3 case occurred during adulthood rather than the developmental
4 period. Those include a diagnosis and treatment, cancer, head
5 injury, and significant depression and anxiety; that's in your
6 report isn't it?

7 A. Correct.

8 Q. Okay. You also stated in your report that the excessive
9 use of alcohol can likewise have a significant impact,
10 although it's unclear whether that would be a significant
11 factor in Mr. Blackwell's case?

12 A. Correct.

13 Q. Okay. Were you informed of Dr. Corbin's pre-trial
14 interview with Mr. Blackwell?

15 A. I'm sorry?

16 Q. Were you informed about Dr. Corbin's pretrial interview
17 with Mr. Blackwell?

18 A. I don't recall.

19 Q. Okay.

20 A. I don't think I knew anything about it at the time
21 of my first evaluation.

22 Q. And nothing about that actual interview was in Dr.
23 Knight's report is there?

24 A. Other than ---

25 (Simultaneous speaking)

1 Q. Other ---

2 A. --- what you just read?

3 Q. (Unintelligible) I'm talking about the actual interview
4 itself when you spoke with Mr. Blackwell. Nothing about what
5 transpired is in Dr. Knight's report is there?

6 A. Correct.

7 Q. Okay. Matter of fact, I don't know if that actual
8 interview was even mentioned in her report; do you remember if
9 it even mentioned?

10 A. I don't recall it.

11 Q. Okay. So you're not aware of that Dr. Corbin also
12 told --- when Mr. Ricky Blackwell also told Dr. Corbin that he
13 smoked marijuana from age 18 to 35? You're not aware of that?

14 A. I was not aware of that.

15 Q. Okay. And he told you the same --- pretty much the same
16 thing; isn't that correct?

17 A. Correct.

18 Q. That's not in Dr. Knight's report, is it?

19 A. Correct.

20 Q. So you asked about prior drug use and alcohol use; isn't
21 that correct?

22 A. Correct.

23 Q. And Dr. Corbin asked about it; isn't that correct?

24 A. Correct.

25 Q. But there's nothing in Dr. Knight's report showing that

1 she ever referred to that or asked him about that; isn't
2 that ---

3 A. That's correct.

4 Q. --- correct? Okay. And prior alcohol and drug use is
5 important when you're making this type of evaluation; isn't
6 it?

7 A. It is important.

8 Q. Okay. Mr. Blackwell also told Dr. Corbin that he took
9 Valium, he tried acid once, he tried powder cocaine three or
10 four times. None of that is mentioned in Dr. Knight's report
11 is there?

12 A. Correct.

13 Q. Okay. But he told you these things --- similar
14 things ---

15 A. Similar things, yes.

16 Q. Mr. Blackwell also told Dr. Corbin he tried speed once.
17 You know if he told you this, or did it?

18 A. I don't recall that.

19 Q. Okay. That's not in her report either is that?

20 A. No.

21 Q. Okay. And the mixture of speed and marijuana could
22 greatly impair somebody's ability to drive; isn't that
23 correct?

24 A. It could, yes.

25 Q. Okay. So it could be possible that Mr. Blackwell had

1 these accidents not because he was intellectually disabled,
2 but high on speed and marijuana?

3 A. That could be, yes.

4 Q. Okay. Okay. According to Dr. Knight on --- report on
5 page 33, second paragraph, he stated: Angie always took care
6 of the bills, I never paid the bills. She kept the paycheck,
7 she knew everything. I'd have checks bouncing every day. I
8 never did write no check. That's what he told her?

9 A. Correct.

10 Q. Okay. Are you aware that he told Dr. Corbin that Angie
11 used the bills to upset him; you're not aware of that?

12 A. That Angie ---

13 Q. Used the bills to upset him?

14 A. I --- I don't recall that, no.

15 Q. Okay. Are you aware that he told Dr. Corbin that him and
16 Angie did the bills together? They figured out the bills
17 together; are you aware of that?

18 A. I was not aware of that.

19 Q. And that's not in her report; is it?

20 A. No, it's not.

21 Q. Okay. Are you aware that Mr. Blackwell also told Dr.
22 Corbin that Angie left when she was confronted with a bill by
23 him that she got from a check --- that they got from a check
24 cashing company? You're not aware of that are you ---

25 (Simultaneous speaking)

1 A. I don't recall that, no.

2 Q. And that's not in Dr. Knight's report either, is it?

3 A. I don't think so.

4 Q. So these are matters concerning bill payments that was
5 told to Dr. Corbin that's not in Dr. Knight's report isn't it?

6 A. Correct.

7 Q. And none of the information was made available to you?

8 A. Correct.

9 Q. Okay. You never was given by that defense counsel, the
10 notes taken by Dr. Corbin that were done in preparation for
11 the initial? You was never given the notes ---

12 A. No, I was not.

13 Q. Are aware that Mr. Blackwell told Dr. Corbin that he was
14 following Angie and he followed Angie and her current
15 boyfriend to the mall and wanted the police to arrest him?

16 (Simultaneous speaking)

17 A. I knew that was an issue. I don't know where I knew
18 that from, but ---

19 Q. Okay. That's not in her report, though is it? You
20 didn't get it out of Dr. Knight's report, did you?

21 A. I --- I can't say where I got it.

22 Q. Okay. Are you aware that Mr. Blackwell told Dr. Corbin
23 that he still loves Angie, but he was mad at Bobby the man
24 that she left him for; are you aware that he told Dr. Corbin
25 that?

1 A. I was aware of that issue. Again, I --- I don't
2 know where that awareness came from.

3 Q. That is not in Dr. Knight's report is it?

4 A. I --- I don't recall seeing it there.

5 Q. You don't recall seeing it in Dr. Knight's report, do
6 you?

7 A. No.

8 Q. Okay. So none of this information I just told you is in
9 Dr. Knight's report is it?

10 A. Correct.

11 Q. Okay. And you was never given this information by the
12 applicant; isn't that correct?

13 A. Information ---

14 Q. I just mentioned from Dr. Corbin?

15 A. Correct. Correct.

16 Q. And Dr. Knight was hired by his counsel; isn't that
17 correct?

18 A. I'm sorry?

19 Q. Dr. Knight was hired by the applicant's counsel?

20 A. Right. Yes, sir.

21 Q. Now, Dr. Knight spoke to you about this case and did a
22 consultation with you also; isn't that correct?

23 A. Very briefly, yes.

24 Q. Okay. And when you were first notified by --- by Dr.

25 Knight, you e-mailed Ms. Brown asking her --- well, informing

1 her that Dr. Knight wants to talk to you; isn't that ---

2 A. Correct.

3 Q. So you had known Ms. Brown's e-mail address?

4 A. I did.

5 Q. And she told you and you --- you can speak to her if you
6 want?

7 A. Correct.

8 Q. Now, during this conversation you and her had discussed
9 genetics testing; isn't that correct?

10 A. Correct.

11 Q. And you told her that you would have considered it?

12 A. I did.

13 Q. Okay. But prior to trial, you never inquired to Mr.
14 Blackwell's counsel about any genetics testing, did you?

15 A. Prior to trial? No.

16 Q. Yeah. Okay. And Mr. McGuire, you was familiar with him.
17 You knew him ---

18 A. Correct.

19 (Simultaneous speaking)

20 Q. --- okay. And you knew about the low IQ scores with
21 his --- daughter and her children --- his grandchildren?

22 A. Various family members, yes, sir.

23 Q. All right. And you hadn't inquired about a genetics
24 testing, because that's just something that wasn't done back
25 in 2013? That wasn't normally ---

1 A. That's not something I would have thought of as part
2 of his evaluation, that is correct.

3 Q. Would --- in that --- was that normal for any
4 psychologist (unintelligible) that you know of?

5 A. I can't say there --- I can't say that the
6 psychologist wouldn't have done that, but it certainly
7 was not a normal practice among people that I've worked
8 with in South Carolina and Georgia at that time.

9 Q. Okay. And --- and that's because according to DSM a
10 diagnosis of intellectual disability should not be assumed
11 because of a particular genetic or medical condition?

12 A. That's correct. Yes.

13 Q. And you told Dr. Knight that a lack of adaptive deficits
14 in the developmental period was a missing piece according to a
15 report; that's what you told her?

16 A. I wouldn't say a missing piece. My opinion back in
17 2014 was because I didn't see significant evidence of
18 adaptive functioning --- deficit (unintelligible)
19 adaptive functioning during that developmental period.

20 Q. Okay.

21 A. So that --- that was what I would need to see more
22 evidence of ---

23 Q. Okay.

24 A. --- to --- to have a different opinion.

25 Q. All right. Okay. On page 36 of Dr. Knight's report, she

1 mentioned that Mr. Blackwell during the developmental period
2 was the socially awkward, did not speak up, kept to himself,
3 made fun of, and had low self-esteem. And she mentioned these
4 as a --- mentioned these as adaptive deficits; isn't that
5 correct?

6 A. Correct.

7 Q. Okay. Aren't these normal behavior for millions of
8 children in the United States?

9 A. It can be.

10 Q. Okay. Are there children all over the world that are
11 shy?

12 A. Sure.

13 Q. Are there children all over the world that won't speak up
14 in class?

15 A. Sure.

16 Q. Okay. Are there children all over the world that bully?

17 A. Huh?

18 Q. Bully? That are bullied?

19 A. Sure.

20 Q. Okay. So because of these things that Mr. Blackwell was
21 as a child, that doesn't make (unintelligible) does it?

22 A. That in itself would not. That's correct.

23 Q. Also on page 36 you mentioned that Mr. Blackwell was shy
24 and unsure of himself in any formalized social activities such
25 as swimming. That he never learned how to swim good and was

1 scared of water; that's correct, right?

2 A. Correct.

3 Q. Okay. There are a lot of children that don't know how to
4 swim ---

5 A. Sure.

6 Q. --- in this country; that's correct? Matter of fact, a
7 lot of children in rural areas don't know how to swim; isn't
8 that correct?

9 A. I would assume that's true.

10 Q. Okay. And I'm not good swimmer myself, so I would never
11 (unintelligible).

12 Not wanting or being afraid around water, isn't that
13 normal behavior, a person not being able to swim well?

14 A. I would say so.

15 Q. Because you don't want to drown; isn't that correct?

16 A. Correct.

17 Q. Okay. So the fact that Mr. Blackwell did not know how to
18 swim and was afraid of water, does that make him
19 intellectually disabled?

20 A. That in itself does not, no.

21 Q. Okay. Actually, that makes him pretty smart, because he
22 doesn't want to drown; isn't that correct?

23 A. That's one way to look at it. Yes, sir.

24 Q. Now on 36, she also mentioned that Mr. Blackwell did not
25 participate in formalized social or curricular activities?

1 A. Correct.

2 Q. Okay. Look at the report on page 10, Mr. Blackwell
3 described his childhood as good. This is saying maybe fourth
4 paragraph adaptive behavior, developmental. And it states
5 here Mr. Blackwell described his childhood as good, there were
6 go carts, mini bikes, bicycles. His daddy taught him how to
7 ride a bike. He had few friends, stayed with his family and
8 lots of cousin stuff. They rode dirt bikes and motorcycles
9 and went to car races. So that does show some type of
10 interaction is what it shows?

11 A. That shows his response, and that's what he's
12 saying.

13 Q. Is there any proof in this report that he never rode
14 minibikes or never went out with his cousins ---

15 A. No, there's not.

16 Q. --- okay. It also says --- I mean, she also said that
17 Mr. Blackwell didn't participate in any curricular ---
18 extracurricular activities. But according to him he played
19 basketball, football, and baseball in grammar school?

20 A. Correct.

21 Q. (Unintelligible) okay.

22 You were also given by the applicant's counsel the report
23 from Dr. Arlene Bowers Andrews ---

24 A. I was.

25 (Simultaneous speaking)

1 Q. Okay. And like Dr. Knight, Dr. Andrews was also hired by
2 the applicant in this case; isn't that correct?

3 A. Correct.

4 Q. Did Dr. Andrews' report also includes you changed your
5 opinion?

6 A. It did.

7 Q. Now, looking at page 10 of her report, second
8 paragraph ---

9 THE COURT: That's --- that's a good place for us to
10 take a break. Page 10.

11 MR. EVANS: All right.

12 (Off the record)

13 THE COURT: Mr. Blackwell has waived his presence.
14 I did get a copy of that waiver as part of the record,
15 but we ---

16 MS. VANN: That's the original ---

17 THE COURT: All right. Let's ---

18 (Simultaneous speaking)

19 THE COURT: --- let's be sure and have it marked a
20 Court's exhibit and make it part of the record ---

21 MS. VANN: Okay.

22 THE COURT: --- as well. All right. Mr. Brown ---
23 I'm sorry, Mr. Evans.

24 MR. EVANS: Want to waive a couple of things. First
25 of all, this case is moving a little faster than we

1 thought. And ---

2 THE COURT: Oh, really?

3 MR. EVANS: Yes.

4 THE COURT: I'm shocked.

5 MR. EVANS: And so we have an Dr. Nelson, Robert
6 Nelson, that we had hired to testify. And also I'm
7 (unintelligible) the solicitor. They won't be available
8 till Wednesday. I don't know ---

9 THE COURT: Till Wednesday?

10 MR. EVANS: Yes, sir.

11 THE COURT: All right. I was anticipating that we
12 would have all of our witnesses through by the day
13 tomorrow. Well, we'll do that.

14 MR. EVANS: Okay.

15 THE COURT: Let --- let me ask you while we're on
16 that, were --- there were --- I --- I got a motion
17 regarding Dr. Nelson's testimony. Have you all
18 resolved ---

19 MR. EVANS: No, we haven't.

20 THE COURT: Okay.

21 (Simultaneous speaking)

22 MR. EVANS: --- this afternoon.

23 THE COURT: Okay. All right. Well, we'll deal with
24 that when it comes up.

25 MR. EVANS: Okay.

1 THE COURT: All right. No way we can get the
2 solicitor Dr. Nelson here tomorrow?

3 MR. EVANS: No, sir.

4 THE COURT: I mean, I'm planning on being here on
5 Wednesday for non --- Common Pleas non-jury. Does it
6 look like logistically we will --- when we finish today
7 that we'll have anything for tomorrow? Can I move my
8 Common Pleas non-jury up to --- for tomorrow?

9 MS. BROWN: That would be good. That's possible.

10 THE COURT: And then will we --- will we be able to
11 conclude all testimony on Wednesday?

12 MS. BROWN: We should. I'm not going to be --- Dr.
13 Nelson won't be long (unintelligible) I don't know how
14 long (unintelligible).

15 THE COURT: Okay. Mr. Grose, do you have an opinion
16 where we are just procedurally and whether we'll finish
17 on Wednesday?

18 MR. GROSE: I'm taking notes of all of his questions
19 and won't ask the same questions without
20 (unintelligible) --- I'm kidding.

21 I --- we --- we will be finished on Wednesday.

22 THE COURT: All right. Well we'll --- what ---
23 whatever time we need we do, but I just --- it's very
24 helpful if we have some idea where we are.

25 Madam Clerk ---

1 CLERK: (Unintelligible).

2 THE COURT: --- well, I'll talk to you during the
3 next break about what we have (unintelligible) matters.

4 CLERK: (Unintelligible).

5 THE COURT: All right. Thank you. All right. Mr.
6 Evans.

7 MR. EVANS: Thank you, Your Honor.

8 BY MR. EVANS:

9 Q. Dr. Brown, I asked you to refer to Dr. Andrews' report on
10 page 10.

11 A. Okay.

12 Q. And the second paragraph --- top of the second paragraph,
13 she mentioned that as a child and youth, Ricky some ---
14 sometimes suffered ridicule and exploitation with people
15 outside his family. This caused him to feel ashamed and to
16 avoid situations where he might be seen by others as
17 incompetent. That's stated on there --- on the --- on the
18 report; isn't that correct?

19 A. Correct.

20 Q. Okay. Isn't that normal child behavior for somebody who
21 is shy and somebody who may be bullied or treated badly by
22 other kids?

23 A. That can be.

24 Q. Okay. And most children they do not like to do things
25 they're not good at; isn't that correct?

1 A. I'm sorry?

2 Q. Most children are not --- don't like to do things they're
3 not good at?

4 A. Correct.

5 Q. And sometimes they have to be forced by their parents to
6 do certain things?

7 A. Correct.

8 Q. So the fact that Mr. Blackwell avoided situations at
9 times does not reflect any intellectual disability, does it?

10 A. That in itself would not necessarily.

11 Q. Also on page 10, the last paragraph, she stated in
12 summary during the early years Ricky's social history
13 indicates that he adapted through these patterns, staying
14 close together as family and help one another, relying on
15 family for guidance and support. Be compliant at school and
16 do the work to the best of your ability. Avoid taking on
17 tasks that might be hard to do, or cause failure or
18 humiliation. Accept that his academic performance was less
19 competent than most other students. Avoid shame by avoiding
20 social relations outside the extended family and church. Keep
21 to yourself to avoid getting bullied or embarrassed. And be
22 kind to others and live according to Christian values. That's
23 what she states on page 10 of her report?

24 A. Correct.

25 Q. Okay. Aren't these traits of a normal child?

1 A. They can be.

2 Q. Okay. There is nothing in that statement that would
3 reveal that Mr. Blackwell's intellectually disabled, is there?

4 A. Not if you're looking just to that one paragraph.

5 Q. Okay. But there's nothing there showing he's
6 intellectually disabled? And this is done during the
7 developmental period, all these things?

8 A. I --- I would accept that paragraph in the context
9 of this is how he's adapting to those disabilities.

10 Q. Okay. Or could it be he doesn't have any disabilities,
11 he's a normal child?

12 A. A normal child to do the same things, correct.

13 Q. Okay. On page 11, second paragraph, Dr. Andrews stated
14 that --- that Ricky could not do math, so he relied on Angie
15 for maths like paying bills. That's stated there, isn't it?

16 A. Correct.

17 Q. Okay. Now, I'm looking at your notes, Respondent's
18 Exhibit 1 for July 31, 2023. And when you go to page 8, you
19 asked him math questions; did you not?

20 A. I did.

21 Q. Okay. You asked him what is 5 plus 3 and he answered 8;
22 which is correct?

23 A. Correct.

24 Q. Okay. You asked him 4 plus --- 14 plus 9, he answered
25 23; that's correct?

1 A. Correct.

2 Q. You asked him 6 times 4, and he answered 24 ---

3 A. Correct.

4 Q. --- that's correct? Okay.

5 You asked him 12 minus 5 and the answer is 7?

6 A. Correct.

7 Q. Okay. That's correct. And you also asked him 20 minus
8 750, he answer 1250?

9 A. Correct.

10 Q. Correct. So this shows that Ricky could do basic math?

11 A. That's pretty simple math.

12 Q. But he can do it?

13 A. Correct.

14 Q. Okay. Dr. Brown, have you ever balanced a checkbook?

15 A. I have.

16 Q. Don't you use simple math to balance a checkbook?

17 A. I use a calculator.

18 Q. But you don't use simple math, add, subtract, to balance
19 a checkbook?

20 A. Sure, but the math is not going to be as simple
21 as --- as the numbers that we're looking at here.

22 Q. Well, I mean, he can add, he can subtract, that shows it
23 right here; isn't that correct?

24 A. Well, the most difficult question asked there was

25 20 --- the question sounded like if you gave the clerk a

1 \$20 bill, you spent 7.50, how much change to you get.
2 12.50 and that's easy. You know, if you got \$103.27 in
3 your checking account, you spend \$21.15, you know, what's
4 the difference? How much is left? You know, that ---
5 that's a much more difficult question. I can't even
6 remember the numbers, much less do it in my head.

7 Q. Okay.

8 A. But I think he would find that level of math far
9 more difficult than these simple ---

10 Q. But he could add ---

11 A. --- questions here.

12 Q. --- and subtract?

13 A. He can add and subtract, yes.

14 Q. And he can multiply. 6 times 4 and 24; isn't that
15 correct?

16 A. Well, single digits, (unintelligible) on that.

17 Q. Well, I mean, but that shows he can add and subtract, so
18 he --- had ability to balance a checkbook, 'cause it's simple
19 add and subtract?

20 A. I wouldn't say that necessarily equates to being
21 able to balance a checkbook. It is the same skill, but
22 at a --- at a higher level.

23 Q. Okay. But Dr. Andrews saying he could not subtract was
24 incorrect; isn't it?

25 A. I'm sorry?

1 Q. Dr. Andrews stating he could not add and subtract, or
2 couldn't do math, is incorrect? Dr. Andrews --- excuse me.
3 Dr. Andrews.

4 A. I'd --- I'd have to look at where she said that.

5 Q. Page 11, Ricky could not do math, so he relied on Angie
6 for matters like paying bills.

7 He could do math according to your notes; so that's
8 incorrect, isn't it?

9 A. He could do math, but I don't --- I don't know that
10 that necessarily justifies Dr. Andrews' statement in ---
11 in that context.

12 Q. Well, she didn't mention he can do difficult math, or he
13 can do higher function math, she said, "math," which ---

14 A. That --- that's what she said.

15 Q. That's what this is, math, isn't it?

16 A. It is.

17 Q. So her statement's incorrect? He could do math?

18 A. If she's saying he can't do math, yes, that
19 statement is incorrect.

20 Q. And of course you didn't provide Mr. Blackwell these
21 answers? He answered them on his own; isn't that correct?

22 A. I'm sorry.

23 Q. He answered these equations on his own?

24 A. Yes.

25 Q. Okay. And you the only one that tested him on these

1 different equations? There's no evidence that Dr. Knight nor
2 Dr. Andrews ever tested him regarding simple math problems as
3 these?

4 A. As far as I --- as I know, that's correct. Yes.

5 Q. And as I reiterate, you were appointed by the court, you
6 were not hired by either side to do ---

7 A. That's correct.

8 Q. --- the evaluation. Unlike Dr. Andrews, Dr. Knight was
9 hired by the applicants?

10 A. That's correct.

11 Q. Dr. Andrews was talking about the intellectual
12 limitations of Mr. Blackwell's family, but that's something he
13 was already aware of when you made your initial evaluation;
14 isn't that correct?

15 A. I think she provided more information, but I was
16 generally aware of those issues. Yes, sir.

17 Q. Okay. And the limitations by the family did not cause
18 you to find him --- you still find him not to be
19 intellectually disabled in your initial report even though you
20 knew about these limitations?

21 A. That's correct.

22 Q. Okay. Now, on page 16 of Dr. Andrews' report, she talked
23 about the substance abuses of then Mr. Blackwell's daughter,
24 Heather, at 14. And she stated that Heather was abusing
25 substances such as speed, crack, beer, vodka, and unprescribed

1 medications. It states that on page 16.

2 A. Uh-huh. Correct.

3 Q. Okay. These are basically the same type of drugs that
4 Mr. Blackwell told you and Dr. Corbin he was using also?

5 A. Correct.

6 Q. But that is not mentioned anywhere in her report that he
7 also used these type of drugs?

8 A. In Dr. Andrews' report?

9 Q. In Dr. Andrews' report.

10 A. I don't recall.

11 Q. Behavioral evaluations for intellectual disability could
12 be challenging, could they?

13 A. Challenging?

14 Q. Yes.

15 A. I'm not sure that's a strong enough word.

16 Q. Okay.

17 A. Yes, they're very challenging.

18 Q. And the reason why because there's not a scan that you
19 can point to. Like somebody has cancer, you can state there's
20 cancer right there, but you cannot do that for intellectual
21 disability?

22 A. It's probably not (unintelligible) of cancer either,
23 but I --- I would agree with that statement, yes.

24 Q. Okay. All right. And it's challenging, because you have
25 to do a backwards evaluation; isn't that correct?

1 A. In cases with the person is well beyond the
2 developmental ---

3 (Simultaneous speaking)

4 Q. Right. Okay. 'Cause it's more important to consider the
5 whole of the evidence, not just --- just the pieces?

6 A. Correct.

7 (Simultaneous speaking)

8 Q. --- right. Okay. Like you rarely have to consider a
9 child's long-term drug abuse of a child; isn't that correct?

10 A. Well, with a child there is a long-term ---

11 (Simultaneous speaking)

12 Q. Right. (Unintelligible) that. But you have to
13 (unintelligible) that over adult; isn't that correct?

14 A. Correct.

15 Q. Okay. Not consider the driving record of a child because
16 most children don't drive ---

17 A. Correct.

18 Q. But you have to consider that of an adult. When you do
19 these type evaluations; isn't that correct?

20 A. Correct.

21 Q. Okay. And it's more heavily dependent on what ifs, isn't
22 it?

23 A. We --- we try to get rid of the what ifs as much as
24 you can, but you --- you can't get rid of all of them.

25 So yes, that --- I --- I would agree with that.

1 Q. Okay. And personal choices such as education, family,
2 alcohol, drug abuse, can cloud the evaluation, can't it?

3 A. I'm --- I'm not sure I understand the question.

4 Q. I mean, these certain things you have to consider,
5 especially if you don't have an IQ test of a person in the
6 developmental period. You have to consider, you know,
7 personal choices, family, certain things like that when you
8 make a determination regarding intellectual disability; isn't
9 that correct?

10 A. I --- I think that would be true.

11 Q. Okay. Now, according to e-mails that were submitted
12 during the deposition, you was contacted by appellate
13 applicant's counsel, Lindsey Vann on March 10, 2023?

14 A. That's correct.

15 Q. Okay. And this is what, 20 days before your testimony?

16 A. That's correct.

17 Q. Okay. And you decide to speak with her counsels on
18 applicant's counsel on March 16th, about two weeks before your
19 testimony?

20 A. I decided to speak with them?

21 Q. Yes.

22 A. That's when we had a Zoom meeting, yes.

23 Q. Okay. And at that time, they gave you Dr. Knight's, Dr.
24 Andrews', and (unintelligible) geneticist's reports for you to
25 read ---

1 A. Well, they e-mailed that to me shortly ---

2 (Simultaneous speaking)

3 A. --- after that --- that meeting, yes.

4 Q. -- Okay. Each of these individuals were individuals that
5 were hired by the applicant; isn't that correct?

6 A. Correct.

7 Q. They never gave you Dr. Corbin's notes who evaluated
8 the --- Mr. Blackwell prior to trial?

9 A. No.

10 Q. They also gave you the PCR application?

11 A. They did.

12 Q. Okay. Now, on March 22, eight days before your
13 testimony, you were informed of applicant's counsel that you
14 have changed your opinion; isn't that correct?

15 A. Correct.

16 Q. Okay. At that time, you never notified anyone at the
17 Attorney General's Office about this change?

18 A. I did not.

19 Q. Even though you had Ms. Brown's e-mail address?

20 A. I did.

21 Q. And at that time, you were not working for DDSN when you
22 made that determination?

23 A. That's correct.

24 Q. And this is the first time you ever --- ever changed your
25 opinion regarding intellectual disability; isn't that correct?

1 A. I'm sorry?

2 Q. This is the first time you ever changed your opinion?

3 A. Correct.

4 Q. Okay. And this change of opinion didn't come from any
5 new evidence, any newly found IQ scores, any new tests, or
6 anything new that came to -- in your attention that occurred
7 during developmental period; isn't that correct?

8 A. I --- I would not agree with that. I think some of
9 the information that Dr. Knight provided in her report,
10 and Dr. Andrews and her report was new information.

11 Q. Okay. Was it new information to you, or just was it
12 newly found by them?

13 A. I'm --- I'm ---

14 Q. Was it new information to you, or was it newly found by
15 them? Was the information always --- always existing?

16 A. Well, the information always existed, it was
17 information that I was unaware of.

18 Q. Okay. Now on page 12 of your report, the second
19 paragraph after the diagnostic summary and conclusion, you
20 stated that Mr. Blackwell demonstrates a significant deficit
21 in intellectual function, and an argument can be made and also
22 demonstrates deficits in adaptive function.

23 A. Correct.

24 Q. That's stated --- okay. It's also stated that it's not
25 clear Mr. Blackwell met this criteria prior to age 18. That's

1 stated also?

2 A. Correct.

3 Q. Okay. And you stated there are three significant risk
4 factors that occurred in adulthood; that's stated in your
5 report also?

6 A. Correct.

7 Q. Okay. First of all, you said diagnosis and treatment for
8 cancer?

9 A. Correct.

10 Q. Okay. Now, in Dr. Knight's report, she mentioned the
11 chemotherapy that Mr. Blackwell received, but she never
12 mentioned the actual cancer itself, does she?

13 A. I don't recall.

14 Q. Okay. And you mentioned diagnosis of cancer. That means
15 you could have possibly considered that, didn't you? 'Cause
16 you mentioned diagnosis and treatment. You just doesn't see
17 treatment do you, in your report?

18 A. Correct.

19 Q. Okay. And Mr. Blackwell had Hodgkin's disease which is a
20 blood-type cancer that can go anywhere in the body
21 (unintelligible); isn't than correct?

22 A. Correct.

23 Q. Okay. So it can be in his brain also?

24 A. Correct.

25 Q. Okay. So I asked you the cancer itself could be an

1 (unintelligible) factor regarding his IQ scores, couldn't it
2 be?

3 A. I think when I wrote the report, I --- I was more
4 concerned about those having an impact on adaptive
5 function and intellectual functioning. Certainly they
6 could have an impact on the intellectual functioning, I
7 didn't feel like in Mr. Blackwell's case it necessarily
8 did, but ---

9 Q. Okay. And you mentioned a point of a head injury on the
10 ATV where Mr. Blackwell was unconscious for 20 to 25 minutes?

11 A. Correct.

12 Q. Okay. Are you aware Mr. Blackwell was also knocked
13 unconscious in one of his truck accidents?

14 A. I don't recall that.

15 Q. Okay. And that's not mentioned in Dr. Knight's report,
16 is it?

17 A. I --- I don't recall see anything about that.

18 Q. You also mentioned significant depression and anxiety ---

19 A. Correct.

20 Q. --- in your report? Okay. But there was something
21 mentioned in your report that was not mentioned in Dr.
22 Knight's or Dr. Andrews's report, his excessive use of
23 marijuana; isn't that correct?

24 A. Correct.

25 Q. Okay. And you cannot say that a use of marijuana since

1 he was 17 to the authorities would not have an adverse effect
2 on the mental ability?

3 A. I'm not an expert in substance abuse disorders
4 or --- or using marijuana. I think it could have an
5 effect. Whether or not it did, I --- I don't know that
6 in Mr. Blackwell's case it was (unintelligible).

7 Q. Okay. But --- and that's why you asked about it; isn't
8 that correct?

9 A. Right.

10 Q. Because it could have an effect? You wanted to know if
11 he did any type of illegal drugs, especially during
12 developmental period ---

13 A. Correct.

14 Q. --- isn't that correct?

15 Dr. Knight or Dr. Andrews, there was no reflection in
16 their report they even went to this route or asked him about
17 this, is there?

18 A. That's correct.

19 Q. Okay. Now, Mr. Blackwell received IQ tests from yourself
20 and Dr. Calloway after his arrest and charge with
21 (unintelligible) charged with murder and --- and the State was
22 seeking the death penalty; is that correct?

23 A. Correct.

24 Q. Okay. He was never given an IQ test in the
25 (unintelligible)?

1 A. Correct.

2 Q. And because he was in adjunct classes, that doesn't mean
3 he's intellectually disabled, does it?

4 A. Not necessarily, no.

5 Q. And although he was in adjunct classes, he was on pace to
6 graduate, wasn't he ---

7 A. Well, that was my ---

8 Q. --- (unintelligible)?

9 A. --- understanding at the time, yes.

10 Q. Okay. All right. That was never denied by any other
11 report you saw since, has it?

12 A. Well, after reading Dr. Knight's report, I'm not
13 sure that it is a true statement (unintelligible).

14 Q. Well ---

15 A. At least not in the traditional sense of earning a
16 diploma.

17 Q. Okay. So he finish school, he would have graduated,
18 right? Because everyone who finishes school have a --- enough
19 hours to graduate; isn't that correct?

20 A. Well, there --- there are a lot of different paths
21 to that now, but ---

22 (Simultaneous speaking)

23 A. --- with passing grades and enough credits, you will
24 get the diploma.

25 Q. Okay. According to his records, he was on pace to arrive

1 at the sufficient number of hours to graduate from high
2 school?

3 A. That was the way I interpreted the records, yes.

4 Q. Okay. All right. And you initially found him not to be
5 intellectually disabled, correct?

6 A. Correct.

7 Q. And Judge Couch who was the trial judge in the case also
8 made that ruling, that he was ---

9 A. I'm sorry?

10 Q. --- Judge Couch ---

11 A. Yes.

12 Q. --- who was the trial judge ---

13 A. Yes. Yes. Correct.

14 (Simultaneous speaking)

15 Q. --- and that decision was upheld by the South Carolina
16 Supreme Court, wasn't it?

17 A. It was.

18 Q. Now, you gave Mr. Blackwell an IQ test on November 14,
19 2013; is that correct?

20 A. Correct.

21 Q. Okay. And at that time Mr. Blackwell was 54 years old?

22 A. Correct.

23 Q. Okay. And Dr. Calloway gave Mr. Blackwell an IQ test in
24 June of 2012; are you aware of that?

25 A. Correct.

1 Q. Okay. And at that time Mr. Blackwell was 53, correct?

2 A. Correct.

3 Q. Okay. Now, in your report you said you followed
4 DSM-IV-TR to make your diagnosis of Mr. Blackwell?

5 A. Correct.

6 Q. Okay. Now, the DSM-IV-TR, the diagnosis material for
7 mental retardation at the time on intellectual ability, mental
8 retardation, was a significantly sub average intellectual
9 function and IQ of approximately 70 or below on --- on an
10 individually administered IQ test, current deficits or
11 impairments in adaptive function, and the onset is before the
12 age of 18 years. Those are the three prongs that's in the
13 DSM-IV to determine intellectual ---

14 A. That's correct.

15 Q. --- disability, correct? Okay.

16 And it's not a either/or thing, you have to satisfy ---

17 A. Have to have all the points.

18 Q. Okay. Now, on the test given Mr. Blackwell while he was
19 in school was achievement tests. They were not IQ tests, were
20 they?

21 A. Correct.

22 Q. Okay. So they did not qualify as an IQ test according to
23 the DSM-IV?

24 A. Well, I don't think the DSM-IV would address
25 that ---

1 Q. Well?

2 A. --- as directly as ---

3 Q. Well, I mean, the DSM-IV does say, IQ of approximately 70
4 or below on an individually administered IQ test?

5 A. Correct. That's correct.

6 Q. Those tests were not individually administered IQ
7 tests ---

8 A. That's correct.

9 Q. --- were they? So would not --- would not count in
10 making a determination of a person's IQ, would they --- would
11 they --- would they?

12 A. In most circumstances, that would be true.

13 Q. Okay. And Mr. Blackwell never had a individually
14 administered IQ test prior to (unintelligible)?

15 A. As far as we know, no.

16 (Simultaneous speaking)

17 Q. Okay. The only two IQ tests that was ever given to Mr.
18 Blackwell was by yourself and Dr. Calloway?

19 A. That's correct.

20 Q. And he was in his 50s at the time, well beyond the
21 developmental ---

22 A. Correct.

23 Q. Okay. Now, the first criteria that's listed in DSM is
24 significantly sub average intellectual functioning, an IQ of
25 approximately 70 or below on an individually administered IQ

1 test. It states that in the DSM-IV?

2 A. Correct.

3 Q. And that's the DSM-IV that you used to make this --- or
4 evaluation; isn't that correct?

5 A. A DSM-IV-TR.

6 Q. TR, correct. Thank you.

7 A. Yes.

8 Q. And the last criteria, the onset has to be before age 18?

9 A. Correct.

10 Q. Okay. So in order to be determined intellectually
11 disabled, you must satisfy all three prongs; isn't that
12 correct?

13 A. Correct.

14 Q. Well, if Mr. Blackwell did not have an IQ test in the
15 developmental period, he did not satisfy the first prong, did
16 he?

17 A. We can't penalize someone because they weren't given
18 a test. There --- there are of lots of people who never
19 had a reason to be tested during the developmental
20 period. So if someone's in their 50s, the first time
21 they get a test, we basically have to look back and see
22 has anything changed that would make us believe the score
23 would have been significantly higher back then.

24 Q. Okay.

25 A. But we --- but we can't disqualify someone just

1 because they didn't get an IQ test before they turned 18.

2 Q. And you agree that adult habits are important to make a
3 determination of a person's IQ test after the developmental
4 period?

5 A. I'm sorry?

6 Q. You agree that adult habits are important to consider
7 when a person does an IQ test after the developmental period?

8 A. Adult habits?

9 Q. Yes. Smoking, drinking, drug use, something, you
10 know ---

11 A. They're important to consider, but we would need
12 substantial evidence to --- to make us believe that that
13 did impact the score.

14 Q. Okay. And you said in your report itself that some
15 (unintelligible) factors regarding his IQ test?

16 A. Yeah, they could. Sure.

17 Q. You report the significance --- three significant factors
18 in your report on page 12 that occurred in adulthood, he was
19 diagnosed and treated for cancer, head injury, and systemic
20 depression and anxiety. You mentioned those three things?

21 A. Correct.

22 Q. Okay. And you also asked about the drug use; isn't that
23 correct?

24 A. Correct.

25 Q. Now, in Dr. Knight's report, she talks to Dr. Corbin

1 regarding any type of intervening factor regarding the head
2 injuries he suffered. That's her consultation ---

3 A. Correct.

4 Q. --- okay.

5 A. Yes.

6 Q. She never talked to a neurologist, did she?

7 A. As far as I know, no.

8 Q. Okay. And Dr. Corbin is not a neurologist, he's a
9 psychiatrist; isn't that correct?

10 A. I don't know what Dr. Corbin's specialty is.

11 Q. Okay. All right. And Mr. Blackwell has COPD also,
12 correct?

13 A. Correct.

14 Q. Okay. What is --- is a breathing disease; isn't that
15 correct?

16 A. I'm sorry?

17 Q. A breathing disease? COPD?

18 A. Correct. Yes.

19 Q. Okay. There is nothing in Dr. Knight's report referring
20 to her talking to pulmonologist regarding whether COPD could
21 be a intervening factor, was there?

22 A. I don't recall anything.

23 Q. Okay. All right. Now, on page 39 of Dr. Knight's
24 report, at the top of 39, she states possible intervening
25 factors. (Unintelligible) testing produced IQ scores well

1 within the range of intellectual disability. Mr. Blackwell's
2 intellectual and neuropsychological testing occur later in
3 life, 2012, 2013, 2020. Decades after the conclusion of the
4 developmental period, thus consideration was given to the
5 possibility of any intervening factors which may be
6 responsible for lowering his intellectual function after the
7 developmental period. Possible factors include exposure to
8 chemotherapy, major depression, and headaches; that states in
9 the report, isn't that correct?

10 A. Correct.

11 Q. Okay. Now, according to you and Dr. Corbin, Mr.
12 Blackwell smoked marijuana on a daily basis from the age of 17
13 to 35?

14 A. Correct.

15 Q. Okay. He also tried cocaine, correct?

16 A. Correct.

17 Q. Tried --- he took Valium?

18 A. Correct.

19 Q. Speed, correct?

20 A. Correct.

21 Q. Drank a 12-pack every weekend, correct?

22 A. Well, and again, all of this is by self-report,
23 so ---

24 Q. Okay. You got no reason to believe he was lying, do you?

25 A. No.

1 Q. Okay. And he huffed paint once ---

2 A. Correct.

3 Q. --- correct? Not one of those factors are mentioned in
4 intervening factors in Dr. Knight's report, is there?

5 A. I don't think so.

6 Q. Okay. And each one of them can cause mental impairments,
7 can't they?

8 A. I don't think that I'll say each one could, but sort
9 of the combination of all or long-term use of any of them
10 could be a ---

11 Q. Okay.

12 A. --- factor.

13 Q. If you do cocaine you receive a high; isn't that correct?

14 A. Correct.

15 Q. Okay. And that's --- that caused by the (unintelligible)
16 it does to the brain; isn't that correct?

17 A. Well, it can.

18 Q. Okay. You smoke marijuana to get a high; isn't that
19 correct?

20 A. Sure.

21 Q. Okay. And that's caused by the effects of the THC that
22 does on the brain; doesn't (unintelligible)?

23 A. Correct.

24 Q. Okay. You drink alcohol and get intoxicated; isn't that
25 correct?

1 A. Correct.

2 Q. And that is done by the effects the alcohol does on your
3 brain matter; isn't that correct?

4 A. It can.

5 Q. Okay. So all of these drugs and alcohol can affect your
6 brain; isn't that correct?

7 A. Sure.

8 Q. Okay. So those are --- should be considered intervening
9 factors when you make a determination on a IQ test done
10 40 years after developmental period; isn't that correct?

11 A. Sure.

12 Q. Okay. And these things were not considered by Dr.
13 Knight, were they?

14 A. As far as the report indicates, no.

15 Q. Okay. But you asked about them, didn't you?

16 A. I did.

17 Q. And Dr. Corbin did, far as you know?

18 A. Yes.

19 Q. Okay. Now, you said that you changed your opinion solely
20 on the reports of Dr. Knight, correct?

21 A. Well, the information provided in Dr. Knight's
22 report and supported by Dr. Andrews' report.

23 Q. Okay. And this was done nine years after your initial
24 diagnosis, correct?

25 A. Correct.

1 Q. But Dr. Knight's report doesn't mention the 17-year daily
2 history of marijuana use by Ricky Blackwell, does it?

3 A. It doesn't.

4 Q. Okay. Dr. Knight's report does not mention the
5 definition of adjunct classes for the full definition of
6 adjunct classes that were given to the defense by certain
7 teachers in Ricky Knight --- Ricky Blackwell's school, does
8 it?

9 A. Dr. Knight's report did address what adjunct classes
10 were.

11 Q. And did adjunct --- it did --- it did a partial
12 definition, but it did not mention the fact that these adjunct
13 classes were by kids who weren't trying or just give up on
14 school as was stated by certain individuals?

15 A. Correct.

16 Q. Okay. And that was not told to you was it?

17 A. No, it was not.

18 Q. And it was not in the report, was it?

19 A. It was not.

20 Q. Okay. Dr. Andrews applies criteria to reveal deficits
21 and adaptive functioning to Mr. Blackwell that apply for many
22 children everywhere; isn't that correct?

23 A. That's correct.

24 Q. Okay. That Dr. Andrews stated that Mr. Blackwell
25 couldn't do simple math, record any notes to show that he can

1 do simple math; isn't that correct?

2 A. Well, again, I think that may be a misinterpretation
3 of what Dr. Andrews was saying that ---

4 Q. He can do simple math according to your ---

5 A. He can do simple math.

6 Q. Okay. The questions you asked during your interview
7 regarding orientation, (unintelligible) knowledge,
8 registration, recall, attention and concentration, along with
9 simple math, there was no evidence that Dr. Knight or Dr.
10 Andrews asked any questions regarding these certain segments,
11 is there?

12 A. Not that I see, no.

13 Q. Okay. And the applicant's lawyer never provides you any
14 other information other than the two reports from two doctors
15 they hire --- they hired; isn't that correct?

16 A. They also provided Dr. Calloway's report, which I
17 did not have a copy of and a report by Dr. Schwartz
18 Foster (phonetic).

19 Q. Okay. Did those reports change your opinion, or was the
20 report of Dr. Knight's not Andrews that changed your opinion?

21 A. Well, I had obviously read Dr. Calloway's report
22 some time ago. So rereading that report didn't change my
23 opinion. And Dr. Schwartz Foster's report, I think
24 was --- was irrelevant to the question that that was
25 addressing.

1 So again, it comes back primarily to Dr. Knight's
2 report and the information provided in that one.

3 Q. Okay. Two individuals hired by the applicant's
4 attorneys, correct?

5 A. Correct.

6 Q. Okay. So not all the evidence was considered by Dr.
7 Knight, was there? There's numerous things I just mentioned
8 that is not in her in report; isn't that correct?

9 A. I don't think that in a case like this we can ever
10 get all the evidence we would like to consider ---

11 Q. Okay.

12 A. --- yes, there --- there were some things that were
13 not considered.

14 Q. Well now, one of should be considered shouldn't it as an
15 intervening factor ---

16 A. Sure.

17 Q. --- especially excessive ---

18 A. Sure.

19 Q. --- marijuana use? And there's no indication she ever
20 considered that in her report, is there?

21 A. That's correct.

22 Q. Okay. Uh-huh. So in Dr. Knight's report either she did
23 not receive statements, or she cherry-picked certain things to
24 come up with the clues that she wanted to come up with; isn't
25 that correct?

1 A. I don't really see evidence of cherry-picking.

2 There --- there's no way we could not write in a report

3 everything and consider everything --- thing.

4 Q. But I reiterate, you placed in your report that he did
5 marijuana and all these drugs; isn't that correct?

6 A. Correct.

7 Q. Because that's important?

8 A. It is.

9 Q. Okay. That's not in her report whatsoever, is there?

10 A. It's not.

11 Q. Okay. So a very important factor --- a very important
12 indicating factor that can cause damage to the brain, such as
13 daily marijuana use for 17 years, she's decided not to put in
14 the report; isn't that correct?

15 A. As far as I can see, yes.

16 Q. Okay. And so you're saying she's not cherry-picking
17 information; that's what you're saying?

18 A. I think what we try to do in a forensic report, is
19 of course support whatever our opinion's going to be, but
20 also provide information that would not support that
21 opinion, to the fact that --- to the point that it may be
22 relevant. I can't address what Dr. Knight's thinking
23 process was in --- in choosing what she said, or what she
24 didn't say, or what she asked before she did it.

25 Q. That -- that's correct, but you can testify about what's

1 in the report, and what's not in the report, because you read
2 it ---

3 A. Correct.

4 Q. --- correct?

5 A. Yes.

6 Q. And the massive drug use that Ricky Blackwell did and the
7 alcohol drinking was not mentioned in her report whatsoever?

8 A. Correct.

9 Q. Okay. And these are certain factors that you should
10 consider when you're making a determination of
11 intellectual ---

12 A. They --- they should be considered.

13 Q. Right. Because since his IQ test was done 40 years after
14 the developmental period, you have to consider all the
15 intervening the factors that cause possibly his IQ to drop?

16 A. Correct.

17 Q. Is that correct? Okay. (Unintelligible).

18 Do you have any idea what type of chemotherapy that Ricky
19 Blackwell received?

20 A. I don't.

21 Q. Okay. Did Dr. Knight provide you with any new school
22 records regarding Ricky Blackwell?

23 A. With any new school records?

24 Q. Yes.

25 A. No.

1 Q. Were you given any new work records by anybody?

2 A. Dr. Knight, I think referenced some that I didn't
3 have, but I was not given any.

4 Q. Were you given any new medical records?

5 A. No.

6 Q. Okay. Are you aware that Ricky Blackwell's daughter and,
7 I think a medical report stated that the chemo washed his
8 brain away; are you aware of that?

9 A. I remember of hearing or reading that. I don't
10 recall the source.

11 Q. Okay. That's not stated in Dr. Knight's though? You
12 didn't see that there ---

13 A. I --- I don't think.

14 Q. --- did you?

15 So what is in Dr. Knight's report that is different or
16 new?

17 A. Primarily two things, one is a more complete
18 description of the school records and how to interpret
19 them. It was my assumption at the time, based on the way
20 I was looking at the records of Mr. Blackwell was
21 that --- excuse me --- as I said, was on track to
22 graduate. And it seems like a lot of the promotions were
23 social promotions, it doesn't seem like he may have
24 actually earned all of the credits that he would have
25 needed to --- to genuinely graduate from high school.

1 Q. And where does it say that ---

2 A. It ---

3 Q. I don't remember seeing that anywhere that he got social
4 promotions. He got the grades and he got promoted.

5 A. Well, that it --- that's my interpretation.

6 Q. Okay. I'm not saying ---

7 (Simultaneous speaking)

8 Q. --- actually one year he got (unintelligible) that grade
9 wasn't it? Is that correct?

10 A. I'm sorry?

11 Q. One year he got left back in ninth grade?

12 A. Correct.

13 Q. Okay. So it's obvious he wasn't be socially promoted
14 that year because he wasn't promoted at all; isn't that
15 correct?

16 A. But it seems like he was in what today we would
17 consider special education. And while it may not have
18 been as --- as specialized as --- as what we have in
19 schools today. It --- it seems like the school did
20 recognize that he needed some type of special education
21 services.

22 Q. Okay.

23 (Simultaneous speaking)

24 A. And the class ---

25 Q. But does that make --- does that make you intellectually

1 disabled?

2 A. Not necessarily, no.

3 Q. Okay. Just because you need help in certain areas,
4 because he was in special education in certain classes or
5 adjunct class in certain classes. But not all of his classes
6 were adjunct ---

7 A. Correct.

8 Q. --- classes but --- okay. So that shows he needed help
9 in those certain areas; isn't that correct?

10 A. Uh-huh.

11 Q. Okay. It doesn't show that he's intellectually able,
12 does it --- disabled, does it?

13 A. Not necessarily.

14 Q. Okay. Does the absence of knowing what --- one second.
15 Now, all those test scores and school records, you had a
16 copy of them also, didn't you?

17 A. As far as I know, yes.

18 Q. Okay. And you read all those records also? Same records
19 Dr. Knight read ---

20 A. As far as I know.

21 Q. --- isn't that correct?

22 Okay. So she just gave a different interpretation of
23 those records than you did; is --- isn't that correct?

24 A. It's providing more information about the records
25 that allows a different interpretation.

1 Q. Okay. But you had a records also, and you had them also?

2 A. I did.

3 Q. And your interpretation was different back in 2013,
4 wasn't it?

5 A. It was.

6 Q. Okay. Does the absence of known facts in this report
7 that you depended on concern you?

8 A. It --- it's hard to say yes or no. Any missing
9 information concerns me. But whether or not that missing
10 information is so significant it could make a difference,
11 I --- I'm not sure in this case it is.

12 Q. Okay. Now, she doesn't say that she got new
13 information --- any new school records, does she? She just
14 read the same records you read?

15 A. As far as I know. I --- I can't for sure what she
16 looked or at this point even for sure what I looked at.

17 Q. Okay. So you wouldn't know where she got the school
18 records from, would you?

19 A. No.

20 Q. Okay. And you were relying on her interpretation of the
21 school records, the same school records you read yourself;
22 isn't that correct?

23 A. I think that's a fair statement.

24 MR. EVANS: Nothing further.

25 THE COURT: Thank you. Redirect?

1 REDIRECT EXAMINATION

2 BY MS. VANN:

3 Q. Hi, Dr. Brown.

4 A. Good morning --- or afternoon.

5 Q. Yes, afternoon I guess. I'd like to start where we left
6 off. I'm not sure you got to finish your answer about what
7 was important or new about Dr. Knight's report that influenced
8 your opinion.

9 A. Okay. And I was going to add in --- in regards to
10 the class rank of 113 out of 113. When I looked at that
11 number ten years ago, I really had no idea of what meant.
12 Is that just the score he gets because he --- he dropped
13 out? Is this based on genuine scores? And I think Dr.
14 Knight provides enough information (unintelligible) that
15 yes, that was indeed his genuine rank.

16 And if you're looking at intellectual disability
17 comprising the lowest one percent population in terms of
18 functioning intellectually, you know, that would
19 certainly be consistent with that 113 out of 113 is, you
20 know, the very lowest percentile possible in --- in
21 looking at that.

22 The other information that I think Dr. Knight
23 provided was a more complete description of his work
24 history, which was early in the developmental period, and
25 then continued on post-developmental period. But I was

1 basically picturing him being a reasonably successful
2 truck driver driving to El Paso, driving to Canada. And
3 it doesn't sound like he really did any of that. His
4 independent driving was all over the low routes that he
5 was able to learn.

6 He's a hard worker. He's --- he --- he tries hard
7 to learn the --- the things that he needs to do to --- to
8 do a good job. And changing gears of an 18-wheeler,
9 can't be easy, I would be intimidated by that myself.
10 But, you know, with practice, and observation he was able
11 to --- to learn it. It doesn't sound like --- sound like
12 he ever took any trips to places like El Paso or Canada
13 independently. Then he was always with someone else when
14 he did that. So I --- I think it was new information in
15 terms of the poor academic functioning and the poor work
16 history which goes to the issue of poor adaptive
17 functioning during the developmental period.

18 Q. Thank you. And was some of the information that she had
19 about the school records, even if she reviewed the school
20 records, did she also interview people about how to properly
21 interpret those scores ---

22 A. She did.

23 Q. And was that important to your ---

24 A. Yeah, that was very helpful.

25 Q. Okay. I'd like to back up just little bit. We

1 talked --- or on your cross-examination, you talked little bit
2 about Dr. Harrison at DMH did not refer the case to DDSN?

3 A. Correct.

4 Q. Because she didn't find evidence of intellectual
5 disability?

6 A. Correct.

7 Q. But when you did your evaluation in 2014, did you find at
8 least some evidence of intellectual disability?

9 A. At that time, yes.

10 Q. And there was a lot of discussion when you did your
11 initial evaluation and you met with Mr. Blackwell, you did a
12 mental status exam?

13 A. Correct.

14 Q. And those were the notes where you asked about the states
15 and the presidents?

16 A. Correct.

17 Q. What is the purpose of a mental status exam?

18 A. The purpose of a mental status exam is to see how
19 the persons function right now in the here and now. And
20 when I'm asking, for example, someone to count backwards
21 from 100 by 3, it's not a --- a math question, it's very
22 simple math. The question is, can they concentrate to do
23 that?

24 The same thing with spelling the word --- word
25 backwards, can they hold that in their mind, can they

1 concentrate it. It's not how are they functioning right
2 now. It's not meant to be a correlation with
3 intelligence.

4 Asking the five states, if someone has grown in
5 Chesnee, South Carolina, never been anywhere else, they
6 might have difficulty. That if someone's driven a truck
7 and all the states he named, I think were in the south
8 east. That's not surprising that he can name five states
9 and four cities that he's familiar with and he's probably
10 been to.

11 Q. And how would you expect someone with mild intellectual
12 disability to do on that mental status examination?

13 A. Well, that specific question there is a
14 semi-structured interview form. I guess it was designed
15 specifically for that population. So I would expect them
16 to be able to get a good number of them right and, you
17 know, miss some here and there.

18 Q. And is that approximately how Ricky Blackwell did on the
19 mental status examination?

20 A. He did --- I would --- if I were writing a report on
21 competency, which is what we normally use those for,
22 you --- I might would say that, well, he did a little bit
23 better than expected, but it's --- it's within --- within
24 the range of what we expect.

25 Q. Now, I'd like to turn to Dr. Knight's report and some

1 questions that you were asked about that. First of all, is
2 the information that was in Dr. Knight's report that you said
3 was relevant, is that something you would have relied on if
4 you had it in 2014 when you did your initial evaluation?

5 A. Sure.

6 Q. And did you know if she asked questions about Ricky
7 Blackwell's drug use that didn't appear in her report?

8 A. I have no idea what she asked.

9 Q. And do you know that she testified that --- about Ricky
10 Blackwell's drug use and the questions that she asked about
11 that?

12 A. I did not know that.

13 Q. In your opinion, based on what you know about Ricky
14 Blackwell's substance abuse, because you did ask those
15 questions, does that undermine your opinion about his
16 intellectual disability?

17 A. It does not.

18 Q. On page 12 of your report and we've talked about this
19 paragraph where you list several potential risk factors ---

20 A. Hmm.

21 Q. --- that occurred after the developmental period?

22 A. Okay.

23 Q. If there was evidence of adaptive deficits in the
24 developmental period, does that relieve any concerns that you
25 have about those risk factors that occurred after the

1 developmental period?

2 A. Well, the diagnosis has to be based on those
3 deficits being occurring in the developmental period. So
4 anything that happens after the develop --- developmental
5 period ends is really irrelevant to the diagnosis.

6 Q. And did you find based on your review of all the
7 information that there was evidence of deficits during the
8 developmental period?

9 A. That's my opinion at this point, yes.

10 Q. You said a couple of times during cross-examination that
11 a certain piece of evidence might be normal for a kid, but you
12 can't look at that in isolation. And perhaps I'm
13 paraphrasing, but is that a --- essentially what you said?

14 A. Sure. And that's where your clinical judgment
15 becomes very important. You can pick any one thing and
16 look at it and say well, she functions at a pretty high
17 level. Or if some other pieces say, well, this indicates
18 he's really functioning at a pretty low level, you have
19 to use clinical judgment based on experience with the
20 diagnosis (unintelligible) to the population to --- to
21 look at the big picture and put all that together and say
22 with all of this information where does it fall?

23 Q. And based on your review of all of the information and
24 your clinical judgment, what is your opinion today?

25 A. My opinion today is that Mr. Blackwell does meet the

1 criteria.

2 MS. VANN: Court's indulgence. I have no further
3 questions. Thank you, Dr. Brown.

4 THE COURT: All right. Any re-cross?

5 RECROSS-EXAMINATION

6 BY MR. EVANS:

7 Q. Now, you talked about Mr. Blackwell's trips to El Paso
8 and to Canada. He had a second person driving with him; isn't
9 that correct?

10 A. That's my understanding yes.

11 Q. Okay. It doesn't mean he couldn't do the trips, it just
12 means that he had somebody with him that maybe helped him
13 drive; isn't that correct?

14 A. You know, based on what I'm saying, you know, based
15 on, again, information provided in Dr. Knight's report, I
16 don't think he would be able to plan a trip to El Paso
17 and back. Somebody else, you know, knows where they're
18 going and they take care of all of the planning. I think
19 he could help with the driving, but I don't think he
20 could be what we call the lead driver ---

21 Q. Okay.

22 A. --- on any trip like that.

23 Q. There's a lot of people that cannot drive to El Paso
24 without a GPS system and cannot read a map; isn't that
25 correct?

1 A. Sure.

2 Q. And that doesn't make them intellectually disabled, does
3 it?

4 A. No, it doesn't.

5 Q. Okay. And in certain situations you have two drivers,
6 it's possibly have that so they can share the driving and keep
7 driving; isn't that correct? You wouldn't have to stop?

8 A. I'm sorry?

9 Q. When you have two drivers in a truck sometimes, it's a
10 situation where they wouldn't --- have two drivers so they
11 wouldn't have to stop, they could keep going. Because you can
12 only drive a certain amount of hours per day ---

13 A. Correct.

14 Q. --- isn't that correct?

15 And that would be the situation with Mr. Blackwell when
16 he drove on this truck with another person; isn't that
17 correct?

18 A. Sure.

19 Q. Okay. Now, you also talked about Mr. Blackwell's class
20 rank of 113 and one --- 113 out of 113. And that information
21 regarding to calculations according to Dr. Knight came from
22 Mr. Blackwell's (unintelligible). That's on page 17 ---

23 A. Okay.

24 Q. --- if you want to look at the report. This teacher
25 affidavit --- academic history?

1 A. Okay. I see it.

2 Q. Yes. And it says Beverly Davis (phonetic). And says at
3 the bottom, Ricky class rank of 113 out of 113 would have been
4 based on his grades at the time of dropping out. It says
5 that, doesn't it?

6 A. Correct.

7 Q. Okay. And Beverly Davis is a home room teacher, she's
8 not a school administrator; is she?

9 (Simultaneous speaking)

10 Q. According to this, she's a homeroom teacher, not a school
11 administrator? She's not a principal, or vice principal, or
12 guidance counselor at the school, was she?

13 A. That's my understanding from the report.

14 Q. And normally, class rank is calculated by administrators
15 because they haven't scored everything in school; isn't that
16 correct?

17 A. Well, I would assume that it was calculated by the
18 administration and ---

19 Q. But it wasn't calculated by Beverly Davis ---

20 A. --- homeroom teacher ---

21 Q. Because she's not an administrator, is she?

22 A. I'm sorry?

23 Q. It probably was not calculated by Beverly Davis, because
24 she was a homeroom teacher and not a school administrator;
25 isn't that correct?

1 A. I --- obviously, that's correct. Yes.

2 Q. Okay. So there's no telling what the calculation was to
3 put Ricky at 113, is there?

4 A. Well, this far down the road, I --- I don't think we
5 could know that for sure.

6 Q. Okay. So but you relied on this calculation that could
7 be incorrect in making your assessment that he's
8 intellectually disabled, didn't you?

9 A. I guess that's a fair statement.

10 Q. Okay. And your opinion has now changed due to the report
11 and information in Dr. Knight's report; isn't that correct?

12 A. Correct.

13 Q. Okay. As far as you know, there's no new records that
14 came up that she considered? Any new school records, medical
15 records ---

16 A. That I considered?

17 Q. --- I --- IQ records, anything like that?

18 A. No.

19 Q. Okay. No employment record --- no new employment records
20 or anything like that? She said that (unintelligible)?

21 A. That's correct.

22 Q. Okay. And Mr. Blackwell never did a IQ test in the
23 developmental age, did he?

24 A. Correct.

25 MS. VANN: Nothing further.

1 THE COURT: All right. Dr. Brown, you can step
2 down.

3 THE WITNESS: Okay.

4 THE COURT: All right. Who's our next witness.

5 MR. GROSE: Your Honor, as we indicated earlier, we
6 would plan to rest. And we do rest at this point.

7 THE COURT: All right.

8 MR. GROSE: And we just ask that Dr. Brown be
9 allowed to be excused if he desires.

10 THE COURT: Any objection then being excused?

11 UNIDENTIFIED SPEAKER: No objection.

12 THE COURT: All right. Who's the State's first
13 witness. We'll get through that before lunch. We've got
14 a witness.

15 MR. MABRY: Judge have a deposition we've noticed.

16 (Simultaneous speaking)

17 THE COURT: Okay. I'm just trying to get a figure
18 on ---

19 MR. MABRY: All right. We can do that Wednesday at
20 10:00. (Unintelligible).

21 THE COURT: I --- I'd rather do it --- no, no, no.
22 I'd rather do ---

23 (Simultaneous speaking)

24 THE COURT: --- everything we can do today, let's do
25 it today.

1 MR. MABRY: Okay.

2 THE COURT: All right. Let's break. We'll break
3 till about --- we'll break till 2:00.

4 UNIDENTIFIED SPEAKER: We did have one --- that want
5 to move for a directed verdict at this time.

6 THE COURT: I'm sorry. I apologize.

7 (Simultaneous speaking)

8 UNIDENTIFIED SPEAKER: And we --- we move for a
9 (unintelligible).

10 THE COURT: All right. Ms. Brown.

11 MS. BROWN: (Unintelligible), Your Honor. We do
12 stand by our return filed March 27, 2023, for the
13 majority of these claims the record based --- can be
14 addressed by the records already before the Court. Your
15 Honor, but on 10A, that is the (unintelligible) stand act
16 in this claim. We do maintain that it is barred. Your
17 Honor has already addressed that.

18 And I also wanted to address the portion of the
19 claim where they're alleging material facts that have not
20 been heard previously. Your Honor, we would suggest that
21 there is absolutely nothing presented to you in either of
22 our hearings so far. A new opinion of course is not
23 (unintelligible) fact. So once again, that should be
24 dismissed on the claim itself.

25 On 2 --- excuse me --- 10B, this is the ineffective

1 assistance of counsel (unintelligible) regarding the
2 (unintelligible) presentation. One of the allegations,
3 Your Honor, is failure to object to the judge's use of
4 stereotypes, or the judge's deviation from clinical
5 concerns. There's been no showings whatsoever that can
6 support that allegation. The judge relied specifically
7 on the evidence presented. He referenced the evidence
8 presented and the clinical opinions presented. So that
9 should be dismissed, directed verdict granted.

10 Also on 10D, Your Honor, this is the
11 (unintelligible) assistance of counsel claims going to
12 the penalty phase where we often say the (unintelligible)
13 phase. There is an allegation that counsel should have
14 investigated the child's urinating on herself, whether
15 that was in fact tied to fear, or if that was part of the
16 process of death.

17 Your Honor, there is nothing to show that there is
18 anything to determine if counsel had not taken --- taken
19 more steps to make review of the --- the forensics or the
20 autopsy findings. There's been nothing whatsoever to
21 show something that could support prejudice even if some
22 deficient performance could be determined. Therefore, we
23 are entitled to a directed verdict on that allegation.

24 Lastly, Your Honor is 10E. This is the allegation
25 that the State presented false or misleading information.

1 Applicant has asserted that Investigator Williams
2 testified falsely. There's been no showing whatsoever of
3 any false testimony, much less he made a statement as
4 well as presented (unintelligible). And on those
5 particular allegations, Your Honor, (unintelligible)
6 directed verdict.

7 THE COURT: All right. Thank you. Mr. Grose.

8 MR. GROSE: I'll start with 10B first as far as the
9 child urinating. And just remind everybody that we went
10 through that claim at the beginning of the hearing. So
11 it's --- it's not there anymore. With regard to 10E.

12 THE COURT: All right. All right. Hold on a
13 minute. So the record's clear. What --- it is not there
14 anymore?

15 MR. GROSE: Well, we with --- we withdrew it.

16 THE COURT: Okay.

17 MR. GROSE: So we --- we didn't go forward on that.
18 That's why we didn't ---

19 (Simultaneous speaking)

20 MS. BROWN: I don't believe there was ever a formal
21 withdrawal by a new filing in --- in the clerk's office
22 so we would just ask for the directed verdict to settle
23 the issue ---

24 THE COURT: All right. Thank you. All right.
25 Let's take care of that now.

1 MR. GROSE: With --- with --- with regard to that,
2 you know, the --- the rules allow a motion to be amended
3 to conform to evidence. We're not at the end of the
4 hearing yet. But the fact that we did formally withdraw
5 that on the record, I think ---

6 THE COURT: All right.

7 MR. GROSE: --- I think that's resolved.

8 THE COURT: All right. Let's take care of that now.
9 So for purposes of the record, 10D that ---

10 MR. GROSE: It's 10D --- it's 10D4 ---

11 THE COURT: --- withdrawn ---

12 MR. GROSE: --- it's 10D four.

13 THE COURT: 10D four.

14 MR. GROSE: It's paragraph four. That's was the
15 only ---

16 THE COURT: Mr. Grose has indicated that they
17 withdrew that in the event that some record or a review
18 in the future would claim it is still pending. I'll
19 grant the motion for directed verdict as to 10D4.

20 All right.

21 MR. GROSE: With regard to 10E, the --- the --- the
22 Brady violation, we did admit the letter that solicitor
23 Barnett wrote regarding Mr. Williams. And we did cover
24 that testimony with Mr. McGuire during his examination.
25 So there is some evidence in the record to support that.

1 And that certainly satisfies, you know, the directed
2 verdicts and standard.

3 With regard to 10B, I believe they're looking at
4 paragraph two. You know, we --- we do believe that there
5 was some stereotyping in the judge's order and that some
6 of Judge Couch's conclusions did depart from the clinical
7 standards. So again, we think that we have met the
8 burden with regards to that.

9 And going back to 10A, you know, in the application
10 we do point out a material fact that is not previously
11 heard is the CAMTA1 gene that was the result of genetic
12 testing that was not performed before. And so, you know,
13 we believe that once against from a directed verdict
14 standpoint looking in light most favorable to the
15 non-moving party, that claim survives.

16 THE COURT: All right. Thank you.

17 MR. GROSE: And --- and we would also add, you know,
18 we did file a response last week to their --- their
19 motion to dismiss. And we did --- it was sent by e-mail
20 and we have a copy ---

21 THE COURT: I --- I have --- I have the copy of
22 that.

23 MR. GROSE: And --- and we would --- we would refer
24 you to the arguments that were made in that.

25 THE COURT: All right. All right. Ms. Brown.

1 MS. BROWN: Your Honor, 10E, (unintelligible) had
2 referenced that (unintelligible) the weather that about
3 event after the trial and about an event not connected to
4 the trial. Your Honor, there's specific allegation of
5 false and misleading information about this trial and
6 there's been nothing submitted whatsoever about any false
7 or misleading information in this trial.

8 And 10A, Your Honor, (unintelligible) reference to
9 gene testimony, there's been uniform agreement that this
10 is not anything (unintelligible) a diagnosis. It was a
11 correlation, if anything, at all. Therefore, it's not a
12 material fact. And that will not (unintelligible) motion
13 for summary --- or excuse me, directed verdict at this
14 point.

15 THE COURT: All right. Thank you. Well, I'll take
16 a look at those and rule on those this afternoon after
17 the break. 10E, 10B, and 10A.

18 Anything else we need to take up before we break for
19 lunch?

20 MR. GROSE: Well, I --- I'm just curious how
21 much --- what they plan to do after lunch today, because
22 my understanding is that they don't have any witnesses
23 for the day; am I correct?

24 THE COURT: All right.

25 MR. GROSE: We --- we're not objecting to them

1 entering the depositions, so they can go ahead and do
2 that now as far as we're concerned.

3 THE COURT: All right. Educate Judge Hall entering
4 depositions in a death penalty PCR case.

5 MR. MABRY: We're introducing the ---
6 (unintelligible) case-in-chief Mr. --- Mr. McGuire's
7 deposition we took in Charleston. And he states answers
8 to specific questions that are relevant to the claims in
9 this case.

10 THE COURT: All right. And you have the deposition
11 with you; is that right?

12 MR. MABRY: We have copies. I can do that ---

13 THE COURT: Well, I'm just asking how a ---
14 practically what is going to be done and you got the
15 deposition that you're going to introduce ---

16 MR. GROSE: Well, Mr. Mabry wrote us a letter last
17 week identifying by page and line numbers what he
18 intended to introduce. We reviewed that and have no
19 objections to that being introduced. Perhaps he can just
20 submit a copy of his letter ---

21 THE COURT: All right.

22 MR. GROSE: --- to us with those pages attached to
23 it.

24 MR. MABRY: That will be fine ---

25 (Simultaneous speaking)

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1 THE COURT: Okay. All right. Then y'all going to
2 take care of that between now and whenever we start back
3 up.

4 MR. MABRY: Sure.

5 THE COURT: Okay.

6 MR. GROSE: And I'm not sure what that leads us
7 to --- to have to do at 2:00.

8 THE COURT: All right.

9 (Simultaneous speaking)

10 THE COURT: What does that --- does --- does
11 that --- where does that leave us for this afternoon?
12 Nothing?

13 MR. MABRY: No.

14 THE COURT: Okay. All right. Tomorrow --- what
15 does tomorrow look like?

16 MR. MABRY: We plan to start back Wednesday.

17 THE COURT: All right. So nothing tomorrow.

18 MR. MABRY: Right.

19 THE COURT: All right. Then we will break till ---

20 MR. GROSE: Just for planning purposes, can we
21 get --- they --- they --- the reference was made that,
22 you know, there expert witness would not be long on
23 Wednesday, if we could get sort of an approximation that
24 would help us plan I think. Not just for this, but I
25 have other Court obligations on Wednesday. This takes

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1 priority. And I need to figure out if I need to
2 reschedule my Wednesday afternoon.

3 THE COURT: All right.

4 MR. MABRY: Dr. Nelson's (unintelligible) no more
5 than two hours.

6 THE COURT: Should be what?

7 MR. MABRY: No more than two hours.

8 THE COURT: All right.

9 MR. GROSE: I wouldn't think that was short, but
10 that helps.

11 (Simultaneous speaking)

12 THE COURT: There's --- there's two hours short or
13 long in lawyer language in ---

14 (Simultaneous speaking)

15 THE COURT: All right. Okay.

16 MR. GROSE: Anyway. But that it --- I mean, it is
17 what it is. And how --- how long ---

18 MR. EVANS: And I'm --- and the reason I'm telling
19 you that, I want to say it's going to be an hour and a
20 half (unintelligible) full two hours. (Unintelligible)
21 hour maybe two hours.

22 (Simultaneous speaking)

23 THE COURT: All right.

24 MR. EVANS: --- a longer estimate. I always ---

25 (Simultaneous speaking)

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1 THE COURT: All right. Where is Dr. Nelson from?

2 MR. EVANS: Greenville.

3 THE COURT: Greenville. I mean and what I --- I
4 thought we were clear that Monday and Tuesday were going
5 to be the days to bring testimony and I'd set aside
6 Monday and Tuesday of this week to do that. What ---
7 what's the deal with Dr. Nelson? He can't be here
8 tomorrow at all?

9 MR. EVANS: I can call and see, but he has prior
10 obligations he (unintelligible). But (unintelligible) I
11 can call --- call and see (unintelligible).

12 MR. MABRY: We have Mr. Barnett. I've got one short
13 witness, Your Honor, who we may call. (Unintelligible)
14 what it's about. She --- there's an interview with her
15 in the file.

16 THE COURT: Right. Well ---

17 (Simultaneous speaking)

18 MR. MABRY: --- really short ---

19 THE COURT: And I --- I --- you know, I --- I'm ---
20 we'll --- we're going to take whatever time we need.
21 We'd have to --- if a phone call to Dr. Nelson would ---
22 might indicate that he could be here this afternoon could
23 we do ---

24 MR. EVANS: I don't think he can be here this
25 afternoon ---

Proceedings

1 THE COURT: Or --- or tomorrow morning? All right.
2 Can you call him right now?

3 MR. EVANS: I will have to call the office and get
4 his number. I don't have it on me now. But I call his
5 office.

6 THE COURT: All right. Well let's --- let's ---
7 let's ---

8 (Simultaneous speaking)

9 THE COURT: --- take a break.

10 MR. MABRY: I think I'm going to get the solicitor
11 here tomorrow afternoon. But do want to start in the
12 afternoon? (Unintelligible) we can get the doctor here
13 in the morning and Mr. Barnett can be here sometime if
14 the solicitor can tomorrow.

15 THE COURT: All right. I mean, I --- I'm happy ---
16 let --- let's do this. Let's at least try to do Barnett
17 tomorrow afternoon.

18 MR. MABRY: Yes, sir.

19 THE COURT: Let's be at ease for about ten minutes,
20 and let's see what the status of Dr. Nelson is either
21 this afternoon or in the morning. And then I'll --- I'll
22 come back in in about ten minutes. See if you can get a
23 hold of Dr. Nelson. We're going to break ten minutes.

24 (Off the record)

25 THE COURT: That they have part of the deposition

1 and that Mr. Grose has indicated that they have no
2 objection to that being introduced and stipulated to.
3 And so Mr. Mabry, if you'll put in the record what it is
4 you're ---

5 MR. MABRY: Yes, Your Honor. We're introducing
6 Respondent's Exhibit Number 2. This is the letter I sent
7 to counsel and the Court notifying them of the pages and
8 line numbers of the deposition of Mr. McGuire. Counsel
9 at trial for the --- for the (unintelligible) Ricky Lee
10 Blackwell. And I'm marking it all as Exhibit 2,
11 including the deposition and just introduce it. The
12 Court can review it and --- at the Court's convenience.
13 Thank you.

14 THE COURT: All right. Thank you. Again, Mr. Grose
15 what's y'all's position on ---

16 MR. GROSE: We have no objection.

17 THE COURT: --- State's Exhibit 2?

18 MR. GROSE: No objection.

19 THE COURT: All right. It's in evidence. And if
20 you'll pass that up and get it marked, I'll consider that
21 along with everything else.

22 MR. MABRY: Thank you, Your Honor.

23 (State's Exhibit 2 marked and in evidence)

24 THE COURT: All right.

25 MR. GROSE: The --- the only other thing and --- and

1 maybe this will help on --- speed things up on Wednesday.
2 We --- we do have the motion to exclude or limit Dr.
3 Nelson's testimony.

4 THE COURT: Right.

5 MR. GROSE: And the --- you know, our understanding
6 is --- is that, you know, the only --- what our
7 understanding is is that he is not intending to offer an
8 opinion whether or not Ricky Blackwell meets or does not
9 meet the diagnostic criteria for an intellectual
10 disability. Other than that, we have no idea what he's
11 going to testify about, because the State hadn't provided
12 him --- they provided him with one document that we know
13 of, which was Dr. Knight's report that Dr. Nelson hadn't
14 read when we deposed him.

15 And they've not provided us --- even after we filed
16 that motion last week, they've not provided us any more
17 information about what Dr. Nelson's testimony is going to
18 be. And so if --- they --- I --- I think that we
19 need --- we need to have that heard, so we know whether
20 or not, you know, Dr. Nelson, what he can testify, what
21 his limits on his testimony are going to be.

22 THE COURT: All right. And what's the State's
23 position, Mr. Evans?

24 MR. EVANS: Your Honor, Dr. Nelson cannot
25 testify --- cannot give a diagnosis regarding Mr.

1 Blackwell, because he didn't examine him. He can give
2 his opinion regarding the right criteria that was not met
3 when it was determined that he was intellectually
4 disabled, and that's what he's going to testify to. He's
5 also --- since he was a psychologist for the Greenville
6 County School District, he also can testify
7 (unintelligible) tests that were given to Mr. Blackwell
8 when he was in school.

9 And he also can testify about certain drug use that
10 Mr. Blackwell committed and possibility that is an
11 intervening factor.

12 And he also has some opinions about Dr. Knight's
13 report (unintelligible).

14 MR. GROSE: None of this ---

15 THE COURT: Yeah. Hold on just a second.

16 MR. GROSE: I'm sorry.

17 MR. EVANS: I --- I --- I think this --- I think
18 this (unintelligible) they were complaining about
19 having --- not having notice when --- (unintelligible)
20 here in this first place, because they had a doctor who
21 changed his opinion and did not give us any notice about
22 that change. And they knew about eight days before his
23 testimony, Your Honor. I --- I --- I think if I can
24 remember when you ruled for continuance, Mr. Grose
25 basically at that time accused us of knowing Dr. Brown's

1 change of opinion as stated to the Court, that he has the
2 right to know. And I think we have a right to know that
3 also and let us --- give us that --- that notice.

4 And that's why we're here today. And now they're
5 saying that they're not giving notice. They were
6 provided an opportunity (unintelligible) Dr. Nelson.
7 They were provided an opportunity to ask Dr. Nelson
8 anything they wanted to regarding his opinions. And
9 they, I guess, refused to do so.

10 MR. GROSE: That --- that is not true ---

11 (Simultaneous speaking)

12 THE COURT: All right. Hold --- hold on.

13 MR. GROSE: I want ---

14 THE COURT: Hold on. Hold on a minute. All right.
15 It's 1:00. Maybe we need to have a full hearing on how
16 we're going to treat Dr. Nelson. And do --- do y'all
17 want to go continue with this? Do you want to come back
18 at 2:15 and do what you need to on the record?

19 MR. GROSE: We're prepared right now.

20 THE COURT: All right. Then let me hear from Mr.
21 Grose and I'll come back to you Mr. Evans.

22 MR. EVANS: Yes, sir.

23 MR. GROSE: Your Honor, just addressing what was
24 just said a minute ago about having an opportunity to
25 depose Dr. Nelson. We noticed Dr. Nelson's deposition.

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1 He was the last deposition that was taken. Since we were
2 last here, there have been three depositions. We agreed
3 to let them reopen Dr. Knight's deposition. They did
4 that. They wanted to take Dr. Brown's deposition. We
5 agreed to let them do that. We wanted to take Dr.
6 Nelson's deposition and it was the last one that was
7 taken. And it was taken, I guess, Thursday before last.
8 And when we ---

9 THE COURT: Wait a minute. I'm confused. Dr.
10 Nelson was deposed ---

11 MR. GROSE: He was deposed.

12 THE COURT: --- hold on.

13 MR. GROSE: But it was not the meaningful
14 deposition.

15 THE COURT: All right.

16 MR. GROSE: And --- and let me explain what --- and
17 the transcript's not back. And when it gets back I'm ---
18 you know, this is just going to bear out what I'm getting
19 ready to tell you. When we --- when we went to this
20 deposition, we had --- had --- there was a subpoena that
21 we had given to the State and that we had mailed to Dr.
22 Nelson for him to turn over his entire file. He came
23 with no file materials to his deposition. That's the
24 first thing.

25 The second thing is when we asked him what materials

1 had he reviewed that were given to him by the Attorney
2 General's Office, the only thing that he identified was
3 Dr. Knight's report. And but he said that he had not
4 read that report yet. And there was a --- and there was
5 a point in the deposition where I think that I asked Dr.
6 Nelson what he planned --- if --- what he planned on
7 doing between the deposition and the hearing. And Mr.
8 Evans responded that Dr. --- Dr. Nelson doesn't know what
9 he's intending to do because apparently hadn't talked to
10 him about what he was going to be doing --- what his role
11 was going to be when it came time for us to have this
12 hearing. All we know is --- is that Dr. Nelson said that
13 it would be both professionally and unethical for him to
14 give an opinion with regards to whether Ricky Blackwell
15 meets the diagnostic criteria for an intellectual
16 disability. And if that's all he's going to testify to,
17 that doesn't take two hours. And that doesn't move the
18 dial one way or the other.

19 Now, one of the things they say is that they want to
20 go through and him offer opinions about Dr. Knight's
21 report. He should have read Dr. Knight's report and we
22 could have asked him those questions, but we couldn't ask
23 him those questions on the deposition because he hadn't
24 read the report. They're saying now that he's going to
25 testify as to why Ricky Blackwell doesn't meet the

1 criteria for an intellectual disability, that's contrary
2 to what he said in the deposition. We've not given any
3 notice ---

4 (Simultaneous speaking)

5 THE COURT: Well, hold --- hold on right there. I
6 mean, he's --- he's --- he --- what --- what the Court's
7 been told is that he is not going to give an opinion on
8 Ricky Blackwell's intellectual disability.

9 MR. GROSE: I --- I heard him say both those things.
10 I heard him say that and I heard him say that they were
11 going to --- they were going to review the evidence and
12 say why he doesn't meet that. I mean, may --- I may have
13 misunderstood. That's what I ---

14 THE COURT: I --- I may have ---

15 MR. GROSE: --- misunderstood. That's what I heard.

16 THE COURT: --- misunderstood too. Let's --- let's
17 take ---

18 (Simultaneous speaking)

19 MR. EVANS: --- be able to testify that the criteria
20 in the DSM-IV was not (unintelligible). You know, now
21 he's not going to give an opinion whether or not he has
22 one or not. All that he's going to say that he did ---
23 did not meet the criteria on DSM-IV. That what ---
24 he --- he's going to testify about the procedure done.

25 THE COURT: All right. Was ---

1 (Simultaneous speaking)

2 MR. EVANS: --- not the actual result.

3 THE COURT: Did ---

4 (Simultaneous speaking)

5 THE COURT: Was that dealt with at his deposition?

6 MR. EVANS: No, but they didn't ask about it.

7 THE COURT: All right. All right. Go ahead Mr.
8 Grose.

9 MR. GROSE: But I --- I --- I --- I think we --- I
10 think we asked him over and over again whether or not he
11 can give an opinion or not. And he said over and over
12 again that it would be inappropriate for him to do that.
13 And if he's going to testify that he doesn't meet the
14 criteria of the DSM-IV, that's offering an opinion on the
15 diagnosis. And --- and that would be something
16 that's --- that's new.

17 We've been provided no information about him
18 testifying about anything dealing with the Greenville
19 School District. I don't know understand why the
20 Greenville School District would be relevant since this
21 is a Spartanburg County case. But that was not in --- in
22 the letter that they sent us notifying that he was going
23 to be a witness there was nothing in it about that. And
24 I asked him about, you know, what he was going to offer
25 at the hearing, and he didn't say anything about

1 testifying about --- about that. And --- and --- and
2 the --- the --- the drug use, nothing was --- was ever
3 note --- noticed to us in the letter or in the deposition
4 that he was going to testify about drug use.

5 THE COURT: All right. Mr. Evans.

6 MR. EVANS: Okay. And first of all, they
7 (unintelligible) a actual motion about Dr. Knight's and
8 his opinions about certain things about her. They knew
9 about that. Also, the --- (unintelligible) of the
10 witnesses that will testify in the applicant's case. And
11 I think in that regard, we are allowed to present that
12 evidence of Dr. Knight's with Dr. Nelson's opinion of
13 certain evidence that was presented by the applicant that
14 we are willing to (unintelligible) on through his
15 testimony.

16 THE COURT: All right. All right. Well, I'll take
17 a look at the motion and consider what's been presented.
18 We'll --- I'll rule on Dr. Nelson's testimony on --- by
19 Wednesday morning. Is there anything else? Mr. Mabry.

20 MR. MABRY: --- tomorrow afternoon?

21 THE COURT: Yeah, let --- oh, yes. Let's start back
22 tomorrow afternoon at 2:00 with whatever witnesses we can
23 do tomorrow afternoon.

24 MR. MABRY: Perfect.

25 THE COURT: All right. And then on the issue of Dr.

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1 Nelson, and I would encourage y'all maybe can discuss
2 there might be a little more clarity between yourselves
3 about what Dr. Nelson may or may not say, but we will ---
4 again, I'll take a look at the motion and we'll deal with
5 that on Wednesday morning. All right. We'll be down
6 till 2:00 tomorrow afternoon.

7 (Off the record)

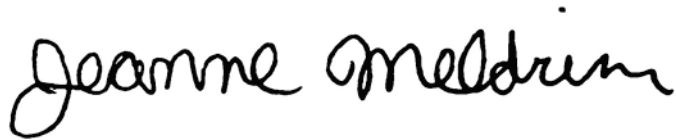
8 (PROCEEDINGS CONCLUDED AT 1:08 P.M.)

CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT COURT 8 for LAURENS COUNTY, South Carolina, on the 31st day of July, 2023.

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

March 13, 2024

A handwritten signature in black ink that reads "Jeanne Meldrim". The signature is written in a cursive, flowing style with a large initial 'J' and a period at the end.

Jeanne Meldrim

Transcriber

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 8
COUNTY OF LAURENS) DOCKET NO. 2018-CP-42-00928

RICKY LEE BLACKWELL,
Plaintiff,
versus
STATE OF SOUTH CAROLINA
Defendant.

H E A R I N G

DATE: August 1, 2023
TIME: 1:57 p.m. - 2:58 p.m.
LOCATION: South Carolina Circuit Court 8
JUDGE: Daniel Hall
TRANSCRIBED BY: Jeanne Meldrim

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 APPEARANCES:

2

3 Charles Grose Jr., Esquire
4 Grose Law Firm
5 305 Main Street
6 Greenwood, SC 29646
7 Attorney for the Petitioner

8

9 Lindsey Vann, Esquire
10 Justice 360
11 900 Elmwood Avenue
12 Suite 200
13 Columbia, SC 29201
14 Attorney for the Petitioner

15

16 Melody Brown, Esquire
17 S.C. Attorney General's Office
18 PO Box 11549
19 Columbia SC 29211-1549
20 Attorney for the Respondent

21

22 Anthony Mabry, Esquire
23 S.C. Attorney General's Office
24 PO Box 11549
25 Columbia SC 29211-1549
Attorney for the Respondent

26

27 Tommy Evans, Esquire
28 S.C. Attorney General's Office
29 PO Box 11549
30 Columbia SC 29211-1549
31 Attorney for the Respondent

32

33

34

35

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EXHIBITS

(No exhibits marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

Direct exam Shields

1 THE COURT: We're back on the record in case number
2 2018-CP-42-00920928. This is a post-conviction relief
3 hearing of a death penalty case entitled Ricky Lee
4 Blackwell versus State of South Carolina.

5 This actually is day seven of the PCR hearing and I
6 think we're ready to resume this is, I believe, testimony
7 this afternoon.

8 Mr. Mabry, I'll be glad to hear from you.

9 MR. MABRY: Yes, Your Honor. We call Judy Shields.

10 (Witness sworn)

11 JUDY SHIELDS, HAVING BEEN DULY SWORN, TESTIFIED AS
12 FOLLOWS.

13 DIRECT EXAMINATION

14 BY MR. MABRY:

15 Q. Okay. Tell us your name again.

16 A. Judy Shields.

17 Q. All right. Ms. Shields, are you retired at this time?

18 A. I am.

19 Q. And where do you live ---

20 (Simultaneous speaking)

21 A. For the past 22 years.

22 Q. Okay. You've been retired 22 years. Where did you
23 retire from?

24 A. Chesnee High School.

25 Q. All right. And what did you do there at Chesnee High

1 School when you worked there?

2 A. I was a math teacher and then I worked in the
3 guidance office (unintelligible).

4 Q. All right. And when you taught math, the records show
5 you taught an adjunct class in which Mr. Blackwell was in ---

6 (Simultaneous speaking)

7 Q. --- Ricky Lee Blackwell; do you remember Mr. Blackwell?

8 A. I do not. I'm sorry to say I don't.

9 Q. Okay. Could you tell the judge about the adjunct class
10 that you taught? What was that class composed of? What
11 did --- what was the goal of it? How did it come about?
12 Those type of things.

13 A. Well, the adjunct class of math, and I believe there
14 was one in English, and I'm not sure anything else. But
15 they were set up, I believe, as an experiment of the
16 State to see if they could do a somewhat lower curriculum
17 than the regular ninth grade math courses, because they
18 had a students who were showing up to be below grade
19 level. And they were hoping that perhaps doing a lower
20 level curriculum would bring those students back up ---

21 Q. Okay.

22 A. --- to grade level ---

23 Q. And ---

24 A. --- so they could proceed and succeed ---

25 Q. Okay.

1 A. --- thereafter.

2 Q. And is that what you taught, the --- the --- add ---

3 A. I taught the adjunct math class in ninth grade. And
4 I may have had one in 10th grade ---

5 Q. Do you --- do you remember?

6 A. --- it's just been so long I don't remember. But I
7 had a couple of them.

8 Q. All right. Do you remember what type of students you had
9 in those classes?

10 A. They were mainly boys. I may have had a girl or
11 two, but the majority of them were boys. And the
12 majority of them gave no problem. That's --- you ten ---
13 you tend to remember the ones that give you trouble ---

14 Q. Uh-huh.

15 A. --- or the ones who excel greatly, the extremes.

16 Q. Right.

17 A. The ones who are quiet, do what you ask them to do,
18 try and behave, you know, sometimes you just ---

19 Q. Don't remember?

20 A. --- slip --- they slip your mind after 50 years.

21 Q. Okay. Did --- did that class have people in it that just
22 didn't like school?

23 A. It did. That's what I think probably the majority
24 were that somewhere down in the elementary school grades
25 they got behind. They got frustrated. They couldn't

1 catch up, they just didn't like coming to school because
2 they could not do what was asked of them on the level.

3 Q. All right. Did you have some that at least to your
4 knowledge, like, did not want to go to college? They wanted
5 to pursue ---

6 A. Oh, I don't think any of them in that class
7 wanted --- or had aspirations to go anywhere beyond high
8 school.

9 Q. All right. What kind of aspirations did they have when
10 they got out of school?

11 A. I think that the majority of them wanted like a
12 blue-collar job to go to work in the mills with their
13 moms and dads, or to work as a mechanic on cars.

14 They all at the point in time in the '70s loved the
15 cars. They were a lot of them shade-tree mechanics
16 worked together on cars because cars then didn't have
17 computers or whatever. You could do pretty much anything
18 you wanted to with them ---

19 Q. Okay.

20 A. --- repair and souping them up, or whatever kind of
21 thing. But they mainly would have followed in some of
22 the --- some area of that type thing. There were a
23 couple of mills in Chesnee ---

24 Q. Uh-huh.

25 A. --- there was a Reeves Brothers and John H.

1 Montgomery and they usually would hire ---

2 Q. Okay.

3 A. --- students if they were good workers for them.

4 Q. Okay. So they wanted to pursue like a blue-collar
5 job ---

6 A. Right.

7 Q. --- did not want to go to college. Were any of them ---
8 any of them involved in drugs or alcohol? Was that part of
9 their problem at that time?

10 A. I have no knowledge of that.

11 Q. Don't know?

12 A. I don't know. They --- I guess it's a possibility,
13 but I have no personal knowledge of that.

14 Q. All right. Did --- was there a special ed class that was
15 different from your adjunct class?

16 A. Absolutely. There were students who were classified
17 as special education students, but they had to be tested
18 by the school psychologist who was housed at our district
19 office ---

20 Q. All right.

21 A. --- and all of those records were kept at that
22 point. And a child who was in special education had
23 resource classes ---

24 Q. Okay.

25 A. --- that's what theirs were titled. They were not a

1 part of my adjunct students.

2 Q. Okay. What kind of math --- did --- did you teach to the
3 students that were in your class?

4 A. It was basically addition, subtraction,
5 multiplication, division. The --- that's what we worked
6 on, it was just the basic-type things.

7 We may have had a few word problems, on like if you
8 went to the store and purchased five --- five items and
9 they each cost \$1.50 how much would you owe ---

10 Q. Uh-huh.

11 A. --- you know, and that type thing. Some might say
12 sort of life skills. You wanted to be sure that they
13 were able to take care of their own finances, and that
14 they could add, subtract, multiply, and divide when they
15 needed to.

16 Q. Sure. So you were preparing them for life if --- if they
17 just went out in the workforce, didn't go on to college, that
18 kind ---

19 A. That's correct. I would say so, yes.

20 MR. MABRY: One moment, please.

21 Thank you, ma'am. Please answer any questions.

22 Stay right there.

23 THE WITNESS: Oh, okay.

24 (Simultaneous speaking)

25 MS. VANN: --- Your Honor.

1 CROSS-EXAMINATION

2 BY MS. VANN:

3 Q. Hi, Ms. Shields.

4 A. Hi.

5 Q. I don't think we've met, but I'm Lindsey Vann, I'm an
6 attorney for Ricky Blackwell.

7 A. Okay.

8 Q. You said that the ninth grade adjunct classes --- or math
9 class that you taught was not taught at grade level; about
10 what grade level was it taught at?

11 A. Well, I believe that the majority of it would have
12 been about at least two grade levels behind, possibly
13 some of the students were more than that. I --- the
14 students were selected by the administration of which I
15 was not a part of at that time. So I don't know exactly
16 what the different levels would have been. But I've ---
17 in my opinion, I --- and best of my recollection, they
18 had to be at least two-grade levels ---

19 Q. Okay.

20 A. --- below their ninth grade.

21 Q. Okay. And you said you do not remember Ricky Blackwell?

22 A. I do not. I'm sorry.

23 Q. So you don't have any recollection of whether he just
24 didn't like school or whether he really couldn't do the
25 grade-level work?

1 A. Well, I suspect that he --- both of those may have
2 been true by him being in the adjunct class. He had to
3 have been below grade level in his math schools. And I
4 think the --- like most people, if you were given some
5 work to do and you could not do it, you wouldn't like
6 having to try to do that type thing. So I would say that
7 he probably didn't like school.

8 Q. Okay.

9 A. But I don't know that for sure, because I didn't ask
10 him.

11 MS. VANN: Okay. I understand. Thank you very
12 much. I don't have any other questions.

13 THE WITNESS: Okay.

14 THE COURT: Redirect?

15 MR. MABRY: Just briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. MABRY:

18 Q. Ms. Shields, if --- if Mr. Blackwell told others that he
19 quit school to become a truck driver, would that be consistent
20 with the kind of people that were in your class?

21 A. It could be yes. I would think so.

22 Q. And were talked to --- prior to me talking to you this
23 week, did anybody ever talk to you in the past?

24 A. They did. Someone did. There was a lady who came
25 to my house years and years ago.

1 Q. Okay. Would that be Carol Richards?

2 A. I'm sorry. I don't remember her name.

3 Q. All right. Would that have been about June 13th of 2012?

4 A. Possibly.

5 Q. Okay. Do you --- do you know why someone would not
6 include the information you told us today in a report about
7 Ricky's life?

8 A. Oh, I have no clue.

9 Q. Okay.

10 A. I don't have ---

11 MR. MABRY: Thank you, ma'am.

12 THE WITNESS: I --- just --- no idea.

13 MR. MABRY: Right. Thank you, ma'am.

14 THE WITNESS: All right.

15 THE COURT: Any re-cross?

16 MS. VANN: No, Your Honor. Thank you.

17 THE COURT: All right. Thank you. Ms. Shields, you
18 can step down.

19 (Simultaneous speaking)

20 THE WITNESS: Thank you.

21 THE COURT: Ms. Shields, you can be excused.

22 All right. Call your next witness.

23 MR. MABRY: Yes, sir. State calls Barry Barnett.

24 (Witness sworn)

25 BARRY BARNETT, HAVING BEEN DULY SWORN, TESTIFIED AS

1 FOLLOWS.

2 MR. MABRY: Can you hear me well enough, Judge?

3 THE COURT: Yes.

4 MR. MABRY: Okay. Madam Court Reporter?

5 THE COURT: Let me make sure. You're --- as long as
6 y'all are in front of that mic ---

7 MR. MABRY: Right.

8 THE COURT: --- she can hear you.

9 MR. MABRY: Okay. Thank you.

10 DIRECT EXAMINATION

11 BY MR. MABRY:

12 Q. All right. Tell us your name, please.

13 A. Barry Barnett.

14 Q. All right. Mr. Barnett, where do you work?

15 A. I work at the Spartanburg County Solicitors Office,
16 7th Circuit.

17 Q. What's your occupation there?

18 A. I'm the solicitor. Circuit solicitor for that ---

19 Q. You're the elected solicitor?

20 A. Yes, sir.

21 Q. Give the judge a little bit of background and your
22 education, and training, and work history.

23 A. Start off with my education. I went to Marshall
24 University. I received a education degree with
25 specialization in chemistry and physical science.

1 Then I went to law school at (unintelligible)
2 University. Graduated there.

3 I went and taught at (unintelligible) high school.

4 Come to South Carolina in Greenville County. Taught
5 chemistry and physical science there for two years.

6 I worked briefly in private practice, and then went
7 to the solicitor's in 1991. I was assistant solicitor
8 there for five and a half years, then became a
9 Spartanburg County magistrate. Was magistrate four and a
10 half years. I went back to the solicitor office 2001,
11 was the deputy solicitor there. Was there for
12 approximately ten years and became solicitor after that.

13 Q. Okay. You became solicitor after Trae Gowdy was elected
14 to Congress; is that correct?

15 A. That's correct. Yes, sir.

16 Q. And then you've been reelected since?

17 A. I have.

18 Q. Did you prosecute this case State versus Ricky Blackwell,
19 a death penalty case?

20 A. I did.

21 Q. And could you tell the Court when did you first --- when
22 were you first notified that there was going to be a --- a
23 claim by the defense of mental retardation or intellectual
24 disability, approximately how long after the case started?

25 A. I can't remember. I remember that initially they

1 filed a Rule 5, and then they withdrew it. So we
2 initially we gave all the information to them, but I ---
3 I suspect that at that point it was going to be a
4 possible mental defense. So that's --- that's the reason
5 why I started suspecting that point ---

6 (Simultaneous speaking)

7 Q. Why would that --- why would you suspect that?

8 A. Well, you know, if they filed Rule 5 with a
9 reciprocal, then they would have to give us notice of a
10 mental defense ---

11 Q. All right.

12 A. --- at that point. And when they withdrew it,
13 they --- they (unintelligible) didn't have to do at that
14 point.

15 Q. All right. Well, did you pursue getting the discovery of
16 the mental retardation claim? What do you remember about when
17 it first came up? How long had the case been going on when
18 they notified you there was going to be a MR claim, or
19 intellectual disability?

20 A. I'm trying to remember exactly if they ever did
21 (unintelligible) we --- at some point I think I actually
22 asked for a mental health evaluation because like I said,
23 they didn't move forward. And obviously, they can do it
24 on their own, I guess.

25 Q. Uh-huh.

1 A. And that sample, and that's when we started
2 suspecting it at that point.

3 Q. Okay. Did you --- you had him evaluated --- did the
4 Court order an evaluation by the State?

5 A. They did.

6 Q. And did you have your own expert separate from the State?

7 A. I did.

8 Q. And who was that?

9 A. Robert Nelson.

10 Q. Okay. Dr. --- Dr. Nelson we've been talking about in
11 this case?

12 A. Yes, sir. I assume you have. I just came today,
13 but I ---

14 Q. All right.

15 A. --- assume.

16 Q. And --- and where does he work now that you know of?

17 A. He --- he works in the hospital system at this point
18 in Greenville County. I don't know which hospital or
19 anything.

20 Q. Greenville County?

21 A. I think it's Greenville County, yes.

22 Q. And what did you do to prepare him for the case?

23 A. Well, what I did was, I sent him the case file,
24 obviously, to look at. All the records involving Mr.
25 Blackwell, things like letting him look through that.

1 Q. Uh-huh.

2 A. And basically, it's the type situation trying to
3 figure out what questions I need to ask any experts they
4 may have.

5 Q. Uh-huh.

6 A. But a lot of times, it took a while to even find who
7 their experts was going to be ---

8 Q. All right.

9 A. --- from that standpoint.

10 Q. And at some point did you learn who their expert was
11 going to be?

12 A. Yes, I did.

13 Q. And who was that? Do you remember?

14 A. Dr. Galloway.

15 Q. Okay. You remember her first name?

16 A. I do not.

17 Q. Was --- was she a specialist in intellectual disability
18 and mental retardation?

19 A. I'm assume --- I went to say she's from North
20 Carolina, but ---

21 Q. Right. Raleigh.

22 A. Uh-huh.

23 Q. Does that sound about right?

24 A. That sounds about right.

25 Q. All right. And what did Dr. Nelson do for you? Was

1 he --- well --- well let me ask you: Was he put on the
2 witness list?

3 A. He was. And I had him review everything. And of
4 course things (unintelligible) this we got from the
5 defense ---

6 Q. Uh-huh.

7 A. --- it took a while to get certain things.

8 Q. Right.

9 A. And he helped me review those from that sampling.
10 Helped prepare questions and things like that.

11 Q. But you also put him on the witness list?

12 A. I did. Yeah.

13 Q. And did --- did you have to turn over discovery to the
14 other side about Dr. Nelson?

15 A. Well, gave them the information. There was no Rule
16 5.

17 Q. Right.

18 A. So but I went ahead and gave them the information
19 from that standpoint.

20 Q. So they knew about Dr. Nelson?

21 A. Oh, they did.

22 Q. And did he sit with you during the trial, or at some
23 point?

24 A. He did. He sat at the table with us
25 (unintelligible) behind us behind us at times.

1 Q. Was it throughout the whole trial, or just the Atkins
2 hearing, and the ---

3 A. I think it was just --- he went there for the whole
4 trial, but he was for a lot of it from that standpoint.

5 Q. Dealing with intellectual disability?

6 A. Potentially. Just sitting there and listen to the
7 evidence and things ---

8 Q. Right.

9 A. --- like that.

10 Q. And why did you not call him at that Atkins hearing or in
11 the penalty phase on intellectual disability?

12 A. I didn't think that he was needed at that point, to
13 be honest with you from that standpoint. And he was just
14 there to help guide us to understand the evidence and
15 understand the --- not the questions, but the tests and
16 things of that nature.

17 Q. How they work?

18 A. Yes, sir.

19 Q. Did --- and why did you think you did not need him at the
20 Atkins hearing or the penalty phase?

21 A. I thought that --- to be honest with you, I thought
22 Dr. Galloway did not do a good job.

23 Q. Okay.

24 A. I thought she wasn't credible from the standpoint in
25 the Atkins, and especially in the (unintelligible)

1 hearing.

2 Q. All right. All right. Next things I want to cover with
3 you is there are some objections Mr. Blackwell has raised in
4 his application; are you familiar with those?

5 A. I am. I saw them ---

6 Q. Okay.

7 A. --- before.

8 Q. And one of those is that counsel failed to object to your
9 sentencing phase closing argument.

10 MR. MABRY: And I think I've got --- I've got a copy
11 of your argument up there and the judge's charge. And
12 I've got --- Judge, I'll put a copy up there for you and
13 Mr. Grose has it as well.

14 THE WITNESS: Okay.

15 MR. MABRY: Should be up there. I apologize if you
16 wanted to look at it.

17 THE COURT: I don't --- I do not have that.

18 MR. MABRY: Okay.

19 THE COURT: I'm sorry. I do. I do.

20 MR. MABRY: Okay.

21 THE COURT: Yes.

22 BY MR. MABRY:

23 Q. His --- his --- his argument is --- starts on 3164.
24 That's Mr. Barnett's penalty phase argument. And then the
25 Judge's charge in the penalty phase starts on page 3217. So

1 they're --- they're separate from each other.

2 And the first objection that I noted in the application
3 was counsel failed to object to the solicitor's sentencing
4 phase closing argument endorsing --- maybe I missed something.
5 Let me back up here. Yeah, that's correct. Endorsing
6 improper stereotypes toward people with intellectual
7 disabilities when the solicitor stated: I mean, it's an
8 insult to people that had truly have a mental disability for
9 them to bring this kind of defense up to try to spare his
10 life, trying to use that excuse on page 3169.

11 And then on page 3171, you said in your argument: He's
12 not disabled. And like I say, it's an insult to people that's
13 mentally --- I mean that truly has that kind of condition. So
14 I would ask you, Solicitor, were you giving improper
15 stereotypes to people with mental retardation or intellectual
16 disability when you made that argument?

17 A. Well, the evidence shows if you go through there ---
18 if you basically see on 169 where I say that, then I go
19 into the commercial driver's license. I go through
20 the --- basically the evidence from there. That he had
21 his wallet back there is basically what the evidence
22 showed in my opinion, that he was not intellectually
23 disabled ---

24 Q. Okay.

25 A. --- in the situation. And it was not stereotyping

1 in any way. It was just showing the --- this kind of
2 defense from that standpoint. So Dr. Galloway's
3 testimony, all the IQ testing, all the evidence, showed
4 that he was not mentally retarded or intellectually
5 disabled.

6 Q. You talking about the IQ tests from when he was in
7 school?

8 A. Yes.

9 Q. Did he have a 87 and a 86 ---

10 A. He did.

11 Q. --- when he was in school?

12 A. He --- he had 87. I think the lowest one I remember
13 is 68.

14 (Simultaneous speaking)

15 Q. And that was in the first grade?

16 A. First grade. Yes, sir.

17 Q. And he didn't have kindergarten at the time he went in
18 first grade?

19 A. That's correct.

20 Q. Okay. The next argument --- hang on a second. Let me
21 find it.

22 Counsel failed to object to the solicitor's closing
23 argument that applicant did not have any remorse for killing
24 Brooke Center, including but not limited to on page 3169 where
25 you said not once did he cry about Brooke, not once did he

1 show any remorse for Brooke, didn't even show concern for
2 Brooke.

3 And on page --- transcript page 3180 to 3181, under
4 circumstances, where the solicitor successfully objected to
5 trial counsel introducing evidence of applicant's remorse. So
6 what I would ask you there is were you arguing anything
7 improper there?

8 A. No. Basically it was a --- he didn't show any
9 remorse. They kept arguing about the two --- the notes
10 from the two chaplains or two --- they want to introduce.
11 Well, those chaplains available. They wanted to enter
12 self-serving hearsay. I don't know why they didn't want
13 to call the chaplains for what reason they did not.
14 They --- my understanding they were available.

15 Q. Okay.

16 A. And to me to try to use self-serving hearsay, if
17 they would have introduced that evidence I think in a
18 proper manner, it wouldn't have been a problem from that
19 standpoint.

20 Q. All right.

21 A. But to me, that was not part of the record.

22 (Simultaneous speaking)

23 Q. So ---

24 A. --- in the record.

25 Q. So Judge, understanding they --- they tried to introduce

1 some jail records which were like what the defendant told two
2 different chaplains months or years after ---

3 A. Well, I don't know about that. I know it was
4 two --- I don't --- I can't remember if it was a
5 hospital ---

6 Q. Well, okay. I may be wrong.

7 (Simultaneous speaking)

8 Q. Whatever the records show?

9 A. Yeah, I think it was a hospital. I think it was
10 there. There's chaplains at the hospital that he had
11 talked to if I remember right.

12 Q. Okay.

13 A. And correct me if I'm wrong, but I think that's what
14 it was.

15 Q. This --- this --- this issue the admissibility of these
16 two records was raised on direct appeal to the Supreme Court?

17 A. That was my understanding.

18 Q. All right. And they dealt with that issue. You had
19 objected to the defendant's self-serving hearsay coming in
20 through these records?

21 A. Yes, sir.

22 Q. All right. And the Supreme Court affirmed Judge Couch
23 not allowing those in?

24 A. That's correct.

25 Q. All right.

1 A. That --- that's my understanding.

2 Q. And what were you arguing about here when you said he ---
3 he showed no remorse; what testimony were you referring to?

4 A. Well, (unintelligible) testimony, the investigator
5 in this case. He basically testified what he saw at the
6 ER room and what he saw when he went out there.

7 Q. Okay. Was there a police report or some kind of
8 supplemental report where --- where Lauren Williams had
9 documented what the defendant said after the shooting?

10 A. I'm trying to remember exactly. I had to look at
11 that record and make sure what I exactly said. But I
12 know he made note --- notes about what he saw and heard
13 that day.

14 Q. Okay. And so did you introduce his testimony based on
15 those notes that he made?

16 A. Yeah. He testified, and obviously the defense knew
17 about that and got a chance to cross (unintelligible).

18 Q. All right. Did --- and any --- did Mr. Williams or
19 anyone ever tell you that --- that Mr. Williams was not
20 telling the truth about what the defendant said after the
21 crime?

22 A. (Unintelligible).

23 Q. The next objection was counsel failed to object to the
24 solicitor's improper closing arguments, including but not
25 limited to the following: On page 3168, now, it's just one

1 sentence here they taken out of the argument: Everything they
2 rolled out yesterday, I mean, I got mad. I tried to keep my
3 composure over there, but here he is. He's saying he's --- he
4 mentally retarded. I think you meant he's mentally retarded.

5 A. Uh-huh.

6 Q. But that's the sentence. What --- what were you arguing
7 there?

8 A. I was arguing the evidence showed there --- no
9 mental retardation from that standpoint. And one thing
10 that we had a charging conference before we did this.

11 Q. Okay.

12 A. We were supposed to have charges in before that ---
13 before we did closing arguments that morning, but went
14 back and had additional charges that the defense wanted.
15 We talked for a long time. And what Judge Couch decided
16 to do was was that he was going to charge the jury
17 basically that you had --- first part you had to
18 (unintelligible) to see if he's mentally retarded in this
19 situation. If he is, you can't find him. It's basically
20 a bar to the death penalty.

21 Q. Right.

22 A. And he instructed that in his jury charge.

23 Q. Okay. Do you remember what page that's ---

24 (Simultaneous speaking)

25 Q. ---

1 A. I cannot remember the exact ---

2 (Simultaneous speaking)

3 Q. One second. Just hang on ---

4 A. I want to say 322.

5 Q. I'm trying to remember exactly. I think it is 32 ---

6 A. 22. Yeah, it is on there. If you look at --- I
7 want to say it's 19 through 21.

8 Q. Okay.

9 A. And then he also charged them that it could still be
10 used in mitigation any kind of evidence of that nature.

11 Q. I can see that if the jury didn't unanimously find mental
12 retardation, they could still consider it as mitigation if
13 some jurors believed it was --- should be given weight or how
14 much weight to give to it.

15 A. If I remember right in the --- in the directed
16 opinion, that was discussed quite a bit by the Supreme
17 Court. They decided that Judge Couch did the proper
18 charge in that situation.

19 Q. All right. So on page --- on page 3222, you have it in
20 front of you?

21 A. I do.

22 Q. Judge Couch charged --- now, below --- even further below
23 the choices, you'll see a statement to you and it says if the
24 jury answers yes to the question, and that is the question
25 if --- if the defendant was shown to be mentally retarded at

1 the time of the commission of the crime as defined by the
2 statute, if you answer yes, then that would end your
3 deliberations. The defendant would not be death penalty
4 eligible in that case and you would then return that verdict
5 to the Court.

6 A. That's correct.

7 Q. That's correct. All right. So when you were arguing on
8 page 316 (unintelligible) --- 3168, everything they rolled out
9 yesterday, I mean, I got mad, I tried to keep my composure
10 over there, but here he is. He's saying he's mentally
11 retarded --- mental retarded. What --- what were you arguing
12 there?

13 A. Well, you know, had Dr. Galloway's testimony which I
14 didn't find credible in --- in my opinion from there.
15 They had played the jail phone calls, one involving his
16 grandson. If you just listen to those phone calls, in my
17 opinion, there's no question it --- it just seems like a
18 total normal person from that standpoint.

19 Q. So there --- there were ---

20 (Simultaneous speaking)

21 Q. --- two --- they introduced how many jail phone calls ---

22 A. I want to say two.

23 Q. Two of him talking to his family?

24 A. Well, I remember one specifically was his grandson.

25 Q. Okay.

1 A. If I remember that. That's one that I remember.

2 Q. And it --- you think it helped the State's case that he's
3 not mentally retarded?

4 A. Well, I thought it --- it showed --- because they
5 didn't hear from Blackwell and obviously he has the right
6 to remain silent. They introduced those phone calls, and
7 those phone calls to me give the jury an idea about ---
8 about him, or they could hear from those phone calls.

9 Q. Okay. When you made that argument, everything they
10 rolled out yesterday, I mean, I got mad, I tried to keep my
11 composure over there. But here he is, he's saying he's
12 mentally retarded. Were you trying to introduce your personal
13 opinion into ---

14 A. No.

15 Q. --- the case?

16 A. No, I was not.

17 Q. What --- what exactly were you arguing to the jury?

18 A. I was trying to convey to them basically, based off
19 the evidence and everything shown in this case, mental
20 retardation, and like I said, it was going to be charged,
21 and knew that going into it.

22 Q. Right.

23 A. I wanted to make sure that we showed that the
24 evidence showed that he was not mentally retarded in this
25 case.

1 Q. All right. And that's something you felt strongly about?

2 A. I did. And I --- and I think my job is to advocate
3 for that position, obviously, showing what the evidence
4 shows in this case. And of course defense has the
5 same --- they argue their part in what the evidence
6 shows.

7 Q. All right. The next --- the next part of --- of eight,
8 they allege counsel should have objected to improper closing
9 argument, made where you said on page 3171, he's not mentally
10 retarded and the reason why I'm going so much over this, and
11 the judge is going to charge you about mental retardation,
12 that if you make a finding that he is mentally retarded from
13 there it's a bar to the death penalty. If it's by
14 preponderance of the evidence they have to show it by that
15 amount. Preponderance means by the greater weight of the
16 evidence. Is --- is there anything improper about that
17 argument ---

18 A. No.

19 Q. --- in your opinion?

20 A. --- because we know what Judge Couch is going to
21 charge, and that's what he did charge.

22 Q. And did he tell y'all that before you even made your
23 closing argument ---

24 A. Yes, he did.

25 Q. --- what he was going to charge?

1 (Simultaneous speaking)

2 Q. So you're referring to the law that he's going to charge
3 the jury?

4 A. That's correct.

5 Q. Okay. The next claim is a claim about that the State
6 presented --- I'm sorry, I can't --- I'm going to tear this
7 off. 10E, that Mr. Blackwell's due process rights, guaranteed
8 by the Fourth Amendment of the Constitution is violated a
9 knowing presentation of false or misleading information by the
10 State. And it's based on Lauren Williams' testimony on page
11 2679 through 86 of the transcript, that Mr. Blackwell did not
12 show any remorse. And your closing argument referencing it
13 despite the evidence from hospital chaplains and others
14 present that applicant did show remorse. And it alleges that
15 Mr. Williams' testimony was false. Even if you didn't know it
16 was false, you allowed it to go in uncorrected. Can you
17 explain to the Judge what you were talking about with Lauren
18 Williams? Who --- who --- first, who was he?

19 A. He was the investigator with the Spartanburg County
20 Sheriff's Department.

21 Q. Okay.

22 A. And --- and back in 2000 --- I think this occurred
23 2008, 2009. And he testified that (unintelligible) in
24 this case. In 2018, he was let go by the sheriff's
25 department. There was a letter sent out. We received a

1 copy of it. I thought abundance of caution that I needed
2 to let the defense bar know, obviously. From there,
3 there was kind of indication that he may have falsified
4 or gave false information on the search warrant for an
5 affidavit. So we released the --- I think we sent a copy
6 to the Attorney General's Office so you could forward to
7 them in this case.

8 Q. Right.

9 A. What I did was I referred the case out. There was a
10 SLED investigation done. Basically the first circuit
11 reviewed this. They didn't find any false information
12 from what I understand from reading the letter. Now, I
13 wasn't involved in the investigation, I didn't talk to
14 anybody. I just tell you what the findings was on the
15 letter that we received.

16 Q. You received a letter from Solicitor Pascoe that of ---

17 (Simultaneous speaking)

18 A. --- I think Don Sorenson was the one that
19 actually ---

20 Q. Right.

21 A. --- his deputy actually did the letter, but it was
22 from his office.

23 Q. They didn't prosecute Mr. Williams for making a false
24 statement on the search warrant in 2018?

25 A. Right.

1 Q. Okay. And that occurred ---

2 A. This was actually four years after this trial ---

3 Q. Four years after the trial is when you learned of this
4 accusation against Mr. Williams?

5 A. That's correct.

6 Q. Did you ever receive any information that Mr. Williams
7 was providing false testimony about this case?

8 A. (Inaudible).

9 Q. Right in 2014?

10 A. Yes.

11 Q. And again the hospital chaplains, that evidence from
12 either medical records or jail records, that evidence was kept
13 out by the judge and affirmed by the Supreme Court; is that
14 correct?

15 A. That's my understanding yes.

16 Q. All right. And what lack of remorse were you referring
17 to if you recall when you --- when you were arguing he didn't
18 show any remorse for Brooke's death?

19 A. He --- well, obviously the testimony that was
20 (unintelligible) in the case, the evidence shown in the
21 case observations in the courtroom, from my standpoint
22 the jail phone calls from there. In my opinion, or saw
23 no remorse in that situation.

24 Q. Were --- were you arguing the evidence in the record and
25 the inferences from record?

1 A. Yes, sir.

2 Q. Did you ---

3 A. All the evidence that was shown, and everything that
4 was in the record in evidence at that point. Obviously
5 the chaplain's information was not in there. They could
6 have introduced through the chaplains themselves, they
7 didn't do that.

8 Q. Okay. So you did --- the chaplains did not testify,
9 so --- and the --- and those records were not admitted by the
10 judge. So you were arguing the evidence that was actually in
11 the record to the jury?

12 A. That's correct.

13 Q. Is that correct?

14 MR. MABRY: All right. One moment, please, Your
15 Honor.

16 BY MR. MABRY:

17 Q. Have you ever heard from anyone or any source that Mr.
18 Williams provided false testimony in this case?

19 A. No.

20 Q. Did anyone ever tell you before the trial of the case
21 that Mr. Williams was not telling the truth?

22 A. No.

23 MR. MABRY: All right. That's all I have, Your
24 Honor.

25 THE COURT: I'm sorry. One moment.

1 BY MR. MABRY:

2 Q. Just to clarify, Lauren Williams' conduct that he was
3 accusing --- accused of making a false statement in a search
4 warrant affidavit, did the conduct occur after this trial?

5 A. Yes.

6 Q. Was it long after this trial was over?

7 A. Yes.

8 Q. Do you remember how long?

9 A. I can't remember. I know it happened pretty soon
10 when they terminated him, but I can't remember what date
11 or time or anything.

12 Q. Was it several years after this trial was over?

13 A. I don't know when --- I know it was after the trial.
14 I can't tell you when it was.

15 Q. Okay. That's fine. And then --- then the whole process
16 went on where he was investigated and then the --- another
17 Solicitor's Office declined to prosecute?

18 A. Right. What I did was, I sent it out, and obviously
19 (unintelligible) I didn't know --- obviously we didn't
20 know who Investigator Williams had worked with over here.

21 Q. Okay.

22 A. So I believe even the SLED agent's from another part
23 of the state.

24 Q. Is --- is Investigator Williams, did he go back to work
25 as a police officer, or do you know?

1 A. As far as I know he has not.

2 Q. He has not?

3 A. No.

4 Q. Okay.

5 MR. MABRY: That's all I have.

6 THE COURT: Thank you. Mr. Grose.

7 MR. GROSE: Thank you.

8 CROSS-EXAMINATION

9 BY MR. GROSE:

10 Q. So do you recall --- I want to talk to you about Dr.
11 Nelson. Do you recall when you first retained Dr. Nelson?

12 A. I remember talking to Mike Prodan and Mike got me
13 with Dr. Nelson. I can't remember exactly when it was.
14 I know we had some e-mails. Because I think I asked Mr.
15 Prodan --- or Mike Prodan, and --- and Mike actually got
16 us together. But I can't tell you exactly when.

17 Q. All right. And Mike Prodan, he works for SLED?

18 A. He does. Yes, sir.

19 Q. He is in their behavioral science profiling section?

20 A. Yes.

21 Q. All right. And he was familiar --- Mr. Prodan was
22 familiar with Dr. Nelson because Dr. Nelson is also a
23 psychologist that works for SLED?

24 A. He --- what he --- psychiatrist --- that he did work
25 for SLED, I don't know in what capacity from that

1 standpoint --- (unintelligible).

2 Q. Okay. So you --- you --- you think Dr. Nelson's a
3 psychiatrist?

4 A. I don't know ---

5 Q. Okay.

6 A. --- for sure on that. I don't --- I don't know from
7 that standpoint.

8 Q. All right. But --- but he --- you are aware of the fact
9 that Dr. Nelson worked for SLED and continues to list that job
10 on his CV?

11 A. He did --- he did work for SLED. I don't know if he
12 still does or not ---

13 Q. Okay.

14 A. --- but he did.

15 Q. All right. Fair enough. And I think you testified a few
16 minutes ago that ultimately Judge Couch ordered an evaluation?

17 A. He did.

18 Q. All right. And specifically, I want to talk about the
19 evaluation by the Department of Disabilities and Special
20 Needs. That was the one that was ultimately done by Dr.
21 Brown; is that correct?

22 A. My understanding, yes.

23 Q. Okay. And initially you had wanted to do your own
24 evaluation?

25 A. Right. At the time, we --- we made a motion for

1 that. And I think that Mr. McGuire said why --- I don't
2 have any objection to the State to do it ---

3 Q. Okay.

4 A. --- so that's --- I think that's how the State
5 wanted ---

6 Q. All right. And so Dr. Nelson's role was consulting with
7 you and your prosecution case?

8 A. Yes, sir.

9 Q. And I understand that you provided him the entire case
10 file?

11 A. Pretty much everything we could provide to him.

12 Q. Okay. And --- and --- and you --- I sent you a subpoena
13 and you sent me what appears to be pretty much the entire case
14 file?

15 A. Yes, sir.

16 Q. And --- and is that what you would have sent Dr. Nelson?

17 A. I would. I'd send as much as I could ---

18 Q. I gotcha.

19 A. --- from that standpoint.

20 Q. All right. And --- and Dr. Nelson's role was to consult
21 with the prosecution case?

22 A. Yes, sir.

23 Q. And I believe he met with you and your team in the
24 office?

25 A. He did. Yes, sir.

1 Q. And he discussed the different aspects the three prongs
2 for intellectual disability?

3 A. He talked to us about that, yes, sir.

4 Q. All right.

5 A. Helped us understand.

6 Q. And he was somebody that you wanted to help your team
7 know what questions to ask the various experts who testified?

8 A. Yeah, to explain the tests and things of that
9 nature, the technical side of it.

10 Q. Okay. But also so that y'all would know what questions
11 to ask the experts?

12 A. Yeah. Possible with that. Helpful with that.

13 Q. All right. And, well, possible, did Dr. Nelson, in fact,
14 help with that?

15 A. He talked to us about it or whatever from that
16 standpoint, but --- but writing out questions or anything
17 like when I cross-examine I rarely have questions when I
18 ask somebody. I usually just ask people give me an idea
19 what this test, or ---

20 Q. Okay.

21 A. --- evidence can show.

22 Q. All right. Then --- then --- that --- that's a fair
23 point. So it would probably be more accurate to say that you
24 and your team relied on the information that Dr. Nelson
25 provided in order to question the expert witnesses?

1 A. It is. He gave us information ---

2 Q. Okay.

3 A. --- concerning that.

4 Q. All right. And I understand from your earlier testimony
5 that Dr. Nelson was --- was present at --- at the Atkins
6 hearing?

7 A. He was present for the Atkins hearing and for part
8 of the trial, I don't think he was there for the whole
9 trial ---

10 Q. Okay. All right. And did --- did --- and did I
11 understand you that Dr. Nelson sat at counsel table during
12 part of the ---

13 A. At --- at parts of it he would sit at --- and I know
14 in the Atkins --- Atkins hearings, I don't know if he sat
15 with us during the (unintelligible) hearing.

16 Q. Okay. All right. And did you and your team consult with
17 Dr. Nelson during the Atkins hearing?

18 A. Yes.

19 Q. Okay. Okay. Now, I understand that the --- you have a
20 copy of your closing argument up there?

21 A. I do. Yes, sir.

22 Q. Okay. All right. If you could turn to page 3168 of the
23 transcript. And I want to direct you to lines 11 through 14.

24 A. Yes, sir.

25 Q. Let's look at this case. You have the defendant,

1 everything they rolled out yesterday. I mean, I got mad, I
2 tried to keep my composure over there. But here he is, he's
3 saying he's mentally retarded.

4 What were you mad about?

5 A. No, just showing the evidence or whatever from the
6 standpoint of the evidence they produced. I mean ---

7 Q. Uh-huh.

8 A. --- a phone call they produced everything that I ---

9 Q. Uh-huh.

10 A. --- be honest with you, I didn't think the evidence
11 showed mental retardation.

12 Q. Okay. And --- and I understand that's your opinion,
13 but --- but what were you about to lose your composure over?

14 A. No, just looking at, you know, asking questions and
15 things like that from that standpoint.

16 Q. Well, I mean, it says, I mean, I got mad. I tried to
17 keep my composure over there. What I want to know is is what
18 were you about to lose your composure over?

19 A. Well, basically, they put up evidence. Like I said,
20 the jail phone calls with the grandson from that
21 standpoint ---

22 Q. Okay.

23 A. --- putting up evidence --- I mean, even his own
24 daughter said he's a pool shark from that standpoint.

25 Q. Okay.

1 A. The evidence with Dr. Galloway, you know, obviously,
2 her testimony, I didn't think was credible in this
3 situation.

4 Q. All right. Do you believe that Ricky Blackwell's a pool
5 shark?

6 A. That's what his daughter said.

7 (Simultaneous speaking)

8 Q. All right. And you're aware that his daughter --- you're
9 talking about Heather, you're aware that she has her own
10 intellectual issues, aren't you?

11 A. I know from the testing or whatever they said that
12 she possibly did.

13 Q. Okay. All right. If you could turn over to 3169,
14 please.

15 A. Yes, sir.

16 Q. At line four. You say another thing too, they played
17 these jail calls for you and I'm glad they did. I'll tell you
18 why. Listen to them, he's not mentally retarded. You can
19 just tell by the voice, the way he talks on this, and the
20 other things I'll tell you they picked two jail phone calls
21 and obviously there's more. But just looking at that, can you
22 point to any scientifically --- scientific peer-reviewed
23 evidence that you can listen to somebody on the telephone and
24 determine that they're -- did not have an intellectual
25 disability?

1 A. One thing I think a juror brings in the courtroom is
2 their common sense.

3 Q. All right.

4 A. And that's one thing I think people has common sense
5 in everyday experiences ---

6 Q. Okay.

7 A. And they could relate to what the evidence may show
8 or may not show.

9 Q. All right. My --- my --- my question is, though, can you
10 point to any peer-reviewed scientific literature that says
11 that you can listen to somebody on a telephone call and tell
12 that they're not mentally retarded?

13 A. I don't have any knowledge of that right now.

14 Q. Did Dr. --- did Dr. Nelson give you any scientific
15 peer-reviewed literature that says you can listen to somebody
16 on the telephone and tell that they're mentally retarded?

17 A. He did not.

18 Q. Okay. All right. A little bit further down, at lines 11
19 through 14, said not once and believe me, they would have
20 played it for you, I believe not once did he cry about Brooke,
21 not once did he show any remorse for Brooke, doesn't even show
22 one concern about Brooke.

23 A. Uh-huh.

24 Q. I think you testify earlier about the issue with the ---
25 the records involving chaplains?

1 A. Yes, sir.

2 Q. All right. And I believe you testified that it was your
3 understanding at the time of trial that the chaplains were
4 available?

5 A. That was my understanding.

6 Q. And I understand that you believe that that's
7 self-serving hearsay, but it's still evidence; you would agree
8 with that?

9 A. No, sir.

10 Q. Well ---

11 A. It's not evidence, because it's self-serving, it's
12 not an exception to hearsay.

13 Q. Well, but I think you testified earlier that that's
14 something that could have been introduced if the chaplains had
15 been there?

16 A. If they testified, then part of the record, yes,
17 sir.

18 Q. And --- and that's my point. So you --- you can see that
19 if chaplains were there and present and testified so that the
20 cross-examination of that evidence would be missing?

21 A. It could have been. Yes, sir.

22 Q. Okay.

23 A. But the records in my opinion are not admissible in
24 this case ---

25 (Simultaneous speaking)

1 Q. And then the Supreme Court said that. And --- and ---
2 and ---

3 A. Yes, sir.

4 Q. --- and actually I'm agreeing with you that the chaplains
5 were available and they should have testified.

6 And regardless of your view of that evidence, there is
7 another view of that evidence there is evidence of remorse
8 in --- in --- in what the chaplains had knowledge of.

9 A. Which --- which evidence are you (unintelligible)?

10 Q. The chaplain records.

11 A. The records?

12 (Simultaneous speaking)

13 Q. And --- and --- and ---

14 A. (Unintelligible). The records are not admissible,
15 they weren't part of the record.

16 Q. I understand. But --- but you are aware there was
17 evidence --- evidence that existed that there was evidence of
18 remorse?

19 A. My position is there was no evidence that was
20 presented concerning that ---

21 Q. All right.

22 A. --- because this --- they weren't subject to
23 cross --- if they called them (unintelligible)
24 cross-examination.

25 Q. I --- I --- I under --- I understand that. There's a

1 difference between no evidence presented and no evidence is
2 missing; would you agree with that?

3 A. Would you rephrase that again.

4 Q. I --- I think your position is is that there was no
5 evidence (unintelligible)?

6 A. No, my position --- there's no evidence existed
7 because it's not part of the record.

8 Q. Okay. All right. I --- you're kind of playing a lawyer
9 game there?

10 MR. MABRY: Objection. He can't testify.

11 (Simultaneous speaking)

12 THE COURT: Yeah. Hold --- hold --- hold on.

13 THE WITNESS: He said --- he said ---

14 MR. MABRY: All right.

15 (Simultaneous speaking)

16 THE COURT: I note your objection.

17 MR. GROSE: I'll --- I'll rephrase.

18 THE COURT: I'll sustain the objection. Rephrase
19 your question.

20 MR. GROSE: Okay. All right.

21 BY MR. GROSE:

22 Q. You're --- so if I understand your testimony, you say the
23 evidence does not exist because it's not part of the record;
24 that's your answer?

25 A. Yes, sir.

1 Q. Okay.

2 MR. GROSE: Beg the Court's indulgence for a moment.

3 Okay. No. Flipped too far. Can you go to page 3171.

4 THE WITNESS: Yes, sir.

5 BY MR. GROSE:

6 Q. If you look at line 20, it says they talk about IQ scores
7 and everything, IQ score of 70, he had one 87. Did Dr. Nelson
8 tell you that the 87 was an individually administered IQ test?

9 A. I can't remember if he did or didn't from that
10 standpoint. I just remember we had the IQ scores, we
11 looked at them from that standpoint. And like I said,
12 there was a 60, 80, an 87, there were two other ones too.
13 I'm trying to remember from that standpoint. But we
14 didn't discover that part of it I don't think. And I
15 can't remember to be honest with you from that
16 standpoint.

17 Q. All right. So based on that answer, I'm going to take it
18 that you --- you can't remember whether the 87 was an
19 individually administered IQ test or not?

20 MR. MABRY: Objection. That was not his answer. He
21 asked him if Dr. Nelson told him. He said I can't
22 remember whether Dr. Nelson told me. He his
23 characterized ---

24 (Simultaneous speaking)

25 THE COURT: All right. Well, he had --- that ---

1 that's --- that's the question he asked first. I'm going
2 to allow him to follow up with --- with that question. I
3 overrule the objection.

4 MR. MABRY: Thank you, Judge.

5 BY MR. GROSE:

6 Q. Well, what I want to know, if you can remember whether or
7 not the 87 was an individually add --- administered IQ test or
8 not?

9 A. I can't remember from that standpoint. I --- I
10 know --- well, the sad thing is I know from a
11 schoolteacher's standpoint, usually they're done in
12 groups. But I can't remember if we actually --- actually
13 talked about that in that situation.

14 Q. Okay.

15 MR. GROSE: Beg the Court's indulgence for a moment.

16 Thank you, Solicitor. That's all the questions I
17 have at this time.

18 THE COURT: Thank you. Redirect?

19 MR. MABRY: Just briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. MABRY:

22 Q. Solicitor Barnett, as a solicitor, are you allowed to
23 argue the evidence in the record and the inferences from that
24 evidence?

25 A. Yes, sir.

1 Q. Are you allowed to argue outside the record?

2 A. No. I usually --- usually keep with inside the
3 record, obviously. A death penalty, you've also got, you
4 know, basically mitigations, aggravators and other --- in
5 this one he had mental retardation as factor. I think
6 it's the only case I know of in South Carolina.

7 Q. Okay. What happens if you argue outside the record or
8 some evidence that's not even in the record as a Solicitor?

9 A. That's not proper.

10 Q. It could be a mistrial?

11 A. It could be yeah.

12 Q. Could be a mistrial caused by you?

13 A. Could be.

14 Q. And could be double jeopardy, couldn't it?

15 A. I guess it could be. I don't know for sure, but
16 obviously that would be for a court to decide.

17 MR. MABRY: Thank you.

18 THE COURT: Hold --- hold on just a second. Mr.
19 Grose. Did y'all have one more ---

20 BY MR. MABRY:

21 Q. Just briefly, Mr. Grose was asking you about the phone
22 calls. And he asked you about whether or not there was
23 something scientific about how somebody talks on a phone call.
24 Isn't it correct that under Atkins, you do consider how
25 somebody interacts with other people?

1 A. That is correct. That's part of the social is the,
2 you know, obviously part of it from that standpoint.

3 Q. And the jury could consider what's on those two jail
4 phone calls as how well he interacts with other people and how
5 well he speaks?

6 A. That's correct.

7 MR. MABRY: No further questions.

8 THE COURT: All right. Thank you. Mr. Grose,
9 re-cross.

10 RECROSS-EXAMINATION

11 BY MR. GROSE:

12 Q. Just briefly, are you familiar with the Court of Appeals
13 and the Supreme Court opinions in State versus Gregory
14 Fullerton?

15 A. I'd have to see them to make sure that I'm --- that
16 I don't --- I usually know them for facts instead of just
17 reading the case names.

18 MR. GROSE: Nothing further.

19 THE COURT: All right. Thank you. Solicitor
20 Barnett, you can step down.

21 THE WITNESS: Thank you, Your Honor. May I ask to
22 be excused?

23 MR. MABRY: No objection.

24 THE COURT: All right. He is excused. Call your
25 next witness.

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1 MR. MABRY: That's all we have for today, Your
2 Honor.

3 THE COURT: All right. And --- and this looked like
4 Dr. Nelson is the only witness for tomorrow.

5 MR. MABRY: Yes, sir, Your Honor.

6 THE COURT: Okay. All right. We'll take as much
7 time tomorrow as we need, Dr. Nelson.

8 I think you --- I believe I do have a pending motion
9 about Dr. Nelson's testimony tomorrow.

10 MR. MABRY: Yes, sir.

11 THE COURT: I did review what had been submitted
12 last night.

13 MR. GROSE: Before you --- can we be heard on that
14 just briefly?

15 THE COURT: Yes. Yes. Be glad to.

16 MR. GROSE: And --- and I don't want to reargue
17 anything there's a motion, or what we --- we argued
18 yesterday. But since we were convened yesterday we've
19 had more communications from Mr. Evans in the Attorney
20 General's Office. And at this point we would have just
21 two primary objections to Dr. Nelson.

22 So this is maybe slightly refined based on
23 developing circumstances. The first objection is --- is
24 that we do believe that his testimony about whether or
25 not the diagnostic criteria is met for intellectual

1 disability, is not reliable. Dr. Nelson, I think we all
2 agree is going to testify that it would be both
3 professionally and unethical for him to offer a diagnosis
4 testimony with whether or not Mr. Blackwell meets the
5 diagnostic criteria is no different than offering a
6 diagnosis.

7 So we believe that that testimony would be
8 unreliable because the reason that it's unprofessional
9 and unethical is because Dr. Nelson has not done a
10 clinical interview of Mr. Blackwell. And so without
11 doing that that testimony cannot be reliable.

12 Secondly ---

13 THE COURT: And --- and on that point, you had cited
14 a circuit judge's order in Bell v State. The way I
15 interpreted that site, do y'all have a copy of that
16 order? I don't have any way of pulling up --- in Circuit
17 Court --- obviously a Circuit Court's order is not
18 binding on the court. It might be helpful.

19 MR. MABRY: Ms. --- Ms. --- Ms. Vann has a copy of
20 the order and she can either bring it or e-mail it.

21 THE COURT: E-mail it. E-mail it to me.

22 MR. GROSE: Yeah. And --- and so that's our
23 position on that. Additionally yesterday they told us
24 that one of the areas that Dr. Nelson's going to testify
25 to would be about the organization and the procedures of

1 the school districts in Greenville, South Carolina
2 presumably in this century. Because that's according to
3 his CV is when he --- he worked there. And we think that
4 evidence about how Greenville School District operated in
5 the 2000s is not relevant because the issue is how the
6 school district in Chesnee, South Carolina operated in
7 the 1970s. And so that --- that would be, you know,
8 the --- the --- the first disorder by global objection to
9 him. And the second is our more specific objection.

10 THE COURT: All right. Well, let's take it in the
11 reverse order. Let --- does the Attorney General have a
12 position on the relevance of his testimony about how the
13 Greenville School District operated, I assume while he's
14 been a school psychologist?

15 MR. EVANS: Your Honor, he's not going to testify
16 tomorrow about the Greenville schools, he's going to
17 testify about how actual special education classes are
18 normally done. And that there are three types of special
19 education classes that are done, and from the evidence
20 you can see that Mr. Blackwell was in a adjunct class or
21 a resource class where you are pulled out from a regular
22 class and given general instruction of a particular
23 subject. Like ---

24 MR. GROSE: Well, we had that testimony from the
25 teacher today.

1 MR. EVANS: Yes. And --- and --- and Dr. Nelson
2 reiterates (unintelligible) what he is able to give the
3 Court regarding how (unintelligible) classes are run.
4 He's not talking about Greenville. He's talking about
5 (unintelligible) class (unintelligible) he's giving his
6 expert opinion because he had worked in the education
7 setting. That's the reason why he was an expert in that
8 field. And that's the reason he's giving that type of
9 testimony.

10 THE COURT: All right. Well, we'll --- we'll ---
11 we'll obviously have to hear testimony in context of
12 whenever we get to those questions. My initial reaction
13 these are almost like motions in limine, but hear ---
14 need to hear a context. But my initial reaction, he can
15 testify in the general sense about special ed classes and
16 how they're set up. I think that we can probably --- I
17 think we can probably all agree that there is uniformity
18 across the state about how that's done. So I'll ---
19 I'll --- that's --- so that's where I'm heading on that.

20 MR. EVANS: Okay. And the second topic, he is
21 basically a witness regarding the impeachment of other
22 testimony that was given by other witnesses at the trial.
23 (Unintelligible). They are witnesses that testified
24 (unintelligible) testified by the applicant that newest
25 IQ test beyond the developmental period. Dr. Nelson will

1 testify that you cannot do that because of DSM does not
2 allow it. He's not saying that Ricky Blackwell isn't
3 competent. He's saying that the witnesses they called
4 did not follow proceeding, because they used IQ tests
5 when he was in his 50s. And DSM-IV, the actual book
6 that --- that's use --- was used when he actually
7 committed the crime, says he must have IQ test under 70
8 at the time of developmental period which was 18.

9 THE COURT: Yeah, I think it was interesting that
10 Justice Cole (phonetic) sort of covered that in his
11 dissent that there's the difficulty of determining IQ
12 30 years after the fact. As a general --- and where I am
13 with that, again, we'll need to hear the context, but
14 this particular case is about --- or parts of this case
15 is about experts reviewing the work of other experts.
16 That's basically what I've heard throughout the seven
17 days of testimony. It's a lot of testimony of other now
18 experts testifying about what experts did at trial. And
19 so I will allow any of that questioning.

20 Again, we'll hear the context if there are any
21 objections, we'll deal with those. But, you know, this
22 is a bench trial, the Court can hear the testimony and
23 determine any value or weight as it's --- as it's
24 presented.

25 So I'll --- I'll --- I'll --- I'll deny the motion

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1 to --- to --- in a broad way to limit Dr. Nelson.
2 However, again, it may be dependent on a particular
3 situation as he's on the stand what the context is.

4 All right. Anything else?

5 MR. EVANS: Thank you, Your Honor.

6 THE COURT: All right. Since we have just Dr.
7 Nelson tomorrow, let's start at 10:00; does that work for
8 y'all, 10:00?

9 MR. EVANS: Yes, sir.

10 THE COURT: Now, there's an issue with Ms. Vann
11 having to be in court tomorrow, do we need to work around
12 that?

13 MR. GROSE: I --- I have to be in court. I --- I
14 moved my appointments that I can, scheduled in the
15 morning. I actually moved from them from tomorrow to
16 today. But I need to be in Greenwood at 3:00 tomorrow.
17 And so I need to leave here by 2:00 to 2:15.

18 THE COURT: All right. Well let's start at 9:30.

19 MR. GROSE: Okay.

20 THE COURT: We'll start at 9:30 in the morning.

21 All right. We'll be down till 9:30 in the morning.

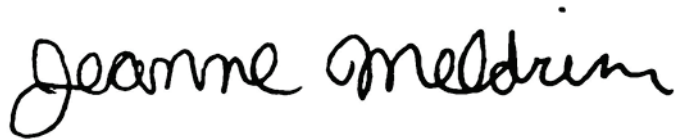
22 (PROCEEDINGS CONCLUDED AT 2:58 P.M.)
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24
25

CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT COURT 8 for LAURENS COUNTY, South Carolina, on the 1st Day of August, 2023.

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

March 16, 2024

A handwritten signature in black ink that reads "Jeanne Meldrim". The signature is written in a cursive, flowing style with a prominent dot over the 'i' in "Meldrim".

Jeanne Meldrim

Transcriber

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 8
COUNTY OF LAURENS) DOCKET NO. 2018-CP-42-00928

RICKY LEE BLACKWELL,
Plaintiff,
versus
STATE OF SOUTH CAROLINA
Defendant.

H E A R I N G

DATE: August 2, 2023
TIME: 9:25 a.m. - 11:17 a.m.
LOCATION: South Carolina Circuit Court 8
JUDGE: Daniel Hall
TRANSCRIBED BY: Jeanne Meldrim

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 APPEARANCES:

2

3 Charles Grose Jr., Esquire
4 Grose Law Firm
5 305 Main Street
6 Greenwood, SC 29646
7 Attorney for the Petitioner

8

9 Lindsey Vann, Esquire
10 Justice 360
11 900 Elmwood Avenue
12 Suite 200
13 Columbia, SC 29201
14 Attorney for the Petitioner

15 Melody Brown, Esquire
16 S.C. Attorney General's Office
17 PO Box 11549
18 Columbia SC 29211-1549
19 Attorney for the Respondent

20 Anthony Mabry, Esquire
21 S.C. Attorney General's Office
22 PO Box 11549
23 Columbia SC 29211-1549
24 Attorney for the Respondent

25 Tommy Evans, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia SC 29211-1549
Attorney for the Respondent

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Number	Description	Marked	Entered
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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

Direct exam Nelson

1 THE COURT: 2018-CP-42-00928. It's a
2 continuation --- this is day eight of a post-conviction
3 relief hearing. Capital murder case of Ricky Blackwell
4 versus State of South Carolina.

5 Is the State ready to proceed?

6 MR. EVANS: Yes, Your Honor.

7 THE COURT: And is the applicant ready to proceed?
8 Mr. Grose?

9 MR. GROSE: Yes, sir.

10 THE COURT: All right. Then call your next witness.

11 MS. BROWN: Thank you, Your Honor. May it please
12 the Court. The State at this time would like to call Dr.
13 Robert Nelson to the stand.

14 (Witness sworn)

15 ROBERT CHARLES NELSON, HAVING BEEN DULY SWORN,
16 TESTIFIED AS FOLLOWS.

17 DIRECT EXAMINATION

18 BY MR. EVANS:

19 Q. Dr. Nelson, can you state your complete name for the
20 record, please.

21 A. Yes, Robert Charles Nelson, N-E-L-S-O-N.

22 Q. And where do you currently reside?

23 A. I live in Greenville, South Carolina.

24 Q. Okay. And can you tell the Court your educational
25 training to be a psychologist?

1 A. Well, I obtained an undergraduate degree and a
2 triple major including psychology, theology, and
3 sociology. I later --- many years later, went back. I
4 dual tracked in a master's degree in marriage and family
5 therapy, and a doctorate in clinical psychology.

6 Q. And when did you get your doctorate ---

7 A. 2000.

8 Q. --- in college?

9 A. The year 2000.

10 Q. Now, before obtaining your doctorate, you were working in
11 a school setting, weren't you?

12 A. Yes, sir.

13 Q. All right. Can you explain to the Court exactly what
14 that employment was?

15 A. I had two internships required for my doctoral
16 degree where I worked as a school psychologist under the
17 supervision of a licensed psychologist in California.

18 Q. Okay. And California is where you're from originally;
19 isn't that correct?

20 A. No, sir. I'm originally from Texas ---

21 Q. Okay.

22 A. --- but lived in Northern California and then San
23 Diego for most of my adult life before moving out here.

24 Q. Okay. What brought you to Greenville?

25 A. My wife's mother was terminally ill and so we packed

1 up and came back out here so that she could be closer to
2 her mother.

3 Q. Okay. And when you arrived in Greenville, what was your
4 first job here?

5 A. My first job was to work with the Greenville County
6 School District, out of the central office as a school
7 psychologist. My --- my assignment was to --- one of my
8 assignments was to help train the --- I want to say about
9 23 school psychologists that were employed by the
10 district and help them better understand compliance with
11 the IDEA Special Education Law related to emotional and
12 behaviorally disturbed children.

13 Q. Okay. Can you explain this law to the Court?

14 A. IDEA is a law that was enacted, I want to say in the
15 70s, like '74. And it was designed to make sure that
16 children that were identified with learning disorders or
17 other mental health disorders were considered for special
18 education classes.

19 Q. Okay. And you currently are licensed to practice in
20 South Carolina?

21 A. Yes, sir.

22 Q. Are you a member of any associations?

23 A. The America Psychological Association and the South
24 Carolina Psychological Association.

25 Q. You were once president weren't you, of the

1 Psychological ---

2 (Simultaneous speaking)

3 Q. --- twice --- twice president of --- of South
4 Carolina ---

5 A. Yes.

6 Q. --- Psychological Association?

7 A. Yes, sir.

8 Q. All right. Where are you currently employed?

9 A. I am currently employed in a group private practice
10 called Lifestance Health in --- in Greenville.

11 Q. And exactly what do you do for Lifestance?

12 A. I'm a clinical psychologist and I do a lot of
13 testing of the individuals that need psychological
14 testing for various purposes, especially consideration
15 for ADHD and --- and other learning disorders.

16 Q. Okay.

17 A. And I also see patients that are just looking for
18 psychotherapy.

19 Q. Okay. Now, you are also a consultant for the South
20 Carolina Law Enforcement Division; isn't that correct?

21 A. Yes, sir.

22 Q. Okay. You've never been employed for SLED, have you?

23 A. No, sir.

24 Q. And you are also a state constable?

25 A. Yes, sir.

1 Q. Okay. Could you explain what is a state constable?

2 A. The best way I can describe it is it's kind like
3 being a reserve police officer, or a reserve deputy with
4 the exception that for former full-time law enforcement
5 eligible people they can become a state constable and
6 that would license them an advanced state cons establish.
7 And that would license them to work for any agency in the
8 state that needed reserve help.

9 Q. Okay. Now, during the course of your career, have you
10 conducted any intellectual assessments?

11 A. Yes, sir.

12 Q. Okay. And during the course of your career, have you
13 ever administered IQ tests?

14 A. Yes, sir.

15 Q. And were they done for school-aged children, the IQ
16 tests?

17 A. Pardon me?

18 Q. Were the IQ tests done for school-age children?

19 A. Yes, sir. I've also done them for adults.

20 Q. Okay. So are you familiar with the standards associated
21 with intellectual disability?

22 A. I am.

23 Q. And --- and you said earlier you once were the
24 psychologist for Greenville County schools, correct?

25 A. Yes, sir.

1 Q. So are you familiar with the assessment testing with the
2 schools?

3 A. Yes, sir.

4 Q. Okay. Are you familiar with remedial and special
5 education (unintelligible)?

6 A. I am.

7 Q. How many IQ tests do you think you've done in your
8 career --- the span of your career?

9 A. I'd have to estimate it in the hundreds.

10 Q. And psychological assessments, how much do you think
11 you've done in your career?

12 A. Several hundred. I --- I do an initial
13 psychological evaluation and assessment for every new
14 patient, for example.

15 Q. Okay. Have you ever qualified to testify as an expert
16 before?

17 A. Yes, sir. I have.

18 Q. How many times?

19 A. I want to say four.

20 Q. Okay. Have you ever been denied qualification to testify
21 as an expert?

22 A. No, sir.

23 Q. Have you ever tested --- testified for the defense
24 (unintelligible)?

25 A. I have not.

1 Q. And you have done forensic psychology for SLED as well,
2 haven't you?

3 A. Criminal forensic consulting. Yes, sir.

4 Q. Okay. What's the difference between criminal forensic
5 psychology and this normal forensic psychology?

6 A. It's not actually a licensure term, but I --- I
7 designate it that way, because the majority of forensic
8 psychology is typically in one of two environments. One
9 is working in the prisons doing evaluations of prisoners,
10 and the other is doing custody terminations for child
11 custody cases. And that's typically what is considered
12 to be forensic psychology.

13 Q. Okay.

14 MR. EVANS: May I approach, Your Honor?

15 THE COURT: Yes, you may.

16 BY MR. EVANS:

17 Q. (Unintelligible) Dr. Nelson, do you recognize --- do you
18 recognize that?

19 THE COURT: What --- what is that exhibit number,
20 please?

21 MR. EVANS: Number three.

22 THE COURT: I realize it was (unintelligible) I just
23 want to make sure I knew what number it is was.

24 THE WITNESS: This is my current CV.

25 MR. EVANS: Okay.

1 THE WITNESS: Well, if I can correct.

2 MR. EVANS: Yes.

3 THE WITNESS: It does not list my most recent
4 employment with Lifestance.

5 MR. EVANS: Okay.

6 THE WITNESS: I mean, I've only been in that
7 position for three months, and it does not reflect it in
8 my current employment.

9 BY MR. EVANS:

10 Q. Okay. Other than your current employment, does it
11 accurately reflect your employment, educational, and
12 career ---

13 A. Yes.

14 Q. --- and things you've done in your career?

15 A. Yes, sir.

16 Q. Okay.

17 MR. EVANS: Your Honor, at this time, Your Honor, I
18 would like to introduce defense --- or case exhibit ---
19 Respondent's Exhibit Number 3 into evidence.

20 MR. GROSE: No objection.

21 THE COURT: All right. Respondent's Exhibit
22 Number 3 is in evidence.

23 (Respondent's Exhibit 3 marked and entered)

24 BY MR. EVANS:

25 Q. How long have you been a practicing clinical

1 psychologist?

2 A. Let me just differentiate. I've been a practicing
3 clinical psychologist, since 2000. The early years of my
4 time in California, I was not --- in my early years in
5 South Carolina, I was not required to have a South
6 Carolina license, because I was working under the license
7 of the Department of Mental Health.

8 Q. Okay. So you would say you've been practicing about
9 23 years?

10 A. Yes, sir.

11 Q. Okay. Have you taught individuals in how to take IQ
12 tests?

13 A. Yes, sir.

14 Q. How to administer IQ tests?

15 A. Yes, sir.

16 Q. Okay. And you said earlier you once worked for the
17 Department of Mental Health?

18 A. Yes, sir.

19 Q. What capacity did you work for the South Carolina
20 Department of Mental Health?

21 A. I started out working as a chief psychologist in the
22 Greenville Mental Health Center, and about six months in,
23 I was promoted to deputy director --- or assistant
24 director.

25 Q. Okay. So you --- you are aware of South Carolina mental

1 health policies and procedures?

2 A. To a degree, yes, sir.

3 Q. Okay. You've also taught in the field of
4 psychopharmacology, haven't you?

5 A. Yes, sir.

6 Q. Okay. And where did you teach psychopharmacology?

7 A. At Webster university at their Greenville
8 metropolitan campus.

9 Q. Okay. Can you explain to the Court exactly what is the
10 field of psychopharmacology?

11 A. Psychopharmacology is the study of psychotropic
12 medications. Psychotropic medications are medications
13 prescribed for individuals with mental health diagnoses.

14 Q. Okay. Would that be including depression?

15 A. Yes, sir.

16 Q. Okay.

17 MR. EVANS: At this time, Your Honor, I would like
18 to introduce Dr. Robert Nelson as the expert in clinical
19 psychology, intellectual, and school assessments,
20 psychopharmacology, and criminal forensic psychology.

21 THE COURT: Mr. Grose.

22 MR. GROSE: We --- we have some voir dire.

23 THE COURT: All right. Mr. Nelson, answer any
24 questions Grose may have for you.

25 THE WITNESS: Yes, sir.

CROSS-EXAMINATION

BY MR. GROSE:

Q. I believe you said that you're --- you did two internships in the schools in California?

A. Yes, sir.

Q. What years were those?

A. May I reflect --- refer --- refresh my memory with my CV?

Q. Sure.

A. 1999 through 2001, and 1998 to 1999.

Q. And you said that you worked in the school district in Greenville ---

A. Yes.

Q. --- what years was that?

A. That would have been 2006 through 2011.

Q. Okay. And you said that you've been qualified as an expert in courts four times previously?

A. I believe it's four, yes, sir.

Q. All right. And how many of those were Atkins cases?

A. I want to say two.

Q. And --- and which ones were those?

A. That would have been the Bennie Brown murder case ---

Q. Uh-huh.

A. --- trial, and Ricky Lee Blackwell.

1 Q. All right. So you're saying that a judge qualified you
2 as an expert in Ricky Lee Blackwell's case?

3 A. No, sir.

4 Q. Okay. So you've only been qualified as an expert in
5 court in an Atkins hearing on one occasion prior?

6 A. Yes, sir.

7 Q. And what were the --- the other occasions that you were
8 qualified as an expert?

9 A. They were non-Atkins involved murder trials.

10 Q. Okay. Okay.

11 MR. GROSE: Beg the Court's indulgence.

12 BY MR. GROSE:

13 Q. And --- and the non-Atkins murder trials, did you testify
14 or were you retained?

15 A. I --- I was --- I testified.

16 Q. Okay.

17 MR. GROSE: Your Honor, at this time I don't have
18 any more questions, but I have three objections.

19 THE COURT: All right. I'll hear --- I'll hear your
20 objections.

21 MR. GROSE: All right. The --- the first objection
22 and our general objection that because Dr. Nelson has
23 testified in his deposition, it would be unprofessional
24 and unethical to offer an opinion on whether somebody
25 meets the criteria for intellectual disability without

1 having seen that person. We believe that his testimony
2 is unreliable under the third prong of the Watts versus
3 Ford Motor Company test that's cited in our brief.

4 Secondly, we had raised an objection yesterday of
5 him offering testimony about school districts. And based
6 on his testimony now, he had from 1998 to 2001,
7 experience in California, and then five years' experience
8 in Greenville School District from 2006-2011. Nothing
9 has been offered as to what his knowledge and experience
10 would be with regard to the Chesnee School System.

11 And the third objection is a new objection based on
12 the earlier presentation today. And I have a packet I'd
13 like to mark as a Court's exhibit. And what's been
14 marked as Court's Exhibit 1 dated 8/2/2023. The first is
15 pages --- a letter dated October 17th of 2022 which is
16 the cover letter responding to our discovery request.

17 The next three pages are the State's answers to Mr.
18 Blackwell's interrogatories.

19 The next three pages of the exhibit are the State's
20 return to the request for production of documents. In
21 these --- the answers that were served on October 17th,
22 the State did not identify any expert witnesses.

23 The next, there's a letter dated May 15th of 2023,
24 where the State identifies Dr. Robert C. Nelson and
25 provides an address. However, they --- they do not offer

1 what his expertise would be.

2 On June 30th, the State supplemented their response
3 and said that Dr. Nelson is a board-certified
4 psychologist that was initially retained by Solicitor
5 Barry Barnette as a consultant who was possibly going to
6 testify for the State in the penalty phase of the trial.
7 And he goes on to explain what he had done in that case.
8 The only reference is is that he's a board-certified
9 psychologist.

10 Then on Monday of this week at 4:34, the State
11 provided more information about what Dr. Nelson's
12 testimony would be. And that's --- that production is
13 what led to our objection about, you know, testifying
14 about the category of special education. We have never
15 been notified that Dr. Nelson would be a expert in
16 anything other than clinical psychology. The --- the
17 pharmacology is new today, the forensic psychology is
18 something new today. And of course we've objected to
19 what he can testify to with regard to his involvement in
20 the court system --- I mean in the school system rather,
21 because he doesn't have any experience in Chesnee.

22 And the final page of the exhibit, not to blind side
23 you, but final page of the exhibit actually has to do
24 with the State wanting to hold this hearing open for
25 another witness, which I think is probably the first

1 you've heard of that.

2 (Court's Exhibit 1 marked)

3 THE COURT: All right. Thank you. Mr. Evans, I'll
4 be glad to hear from you.

5 MR. EVANS: Thank you, Your Honor. First of all, to
6 address (unintelligible) raised by Dr. Nelson's
7 (unintelligible) Mr. Blackwell. We have said all along
8 that he cannot make an opinion regarding his actual
9 diagnosis, but he can make an opinion about actually what
10 was done to come up with this diagnosis and criteria that
11 was not followed. That's to be his testimony.

12 And as I said --- as I said yesterday, it would a
13 (unintelligible) for all the doctors to have come
14 (unintelligible) certain things they have done in order
15 to accomplish their diagnosis (unintelligible) the actual
16 rule (unintelligible) determination. Therefore what was
17 not --- what the psychology should do and
18 (unintelligible) diagnosis. Dr. Nelson will not say
19 whether or not Mr. Blackwell (unintelligible) disabled or
20 not. He cannot say that, because (unintelligible)
21 actually treat him. (Unintelligible) he can't say. He
22 (unintelligible) criteria (unintelligible). He can make
23 that analysis in order to impeach the other doctors that
24 are saying that have made the proper following of the
25 criteria the DSM-IV to make a diagnosis. And that's what

1 he's here to testify to.

2 I ask with the second argument they made, and I can
3 question Dr. Nelson on this (unintelligible) but he
4 didn't (unintelligible) existed (unintelligible). We
5 were not told about the existence of Dr. Nelson until
6 after the actual hearing in May of this --- in April of
7 this year. April of this year. And then I finally got
8 in contact with Dr. Nelson in mid-May and spoke to him
9 about his knowledge in this case. And that's when I
10 immediately notified them (unintelligible) be a possible
11 witness. And I gave them the name and the address
12 pertaining to the rules, Your Honor.

13 After that I also --- well, between the time I told
14 them about wanting to testify to his knowledge and the
15 time I (unintelligible) made that initial extended
16 interrogatories let them know that he existed, actually,
17 my mother passed away. My mother passed away of June in
18 2003. So therefore, I was out of the office for two
19 weeks (unintelligible) the time I could not work this
20 case. I was in New York at this time.

21 I returned on June 26th --- June 30th. I let them
22 know about what Dr. Nelson his knowledge of the case
23 (unintelligible). As for the other things regarding
24 psychopharmacology, I just found out about that Saturday
25 when I talked to Dr. Nelson about his testimony. And I

1 let them know about that through a e-mail day before
2 yesterday.

3 And also criminal forensic psychologist. So he's
4 (unintelligible) Dr. Nelson's testimony that I just found
5 out about (unintelligible) his knowledge of the factors,
6 I --- know about issues, once I found about
7 (unintelligible). Your Honor, we will once again state
8 that ---

9 THE COURT: Mr. Grose. I'll hear from you after ---
10 I'll give you another ---

11 MR. GROSE: I'm sorry.

12 THE COURT: --- after.

13 MR. EVANS: Once again, Your Honor, as --- as stated
14 yesterday, we think that Dr. Nelson's fully qualified to
15 testify in Atkins. As for his knowledge about school
16 test scores, (unintelligible). During his voir dire, he
17 made a reference to a 1974 Federal case that he actually
18 taught people about. And 1974 is when Ricky Blackwell
19 was in school. So it was obvious (unintelligible)
20 reports he has knowledge about school, special education
21 (unintelligible) classes and (unintelligible) tests that
22 are given during that time period, they had --- they had
23 to follow the Federal law. I'm sure Texas is part of the
24 United States, Your Honor. Therefore the Federal law
25 (unintelligible) Nelson (unintelligible). So that was a

1 actual Federal law within 1974 that Chesnee had to follow
2 that he knew about and he actually talked to other
3 psychologists about.

4 So I think he's highly qualified in that field to
5 make assessments regarding school tests (unintelligible)
6 and also (unintelligible) at that time (unintelligible).

7 THE COURT: All right. Tell me again the --- I
8 believe you had four areas that you were ten --- you
9 wanted to tender him as an expert. And just give me
10 those four again.

11 MR. EVANS: Clinical psychology, intellectual and
12 school assessments, psychopharmacology, and criminal
13 forensic psychology. And --- and also I'll reiterate ---

14 THE COURT: Well, let me ask you, what is the
15 relevance of him being qualified as an expert in the
16 psychopharmacology and --- and in the last one, the ---

17 MR. EVANS: Criminal forensic psychology.

18 THE COURT: Right.

19 MR. EVANS: Well, psychopharmacology, Your Honor, he
20 can testify as to the --- the --- the drugs that were
21 given to Mr. Blackwell at this time during this
22 (unintelligible) before he was actually evaluated, Your
23 Honor. And the side effects of (unintelligible) drugs.

24 Now, he cannot testify if Mr. Blackwell was on drugs
25 at the time. He can't testify (unintelligible) possibly

1 (unintelligible). And also he also testified about the
2 marijuana use that there are witnesses Dr. Knight totally
3 didn't consider (unintelligible) marijuana use can also
4 affect your brain functioning. So it is obvious that it
5 would be the interview background when you make a
6 consideration (unintelligible). Criminal forensic
7 psychology, that's as he stated it's kind of a direct
8 type of psychology because it's based in criminal acts,
9 what criminals do other than regular --- regular
10 psychology. (Unintelligible) two weeks (unintelligible)
11 expert to give his opinion on those (unintelligible)
12 regarding (unintelligible). His ---

13 THE COURT: All right.

14 MR. EVANS: Can --- can I say one more thing, Your
15 Honor?

16 THE COURT: Yes.

17 MR. EVANS: Mr. Grose has now referenced us doing
18 his voir dire on Dr. Nelson, but he was the actual
19 attorney for the Bennie Brown case. That
20 (unintelligible) Dr. Nelson during that time on that
21 case. So he should know what Dr. Nelson could testify
22 and acknowledge about the case probably better than we
23 would, because he has experience with Dr. Nelson before
24 we even knew he existed, Your Honor.

25 So we would just ask the Court to allow Dr. Nelson

1 to testify on the subjects as an expert witness. And so
2 he can give his opinions (unintelligible) by the
3 applicant's (unintelligible).

4 THE COURT: All right. Thank you. Mr. Grose.

5 MR. GROSE: Oh, I --- I assure you that I have some
6 questions for him about the Ben Brown case. But the
7 first response is --- and I want to read into the record
8 the e-mail from July 31, 2023, at 4:34 p.m. It says as
9 further dialogue that was advised by Judge Hall, I will
10 offer a further explanation of the testimony of Dr.
11 Nelson. Dr. Nelson's testimony would be as the --- would
12 be as to the achievement tests that are not IQ tests, and
13 why they are not administered, and explaining different
14 categories of special education classes.

15 He will also be impeaching Dr. Knight regarding the
16 conversation of prior drug use as an intervening factor
17 and certain findings she made regarding the
18 (unintelligible). Although he cannot make a diagnosis as
19 to the intellectual disability of Mr. Blackwell, he can
20 testify to the three prongs that must be satisfied were
21 not met in order for a person to be determined
22 intellectual disabled. Something similar to the
23 testimony that he made in Bennie Brown.

24 And as you'll recall yesterday, we referenced having
25 received this e-mail and we clarified and specified what

1 our motion was. And --- and --- and narrative. And I
2 did have an objection to Dr. Brown testifying and
3 offering an opinion in the Bennie Brown case, because he
4 hadn't seen Bennie. And we'll get to it at some point,
5 but the judge discounted his testimony to a certain
6 extent because he had not had that clinical interview.

7 So the first problem is is that there's --- there's
8 nothing in here about him testifying as a
9 psychopharmacologist, there's nothing about --- in here
10 about him testifying as a forensic psychologist. This
11 was something that was new today. And he --- and I can
12 go back. I've got access to Bennie Brown transcript. He
13 was not qualified as an expert. I have no recollection
14 of him being an expert in psychopharmacology or forensic
15 psychology in the Bennie Brown case.

16 The second thing is is I've got to object to the
17 repeated misrepresentation and mischaracterization of Dr.
18 Knight testimony this week. While the drug use was not
19 in Dr. Knight's report, she testified about that. She
20 testified about how she considered it and what
21 considerations that she made about that. There was also
22 additional testimony from Dr. Corbin about all of that.

23 And for them to sit here this morning and tell you
24 that Dr. Knight did not consider that and then
25 cross-examine Dr. Brown the other way, I'm trying to

1 ambush him about what's in a report when he did not see
2 Dr. Knight's testimony. It's disingenuous and it's
3 intended to mislead and we object to that
4 mischaracterization.

5 THE COURT: All right. I'll give you the last word,
6 Mr. Evans.

7 MR. EVANS: Okay. First of all, Dr. Knight, I
8 simply asked her about drug use and she --- she didn't
9 think it was relevant. That was (unintelligible) exact
10 words. You can check your record and check the
11 transcript. That was her exact words. I do not think
12 these are relevant. (Unintelligible).

13 Therefore she did not consider them. So I don't
14 think mischaracterized her testimony whatsoever when I
15 cross-examined Dr. Brown. And I will ask
16 (unintelligible) Nelson. She didn't consider the drug
17 use relevant. Therefore, she did not consider it.

18 Second of all, Dr. Nelson was also (unintelligible)
19 he assisted Barry Barnette in this --- in the initial
20 case, Your Honor. So I think he should be here to
21 testify about the things he told (unintelligible)
22 regarding the drug use and also other matters that he
23 informed Dr. Barnette --- I mean Mr. Barnette about in
24 preparation of the initial case.

25 THE COURT: Well --- well, let's be clear. He was

1 not a fact witness in the --- he was not a witness ---

2 MR. EVANS: He was not a witness, Your Honor, but he
3 was ---

4 THE COURT: --- he --- he was a consultant ---

5 MR. EVANS: Yes, sir.

6 THE COURT: --- he was present what --- what's been
7 presented to the Court.

8 MR. EVANS: Yes, sir.

9 THE COURT: All right. Well, here's the thing, it
10 seems to me where we are, what triggered Dr. Nelson's
11 appearance is that when we had our last hearing is that
12 Dr. Brown and y'all clear me up on this, if --- if I'm
13 wrong, the --- the applicant had information that Dr.
14 Brown had changed his --- his assessment, and when he had
15 testified at trial that he determined that Mr. Blackwell
16 was not intellectually disabled, the applicant learned at
17 some point in time that Dr. Brown was going to testify at
18 PCR hearing that he had changed that. And he now
19 believes that he was intellectually disabled. What was
20 presented to the Court was that the first time the State
21 learned that was during the hearing. Now, am I correct
22 on --- is the record correct on that, Mr. Grose?

23 MR. GROSE: No, sir, it's not.

24 THE COURT: All right. Tell me about it.

25 MR. GROSE: Because we had filed a pre-trial brief

1 and we did that on --- or we served it on March 22nd.
2 E-mailed to the Court and e-mailed to the Attorney
3 General's Office. And in that report we identified Dr.
4 Edgar Brown intellectual disability expert. Dr. Brown is
5 expected to testify regarding his pretrial evaluation of
6 Blackwell for intellectual disability and how additional
7 evidence may have impacted his opinion. Dr. Brown is
8 expected to testify in person. It's our theory that they
9 just didn't read that.

10 THE COURT: Well --- well --- well stop right there.

11 (Simultaneous speaking)

12 THE COURT: Whoa. Hold on a minute. We'll stop
13 right there. Tell me where you notify the State --- the
14 Attorney General's Office that he was changing his
15 opinion. That's not what you just read to ---

16 MR. GROSE: Well, it --- it --- he testified about
17 how the additional information that he learned in Dr.
18 Knight's report affected his opinion. I ---

19 THE COURT: Right. And how does that ---

20 (Simultaneous speaking)

21 THE COURT: --- how does that indicate --- put
22 anybody on notice that his new opinion which is different
23 than his trial opinion is that he is --- is changing his
24 opinion?

25 Now, I don't have --- maybe I don't have a grasp of

1 the English language. It appears to me that you --- what
2 you said in your e-mail to him, he's going to testify he
3 was a fact witness. And he's going to testify your exact
4 words was the --- what --- with what formed his opinion.
5 All right. So here's the thing, we --- we can disagree
6 on that, but the Court believe is --- what --- what's
7 been presented to the Court the first time that they
8 learned knowledge that --- did you have knowledge at the
9 time when you sent the e-mail that Dr. Brown was going to
10 change his opinion for what he gave at trial?

11 MR. GROSE: Based on the additional information that
12 had been provided to him, yes, sir.

13 THE COURT: Right. So you had --- you had that
14 knowledge?

15 MR. GROSE: Yeah, we learned it that same very day,
16 March 22nd.

17 THE COURT: All right. And you did not communicate
18 anything more concerning Dr. Brown other than your
19 e-mail, and --- and then what was --- what he stated at
20 trial? What he stated at trial ---

21 MR. GROSE: Correct.

22 THE COURT: --- was he now, if disagreeing with what
23 he did a number of years ago?

24 MR. GROSE: Yes, sir.

25 THE COURT: All right. That's clear. The Court's

1 clear on that. So where we are is that --- at that point
2 in time, it appeared that Dr. Nelson was not going to be
3 a witness at the post-conviction relief hearing. The
4 Court adjourned court. The Court adjourned the hearing
5 to give the State an opportunity to identify if they
6 needed another witness. It appears that in that time,
7 Dr. Nelson, that the --- you were put on notice on e-mail
8 back on --- well you responded on May the 17th that you
9 received notice that he was a potential witness in the
10 case. So that's two and a half months ago. Was --- has
11 he been deposed since then?

12 MR. GROSE: He has been deposed, but hadn't done
13 anything. All of the --- he --- his testimony --- and
14 we'll get into this --- his testimony was is that he
15 hadn't reviewed anything for the deposition, that he had
16 received Dr. Knight's report, that he had read two
17 pages ---

18 THE COURT: Well, I don't know what he's going to
19 testify to today.

20 MR. GROSE: Well --- well, but I'm telling you that
21 the deposition wasn't very meaningful is because he
22 hadn't reviewed Dr. Knight's report. And so I wasn't
23 able to question him about that. But our --- part of our
24 objection is is there's nothing in here about forensic
25 psychology, or psychopharmaceutical, or whatever they

1 said it was. They've never disclosed any of that.

2 THE COURT: All right. Well, I note your objection.
3 The Court's going to find him qualified as an expert in
4 those areas. And we'll see where the question goes. It,
5 again, appears that --- that the --- the applicant was
6 placed on notice that Dr. Nelson was going to testify at
7 the next hearing which was scheduled for this week, that
8 in fact, the defense has had an opportunity to be --- or
9 the applicant has --- Mr. Grose has had opportunities to
10 cross-examine this witness at trial at least under
11 certain areas. And he's familiar with him.

12 He --- in the meantime, he was deposed and --- and
13 so he has been called here to testify as an expert today.
14 And I --- he is not --- he's indicated that what's been
15 provided to the Court that he is not going to give
16 opinion. In fact, he (unintelligible) give an opinion
17 about Ricky Blackwell's intellectual disability. That's
18 not going to be presented to the Court, but I'll allow
19 him to be used as an expert in his particular field to
20 give his opinion of the work of the experts who testified
21 in this PCR hearing.

22 Again, as I stated yesterday, that does appear to be
23 the issue in the case, it's the --- the experts and what
24 they did or didn't do at trial of Ricky Blackwell. And
25 so that's the basis of one of the --- one of the issues

1 that's important in this case as far as this PCR. So I
2 find he is qualified as an expert in those areas. You
3 can ask your next question.

4 MR. EVANS: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. EVANS:

7 Q. Dr. Nelson, when did you first become involved in the
8 Ricky Blackwell case?

9 A. I want to say this is 11 years ago, but I want to
10 say it was about three to four weeks before the trial.

11 Q. Okay. And you were originally contacted by Solicitor
12 Barry Barnette, weren't you?

13 A. Yes, sir.

14 Q. And what did Mr. Barnette ask for you to do in regarding
15 this case?

16 A. He asked me if I would be qualified for and able to
17 provide an education to his team as to some of the
18 factors of the case related to intellectual disability
19 and mental health disorders, and sort of help them
20 understand the process and the school education system.

21 Q. Okay. So he asked you back before this case happened to
22 give him some type of advisory regarding the school education
23 system, and actual assessment tests, and IQ tests, and things
24 like that?

25 A. Yes, sir.

1 Q. Okay. Were you present for the Atkins hearing?

2 A. I was.

3 Q. Okay. How much of the trial were you actually was
4 present for and observed?

5 A. All of it.

6 Q. All of it?

7 A. Yes, sir.

8 Q. And was it a plan for Mr. Barnette to call you up to
9 testify?

10 A. It was.

11 Q. But you did not testify in the trial?

12 A. No, sir.

13 Q. Okay. What were you going to testify about if you were
14 called to the stand to test --- to testify?

15 A. I was prepared to testify to the current state of
16 special education in the state, requirements for certain
17 types of classes. I was expected to testify on the three
18 prongs of eligibility for a diagnosis of intellectual
19 disability. And I was also --- well, I guess that was
20 the limit of my ---

21 Q. So pretty much what you are on the stand to testify today
22 about?

23 A. Yes, sir.

24 Q. (Unintelligible) testified going to trial?

25 At the sentencing, did you have any involvement in this

1 case until you was contacted by me in May of this year?

2 A. No, sir.

3 Q. Okay. Did you even know I existed up until May of this
4 year?

5 A. No, sir.

6 Q. Okay. And to prepare for this testimony, did you read
7 the reports of Dr. Knight and Dr. Andrews?

8 A. I did.

9 Q. Okay. Okay. You are aware of the diagnostic statistical
10 manual for mental disorders ---

11 A. Yes, sir.

12 Q. --- are you? Okay. Can you explain exactly what this
13 is?

14 A. The diagnostic and statistical manuals of mental
15 disorders was meant to be a companion document to the ICD
16 documents, the international classification of diseases.
17 It is the -- the books, and there have been several
18 iterations of it over the last several decades. They
19 were meant to be a taxonomy of what we're calling mental
20 health disorders, similar to the ICD-10.

21 Medical doctors want to make sure that everybody's
22 calling, you know, hepatitis, hepatitis. Similar to
23 mental health disorders, that it's meant to be a taxonomy
24 to make sure that everyone is identifying mental health
25 disorders correctly and appropriately.

1 Q. Okay. So basically, the DSM was created so all
2 psychologists could say this is depression, this is mental
3 retardation, this is whatever ---

4 A. Yes, sir.

5 Q. Okay. So all psychology can be in the same page when it
6 comes to diagnosis, that's why it was created, right?

7 A. Yes, sir.

8 Q. Okay. And at the time when Mr. Blackwell was initially
9 diagnosed and evaluated back in 2013, what edition was being
10 used of the DSM?

11 A. The DSM-IV-TR.

12 Q. Okay. And this book right here?

13 A. Yes, sir.

14 Q. Okay. Now, according to the DSM-IV, what must be present
15 in order for a person to be diagnosed as intellectually
16 disabled?

17 A. It's referred to as three prongs. The first prong
18 is must be a subaverage IQ score between 55 and 70,
19 established by a --- an individual ---
20 individual-administered test of IQ.

21 The second prong is the presence of a number of
22 adaptive functioning deficits in at least two domains.

23 And then the third prong is must have been
24 established during the developmental period, which at the
25 time of the DSM-IV-TR was age 18.

1 Q. At the time of trial, was --- let me go back. What was
2 given to you by Mr. Barnette in order to assist in the case?

3 A. I was given a number of details about the crime. I
4 was provided copies of the psychological reports that
5 were admit --- that --- the IQ testing reports. And also
6 copies of the adaptive behavior assessment scale, which
7 is the function --- adaptive functioning determination
8 test.

9 Q. Okay. Now, you were given copies of the reports Dr.
10 Calloway and Dr. Brown, were you?

11 A. Yes, sir.

12 Q. Okay. And within these reports it stated when they
13 actually gave Mr. Brown his IQ test?

14 A. Yes, sir.

15 Q. Did you see any results from any IQ test that Mr.
16 Blackwell did in --- during the developmental period?

17 A. No, sir, there was none presented.

18 Q. Okay. So as far as you know, there were no IQ tests ever
19 done by any --- well, individual IQ tests by any psychologists
20 or Mr. Blackwell during the developmental period, prior to age
21 18?

22 A. Correct.

23 Q. Can anything be substituted for an IQ test to determine
24 subaverage intellectual functioning?

25 A. Oftentimes it is offered --- achievement testing is

1 offered, but that doesn't meet the three prongs, it's not
2 an IQ test.

3 Q. Okay. And what are examples of IQ tests?

4 A. The Wechsler individual IQ scale for children, the
5 Wechsler adult IQ test. Those are called the WISC and
6 the WAIS. They have several different iterations over
7 the years.

8 Q. Okay. And there are no examples and no --- no examples
9 or no results of these tests being given to Mr. Blackwell
10 prior to age 18, are there?

11 A. Correct.

12 Q. Now, prior to trial, Mr. Brown was given IQ tests by Dr.
13 Calloway and Dr. Brown, correct?

14 A. Yes.

15 Q. Okay. And --- and these were done when Mr. Blackwell was
16 in his 50s?

17 A. I believe so. Yes, sir.

18 Q. All right. Now, exactly what --- there are results from
19 tests that Mr. Blackwell did during school, what are ---
20 exactly are those tests that he did during his school years?

21 A. They were achievement tests, so if I can refer to
22 the report, I can read them off to you. But it --- I
23 want to say one of them was the California Verbal
24 Learning Test. May I --- may I ---

25 Q. Yes.

1 A. --- look at my --- thank you. One of the tests
2 referenced was the CTMM-SF test, which was administered
3 to him in the third grade, which is a group format
4 achievement test. I believe that test was readministered
5 at a later grade.

6 Q. Well, can --- can I ask you, Dr. Nelson ---

7 A. Yes, sir. He is.

8 Q. Are --- are those considered individual IQ tests?

9 A. No, sir. They're not.

10 Q. Okay. And can a IQ test not done during the
11 developmental period ever be considered to make a
12 determination of intellectual disability?

13 A. Well, I would say no, because it's the first prong
14 individual IQ test must be administered and scored ---

15 Q. All right.

16 A. --- with a subaverage IQ during the developmental
17 period.

18 Q. And the tests that were given to Mr. Blackwell while he
19 was in school prior to 18 were achievement tests, right?

20 A. Yes, sir.

21 Q. What are the different between --- difference between
22 achievements and IQ tests?

23 A. It's a pretty pivotal difference. IQ tests are
24 tests designed to measure one's ability to learn, and
25 that was also testified, I think by --- in this report.

1 Achievement tests are tests measuring what has been
2 learned.

3 Q. Okay. Now, in your experience is it possible that a
4 person's scores are low enough on achievement tests that they
5 are given --- a child is given an individualized IQ test?

6 A. Yes, sir. That's kind of standard.

7 Q. Okay. But that was never done for Mr. Blackwell as far
8 as you know?

9 A. As far as I know. No, sir.

10 Q. Okay. Now, what are the different special education
11 classes that are available to students when they're in ---

12 A. There are three categories ---

13 Q. --- school?

14 A. One is inclusion, one is resource classes or
15 resource rooms, and one is all-inclusive.

16 Q. Okay.

17 A. Or self-contained.

18 Q. Can you explain difference between the three --- three?

19 A. Yes, sir. So inclusion classes are classes where
20 when a child is identified as having a learning
21 disability or slow learner difficulty with learning,
22 they're provided extra resources from a teacher or a
23 tutor-type person in the classroom in the main treatment
24 classroom.

25 Resource classes are when a student is actually

1 removed from the mainstream classroom for a period of
2 time, or a period of course. Second or third period
3 where they go into a special resource room and get
4 one-on-one training or group training and test --- and
5 teaching in that environment too.

6 Self-contained classes are classes that are totally
7 separate from the mainstream classrooms setting and they
8 are typically populated by individuals with intellectual
9 disability, or at --- at various levels of severity.
10 And --- and they're not designed to try and school a
11 person up as much as they are to provide them, you know,
12 a safe place to learn some skills.

13 Q. Okay.

14 MR. EVANS: May I approach, Your Honor?

15 THE COURT: Yes, you may.

16 BY MR. EVANS:

17 Q. I will show you (unintelligible) evidence --- the actual
18 grade sheet of Mr. Blackwell during his time in school. I
19 want you to observe the last few years which is between '73
20 and '77.

21 Now, Mr. Blackwell attended what is called adjunct
22 classes ---

23 A. Yes, sir.

24 Q. --- correct? Is that some type of, like, remedial
25 classes or (unintelligible) remedial classes?

1 A. Adjunct classes, I --- I believe at the time was
2 synonymous with resource classes.

3 Q. Okay. And as you see on that sheet, he was in adjunct
4 classes for English, math, civics and history, correct?

5 A. Yes, sir.

6 Q. And he was --- other times, he was in classes --- regular
7 classes all other times, correct?

8 A. Yes, sir.

9 Q. So that would ---

10 A. You said --- you said --- you said ---

11 Q. --- explain it ---

12 A. --- you said civics it was a science.

13 Q. Science? Okay.

14 A. Yes, sir.

15 Q. And that would show that Mr. Blackwell was in resource
16 classes as you explained earlier?

17 A. And I believe at the time they were called adjunct
18 classes.

19 Q. Okay. Now, are children in resource classes normally
20 given vocational training?

21 A. Typically by the time the student reaches the late
22 middle school or high school years of school, if they are
23 continuing to appear to be slow learners and not
24 appearing to be on a graduation track, school districts
25 often will offer occasional setting training, so that

1 they can develop a trade and have a meaningful job in
2 adulthood.

3 Q. And Mr. Blackwell was in --- in a vocation program; is
4 that common?

5 A. Yes.

6 Q. Okay. Now, how are diagnoses of mental disorders used?

7 A. They're used primarily to guide treatment and the
8 approach to making a diagnosis of a mental disorder is
9 multifaceted. An individual has to meet the essential
10 feature of the diagnosis. They also have to meet a
11 certain number of criteria required symptoms. Sometimes
12 it will be they're required to have five of nine, or six
13 of eight. And then they also must be able to
14 establish --- the psychologist must be able to establish
15 that the symptoms and the essential feature of what's
16 about to be diagnosed is a causing a functional
17 impairment which is a important distinction because a
18 person can have the essential feature of a mental health
19 disorder, have the symptoms and still be quite functional
20 in lifetime which is a preclusion from them getting the
21 diagnosis.

22 Q. I think --- I think you explained other considerations
23 that are done before you give a diagnosis. Are there other
24 considerations that are --- are considered ---

25 A. Yes, sir.

1 Q. --- before giving a diagnosis?

2 A. Yes. It's call --- it's called differential
3 diagnosis.

4 Q. Okay.

5 A. It --- it's a --- it's a requirement for the
6 psychologist to consider what other diagnoses may have
7 been mistaken for or might explain the symptoms of the
8 diagnosis you're about to give.

9 Q. Okay. And what's the most simple explanation of
10 intellectual disability?

11 A. Inability to learn.

12 Q. Okay. And in consulting Solicitor Barnette, you were
13 also given the opportunity to read his school records, weren't
14 you?

15 A. Yes, sir.

16 Q. Okay. And his grades rose early on in his school years,
17 what did that reveal to you?

18 A. Well, based on the achievement tests that were
19 administered to him, I want to say in the second or third
20 grade and later, there appears to a period of learning
21 where he jumped up quite a bit from his first grade level
22 which, by the way, in this case was his first exposure to
23 formalized teaching.

24 And second grade, there was a --- there was a jump,
25 I want to say of about 20 points on an achievement test.

1 It's not an IQ test, but that would suggest that he
2 learned something of what was being taught.

3 Q. Now, you had an opportunity to read Dr. Knight's report,
4 correct?

5 A. Yes, sir.

6 Q. And on page 7 of her report, she discusses a
7 neuropsychological test that was given to Mr. Blackwell by Dr.
8 Christine Hurst (phonetic).

9 A. Yes, sir.

10 Q. Okay. Now exactly what is a neuropsychological test?

11 A. It's a --- it's a separate form of testing that's
12 focusing on neurological factors and not just mental
13 health diagnoses. Those are typically tests that dig a
14 little bit deeper into executive functioning, like being
15 able to change focus, set being able to perform tasks of
16 visual learning, as well as auditory learning. And they
17 tend to tease out psych --- I mean, neurological factors
18 that could be causing a --- a person difficulty.

19 Q. Okay. Can chronic prior drug use affect a neurological
20 test?

21 A. I believe so, yes.

22 Q. Okay. So shouldn't Dr. Hurst be notified that Mr.
23 Blackwell smoked marijuana daily for 17 years prior to her
24 conducting this test?

25 A. I would consider it essential if I was administering

1 a test to know that history.

2 Q. All right. Now, Dr. Hurst concluded that Mr. Blackwell
3 is functioning at levels commensurate with a child that has
4 history of learning and intellectual problems; does that
5 equate to intellectual disability?

6 A. No, sir. That equates to learning problems. And
7 there's a whole bunch of diagnoses in here of various
8 learning disorders, which is why they have resource
9 classes to help them in that area that's weak.

10 Q. Okay. So a learning disability is not the same as
11 intellectual disability?

12 A. No, sir.

13 Q. I mean, you can be --- have a learning disability and not
14 be intellectually disabled, right?

15 A. Absolutely.

16 Q. Also on page 6 and 7, there were results of IQ tests
17 given on --- to Mr. Blackwell. His first test was given in
18 June of '12, at the age of 53 by Dr. Calloway. And the second
19 test was given in November of 2013 at the age of 54 by Dr.
20 Brown. Should those tests have been considered to make a
21 determination of intellectual disability?

22 A. They don't meet the first prong.

23 Q. Okay.

24 A. I'm sorry, I should have said the third prong.

25 Q. Okay.

1 A. During the developmental period.

2 Q. Right.

3 A. They're not IQ tests that were administered during
4 the developmental period.

5 Q. Dr. --- Dr. Knight also relied on things such as Mr.
6 Blackwell's shyness, indecision, not wanting to participate in
7 class, not learning how to swim, to make a determination of
8 significant deficits in adaptive behavior could that reveal
9 something else other than that?

10 A. I want to think --- I think there's evidence
11 presented in these reports that he had things going on in
12 childhood that would have made him perhaps choose to be
13 shy, not raise his hands, not stand out in the classroom.
14 He was bullied, he was made fun of for being a slow
15 learner, and that would maybe explain his reluctance to
16 answer questions that the teacher is asking or to, you
17 know, offer answers.

18 Q. Is that normal childhood behavior?

19 A. It can be. Sure.

20 Q. All right. Dr. Knight also consulted with a geneticist
21 as part of her report. Now, when Mr. Blackwell was initially
22 evaluated in 2013, was genetics being used as an assistant to
23 an evaluation? Was that common back then?

24 A. Not to my knowledge. No, sir. That's a relatively
25 new science and it's referenced in a later version of the

1 DSM-V.

2 Q. Okay.

3 A. The DSM-V.

4 Q. All right. Can genetics alone determine intellectual
5 disability?

6 A. That's outside of my expertise, but what I --- what
7 I understand is when a particular ---

8 MR. GROSE: Objection. If it's outside his
9 expertise.

10 THE COURT: Yeah, I sustain the objection.

11 MR. EVANS: Okay.

12 BY MR. EVANS:

13 Q. Doesn't the DSM-V state that genetics alone should not be
14 used in order alone in order to determine intellectual
15 disability?

16 A. Yes, sir.

17 Q. Okay. And that is because a family that has low IQ does
18 not guarantee a person having another person having a low IQ
19 is there?

20 A. I believe that's correct.

21 Q. Okay. Even a low IQ does not guarantee a diagnosis of
22 intellectual disability does it?

23 A. No, sir.

24 Q. Okay. Now, you gave statements regarding the school
25 achievement test that Mr. Blackwell did during school. And

1 when he first entered school, he scored a 67. What is
2 your --- but it --- by third grade it raised up to 87. What
3 is your explanation of --- of why that can possibly have
4 occurred?

5 A. Well, one likely explanation is he did not --- he
6 had an impoverished educational environment prior to
7 first grade. He didn't attend kindergarten, and his ---
8 I would presume his only in --- in --- educational
9 environment was home.

10 Q. Okay. And his parents weren't educated were they?

11 A. Not to my knowledge.

12 Q. Okay. And --- and that would make a difference to a
13 child when a child enters school and he doesn't have parents
14 that are educated --- educated?

15 A. Correct. And that's one of the reasons we are
16 cautious about IQ tests --- IQ scores that are given at
17 five or six, because they have yet to be exposed to
18 conventional teaching.

19 Q. Okay. And as far as you know, Mr. Blackwell was not
20 given an IQ test at all during the developmental period?

21 A. There's no evidence of one, No, sir.

22 Q. In Dr. Knight's report on page 42, she mentioned the
23 reading and math score --- math levels of Dr. Blackwell back
24 in 1976 at the age of 17, and in 2012 at the age of 53.

25 A. Yes, sir.

1 Q. And --- and they pretty much did not change that whole
2 period of time. In your opinion what does that reveal?

3 A. It reveals that he continued to not learn after
4 those --- after those grades.

5 Q. Okay.

6 A. I mean, his --- his --- his achievement scores as
7 measured by the school back in 10th --- back in 10th
8 grade, said he was at the 5.8 late fifth or mid-fifth
9 grade level.

10 Q. Okay.

11 A. Which indicates that he learned something by the
12 time he got to 10th grade. He wasn't on --- he wasn't on
13 track, he was a few years behind. That's not the same
14 thing as being intellectually disabled.

15 Q. Okay. All right. Now, page 39 of Dr. Nights report, she
16 mentioned intervening factors that include exposure to
17 chemotherapy, and major depression, and (unintelligible).
18 However, she does not list the drug abuse that Mr. Blackwell
19 admitted to using that he stated to Dr. Brown and Dr. Corbin.
20 Can the use of marijuana beginning during the developmental
21 period and into adulthood be an intervening factor in an IQ
22 test?

23 A. It can be, especially if the use is chronic.

24 Q. Okay. So if you smoke every day for 17 years, would you
25 consider that chronic --- chronic use?

1 A. Yes, sir.

2 Q. Would you have ignored this drug use prior to giving any
3 type of IQ test?

4 A. No, sir. I think it would have been essential to
5 take into consideration.

6 Q. Okay. So you would have --- you would have found that
7 relevant?

8 A. Yes, sir.

9 Q. Okay. Now, can chemotherapy or cancer itself also be
10 considered intervening factor regarding IQ score?

11 A. Yes, sir. I think in her report on page 39, she
12 references Dr. Rutherford (phonetic) reported that
13 chemotherapy can cause chemo brain, it's also referred to
14 as cognitive clouding, or cognitive deficit, difficulty
15 accessing memory.

16 Q. All right. Mr. Blackwell also had two car accidents
17 where he lost consciousness. Could those also be intervening
18 factors?

19 A. Absolutely. Especially for a prolonged period of
20 unconsciousness.

21 Q. So why is it important for IQ tests to be done during
22 development period to make a assessment of intellectual
23 disability?

24 A. Well, one obvious reason is many things can happen
25 to us in adulthood that could cause a deficit in our IQ,

1 our ability to learn. But that wasn't during the
2 development period. The developmental period is where we
3 would find evidence that a child has not got the ability
4 to learn.

5 Q. And they call it developmental period, because that's the
6 period your brain continue --- is continue --- continuing to
7 develop; isn't that correct?

8 A. Yes, sir.

9 Q. Okay. Now, on page 19, Dr. Blackwell [sic] created a
10 chart revealing Mr. Blackwell's academic performance through
11 his entire period of school. Now, during the trial you read
12 evidence that reveals Mr. Blackwell probably had a hard time
13 being able to read?

14 A. Yes, sir.

15 Q. Okay. And the scoring was high early on in school and
16 then it dropped. What is your take of possibility why that
17 happened?

18 A. Well, for example, in first grade, his score was a
19 75. By second grade it was an 83, and it remained in the
20 80s through fourth grade. In fifth grade it dropped down
21 to a 77. And then up again in sixth grade, which would
22 indicate he learned some between fifth and sixth. It
23 remained in the 75s up until the end --- I presume, the
24 end of 8th grade, and then it dropped real low in ninth
25 grade. And then it went up again later on in ninth grade

1 to a 76. And 78 in 10th grade. And by the time, you
2 know, 11th grade when he was dropping out of school, it
3 was a 71.

4 Q. Okay. Can his inability to read cause these drops and
5 highs and lows in the scoring in the school?

6 A. Yes, especially as the grades advance, because
7 instruction is much more visual. You have to be able to
8 read, you have to be able to understand questions and you
9 have to be able to write.

10 Q. Okay.

11 A. But those --- those skills are not as predominantly
12 necessary for second and third grade when you're learning
13 to read.

14 Q. But not being able to read well is not a reflection of
15 intellectual disability, is it?

16 A. No, sir. It definitely is an impediment to
17 learning.

18 Q. Okay. Now, according to the DSM-IV, you must satisfy the
19 three prongs in order to determine --- determine
20 intellectually disabled, correct?

21 A. Correct.

22 Q. Okay. And you must satisfy all three prongs, it's not
23 the either/or situation, is it?

24 A. Correct.

25 Q. Okay. And the first prong requires an IQ test during the

1 developmental period; is that correct?

2 A. Reflecting a score below 70 (unintelligible).

3 Q. Okay. And without that test, you don't satisfy the first
4 prong, correct?

5 A. Well, I keep saying that it --- it's actually
6 referring to the third prong, must be done during the
7 developmental period.

8 Q. Okay. Now, the second prong relates to adaptive
9 function. And why must that be considered?

10 A. Well, as I mentioned earlier, a person can have a
11 mental disorder and meet all the criteria but be
12 functioning in life just fine. I've had a number of
13 patients in that --- in that category. Without a
14 functional impairment, you don't get the diagnosis.

15 Q. Okay. Was the DSM-IV created to make it more difficult
16 for a person to be labeled intellectually disabled because you
17 didn't want that person to have that label for the rest of
18 their life even if they're not intellectually disabled?

19 A. I'd say that's true of all the diagnoses in the
20 DSM-IV. They were --- they --- it was designed to make
21 sure that it was more specific. And that's why they have
22 the requirement of not otherwise explained by the die ---
23 the differential diagnosis because where you have to make
24 sure that what you're seeing which looks like X, isn't
25 created or caused by Y.

1 Q. Okay.

2 A. They refer to it as ruling out other disorders that
3 could have made you think it was this.

4 Q. Okay. Are there any other diagnoses that could be made
5 other than intellectual disability when you are making that
6 assessment?

7 A. Yes, there's borderline intellectual functioning.

8 Q. Okay. And explain what is borderline intellectual
9 functioning?

10 A. Well, ironically borderline intellectual functioning
11 starts at scores of 71 and above.

12 Q. Okay.

13 A. It means that you still have deficit learning
14 ability, but it's not the same thing as intellectual
15 disability.

16 Q. While Mr. Blackwell worked as a truck driver, I think Dr.
17 Knight referred to him having somebody ride with him during
18 his trips out west and up north. And I think she used that as
19 an example of a --- a deficit of adaptive functioning. Does
20 that show a --- a deficit of adaptive functioning because he's
21 riding with somebody else who (unintelligible)?

22 A. It can. There are other reasons truck drivers
23 across --- over the road --- long haul drivers would have
24 a second driver, like, safety, taking turns when
25 somebody's sleepy. There could be other reasons that

1 you'd have another driver.

2 Q. That doesn't prove intellectual disability, does it?

3 A. No, sir.

4 Q. Okay. Now, while Mr. Blackwell --- you read the county
5 jail records of Mr. Blackwell, that was provided to you by
6 Solicitor Barnette, wasn't it?

7 A. Yes, sir.

8 Q. Okay. And while Mr. Blackwell was in jail, was he taking
9 some type of medication?

10 A. He was.

11 (Simultaneous speaking)

12 A. Several medications, but two that were of concerns,
13 was ---

14 MR. GROSE: I'm going to ---

15 THE WITNESS: --- Thorazine.

16 MR. GROSE: --- object to the testimony as a
17 psychopharmacologist for reasons previously stated.

18 THE COURT: All right. Thank you. I note your
19 objection I'll overrule the objection.

20 MR. GROSE: Okay.

21 BY MR. EVANS:

22 Q. Could you state your answer, please?

23 A. He was on a number of medications, but two that were
24 of concern related to cognitive function were Thorazine,
25 which is an antipsychotic medication that he was given

1 twice daily, and benztropine which is actually a
2 medication used for motor dysfunction of Parkinson's
3 patients but it's also used off label. And was also
4 given to him, I believe ---

5 Q. Okay.

6 A. --- twice a day while he was in jail. Both of those
7 can cause cognitive deficit.

8 Q. Okay. Would you want to know about those medications
9 prior to giving the IQ test?

10 A. Absolutely. Because it could affect the performance
11 on the test.

12 MR. EVANS: Beg the Court's indulgence.

13 BY MR. EVANS:

14 Q. Now, when you are doing a typical IQ assessment or
15 assessment regarding intellectual disability, would you want
16 to know all the information that was available to assist you
17 in that assessment?

18 A. Yes, sir. All the things that you mentioned before,
19 head injuries, loss of consciousness, other medical
20 disorders, drug use. Those are all relevant to the
21 performance you're about to see from the person being
22 administered the test.

23 Q. Okay. Now, in the information of cherry-picked and
24 certain information that was ---

25 MR. GROSE: Objection to the mischaracterization ---

1 THE COURT: Yeah, I sustain the objection.

2 MR. GROSE: Thank you.

3 BY MR. EVANS:

4 Q. If information was left out that could reveal a --- that
5 he was not --- or a person is not intellectually disabled,
6 would that affect your final diagnosis?

7 A. Well, especially if it was something that could
8 explain a poor performance, yes.

9 Q. Okay.

10 MR. EVANS: Beg the Court's indulgence.

11 BY MR. EVANS:

12 Q. Would you also want to know the opinions of his long-term
13 treating physician prior to making any type of diagnosis ---

14 A. Yes, sir.

15 Q. --- diagnosis?

16 A. Yes, sir.

17 MR. EVANS: Nothing further. Please answer any
18 questions applicant counsel has.

19 THE COURT: All right. Everybody okay? You think
20 we need to take a break?

21 MR. GROSE: I'm ready to go, but I would ---

22 THE COURT: Let's take a ten-minute break.

23 MR. GROSE: Okay.

24 (Off the record)

25 MR. GROSE: Thank you, Your Honor. May it please

1 the Court.

2 RECROSS-EXAMINATION

3 BY MR. GROSE:

4 Q. Dr. Nelson, I believe you indicated that your first
5 involvement in this case was when Solicitor Barnette contacted
6 you?

7 A. Yes, sir.

8 Q. And I believe that was approximately a month, give or
9 take before the Atkins hearing?

10 A. I believe so. Yes, sir.

11 Q. And as I understand it, your value to the solicitor was
12 for to help them understand some of the scientific
13 terminology?

14 A. Yes, sir.

15 Q. It's my understanding that prior to the Atkins hearing
16 you did not interview any witnesses?

17 A. Correct.

18 Q. You did not interview Ricky Blackwell?

19 A. No, sir.

20 Q. All right. And when we took your deposition a couple
21 weeks ago, you had not interviewed any witnesses at that
22 point, had you?

23 A. No, sir.

24 Q. As of today, I take it you still haven't interviewed any
25 witnesses since we haven't heard about it?

1 A. That's correct.

2 Q. Okay. Now, as I understand your testimony today, you're
3 saying that the absence of an IQ test in the developmental
4 period means that prong three cannot be satisfied?

5 A. That's correct.

6 Q. And I think that you testified earlier that the DSM-IV
7 requires that the intellectual disability diagnosis be
8 established during the developmental period?

9 A. Yes, sir.

10 Q. Do you have the DSM-IV-TR in front of you?

11 A. I do.

12 Q. All right. I would ask you to turn to page 41, please.

13 A. Yes, sir.

14 Q. And looking at the third paragraph, would you agree with
15 me it says the onset must occur --- must occur before age 18
16 as criterion C?

17 A. Yes, sir.

18 Q. All right. So it says occur not established; is that
19 correct?

20 A. Yes, sir.

21 Q. I'm going to hand you a notebook contains a copy of your
22 deposition. If you would, please turn to page 19.

23 A. Yes, sir.

24 Q. All right. At line four through line seven, I ask you,
25 is it your testimony today that in the absence of an IQ test,

1 qualifying IQ tests during the developmental period that a
2 person cannot be diagnosed with an intellectual disability?
3 And what is your answer at line eight, please?

4 A. I said, no I'm not saying that.

5 Q. And if you could, with the DSM in front of you, could you
6 turn to page 43.

7 A. Yes, sir.

8 Q. And you see under heading 317, mild mental retardation
9 ---

10 A. Yes, sir.

11 Q. --- I'm going to read that and ask you if I read that
12 correctly. Okay?

13 A. Sure.

14 Q. Mild mental retardation is roughly equivalent to what
15 used to be referred to as educable. This group constitutes
16 the largest segment, about 85 percent of those with the
17 disorder. As a group, people with this level of mental
18 retardation typically develop social and communication skills
19 during the preschool years ages zero to five, have minimal
20 impairment and sensory motor areas and often are not
21 distinguishable from children without mental retardation until
22 a later age. By their late teens they can acquire academic
23 skills up to approximately the sixth grade level. During
24 their adult years, they usually achieve social and vocational
25 skills adequate for minimum self-support, but may need

1 supervision guidance and assistance, especially when under
2 unusual social or economic stress. With appropriate support,
3 individuals with mild retardation, can usually live
4 successfully in the community either independently, or in a
5 supervised setting.

6 Did I read that correctly?

7 A. You did.

8 Q. All right. And of course mental retardation is a term
9 that's interchangeable with intellectual disability?

10 A. Yes, sir.

11 Q. Okay. All right. Now in your direct testimony, you only
12 referred to the DSM-IV?

13 A. Yes, sir.

14 Q. All right. You're also familiar with the American
15 Association of Intellectual and Developmental Disorders,
16 aren't you?

17 A. I am.

18 Q. And you're familiar with their publication, Intellectual
19 Disability Definition, Classification and Systems of Support;
20 is that right?

21 A. Yes, sir.

22 Q. And the 11th edition of that was published in 2010; is
23 that correct?

24 A. I believe so.

25 Q. And --- or I can show you?

1 A. No.

2 Q. This is a copy (unintelligible)?

3 A. Yes, sir.

4 Q. They sometimes call it the green book because it has a
5 green cover?

6 A. Right.

7 Q. All right.

8 A. Yes, sir.

9 Q. Okay. And so this would have been the publication that
10 was in effect at the time of Ricky Blackwell's crime and
11 trial?

12 A. As an adjunct to the DSM, yes.

13 Q. Okay. And on --- if you would --- would you agree with
14 me that on page 95 going on to 96, they have a section in the
15 AAIDD publication as a section regarding the role of thorough
16 history in retrospective diagnosis?

17 A. May I look at it?

18 Q. Yes, sir.

19 A. 94, 95?

20 Q. Sorry. 95 going on to 96.

21 A. Gotcha. Okay. And your question? I'm sorry.

22 Q. You would agree that that section's in the book?

23 A. Yes.

24 Q. All right. And if you could, starting on page 95, would
25 you read the first paragraph into the record?

1 A. Certainly. It is sometimes necessary to assess the
2 functioning of the individual in his or her past in those
3 situations with a diagnosis of ID becomes relevant even
4 though the individual did not receive an official
5 diagnosis of ID during the developmental period. Should
6 I keep going?

7 Q. Please.

8 A. A retrospective diagnosis may be required, for
9 example, when clinicians are involved in determining
10 eligibility for adult rehabilitation services, evaluating
11 individuals for Social Security disability, or evaluating
12 individuals involved in legal processes such as
13 guardianship petitions, competence determinations, or
14 sentencing eligibility questions. In these potential
15 situations, the clinician must use other sources of
16 information including possible --- possible obtainable
17 testing data and the person's history in order to
18 determine the manifestations of possible ID prior to the
19 age of 18.

20 Q. Thank you.

21 A. You're welcome.

22 Q. Now, I believe that you testified that you'd been
23 involved in one other Atkins hearing as a witness?

24 A. Yes, sir.

25 Q. And that was State versus Bennie Brown?

1 A. Yes, sir.

2 Q. That was a case out of Laurens County, this courtroom
3 where we are today?

4 A. Yes, sir.

5 Q. And you testified in that case?

6 A. I did.

7 Q. And are you aware that Judge Addy found Bennie Brown to
8 be a person with an intellectual disability?

9 MR. EVANS: Your Honor, I object.

10 MR. GROSE: Your --- Your Honor, it goes ---

11 THE COURT: Hold on. Hold --- hold on. I'll
12 overrule the objection.

13 BY MR. GROSE:

14 Q. Are you aware that Judge Addy found Bennie Brown to be
15 somebody with an intellectual disability?

16 A. Yes, sir.

17 Q. Are you aware that Judge Brown --- I mean, Judge Addy
18 discounted your testimony in part because you had --- did not
19 have personal observations through a clinical interview?

20 A. Yes, sir.

21 Q. And are you aware that Judge Addy ultimately concluded
22 that you did not offer a legally sufficient conclusion?

23 A. Yes, sir.

24 Q. Are you aware that Judge Addy ultimately concluded that
25 you did not offer a legally sufficient conclusion?

1 A. Yes, sir.

2 Q. And are you aware that Judge Addy rejected testimony
3 that's similar to what you gave today that no IQ test during
4 the developmental period would disqualify him as a person of
5 intellectual disability?

6 A. I was not aware of that.

7 Q. But if the order states that you wanted argue with that?

8 A. No, sir.

9 Q. Okay. And in your deposition, you testified that it
10 would be both unprofessional and unethical to offer an opinion
11 on --- on a person whether or not they meet diagnostic
12 criteria for intellectual disability if you did not personally
13 interview that person?

14 A. Specifically, I said I cannot make a diagnosis of
15 someone I haven't examined, but yes.

16 Q. And you also said it would be unprofessional and
17 unethical?

18 A. Yes, sir.

19 Q. Okay.

20 MR. GROSE: Beg the Court's indulgence for a moment.
21 No additional questions at this time. Thank you, Dr.
22 Nelson.

23 THE COURT: All right. Thank you. Redirect?

24 REDIRECT EXAMINATION

25 BY MR. EVANS:

1 Q. Applicant's counsel referred to DSM-IV on page 41 letter
2 C --- or letter B, saying the onset must occur before age 18.
3 And it states that doesn't it?

4 A. Yes, sir.

5 Q. Okay. That means that it must have presented itself
6 prior to (unintelligible); is that correct?

7 A. That's what I believe, yes.

8 Q. Okay. Now, page 43, when he talked about mild mental
9 retardation, that does not discuss the actual prongs that must
10 be used to determine intellectual disability, does it?

11 A. No, sir.

12 Q. Okay. So the prongs must be established prior to the
13 diagnosis of mildly to meant --- mental retardation, isn't
14 that correct?

15 A. Yes, because those are subset --- subset diagnoses,
16 or modifiers, if you will.

17 Q. Okay. Now, he also referred to a green book regarding
18 intellectual disability, and it mentions and I --- I would
19 repeat the partial --- part of the portion you read a --- must
20 consider a person's history prior to age 18; isn't that
21 correct?

22 A. Yes, sir.

23 Q. Okay. And also it's --- so this refers to a person's
24 history also after the developmental period to make that
25 determination?

1 A. I believe so.

2 Q. Okay. So constant drug use must be considered according
3 to that book when you make a determination regarding
4 intellectual disability?

5 A. It certainly would be a factor.

6 Q. Okay. And it should be considered an --- as an
7 intervening factor, shouldn't it?

8 A. Yes, potential.

9 Q. Okay.

10 MR. EVANS: Nothing further, Your Honor. One
11 second.

12 BY MR. EVANS:

13 Q. Now, do you agree that clinicians still disagree ---
14 still disagree with guidelines and manuals at times?

15 A. Do they disagree with diagnostic manuals sometimes?

16 Q. Yeah. With each other and --- and ---

17 A. Yes, I'm --- I'm sure.

18 Q. Okay. And do you agree that most differences can come
19 down to information that someone has or did not have?

20 A. Well, especially in the adaptive functioning areas
21 in some of those other sources of information, yes.

22 Q. Okay. So if information is missing, it can drastically
23 change a person's ability to make a sufficient diagnosis,
24 would you say that?

25 A. Yes.

1 Q. Okay. Now, the Atkins hearing, that's a legal term, and
2 not a medical term, that --- resulted in Atkins hearing ---

3 A. Yes, sir.

4 Q. --- is that correct? Okay. And the DSM-V has an
5 expressed provision that there is an imperfect fit between the
6 medical manual and legal determinations; isn't that correct?

7 A. Correct.

8 Q. One second.

9 MR. EVANS: Nothing further, Your Honor.

10 THE COURT: Any re-cross?

11 MR. GROSE: No, sir.

12 THE COURT: All right. Thank you. Dr. Nelson, you
13 can step down.

14 MR. EVANS: (Unintelligible).

15 MR. GROSE: No objection.

16 THE WITNESS: Your Honor, where would you like these
17 exhibits?

18 THE COURT: I'm not sure which exhibits ---

19 (Simultaneous speaking)

20 THE COURT: --- were made a part of the record.

21 MR. EVANS: No, it's not.

22 THE COURT: Okay. Okay. All right. Let me have
23 the --- let me have that. Thank you.

24 THE WITNESS: And Your Honor, I'm sorry, did you say
25 I'm excused?

1 THE COURT: You're excused. Yes, sir. All right.
2 Anything further from the State?

3 MR. EVANS: It's only matter Counsel for the
4 applicant raised that earlier. Robert Jackson is the
5 primary physician for Mr. Blackwell. We were possibly
6 intending to call him as a witness in this case, however,
7 we found out yesterday he had a massive heart attack and
8 he is in --- in the hospital. So we would ask the Court
9 to just leave the --- an open for us to an affidavit and
10 submit it to the Court of his testimony, since he's
11 unavailable to testify.

12 THE COURT: All right. Mr. Grose.

13 MR. GROSE: Before I respond, can I ask what they
14 mean by saying that they were possibly going to call him
15 to testify? That's what they put in their notice
16 yesterday.

17 MR. EVANS: Well, we weren't sure we was going to
18 call to testify and --- and now we can't ---

19 THE COURT: Well ---

20 MR. EVANS: --- have him testify.

21 THE COURT: --- well ---

22 (Simultaneous speaking)

23 THE COURT: --- well let me --- I think what Mr.
24 Grose is asking --- don't let me put words in your mouth,
25 I'll be glad to hear from you.

Proceedings

1 MR. GROSE: I --- I want to know if they had
2 subpoenaed him.

3 MR. EVANS: He was --- he was going to testify. I
4 mean ---

5 MR. GROSE: That's not the question.

6 MR. EVANS: Well, he --- he was going to testify,
7 we'd have to subpoena voluntary come to testify, but now
8 he can't because he's in the hospital.

9 MR. GROSE: Can --- can we put a copy of the
10 subpoena in the record?

11 MR. EVANS: I didn't subpoena him because he was ---

12 (Simultaneous speaking)

13 THE COURT: Yeah, what he's told Court is that he
14 didn't subpoena him, that he had --- he was --- they were
15 going to call him as a witness. He was voluntarily going
16 to come and he had a massive heart attack ---

17 MR. EVANS: He had a heart attack ---

18 (Simultaneous speaking)

19 THE COURT: --- yesterday, or last night?

20 MR. EVANS: He had it Sunday.

21 THE COURT: Sunday?

22 MR. EVANS: Yes, sir.

23 THE COURT: All right. Mr. Grose.

24 MR. GROSE: All right. Our --- our --- our position
25 is this: You --- you have their responses to

1 interrogatories where we ask them to name witnesses.
2 They did not name him as a witness. They also did not
3 name Ms. Shields who testified yesterday. We did not
4 object to Ms. Shields testifying, or the doctor here
5 today to testify, we would not object to him testifying
6 because like yesterday with Ms. Shields, we would have
7 had an opportunity to cross-examine the doctor. We
8 believe it's time to bring this to a conclusion.
9 However, if Your Honor wants to hold the record open for
10 them to bring this witness, then we should have the
11 opportunity to cross-examine him.

12 And I would note, you know, when we started this
13 hearing in --- in March, prior to the hearing we had sent
14 notice to the state of the affidavits that we intended to
15 rely on and that you ultimately admitted. And we did
16 that so that they would have an opportunity if they
17 wanted to call those witnesses that they would be able to
18 do that. They have chosen not to do that. We just want
19 the same opportunity to be able to call Dr. Jackson
20 if --- if --- and be able to ask him questions.

21 And so if they want to hold the record open, then we
22 need to hold it open for another (unintelligible) that
23 will be our (unintelligible).

24 (Simultaneous speaking)

25 MR. EVANS: Your Honor, they were aware of Dr.

1 Jackson, that's part of the actual discovery. They
2 wanted to call Dr. Jackson to testify, because he
3 (unintelligible).

4 THE COURT: All right. Well, hold on a minute.

5 MR. GROSE: Objection. That's not what I'm
6 saying ---

7 THE COURT: Right.

8 MR. GROSE: --- I'm not --- I'm not saying that we
9 weren't aware of Dr. Jackson. We are aware of Dr.
10 Jackson. We weren't aware that they wanted to be
11 introducing the affidavit of Dr. Jackson, it doesn't yet
12 exist until 11:15 and 47 seconds yesterday, when they
13 sent this e-mail. So if they want Dr. Jackson to be a
14 witness, to be clear, we are not objecting to Dr. Jackson
15 being a witness. We would want to be able to question
16 him as well on the record.

17 MR. EVANS: Well, on --- on the affidavits that is
18 clear the affidavit (unintelligible) PCR hearings.
19 That's --- they are (unintelligible) affidavit
20 (unintelligible). So I don't see why Dr. Jackson
21 (unintelligible).

22 THE COURT: Well ---

23 (Simultaneous speaking)

24 THE COURT: --- tell me again what Dr. --- who Dr.
25 Jackson is and his relevance.

Proceedings

1 MR. EVANS: He's the primary care physician for Mr.
2 Blackwell. He also ---

3 THE COURT: I mean, from --- from when? When was he
4 his prime --- is he his primary care physician now, while
5 he's in the Department of Corrections?

6 MR. EVANS: No.

7 THE COURT: Was he the primary care physician ---
8 (Simultaneous speaking)

9 MR. EVANS: (Unintelligible) primary care physician.
10 And he also wrote a statement to this counsel basically
11 stating he was (unintelligible). He also had some other
12 observations regarding Mr. Blackwell's character during
13 the time when after Mr. Blackwell and his wife split up.

14 MR. GROSE: All right. And that's why we want to
15 cross-examine him, because we're aware of the interview
16 that defense counsel had with him. That's a
17 mischaracterization of --- of --- of what it was.

18 THE COURT: Well, tell me about his health status;
19 is he still in the hospital?

20 MR. EVANS: He's still in the hospital.

21 THE COURT: How old is he?

22 MR. EVANS: I'm not aware of how old is he, probably
23 in his 70s, I --- I know that.

24 (Simultaneous speaking)

25 THE COURT: All right. Well --- well here's the

1 thing, I don't think that the Court's not going to limit
2 or hamstring either party in the --- who they want to
3 call as a witness. They have a right to call whoever
4 they want to.

5 We're --- we're in the --- where we are in the case
6 is the --- the State is presenting their case. We
7 continued the hearing to give them an opportunity to
8 respond to Dr. Brown's change in his opinion. So we
9 weren't --- we certainly at --- at that time we had
10 not --- or the Court was not informed that we had gotten
11 to the end of their witness list or the witnesses they
12 intended to call, so we'll leave it open. And we'll
13 continue the hearing when y'all tell me we're ready to
14 call Dr. Jackson.

15 MR. EVANS: Yes, Your Honor.

16 THE COURT: Or either y'all resolve it through
17 affidavit if that can be done. But if they want to
18 cross-examine him we'll have to schedule another hearing.

19 MR. EVANS: Could we --- (unintelligible)
20 deposition? (Unintelligible).

21 THE COURT: I'm sorry?

22 MR. EVANS: (Unintelligible) deposition
23 (unintelligible).

24 THE COURT: Well, I'll let that --- y'all work that
25 out.

Proceedings

1 Now, there does need to be some time of type period
2 as far as Dr. Jackson and his availability. You know,
3 he's a 71-year-old man, had a massive heart attack, still
4 in the hospital. He might, you know, he --- he may die
5 soon. On the other hand, he may not be able to testify.
6 We don't know what ---

7 MR. EVANS: I called him yesterday. He didn't sound
8 like he was dying, but he told me he'd be in the hospital
9 today.

10 THE COURT: Okay. All right. Then we'll continue
11 the hearing and we will --- when y'all --- when you
12 figured out when you can get him to testify, then let me
13 know, we'll have --- we'll set a hearing date, time, and
14 place. All right.

15 MR. EVANS: All right. Thank you, Your Honor.

16 THE COURT: Anything else?

17 (Simultaneous speaking)

18 THE COURT: Let me make sure that --- let me make
19 sure I have all of the exhibits that have been introduced
20 put into my box.

21 MR. GROSE: Judge, I think the only thing that we
22 added this week was the Court exhibit from today.

23 THE COURT: From the ---

24 MR. GROSE: And --- and the waiver, we did add the
25 waiver yesterday.

Proceedings

1 THE COURT: All right. Let me make sure that I
2 have --- I don't have the ---

3 MR. GROSE: Waiver? Okay. Here we go. All right.
4 Okay. I've got them. I've got them. Thank you.

5 THE COURT: All right.

6 MR. GROSE: Thank you.

7 THE COURT: All right. That concludes the hearing
8 for today.

9 MR. EVANS: Thank you, Your Honor.

10 (PROCEEDINGS CONCLUDED AT 11:17 A.M.)

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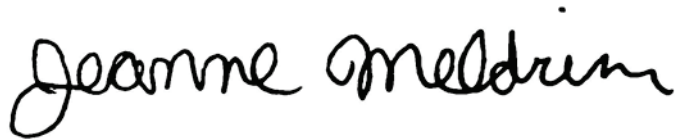
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CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT COURT 8 for LAURENS COUNTY, South Carolina, on the 2nd day of August, 2023.

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

March 13, 2024

A handwritten signature in black ink that reads "Jeanne Meldrim". The signature is written in a cursive, flowing style with a prominent dot over the 'i' in "Meldrim".

Jeanne Meldrim

Transcriber

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
CASE NO. 2018-CP-42-00928

RICKY LEE BLACKWELL,)
)
Plaintiff,)
)
-vs-)
)
STATE OF SOUTH CAROLINA,)
)
Defendant.)
_____)

TRANSCRIPT OF RECORD

December 15, 2023
York, South Carolina

B E F O R E:

Honorable Daniel D. Hall, Judge.

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

Mr. Charles E. Grose, Junior
Attorney at Law
Attorney for the Applicant
Greenwood, South Carolina

Ms. Lindsey S. Vann
Attorney at Law
Attorney for the Applicant
Columbia, South Carolina

Mr. Tommy Evans, Junior
Assistant Attorney General
Ms. Melody Brown
Assistant Attorney General
Attorneys for the State of South Carolina
Columbia, South Carolina

Shannon E. McGilberry, CVR-M
Court Reporter

1			<u>I</u> <u>N</u> <u>D</u> <u>E</u> <u>X</u>	
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	ROBERT E. JACKSON			
4	Mr. Evans	5		
5	Ms. Vann		16	
6	Mr. Evans			25
7	TARA RICHARDS BAKER			
8	Ms. Vann	32		
9	Mr. Evans		33	
10	Certificate	40		
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E X H I B I T S

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>ID/AD</u>
A-1	Medical Records	23
A-2	Memo to File	33

(REPORTER'S NOTE: All exhibits admitted into evidence during the course of this proceeding were duly filed with the York County Clerk of Court's Office.)

1 THE COURT: We're on the record in 2018-CP-42-00928.
2 This is *Ricky Blackwell -- Ricky Lee Blackwell versus State*
3 *of South Carolina*. This is a PCR case that arose out of a
4 death penalty conviction. Representing the applicant are
5 Mr. Charles Grose and Ms. Lindsey Vann. Representing the
6 State are Mr. Evans, Ms. Brown and Mr. Mabry of the Attorney
7 General's Office.

8 By my calculations, this is day eight of receiving
9 testimony in this case. We did five days in Spartanburg
10 back in March, began on March the 27th and then we did -- so
11 five days of testimony. We then took two days of testimony
12 beginning on July the 31st in Laurens County. At that point
13 the applicant had waived his presence and is not present in
14 Laurens County. There was no objection to the change in
15 venue from Spartanburg to Laurens County.

16 We're here today in York County and it appears that we
17 are ready to take testimony -- to resume taking testimony
18 today. I believe we're at the point, we're in rebuttal from
19 the State and the State has a witness that they intend to
20 call this morning and let me be sure for the record, all the
21 attorneys are here, Mr. Blackwell is not here.

22 Mr. Grose, again, for purposes of the record, is your
23 client waiving his presence to be present?

24 MR. GROSE: Yes, sir, he is.

25 THE COURT: All right. And then is he also waiving his

1 right for this to be heard in Spartanburg County and does
2 not objection to the change of venue here to York County?

3 MR. GROSE: There's no objection to hearing it in York
4 County.

5 THE COURT: All right. Thank you. Is there anything
6 we need to put on the record going forward before we begin
7 to take testimony?

8 MR. GROSE: Not from us.

9 THE COURT: All right. Mr. Evans?

10 MR. EVANS: No, Your Honor, from the State.

11 THE COURT: All right. Is the State prepared to go
12 forward?

13 MR. EVANS: Yes, sir, Your Honor.

14 THE COURT: All right. Then, Mr. Evans, if you'll call
15 your first witness.

16 MR. EVANS: May it please the Court. The State would
17 like to call Dr. Robert Jackson to the stand.

18 THE COURT: If you'd raise your right hand.

19 DR. JACKSON: Yes, sir.

20 (ROBERT E. JACKSON, being first duly sworn, was
21 examined and testified as follows):

22 DIRECT EXAMINATION

23 ROBERT E. JACKSON BY MR. EVANS:

24 Q. Good morning, Dr. Jackson.

25 A. Good morning, sir.

1 Q. My name is Tommy Evans. We spoke at length in the
2 past. Could you state your name and spelling your last name
3 for the record?

4 A. Robert E. Jackson, J-a-c-k-s-o-n.

5 Q. Okay. And, Dr. Jackson, what is your current
6 occupation?

7 A. I'm a family practice physician in Spartanburg County.

8 Q. And how long have you been practicing medicine, Dr.
9 Jackson?

10 A. Forty-three years.

11 Q. And what area of medicine do you currently practice?

12 A. I'm in family medicine.

13 Q. Have you always practiced in that area?

14 A. Yes, sir. Always in Spartanburg County.

15 Q. Okay. And Dr. Jackson, where are you working
16 currently?

17 A. I'm at the Grassy Pond Medical Clinic in Gaffney, South
18 Carolina.

19 Q. And how long have you worked at Grassy Pond?

20 A. I've been at that clinic for four years. Prior to that
21 I was at Westgate Family Physician in Spartanburg, thirty-
22 eight years.

23 Q. And while at Westgate, did you have a chance to get to
24 know Angie -- Angela and Ricky Blackwell?

25 A. Yes, sir. Knew them very well.

1 Q. Okay. How -- in what way did you know the Blackwells?

2 A. They were my patients for a number of years.

3 Q. Okay. Which one was your patient first, Angela or
4 Ricky?

5 A. That's hard to say. I don't remember.

6 Q. Okay. But you were patients for -- for both of them---

7 A. Yes.

8 Q. ---at one time? All right. And you don't exactly how
9 long Mr. Blackwell was your patient prior to the incident
10 occurring?

11 A. Without looking at his medical record, I don't
12 remember, sir.

13 Q. Okay. You said a number of years.

14 A. Yeah, a number --

15 Q. Can you take a estimate how long?

16 A. I would say four or five years for sure, maybe longer.

17 Q. And what kind of relationship when Angela and Ricky
18 first came to you, what kind of relationship did they have?

19 A. They had a pretty good and strong relationship when I
20 first met them.

21 Q. Okay. And when Ricky had appointments, would Angela
22 bring him to the appointments?

23 A. Not always, but usually.

24 Q. Okay. And would Angela sit in the actual examining
25 room with you and Ricky?

1 A. Most of the time. Yes.

2 Q. Okay. Now, when -- at a period of time, did they start
3 having marital problems?

4 A. Yes, sir. They did.

5 Q. Okay. And did you try to counsel them on their marital
6 problems?

7 A. Yes, sir. I did.

8 Q. And was that abnormal for you to do that?

9 A. No, sir. I -- it's one of things that I provide in my
10 medical practice is marriage counseling.

11 Q. Okay. So you felt that need to provide that to your
12 patients, something you normally did?

13 A. Yes, sir.

14 Q. Okay. And you did that with Angela and Ricky also?

15 A. Yes, sir.

16 Q. Okay.

17 A. They would come together at times, sometimes they came
18 separate.

19 Q. Okay. And why did you feel the need to counsel Ricky
20 and Angela on their marital problems?

21 A. Number 1, I was very affectionate towards the both of
22 them and, number 2, I felt like they were trying to work
23 things out between them. You know, some relationships you
24 don't have much hope for, some relationships you feel like
25 they can be salvaged. In the beginning their relationship

1 was one that I was pretty confident could be salvaged and I
2 was willing to invest some time helping them do that.

3 Q. Now, you said earlier that sometimes you would counsel
4 them together and sometimes separately?

5 A. Yes, sir.

6 Q. How often did you counsel them as a couple together?

7 A. Most of the time they were together.

8 Q. Okay.

9 A. Towards the end of their relationship, it ended up
10 being separate.

11 Q. Okay. Now, you became aware that Ricky and Angela
12 separated?

13 A. Yes, sir.

14 Q. When did you become aware of that?

15 A. That's hard to say. That's a long time ago now. I
16 can't remember exactly.

17 Q. How did you become aware that they separated?

18 A. I think Angela told me first and then later Ricky was
19 in and he informed me. So she told me first, I'm pretty
20 sure of that.

21 Q. Now, after they separated, did Ricky still come to see
22 you?

23 A. Yes, sir; he did. He continued to come.

24 Q. And would anybody bring him to his appointments?

25 A. That I don't know.

1 Q. Okay.

2 A. He always showed up for his appointments. He didn't
3 miss appointments, so he managed to get there on his own,
4 but I don't know if someone drove him or if he came on his
5 own.

6 Q. Okay. But was somebody with him when he went into the
7 doctor's office?

8 A. No, sir.

9 Q. Okay. And was anybody with him in the examining room
10 after him and Angela split up?

11 A. No, sir.

12 Q. Okay. What was Ricky's mental state after they
13 separated?

14 A. Very depressed, distraught.

15 Q. And so he was in a state of depression when he saw you
16 after the separation?

17 A. Yes, sir.

18 Q. Was he on any type of medication?

19 A. I don't remember exactly, but I would say probably;
20 yes.

21 Q. Okay. And do you remember who kept up with his
22 medications while him and Angela were together?

23 A. When they were together she was usually the boss.

24 Q. Okay.

25 A. She pretty much kept up with his medications.

1 Q. Okay. Do you remember after they separated Mr.
2 Blackwell having any problems taking his medications?

3 A. No. I do not remember him being unable to take his
4 medicine.

5 Q. Okay. Do you recall, after they separated, any
6 incidents where he was not taking his medication properly?

7 A. Do not recall that.

8 Q. Okay. Now, during the separation, did you continue to
9 counsel Ms. Blackwell?

10 A. Yes. She came multiple times on her own.

11 Q. Mr. Blackwell?

12 A. And Mr. Blackwell, too. Yeah. Both of them came
13 separately and even after they separated.

14 Q. Okay. Did you see at any time him beg- -- Mr.
15 Blackwell beginning to deteriorate?

16 A. Yeah. His mood deteriorated. That's for certain.

17 Q. Okay. Did you ever refer him to any psychologist or
18 psychiatrist?

19 A. No, sir. I don't recall doing that.

20 Q. Okay. And you just said that he was making his
21 appointments---

22 A. Yeah. He --

23 Q. ---on a regular basis?

24 A. He made his appointments. He was on time and he showed
25 up.

- 1 Q. Okay. He didn't miss any --
- 2 A. He didn't miss appointments.
- 3 Q. He didn't miss any appointments either?
- 4 A. No.
- 5 Q. Okay. And this was after Angela and Ricky separated,
- 6 he still was making his appointment on time?
- 7 A. Yes, sir.
- 8 Q. Okay. Now, when Angela, and you may not be aware of
- 9 this, but when Angela and Ricky were together, she was
- 10 making his appointments and making sure he got there?
- 11 A. I don't know that, but---
- 12 Q. Don't know about that. Okay.
- 13 A. ---I wouldn't be surprised, knowing---
- 14 Q. Okay.
- 15 A. ---her.
- 16 Q. But even after they separated, Mr. Blackwell was still
- 17 making his appointments on time?
- 18 A. Yeah; yeah. He made his appointments.
- 19 Q. Okay. Now, after each examination, was Ricky able to
- 20 pay for his examination?
- 21 A. I never knew who did and---
- 22 Q. Okay.
- 23 A. ---did not pay for their visits at my office.
- 24 Q. All right. Now, Dr. Jackson, in your forty-three years
- 25 of practicing medicine, you've had patients that were

1 intellectually disabled?

2 A. Yes, sir. I had plenty of patients who had serious
3 psychiatric problems and patients who were mentally
4 challenged.

5 Q. Okay. And how did you conduct exams with these
6 patients?

7 A. Same way I conducted everybody else's exams.

8 Q. Were there instances that you had to do special things
9 for them?

10 A. Well, if they were very, very low IQ, I would always
11 insist that they have a caretaker or family member with
12 them. You know, if they were not intellectually challenged,
13 then they could present themselves alone.

14 Q. Okay. And you are aware that to give a diagnosis of
15 intellectually disabled you have to have an IQ test done?

16 A. That's correct.

17 Q. Okay. Did you ever refer Mr. Blackwell to have an IQ
18 test done?

19 A. No, sir. I didn't ever think that was necessary.

20 Q. Okay. Did you ever known Mr. Blackwell to have an IQ
21 test done?

22 A. Not -- I didn't ever order one. No, sir.

23 Q. Okay. Did you ever hear of anybody else ordering one
24 for him?

25 A. No, sir.

1 Q. Now, your meetings with Ricky, did he ever have any
2 problems understanding you?

3 A. No, sir. He was competent and he understand our
4 counseling, he understood his medications. He was mentally
5 competent.

6 Q. Okay. Did he ever -- are there ever any times where
7 you had to write something down for him to understand?

8 A. No, sir, not for Ricky.

9 Q. How do you personally feel about Ricky Blackwell as a
10 person?

11 A. My patients become my friends. Ricky and Angela both
12 became close friends and I had a lot of affection for the
13 both of them.

14 Q. Okay. Do you think the death penalty was an
15 appropriate sentence for Mr. Blackwell?

16 MS. VANN: Objection, Your Honor. He would not --

17 THE COURT: I sustain the objection.

18 MR. EVANS: Your Honor, I'm asking this question for
19 showing his credibility. That's the reason.

20 THE COURT: Ms. Vann, you wish to be heard?

21 MS. VANN: Yes. This answer wouldn't be allowed at a
22 trial in this matter. It's not up to the witness what the
23 appropriate sentence is.

24 MR. EVANS: Well, Your Honor, under the *Wise* case the
25 only reason this wouldn't be allowed is for a jury to make

1 that decision. There's no jury here and this is a PCR
2 hearing. Therefore, I think this -- to show his
3 credibility, I think this is a legitimate question, Your
4 Honor.

5 THE COURT: Well, I'm curious. I don't believe I've
6 heard that question asked of any of the other prior State's
7 witnesses or any of the defense witnesses.

8 MR. EVANS: Well, Your Honor, the State -- none of the
9 State witnesses had a relationship --

10 THE COURT: I'm sorry.

11 MR. EVANS: -- that type of relationship that Dr.
12 Jackson had with Mr. Blackwell.

13 THE COURT: All right.

14 MR. EVANS: He just said Mr. Blackwell was a friends of
15 his.

16 THE COURT: All right. I'm going to overrule the
17 objection. I'll allow him to ask the question, be a part of
18 the record.

19 MR. EVANS: Okay.

20 Q. Do you think the death sentence -- death penalty
21 sentence is an appropriate sentence for Ricky?

22 A. You know, as much as I love Ricky and wish him well,
23 I'm sad to say I think there's no justification for what
24 Ricky did and I do think that a death sentence is
25 appropriate in his situation.

1 Q. All right.

2 MR. EVANS: Nothing further, Your Honor.

3 THE COURT: All right. Cross-examination, either—

4 MS. VANN: Yes, Your Honor.

5 THE COURT: ---Mr. Grose or Ms. Vann?

6 CROSS-EXAMINATION

7 ROBERT E. JACKSON BY MS. VANN:

8 Q. Good morning, Dr. Jackson. I'm Lindsey Vann. I
9 represent Ricky Blackwell. I don't think we've ever met
10 before.

11 A. No, ma'am. But good morning to you.

12 Q. Good morning. Nice to meet you. You were Ricky's
13 primary care physician. Is that correct?

14 A. That's correct.

15 Q. And you only treated him as an adult?

16 A. That's correct.

17 Q. Do you remember approximately how old he was when you
18 started treating him?

19 A. That would be hard to say. Let me just think. I would
20 say he was probably in his thirties.

21 Q. Okay.

22 A I'm speculating, but I'm thinking of his facial
23 features and everything about him, so I'm going to say
24 thirties.

25 Q. That sounds about right from my review of the record.

- 1 A. Okay.
- 2 Q. And you testified that you treated Ricky before he and
- 3 Angie Blackwell separated. Correct?
- 4 A. Yes, ma'am.
- 5 Q. And after the separation?
- 6 A. And after the separation. Yes, ma'am.
- 7 Q. You were asked some questions about scheduling
- 8 appointments. Do you recall when you would meet with a
- 9 patient, would you tell them when they should schedule their
- 10 next appointment?
- 11 A. Yes, ma'am.
- 12 Q. And would they schedule that before they left?
- 13 A. Yes, ma'am.
- 14 Q. So you would be directing when they would schedule the
- 15 appointment and they would get---
- 16 A. Yes, ma'am.
- 17 Q. ---that appointment scheduled?
- 18 A. Yes, ma'am.
- 19 Q. Have you ever personally administered an IQ test to
- 20 Ricky Blackwell?
- 21 A. No, ma'am. I never felt that was necessary.
- 22 Q. And do you recall ever seeing an IQ score in any of his
- 23 medical records?
- 24 A. I do not.
- 25

1 Q. And as a medical doctor, do you have any specialized
2 training in administering IQ tests?

3 A. No, ma'am. I do not and never have.

4 Q. Do you recall being interviewed by anyone on Ricky
5 Blackwell's legal team after the incident?

6 A. Yes, ma'am.

7 Q. Were you -- do recall how many times?

8 A. I do not. I do remember once. If it was more than
9 once, I don't remember that.

10 Q. Okay. Do you recall being interviewed by one of his
11 investigators, Kara Richards Baker?

12 A. No, ma'am.

13 Q. Do you recall being interviewed by one of his
14 attorneys, Mr. Bill McGuire?

15 A. I do remember.

16 Q. Okay. And if I said that interview was in 2014 before
17 his trial, would that sound right?

18 A. Yeah. That would probably be about right.

19 Q. Okay. Do you recall the kind of things that they asked
20 you about or that you discussed about Mr. Blackwell?

21 A. I don't remember all of the conversation. All I
22 remember is them being in my office and us having a
23 conversation, but I don't remember the gist of the
24 conversation. No, ma'am.

25 Q. I think you testified earlier that Ricky deteriorated

1 after Angie and he had separated?

2 A. Yes. He emotionally got very depressed and he was very
3 distraught as well.

4 Q. Uh-huh. Do you recall telling Ricky's legal team that
5 he just couldn't pull out of that depression or out of that?

6 A. I don't remember telling them that, but that would be a
7 accurate description of his emotional state. Yes, ma'am.

8 Q. Uh-huh. And would he cry in your office?

9 A. Sometimes, yes.

10 Q. Do you remember saying that he would sometimes weep
11 uncontrollably?

12 A. That would be a fair assessment. Yes, ma'am.

13 Q. Do you recall saying that their separation pushed Ricky
14 over the edge and that his reserves were very limited?

15 A. I don't recall saying it, but I think, again, that
16 would be a fair assessment of him at that time. Yes, ma'am.

17 Q. Do you recall being asked about his depression before
18 the separation and after the separation?

19 A. I'm sure they probably asked me that.

20 Q. Do you -- was the depression different before the
21 separation than after the separation?

22 A. Yeah. It was significantly worse afterwards.

23 Q. Do you recall saying that it was grief beyond
24 consolation?

25 A. No. I don't remember saying that.

1 Q. Do you recall saying that you thought that Angie was
2 Ricky's rock?

3 A. Again, I don't remember the exact conversation, but
4 again, that would be a very accurate statement.

5 Q. Do you recall talking about -- I'm sorry -- about Ricky
6 Blackwell's parents?

7 A. No, ma'am. But I do know that his parents were sort of
8 controlling or domineering.

9 Q. Uh-huh.

10 A. They lived, to my -- best of my recollection, they
11 lived in the basement of their home or at least on their
12 property, which was a thorn in Angela's side.

13 Q. Uh-huh.

14 A. Ricky could not afford to live anywhere else 'cause his
15 jobs were kind of mediocre jobs. She wanted them to move
16 out and he could not afford that and that caused contention
17 between them. Angela did not appreciate his parents'
18 interference in their marriage, so that was always an issue
19 between them and that came up a lot in their counseling.

20 Q. Uh-huh. And do you recall saying that Ricky was a
21 relatively passive person who would acquiesce to that kind
22 of control?

23 A. Yeah. Ricky was quite the passive person in their
24 relationship. Angela was a strong-willed person. He was,
25 compared to her, very passive.

1 Q. Uh-huh. Do you recall saying that you never thought
2 Ricky was a hypochondriac or was malingering any of his
3 symptoms?

4 A. I don't remember saying that. No, ma'am.

5 Q. Okay. Do you recall saying that you thought the crime
6 was out of character for him?

7 A. Again, I don't remember saying it, but that would be an
8 accurate statement. Yeah. He -- Ricky was not in any way a
9 criminal.

10 Q. Uh-huh.

11 A. He was as good as gold.

12 Q. Yes. And do you recall talking about Ricky's jobs?

13 A. Yeah. Ricky had just minimum wage kind of jobs.

14 Q. Uh-huh. Would you characterize those as mediocre jobs?

15 A. Yes, ma'am.

16 MS. VANN: Court's indulgence.

17 THE COURT: All right.

18 Q. Dr. Jackson, do you recall Ricky having an incident
19 where he overdosed on Xanax?

20 A. No, ma'am. I do not.

21 MS. VANN: Your Honor, may I approach?

22 THE COURT: Yes, you may.

23 Q. I'd like to show you some medical records.

24 A. Where do I need to go, ma'am?

25 MS. VANN: Well, first, Your Honor, how should we mark

1 them for this hearing? I cannot remember if we started over
2 at the last hearing.

3 THE COURT: I think -- it appears what we did at the
4 last hearing is that -- Shannon, if you'll just mark --
5 we'll call it Petitioner's Exhibit 1 and then put today's
6 date on it so there will be no question where we -- that it
7 was entered today.

8 (Whereupon, the court reporter marked the referenced
9 document as Applicant's Exhibit Number 1.)

10 MS. VANN: Thank you.

11 COURT REPORTER: Thank you.

12 THE COURT: I tell you what, and then if you'll hand me
13 that -- let me do this,---

14 MS. VANN: Yes.

15 THE COURT: ---swap with you so I'll make that part of
16 the record.

17 MS. VANN: Very good. Thank you.

18 (Whereupon, Ms. Vann passed the referenced document up
19 to the Court.)

20 Q. Dr. Jackson, do you recognize this set of records?

21 A. Well, I don't recall these, I'm sorry, but some -- I
22 recognize some of the -- no. I just have to say no, I
23 don't. Okay.

24 Q. Well, on the first page it says that they are from
25 Westgate Family Physicians?

1 A. Yes, ma'am.

2 Q. And your name is the top name listed there?

3 A. Yes, ma'am.

4 Q. And then it looks like there is some documentation
5 saying that these records are certified as true and accurate
6 copies of the originals?

7 A. Yeah. All I'm saying is don't remember it, put it that
8 way.

9 Q. Okay. But these -- do they appear to have been created
10 by your office?

11 A. Oh, yeah. Yeah. The first page -- I was looking at
12 the -- some of these other office records, which I do not
13 remember or recall, but I see the ones from my office and
14 they are my office records.

15 Q. Okay.

16 MS. VANN: Your Honor, I would move to have these
17 admitted as Applicant's Exhibit 1 for the purposes of this
18 hearing.

19 THE COURT: State wish to be heard?

20 (No indication)

21 THE COURT: Thank you. Without objection,---

22 MR. EVANS: No objection, Your Honor.

23 THE COURT: ---Applicant's Exhibit 1 for today's date,
24 December the 15th, 2023, are in evidence.

25 MS. VANN: Thank you, Your Honor.

1 Q. And I'm sorry. I should have put page numbers on these
2 so we could easily find the section.

3 A. All right. I found where he was admitted to the
4 Carolina Center for Behavioral Health. Is that what you
5 want me to look at?

6 Q. Yes, sir.

7 A. All right. Yeah; I found that one.

8 Q. Okay. And there is a page marked "Psychiatric
9 Evaluation" from Carolina Behavioral Center or Behavioral
10 Health.

11 A. Yes, ma'am. I see that.

12 Q. Okay. And so that date of admission is December 10th,
13 2008?

14 A. Yes, ma'am.

15 Q. And then on the second page of that evaluation it has
16 the plan.

17 A. Yes, ma'am.

18 Q. Do you see that it says, "Discontinue Xanax obviously,
19 as he tried to overdose on that"?

20 A. Right.

21 Q. Okay. And this -- do you recall, would that have been
22 after the separation?

23 A. I don't know the time line; no, ma'am. I could not
24 tell you that.

25 Q. Okay.

1 A. Except for the fact that his -- at the beginning his
2 chief complaint, My wife left me.

3 Q. Uh-huh.

4 A. So it probably is afterwards.

5 Q. Okay. And do you recall if he was restarted on Xanax
6 after that treatment?

7 A. I don't recall.

8 Q. Okay.

9 MS. VANN: I have no further questions, Your Honor.

10 Thank you. Thank you, Dr. Jackson. It's nice to meet you.

11 THE WITNESS: Thank you, ma'am.

12 THE COURT: Mr. Brown? I'm sorry. Mr. Evans?

13 MR. EVANS: Some recross. I mean, redirect, Your
14 Honor.

15 REDIRECT EXAMINATION

16 ROBERT E. JACKSON BY MR. EVANS:

17 Q. Now, the patients that you had that was intellectually
18 disabled, when they got to your office, that's how they
19 were. Correct?

20 A. More often than not, unless there was, like, a accident
21 or something like a traumatic brain injury.

22 Q. Right.

23 A. Most people that came to me were that way from birth.

24 Q. Okay. And Ricky didn't appear that way to you when you
25 first came to you?

1 A. No, sir. He did not.

2 Q. Okay.

3 A. And to be honest, if I felt like somebody's
4 intellectually challenged, I would put that in my medical
5 record. If, in my opinion, a patient has, as we used to
6 call it many years ago, mental retardation.

7 Q. Right.

8 A. Now the politically correct term is intellectually
9 challenged, then I would put that in the medical record and
10 I never felt that Ricky was intellectually
11 challenged/mentally retarded and I never put that in my
12 medical record.

13 Q. Okay. Now, the applicant's attorney asked you about a
14 interview with Mr. Blackwell's attorney prior to his trial.

15 A. Yes, sir.

16 Q. Do you remember telling him that you feel that Mr.
17 Blackwell should get the death penalty?

18 A. I'm -- you know, I don't know that I really recall it.
19 If he'd asked me that, I would have said yes.

20 MS. VANN: Your Honor, I would just renew our objection
21 to that question.

22 THE COURT: All right. I note your objection and I
23 overruled the objection.

24 MR. EVANS: Thank you, Your Honor.

25 Q. I'll refer to the notes that was written and it states

1 that you stated to them he probably deserved the death
2 penalty. He knew what he was doing, it was premeditated. I
3 love him and he's a long-term friend.

4 A. That's correct. All of that --

5 Q. Does that sound like something you would tell --

6 A. -- all of that's a correct statement. I don't exactly
7 remember those words, but I would say those are a fair
8 assessment of how I felt at the time. Yes, sir.

9 Q. Okay. And you were never subpoenaed to testify at his
10 trial, were you?

11 A. No, sir.

12 Q. Were you ever asked to testify at his trial, that you
13 recall?

14 A. I mean, I -- they asked me if I was willing and I told
15 them I would be willing.

16 Q. Okay. But you were never given any---

17 A. No, sir.

18 Q. ---notice of the trial and---

19 A. No.

20 Q. ---to come and testify?

21 A. That's correct.

22 Q. Okay.

23 MR. EVANS: Beg the Court's indulgence.

24 Q. Do you remember telling his lawyer or anybody from his
25 office that you believe Mr. Blackwell was not intellectually

1 disabled?

2 A. No, sir. I don't recall telling anybody. I mean, that
3 was a long time ago. If they had asked me, I would have
4 told him that I didn't think he was mentally challenged.
5 No, sir. I would -- that's what I would have told him, but
6 I don't exactly remember the conversation.

7 Q. Okay. Do you remember telling the investigator, "I
8 felt his communication with me was someone with a higher IQ
9 than that"?

10 A. I'm sorry. I didn't hear you clearly.

11 Q. Do you remember telling the investigator that, "I felt
12 his communication with me was someone -- was of someone with
13 a higher IQ than that"?

14 A. I don't remember that particular statement. No, sir.

15 Q. Okay. But if it's in his notes, more than likely you
16 did tell him?

17 A. Yeah.

18 Q. You think that's something --

19 A. If it was in his notes, I wouldn't dispute it.

20 Q. Okay. And do you remember telling his lawyer, and it's
21 in his lawyer's notes, that you take care of mentally
22 retarded people every day and he is not, speaking about
23 Ricky Blackwell? Remember telling him that?

24 A. Yes, sir. I would have told him that, 'cause I do take
25 care of mentally challenged patients routinely and in my

1 opinion, Ricky was not in that category.

2 Q. Okay.

3 MR. EVANS: Nothing further, Your
4 Honor.

5 THE COURT: Any recross?

6 MS. VANN: No, Your Honor.

7 THE COURT: All right. Thank you, Dr. Jackson. You
8 can step down.

9 THE WITNESS: Thank you, sir.

10 THE COURT: All right. I am curious. Dr. Jackson, we
11 had to stop -- you were the next witness and you'd had heart
12 issues, significant heart issues, and we continued. You do
13 all right now?

14 THE WITNESS: I'm fine, sir.

15 THE COURT: Well, good. All right.

16 THE WITNESS: Yes, sir. Thank you for asking.

17 THE COURT: Glad you're doing all right. Thank you.

18 THE WITNESS: Yes, sir.

19 MR. EVANS: Your Honor, can Dr. Jackson be
20 excused?

21 THE COURT: Any objection to---

22 MS. VANN: No objection.

23 THE COURT: ---Dr. Jackson being excused?

24 MS. VANN: No objection.

25 MR. EVANS: Your Honor, at this time the State would

1 rest.

2 THE COURT: All right. Anything else we need to do
3 today?

4 MS. VANN: Your Honor, we do have one brief rebuttal
5 witness.

6 THE COURT: All right. Any objection to -- I assume
7 this is what we might call a rebuttal of the rebuttal. Is
8 that where we are?

9 MS. VANN: Or the reply.

10 THE COURT: Right. Then call your witness.

11 MS. VANN: The applicant calls Kara Richards-Baker.

12 Your Honor, just for a bit of housekeeping because we
13 have had a couple of hearings, we're going to refer to two
14 exhibits that the State admitted at the first hearing, which
15 are State's Exhibits 4 and 12. They're Kara Richards-
16 Baker's reports of meeting with Dr. Jackson. I have them
17 here and we could enter them as an applicant's exhibit
18 together, if that is easier.

19 MR. MABRY: What are you talking about? I couldn't
20 hear you.

21 MS. VANN: I'm sorry. We have this doctor's submittals
22 from Dr. Jackson's interview.

23 MR. MABRY: Yeah; right.

24 MS. VANN: But I didn't know if the judge wanted --

25 MR. MABRY: They're two different ones?

1 MR. EVANS: They're two different interviews?

2 MR. MABRY: Both?

3 MS. VANN: Yes.

4 MR. MABRY: Twenty-six, fourteen and --

5 MS. VANN: Yes.

6 MR. MABRY: Okay.

7 MR. MABRY: We don't object.

8 MR. EVANS: We don't object, Your Honor.

9 THE COURT: Again, they were--

10 MS. VANN: Exhibits--

11 THE COURT: ---State's Exhibit --

12 MS. VANN: ---4 and 12. And we're happy to just admit
13 a new exhibit that has both of them.

14 MR. EVANS: That would be fine with us. We would have
15 no objection to that.

16 THE COURT: All right. That's fine.

17 MR. MABRY: Make it cleaner.

18 THE COURT: I don't have everything catalogued.

19 MS. VANN: Can you mark these are number 2? Thank you.

20 (Whereupon, the court reporter marked the referenced
21 documents as Applicant's Exhibit Number 2.)

22 THE COURT: All right. Ms. Vann.

23 MS. VANN: Thank you.

24 (KARA RICHARDS-BAKER, being first duly sworn, was
25 examined and testified as follows):

DIRECT EXAMINATION

TARA RICHARDS-BAKER BY MS. VANN:

Q. Good morning. Could you state your name for the record and spell you last name, please?

A. Sure. It's Kara, last name is Richards, hyphen, Baker, R-i-c-h-a-r-d-s, hyphen, B-a-k-e-r.

Q. And have you testified previously in this hearing?

A. I have.

Q. And can you just remind the Court of your role in this case?

A. I was the mitigation investigator in the case.

Q. And that was prior to trial?

A. That's correct.

Q. And as part of conducting your investigation, did you do interviews with witnesses?

A. I did.

Q. And how would you go about documenting those interviews?

A. When I meet with somebody, I take handwritten notes of everything they say and then as soon as, usually, as soon as I return either to my hotel room or home, I type them up and then send them to the attorney.

Q. And what is your goal in documenting those?

A. To accurately reflect what was told to me.

Q. And if I could ask you to just take a look at the

1 documents that I handed to you. Are these the memos you did
2 about your interviews with Dr. Robert Jackson?

3 A. They are.

4 Q. And can you just say what interviews they were? Oh,
5 I'm sorry, the date.

6 A. Sure. The first interview was with Dr. Jackson on July
7 12th of 2012. I believe that was just myself and Dr.
8 Jackson and then the next one was on February 26th, 2014 and
9 that was -- also included Bill McGuire, one of Mr.
10 Blackwell's attorneys.

11 Q. And did you create these interview memos in the same
12 way you just described?

13 A. I did.

14 Q. With the goal of accurately reflecting your interview
15 with him?

16 A. Correct.

17 MS. VANN: Your Honor, I have no further questions.

18 MR. EVANS: Oh. Are those admitted yet?

19 MS. VANN: I'm sorry. We would move to admit these as
20 Applicant's Exhibit 2. Thank you.

21 THE COURT: All right. And I think they've been
22 previously admitted. That's what y'all stated to me.

23 MR. EVANS: Yes, sir. They were previously admitted
24 during the first hearing. We have no objection to them
25 being admitted.

1 THE COURT: All right. They're admitted today and for
2 purposes of this hearing, they're admitted into evidence
3 without objection.

4 MS. VANN: Thank you, Your Honor.

5 THE COURT: Mr. Evans?

6 MR. EVANS: Thank you, Your Honor,

7 CROSS-EXAMINATION

8 KARA RICHARDS BAKER BY MR. EVANS:

9 Q. Now, you testified that you spoke with Dr. Jackson
10 alone by yourself. Correct?

11 A. Correct.

12 Q. Okay. And that interview was on July 12th, 2012?

13 A. Correct.

14 Q. Correct?

15 A. Yes.

16 Q. Yes. Okay. And during that interview you told Mr.
17 Jackson that Ricky tested at an IQ of 63. Correct?

18 A. That's correct.

19 Q. And Dr. Jackson told you, "I felt his communication
20 with me was someone of a higher IQ than that"? He told you
21 that?

22 A. He did.

23 Q. Okay. And also Dr. Jackson told you, "I would never
24 guess he has an IQ that low based on his ability to talk.
25 He held a job for a long time. The way he interacted with

1 people, I would put him at the 80s or 90s." That's what he
2 told you; isn't that correct?

3 A. He said that. Yes.

4 Q. Okay. Dr. Jackson also told you that he talked to
5 Ricky a lot and that he got a personal revival. Isn't that
6 correct?

7 A. A personal?

8 Q. Revival.

9 A. If you say it's in here, I believe you.

10 Q. Okay.

11 A. Yes.

12 Q. And that he thought that Mr. Blackwell was pulling out
13 of his depression?

14 A. Yes.

15 Q. Okay. And at the bottom of page 2, Dr. Jackson told
16 you that at a point Ricky lost his job, he couldn't find
17 another one and the economy was bad; this added to his
18 depression?

19 A. Correct.

20 Q. He said that also. Okay. And do you remember being
21 present when you and Mr. McGuire spoke with Dr. Jackson?

22 A. Yes.

23 Q. Okay. And that interview was on February the 26th,
24 2014. Correct?

25 A. Yes. Correct.

1 Q. Okay; all right. And in your notes it says that
2 McGuire asked Dr. Jackson if he has an opinion on what
3 Ricky's punishment should be and Dr. Jackson replied, "He
4 probably deserves the death penalty. He knew what he was
5 doing."

6 MS. VANN: Your Honor, we would just renew our
7 objection.

8 THE COURT: I note your objection. He's simply going
9 over what's recorded and what has already been admitted in
10 the evidence in Applicant's --

11 MR. EVANS: And, Your Honor, I'm just going over what
12 was told to her. I think they opened the door to this
13 testimony when they entered this evidence.

14 THE COURT: Right. You're reading word for word from
15 what's already into evidence.

16 Q. Okay. It says, "He knew what was doing. It was
17 premeditated. I love him. He's a long-time friend." It
18 says that in your notes; isn't that correct?

19 A. Yeah. Long-term friend.

20 Q. Yes.

21 A. Yes.

22 Q. All right. Also, a couple paragraphs down it states
23 that -- you state several times during our meeting that
24 Ricky has a borderline IQ. Ricky needed someone to help
25 with his medications. Bill mentioned Dr. Jackson. Dr.

1 Jackson isn't really an expert on mental retardation and Dr.
2 Jackson took great exception to that and he stated he takes
3 care of mentally retarded people every day and he is not.
4 It says that?

5 A. Yes. I remember that very well because Dr. Jackson got
6 pretty defensive.

7 Q. All right. Now, at the bottom of this statement, Dr.
8 Jackson told you he'd be out of town on March 15th at a
9 turkey shooting.

10 A. Uh-huh.

11 Q. Was that the trial date?

12 A. Oh gosh. I don't remember.

13 Q. Okay. But you never subpoenaed Dr. Jackson to appear
14 at trial to testify, did you?

15 A. No; we did not.

16 Q. Okay. And it seems to me that he was able and willing
17 to testify if called, but you never called him to testify?

18 A. That's correct.

19 Q. Okay.

20 MR. EVANS: Beg the Court's indulgence. Nothing
21 further, Your Honor.

22 THE COURT: All right. And redirect?

23 MS. VANN: No. Nothing further, Your Honor.

24 THE COURT: Thank you, Dr. Baker. You can step down.
25 All right. Anything further from the applicant?

1 MS. VANN: Nothing further, Your Honor.

2 THE COURT: All right. Anything else for the record?

3 MR. EVANS: Nothing from the State, Your Honor.

4 THE COURT: Mr. Grose?

5 MR. GROSE: Nothing as far as evidence is concerned.

6 We did want to, while we were here, discuss the procedure
7 going forward. We've ordered the transcripts from the prior
8 hearings. We have the transcript from the first hearing in
9 March. I don't think the July transcript has come in yet.
10 We plan to order a transcript from today's hearing and we
11 would like for an opportunity, particularly since this has
12 been drawn out over so many months, for post-hearing
13 briefing once all the transcripts are received.

14 THE COURT: Okay. What's the State's position?

15 MR. EVANS: Yeah. That sounds logical, Your Honor.

16 THE COURT: All right. How does the Court place a time
17 limit on the amount of time to --

18 MR. GROSE: What we would propose would be that we
19 would notify Your Honor once all the transcripts are
20 received, like we do in appeals when we have to order
21 transcripts, and then we would request ninety days after the
22 receipt of the final transcript to submit a brief.

23 THE COURT: All right. Does that make sense to the
24 State as well?

25 MR. EVANS: Yeah; that's fine from the State's --

1 THE COURT: All right. So -- all right. Well, then it
2 will be left up to the attorneys, both -- either one or both
3 of you to notify the Court when you receive the complete
4 transcripts and then my understanding is that once the
5 Court's been put on notice of that, then you will be allowed
6 at least ninety days to respond with your own particular
7 post-trial briefs before the Court issues any type of order.

8 MR. EVANS: Your Honor, I think that it would be
9 ninety, then thirty days plus afterwards so we can respond?

10 MR. GROSE: Right.

11 THE COURT: Right. That makes sense.

12 MR. EVANS: All right. Thank you.

13 THE COURT: All right. Thank y'all. We are through
14 gathering evidence in the case of *Ricky Blackwell versus*
15 *State*. Thank you. All right.

16 MR. EVANS: Thank you, Your Honor.

17 MS. VANN: Thank you, Your Honor.

18 MR. GROSE: Thank you, Your Honor.

19 MS. BROWN: Appreciate it.

20 (END OF REQUESTED TRANSCRIPT)

21 * * * * *

22
23
24
25

In witness whereof, I have hereunto subscribed my name,
this 5th day of February, 2024.

My Commission Expires:
April 26, 2027

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

AFFIDAVIT

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

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

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

Beverly Daves
BEVERLY DAVES

Sworn to and subscribed before me
This 10th day of October, 2018

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

AFFIDAVIT

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

1. I reside in Spartanburg County in South Carolina.
2. I was a teacher at Chesnee High School from 93 to 203
3. Before teaching at Chesnee High, I taught at Foster's Grove from 78 to 73.
4. Foster's Grove was a vocational school in Chesnee. Students traveled back and forth between Foster's Grove and Chesnee High.
5. I was a history teacher at Chesnee. I primarily taught U.S. History. I also taught an "adjunct history" class at Chesnee High. The adjunct courses were remedial, special education-like classes.
6. The adjunct history course was a remedial course. It was a very simplified version of a history class. Students were given passing grades based primarily on coming to class.
7. In the adjunct history course, I mainly read stories to the students about heroes, including stories about historical figures like Abraham Lincoln.

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

William Bill Hayes
WILLIAM "BILL" HAYES

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

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

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

AFFIDAVIT

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

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

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


SONYA STOTT

Sworn to and subscribed before me
This 30 day of Jan, 2020


Notary Public for the State of South Carolina
My commission expires: 10-23-2024



STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

AFFIDAVIT

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

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

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

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

Geraldine Jean White
GERALDINE "JEAN" WHITE

Sworn to and subscribed before me

This 27th day of September, 2022

[Signature]

Notary Public for the State of South Carolina

My commission expires: 2/2/2024

GTW

2

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

AFFIDAVIT

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

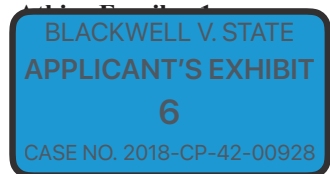
1. I reside in Spartanburg County, South Carolina.
2. I was Rickey Blackwell's primary supervisor on the third shift at Springs Industries. I held the third shift supervisor position from 2000-2005.
3. At Springs, Rickey drove a forklift and was called a "trucker." His job required him to bring rolls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

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

Glenda Wooten
GLEND A WOOTEN

Sworn to and subscribed before me
This 27th day of September, 2022

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



Begin forwarded message:

From: "Allen, Clay" <callen@spartanburgcounty.org>
Subject: RE: Blackwell
Date: July 2, 2012 at 12:30:42 PM EDT
To: "Bill S. McGuire" <bmcguire@sccid.sc.gov>, "Kara Richards" <kara.richards@earthlink.net>, "Natasha J. Holliday" <nholliday@sccid.sc.gov>
Cc: "Bill McGuire" <bmcguire1966@gmail.com>

At this point, what are our obligation, if any, to notify the solicitors on this issue? Also, should we file a written objection to the State's motion for alibi/mental illness, etc? I am thinking that we should do something in writing so that we notify the court that we disagree with the State's right to get information from us and we are not prohibited from introducing this evidence later until this issue is decided by the judge.

Clay T. Allen

Circuit Public Defender

Seventh Judicial Circuit

864-596-2561

From: Bill S. McGuire [<mailto:bmcguire@sccid.sc.gov>]
Sent: Monday, July 02, 2012 12:08 PM
To: Allen, Clay; Allen, Clay; Kara Richards; Natasha J. Holliday
Cc: Bill S. McGuire; Bill McGuire
Subject: Blackwell

So R scored a whopping 63 on his IQ test. We need to go all out in getting the appropriate records and interviews to support adaptive deficits. Clay, the judge wanted us to give notice as to whether we were pursuing an Atkins claim. My recollection is that he gave us about a month from our status conference, which is pretty much this week. I say we send something like the following tomorrow..

Dear Judge Couch,

At the most recent status conference, you requested that defense counsel provide notice if we planned to pursue either of the two mental health defenses available by statute in South Carolina. At this time we do not anticipate presenting evidence as to a NGRI or GBMI defense.

We are, however, currently investigating what appears to a very strong potential Atkins claim. This Atkins investigation is now necessary based upon records recently provided to us. These records indicate that our client, Rickie Lee Blackwell is likely to be diagnosed as mentally retarded. Standardized testing indicates he was reading at an elementary school level when he was approximately eighteen years old. Another test from his school records place his I.Q. in the range of being mentally retarded. The most recent comprehensive and full IQ test indicates that Rickie's IQ is 63. Initial interviews with some of his teachers reveal that Rickie was regarded as "slow" and was in "adjunct" classes. These "adjunct" classes appear to be classes that would later come to be referred to as "special education" classes. Our investigation has also revealed that Rickie was also not capable of maintaining typical financial or personal affairs without the assistance of others.

While this investigation is far from complete, we have also been able to obtain records indicating that mental retardation is common in our client's family. His father's IQ has been tested at 60. His daughter's IQ has been tested at __, and his first cousin's IQ has been tested at __.

While we are diligently pursuing the Atkins investigation, we may not be able to complete the adaptive deficit portion of this investigation in the near future. As soon as this investigation is complete, we will certainly notify the Court.

What are yall's thoughts???

-----Original Message-----

From: Kara Richards [<mailto:kara.richards@earthlink.net>]
Sent: Thursday, January 16, 2014 4:46 PM
To: Bill S. McGuire; Ginger
Cc: Kara Richards; Allen, Clay; Casey Secor
Subject: RE: working on prep

I believe you are correct Bill. There is nothing about those outlier high IQ scores in the body of Ginger's report; only in that one chart. I agree with your theory that she used a chart from another report as a template and somehow those IQ scores were imported into Rickey's report.

-----Original Message-----

From: "Bill S. McGuire" <bm McGuire@sccid.sc.gov>
Sent: Jan 16, 2014 4:25 PM
To: Ginger <gallowayphd@gmail.com>
Cc: Kara Richards <kara.richards@earthlink.net>, "Clay T. Allen" <callen@spartanburgcounty.org>, Casey Secor <cseccor@sccid.sc.gov>
Subject: RE: working on prep

I reread the part of the report that talks about variances- nothing is mentioned specifically re these IQ scores- there are differences/variances in the percentile ranked performances - 5 % up to 41 %-- If the IQ scores weren't there the report would read the same-right? It still addresses the variances in those % ranked performances, right? What I'm getting at is it

looks like it really is just a typo with no reliance on the info

-----Original Message-----

From: Ginger [<mailto:gallowayphd@gmail.com>]
Sent: Thursday, January 16, 2014 4:19 PM
To: Bill S. McGuire
Cc: Kara Richards; Clay T. Allen; Casey Secor
Subject: Re: working on prep

Yes, correct. Don't ask me how is generated those IQ scores. I am totally baffled. The computer genie?

G

Sent from my iPad

On Jan 16, 2014, at 4:17 PM, "Bill S. McGuire" <bmcguire@sccid.sc.gov> wrote:

All tests listed in the chart were actually given to Rickie, and the chart is correct as to when they were given and what his percentile rank was, or is some cases what his equivalent grade level performance was- correct? The only problem is that the records don't seem to contain these IQ scores that we have associated with the tests- right?

-----Original Message-----

From: Kara Richards [<mailto:kara.richards@earthlink.net>]
Sent: Thursday, January 16, 2014 4:01 PM
To: Bill S. McGuire; ginger calloway; Clay T. Allen; Casey Secor
Cc: Kara Richards; Bill S. McGuire
Subject: RE: working on prep

Correct. They are the problematic scores the solicitor has been throwing around as one reason Rickey can't be ID. It is to our benefit to get rid of them. I think Ginger and I are concerned about the hey day the solicitor will have with her on the stand, i.e. "you were wrong about these scores, how do we know you aren't wrong about other scores, other issues, etc?"

-----Original Message-----

From: "Bill S. McGuire" <bmcguire@sccid.sc.gov>
Sent: Jan 16, 2014 3:57 PM
To: ginger calloway <gallowayphd@gmail.com>, "Clay T. Allen" <callen@spartanburgcounty.org>, Casey Secor <csecur@sccid.sc.gov>
Cc: Kara Richards <kara.richards@earthlink.net>, "Bill S. McGuire" <bmcguire@sccid.sc.gov>
Subject: RE: working on prep

Let me do some digging- I don't think this is a big deal- my understanding is that those "scores" were never really treated as valid IQ scores so that they would not really have an impact on ultimate conclusion- correct?

-----Original Message-----

From: ginger calloway [<mailto:gallowayphd@gmail.com>]
Sent: Thursday, January 16, 2014 3:41 PM
To: Bill S. McGuire; Clay T. Allen; Casey Secor
Cc: Kara Richards
Subject: working on prep

Dear Bill, Clay & Casey (I can never keep up with who's working on this case),

Kara and I have reviewed the problematic chart on page 14 of my psychological report on Rickey. We have found errors in my reporting. If you examine Rickey's cumulative record, the percentiles reported for 10/73 and 10/74 for the Comprehensive Test of Basic Skills are correct. The IQ scores, however, cannot be found. We have identified 5 pages of school records that list standardized scores: 1. The cumulative record. 2. The California Achievement Test for 5/66 when Rickey was 7 years 5 months. 3. The California Achievement Test for 11/67 when Rickey was 8 years 11 months. 4. The California Short-Form Test of Mental Maturity given in 4/66 when Rickey was 7 years 5 months. 5. The California Short Form Test of Mental Maturity given in 10/76 when Rickey was 8 years 11 months.

In none of these can we find these IQ scores that are reported in the chart on page 14 for 10/73 and 10/74. If we don't have these scores and neither does the state, they obviously are a mistake.

We look forward to your suggestion as to how to resolve this.
Addendum to the report? 10 Hail Marys?

Ginger

Begin forwarded message:

From: "Bill S. McGuire" <bmcguire@sccid.sc.gov>
Subject: RE: Another Brown mistake
Date: February 11, 2014 at 3:01:59 PM EST
To: Ginger Calloway <gcallowayphd@gmail.com>
Cc: Kara Richards <kara.richards@earthlink.net>, "Natasha J. Holliday" <nholliday@sccid.sc.gov>, "Clay T. Allen" <callen@spartanburgcounty.org>

Also, Dr. Calloway- I plan to ask you in yyour testimony if there was any evidence at all of a change in Rickey after the four wheeler—I will cross Brown on his failure to pick up the phone and ask anyone “did anyone notice a change in Rickey at all- re his intelligence, speech, activity, personality, etc.....”

From: Ginger Calloway [<mailto:gcallowayphd@gmail.com>]
Sent: Tuesday, February 11, 2014 2:57 PM
To: Bill S. McGuire
Cc: Kara Richards; Natasha J. Holliday; Clay T. Allen
Subject: Re: Another Brown mistake

Good catch, Bill.

Don't forget to send those cases to me, please.

Ginger

On Feb 11, 2014, at 2:55 PM, Bill S. McGuire <bmcguire@sccid.sc.gov> wrote:

Another quote from the fed courts in the 4th circuit--- looks like Brown's four wheeler comment is now doubly problematic for him

Finally, the Court notes that, "in the absence of any evidence of a change in a claimant's intelligence functioning, it must be assumed that the claimant's IQ ha[s] remained relatively constant and the evidence that [a claimant] could barely read or write [i]s "a clear 'manifestation' of mental retardation occurring before age twenty-two." *Luckey v. U.S. Dept. of Health & Human Services*, 890 F.2d 666, 668-69 (4th Cir.1989) (citations omitted).

Conyers v. Astrue 2012 WL 3282329 (E.D.N.C.,2012)

From: Bill S. McGuire
Sent: Tuesday, February 11, 2014 2:54 PM
To: Natasha J. Holliday; Ashley Adams (ashley.diann.adams@gmail.com)
Cc: Bill S. McGuire
Subject: RE: Blackwell

N, pls put in MR file on n drive in Rickey's case

Finally, the Court notes that, "in the absence of any evidence of a change in a claimant's intelligence functioning, it must be assumed that the claimant's IQ ha[s] remained relatively constant and the evidence that [a claimant] could barely read or write [i]s "a clear 'manifestation' of mental retardation occurring before age twenty-two." *Luckey v. U.S. Dept. of Health & Human Services*, 890 F.2d 666, 668-69 (4th Cir.1989) (citations omitted).

Conyers v. Astrue 2012 WL 3282329 (E.D.N.C.,2012)

MEMO TO THE RICKEY BLACKWELL FILE

TO: File
FROM: Kara
RE: Interview with Bill Hayes
DATE: 7/11/12

CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT

I had stopped by Bill Hayes' home in Spartanburg a number of times, but never found him at home. On the above date, I called Mr. Hayes' home number and left a message asking him to call me back. Mr. Hayes returned my phone call. I explained my role on Rickey's case. Mr. Hayes taught social studies. Mr. Hayes taught school for 38 years. Mr. Hayes reports there were at least two Rickey Blackwells at Chesnee High School. The one he remembers played on the football team. The Rickey Blackwell who played football was not in adjunct classes.

I explain the Rickey Blackwell I am referring to was in adjunct classes in high school and ask Mr. Hayes if he ever taught adjunct classes. Mr. Hayes reports he did teach an adjunct class one year, but he doesn't remember Rickey. According to Mr. Hayes, adjunct classes were "for weak students for sure." Adjunct classes were "special classes" that were created to make an "easy course" for the weaker students.

The adjunct class Mr. Hayes taught wasn't really a social studies class. He recalls, "It was a real simple course with a real simple book." Mr. Hayes remembers the class "used stories about people who weren't smart, yet made something out of themselves." Mr. Hayes thinks students with mental retardation could be in adjunct classes since those classes were available to anyone.

MEMO TO THE RICKEY BLACKWELL FILE

TO: File
FROM: Kara
RE: Interview with Kenneth Lawter
DATE: 5/18/12

CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT

On the above date, I meet with Kenneth Lawter at his home in Chesnee. Mr. Lawter seems somewhat reluctant to talk with me about Rickey. It is difficult to get any information out of him. He is very quiet and responds only to direct questions. He volunteers next to no information.

Mr. Lawter and Rickey went to grammar school and high school together. Mr. Lawter says he does not remember Rickey dropping out of school, although he later says once Rickey dropped out of school they didn't see each other much. Mr. Lawter notes, "I didn't really see him except in passing. I pretty much stay to myself. I don't go out much."

Mr. Lawter says when he was growing up, "Rickey was just like the rest of us. We rode bicycles and played." Rickey wasn't violent or mean. Mr. Lawter never knew of Rickey ever getting into a fight. Mr. Lawter states, "He never tried to mess with nobody."

Mr. Lawter and Rickey spent the night at each others' homes when they were growing up. Rickey's daddy drove a truck and would take Mr. Lawter and Rickey to different places when they were little. Rickey's mother didn't work. She stayed at home. Mr. Lawter describes Mildred as "Real nice. She was always wanting me to eat something."

Mr. Lawter was surprised by Rickey's brother Don's death. Mr. Lawter used to see Don outside of his place and wave at him. Mr. Lawter heard Rickey had cancer, but didn't know this for sure. Mr. Lawter never talked with Rickey about his cancer. Mr. Lawter noticed Rickey was "back driving a big truck" so he assumed Rickey's health was better.

Mr. Lawter doesn't remember Rickey having a girlfriend. Mr. Lawter wasn't close with Rickey when Rickey began dating Angie. Mr. Lawter didn't know anything about Angie leaving Rickey. It was hard for Mr. Lawter to believe when he heard about the crime.

I ask Mr. Lawter if there were other boys Rickey hung out with growing up. Mr. Lawter reports Rickey and he both hung out with Alan Stephens. Mr. Lawter thinks Alan Stephens now works down at the Marlow truck repair place.

Mr. Lawter never thought Rickey was crazy or disturbed when they were growing up. Mr. Lawter notes, "We just had good times. Something had to be a chemical imbalance for him to do what he did."

MEMO TO THE RICKEY BLACKWELL FILE

TO: File
FROM: Kara
RE: Interview with Cheryl Ponder
DATE: 7/11/12

CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT

Cheryl Ponder was a teacher at Chesnee High School when Rickey was a student. I had stopped by Ms. Ponder's house on 6/29/12 to speak with her about Rickey. She wasn't home, and I left a card. Ms. Ponder sent me an email on 7/6/12 stating she does not remember Rickey.

On the above date, I called Ms. Ponder to follow up on her email. Ms. Ponder taught 11th grade English at Chesnee High. She stated she does not remember Rickey. She went on to say she has never been good at remembering names and faces. Over the years she has had prior students come up to her, and she never remembers them. Rickey's name is familiar, but she cannot remember him.

Ms. Ponder taught school for 27 years. She graduated from college in 1972 and began teaching at Chesnee High that fall. I ask Ms. Ponder about the adjunct classes. Ms. Ponder stated, "They started those classes to help kids who wouldn't be successful in general classes. They were for kids who went to vocational school. They were for kids who weren't able to do." Ms. Ponder doesn't think students who were mentally retarded were in adjunct classes. There were special education classes that the mentally retarded students would have been in.

Ms. Ponder remembered she had to teach an adjunct English class soon after she came to Chesnee High School. Ms. Ponder commented, "I hated teaching that class. There were no materials, no requirements, no guidelines for the class. I didn't know what to do." Ms. Ponder remembered going to the administration and asking for some materials or guidelines on how to teach the class.

Ms. Ponder said Louise Scruggs taught special education. Lynn Burnett also taught special education. Ms. Burnett has since married, and Ms. Ponder does not know her married name.

Beverly Cash (now Beverly Daves) was probably Rickey's homeroom teacher since she taught psychology and French.

MEMO TO THE RICKEY BLACKWELL FILE

TO: File
FROM: Kara
RE: Interview with Ken White
DATE: 10/11/12

CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT

On the above date, I meet with Ken White at his place of employment in Inman. Ken White owns a trucking company. Rickey worked for Ken White approximately 30 years ago. Mr. White thinks Rickey was around 21 or 22 years old when he worked for Mr. White. Mr. White had known Cletus for years. Mr. White and Cletus worked for the same company back in the early 1960s. Mr. White remembers Cletus used to come by Mr. White's workplace with Rickey. Rickey needed a job so Mr. White hired him.

Rickey worked as a long-distance truck driver for Mr. White. Rickey hauled produce out to Texas and brought textiles from TX back to SC. Rickey didn't have any problems driving to Texas and back. Mr. White didn't have any problems with Rickey as an employee. Mr. White notes, "He was just a young'un."

I ask Mr. White if he ever thought Rickey was slow mentally. Mr. White responds by saying, "Well, you know, Rickey smoked a little dope." Rickey wasn't married when he worked for Mr. White. Mr. White doesn't remember if Rickey had a girlfriend at the time.

Rickey did not have a CDL. At the time, truck drivers only needed a Class 3 driver's license. A CDL became required in 1992.

Rickey had to carry a log book in his truck. He recorded his miles daily. Usually, Rickey left for Texas on Friday and drove into the next week. He slept in the cab of his truck. Rickey would have worked 70 hours a week. Mr. White rode with Rickey on occasion when the load was pushed for time so they could take turns driving.

Rickey did not have any problems with directions or street signs. Mr. White notes, "But it was much easier back then. There wasn't so much traffic."

Mr. White thinks Rickey worked for him for about a year. His memory is Rickey quit working for him when Cletus bought Rickey his own truck. I ask Mr. White if Rickey ever had an accident in one of his trucks. Mr. White says Rickey did not wreck any of his trucks, but he has a memory of hearing something about Rickey running into the back of something when he was hauling for Jordan Oil.

Mr. White was shocked when he heard about Rickey's current charges. He states, "There wasn't a violent bone in his body when I knew him." Mr. White does not think Rickey should receive the death penalty mainly because he doesn't support the death penalty. He thinks the death penalty is a waste of money.

MEMO TO THE RICKEY BLACKWELL FILE

TO: File
FROM: Kara
RE: Interview with Randy Shields
DATE: 2/21/14

CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT

On the above date, I meet with Randy Shields in the fellowship hall of Calvary Baptist Church where he is the pastor. Mr. Shields has been the pastor at Calvary Baptist Church for the past seven years. Mr. Shields has served as a missionary in Russia for 8 years.

Mr. Shields is 54 years old. He has known Rickey since they were both little boys. Rickey's father bought a farm in Cooley Springs. Mr. Shields and Rickey went to school together beginning at Cooley Springs Elementary. Mr. Shields and Rickey were in the same grade until high school.

Mr. Shields played football when he was a boy, prior to high school. Rickey started out playing football, but "dropped out early on." When I ask Mr. Shields why Rickey dropped out of football, Mr. Shields states, "Rickey had a hard time making decisions, nailing things down."

Mr. Shields was saved when he was 21 years old. Mr. Shields attended church in Cooley Springs. Mr. Shields would go to Rickey's house and try to get Rickey and his parents to come to church.

In addition to being the pastor of Calvary Baptist Church, Mr. Shields works as a contractor for Firestone. Mr. Shields knows Bobby Center.

I ask Mr. Shields to tell me about Rickey as a young boy. Mr. Shields remembers a time when Rickey brought cigarettes to school to share with some of the other boys. The boys all knew the principal Mr. Bachelor "would nail down whoever brought cigarettes to school. We all knew he was going to get caught."

Mr. Bachelor watched out of his window for boys smoking during recess. Despite this, Rickey smoked the cigarettes right out in the open playground instead of going out behind the vineyard. Mr. Bachelor caught Rickey smoking. Mr. Shields thinks Rickey was in 5th, 6th or 7th grade when this happened.

Mr. Shields remembers when they would play softball during recess time, Rickey had a hard time making a decision about whether he should run or stay on base. Mr. Shields notes, "He would sit on the base unable to make a decision." Mr. Shields goes on to say, "Rickey is not someone who sets priorities in his life."

Mr. Shields tells me, "I'm really against what he done. The Bible clearly comes down on the side of capital punishment. Despite this, I hope you all can help him."

Mr. Shields was working at Firestone 2-3 times a week when Angie was hired at Firestone. Mr. Shields recalls, "Angie was very friendly with the men down there. Some of the guys told Bobby he should be careful."

Prior to working at his current church, Mr. Shields was the pastor at Rainbow Baptist Church. Angie and her sister would come to Rainbow Baptist at times. Angie's sister came more than Angie did. When Angie left Rickey, Rickey came to Mr. Shields' church three Sunday nights in a row. Mr. Shields reports, "I could tell Rickey was really disturbed. He would stare out in space, like he was in his own bubble."

After all three Sunday night services, Mr. Shields asked Rickey to go out to get coffee or something to eat. Rickey turned him down all three times stating, "No. I've got to go home." Mr. Shields states, "It was like he put a block up." Mr. Shields goes on to say, "I didn't see anything like the person I knew those three times. He was physically different." Rickey did not talk with Mr. Shields about Angie having left him.

Mr. Shields was aware Rickey was living with his parents at the time. Mr. Shields heard through the grapevine Rickey had lost his trailer.

Rickey didn't attend Mr. Shields' church on a regular basis. Rickey went to another church in Cooley Springs.

When Rickey was first arrested, Cletus called and asked Mr. Shields to visit Rickey at the jail. Mr. Shields went to the jail, but wasn't allowed in to see Rickey. Mr. Shields thinks Tom Sawyer, the minister at Gateway Baptist Church, did visit with Rickey at the jail.

In high school, Rickey "ran with a rough crowd." Mr. Shields notes, "Rickey would let people take advantage of him, maybe just to have friends. I don't know for certain."

Rickey dropped out of high school. When Mr. Shields and Rickey entered high school, Mr. Shields became involved with football. At recess time, Mr. Shields would hang out in the gym. Rickey was "hanging around the side. He would go back to the bleachers and smoke."

Mr. Shields knows about adjunct classes. Adjunct classes were "for kids who had trouble learning." Mr. Shields admits the school wanted to put him in adjunct English because, as he says, "My English was bad." Mr. Shields did not take the adjunct English class and had to work hard on his English when he was in Bible

College. Mr. Shields lost track of Rickey after 8th grade. He didn't realize Rickey failed 9th grade. Mr. Shields graduated from high school in 1977.

Rickey was always "very polite."

Mr. Shields visited Rickey when Rickey had cancer. He remembers a particular time he visited Rickey, and all Rickey did was watch the race while Mr. Shields was there. Mr. Shields recalls, "He didn't respond. I wondered then if it was the chemo or just he was really into the race." Mr. Shields was surprised Rickey wasn't interested in spiritual counseling since he had cancer.

Mr. Shields states, "I can't say anything negative about Angie until I saw her at the Firestone plant. I heard she had to leave her prior company because of a relationship she had there. At Firestone, she would get into positions that were very provocative, enticing. Like they way she was leaning over to pick up stuff. She was friendly with all the men."

Mr. Shields thought Rickey and Angie's relationship "seemed to be okay." He doesn't know if Rickey relied on Angie because he wasn't around the two of them when they were making decisions.

Mildred Blackwell used to sing in a gospel group that performed at Rainbow Baptist Church. Rickey only attended Rainbow one time; it may have been Easter.

Mr. Shields has talked with Cletus about coming to church. Cletus told Mr. Shields, "I have a problem with beer." Cletus used to drink "pretty heavy."

Mr. Shields and his brother ran a paint and body shop. Their shop painted Hess equipment. Mr. Shields remembers it was real hard to back a truck into their body shop. It took most drivers 5-6 times to back a truck in. This wasn't true for Cletus who backed his trucks right in and never had to stop to straighten up. Cletus "is an awesome truck driver."

Mr. Shields thinks Cletus got Rickey hired on at Hess. Rickey didn't work at Hess that long because he totaled one of the Hess trucks. Mr. Shields didn't fix that truck because it was total loss.

Mr. Shields never saw Rickey discipline his children. Mr. Shields notes, "It can be taxing on a woman to do it all." There were times when Mr. Shields saw Cletus over cutting Rickey's grass.

Mr. Shields points out, "Rickey could never come to a conclusion or finality. Rickey could get from point A to B, but don't interfere with the in between." Mr. Shields goes on to say, "Rickey is a good person. He isn't threatening. I would have a pleasant time going out to eat with him, although he isn't someone who could enrich your life. He is simple-minded."

Mr. Shields has never seen Rickey do a mean act other than smoking cigarettes.

Rickey isn't the type of person who thought about consequences. That was clear when he smoked the cigarettes right out in front of everyone at school.

Mr. Shields has never heard Rickey read or count change. He doesn't know anything about Rickey taking any medications other than when he had cancer.

Mr. Shields tells me he does not want to testify in Rickey's trial, although he would help in any other way he can.

POSSIBLE STATE ARGUMENTS AGAINST MR/ID:

1. No record of IQ or adaptive deficits prior to the age of 18.
2. "IQ" scores prior to 18 are too variable; some of them are way above ID range.
3. He is not MR/ID. Any limitations we see are a result of Rickey having cancer, being in a 4-wheeler accident, having seizures, etc.
4. He isn't MR/ID; he is just lazy, lacks motivation, lives in a culture where the women do all these things for their husbands.
5. Identify isolated examples of competent behavior and argue this shows Rickey does not have ID. I.e., he was able to have a job. The type of job he had – driving a big rig. He passed the CDL.
6. He is a model prisoner; guards have seen him play cards/chess/checkers; he can order canteen; he can request medical attention; guards say he isn't MR.
7. He can understand complex legal matters and terms (see competency evaluation).
8. He is malingering; didn't try his hardest. (Looks like they aren't going to use this)
9. The facts of the crime show Rickey engaged in planning and other higher level thinking that shows he isn't ID.
10. There is no evidence of adaptive deficits prior to the age of 18.

Blackwell - psychiatrist

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
9
CASE NO. 2018-CP-42-00928

From: Kara Richards <kara.richards@earthlink.net>
To: Bill McGuire , Clay Allen
Subject: Blackwell - psychiatrist
Date: Jul 16, 2012 8:21 PM

Bill & Clay

I think we talked some about his at our last team meeting, but I am wondering if we need a forensic psychiatrist aside from Donna Schwartz-? to take a look at Rickey. It seems to me that Rickey was in the midst of a severe major depressive episode in the months and days leading up to the homicide. Dr. Jackson told me he was not surprised Rickey had overdosed since he was so depressed. I believe Dr. Jackson should have raised the level of care Rickey was getting since he was so depressed, i.e. hospitalize him to stabilize him, meet with him weekly, refer him to a psychiatrist or a therapist, etc. I am not qualified to say whether Dr. Jackson was treating Rickey with the right medications for the severity of his depression, although I doubt Xanax is the best treatment for what Rickey was experiencing. Also, Xanax is highly addictive, and Dr. Jackson had Rickey on it for years and continually had to increase the dose. I think a forensic psychiatrist could address some of these questions/issues.

You guys may have a forensic psychiatrist you like to use. There is a guy up here in NC who I really like and have worked with a bunch of times. His name is George Corvin. He is originally from Alabama. He and Ginger have worked together on a number of cases as well.

What do you two think?

Kara

George Corvin

From: Kara Richards <kara.richards@earthlink.net>
To: Bill McGuire
Cc: Natasha Holliday <nholliday@sccid.sc.gov>
Subject: George Corvin
Date: Jul 18, 2012 3:57 PM

Here is George's contact info:

North Raleigh Psychiatry
5530 Munford Rd., Suite 119
Raleigh, NC 27612

919-782-9554 - office
919-782-9130 - fax
919-632-9889 - cell

George is willing to help. What do we need to do next?



Lindsey Vann <lindsey@deathpenaltyresource.org>

Blackwell emails last one

1 message

Kara Richards-Baker <kara.richards@earthlink.net>
To: lindsey@justice360sc.org, pbleonard@ptmc.net

Wed, Oct 24, 2018 at 3:25 PM

Begin forwarded message:

From: Bill McGuire <bmcguire1966@gmail.com>
Subject: Re: Blackwell
Date: August 19, 2012 at 2:03:34 PM EDT
To: Kara Richards <kara.richards@earthlink.net>
Cc: "Allen, Clay" <callen@spartanburgcounty.org>, "Natasha J. Holliday" <nholliday@sccid.sc.gov>, "Bill S. McGuire" <bmcguire@sccid.sc.gov>, Bill McGuire <bmcguire1966@gmail.com>

ok -- sounds good

On Sun, Aug 19, 2012 at 1:29 PM, Kara Richards
 <kara.richards@earthlink.net> wrote:

I am going to be at the beach this week. I will be checking email, but don't know how well my phone will work. I think George Corvin is ready and willing; we just need to steer him in the right direction.

-----Original Message-----

From: Bill McGuire <bmcguire1966@gmail.com>
 Sent: Aug 19, 2012 1:10 PM
 To: Kara Richards <kara.richards@earthlink.net>
 Cc: "Allen, Clay" <callen@spartanburgcounty.org>, Bill McGuire
 <bmcguire1966@gmail.com>, "Natasha J. Holliday" <nholliday@sccid.sc.gov>
 Subject: Re: Blackwell

I agree w/ the psychiatrist issue. I'm back in town today-- Let's see if we can all talk via phone in next day or 2.

On Fri, Aug 17, 2012 at 11:59 AM, Kara Richards
 <kara.richards@earthlink.net> wrote:

Hi Everyone -

I received my first set of records in response to the court order for Donald Blackwell's various mental health records. Today I received records from Spartanburg Mental Health Center. I have only glanced through them briefly. While I did not see any formal IQ testing information, there is lots of information regarding Donald's mental health. Donald has been diagnosed at different times with schizophrenia or schizoaffective disorder. He has been treated with very strong neuroleptics including Prolixin, Clozaril and Thorazine. He has also been prescribed Seroquel and Xanax (who does that remind us of?). At one time Donald was so depressed he shot himself in the abdomen (who does that remind of us again?).

I think these records highlight the need for a psychiatrist on the team. Something is really wrong with these folks genetically.

I will summarize them as soon as I can and get the summary to you. I am going to be at the beach this upcoming week with my family. I will be checking emails while I am away. Ginger and I are set to be up in Chesnee on Monday the 27th. Any word from the judge about a continuance?

Kara

From: "Bill S. McGuire" <bmcguire@sccid.sc.gov>
Subject: R Blackwell
Date: September 21, 2012 at 9:35:28 PM EDT
To: "gcorvin@nc.rr.com" <gcorvin@nc.rr.com>
Cc: Kara Richards <kara.richards@earthlink.net>, "Natasha J. Holliday" <nholliday@sccid.sc.gov>, "Bill S. McGuire" <bmcguire@sccid.sc.gov>, "bmcguire1966@gmail.com" <bmcguire1966@gmail.com>, "Clay T. Allen" <callen@spartanburgcounty.org>

Dr. Corvin, I'm working on a case with Kara Richards and Dr. Callowway. I have complete trust in Kara Richards's judgment. She indicates that you would be ideal for the case at bar. Please forward your cv and rate schedule to me, if you would. I'll be out of town next week, but will be able to discuss the case the first week of October. Thanks so much. Bill McGuire

Begin forwarded message:

From: Bill McGuire <bmcguire1966@gmail.com>
Subject: Re: Blackwell
Date: August 21, 2012 at 11:05:03 AM EDT
To: Kara Richards <kara.richards@earthlink.net>
Cc: "Allen, Clay" <callen@spartanburgcounty.org>, "Natasha J. Holliday" <nholliday@sccid.sc.gov>, "Bill S. McGuire" <bmcguire@sccid.sc.gov>

Will do-- we also got continuance- no new date

On Sun, Aug 19, 2012 at 2:47 PM, Kara Richards <kara.richards@earthlink.net> wrote:

Bill,

After you talk with George, let me know what he needs and I will get it to him.

-----Original Message-----

Blackwell

From: Kara Richards <kara.richards@earthlink.net>
To: Clay Allen , Bill McGuire , Bill McGuire , Natasha Holliday
Cc: George Corvin <gcorvin@gmail.com>
Subject: Blackwell
Date: Oct 23, 2012 9:27 PM

Hi Everyone -

Dr. Corvin would like to meet with Rickey on Tuesday, Nov. 20 at 11:30. He would like to meet with Rickey as long as possible. I warned him that Rickey's attention span isn't great. Hopefully, Rickey will be able to last 3-4 hours. Maybe Clay could go the day before and prep Rickey and make sure Rickey doesn't have canteen, a shower or a visit scheduled for the 20th.

Kara

Begin forwarded message:

From: George Corvin <gcorvin@gmail.com>
Subject: Blackwell
Date: November 19, 2012 at 5:10:32 PM EST
To: "Kara B. Richards-Baker LCSW" <kara.richards@earthlink.net>

Hi Kara,
Got your message. I think I'm good to go tomorrow. Will let you know how things go. If you don't hear from me, that just means I forgot, so feel free to call!
George

--

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Begin forwarded message:

From: George Corvin <gcorvin@gmail.com>
Subject: Re: Blackwell
Date: November 26, 2012 at 8:56:31 PM EST
To: Kara Richards <kara.richards@earthlink.net>
Cc: Bill McGuire <bmcguire@sccid.sc.gov>, Clay Allen <callen@spartanburgcounty.org>, Casey Secor <csecor@sccid.sc.gov>

Hi Kara,
The short answer is yes. As you know, there is considerable clinical evidence that Mr. Blackwell is functionally MR, but the issue isn't crystal clear either. I can imagine this could become a very heated debate/battle in court. That said, his history is remarkable for considerable evidence of genetic vulnerability as well as risk factors for "organic" intellectual issues (such as his h/o Hodgkin's, possible environmental toxin exposure, etc.). Functional imaging, although still not widely used in clinical practice, is increasingly used in forensic settings, and can help detect abnormalities not seen on standard imaging (MRI/CT). I also briefly talked with Dr. Calloway today and she is going to look over her data to see if there is any noteworthy evidence of focal deficits or other indicators for organic damage. What I can say is that my examination of him last week coupled with what I know of his history also raises my index of suspicion for such conditions - we can go into detail about that when we talk again. There will be much to discuss I think.
George

On Mon, Nov 26, 2012 at 1:15 PM, Kara Richards <kara.richards@earthlink.net> wrote:
George -

Do you think we need a functional MRI in Rickey's case?

--

This message is PRIVILEGED and CONFIDENTIAL and may contain Protected Healthcare Information as

MEMO TO THE RICKEY BLACKWELL FILE

TO: File
FROM: Kara
RE: Team mtg
DATE: 1/9/14

CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT

On the above date, Bill, clay and I meet and talk about both the MR/ID hearing scheduled for the end of the month and the trial scheduled for the beginning of March. The following is a list of things we need to do:

1. Get additional funding for Ginger and Kara.
2. Get funding orders for Jim Aiken and forensic pathologist.
3. Natasha to follow up on status of subpoenas for Cletus' siblings' school records.
4. Natasha/Bill to copy Rickey's bank records and send to Kara to summarize for possible use in MR/ID hearing.
5. Clay to get a copy of the Solicitors 19-page memo to Ginger and Kara.
6. Kara will copy and send a copy of Rickey's Belue employment records and Rickey Jr's school records to Ginger.
7. Bill to email Ginger Dr. McKee's contact information.
8. Kara to call Heather about family pictures and videos.
9. Kara to contact Dr. Corvin to advise him of trial date and check to see he has Rickey's mental health records.
10. Kara to locate witness statements to give to Dr. Corvin.
11. Kara to find out date of Jerry Wayne's death – will give this info to Clay to target date of jail phone call Rickey made to Jerry Wayne prior to Jerry Wayne's death.
12. Need to get updated copy of jail records.
13. Get funding order for someone to listen to jail phone calls - ???
14. Bill to get copy of jail records to Jim Aiken.



Lindsey Vann <lindsey@deathpenaltyresource.org>

Blackwell

Kara Richards <kara.richards@earthlink.net>

Wed, Oct 24, 2018 at 3:28 PM

Reply-To: Kara Richards <kara.richards@earthlink.net>

To: Lindsey Vann <lindsey@justice360sc.org>, Pam Leonard <pbleonard@ptmc.net>

-----Forwarded Message-----

>From: Kara Richards <kara.richards@earthlink.net>

>Sent: Feb 5, 2014 5:19 PM

>To: George Corvin <gcorvin@gmail.com>

>Subject: Blackwell

>

>Hi George -

>

>I hope you are well. I haven't seen or spoken with you in ages.

>

>I want to update you on the Blackwell case. We were supposed to have a MR/ID hearing last Tuesday and Wednesday, it got delayed until next week. Rickey was in the hospital last week for a small bowel obstruction and pancreatitis.

>

>We are scheduled to go to trial beginning the first week of March. Bill would like you to testify about the effects of taking Xanax on Rickey's state of mind. Are you available the second week of March.

>

>Kara



Lindsey Vann <lindsey@deathpenaltyresource.org>

Fw: blackwell

1 message

Kara Richards <kara.richards@earthlink.net>

Wed, Oct 24, 2018 at 3:29 PM

Reply-To: Kara Richards <kara.richards@earthlink.net>

To: Lindsey Vann <lindsey@justice360sc.org>, Pam Leonard <pbleonard@ptmc.net>

-----Forwarded Message-----

>From: Kara Richards <kara.richards@earthlink.net>

>Sent: Feb 5, 2014 5:29 PM

>To: Bill McGuire <bmcguire@sccid.sc.gov>, Clay Allen <callen@spartanburgcounty.org>

>Subject: blackwell

>

>We have problems with Dr. Corvin. He is headed out of the country for 10 days in February. Then he has two capital trials scheduled in NC in early March that he is subpoenaed to testify in. He is concerned that he has not written a report in this case, hasn't spoken with an attorney, and isn't prepared.

Begin forwarded message:

From: George Corvin <gcorvin@gmail.com>

Subject: Blackwell

Date: February 22, 2014 at 10:11:45 AM EST

To: "Kara B. Richards-Baker LCSW" <kara.richards@earthlink.net>

Kara,

Just checking in. Any news with Blackwell. Saw some press on the MR hearing. Of course I still have heard nothing from anyone about him, ever, except from you. :(

George

--

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Issues for post-conviction:

1. team communication
2. not enough witness prep
3. why did Bill give Mildred Blackwell to Clay as his witness at the last minute
4. lack of exploration of mental health defense
5. should have used Dr. Jackson; Mr. Davis in sentencing
6. getting records that required subpoenas to late in the process
7. Clay forgetting to give Ginger; me a copy of the records the solicitor gave him until mid Jan 2014.

POTENTIAL DEATH PENALTY CASE

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

COUNTY OF SPARTANBURG

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

RICKY LEE BLACKWELL,

Defendant.

Indictment No. 2009-GS-42-3610

Warrant No.s MO88424, 34

**EX PARTE MOTION FOR FUNDS TO CONTINUE
THE REQUIRED MITIGATION INVESTIGATION**

The Defendant moves, by and through his attorneys, for an order from this Court authorizing funds, to be paid by the South Carolina Commission on Indigent Defense (hereinafter "Commission"), so that the Defendant may secure the services of a mitigation specialist.

Factual Background

Rickey Lee Blackwell is accused of committing capital murder in Spartanburg County on July 8, 2009. Mr. Blackwell is on trial for his life as the state filed Notice of Intention to Seek the Death Penalty on July 9, 2009

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 JAN -4 AM 11:40
M. HOPE BLACKWELL

Legal Argument

The Defendant must have access to funds and services necessary to build an effective defense. Ake v. Oklahoma, 470 U.S. 68 (1985); S.C. Code Ann. § 16-3-26(C)(1) (1976); ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, 2003.

CF #2
To ensure meaningful access to justice, the Supreme Court has construed the meaning of Due Process to guarantee access to a number of resources to the indigent defendant. This guarantee started with the fundamental right to court appointed counsel, Powell v. Alabama, 287 U.S. 45 (1932), and expanded from there. See e.g., Douglas v. California, 372 U.S. 353 (1963) (ensuring assistance of counsel as a right for first direct appeal); Little v. Streater, 452 U.S. 1, 101 (1981) (extending the right to “meaningful participation of an indigent defendant to “quasi-criminal” cases); Strickland v. Washington, 466 U.S. 668 (1984); (holding assistance of counsel must be effective). Furthermore, a criminal trial is fundamentally unfair, in violation of the Fourteenth Amendment’s Due Process and Equal Protection Clauses, where the “State proceeds against an indigent defendant without making certain he has the raw materials integral to the building of an effective defense.” Ake v. Oklahoma, 470 U.S. 68, 77 (1985). See also U.S. Const. amend. IV § 1.

The landmark ruling in Ake v. Oklahoma, involved the Court’s reversal of the trial court’s refusal to grant the defendant the means to employ a psychiatrist. The Court stated that a fundamentally fair trial requires that the court provide an indigent defendant with all raw materials necessary to build an effective defense, and this includes the assistance of all experts necessary to reach that end. 470 U.S. at 77-80 (emphasis added).

While Ake was determined in the context of a mental health expert, both federal and state courts have extended its essential principle to all necessary experts, see e.g., United States v.

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Dominguez Benitez, 542 U.S.74, 77 n.1 (2004) (non-English speaking Defendant entitled to court appointed translator); Weeks v. Angelone, 176 F.3d 249, 266 (E.D. Va. 1999) (recognizing defendant entitled to non-psychiatric expert assistance, including ballistics expert, but denying request on other grounds); Husske v. Commonwealth, 252 Va. 203, 476 S.E.2d 920 (1996) (defendant entitled to non-psychiatric expert assistance, including forensic DNA expert, where he can make an individualized showing that it is material to the defense); Williams v. Martin, 618 F.2d 1021, 1027 (4th Cir. 1980) (defendant entitled to pathologist, where necessary to defense); State v. Bailey, 424 S.E.2d 503, 507 (S.C. 1992); (defendant entitled to mitigation specialist); as well as support services. See e.g., Britt v. North Carolina, 404 U.S. 226, 227-28 (1971) (court must provide indigent defendant with court transcripts, where he cannot otherwise afford them); Simmons v. Lockhart, 931 F.2d 1226, 1230 (8th Cir. 1991) (indigent defense entitled to clerks, paralegals, and other support staff necessary to build an adequate defense).

CV #3
Additionally, reflecting the sentiments of these court rulings, both the federal and state legislatures have enacted statutes codifying the assistance and resources to which an indigent defendant is entitled. See 18 U.S.C.A § 3006(A) (2008). See also, e.g., Kan. Stat. Ann. § 22-4508 (1988); Tenn. Code Ann. § 40-14-207(b). Particularly, South Carolina's Statute declares that:

Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant's attorney's to obtain such services on behalf of the defendants....Payment of such fees and expenses may be ordered in cases where the defendant is an indigent[.]

S.C. Code Ann. 1976 § 16-3-26(C)(1) (1976).

In 2003, the American Bar Association ("ABA") revised its guidelines to help further explain what the court must provide an indigent defendant pursuant to a fundamentally fair trial.

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The ABA has, in its guidelines, stated that the State must make “extraordinary efforts on behalf of the accused.” Specifically, it has declared that, in addition to appointing counsel, the State must provide for counsel to receive the assistance of all expert, investigative, and other ancillary professional services reasonably necessary or appropriate to provide high quality legal representation and maintain parity between the defense and prosecution with respect to these resources. American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Guideline 9.1, commentary (rev. ed. 2003), in 31 Hofstra L. Rev. 913, 984-85 (2003). (Hereinafter “ABA Guidelines”). See also, Wiggins v. Smith 539 U.S. 510, 525 (2003) (The Supreme Court of the United States has referred to the ABA Guidelines as a gauge of what is reasonable in terms of capital representation (citing Strickland v. Washington, 466 U.S.668, 688 (1984)), Council v. South Carolina, Opinion No. 26543, Shearhouse Advance Sheets, filed September 8, 2008 (reversing death sentence stating that counsel’s performance fell below that required by the ABA Guidelines).

In a capital case, maintaining “parity” requires far more resources than would be necessary under any other criminal proceeding. Generally, a death penalty trial involves homicide, which requires the undertaking of an independent and complicated investigation, practically impossible for the defense without consulting experts in multiple fields and disciplines. ABA Guidelines, supra at Guideline 4.1, commentary.

It is inevitable that the prosecution will have the requisite experts, services, and resources to undertake an aggressive and thorough prosecution. Death penalty cases are unique to prosecution as well. In these cases, the prosecutor will concentrate a vast amount of resources into the trial, as death penalty trials are uncommon and highly publicized; thus, failing to attain the punishment will be very embarrassing for the prosecutor, as he ultimately would have used

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overwhelming resources to achieve a result – life in prison – that he could have likely accomplished through a plea agreement. See Stephen F. Smith, The Supreme Court and the Politics of Death, 94 Va. L. Rev.283, 307-17 (2008).

Specifically, regarding the need for a mitigation specialist, it is axiomatic that a complete and thorough life history investigation of the Defendant be undertaken by the defense. See Sears v. Upton, 130 S.Ct. 3259 (2010)(reversing death sentence due to inadequate mitigation investigation despite fact that defense counsel interviewed a dozen mitigation witnesses and presented a mitigation case supported by evidence) Wiggins v. Smith 539 U.S. 510, 525 (2003) (reversing death sentence due to counsel's failure to conduct a complete life history investigation), Council v. South Carolina, 380 S.C. 159, 670 S.E.2d 356 (S.C. 2008) (reversing death sentence stating that counsel's mitigation investigation fell below standard required by the ABA Guidelines).

CONCLUSION

It is clear that, pursuant to jurisprudence regarding due process, equal protection and the effective assistance of counsel, federal and South Carolina statutes, and the ABA Guidelines, this Court must provide an indigent defendant with all raw materials necessary to build an effective defense, and this includes the assistance of all experts and support personnel necessary to reach that end. Ake, 470 U.S. at 77-80. Failure to do so would render this trial fundamentally unfair.

Therefore, the Defendant at bar seeks funds to obtain the services of a mitigation specialist. Specifically, the Defendant requests funds to retain Lyn Phillips to assist the defense in establishing and presenting all of the mitigation evidence in this case. The Defendant further requests that this Court order that funds be approved and made available to the Defendant by the South Carolina Commission on Indigent Defense not to exceed, at this time, Ten thousand.

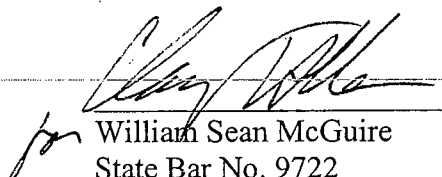
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(\$10,000.00) dollars so that Ms. Phillips may be retained and compensated for her services at a rate of Seventy (\$70.00) dollars per hour.

The Defendant requests that funds be made available by the Commission on a monthly basis, upon receipt of monthly invoices and receipts, for the above referenced services and related expenses and in the amount necessary to pay such monthly invoices in full.

DATED this 22^d day of December, 2010.

Respectfully Submitted,


for William Sean McGuire
State Bar No. 9722
Attorney, Capital Trial Division
South Carolina Commission on Indigent Defense
PO Box 11433
Columbia, SC 29211
(803) 734-7818

Clay Allen
7th Circuit Public Defender
State Bar No. 328
366 N. Church Street
Suite 3000
Spartanburg, SC 29303
(864) 596-2561

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL
SESSIONS SEVENTH JUDICIAL
CIRCUIT

COUNTY OF SPARTANBURG

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

RICKEY LEE BLACKWELL,

Defendant.

Indictment No. 2009-GS-42-3610

Warrant No.s MO88424, 34

EX PARTE ORDER FOR FUNDS FOR EXPERT SERVICES

This matter comes before me in an *ex parte* manner authorized pursuant to S.C. Code § § 16-3-26(C), 17-27-160(B) and *Ex Parte Lexington County*, 314 S.C. 220, 442 S.E.2d 589 (1994), due to the confidential nature of the matters herein. Court-appointed counsel for the defendant, Rickey Lee Blackwell, has made an *ex parte* motion for authorization to expend Ten Thousand (\$10,000.00) Dollars at a rate of Seventy (\$70.00) dollars per hour for the services of a mitigation specialist. Based on the motion provided, this Court finds that the amounts are appropriate because the services to be provided are reasonable and necessary. S.C. Code § 16-3-26(D). Counsel may apply for additional funding as the need arises, but the expenditure of state funds is not to exceed the limits set forth below without further authorization from this Court.

The total expenditure authorized at this time is Ten Thousand (\$10,000.00) dollars to pay for a mitigation specialist needed in preparation of trial. This Court finds these services to be reasonable and necessary for Blackwell's counsel to evaluate and

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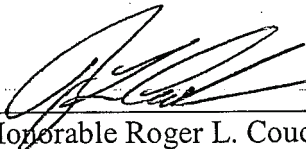
present evidence on all potential issues in this case. As a matter of fundamental fairness, this Court finds that Mr. Blackwell is entitled to this funding; otherwise, he will be "denied the opportunity to participate meaningfully in a judicial proceeding in which [his] liberty is at stake." *Ake v. Oklahoma*, 470 U.S. 68, 76 (1985).

Order

Therefore, this Court orders that court-appointed counsel for Mr. Blackwell be provided with state funds in the amount of Ten Thousand (\$10,000.00) dollars for a mitigation expert. This Court orders that these funds be disbursed on a monthly basis upon the bills and expense receipts being submitted to the South Carolina Commission on Indigent Defense at any time from this date. The amount listed establishes the maximum amount to be paid without additional authorization from this Court.

ANY VIOLATION BY ANY PERSON OF THE CONFIDENTIAL NATURE OF THIS ORDER MAY CONSTITUTE CONTEMPT OF COURT.

IT IS SO ORDERED.


Honorable Roger L. Couch
Seventh Judicial Circuit Court Judge

12/22, 2010.

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Evelyn J. (Lyn) Phillips, LISW-CP, LMSW

914 Richland Street, Suite A-101
Columbia, SC 29201
(803) 254-7865; (803) 361-9591
lynphil90@gmail.com

April 18, 2011

Bill McGuire, Attorney-at-Law
Capital Defense Division
SC Commission on Indigent Defense
1330 Lady St., Suite 401
Columbia, SC 29201

Dear Bill:

I hope this finds you well. It has been a pleasure working with you and Clay Allen on the Rickey Blackwell case. I regret that my current health issues prevent me from continuing with the case, and please know that I will be happy to spend as much time as necessary helping the new Mitigation Specialist (Laura Switzer, I assume) get familiarized with the case.

I have called Mrs. Blackwell to let her know that I will no longer be working on the case and to ask her to have Rickey call me so that we can have a talk for closure in our relationship. As you are aware, I had already spoken with her in late February about my breast cancer and upcoming treatment. I will continue to watch this case with great anticipation of a positive result for the Blackwells.

I am delivering to your office, today, the box of file materials that I received from Morgan Lea Daniels, with my additional materials. Also, please see my attached final invoice for my work in December, 2010 and January/February/March of this year. If there is anything additional needed please contact me. I wish you the very best in this difficult case, and in all your capital cases.

Sincerely,

Evelyn J. (Lyn) Phillips, LISW-CP, LMSW
Mitigation Specialist

cc: Clay Allen, Attorney-at-Law

INVOICE FOR SERVICES: Evelyn J. (Lyn) Phillips, LISW-CP
CASE: Ricky Lee Blackwell
INVOICE TOTAL: \$2172.14

TC: telephone conversation
EM: email correspondence
Mtg: meeting
SpCDC: Spartanburg County Detention
m: minute; hr: hour

BLACKWELL V. STATE
 APPLICANT'S EXHIBIT
 14
 CASE NO. 2018-CP-42-00928

MONTH: DECEMBER, 2011

Date	Hours	Purpose	Mileage
12/22	5 hrs 30 m	Trip to Spartanburg Public Defenders Office to discuss case with B.McGuire/Clay Allen; then first meeting of defense team with client at SpCDC.	202 miles
5.5 total hours at \$70. per hour = \$385.00 202 total miles at .505 per mile = \$102.01			

MONTH: JANUARY, 2011

Date	Hours	Purpose	Mileage
1/1/11	20 m	TC Mrs Blackwell (mother) to arrange first meeting at their home	
1/3	10 m	EM to McGuire/TC message to N. Holliday to schedule appointment	
1/4	35 m	TC N.Holliday & Ms.Blackwell to set up Thurs (not Wed) appt; EMs w/ N.Holliday/Clay Allen arranging visit and getting permission letter to Jail Director Powers	
1/5	20 m	TC Larry Powers, Director SpDC, to arrange visit and discuss rules/RB; medication issues	
1/6	6 hrs 45 m	Interview w/client at SpCDC 2 hrs. and 1 hour interview with parents in Chesnee	225 miles
1/10	30 m	Documentation of visit with RB at jail and parents in Chesnee.	
1/11	5 m	EM B.McGuire/N.Holliday re: visit; EMs/N.Holliday re: Morgan's contact info and receiving Lee Connelly's memos	
1/12	55 m	EMs w/ N.Holliday re: Morgan's contact info and to receive Investigator Lee Connelly's memos; Mtg w/ Morgan Daniels for case transition info	
1/16	10 m	Conversation w/ George Woods, MD re: chemotherapy and brain function; seeking expert in effects of chemo on later cognition.	
1/18	1 hr	Met w/ Morgan Daniels/discuss & transition files	
1/19	1 hr 15 m	EM B.McGuire to share documentation/discussion of visit to RB and interaction with Jail Director Powers re: medications; review of case files provided by Ms. Daniels	
1/21	1 hr	Review of case files (L.Connelly and Morgan Daniels)	
1/24	15 m	TC w/ Dr. Donna Schwartz-Watts re: RB's medications, coordinating w/ Dr.Bianco/SpCDC & Director Powers re: recent medications; EMs w/ Natasha H/B.McGuire re: Dr.Schwartz-Watts.	
1/25	5 hrs	Interview w/ client (1 hr/45 m) at SpCDC	201 miles

MONTH: JANUARY, 2011, *continued*
CASE: Rickey Lee Blackwell

Date	Hours	Purpose	Mileage
1/26	5 m	EM correspondence with N.Holliday/B.McGuire re: Dr. Schwartz-Watts	
1/27	5 m	EMs/N.Holliday to get RB records sent to her office	
18.5 hrs at \$70./hour = \$1295.00			
426 total miles at .505 per mile = \$215.13			

MONTH: FEBRUARY, 2011

Date	Hours	Purpose	Mileage
2/1	15 m	EM/N.Holliday to arrange pick-up of records; EM with Dr. Schwartz-Watts re: RB's medication and coordinating with Dr. Bianco; connecting Dr. Schwartz-Watts with SpCDC nurse	
2/4	5 m	EMs w/ N.Holliday to try to arrange document pick-up	
2/7	40 m	Research on chemotherapy and cognition; emotional impact	
2/8	5 m	EM Lee Connelly to arrange meeting	
2/14	5 m	EMs Lee Connelly re: cancellation of meeting/rescheduling due to her husband's surgery	
2/20	15 m	TC w/ Mrs Blackwell regarding Rickey's case and to tell her about my health issue/implications	
2/28	5 m	EM B. McGuire re: my health issue and status of RB case	
1.5 hrs at \$70. per hr = \$105.00			
No mileage			

MONTH: MARCH, 2011

Date	Hours	Purpose	Mileage
3/27	1 hr	Organizing all case materials to return to B. McGuire/new Mitigation Specialist	
1 hr at \$70. per hr = \$70.00			
No mileage			

TOTAL FOR DECEMBER 2010 AND JANUARY/FEBRUARY/MARCH 2011:

Hourly rate \$70. per hour = \$1855.00

Mileage total: \$317.14

INVOICE TOTAL: \$2172.14

DEATH PENALTY CASE

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

RICKY LEE BLACKWELL,

Defendant.

Indictment No. 2009-GS-42-3610

Warrant No.s MO88424, 34

**EX PARTE MOTION FOR FUNDS TO CONTINUE
THE REQUIRED MITIGATION INVESTIGATION**

The Defendant moves, by and through his attorneys, for an order from this Court authorizing funds, to be paid by the South Carolina Commission on Indigent Defense (hereinafter "Commission"), so that the Defendant may continue the services of a mitigation specialist.

Factual Background

Rickey Lee Blackwell is accused of committing capital murder in Spartanburg County on July 8, 2009. Mr. Blackwell is on trial for his life as the state filed Notice of Intention to Seek the Death Penalty on July 9, 2009.

Legal Argument

The Defendant must have access to funds and services necessary to build an effective defense. Ake v. Oklahoma, 470 U.S. 68 (1985); S.C. Code Ann. § 16-3-26(C)(1) (1976); ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, 2003.

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To ensure meaningful access to justice, the Supreme Court has construed the meaning of Due Process to guarantee access to a number of resources to the indigent defendant. This guarantee started with the fundamental right to court appointed counsel, Powell v. Alabama, 287 U.S. 45 (1932), and expanded from there. See e.g., Douglas v. California, 372 U.S. 353 (1963) (ensuring assistance of counsel as a right for first direct appeal); Little v. Streater, 452 U.S. 1, 101 (1981) (extending the right to “meaningful participation of an indigent defendant to “quasi-criminal” cases); Strickland v. Washington, 466 U.S. 668 (1984); (holding assistance of counsel must be effective). Furthermore, a criminal trial is fundamentally unfair, in violation of the Fourteenth Amendment’s Due Process and Equal Protection Clauses, where the “State proceeds against an indigent defendant without making certain he has the raw materials integral to the building of an effective defense.” Ake v. Oklahoma, 470 U.S. 68, 77 (1985). See also U.S. Const. amend. IV § 1.

CA #2
The landmark ruling in Ake v. Oklahoma, involved the Court’s reversal of the trial court’s refusal to grant the defendant the means to employ a psychiatrist. The Court stated that a fundamentally fair trial requires that the court provide an indigent defendant with all raw materials necessary to build an effective defense, and this includes the assistance of all experts necessary to reach that end. 470 U.S. at 77-80 (emphasis added).

While Ake was determined in the context of a mental health expert, both federal and state courts have extended its essential principle to all necessary experts, see e.g., United States v. Dominguez Benitez, 542 U.S. 74, 77 n.1 (2004) (non-English speaking Defendant entitled to court appointed translator); Weeks v. Angelone, 176 F.3d 249, 266 (E.D. Va. 1999) (recognizing defendant entitled to non-psychiatric expert assistance, including ballistics expert, but denying request on other grounds); Husske v. Commonwealth, 252 Va. 203, 476 S.E.2d 920 (1996)

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(defendant entitled to non-psychiatric expert assistance, including forensic DNA expert, where he can make an individualized showing that it is material to the defense); Williams v. Martin, 618 F.2d 1021, 1027 (4th Cir. 1980) (defendant entitled to pathologist, where necessary to defense); State v. Bailey, 424 S.E.2d 503, 507 (S.C. 1992); (defendant entitled to mitigation specialist); as well as support services. See e.g., Britt v. North Carolina, 404 U.S. 226, 227-28 (1971) (court must provide indigent defendant with court transcripts, where he cannot otherwise afford them); Simmons v. Lockhart, 931 F.2d 1226, 1230 (8th Cir. 1991) (indigent defense entitled to clerks, paralegals, and other support staff necessary to build an adequate defense).

Additionally, reflecting the sentiments of these court rulings, both the federal and state legislatures have enacted statutes codifying the assistance and resources to which an indigent defendant is entitled. See 18 U.S.C.A § 3006(A) (2008). See also, e.g., Kan. Stat. Ann. § 22-4508 (1988); Tenn. Code Ann. § 40-14-207(b). Particularly, South Carolina's Statute declares that:

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Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant's attorney's to obtain such services on behalf of the defendants....Payment of such fees and expenses may be ordered in cases where the defendant is an indigent[.]

S.C. Code Ann. 1976 § 16-3-26(C)(1) (1976).

In 2003, the American Bar Association ("ABA") revised its guidelines to help further explain what the court must provide an indigent defendant pursuant to a fundamentally fair trial.

The ABA has, in its guidelines, stated that the State must make "extraordinary efforts on behalf of the accused." Specifically, it has declared that, in addition to appointing counsel, the state must provide for counsel to receive the assistance of all expert, investigative, and other ancillary professional services reasonably necessary or appropriate to provide high quality legal representation.

representation and maintain parity between the defense and prosecution with respect to these resources. American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Guideline 9.1, commentary (rev. ed. 2003), in 31 Hofstra L. Rev. 913, 984-85 (2003). (Hereinafter "ABA Guidelines"). See also, Wiggins v. Smith 539 U.S. 510, 525 (2003) (The Supreme Court of the United States has referred to the ABA Guidelines as a gauge of what is reasonable in terms of capital representation (citing Strickland v. Washington, 466 U.S.668, 688 (1984)), Council v. South Carolina, Opinion No. 26543, Shearhouse Advance Sheets, filed September 8, 2008 (reversing death sentence stating that counsel's performance fell below that required by the ABA Guidelines).

CA #4
In a capital case, maintaining "parity" requires far more resources than would be necessary under any other criminal proceeding. A death penalty trial necessarily involves homicide, which requires the undertaking of an independent and complicated investigation, practically impossible for the defense without consulting experts in multiple fields and disciplines. ABA Guidelines, supra at Guideline 4.1, commentary.

It is inevitable that the prosecution will have the requisite experts, services, and resources to undertake an aggressive and thorough prosecution. Death penalty cases are unique to the prosecution as well. In these cases, the prosecutor will concentrate a vast amount of resources into the trial, as death penalty trials are uncommon and highly publicized; thus, failing to attain the punishment will be very embarrassing for the prosecutor, as he ultimately would have used overwhelming resources to achieve a result – life in prison – that he could have likely accomplished through a plea agreement. See Stephen F. Smith, The Supreme Court and the Politics of Death, 94 Va. L. Rev.283, 307-17 (2008).

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Specifically, regarding the need for a mitigation specialist, it is axiomatic that a complete and thorough life history investigation of the Defendant be undertaken by the defense. See Sears v. Upton, 130 S.Ct. 3259 (2010)(reversing death sentence due to inadequate mitigation investigation despite fact that defense counsel interviewed a dozen mitigation witnesses and presented a mitigation case supported by evidence) Wiggins v. Smith 539 U.S. 510, 525 (2003) (reversing death sentence due to counsel's failure to conduct a complete life history investigation), Council v. South Carolina, 380 S.C. 159, 670 S.E.2d 356 (S.C. 2008) (reversing death sentence stating that counsel's mitigation investigation fell below standard required by the ABA Guidelines).

CONCLUSION

CRA #5
It is clear that, pursuant to jurisprudence regarding due process, equal protection and the effective assistance of counsel, federal and South Carolina statutes, and the ABA Guidelines, this Court must provide an indigent defendant with all raw materials necessary to build an effective defense, and this includes the assistance of all experts and support personnel necessary to reach that end. Ake, 470 U.S. at 77-80. Failure to do so would render this trial fundamentally unfair.

Therefore, the Defendant at bar seeks funds to continue the services of a mitigation specialist who will assist the defense in establishing and presenting all of the mitigation evidence in this case. On December 22, 2010 this Court authorized Five Thousand (\$5,000) dollars for the services of a mitigation specialist. At that time the Defendant employed Lyn Phillips, LISW-CP as the mitigation specialist in this case. Due to medical reasons, Ms. Phillips has had to withdraw from the Blackwell's case. The defense then retained Kara Richards-Baker, LCSW to replace Ms. Phillips as a mitigation investigator. To date all but \$78.53 of those funds remain. Therefore, the Defendant requests this Court to authorize an additional Five Thousand (\$5,000)

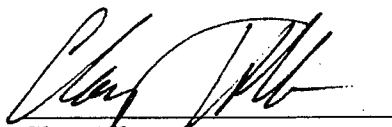
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Dollars in order to maintain the continued mitigation investigation into Mr. Blackwell's life that is essential to the defense of the Defendant. The Defendant further requests that this Court order that funds be approved and made available to the Defendant, by the South Carolina Commission on Indigent Defense not to exceed, at this time, Five Thousand (\$5,000.00) dollars so that Ms. Kara Richards-Baker may be retained and compensated for her services at a rate of Seventy (\$70.00) dollars per hour.

The Defendant requests that funds be made available by the Commission on a monthly basis, upon receipt of monthly invoices and receipts, for the above referenced services and related expenses and in the amount necessary to pay such monthly invoices in full.

DATED this 23^d day of January, 2012.

Respectfully Submitted,



Clay Allen
7th Circuit Public Defender
State Bar No. 328
366 N. Church Street
Suite 3000
Spartanburg, SC 29303
(864) 596-2561

William Sean McGuire
State Bar No. 9722
Attorney, Capital Trial Division
South Carolina Commission on Indigent Defense
PO Box 11433
Columbia, SC 29211
(803) 734-7818

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STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL
 SESSIONS SEVENTH JUDICIAL
 CIRCUIT

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

RICKEY LEE BLACKWELL,

Defendant.

Indictment No. 2009-GS-42-3610

Warrant No.s MO88424, 34

EX PARTE ORDER FOR FUNDS FOR EXPERT SERVICES

This matter comes before me in an *ex parte* manner authorized pursuant to S.C. Code § § 16-3-26(C), 17-27-160(B) and *Ex Parte Lexington County*, 314 S.C. 220, 442 S.E.2d 589 (1994), due to the confidential nature of the matters herein. Court-appointed counsel for the defendant, Rickey Lee Blackwell, has made an *ex parte* motion for authorization to expend Five Thousand (\$5,000.00) dollars at a rate of Seventy (\$70.00) dollars per hour for the services of a mitigation specialist. Based on the motion provided, this Court finds that the amounts are appropriate because the services to be provided are reasonable and necessary. S.C. Code § 16-3-26(D). Counsel may apply for additional funding as the need arises, but the expenditure of state funds is not to exceed the limits set forth below without further authorization from this Court.

The total expenditure authorized at this time is Five Thousand (\$5,000.00) dollars to pay for a mitigation specialist needed in preparation of trial. This Court finds the services to be reasonable and necessary for Blackwell's counsel to evaluate and present

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evidence on all potential issues in this case. As a matter of fundamental fairness, this Court finds that Mr. Blackwell is entitled to this funding; otherwise, he will be "denied the opportunity to participate meaningfully in a judicial proceeding in which [his] liberty is at stake." *Ake v. Oklahoma*, 470 U.S. 68, 76 (1985).

Order

Therefore, this Court orders that court-appointed counsel for Mr. Blackwell be provided with state funds in the amount of Five Thousand (\$5,000.00) dollars for a mitigation expert. This Court orders that these funds be disbursed on a monthly basis upon the bills and expense receipts being submitted to the South Carolina Commission on Indigent Defense at any time from this date. The amount listed establishes the maximum amount to be paid without additional authorization from this Court.

ANY VIOLATION BY ANY PERSON OF THE CONFIDENTIAL NATURE OF THIS ORDER MAY CONSTITUTE CONTEMPT OF COURT.

IT IS SO ORDERED.



Honorable Roger L. Couch
Seventh Judicial Circuit Court Judge

_____, 1/31, 2012.

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DEATH PENALTY CASE

STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS
 SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

RICKY LEE BLACKWELL,

Defendant.

Indictment No. 2009-GS-42-3610

Warrant No.s MO88424, 34

**EX PARTE MOTION FOR FUNDS TO CONTINUE
 THE REQUIRED MITIGATION INVESTIGATION**

The Defendant moves, by and through his attorneys, for an order from this Court authorizing funds, to be paid by the South Carolina Commission on Indigent Defense (hereinafter "Commission"), so that the Defendant may continue the services of a mitigation specialist.

Factual Background

Rickey Lee Blackwell is accused of committing capital murder in Spartanburg County on July 8, 2009. Mr. Blackwell is on trial for his life as the state filed Notice of Intention to Seek the Death Penalty on July 9, 2009.

Legal Argument

The Defendant must have access to funds and services necessary to build an effective defense. Ake v. Oklahoma, 470 U.S. 68 (1985); S.C. Code Ann. § 16-3-26(C)(1) (1976); ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, 2003.

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To ensure meaningful access to justice, the Supreme Court has construed the meaning of Due Process to guarantee access to a number of resources to the indigent defendant. This guarantee started with the fundamental right to court appointed counsel, Powell v. Alabama, 287 U.S. 45 (1932), and expanded from there. See e.g., Douglas v. California, 372 U.S. 353 (1963) (ensuring assistance of counsel as a right for first direct appeal); Little v. Streater, 452 U.S. 1, 101 (1981) (extending the right to “meaningful participation of an indigent defendant to “quasi-criminal” cases); Strickland v. Washington, 466 U.S. 668 (1984); (holding assistance of counsel must be effective). Furthermore, a criminal trial is fundamentally unfair, in violation of the Fourteenth Amendment’s Due Process and Equal Protection Clauses, where the “State proceeded against an indigent defendant without making certain he has the raw materials integral to the building of an effective defense.” Ake v. Oklahoma, 470 U.S. 68, 77 (1985). See also S. Const. amend. IV § 1.

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The landmark ruling in Ake v. Oklahoma, involved the Court’s reversal of the trial court’s refusal to grant the defendant the means to employ a psychiatrist. The Court stated that a fundamentally fair trial requires that the court provide an indigent defendant with all raw materials necessary to build an effective defense, and this includes the assistance of all experts necessary to reach that end. 470 U.S. at 77-80 (emphasis added).

While Ake was determined in the context of a mental health expert, both federal and state courts have extended its essential principle to all necessary experts, see e.g., United States v. Dominguez Benitez, 542 U.S. 74, 77 n.1 (2004) (non-English speaking Defendant entitled to court appointed translator); Weeks v. Angelone, 176 F.3d 249, 266 (E.D. Va. 1999) (recognizing defendant entitled to non-psychiatric expert assistance, including ballistics expert, but denying request on other grounds); Husske v. Commonwealth, 252 Va. 203, 476 S.E.2d 920 (1996)

(defendant entitled to non-psychiatric expert assistance, including forensic DNA expert, where he can make an individualized showing that it is material to the defense); Williams v. Martin, 618 F.2d 1021, 1027 (4th Cir. 1980) (defendant entitled to pathologist, where necessary to defense); State v. Bailey, 424 S.E.2d 503, 507 (S.C. 1992); (defendant entitled to mitigation specialist); as well as support services. See e.g., Britt v. North Carolina, 404 U.S. 226, 227-28 (1971) (court must provide indigent defendant with court transcripts, where he cannot otherwise afford them); Simmons v. Lockhart, 931 F.2d 1226, 1230 (8th Cir. 1991) (indigent defense entitled to clerks, paralegals, and other support staff necessary to build an adequate defense).

Additionally, reflecting the sentiments of these court rulings, both the federal and state legislatures have enacted statutes codifying the assistance and resources to which an indigent defendant is entitled. See 18 U.S.C.A § 3006(A) (2008). See also, e.g., Kan. Stat. Ann. § 22-4508 (1988); Tenn. Code Ann. § 40-14-207(b). Particularly, South Carolina's Statute declares that:

Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendants....Payment of such fees and expenses may be ordered in cases where the defendant is an indigent[.]

S.C. Code Ann. 1976 § 16-3-26(C)(1) (1976).

In 2003, the American Bar Association ("ABA") revised its guidelines to help further explain what the court must provide an indigent defendant pursuant to a fundamentally fair trial. The ABA has, in its guidelines, stated that the State must make "extraordinary efforts on behalf of the accused." Specifically, it has declared that, in addition to appointing counsel, the State must provide for counsel to receive the assistance of all expert, investigative, and other ancillary professional services reasonably necessary or appropriate to provide high quality legal

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representation and maintain parity between the defense and prosecution with respect to these resources. American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Guideline 9.1, commentary (rev. ed. 2003), in 31 Hofstra L. Rev. 913, 984-85 (2003). (Hereinafter "ABA Guidelines"). See also, Wiggins v. Smith 539 U.S. 510, 525 (2003) (The Supreme Court of the United States has referred to the ABA Guidelines as a gauge of what is reasonable in terms of capital representation (citing Strickland v. Washington, 466 U.S.668, 688 (1984)), Council v. South Carolina, Opinion No. 26543, Shearhouse Advance Sheets, filed September 8, 2008 (reversing death sentence stating that counsel's performance fell below that required by the ABA Guidelines).

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In a capital case, maintaining "parity" requires far more resources than would be necessary under any other criminal proceeding. A death penalty trial necessarily involves homicide, which requires the undertaking of an independent and complicated investigation, practically impossible for the defense without consulting experts in multiple fields and disciplines. ABA Guidelines, supra at Guideline 4.1, commentary.

It is inevitable that the prosecution will have the requisite experts, services, and resources to undertake an aggressive and thorough prosecution. Death penalty cases are unique to the prosecution as well. In these cases, the prosecutor will concentrate a vast amount of resources into the trial, as death penalty trials are uncommon and highly publicized; thus, failing to attain the punishment will be very embarrassing for the prosecutor, as he ultimately would have used overwhelming resources to achieve a result – life in prison – that he could have likely accomplished through a plea agreement. See Stephen F. Smith, The Supreme Court and the Politics of Death, 94 Va. L. Rev.283, 307-17 (2008).

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Specifically, regarding the need for a mitigation specialist, it is axiomatic that a complete and thorough life history investigation of the Defendant be undertaken by the defense. See Sears v. Upton, 130 S.Ct. 3259 (2010)(reversing death sentence due to inadequate mitigation investigation despite fact that defense counsel interviewed a dozen mitigation witnesses and presented a mitigation case supported by evidence) Wiggins v. Smith 539 U.S. 510, 525 (2003) (reversing death sentence due to counsel's failure to conduct a complete life history investigation), Council v. South Carolina, 380 S.C. 159, 670 S.E.2d 356 (S.C. 2008) (reversing death sentence stating that counsel's mitigation investigation fell below standard required by the ABA Guidelines).

CONCLUSION

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It is clear that, pursuant to jurisprudence regarding due process, equal protection and the effective assistance of counsel, federal and South Carolina statutes, and the ABA Guidelines, this Court must provide an indigent defendant with all raw materials necessary to build an effective defense, and this includes the assistance of all experts and support personnel necessary to reach that end. Ake, 470 U.S. at 77-80. Failure to do so would render this trial fundamentally unfair.

Therefore, the Defendant at bar seeks funds to continue the services of a mitigation specialist who will assist the defense in establishing and presenting all of the mitigation evidence in this case. On December 22, 2010 this Court authorized Ten Thousand (\$10,000) dollars for the services of a mitigation specialist. At that time the Defendant employed Lyn Phillips, LISW-CP as the mitigation specialist in this case. Due to medical reasons, Ms. Phillips has had to withdraw from the Blackwell's case. The defense then retained Kara Richards-Baker, LCSW to replace Ms. Phillips as a mitigation investigator. To date all but \$78.53 of those funds remain. Therefore, the Defendant requests this Court to authorize an additional Twenty Thousand

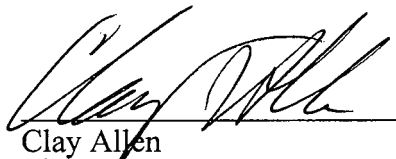
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(\$20,000) Dollars in order to maintain the continued mitigation investigation into Mr. Blackwell's life that is essential to the defense of the Defendant. The Defendant further requests that this Court order that funds be approved and made available to the Defendant, by the South Carolina Commission on Indigent Defense not to exceed, at this time, Twenty Thousand (\$20,000.00) dollars so that Ms. Kara Richards-Baker may be retained and compensated for her services at a rate of Seventy (\$70.00) dollars per hour.

The Defendant requests that funds be made available by the Commission on a monthly basis, upon receipt of monthly invoices and receipts, for the above referenced services and related expenses and in the amount necessary to pay such monthly invoices in full.

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DATED this 7th day of June, 2012.

Respectfully Submitted,



Clay Allen
7th Circuit Public Defender
State Bar No. 328
366 N. Church Street
Suite 3000
Spartanburg, SC 29303
(864) 596-2561

William Sean McGuire
State Bar No. 9722
Attorney, Capital Trial Division
South Carolina Commission on Indigent Defense
PO Box 11433
Columbia, SC 29211
(803) 734-7818

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EX PARTE ORDER FOR FUNDS FOR EXPERT SERVICES

This matter comes before me in an *ex parte* manner authorized pursuant to S.C. Code § § 16-3-26(C), 17-27-160(B) and *Ex Parte Lexington County*, 314 S.C. 220, 442 S.E.2d 589 (1994), due to the confidential nature of the matters herein. Court-appointed counsel for the defendant, Rickey Lee Blackwell, has made an *ex parte* motion for authorization to expend Twenty Thousand (\$20,000.00) Dollars at a rate of Seventy (\$70.00) dollars per hour for the services of a mitigation specialist. Based on the motion provided, this Court finds that the amounts are appropriate because the services to be provided are reasonable and necessary. S.C. Code § 16-3-26(D). Counsel may apply for additional funding as the need arises, but the expenditure of state funds is not to exceed the limits set forth below without further authorization from this Court.

The total expenditure authorized at this time is Twenty Thousand (\$20,000.00) Dollars to pay for a mitigation specialist needed in preparation of trial. This Court finds these services to be reasonable and necessary for Blackwell's counsel to evaluate and

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