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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case Number: 2025-001377

RICKY LEE BLACKWELL, SR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
VOLUME **16** OF **18**

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- Another article from this era describes the CTMM as "originally designed and published…as a group intelligence test" with the Short-Form version an "abbreviated" edition of the CTMM. [20]

- Further, in a 'gold standard' assessment book of its day, noted psychological assessment expert, Lee Cronbach stated of the CTMM, "There is a Short-Form for use where less reliable measurement is acceptable." [21] Additionally, in research comparing the CTMM-SF 'IQ' score to the full-scale IQ score obtained by a comprehensive intelligence test, the Stanford Binet, it was found: "for groups of children…it would seem plausible to substitute CTMM-SF for an individual test when an estimate of global functioning is desired. *On the other hand, for individual clinical referrals, CTMM-SF cannot be considered interchangeable with Binet*." [22]

Thus, the CTMM-SF is not a full-scale, individualized test of intelligence, but an abbreviated/ screening test used in group settings. Authoritative texts in the field of Intellectual Disability are clear that group and screening measures are not appropriate methods to measure intelligence for diagnosis. Per the DSM-5-TR, in assessing intellectual functioning, "invalid [IQ] scores may result from the use of brief intelligence screening tests or group tests." [23] Per the AAIDD's manual on Intellectual Disability, "intellectual functioning is most accurately assessed and represented using a current, reliable, valid, individually administered, comprehensive and standardized test that yields a full-scale IQ score." [24] AAIDD's manual on Intellectual Disability and the Death Penalty, also issued a statement on screening IQ tests in that "careful consideration should be given to the role, if any, that such instruments might play in the comprehensive assessment of ID" and "considerable caution should be exercised in the use of brief IQ tests in the evaluation of ID." [25] Further "group IQ tests, because of uncertain administration parameters and limited breadth of coverage, should not be used as the primary source of information in the diagnosis of ID." [26]

b) Under Mr. Blackwell's school section of "Achievement Tests," three testing periods are documented. Achievement testing, by definition, is not IQ testing. It is considered a wholly separate type of testing, which assesses academic skills versus constructs of intelligence. Achievement testing is used as a marker of acquisition of grade-level skills, and to assess appropriateness for advancement to the next grade. It does not assess the multi-varied conceptual constructs of intelligence, as do full-scale intelligence tests. This delineation is demonstrated in Mr. Blackwell's records by his school's separation of the two types of testing, using the different headings, "Intelligence Tests" and "Achievement Tests." His achievement results are as follows.

[20] Harry E. Anderson, Jr. & Donald Leton, *Factor Analyses of the California Test of Mental Maturity*, XXIV EDUC. PSYCHOL. MEAS. 513 (1964).
[21] Lee J. Cronbach, ESSENTIALS OF PSYCHOLOGICAL TESTING, 229 (1960).
[22] Clifford B. Tatham & Arthur A. Dole, *A Note on the Relationship of CTMM-SF to the Revised Binet, Form L-M*, 19 J. CLIN. PSYCHOL. 302 (1963).
[23] APA *supra* note 2 at 38.
[24] Shalock et. al *supra* note 3 at 29.
[25] AAIDD *supra* note 4 at 130.
[26] *Id.* at 131.

On May 10, 1966, at **age 7,** and in the **1st grade**, Mr. Blackwell was administered the California Achievement Tests, Lower Primary Battery. The CAT is a measure of academic achievement. Three domains, and six subdomains are assessed: Reading [Reading Vocabulary and Reading Comprehension]; Arithmetic [Arithmetic Reasoning and Arithmetic Fundamentals]; and Language [Mechanics of English and Spelling]. On the 1966 testing, Mr. Blackwell scored within the 1st grade level on all domains, with little variation.

On November 6, 1967, at **age 8**, and in the **3rd grade**, Mr. Blackwell was administered the California Achievement Tests, Upper Primary Battery. Domains and subdomains were the same as the Lower Primary Form: Reading [Reading Vocabulary and Reading Comprehension]; Arithmetic [Arithmetic Reasoning and Arithmetic Fundamentals]; and Language [Mechanics of English and Spelling]. Mr. Blackwell scored within 1st, 2nd and 3rd grade levels across domains, indicating that he is beginning to drop below grade level, as compared to his 1st grade CAT testing.

On May 19, 1976, at **age 17**, in the **10th grade**, Mr. Blackwell was administered a third round of achievement testing. He took the ABLE [Adult Basic Learning Examination], as part of "Project Succeed – English." The ABLE "is an achievement battery developed specifically for use with adults whose formal education does not exceed the eighth grade" and is used with "low achieving adults." [27] He obtained grade equivalency scores as the following: Reading [late 5th grade level]; Arithmetic Computation [early 5th grade level]; Arithmetic Problem Solving [mid-6th grade level]; and Arithmetic Total [mid-5th grade level]. Of note, records indicate Mr. Blackwell was administered the ABLE as part of 'Project Succeed' described above.

c) Mr. Blackwell also took <u>standardized testing</u> during his schooling. In the **6th grade**, in October 1970, Mr. Blackwell took the CAT [California Achievement Test], and obtained a Total Battery score equivalent to the 4th grade level, and at the 5th percentile. Also in October 1970, at **age 11** years, 11 months, in the 6th grade, Mr. Blackwell again took the CTMM-SF. His mental age was calculated at 10 years, three months; his Language score was 84, 18th percentile; his Non-Language score was 90, 31st percentile, and his Total score was 86, 21st percentile. In the **7th grade**, in October 1971, Mr. Blackwell took the CTBS [Comprehensive Test of Basic Skills]. His Total Battery [combination of the Reading, Language and Mathematics] performance fell at the 5th grade level, at the 28th percentile. In the **9th grade**, in October 1973, he took the CTBS, but a Total Battery score was not provided.

Also in October 1973, he took the SFTAA-5 [Short Form Test of Academic Aptitude]. He obtained a language score of 76; and 'non-language' score of 76; with a Total score of 72. *[Scores have a mean of 100 and standard deviation of 15].* Around the time of Mr. Blackwell's testing, research was conducted comparing the SFTAA to the WISC-R [Wechsler Intelligence Scale for Children-Revised], which was a full-scale, individualized administered IQ test appropriate for diagnosis of ID. Research found comparable results between the two measures. [28]

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[21] James W. Hall, *Reviewed Work: The Adult Basic Learning Examination,* 5 J. EDUC. MEAS. 271 (1968).
[28] Richard L. Wikoff & Roger J. Parolini, *Prediction of the WISC-R Full Scale IQ from the SFTAA*, 38 J. CLIN. PSYCHOL. 1 (1982).

When repeating the **9th grade**, in October 1974, he took the CTBS, and his Total Battery performance fell at the 4th grade level, 7th percentile. In the **11th grade**, in April 1977, Mr. Blackwell took the CTBS [Comprehensive Test of Basic Skills] again. His 'Total Battery' performance fell at the 6th grade equivalency level, and at the 8th percentile rank, indicating 92% of 11th grade students perform at a higher level.

Based on overall results from his standardized testing, Mr. Blackwell consistently obtained scores lower than his grade level and age, across testing.

ADAPTIVE BEHAVIOR [POST-DEVELOPMENTAL]: Mr. Blackwell's adaptive behavior, post-developmental period, was assessed via information regarding his general functioning; as well as his vocational, finance, and marital history, using interview data and relevant records.

Adaptive Behavior [General / Post-Developmental]: Mr. Blackwell's former pastor, and family friend, Reverend Ken Rice, provided insight into his general adaptive functioning in the post-developmental phase.

Former Pastor/Friend [General]: Reverend Ken Rice met Mr. Blackwell when he and his wife placed their children into his church's school, Faith Bible Fellowship/Faith Bible Academy. Reverend Rice was the "pastor and principal" of this school and church for 28 years. Of Mr. Blackwell's children, he stated "both had learning problems," and that Mr. Blackwell's son was "supposed to be in the third grade, but we put him in the 1st grade because of his reading." In addition to the children attending school, the family also "came to church" with Mr. Blackwell attending "Sunday morning and evening and Wednesday night." This went on for approximately three to four years. During this time, he stated Mr. Blackwell's wife would handle the issues with the children, and Mr. Blackwell "would do what Angie wanted."

Reverend Rice described Mr. Blackwell as "a jolly green giant, always laughing, joking, easy going, but he wasn't the sharpest fellow." Rev. Rice had been in education for "50 years," and "thought his IQ was low, he didn't do anything with finances, Angie did it all, he gave her his check, she put it in the bank." He "has a limited vocabulary, he could read but not well." He related one example of going to Mr. Blackwell's house one evening and found him reading the Bible and Angie had a big dictionary in her lap…he didn't read well, he struggled to read the Bible, but Angie was sharp." Of Mr. Blackwell's general conversation, he stated, "he liked to joke, but it was nothing intellectual." Reverend Rice described Mr. Blackwell as "backward and shy, didn't start conversation, he felt insecure…didn't understand a whole lot of things about the church." He clarified that Mr. Blackwell attended church, but did not have any type of leadership role, noting, "he would not be able to lead a group" but he "mowed the grass around the church."

He provided an example of Mr. Blackwell's vulnerability when another "preacher told him he couldn't take communion if his hair was long." Rev. Rice noticed Mr. Blackwell had stopped taking communion, and when he asked, Mr. Blackwell gave him this reason. He stated Mr. Blackwell did not question this, or ask others about it, just stopped taking communion. He stated Mr. Blackwell "could be easily manipulated and taken advantage of, he was a follower, never did initiate much of anything but he was a good worker."

He also described Mr. Blackwell as a "big old overgrown boy, had he married someone of the same mentality, he wouldn't have survived, there would have been major problems, or if he hadn't gotten married at all, he would have been with his parents." He stated that when Mr. Blackwell was "laid off from Springs Industries, he looked but couldn't find another job, he was getting unemployment, I'm sure part of it was lack of qualifications, he was only qualified for hard manual labor."

After Mr. Blackwell's marital separation, Rev. Rice engaged in pastoral counseling with Mr. Blackwell, however, "he didn't register what I was saying, he kept saying the same thing over and over, the same thing every day…he was emotionally distraught, he would cry all the time." He stated Mr. Blackwell lost the trailer and his truck when his wife left. She also "took all the furniture, he slept on the floor." Rev. Rice stated that "every day, Rickey would tell the same story, day after day, he wasn't sleeping, losing weight, and I was afraid of suicide, I told him to go back to the doctor." Once Mr. Blackwell was arrested, Reverend Rice arranged for him to have a "Children's Bible, I knew he couldn't read the other type of Bible." The Bible was written for a "7, 8 or 9-year-old child." He met with Mr. Blackwell while in jail, and "he still struggled to read some passages."

Adaptive Behavior [Vocational History – Post-Developmental]: Mr. Blackwell's vocational history, as it relates to adaptive functioning, is detailed per interviews, and collateral data.

Mother/Father Interviews [Vocational]: His parents were asked about Mr. Blackwell's vocational history. They stated he "worked before he got sick, worked for years, worked at the ice house, the waste mill..." Specific to his trucking jobs, his father stated, "I taught him how to drive, he watched me drive, drive a tractor trailer truck…I started teaching him around age 12, he watched me change gears…can't remember when I started letting him drive, maybe 15 or 16…he went to work for Ken White, and another trucker went with him…" His father "knew Ken White, and used to work with him," which is how Mr. Blackwell was hired on with Mr. White.

His father stated Mr. Blackwell "also worked for B&R," but he "don't know how he got that job." With Belue Trucking, his father stated, "they knew me real good, I drove for Belue too… I bought a truck and loaned it to Belue and then Rickey wrecked it." He "got the Hess job for Rickey too, but he wrecked that truck too…" He "don't know why Rickey had so many wrecks, maybe he was asleep." At Hess, he "had to drive and pay attention…had to log in the book, how many hours he drove and stops, keep up with the mileage, did alright on that, far as I know… only time he drove out of state was with someone else…" His father stated Mr. Blackwell was "driving an oil tanker for Hess, no special skill required…just load truck up with gallons of oil, and unload it." His father believed Mr. Blackwell failed the CDL test "the first time, and got it on the second time." He did not know any further details on Mr. Blackwell taking the CDL test or if anyone assisted him.

Examinee Interviews & Concurrent Work Records [Vocational]: Mr. Blackwell's record of social security earnings ranges from 1976 to 2008, and reflect many periods of employment, of varying duration. Mr. Blackwell was questioned regarding these jobs, as reflected below.

Examinee Interview: Mr. Blackwell recalled his first job occurred while still in high school **[1976],** when he "worked in a peach shed. I put lids on boxes of peaches, a peach packing shed, that's all I did, on a conveyor, put lids on the boxes before they went on the truck. Daddy got me the job, not much pay." This was a "peach season job only." This job was through the Belue family, who owned the peach business, and knew Mr. Blackwell's family.

He recalled working next at Community Cash Store **[1976/1977]** which was a "grocery store." He "filled out an application with help in the store, in a room, they helped me." He stated, "I worked in the meat section, making hamburger meat, put the lean and fat in together, they told me how much to put in of each…" He "worked there less than a year, didn't like it, too cold in the freezer." He believed he earned "$3.00 or $4.00 dollars an hour."

Mr. Blackwell next worked at Crown Cork & Seal **[1977]** "a can company." His "neighbor got me job, she worked there, worked a different shift." He worked "8 hours, 2nd shift." His job duties were to "pick the cans out with the bad spots and throw them out…" He "did alright, but didn't like it, I could never get promoted or transferred so I quit." *[Interview memo data indicated he may have been fired from this job due to possibly taking cans from the jobsite.].* He did not recall his pay from this job. He worked there less than a year.

Mr. Blackwell's next job was at the White Bag company **[1977],** "stacking bags on a pallet when they come off the conveyor, stack them up, but I couldn't make them stack on the pallet, they would slide off…got the job through my uncle Raymond, mom's brother." He earned "$3.00 an hour" and "I quit because I couldn't stack the bags, they told me it would take time to learn it, but I didn't think I could." He worked there less than a year. He next worked at Milliken [**1978**], a textile factory, where he worked the "creeler." However, he "wasn't fast enough, so they let me go…" His "neighbor was the boss man…" His next employment was at Newspaper Management Production [**1978**], "inserting ads into the paper, just got the ads ready to put in the paper, put them altogether." He "got this job through a friend." He "didn't like it" worked there "less than a year, quit."

His next job was at Phillips Fiber **[1978]**, in textiles. He had to put "the whole rack in the oven…" He stated the company "helped me fill out the application, I can read it, but I can't read the big words." He worked there "less than a year, quit because I didn't like the swing shift." His next job was at Southern Piedmont Ice [**1979**], where he "bagged ice, it wasn't hard, just cold." He "got it through my cousin, he talked for me, got it approved." He "did okay, worked about a year or over, got tired of working in the cold, quit for the next job, maybe made $3.00 an hour."

Mr. Blackwell then worked at M&C Farm and Feed Mill **[1979]** which dealt in turkeys. He "took the turkeys off the conveyor belt, and put it in the truck, sling the turkey into the truck…" He "got it through daddy, he knew the owners of the turkey farm." He only worked during "turkey season." The job ended "when the season was over." He also worked in American Fast Print **[1979],** "not in the printing place, in the yarn part…" He worked in the fabric factory "behind American Fast Print." He hung up textiles "on the beam, on a roll, you just have to hang it up, did pretty good…" He "think I filled out the application by myself this time, if I didn't know something, I got help with it." He "worked there less than a year, didn't like 3rd shift, quit…"

Around this time **[1979],** Mr. Blackwell began his first trucking job "with Ken White, K&S trucking, out of Spartanburg, knew him through my dad, my dad got me the job." He grew up watching his dad drive trucks, sitting in the middle of the cab. He stated his father "taught me how to drive an 18-wheeler, started teaching me young, I watched him from between the seats. I would set up there, and watch dad change the gears. I didn't know how to set the clutch. I had to learn to get the RPM's right to shift without the clutch…" He stated, "dad was sitting next to me, telling me what to do, I learned how to drive on the interstate with dad."

At K&S, he stated, "me and Ken were a trucking team, I was with him the whole time, we took turns driving." He never drove alone at this job. He stated "that was my start, where I got my experience at." This job included "out of state routes" up and down the East coast, and to the "Midwest, El Paso." They "hauled everything, peaches in the summer, frozen turkeys…" It was an "18-wheeler truck." When asked how he knew where to go, he responded, "Ken! Ken been driving for years, Ken could find it…I couldn't read the map, I would get confused out of state…" He described Ken providing turn-by-turn instructions. Sometimes Mr. Blackwell made trips with another employee, "I always had somebody that knew [where to go]." When he was working with Ken, "Ken had to be in the cab because I didn't have my CDL license." He "stopped working with Ken because I didn't like that running the road and being gone all the time." *[This period of employment was not a formal arrangement, but rather compensated 'under the table.' Therefore, it is not reflected in his social security earnings records]*.

K&S [Former Employer]: Mr. Ken White, owner of K&S trucking and former employer of Mr. Blackwell's, was interviewed regarding Mr. Blackwell. Mr. White is 81 years old, and continues to be connected to the trucking industry. Mr. White stated he "knew Cletus," referencing Mr. Blackwell's father and "was doing a favor to his [Mr. Blackwell's] dad to hire him." He was asked what tests, if any, Mr. Blackwell had to pass for employment. Mr. White stated, "if you was breathing and could climb in the cab, I'd hire you;" and "if you could drive around the block without hitting anybody, I'd hire you," indicating very low standards and no formal testing. He stated Mr. Blackwell would have only required a 'Public Service License" or "Chauffer's license" which "cost $2.00" and did not require any testing to obtain. He clarified that a CDL was not required until 1992. Mr. White stated Mr. Blackwell did not "make runs" by himself, and always had someone in the cab with him. He went with Mr. Blackwell, or another trucker, Clarence Bishop, who he confirmed was deceased. Mr. White referenced several accidents Mr. Blackwell had in his "daddy's truck" but not when he was working for K&S. He described Mr. Blackwell as "friendly" with "no problems" getting along with the other employees, "no fighting or nothing;" and that he was "kind of slow." With regard to re-hiring Mr. Blackwell several years later, he called himself a "fool" to rehire him but would not provide explanation.

Examinee Interview: After K&S, Mr. Blackwell returned to Southern Piedmont Ice **[1980],** "because I thought I was going to end up on the truck, to be a helper on the truck, but I got stuck back in the ice house. I ended up in the ice house, bagging ice." He was "not there long, less than a year…" He again worked seasonally at M&C Farm and Feed Mill **[1980/1981**], "got the turkeys and threw them into the coop, eight or nine turkeys to a coop, season job, might do it twice a year, did good on that."

Mr. Blackwell's next job was at Oneita Industries **[1980/1981].** He "worked in the dye room, I dyed cloth, took the roll of cloth, and ran it around a big old wheel, had to sew the ends together and threw it in there, and cut the ends." He "got this job through my cousin Dale, he told the company to hire me." Mr. Blackwell "didn't like it, I had trouble with the sewing machine, I would break the needles and everything else, my cousin made it look so easy. And I wasn't fast, I couldn't keep up like they could…it wasn't for me." He worked there "close to a year." He was "fired after I got caught smoking in the warehouse, where the bins of cloth were, they were afraid the cloth would set on fire."

Mr. Blackwell's first formal trucking job was with Hess **[1982],** "I got the job because dad was working there at the time, I had to get my CDL before I could drive with them." In 1982, he "just took the driving test for the CDL, I had to take it around blocks, on the frontage road, I had to back it up, like backing into a loading dock, pretend like." He "passed the first time and got my CDL." For Hess, he "drove the truck from Spartanburg to Charleston, to Georgia and North Carolina, only had a day cab, no sleeper, and 18 wheeler, carried oil, black oil, crude oil." He was "doing the runs by myself, but when I first started, I went with a guy for a week, he showed me how to load, unload, he showed me everything…"

His routes were set, so Mr. Blackwell "knew all my runs on the local" as he was not driving overnight trips. His father also assisted, "told me where to go, what exit to take, sometimes wrote it down." He "always went to the same place in Georgia," and North Carolina, "always the same routes, exits, places…" Each time he "would go the long way, I didn't know how to cut across, other drivers tried to show me the short cuts." His most frequent route was "back and forth between Spartanburg and Charleston" with very infrequent trips to Georgia. For Hess, he "never did haul no gas, I was scared of it, didn't want to haul it. I was scared I would mess up, I was hired for the black oil." From Hess, he was "laid off during the summer months, the company got slow in the summertime."

He also worked for "B&R Transport" **[1982]** and "hauled black oil and asphalt." He "had some friends that worked up there and I put an application in, worked there about a year." These were also local trips, not overnight, to Charlotte, Garden City, Savannah…" He drove alone, and learned the routes, which were the same each time. On June 17, 1982, Mr. Blackwell was brought to the Emergency Department for a "tractor trailer accident," working for B&R transport. Records are difficult to read, and any injuries are unclear. Also in 1982, when working for B&R, he "made an illegal U-turn, and they fired me for it." He was also charged with Reckless Driving. He "went back to Hess [**1983**] because Hess paid better, almost $8.00 an hour." He worked for Hess "a few months and then had an accident, and they fired me." He "went to sleep and ran off the road, going about 55 miles per hour, on I-26, ran off the shoulder and when I corrected, it jack knifed and went across the median and totaled the truck, no one was hurt, but it messed my back up."

He next worked for Belue Trucking **[1984],** for "daddy knew them and got me a job, all my family knew the Belue's real well. I hauled black oil, concrete, steel, drove an 18-wheeler." He "always went the same places, "we would run together, follow each other, I would ask the other drivers where to go, if I got lost, I would show someone the bill with the address, at a convenience store or truck stop." He stated "most routes were straight shots, without a lot of turns, or detours, or other roads, just a straight shot to get from the interstate to the terminal."

He left Belue "to drive for Cherokee Textiles [**1984**], but I worked the hopper" cleaning trash out, instead of driving trucks, so he left this job.

Around this time **[1985]**, he drove for "John Brannon, he paid me under the table, we ran to Amarillo, Texas, me and John always together, John drove with me the whole time, he told me where to go, he was with me if I messed up, he'd tell me where to go." He "didn't want to be gone, and went back to Belue" **[1985]** to drive locally. He did not recall why Belue trucking ended this second time. He returned to K&S trucking **[1985],** "some local stuff, did a few trips, did short runs for him, would have to go back to long haul, so I didn't stay." When trucking, Mr. Blackwell "kept the local logs…kept up with the mileage and time of trip" but "couldn't do the out of state logs, you had to remember a lot, it was pretty tough." He "couldn't keep the logs if spending night on the road, couldn't make my time match up" because it was too complicated. With regard to inspections, he "just checked the time, the lights, and turn signals, tire pressure and blinkers…very basic," and that "DOT did the safety inspections."

Belue Employment Records: Mr. Blackwell's Belue Trucking personnel records indicate the following. His 'Application for Employment was submitted on July 6, 1984. He was working at Cherokee Textiles as a "press operator" at the time of the application. He passed a "Driver's Road Test Examination" on the same date of his application. He was issued a "Driver's Certification" on July 11, 1984; and his date of hire was noted as July 12, 1984.

He incurred a number of difficulties working at Belue. He was involved in a workplace accident on September 17, 1984 when he suffered a "crushing injury to left hand "after his hand was caught in the trucking equipment. It appears he suffered a fractured finger and was out of work for several weeks. He "failed to show" on November 8, 1984, after stating he would return. On November 28, 1984, he was disciplined due to failing to show, after he believed "that because it was raining he thought top loads would be cancelled." On December 18, 1984, he was cited for "driving more than 10 hours." On December 28, 1984, he was cited for "backing into dock…hit another trailer." The weather conditions were "clear" and he acknowledged responsibility. On April 3, 1985, he was involved in another accident, in "clear" weather conditions when turning into the job site. He was issued a ticket for speeding. On April 17, 1985, he was cited for "failure to prepare daily logs in form and manner prescribed." On May 20, 1985, he was issued a traffic ticket for Disregard Sign or Signal. On May 22, 1985, he was cited for having "his wife and others in truck" as well as "kid brother" while working. *[Mr. Blackwell reported "I had my wife and brother in the truck, I carried them with me when working, running at night…wanted something to do."].* He was cited for "missing logs" on June 8 and June 9, 1985. On July 10, 1985, he was involved in another trucking accident when driving, under "clear weather" conditions, and acknowledged responsibility. On July 15, 1985, he was terminated from Belue, which was "involuntary" and he was marked ineligible for rehire.

After his employment ended, on August 20, 1985, he was issued a traffic citation for "Failure to Reduce Speed to Avoid an Accident" however, it is unclear if this was during the course of trucking, or driving a personal vehicle.

Examinee Interview: After Belue, Mr. Blackwell worked for Peeler Rug Company **[1985/1986],** "kept the print screen in line, changed the dye, move the screen to adjust the color, did pretty good, didn't like it, too messy, ink everywhere." He worked there "about a year" after which he "quit, didn't like it, wanted to go back to driving." He went back to Belue **[1986],** but "got sick" [cancer] which ended his employment.

Belue Records: On **February 24, 1986** *[the year is erroneously recorded in records as 1985],* there is a second Application for Employment submitted to Belue. His current employment was noted at Peeler Rug as a "fixer." His employment before Peeler was noted as Belue. It appears he was hired, and worked until he became disabled from Hodgkin's, but there is no documentation of his performance.

Examinee Interview: Due to his illness, Mr. Blackwell reported he was out of work from **1987 to 1997,** drawing disability compensation during this time. He "was around the house, working in the yard, cut grass, trim trees, worked in the garden, piddle, find something to do, in the house, Dale would come by, went to the races on the weekends." With his disability compensation, "the monthly payments came in the mail, I gave it to my wife, and she would pay the bills." In **1998**, he was hired at Springs Industries due to his wife working at this company. He was hired to "drive a forklift, I was too nervous to go back to driving a truck, I didn't feel like I could handle it…" He "already knew how to drive a forklift but got all my experience at Springs." He stated "there was a written test, but they gave you the answers." He stated "there was a gas pedal, like driving a car." He "picked up rolls of cloth, and took it to the machine, 100 yards, that was the route." He "punched in the numbers and checked it off on the paper…" Prior to the forklift, he "worked as a service person, brought supplies to the machine, did it for eight months, it took eight months to get on the forklift, had to wait for it to come open." He worked at Springs from 1998 to 2005. This job ended "when the factory shut down, they closed up, not a lot of notice."

Springs Records: On **November 19, 1998**, he was hired at Springs Industries with the title of 'Service Person.' In November 1999, he had a "Promotional Increase" to a "lift truck operator" position. He received several pay increases from his starting pay of $8.64 per hour, to a final hourly rate of $11.00 per hour. Per Springs' formal records response, personnel records were no longer available, thus his performance documentation was not received. His last day of work was on **February 4, 2005**, due to "permanent layoff."

Springs [Former Work Supervisor]: Ms. Gail Shook was interviewed as she was Mr. Blackwell's supervisor at Springs Industries. She worked at Springs from 1964 to 2003, and was retired at the time of the interview. She stated, "I was his supervisor, he drove a forklift truck." He operated a "stand up forklift" but "not a cherry picker forklift" which was more involved and complicated. She supervised Mr. Blackwell "for about one year, maybe 2001 or 2002." His duties included, "he would go to the warehouse and get what I needed, and key it in, it was a very simple job, anybody could have done it." She described Mr. Blackwell as "very dependable, had good manners, always willing to do his job and anything else, very humble and loved his family, and was religious." Mr. Blackwell's wife "worked there too, they rode together."

Of the forklift work, Mr. Blackwell "had to take a test, but I didn't give him the test, the training lady showed him how to operate the forklift." She stated "the test was just a simple little thing, I never knew anyone to fail the test…I'm sure they would have helped somebody pass and give them a second chance, the company would want them to have a second chance." *[It was unclear if this was a written test, or performance test].* Driving the forklift at Springs consisted of "just going front and back-up and learn how to raise forks up to get the rolls of material and cloth in the warehouse." Thus, Mr. Blackwell "had to get the forklift and retrieve the rolls from the warehouse," using a "pager" which "had the location of where to get the rolls." He would travel "just two buildings away, all inside mostly, from warehouse to the rolls. He would get the rolls, put the roll on the machine and come back. He did that for eight hours straight." Any other duties included "when the trucks came, he helped unload the rolls, put it on the shelf and key in the locations, on a little calculator, like a kids calculator, with the alphabet and numbers on it."

She stated Mr. Blackwell "always worked safe, never had to write him up or anything." He "got along with everybody, super nice, didn't want to have conflict with anyone." He was "easy going, laid back, never violent, never had a problem with anybody, never used profanity." However, he "wasn't very social with the other employees, he would eat with his wife when he had a break. He stayed to himself mostly after his wife left Springs…he always brought his lunch." She then noted, "his family was his world." When asked if Mr. Blackwell needed help with anything in particular, Ms. Shook stated, "can't remember anything, his job was a simple job, a 10 or 12 year old could've done it…" He "had keep up with his time card, and stick it in the machine in and out, but his supervisor would fill out his paperwork." He was "very content with his job, he never put in for another job…and he couldn't have been able to run the actual machine, it would've been very complicated for him." He "never had an accident with the forklift" and "there was no end of shift paperwork."

She stated, "most forklift drives got high production points, but his job was not production driven, he did not have to meet a certain quota, his forklift job was a simple job, entry level." She stated, "Mr. Blackwell could not have done a production job because it took a whole lot of get up and go…he had one speed, not the get up and go." He "was very compliant, did his job, he wasn't in a hurry, never got too assured of himself." He "didn't do a lot of overtime, was down to earth, didn't try to overdo, just simple Rickey, simplest guy I've ever met…always clean and neat, always on time because he was coming with Angie." Once Springs closed, he "called me crying that he couldn't find a job, he didn't have the skill set to get another job."

Springs [Former Work Supervisor]: Ms. Glenda Wooten, another supervisor from Springs submitted an affidavit. She described Mr. Blackwell as "slow;" "a simple man;" "very low key;" and "stayed around his wife a lot." Ms. Wooten described his forklift work as "not very complicated" and "mostly manual." She believed he would have been trained to use the forklift by "other drivers showing him how to drive it" which was how she was trained. She did not mention a test of any kind. She also recalled Mr. Blackwell's wife completing his paperwork at the end of their shift, and described her as "dominant." She did not recall any problems from Mr. Blackwell at work.

Examinee Interview: His next, and final job prior to his arrest was at Jacobson Warehouse, which he started in 2005. Jacobson "was a warehouse, storage, we stored stuff for people, stored chemicals, 55 gallon drums, big products, HAZMAT."

He was an "order puller, they gave me a number and location and I pulled it, and brought it to the line, just checked it off on the sheet." He did not receive a promotion, but "stayed an order picker, they tried to make me a loader, but I couldn't keep up." At this place of employment, he was exposed to chemicals, when a "bag busted, when I picked it up, and poof, I wasn't wearing safety glasses, it burned my lungs, and it burned me inside, it caused me to have COPD, started having trouble breathing, and they said COPD a year later." This job ended in November 2008, when Jacobs "shut down, and I collected unemployment. I thought another company was coming in where Jacobs was." However, when another company did not take over, he put in applications to places, "everywhere" but could not find another job.

Jacobson Employment Records: Records from Jacobson Warehouse indicated that Mr. Blackwell was hired on **September 5, 2005** and moved from temp status to full time, on November 28, 2005. His job title was "warehouse worker" and he was classified as a "laborer." For his first employment review, he was described as a "good solid employee" and "with further training will be a solid block to build upon." On March 29, 2006, his performance review noted his "work is exception, great job…will be a great team member…has great spirit, he gets along with all team members, very happy, likes his job." On February 7, 2007, he dropped a "bag of chemicals" resulting in inhalation exposure, in that he "inhaled toxic dust." The chemical was identified as "sodium metasilicate." Per records, he reported "the bag busted and covered me in a cloud of dust." He was seen in the emergency department of a local hospital. On a Performance Review from May 23, 2007, he was performing at, or exceeding expectations, however, he needed to improve his "communication with peers and supervisors" in that, "Rickey needs to speak up and tell other Team members when they are not following procedures." He was terminated on **May 2, 2008** due to "layoff" and "plant closed." His ending pay was $12.85 per hour. This was his last term of employment, or job, prior to his arrest in July 2009.

Commercial Driver's License: In Mr. Blackwell's records, there is a Commercial Driver Written Examination, dated July 9, 1984, during his employment with Belue Trucking. Mr. Blackwell's name is at the top of the form, and answers to each questions are marked with a 'check mark.' However, at the bottom of the test, is a "Certificate of Written Examination" section, with 'Signature of person taking examination' left blank, and unsigned. The 'signature of examiner' is read as "Sonya Stott." Ms. Stott was a coworker of Mr. Blackwell's at Belue, and per her affidavit regarding this written examination, the signature at the bottom of this form is not her signature. In her affidavit, she "worked in the front office" of Belue Trucking, and was working there in 1984 when Mr. Blackwell was hired. She stated: "*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*." She also confirmed that the individual who signed Mr. Blackwell's "Commercial Driver Written Examination," Mr. Ken Duncan, is deceased.

Therefore, it is unclear if Mr. Blackwell was the person who took this test; if the responses are correct; the actual identity of the examiner; and why a forged examiner signature was on the form. Further, in applying a readability statistic to the CDL written examination, it is written at the 10th grade level, and thus, Mr. Blackwell would not have been able to read it. [29]

[29] J. P. Kincaid et al., DERIVATION OF NEW READABILITY FORMULAS (AUTOMATED READABILITY INDEX, FOG COUNT AND FLESCH READING EASE FORMULA) FOR NAVY ENLISTED PERSONNEL (1975).

By way of additional information, the Code of Federal Regulations [1984], addresses the written test for commercial vehicles, by the following. The "written examination…is an instructional tool only, and a person's qualifications to drive a motor vehicle under the rules in this part are not affected by his performance on the examination." Further, "the person who takes it shall be permitted to examine and consult a copy of the Federal Motor Carrier Safety Regulations, in addition to any other material explaining the provisions of those regulations that the motor carrier may provide. There is no time limit for completing the examination…" Additionally, "after the examinee completes the examination, the person who administered it shall advise him of the correct answer to any questions he failed to answer correctly." After the test, "the motor carrier, or the person who administered the examination on the motor carrier's behalf, shall provide every person who completes the examination with a certificate…" [30]

Therefore, per the CFR, if Mr. Blackwell did fill out this examination, he did not have to obtain correct scores in order to be qualified to drive commercially; would have been allowed to consult any materials desired during the exam; was not under time constraints when taking it; was provided the correct responses after taking it; and only his completion (not accurate completion) would have been required for a CDL certificate.

Examinee Interview: Mr. Blackwell was specifically asked about this written CDL test from 1984. He did not recognize the test, and could not provide any details regarding if he took it. Of any CDL test he may have taken, he stated, "don't remember how I took it, think I passed it, don't remember taking another one." He recalled taking trucking testing with other drivers, "took it altogether in a big conference room…with all the other drivers." He believes they may have discussed answers, but "I don't remember if we talked about it." He was unsure exactly what testing he took in a group.

Trucking Testing [DMV Records]: Per Mr. Blackwell's DMV records, he was issued a CDL on April 1, 1992, eight years after this test. In his DMV records, there is a "Commercial Driver License Certification Waiver of Skill Test" form, signed by Mr. Blackwell, dated April 1, 1992, indicating he was not given a skills test for a CDL license. Also included in Mr. Blackwell's DMV records, are multiple test answer sheets for various skill sets, filled out, with Mr. Blackwell's name on them. *[Corresponding tests/questions were not available for review].* The answer sheets include: a "Hazardous Materials Test Answer Sheet, Form A," dated April 1, 1992; "Tanker Test Answer Sheet," dated April 1, 1992; "Air Brake Test Answer Sheet," dated April 1, 1992; "Combination Vehicles Test Answer Sheet," dated April 1, 1992; "General Knowledge Test Answer Sheet," dated April 1, 1992; "Hazardous Materials Test Answer Sheet, Form B," dated November 14, 1996; Hazardous Materials Test Answer Sheet, Form A," dated November 14, 1996; and Hazardous Materials Answer Sheet, Form B," on November 15, 2000.

Examinee Interview: For these tests, Mr. Blackwell's memory was also poor, given the amount of time passed. He recalled on the 'Hazardous Materials' test, "my dad got the test papers with the answers on them, and I remembered the answers. I failed it the first time, and went back after studying the test papers, I tried to remember the answer and still almost failed." Of the testing, he "couldn't get anything out of it, that's why I had them test papers [with answers], couldn't understand the stuff in there."

[30] CODE OF FEDERAL REGULATIONS, 49 CRF s 391.35, 49 CRF s 391. 35 (1984).

Adaptive Behavior [Financial History / Post-Developmental]: Mr. Blackwell's financial history was also assessed, with regard to adaptive behavior. Regarding Mr. Blackwell's work checks, he "would carry to get it cashed, at the corner store. They knew me, didn't have to show no ID, just gave the clerk the check, they counted in front of you before you left." For some jobs, his pay was directly deposited into his joint bank account with his wife. They "had a joint bank account, Angie would always tell me how much money was in there."

Of their finances, he stated, "Angie always took care of the bills, I never did pay no bills, she kept the paycheck, she knew everything. I'd have checks bouncing everywhere, never did write no check." Mr. Blackwell "never used a credit card" and "never used" a "self-checkout." He stated he could use an ATM card to obtain cash, but had trouble remembering the pin. He reported never having applied for a credit card, but "signed a paper" for credit cards, facilitated by his wife, "Angie did all the financial stuff, I just signed all the stuff…" He understood she put the cards in his name "because she had too much credit, it didn't go through." *[Mr. Blackwell meant she had poor credit and could not obtain cards in her name].* Regarding the payments for all the credit cards, "I never did keep up with that, I don't know how." With regard to the loan from the trailer, he stated "dad helped us get that loan, for the trailer, he talked to the banker." When they purchased the "double wide," the "bank lady did everything, didn't have to do nothing." His wife also assisted with this purchase.

When his wife left, Mr. Blackwell had an outstanding loan that his wife always managed. After she left, he took his unemployment check to the bank, and "they took the money out for the loan and gave me the rest." He stated the "bank lady" told him how much he should pay on the loan and "took it out" of his check. He used the cash received to "pay the power bill, water bill" by going to these locations and giving them cash for the bills. When he could not keep up with the trailer payments after his wife left, "daddy bought it back, from the bank."

Financial Records: Mr. Blackwell's credit reports indicate many joint accounts, or that he is an authorized user on the account, with individual accounts primarily for medical bills. His medical accounts were mostly overdue, and in collection. There are some "individual" accounts which are not medically related, and most are in collection status, negative, or "charged off as bad debt" indicating poor financial management skills. There are some "individual accounts" which were paid off. Records regarding a personal loan from Founders Federal Credit Union identify Angela Blackwell as the name on the account and as the "borrower." Mr. Blackwell's name does not appear on these documents. In banking records from Founders Federal Credit Union, a joint account with his wife is reflected until November 2008 when it is noted "removing joint ownership" to "single ownership." Records from 2009 indicate they had separate accounts.

A file of 239 checks was also provided. This file indicates that out of 220 handwritten checks, Angela Blackwell filled out all 220 checks, with no check filled out by Mr. Blackwell. Their joint bank account is listed on most of the checks. Of the remaining 19 checks that are typed, either no one's name is on the check, both names are on the checks, Angela's name is on the check, and on three checks, is Mr. Blackwell's name. On these, instead of a signature, it is noted, "verbally authorized by your depositor" or "preauthorized payment."

Daughter [Financial History – Post-Developmental]: Mr. Blackwell's daughter, Heather Blackwell, indicated that her mother "took care of all the bills" during her parents' marriage. She also noted her parents had credit cards "together, jointly." She stated, "mom would run up the balance…and she could never get cards in her own name because she didn't have enough credit…her credit [score] wasn't high enough." His daughter stated, "she would get cards in his name and run them up." She indicated her mother would get credit card applications and have Mr. Blackwell sign them. She stated Mr. Blackwell knew about most of the credit cards in his name, however, Heather also stated "mom filled out a couple that my dad didn't know about." To her knowledge, Mr. Blackwell "never used the credit cards, he only used cash."

Adaptive Behavior [Marital History / Post-Developmental]: Mr. Blackwell married in 1982, after meeting his wife at church, "we dated three years and then married." They married when he was 23, and she was 17 years old, "we run off and got married because Angie's mom was going to tear up the marriage license." They "got married at the preacher's house four days before the church wedding, so we didn't have a church wedding." He stated, "Angie got the marriage license and her family did everything..."

After they married, "we lived with Angie's momma and daddy in Cheraw, for a little more than a year, and got a trailer in 1983." They got "a single wide" and then "got a double wide in 1999, same place, never moved." Their children were born in 1984 [daughter] and 1986 [son]. His daughter "went to the low classes" and his son" had regular classes, but he quit, he couldn't make it in the regular classes." He stated "Angie was in charge of the household, took care of everything, the bills, she kept up with everything. She did the housework, laundry, dishes, gave the kids their baths, did all the cooking, except grilling out. She did the grocery shopping, I went with her, but she picked everything out, she knew what we needed, I got the snacks, she would always pay at the register." She "scheduled all the appointments, I never went to doctor's appointments by myself until Angie left, she would go to the pharmacy for medicine." He stated, "Angie always handled the children's schooling, I only went once or twice…she did the taxes at the end of the year." He also stated "Angie filled out the tax forms, and insurance forms, and all the doctor visit forms."

After his wife left their home in November 2008, he "moved up to momma's." Before he moved home, he "would go to mom's every day, take my clothes, took my shower at momma's…mom would do my laundry…" He would eat with his mother, or his wife's mother. He also noted "Angie took all the furniture."

Mother/Father Interviews [Marital History – Post-Developmental]: His parents stated that Mr. Blackwell resided with them, until he married. After he got married, "he lived with Angie's momma and then got a trailer, and put it on Ridings Road…we had to sign for him to get it." After he married, his mother stated, "Angie helped with his medical, I wasn't down there, Angie was…" During the social history expert's interview, his mother reported that when Mr. Blackwell moved out of her home, "Angie did everything for him like I did." They also noted, "He did not stay by himself in the trailer after Angie left, he stayed with us until his arrest, she took all the furniture, she took care of the money and paid the bills, did all the household chores." His mother noted that, after Angie left the marriage, Mr. Blackwell "wasn't Rickey, went to pieces, he stayed with us seven months…he wouldn't stay by himself, I stayed with him down there…she took all the furniture, I took cushions and put them on the floor…"

Analysis [Adaptive Deficits]: As with intellectual deficits, in the absence of diagnostic instruction for the statutory 'deficits in adaptive behavior,' the DSM-5-TR is used. In the DSM, Prong II is defined as "deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work and community." [31] Per DSM-5-TR and the field of intellectual disability, adaptive functioning involves three domains: **a)** conceptual, **b)** social and **c)** practical. An individual need only have deficits in one area, in that: "*The criterion for deficits in adaptive behavior is met when at least one domain of adaptive functioning – conceptual, practical or social- is sufficiently impaired that ongoing support is needed in order for that person to perform adequately across multiple environments…"* [32] Further, guiding tenants include that the evaluation of adaptive behavior is one's "typical performance… not their maximum performance," and that "all people with ID have strengths" which coexist with their deficits. [33]

a) Per DSM-5-TR, the "*conceptual [academic] domain involves competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving and judgments in novel situations, among others*." [34]

Mr. Blackwell clearly demonstrated deficits in the 'conceptual' domain reflected by his academic struggles. His grades became progressively worse as he advanced through school; he was placed in 'lower level' adjunct classes akin to special education services; testing indicated scores below average, below grade, and below his peers; he repeated the 9th grade due to failing grades, likely due to the material outpacing his abilities; he was involved in 'Project Succeed,' a program for lower functioning students; participated in "pre-vocation" classes, which was a diversion program out of academics and into vocational training; he prematurely discontinued his schooling due to school being too difficult; and fell last in class ranking. Of his schooling, Mr. Blackwell reported "the work was real hard" and that he "struggled" in school. Relatedly, a childhood friend and teachers described Mr. Blackwell's academic functioning as "on the outer flank of the slow learner group;" "a slower student;" "very slow;" "lowest level in everything;" "was not in a thinking group;" and it would have been a "struggle" for him to be in regular classes. Further, as a teenager, he failed the written driving test, and passed only after being provided the correct responses.

Regarding problem solving and judgment, Mr. Blackwell's childhood friend cited an example of a 'novel' situation for which Mr. Blackwell lacked the ability to problem solve. The simplicity of the situation, juxtaposed against Mr. Blackwell's complete inability to problem solve, stood out to him over the years. He described Mr. Blackwell as indecisive to the point of inability to make decisions, take initiative, assert himself or take on any responsibility with his peers. He also described Mr. Blackwell as very predictable across situations. Post-developmental period, Mr. Blackwell did not pursue any type of education, degree or academic work.

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[31] APA *supra* note 2 at 37.
[32] APA supra note 2 at 42.
[33] Shalock et al. *supra* note 3 at 40.
[34] APA *supra* note 2 at 42.

His pastor described Mr. Blackwell as "not the sharpest fellow, his IQ was low," with a "limited vocabulary.'" The pastor had to provide Mr. Blackwell a children's Bible in order for him to read it, which was written at the 2nd or 3rd grade level. Further his academic skills tested by the trial psychologist in 2012 indicated academic abilities at the elementary school level.

b) The "*social domain involves awareness of others' thoughts, feelings, and experiences; empathy, interpersonal communication skills; friendship abilities; and social judgment, among others."* [35]

Mr. Blackwell also clearly demonstrated social deficits during his developmental and post-developmental phases. Those that knew Mr. Blackwell during his development described a child who was not socially adept or skilled at social interactions, who kept to himself, and was not a leader among his peers. For example, his childhood friend described him as a child who would "lay low" among his peers; would "cow down" and "not stand up for himself;" would "follow along" with his peers; was "more gullible" and "more easily persuaded" than his peers; "had no territory" among his male peers; "lacked confidence;" and had "low self-esteem" among their peers. His former teacher described him as "quiet" and "almost withdrawn…never in a group." She noted he did not initiate conversation and "never spoke up." She described him as "never one to initiate contact or communication…almost backward, socially awkward." Mr. Blackwell reported having few friends outside the family. He was not engaged in any formalized social or extracurricular activities. He was shy and unsure of himself in more skilled social activities, such as swimming, in that he "never did learn to swim good" and "was scared of the water." Mr. Blackwell reported bullying during his development "all through school" due to his lower functioning, and that he "wouldn't fight them" or stand up to them.

Post-developmental period, his pastor/friend, described Mr. Blackwell with a lack of social initiative and social insecurities. He did not believe Mr. Blackwell would have been able to lead any church groups. He also indicated that Mr. Blackwell was naïve and believed what others said without question, without independently thinking through the issue. This pastor further described Mr. Blackwell's social functioning a "follower" who "could be easily manipulated and taken advantage of." He believed his social maturity level was akin to an "overgrown boy." Additionally, one of Mr. Blackwell's former work supervisors described him as lacking in social skills and that he "stayed mostly to himself." A former work performance review indicated that he lacked adequate communications skills, and was not asserting himself with his coworkers.

c) The *"practical domain involves learning and self-management across life settings, including personal care, job responsibilities, money management, among others."* [36]

Deficits in practical skills were also found. During his development, Mr. Blackwell's 'practical' skills were micromanaged by his mother, as she stated she "did everything" for him as far as personal care and daily functioning. He did not appear to have any domestic or household responsibilities, nor expectations of such. Post-developmental period, Mr. Blackwell never resided independently. He lived with his parents until he married; moved in with his wife's parents after marriage; and then he and his wife moved into their residence.

[35] APA *supra* note 2 at 42.
[36] *Id.*

He remained with his wife until age 49, when she left the home. He subsequently resided with his parents, or his mother resided with him. His former pastor believed that Mr. Blackwell would have remained living with his parents if he had not married.

In addition to a lack of independent living, Mr. Blackwell's deficits in this area were 'masked' by his marriage. His wife assumed most responsibilities within the 'practical domain' such as household duties, caretaking, finances, and the like. For example, he maintained his wife handled all of their finances. He stated he did not know how to write a check, or balance their checkbook. They had joint banking accounts, and out of over 200 checks, none were written by Mr. Blackwell, with all written by his wife. This data supports his report that his wife paid all their bills, and managed their finances. He also noted his wife "took care of everything" regarding the children, doctor's appointments, medicine, cooking, laundry, shopping, and budgeting. His mother reiterated that Mr. Blackwell's wife "did everything for him like I did" once he was married. Once the marriage ended, Mr. Blackwell was unable to maintain self-management, keep a household, or reside independently. Acute grief and depression due to the sudden loss of his marriage accounted for some of his difficulties during this time. However, Mr. Blackwell's lack of ability to function was more prolonged and of greater intensity than would normally be seen in depressed individuals. When he encountered this disruptive situation, he did not have baseline adaptive skills to maintain basic functioning, which enhanced his deterioration and lack of independence over and above his depression.

In regard to 'job responsibilities,' within the 'practical domain,' Mr. Blackwell demonstrated an adaptive strength in this area, in that he was able to find jobs, and increase compensation over his working life. However, his skill set was limited to simple manual labor. Prior to his trucking jobs, his jobs consisted of repetitive and simple work, to include: putting lids on peach boxes; throwing damaged cans out; mixing hamburger meat; 'slinging' turkeys; stacking bags on pallets; inserting ads into newspapers; bagging ice; and hanging up cloth on beams. He unsuccessfully attempted two textile jobs that required operation of machinery. At one, he worked too slowly and was terminated; and at the other, he had great difficulty with the machine, breaking components. He was eventually fired for smoking near flammable items, which he did not recognize as a hazard. Most jobs were of short duration due to poor stamina, poor performance, seasonal in duration, or poor working conditions. Thus, he was unable to maintain many of his jobs. For almost all of these jobs, he was hired due to a family member, neighbor or friend. He indicated completing some applications, but on-site, with assistance.

Trucking: Mr. Blackwell held several trucking positions in the post-developmental period. He learned to drive a truck by watching his father from a very young age. For many hours during his development, he sat on a "box" in the middle of the cab and watched his father manipulate the gears, brake, accelerate, change lanes and other tasks. His father stated he had Mr. Blackwell driving as a teenager, before the law allowed. His first trucking job [K&S] was obtained through his father; his second trucking job [Hess] was obtained through his father; his third trucking job [B&R] was known via "friends;" and his fourth trucking job [Belue] was through his father. Over his trucking jobs, Mr. Blackwell reported that he always went with another individual if going on routes which required sleeping overnight. He was unable to find these locations on his own, and was dependent on the accompanying individual for directions.

He reported being unable to read out of state maps, and would become "confused." He was uncomfortable with the overnight drives, and would quit a company to return to 'local' routes to areas where he had much more familiarity. On local [not overnight] routes, he ran the same, repetitive route each time "straight shots," and was able to drive alone once he learned the route. He was unable to take 'short-cuts' or alter the route on his own. In addition, although he was able to earn compensation as a truck driver. Mr. Blackwell's history of truck driving was rife with accidents. He was fired from B&R trucking for an illegal U-turn; fired from Hess for jack knifing the truck on the interstate; and fired from Belue for another accident. He had multiple other vehicle accidents, and other citations, indicative of poor or unsafe performance.

Of note, the procedures to be hired as a trucker in that era appeared basic, and without requirement of demonstrated skill. For example, his former employer at K&S, who hired Mr. Blackwell twice, indicated he only had to be breathing, able to climb in the cab, and not hit anyone when driving. Further, although Mr. Blackwell technically earned his CDL license, the qualifying procedure is not clear. A written test with his name on it is not signed, and has a forged examiner signature. He reported taking a simple 'road' test for the license, and did not have good memory for any written test, or the conditions under which it may have been taken. Further per federal code, he did not have to pass this test to be issued a CDL. Other trucking 'testing' is included in his DMV records, but the actual tests were unable to be located to assess level of difficulty. Mr. Blackwell recalls having the answers for at least one of these tests.

Mr. Blackwell stopped driving trucks due to cancer, and after an extended medical leave, was hired as a "service person" and then promoted to "forklift" driver. His former supervisor described this job as "simple…entry level…a 10 or 12 year old could've done it." She described his duties as repetitive, rote, and without need for initiative or problem solving. She noted his compensation was not production dependent, as Mr. Blackwell "had one speed" and would not have been able to keep up or compete in a performance based position. She also described him as "simplest guy I ever met." Mr. Blackwell's final employment prior to his arrest was working at a warehouse, with his position identified as "laborer." Mr. Blackwell described this job as an "order puller" which was rote and repetitive. He attempted a more involved position, but "couldn't keep up."

- **PRONG III) 'Manifested During the Developmental Period:'** To meet criteria for ID, intellectual and adaptive deficits must originate during the developmental period, traditionally defined as up to age 18 in prior DSM's, but with age eliminated in DSM-5 and DSM-5-TR. Developmental period is defined as up to age 22 per the leading agency on ID [AAIDD],[37] and per South Carolina's leading agency on ID, SCDDSN. [38]

I) INTELLECTUAL DEFICITS: Evidence for intellectual deficits during the developmental period stem from: a) consideration of possible intervening factors; b) stability of intellectual function/academic skills across the life span; c) childhood medical conditions; d) family history of cognitive deficits; and e) genetic testing.

[37] Shalock et al. *supra* note 3 at 120
[38] https://ddsn.sc.gov/sites/default/files/Documents/Consumer/100-30-DD%20-%20Revised%20(031418).pdf.

a) Possible Intervening Factors: Although valid testing produced IQ scores well within range of intellectual disability, Mr. Blackwell's intellectual and neuropsychological testing occurred later in life [2012, 2013 and 2020], decades after conclusion of the 'developmental period.' Thus, consideration was given to the possibility of any intervening factors, which may be responsible for lowering his intellectual function, after the developmental period. Potential factors included: i) exposure to chemotherapy; ii) major depression; and/or iii) head injury.

i) Chemotherapy: In September 1986, at age 27, Mr. Blackwell was diagnosed with Hodgkin's lymphoma. He underwent a series of chemotherapy treatments, from September 1986 through March 1987. Per medical records, he was administered "MOPP chemotherapy" for at least "six" cycles of treatment. He responded well, and did not require another round of chemotherapy, with his cancer considered to be in remission. By May 2009, medical records indicated "his Hodgkin's lymphoma is certainly considered to be cured."

<u>*Consultation*</u>: Dr. Sarah Rutherford, hematologist/oncologist at Weill Cornell Medicine College has particular expertise in lymphomas, including Hodgkin's type. She was consulted regarding Mr. Blackwell's history of MOPP chemotherapy for Hodgkin's lymphoma, to ascertain the possibility of any lasting adverse impact on his intellectual function. Dr. Rutherford reported that during MOPP chemotherapy treatments, Mr. Blackwell may have experienced "chemo brain" which she described as general "cognitive clouding and brain fog." However, this condition clears at the cessation of treatment, with effects clearing "after one year at most." *[Mr. Blackwell's last instance of chemotherapy was in 1987].* In her expertise, she knew of no clinical or research data to support lasting cognitive effects decades after such treatment. Thus, she did not believe that a course of chemotherapy, specific to Mr. Blackwell's type, would result in any lasting adverse impact to intellectual or cognitive function.

<u>*Findings [Chemotherapy]*</u>: Based on Dr. Rutherford's expertise, Mr. Blackwell's remote history of chemotherapy twenty-five years prior to his first period of IQ testing, and twenty-six years from his second testing, does not appear a valid intervening factor.

ii) Major Depressive Disorder: Per psychiatric records and interview data, Mr. Blackwell has a history of major depression linked to significant life stressors. He reported no history of depression before he was diagnosed with cancer in 1986. Subsequent to his diagnosis, he took medication for depression and anxiety; and had two psychiatric hospitalizations for acute depressive episodes. His first psychiatric hospitalization was in 1990, at age 31, after reckless conduct associated with thoughts of self-harm when arguing with his wife. He reported a "history of depression since diagnosis of Hodgkin's Disease in [September]1986." Associated symptoms included sleep and appetite disturbance, weight loss, irritability, anxiety, depressed mood and thoughts of suicide with no clear plan or intent. He was diagnosed with "Major Depression, Recurrent, in Partial Remission" and placed on medication. Outpatient records indicate continued antidepressant and anti-anxiety medications after discharge.

He was hospitalized again in December 2008, at age 50, for acute depression and suicide attempt by overdose of Xanax. Precipitating stressor was his wife's admission of an extramarital affair, and refusal to return home. He endorsed "significant depression, anhedonia, decreased sleep, decreased appetite, crying spells daily, very distraught, vague suicidal ideation, no homicidal ideations, increased amounts of anxiety, some shortness of breath and tremors…"

He was noted with "very poor coping skills" and a note indicated "mother staying with him and supportive." He denied the use of alcohol or drugs at this time. He described this event as his "second bout of depression." He was treated with medication and other therapies, with improvement noted. On December 16, 2008, he was discharged with a primary diagnosis of Major Depressive Disorder, Recurrent, Severe without Psychosis," with medication, and a referral for outpatient treatment.

Mr. Blackwell stated that once released from the 2008 hospitalization, he "went to stay with mom and dad, was down all the time, and hurt, sad, cried, got her pictures out, I'd get up every day and go to her momma's." He was "eating and sleeping," but "felt sad and missing Angie, I never wanted to leave because I wanted to see her when she came over."

Consultation: Psychiatrist Dr. George Corvin was consulted as to the role of depression, and possible impact on intellectual function and/or adaptive deficits, as well as the role of medication on intellectual testing. Dr. Corvin confirmed that depression does not have lasting negative impact on intellectual or adaptive function, but that significant symptoms may temporarily reduce these abilities, until treated. Dr. Corvin further asserted that the type and dosage of medication taken at the time of IQ testing in 2012 and 2013 would not have adversely impacted Mr. Blackwell's testing performance. On the contrary, he believes the medication may have worked to "optimize" Mr. Blackwell's test performance by managing his anxiety and any negative symptoms during testing. The same impact was believed to be true with regard to his neuropsychological testing in 2020. Further, Dr. Calloway described Mr. Blackwell as staring "blankly" at her, and Dr. Corvin was asked if this behavior implicated the impact of his medication. He specifically cited records prior to the testing when Mr. Blackwell was not taking any medication, and also appeared "flat," which appears to be an enduring trait for Mr. Blackwell, across situations.

Findings [Depression]: Depression in and of itself does not adversely impact intellectual function on any long-term basis. If an individual is experiencing a major depressive episode, cognitive impairment, such as deficits in working memory, concentration, problem-solving, or sluggish thought process may be present for the duration of the episode. However, these symptoms clear as the depression lifts. Depressive episodes do not result in lasting cognitive impairment. Thus, a psychologist would not administer intellectual/cognitive testing if the examinee were experiencing major depression, as results may be spuriously low. In Dr. Calloway, Dr. Brown and Dr. Herfken's testing reports, no examiner described Mr. Blackwell as depressed at the time of testing. Although Dr. Calloway described Mr. Blackwell as intermittently anxious and tearful, this appeared to be affect congruent with his situational stressors, instead of major depression as described in his psychiatric records. Thus, depression is not believed a valid intervening factor impacting intellectual function.

iii) Head Injury: In June 2002, at age 43, Mr. Blackwell was involved in a four wheeler accident, with injuries, including a head injury. During the present evaluation, Mr. Blackwell stated of the accident, "I don't remember nothing, it knocked me out, but I remember the ambulance." He stated, "Mark [son-in-law] was riding with me, we jumped a hill and I came down and flipped…" He was not wearing a helmet. He "cracked my collar bone" and was "out of work for seven weeks." He reported no other changes in functioning, specifically, no changes to his memory, concentration, focus, episodes of confusion, or irritability.

Mr. Blackwell's medical records indicate: "4-wheeler overturned on patient – doesn't remember events." Additional notes indicate "patient crashed on 4-wheeler, which was on top of patient. Patient has no memory of accident…has laceration behind left ear, pain in left arm and chest…patient is now alert." EMS records note they "responded to recreational vehicle accident…approximately one mile into wooded area. Patient found lying next to over turned 4 wheeler. Patient awake but confused. Patient had head laceration, abrasions on one arm. Bruising on chest." Notes indicate he suffered a "chest contusion, neck sprain, and concussion with loss of consciousness." He also fractured his clavicle. Duration of the loss of consciousness was noted with a question mark. He underwent a CT brain scan, which was "negative," with no significant findings. He was not held overnight, but discharged home in "stable" condition. His discharge diagnoses were "motor vehicle accident" and "concussion." Alcohol testing was negative.

At his follow-up appointment with his primary care physician, on July 1, 2002, Mr. Blackwell reported "he was unconsciousness for 15-20 minutes and confused for over an hour." He was seen again on July 3, 2002, with significant shoulder pain, but no post-concussive symptoms were noted. He was seen again on July 10, 2002, reporting "intermittent headaches" and depression, but no confusion, memory loss, irritability or other post-concussive symptoms were noted. On July 24, 2002 and August 8, 2002, he was again seen by his PCP, with no post-concussive symptoms reported.

Consultation: Psychiatrist, Dr. George Corvin, was consulted regarding Mr. Blackwell's concussive injury. He believed the accident produced a "discrete concussive injury with negative imaging and unremarkable recovery." Such would not result in lasting cognitive symptoms beyond approximately one year, if any were experienced. He knew of no clinical data or research to indicate lasting cognitive impact years later, after a mild concussive injury.

Findings [Head Injury]: Based on the data, Mr. Blackwell had a negative CT brain scan, was not held overnight at the hospital, and exhibited lack of any post-concussive syndrome at subsequent medical visits. Thus, it is unlikely that Mr. Blackwell's concussive injury would have had lasting adverse impact on intellectual function years later. Further, by all indication, he suffered a concussion or mild traumatic brain injury. While individuals with mild TBI or concussions can experience short-term cognitive impacts, they typically recover to premorbid functioning. In addition, research in this area overwhelmingly assesses cognitive functioning weeks to months after the injury. Research is wholly lacking in assessing for impairment many years after the injury (10 to 11 years), as in Mr. Blackwell's case. Thus, without more information, this factor is likely not implicated in lowering his IQ scores from the developmental period.

Overall Findings [Intervening Factors]: In conclusion, based on the above data, known intervening factors were likely not contributory to lowering Mr. Blackwell's IQ. Thus, without the impact of intervening factors, and given the robust finding that IQ remains relatively stable over time, Mr. Blackwell's in-range IQ scores of 63 and 68, are considered reflective of his intellectual functioning during the developmental period.

b) Intellectual Functions / Academic Skills: With regard to intellectual function as related to academic learning, academic skills testing during the developmental period, at age 17, was similar to academic skills testing at age 53. Although the tests differed somewhat, results were commensurate. Results indicate approximately the same skill level in reading and math, with both areas testing at the late elementary school levels. These results held constant across the developmental and post-developmental periods. This result indicates that Mr. Blackwell's intellectual function re: academic skills has remained relatively stable over the course of his life, providing evidence of cognitive deficits within the developmental period.

Table 3. Mr. Blackwell's Academic Skills Testing Developmental and Post-Developmental.

Test	Year/Age/ Grade	Agency	Domains	Grade Level
ABLE	1976 17 yrs. / 10th	School District	Reading	5.8 – Late Fifth
			Arithmetic	5.6 – Mid-Fifth
WRAT-4	2012 53 yrs.	G. Calloway	Reading Compr.	5.3 – Early Fifth
			Arithmetic	4.6 – Mid-Fourth

c) Relevant Childhood Medical Conditions: Per medical records from Spartanburg Regional Healthcare System, Mr. Blackwell underwent certain events, and/or was diagnosed with certain conditions during the developmental period, potentially associated with intellectual disability.

In August 1959, at nine months of age, Mr. Blackwell was in a motor vehicle accident, during which he was "thrown from the car." His mother also verified he was "thrown from the car" and that she was the driver. He was issued provisional diagnoses of "possible skull fracture" and "laceration – forehead." He was held overnight, and required some sort of surgery that was illegible given the age of the records. His "final diagnosis" was "laceration to forehead." Due to his injuries, and if he were indeed 'thrown from the car' as an infant, possibly without a car seat, then a closed head injury would have been likely. Without additional data, it is not possible to determine if this event resulted in lasting cognitive damage associated with intellectual disability, but should be noted due to the potential severity of impact.

In addition, medical records from his 1990 hospitalization for depression indicated, "history of seizures in childhood associated with high fever lasting up until age 9." This history was confirmed by his mother who referred to them as "convulsions," associated with high fever. She indicated these events were frequent and of significant severity, enduring for at least several years during his childhood. It is possible that Mr. Blackwell suffered epileptic type seizures, as did his mother, and brother. Epileptic seizure activity during development is a known correlate of intellectual disability. It is also possible that Mr. Blackwell may have suffered 'febrile seizures' which are convulsive events associated with high fever, most common in children six years and younger. Isolated febrile seizures are not typically associated with intellectual disability. However, *recurrent and prolonged* febrile seizures, as described by Mr. Blackwell's parents, may be associated with lasting cognitive impairment. [39]

[39] Gill Nilsson et al., *Neurodevelopmental problems should be considered in children with febrile seizures,* 108 ACTA PAEDIATRICA 1507 (2019).

d) Family History: Intellectually disability, lowered cognitive functioning, and developmental delays are often found in family members of the individual with intellectual disability. In Mr. Blackwell's case, there is ample evidence of such genetic vulnerability, as detailed below.

i) Mr. Blackwell's father's school records indicate a history of poor grades, and well below average scores on achievement testing. For example, in the 7th grade, at age 13, on the Stanford Achievement Test, his grade equivalence was at the 3rd grade, and his score age equivalent was 8 years old. In the 8th grade, at age 15, on the Stanford, his overall score age equivalent was 10 years, testing at the 5th grade level. He eventually "dropped out" of school in the 9th grade.

ii) Mr. Blackwell's brother's school records indicate he repeated the 1st grade and 9th grade, and did not continue in schooling after his 2nd ninth grade year. He was noted in the "remedial" program and in "pre-vocation" classes. He was "socially promoted" to the 6th and 8th grades, indicating that although his grades were failing, his age prevented him from being held back in lower grades. His grades/marks were poor to failing as he advanced through school and he "dropped" out in the 9th grade. His brother's psychiatric records indicate he failed the 1st and 9th grades, and attended vocational rehabilitation series.

iii) His son's school records document that he failed the 1st grade; had a history of "resource" classes with IEP's [Individualized Education Programs]; and scored 'Below Basic' and standards 'Not Met' on standardized school testing. It appears he was "promoted" to the 8th grade as "student met requirements of his IEP to be promoted." A note from the records custodian indicates he was "in special education – Learning Disability – certificate program – CHS [Chesnee High School – withdrew…" No high school records were received.

iv) Mr. Blackwell's daughter's school records reflect significant academic struggles and poor performance on cognitive testing. She was retained in the first grade after failing all subject areas. At age 10, she scored from the 1st to 10th percentile on standardized cognitive testing; and with most scores "well below" average on standardized testing at age 12. By the 2nd grade, she was placed in "self-contained learning disabled classes," which continued throughout 5th grade, until her transfer to a private Christian school. Upon return to public school, in the 7th grade, she was placed in "modified" classes due to struggling in most areas. These classes "make it easier to read and understand the content of material." She eventually discontinued her high school studies to earn a degree through Adult Education.

His daughter's mental health records from Spartanburg Mental Health note that, on August 5, 1999, at age 15, her treating psychiatrist believed lowered cognitive functioning was her primary clinical issue. He wrote, "The real problem is that we are dealing with a child who has an IQ of only 60 and has all the naivety of a retarded person but does not look retarded." She carried diagnoses of "Reading Disorder" and "Mathematics Disorder." Additionally, during a visit from April 2001, she was issued a diagnosis of Mental Retardation. His daughter's IQ was formally tested during a psychiatric hospitalization at age 14, using the Wechsler Intelligence Scale for Children, 3rd Edition. Records indicate she obtained a Full Scale IQ of 67, at or below the 1st percentile, in the 'Extremely Low' range of functioning, noted as "within the range of mild mental retardation." During her hospitalization, she was issued the diagnosis "Mild Mental Retardation."

v) His granddaughter underwent genetic testing at age 21 months, and a "significant gene change, on chromosome 17" was found, consistent with a diagnosis of "Smith-Magenis syndrome." Testing "found a piece of the genetic material is missing on chromosome 17…" which causes developmental delay and other systemic, cognitive, and medical issues. Medical records from 2009 diagnosed her with a "global delay in development;" and "chromosomal abnormality syndrome," and included reference to well below average cognitive and adaptive testing results.

vi) His grandson's [K.B.] school records note he was tested on August 18, 2010, at age 9, and on the Wechsler Intelligence Scale for Children, 3rd Edition [WISC-III]. He obtained a Full Scale IQ score of 52, "in the intellectually deficient range," which is below the 1st percentile. Achievement testing for reading, writing and mathematics also fell below the 1st percentile. His adaptive functioning testing also produced a score well within range of ID, with an adaptive composite score of 67, at the 1st percentile. He was identified as a student with a "mild mental disability" which is equivalent to intellectual disability.

vii) Mr. Blackwell's other grandson [M.A.B.] was also identified as intellectually disabled via his school records. In February 2009, at age 8 on the Stanford Binet V, he obtained a Full Scale IQ of 50, at below the 1st percentile. On adaptive behavior testing, school version, he obtained a score of 59. Subsequent cognitive testing at age 8, indicated a 'nonverbal intelligent quotient' of 57; and a "composite intelligence quotient" of 46, all very low, and below the 1st percentile. Adaptive testing indicated a general adaptive composite score of 40, below the 1st percentile. In addition, his academic skills tested at or below the 1st percentile. He was described as a "child with a developmental delay." He was "eligible for special education services as a child with an intellectual disability."

viii) Records indicated Mr. Blackwell's first maternal cousin, resided in DDSN's 'Community Training Home II' in Newberry, with a diagnosis of "Mental Retardation, Moderate" among other disorders. Records also noted he "has lived in several placements within the Newberry DSN [Disabilities/Special Needs] Board.

Findings[Family History]: Based on the above data, strong evidence exists of a family lineage of cognitive and intellectual deficits found in generations before and after Mr. Blackwell. Such findings support Mr. Blackwell's increased risk of cognitive and intellectual deficits stemming from a genetic, and thus, developmental, etiology.

e) Genetic Testing: Given the strong family history of cognitive deficits, Mr. Blackwell underwent genetic testing at the Greenwood Genetic Center, with multiple tests run in 2020. Per DSM-5-TR, genetic testing is a sanctioned and recommended diagnostic tool for ID, stating: "A comprehensive evaluation includes an assessment of intellectual capacity and adaptive functioning; identification of genetic and nongenetic etiologies…components of the evaluation may include…[a] genetic evaluation (e.g., karyotype or chromosomal microarray analysis and testing for specific genetic syndromes)..." [40]

[40] APA *supra* note 2 at 42.

Mr. Blackwell's report of test findings from the genetic center indicated a maternally inherited genetic "alteration…" His specific alteration was characterized by "impaired intellectual development" among other traits.

Consultation/Affidavit: Dr. Christopher Cunniff, geneticist at Weill Cornell Medical College, ordered the genetic testing for Mr. Blackwell and was consulted. He provided the following explanation regarding Mr. Blackwell's genetic testing report. Dr. Cunniff interpreted the findings as a "gene change" was found, which is "associated with mild to moderate intellectual disability." Thus, Mr. Blackwell has a "*CAMTA1* related intellectual disability."

In his subsequent affidavit, Dr. Cunniff asserted that "the genetic testing identified an abnormality of the *CAMTA1* gene, which causes intellectual disability in those who have such genetic abnormalities, and which is more likely than not the cause of intellectual disability in Mr. Blackwell." He stated that testing results "establish that that Mr. Blackwell is a person with intellectual disability as a result of an abnormality of his *CAMTA1* gene, which was present at conception and has had lifelong negative effects on his intellectual functioning."

Findings [Genetic Testing]: Based on the testing, Mr. Blackwell has a genetic predisposition to 'impaired intellectual development.' Thus, results provide evidence of congenital etiology, which clearly supports manifestation of deficits in the developmental period.

II) ADAPTIVE BEHAVIOR: Evidence for adaptive behavior deficits during the developmental period stem from Mr. Blackwell's a) social functioning and b) conceptual functioning, supported by records and collateral sources.

a) Social Skills: Mr. Blackwell's social functioning during the developmental period was described by others to be lacking in adequate interpersonal and communication skills, and as socially awkward. He lacked initiative with peers and in social settings, had very few friends outside of his family, and was vulnerable to 'bullying.' He did not take on any leadership roles with his peers, or any responsibilities in social situations and preferred to remain 'in the background.' He was not engaged in any formal extracurricular pursuits, with his socialization consisting of basic activities, such as playing outside 'in the gulley' or throwing a football with peers. In addition, Mr. Blackwell's closest friend during his development (outside of the family) was interviewed and appeared to have significant cognitive limitations, which likely provides indication of Mr. Blackwell's lowered social functioning as a youth.

b) Conceptual Skills: As fully detailed above, Mr. Blackwell's conceptual functioning within academics is captured within the developmental period, from ages six [1st grade] to 18 [11th grade]. Sources indicate well below average testing; decreasing grades over his schooling; placement in lower level 'special education' like classes in high school; placement in a vocational, versus academic track; failure of the 9th grade; eventually discontinuing his schooling given the difficulty of the work; and falling last in class rank. He was also described with poor problem-solving abilities as a youth, inability to think through novel situations, and difficulty with self-direction. This developmental history is commensurate with his significantly subaverage WAIS-IV IQ scores, as tested by defense and state experts.

EXPERT CONSULTATION *RE*: DIAGNOSIS OF ID: In addition to evaluating the three prongs of ID, the two state experts involved in evaluating Mr. Blackwell during his *Atkins'* claim were consulted regarding their evaluations and decision-making process.

Consultation - K. Harrison, PhD. [DMH Psychologist]: Dr. Harrison was consulted regarding her DMH competency to stand trial assessment of Mr. Blackwell. She was asked her decision-making process of referring defendants for a joint competency evaluation with DDSN. She explained that, in deciding not to refer Mr. Blackwell for a 'joint' evaluation, she used competency as a measure. She stated, "had there been stronger indications that he had been incompetent, if there were real competency concerns, then I definitely would have referred for the [joint] evaluation…he was clearly competent, so there was no need." *[Per S.C.'s competency statute § 44-23-410(D), the standard for referral is "preliminary indication" of intellectual disability, without regard for competency status].*

She also used "clinical signs" to determine if he was intellectually disabled, and would therefore need a joint evaluation, noting she did a "brief mental status examination" on which he was without deficit. Other 'clinical signs' were his "ability to communicate and appropriately respond." She further stated, "I was [also] relying on the IQ scores, but I don't know what tests were used or anything like that." She noted the attorneys' referral concerns that there was a "strong possibility" of intellectual disability, and therefore was looking for "for signs of a strong possibility." Dr. Harrison clarified that she "didn't do a full evaluation of his intellectual functioning, I was only asked to evaluate competency." She also questioned why the attorneys had not initially sent the competency order to DDSN for them to perform the competency evaluation.

Consultation – G. Brown, PhD. [DDSN Psychologist]: Dr. Gordon Brown was consulted regarding his DDSN diagnostic evaluation of Mr. Blackwell. Of his IQ testing, he stated "there was never any question about the in-range IQ score" and he did not see any indication of malingering. However, he was unsure of any post-developmental factors that could have lowered Mr. Blackwell's IQ. When informed about the genetic testing, he "would have to consider it," and did not recall any previous case he has evaluated with such testing. Dr. Brown recalled giving the adaptive measure [ABAS-II] to Mr. Blackwell and believed he likely "exaggerated" his abilities on this measure. He did not utilize any collateral sources on the ABAS-II, as he did not know of any appropriate sources, meaning someone who was very familiar with Mr. Blackwell's adaptive functioning. He believed Mr. Blackwell's "ex-wife" may have been a useful respondent, however, she was not available. In the absence of collateral sources for adaptive behavior, Dr. Brown believed one "should get any records you can, and interview data."

In formulating his ID opinion, Dr. Brown cited "lack of adaptive deficits in the developmental period" as the missing piece. He "would have considered developmental information if the attorney presented it to me." He referenced another case in which the attorney had provided him with considerable information regarding the defendant's functioning, which he found very helpful in formulating his opinion. In formulating his ID opinion for Mr. Blackwell's case, he also mentioned relying heavily on Dr. Harrison's decision not to refer for a joint evaluation to DDSN. However, Dr. Brown stated that if Dr. Harrison had called to consult him on the case, he would have advised her to refer, given that it was a capital case.

CONCLUSION: Based on the totality of evaluation data, to include Mr. Blackwell's legal, academic, medical, social, financial, vocational and psychiatric records; family psychiatric, medical and academic records; review of prior intellectual assessment data and review of multiple expert reports; collateral interviews with Mr. Blackwell's family and extrafamilial respondents; interviews with Mr. Blackwell; professional consultation with various experts in relevant fields; and consultation of applicable literature, the following is found.

On the WAIS-IV, a 'gold standard,' individually administered test of intellectual functioning, Mr. Blackwell obtained full-scale IQ scores of 63 and 68, in the 1st and 2nd percentiles, and within the 'Extremely Low' range. These scores were obtained during adulthood, by defense and state experts. Testing was conducted by qualified examiners, produced consistent results, was valid, and without evidence of malingering. A thorough review of potential intervening 'post-developmental' factors was conducted, to include a history of chemotherapy, head injury and depression. Per examination of case circumstance, expert consultation, and relevant literature, evidence does not support that these factors impacted intelligence, and thus, his IQ scores are considered representative of intellectual functioning in the developmental period. Mr. Blackwell's very strong generational history of cognitive deficits; and genetic testing positive for a genetic alteration associated with intellectual disability, also provides evidence of 'manifestation' of intellectual deficits during the developmental period.

Adaptive behavior during the developmental and post-developmental periods was positive for significant deficits in the conceptual domain, to include academic skills, learning; knowledge acquisition and problem solving; and within the social domain, with regard to limited social and interpersonal functioning. Mr. Blackwell's adaptive behavior post-developmental period was also significant for deficits in the practical domain with regard to vocational skills, financial management, and daily domestic skills. He required the significant support of his spouse of almost 30 years, and when his marriage abruptly ended, he was not able to function independently due to his adaptive deficits. In assessing his adaptive behavior, standardized testing was unable to be utilized due to the age of the case, and lack of qualified informants. ID severity is based on the level of adaptive deficits per standardized testing, using a scale of 'mild,' 'moderate,' 'severe' or 'profound.' Thus, without testing, and per DSM-5-TR, his adaptive deficits are classified within the 'Unspecified' range.

Diagnostic Opinion: Therefore, per S.C. Code § 16-3-20(C)(b)(10), confirmed in *Franklin*, and per the DSM-5-TR, it is opined that Mr. Blackwell meets criteria for all three statutory prongs, in that he has "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period." As such, Mr. Blackwell is assigned the diagnosis of Intellectual Disability, Unspecified.

Respectfully Submitted,



October 1, 2022
Date Signed

Susan C. Knight, Ph.D., ABPP
Licensed Clinical Psychologist
Board-Certified Forensic Psychologist

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
64
CASE NO. 2018-CP-42-00928

I. NAME Blackwell, Rickey, Lee (LAST, FIRST, MIDDLE) MALE ☒ FEMALE ☐ DATE OF BIRTH [redacted] PLACE OF BIRTH Cowpens, S.C. (TOWN, STATE) NATIONALITY COLOR

II. DROP-OUT AND RE-ENTRY RECORD

DATE	SCHOOL AND GRADE LEFT	REASON	DATE RE-ENTERED	SCHOOL AND GRADE RE-ENTERED
May 9th	Chesnee High			

IV.

DATE	LOCAL ADDRESS	PHONE	DATE OF ATTENDANCE	NAME OF SCHOOL
5-30-66	Rt #2 Chesnee SC		1965-1966	Cooley Springs
1972	Rt #2	461	2 681	

III. FAMILY DATA

	MOTHER	FATHER
NAME OF PARENTS	Mildred Allene Bridges	Cletus Franklin
HOME ADDRESS	Rt #2 Chesnee, S.C.	
NATIVE, RESIDENT		
DATE NATURALIZED		
LANGUAGE IN HOME		
OCCUPATION	Cook Textile Mess oil co. Spthgs	
EDUCATION		
MARITAL STATUS		
DECEASED		
WITH WHOM DOES CHILD RESIDE	Parents	

CODE FOR REASONS FOR LEAVING SCHOOL
T—TRANSFERRED E—EMPLOYMENT PERMIT D—DEAD
P—PERMANENT ILLness Q4—OVER LEGAL AGE M—MARRIED
DATE AND GRADE RECORD STARTED 9/10/65 First
NUMBER CHILDREN IN FAMILY 2
BOYS 2 GIRLS
REMARKS REGARDING HOME CONDITIONS
DATE

DATE Oct 19 67
AGE 7
GRADE 1

V. ELEMENTARY SCHOOL RECORD

	YEAR		1965-66	1966-67	1967-68	1968-69	1969-70	1970-71	1971-72	
	SUBJECTS	WEEKS	1st GRADE	2nd GRADE	3rd GRADE	4th GRADE	5th GRADE	6th GRADE	7 GRADE	FINAL
ENGLISH	ARITHMETIC		96 70	78 74	82 77	78 79	75 78	78 78	75 67	
	SPELLING		90 76	90 93	79 83	85 96	59 70	71 72	60 67	
	LANGUAGE GRAMMAR			78 77	67 77	78 75	72 74	76 75	76 78	
	HANDWRITING		75 75	84 94	87 90	88 96		80 85		
	SPELLING			86 96	93 97	96 95	97 96	98 98	90 92	
SOCIAL STUDIES	Soc. Studies				63 70	75 77	84	70 71	62 66	
SCIENCE	GENERAL SCIENCE		76	78	76	74	82	75 90	72	
	AGRICULTURE									
	PHYSIOLOGY HYGIENE									
	Health			75 80	76	76	70	75		
ARTS AND CRAFTS	HOUSEHOLD ARTS		C							
	INDUSTRIAL ARTS									
	ART									
	MUSIC							A	A A	
	Promoted							Yes	Yes	
	DAYS PRESENT		85	90 90	81 87	93 90	80 88	87 90	90 87	81
	DAYS ABSENT		5	0 9	3 4	0 5	2 2	0	0 2	3
	TIMES TARDY					0 0		0	0	
	REMARKS									

VI. SECONDARY SCHOOL RECORD

YEAR 19 - 19 — 7th GRADE

SUBJECTS	MARK 1st	MARK 2nd	ABS.
UNITS FOR THE YEAR			
HALF DAYS ABSENT			

YEAR 19 - 19 — 8th GRADE

SUBJECTS	MARK 1st	MARK 2nd	ABS.
	76	70	2
	72	70	21
	70	70	20
	70	75	24
Phy. Ed.	80	80	Ad
UNITS FOR THE YEAR			
HALF DAYS ABSENT			6

YEAR 1972-73 — 8 GRADE

SUBJECTS	AVG.	EXAM	ABS.	TARDY
Adj. English	65	61	0	63
Adj. Math	79	65	1	72
Adj. Science	70	60	0	65
Pre-Vocational	80	80	1	79
Phy. Ed.	80	90	1	90
UNITS FOR THE YEAR			3	
HALF DAYS ABSENT			17	

YEAR 19 - 19 — 9th GRADE

SUBJECTS	AVG.	EXAM	ABS.	TARDY
Adj. English I	57	57	1	57
Adj. Math II	71	62	1	78
Adj. Science	65	74	1	70
Typing I	71	72	1	78
Physical Ed.	96	87	1	84
Days Absent				25
UNITS AND POINTS FOR YEAR			5	
UNITS AND POINTS TO DATE			12	

YEAR 1973-74 — 9th GRADE

SUBJECTS	UNIT PER SUBJ.	MARK 1st	MARK 2nd	ABS.	TARDY
Adj. English I		55	55		71
Civics		91	85	1	86
Algebra					
Agriculture I		78	82	1	80
P.E.		80	80	1	83
Adjustment		70	80	1	75
Days absent				22	
UNITS FOR THE YEAR				4	
UNITS AND POINTS TO DATE				12	

11 units Required for graduation

YEAR 1974-75 — 10 GRADE

SUBJECTS	MARK 1st	MARK 2nd	ABS.	TARDY
Adj English II		85		
Health		80		
Agriculture II		76		
Family Living		90		
B Conference		84		
UNITS AND POINTS FOR YEAR				
UNITS AND POINTS TO DATE				

VII.

7528

7529

XIV.

Year	Educational Plans	Vocational Plans	Interests and Hobbies	Special Talents
72-73	finish high school	undecided	horseback riding	
1973-74				
197				
1976-77	High School	Teach.		

XV. Work Experience Record (while attending school and after leaving school)

Grade or In School	Age	Year	Length of Job	Name and Address of Employer	Type of Work	Wages or Salary	Remarks

XVI. Other Significant Experiences

Other Work Experiences			Home Duties		Exceptional Experiences (travel, etc.)	
Year	Type of Work	Time Spent	Year	Type of Duty	Year	Places, etc.

7550

DATE	GRADE	INTELLIGENCE TESTS	C. A.	M. A.	I. Q.
4-19-44	1	Calif. Short form 1963	89	74	18
10-20-67	3	Calif. short form 1963	107	96	89

DATE	GRADE	ACHIEVEMENT TESTS	C. A.	SCORE	NORM
5-10-44	1	Calif Lower P. 1963	89	1.3	18
11-6-67	3	Calif Upper P. 1963	107	2.9	32
May 26 10		ABLE Voc.		—	
		Reading		5.8	
		Spelling		5.6	
		Arith			

DATE	GRADE	INTEREST AND APTITUDE TESTS	C. A.	RAW SCORE	CON. SCORE

Finished work 113 in a Study Hall

YEAR	GRADE	SUBJECTS	WEEKS PER WEEK	MINUTES	UNITS	POINTS
		UNITS AND POINTS FOR YEAR				
		UNITS AND POINTS TO DATE				

YEAR	GRADE	SUBJECTS	WEEKS PER WEEK	MINUTES	UNITS	POINTS
		UNITS AND POINTS FOR YEAR				
		UNITS AND POINTS TO DATE				

VII. HEALTH RECORD

CHECK—Giving YEAR OF HIGHEST GRADE WHEN POSSIBLE

DIPHTHERIA	SCARLET FEVER	MEASLES ✓	WHOOPING COUGH
MUMPS	SMALLPOX	TYPHOID	TONSILITIS

IMMUNIZING AND DIAGNOSTIC PROCEDURES RECORD

YEAR AND RESULT	DIPHTHERIA	SMALLPOX	T-B TESTS	X-RAY	RESULT OF X-RAY

IX. GRADUATION FROM SENIOR HIGH SCHOOL

GRADUATION DATE	NAME OF SIGNATURE OF HIGH SCHOOL PRINCIPAL		
NO. IN CLASS	RANK IN CLASS	NO. OF GRADS	COURSE COMPLETED

CODE OF BIRTH INFORMATION — CERTIFIED COPY OF BIRTH CERTIFICATE=BC; CHURCH RECORD=CR; FAMILY BIBLE=FB; NOTARIAL RECORD=SA; PASSPORT=PP; PARENT'S STATEMENT=PS; LIFE INSURANCE POLICY=LP; OTHER=OC

X. EXTRA CURRICULAR ACTIVITIES

GRADE	9	10	11				
PUBLICATIONS							
BAND							
VOCAL MUSIC							
ORCHESTRA							
DRAMATICS							
STUDENT COUNCIL							
SAFETY PATROL							
CLASS OFFICER							
CLUBS							
Dragon Queen	✓						
AUDITORIUM ACTIVITIES							
ATHLETICS							

XI. EVALUATION OF PERSONAL AND SOCIAL ASSETS

GRADE	1	2	3	4	5	6	7	8	9	9	10	11
COOPERATION	B	N	N	B	N			N	N	N	N	N
COURTESY	N	N	N	N	N			N	N	N	N	N
DEPENDABILITY	B	N	N	N	N			N	N	N	N	N
INDUSTRIOUSNESS	B	N	N	N	N			N	N	N	N	N
INITIATIVE	B	B	B	B	N			N	N	N	N	N
LEADERSHIP	B	B	B	B	B			N	N	N	N	N
EMOTIONAL MATURITY	B	N	N	N	N			N	N	N	N	N
PERSONAL APPEARANCE	N	N	N	N	N			N	N	N	N	N
SELF CONTROL	B	N	N	N	N			N	N	N	N	N
HONESTY	N	N	N	N	N			N	N	N	N	N
PERSEVERANCE	N	N	N	N	N			N	N	N	N	N
SERVICE TO SCHOOL	N	N	N	N	N			N	N	N	N	N

CODE: B – BELOW; N – NORMAL; A – ABOVE

NAME OF TEACHER: E. Bradford; M. Radford; E. Shields; R. Oldroyd; A. Meese; D. Gallup; B. Cook; B. Cook; Jackson; Gallup

XII. EDUCATIONAL FOLLOW-UP RECORD

RECORD SENT — DATE — TO — SCHOOL

NAME OF SCHOOL — LOCATION

COURSE OF STUDY

XIII. RECORD OF COMMUNICATIONS FOR EMPLOYMENT

DATE	TO WHOM SENT	AGENCY

Cumulative Record

SUGGESTIONS FOR ADDITIONAL DATA WHICH MAY BE FILED IN THIS FOLDER

1. SCHOOL HEALTH AND PHYSICAL RECORD CARD
2. CORRESPONDENCE WITH PARENTS
3. RECORD OF HOME VISITS, PARENT INTERVIEWS
7. COPIES OF PUPILS LONG-RANGE COURSE ELECTIONS
8. PROFILE SHEETS FROM INTEREST INVENTORIES
9. PERSONALITY RATING SHEETS
10. VOCATIONAL THEMES, CAREER BOOKLETS, ETC.

BLACKWELL R L
E1C9-002-015

| | | |

7532

Name Blackwell Rickey Grade 11-A (12)
(Last) (First) 1977-78

Address Route 4 Chesnee S.C. 29323 Phone 461-2681

I want to follow the course (A) B C D E (Circle One)

1. ENGLISH II (Gen) Check Eng ?
2. ENGLISH III (Adv Occ)
3. AGRICULTURE II
4. Advanced Home making Dropped ?
5. Home
6. Home

Signature of Father

Wilfred Blackwell by Rickey
Signature of Mother

7533

PARENT'S SIGNATURE

First Report Cletus Blackwell

Second Report Cletus Blackwell

Third Report Cletus Blackwell

Fourth Report

REQUIREMENTS FOR PROMOTION

Eighth grade students must pass 3 of the 4 required subjects.

Ninth grade students must earn 4 units of credit to promote to the tenth grade.

Tenth grade students must have earned 8 units to be eligible for promotion to the eleventh grade.

Eleventh grade students must have earned 12 units applicable toward graduation to be eligible for promotion to the twelfth grade.

In order to graduate, a student must earn 18 units, including units on all required subjects.

Dropped out

Based on the number of units already earned

is (promoted to, retained in) the _____ grade.

Signature of Teacher Charlotte Lefford

B&W 67083-3M-4-13-74

SPARTANBURG COUNTY SCHOOLS

DISTRICT NUMBER TWO

SCHOOL SESSION 19 76 - 19 77

REPORT OF PROGRESS

Name Blackwell, Ricky

School Chesnee High

Grade 11A

Teacher Mrs. Charlotte L. Lefford

Principal Mr. Howard L. Painter

TO THE PARENTS OR GUARDIAN:

Teachers and administrators are interested in the same thing you are: namely, the growth and progress of our students. The purpose of this report to you is to indicate the growth and progress of your son or daughter.

If these grades do not reflect the quality of work that you think your child is capable of doing, attempt to arrive at the cause. Possibly it can be attributed to irregular attendance, late hours, too many social engagements or to some other cause which may be removed.

The school seeks advice and cooperation in its efforts to educate your child; therefore, you are encouraged to visit your school and confer with the teacher. However, conferences should be arranged at a time that will not take the teacher away from her class.

The signature of the parent is evidence that the report card has been examined. Please sign on the back and return promptly.

James H. Hendrix, Superintendent

7534

REPORT OF

Ricky Blackwell

SUBJECTS	1st 9 Wks.		2nd 9 Wks.		3rd 9 Wks.		4th 9 Wks.		AVERAGE	UNIT CREDIT
	SUBJECT GRADE	CONDUCT GRADE	SUBJECT GRADE	CONDUCT GRADE	SUBJECT GRADE	CONDUCT GRADE	SUBJECT GRADE	CONDUCT GRADE		
English II	F	A	F	A	C	A				
Health	F	A	F	A						
Agriculture	C	A	D	C						
Family Living	B	A	B	A	D	A				
Basic Business	C	A	C	A	D	B				
Days Present	45		44		30		5			
Days Absent	1		2		14		11			
Days Tardy										

adj

EXPLANATION OF GRADES

A-(95-100) Superior
B-(85-94) Above Average
C-(75-84) Average
D-(70-74) Below Average
F-(Below 70) Failure

Name Libby Blackwell 11-A

Date 5-19-76 Teacher Ensy Group II

Program Project Succeed - English I.D Number - (3 K #)

TEST	No. Right	Grade Score	Stanine %ile *	Stanine %ile **
Vocabulary	—	—		
Reading	43	5.8		
Spelling	—	—		
Arith. Computation	10	5.2		
Arith Prob. Solving	7	6.6		
Arith Total	17	5.6		

Stanine, %ile * (Specify) _____

Stanine, %ile ** (Specify) _____

This edition of ABLE is designed for hand scoring only. A special edition designed for MRC electronic scoring is also available.

Form A

PAGE 1

SOUTH CAROLINA SCHOOL HEALTH RECORD

NAME OF PUPIL: [illegible] Ricky Lee — DATE OF BIRTH: YEAR 1958 MONTH December DAY 18

SCHOOL (To Pencil): Cowpens Spartanburg — RACE White SEX Male

NAME OF PARENT/GUARDIAN: Walter F. & Mildred Bridges Blackwood — PHONE (In Pencil) 439-7601

RESIDENCE ADDRESS (In Pencil): Rt 2 Cherokee Co. — PHONE (In Pencil)

BUSINESS ADDRESS (In Pencil): Kendall Co - Spartanburg, S.C.

FAMILY PHYSICIAN (In Pencil): Dr. N. P. Hinson — DENTIST (In Pencil)

DISEASE AND ILLNESS HISTORY (Give year if possible; otherwise yes)

MEASLES	✓	INFANTILE PARALYSIS		RUNNING EAR	
GERMAN MEASLES		SORE THROAT (Frequent)	1st grade	WORMS (Type)	
MUMPS		RHEUMATIC FEVER		RUPTURE	
CHICKEN POX		HEART DISEASE		TYPHOID FEVER	
WHOOPING COUGH		HEADACHE (Frequent)		CONVULSIONS	
DIPHTHERIA		ASTHMA AND HAY FEVER			

OTHER DISEASES, INJURIES, OR OPERATIONS:

PREVENTIVE PROCEDURES (Inoculations and Special Tests)

Inoculations: (Dates)		Special Tests (Give year and results)									
		HEMOGLOBIN		FECES			OTHER				
	BOOSTER	YEAR	RESULT	YEAR	RESULT	TYPE	YEAR	RESULT	YEAR	RESULT	YEAR	RESULT
DIPHTHERIA BASIC SERIES 1959	1965		%								
WHOOPING COUGH BASIC SERIES 1959	1965		%								
TETANUS TOXOID BASIC SERIES 1959	1965		%								
SMALL POX FIRST TAKE 1965			%								
POLIOMYELITIS Salk's Type I + II + III											
TYPHOID FEVER											

HEALTH APPRAISAL — BY NURSE, TEACHER OR OTHER

GRADE	Pre-School	1	2	3	4	5	6	7	8	9	10	11	12
DATE (Year)													
HEIGHT IN INCHES Full / Series	49 in												
WEIGHT IN LBS. Full / Series	44½												
VISION WITHOUT GLASSES R			10/20										
VISION WITH GLASSES L			10/20										
TYPE OF TEST													
PERSON GIVING TEST		Teacher											
HEARING R													
HEARING L													
TYPE OF TEST													
PERSON GIVING TEST													

RECOMMENDED BY: THE SOUTH CAROLINA STATE DEPARTMENT OF EDUCATION
THE SOUTH CAROLINA STATE BOARD OF HEALTH — 1964

H-1 (1)

7536

PUPIL Blanchard, Billy Joe PARENT Charles & Mildred Blanchard SCHOOL Cooley Springs

TEACHERS' OBSERVATIONS

Code: X - needs attention; C - correction of defect

| | | |

Form 5

PUPIL Blackwell, Ricky Lee PARENT Clifton + Mildred Blackwell SCHOOL Caleb Grimsley

HEALTH APPRAISAL BY PHYSICIAN

Code. V - satisfactory; X - needs observation; XX - needs immediate attention; C - correction of defect.

GRADE AND DATE	Code	Correction	Code	Correction	Code	Correction	Code	Correction	Code	Correction
NUTRITION										
POSTURE										
GAIT										
MUSCULATURE										
SKIN										
SCALP										
EYES										
EARS										
NOSE										
MOUTH, GUMS										
SPEECH										
TEETH										
THROAT										
LYMPH NODES										
THYROID										
HEART										
LUNGS										
ABDOMEN										
BONES AND JOINTS										
FEET	✓									
HEMOGLOBIN	80%									
URINALYSIS	Neg									
INOCULATIONS GIVEN: (Date)										
SHOULD PHYSICAL ACTIVITY BE RESTRICTED?	No									
PARENT PRESENT										
EXAMINING PHYSICIAN	[illegible]									

PHYSICIAN'S REMARKS AND RECOMMENDATIONS (Give date)

Form C

PUPIL Blackwell, Rick Lee PARENT Clifton + Mildred Blackwell SCHOOL Cooley Springs

FOLLOW-UP NOTES OF HEALTH APPRAISAL BY PHYSICIAN: RESULTS AND DATES

DENTAL INSPECTION BY DENTIST

Code: Enter V in Grade Columns when indicated; enter C beside V in Column when condition has been corrected

GRADE	Pre-School	1	2	3	4	5	6	7	8	9	10	11	12
DATE													
TEETH APPARENTLY NORMAL													
DEFECTS IN TEMP. TEETH													
DEFECTS IN PERM. TEETH													
DISEASED GUMS													
STAINS, TARTAR													
NEEDS ORTHODONTIC CARE													
NUMBER LOST PERM. TEETH													
EXAMINING DENTIST													
TEETH CLEANED (Give Date)													
DATE OF TREATMENT		1st	2nd	3rd	4th	1st	2nd	3rd	4th	1st	2nd	3rd	4th
SODIUM FLUORIDE THERAPY													

RECOMMENDATIONS OF DENTIST (Give dates)

FOLLOW-UP NOTES (Give dates)

S. C. STATE DEPARTMENT OF EDUCATION
S. C. STATE BOARD OF HEALTH - 1953

7540

California Achievement Tests

FOR USE WITH 1963 NORMS

Lower Primary · GRADES 1 and 2 · Form ☐

DIAGNOSTIC PROFILE SHEET

DEVISED BY ERNEST W. TIEGS AND WILLIS W. CLARK

Name (Last, First, Middle): Blackwell, Rickey Lee — Date of Test: 1966 May — School: Cooley Springs — City: Rt 2, Chesnee — Date of Birth: 1958 [redacted] — Boy / Girl (Circle one) — Grade: First — Teacher or Examiner: E Bishop — Pupil's Age: 7 Years 5 Months (89 Total Mos.)

READING

1. READING VOCABULARY

	A. Word Form	B. Word Recognition	C. Meaning of Opposites	D. Picture Association	TOTAL (A + B + C + D)
Grade Placement					1.3
AAGP*					1.4
Other Scores†					
Raw Score	14	8	7	8	37
Possible Score	25	20	15	15	75

2. READING COMPREHENSION

	TOTAL READING COMPREHENSION	TOTAL READING
Grade Placement	1.6	1.4
AAGP*	1.3	1.4
Other Scores†		
Raw Score	5	42
Possible Score	15	90

ARITHMETIC

3. ARITHMETIC REASONING

	A. Meanings	B. Problems	TOTAL (A + B)
Grade Placement			1.4
AAGP*			1.3
Other Scores†			
Raw Score	15	6	21
Possible Score	30	15	45

4. ARITHMETIC FUNDAMENTALS

	C. Addition	D. Subtraction	TOTAL (C + D)	TOTAL ARITHMETIC
Grade Placement			1.4	1.4
AAGP*			1.4	1.4
Other Scores†				
Raw Score	15	12	27	48
Possible Score	25	20	45	90

LANGUAGE

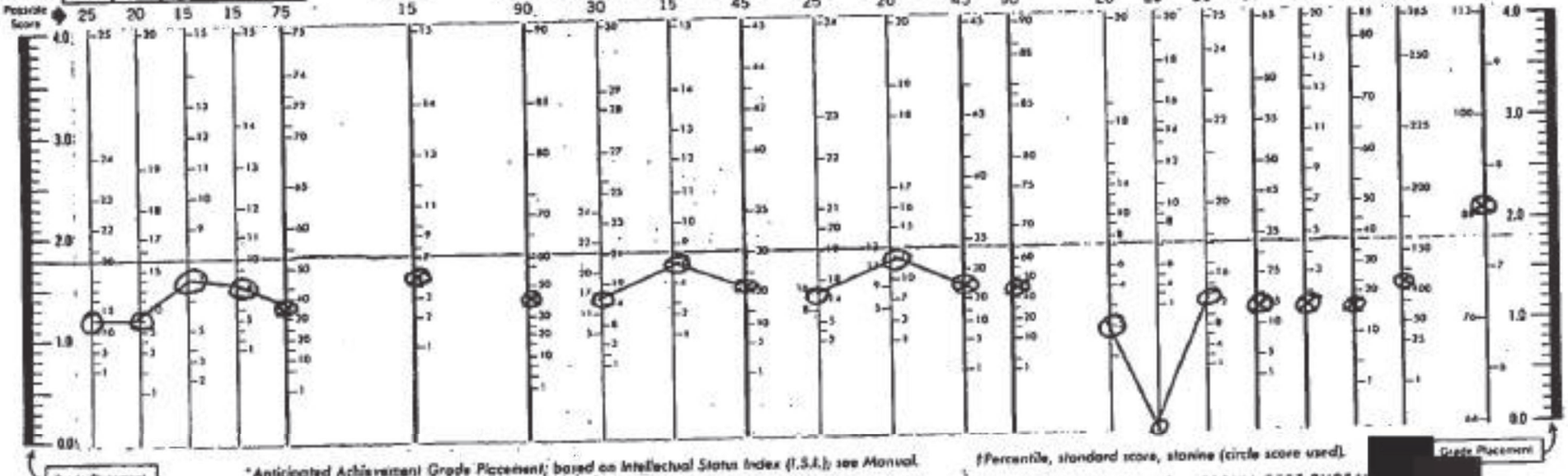
5. MECHANICS OF ENGLISH

	A. Capitalization	B. Punctuation	C. Word Usage	TOTAL (A + B + C)
Grade Placement				1.0
AAGP*				1.4
Other Scores†				
Raw Score	2	0	13	15
Possible Score	20	20	25	65

6. SPELLING

	TOTAL SPELLING	TOTAL LANGUAGE	TOTAL BATTERY
Grade Placement	1.2	1.2	1.3
AAGP*	1.4	1.4	1.4
Other Scores†			
Raw Score	1	16	106
Possible Score	20	85	265

AGP	1.8
ISI	78
GCA	86
CA	89



*Anticipated Achievement Grade Placement; based on Intellectual Status Index (I.S.I.); see Manual. †Percentile, standard score, stanine (circle score used).

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Diagnostic Analysis of Learning Difficulties*

California Achievement Tests—Lower Primary Battery

1. Reading Vocabulary

A. WORD FORM

1, 2, 4 ..... Identical words, lower case

2, 7, 12, 16, 17, 21, 24, 25] Different words, lower case

14, 18, 23 ..... Different words, capitals

8, 9, 8, 11, 13, 15, 22] Identical words, mixed forms

20 ..... Different words, mixed forms

5, 10, 18 ..... Reversed words

B. WORD RECOGNITION

1, 11 ..... Gross differences

2, 3, 6, 7, 8, 12, 19, 16] ..... Final sounds

4, 8, 10, 16, 17] ..... Initial sounds

8, 14, 15, 19, 20] ..... Middle sounds

C. MEANING OF OPPOSITES

1-15 ..... Basic vocabulary

D. PICTURE ASSOCIATION

1-9 ..... Identification of objects

10-15 ..... Location of objects

2. Reading Comprehension

1, 2 ..... Simple directions

3, 4, 5 ..... Directions requiring choice

6, 7, 8, 11, 12, 13] ..... Directly stated facts

9, 10, 14, 15 ..... Inferences

TEST OF LETTER RECOGNITION

1, 2, 3, 4, 5, 6] ..... Lower case

7, 8, 9, 10, 11, 12] ..... Capitals

13-24 ..... Mixed forms

3. Arithmetic Reasoning

A. MEANINGS

1, 2, 3 ..... Picture-symbol association

4, 5, 6, 7, 8, 9] ..... Recognizing numbers

10, 11, 16, 17, 18, 19] ..... Writing numbers

12, 29 ..... Sequence of numbers

13, 14, 15 ..... Comparison of numbers

21, 22, 23 ..... Value of coins

24, 25 ..... Telling time

26, 27, 28 ..... Weight & time concepts

29, 30 ..... Symbols & abbreviations

B. PROBLEMS

1, 2, 3, 6, 8, 10, 11, 12, 15] ..... One-step problems

4, 7, 14 ..... Budgeting

5 ..... Sharing

9, 6, 7, 9, 13, 14] ..... Two-step problems

4. Arithmetic Fundamentals

A. ADDITION

1-20 ..... Number facts

6, 8, 11, 13 ..... Adding zero

21-25 ..... Two-place simple addition

27, 28 ..... Carrying

B. SUBTRACTION

1-15 ..... Number facts

1, 3, 5 ..... Subtracting zero

16-20 ..... Two-place simple subtraction

20 ..... Borrowing

5. Mechanics of English

A. CAPITALIZATION

1, 2, 8, 14 ..... Names of persons or animals

3, 11, 18, 18 ..... Pronoun "I"

4, 9, 17, 20 ..... First words of sentences

8, 7, 9, 12, 16] ..... Names of months or days

10, 13, 15 ..... Names of cities

B. PUNCTUATION

1, 3, 5, 6, 9, 15, 17, 20] ..... Periods

2, 4, 7, 10, 12, 14, 19] ..... Question marks

8, 11, 13, 16, 18] ..... Commas

C. WORD USAGE

1, 4, 8, 11, 14, 25] ..... Number

2, 3, 9, 10, 12, 19, 23, 24] ..... Tense

5, 7, 13, 15, 16, 17, 18, 20] ..... Good usage

6, 21 ..... Person

22 ..... Case

6. Spelling (1-20) ..... See profile

* Consult Part 2 of the Manual for use.

7542

FOR USE WITH 1963 NORMS

California Achievement Tests

Upper Primary · GRADES H2-3-L4 · Form ☐

DIAGNOSTIC PROFILE SHEET

DEVISED BY ERNEST W. TIEGS AND WILLIS W. CLARK

Name Blevins, Rickey (Last, First, Middle) Date of Test 67 - 11 - 6 (Year, Month, Day)

School Cooley Springs City Chesnee Date of Birth [redacted]

(Boy) Girl (circle one) Grade 3 Teacher or Examiner Emily B. Shields Pupil's Age 8 - 11 (107) (Years, Months, Total Mos.)

READING

1. READING VOCABULARY

A. Word Recognition	B. Meaning of Opposites	TOTAL (A + B)
13	16	29
		3.2
		3.1
Possible Score: 20	25	45

2. READING COMPREHENSION

C. Following Directions	D. Reference Skills	E. Interpretations	TOTAL (C + D + E)	TOTAL READING
6	8	14	28	57
			2.9	3.0
			3.1	3.1
Possible Score: 15	15	25	55	100

ARITHMETIC

3. ARITHMETIC REASONING

A. Meanings	B. Signs and Symbols	C. Problems	TOTAL (A + B + C)
4	2	3	9
			2.5
			3.1
Possible Score: 19	11	10	40

4. ARITHMETIC FUNDAMENTALS

D. Addition	E. Subtraction	F. Multiplication	TOTAL (D + E + F)	TOTAL ARITHMETIC (Division not included)	G. Division (extra credit)
46	29	1	76	84	2
			3.0	2.8	
			3.1	3.1	
Possible Score: 50	50	50	150	190	50

LANGUAGE

5. MECHANICS OF ENGLISH

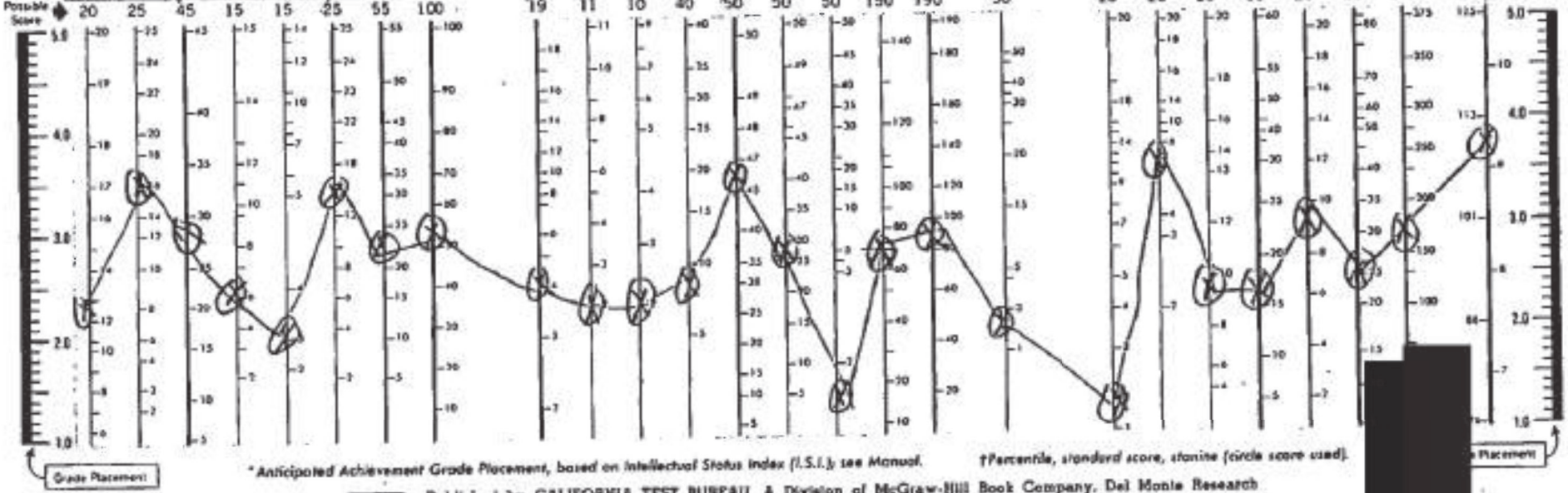
A. Capitalization	B. Punctuation	C. Word Usage	TOTAL (A + B + C)
2	5	9	16
			2.2
			3.1
Possible Score: 20	20	20	60

6. SPELLING

TOTAL SPELLING	TOTAL LANGUAGE	TOTAL BATTERY
9	25	163
2.9	2.4	2.9
3.1	3.1	3.1
Possible Score: 25	85	375

AGP	3.2
ISI	91
GCA	3.5
CA	101

Grade Placement | AAGP* | Other Scores† | Raw Score



*Anticipated Achievement Grade Placement, based on Intellectual Status Index (I.S.I.); see Manual.

†Percentile, standard score, stanine (circle score used).

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Diagnostic Analysis of Learning Difficulties*

California Achievement Tests—Upper Primary Battery

1. Reading Vocabulary

A. WORD RECOGNITION

- 1, 12 — Cross-similarities
- 2, 3, 6, 7, 8, 9, 10, 13, 15, 16, 17, 18 — Final sounds
- 4, 5, 14, 19, 20 — Middle sounds
- 11 — Initial sounds

B. MEANING OF OPPOSITES

- 1-25 — Basic vocabulary

2. Comprehension

C. FOLLOWING DIRECTIONS

- 1, 2, 3, 6, 10, 11 — Simple directions
- 4, 5, 7, 8, 9, 12, 13, 14, 15 — Directions requiring choice

D. REFERENCE SKILLS

- 1, 2 — Parts of book
- 3, 4 — Use of dictionary
- 5, 6, 7, 8 — Alphabetizing
- 9, 10, 11 — Table of contents
- 12, 13 — Use of index
- 14, 15 — Reading a graph

E. INTERPRETATION OF MATERIAL

- 1, 6, 11 — Topic or central idea
- 2, 3, 4, 12, 13, 14, 15 — Directly stated facts
- 5, 6, 7, 9, 10, 16, 17, 18, 19, 20, 21, 22 — Inferences
- 23, 24, 25 — Sequence of events

TEST OF WORD FORM

- 1, 5, 9 — Identical words, lower case
- 2, 3, 8, 10 — Different words, lower case
- 11, 13 — Identical words, script
- 12, 14, 21, 24 — Diff. words, script
- 16, 22 — Identical words, capitals
- 15, 17 — Different words, capitals
- 18, 20, 23 — Identical words, mixed forms
- 19, 23 — Different words, mixed forms
- 4, 6, 7 — Reversed words

3. Arithmetic Reasoning

A. MEANINGS

- 1, 2 — Sequence of numbers
- 3 — Writing numbers
- 4, 5, 8 — Value of coins
- 7, 8, 9 — Writing money
- 10, 11 — Vocabulary
- 12, 13 — Telling time
- 14, 15, 16 — Comparison of numbers
- 17, 18, 19 — Roman numerals

B. SIGNS AND SYMBOLS

- 1-8 — Meaning and use of signs
- 9-11 — Abbreviations

C. PROBLEMS

- 1, 2, 4 — One-step problems
- 3, 5, 6, 7, 8, 9, 10 — Two-step problems
- 6, 7 — Sharing and averaging
- 8, 9, 10 — Budgeting

4. Arithmetic Fundamentals

D. ADDITION

- 1-45 — Number facts
- 2, 4, 6, 12, 17, 18, 20, 25, 46 — Adding zeros
- 46, 47 — Two-place simple addition
- 48, 49, 50 — Carrying

E. SUBTRACTION

- 1-45 — Number facts
- 2, 6, 12 — Subtracting zeros
- 48, 49 — Two- and three-place simple subtraction
- 44, 45, 47, 48, 50 — Borrowing

F. MULTIPLICATION

- 1-45 — Number facts
- 9, 21, 24, 27, 30, 33, 34, 38 — Multiplying zeros
- 46, 47, 48 — Two- and three-place simple multiplication
- 48, 50 — Carrying

G. DIVISION

- 1-45 — Number facts
- 4, 6, 14, 28, 35 — Dividing zeros
- 46 — Two-place simple division
- 47, 48, 49, 50 — Carrying

5. Mechanics of English

A. CAPITALIZATION

- 1, 5 — Pronoun "I"
- 2, 7, 18 — Names of persons
- 3, 4, 8 — Names of months or days
- 6, 9, 10, 12, 13 — Names of places
- 14, 19 — First words of quotations
- 11, 15, 17, 16, 20 — First words of sentences

B. PUNCTUATION

- 1, 8, 10, 11, 13, 14, 16, 17 — Periods
- 2, 3, 5, 7, 19 — Question marks
- 4, 6, 8, 12, 15, 16, 20 — Commas

C. WORD USAGE

- 1, 7 — Case
- 2, 11, 14, 16, 18 — Tense
- 3, 4, 9, 17 — Number
- 5, 6, 8, 10, 12, 13, 15, 19, 20 — Good usage

6. Spelling (1-25). See profile

* Consult Part II of the Manual for uses.

Spartanburg County School District Two
Route 6
Spartanburg, South Carolina 29303

February 9, 1967

Dear Parent or Guardian:

The following is an immunization schedule recommended by the Executive Committee of the South Carolina State Board of Health. If your child has not been immunized or needs his booster shots, I urge you to give consideration to this matter. Please take your child to the family doctor or to the Health Department, have them complete the immunization schedule on the lines below, and return it to the school.

Please keep in mind that South Carolina Law states that all children must have a smallpox vaccination before entering school.

1. Diphtheria-Pertussis (whooping cough) Tetanus (lock jaw) D.P.T.
   Start at age 2 months-3 doses given-1 each month
   Booster shot at 1 year then every 2 or 3 years
2. Oral polio-Sabin Vaccine
   Schedule same as Diphtheria-Pertussis-Tetanus
3. Smallpox
   Given at 6 months
   Given before entering school-South Carolina Law
   Given again in 7th grade
   Given again in 12th grade
4. Red Measles vaccine-VERY IMPORTANT
   Given at one year of age and through first grade
5. Diphtheria-Tetanus-adult type given every 3 to 5 years

Let's keep our children healthy!

Sincerely,

Juanita Robbins

(Mrs.) Juanita Robbins, R. N.

JR:jms

Inoculation	Give Date Basic Series	Give Date Boosters	Signature of Doctor or Health Department
Diphtheria			
Whooping Cough			
Tetanus			
Oral Polio-Sabin			
Smallpox			
Red Measles			

*Health Department immunization schedule
Chesnee Clinic-Thursday-2:00 to 4:00 P. M. weekly
Spartanburg Clinic-Monday, Wednesday, Friday-9:00 A. M. to 4:30 P.M. weekly

Form No. LHS-1

S. C. STATE BOARD OF HEALTH
Immunization Record

County _____ Address [redacted] -58

Name Blackwell Rickey Sex M Race W Age born

Parent's Name Mildred L Slate Address Rt 2 Chesnee

	1st Dose	2nd Dose	3rd Dose	Booster
Diphtheria	3-9-54	4/6/4	2-4-59	8/18/60
Pertussis	B 8/26/64			
Tetanus				
Poliomyelitis	6-20-65	9-17-59	1/15/1	3-4-61
Smallpox	6-2-65			
Typhoid				
	Sch (1) 8/26/64		9/17/64	6-2-65

7546

CALIFORNIA SHORT-FORM TEST OF MENTAL MATURITY

1963 S-FORM/LEVEL 1

DEVISED BY E. T. SULLIVAN, W. W. CLARK, AND E. W. TIEGS

Name Blackwell, Rickey Lee (Last, First, Middle)

School Cooley Springs City Pl½, Chesnee

Boy / Girl (Circle one) Grade First Teacher or Examiner Elizabeth Bishop

Date of Test 1966 (Year) Apr. (Month) 19 (Day)

Date of Birth 1958 (Year) [redacted] (Month) (Day)

C.A. 7 (Years) 5 (Months) (89) (Total Mos.)

TEST/FACTOR	1. OPPOSITES	2. SIMILARITIES	3. ANALOGIES	I. LOGICAL REASONING	4. NUMERICAL VALUES	5. NUMBER PROBLEMS	II. NUMERICAL REASONING	III. VERBAL CONCEPTS (6. VERBAL COMPREHENSION)	IV. MEMORY (7. DELAYED RECALL)	LANGUAGE (Tests 5, 6, 7)	NON-LANGUAGE (Tests 1, 2, 3, 4)	TOTAL	I.S.I.*
POSSIBLE SCORE	12	12	12	36	14	10	24	25	15	50	50	100	78
RAW SCORE	5	1	6	12	7	4	11	12	6	22	19	41	ACTUAL G.P. 1.8
PERCENTILE*				4			31	14	21	14	1	1	GRADE C.A. 8-6

	LANGUAGE	NON-LANGUAGE	TOTAL
M.A.†	80	73	74
RAW SCORE	22	19	41
I.Q.†	73	67	68

PERCENTILE RANK

STANDARD SCORE

STANINE

INTELLIGENCE QUOTIENT

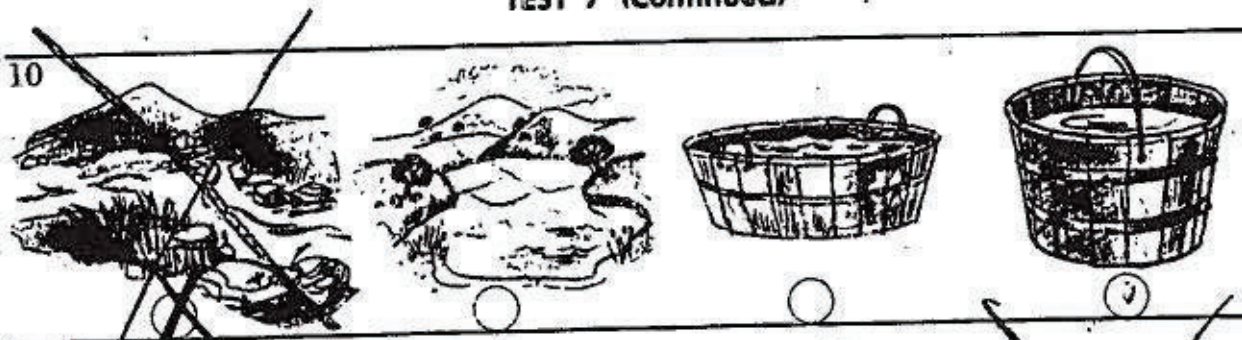
*Unless otherwise indicated, national norms appropriate for pupil's chronological age are used.

†Intellectual Status Index; see Manual.

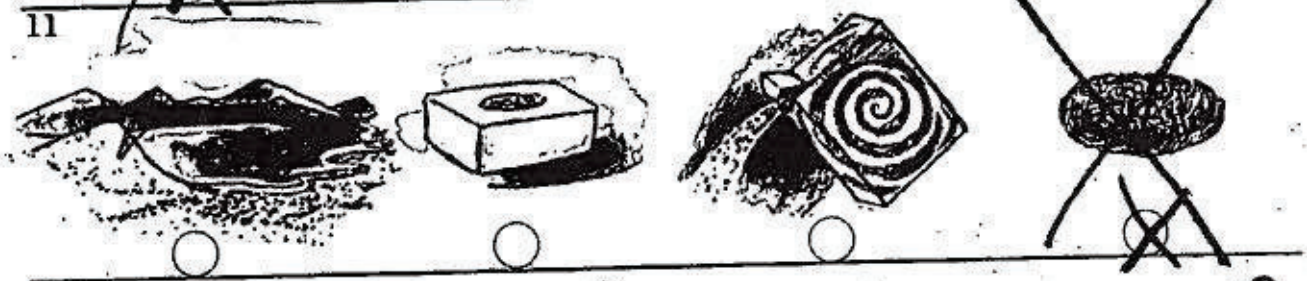
†Must be obtained [redacted] anual.

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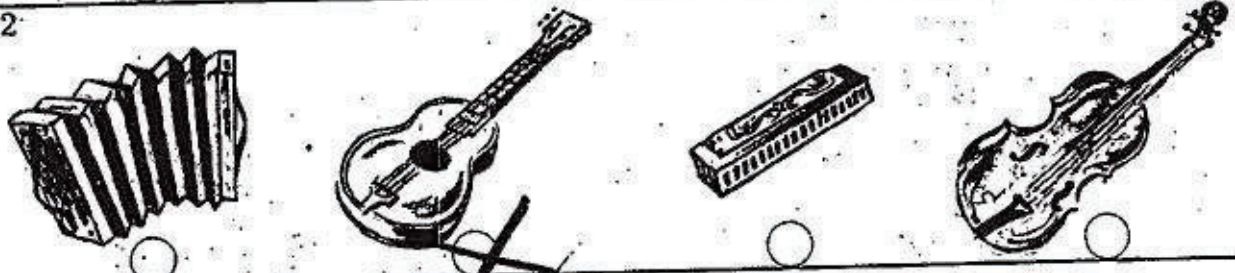
10



11



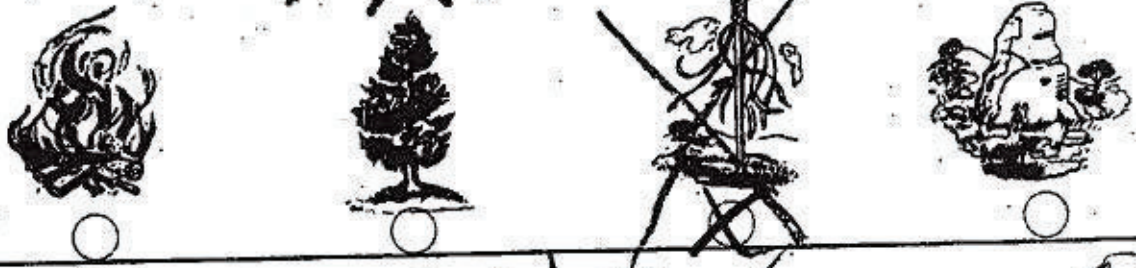
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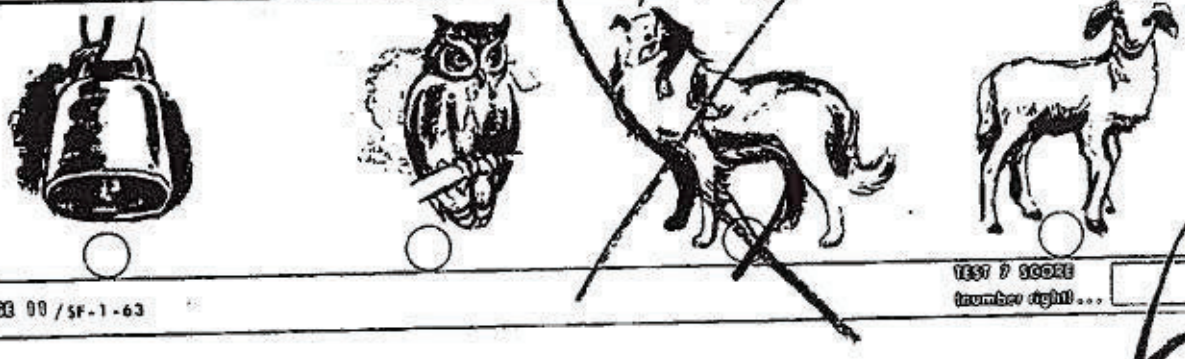
13



14



15



TEST 7 SCORE
(number right) . . .

6

7548

CALIFORNIA SHORT-FORM TEST OF MENTAL MATURITY

1963 S-FORM/LEVEL 1H

DEVISED BY E. T. SULLIVAN, W. W. CLARK, AND E. W. TIEGS

Name Blackwell Rickey Lee (Last, First, Middle)

School Cooley Springs City Chesnee

(Boy) Girl (Circle one) Grade 3 Teacher or Examiner Emily Stubbs

Date of Test 67-10-10 (Year, Month, Day)

Date of Birth 58-[redacted] (Year, Month, Day)

C.A. 8 Years 11 Months (107) Total Mos.

TEST/FACTOR	I. OPPOSITES	2. SIMILARITIES	3. ANALOGIES	I. LOGICAL REASONING	4. NUMERICAL VALUES	5. NUMBER PROBLEMS	II. NUMERICAL REASONING	III. VERBAL CONCEPTS (6. VERBAL COMPREHENSION)	IV. MEMORY (7. DELAYED RECALL)	LANGUAGE (Tests 5, 6, 7)	NON-LANGUAGE (Tests, 1, 2, 3, 4)	TOTAL	I.S.I.†
POSSIBLE SCORE	13	13	15	41	14	10	24	25	20	55	55	110	91
RAW SCORE	1	10	8	19	6	5	11	3	4	12	25	37	ACTUAL G.P. 3.1
PERCENTILE*				24			66	14	27	24	31	24	GRADE C.A. 102

	LANGUAGE	NON-LANGUAGE	TOTAL
M.A.†	96	99	96
RAW SCORE	12	25	37
I.Q.†	87	90	87

STANDARD SCORE

STANINE

INTELLIGENCE QUOTIENT

*Unless otherwise indicated, national norms appropriate for pupil's chronological age are used.

†Intellectual Status Index; see Manual.

†Must be obtained from [redacted] Manual.

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Rickey Blackwell Trucking Summary Chart

Location & Timeframe	Relevant Information & Incidents	Certification or Licensing Required	Source
K&S Trucking, approximately 1979	▪ Obtained job through Cletus Blackwell ▪ Rickey did not make runs by himself ▪ Ken White reported "if you was breathing and could climb in the cab, I'd hire you;" and "if you could drive around the block without hitting anybody, I'd hire you."	Public Service License or Chauffer's License – no testing required	▪ Interview with Ken White (owner of K&S Trucking)
Hess Trucking, 1/23/1982-5/7/1983	▪ Obtained job through Cletus Blackwell ▪ Hauled oil, not gas ▪ 2/9/1983 – cited for speeding (p. 16[1]) ▪ 4/27/1983 – cited for speeding 10 MPH or less (p. 16) ▪ 5/7/1983 – accident; cited for speeding 10 MPH or less (p. 16) ▪ 5/7/1983 – fired from Hess due to accident ("had a [sic.] accident") (p. 2)	Unknown	▪ Belue Trucking Records ▪ Interview with Rickey Blackwell
B&R Transport, 1982	▪ Applied because friends worked there ▪ 6/17/1982 – accident; admitted to ER; cited for speeding under 10 MPH (pp. 16, 52) ▪ Rickey reported he left because he made an illegal U-turn and was fired; he went back to Hess	Unknown	▪ Belue Trucking Records ▪ Interview with Rickey Blackwell
Belue Trucking, 7/6/1984-early 1986	▪ Obtained job through Cletus Blackwell ▪ 7/6/1984 – Belue internally administered a Driver's Road Test Examination and a Commercial Driver Written Examination (unscored, unsigned, not signed by test administrator, forged signature by trucking agency) (pp. 5, 11-12, 49-51) ▪ 9/27/1984 – accident; Rickey's "left hand got caught between chain and binder when driver was pulling the binder;" admitted to ER with fractured finger (pp. 15, 53) ▪ 11/8/1984 – Rickey called out of work on 11/7/1984 saying he would return 11/8/1984 but failed to show (p. 18) ▪ 11/28/84 – "Offense: failed to come in on top dispatch. . . . Did not call in." "[S]tated that because it was raining he thought top loads would be canceled." Decision: "Told Ricky that in future it was a must that he came on in unless someone called & cancelled ld. – that if some reason he could not come in he must call someone at terminal & notify so dispatch could have time to cover his assignment." (p. 19)	Driver's Certification – testing administered internally by trucking company	▪ Belue Trucking Records ▪ Interview with Rickey Blackwell

[1] Page numbers refer to Blackwell Trucking Records Exhibit.

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
65
CASE NO. 2018-CP-42-00928

	▪ 12/20/1984 – Writeup: "Driving for more than ten (10) hours. 12-18-1984 = 10 ½ hrs. driving." Ken Duncan writes: "Please come in as soon as possible and let's go over this matter." (p. 20) ▪ 12/28/1984 – Accident; "backing into dock at Crown Cork Seal hit another trailer." Damage: "Damaged driver side fr." (p. 21) ▪ 4/3/1985 – Accident; "was turning in road to go to job site and when making swing to make turn septic tank cave in." Damage: "Septic tank top broken." Cited for speeding - 10 MPH or less. (pp. 24, 43) ▪ 4/17/1985 – First Warning: "Failure to prepare daily logs in form and manner prescribed. Not showing your unloading time on line 4. . . . The above are in violation of the federal bureau of motor carrier saf[e]ty regulations if not adhered to." (p. 25) ▪ 5/20/1985 - Citation for disregarding sign or signal. (p. 43) ▪ 5/22/1985 – Writeup: "Problem: Was reported to me today that Ricky has been riding his wife & others in truck leased to Belue Trucking." (p. 26) ▪ 5/25/1985 –Note: "Was told this AM that Mr. Blackwell came to CC&S to go out Fri nite & had his kid bro. in truck with him. Mr. Belue let him take bro. home but Mr. Blackwell did not show back up to cover load." (p.26) ▪ 6/8/1985 & 6/9/1985 - Missing logs. (p. 27) ▪ 6/17/1985 & 6/19/1985 - Failure to forward logs. (p. 28) ▪ 7/10/1985 – Accident: Lillington, NC; cited for failure to reduce speed to avoid accident. (pp. 29-32) ▪ 7/15/1985 – Employee Termination; Reason: "rear end." Eligible for rehire: "No." (p. 33) ▪ 2/24/1986 - Reinstated as employee at Belue (pp. 38-39)		
John Brannon and K&S Trucking, 1985	▪ Returned for some trucking work with previous employers ▪ Brannon rode with Rickey on trips to Texas, telling him where to go ▪ Rickey had difficulty keeping logs	Unknown	▪ SSA Earning Report (p. 67) ▪ Interview with Rickey Blackwell
1986-1998	▪ No SSA earnings (pp. 67-68)	N/A	▪ SSA Earning Report
1992	▪ CDL First Issued (p. 54) ▪ No record of Rickey driving a commercial vehicle with this license	Commercial Driver's License	▪ 10 Year Driver Record

Blackwell Trucking Records

Table of Contents

Page(s)	Record
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52-53	Spartanburg General Hospital Records (Excerpt)
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64-69	Social Security Administration Earnings Record

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
66
CASE NO. 2018-CP-42-00928

will the
need the
11 Mrs. on app.

APPLICATION FOR EMPLOYMENT

APPLICANT: READ AND SIGN BEFORE SUBMITTING THIS APPLICATION:

I understand that the information in this application will be used and that prior employers will be contacted for purposes of investigation as required by 391.23 of the Motor Carrier Safety Regulations.

Rickey L Blackwell
SIGNATURE OF APPLICANT

7-6-84
DATE

COMPANY _____ STREET ADDRESS _____

CITY, STATE AND ZIP CODE _____ 461-7281 aunt 461-8613 next door Ricky's # 461-8947

NAME Rickey Lee Blackwell (First) (Middle) (Maiden Name, if any) (Last) PHONE 461-7681 mother SOCIAL SEC. NO. [redacted]

ADDRESS Route 4 Box 318 (Street) Chesnee (City) S.C 29323 (State & Zip Code) HOW LONG? 2 mths

ADDRESS FOR PAST THREE YEARS (Street) (City) (State & Zip Code) HOW LONG? _____

(Street) (City) (State & Zip Code) HOW LONG? _____

(ATTACH SHEET IF MORE SPACE IS NEEDED)

SEX M HT. 6'1" WT. 145 DATE OF BIRTH *(not discriminated against due to age or sex)* [redacted]

CHECK ONE: SINGLE ___ ENGAGED ___ MARRIED ✓ SEPARATED ___ DIVORCED ___ WIDOWED ___

NO. OF DEPENDENTS 0 AGES OF DEPENDENTS _____

DO YOU OWN HOME OR RENT? OWN AVERAGE MONTHLY LIVING EXPENSES _____

IS YOUR SPOUSE WORKING? NO WHERE? _____

IN CASE OF EMERGENCY NOTIFY: Angela Blackwell (Name) Route 4 Chesnee (Address) 461-8613 (Phone)

POSITION APPLIED FOR Truck Driver TEMPORARY OR PERMANENT Permanent

HAVE YOU WORKED FOR THIS COMPANY BEFORE? NO WHERE? _____

DATES: FROM _____ TO _____ RATE OF PAY _____ POSITION _____

REASON FOR LEAVING _____

NAMES OF RELATIVES IN OUR EMPLOY _____

ARE YOU NOW EMPLOYED? NO IF NOT, HOW LONG SINCE LEAVING LAST EMPLOYMENT? _____

WHO REFERRED YOU _____ RATE OF PAY EXPECTED ANY

PHYSICAL HISTORY

LIST ANY PHYSICAL LIMITATIONS (SUCH AS EYESIGHT, LIMB IMPAIRMENT, DIABETES, HEMORRHOIDS) _____

ARE YOU PHYSICALLY CAPABLE OF HEAVY MANUAL WORK YES

DATE OF LAST PHYSICAL EXAMINATION 5-7-84 DOCTOR'S NAME AND ADDRESS Robert Taylor Spartanburg

EVER INJURED ON THE JOB? NO GIVE NATURE AND DEGREE OF SUCH INJURIES _____

HOW MUCH TIME LOST FROM WORK IN PAST THREE YEARS FOR ILLNESS None

HAVE YOU RECEIVED WORKMEN'S COMPENSATION NO WHEN _____

EMPLOYMENT RECORD (Attach Sheet if More Space is Needed)

Note: D.O.T. Requires that Employment for at Least 3 Years be Shown

LAST EMPLOYER: NAME Cherokee Textile

ADDRESS Spartanburg S.C

POSITION HELD press operator FROM 9-6-84 TO _____ SALARY $5.41

REASONS FOR LEAVING (still) work [illegible]

SECOND LAST EMPLOYER: NAME John Brannon HU-8496

ADDRESS Chesnee S.C

POSITION HELD Truck Driver FROM 5-10-83 TO 2-6-84 SALARY $150.00

REASONS FOR LEAVING Had to have full time job

THIRD LAST EMPLOYER: NAME Amerada Hess n.g

ADDRESS Spartanburg S.C

POSITION HELD Truck Driver FROM 1-23-82 TO 5-7-83 SALARY $6.70

REASONS FOR LEAVING Had a accident

MILITARY STATUS

HAVE YOU SERVED IN THE U.S. ARMED FORCES? no BRANCH _____ DATES: FROM _____ TO _____

RANK AT DISCHARGE _____ DATE OF DISCHARGE _____

(IN N.J. DO NOT FILL IN THIS LINE UNLESS HIRED) DRAFT STATUS _____ RESERVE STATUS _____

EDUCATION

CIRCLE HIGHEST GRADE COMPLETED: 1 2 3 4 5 6 7 8 HIGH SCHOOL: 1 2 3 4 COLLEGE: 1 2 3 4

LAST SCHOOL ATTENDED Chesnee High School (Name) Chesnee (City)

GENERAL

HAVE YOU EVER BEEN BONDED no NAME OF BONDING COMPANY _____

HAVE YOU EVER BEEN REFUSED BOND no IF YES, WHY _____

HAVE YOU EVER BEEN CONVICTED OF ANY CRIME no

HAVE YOU EVER BEEN KNOWN BY ANY NAME OTHER THAN THE ONE ON THIS APPLICATION _____

EXPERIENCE AND QUALIFICATIONS – DRIVER

	STATE	LICENSE NO.	TYPE	EXPIRATION DATE
DRIVER LICENSES	S.C	[redacted]	Class 3	11-18-86

A. Have you ever been denied a license, permit or privilege to operate a motor vehicle? YES _____ NO ✓

B. Has any license, permit or privilege ever been suspended or revoked? YES _____ NO ✓

IF THE ANSWER TO EITHER A OR B IS YES, ATTACH STATEMENT GIVING DETAILS

DRIVING EXPERIENCE

CLASS OF EQUIPMENT	TYPE OF EQUIPMENT (VAN, TANK, FLAT, ETC.)	DATES FROM	DATES TO	APPROX. NO. OF MILES (TOTAL)
STRAIGHT TRUCK				
TRACTOR AND SEMI-TRAILER	van, tank	1-23-82	2-6-84	
TRACTOR – TWO TRAILERS				
OTHER				

LIST STATES OPERATED IN FOR LAST FIVE YEARS Texas, Oklahoma, Tennessee, New York, New Jersey

SHOW SPECIAL COURSES OR TRAINING THAT WILL HELP YOU AS A DRIVER: _____

ACCIDENT RECORD FOR PAST 3 YEARS OR MORE (ATTACH SHEET IF MORE SPACE IS NEEDED)

DATES	NATURE OF ACCIDENT (HEAD-ON, REAR-END, UPSET, ETC.)	FATALITIES	INJURIES
ST ACCIDENT 5-7-82			None
NEXT PREVIOUS			
NEXT PREVIOUS			

TRAFFIC CONVICTIONS AND FORFEITURES FOR THE PAST 3 YEARS (OTHER THAN PARKING VIOLATIONS)

LOCATION	DATE	CHARGE	PENALTY
Chapin S.C	5-7-82	To Fast For Cond Cond	2 Points
Spartanburg S.C	2-20-81	Speeding	4 Points

(ATTACH SHEET IF MORE SPACE IS NEEDED)

EXPERIENCE AND QUALIFICATIONS – MAINTENANCE

LIST TYPES OF MAINTENANCE EXPERIENCE AND YEARS OF EACH

SHOW EQUIPMENT YOU CAN OPERATE	CHECK	YEARS OF EXPERIENCE	EQUIPMENT	CHECK	YEARS OF EXPERIENCE
Woodworking Equipment	✓	1	Electric Welder		
Sheet Metal Equipment			Oxyacetylene Welder		
Clutch Rebuilding			Paint Spray Gun		
Differential Rebuilding			Wheel & Tire Balancing Machine		
Transmission Rebuilding			Tire Recapping Mold		
Body Work			Engine Dynamometer		
Frame & Axle Straightening Equipment			Chassis Dynamometer		
Electrical & Ignition Repair			Magnetic Crack Tester		
Engine Rebuilding Equipment			Vacuum & Air Brakes		
Diesel Injection Equipment			Other:		

LIST COURSES AND TRAINING IN MAINTENANCE WORK

EXPERIENCE AND QUALIFICATIONS – CLERICAL

INDICATE TRAINING AND SHOW EXPERIENCE IN THE FOLLOWING:

*INDICATE WORDS PER MINUTE	TRAINING (CHECK)	YEARS OF EXPERIENCE		TRAINING (CHECK)	YEARS OF EXPERIENCE
Typing*			Rates **		
Shorthand *			OS & D		
Billing			Interline		
TWX			Claims		
PBX			Cashier		
Key Punch Operator			Accounting		
Calculator			Dispatcher		
Dictating Machine Transcriber			Tabulator		
Bookkeeping Machine			Mimeograph		
Adding Machine			**Indicate tariffs with which you		
Other:			have worked		

LIST COURSES AND TRAINING FOR OFFICE WORK

EXPERIENCE AND QUALIFICATIONS – PLATFORM

LIST TYPES OF PLATFORM EXPERIENCE AND YEARS OF EACH _____

LIST PLATFORM EQUIPMENT YOU CAN OPERATE (LIFT TRUCK, ETC.) _____

SHOW COURSES OR TRAINING IN PLATFORM WORK _____

TO BE READ AND SIGNED BY APPLICANT

It is agreed and understood that any misrepresentations of information given above shall be considered an act of dishonesty.

It is agreed and understood that the employer or his agents may investigate the applicant's background to ascertain any and all information of concern to applicant's record, whether same is of record or not, and applicant releases employers and persons named herein from all liability for any damages on account of his furnishing such information.

The applicant agrees to furnish such additional information and complete such examinations as may be required to complete his employment file.

It is agreed and understood that this application for employment in no way obligates the employer to employ the applicant.

It is agreed and understood that if hired, the employee may be on a probationary period during which time he may be discharged without recourse.

This certifies that this application was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge.

7-6-54
Date

Richard E Blackwell
Applicant's Signature

HERE DOWN FOR OFFICE USE ONLY

PROCESS RECORD

APPLICANT HIRED _____ REJECTED _____

DATE EMPLOYED _____ POINT EMPLOYED _____

DEPARTMENT _____ CLASSIFICATION _____

(IF REJECTED, SUMMARY REPORT OF REASONS SHOULD BE PLACED IN FILE)

THIS SECTION TO BE FILLED IN BY RESPONSIBLE OFFICER OR COMPANY REPRESENTATIVE

	SUPERIOR	GOOD	FAIR	BELOW AVERAGE	POOR	WRITTEN RECORD ON FILE
1. APPLICATION						
2. INTERVIEW						
3. PHYSICAL EXAM						
4. PAST EMPLOYMENT						
5. WRITTEN EXAM						
6. ROAD TEST						
7. POLICE AND TRAFFIC RECORD						

SIGNATURE OF INTERVIEWING OFFICER _____

TRANSFERS

FROM: _____ TO: _____
DATE: _____
REASON FOR TRANSFER _____

FROM: _____ TO: _____
DATE: _____
REASON FOR TRANSFER _____

FROM: _____ TO: _____
DATE: _____
REASON FOR TRANSFER _____

FROM: _____ TO: _____
DATE: _____
REASON FOR TRANSFER _____

TERMINATION OF EMPLOYMENT

DATE TERMINATED _____ DEPARTMENT RELEASED FROM _____

DISMISSED _____ VOLUNTARILY QUIT _____ OTHER _____

TERMINATION REPORT PLACED IN FILE _____ SUPERVISOR _____

The seller makes no guaranty, warranty or representation, express or implied, that this form will or will not comply with any present, future or past local, state or federal regulations and laws governing what can be asked in Application For Employment. Seller shall not be liable for

DRIVER'S ROAD TEST EXAMINATION

Driver's Name Rickey Lee Blackwell, Phone

Driver's Address Rt 4 Box 318

City Chesnee, S.C. State Zip Code 29323

INSTRUCTIONS: The road test shall be given by the motor carrier or a person designated by it. However, a driver who is a motor carrier must be given the test by a person other than himself. The test shall be given by a person who is competent to evaluate and determine whether the person who takes the test has demonstrated that he is capable of operating the vehicle, and associated equipment, that the motor carrier intends to assign him. The road test must be of sufficient duration to enable the person who gives it to evaluate the skill of the person who takes it at handling the motor vehicle, and associated equipment, that the motor carriers intends to assign to him. As a minimum, the person who takes the test must be tested, while operating the type of motor vehicle the motor carrier intends to assign him, on his skill at performing each of the following operations:

Rating of Performance	
OK	The pretrip inspection. (As required by Sec. 392.7)
	Coupling and uncoupling of combination units, if the equipment he may drive includes combination units.
OK	Placing the vehicle in operation.
OK	Use of the vehicle's controls and emergency equipment.
OK	Operating the vehicle in traffic and while passing other vehicles.
OK	Turning the vehicle
OK	Braking, and slowing the vehicle by means other than braking.
OK	Backing and parking the vehicle.
	Other, Explain:

Type of equipment used in giving test:

Date 19 Examiner's Signature

Remarks:

If the road test is successfully completed, the person who gave it shall complete the certificate of driver's road test.

CERTIFICATION OF ROAD TEST

Driver's Name Rickey Lee Blackwell Social Security No. [redacted]

Operator's or Chauffeur's License No. State

Type of power unit Ford Tractor Type of Trailer(s) Flat

If passenger carrier, type of bus

This is to certify that the above-named driver was given a road test under my supervision on 7-6 19 84 consisting of approximately 25 miles of driving.

It is my considered opinion that this driver possesses sufficient driving skill to operate safely the type of commercial motor vehicle listed above.

(Signature of Examiner) (Title)

Behr Trucking Campobello, S.C.

(Organization and address of examiner)

Ja[illegible] FORM W[illegible] 57
JA[illegible]-COBB
908 Central St.
Kansas City, Mo. 64105

COMMERCIAL DRIVER WRITTEN EXAMINATION

MOTOR CARRIER PART 391—APPENDIX C

As required in § 391.35 of Motor Carrier Safety Regulations to test knowledge of parts 390 - 397.

Date 7-9-84

Examinee's Name Ricky Blackwell Phone 461-2681

Address Route 4 # Chesnee Box 718 City & State Chesnee S.C Zip Code 29323

INSTRUCTIONS

All of the questions contained herein are based on the U.S. Department of Transportation's Federal Motor Carriers Safety Regulations. Applicants for the position of commercial driver are required to take the examination.

Each question has four answers but only one is right. Your job on each question is to read all of the answers and then to pick the one answer you think is right. Mark an "X" in the space next to the answer you choose. Do *not* pick more than one answer for each question.

Here is a sample question to show you what is to be done:

The Federal Motor Carrier Safety Regulations were written for:

1.( ) vehicle makers.
2.( ) drivers only.
3.( ) carriers only.
4.( ) drivers and carriers.

The right answer is number 4, "drivers and carriers," so you would mark an "X" in the space next to answer 4.

Finally, be sure to answer every question and do not skip any pages. Your score will be the number of items correctly answered. Keep in mind that most of the regulations covered here are different from what is required of passenger car drivers; they apply to commercial bus and truck drivers. Again, *pick only one answer for each question.* There is no time limit on the examination, but try to work as fast as you can.

1–390.32 *A motor carrier who is also a driver (owner-operator):*
1.( ) is not covered by the safety regulations.
2.( ) must obey only those parts of the regulations which cover drivers.
3.( ) must obey only those parts of the regulations which cover motor carriers.
4.(✓) must obey both the parts covering drivers and the parts covering motor carriers.

2–391.11(b)(1) *With only a few exceptions, the Federal Motor Carrier Safety Regulations a driver must be:*
1.( ) at least 18 years old.
2.( ) at least 19 years old.

9–391.41(b)(8) *Persons who have ever had epilepsy:*
1.( ) cannot drive unless another driver is along.
2.(✓) cannot drive.
3.( ) cannot drive on long runs.
4.( ) cannot drive without monthly medical examinations.

10–391.41(b)(9)(12)(13) *In order to be able to drive, a person:*
1.( ) must not have any mental, nervous, or physical problem likely to affect safe driving.
2.( ) must not use an amphetamine, narcotic, or any habit-forming drug.
3.( ) must not have a current alcoholism problem.
4.(✓) must not have or use any of the above.

11–391.45(c) *Any driver who gets an injury or illness serious enough to affect his ability to perform his duties:*
1.( ) must report it at his next scheduled physical.
2.( ) cannot drive again.
3.(✓) must take another physical and be recertified before driving again.
4.( ) must wait at least 1 month after recovery before driving again.

12–392.2 *A driver may not drive faster than posted speed limits:*
1.( ) unless he is sick and must complete his run quickly.
2.(✓) at any time.
3.( ) unless he is passing another vehicle.
4.( ) unless he is late and must make a scheduled arrival.

13–392.3 *When a driver's physical condition while on a trip requires that he stop driving, but stopping would not be safe, the driver:*
1.( ) must stop anyway.
2.( ) may try to complete his trip, but as quickly as possible.
3.( ) may continue to drive to his home terminal.
4.(✓) may continue to drive, but must stop at the nearest safe place.

14–392.5(a)(2) *A driver may not drink or be under the influence of any alcoholic beverage (regardless of alcoholic content):*
1.(✓) within 4 hours before going on duty

22–392.13 *Drivers of motor vehicles not required to stop at drawbridges without signals:*
1.(✓) must drive at a rate of speed which will permit a stop before reaching the lip of the draw.
2.( ) must sound their horn before crossing.
3.( ) can proceed across without reducing speed.
4.( ) must slow down only if directed to by an attendant.

23–392.15(a) *A driver turning his vehicle should begin flashing his turn signal:*
1.( ) at least 50 feet before turning.
2.( ) at least 60 feet before turning.
3.( ) at least 75 feet before turning.
4.(✓) at least 100 feet before turning.

24–392.16 *Which of the following is true?*
1.(✓) If a seat belt is installed in the vehicle, a driver must have it fastened before beginning to drive.
2.( ) A driver may or may not use the seat belt, depending on his judgment.
3.( ) Seat belts are not necessary on heavier vehicles.
4.( ) A driver must use his seat belt only if required to by the carrier.

25–392.21 *When a motor vehicle cannot be stopped off the traveled part of the highway, the driver:*
1.( ) must keep driving.
2.( ) may stop, but shall get as far off the traveled part of the highway as possible.
3.(✓) may stop, but shall make sure that the vehicle can be seen as far as possible to its front and rear.
4.( ) may stop if he has to, but should do both 2 and 3 above.

26–392.22(b)(1) *If a vehicle has a breakdown the driver must place one emergency signal:*
1.( ) 100 feet in front of the vehicle in the center of the lane it occupies.
2.( ) 100 feet in back of the vehicle in the center of the lane it occupies.
3.( ) 10 feet in front or back of the vehicle on the traffic side.
4.(✓) at all of the above locations.

27–392.22(b)(1)(i) *If a vehicle has a breakdown on a poorly lit street or highway, the driver shall place on the traffic side:*
1.(✓) a reflective triangle.

3.( ) at least 20 years old.
4.(✓) at least 21 years old.

3-391.15(c)(2)(3) *A driver cannot drive a motor vehicle:*
1.( ) for 1 year after a first offense conviction for a felony involving a commercial motor vehicle he was driving.
2.( ) for 1 year after a first offense conviction for driving a commercial vehicle under the influence of alcohol or narcotics.
3.( ) for 1 year after a first offense conviction for leaving the scene of an accident which resulted in personal injury or death.
4.(✓) for 1 year after a first offense conviction for any of the above.

4-391.21(b)(7)(8)(10) *Every driver applicant must fill out an application form giving:*
( ) a list of all vehicle accidents he was in during the previous 3 years.
2.( ) a list of all of his motor vehicle violation convictions and bond forfeits (except for parking) during the previous 3 years.
3.( ) a list of names and addresses of all of his employers during the previous 3 years.
4.(✓) all of the above.

5-391.27(a)(b) *At least once a year, a driver must fill out a form listing all motor vehicle violations (except parking) which he had during the previous 12 months. He must fill out the form:*
1.( ) even if he had no violations.
2.(✓) only if he was convicted.
3.( ) only if he was convicted or forfeited bond or collateral.
4.( ) only if the carrier requires it.

6-391.33(a)(2) *If a driver applicant has a valid certificate showing he passed a driver's road test:*
1.( ) the carrier must accept it.
2.(✓) the carrier may still require the applicant to take a road test.
3.( ) the carrier cannot accept it.
4.( ) the carrier may request a road test waiver from the Bureau of Motor Carrier Safety.

7-391.41(b)(5) *Persons with breathing problems which may affect safe driving:*
1.(✓) cannot drive.
2.( ) cannot drive unless the vehicle has an emergency oxygen supply.
3.( ) cannot drive unless another driver is along.
4.( ) cannot drive except on short runs.

8-391.41(b)(7) *Persons with arthritis rheumatism, or any such condition which may affect safe driving:*
1.( ) cannot drive unless they are checked by a doctor before each trip.
2.(✓) cannot drive.
3.( ) cannot drive except [illegible]
4.( ) cannot drive unless [illegible] is along.

[illegible] or driving.
2.( ) within 6 hours before going on duty or driving.
3.( ) within 8 hours before going on duty or driving.
4.( ) within 12 hours before going on duty or driving.

15-392.7 *A driver must satisfy himself that service and parking brakes, tires, lights and reflectors, mirrors, coupling, and other devices are in good working order:*
1.( ) at the end of each trip.
2.(✓) before the vehicle may be driven.
3.( ) only when he considers it necessary.
4.( ) according to schedules set by the carrier.

16-392.8 *Which of the following must be in place and ready for use before a vehicle can be driven?*
1.(✓) At least one spare fuse or other overload protector of each type used on the vehicle.
2.( ) a tool kit containing a specified list of hand tools.
3.( ) At least one spare tire for every four wheels.
4.( ) A set of spark plugs.

17-392.9(a)(3) *If any part of the cargo or anything else blocks a driver's front or side views, his arm or leg movements, or his access to emergency equipment, the driver:*
1.( ) can drive the vehicle, but must report the problems at the end of the trip.
2.(✓) cannot drive the vehicle.
3.( ) can drive the vehicle, but only at speeds under 40 miles per hour.
4.( ) can drive the vehicle, but only on secondary roads.

18-392.9a *Any driver who needs glasses to meet the minimum visual requirements:*
1.( ) must drive only during daylight hours.
3.(✓) must always wear his glasses when driving.
3.( ) must always carry a spare pair of glasses.
4.( ) must not drive a motor vehicle.

19-392.9b *A driver may drive with a hearing aid:*
1.(✓) if he always has it turned on while he is driving.
2.( ) if he always carries a spare power source for it.
3.( ) if he can meet the hearing requirements when he has it turned on.
4.( ) if all of the above are met.

20-392.10(a) *A driver required to stop at a railroad crossing should bring his vehicle to a stop no closer to the tracks than:*
1.( ) 5 feet.
2.( ) 10 feet.
3.(✓) 15 feet.
4.( ) 20 feet.

21-392.10(a) *Shifting gears is not permitted:*
1.( ) when traveling faster than 35 miles per hour.
2.( ) when moving across any bridge.
3.(✓) when crossing railroad tracks.
4.( ) when traveling down a hill steeper than 10°.

2.( ) a lighted red electric lantern.
3.(✓) a red reflector.
4.( ) any one of the above.

28-392.22(b)(2)(iii) *No emergency signals are required for a vehicle with a breakdown if the street or highway lighting is bright enough so it can be seen at a distance of:*
1.(✓) 100 feet.
2.( ) 200 feet.
3.(✓) 500 feet.
4.( ) 750 feet.

29-392.22(b)(v) *If a vehicle has a breakdown and stops on a poorly lit divided or one way highway, the driver must place one emergency signal:*
1.( ) 200 feet in back of the vehicle in the center of the lane it occupies.
2.( ) 100 feet in back of the vehicle in the center of the lane it occupies.
3.( ) 10 feet in back of the vehicle on the traffic side of the vehicle.
4.(✓) at all of the above locations.

30-392.25 *Lighted flame-producing emergency signals, including fusees:*
1.( ) may not be used with vehicles carrying class A or B explosives.
2.( ) may not be used with tank vehicles, loaded or empty, which are used to carry flammable liquids or gas.
3.( ) may not be used with any vehicle using compressed gas as a fuel.
4.(✓) may not be used with any of the above.

31-392.30(a) *A driver is required to have his lights on:*
1.(✓) from one-half hour *before* sunset to one-half hour *before* sunrise.
2.( ) from one-half hour *before* sunset to sunrise.
3.( ) from one-half hour *after* sunset to one-half hour *before* sunrise.
4.( ) from sunset to one-half hour before sunrise.

32-392.32(a)(b) *When lights are required on the open highway, a driver shall use the high beam:*
1.(✓) except when within 500 feet of an on-coming vehicle or a vehicle he is following.
2.( ) except when within 400 feet of an on-coming vehicle or a vehicle he is following.
3.( ) except when within 200 feet of an on-coming vehicle or a vehicle he is following.
4.( ) except when within 100 feet of an on-coming vehicle or a vehicle he is following.

33-392.32(a) *When lights are required, drivers may use lower beam lights:*
1.(✓) when fog, dust, or other such conditions exist.
2.( ) when approaching tunnels or bridges.
3.( ) when driving on one-way highways.
4.( ) when within 1,000 feet of business areas or where people live.

...y driver involved in an ac-...t follow the safety regulation ...whenever an injury or death ...ed or if:

...n accident is caused by the driver and property damage of over $200 results.
...) property damage of over $250 results, no matter who is at fault.
3.( ) property damage of over $100 results.
4.(✓) property damage of any kind results.

35-392.41 *If a driver strikes a parked vehicle, he should first:*
1.( ) stop and call the local police.
2.( ) stop and call his carrier.
3.(✓) stop and try to find the driver or owner of the parked vehicle.
4.( ) stop and estimate the damage.

36-392.42 *When a driver receives notice that his operator's license or permit has been revoked, suspended, or withdrawn, he must:*
1.( ) notify his carrier within 72 hours.
2.( ) notify his carrier within 1 week.
3.(✓) notify his carrier before the end of the next business day.
4.( ) take no action since his carrier will also get a notice.

37-392.61 *Except in emergencies, no driver shall allow his vehicle to be driven by any other person:*
1.( ) except those he knows can drive it.
2.( ) except on roads with little or no traffic.
3.(✓) except those allowed by the carrier to do it.
4.( ) unless he goes along with the person driving.

38-392.64 *A person may ride inside a vehicle's closed body or trailer:*
1.( ) only on short runs.
2.(✓) only if there is an easy way to get out from the inside.
3.( ) only if the inside of the body or trailer is lighted.
4.( ) only if there is no cargo in it.

39-392.66 *If carbon monoxide is inside a vehicle or if a mechanical problem may produce a carbon monoxide danger, the vehicle:*
1.( ) may be sent out and driven so long as the windows are left open.
2.(✓) may not be sent out or driven.
3.( ) may be sent out and driven only if the carrier decides the vehicle has to be used.
4.( ) may be sent out and driven on short runs.

40-392.83 *No motor vehicle shall be operated out of gear:*
1.( ) except when fuel must be saved.
2.( ) except on hills which are less than 20°.
3.(✓) except when it is necessary for stopping or shifting gears.
4.( ) except when the vehicle's speed is

43-393.77(b)(6) *A portable heat... not be used in any vehicle cab:*
1.(✓) unless it is secured.
2.( ) unless it is of the electric filament type.
3.(✓) at any time.
4.( ) without approval from the carrier.

46-395.3(a) *Drivers are not generally allowed to drive for more than:*
1.( ) 6 hours following 8 straight hours off duty.
2.( ) 8 hours following 8 straight hours off duty.
3.(✓) 10 hours following 8 straight hours off duty.
4.( ) 12 hours following 8 straight hours off duty.

47-395.3(a) *Most drivers of large vehicles are not allowed to drive.*
1.( ) after they have been *on duty* for 16 hours.
2.(✓) after they have been *on duty* for 15 hours.
3.( ) after they have been *on duty* for 14 hours.
4.( ) after they have been *on duty* for 12 hours.

48-395.3(b) *Generally, a driver may not be "on duty":*
1.(✓) for more than 40 hours in any 7 straight days.
2.( ) for more than 50 hours in any 7 straight days.
3.( ) for more than 60 hours in any 7 straight days.
4.(✓) for more than 70 hours in any 7 straight days.

49-395.7 *When a driver is riding in a vehicle, but is not driving and has no other responsibility, such time shall be counted as:*
1.( ) on-duty time.
2.(✓) on-duty time unless he is allowed 8 straight hours off duty when he gets to the destination.
3.( ) on-duty time unless he is allowed 6 straight hours off duty when he gets to the destination.
4.( ) on-duty time unless he is allowed 4 straight hours off duty when he gets to the destination.

50-395.8(b) *Every driver must prepare an original and one copy of a daily log which he must keep current by updating it:*
1.(✓) every time he changes a duty status.
2.( ) every 24 hours.
3.( ) every 8 hours.
4.( ) at the end of each trip.

51-395.8(c) *Except for the name and main address of the carrier, all entries in a log:*
1.( ) must be printed in ink or typed.
2.( ) must be made by the carrier dispatcher.
3.( ) must be made in front of a witness.
4.(✓) must be written in the driver's own handwriting.

52-395.8(1)(p)(q) *Which of the following is not to be put in a driver's log?*

57-396.5(c)(4) *If the driver makes his own repairs on an "out of service vehicle":*
1.( ) his work must be approved by a mechanic.
2.(✓) he must complete and sign a "certification of repairman" form himself.
3.( ) his work must be approved by his supervisor.
4.( ) his work must be approved by a Federal inspector.

under 25 miles per hour.

41–393.1(a) *Under the Motor Carrier Safety Regulations, no vehicle may be driven:*

1.( ) until a list of all missing or defective equipment has been prepared and given to the carrier.
2.( ) until all equipment has been inspected and replacements for defective parts have been ordered.
3.( ) unless all missing equipment is to to be replaced no later than the end of the vehicle's next run.
4.(✓) until it meets all of the equipment requirements of the regulations.

42–393 various *Minimum requirements for lighting, reflecting and electrical equipment and devices on buses and trucks:*

1.( ) are set by the vehicle makers.
2.( ) are set by the National Safety Council.
3.(✓) are specified in the safety regulations.
4.( ) are set by the trucking associations.

43–393.18(a)(b) *Every motor vehicle which has a load sticking out over its sides must be specially marked with flags and lamps. Additional flags and lamps must be added if the load or tailgate sticks out beyond the rear of the vehicle by more than:*

1.( ) 2 feet.
2.(✓) 4 feet.
3.( ) 6 feet.
4.( ) 8 feet.

44–393.41(a) *Every vehicle shall have a parking brake system which will hold it, no matter what its load:*

1.(✓) on any grade on which it is operated which is free from ice and snow.
2.( ) on all grades under 15° which are free from ice and snow.
3.( ) on all grades under 20° which are free from ice and snow.
4.( ) on all grades under 25° which are free from ice and snow.

1.(✓) Time spent in a sleeper berth.
2.( ) Total hours in each duty status.
3.( ) The name of the carrier or carriers.
4.( ) The name and make of his vehicle.

53–395.11 *If an emergency delays a run which could normally have been completed within hours of service limits, the driver:*

1.( ) must still stop driving when the hours of service limit is reached.
2.( ) may drive for 1 extra hour.
3.( ) may drive for 2 extra hours.
4.(✓) may finish his run without being in violation.

54–395.13 *Any driver declared "out of service":*

1.( ) must take a road test before driving again.
2.( ) must wait 72 hours before driving again.
3.( ) must appeal to the Director of the Bureau of Motor Carrier Safety to drive again.
4.(✓) can drive again only after hours of service requirements are met.

55–396.4 *If a vehicle on a trip is in a condition likely to cause an accident or breakdown:*

1.( ) the driver should report it at the end of his run so repairs can be made.
2.( ) the driver should drive at lower speeds for the rest of the run.
3.(✓) the driver should stop immediately unless going on to the nearest repair shop is safer than stopping.
4.( ) the driver should change his route so as to get away from heavily traveled roads.

56–396.5(c) *If authorized Federal inspectors find a vehicle which is likely to cause an accident or breakdown:*

1.( ) it will be reported to the carrier for repair as soon as the vehicle is not scheduled.
2.( ) it will be reported to the carrier for repair at the end of the trip.
3.(✓) it will be marked with an "out of service vehicle" sticker and not driven until repairs are made.
4.(✓) the driver will be held responsible and declared "out of service."

CERTIFICATE OF WRITTEN EXAMINATION

This is to certify that the person whose signature appears below, has successfully completed the written examination under my supervision in accordance with the provisions of § 391.35 of the Motor Carrier Safety Regulations.

(Signature of person taking examination)	7-9-84 (Date of examination)	Campbell S.C. (Location of examination)
(Signature of examiner)	(Title)	Blue Trucking - Same (Organization and address of examiner)

FORM MCS 57 Order from Jack-Rill Corp., S... Kansas City, Mo. 64165

Blackwell Trucking Records - 9

7560

REQUEST FOR INFORMATION FROM PREVIOUS EMPLOYER

From: Company Belue Trucking Co.

Name & Title Donya Scott - Personnel File:

Street Address Rt 1 Box 268

City Campobello State SC Zip Code 29322

TO: Amerada Hess Date: 7-9-84

Gentlemen:

Mr. Bobby Lee Blackwell, social security number [redacted]

tion to this company for a position as driver and states that he was employed by you as Driver from 1-23-82 to 5-7-83.

Will you kindly reply to the inquiry below respecting this applicant. You reply will be held in strict confidence and will in no way involve you in any responsibility.

For your convenience in replying by return mail, we enclose a stamped self-addressed envelope.

Very truly yours,

Donya

1. Is employment record with your company correct as stated above? yes
2. What kind(s) of work did he do? Driver
3. Did he have custody of money or valuables? ✓ Were his accounts properly kept? ✓
4. Any record of salary garnishments? —
5. If employed as a driver, specify equipment driven Tractor - Trailer
6. Number of accidents + Number preventable 1 —
7. Was his driver's license ever suspended or revoked? —
8. Number of on-the-job injuries while in your employ —
9. Any back injuries? —
10. Any award for permanent partial disability? —
11. Reason for leaving your employ? Discharged ____ Laid off ____ Resigned ____
12. Was his general conduct satisfactory? Yes ____ No ____ Other ____
13. Is he competent for the position he is seeking? Yes ____ No ____ Other ____
14. Would you re-employ? Yes ____ No ____ Other ____
15. Any remarks with regard to questions 1-15 above? ____

** Due to company policy additional information is not available.

Date: 7-9-84 For: Amerada Hess Barry D. Brigman
(Name of Company)

By: Mgr. Personnel Svcs.
(Signature of person supplying information)

(Detach here for your files)

Amerada Hess Date ____
(Former Employer)

You are hereby authorized to give to the Belue Trucking Co.
(Name of Prospective Employer)

all information regarding my services, character and conduct while in your employ, and you are released from any and all liability which may result from furnishing such information.

Witness: Donya Scott

DRIVER'S CERTIFICATION

Rickey Lee Blackwell [redacted]
Name of driver — SS Number

Rickey L Blackwell
Signature of driver

I certify that the above named driver, as defined in § 391.3(c) is regularly driving a vehicle operated by the below named carrier and is fully qualified under Part 391, Federal Motor Carrier Safety Regulations.

His current medical examiner's certificate expires on 7-11-86 (date)

This certificate expires 7-11-86 (date not later than expiration date of medical certificate) issued on 7-11-84 (date)

Issued by Belue Trucking (name of carrier)

Rt 1 Box 268 Campobello SC (address)

Ronya Pratt (signature) Personnel (title)

JACK-BILT Form Q 769

SOUTH CAROLINA DRIVER'S LICENSE

Blackwell - Rickey Lee [redacted]
Rt 4 Box 201
Chesnee S.C. 29323
92 EYDH 6-1 150
3

1986



MEDICAL EXAMINER'S CERTIFICATE

I certify that I have examined

Rickey Blackwell
(Driver's name (Print))

in accordance with the Motor Carrier Safety Regulations 49 CFR 391.41—391.49 and with knowledge of his duties, I find him qualified under the regulations.

☐ Qualified only when wearing corrective lenses.
☐ Qualified only when wearing a hearing aid.

A completed examination form for this person is on file in my office at 871 N. Church St. Spartanburg, S.C.

Dr. J. R. Leighton
(Name of examining doctor (Print))

7/11/84
(Date of examination)

(Signature of examining doctor)

[redacted]
(Address of driver)

(Signature of driver)

Form 9112 — Jack-Bilt Corp., 906 Central St., Kansas City, Missouri 64105-1688

DRIVER'S CERTIFICATION

Rickey Lee Blackwell [redacted]
Name of driver — SS Number

Rickey L Blackwell
Signature of driver

I certify that the above named driver, as defined in § 391.3(c) is regularly driving a vehicle operated by the below named carrier and is fully qualified under Part 391, Federal Motor Carrier Safety Regulations.

His current medical examiner's certificate expires on 7-11-86 (date)

This certificate expires 7-11-86 (date not later than expiration date of medical certificate) issued on 7-11-84 (date)

Issued by Belue Trucking (name of carrier)

Rt 1 Box 268 Campobello SC (address)

Donna Hall (signature) Personnel (title)

JACK-BILT Form Q 765

SOUTH CAROLINA DRIVER'S LICENSE



MEDICAL EXAMINER'S CERTIFICATE

I certify that I have examined

RICKey Blackwell
(Driver's name (Print))

in accordance with the Motor Carrier Safety Regulations (49 CFR 391.41—391.49) and with knowledge of his duties, I find him qualified under the regulations.

☐ Qualified only when wearing corrective lenses.
☐ Qualified only when wearing a hearing aid.

A completed examination form for this person is on file in my office at 874 N. Church St. Spartanburg, S.C. (Street address)

DR. J. B. Guthrie (Name of examining doctor (Print))

7/11/84 (Date of examination)

Dr. John B. Guthrie (Signature of examining doctor)

[redacted] (Address of driver)

Rickey Blackwell (Signature of driver)

Form Q 110 — Jack-Bilt Corp., 924 Central St., Kansas City, Missouri 64105-1688

REQUEST FOR INFORMATION FROM PREVIOUS EMPLOYER

From: Company Belue Trucking

Name & Title Dorsey Stott File: _____

Street Address Rt 1 Box 268

City Campobello State SC Zip Code 29322

TO: John Branon Date: 7-11-84

Gentlemen:

Mr. Ricky Lee Blackwell, social security number _____ has made application to this company for a position as driver and states that he was employed by you as driver from _____ to _____.

Will you kindly reply to the inquiry below respecting this applicant. You reply will be held in strict confidence and will in no way involve you in any responsibility.

For your convenience in replying by return mail, we enclose a stamped self-addressed envelope.

Very truly yours,

D

1. Is employment record with your company correct as stated above? ✓
2. What kind(s) of work did he do? Tractor Trailer - Driver
3. Did he have custody of money or valuables? ✓ Were his accounts properly kept? ✓
4. Any record of salary garnishments? None
5. If employed as a driver, specify equipment driven Tractor Trailer -
6. Number of accidents — Number preventable —
7. Was his driver's license ever suspended or revoked? —
8. Number of on-the-job injuries while in your employ —
9. Any back injuries? —
10. Any award for permanent partial disability? —
11. Reason for leaving your employ? Discharged ____ Laid off ____ Resigned ✓
12. Was his general conduct satisfactory? Yes ✓ No ____ Other ____
13. Is he competent for the position he is seeking? Yes ✓ No ____ Other ____
14. Would you re-employ? Yes ✓ No ____ Other ____
15. Any remarks with regard to questions 1-15 above? ____

Date: _____ For: John Branon
(Name of Company)

By: _____
(Signature of person supplying information)

(Detach here for your files)

_____ Date _____
(Former Employer)

You are hereby authorized to give to the _____
(Name of Prospective Employer)

all information regarding my services, character and conduct while in your employ, and you are released from any and all liability which may result from furnishing such information.

Witness: Signed:

EMPLR.: BELTRK

LAST NAME: BLACKWELL

FIRST NAME: RICKEY

[redacted]: L.

[redacted]

[redacted]

D/L-ST-NO: SC-4934285
POSITION: DRIVER
DATE/MVR: 10-01-84 MVR DUE: 10-01-85
DATE/PHY: 07-11-84 PHY DUE: 07-11-86
7 YR. CK.: NO
PHONE NO.: 803-461-8613
STATUS: 2

ADDRESS: RT. 4, BOX 318

CITY: CHESNEE

STATE: S. C.

ZIP CODE: 29323

TAX FILE STATUS: M EFF. DATE: 07-11-84

NO. EX.: 0 EFF. DATE: 07-11-84

[redacted] TYPE: C EFF. DATE: 07-12-84

REG. RATE: N/A EFF. DATE: N/A

O.T. RATE: N/A EFF. DATE: N/A

COMM. SCHED.: 1 EFF. DATE: 07-12-84

A/H INS.: 0.00 EFF. DATE: N/A

CANCER INS.: 0.00 EFF. DATE: N/A

UNIF. DED.: 0.00 EFF. DATE: N/A

DATE HIRE: 07-12-84

DATE TERM.:

WAGE DIST PROMPT-REG: 6131

WAGE DIST PROMPT-VAC: 6031

TERM-VOL/INVOL:

WORKED NOTICE:

[redacted]

LEFT OWING: NO

ELGIBLE/REHIRE:

SOUTH CAROLINA INDUSTRIAL COMMISSION
COLUMBIA, SOUTH CAROLINA

EMPLOYER'S FIRST REPORT OF INJURY

Complete and send in duplicate to

Copy

(ANSWER EVERY QUESTION FULLY TO AVOID FURTHER CORRESPONDENCE)

Empl. Code No. ____
Carrier Code No. ____
Policy Year ____
Carrier File No. ____

DO NOT WRITE IN THIS COLUMN
MANUAL CLASS
CITY COUNTY
DATE OF ACCIDENT
DAY AND TIME OF ACCIDENT
AND SEX
NATIONALITY
TIME EMPLOYED
WEEKLY WAGE
COMPENSABLE RATE
MECHANICAL CAUSE
NON-MECHANICAL CAUSE
UNSAFE ACT
DEPARTMENT
NATURE
LOCATION
TYPE OF DISABILITY
KIND OF AWARD
CLOSED BY
COMPENSABLE TIME
TIME LOST
COMPENSATION
MED. & HOSP.
TOTAL
REPORT LAG
CODED BY

EMPLOYER

(1) Name: Charles P. Belue d/b/a Belue Trucking
(Give name under which concern does business)

(2) Office address: No. and Street: Rt. 1 Box 268 City: Campobello State: SC 29322

(3) Nature of business: Common Carrier
(List principal product or service of the concern)

ACCIDENT

(4) Accident occurred where? Rock Hill, York, SC (5) On employer's premises? No
(City, County and State) (Yes or no)

(6) Date of accident: 9/27/84, 19__ Day of week: Thursday Hour: 3:30 A.M. P.M.

(7) Date disability began: 9/27/84 (8) Was injured paid in full for this day? Yes
(Yes or no)

(9) When did you or foreman first know of injury? Immed. Name of foreman: Floyd M. Pace

INJURED EMPLOYEE

(10) Name: Rickey (First name) L. (Middle initial) Blackwell (Last name) Soc. Sec. Number: [redacted]

(11) Address: No. and street: Rt. 4 Box 318 City: Chesnee State: SC 29323

(12) Age: 25 (13) How long employed by you? 2 1/2 months (13a) Department: Driver

(14) Check (√): Single ____ Married X Divorced ____ Widowed ____ Male X Female ____

(15) Number of hours worked per day: 10 (16) Number of days worked per week: 6

(17) Wages: per hour ____ per day $ ____ per week $ ____ per month $ ____ If board, lodging, fares or other advantages were furnished in addition to wages, give estimated value per week: $ ____

CAUSE OF ACCIDENT

(18) What was employee doing when the accident occurred? Chaining load down to trailer
(Describe briefly, such as: loading truck; operating a drill press; shoveling dirt; painting with spray gun; etc.)

(19) Occupation: Driver

(20) How long employed by you at this occupation? 2 1/2 months

(21) What machine, tool, substance or object was most closely connected with the accident? Chains & Binders
(Name the machine, tool, appliance, gas, liquid, etc., involved)

(22) If machine or vehicle, what part of it? ____
(State if gears, pulley, motor, etc.)

(23) How did the accident happen? Driver was chaining boom part of crane onto trailer, left hand got caught between chain and binder when driver was pulling the binder tight.
(Describe the accident fully, stating whether the injured person fell or was struck, etc., and all the factors contributing to the accident. Use other side of report for additional space.)

(24) In what way was the machine, tool or object defective? None

(25) How can you prevent this type of accident? Use more care when chaining down load that your hands are out of the way.
(Specify the remedial measure, such as: better illumination, better ventilation, providing goggles, providing a better guard, better supervision, etc.)

(26) Were mechanical guards, or other necessary safeguards (such as goggles) provided? No

(27) Was injured using them? No

(28) How could the injured have prevented the accident? Should have moved hand before pulling on binde
(Do not say "by being more careful," but specify what employee should or should not have done. For instance: should not have used defective ladder; should not have oiled machinery in motion; should have worn goggles, etc.)

(29) Names and addresses of witnesses: Danny MCFall c/o Belue Trucking

NATURE AND LOCATION OF INJURY

(30) Crushing injury to left hand
(Describe in detail the nature of the injury and the part of the body affected. For instance: amputation of right arm, crushing injury to chest, lead poisoning, dermatosis of right arm and hand, etc.)

(31) Name and address of physician: Dr. Postman ER Physician

(32) Name and address of hospital: Spartanburg General Hosp. 101 E. Wood St. Sprbg., SC

(33) Probable length of disability: ? Surgery may be indicated

(34) Has employee returned to work? No (35) If so, give date ____ (36) At what weekly wage? $ ____

(37) Did injury result in death? No (38) If so, give date ____

(39) In case of death, give name and address of nearest relative ____

INSURANCE

(40) Name and address of workmen's compensation insurance carrier

(41) Date of this report: 9/28/84 Made out by: Sonya Stott
Official position: Insurance Administrator

C-45415 Nov 8-51 Printed in U.S.A.

FORM DL-16
1-69

S. C. DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

DRIVER RECORD REPORT

NAME BLACKWELL-RICKEY LEE
ADDRESS R 4 BX 201
CHESNEE

ISSUE DATE 01/21/82
29323 CLASS LICENSE 3

SEARCH DATE 10/01/84
COMPANY CODE 6001
ACCOUNT NO. BELUE TRUCKING

PAGE
FILE NO. 00903

DRIVER [redacted] BIRTH

SEX M

DESCRIPTION OF ACTION				DATE OF ACTION
ACCIDENT		MOVING VIOL. INDICATED - PD		06/17/82
SPEEDING	UNDER 10 MPH		VIO CODE 421	06/17/82
SPEEDING	POSTED = 35	ACTUAL = 52	VIO CODE 441	02/09/83
ACCIDENT		MOVING VIOL. INDICATED - PD		05/07/83
SPEEDING	UNDER 10 MPH		VIO CODE 421	04/27/83
SPEEDING	UNDER 10 MPH		VIO CODE 421	05/07/83

E. P. AUSTIN, JR., DIREC
MOTOR VEHICLE

EMPLOYEE

EMPLOYEE _____ JOB TITLE Driver

EMPLOYMENT DATE _____

NAME Ricky Blackwell S.S.A [redacted]

ADDRESS Rt. 4 Box 201 Chesnee, SC.

ENTER ON PAYROLL N/A RATE $ N/A PERMANENT N/A PART TIME N/A

REMOVE FROM PAYROLL ✓ VOLUNTARY ✓* INVOLUNTARY ___ DATE ___

REASON * Started Driving Lease Unit owned by Otis Blackwell + Leased to Belue Trucking

WORKED NOTICE N/A FROM N/A TO N/A WORKED OUT NOTICE N/A

LEFT OWING N/A AMOUNT N/A ELIGIBLE FOR REHIRE N/A

ARRANGEMENTS FOR REPAYING N/A

EMPLOYEE SIGNATURE _____

WITNESS Ken Duncan

WITNESS _____

ORTHOPAEDIC SURGERY

DONALD H. McCLURE, M.D., P.A.
JAN H. POSTMA, M.D., P.A.

SPARTANBURG, S. C. 29302
323 N. PINE STREET
803/573-7241

10/22/84
Date

Re: Ricky Blackwell

This patient has been under my care for Fractured Finger

from 9/27/84 to present

and (may, may not) return to

✓ Regular Work

_____ Light Work

_____ School

_____ Physical Education

until on 2 weeks

M.D.

BLACKWELL, RICKEY L.
RT. 4 BOX 318
CHESNEE, SC 29323

461-7281 Aunt
461-8613 Next Door
461-2681 Mother

7-12-84

461-9740 -

called to work 11-7-84
said he would run
11-8-84 - failed to
show -

Certificate to return to work or school

Mr.
Mrs.
Miss Rickey Blackwell

has been under my care from 11-3 to _____

and is able to return to work/school on 11-4

Remarks - Pt. Blackwell was
seen in the office on
11-3-84 -

Dr. [illegible] Phone [illegible]

Address [illegible] Date 11-3-84

Eli Lilly and Company • Indianapolis, Indiana 46285

60-CR-0131-0 PRINTED IN U.S.A. 200026-1181200 • NOVEMBER, 1981

Date: 1-28-84

DRIVER: Ricky Blackwell

Offense: Failed to come In on Top Dispatch - Assigned Simpsonville, SC. Load - Did not call In.

Reviewed: Ricky stated That because It was raining he thought Top Loads would be canceled.

DECISION: Told Ricky That In Future It was ~~Important~~ A must That he come on In unless Someone called & cancelled Ld. - That if some Reason he could not come In he must call Someone At Terminal & Notify So Dispatch could have Time to cover his Assignment

Ken Duncan

BELUE TRUCKING

ROUTE 6 • SPARTANBURG, SOUTH CAROLINA 29303 • TEL. 803/579-1613

Dear Ricky Blackwell,

An audit of your driver's daily log for Dec, has revealed the following:

_____ Failure to prepare daily logs in form and manner prescribed.

✓ Driving for more than ten (10) hours.
12-18-84 = 10½ hrs. Driving

_____ Driving after having been on duty fifteen (15) hours.

_____ Remaining on duty more than seventy (70) hours in eight (8) consecutive days.

_____ Failing to make or forward each day the original of your driver's daily log.

_____ Failing to prepare a daily vehicle condition report. (on back of logs).

_____ Average speed in excess of fifty four (54) miles per hour.

This is in violation of the Federal Bureau of Motor Carrier Safety Regulations and you should take immediate action to correct this. This information will be so noted in driver qualification file; this is your _____ warning.

Please come in As soon As Possible and lets Go over This matter,

Thanks,

12/20/84

DISTRICT MGR.: SHOW COVERAGE(S)
P.D. ☐ MEDICAL $ ____
O. O. C. ☐ COLL. $ DED.
PERSONAL COMP. LIABILITY ☐

NO. ____ STATE ____

(USE THIS FORM TO REPORT BODILY INJURY LIAB., PROPERTY DAMAGE LIAB., COMPREHENSIVE LIAB., COLLISION, MEDICAL PAYMENTS, DRIVE OTHER CAR LOSSES.)

TO ____ BRANCH CLS. OFF.

POLICY HOLDER
NAME: Belue Trucking
HOME OFFICE ADDRESS: Rt. 1 Box 268 PHONE NO. 803-472-2086
TERMINAL ADDRESS: Campobello, SC. PHONE NO.

INSURED VEHICLE — Auto, Truck, Tractor or Bus
YEAR 1978 MAKE Ford KIND OF BODY Sky Lt. MODEL ____ LOCAL? ✓ LONG HAUL? ____
MOTOR NO. ____ SERIAL NO. CE 7671 EQUIP. NO. 22 WAS TRAILER ATTACHED? YES
REGISTERED OWNER Belue Trucking ADDRESS Same
DRIVER'S NAME Ricky Blackwell AGE 26 ADDRESS Rt. 4 Box 318 Chesnee, S.C.
DRIVER YOUR EMPLOYEE? YES NO. OCCUPANTS YOUR CAR N/A RELATIONSHIP N/A
OCCUPANT'S NAME N/A ADDRESS N/A

Trailer or Semi
YEAR 83 MAKE Fruh. KIND OF BODY VAN SERIAL NO. DC 008281 EQUIP. NO. 48104
REGISTERED OWNER Belue Trucking ADDRESS Same
ESTIMATED DAMAGE TO YOUR AUTO OR POWER UNIT $ NONE SEMI OR TRAILER $ NONE

WERE ANY OF THE ABOVE VEHICLES RENTED OR LEASED OUT BY YOU AT TIME OF ACCIDENT? ____ OR TO YOU? ____

OTHER VEHICLE
MAKE ____ YEAR ____ TYPE ____ LIC. NO. ____ NO. OF OCCUPANTS ____
REGISTERED OWNER C. N. Evans ADDRESS ____
DRIVER ____ ADDRESS ____
ESTIMATED DAMAGES $ Scope x x DESCRIBE DAMAGE: ~~Left~~ Damaged Driver's side Fdr. LIABILITY INSURANCE? ____

OTHER DAMAGED PROPERTY
OWNER ____ ADDRESS ____
ESTIMATED DAMAGE: $ ____ DESCRIBE DAMAGE: None

INJURED PERSONS
IF NO ONE INJURED, SO STATE ____ ANYONE INJURED IN YOUR CAR? ____ OTHER CAR? ____
NAME ____ ADDRESS ____ CITY ____
AGE ____ INJURIES (DESCRIBE BRIEFLY) None
NAME: ____ ADDRESS ____ CITY ____
AGE ____ INJURIES (DESCRIBE BRIEFLY) ____

WITNESSES
NAME: ____ ADDRESS ____ CITY ____
NAME: None ADDRESS ____ CITY ____
NAME: ____ ADDRESS ____ CITY ____

IF ADDITIONAL SPACE IS NEEDED FOR NAMES OF INJURED, WITNESSES, FACTS, ETC., USE REVERSE SIDE.

FACTS OF Accident
DATE OF ACCIDENT 12-28-84 19 ____ TIME 5:00 P.M. LOCATION Crown Cork Dock
CITY Spartanburg COUNTY Spartanburg STATE S. C.
DIRECTION YOU WERE TRAVELING Backing ON WHAT STREET? To Crown Cork Dock SPEED — MPH
DIRECTION OTHER CAR TRAVELING? N/A ON WHAT STREET? N/A SPEED ____ MPH
WHICH VEHICLE ENTERED INTERSECTION FIRST? YOU N/A OTHER VEHICLE N/A
DISTANCE FROM POINT OF COLLISION WHEN YOU FIRST SAW OTHER CAR, YOU N/A FT. OTHER CAR N/A FT.
ANY SIGNAL BY YOU N/A OTHER DRIVER N/A LENGTH OF SKID MARKS YOUR CAR N/A FT. OTHER N/A FT.
LIGHTS BURNING? YOUR CAR N/A OTHER CAR N/A
WEATHER CONDITIONS: Clear VISIBILITY LIMITED TO Normal FT.
DID YOU ADMIT RESPONSIBILITY FOR ACCIDENT? YES DID OTHER DRIVER? N/A
WAS ACCIDENT REPORTED TO POLICE? NO DATE N/A WHAT STATION N/A
ANY ARRESTS MADE? YOU N/A OTHER N/A CITATION N/A
ANY INDICATION OF INTOXICATION? EXPLAIN None

NOTE
If case requires field investigation (injuries or $250.00 property damage) designate adjuster to whom it has been assigned:
NAME: ____ LOCATION: ____
DATE OF ASSIGNMENT: ____ NAME OF PERSON ASSIGNING CASE: ____
COMMENT ON ADJUSTER'S RESPONSE: ____

IMPORTANT: DESCRIBE IN YOUR OWN WORDS HOW ACCIDENT OCCURRED: Backing into Dock at Crown Cork seal Int. on oth. Trailer.

CITY Spartanburg, S.C. COUNTY ____ STATE ____ DATE 12-28-84

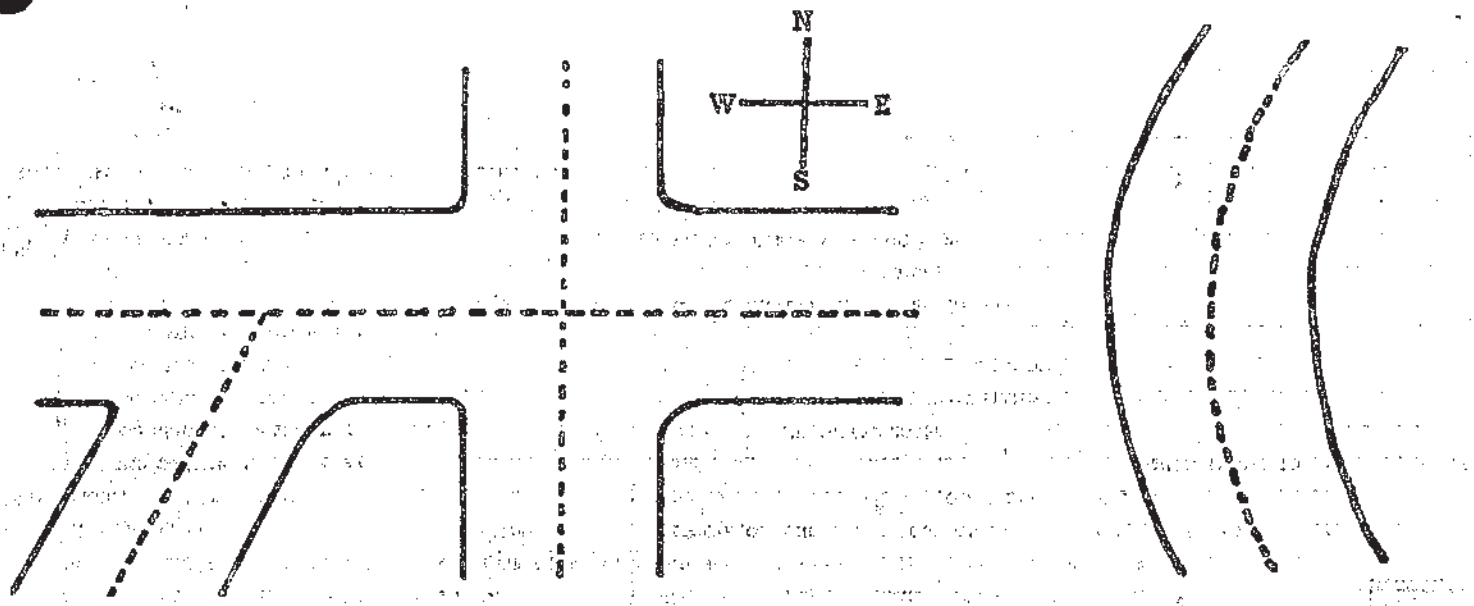
SIGNATURE OF DRIVER: Ricky L Blackwell SIGNATURE FOR POLICYHOLDER: Glen Duncan TITLE Gen. Mgr.

PLEASE DRAW ROUGH DIAGRAM AND FILL IN ADDITIONAL INFORMATION ON REVERSE SIDE. PLEASE REVERSE CARBONS.

PLEASE BE CERTAIN THAT DRIVER INVOLVED AND COMPANY OFFICIAL SIGN THIS REPORT!

TI—30M—10-73

RAW DIAGRAM OF ACCIDENT showing your vehicle as < A >; other vehicle or pedestrian as [B]. Indicate active position of vehicles and pedestrian as they approached each other. Show point of collision and position and ce traveled after collision. Show skid and tire marks as ~~~~~



se space below for listing additional names of injured, witnesses, facts of accident, etc.

umber Of Shipment _____ Load Date _____

rigin _____ Destination _____

pproximate Load Weight _____ Reg. Number _____

ame & Address _____

o. of Axels _____ Area – Rural _____ Business _____ Residential _____

ate Of Last Medical Report _____ Seat Belts In Use _____

verall length of your Vehicle No. 1 _____ Feet.

your vehicle equipped with sleeper berth? _____

ow many years experience do you have driving any type vehicle? _____

ow much experience driving the type vehicle in this accident? _____

ow many hours had you worked since the last eight hours off duty? _____

ow much of that was driving time? _____

as there any defect in your vehicle at the time of the accident? _____

"yes", describe defect: _____

escribe damage to your vehicle _____

r of traffic lanes _____

ehicle license number (Home State) _____

iver's license no. _____ Social Security No. _____

ate of birth _____

PREVIOUS EMPLOYER INFORMATION REQUEST

To: [ ]

Re: _____

Social Security No.: _____

Who states he/she was employed by you from

_____ 19__ to _____ 19__

working in the capacity of _____

has requested a Department of Transportation Driver Safety Clearance.

Gentlemen:

To assist us in evaluating this person's qualifications, would you please answer the questions listed below along with any other information which might be helpful. All information will be held in strict confidence. Please note this person's signed release at the bottom of this letter authorizing this inquiry. A duplicate copy of the request is attached for retention in your files. A self-addressed, stamped envelope is enclosed for your convenience in replying to this inquiry.

Date _____ Signature _____ Title _____

1. Is the information shown above regarding employment with your organization correct? _____
   If no, please explain _____
2. Reason for termination _____ If "discharged" or "resigned" what was reason? _____
3. Would you re-employ? _____ If no, why not? _____
4. Would you recommend this person for the position for which he is applying? _____ If no, please explain _____
5. Please give your evaluation of this person with respect to the following:

	Excellent	Very Good	Good	Fair	Poor		Excellent	Very Good	Good	Fair	Poor
Quality of work						Safety Habits					
Driving Skills						Attitude					
Cooperation											

6. Did this person file any Workmen's Compensation claims while in your employ? _____
   If yes, nature of injury _____ Per cent disability _____
7. If employed by you as a driver:
   A. Number of accidents: Preventable _____ Non-Preventable _____
   B. How would you rate his driving ability? Good ☐ Fair ☐ Poor ☐
   C. Type of equipment driven: straight truck ☐ semi ☐ tractor-diesel ☐ gas ☐
   D. Drove over the road ☐ Or city delivery ☐
8. Did this person have excessive shortage or damage claims? _____
9. Did this person handle deliveries to the shipper's satisfaction? _____
10. Did this person satisfactorily complete his paper work, e.g. D.O.T. Logs, etc? always _____ seldom _____ never _____
11. Did this person have personal or financial problems that interferred with his profession? _____

REMARKS: _____

Date _____ Signature _____ Title _____

RELEASE

Having made application for D.O.T. Safety Clearance at R & P Motor Lines, Inc.
I request their representative be informed as to my previous record. I hereby authorize the investigation of my past record to ascertain any and all information which may concern my past employment, whether same is of record or not. I release my previous employers and all persons whomsoever of any damages resulting from furnishing said information.

(Witness) _____ (Signed) _____

Date _____

B&P #10

COLL. $ DED.

ONAL COMP. LIABILITY

(USE THIS FORM TO REPORT BODILY INJURY LIAB., PROPERTY DAMAGE LIAB., COMPREHENSIVE LIAB., COLLISION, MEDICAL PAYMENTS, DRIVE OTHER CAR LOSSES.)

NO. STATE

TO BRANCH CLS. OFF

LICY DER

NAME

HOME OFFICE ADDRESS PHONE NO.

TERMINAL ADDRESS PHONE NO.

URED ICLE

YEAR MAKE KIND OF BODY MODEL LOCAL? LONG HAUL?

MOTOR NO. SERIAL NO. EQUIP. NO. WAS TRAILER ATTACHED?

REGISTERED OWNER Charles Blackwell ADDRESS

DRIVER'S NAME Ricky Blackwell AGE 26 ADDRESS

DRIVER YOUR EMPLOYEE? Yes NO. OCCUPANTS YOUR CAR — RELATIONSHIP —

OCCUPANT'S NAME — ADDRESS —

ailer Semi

YEAR MAKE KIND OF BODY SERIAL NO. EQUIP. NO.

REGISTERED OWNER ADDRESS

MATED DAMAGE TO YOUR AUTO OR POWER UNIT $ SEMI OR TRAILER $

E ANY OF THE ABOVE VEHICLES RENTED OR LEASED OUT BY YOU AT TIME OF ACCIDENT? OR TO YOU?

HER ICLE

MAKE YEAR TYPE LIC. NO. NO. OF OCCUPANTS

REGISTERED OWNER No Other ADDRESS

DRIVER ADDRESS

ESTIMATED DAMAGES $ DESCRIBE DAMAGE LIABILITY INSURANCE?

THER MAGED OPERTY

OWNER ADDRESS

ESTIMATED DAMAGE $ DESCRIBE DAMAGE Septic Tank Top Broken

URED SONS

IF NO ONE INJURED, SO STATE None ANYONE INJURED IN YOUR CAR? — OTHER CAR? —

NAME ADDRESS CITY

AGE INJURIES (DESCRIBE BRIEFLY)

NAME ADDRESS CITY

AGE INJURIES (DESCRIBE BRIEFLY)

SSES

NAME None ADDRESS CITY

NAME ADDRESS CITY

NAME ADDRESS CITY

DITIONAL SPACE IS NEEDED FOR NAMES OF INJURED, WITNESSES, FACTS, ETC., USE REVERSE SIDE.

CTS OF cident

DATE OF ACCIDENT 4-3-85 19 TIME 11:00 A.M. LOCATION

CITY Myrtle Beach COUNTY — STATE SC

DIRECTION YOU WERE TRAVELING Turning ON WHAT STREET? SPEED 5 MPH

DIRECTION OTHER CAR TRAVELING? N/A ON WHAT STREET? N/A SPEED MPH

WHICH VEHICLE ENTERED INTERSECTION FIRST? YOU N/A OTHER VEHICLE N/A

DISTANCE FROM POINT OF COLLISION WHEN YOU FIRST SAW OTHER CAR: YOU N/A FT. OTHER CAR N/A FT.

ANY SIGNAL BY YOU N/A OTHER DRIVER N/A LENGTH OF SKID MARKS YOUR CAR N/A FT. OTHER N/A FT.

LIGHTS BURNING? YOUR CAR N/A OTHER CAR N/A

WEATHER CONDITIONS: Clear VISIBILITY LIMITED TO None FT.

DID YOU ADMIT RESPONSIBILITY FOR ACCIDENT? No DID OTHER DRIVER? N/A

WAS ACCIDENT REPORTED TO POLICE? No DATE N/A WHAT STATION N/A

ANY ARRESTS MADE? YOU None OTHER N/A CITATION None

ANY INDICATION OF INTOXICATION? EXPLAIN None

OTE

If case requires field investigation (injuries or $250.00 property damage) designate adjuster to whom it has been assigned:

NAME LOCATION

DATE OF ASSIGNMENT NAME OF PERSON ASSIGNING CASE

COMMENT ON ADJUSTER'S RESPONSE

ORTANT: DESCRIBE IN YOUR OWN WORDS HOW ACCIDENT OCCURRED

11:00 Turning in road to go to Job site and when making swing to make turn septic tank came in

COUNTY STATE DATE

GNATURE OF VER X Ricky Blackwell SIGNATURE FOR POLICYHOLDER Ken Duncan TITLE

PLEASE DRAW ROUGH DIAGRAM AND FILL IN ADDITIONAL INFORMATION ON REVERSE SIDE. PLEASE REVERSE CARBONS.

PLEASE BE CERTAIN THAT DRIVER INVOLVED AND COMPANY OFFICIAL SIGN THIS REPORT!

-30M-10-72

7575

BELUE TRUCKING
RT.1 BOX 268
CAMPOBELLO,S.C.

Mr. Ricky L. Blackwell,

An audit of your drivers daily log for April 1985 has revealed the following:

Failure to prepare daily logs in form and manner prescribed. X
Not showing your unloading time on line 4

Driving for more than ten (10) hours. _____

Driving after having been on duty fifteen hours. _____

Remaining on duty more than seventy(70) hrs.in eight (8) consecutive days. _____

Failing to make or forward each day the oringinal of your drivers daily log. _____

Failing to prepare a daily vehicle condition report(on back of log.) _____

Average speed in excess of fifty four (54) miles per hour _____

Each driver will be held respondsible to report his available hours of service before excepting a trip dispatch.If at time of dispatch you do not have hours available to start trip or to complete trip,then you can and should turn trip down.

The above are in violation of the federal bureau of motor carrier safty regulations if not adhered to.If you do not comply to above it will become ness.to so note and place same in your personell file.

This is your 1ST warning.

Glen L. Duncan

4-17-85

DATE: 5-22-85

EMPLOYEE: Ricky Blackwell

PROBLEM : Was Reported To Me Today That Ricky has been Riding his wife + Others, In truck Leased To Belue Trucking.

Dispatch Notified That I had Mr Blackwell Grounded until he came In + Discussed this Matter.

REVIEWED :

DECISION :

Sat. 5/25/85

Was told This Am That Mr Blackwell Came to CC+S To get out Fri Nite + had his Kid Bro. On truck with him. Mr. Belue Let him take Bro. home but Mr. Blackwell did not show back up to cover

5/24/85

Dispatch stated this Am That Mr. Blackwell was coming In Today to get cleaned.

Mr. Ricky Blackwell DATE: 6-04-85

YOUR LOG FILE SHOWS THE FOLLOWING-

1= Missing Logs- 6/8 6/9

2= Failing To Put Bill Of Lading Numbers On Log

3= Failing To Turn Logs In Daily.

4= Logging Excessive Hours On Line 4.

5= Not Showing Daily Pre-Trip Inspections.

6= YOU MUST COME IN TO SEE ME AS SOON AS POSSIBLE.

7= FAILING TO SHOW UNLOADING TIME ON LINE 4 OF LOG

8= FAILING TO SHOW LOADING TIME ON LINE 4 OF LOG

KEN DUNCAN

FAMILY PRACTICE CENTER
SPARTANBURG HOSPITAL SYSTEM
101 East Wood Street
Spartanburg, S.C. 29303 Phone: 573-6193

NAME Ricky Blackwell DATE 6/3

ADDRESS

Label
Contents
Yes
No

Refills
None
P R N
1 2
3 4
5

Pt may return back to work

Disp#

Sig:

Dispense as written
DEA#

Substitution Permitted
SC#

M.D.

466-082

DRIVER: Ricky L. Blackwell

VIOLATION REVIEW RECORD

DATE	FAILURE TO PREPARE LOG	10 HOUR RULE	70 HOUR RULE	FAILURE TO FORWARD LOGS	EXCESS SPEED	OTHER	OTHER
April	Missing 5 days Log Feb. 1985						
JUNE, 17-85				Missing 5/28 - 6/9			
JUNE 19-85				Warning Letter			

O. D. C. [ ] COLL. [ ] COMP.

PERSONAL COMP. LIABILITY [ ]

(USE THIS FORM TO REPORT BODILY INJURY LIAB., PROPERTY DAMAGE LIAB., COMPREHENSIVE LIAB., COLLISION, MEDICAL PAYMENTS, DRIVE OTHER CAR LOSSES.)

TO _____ BRANCH CLD

POLICY HOLDER
NAME _____
HOME OFFICE ADDRESS _____ PHONE NO. _____
TERMINAL ADDRESS _____ PHONE NO. _____

INSURED VEHICLE — Auto, Truck, Tractor or Bus
YEAR 79 MAKE Peterbilt KIND OF BODY Sleeper MODEL _____ LOCAL? ✓ LONG HAUL? _____
MOTOR NO. _____ SERIAL NO. _____ EQUIP. NO. L-8462 WAS TRAILER ATTACHED? Yes
REGISTERED OWNER _____ ADDRESS _____
DRIVER'S NAME Ricky Blackwell AGE 24 ADDRESS Chesnee, SC
DRIVER YOUR EMPLOYEE? No NO. OCCUPANTS YOUR CAR N/A RELATIONSHIP N/A
OCCUPANT'S NAME N/A ADDRESS N/A

Trailer or Semi
YEAR _____ MAKE Reinwald KIND OF BODY Flat SERIAL NO. _____ EQUIP. NO. 43
REGISTERED OWNER _____ ADDRESS _____
ESTIMATED DAMAGE TO YOUR AUTO OR POWER UNIT $ Total STAKE OR TRAILER $ None
WERE ANY OF THE ABOVE VEHICLES RENTED OR LEASED OUT BY YOU AT TIME OF ACCIDENT? Yes (#43) OR TO YOU? ✓

OTHER VEHICLE
MAKE Ford YEAR 78 TYPE Stake LIC. NO. _____ NO. OF OCCUPANTS 1
REGISTERED OWNER Belue Trucking ADDRESS Same
DRIVER Jerry Fowler ADDRESS _____
ESTIMATED DAMAGES $ 500.00 DESCRIBE DAMAGE 2 Tires - Mud Flap LIABILITY INSURANCE? Yes

OTHER DAMAGED PROPERTY
OWNER _____ ADDRESS _____
ESTIMATED DAMAGE $ _____ DESCRIBE DAMAGE N/A

INJURED PERSONS
IF NO ONE INJURED, so STATE None ANYONE INJURED IN YOUR CAR? None OTHER CAR None
NAME _____ ADDRESS _____ CITY _____
AGE _____ INJURIES (DESCRIBE BRIEFLY) None
NAME _____ ADDRESS _____ CITY _____
AGE _____ INJURIES (DESCRIBE BRIEFLY) _____

WITNESSES
NAME Jerry Fowler ADDRESS _____ CITY _____
NAME _____ ADDRESS _____ CITY _____
NAME _____ ADDRESS _____ CITY _____

IF ADDITIONAL SPACE IS NEEDED FOR NAMES OF INJURED, WITNESSES, FACTS, ETC., USE REVERSE SIDE.

FACTS OF Accident
DATE OF ACCIDENT 7-10-85 19 TIME 1:15 P.M. LOCATION Hwy. #5 421
Near CITY Lillington, NC COUNTY _____ STATE _____
DIRECTION YOU WERE TRAVELING North ON WHAT STREET? Hwy #5 421 SPEED 20
DIRECTION OTHER CAR TRAVELING? North ON WHAT STREET? Hwy #5 421 SPEED _____
WHICH VEHICLE ENTERED INTERSECTION FIRST? YOU _____ OTHER VEHICLE ✓
DISTANCE FROM POINT OF COLLISION WHEN YOU FIRST SAW OTHER CAR: YOU 75 - 80' FT. OTHER CAR _____
ANY SIGNAL BY YOU No OTHER DRIVER Smoking Tires LENGTH OF SKID MARKS YOUR CAR 10 Ft. FT. OTHER 10 Ft.
LIGHTS BURNING? YOUR CAR No OTHER CAR _____
WEATHER CONDITIONS Clear VISIBILITY LIMITED TO Normal
DID YOU ADMIT RESPONSIBILITY FOR ACCIDENT? Yes DID OTHER DRIVER? No
WAS ACCIDENT REPORTED TO POLICE? Yes DATE 7/10/85 WHAT STATION N.C.H.P.
ANY ARRESTS MADE? YOU ✓ OTHER No CITATION Yes
ANY INDICATION OF INTOXICATION? EXPLAIN None

NOTE
If case requires field investigation (injuries or $250.00 property damage) designate adjuster to whom it has been assigned:
NAME _____ LOCATION _____
DATE OF ASSIGNMENT _____ NAME OF PERSON ASSIGNING CASE _____
COMMENT ON ADJUSTER'S RESPONSE _____

IMPORTANT: DESCRIBE IN YOUR OWN WORDS HOW ACCIDENT OCCURRED _____

CITY _____ COUNTY _____ STATE _____ DATE _____

SIGNATURE OF DRIVER _____ SIGNATURE OF POLICYHOLDER _____ TITLE _____

PLEASE DRAW ROUGH DIAGRAM AND FILL IN ADDITIONAL INFORMATION ON REVERSE SIDE. PLEASE REVERSE CARBONS.

PLEASE BE CERTAIN THAT DRIVER INVOLVED AND COMPANY OFFICIAL SIGN THIS REPORT!

7580

11—30M—10-73

HP-348

North Carolina
STATE HIGHWAY PATROL

EXCHANGE SLIP

ACCIDENT DATE 7-10-85 HOUR 1:15 P.M. A.M.

ACCIDENT LOCATION Hwy 421

DRIVER Larry James Fowler

DRIVER'S ADDRESS [redacted]

DRIVER'S *DOB 12-12-51 DRIVER'S LICENSE NO. 2061317

OWNER C. P. Belue Trucking Co.

OWNER'S ADDRESS RT 1 Bx 268 Campobello SC 29322

MAKE OF VEHICLE Ford Tractor MODEL COLL YEAR 79

VEHICLE LICENSE [redacted]

INSURANCE INFORMATION

FULL NAME OF INSURANCE COMPANY

REPRESENTATIVE WHO SOLD POLICY

ADDRESS

CITY STATE

POLICY NUMBER

*D. O. B. – DATE OF BIRTH

In The District Court Division 6187549

County of HARNETT File No.

State of North Carolina vs.

Code 3 No. Charges 1

RICKY LEE (JR.) MCKWELL
Defendant

RT #4 BOX 201
Current Address

CHESNEE SC 29323
☐ D.L. ☐ P.A.N. ☐ Other

Defendant is to appear in District Court	Day/Wk.	Mo.	Da.	Time
LILLINGTON N.C.	TUES	8	20	10 9:30 AM

Material Opposite Unmarked Squares Is To Be Disregarded As Surplusage

The undersigned officer has probable cause to believe that on or about 7-9-85 1:15 (a.) (p.) m., the 10TH day of JULY 19 85 in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

- ☐ At a speed of _____ MPH in a _____ MPH zone. G.S. 20-141.
- ☐ Without being licensed as a driver by the Division of Motor Vehicles of North Carolina. G.S. 20-7.
- ☐ By failing to stop at a duly erected (stop sign) (flashing red light). G.S. 20-158.
- ☐ By entering an intersection while a stop light was emitting a steady red light for traffic in defendant's direction of travel. G.S. 20-158.
- ☐ While subject to an impairing substance. G.S. 20-138.1.
- ☐ By failing to yield right of way in obedience to a duly erected (stop sign) (flashing red light) (yield sign). G.S. 20-158; -158.1
- ☐ By failing to see before (starting) (stopping) (turning from a direct line) that such movement could be made in safety. G.S. 20-154.
- ☐ Without due caution and circumspection and at a speed or in a manner so as to endanger persons and property. G.S. 20-140.
- ☐ By failing to drive said vehicle upon the right half of the highway that was of sufficient width for more than one lane of traffic. G.S. 20-146.
- ☐ While his driver's license was revoked. G.S. 20-28.
- ☐ Without displaying thereon a current approved inspection certificate, such vehicle requiring registration in North Carolina. G.S. 20-183.2. Mo. Exp. _____
- ☐ TRIED TO RUN SOLD TO AVOID ACCIDENT

- ☐ And on or about _____ (a.) (p.) m., the _____ day of _____ 19_____ in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

DEPARTMENTAL USE ONLY

Officer	No.	Zone/Troop	Dist.	☐ N.C. Patrol, ☐ _____ Police
D.P. PARKER	720	R	III	

Area	Pct.	Veh.	Traffic	Accident	Wit.	Chemical Analyst
01	C	C	M	#2		

On Highway No./Street: US 421 | In vicinity/City of: | At/Near Intersection:

Driver License No.	State	Type	Race	Sex	Date of Birth
[redacted]	SC	A	W	M	11-18-55

Vehicle License No.	State	Make	Type	Year	Speed
P12151	SC	PTRB	T.T	71	35

7-10-85
Officer Date

Signature of Defendant Acknowledging Receipt of Citation

MAGISTRATE'S ORDER

The defendant named above has been arrested without a warrant and there is probable cause for his detention on the charges set out above, issued upon information furnished under oath by the arresting officer named above.

Magistrate/Deputy/Assistant Clerk of Court Date

THIS CITATION REQUIRES YOU TO APPEAR IN THE DISTRICT COURT AT THE DATE AND TIME OUTLINED IN RED ABOVE. IF YOU FAIL TO APPEAR, A WARRANT WILL BE ISSUED FOR YOUR ARREST. IF YOU FAIL TO APPEAR ON A MOTOR VEHICLE OFFENSE AND SUBMIT TO THE JURISDICTION OF THE COURT AS REQUIRED BY LAW, YOUR FAILURE WILL BE TREATED AS A "CONVICTION" RESULTING IN "POINTS" AGAINST YOUR RECORD OR POSSIBLE LICENSE REVOCATION.

IN CERTAIN CASES, YOU MAY PLEAD GUILTY WITHOUT GOING TO COURT. SEE INSTRUCTIONS ON REVERSE SIDE.

PLEASE READ CAREFULLY
(only the checked block applies)

☐ You must be in court at the time and place shown on the other side unless the non-traffic misdemeanor charge is one to which you can plead guilty before a magistrate. If the charge is one of those cases in which magistrates can take guilty pleas, you may plead guilty before any magistrate of _____ County.

☐ You must be in court at the time and place shown on the other side. You may not plead guilty and pay the fine and costs before court because of the nature of the charge.

☑ You do not have to appear in court on this charge **IF** you plead guilty and pay the fine and costs before 5:00 p.m. on the last working day before your scheduled trial date as shown on the other side. The amount of fine and costs is a standard amount which the arresting officer has written below. You must appear in court at the time and place shown on the other side if you wish to plead NOT GUILTY.

If you decide to waive your right to trial and to plead guilty without going to court, you may do so as follows:

1. Date and sign the form below, and deliver this sheet together with the amount of costs and fine to the **Office of the Clerk of Superior Court, County Courthouse,** ILLINOIS **North Carolina**, between the hours of 8:30 a.m.-5:00 p.m., Monday through Friday. Personal payment must be made by cash, certified check or money order. Certified checks and money orders must be made payable to Clerk of Superior Court.

OR

2. Date and sign the form below and bring this sheet together with the fine and costs to any Magistrate in HARNETT County.

OR

3. PAYMENT BY MAIL may be made by signing and dating this form below and mailing it, with a certified check or money order to the **Clerk of Superior Court** at the address above. Certified checks and money orders must be made payable to **Clerk of Superior Court.**

WARNING: The above payment should be made as soon as possible to avoid being **liable** for the cost of serving subpoenas on witnesses plus witness fees. Subpoenas are usually served about **ten days** before the trial date. In any event payment **must** be received by the Clerk of Superior Court no later than 5:00 p.m. on the last working day prior to your trial date. (Law enforcement officers are not authorized to accept payment from a defendant under any circumstances.)

WAIVER OF RIGHT TO TRIAL AND PLEA OF GUILTY

I hereby waive my constitutional rights to a trial and tender to the Court a plea of guilty as charged on the reverse side hereof. Furthermore, I tender to the Court herewith the sum of $35.00 as payment of costs and the sum of $ _____ as payment of fine, a total costs and fine of $ 35.00

I request that the Court accept my waiver of rights to a trial, plea of guilty and tender of costs and fine and that a final judgment of guilty be entered. This request is made with the full understanding that a conviction will be entered against my record; that the North Carolina Division of Motor Vehicles or the state of issue of my license will be notified of this conviction, that it will have the same legal effect as a final conviction, after trial, for all purposes and may result in the assessment of points against my driving record or suspension or revocation of my driver's license.

This _____ day of _____ 19 _____
Defendant's Signature

IMPORTANT

If you do not plead guilty and pay the fine and costs before the day set for trial AND if you then fail to appear, criminal process will be issued against you, and if you are convicted, you may lose your driver's license or have points assessed against your record.

EMPLOYEE TERMINATION

EMPLOYEE _____ JOB TITLE Lease Driver (also Blackwell Lease)

EMPLOYMENT DATE 7-12-84

NAME Ricky L Blackwell S.S.# [redacted] EFFECTIVE 7-12-84

ADDRESS Rt 4 Box 318 Chesnee, S.C. 29323

ENTER ON PAYROLL ✓ RATE $ Lease Driver PERMANENT ✓ PART TIME _____

REMOVE FROM PAYROLL ✓ VOLUNTARY ___ INVOLUNTARY ✓ DATE 7/15/85

REASON Lease Ends ~~Quitting~~

WORKED NOTICE N/A FROM N/A TO N/A WORKED OUT NOTICE N/A

LEFT OWING No AMOUNT N/A ELIGIBLE FOR REHIRE No

ARRANGEMENTS FOR REPAYING _____

EMPLOYEE SIGNATURE _____

WITNESS Ken Duncan

WITNESS _____

APPLICATION FOR EMPLOYMENT

Company _____

Address _____

City _____ State _____ Zip _____

(answer all questions - please print)

In compliance with Federal and State equal employment opportunity laws, qualified applicants are considered for all positions without regard to race, color, religion, sex, national origin, age, marital status, or the presence of a non-job related medical condition or handicap.

Date of application 2-24-85

Position(s) Applied for Truck driver

Name BLACKwell (Last) Rickey (First) Lee (Middle) Social Security No. _____

Address Route 4th Box 318 (Street) Chesnee (City)

S.C (State) 29323 (Zip) Phone _____

ADDRESS FOR PAST THREE YEARS

_____ (Street) _____ (City) _____ (State & Zip Code) How Long? _____

_____ (Street) _____ (City) _____ (State & Zip Code) How Long? _____

[redacted] If hired can you provide proof of age? Yes

In case of emergency notify Angie Blackwell (Name) [redacted] (Address) (Phone)

Have you worked for this company before? Yes Where? _____

Dates: From 7-14-84 To 7-10-85 Rate of Pay _____ Position _____

Reason for leaving _____

Are you now employed? NO If not, how long since leaving last employment? 2-12-85

Who referred you? _____ Rate of pay expected Any

PHYSICAL HISTORY

List any handicap that prevents you from doing certain kinds of work None

Are you physically capable of heavy manual work? Yes

Ever injured on the job? Yes Give nature and degree of such injuries Broke Finger

How much time last from work in past three years for illness? _____

Would you be willing to take a physical examination? Yes

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EMPLOYMENT FOR THE PAST 3 YEARS
(ATTACH SHEET IF MORE SPACE IS NEEDED)

LAST EMPLOYER: NAME Peelers Bus
ADDRESS Gaffney S.C.
POSITION HELD Fixer FROM 8-12-85 TO 7-12-86 SALARY $3.50
REASONS FOR LEAVING

SECOND LAST EMPLOYER: NAME Blue Trucking
ADDRESS Rt 1 Box 265 Campobello
POSITION HELD Truck driver FROM 7-1-84 TO 7-10-85 SALARY
REASONS FOR LEAVING

THIRD LAST EMPLOYER: NAME Rockwell's Drywall
ADDRESS 615 W Cherokee
POSITION HELD Finisher FROM 5-10-82 TO 7-5-84 SALARY
REASONS FOR LEAVING

MILITARY STATUS

HAVE YOU SERVED IN THE U.S. ARMED FORCES? No BRANCH DATES: FROM TO

RANK AT DISCHARGE DATE OF DISCHARGE

EDUCATION

CIRCLE HIGHEST GRADE COMPLETED: 1 2 3 4 5 6 (7) 8 HIGH SCHOOL: 1 2 3 4 COLLEGE: 1 2 3 4

LAST SCHOOL ATTENDED Chesnee High School (NAME) S.C. (CITY)

EXPERIENCE AND QUALIFICATIONS — DRIVER

	STATE	LICENSE NO.	TYPE	EXPIRATION DATE
DRIVER LICENSES	S.C.	[redacted]	Class 3	11-18-86

A. Have you ever been denied a license, permit or privilege to operate a motor vehicle? YES ____ NO ✓

B. Has any license, permit or privilege ever been suspended or revoked? YES ____ NO ✓

IF THE ANSWER TO EITHER A OR B IS YES, ATTACH STATEMENT GIVING DETAILS

DRIVING EXPERIENCE

CLASS OF EQUIPMENT	TYPE OF EQUIPMENT (VAN, TANK, FLAT, ETC.)	DATES FROM	DATES TO	APPROX. NO. OF MILES (TOTAL)
STRAIGHT TRUCK				
TRACTOR AND SEMI-TRAILER	Van, Tank, FLAT	7-11-84	7-10-85	45,000
TRACTOR - TWO TRAILERS				
OTHER				

LIST STATES OPERATED IN FOR LAST FIVE YEARS

SHOW SPECIAL COURSES OR TRAINING THAT WILL HELP YOU AS A DRIVER:

WHICH SAFE DRIVING AWARDS DO YOU HOLD AND FROM WHOM?

ACCIDENT RECORD FOR PAST 3 YEARS OR MORE (ATTACH SHEET IF MORE SPACE IS NEEDED)

DATES	NATURE OF ACCIDENT (HEAD-ON, REAR-END, UPSET, ETC.)	FATALITIES	INJURIES
LAST ACCIDENT 7-10-85	Rear-end		None
NEXT PREVIOUS			
NEXT PREVIOUS			

TRAFFIC CONVICTIONS AND FORFEITURES FOR THE PAST 3 YEARS (OTHER THAN PARKING VIOLATIONS)

LOCATION	DATE	CHARGE	PENALTY
Lillington N.C.	2-10-45	13 S.C.	Arrested

(ATTACH SHEET IF MORE SPACE IS NEEDED)

EXPERIENCE AND QUALIFICATIONS — PLATFORM

LIST TYPES OF PLATFORM EXPERIENCE AND YEARS OF EACH _____

LIST PLATFORM EQUIPMENT YOU CAN OPERATE (LIFT TRUCK, ETC.) _____

SHOW COURSES OR TRAINING IN PLATFORM WORK _____

EXPERIENCE AND QUALIFICATIONS — MAINTENANCE

LIST TYPES OF MAINTENANCE EXPERIENCE AND YEARS OF EACH _____

SHOW EQUIPMENT YOU CAN OPERATE	CHECK	YEARS OF EXPERIENCE	EQUIPMENT	CHECK	YEARS OF EXPERIENCE
Woodworking Equipment			Electric Welder		
Sheet Metal Equipment			Oxyacetylene Welder		
Clutch Rebuilding			Paint Spray Gun		
Differential Rebuilding			Wheel & Tire Balancing Machine		
Transmission Rebuilding			Tire Recapping Mold		
Body Work			Engine Dynamometer		
Frame & Axle Straightening Equipment			Chassis Dynamometer		
Electrical & Ignition Repair			Magnetic Crack Tester		
Engine Rebuilding Equipment			Vacuum & Air Brakes		
Diesel Injection Equipment			Other:		

LIST COURSES AND TRAINING IN MAINTENANCE WORK _____

EXPERIENCE AND QUALIFICATIONS — CLERICAL

INDICATE TRAINING AND SHOW EXPERIENCE IN THE FOLLOWING:

*INDICATE WORDS PER MINUTE	TRAINING (CHECK)	YEARS OF EXPERIENCE		TRAINING (CHECK)	YEARS OF EXPERIENCE
Typing *			Rates **		
Shorthand *			OS & D		
Billing			Interline		
TWX			Claims		
PBX			Cashier		
Key Punch Operator			Accounting		
Calculator			Dispatcher		
Dictating Machine Transcriber			Tabulator		
Bookkeeping Machine			Mimeograph		
Adding Machine			** Indicate tariffs with which you		
Other:			have worked		

LIST COURSES AND TRAINING FOR OFFICE WORK _____

EXPERIENCE AND QUALIFICATIONS — OTHER

SHOW ANY TRUCKING, TRANSPORTATION OR OTHER EXPERIENCE THAT MAY HELP IN YOUR WORK FOR THIS COMPANY Belue Trucking

LIST COURSES AND TRAINING OTHER THAN SHOWN ELSEWHERE IN THIS APPLICATION

LIST SPECIAL EQUIPMENT OR TECHNICAL MATERIALS YOU CAN WORK WITH (OTHER THAN THOSE ALREADY SHOWN)

TO BE READ AND SIGNED BY APPLICANT

This certifies that this application was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge.

I authorize you to make such investigations and inquiries of my personal, employment, financial or medical history and other related matters as may be necessary in arriving at an employment decision. I hereby release employers, schools or persons from all liability in responding to inquiries in connection with my application.

In the event of employment, I understand that false or misleading information given in my application or interview(s) may result in discharge. I understand, also, that I am required to abide by all rules and regulations of the Company, as permitted by Law.

2-24-85
Date

Richard L Blackwell
Applicant's Signature

PROCESS RECORD

APPLICANT HIRED _____ REJECTED _____

DATE EMPLOYED _____ POINT EMPLOYED _____

DEPARTMENT _____ CLASSIFICATION _____

(IF REJECTED, SUMMARY REPORT OF REASONS SHOULD BE PLACED IN FILE)

THIS SECTION TO BE FILLED IN BY RESPONSIBLE OFFICER OR COMPANY REPRESENTATIVE

	SUPERIOR	GOOD	FAIR	BELOW AVERAGE	POOR	WRITTEN RECORD ON FILE
1. APPLICATION						
2. INTERVIEW						
3. PAST EMPLOYMENT						
4. WRITTEN EXAM						
5. ROAD TEST						
6. POLICE AND TRAFFIC RECORD						

SIGNATURE OF INTERVIEWING OFFICER _____

TRANSFERS

FROM: _____ TO: _____
DATE: _____
REASON FOR TRANSFER _____

FROM: _____ TO: _____
DATE: _____
REASON FOR TRANSFER _____

FROM: _____ TO: _____
DATE: _____
REASON FOR TRANSFER _____

FROM: _____ TO: _____
DATE: _____
REASON FOR TRANSFER _____

TERMINATION OF EMPLOYMENT

DATE TERMINATED _____ DEPARTMENT RELEASED FROM _____

DISMISSED _____ VOLUNTARILY QUIT _____ OTHER _____

TERMINATION REPORT PLACED IN FILE _____ SUPERVISOR _____

EMPLOYEE TERMINATION

EMPLOYEE # 425 JOB TITLE Driver

EMPLOYMENT DATE Re-Installed 2/24/86

NAME Rickey L. Blackwell S.S.# [redacted] EFFECTIVE 2-24-86

ADDRESS Route 4 Box 318 Okemah

ENTER ON PAYROLL ✓ RATE $ 70 PERMANENT ✓ PART TIME ____

REMOVE FROM PAYROLL ____ VOLUNTARY ____ INVOLUNTARY ____ DATE ____

REASON —

WORKED NOTICE ____ FROM ____ TO ____ WORKED OUT NOTICE ____

LEFT OWING ____ AMOUNT ____ ELIGIBLE FOR REHIRE ____

ARRANGEMENTS FOR REPAYING ____

EMPLOYEE SIGNATURE ____

WITNESS Ken Duncan

WITNESS ____

7589

Blackwell Trucking Records - 38

EMPLOYEE TERMINATION

EMPLOYEE _____ JOB TITLE Driver

EMPLOYMENT DATE Re-Instated 2-24-86

NAME Ricky L. Blackwell S.S.# [redacted] EFFECTIVE 2-24-86

ADDRESS Rt. 4 Box 316

ENTER ON PAYROLL ✓ RATE $ 7.0 PERMANENT ✓ PART TIME _____

REMOVE FROM PAYROLL ___ VOLUNTARY ___ INVOLUNTARY ___ DATE _____

REASON _____

WORKED NOTICE _____ FROM _____ TO _____ WORKED OUT NOTICE _____

LEFT OWING _____ AMOUNT _____ ELIGIBLE FOR REHIRE _____

ARRANGEMENTS FOR REPAYING _____

EMPLOYEE SIGNATURE X Ricky Blackwell

WITNESS Ken Duncan

WITNESS _____

STATEMENT OF VIOLATIONS

(to be completed prior to Hiring and Annually)

I certify that the following is a true and complete list of traffic violations (other than parking violations) for which I have been convicted or forfeited bond or collateral during the past 12 months.

DATE	OFFENSE	LOCATION	TYPE OF VEHICLE OPERATED
7-10-85	Speeding	Lillington N.C	Tractor Trailer

If no violations are listed above, I certify that I have not been convicted or forfeited bond or collateral on account of any violation required to be listed during the past 12 months.

2-24-86
DATE OF RECERTIFICATION

Belue Trucking
MOTOR CARRIER'S NAME

Ricky Blackwell
DRIVER'S SIGNATURE

Lumberton, N.C.
MOTOR CARRIER'S ADDRESS

REVIEWED BY TITLE

Employee's Withholding Allowance Certificate

The explanatory material below will help you determine your correct number of withholding allowances, and will indicate whether you should complete the new Form W–4 at the bottom of this page.

How Many Withholding Allowances May You Claim?

Please use the schedule below to determine the number of allowances you may claim for tax withholding purposes. In determining the number, keep in mind these points: If you are single and hold more than one job, you may not claim the same allowances with more than one employer at the same time; If you are married and both you and your wife or husband are employed, you may not claim the same allowances with your employers at the same time. A nonresident alien other than a resident of Canada, Mexico or Puerto Rico may claim only one personal allowance.

Figure Your Total Withholding Allowances Below

(a) Allowance for yourself—enter 1	
(b) Allowance for your wife (husband)—enter 1	
(c) Allowance for your age—if 65 or over—enter 1	
(d) Allowance for your wife's (husband's) age—if 65 or over—enter 1	
(e) Allowance for blindness (yourself)—enter 1	
(f) Allowance for blindness (wife or husband)—enter 1	
(g) Allowance(s) for dependent(s)—you are entitled to claim an allowance for each dependent you will be able to claim on your Federal income tax return. Do not include yourself or your wife (husband)*	
(h) Special withholding allowance—if you have only one job, and do not have a wife or husband who works—enter 1	
(i) Total—add lines (a) through (h) above	
If you do not plan to itemize deductions on your income tax return, enter the number shown on line (i) on line 1, Form W–4 below. Skip lines (j) and (k).	
(j) Allowance(s) for itemized deductions—If you do plan to itemize deductions on your income tax return, enter the number from line 5 of worksheet on back	
(k) Total—add lines (i) and (j) above. Enter here and on line 1, Form W–4 below	

*If you are in doubt as to whom you may claim as a dependent, see the instructions which came with your last Federal income tax return or call your local Internal Revenue Service office.

See Table and Worksheet on Back if You Plan to Itemize Your Deductions

Completing New Form W–4

If you find that you are entitled to one or more allowances in addition to those which you are now claiming, please increase your number of allowances by completing the form below and filing with your employer. If the number of allowances you previously claimed decreases, you must file a new Form W–4 within 10 days. (Should you expect to owe more tax than will be withheld, you may use the same form to increase your withholding by claiming fewer or "0" allowances on line 1 or by asking for additional withholding on line 2 or both.)

▼ Give the bottom part of this form to your employer; keep the upper part for your records and information ▼

Form W-4
(Rev. Aug. 1972)
Department of the Treasury
Internal Revenue Service

Employee's Withholding Allowance Certificate

(This certificate is for income tax withholding purposes only; it will remain in effect until you change it.)

Type or print your full name: Rickey Lee BLACKwell

Your social security number: [redacted]

Home address (Number and street or rural route): Route 4 Box 318

Marital status: ☐ Single ☑ Married
(If married but legally separated, or wife (husband) is a nonresident alien, check the single block.)

City or town, State and ZIP code: CHesNee S.C 29323

1 Total number of allowances you are claiming: 0

2 Additional amount, if any, you want deducted from each pay (if your employer agrees): $

I certify that to the best of my knowledge and belief, the number of withholding allowances claimed on this certificate does not exceed the number to which I am entitled.

Signature ▶ Rickey L Blackwell Date ▶ Feb 24 19 86

MP. NO.: 425 REV. DATE: 03-07-86

MPLR.: BELTRK

AST NAME: BLACKWELL

IRST NAME: RICKEY

/I: L

OC. SEC. NO.: [redacted]

ATE BIRTH: [redacted]

[redacted]

JSITION: DRIVER
ATE/MVR: MVR DUE:
ATE/PHY: PHY DUE:
YR. CK.: NO
HONE NO.: 803-461-2681
TATUS: 1

DDRESS: RT. 4, BOX 318

ITY: CHESNEE

TATE: S.C.

IP CODE: 29323

AX E STATUS: M EFF. DATE: 02-24-86

). EX.: 0 EFF. DATE: 02-24-86

AY TYPE: C EFF. DATE: 02-24-86

OD. RATE: N/A EFF. DATE: N/A

.T. RATE: N/A EFF. DATE: N/A

MM. SCHED.: 1 EFF. DATE: 02-24-86

H INS.: 0.00 EFF. DATE: N/A

NCER INS.: 0.00 EFF. DATE: N/A

IF. DED.: 0.00 EFF. DATE: N/A

TE HIRE: 02-24-86

TE TERM.:

GE DIST PROMPT-REG: 6131

GE DIST PROMPT-VAC: 6031

RM L INVOL:

RKED NOTICE:

FT OWING: .

GIBLE/REHIRE:

SOUTH CAROLINA
DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION
MOTOR VEHICLE DIVISION
P.O. BOX 1498
COLUMBIA, S.C. 29216

OFFICIAL DRIVING RECORD AS
INDICATED BY DEPARTMENT FILES

861560833-0008 06/05/86

PAGE 1

NAME BLACKWELL-RICKEY LEE
ADDRESS R 4 BX 201
CHESNEE 29323
BIRTH DATE [redacted]
ISSUE DATE 01/21/82 DRIVE TRAIN NO
TYPE LICENSE CLASS 3
DRIVING STATUS POINTS-NO SUSPENSION
MANDATORY-NO SUSPENSION
MANUAL-NO SUSPENSION

VIOL SPEEDING - 10 MPH OR LESS
DATE 05/07/83 TICKET F005152
POSTED 06/14/83 POINTS 2
CURRENT POINT VALUE 0

VIOL SPEEDING - 10 MPH OR LESS
DATE 04/03/85 TICKET M155367
POSTED 05/02/85 POINTS 2
CURRENT POINT VALUE 1

VIOL DISREGARD SIGN OR SIGNAL
DATE 05/20/85 TICKET M200174
POSTED 06/25/85 POINTS 4
CURRENT POINT VALUE 4

LICENSE NUMBER 4934285 PAGE 2
TOTAL CURRENT POINTS = 5
END INQUIRY

Certified to be a true and correct copy of the original record on file with the State Highway Department.

E. P. AUSTIN, JR., Director
Motor Vehicle Division

DF 11/08

EXAMINATION TO DETERMINE PHYSICAL CONDITION OF DRIVERS

Driver's name Blackwell Rickey Lee ☐ New Certification
(Please Print) (Last) (First) (Middle)

[redacted] Route 4 Box 318 Chesnee S.C ☐ Recertification
(Number) (Street) (City) (State)

[redacted] Age 27

HEALTH HISTORY

Yes	No		Yes	No		Yes	No		Yes	No	
☐	☑	Head or spinal injuries.	☐	☑	Cardiovascular disease.	☐	☑	Gastrointestinal ulcer.	☐	☑	Suffering from any other disease.
☐	☑	Seizures, fits, convulsions, or fainting.	☐	☑	Tuberculosis.	☐	☑	Nervous stomach.	☐	☑	Permanent defect from illness, disease or injury.
☐	☑	Extensive confinement by illness or injury.	☐	☑	Syphilis.	☐	☑	Rheumatic fever.	☐	☑	Psychiatric disorder.
			☐	☑	Gonorrhea.	☐	☑	Asthma.	☐	☑	Any other nervous disorder.
			☐	☑	Diabetes.	☐	☑	Kidney disease.			
						☐	☑	Muscular disease.			

If answer to any of the above is yes, explain: _____

PHYSICAL EXAMINATION

General appearance and development: Good ✓ Fair _____ Poor _____ Height 6'1 Weight 153½

Vision: For distance: Right 20/ 20 Left 20/ 30

☑ Without corrective lenses. ☐ With corrective lenses if worn.

Evidence of disease or injury: Right none Left none

Color Test normal Horizontal field of vision: Right > 70 ° Left > 70 °

Hearing: Right ear ✓ Left ear ✓ Disease or injury none

Audiometric Test (complete only if audiometer is used to test hearing) decibel loss at 500 Hz ____, at 1,000 Hz ____, at 2,000 Hz ____

Throat clear

Thorax: Heart RRR WNL

If organic disease is present, is it fully compensated? _____ Blood pressure: Systolic 110 Diastolic 68

Pulse: Before exercise 84 Immediately after exercise _____

Lungs Clear

Abdomen: Scars none Abnormal masses none Tenderness none Hernia: Yes ____ No ✓

If so, where? _____ Is truss worn? _____

Gastrointestinal: Ulceration or other disease: Yes ____ No ✓

Genito-Urinary: Scars none Urethral discharge none

Reflexes: Rhomberg ✓ Pupillary ✓ Light R ✓ L ✓ Accommodation Right ✓ Left ✓

Knee Jerks: Right: Normal ✓ Increased ____ Absent ____ Left: Normal ✓ Increased ____ Absent ____

Remarks _____

Extremities: Upper normal Lower normal Spine normal

Laboratory and other Special Findings: Urine: Spec. Gr. 1.500 Alb. neg Sugar neg

Other laboratory data (Serology, etc.) _____ Electrocardiograph _____

Radiological data _____

General comments Pt. appears to be in good health.

7.11.86 (Date of examination)

Barry B. Henderson, M.D. (Name of examining doctor) (Print)

One Mandala Lane Spthg, SC 29303 (Address of examining doctor)

Barry B. Henderson M.D. (Signature of examining doctor)

NOTE: This section to be completed only when visual test is conducted by a licensed optometrist.

(Date of examination) (Address of optometrist)

(Signature of optometrist) (Name of optometrist) (Print)

(d) If the medical examiner finds that the person he examined is physically qualified to drive a motor vehicle in accordance with § 391-41(b), he shall complete a certificate in the form prescribed in paragraph (e) of this section and furnish one copy to the person who was examined and one copy to the motor carrier that employs him.

(e) The medical examiner's certificate shall be in accordance with the following form:

MEDICAL EXAMINER'S CERTIFICATE

[redacted] I certify that I have examined Rickey Blackwell (Driver's name) (Print) in accordance with the Motor Carrier Safety Regulations (49 CFR 391.41-391.49) and with knowledge of his duties, I find him qualified under the regulations.

☐ Qualified only when wearing corrective lenses. ☐ Qualified only when wearing a hearing aid.

A completed examination form for this person is on file in my office at One Mandala Lane, Spthg, S.C. 29303 (Address)

Rickey L Blackwell (Signature of driver)

Route 4 Box 318 Chesnee S.C (Address of driver)

7-11-86 (Date of examination)

Barry B. Henderson M.D. (Name of examining doctor) (Print)

Barry B. Henderson M.D. (Signature of examining doctor)

Form CD-3-3, Rev. 8/84
Control No. 90773040

CONSUMER LIFE INSURANCE COMPANY

Executive Office:
30 Perimeter Park, Atlanta, Georgia 30341

Home Office:
Phoenix, Arizona

STATEMENT OF EMPLOYER

I am the employer of RICKEY L. BLACKWELL S/S # [redacted]
(Claimant's Name)

he/she did not perform any part of his/her work from SEPTEMBER 4,1986, 19____ to _____, 19____ I further certify that he/she did not perform any duty pertaining to his/her occupation during this period except as follows: NONE

Firm Name BELUE TRUCKING

Address P.O. BOX 734

City FAIRFOREST, State S.C. Zip 29336

Date: 9/17/86, 19__ By: [signature]

Title: OPER. MGR.

NOTE: Please return this form to Fleet

MP. NO.: 425 REV. DATE: 09-12-86

MPLR.: BELTRK

AST NAME: BLACKWELL

IRST NAME: RICKEY

/I: L

[redacted]

OSITION: DRIVER
ATE/MVR: MVR DUE:
ATE/PHY: PHY DUE:
YR. CK.: NO
HONE NO.: 803-461-2681
TATUS: 1

DDRESS: RT. 4, BOX 318

ITY: CHESNEE

TATE: S. C.

IP CODE: 29323

AX[redacted]LE STATUS: M EFF. DATE: 02-24-86

O. EX.: 0 EFF. DATE: 02-24-86

AY TYPE: C EFF. DATE: 02-24-86

EG. RATE: N/A EFF. DATE: N/A

.T. RATE: N/A EFF. DATE: N/A

OMM. SCHED.: 1 EFF. DATE: 02-24-86

/H INS.: 21.63 EFF. DATE: 08-24-86

NCER INS.: 0.00 EFF. DATE: N/A

NIF. DED.: 0.00 EFF. DATE: N/A

ATE HIRE: 02-24-86

ATE TERM.:

AGE DIST PROMPT-REG: 6131

AGE DIST PROMPT-VAC: 6031

ERM[redacted]OL/INVOL:

DRMED NOTICE:

EFT OWING:

LIGIBLE/REHIRE:

:MP. NO.: 425 REV. DATE: 10-10-86

:MPLR.: BELTRK

AST NAME: BLACKWELL

IRST NAME: RICKEY

I/I: L

[redacted]

OSITION: DRIVER
ATE/MVR: MVR DUE:
ATE/PHY: PHY DUE:
 YR. CK.: NO
HONE NO.: 803-461-2681
TATUS: 1

DDRESS: RT. 4, BOX 318

ITY: CHESNEE

TATE: S. C.

IP CODE: 29323

AX LE STATUS: M EFF. DATE: 02-24-86

O. EX.: 0 EFF. DATE: 02-24-86

AY TYPE: C EFF. DATE: 02-24-86

EG. RATE: N/A EFF. DATE: N/A

.T. RATE: N/A EFF. DATE: N/A

OMM. SCHED.: 1 EFF. DATE: 02-24-86

/H INS.: 28.12 EFF. DATE: 10-10-86

ANCER INS.: 0.00 EFF. DATE: N/A

NIF. DED.: 0.00 EFF. DATE: N/A

ATE HIRE: 02-24-86

ATE TERM.:

AGE DIST PROMPT-REG: 6131

AGE DIST PROMPT-VAC: 6031

ER OL/INVOL:

ORKED NOTICE:

EFT OWING:

LGIBLE/REHIRE:

BELUE TRUCKING

P.O. Box 734 • Fairforest, S.C. • Phone 576-1660

I, Ricky Blackwell (DO)_____

(DO NOT) ✓ WISH TO CONTINUE MY HEALTH INSURANCE WITH BELUE TRUCKING. I UNDERSTAND THAT THE PREMIUM OF _____ PER MONTH MUST BE PAID BY THE FIRST OF EACH MONTH, PREMIUM TO BE INCREASED AS BELUE TRUCKING RECEIVES COST INCREASE.

INSURANCE CAN BE MAINTAINED THROUGH BELUE TRUCKING FOR 18 MONTH AND THEN CONVERTED TO AN INDIVIDUAL POLICY.

EMPLOYEE : Ricky Blackwell

WITNESS Jay B Sedretta 4-14-87

Jack-Hill FORM WE 37
JACK-HILL-CORP.
908 Central St.
Kansas City, Mo. 64105

COMMERCIAL DRIVER WRITTEN EXAMINATION

MOTOR CARRIER PART 391—APPENDIX C

As required in § 391.35 of Motor Carrier Safety Regulations to test knowledge of parts 390 - 397.

Date 7-9-84

Examinee's Name Ricky Blackwell Phone 461-2681

Address Route 4 # Chesnee Box 318 City & State Chesnee S.C. Zip Code 29323

INSTRUCTIONS

All of the questions contained herein are based on the U.S. Department of Transportation's Federal Motor Carriers Safety Regulations. Applicants for the position of commercial driver are required to take the examination.

Each question has four answers but only one is right. Your job on each question is to read all of the answers and then to pick the one answer you think is right. Mark an "X" in the space next to the answer you choose. Do *not* pick more than one answer for each question.

Here is a sample question to show you what is to be done:

The Federal Motor Carrier Safety Regulations were written for:

1.( ) vehicle makers.
2.( ) drivers only.
3.( ) carriers only.
4.( ) drivers and carriers.

The right answer is number 4, "drivers and carriers," so you would mark an "X" in the space next to answer 4.

Finally, be sure to answer every question and do not skip any pages. Your score will be the number of items correctly answered. Keep in mind that most of the regulations covered here are different from what is required of passenger car drivers; they apply to commercial bus and truck drivers. Again, *pick only one answer for each question.* There is no time limit on the examination, but try to work as fast as you can.

1-390.32 *A motor carrier who is also a driver (owner-operator):*
1.( ) is not covered by the safety regulations.
2.( ) must obey only those parts of the regulations which cover drivers.
3.( ) must obey only those parts of the regulations which cover motor carriers.
4.(✓) must obey both the parts covering drivers and the parts covering motor carriers.

2-391.11(b)(1) *With only a few exceptions, the Federal Motor Carrier Safety Regulations a driver must be:*
1.( ) at least 18 years old.
2.( ) at least 19 years old.
3.( ) at least 20 years old.
4.(✓) at least 21 years old.

3-391.15(c)(2)(3) *A driver cannot drive a motor vehicle:*
1.( ) for 1 year after a first offense conviction for a felony involving a commercial motor vehicle he was driving.
2.( ) for 1 year after a first offense conviction for driving a commercial vehicle under the influence of alcohol or narcotics.
3.( ) for 1 year after a first offense conviction for leaving the scene of an accident which resulted in personal injury or death.
4.(✓) for 1 year after a first offense conviction for any of the above.

4-391.21(b)(7)(8)(10) *Every driver applicant must furnish on application form giving:*
( ) a list of all vehicle accidents he was in during the previous 3 years.
2.( ) a list of all of his motor vehicle violation convictions and bond forfeits (except for parking) during the previous 3 years.
3.( ) a list of names and addresses of all of his employers during the previous 3 years.
4.(✓) all of the above.

5-391.27(a)(b) *At least once a year, a driver must fill out a form listing all motor vehicle violations (except parking) which he had during the previous 12 months. He must fill out the form:*
1.( ) even if he had no violations.
2.(✓) only if he was convicted.
3.( ) only if he was convicted or forfeited bond or collateral.
4.( ) only if the carrier requires it.

6-391.33(a)(2) *If a driver applicant has a valid certificate showing he passed a driver's road test:*
1.( ) the carrier must accept it.
2.(✓) the carrier may still require the applicant to take a road test.
3.( ) the carrier cannot accept it.
4.( ) the carrier may request a road test waiver from the Bureau of Motor Carrier Safety.

7-391.41(b)(5) *Persons with breathing problems which may affect safe driving:*
1.(✓) cannot drive.
2.( ) cannot drive unless the vehicle has an emergency oxygen supply.
3.( ) cannot drive unless another driver is along.
4.( ) cannot drive except on short runs.

8-391.41(b)(7) *Persons with arthritis rheumatism, or any such condition which may affect safe driving:*
1.( ) cannot drive unless they are checked by a doctor before each trip.
2.(✓) cannot drive.
3.( ) cannot drive except when free of pain.
4.( ) cannot drive unless a [illegible] is along.

9-391.41(b)(8) *Persons who have ever had epilepsy:*
1.( ) cannot drive unless another driver is along.
2.(✓) cannot drive.
3.( ) cannot drive on long runs.
4.( ) cannot drive without monthly medical examinations.

10-391.41(b)(9)(12)(13) *In order to be able to drive, a person:*
1.( ) must not have any mental, nervous, or physical problem likely to affect safe driving.
2.( ) must not use an amphetamine, narcotic, or any habit-forming drug.
3.( ) must not have a current alcoholism problem.
4.(✓) must not have or use any of the above.

11-391.45(a) *Any driver who gets an injury or illness serious enough to affect his ability to perform his duties:*
1.( ) must report it at his next scheduled physical.
2.( ) cannot drive again.
3.(✓) must take another physical and be recertified before driving again.
4.( ) must wait at least 1 month after recovery before driving again.

12-392.2 *A driver may* not *drive faster than posted speed limits:*
1.( ) unless he is sick and must complete his run quickly.
2.(✓) at any time.
3.( ) unless he is passing another vehicle.
4.( ) unless he is late and must make a scheduled arrival.

13-392.3 *When a driver's physical condition while on a trip requires that he stop driving, but stopping would not be safe, the driver:*
1.( ) must stop anyway.
2.( ) may try to complete his trip, but as quickly as possible.
3.( ) may continue to drive to his home terminal.
4.(✓) may continue to drive, but must stop at the nearest safe place.

14-392.5(a)(1) *A driver may not drink or be under the influence of any alcoholic beverage (regardless of alcoholic content):*
1.(✓) within 4 hours before going on duty or driving.
2.( ) within 5 hours before going on duty or driving.
3.( ) within 8 hours before going on duty or driving.
4.( ) within 12 hours before going on duty or driving.

15-392.7 *A driver must satisfy himself that service and parking brakes, tires, lights and reflectors, mirrors, coupling, and other devices are in good working order:*
1.( ) at the end of each trip.
2.(✓) before the vehicle may be driven.
3.( ) only when he considers it necessary.
4.( ) according to schedules set by the carrier.

16-392.8 *Which of the following must be in place and ready for use before a vehicle can be driven?*
1.(✓) At least one spare fuse or other overload protector of each type used on the vehicle.
2.( ) a tool kit containing a specified list of hand tools.
3.( ) At least one spare tire for every four wheels.
4.( ) A set of spark plugs.

17-392.9(a)(3) *If any part of the cargo or anything else blocks a driver's front or side vicies, his arm or leg movements, or his access to emergency equipment, the driver:*
1.( ) can drive the vehicle, but must report the problems at the end of the trip.
2.(✓) cannot drive the vehicle.
3.( ) can drive the vehicle, but only at speeds under 40 miles per hour.
4.( ) can drive the vehicle, but only on secondary roads.

18-392.9a *Any driver who needs glasses to meet the minimum visual requirements:*
1.( ) must drive only during daylight hours.
2.(✓) must always wear his glasses when driving.
3.( ) must always carry a spare pair of glasses.
4.( ) must not drive a motor vehicle.

19-392.9b *A driver may drive with a hearing aid:*
1.(✓) if he always has it turned on while he is driving.
2.( ) if he always carries a spare power source for it.
3.( ) if he can meet the hearing requirements when he has it turned on.
4.( ) if all of the above are met.

20-392.10(a) *A driver required to stop at a railroad crossing should bring his vehicle to a stop no closer to the tracks than:*
1.( ) 5 feet.
2.( ) 10 feet.
3.(✓) 15 feet.
4.( ) 20 feet.

21-392.10(a) *Shifting gears is not permitted:*
1.( ) when traveling faster than 35 miles per hour.
2.(✓) when moving across any bridge.
3.(✓) when crossing railroad tracks.
4.( ) when traveling down a hill steeper [illegible]

22-392.13 *Drivers of motor vehicles not required to stop at drawbridges without signals:*
1.(✓) must drive at a rate of speed which will permit a stop before reaching the lip of the draw.
2.( ) must sound their horn before crossing.
3.( ) can proceed across without reducing speed.
4.( ) must slow down only if directed to by an attendant.

23-392.16(a) *A driver turning his vehicle should begin flashing his turn signal:*
1.( ) at least 50 feet before turning.
2.( ) at least 60 feet before turning.
3.( ) at least 75 feet before turning.
4.(✓) at least 100 feet before turning.

24-392.18 *Which of the following is true?*
1.(✓) If a seat belt is installed in the vehicle, a driver must have it fastened before beginning to drive.
2.( ) A driver may or may not use the seat belt, depending on his judgment.
3.( ) Seat belts are not necessary on heavier vehicles.
4.( ) A driver must use his seat belt only if required to by the carrier.

25-392.21 *When a motor vehicle cannot be stopped off the traveled part of the highway, the driver:*
1.( ) must keep driving.
2.( ) may stop, but shall get as far off the traveled part of the highway as possible.
3.(✓) may stop, but shall make sure that the vehicle can be seen as far as possible to its front and rear.
4.( ) may stop if he has to, but should do both 2 and 3 above.

26-392.22(b)(1) *If a vehicle has a breakdown the driver must place one emergency signal:*
1.( ) 100 feet in front of the vehicle in the center of the lane it occupies.
2.( ) 100 feet in back of the vehicle in the center of the lane it occupies.
3.( ) 10 feet in front or back of the vehicle on the traffic side.
4.(✓) at all of the above locations.

27-392.22(b)(1)(i) *If a vehicle has a breakdown on a poorly lit street or highway, the driver shall place on the traffic side:*
1.(✓) a reflective triangle.
2.( ) a lighted red electric lantern.
3.(✓) a red reflector.
4.( ) any one of the above.

28-392.22(b)(2)(iii) *No emergency signals are required for a vehicle with a breakdown if the street or highway lighting is bright enough so it can be seen at a distance of:*
1.(✓) 100 feet.
2.( ) 200 feet.
3.(✓) 500 feet.
4.( ) 750 feet.

29-392.22(b)(v) *If a vehicle has a breakdown and stops on a poorly lit divided or one way highway, the driver must place one emergency signal:*
1.( ) 200 feet in back of the vehicle in the center of the lane it occupies.
2.( ) 100 feet in back of the vehicle in the center of the lane it occupies.
3.( ) 10 feet in back of the vehicle on the traffic side of the vehicle.
4.(✓) at all of the above locations.

30-392.25 *Lighted flame-producing emergency signals, including fusees:*
1.( ) may not be used with vehicles carrying class A or B explosives.
2.( ) may not be used with tank vehicles, loaded or empty, which are used to carry flammable liquids or gas.
3.( ) may not be used with any vehicle using compressed gas as a fuel.
4.(✓) may not be used with any of the above.

31-392.30(a) *A driver is required to have his lights on:*
1.(✓) from one-half hour *before* sunset to one-half hour *before* sunrise.
2.( ) from one-half hour *before* sunset to sunrise.
3.( ) from one-half hour *after* sunset to one-half hour *before* sunrise.
4.( ) from sunset to one-half hour before sunrise.

32-392.32(a)(b) *When lights are required on the open highway, a driver shall use the high beam:*
1.(✓) except when within 500 feet of an on-coming vehicle or a vehicle he is following.
2.( ) except when within 400 feet of an on-coming vehicle or a vehicle he is following.
3.( ) except when within 300 feet of an on-coming vehicle or a vehicle he is following.
4.( ) except when within 100 feet of an on-coming vehicle or a vehicle he is following.

33-392.32(a) *When lights are required, drivers may use lower beam lights:*
1.(✓) when fog, dust, or other such conditions exist.
2.( ) when approaching tunnels or bridges.
3.( ) when driving on one-way highways.
4.( ) when within 1,000 feet of business areas or where people live.

...y driver involved in an ac... it follow the safety regulations as whenever an injury or death ...ed or if:

...n accident is caused by the driver and property damage of over $250 results.

( ) property damage of over $250 results, no matter who is at fault.

3.( ) property damage of over $100 results.

4.(✓) property damage of any kind results.

35-392.41 *If a driver strikes a parked vehicle, he should first:*

1.( ) stop and call the local police.
2.( ) stop and call his carrier.
3.(✓) stop and try to find the driver or owner of the parked vehicle.
4.( ) stop and estimate the damage.

36-392.42 *When a driver receives notice that his operator's license or permit has been revoked, suspended, or withdrawn, he must:*

1.( ) notify his carrier within 72 hours.
2.(✓) notify his carrier within 1 week.
3.( ) notify his carrier before the end of the next business day.
4.( ) take no action since his carrier will also get a notice.

37-392.61 *Except in emergencies, no driver shall allow his vehicle to be driven by any other person:*

1.( ) except those he knows can drive it.
2.( ) except on roads with little or no traffic.
3.(✓) except those allowed by the carrier to do it.
4.( ) unless he goes along with the person driving.

38-392.64 *A person may ride inside a vehicle's closed body or trailer:*

1.( ) only on short runs.
2.(✓) only if there is an easy way to get out from the inside.
3.( ) only if the inside of the body or trailer is lighted.
4.( ) only if there is no cargo in it.

39-392.66 *If carbon monoxide is inside a vehicle or if a mechanical problem may produce a carbon monoxide danger, the vehicle:*

1.( ) may be sent out and driven so long as the windows are left open.
2.(✓) may not be sent out or driven.
3.( ) may be sent out and driven only if the carrier decides the vehicle has to be used.
4.( ) may be sent out and driven on short runs.

40-392.68 *No motor vehicle shall be operated out of gear:*

1.( ) except when fuel must be saved.
2.( ) except on hills which are less than 20°.
3.(✓) except when it is necessary for stopping or shifting gears.
4.( ) except when the vehicle's speed is under 25 miles per hour.

41-393.1(a) *Under the Motor Carrier Safety Regulations, no vehicle may be driven:*

1.( ) until a list of all missing or defective equipment has been prepared and given to the carrier.
2.( ) until all equipment has been inspected and replacements for defective parts have been ordered.
3.( ) unless all missing equipment is to to be replaced no later than the end of the vehicle's next run.
4.(✓) until it meets all of the equipment requirements of the regulations.

42-393 various *Minimum requirements for lighting, reflecting and electrical equipment and devices on buses and trucks:*

1.( ) are set by the vehicle makers.
2.( ) are set by the National Safety Council.
3.(✓) are specified in the safety regulations.
4.( ) are set by the trucking associations.

43-393.16(a)(b) *Every motor vehicle which has a load sticking out over its rear must be specially marked with flags and lamps. Additional flags and lamps must be added if the load or tailgate sticks out beyond the rear of the vehicle by more than:*

1.( ) 2 feet.
2.(✓) 4 feet.
3.( ) 6 feet.
4.( ) 8 feet.

44-393.41(a) *Every vehicle shall have a parking brake system which will hold it, no matter what its load:*

1.(✓) on any grade on which it is operated which is free from ice and snow.
2.( ) on all grades under 15° which are free from ice and snow.
3.( ) on all grades under 20° which are free from ice and snow.
4.( ) on all grades under 25° which are free from ice and snow.

45-393.77(b)(6) *A portable heater may not be used in any vehicle cab:*

1.(✓) unless it is secured.
2.( ) unless it is of the electric filament type.
3.(●) at any time.
4.( ) without approval from the carrier.

46-395.3(a) *Drivers are not generally allowed to drive for more than:*

1.( ) 6 hours following 8 straight hours off duty.
2.( ) 8 hours following 8 straight hours off duty.
3.(✓) 10 hours following 8 straight hours off duty.
4.( ) 12 hours following 8 straight hours off duty.

47-395.3(a) *Most drivers of large vehicles are not allowed to drive:*

1.( ) after they have been on duty for 16 hours.
2.(✓) after they have been on duty for 15 hours.
3.( ) after they have been on duty for 14 hours.
4.( ) after they have been on duty for 12 hours.

48-395.3(b) *Generally, a driver may not be "on duty":*

1.(●) for more than 40 hours in any 7 straight days.
2.( ) for more than 50 hours in any 7 straight days.
3.( ) for more than 60 hours in any 7 straight days.
4.(✓) for more than 70 hours in any 7 straight days.

49-395.7 *When a driver is riding in a vehicle, but is not driving and has no other responsibility, such time shall be counted as:*

1.( ) on-duty time.
2.(✓) on-duty time unless he is allowed 8 straight hours off duty when he gets to the destination.
3.( ) on-duty time unless he is allowed 8 straight hours off duty when he gets to the destination.
4.( ) on-duty time unless he is allowed 4 straight hours off duty when he gets to the destination.

50-395.8(b) *Every driver must prepare an original and one copy of a daily log which he must keep current by updating it:*

1.(✓) every time he changes a duty status.
2.( ) every 24 hours.
3.( ) every 8 hours.
4.( ) at the end of each trip.

51-395.8(c) *Except for the name and main address of the carrier, all entries in a log:*

1.( ) must be printed in ink or typed.
2.( ) must be made by the carrier dispatcher.
3.( ) must be made in front of a witness.
4.(✓) must be written in the driver's own handwriting.

52-395.8(j)(p)(q) *Which of the following is not to be put in a driver's log?*

1.(✓) Time spent in a sleeper berth.
2.( ) Total hours in each duty status.
3.( ) The name of the carrier or carriers.
4.( ) The name and make of his vehicle.

53-395.11 *If an emergency delays a run which could normally have been completed within hours of service limits, the driver:*

1.( ) must still stop driving when the hours of service limit is reached.
2.( ) may drive for 1 extra hour.
3.( ) may drive for 2 extra hours.
4.(✓) may finish his run without being in violation.

54-395.13 *Any driver declared "out of service":*

1.( ) must take a road test before driving again.
2.( ) must wait 72 hours before driving again.
3.( ) must appeal to the Director of the Bureau of Motor Carrier Safety to drive again.
4.(✓) can drive again only after hours of service requirements are met.

55-396.4 *If a vehicle on a trip is in a condition likely to cause an accident or breakdown:*

1.( ) the driver should report it at the end of his run so repairs can be made.
2.( ) the driver should drive at lower speeds for the rest of the run.
3.(✓) the driver should stop immediately unless going on to the nearest repair shop is safer than stopping.
4.( ) the driver should change his route so as to get away from heavily traveled roads.

56-396.5(c) *If authorized Federal inspectors find a vehicle which is likely to cause an accident or breakdown:*

1.( ) it will be reported to the carrier for repair as soon as the vehicle is not scheduled.
2.( ) it will be reported to the carrier for repair at the end of the trip.
3.(✓) it will be marked with an "out of service vehicle" sticker and not driven until repairs are made.
4.(●) the driver will be held responsible and declared "out of service."

57-396.6(c)(4) *If the driver makes his own repairs on an "out of service vehicle":*

1.( ) his work must be approved by a mechanic.
2.(✓) he must complete and sign a "certification of repairman" form himself.
3.( ) his work must be approved by his supervisor.
4.( ) his work must be approved by a Federal inspector.

CERTIFICATE OF WRITTEN EXAMINATION

This is to certify that the person whose signature appears below, has successfully completed the written examination under my supervision in accordance with the provisions of § 391.35 of the Motor Carrier Safety Regulations.

(Signature of person taking examination)	7-9-80 (Date of examination)	Campbell S.C. (Location of examination)
(Signature of examiner)	(Title)	BCHE Trucking - 50 (Organization and address of examiner)

FORM MCS-57 (Reprinted from Jack-Rich Corp.,)

Kansas City, Mo. 64106

7601
Blackwell Trucking Records - 50

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
SONYA STOTT

Sworn to and subscribed before me
This 30 day of Jan, 2020

Amanda B Smith
Notary Public for the State of South Carolina
My commission expires: 10-23-2026

SPARTANBURG GENERAL HOSPITAL

RADIOLOGY REPORT

16-51-16

BLACKWELL, RICKY
DR
DR. ALDAY

RIGHT RIBS: 6-17-82

The bony architecture is normal. No fractures are identified.

CONCLUSION: Negative right ribs.

JAH:mjc
6-17-82

SPARTANBURG RADIOLOGICAL ASSOCIATES, P.A.

John A. Harrill, Jr., M.D.

SPARTANBURG GENERAL HOSPITAL
Clinical Record
Radiology Report

SPARTANBURG GENERAL HOSPITAL

RADIOLOGY REPORT

[illegible]

[illegible], NICKY
MR
[illegible] GARLINGTON

LEFT HAND 9/27/84

There is a nondisplaced comminuted fracture of the proximal phalanx of the ring finger with overlying soft tissue swelling.

SHP:kh
9/28/84

SPARTANBURG GENERAL HOSPITAL
Digital Based
Radiology Report

[illegible]

10 Year Driver Record - External - Departmental Use Only

Customer No.: [redacted] **Driver License No.:** [redacted]
Name : BLACKWELL, RICKEY LEE
Address : 248 RIDINGS RD
City : CHESNEE **State:** SC **Zip:** 293238100
County : SPARTANBURG
DOB: [redacted] **Sex:** M **Driver Training:** N

Status - DL: NO SUSPENSION **CDL:** NO DISQUALIFICATION

License Information

Type	Class	Function Issued	Expires	First Issued	Rest.	Endor.
Current						
CDL	A	Renewal 11/15/2005	11/18/2010	04/01/1992	N	Y
Prior						
CDL	A	Renewal 11/15/2000	11/18/2005	04/01/1992	N	Y
DL	F	Returned 11/16/1990	11/18/1994	11/18/1986	N	N

Current

Endorsements: N: Tank Vehicle

Address Change -
Date Changed: 04/04/2003
Address: 248 RIDINGS RD
City: CHESNEE **State:** SC **Zip:** 293238100

Point Summary
Total Current Points: 0
Driver Credit: - 0
Adjusted Current Points: 0

VIOL: 421-Speeding 10-mph or less **Ticket#:** D607533
Violation: 12/04/2008 **Conviction:** 01/12/2009 **Recd:** 02/20/2009 **Post:** 03/04/2009
ACD: S51 **Conviction Loc Ref:** **Conviction Reference:**
Conviction State: SC **Court Type:** Magistrate Court
Violation Points: 2 **Current Points:** 0

ACC: REPORTABLE
Accident: 09/25/2002 **Posted:** 10/04/2002
Accident Case Number: 2111500 **FR-10 Audit Number:** P-643671
Accident Jurisdiction: SC **Accident Loc Ref:** SCHDPT **History:** N
Contributed: N

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.

End of Report

D. L. Phelps
Driver Services, Deputy Director

CDL 2
(Rev. 7-90)

1 1 2 5 3 0 0 3 4 1 7

[redacted]

EYES		
Acuity	Right	Left
With Glasses:	20/	20/
Without Glasses:	20/ 40	20/40

CDL 20/40

COMMERCIAL DRIVER LICENSE CERTIFICATION WAIVER OF SKILL TEST

337

All information except the signatures must be printed in black ink or type written.

Date: [illegible] 1992

BLACKWELL	RICKEY	L.
Last Name	First Name	Middle or Maiden Name
[redacted]	[redacted]	[redacted]
Drivers License Number	Social Security Number	Date of Birth

1. My license is not currently under suspension, revocation or cancellation.
2. My license is not subject to suspension, revocation or cancellation.
3. I have been road tested for a class F license by the South Carolina Department of Highways and Public Transportation or a Safety Officer certified by the Department.

I certify that during the two year period immediately prior to this date on which I receive a Commercial Drivers License:

(1) I have not had more than one license.
(2) My license has not been suspended, revoked, or cancelled.
(3) I have received no more than four (4) points against my driving record.
(4) I have not contributed to an accident.
(5) I have operated a vehicle representative of the class of vehicle for which I am applying for a license. Class (A B C *(Circle One)*
(6) I have not been convicted of any of the disqualification offenses contained in Federal Motor Carrier Safety Regulations 383.51.
(7) Class B Bus also (Bus over 26,000 pounds GVWR). Restriction Code V
(8) Class C Bus also (Bus under 26,000 pounds GVWR). Restriction Code W

I hereby certify that all information is true and correct.

Applicant's Signature Ricky Blackwell Date APR 0 1 1992

Examiner's Signature [signature]

[redacted]

DL8

,4+P42J

H-1

HAZARDOUS MATERIALS TEST ANSWER SHEET

Form: A

Name: RICKEY L. BLACKWELL

Social Security Number: [redacted]

Today's Date: APR 0 1 1992

DL# [redacted] DOB [redacted] Ret27

EXAMPLE

X. (a) ● (c) (d)

	1.	●	(b)	(c)	(d)		16.	(a)	(b)	(c)	●
	2.	(a)	(b)	(c)	●		17.	(a)	●	(c)	(d)
	3.	●	(b)	(c)	(d)		18.	●	(b)	(c)	(d)
	4.	(a)	●	(c)	(d)		19.	(a)	(b)	●	(d)
-/	5.	⊗	●	(c)	(d)		20.	(a)	(b)	(c)	●
	6.	●	(b)	(c)	(d)		21.	(a)	●	(c)	(d)
-/	7.	●	(b)	(c)	⊗		22.	(a)	(b)	●	(d)
	8.	●	(b)	(c)	(d)		23.	(a)	(b)	●	(d)
	9.	(a)	●	(c)	(d)		24.	(a)	(b)	●	(d)
	10.	(a)	(b)	●	(d)	-/	25.	(a)	●	(c)	⊗
	11.	(a)	(b)	(c)	●		26.	(a)	●	(c)	(d)
-/	12.	(a)	⊗	●	(d)		27.	(a)	(b)	●	(d)
	13.	(a)	(b)	●	(d)		28.	(a)	(b)	(c)	●
	14.	(a)	(b)	●	(d)		29.	(a)	(b)	(c)	●
	15.	●	(b)	(c)	(d)		30.	(a)	●	(c)	(d)

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.

D L Phelps

Driver Services, Deputy Director

H

04-16-90

0 1 2 6 0 0 5 6 1 9

DL6

T-1

-2 +P 42 3

TANKER TEST ANSWER SHEET

Form: A

Name: RICKEY L. BLACKWELL

Social Security Number: [redacted]

Today's Date: Apr [illegible] 1992

DL # [redacted] DOB [redacted] RE 270

EXAMPLE

X. ⓐ ● ⓒ ⓓ

✓	1.	⊘	ⓑ	ⓒ	●	11.	●	ⓑ	ⓒ	ⓓ
	2.	ⓐ	ⓑ	ⓒ	●	12.	ⓐ	ⓑ	ⓒ	●
	3.	ⓐ	●	ⓒ	ⓓ	13.	●	ⓑ	ⓒ	ⓓ
-1	4.	●	ⓑ	ⓒ	⊘	14.	ⓐ	ⓑ	ⓒ	●
	5.	●	ⓑ	ⓒ	ⓓ	15.	ⓐ	●	ⓒ	ⓓ
	6.	ⓐ	ⓑ	●	ⓓ	16.	ⓐ	ⓑ	●	ⓓ
	7.	ⓐ	ⓑ	●	ⓓ	17.	ⓐ	●	ⓒ	ⓓ
	8.	ⓐ	ⓑ	●	ⓓ	-1	18.	●	ⓑ	ⓒ	⊘
	9.	ⓐ	●	ⓒ	ⓓ		19.	●	ⓑ	ⓒ	ⓓ
	10.	ⓐ	ⓑ	●	ⓓ		20.	ⓐ	●	ⓒ	ⓓ

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D L Phelps

Driver Services, Deputy Director

T

04-16-90

0 1 2 6 0 0 5 8 2 5

-4 +P 42 5

CDL #
(Rev. 7-90)

AIR BRAKE TEST ANSWER SHEET
Form: A

Name: RICKEY L. BLACKWELL

Social Security Number: [redacted]

Today's Date: [redacted] 1992

Drivers License Number: [redacted]

D 07 B

EXAMPLE
x (a) ● (c) (d)

Ref 277

1.	(a)	●	(c)	(d)	16.	(a)	●	(c)	(d)
2.	(a)	●	(c)	(d)	17.	●	(b)	(c)	(d)
3.	●	(b)	(c)	(d)	18.	(a)	(b)	(c)	●
4.	(a)	(b)	(c)	●	19.	(a)	●	(c)	(d)
5.	(a)	●	(c)	(d)	-/ 20.	(a)	(b)	(c)	(d)
6.	(a)	(b)	●	(d)	-/ 21.	(a)	●	(c)	(d)
7.	●	(b)	(c)	(d)	22.	(a)	(b)	●	(d)
8.	●	(b)	(c)	(d)	23.	(a)	●	(c)	(d)
9.	(a)	●	(c)	(d)	24.	(a)	●	(c)	(d)
10.	●	(b)	(c)	(d)	25.	(a)	(b)	(c)	●
11.	(a)	(b)	(c)	●					
12.	(a)	(b)	●	(d)					
13.	(a)	(b)	●	(d)					
-/ 14.	(a)	●	(c)	(d)					
-/ 15.	(a)	●	(c)	(d)					

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D L Phelps

Driver Services, Deputy Director

B

04-16-97

CDL4

01260 05821 -4 xp 42344-1

COMBINATION VEHICLES TEST ANSWER SHEET

Form: A

Name: Rickey L. BLACKWELL

Social Security Number: [redacted]

Today's Date: Apr. 5 1992

DL# [redacted] DOB [redacted] Rec 277

EXAMPLE

X. ⓐ ● ⓒ ⓓ

	1.	ⓐ	ⓑ	ⓒ	●
	2.	ⓐ	ⓑ	●	ⓓ
	3.	●	ⓑ	ⓒ	ⓓ
	4.	ⓐ	●	ⓒ	ⓓ
-1	5.	ⓐ	●	ⓒ	ⓓ
	6.	ⓐ	ⓑ	●	ⓓ
	7.	●	ⓑ	ⓒ	ⓓ
-1	8.	ⓐ	ⓑ	●	ⓓ
-1	9.	ⓐ	●	ⓒ	ⓓ
	10.	ⓐ	ⓑ	ⓒ	●
	11.	ⓐ	ⓑ	●	ⓓ
	12.	●	ⓑ	ⓒ	ⓓ
-1	13.	ⓐ	ⓑ	ⓒ	ⓓ
	14.	ⓐ	●	ⓒ	ⓓ
	15.	●	ⓑ	ⓒ	ⓓ
	16.	ⓐ	●	ⓒ	ⓓ
	17.	ⓐ	ⓑ	ⓒ	●
	18.	ⓐ	ⓑ	ⓒ	●
	19.	ⓐ	ⓑ	●	ⓓ
	20.	ⓐ	ⓑ	ⓒ	●

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Driver Services Deputy Director

C

04-16-9(

DL3 01260 05822

GENERAL KNOWLEDGE TEST ANSWER SHEET -34P4Z 651

Form: A

Name: RICKEY L. BLACKWELL

Social Security Number: [redacted]

Today's Date: APR 0 1 1992

DL# [redacted] DOB [redacted] 6277

EXAMPLE

X. ⓐ ● ⓒ ⓓ

1.	ⓐ	●	ⓒ	ⓓ	21.	ⓐ	ⓑ	ⓒ	●
-/ 2.	Ⓐ	ⓑ	●	ⓓ	22.	ⓐ	ⓑ	●	ⓓ
3.	●	ⓑ	ⓒ	ⓓ	23.	●	ⓑ	ⓒ	ⓓ
4.	●	ⓑ	ⓒ	ⓓ	24.	ⓐ	ⓑ	●	ⓓ
5.	ⓐ	ⓑ	●	ⓒ	25.	ⓐ	ⓑ	●	ⓓ
-/ 6.	●	Ⓑ	ⓒ	ⓓ	26.	ⓐ	ⓑ	●	ⓓ
7.	●	ⓑ	ⓒ	ⓓ	27.	ⓐ	●	ⓒ	ⓓ
8.	ⓐ	ⓑ	ⓒ	●	28.	●	ⓑ	ⓒ	ⓓ
9.	ⓐ	ⓑ	ⓒ	●	29.	ⓐ	ⓑ	●	ⓒ
10.	ⓐ	ⓑ	●	ⓓ	30.	ⓐ	●	ⓒ	ⓓ
11.	ⓐ	ⓑ	ⓒ	●	31.	ⓐ	●	ⓒ	ⓓ
12.	●	ⓑ	ⓒ	ⓓ	32.	●	ⓑ	ⓒ	ⓓ
13.	●	ⓑ	ⓒ	ⓐ	33.	●	ⓑ	ⓒ	ⓐ
14.	ⓐ	ⓑ	ⓒ	●	34.	ⓐ	●	ⓒ	ⓓ
15.	ⓐ	ⓑ	ⓒ	●	35.	ⓐ	ⓑ	ⓒ	●
16.	●	ⓑ	ⓒ	ⓓ	36.	●	ⓑ	ⓒ	ⓓ
17.	ⓐ	●	ⓒ	ⓐ	37.	ⓐ	ⓑ	ⓒ	●
18.	ⓐ	ⓑ	●	ⓓ	38.	ⓐ	●	ⓒ	ⓓ
19.	ⓐ	●	ⓒ	ⓓ	39.	ⓐ	ⓑ	ⓒ	●
20.	ⓐ	ⓑ	ⓒ	●	40.	ⓐ	ⓑ	ⓒ	●

41.	ⓐ	●	ⓒ	ⓓ
-/ 42.	ⓐ	ⓑ	●	Ⓓ
43.	ⓐ	ⓑ	●	ⓓ
44.	ⓐ	ⓑ	●	ⓓ
45.	ⓐ	ⓑ	●	ⓓ
46.	ⓐ	●	ⓒ	ⓓ
47.	ⓐ	ⓑ	●	ⓓ
48.	ⓐ	●	ⓒ	ⓓ
49.	●	ⓑ	ⓒ	ⓒ
50.	ⓐ	ⓑ	ⓒ	●

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Driver Services, Deputy Director

G

04-16-90

2975.06190

CDL 8
(Rev. 7-90)

-4
YP42H

HAZARDOUS MATERIALS TEST ANSWER SHEET
Form: B

Name: Blackwell, R. L.

Social Security Number: [redacted]

Today's Date: NOV 14 1996.

Driver's License Number: [redacted]

DOB [redacted]

EXAMPLE
X (a) ● (c) (d)

1.	(a)	(b)	●	(d)	16.	(a)	(b)	●	(d)
2.	(a)	(b)	●	(d)	17.	(a)	(b)	●	(d)
3.	●	(b)	(c)	(d)	18.	●	(b)	(c)	(d)
4.	(a)	(b)	(c)	●	19.	(a)	(b)	●	(d)
5.	(a)	●	(c)	(d)	20.	(a)	●	(c)	(d)
6.	●	(b)	(c)	(d)	21.	(a)	(b)	(c)	●
7.	●	(b)	(c)	(d)	22.	●	(b)	(c)	(d)
X 8.	(a)	●	●	(d)	23.	●	(b)	(c)	(d)
9.	(a)	●	(c)	(d)	24.	●	(b)	(c)	(d)
10.	●	(b)	(c)	(d)	25.	(a)	●	(c)	(d)
X 11.	●	(b)	●	(d)	26.	(a)	(b)	(c)	●
12.	(a)	●	(c)	(d)	XX 27.	●	●	(c)	(d)
13.	(a)	(b)	●	(d)	XX 28.	●	●	(c)	(d)
14.	(a)	(b)	(c)	●	29.	●	(b)	(c)	(d)
15.	(a)	●	(c)	(d)	30.	(a)	(b)	(c)	●

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D. L. Shelpa
Driver Services, Deputy Director

M.V.I.R.
RECEIVED
JAN 29 1997

D.P.S. 16-90

H

2978.05176

CDL 8
(Rev. 7-90)

-10
YF42H

HAZARDOUS MATERIALS TEST ANSWER SHEET
Form: A

Name: Blackwell - Ricky Lee

Social Security Number: [redacted]

Today's Date: 11-14-96

Driver's License Number: [redacted]

DOB [redacted]

EXAMPLE
x (a) ● (c) (d)

1.	(a)	●	●	(d)	16.	(a)	(b)	(c)	●
2.	(a)	(b)	(c)	●	17.	(a)	(b)	(c)	●
3.	(a)	●	●	(d)	18.	(a)	(b)	(c)	●
4.	(a)	●	●	(d)	19.	(a)	●	●	(d)
5.	●	(b)	(c)	(d)	20.	(a)	●	●	(d)
6.	(a)	●	(c)	●	21.	(a)	●	(c)	(d)
7.	(a)	(b)	●	(d)	22.	(a)	(b)	●	(d)
8.	●	(b)	●	(d)	23.	(a)	(b)	●	(d)
9.	(a)	●	(c)	(d)	24.	●	(b)	(c)	●
10.	(a)	●	(c)	(d)	25.	●	(b)	(c)	(d)
11.	●	(b)	(c)	●	26.	●	(b)	(c)	(d)
12.	●	(b)	(c)	(d)	27.	(a)	(b)	(c)	●
13.	(a)	(b)	(c)	●	28.	(a)	●	(c)	(d)
14.	(a)	(b)	(c)	●	29.	●	(b)	●	(d)
15.	(a)	(b)	(c)	●	30.	●	(b)	(c)	(d)

JAN 30 1997
DPS

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D L Phelps
Driver Services, Deputy Director

H

04-16-90

CDL8

4667.06610

H-1

-4 XP42G

HAZARDOUS MATERIALS TEST ANSWER SHEET

Form: B

Name: Blackwell, Rickey Lee

Social Security Number: [redacted]

Today's Date: [redacted]

SC CDL # [redacted]

EXAMPLE

X. (a) ● (c) (d)

1.	(a)	(b)	●	(d)	16.	(a)	(b)	●	(d)
2.	(a)	(b)	●	(d)	17.	(a)	(b)	●	(d)
3.	●	(b)	(c)	(d)	18.	●	(b)	(c)	(d)
4.	(a)	●	(c)	●	19.	(a)	(b)	●	(d)
5.	(a)	●	(c)	(d)	20.	(a)	●	(c)	(d)
6.	●	(b)	(c)	(d)	21.	(a)	(b)	(c)	●
7.	●	(b)	(c)	(d)	22.	●	(b)	(c)	(d)
8.	(a)	●	●	(d)	23.	●	(b)	(c)	(d)
9.	(a)	●	(c)	(d)	24.	●	(b)	(c)	(d)
10.	●	(b)	(c)	(d)	25.	(a)	●	(c)	(d)
11.	●	(b)	(c)	(d)	26.	(a)	(b)	(c)	●
12.	(a)	●	(c)	(d)	27.	(a)	●	(c)	●
13.	(a)	(b)	●	(d)	28.	●	●	(c)	(d)
14.	(a)	(b)	(c)	●	29.	●	(b)	(c)	(d)
15.	(a)	●	(c)	(d)	30.	(a)	(b)	(c)	●

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.

D L Phelps

Driver Services, Deputy Director

H

04-16-90

SSA-1826 ITEMIZED STATEMENT OF EARNINGS
* * * FOR SSN [redacted] * * *

FROM: SOCIAL SECURITY ADMINISTRATION
OFFICE OF CENTRAL OPERATIONS
300 N. GREENE STREET
BALTIMORE, MARYLAND 21290-0300

NUMBER HOLDER NAME: RICKEY L BLACKWELL
YEARS REQUESTED: 1974 THRU 2009

KARA RICHARDS
P[redacted] BOX 400
H[redacted]SBOROUGH NC 27278

EMPLOYER NUMBER: 57-0456606 (AGRICULTURAL)
JAMES L BELUE
R[redacted]8
SPARTANBURG SC 29302-0000

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1976					$89.00

EMPLOYER NUMBER: 04-2026891
UNITED OVERTON CORPORATION
DBA BOSTON PROPER MAIL ORDER
590 FRANKLIN AVE
MT VERNON NY 10550-4516

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1976				165.60	$165.60

EMPLOYER NUMBER: 57-0342817
COMMUNITY CASH STORES INC
CAMP WADSWORTH
10 BROOKSIDE CIR
GREENVILLE SC 29609-5002

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1976				355.36	$355.36
1977	173.66				$173.66

SSA-1826 ITEMIZED STATEMENT OF EARNINGS
* * * FOR SSN [redacted] * * *

EMPLOYER NUMBER: 23-1526444
CROWN CORK & SEAL CO INC
1 CROWN WAY
PHILADELPHIA PA 19154-4599

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1977		534.01	1397.49		$1,931.50

EMPLOYER NUMBER: 57-0300583
WHITE BAG CO
P O BOX 5419
SPARTANBURG SC 29301-0000

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1977				154.78	$154.78

EMPLOYER NUMBER: 13-1924994
MILLIKEN & COMPANY
PO BOX 1926
SPARTANBURG SC 29304-1926

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1978					$3,506.35

EMPLOYER NUMBER: 57-0331673
NEWSPAPER MANAGEMENT PRODUCTION CO
INC
PO BOX 1634
SPARTANBURG SC 29304-1634

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1978					$1,285.50

EMPLOYER NUMBER: 73-0756287
PHILLIPS FIBERS CORPORATION
200 E RANDOLPH DRIVE MC 2401
CHICAGO IL 60601-6436

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1978					$286.96

SSA-1826 ITEMIZED STATEMENT OF EARNINGS
* * * FOR SSN [redacted] * * *

EMPLOYER NUMBER: 57-0251080
SOUTHERN PIEDMONT ICE CO
5 CORDES ST
CHARLESTON SC 29401-0000

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1979					$1,554.06
1980					$5,571.09

EMPLOYER NUMBER: 57-0392451
J & C FARM & FEED MILL INC
[redacted]0 MELODY FOREST LN
SPARTANBURG SC 29301-2514

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1979					$30.00
1980					$50.00
1981					$40.00

EMPLOYER NUMBER: 57-0511565
AMERICAN FAST PRINT
% ATLANTEX LTD
[redacted] PETTIGRU ST
GREENVILLE SC 29601-3114

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1979					$1,554.40

EMPLOYER NUMBER: 57-0351045
ONEITA INDUSTRIES INC
% J H COHN LLP
4 BECKER FARM RD
ROSELAND NJ 07068-1739

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1980					$2,100.31
1981					$1,079.70

EMPLOYER NUMBER: 13-4921002
HESS CORPORATION
% EXCISE TAX DEP
1 HESS PLZ
WOODBRIDGE NJ 07095-1229

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1982					$5,498.01
1983					$8,141.58

SSA-1826 ITEMIZED STATEMENT OF EARNINGS
* * * FOR SSN [redacted] * * *

EMPLOYER NUMBER: 56-0688694
B & R TRANSPORTS INC
BOX 207
FOREST CITY NC 28043-0207

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1982					$2,304.10

[redacted]

EMPLOYER NUMBER: 57-0340618
CHARLES P BELUE
BOX 734
BLAIR FOREST SC 29336-0734

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1984					$4,640.72
1985					$3,562.94
[redacted]6					$10,083.72

[redacted]

EMPLOYER NUMBER: 57-0378448
CHEROKEE TEXTILES
PO BOX 1019
CHESNEE SC 29330-1019

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1984					$4,388.15

SELF EMPLOYMENT:

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1985					$1,480.00

EMPLOYER NUMBER: 56-1455156
K & S TRUCKING
% GUM & HILLIEL
RT 1 BOX 81
TRYON NC 28782-0000

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1985					$197.50

EMPLOYER NUMBER: 57-0523878
PEELER RUG COMPANY INC
1224 CHAMPION FERRY RD
GAFFNEY SC 29341-5617

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1985					$2,650.24

SSA-1826 ITEMIZED STATEMENT OF EARNINGS
* * * FOR SSN [redacted] * * *

1986 $834.00

EMPLOYER NUMBER: 57-0252730
SPRINGS INDUSTRIES INC
% TAX DEPARTMENT
7549 GRABER RD
MIDDLETON WI 53562-1001

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1998					$1,502.09
1999					$15,418.77
2000					$17,641.52
[redacted]					$19,093.09
					$17,252.68
					$23,195.03
					$20,575.52
					$3,393.18

[redacted]OYER NUMBER: 59-2108747
[redacted]ADSPIRE NATIONAL SERVICES INC
%[redacted]LIENT ACCOUNTING DEPARTMENT
1[redacted] FARMINGTON AVENUE RS61
H[redacted]FORD CT 06156-0001

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
2000					$200.00
2001					$228.58
2002					$542.87

EMPLOYER NUMBER: 42-1399841
JACOBSON WAREHOUSE COMPANY INC
% RICHARD O JACOBSON PRES
3811 DIXON STREET
DES MOINES IA 50313-3907

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
2005					$3,038.70
2006					$28,690.27
2007					$32,799.70
2008					$9,994.74

SSA-1826 ITEMIZED STATEMENT OF EARNINGS

* * * FOR [redacted] * * *

EMPLOYER NUMBER: 42-1482589
JACOBSON STAFFING COMPANY L C
TROY DEJOODE MEMBER
3811 [redacted] STREET
DES [redacted] IA 50313-3907

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
2005					$6,614.39

****
********* THERE ARE NO OTHER EARNINGS RECORDED UNDER THIS *********
********* SOCIAL SECURITY NUMBER FOR YEAR(S) REQUESTED *********
****

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- Board Certified, General & Forensic Psychiatry, The National Board of Physicians & Surgeons (2017 – 2023)
- American Board of Psychiatry & Neurology - Forensic Psychiatry (Certified 1998-2018)
- American Board of Psychiatry & Neurology - General Psychiatry (Certified 1997-2017)
- Distinguished Life Fellow of the American Psychiatric Association (2022)
- Distinguished Fellow of the American Psychiatric Association (2009)
- North Carolina Medical License #97-00519
- Kentucky Medical License #53584
- National Board of Medical Examiners – Part I (1990), Part II (1991), Part III (1993)

EDUCATION

- **FELLOWSHIP** (July 1996 – June 1997)
  Forensic Psychiatry
  United States Department of Justice
  Federal Bureau of Prisons
  Federal Correctional Institution
  Butner, North Carolina
- **RESIDENCY** (July 1992 – June 1996)
  Psychiatry
  Medical College of Georgia
  Augusta, Georgia
- **MEDICAL SCHOOL** (July 1988 – June 1992)
  University of Alabama at Birmingham
  Birmingham, Alabama
  Degree: M.D.
- **COLLEGE** (August 1984 – May 1988)
  Birmingham – Southern College
  Birmingham, Alabama
  Degree: Bachelor of Science (Biology & Psychology)

MEMBERSHIP

- American Psychiatric Association
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- North Carolina Psychiatric Association
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CLINICAL EXPERIENCE

- Private Psychiatric Practice (August 1997 – Present)
  North Raleigh Psychiatry, P.A., 5530 Munford Rd., Ste. 119, Raleigh, North Carol

BLACKWELL V. STATE
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CLINICAL EXPERIENCE *– cont.*

- Medical Staff President (January 2002 – December 2006)
  Holly Hill Hospital
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- Service Director of the Chemical Dependency Program (January 1999 – December 2006)
  Holly Hill Hospital
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- Fee Basis Physician Scheduling Coordinator (June 1994 – June 1996)
  Georgia Regional Hospital at Augusta
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- Compensation and Pension Examiner (Psychiatry) (August 1995 – June 1996)
  Department of Veteran Affairs
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AWARDS AND HONORS

- Board of Directors – Alliance Health (March 2012 – April, 2020; November 2022 - Present)
  - Chairman, Quality Management Committee (July 2014 – July 2017)
  - Vice Chairman, Board of Directors (July 2017 – June 2019)
  - Chairman, Board of Directors (June 2019 – April, 2020)
- Board of Directors – New Leaf Behavioral Healthcare (June 2020 – September 2021)
  - Chairman, Fundraising/Community Outreach Committee (July 2020 – September 2021)
- NCPA Psychiatry and Law Committee (1997 – Present)
- Chairman – NCPA Legislative Committee (February 2017 – June 2019)
- Board of Directors – Wake County Human & Environmental Services (July 2010 – March 2012)
- Board of Directors – Postpartum Education & Support, Inc. (June 2007 – June 2009)
- Chief Psychiatric Resident – Medical College of Georgia (June 1995 – 1996)
- Psychiatric Representative – Medical College of Georgia Residency Council (1995 – 1996)
- Medical College of Georgia Residency Selection Committee (1996 – 1996)
- Medical College of Georgia Residency Education Committee (1992 – 1996)
- Resident Representative to the Georgia Psychiatric Physicians' Association (1995 – 1996)
- Journal of Clinical Psychiatry Resident Advisory Board (1994 – 1996)
- E. J. MacCranie Award for Clinical Excellence (1996)
- Hervey Cleckley Award for Best Resident Paper (1996)
- Hervey Cleckley Award for Best Resident Paper (1995)
- Social Psychiatry Award (1995 – 1996)
- Alabama Board of Medical Scholarships – Merit Scholarship (1988 – 1992)
- Summa Cum Laude – Birmingham Southern College (1988)
- Phi Beta Kappa

RESEARCH

- "Combined Buspirone & Carbamazepine in the Treatment of Agitation & Delirium Associated with Closed Head Injury"
- "Endogenous Opioids in Psychiatry: Implications for the Treatment of Chronically Self-Injurious Patients"
- "Offenders with Mental Disease or Defect: Historical Perspectives & Emerging Issues" (Co-authored with students participating in the Forensic Psychiatry Seminar Series – Duke University Law School – Spring 1997

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BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

January 28, 2019

To Whom It May Concern:

I am writing to notify all attorneys that have present cases or previous cases involving Inv. Lorin Williams from the Spartanburg County Sheriff's Office concerning information provided to our office. This past Friday afternoon, our office received notification from the Spartanburg County Sheriff's Office that Inv. Williams was terminated for the following reason:

> "On January 11, 2019 you (Inv. Williams) were issued a search warrant on CRI information. This warrant was executed on January 15, 2019. In the affidavit, you swore to the facts that the information came from a confidential reliable informant and this CRI had provided information in the past to law enforcement that has been verified as truthful and has led to the seizure of illegal narcotics as well as the arrest of persons involved in illegal narcotics sales. This is not accurate, as this person claimed to be a CI was never signed up for that purpose. You neglected to confirm this information before using this person's information to secure a search warrant.
>
> This is a serious violation of Sheriff's Office Policy and has potential for other serious repercussions. It is a very unfortunate situation as this is going to result in the termination of your employment. The SO is also required to report this to the SCCJA and your certification is in jeopardy."

Under Rule 3.8 of the South Carolina Rules of Professional Conduct and Brady v. Maryland, our office is notifying you of the above information. Our office is timely reviewing all cases in our office that Inv. Williams was involved in and will contact you as these reviews are complete. The South Carolina Attorney General's Office has also been contacted about this matter. If you have any questions or need any additional information, please feel free to contact our office.

Sincerely,

Barry Barnette
Solicitor

BJB:sop

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
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CASE NO. 2018-CP-42-00928

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

RECEIVED

MAR - 7 2016

SC SUPREME COURT

THE STATE,

RESPONDENT,

V.

RICKY LEE BLACKWELL,

APPELLANT

APPELLATE CASE NO. 2014-000610

FINAL BRIEF OF APPELLANT
REDACTED

ROBERT M. DUDEK
Chief Appellate Defender

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South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEYS FOR APPELLANT

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
69
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STATEMENT OF ISSUE ON APPEAL

1.

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2.

3.

Whether the trial court erred in finding that appellant was not mentally retarded at the pretrial hearing pursuant to *Atkins v. Virginia* and *Franklin v. Maynard*, and therefore sentencing appellant to death violates his rights under the Eighth Amendment?

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Whether the trial court erred in refusing to charge the jury that the state had the burden to prove appellant was not mentally retarded beyond a reasonable doubt and, alternatively, charging the jury that it was required to find appellant was mentally retarded by a preponderance of the evidence, all of which impermissibly shifted the burden of proof to appellant and resulted in verdict forms that were hopelessly confusing

in violation of his rights under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution?

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Whether the court erred by ruling the state presented racially neutral reasons for striking black male jurors Cheeks and Fullenwider where the state did not strike similarly situated white jurors who also had a criminal record, or had pending criminal charges in the same county, and the treatment of alleged "pro-life" black and white jurors by the solicitor was also disparate?

7.

Whether the court erred by qualifying Juror #43, Donna Champion, because her position that the defense had to prove appellant deserved a life sentence rather the death penalty was burden shifting, inconsistent with the law, and her entire voir dire showed she would not consider certain categories of mitigating evidence?

STATEMENT OF THE CASE

Appellant was indicted by the Spartanburg County grand jury for the offenses of murder and kidnapping. R. 4829 - 4832. Following pretrial hearings, his case came for trial on March 3, 2014, before the Honorable Roger L. Couch and a jury. William McGuire, Clay Allen and Boyd Young represented appellant. The state was represented by Solicitor Barry Barnette, Deputy Solicitor Derrick Bulsa and Assistant Solicitor Russell Ghent. R. 47 - 48.

The jury found appellant guilty of murder and kidnapping. R. 2602, ll. 1-8. Following a penalty phase trial the jury recommended a sentence of death. R. 3258, ll. 12-25. Judge Couch then imposed the death penalty for murder, and ruled that the kidnapping conviction was subsumed by the murder conviction. R. 3262, ll. 14-21.

This appeal follows.

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Trial testimony

The state first presented the short testimony of Spartanburg County Sheriff's Deputy Bill Meyer. He responded to the scene where appellant had shot Brooke, the child of his estranged wife's lover, in her presence. Meyer was told that appellant was the shooter and he began putting up crime scene tape. R. 2358, l. 8 – 2374, l. 9. There was also testimony that appellant walked out of the woods a short time later, shot himself, and dropped his gun. He did not point his gun at the police, and his gun had been fired five times.[2] R. 2502, l. 7 – 2511, 11.

The state then called its star witness, Angela Davis. Davis had been married to appellant for approximately twenty-seven years. R. 2378, l. 3 – 2379, l. 3.

She was separated from appellant at the time of the fatal incident on July 8, 2009. R. 2379, ll. 12-18. Angela took her boyfriend's daughter, Brooke, with her that day. She maintained appellant came over to her house to discuss medical "and life insurance and stuff through my job on him" because their divorce was not final. Davis testified that she was "taking a personal lay off from Firestone for three months." R. 2380, ll. 4-23.

Davis said appellant told her that she came "to Chesnee all the time, and you don't never go over there to get those boys. You don't never go see your boys. Go over there and see those boys today, and Brooke spoke up because she was, she was just so full of happiness and life. She said we're gonna go down there and go swimming today." R. 2380, ll. 18-23.

Davis maintained that appellant "[l]ooked back at me and he said you make sure you go over there and get them boys. And my daddy asked him, said Ricky, he said why don't

[2] The decedent was shot four times, and appellant shot himself once in the stomach.

you stay here and play some cards with me. And Ricky told him, he said, I got to go pay some bills and do some shopping. But as soon as I get my bills and my shopping done, I'll come back and play cards." R. 2381, ll. 1-7. Davis maintained that her plan was to go to "Brooke's home, Bobby's, and we're all gonna swim and just have a good day." R. 2381, ll. 19-21. Davis claimed she also intended to pick up her grandchildren and take them with Brooke to go swimming. R. 2381, l. 22 – 2382, l. 1.

Davis maintained that when she went by the trailer where her daughter Heather and grandchildren lived that she noticed "my daughter's car was not in the driveway." R. 2382, ll. 6-10. Her claim to the jury from there was that "Ricky jumped out and flagged me down, and he said I thought you was picking up the boys and I said I was, but Heather's car [was] not there." "She's gone. He said she's gone to the store. She'll be back in a few minutes. Mark's [her husband] got the boys ready and they're waiting on you." R. 2383, ll. 1-7.

Davis testified that she parked the car but she was concerned Heather's dog would bite Brooke. She claimed: "So, I turned around and looked at her and I said Brooke, honey, don't get out of this car until I get this dog cause I don't want you to get dog bit (sic). She said okay. So, I got out of the car and I reached down and got the dog, but when I turned back around he had her." R. 2383, ll. 17-23. Davis said: "I kept telling him Ricky, please let that baby go." R. 2384, ll. 1-2.

Davis maintained that she yelled: "Ricky, please, it's me you want, take me, and let Heather take her home, and he said no and he took the gun and pointed it toward – on the car, and he said you pushed this too far. You did this. You tell me what Bobby thinks of this, and then the gun went off, and then it went off again." R. 2386, ll. 7-15. Davis said she ran into her daughter's house and "I dialed 911, but my handicapped granddaughter was

screaming so loud that I couldn't make ways of hearing them good or them hearing me good." R. 2386, l. 7 – 2387, l. 2.

On cross-examination Davis acknowledged that appellant lived next door to their daughter, Heather, and that Heather's children were "special needs kids." R. 2395, ll. 12-20. Davis admitted appellant was a hard worker, but quickly added, "when he had a job." She refused to admit appellant "pretty much always had a job except for that period where he had cancer." Davis countered: "He wasn't holding jobs." She acknowledged appellant was out of work for ten years fighting cancer, but allowed that "he held a job for seven years" at Springs Industries. R. 2396, ll. 5-13.

Davis refused to admit that her leaving "hit Ricky hard." She said she did not want to reconcile with appellant, and that their family doctor talked to her about getting marriage counseling. She told her doctor: "I do not want to work this out, I want a divorce, I want out . . ." R. 2397, l. 21 – 2398, l. 8. Davis denied she told her doctor that she "should be a Christian woman, but there's some things [she] wanted to do first?" Davis then reconsidered: "I may have, but I don't remember telling him that." R. 2398, ll. 2-15.

When asked about appellant's suicide attempts, Davis would only acknowledge: "He took a few pills and ran out there in the yard that day and showed Heather and us the bottle and stuff and Heather took [off] chasing after him trying to get the pills out of his hand. He, he did that to let us know what he had done. To me it was show." R. 2398, ll. 16-22.

When asked about appellant's commitment to "a mental hospital," Davis asserted that the doctor was there "and Ricky was screaming and hollering don't let her leave me, don't let leave me. I looked at the doctor, I told the doctor that I had left him. I was wanting

a divorce. I wanted out." Davis testified that the doctor told her: "[Y]ou have serious problems and I wouldn't dare tell you to go back to him, and I said well, do you have him? She said we got him and I left. I did not stay. I left." R. 2398, l. 23 – 2399, l. 6.

Davis denied she told appellant that she and her new boyfriend had enough insurance on him so that when he died they would live comfortably. Davis claimed: "I ain't want nothing off of Ricky." R. 2399, l. 16 – 2400, l. 1.

Davis said she "had it out" with her daughter, Heather, over her affair with Bobby. She maintained that Heather would "never accept Bobby, she'd never accept nobody, and she told me not never to bring so and so around. So, we stayed apart. We didn't have a lot of communication, nothing to do with each other." R. 2400, ll. 2-9.

When defense counsel questioned Davis about her being instructed not to bring Bobby and his family around appellant, Davis claimed that: "Eventually Heather starts coming to Bobby's [house]." She maintained that Bobby even gave money to Heather's children. R. 2400, ll. 10-19. Davis denied that Heather had told her specifically not to bring Brooke and Bobby around her home. R. 2400, l. 20 – 2401, l. 24.

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3.

The trial court erred in finding that appellant was not mentally retarded at the pretrial hearing pursuant to *Atkins v. Virginia*[3] and *Franklin v. Maynard*,[4] and therefore sentencing appellant to death violates his rights under the Eighth Amendment.

Introduction

Human beings thirst for simple answers. Simplicity can be a great virtue in life, reasoning, and the law. Maxims such as Occam's Razor teach us that the simplest answer, or the simplest argument, is often the correct answer or the best argument. Unfortunately, simplicity does not always describe reality. The real world is often complex and human beings must sometimes put aside their desire to ever-simplify the world and embrace complexity.

This case is one of those times. All of the errors made by the trial court regarding the issue of whether appellant Ricky Lee Blackwell is mentally retarded stem from the failure to embrace complexity. The state certainly encouraged this approach. The state argued that appellant was not mentally retarded because he could drive a truck. The trial court seized on this isolated fact. Reading the trial court's Atkins order, it is clear that most of the trial court's findings and conclusions (and errors) revolve around appellant's short career as a truck driver. These findings were flatly contradicted by the thorough testimony and reports from the defense psychologist. More importantly, from this Court's perspective sitting in review, the trial court's findings were also contradicted by the testimony of the court's own expert. The trial court declined to even credit the state's

[3] 536 U.S. 304 (2002).

[4] 356 S.C. 276, 588 S.E.2d 604 (2003).

expert in its Order—likely because the state's expert admitted she did no testing or investigation of any kind.

This case is not one of dueling experts because the experts agree on almost all of the questions about appellant's mental retardation. Instead, this Court must examine the complex issues that both experts confronted and compare that evidence to the trial court's findings. The trial court's conclusions are supported only by cherry-picked, simplistic facts that ignore the voluminous and intelligent testimony presented by the experts at the Atkins hearing. When the simple notion that appellant cannot be mentally retarded because he was a truck driver is rejected, the complex evaluations by the experts irrefutably lead to the conclusion that appellant is ineligible for the death penalty under Atkins.

Procedural Posture

Pursuant to Franklin v. Maynard, the trial court held a pre-trial hearing on the issue of whether appellant was mentally retarded.[5] The hearing was conducted from February 19, 2014 until February 21, 2014, which was a Friday. Atkins Hearing R. 3765. The trial judge did not rule from the bench at the conclusion of the hearing. Four days later, on Tuesday, February 25, 2014, Judge Couch issued a written order initially stating, "I agree with the defense that there are several factors in Ricky Blackwell's life which would raise the possibility of mental retardation...." Supp. R. 14. However, Judge Couch found that appellant failed to meet the burden of proof. Supp. R. 14. The trial began the following Monday, March 3, 2014. R. 1. On March 20, 2014, at the post-trial motion hearing, appellant asked for a new trial based on the court's adverse

[5] This brief will adopt the trial court's convention of using the term "mental retardation," although the witnesses used "intellectual disability" along with "mental retardation" interchangeably. Supp. R. 1.

ruling in its order. R. 4816, ll. 8-21. The trial judge denied the motion. March 20, 2014, Hearing R. 4824, l. 2 – 14, l. 5.

Three witnesses testified at the hearing. R. 3767 – 3768. Dr. Kimberly Harrison ("Harrison") from the South Carolina Department of Mental Health testified for the State. R. 3767. R. 3775, ll. 11-12. Dr. Gordon Brown ("Brown"), also employed by the South Carolina Department of Mental Health, but formerly of the South Carolina Department of Disabilities and Special Needs, was appointed by the Court to evaluate appellant. R. 4135, ll. 6 – 4137, l. 10. Dr. Ginger Calloway ("Calloway") testified for the defense. R. 3827, l. 14 – 3828, l. 10.

The Purpose of Atkins and the Theories of this Crime

When the United States Supreme Court decided that the execution of mentally retarded defendants violated the Eighth Amendment, it stated its reasons in the second sentence of the Atkins decision. Atkins, 536 U.S. at 306. The Court held, "because of their disabilities in areas of reasoning, judgment, and control of their impulses... they do not act with the level of moral culpability that characterizes the most serious adult criminal conduct." Id. The court further explained that the death penalty's twin aims– retribution and deterrence– were inconsistent with executing the mentally retarded. Id. at 318-19. Retribution "necessarily depends on the culpability of the offender." Id. at 319. Because the death penalty "can serve as a deterrent only when murder is the result of premeditation and deliberation," the "cognitive and behavioral impairments that make these defendants less morally culpable – for example, the diminished ability to understand and process information, to learn from experience, to engage in logical

reasoning, or to control impulses" make it unlikely that the death penalty would have any deterrent effect. Id. at 319-20.

The tragic facts of this case align with the rationale of Atkins. In a horrifying scenario that cannot be fathomed without the explanation of diminished impulse control, appellant shot an eight year old girl four times, including once in the head. R. 2540, ll. 13-15. Appellant had no history of violence and his only criminal conviction was for petty larceny for siphoning gasoline in 1981. R. 2647, ll. 3-24. Appellant only came into contact with the decedent though his ex-wife, Angela Davis (formerly Blackwell) ("Angie").

Angie and appellant were married for almost 27 years. R. 2334, l. 25 – 2395, l. 1. At the time of the shooting she and appellant had been separated for about "a year and nine months or maybe a little longer." R. 2379, ll. 16-18. Angie admitted that she was still married to appellant when she "took up with" Bobby Center, the decedent's father. R. 2396, l. 23 – 2397, l. 20. The state argued that appellant shot the child in revenge for the affair. R. 2346, ll. 7-21. The defense argued that appellant likely snapped in the face of cruel treatment and taunting from Angie. R. 3195, l. 17 – 3199, l. 10. Under either version, the shooting of an innocent child makes no sense except for a person suffering from an intellectual disability who lacked the ability to think logically and could not control his impulses. Id. at 319-20.

The limitations of mentally retarded people recognized in Atkins explain this tragedy better than any other theory. The trial judge never discussed the reasoning of Atkins in his order. The court simply stated Atkins' constitutional prohibition on executing mentally retarded defendants without further discussion. Supp. R. 2. Had the

court explored the reasoning of Atkins in more detail, it likely would have not reached the wrong conclusion about whether appellant is mentally retarded.

Evidence Presented at the Atkins Hearing

The Experts, Their Qualifications, and Their Respective Investigations

Dr. Calloway testified for the defense and opined that appellant is mentally retarded. Dr. Calloway received her doctorate in psychology from North Carolina State University. R. 3828, ll. 14-23. Her curriculum vitae was 24 pages long. R. 4335 – 4357. She had practiced primarily as a forensic psychologist for the 15-20 years prior to the hearing. R. 3829, ll. 21-23. She had testified in "somewhere between 8 to 10 or 12 times" in Atkins hearings. R. 3966, ll. 14-17. She had conducted more Atkins evaluations but had not always testified in those cases. R. 3966, ll. 18-20.

Dr. Calloway issued a forty-page report and an eight-page supplemental report which were reviewed by the trial judge. Supp. R. 1-14. R. 4358 – 4405. The Court's expert, Dr. Brown, agreed that Dr. Calloway conducted a "thorough" investigation. R. 4238, ll. 6-9. She reviewed her medical records, school records, and testing done on both appellant and members of his family. R. 4362 – 4363. She conducted her own testing regarding intellectual functioning and adaptive behaviors on both appellant and the people she could find who knew the most about appellant including members of his family, employers, and members of the community. R. 4362 – 4363.

The court's expert, Dr. Brown, admitted on direct examination by the solicitor that he did no independent investigation into appellant's background. R. 4166, l. 24 – 4167, l. 1. He stated the reason he did not conduct any investigation but because was

because "[we] typically don't have time to do that or time or resources to do that."[6] R. 4167, ll. 2-4. He had to rely on what was provided to him and that, as the solicitor described it, "Dr. Calloway had already done an extensive background." R. 4167, ll. 7-10. On cross-examination, Dr. Brown admitted that his investigation did not require him to leave the building at the Department of disabilities and special needs. R. 4214, l. 23 – 4215, l. 10. Dr. Brown said that he wished he had the opportunity to give adaptive functioning testing to appellant's family members and friends, interview them, but did not have the resources to do so. R. 4215, l. 11 – 4219, l. 14. The Department was "in the process" of hiring a social worker who can help conduct investigations in the future. R. 4216, ll. 9-19. As trial counsel put it:

> Q. And – okay. Just so we're clear about that. I'm certainly – I'm not attacking either your credentials or your skills.
> Okay. Just with regard to resources, you are limited?
>
> A. Right.
>
> Q. And you do have a plan now, it appears in the future, to actually do a little bit more investigation –
>
> A. Correct.
>
> Q. In these situations?
>
> A. Correct.

R. 4217, ll. 2-11.

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[6] At the time of the hearing, Dr. Brown had recently left the Department of Disabilities and Special Needs to go work in the Department of Mental Health in the sexually violent predator program. R. 4135, ll. 15-19. R. 4140, ll. 8-11. He began doing Atkins evaluations after another doctor left the department "and no one else wanted to take the job." R. 4141, ll. 16-21. Dr. Brown had been involved "to some extent" in a total of 7 Atkins evaluations and his appearance in this case was his second time testifying in an Atkins matter. R. 4142, ll. 4-11.

Dr. Brown issued a twelve-page report which the trial court reviewed and credited in its Order. Supp. R. 14. R. 4436 – 4447. Dr. Brown reviewed the testing data and Dr. Calloway's report. R. 4437. Dr. Brown reviewed the records collected and reviewed by Dr. Calloway. R. 4437. Dr. Brown did interview appellant and administered 3 tests to him, which will be discussed in more detail below. R. 4437. Dr. Brown ultimately concluded in his report that appellant was not mentally retarded. R. 4447.

In Dr. Brown's conclusions in his report, he wrote that it was "very significant that the DMH examiners did not see any indication of intellectual disability during the course of an evaluation of competency to stand trial." R. 4447. The DMH examiner Dr. Brown referred to was Dr. Kimberly S. Harrison. R. 4421 – 4428. Dr. Harrison stated that after speaking with appellant, she had "no concern that he might have an intellectual disability." R. 3804, l. 22 – 3805, l. 2. Dr. Harrison then admitted that there was no way to look at an individual and tell that a person suffers from mild intellectual disability. R. 3806, ll. 10-16. She agreed that mildly mentally retarded people can communicate and answer questions. R. 3806, ll. 4-9. She admitted she did no testing even though testing is "the best way" to determine if someone suffers from mental retardation. R. 3806, ll. 17 – 25. She admitted she did no testing or used any instruments to determine appellant's adaptive functioning. R. 3819, l. 21 – 3820, l. 1. Defense counsel asked Dr. Harrison, "and, therefore, he did not investigate any adaptive deficits, correct?" R. 3820, ll. 2-3. Dr. Harrison replied, "not in any formal way, no." R. 3820, l. 4. Dr. Brown agreed that what Dr. Harrison did "was not a thorough Atkins evaluation." R. 4238, ll. 3-5. The trial court did not credit Dr. Harrison's work or opinion in its Order and mentioned her name only once. Supp. R. 1 – 14.

The Experts Agreed that Appellant Was Not Malingering

This case contains no hint of malingering by appellant or his family. Judge Couch made no finding that appellant was malingering. Supp. R. 1 – 14. Dr. Brown admitted that appellant was "a pretty hard worker." R. 4222, ll. 5-7. As pointed out by the experts, appellant suffered from cancer and went on Social Security disability for ten years. R. 4076, l. 22 – 4078, l. 5. In 1998, Blackwell left disability and went back to work. R. 4078, ll. 6-17. Dr. Brown admitted that there was even "some shock" from the state that appellant "would go off the public dole and return to work." R. 4222, ll. 8-13. Dr. Brown was asked whether there was any evidence of malingering and he replied "None." R. 4191, ll. 23-24. Dr. Brown stated he would have noted any evidence of malingering if there was a problem. R. 4192, ll. 3-8. Both Dr. Calloway and Dr. Brown gave appellant the Test of Memory Malingering, which showed no evidence of malingering. R. 4146, l. 15 – 4147, l. 9. R. 3859, ll. 1-16. The members of appellant's family who gave him ratings and a test designed to measure appellant's adaptive functioning frequently gave him higher marks been people who were not related to appellant. R. 4099, l. 11 – 4103, l. 8.

The Experts Agreed on the Clinical and Legal Definition of Mental Retardation

The experts agreed that the definition of mental retardation has three prongs, all of which must be met. As Dr. Calloway defined it, the three prongs are (1) "significantly subaverage general intellectual functioning;" (2) "the presence of adaptive deficits in two of ten areas identified by the DSM-IV-TR"; and (3) "onset of the disability before the age of 18." R. 3834, ll. 9-16. When asked to state the three prongs of mental retardation, Dr. Brown testified, "I don't know that I can say it any differently than its already been said."

R. 4145, l. 23 – 4146, l. 5. Dr. Brown also testified that an Atkins evaluation "should not be any different" from any other mental retardation situation. R. 4150, ll. 11-19. He stated that the criteria would be the same. R. 4150, ll. 13-19.

In Atkins, the Court cited the definitions of mental retardation from the American Association on Mental Retardation and the DSM-IV. Atkins at 308 n.3. Both definitions used by the Atkins Court described mental retardation in the same fashion as Dr. Calloway and Dr. Brown. Id. The trial court cited South Carolina's death penalty statute, which contains the following definition of mental retardation: "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period." S.C. Code Ann. § 16-3-20(C)(b)(10). Supp. R. 2.

The trial court's Order inexplicably criticizes Dr. Calloway for using the definitions of mental retardation from Atkins and the DSM-IV, but never explained how the definition used in Atkins, the DSM-IV, or by either expert in this case differed from section 16-3-20(C)(b)(10). Supp. R. 4-5. Without citation to any authority, the trial court also stated that it gave "greater weight" to Dr. Brown's report because he gave "greater weight" to appellant's functional adaptations "as is required by our state's statutory definition of mental retardation." Supp. R. 14. Nothing in section 16-3-20(C)(b)(10) assigns differing weight to any of the three prongs of mental retardation or greater weight to adaptive behavior. S.C. Code Ann. 16-3-20(C)(b)(10). Dr. Brown's report specifically cites the same clinical sources for his definition of the adaptive functioning prong as used in Atkins and by Dr. Calloway. R. 4445. Since neither the statute (nor Dr. Brown) provided any definition different from either Atkins, the clinical definition, or the

definition provided by Dr. Calloway, assigning more weight to Dr. Brown's report on this basis was a legal error.

The Evidence Regarding Prong One: Intellectual Functioning

Both Dr. Calloway and Dr. Brown agreed that appellant meets prong one of the definition of mental retardation. Dr. Brown wrote in his report, "There is no doubt that Mr. Blackwell currently demonstrates significant deficits in intellectual functioning...." R. 4447. Dr. Brown gave appellant the same IQ test Dr. Calloway gave him, the Wechsler Adult Intelligence Scale, 4th edition ("WAIS-IV"). R. 4437. Appellant scored a 68. R. 4192, ll. 9-12. Dr. Brown agreed that a score of 68 "clearly puts Mr. Blackwell in the M.R. range." R. 4192, ll. 9-12. When Dr. Calloway gave appellant the WAIS-IV, he scored a 63. R. 4245, l. 25 – 4246, l. 4. Dr. Brown agreed those scores were "roughly similar." R. 4246, ll. 5-6. R. 4197, ll. 4-15. Appellant's score on the WAIS-IV places him in the bottom 2% of the population meaning that roughly 98% of the population would score higher than appellant. R. 3901, l. 12 – 3902, l. 6. Dr. Calloway, from reviewing Dr. Brown's report, stated that there seemed to be no disagreement that appellant met the intelligence prong of mental retardation's definition. R. 3902, ll. 7-11.

The experts also reviewed appellant's school records which contained his grades and results of multiple tests. Appellant took "adjunct" classes. R. 3882, l. 20 – 3883, l. 19. Dr. Calloway interviewed appellant's schoolteacher, Louise Scruggs ("Scruggs") who explained that adjunct classes "predated special education classes in that county." R. 3882, l. 25 – 3883, l. 12. Dr. Brown agreed that adjunct classes "were the pre-runner to special ed classes." R. 4205, l. 24 – 4206, l. 2. Scruggs indicated these classes would provide smaller groups and individualized attention. R. 3883, ll. 13-19. Despite the extra

attention, appellant failed these classes and repeated the ninth grade. R. 3882, ll. 18-24. R. 3883, l. 20 – 3884, l. 2. R. 4206, ll. 3-5. Appellant was the only one of the adjunct students who failed the 9th grade. R. 3813, ll. 15-21. Of the three credits appellant received in the 9th grade, one was for adjunct math, another was for "prevention," and the last was for physical education. R. 4270, ll. 15-18.

When appellant was 18 years old (and still in high school) he took a test called the Adult Basic Learning Examination. R. 3898, ll. 15-24. Appellant's scores at the age of 18 indicated he was reading "at grade level 5.8." R. 3899, ll. 8-11. Appellant's total arithmetic grade was at "grade 5.6." R. 3899, ll. 12-15. Dr. Brown agreed that these were the scores appellant received at the age of 18. R. 4221, ll. 10-18. Dr. Calloway explained what the scores meant: "Well, if you look at how he was scoring, I think that may be helpful, he's scoring at like a fifth to sixth grade level here at age 18. So, he's, he's really functioning like an 11 to 12 year old child." R. 3899, ll. 16-24. In his report, Dr. Brown wrote that the "data seems to indicate that Mr. Blackwell was on track toward graduation." R. 4438. However, in the hearing when Dr. Brown was confronted with appellant's scores, he admitted that he "would agree then that does not seem to indicate that [appellant] was on track toward high school graduation." R. 4221, ll. 10 – 4222, l. 4.

Appellant's scores at the age of 18 were almost the same as his scores on a similar test given by Dr. Calloway. R. 4109, ll. 7-19. Dr. Calloway administered the Wide Range of Achievement Test ("WRAT-4") to appellant. R. 3857, ll. 7-24. It measures a person's achievement level to see where they are functioning. R. 3857, ll. 16-24. At the age of 53, appellant functioned at grade level 7.4 in word reading, 5.3 in sentence

comprehension, 6.8 in spelling, and 4.6 and math computation. R. 4108, ll. 17-25. Appellant scored in the 4th percentile. R. 4108, l. 17 – 4109, l. 5.

Dr. Calloway and Dr. Brown also agreed on the results of other testing given to appellant during his school years. Some of these tests purported to give an IQ score. R. 4445. The experts agreed that the scores were not true IQ scores. An example was the California Test of Mental Maturity which was not strictly speaking an intelligence test, but used for placement purposes. R. 3891, ll. 5-11. These tests needed no specialized expertise to administer them and were often given to children in group settings. R. 3891, ll. 16-22. Some of these tests gave percentile ranks. R. 3893, ll. 5-10. At 11 years old, appellant fell in the 5th percentile. R. 3893, ll. 11-15. At the age of 12, he scored in the 28th percentile. R. 3893, ll. 20-23. At the age of 14, on the Comprehensive Test of Basic Skills, appellant scored in the 7th percentile. R. 3898, ll. 3-14.

Dr. Brown concurred. He wrote in his report, "School records do include references to 'IQ' scores, but the scores are on screening measures and cannot be considered equivalent to scores obtained on more comprehensive tests such as the Wechsler." R. 4445. Dr. Brown explained the complicated nature of using the scores to measure IQ when questioned by the solicitor. R. 4183, ll. 6-17. Dr. Brown stated that the individual exam he gave was more accurate than any school exam. R. 4183, ll. 3-5. The solicitor asked Dr. Brown:

> Q. And I think you would agree that the individual exam you gave is probably more accurate than any school exam?
>
> A. Correct.
>
> Q. Okay. But the school numbers certainly support or could, could there be an argument that they support that he is not mentally retarded or did not suffer intellectual functioning, difficulties?

> A. Well, again, I think that goes back to **what's been discussed in previous testimony** regarding the fact **that those are not really IQ scores.** They are more measures of scholastic aptitude, more measures of achievement. They can be roughly equivalent to an IQ score, **but as a psychologist, I can't say that I would trust the scores of I think 86 and 87 as being necessarily an indication that he would not be.**

R. 4183, ll. 3-17 (emphasis added).

The scores of 86 and 87 that Dr. Brown did not trust were two of four scores that purported to be "IQ" scores. R. 4445. Dr. Brown and Dr. Calloway agreed on what the reported scores were and they listed them in their reports as follows:

- 68, at the age of 7 years, in the first grade, and in April 1966.
- 87, and the age of 8 years, in the third grade, in October 1967.
- 86, at the age of 11 years, in October 1970.
- 72, at the age of 14 years, in October 1973.

R. 4445. R. 4362. Dr. Brown wrote that the score of 72 was "within the borderline range of intellectual functioning" and that the score of 68 was "within the range of mild mental retardation." R. 4445 Then when asked by the solicitor whether the score of 87 on the California Test of Mental Maturity meant that appellant was "well beyond any margin of error or whatever for mentally retarded," Dr. Calloway replied that the test measured achievement and was "not so much an individually administered IQ test." R. 4004, ll. 10-18.

The Evidence Regarding Prong Two: Deficits in Adaptive Functioning

The experts largely agreed that appellant satisfied the adaptive functioning prong. According to the DSM-IV, a person meets the definition of mentally retarded with respect to the adaptive functioning prong if they have a deficit in two of ten skill areas.

R. 3836, ll. 10-18. Practitioners in the field expect that mentally retarded persons will have strengths along with their deficits. R. 3837, ll. 13-24. Adaptive functioning is about "looking at the entire picture of who the person is with regard to strengths and deficits in identifying those deficits in terms of the skill areas." R. 3840, ll. 15-24. Dr. Calloway ultimately found deficits in 6 of the 10 areas of adaptive functioning. R. 3920, l. 3 – 3937, l. 16. R. 4378 – 4394. She did not find significant deficits in 4 areas of adaptive functioning, including the area of work. R. 3920, l. 3 – 3937, l. 16. R. 4378 – 4394. Dr. Brown concluded in his report that "**an argument can be made that [appellant] also currently demonstrates significant deficits in adaptive functioning.**" R. 4447.

The best practice in the field for determining adaptive deficits is to use a standardized instrument as well as extensive interviewing. R. 3841, ll. 8-21. Three tests are accepted by practitioners which are the Vineland, the SIB-R, and the Adaptive Behavior Assessment System ("ABAS"). R. 3843, ll. 3-8. Dr. Calloway used the ABAS. R. 3843, ll. 7-10. Dr. Brown also selected the ABAS and administered it to appellant. R. 4143, l. 15 – 4144, l. 14. Dr. Brown selected the ABAS because its ten different areas "parallels more directly what we're looking for according to the DSM-IV criteria, and it just seems to be a little bit easier to deal with conceptually then the [other test] is." R. 4144, ll. 5-14. Dr. Brown agreed that using the ABAS was a matter of his professional choice. R. 4144, ll. 15-19.

The ABAS is not a simple test. How to give the test is a subject of study for experts in the field and Dr. Calloway learned to give the test after "supervision and consultation from people who are expert in the field." R. 3843, l. 11 – 3845, l. 11. The ABAS is administered by a psychologist individually to people with information about

the subject of the evaluation. R. 3843, l. 11 – 3845, l. 11. Dr. Calloway testified that the people who trained her recommended obtaining as many as ten to twenty different people for interviewing with the ABAS, but in practice it is "often difficult to find that number of people." R. 3844, ll. 1-11.

When giving the ABAS, the clinician sits with the interviewee and asks the person to rate the subject on a four-point scale as to whether the subject could perform a particular action. R. 3844, ll. 12 – 3845, l. 11. The interviewing is difficult because interviewees "often lose sight of the fact that we are not looking at what a person might do if given the proper opportunity.... We're looking at what a person actually did or does." R. 3844, ll. 12-21. Part of the clinician's job is to determine whether the interviewee is guessing and the ABAS contains a correction factor for these guesses. R. 80, l. 22 – 3845, l. 11.

Dr. Calloway explained that when she interviewed informants from appellant's life with the ABAS, if it was clear that interviewee was guessing, she would note that in the test's column "and then the number of guesses that he had exceeded what's accepted by the ABAS manual." R. 4048, l. 12 – 4049, l. 13. This part of the ABAS was explained in more detail with respect to Dr. Calloway's administration of the test to appellant's pastor. R. 4048, l. 12 – 4049, l. 13. If there were areas where the reporter (such as the pastor) did not have enough information and would guess, if his guesses exceeded what was accepted by the ABAS manual, Dr. Calloway would conclude that the reporter did not have enough information regarding that area of appellant's situation, but would still use the ratings where the reporter had enough information and "could answer in a reliable way." R. 4048, l. 12 – 4049, l. 21.

The test is not simply given to just the subject because mentally retarded persons who "have sufficient awareness to know that they are not as bright" can find this to be shameful. R. 3845, ll. 12-21. They attempt to cover up what they do not know and pretend that they do know. R. 3845, ll. 22-25. This concept is described as "The Cloak of Competence" which means that people with mild mental retardation attempt to pass as average normal people. R. 3845, l. 22 – 3846, l. 9. As a result of the Cloak of Competence, mentally retarded subjects will overestimate their abilities. R. 3846, ll. 10-14. Because of this factor, clinicians cannot rely on an ABAS given solely to the subject alone. R. 3846, l. 15 – 3847, l. 19. Dr. Brown agreed that the Cloak of Competence was a valid concept with respect to people who are mentally retarded. R. 4223, ll. 7-18. Dr. Brown admitted that "one administration by itself" of the ABAS "is not gonna be adequate, but it does a measure of adaptive functioning." R. 4145, ll. 14-17.

Dr. Brown agreed that if he had the opportunity he would have given the ABAS to family members and friends but that he had limited time and resources. Atkins hearing R. 4215, ll. 11-19. Dr. Brown wanted to talk to Angie and discussed interviewing her with his supervisor and DDSN's attorney. R. 4218, ll. 10-22. He ultimately stated that logistics and lack of resources were "a major factor" in the decision not to interview Angie. R. 4218, l. 10 – 4219, l. 14. Dr. Calloway asked to interview Angie, but Angie refused to cooperate and would not make herself available. R. 4051, ll. 13-22.

The journal articles in the field show a consensus that giving an ABAS to only the subject is not reliable and not valid. R. 3849, ll. 1-6. Dr. Calloway testified that if she could get between "six to twelve people, that's pretty good for most situations." R. 3849, ll. 7-17. When asked about the number of informants and whether "10 to 20" were

preferred and whether she was comfortable with "6 to 12" informants, Dr. Calloway responded that she "wouldn't say I'm totally comfortable with 6 to 12, but that's all we could find... That were available and that would talk with us." R. 4033, ll. 5-13.

Dr. Brown stated, "Well, I don't think, in a case like this, I ever feel like I have everything that I need." R. 4148, ll. 9-12. When asked why he did not undertake an independent investigation of appellant's background, Dr. Brown replied, "We typically don't have time to do that or time or resources to do that," and then agreed that "Dr. Calloway had already done an extensive background" investigation. R. 4166, l. 24 – 4167, l. 10.

Dr. Calloway gave the ABAS to the following individuals:

- Appellant's mother, Mildred Blackwell.
- Appellant's father, Cletus Blackwell.
- Appellant's daughter, Heather Bryant.
- Appellant's pastor and counselor, Reverend Ken Rice.
- Appellant's neighbor and friend of the family, Jean White.
- Appellant's teacher, Louise Scruggs.
- Appellant's employer, Ricky Bagwell.
- Appellant's employer, Gail Shook.

R. 3862, ll. 11-22. Through the ABAS, her interview with appellant, and through her review of the records collected, Dr. Calloway learned appellant was married to Angie for 29 years. R. 3869, ll. 8-19. Although they had a joint checking account, appellant never wrote a single check. R. 3869, ll. 20-24. Angie paid all the bills, made all of his medical appointments, did all of the shopping, managed his medications, and managed the

household. R. 3869, l. 20 – 3870, l. 18. Multiple sources reported that appellant worked and then turned his paycheck over to Angie. R. 3870, ll. 19-23.

Appellant grew up in Chesnee. He lived on land that was owned by his father and mother to live within walking distance of them. R. 3871, ll. 1-8. Appellant was still living with his parents when he married Angie. R. 3881, ll. 8-11. After their marriage they lived briefly with Angie's parents and then they moved into a trailer that appellant's parents bought for them and put on their own land. R. 3881, ll. 12-17.

After dropping out of school, appellant held numerous jobs, mostly involving menial labor. His employment history was summarized on pages 11 through 12 of Dr. Calloway's report and on pages 4 through 6 of Dr. Brown's report. R. 4368 – 4369. R. 3884, ll. 6 – 3890, l. 17. R. 4439 – 4441. Examples of the types of jobs appellant had after dropping out of school were putting the lids on boxes of peaches, stacking pallets, bagging ice, and basic factory jobs in textile companies. R. 3884, l. 8 – 3885, l. 20.

In 1982, appellant got a job as a truck driver and shortly thereafter got into an accident. R. 3884, ll. 19-24. His father then got him a job with the same trucking company where his father worked, but appellant had an accident and lost that job. R. 3885, ll. 2-12. He then had another trucking job with a company called Charles Belue and had another accident. R. 3885, ll. 10-17. Appellant also intended to be a self-employed truck driver, but ultimately lost the truck after having an accident and wrecking it. R. 3885, l. 23 – 3886, l. 6. Dr. Calloway reviewed an employee termination form that showed he was terminated from a truck driving job in 1985 after rear ending another vehicle and was not eligible for rehire. R. 4249, l. 23 – 4250, l. 19. R. 4406.

Appellant grew up riding in the trucks because his father was a truck driver and he also lived on a farm were there were trucks and other equipment to drive. R. 3887, ll. 16-24. Some of appellant's employment records suggest that appellant had people in his truck and was disciplined for this from time to time. R. 3888, ll. 3-13. Appellant would be taught how to drive a truck by going through the same route multiple times and having people in the truck with him when he was learning a new route. R. 3888, ll. 14-22. Many times when appellant would drive a truck he would not be by himself but would follow another truck in the same convoy. R. 3889, ll. 10-13.

Appellant was unemployed for ten years due to cancer but was a hard worker and eventually went back to work in 1997 at Springs Industries where he operated a forklift. R. 3886, ll. 10-21. He got the job at Springs with his wife's help. R. 3886, ll. 18-21. In all the jobs appellant held, he never became a supervisor, was never asked to train new people, and was never given jobs requiring judgment. R. 3886, l. 22 – 3887, l. 15. Dr. Calloway described his jobs as consistent with the kind of employment you would expect for someone who was mildly mentally retarded. R. 3887, ll. 4-15. People who were mildly mentally retarded are often called the "educable mentally handicapped." R. 3887, ll. 4-15. This means they can be taught repetitive tasks. R. 3887, ll. 4-15.

Dr. Calloway tested testified that someone can be mildly mentally retarded and drive a truck and the forklift. R. 3838, ll. 16-20. Mildly mentally retarded people can read, get a GED, write letters, use a telephone, count money, make change, work, have a driver's license, including a commercial driver's license. R. 3838, l. 16 – 3840, l. 14. Dr. Calloway had reviewed CDL tests. R. 4062, l. 19 – 4063, l. 6. While Dr. Brown's report indicated that it would be very difficult for a mentally retarded person to obtain a CDL,

he did not say that it would be impossible. R. 4446. Appellant's employer, Bagwell, reported that "if you could drive at all you could drive those trucks" and also said, "you don't need a Ph.D. or a college degree to drive a truck." R. 3932, ll. 5-15

Dr. Brown agreed that appellant's employment records show that he never made more than $10,000 a year until he was 28 years old and did not "break" $20,000 a year until he was 45 years old. R. 4224, ll. 4-18. This first few jobs after he dropped out of high school were "sort of menial labor jobs." R. 4224, ll. 2-3. Dr. Brown agreed that from his review the records indicated that appellant had never been a supervisor and was never given the opportunity to train a new employee. R. 4225, ll. 1-6.

When Dr. Calloway interviewed people with the ABAS, she also used additional questions given to her by one of the leading practitioners in the field of mental retardation. R. 3902, l. 22 – 3903, l. 6. After giving the ABAS and recording the answers, Dr. Calloway then scored it and converted the scores to standard which then becomes a composite score. R. 3903, ll. 7-15. To determine whether appellant had adaptive functioning deficits, she then looked through her records to see whether they confirmed or disconfirmed the findings of the ABAS looking for a convergence (or failure of convergence) of data. R. 3903, ll. 16-20.

On the ABAS, a score of 10 is average. R. 3905, ll. 14-22. In Dr. Calloway's report she noted "significantly low" scores with one asterisk and "very significantly low scores" with two asterisks. R. 3905, l. 14 – 3906, l. 1. Each area of the ABAS has roughly 30 to 40 questions. R. 3906, ll. 16-20. Questions are designed to determine whether an individual has the ability to perform tasks independently without help. R.

3909, ll. 6-13. If someone guesses too much on the ABAS, the clinician must write off their scores. R. 3907, ll. 14-23.

For each question, an individual can give the subject a score of zero meaning the subject has no ability at all. R. 3910, ll. 5-11. A score of one would mean that the subject "sometimes does that." R. 3910, ll. 6-11. A score of two means that the subject "occasionally does it." R. 3910, ll. 5-11. A score of three means the subject "does it all the time." R. 3910, ll. 5-11. In scoring the ABAS, the clinician adds up the ratings for a raw number which is then converted into a scaled score. R. 3910, ll. 6-23. The highest scaled score an individual can get is a 19. R. 3910, l. 24 – 3911, l. 5.

The skill areas which Dr. Calloway used to test are identified by the American Association on Mental Retardation as being the areas that are important for everyday functioning. R. 3913, ll. 15-24. With regard to the skill of home living, appellant had scores from two people who rated him very significantly low, and two people who rated him significantly low. R. 3912, ll. 9-18. With regard to health and safety, three people rated appellant as very significantly low and two people rated him as significantly low. R. 3914, ll. 14-22. Appellant was not found to have any deficit with regard to leisure. R. 3914, l. 23 – 3915, l. 7. With regard to the area of self-care, one person identified him as very significantly low and three people identified him as significantly low. R. 3915, ll. 8-15. With regard to the area of self-direction, one person rated appellant "very significantly low" and four people rated him as significantly low. R. 3915, ll. 16-21. With regard to community use, five people rated appellant as very significantly low. R. 3907, ll. 7-13.

Regarding home living, appellant was quite dependent upon his wife. R. 3921, ll. 7-21. Dr. Calloway described appellant's home life: "He didn't wash or dry his own clothes. He didn't cook for himself. He didn't budget money. He did not routinely shop on his own without assistance . . . for clothes or groceries." R. 3921, ll. 18-21. Appellant did not write checks because he was afraid of "messing up." R. 3933, ll. 3-10. He did not use credit or debit cards. R. 3933, ll. 11-14.

When Angie left him, appellant was unable to keep up with these tasks. R. 3921, ll. 22-24. Appellant's mother moved in with him for a little while and shortly thereafter appellant moved in with his parents. R. 3921, l. 22 – 3922, l. 5. After Angie left him, the trailer where they lived went into foreclosure because appellant did not know how to pay the monthly mortgage payment. R. 3922, ll. 6-13.

Reverend Rice described how appellant dealt with Angie leaving him. R. 3926, l. 12 – 3927, l. 8. He would visit Reverend Rice on almost a daily basis. R. 3926, l. 12 – 3927, l. 8. Reverend Rice told him the same message every day and that he had to quit giving all his money to Angie because she was not coming back to him, especially if appellant continued supporting her while she lived with Bobby Center. R. 3926, l. 12 – 3927, l. 8. Despite the pastor's repeated advice, appellant "never quite seemed to grasp that. He kept doing the same sort of repetitive maladaptive pattern again and again." R. 3927, ll. 5-8. Dr. Brown admitted that he did not know that after Angie left him, appellant was basically sleeping on a mattress on the floor in an empty trailer until the power got cut off and his parents took over his care. R. 4197, l. 22 – 4203, l. 5. Dr. Brown agreed that this would not surprise him. R. 4200, l. 17-22. Dr. Brown admitted he had no idea how much help appellant and Angie got from appellant's parents in setting

up their first trailer, paying the mortgage, doing shopping, buying clothes, or who took care of the children. R. 4204, ll. 14 – 4205, l. 1.

With regard to his social skills, appellant's world was "constricted." R. 3925, ll. 19-20. Almost all of his time was spent with his parents or with his daughter. R. 3925, ll. 4-7. Growing up, he was frequently taken advantage of by his peers. R. 3927, l. 9 – 3928, l. 14. Appellant would give away his possessions in hopes of making a friend. R. 3927, l. 9 – 3928, l. 14. For example, some friends took a car from appellant and appellant's father ultimately had to involve law enforcement. R. 3928, ll. 3-14.

Dr. Calloway ultimately found deficits in 6 of the 10 areas of adaptive functioning: (1) communication, (2) home living, (3) social functioning, (4) community use, (5) self-direction, and (6) functional academics. R. 3920, l. 3 – 3937, l. 16. R. 4378 – 4394. She did not find significant deficits in four areas of adaptive functioning: (1) self-care, (2) health and safety, (3) leisure, and (4) work. R. 3920, l. 3 – 3937, l. 16. R. 4378 – 4394. The assistant solicitor attempted to get Dr. Brown to agree that appellant did not have an adaptive functioning deficit, asking him, "I mean he's held numerous jobs. He had a family life, raise children. Isn't that – can't we extrapolate backwards and say he had no adaptive functioning disability?" R. 4189, l. 23 – 4190, l. 5. Dr. Brown replied, "I think that's one thing we look at, and that's part of what we do, but I don't think this, in itself, is sufficient." R. 4190, ll. 2-8.

The trial judge questioned Dr. Calloway regarding how the ABAS was scored. R. 4123, l. 13 – 4129, l. 5. Judge Couch stated he "looked at the scores that you reported and did an average of those scores, and a couple of things confused me." R. 4123, l. 24 – 4124, l. 1. The trial judge stated that he averaged the scores of the reporters in the area of

home living and came up with a number of 5.6. R. 4125, ll. 9-12. He asked her how she could conclude that appellant had an area of significant deficits in adaptive functioning when the ABAS showed an average of 5.6, which is above the criteria for significant impairment (a score of 4). R. 4123, l. 15 – 4125, l. 13. The individual ratings were contained in a chart on pages 24 through 26 of Dr. Calloway's report. R. 4381 – 4383.

The court apparently averaged the scores of the reporters on each section of the ABAS. R. 4126, l. 19 – 4127, l. 12. Dr. Calloway explained, "we don't use the ABAS scores that way to average across people." R. 4125, ll. 14-19. Judge Couch asked Dr. Calloway whether there was "something going on besides simply reporting data?" R. 4127, ll. 14-15. Dr. Calloway agreed and explained that in the area of adaptive functioning, the conclusion is not simply what the ABAS score showed. R. 4127, ll. 14-23. She explained that adaptive functioning was "the most difficult part of the Atkins evaluation because it so nuanced." R. 4127, ll. 16-23. She further explained, "With adaptive functioning, because adaptive functioning is looking at life skills across the many domains of behavior, you don't have one score. So, you don't just say oh, because there was the score, that means he has a deficit." R. 4128, ll. 16-20.

Judge Couch asked whether that was inconsistent with Dr. Calloway's testimony where she "talked in terms that I simply gathered the data and report it when you were doing that, and it seems to me there's more to it than that." R. 4128, ll. 21-24. Dr. Calloway agreed that the court was correct with regard to adaptive functioning and that there was a certain methodology used with the test. R. 4128, l. 25 – 4129, l. 5. Dr. Calloway further explained about how a clinician judges adaptive functioning in conjunction with ABAS scores and that the identity of the reporters must be taken into

account. R. 4131, l. 5 – 4133, l. 10. The following colloquy explained the difficulties of determining adaptive functioning and why averaging the scores from an ABAS would be an error:

> Q. With regard to all of the information on the ABAS – oh, and by the way, judge, you indicated that leisure was a significant deficit. It's actually reported not a deficit, and, and that was the sixth –
>
> THE COURT: I realize that now. But, again, there, there were a couple of them that didn't follow the four – that's – the thing starts off with saying you look at ten, two standard –
>
> MR. MCGUIRE: And you –
>
> THE COURT: – deviations of six. It comes down to that four, and that's the number you look for a significant problem, and then I've got some here that fell in threes that were not considered problems, and some that fell at an average of five that were considered problems, and it seemed to me that there's more to it than simply reporting numbers.
>
> MR. MCGUIRE: Okay.
>
> THE COURT: And I think I've got my answer on that.
>
> MR. MCGUIRE: I just want to make sure you're satisfied.
>
> For instance, one of the reporters is Heather, his daughter, and I think, in your interviews with her, you discovered that she loves her dad very much, and she thinks he can hang the moon, and I think she was consistently a high reporter.
>
> A. Correct.
>
> Q. And you have to take that into account when, when doing an ABAS?
>
> A. Correct.
>
> Q. And that's part of a clinician's judgment?
>
> A. That, that's correct. That's absolutely correct.
>
> Q. And that is an accepted best practice in the field is to interview people in person, get as much – many people as you can, can interview them all in person, and there is some clinician judgment that goes into the reporting?

A. Yes.

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

A. Correct.

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

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

Q. Okay. And, for instance, somebody might use the subject or the defendant as a self-reporter and that's fraught with problems, correct?

A. Yes, it is.

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

A. Correct.

Q. And, so, it's actually required?

A. Yes.

R. 4131, l. 5 – 4133, l. 10 (emphasis added).

Dr. Brown agreed that a clinician must use his training and judgment when assessing the adaptive functioning prong. When asked by the assistant solicitor about "being a reporter of information," and whether he considered himself a reporter, Dr. Brown replied, "To some degree, but I, I think when we're writing any report about test data, **there's some interpretation of the data that we report.**" R. 4172, l. 25 – 4173, l. 5 (emphasis added). He said, **"So, I think we are reporters, but I think it goes beyond that."** R. 4173, ll. 6-8 (emphasis added). He agreed with the assistant solicitor that part

of his job was to extract the significant parts of the data and include it in his report. R. 4173, ll. 9-11.

Dr. Brown reviewed the raw test data of Dr. Calloway on the tests she conducted, including "the ABAS for all various family members and other informants." R. 4151, ll. 17-19. When given an opportunity to "give the judge an overview of what these tests are and how they are conducted," Dr. Brown replied, "Well, again, I'm not sure what I can add to what's already been said." R. 4157, ll. 1-4. The assistant solicitor then interrupted Dr. Brown. R. 4157, ll. 4-6. In his report, Dr. Brown addressed the results Dr. Calloway had obtained on the ABAS in four categories, "the general adaptive composite, conceptual and social and practical skill areas as opposed to the ten separate areas." R. 4161, ll. 14-24. R. 4446. Dr. Brown stated "It could be done either way." R. 4161, ll. 14 – 24.

In his report, Dr. Brown wrote, "Adaptive functioning is much more difficult to quantify that is intelligence." R. 4446. "The ABAS-II was used by the undersigned as a measure of adaptive functioning, with Mr. Blackwell serving as the informant. Dr. Calloway had earlier used the same instrument with several other informants. While scores can be presented from those assessments, all are problematic." R. 4446. Dr. Brown thoughtfully explained this comment after questioning from the assistant solicitor:

> I think the nature of any instrument like this, whether we're talking about the ABAS or any other similar instrument, they are really designed to look at adaptive functioning so that agencies like DDSN can develop from that a plan of supports. What's gonna best help this person to succeed and overcome these, these deficits.
>
> So, we're using it for a purpose that it really wasn't developed for. I don't think when these tests were developed there was any thought that they might be used in death penalty cases to determine whether somebody would be eligible for that. Nevertheless, **it's the best that we have**, but

> we were asking someone to rate someone like Mr. Blackwell who is 53, 54 years old at the time, first of all, we got the issue of dealing with current level of adaptive functioning and then trying to extrapolate from that how does that relate back to his functioning prior to the age of 18.
>
> And then if you do go back, and if, for example, they teach you to rate him related to how he was functioning at age 16 or 17, relying on the memory that almost 40 years old at that point, so, I think the nature of the instrument, in most cases, is gonna make the data problematic.

R. 4187, ll. 2-23. These comments by Dr. Brown showed the difficulty and complexity of dealing with the adaptive functioning prong of mental retardation, but his conclusion in his report that an "argument can be made that [appellant] currently demonstrates significant deficits in adaptive functioning" and his testimony showed that the two psychologists were largely in agreement that appellant met the adaptive functioning prong of mental retardation's definition.

The Evidence Regarding Prong Three: Onset Before Age 18

While the two experts' reports showed a disagreement on the onset prong, after the testimony was complete, it was clear Dr. Brown agreed that only speculation existed to counter the evidence that appellant's difficulties manifested during his youth. Dr. Calloway testified that "a number of different sources" showed that appellant's intellectual functioning was subaverage before the age of 18. R. 3852, l. 22 – 3853, l. 4. Dr. Calloway partly relied on the school information to determine that appellant's mental retardation onset before age 18. R. 3961, l. 17 – 3962, l. 11. Those records showed that he "clearly he was functioning between the level of other children his age." R. 3962, ll. 1-11. In her report she concluded that, "Extensive review and testing indicated that Mr. Blackwell exhibited these deficits and subaverage functioning prior to the age of 18 years." R. 4394.

Also important to this conclusion was the history of low intellectual functioning in appellant's family. The AAIDD manual describes familial factors such as low IQ as a risk factor for intellectual disability. R. 4274, l. 20 – 4275, l. 10. Dr. Calloway testified that mental retardation can have a familial hereditary component. R. 3942, ll. 3-10. She reviewed records regarding appellant's family including IQ tests given to several family members. R. 3863, l. 11 – 3867, l. 18.

Multiple people in appellant's family had test scores in their records that approximated IQ and placed them within the range of mental retardation. R. 3871, ll. 18-24. Appellant's father, Cletus, had a reported IQ score of 60. R. 3872, ll. 3-9. Appellant's brother had approximate IQ scores of 73 and 74. R. 3874, ll. 10-18. Appellant's daughter, Heather had two scores of 57 and 71. R. 3875, l. 14 – 3876, l. 3. Appellant's grandson had been given the Wechsler intelligence scale for children on which he scored a 52. R. 3876, ll. 12-16. That score was not a screening measure but was a standardized, normed, true IQ test. R. 3876, l. 10 – 3877, l. 4. Another grandson had been given an individual IQ test – the Stanford-Binet intelligence scale – and scored a 50. R. 3877, ll. 12-20. On another test, the Reynolds, the grandson scored a 46. R. 3877, ll. 12-20. Appellant's cousin was diagnosed with moderate mental retardation. R. 3878, ll. 2-7. All of these people were in the mentally retarded range. R. 3878, ll. 8-11.

The assistant solicitor attempted to attack Dr. Calloway for reporting the number of low IQ scores in appellant's family. R. 4036, l. 22 – 4042, l. 19. Dr. Calloway testified that "in some cases of mild intellectual disability, there can be a familial association, i.e., a number of people in the family can have limited intellect." R. 4041, ll. 20 – 4042, l. 1. She stated, "There certainly is a strong association here for members of

his family to have limited intellect, which [appellant] also exhibited on an IQ test." R. 4042, ll. 15-19.

The assistant solicitor then asked Dr. Calloway if she was familiar with what he called the "Genomics Movement" in the 1920s and 1930s. R. 4042, ll. 20-24. The assistant solicitor asked Dr. Calloway whether "genetics was used by, and you said so called science, but it was people who were working in psychology to justify everything from racial inferiority to being used by the Germans, isn't that true?"[7] R. 4043, ll. 17-21. On redirect, defense counsel asked Dr. Calloway, "I'm not going to ask you too much about genetics and Nazis and the final solution, but I will ask you, you did note in the report the fact that Cletus, Ricky's father, was tested and had an IQ score of 60" to which Dr. Calloway responded "correct." R. 4112, ll. 9-13. She agreed that "any expert in the field," in the context of an Atkins investigation, should include in their report the fact that multiple people in a subject's family tested in the mentally retarded range. R. 4112, l. 9 – 4113, l. 3.

Dr. Brown agreed this information was important and properly considered. He included a paragraph about the family history of mental retardation in his report. R. 4438. At the hearing he agreed that he was present "for the cross-examination involving Genomics or Eugenics and Nazis and that criminal, criminal genes and stuff," but he had included some of the same information in his own report. R. 4210, ll. 6-12. When asked why he would include this information, Dr. Brown replied, "Because [there] often is a family history of intellectual disability, **and if there is a history of intellectual**

[7] The irony of a government official who was doing his absolute best to execute a mentally retarded person accusing the defense psychologist of promoting eugenics and comparing her to the Nazis was apparently lost on the assistant solicitor.

disability within the family, that makes it more likely that a particular individual might also have that diagnosis." R. 4210, ll. 17-23 (emphasis added). Dr. Brown agreed that as a forensic examiner, he would be "remiss" if he knew such information and left it out of his report. R. 4210, l. 24 – 4211, l. 2. He agreed that a forensic psychologist has an obligation to include information about the family's mental retardation because it is "significant." R. 4211, ll. 4-9.

Dr. Brown's report concluded that it was "not clear" that appellant met the criteria for mental retardation prior to the age of 18. R. 4447. He supported this lack of clarity by citing "[t]hree significant risk factors" that occurred in adulthood: cancer treatment, depression, and a head injury. R. 4447. The report does not state that these factors did have an effect on appellant's intellectual and adaptive functioning, but speculated that they "can" have an effect. R. 4447.

At the hearing, Dr. Brown all but abandoned this notion. Appellant's medical records from Spartanburg Regional Hospital showed he received treatment in 2002 for injuries sustained in a four wheeler accident. R. 4085, l. 15 – 4091, l. 2. The record showed that appellant lost consciousness for 15 to 20 minutes. R. 4085, l. 23 – 4086, l. 3. However the records also showed that the hospital did a CT scan of his brain and it was normal. R. 4089, ll. 16-25. Appellant had a broken clavicle. R. 4089, ll. 13-21. Nothing in the medical records showed anything about injuries to the external area of appellant's head. R. 4090, ll. 8-20.

Dr. Brown agreed that "as a matter of science" it was safe to rely on the presumption that IQ remains relatively constant through life. R. 4194 ll. 1-15. Defense counsel asked Dr. Brown if he could agree that "speculating without evidence that

something may have affected IQ is improper." R. 4194, l. 22 – 4195, l. 2. Dr. Brown replied, "I, I don't know that I would say it's completely improper. **I obviously can't rely completely on speculation.** But I, I think, in the absence of solid data, there – I would think, almost by definition, there has to be some speculation." R. 4195, ll. 3-7 (emphasis added). The following colloquy occurred on cross-examination:

> Q. Okay. Well, specifically you mention a couple of environmental factors, chemotherapy, four wheeler accident, and alcohol and drug use, and you kind of – you seem to speculate that they could have some cause of Mr. Blackwell's IQ?
>
> A. I'm saying they could have.
>
> **Q. And you have absolutely no evidence of that though?**
>
> **A. That's correct.**
>
> Q. Okay. For instance, you didn't go and interview anybody to see if there was a change in his personality after the four wheeler accident?
>
> A. No, I did not.
>
> Q. And that's a – that's common, in head injuries, to see if there is an effect with somebody, see if their, their mood or temperament has changed, for instance?
>
> A. Correct.
>
> Q. You could do, right?
>
> A. Correct.
>
> **Q. And, of course, in this case, there is no evidence of any change in Mr. Blackwell after the four wheeler accident?**
>
> **A. Not that I'm aware of, no.**
>
> Q. Right.
>
> And there's no evidence in the record that his IQ was affected or, or affected negatively by chemotherapy?
>
> A. No evidence, no.

Q. Okay. Or alcohol and drug use, there is no evidence that we can rely on to say that that negatively affected his IQ?

A. That's correct.

Q. Okay. So, with regard to these environmental factors, we really only have speculation with regard to did it possibly affect his IQ?

A. I would agree with that.

R. 4195, l. 8 – 4196, l. 15 (emphasis added). Dr. Brown ultimately agreed that it would be "pure speculation" that environmental factors such as the four wheeler accident affected appellant's IQ. R. 4246, ll. 11-22.

The state elected not to call Dr. Brown during the penalty phase.

Discussion

The evidence presented by the defense and through Dr. Brown conclusively demonstrated that appellant is mentally retarded and the Eighth Amendment forbids his execution. U.S. Const. amend. VII. U.S. Const. amend. XIV. In Atkins, the United States Supreme Court stated, "We are not persuaded that the execution of mentally retarded criminals will measurably advance the deterrent or the retributive purpose of the death penalty." Atkins, 536 U.S. at 321. "Construing and applying the Eighth Amendment in the light of our evolving standards of decency, we therefore conclude that such punishment is excessive and that the Constitution places a substantive restriction on the State's power to take the life of a mentally retarded offender." Id. "No legitimate penological purpose is served by executing a person with intellectual disability." Hall v. Florida, 134 S.Ct. 1986, 1992 (2014).

Standard of Review

The standard of review is whether the trial judge's findings have "evidentiary support and [are] not against the preponderance of the evidence." State v. Reed, 332 S.C. 35, 39-40, 503 S.E.2d 747, 749 (1998) (stating standard of review for trial court's findings regarding a defendant's competency to stand trial); State v. Kelly, 331 S.C. 132, 149, 502 S.E.2d 99, 108 (1998). In Franklin, when this Court created South Carolina's procedure for making Atkins determinations, it specifically referenced Reed and Kelly and how trial courts determine a defendant's competency to stand trial. Franklin at 279, 588 S.E.2d at 606. Since the competency model was adopted in Franklin, it follows that the standard of review of a trial court's determination on mental retardation is the same.

The Trial Court's Findings and Conclusions are Not Supported and are Against the Preponderance of the Evidence

Despite the agreement of the experts that appellant met at least two and arguably agreed on all three of the prongs of mental retardation, the trial court concluded that appellant had met none of them. The trial court reached these conclusions only as the result of numerous factual and legal errors and omitting many of the facts and opinions detailed above. The trial court also failed to appreciate the complexity of many of the issues, including IQ scores and how clinicians measure adaptive functioning. Finally, the court relied wholly on speculation for its finding that appellant did not meet the age of onset prong.

In Franklin, this Court stated that "the trial judge shall make the determination in a pre-trial hearing . . . after hearing evidence, including expert testimony, from the

defendant and the State." Franklin at 279, 588 S.E.2d at 606. "The defendant shall have the burden of proving he or she is mentally retarded by a preponderance of the evidence." Id.

Ignoring the opinions of the medical experts was an error of law. As the United States Supreme Court recently held in Hall:

> That this Court, state courts, and state legislatures **consult and are informed by the work of medical experts in determining intellectual disability is unsurprising.** Those professionals use their learning and skills to study and consider the consequences of the classification schemes they devise in the diagnosis of persons with mental or psychiatric disorders or disabilities. Society relies upon medical and professional expertise to define and explain how to diagnose the mental condition at issue. And the definition of intellectual disability by skilled professionals has implications far beyond the confines of the death penalty: for it is relevant to education, access to social programs, and medical treatment plans. **In determining who qualifies as intellectually disabled, it is proper to consult the medical community's opinions.**

Hall, 134 S.Ct. at 1993 (emphasis added). The trial court's hostility toward the opinions of the medical community is apparent at the beginning of its Order. The court criticized Dr. Calloway for using definitions of mental retardation from the American Association on Mental Retardation and claiming they had been "embraced" by the Atkins Court. Supp. R. 4. It is abundantly clear after Hall that clinical definitions must be used by state courts when evaluating mental retardation. Hall, 134 S.Ct. at 1998-99. The Court held, "**The clinical definitions of intellectual disability,** which take into account that IQ scores represent a range, not a fixed number, **were a fundamental premise of Atkins.** Id. at 1999 (emphasis added). The trial court's refusal to acknowledge best clinical practices and the testimony of the experts is a legal error under Hall.

Errors Regarding Intellectual Functioning

Despite the agreement of both experts that appellant had, as Dr. Brown put it, "significant deficits in intellectual functioning," the trial court concluded otherwise. Ignoring their opinions and testimony was error under Hall. The trial court chose to ignore the IQ tests given by Drs. Calloway and Brown. Supp. R. 8, ¶ 12. The court noted appellant's scores of 63 and 68, but then held that these scores were not as reliable as the testing administered to appellant while he was in school. Supp. R. 8, ¶ 12.

Both experts agreed that the tests given to appellant in school were not true IQ scores. Dr. Brown stated that the scored in the school records "are not really IQ scores." R. 4183, ll. 3-17. In his report he wrote, "School records do include references to 'IQ' scores, but the scores are on screening measures and cannot be considered equivalent to scores obtained on more comprehensive tests such as the Wechsler." R. 4445. Even more importantly, Dr. Brown explicitly stated (under questioning by the state) that he did not "trust" the purported "IQ" scores of 86 and 87. R. 4183, ll. 3-17. Dr. Brown said, "[A]s a psychologist, I can't say that I would trust the scores of I think 86 and 87 as being necessarily an indication that he would not be [mentally retarded]." R. 4183, ll. 3-17.

Despite the court's own expert stating that he did not "trust" the 86 and 87 scores, the trial judge specifically credited them, holding that "[m]ost" of appellant's scores "are above the score of 70 which is generally accepted as the level at which a finding of mild mental retardation would be possible." Supp. R. 13. Seventy is not a bright-line score. Hall, 134 S.Ct. at 2001. "Intellectual disability is a condition, not a number." Id. In Hall, the Supreme Court reversed the Florida Supreme Court for seeking "to execute a man because he scored a 71 instead of 70 on an IQ test." Id. Courts must take into

account the standard error of measurement on a test and realize that IQ testing provides a range, not a singular point. Id. It is clear from the Hall Court's thorough discussion of the complexities of IQ testing that the trial court erred in disregarding the opinions of the experts and crediting scores that were not true IQ tests. As noted in Hall, even modern IQ tests are "imprecise." Id. at 2001. If modern testing is imprecise, then discrediting the results of both experts' modern tests in favor of school tests that the experts agreed were not true IQ tests and could not be trusted was error.

Inexplicably, the trial court noted appellant's achievement testing but ignored this evidence when making its conclusion on the first prong. Supp. R. 13. The trial court correctly transcribed the results of the Dr. Calloway's investigation that appellant's achievement tests at the age of 18 showed him functioning on a sixth grade level. Supp. R. 13. The court omitted from its order the testing done by Dr. Calloway which showed appellant was still functioning on a sixth grade level at the age of 53. R. 4108, ll. 17-25. Appellant's failure to progress past the sixth grade level from his youth to his fifties is conclusive evidence that appellant is mentally retarded.

The trial court also omitted any reference to the history of low intellectual functioning in appellant's family. Both experts agreed this information was significant and was accepted in the field as a risk factor for mental retardation. Dr. Brown testified that the history of low intellectual functioning in a subject's family made it "more likely" that the subject was mentally retarded. R. 4210, ll. 17-23. The scores on true IQ tests by members of appellant's family were 52, 50, and 46 by appellant's grandchildren. R. 3871, l. 18 – 3878, l. 11. Other testing (like the tests credited by the trial judge) showed scores of 57 and 71 for appellant's daughter, a score of 60 for appellant's father, scores in

the low 70s for appellant's brother, and a diagnosis of mental retardation for appellant's cousin. R. 3871, l. 18 – 3878, l. 11. The court erred in ignoring this information.

No real disagreement existed between the experts that appellant satisfied his burden on the intellectual functioning prong. Appellant's IQ scores, his academic record (including the testing), and the history of mental retardation in his family proved that appellant's intellect is significantly subaverage and satisfies the definition for mental retardation. The court seized on the simple appellation of the letters "I" and "Q" to numbers without attempting to understand what the experts were conveying about the complex nature of these scores. This failure to grasp that all IQ scores are not created equal led the court to erroneously conclude that a man with the intellectual ability of an eleven year old child was not mentally retarded. The trial judge erred in disregarding the opinions of the experts and the evidence on this prong.

Errors Regarding Adaptive Functioning

Much as with the intellectual functioning prong, the trial court erred in disregarding the evidence and opinions of the experts on appellant's adaptive functioning. Hall, 134 S.Ct. at 1998-99. Dr. Calloway found deficits in six of ten areas of functioning. R. 3920, l. 3 – 3937, l. 16. Only two deficits are needed to qualify as mentally retarded. R. 3836, ll. 10-18. Dr. Brown concluded in his report that "an argument can be made that [appellant] also currently demonstrates significant deficits in adaptive functioning." R. 4447 (emphasis added). Despite this evidence, the trial court concluded that it received "little or no evidence" regarding this prong. Supp. R. 10, ¶ 19.

The trial court also erred in stating that Dr. Brown's report was deserving of more consideration because it gave "greater weight to Mr. Blackwell's functional adaptations

as is required by our state's statutory definition of mental retardation." Supp. R. 14. South Carolina's definition of mental retardation contains no such assignment of weight. S.C. Code Ann. § 16-3-20(C)(b)(10). The trial judge erred in giving greater credence to Dr. Brown's report because it misread the statute as requiring more emphasis on the adaptive functioning prong.

Both experts used the same test—the ABAS—to assist them in measuring appellant's adaptive functioning. The trial court seemed to believe that Dr. Calloway's use of a normed test accepted by the medical community actually weighed against her credibility, even though it was the same test used by Dr. Brown. The trial court stated it had "serious questions" about whether Dr. Calloway gave the ABAS to enough people. Supp. R. 10, ¶ 20. This finding is directly contradicted by the trial court crediting the report of Dr. Brown because of it gave "greater weight" to appellant's functional adaptations after Dr. Brown admitted he performed no independent investigation. Supp. R. 14. R. 4166, l. 24 – 4167, l. 10. Dr. Brown did not perform an investigation or interview people because in his clinical judgment it was not required; he did not investigate because he lacked the time and resources (despite being a court's expert). R. 4166, l. 24 – 4167, l. 10. Dr. Brown agreed that Dr. Calloway's investigation into appellant's background was "extensive." R. 4166, l. 24 – 4167, l. 10.

Both experts agreed that the adaptive functioning prong is the most difficult to assess and understand, yet the trial court seized on the simple fact that appellant was a truck driver to conclude appellant did not meet the definition. Supp. R. 8 – 10, ¶ 13, 14, and 19. This conclusion was certainly urged upon the trial judge by the state. During his cross-examination of Dr. Calloway during her rebuttal, Solicitor Barnette accused her of

trying to have her cake and eat it, too. R. 4276, ll. 3-4. Solicitor Barnette followed this accusation with:

> You're trying to say well, the IQ scores are this and they're low and everything, but they – you can't be adapted or whatever. **This is a gentleman that's drove a truck. He's went all the way to Texas, to New York, to New Jersey driving through that traffic I can't imagine. Obviously he has adaptability to handle that.** If you're saying his father can take care of things for him and him have to be –
>
> MR. MCGUIRE: Object to the form of the question. We've already had two questions.
>
> THE COURT: Well, he hasn't finished the question, but he is on cross-examination and you're allowed to lead on cross-examination.
>
> MR. MCGUIRE: Yes, sir.
>
> THE COURT: You may proceed.
>
> SOLICITOR BARNETTE: Thank you, Your Honor.
>
> Q. So, here, here now you're saying Cletus has had all these life experiences, and he's taking care of all these things for the defendant and everything. Well, the defendant did the same thing. He took care of a family. **He took care of, you know, through trucking.** He obviously worked, came up to a salary of 32,000 at one point. Increase his salary over the years. This is a gentleman that obviously has adapted very well if we believe the IQ scored and what you've submitted.
>
> A. I don't—
>
> MR. MCGUIRE: Objection. That's testimony. Lack of a question.
>
> THE COURT: Is that a question?
>
> SOLICITOR BARNETTE: Yes, sir.
>
> THE COURT: All right. You may answer it.
>
> A. I don't agree with you that he's adapted very well. I do agree with you that he's adapted very well in the work area, and I think about that. So, I, I simply agree with you that he's done very well in the work area, **and it's also true that people with mild intellectual disability have strengths and they have limitations,** and the way

> that I have arrived at this Atkins evaluation is to approach this topic in both a scientific way and a way that meets the standards of the field. **So, I don't take one area and say work is very good for him, he has a strength, therefore he's not intellectually disabled.**

R. 4276, l. 3 – 4277, l. 20 (emphasis added).

As the experts agreed, the ability to adapt in one area of a person's life does not mean he is not mentally retarded. Dr. Calloway candidly admitted that the area of "work" was a strength for appellant and he had no significant deficits in that area. This strength does not negate the limitations in six other areas of adaptive functioning, especially when only two are required to satisfy this prong. See United States v. Davis, 611 F.Supp.2d 472, 475-76 (D. Md. 2009) (citing the American Association on Mental Retardation manual's assumption that "Within an individual, limitations often coexist with strengths.").

Finding that appellant did not meet the adaptive functioning prong because of a relative strength is similar to the error found by the United States Supreme Court in Hall. In Hall, the experts opined that the defendant was mentally retarded. Hall, 134 S.Ct. at 1991. The Supreme Court unfavorably quoted the trial judge as stating that he was suspicious of "professional overkill" by the experts because "'[n]othing of which the experts testified could explain how a psychotic, mentally-retarded, brain-damaged, learning-disabled, speech-impaired person could formulate a plan whereby a car was stolen and a convenience store was robbed.'" Id. Ignoring the expert testimony in Hall because the defendant stole a car and robbed a convenience store would be analytically the same error as concluding appellant is not mentally retarded because he once drove a truck.

The trial court also erred in finding Dr. Calloway not credible because she used her clinical judgment in scoring the ABAS. The trial judge wrote that "the Court finds that in several instances, Dr. Calloway substituted her subjective opinions for the responses of the informants." Supp. R. 11. The trial court cited her testimony on direct examination that she "was simply merely giving the test" and then found an "inconsistency" with her view of her role after she "acknowledged" that she used her "subjective expertise in weighting some of the results of the ABAS-II." Supp. R. 11. As evidence of this, the trial judge used his own example of how he averaged the scores of the reporters on the ABAS and the averages he computed were different from the deficits in adaptive functioning found by Dr. Calloway. Supp. R. 11.

Essentially, the trial judge made up his own way to score the ABAS and to assess adaptive functioning in a way that was not supported by the testimony of either expert. Ignoring the expert testimony in this fashion is an error under Hall. Part of the clinician's job is to determine whether the interviewee is guessing and the ABAS contains a correction factor for these guesses. R. 3844, l. 22 – 3845, l. 11. She also took into account the limitations of the reporters, such as appellant's daughter who suffers from low intellectual functioning, otherwise the ABAS would not be accurate. R. 4131, l. 5 – 4133, l. 10. Dr. Calloway testified that using professional judgment to score the ABAS is required by the best practices in the field. R. 4131, l. 5 – 4133, l. 10. Dr. Brown answered the question of whether he was merely a "reporter of information" the same way Dr. Calloway did: that the clinician must interpret "the data that we report." Atkins hearing R. 4172, l. 25 – 4173, l. 5. No justification existed for the trial judge to discount

the experts' opinions on how to score the ABAS or how to determine adaptive functioning.

The Sixth Circuit recently held that a state court's use of "holistic" and "commonsense" reasoning departed from expert opinions on adaptive functioning and reversed. Van Tran v. Colson, 764 F.3d 594, 605 (2014). The Van Tran court held that the state court's "ostensibly commonsense reasoning, by itself, is not sufficient to reject the experts' conclusions that Van Tran has more than one adaptive deficit." Id. The expert testimony was in accordance with "professionally accepted definitions" and "clinical best practices." Id. "The reliable and professionally vetted methods presented by Van Tran's experts, from which the legal standards draw their substance, must guide the court's inquiry." Id.

The trial court in Van Tran, just as here, invented its own way to assess adaptive functioning, particularly with respect to the area of functional academics. Id. at 606-08. The trial court, against the expert testimony, concluded that the defendant's problems in functional academics were a result of his deficits in communication (which were admitted). Id. The Sixth Circuit held, "This discounting of expert testimony was based on the trial court's refusal to accept the expert conclusions of Van Tran's witnesses. . . .These conclusions, while perhaps reasonable in appearance to a layperson, are in the context of this case too unsupported by the record to be upheld as reasonable." Id. at 607. "The State presented no testimony to contradict the conclusions of Van Tran's experts, all of whom agreed that he suffered significant deficits in functional academics." Id. The trial judge's decision to create his own way to score the ABAS is analytically similar to the error in Van Tran.

As in Van Tran, the trial court here decided the case against the weight of the experts on the adaptive functioning prong. Dr. Calloway testified that appellant had deficits in six areas. Dr. Brown agreed in his report that a case could be made that appellant suffered deficits in adaptive functioning. The court's complete disregard of the expert testimony in favor of its own method of assessing adaptive functioning was error.

Errors Regarding Age of Onset

The trial court based its finding regarding the age of onset prong on, as Dr. Brown agreed, "pure speculation." R. 4246, ll. 11-22. The trial court held that his current IQ scores "both carry with them the possibility that they may have been adversely affected by events occurring in his adult life." Supp. R. 13. The trial judge also wrote that while he could not "assume that the intervening factors directly affected his later IQ testing, I cannot rule them out either." Supp. R. 8, ¶12. The court listed these intervening factors as the four-wheeler accident, cancer and chemotherapy treatment, and depression. Supp. R. 7 – 8, ¶ 11.

Inconsistent with these findings was the court's recognition that "most experts agree that a person's IQ remains relatively constant throughout their life. . . ." Supp. R. 8, ¶ 12. In fact, the court failed to appreciate the significance of this point and that it carries the force of law. On direct examination, the assistant solicitor asked Dr. Brown how an Atkins case is different than any other mental retardation situation. R. 4150, ll. 13-14. Dr. Brown replied, "the valuation itself should not be any different in terms of the criteria were looking at." R. 4150, ll. 15-16. Consistent with the experts' testimony that a court in an Atkins situation considers the same criteria as any other court deciding a mental retardation claim, trial counsel offered extensive argument and citations

concerning how this prong is treated in social security disability cases. See, e.g., Muntzert v. Astrue, 502 F.Supp.2d 1148 (D. Kan. 2007). R. 4306, l. 25 – 4313, l. 22. The trial court indicated his skepticism of this argument, stating, "Heard a lot of mention of the admin judge. I'm not an admin judge," and asking trial counsel to separate the social security cases from the criminal cases. R. 4320, l. 18 – 4321, l. 19. The court did not cite any disability cases in its Order.

As early as 1985, the Fourth Circuit held, "**We must and do assume**, therefore, that in the absence of any evidence of a change in plaintiff's intellectual functioning from the time of his back injury to the time of his IQ test, that he had the same or approximately the same IQ (63) at the time of his back injury . . . as he did at the time of his 1982 test." Branham v. Heckler, 775 F.2d 1271, 1274 (1985). See also Luckey v. U.S. Dep't Health & Human Servs., 890 F.2d 666, 668-69 (4th Cir. 1989) (rejecting the notion that claimant's low IQ had not manifested during his developmental years because "there is no evidence that Luckey's IQ had changed"). The Eighth and Eleventh Circuits also have presumptions that IQ remains constant without any evidence of a change in a claimant's intellectual functioning. Sird v. Chater, 105 F.3d 401, 402 n.4 (8th Cir. 1997); Hodges v. Barnhart, 276 F.3d 1265, 1268-69 (11th Cir. 2001).

Applying this assumption to the present case, the trial court erred in finding appellant did not satisfy his burden of proof because it could not "rule out" that appellant's IQ had changed. Dr. Brown agreed that "as a matter of science" it was safe to rely on the presumption that IQ remains relatively constant through life. R. 4194 ll. 1-15. Dr. Brown repeatedly agreed that there was "no evidence" of a change in appellant's IQ. R. 4195, l. 8 – 4196, l. 15 (emphasis added). Dr. Brown ultimately agreed that it would

be "pure speculation" that environmental factors such as the four wheeler accident affected appellant's IQ. R. 4246, ll. 11-22.

Furthermore, the trial court ignored evidence of the family history of low intellectual functioning. The numerous low IQ scores in his family are strong evidence that appellant's mental retardation was present during his youth. The experts agreed this family history was significant, yet the trial court did not mention this information in its Order. The trial court therefore engaged in impermissible speculation that appellant's intellectual functioning, despite the numerous low test scores, the numerous failed special education classes, the assessment of appellant functioning at a sixth grade level at the age of 18 and at the age of 53, the low scores on the ABAS from people both within and outside his family, the fact that appellant never lived alone and was always taken care of by either his parents or Angie, the fact that multiple people in his family show signs of mental retardation, and the current IQ scores on scientifically valid tests of 63 and 68 are all perhaps due to a four wheeler accident, depression, or chemotherapy. This speculation is an error of law and this Court should reverse.

4.

The trial court erred in refusing to charge the jury that the state had the burden to prove appellant was not mentally retarded beyond a reasonable doubt and, alternatively, charging the jury that it was required to find appellant was mentally retarded by a preponderance of the evidence, all of which impermissibly shifted the burden of proof to appellant and resulted in verdict forms that were hopelessly confusing in violation of his rights under the United States Constitution.

Relevant Facts

After the close of the evidence at the sentencing phase, appellant transmitted to the court proposed jury instructions, proposed mitigating circumstances, and a proposed "Finding of Mental Retardation." R. 3139, ll. 3-14. R. 3143, ll. 7-17. R. 3711 – 3734. Defendant's proposed instruction number one informed the jury that a "person with mental retardation may not be sentenced to death." R. 3711 – 3728. He further requested instruction that "[Before] you may consider the sentence to be imposed in this case you must unanimously find, beyond a reasonable doubt, that he is not mentally retarded." R. 3711 – 3734. The defendant's instruction also would have told the jury that if they unanimously found beyond a reasonable doubt that appellant was not mentally retarded, they could continue with their deliberations and "must consider his intellectual level as a mitigating circumstance in your further deliberations." R. 3711 – 3734.

Defense counsel argued that the "only burden of proof that I can think of for the... prosecution or the State must prove, beyond a reasonable doubt, the someone is not, for example, insane. But, in this case, not mentally retarded." R. 3150, l. 14 – 3151, l. 13. Defense counsel readily admitted contrary authority from this Court's opinion in

State v. Laney, 367 S.C. 639, 627 S.E.2d 726 (2006). R. 3150, l. 22 – 3151, l. 13. In response, the trial judge stated, "I understand that this is, to a certain degree, a – would appear to be burden shifting." R. 3151, ll. 14-20. The trial judge then indicated that his understanding of Laney and Franklin meant that the defense had the burden of presenting the evidence and he believed the preponderance standard applied. R. 3152, ll. 5-15.

Recognizing that the trial judge had denied the request to charge on burden of proof beyond a reasonable doubt, defense counsel then objected to the trial judge charging the jury that it must find mental retardation by the preponderance of the evidence. R. 3152, ll. 16 – 3153, l. 19. Defense counsel argued that a charge on preponderance of the evidence would be burden shifting. R. 3153, ll. 16-19. The trial judge responded that the preponderance standard was "the lowest standard we have." R. 3153, l. 20 – 3154, l. 7. The trial judge also noted that he intended to leave mental retardation as a mitigating factor, "which doesn't require any particular level of proof." R. 3154, ll. 16-20. Defense counsel suggested that the jury "should be just charged that if they find [its existence] is essentially the language I would alternatively suggest." R. 3157, ll. 2-7. The trial judge relied on Franklin and Laney, and denied defense counsel's request. The trial judge replied, "I understand all those things and then, again, I have considered it thoroughly and I guess this case may define it further." R. 3160, ll. 23-25.

The trial judge initially charged the jury that the "burden of proof is upon the State, and that burden remains with the State." R. 3216, ll. 8-9. Concerning the statutory aggravators, the trial judge charged that the State had to prove the existence of at least one of the aggravators by proof beyond a reasonable doubt. R. 3228, ll. 12-14. The trial

judge then defined reasonable doubt. R. 3228, l. 15 – 3229, l. 6. Regarding mental retardation, the court charged the jury:

> Now, in order to establish that the defendant suffered from mental retardation at the time of the crime, that fact must be found by you, the jury, by evidence that you find to be the preponderance of the evidence or the greater weight of the evidence. This is a different standard of proof than I've discussed with you in the past in this case. Normally, in a criminal proceeding, facts are to be proven beyond a reasonable doubt. That's not the standard as to this particular question or issue. The level of proof as to this question is lower than proof beyond a reasonable doubt.
>
> Again, for a finding by you of – for the jury on this matter, the level of proof must be by the great weight or preponderance of the evidence.

R. 3219, ll. 13-25. The trial judge then gave a definition of preponderance of the evidence. R. 3220, l. 1 – 3221, l. 4. The court instructed the jury to consider its mental retardation verdict form first. R. 3221, ll. 18-20. R. 3735. The court's verdict form read:

> We, the jury unanimously find by the preponderance of the evidence that the defendant was mentally retarded as defined as, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period at the time of the commission of the crime of murder in this case.

R. 3735. The form had blanks for the jury to indicate either "Yes", "No", or that they were unable to make a unanimous finding. R. 3735. The form instructed the jury that if they found "Yes" to stop their deliberations. R. 3735. The jury checked "No" and recommended a sentence of death. R. 3735. R. 3257, ll. 16 – 3259, l. 2. Appellant renewed his objection to this charge verdict form at the post-trial motion hearing. R. 4819, l. 10 – 4820, l. 21.

Discussion

Franklin left open the question of the burden of proof for the jury on mental retardation at the sentencing phase after the Eighth Amendment's restriction on the death penalty in Atkins. Franklin at 279, 588 S.E.2d at 606. U.S. Const. amends. VIII, XIV. According to Franklin, when the trial judge does not find the defendant is mentally retarded, "the defendant may still present mitigating evidence that he or she had mental retardation at the time of the crime." Id. "if the jury finds this mitigating circumstance, then a death sentence will not be imposed." Id.

Laney left open the constitutionality of our statute's designation of mental retardation as merely a mitigating circumstance in light of Atkins. Laney at 647, n.4, 627 S.E.2d at 731, n.4 (citing S.C. Code Ann. § 16-3-20(C)(b)(10)). The defendant in Laney argued pursuant to Atkins, Ring v. Arizona, 536 U.S. 584 (2002), and Apprendi v. New Jersey, 530 U.S. 466 (2000) that the fact that appellant was not mentally retarded must be found by the jury beyond a reasonable doubt. Laney at 646-49, 627 S.E.2d 730-32. This Court rejected that argument, finding that the issue of mental retardation was not an aggravating circumstance but instead was one of eligibility for the sentence imposed by the jury. Id. However, the United States has since reaffirmed the principle from Apprendi and Ring that juries must pass on issues that increase punishment because they are elements of the crime and not sentencing factors. Alleyne v. United States, 133 S.Ct. 2151 (2013).

Jury instructions which create a burden shifting presumption are unconstitutional. Sandstrom v. Montana, 442 U.S. 510 (1979). "Under our state law, no articulated burden is placed on the capital defendant to prove his statutory mitigating circumstances." State

v. Patrick, 289 S.C. 301, 308, 345 S.E.2d 481, 485 (1986) *overruled on other grounds by* Casey v. State, 305 S.C. 445, 409 S.E.2d 391 (1991) . As determined by this Court in Laney and Franklin, the issue of mental retardation is a mitigating circumstance and therefore charging the jury that the defendant had a burden of proof was erroneous.

This Court's decision not to hold that the defendant had a burden of proof in Franklin indicates that it did not intend for the burden from the pre-trial determination by the judge to carry over to the jury's deliberations in the sentencing phase. Charging a burden of proof on a mitigating circumstance is error under Patrick. The jury heard three burdens of proof during its charge: (1) beyond a reasonable doubt; (2) preponderance of the evidence; and (3) that they could recommend a sentence of life imprisonment for any reason or no reason at all. In the final analysis, the defense correctly argued that if the judge did not charge the jury that the state had to disprove mental retardation beyond a reasonable doubt, then the judge's instruction on the defendant having the burden of proof by the preponderance of the evidence and the verdict forms would be hopelessly confusing. Indeed, the jury demonstrated confusion when it asked a question about whether the signing of the form indicating a verdict on the aggravators automatically resulted in the death penalty. R. 3252, l. 16 – 3255, l. 17.

A jury instruction must be viewed in the context of the overall charge. See State v. Hicks, 330 S.C. 207, 218, 499 S.E.2d 209, 215 (1998). While a court is not required to give any particular verbiage, instructions may not confuse or mislead the jury. State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). "The purpose of instructions is to enlighten the jury and to aid it in arriving at a correct verdict." Id. When a reasonable juror "might find the instruction confusing" and infer a burden of proof on the defendant,

it is error despite general language charging that "the burden of proof was not raised from the shoulders of the State." State v. Adams, 275 S.C. 108, 109-10, 267 S.E.2d 538, 539 (1980) *citing* Sandstrom, at 518 n.7. The multiple, confusing burdens of proof and the placing of a burden by the preponderance standard on appellant were errors. This Court should reverse and remand the case for a new sentencing proceeding.

5.

The trial court erred in refusing to admit evidence of appellant's remorse contained in the records of a hospital chaplain pursuant to Rule 803(6), SCRE, in mitigation, and in response to testimony from a police officer who claimed appellant said "the only thing that I'm sorry about is that I didn't do a better job on myself," since the exclusion of this relevant evidence violated appellant's Eighth Amendment rights.

Relevant facts

During the state's case in aggravation, Spartanburg County Sheriff Deputy Lorin Williams ("Williams") testified that he went into the trauma bay of the hospital while medical staff were attending to appellant's gunshot wound. R. 2680, l. 18 – 2682, l. 15. Officer Williams read appellant his rights and questioned him. R. 2683, l. 16 – 2685, l. 25. Officer Williams claimed appellant told him that Angie "was continuously throwing up her boyfriend to him" and that appellant had "been having sour thoughts about how to get back at this man for breaking up his marriage." R. 2685, ll. 3-9.

The police officer continued to question appellant. R. 2685, ll. 11-25. He asked appellant to give him a reason to help him understand "how this could happen to a child of this age." R. 2685, ll. 11-25. The officer claimed appellant told him it was "his way of getting back at, at her dad for breaking up the marriage." R. 2685, ll. 11-25. The officer asked appellant, "is there something you can tell me, tell me it was an accident, tell, tell me you are sorry, tell me anything like that. And he just looked at me, he said the only thing that I'm sorry about is that I didn't do a better job on myself." R. 2685, ll. 18-25.

On cross-examination, defense counsel asked the officer if he had spoken with the chaplains at the hospital and the officer told him, "Had no reason to." R. 2688, l. 1 – 2689, l. 17. Defense counsel also asked whether the officer knew "that Mr. Blackwell was praying for Bobby Center's family at the hospital," to which the officer replied, "I know what he told me." R. 2689, ll. 18-20.

During appellant's mitigation case, and outside the presence of the jury, appellant called Gracie Williams, records custodian from Spartanburg Regional Hospital. R. 2961, ll. 3-5. Appellant proffered medical records from the hospital chaplain through the records custodian. R. 2961, ll. 17-19. R. 3386. The state objected on hearsay grounds. R. 2961, l. 24 – 2968, line 6.

The defense argued that the documents were "a record of regularly conducted activity at Spartanburg Hospital, and the records custodian is here to testify to that fact." R. 2962, ll. 11-18. The chaplains themselves "didn't have much memory actually of this event. So, their notes are actually the best evidence of it." R. 2963, ll. 17-20. The trial judge reviewed the document and published the pertinent section:

> I assume the pertinent portions are the parts that I discussed earlier that state the patient was struggling with guilt. Wanted to tell his grandchildren he loved them. He was struggling with his actions and what had been done, and another entry, the next day, by a different individual said but he was sad, had some prayers in his heart, asked for the family. We prayed the Lord's Prayer together.

R. 2965, ll. 13-22. The trial judge ruled that this record was an opinion that would not be admitted under the hearsay exception for a regularly kept business record. R. 2965, l. 23 – 2966, l. 6.

The defense then proffered testimony from the records custodian who stated that the records were kept in the regular course of business, the information would have been

recorded at or about the time the information existed, and that they were genuine. R. 2966, l. 14 – 2967, l. 23. Defense counsel further argued that the document was being offered in response to Officer Williams' testimony, as a business record, and as mitigation evidence under the Eighth Amendment. Counsel argued the failure to admit this evidence would violate appellant's right to present mitigating evidence under the Eighth Amendment to the United States Constitution. He noted that hearsay rules in particular "would necessarily fold" in the face of appellant's right to present mitigating evidence. He cited Green v. Georgia, 442 U.S. 95, 97 (1979) to the trial court in support of his argument. (Reliable hearsay evidence that is relevant to a capital defendant's defense should not be excluded by rote application of a state hearsay rule). He also cited Mills v. Maryland, 486 U.S. 367, 374 (1988) and Skipper v. South Carolina, 476 U.S. 1 (1986) in support of his argument. R. 2968, l. 13 – 2971, l. 3. R. 3386.

The solicitor took full advantage of the exclusion of this evidence. He told the jury that "not once did he [appellant] show any remorse for Brooke. Doesn't even show one concern about Brooke . . . He said I shot and killed Brooke [to Investigator Williams]. Didn't show any remorse. He said what, what would you on done differently. He said well, I would of just done of done a better job of shooting myself. That's how much he cared about Brooke C." R. 3169, ll. 13-14.

Discussion

The chaplain's record was admissible under the business records exception. Rule 803(6), SCRE. The court affirmed its ruling excluding the evidence. Under Rule 803, the availability of the declarant is immaterial. Id.

The proffer of the records custodian showed that the records were kept in the course of a regularly conducted business activity. The rule's prohibition on admission of opinions did not apply because the chaplain's records were not opinions, but statements made by appellant to the chaplain—the very definition of hearsay and why the exception exists. "Medical records are admitted routinely as business records." Ex Parte Department of Health and Environmental Control, 350 S.C. 243, 565 S.E.2d 293 (2002) (holding that medical records were admissible under the business records exception).

Furthermore, to the extent the records contained any subjective opinions, appellant's right to present mitigation evidence under the Eighth Amendment trumps any defect. U.S. Const. amend. VIII. "It is beyond dispute that in a capital case the sentencer may not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record in any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." Mills v. Maryland, 486 U.S. 367, 374 (1988) (internal quotations omitted). See also Eddings v. Oklahoma, 455 U.S. 104 (1982). Further, appellant had the due process right to respond to this evidence that he expressed no remorse after the shooting. Skipper v. South Carolina, 476 U.S. 1 (1986).

Further, as seen above, Green v. Georgia, 442 U.S. 95, 97 (1979) holds that reliable hearsay evidence that is relevant to a capital defendant's defense should not be excluded by rote application of a state hearsay rule.

The evidence from Officer Williams was highly inflammatory. The trial court's ruling prevented appellant from responding with mitigating evidence that contradicted the deputy and showed that appellant was remorseful and was praying for the decedent's family.

As also seen above, the solicitor took full advantage of the exclusion of this evidence. He told the jury that appellant did not show any remorse for killing the decedent. He only allegedly was sorry he had not killed himself also. R. 3169, ll. 13-14. Solicitors argue lack of remorse to sentencing juries because they know "lack of remorse" inflames the passions of the jury. Where the state takes advantage of the exclusion of relevant mitigating evidence, the error is not harmless. State v. Chaffee, 294 S.C. 88, 92, 362 S.E.2d 875, 877 (1987).

Further, the refusal to allow the jury to consider this evidence that appellant was "struggling with guilt," and "struggling with his actions and what he had done," as rebuttal mitigation evidence to the testimony of Investigator Williams that appellant was centered on himself was also not harmless because any one juror may vote for a life sentence "for any reason or no reason at all." State v. McClure, 342 S.C. 403, 409, 537 S.E.2d 273, 275, 276 (2000). Appellant is entitled to a new sentencing trial.

6.

The court erred by ruling that the state presented racially neutral reasons for striking black male jurors Cheeks and Fullenwider where the state did not strike similarly situated white jurors who also had a criminal record, or had pending criminal charges in the same county and the treatment of alleged "pro-life" black and white jurors by the solicitor was also disparate.

Relevant Facts

Following jury selection Defense Counsel Young made a Batson motion challenging the solicitor's use of preemptory challenges to remove three black men from the venire.[8] R. 2308, l. 20 – 2315, l. 1. The black jurors that were struck were Juror 45, Cory Cheeks, Juror 79, Stacy Fullenwider, and black Alternate Juror 79, John Lindsey. R. 2314, l. 18 – 2315, l. 9. R. 3391 – 3392. Solicitor Barnette cited Juror Cheeks' criminal domestic violence conviction as well as Juror Fullenwider's "criminal record" as reasons for the strikes, as well as his concerns about their allegedly "pro-life" positions on the death penalty. R. 2315, l. 12 – 2316, l. 2.

Defense Counsel Young noted the gross inconsistency with the solicitor's use of his preemptory challenges. The solicitor did not strike white Juror 70, Michael Estes, who also had a criminal domestic violence conviction. Further, the solicitor did not strike a white sitting juror, Juror 188, Stephanie Partridge, who had a pending breach of trust charge at the time of the trial in the same county. The solicitor also did not exercise a preemptory

[8] See Batson v. Kentucky 476 U.S. 79 (1986). Appellant is not pursuing the gender-based challenges on appeal.

challenge on white juror 154, Donald Lowe who had very serious criminal charges of kidnapping and criminal domestic violence of a high and aggravated nature dismissed. R. 2316, l. 24 – 2318, l. 15. Defense counsel said the solicitor's reasons for striking the Black jurors were pretextual, and that the solicitor had failed to strike similarly situated white jurors. R. 2318, ll. 10-15. The judge discussed this then with the solicitor:

> THE COURT: All right. Hear from the State.
>
> SOLICITOR BARNETTE: [M]r. Estes is a pro-death (sic) juror, if you just look from the facts of the situation, and interviewing him from that standpoint. It was – he worked at the DOC [Department of Corrections] for a short period of time. I think it was six months, if I remember right, through the testimony, and answering questions about Ms. Marcotte [a struck juror not challenged on appeal] you know, that's being – she was there for 12 years at least if I remember right from that standpoint.
>
> The – Mr. Estes, from that standpoint, it doesn't match up what he's saying because our reasons is cause they're pro-life jurors on top of that. It's just not merely – they do have the convictions as a factor in this situation, but also ---
>
> THE COURT: You took from their answers then---
>
> SOLICITOR BARNETTE: Took from the answers.
>
> THE COURT: ---that you felt they were being more pro-life than not?
>
> SOLICITOR BARNETTE: And if you look at him, and you look through my questioning or Mr. Bulsa's questioning, I can't remember who, who did which one, it was based off our questioning of those individuals from that standpoint.
>
> THE COURT: Anything further from the challenge?
>
> MR. YOUNG: No, Your Honor
>
> THE COURT: All right.

> THE COURT: All right. In reviewing the, the reasoning given by the State for those strikes, I find that it is not pretextual, and I do not find that it indicates a pattern of discrimination, and I will deny the motion.
>
> MR. YOUNG: Your Honor, I don't have them printed out, but I would like to offer just court records concerning the Jurors that I argued were similarly situated, just their local court records.

R. 2318, l. 16 - 2319, l. 25

Thus, black male jurors Cheek and Fullenwider were struck by the solicitor for allegedly having criminal records while the solicitor did not strike white sitting Juror Partridge or white potential jurors Lowe or Estes who either had a criminal records, pending criminal charges, or had extremely serious criminal charges against them dismissed. R. 3391 – 3392.

The defense then noted the solicitor's alleged "added" reason that the struck black jurors were also "pro-life" also rang hollow. The defense pointed to Juror 266, William Van Der Plaat, who was also "similarly life leaning or pro-life comments in his voir dire, and he's a white male similarly situated to the ones challenged by – in our last motion." R. 2322, ll. 12-17. In fact, as will be seen infra, Juror Van Der Plaat, stated that life imprisonment may be worse than the death penalty, and he expressed his strong concern that innocent people could be executed.[9]

White Juror Partridge

It is apparent the light went on for the solicitor during the voir dire of Juror Stephanie Partridge. The judge noted before her voir dire that she had a pending criminal

[9] Solicitors, the one in this case included, frown upon a juror thinking that life imprisonment without parole is worse than death for obvious reasons as they attempt to obtain a death sentence.

charge "in this county." According to prosecutors, she has "entered an admission of guilt and is entering the PTI program at this point in time." The Deputy Solicitor offered that Juror Partridge had given a written statement to the police admitting her guilt, and she asked to enroll in PTI. The solicitor's office had not yet approved her entering PTI at the time of trial. R. 795, ll. 3-18.

The solicitor's office at first stated they would like to disqualify Partridge. The judge agreed that Partridge having criminal charges pending against her could "cut both ways" since she could have hard feelings towards the police, or as defense counsel stated, she could "throw them a bone and deliver a verdict they would like" so her PTI application would be approved. R. 796, ll. 2-17; R. 797, l. 6.

The judge noted that Partridge was not automatically disqualified and that the attorneys would be allowed to question her. R. 797, ll. 1-22.

This case involves the murder of a child and Partridge noted on questioning that she had an eleven year old and a seven-year-old child. R. 823, l. 19. Juror Partridge was raised as a Jehovah's Witness, but apparently did not continue in the practice of that faith. She did note, however, that "the scriptures definitely have a strong bearing on how I feel. On the one hand, I do believe an eye for an eye." She also noted there were "three cities of refuge for people who might have been guilty, but yet there was a place for them to reside and live with their lives normal – I mean as balanced." R. 825, l. 12 – 826, l. 13.

Partridge said she had thought about the death penalty and she observed: "I think the only injustice is that women are not put on death row as well, which I -- but that is just my personal opinion." R. 826, l. 12 – 827, l. 12.

When questioned about her pending criminal charges, Partridge claimed they would not impact her verdict:

Q Okay. Now, I hate to go into this, but the judge mentioned it about your pending case with the Sheriff's office.

A Yes.

Q And you're, you're aware that they're the prosecuting agency in this case.

A Yes, I do.

Q And it's not gonna impact your decision at all?

A No, it shouldn't. There's no correlation.

Q Okay. I understand that---

A Yeah.

Q You're gonna need to be comfortable because you're gonna be hearing a lot of witnesses coming up here.

A Uh-huh. (Affirmative).

Q Okay. And you can set that aside---

A Oh, yeah.

Q You mentioned knowing one of the witnesses.

A Uh-huh. (Affirmative).

Q Who is that again?

A Elizabeth Sima. She's the principal---

Q In Woodruff?

A ---of the elementary school.

Q Okay. All right. That's another – she was actually the complainant in the case also.

A Yes.

Q Okay.

A I have the utmost respect for Elizabeth and I have a very unique relationship with her. She's an amazing principal and, and, again, it's, it's compartmentalization.

Q And you, you feel---

A There's just---

Q ---confident you can do that?

A This is me and my stupidity, my issue, and this has nothing to do with that, and whether she's involved in both is irrelevant.

R. 830, l. 9 – 831, l. 24.

White Juror Van Der Plaat

During the voir dire of Van Der Plaat, he testified he was a "type three juror." R. 1278, ll. 11-14. He said he could sentence a defendant to life without parole, but "it would definitely be harder" to impose the death penalty. R. 1278, l. 22 – 1279, l. 14.

Van Der Plaat noted his fear that "we put someone innocent to death." Van Der Plaat attempted to balance that by observing: "that would bother me," but he also thought there were dangerous people that "maybe the only way to handle that would be to put them to death. " R. 1283, ll. 7-22. Juror Van Der Plaat even stated what the solicitor apparently disliked most in a juror, that life imprisonment without parole may be as bad if not worse than the death penalty. Van Der Plaat testified: "I could go either way on that I guess. I don't, I don't really see, because it's forever life in prison, you're essentially letting someone remain alive, but without a life. Whereas, in the other case, you're actually taking

the life, which, okay, depending on, on some people's beliefs, is worse than the two. *But being locked up for life with essentially no life to live anymore seems just as drastic to be honest with you.*" Van Der Plaat noted that he was "an engineer" and that he tried to be logical about such matters. R. 1300, ll. 1 – 1302, l. 13.

Further, the voir dire of jurors Cheeks and Fullenwider does not support the solicitor's position that they were "very pro-life." The state and the defense agreed that Juror Cheeks was a qualified juror. Speaking of his own criminal domestic violence conviction, Juror Cheeks said it had involved his girlfriend and noted the system had "treated me fair." R. 1644, ll. 12-22. Cheeks said he was a "number three juror" and that he could sign a verdict form sentencing a defendant to death. However, and totally inconsistent with his treatment of white Juror Van Der Plaat, the solicitor referred to comments by Cheeks which he thought expressed reservations about the death penalty, and innocent people. R. 1339, l. 15 – 1341, l. 1; 1647, ll. 14-25.

Juror Fullenwider agreed a death penalty case was a serious matter, but he added: "I mean I still feel the same way, that I mean if they, if they done it, I mean, and they deserve it, then they deserve it." Fullenwider told the solicitor he was, "positive --- I could do it" when asked if he could sentence a defendant to death. R. 1784, ll. 4-16. The solicitor agreed Fullenwider was qualified, but later struck him. R. 1785, ll. 2-5.

Discussion

Whether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record. State v. Shuler, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001); State v. Scott, 406 S.C. 108, 479 S.E.2d 160 (Ct. App. 2013). The purpose of Batson is not only to protect the defendant's right to a fair trial by a jury of his

peers, but also to protect each juror's right not to be excluded from jury service for discriminatory reasons, and to preserve public confidence in the fairness of our system of justice. State v. Haigler, 334 S.C. 623, 628-29, 515 S.E.2d 88, 90 (1999.)

In this case, the defense correctly challenged the state's striking of three black men. The solicitor alleged he struck jurors Cheeks and Fullenwider because they had criminal records, and he claimed they appeared "very pro-life." The defense, at step three of the Batson process, countered that these reasons were not racially neutral given the fact that white jurors Partridge, Lowe and Estes, were not struck by the solicitor. The solicitor obviously saw the upside of juror Partridge in particular since she was beholden to the solicitor's office with her PTI application still pending at the time of appellant's trial.

The defense was out of strikes when the last juror was seated. See strike sheet. R. 3391 – 3392.

White potential Juror Estes had a conviction for criminal domestic violence and he was not struck by the state. The state also did not strike white male juror Donald Lowe despite the fact at one point he had been charged with both kidnapping and criminal domestic violence of a high and aggravated nature. R. 3393 – 3495.

Further, while the solicitor expressed alleged concern about juror Cheeks' mention of "innocent people" and the death penalty, white sitting Juror William Van Der Plaat went much further in expressing his concern that an innocent person could be executed. Indeed, Van Der Plaat thought as an engineer, and as a matter of logic, that life imprisonment without the possibility of ever being released was worse than the death penalty.

It is apparent from this record that the solicitor did not exercise his preemptory challenges in a racially neutral manner regarding these black veniremen. The disparate

treatment of white jurors Stephanie Partridge and William Van Der Plaat and the solicitor's failure to strike jurors Estes and Lowe, shows that the defense demonstrated the alleged racially race–neutral reasons of the solicitor for striking these black jurors was actually pretext.[10] See Purkett v. Elem, 514 U.S. 765 (1995); Georgia v. McCollum, 505. U.S. 42, 44 (1992).

[10] Appellant had only one black juror on his jury.

7.

The court erred by qualifying Juror #43, Donna Champion, because her position that the defense had to prove appellant deserved a life sentence rather the death penalty was burden shifting, inconsistent with the law, and her entire voir dire showed she would not consider certain categories of mitigating evidence.

Relevant Facts

The trial judge explained to Juror Champion how the penalty phase trial was conducted so the jury could determine the "appropriate sentence." R. 691, l. 12 – 692, l. 7. The judge explained that aggravating circumstances "tend to make the crime of murder to be considered more severe. In other words, deserving a higher punishment." R. 692, ll. 15-25.

Conversely, the judge told Champion that mitigating circumstances lessened either the crime or the culpability of the person involved such that the jurors might tend to give a lesser sentence. Champion acknowledged she understood these concepts. R. 693, ll. 1-22.

Juror Champion considered herself in the third category of jurors. R. 696, ll. 5-7. Defense counsel asked Champion what she meant in her questionnaire that there were "many things . . . wrong with the criminal justice system, people are doing bad things, and the next thing you know they're back out doing it again." R. 699, ll. 13-20. R. 3501.

Champion explained that a lot of people were arrested, and she cited to one particular person she saw on the news who was arrested and "he got out that day or something and went and did it again. So, I mean yeah, it needs to be fixed. Something needs to be done. People are -- just keep doing the same thing over and over and over, you know. They'll go to jail or county lockup and . . . make bail and out doing it again." R. 699, l. 13 – 700, l. 6.

Champion said she understood that a person sentenced to life without parole would die in prison. R. 700, ll. 7-24. Champion described her feelings on the death penalty as being "if the crime is so severe I am not against it . . . if it fits the crime or, you know, the crime was so severe, I don't - - I'm not against it." R. 700, l. 25 – 701, l. 7.

Defense counsel then questioned Champion about mitigating circumstances. She was asked the type of things she wanted to know about the person before deciding whether he should be sentenced to death or life imprisonment without parole. "I don't know if it's so much about the person. I just want to know about the facts about the trial, what happened, the facts that led up to being here . . . I don't really consider - - I don't know. I guess I shouldn't say I don't consider the person, but I need to know all the facts." R. 706, ll. 11-24.

Champion was also asked if she would consider how the person was raised "what their walk in life" if matters such as those would be important to her. She responded: "Somewhat. I mean somewhat. That makes you who you are, but, on the other hand, you have responsibility. I mean [you've made a choice] . . . And I know everybody's life is hard, and every - - you know... I mean you do have to take that into account, but, on the other hand, nobody told you to do these - - things. So, I mean I guess everything - - you have to hear everything and work it out." R. 707, l. 20 – 708, l. 18.

Champion testified that a defendant would have to prove to her why he should get a life sentence rather than the death penalty. "I think it'd have to be proved I mean or shown what happened." Champion reiterated on a follow-up question that the defense would have

to prove to her why a life sentence should be imposed rather than death for the murder. R. 708, l. 22 – 709, l. 7; 710, ll. 17-20.[11]

Champion acknowledged she understood while a person's background or how they grew up might *not* be important to her that it could be important to other jurors. She said she would respect their opinion. R. 711, l. 17 – 714, l. 21.

When questioned by the solicitor Juror Champion responded she knew the burden of proof was always on the state and not on the defendant. R. 715, ll. 17-21. She said she understood the state had to prove aggravating circumstances, and she said she would listen to mitigating circumstances and take them into account. R. 716, l. 18 – 717, l. 16.

Champion said "if enough aggravation was brought into the case" she did not "have a problem imposing the death penalty." The solicitor also asked "*if their mitigation* or the evidence or something in the, in the sentencing phase *would point to life without parole*, you wouldn't have any problem voting life without parole either, would you?" Champion said she could give a life without parole sentence under these circumstances. R. 717, ll. 17-25.

The defense moved to disqualify Juror Champion for cause. Counsel noted that she would require the defense to prove why life was a proper punishment, which was contrary to the law. She was a "burden-shifting juror." R. 719, ll. 5-14.

Juror Champion also "rejected certain categories of mitigation such as growing up hard and background are not relevant to her in her penalty decision making process." The defense noted the state tried to rehabilitate her, but these remained her positions. R. 719, ll.

---

[11] Q. But would, would I have to prove to you as to why a life sentence was the appropriate penalty?
A. Yes. R. 709, ll. 5-7.

5-14. See Wiggins v. Smith, 539 U.S. 510 (2003); Council v. State, 380 S.C. 159, 670 S.E.2d 356 (2008); Nance v. Ozmint, 367 S.C. 547, 557, 626 S.E.2d 878, 883 (2006).

The solicitor responded that Juror Champion was asked leading questions. The trial judge interjected that both sides asked leading questions, and he did not have a problem with that procedure. The solicitor added that Juror Champion's answers showed she took the matter seriously, and he asserted Juror Champion was exactly the kind of juror that should sit in judgment in this case. R. 719, l. 22 – 720, l. 12.

The judge stated that Champion said "she may require someone to prove something to avoid the death penalty, I'm not sure she had been instructed on the law. She made clear that she would be willing to follow the Court's instructions even if she disagreed with the Court's instructions - - with the law as stated by the Court." The judge ruled that Champion was qualified to be a juror. R. 720, l. 13 – 721, l. 7.

Champion was one of eleven white jurors who served on appellant's jury, and the defense used all ten of its peremptory challenges in this case. R. 3391 – 3392.

Discussion

In reviewing an error as to the qualification of a juror, this court engages in a three step analysis. First, the appellant must show that he has exhausted all of his peremptory challenges. Here, it is clear appellant used all ten of his peremptory challenges. R. 3391 – 3392.

Second, if all peremptory challenges were used, this court must determine if the juror was erroneously qualified. As will be seen infra, Juror Champion was erroneously qualified.

Third, the appellant must demonstrate this error denied him of a fair trial. Juror Champion, an unqualified juror, served on appellant's jury that sentenced him to death. Prejudice has been demonstrated. See State v. Council, 335 S.C. 1, 10, 515 S.E.2d 508, 512 (1999); State v. Green, 301 S.C. 347, 392 S.E.2d 157 (1990).[12]

In a capital case, the proper standard for determining the qualification of a prospective juror is whether the juror's views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath. Wainwright v. Witt, 469 U.S. 412, 424 (1995); Uttecht v. Brown, 551 U.S. 1 (2007).

In this case Juror Champion unequivocally stated that the defense would have to prove to her that the defendant deserved a life sentence. Juror Champion also stated that all people live "hard lives," but that people are responsible for their actions.

Her focus was on the circumstances of the crime, and defense counsel correctly argued her positions were contrary to the law, burden shifting, and that she could not give meaningful consideration to important categories of mitigation. A review of the voir dire of Champion as a whole reveals she was not a qualified juror.

A jury in a capital sentencing phase may recommend a life sentence for any reason or no reason at all, including as an act of mercy. Rosemond v. Catoe, 383 S.C. 320, 330, 680 S.E.2d 5, 10-11 (2009).[13] Further, there is no burden of proof on a capital defendant with regard to evidence of mitigating circumstances. E.g. State v. Hicks, 330 S.C. 207, 215, 499 S.E.2d 209, 218 (1998). Moreover, a defendant is entitled to have a jury consider during the sentencing phase of his capital trial any mitigating factor related

[12] Certiorari denied. Green v. South Carolina, 498 U.S. 881 (1990).

[13] Overruling in part State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000).

to his character or background. See Lockett v. Ohio, 438 U.S. 586 (1978); Eddings v. Oklahoma, 455 U.S. 104 (1982).

Juror Champion's voir dire, considered as a whole, discloses that the defense would have to prove to her that appellant was entitled to a life sentence rather than a death sentence. Her voir dire also disclosed that circumstances of the crime virtually subsumed her consideration of relevant mitigating evidence, and that she would not give serious consideration to certain categories of evidence. Her view the "*everybody*" lived a "hard life" but that they were responsible for their actions was very revealing about her view of mitigating evidence.

Sentencing juries -- and therefore individual jurors -- must be able to give meaningful consideration and effect to all mitigating evidence that might provide a basis to not impose the death penalty on a particular individual, notwithstanding the severity of his crime or his future dangerousness. Abdul-Cabir v. Quarterman, 550 U.S. 233 (2007); Smith v. Texas, 550 U.S. 297 (2007). Juror Champion's position that the defense had to convince her why a life sentence was deserved was the antithesis of this bedrock principle of modern death penalty jurisprudence.

In State v. Bennett, 328 S.C. 251, 257-258 493 S.E.2d 845, 848 (1997), this Court held that a juror's generalized statements that he would be fair and impartial, and that he would follow the law did not make him a qualified juror where he also stated he "would have to go with the majority" if the other eleven jurors wanted to impose a death sentence. The juror's position was contrary to the law that every juror has the right to his own opinion, and that verdict he agreed to must also be his own verdict. State v. Williams, 386 S.C. 503, 514-515, 690 S.E.2d 62, 67-68 (2010).

The judge here erred by refusing to strike Juror Champion for cause. The judge's view that a jury charge could transform an unqualified juror into a proper one is confounding. She was not a qualified juror and she sat on appellant's jury that imposed the death sentence upon him. Appellant must be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed and this case remanded to the Spartanburg County Court of General Sessions for a new trial. In the alternative, appellant should be granted a new sentencing trial.

Respectfully submitted,



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This 7th day of March, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 7th, 2016

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICKY LEE BLACKWELL,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Redacted Final Brief of Appellant in the above referenced case has been served upon Melody J. Brown, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of March, 2016.

Robert M. Dudek
Chief Appellate Defender

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SUBSCRIBED AND SWORN TO before me
this 7th day of March, 2016.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

Due to redaction, pages may be blank and non-consecutively numbered

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
70
CASE NO. 2018-CP-42-00928

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
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SC SUPREME COURT

CAPITAL CASE
APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
Roger L. Couch, Circuit Court Judge

The State of South Carolina, Respondent,

v.

Ricky Lee Blackwell, Appellant.

Appellate Case No. 2014-000610

FINAL BRIEF OF RESPONDENT
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The trial judge did not commit clear error in crediting the State's neutral reasons for striking two African American males jurors as the reasons for the State's strikes were absolutely non-discriminatory, were well-supported by the record, and appellant failed to show a "material in relevant aspects" potential juror of a different race that the State did not strike in an attempt to undermine the clear non-discriminatory intent expressed in the reasons for the strikes 97

VII.

The defense failed to exercise a peremptory strike and is procedurally barred and/or has waived the issue of qualification. Even so, the record supports that the trial judge did not abuse his discretion in qualifying Juror #43, Donna Champion, where her responses, when viewed correctly as a whole, indicated she could be a fair and impartial juror 112

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1.

Whether the Court denied appellant his constitutional right to confront and cross-examine the state's most critical witness, [redacted]?

2.

Whether, in the alternative, appellant is entitled to a new trial because the trial court denied him meaningful appellate review [redacted]?

3.

Whether the trial court erred in finding that appellant was not mentally retarded at the pretrial hearing pursuant to *Atkins v. Virginia* and *Franklin v. Maynard*, and therefore sentencing appellant to death violates his rights under the Eighth Amendment?

4.

Whether the trial court erred in refusing to charge the jury that the state had the burden to prove appellant was not mentally retarded beyond a reasonable doubt and, alternatively, charging the jury that it was required to find appellant was mentally retarded by a preponderance of the evidence, all of which impermissibly shifted the

burden of proof to appellant and resulted in verdict forms that were hopelessly confusing in violation of his rights under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution?

5.

Whether the trial court erred in refusing to admit evidence of appellant's remorse contained in the records of a hospital chaplain pursuant to Rule 803(6), SCRE, in mitigation, and in response to testimony from a police officer who claimed appellant said "the only thing that I'm sorry about is that I didn't do a better job on myself," since the exclusion of this relevant evidence violated appellant's Eighth Amendment rights?

6.

Whether the court erred by ruling the state presented racially neutral reasons for striking black male jurors Cheeks and Fullenwider where the state did not strike similarly situated white jurors who also had a criminal record, or had pending criminal charges in the same county, and the treatment of alleged "pro-life" black and white jurors by the solicitor was also disparate?

7.

Whether the court erred by qualifying Juror #43, Donna Champion, because her position that the defense had to prove appellant deserved a life sentence rather the death penalty was burden shifting, inconsistent with the law, and her entire voir dire showed she would not consider certain categories of mitigating evidence?

(FBOA, pp. 7-8).

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

1.

Whether the trial judge abused his discretion in limiting a discrete portion of cross-examination of a witness [redacted]?

2.

Whether the trial judge erred in declining [redacted]?

3.

Whether the trial judge's initial determination that appellant was not mentally retarded is moot where the jury subsequently returned a verdict that appellant had not shown mental retardation by a preponderance of the evidence?

4.

Whether the trial judge erred in charging the jury the correct standard of proof by instructing the jury that appellant must establish the existence of mental retardation by a preponderance of the evidence?

5.

Whether the trial judge abused his discretion in declining to admit notes from two hospital chaplains to the effect that appellant was "struggling" with his actions and "asked for the family" where appellant failed to present the writers of the notes; the notes were not made in the course of medical treatment; the notes for the most part constituted the writer's opinion rather than appellant's statements; thus, for all these reasons, were inadmissible under standard evidentiary rules?

6.

Whether the trial judge committed clear error in crediting the State's neutral reasons for striking two African American males jurors as the reasons for the State's strikes were absolutely non-discriminatory, were well-supported by the record, and appellant failed to show a "material in relevant aspects" potential juror of a different race that the State did not strike in an attempt to undermine the clear non-discriminatory intent expressed in the reasons for the strikes?

7.

Whether the defense failed to exercise an available peremptory strike and the issue on qualification is procedurally barred and/or waived? Alternatively, if the issue can be reached, whether the trial judge abused his discretion in qualifying Juror #43, Donna Champion, when her responses, when viewed correctly as a whole, indicated she could be a fair and impartial juror?

STATEMENT OF THE CASE

A Spartanburg County grand jury indicted appellant, Ricky Lee Blackwell, Sr., in July 2009 for the kidnapping and murder of eight-year-old Heather Brooke C[redacted] (R. pp. 4829 - 4832 [indictments 2009-GS-42-3609 and 3610]). The State served and filed its notice of intent to seek the death penalty on August 11, 2011. The State subsequently served and filed its notice of statutory aggravating circumstances on June 8, 2012. William Sean McGuire, Esq., of the South Carolina Commission on Indigent Defense, Capital Trial Division, along with Clay T. Allen, Public Defender for the Seventh Judicial Circuit, represented appellant on the charges. The Honorable Barry J. Barnette, Solicitor of the Seventh Judicial Circuit, with Deputy Solicitor Derick B. Bulsa and Assistant Solicitor Russell Ghent represented the State of South Carolina. This Court assigned the Honorable Roger L. Couch exclusive jurisdiction over the capital proceedings.

On February 19, 2014, a hearing began pursuant to *Franklin v. Maynard*, 356 S.C. 276, 279, 588 S.E.2d 604, 606 (2003) on appellant's claim of intellectual disability. Judge Couch heard competing opinions and arguments over three days. After detailed questions of his own, Judge Couch resolved appellant had failed to carry his burden of proof of showing intellectual disability by a preponderance of the evidence. (Supp. R. pp. 1-14 [February 25, 2014 Order]).

After expanded capital *voir dire* proceedings, a jury was selected and a capital trial began on March 11, 2014. The case was sent to the jury on March 12, 2014. The jury began deliberations at 4:08 pm and returned a guilty verdict at 4:29 pm. (R. p. 2600, lines 18-20; p. 2602, lines 1-8). Appellant waived the statutory twenty-four (24) hour break afforded between phases, and the penalty phase began at 1:30 pm on the afternoon

of March 13, 2014. (R. p. 2603, line 15 – p. 2604, line 18; p. 2606, line 21 – p. 2607, line 13). At the conclusion of penalty phase deliberations on March 16, 2014, the jury returned. The jury's first finding reflected the jury declined to find appellant was intellectual disabled. (R. p. 3257, lines 16-22). The jury's second finding reflected the State had proven beyond a reasonable doubt, the following circumstances in aggravation:

(1) The murder of a child eleven years of age or under;

(2) The murder was committed while in the commission of the crime of kidnapping.

(R. p. 3257, line 23 – p. 3258, line 11). (See also S.C. Code Ann. § 16-3-20 (C) (a) (1) (b) and 16-3-20 (C) (a) (10)).

The jury recommended death. (R. p. 3258, line 12-25). Judge Couch thereafter sentenced appellant to death, noting the sentence for kidnapping was subsumed by statutory provision.[1] (R. p. 3262, line 14 – p. 3263, line 5; R. pp. 4823 and 4825).

On March 20, 2014, Judge Couch denied post-trial motions. Appellant served his notice of intent to appeal on March 21, 2014. A stay of the death sentence is automatic pursuant to S.C. Code Ann. § 18-1-70.

Appellant originally filed an initial brief on January 8, 2015. The State moved to seal or strike the brief; moved to strike the designation of matter; and moved for an order

[1] Judge Couch imposed a thirty (30) year sentence, concurrent to any other sentences; however, on the sentencing sheet, by notation added March 20, 2014 without objection, he appropriately noted that the sentence is subsumed by the sentence on the murder conviction. (R. pp. 4823 and 4825). See S.C. Code Ann. § 16-3-910. The conviction, however, still stands. *State v. Perry*, 278 S.C. 490, 495-96, 299 S.E.2d 324, 327 (1983) ("The statute does not mandate a vacation of the kidnapping conviction. It merely provides that either the life imprisonment sentence or the death penalty sentence required in a murder conviction shall be sufficient punishment.").

prohibiting [redacted] in the appeal and requiring an amended initial brief of appellant. On May 20, 2015, this Court granted in part and denied in part, directing appellant to file a redacted brief and a sealed copy of the [redacted]. On June 18, 2015, appellant filed a redacted brief. Respondent now files its brief in response.

STATEMENT OF FACTS

A Spartanburg County jury found appellant guilty of the kidnapping and murder of eight-year-old Heather Brooke C[redacted] ("Brooke"). After hearing all the evidence of the crime, and the evidence submitted in the separate sentencing proceeding, the jury recommended a sentence of death. The jury considered the following facts in guilt and sentencing:

Guilt Phase

On July 8, 2009, William Meyer, a patrol deputy with Spartanburg County Sheriff's Office, received a call at approximately 3:00 in the afternoon. He was advised a child had been shot at a home in the Chesnee area of Spartanburg County. When he arrived just minutes later, he saw a woman frantically trying to direct him to the child. The child was lying face down on the ground near the front of a vehicle. The child was not responsive. Deputy Meyer noticed a "red spot" on her back, then a "gaping wound ... on her left leg." While attempting to check her pulse, Officer Meyer "realized there was blood pouring out of [her] ear." There were no signs of life. He called for assistance. (R. p. 2357, line 1-23; p. 2374, lines 4-11; p. 2376, lines 12-16). He then met the visibly shaken homeowner, Mr. Bryant, who informed Deputy Meyer that Ricky Blackwell was the shooter. (R. p. 2358, lines 1-21; p. 2363, lines 9-12). Deputy Meyer testified he was also informed of appellant's "direction of travel" which was behind the residence and directed other responding deputies toward the area. (R. p. 2363, line 16- p. 2364, line 6).

Deputy John Smoak testified that he arrived after Deputy Meyer. He testified that he also checked Brooke for signs of life and did not find any. (R. p. 2493, line 14 – p. 2494, line 2). Armed with a description of appellant, he then searched the area and was

joined by other officers. (R. p. 2494, lines 4-23; 2498, lines 1-14). Appellant came out of the wood line toward the officers. He was still armed. (R. p. 2498, line 17 – p. 2499, line 10). He stayed behind a children's play set, out of sight of the officers. Appellant eventually placed the gun at his abdomen and shot himself. Though repeatedly instructed to drop the gun, he did not do so until the gun slipped from his hand after he shot himself. (R. p. 2500, line 4 – p. 2501, line 23). Deputy Smoak retrieved and secured the gun. (R. p. 2501, lines 19-21; p. 2502, lines 5-17).

Ms. Angela Davis witnessed the shooting. Ms. Davis was formerly married to appellant. Since their separation, Ms. Davis had been seeing Brooke's father, Bobby Center. (R. p. 2378, line 24 – p. 2379, line 2; p. 2396, line 23- p. 2397, line 16). The day of the murder, Ms. Davis testified that she had Brooke with her, and had intended to pick up her grandchildren to return to Brooke's home for them to play. (R. p. 2381, lines 14 – 24). As she arrived at her daughter Heather's home, not seeing a car, she was turning to leave. She testified "Ricky jumped out and flagged me down, and he said I thought you was picking up the boys," and she replied she was, but her daughter's car was not there. (R. p. 2382, line 25 – p. 2383, line 4). She testified appellant told her the grandchildren were with their father in the home "waiting for you." (R. p. 2383, lines 5-7). She turned back around and headed back toward the home. When stopped, she saw a small dog and turned to Brooke, saying, "Brooke, honey, don't get out of this car until I get this dog cause I don't want you to get dog bit." Brooke stayed in the car and Ms. Davis exited and grabbed the dog. As she "turned back around he had her." (R. p. 2383, lines 11-23). Appellant, still upset at the breakup of his marriage, grabbed the child, held her, and

pointed a gun at the child's head. Ms. Davis testified that she pleaded with appellant to take her instead of the child. (R. p. 2386, lines 1-11). Ms. Davis testified:

> ... he was walking around the car and I was screaming let her go, Ricky, please, its me you want, take me, and let Heather take her home, and he said no and he took the gun and pointed it toward - - on the car, and he said you've pushed this too far. You did this. You tell me what Bobby thinks of this, and then the gun went off, and then it went off again.

(R. p. 2386, lines 9-15).

Ms. Davis testified she saw appellant place the child on the ground and she ran into her daughter's home to call 911. She grabbed her granddaughter, who was crying, and ran out the back of the home. She heard another shot. She ran. Appellant followed. She testified a neighbor let her in and she called 911 once again. (R. p. 2386, line 17- p. 2387, line 25). She identified not only appellant, who had asked them to go to their daughter's home that day, but also the gun he used. It was a gun she had purchased for him "earlier in our marriage" as a gift. (R. p. 2388, lines 14-15; p. 2392, lines 9-18; p. 2393, line 22 – p. 2394, line 14).

Mark Bryant, the Blackwells' son-in-law, confirmed that appellant was in the area around the home earlier that day. (R. p. 2471, line 18 – p. 2472, line 16). He also confirmed he saw Ms. Davis pull into the yard and told his sons that their grandmother has arrived. He testified by the time he turned back around and went to the door, he saw appellant with his arm around Brooke's neck/chest area and saw a gun. (R. p. 2474, line 14- p. 2475, line 25; p. 2487, line 24 – p. 2488, line 3). He tried to pull his children back into the home and heard two shots. (R. p. 2476, line 9 – p. 2477, line 8). He testified his mother-in-law went in the house as he was trying to get his children inside, and she called 911. (R. p. 2477, lines 10-24). He testified his mother-in-law ran out the back with his

daughter and he picked up the phone and spoke to the 911 operator. She told him to check on the child, which he did. Brooke was face down and not moving. (R. p. 2477, line 12- p. 2479, line 15). He confirmed that appellant ran after his mother-in-law across the back of the home. (R. p. 2478, lines 11-15; p. 2483, lines 20-25). Mr. Bryant testified that he told the responding officer that appellant had shot Brooke and described appellant. (R. p. 2480, line 17 – p. 2481, line 15). He testified that had been married to appellant's daughter for approximately fifteen (15) years at the time of trial, (R. p. 2471, lines 1-7), and knew appellant had a gun, but had only seen the gun two times – "when I first met my wife, and the day of the incident." (R. p. 2478, lines 16-18).

Pathologist David Wren testified that he conducted the autopsy on Brooke on July 9, 2009. (R. p. 2536, lines 7-10). Dr. Wren recorded the following injuries:

> ... There were nine gunshot wounds to the body... some of them were through and through and the reentries. Specifically there was a gunshot wound to the right side of the head that exited in the left temple. There was a gunshot wound in the right che[e]k, a grazing gunshot wound and a deep grazing wound in the right neck that went under the skin and came back out and went in her left arm where it fractured her humerus and I recovered a bullet from that area, and then she had a gunshot wound in the back that communicated with the one on her cheek, and she had a through and through gunshot wound to the left leg.

(R. p. 2537, lines 3-15).

From tracking the injuries to the child's body, Dr. Wren opined there were four gunshots: "One to the head, one to the back, one to the leg and a grazing" wound to the cheek and neck which went into her arm. (R. p. 2540, line 13 – p. 2541, line 8). He opined:

> ... the immediately fatal wound was the one to the head. Any, any of those individually or collectively could of caused her death. If they're not immediately fatal, there are lots of complications that can occur. So, we actually assigned those as potentially fatal if they're not immediately fatal.

So, I put down the cause of death as gunshot wounds to the head and body.

(R. p. 2541, lines 11-17).

Suzanne Cromer of the South Carolina Law Enforcement Division ("SLED") was qualified as expert in the field of ballistics and tool mark identification. (R. p. 2558, lines 4-7). She opined the bullet recovered from the child's body was fired by the gun recovered from appellant. (R. p. 2559, line 16 – p. 2561, line 13). That particular gun would require "three and a quarter to 4 pounds" for single action firing, and "ten and three-four[th]s pounds to eleven and fourth pounds of pressure" for double action firing. (R. p. 2562, line 1 – p. 2563, line 11).

The State argued not just that appellant shot the child, but that he "finish[ed] off" the child shooting her four times to ensure she was dead. (R. p. 2576, lines 9-11). The defense conceded guilt, but attacked Ms. Davis' testimony, accusing her of using appellant for money after their separation and embellishing her testimony to demonstrate her "heroic" action during the shooting. (R. p. 2578, line 10-p. 2579, line 11).

The case was sent to the jury on March 12, 2014. The jury began deliberations at 4:08 pm and returned a guilty verdict at 4:29 pm. (R. p. 2600, lines 18-20; p. 2602, lines 1-8). The jury then turned their attention to the sentencing evidence.

Penalty Phase

As noted, the jury considered the above facts and found appellant guilty of the kidnapping and murder of eight-year-old Brooke. The above evidence was also moved into the penalty phase. (R. p. 2608, lines 13-25).

In addition, the State presented a glimpse of the young victim's life. The State presented Brooke's baseball coach, John Sloan. Mr. Sloan testified that "Brookie" was

the only girl on the team, and was friends with Mr. Sloan's son. The eight-year-old was the son's first "girlfriend," and the two would "hold[] hands in the outfield." (R. p. 2626, line 13- p. 2627, line 12). He described her play and in particular her first run. (R. p. 2628, line 1- p. 2629, p. 14). Mr. Sloan also described the memorial for her at the sports complex. (R. p. 2630, line 7 – p. 2631, line 15).

The State also presented Ms. Elizabeth Sima, the principal at Reidville Elementary School, the elementary school eight-year-old Brooke attended. Ms. Sima testified that she had known Brooke from kindergarten through the end of second grade, after which she was listed as "withdrawn" due to her death. (R. p. 2633, lines 6-18). Ms. Sima testified that Brooke was a loving child, with "a special spark and a special light that the children felt and knew," a leader even at an early age, demonstrating "integrity … kindness, and caring." (R. p. 2633, line 6 – p. 2635, line 24). She testified that Brooke's parents had been outstanding, "not a single bit of negativity and a whole heck of a lot of love," even when going through a hard time personally (apparently referencing separation, *i.e.* "book bag that was at one house or another" example of what could happen), and that Brooke "saw that and felt that too." (R. p. 2636, lines 5-25). Ms. Sima also testified Brooke's murder was difficult for the faculty, especially in trying to begin a new school year without her, and they honored her memory in a ceremony at their science center, and in an annual. (R. p. 2637, lines 1-19; p. 2638, lines 14-24). She testified Brooke was an outstanding and loving student. (R. p. 2639, line 9 – p. 2641, line 4).

As to appellant, the State presented evidence of appellant's indictment for breaking into a gasoline tank and petty larceny, and his 1981 guilty plea to those charges,

(R. p. 2647, lines 3-24), and two disciplinary actions in the Spartanburg County Detention Facility (possession of contraband – Clorox in a baby bottle – and possession of contraband – unauthorized medication, hoarding medication in a candy wrapper), (R. p. 2650, line 4 – p. 2651, line 21; p. 2655, lines 2-22).

As to the circumstances of the crime, in addition to the incorporated evidence, the State presented Ms. Davis' mother, Irene Blackwell. Mrs. Blackwell testified that her daughter and Brooke were with her the morning of the crime, and she had fixed breakfast for them. Mrs. Blackwell testified appellant initiated a conversation about insurance; Ms. Davis advised she intended to take a three month leave of absence and each of them would have to pay $100.00 a month to keep the insurance active. She testified that appellant then requested Ms. Davis "go over there and see the grandbabies today," and Ms. Davis agreed to do so. Appellant left at that time stating he was "leaving to go pay some bills, and he was gonna go shopping." She testified her husband, Jerry Wayne, asked appellant to stay and play cards, but he declined citing other obligations. However, he promised to return. Mrs. Blackwell explained that her husband and appellant often played rummy together. She also testified that it was not her impression that appellant was "grieving" over the breakup of his marriage, and noted that he came over almost every day, and was "kidding with Jerry Wayne, laughing and joking and cutting up and playing cards and stuff." (R. p. 2658, lines 2-9; p.2662, line 19 – p. 2666, line 17).[2]

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[2] The defense objected to Mrs. Blackwell's testimony on the basis that it corroborated Ms. Davis' testimony from the first phase. However, as the State correctly argued, the testimony went to premeditation, essentially, the extent of malice, which is a proper sentencing phase consideration. *See, e.g., State v. Shuler*, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003) ("The purpose of the sentencing phase in a capital trial is to direct the jury's attention to the specific circumstances of the crime and the characteristics of the offender."). The State noted that the defense had essentially conceded guilt in the first

Deputy Micah Horton testified that he stood by appellant at the crime scene while EMS treated him for his self-inflicted gunshot wound. He testified appellant asserted, without questioning or prompting by anyone: "... I shouldn't have done it, not to get back at him...." (R. p. 2669, lines 2-15).

Reserve Officer Tim Timmons testified that he was instructed to ride in the ambulance with appellant. He testified that he consulted with the EMT to determine if appellant was in jeopardy of dying and wanted to give him the opportunity to give a statement. He did so and Officer Timmons read appellant his Miranda rights which appellant acknowledged and waived. Officer Timmons asked what had happened and appellant responded: "... my ex-wife drove up and I grabbed her boyfriend's little girl..." The office asked appellant to identify the little girl, to which he replied, "... I called her Brooke." (R. p. 2676, line 6 – p. 2677, line 10).

Investigator Lorin Williams testified he went directly to the hospital after receiving information appellant was being transported. He testified, after checking with medical personal to ensure appellant was stable and not heavily medicated, that he read appellant his Miranda rights which appellant acknowledged. (R. p. 2682, line 8 – p. 2684, line 17). He then asked appellant what happened and why. Appellant responded:

> ... he and his wife had been having problems, and that he was trying to get her to reconcile their marriage. Basically that, that she was continuously

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phase and it was unnecessary to call all available witnesses at that time. The defense conceded the evidence was otherwise admissible, but objected at this point only because it had not been submitted previously. The judge rejected the argument and allowed the testimony. (R. p. 2659, line 9- p. 2662, line 6). The defense also attempted to keep the photographs of Brooke away from the jury determining sentencing, arguing "all these photographs ... depicting these wounds on this very young child, they all invoke the Fourteenth Amendment, due process clause, because they're so prejudicial and it renders the, the penalty phase fundamentally unfair" and, given "the concession of guilt," they were "not necessary to prove anything at all." (R. p. 2701, line 19 – p. 2703, line 17).

> throwing up her boyfriend to him, and he said that, that he had been having sour thoughts about how to get back at this man for breaking up his marriage.
> ...
> ... he went on and I asked him about the sour thoughts. ... I told him, I said, well, you know, can you - - is there something that you can tell me, is there, is there a reason that you can give me to help me understand you know, how this could happened to a child of this age ...I need some help in helping me understand what, what would make you do this ... why this would happen. And he just basically said, again, you know, that ... it was his way of getting back at, at her dad for breaking up the marriage, and I said ... is there something you can tell me, tell me it was an accident, tell, tell me you were sorry, tell me anything like that. And he just looked at me, he said the only thing that I'm sorry about is that I didn't do a better job on myself.

(R. p. 2684, line 19 – p. 2685, line 25). The investigator testified that appellant never asked about Brooke, "if Brooke was okay, what her condition was, had, had no concern and showed no concern whatsoever for anything but, but his condition at that point." (R. p. 2686, lines 1-6).

The State also called Dr. Wren to further discuss the injuries to Brooke.[3] Dr. Wren discussed the nature of the wounds reflecting the details of the shots, including closeness of the shots and angles. (R. p. 2711, lines 15 – p. 2720, line 17). Dr. Wren opined the shot to Brooke's head was inflicted "probably very close, but not tight contact and most probably not loose contact." (R. p. 2713, lines 3-8). Dr. Wren testified the shot to the back had abrasion characteristics that indicated consistency with being shot while bent over and falling down. (R. p. 2715, line 20 – p. 2716, line 22). The shot to the neck

[3] The State carefully selected the additional photographs to be used in this phase in camera with the trial judge and defense counsel. (See R. p. 2692, line 13 – p. 2693, line 8). The trial judge placed on the record: "I'll note, in making the ruling, that the State has shown restraint in presenting the photographs that they have presented by offering black and white photographs of the appropriate situations, and also not a seeking to introduce a rather large number of similar photographs in the case. The Court does note that in making its ruling." (R. p. 2707, lines 15-21).

area indicated charring which comes from a contact wound, "... the barrel gets immediately hot and it burns the skin where it goes in." (R. p. 2717, line 5 – p. 2718, line 14). The remaining shot was to Brooke's leg hitting "solid tissues" and exiting near her knee. (R. p. 2720, lines 8-19). Dr. Wren opined that given the nature of the wounds, Brooke would have been moving during some of the shots, with the inability to move after infliction of the head shot. (R. p. 2720, line 24; p. 2721, line 6). He confirmed that "these are not all exactly at the same time." (R. p. 2721, lines 10-11).

As further evidence of the details of the crime and how appellant left Brooke, Sergeant David Hogsed identified and explained the pictures from the crime scene reflecting that (before being moved by EMS), Brooke was face down on the ground. He identified another photograph that showed "basically the mid section to the top of her knees" reflecting injuries and that the child had "urinated on herself at the incident...." (R. p. 2728, line 3 – p. 2729, line 20).

Returning to Brooke, the State presented several other witnesses from the elementary school she attended. Amy Nunnary was the school nurse who administered Brooke's asthma medication and would sooth the child as she struggled to breath. Ms. Nunnary testified to Brooke's smile, her beauty, maturity and love of flowers. She also testified that "her mom and dad were, were always available ... [v]ery protective, very caring, very loving towards Brooke. Always, always there as soon as I needed them." (R. p. 2731, line 4 – p. 2732, line 23). Ms. Nunnary testified she could not "make it to the funeral. It was just really too hard for me," but she was able to go to the grave site and retrieve one of the flowers which she pressed and kept. (R. p. 2733, lines 13-20). She testified that Brooke's "dad painted [Brooke's] house bright yellow because that was

her favorite color" and that "every morning [she would] pass Brooke's house going to work and I pass it in the afternoon and there's the bright yellow house," that "brings a smile to [her] face," reminding her of being "happy and cheerful," the "kind of child she was." (R. p. 2733, lines 21-25).

Ms. Debbie Alton, Brooke's second grade teacher, testified to her recollection of "just a precious, sweet, kind, loving little girl," and read a story that Brooke had written, a story with emphasis on family fun and inspiration. Ms. Alton testified that Brooke's own parents, Bobby and Kelly, "were very supportive, very loving," and she would see them not just at school but also at Brooke's baseball games. She testified Brook greatly enjoyed baseball, and she recalled seeing the memorial to Brooke at the field. (R. p. 2736, line 9 – p. 2743, line 2). Ms. Alton also shared a letter Brooke wrote to a soldier to express thanks to the soldier as part of a class project. She testified she kept Brooke's letter to help other students the following year. She testified Brooke "wanted everybody to be friends and she was a peacemaker," and that "she holds a special place in [her] heart." (R. p. 2744, line 6 – p. 2745, line 23). She noted, "... I feel like people that didn't know her were really robbed of a chance to get to know of a wonderful girl." (R. p. 2746, lines 3-5).

Defense Mitigation

The defense called Ms. Gail Shook who testified she had been a work supervisor for both appellant and his wife, Angie Davis. (R. p. 2757, line 18 – p. 2758, line 21). Ms. Shook described appellant as "gentle, humble," "very tender hearted," "compassionate," and a reliable compliant worker. (R. p. 2759, line 11 – p. 2760, line 2; p. 2770, lines 1-4). She described his "anguish" at the breakup of his marriage. (R. p. 2768, lines 12-24).

The defense also called Dr. Ginger Calloway to again make a presentation about intellectual disability. (R. p. 2810, lines 21-22). Dr. Calloway opined appellant "fell into a mildly retarded range," and "this disability was manifested before the age of 18...." (R. p. 2915, lines 2-6). She testified in her opinion, appellant was intellectually disabled. (R. p. 2916, lines 1-5).

Also for the defense, Dr. Donna Schwartz-Watts, an expert in forensic psychiatry, testified that she "treated [appellant's] depression and his anxiety and helped to manage that in the detention center." (R. p. 2985, lines 7-10). She reviewed prior medical records treated appellant at the Spartanburg County Detention Center, which included two psychiatric hospitalizations and a prior diagnosis of depression, testified:

> ... in my opinion, he's had a history of major depression before. He's had two episodes before when he was hospitalized, and it's clear, from looking at Doctor Jackson's records, that he remained depressed before this incident, and it's very clear that, since I treated him at the jail, he had had symptoms of depression as well.

(R. p. 2985, lines 10-18). She noted when asked about his thoughts about the murder:

> ...the words that he usually uses with me are he can't believe he's done this. It's very hard for him to accept what happened and what he's done, and he, he has a lot of anxiety. He has nightmares about it. He has a difficult time dealing with what he's done and he's very sad about it.

(R. p. 2987, lines 5-16).

The defense also presented appellant's cousin, Sherry Wofford, who testified appellant was "like a brother" and was "loving," "gentle," and "always trying to help people." (R. p. 2990, line 17-23). She recounted kind gestures and family moments. She testified "we love him with all our hearts and need him. So, just understand he is a good man." (R. p. 2994, lines 1-3). Ms. Wofford described her reaction to having heard appellant had murder the eight-year-old child: "It wasn't Ricky. They wasn't our Ricky.

It was no way that was our Ricky. Something went wrong. It was not our Ricky that did that." (R. p. 2994, lines 6-10).

The defense also called Heather Bryant, appellant's daughter. She described her father as "a kind caring man" to her and the family, even taking in his son's "baby mama" when needed. (R. p. 3000, line 9- p. 3001, line 6). She testified appellant loved his wife and treated her well, and that he loved and played with his grandchildren. (R. p. 3002, lines 3-24). She testified that as her mother began to see Brooke's father, Bobby, her mother began to change: "... she started drinking, she started smoking, she started dressing more inappropriately...." (R. p. 3004, lines 5-15). She testified that Bobby had a Harley Davidson motorcycle, and her mother got a tattoo on her lower back with "a Harley Davidson logo that said Harley in the middle of it." (R. p. 3004, line 20 – p. 3005, line 2). Ms. Bryant testified they had had a loving household before, and provided "a little clip" from home movies, which she then explained. (R. p. 3007, line 2 – p. 3009, line 17). She testified her father remains a religious man and has studied the Bible, even while incarcerated at the county jail. (R. p. 3009, line 19 – p. 3010, line 13). She also reviewed multiple family pictures, explaining the events and people. (R. p. 3011, line 20 – p. 3015, line 11). Ms. Bryant testified her father still loves her mother and would accept her back if he could. (R. p. 3015, lines 18-22). She recalled when appellant found out her mother was intimate with Bobby, appellant left only to return minutes later with a "bottle of pills in his hand...." Both Ms. Bryant and her mother attempted to ensure he would not harm himself. (R. p. 3017, lines 1-9). She described her mother as "mean" to him, having "bragged about having sex with Bobby," and Ms. Bryant would sympathize with appellant. (R. p. 3017, line 22 – p. 3018, line 21). Ms. Bryant testified she had

advised her mother to call before coming to Ms. Bryant's house, and not to bring "Brooke or Dustin ... because it hurts daddy ... and she told me she would not do that." (R. p. 3019, lines 3-8). When asked if it hurt appellant to see her mother "paying so much attention to Bobby's family and not you," she responded, "Yes, sir, it did." (R. p. 3019, lines 12-14). Ms. Bryant testified her mother would call Brooke her "new daughter," her "perfect daughter," and "angel." (R. p. 3019, lines 15-21). She testified that her mother was not seeing her own grandchildren at that time. (R. p. 3019, lines 22-24). She previously testified her daughter has special needs. (R. p. 3003, lines 2-7). She concluded with telling the jury that appellant:

> ... was always a kind, gentle, caring man. He was not the man that they're trying to make him out to be today. My daddy would of never done that. My daddy was pushed to the extinct (sic) to do what he did, and he regrets what he had done. He suffers from that every day.

(R. p. 3020, lines 7-11).

When asked if he cries about what he has done, Ms. Bryant responded, "Yes, sir." (R. p. 3020, lines 12-13).

On cross-examination, Ms. Bryant admitted her two sons witnessed the murder, the "oldest one witnessed it a little bit more," but they both had to receive counseling, and that it still affects them. (R. p. 3021, lines 8-22). She also admitted upon questioning that he played pool very well, having won several tournaments. (R. p. 3022, lines 1-6).

Brittany Fowler testified for appellant, as well. She was the "baby mama" appellant took in and helped. She testified appellant helped with the baby "did everything for him ... changed diapers, fed him, whatever there was to be done." (R. p. 3025, lines 17-p. 3026, line 13). She testified that she loves appellant and described him as: "Amazing... great. Very kind hearted ... give the shirt off his back" kind of man. (R.

p. 3026, lines 16-20). Ms. Fowler left to live with Irene Blackwell (Angie Davis's mother). Ms. Fowler testified that appellant would come by to play cards with Jerry Wayne Blackwell and would express that he missed his wife and wanted her back. He was sad, and would plead with her to return. (R. p. 3027, line 9- p. 3028, line 13). She testified his wife would speak harshly to him in response. (R. p. 3028, lines 14-15). Ms. Fowler testified appellant was heartbroken over her leaving. (R. p. 3028, lines 16-20). She testified Ms. Davis changed her appearance after leaving, "dressing more like she was a teenager with some short clothes, low cut shirts." (R. p. 3028, lines 21 – p. 3029, line 2). She testified Ms. Davis "started drinking and things like that, going to the bars." (R. p. 3029, lines 3-4). She would "flirt" with appellant, but it only "hurt him a lot because she ... gave him hope" she would return. (R. p. 3029, lines 7-12). She testified appellant had "been there" for her, that he was great, and "very kind hearted." Ms. Fowler testified she was shocked and could not believe that he murdered eight-year-old Brooke. She had "never heard him argue with Angie...." (R. p. 3029, lines 15-25).

Norm Uber, a fellow church member with appellant, testified appellant was "a good friend, kind of easy going, laid back, but deliberate in his speech." He testified he "never knew him to be other than easy to get along with," and a gentle man. (R. p. 3031, lines 1-19). Mr. Uber testified appellant loved his wife and treated her well. (R. p. 3031, line 20 – p. 3032, line 2). He recalled how appellant "wept" in the parking lot while telling Mr. Uber about the breakup of his marriage, and Mr. Uber testified, "it jerked at my heart strings." (R. p. 3032, lines 7-10). Mr. Uber testified as to appellant's religion, he "would say he was a good Christian believer in our midst." (R. p. 3033, lines 4-7). He, too, testified that he could not believe appellant had murdered eight-year-old Brooke.

He stated he did not think appellant could be stirred to anger. (R. p. 3033, lines 10-15). He stated appellant was in "anguish" over the breakup. (R. p. 3035, lines 11-14).

Appellant's father, Cletus Blackwell, testified that appellant was a "good boy when he was a kid ... never give us any trouble...." (R. p. 3037, lines 23-25). He was humble ... good ... never did bother nobody." (R. p. 3038, lines 2-7). He testified appellant loved his wife, his children and grandchild, and treated them well. He played with his grandchildren. (R. p. 3038, line 18 – p. 3039, line 6). Mr. Blackwell testified appellant was "real depressed" and spent days crying when his wife left. Mr. Blackwell testified "he wasn't Ricky," agreeing with defense counsel that "he just wasn't the same man anymore." (R. p. 3039, lines 9-16). Mr. Blackwell testified that when Ms. Davis would come around, "it would tear him up." (R. p. 3039, lines 23-24). It would give him hope then cause despair. (R. p. 3040, lines 2-8). He testified that when he learned appellant had murdered the child, "it tore me up" and he "just couldn't believe it." (R. p. 3040, line 12). Mr. Blackwell also went through several photographs and explained family and events. (R. p. 3041, lines 6 – p. 3046, line 20). Mr. Blackwell asked the jury to spare his son's life, that he "was always a good boy" and "Ricky wasn't Ricky when this happened. Ricky wouldn't hurt nobody if he's, if he was in his right mind." He testified "Ricky wants to live till the Lord calls him home. I know it won't be no pleasant life, but he wants to live, and my sympathy goes out for the little girl's family." (R. p. 3047, lines 13-22). On cross-examination, Mr. Blackwell admitted the gun appellant used to murder Brooke had been locked in a gun case at Mr. Blackwell's home. Appellant had to go to Mr. Blackwell's home to retrieve the gun before he could use it in the murder. (R. p. 3048, line 16 – p. 3052, line 4; p. 3054, lines 1-20).

The defense also presented James Hamrick, appellant's brother-in –law. Mr. Hamrick is married to Ms. Davis's sister. He testified that appellant was "always a really good person. Kind, gentle, like everybody said." (R. p. 3057, lines 9-11). After Ms. Davis left appellant, appellant would go by Mr. Hamrick's salvage yard and garage business. He would help out, and no one had a "mean word" to say about him, nor did he have a "mean word" to say about anyone else. (R. p. 3057, line 17 – p. 3059). However, appellant was so distraught over the breakup of his marriage that he became a distraction to the work. Mr. Hamrick's son expressed that he considered not allowing appellant to help in a later car sale event as appellant's crying was a distraction. (R. p. 3059, line 4 – p. 3060, line 3). Mr. Hamrick testified he could not believe appellant had shot an eight-year-old child, indicating "I don't know what happened, and I mean he done a bad thing ... it just wasn't ... Ricky...." (R. p. 3060, lines 8-23).

Appellant also presented Mary Youmans, who had worked with appellant and had grown close to both appellant and Ms. Davis. (R. p. 3062, lines 3-23). Ms. Youmans testified appellant was distraught over the breakup.[4] (R. p. 3064, lines 15-18). Ms. Youmans testified that, on the day of the shooting, "Angie" stopped by her house with Brooke. She introduced Brooke as her daughter, and insisted Ms. Youmans knew Brooke's father, Bobby, though Ms. Youmans could not recall Bobby. (R. p. 3064, line 19 – p. 3067, line 7). She recalled that Ms. Davis's appearance changed after she left appellant. She testified Ms. Davis lost weight and began wearing short "Daisy Dukes" and bared her midriff. She also changed her hair color. (R. p. 3067, line 12 – p. 3068,

[4] She would later testify in cross-examination that she did not know the cause of the breakup. (R. p. 3070, lines 15-20).

line 17).[5] Ms. Youmans then returned to describing appellant's character. She noted that appellant had been very good to her husband as he was dying from cancer. (R. p. 3069, lines 2-13). She expressed that she "didn't believe it," when she heard appellant had shot a child. (R. p. 3069, lines 18-21). She testified she "struggled" with the news as the "Ricky [she] knew" would not have hurt a little girl. (R. p. 3073, lines 1-5).

Ken Rice, appellant's pastor, also testified for the defense. Mr. Rice testified that appellant had attended his church while his children were same, then began attending again when "Angie" left him. (R. p. 3072, line 7 – p. 3073, line 12). (See also R. p. 3085, line 14 – p. 3086, line 10; p. 3088, lines 9-22). Mr. Rice testified appellant cried to him over the breakup and his emotional state began to deteriorate. Appellant lost weight and reported sleeping on the floor in his home. (R. p. 3073, line 15 – p. 3074, line 3). Mr. Rice testified that he advised appellant:

> ... if this is what she wants to do you're not gonna win her back by chasing after her. She wanted money for rent, for an apartment that she had rented. He gave her money for food. I said you're just helping the matter along. I mean she's not gonna come back as long as you're paying her way, and he finally went to his mom and dad's to spend the night....

(R. p. 3074, lines 6-12). He also identified several pamphlets that the church would provide so its members could use it in study at home which had belonged to appellant. He recalled that he once took material to appellant's home, and saw appellant with a family Bible, and appellant's wife with a dictionary and pad of paper. He testified "she was looking up words they didn't understand." (R. p. 3081, line 9 – p. 3083, line 7). After appellant was incarcerated, Mr. Rice sent appellant a children's Bible so he could

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[5] This testimony was allowed over the objection of the State. (R. p. 3067, line 24 – p. 3068, line 2). The State argued the testimony "has nothing to do with mitigation. It's just poor mouthing Angie." (R. p. 3067, lines 24 – p. p. 3068, line 1).

better understand the scripture. (R. p. 3083, line10-23). Mr. Rice testified he spoke with appellant at the jail:

> ... the first time I went to the jail to talk with him, he honestly said, he said I did it, but I don't remember doing it. Said I only - - the first I remember of what happened I was in the hospital, and I talked to him about forgiveness. I told him that God forgave David for murder, and God can forgive him, and I took him down the road of repenting, and prayed with him, and he said he'd - - the burden of guilt was gone. The next time I went to see him he said I've - - God's forgiven me, but I can't forgive myself.

(R. p. 3084, lines 3-12). He testified that he was "surprised" to hear about the shooting. Mr. Rice testified: "I knew he was emotionally disturbed. He wasn't the man that I first met and - - but I couldn't believe he did it. I just couldn't believe it." (R. p. 3086, line 24 – p. 3087, line 1).

Lastly, appellant called his mother, Mildred Blackwell who identified and presented more family photographs. (R. p. 3101, line 9 – p. 3104, line 18). She also testified that appellant receives a multitude of letters and cards at the jail, and demonstrated a box full of items representing those items as a portion of the mail received. (R. p. 3105, lines 1-22). Further, she identified appellant's voice on a telephone recording from the jail, and testified the conversation was between appellant and "Angie's" father, Jerry Wayne Blackwell wherein he expressed concern over Mr. Blackwell's failing health. (R. p. 3106, lines 2-6; p. 3192, lines 9-17). She asked for mercy for her son:

> He's a wonderful son ... if you only knew my son like I have for 55 years that he's been here with me you would say he's a wonderful son. I couldn't of asked for a better son than what I've got, and ... I just love to ask you to spare his life because I know that something happened to him that day, and he would of never did that to that child cause he loved children too good and children love him too good, and I'd love for y'all to spare his life.

(R. p. 3110, line 22 – p. 3111, line 5).

Before the defense officially rested,

State's Reply

In reply, the State recalled Cletus Blackwell to clarify that he knew an individual by the name of Reggie Frye, though he denied knowing such an individual earlier believing his name to be Ritchie Frye. (R. p. 3121, lines 10-22). He did not recall telling Mr. Frye that he had taken possession of appellant's guns because he was afraid appellant would hurt someone, or that appellant had broken into the gun cabinet to obtain a gun. (R. p. 3122, lines 11-20).

Mr. Frye testified that worked in trucking with Mr. Cetus Blackwell and went on many trips with him. He testified he was "very fond" of Mr. Blackwell and it was "extremely hard" to testify at the trial. (R. p. 3126, lines 14-25). Even so, Mr. Frye testified concerning a conversation with Mr. Blackwell on one trip approximately three weeks after the murder:

> Cletus and I had many discussions about Ricky, Ricky being in jail, his wife, you know, not sleeping, being upset. One occasion he told me that - - we were discussing what happened, how, and he said that Ricky had broke in and broke into his gun case, that they had got the guns from Ricky because he was afraid he was gonna hurt hisself or someone, and said that Ricky had broke into the gun case, got the gun, and bang, you know, the next day or so it happened.

(R. p. 3127, lines 9-17). On cross-examination, he noted the surety of his recollection though he underscored the difficulty in testifying: "... when something happens to a child, I didn't want to say anything. It's eat on me for five years, and I know exactly because I went home and discussed it with my wife ... that day." (R. p. 3129, lines 10-17). He further testified *in camera* that Mr. Blackwell had talked about appellant's relationship with Angie:

> ... that he was very possessive over her. He couldn't handle her leaving for another man, about how she brought that child to torment Ricky to go swimming that day, and it was her fault that the child was killed because she was getting back at Ricky. That's mainly what he discussed with me on many occasions.

(R. p. 3133, line 20 – p. 3134, line 1). Also *in camera*, defense asked if Mr. Blackwell had said appellant, "Ricky carried the gun because he was afraid of Bobby Center?" to which Mr. Frye responded, "he never talked about Ricky being afraid of anyone." (R. p. 3134, lines 13-15). Defense counsel also asked if Mr. Cletus Blackwell said anything about being afraid "his house was gonna burn down?" to which Mr. Frye answered, "No.... Never heard that." (R. p. 3134, lines 13-20). The State objected and no further questions were asked by defense counsel given the trial court's ruling that Mr. Frye was offered for "impeachment purposes because Cletus did not admit that he made a prior statement." (R. p. 3135, lines 12-16).

Charge on Aggravating Circumstances and Mitigating Circumstances

The judge instructed the jury that aggravating circumstances must be proven by the State beyond a reasonable doubt. Further, the judge instructed the jury it could consider only two circumstances: (1) murder of a child under eleven years of age; and (2) murder during the commission of the crime or act of kidnapping. (R. p. 3226, line 10- p.

3227, line 14). The judge instructed that only if one or both of the aggravating circumstances are found could the jury consider sentencing. (R. p. 3227, line 15- p. 3229, line 23). However, he also instructed that even if the jury found one or more statutory aggravating circumstances, they were not required to recommend death. (R. p. 3230, line 23 – p. 3231, line 19; p. 3239, lines 14-25; p. 3240, lines 12-18). The judge also instructed the jury could consider any statutory mitigating circumstance supported by the evidence and charged the jury on five (5) such circumstances to consider: (1) no significant history of prior criminal conviction involving the use of violence against another person; (2) the murder was committed while the defendant was under the influence of mental or emotional disturbance; (3) the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired; (4) the age or mentality of the defendant at the time of the crime; and (5) evidence of mental retardation. (R. p. 3237, lines 5-24). The judge also instructed the jury it may consider any nonstatutory mitigator supported by the evidence, but that it "need not find the existence of such a circumstance by proof beyond a reasonable doubt or any other level of proof." (R. p. 3239, line 13). The judge also instructed that apart from statutory or nonstatutory mitigating circumstances, the jury could also return a life sentence as an act of mercy. (R. p. 3240, lines 1-18). (See also R. p. 3241, line 23- p. 3243, line 3243, line 4). The judge cautioned, however, that the decision must be made "without bias and without prejudice to any party" and may not "be governed by sympathy, prejudice, passion, public opinion, or any other arbitrary factor." (R. p. 3243, lines 5-12). He instructed that "[b]oth the State and the defendant have the right to expect that each of you will carefully and impartially consider all of the

evidence in the case, and that you will follow the law as ... explained ...." (R. p. 3243, lines 12-15).

Sentencing

The jury considered and rejected, as Judge Couch had independently done before the trial, appellant's suggestion he was intellectually disabled. Next, the jury reported that it found, beyond a reasonable doubt, both of the submitted circumstances in aggravation – (1) murder of a child under eleven years of age; and (2) murder during the course of kidnapping – and recommended death.[6] (R. p. 3257, line 23 – p. 3258, line 25). As noted, Judge Couch imposed a sentence of death. (R. p. 3262, line 19 – p. 3263, line 5).

[6] The jury was clearly instructed its recommendation will be followed by the sentencing court. (R. p. 3223, lines 20-22; p. 3250, lines 7-10).

ARGUMENT

I.

The trial judge did not abuse his discretion in limiting a discrete portion of cross-examination of a witness [redacted] Lastly, if error could be found in the limitation, any such error was harmless beyond a reasonable doubt.

Relevant Facts:

During a pre-trial hearing on November 6, 2013, defense counsel moved for an order to show cause why the sheriff's office should not produce its file "on the fire bombing of my client's family member's house, houses." (R. p. 4563, lines 15-23). He referenced a "continuing threat" to appellant's family, and asserted:

> ... Mr. Center belongs to a biker gang or a motorcycle club, whatever you want to call it, that, at the funeral, hundreds of bikers showed up. On the memorial of her death, more bikers showed up for fundraiser to help pay for the funeral from the previous year, and even in some of my motions, I've provided information to the Court that sort of like Harley Davidson type bikers have ridden by my client's family member's houses sort of at a low speed and kind of throwing glances over at the house.

(R. p. 4564, line 15 – p. 4565, line 6).

Defense counsel admitted, "[t]his is a collateral matter," and that it would not be a matter of ordinary discovery. (R. p. 4565, lines 12-19; p. 4570, lines 9-10). The State moved to quash the subpoena as improper (the defense opted out of state discovery rules); the evidence appears to suggest speculative third party guilt; but, critically, the defense "keeps referring to a biker gang in pointing the finger at the victim's father, that somehow this is a biker gang retaliation" when no such link has been established.[7] (R. p.

[7] The State also correctly noted that "as victims of what they contend was an arson, they [*i.e.* the Appellant's family members] were entitled to ... request" the reports. (R. p. 4568, lines 11-14). Defense counsel asserted he did not represent the family, and asserted a "right" to use the subpoena process even in light of opting out of discovery – a tactical decision to prevent fair disclosure under established rules. (R. p. 4571, line 10 – p. 4574, line 12). He also contended the State had no standing to seek to quash the subpoena as the solicitor did not represent the sheriff. (R. p. 4574, lines 13-21). Discovery issues were rampant due in large part to the defense opting out of recognized discovery rules only to attempt to force discovery in other ways. (See, for example, FOIA

4566, line 6 – p. 4569, line 3). The State argued "the defense is trying to ... bring this biker element into the trial, at some point, to either get an acquittal or, more importantly, to avoid a death sentence," but the collateral matter was not relevant to the trial and sentencing. (R. p. 4568, lines 3-8). The trial judge found "this is extremely collateral to the issues," and defense counsel again agreed. (R. p. 4570, lines 11-25). Defense counsel also admitted to arguing "both ways," that it was a collateral matter, but he needed it for litigation. (R. p. 4571, lines 2-9).[8]

Objections; Motion for protective or Modifying Order Under SCRCrP 5(d)(1), and For Remedies, R. pp. 3286 - 3385; State's Return to Defendant's Motion to Preserve Notes, Et.Al., p. 3710).

[8] Appellant also inconsistently argued a motion not to sequester the jury for fear "that a hundred bikers might show up the morning we try to pick a jury in some sort of show of solidarity with Mr. Bobby Center," and have "a hundred motorcyclist circling the courthouse," and noted "the most significant amount of retaliatory conduct directed toward the victim's family [in a matter] that I've been involved in." (R. p. 4605, line 19 – p. 4608, line 14).

Appellant also inconsistently argued a motion to "prevent introduction of evidence of attempted murder of defendant's family members," unless it became relevant to "sully the character of Mr. Bobby Center." (R. p. 4610, lines 17-22). It appears appellant argued the post-murder threats and violence against the family members would be admissible to show the impact of appellant's *crimes on his family* (and simply inferentially sully the character of the victim's father) or to attack the sufficiency of the police investigation by proof of collateral acts where the defense perceived the victim's father was given preferential treatment. (R. p. 4610, line 17 – p. 4611, line 18). *But see State v. Dickerson*, 395 S.C. 101, 122, 716 S.E.2d 895, 906 (2011) (Supreme Court precedent "does not limit a court's ability to exclude evidence not bearing on the defendant's character, his prior record, or the circumstances of the crime as being irrelevant"); Rule 608 (b), SCRE ("Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than a conviction of a crime ... may not be proved by extrinsic evidence."). (See also State's Return to Defendant's Motion in Limine (Defendant's Pleadings #23 &25), R. p. 3390, asserting the defense "request to admit evidence as to a fire of unknown origin is an attempt to attack the family of the victims and should be denied").

A summary of the defense's position is reflected not only in the transcripts, but in pleadings referencing same. (See Motion for Change of Venue Based on the Retaliatory

Again in response, the State argued the eight-year-old child victim had nothing to do with biker gangs, and all the information the defense sought "had nothing to do with this day" of the murder, and was all, in fact, well after the murder. Further, if it could possibly be relevant, "the prejudicial effect is just unbelievable," when the focus should be on the murder of an eight-year-old child. (R. p. 4575, line 5 – p. 4576, line 10). The State also noticed the court and defense counsel it had a *motion in limine* to be heard to prevent such reference at trial. (R. p. 4575, lines 13-15). (See Notice of Motion and Motion in Limine (to Exclude Any Reference to Any Matters Involving Incidents or Investigations in the Neighborhood of the Defendant that Occurred After the Date of the Murder of the Victim Concerning Non-Related Incidents or Crimes, and Any Further Attacks on the Character of the Victim's Father under South Carolina Case Law and Rules 401, 402, 403, 801, 802, and 804 of the South Carolina Rules of Evidence), R. pp. 3387 - 3389).

Later in the same hearing, defense counsel made a pre-trial motion for

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Attempted Murder of the Defendant's Family Members and the Potential Threats of Violence and Intimidation from Others, Including Local Biker Gangs (R. pp. 3266 - 3274); and Motion for Change of Venue Based on Pre-Trial Publicity and Potential Presence of Biker Gangs Which Will Influence Jurors and Deny the Defendant's Right to a Fair and Impartial Jury, R. pp. 3275 - 3284). Further, though these requests for change of venue were made, the defense could show no issue with selection of a fair and impartial jury and there is no issue raised in this appeal concerning venue.

> In recognition of the civic and moral duty of victims of and witnesses to a crime to cooperate fully and voluntarily with law enforcement and prosecution agencies, and in further recognition of the continuing importance of this citizen cooperation to state and local law enforcement efforts and to the general effectiveness and the well-being of the criminal and juvenile justice systems of this State, and to implement the rights guaranteed to victims in the Constitution of this State, the General Assembly *declares its intent, in this article, to ensure that* ***all victims of and witnesses to a crime are treated with dignity, respect, courtesy, and sensitivity****; that the rights and services extended in this article to victims of and witnesses to a crime are honored and protected by law enforcement agencies, prosecutors, and judges* ***in a manner no less vigorous than the protections afforded criminal defendants****...*

S.C. Code Ann. § 16-3-1505 (emphasis added).

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Ms. Davis testified in the guilt phase that at the time of the murder, she and appellant has been separated "[a]bout a year and nine months or maybe a little longer." (R. p. 2379, lines 16-18). On the day of the murder, she testified she was at her parents' home with Brooke when appellant came by the home and discussed insurance with her. At the conclusion of the discussion, appellant directed her to go to their grandchildren's home. Brooke excitedly told appellant they were going to go swimming. Appellant "looked back" toward Ms. Davis and directed, "you make sure and you go over there and get them boys." He left thereafter. (R. p. 2379, line 19 – p. 2381, line 9). Ms. Davis testified she drove to her daughter's home but did not see a car and attempted to leave. However, appellant "flagged" her to pull over and said to return, that her son-in-law and

grandchildren were there. (R. p. 2382, line 25 – p. 2383, line 9). She returned and exited the car to corral a lively little dog so Brooke would not be bitten. (R. p. 2383, lines 17-19). As she turned, she saw appellant had Brooke. Ms. Davis pleading with him, but appellant stated "you've pushed this too far. You did this. You tell me what Bobby thinks of this," and he shot the child. (R. p. 2386, lines 2-15).

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[11] The meeting at her parents' home and appellant's direction to Ms. Davis to go to the daughter's home while she had the victim was confirmed in the penalty phase by the witness's mother. (See R. p. 2662, lines 22 – p. 2663, line 14). The defense conceded the testimony was consistent and attempted to prevent Ms. Davis' mother's from testifying to the premeditation and malice, apparently arguing all the State's evidence on same should have been presented in the guilt phase (though he admitted guilt and the sentencing proceeding was separate). (R. p. 2659, line 9 – p. 2662, line 4). The trial judge correctly overruled the attempt to limit the proper evidence for the sentencing phase. (R. p. 2662, lines 5-6). There is no challenge to that ruling on appeal.

[12] Defense counsel in addressing the jury candidly advised that he "hate[s]" the death penalty and everything about it, and admitted another instance of error, that he "lost [his] temper with an officer and that was wrong." (R. p. 3188, lines 3-6). The State

acknowledges that personal opinions about the most severe penalty that the law allows varies and recognizes that some individuals have vehement views against its imposition; however, every lawyer has the duty to respect the participants and act within the rules of court. See Rule 407, SCACR, Rules of Professional Conduct; Preamble, para. [5]; Rule 4.4 (Respect for Rights of Third Persons).

Discussion:

Appellant's argument to the contrary should be rejected.

II.

The trial judge did not err in declining

Relevant facts:

Appellant has

Discussion:

An "appellant is not in position to assert error when he was the author of such and his own conduct induced the situation of which he now complains." *State v. Worthy*, 239 S.C. 449, 465, 123 S.E.2d 835, 843 (1962), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). *See also Gordon v. Busbee*, 397 S.C. 119,

130, 723 S.E.2d 822, 828 (Ct.App. 2012) ("An appellant cannot cause or invite the trial court to err and then complain about the court's actions on appeal.").

III.

The trial judge's initial determination that appellant was not mentally retarded is moot where the jury subsequently returned a verdict that appellant had not shown mental retardation by a preponderance of the evidence.

Relevant Facts:

Appellant advised the State and the trial judge that he would assert that he was mentally retarded.[20] This prompted a pre-trial hearing pursuant to *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003), to determine if appellant's capital trial could continue. At a pre-trial hearing held February 19-21, 2014, the trial court received evidence from three mental health experts and multiple exhibits. On February 25, 2014, the trial judge issued an Order that carefully detailed the multi-faceted review effected to make his determination. He concluded that appellant had failed to carry his burden of proof. (Supp. R. pp. 1-14). The capital trial proceedings were allowed to continue and began the following Monday, March 3, 2014.

At sentencing, the jury was asked to determine whether appellant had carried his burden of proof in establishing, by a preponderance of the evidence, that he was mentally retarded. The jury indicated it did not find by a preponderance of the evidence that the defendant was mentally retarded. (R. p. 3257, lines 16-22).

On appeal, appellant asks this Court only to review the pre-trial determination by the trial judge. He does not challenge the subsequent finding by the sentencing jury.

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[20] Respondent acknowledges this specific condition is now referenced as "intellectual disability." *State v. Stanko*, 402 S.C. 252, 741 S.E.2d 708 (2013). As the term "mental retardation" was used throughout the trial and throughout appellant's brief, Respondent continues to use the term "mental retardation" in this particular case for continuity.

Discussion:

Appellant's argument for error is moot as appellant submitted the matter to the jury which found that he failed to carry his burden of proof. As the jury's determination is final and controlling, the trial judge's initial ruling is moot. *See Franklin*, 356 S.C. at 279, 588 S.E.2d at 606 (if pre-trial hearing results in a finding of not mentally retarded, then the evidence is submitted at sentencing, and "[i]f the jury finds this mitigating circumstance, then a death sentence will not be imposed."). Even so, his argument for error in the initial ruling is not supported by the record.

In his brief, appellant begins his discussion of this issue with a criticism of the sufficiency of the trial judge's focus in the pre-trial ruling. He describes that ruling as simplistically resting on one fact – that appellant was a truck driver. (FBOA, pp. 35-36). That is wholly unsupported by the record in this matter. The trial judge's ruling was detailed and reflected a thoughtful and thorough consideration of the evidence. (Supp. R. pp. 1-14). Further, appellant asserts that his crime may only be explained by a finding that he is mentally retarded. (FBOA, pp. 37-38). However, the trial judge's determination was simply one of eligibility. The facts of the murder were not before the trial judge at that point. When both eligibility and the facts of the case were before the fact-finder, the jury, appellant's assertion he was mentally retarded was rejected. To the extent appellant argues that the facts of the crime support the diagnosis (regardless of whether this position is accepted or not accepted in the medical or legal communities addressing a diagnosis, which is not addressed here), he failed to make such an argument below. It is barred from review on appeal. *Dunbar, supra.* Further, the jury then determined his moral culpability in light of the individually sentencing proceedings. They

found death – "the law's most severe sentence," *Hall v. Florida*, ___ U.S. ___, 134 S.Ct. 1986, 1993 (2014) – was appropriate. In short, appellant mixes concepts in this area. A finding of mental retardation bears on eligibility to receive the "law's most severe punishment." It does not prevent punishment. *Id.* Moreover, this record shows appellant's assertion was twice rejected. Appellant has not shown, by a preponderance of the evidence, that he in fact was mentally retarded and exempt from capital punishment.

Determination of Atkin Claims

In *Atkins v. Virginia*, 536 U.S. 304, 318, 122 S. Ct. 2242 (2002), the Supreme Court of the United States determined that "the mentally retarded should be categorically excluded from execution." The Court cautioned that "[n]ot all people who claim to be mentally retarded will be so impaired as to fall within the range of mentally retarded offenders about whom there is a national consensus," and allowed the States to set the process by which such offenders may be identified. 536 U.S. at 317.

In *Franklin v. Maynard,* 356 S.C. 276, 588 S.E.2d 604 (2003), this Court implemented a two-step process to ensure compliance with the prohibition in *Atkins*. First, to determine if a defendant's capital trial may be held, upon notice of a claim of mental retardation, the trial judge will hold a pre-trial hearing to determine eligibility. 356 S.C. at 276, 588 S.E.2d at 606. If the defendant carries his burden of proof to show that he is mentally retarded by a preponderance of the evidence, the capital trial will not continue. *Id.* If the trial judge finds the capital defendant has not carried his burden of proof, the capital trial will continue. If convicted, the issue of eligibility for the sentence is once again put to the jury as an issue of mitigation. *Id. See also State v. Laney*, 367 S.C. 639, 646-49, 627 S.E.2d 726, 730-32 (2006) (finding that, pursuant to *Franklin*, the

"determination is a two-step process" where "mental retardation is a threshold issue, decided by the trial judge as a matter of law in a pretrial hearing, that determines whether a defendant is eligible for capital punishment at all, and if not found as a threshold issue, mental retardation continues to be a mitigating circumstance under statutory law."). However, though considered "mitigation," it is still an eligibility finding because "[i]f the jury ***finds*** this mitigating circumstance, then a death sentence will not be imposed." *Franklin*, 356 S.C. at 279, 588 S.E.2d at 606 (emphasis added). There is no burden of proof for purely mitigating evidence, nor a report of findings as each juror is free to consider the evidence. *See, e.g., Mills v. Maryland*, 486 U.S. 367, 384, 108 S. Ct. 1860, 1870 (1988) (finding unconstitutional a limitation that would indicate the jury was "precluded from considering any mitigating evidence unless all 12 jurors agreed on the existence of a particular such circumstance"). In *Laney,* this Court rejected a call to "modify the procedure" in *Franklin*, and require the determination be made by the jury alone. Instead, the Court affirmed the two-step process which included a jury finding. *Laney*, 367 S.C. at 648-49, 627 S.E.2d at 731.

In this case, the jury was instructed that, as "a threshold matter," that it must consider whether appellant had proven mental retardation by a preponderance of the evidence, and a finding that appellant carried his burden of proof required a unanimous vote. (R. p. 3219, lines 3-25; p. 3222, lines 4-7; p. 3241, lines 2-25). The trial judge also instructed that a finding of "yes" "would be the end of our discussion because the defendant would not be death penalty eligible." (R. p. 3241, lines 5-7). After this finding, the jury was further instructed as to its consideration of the separate aggravating and mitigating circumstances. (R. p. 3223, line 3-p. 3243, line 17). Thus, not only do *Franklin*

and *Laney* establish and acknowledge this two-step process, the treatment of the issue below shows that an independent fact-finder, the jury, made the ultimate determination. In short, the trial judge's initial determination is now moot.[21] Alternatively, any error in consideration of any portion of the evidence in the pre-trial ruling is harmless as appellant was allowed to seek another ruling from the jury. *See Hurst v. State*, 147 So. 3d 435, 442 (Fla. 2014), *reh'g denied* (Sept. 4, 2014), *cert. granted in part*, 135 S. Ct. 1531, 191 L. Ed. 2d 558 (2015) ("any error in denying the pretrial evidentiary hearing on mental retardation was harmless because Hurst was allowed to present all his mental retardation evidence at the penalty phase, after which the trial court ruled that he failed to establish that he is mentally retarded"). Of note, the State did not even present at sentencing the testimony from the DDSN[22] doctor who had opined that appellant was not mentally retarded at the pre-trial hearing. However, the jury still rejected appellant's evidence of mental retardation.

There is no requirement that appellant be allowed two opportunities to present his case for mental retardation. Other states have found that determinations are made by the

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[21] Also, this issue should be barred by the two-issue rule as appellant has failed to challenge the jury's findings. *See Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Under the two issue rule, where a trial court's decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case"). *See also Atl. Coast Builders & Contractors, L.L.C. v. Lewis*, 398 S.C. 323, 328, 730 S.E.2d 282, 285 (2012) (applying two issue rule). Even in a matter of disqualifying condition, a defendant may not circumvent established rules. *See generally Prieto v. Zook*, 791 F.3d 465, 472-73 (4th Cir.) *cert. denied sub nom. Prieto v. David Zook*, ___ U.S. ___, 136 S. Ct. 28 (2015) (finding *Atkins* claim procedurally defaulted).

[22] The Department of Disability and Special Needs. This state agency specializes in the identification of intellectual disability. (Feb. 2014 R. p. 4139, lines 16- p. 4140, line 7). The evaluator from DDSN, Dr. Brown, was the Court's expert in this matter. (Feb. 2014 R. p. 4140, line 20 – p. 4141, line 9).

trial judge in a separate hearing and the matter is not re-litigated. *See, e.g., Maldonado v. Thaler,* 662 F.Supp.2d 684, 705–07 (S.D.Tex.2009) (rejecting argument a jury must determine mental retardation); *State v. Grell,* 212 Ariz. 516, 135 P.3d 696, 706 (2006) (same); *Pruitt v. State,* 834 N.E.2d 90, 112–13 (Ind. 2005) (same); *Bowling v. Commonwealth,* 163 S.W.3d 361, 378–81 (Ky.2005) (noting no precedent for mental retardation determination being converted to "constitutional right to jury trial" on finding); *State v. Were,* 890 N.E.2d 263, 294 (Ohio 2008) (rejecting argument for jury determination). In *Hurst v. State*, the Florida Supreme court strongly stated its position that there is no right to a jury determination: "We have repeatedly held that a defendant has no right under *Atkins* to a jury determination of whether he is mentally retarded." 147 So. 3d at 445. In the federal system, such determinations are by a trial judge only.

In *United States v. Candelario-Santana,* 916 F. Supp. 2d 191, 193 (D.P.R. 2013), the federal district court reasoned:

> We agree that deciding this issue before trial is logical, but we have found no case that demonstrates it must be so as a matter of law. A case might arise in which this issue is deferred to the penalty phase. We also note that there is no consensus as to whether the issue is foreclosed once decided by the judge. We note that it would make no sense for the issue to remain open, other than on appeal.

Other jurisdictions, however, have allowed a jury to be empaneled for purposes of the determination, *Blonner v. State*, 127 P.3d 1135 (Ct.Crim.App. 2006), or will allow (much like our State) a defendant to have a judge decide pre-trial and to submit the issue to the jury in sentencing;. *State v. Bell*, 53 So.3d 437 (La. 2011) (noting statutory provision providing jury "shall" determine, but allowing a pre-trial determination by the judge upon agree which does not prohibit raising the issue at sentencing). *See also Com.*

v. Sanchez, 36 A.3d 24, 61 (Pa. 2011) (observing Missouri and North Carolina also have this approach).

In a slightly different approach, the Utah Supreme Court, while upholding their Exemption Statute that allowed only for a trial court determination of eligibility, noted that "the jury was the ultimate finder of fact in imposing the death penalty," that capital defendants could submit "evidence of any mental deficiency as a mitigating circumstance during sentencing," and that "the State would have had to persuade the jury that, even considering such evidence, the totality of the aggravating circumstances outweighed the totality of the mitigating circumstances such that death was the appropriate penalty." *State v. Maestas*, 299 P.3d 892, 954 (Utah), *cert. denied*, 133 S.Ct. 1634 (2013). Unlike the process in our procedure under *Franklin*, though, the jury cannot revisit the eligibility. Thus, our State's procedure is decidedly to the defendant's benefit.

Here, appellant seeks only to challenge the initial ruling. As the intervening, and final ruling, of the jury was controlling as to whether the jury would consider death, the initial ruling was rendered moot. At any rate, the trial judge's ruling is well-supported by the facts of records and controlling precedent.

Standard of Review

This Court has not specifically set out the appropriate standard of review in a direct appeal of the lower court's determination of mental retardation. However, this Court indicated in *Franklin* that sufficient review of pre-*Atkins* cases could be made through post-conviction relief. *See Franklin*, 356 S.C. at 280 (noting procedure for review of *Atkins* claim where defendant already sentenced would be found in PCR proceedings as a freestanding claim with the defendant bearing the burden of proof to

show the condition by a preponderance of the evidence). Thus, review of a finding regarding mental retardation would be review under the deferential standard of "any evidence of probative value." *See e.g., Vasquez v. State*, 388 S.C. 447, 456, 698 S.E.2d 561, 565 (2010) ("This Court will uphold the findings of the PCR judge when there is any evidence of probative value to support them, and will reverse the decision of the PCR judge when it is controlled by an error of law.").

Appellant suggests a standard of review consistent with a pre-trial determination of competency to stand trial; however, this would focus specifically on the first ruling which is inconsistent with the *Franklin* structure. The PCR standard of review fits most comfortably with the two-step process at issue here and brings consistency with review either by direct appeal or collateral litigation. This standard of review was just recently applied in *Kenneth Simmons v. State,* Appellate Case No.: 2014-000387. It would be inconsistent to apply a different review to a matter in direct appeal where the Court specifically stated sufficient review existed by way of collateral proceedings.

Moreover, allowing review of an initial determination will invalidate a jury ruling, though each is separate, distinct, and valid. In fact: "Trial by jury is the normal and, with occasional exceptions, the preferable mode of disposing of issues of fact in criminal cases above the grade of petty offenses." *Patton v. United States*, 281 U.S. 276, 312, 50 S. Ct. 253 (1930). Where the Court specifically allows this fact finding by a jury, it is the jury's fact finding that should be reviewed if any at all. Further, these findings should be afforded great deference. Other courts favor a similarly deferential standard in reviewing jury determinations.

Intensive scrutiny is against the weight of historical deference to jury verdicts, a product of the closed deliberative process. For example, in Oklahoma, if a jury decided the matter, the standard of review is treated as a review of fact. Oklahoma will "give great deference to the jury's finding. We will not disturb the jury verdict where there is any competent evidence reasonably tending to support it." *Myers v. State*, 130 P.3d 262, 266-67 (Ct.Crim.App. 2005).

In Louisiana, "[t]he jury's unanimous decision that defendant is not mentally retarded" is upheld if it "is neither irrational nor arbitrary." *State v. Lee*, 976 So. 2d 109, 147 (La. 2008).

In Georgia, "[t]he appropriate standard of appellate review is whether, after reviewing the evidence in the light most favorable to the State, a rational trier of fact could have found that [the defendant] failed to meet the burden of proving his mental illness or mental retardation at the time of the crime." *Pittman v. State*, 269 Ga. 419, 419, 499 S.E.2d 62, 63 (1998).[23]

However, where the trial judge alone rules on the issue, courts are divided as to the correct standard of review. *See Ybarra v. State*, 247 P.3d 269, 276 (Nev. 2011) ("While some courts have reviewed such decisions for an abuse of discretion, or clear error, others have treated it as a mixed question of fact and law...") (internal citations omitted). In *Ybarra*, the Supreme Court of Nevada resolved: "...we will give deference to the district court's factual findings so long as those findings are supported by substantial evidence and are not clearly erroneous, but we will review the legal

[23] Georgia was actually the leader in determining that the intellectually disabled should not be subject to the death penalty. It abolished capital punishment for such offenders in 1988. *In re Hill*, 715 F.3d 284 (11th Cir. 2013). It also retains the highest burden of proof – beyond a reasonable doubt. *In re Hill*, 777 F.3d 1214 (2014).

consequences of those factual findings de novo. Matters of credibility in this area remain, however, within the district court's discretion." 247 P.3d at 276. *See also Hodges v. State*, 55 So. 3d 515, 527 (Fla. 2010) ("we must decide whether competent, substantial evidence supports the trial court's findings" and review *de novo* questions of law); *Com. v. Crawley*, 924 A.2d 612, 616 (Pa. 2007) ("A question involving whether a petitioner fits the definition of mental retardation is fact intensive as it will primarily be based upon the testimony of experts and involve multiple credibility determinations. Accordingly, our standard of review is whether the factual findings are supported by substantial evidence and whether the legal conclusion drawn therefrom is clearly erroneous.").

Respondent submits that the correct standard of review should be in line with the deferential review of jury determinations as noted above, and the jury determination considered dispositive. However, since the issue here contests only the judge's determination, and if this Court allows the review given the subsequent jury determination, the Court should give deference to the trial judge's ruling on credibility and affirm if there is any probative evidence supporting the decision. This would be consistent with the standard for review in collateral free-standing claims.

Appellant's Argument for Error is Rebutted by the Record

The trial judge carefully reviewed the evidence presented and made detailed credibility assessments as evidenced in his fourteen (14) page order issued on February 25, 2014. (Supp. R. pp. 1-14). Credibility determinations concerning mental retardation evidence and opinions is particular crucial. It is well-recognized that "[n]ot all people who claim to be mentally retarded will be so impaired as to fall within the range of mentally retarded offenders about whom there is a national consensus." *Atkins*, 536 U.S.

at 317. "[T]he determination of mental retardation in the *Atkins* context is always complicated by the problems associated with retrospective assessment and the well-known consequence of a diagnosis of mental retardation-exemption from the death penalty. Both experts and those answering questions about a person's adaptive functioning may exhibit significant conscious or unconscious bias in addressing this issue." *Ex parte Cathey*, 451 S.W.3d 1, 19 (Tex. Crim. App. 2014) *cert. denied sub nom. Cathey v. Texas*, ___ U.S. ___ 135 S. Ct. 2857 (2015). As the *Cathey* court critically noted when considering the claim in the circumstance of the matter before it: "It is difficult to credit that a developmental intellectual disability can lie dormant and undiscovered for thirty-seven years and then spring full-grown, like Minerva from Zeus's forehead, only when that person would be exempted from the death penalty if found so disabled." *Id*, 451 S.W.3d at 20. *See also Com. v. Hackett*, 99 A.3d 11, 33 (Pa. 2014) ("As there may be a powerful incentive to malinger and to slant evidence in cases where a petitioner has not been clinically diagnosed with intellectual disability and the record before the factfinder was created to seek relief under *Atkins*, this Court has found a petitioner's motivation to slant evidence of intellectual disability is a relevant consideration for *Atkins* factfinders in assessing not only the validity of results of post-*Atkins* intelligence testing, but in analyzing the entire *Atkins* petition. ").[24]

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[24] Appellant suggest that the Supreme Court had deferred such decisions to mental health experts by accepting certain diagnostic factors. (See FBOA, p. 72). To the contrary, the Supreme Court made clear that the legal decisions are informed by the medical community, but the medical community does not control the legal conclusion. *Hall v. Florida*, ___ U.S. ___, 134 S. Ct. 1986, 2000 (2014) (medical expert "views do not dictate the Court's decision, yet the Court does not disregard these informed assessments. *See Kansas v. Crane*, 534 U.S. 407, 413, 122 S.Ct. 867, 151 L.Ed.2d 856 (2002) ("[T]he science of psychiatry ... informs but does not control ultimate legal determinations ..."). Curiously, his suggestion that his expert's decision must be honored

Contrary to appellant's lengthy recitation of simplicity in preface to his argument, the trial judge considered much more than the simple fact appellant was a truck driver. In fact, appellant's work history was not even mentioned until page 8 of the 14 page report. (Supp. R. pp. 1-14). That reference was not simply to driving a truck, but appellant's stated goal of becoming a truck driver and his accomplishment:

> ... Within five years of leaving school he had achieved his vocational goal of getting his commercial driver's license and gotten a job driving trucks. He seems to have realized that goal in the early 1980's. In doing so, Blackwell was required to take and pass the exam for a Commercial Driver's License. Also, he took and passed the additional exam to obtain his license to drive tankers of hazardous materials. Those exams require extensive reading writing and practical skills. A commercial driver must be able to not only operate a truck, but is responsible for being able to perform inspections of his vehicle and recognize defects in the vehicle for safety purposes.
>
> 14. Mr. Blackwell drove trucks for KNS Trucking, Hess Corporation, and Belue Trucking. The record related by Dr. Brown indicates that Blackwell was cited for such work related problems as

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in a court decision is contrary to medical authority. The DSM 5 at p. 25 acknowledges the "imperfect fit between the questions of ultimate concern to the law and the information contained in clinical diagnosis" and, in matters of intellectual disability specifically, states such a diagnosis "does not imply that an individual with such a condition meets ... a specific legal standard...." The trial judge also correctly noted the defense expert fused several definitions for different organizations. Though the ultimate goal in these methods was to identify mental retardation, organizations modify clinical methodology. *See, for example, United States v. Williams*, 1 F.Supp.3d 1124, 1146 (D. Hawai'i 2014) (discussing guidance from APA as "deficient in at least two of eleven relatively specific areas" and the AAIDD's more "global" approach which "shift[s] from the former 1992 approach of "at least 2 of the 10 specific skill areas").

Further, Appellant's reliance on *Van Tran v. Colson*, 764 F.3d 594 (6th Cir. 2014) for a forced fit of methodology under *Atkins*, (see FBOA, p. 80), is misplaced where relief was granted only on proper application of Tennessee law in making such a decision in a Tennessee case. *See also Chase v. State*, 171 So. 3d 463, 483 (Miss. 2015) ("We reject Chase's invitation to enact a rule that a circuit court must blindly accept a psychologist's interpretation of witnesses' answers to interview questions as dispositive of the adaptive functioning prong of the test for intellectual disability. We hold that the circuit court was entitled to evaluate the scientific validity and credibility of Dr. Reschly's opinions and to reject them if it found them not credible.").

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

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

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

(Supp. R. pp. 8-9).[25]

The trial judge went on to describe income reported during appellant's work history, and his family relationships, noting his former wife, Angie Davis,[26] "handled the

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[25] These facts are without doubt supported by the record as appellant concedes so by recitation of same in his brief. (See FBOA, pp. 54-56). In regard to obtaining a commercial driver's license, he admits that Dr. Brown noted in his report that it would be very difficult for a mentally retarded individual to obtain that license. Appellant simply offers "he did not say that it would be impossible." (FBOA, p. 55). However, he fails to mention that Dr. Harrison also opined it would be "unlikely" that a mentally retarded individual could obtain a commercial driver's license given it requires a written test that is complex and an "understanding of rather technical machinery." (R. p. 3786, lines 20-25). The fact that it is significantly difficult to obtain the specialized license weighs in favor of finding appellant was not mentally retarded. *See Com. v. Hackett*, 99 A.3d 11, 34-35 (Pa. 2014) (criticizing evaluation failing to consider work skills); *United States v. Williams*, 1 F.Supp.3d 1124, 1164-67 (D. Hawai'i 2014) (finding credible an expert's testimony crediting defendant's work and accomplishments, including being able to drive long distances, as evidence of adaptive functioning not consistent with mental retardation and criticizing another expert's failure to consider " 'real world' functioning").

[26] Ms. Davis declined to speak with defendant's expert, (see R. p. 4051, lines 13-22), and the Court's expert considered contact with Ms. Davis but cited concern over "ethical issues" of reaching out to her, (R. p. 4218, line 16 – p. 4219, lines 3). At any rate, neither expert spoke to Ms. Davis as a person who possibly could have "provided some really useful information." (R. p. 4218, lines 10-22).

management of the household by paying all the bills and writing all the checks." (Supp. R. p. 10).[27] Again, this is far more than relying on the simple fact that appellant drove a truck.

Moreover, the trial judge considered evidence of school performance ("made reasonably sufficient grades during his school career")[28]; though ranked 113 out of 113 in his class, appellant had dropped out and may have received a successions of zeros; had four IQ tests before age eighteen, which reflected 68 (first grade); 87 (third grade); 86 (sixth grade); and 72 (ninth grade)[29]; and, that after the age of eighteen he had had a head

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[27] The defense had to admit that they failed to turn over all evidence to Dr. Brown as they were ordered to do. (R. p. 4256 , line 6 – p. 4258, line 11). (See also R. p. 4478, line 10 – p. 4479, line 4, State seeking information on *Atkins* claim where no information had been provided in approximately 3 years since claim asserted; R. p. 4743, line 1 – p. 4753, line, State seeking medical records in compliance with HIPPA requirements and other materials for preparation of the hearing, upon failure to receive materials from the defense pursuant to the consent order; State's Return to Defendant's Discovery Motion to Deny Meaningful Access to *Atkins* Sentencing Information, R. pp. 3746 - 3759; State's Return to Defendant's Motion to Exclude Evidence of Evaluation by Dr. Brown, pp. 3760 - 3762; Motion to Exclude Testimony of Dr. Ginger Calloway, pp. 3736 - 3739). Part of the information on home finances was disallowed as a result of their failure to abide by the trial court's order. (R. p. 4258, lines 13-16). This highlights the necessity of placing the burden of proof of the capital defendant: "Counsel for the capital defendant is better positioned than the [State] to ... gather the evidence and witnesses relevant to an *Atkins* determination." *Com. v. Sanchez*, 36 A.3d 24, 68 (Pa. 2011).

[28] See R. p. 4244, lines 3-14, Dr. Brown's testimony that appellant had the required unit numbers needed to be on track for graduation .

[29] Though the witnesses and the parties referred to these as IQ tests, there was some question as to whether they were more general scholastic tests. Dr. Calloway did not discount these scores entirely as appellant would argue should be done; rather, both Dr. Calloway and Dr. Brown indicated they could be considered as broad indicators. (See R. p. 3874, lines 12-18; p. 4183, lines 10-17). In fact, Dr. Calloway depended on school testing in opining family members had indicators of mental retardation. (See R. p. 3872, line 1 – p. 3873, line 9, appellant's father's IQ test from school scores indicated as 60; p. 3874, lines 12-18, appellant's brother school test scores indicated 73 and 74; p. 3875, line 11 – p. 3876, line 5, appellant's daughter's school scores at 57 and 71). Additionally, Dr. Harrison also considered the school testing scores though she acknowledged that any score could have been incorrect. (R. p. 3797, lines 15-21; p. 3800, lines 4-20; p. 3809,

injury from an accident and had been treated for cancer and depression with strong drugs which may have impacted intellectual functioning (later testing near time of trial showing 63 and 68).[30] (Supp. R. pp. 6-7).

As far as the defense expert's testing for adaptability, while the trial judge acknowledged that the defense doctor reported using a formal test – "Adaptive Behavior Assessment System (ABAS-II) – the doctor had "indicated that a matrix of 10-20 individuals was necessary to obtain the best result" yet had used only 6, and with incomplete results. Moreover, the doctor "substituted her subject opinions for the responses of the informants." (Supp. R. pp. 10-11). She had, in fact, admitted to the trial court, upon questioning by the trial judge, that she was more than just there to report information and score the test, she considered that her evaluation considered "weighing

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lines 5-11; p. 3821, line 13 – p. 3822, line 13). In regard specifically to appellant's testing, Dr. Harrison noted that it would not be unusual to begin school with a depressed ID if not intellectually stimulated at home, and the following year have a significant leap, which is indicated in appellant's record, and is not indicative of mental retardation. (R. p. 3786, lines 1-10).

Appellant's attempt to cast the testimony as an agreement of evidence for "prong one" is incorrect, (see FBOA, p. 44), as the relevant determination is not present day, but that manifested before the age of eighteen. Appellant must continually admit that he focuses only on current evidence not conducive to finding agreement in the relevant developmental period. (See, for example, FBOA pp. 44, 49, 64 and 75). As Dr. Brown testified, the age of onset has to be prior to the age of 18 or in the developmental period," therefore, "we have to go back and look at what records are available, and for most people, it's going to be school records when we can get them. That's going to give us the most useful information in that regard." (R. p. 4189, lines 10-22).

[30] Both Dr. Brown and Dr. Calloway agreed that certain of these factors could negatively affect intellectually functioning and it was not sheer speculation. (R. p. 4195, lines 3-13; p. 3853, lines 5-21). The issue was objective proof which was lacking. However, as Dr. Calloway testified, it is not "inappropriate to say that it may have affected his cognitive functioning" as, for example the four wheeler accident, could not be "ruled out" as having affected functioning. (R. p. 3853, lines 10-21). Further, she candidly conceded that depression would result in "disturbances in thinking" independent of any difficulties in intellectual deficits. (R. p. 4284, line 5 – p. 4288, line 14).

some of the results of the ABAS-II." (Supp. R. p. 11). For this reason, the trial judge "question[ed] the credibility of that evidence." (Supp. R. p. 11). Moreover, the test called for a "score of 4 or below" in indication of "significant impairment." (Supp. R. p. 11). In further explanation of finding the testing "not determinative" as to adaptive behavior, the trial judge reasoned:

> ... On the ABAS-II a score of 4 or below indicates significant impairment. An example of the subjectivity of Dr. Calloway's interpretation of the results was in the area of Home Living. The average score of the informants in that area was 5.6. This was 1.6 points above the level of a 4. Yet, in that area, Dr. Calloway found Blackwell to "exhibit(s) a significant deficit in the adaptive functioning area of Home Living." The Court determined that she failed to reach the same conclusion as the average of her informants in the following areas of adaptive living that she reported: Communication, Home Living, Health and Safety, and Self-Direction.

(Supp. R. p. 11).[31]

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[31] Appellant apparently argues that it is perfectly acceptable for Dr. Calloway to exercise clinical judgment in claiming that she is merely reporting collected information. (FBOA p. 79). That is not precisely what is meant by clinical judgment. Clinical judgment by definition refers to *evaluation* of facts and does not support a substitution of facts collected. *United States v. Williams*, 1 F.Supp. 3d 1124, 1146 (D. Hawai'i 2014) (citing AAIDD Manual, p. 29 for definition: "a special type of judgment rooted in a high level of clinical expertise and experience ... to enhance the quality, validity, and precision *of the clinician's decision*") (emphasis added). Clinical judgment is no doubt a part of the second prong analysis. *Id.* However, employing standardized measures in data collection brings more reliability to the eventual exercise of clinical judgment. *See id.* at 1163-64 (noting doctor found the ABAS scored "underestimated" the capability and explained the factors in his exercise of clinical judgment in concluding same). According to her responses to the trial judge, Dr. Calloway's information was assessed and was not the mere report of information. (R. p. 4123, line 16 – p. 4129, line 5, Dr. Calloway's responses to the Court's questioning confirming tinkering with the report of facts based on her perceptions and mathematical inaccuracies in ratings). This included interviewing people and using the information in scoring, but not including their information in the raw data. (R. p. 4124, line 8 – p. 4125, line 8). The subjective determination of the truthfulness of reported events is cause to challenge the credibility of the use of an otherwise objective, scientific approach to reasoned clinical judgment. *Chase v. State*, 171 So.3d 463, 483-84 (Miss. 2015). Further, the doctor's presentation at the pre-trial *Atkins* hearing here was admittedly meant to convey a standard methodology that "could be replicated by another forensic examiner and the conclusions should be the same

The trial judge also discounted the defense argument that appellant's "failure to live independently after the breakup of his marriage" in support of deficiency in adaptive behavior. He found that appellant did have issues after his wife left, but his wife had previously managed the household, and he lapsed into another major depression episode "which can result in confused thinking and an inability to handle the pressures of daily living." (Supp. R. p. 12).[32] The judge concluded that deficiency did not relate to behavior that would have "manifested during the developmental period." (Supp. R. p. 12).

Lastly, the trial judge noted appellant had never been previously diagnosed as mentally retarded, or a discussion by "health professions" in his medical record that expressed a concerned that he may have been mentally retarded prior to capital proceedings. (Supp. R. p. 12). [33]

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because it's the data that leads one to the conclusion. It's not my personal opinion" rather she was "merely reporting." (R. p. 3923, lines 16-25; p. 4128, line 21 – p. 4129, line 5). This is one of many issues going to credibility, including the use of a limited pool of information from admittedly biased individuals.

[32] It is well-recognized that depression can affect IQ presentation. *See Bowling v. Com.*, 163 S.W.3d 361, 376 (Ky. 2005), *as modified* (Apr. 22, 2005) (noting "If the relevant time frame were the time of execution, there would exist the possibility that the IQ test would be 'significantly skewed by potential depression, tension, and anxiety on the part of [the] defendant'") (quoting *United States v. Beckford*, 962 F.Supp. 748, 762 n. 13 (E.D.Va. 1997)).

[33] Dr. Brown found significant that DMH evaluated appellant for competency to stand trial and saw no indication of mental retardation. (Dr. Brown's Report, R. p. 4447; R. p. 4165, line 14 – p. 4166, line 17). Dr. Kimberly Harrison, Chief Psychologist with Forensic Evaluation Service at the Department of Mental Health testified that she was tasked with evaluating appellant for competency to stand trial. She testified at the February 2014 hearing that she had a social worker gather information on appellant's background, and she personally evaluated appellant in addition to review the social worker's information. (R. p. 3780, line 19 – p. 3785, line 7). (See also Dr. Harrison's Report, R. pp. 4421-4428). She concluded that there was not "enough indication" of

The trial judge after finding these facts critically weighed the facts to reject a finding of below average intellectual functioning during the developmental period, with additional explanation of his credibility rulings. (Supp. R. p. 14). He concluded appellant had failed in his burden of proof. (Supp. R. p. 14).

The ruling reflects a well-reasoned, well-supported determination that appellant was not mentally retarded. Appellant cannot show reversible error if the Court should review the trial judge's findings. However, the trial judge's findings are moot given that the issue of whether appellant was mentally retarded was submitted to the jury. The jury's finding that appellant failed in his burden of proof rendered the trial judge's ruling moot. As appellant had not challenged this separate factual finding, the jury's fact finding stands uncontested on appeal.

Appellant is not entitled to any relief.

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mental retardation to support "referring the case over the DDSN or to request for a joint evaluation...." (R. p. 3785, lines 8-24; p. 3806, lines 1-3).

IV.

The trial judge did not err in charging the jury the correct standard for appellant's burden of showing mental retardation separately and distinctly from all other references for mitigating and aggravating evidence.

Relevant Facts:

The trial judge held a charge conference after receipt of all the sentencing phase evidence. The defense had no objection to the trial court's proposed verdict form for the finding as to mental retardation; however, the defense, though acknowledging precedent to the contrary, submitted that the State must prove the absence of mental retardation beyond a reasonable doubt. (R. p. 3150, line 11 – p. 3151, line 13; p. 3152, line 23 – p. 3153, line 19). The defense also explored a charge that the decision had to be unanimous either in finding mental retardation or rejecting mental retardation. (R. p. 3157, lines 2-20). The judge rejected both the suggestion on burden of proof, and that the jury had to unanimously reject mental retardation. (R. p. 3156, lines 4-7; p. 3158, line 8 – p. 3159, line 15; p. 3160, lines 6-11).

The trial judge carefully explained the verdict process to the jury and properly explained before considering anything further, the jury must determine if the defendant had shown by a preponderance of the evidence that the defendant was mentally retarded. As noted above, the trial judge carefully instructed that, as "a threshold matter," appellant must prove mental retardation by a preponderance of the evidence. (R. p. 3219, lines 3-25; p. 3241, line 23 – 25). After this finding, the jury was further instructed as to the separate consideration of aggravating and mitigating circumstances. (R. p. 3223, line 3-p. 3243, line 17). The finding returned indicated the jury did not find by a preponderance of the evidence that the defendant was mentally retarded. (R. p. 3257, lines 16-22).

In his motion for a new trial heard March 20, 2014, appellant argued he was entitled to a new trial based on the court's denial to instruct "the jury that it be proven beyond a reasonable doubt that the defendant was not mentally retarded" and that it was burden shifting to place any burden on the defendant at sentencing. (R. p. 4819, lines 10-15; p. 4820, lines 12-18).

On appeal, appellant argues this Court has not stated that the burden of proof continues in the sentencing phase. (FBOA, p. 87). He also contends, while expressing a preference for a jury determination, that he should have no burden of proof in regard to a mitigating circumstance. (FBOA, pp. 87-88). He argues the trial judge's charge was "burden shifting." (FBOA, p. 89).

Discussion:

As a first matter, this issue was not squarely before the trial judge and should be considered procedurally barred. *See, e.g., State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal."). At trial, defense counsel argued that the jury should be charged that the State must prove the absence of mental retardation beyond a reasonable doubt. (R. p. 3150, line 11 – p. 3151, line 13; p. 3152, line 23 – p. 3153, line 19). An argument as to burden of proof where mental retardation is raised *only as a mitigating circumstance* was not raised. Thus, this issue is not available for review the merits. However, even if it could be reviewed, the issue would not afford relief.

This Court has provided that "the trial judge shall make the determination in a pre-trial hearing," upon assertion of mental retardation as a bar to the death sentence. *Franklin v. Maynard*, 356 S.C. 276, 279, 588 S.E.2d 604, 606 (2003). The defendant

shall have the burden of proving he or she is mentally retarded by a preponderance of the evidence. *Id.* If the judge finds a defendant has failed to carry his burden of proof, the defendant may still submit the evidence to the jury in mitigation. *Id.* "If the jury *finds* this mitigating circumstance, then a death sentence will not be imposed." *Id.* (emphasis added). Thus, this Court has provided that both a trial judge and the jury may consider the evidence and the defendant has two opportunities to present his case for mental retardation. Nothing in this Court's decision of *Franklin v. Maynard* suggests that between the initial determination and sentencing proceedings, there is a presumption that mental retardation exists, and the State must show beyond a reasonable doubt that it does not exist. The absence of mental retardation is not an element of the offense of murder or a statutory aggravating circumstance to be proven. *State v. Laney*, 367 S.C. 639, 648, 627 S.E.2d 726, 731 (2006) ("The fact a defendant is not mentally retarded is not an aggravating circumstance that increases a defendant's punishment; rather, the issue is one of eligibility for the sentence imposed by a jury.").

Moreover, courts have specifically rejected the concept that the prosecuting agency is charged, at any point, with proving the absence of mental retardation. *See, for example, United States v. Umana*, 750 F.3d 320, 359 (4th Cir. 2014) *cert. denied*, 135 S. Ct. 2856 (2015) ("We accordingly reject Umaña's argument that the government had the burden of proving the absence of mental retardation in order for him to receive the death penalty"); *Com. v. Sanchez*, 36 A.3d at 71 (where jury unanimously finds mental retardation, capital defendant may not be sentenced to death; "Any other jury decision equates to a finding in favor of the Commonwealth ... A jury finding, much less a unanimous jury finding, that the defendant is **not** mentally retarded in unnecessary; as

with all preponderance determinations, if the jury believes the evidence to be equivocal, the party with the burden cannot prevail."). *See also United States v. Nelson*, 419 F. Supp. 2d 891, 893 (E.D. La. 2006) (citing *State v. Williams*, 831 So.2d 835, 860 (La. 2002) ("*Atkins* established mental retardation as an exemption from capital punishment, not a fact whose absence results in an enhancement."); Jeffrey Usman, *Capital Punishment, Cultural Competency, and Litigating Intellectual Disability*, 42 U. Mem. L. Rev. 855, 884 (2012) ("As is oft noted, 'although every state that has considered the issue has allocated the burden of proof to the defendant to establish that he or she is intellectually disabled, states have varied with regard to what level of proof is required. Georgia imposes the highest burden and is the only state that requires a defendant to prove his or her intellectual disability beyond a reasonable doubt. A number of other states require a defendant to prove that he or she is intellectually disabled by clear and convincing evidence. Most states, however, require defendants to prove that they are intellectually disabled by only a preponderance of the evidence.").

Further, the argument presented is contrary to the stated policy of having the defendant bear the burden of proof both before a judge and before a jury. Appellant is essentially urging this Court to modify *Franklin* so that mental retardation may be considered only as mitigation after the pre-trial ruling. However, there is no error in the *Franklin* structure in light of the express decision to leave the method of determining same in the province of the individual states. *Atkins, supra.*

For all the reasons above, if appellant's argument to the contrary could be heard, it should be rejected.

V.

The trial judge did not abuse his discretion in declining to admit notes from two hospital chaplains to the effect that appellant was "struggling" with his actions and "asked for the family" when appellant failed to present the writers of the notes, the notes were not made in the course of medical treatment, and the notes for the most part constituted the writer's opinion rather than appellant's statements. Further, there was no prejudice in exclusion where the notes were vague and undefined, and there was other, direct and clear evidence of remorse submitted through other witnesses presented.

Relevant Facts:

Before the witness was called, defense counsel advised the Court of the State's objection to the substance of the testimony regarding the notes. The trial judge held a hearing on the objection outside the presence of the jury. (R. p. 2960, lines 18-25). Defense counsel advised that he would present Ms. Gracie Williams, a record custodian from the Spartanburg Regional Hospital. (R. p. 2961, lines 4-5). He sought to introduce the notes of two hospital chaplains who spoke with appellant after his self-inflicted wound, and relied upon the business records exception for admissibility. (R. p. 2962, lines 11-18; p. 2965, lines 3-5). The substance of the notes were described as follows:

> ... the patient was struggling with guilt, and wanted to tell his grandchildren he loved them...
> ...
> ... He was struggling with his actions and what had been done, and then the second indicates - - second statement ... was sad, had some prayers in his heart, asked for prayers for the family. We prayed ... the Lord's Prayer together.

(R. p. 2961, line 25 – p. 2962, line 2; p. 2963, line 24 – p. 2964, line 6).

The State objected noting the information was not in the nature of a diagnosis; the witnesses were available; and, lastly, the notes were more prejudicial than probative. (R. p. 2962, line 20 – p. 2963, line 4; p. 2964, lines 14-23). The State relied upon *State v. Burroughs*, 328 S.C. 489, 501, 492 S.E.2d 408, 414 (Ct.App. 1997), which found

statements not necessary to medical treatment or diagnosis were inadmissible hearsay. Defense counsel offered that "we interviewed the chaplains and ... [t]hey didn't have much memory actually of this event. So, their notes are actually the best evidence of it...." (R. p. 2963, lines 17-19). The trial judge found that the chaplain's notes were not admissible:

> ... I assume the pertinent portions are the parts that I discussed earlier that state the patient was struggling with guilt. Wanted to tell his grandchildren he loved them. He was struggling with his actions and what had been done, and another entry, the next day, by a different individual said but he was sad, had some prayers in his heart, asked for the family. We prayed the Lord's Prayer together.
>
> The case cited by Mr. Barnette does appear to be on point. Also the exception to the hearsay rule for regularly kept business records states that matters which are in the nature of an opinion will not be admitted as an exception to the hearsay rule from a regularly kept business record.
>
> It appears that the quotes in here that describe the defendant would be in the form of opinions given by the individuals involved, and therefore, I'll grant the State's motion.

(R. p. 2965, line 15 – p. 2966, line 6).

Defense counsel presented Ms. Williams's testimony in a proffer of the evidence. She testified the records were records kept in the regular course of business. (R. p. 2967, lines 5-21). Counsel also argued admissibility was warranted pursuant to "all United States Supreme Court cases where they indicated the rules of evidence, particularly hearsay, would necessarily fold in, in the face of presenting mitigation evidence" and specifically referenced *Georgia v. Green*. (R. p. 2970, lines 4-9).

On appeal, appellant argues the judge erred in not allowing him to present his evidence of remorse. He contends the trial court erred in not allowing the evidence in under the business records, and, even if the records contained impermissible opinion

evidence, he has an absolute right under the Eighth Amendment to offer any evidence in mitigation. (FBOA, p. 93).

Discussion:

Evidentiary rulings in the penalty phase of a capital trial are reviewed for abuse of discretion. *State v. Owens*, 378 S.C. 636, 640, 664 S.E.2d 80, 82 (2008). As appellant has shown no improper application of law on the facts, he fails to show an abuse of discretion. This issue cannot afford relief.

Out of court statements offered for the truth of the matter are hearsay. Rule 801, SCRE. Hearsay is not allowed except pursuant to an established exception. Rule 802, SCRE. Business records are afforded an exception; however, the records that fall under the exception are records "of acts, events, conditions, or diagnoses ... if kept in the course of a regularly conducted business activity" that are not "subject opinions and judgments...." Rule 803(6), SCRE. *See also* S.C. Code § 19-5-510 (Uniform Business Records as Evidence Act) (in order to qualify as a business record, the proponent must show the record was "made in the regular course of business"). Business is liberally construed but is not without boundaries. In short, "[n]ot everything contained in a 'business record' is automatically admissible under s 19-5-510" and "subjective opinions and judgments" are not a part of the contemplated business record exception. *Kershaw County Dep't of Soc. Servs. v. McCaskill*, 276 S.C. 360, 362, 278 S.E.2d 771, 773 (1981).

The trial judge found the proffered evidence did not meet the exception for two reasons. First, the judge found persuasive the argument that the records were not medical records subject to the exception. Second, the judge found the notes reflected opinion

evidence which is not admissible under the exception. The record supports both of these findings.

As to the first basis, the notes are clearly not notes for medical diagnosis and treatment. Therefore, they do not fall under the business record exception as part and parcel of the medical records. The business at issue would be health care. Chaplain notes, while maintained by the hospital, do not follow the business of health care. See generally Danny R. Collins, *South Carolina Evidence*, p. 609 (2nd Ed. 2000) (giving examples of regular course of business: "Banks are in the business to make loans; hence, office memoranda made in connection with a bank loan are made in the regular course of the bank's business"; "SLED is in the business of fighting crime and enforcing the law; hence law enforcement fingerprint records prepared and maintained by SLED are prepared in the regular course of SLED's business"). Appellant fails to note any difference between the chaplain notes and actual medical records, though the distinction is great. *See generally Ex parte Dep't of Health & Envtl. Control*, 350 S.C. 243, 250, 565 S.E.2d 293, 297 (2002) ("Medical records are admitted routinely as business records. The trustworthiness of medical records is presumed, based on the fact that the test is relied on for diagnosis and treatment.") (internal citations omitted). However, "[i]f the person who provides the information is an outsider to the business who is not under a business duty to provide accurate information, then the reliability rationale that underlies the business records exception ordinarily does not apply." *United States v. Blechman*, 657 F.3d 1052, 1065 (10th Cir. 2011). Here, there was no indication that the chaplains were under such a duty to report accurately for a purpose. Certainly, the statements were not made for the purpose of diagnosis or treatment. *See generally State v. Burroughs*, 328 S.C. 489, 492

S.E.2d 408 (Ct.App. 1997); Rule 803(4), SCRE. As there was no connection to the business of the hospital, *i.e.* treatment, diagnosis or medical care, the notes were not business records to be admitted under this particular exception. *See also Com. v. Irene*, 970 N.E.2d 291, 304 (Mass. 2012) ("without testimony or additional evidence to establish that the statement was germane to the defendant's treatment or medical history, the defendant's statement contained in his medical records was not admissible under the exception to the hearsay rule") (internal citation omitted); *People v. Bailey*, 252 A.D.2d 815, 815 (N.Y. Appellate Division, Third Department (1998)) ("In order for a statement contained in a hospital record to be admissible under this exception, it must be germane to the medical diagnosis or treatment of the patient...").

As to the second basis, the notes reflect comments appellant was "struggling" and was "sad." (R. p. 2961, line 25 – p. 2962, line 2; p. 2963, line 24 – p. 2964, line 6). This is clearly opinion evidence which is, by the text of the exception, not admissible. Rule 803(6), SCRE. *See also Kershaw County Dep't of Soc. Servs. v. McCaskill*, 276 S.C. at 362, 278 S.E.2d at 773 ("subjective opinions and judgments" are not a part of the contemplated business record exception under the statute). The remainder that they said a prayer together, and he "asked for prayers for the family" does not particularly go to directly to remorse for the crime. "The family" is undefined and could have been his own given that he had inquired as to his grandchildren (especially when those children had also been traumatized by his killing the child, see R. p. 3021, lines 8-22). Further, appellant had previously asserted his intent to "get back at" the little girl's father, not the child's family in general. (R. p. 2669, lines 2-15; p. 2684, line 19 – p. 2685, line 25). Even so, the point is, without further explanation of the cryptic note, this phrase means

little to nothing in regard to remorse. At any rate, any conceivable error would be harmless. Appellant was allowed to present clear evidence of remorse through other witnesses. Dr. Donna Schwartz-Watts testified:

> ...the words that he usually uses with me are he can't believe he's done this. It's very hard for him to accept what happened and what he's done, and he, he has a lot of anxiety. He has nightmares about it. He has a difficult time dealing with what he's done and he's very sad about it.

(R. p. 2987, lines 5-16). Further, Heather Bryant, his daughter, testified: "...he regrets what he had done. He suffers from that every day." (R. p. 3020, lines 7-11). Appellant's pastor, Ken Rice, testified appellant sought forgiveness, and told him, "God's forgiven me, but I can't forgive myself." (R. p. 3084, lines 3-12). Thus, the slight value the vague recorded comments would have, if any, would be at most be cumulative to properly admitted clear evidence. *Compare Jones v. Polk*, 401 F.3d 257, 264 (4th Cir. 2005) ("we think that the state supreme court did rule unreasonably that the exclusion of the evidence was harmless beyond a reasonable doubt. By erroneously excluding Jasper Jones' evidence of remorse, the trial court removed from the jury's consideration *all evidence of remorse*, an important mitigating factor.") (emphasis added), *with State v. Sapp,* 366 S.C. 283, 293-94, 621 S.E.2d 883, 888 (2005) (though witness "should have been permitted to answer the question as to whether she would like to see Sapp put to death," defendant could not show prejudice where mother pleading for life and nephew "testified that if Sapp were gone from him, it would be the worst thing ever" as "exclusion of testimony is harmless where it is cumulative to other testimony in the record"). Consequently, there was no reversible error if any error may be found. *See State v. Northcutt*, 372 S.C. 207, 221, 641 S.E.2d 873, 881 (2007) ("Although it was error for the trial judge to exclude the letter written from Appellant to Ms. Northcutt expressing remorse, the error was

harmless. The record contains evidence of Appellant's remorse. Appellant was not prejudiced, nor was the outcome of the trial affected.").[34] *Cf. Fullwood v. Lee*, 290 F.3d 663, 693 (4th Cir. 2002) ("It is permissible to exclude on hearsay grounds mitigating evidence which is " 'only [of] cumulative probative value.' ") (quoting *Buchanan v. Angelone*, 103 F.3d 344, 348–49 (4th Cir.1996), *aff'd*, 522 U.S. 269, 118 S.Ct. 757, 139 L.Ed.2d 702 (1998)); *People v. Pearson*, 56 Cal. 4th 393, 470, 297 P.3d 793, 853 *cert. denied sub nom. Pearson v. California*, 134 S. Ct. 198, 187 L. Ed. 2d 134 (2013) ("we have held that if the exculpatory value of the excluded evidence is tangential, or cumulative of other evidence admitted at trial, exclusion of the evidence does not deny the accused due process of law").

Lastly, appellant appears to argue that even if the judge correctly and fairly ruled the evidence was not admissible under the rule, he had an Eight Amendment right to submit the evidence. His reliance on *Green v. Georgia*, 442 U.S. 95, 99 S.Ct. 2150 (1979), is misplaced. First, "the principles developed in *Lockett*[35] and *Eddings*[36] do not eviscerate all state evidentiary rules with respect to mitigating evidence offered in capital sentencing proceedings." *Fullwood v. Lee*, 290 F.3d at 693. Second, the exception in *Green* dealt with a fact specific exception. *See Green v. Georgia*, 442 U.S. at 97 ("In these unique circumstances, 'the hearsay rule may not be applied mechanistically to defeat the ends of justice.' "). The Court found a critical relevancy to the accomplice Moore's confession to another, Pasby (who had testified as to the statement in Moore's

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[34] It is worthy to note that this Court also found that the letter was "subject to redaction because portions are inadmissible hearsay." *State v. Northcutt*, 372 S.C. 207, 221, 641 S.E.2d 873, 880 (2007).

[35] *Lockett v. Ohio*, 438 U.S. 586, 98 S.Ct. 2954 (1978).

[36] *Eddings v. Oklahoma*, 455 U.S. 104, 102 S.Ct. 869 (1982).

death penalty trial), indicating that Moore alone shot the victim while Green was absent. 442 U.S. at 96. Cumulative evidence of remorse cannot logically be equated which such a limited exception. Further, such evidence lacks the critical relevance and noted reliability of spontaneous statements against interest as that in *Green*. Other courts considering hearsay rulings in sentencing have carefully analyzed the proffered evidence for critical relevance and "substantial reasons" to assume reliability as referenced in *Green*, or simply "limited *Green* to its facts." *McLaughlin v. State*, 378 S.W.3d 328, 347 (Mo. 2012) ("statements, although self-incriminatory, lack considerable indicia of reliability to be admissible" in penalty phase pursuant to exception in *Green*); *Com. v. Spotz*, 47 A.3d 63, 124 (Pa. 2012) (noting the "unique circumstances" in *Green*, and "high relevance of the testimony to a critical issue," finding in review of the trial ruling at issue that "the trial court did not mechanistically apply the hearsay rule to defeat the ends of justice, but rather acted well within its discretion in sustaining the Commonwealth's hearsay objections"); *People v. Eubanks*, 266 P.3d 301, 332 (Cal. 2011) ("we conclude the proffered mitigating evidence 'bore no special indicia of reliability, so the rule [set forth in *Green v. Georgia*] did not require the trial court to dispense with the hearsay rule.'") (quoting *People v. Weaver*, 29 P.3d 103 (Cal. 2001)); *State v. Langley*, 711 So. 2d 651, 661-62 (La. 1998) ("The Supreme Court's per curiam opinion in *Green v. Georgia*, is so easily distinguished from this case that it hurts Langley's cause ... Langley's statements ... possessed no indicia of reliability that would justify admitting them."); *McGinnis v. Johnson*, 181 F.3d 686, 693 (5th Cir. 1999) (recognizing circuit precedent limiting *Green* to its unique facts); *Jordan v. Epps*, 740 F. Supp. 2d 802, 878 (S.D. Miss. 2010) (same). Appellant's stark argument for admissibility under *Green*

simply does not afford relief. *Spotz*, 47 A.3d at 123 ("Contrary to Appellant's undeveloped averment, none of the cited cases [*Green v. Georgia* included], or any other precedent of which we are aware, can be interpreted in such a broad, all-encompassing manner [*i.e.* due process compels finding relevant evidence admissible in sentencing phase even if not admissible under state rules]"). In short, to invoke the due process protection of *Green*, the evidence must be critical and reliable. While arguments may be made both for and against reliability,[37] it is inescapable that the vague notes could not be critical where there was direct testimony from multiple other witnesses clearly reflecting evidence of remorse.

Thus, for all the foregoing reasons, the trial judge did not abuse his discretion in these discrete circumstances. However, if the Court should find an abuse of discretion, and that the notes should have been allowed as evidence of remorse, the error could only be harmless in light of the cumulative nature of such evidence. Appellant's argument to the contrary should be rejected.

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[37] While defense counsel stated as to the availability of the writers to be called, that "they're gonna say I don't have a recollection of this," (R. p. 2970, lines 16-17), there was no indication whether the recollection could be refreshed. There was certainly no indication on the record that a subpoena would not have been honored. If such information was indeed critical, logic dictates that there would have been an attempt to call such witnesses.

VI.

The trial judge did not commit clear error in crediting the State's neutral reasons for striking two African American males jurors as the reasons for the State's strikes were absolutely non-discriminatory, were well-supported by the record, and appellant failed to show a "material in relevant aspects" potential juror of a different race that the State did not strike in an attempt to undermine the clear non-discriminatory intent expressed in the reasons for the strikes.

Relevant Facts:

The trial judge, with the agreement of the parties, had a list generated of prospective jurors in order of qualification. (R. p. 2304, lines 5-17). The following selection process is included in the record:

Called		Strike by State	Strike by Defense	Seated
134	Martin Kimmons		X [1]	
237	Lonny Smith		X [2]	
70	Michael Estes		X [3]	
264	Ronald Unger	X [1]		
162	Robert Martin		X [4]	
165	Eric McCraw			X (1)
290	Tommy Williams		X [5]	
154	Donald Lowe		X [6]	
192	Donald Patterson			X (2)
43	Don[nna] Champion			X (3)
160	Diane Marcotte	X [2]		
188	Stephanie Partridge			X (4)
140	George Lamb, Jr.			X (5)
29	Angela Bradley			X (6)
69	Andrea Dendy			X (7)
78	Caroline Fritch		X [7]	
3	Richard Anderson		X [8]	
69	Ferrall Erickson			X (8)
266	Willem Van Der Platt			X (9)
241	Robert Stephens			X (10)
168	Michael McIntyre		X [9]	
50	Barbara Collins			X (11)
215	Terrance Richardson		X [10]	
88	Laura Matherly	X [3]		
45	Cory Cheeks	X [4]		
60	Todd Danielson			X (12)

Alternates

79	Stacy Fullenwinder	X[1]		
219	Ray Rothenburg		X[1]	
261	Karen Trejo		X[2]	
224	Keith Sanders			X (A1)
92	Edward Grabarkiewicz		X[3]	
147	John Lindsey	X[2]		
98	Christopher Guenther		X[4]	
208	Pamela Pruitt			X(A2)

The defense made two separate motions contesting the State's use of strikes. The first motion was made challenging the strikes of two female jurors. The defense argued:

> ... they only used four of their five, but half of which they used to exclude women. The defense would challenge their strikes on that basis.

(R. p. 2309, lines 19-23).

The State made the following responses. The State struck Ms. Marcotte she was in the Michigan Department of Corrections; she stated that she thought life without parole was "a very serious thing," said she would impose same for "pedophiles" but treated murders differently. (R. p. 2310, lines 7-12).

The State struck Ms. Matherly as she had stated she could consider the death penalty if it was her child or family member, but didn't think she could recommend that sentence otherwise. The State noted there had been an argument over her qualification. (R. p. 2310, lines 18-24).

The defense offered there were two other jurors connected to corrections but conceded that the individual in corrections was his wife, not the juror. The other juror was actually a correctional officer at Perry Correctional. (R. p. 2311, lines 1-14). However, the State noted the clear distinction:

> Well, very easy, Your Honor. [Ms. Marcotte] was in the Department of Corrections for 12 years in Michigan, which had never had the death penalty. She believes that pedophiles is the only thing she can put to death. She treated murders totally different from that standpoint, and obviously we felt like that she would argue that life without parole would be a more severe penalty than death. So, that's the reason...

(R. p. 2311, lines 15-23).

While defense counsel attempted to separate the modifiers in the reason to a bare "corrections involvement only" in order to show a stronger comparative analysis, the defense conceded there were no arguments when considering the entirety of the response. (R. p. 2312, line 1- p. 2313, line 11). The trial judge found "the reasons given by the State are not pretextual, and I'll allow that ... strike to stand." (R. p. 2313, lines 12-14). The trial judge asked the defense if he wished to "talk about the Matherly case" and he responded, "No, Your Honor." (R. p. 2313, lines 15-16). Even so, the trial judge requested the State placed the reason for the strike on the record again, and the State underscored her hesitation, the qualification battle, and the fact she would limit the sentence to if someone in her family was the victim. (R. p. 2313, line 17 – p. 2314, line 5). Again, defense counsel stated he had no argument. (R. p. 2314, lines 8-9). A short break was taken after which defense counsel sought to make another argument on another basis:

> Your Honor, I apologize to the court and to the solicitor.
>
> Upon further review of the State's strikes, it appears they used six strikes in total if you include alternate strikes. Three of those strikes were to exclude African-Americans from the jury. The defense would challenge those strikes as well. Those strikes being Juror Number 45, Mr. Cheeks, Juror Number 79, Mr. Fullenwinder, and Juror Number 147, Mr. Lindsey.

(R. p. 2314, line 18 – p. 2315, line 1).

The State responded as follows:

Number 45, Mr. Cheeks -

> "he said a doubt, a doubt in my mind I would not sign it period from there. Seemed very pro-life juror from that stand point. He also had a previous CDV conviction...." (R. p. 2315, lines 12-22).

Number 79, Mr. Stacy Fullenwinder -

> "also has a criminal record, Your Honor. He said you have a lot on you when asked about the law and talking to him about the death penalty. He just gave the impression that he would not sign the death warrant in that situation. We felt like he'd be a pro-life juror from that standpoint..."[38] (R. p. 2315, line 23 – p. 2316, line 3).

Number 147, Mr. John Linsey -

> "indicated that he had a hard time signing the document and so forth. And another thing, he was the one that was afraid for his family. He was scared to death that something would happened to his family, one way or there other, since it's a death penalty case. Just gives the impression that he was a pro-life juror, and that's the reason we struck him from that standpoint..." (R. p. 2316, lines 4-22).

The defense argued:

Mr. Estes [*Juror 70, Michael Estes that the defense struck*], had a CDV conviction, and is a white male, (R. p. 2316, lines 24-2); and,

Mr. Lowe [*Juror 154, Donald Lowe that the defense also struck*] had a CDVHAN charge and kidnapping charge that were dismissed, (R. p. 2317, lines 11-14); and,[39]

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[38] The State noted after the hearing that according to their notes that his conviction came up in the main qualification session and made the records an exhibit. (R. p. 2327, line 19 – p. 2327, line 23).

[39] The defense admitted after the hearing that their court records were incorrect as to Mr. Lowe. (R. p. 2327, lines 8-16). In defense of their mistake, defense counsel offered they were denied access to the rap sheets, suggested there may be even more arguments to make against the State's strikes, and asked that the rap sheets for the 35 qualified jurors be made a part of the record. The judge accepted the records, but pointed out "they were not argued to me during the Batson hearing." (R. p. 2328, line 24 – p. 2329, line 4). This Court has expressly ruled juror criminal histories as run by the prosecution are not a

> Ms. Partridge [Juror Number 188, who was seated] has a pending breach of trust charge; and,
>
> Juror Number 215, [*Terrance Richardson that the defense struck*] has a breach of peace conviction, (R. p. 2317, lines 21-24).[40]

The State noted that the reasons were not to be parsed as the convictions were simply one fact; however, the answers in qualification formed the major basis for the strikes. He argued the defense response "doesn't' match up what he's saying because our reasons is cause they're pro-life jurors on top of that. It's just not merely - - they do have the convictions as a factor in this situation" but the answers were the deciding cause. (R. p. 2318, line 19 – p. 2319, line 13). When asked if there was anything further from the defense, the defense replied, "No, Your Honor." (R. p. 2319, lines 14-15).

The trial judge ruled the reasons offered were not pretextual, found no pattern to support a finding of discrimination in either case, and denied the motion. (R. p. 2319, lines 18-21; p. 2321, lines 4-7). The State requested the questionnaires for the jurors be made a part of the record as some of the jurors' answers also reflected responses the State

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discoverable item. *State v. Childs*, 299 S.C. 471, 474, 385 S.E.2d 839, 841 (1989) (affirming denial of request for "criminal records checks or records of arrest" of "prospective jurors," as "no statute or court rule requir[es] a disclosure of this information"). However, SLEDCatch, which is also a criminal history program, is available to the defense or any private person. Respondent notes no issue on the denial of access to the State's criminal history run for jurors – which carries restricted use for access to the database – has been raised in this appeal. Respondent also notes that the State had previously offered that their materials for jury selection could be taken under seal if the defense would agree to do the same so that any and all justifications for any strikes could be reviewed by the trial judge for compliance, given that the *Batson* mandate applies to both parties. (See State's Return to Defendant's Motion to Preserve Voir Dire Analysis for Defendant's Use in Future Proceedings, R. pp. 3708 - 3709).

[40] The defense noted an exhibit for Mr. Richardson, but did not clearly concede error in the offered criminal history. (R. p. 2327, lines 8-11). However, appellant has not argued a conviction in the record for Mr. Richardson in the issue on appeal.

relied upon. (R. p. 2320, lines 3-8). The defense joined in the State's request. (R. p. 2320, lines 9). Both the defense and State said there was nothing further. However, the defense later asked to re-open and/or supplement the prior argument. The trial judge admonished "there was a time for making the motion," and stated that he had "allowed [the defense] to make another one after I'd gone out to consider the first ... Now, we're making a third one ... it needs to be done in timely fashion." (R. p. 2322, lines 3-8). However, he allowed the defense to make the suggestion that "Juror Number 266, Mr. Van Der Plaat [who was seated] also gave similarly life leaning or pro-life comments in his voir dire, and he's a white male similarly situated to the ones challenged - - in our last motion." (R. p. 2322, lines 1-17).

The State disagreed with the attempt to "keep dissecting very juror" but would do that if necessary. As to the new argument, the State noted that it disagreed with the defense characterization of the *voir dire* as Mr. Van Der Plaat stated "that he would weigh and balance" and "could sign it in the situations he felt like it was warranted ... and I totally disagree with their findings ... cause he said he could definitely" impose death. (R. p. 2322, line 21 – p. 2323, line 3).

The trial judge found the defense argument unpersuasive and not indicative of any clear material difference to raise a suggestion of discriminatory intent:

> ... I think we're getting into subjective, your subjective weighing of their statements. Those, obviously, are, are, I guess to a certain degree, those are all in the eye of the attorney, can be taken different ways.
>
> Again, I don't find those to, to exhibit any purposeful racial discrimination. It seems to me that you're weighing the factors concerning their positions on the death penalty. I find that to be race neutral.

(R. p. 2323, lines 4-13).

The judge again denied the motion. (R. p. 2323, line 15).

After the seated jurors were dismissed to settle into the local hotel, and instructed not to discuss, or have exposure to media, the trial judge turned to setting a time have the jurors return and be sworn. The defense admitted that the records they had for Mr. Richardson were "incorrect" as noted above.

Appellant abandoned his initial motion based on gender. (FBOA, p. 95 n. 9). Appellant has also abandoned his arguments as to Juror Number 147, Mr. John Linsey being improperly struck, and abandoned his argument that Juror Richardson was similarly situation. Rather, he argues only that two jurors, Mr. Cheek and Mr. Fullenwider should have been challenged, (FBOA, p. 95), and only in comparison to Jurors Partridge, Lowe, Estes and Van Der Plaat, (FBOA, p. 95).

Discussion:

As a first matter, and what could be considered a new and fourth attempt at a different *Batson* motion argument, appellant argues that Juror Partridge was then currently seeking PTI and the solicitor sought to seat her as an advantage after hearing her answers on *voir dire*. (FBOA, pp. 97-100; p. 102). That suggestion is neither relevant to the striking of another juror, evidence of a pattern of race discrimination, nor an argument made at the hearing. (FBOA, pp. 97-100). The argument on appeal is procedurally barred. *Dunbar, supra*. Further, it is wholly without merit. Defense counsel lobbied to keep her from being disqualified arguing the pending charge "cuts both ways" as she could "harbor a grudge" or "try to deliver a verdict that they would like." (R. p. 796, lines 2-18). The defense argued, "I just want to see who we have and if she can be fair and follow the law." (R. p. 796, lines 11-19). The defense, after hearing

all answers in the *voir dire* – which included responses that she could and would consider both penalties, a response she could stay firm in her decision while respecting discourse, and a response that she would report bullying or other bad behavior – the defense stated, "She's qualified, judge," while the State thereafter agreed, (R. p. 832, lines 12-15). But again, it is procedurally barred as it was not presented to the judge at trial.

Next, appellant's argument the "defense correctly challenged the state's striking of three black men," is inconsistent with his own issue presented which only challenges the strikes of Jurors Cheeks and Fullenwider. (FBOA, p. 102). While defense counsel at trial originally included Mr. Linsey, who was struck based on his responses just like the other two challenged jurors, the appellant has not included that strike challenge in his issue on appeal. (FBOA, p. 95). His argument on same has been abandoned. At any rate, the allegation of error is without merit. The trial judge afforded trial counsel ample opportunity to make their arguments, opening the argument after ruling not once but twice. The defense, however, could not carry their burden of showing discriminatory intent as there was none.

Analysis

In *Batson v. Kentucky,* 476 U.S. 79, 106 S.Ct. 1712 (1986), the Supreme Court of the United States found that the Equal Protection Clause prohibits a prosecutor from striking a juror on the basis of race. In *Georgia v. McCollum,* 505 U.S. 42, 59, 112 S.Ct. 2348 (1992), the Supreme Court extended that prohibition to defendants. In *J.E.B. v. Alabama ex rel T.B.,* 511 U.S. 127, 143, 114 S.Ct. 1419 (1994), the Court again extended *Batson* protections to gender discrimination.

"Whether a *Batson* violation has occurred must be determined by examining the totality of the facts and circumstances in the record." *State v. Shuler*, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001). A reviewing court must afford "the trial judge's finding great deference on appeal" and will reverse only where "clearly erroneous." *Id.* "A finding is clearly erroneous if it is not supported by the record." *Id.*, at 620, 545 S.E.2d at 813.

The structure for pursuing a *Batson* challenge is well-settled and contains a three-step process. First, upon a *prima facie* showing of an improper strike, the trial court will require the opponent of the challenge to state his or her reason for the strike. *Purkett v. Elem*, 514 U.S. 765, 767, 115 S. Ct. 1769 (1995). The Supreme Court described a *prima facie* case as showing a pattern of striking specific jurors, or statements indicating discriminatory intent, or other circumstance that may similarly reflect same. *Batson*, 476 U.S. at 97. In this jurisdiction, "the trial judge must hold a *Batson* hearing when members of a cognizable racial group or gender are struck and the opposing party requests a hearing." *State v. Haigler*, 334 S.C. 623, 629, 515 S.E.2d 88, 90 (1999). If this *prima facie* case is shown, the process moves to step two.

Here, two members of the same cognizable racial group were struck. Thus, the trial judge held a hearing on the matter, prompting the next step.

In step two, the party's against whom the motion is made must offer his reasons for the strikes. *Purkett v. Elem, supra*. The reason "need not be persuasive, or even plausible, but it must be clear and reasonably specific such that the opponent of the challenge has a full and fair opportunity to demonstrate pretext in the reason given and the trial court to fulfill its duty to assess the plausibility of the reason in light of all the

evidence with a bearing on it." *State v. Giles*, 407 S.C. 14, 21-22, 754 S.E.2d 261, 265 (2014).

The State, however, presented clear and specific reasons showing that the strikes were proper. Consequently, since the reasons pass constitutional muster, *i.e.* are not plainly indicative of strikes based upon an improper, discriminatory reason, the trial judge proceeding to the third and final step of the *Batson* structure.

In step three, the movant under *Batson* must offer some cause to challenge the strike. Often, this is done by a comparative juror analysis. If the party can show a similarly situated juror of another race (or gender) was seated, the party may be able to show discriminatory intent. *See Miller–El v. Dretke,* 545 U.S. 231, 241, 125 S.Ct. 2317 (2005) ("If a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at *Batson* 's third step."). However, the potential jurors compared need not be "identical in all respects." *Id.*, 545 U.S. at 247 n. 6, 125 S.Ct. 2317. Rather, the compared potential jurors must be similar "in all relevant aspects." *State v. Scott*, 406 S.C. 108, 115, 749 S.E.2d 160, 164 (Ct.App. 2013). Stated differently, the trial judge must determine if "there are meaningful distinctions between the individuals compared." *Id.* Further, inconsistency may be explained by other non-discriminatory reasons. *Id.*, 406 S.C. at 116-17, 749 S.E.2d at 165. "The burden of persuading the court that a *Batson* violation has occurred remains at all times on the opponent of the strike." *Haigler,* 334 S.C. at 629, 515 S.E.2d at 91.

Lastly, credibility is essential in evaluating the reasons offered by both the movant and the responding party. The Supreme Court has recently noted once again the

tremendous deference due the trial judge, especially in a capital case where "it is not surprising for prospective jurors to express varying degrees of hesitancy about voting for a death verdict" and both parties "may be required to make fine judgment calls about which jurors are more or less willing to vote for the ultimate punishment." *Davis v. Ayala*, ___ U.S. ___, 135 S. Ct. 2187, 2201, 192 L. Ed. 2d 323 (2015). Decisions to strike "may involve a comparison of responses that differ in only nuanced respects, as well as a sensitive assessment of jurors' demeanor." *Id.* "A trial court is best situated to evaluate both the words and the demeanor of jurors who are peremptorily challenged, as well as the credibility of the prosecutor who exercised those strikes." *Id.*

The trial judge here noted that the real issue was a subjective impression of each party in the evaluation of the answers the jurors gave in the extended *voir dire*. As the solicitor clearly argued, he considered the jurors as a whole and the critical factor in any of his strikes was his perception of the responses. Appellant's selective view of the juror's background, and intent to paint the solicitor in any negative light, is obvious in the argument on appeal, but lacks persuasion for those same reasons. For instance, appellant makes strong assertions that the State wanted Ms. Partridge on the jury so she would be beholden to the State in an effort to obtain PTI, yet there was much more to her background and testimony.

The State informed the court and defense counsel before questioning that she had admitted guilt, and was attempting to enter PTI on a charge in the county. (R. p. 795, lines 3-13). As noted before, the State had attempted to have Ms. Partridge disqualified based on the yet resolved charge, but the defense requested she stay. (R. p. 795, line 23 – p. 797, line 15). Ms. Partridge testified during *voir dire* that she had both been a victim

of fraud and had a pending charge being prosecuted. (R. p. 828, line 22 – p. 830, line 17). Ms. Partridge testified that she knew Heather's principle, Ms. Sima, who would later testify in sentencing, and that Ms. Sima had been a complainant. (R. p. 831, lines 6-14). She firmly stated, however, that she had the "utmost respect" for her and she considered her difficulties with separate. (R. p. 831, lines 16-24). Even though there was a legitimate concern that the juror could be anti-prosecution, the State took the answers as a whole and agreed with the defense she was qualified. Rather than supporting appellant's conjecture of evil intent, this particular juror's treatment shows the State's balanced and fair treatment of jurors, and also shows the relative subjectivity referenced by the trial judge.

As far as convictions comparisons alone, if one would separate the analysis of the juror's presentation as a whole, there are still some substantial and material differences.

Ms. Partridge's offense was a charge and was minor enough to qualify for PTI. (R. p. 795, lines 3-13).

Mr. Lowe, who was originally thought to have charges that were dismissed (which is different on its own, see R. p. 2317, lines 11-14), actually didn't have any charges at all, as the defense later admitted. Their records were for an individual with a different date of birth. (R. p. 2327, lines 8-16).

Mr. Estes had a CDV conviction, (R. p. 2316, lines 24-2), but Mr. Fullenwinder had a gun charge, shoplifting, and several drug charges, (R. p. 2327, line 19 – p. 2328, line 10), and Mr. Cheeks was not struck for his CDV conviction. The solicitor plainly stated he was struck for his responses indicated he had a doubt, he would not sign a form returning a death sentence. (R. p. 2315, lines 12-14). Though the solicitor would note

that Mr. Cheeks had a CDV conviction as well, that was not the reason for the strike and to parse it out is not a fair reading of the response. (R. p. 2315, lines 12-16).

Further, appellant apparently argues that judge clearly erred in accepting the "pro-life" assessment. However, appellant's argument is wholly rebutted by the record.

As to Mr. Cheeks, the solicitor noted he responded if he *a* doubt, he would not sign. Mr. Cheeks responded in *voir dire*: "It it's a doubt in my mind that he don't deserve it, I'm not gonna say he deserves it. ... I'm gonna say he don't deserve it." (R. p. 1649, lines 16-20). He later stated, "I would not sign it. If there's any doubt in my mind, I would not sign it." (R. p. 1650, lines 7-8). That testimony directly supports the solicitor's stated reason for the strike. Additionally, the remaining testimony similarly shows a tendency to favor a life sentence instead of a balance approached to either sentence depending on the circumstances.[41] (See, for example, R. p. 1651, lines 2-4, considered a

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[41] Appellant's offered criticism that all solicitors "frown upon a juror thinking that life imprisonment without parole is worse than death for obvious reasons as they attempt to obtain a death sentence," (FBOA, p. 97, n.10), is simply a wholesale generalization that fails to account for any difference of opinion as what actually constitutes the "worse" sentence. Further, appellant misses two critical points, 1) that striking an individual for his perception on the "worse" sentence is a race and gender neutral reasons to exercise a strike; and 2) the victim, the victim's family, and the State deserve a fair trial. If it is indicated, in the solicitor's judgment, that an individual is pre-disposed to favor a sentence, that is a clear and proper reason to exercise a strike in an effort to secure a fair jury – just as defense counsel would surely strike an individual who leans toward death as a general rule or as the worse sentence. As Justice O'Connor wrote:

> Peremptory challenges are limited in number. Each party, the prosecutor, and the defense counsel, must balance a host of considerations in deciding which jurors should be peremptorily excused. Permitting prosecutors to take into account the concerns expressed about capital punishment by prospective jurors, or any other factor, in exercising peremptory challenges simply does not implicate the concerns expressed in *Witherspoon*.

life sentence "severe enough punishment sometimes for murder"). Further, the juror considered the justice system "sometimes fair, sometimes not," and specifically, "like with the death penalty, I read stories or heard stories of some people being killed and really didn't deserve to be killed." (R. p. 1643, lines 10-17). The State agreed, however, that he was qualified on the whole, but the solicitor – before any mention of selection or *Batson* or a comparative juror analysis – placed on the record, "I agree, even though I don't like his view of the death penalty about the innocence and stuff." (R. p. 1654, lines 17-19). There could be little credible argument that solicitor made this statement *just in case* he later hoped to discriminate on the basis of race or gender if an opportunity should arise.

Additionally, appellant's argument fails to appreciate the clear differences in the testimony in *voir dire* by attempting to equate Mr. Van Der Plaat's responses on "innocents" in the system with Mr. Cheeks. Mr. Cheeks related his belief, from stories that he had read, that some people have been killed who didn't deserve it – not clearly a statement on innocence, but clearly a statement of what is true, in his opinion. (R. p. 1643, lines 10-19). Mr. Van Der Plaat indicated that he had a *fear* that an individual who "is indeed innocent, but somehow, through misfortune or whatever else ... they can't prove that and we put someone innocent to death. ... that would bother me if I ever found out" however, he asserted "there are people in this society that really could pose a threat, and maybe the only way, you know, to deal with them is to put them to death." (R. p. 1283, lines 10-22). There was no belief that someone had not deserved their sentence,

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Brown v. N. Carolina, 479 U.S. 940, 107 S. Ct. 423, 424 (1986) (J. O'Connor, concurring). *See also State v. Johnson*, 306 S.C. 119, 123-24, 410 S.E.2d 547, 550 (1991) (citing Justice O'Connor's concurrence in *Brown v. North Carolina*).

but a healthy critical thought of what if he was wrong in a given case. The two jurors' presentation of their thought processes simply cannot be fairly equated.

In sum, the record fully and fairly supports the race neutral reasons for striking the jurors. Appellant has shown no error, much less clear error by the trial judge in crediting the solicitor's responses in light of the record.

Appellant's argument to the contrary should be rejected.

VII.

The defense failed to exercise a peremptory strike and is procedurally barred and/or has waived the issue of qualification. Even so, the record supports that the trial judge did not abuse his discretion in qualifying Juror #43, Donna Champion, where her responses, when viewed correctly as a whole, indicated she could be a fair and impartial juror.

Relevant Facts:

The trial judge questioned Juror #43, Ms. Champion, who confirmed that she would follow the law as given to her. (R. p. 686, line 10 – p. 687, line 4). The juror confirmed to the trial judge that she understood that the only burden was on the State to prove the allegations. (R. p. 687, lines 17-23). The juror's answers evidenced some difficulty in understanding the questions posed, but the trial judge repeated the questions until each understood the other. (R. p. 687, line 24- p. 691, line 11). The juror indicated that she would make up her mind only on the evidence, and could consider either a life sentence of a sentence of death. (R. p. 696, lines 5-24). Further she acknowledged that in sentencing, you have to "take into account" mitigating factors, "but, on the other hand, nobody told you to do these ... things." She concluded, "So, I mean I guess ... you have to hear everything and work it out." (R. p. 708, lines 10-14).

Within the defense question, defense counsel asked if a defendant would have to prove he should receive a life sentence, and questioned if the juror understood the burden of proof as instructed by the trial judge; however, the state objected and the trial judge asserted he had not charged anything about the burdens in sentencing. (R. p. 708, line 19 – p. 710, line 11). When asked next if she would "start at death and require the defense to show a reason" for life, the juror answered "it would have to be proved either way." (R. p. 710, lines 17-20).

The solicitor told the juror that the State had to prove aggravating circumstances beyond a reasonable doubt, but the defense did not have to prove mitigation. He asked if she would listen to those mitigating circumstances. She replied, "Yes, sir, I would listen to everything and take everything into account." (R. p. 716, lines 18-24). He confirmed with the juror whether she understood the defense did not have to prove anything mitigating, and she replied she did. (R. p. 716, line 25 – p. 717, line 3). Further, she stated, "... I would have to take everything into account I mean before I can sentence somebody to death. I mean I would have to hear everything, you know," and said she confirmed that she was not "predisposed to death just because it's a death penalty case." (R. p. 717, lines 11-13). She indicated she could consider either sentence. (R. p. 717, lines 17-25).

The defense argued she was a "burden shifter" who would reject certain categories of information and should not be found qualified. (R. p. 719, lines 5-11). However, the trial judge, while noting that she did at times have answers indicating "she may require someone to prove something to avoid death," in fairness, she had not yet been instructed on sentencing burden, and she indicated she would follow the law as given to her. (R. p. 720, lines 13-21). The judge was also persuaded that the juror "made it clear, on several - - on many occasions, that she would have an open mind on the, during the sentencing and - - proceeding and would consider both aggravating and mitigating circumstances." (R. p. 720, line 22 – p. 721, line 3). Further, the trial judge considered the juror's demeanor while testifying. (R. p. 721, line 5). The solicitor had noted the juror took all the questioning very seriously, giving the proper "weight" to the capital proceedings. (R. p. 720, lines 7-11). (See also R. p. 714, line 25- p. 715, line 2,

answering question as to how she would feel on making an individual decision as to "whether or not a person lives or dies," she responded, "It's really hard. It's nerve racking to have somebody's life in your hands, and you hope you can only make the best decision for the case."). The trial judge concluded based on her responses and her demeanor during *voir dire*, that she was qualified. (R. p. 721, lines 4-7).

At the time Ms. Champion was called, the defense still had four of their ten strikes available. They did not seek to use a peremptory strike. (R. p. 4804, lines 12-17).

Appellant argues the trial judge erred when he considered instruction on the law "could transform an unqualified juror into a proper one...." (FBOA, p. 10).

Discussion:

As a first matter, this issue should be considered either procedurally barred and/or waived. While case law requires that all strikes be exhausted before an argument may be made against a seated juror, *see State v. Tucker*, 324 S.C. 155, 162, 478 S.E.2d 260, 264 (1996), this juror was not seated because of exhausted strikes. Rather, the defense still had not one, not two, not three, but four more of their ten strikes available when Ms. Champion was called. (R. p. 4804, lines 12-17). If not procedurally barred, the issue should be subjected to a waiver analysis in these discrete circumstances where counsel exercises professional judgment in using his strikes but determines not to strike the juror at issue. *Cf. State v. Torrence*, 305 S.C. 45, 65, 406 S.E.2d 315, 326 (1991) (discouraging structure that allows counsel to hold back an issue for appeal). At bottom, the fault if any lies in his decision not to use one of his strikes, not with qualification. At any rate, the record supports the trial judge's exercise of discretion.

"[A] prospective juror may be excluded for cause when his views on capital punishment are such as would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." *State v. Sapp*, 366 S.C. 283, 290-291, 621 S.E.2d 883, 886 (2005) (citing *Wainwright v. Witt*, 469 U.S. 412, 424, 105 S.Ct 844 (1985)). "The ultimate consideration is that the juror be unbiased, impartial, and able to carry out the law as explained to him." *Sapp*, 366 S.C. at 291, 621 S.E.2d at 887.

"The determination whether a juror is qualified to serve in a capital case is within the sole discretion of the trial judge and is not reversible on appeal unless wholly unsupported by the evidence." *State v. Evins*, 373 S.C. 404, 418, 645 S.E.2d 904, 911 (2007). *See also State v. Longworth*, 313 S.C. 360, 365, 438 S.E.2d 219, 222 (1993); *State v. Bell*, 302 S.C.18, 23, 393 S.E.2d 364, 367 (1990). "Deference must be paid to the trial court who sees and hears the juror." *Evins*, 373 S.C. at 418, 645 S.E.2d at 911 (citing *State v. Green*, 301 S.C. 347, 392 S.E.2d 157(1990)).

Appellant's argument rests on parsed statements taken out of context which is contrary to settled law and unsupportive of error. The instant passage from *State v. Gilbert* is instructive:

> This Court will not consider only isolated statements made during voir dire but will examine the entire colloquy with the venireman in order to review his qualifications. Having done this, it is clear that the challenged juror was properly qualified. When questioned by the trial judge subsequent to confusing inquiries made by appellants' trial counsel, the juror stated that she would give due consideration to any mitigating factor that the court instructed her to consider.

277 S.C. 53, 56-57, 283 S.E.2d 179, 108-81 (1981).

Like the issue in *Gilbert*, when the whole of the answers are reviewed in the instant matter, the record supports the juror would abide by the judge's instructions on the law, and would make a sincere judgment on whether the sentence should be life or death. The trial judge properly considered this juror's responses as a whole and the seriousness of her demeanor.

In capital *voir dire* proceeding, the parties and the prospective jurors will naturally engage in dialogue. Most all prospective jurors are being requested to answer broad questions about concepts and procedures that they know little or nothing about. It should be expect that many of the answers will demonstrate that disadvantage. *See, for example, State v. Bell*, 302 S.C. at 25, 393 S.E.2d at 368 ("The other two jurors initially misunderstood the bifurcation of the trial, but later, after clarification, responded that they could impose either the death penalty or a life sentence. The trial judge, therefore, did not abuse his discretion in qualifying the challenged jurors."); *State v. Green*, 301 S.C. at 354-55, 392 S.E.2d at 161 ("With regard to Mr. Brown, we find that while his responses indicated some confusion on his part, he demonstrated the ability to consider all evidence before reaching a decision."). The *voir dire* process should be used to uncover real issues with juror qualification. A juror should not be disqualified just because a party may simply point to a few missteps in the dialogue. *Id.*

In short, a juror's answers should be considered in light of their lack of training in the law, and the lack of instruction by the court, when considering qualification. The trial judge is in the best position to determine if the suspect answer is disqualifying or whether the jury can be fair. *See State v. Dickerson*, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011) ("The circuit judge was more persuaded by the juror's consistent affirmation he

would follow the law and wait to hear all of the evidence than by his apparent confusion over the State's burden, and we believe his ultimate determination of Juror 370's qualification to serve is supported by the record."); *Green*, 301 S.C. at 354, 392 S.E.2d at 161 ("we find that while his responses indicated some confusion on his part, he demonstrated the ability to consider all evidence before reaching a decision").

Appellant is mistaken that the juror's response ultimately indicated she would hold appellant to a burden of proof. When read as a whole, the responses show a juror who was attempting to be as fair as possible in answer the specific questions posed to her. The only misstep was when the juror was asked a specific question, by the defense, suggesting a burden of proof. The defense then relied on a response to their own questioning which may be read (or heard) to suggest the incorrect answer. When directly questioned, the juror had no issue with following the correct law. Further, no one has challenged the juror's sincerity and her noted very serious consideration of the questions posed. Again, any simple, and understandable, missteps in the dialogue should not render her unqualified.

Appellant has failed to show an abuse of discretion. His argument to the contrary should be rejected.

CONCLUSION

For all the foregoing reasons, Respondent, the State, submits that the rulings, convictions and judgment of the lower court should be affirmed. However, if the Court should find issues 1 and/or 2 are not procedurally deficient on this record or simply without merit, this Court should remand to the trial judge to allow for development of factual findings, specific conclusions of law, fair litigation of the witness's assertion of privilege, and a ruling on the appropriate treatment of the records.

Respectfully submitted,

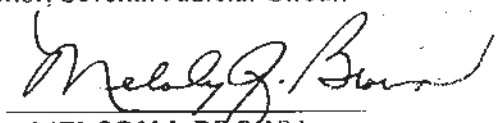
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March 7, 2016
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STATE OF SOUTH CAROLINA
In the Supreme Court

CAPITAL CASE
APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
Roger L. Couch, Circuit Court Judge

The State of South Carolina, Respondent,

v.

Ricky Lee Blackwell, Appellant

Appellate Case No. 2014-000610

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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STATE OF SOUTH CAROLINA

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Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICKY LEE BLACKWELL,

APPELLANT

APPELLATE CASE NO. 2014-000610

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BLACKWELL V. STATE
APPLICANT'S EXHIBIT
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In Davis v. Alaska, Richard Green was a witness for the prosecution in a burglary case arising from the stealing of a safe from a bar. Green made a hasty identification of Davis as the man he saw with the crowbar standing near the suspected vehicle. The defense sought to show the jury Green's bias in identifying Davis since Green was on probation by order of the juvenile court for two prior burglaries. The prosecution sought a protective order to prevent any reference to Green's juvenile record on cross-examination. The defense argued it did not want to introduce Green's juvenile record as general impeachment of his character, but rather to "show – or at least argue – that Green acted out of fear or concern of possible jeopardy to his probation." Davis v. Alaska, 415 U.S. at 311-312.

The trial court granted the motion for a protective order under the applicable Alaska statute. The United States Supreme Court noted that defense counsel for petitioner Davis did his best to expose Green's state of mind but Green was able to "hide behind" the protective order, and Green even denied that he had ever been questioned before by law enforcement. Davis v. Alaska, 415 US. At 313. The Supreme Court wrote that:

> "The tension between the right of confrontation and the State's policy of protecting the witness with a juvenile record is particularly evident in the final answer given by the witness. Since it is probable that Green underwent some questioning by police when he was arrested for the burglaries on which his juvenile adjudication of delinquency rested, the answer can be regarded as highly suspect at the very least. The witness was in effect asserting, under protection of the trial court's ruling, a right to give a questionably truthful answer to a cross-examiner pursuing a relevant line of inquiry; it is doubtful whether the bold 'No' answer would have been given by Green absent a belief that he was shielded from traditional cross-

> examination. It would be difficult to conceive of a situation more clearly illustrating the need for cross-examination. The remainder of the cross-examination was devoted to an attempt to prove that Green was making his identification at trial on the basis of what he remembered from his earlier identifications at the photographic display and lineup, and not on the basis of his February 16 confrontation with the two men on the road."

Davis v. Alaska, 415 U.S. at 314.

The Supreme Court further held that "Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested. Subject always to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation, the cross-examiner is not only permitted to delve into the witness' story to test the witness' perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, i.e., discredit, the witness." Davis v. Alaska, 415 U.S. at 316.

Further, "A more particular attack on the witness' credibility is affected by means of cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand. The partiality of a witness is subject to exploration at trial, and is 'always relevant as discrediting the witness and affecting the weight of his testimony.' 3A J. Wigmore, Evidence s 940, p. 775 (Chadbourn rev. 1970). We have recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination." Davis v. Alaska, 415 U.S. at 316-17.

The Supreme Court held that it could not accept the conclusion of the Alaska Supreme Court that the permitted cross-examination was "adequate to develop the issue

of bias properly to the jury." Davis v. Alaska, 415 U.S. at 317. "The State's policy interest in protecting the confidentiality of a juvenile offender's record cannot require yielding of so vital a constitutional right as the effective cross-examination for bias of an adverse witness." Davis v. Alaska, 415 U.S. at 320.

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Issue 3

This Court Should Ignore the State's Desperate "Mootness" Argument.

The desperation of the state's "mootness" argument betrays its lack of confidence in the merits of its position. The trial judge ruled that appellant is eligible for the death penalty because he is not mentally retarded. Appellant has appealed the trial judge's ruling. The state claims that this Court cannot review the trial judge's finding because the jury considered this issue. The state calls the trial judge's ruling "moot." Brief of Respondent at 67.

If the state's "mootness" argument is correct, then much of this Court's jurisprudence—and that of the United States Supreme Court—will need to be overruled. For example, because a jury ultimately decides the voluntariness of a statement, a trial judge's ruling in a hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964) would be moot and unreviewable. Because a jury ultimately decides whether to credit a witness's identification of a defendant, a trial judge's ruling in a hearing pursuant to Neil v. Biggers, 409 U.S. 188 (1972) would be moot and unreviewable. Because a jury decides whether a defendant is entitled to acquittal on a theory of self-defense, a trial judge's pretrial immunity determination under the Protection of Persons and Property Act would be moot and unreviewable. State v. Isaac, 405 S.C. 177, 747 S.E.2d 677 (2013). Because a jury ultimately decides whether the state meets its burden of proof, a trial judge's decision on a defendant's motion for directed verdict would be moot and unreviewable.

Under the state's theory, the United States Supreme Court's recent mental retardation decision reversing a death sentence in Hall v. Florida, 134 S.Ct. 1986, 1990-

91 (2014), which the state inexplicably cites in its preservation argument, was wrongly decided because Hall presented "substantial and unchallenged evidence of intellectual disability" to a jury which sentenced him to death. This Court set forth our state's Atkins procedure in Franklin v. Maynard, 356 S.C. 276, 279, 588 S.E.2d 604, 606 (2003). "If the judge finds the defendant to be mentally retarded in the pre-trial hearing, the defendant **will not be eligible** for the death penalty." Franklin at 279, 588 S.E.2d at 606 (emphasis added). The pre-trial eligibility ruling is separate from the jury's determination. Id. at 279, n.5, 588 S.E.2d at 606, n.5. The state's "mootness" argument is frivolous. This Court should view the state's willingness to make such an argument as a strong indicator that it has no confidence in the trial judge's ruling.

The State Urges This Court to Ignore Expert Testimony and Methodology

The state's argument invites this Court to ignore the testimony of the experts. While claiming that the trial judge's conclusion that appellant was not mentally retarded did not rest primarily on appellant's short and checkered history as a truck driver, the state invites the Court to make *exactly the same conclusion.* Brief of respondent at 78, n.25. Referring to appellant's possession of a commercial driver's license, the state argues, "The fact that it is significantly difficult to obtain the specialized license weighs in favor of finding appellant was not mentally retarded." Brief of respondent at n.25. Both the defense expert and the court's expert agreed that when assessing the adaptive functioning prong of mental retardation, work history is only one of multiple areas that must be considered. R. 3920, l. 3 – 3937, l. 16. R. 4190, ll. 2-8. Appellant's relative strength in the area of work does not make him eligible for the death penalty. This Court should reject the state's simplistic approach.

A recent unanimous summary reversal of an Alabama decision by the United States Supreme Court illustrates the folly of the state's argument. See Lane v. Alabama, 136 S.Ct. 91 (Oct. 5, 2015) (vacating and remanding for further consideration in light of Hall v. Florida, 134 S.Ct. 1986 (2014)) *opinion below:* Lane v. State, 169 So.3d 1076 (Ala. Crim. App. 2013). The Alabama trial judge and appellate court disregarded the uncontradicted expert testimony that Lane was mentally retarded. Lane, 169 So.3d at 1090-94. The United States Supreme Court's summary reversal in light of Hall demonstrates that courts are not free to disregard expert testimony regarding mental retardation and cherry-pick facts supporting a conclusion that ignores scientific standards.

A comparison of the facts of Lane with appellant's case is compelling. Lane's IQ was 70 and the trial court ruled that he met the first prong of Atkins—"subaverage intellectual functioning." Lane, 169 So.3d at 1089. The trial court concluded that Lane did not prove the adaptive functioning prong. Id. The adaptive functioning prong was the only issue before the appellate court with respect to Lane's Atkins claim. Id.

At the Atkins hearing, Lane presented two witnesses: his sister and a clinical neuropsychologist. Id. at 1089. The prosecution presented no witnesses. Id. at 1091. Lane's sister testified that he "had never been gainfully employed, had never been able to handle his own finances, and depended on family to handle his money." Id. at 1089. Lane's expert testified that he had deficits in adaptive functioning in ten areas. Id. at 1090. His findings were based on interviews with Lane and Lane's family. Id. Lane read at a third-grade level. Id. The expert had not been able to obtain Lane's school records. Id.

Ignoring the only expert testimony before it, the trial court concluded that Lane was not mentally retarded. Id. at 1090-91. The trial judge emphasized the facts of the crime—that he stalked the victim. Id. The trial judge also relied on rap lyrics written by Lane. Id. Based primarily on these facts, the trial judge concluded that the expert's testimony did not prove Lane met the adaptive functioning prong. Id. The appellate court agreed with the trial court's assessment and added that Lane's "statement to police indicated that he was able to communicate, that he was able to care for himself, and that he had a group of friends that he 'chilled' with every other day." Id. at 1092.

The United States Supreme Court summarily reversed in light of Hall. Lane, 136 S.Ct. at 91. The errors committed by the Alabama courts are analytically the same as the error committed by the trial judge and urged upon this Court by the state: ignoring expert methodology. The Alabama courts cast aside the only expert testimony regarding adaptive functioning and fashioned their own measurement of this prong of Atkins.

A similar state court error was reversed by the United States Supreme Court even under the strict review of federal habeas. Brumfield v. Cain, 135 S.Ct. 2269 (2015). In Brumfield, Louisiana denied the defendant funds for experts and an evidentiary hearing on his Atkins claim. The district court concluded the state court decision was unreasonable, but the Fifth Circuit reversed. Brumfield, 135 S.Ct. at 2275-76. The Supreme Court reversed the Fifth Circuit, noting evidence the defendant had been in special education classes and could "barely read at a fourth-grade level" demonstrated a likelihood of deficits in adaptive functioning. Id. at 2280. The district court, after concluding the state court's decision was unreasonable, held its own evidentiary hearing

and held the defendant was mentally retarded. Brumfield v. Cain, 854 F.Supp2d 366, 384-406 (M.D. La. 2012).

The Fifth Circuit recently affirmed the district judge's finding of mental retardation after remand from the Supreme Court. Brumfield v. Cain, ___ F.3d ___, No. 12-30256 (5th Cir. Dec. 16, 2015). Much like appellant's case, the state's experts performed little or no investigation of adaptive functioning while the defense expert used the ABAS to interview people who knew the defendant. Id. at 17-18. Following the dictates of Hall, the Fifth Circuit stated that the question of mental retardation "is heavily informed by clinical standards and guidelines." Id. at 27. As commanded by Hall, the courts in Lane and Brumfield followed the experts' methodology and concluded those defendants were mentally retarded.

The trial court in appellant's case erred in deviating from the methodology of the experts. Here, the trial court gave more credence to its own method for scoring the ABAS than that of both Dr. Calloway and Dr. Brown. R. 4131, l. 5 – 4133, l. 10. R. 4172, l. 25 – 4173, l. 5. See State v. Agee, ___ P.3d ___, 2015 WL 7774300 at *14-16 (Ore. Dec. 3, 2015) (vacating death sentence because trial court failed to use current standards for assessing adaptive functioning which require the use of a clinician's judgment). The trial court's crediting of Dr. Brown's report as opposed to Dr. Calloway's report cannot be based on Dr. Calloway's use of the ABAS—because it is the exact same test used by Dr. Brown. Dr. Brown admitted he did no independent investigation because he lacked the time and resources. R. 4166, l. 24 – 4167, l. 10. Dr. Brown agreed that Dr. Calloway's investigation into appellant's background was "extensive." R. 4166, l. 24 – 4167, l. 10. The trial judge contradicted himself by

questioning Dr. Calloway's results because she did not give the ABAS to enough people when Dr. Brown only gave the ABAS to one person—appellant. Supp. R. 10, ¶ 20. R. 4145, ll. 14-17. The trial court's ruling that appellant did not meet the adaptive functioning prong of Atkins is without evidentiary support.

On appeal, the state does not seriously contest that appellant met the intellectual functioning prong. Brief of respondent at 80, n.29. The experts measured appellant's IQ at 63 (Calloway) and 68 (Brown). R. 4245, l. 25 – 4246, l. 4. R. 4192, ll. 9-12. While couching its argument in terms that appear to contest this part of the Atkins inquiry, upon closer inspection the state's contentions all relate to the age of onset prong. Brief of respondent at 80, n.29.

The state's arguments concerning depression or a head injury amount to speculation. No dispute existed that appellant took special education classes. R. 4205, l. 24 – 4206, l. 2. No dispute existed that appellant was at a sixth grade level in math and reading at the age of eighteen. R. 4221, ll. 10-18. No dispute existed that appellant's family had a history of mental retardation. R. 4210, ll. 17-23. Dr. Brown agreed that IQ remains presumptively constant through life. R. 4194 ll. 1-15. See Brumfield, ___ F.3d ___, at 41 (finding that the defendant met the age of onset prong because it credited the experts' testimony that IQ scores remain stable over time, there was no evidence of any physical problem later in life, and "the family history of intellectual disability."); Branham v. Heckler, 775 F.2d 1271, 1274 (4th Cir. 1985) ("We must and do assume, therefore, that in the absence of any evidence of a change in plaintiff's intellectual functioning from the time of his back injury to the time of his IQ test, that he had the same or approximately the same IQ (63) at the time of his back injury on October 24,

1979 as he did at the time of his 1982 test."). Dr. Brown agreed that the notion that a four-wheeler accident, cancer, or alcohol use affected appellant's IQ was pure speculation. R. 4195, l. 8 – 4196, l. 15. R. 4246, ll. 11-22. See also Williams v. Mitchell, 792 F.3d 606, 621 (6th Cir. 2015). ("[The Ohio Court of Appeals] also ignored the medical community's determination, as adopted by the Supreme Court, that intellectual disability manifests itself before eighteen and remains consistent throughout a person's life.").

The state also urges the Court to adopt the trial court's legal error in heavily weighting the lack of a diagnosis of mental retardation before the hearing. Supp. R. 12, ¶ 25. Brief of Respondent at 82. The Florida Supreme Court recently reversed a trial judge for using this as a determining factor in concluding that a defendant was not mentally retarded. Oats v. Florida, ___ So.3d ___, No. SC12-749, at 25-27 (Fla. Dec. 17, 2015). The Florida trial court ruled that the defendant had not met the age of onset prong because there was a "'lack of diagnosis before 18.'" Id. at 25. The Florida Supreme Court reversed. Id. at 25-27. The court said, "Accepting the position that 'manifested' equates to 'diagnosed' would render the first two prongs of the statutory test for an intellectual disability moot, as the only way to find an intellectual disability would be if the diagnosis already existed by the age of 18." Id. at 26-27. Much like appellant, the defendant in Oats could only read at a grade-school level, always lived with family who took care of him, and was in special education classes in school Id. at 7, 13.

When all three prongs of the test for mental retardation are considered, appellant's case is strikingly similar to the Pennsylvania Supreme Court's recently decided PCR case of Commonwealth v. Vandivner, ___ A.3d ___, Op. No. 696 CAP (Pa. Dec. 29, 2015).

In Vandivner, the prosecution relied on evidence that the defendant was a truck driver and had a CDL. Vandivner at 14. The trial court ultimately ruled that appellant did not prove the age of onset prong and that finding was upheld on appeal. Id. at 16-17. At PCR, the defendant presented additional evidence regarding the special education classes he took as a child. Id. at 17-20. The defendant also demonstrated that his siblings had IQs of 72, 63, 74, and 74. Id. at 20-21. The PCR court denied relief, but the Pennsylvania Supreme Court reversed, holding that the defendant proved the age of onset prong. Id. at 32. Like the defendant in Vandiver, appellant's short career as a truck driver does not rebut the substantial evidence that he was mentally retarded.

The trial court reached its conclusion that appellant was not mentally retarded only by disregarding the complexity of the issue and the experts' testimony.[1] Hall instructs that courts may not use this approach. The Supreme Court's summary reversal of Lane and the Brumfield decisions demonstrate that Hall's instructions are in full force and are required by the Eighth Amendment. The trial court's methodology is rife with legal and factual errors. This Court should reverse and find appellant ineligible for the death penalty.

[1] The state's brief continually makes reference to Dr. Harrison's opinion that appellant was not mentally retarded, even though she admitted she: (1) did no testing, (2) performed no investigation, and (3) her testimony was not mentioned by the trial court. R. 3806, ll. 17-25. R. 3819, l. 21 – 3820, l. 1. R. 3820, ll. 2-3. R. 4238, ll. 3-5. Just as Judge Couch did, this Court should ignore Dr. Harrison's unsupported, conclusory opinion.

Issue 5

The Chaplains' Notes Were Admissible Under Both the Hearsay Exception for Business Records and as Mitigation Evidence under the Eighth Amendment.

The state incorrectly asserts that appellant's statements to the chaplains do not fall under the business record exception because they were not made for the purpose of medical diagnosis and treatment. Nothing about the note itself supports the state's assertion. R. 3386. The box at the top right corner states that it is a record from Spartanburg Regional's "Interdisciplinary Plan of Care." R. 3386. In addition to the chaplains' notes, the page also contains nurses' notes from Danielle Ward and Amy Knight. R. 3386. It contains assessments of precautions taken to prevent appellant from falling. R. 3386. It contains chronological notes of appellant's care. R. 3386. The chaplains' assessments were clearly available to appellant's doctors. R. 3386. Appellant's doctors not only needed to know his physical condition, but also his mental condition to assess him for depression and suicide potential.

Medical records such as these are admissible. See Todd v. Joyner, 385 S.C. 421, 425-26, 585 S.E.2d 595, 597-98 (2009). In Todd, an expert was allowed to read from notes in the medical records that, for example, contained hearsay that the plaintiff complained of headaches. Id. at 426 n.2, 685 S.E.2d at 597 n.2. This Court ruled that admission of the hearsay contained in the records was proper under 803(4), Statements for Purposes of Medical Diagnosis or Treatment. Id. Furthermore, under the business records rule, it is not only a diagnosis that is admissible, but acts, events, and conditions. Rule 803(6), SCRE. Appellant's statements to the chaplains that he "was struggling with

guilt" and "struggling with his actions" fall under acts, events, and conditions as well as information necessary for a diagnosis. Nothing about the preparation of the chaplains' notes indicates a "lack of trustworthiness" under the rule. Rule 803(6), SCRE.

The inability of the state to show that the records have a "lack of trustworthiness" is precisely why the Eighth Amendment also compels their admission. Reliable hearsay is admissible in a capital sentencing proceeding. See Sears v. Upton, 561 U.S. 945, 950 n.6 (2010). ("[W]e have also recognized that reliable hearsay evidence that is relevant to a capital defendant's mitigation defense should not be excluded by rote application of a state hearsay rule.") To the extent any question about admissibility exists, the Eighth Amendment requires that it be resolved in appellant's favor during the sentencing phase.

The state also ignores that hearsay of a similar nature—appellant's statements concerning lack of remorse made to a police officer at the hospital—was admitted; however, appellant's statements showing remorse made to a chaplain at the hospital were excluded. Both are hearsay statements against interest. A statement made to a chaplain is no less reliable than a statement made to a police officer. Even business records compiled by prison guards concerning a defendant's behavior have been held admissible by this Court in a capital sentencing proceeding. State v. Owens, 378 S.C. 636, 639-40, 664 S.E.2d 80, 81-82 (2008). The fact that the best evidence of the statement was made in a business record a chaplain made contemporaneously with her duties at the hospital is not sufficient to cause its exclusion, especially where the hearsay statement to the police officer was admitted. The Eighth Amendment further compels the result that appellant should have been allowed to rebut Detective Williams' testimony. Under Rule 803(6), the availability of the declarant is immaterial as long as a records custodian can lay a

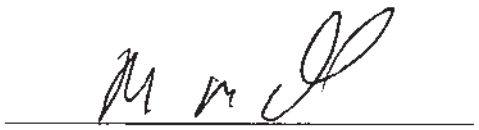
proper foundation for the records. Rule 803(6), SCRE. Appellant's proffer met the foundational requirements for this exception.

The state's harmless error argument also fails because the evidence of remorse from the chaplains would have been viewed as coming from a neutral observer lacking any motive to aid appellant. The evidence of remorse which the state claims makes the chaplains' notes cumulative came from an expert witness and appellant's family—people more likely to be perceived as biased by the jury. Furthermore, appellant's expression of remorse to the chaplains was made near the time of the statements allegedly made to Detective Williams. The error was also not harmless because any one juror may vote for a life sentence "for any reason or no reason at all." State v. McClure, 342 S.C. 403, 409, 537 S.E.2d 273, 275, 276 (2000). This evidence was absolutely necessary to rebut Detective Williams' testimony and the Eighth and Fourteenth Amendments required its admission.

CONCLUSION

By reason of the arguments in appellant's brief, and in this reply brief, appellant's convictions should be reversed and this case remanded to the Spartanburg County Court of General Sessions for a new trial. In the alternative, appellant should be granted a new sentencing trial.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

David Alexander
Appellate Defender

ATTORNEYS FOR APPELLANT.

This 7th day of March, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 7th, 2016

Robert M. Dudek
Chief Appellate Defender

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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICKY LEE BLACKWELL,

APPELLANT

CERTIFICATE OF SERVICE

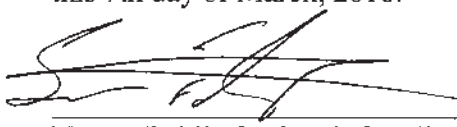
The undersigned attorney hereby certifies that a true copy of the Redacted Final Reply Brief of Appellant in the above referenced case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of March, 2016.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 7th day of March, 2016.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

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RECEIVED
SEP 12 2016
S.C. SUPREME COURT

September 12, 2016

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

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

Dear Mr. Shearouse:

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

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

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

Sincerely,

David Alexander
Appellate Defender

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

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
72
CASE NO. 2018-CP-42-00928

Supreme Court of Florida

No. SC10-1335

FREDDIE LEE HALL,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

RECEIVED
SEP 12 2016
S.C. SUPREME COURT

[September 8, 2016]

PER CURIAM.

This case comes before this Court on remand from the decision of the United States Supreme Court in Hall v. Florida, 134 S. Ct. 1986 (2014). In our previous decision in Hall v. State (Hall IX), 109 So. 3d 704 (Fla. 2012), we affirmed the Fifth Circuit court's denial of Hall's postconviction motion, holding that our interpretation of section 921.137(1), Florida Statutes, in Cherry v. State, 959 So. 2d 702, 712-13 (Fla. 2007), was proper. We concluded that because Hall failed to establish that his IQ was below 70, the circuit court properly denied his claim. The United States Supreme Court reversed our decision, holding that our decision interpreted section 921.137 so narrowly that it precluded sentencing courts from

considering substantial evidence that is accepted by the medical community to be probative of intellectual disability.

Following the Supreme Court's decision in Hall v. Florida, on July 25, 2014, we granted Hall's motion for supplemental briefing. After careful consideration of the parties' briefs, the voluminous record, and the United States Supreme Court's decision, we withdraw our prior opinion and conclude that Hall has demonstrated that he meets the clinical, statutory, and constitutional requirements to establish that his intellectual disability serves as a bar to execution. Accordingly, we reverse the circuit court's order denying postconviction relief, vacate Hall's sentence of death, and remand for imposition of a life sentence.

FACTS

Freddie Lee Hall was tried and convicted in Putnam Country for the 1978 murder of Karol Hurst.[1] Hall v. State (Hall I), 403 So. 2d 1321, 1323 (Fla. 1981).

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1. The trial was moved from Sumter County to Putnam County on Hall's motion for change of venue. Hall and his codefendant, Mack Ruffin, were also indicted for the murder of Deputy Sheriff Lonnie Coburn. Hall, 403 So. 2d at 1323 n.1. Hall was tried separately for the murder of Hurst. Id. The facts of the Hurst murder are described differently by the courts. These facts are clear: Hurst was seven months pregnant, forced into her car by Hall, driven to a secluded wooded area, and then beaten, sexually assaulted, and shot. In Hall I, it is stated that the State presented the evidence as though the codefendants acted in unison, although Hall stated in his confession that Ruffin alone committed the sexual battery and murder. Hall I, 403 So. 2d at 1323. In Hall VII, this Court summarized the facts stating "both men raped the victim, after which she was beaten and shot and her body dragged further into the woods. Later that day. . . they killed a deputy sheriff." Hall v. State (Hall VII), 614 So. 2d 473, 475 (Fla. 1993). The gun used

This Court upheld Hall's conviction and sentence on direct appeal. Id. at 1325. On September 9, 1982, the governor signed Hall's first death warrant, effective for the week of October 1-8, 1982. Hall v. State (Hall II), 420 So. 2d 872, 873 (Fla. 1982). Hall filed a motion to vacate, a habeas petition, and an application for stay of execution, all of which were denied. Id. Hall then sought habeas relief in the federal court, which was denied without an evidentiary hearing. Hall v. Wainwright (Hall III), 733 F.2d 766, 769 (11th Cir. 1984). Hall appealed to the Eleventh Circuit Court of Appeals, which reversed in part and remanded for a hearing. Id. at 777 (finding that Hall was entitled to a hearing on the issues of his absence from the courtroom and whether he deliberately bypassed his ineffective assistance of counsel claim).

On remand, the district court again denied relief, finding that Hall's absences from trial occurred in non-critical stages and were therefore harmless, and that he deliberately bypassed the ineffective assistance of counsel claim. Hall v. Wainwright (Hall IV), 805 F.2d 945, 946 (11th Cir. 1986). The Eleventh Circuit

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to kill Hurst was found under the deputy's body. Id. However, in his special concurrence in Hall VIII, Justice Anstead stated, "it is important to note that Hall did not actually kill the victim. Rather, his codefendant, Ruffin, was the actual killer. It should also not go unnoticed that the actual killer, Ruffin, received a life sentence while Hall was sentenced to death." Hall v. State (Hall VIII), 742 So. 2d 225, 233 (Fla. 1999) (Anstead, J., specially concurring (citing Hall VII, 614 So. 2d at 478-79)). Accordingly, it is not readily apparent whether Hall committed the murder, but this Court has found him to be an active participant in the crimes.

affirmed the denial. Id. at 948. Hall then petitioned for habeas relief with this Court based on the United States Supreme Court's ruling in Hitchcock v. Dugger, 481 U.S. 393 (1987). This Court held that any error in the sentencing was harmless. Hall v. Dugger (Hall V), 531 So. 2d 76 (Fla. 1988).

The governor then signed a second death warrant on September 20, 1988. Hall v. State (Hall VI), 541 So. 2d 1125, 1126 (Fla. 1989). Hall filed his second 3.850 motion, alleging error under Hitchcock. The trial court found that this Court's ruling on the issue in Hall V was a procedural bar to Hall's raising the claim again. Id. This Court disagreed, stating that the "case involves significant additional non-record facts" that had not been considered on habeas review. Id. Ultimately, this Court determined that a Hitchcock error occurred, and that such error could not be considered harmless. Id. at 1128. This Court then vacated Hall's death sentence and remanded for a new sentencing proceeding. Id.

During the resentencing,[2] the trial court found Hall intellectually disabled as a mitigating factor and gave it "unquantifiable" weight. State v. Hall, No. 78-52-CF (Fla. 5th Jud. Cir. Feb. 21, 1991) (Findings of Fact for Sentencing Order). The court again condemned Hall, and this Court affirmed. Hall VII, 614 So. 2d at 479.

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2. The resentencing was held in Marion County upon Hall's motion for change of venue and after the original trial judge disqualified himself, stating "the only proper disposition herein is for the execution of the Death Sentence originally imposed upon the defendant."

Hall sought postconviction relief, which was denied. Hall VIII, 742 So. 2d at 225. This Court affirmed the denial. Id. at 230. In finding that the trial court properly denied Hall's claim that the court erred in finding him competent to proceed at the resentencing, this Court stated "While there is no doubt that [Hall] has serious mental difficulties, is probably somewhat retarded, and certainly has learning difficulties and a speech impediment, the Court finds that [Hall] was competent at the resentencing hearings." Id. at 229. In a special concurrence, Justice Anstead wrote that while the majority was technically correct regarding the procedural bars to Hall's claim, his intellectual disability should provide a bar to his execution. Quoting Chief Justice Barkett's dissent in Hall VII, he noted that the evidence showed Hall's mental retardation:

> The testimony reflects that Hall has an IQ of 60; he suffers from organic brain damage, chronic psychosis, a speech impediment, and a learning disability; he is functionally illiterate; and he has a short-term memory equivalent to that of a first grader. The defense's four expert witnesses who testified regarding Hall's mental condition stated that his handicaps would have affected him at the time of the crime. As the trial judge noted in the resentencing order, Freddie Lee Hall was "raised under the most horrible family circumstances imaginable."
>
> Indeed, the trial judge found that Hall had established substantial mitigation. The judge wrote that the evidence conclusively demonstrated that Hall "may have been suffering from mental and emotional disturbances and may have been, to some extent, unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." Additionally, the judge found that Hall suffers from organic brain damage, has been mentally retarded all of his life, suffers from mental illness, suffered tremendous emotional deprivation and disturbances throughout his life, suffered tremendous

> physical abuse and torture as a child, and has learning disabilities and a distinct speech impediment that adversely affected his development.
>
> Hall's mental deficiency as an adult is not surprising. The sixteenth of seventeen children, Hall was tortured by his mother and abused by neighbors. Various relatives testified that Hall's mother tied him in a "croaker" sack, swung it over a fire, and beat him; buried him in the sand up to his neck to "strengthen his legs"; tied his hands to a rope that was attached to a ceiling beam and beat him while he was naked; locked him in a smokehouse for long intervals; and held a gun on Hall and his siblings while she poked them with sticks. Hall's mother withheld food from her children because she believed a famine was imminent, and she allowed neighbors to punish Hall by forcing him to stay underneath a bed for an entire day.
>
> Hall's school records reflect his mental deficiencies. His teachers in the fourth, sixth, seventh, and eighth grades described him as mentally retarded. His fifth grade teacher stated that he was mentally maladjusted, and still another teacher wrote that "his mental maturity is far below his chronological age."

Hall VIII, 742 So. 2d at 231 (Anstead, J. specially concurring (quoting Hall VII, 614 So. 2d at 479-80 (Barkett, C.J. dissenting))).

In 2002, the Supreme Court ruled that the Eighth Amendment prohibited the execution of a person with an intellectual disability. Atkins v. Virginia, 536 U.S. 304, 321 (2002). Hall filed a motion to declare section 921.137, Florida Statutes, unconstitutional. While the motion was pending, this Court adopted rule 3.203 as a mechanism to file Atkins claims. Hall timely filed such a claim on November 30, 2004. No action was taken on the motion until, on March 27, 2008, Hall filed an unsuccessful motion to prohibit relitigation of the intellectual disability issue. The court then held an evidentiary hearing on Hall's successive motion to vacate his sentence.

At the evidentiary hearing held on December 7-8, 2009, Hall presented testimony from Dr. Valerie McClain, who testified that she did not obtain Hall's IQ; Lugene Ellis, Hall's half-brother, who testified about his recollection of Hall as a child; James Hall, Hall's brother, who testified regarding Hall's problems with reading, writing, and caring for himself; Dr. Harry Krop, who testified that Hall's IQ using the Wechsler Adult Intelligence Scale Revised was 73; and Dr. Gregory Prichard, who testified that Hall scored a 71 on the Wechsler Adult Intelligence Scale Third Edition. Hall sought to introduce a report compiled by then-deceased Dr. Bill Mosman through Dr. Prichard, but the court denied it and only allowed Hall to proffer the report for the record. After reviewing the evidence presented, the court determined that Hall could not meet the first prong to establish his intellectual disability—an IQ below 70. The court denied relief in an order issued May 26, 2010, and entered an amended order on June 16, 2010.

Dr. Gregory Prichard reported that Hall started the first grade in public school in 1950, at age six, and then failed. A second grade report in 1952 by the school guidance counselor reported seven-year-old Hall's mental maturity as far below his chronological age. In 1953, eight-year-old Hall was described as very inattentive and extra slow in comprehension. In 1954, nine-year-old Hall was described as slow in all his work. Then in 1955, when he was in the fourth grade and age ten, Hall was characterized as "Mentally Retarded" by school counselors.

During his fifth-grade year, Hall was again described as slow in all phases of his work and described as mentally maladjusted. In 1957 (at age eleven to twelve), Hall was described as "Mentally Retarded." In 1958 (at age twelve to thirteen), Hall was again described as "Mentally Retarded," and in 1961 (at age fourteen to fifteen) Hall was once more described as "Mentally Retarded." Hall's elementary school grades were Cs, Ds, and Fs, in a vast majority of classes in grades one through six. In middle school, grades seven and eight, Hall had one D and eleven Fs, and in high school his grades were Ds and Fs in all classes before he dropped out in eleventh grade. Hall was socially promoted, a fact corroborated by a Florida Department of Corrections (DOC) Classification and Admission Summary Report dated December 24, 1968. In short, all of the information in Hall's school and military records shows a history of low intellectual functioning and provides strong evidence of his mental retardation claim.

The record reflects that attempts to locate Florida Public School records for psychological testing administered during the 1950s were not successful. However, based on Hall's academic record, it is reasonable to believe that some testing must have occurred because Hall was referred for placement in Special Education classes and referred to as intellectually disabled in the school record.

The results of the testing performed on Hall are summarized in the following chart:

Mental Health Evidence

Dates/Hall's Age	Administrator/Test/Records	Results
12/24/68 Age 23	DOC Beta IQ	IQ Score 76 Reading level 2.6
2/11/69 Age 23	California Achievement	Level 3.8
2/13/69 Age 23	DOC Report	4-F Military
8/22/69 Age 24	DOC Vocational Report Psychological DOC Screening Report	Adaptive deficits Reading level 2.6
9/13/78 Age 33	DOC Confidential Evaluation DSM-Diagnosis	"borderline retardation in intellectual ability"
1/10/79 Age 33	DOC Kent IQ Test	Score 79 Borderline intelligence Social difficulties Illiteracy Reading level 2.8
9/8/86 Age 41	Dr. Barbara Bard Woodcock Johnson Psycho-Educational Battery	Severe adaptive deficits
9/10/86 Age 41	Dr. Dorothy Lewis, M.D. NYU Medical Center Neuropsychological Evaluation (Halstead-Reitan)	Chronic brain damage Severe learning disabled
9/10/86 Age 41	Marilyn Feldman, M.A. WAIS-R	FSIQ-80 Organic brain damage Limited intelligence
9/15/86 Age 41	Dr. Lelie Prichep, Ph.D. NY Medical Center Neurometric Exam	Moderately abnormal
8/22/88 Age 43	Dr. Jethro Toomer, Ph.D. Psychologist, Florida International University	IQ: 60 Organic brain damage

Dates/Hall's Age	Administrator/Test/Records	Results
	Revised Beta/Bender Gestalt Adaptive Behavior Evaluated	DX: Mental retardation
10/18/90 Age 45	Dr. Johnathan Pincus, M.D. Georgetown University Hospital Neurological Exam/Evaluation	DX: Mildly retarded
3/16/90 Age 45 1/8/91 Age 46	Dr. Harry Krop, Ph.D. Psychologist WAIS-R	FSIQ-73 Cognitive deficits Mental age 13 years DX: Functional retardation
10/6/90 Age 45	Dr. Kathleen M. Heide, Ph.D Criminologist	Cognitive deficits Adaptive deficits: Restricted personality development
5/12/95 Age 48	Dr. Mark Zimmerman, Psychologist WAIS Wide Range Assessment Woodcock Johnson Westwood Adult Scale Revised Retention Test Short Category Test Adaptive Functioning Evaluation	FSIQ-74 Deficiencies noted Deficiencies noted Deficiencies noted Mildly deficient Brain damage Deficits DX: Mentally retarded and brain damaged. Possible psychosis.
11/19/01 Age 51	Dr. Bill E. Mosman, Psychologist WAIS-III Leiter Adult Intelligence Scale Slosson Intelligence WRAT-III Vineland	FSIQ-69 FSIQ-52 Mental age -10 1st grade child Adaptive deficits DX: Mental retardation
8/14/02 Age 57	Dr. Gregory Prichard, Psychologist WAIS-III	FSIQ-71 1st-2nd grade level Adaptive deficits

Dates/Hall's Age	Administrator/Test/Records	Results
8/15/02	WRAT-III Vineland	DX: Mentally retarded
11/25/08 Age 63	Dr. Joseph Sesta WAIS-IV IQ Testing Administration Only	FSIQ-72

As this Court stated in Hall VI, 541 So. 2d at 1127, "Hall's childhood was marked by an existence which can only be described as pitiful. Teachers and siblings alike immediately recognized him to be significantly mentally retarded."

United States Supreme Court's Decision in Hall v. Florida

The United States Supreme Court held:

> On its face, the Florida statute could be consistent with the views of the medical community noted and discussed in Atkins. Florida's statute defines intellectual disability for purposes of an Atkins proceeding as "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18." Fla. Stat. §921.137(1) (2013). The statute further defines "significantly subaverage general intellectual functioning" as "performance that is two or more standard deviations from the mean score on a standardized intelligence test." Ibid. The mean IQ test score is 100. The concept of standard deviation describes how scores are dispersed in a population. Standard deviation is distinct from standard error of measurement, a concept which describes the reliability of a test and is discussed further below. The standard deviation on an IQ test is approximately 15 points, and so two standard deviations is approximately 30 points. Thus a test taker who performs "two or more standard deviations from the mean" will score approximately 30 points below the mean on an IQ test, i.e., a score of approximately 70 points.

Hall v. Florida, 134 S. Ct. at 2000-2001.

The Court explained that our statute may be interpreted consistently with Atkins because it does not preclude taking the standard of error into account. Id. at 2001. The Court opined that the problem with our decision in Hall IX is that it interpreted the statute too narrowly and held that a person with a score of above 70, including a score within the margin for error, is barred from presenting evidence that would show intellectual disability. Id. Because of this mandatory cutoff, the Court opined that sentencing courts cannot consider substantial evidence such as medical history, school and test reports, and testimony regarding past behavior, even though this evidence is accepted by the medical community to be probative of intellectual disability. Id. at 1994.

The Court further explained that our decision in Hall IX disregards established medical practice in two interrelated ways. Id. at 1995. First, it takes an IQ score as final and conclusive evidence of a defendant's intellectual capacity when experts in the field would also consider other evidence. Id. Second, it relies on the IQ score while refusing to recognize that the score may be imprecise. Id. Instead of using a fixed number IQ score as determinative of intellectual disability, Florida's courts must also use other indicative evidence such as past performance, environment, and upbringing. Id. at 1996. In sum, when determining the eligibility for the death penalty of a defendant who has an IQ test score approaching 70, Florida courts may not bar the consideration of other evidence of

deficits in intellectual and adaptive functioning. Florida courts may continue to abide by section 921.137(1), but may not have a bright-line cutoff IQ test score because "[i]t is not sound to view a single factor as dispositive of a conjunctive and interrelated assessment." Hall v. Florida, 134 S. Ct. at 2001.

Application to Freddie Lee Hall

The Supreme Court stated:

> Florida's rule is in direct opposition to the views of those who design, administer, and interpret the IQ test. By failing to take into account the standard error of measurement, Florida's law not only contradicts the test's own design but also bars an essential part of a sentencing court's inquiry into adaptive functioning. Freddie Lee Hall may or may not be intellectually disabled, but the law requires that he have the opportunity to present evidence of his intellectual disability, including deficits in adaptive functioning over his lifetime.

Id. We therefore turn to the record to determine whether Hall has presented sufficient evidence to establish that he meets the statutory definition of intellectual disability. Because we find that Hall has demonstrated that he is intellectually disabled, we vacate his sentence of death and remand with instructions to enter a life sentence.

At the evidentiary hearing below, despite granting the State's motion in limine to prevent Hall from introducing any evidence relating to adaptive functioning, the court permitted Hall to proffer evidence related to all three statutory prongs. The circuit court found that Hall failed to establish that he had concurrent deficits in adaptive functioning. Specifically, the court relied on our

opinion in Phillips v. State, 984 So. 2d 503 (Fla. 2008), stating that the expert witnesses failed to properly interview correctional officers. The lower court's reading of Phillips is too narrow, especially in light of the Supreme Court's decision in Hall v. Florida.

In Phillips, this Court held that Phillips' experts' reliance on retrospective diagnosis, which focused solely on Phillips' adaptive functioning prior to age 18, was insufficient to satisfy the second prong of the intellectual disability prong. Phillips, 984 So. 2d at 511 (citing Jones v. State, 966 So. 2d 319, 325-27 (Fla. 2007)). We opined that a defendant must demonstrate significantly subaverage general intellectual functioning to exist with concurrent deficits in adaptive behavior. Id. In Phillips, we were able to determine from the record that:

> Phillips does not suffer from deficiencies in adaptive functioning. Phillips supported himself. He worked as a short-order cook, a garbage collector, and a dishwasher. The mental health experts generally agreed that Phillips possessed job skills that people with mental retardation lacked. Specifically, the defense's expert admitted that Phillips's position as a short-order cook was an "unusually high level" job for someone who has mental retardation.

Id. The record further demonstrated that Phillips lived with his mother where he paid most of the bills and did a majority of the household chores. Phillips also cared for his nieces and nephews overnight, cooked, and went grocery shopping. Id. In short, there was record evidence that Phillips lived a normal life prior to his crimes, and our decision was not based solely on the retrospective analysis

performed. The retrospective analysis in Phillips was focused solely on Phillips' adaptive skills prior to the age of 18 and failed to consider any of his adult skills. It was that limitation coupled with the record evidence that led to our decision.

Indeed, in Jones v. State, 966 So. 2d 319 (Fla. 2007), we considered whether a determination of the second prong was limited to an assessment of adaptive functioning prior to age 18 "instead of an assessment of [a defendant's] adaptive functioning as an adult." Id. at 325. We rejected that the statute and rule should be read so narrowly. However, the lower court incorrectly read this Court's decision to preclude a retrospective analysis of Hall prior to his incarceration but while he was an adult.

Section 921.137(1) of the Florida Statutes defines "adaptive behavior" as "the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community." § 921.137(1), Fla. Stat. (2016). Evaluating the adaptive behavior of an individual who has spent much of his adult life incarcerated can be difficult. In another case before this Court, Williams v. State, No. SC13-1472, Dr. Thomas Oakland explained that the Adaptive Behavior Assessment System II (ABAS) scale is not normed on prison populations because:

> prison represents clearly the antithesis of the environment in which adaptive behavior can be displayed. The assumption in the assessment of adaptive behavior is that a person has considerable degrees of freedom and opportunity to decide what he or she will do

> with his or her time and how they will progress. And within a prison setting the people of course are highly restricted as to the behaviors that they can display, and therefore we are not going to get an accurate assessment of adaptive behavior by . . . acquiring information on prison related behaviors.

Transcript of Evidentiary Hearing, Record on Appeal Vol. 48 at 4681, State v. Williams, No. 93-003005CF10A (Fla. 17th Cir. Ct. Sept. 21, 2012). This difficulty has also been acknowledged by the American Association on Intellectual and Developmental Disabilities. See Dufour v. State, 69 So. 3d 235, 258 (Fla. 2011) (Pariente, J., concurring in part and dissenting in part) ("much of the clinical definition of adaptive behavior is much less relevant in prisons"). Accordingly, we reject the trial court's narrow reading of Phillips and the State's argument that mental health experts may only evaluate a prisoner's adaptive functioning during his or her incarceration.

Hall committed the murder at issue in 1978 at the age of thirty-two, and has been incarcerated ever since. As such, it would be illogical to preclude a retrospective analysis of Hall's deficits in adaptive functioning at the time of the murder. The prohibition against executing the intellectually disabled is based, in part, on their culpability at the time the crimes were committed. The reason that defendants claiming intellectual disability must demonstrate its onset prior to adulthood is to differentiate them from those who have suffered brain damage in adulthood that rendered them incompetent but not intellectually disabled.

At the evidentiary hearing in 2009, the unrefuted opinion presented by Dr. Gregory Prichard was that Hall meets the clinical definition of an intellectually disabled person. Dr. Prichard made this determination in 2002 based on his personal evaluation of Hall and the records and reports of the multiple other mental health experts who evaluated Hall. Relating to adaptive functioning, Dr. Prichard administered the Vineland Adaptive Behavior Scales Test and the Wide Range Achievement Test in addition to reviewing Hall's school records, DOC records, prior mental health evaluation records, and speaking to Hall's family members. Thus, to find that Dr. Prichard failed to adequately determine Hall's adaptive functioning because he failed to speak to corrections officers ignores the depth and breadth of Dr. Prichard's evaluation and—worse—ignores that Dr. Prichard had access to DOC records that also considered Hall to lack the skills necessary to adequately cope with the more complex factors in his environment. Accordingly, we find that Hall has presented evidence that satisfies the second prong.

We also find that Hall has established the third prong. As noted by the United States Supreme Court, age of onset was "not at issue" in this case. Hall v. Florida, 134 S. Ct. at 1994. The State's argument that a proper IQ test prior to the age of 18 is the only valid evidence to establish this prong is unjustifiable and would effectively preclude a finding of intellectual disability in most people born prior to a certain era. This Court has never held that in order to find an intellectual

disability, the defendant must have been given a specific IQ test prior to the age of 18. Such an inflexible view would not be supported by Hall v. Florida, which recognized that, based on a consensus within the medical community, this prong simply requires the "onset of these deficits during the developmental period." Id. at 1994. Further, this argument was raised and rejected in Oats v. State, 181 So. 3d 457, 469 (Fla. 2015) (holding that section 921.137(1), Florida Statutes, requires only that intellectual disability be demonstrated to have manifested prior to age eighteen, not that it be diagnosed).

CONCLUSION

In sum, the United States Supreme Court has made clear that when determining whether an individual meets the criteria to be considered intellectually disabled, the definition that matters most is the one used by mental health professionals in making this determination in all contexts, including those "far beyond the confines of the death penalty." Hall v. Florida, 134 S. Ct. at 1993. As such, courts cannot disregard the informed assessments of experts. Id. at 2000. Here, the record evidence amassed over nearly thirty-seven years, and the unrefuted testimony at the 2009 evidentiary hearing is that Hall meets the medical definition of intellectually disabled.

The State argues that it has not had a chance to have a full adversarial proceeding to challenge Hall's claim that he is intellectually disabled. Notably,

this argument was not raised in the State's initial supplemental brief, where it merely asked this Court to affirm the lower court's order based on Hall's failure to establish deficits in adaptive functioning, but only in its supplemental reply brief. Additionally, at the evidentiary hearing, the State did not attempt to rebut the testimony of the experts, but instead stated that "a clinician's approach to mental retardation . . . is not relevant to this proceeding." Furthermore, the State's assertion is not supported by the record. As previously noted in Justice Pariente's concurring opinion after Hall's most recent postconviction motion, the State came into this proceeding forewarned for twenty years of Hall's claim of intellectual disability and was afforded the opportunity of a full adversarial proceeding under Atkins. Hall IX, 109 So. 3d at 712-14 (Pariente, J., concurring) (noting that "in 2010, there was a true adversarial testing of whether Hall was [intellectually disabled] under Florida's statutory definition."). The fact that the State has chosen not to avail itself of prior opportunities is not a sufficient reason to expend further resources to continue to litigate this issue.

The United States Supreme Court was clear that this state is not free "to define intellectual disability as [it] wishe[s]," and the unrefuted evidence in this case has consistently demonstrated that Hall meets the clinical and statutory definition of intellectual disability. The record evidence in this case overwhelmingly supports the conclusion that "Hall has been [intellectually

disabled] his entire life." Accordingly, we vacate his sentence of death and remand with instructions to enter a life sentence.

It is so ordered.

LABARGA, C.J., and PARIENTE, and PERRY, JJ., concur.
LEWIS, J., concurs in result.
QUINCE, J., recused.
CANADY, J., dissents with an opinion, in which POLSTON, J., concurs.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

CANADY, J., dissenting.

In this case, the Supreme Court held "that an individual with an IQ test score 'between 70 and 75 or lower' . . . may show intellectual disability by presenting additional evidence regarding difficulties in adaptive functioning." Hall v. Florida, 134 S. Ct. 1986, 2000 (2014) (quoting Atkins v. Virginia, 536 U.S. 304, 309 n.5 (2002)). The Court recognized that "Freddie Lee Hall may or may not be intellectually disabled," and instructed "that he have the opportunity to present evidence of his intellectual disability, including deficits in adaptive functioning over his lifetime." Hall, 134 S. Ct. at 2001. As instructed by the Supreme Court, I would reverse the circuit court's order denying Hall's motion for postconviction relief and remand for a new evidentiary hearing in which Hall and the State would have an opportunity to litigate this intellectual disability claim under the standard that has now been articulated by the Supreme Court. I therefore dissent from the

majority's decision to foreclose further evidentiary proceedings and to impose a sentence of life.

The majority asserts that Hall has presented sufficient evidence to establish that he meets the statutory definition of intellectual disability. Majority op. at 13. The majority relies on the fact that the circuit court permitted Hall to proffer evidence related to all three statutory prongs of intellectual disability at the evidentiary hearing, majority op. at 13, and the circuit court's order denying postconviction relief and the transcript from the evidentiary hearing reflect that Hall proffered the testimony of Lugene Ellis, James Hall, and much of the testimony of Dr. Prichard—including Dr. Prichard's report in which he assessed Hall for intellectual disability. But "[p]roffered evidence is merely a representation of what evidence the defendant proposes to present and is not actual evidence." Grim v. State, 841 So. 2d 455, 462 (Fla. 2003); LaMarca v. State, 785 So. 2d 1209, 1216 (Fla. 2001) (same); see also Blackwood v. State, 777 So. 2d 399, 410 (Fla. 2000) ("In order to preserve a claim based on the court's refusal to admit evidence, the party seeking to admit the evidence must proffer the contents of the excluded evidence to the trial court."). The proffered evidence was not subjected to adversarial testing, and its credibility was not evaluated by the trier of fact. The majority thus errs by relying on proffered evidence to support its conclusion that Hall has presented sufficient evidence to establish that he is

intellectually disabled. It is a cardinal error for an appellate court to step outside its proper role and make findings of fact based on a proffer.

The majority asserts that the State is not entitled to a new evidentiary hearing because it was afforded the opportunity of a full adversarial proceeding where it failed to rebut or refute the proffered testimony of Hall's experts. Majority op. at 18-19. But the State, of course, had no obligation to rebut or refute the proffered evidence. And it is doubly inappropriate to now fault the State for failing to rebut evidence when that evidence only requires rebuttal because the law has subsequently changed. At the time of the 2009 evidentiary hearing Hall failed to provide evidence of an IQ score of 70 or below. Hall v. State, 109 So. 3d 704, 707-10 (Fla. 2012) (affirming the denial of Hall's postconviction motion in relevant part because Hall failed to present evidence of an IQ score of 70 or below), rev'd and remanded, 134 S. Ct. 1986 (2014). And under clearly established Florida law at that time, the State did not need to rebut or refute the testimony of Hall's experts because Hall's claim was precluded by his failure to provide evidence of an IQ score of 70 or below. See, e.g., Cherry v. State, 959 So. 2d 702, 712-13 (Fla. 2007) (holding that a person whose test score is above 70, including a score within the margin for measurement error, does not have an intellectual disability and is barred from presenting other evidence that would show his faculties are limited), cert. denied, 552 U.S. 993 (2007), abrogated by Hall v.

Florida, 134 S. Ct. 1986 (2014). This Court should not penalize the State for failing in 2009 to anticipate the ruling the Supreme Court would hand down in 2014.

POLSTON, J., concurs.

An Appeal from the Circuit Court in and for Sumter County,
Richard Tombrink, Jr., Judge – Case No. 601978CF000052CFAXF

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RECEIVED
MAR 29 2017
S.C. SUPREME COURT

March 29, 2017

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

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

Dear Mr. Shearouse:

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

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

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

Sincerely,

David Alexander
Appellate Defender

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

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
73
CASE NO. 2018-CP-42-00928

RECEIVED
MAR 29 2017
S.C. SUPREME COURT

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

MOORE *v.* TEXAS

CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

No. 15–797. Argued November 29, 2016—Decided March 28, 2017

Petitioner Moore was convicted of capital murder and sentenced to death for fatally shooting a store clerk during a botched robbery that occurred when Moore was 20 years old. A state habeas court subsequently determined that, under *Atkins* v. *Virginia*, 536 U. S. 304, and *Hall* v. *Florida*, 572 U. S. ___, Moore qualified as intellectually disabled and that his death sentence therefore violated the Eighth Amendment's proscription of "cruel and unusual punishments." The court consulted current medical diagnostic standards—the 11th edition of the American Association on Intellectual and Developmental Disabilities clinical manual (AAIDD–11) and the 5th edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. The habeas court followed the generally accepted intellectual-disability definition, which identifies three core elements: (1) intellectual-functioning deficits, (2) adaptive deficits, and (3) the onset of these deficits while still a minor. Moore's IQ scores, the court determined, established subaverage intellectual functioning. The court credited six scores, the average of which (70.66) indicated mild intellectual disability. And relying on testimony from mental-health professionals, the court found significant adaptive deficits in all three skill sets (conceptual, social, and practical). Based on its findings, the habeas court recommended to the Texas Court of Criminal Appeals (CCA) that Moore be granted relief. The CCA declined to adopt the judgment recommended by the habeas court. The CCA held instead that the habeas court erred by not following the CCA's 2004 decision in *Ex parte Briseno*, 135 S. W. 3d 1, which adopted the definition of, and standards for assessing, intellectual disability contained in the 1992 (ninth) edition of the American Association on Mental Retardation manual (AAMR–9), predecessor to the current AAIDD–11 manual. *Briseno* also incorporated the

Syllabus

AAMR–9's requirement that adaptive deficits must be "related" to intellectual-functioning deficits, and it recited, without citation to any medical or judicial authority, seven evidentiary factors relevant to the intellectual-disability inquiry. Based on only two of Moore's IQ scores (of 74 and 78), the CCA concluded that Moore had not shown significantly subaverage intellectual functioning. And even if he had, the CCA continued, his adaptive strengths undercut any adaptive weaknesses. The habeas court also failed, the CCA determined, to inquire into relatedness. Among alternative causes for Moore's adaptive deficits, the CCA suggested, were an abuse-filled childhood, undiagnosed learning disorders, multiple elementary-school transfers, racially motivated harassment and violence at school, and a history of academic failure, drug abuse, and absenteeism. *Briseno*'s seven evidentiary factors, the CCA further determined, weighed against finding that Moore had satisfied the relatedness requirement.

Held: By rejecting the habeas court's application of medical guidance and by following the *Briseno* standard, including the nonclinical *Briseno* factors, the CCA's decision does not comport with the Eighth Amendment and this Court's precedents. Pp. 9–18.

(a) The Eighth Amendment, which "'reaffirms the duty of the government to respect the dignity of all persons,'" *Hall*, 572 U. S., at ___, prohibits the execution of any intellectually disabled individual, *Atkins*, 536 U. S., at 321. While *Atkins* and *Hall* left to the States "the task of developing appropriate ways to enforce" the restriction on executing the intellectually disabled, *Hall*, 572 U. S., at ___ (internal quotation marks omitted), States' discretion is not "unfettered," *id.*, at ___, and must be "informed by the medical community's diagnostic framework," *id.*, at ___–___. Relying on the most recent (and still current) versions of the leading diagnostic manuals, the Court concluded in *Hall* that Florida had "disregard[ed] established medical practice," *id.*, at ___, and had parted ways with practices and trends in other States, *id.*, at ___–___. *Hall* indicated that being informed by the medical community does not demand adherence to everything stated in the latest medical guide. But neither does precedent license disregard of current medical standards. Pp. 9–10.

(b) The CCA's conclusion that Moore's IQ scores established that he is not intellectually disabled is irreconcilable with *Hall*, which instructs that, where an IQ score is close to, but above, 70, courts must account for the test's "standard error of measurement." See 572 U. S., at ___–___, ___–___. Because the lower range of Moore's adjusted IQ score of 74 falls at or below 70, the CCA had to move on to consider Moore's adaptive functioning. Pp. 10–12.

(c) The CCA's consideration of Moore's adaptive functioning also deviated from prevailing clinical standards and from the older clini-

Syllabus

cal standards the CCA deemed applicable. Pp. 12–16.

(1) The CCA overemphasized Moore's perceived adaptive strengths—living on the streets, mowing lawns, and playing pool for money—when the medical community focuses the adaptive-functioning inquiry on adaptive *deficits*. The CCA also stressed Moore's improved behavior in prison, but clinicians caution against reliance on adaptive strengths developed in controlled settings. Pp. 12–13.

(2) The CCA further concluded that Moore's record of academic failure, along with a history of childhood abuse and suffering, detracted from a determination that his intellectual and adaptive deficits were related. The medical community, however, counts traumatic experiences as *risk factors* for intellectual disability. The CCA also departed from clinical practice by requiring Moore to show that his adaptive deficits were not related to "a personality disorder." Mental-health professionals recognize that intellectually disabled people may have other co-existing mental or physical impairments, including, *e.g.*, attention-deficit/hyperactivity disorder, depressive and bipolar disorders, and autism. Pp. 13–14.

(3) The CCA's attachment to the seven *Briseno* evidentiary factors further impeded its assessment of Moore's adaptive functioning. By design and in operation, the lay perceptions advanced by *Briseno* "creat[e] an unacceptable risk that persons with intellectual disability will be executed." *Hall*, 572 U. S., at ___. The medical profession has endeavored to counter lay stereotypes, and the *Briseno* factors are an outlier, in comparison both to other States' handling of intellectual-disability pleas and to Texas' own practices in contexts other than the death penalty. Pp. 14–16.

(d) States have some flexibility, but not "unfettered discretion," in enforcing *Atkins*' holding, *Hall*, 572 U. S., at ___, and the medical community's current standards, reflecting improved understanding over time, constrain States' leeway in this area. Here, the habeas court applied current medical standards in reaching its conclusion, but the CCA adhered to the standard it laid out in *Briseno*, including the nonclinical *Briseno* factors. The CCA therefore failed adequately to inform itself of the "medical community's diagnostic framework," *Hall*, 572 U. S., at ___–___. Because *Briseno* pervasively infected the CCA's analysis, the decision of that court cannot stand. Pp. 17–18.

470 S. W. 3d 481, vacated and remanded.

GINSBURG, J., delivered the opinion of the Court, in which KENNEDY, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ROBERTS, C. J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 15–797

BOBBY JAMES MOORE, PETITIONER *v.* TEXAS

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

[March 28, 2017]

JUSTICE GINSBURG delivered the opinion of the Court.

Bobby James Moore fatally shot a store clerk during a botched robbery. He was convicted of capital murder and sentenced to death. Moore challenged his death sentence on the ground that he was intellectually disabled and therefore exempt from execution. A state habeas court made detailed factfindings and determined that, under this Court's decisions in *Atkins* v. *Virginia*, 536 U. S. 304 (2002), and *Hall* v. *Florida*, 572 U. S. ___ (2014), Moore qualified as intellectually disabled. For that reason, the court concluded, Moore's death sentence violated the Eighth Amendment's proscription of "cruel and unusual punishments." The habeas court therefore recommended that Moore be granted relief.

The Texas Court of Criminal Appeals (CCA)[1] declined to adopt the judgment recommended by the state habeas court.[2] In the CCA's view, the habeas court erroneously

[1] The CCA is Texas' court of last resort in criminal cases. See Tex. Const., Art. 5, §5.

[2] Under Texas law, the CCA, not the court of first instance, is "the ultimate factfinder" in habeas corpus proceedings. *Ex parte Reed*, 271 S. W. 3d 698, 727 (Tex. Crim. App. 2008); see *Ex parte Moore*, 470 S. W. 3d 481, 489 (Tex. Crim. App. 2015).

employed intellectual-disability guides currently used in the medical community rather than the 1992 guides adopted by the CCA in *Ex parte Briseno*, 135 S. W. 3d 1 (2004). See *Ex parte Moore*, 470 S. W. 3d 481, 486–487 (2015). The appeals court further determined that the evidentiary factors announced in *Briseno* "weigh[ed] heavily" against upsetting Moore's death sentence. 470 S. W. 3d, at 526.

We vacate the CCA's judgment. As we instructed in *Hall*, adjudications of intellectual disability should be "informed by the views of medical experts." 572 U. S., at ___ (slip op., at 19); see *id.*, at ___ (slip op., at 7). That instruction cannot sensibly be read to give courts leave to diminish the force of the medical community's consensus. Moreover, the several factors *Briseno* set out as indicators of intellectual disability are an invention of the CCA untied to any acknowledged source. Not aligned with the medical community's information, and drawing no strength from our precedent, the *Briseno* factors "creat[e] an unacceptable risk that persons with intellectual disability will be executed," 572 U. S., at ___ (slip op., at 1). Accordingly, they may not be used, as the CCA used them, to restrict qualification of an individual as intellectually disabled.

I

In April 1980, then-20-year-old Bobby James Moore and two others were engaged in robbing a grocery store. *Ex parte Moore*, 470 S. W. 3d 481, 490–491 (Tex. Crim. App. 2015); App. 58. During the episode, Moore fatally shot a store clerk. 470 S. W. 3d, at 490. Some two months later, Moore was convicted and sentenced to death. See *id.*, at 492. A federal habeas court later vacated that sentence based on ineffective assistance of trial counsel, see *Moore* v. *Collins*, 1995 U. S. Dist. LEXIS 22859, *35 (SD Tex., Sept. 29, 1995), and the Fifth Circuit affirmed,

see *Moore* v. *Johnson*, 194 F. 3d 586, 622 (1999). Moore was resentenced to death in 2001, and the CCA affirmed on direct appeal. See *Moore* v. *State*, 2004 WL 231323, *1 (Jan. 14, 2004), cert. denied, 543 U. S. 931 (2004).

Moore subsequently sought state habeas relief. In 2014, the state habeas court conducted a two-day hearing on whether Moore was intellectually disabled. See *Ex parte Moore*, No. 314483–C (185th Jud. Dist., Harris Cty., Tex., Feb. 6, 2015), App. to Pet. for Cert. 129a. The court received affidavits and heard testimony from Moore's family members, former counsel, and a number of court-appointed mental-health experts. The evidence revealed that Moore had significant mental and social difficulties beginning at an early age. At 13, Moore lacked basic understanding of the days of the week, the months of the year, and the seasons; he could scarcely tell time or comprehend the standards of measure or the basic principle that subtraction is the reverse of addition. *Id.*, at 187a. At school, because of his limited ability to read and write, Moore could not keep up with lessons. *Id.*, at 146a, 182a–183a. Often, he was separated from the rest of the class and told to draw pictures. *Ibid.* Moore's father, teachers, and peers called him "stupid" for his slow reading and speech. *Id.*, at 146a, 183a. After failing every subject in the ninth grade, Moore dropped out of high school. *Id.*, at 188a. Cast out of his home, he survived on the streets, eating from trash cans, even after two bouts of food poisoning. *Id.*, at 192a–193a.

In evaluating Moore's assertion of intellectual disability, the state habeas court consulted current medical diagnostic standards, relying on the 11th edition of the American Association on Intellectual and Developmental Disabilities (AAIDD) clinical manual, see AAIDD, Intellectual Disability: Definition, Classification, and Systems of Supports (2010) (hereinafter AAIDD–11), and on the 5th edition of the Diagnostic and Statistical Manual of Mental Disorders

published by the American Psychiatric Association (APA), see APA, Diagnostic and Statistical Manual of Mental Disorders (2013) (hereinafter DSM–5). App. to Pet. for Cert. 150a–151a, 202a. The court followed the generally accepted, uncontroversial intellectual-disability diagnostic definition, which identifies three core elements: (1) intellectual-functioning deficits (indicated by an IQ score "approximately two standard deviations below the mean"—*i.e.*, a score of roughly 70—adjusted for "the standard error of measurement," AAIDD–11, at 27); (2) adaptive deficits ("the inability to learn basic skills and adjust behavior to changing circumstances," *Hall* v. *Florida*, 572 U. S. ___, ___ (2014) (slip op., at 8)); and (3) the onset of these deficits while still a minor. See App. to Pet. for Cert. 150a (citing AAIDD–11, at 1). See also *Hall*, 572 U. S., at ___ (slip op., at 8).[3]

Moore's IQ scores, the habeas court determined, established subaverage intellectual functioning. The court credited six of Moore's IQ scores, the average of which (70.66) indicated mild intellectual disability. App. to Pet. for Cert. 167a–170a.[4] And relying on testimony from several mental-health experts, the habeas court found significant adaptive deficits. In determining the significance of adaptive deficits, clinicians look to whether an individual's adaptive performance falls two or more standard deviations below the mean in any of the three adaptive skill sets (conceptual, social, and practical). See AAIDD–11, at 43. Moore's performance fell roughly two standard deviations below the mean in *all three* skill categories. App. to Pet. for Cert. 200a–201a. Based on this evidence, the state habeas court recommended that the CCA reduce

[3]The third element is not at issue here.

[4]The habeas court considered a seventh score (of 59 on a WAIS–IV test administered in 2013) elsewhere in its opinion, see App. to Pet. for Cert. 170a–172a, but did not include that score in the calculation of Moore's average IQ score, see *id.*, at 170a.

Moore's sentence to life in prison or grant him a new trial on intellectual disability. See *id.*, at 203a.

The CCA rejected the habeas court's recommendations and denied Moore habeas relief. See 470 S. W. 3d 481. At the outset of its opinion, the CCA reaffirmed *Ex parte Briseno*, 135 S. W. 3d 1 (Tex. Crim. App. 2004), as paramount precedent on intellectual disability in Texas capital cases. See 470 S. W. 3d, at 486–487. *Briseno* adopted the definition of, and standards for assessing, intellectual disability contained in the 1992 (ninth) edition of the American Association on Mental Retardation (AAMR) manual, predecessor to the current AAIDD–11 manual. See 135 S. W. 3d, at 7 (citing AAMR, Mental Retardation: Definition, Classification, and Systems of Supports (9th ed. 1992) (hereinafter AAMR–9)).

Briseno incorporated the AAMR–9's requirement that adaptive deficits be "related" to intellectual-functioning deficits. 135 S. W. 3d, at 7 (quoting AAMR–9, at 25).[5] To determine whether a defendant has satisfied the relatedness requirement, the CCA instructed in this case, Texas courts should attend to the "seven evidentiary factors" first set out in *Briseno*. 470 S. W. 3d, at 489.[6] No citation to

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[5]This relatedness requirement, the CCA noted, is retained in the DSM–5. See 470 S. W. 3d, at 487, n. 5 (citing DSM–5, at 38).

[6]The seven "*Briseno* factors" are:

- "Did those who knew the person best during the developmental stage—his family, friends, teachers, employers, authorities—think he was mentally retarded at that time, and, if so, act in accordance with that determination?
- "Has the person formulated plans and carried them through or is his conduct impulsive?
- "Does his conduct show leadership or does it show that he is led around by others?
- "Is his conduct in response to external stimuli rational and appropriate, regardless of whether it is socially acceptable?
- "Does he respond coherently, rationally, and on point to oral or written questions or do his responses wander from subject to subject?
- "Can the person hide facts or lie effectively in his own or others'

any authority, medical or judicial, accompanied the *Briseno* court's recitation of the seven factors. See 135 S. W. 3d, at 8–9.

The habeas judge erred, the CCA held, by "us[ing] the most current position, as espoused by AAIDD, regarding the diagnosis of intellectual disability rather than the test . . . in *Briseno*." 470 S. W. 3d, at 486. This Court's decision in *Atkins* v. *Virginia*, 536 U. S. 304 (2002), the CCA emphasized, "left it to the States to develop appropriate ways to enforce the constitutional restriction" on the execution of the intellectually disabled. 470 S. W. 3d, at 486. Thus, even though "[i]t may be true that the AAIDD's and APA's positions regarding the diagnosis of intellectual disability have changed since *Atkins* and *Briseno*," the CCA retained *Briseno*'s instructions, both because of "the subjectivity surrounding the medical diagnosis of intellectual disability" and because the Texas Legislature had not displaced *Briseno* with any other guideposts. 470 S. W. 3d, at 486–487. The *Briseno* inquiries, the court said, "remai[n] adequately 'informed by the medical community's diagnostic framework.'" 470 S. W. 3d, at 487 (quoting *Hall*, 572 U. S., at ___ (slip op., at 19–20)).

Employing *Briseno*, the CCA first determined that Moore had failed to prove significantly subaverage intellectual functioning. 470 S. W. 3d, at 514–519. Rejecting as unreliable five of the seven IQ tests the habeas court had considered, the CCA limited its appraisal to Moore's scores of 78 in 1973 and 74 in 1989. *Id.*, at 518–519. The court then discounted the lower end of the standard-error range associated with those scores. *Id.*, at 519; see *infra*, at 10–11 (describing standard error of measurement).

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interests?

- "Putting aside any heinousness or gruesomeness surrounding the capital offense, did the commission of that offense require forethought, planning, and complex execution of purpose?" *Briseno*, 135 S. W. 3d, at 8–9.

Regarding the score of 74, the court observed that Moore's history of academic failure, and the fact that he took the test while "exhibit[ing] withdrawn and depressive behavior" on death row, might have hindered his performance. 470 S. W. 3d, at 519. Based on the two scores, but not on the lower portion of their ranges, the court concluded that Moore's scores ranked "above the intellectually disabled range" (*i.e.*, above 70). *Ibid.*; see *id.*, at 513.

"Even if [Moore] had proven that he suffers from significantly sub-average general intellectual functioning," the court continued, he failed to prove "significant and related limitations in adaptive functioning." *Id.*, at 520. True, the court acknowledged, Moore's and the State's experts agreed that Moore's adaptive-functioning test scores fell more than two standard deviations below the mean. *Id.*, at 521; see *supra*, at 4. But the State's expert ultimately discounted those test results because Moore had "no exposure" to certain tasks the testing included, "such as writing a check and using a microwave oven." 470 S. W. 3d, at 521–522. Instead, the expert emphasized Moore's adaptive strengths in school, at trial, and in prison. *Id.*, at 522–524.

The CCA credited the state expert's appraisal. *Id.*, at 524. The habeas court, the CCA concluded, had erred by concentrating on Moore's adaptive weaknesses. *Id.*, at 489. Moore had demonstrated adaptive strengths, the CCA spelled out, by living on the streets, playing pool and mowing lawns for money, committing the crime in a sophisticated way and then fleeing, testifying and representing himself at trial, and developing skills in prison. *Id.*, at 522–523. Those strengths, the court reasoned, undercut the significance of Moore's adaptive limitations. *Id.*, at 524–525.

The habeas court had further erred, the CCA determined, by failing to consider whether any of Moore's adaptive deficits were related to causes other than his intellectual-

functioning deficits. *Id.*, at 488, 526. Among alternative causes for Moore's adaptive deficits, the CCA suggested, were an abuse-filled childhood, undiagnosed learning disorders, multiple elementary-school transfers, racially motivated harassment and violence at school, and a history of academic failure, drug abuse, and absenteeism. *Ibid.* Moore's significant improvement in prison, in the CCA's view, confirmed that his academic and social difficulties were not related to intellectual-functioning deficits. *Ibid.* The court then examined each of the seven *Briseno* evidentiary factors, see *supra*, at 5–6, and n. 6, concluding that those factors "weigh[ed] heavily" against finding that Moore had satisfied the relatedness requirement. 470 S. W. 3d, at 526–527.

Judge Alcala dissented. *Atkins* and *Hall*, she would have held, require courts to consult current medical standards to determine intellectual disability. 470 S. W. 3d, at 530. She criticized the majority for relying on manuals superseded in the medical community, *id.*, at 530–534, 536–539, and for disregarding the habeas court's credibility determinations, *id.*, at 535–536, 538–539. Judge Alcala questioned the legitimacy of the seven *Briseno* factors, recounting wide criticism of the factors and explaining how they deviate from the current medical consensus. See 470 S. W. 3d, at 529–530, and n. 5. Most emphatically, she urged, the CCA "must consult the medical community's current views and standards in determining whether a defendant is intellectually disabled"; "reliance on . . . standard[s] no longer employed by the medical community," she objected, "is constitutionally unacceptable." *Id.*, at 533.

We granted certiorari to determine whether the CCA's adherence to superseded medical standards and its reliance on *Briseno* comply with the Eighth Amendment and this Court's precedents. 578 U. S. ___ (2016).

II

The Eighth Amendment prohibits "cruel and unusual punishments," and "reaffirms the duty of the government to respect the dignity of all persons," *Hall*, 572 U. S., at ___ (slip op., at 5) (quoting *Roper* v. *Simmons*, 543 U. S. 551, 560 (2005)). "To enforce the Constitution's protection of human dignity," we "loo[k] to the evolving standards of decency that mark the progress of a maturing society," recognizing that "[t]he Eighth Amendment is not fastened to the obsolete." *Hall*, 572 U. S., at ___ (slip op., at 5) (internal quotation marks omitted).

In *Atkins* v. *Virginia*, we held that the Constitution "restrict[s] . . . the State's power to take the life of" *any* intellectually disabled individual. 536 U. S., at 321. See also *Hall*, 572 U. S., at ___ (slip op., at 6); *Roper*, 543 U. S., at 563–564. Executing intellectually disabled individuals, we concluded in *Atkins*, serves no penological purpose, see 536 U. S., at 318–320; runs up against a national consensus against the practice, see *id.*, at 313–317; and creates a "risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty," *id.*, at 320 (internal quotation marks omitted); see *id.*, at 320–321.

In *Hall* v. *Florida*, we held that a State cannot refuse to entertain other evidence of intellectual disability when a defendant has an IQ score above 70. 572 U. S., at ___–___ (slip op., at 21–22). Although *Atkins* and *Hall* left to the States "the task of developing appropriate ways to enforce" the restriction on executing the intellectually disabled, 572 U. S., at ___ (slip op., at 17) (quoting *Atkins*, 536 U. S., at 317), States' discretion, we cautioned, is not "unfettered," 572 U. S., at ___ (slip op., at 17). Even if "the views of medical experts" do not "dictate" a court's intellectual-disability determination, *id.*, at ___ (slip op., at 19), we clarified, the determination must be "informed by the medical community's diagnostic framework," *id.*, at ___–

___ (slip op., at 19–20). We relied on the most recent (and still current) versions of the leading diagnostic manuals—the DSM–5 and AAIDD–11. *Id.*, at ___, ___, ___–___, ___–___ (slip op., at 3, 8, 10–11, 20–21). Florida, we concluded, had violated the Eighth Amendment by "disregard[ing] established medical practice." *Id.*, at ___ (slip op., at 10). We further noted that Florida had parted ways with practices and trends in other States. *Id.*, at ___–___ (slip op., at 12–16). *Hall* indicated that being informed by the medical community does not demand adherence to everything stated in the latest medical guide. But neither does our precedent license disregard of current medical standards.

III

The CCA's conclusion that Moore's IQ scores established that he is not intellectually disabled is irreconcilable with *Hall*. *Hall* instructs that, where an IQ score is close to, but above, 70, courts must account for the test's "standard error of measurement." See *id.*, at ___–___, ___–___ (slip op., at 10–11, 21–22). See also *Brumfield* v. *Cain*, 576 U. S. ___, ___ (2015) (slip op., at 10) (relying on *Hall* to find unreasonable a state court's conclusion that a score of 75 precluded an intellectual-disability finding). As we explained in *Hall*, the standard error of measurement is "a statistical fact, a reflection of the inherent imprecision of the test itself." 572 U. S., at ___ (slip op., at 10). "For purposes of most IQ tests," this imprecision in the testing instrument "means that an individual's score is best understood as a range of scores on either side of the recorded score . . . within which one may say an individual's true IQ score lies." *Id.*, at ___ (slip op., at 11). A test's standard error of measurement "reflects the reality that an individual's intellectual functioning cannot be reduced to a single numerical score." *Ibid.* See also *id.*, at ___–___ (slip op., at 10–12); DSM–5, at 37; AAIDD, User's Guide: Intellec-

tual Disability: Definition, Classification, and Systems of Supports 22–23 (11th ed. 2012) (hereinafter AAIDD–11 User's Guide).

Moore's score of 74, adjusted for the standard error of measurement, yields a range of 69 to 79, see 470 S. W. 3d, at 519, as the State's retained expert acknowledged, see Brief for Petitioner 39, n. 18; App. 185, 189–190. Because the lower end of Moore's score range falls at or below 70, the CCA had to move on to consider Moore's adaptive functioning. See *Hall*, 572 U. S., at ___–___ (slip op., at 21–22); 470 S. W. 3d, at 536 (Alcala, J., dissenting) (even if the majority correctly limited the scores it would consider, "current medical standards . . . would still require [the CCA] to examine whether [Moore] has adaptive deficits").

Both Texas and the dissent maintain that the CCA properly considered factors unique to Moore in disregarding the lower end of the standard-error range. *Post*, at 14–15; Brief for Respondent 41–42; see *supra*, at 6–7; 470 S. W. 3d, at 519. But the presence of other sources of imprecision in administering the test to a particular individual, see *post*, at 14–16, and n. 3, cannot *narrow* the test-specific standard-error range.[7]

In requiring the CCA to move on to consider Moore's adaptive functioning in light of his IQ evidence, we do not suggest that "the Eighth Amendment turns on the slightest numerical difference in IQ score," *post*, at 15–16. *Hall*

[7] The dissent suggests that *Hall* tacitly approved Idaho's approach to capital sentencing, which the dissent characterizes as "grant[ing] trial courts discretion to draw 'reasonable inferences' about IQ scores and, where appropriate, decline to consider the full range of the [standard error of measurement]." *Post*, at 14–15 (quoting *Hall*, 572 U. S., at ___ (slip op., at 15) (quoting *Pizzuto* v. *State*, 146 Idaho 720, 729, 202 P. 3d 642, 651 (2008))). We referred in *Hall* to Idaho's capital-sentencing scheme, however, only to note that the State had "passed legislation allowing a defendant to present additional evidence of intellectual disability even when an IQ test score is above 70." 572 U. S., at ___ (slip op., at 15).

invalidated Florida's strict IQ cutoff because the cutoff took "an IQ score as final and conclusive evidence of a defendant's intellectual capacity, when experts in the field would consider other evidence." 572 U. S., at ___ (slip op., at 10). Here, by contrast, we do not end the intellectual-disability inquiry, one way or the other, based on Moore's IQ score. Rather, in line with *Hall*, we require that courts continue the inquiry and consider other evidence of intellectual disability where an individual's IQ score, adjusted for the test's standard error, falls within the clinically established range for intellectual-functioning deficits.

IV

The CCA's consideration of Moore's adaptive functioning also deviated from prevailing clinical standards and from the older clinical standards the court claimed to apply.

A

In concluding that Moore did not suffer significant adaptive deficits, the CCA overemphasized Moore's perceived adaptive strengths. The CCA recited the strengths it perceived, among them, Moore lived on the streets, mowed lawns, and played pool for money. See 470 S. W. 3d, at 522–523, 526–527. Moore's adaptive strengths, in the CCA's view, constituted evidence adequate to overcome the considerable objective evidence of Moore's adaptive deficits, see *supra*, at 4; App. to Pet. for Cert. 180a–202a. See 470 S. W. 3d, at 522–524, 526–527. But the medical community focuses the adaptive-functioning inquiry on adaptive *deficits*. *E.g.*, AAIDD–11, at 47 ("significant limitations in conceptual, social, or practical adaptive skills [are] not outweighed by the potential strengths in some adaptive skills"); DSM–5, at 33, 38 (inquiry should focus on "[d]eficits in adaptive functioning"; deficits in only one of the three adaptive-skills domains suffice to show adaptive deficits); see *Brumfield*,

576 U. S., at ___ (slip op., at 15) ("[I]ntellectually disabled persons may have 'strengths in social or physical capabilities, strengths in some adaptive skill areas, or strengths in one aspect of an adaptive skill in which they otherwise show an overall limitation.'" (quoting AAMR, Mental Retardation: Definition, Classification, and Systems of Supports 8 (10th ed. 2002)).[8]

In addition, the CCA stressed Moore's improved behavior in prison. 470 S. W. 3d, at 522–524, 526–527. Clinicians, however, caution against reliance on adaptive strengths developed "in a controlled setting," as a prison surely is. DSM–5, at 38 ("Adaptive functioning may be difficult to assess in a controlled setting (e.g., prisons, detention centers); if possible, corroborative information reflecting functioning outside those settings should be obtained."); see AAIDD–11 User's Guide 20 (counseling against reliance on "behavior in jail or prison").

B

The CCA furthermore concluded that Moore's record of academic failure, along with the childhood abuse and suffering he endured, detracted from a determination that his intellectual and adaptive deficits were related. See 470 S. W. 3d, at 488, 526; *supra*, at 5, 7–8. Those traumatic experiences, however, count in the medical community as *"risk factors" for* intellectual disability. AAIDD–11, at 59–60 (emphasis added). Clinicians rely on such factors as cause to explore the prospect of intellectual disability further, not to counter the case for a disability

[8]The dissent suggests that disagreement exists about the precise role of adaptive strengths in the adaptive-functioning inquiry. See *post*, at 11–12. But even if clinicians would consider adaptive strengths alongside adaptive weaknesses within the same adaptive-skill domain, neither Texas nor the dissent identifies any clinical authority permitting the arbitrary offsetting of deficits against unconnected strengths in which the CCA engaged, see 470 S. W. 3d, at 520–526.

determination. See *id.*, at 60 ("[A]t least one or more of the risk factors [described in the manual] will be found in every case of" intellectual disability.).

The CCA also departed from clinical practice by requiring Moore to show that his adaptive deficits were not related to "a personality disorder." 470 S. W. 3d, at 488; see *id.*, at 526 (Moore's problems in kindergarten were "more likely cause[d]" by "emotional problems" than by intellectual disability). As mental-health professionals recognize, however, many intellectually disabled people also have other mental or physical impairments, for example, attention-deficit/hyperactivity disorder, depressive and bipolar disorders, and autism. DSM–5, at 40 ("[c]o-occurring mental, neurodevelopmental, medical, and physical conditions are frequent in intellectual disability, with rates of some conditions (e.g., mental disorders, cerebral palsy, and epilepsy) three to four times higher than in the general population"); see AAIDD–11, at 58–63. Coexisting conditions frequently encountered in intellectually disabled individuals have been described in clinical literature as "[c]omorbidit[ies]." DSM–5, at 40. See also Brief for AAIDD et al. as *Amici Curiae* 20, and n. 25. The existence of a personality disorder or mental-health issue, in short, is "not evidence that a person does not also have intellectual disability." Brief for American Psychological Association, APA, et al. as *Amici Curiae* 19.

C

The CCA's attachment to the seven *Briseno* evidentiary factors further impeded its assessment of Moore's adaptive functioning.

1

By design and in operation, the *Briseno* factors "creat[e] an unacceptable risk that persons with intellectual disability will be executed," *Hall*, 572 U. S., at ___ (slip op., at

1). After observing that persons with "mild" intellectual disability might be treated differently under clinical standards than under Texas' capital system, the CCA defined its objective as identifying the "consensus of *Texas citizens*" on who "should be exempted from the death penalty." *Briseno*, 135 S. W. 3d, at 6 (emphasis added). Mild levels of intellectual disability, although they may fall outside Texas citizens' consensus, nevertheless remain intellectual disabilities, see *Hall*, 572 U. S., at ___–___ (slip op., at 17–18); *Atkins*, 536 U. S., at 308, and n. 3; AAIDD–11, at 153, and States may not execute anyone in "the *entire category* of [intellectually disabled] offenders," *Roper*, 543 U. S., at 563–564 (emphasis added); see *supra*, at 9.

Skeptical of what it viewed as "exceedingly subjective" medical and clinical standards, the CCA in *Briseno* advanced lay perceptions of intellectual disability. 135 S. W. 3d, at 8; see *supra*, at 5–6, and n. 6. *Briseno* asks, for example, "Did those who knew the person best during the developmental stage—his family, friends, teachers, employers, authorities—think he was mentally retarded at that time, and, if so, act in accordance with that determination?" 135 S. W. 3d, at 8. Addressing that question here, the CCA referred to Moore's education in "normal classrooms during his school career," his father's reactions to his academic challenges, and his sister's perceptions of Moore's intellectual abilities. 470 S. W. 3d, at 526–527. But the medical profession has endeavored to counter lay stereotypes of the intellectually disabled. See AAIDD–11 User's Guide 25–27; Brief for AAIDD et al. as *Amici Curiae* 9–14, and nn. 11–15. Those stereotypes, much more than medical and clinical appraisals, should spark skepticism.[9]

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[9]As elsewhere in its opinion, the CCA, in its deployment of the *Briseno* factors, placed undue emphasis on adaptive strengths, see

2

The *Briseno* factors are an outlier, in comparison both to other States' handling of intellectual-disability pleas and to Texas' own practices in other contexts. See *Hall*, 572 U. S., at ___ (slip op., at 12) (consensus in the States provides "objective indicia of society's standards in the context of the Eighth Amendment" (internal quotation marks omitted)). No state legislature has approved the use of the *Briseno* factors or anything similar. In the 12 years since Texas adopted the factors, only one other state high court and one state intermediate appellate court have authorized their use. See, *e.g.*, *Commonwealth* v. *Bracey*, 632 Pa. 75, ___–___, 117 A. 3d 270, 286–287 (2015); *Howell* v. *State*, 2011 WL 2420378, *18 (Tenn. Crim. App., June 14, 2011).

Indeed, Texas itself does not follow *Briseno* in contexts other than the death penalty. See Brief for Constitution Project as *Amicus Curiae* 14–17. For example, the relatedness requirement Texas defends here, see *supra*, at 5–6, is conspicuously absent from the standards the State uses to assess students for intellectual disabilities. See 19 Tex. Admin. Code §89.1040(c)(5) (2015). And even within Texas' criminal-justice system, the State requires the intellectual-disability diagnoses of juveniles to be based on "the latest edition of the DSM." 37 Tex. Admin. Code §380.8751(e)(3) (2016). Texas cannot satisfactorily explain why it applies current medical standards for diagnosing intellectual disability in other contexts, yet clings to superseded standards when an individual's life is at stake.[10]

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supra, at 12–13; 470 S. W. 3d, at 527, and regarded risk factors for intellectual disability as evidence of the absence of intellectual disability, see *supra*, at 13–14; 470 S. W. 3d, at 526–527.

[10] Given the *Briseno* factors' flaws, it is unsurprising that scholars and experts have long criticized the factors. See, *e.g.*, American Bar Assn., Evaluating Fairness and Accuracy in State Death Penalty Systems: The Texas Capital Punishment Assessment Report 395 (2013)

V

As noted *supra*, at 9, States have some flexibility, but not "unfettered discretion," in enforcing *Atkins*' holding. *Hall*, 572 U. S., at ___ (slip op., at 17). "If the States were to have complete autonomy to define intellectual disability as they wished," we have observed, "*Atkins* could become a nullity, and the Eighth Amendment's protection of human dignity would not become a reality." *Id.*, at ___–___ (slip op., at 18–19).

The medical community's current standards supply one constraint on States' leeway in this area. Reflecting improved understanding over time, see DSM–5, at 7; AAIDD–11, at xiv–xv, current manuals offer "the best available description of how mental disorders are expressed and can be recognized by trained clinicians," DSM–5, at xli. See also *Hall*, 572 U. S., at ___, ___, ___, ___–___, ___–___ (slip op., at 2, 3, 8, 10–11, 20–21) (employing current clinical standards); *Atkins*, 536 U. S., at 308, n. 3, 317, n. 22 (relying on then-current standards).

In Moore's case, the habeas court applied current medical standards in concluding that Moore is intellectually disabled and therefore ineligible for the death penalty. See, *e.g.*, App. to Pet. for Cert. 150a–151a, 200a–203a.

("The *Briseno* factors create an especially high risk that [an intellectually disabled defendant] will be executed because, in many ways, they contradict established methods for diagnosing [intellectual disability]."); Blume, Johnson, & Seeds, Of *Atkins* and Men: Deviations from Clinical Definitions of Mental Retardation in Death Penalty Cases (footnote omitted), 18 Cornell J. L. & Pub. Pol'y 689, 710–712 (2009) ("The *Briseno* factors present an array of divergences from the clinical definitions."); Macvaugh & Cunningham, *Atkins* v. *Virginia*: Implications and Recommendations for Forensic Practice, 37 J. Psychiatry & L. 131, 136 (2009) ("The seven criteria of the *Briseno* opinion operationalize an *Atkins* interpretation that [exempts only] a subcategory of persons with [intellectual disabilities] from execution."). See also 470 S. W. 3d, at 529–530, and n. 5 (Alcala, J., dissenting) (summarizing, in this case, scholarly criticism of *Briseno*).

The CCA, however, faulted the habeas court for "disregarding [the CCA's] case law and employing the definition of intellectual disability presently used by the AAIDD." 470 S. W. 3d, at 486. The CCA instead fastened its intellectual-disability determination to "the AAMR's 1992 definition of intellectual disability that [it] adopted in *Briseno* for *Atkins* claims presented in Texas death-penalty cases." *Ibid.* By rejecting the habeas court's application of medical guidance and clinging to the standard it laid out in *Briseno*, including the wholly nonclinical *Briseno* factors, the CCA failed adequately to inform itself of the "medical community's diagnostic framework," *Hall*, 572 U. S., at ___–___ (slip op., at 19–20). Because *Briseno* pervasively infected the CCA's analysis, the decision of that court cannot stand.

* * *

For the reasons stated, the judgment of the Texas Court of Criminal Appeals is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 15–797

BOBBY JAMES MOORE, PETITIONER *v.* TEXAS

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

[March 28, 2017]

CHIEF JUSTICE ROBERTS, with whom JUSTICE THOMAS and JUSTICE ALITO join, dissenting.

The Texas Court of Criminal Appeals (CCA) concluded that Bobby James Moore was not intellectually disabled so as to be exempt from the death penalty under *Atkins* v. *Virginia*, 536 U. S. 304 (2002). It reached that conclusion based on its findings that he had failed to establish either significantly subaverage intellectual functioning or related significant deficits in adaptive behavior. The latter conclusion was based, in part, on the CCA's analysis of a set of seven "evidentiary factors" from *Ex parte Briseno*, 135 S. W. 3d 1, 8 (Tex. Crim. App. 2004). I agree with the Court today that those factors are an unacceptable method of enforcing the guarantee of *Atkins*, and that the CCA therefore erred in using them to analyze adaptive deficits. But I do not agree that the CCA erred as to Moore's intellectual functioning. Because the CCA's determination on that ground is an independent basis for its judgment, I would affirm the decision below.

My broader concern with today's opinion, however, is that it abandons the usual mode of analysis this Court has employed in Eighth Amendment cases. The Court overturns the CCA's conclusion that Moore failed to present sufficient evidence of both inadequate intellectual functioning and significant deficits in adaptive behavior without even considering "objective indicia of society's stand-

ards" reflected in the practices among the States. *Hall* v. *Florida*, 572 U. S. ___, ___ (2014) (slip op., at 12) (quoting *Roper* v. *Simmons*, 543 U. S. 551, 563 (2005)). The Court instead crafts a constitutional holding based solely on what it deems to be medical consensus about intellectual disability. But clinicians, not judges, should determine clinical standards; and judges, not clinicians, should determine the content of the Eighth Amendment. Today's opinion confuses those roles, and I respectfully dissent.

I

On April 25, 1980, Moore and two others were throwing dice when they decided to commit a robbery to obtain money for car payments. Moore provided the group with two firearms, and the three men began to drive around Houston looking for a target. Eventually they settled on the Birdsall Super Market. After negotiating their respective shares of the money they intended to steal and donning disguises, the three went inside, heading straight to a courtesy booth staffed by James McCarble and Edna Scott. When Scott realized a robbery was occurring and screamed, Moore shot McCarble in the head, killing the 70-year-old instantly.

Moore fled Houston and remained on the run until his arrest in Louisiana ten days after the murder. After giving a written statement admitting his participation in the robbery and killing, Moore was charged with capital murder. A jury convicted him and sentenced him to death.

Over the next three decades, Moore's case traversed the state and federal court systems, finally reaching the *Atkins* hearing at issue today in 2014. The state habeas court conducted a two-day evidentiary hearing, during which it heard testimony from family members, a fellow inmate, a prison official, and four mental health professionals. The court concluded that Moore had shown intellectual disability and recommended that he be granted

relief.

But it was just that: a recommendation. Under Texas law, the CCA, not the habeas court, is the ultimate fact-finder in habeas corpus proceedings. *Ex parte Reed*, 271 S. W. 3d 698, 727 (Tex. Crim. App. 2008); see also *Ex parte Moore*, 470 S. W. 3d 481, 489 (Tex. Crim. App. 2015). Assuming that role, the CCA declined to adopt the habeas court's findings and conclusions, instead conducting its own review of the record to determine whether Moore had shown he was intellectually disabled.

The CCA began by considering the appropriate legal standard for assessing intellectual disability. Following our instruction to the States to "develop[] appropriate ways to enforce" *Atkins*, 536 U. S., at 317 (internal quotation marks omitted), the CCA had set out a legal definition for intellectual disability in its prior decision in *Ex parte Briseno*. Rather than follow that test, the habeas court below crafted its own standards for intellectual disability. But "[t]he decision to modify the legal standard for intellectual disability in the capital-sentencing context," the CCA explained, "rests with this Court unless and until the Legislature acts." 470 S. W. 3d, at 487. Just as we have corrected lower courts for taking it upon themselves to dismiss our precedent as outdated, see, *e.g.*, *Bosse* v. *Oklahoma*, 580 U. S. ___, ___ (2016) (*per curiam*) (slip op., at 2), so too the CCA rebuked the habeas court for ignoring binding CCA precedent.

The CCA went on to explain why there was no reason to modify the legal standard it had previously set out. *Briseno* had stated a rule that in order for an *Atkins* claimant to demonstrate intellectual disability he must show (1) significantly subaverage general intellectual functioning and (2) related limitations in adaptive functioning, (3) which had appeared prior to age 18. See 470 S. W. 3d, at 486. It also laid out a set of seven evidentiary factors—the "*Briseno* factors"—designed to assist "fact-

finders . . . in weighing evidence" of intellectual disability. *Briseno*, 135 S. W. 3d, at 8.

The three-prong definition of intellectual disability came directly from the ninth edition of the manual published by what is now the American Association on Intellectual and Developmental Disabilities (AAIDD). *Id.*, at 7; see American Association on Mental Retardation, Mental Retardation: Definition, Classification, and Systems of Supports 5 (9th ed. 1992). By the time Moore's case reached the CCA, the AAIDD no longer included the requirement that adaptive deficits be "related" to intellectual functioning. But, as the CCA noted, the most recent version of the other leading diagnostic manual, the DSM–5, *did* include that requirement. 470 S. W. 3d, at 487, n. 5; American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 38 (5th ed. 2013) (hereinafter DSM–5). So the CCA was faced with a choice in *Moore*: Keeping the relatedness requirement would be inconsistent with the AAIDD's current guidance; dropping it would be out of step with the newest version of the DSM. The CCA concluded that "the legal test we established in *Briseno* remains adequately 'informed by the medical community's diagnostic framework,'" and went on to evaluate the case under that approach. 470 S. W. 3d, at 487 (quoting *Hall*, 572 U. S., at ___–___ (slip op., at 19–20)).

Starting with intellectual functioning, the CCA conducted a painstaking analysis of the battery of tests Moore had taken over the past 40 years. The CCA concluded that five of the tests the habeas court had considered were unreliable: two of them were neuropsychological tests rather than formal IQ measures; two were group-administered tests, which Moore's own experts had criticized, App. 12 (Otis-Lennon Mental Abilities Test "not accepted as an instrument appropriate for the assessment of mental retardation or intellectual deficiency"); *id.*, at 115–116 (Slosson is "not the greatest test" and "not the most reliable approach");

and the administrator of the fifth test concluded it was "not . . . a valid score" because of evidence of suboptimal effort, *id.*, at 203.

That left two scores for the CCA to analyze: a 78 and a 74. Significantly subaverage intellectual functioning is "generally shown by an [IQ] of 70 or less." 470 S. W. 3d, at 486. "Taking into account the standard error of measurement" for the 78 score yielded a range of 73 to 83—*i.e.*, a range that did not include an IQ of 70 or less. *Id.*, at 519. As for the 74, the CCA again considered the standard error of measurement, which yielded a score range of 69 to 79. The lower end of that range placed Moore within the parameters for significantly subaverage intellectual functioning. The CCA found, however, that Moore's score was unlikely to be in the lower end of the error-generated range because he was likely exerting poor effort and experiencing depression at the time the test was administered—both factors that Moore's experts agreed could artificially deflate IQ scores. *Id.*, at 516–517, 519; App. 46, 92. The CCA accordingly concluded that Moore had failed to present sufficient evidence of significantly subaverage intellectual functioning.

Having failed one part of the CCA's three-part test, Moore could not be found intellectually disabled. The CCA nonetheless went on to consider the second prong of the test, Moore's adaptive deficits. Moore had taken a standardized test of adaptive functioning in which he scored more than two standard deviations below the mean. But Dr. Kristi Compton, the state expert who had administered that test, explained that it was not an accurate measure of Moore's abilities. She reached this conclusion not because of Moore's adaptive strengths but instead because "she had to assign zeroes to questions asking about areas to which [Moore] had no exposure, such as writing a check and using a microwave oven." 470 S. W. 3d, at 522. Dr. Compton further opined that her

evaluation of Moore and review of documentary evidence—including school, trial, and prison records—did not show adaptive deficits sufficient for an intellectual disability diagnosis. App. 185; see 470 S. W. 3d, at 521–524.

The CCA also considered and recounted the testimony of the other experts who, unlike Dr. Compton, concluded that Moore had shown significant adaptive deficits. As fact-finders often do in confronting conflicting evidence, the CCA made a credibility determination. The opinion of Dr. Compton, the CCA concluded, was "far more credible and reliable" than those of Moore's experts, given Dr. Compton's "considerable experience," "thorough[] and rigorous[] review[] [of] a great deal of material," and personal evaluation of Moore. *Id.*, at 524. Based on Dr. Compton's expert opinion, the CCA concluded Moore had failed to demonstrate significant adaptive deficits.

Finally, the CCA considered whether, even assuming that Moore had made sufficient showings as to intellectual functioning and adaptive deficits, those two were related. Again finding Dr. Compton's testimony the most credible, the CCA concluded that "the record overwhelmingly supports the conclusion" that Moore's observed academic and social difficulties stemmed, not from low intellectual abilities, but instead from outside factors like the trauma and abuse he suffered as a child and his drug use at a young age. *Id.*, at 526. The CCA explained that, in addition to Dr. Compton's expert testimony, consideration of the seven *Briseno* factors reinforced that relatedness conclusion.

Given that Moore had failed to present sufficient evidence on intellectual functioning or related adaptive deficits, the CCA "conclude[d] that for Eighth Amendment purposes," Moore had not shown he was intellectually disabled. 470 S. W. 3d, at 527. Accordingly, he was not exempt from execution under *Atkins*.

II

A

This Court's precedents have emphasized the importance of state legislative judgments in giving content to the Eighth Amendment ban on cruel and unusual punishment. "Eighth Amendment judgments should not be . . . merely the subjective views of individual Justices." *Coker* v. *Georgia*, 433 U. S. 584, 592 (1977) (plurality opinion). For that reason, we have emphasized that "judgment should be informed by objective factors to the maximum possible extent." *Ibid.* The "clearest and most reliable objective evidence of contemporary values" comes from state legislative judgments. *Atkins*, 536 U. S., at 312 (internal quotation marks omitted). Such legislative judgments are critical because in "a democratic society legislatures, not courts, are constituted to respond to the will and consequently the moral values of the people." *Gregg* v. *Georgia*, 428 U. S. 153, 175 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.) (internal quotation marks omitted). And we have focused on state enactments in this realm because of the "deference we owe to the decisions of the state legislatures under our federal system . . . where the specification of punishments is concerned." *Id.*, at 176. For these reasons, we have described state legislative judgments as providing "essential instruction" in conducting the Eighth Amendment inquiry. *Roper*, 543 U. S., at 564.

Our decisions addressing capital punishment for the intellectually disabled recognize the central significance of state consensus. In holding that the Eighth Amendment prohibits the execution of intellectually disabled individuals in *Atkins*, the Court first identified a national consensus against the practice and then, applying our own "independent evaluation of the issue," concluded that there was "no reason to disagree" with that consensus. 536 U. S., at 321. The scope of our holding—guided as it was by the

national consensus—swept only as far as that consensus. We recognized that there remained the potential for "serious disagreement . . . in determining which offenders are in fact retarded." *Id.*, at 317. And we did not seek to provide "definitive procedural or substantive guides for determining when a person who claims mental retardation will be so impaired as to fall within *Atkins*' compass." *Bobby* v. *Bies*, 556 U. S. 825, 831 (2009) (alterations and internal quotation marks omitted). Instead, we left "to the States the task of developing appropriate ways to enforce the constitutional restriction upon their execution of sentences." *Atkins*, 536 U. S., at 317 (quoting *Ford* v. *Wainwright*, 477 U. S. 399, 416–417 (1986); alterations omitted).

Twelve years after *Atkins*, the Court confronted one State's attempt to enforce the holding of that case. *Hall* v. *Florida* considered Florida's rule requiring a prisoner to present an IQ score of 70 or below to make out an *Atkins* claim. Although the Court thought it "proper to consider the psychiatric and professional studies that elaborate on the purpose and meaning of IQ scores," it emphasized that "[t]he legal determination of intellectual disability is distinct from a medical diagnosis." 572 U. S., at ___, ___ (slip op., at 7, 19). It was "the Court's duty"—not that of medical experts—"to interpret the Constitution." *Id.*, at ___ (slip op., at 19). The Court's conclusion that Florida's rule was "in direct opposition to the views of those who design, administer, and interpret the IQ test" was not enough to decide the case. *Id.*, at ___ (slip op., at 22). Instead, consistent with our settled approach, the Court canvassed "the legislative policies of various States," as well as "the holdings of state courts," because it was state policies that provided "essential instruction" for determining the scope of the constitutional guarantee. *Id.*, at ___, ___ (slip op., at 7, 19) (quoting *Roper*, 543 U. S., at 564). State policy, the Court concluded, indicated a "consensus

that our society does not regard [Florida's rule] as proper or humane," and that "consensus . . . instruct[ed us] how to decide the specific issue presented." 572 U. S., at ___, ___ (slip op., at 7, 16). The Court was sharply divided on that conclusion, see *id.*, at ___–___ (slip op., at 4–7) (ALITO, J., dissenting), but not on the fact that our precedent mandated such an inquiry.

B

Today's decision departs from this Court's precedents, followed in *Atkins* and *Hall*, establishing that the determination of what is cruel and unusual rests on a judicial judgment about societal standards of decency, not a medical assessment of clinical practice. The Court rejects the CCA's conclusion that Moore failed to make the requisite showings with respect to intellectual functioning and adaptive deficits, without any consideration of the state practices that were, three Terms ago, "essential" to the Eighth Amendment question. *Hall*, 572 U. S., at ___ (slip op., at 19). The Court instead finds error in the CCA's analysis based solely on what the Court views to be departure from typical clinical practice.

The clinical guides on which the Court relies today are "designed to assist clinicians in conducting clinical assessment, case formulation, and treatment planning." DSM–5, at 25. They do not seek to dictate or describe who is morally culpable—indeed, the DSM–5 cautions its readers about "the imperfect fit between the questions of ultimate concern to the law and the information contained" within its pages. *Ibid.*

The Eighth Amendment, under our precedent, is supposed to impose a moral backstop on punishment, prohibiting sentences that our society deems repugnant. The Court, however, interprets that constitutional guarantee as turning on clinical guidelines that do not purport to reflect standards of decency. The Court's refusal even to

address what we previously "pinpointed" as "the clearest and most reliable objective evidence" of such standards—the practices among the States—goes unexplained by the majority. *Atkins*, 536 U. S., at 312 (internal quotation marks omitted).

A second problem with the Court's approach is the lack of guidance it offers to States seeking to enforce the holding of *Atkins*. Recognizing that we have, in the very recent past, held that "'the views of medical experts' do not 'dictate' a court's intellectual-disability determination," the Court assures us that it is not requiring adherence "to everything stated in the latest medical guide," *ante*, at 9–10 (quoting *Hall*, 572 U. S., at ___ (slip op., at 19)); States have "some flexibility" but cannot "disregard" medical standards. *Ante*, at 10, 17. Neither the Court's articulation of this standard nor its application sheds any light on what it means.

Start with the Court's stated principle. "Disregard" normally means to dismiss as unworthy of attention, and that is plainly not what the CCA did here. For example, the Court faults the CCA for placing too much weight on Moore's adaptive strengths and functioning in prison, implying that this marked a dismissal of clinical standards. Yet the CCA was aware of and, in a prior decision, had addressed the fact that some clinicians would counsel against considering such information. See 470 S. W. 3d, at 489 (citing *Ex parte Cathey*, 451 S. W. 3d 1, 26–27 (2014)). Both because "[m]ost courts . . . consider *all* of the person's functional abilities" and because it seemed "foolhardy" to ignore strengths, the CCA thought it proper to take note of them. *Id.*, at 27. As to prison conduct, the CCA decided that the fundamental questions the *Atkins* inquiry sought to answer were best considered—and "sound scientific principles" best served—by taking account of "*all* possible data that sheds light on a person's adaptive functioning, including his conduct in a prison society." 451 S. W. 3d, at

26–27. The CCA considered clinical standards and explained why it decided that departure from those standards was warranted. The court did not "disregard" medical standards.

Nor do the Court's identified errors clarify the scope of the "flexibility" we are told States retain in this area. The Court faults the CCA for "overemphasiz[ing]" strengths and "stress[ing]" Moore's conduct in prison, *ante,* at 12–13, suggesting that some—but not *too much*—consideration of strengths and prison functioning is acceptable. The Court's only guidance on when "some" becomes "too much"? Citations to clinical guides. See *ibid.* But if courts do have "flexibility" in enforcing the guarantee of *Atkins* and need not "adhere[] to these guides in every instance or particular, *ante,* at 10, 17, then clinical texts, standing alone, cannot answer the question of why the CCA placed too much weight on adaptive strengths and prison conduct. The line between the permissible—consideration, maybe even emphasis—and the forbidden—"overemphasis"—is not only thin, but totally undefined by today's decision. It is not at all clear when a State's deviation from medical consensus becomes so great as to "diminish the force" of that consensus, *ante,* at 2, and thereby violate the Constitution.

Finally, the Court's decision constitutionalizes rules for which there is not even clinical consensus—a consequence that will often arise from the approach charted by the Court today. Consider the Court's conclusion that, contrary to "the medical community['s] focus[] . . . on adaptive *deficits*," "the CCA overemphasized Moore's perceived adaptive strengths." *Ante,* at 12. In support of this proposition, the Court cites the AAIDD's direction that "significant limitations in conceptual, social, or practical adaptive skills [are] not outweighed by the potential strengths in some adaptive skills." AAIDD, Intellectual Disability: Definition, Classification, and Systems of Supports 47

(11th ed. 2010) (hereinafter AAIDD–11). Even assuming that all clinicians would agree with this statement, there are a number of ways it might be interpreted: as meaning that strengths in one of the three adaptive skill areas—conceptual, social, and practical—should not cancel out deficits in another; as meaning that strengths should not outweigh deficits within the same skill area; or as meaning that evidence of some ability to perform a skill should not offset evidence of the inability to perform that same skill. And it appears that clinicians do, in fact, disagree about what this direction means. Compare, *e.g.*, Brief for AAIDD et al. as *Amici Curiae* 17 ("The clinician's diagnostic focus does not—and cannot—involve *any form* of 'balancing' deficits against the abilities or strengths which the particular individual may also possess" (emphasis added)) with Hagan, Drogin, & Guilmette, Assessing Adaptive Functioning in Death Penalty Cases after *Hall* and DSM–5, 44 J. Am. Acad. Psychiatry & L. 96, 98 (2016) ("Any assessment of adaptive functioning must give sufficient consideration to assets and deficits alike. . . . [I]nventorying only assets or deficits . . . departs from DSM–5, [the AAIDD–11], and all other established frameworks" (footnotes omitted)).

The same is true about consideration of prison conduct. The two primary clinical guides do offer caution about considering functioning in prison. But the stringency of their caution differs, with the AAIDD seeming to enact a flat ban on ever looking to functioning in prison and the DSM urging "if possible" to consider "corroborative information reflecting functioning outside" of prison. AAIDD, User's Guide: Intellectual Disability: Definition, Classification, and Systems of Supports 20 (11th ed. 2012); DSM–5, at 38. The CCA followed the DSM–5's instruction, relying on Dr. Compton's conclusion that "even before [Moore] went to prison" he demonstrated a "level of adaptive functioning . . . too great . . . to support an intellectual-

disability diagnosis." 470 S. W. 3d, at 526. In determining that the CCA erred in this regard, the Court implicitly rejects the DSM–5's approach to the proper consideration of prison conduct and accepts what it takes to be that of the AAIDD. The Court does not attempt to explain its justification for why the Eighth Amendment should favor one side over the other in this clinical debate.

"Psychiatry is not . . . an exact science." *Ake* v. *Oklahoma*, 470 U. S. 68, 81 (1985). "[B]ecause there often is no single, accurate psychiatric conclusion," we have emphasized the importance of allowing the "primary factfinder[]" to "resolve differences in opinion . . . on the basis of the evidence offered by each party." *Ibid.* You would not know it from reading the Court's opinion today, but that is precisely what the CCA—the factfinder under Texas law—did in the decision below: Confronted with dueling expert opinions about how to evaluate adaptive functioning and what conclusion to reach, the CCA resolved the dispute before it by accepting the testimony of the expert it deemed most credible. Of course, reliance on an expert opinion does not insulate a decision from further judicial review. But, unlike the Court, I am unwilling to upset the considered judgment of the forensic psychologist that the factfinding court deemed the most credible based on my own interpretation of a few sentences excised from medical texts.

III

As for how I would resolve this case, there is one aspect of the CCA's approach to intellectual disability that is incompatible with the Eighth Amendment: the *Briseno* factors. As the Court explains, no state legislature has approved the use of these or any similar factors. Although the CCA reviewed these factors to determine whether Moore's adaptive deficits were "related" to his intellectual functioning, it may be that consideration of those factors tainted the whole of the CCA's adaptive functioning anal-

ysis. I need not decide this question, however, because the CCA reached the issue of Moore's adaptive functioning only after concluding that he had failed to demonstrate intellectual functioning sufficiently low to warrant a finding of intellectual disability, regardless of his adaptive deficits or their relation to his IQ. Moore has not presented sufficient reason to upset that independent holding.

The Court concludes that the CCA's assessment of Moore's IQ scores is "irreconcilable with *Hall*." *Ante,* at 10. Not so. *Hall* rejected a Florida rule that required a prisoner to present an IQ score of 70 or below to demonstrate intellectual disability, thereby barring consideration of the standard error of measurement (SEM) of an over-70 score. But the CCA did not apply Florida's rule—or anything like it. The court in fact began by taking account of the SEM, explaining that Moore's tested score of 74 led to an IQ range between 69 and 79. The court went on to consider additional expert testimony about potential factors affecting that score. Based on that evidence, the CCA discounted portions of the SEM-generated range and concluded that Moore's IQ did not lie in the relevant range for intellectual disability.

Hall provided no definitive guidance on this sort of approach: recognizing the inherent imprecision of IQ tests, but considering additional evidence to determine whether an SEM-generated range of scores accurately reflected a prisoner's actual IQ.[1] Indeed, in its catalog of States that

[1] *Hall* also reached no holding as to the evaluation of IQ when an *Atkins* claimant presents multiple scores, noting only that "the analysis of multiple IQ scores jointly is a complicated endeavor." *Hall* v. *Florida*, 572 U. S. ___, ___ (2014) (slip op., at 11). The Court's definition of deficient intellectual functioning as shown by "*an* IQ score" of roughly 70, *ante,* at 4 (emphasis added), is dicta and cannot be read to call into question the approach of States that would not treat a single IQ score as dispositive evidence where the prisoner presented additional higher scores.

"ha[d] taken a position contrary to that of Florida," the Court in *Hall* included a State that granted trial courts discretion to draw "reasonable inferences" about IQ scores and, where appropriate, decline to consider the full range of the SEM. 572 U. S., at ___, ___ (slip op., at 15, 16) (quoting *Pizzuto* v. *State*, 146 Idaho 720, 729, 202 P. 3d 642, 651 (2008)).[2] That is the approach the CCA took here. If that approach was "contrary" to Florida's rule in *Hall*, I do not understand how *Hall* can be read to reject that approach today.

The Court's ruling on intellectual functioning turns solely on the fact that Moore's IQ range was 69 to 79 rather than 70 to 80. See *ante*, at 11 ("Because the lower end of Moore's score range falls at or below 70, the CCA had to move on to consider Moore's adaptive functioning"). The CCA certainly did not "disregard" SEM in assessing Moore's IQ, and it explained why other factors led it to conclude that his actual score did not fall near the lower end of the SEM range. Only by insisting on the absolute conformity to medical standards the Court disclaims can it find a violation of the Eighth Amendment based on that one-point difference.[3] *Ibid.* In concluding that the Eighth

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[2]The Court correctly notes that *Hall* cited *Pizzuto* as an instance of a State that had enacted "legislation allowing a defendant to present additional evidence of intellectual disability even when an IQ test score is above 70." *Hall*, 572 U. S., at ___ (slip op., at 15). The "additional evidence" that *Pizzuto* considered, however, was evidence that would indicate where within the SEM range a prisoner's IQ likely fell, 146 Idaho, at 729, 202 P. 3d, at 651—that is, the same sort of evidence that the CCA considered below.

[3]It is not obvious that clinicians would ignore evidence beyond the SEM in determining the appropriate range that an IQ score represents. See, *e.g.*, Macvaugh & Cunningham, *Atkins v. Virginia*: Implications and Recommendations for Forensic Practice, 37 J. Psychiatry & L. 131, 147 (2009) ("Error in intellectual assessment is not solely a function [of the SEM]. Other sources of error or assessment imprecision may involve the examinee . . . includ[ing] the mental and physical health, mood, effort, and motivation of the examinee during testing . . . .");

Amendment turns on the slightest numerical difference in IQ score, the Court today is just as wrong as the Florida Supreme Court was in *Hall*.

Today's decision is not compelled by *Hall*; it is an expansion of it. Perhaps there are reasons to expand *Hall*'s holding—to say that States must read IQ tests as rigidly encompassing the entire SEM range, regardless of any other evidentiary considerations, or to say that the reasons that the CCA gave for discounting the lower end of Moore's IQ range were improper. But before holding that the Constitution demands either result, our precedent requires consulting state judgments on the matter to determine whether a national consensus has developed. Moore has presented no argument as to such a consensus, and the majority does not claim that there is one. Without looking to any such "objective evidence of contemporary values," *Atkins*, 536 U. S., at 312 (internal quotation marks omitted), there is a real danger that Eighth Amendment judgments will embody "merely the subjective views of individual Justices," *Coker*, 433 U. S., at 592 (plurality opinion). As Justice Frankfurter cautioned, "[o]ne must be on guard against finding in personal disapproval a reflection of more or less prevailing condemnation." *Louisiana ex rel. Francis* v. *Resweber*, 329 U. S. 459, 471 (1947) (concurring opinion).

I respectfully dissent.

AAIDD–11, at 100–101 ("When considering the relative weight or degree of confidence given to any assessment instrument, the clinician needs to consider . . . the conditions under which the test(s) was/were given [and] the standard error of measurement").

ORIGINAL

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RECEIVED
MAY 04 2017
S.C. SUPREME COURT

May 4, 2017

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

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

Dear Mr. Shearouse:

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

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

Sincerely,

David Alexander
Appellate Defender

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

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
74
CASE NO. 2018-CP-42-00928

(ORDER LIST: 581 U.S.)

MONDAY, MAY 1, 2017

CERTIORARI -- SUMMARY DISPOSITION

16-7685 CARROLL, TAURUS J. V. ALABAMA

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the Court of Criminal Appeals of Alabama for further consideration in light of *Moore* v. *Texas*, 581 U. S. ____ (2017).

ORDERS IN PENDING CASES

16M122 SAID, ALBER I. V. COHEN, MARY ANN, ET AL.

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

16-7564 KASTNER, JOSEPH R. V. CARDOZO, MICHAEL, ET AL.

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied.

CERTIORARI GRANTED

16-498 PATCHAK, DAVID V. ZINKE, SEC. OF INTERIOR, ET AL.

The motion of Federal Courts Scholars for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is granted limited to Question 1 presented by the petition.

16-784 MERIT MANAGEMENT GROUP V. FTI CONSULTING

The petition for a writ of certiorari is granted.

CERTIORARI DENIED

15-1486 TUNICA-BILOXI GAMING, ET AL. V. ZAUNBRECHER, ZACHARY, ET AL.

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
75
CASE NO. 2018-CP-42-00928

James Austin

Major Positions Held

2003 – Present	*President, The JFA Institute*, Washington, D.C.
1999 -2003	*Research Professor and Director, Institute for Crime, Justice, and Corrections*, Department of Sociology, The George Washington University, Washington, D.C.
1982 - 1998	*Executive Vice President* National Council on Crime and Delinquency San Francisco and Washington, D.C.
1974 - 1982	*Research Associate* National Council on Crime and Delinquency San Francisco
1970 - 1974	*Correctional Sociologist* Illinois Department of Corrections Joliet, Illinois

Education

B.A.	1970, Wheaton College, Wheaton, Illinois, Sociology
M.A.	1975, De Paul University, Chicago, Illinois, Sociology
Ph.D.	1980, University of California, Davis, California, Sociology

Relevant Professional Experience

2015 – present	MacArthur Foundation Safety and Justice Challenge in which JFA is responsible for working with 20 local counties to design and implement plans to lower current jail populations by 15-30%.

2016 – present	Maryland Department of Public Safety and Correctional Services, Technical Assistance funded by Open Society Institute-Baltimore.
2012 - present	Orleans Parish Prison Population Projections and Jail Reduction Strategic Plan.
2014 - present	Validation study of the San Francisco Adult Probation Risk and Needs Assessment System (COMPAS), San Francisco County.
2005 – 2014	Director, Design and Evaluation of the Maryland Department of Public Safety and Corrections (MDPSC) Risk and Case Management System (Parole, Probation and Prison). MDPSC and Open Society Institute-Baltimore.
2014 - 2015	Master Jail Plan, Sonoma County.
2011 – 2016	Monitor, Consent Decree, Walnut Group Correctional Facility, Mississippi Department of Corrections (adult and juvenile populations)
2010 – 2014	Consultant. Technical Assistance on Solitary Confinement in Maryland, New Mexico, and Illinois. Vera Institute.
2011 – 2015	Director, Los Angeles County Sheriff Jail Population Projections and Impact of AB 109. Funded by Public Welfare Foundation.
2013-2014	Evaluation of the Contra Costa Probation Department's Response to AB 109- Realignment.
2012-2013	Evaluation of Alternatives to Incarceration, San Diego County.
2012 – 2013	Evaluation of the Short-Term Technical Violation Pilot Study. U.S. Parole Commission.
2012	Co-Director. Evaluation of the Oklahoma Administrative Segregation System. Oklahoma Department of Corrections.

2011 - 2012	Consultant. Study of Colorado Administrative Segregation System. Colorado Department of Corrections and National Institute of Corrections, U.S. Department of Justice.
2010 – 2011	Co-Director, Revalidation of the Texas Pardon and Parole Board System. Texas Pardon and Parole Board.
2009 – 2012	Director, Prison Population-Justice Re-investment Initiative. Pew Charitable Trusts.
2010 – 2011	Special Consultant, Jail Population Projection Study, US Department of Justice and Orleans Paris.
2008 – 2009	Special Consultant, Administrative Segregation/Super Max Parchment Study. Mississippi Department of Corrections and ACLU
1998 – 2011	*Director,* Correctional Options Program (Bureau of Justice Assistance, U.S. Department of Justice)
2007 – 2008	Director, Harris County Pretrial Services Re-Validation Risk Assessment Study. (Harris County, Texas).
2005 – 2008	Director, Montgomery Pretrial Services Risk Assessment Validation Study. (Bureau of Justice Assistance, U.S. Department of Justice).
2003 – 2006	*Director*, Assessment of Sexual Assault in the Texas Prison System. (National Institute of Justice).
2002 – 2006	*Director,* Parole Guidelines System Project, Maryland Parole Commission. (Baltimore Open Society Institute).
2003 – 2006	*Director*, Validation Study of the Alameda County Juvenile Detention Risk Assessment System (Alameda County, California).
2002—2006	*Independent Expert,* Office of Youth Development, Louisiana Department of Public Safety and Corrections, Jointly Appointed by State of Louisiana and U.S. Department of Justice, Civil Rights Division

2003-2004	*Director,* Evaluation and Redesign Of Systems For Berks County Pretrial and Sentenced Populations. (Berks County, PA).
2002 – 2003	*Director*, Validation of the Pennsylvania Parole Guidelines. Pennsylvania Board of Probation and Parole. (Pennsylvania Commission on Crime and Delinquency).
2001 – 2003	*Director,* Development of the Kentucky Parole Risk Assessment System. Kentucky Parole and Pardon Board.
1998 – 2004	*Monitor*, Georgia Juvenile Justice Corrections System, Jointly Appointed by State of Georgia and U.S. Department of Justice, Civil Rights Division.
1997 - 2002	*Director*, National Technical Assistance Program for External Prison Classification Systems (Oregon, Wisconsin, Virginia, Tennessee, Texas, Oklahoma, and Montana) (National Institute of Corrections)
1996 - 2002	*Director,* National Technical Assistance Program for Internal Prison Classification Systems (Washington State, Oregon, Missouri, South Dakota, Connecticut, Colorado, and Florida)
1996 - 1999	*Director*, National Survey of Juveniles in Adult Correctional Facilities (Bureau of Justice Assistance), GWU.
1996 - 1999	*Director,* National Multi-Site Boot Camp Evaluation (Adult and Juvenile) (National Institute of Justice), GWU.
1995 - 1999	*Director*, Evaluation of “Three Strikes and You're Out” Laws in California and Nationally, (National Institute of Justice), NCCD
1996 - 1999	*Director*, National Survey of Privatization in Corrections (adult and juvenile facilities) (Bureau of Justice Assistance), NCCD.

1992 - 1997	*Director*, Correctional Options Evaluation (National Institute of Justice and Bureau of Justice Assistance), NCCD
1997	*Director*, Congressionally mandated evaluation of the D.C. Department of Youth Services Agency (YSA) operations, classification system, staffing levels, physical plant, mental health, information services and program services, (National Institute of Corrections, Bureau of Prisons), NCCD
1992 - 1997	*Director*, National Structured Sentencing Evaluation (Bureau of Justice Assistance), NCCD
1995 - 1997	*Director*, Congressionally mandated evaluation of the D.C. Department of Corrections operations, classification system, staffing levels, and physical plant, including, comprehensive cost analysis of long-term options for the Lorton Complex, (National Institute of Corrections, Bureau of Prisons), NCCD
1991 - 1997	*Director*, Design and Implementation of the New York City Department of Corrections Objective Jail Classification System (Consent Decree, New York City Department of Corrections), NCCD
1991 - 1995	*Director*, Philadelphia Prison System Classification and Population Projections Project (Consent Decree, City of Philadelphia), NCCD
1991 - 1994	*Director*, Evaluation of Jail Drug Treatment Programs (National Institute of Justice), NCCD
1990 - 1993	*Director*, Evaluation of the Los Angeles Sheriff's Boot Camp Program (National Institute of Justice), NCCD
1991 - 1993	*Director*, Design and Implementation of the Cook County Objective Jail Classification System (Cook County Sheriff's Department), NCCD
1990 - 1991	*Director*, California Assessment of the Overrepresentation of Minority Youth in Juvenile Justice (Office of Criminal Justice Planning), NCCD

1988 - 1992	*Director*, Experimental Test of Electronic Monitoring Program, Oklahoma Department of Corrections (National Institute of Justice), NCCD
1987 - 1992	*Director*, Experimental Test of the Prison Management Classification System (National Institute of Corrections and Washington Department of Corrections), NCCD
1986 - 1990	*Director*, National Jail Classification Project (NIC), NCCD
1985 - 1987	*Co-Director*, California Youth Authority Parole Risk Study (Packard Foundation and CYA), NCCD
1984 - 1986	*Co-Director*, Study of Institutional Violence at San Quentin (Consent Decree, California Department of Corrections, NCCD
1982 - 1987	*Co-Director*, Experimental Study of Juvenile Court Probation Services, Salt Lake City, Utah (OJJDP), NCCD
1983 - 1985	*Co-Director*, Illinois Department of Corrections Early Release Evaluation (NIJ), NCCD
1980 - 1984	*Co-Director*, Supervised Pretrial Release Test Program (NIJ/LEAA), NCCD
1981 - 1983	*Co-Director*, Evaluation of California AB2 Bail Reform Act (OCJP), NCCD
1980	*Senior Research Associate*, California Alternatives to Incarceration Study (State Legislature), NCCD

Special Appointments

2006 – 2007	Expert Panel on Adult Offender and Recidivism Reduction Programming, California Department of Corrections and Rehabilitation
2003	Advisory Committee, The Little Hoover Commission Report on California Prison System
1999- 2003	Chair, National Policy Committee, American Society of Criminology

1987 - 1994	Trustee, Robert Presley Institute of Corrections Research and Training
1991	Governor's Task Force on Prison Crowding, State of Nevada
1988	Governor's Task Force on Corrections, State of Oregon
1981, 1986	National Academy of Sciences, National Panels on Sentencing and Prison Overcrowding

EXPERT WITNESS/LITIGATION

1987 - 1989	Office of the Special Masters, Ruiz v. Lynaugh, Evaluation of the TDC Classification System and Inmate Violence Appointed by Court to produce evaluation report of classification system to determine if inmate violence had been reduced.
1989 - 1991	U.S. Department of Justice, Civil Rights Division, U.S. v. State of Florida: Florida Department of Corrections, et al., Case No. TCA 86-7330 (N.D. Fla) Expert Witness Retained by Plaintiffs to determine whether women should be excluded from certain post positions in the DOC.
1990 - 1991	King County (Seattle, Washington) District Attorney's Office, Hammer v. King County Expert Witness Retained by Defendants to determine if minority staff was being discriminated against.
1990 - 1991	Office of the Attorney General, State of Texas, Lamar v. Collins Expert Witness Retained by Defendants to determine if use of local incarceration rates by selected counties was appropriate.

1991	Office of the Attorney General, State of Texas, Alberti v. Sheriff of Harris County, et al., No. CA-H-72-1094 Expert Witness Retained by Defendants to determine if use of local incarceration rates by selected counties was appropriate.
1991 - 1992	U.S. Department of Justice, Civil Rights Division, U.S. v. The Parish of Orleans Criminal Sheriff's Office Expert Witness Retained by Plaintiffs to determine the appropriateness of excluding females from certain post positions within the jail.
1991 - 1994	Calvin R. vs. Illinois Department of Corrections. Consent Decree. Appointed by Court to produce evaluation of classification system and to implement internal classification system to reduce inmate violence.
1995	International Fidelity Insurance Co. et al. v. Charles Nobel et al: In the United States District Court of the Southern District of Texas, Houston Division. Expert Witness Retained by Defendants to determine the Failure to Appear rates for defendants released on surety bond versus O.R.
1995	Sandra Herrera, et al., v Pierce County, et al. Retained by Plaintiffs to evaluate whether inmates were being properly classified and housed in the local jail.
1995 - 1996	Montoya v. Gunter, et al. Retained by Defendants to determine whether inmate who was killed while incarcerated had been properly classified and housed.
1995 - 1997	Inmates A,B,C and D v. Illinois Department of Corrections Consent Decree

	Appointed by Court to produce evaluation of the level of control of housing and job assignments by gangs.
1995 - 2002	USA v. Michigan and Cain v. Michigan Consent Decrees Expert witness retained by Defendants to help Department of Corrections reach compliance with court order regarding classification system.
1996	Rentschler v. Carnahan et al. Retained by Defendants to evaluate the impact of crowding at the Colorado maximum security prison.
1997	Carlos Morales Feliciano v. Pedro Rossello Gonzales Consent Decree Retained by Special Master to conduct a comprehensive assessment of the inmate classification system that was designed and partially implemented by the Administration of Corrections.
1998 - 1999	Southern Ohio Correctional Facility (Civil Action No. C-1-93-436). Retained by the Ohio Department of Rehabilitation and Correction to serve as an expert witness on classification issues as they pertain to the Lucasville riot.
1998 - 1999	Busey et al. v. Corrections Corporation of America Retained by CCA to develop an objective classification system for the Youngstown facility and have all inmate's properly classified according to the classification criteria. No expert report, deposition or court testimony.
1998 - 2000	Holloway, et al., v. King County Retained by plaintiff's counsel to examine the validity of client's claims that sexual harassment of female correctional officers by male inmates was being

encouraged by male correctional officers and departmental policy. Declaration and deposition.

2001 — Gartrell et al., v. Ashcroft et al.

Retained by plaintiffs to examine if BOP inmates placed in Virginia Department of Corrections are unnecessarily having their expression of religious freedoms unnecessarily restricted? Report submitted but no deposition or court testimony.

2001 - 2005 — Austin, et al., v. Wilkinson, et al.

Retained by defendants to examine the classification process used to assign inmates to the Ohio State Penitentiary – a high maximum security prison. Expert report but no deposition or testimony.

2008- present — Plato and Coleman v. Schwarzenegger.

Retained by plaintiffs to develop plan to depopulate the California Prison Population. Reports submitted and deposed by defendants, two expert reports submitted and court testimony.

2013 - 2014 — Coleman v. Brown

Expert declaration, deposition and court testimony in support of plaintiff's motion regarding mentally ill inmates in segregation.

2012 — Louis Henderson, et al., v. Kim Thomas

Expert declaration and testimony on behalf of plaintiffs on the appropriateness of segregating inmates based on HIV status (Alabama). Court ruled in favor of plaintiffs.

2016 - present — Mark Duke, et al., vs. Jefferson S. Dunn

Expert declaration on behalf of plaintiffs on proper classification of inmates at the St. Clair prison facility (Alabama). Stipulated agreement designated Dr. Austin as expert for the DOC to implement reforms.

2016 - present	Stephen Rudisill v. Charles Ryan Appointed as expert to monitor stipulated agreement where the Arizona Department of Corrections agrees to desegregate their inmate population in housing and program assignments.

MAJOR PUBLICATIONS

Books

2011	It's About Time: America's Imprisonment Binge (with John Irwin), 4th Edition, Cengage, Publishing.
1993	Reinventing Juvenile Justice (with Barry Krisberg), Beverly Hills, CA: Sage Publications.
1978	The Children of Ishmael: Critical Perspectives on Juvenile Justice (with Barry Krisberg),

Articles

2010	"Reducing America's Correctional Populations", 2001. Justice Research and Policy, Vol, 12, No. 1, pp,1-32.
2009	"Prisons and the Fear of Terrorism." August 2009. Criminology and Public Policy. Vol., Issue 3: 641-649.
2009	"Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs." 2009. Criminal Justice and Behavior. Vol. 36, No. 10: 1025-1037.
2006	"How Much Risk Can We Take? The Misuse of Risk Assessment in Corrections." 2006. Federal Probation. Vol. 70, No. 2: 58-63.
2004	Richards, Stephen C., James Austin, and Richard S. Jones. 2004. "Thinking About Prison Release and Budget Crisis in the Blue Grass State." Critical Criminology: An International Journal, Vol. 12, No.3: 243-263.
2004	Richards, Stephen C., James Austin, and Richard S. Jones. 2004. "Kentucky's Perpetual Prisoner

Machine: It's All about Money." Review of Policy Research, Vol. 24, No. 1 (at press).

2003 "Why Criminology Is Irrelevant", Criminology and Public Policy, Vol. 2, No.3: 557-564

2003 "Three Strikes Laws", in Current Controversies in Criminology, Ronald Weitzer, ed., Prentice Hall: Upper Saddle River, NJ.

2003 "The Use of Science to Justify The Imprisonment Binge", Convict Criminology, Jeffrey Ian Ross and Stephen C. Richards, eds., Wadsworth: Belmont, CA.

2003 "Its About Time: America's Imprisonment Binge", Punishment and Social Control, Aldine De Gruyter: New York, NY.

1999 "Are We Better Off? Comparing Private and Public Prisons in the United States", Current Issues in Criminal Justice. Vol. 11 (2): 177-201.

1999 "The Impact of 'Three Strikes and You're Out'", Punishment and Society, Vol 1(2): 131-162.

1998 "The Limits of Prison Drug Treatment", Corrections Management Quarterly, Vol. 2, Issue 4, Fall 1998, pp. 66-74.

1996 "The Effect of 'Three Strikes and You're Out' on Corrections" in Three Strikes and You're Out: Vengance as Public Policy, David Shichor and Dale K. Sechrest, eds., Sage Publications: Thousand Oaks, CA.

1996 "Are Prisons A Bargain? The Case of Voodoo Economics", Spectrum, Spring 1996, pp. 6-24.

1995 "The Overrepresentation of Minority Youths in the California Juvenile Justice System: Perceptions and Realities" in Minorities in Juvenile Justice, Kimberly Kempf Leonard, Carle E. Pope, and William H. Fyerherm, eds., Sage Publications: Thousand Oaks, CA.

1994	"Three Strikes and You're Out: The Likely Consequences". St. Louis University Public Law Review, 14, 1, pp. 239-258.
1993	"Classification for Internal Purposes: The Washington Experience" (with Chris Baird, and Deborah Nuenfeldt), Classification: A Tool for Managing Today's Offenders, Laurel, MD: American Correctional Association.
1993	"Objective Prison Classification Systems: A Review", Classification: A Tool for Managing Today's Offenders, Laurel, MD: American Correctional Association.
1986	"Using Early Release to Relieve Prison Crowding: A Dilemma in Public Policy," Crime and Delinquency (October):404-501
1986	"Evaluating How Well Your Classification System Is Operating," Crime and Delinquency (July):302-321
1985	"Incarceration in the United States: The Extent and Future of the Problem," The Annals (March):15-30
1983	"Assessing the New Generation of Prison Classification Models," Crime and Delinquency (October):561-576
1982	"Do We Really Want to Get 'Tough on Crime'?" Corrections Today, Vol. 44, No. 6:50-52
1982	"Bail Reform in California: The Passage of AB2" (with E. Lemert), Pretrial Services Annual Journal, 1982, Vol V:4-23
1982	"Review of Fatal Remedies: The Ironies of Social Intervention" (Sam D. Seiber) in Crime and Delinquency, Vol. 20, No. 4:639-641
1982	"The Unmet Promise of Alternatives to Incarceration" (with B. Krisberg), Crime and Delinquency, Vol. 28, No. 3:374-409
1982	"Promises and Realities of Jail Classification," Federal Probation, Vol. 46, No. 1:58-67

1981	"Wider, stronger, and different nets: the dialectics of criminal justice reform" (with B. A. Krisberg), Journal of Research in Crime and Delinquency, Vol. 18, No. 1:165-196
1980	Instead of Justice: Diversion, Ph.D. Dissertation, University of California, Davis

AWARDS

2009	Recipient of the Marguerite Q. Warren and Ted B. Palmer Differential Intervention Award, American Society of Criminology, Corrections and Sentencing Division
1999	Recipient of the Paul Tappin award for outstanding contributions in the field of criminology, Western Society of Criminology
1991	Recipient of the Peter P. Lejins Research Award, American Correctional Association

ARREST WARRANT

M-088424 3Rmc

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Spartanburg 47350

THE STATE

against

Ricky Lee Blackwell

Address: 248 Ridings Rd

Chesnee, SC 29323-

Phone: SSN: [redacted]

Sex: M Race: W Height: Weight:

DL State: DL #:

DOB: [redacted] Agency ORI #: SC0420000

Prosecuting Agency: Spartanburg County Sheriff

Prosecuting Officer: Brandon M Letterman - 0064

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL ORIGINAL

06/06/2012 Page 1 of 1

AFFIDAVIT

ORIGINAL

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Spartanburg

Personally appeared before me the affiant Brandon M Letterman who being duly sworn deposes and says that defendant Ricky Lee Blackwell did within this county and state on or about 07/08/2009 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Spartanburg) in the following particulars:

DESCRIPTION OF OFFENSE Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on July 8, 2009 in the city/county of Spartanburg, the defendant did, with malice and aforethought, cause the death of victim, the victim being Brooke Center, by shooting the victim with a pistol and did so kill the victim

AFFIANT'S BELIEF BASED ON POLICE INVESTIGATION

SPARTANBURG COUNTY SHERIFF'S OFFICE
2009 JUL 9 AM 5:58

Signature of Affiant

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Spartanburg

Affiant's Address 8045 Howard Street
Spartanburg, SC 29303-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 7/8/2009 defendant Ricky Lee Blackwell did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 07/08/2009

(L.S.)

Signature of Issuing Judge

Dwight Smith

Judge Code: 7151

Judge's Address Spartanburg County Judicial Center
Spartanburg, SC 29306-

Judge's Telephone (864)596-2564

Issuing Court: [X] Magistrate [ ] Municipal

ORIGINAL ORIGINAL

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
76
CASE NO. 2018-CP-42-00928

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF GENERAL SESSIONS FOR THE SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA, V. RICKY LEE BLACKWELL, DEFENDANT.	)	NOTICE SEEKING DEATH PENALTY

TO THE DEFENDANT, Ricky Lee Blackwell:

YOU WILL PLEASE TAKE NOTICE, that the State of South Carolina, acting by and th[redacted]h the Solicitor for the Seventh Judicial Circuit, Harold W. Gowdy, III, hereby gives written notice p[redacted]uant to Section 16-3-26 of the Code of Laws of South Carolina (1976), as amended, that the State intends to seek the death penalty against the aforesaid Defendant on indictment number: 2009-GS-42-3610 and Warrant No.: M088424, charging him with the murder of Heather Brooke C[redacted]

The trial of the aforesaid defendant shall be set at a date and time thirty (30) days after the service of this notice on the said defendant and his attorney(s) have been provided with a written notice of the aggravating circumstances and evidence in support of aggravating circumstances that the State intends to rely upon in the case against the defendant.

Harold W. Gowdy, III, Solicitor
Seventh Judicial Circuit Solicitor's Office
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, South Carolina 29306
(864)-596-2575

FILED
2009 JUL -9 PM 3:0[illegible]
MARC HITCHCOCK
CLERK OF COURT

Spartanburg, South Carolina
July 9, 2009

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
77
CASE NO. 2018-CP-42-00928

SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER

CLAY T. ALLEN
CIRCUIT PUBLIC DEFENDER

366 NORTH CHURCH STREET
SUITE 3000
SPARTANBURG SC 29303

TELEPHONE (864) 596-2561
FAX (864) 596-2284

June 18, 2010

The Honorable H.W. "Trey" Gowdy, III
Solicitor, Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, South Carolina 29306

Re: State v. Ricky Lee Blackwell
Warrant Numbers M088424, M088434

Dear Trey:

Please accept this letter as notice of Mr. Ricky Lee Blackwell's desire and offer to accept responsibility and plead guilty to all of the pending charges in the above referenced matter to a sentence of Life in Prison With No Possibility of Parole. As you and I know, such a sentence would result in Mr. Blackwell's imprisonment until his death within the walls of the South Carolina Department of Corrections.

I look forward to hearing from you soon.

Sincerely,

Clay T. Allen
Circuit Public Defender

CTA:

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
78
CASE NO. 2018-CP-42-00928

EXHIBIT 2

SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER

CLAY T. ALLEN
CIRCUIT PUBLIC DEFENDER

366 NORTH CHURCH STREET
SUITE 3000
SPARTANBURG SC 29303

TELEPHONE (864) 596-2561
FAX (864) 596-2284

July 13, 2012

The Honorable Roger L. Couch
Judge, Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, South Carolina 29306

Re: State v. Ricky Lee Blackwell
Indictment Numbers 09-GS-42-3609, 09-GS-42-3610

Dear Judge Couch:

At the status conference on June 13, 2012, you asked 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 defense of Not Guilty by Reason of Insanity or Guilty but Mentally Ill.

We are, however, currently investigating what appears to be a very strong potential claim pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002). This investigation is now necessary based upon records recently provided to us. These records indicate that our client, Ricky 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 I.Q. test indicates that Ricky's I.Q. is 63. Initial interviews with some of his teachers reveal that Ricky was regarded as "slow" and was in "adjunct" classes. The term adjunct appears to be the term used to describe classes for students who were not able to perform academically. As one of Ricky's teachers indicated, "They started those classes to help kids who wouldn't be successful in general classes.... [T]hey were for kids who weren't able to do." Our investigation has also revealed that Ricky was 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 I.Q. has been tested at 60. His daughter's I.Q. has been tested at 67, and his first cousin has been diagnosed or described by the State Hospital as mentally retarded. (We are still trying to get more specific records on this cousin.) Because of the frequency of the findings or determinations of low I.Q. and mental retardation in this family, we believe that Ricky Blackwell has a significant likelihood of being mentally retarded as well.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 DEC 10 AM 11:12
KATHY BLACKLEY

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
79
CASE NO. 2018-CP-42-00928

Again, while we do not intend to pursue a defense of Not Guilty by Reason of Insanity or Guilty but Mentally Ill, it may be appropriate to address the issue of Ricky's competency at some point.

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.

Sincerely,

Clay T. Allen
Circuit Public Defender

CTA:

cc: William S. McGuire, Esquire
Barry J. Barnette, Esquire

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 DEC 10 AM 11:12
M. HOPE BLACKLEY

State of South Carolina

Spartanburg County Court House
180 Magnolia Street
Spartanburg, S.C. 29306
Phone (864) 596-2575
Fax (864) 596-2386

Cherokee County Court House
Floyd Baker Blvd.
Gaffney, S.C. 29340
Phone (864) 487-2576
Fax (864) 487-2753

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

July 16, 2012

Clay T. Allen, Esquire
Chief Public Defender for the Seventh Judicial Circuit
366 North Church Street- Suite 3000
Spartanburg, South Carolina 29303

Re: Letter dated July 13, 2012 concerning Ricky Lee Blackwell
Indictment Nos.: 09-GS-42-3609 and 3610.

Dear Clay:

I am writing this letter in response to your letter to Judge Couch concerning "a very strong potential claim pursuant to Atkins v. Virginia." I have concerns about this issue being brought up at this time with the trial date being just over three (3) months from now. The death notice on this case was served on July 9, 2009 and the defendant has been represented by yourself and Mr. McGuire for almost three (3) years. We were not given any notice of this issue until July 13, 2012 or any information showing that the defendant has ever been diagnosed as mentally retarded. It appears the defense is still not close to being done with its own investigation at this point (your letter states: "While this investigation is far from complete..."). This issue should have been dealt with much earlier than this and the State is now put in an untenable position based on the delay of the defense in this situation.

We are requesting all testing materials, notes, reports, and any other relevant materials on this issue as stated in our Motion to Produce Underlying Data, Documents and Facts supporting any Expert Testimony by Defense Witnesses under Rules 611, 612, and 705 as soon as possible to avoid further delay in this case. As you know, the Atkins hearing is a pre-trial hearing to be heard before any action is taken on the death penalty trial to avoid delay or waste of financial resources by the Court. If the defense decides to argue the Defendant is mentally retarded, the State will be asking this Court for an independent evaluation of the defendant on this issue. The State will also need sufficient time to investigate the findings of the defense experts, as well as consulting with other experts on this issue.

I am forwarding a copy of this letter to Judge Couch to inform the Court of our position on this issue.

Sincerely,

Barry Barnette

Barry Barnette
Solicitor

cc: The Honorable Roger L. Couch
Mr. William S. McGuire, Esq.

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
80
CASE NO. 2018-CP-42-00928

SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER

CLAY T. ALLEN

CIRCUIT PUBLIC DEFENDER

366 NORTH CHURCH STREET
SUITE 3000
SPARTANBURG SC 29303

TELEPHONE (864) 596-2561

FAX (864) 596-2284

February 18, 2014

Mr. James Aiken
James Aiken & Associates, Inc.
36 Psiya Court
Brevard, North Carolina 28712

Re: State v. Rickey Lee Blackwell, Sr.
Indictment Number 2009-GS-42-3610

Dear Mr. Aiken:

Thank you so much for speaking with me last Friday and for agreeing to assist us in the above referenced death penalty case. As I mentioned, this case is scheduled to begin trial on March 3, 2014. Usually, the process of selecting the jury in South Carolina takes several days; therefore, I do not anticipate calling you as a witness until sometime during the week of March 10, 2014.

Enclosed are all the Detention Center records I have in Mr. Blackwell's case. I have not included the CD's containing the jail phone calls because there are over a thousand phone calls. I will try to send to you the information concerning the incident in the next several days so that you will be familiar with the facts of the case.

Again, thank you for your assistance in this matter, and I look forward to talking with you soon.

Sincerely,

Clay T. Allen
Circuit Public Defender

CTA:

Enclosures

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
81
CASE NO. 2018-CP-42-00928

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
82
CASE NO. 2018-CP-42-00928

Ricky Lee Blackwell vs.
State of South Carolina

Intellectual Disability Assessment

S. Knight, PhD, ABPP
Forensic Psychologist

1

Prong I: Significantly Subaverage General Intellectual Functioning

- "Deficits in intellectual functioning, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience…
- Typically measured with individually administered and psychometrically valid, comprehensive and culturally appropriate tests of intelligence."
- Individuals with ID "have scores of approximately two standard deviations or more below the population mean, including a margin of measurement error (generally 5 +/- points). [DSM-5-TR, p. 38]

2

Prong I: R. Blackwell IQ Testing - Time 1

Test/Date/ Age/Examiner	Intellectual Domain	*IQ Scores	Per. Rank	95% Conf. Int	Wechsler Class.
WAIS-IV 6/2012 53 y.o. G. Calloway, Defense Psychologist	**FULL SCALE**	**63**	1st	60-68	Extremely Low
	Verbal Comprehension	**63**	1st	59-70	Extremely Low
	Perceptual Reasoning	**69**	2nd	64-77	Extremely Low
	Working Memory	**77**	6th	72-85	Borderline
	Processing Speed	**68**	2nd	63-80	Extremely Low

*IQ scores have a mean of 100 and standard deviation of 15.

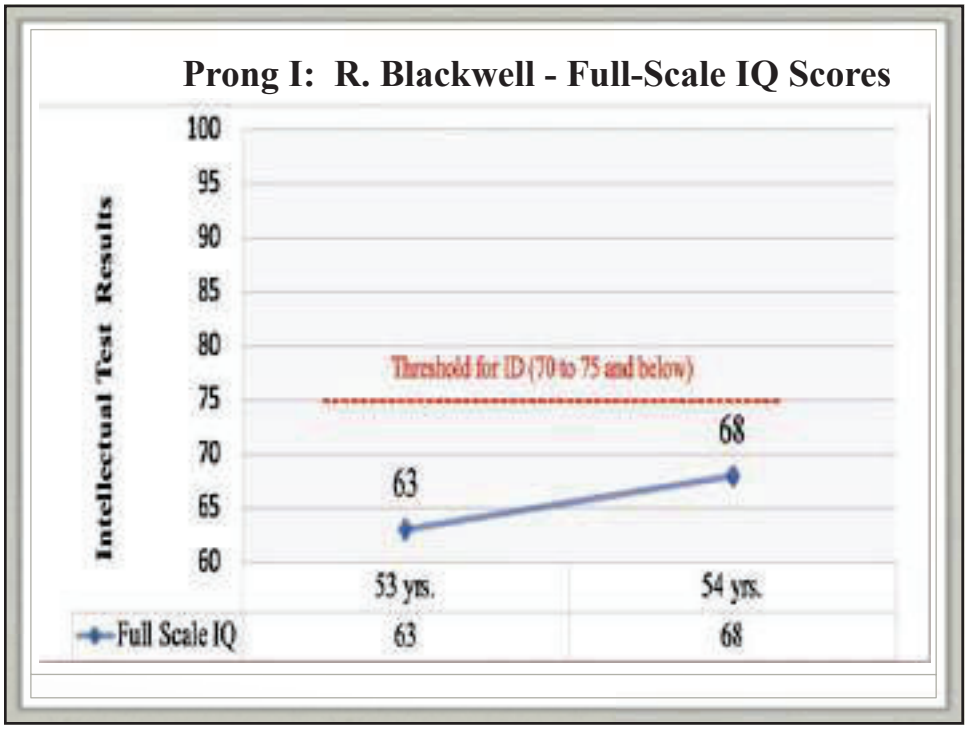
3

Prong I: R. Blackwell IQ Testing - Time 2

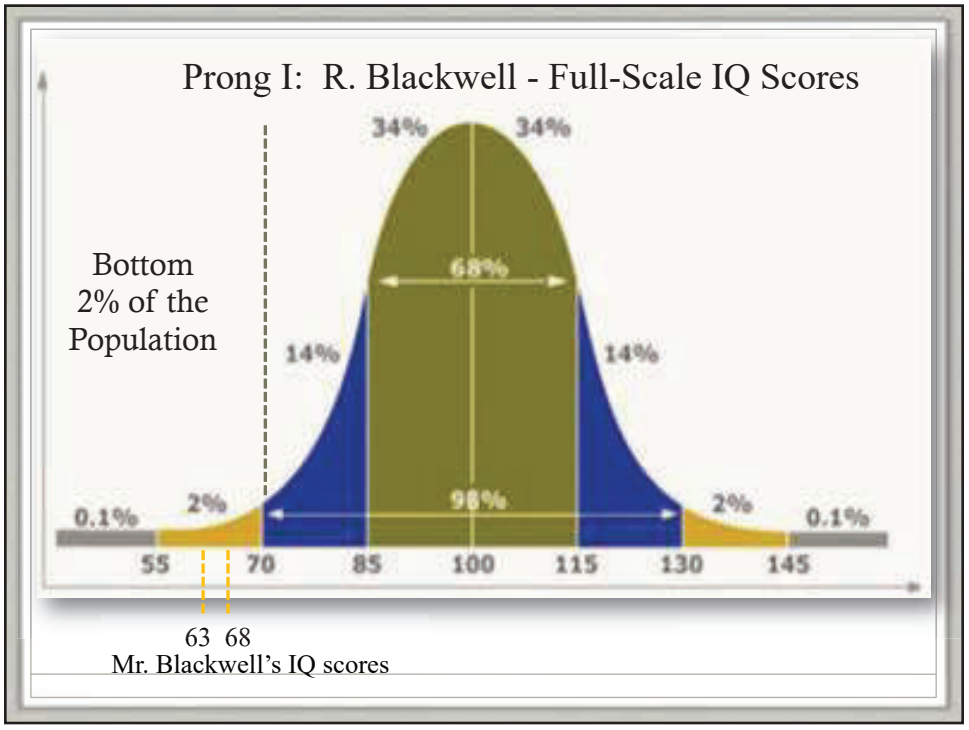
Test/Date/ Age/Examiner	Intellectual Domain	*IQ Scores	Per. Rank	95% Conf. Int	Wechsler Class.
WAIS-IV 11/2013 54 y.o. G. Brown, State Psychologist	**FULL SCALE**	**68**	2nd	65-73	Extremely Low
	Verbal Comprehension	**68**	2nd	64-75	Extremely Low
	Perceptual Reasoning	**75**	5th	70-82	Borderline
	Working Memory	**83**	13th	77-91	Low Average
	Processing Speed	**68**	2nd	63-80	Extremely Low

*IQ scores have a mean of 100 and standard deviation of 15.

4


Prong I: R. Blackwell - Full-Scale IQ Scores
Intellectual Test Results
100
95
90
85
80
75
70
65
60
Threshold for ID (70 to 75 and below)
63
68
53 yrs.
54 yrs.
Full Scale IQ
63
68

5


Prong I: R. Blackwell - Full-Scale IQ Scores
Bottom 2% of the Population
34%
34%
68%
14%
14%
98%
2%
2%
0.1%
0.1%
55
70
85
100
115
130
145
63
68
Mr. Blackwell's IQ scores

6

Prong I: School Testing Considerations

- Group Testing Only
- Screening Testing Only
- No scores obtained through "individualized …comprehensive tests of intelligence."
- No true 'IQ' scores obtained
- Achievement/Aptitude/Scholastic Testing

7

Prong I: Factors Unrelated to IQ Scores

- Chemotherapy
- Depression
- Head Injury

8

Prong II: Deficits in Adaptive Behavior

- "Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one more activities of daily life, such as communication, social participation and independent living, across multiple environments, such as home, school, work and community."
- "Impairment in everyday adaptive functioning compared to one's age, gender and socioculturally matched peers."
- "How well a person meets community standards of personal independence and social responsibility, compared to others of similar age and sociocultural background." [DSM-5-TR, p. 37, 38 & 42]

9

Prong II: Deficits in Adaptive Behavior

- **Conceptual** – "competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving and judgment in novel situations, among others." [DSM-5-TR, p. 42]

10

Prong II: Conceptual / Developmental R. Blackwell

- **Academic/Learning Issues**
  - School Records
    - Decreasing grades, 'Adjunct' classes, repeated 9th grade, 'Project Succeed,' pre-vocation classes, testing consistently below grade and age level, last in class rank, premature discontinuation of school
  - Collateral Descriptors
    - "slower student;" "outer flank of the slow learner group;" "very slow;" "lowest level in everything;" "not in a thinking group;" regular classes would have been a "struggle"
    - Indecisive / Poor ability to think through situations
    - Poor problem-solving skills, Predictable

11

Prong II: Conceptual / Post-Developmental R. Blackwell

- No pursuit of any education, degree or academics
- Jobs not dependent on academic skills
- "Slow;" "simple man;" "simplest guy I ever met;" "Never did initiate much of anything"
- Given a child's Bible to read by his pastor
  - "Not the sharpest fellow…limited vocabulary"
- Academic skills tested at the 5th grade level in 2012

12

Conceptual – 'Mild' Deficits - DSM

- For school age children and adults, difficulties in learning academic skills…
- "Abstract thinking, executive functioning (i.e., planning, strategizing, priority setting, and cognitive flexibility), and short-term memory, as well as functioning use of academic skills (e.g., reading, money management) are impaired.
- There is a somewhat concrete approach to problems and solutions compared with age-mates." [DSM-5, p. 34; DSM-5-TR, p. 39]

13

Prong II: Deficits in Adaptive Behavior

- **Social** – "awareness of others' thoughts, feelings, and experiences; empathy, interpersonal communication skills; friendship abilities; and social judgment, among others." [DSM-5-TR, p. 42]

14

Prong II: Social / Developmental
R. Blackwell

- Childhood Social Interactions
  - No leadership, lack of social initiation
  - Unskilled, shy, unsure of himself
  - Low confidence, low self-esteem
  - "Almost withdrawn…never in a group;" and "never spoke up"
  - "Almost backward, socially awkward"
  - "lay low…cow down…follow along…gullible…more easily persuaded" than peers, "easily led"
  - Closest friend cognitively impaired
  - No extracurricular activities or skilled social activities
  - Persistent bullying "would not stand up for himself"

15

Prong II: Social / Post-Developmental
R. Blackwell

- Closed and small social group of family and relatives, no new social relationships formed
- "Stayed mostly to himself"
- Lack of assertion with others, "backward and shy"
- Naïve, Gullible
- A "follower…could be easily manipulated and taken advantage of" and social level of "an overgrown boy"

16

Social –'Mild' Deficits - DSM

- "Immature social interactions compared with peers.
- Communication, conversation and language are more concrete or immature than expected for age.
- Limited understanding of risk in social situations, social judgment is immature for age, and the person is at risk of being manipulated by others (gullibility)." [DSM-5 p. 34; DSM-5-TR, pg. 39]

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Prong II: Deficits in Adaptive Behavior

- **Practical** – "learning and self-management across life settings, including personal care, job responsibilities, money management, among others." [DSM-5-TR, p. 42]

18

Prong II: Practical / Developmental
R. Blackwell

- Mother micromanaged practical developmental tasks.
  "I did everything for them boys."
- No childhood household responsibilities or independent expectations in care, self-management, initiative, etc.
- Her approach likely due to his compromised abilities.
- Deficits likely masked due to mother's extensive care.

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Prong II: Practical / Post-Developmental
R. Blackwell

- Has never resided independently
- Did not independently manage finances
- Did not cook, clean, manage appointments, grocery shop, handle children's needs, etc.
- Most jobs obtained through family/friends, and involved simple, repetitive labor, with varying performance success.
- Trucking jobs represent a relative strength, but with multiple accidents, rule violation and firings

20

Practical – 'Mild' Deficits - DSM

- "May function age appropriately in personal care. Individuals need some support with complex daily living tasks…
- In adulthood, supports typically involve grocery shopping, transportation, home, and child-care organization, nutritious food preparation, and banking and money management…competitive employment is often seen in jobs that do not emphasize conceptual skills.
- Individuals generally need support to make health care decisions and legal decisions and to learn to perform a skilled vocation competently. Support is typically needed to raise a family."

[DSM-5 p. 34; DSM-5-TR, pg. 39]

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TO OID 2/3/14
Voucher #
75467

Geoffrey R. McKee, PhD, ABPP
1728 Main Street, Suite 110
Columbia, SC 29201
(803) 251-3499

January 31, 2014

William S. McGuire, Esq.
Chief Attorney, SC Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, SC 29201

Re: Ricky Lee Blackwell

Dear Mr. McGuire:

Pursuant to your request, below is a final accounting of my time in the above-referenced case:

1/07/14	Consultation with Mr. McGuire & Mr. Allen	3.0hrs	$ 600.00
1/13/14	Review Volumes 1 & 2	6.0	1,200.00
1/22/14	Review/notate Dr. Calloway's report	2.0	400.00
1/23/14	Review/notate Dr. Brown's report	2.0	400.00
1/25/14	Create/complete/type cross-exam questions	7.0	1,400.00
	TOTALS	**20.0 hrs**	**$ 4,000.00**

Please make the check of $4,000.00 payable to me and mail it to the address above. For tax purposes, my TIN is: 57-0818621.

Thank you for your prompt attention to this account.

Please contact me at (803) 251-3499 or (803) 463-7573 (cell) if you have any questions about this account.

Geoffrey R. McKee, PhD

Geoffrey R. McKee, PhD, ABPP
Diplomate in Forensic Psychology
Clinical Professor, Department of Neuropsychiatry
University of South Carolina School of Medicine

BLACKWELL V. STATE
APPLICANT'S EXHIBIT
83
CASE NO. 2018-CP-42-00928

MEMO TO THE RICKEY BLACKWELL FILE

4

TO: File
FROM: Kara
RE: Meeting with Rick Bagwell
DATE: 2/26/14

CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT

On the above date, Bill and I meet with Rick Bagwell at Belue Trucking. I introduce Bill to Mr. Bagwell. Bill explains the status of Rickey's case to Mr. Bagwell.

Mr. Bagwell tells us, "Rickey was plenty smart enough to function from what I seen with his work." Mr. Bagwell says Rickey wasn't much different from any of the other truckers; he didn't come to work every day, but most truckers don't. Mr. Bagwell goes on to say, "His personal life, I don't know. He fit in with the guys here. I didn't have day-to-day dealings with him. If there had been a problem or he did something outstanding, I would have heard about it."

Mr. Bagwell knew Rickey by name when Rickey was a young boy. Rickey's grandparents lived near Mr. Bagwell's family.

Mr. Bagwell tells us Rickey rear-ended another vehicle when he worked for Belue. He doesn't remember the details of the accident, but the company let Rickey go because of it. Mr. Bagwell notes, "There was no excuse for it. It was a chargeable offense."

Mr. Bagwell remembers Rickey was not eligible for rehire after the accident. The safety director, Ken Duncan, made that call based on liability, safety ratings and company policy. Ken Duncan is deceased. The DOT issued a safety rating for the company. The company could be rated as satisfactory, conditional or unsatisfactory. Belue was always rated as satisfactory. Things like Rickey's accident could cause the rating to drop.

Mr. Bagwell admits that Belue rehired Rickey even though he wasn't eligible for rehire. Mr. Bagwell notes, "We needed drivers. We needed warm bodies. Rickey was a capable driver."

Mr. Bagwell thinks Cletus owned the truck Rickey wrecked.

When Rickey worked for Belue the trucks hauled general freight. Mostly they carried prestressed, concrete beams.

Mr. Bagwell thinks Rickey ran routes in NC, SC and GA. Belue ran the East Coast for a little while, but Mr. Bagwell doesn't think Rickey drove those routes.



1

Rickey got in trouble for a log violation, but that was common back then. Rickey had one or two log violations; Mr. Bagwell describes that as "on the low end." I ask Mr. Bagwell about Rickey getting in trouble for having people in the cab. He notes, "That is him just being a boy. It wasn't uncommon. You can't have people in the cab for insurance purposes."

There are more gears on a long-distance truck than on a regular truck. The brake system is different, and the truck is bigger. A regular pickup truck weighs 3500 pounds while a long-distance truck weighs 80,000 pounds. Driving a long-distance truck involves "judgment." Mr. Bagwell notes, "You have to use judgment to drive it. You have to know when to go and when to whoa."

A long-distance truck has two air gauges and six to seven other gauges including a temperature gauge, an oil gauge and an oil pressure gauge. Back then, most trucks did not have a heat gauge.

A J-brake is not that complicated to operate; you just flip a switch.

Casey O'Dell is the current safety director and records custodian for Belue.

Mr. Bagwell tells us that he is a firm believer in the death penalty. If he had been around when Rickey shot the little girl, Rickey "wouldn't have got out of the field."

MEMO TO THE RICKEY BLACKWELL FILE

TO: File
FROM: Kara
RE: Interview with Abi Moon
DATE: 7/25/12

CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT

On the above date, I speak with Abi Moon on the telephone. Abi Moon is the Associate Rector at St. John's Episcopal Church in Tallahassee, FL, and is referred to as Mother Moon. Mother Moon was one of the chaplains at Spartanburg Regional Hospital who met with Rickey when he was brought to the hospital after shooting Brooke and himself.

Mother Moon remembers Rickey although she never knew his real name; she only knew him by the alias the hospital was using. Mother Moon remembers Rickey "was distressed, feeling bad about what had happened. He was worried about what was going to happen next. He was distraught." Rickey was trying to figure out what was going on. He was tearful and distraught. Mother Moon thought Rickey was in shock.

Mother Moon remembers Rickey was worried about going to heaven. He was worried that what he had done would keep him from going to heaven. Mother Moon recalls Rickey asking her, "Does God still love me?" Mother Moon talked with Rickey about who God is and God's forgiveness.

Mother Moon does not remember if Rickey said he was sorry for what he had done. Either the nursing staff or Rickey asked Mother Moon to visit with Rickey. She was on-call at the time. Mother Moon remembers it was a difficult time for everyone on the floor. Rickey was on a floor that was not one of Mother Moon's regular floors, so Mother Moon doesn't know any of the nurses who were attending to Rickey.

Prior to Rickey's crime, there had been a shooting up in Gaffney. The victim of that shooting was brought to Spartanburg Regional Hospital. The entire community had strong emotions about these shootings. Mother Moon thinks the nursing staff may have called her to see Rickey because she is from TN and "was a neutral party."

There was a police officer in the room the entire time Mother Moon was with Rickey.

Mother Moon was working at Spartanburg Regional as part of her Clinical Pastoral Education program. She worked at SRH for 10 weeks.



MEMO TO THE RICKEY BLACKWELL FILE

TO: File
FROM: Kara
RE: Telephone interview with Virginia Hess
DATE: 7/16/12

CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT

Virginia Hess is identified as one of the chaplains at Spartanburg Regional Hospital who met with Rickey when he was hospitalized after shooting himself. On the above date, I spoke with Virginia "Vicki" Hess on the telephone about Rickey. Vicki is currently in school in Alexandria, VA, where she is studying to become an Episcopal priest.

Vicki remembers Rickey. She begins our conversation by telling me that generally her conversations with people are covered under "clergy confidentiality" but nothing was said with Rickey that was confidential because there was a policeman in the room the whole time. Rickey was placed in the neuro-trauma unit at Spartanburg Regional. The neuro-trauma wing was one of Vicki's floors. She visited every patient on her floors.

Vicki remembers visiting Rickey. She walked into his room and introduced herself. Vicki could tell Rickey was in pain. Rickey was handcuffed to the bed. Vicki stood next to Rickey while the policeman watched them. Vicki asked Rickey if she could hold his hand, and he said yes. Rickey did not make eye contact with her. Rickey had his eyes closed. Vicki recalls, "It seemed like he was trying to deal with his pain."

After several minutes of silence, Vicki asked if there was anything she could pray for. Rickey said, "The family." Vicki interpreted this to mean the little girl's family. Rickey spoke very softly, and it was hard to hear him. Vicki recalls, "I told him I would. I reminded him he was loved by God." Rickey didn't say anything else.

I ask Vicki if she remembers saying the Lord's Prayer with Rickey since that is written in the medical record. Vicki responds, "It is highly possible I prayed the Lord's Prayer. I don't remember it specifically, but I often did because most people no matter what their religious background know the Lord's Prayer."

The police officer never said anything, but he seemed nervous when Vicki asked Rickey to hold his hand.

Vicki doesn't recall if she was the chaplain who gave Rickey a Bible, but she may have been. This one interaction is the only interaction Vicki had with Rickey. He didn't say anything other than asking her to pray for the family.



MEMO TO THE RICKEY BLACKWELL FILE

TO: File
FROM: Kara
RE: Meeting with Dr. Jackson
DATE: 2/26/14

CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT

On the above date, Bill and I meet with Dr. Jackson at his office. I introduce Bill to Dr. Jackson, and Bills explains the status of Rickey's case to Dr. Jackson. Bill explains he would like Dr. Jackson to testify at Rickey's sentencing hearing about his experiences with Rickey over the years as his physician. Bill advises Dr. Jackson he does not want him to testify about Rickey's competency.

Dr. Jackson reports after Angie left Rickey, Rickey "was decompensating emotionally." Dr. Jackson thinks Rickey lost his job around the same time Angie left him. Dr. Jackson notes, "All that was going on at the same time. He had also had an on the job injury at one time. He became very depressed, and that was aggravated by her leaving."

Dr. Jackson goes on to say, "His parents were very domineering. Rickey is very passive. Angie had all she could take. She had been begging him for years to get away. He was very entangled." Dr. Jackson initially says Rickey and Angie were living with Rickey's parents. He later says Rickey's parents lived in "very close proximity" to Rickey and Angie.

Dr. Jackson recalls, "Angie had always been a modest dresser, and she became an immodest dresser. It was like she became liberated in some ways. She had been subdued or under subjugation from the family pressure. Her new connections were not good for her. Angie let me know some of the people she was connecting with. I saw who she was hanging with and the way she was dressing. She was talking like she was a different person. She got a tattoo, and I think she started smoking."

Dr. Jackson remembers, "Both of them were Christian, church-going. They had an active life in a local church for a long time. You never know what goes on in peoples' home lives. It can be pathological things going on. I had the sense that was going on. I wouldn't say this in court, but I think it was the oppressiveness of his parents. That was implied by things she said, not what he said. There was a pathological relationship between her and his parents."

Dr. Jackson describes Rickey as "passive. He was not domineering. Angie could do whatever she wanted, and Rickey wouldn't say anything." Angie came to all of Rickey's medical appointments.

Dr. Jackson counseled both Angie and Rickey separately about their relationship. Dr. Jackson recalls, "I counseled them to restore their marriage. They were both



very conflicted about what was going on. He desperately wanted to make it work; she knew she should go back, but desperately didn't want to."

Rickey was "as good as gold." Dr. Jackson goes on to say, "Rickey's jobs were always mediocre. They lived hand to mouth. I don't think she respected him because he was not a good family leader because he was so passive."

Bill asks Dr. Jackson if he has an opinion on what Rickey's punishment should be. Dr. Jackson replies, "He probably deserves the death penalty. He knew what he was doing. It was premeditated. I love him. He's my long-term friend."

Rickey "had a spiritual revival in his life. He made some progress from the talking and counseling I was giving." Dr. Jackson reports there was a time when Rickey "got better emotionally and was not as depressed" but he doesn't remember if that was before Angie left.

Dr. Jackson states several times during our meeting that Rickey has a "borderline IQ." Rickey needed someone to keep up with his medications. Bill mentions to Dr. Jackson that Dr. Jackson isn't really an expert on mental retardation. Dr. Jackson takes great exception to this and points out he "takes care of mentally retarded people every day, and he is not."

In regards to Rickey, Dr. Jackson notes, "There was a period of time when he was very depressed. He was nonfunctional for a period of time. It was not a result of his IQ. It was his depression. If Angie didn't come, Rickey wasn't with it." Dr. Jackson can't remember "what put him in that depression; it was some injury." Dr. Jackson points out Rickey "gets knocked flat easily. He has no internal reserves."

Rickey has "borderline IQ and coping skills. He does not have the reserves emotionally or physically. Angie was his rock. When she left, his anchor left."

Every time Dr. Jackson saw Rickey, Rickey "was crying uncontrollably." Dr. Jackson remembers telling Rickey, "You have got to pull yourself together or you will never get her back. She can't respect you."

Dr. Jackson is going to be out of town Friday, March 15, turkey shooting. He needs at least a day, preferably two days notice of when he will be needed in court.

MEMO TO THE RICKEY BLACKWELL FILE

TO: File
FROM: Kara
RE: Interview with Gail Shook
DATE: 8/2/12

CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT

On the above date, I meet with Gail Shook at her home in Spartanburg. Ms. Shook was Rickey's supervisor at Spring Industries for about a year and clearly remembers him. Rickey's job at Springs was droving a forklift and loading materials onto a machine that made sheets. Rickey would use the forklift to pick up a big roll of material. He would then drive the material over to the machine and load the material onto the machine.

Ms. Shook describes Rickey as "a very good worker." She states, "I never met a finer young man than he was." Ricky was a hard worker and came to work everyday. Ms. Shook retired from Springs in 2003. Springs was in the process of shutting down, and she was one of the first to let go because of her age. Rickey continued to work at Springs after Ms. Shook retired. Ms. Shook thinks she supervised Rickey in 2002.

Ms. Shook is surprised to hear Rickey has a low IQ. She comments, "I never saw any indication of it." Ms. Shook never had any problems with Rickey's work performance. She always gave him good evaluations. Rickey always did what she asked and got along with his coworkers. Rickey didn't need any extra help with his job.

I ask Ms. Shook if Rickey did the same thing every day. She states, "He did the same thing or anything else I needed even if it wasn't in his job description. Everyone liked him."

Rickey talked with Ms. Shook about his family. Ms. Shook reports, "He adored and loved his wife and children and mom and dad. They all lived close to each other. He was family-oriented. He talked about his religion. He didn't go to church like he should. He knew he needed to. He believed in the Lord Jesus Christ; he just didn't make it to church all the time. He talked about his daughter and son."

I ask Ms. Shook if Rickey ever said there was anything wrong at home. Ms. Shook replies, "The only sense I got was the children were rebellious. They didn't always mind. This was troublesome to Rickey."

I ask Ms. Shook if Rickey ever missed work because of family issues. Ms. Shook states, "The time he was out was when his grandbaby got burned. They had to take the baby to a burn center." Ms. Shook later remembers Rickey may have been late to work a time or two because he had to go to court with his son. Ms. Shook remarks, "He worried about his children."



Ms. Shook saw Rickey at the Home Depot after they both had been let go from Springs. Rickey couldn't find a job. Ms. Shook told Rickey he could write her down as a reference. Rickey told Ms. Shook Angie had left him for another man. Rickey said Angie was out partying and drinking. Rickey said Angie met the other man at Wise where they Angie and the other man were both working.

Ms. Shook was surprised by what Rickey told her. Angie had worked for Ms. Shook on occasion at Springs. Rickey and Angie rode to work together. Ms. Shook recalls, "She seemed like the salt of the earth." Rickey told Ms. Shook Angie "had gone wild." Ms. Shook remembers, "It had killed him. He was broken up. He was a broken man." Rickey cried while he was talking to Ms. Shook about Angie. Ms. Shook notes, "He didn't seem like the happy, stable person I knew."

Rickey told Ms. Shook he loved Angie and had never loved anyone but her. Rickey said he tried to get Angie back, but she wouldn't come back.

Ms. Shook states, "I don't understand why he didn't shoot Angie. Knowing the way he felt about his children and grandchildren, I couldn't imagine him harming a child. I think he must have lost it."

I ask Ms. Shook if she thinks Rickey deserves the death penalty for what he did. She replies, "No. I don't think it is the Rickey Blackwell I know who did that."

I ask Ms. Shook about other people who might have supervised Rickey at Springs. Greg Kruse isn't living in the area anymore. His father was in management at Springs. Greg's father's name is something like Arvin or Arv Kruse. Kathy LNU might have supervised Rickey for a while. Kathy's husband owns a health food store located across from the Ingles in Spartanburg. Chad Medley may also have supervised Rickey. Chad lived in Inman.

Rickey and Angie worked the third shift from 11pm –7am when they worked at Springs. Ms. Shook assumed Rickey's parents watched Rickey's kids when he and Angie were at work. Rickey may have worked the second shift at times. Both Rickey and Angie were good workers. Ms. Shook was surprised when Rickey told her Angie had left him. Ms. Shook states when she saw Angie with Rickey, 'She acted like she loved the ground he walked on."

As I leave, Ms. Shook comments, "I thought the world of Rickey and I still do."

MEMO TO THE RICKEY BLACKWELL FILE

TO: File
FROM: Kara
RE: Interview with Neal Waters
DATE: 7/13/12

CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT

On the above date, I meet with Neal Waters at his home in Boiling Springs. Mr. Waters knows Rickey through work at Jacobson. Jacobson was a third party logistics company that shipped orders to other companies. Mr. Waters believes he was already working at Jacobson when Rickey came to work there. Rickey and Mr. Waters started out as coworkers, but Mr. Waters ended up being Rickey's boss.

Rickey's job was to pull orders and fill those orders. The girls in the office would get the orders together and, in the morning, give Rickey's his orders for the day. Rickey would pull them to be shipped out. Rickey drove a forklift. He would go by his list and pull orders with his forklift and put them on pallets. This is the only job Rickey had at Jacobson. This is what he did all day long.

Rickey was a good employee. He showed up on time and did not lay out of work. Rickey did what he was told and wasn't a discipline problem. Mr. Waters never had to write up Rickey. Rickey usually got along with his coworkers.

Mr. Waters does not view Rickey as slow. He notes, "He always done a good job. He worked in a chemical warehouse. It was very important you pulled the right stuff." Rickey had to read his order and match it to the merchandise and then pull that merchandise. The lot number on the merchandise and the product number on the merchandise had to match. Rickey was able to match these numbers.

Rickey didn't have any problems driving the forklift. Mr. Waters states, "You wouldn't last if you made mistakes." Mr. Waters' job as a supervisor was to check behind his employees. Mr. Waters does not remember Rickey making mistakes.

Rickey left Jacobson because his job was ending. The company was closing due to a lack of business. The last 6-9 months of work they didn't really do anything but sit around. Since Rickey was one of the last hired, he was one of the first to be let go. Rickey didn't seem really upset when he was let go. He didn't show any anger about losing his job.

Mr. Waters remembers Rickey had some sort of confrontation with a coworker one time. The other guy tried to sneak an order out from under another stack. Rickey was upset about this, and the two of them had words. It was just words.

Mr. Waters was shocked when he heard about Rickey's current charges. He was out cutting the grass when his wife called him in to see the news. Mr. Waters states, "Rickey didn't seem like the type. I never dreamed he could do something like that."



Rickey talked some about his grandchildren. He also talked a few times about his daughter. Mr. Waters heard some rumors that Rickey and his wife were having some problems because of "what she was doing." Mr. Waters notes, "I stayed away from that. I didn't want to know about their personal lives." Mr. Waters was not aware of Rickey having any financial problems.

Rickey was a "likeable guy." Mr. Waters didn't "fraternize" with Rickey outside of work other than Rickey picking Mr. Waters up for work a couple of times when Mr. Waters' truck wouldn't start. I ask Mr. Waters about other folks at Jacobson who Rickey was friends with. Mr. Waters replies, "He was as close to me as anyone." There was girl in the front office who thought a lot of Rickey. Her name was Addie Beam. Mr. Waters thinks Addie married and changed her last name, but he doesn't know what her new last name would be.

Rickey was a "pretty quiet guy." Rickey didn't initiate conversations. Mr. Waters never saw anything in Rickey that made him think something was mentally wrong with Rickey. Mr. Waters then admits there were "a couple of times he may have seemed depressed, but it didn't keep him from doing his job." Rickey had some health problems before he came to Jacobson.

I ask Mr. Waters about Rickey having an accident at work. Mr. Waters remembers Rickey had a bag break open on him, the powder came up in his face, and he inhaled some stuff. They sent Rickey to the ER after the incident, but Rickey had a cough for a while after the incident.

Mr. Waters cannot remember who Rickey's boss was before Mr. Waters. They went without a warehouse supervisor for quite a while before Mr. Waters got the job.

I ask Mr. Waters for more information about Rickey's job. The order form Rickey received each morning could be 8-10 pages in length. It could list 80-100 drums that needed to be pulled. The drums were usually 55 pounds. If Rickey completed his order, he would get another order. Mr. Waters states, "We didn't want you to fly wide open because you could make mistakes. If Rickey had been on a production line, he might have seemed slow, but he was trying to do the job and do it right."

I ask Mr. Waters if he thinks Rickey deserves the death penalty. Mr. Waters replies, "Yes. I have no sympathy for him. It was a brutal killing. There is no excuse for killing a child."

Mr. Waters now works for Adidas. He has worked for Adidas for three and a half years. Jacobson Logistics' headquarters are located in Des Moines, Iowa.

MEMO TO THE RICKEY BLACKWELL FILE

TO: File
FROM: Kara
RE: Interview with Ginger Calloway and Heather Bryant
DATE: 11/6/12

CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT

On the above date, Ginger Calloway and I meet with Heather Bryant at her home. Ginger spends some time asking Heather about Rickey. Ginger then administers the ABAS to Heather. Ginger has to read the ABAS questions to Heather. It is evident Heather does not understand many of the questions. A number of times, I have to clarify the question for Heather which results in her changing her answer. Heather states a couple of times, "Some of these things confuse me." It is also hard to keep Heather focused on answering the questions. The following is a summary of some of the information Heather provided.

- Heather lived with her family even while she was married. Heather got her own place a couple of times, but then moved back in with family. She got her own place for good before the birth of her second child. Heather moved out for good in 2002 or 2003. Even after she moved out of her parents' house, Heather still went down to her parents' house a lot and stayed down there a lot.

- Heather says she paid her own way when she lived with her family. Heather says she lived with her parents even when she was married because "my daddy didn't want me moving away because I was so young and I was having the first grandbaby."

- Heather got married at 16. She had her first child at 17.

- Heather says, "Me and my daddy had a bond. We watched football and the races together. We played pool. I was always my daddy's pride and joy. I never lacked for nothing with my daddy and grandparents being around."

- In regards to Rickey, Heather says, "I cooked for him. I took care of him."

- When Heather would visit her parents, she would help her mother cook supper while Rickey spent time with his grandchildren. Heather saw her father 2-3 hours a few times a week. She also talked with him on the phone regularly.

- Heather says, "My mama was jealous of me and my daddy's relationship. She always said she was going to get him, to bring him down. My brother was closer to my mama."

COMMUNICATION

- Rickey wouldn't pay attention to certain things when other people were talking.



- "Daddy has always been a real nervous person. He couldn't take but so much. She drove him crazy. He loved her so much. He still loves her."

- "She would tell him one thing and get him confused." For example, Angie would tell Rickey the Discover card wasn't being used anymore, but he would see there was a bill for the Discover card. Rickey couldn't understand that. Heather states, "She wasn't telling him the truth, and he was trusting her."

- "Daddy was real smart. He wanted to get his education."

COMMUNITY USE

- "He could go into a store, but mama always did the paying."

- "Mama packed for trips."

- "He would mail things sometimes."

- Rickey and Angie went to the races with their good friend Charles and Janice.

- "Daddy always pretty much needed help. He relied on others for things. He couldn't cook food. He would heat a TV dinner. He couldn't wash clothes well. He couldn't' manage a household by himself."

- Heather believes her father's mind "got washed away with chemo."

- Rickey never purchased anything by himself except a motorcycle or four-wheeler.

HOME LIVING

- Rickey couldn't iron clothes. He couldn't get the wrinkles out of the clothes.

- Rickey couldn't sort the laundry correctly. He didn't use the washing machine because one time he put too much soap in the machine, and there were suds coming out of the machine. Rickey was scared to try to use the washing machine because he was worried he would do something to it. After Angie left, Heather washed Rickey's clothes, and Mildred ironed them.

HEALTH & SAFETY

- Angie kept track of all of Rickey's medications.

- Rickey would ask for help when he bought over the counter medications.

LEISURE

- Rickey liked to play cards and monopoly. Rickey kept "score" in monopoly.

- Rickey played Rook with Cindy and Danny Fletcher.

SELF-DIRECTION

- Rickey didn't remodel his trailer. He hired people to do it. His cousin Brian Blackwell and Wayne Willingham remodeled the single-wide.

SOCIAL

- Rickey didn't have many friends. His one close friend was his cousin Dale.

MEMO TO THE RICKEY BLACKWELL FILE

TO: File
FROM: Kara
RE: Interview with Dr. Brian Dalton
DATE: 10/12/12

CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT

On the above date, Lee and I meet with Dr. Brain Dalton at Spartanburg Regional Hospital. Also present during part of the interview is Robin Deming who works in the legal department of the hospital. Dr. Dalton was a second year surgical resident who was working in the emergency department when Rickey was brought in after shooting himself. Dr. Dalton assisted Dr. Orr with Rickey's surgery.

Dr. Dalton remembers Rickey although he says he doesn't remember any specifics. He reviewed Rickey's medical record prior to our meeting. At the time, EMS staff told the hospital staff what had happened. Dr. Dalton reports, "EMS told us about what happened. He had a little girl, shot her and killed her and then shot himself in the belly." Dr. Dalton believes the police officers at the hospital told a similar story. Dr. Dalton does not remember how many law enforcement officers were present at the hospital. He also doesn't remember what agency the officers were from.

Dr. Dalton was working in the trauma bay when Rickey was brought in. Dr. Dalton does not remember if the police officers were separate from the ambulance or if they came with the ambulance. As a second year resident, Dr. Dalton served as the "head of bed" which means he talked with Rickey to figure out what had happened. Dr. Dalton's job was to manage Rickey's airway. Rickey's airway was not blocked.

Rickey was stable when he arrived at the hospital. He was talking to hospital staff. Rickey had an "obvious gunshot would to his abdomen" and was taken quickly to the operating room. Dr. Dalton says EMS might have given Rickey pain meds in the ambulance, but he does not know for sure.

We ask about the seriousness of Rickey's injury. Dr. Dalton reports, "We rank by location. The abdomen is always serious, potentially life-threatening if you hit something major." Dr. Dalton says Rickey was not in shock when he arrived at the hospital, and he was coherent.

Dr. Dalton does not remember Rickey saying anything in particular. He tells us the chart "says he was making sense." Dr. Dalton says, "Other than to ask him how he got the gunshot wound, I don't remember what he said." Dr. Dalton does not remember if Rickey was upset.

Patients are usually given a drug screen in the trauma bay. A patient might not receive a drug screen if they are going straight into the OR. They also usually do an alcohol



screen. This might have been bypassed due to the gunshot wound to the abdomen. Hospital staff may bypass secondary procedures when there is a serious gunshot wound.

The type of surgery Rickey received is "usually not too long." Dr. Dalton cannot remember how long Rickey's surgery was. Dr. Dalton recalls they took out parts of Rickey's intestine; two parts from his small intestine and one from his large. Rickey's colon was "working fine."

Dr. Dalton thinks Rickey was in the hospital for a week. Dr. Dalton thinks he saw Rickey every day except the second day. Rickey went to the floor the second day and was then moved to the ICU for Rickey's safety. Dr. Dalton saw Rickey in the ICU. The ICU was Dr. Dalton's floor. There was no medical reason for Rickey to be in the ICU. It was not normal procedure. Rickey could not be moved to the ICU on his own request. Dr. Dalton imagines Rickey was placed in the ICU at the request of law enforcement. There is limited access to the ICU rooms. There was always a law enforcement officer in the room with Rickey when Dr. Dalton saw him. Dr. Dalton is "pretty sure" Rickey was in cuffs or shackles.

Dr. Dalton reports Rickey was "cooperative and calm post-operatively." Dr. Dalton goes on to say, "I don't remember him saying anything about the shooting." Dr. Dalton denies Rickey made any declarations. Dr. Dalton did not view Rickey as being remorseful. Dr. Dalton does not remember if Rickey smelled of alcohol. Dr. Dalton does not remember if Rickey mentioned what medications he was taking at the time.

Rickey had an injury to his transverse colon. If the gunshot wound had been in the middle of his colon it would have hit either his aorta or inferior vena cava. Gunshot wounds to the abdomen are "always life threatening." Rickey's wound "could have been fatal."

Dr. Dalton was not present when Rickey was discharged and taken to the county jail. In terms of follow up, Rickey should have been seen in a couple of weeks to have his wound checked and to see if his bowel was functioning correctly. Dr. Dalton advises it is fairly common for someone who undergoes Rickey's type of surgery to develop a hernia post-operatively. If the hernia isn't surgically fixed, it will bulge. The hernia surgery would be elective surgery.

Dr. Orr did the actual surgery. "Zalias" is the name the hospital uses for prisoners. People in custody always get this name. Dr. Dalton does not remember if the officer in Rickey's room interacted with Rickey. The officer always asked Dr. Dalton's name when he entered the room.

Dr. Dalton thinks Rickey was capable of making a statement prior to surgery. Rickey "was lucid." Rickey was able to answer questions like "what is your name" and "where are you?" Dr. Dalton says, "He was talking and could respond to questions appropriately."

Psychiatric Evaluation

Name: Ricky Blackwell
DOB: 1/18/58
Dates of Evaluation: 7/6/10, 11/26/10, 4/17/11, 2/11/12, 2/16/14
Date of Report: 3/5/14

Identifying Information: Ricky Lee Blackwell is a 55 year old divorced male evaluated pursuant to a request from his attorneys, Clay Allen and Bill McGuire.

Statement of Nonconfidentiality: Mr. Blackwell understood that his communication could be used in his upcoming legal proceedings.

Sources of Information:
Carolinas Center Records 2008
Harris Psychiatric Hospital 1990
Interview with Robert Jackson 7/12/12
Spartanburg Regional Hospital
DDSN Diagnostic Evaluation 11/5/13, 11/14/13
DMH Evaluation 5/6/13
Driver's record
Detention Center Records
Chesnee School records Cleatus Blackwell
Chesnee School records Ricky Blackwell
Bellue trucking records
Hess Corporation correspondence
Jacobson Companies records
Springs Industries records
911 Call Log 8/12/09
911 Call log 2003-2009 Ridings Road
ATF Tracings Center Summary
Autopsy Report Heather Brooke Center 7/12/09
Booking Report
CAC Interview K Bryant
CAD Printout
Coroner's Investigative report
Crime Scene Diagram
Crime Scene Log
Crime Scene Photos
Criminal History Angela Blackwell
Criminal History jerry Blackwell
Criminal History Mark Anthony Blackwell
Criminal History Vernon Russell Kimbrell
Criminal History Ricky Blackwell
Handwritten notes
Incident Report Murder



Indictment Kidnapping
Indictment Murder
Spartanburg County Supplemental Narrative
Investigation Report Talanges
Forensics Report
Investigation Report Jason Bryant
Investigation report Joseph Bohon
Investigation Reports Letterman
Investigation report Lorin Williams
Investigation report M. Horton
Investigation Report W.R. Foster
Jail Call Detail Report
Jail Call Log
Jail Incident report 2/4/12
Law Enforcement Report
Arrest warrant Murder
Arrest warrant Kidnapping
Preliminary Hearing Sheet
Search warrants
SLED Firearm Report Victim
Sled Trace Evidence
Supplemental Kish
Supplemental Turner
Supplemental Barry Pridgeon
Supplemental C. Terry
Supplemental C.A. Stowe
Supplemental Leso
Supplemental Taylor
Supplemental J. Tate
Supplemental John Smoak
Supplemental Michael Turner
Supplemental Timmons
Statement Angela Blackwell
Statement Jerry Wayne Blackwell
Statement Mark Bryant
Statement Vernon Kimbrell
Case File Suzanne Cromer
Interview Notes Dale Blackwell
Interview Notes Elizabeth Bridges
Interview Notes Heather Bryant
Interview Notes Linda Miller
Interview Notes Mildred Blackwell
Interview Notes Miriam Bridges Morgan
Interview Royann Thompson
Interview Sherry Wofford
School records Digest Mmark Allen B[redacted]

School Records Digest Heather Blackwell Bryant
School records Digest Kaleb Bryant
Birth Certificate Ricky Blackwell
Divorce records
Palmetto Hematology/Oncology records (Stage IV Hodgkins Lymphoma) 2003
Spartanburg Regional records 7/8/09-7/15/09 small bowel resection, s/p gsw abdomen
Spartanburg Hospital records 9/86 (elevated copper)
Cholecystectomy 2000
Nissen 7/10/2001- 7/14/01
Westgate Family Physician Records
Splenectomy 1986
Carolina Family Physicians Mildred Blackwell
Discharge Summary 2/10/14 pancreatitis
Spartanburg ER 1/25/14
Greenwood Genetic Center Records Mckenzie B[redacted]
Patrick Harris records Donald Blackwell
Patrick Harris records Heather Blackwell Bryant 1998
Patrick Harris records Rickey Blackwell 1990

Developmental History:
Mr. Blackwell was raised in an intact family. He had a normal birth and development. There is no history of physical, sexual abuse or neglect. He did have an automobile accident at 9 months of age on 8/23/59. He was thrown from the car and assessed for a possible skull fracture. Patrick Harris records note he suffered seizures as a child. The medical records were of poor quality and difficult to read. At age 8, he had a tonsillectomy and adenoidectomy for recurrent strep throat. He had surgery at age 10 for a hernia and hydrocele.

School History:
His school history has been presented by experts assessing his intellectual ability and will therefore not be referenced, although he was noted to have poor grades at intervals (grades 8 and 11 especially) and low achievement on standardized tests. He missed 22 days of school in the tenth grade. (Do we want her to say something here about Rickey being placed in adjunct classes in high school?)

Employment History:
Experts assessing his intellectual functioning have extensively referenced his employment history. He worked as a truck driver and forklift operator. He had periods of disability secondary to work related accidents (crushed hand at Bellue, inhaled toxic dust at JacobsonHess) and his lymphoma. He had numerous other employment related injuries. He fell and hurt his hip and later lacerated his hand in 1977 while working at Crown Cork and Seal. Hhe sprained his foot in 1979 while working at Southern Piedmont Ice Company. He was involved in a tractor-trailer accident while working for B & R transport in 1982.

Medical History:
In addition to the closed head injury as an infant and his surgery at age 10, Mr. Blackwell reports a lower back injury when he fell five feet from some steps in 1981. He sustained a gunshot wound to his right leg in 1983. He was also assessed for Rocky Mountain spotted fever in 1984.

He was diagnosed with gastroenteritis in 1980.
He was seen for headaches and fever in 7/86. He was later admitted and diagnosed with Hodgkins Lymphoma, mixed cellularity, stage 3-B, pathologic stage 4 involving lymph nodes, spleen and bone marrow. He also had weight loss and night sweats as symptoms. He had mediastinal adenopathy on CT scan of the chest. His wife was pregnant with their second child at the time. He had good family support throughout his diagnostic workup. As part of his treatment, he had a splenectomy.

During his workup, he was also found to have an elevated copper level of 163 (70-140). Elevated copper is associated with clumsiness and neuropsychiatric symptt~~t~~poms.

On 3/14/87, he was admitted to the hospital for nausea and vomiting for the past four days. He was receiving chemotherapy at the time. He was noted to have: "Depression due to diagnosis and prognosis."

On 8/14/00, he presented to the ER with chest tightness and a headache. He did not feel well prior to going to work and progressively felt worse as time went by. Rickey reports feeling swimming in the head, weakness in his knee~~needs~~ and feeling like he was going to pass out. Rickey went and told his wife (who worked at the same place) about how he was feeling, and she broughtings him to the ER. Rickey is admitted to the hospital. He had a biopsy of his esophagus and EGD and was diagnosed with hiatal hernia and erosive esophagitis. He had a laparoscopic cholecystectomy. He had a repeat EGD on 6/1/01 and had a Nissen fundoplication procedure performed and a hiatal hernia repair.

On 11/2/00, he was referred for a lower back MRI due to weakness in his legs, right leg numbness, and lower back pain. MRI revealed degenerative disc disease with central disc bulge.

On 6/29/02, he was brought to the ER via ambulance following a four-wheeler accident. The four-wheeler overturned on top of him. He reported he could not remember the incident. He was awake but confused when EMS arrives. He had a head laceration, abrasion on one arm and bruising on his chest. His head CT scan was negative. A sScan of his left shoulder revealed an oblique fracture through the distal end of the clavicle.

On 10/19/05, he was seen for CT scans of his lungs, pelvis and abdomen to follow up on Hodgkin's disease. All scans were normal.

On 2/9/07, he presented to the ER after picking up a broken bag of sodium metasilicate at work and inhaling the dust.

On 7/4/08, he presented to the ER with complaints of shortness of breath and wheezing for past 10 days.

On 12/9/08, he presented to the ER after a suicide attempt by taking an overdose of Xanax® because his wife left him. The Behavioral Health Services Comprehensive Assessment Tool indicates Rickey presented with anxiety, depression, obsessions and worries.

He was most recently hospitalized in 2/14 for pancreatitis and small bowel obstruction.

His present medications include Spiriva, Norvasc

Psychiatric History:

On 3/12/90, he was admitted to Patrick B. Harris Psychiatric Hospital for a suicidal gesture upon referral from Spartanburg MHC. A nursing note indicated he had fired a gun through the roof of his mobile home. He reported depression secondary to his Hodgkins and disability and was also drinking beer and using marijuana daily. A maternal and paternal history of mood and anxiety disorders were noted. A social history noted he and his wife were experiencing financial problems. He was discharged on 3/16/90 and referred to Dr. Wells for follow-up. He was diagnosed with depression and discharged on lorazepam and Sinequan®.

On 12/10/08, he was evaluated as part of an Application for Involuntary Emergency Hospitalization for Mental Illness at Spartanburg Regional Medical Center. The evaluating physician noted he was "impulsive and unpredictable with poor control of emotions…Patient refusing treatment and presents with significant lack of insight and judgment." He was admitted to Carolina Center for Behavioral Health Services for inpatient treatment. He overdosed on alprazolam. "My wife left me and I overtook my medication." The note indicates: "Patient is very upset crying and sobbing hysterically at times during assessment. Patient is a significant risk to self at present and is unable to maintain his own safety at this time." The record also noted , "Rickey has been unemployed since May. There has been deterioration in Rickey's hygiene. He has no energy, is isolating himself, and can't sleep. Rickey reports he worries about everything and has "bad nerves." He "states he hears his wife's voice and wakes up thinking she is next to him." Rickey denies any history of physical or sexual abuse. He denies alcohol or drug use. Rickey's mother has a history of depression. The Psychiatric Evaluation completed by Dr. Ishmeal Major noted he was seen on commitment after overdosing on approximately 30 Xanax tablets. Rickey's wife left three weeks prior. She came to the house on this date to see her grandchildren. Rickey "begged and pleaded with her to come back home." When she refused, Rickey went out to his truck and took the bottle of Xanax. Rickey admits to significant depression, anhedonia, decreased sleep, decreased appetite, daily crying spells, being very distraught, vague suicidal ideations, increased amounts of anxiety, and some shortness of breath and tremors. He denies any homicidal ideation. Diagnostic impression is Major Depressive Disorder, recurrent, severe without psychosis on Axis I and mixed personality traits on Axis II. Rickey will be admitted to

the unit and started on mirzatapine, Ambien® and Vistaril®. He was discharged on 12/16/08.

The Discharge Summary completed on this date indicates, "The patient was stabilized via medication management group. The patient began working on depression, anxiety, unresolved grief issue, and loss of the marriage to work to improve coping skills and handle stressors and to continue relapse prevention education." Discharge diagnosis is Major Depressive Disorder, severe without psychosis on Axis I and mixed personality traits on Axis II. He was discharged on clonazepam, mirzatapine, and Lunesta®. He was to follow up with a psychiatrist and therapist at Spartanburg Area Mental Health Center.

Notes from the mitigation specialist's interview with Dr. Jackson, Mr. Blackwell's primary care physician, reported: "Most of the time, Rickey was a little on the nervous side." Mr. BlackwellRickey took antidepressants for a number of years. Mr. BlackwellRickey stopped taking antidepressants for a while. Dr. Jackson thought Mr. BlackwellRickey had overcome his anxiety issues. After Angie left Mr. BlackwellRickey, though, heRickey "decompensated." Dr. Jackson had "multiple counseling visits" with Mr. BlackwellRickey trying to help himRickey with his depression. Dr. Jackson recalls, "He didn't respond well. He didn't handle any of it well. He continued to deteriorate. I suspect it was because of his underlying anxiety and depression issues." Dr. Jackson was not surprised by BlackwellRickey's overdose. Dr. Jackson notes, "He couldn't pull out of it. He couldn't recover it. He went into a depressed mood." Mr. BlackwellRickey "wept uncontrollably multiple times" in Dr. Jackson's office. In regards to Mr. Blackwell's relationship with Angie ask Dr. Jackson if he has any thoughts about why Rickey wasn't getting over Angie. Dr. Jackson remarksplies, "She was the only one for him. She nurtured him and took care of him." He also noted economic stressors affected Mr. Blackwellhim. Dr. Jackson noted Mr. Blackwell's depression was very different after he and his wife separated. , "It was way far out for depression. It was grief beyond consolation."

Mr. Blackwell also reports symptoms of anxiety after finding his brother dead. "Me and my son found him." He reports he blames himself for his brother's death. He reports he also "walked in on poppa" when he was 12 years old. He states his grandfather had a heart attack and fell from the toilet. He reports he also found his aunt dead when he was 18. He reports she had a massive heart attack and he found her lying on the floor. He reports he tried to talk to her. "She looked like she wanted me to help her." Hhe also reports recurrent intrusive thoughts about his victim.

His present antidepressant is paroxetine. He was on chlorpromazine which was stopped after his recent hospitalization.

Substance Abuse History:

He was abusing alcohol and marijuana at the time of his Patrick Harris hospitalization in 1990. He reports he was drinking beer prior to the offense. He denied blackouts or withdrawal symptoms.

Family History:
Mr. Blackwell's mother has been treated for anxiety and depression. His brother Don was treated for depression and died on 7/30/01. There is a family history of alcoholism and intellectual disability. His brother was abusing oxycontins when he died. (I don't think Dr. S-W was given Donald Blackwell's SRHS records, but those records indicate Donald was diagnosed with schizophrenia and schizoaffective disorder at different times. Do we want this information included?)

Legal History:
He reports he had a prior charge of Possession of marijuana in 1977. He reports a DWI in 1982. He also had a history of Petty Larceny.

Mental Status Examination:
He was alert and oriented. His weight fluctuated depending upon his medical condition. He maintained good eye contact. His speech was normal in rate and tone. His mood was anxious and depressed. His affect was constricted. He was not suicidal or homicidal. He was not psychotic. He had some difficulty reproducing a visual design. He was able to abstract similarities between objects. He was able to perform serial three subtractions. He was able to name past presidents but required prompting for George Bush Sr. and Jr. he was unable to interpret the proverb: "Don't cry over spilled milk." He was able to register three items and recall them correctly after five minutes.

Diagnoses:
Axis I) Major Depression, recurrent, in partial remission
Anxiety Disorder Not Otherwise Specified
Cannabis Abuse by History
Alcohol Abuse
Axis II Dependent Personality Traits
Borderline Intellectual Functioning vs. Mental Retardation (This could be a problem: The solicitor will point out that our own psychiatrist doesn't support Ginger's diagnosis.)
Axis III) s/p Hodgkins Lymphoma, s/p cholecystectomy, s/p Nissen fundoplication, s/p tonsillectomy/adenoidectomy, s/p small bowel obstruction and pancreatitis, COPD , Hypertension,
Axis IV) legal stressors, mental illness, physical illness

Opinions:
1. Mr. Blackwell was suffering from depression at the time of his offense. He had two prior inpatient hospitalizations for depression prior to the offense. He has a family history of depression. He had a history of impulsively acting out when depressed. He had discharged a firearm in the past and overdosed after seeing his ex-wife.
2. He will need to be monitored by a psychiatrist while confined at the South Carolina Department of Corrections. He continues to ruminate about his ex-wife, he ruminates about the victim and continues to have poor health and chronic pain.

Donna Schwartz-Watts, M.D.
Treating Forensic Psychiatrist

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.



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* proceeding 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 an Five Thousand Dollars ($5,000.00) for the services forensic psychologist in order to conduct standardized adaptive deficit functioning testing, specifically, Dr. Geoffrey McKee. 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.

FILED
2012 AUG 14 P 3:49
M. DOPF BLACKLEY
CLERK OF COURT
SPARTANBURG COUNTY

The total expenditure authorized at this time is Five Thousand ($5,000.00) Dollars to pay for a licensed psychologist needed in preparation of Defendant's trial. This Court finds these services to be reasonable and necessary for Mr. Blackwell's counsel to

P1

STATE'S EXHIBIT 4 5273

evaluate and present evidence on all potential mitigating 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 to at $200.00 per hour for Dr. McKee's services. 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

August 14, 2012.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 AUG 14 PM 3:49
M. HOPE BLACKLEY

11

MEMO TO THE RICKEY BLACKWELL FILE

TO: File
FROM: Kara
RE: Meeting with Dr. Jackson
DATE: 2/26/14

CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT

On the above date, Bill and I meet with Dr. Jackson at his office. I introduce Bill to Dr. Jackson, and Bills explains the status of Rickey's case to Dr. Jackson. Bill explains he would like Dr. Jackson to testify at Rickey's sentencing hearing about his experiences with Rickey over the years as his physician. Bill advises Dr. Jackson he does not want him to testify about Rickey's competency.

Dr. Jackson reports after Angie left Rickey, Rickey "was decompensating emotionally." Dr. Jackson thinks Rickey lost his job around the same time Angie left him. Dr. Jackson notes, "All that was going on at the same time. He had also had an on the job injury at one time. He became very depressed, and that was aggravated by her leaving."

Dr. Jackson goes on to say, "His parents were very domineering. Rickey is very passive. Angie had all she could take. She had been begging him for years to get away. He was very entangled." Dr. Jackson initially says Rickey and Angie were living with Rickey's parents. He later says Rickey's parents lived in "very close proximity" to Rickey and Angie.

Dr. Jackson recalls, "Angie had always been a modest dresser, and she became an immodest dresser. It was like she became liberated in some ways. She had been subdued or under subjugation from the family pressure. Her new connections were not good for her. Angie let me know some of the people she was connecting with. I saw who she was hanging with and the way she was dressing. She was talking like she was a different person. She got a tattoo, and I think she started smoking."

Dr. Jackson remembers, "Both of them were Christian, church-going. They had an active life in a local church for a long time. You never know what goes on in peoples' home lives. It can be pathological things going on. I had the sense that was going on. I wouldn't say this in court, but I think it was the oppressiveness of his parents. That was implied by things she said, not what he said. There was a pathological relationship between her and his parents."

Dr. Jackson describes Rickey as "passive. He was not domineering. Angie could do whatever she wanted, and Rickey wouldn't say anything." Angie came to all of Rickey's medical appointments.

Dr. Jackson counseled both Angie and Rickey separately about their relationship. Dr. Jackson recalls, "I counseled them to restore their marriage. They were bo



very conflicted about what was going on. He desperately wanted to make it work; she knew she should go back, but desperately didn't want to."

Rickey was "as good as gold." Dr. Jackson goes on to say, "Rickey's jobs were always mediocre. They lived hand to mouth. I don't think she respected him because he was not a good family leader because he was so passive."

Bill asks Dr. Jackson if he has an opinion on what Rickey's punishment should be. Dr. Jackson replies, "He probably deserves the death penalty. He knew what he was doing. It was premeditated. I love him. He's my long-term friend."

Rickey "had a spiritual revival in his life. He made some progress from the talking and counseling I was giving." Dr. Jackson reports there was a time when Rickey "got better emotionally and was not as depressed" but he doesn't remember if that was before Angie left.

Dr. Jackson states several times during our meeting that Rickey has a "borderline IQ." Rickey needed someone to keep up with his medications. Bill mentions to Dr. Jackson that Dr. Jackson isn't really an expert on mental retardation. Dr. Jackson takes great exception to this and points out he "takes care of mentally retarded people every day, and he is not."

In regards to Rickey, Dr. Jackson notes, "There was a period of time when he was very depressed. He was nonfunctional for a period of time. It was not a result of his IQ. It was his depression. If Angie didn't come, Rickey wasn't with it." Dr. Jackson can't remember "what put him in that depression; it was some injury." Dr. Jackson points out Rickey "gets knocked flat easily. He has no internal reserves."

Rickey has "borderline IQ and coping skills. He does not have the reserves emotionally or physically. Angie was his rock. When she left, his anchor left."

Every time Dr. Jackson saw Rickey, Rickey "was crying uncontrollably." Dr. Jackson remembers telling Rickey, "You have got to pull yourself together or you will never get her back. She can't respect you."

Dr. Jackson is going to be out of town Friday, March 15, turkey shooting. He needs at least a day, preferably two days notice of when he will be needed in court.

Blackwell

From: Kara Richards <kara.richards@earthlink.net>
To: Bill McGuire
Cc: Clay Allen <callen@spartanburgcounty.org>, Natasha Holliday <natashaholliday11@gmail.com>, Sarah Jurick <sjurick@sccid.sc.gov>
Subject: Blackwell
Date: Feb 28, 2014 1:33 PM

Bill -

Rodney Mort told us Rickey walked off his job at Jacobson during the first week or so of his employment at Jacobson. Mort said Angie told Mort Rickey's doctor was adjusting his medications. Mort attributed this to chemo meds. I checked both Rickey's Social Security earnings statement and Rickey's Westgate Family Physicians records for information related to this incident. Rickey began work at Jacobson in late 2005 (many years after his chemo had stopped). He was seen by Dr. Jackson in Sept 2005. Dr. Jackson's note mentions Rickey walking off the job because he couldn't handle the stress. Dr. Jackson had taken Rickey off of his Serzone (an antidepressant) in February 2005. Dr. Jackson started Rickey back on the Serzone and Xanax during the Sept 2005 visit.

Rickey was clearly overwhelmed with his new job at Jacboson, got stressed out and walked off. It doesn't have anything to do with chemo meds.

Kara

MEMO TO THE RICKEY BLACKWELL FILE

TO: File
FROM: Kara
RE: Interview with Dr. Brian Dalton
DATE: 10/12/12

CONFIDENTIAL INFORMATION: ATTORNEY-CLIENT WORK PRODUCT

On the above date, Lee and I meet with Dr. Brain Dalton at Spartanburg Regional Hospital. Also present during part of the interview is Robin Deming who works in the legal department of the hospital. Dr. Dalton was a second year surgical resident who was working in the emergency department when Rickey was brought in after shooting himself. Dr. Dalton assisted Dr. Orr with Rickey's surgery.

Dr. Dalton remembers Rickey although he says he doesn't remember any specifics. He reviewed Rickey's medical record prior to our meeting. At the time, EMS staff told the hospital staff what had happened. Dr. Dalton reports, "EMS told us about what happened. He had a little girl, shot her and killed her and then shot himself in the belly." Dr. Dalton believes the police officers at the hospital told a similar story. Dr. Dalton does not remember how many law enforcement officers were present at the hospital. He also doesn't remember what agency the officers were from.

Dr. Dalton was working in the trauma bay when Rickey was brought in. Dr. Dalton does not remember if the police officers were separate from the ambulance or if they came with the ambulance. As a second year resident, Dr. Dalton served as the "head of bed" which means he talked with Rickey to figure out what had happened. Dr. Dalton's job was to manage Rickey's airway. Rickey's airway was not blocked.

Rickey was stable when he arrived at the hospital. He was talking to hospital staff. Rickey had an "obvious gunshot would to his abdomen" and was taken quickly to the operating room. Dr. Dalton says EMS might have given Rickey pain meds in the ambulance, but he does not know for sure.

We ask about the seriousness of Rickey's injury. Dr. Dalton reports, "We rank by location. The abdomen is always serious, potentially life-threatening if you hit something major." Dr. Dalton says Rickey was not in shock when he arrived at the hospital, and he was coherent.

Dr. Dalton does not remember Rickey saying anything in particular. He tells us the chart "says he was making sense." Dr. Dalton says, "Other than to ask him how he got the gunshot wound, I don't remember what he said." Dr. Dalton does not remember if Rickey was upset.

Patients are usually given a drug screen in the trauma bay. A patient might not receive a drug screen if they are going straight into the OR. They also usually do an alcohol



screen. This might have been bypassed due to the gunshot wound to the abdomen. Hospital staff may bypass secondary procedures when there is a serious gunshot wound.

The type of surgery Rickey received is "usually not too long." Dr. Dalton cannot remember how long Rickey's surgery was. Dr. Dalton recalls they took out parts of Rickey's intestine; two parts from his small intestine and one from his large. Rickey's colon was "working fine."

Dr. Dalton thinks Rickey was in the hospital for a week. Dr. Dalton thinks he saw Rickey every day except the second day. Rickey went to the floor the second day and was then moved to the ICU for Rickey's safety. Dr. Dalton saw Rickey in the ICU. The ICU was Dr. Dalton's floor. There was no medical reason for Rickey to be in the ICU. It was not normal procedure. Rickey could not be moved to the ICU on his own request. Dr. Dalton imagines Rickey was placed in the ICU at the request of law enforcement. There is limited access to the ICU rooms. There was always a law enforcement officer in the room with Rickey when Dr. Dalton saw him. Dr. Dalton is "pretty sure" Rickey was in cuffs or shackles.

Dr. Dalton reports Rickey was "cooperative and calm post-operatively." Dr. Dalton goes on to say, "I don't remember him saying anything about the shooting." Dr. Dalton denies Rickey made any declarations. Dr. Dalton did not view Rickey as being remorseful. Dr. Dalton does not remember if Rickey smelled of alcohol. Dr. Dalton does not remember if Rickey mentioned what medications he was taking at the time.

Rickey had an injury to his transverse colon. If the gunshot wound had been in the middle of his colon it would have hit either his aorta or inferior vena cava. Gunshot wounds to the abdomen are "always life threatening." Rickey's wound "could have been fatal."

Dr. Dalton was not present when Rickey was discharged and taken to the county jail. In terms of follow up, Rickey should have been seen in a couple of weeks to have his wound checked and to see if his bowel was functioning correctly. Dr. Dalton advises it is fairly common for someone who undergoes Rickey's type of surgery to develop a hernia post-operatively. If the hernia isn't surgically fixed, it will bulge. The hernia surgery would be elective surgery.

Dr. Orr did the actual surgery. "Zalias" is the name the hospital uses for prisoners. People in custody always get this name. Dr. Dalton does not remember if the officer in Rickey's room interacted with Rickey. The officer always asked Dr. Dalton's name when he entered the room.

Dr. Dalton thinks Rickey was capable of making a statement prior to surgery. Rickey "was lucid." Rickey was able to answer questions like "what is your name" and "where are you?" Dr. Dalton says, "He was talking and could respond to questions appropriately."

INFO, INC.
Investigations

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Rickey Lee Blackwell Report

November 9, 2012

Dr. Charles Morrow
Spartanburg Regional Memorial
Spartanburg, South Carolina
(864) 809-0542

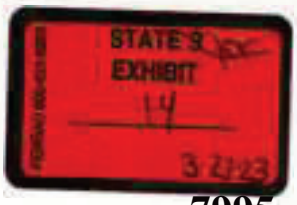
This afternoon, I spoke with Dr. Charles Morrow via telephone. He indicated that he does not remember anything specific about Rickey Blackwell or when he was in the hospital. Gunshot victims are common at the hospital and those are the types of injuries that Dr. Morrow treats.

Dr. Morrow indicated that he was asked to interpret the Progress Note that he wrote on July 12, 2009, and the only thing he recalls about Mr. Blackwell is what is written in that note. He did indicate that it appears that the Note came from a floor visit with the patient because if Dr. Morrow would have seen the patient in ICU, the Note would have been several pages long.

I inquired about how/where he would have received knowledge of Mr. Blackwell's history of Xanax use and Dr. Morrow did not remember where that information came from.

Dr. Morrow also informed me that Mr. Blackwell saw a fair number of physicians while at the hospital and any one of them could have ordered psychiatric/psychological treatment if deemed necessary.

Rickey Lee Blackwell Approved Funding	updated 2/25/2014		
EXPERT	FUNDING APPROVED	BILLED	BALANCE
Fact Investigation	$ 24,771.23	$ (18,611.70)	$ 6,159.53
Psychiatrist	$ 12,500.00	$ (4,200.00)	$ 8,300.00
Firearms	$ 1,500.00	$ -	$ 1,500.00
Mitigation	$ 70,000.00	$ (55,979.78)	$ 14,020.22
Security	$ 5,000.00	$ (1,870.50)	$ 3,129.50
Psychologist (Calloway)	$ 70,000.00	$ (52,112.71)	$ 17,887.29
Psychologist (McKee)	$ 5,000.00	$ (4,000.00)	$ 1,000.00
Forensic Psychiatrist (Corvin)	$ 7,500.00	$ (5,783.40)	$ 1,716.60
Prison Expert	$ 7,500.00	$ -	$ 7,500.00
Statistical Analysis	$ 5,000.00	$ -	$ 5,000.00
	Total		
	$ 208,771.23	$ (142,558.09)	$ 66,213.14



Hospital Report
Call #: 41048

Incident #:
Date: 12/9/2008
Med. Record # 109316
SRMC Acct. # 0834401620

Crew Information

EMS Unit	M14	Crew	Cert. Numbe
Type Unit	EMTP-Transpor	Harris, Phillip	83611
Permit #	05723	Sloan, Tiffany	29231
Patient #	1		

Call Summary

Location	248 RIDINGS ROAD
	Chesnee, SC, USA 29323
Location Type	Residence
Nature	Medical - Behavioral - Overdose
Respond Wit	Police
Response Mode	Emergency Changed to
Transport Mode	Non-Emergency Changed to
Patient Transported	Main Stretcher
Transport Agency	Spartanburg EMS
Transport Unit	Medic 14
Patient positio	Fowlers
Outcome	Hospital ER
Destination	Spartanburg Regional Medical Center

Call Receiv	17:16 Dec 09, 20	Clear	18:19
Dispatch	17:16	Base	
Enroute	17:18	Injury	
Scene	17:39	Trauma Ale	
Patient Si	17:40	Transport Arri	
Depart	17:41	Transport Dep	
Destinati	18:02	Last Seen Norm	

Patient Information

PRINTED BY: SB12286
DATE 7/16/2009

Name Blackwell, Ricky L

STATE'S EXHIBIT 15

SSN [redacted] SEX M
DOB [redacted] (50 Weight200 lbs
Docto R. Jackson Race Caucasian
Pers. Effects Pt.'s ID cards left w/registrar.

Phone (864)461-8947
Addres248 RIDINGS ROAD

Vital Signs

Time	BP	Pulse	SPO2	Cap Refill	ECG
17:42	100/64	74, Strong, Regular	98 %	Normal	

GCS	Respiratory Effort	Rate	Left	Right
	Normal	18	Clear	Clear

SKIN TEMP: Warm SKIN COLOR: Normal SKIN MOISTURE: Normal ARM MOVEMENT: Left - Strong , Right - Strong
LEG MOVEMENT: Left - Strong , Right - Strong

PUPIL REACTS: Left - Reacts, Right - Reacts PUPIL DILATION: Left - Normal, Right - Normal
LOC: Alert

Time	BP	Pulse	SPO2	Cap Refill	ECG
17:57	102/78	68, Strong, Regular		Normal	

GCS	Respiratory Effort	Rate	Left	Right
	Normal	18	Clear	Clear

SKIN TEMP: Warm SKIN COLOR: Normal SKIN MOISTURE: Normal ARM MOVEMENT: Left - Strong , Right - Strong
LEG MOVEMENT: Left - Strong , Right - Strong GLUCOSE: 134

PUPIL REACTS: Left - Reacts, Right - Reacts PUPIL DILATION: Left - Normal, Right - Normal
LOC: Alert

History

Chief Complaint: Overdose - Intentional
MOI / Present Illness: Overdose
Relevant Past History: Psychiatric - Anxiety

PRINTED BY: SB12286
DATE 7/16/2009

Medications: Xanax
Allergies: No Known Allergies

Assessment

Time	Body Area	Assessment
17:40	ABC , Airway	Patent
	ABC , Breathing	Normal Respirations
	ABC , Circulation	All Pulses Present
	Cardio Vascular , Cardio Vascular	Normal Pulse
	Head , Head	Assessed with No Abnormalities
	Head , Face	

PRINTED BY: SB12286
DATE 7/16/2009

Head , Left Eye	
Head , Right Eye	
Head , Left Ear	
Head , Right Ear	
Head , Throat	
Neck , Neck	
Chest , Chest	
Abdomen , Abdomen	
Pelvis , Pelvis	
Upper Extremities , Left Arm	
Upper Extremities , Left Hand	
Upper Extremities , Right Arm	
Upper Extremities , Right Hand	
Lower Extremities , Left Leg	
Lower Extremities , Left Foot	
Lower Extremities , Right Leg	
Lower Extremities , Right Foot	
Back , Upper Back	
Back , Lower Back	
Back , Thoracic	
Back , Lumbar	
Central Nervous System , Central Nervous System	Neuro Intact Neuro Sensory and Motorfunction Normal
Blood/Fluid Loss , Blood / Fluid Loss	None Noted
LOC , LOC	A & O to person,place

PRINTED BY: SB12286
DATE 7/16/2009

,time,event

Interventions

Time	Treatment	Description	Further Details
17:43	IV	Rate: TKO, Site: Left Hand, Solution: <not entered>, Tubing: <not entered>, Size Needle: 20 G, Length Catheter: 1 .25, Volume: 10 ml , Successful: Yes, Blood Drawn: No, By:Harris, Phillip	
17:46	Cardiac Monitor	Indication: Medical Problem, Pads: Standard Electrodes, Lead: I, II, III, By:Harris, Phillip	Sinus Tachycardia
17:50	Hospital Notified	Method: 800 Med Channel, Contact Made: Yes, Orders Requested: No, Orders Received: No, By:Harris, Phillip	

Adult Trauma Score | Apgar Score

General Comments

Medic 14 was called to residence for overdose Pt. On arrival we found Pt. sitting, alert, talking upset about being depressed over a relationship problem. Pt. stated that he had taken over 100 - 1mg Xanax approximately 45 prior. Pt. denied any pain or S.O.B. Pt. transport initiated to Spartanburg Regional Medical Center. All ALS measures established while enroute to hospital. Pt. was transported to Spartanburg Regional Medical Center without incident. Pt was transferred to ER bed #73, & released to ER staff with report.

PRINTED BY: SB122886
DATE 7/16/2009
