

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case Number: 2025-001377

RECEIVED

May 04 2026

S.C. SUPREME COURT

RICKY LEE BLACKWELL, SR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
VOLUME 18 OF 18

ROSALIND S.D. MAJOR

BRIANNA L. CRUZ

Justice 360

900 Elmwood Ave., Suite 200

Columbia, SC 29201

(803) 765-1044

Counsel for Petitioner

MELODY BROWN

TOMMY EVANS JR.

Office of the Attorney General

P.O. Box 11549

Columbia, SC 29211

Counsel for Respondent

INDEX

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

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

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

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

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

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

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

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

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

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

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

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

PENALTY PHASE TESTIMONY

JOHN SLOAN

Direct examination by Mr. Barnette 2625

ELIZABETH SIMA

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

GAIL MOFFITT

Direct examination by Mr. Barnette 2645

Cross examination by Mr. McGuire 2647

MICHAEL JONES

Direct examination by Mr. Barnette 2649

Cross examination by Mr. Allen 2652

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

IRENE BLACKWELL

Direct examination by Mr. Barnette 2657

Cross examination by Mr. McGuire 2664

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

MICAH HORTON

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

Cross examination by Mr. Allen 2670

TIM TIMMONS

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

Cross examination by Mr. Allen 2677

LORIN WILLIAMS

Direct examination by Mr. Barnette 2680

Cross examination by Mr. McGuire 2686

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

DR. DAVID WREN

Direct examination by Mr. Barnette 2709

DAVID HOGSED

Direct examination by Mr. Barnette 2725

AMY NUNNARY

Direct examination by Mr. Barnette 2730

DEBBIE ALTON

Direct examination by Mr. Barnette 2735

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

addressed the chronic marijuana abuse that Applicant admitted to smoking daily for over a decade, the alcohol abuse, nor the Hodgkins disease. (PCR Tr. Vol. 1 pp. 810, 815).

Dr. Knight also did not address the COPD the Applicant was suffering from. Applicant argues that there was no evidence that COPD or adolescent drug use decreases cognitive function. However, even witnesses called by Applicant disagree. Dr. Corvin and Schwartz-Maddox testified COPD could cause some effect in brain functioning. (PCR Tr. Vol. 1 pp. 838, 819, 391, 972).

There was evidence presented that the amount of damage that the Applicant did to his body during and after the developmental period led to a substantive decline in his cognitive functioning. Respondent's expert witness Dr. Robert Nelson testified that an I.Q. test conducted after the developmental period should not be considered, because too many things that Applicant did to himself that can affect the brain during its development and after it has been developed that will lower I.Q. scores. (PCR Tr. Vol. 4 pp. 49-50). Dr. Nelson also discussed how the chronic use of drugs can be an intervening factor in an I.Q. test when those drugs are taken during the developmental period. And smoking marijuana everyday would have been considered chronic. (PCR Tr. Vol. 4 p. 49). This is consistent with the fact the DSM-5 does not allow I.Q. scores to be the only measure to determine deficits in intellectual functioning.

In sum, this Court does not find credible or persuasive Dr. Knight's opinion, or Dr. Brown's opinion based on the infirm Knight opinion and report. During the Applicant's trial as well as during this PCR hearing, Applicant failed to present sufficient evidence to satisfy the burden of proof to be determined intellectually disabled.

Thus, this Court finds and concludes that trial counsel was not ineffective in the presentation of their *Alkins* claim during the initial trial. Further, could counsel be deemed

2025 APR -7 PM 12:07

FILED

deficient in their investigation, Applicant has not shown a reasonable probability of a different result by virtue of his PCR presentation. Applicant has failed in his burden of proof.

Applicant is due no relief and this Court grants none.

11(b)(2) and (7)

As found by the Supreme Court in the direct appeal, the trial judge did not rely on stereotypes nor deviated from clinical consensus and practice to determine that Applicant was not a person with intellectual disability; Applicant has shown no basis on which counsel should or even could object.

Applicant is unable to meet his burden under *Strickland*, as the Record does not support that the trial judge relied on stereotypes. Stated differently, Applicant has failed to show a basis for objection. The trial judge made a detailed consideration of the evidence, guided by the facts and the medical standards. Further, the allegation of trial court error was raised – and rejected – in the direct appeal based on a review of that detailed ruling:

Initially, we note the trial court correctly identified and made its determination applying the statutory definition of “mental retardation.” Moreover, contrary to Blackwell’s claim, the trial court did not base its decision solely on the fact that Blackwell was able to successfully obtain a commercial driver’s license and be employed as a truck driver. The court relied on other factors, including Blackwell’s school performance and full employment history. Additionally, the court explained why it gave greater weight to Dr. Brown’s report, noting that the report was directed at an evaluation of Blackwell’s “formative years” and was consistent with the “functional adaptations” required by the statutory definition of “mental retardation.” The court also discounted some of Dr. Calloway’s findings as it questioned whether “adequate information” was used and believed Dr. Calloway improperly “made subjective determinations concerning the results obtained and weighted responses of various informants differently.”

SPARTANBURG COUNTY
CLERK OF COURT
10-21-11
10:21 AM
We also find the trial court’s factual determinations are supported by evidence in the record. Admittedly, it is concerning that Blackwell, at 54 years old, scored 63 and 68 on the I.Q. tests given in preparation of the *Atkins* hearing. However, in terms of

FILED

“significantly sub-average general intellectual functioning,” the trial court readily acknowledged the recent I.Q. scores but was persuaded by evidence that: (1) Blackwell, *prior to the age of 18*, scored between 68 and 87 on standard school I.Q. tests; (2) Blackwell made “reasonably sufficient grades during his school career”; (3) at the age of 18, Blackwell was found to read at the 5.8 grade level, completed arithmetic problem solving at the 6.6 level, and completed arithmetic computation at the 5.2 level; and (4) Blackwell dropped out of high school in the eleventh grade despite having earned significant credits toward graduation.

The court also recognized that Blackwell’s recent I.Q. scores may have been caused by events in his adult life that adversely affected his current cognitive ability. For example, the court accurately referenced the fact that Blackwell received chemotherapy for Hodgkin’s Lymphoma in 1986, had an accident in 2003 or 2004 while riding a four-wheeler which rendered him unconscious for approximately 15 to 20 minutes, had several major depressive episodes that resulted in involuntary commitments in 1990 and 2008, and was taking Thorazine, an anti-psychotic medication, at the time of his *Atkins* evaluation.

With respect to Blackwell’s adaptive behavior, the court found “no evidence that he was unable to function at his home during the time before his eighteenth birthday.” Although the court acknowledged evidence that Blackwell had difficulty living independently after the dissolution of his marriage, the court declined to find this translated into deficits in Blackwell’s adaptive behavior. Rather, the court accepted the testimony of Dr. Calloway that Blackwell’s major depressive episodes after the separation were the cause of Blackwell’s inability to function normally. The court also found that Blackwell adapted to life well as he was able to achieve his goal of becoming a commercial truck driver, maintain employment with consistent increases in his earnings, and raise two children during his twenty-six-year marriage. Additionally, the court found significant the fact that Blackwell was never diagnosed with mental retardation until the *Atkins* issue was raised and also noted that Dr. Harrison, who evaluated Blackwell as to his competency to stand trial, reported no finding of mental retardation.

After thoroughly reviewing the record, we conclude Blackwell has not shown the trial court committed an error of law or that its decision is unsupported by the evidence or against its preponderance. Accordingly, we find the case properly proceeded as a capital trial.

Blackwell, 420 S.C. at 141–43, 801 S.E.2d at 720–22.

FILED

Further, the Court found the trial judge “correctly identified and made its determination applying the statutory definition of ‘mental retardation’” and “correctly considered Blackwell’s adaptive functioning using the current clinical standards presented by the medical experts.” *Id.*, at n. 11., 420 S.C. at 141, 801 S.E.2d at 720 and n. 11.

Applicant argues again that the use of the fact that he passed the test to obtain his CDL license demonstrated an opinion based on stereotypes. As our Supreme Court has already found, the analysis was much fuller. The trial judge properly reviewed the evidence presented as shown in his comprehensive, 14 page order issued on February 25, 2014. (Return Attachment, Supp. R. 1-14). As to the licensing issue, Applicant’s work history was not even mentioned until page 8 of the 14-page Order. (Return Attachment, Supp. R. 1-14). That reference was not simply to driving a truck, but consideration of Applicant’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 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

FILED

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 forklift driver.

(Supp. R. 8-9).²¹

The trial judge went on to describe income reported during Applicant's work history, and his family relationships, noting his former wife, Angie Davis,²² "handled the management of the household by paying all the bills and writing all the checks." (Supp. R. 10).²³

The trial judge also considered evidence of school performance ("made reasonably sufficient grades during his school career")²⁴; though ranked 113 out of 113 in his class, Applicant had dropped out and may have received a succession of zeros; had four I.Q. tests before age

²¹ 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").

²² Ms. Davis declined to speak with defendant's expert, (see R. 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. 4218- 4219). At any rate, neither expert spoke to Ms. Davis as a person who possibly could have "provided some really useful information." (R. 4218).

²³ The defense admitted that they failed to turn over all evidence to Dr. Brown as they were ordered to do. (R. 4256- 4258). This shows more material was gathered than what Counsel wished to share with the State. One may reasonably assume that such evidence was not supportive of Applicant's intellectual disability claim.

²⁴ See R. 4047, lines 3-14 (Dr. Brown's testimony that appellant had the required unit numbers needed to be on track for graduation).

FILED

eighteen, which reflected 68 (first grade); 87 (third grade); 86 (sixth grade); and 72 (ninth grade)²⁵; and, that after the age of eighteen he had had a head 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). (Supp. R. 6-7). Accordingly, the Records support that the trial judge's assessment of Applicant's intellectual capacity did not deviate from the clinical consensus. When a trial court's determination is properly based on the weight and validity of two competing expert opinions, what possible grounds did Defense Counsel have to object?

The thoroughness of Judge Couch's order, supplemented by the conclusion reached by our Supreme Court in the direct appeal, leaves little doubt that the evidence supported the determination that Applicant failed in his burden of proof. The decision was not based on stereotypes but was instead based on facts in evidence *and* clinical standards. *See Commonwealth v. Flor*, 259 A.3d 891, 923–24 (Pa. 2021) (“The examples of Appellant’s abilities cited by the PCRA court were not offered to discount or offset scientific conclusions of Appellant’s deficits, but to illustrate that the experts often neglected to consider all sources of information in forming their opinions. The court did not offer examples of adaptive strengths to offset established adaptive deficits, but to illustrate the credibility issues with some of the information relied on by Appellant’s experts in determining the existence of a particular deficit in the first place.”). Applicant has failed to show either deficient performance or prejudice regarding an objection to these matters.

²⁵ Though the witnesses and the parties referred to these as I.Q. tests, there was some question as to whether they were more general scholastic tests. Dr. Calloway did not discount these scores entirely as Applicant would argue should be done; rather, both Dr. Calloway and Dr. Brown indicated they could be considered as broad indicators. (See R. 3874; 4183). In fact, Dr. Calloway depended on school testing in opining family members had indicators of mental retardation. (See R. 3872– p. 3875, appellant’s father’s I.Q. test from school scores indicated as 60; appellant’s brother school test scores indicated 73 and 74; appellant’s daughter’s school scores at 57 and 71).

Applicant attempts to rely upon *Moore v. Texas* in a strained attempt to cast doubt on the conclusions reached by the trial court. See *Moore v. Texas*, 581 U.S. 1 (2017) (*Moore I*); and *Moore v. Texas*, 586 U.S. 133 (2019) (*Moore II*). *Moore I* was an opinion specifically targeted toward Texas's use of non-clinical, court created tests, for determining intellectual disability in capital cases. See *Moore I*, at 5-6 (holding that the *Briseno* factors adopted by Texas Court of Criminal Appeals, for evaluating an *Atkins* claim, are based largely on superseded non-medical standards that create an unacceptable risk that a person with intellectual disabilities will be executed). There the Court held that "adjudications of intellectual disability should be 'informed by the views of medical experts.'" *Id.* (citing *Hall v. Fla.*, 572 U.S. 701, 721 (2014)). *Moore II* was an error correction again targeted to Texas's continued use of arbitrary factors in intellectual disability determinations and an overall disregard of the Court's opinion in *Moore I*. See *Moore*, at 138-139. This does not readily translate to precedent that is directly on point here. But even so, our Supreme Court considered the more general teachings of *Moore* and determined there was no error by the trial court:

Here, the trial court made no reference to the impermissible *Briseno* factors. Furthermore, given the fact that Blackwell's I.Q. scores were at the lower end of the spectrum, the court correctly considered Blackwell's adaptive functioning using the current clinical standards presented by the medical experts. The court, as required by *Moore*, carefully considered and weighed Blackwell's adaptive strengths against his adaptive deficits. While the dissent may believe the trial court overemphasized Blackwell's adaptive strengths, any significance assigned to these adaptive strengths was based on the court's assessment and credibility determination of the expert testimony.

Blackwell, 420 S.C. at 143, 801 S.E.2d at 721 n. 11.

Notably, though *Moore I* and *Moore II* provide a glimpse into what is permissible under *Atkins*, specifically that courts should rely in large measure on clinical standards, that is not a

FILED

direction that the courts must *accept* all clinical opinions without challenge. *See Moore*, 581 U.S. at 13 (“the views of experts’ do not ‘dictate’ a court’s intellectual-disability determination” however, “the determination must be ‘informed by the medical community’s diagnostic framework’”) (quoting *Hall v. Florida*, 572 U.S. 701, 721 (2014)). At its heart, *Atkins* remains a legal decision.

Additionally, Applicant misuses the concept of “stereotypes” in this context by substituting generality for a proper argument based on a critical assessment of facts. For instance, it would be relying on a general stereotype to reject intellectual disability because a defendant’s records reflect gainful employment. Employment itself neither contributes nor detracts from finding of intellectual disability. What properly supports a determination of intellectual disability would be critical analysis of weaknesses exhibited throughout the defendant’s employment, that below-the-surface analysis, to determine adaptive functioning, *i.e.*, was the individual timely and prompt, was he responsible, did he assert management qualities, etc. In short, generalities neither contribute nor support the finding of intellectual disability. Applicant’s mere reference to “stereotypes” is insufficient to challenge the trial court’s thoughtful consideration of two competing clinical opinions with supporting factual basis. Returning to the licensing issue brings this distinction into sharp focus.

In the appeal, Applicant argued the trial court rested almost entirely on the fact of the driver’s license, *see Blackwell*, 420 S.C. at 141, 801 S.E.2d at 720, but the trial court actually heard this evaluation from Dr. Brown:

“It is difficult for many intellectually disabled persons to pass the examination to get a regular driver’s license, and it would be very difficult for someone who is intellectually disabled to pass the written test or the practical test to obtain a commercial license. Mr. Blackwell passed the examination including additional tests for a

FILED

tanker, for hazardous materials (he said in interview he had to take that part twice to pass), and for combination vehicles.”

(R. 4446-4447).

The trial court did not use a stereotype, rather, the court critically considered the facts. Applicant has failed to show any stereotype dependence, thus, has shown no cause for counsel to object. Consequently, Applicant has failed in his *Strickland* burden of proof.

Applicant is not entitled to any relief and this Court grants none.

11(b)(3) Trial counsel did present through their experts that some of the purported I.Q. scores during the developmental period were not legitimate thus were not ineffective either in investigation or presentation on this point.

Applicant next alleges that counsel was deficient in failing to adequately discredit I.Q. scores that reflected Applicant’s higher intellectual capacity. The Record supports that counsel, utilizing qualified experts, investigated the I.Q. tests administered to Applicant during his grade school years, and attempted to rebut their veracity. Counsel presented evidence to the trial judge, and subsequently to the jury, which Counsel offered as supportive of the claim of intellectual disability. Specifically, Defense Counsel retained Dr. Ginger Calloway. Dr. Calloway, after evaluation, opined Applicant was intellectually disabled. *See Blackwell*, 420 S.C. at 137–38, 801 S.E.2d at 718 (“Ginger Calloway, a forensic psychologist who was offered by the defense, opined that Blackwell met the definition of ‘mental retardation’ because he exhibited: sub-average intellectual ability based on his I.Q. scores; significant deficits in adaptive functioning such as communication, home living, social interaction, self-direction, and functional academics; and that these deficits existed prior to the age of eighteen....”).

During the examination of Dr. Calloway at the *Atkins* hearing, Counsel referenced several tests administered to Applicant during his grade school years which reflected an I.Q. level higher than that required for intellectual disability. Dr. Calloway acknowledged the test but stated, “[i]t’s

FILED

used to go at IQ, but it's a group administered test, and group measures of IQ are typically not as accurate as individually administered measure of IQ." (R. 3872). Later, in regard to another similar test, Dr. Calloway testified "it's considered a measure of general aptitude, but that can include achievement as well. So, no, it's not strictly speaking an intelligence test that you would use for placement purposes." (R. 3891). During cross-examination the State cited these same tests. Dr. Calloway again responded on behalf of the defense, "this is still a measurement of mental maturity, i.e. achievement, not so much an individually administered IQ test." (R. 4003-4004).

She went even further in her assessment of these tests during the States recross examination.

. . . The Short Test of Mental Maturity is a measure of cognitive ability. That is not equal to IQ and intellect despite the fact that an IQ score is reported.

[. . .]

At one point in the development of IQ tests, and the Binet uses a mental age to talk about IQ test or did, mental age - - IQ was calculated as mental age over chronological age.

Okay. That's not how it's calculated any longer because we have more sophisticated statistical way of figuring out IQ scores.

(R. 4118-4119).²⁶

²⁶ Further negating a finding of prejudice, at trial, Dr. Brown, provided a similar assessment to that reached by Dr. Calloway:

Well, again, I think that goes back to what's been discussed in previous testimony regarding the fact that those are not really IQ scores. They're more measures of scholastic aptitude, more measure of achievement. They can be roughly equivalent to an IQ score, but as a psychologist, I can't say that I would trust these scores of I think 86 and 87 as being necessarily an indication that he would not be [intellectually disabled].

(R. 4183).

FILED

Dr. Calloway provided similar testimony to the jury during the penalty phase of trial. She testified that the "I.Q. tests" administered to Applicant and family members during grade school were not clinically accurate I.Q. determinations. (R. 2840-2842). She reiterated this conclusion to the jury during the defense's presentation of Applicant's school records.

The, the — he was given some — many, many measures of, of — there's some measures of mental maturity, which are not the same as individually administered IQ tests, but they do give us some rough idea of where he might fall within these ranges that I've been talking about, the lower two percentile of functioning.

[. . .]

So, we wouldn't give them the weight, those measures that report IQ, we wouldn't give them the kind of weight that we would give to a Wechsler Test or there's another test called the Stanford Binet that's also an individually administered scientifically recognized measure of IQ, but we, but we look at them. We, we look at them and we try to determine, you know, do they give us any indication that he had an impairment in the area of functional academics.

(R. 2847-2850).

Further, she made additional assertions throughout her testimony to the jury. (R. 2861-2862) ("It's a, it's a [sic] - - more like an academic [sic] achievement or mental maturity. Mental maturity tests don't measure the same thing as an individualized IQ test.").

Despite Applicant's claim, the Record supports that Defense Counsel adequately investigated and presented evidence to assert that these particular test scores were not individualized measures of general intellectual functioning equal to formal I.Q. testing. *See Skeen v. State*, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Applicant also raised an argument in the direct appeal regarding the use of school testing in consideration of the claim of intellectual disability. Applicant overstated that the scores should

FILED

not be considered at all. Again, the details and context were important and considered.

Respondent made the following observation in the Final Brief of Respondent:

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. 3874, lines 12-18; 4183, lines 10-17). In fact, Dr. Calloway depended on school testing in opining family members had indicators of mental retardation. (See R. 3872, line 1 - 3873, line 9, appellant's father's IQ test from school scores indicated as 60; 3874, lines 12-18, appellant's brother school test scores indicated 73 and 74; 3875, line 11 - 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. 3797, lines 15-21; 3800, lines 4-20; 3809, lines 5-11; 3821, line 13 - 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 IQ 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. 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, "[t]he 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. 4189, lines 10-22).

(Attachment 3, pp. 79-80 n. 29).

This Court finds this argument persuasive. Further, our Supreme Court considered the scores within context of other evidence, concluding the trial court's findings were "supported by the record" at trial:

FILED

Page 50 of 97

...Admittedly, it is concerning that Blackwell, at 54 years old, scored 63 and 68 on the I.Q. tests given in preparation of the *Atkins* hearing. However, in terms of “significantly sub-average general intellectual functioning,” the trial court readily acknowledged the recent I.Q. scores but was persuaded by evidence that: (1) Blackwell, prior to the age of 18, scored between 68 and 87 on standard school I.Q. tests; (2) Blackwell made “reasonably sufficient grades during his school career”; (3) at the age of 18, Blackwell was found to read at the 5.8 grade level, completed arithmetic problem solving at the 6.6 level, and completed arithmetic computation at the 5.2 level; and (4) Blackwell dropped out of high school in the eleventh grade despite having earned significant credits toward graduation.

The court also recognized that Blackwell’s recent I.Q. scores may have been caused by events in his adult life that adversely affected his current cognitive ability. For example, the court accurately referenced the fact that Blackwell received chemotherapy for Hodgkin’s Lymphoma in 1986, had an accident in 2003 or 2004 while riding a four-wheeler which rendered him unconscious for approximately 15 to 20 minutes, had several major depressive episodes that resulted in involuntary commitments in 1990 and 2008, and was taking Thorazine, an anti-psychotic medication, at the time of his *Atkins* evaluation.

Blackwell, 420 S.C. at 142, 801 S.E.2d at 721.

Applicant, though, continued to argue about the use of school testing scores in his petition to the Supreme Court of the United States. In response, the State summarized Applicant’s argument and set out the relevant records citations supporting the error in Applicant’s logic in the following passage from the Brief in Opposition, the contest was on the *value* of the indicators, otherwise:

Petitioner essentially argues the higher scores were misused as IQ tests. (See Petition, p. 8-9). This is an incorrect assertion. The disagreement was over the value of indicators at the relevant time – the developmental period. Both experts agreed the tests could be used for that limited purpose. The defense expert, Dr. Calloway, did not discount these scores entirely; rather, both Dr. Calloway and the court appointed expert, Dr. Brown, indicated they could be considered as broad indicators. (See R. p. 3874, lines 12-18; 4183, lines 10-17). In fact, Dr. Calloway depended on school testing in

FILED

opining family members had indicators of mental retardation. (See R. 3872-3876, (Petitioner's father's IQ test from school scores; his brother school test scores indicated 73 and 74; his daughter's school scores at 57 and 71). Petitioner would have the Court agree they could be used when such indicators are not contrary to his position, (see Petition, p. 15), but not used if contrary. Petitioner cannot be right on both arguments. Even so, 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. 4189). Such scores are properly considered in that context.

(Return Attachment 9, pp. 13-14 n. 7).

Simply, even had the administrative testing scores been misinterpreted as I.Q. scores, that is not the only determinate for intellectual disability. As stated in the DSM-5, "deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing." *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition 33 (5th ed. 2022). In his determination, the trial judge not only used I.Q. scores but academic scores as well as Applicant's ability to pass the CDL exam with its known difficult requirements, and Applicant's specific work history instead of mere employment.

The trial court acknowledged in its order that Applicant made reasonably sufficient grades during his school career. The trial court noted that Applicant had a 90 average for Family Living for the 1st semester of his 11th grade year, and that he held a goal of being a truck driver and within five years of leaving high school he achieved that goal, correctly considering that these tests required extensive reading, writing and practical skills.

The DSM-5 provides that in order to determine a person is intellectually disabled, you may look at I.Q. scores and also other measures of intellectual functioning. This is not making a

FILED

determination based on stereotypes but a global approach to the evidence to determine true intellectual functioning. Again, here the evidence is particularly difficult because of the backwards looking review in the absence of a finding of intellectual disability at the relevant time. Applicant fails to show a basis for objection. He fails to carry his burden of proof under *Strickland*.

Applicant is not entitled to any relief and this Court grants none.

11(b)(4) *Counsel's alleged failure in not investigating how Applicant obtained his CDL does not show ineffective assistance of counsel because this Court finds that obtaining his commercial driver's license was not the only consideration used to determine Applicant is not intellectually disabled and the evidence offered at PCR to attempt to undermine the test procedure is only speculative.*

Applicant submits a claim of ineffective assistance for failing to adequately investigate and address Applicant's acquisition of a commercial driver's license. As referenced in the above-quoted passage from the direct appeal opinion, the Supreme Court of South Carolina rejected Applicant's position on appeal that his commercial driver's license was the key to finding Applicant failed in his burden of proof. *Blackwell*, at 141, 801 S.E.2d at 72.

In short, the fact that Applicant did obtain a commercial driver's license is not, and never was the only issue or dispositive fact. At any rate, Applicant failed to show that the defense, particularly the mitigation investigator and other experts, failed to reasonably investigate this fact.

That was a large part of the "jobs held" and required significant responsibility and thought. Though Applicant relies heavily on Dr. Knight's testimony and characterizations of "rote repetition," assistance, and that he was "not very successful," (*see* Applicant's Post-hearing Brief, at 47), the facts presented at the PCR hearing revealed that Dr. Knight's characterizations miss the mark. First, she misjudged the actual CDL test that Applicant took. In her report she listed a test that was taken on 01/09/1984 as a "Commercial Driver Written Examination," however, this was not a test to obtain his Commercial Driver's License. Moreover, the requirements and resulting

FILED

obligations belie the dismissiveness of his achievements. The results of the actual test for his commercial driver's license, hazmat test, and tanker test was telling: he was asked 145 questions and only got 17 incorrect. (*See* PCR Tr. Vol. 1 pp. 793-796). In an attempt to show some error, Applicant suggested that perhaps someone helped him with the test or helped him with his duties. That is not evidence. That is speculation. Further, the "not very successful" characterization is inconsistent with the very fact that she ultimately had to consider his career "a relative strength," though not necessarily inconsistent with intellectual disability. (*See* PCR Tr. Vol. 1 at 730-31). That cannot carry his burden of proof in this ineffective assistance claim, and, to rely on such speculation further undermines the opinion.

Again, Dr. Knight's opinion suffers from unfairly discounting facts or weighing those facts in biased fashion – a pattern repeated in her report. As this Court has stated before, the details matter. A simple driver's license achievement, this Court agrees, does not move the meter toward or away from the diagnosis much, if at all. A history of a commercial driver's license, and hazmat responsibilities, and long-distance navigation, logically moves it more to strength and ability. This Court finds Dr. Knight's eagerness to discount the information to be a significant showing of confirmation bias, thus, negatively affects her credibility. For purposes of this ineffective claim, this Court has considered the details that could be uncovered (but not the speculation offered) and finds if offered (especially in the manner Dr. Knight did so), there is not a reasonable probability of a different result. The judge and jury could properly consider the details supporting this "strength" (as Dr. Knight concedes it is), and consider those details evidence of intellect and functioning. Stated differently, this Court weighs the details as further support of not finding intellectual disability. Thus, this Court finds that Applicant failed to carry his burden of proof to show *Strickland* deficient performance and prejudice. Applicant's claim that Defense Counsel

FILED

was ineffective for failing to adequately develop and present evidence of his alleged intellectual disability is without merit. Moreover, the general basis for this claim has been thoroughly considered at trial and on appeal.

Applicant is due no relief, and this Court grants none.

11(b)(5) *Applicant failed to prove that his depression and cancer had no demonstrable effect on I.Q. scores.*

Applicant alleges that his trial counsel was ineffective in not managing to discredit that Applicant's depression and cancer treatment resulted in his adult low I.Q. scores. Applicant is unable to show ineffective assistance in this regard as the Record supports that Counsel was aware of these factors and attempted to rebut the State's theory that either treatment was responsible for Applicant's low I.Q.

During the State's cross-examination of Dr. Calloway, during the *Atkins* hearing, the State called attention to a particular antipsychotic medication Applicant was prescribed. It thereafter sought to call into question whether Applicant's low I.Q. was not the result of intellectual disability, but instead caused by the side effects of the prescribed medication. (R. 4017-4024). The State later cited a psychotic incident in which Applicant made suicidal gestures during the time he was undergoing treatment for cancer. (R. 4070-4076). During examination of the State's expert, Dr. Brown, Defense Counsel took the opportunity to counter the questions raised by the State as to the effect depression and cancer treatment could have had on Applicant's intellectual capacity:

- Q Okay. Well, specifically you mentioned a couple of environmental factors, chemotherapy, four-wheeler accident, and alcohol and drug use, and you kind of — you seem to speculate that they could have some cause of Mr. Blackwell's
- A I'm saying they could have.
- Q And you have absolutely no evidence of that though?

- A That's correct.
- Q Okay. For instance, you didn't go and interview anybody to see if there was a change in his personality after the four-wheeler accident?
- A No, I did not.
- Q And that's a --- that's common, in head injuries, to see if there's an effect with somebody, see if their, their mood or temperament has changed, for instance?
- A Correct.
- Q You could do, right?
- A Correct.
- Q And, of course, in this case, there is no evidence of any change in Mr. Blackwell after the four-wheeler accident?
- Q Not that I'm aware of, no.
- Q Right.
- And there's no evidence in the record that his IQ was affected or, or affected negatively by chemotherapy?
- A No evidence, no.
- Q Okay, or alcohol and drug use, there's no evidence that we can rely on to say that that negatively affected his IQ?
- A That's correct.
- Q Okay, so, with regard to these environmental factors, we really only have speculation with regard to did it possibly affect his IQ?
- A I would agree with that.

(R. 4195-4196).

During the penalty phase of Applicant's trial, Defense Counsel adapted its intellectual disability presentation to further attempt to discredit this theory. During examination of Dr. Calloway, Defense Counsel specifically questioned her on the possible effect Applicant's

2025 APR -7 PM 12:08

FILED

depression treatment, specifically Thorazine, could have on his IQ. (R. 2933). Dr. Calloway responded:

A [Y]es, he was taking it and I was concerned not because of his behavior because when someone is overdosing on or if they have too much Thorazine, it's very obvious event to a lay person. Their words are slurred. They can't walk very well. They can, they can barely keep their eyes open. You know, they're - - just look not right.

But I was concerned because it is a medication that was popular 30 years, 40 years ago, a lot — some number of years ago, and it's been replaced by earlier medications. So, I, I was concerned about it from that point of view and I wanted to ask his attorneys about it.

I did, after I was here February 19th through the 21st, I went and consulted a forensic psychiatrist about the dosage that he was on at the time and he was actually on a very low dose, according to this forensic psychiatrist, of the Thorazine. So, I looked — a dose actually lower than what children are given in inpatient facilities. So — and this forensic psychiatrist also told me some other ways in which the Thorazine is being used, so, it's not maybe quite as uncommon as I had thought, but I was concerned and I brought it to the attorney's attention.

Q Now, based on what you've been able to do and, and what you know and your consult, do you believe the Thorazine affected his scores on the WAIS-4 or any of these scores?

A I don't think so. He, he did not look overmedicated to me. What I did learn, from the forensic psychiatrist, was that he's at such a low dose that the forensic psychiatrist would of expected, if anything, that dosage of Thorazine would of helped him to be more alert than be less alert.

(R. 2833-2834).

The Record supports that Defense Counsel made a satisfactory attempt to contradict any questions raised by the State as to the effect mental health and cancer treatments had on Applicant's intellectual capacity.

2025 APR -7 PM 12:08

FILED

Page 57 of 97

During the PCR hearing, Applicant submitted an opinion that a CT scan after a four-wheeler accident was “normal,” but that same expert indicated that there were concussion “symptoms” that lasted at least one-year, and noted, in 2020, there were confirmed deficits in executive functioning. (PCR Tr. Vol. 1 pp. 907-910). Dr. Knight testified that she consulted an oncologist on the general “type” of chemotherapy drug Applicant received and generally that would cause “short-term” issues that would clear after approximately one-year. (PCR Tr. Vol. pp. 695-696). She sought to establish that this would not have lowered his I.Q. at the time of trial. However, once again, that is not the relevant time period. It is the I.Q. during the developmental period at issue. Even so, Applicant’s presentation was contradictory and general in nature. Further, Applicant’s presentation consistently overlooked the great evidence of voluntary drug use and use of alcohol.

In contrast, Respondent presented Dr. Nelson who was also found qualified to testify as an expert in the field of psychopharmacology, the study of psychotropic medications, *i.e.*, medications prescribed for individuals with a mental health diagnosis. (PCR Tr. Vol. 4 p. 13). Dr. Nelson explained that Applicant was on two medications that were of concern as it relates to cognitive function, Thorazine *and* Benztropine. Dr. Nelson testified that he would like to know about those medications before giving an I.Q. test because it could affect the performance. (PCR Tr. Vol. 4 p. 55). Dr. Calloway considered Thorazine and spoke to another expert, but then relied on her general opinion that he did not look “overmedicated.” (R. 2833-2834). Dr. Nelson’s testimony based on his direct knowledge in psychopharmacology is credible, and there is evidence that drugs could have affected the for-trial I.Q. testing.

Also, from Applicant’s own witness, Dr. Corvin, this Court heard testimony relating to the Hodgkins Lymphoma that Applicant once suffered, and that this form of cancer can be anywhere

FILED

and could spread to the brain. Dr. Corvin testified that though he saw no record of “brain involvement” it was possible, and he further carefully distinguished that from treatment, which he opined, “did change him psychiatrically, but I don’t think it changed him intellectually.” (PCR Tr. Vol. 1 pp. 914-917; 969-970).²⁷ He agreed, though, that the treatment, the head injury and alcohol use would impact functioning, he just considered that Applicant was already intellectually disabled and it disabled him further. (PCR Tr. Vol. 1 918). Further, he admitted that COPD, which Applicant had for approximately 6 years before the 2012 I.Q. test, can impact I.Q., as well as drug use during the development period (at least in some studies), which was also noted. (PCR Tr. Vol. 1, p. 971-972; 986; 993-994). The concession, however, is that these things can have impact. Where on the spectrum and how much is a different matter, but to the extent Applicant claims no impact, that would be contrary to concessions made.

Further, just like several of the witness interviews from the trial investigation were not provided to Dr. Knight, Dr. Corvin was not provided with an interview that reflected a major accident “the trailer jackknifed, swinging the trailer around, hitting the cab” where Applicant had fallen asleep, even though a history of “multiple concussions back to back” is notably detrimental. (PCR Vol. 1, Tr. Vol. 1, pp. 991-992). He also testified that “structural imaging” is broad, detecting “tissue disruption or death,” but does not fully “rule out” neurocognitive issues. (PCR Vol. 1, Tr. 1015). Further, Dr. Corvin admitted that Applicant’s truck accident could well be caused by use of marijuana. (PCR Vol. 1, Tr. 989-990).

²⁷ Of concern is that Dr. Corvin also testified that he did not have the records, did not “know that anybody does,” and did not speak to Applicant’s oncologist, though he also testified that he knew “some” about the treatment. (PCR Tr. Vol. 1, 1023-1024). This leaves a scattered impression that is not persuasive.

There can be no finding of prejudice in regard to investigation of these areas of fact and potential opinions as Defense Counsel presented vast amounts of evidence in support of the early onset theory. The defense provided during both the *Atkins* hearing and trial examples of Applicant's substandard performance during grade school. (R. 3852-3853; 2812-2918). The defense presented standardized tests from Applicant's school records reflecting low I.Q. scores during cross-examination of DDSN Psychologist Kimberly Harrison. (R. 3795-3802; 3890-3902; 2861-2866). Additionally, Dr. Calloway testified to Applicant's poor performance in grade school, his enrollment in adjunct classes, and his eventual dropping out of school in the eleventh grade. (R. 3871; 3882-3883; 2851-2861). She also made reference to a basic learning exam administered to Applicant when he was seventeen years old, which indicated that he was functioning academically between a fifth and sixth grader. (R. 2855; 2867). She then correlated these to a similar test that she had recently administered which placed Applicant at a similar academic range. (R. 2868-2870). Dr. Calloway also attempted to relate several of the alleged deficits in social adaptability back to Applicant's childhood. She testified that interviews with family and acquaintances indicated that Applicant had difficulty making friends and was often taken advantage of. (R. 3927-3928).

Careful consideration of the Record does not support Applicant's claim that Defense Counsel was ineffective for failing to investigate and present evidence to the trial judge and jury that Applicant's depression and cancer treatment had no demonstrable effect on I.Q. scores. Instead, the Record would support that Counsel, through qualified experts, were aware and attempted to combat the allegation. Furthermore, the Record would does not support a finding of prejudice. Defense Counsel submitted adequate evidence of early onset, in attempt to counter the State's theory. There simply were other factors to consider. The trial judge and jury decided this

FILED

factual matter against the defense, but Applicant shows no deficiency by counsel. Applicant has failed in his *Strickland* burden of proof.

Applicant is not entitled to any relief and this Court grants none.

11(b)(6) *Counsel did adequately inform and educate the trial judge and jury about potentially preconceived misconceptions and stereotypes related to intellectual disability; Applicant's allegation counsel failed to investigate and challenge misconceptions lacks merit.*

Applicant next faults Defense Counsel for failing to educate the judge and jury about intellectual disabilities in general. Nevertheless, the Record would support that Counsel took affirmative measures to educate both the judge and jury in regard to potential misconceptions and stereotypes. During Defense Counsel's extensive examination of Dr. Calloway at Applicant's *Atkin*'s hearing the following testimony was presented:

Q Can somebody be mild mentally retarded and drive a truck?

A Yes .

Q forklift?

A Yes .

Q Be a welder?

A Yes .

Q Get a GED?

A Yes.

Q Read?

A Yes.

Q Write?

A Yes .

FILED

Q Write letters?

A Yes.

Q Use the telephone?

A Yes.

Q Use an ATM machine?

A Yes.

Q Have a child?

A Yes .

Q Marry?

A Yes

Q Do household chores?

A Yes

Q Cook?

A Yes .

Q Shop?

A Yes.

Q Count money?

A Yes .

Q Make change?

A Yes.

Q Buy clothes?

A Yes.

Q Dress themselves?

A Yes.

FILED

Q Maintain hygiene?

A Yes.

Q Work?

A Yes .

Q Be a mechanic?

A Yes.

Q Be a pizza delivery driver?

A Yes.

Q Have a driver's license?

A Yes.

Q Get a CDL?

A Yes.

Q Can you rule out mental retardation by pointing to these skills and say the person's not M.R.?

A No, because that's not the way, in our profession, that we go about assessing adaptive functioning. It's not a rule out. *It's looking at the entire picture of who the person is with regard to strengths and deficits and identifying those deficits in terms of these skill areas.*

(R. 3838-3840) (emphasis added).

Immediately after, Dr. Calloway presented to the trial court a detailed analysis on how mental health professionals investigate and determine intellectual disability. (R. 3840-3845). Dr. Calloway also cautioned the court on the "cloak of competency" exhibited by individuals with mild mental retardation:

For several reasons. People who are suspected of having intellectual disability, particularly people who fall within the mild range of intellectual disability, are people who are — have sufficient awareness to know that they are not as bright, if you want to put it that way, they're not as capable, they don't have as much intellect

FILED

as other people, and this is for — this is a shameful thing in our society not to be bright, not to be capable, it's shameful.

So, there is a — there's a way in which people who have intellectual disability, particularly people with the mild form of it, will want to cover what they, what they don't know and pretend that they do know. There's a book called *The Cloak of Competence* in which this man did a study of a number of people in California with intellectual disability, and he came up with this concept of *The Cloak of Competence*.

So, this describes the way in which, if you will, like somebody would put on a coat to cover themselves, *The Cloak of Competence* is what people with mild M.R. or mild I.D. do in order to pass, in order to look like that they are average normal people.

(R. 3845-3846).

Defense Counsel further endeavored to mitigate the fact that Applicant held a Commercial Driver's License and had a career in trucking. Through Dr. Calloway, Defense Counsel provided a comprehensive assessment of the tribulations Applicant experienced during his driving career. Dr. Calloway detailed during the *Atkins* hearing and trial the accident history and disciplinary records from Applicant's various employers. (R. 3884-3890; 2947-2948). In addition, Dr. Calloway reflected on comments made by one of Applicant's prior employers:

But Mr. Bagwell said if you could drive at all you could drive those trucks, and this is down at the latter part of that paragraph. He said later you don't need a Ph.D. or college degree to drive a truck, and he thought that [Applicant] didn't drive tanker trucks, which required a greater amount of paperwork to be completed by the driver.

(R. 3932).

Defense Counsel also took several more opportunities to educate the jury during the penalty phase about the realities of intellectual disability. Dr. Calloway began her testimony by informing the jury that individuals with mild intellectual disabilities often appear normal. She again explained the "cloak of competence" intellectually disabled individuals often exhibit in order to maintain a

FILED

normal appearance. (R. 2826). Dr. Calloway also expressed the importance of clinical judgment in reaching an intellectual disability determination. (R. 2827-2828). Defense Counsel later offered the question on an intellectually disabled individual's ability to read to which Dr. Calloway affirmed that individuals with mild mental retardation have the capability to both learn and read. (R. 2867-2868). Similarly, Defense Counsel asked during presentation of Applicant's work history, whether the mildly mentally retarded could work. Dr. Calloway responded:

They can be - - they are in educable sorts of classes, educable classes for special ed children, and so they can be taught, and they can be taught through routines and they can be taught through assistance, and they can be - - they can work. There's no reason they shouldn't be able to work.

(R. 2876-2877).

Dr. Calloway further affirmed her belief that a mildly mentally retarded person could be trained to drive a commercial truck, a forklift, attain a commercial driver's license and to keep logs of their activities. (R. 2877). She concluded this line of questioning with the following statement:

Again, I - - you know, the, the distinguishing thing about mildly mentally retarded people is that, just by looking at them and *just by looking at some of their activities*, would not be sufficient - - a sufficient way to diagnose mental retardation because they are capable of doing many things.

(R. 2877) (emphasis added).

Applicant is unable to satisfy his burden under *Strickland*, as the Record wholly contradicts any allegation that Defense Counsel was deficient in their attempts to educate all parties on misconceptions and stereotypes. Defense Counsel took advantage of repeated opportunities to educate both the court and jury on the nature of intellectual disability and to dispel any

2023 APR -7 PM 12:08

FILED

Page 65 of 97

preconceived stereotypes or misconceptions. Applicant has failed in his *Strickland* burden of proof.

Applicant is due no relief and this Court grants none.

11(b)(7), 11(d)(7), & 11(d)(8)

Applicant failed to show deficient performance in counsel's not objecting to the Solicitor's closing arguments regarding Applicant's alleged intellectual disability, or that Applicant did not have any remorse, as Applicant has not shown the argument was improper or that counsel otherwise would have had a basis on which to object.

Applicant claims Defense Counsel was ineffective for not objecting to Solicitor's closing arguments regarding the veracity of Applicant's intellectual disability claim and lack of remorse. Trial counsel was not deficient as the contents of the Solicitor's closing argument was appropriately confined to the Record and not overly prejudicial.

"[I]t is important that both the defendant and the prosecutor have the opportunity to meet fairly the evidence and arguments of one another." *United States v. Robinson*, 485 U.S. 25, 33 (1988). "A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." *Von Dohlen v. State*, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004). "[I]ts content should stay within the record and reasonable inferences that may be drawn therefrom." *Id.* at 609–10, 602 S.E.2d at 744.

In *State v. Durden*, 264 S.C. 86, 212 S.E.2d 587 (1975), our Supreme Court set forth the parameters that attorneys must abide by putting forth permissible closing arguments. Citing the 23A C.J.S. Criminal Law § 1107, the Court found that while closing arguments have been held improper when reliant upon personal bias or arousing passions and prejudices of the jury, there is no error if the attorney stays within the record and the reasonable inferences that can be drawn

FILED

therefrom. *Id.* at 92, 212 S.E.2d at 590. Post-conviction relief will not be granted if an applicant cannot show both deficient performance and prejudice resulting from an alleged improper closing argument. *Brown v. State*, 383 S.C. 506, 517, 680 S.E.2d 909, 915 (2009).

Applicant is unable to show ineffective assistance for not objecting because the closing argument was carefully tailored to the issues presented at trial and based on either the facts in evidence or the reasonable inferences from the facts in evidence. The defense relied heavily on Applicant's intellectual capacity during mitigation. In response the State pointed to several noted social strengths to reinforce its position that Applicant was not intellectually disabled. The Solicitor's closing argument is a clear expression of that position. In addition, the issue of Applicant's remorse was clearly before the jury.

During the PCR hearing the State called Mr. Barry Barnett, Solicitor of the Seventh Judicial Circuit. Solicitor Barnett prosecuted the case against the Applicant. Solicitor Barnett testified that he was not stereotyping in any way, that, "[I]t was just a showing the kind of defense from that standpoint. So, Dr. Galloway's testimony, all the I.Q. testing, all the evidence, showed that he was not mentally retarded or intellectually disabled." (PCR Tr. Vol. 3 pp. 21-22).

Notably, the defense presented witnesses contradicting testimony regarding Applicant's level of remorse. (See R. 2987 (Dr. Maddox: "He has a difficult time dealing with what he's done and he's very sad about it."); R. 3020 (Heather Bryant: "My daddy was pushed to the extinct [sic] to do what he did, and he regrets what he has done. He suffers from that everyday."); R. 3084 (Ken Rice: "The next time I went to see him he said I've - - God's forgiven me, but I can't forgive myself.")). Accordingly, the Solicitor's comments on the topic were appropriate and appropriately

confined to the record.

SPARTANBURG COUNTY
CLERK OF COURT
JAN 17, 2025

2025 APR -7 PM 12:08

FILED Page 67 of 97

Moreover, a criminal defendant is not entitled to relief based upon the closing argument of a prosecutor, unless that argument infected the trial with unfairness as to make the resulting conviction a denial of due process. *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974). *See also Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002) (“Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument”); *State v. Brisbon*, 323 S.C. 324, 474 S.E.2d 433 (1996) (The test of granting a new trial for alleged improper closing argument of counsel is whether the defendant was prejudiced to the extent that he was denied a fair trial). The standard in *Donnelly* is a very high standard for a defendant to meet. “ ‘[I]t is not enough that the remarks were undesirable or even universally condemned.’ ” *Darden v. Wainwright*, 477 U.S. 168, 181 (1986). *See also Parker v. Matthews*, 567 U.S. 37, 47-48 (2012); *State v. Tubbs*, 333 S.C. 316, 321, 509 S.E.2d 815, 818 (1999). “In order to make an appropriate assessment, the reviewing court must not only weigh the impact of the prosecutor’s remarks but must also take into account defense counsel’s opening salvo.” *United States v. Young*, 470 U.S. 1, 12 (1985).²⁸ Further, the Supreme Court in *Donnelly* admonished that “a court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury, sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations.” *Donnelly*, 416 U.S. at 647.

Applying this standard to the challenged comments, it is clear that Applicant cannot show prejudice under *Strickland* because he has not proven that the challenged remarks were so

²⁸ As the Court explained in *United States v. Robinson*, 485 U.S. 25, 33 n. 5 (1988): “In *United States v. Young* and *Darden v. Wainwright*, we concluded that statements by the prosecutor which inflamed the jury, vouched for the credibility of witnesses, or offered the prosecutor’s personal opinion as to the defendant’s guilt were improper, but we held that, in context, those statements did not necessitate reversal.”

prejudicial that they deprived him of a fair trial under *Donnelly*. See 416 U.S. at 637; *Humphries*, 351 S.C. at 373, 570 S.E.2d at 166. The Solicitor, during his closing simply referenced the fact that Applicant's intellectual and adaptive strengths undermined confidence in the defense's subjective opinion on adaptive deficits, and that the State's evidence negated any finding of remorse. Those considerations were already before the jury. Applicant is unable to meet his *Strickland* burden.

Applicant is not entitled to any relief and this Court grants none.

11(c) Applicant failed to prove that trial counsel did not adequately question prospective jurors in voir dire to identify prospective jurors with pre-formed beliefs about and stereotypes and biases against a defendant with an intellectual disability.

As with Ground 11(d)(4), Applicant has asserted that he wishes to withdraw and/or waive the allegation presented. (See Post-hearing Brief, at 92). Also like Ground 11(d)(4), there is no merit to this allegation.

Applicant alleges that Defense Counsel was deficient in failing to question and identify specific jurors with beliefs and biases against persons with intellectual disability. There can be no finding of ineffective assistance as such questions would have been beyond the permissible scope of *voir dire*. “[V]oir dire is not to be used as a means of pre-educating or indoctrinating a jury or as a means of impaneling a jury with particular predispositions.” *State v. Poindexter*, 314 S.C. 490, 431 S.E.2d 254, n. 2 (1993) (citing *People v. Hundley*, 227 Ill.App.3d 1056, 169 Ill.Dec. 399, 591 N.E.2d 903 (1992)). “While the Sixth and Fourteenth Amendments to the United States Constitution provide a defendant with the constitutional right to a fair and impartial jury of his peers, this right does not entitle a defendant to handpick a jury. The Constitution, after all, does not dictate a catechism for voir dire, but only that the defendant be afforded an impartial jury.”

FILED

Page 69 of 97

State v. Stanko, 376 S.C. 571, 576, 658 S.E.2d 94, 96–97 (2008) (citing *Morgan v. Illinois*, 504 U.S. 719, 729 (1992)).

A defendant is entitled to question a prospective juror *on the general subject of mitigating circumstances*, in order to determine if such a juror would follow the instructions of the trial judge, *i.e.*, to consider mitigating circumstances. *Morgan v. Illinois*, 504 U.S. 719 (1992). However, a defendant does not have the right to question jurors whether or not they would consider *specific mitigating circumstances*, or what their opinion is of any *specific mitigating circumstance*. *State v. Hill*, 331 S.C. 94, 501 S.E.2d 122 (1998); *State v. Powers*, 331 S.C. 37, 501 S.E.2d 116 (1998); *United States v. Tipton*, 90 F.3d 861 (4th Cir. 1996). The underlying rationale for limiting such questioning is that it might cause a juror to believe that he has pledged or committed himself to a future course of action when considering evidence of such mitigating circumstances. *Powers*, 331 S.C. 37, 501 S.E.2d 116, *referencing State v. Skipper*, 337 N.C. 1, 446 S.E.2d 252, *cert. denied* 513 U.S. 1134, 115 S.Ct. 953 (N.C. 1995); *State v. Wilson*, 74 Ohio St.3d 381, 659 N.E.2d 292 (1996); *State v. Drutzer*, 928 S.W.2d 854 (Mo. 1996); *Hill*, 331 S.C. 94, 501 S.E.2d 122; *State v. Patterson*, 324 S.C. 5, 482 S.E.2d 760 (1997).

While Applicant characterizes such questions as probing bias, in reality, Applicant would have sought for Defense Counsel to question jurors for the purpose of seeking out those who were predisposed to finding in favor of intellectual disability. This would have been improper questioning during the *voir dire*.

Moreover, the trial record and the direct appeal opinion, and Mr. McGuire's background as presented to this Court, demonstrate that counsel held experience and knowledge for careful participation in the capital *voir dire* process, and had challenged a juror that counsel assessed would not be qualified to sit on the jury. *See Blackwell*, at 144-146, 801 S.E.2d at 722-723. Applicant

FILED

has failed to overcome *Strickland*'s "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance...." *Strickland*, at 689. No relief is due.

Whether withdrawn or ruled upon, this allegation cannot support relief. This Court dismisses the claim.

11(d)(1) and 11(d)(2)

Counsel adequately investigated and presented a full range of mitigating evidence concerning Applicant's social and life history.

Counsel adequately investigated and presented all available mitigating evidence concerning Applicant's mental health prior to and at the time of the capital offense.

Applicant claimed that counsel's performance was deficient for failing to investigate and present the full range of mitigating evidence, and Applicant's mental health prior to and at the time of the capital offense. This Court finds that this is not the correct question, rather the correct question to consider is whether the investigation was reasonable. *Owens, supra*. Even so, the Record shows a broad and far-ranging investigation, not simply on the case for intellectual disability, but also regarding Applicant's social and life history, as well as his mental health at the time of the murder, and presentation of that evidence. Counsel utilized the services of both a trained social worker and forensic psychologist for the purpose of investigating Applicant's social and life history. Together they conducted numerous interviews with family members, friends, past employers, grade school teachers, and acquaintances. (R. 3779; 3780-3781; 3816). In addition, they collected grade school, employment, and social security records. (R. 2831-2837). They also collected and reviewed Applicant's health and psychiatric records, and various school and mental health records for Applicant's immediate family. (R. 2835-2838). Having gathered that information, Defense Counsel, through its qualified experts, presented a detailed accounting of

FILED

Applicant's social and family history which was presented during both the *Atkins* hearing and at trial. (R. 3871-3890). These findings were further detailed in Dr. Calloway's report. (R. 3871).

During the penalty phase of Applicant's trial, Dr. Calloway detailed Applicant's life history dating from adolescence up until the murder. This included detailed recounting of educational and occupational history. (R. 2848-2868; 2873-2877). Dr. Calloway also listed Applicant's other family members who suffered from various levels of lower intellectual functioning and psychiatric disorders. (R. 2838-2841). As to Applicant's mental health, Dr. Calloway detailed Mr. Blackwell's psychiatric records, including his several diagnoses for depressive disorder, previous suicidal gestures and resulting psychiatric commitments. (R. 2843-2844).

In addition, during trial Defense Counsel called forensic psychiatrist Dr. Donna Schwartz-Watts (now Dr. Maddox) to testify further on Applicant's mental health history. (R. 2973). She provided additional testimony to Applicant's history of depression and prior suicidal gestures. (R. 2976-2977). She detailed how Applicant fired a gun through the roof of his trailer and was subsequently committed to a psychiatric facility. (R. 2976-2977). She also detailed a later psychotic event in which Applicant overdosed on medication in response to his wife leaving him. This resulted in him again being committed. (R. 2977-2978). Dr. Maddox also confirmed Applicant's diagnosis of depression disorder. (R. 2979). In addition, she detailed the difficulties Applicant had experienced with his physical health, including his battle with cancer, and back and blood pressure issues. (R. 2982-2984). In regard to Applicant's mental health at the time the murder, Dr. Maddox testified:

So, the only opinion I'm able to give today would be that, in my opinion, he's had a history of major depression before. He's had two episodes before when he was hospitalized, and it's clear, from looking at Doctor Jackson's records, that he remained depressed before this incident, and it clear that, since I treated him at the jail, he had symptoms of depression as well.

Q E T I E

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

(R. 2985).

Applicant argues, though, that there was not a presentation of mitigating evidence that encompassed the evidence that would have been presented by Dr. Corvin. Applicant misinterprets the reason why Dr. Corvin was not called to testify as is shown and supported by the record.

It is obvious to this Court that trial counsel did not call Dr. Corvin not because they misunderstood or overlooked what he could have said in mitigation, but to prevent the potential for other damaging information to come out – information that, without a doubt, had been shared with them for consideration. Trial counsel decided to use other witnesses such as Dr. Calloway and Dr. Maddox in order to relay identical information without the risk of exposing very damaging information to the jury. Due to the apparent strategy in this decision, Applicant is unable to maintain his burden to show ineffective assistance of counsel.²⁹ The Record supports that Defense Counsel, through its experts, conducted a detailed and adequate investigation into Applicant's history and mental health. Moreover, the Record reflects that this information was adequately utilized during defense's mitigation case.

²⁹ Again, *Strickland* teaches that “a court must indulge in a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance” and it is “the defendant [who] must overcome the presumption that, under the circumstances, the challenged action ‘might be considered sound trial strategy.’” *Id.* at 689 (quoting *Michel v. State of La.*, 350 U.S. 91, 101 (1955)). See also *Burt v. Titlow*, 571 U.S. 12, 23 (2013) (“It should go without saying that the absence of evidence cannot overcome the *Strickland* presumption). The evidence here shows that trial counsel was not deficient in investigation and was not unaware of the evidence, he just didn’t use it. That reasonably infers strategy. In contrast, “[d]ecisions made in ignorance of relevant, available information cannot be characterized as strategic.” *Weik v. State*, 409 S.C. 214, 236, 761 S.E.2d 757, 768 (2014).

During the PCR hearing the Applicant called Dr. Corvin who was found qualified as an expert in the field of general and forensic psychology. During his testimony Dr. Corvin gave the opinion that when this crime was committed the Applicant suffered from an intellectual disability with adaptive functioning which was further worsened by the fact that his major depression was out of control.

While preparing for trial Dr. Corvin was contacted by Kara Richards-Baker who was the mitigating specialist that the defense hired on this case. She was familiar with Dr. Corvin's work and he was hired to evaluate the Applicant. Dr. Corvin went to interview the Applicant on November 20, 2012, in preparation for this case. (PCR Tr. Vol. I p. 975). That examination lasted over three and a half hours. (PCR Tr. Vol. I p. 975). During this examination Dr. Corvin took notes from what was told to him by the Applicant. Within those notes it states that the Applicant told him that he used marijuana from age 18 until 1993 some seventeen years. (PCR Tr. Vol. I p. 985). The Applicant told him that "he loved to smoke marijuana." (PCR Tr. Vol. I p. 985). Applicant also told Dr. Corvin that he used valium, tried powdered cocaine, and used acid once. Applicant also told Dr. Corvin that he and Angie did the bills together and that Applicant was angry because Angie was getting loans from a check cashing place. (PCR R. Vol. I Tr. p. 981-982). Applicant also informed Dr. Corvin that he was following Angie and her new boyfriend around. (PCR Tr. Vol. I p. 984). And on the day of the incident, he actually drove by the house of the child he murdered witnessing her at home with her mother. (PCR Tr. Vol. I p. 984). After this conversation, Dr. Corvin telephoned Ms. Richards and spoke for thirty minutes about this interview. (PCR Tr. Vol. I p. 976). After this conversation Dr. Corvin was not called to testify in this trial.

At the PCR hearing, Dr. Corvin opined, like Dr. Calloway, that Applicant was intellectually disabled. Dr. Corvin also discussed the fact that the Applicant was suffering from major depression

FILED

at the time of the crime due to his break-up with his wife, (PCR Tr. Vol. 1 p. 973), a fact that was relayed to the jury through the testimony of Dr. Schwartz-Watts (now Maddox) during trial, (R. pp. 2981-2982; 2985). Thus, Defense Counsel presented a diagnosis, and the relevant medical information to the jury without the damaging information from Dr. Corvin. The defense not calling Dr. Corvin as a witness was a reasonable trial strategy.

The long-term drug use, the fact that he paid bills with his wife, along with admissions that would show Applicant followed his wife and rode by the victim's house on the day of the murder, would have been damaging to, the defense. Dr. Corvin admitted that if Solicitor Barnett was to ask him about all of the detrimental statements Applicant made to him that he would have to admit he was told all these things. (PCR Tr. Vol. 1 pp. 1005-1006). The fact the defense decided not to use Dr. Corvin when the same basic information was relayed to the jury in other ways revealed a reasonable strategy. Applicant has failed to show ineffective assistance of counsel.

Further, Applicant made a lengthy presentation from yet another mitigation specialist in the PCR hearing, Dr. Andrews – but that was merely recasting the background information and counsel, with their trial experts had already investigated and considered that information. Again, Applicant has failed to show ineffective assistance of counsel.

Alternatively, even if the decision could support deficient representation, there would be no prejudice. Indisputably, there was ample evidence presented in mitigation. The evidence in aggravation, however, was astonishingly heavy. The mere fact that he shot a child to hurt his estranged wife boyfriend is a circumstance that most jurors would find very difficult to weigh any less in face of one or two more points in a vast array of mitigation. See *Wong v. Belmontes*, 558 U.S. 15, 288 (2009) (“Schick’s mitigation strategy failed, but the notion that the result could have

2025 APR -7 PM 12:08

FILED

been different if only Schick had put on more than the nine witnesses he did, or called expert witnesses to bolster his case, is fanciful.”).

Applicant is not entitled to any relief, and this Court grants none.

11(d)(3) *Applicant failed to show that counsel was ineffective in failing to present character witnesses where sufficient mitigating evidence going to lack of future dangerousness, adaptability to confinement, and good character was presented*

Applicant claims that trial counsel was ineffective for failing to adequately investigate and present expert testimony regarding Applicant’s good character generally, and ability to adapt to incarceration. Evidence of adaptability to prison life can be demonstrated in a number of ways, including the provision of evidence and testimony that a defendant has been a well-behaved and disciplined prisoner in jail. *See Skipper v. South Carolina*, 476 U.S. 1, 7 n. 2 (1986). Further, “[a] defendant who alleges a failure to investigate by counsel must allege with specificity what the investigation would have revealed and how it would have altered the outcome....” *United States v. Green*, 882 F.2d 999, 1003 (5th Cir.1989).

Defense Counsel presented several character witnesses during the penalty phase of Applicant’s trial, including a pastor, former employer, a church acquaintance, Applicant’s cousin, daughter, father, and mother. These witnesses testified extensively to Applicant’s good character and gentle demeanor. Applicant’s former employer, Gail Shook, testified that Applicant was “the most gentle, humble man that I’ve ever met including my husband.” (R. 2759). Applicant’s cousin, Sherry Wofford offered that Applicant was “a loving man,” and “[j]ust as gentle, always caring about everybody, doing everything he can for anybody.” (R. 2990). Applicant’s daughter testified that Applicant was “kind, gentle, caring man.” (R. 3020). Brittany Fowler, the mother of Applicant’s grandson, described Applicant as “[v]ery kindhearted,” and stated that he “would give you the shirt off his back.” (R. 3026). Norm Uber, an acquaintance from church, described

FILED

Applicant as a "gentle man." (R. 3031). Cletus Blackwell, Applicant's father, testified that Applicant was "a good boy," and no trouble. (R. 3037). He further iterated that Applicant did not fight others as a kid despite being larger. (R. 3038). Applicant's brother-in-law described Applicant as "a really good person," and "[k]ind and gentle." (R. 3057). Applicant's pastor provided the following testimony regarding Applicant:

Well, Ricky is - - I summarize his personality as being phlegmatic maybe, laid back, easy going, did not like to be at any conflicts. He was always smiling, had a little grin all the time, easy going, very cooperative, gentle. Just a lot of good qualities.

(R. 3072).

Moreover, witnesses repeatedly emphasized that in their opinion this murder was directly tied to the breakup of Applicant's marriage. (*See* R. 3020; 3035; 3060; 3086). Lastly, in regard to testimony provided by the detention officer concerning Applicant's hoarding of detergent and medication, Defense Counsel conducted a thorough cross-examination for the purpose of minimizing any judgment on Applicant's ability to adapt to prison. (*See* R. 2650-2652). Further, the records referenced at trial sufficiently showed very little prior by way of a prior criminal record and no record of violence. The fact that Defense Counsel did not present specific expert testimony regarding lack of future dangerousness (though, arguably, some came through Dr. Maddox's testimony), simply does not show a reasonable probability of a different result. All in all, the basic substance of the information was presented. Applicant fails in his *Strickland* burden of proof.

In the alternative, if some deficiency in representation could be found, Applicant has failed to show a reasonable probability of a different result. First, the basic facts were admitted, clearly on character, and on ability to a prison environment, even if a corrections "expert" did not tell the jury those basic facts existed. Second, the evidence in aggravation was astonishingly heavy. The mere fact that he shot a child to hurt his estranged wife boyfriend is a circumstance that most jurors

FILED

would find very difficult to weigh any less in face of one or two more points in a vast array of mitigation. *Wong v. Belmontes, supra*.

So again, Applicant is not entitled to relief, and this Court grants none.

11(d)(4) *Applicant wished to withdraw allegations in this section alleging that counsel failed to adequately investigate and present scientific evidence that victim urinated on herself as a natural result of death. This Court grants Respondent's directed verdict motion on this issue.*

Applicant, consistent with an indication he wished to withdraw this allegation, (*see* Post-hearing Brief, at 92), failed to present any evidence in support. Further, Applicant would be unable to show that the result of the proceeding would have been different but for counsel's alleged error. *See Strickland, supra*. Whether the child urinated on herself from fear or as the death process – this Applicant undoubtedly terrorized and murdered a small child. Applicant cannot carry his burden of proof, and no relief is warranted. Whether withdrawn or ruled upon, this allegation cannot support relief. This Court dismisses the claim.

11(d)(5) *Applicant failed to show counsel was ineffective by failing to object to trial courts jury instructions.*

Applicant claims ineffective assistance of counsel for failure to object to the trial court's jury charge, specifically as to the jury's sentencing verdict. However, Applicant cannot show error in the charge given. "A jury instruction must be viewed in the context of the overall charge." *Sigmon v. State*, 403 S.C. 120, 133, 742 S.E.2d 394, 401 (2013) (quoting *State v. Hicks*, 330 S.C. 207, 218, 499 S.E.2d 209, 215 (1998)). "The test to determine the propriety of the trial judge's charge is what a reasonable juror would have understood the charge to mean." *Id.* (quoting *State v. Bell*, 305 S.C. 11, 16, 406 S.E.2d 165, 168 (1991)).

FILED

Applicant's reliance on *Caldwell v. Mississippi*, 472 U.S. 320, 105 S.Ct. 2633 (1985), and *State v. Davis*, 306 S.C. 246, 411 S.E.2d 220 (1991), to show the statutory language is facially invalid and constitutionally wrong as included in the charge is misplaced. These cases cannot afford relief primarily because it is undisputed that the trial court here plainly instructed the jury that it was the jury's decision on the sentence that was controlling. Indeed, the very reasons identified as supporting reversal in *Caldwell* and *Davis*, which are far removed from the factual basis here, well-demonstrate the flaw in Applicant's allegation of error.

In *Caldwell*, the Supreme Court found "it is constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere." 472 U.S. at 328-29, 105 S.Ct. 2633. The prosecution pointedly told the jury its sentencing decision was "not the final decision," that its "job is reviewable" and "the decision you render is automatically reviewable by the Supreme Court." *Id.* at 325-26, 105 S.Ct. 2633. Additionally, the trial judge endorsed and supported those comments in stating, "I think it proper that the jury realizes that it is reviewable automatically as the death penalty commands." *Id.* at 325, 105 S.Ct. 2633. Concluding that "the State sought to minimize the jury's sense of responsibility for determining the appropriateness of death," the Supreme Court vacated the death penalty:

This Court has always premised its capital punishment decisions on the assumption that a capital sentencing jury recognizes the gravity of its task and proceeds with the appropriate awareness of its "truly awesome responsibility." In this case, the State sought to minimize the jury's sense of responsibility for determining the appropriateness of death. Because we cannot say that this effort had no effect on the sentencing decision, that decision does not meet the standard of reliability that the Eighth Amendment requires. The sentence of death must therefore be vacated.

2025 APR -7 PM 12:08

FILED

Id. 472 U.S. at 341, 105 S. Ct. 2633. *See also California v. Ramos*, 463 U.S. 992, 1011, 103 S. Ct. 3446, 3459, 77 L. Ed. 2d 1171 (1983) (“advising jurors that a death verdict is theoretically modifiable, and thus not ‘final,’ may incline them to approach their sentencing decision with less appreciation for the gravity of their choice and for the moral responsibility reposed in them as sentencers”).

Our State Supreme Court applied the *Caldwell* rule in *Davis*. The Court found reversal necessary based upon: (1) the trial court’s *refusal* to tell the jury “its sentencing recommendation would be accepted by the judge and the sentence imposed accordingly;” and (2) the observance that “nowhere in the record does the trial judge refer to the jury’s sentencing decision as anything more than just a recommendation.” 306 S.C. at 250, 411 S.E.2d at 222. To avoid any misunderstanding, the trial court here, unlike the trial court in *Davis*, actually charged the jury that it would follow the jury’s recommendation and underscored the jury’s duty:

[T]here are two verdicts that you will consider in this case as to the sentencing. One is the death penalty, which, in this state, is by electrocution, electrocution [sic] or by lethal injection, at the option of the defendant, and the other is life imprisonment without the possibility of parole. ***I will advise you that your sentencing recommendation in this case would be followed — will be followed by the Court.***

(R. 3223) (emphasis added). (*See also* R. 3250, “I will tell you now that I’m going to ask you to retire to begin your deliberations, and when a recommendation is submitted to the court, I will advise you that the court will follow that recommendation.”).

It is long been held that juries are presumed to follow the law as given in the instructions.³⁰

Applicant shows no cause to depart from that long standing principle. Critically, the trial judge

³⁰ *See State v. Dynlap*, 346 S.C. 312, 319, 550 S.E.2d 889, 893 (Ct App. 2001), *aff’d as modified on writ of cert.*, 353 S.C. 539, 579 S.E.2d 318 (2003) (*quoting Fove v. State*, 335 S.C. 586, 590 n.l, 518 S.E.2d 265, 267 n. 1 (1999) (“A jury is presumed to [have followed the trial

here expressly informed the jury that its sentencing recommendation “will be followed” which is in sharp contrast to *Davis*. It is also completely consistent with established case law on this issue. See *State v. Sims*, 304 S.C. 409, 421-22, 405 S.E.2d 377, 384 (1991) (holding the instruction “whatever you recommend, will be the sentence that will be given to a defendant” informed the jury “that it was to make the ultimate decision as to [the defendant’s] fate.”); *State v. Middleton*, 295 S.C. 318, 325-26, 368 S.E.2d 457, 461(1988) (concluding the instruction, “the ultimate punishment of the defendant will be in your hands if you as a member of the trial jury have found the defendant guilty” told the jury it was vested with making a decision as to the defendant’s fate); *State v. Bellamy*, 293 S.C. 103, 107, 359 S.E.2d 63, 65 (1987) *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (“The idea should be conveyed to the jury that its sentencing recommendation will be followed.”); *State v. Linden*, 276 S.C. 304, 310-11, 278 S.E.2d 335, 338-39 (1981) (“To instruct the jury that it will recommend what sentence the convicted murderer will be given is not improper and does not mask the true nature of the jurors responsibility at this phase of trial”). It is so in other jurisdictions where the statute similarly sets out the jury recommends and the judge imposes the sentence. See, for example, *Brockman v. State*, 739 S.E.2d 332, 358 (Ga. 2013) *cert. denied* 134 S.Ct. 521 (2013) (finding, in the alternative, procedurally barred claim was without merit where “it was clear from the charge that the recommendation would be binding on the trial court”); *Treadway v. State*, 924 N.E.2d 621, 639 (Ind. 2010) (“merely referring to the jury’s determination as a ‘recommendation’—the term used in the statute—did not run afoul of *Caldwell* because there was no intimation to the jury that its recommendation was

judge’s] instructions.”); *State v. Arda*, 332 S.C. 370, 386, 505 S.E.2d 328, 336 (1998) (holding in a capital case that jurors are presumed to follow the trial court’s instructions); *State v. Pierce*, 289 S.C. 430, 346 S.E.2d 707 (1986) (finding jurors are presumed to follow the law as instructed); see also *Weeks v. Angelone*, 528 U.S. 225, 234 (2000) (holding in a capital case that “a jury is presumed to follow its instructions.”).

‘only a preliminary step’ and no suggestion that the jury was ‘not responsible’ for the ultimate sentence.”). Applicant’s allegation of ineffective assistance (or any error in regard to the charge) necessarily fails as a matter of law.

Lastly, in regard to Applicant’s reliance on *Hurst v. Florida*, 577 U.S. 92 (2016) (which was decided after the 2014 trial), and *Ring v. Arizona*, 536 U.S. 584 (2002), that reliance is misplaced. *Hurst* applied *Ring* to invalidate a statutory scheme that allowed an advisory opinion by the jury for sentencing. *Hurst*, at 99 (“As with *Ring*, a judge increased Hurst’s authorized punishment based on her own fact-finding. In light of *Ring*, we hold that Hurst’s sentence violates the Sixth Amendment.”). As noted in the parenthetical, this scheme resulted in factual determinations by the trial judge in violation of the right to a jury trial. The statute here, the case law in this jurisdiction, and the charge and sentence in this case specifically show there is no like circumstances here. Again, though the word recommendation is used, it was underscored clearly to the jury that its determination would be followed and was in fact followed in sentencing. There is no Sixth Amendment violation. Nothing demonstrates that counsel not challenging the statutory language and/or charge was “outside the wide range of professionally competent assistance.” *Strickland*, 466 U.S. at 690. To the contrary, given the established state of the law, counsel had no reason to challenge the constitutionality of Section 16-3-20, either on its face or on these facts. *See, e.g., Maryland v. Kulbicki*, 577 U.S. 1 (2015) (summarily reversing the Court of Appeals of Maryland for failing to view counsel’s representation as of the time of trial); *Harrington v. Richter*, 562 U.S. 86, 107 (2011) (finding error where “the Court of Appeals failed to ‘reconstruct the

FILED
CLERK OF COURT
SPARTANBURG COUNTY
JULY 11, 2015

2015 APR -7 PM 12:08

FILED

circumstances of counsel's challenged conduct" and "evaluate the conduct from counsel's perspective at the time."³¹ Applicant has failed in his burden of proof.

Applicant is due no relief, and this Court grants none.

11(d)(6) *Applicant failed to show either deficient performance or the required prejudice to support an ineffective assistance claim where counsel investigated and attempted to present evidence of remorse and acceptance of responsibility; however, the witnesses could not remember and this evidence would not have changed the outcome of the trial.*

The factual basis for this claim was developed at trial and addressed in the direct appeal. The Record shows that before the records custodian was called, Defense Counsel advised the trial judge 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. 2960, lines 18-25). Defense Counsel advised that he would present Ms. Gracie Williams, a record custodian from the Spartanburg Regional Hospital. (R. 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. 2962, lines 11-18; 2965, lines 3-5). The substance of the notes was 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

³¹ Indeed, since its 1984 decision in *Strickland*, the Supreme Court has consistently applied the rule of contemporary assessment of counsel's conduct. See, e.g., *Rompilla v. Beard*, 545 U.S. 374, 381, 125 S.Ct. 2456 (2005); *Wiggins v. Smith*, 539 U.S. 510, 523, 123 S.Ct. 2527 (2003); *Lockhart v. Fretwell*, 506 U.S. 364, 372, 113 S.Ct. 838 (1993); *Burger v. Kemp*, 483 U.S. 776, 789, 107 S.Ct. 3114 (1987); *Kimmelman v. Morrison*, 477 U.S. 365, 384, 106 S.Ct. 2574 (1986).

FILED

prayers in his heart, asked for prayers for the family. We prayed ...
the Lord's Prayer together.

(R. 2961 , line 25 - 2962, line 2; 2963, line 24 - 2964, line 6).

The State objected noting the information was not in the nature of a diagnosis; the witnesses were available; and, lastly, the notes were more prejudicial than probative. (R. 2962, line 20 - 2963, line 4; 2964, lines 14-23). The State relied upon *State v. Burroughs*, 328 S.C. 489, 501, 492 S.E.2d 408, 414 (Ct. App. 1997), which found statements not necessary to medical treatment or diagnosis were inadmissible hearsay. 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. 2963, lines 17-19). The trial judge found that the chaplain's notes were not admissible:

...I assume the pertinent portions are the parts that I discussed earlier that state the patient was struggling with guilt, grandchildren he loved them. He was struggling with his actions and what had been done, and another entry, the next Day, by a different individual said but he was sad, had some prayers in his heart, asked for the family. We prayed the Lord's Prayer together.

The case cited by Mr. Barnette does appear to be on point. Also the exception to the hearsay rule for regularly kept business records states that matters which are in the nature of an opinion will not be admitted as an exception to the hearsay rule from a regularly kept business record.

It appears that the quotes in here that describe the defendant would be in the form of opinions given by the individuals involved, and therefore, I'll grant the State's motion.

(R. 2965, line 15 - 2966, line 6).

On appeal, Applicant argued the trial judge erred in not allowing him to present his evidence of remorse. (Return Attachment 2, p. 93). Our Supreme Court disagreed. The Court

2025 APR -7 PM 12:08

FILED

found not only that the trial judge did not err, but even if the ruling had been error, it would only have been harmless in light of other evidence of record:

..we find the trial court correctly excluded the document as it contained inadmissible subjective opinions and judgments, in particular the notations that Blackwell was “struggling with guilt” and “struggling with his actions.”

Nonetheless, even if the trial court erred in excluding the chaplains’ notes, we find the error harmless as the evidence was cumulative to other evidence in the record of Blackwell’s remorse. *See State v. Northcutt*, 372 S.C. 207, 221, 641 S.E.2d 873, 881 (2007) (“Although it was error to exclude the letter written from Appellant to Ms. Northcutt expressing remorse, the error was harmless. The record contains evidence of Appellant’s remorse. Appellant was not prejudiced, nor was the outcome of the trial affected.”).

Specifically, as mitigation evidence, Blackwell presented: (1) Dr. Donna Schwartz-Watts, a psychiatrist who evaluated Blackwell, who testified that “[i]t’s very hard for [Blackwell] to accept what happened and what he’s done,” and “he’s very sad about it”; (2) Heather Bryant, his daughter, who testified that “he regrets what he has done” and “suffers from that every day”; and (3) Ken Rice, his pastor, who testified that Blackwell told him “God’s forgiven me but I can’t forgive myself.”

Blackwell, 420 S.C. at 160, 801 S.E.2d at 730–31.

During the hearing both Reverends Moon and Hesse testified. They both did not remember if the Applicant told them if he was ever sorry for what he done. (PCR Vol 1 T. p. 1238-1239).

In short, whether counsel erred or not, Applicant has failed to show a reasonable probability of a different result. However, the Record supports that Applicant failed to carry his *Strickland* deficient performance burden of proof.³² Defense counsel explained their reason for not calling

³² As noted above, several witnesses were introduced during the penalty phase who testified to Applicant’s remorse. (Dr. Maddox: “He has a difficult time dealing with what he’s done and he’s very sad about it.”); R. 3020 (Heather Bryant: “My daddy was pushed to the extinct [sic] to do what he did, and he regrets what he has done. He suffers from that everyday.”); R. 3084 (Ken

the witnesses – they possessed little to no memory of the counseling they had provided. Thus, counsel had specific, reasonable cause not to present the witnesses. This informed decision does not support any finding of deficient performance. *See Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992) (Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel).

During the PCR hearing trial counsel for the Applicant Mr. William McGuire testified. During his testimony he stated:

“I thought the notations in the record was good – were good. And my recollection, my recollection is in talking to Kara that I got more of a feeling that their memories were a little fuzzier than maybe her memo made out to be. For instance, one of the chaplains said, even though the medical records said they prayed the Lord’s prayer together, I think in the interview she didn’t remember that, but said well, if its on the record, I probably did. So I thought – my recollection is that their memory was fuzzier than maybe Kara’s memos would indicate.”

(PCR vol. 1 Tr. p. 310-311)

Trial counsel made a judgment call (one well supported by his knowledge of the facts) not to put those witnesses on the stand because at the time of trial they had no recollection of the events – as they do not know. Applicant has failed to carry his burden of proof.

Applicant is due no relief and this Court grants none.

Rice: “The next time I went to see him he said I’ve - - God’s forgiven me, but I can’t forgive myself.”).

CLERK OF COURT
SPARTANBURG COUNTY
ALMY W. COX

FILED

11(e) Applicant's allegation of false evidence based on Investigator Williams testimony fails. There has been no showing of any false evidence presented. Further, Investigator Williams was never found to have committed any wrongdoing, and the matter alluded to in Applicant's argument occurred after trial. There is not even sufficient evidence to show some impeachment value. Applicant's right to due process was not violated.

Applicant has failed to show any evidence indicating that the testimony given by Investigator Williams was false, much less that the State was aware of such falsity. The claim, as presented, does not rise beyond mere speculation. See *Glover v. State*, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995) ("The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice."). During his PCR testimony Solicitor Barnett explained the situation regarding Investigator Williams. Within his testimony Solicitor Barnett stated:

"In 2018, he was let go by the sheriff's department. There was a letter sent out. We received a copy of it. I thought abundance of caution that I needed to let the defense bar know, obviously. From there--there was kind of indication that he may have falsified or gave false information on the search warrant for an affidavit. So, we released the --- I think we sent a copy to the Attorney Generals office so you could forward to them in this case."

"What I did was I referred the case out. There was a SLED investigation done. Basically, the first circuit reviewed this. They didn't find any false information from what I understand from reading this letter. Now I wasn't involved in the investigation, I didn't talk to anybody I just tell you what the findings was on the letter that we received."

Q. They didn't prosecute Mr. Williams for making a false statement on the search warrant in 2018?

A. Right.

(PCR Tr. Vol. 3 pp. 31 l. 24 – p. 32 l. 25).

Simply, on the matter Applicant alludes to, after investigation, Investigator Williams was not prosecuted at all. At any rate, the event referenced as possible impeachment – and it could

FILED

only be impeachment if anything at all since it has no connection whatsoever to the facts and investigation of the murder of the eight-year old victim in this matter – occurred in 2018 well after his testimony in the present case. This allegation has no merit.

Applicant is not entitled to any relief, and this Court grants none.

11(f)(1) *The allegation that appellate counsel failed to adequately raise and brief all legal and factual grounds has not been proven by the Applicant, nor has Applicant shown prejudice. Appellate counsel raised all relevant issues pertaining Applicant's trial as determined in Appellate counsel's professional opinion.*

Contrary to Applicant's allegation, the records before this Court confirm that Appellate Counsel adequately raised and briefed the issue of Applicant's intellectual disability. "Generally, in analyzing a claim of ineffective assistance of appellate counsel, this Court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel." *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009) (citing *Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999)). "Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance." *Id.* In order to show that he was prejudiced by appellate counsel's performance, a PCR applicant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625.

On direct appeal, Applicant was represented by Chief Appellant Defender Robert Dudek and Assistant Appellate Defender David Alexander. In the Brief of Appellant, counsel raised seven separate and distinct issues spanning one hundred and eleven pages. One of the issues raised was:

2025 APR -7 PM 12:08

FILED

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.

(Final Brief of Appellant).

Appellate counsel devoted forty-five pages to this particular argument. Counsel thoroughly addressed each prong required for a finding of intellectual disability. See Section 16-3-20(C)(b)(10) (defining mental retardation as: “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.”). Counsel further detailed the strength of Applicant’s case in regard to each prong, as well as the investigation conducted and conclusion reached by Applicant’s expert, Dr. Calloway. Counsel presented a constitutionally sufficient analysis detailing Applicant’s theory that the trial court incorrectly weighed the experts’ testimony and opinions. Further, Mr. Alexander provided supplemental authority to the Court on September 12, 2016, March 29, 2017, and May 4, 2017.³³ (Return Attachment 11).

Despite counsel’s adequate presentation of the issue, Applicant’s direct appeal netted him no relief. Our Supreme Court found that the trial court’s credibility determination in regard to the experts was appropriate and supported by the Record:

After thoroughly reviewing the record, we conclude Blackwell has not shown the trial court committed an error of law or that its decision is unsupported by the evidence or against its preponderance. Accordingly, we find the case properly proceeded as a capital trial.

Blackwell, 420 S.C. at 141–43, 801 S.E.2d at 720–22.

³³ The supplements provided cited and referenced both *Hall v. Florida*, 134 S.Ct. 1986 (2014) and *Moore v. Texas*, 137 S.Ct. 1039 (2017). (Return Attachment 11).

Applicant cites to *Patrick v. State*, 349 S.C. 203, 562 S.E.2d 609 (2002), in support of his claim of ineffective assistance of appellate counsel. There, our Supreme Court found ineffective assistance when appellant counsel “devoted three short paragraphs to [the issue on appeal], did not give any useful analysis, and only cited one case.” *Id.*, at 208, 562 S.E.2d at 611.

The appeal argument at issue here clearly does not fit the same mold as that found in *Patrick*. Again, appellate counsel devoted **forty-five pages** of analysis to the intellectual disability issue and cited to **over thirteen different cases**, including *Hall v. Florida*, which Applicant has also cited.

Further, Applicant again cites *Moore v. Texas*, however, that case was clearly not available prior to briefing in the appeal and does not bear on whether counsel was ineffective in his briefing. See *Gilmore v. State*, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) (“We have never required an attorney to be clairvoyant or anticipate changes in the law....” (citing *Thornes v. State*, 310 S.C. 306, 309–10, 426 S.E.2d 764, 765 (1993))), *overruled on other grounds* by *Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999); *Thornes*, 310 S.C. at 309–10, 426 S.E.2d at 765 (“This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial.”). However, as noted above, appellate counsel provided the Court with additional cases, which included *Moore*, and the Court found the holding in *Moore* had no impact on the decision:

Although the trial court did not have the benefit of the USSC’s recent decision in *Moore v. Texas*, — U.S. —, 137 S.Ct. 1039, 197 L.Ed.2d 416 (2017), we find the court’s analysis comports with this decision. In *Moore*, the defendant was convicted of capital murder and sentenced to death for fatally shooting a store clerk during a robbery that occurred when the defendant was twenty years old. *Id.* at 1044. Subsequently, the defendant sought state habeas relief. *Id.* Pursuant to *Atkins* and *Hall*, a Texas habeas court determined that the defendant was intellectually disabled and, therefore, recommended to the Texas Court of Criminal Appeals

FILED

("CCA") that the defendant be granted relief. *Id.* at 1045-46. The CCA disagreed with the recommendation and found the habeas court erred by not following the CCA's decision in *Ex Parte Briseno*, 135 S.W.3d 1 (Tex. Crim. App. 2004), wherein the CCA adopted the definition of and standards for assessing intellectual disability based on a 1992 edition of the American Association on Mental Retardation manual. *Id.* at 1046. The USSC granted certiorari "to determine whether the CCA's adherence to superseded medical standards and its reliance on *Briseno* comply with the Eighth Amendment" and the Court's precedents. *Id.* at 1048. The USSC vacated the CCA's judgment, finding "[t]he CCA's consideration of [the defendant's] adaptive functioning ... deviated from prevailing clinical standards and from the older clinical standards the court claimed to apply." *Id.* at 1050. Further, the USSC rejected the CCA's use of the *Briseno* factors, which the Court deemed an "invention of the CCA untied to any acknowledged source." *Id.* at 1044.

Here, the trial court made no reference to the impermissible *Briseno* factors. Furthermore, given the fact that Blackwell's I.Q. scores were at the lower end of the spectrum, the court correctly considered Blackwell's adaptive functioning using the current clinical standards presented by the medical experts. The court, as required by *Moore*, carefully considered and weighed Blackwell's adaptive strengths against his adaptive deficits. While the dissent may believe the trial court overemphasized Blackwell's adaptive strengths, any significance assigned to these adaptive strengths was based on the court's assessment and credibility determination of the expert testimony.

Blackwell, 420 S.C. at 143, 801 S.E.2d at 721 n. 11.

Consequently, the Record supports that appellate counsel provided constitutionally sufficient representation on direct appeal. Furthermore, the independent assessment reached by our Supreme Court that there was no trial court error in finding Applicant failed in his burden of proving intellectual disability all but forecloses a finding of prejudice. There is no reasonable probability of a different result.

Applicant is due no relief, and this Court grants none.

2025 APR - 7 PM 12:08

FILED

11(f)(2)(3) The introduction of autopsy photographs and the testimony of Mr. Reggie Frye were both admissible, thus, appellate counsel was not ineffective in failing to raise these issues on appeal.

When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine “whether appellate counsel failed present significant and obvious issues on appeal.” *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. *Id.*

In regard to the first issue, during the punishment phase of Applicant’s trial, the defense moved pursuant to Rule 403, SCRE to suppress State’s Exhibit No. 60-72, which consisted of photos that depicted the deceased victim. The defense argued that other photos of the victim had already been admitted and the current photos were taken after the body had been moved. (R. 2695-2698; 2704-2705). The trial court granted a part of that motion, and excluded State’s Exhibit No. 61, 62, 63 and 64. However, after identification by a forensic pathologist, the judge admitted remaining photographs. He held that their probative value outweighed their prejudicial effect, and that they were relevant to show the circumstances of the crime. (R. 2709-2711). The trial court further cited *State v. Torres*, 390 S.C. 618, 703 S.E.2d 226 (2010), *State v. Rosemond*, 335 S.C. 593, 597, 518 S.E.2d 588, 590 (1999); *State v. Burkhardt*, 371 S.C. 482, 487, 640 S.E.2d 450, 453 (2007), to support its position that autopsy photographs of victim are admissible in the sentencing phase of a capital murder trial for use by the doctor who performed the autopsy for the purpose of illustrating the nature of the injuries. (R. 2705-2706).

There can be no finding of *Strickland* deficiency or prejudice because admission of the photos under the existing and relevant case law was proper. “The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court.” *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). “If the offered photograph serves

to corroborate testimony, it is not an abuse of discretion to admit it.” *Id.* “A trial judge’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances.” *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 207 (Ct. App. 2008) (internal quotation marks omitted). *See also State v. Collins*, 409 S.C. 524, 535, 763 S.E.2d 22, 28 (2014) (quoting *Nichols v. State*, 267 Ala. 217, 100 So.2d 750, 756 (1958) (“The mere fact that an item of evidence is gruesome or revolting, if it sheds light on, strengthens or gives character to other evidence sustaining the issues in the case, should not exclude it.”)).

In *State v. Torres* the Supreme Court of South Carolina held that “[i]n the sentencing phase of a capital murder trial, the scope of the probative value is much broader than the guilt phase. *Torres*, 390 S.C. at 623, 703 S.E.2d at 229 (citing *State v. Kornahrens*, 290 S.C. 281, 289, 350 S.E.2d 180, 186 (1986)). In addition, the Court held “that autopsy photographs may be presented to the jury in an effort to show the circumstances of the crime and character of the defendant.” *Torres*, 390 S.C. at 623, 703 S.E.2d at 229 (citing *Rosemond, supra*; *Burkhart, supra*). Here, in compliance with *Torres*, the State introduced the photographs during examination of Dr. Wren illustrating the number of injuries, location of the injuries, and manner in which the injuries were committed. *See id.*, (“If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.”) (quoting *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353(1996)); *see also State v. Martucci*, 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct. App. 2008) (“Admitting photographs which serve to corroborate testimony is not an abuse of discretion.”); *State v. Kelsey*, 331 S.C. 50, 76, 502 S.E.2d 63, 76 (1998) (photographs of various bone and bomb fragments and clothing found at crime scene were admissible in murder prosecution to corroborate testimony concerning condition of victim’s body as first discovered by police at the crime scene, and location of bone and bomb fragments supported testimony that the bomb had been detonated

FILED

in victim's mouth). Mr. Dudek testified during the PCR hearing regarding the crime scene and autopsy photographs. He testified in his assessment that the Court would consider this proper evidence of how Applicant left the victim, and further, case law supported that if a pathologist says the photographs will assist his testimony, they will come in. (PCR Tr. Vol. 2 p. 9). The case law shows that was not a faulty assessment; therefore, there was no deficient performance.

Applicant is also unable to show deficiency for failure to raise the issue of Reggie Frye's testimony. During trial, the defense called Applicant's father to the stand. During cross-examination, the State questioned Applicant's father about whether he knew Reggie Frye and had had a conversation with him regarding the fact that he had involuntarily locked up Applicant's gun in order to prevent Applicant from gaining access to it. Applicant's father denied knowing Reggie Frye and claimed he did not recall having any such conversation with him. (R. 3048-3052). Later, during the punishment phase of Applicant's trial, the defense recalled Applicant's father and asked the same questions. During the State cross-examination, Applicant's father admitted to knowing Mr. Frye, but again denied recalling any conversation about locking up Applicant's gun. (R. 3115-3117). The State then sought to offer testimony from Mr. Frye on the basis of the father's inconsistent statement. The State cited *State v. Stokes*, 381 S.C. 390, 673 S.E.2d 434 (2009) to support its position. (R. 3117-3119). Over the defense's objection, the trial court permitted Reggie Frye to testify as to his conversation. (R. 3119-3120). Mr. Frye testified to a conversation he had had with Applicant's father in which the father admitted that he had seized Applicant's gun because he was afraid that Applicant was going to hurt himself or someone else. He testified further that the father also acknowledged that Applicant had broken into the gun case prior to the murder and retrieved the murder weapon. (R. 3127).

FILED
CLERK OF COURT
SPRINGFIELD COUNTY
JAMES W. COX
2025 APR - 7 PM 12:10

As to Applicant's allegations of hearsay, under the rules of evidence, a prior inconsistent statement may be admitted when the proper foundation has been laid:

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible.

Rule 613(b), SCRE.

Further, in *State v. Stokes*, our Supreme Court affirmed under similar circumstances:

Thus, it is the opportunity to cross-examine that is constitutionally protected. In the instant case, appellant had that opportunity. It is undisputed [witness] appeared at trial, was available for cross-examination, and could have been recalled after the statement was admitted.

Stokes, 381 S.C. at 402, 673 S.E.2d at 440.

During Applicant's trial, Mr. Frye was cross-examined by Defense Counsel. (R. 3128-3131). In addition, Mr. Frye's testimony fell under the hearsay exception set forth under Rule 613(b). In regard to relevancy, the State offered, and the trial court accepted premeditation as sufficient reason to introduce the evidence. (R. 3118). The statement supported that Applicant took affirmative steps to acquire his firearm prior the victim's murder.

Therefore, there can be no finding of ineffectiveness of appellate counsel because the testimony of Reggie Frye was both permissible under Rule 613(b) and relevant to the level of applicant's malice and culpability. Further, the admission of the contested photos were proper under the existing and relevant case law. And, there is no prejudice were there is no reasonable probability that relief would be granted based on the then relevant and controlling case law. Applicant's claims to the contrary are without merit.

Applicant is due no relief, and this Court grants none.

11(d)(9) and 11(f)(4)

Trial counsel could not be ineffective in failing to “raise and argue all legal and factual grounds” for a sentence less than death “pursuant to 16-3-20” and proportionality review under 16-3-25(C). Further, appellate counsel is not ineffective for failing to challenge proportionality review as the review is conducted automatically by the Supreme Court of South Carolina on direct appeal review.

Applicant seeks to “reserve[] his proportionality claims for review by the Supreme Court and does not seek a ruling” on those claims in 11(d)(9) and 11(f)(4). Again, whether withdrawn or ruled upon, these allegations cannot support relief. The statutory proportionality review is reserved solely for our Supreme Court. *See* S.C. Code Ann. § 16-3-25(C). Further, the Court already conducted the required review under the statute. *Blackwell*, 420 S.C. at 168, 801 S.E.2d at 735. While there is nothing to indicate that Applicant could be entitled to another review, this Court is neither the place for that review, nor a forum for an appeal of the direct appeal review decision. This Court dismisses the claim.³⁴

³⁴ This Court interprets Applicant's reference to “reserve[ing] the proportionality claims” for later review to be a request to withdraw the claims in this action. Ineffective assistance claims are properly brought in PCR. *See generally Al-Shabazz, supra*. Further, this Court can neither reserve nor allow a party to “reserve” issues not heard. Thus, the Court rules only on waiver and dismissal.

CONCLUSION

For all the foregoing reasons, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that require this Court to grant any relief. This application for post-conviction relief must be denied and dismissed with prejudice.

IT IS THEREFORE ORDERED

1. That this application for post-conviction relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the South Carolina Department of Corrections until such time as his death sentence may be carried out.

IT IS SO ORDERED this 7th day of April, 2025



Daniel D. Hall, Circuit Court Judge
By Special Assignment

York

, South Carolina.

FILED
2025 APR -7 PM 12:09
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Case No. 2018-CP-42-00928
	)	
RICKY LEE BLACKWELL,	)	APPLICANT'S AMENDED MOTION TO
<i>Applicant,</i>	)	ALTER OR AMEND JUDGMENT
vs.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
<i>Respondent.</i>	)	
_____	)	

Applicant, Ricky Lee Blackwell, by and through undersigned counsel, moves this Court pursuant to Rule 59(e), SCRCP, to alter or amend its Order Denying Post-Conviction Relief ("Order"), issued on April 7, 2025 and emailed to counsel on the same day.¹ By signing an order drafted by the Office of the Attorney General (without the Court having provided direction as to the reasoning to be included or even the ultimate ruling on Blackwell's intellectual disability claims) and signing the Order without any changes, this Court has adopted an Order that contains many errors; factual findings that are not supported by, or are contrary to, the record; and legal conclusions that apply the wrong standard or apply standards incorrectly. Blackwell maintains that he is entitled to relief, as described in detail in his post-hearing brief and reply, on all claims not explicitly waived in his briefing. This Motion to Alter or Amend does not waive any claims

¹ On January 28, 2025, this Court issued an Order Dismissing Post Conviction Relief Application, which "instruct[ed] the State to prepare and submit a proposed order." Because the effect of this January 28 Order was that the Clerk of Court closed and marked as dismissed the PCR proceeding, Blackwell filed a Motion to Alter or Amend this short order on February 6, 2025. Counsel for the State later indicated to counsel for the Applicant that they believed the February 6 motion was premature. Email Brown to Vann (Feb. 17, 2025), attached as Ex. A. Further, the final Order adopted by this Court explicitly found the February 6 motion was premature and allowed that the "Applicant may re-file his motion or file an amended motion at the appropriate time." Order, 2 n.1. Applicant, therefore, files this Amended Motion to Alter or Amend Judgment to raise issues arising from this Court's adoption of the State's proposed order, filed on April 7, 2025.

addressed in Blackwell's post-hearing briefing, but Blackwell does not re-raise all his arguments on the merits here.² Instead, this Motion focuses on the errors contained within the Order that were not previously addressed in the post-hearing briefing.

I. BECAUSE THE PROCESS FOLLOWED BY THIS COURT VIOLATES S.C. CODE ANN. § 17-27-80 AND S.C. CONST. ART. I, § 8, THIS COURT SHOULD WITHDRAW THE ORDER OF DISMISSAL AND DRAFT THE FINAL ORDER.

a. Relevant Background.

This Court convened an evidentiary hearing on March 27-31, 2023; July 31-August 2, 2023; and December 15, 2023. After obtaining transcripts of all the hearings, Blackwell submitted his post-hearing brief on July 8, 2024, the State responded on November 5, 2024, and Blackwell replied on January 15, 2025. Next, this Court completely abdicated its constitutional and statutory responsibilities to “render an independent judicial judgment.” *Hall v. Catoe*, 360 S.C. 353, 364, 601 S.E.2d 335, 341 (2004).

Immediately after receiving Blackwell's reply brief, this Court announced, “I will rule by February 10,” 2025. Ex. B. On January 28, 2025, this Court transmitted “the signed Order Dismissing PCR Application for Ricky Lee Blackwell.” Ex. C, pp. 14–15. The two-page order “instruct[ed] the State to prepare and submit a proposed order.” Order (Jan. 28, 2025), p. 1. This order stated Blackwell “is unable to maintain his burden under *Strickland*”³ but is otherwise devoid of any legal analysis pertaining to the merits of Blackwell's PCR claims.

Perplexed by this Court's rapid and unexplained failure to “render an independent judicial judgement,” *Hall, supra*, Blackwell submitted a Motion to Alter or Amend Judgement on February

² See *Spence v. Wingate*, 381 S.C. 487, 489–90, 674 S.E.2d 169, 170 (2009) (holding a petitioner is not required to file a 59(e) motion to alter or amend a claim raised and ruled on by the lower court to preserve the issue for appeal).

³ *Strickland v. Washington*, 466 U.S. 668 (1984).

6, 2025.⁴ Blackwell reminded the Court that, “S.C. Code Ann. § 17-27-80 (1976), requires the PCR court to ‘make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.’” Motion, p. 2 (citing *McCray v. State*, 305 S.C. 329, 330, 408 S.E.2d 241, 241 (1991); *Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992)). This motion identified the ordinary process in capital cases where “a PCR judge either drafts an order ruling on a PCR action that includes his or her findings of fact and conclusions of law or notifies the parties via email or letter of its intention to rule on PCR and directing a party to draft a proposed order to include proposed findings of fact or conclusions of law with specific instructions as to the reasons PCR is being granted or denied.” *Id.*, pp. 1–2. Blackwell argued:

By not providing any factual or legal guidance, this Court is delegating its statutory obligation to the Attorney General’s Office. Such delegation of a judicial branch function to the executive branch violates the separation of powers required by S.C. Const. Art. I, § 8.

Id. at 2.

The motion “further request[ed] that this Court provide its reasons for denying Blackwell’s claims to direct the Attorney General’s drafting of the proposed order.” *Id.* at 2. The motion noted “the Court’s statement relating to dismissal does not address all the grounds for relief raised in Blackwell’s PCR application because they were not all raised as ineffective assistance of counsel claims pursuant to *Strickland*.” *Id.* at 3. Regarding the *Strickland* claims, the motion pointed out “the Court did not indicate which prong of *Strickland* Blackwell failed to satisfy—i.e. deficient performance or prejudice.” *Id.* Significantly, the motion observed:

Ultimately, the PCR application raises multiple claims that require this Court to determine whether Blackwell is a person with an intellectual disability, but this Court’s Order Dismissing is silent on this question. Pursuant to section 17-27-80,

⁴ At the time of the motion, undersigned counsel was concerned the Order of Dismissal would “set in motion deadlines for filing reconsideration and appeal, which would ultimately divest this Court of jurisdiction over Blackwell’s PCR application.” Motion at 2 (citing Rule 59, SCRPC; Rule 203, SCACR; Rule 205, SCACR); *see also supra* note 1.

FILED
MAR 3 9:04
CLERK OF COURT
SOUTH CAROLINA
COUNTY

Blackwell respectfully requests this Court state whether it concluded Blackwell is or is not a person with an intellectual disability. If this Court concluded Blackwell is not a person with an intellectual disability, then Blackwell further requests this Court explain its reasoning given the fact that every expert who evaluated Blackwell ultimately concluded he is a person with an intellectual disability.

Id.

This Court rejected this request without explanation. Initially, this Court planned to convene a WebEx hearing “to discuss this issue.” Ex. C, p. 13. However, after discussing scheduling with the parties, this Court announced:

No need for a webex conference today regarding the Motion to Reconsider. I will hear oral arguments on appropriate motions once the final order has been signed by me. I ask that a Proposed Order be sent to my judicial email by March 15.

Id. at 4-12.

The State requested a “short extension” and submitted a proposed order in PDF and Word formats at 6:47 p.m. on March 21, 2025. *Id.* at 1, 3; Ex. D, Respondent’s Proposed Order. At 7:18 p.m. on March 21st, this Court requested the State send a paper copy of the “original Order” to Chambers. Ex. C, p. 1. On April 7, 2024, this Court signed the State’s proposed order without making any changes other than removing the words “***RESPONDENT’S PROPOSED***” from the caption. *Compare* Ex. D, with Order, *Ricky Lee Blackwell v. State of South Carolina*, No. 2018-CP-42-00928 (Apr. 7, 2024).

b. Legal Discussion.

The law is clear. S.C. Code Ann. § 17-27-80 requires a PCR “court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.” *Cf.* Rule 52(a), SCRCP (“the court shall find the facts specially and state separately its conclusions of law thereon”). In capital PCR cases, S.C. Code Ann. § 17-27-160(D) provides, “[T]he hearing judge in writing shall make specific findings of fact and state expressly the judge’s conclusions of law relating to each issue.” Despite these clear mandates, for over thirty-three years the Supreme

Court of South Carolina has recognized and expressed concerns about the State drafting orders in PCR cases—both capital and non-capital. Initially, the Court was concerned with final orders that did not contain findings of fact and conclusions of law addressing all PCR claims properly presented to the circuit court. However, the Supreme Court continues to express this concern, but is increasingly concerned about final orders drafted by the Attorney General's Office that do not accurately reflect the record in the circuit court.⁵

In 1991 in *McCray*, “The PCR court dismissed McCray's allegations of ineffective assistance of counsel without making findings of fact on the specific allegations raised.” *McCray*, 305 S.C. at 330, 408 S.E.2d at 241. The Supreme Court reminded that, “S.C. Code Ann. § 17-27-80 (1976), requires the PCR court to make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.” *Id.* (internal quotations omitted). Because “[t]he PCR court's conclusions regarding ineffective assistance [were] insufficient for appellate review and fail[ed] to meet the standard set forth in the statute,” the Court remanded the case “for a new PCR hearing.” *Id.*

The next year, in 1992, the Supreme Court took the

opportunity to express [its] concern with the increasing number of orders in PCR proceedings that fail to address the merits of the issues raised by the applicant. Not only does this deprive the parties of rulings on the issues raised, but it makes review by the appellate court more difficult and ultimately increases the work load of all involved.

Pruitt, 310 S.C. at 255-56, 423 S.E.2d at 128. The Court expressed “confiden[ce] that in the future all those involved in post-conviction matters will do everything in their power to ensure that

⁵ History reveals the Attorney General's Office has two schools of thought about drafting final orders in PCR cases. First, orders lacking specific findings of fact and express conclusions of law might evade judicial review on our state's error preservation rules. Second, self-serving findings of fact receive greater deference under the appellate court's scope of review rules.

remands such as the one [ordered in *Pruitt*] will no longer be necessary.” *Id.* The Court’s optimism, although noble, was not rewarded.

Pervasive defiance of *Pruitt* has led to inconsistent application of our state’s error preservation rules. In turn, the Court has also sometimes overlooked a lack of error preservation in this context. In *McCullough v. State*, “The PCR judge signed an order prepared by the Attorney General’s Office” that did not comply with section 17-27-80. 320 S.C. 270, 271, 464 S.E.2d 340, 341 (1995). “Although the error was not raised and ruled on by the PCR judge,” the Court remanded the case for the PCR court to issue an order that complied with the statute. *Id.* at 272, 464 S.E.2d at 341; *see also Simmons v. State*, 416 S.C. 584, 592, 788 S.E.2d 220, 225 (2016) (remanding for findings of fact and conclusion of law, even though “the State [was] technically correct regarding issue preservation”). Similarly, in *Ramirez v. State*, the Supreme Court reached the merits of the case, even though the PCR order contained “no findings of fact contained within the PCR court’s order to support its conclusion that Ramirez was not prejudiced.” 419 S.C. 14, 21, 795 S.E.2d 841, 845 (2017).⁶

In other cases, the Supreme Court did apply error preservation rules—allowing the final order to evade appellate review—but reminded both the bench and bar about its admonition in *Pruitt*. For example, in *Marlar v. State*, the applicant “did not make a Rule 59(e) motion asking the PCR judge to make specific findings of fact and conclusions of law on his allegations, [meaning] the issues were not preserved for appellate review.” 375 S.C. 407, 410, 653 S.E.2d 266, 267 (2007), *abrogated by Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019). The Court,

⁶ In *Bryson v. State*, the Supreme Court “vacate[d] the order of dismissal, and remand[ed] this matter to the post-conviction relief judge to make specific findings of fact and conclusions of law as to each issue raised by petitioner in his post-conviction relief application and at the hearing thereon.” 328 S.C. 236, 236-37, 493 S.E.2d 500 (1997) (Per Curiam). *Bryson* is silent regarding issues preservation.

FILED
2025 APR 9 AM 10:04
CLERK OF DISTRICT COURT
SPARTANBURG COUNTY

however, repeated its admonition from *Pruitt*. *Id.* The final PCR order in *Marlar* contained the following paragraph:

As to any allegations raised in the application or at the hearing not specifically addressed by this Order, this Court finds that the applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds that the applicant failed to meet his burden of proof regarding them. Therefore, any and all allegations not specifically addressed in this Order are hereby denied and dismissed.

Id. at 409, 653 S.E.2d at 266. The Court observed, “This paragraph does not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law.” *Id.*; see also *Humbert v. State*, 345 S.C. 332, 337, 548 S.E.2d 862, 865 (2001) (“The PCR judge did not rule on whether defense counsel was ineffective for proceeding to trial while petitioner was shackled and wearing an identification bracelet. Petitioner did not file a Rule 59(e), SCRPC, motion requesting a ruling on these issues. Accordingly, petitioner's claims regarding counsel's ineffectiveness for allowing the trial to proceed while he was shackled and wearing an identification bracelet are not preserved for review.”) *abrogated by Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019).

On occasion, the Supreme Court addressed PCR issues preserved for appeal but reminded the bench and bar about its admonition from *Pruitt*. In *Tappeiner v. State*, “the PCR court failed to comply with” *Pruitt* by only addressing the majority of the PCR “grounds for relief in a summary fashion and making no factual findings on those issues whatsoever.” 416 S.C. 239, 249, n. 5, 785 S.E.2d 471, 476, n. 5 (2016). The Court reminded, “Ordinarily, when the PCR court makes inadequate factual findings, we remand the matter to the PCR court for a new hearing.” *Id.* However, because “the PCR court should have granted Tappeiner relief on one of the very few issues it did make specific findings on,” the Court held “that a remand in this case is unnecessary.”

Id.

In capital PCR cases, S.C. Code Ann. § 17-27-160(D) further requires “the hearing judge in writing shall make specific findings of fact and state expressly the judge’s conclusions of law relating to each issue.” In *Hall v. Catoe*, the PCR court “adopt[ed] the state’s proposed order,” and Hall argued “the judge did not render an independent judicial judgment.” 360 S.C. at 364, 601 S.E.2d at 341. Even though “Hall waived his right to make this challenge when he failed to file a motion to alter or amend the order,” the Supreme Court reminded the bench and bar about its admonition in *Pruitt* and “strongly encourage[d] PCR judges to draft their own findings of fact and conclusions of law in death penalty cases.” *Id.* at 364-65, 601 S.E.2d at 341. Since *Hall*, the Supreme Court has remanded three capital cases for orders that comply with sections 17-27-80 and 17-27-160. *Inman v. State*, 439 S.C. 97, 100, 886 S.E.2d 204, 206 (2023) (“the PCR court erred in failing to address Inman’s remaining PCR claims as required by S.C. Code Ann. § 17-27-80”); *Simmons*, 416 S.C. at 592-93, 788 S.E.2d at 225 (holding the PCR court erred in failing to make specific findings of fact and rulings of law on each issue raised by the petitioner despite granting PCR on one issue); *Lindsey v. State*, No. 2012-206087 (S.C. Sept. 30, 2014) (vacating order drafted by the State due to “the frequency and severity of the drafting errors in the Order of Dismissal” and reminding of the “Court’s admonishments to PCR judges in *Pruitt*”).

In addition to violating sections 17-27-80 and 17-27-160, the process followed in this case violates the separation of powers required by S.C. Const. Art. I, § 8. By not providing any guidance to the Attorney General’s office regarding the Court’s findings of fact and conclusions of law, this Court not only failed to render an independent judgement, but also delegated its judicial function to the executive branch. “Vesting a member of the executive branch with the exclusive authority to perform an inherently judicial function unquestionably is a violation of separation of powers.” *State v. Langford*, 400 S.C. 421, 435, 735 S.E.2d 471, 478 (2012). *See also State ex rel. Condon*

FILED
2025 APR 23 AM 9:04
CLERK OF COURT
SOUTH CAROLINA
JUDICIAL BRANCH

v. Hodges, 349 S.C. 232, 250, 562 S.E.2d 623, 633 (2002) (“the office of attorney general is part of the executive branch”); S.C. Code Ann. § 1-1-110.

Because the procedure followed by this Court violates the separation of powers between the judicial branch and the executive branch and violates sections 17-27-80 and 17-27-160, this Court should withdraw the order of dismissal.

II. THE ORDER CONTAINS MANY ERRORS AND MISSTATEMENTS OF THE RECORD.

The proposed order submitted by counsel for the State, and adopted as this Court’s Order, contains multiple errors and misstatements of the transcript and record in this case. These include:

- Page 2 of the Order states “The State served and filed its notice of intent to seek the death penalty on August 11, 2011.” At the PCR hearing, the notice of intent to seek the death penalty was admitted as an exhibit, showing it was filed on July 9, 2009. App. Ex. 77; *see also* PCR Hrg. Vol. 1, 131 (trial counsel McGuire testifying the notice was filed the day after the crime).
- Page 14 of the Order states: “This Court has already announced its conclusion finding the issue [of intellectual disability] may not be heard because ‘the Atkins issue has been answered by our Supreme Court’ through its direct appeal review of the findings and procedures from trial.” The Order cites page 597 of the PCR hearing transcript, but a review of that page of the transcript demonstrates the Court was not “announcing its conclusion,” rather it was asking a question while addressing the State’s objection to the testimony of one of Blackwell’s expert witnesses. PCR Hrg. Vol. 1, 597 (“Well, that’s [Atkins] is not the PCR issue, am I correct? . . . I mean, the Atkin issue has been answered by our Supreme Court . . . on appeal. So tell me again how it is relevant to the ineffective assistance of counsel issue in PCR.”). Further, as Blackwell pointed out in his Post-Hearing Brief Reply, the Court did not rule at the hearing on whether Blackwell’s freestanding *Atkins* claim was procedurally barred, and the State continued to seek a ruling later in the hearing. *See* Post-Hearing Reply Brief at 15–16 (citing PCR Vol. 2, 132, 136–137, 151).
- The Order repeatedly indicates Blackwell relied on the three expert opinions regarding intellectual disability: Dr. Susan Knight, Dr. Gordon Brown, and Dr. Ginger Calloway. *See, e.g.*, Order at 17–18. This is incorrect. Blackwell relied on the opinions of Dr. Knight, Dr. Brown, and Dr. George Corvin, who all opined at the PCR hearing that Blackwell is a person with intellectual disability. Blackwell recognizes Dr. Calloway also found him intellectually disabled prior to trial, but he did not rely on her opinion given the issues with trial counsel’s oversight of her evaluation and the information she was missing regarding developmental period adaptive behavior deficits.
- The Order references witnesses “Shirley Wofford, Norm Hooper, James Hatter, and Mary Unis.” Order at 38. Likely, the Order intended to reference Sherry Wofford, Norm Uher,

James Hamrick, and Mary Youmans, all of whom testified at trial, but used the wrong names for each witness. *See* ROA Index xiv–xv (listing witnesses Sherry Wofford, Norm Uber, James Hamrick, and Mary Youmans).

- Page 59 of the Order states: “Dr. Corvin was not provided with an interview that reflected a major accident “the trailer jackknifed [sic], swinging the trailer around, hitting the cab’ where Applicant had fallen asleep, even though a history of ‘multiple concussions back to back’ is notably detrimental.” Though this finding indicates Blackwell likely experienced a concussion from this accident, the Order misrepresents the actual testimony regarding this accident. The interview indicated Blackwell “does not remember hitting his head.” PCR Hrg. Vol. 1, 991. This further ignores that Dr. Corvin testified that Blackwell had a CT scan after this accident “which was normal.” *Id.* at 915.
- The Order references Ground 11(b)(6) on page 61, referring to Blackwell’s ineffective assistance of counsel claim relating to trial counsel’s failure to educate the judge and jury regarding misconceptions and stereotypes related to intellectual disability. The ground that actually raised that allegation is Ground 11(b)(7). Third Amended Application for Post-Conviction Relief (Nov. 10, 2021).
- The Order states: “During the hearing both Reverends Moon and Hesse testified. They both did not remember if Applicant told them if he was ever sorry for what he done [sic].” Order at 85 (citing PCR Vol. 1, 1238–39). However, the transcript pages cited are only for the testimony of Reverend Moon, who actually testified that she did not remember “telling the defense team that you don’t remember if Rickey ever said he was sorry for what he’s done?” PCR Vol. 1, 1238. As Reverend Moon testified on direct, she *did* remember her interactions with Blackwell and his remorse. PCR Vol. 1, 1234–35. Similarly, Reverend Hesse testified that she recalled her interactions with Blackwell and his desire to pray with her and his remorse. PCR Vol. 1, 1280–82.

These clear errors and misstatements of the record should be amended by the Court. *See* Order, *Lindsey v. State*, No. 2012-206087 (S.C. Sept. 30, 2014) (vacating a capital PCR order and remanding “[i]n light of the Court’s concern with the frequency and severity of the drafting errors in the Order of Dismissal, and th[e] Court’s admonishments to PCR judges in *Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992), and *Hall v. Catoe*, 360 S.C. 353, 601 S.E.2d 335 (2004)”).

III. THE ORDER ADOPTS AN INCORRECT STATEMENT OF THE STANDARD GOVERNING PCR CLAIMS PREDICATED ON NEWLY DISCOVERED EVIDENCE, WHICH IS CONTRARY TO THE SUPREME COURT’S EXPLICIT STATEMENT OF THE PROPER STANDARD.

The Order’s conclusion that Blackwell has not met the statutory requirements for relief based on newly discovered evidence is flawed due to clear errors of law. The Order improperly

assigned an arbitrary meaning to the term “material,” disregarding well-established principles of statutory interpretation and relevant case law. When a statute fails to define a term, the Court must interpret it in a way that is consistent with legislative intent. *Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass’n*, 424 S.C. 542, 549, 819 S.E.2d 124, 127 (2018). The Supreme Court of South Carolina has done just that, holding “material” evidence in this context refers to evidence that “*probably* would change the result” of a new sentencing proceeding. *State v. South*, 310 S.C. 504, 508, 427 S.E.2d 666, 671 (1993) (emphasis added) (extending the five-factor test for newly discovered evidence set forth in *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979) to motions for resentencing in capital cases and modifying the “material to guilt or innocence requirement” to mean “material to any mitigating or aggravating circumstances” in such cases); *see also McCoy v. State*, 401 S.C. 363, 368 n.1, 370, 737 S.E.2d 623, 625 n.1, 627 (2013) (citing this five-part test as the “standard test governing newly discovered evidence” in the PCR context).⁸ Despite case law that is *directly* on point, the Order defines “material” based on unrelated areas of law and introducing a causation element not supported by statutory language or Supreme Court authority.⁹

⁸ A discussion of the *Caskey* test’s application in the context of motions for resentencing in capital cases has been laid out in detail in Blackwell’s post-hearing brief but in review, an applicant must show the following: the evidence (1) “[i]s such as would probably change the result if a new trial is had”; (2) “[h]as been discovered since the trial”; (3) “[c]ould not by the exercise of due diligence have been discovered before the trial”; (4) “[i]s material to any mitigating or aggravating circumstances”; and (5) “[i]s not merely cumulative or impeaching.” *State v. South*, 310 S.C. 504, 507, 427 S.E.2d 666, 670 (1993).

⁹ Counsel has also been unable to find a single case establishing a causal element, only finding cases that support the opposite conclusion. *E.g. State v. Mercer*, 381 S.C. 149, 169, 672 S.E.2d 556, 566 (2009) (finding that the “*cumulative effect* [of the evidence] informed the judgment of the trial court” in assessing the motion for a new trial based on newly discovered evidence) (emphasis added); *State v. Wakefield*, 443 S.C. 123, 126, 903 S.E.2d 489, 490 (2024) (holding the newly discovered evidence standard “presumes that [the circuit court] is in a position to weigh the new [evidence] against that provided at the prior trial” and decide whether the outcome is likely to change based on the full picture) (emphasis supplied)).

Applying the wrong standard of materiality is an error of law constituting an abuse of discretion. *South*, 310 S.C. at 508, 427 S.E.2d at 671 (1993) (reversing the trial court's decision to grant resentencing because the PCR court applied the wrong standard of materiality). The Order's misinterpretation of the statute led to the improper evaluation of the newly discovered evidence of the CAMTA1 gene, constituting an abuse of discretion.

Not only does the Order read language into S.C. Code Ann. § 17-27-20(A)(4) (2014) that is not there, but the Court's interpretation of the statute also excludes language that is there. South Carolina courts have consistently held that "[a] statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010); *see also Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 199, 882 S.E.2d 770, 778 (2023) (holding that a court must "give meaning to the entire text [of a statute], and not render any provision meaningless"). S.C. Code Ann. § 17-27-20(A)(4) is no exception.

While the statute states that evidence of a material fact, if true, would "require[] the vacation of the conviction or sentence in the interests of justice," the Court repeatedly emphasized that Blackwell must show the evidence "requires" his death sentence to be overturned, ignoring the discretionary qualifier "in the interests of justice." The phrase "in the interests of justice" introduces a balancing test, requiring courts to weigh the interests of justice against the finality of convictions, as clarified in *Jamison v. State*, 410 S.C. 456, 765 S.E.2d 123 (2014). By failing to account for this qualifier, the Court's interpretation alters the statute's scope and application, violating fundamental principles of statutory interpretation and constituting a clear error of law.

FILED
2025 APR 23 AM 9:04
CLERK OF COURT
SCALED COUNTY
K. J. W. COX

Considering these errors, the Court should re-evaluate Blackwell's claim using the correct standard of review and decide whether relief is warranted based on what the law is, and not what the State itself interpreted the law to be.

IV. THE ORDER MAKES CREDIBILITY FINDINGS REGARDING THE EXPERT WITNESSES THAT ARE CONTRARY TO THE RECORD.

At the PCR hearing in this case, three qualified experts (Dr. Knight, Dr. Brown, and Dr. Corvin) testified Blackwell is a person with intellectual disability. No expert testified that Blackwell is not intellectually disabled. In its request for the State to draft a proposed order, this Court did not indicate whether it found Blackwell to be a person with intellectual disability, nor did it provide any determination regarding expert credibility. Nevertheless, the State's proposed order, which the Court adopted, makes a finding that Blackwell is not a person with intellectual disability. To do so, the Order finds two of the expert opinions on intellectual disability were not credible and ignores the third. As discussed below, these credibility findings are contrary to the record and the experts' presentations to this Court.

a. Dr. Knight

Dr. Susan Knight testified at the PCR hearing regarding her extensive and detailed evaluation of Blackwell for intellectual disability.¹⁰ PCR Hrg. Vol. 1, 647–854. She also presented the Court with a 47-page report describing the materials she reviewed, the witnesses she interviewed, and her opinions based on the application of the diagnostic criteria for intellectual disability. App. Ex. 63. She concluded to “a reasonable degree of scientific certainty” that Blackwell “meets the criteria for all three prongs” of the intellectual disability diagnosis. PCR Hrg. Vol. 1, 684. Despite Dr. Knight's qualifications, her detailed evaluation, and her persuasive

¹⁰ Blackwell described Dr. Knight's qualifications, evaluation, and opinions in detail in his post-hearing briefing. Post-Hearing Brief at 11–28; Post-Hearing Reply Brief at 1–12.

testimony, the Order finds her opinion that Blackwell is intellectually disabled is not credible. This finding appears motivated by the fact that the State included a finding in the Order that Blackwell is not intellectually disabled.¹¹ To reach the State's desired finding on intellectual disability, it had to include the self-serving finding that Dr. Knight's opinion was not credible. This outcome-motivated credibility finding is the opposite of how a Court should make findings—the Court should base the outcome of the claim on the witness testimony and their credibility, not the other way around.

The Order's negative credibility finding as to Dr. Knight is contrary to, and is not supported by, the record. As an initial matter, the Order ignores Dr. Knight's extensive qualifications. Dr. Knight is a board certified clinical and forensic psychologist. PCR Hrg. Vol. 1, 675–81. She has worked in correctional settings, as a DMH state evaluator, in private practice, and as an educator. *Id.* at 675–76; App. Ex. 62. She has conducted intellectual disability evaluations since she was in graduate school and has been qualified as an expert in clinical and forensic psychology approximately 25 times, including in capital cases. PCR Hrg. Vol. 1, 678–80. This Court qualified Dr. Knight as an expert in clinical and forensic psychology with no objection from the State regarding her qualifications. *Id.* at 681.

¹¹ It may go without saying, but the Court's instruction to the State to draft an order dismissing PCR did not require a finding that Blackwell is not a person with intellectual disability. See Order Dismissing (Jan. 28, 2025) (providing only: "After careful consideration, Applicant is unable to maintain his burden under *Strickland*"). The State has repeatedly argued that Blackwell's intellectual disability claim cannot be revisited because it was raised during trial. Similarly, the Court's indication that Blackwell did not satisfy *Strickland* necessitates a finding on intellectual disability because that would only be reached if trial counsel provided deficient performance, which the State argued against. Nevertheless, the State drafted an Order that found that Blackwell's intellectual disability claim was procedurally barred and trial counsel's performance was not deficient, but then went further and found Blackwell is also not a person with intellectual disability.

After overlooking Dr. Knight's qualifications, the Order states that "Dr. Knight's report and opinion suffers from selective omission of data of the kind that should be considered in an intellectual disability assessment." *See, e.g.*, Order at 14 n.4. This ignores that Dr. Knight listed 86 sources of information on which she relied, including the transcripts from the pre-trial *Atkins* hearing and Blackwell's entire trial; dozens of psychosocial records related to Blackwell and his family; expert reports from pre-trial evaluations by the defense expert, DMH, and DDSN; and information from interviews, affidavits, and consultations with over 20 different witnesses. App. Ex. 63.

Attempting to justify the finding that Dr. Knight overlooked relevant information, the Order relies on the fact that Dr. Knight did receive interview memos or interview seven witnesses: Cheryl Ponder (a former teacher), Rick Bagwell (a former co-worker), Neal Waters (a former co-worker), Sherry Wofford (Blackwell's cousin), Norm Uber (a friend), Mary Youmans (a former work supervisor), and James Hamrick (Blackwell's brother in law). *See* Order at 36. However, she explicitly testified she reviewed the trial testimony of four of those witnesses: Wofford, Uber, Hamrick, and Youmans. PCR Hrg. Vol. 1, 737, 848. Two of the other three were witnesses—Walters and Bagwell—who only knew Blackwell as an adult, making their information irrelevant to developmental period deficits, and the information they had was cumulative of other information she reviewed and considered in her evaluation. Specifically, Dr. Knight interviewed Gail Shook, a former work supervisor who described Blackwell's work as a forklift operator like Walters, and she reviewed records from Blackwell's trucking work at Belue where Bagwell supervised Blackwell. App. Ex. 63, at 4. Finally, as to former teacher Cheryl Ponder, the State confronted Dr. Knight at the hearing with an interview memo from a trial investigator's interview with Ponder, who reported that Ponder did not believe adjunct classes "were meant for the

FILED
2023 APR 13 PM 9:04
CLERK OF COURT
SPRINGFIELD COUNTY
MISSOURI

retarded.” PCR Hrg. Vol. 1, 758. The full interview memo, however, indicates that Ponder “does not remember Rickey” and that “those [adjunct] classes [were] 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.” State Ex. 10. This reveals that Ponder did not evaluate Blackwell or have an opinion on Blackwell’s intellectual disability and provided information regarding adjunct classes that was cumulative to what Dr. Knight obtained during her interviews. Nothing in these handful of memos undermined Dr. Knight’s opinion based on hundreds of pages of materials and witness interviews she conducted. PCR Hrg. Vol. 1, 851–52.

The Order further inexplicably finds Dr. Knight’s opinion was “sorely lacking” in detail, “discarded that which did not fit the narrative,” and was apparently only based on the fact that Blackwell was shy, being bullied, and afraid to jump in the deep end of the lake.¹² Order at 35. None of these findings have any basis in the record. Dr. Knight’s direct testimony regarding her evaluation and diagnosis describes her consideration of all testing scores in the record, both IQ scores and achievement scores. PCR Hrg. Vol. 1, 686–89, 710. She considered the fact that Blackwell was taking medication at the jail during the pretrial IQ testing and consulted with a psychiatrist regarding its effect, concluding that it did not negatively impact Blackwell’s intellectual functioning given the low dose he was receiving. *Id.* at 690. She also considered

¹² The Order also makes unsupported references to “the Court’s observations of” Dr. Knight who “appeared closed to any new information or at least would quickly discount its potential impact.” Order at 35, n.19. This finding is clearly erroneous and appears inserted to support the State’s position on appeal by encouraging the Supreme Court to defer to this self-serving finding by one of the parties. Contrary to the assertion, Dr. Knight considered the information provided by the State and responded to it appropriately. *See, e.g.*, PCR Hrg. Vol. 1, 812–16 (engaging with the State regarding Blackwell’s marijuana usage and explaining why the studies cited by the State were irrelevant due to the time when they were conducted and explaining that marijuana has not historically been a drug that impacts cognitive functioning); 834–837 (engaging with the State regarding work supervisor Rick Bagwell, acknowledging that she did not speak with him, but explaining that she reviewed work records created by Bagwell).

whether events after the developmental period may have negatively impacted his intellectual functioning, which could have undermined a finding that Blackwell had significantly subaverage intellectual functioning during the developmental period, concluding they did not. *Id.* at 693–99.

Regarding adaptive behavior, Dr. Knight described evidence of conceptual deficits during the developmental period, including Blackwell’s placement in classes for students who struggle with conceptual skills, his placement in Project Succeed (a federal program for students at risk of dropping out), teachers’ descriptions of Blackwell as “very slow” and a person who had difficulty learning, his low scores on achievement tests, and other witness descriptions of Blackwell as a “slower student” who was at the lowest level of everything, was indecisive, and had problems with problem solving. *Id.* 702–12. Dr. Knight then addressed social adaptive behavior deficits, including that Blackwell would be overwhelmed by having to choose kids for a kickball game; he was unsure of himself and had low self-esteem that led to bullying; he was not involved in extracurricular or skilled social activities; people who knew him called him socially awkward and backward; and people never saw him interact in a group. *Id.* at 714–17. These were all important factors to conceptual and social functioning as a child, and Dr. Knight compared Blackwell’s functioning with the DSM’s rubric for mild deficits in both domains of functioning, noting that this review “provides more of a convergence of information with the DSM and with his particular case” and Blackwell’s functioning “information fits very well” into that chart. *Id.* at 714, 717.

Dr. Knight considered the practical domain of adaptive behavior as well, but far from suffering confirmation bias, she opined that she “didn’t have enough information to find deficits in that area.” *Id.* at 719. In addition to Dr. Knight’s testimony, her report details information she had about all of Blackwell’s life stages and his functioning according to the witnesses she spoke with and records she reviewed. App. Ex. 63. Nothing in the record contradicts the deficits

FILED
2025 APR 30 9:04
FEDERAL COURT
SOUTHERN DISTRICT OF CALIFORNIA

identified by Dr. Knight, and her opinion that he met the criteria for adaptive deficits during the developmental period is consistent with the clinical guidelines. *See Moore v. Texas*, 581 U.S. 1, 15 (2017) (“The [state court] overemphasized Moore’s perceived adaptive strengths. . . . But the medical community focuses the adaptive-functioning inquiry on adaptive *deficits*.” (emphasis in original)).

In addition to following the clinical guidelines and evaluating Blackwell’s deficits during the developmental period, Dr. Knight did not shy away from information that may have seemed like adaptive strengths. She evaluated Blackwell’s work as a truck driver and a forklift operator and the fact that he obtained his CDL. PCR Hrg. Vol. 1, 720–31. She acknowledged that Blackwell’s truck driving was a relative strength for him, but “strengths are expected, in addition to deficits” and are not inconsistent with intellectual disability. *Id.* at 721. Much ink has been spilled on the issue of Blackwell’s driving and CDL. *See* App. Ex. 63, at 24–32, 37–38; Post-Hearing Brief, at 19–22; Post-Hearing Reply Brief, at 26–27. Nearly all of the discussion surrounding this topic finds its basis in Dr. Knight’s extensive review of Blackwell’s driving record from the time he learned to drive a truck through rote repetition and observation of his father; his initial licensing through the Public Service License or Chauffeur’s License that did not require a test to obtain; and his multiple accidents and record-keeping violations during his driving career. Dr. Knight recognized that Blackwell’s CDL and driving history “were important areas for [her] to assess as far as adaptive functioning,” but ultimately she recognized that he struggled with trucking, there were significant questions about the testing that allowed him to drive, and “he wasn’t terribly successful at this . . . endeavor.” PCR Hrg. Vol. 1, 730. Contrary to the Order’s indication that Dr. Knight failed to appropriately consider Blackwell’s driving and CDL, Dr. Knight extensively considered it and the actual abilities it revealed (as opposed to the State’s

FILED
2023 APR 23 AM 9:04
CLERK OF COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON, TEXAS

repeated assertion that simply having a CDL indicates Blackwell cannot be intellectually disabled). Following this review, she appropriately concluded that it was not inconsistent with a diagnosis of intellectual disability.

Similarly, Dr. Knight did not ignore marijuana, alcohol, Hodgkin's disease, or COPD. Order, at 38–39. Dr. Knight explicitly testified that she considered Blackwell's drug use, which he reported to her, but found it was not relevant to her opinion based on the level of his usage and because "[m]arijuana historically has not been a type of drug that would reduce someone's cognitive functioning." PCR Hrg. Vol. 1, 816. Dr. Knight also spoke with an oncologist about Blackwell's Hodgkin's disease and treatment who confirmed that, while Blackwell may have had some cognitive impacts during his treatment, that would have cleared up in about a year—over a decade before his IQ testing was conducted. *Id.* at 696. Regarding COPD, Dr. Knight had no indication it would impact Blackwell's cognitive functioning, *id.* at 819, and the record provides no support for that proposition other than counsel for the State asserting that it might.

Overall, the Order misrepresents Dr. Knight's evaluation as cursory and discounts her opinion for reasons not supported by the record. This Court should amend the Order to correct this unsupported credibility finding.

b. *Dr. Brown*

The Order went on to find "Dr. Brown's change in opinion based on Dr. Knight's opinion also carries little weight." Order at 14 n. 4. This finding is not supported by the record because Dr. Brown testified he changed his opinion based on new information provided to him during PCR proceedings, *not* on Dr. Knight's opinion that Blackwell is a person with intellectual disability.

Before Blackwell's trial, Dr. Brown conducted an intellectual disability assessment as an evaluator for DDSN. PCR Hrg. Vol. 1, 1030. At that time, he reviewed information provided to

FILED
2025 APR 23 AM 9:04
CLERK OF COURT
SOUTHERN DISTRICT OF NEW YORK

him by the Solicitor and defense counsel and information obtained during an interview with Blackwell. *Id.* at 1031–32. In Dr. Brown’s opinion at the time, he “did not see enough demonstration of adaptive deficits during the developmental period.” *Id.* at 1032.

During PCR proceedings, Dr. Brown reviewed additional information provided by PCR counsel, including Dr. Knight’s report, Dr. Andrews’s social history report, the report of Dr. Schwartz-Watts, Dr. Calloway’s report, his own initial report, and the Supreme court opinion affirming the death penalty on direct appeal. *Id.* at 1035. This was all information he would have taken into account if it had been provided during his pre-trial evaluation. *Id.* “[W]ith this new information,” Dr. Brown found that, in his opinion, Blackwell is a person with intellectual disability. *Id.* at 1040. At no point does Dr. Brown indicate that he changed his opinion based on Dr. Knight’s opinion.¹³ The Order additionally ignores that the information Dr. Brown relied on to find Blackwell is a person with intellectual disability was available, but not provided to him, pre-trial, which supports Blackwell’s claim that his trial counsel were ineffective. The Order should be amended to accurately reflect Dr. Brown’s testimony and find his opinions credibly support Blackwell’s claims for relief.

¹³ Dr. Brown exclusively testified that his current opinion was based on the new information he received during PCR proceedings, which was sufficient to demonstrate deficits in adaptive deficits during the developmental period—the diagnostic information he specifically noted was missing during his pre-trial evaluation. *See, e.g.*, PCR Hrg. Vol. 1, 1035–36 (discussing information provided to him showing he misjudged some of the school records, including that Blackwell was in adjunct classes and was given an accurate school ranking of 113 out of 113); *id.* at 1036 (discussing information clarifying Blackwell’s early job history, revealing that Blackwell tends to overrate his abilities and really only had “very basic jobs, repetitious jobs that required . . . very little, if any, skill” or “learning”); *id.* at 1038 (indicating he thought intellectual disability was “a very close call” during his pretrial evaluation and that “[w]ith this additional information,” he finds Blackwell is a person with intellectual disability).

c. *Dr. Corvin*

In the sections of the Order addressing whether Blackwell is a person with intellectual disability, the Order ignores that Dr. Corvin also found Blackwell to be intellectually disabled. *See, e.g.*, Order, at 17–18. At the PCR hearing, Dr. Corvin was qualified as an expert in general and forensic psychiatry. PCR Hrg. Vol. 1, 862. He testified that he reviewed Blackwell’s IQ tests and found them valid and falling within the intellectual disability range. *Id.* at 900–02. Dr. Corvin then considered the risk factors identified by Dr. Brown in his pre-trial report—depression and anxiety, head injury, alcohol and drug use, and cancer treatment—and found none of these meaningfully affected Blackwell’s intellectual capacity. *Id.* at 903–17. Accordingly, Dr. Corvin found the IQ tests as an adult were reflective of his life-long intellectual functioning and found Blackwell had an onset of significantly subaverage intellectual functioning during the developmental period. *Id.* at 932. Dr. Corvin also described the evidence of adaptive deficits he reviewed from Dr. Calloway, Dr. Brown, Dr. Knight, and Dr. Andrews’s reports. *Id.* at 920–27, 933. Dr. Corvin found evidence of significant deficits in adaptive functioning during the developmental period. *Id.* at 933. Accordingly, Dr. Corvin found, to a reasonable degree of medical certainty, that “Blackwell meets all diagnostic . . . according to DSM criteria for an intellectual disability [] disorder of mild severity.” *Id.* at 934.

Despite Dr. Corvin’s reasoned expert opinion, the Order does not acknowledge that this expert independently reviewed the evidence and the diagnostic criteria and found Blackwell to be a person with intellectual disability. In this way as well, the Order’s finding that Blackwell is not a person with intellectual disability is clearly contrary to the evidence in the record and should be amended.

FILED
2025 MAR 23 AM 9:05
CLERK OF COURT
PARSONS COUNTY

d. *Dr. Nelson*

Following the Order's unjustified rejection of Dr. Knight and Dr. Brown's opinions and overlooking of Dr. Corvin's opinion, the Order makes a finding that Dr. Nelson's testimony is of "heightened credibility" because of his limited work in *Atkins* death penalty cases. Order at 37 n. 20. The record does not support this heightened credibility determination. First, the Order finds that Dr. Nelson has experience in the education system, which is relevant because "[t]hese cases require a backwards looking review, attempting to assess school records and other developmental period information." *Id.* However, Dr. Nelson's background in education began in 1999, when he interned in schools in California. PCR Hrg. Vol. 4, 14. Then, he worked from 2006-2011 in the Greenville school district. *Id.* Blackwell was born in 1958 and stopped attending school during the 1976-77 school year, App. Ex. 64, over twenty years before Dr. Nelson began working the school systems. Dr. Knight, on the contrary, relied on information from teachers who taught in Blackwell's school system at the time he was a student. *See* App. Ex. 63, pp. 4-5 (listing information Dr. Knight received from Blackwell's teachers, including Louise Scruggs, Beverly Davis, William Hayes, and Emily Shields).

Further, Dr. Nelson's testimony was directly contrary to the clinical guidelines for assessing intellectual disability.¹⁴ Dr. Nelson incorrectly asserted that the DSM requires a diagnosis of intellectual disability to be made during the developmental period. *Compare* PCR

¹⁴ Consistent with the Supreme Court's direction, lower courts regularly find expert witnesses who do not follow the clinical guidelines not credible in *Atkins* cases. *See, e.g., United States v. Boland*, 281 F. Supp. 3d 470, 481 (D.N.J. 2017) ("The Court finds the Government's experts generally less credible, as they all had fundamental disagreements with, and at times disregarded, the clinical standards and oftentimes contradicted their own conclusions."); *United States v. Wilson*, 2017 F. Supp. 3d 347 (E.D.N.Y. 2016) ("Dr. Patterson's focus on criminal and prison evidence runs counter to the clinical standards. . . . Accordingly, the court will not give significant weight to his testimony.").

Hrg. Vol. 4, 58; *with* DSM-IV-TR at 49 (specifying intellectual disability must have an “onset” during the developmental period, not requiring it be established during the developmental period); DSM-5 at 33 (same); DSM-5-TR at 42 (same). Dr. Nelson’s testimony is also contrary to the AAIDD manual, which expressly recognizes “[i]t is possible to make a retrospective diagnosis of ID after the individual attains 22.” AAIDD-12 at 41. Were Dr. Nelson’s testimony accurate, a person who was not administered an IQ test as a child—when he has no control over whether he is tested—would never be eligible for services as a person with intellectual disability. *See* PCR Hrg. Vol. 2, 106–107 (Dr. Brown’s opinion that clinicians “can’t penalize someone because they weren’t given a test. There - - there are lots of people who never had a reason to be tested during the developmental period. . . . we can’t disqualify someone just because they didn’t get an IQ test before they turned 18.”). This non-clinical testimony cannot justify a finding of credibility, much less heightened credibility, in this matter. *See Moore*, 581 U.S. at 12–13 (requiring courts determining intellectual disability “must be informed by the medical community’s diagnostic framework”) (quoting *Hall v. Florida*, 572 U.S. 701, 719 (2014)).

Finally, it is important to recall that Dr. Nelson did not, and could not, provide an opinion on Blackwell’s intellectual disability because he did not examine Blackwell or speak to any witnesses, and “cannot make a diagnosis of someone [he] ha[s]n’t examined.” PCR Hrg. Vol. 4, 57–58, 64; *see also State v. Brown*, 2011-GS-30-152, at 7–8 (Apr. 14, 2016) (finding Dr. Nelson in an *Atkins* case “could not offer any legally sufficient conclusions: and was “significantly burdened by [his] lack of personal observation of, and interaction with, the defendant”). The Order is therefore unjustified in relying on Dr. Nelson to undermine the opinions of the other eminently qualified experts in this case.

* * * *

FILED
25 APR 23 AM 9:05
CLERK OF COURT
PARTLAND COUNTY
ASTORIA, OREGON

In sum, the Order's expert credibility findings are contrary to the record, and the Order should be amended to correct these unsupported findings.

V. THE ORDER'S FINDINGS REGARDING MITIGATION EVIDENCE AT TRIAL AND IN PCR ARE CONTRARY TO THE RECORD AND MISAPPLY THE LEGAL STANDARD FOR REVIEWING A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL.

i. The Court's order misstates and misapplies the Wiggins standard.

The Order misstates and misapplies the *Wiggins v. Smith*, 539 U.S. 510 (2003), standard while assessing Blackwell's claims for relief. In setting forth and applying what is required of trial counsel under *Wiggins*, the Order only considered the investigation trial counsel conducted, ignoring the information they failed to uncover prior to trial and information their investigator obtained but counsel failed to present to the jury. Order at 27, 71. This misconstrues what is required under the governing case law.

Regardless of the investigation trial counsel conducted, their decisions to conduct further investigation and regarding what evidence should be presented to the jury must be based on "a reasoned strategic judgment" rather than "inattention" to the investigation. *Wiggins v. Smith*, 539 U.S. 510, 533–34 (2003); *Williams v. Taylor*, 529 U.S. 362, 390–96 (2000); *Rompilla v. Beard*, 545 U.S. 374, 378 (2005); *Porter v. McCollum*, 558 U.S. 30, 38–40 (2009); *Andrus v. Texas*, 590 U.S. 806, 817–21 (2020); *Council v. State*, 380 S.C. 159, 171–779, 670 S.E.2d 356, 362–66 (2008); *Weik v. State*, 409 S.C. 214, 233–39, 761 S.E.2d 757, 767–770 (2014). The Order articulating that "the correct question to consider is whether the investigation was reasonable," simply ignores decades of precedent that also recognizes the importance of evaluating the mitigation presentation.

ii. The Court's order finding that trial counsel made an informed and strategic decision to not call Dr. Corvin at Blackwell's trial is directly contrary to the record.

The Order found that it was "obvious . . . that trial counsel did not call Dr. Corvin . . . to prevent the potential for other damaging information to come out – information that, without a

doubt, had been shared with them for consideration.” Order at 73. This finding is without evidentiary support and is entirely contrary to the evidence presented during these PCR proceedings.

The Order identifies this “damaging information” about Blackwell’s drug use and experimentation, information about him paying bills with his wife, and information about Blackwell’s behavior to his ex-wife after she left him. Order at 74. In doing so, the Order ignores the evidence establishing that this information was before the jury at the time of Blackwell’s trial. Dr. Maddox, Blackwell’s treating psychiatrist, presented information about Blackwell’s abuse of substances to the jury as she testified about his two suicide attempts, highlighting both his history of marijuana and alcohol usage and of overdosing on psychiatric medication. ROA 2976–2978. She also included this information in her report. App. Ex. 42 at 5–6. Similarly, Irene Blackwell, Blackwell’s mother-in-law, testified not only about Blackwell’s behavior after his ex-wife left him, but also about Blackwell coming over the morning of the offense. ROA 2658, 2662–63.¹⁵

Further, in finding that not calling Corvin was the result of a strategic decision, the Order simply ignores the evidence that trial counsel’s real reason for not calling Dr. Corvin was their failure to communicate and work with Dr. Corvin to complete his evaluation pre-trial. At the PCR hearing, trial counsel acknowledged this themselves. McGuire testified that “I don’t recall anything about [Dr. Corvin,]” or his involvement whatsoever in the case. PCR Hrg. Vol. 1, 318.

¹⁵ Additionally, trial counsel testified that keeping this information out was not why they did not call Dr. Corvin. McGuire testified he did not find the information about Blackwell using drugs in his later teen years surprising as it goes “hand-in-hand” with understanding depression and someone’s attempt to cope with those symptoms. PCR Hrg. Vol. 1, 327–329. Allen testified he did not remember Blackwell’s marijuana use history “specifically,” and while “it’s not ideal” for that information to come out in front of a jury, he did not think smoking marijuana was viewed as that bad.” PCR Hrg. Vol. 1, 1200.

FILED
CLERK OF COURT
FRANKLIN COUNTY
JAN 23 AM 9:05

Likewise, Allen testified he was not sure if he ever met Dr. Corvin but might have accompanied him briefly to the jail before Dr. Corvin's clinical interview of Blackwell, as was his "general practice," but he "may not have." PCR Hrg. Vol. 1, 1186–1187. Rather, the only person on Blackwell's team who had any communication with Corvin or provided any supervision was Richards-Baker, the mitigation investigator. PCR Hrg. Vol. 1, 72, 104, 211, 213–14, 865–66; App. Ex. 9. Following Dr. Corvin's only pre-trial clinical interview with Blackwell in 2012, he spoke once with Richards-Baker and requested additional information, including discovery and a functional MRI of Blackwell. PCR Hrg. Vol. 1, 65, 88; App. Ex. 9 at 7. Dr. Corvin did not hear from anyone on Blackwell's trial team until two years later. PCR Hrg. Vol. 1, 887–89; App. Ex. 9 at 9.

More importantly, in finding that trial counsel made a strategic decision not to call Dr. Corvin, the Order ignores the evidence that trial counsel *did decide* to call Dr. Corvin as a witness at Blackwell's trial. App. Ex. 9, at 9 (email from trial team to Dr. Corvin: "We are scheduled to go to trial beginning the first week of March. Bill would like you to testify about the effects of taking Xanax on Rickey's state of mind. Are you available the second week of March[?]"). At a pre-trial team meeting in January 2014, trial counsel asked Richards-Baker to contact Dr. Corvin about testifying. PCR Hrg. Vol. 1, 64, 71–72, 215–17, 888; App. Ex. 9 at 8–11. In response, Dr. Corvin told Richards-Baker that one month was insufficient to complete his evaluation of Blackwell's mental state at the time of the crime, and other pre-existing court commitments would make his presence at trial impossible. PCR Hrg. Vol. 1, 888–90. After Dr. Corvin's call with Richards-Baker, he did not hear from counsel again. PCR Hrg. Vol. 1, 890. Thus, despite the negative information the Order indicates Dr. Corvin had, trial counsel elected to call Dr. Corvin as a witness.

FILED
2025 FEB 2 AM 9:05
CLERK OF COURT
PARSONS COUNTY
TX

It was only through their failure to provide Dr. Corvin with the information he needed in time for him to complete his evaluation that Dr. Corvin was ultimately not called as a witness.

As the case law recognizes, while trial counsel has some discretion regarding the mitigation investigation and presentation, the decisions must still be conscious and informed and cannot result from counsel's "inattention." *Wiggins*, 539 U.S. at 533–34; *Weik*, 409 S.C. at 236, 761 S.E.2d at 768. Dr. Corvin did not testify at Blackwell's trial, which was directly the result of counsel's inattention to his evaluation. Accordingly, their mitigation presentation lacked any forensic psychiatrist who could opine about Blackwell's mental state at the time of the offense.¹⁶ This prejudiced Blackwell. *See infra* V.iv.; App. Post-Hearing Brief at 56–72.

iii. *The Court's order misconstrues Dr. Andrews' role and expertise*

The Order discounts Dr. Arlene Andrews's testimony by incorrectly referring to her as "yet another mitigation specialist." Order at 75. This misconstrues Dr. Andrews's role and expertise. Dr. Andrews was qualified as an expert in conducting social history assessments at the hearing without objection.¹⁷ PCR Hrg. Vol. 1, 498. As Dr. Andrews explained, social history assessments are "the core process that social workers use in a variety of settings." PCR Hrg. Vol. 1, 496. Social

¹⁶ The Order states that Dr. Donna Schwartz-Watts (now Maddox) testified as a forensic psychiatrist at Blackwell's trial and offered this kind of opinion evidence. Order at 72–73. This is directly contradictory to her qualification and testimony at trial. Dr. Maddox was specifically qualified as a general psychiatrist at Blackwell's trial because of her role as his treating psychiatrist. ROA 2974; PCR Hrg. Vol. 1, 67, 158, 189, 197–205, 219–20, 350–51, 354, 356, 1182; App. Ex. 36–42. When asked at trial if she had any forensic opinions about Blackwell, Dr. Maddox refused to offer any such opinions because she did not have a forensic role in the case. ROA 2985. As Dr. Maddox explained, her "only role had been treating him." PCR Hrg. Vol. 1, 356.

¹⁷ Dr. Andrews is an emeritus professor from the University of South Carolina. PCR Hrg. Vol. 1, 493. She has a master's degree in social work and a PhD in clinical community psychology. *Id.* She has published articles and a textbook on social history assessment and has conducted and supervised hundreds of social history assessments throughout her career in a variety of settings, including participating in 30 to 40 capital mitigation proceedings. PCR Hrg. Vol. 1, 493–98.

history assessments involve three parts: “a careful assessment of someone,” including the key events in their life and how they “relate to one another” socially; looking at the key events and “look[ing] for patterns;” and making “some kind of recommendation for treatment or intervention.” PCR Hrg. Vol. 1, 496–497. In capital cases, social historians are often used to help in “developing sentencing recommendations.” PCR Hrg. Vol. 1, 497. This kind of social analysis is different in kind from general mitigation investigation. Although conducting a social history does require uncovering information about a specific person’s background, it also draws on insights and theories from other fields to analyze that person’s social functioning.¹⁸

As Dr. Andrews testified, in Blackwell’s case, she “was asked to assess his social history, his life history, and his social functioning,” prior to the day of the offense. PCR Hrg. Vol. 1, 499. In conducting her assessment, Dr. Andrews looked at “a large number of records,” for Blackwell and his family members, and conducted “a number of interviews [] with family members and with the client.” PCR Hrg. Vol. 1, 499–501; App. Ex. 53. In considering this wealth of information, Dr. Andrews used her specific expertise to evaluate Blackwell’s life and offered opinions about his functioning in his personal life and in the community, saying:

I found that Rickey Blackwell lived for almost 50 years as a responsible citizen. He didn't violate any major laws. And he was in a caring family network located in a rural community. He was very dependent on his parents throughout his life, which was rather unusual, but also dependent on his wife, Angie. He adapted to what seemed to be intellectual limitations. He managed very serious chronic mental health conditions, and he coped with multiple stressors that I would call extraordinary stressors that I can talk about more in a moment. Throughout all this time he had no history of harm to any person. Now, there were instances of attempted self harm when he was overwhelmed because of life complications or

¹⁸ Testimony from licensed social workers and/or social historians including this kind of social analysis and opinion evidence is common in capital trials in South Carolina. Counsel has looked at all the capital trials since 2000, including those resulting in a sentence less than death, to determine whether this kind of witness was utilized during the penalty phase. On the information available to counsel, about two-thirds of the capital trials had penalty phases where a licensed social worker or social historian testified about the defendant’s life history.

2025 APR 29 11:05
CLERK OF COURT
SPARTANBURG COUNTY

changes in his routine, which created stress for him. In 2008 he went through a change when he experienced the traumatic loss of his wife when she moved out of their home. By all accounts Rickey adored Angie and he was unable to fully comprehend or adapt to or cope with the multiple changes that occurred due to that loss. They were in a small community. They were a very immeshed family network. And Rickey saw Angie regularly after she left, sometimes with her new boyfriend. The repeated exposure was painful and he constantly yearned for her to come back. By July 2009, his physical, mental, and emotional capacities were exhausted, according to the evidence. He was overwhelmed and woefully unable to cope. He tried seeking help in the ways that he had always done and it failed to help him. There was no relief for his symptoms. People in his social networks were limited or they were unavailable around this time, around July of 2009. He continued to show signs of excessive dependency, unrelenting prolonged grief, separation anxiety, depression, and exhaustion. He was not able to conduct normal daily activities that one would expect of an adult male. His thinking was impaired. He just didn't seem to have any intellectual capacity or the mental health to deal with this loss in his life.

PCR Hrg. Vol. 1, 502–03; App. Ex. 54. Dr. Andrews did not simply go out and talk to people to collect information; she also analyzed the information and offered thoughtful opinions about Blackwell and how he related to and functioned in the world. This information was highly relevant to understanding his character and the circumstances existing in his life at the time of the offense.

iv. *The Court's prejudice finding is perfunctory and ignores highly relevant precedent.*

The Order finds no prejudice, under *Strickland*, because of “the mere fact that [Blackwell] shot a child to hurt his estranged wife[’s] boyfriend,” which “is a circumstance that most jurors would find very difficult to weigh any less,” irrespective of any mitigation presented. Order at 75. This finding misapplies the Supreme Court’s instructions for considering prejudice based on trial counsel’s failure to uncover and/or present mitigation information. A court is to “assess prejudice by reweighing the aggravating evidence against the totality of the mitigating evidence adduced both at trial and in the [post-conviction] proceedings. *Wiggins*, 539 U.S. at 512. In making this consideration, prejudice exists if there is a reasonable probability that at least one juror may have changed their vote from death to life. *Wiggins*, 539 U.S. at 537; *Porter*, 558 U.S. at 42. *Weeks*, 509 U.S. at 233, 761 S.E.2d at 767. The Order’s analysis fails to properly assess prejudice, focusing

solely on the aggravating evidence in Blackwell's case and ignoring all the evidence in mitigation from both trial and PCR before it.

Moreover, the Court's finding ignores guidance from available precedents where, despite highly aggravated crimes, courts have still found prejudice exists. Both the United States Supreme Court and the Supreme Court of South Carolina have found prejudice resulting from a deficient mitigation investigation and presentation in cases that are equally or more aggravated than Blackwell's. For example, in *Rompilla*, the Court found that trial counsel's deficient performance prejudiced Rompilla though he repeatedly stabbed his victim and then set him on fire and had a significant history of prior violence. 545 U.S. at 393. In *Wiggins*, the Court found prejudice where Wiggins robbed an elderly woman, ransacked her apartment, and drowned her in a bathtub. 539 U.S. at 536. Likewise, in *Williams*, prejudice was established despite Williams killing a man with a pickaxe for refusing to lend Williams "a couple of dollars" and violently assaulting two elderly victims, leaving one woman in "a vegetative state." 529 U.S. at 398. In *Weik*, our state's Supreme Court found prejudice where Weik kicked down his ex-girlfriend's door and shot her multiple times, killing her. 409 S.C. 214, 216 n.1, 239, 761 S.E.2d 757, 758 n.1, 770 (2014). The Court also found prejudice in *Council*, where Council, who had a lengthy history of escalating criminal activity, "hogtied" his 72-year-old victim in her basement, "forced [her] to ingest" cleaning fluids, tore her clothes off, and violently sexually assaulted her while killing her. *Council v. State*, 380 S.C. 159, 162–63, 670 S.E.2d 356, 357–58 (2008).

The Court also fails to give weight to the close nexus between the previously unrepresented mitigation evidence and Blackwell's crime. Although mitigating evidence is not required to have a nexus to the crime, the previously unrepresented evidence from Dr. Corvin and Dr. Andrews would have provided the jury with a powerful missing puzzle piece to the case for Blackwell's life. As

FILED
2023 APR 23 AM 9:05
CLERK OF COURT
SHERMAN COUNTY
SHERMAN COUNTY

discussed more thoroughly in Applicant’s post-hearing briefing, these two evaluations show how Blackwell, who was known as a kind, simple, family-oriented man with no prior criminal record, ended up in the position of committing the instant offense, which he has always accepted responsibility and expressed profound remorse for. Dr. Corvin’s evaluation and testimony clearly establish a nexus between the “perfect storm” of Blackwell’s mental illnesses, intellectual disability, the extreme loss of his long-term romantic partner and primary support system, and his commission of the offense. The nexus between this unrepresented evidence and the offense is far closer in Blackwell’s case than in many of the cases where the United States Supreme Court or the Supreme Court of South Carolina have found prejudice for the failure to develop and present mitigating evidence. *See e.g., Rompilla*, 545 U.S. at 390–93; *Porter*, 558 U.S. at 40–44; *Williams*, 529 U.S. at 396–98; *Wiggins*, 539 U.S. at 536–37; *Weik*, 409 S.C. at 238–39, 761 S.E.2d at 769–70; *Council*, 380 S.C. at 176–79, 670 S.E.2d at 365–66. Given the close nexus between this evaluation and the offense, it is reasonably likely that at least one juror would have changed their vote from death to life in Blackwell’s case. The Order should, therefore, be amended to properly consider the mitigation evidence presented in PCR proceedings and assess the prejudice of trial counsel’s failure to present it to the jury.

CONCLUSION

For the reasons stated above and in Blackwell’s post-hearing briefing, this Court should alter or amend its judgment and grant Applicant post-conviction relief.

[Signature Block Appears on Next Page]

FILED
2025 APR 23 AM 9:05
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

Respectfully submitted,

By s/ E. Charles Grose, Jr.
E. Charles Grose, Jr.
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
charles@groselawfirm.com

By s/ Lindsey S. Vann
Lindsey S. Vann
Rosalind S.D. Major
Brianna L. Cruz
Justice 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201
(803) 765-1044
lindsey@justice360sc.org
rosalind@justice360sc.org
brianna@justice360sc.org

April 17, 2025.

Attorneys for Ricky Lee Blackwell

FILED
2025 APR 23 AM 9:05
CLERK OF COURT
SPARTANBURG COUNTY
JANAY COY

April 17, 2025

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

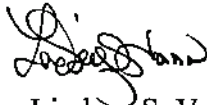
RE: *Ricky Lee Blackwell, #6033 v. State, 2018-CP-42-00928*

Dear Ms. Cox:

Please find enclosed for filing, with certificate of service, Applicant's Amended Motion to Alter or Amend Judgment in the above referenced case.

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

Sincerely,



Lindsey S. Vann

Enclosure

cc: Judge Daniel Hall

FILED
2025 APR 23 AM 9:10
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

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

Case No. 2018-CP-42-00928

vs.)

CERTIFICATE OF SERVICE

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

The undersigned certifies that a copy of Applicant's Amended Motion to Alter or Amend Judgment was served by email to the AIS email addresses, pursuant to Section (b) of the Supreme Court of South Carolina's May 6, 2022 Order, this 17th day of April, 2025, upon the following:

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

s/Lindsey S. Vann
Lindsey S. Vann

April 17, 2025.

FILED
2025 APR 23 AM 9:10
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

Exhibit A: Emails Between the Parties Regarding Position on Short Order

FILED

2025 APR 23 AM 9:05

**CLERK OF COURT
SPARTANBURG COUNTY
401 W. 7th St.**



Lindsey Vann <lindsey@deathpenaltyresource.org>

Blackwell Status

Melody Brown <MBrown@scag.gov>

Mon, Feb 17, 2025 at 3:04 PM

To: "Lindsey S. Vann" <lindsey@justice360sc.org>, "Tommy Evans, Jr." <TommyEvansJr@scag.gov>, Anthony Mabry <amabry@scag.gov>

Cc: Charles Grose <charles@groselawfirm.com>, Rosalind Major <rosalind@justice360sc.org>

Good afternoon:

Short answer: The State does not consider the time to appeal could be running.

That said, I can provide you with our position. We considered Judge Hall's order to expressly provide that a formal order will follow such that it is not a final order that could be appealed. See Rule 203(b)(1), SCACR and Rule 243(a), SCACR. We will address that in the proposed order which you will have an opportunity to review pursuant to Judge Hall's prior directions and *Fishburne v. State*. Ordinarily, I think it would be most appropriate to move to dismiss the motion as premature, but Judge Hall has provided that he "will hear oral arguments on appropriate motions once the final order has been signed..." (Feb. 7, 2025 email). Given his wording, it appears that he has found that the motion as currently filed is not appropriate, which I construe as premature. It could not toll the time because the time to appeal is not yet running.

To be clear, whether to file a notice is not something on which we can advise. The State is merely responding to your request for our position. This is our position.

Kind regards,

Melody

MELODY J. BROWN, Senior Assistant Deputy Attorney General

Office of the South Carolina Attorney General

Capital and Collateral Litigation Section | Office 803-734-6305 | mbrown@scag.gov

P.O. Box 11549 | Columbia, SC 29211

scag.gov



FILED
2025 APR 23 AM 9:05
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

8596

This email, along with any attachments, is considered confidential and may be legally privileged. If you have received it in error please notify the sender immediately by reply email and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. This email, and attachments, are subject to FOIA requests. Thank you for your cooperation.

From: Lindsey S. Vann <lindsey@justice360sc.org>

Sent: Monday, February 17, 2025 1:50 PM

To: Melody Brown <MBrown@scag.gov>; Tommy Evans, Jr. <TommyEvansJr@scag.gov>; Anthony Mabry <amabry@scag.gov>

Cc: Charles Grose <charles@groselawfirm.com>; Rosalind Major <rosalind@justice360sc.org>

Subject: Blackwell Status

Dear Counsel,

We are reaching out to request your position on the status of the Blackwell case. Is it your position that the time for filing a NOA is running? Alternatively, is it your position that (1) the January 28th order falls under Rule 203(b)(1) as a "form or short order or judgement [that] indicates that a more full and complete order or judgment is to follow," which does not require the filing of a notice of appeal until the "written notice of entry of the more complete order or judgment;" or (2) that the Motion to Alter or Amend has tolled the NOA time limits (we recognize that Judge Hall's email appears to deny our requests made in the Motion to Alter or Amend, but he did not enter an order, so the Motion is still pending on the docket)?

Thank you for your consideration of this. If you believe the time for filing the NOA is currently running or if we do not hear back from you, we will file the NOA to make sure we protect Mr. Blackwell's right to appeal.

Please let us know your thoughts at your earliest convenience.

Best,

Lindsey S. Vann

Executive Director, Justice 360

900 Elmwood Avenue, Suite 200

Columbia, SC 29201 | (803) 765-1044

FILED
2025 APR 23 AM 9:05
CLERK OF COURT
SPARTANBURG COUNTY
AUSTIN COX

Exhibit B: Emails Indicating when a Ruling Would be Reached

FILED

2025 APR 23 AM 9:05

CLERK OF COURT
SARATOGA COUNTY
ALBANY, NY

Subject: RE: Blackwell v. State, 2018-CP-42-00928, Applicant's Post-Hearing Brief
Date: Wednesday, January 15, 2025 at 3:57:05 PM Eastern Standard Time
From: Hall, Daniel D.
To: Lindsey S. Vann, Hall, Daniel D. Law Clerk (), Hall, Daniel D. Secretary (Renee Graham Barker), Melody Brown, Tommy Evans, Jr., Anthony Mabry, Charles Grose, Rosalind Major

Thank you. I will rule by February 10.. Judge Hall

From: Lindsey S. Vann <lindsey@justice360sc.org>
Sent: Wednesday, January 15, 2025 2:46 PM
To: Hall, Daniel D. <dhallj@sccourts.org>; Hall, Daniel D. Law Clerk () <dhallc@sccourts.org>; Hall, Daniel D. Secretary (Renee Graham Barker) <dhallsc@sccourts.org>; Melody Brown <MBrown@scag.gov>; Tommy Evans, Jr. <TommyEvansJr@scag.gov>; Anthony Mabry <amabry@scag.gov>; Charles Grose <charles@groselawfirm.com>; Rosalind Major <rosalind@justice360sc.org>
Subject: Blackwell v. State, 2018-CP-42-00928, Applicant's Post-Hearing Brief

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

Dear Judge Hall,

Attached, please find Applicant's Post-Hearing Reply Brief in Ricky Blackwell's capital PCR action.

I will place a hard copy of the brief in the mail to Chambers and to the clerk for filing today.

Please let us know if you need anything further or have any questions.

Best,
Lindsey S. Vann
Executive Director, Justice 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201 | (803) 765-1044

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

FILED  
2025 APR 23 AM 9:05  
CLERK OF COURT  
SPARTANBURG COUNTY  
SOUTH CAROLINA

**Exhibit C: Emails Regarding the Final Order**

**FILED**

2025 APR 23 AM 9:05

CLERK OF COURT  
SPARTANBURG COUNTY  
MY V COR

**Subject:** Re: Signed Court's Order Dismissing PCR Application - Ricky Lee Blackwell  
**Date:** Friday, March 21, 2025 at 7:18:18 PM Eastern Daylight Time  
**From:** Hall, Daniel D. Secretary (Renee Graham Barker)  
**To:** Melody Brown, Hall, Daniel D., Charles Grose, Lindsey S. Vann  
**CC:** Tommy Evans, Jr., Anthony Mabry, Rosalind Major, Angela Brown  
**Attachments:** image001.png, image001.png

Good Evening:

Please send original Order with a return, self-addressed, stamped envelope to Judge Hall's chambers at Moss Justice Center.

Thank you, and have a great weekend.

Renee G. Barker  
Administrative Assistant  
of the Sixteenth Judicial Circuit  
Moss Justice Center  
1675-J York Hwy.  
York, SC 29745  
(803) 628-3048

Sent from my T-Mobile 5G Device  
Get Outlook for Android<<https://aka.ms/AAb9yvg>>

---

From: Melody Brown <MBrown@scag.gov>  
Sent: Friday, March 21, 2025 6:47:00 PM  
To: Hall, Daniel D. <dhallj@sccourts.org>; Charles Grose <charles@groselawfirm.com>; Lindsey S. Vann <lindsey@justice360sc.org>; Hall, Daniel D. Secretary (Renee Graham Barker) <dhallsc@sccourts.org>  
Cc: Tommy Evans, Jr. <TommyEvansJr@scag.gov>; Anthony Mabry <amabry@scag.gov>; Rosalind Major <rosalind@justice360sc.org>; Angela Brown <abennett@scag.gov>  
Subject: RE: Signed Court's Order Dismissing PCR Application - Ricky Lee Blackwell

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

Dear Judge Hall:

Attached is a PDF and Word copy of the State's proposed Order denying post-conviction relief. We will be happy to forward a paper copy to your chambers if you would like one (or two if you would like another for your clerk). Please let us know your preference.

And, should you need anything further in review of the proposed Order, please let us know so we can provide that, as well.

FILED  
2025 APR 01 13:05  
CLERK OF COURT  
SPARTANBURG COUNTY  
SOUTH CAROLINA

Kind regards,

MELODY J. BROWN, Senior Assistant Deputy Attorney General  
Office of the South Carolina Attorney General

Capital and Collateral Litigation Section | Office 803-734-6305 |  
mbrown@scag.gov<<mailto:mbrown@scag.gov>>

P.O. Box 11549 | Columbia, SC 29211

scag.gov<[https://protect.checkpoint.com/v2/r01/\\_\\_\\_\\_http://www.scag.gov/\\_\\_\\_\\_.YzJ1OnNjanVkaWNpYWw6YzpvOmQzMzM4MWNmNDk1YmlwZGNIOTM0OTMwOTM3YmYyZjY4Ojc6ZTA4YTphOWMzNzkwYmQ3NTIzNmEzMj4ZjNhYmViNWZlMwYyNWMyZWY3MDOzMDE1OTAzZTQxY2Y2NGM1MTZmNDBhMDEzOmg6RjpO](https://protect.checkpoint.com/v2/r01/____http://www.scag.gov/____.YzJ1OnNjanVkaWNpYWw6YzpvOmQzMzM4MWNmNDk1YmlwZGNIOTM0OTMwOTM3YmYyZjY4Ojc6ZTA4YTphOWMzNzkwYmQ3NTIzNmEzMj4ZjNhYmViNWZlMwYyNWMyZWY3MDOzMDE1OTAzZTQxY2Y2NGM1MTZmNDBhMDEzOmg6RjpO)>

[emailsigseal]

This email, along with any attachments, is considered confidential and may be legally privileged. If you have received it in error please notify the sender immediately by reply email and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. This email, and attachments, are subject to FOIA requests. Thank you for your cooperation.

-----Original Message-----

From: Hall, Daniel D. <dhallj@sccourts.org>

Sent: Tuesday, March 18, 2025 8:17 AM

To: Melody Brown <MBrown@scag.gov>; Charles Grose <charles@groselawfirm.com>; Lindsey S. Vann <lindsey@justice360sc.org>; Hall, Daniel D. Secretary (Renee Graham Barker) <dhallsc@sccourts.org>

Cc: Cox, Amy W. <acox@spartanburgcounty.org>; Tommy Evans, Jr. <TommyEvansJr@scag.gov>; Anthony Mabry <amabry@scag.gov>; Rosalind Major <rosalind@justice360sc.org>; Angela Brown <abennett@scag.gov>

Subject: Re: Signed Court's Order Dismissing PCR Application - Ricky Lee Blackwell

FILED  
2025 MAR 18 AM 9:05  
CLERK OF COURT  
SPARTANBURG COUNTY  
SOUTH CAROLINA  
JULIA COX

That is fine . Judge Hall

---

From: Melody Brown <MBrown@scag.gov<mailto:MBrown@scag.gov>>

Sent: Monday, March 17, 2025 10:57:26 PM

To: Hall, Daniel D.; Charles Grose; Lindsey S. Vann; Hall, Daniel D. Secretary (Renee Graham Barker)

Cc: Cox, Amy W.; Tommy Evans, Jr.; Anthony Mabry; Rosalind Major; Angela Brown

Subject: RE: Signed Court's Order Dismissing PCR Application - Ricky Lee Blackwell

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

Tommy and I have been working to put together the proposed order and it is mostly complete. I have had a little difficulty in putting some of the parts together, as we had three attorneys working on briefing and I'm afraid I have not correctly incorporated some parts in the main document. I regret to ask, but wondered if you would allow a short extension? I thought I could complete it today, but as the clock ticks forward I am rapidly understanding I have little ability to successfully estimate how long this should take. I would certainly have worked ahead if at all possible, but my workload (especially the capital case load) has been extraordinarily heavy over the last few month and has placed a strain on my calendar. I apologize for the delay and respectfully ask if we can get this to you by the end of the week. Thank you for considering.

Sincerely,

Melody

MELODY J. BROWN, Senior Assistant Deputy Attorney General Office of the South Carolina Attorney General  
Capital and Collateral Litigation Section | Office 803-734-6305 |  
mbrown@scag.gov<mailto:mbrown@scag.gov<mailto:mbrown@scag.gov%3cmailto:mbrown@scag.gov>>>

P.O. Box 11549 | Columbia, SC 29211

FILED  
2025 APR 23 AM 09:05  
CLERK OF COURT  
SPARTANBURG COUNTY  
ANY VA. CO.



Thanks,

Daniel D. Hall

Circuit Judge, Sixteenth Judicial Circuit

From: Melody Brown

<MBrown@scag.gov<mailto:MBrown@scag.gov<mailto:MBrown@scag.gov%3cmmailto:MBrown@scag.gov>>>

Sent: Thursday, February 6, 2025 5:38 PM

To: Charles Grose

<charles@groselawfirm.com<mailto:charles@groselawfirm.com<mailto:charles@groselawfirm.com%3cmmailto:charles@groselawfirm.com>>>; Hall, Daniel D.

<dhallj@sccourts.org<mailto:dhallj@sccourts.org<mailto:dhallj@sccourts.org%3cmmailto:dhallj@sccourts.org>>>; Lindsey S. Vann

<lindsey@justice360sc.org<mailto:lindsey@justice360sc.org<mailto:lindsey@justice360sc.org%3cmmailto:lindsey@justice360sc.org>>>; Hall, Daniel D. Secretary (Renee Graham Barker)

<dhallsc@sccourts.org<mailto:dhallsc@sccourts.org<mailto:dhallsc@sccourts.org%3cmmailto:dhallsc@sccourts.org>>>

Cc: Cox, Amy W.

<acox@spartanburgcounty.org<mailto:acox@spartanburgcounty.org<mailto:acox@spartanburgcounty.org%3cmmailto:acox@spartanburgcounty.org>>>; Tommy Evans, Jr.

<TommyEvansJr@scag.gov<mailto:TommyEvansJr@scag.gov<mailto:TommyEvansJr@scag.gov%3cmmailto:TommyEvansJr@scag.gov>>>; Anthony Mabry

<amabry@scag.gov<mailto:amabry@scag.gov<mailto:amabry@scag.gov%3cmmailto:amabry@scag.gov>>>; Rosalind Major

<rosalind@justice360sc.org<mailto:rosalind@justice360sc.org<mailto:rosalind@justice360sc.org%3cmmailto:rosalind@justice360sc.org>>>; Angela Brown

<abennett@scag.gov<mailto:abennett@scag.gov<mailto:abennett@scag.gov%3cmmailto:abennett@scag.gov>>>

Subject: RE: Signed Court's Order Dismissing PCR Application - Ricky Lee Blackwell

\*\*\* EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\* I am fine with 2:30, as well.

FILED  
2025 APR 23 AM 9:03  
CLERK OF COURT  
SPARTANBURG COUNTY  
ATTY GEN

Sincerely,

MELODY J. BROWN, Senior Assistant Deputy Attorney General Office of the South Carolina Attorney General  
Capital and Collateral Litigation Section | Office 803-734-6305 |  
mbrown@scag.gov<mailto:mbrown@scag.gov<mailto:mbrown@scag.gov%3cmailto:mbrown@scag.gov>>

P.O. Box 11549 | Columbia, SC 29211

scag.gov<[https://protect.checkpoint.com/v2/r01/\\_http://www.scag.gov/\\_YzJ1OnNjanVkaWNpYWw6YzpvOmY2YjBkODgxNzJkNjE0MGNkNWVmYTE1YjczZjAwYjFmOjc6NzcyZjplNWExN2UzZDMyNjQ0ZTUyODAyYTU3ZjA5N2NkOWY3YjUxNWQ1YTQxZWZWM2MzEyZjQyZmJhNDU1MzJiOWJkNzBjOmg6RjpO](https://protect.checkpoint.com/v2/r01/_http://www.scag.gov/_YzJ1OnNjanVkaWNpYWw6YzpvOmY2YjBkODgxNzJkNjE0MGNkNWVmYTE1YjczZjAwYjFmOjc6NzcyZjplNWExN2UzZDMyNjQ0ZTUyODAyYTU3ZjA5N2NkOWY3YjUxNWQ1YTQxZWZWM2MzEyZjQyZmJhNDU1MzJiOWJkNzBjOmg6RjpO)>>

[emailsigseal]

This email, along with any attachments, is considered confidential and may be legally privileged. If you have received it in error please notify the sender immediately by reply email and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. This email, and attachments, are subject to FOIA requests. Thank you for your cooperation.

From: Charles Grose

<charles@groselawfirm.com<mailto:charles@groselawfirm.com<mailto:charles@groselawfirm.com%3cmailto:charles@groselawfirm.com>>>

Sent: Thursday, February 6, 2025 5:04 PM

To: Melody Brown

<MBrown@scag.gov<mailto:MBrown@scag.gov<mailto:MBrown@scag.gov%3cmailto:MBrown@scag.gov>>>

>; Hall, Daniel D.

<dhallj@sccourts.org<mailto:dhallj@sccourts.org<mailto:dhallj@sccourts.org%3cmailto:dhallj@sccourts.org>>>

>; Lindsey S. Vann

<lindsey@justice360sc.org<mailto:lindsey@justice360sc.org<mailto:lindsey@justice360sc.org%3cmailto:lindsey@justice360sc.org>>>

>; Hall, Daniel D. Secretary (Renee Graham Barker)

<dhallsc@sccourts.org<mailto:dhallsc@sccourts.org<mailto:dhallsc@sccourts.org%3cmailto:dhallsc@sccourts.org>>>

Cc: Cox, Amy W.

<acox@spartanburgcounty.org<mailto:acox@spartanburgcounty.org<mailto:acox@spartanburgcounty.org%3cmailto:acox@spartanburgcounty.org>>>

cmailto:acox@spartanburgcounty.org>>>; Tommy Evans, Jr.  
<TommyEvansJr@scag.gov<mailto:TommyEvansJr@scag.gov<mailto:TommyEvansJr@scag.gov%3cmailto:TommyEvansJr@scag.gov>>>; Anthony Mabry  
<amabry@scag.gov<mailto:amabry@scag.gov<mailto:amabry@scag.gov%3cmailto:amabry@scag.gov>>>;  
Rosalind Major  
<rosalind@justice360sc.org<mailto:rosalind@justice360sc.org<mailto:rosalind@justice360sc.org%3cmailto:rosalind@justice360sc.org>>>; Angela Brown  
<abennett@scag.gov<mailto:abennett@scag.gov<mailto:abennett@scag.gov%3cmailto:abennett@scag.gov>>>  
>>

Subject: Re: Signed Court's Order Dismissing PCR Application - Ricky Lee Blackwell

Dear Judge Hall,

I have several appointments scheduled tomorrow afternoon, but I can be available at 2:30. I conferred with Ms. Vann, and she is available at 2:30 too.

Best,

Charles

E. Charles Grose, Jr.

The Grose Law Firm, LLC

305 Main Street

Greenwood, SC 29646

Phone: 864-538-4466

Fax: 864-538-4405

Web: GroseLawFirm.com

Email:

charles@groselawfirm.com<mailto:charles@groselawfirm.com<mailto:charles@groselawfirm.com%3cmailto:charles@groselawfirm.com>>>  
:charles@groselawfirm.com>>

FILED  
2025 APR 23 AM 9:05  
CLERK OF COURT  
SPARTANBURG COUNTY  
S.C. V. COX

From: Melody Brown

<MBrown@scag.gov<mailto:MBrown@scag.gov<mailto:MBrown@scag.gov%3cmailto:MBrown@scag.gov>>>  
>

Date: Thursday, February 6, 2025 at 3:56 PM

To: Hall, Daniel D.

<dhallj@sccourts.org<mailto:dhallj@sccourts.org<mailto:dhallj@sccourts.org%3cmailto:dhallj@sccourts.org>>>, Charles Grose

<charles@groselawfirm.com<mailto:charles@groselawfirm.com<mailto:charles@groselawfirm.com%3cmailto:charles@groselawfirm.com>>>, Lindsey S. Vann

<lindsey@justice360sc.org<mailto:lindsey@justice360sc.org<mailto:lindsey@justice360sc.org%3cmailto:lindsey@justice360sc.org>>>, Hall, Daniel D. Secretary (Renee Graham Barker)

<dhallsc@sccourts.org<mailto:dhallsc@sccourts.org<mailto:dhallsc@sccourts.org%3cmailto:dhallsc@sccourts.org>>>

Cc: Cox, Amy W.

<acox@spartanburgcounty.org<mailto:acox@spartanburgcounty.org<mailto:acox@spartanburgcounty.org%3cmailto:acox@spartanburgcounty.org>>>, Tommy Evans, Jr.

<TommyEvansJr@scag.gov<mailto:TommyEvansJr@scag.gov<mailto:TommyEvansJr@scag.gov%3cmailto:TommyEvansJr@scag.gov>>>, Anthony Mabry

<amabry@scag.gov<mailto:amabry@scag.gov<mailto:amabry@scag.gov%3cmailto:amabry@scag.gov>>>, Rosalind Major

<rosalind@justice360sc.org<mailto:rosalind@justice360sc.org<mailto:rosalind@justice360sc.org%3cmailto:rosalind@justice360sc.org>>>, Angela Brown

<abennett@scag.gov<mailto:abennett@scag.gov<mailto:abennett@scag.gov%3cmailto:abennett@scag.gov>>>

Subject: RE: Signed Court's Order Dismissing PCR Application - Ricky Lee Blackwell Yes, sir. I will be available at 3:00 tomorrow.

MELODY J. BROWN, Senior Assistant Deputy Attorney General Office of the South Carolina Attorney General  
Capital and Collateral Litigation Section | Office 803-734-6305 |  
mbrown@scag.gov<mailto:mbrown@scag.gov<mailto:mbrown@scag.gov%3cmailto:mbrown@scag.gov>>>

P.O. Box 11549 | Columbia, SC 29211

scag.gov<https://protect.checkpoint.com/v2/r01/\_http://www.scag.gov/\_YzJ1OnNjanVkaWNpYWw6YzpvOmY2YjBkODgxNzJkNjE0MGnkNWVmYTE1YjcZjAwYjFmOjc6NjIzNDpINTY3MGJjZTRjMzdjOTYxMjI0ODlkZTgyNTcwODk0MjdmZmI4MzUxZGZjN2I0YmE0NzU4MTY3NWUzMzlyODhlOmg6RjpO<https://protect.checkpoint.com/v2/r01/\_http://www.scag.gov/\_YzJ1OnNjanVkaWNpYWw6YzpvOmY2YjBkODgxNzJkNjE0MGnkNWVmYTE1YjcZjAwYjFmOjc6NjIzNDpINTY3MGJjZTRjMzdjOTYxMjI0ODlkZTgyNTcwODk0MjdmZmI4MzUxZGZjN2I0YmE0NzU4MTY3NWUzMzlyODhlOmg6RjpO>>

[emailsigseal]

This email, along with any attachments, is considered confidential and may be legally privileged. If you have received it in error please notify the sender immediately by reply email and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. This email, and attachments, are subject to FOIA requests. Thank you for your cooperation.

From: Hall, Daniel D.

<dhallj@sccourts.org<mailto:dhallj@sccourts.org<mailto:dhallj@sccourts.org%3cmailto:dhallj@sccourts.org>>>>

Sent: Thursday, February 6, 2025 3:51 PM

To: Melody Brown

<MBrown@scag.gov<mailto:MBrown@scag.gov<mailto:MBrown@scag.gov%3cmailto:MBrown@scag.gov>>>>

>; Charles Grose  
<charles@groselawfirm.com<mailto:charles@groselawfirm.com<mailto:charles@groselawfirm.com%3cmailto:charles@groselawfirm.com>>>>

>; Lindsey S. Vann  
<lindsey@justice360sc.org<mailto:lindsey@justice360sc.org<mailto:lindsey@justice360sc.org%3cmailto:lindsey@justice360sc.org>>>>

>; Hall, Daniel D. Secretary (Renee Graham Barker)  
<dhallsc@sccourts.org<mailto:dhallsc@sccourts.org<mailto:dhallsc@sccourts.org%3cmailto:dhallsc@sccourts.org>>>>

Cc: Cox, Amy W.

<acox@spartanburgcounty.org<mailto:acox@spartanburgcounty.org<mailto:acox@spartanburgcounty.org%3cmailto:acox@spartanburgcounty.org>>>>

>; Tommy Evans, Jr.  
<TommyEvansJr@scag.gov<mailto:TommyEvansJr@scag.gov<mailto:TommyEvansJr@scag.gov%3cmailto:TommyEvansJr@scag.gov>>>>

>; Anthony Mabry  
<amabry@scag.gov<mailto:amabry@scag.gov<mailto:amabry@scag.gov%3cmailto:amabry@scag.gov>>>>

>; Rosalind Major  
<rosalind@justice360sc.org<mailto:rosalind@justice360sc.org<mailto:rosalind@justice360sc.org%3cmailto:rosalind@justice360sc.org>>>>

>; Angela Brown  
<abennett@scag.gov<mailto:abennett@scag.gov<mailto:abennett@scag.gov%3cmailto:abennett@scag.gov>>>>

Subject: RE: Signed Court's Order Dismissing PCR Application - Ricky Lee Blackwell

How about 3:00 tomorrow afternoon? Judge Hall I have questions regarding procedure

From: Melody Brown

<MBrown@scag.gov<mailto:MBrown@scag.gov<mailto:MBrown@scag.gov%3cmailto:MBrown@scag.gov>>>>

>

FILED  
2025 APR 23 AM 9:05  
CLERK C. COURT  
SPARTANBURG COUNTY  
SOUTH CAROLINA

Sent: Thursday, February 6, 2025 3:46 PM

To: Charles Grose

<charles@groselawfirm.com<mailto:charles@groselawfirm.com<mailto:charles@groselawfirm.com%3cmaito:charles@groselawfirm.com>>>; Hall, Daniel D.  
<dhallj@sccourts.org<mailto:dhallj@sccourts.org<mailto:dhallj@sccourts.org%3cmaito:dhallj@sccourts.org>>>; Lindsey S. Vann  
<lindsey@justice360sc.org<mailto:lindsey@justice360sc.org<mailto:lindsey@justice360sc.org%3cmaito:linds  
ey@justice360sc.org>>>; Hall, Daniel D. Secretary (Renee Graham Barker)  
<dhallsc@sccourts.org<mailto:dhallsc@sccourts.org<mailto:dhallsc@sccourts.org%3cmaito:dhallsc@sccourt  
s.org>>>

Cc: Cox, Amy W.

<acox@spartanburgcounty.org<mailto:acox@spartanburgcounty.org<mailto:acox@spartanburgcounty.org%3  
cmaito:acox@spartanburgcounty.org>>>; Tommy Evans, Jr.  
<TommyEvansJr@scag.gov<mailto:TommyEvansJr@scag.gov<mailto:TommyEvansJr@scag.gov%3cmaito:Tom  
myEvansJr@scag.gov>>>; Anthony Mabry  
<amabry@scag.gov<mailto:amabry@scag.gov<mailto:amabry@scag.gov%3cmaito:amabry@scag.gov>>>;  
Rosalind Major  
<rosalind@justice360sc.org<mailto:rosalind@justice360sc.org<mailto:rosalind@justice360sc.org%3cmaito:r  
osalind@justice360sc.org>>>; Angela Brown  
<abennett@scag.gov<mailto:abennett@scag.gov<mailto:abennett@scag.gov%3cmaito:abennett@scag.gov>>>  
>>

Subject: RE: Signed Court's Order Dismissing PCR Application - Ricky Lee Blackwell

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

Given the below response, I'm not entirely sure where we might be in regard to the request to discuss the matter tomorrow, but I am available a 10:00 and in the afternoon. Thank you.

Sincerely,

MELODY J. BROWN, Senior Assistant Deputy Attorney General Office of the South Carolina Attorney General  
Capital and Collateral Litigation Section | Office 803-734-6305 |  
[mbrown@scag.gov](mailto:mbrown@scag.gov)<mailto:mbrown@scag.gov<mailto:mbrown@scag.gov%3cmaito:mbrown@scag.gov>>>

P.O. Box 11549 | Columbia, SC 29211

FILED  
2025 APR 23 AM 9:05  
CLERK OF COURT  
SPARTANBURG COUNTY  
FLORENCE

scag.gov<<https://protect.checkpoint.com/v2/r01/> <http://www.scag.gov/> .YzI1OnNjanVkaWNpYWw6Yzp  
vOmJhMzcwZDFINjFjOGIzYzA2MjAzZGNjZDM0ZGY0OTM4Ojc6MjQ0MzpjNjE0N2M0YjhIMDIzMDU2NjQyMjFjZ  
DhjZTNhNWQ1N2I2N2MzYjNINDQ2NTEwMDYzOTY5MmNiNzkxMDkzNGVhOmg6RjpO<<https://protect.checkpoint.com/v2/r01/> <http://www.scag.gov/> .YzI1OnNjanVkaWNpYWw6YzpvOmJhMzcwZDFINjFjOGIzYzA2MjAzZGNjZDM0ZGY0OTM4Ojc6MjQ0MzpjNjE0N2M0YjhIMDIzMDU2NjQyMjFjZDhjZTNhNWQ1N2I2N2MzYjNINDQ2NTEwMDYzOTY5MmNiNzkxMDkzNGVhOmg6RjpO>>

[emailsigseal]

This email, along with any attachments, is considered confidential and may be legally privileged. If you have received it in error please notify the sender immediately by reply email and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. This email, and attachments, are subject to FOIA requests. Thank you for your cooperation.

From: Charles Grose

<[charles@groselawfirm.com](mailto:charles@groselawfirm.com)<<mailto:charles@groselawfirm.com><<mailto:charles@groselawfirm.com>%3cmailto:charles@groselawfirm.com>>>

Sent: Thursday, February 6, 2025 3:14 PM

To: Hall, Daniel D.

<[dhallj@sccourts.org](mailto:dhallj@sccourts.org)<<mailto:dhallj@sccourts.org><<mailto:dhallj@sccourts.org>%3cmailto:dhallj@sccourts.org>>>; Lindsey S. Vann

<[lindsey@justice360sc.org](mailto:lindsey@justice360sc.org)<<mailto:lindsey@justice360sc.org><<mailto:lindsey@justice360sc.org>%3cmailto:lindsey@justice360sc.org>>>; Hall, Daniel D. Secretary (Renee Graham Barker)

<[dhallsc@sccourts.org](mailto:dhallsc@sccourts.org)<<mailto:dhallsc@sccourts.org><<mailto:dhallsc@sccourts.org>%3cmailto:dhallsc@sccourts.org>>>

Cc: Cox, Amy W.

<[acox@spartanburgcounty.org](mailto:acox@spartanburgcounty.org)<<mailto:acox@spartanburgcounty.org><<mailto:acox@spartanburgcounty.org>%3cmailto:acox@spartanburgcounty.org>>>; Melody Brown

<[MBrown@scag.gov](mailto:MBrown@scag.gov)<<mailto:MBrown@scag.gov><<mailto:MBrown@scag.gov>%3cmailto:MBrown@scag.gov>>>; Tommy Evans, Jr.

<[TommyEvansJr@scag.gov](mailto:TommyEvansJr@scag.gov)<<mailto:TommyEvansJr@scag.gov><<mailto:TommyEvansJr@scag.gov>%3cmailto:TommyEvansJr@scag.gov>>>; Anthony Mabry

<[amabry@scag.gov](mailto:amabry@scag.gov)<<mailto:amabry@scag.gov><<mailto:amabry@scag.gov>%3cmailto:amabry@scag.gov>>>

Rosalind Major

<[rosalind@justice360sc.org](mailto:rosalind@justice360sc.org)<<mailto:rosalind@justice360sc.org><<mailto:rosalind@justice360sc.org>%3cmailto:rosalind@justice360sc.org>>>

Subject: Re: Signed Court's Order Dismissing PCR Application - Ricky Lee Blackwell

FILED  
APR 23 AM 9:05  
CLERK OF COURT  
SPARTANBURG COUNTY  
S.C.

Dear Judge Hall,

Beginning at 9:30 tomorrow, I will be involved in the docket call/status conference for cases on the Spartanburg GS jury trial docket for next week. I am not sure how long that will last.

Also, Ms. Vann and I request any status conference or hearing on the Rule 59(e) motion be on the record.

For planning purposes, I also have the first case for trial on the Greenwood GS jury trial docket for next week.

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

Best,

Charles

E. Charles Grose, Jr.

The Grose Law Firm, LLC

305 Main Street

Greenwood, SC 29646

Phone: 864-538-4466

Fax: 864-538-4405

Web: GroseLawFirm.com

Email:

charles@groselawfirm.com<mailto:charles@groselawfirm.com>  
:charles@groselawfirm.com>>

FILED  
2025 APR 23 AM 9:06  
CLERK OF COURT  
SPARTANBURG COUNTY  
SOUTH CAROLINA

From: Hall, Daniel D.

<dhallj@sccourts.org<mailto:dhallj@sccourts.org<mailto:dhallj@sccourts.org%3cmailto:dhallj@sccourts.org>>>>

Date: Thursday, February 6, 2025 at 2:35 PM

To: Lindsey S. Vann

<lindsey@justice360sc.org<mailto:lindsey@justice360sc.org<mailto:lindsey@justice360sc.org%3cmailto:lindsey@justice360sc.org>>>, Hall, Daniel D. Secretary (Renee Graham Barker)  
<dhallsc@sccourts.org<mailto:dhallsc@sccourts.org<mailto:dhallsc@sccourts.org%3cmailto:dhallsc@sccourts.org>>>>

Cc: Cox, Amy W.

<acox@spartanburgcounty.org<mailto:acox@spartanburgcounty.org<mailto:acox@spartanburgcounty.org%3cmailto:acox@spartanburgcounty.org>>>, Charles Grose

<charles@groselawfirm.com<mailto:charles@groselawfirm.com<mailto:charles@groselawfirm.com%3cmailto:charles@groselawfirm.com>>>,

mbrown@scag.gov<mailto:mbrown@scag.gov<mailto:mbrown@scag.gov%3cmailto:mbrown@scag.gov>>>

<mbrown@scag.gov<mailto:mbrown@scag.gov<mailto:mbrown@scag.gov%3cmailto:mbrown@scag.gov>>>

,  
tommyevansjr@scag.gov<mailto:tommyevansjr@scag.gov<mailto:tommyevansjr@scag.gov%3cmailto:tommyevansjr@scag.gov>>>

<tommyevansjr@scag.gov<mailto:tommyevansjr@scag.gov<mailto:tommyevansjr@scag.gov%3cmailto:tommyevansjr@scag.gov>>>, Anthony Mabry

<amabry@scag.gov<mailto:amabry@scag.gov<mailto:amabry@scag.gov%3cmailto:amabry@scag.gov>>>, Rosalind Major

<rosalind@justice360sc.org<mailto:rosalind@justice360sc.org<mailto:rosalind@justice360sc.org%3cmailto:rosalind@justice360sc.org>>>

Subject: RE: Signed Court's Order Dismissing PCR Application - Ricky Lee Blackwell Are y'all available to enter my virtual courtroom tomorrow morning at 10:00 am to discuss this issue?

Daniel D. Hall

Circuit Judge, Sixteenth Judicial Circuit

From: Lindsey S. Vann

<lindsey@justice360sc.org<mailto:lindsey@justice360sc.org<mailto:lindsey@justice360sc.org%3cmailto:lindsey@justice360sc.org>>>

Sent: Thursday, February 6, 2025 12:57 PM

To: Hall, Daniel D. Secretary (Renee Graham Barker)

<dhallsc@sccourts.org<mailto:dhallsc@sccourts.org<mailto:dhallsc@sccourts.org%3cmailto:dhallsc@sccourts.org>>>; Hall, Daniel D.

<dhallj@sccourts.org<mailto:dhallj@sccourts.org<mailto:dhallj@sccourts.org%3cmailto:dhallj@sccourts.org>>>

FILED  
2025 APR 23 AM 9:06  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

Cc: Cox, Amy W.

<acox@spartanburgcounty.org<mailto:acox@spartanburgcounty.org<mailto:acox@spartanburgcounty.org%3cmailto:acox@spartanburgcounty.org>>>; Charles Grose  
<charles@groselawfirm.com<mailto:charles@groselawfirm.com<mailto:charles@groselawfirm.com%3cmailto:charles@groselawfirm.com>>>;  
mbrown@scag.gov<mailto:mbrown@scag.gov<mailto:mbrown@scag.gov%3cmailto:mbrown@scag.gov>>>;  
tommyevansjr@scag.gov<mailto:tommyevansjr@scag.gov<mailto:tommyevansjr@scag.gov%3cmailto:tommyevansjr@scag.gov>>>; Anthony Mabry  
<amabry@scag.gov<mailto:amabry@scag.gov<mailto:amabry@scag.gov%3cmailto:amabry@scag.gov>>>;  
Rosalind Major  
<rosalind@justice360sc.org<mailto:rosalind@justice360sc.org<mailto:rosalind@justice360sc.org%3cmailto:rosalind@justice360sc.org>>>

Subject: Re: Signed Court's Order Dismissing PCR Application - Ricky Lee Blackwell

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

Attached, please find Applicant's Motion to Alter or Amend Judgment in this case. Hard copies are being sent to Chambers and the Clerk for filing today.

Thank you for your attention to this matter.

Best,

Lindsey S. Vann

Executive Director, Justice 360

900 Elmwood Avenue, Suite 200

Columbia, SC 29201 | (803) 765-1044

FILED  
2025 APR 23 AM 9:06  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY W. COX

On Tue, Jan 28, 2025 at 11:06 AM Hall, Daniel D. Secretary (Renee Graham Barker)  
<dhallsc@sccourts.org<mailto:dhallsc@sccourts.org<mailto:dhallsc@sccourts.org%3cmailto:dhallsc@sccourts.org>>> wrote:

Good Morning!

Attached is the signed Order Dismissing PCR Application for Ricky Lee Blackwell.

Amy, we are mailing the original to you today, but sending everyone a copy for their records.

Thank you, and have a great day!!

Renee G. Barker

Administrative Assistant

to Daniel D. Hall

Administrative Judge of the Sixteenth Judicial Circuit 1675-1J York Highway York, SC 29745

803-628-3048

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

FILED
2025 APR 23 AM 9:06
CLERK OF COURT
SPARTANBURG COUNTY
S.C.

Exhibit D: Respondent's Proposed Order

FILED

2025 APR 23 AM 9:06

CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

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

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C/A No.: 2018-CP-42-00928
(Capital PCR)

**** RESPONDENT'S PROPOSED ****
ORDER
(DENYING POST-CONVICTION RELIEF)

This matter is before the Court for consideration of the application for post-conviction relief (PCR) filed by Applicant, Ricky Lee Blackwell. Applicant is a death-sentenced inmate presently confined in the Secure Facility at the Broad River Correctional Institution. Applicant filed his initial application on March 15, 2018, beginning the capital proceedings in circuit court. On March 29, 2018, the Supreme Court of South Carolina assigned the undersigned to preside over the case. With the assistance of his appointed counsel, Applicant filed a second application on February 22, 2019, and a third and final amended application on November 12, 2021.

An evidentiary hearing was held in three parts beginning on March 27-31, 2023, with another hearing on July 31- August 2, 2023, and concluding with testimony taken on December 15, 2023. Applicant attended a portion of the hearing during the March 2023 segment, then waived his presence at the remaining portions. Applicant remained represented at all times by appointed counsel, Charles E. Grose, Esq., and Lindsey S. Vann, Esq. The State was represented by Senior Assistant Deputy Attorney General Melody J. Brown, Senior Assistant Attorney General Anthony Mabry and Assistant Attorney General Tommy Evans, Jr.

At the conclusion of the hearing, the court set a schedule to receive post-hearing briefing. The parties have submitted their briefs, and this Court has considered the arguments for and against

FILED
2025 FEB 23 AM 9:06
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

the granting of relief. Along with the post-hearing briefing submissions, this Court has also considered the testimony, exhibits, the transcripts, and all other filings and matters relevant to this action. After careful consideration of the evidence and arguments and having observed the witnesses and passed on their credibility, this Court finds that Applicant has failed to show he is entitled to any relief.¹ The Court begins with a recitation of the procedural history in relevant part.

PROCEDURAL HISTORY

I. *Indictment and Trial*

Applicant was indicted by a Spartanburg County Grand Jury in July 2009 for the kidnapping and murder of eight-year-old Heather Brooke C [REDACTED] (R. 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 Applicant on the charges. S. Boyd Young, Esq., also of the South Carolina Commission on Indigent Defense, Capital Trial Division, assisted during trial. The Honorable Barry J. Barnette, Solicitor of the Seventh Judicial Circuit, along with

¹ The Court's decision was incorporated into a short order and announced to the parties on January 28, 2025. That order, filed on January 31, 2025, expressly noted that a formal order would follow. The Court notes that Applicant's counsel submitted a Rule 59 motion on February 6, 2025. However, that motion was premature as the final order had not yet been issued. Applicant may re-file his motion or file an amended motion at the appropriate time.

Further, in the same order, the Court, having agreed with the State's arguments in these matters in relevant and substantial part, also called for a proposed order from the State. Applicant has been provided a copy of the proposed order drafted by the State for this Court's review and has been encouraged to carefully review the order pursuant to *Fishburne v. State*, 427 S.C.1505, 516, 832 S.E.2d 584, 589 (2019), particularly to bring to the Court's attention any argument or issue that Applicant believes was not addressed.

FILED
SPARTANBURG COUNTY
CLERK OF COURT
MAR 3 AM 9:06

Deputy Solicitor Derick B. Bulsa, and Assistant Solicitor Russell Ghent represented the State. The South Carolina Supreme Court assigned the Honorable Roger L. Couch exclusive jurisdiction over the capital proceedings.

On February 19, 2014, a hearing began pursuant to *Franklin v. Maynard*, 356 S.C. 276, 279, 588 S.E.2d 604, 606 (2003), on Applicant's claim of intellectual disability. Judge Couch heard competing opinions and arguments over three days. After detailed questions of his own, Judge Couch found Applicant had failed to carry his burden of proof of showing intellectual disability by a preponderance of the evidence. (Supp. R. 1-14 [February 25, 2014 Order]).²

Because Judge Couch's ruling allowed the capital trial to proceed, capital *voir dire* proceedings began thereafter, and a jury was selected. The guilty phase began on March 11, 2014, and sent to the jury on March 12, 2014. The jury began deliberations at 4:08 pm and returned a guilty verdict at 4:29 pm. (R. 2600, lines 18-20; 2602, lines 1-8). Applicant waived the statutory twenty-four (24) hour break afforded between phases, and the penalty phase began at 1:30 pm on the afternoon of March 13, 2014. (R. 2603, line 15 – 2604, line 18; 2606, line 21 – 2607, line 13). At the conclusion of penalty phase deliberations on March 16, 2014, the jury found (1) that Applicant failed to show by a preponderance of the evidence he was intellectually disabled, (R. 3257, lines 16-22); then found (2) that the State had proven beyond a reasonable doubt, two statutory aggravating circumstances in aggravation: The murder of a child eleven years of age or under and the murder was committed while in the commission of the crime of kidnapping. (R. 3257, l. 23 – 3258, l. 11) (*See* S.C. Code Ann. § 16-3-20 (C)(a)(10) and (C)(a)(1)(b)). The jury concluded that death was the appropriate sentence. (R. 3258, lines 12-25). Judge Couch followed

² The prior records have been provided to the Court and in some cases referenced through the direct appeal filings available on our Supreme Court's website through e-track, Appellate Case No. 2014-000610.

FILED
APR 23 9:06
CLERK OF COURT
HARTSOG COUNTY
SOUTH CAROLINA

the mandatory resolution and sentenced Applicant to death. (R. 3262, line 14 –3263, line 5; 4823 & 4825).³

II. *Direct Appeal*

Applicant, represented by appellate defenders Robert M. Dudek and David Alexander, of the Office of Indigent Defense, Division of Appellate Defense, raised multiple issues in the direct appeal including two issues regarding privileged medical information of a witness. The witness records issues were redacted in light of the nature of the information. The appeal issues, not including the redated ones, were:

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?

³ The sentence for kidnapping was subsumed by the murder sentence in accordance with the prior provisions of S.C. Code Ann. § 16-3-910. The statute was amended, effective July 24, 2024, to strike the provision that a kidnapping sentence would not be imposed where the defendant was sentenced for murder. However, that prior provision was controlling at the time of sentencing in this case.

FILED
2025 APR 23 PM 6:08
CLERK OF DISTRICT COURT
SPARTANBURG, SOUTH CAROLINA

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?

(Return Attachment 2, pp. 7-8).

In an opinion issued on May 31, 2017, the Supreme Court of South Carolina affirmed the convictions and death sentence. *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017). Applicant did not seek rehearing but filed a petition in the Supreme Court of the United States seeking review of the intellectual disability claim determination, and treatment of the privileged mental health records. Applicant’s petition was denied February 20, 2018. (Return Attachment 10).

FACTS OF THE CRIME

Our Supreme Court set out a succinct summary of the facts, which this Court relies upon for context in addressing the issues that follow:

After twenty-six years of marriage, Blackwell’s wife, Angela, entered into an adulterous relationship with Bobby Center in 2008. By all accounts, Blackwell was devastated when Angela left him. Following the breakup, Blackwell attempted suicide, suffered financial problems, and was forced to turn to his parents for support.

According to Angela, on July 8, 2009, Blackwell came to her parents’ house to discuss insurance matters. While there, Blackwell chastised her about not visiting their grandsons and urged her to go see them that day. Angela testified she was going to take Brooke swimming at Center’s house that day and intended to pick up her grandsons to take them along. When she arrived at her daughter’s

FILED
2025 APR 23 AM 9:06
CLERK OF COURT
SPARTANBURG COUNTY

home, she did not see her daughter's car. Assuming that her daughter was not home, Angela began to drive away. As she was leaving, Blackwell flagged her down and informed her that their daughter went to the store but that their son-in-law had the children. Angela testified she got out of the car to secure a dog in order that it would not bite Brooke. When Angela turned around, she saw that Blackwell had grabbed Brooke and was holding a gun to the child. Blackwell ignored Angela's pleas for him to release Brooke. Instead, Blackwell stated that Angela had "pushed this too far," that she "did this," and that she could let him know "what Bobby thinks of this." Blackwell then fatally shot Brooke. Following the shooting, Blackwell fled into the woods behind his daughter's home. When law enforcement surrounded him, Blackwell shot himself in the stomach and was taken to the hospital. While being transported to the hospital and waiting for treatment, Blackwell gave inculpatory statements to the law enforcement officers who questioned him.

Blackwell, 420 S.C. at 135, 801 S.E.2d at 717.

POST CONVICTION RELIEF ALLEGATIONS

In his third and final application filed on November 12, 2021, Applicant presented the following allegations for relief:

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

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

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

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

FILED
2025 APR 23 AM 9:06
CLERK OF COURT
SOUTH CAROLINA
JUDICIAL DISTRICT
OF CLAY COUNTY

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

(1) Counsel failed to investigate and present all relevant evidence on the issue of intellectual disability including evidence of Applicant's significantly subaverage intellectual functioning, deficits in adaptive functioning, and onset before the age of 18, *Atkins v. Virginia*, 536 U.S. 304 (2002); *Wiggins v. Smith*, 583, U.S. 510 (2003);

(2) Counsel failed to object to the trial judge's reliance on stereotype and deviation from clinical consensus and practice in the determination that Applicant was not a person with intellectual disability, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 572 U.S. 701 (2014);

(3) Counsel failed to investigate and present evidence that some of Applicant's purported IQ test scores in the developmental period were not legitimate, individualized measures of general intellectual functioning and thus were not inconsistent with intellectual disability, *Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 572 U.S. 701 (2014); *Wiggins v. Smith*, 583, U.S. 510 (2003);

(4) Counsel failed to investigate and present circumstances under which Applicant obtained a commercial driver's license and other certifications to refute the trial judge and jury's reliance on the certifications in finding Applicant was not a person with intellectual disability, *see Wiggins v. Smith*, 583, U.S. 510 (2003);

(5) Counsel failed to investigate and present evidence to the trial judge and jury that Applicant's depression and cancer treatment (including chemotherapy) had no demonstrable effect on IQ scores establishing significantly subaverage intellectual functioning;

(6) Counsel failed to investigate and present evidence that Applicant is a person with intellectual disability as a result of a genetic abnormality of his *CAMTA1* gene, which he inherited from his mother

(7) Counsel failed to adequately inform and educate the trial judge and jury about potentially prejudicial and preconceived misconceptions and stereotypes related to intellectual disability, *see Moore v. Texas*, 137 S.Ct. 1039 (2017);

FILED
2025 APR 10
AH 9:06
CLERK OF COURT
SPRING COUNTY
TX

(8) Counsel failed to object to the Solicitor's sentencing phase closing argument endorsing improper stereotypes toward people with intellectual disability when the Solicitor stated: "I mean it's an insult to people that had truly – have a mental disability for them to bring this kind of defense up to try to spare his life trying to use that excuse," Tr. 3169, and "He's not disabled, and, like I say, it's an insult to people that's mentally—I mean that truly has that kind of condition." Tr. 3171. *See Moore v. Texas*, 137 S. Ct. 1039 (2017); *Brown v. State*, 383 S.C. 506, 680 S.E.2d 909 (2009); *State v. Northcutt*, 372 S.C. 207, 641 S.E.2d 873 (2007); *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2007), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d (2004).

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

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

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

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

(1) Counsel failed to adequately investigate and present the full range of mitigating evidence concerning Applicant's social and life history, *see Wiggins v. Smith*, 583 U.S. 510 (2003);

(2) Counsel failed to adequately investigate and present all available mitigating evidence concerning Applicant's mental health prior to and at the time of the capital offense, *see Wiggins v. Smith*, 583 U.S. 510 (2003);

(3) Counsel failed to investigate and present mitigating evidence concerning Applicant's lack of future dangerousness, adaptability to confinement, and good character, *Skipper v. South Carolina*, 476 U.S. 1 (1986);

(4) Counsel failed to adequately investigate and present scientific evidence demonstrating that the fact the victim urinated on herself was a natural result of death as opposed to resulting from fear while alive during the incident;

(5) Counsel failed to object to misleading jury instructions, in violation of the Sixth and Eighth Amendments to the United States Constitution, which did not properly advise the jurors that whatever sentence they recommended would be the sentence imposed by the court rather than a recommendation to the court about the sentence to be imposed, *see Hurst v. Florida*, 572 U.S. 701 (2016); *Ring v. Arizona*, 536 U.S. 584 (2002); *Caldwell v. Mississippi*, 472 U.S. 320, 328-29 (1985); *see also State v. Bellamy*, 293 S.C. 103, 259 S.E.2d 63 (1987), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991);

(6) Counsel failed to investigate and present evidence of remorse and acceptance of responsibility including, but not limited to, failure to call a hospital chaplain to testify regarding Applicant's remorse shortly after the crime when the chaplain's records documenting the remorse were excluded by the trial judge as inadmissible hearsay;

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

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

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

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

See, e.g. Brown v. State, 383 S.C. 506, 680 S.E.2d 909 (2009); *State v. Northcutt*, 372 S.C. 207, 641 S.E.2d 873 (2007); *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2007), *overruled on other grounds by State v. Belcher*,

385 S.C. 597, 685 S.E.2d 802 (2009); *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d (2004).

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

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

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

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

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

(1) Appellate counsel failed to adequately raise and brief all legal and factual grounds for challenging the trial court's ruling that Applicant was not intellectually disabled, *see Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 572 U.S. 701 (2014); *Atkins v. Virginia*, 536 U.S. 304 (2002); *Patrick v. State*, 349 S.C. 203, 562 S.E.2d 609 (2002);

(2) Appellate counsel failed to raise the issue that the trial court erred in admitting prejudicial autopsy photographs and close-up photographs from the crime scene, including a photograph of the victim after she [sic] her body was moved, U.S. Const. amends. V, VIII; Rule 403 SCRE;

(3) Appellate counsel failed to raise the issue that the trial court erred in allowing Reggie Frye to testify during the penalty phase of Applicant's trial when Frye's testimony was not relevant and impermissible hearsay, Rule 401, SCRE; Rule 613(b), SCRE; Rule 802, SCRE.

(4) Appellate counsel failed to adequately raise and brief all legal and factual grounds for finding Applicant's death sentence disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant, pursuant to S.C. Code § 16-3-25 (C)(3), *see State v. Dickerson*, 395 S.C. 101, 125 n.8, 716 S.E.2d 895, 908 n. 8 (2011).

Third Amended Application for Post-Conviction
Relief, filed November 12, 2021, pp. 2-6.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the filings in this case and has heard the testimony and considered the evidence presented. This Court specifically notes that it has had the opportunity to observe the witnesses presented at the evidentiary hearing, and closely pass upon their credibility, weighing their testimony accordingly. After considering Applicant's and Respondent's positions, the testimony at the evidentiary hearing, and after having carefully reviewed the Record, I find that I must deny the application for postconviction relief. Set forth below are the relevant findings of fact and conclusions of law as required under S.C. Code Ann. § 17-27-80 and S.C. Code Ann. § 17-27-160(D).

Jurisdiction

The scope of this Court's jurisdiction for PCR matters is set out in S.C. Code Ann. § 17-27-20 (A). In addition to the listing of claims that may be raised in Section (A), there is a limitation. Section (B) provides: "This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(B). Because a PCR action is not a substitute for those proceedings, a PCR applicant cannot assert any issues in his PCR action that could have been raised at trial and on

FILED
2023 APR 23 AM 9:07
CLERK OF COURT
STANLEY COUNTY
N.C.

direct appeal. This prohibition has long been recognized. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“Errors in a petitioner’s trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings.”); *see also Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (“The Simmons rule gives effect to the Legislature’s clear intent that the post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”).

Standard of Review for Ineffective Assistance of Counsel Claim

While previously heard or unheard freestanding trial or direct appeal issues are not cognizable, the general factual basis for the previously unheard issues may be reached by and through an allegation of ineffective assistance of counsel. *Drayton*, 312 S.C. at 9, 430 S.E.2d at 520 (“Issues that could have been raised at trial or on direct appeal cannot be asserted in an application for post-conviction relief absent a claim of ineffective assistance of counsel.”). Ineffective assistance of counsel claims constitute the general nature of issues appropriate for post-conviction relief actions. *See, e.g., Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (discussing jurisdiction pursuant to S.C. Code § 17-27-20(A), and finding “A typical PCR claim of ineffective assistance of counsel falls into this category....”).

To establish that Sixth Amendment counsel was ineffective, a PCR applicant must show that counsel’s representation fell below an objective standard of reasonableness, and if not for counsel’s error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to

undermine confidence in the outcome” of the trial. *Strickland, supra*. Relief will not be granted on a showing of mere error—prejudice must also be shown. *Id.*

The standard of “prejudice” differs depending upon whether it is related to guilt phase issues or penalty phase issues. In order to prove “prejudice” in the guilt phase, an applicant must show that but for counsel’s errors, there is a reasonable probability the result of the trial would have been different. *Johnson v. State*, 325 S.C. 182, 480 S.E.2d 733 (1997). In *Jones v. State*, 332 S.C. 329, 504 S.E.2d 822 (1998), the court instructed that prejudice may be found in a capital sentencing proceeding “when ‘there is a reasonable probability that, absent [counsel’s] errors, the sentencer—including an appellate court, to the extent it independently reweighs the evidence—would have concluded that the balance of aggravating and mitigating circumstances did not warrant death.’” 332 S.C. at 333, 504 S.E.2d at 823 (quoting *Strickland*, 466 U.S. at 695). Again, “[a] reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* (quoting *Strickland*, 466 U.S. at 694).

To conduct a fair review of counsel’s performance, a reviewing court must “eliminate the distorting effects of hindsight” and attempt “to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689.

When reviewing Applicant’s issues under the above jurisdictional limitations and the standard for review of ineffective assistance of counsel claims, the Record and PCR presentations—including testimony, other evidence, and arguments—together show that Applicant is not entitled to any relief on the claims presented.

This court will address the claims in detail below.

FILED
2025 APR 23 AM 9:07
CLERK OF COURT
SOUTH CAROLINA
JUDICIAL BRANCH

“confirmed that none of the experts they worked with prior to trial recommended they obtain genetic testing prior to” the trial proceedings. (Appellant’s Post-hearing Brief, at 34). There is nothing to show that counsel conducted an unreasonable investigation. *See Wiggins v. Smith*, 539 U.S. 510, 524 (2003) (using the term “reasonably available” in describing mitigation investigation efforts); *Wilson v. Greene*, 155 F.3d 396, 403 (4th Cir. 1998) (“counsel was not required to second-guess” expert); *Rubio v. Lumpkin*, 729 F. Supp. 3d 616, 668 (S.D. Tex. 2024) (“The fact that other experts can review the record in hindsight and identify additional areas of inquiry does not in itself reflect that trial counsel’s representation fell below an objective standard of reasonableness.”); *Terry v. Stirling*, No. CV 4:12-1798-RMG, 2019 WL 4723345, at *14 (D.S.C. Sept. 26, 2019), *aff’d*, 854 F. App’x 475 (4th Cir. 2021) (“Trial counsel had every right to rely on their expert’s informed assessment.”).

Further still, though there is no Sixth Amendment “ineffective assistance of expert” guarantee, *Wilson, supra*, there was no evidence presented that genetic testing is required for an intellectual disability diagnosis. There has been no showing that counsel failed to obtain funding in light of a specific request, or a rejection of a specific request for more information on genetics. Notably, Dr. George Corvin, an expert for Applicant at the PCR hearing, testified that in “most cases of intellectual disability [he has] diagnosed or work with, have never had genetic testing” and, specifically, not only was there “nothing wrong with” not requesting a test, but also that “there’s not a step for that.” (PCR Tr. Vol. 1, 1025). And, as noted, the uncontested evidence was that the gene abnormality can exist with or without intellectual disability. At any rate, trial counsel could clearly rely on their qualified expert to direct what testing was necessary for the expert’s opinion. No relief could be due on this point.

FILED
2025 APR 23 AM 9:07
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

In sum, the Record shows counsel adequately investigated and obtained a qualified expert to aid in the evaluation and presentation of evidence on intellectual disability. Even so, as *Strickland* teaches, “The object of an ineffectiveness claim is not to grade counsel’s performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.” *Id.*, at 697. Because the genetic abnormally is not dispositive – again, under uncontested medical opinion – Applicant fails to show a reasonable probability of a different result. An analysis of either *Strickland* prong shows Applicant’s allegation fails.

Applicant is not entitled to any relief, and this Court grants none.

11(b)(1) Trial counsel was not ineffective in the investigation and presentation of the intellectual disability claim in either the pre-trial presentation or in sentencing. Trial counsel properly investigated, developed, and presented a case for intellectual disability even though it was ultimately unsuccessful.

Applicant claims that Defense Counsel was ineffective for failing to investigate and present an adequate case of Applicant’s intellectual disability. In particular, he alleges counsel failed to *present all evidence* regarding possible intellectual disability. (See Allegation 11(b)(1)). Applicant’s allegation fails to show relief is warranted.

First, this claim is little more than a request to review the intellectual disability determination which this Court has already declined to do. See *11(a) discussion, supra*. Applicant has shown very little that could be considered different, and nothing that this Court would assign any significant weight. Second, Applicant has labeled his issues as a “more general claim” following the specific genetic issue. (Applicant’s Post-hearing Brief, at 48). It is general indeed. This Court finds that Applicant’s allegation is insufficient as a matter of law as he conceives of a standard of representation that is not required by any state or federal law. However, while counsel

is not obligated to present *all* evidence (however that would ultimately be determined), counsel is required to conduct a constitutionally adequate investigation.¹⁴

The Supreme Court has instructed that trial counsel has the “obligation to conduct a thorough investigation of the defendant’s background,” *Williams v. Taylor*, 529 U.S. 362, 396 (2000), but also has used the term “reasonably available” in describing mitigation investigation efforts, *Wiggins v. Smith*, 539 U.S. 510, 524 (2003). Consequently, the Sixth Amendment does not task counsel with discovering “everything” possible – that is even possible to define the universe of such criteria. *Id.*, at 533 (“*Strickland* does not require counsel to investigate every conceivable line of mitigating evidence”). “[T]he issue turns on *how* ‘thorough’ the mitigation investigation must be” and the Supreme “Court’s cases indicate that the investigation need only be *reasonably* thorough.” *Owens v. Stirling*, 967 F.3d 396, 413–14 (4th Cir. 2020) (citing *Strickland*, 466 U.S. at 690–91 (equating capital sentencing counsel’s duty of “thorough investigation” to “a duty to make reasonable investigations” and noting that “[i]n any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances”).

Applicant has not shown a deficiency under *Strickland*. The Record supports that trial counsel reasonably investigated and adequately presented an intellectual disability claim. Moreover, the proper evaluation of counsel’s conduct is from the perspective at the time trial, not

¹⁴ In Applicant’s post-hearing reply brief, Applicant acknowledges the problem with this claim as alleged and asserts the Court should allow amendment of the claim to “failed to exercise reasonable professional judgment” in investigation. (See Reply, at 22-23). This Court declines to allow the late amendment that was only offered well-after the hearing and after extensive briefing. However, this Court does review the investigation in considering the strategic decisions on presentation. Thus, by implication, where relief is denied as it is here, counsel’s investigation was not professionally unreasonable. There could be no significant prejudice to Applicant in not allowing the late amendment, and the request for amendment is denied.

in hindsight. See *Rompilla v. Beard*, 545 U.S. 374, 381 (2005) (“[I]n applying *Strickland*, hindsight is discounted by pegging adequacy to counsel’s perspective at the time investigative decisions are made and by giving a heavy measure of deference to counsel’s judgments.” (citation omitted) (quoting *Strickland*, 466 U.S. at 689) (internal quotation marks omitted)) This guidance is most crucial given the dismissal of Applicant’s intellectual disability claim at trial.

Rather uniquely, Applicant’s counsel pursued a theory of intellectual disability and had the opportunity to *twice* convince a fact-finder. That he ultimately received *two determinations that he had failed to show he was intellectually disabled* does not speak to representation – it speaks to the absence of the condition. See generally *United States v. Mason*, 774 F.3d 824, 828 (4th Cir. 2014) (“It is ‘all too tempting for a defendant to second-guess counsel’s assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.’”) (quoting *Strickland*, at 689).

At any rate, the potential of this claim was recognized early in the representation and counsel investigated and presented a claim twice that Applicant was intellectually disabled and, therefore, ineligible to receive the death penalty pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002). Those claims were based on the fruit of a more than adequate investigation.

Counsel acquired the services of forensic psychologist Dr. Ginger Calloway to assist in supporting Applicant’s intellectual disability claim. (R. 3827-3828). Dr. Calloway received her doctorate in psychology from North Carolina State University. (R. 3828). She had practiced primarily as a forensic psychologist for the 15-20 years prior to the hearing. (R. 3829). She had

FILED
20 APR 23 AM 9:07
U.S. DISTRICT COURT
MIDDLESEX COUNTY

testified on numerous other *Atkins* hearings prior to Applicant's trial.¹⁵ (R. 3966). Applicant's PCR hearing witness Dr. George Corvin expressed high praise for Dr. Calloway's abilities in the field of intellectual disability assessment. During his PCR testimony Dr. Corvin stated that Dr. Calloway was the "best in the U.S. in terms of intellectual assessment." (PCR Tr. Vol. 1 p. 960). Dr. Corvin stated that he calls Dr. Calloway for advice and that she is "quite qualified." (PCR Tr. Vol. 1 p. 961).

At trial, Dr. Calloway opined that Applicant was intellectually disabled, and issued a forty-page report and eight-page supplemental report in support of her determination. (R. 4358-4405). She reviewed Applicant's medical records, school records, and testing done on both Applicant and members of his family. (R. 4362 – 4363). She conducted her own testing for intellectual functioning and adaptive behaviors on both Applicant and the people she could find who were the most familiar with him, including members of his family, employers, and associates. (R. 4362 – 4363). For her assessments on deficiency in adaptive behavior Dr. Calloway interviewed people like the Applicant's parents, his daughter, his pastor, and his former co-workers and supervisors.

As a result of the *Atkins* claim, a pre-trial hearing was held pursuant to *Franklin v. Maynard*. (R. 3772). During the hearing, Defense Counsel called Dr. Calloway to present her findings and professional opinion that Applicant was intellectually disabled. Dr. Calloway defined intellectual disability as (1) "significantly subaverage general intellectual functioning;" (2) "the presence of adaptive deficits in two of ten areas identified by the DSM-IV-TR;" and (3) "onset of the disability before the age of 18." (R. 3834). She testified that Applicant's I.Q. placed him with

¹⁵ See Ginger C. Calloway, Ph.D., 2011 WL 5927498 (curriculum vitae submitted to Federal District Court for the Eastern District of North Carolina during *Walton v. N. Carolina Dep't of Agric. & Consumer Servs.*, No. 5:09-CV-302-FL, 2011 WL 883579, at *1 (E.D.N.C. Mar. 11, 2011)).

the range of subaverage intellectual functioning. When confronted with the higher I.Q. scores originating from a test administered to Applicant during grade school, Dr. Calloway testified that they were not true I.Q. scores in that they required no specialized expertise to administer. (R. 3891). She further testified that the test measured achievement and was “not so much an individually administered IQ test.” (R. 4004). In regard to deficits in adaptive functioning, Dr. Calloway detailed her approach in reaching her determination, and presented her conclusion that Applicant displayed deficits in six of the ten areas of adaptive functioning (R. 3843-3937). Lastly, as to the final intellectual disability prong, Dr. Calloway testified that “a number of different sources” showed that Applicant’s intellectual functioning was subaverage before the age of 18. (R. 3852). Dr. Calloway partly relied on the school information to determine that Applicant’s mental retardation onset was before age 18. (R. 3961- 3962).¹⁶

Defense Counsel also called Dr. Calloway to testify during the penalty phase of the trial (the second opportunity under *Franklin*). (R. 2799). Her testimony there was largely repetitive of the testimony offered during the *Atkins* hearing. However, Dr. Calloway adapted her testimony in order to address several issues that arose in the prior hearing. Dr. Calloway first testified to the

¹⁶ This Court acknowledges that Dr. Greg Olley was also called at the PCR hearing generally regarding the facts relevant to the ineffective assistance claim. (See PCR Tr. Vol. 1, p. 597-599). Dr. Olley spent much time going over a standard procedure for evaluations and information gathering. Notably, Dr. Olley candidly admitted in attempting to determine intellectual functioning and adaptive behavior “[t]here’s a lot of described procedures for doing that, but they are not perfect.” (PCR Tr. Vol. I., p. 619). He agreed that a mitigation expert and a credentialed expert for guidance was essential, (See PCR Tr. Vol. I, pp. 642-643 and 654). Applicant’s defense counsel retained both in their representation of Applicant. Further, he testified that experts should look at all information available. (See PCR Tr. Vol. I, p. 655, 657 and 663). This further supports this Court’s findings in determining the lack of credibility assigned Dr. Knight’s opinion in this matter. Dr. Olley did not, however, give any testimony as to Dr. Calloway’s performance (though he admitted knowing Dr. Calloway), and did not have any opinion or information on this particular case. (PCR Tr. Vol. I, p. 666). Dr. Olley’s testimony is referenced very lightly in the post-hearing briefing, which is consistent with this Court’s treatment of the testimony here.

necessity of interviewing multiple individuals for the purpose of determining social adaptability rather than confining the investigation to an interview with the defendant. (R. 2825-2826). This was in notable response to Dr. Gordon Brown's *Atkins* testimony (Dr. Brown's trial testimony is more fully referenced below) regarding the social adaptability investigation which was shaped by Applicant's disclosures. The examination then transitioned into Dr. Calloway's intellectual disability determination. In support of her conclusion, the defense presented the results of a recent WAIS-IV IQ test that was administered to Applicant by Dr. Calloway in which he scored a 63. Dr. Calloway opined that this placed Applicant in the range of mild mental retardation. (R. 2847-2848). Dr. Calloway also testified to Applicant's school records reflecting Applicant's poor academic performance. These included "IQ tests" administered during grade school. (R. 2846-2867). She also offered the results of a recently administered Wide Range Achievement Test which placed Applicant's current math, reading and comprehension level between a fourth and seventh grade level. (R. 2868-2869). Dr. Calloway later presented her findings in regard to Applicant's adaptive functioning as determined through the use of the Adaptive Behavioral Assessment System (ABAS). She addressed the purpose of adaptive functioning, how the ABAS was performed, and the results she attained and scored, reflecting significant deficits in adaptability. (R. 2882-2915). Dr. Calloway concluded her testimony to the jury by offering her opinion that Applicant was intellectually disabled under the clinical definition. (R. 2916). Even though the defense was not successful, the Record clearly supports that Defense Counsel investigated, developed, and presented a well-prepared case of intellectual disability with reliance on a credentialed expert. *See generally Atkins*, 536 U.S. at 317 ("Not all people who claim to be mentally retarded will be so impaired as to fall within the range of mentally retarded offenders about whom there is a national consensus.").

FILED
25 FEB 23 AM 9:07
CLERK OF COURT
JAMES H. COX

Further, the Record also makes clear that Defense Counsel recognized the possible *Atkins* defense, gathered voluminous records, and interviewed numerous witnesses in support of the intellectual disability finding. They obtained the services of a social worker and an accomplished mental-health expert who also conducted multiple interviews with Applicant and his family, performed psychological evaluations, and reviewed medical records. (R. 3779; 3780-3781; 3816).¹⁷

Applicant's assertion that additional individuals to interview regarding school generally and the impressions of his classmates were not available or provided to Dr. Calloway but were made available to Dr. Knight does not persuade the Court of deficiency. (See Applicant's Post-hearing Brief, at 48). Defense Counsel testified that the defense secured assistance from Kara Richards-Baker, a qualified mitigation investigator, who attempted to find any individual who could assist in shaping the defense's case. (See PCR Tr. Vol. 1, pp. 34-35).¹⁸ Indeed, our Supreme Court has recognized the importance of relying on qualified mitigation specialists. *See Council v. State*, 380 S.C. 159, 173–74, 670 S.E.2d 356, 363 (2008) (in finding counsel ineffective, the Court observed that “counsel chose not to hire a social history investigator. Instead, he relied on his law partner and private investigator to collect potentially relevant information. However, neither of these individuals was qualified, in terms of social work experience, to evaluate the information to assess Respondent's background.”). Of no little note, Applicant similarly relies on experts – the

¹⁷ Notably, the trial investigation netted information from interviews that either the collateral investigation missed or failed to share with Dr. Knight.

¹⁸ Based on counsel's testimony, Applicant asserts the defense failed to “develop evidence” available evidence and present that evidence. (See Applicant's Post-hearing Brief, at p. 51). This is incorrect. Applicant misconstrues counsel's testimony. The very fact that counsel testified he should have “presented more,” (see Applicant's Post-hearing Brief, at 51), is a classic hindsight evaluation prompted by the rejection of the defense. It would offend the mandated *Strickland* contemporaneous-to-trial evaluation of the claim to accept Applicant's interpretation.

same Dr. Corvin and another mitigation witness, Dr. Andrews, assisted counsel in attempting to challenge trial counsel's same method. (See Applicant' Post-hearing Reply Brief, at 34-35). In essence, the same, consistent investigation pattern has been followed by both teams. At most, Applicant has shown a different strategy, and different experts, but not deficient performance by trial counsel.

Thus, Defense Counsel competently relied on their expert's findings and conclusions in formulating and presenting their case for Applicant's intellectual disability. *Smith v. Cockrell*, 311 F.3d 661, 676–77 (5th Cir. 2002), overruled on other grounds by *Tennard v. Dretke*, 542 U.S. 274 (2004) (“Counsel should be permitted to rely upon the objectively reasonable evaluations and opinions of expert witnesses without worrying that a reviewing court will substitute its own judgment, with the inevitable hindsight that a bad outcome creates, and rule that his performance was substandard for doing so.”); see also *Turner v. Epps*, 412 Fed.Appx. 696, 704 (5th Cir. 2011) (“While counsel cannot completely abdicate a responsibility to conduct a pre-trial investigation simply by hiring an expert, counsel should be able to rely on that expert to alert counsel to additional needed information....”).

Applicant, however, cites to *Wiggins v. Smith*, 539 U.S. 510 (2003), for support of finding error. Applicant's argument is unavailing.

The Court in *Wiggins* held:

Counsel did not conduct a reasonable investigation. Their decision not to expand their investigation beyond a presentence investigation (PSI) report and Baltimore City Department of Social Services (DSS) records fell short of the professional standards prevailing in Maryland in 1989. Standard practice in Maryland capital cases at that time included the preparation of a social history report. Although there were funds to retain a forensic social worker, counsel chose not to commission a report.

Wiggins, 539 U.S. at 511.

FILED
2025 APR 23 AM 9:07
CLERK OF COURT
ST. LOUIS COUNTY
JULIA M. COX

Wiggins goes to reasonableness in investigation – not presentation as Applicant challenges – and it also touches on the unreasonable limitations on the investigation in that case. As far as the investigation, the circumstances of Applicant’s trial are distinct from those presented in *Wiggins*. As noted above, Defense Counsel in Applicant’s trial acquired the services of both a social worker and forensic psychologist. These two experts (along with others according to Ms. Richards-Baker) conducted an extensive investigation into potential intellectual disability. Given Defense Counsel’s investigation and reliance on reasonable expert evaluation, Applicant cannot overcome the strong presumption that Counsel’s representation fell within the wide range of reasonable professional assistance. *Strickland*, at 689.

During his PCR testimony, Applicant’s trial counsel William McGuire testified that he was prepared to go forward. He stated that he might have been “overconfident,” (PCR Tr. Vol. 1 p. 196), however, being overconfident cannot be considered ineffective. It can be, and this Court considers it to be, confidence in the reasonable investigation; after all the defense collected numerous records and had the assistance of a qualified expert in the field of intellectual disability – as stated by Dr. Corvin, one of Applicant’s witnesses at PCR, an expert who was one of the best in the United States in this field. Applicant has shown an unsuccessful defense, but not an inadequate one. Again, both fact-finders determined the evidence did not support intellectual disability. Further, Applicant’s new expert in PCR gave an opinion this Court finds not credible or persuasive. As such, Applicant has not shown *Strickland* prejudice.

For instance, in Judge Couch’s order finding Applicant had not carried his burden of showing intellectually disability, the trial court set out, “I make this finding because of the fact that in reviewing the results of Dr. Calloway’s ABAS-II it is clear that she has made subjective determinations concerning the results obtained and weighted the responses of various informants

FILED
JUL 23 AM 9:08
CLERK OF COURT
HARRISON COUNTY
MISSISSIPPI

differently.” Yet, during the PCR hearing Applicant’s witness Dr. Susan Knight did the identical thing in her determination of the Applicant being intellectually disabled. Dr. Knight stated that due to the Applicant’s shyness, being bullied, being afraid to jump in the deep end of a lake when he cannot swim, *shows* deficits in adaptive functioning. (PCR Tr. Vol. 1 p. 826). That is vastly overstated and goes to bias. Shyness is not a phenomenon unique to intellectual disability, and being bullied is likewise not limited to the intellectually disabled. Not wanting to drown is evidence of prudent self-care and self-preservation. That does not appear to be a negative in cognitive ability or adaptive functioning. None of these factors prove any type of intellectual disability. However, the expert’s reference to these items does show a different problem – that appears to be stereotyping, but in favor of intellectual disability instead of against it. It is the details that make the difference and those were sorely lacking, and worse, at times simply ignored. Based on the Court’s observations of the witness and consideration of the facts of the case at trial and those presented and discussed in PCR, the new opinion suffers greatly from confirmation bias.¹⁹

For example, Dr. Knight listed numerous jobs held by the Applicant during his lifetime. She stated that the Applicant’s jobs were simple manual labor. However, individuals with only a tenth-grade education will for the most part only be qualified for the type of jobs held by the Applicant. Even so, Dr. Knight simply discarded that which did not fit the narrative – Applicant was able to pass his commercial driver’s license exam including the test on hauling hazardous materials only getting 17 out of 145 questions incorrect. (PCR Tr. p. 796). That was a large part

¹⁹ In this Court’s opinion having observed closely Dr. Knight, Dr. Knight during cross-examination appeared closed to any new information or at least would quickly discount its potential impact. One would think that some careful evaluation would be necessary to fairly respond but that appeared lacking.

FILED
2025 APR 23 AM 8:08
CLERK OF COURT
SPRINGFIELD COUNTY
MISSOURI

of the “jobs held” and a significant responsibility that he successfully maintained. Further, the facts presented at the PCR hearing revealed that Dr. Knight misjudged the actual CDL test that Applicant took. In her report she listed a test that was taken on July 9, 1984, as a “Commercial Driver Written Examination,” however, this was not a test to obtain his Commercial Driver’s License. The results of the actual test for his commercial driver’s license, hazmat test, and tanker test in which he was asked the 145 questions noted above, missing only 17. (PCR Tr. Vol. 1 pp. 793-796). In an attempt to show some error, Applicant suggested that perhaps someone helped him with the test or helped him with his duties. That is not evidence. That is speculation. That cannot carry his burden of proof, and to rely on such speculation further undermines the opinion.

Dr. Gordon Brown, retired psychologist from the South Carolina Department of Disabilities and Special Needs, examined Applicant prior to trial and determined that he was not intellectually disabled. It was his testimony that the trial court relied upon in great measure and was the apparently catalyst for Dr. Calloway to adjust her presentation at sentencing. During the PCR hearing Dr. Brown testified that he changed his mind concerning his previous diagnoses, stating that he believes the Applicant is intellectually disabled. Dr. Brown came to this conclusion solely from review of the Knight report. (PCR Tr. Vol. 2 p. 25). Dr. Brown stated that he was not aware of the amount of the Applicant’s diminished adaptive functioning, which, he contended, was made clear by the report of Dr. Knight. (PCR Tr. Vol. 1 pp. 1035, 1036, 1037). However, in this Court’s opinion Dr. Knight’s report is not complete because there are some critical interviews in Applicant’s possession that were inexplicably not made available to Dr. Knight. (PCR Tr. Vol. 1 pp. 756, 757, 758, 768, 790, 840).

Dr. Robert Nelson, a psychologist, was called to testify during PCR. He had worked in many schools, and was, notably, employed by the Greenville County School District to assist their

FILED
2025 APR 23 AM 9:08
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

psychologist to “better understand compliance with the IDEA Special Education Law related to emotional and behaviorally disturbed children.” (PCR Tr. Vol. 4 p. 6). Dr. Nelson explained the three different categories of special education classes: inclusion, resource, and all-inclusive. (PCR Tr. Vol. 4 p. 38) The “adjunct” classes at the time Applicant was in school would fall in the area of “resource classes,” meaning additional “one-on-one training or group training.” (PCR Tr. Vol. 4 pp. 38-37). That is different than “all-inclusive” or “[s]elf-contained classes ... that are totally separate ... and typically populated by individuals with intellectual disability ... at various levels of severity.” (PCR Tr. Vol. 4 p. 39). Similarly, Ms. Judy Shields, a teacher that once taught Applicant, explained that special education classes were different than adjunct classes. Special education students had to be tested by the school psychologist they were not a part of her adjunct students. (PCR Tr. Vol. 3 p. 8). This Court finds Dr. Nelson testimony and Ms. Shields’ testimony credible in light of their knowledge and careful explanation of terms.²⁰

²⁰ Though in post-trial briefing Applicant urged this Court not to credit Dr. Nelson’s testimony on intellectual disability, because he does not work with *Atkins* claims and because another court discounted his testimony in another, separate case based on not personally evaluating the individual for intellectual disability, (*see* Applicant’s Post-hearing Reply Brief, at 7 n. 6), this Court disagrees. This Court finds a heightened credibility of Dr. Nelson’s testimony precisely because the great majority of his work is based in non-*Atkins*, *i.e.*, non-death penalty cases. These cases require a backwards looking review, attempting to assess school record and other development period information mostly without much guidance from the creator of those records, and the outcome affects a criminal sentence, not treatment or benefits. Dr. Nelson’s credentials, on the other hand, demonstrate significant, relevant education and school psychologist experience. (PCR Tr. Vol. 4 p. 5-6). Thus, his work and opinions have affected actual treatment and/or placement of children with special needs or “mental health disorders” in the developmental period. (PCR Tr. Vol. 4 p. 6). Dr. Nelson is uniquely qualified to consider school records and testing. Further, he testified that he has done “several hundred” psychological assessments. (PCR Tr. Vol. 4 pp. 8-9). This Court find his testimony credible and interprets his testimony with a focus on the area in which he has specialization – educational and developmental evaluations. He also has a wealth of education, knowledge and experience, not only in school focused practice, but also psychopharmacology and criminal forensic psychology. (PCR Tr. Vol. 4 at 13). This, too, bears on the credibility of his opinions.

There were also numerous important factors related to diminishing cognitive functioning of Applicant's mental state that occurred during and after the developmental period causing a lowering of Applicant's I.Q. score. An overwhelming majority of the people referenced in Dr. Knight's report were interviewed at the trial level, and the identical statements regarding adaptive functioning can be found in Dr. Calloway's report. There were also individuals that spoke to Ms. Richards-Baker or Dr. Calloway *not made available* to Dr. Knight for her examination. Applicant has argued that these witnesses offered cumulative or irrelevant evidence. However, in reviewing the trial testimony and affidavits submitted, the Court finds that many of these witnesses had firsthand knowledge Applicant's mental abilities and could have given Dr. Knight great insight into Applicant's adaptive functioning, the second prong that must be satisfied in order to determine intellectual disability according to the DSM-5.

During her PCR testimony Dr. Knight testified that she never spoke to Shirley Wofford, Norm Hooper, James Hatter, or Mary Unis, all witnesses for the Applicant during the penalty phase of his trial. (PCR Tr. Vol. 1 pp. 756, 757, 758). Dr. Knight was never given the interview memo of Mr. Rick Bagwell, who worked with the Applicant and who stated in his memo, "Ricky was plenty smart enough to function." "That Ricky wasn't' pretty much different from any other truckers." (PCR Tr. Vol. 1 p. 768). Dr. Knight was not given the interview memo of Neal Walters an individual who worked with Applicant at Jacobson. In the memo, Mr. Walters stated, "he did not see Ricky as slow." He stated that "Ricky had to read the order and match it to the merchandize and then pulled that merchandise," and he did well. Notably, this was in a chemical warehouse requiring care. (See PCR Tr. Vol. 1 p. 790).

Dr. Knight also contacted doctors in an attempt to address potential arguments regarding the effects of chemotherapy drugs or concussions on his intellectual abilities. However, she never

addressed the chronic marijuana abuse that Applicant admitted to smoking daily for over a decade, the alcohol abuse, nor the Hodgkins disease. (PCR Tr. Vol. 1 pp. 810, 815).

Dr. Knight also did not address the COPD the Applicant was suffering from. Applicant argues that there was no evidence that COPD or adolescent drug use decreases cognitive function. However, even witnesses called by Applicant disagree. Dr. Corvin and Schwartz-Maddox testified COPD could cause some effect in brain functioning. (PCR Tr. Vol. 1 pp. 838, 819, 391, 972).

There was evidence presented that the amount of damage that the Applicant did to his body during and after the developmental period led to a substantive decline in his cognitive functioning. Respondent's expert witness Dr. Robert Nelson testified that an I.Q. test conducted after the developmental period should not be considered, because too many things that Applicant did to himself that can affect the brain during its development and after it has been developed that will lower I.Q. scores. (PCR Tr. Vol. 4 pp. 49-50). Dr. Nelson also discussed how the chronic use of drugs can be an intervening factor in an I.Q. test when those drugs are taken during the developmental period. And smoking marijuana everyday would have been considered chronic. (PCR Tr. Vol. 4 p. 49). This is consistent with the fact the DSM-5 does not allow I.Q. scores to be the only measure to determine deficits in intellectual functioning.

In sum, this Court does not find credible or persuasive Dr. Knight's opinion, or Dr. Brown's opinion based on the infirm Knight opinion and report. During the Applicant's trial as well as during this PCR hearing, Applicant failed to present sufficient evidence to satisfy the burden of proof to be determined intellectually disabled.

Thus, this Court finds and concludes that trial counsel was not ineffective in the presentation of their *Atkins* claim during the initial trial. Further, could counsel be deemed

deficient in their investigation, Applicant has not shown a reasonable probability of a different result by virtue of his PCR presentation. Applicant has failed in his burden of proof.

Applicant is due no relief and this Court grants none.

11(b)(2) and (7)

As found by the Supreme Court in the direct appeal, the trial judge did not rely on stereotypes nor deviated from clinical consensus and practice to determine that Applicant was not a person with intellectual disability; Applicant has shown no basis on which counsel should or even could object.

Applicant is unable to meet his burden under *Strickland*, as the Record does not support that the trial judge relied on stereotypes. Stated differently, Applicant has failed to show a basis for objection. The trial judge made a detailed consideration of the evidence, guided by the facts and the medical standards. Further, the allegation of trial court error was raised – and rejected – in the direct appeal based on a review of that detailed ruling:

Initially, we note the trial court correctly identified and made its determination applying the statutory definition of “mental retardation.” Moreover, contrary to Blackwell’s claim, the trial court did not base its decision solely on the fact that Blackwell was able to successfully obtain a commercial driver’s license and be employed as a truck driver. The court relied on other factors, including Blackwell’s school performance and full employment history. Additionally, the court explained why it gave greater weight to Dr. Brown’s report, noting that the report was directed at an evaluation of Blackwell’s “formative years” and was consistent with the “functional adaptations” required by the statutory definition of “mental retardation.” The court also discounted some of Dr. Calloway’s findings as it questioned whether “adequate information” was used and believed Dr. Calloway improperly “made subjective determinations concerning the results obtained and weighted responses of various informants differently.”

We also find the trial court’s factual determinations are supported by evidence in the record. Admittedly, it is concerning that Blackwell, at 54 years old, scored 63 and 68 on the I.Q. tests given in preparation of the *Atkins* hearing. However, in terms of

CLERK OF COURT
SHELBY COUNTY
COURT

2025 APR 23 AM 9:08

FILED

“significantly sub-average general intellectual functioning,” the trial court readily acknowledged the recent I.Q. scores but was persuaded by evidence that: (1) Blackwell, *prior to the age of 18*, scored between 68 and 87 on standard school I.Q. tests; (2) Blackwell made “reasonably sufficient grades during his school career”; (3) at the age of 18, Blackwell was found to read at the 5.8 grade level, completed arithmetic problem solving at the 6.6 level, and completed arithmetic computation at the 5.2 level; and (4) Blackwell dropped out of high school in the eleventh grade despite having earned significant credits toward graduation.

The court also recognized that Blackwell’s recent I.Q. scores may have been caused by events in his adult life that adversely affected his current cognitive ability. For example, the court accurately referenced the fact that Blackwell received chemotherapy for Hodgkin’s Lymphoma in 1986, had an accident in 2003 or 2004 while riding a four-wheeler which rendered him unconscious for approximately 15 to 20 minutes, had several major depressive episodes that resulted in involuntary commitments in 1990 and 2008, and was taking Thorazine, an anti-psychotic medication, at the time of his *Atkins* evaluation.

With respect to Blackwell’s adaptive behavior, the court found “no evidence that he was unable to function at his home during the time before his eighteenth birthday.” Although the court acknowledged evidence that Blackwell had difficulty living independently after the dissolution of his marriage, the court declined to find this translated into deficits in Blackwell’s adaptive behavior. Rather, the court accepted the testimony of Dr. Calloway that Blackwell’s major depressive episodes after the separation were the cause of Blackwell’s inability to function normally. The court also found that Blackwell adapted to life well as he was able to achieve his goal of becoming a commercial truck driver, maintain employment with consistent increases in his earnings, and raise two children during his twenty-six-year marriage. Additionally, the court found significant the fact that Blackwell was never diagnosed with mental retardation until the *Atkins* issue was raised and also noted that Dr. Harrison, who evaluated Blackwell as to his competency to stand trial, reported no finding of mental retardation.

After thoroughly reviewing the record, we conclude Blackwell has not shown the trial court committed an error of law or that its decision is unsupported by the evidence or against its preponderance. Accordingly, we find the case properly proceeded as a capital trial.

Blackwell, 420 S.C. at 141–43, 801 S.E.2d at 720–22.

FILED
2025 APR 23 AM 9:08
CLERK OF COURT
SOUTH CAROLINA
JULIO COUNTY

Further, the Court found the trial judge “correctly identified and made its determination applying the statutory definition of ‘mental retardation’” and “correctly considered Blackwell’s adaptive functioning using the current clinical standards presented by the medical experts.” *Id.*, at n. 11., 420 S.C. at 141, 801 S.E.2d at 720 and n. 11.

Applicant argues again that the use of the fact that he passed the test to obtain his CDL license demonstrated an opinion based on stereotypes. As our Supreme Court has already found, the analysis was much fuller. The trial judge properly reviewed the evidence presented as shown in his comprehensive, 14 page order issued on February 25, 2014. (Return Attachment, Supp. R. 1-14). As to the licensing issue, Applicant’s work history was not even mentioned until page 8 of the 14-page Order. (Return Attachment, Supp. R. 1-14). That reference was not simply to driving a truck, but consideration of Applicant’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 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

CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

2025 APR 23 AM 9:08

FILED

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 forklift driver.

(Supp. R. 8-9).²¹

The trial judge went on to describe income reported during Applicant's work history, and his family relationships, noting his former wife, Angie Davis,²² "handled the management of the household by paying all the bills and writing all the checks." (Supp. R. 10).²³

The trial judge also considered evidence of school performance ("made reasonably sufficient grades during his school career")²⁴; though ranked 113 out of 113 in his class, Applicant had dropped out and may have received a succession of zeros; had four I.Q. tests before age

²¹ 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").

²² Ms. Davis declined to speak with defendant's expert, (see R. 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. 4218- 4219). At any rate, neither expert spoke to Ms. Davis as a person who possibly could have "provided some really useful information." (R. 4218).

²³ The defense admitted that they failed to turn over all evidence to Dr. Brown as they were ordered to do. (R. 4256- 4258). This shows more material was gathered than what Counsel wished to share with the State. One may reasonably assume that such evidence was not supportive of Applicant's intellectual disability claim.

²⁴ See R. 4244, lines 3-14 (Dr. Brown's testimony that appellant had the required unit numbers needed to be on track for graduation).

eighteen, which reflected 68 (first grade); 87 (third grade); 86 (sixth grade); and 72 (ninth grade)²⁵; and, that after the age of eighteen he had had a head 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). (Supp. R. 6-7). Accordingly, the Records support that the trial judge's assessment of Applicant's intellectual capacity did not deviate from the clinical consensus. When a trial court's determination is properly based on the weight and validity of two competing expert opinions, what possible grounds did Defense Counsel have to object?

The thoroughness of Judge Couch's order, supplemented by the conclusion reached by our Supreme Court in the direct appeal, leaves little doubt that the evidence supported the determination that Applicant failed in his burden of proof. The decision was not based on stereotypes but was instead based on facts in evidence *and* clinical standards. *See Commonwealth v. Flor*, 259 A.3d 891, 923–24 (Pa. 2021) (“The examples of Appellant’s abilities cited by the PCRA court were not offered to discount or offset scientific conclusions of Appellant’s deficits, but to illustrate that the experts often neglected to consider all sources of information in forming their opinions. The court did not offer examples of adaptive strengths to offset established adaptive deficits, but to illustrate the credibility issues with some of the information relied on by Appellant’s experts in determining the existence of a particular deficit in the first place.”). Applicant has failed to show either deficient performance or prejudice regarding an objection to these matters.

²⁵ Though the witnesses and the parties referred to these as I.Q. tests, there was some question as to whether they were more general scholastic tests. Dr. Calloway did not discount these scores entirely as Applicant would argue should be done; rather, both Dr. Calloway and Dr. Brown indicated they could be considered as broad indicators. (See R. 3874; 4183). In fact, Dr. Calloway depended on school testing in opining family members had indicators of mental retardation. (See R. 3872– p. 3875, appellant’s father’s I.Q. test from school scores indicated as 60; appellant’s brother school test scores indicated 73 and 74; appellant’s daughter’s school scores at 57 and 71).

FILED
JUN 19 2023
CLERK OF COURT
JUN 19 2023
8649

Applicant attempts to rely upon *Moore v. Texas* in a strained attempt to cast doubt on the conclusions reached by the trial court. See *Moore v. Texas*, 581 U.S. 1 (2017) (*Moore I*); and *Moore v. Texas*, 586 U.S. 133 (2019) (*Moore II*). *Moore I* was an opinion specifically targeted toward Texas’s use of non-clinical, court created tests, for determining intellectual disability in capital cases. See *Moore I*, at 5-6 (holding that the *Briseno* factors adopted by Texas Court of Criminal Appeals, for evaluating an *Atkins* claim, are based largely on superseded non-medical standards that create an unacceptable risk that a person with intellectual disabilities will be executed). There the Court held that “adjudications of intellectual disability should be ‘informed by the views of medical experts.’” *Id.* (citing *Hall v. Fla.*, 572 U.S. 701, 721 (2014)). *Moore II* was an error correction again targeted to Texas’s continued use of arbitrary factors in intellectual disability determinations and an overall disregard of the Court’s opinion in *Moore I*. See *Moore*, at 138-139. This does not readily translate to precedent that is directly on point here. But even so, our Supreme Court considered the more general teachings of *Moore* and determined there was no error by the trial court:

Here, the trial court made no reference to the impermissible *Briseno* factors. Furthermore, given the fact that Blackwell’s I.Q. scores were at the lower end of the spectrum, the court correctly considered Blackwell’s adaptive functioning using the current clinical standards presented by the medical experts. The court, as required by *Moore*, carefully considered and weighed Blackwell’s adaptive strengths against his adaptive deficits. While the dissent may believe the trial court overemphasized Blackwell’s adaptive strengths, any significance assigned to these adaptive strengths was based on the court’s assessment and credibility determination of the expert testimony.

Blackwell, 420 S.C. at 143, 801 S.E.2d at 721 n. 11.

Notably, though *Moore I* and *Moore II* provide a glimpse into what is permissible under *Atkins*, specifically that courts should rely in large measure on clinical standards, that is not a

FILED
2025 APR 22 AM 9:08
CLERK OF COURT
SPARTANBURG COUNTY
S.C.

direction that the courts must *accept* all clinical opinions without challenge. *See Moore*, 581 U.S. at 13 (“the views of experts’ do not ‘dictate’ a court’s intellectual-disability determination” however, “the determination must be ‘informed by the medical community’s diagnostic framework’”) (quoting *Hall v. Florida*, 572 U.S. 701, 721 (2014)). At its heart, *Atkins* remains a legal decision.

Additionally, Applicant misuses the concept of “stereotypes” in this context by substituting generality for a proper argument based on a critical assessment of facts. For instance, it would be relying on a general stereotype to reject intellectual disability because a defendant’s records reflect gainful employment. Employment itself neither contributes nor detracts from finding of intellectual disability. What properly supports a determination of intellectual disability would be critical analysis of weaknesses exhibited throughout the defendant’s employment, that below-the-surface analysis, to determine adaptive functioning, *i.e.*, was the individual timely and prompt, was he responsible, did he assert management qualities, etc. In short, generalities neither contribute nor support the finding of intellectual disability. Applicant’s mere reference to “stereotypes” is insufficient to challenge the trial court’s thoughtful consideration of two competing clinical opinions with supporting factual basis. Returning to the licensing issue brings this distinction into sharp focus.

In the appeal, Applicant argued the trial court rested almost entirely on the fact of the driver’s license, *see Blackwell*, 420 S.C. at 141, 801 S.E.2d at 720, but the trial court actually heard this evaluation from Dr. Brown:

“It is difficult for many intellectually disabled persons to pass the examination to get a regular driver’s license, and it would be very difficult for someone who is intellectually disabled to pass the written test or the practical test to obtain a commercial license. Mr. Blackwell passed the examination including additional tests for

CLERK OF COURT
CHARLESTON COUNTY
SOUTH CAROLINA

2025 APR 23 AM 9:08

FILED

tanker, for hazardous materials (he said in interview he had to take that part twice to pass), and for combination vehicles.”

(R. 4446-4447).

The trial court did not use a stereotype, rather, the court critically considered the facts. Applicant has failed to show any stereotype dependence, thus, has shown no cause for counsel to object. Consequently, Applicant has failed in his *Strickland* burden of proof.

Applicant is not entitled to any relief and this Court grants none.

11(b)(3) Trial counsel did present through their experts that some of the purported I.Q. scores during the developmental period were not legitimate thus were not ineffective either in investigation or presentation on this point.

Applicant next alleges that counsel was deficient in failing to adequately discredit I.Q. scores that reflected Applicant’s higher intellectual capacity. The Record supports that counsel, utilizing qualified experts, investigated the I.Q. tests administered to Applicant during his grade school years, and attempted to rebut their veracity. Counsel presented evidence to the trial judge, and subsequently to the jury, which Counsel offered as supportive of the claim of intellectual disability. Specifically, Defense Counsel retained Dr. Ginger Calloway. Dr. Calloway, after evaluation, opined Applicant was intellectually disabled. *See Blackwell*, 420 S.C. at 137–38, 801 S.E.2d at 718 (“Ginger Calloway, a forensic psychologist who was offered by the defense, opined that Blackwell met the definition of ‘mental retardation’ because he exhibited: sub-average intellectual ability based on his I.Q. scores; significant deficits in adaptive functioning such as communication, home living, social interaction, self-direction, and functional academics; and that these deficits existed prior to the age of eighteen....”).

During the examination of Dr. Calloway at the *Atkins* hearing, Counsel referenced several tests administered to Applicant during his grade school years which reflected an I.Q. level higher than that required for intellectual disability. Dr. Calloway acknowledged the test but stated, “[i]t’s

used to go at IQ, but it's a group administered test, and group measures of IQ are typically not as accurate as individually administered measure of IQ." (R. 3872). Later, in regard to another similar test, Dr. Calloway testified "it's considered a measure of general aptitude, but that can include achievement as well. So, no, it's not strictly speaking an intelligence test that you would use for placement purposes." (R. 3891). During cross-examination the State cited these same tests. Dr. Calloway again responded on behalf of the defense, "this is still a measurement of mental maturity, i.e. achievement, not so much an individually administered IQ test." (R. 4003-4004).

She went even further in her assessment of these tests during the States recross examination.

. . . The Short Test of Mental Maturity is a measure of cognitive ability. That is not equal to IQ and intellect despite the fact that an IQ score is reported.

[. . .]

At one point in the development of IQ tests, and the Binet uses a mental age to talk about IQ test or did, mental age - - IQ was calculated as mental age over chronological age.

Okay. That's not how it's calculated any longer because we have more sophisticated statistical way of figuring out IQ scores.

(R. 4118-4119).²⁶

²⁶ Further negating a finding of prejudice, at trial, Dr. Brown, provided a similar assessment to that reached by Dr. Calloway:

Well, again, I think that goes back to what's been discussed in previous testimony regarding the fact that those are not really IQ scores. They're more measures of scholastic aptitude, more measure of achievement. They can be roughly equivalent to an IQ score, but as a psychologist, I can't say that I would trust these scores of I think 86 and 87 as being necessarily an indication that he would not be [intellectually disabled].

(R. 4183).

Dr. Calloway provided similar testimony to the jury during the penalty phase of trial. She testified that the “I.Q. tests” administered to Applicant and family members during grade school were not clinically accurate I.Q. determinations. (R. 2840-2842). She reiterated this conclusion to the jury during the defense’s presentation of Applicant’s school records.

The, the — he was given some — many, many measures of, of — there’s some measures of mental maturity, which are not the same as individually administered IQ tests, but they do give us some rough idea of where he might fall within these ranges that I’ve been talking about, the lower two percentile of functioning.

[. . .]

So, we wouldn’t give them the weight, those measures that report IQ, we wouldn’t give them the kind of weight that we would give to a Wechsler Test or there’s another test called the Stanford Binet that’s also an individually administered scientifically recognized measure of IQ, but we, but we look at them. We, we look at them and we try to determine, you know, do they give us any indication that he had an impairment in the area of functional academics.

(R. 2847-2850).

Further, she made additional assertions throughout her testimony to the jury. (R. 2861-2862) (“It’s a, it’s a [sic] -- more like an academic [sic] achievement or mental maturity. Mental maturity tests don’t measure the same thing as an individualized IQ test.”).

Despite Applicant’s claim, the Record supports that Defense Counsel adequately investigated and presented evidence to assert that these particular test scores were not individualized measures of general intellectual functioning equal to formal I.Q. testing. *See Skeen v. State*, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Applicant also raised an argument in the direct appeal regarding the use of school testing in consideration of the claim of intellectual disability. Applicant overstated that the scores should

not be considered at all. Again, the details and context were important and considered.

Respondent made the following observation in the Final Brief of Respondent:

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. 3874, lines 12-18; 4183, lines 10-17). In fact, Dr. Calloway depended on school testing in opining family members had indicators of mental retardation. (See R. 3872, line 1 - 3873, line 9, appellant's father's IQ test from school scores indicated as 60; 3874, lines 12-18, appellant's brother school test scores indicated 73 and 74; 3875, line 11 - 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. 3797, lines 15-21; 3800, lines 4-20; 3809, lines 5-11; 3821, line 13 - 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 IQ 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. 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, "[t]he 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. 4189, lines 10-22).

(Attachment 3, pp. 79-80 n. 29).

This Court finds this argument persuasive. Further, our Supreme Court considered the scores within context of other evidence, concluding the trial court's findings were supported by the record" at trial:

FILED
2025 APR 23 AM 9:08
CLERK OF COURT
SANDHILLS COUNTY
JULIA FOX

...Admittedly, it is concerning that Blackwell, at 54 years old, scored 63 and 68 on the I.Q. tests given in preparation of the *Atkins* hearing. However, in terms of “significantly sub-average general intellectual functioning,” the trial court readily acknowledged the recent I.Q. scores but was persuaded by evidence that: (1) Blackwell, prior to the age of 18, scored between 68 and 87 on standard school I.Q. tests; (2) Blackwell made “reasonably sufficient grades during his school career”; (3) at the age of 18, Blackwell was found to read at the 5.8 grade level, completed arithmetic problem solving at the 6.6 level, and completed arithmetic computation at the 5.2 level; and (4) Blackwell dropped out of high school in the eleventh grade despite having earned significant credits toward graduation.

The court also recognized that Blackwell’s recent I.Q. scores may have been caused by events in his adult life that adversely affected his current cognitive ability. For example, the court accurately referenced the fact that Blackwell received chemotherapy for Hodgkin’s Lymphoma in 1986, had an accident in 2003 or 2004 while riding a four-wheeler which rendered him unconscious for approximately 15 to 20 minutes, had several major depressive episodes that resulted in involuntary commitments in 1990 and 2008, and was taking Thorazine, an anti-psychotic medication, at the time of his *Atkins* evaluation.

Blackwell, 420 S.C. at 142, 801 S.E.2d at 721.

Applicant, though, continued to argue about the use of school testing scores in his petition to the Supreme Court of the United States. In response, the State summarized Applicant’s argument and set out the relevant records citations supporting the error in Applicant’s logic in the following passage from the Brief in Opposition, the contest was on the *value* of the indicators, otherwise:

Petitioner essentially argues the higher scores were misused as IQ tests. (*See* Petition, p. 8-9). This is an incorrect assertion. The disagreement was over the value of indicators at the relevant time – the developmental period. Both experts agreed the tests could be used for that limited purpose. The defense expert, Dr. Calloway, did not discount these scores entirely; rather, both Dr. Calloway and the court appointed expert, Dr. Brown, indicated they could be considered as broad indicators. (*See* R. p. 3874, lines 12-18; 4183, lines 10-17). In fact, Dr. Calloway depended on school testing in

opening family members had indicators of mental retardation. (See R. 3872-3876, (Petitioner's father's IQ test from school scores; his brother school test scores indicated 73 and 74; his daughter's school scores at 57 and 71). Petitioner would have the Court agree they could be used when such indicators are not contrary to his position, (see Petition, p. 15), but not used if contrary. Petitioner cannot be right on both arguments. Even so, 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. 4189). Such scores are properly considered in that context.

(Return Attachment 9, pp. 13-14 n. 7).

Simply, even had the administrative testing scores been misinterpreted as I.Q. scores, that is not the only determinate for intellectual disability. As stated in the DSM-5, "deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing." *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition 33 (5th ed. 2022). In his determination, the trial judge not only used I.Q. scores but academic scores as well as Applicant's ability to pass the CDL exam with its known difficult requirements, and Applicant's specific work history instead of mere employment.

The trial court acknowledged in its order that Applicant made reasonably sufficient grades during his school career. The trial court noted that Applicant had a 90 average for Family Living for the 1st semester of his 11th grade year, and that he held a goal of being a truck driver and within five years of leaving high school he achieved that goal, correctly considering that these tests required extensive reading, writing and practical skills.

The DSM-5 provides that in order to determine a person is intellectually disabled, you may look at I.Q. scores and also other measures of intellectual functioning. This is not making a

FILED
2023 APR 23 AM 9:08
CLERK OF COURT
STANTON COUNTY
MO

determination based on stereotypes but a global approach to the evidence to determine true intellectual functioning. Again, here the evidence is particularly difficult because of the backwards looking review in the absence of a finding of intellectual disability at the relevant time. Applicant fails to show a basis for objection. He fails to carry his burden of proof under *Strickland*.

Applicant is not entitled to any relief and this Court grants none.

11(b)(4) *Counsel's alleged failure in not investigating how Applicant obtained his CDL does not show ineffective assistance of counsel because this Court finds that obtaining his commercial driver's license was not the only consideration used to determine Applicant is not intellectually disabled and the evidence offered at PCR to attempt to undermine the test procedure is only speculative.*

Applicant submits a claim of ineffective assistance for failing to adequately investigate and address Applicant's acquisition of a commercial driver's license. As referenced in the above-quoted passage from the direct appeal opinion, the Supreme Court of South Carolina rejected Applicant's position on appeal that his commercial driver's license was the key to finding Applicant failed in his burden of proof. *Blackwell*, at 141, 801 S.E.2d at 72.

In short, the fact that Applicant did obtain a commercial driver's license is not, and never was the only issue or dispositive fact. At any rate, Applicant failed to show that the defense, particularly the mitigation investigator and other experts, failed to reasonably investigate this fact.

That was a large part of the "jobs held" and required significant responsibility and thought. Though Applicant relies heavily on Dr. Knight's testimony and characterizations of "rote repetition," assistance, and that he was "not very successful," (see Applicant's Post-hearing Brief, at 47), the facts presented at the PCR hearing revealed that Dr. Knight's characterizations miss the mark. First, she misjudged the actual CDL test that Applicant took. In her report she listed a test that was taken on July 9, 1984, as a "Commercial Driver Written Examination," however, this was not a test to obtain his Commercial Driver's License. Moreover, the requirements and resulting

obligations belie the dismissiveness of his achievements. The results of the actual test for his commercial driver's license, hazmat test, and tanker test was telling: he was asked 145 questions and only got 17 incorrect. (See PCR Tr. Vol. 1 pp. 793-796). In an attempt to show some error, Applicant suggested that perhaps someone helped him with the test or helped him with his duties. That is not evidence. That is speculation. Further, the "not very successful" characterization is inconsistent with the very fact that she ultimately had to consider his career "a relative strength," though not necessarily inconsistent with intellectual disability. (See PCR Tr. Vol. 1 at 730-31). That cannot carry his burden of proof in this ineffective assistance claim, and, to rely on such speculation further undermines the opinion.

Again, Dr. Knight's opinion suffers from unfairly discounting facts or weighing those facts in biased fashion – a pattern repeated in her report. As this Court has stated before, the details matter. A simple driver's license achievement, this Court agrees, does not move the meter toward or away from the diagnosis much, if at all. A history of a commercial driver's license, and hazmat responsibilities, and long-distance navigation, logically moves it more to strength and ability. This Court finds Dr. Knight's eagerness to discount the information to be a significant showing of confirmation bias, thus, negatively affects her credibility. For purposes of this ineffective claim, this Court has considered the details that could be uncovered (but not the speculation offered) and finds if offered (especially in the manner Dr. Knight did so), there is not a reasonable probability of a different result. The judge and jury could properly consider the details supporting this "strength" (as Dr. Knight concedes it is), and consider those details evidence of intellect and functioning. Stated differently, this Court weighs the details as further support of not finding intellectual disability. Thus, this Court finds that Applicant failed to carry his burden of proof to show *Strickland* deficient performance and prejudice. Applicant's claim that Defense Counsel

FILED
2025 APR 22 AM 9:08
CLERK OF COURT
PARSONS COUNTY
OREGON

was ineffective for failing to adequately develop and present evidence of his alleged intellectual disability is without merit. Moreover, the general basis for this claim has been thoroughly considered at trial and on appeal.

Applicant is due no relief, and this Court grants none.

11(b)(5) Applicant failed to prove that his depression and cancer had no demonstrable effect on I.Q. scores.

Applicant alleges that his trial counsel was ineffective in not managing to discredit that Applicant's depression and cancer treatment resulted in his adult low I.Q. scores. Applicant is unable to show ineffective assistance in this regard as the Record supports that Counsel was aware of these factors and attempted to rebut the State's theory that either treatment was responsible for Applicant's low I.Q.

During the State's cross-examination of Dr. Calloway, during the *Atkins* hearing, the State called attention to a particular antipsychotic medication Applicant was prescribed. It thereafter sought to call into question whether Applicant's low I.Q. was not the result of intellectual disability, but instead caused by the side effects of the prescribed medication. (R. 4017-4024). The State later cited a psychotic incident in which Applicant made suicidal gestures during the time he was undergoing treatment for cancer. (R. 4070-4076). During examination of the State's expert, Dr. Brown, Defense Counsel took the opportunity to counter the questions raised by the State as to the effect depression and cancer treatment could have had on Applicant's intellectual capacity:

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

A I'm saying they could have.

Q And you have absolutely no evidence of that though?

A That's correct.

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

A No, I did not.

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

A Correct.

Q You could do, right?

A Correct.

Q And, of course, in this case, there is no evidence of any change in Mr. Blackwell after the four-wheeler accident?

Q Not that I'm aware of, no.

Q Right.

And there's no evidence in the record that his IQ was affected or, or affected negatively by chemotherapy?

A No evidence, no.

Q Okay, or alcohol and drug use, there's no evidence that we can rely on to say that that negatively affected his IQ?

A That's correct.

Q Okay, so, with regard to these environmental factors, we really only have speculation with regard to did it possibly affect his IQ?

A I would agree with that.

(R. 4195-4196).

During the penalty phase of Applicant's trial, Defense Counsel adapted his intellectual disability presentation to further attempt to discredit this theory. During examination of Dr. Calloway, Defense Counsel specifically questioned her on the possible effect Applicant's

FILED
2025 APR 23 PM 9:08
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

depression treatment, specifically Thorazine, could have on his IQ. (R. 2933). Dr. Calloway responded:

A [Y]es, he was taking it and I was concerned not because of his behavior because when someone is overdosing on or if they have too much Thorazine, it's very obvious event to a lay person. Their words are slurred. They can't walk very well. They can, they can barely keep their eyes open. You know, they're - - just look not right.

But I was concerned because it is a medication that was popular 30 years, 40 years ago, a lot — some number of years ago, and it's been replaced by earlier medications. So, I, I was concerned about it from that point of view and I wanted to ask his attorneys about it.

I did, after I was here February 19th through the 21st, I went and consulted a forensic psychiatrist about the dosage that he was on at the time and he was actually on a very low dose, according to this forensic psychiatrist, of the Thorazine. So, I looked — a dose actually lower than what children are given in inpatient facilities. So — and this forensic psychiatrist also told me some other ways in which the Thorazine is being used, so, it's not maybe quite as uncommon as I had thought, but I was concerned and I brought it to the attorney's attention.

Q Now, based on what you've been able to do and, and what you know and your consult, do you believe the Thorazine affected his scores on the WAIS-4 or any of these scores?

A I don't think so. He, he did not look overmedicated to me. What I did learn, from the forensic psychiatrist, was that he's at such a low dose that the forensic psychiatrist would of expected, if anything, that dosage of Thorazine would of helped him to be more alert than be less alert.

(R. 2833-2834).

The Record supports that Defense Counsel made a satisfactory attempt to contradict any questions raised by the State as to the effect mental health and cancer treatments had on Applicant's intellectual capacity.

FILED
2025 APR 23 AM 6:08
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

During the PCR hearing, Applicant submitted an opinion that a CT scan after a four-wheeler accident was “normal,” but that same expert indicated that there were concussion “symptoms” that lasted at least one-year, and noted, in 2020, there were confirmed deficits in executive functioning. (PCR Tr. Vol. 1 pp. 907-910). Dr. Knight testified that she consulted an oncologist on the general “type” of chemotherapy drug Applicant received and generally that would cause “short-term” issues that would clear after approximately one-year. (PCR Tr. Vol. pp. 695-696). She sought to establish that this would not have lowered his I.Q. at the time of trial. However, once again, that is not the relevant time period. It is the I.Q. during the developmental period at issue. Even so, Applicant’s presentation was contradictory and general in nature. Further, Applicant’s presentation consistently overlooked the great evidence of voluntary drug use and use of alcohol.

In contrast, Respondent presented Dr. Nelson who was also found qualified to testify as an expert in the field of psychopharmacology, the study of psychotropic medications, *i.e.*, medications prescribed for individuals with a mental health diagnosis. (PCR Tr. Vol. 4 p. 13). Dr. Nelson explained that Applicant was on two medications that were of concern as it relates to cognitive function, Thorazine *and* Benztropine. Dr. Nelson testified that he would like to know about those medications before giving an I.Q. test because it could affect the performance. (PCR Tr. Vol. 4 p. 55). Dr. Calloway considered Thorazine and spoke to another expert, but then relied on her general opinion that he did not look “overmedicated.” (R. 2833-2834). Dr. Nelson’s testimony based on his direct knowledge in psychopharmacology is credible, and there is evidence that drugs could have affected the for-trial I.Q. testing.

Also, from Applicant’s own witness, Dr. Corvin, this Court heard testimony relating to the Hodgkins Lymphoma that Applicant once suffered, and that this form of cancer can be anywhere

FILED
2025 APR 23 AM 08
CLERK OF COURT
Spartanburg County

and could spread to the brain. Dr. Corvin testified that though he saw no record of “brain involvement” it was possible, and he further carefully distinguished that from treatment, which he opined, “did change him psychiatrically, but I don’t think it changed him intellectually.” (PCR Tr. Vol. 1 pp. 914-917; 969-970).²⁷ He agreed, though, that the treatment, the head injury and alcohol use would impact functioning, he just considered that Applicant was already intellectually disabled and it disabled him further. (PCR Tr. Vol. 1 918). Further, he admitted that COPD, which Applicant had for approximately 6 years before the 2012 I.Q. test, can impact I.Q., as well as drug use during the development period (at least in some studies), which was also noted. (PCR Tr. Vol. 1, p. 971-972; 986; 993-994). The concession, however, is that these things can have impact. Where on the spectrum and how much is a different matter, but to the extent Applicant claims no impact, that would be contrary to concessions made.

Further, just like several of the witness interviews from the trial investigation were not provided to Dr. Knight, Dr. Corvin was not provided with an interview that reflected a major accident “the trailer jackknifed, swinging the trailer around, hitting the cab” where Applicant had fallen asleep, even though a history of “multiple concussions back to back” is notably detrimental. (PCR Vol. 1, Tr. Vol. 1, pp. 991-992). He also testified that “structural imaging” is broad, detecting “tissue disruption or death,” but does not fully “rule out” neurocognitive issues. (PCR Vol. 1, Tr. 1015). Further, Dr. Corvin admitted that Applicant’s truck accident could well be caused by use of marijuana. (PCR Vol. 1, Tr. 989-990).

²⁷ Of concern is that Dr. Corvin also testified that he did not have the records, did not know that anybody does,” and did not speak to Applicant’s oncologist, though he also testified that he knew “some” about the treatment. (PCR Tr. Vol. 1, 1023-1024). This leaves a scattered impression that is not persuasive.

FILED
2025 APR 23 AM 9:20
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

There can be no finding of prejudice in regard to investigation of these areas of fact and potential opinions as Defense Counsel presented vast amounts of evidence in support of the early onset theory. The defense provided during both the *Atkins* hearing and trial examples of Applicant's substandard performance during grade school. (R. 3852-3853; 2812-2918). The defense presented standardized tests from Applicant's school records reflecting low I.Q. scores during cross-examination of DDSN Psychologist Kimberly Harrison. (R. 3795-3802; 3890-3902; 2861-2866). Additionally, Dr. Calloway testified to Applicant's poor performance in grade school, his enrollment in adjunct classes, and his eventual dropping out of school in the eleventh grade. (R. 3871; 3882-3883; 2851-2861). She also made reference to a basic learning exam administered to Applicant when he was seventeen years old, which indicated that he was functioning academically between a fifth and sixth grader. (R. 2855; 2867). She then correlated these to a similar test that she had recently administered which placed Applicant at a similar academic range. (R. 2868-2870). Dr. Calloway also attempted to relate several of the alleged deficits in social adaptability back to Applicant's childhood. She testified that interviews with family and acquaintances indicated that Applicant had difficulty making friends and was often taken advantage of. (R. 3927-3928).

Careful consideration of the Record does not support Applicant's claim that Defense Counsel was ineffective for failing to investigate and present evidence to the trial judge and jury that Applicant's depression and cancer treatment had no demonstrable effect on I.Q. scores. Instead, the Record would support that Counsel, through qualified experts, were aware and attempted to combat the allegation. Furthermore, the Record would does not support a finding of prejudice. Defense Counsel submitted adequate evidence of early onset, in attempt to counter the State's theory. There simply were other factors to consider. The trial judge and jury decided this

FILED
2023 APR 23 PM 3:08
CLERK OF COURT
STRAUBENBERG COUNTY
CLERK

factual matter against the defense, but Applicant shows no deficiency by counsel. Applicant has failed in his *Strickland* burden of proof.

Applicant is not entitled to any relief and this Court grants none.

11(b)(6) *Counsel did adequately inform and educate the trial judge and jury about potentially preconceived misconceptions and stereotypes related to intellectual disability; Applicant's allegation counsel failed to investigate and challenge misconceptions lacks merit.*

Applicant next faults Defense Counsel for failing to educate the judge and jury about intellectual disabilities in general. Nevertheless, the Record would support that Counsel took affirmative measures to educate both the judge and jury in regard to potential misconceptions and stereotypes. During Defense Counsel's extensive examination of Dr. Calloway at Applicant's *Atkin's* hearing the following testimony was presented:

Q Can somebody be mild mentally retarded and drive a truck?

A Yes .

Q forklift?

A Yes .

Q Be a welder?

A Yes .

Q Get a GED?

A Yes.

Q Read?

A Yes.

Q Write?

A Yes .

FILED
2021 MAR 23 AM 9:09
CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

Q Write letters?

A Yes.

Q Use the telephone?

A Yes.

Q Use an ATM machine?

A Yes.

Q Have a child?

A Yes .

Q Marry?

A Yes

Q Do household chores?

A Yes

Q Cook?

A Yes .

Q Shop?

A Yes.

Q Count money?

A Yes .

Q Make change?

A Yes.

Q Buy clothes?

A Yes.

Q Dress themselves?

A Yes.

FILED
2025 APR 23 AM 9:09
CLERK OF COURT
STAFFORD COUNTY
STAFFORD, CT

Q Maintain hygiene?

A Yes.

Q Work?

A Yes .

Q Be a mechanic?

A Yes.

Q Be a pizza delivery driver?

A Yes.

Q Have a driver's license?

A Yes.

Q Get a CDL?

A Yes.

Q Can you rule out mental retardation by pointing to these skills and say the person's not M.R.?

A No, because that's not the way, in our profession, that we go about assessing adaptive functioning. It's not a rule out. *It's looking at the entire picture of who the person is with regard to strengths and deficits and identifying those deficits in terms of these skill areas.*

(R. 3838-3840) (emphasis added).

Immediately after, Dr. Calloway presented to the trial court a detailed analysis on how mental health professionals investigate and determine intellectual disability. (R. 3840-3845). Dr. Calloway also cautioned the court on the “cloak of competency” exhibited by individuals with mild mental retardation:

For several reasons. People who are suspected of having intellectual disability, particularly people who fall within the mild range of intellectual disability, are people who are — have sufficient awareness to know that they are not as bright, if you want to put it that way, they're not as capable, they don't have as much intellect

FILED
2025 APR 23 AM 9:09
CLERK OF COURT
EMERY COUNTY

as other people, and this is for — this is a shameful thing in our society not to be bright, not to be capable, it's shameful.

So, there is a — there's a way in which people who have intellectual disability, particularly people with the mild form of it, will want to cover what they, what they don't know and pretend that they do know. There's a book called *The Cloak of Competence* in which this man did a study of a number of people in California with intellectual disability, and he came up with this concept of *The Cloak of Competence*.

So, this describes the way in which, if you will, like somebody would put on a coat to cover themselves, *The Cloak of Competence* is what people with mild M.R. or mild I.D. do in order to pass, in order to look like that they are average normal people.

(R. 3845-3846).

Defense Counsel further endeavored to mitigate the fact that Applicant held a Commercial Driver's License and had a career in trucking. Through Dr. Calloway, Defense Counsel provided a comprehensive assessment of the tribulations Applicant experienced during his driving career. Dr. Calloway detailed during the *Atkins* hearing and trial the accident history and disciplinary records from Applicant's various employers. (R. 3884-3890; 2947-2948). In addition, Dr. Calloway reflected on comments made by one of Applicant's prior employers:

But Mr. Bagwell said if you could drive at all you could drive those trucks, and this is down at the latter part of that paragraph. He said later you don't need a Ph.D. or college degree to drive a truck, and he thought that [Applicant] didn't drive tanker trucks, which required a greater amount of paperwork to be completed by the driver.

(R. 3932).

Defense Counsel also took several more opportunities to educate the jury during the penalty phase about the realities of intellectual disability. Dr. Calloway began her testimony by informing the jury that individuals with mild intellectual disabilities often appear normal. She again explained the "cloak of competence" intellectually disabled individuals often exhibit in order to maintain a

normal appearance. (R. 2826). Dr. Calloway also expressed the importance of clinical judgment in reaching an intellectual disability determination. (R. 2827-2828). Defense Counsel later offered the question on an intellectually disabled individual's ability to read to which Dr. Calloway affirmed that individuals with mild mental retardation have the capability to both learn and read. (R. 2867-2868). Similarly, Defense Counsel asked during presentation of Applicant's work history, whether the mildly mentally retarded could work. Dr. Calloway responded:

They can be -- they are in educable sorts of classes, educable classes for special ed children, and so they can be taught, and they can be taught through routines and they can be taught through assistance, and they can be -- they can work. There's no reason they shouldn't be able to work.

(R. 2876-2877).

Dr. Calloway further affirmed her belief that a mildly mentally retarded person could be trained to drive a commercial truck, a forklift, attain a commercial driver's license and to keep logs of their activities. (R. 2877). She concluded this line of questioning with the following statement:

Again, I -- you know, the, the distinguishing thing about mildly mentally retarded people is that, just by looking at them and *just by looking at some of their activities*, would not be sufficient -- a sufficient way to diagnose mental retardation because they are capable of doing many things.

(R. 2877) (emphasis added).

Applicant is unable to satisfy his burden under *Strickland*, as the Record wholly contradicts any allegation that Defense Counsel was deficient in their attempts to educate all parties on misconceptions and stereotypes. Defense Counsel took advantage of repeated opportunities to educate both the court and jury on the nature of intellectual disability and to dispel any

FILED
2017 JUN 23 AM 10:09
CLERK OF COURT
JEREMY A. COOK, CLERK

preconceived stereotypes or misconceptions. Applicant has failed in his *Strickland* burden of proof.

Applicant is due no relief and this Court grants none.

11(b)(7), 11(d)(7), & 11(d)(8)

Applicant failed to show deficient performance in counsel's not objecting to the Solicitor's closing arguments regarding Applicant's alleged intellectual disability, or that Applicant did not have any remorse, as Applicant has not shown the argument was improper or that counsel otherwise would have had a basis on which to object.

Applicant claims Defense Counsel was ineffective for not objecting to Solicitor's closing arguments regarding the veracity of Applicant's intellectual disability claim and lack of remorse. Trial counsel was not deficient as the contents of the Solicitor's closing argument was appropriately confined to the Record and not overly prejudicial.

"[I]t is important that both the defendant and the prosecutor have the opportunity to meet fairly the evidence and arguments of one another." *United States v. Robinson*, 485 U.S. 25, 33 (1988). "A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." *Von Dohlen v. State*, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004). "[I]ts content should stay within the record and reasonable inferences that may be drawn therefrom." *Id.* at 609–10, 602 S.E.2d at 744.

In *State v. Durden*, 264 S.C. 86, 212 S.E.2d 587 (1975), our Supreme Court set forth the parameters that attorneys must abide by putting forth permissible closing arguments. Citing the 23A C.J.S. Criminal Law § 1107, the Court found that while closing arguments have been held improper when reliant upon personal bias or arousing passions and prejudices of the jury, there is no error if the attorney stays within the record and the reasonable inferences that can be drawn

therefrom. *Id.* at 92, 212 S.E.2d at 590. Post-conviction relief will not be granted if an applicant cannot show both deficient performance and prejudice resulting from an alleged improper closing argument. *Brown v. State*, 383 S.C. 506, 517, 680 S.E.2d 909, 915 (2009). -

Applicant is unable to show ineffective assistance for not objecting because the closing argument was carefully tailored to the issues presented at trial and based on either the facts in evidence or the reasonable inferences from the facts in evidence. The defense relied heavily on Applicant's intellectual capacity during mitigation. In response the State pointed to several noted social strengths to reinforce its position that Applicant's was not intellectually disabled. The Solicitor's closing argument is a clear expression of that position. In addition, the issue of Applicant's remorse was clearly before the jury.

During the PCR hearing the State called Mr. Barry Barnett, Solicitor of the Seventh Judicial Circuit. Solicitor Barnett prosecuted the case against the Applicant. Solicitor Barnett testified that he was not stereotyping in any way, that, "[I]t was just a showing the kind of defense from that standpoint. So, Dr. Galloway's testimony, all the I.Q. testing, all the evidence, showed that he was not mentally retarded or intellectually disabled." (PCR Tr. Vol. 3 pp. 21-22).

Notably, the defense presented witnesses contradicting testimony regarding Applicant's level of remorse. (See R. 2987 (Dr. Maddox: "He has a difficult time dealing with what he's done and he's very sad about it."); R. 3020 (Heather Bryant: "My daddy was pushed to the extinct [sic] to do what he did, and he regrets what he has done. He suffers from that everyday."); R. 3084 (Ken Rice: "The next time I went to see him he said I've - - God's forgiven me, but I can't forgive myself.")). Accordingly, the Solicitor's comments on the topic were appropriate and appropriately confined to the record.

FILED
2020 APR 23 AM 9:09
CLERK OF COURT
ST. JAMES COUNTY
JANET COX

Moreover, a criminal defendant is not entitled to relief based upon the closing argument of a prosecutor, unless that argument infected the trial with unfairness as to make the resulting conviction a denial of due process. *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974). *See also Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002) (“Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument”); *State v. Brisbon*, 323 S.C. 324, 474 S.E.2d 433 (1996) (The test of granting a new trial for alleged improper closing argument of counsel is whether the defendant was prejudiced to the extent that he was denied a fair trial). The standard in *Donnelly* is a very high standard for a defendant to meet. “[I]t is not enough that the remarks were undesirable or even universally condemned.” *Darden v. Wainwright*, 477 U.S. 168, 181 (1986). *See also Parker v. Matthews*, 567 U.S. 37, 47-48 (2012); *State v. Tubbs*, 333 S.C. 316, 321, 509 S.E.2d 815, 818 (1999). “In order to make an appropriate assessment, the reviewing court must not only weigh the impact of the prosecutor’s remarks but must also take into account defense counsel’s opening salvo.” *United States v. Young*, 470 U.S. 1, 12 (1985).²⁸ Further, the Supreme Court in *Donnelly* admonished that “a court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury, sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations.” *Donnelly*, 416 U.S. at 647.

Applying this standard to the challenged comments, it is clear that Applicant cannot show prejudice under *Strickland* because he has not proven that the challenged remarks were so

²⁸ As the Court explained in *United States v. Robinson*, 485 U.S. 25, 33 n. 5 (1988): “In *United States v. Young* and *Darden v. Wainwright*, we concluded that statements by the prosecutor which inflamed the jury, vouched for the credibility of witnesses, or offered the prosecutor’s personal opinion as to the defendant’s guilt were improper, but we held that, in context, those statements did not necessitate reversal.”

FILED
2025 APR 23 11:09
CLERK OF DISTRICT COURT
STARK COUNTY, OHIO

prejudicial that they deprived him of a fair trial under *Donnelly*. See 416 U.S. at 637; *Humphries*, 351 S.C. at 373, 570 S.E.2d at 166. At bottom, the Solicitor, during his closing simply referenced the fact that Applicant's intellectual and adaptive strengths undermined confidence in the defense's subjective opinion on adaptive deficits, and that the State's evidence negated any finding of remorse. Those considerations were already before the jury. Applicant is unable to meet his *Strickland* burden.

Applicant is not entitled to any relief and this Court grants none.

11(c) Applicant failed to prove that trial counsel did not adequately question prospective jurors in voir dire to identify prospective jurors with pre-formed beliefs about and stereotypes and biases against a defendant with an intellectual disability.

As with Ground 11(d)(4), Applicant has asserted that he wishes to withdraw and/or waive the allegation presented. (See Post-hearing Brief, at 92). Also like Ground 11(d)(4), there is no merit to this allegation.

Applicant alleges that Defense Counsel was deficient in failing to question and identify specific jurors with beliefs and biases against persons with intellectual disability. There can be no finding of ineffective assistance as such questions would have been beyond the permissible scope of *voir dire*. “[V]oir dire is not to be used as a means of pre-educating or indoctrinating a jury or as a means of impaneling a jury with particular predispositions.” *State v. Poindexter*, 314 S.C. 490, 431 S.E.2d 254, n. 2 (1993) (citing *People v. Hundley*, 227 Ill.App.3d 1056, 169 Ill.Dec. 399, 591 N.E.2d 903 (1992)). “While the Sixth and Fourteenth Amendments to the United States Constitution provide a defendant with the constitutional right to a fair and impartial jury of his peers, this right does not entitle a defendant to handpick a jury. The Constitution, after all, does not dictate a catechism for voir dire, but only that the defendant be afforded an impartial jury.”

FILED
CLERK OF COURT
FULTON COUNTY
JAN 25 2025
AM 9:09

State v. Stanko, 376 S.C. 571, 576, 658 S.E.2d 94, 96–97 (2008) (citing *Morgan v. Illinois*, 504 U.S. 719, 729 (1992)).

A defendant is entitled to question a prospective juror *on the general subject of mitigating circumstances*, in order to determine if such a juror would follow the instructions of the trial judge, *i.e.*, to consider mitigating circumstances. *Morgan v. Illinois*, 504 U.S. 719 (1992). However, a defendant does not have the right to question jurors whether or not they would consider *specific mitigating circumstances*, or what their opinion is of any *specific mitigating circumstance*. *State v. Hill*, 331 S.C. 94, 501 S.E.2d 122 (1998); *State v. Powers*, 331 S.C. 37, 501 S.E.2d 116 (1998); *United States v. Tipton*, 90 F.3d 861 (4th Cir. 1996). The underlying rationale for limiting such questioning is that it might cause a juror to believe that he has pledged or committed himself to a future course of action when considering evidence of such mitigating circumstances. *Powers*, 331 S.C. 37, 501 S.E.2d 116, *referencing State v. Skipper*, 337 N.C. 1, 446 S.E.2d 252, *cert. denied* 513 U.S. 1134, 115 S.Ct. 953 (N.C. 1995); *State v. Wilson*, 74 Ohio St.3d 381, 659 N.E.2d 292 (1996); *State v. Drutzer*, 928 S.W.2d 854 (Mo. 1996); *Hill*, 331 S.C. 94, 501 S.E.2d 122; *State v. Patterson*, 324 S.C. 5, 482 S.E.2d 760 (1997).

While Applicant characterizes such questions as probing bias, in reality, Applicant would have sought for Defense Counsel to question jurors for the purpose of seeking out those who were predisposed to finding in favor of intellectual disability. This would have been improper questioning during the *voir dire*.

Moreover, the trial record and the direct appeal opinion, and Mr. McGuire's background as presented to this Court, demonstrate that counsel held experience and knowledge for careful participation in the capital voir dire process, and had challenged a juror that counsel assessed would not be qualified to sit on the jury. *See Blackwell*, at 144-146, 801 S.E.2d at 722-723. Applicant

has failed to overcome *Strickland's* “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance....” *Strickland*, at 689. No relief is due.

Whether withdrawn or ruled upon, this allegation cannot support relief. This Court dismisses the claim.

11(d)(1) and 11(d)(2)

Counsel adequately investigated and presented a full range of mitigating evidence concerning Applicant’s social and life history.

Counsel adequately investigated and presented all available mitigating evidence concerning Applicant’s mental health prior to and at the time of the capital offense.

Applicant claimed that counsel’s performance was deficient for failing to investigate and present the full range of mitigating evidence, and Applicant’s mental health prior to and at the time of the capital offense. This Court finds that this is not the correct question, rather the correct question to consider is whether the investigation was reasonable. *Owens, supra*. Even so, the Record shows a broad and far-ranging investigation, not simply on the case for intellectual disability, but also regarding Applicant’s social and life history, as well as his mental health at the time of the murder, and presentation of that evidence. Counsel utilized the services of both a trained social worker and forensic psychologist for the purpose of investigating Applicant’s social and life history. Together they conducted numerous interviews with family members, friends, past employers, grade school teachers, and acquaintances. (R. 3779; 3780-3781; 3816). In addition, they collected grade school, employment, and social security records. (R. 2831-2837). They also collected and reviewed Applicant’s health and psychiatric records, and various school and mental health records for Applicant’s immediate family. (R. 2835-2838). Having gathered that information, Defense Counsel, through its qualified experts, presented a detailed accounting of

Applicant's social and family history which was presented during both the *Atkins* hearing and at trial. (R. 3871-3890). These findings were further detailed in Dr. Calloway's report. (R. 3871).

During the penalty phase of Applicant's trial, Dr. Calloway detailed Applicant's life history dating from adolescence up until the murder. This included detailed recounting of educational and occupational history. (R. 2848-2868; 2873-2877). Dr. Calloway also listed Applicant's other family members who suffered from various levels of lower intellectual functioning and psychiatric disorders. (R. 2838-2841). As to Applicant's mental health, Dr. Calloway detailed Mr. Blackwell's psychiatric records, including his several diagnoses for depressive disorder, previous suicidal gestures and resulting psychiatric commitments. (R. 2843-2844).

In addition, during trial Defense Counsel called forensic psychiatrist Dr. Donna Schwartz-Watts (now Dr. Maddox) to testify further on Applicant's mental health history. (R. 2973). She provided additional testimony to Applicant's history of depression and prior suicidal gestures. (R. 2976-2977). She detailed how Applicant fired a gun through the roof of his trailer and was subsequently committed to a psychiatric facility. (R. 2976-2977). She also detailed a later psychotic event in which Applicant overdosed on medication in response to his wife leaving him. This resulted in him again being committed. (R. 2977-2978). Dr. Maddox also confirmed Applicant's diagnosis of depression disorder. (R. 2979). In addition, she detailed the difficulties Applicant had experienced with his physical health, including his battle with cancer, and back and blood pressure issues. (R. 2982-2984). In regard to Applicant's mental health at the time the murder, Dr. Maddox testified:

So, the only opinion I'm able to give today would be that, in my opinion, he's had a history of major depression before. He's had two episodes before when he was hospitalized, and it's clear, from looking at Doctor Jackson's records, that he remained depressed before this incident, and it clear that, since I treated him at the jail, he had symptoms of depression as well.

FILED
2025 APR 23 AM 9:09
CLERK OF COURT
SPRINGFIELD COUNTY
MO

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

(R. 2985).

Applicant argues, though, that there was not a presentation of mitigating evidence that encompassed the evidence that would have been presented by Dr. Corvin. Applicant misinterprets the reason why Dr. Corvin was not called to testify as is shown and supported by the record.

It is obvious to this Court that trial counsel did not call Dr. Corvin not because they misunderstood or overlooked what he could have said in mitigation, but to prevent the potential for other damaging information to come out – information that, without a doubt, had been shared with them for consideration. Trial counsel decided to use other witnesses such as Dr. Calloway and Dr. Maddox in order to relay identical information without the risk of exposing very damaging information to the jury. Due to the apparent strategy in this decision, Applicant is unable to maintain his burden to show ineffective assistance of counsel.²⁹ The Record supports that Defense Counsel, through its experts, conducted a detailed and adequate investigation into Applicant's history and mental health. Moreover, the Record reflects that this information was adequately utilized during defense's mitigation case.

²⁹ Again, *Strickland* teaches that “a court must indulge in a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance” and it is “the defendant [who] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.” *Id.* at 689 (quoting *Michel v. State of La.*, 350 U.S. 913, 101 (1955)). See also *Burt v. Titlow*, 571 U.S. 12, 23 (2013) (“It should go without saying that the absence of evidence cannot overcome” the *Strickland* presumption). The evidence here shows that trial counsel was not deficient in investigation and was not unaware of the evidence, he just didn’t use it. That reasonably infers strategy. In contrast, “[d]ecisions made in ignorance of relevant, available information cannot be characterized as strategic.” *Weik v. State*, 409 S.C. 214, 236, 761 S.E.2d 757, 768 (2014).

During the PCR hearing the Applicant called Dr. Corvin who was found qualified as an expert in the field of general and forensic psychology. During his testimony Dr. Corvin gave the opinion that when this crime was committed the Applicant suffered from an intellectual disability with adaptive functioning which was further worsened by the fact that his major depression was out of control.

While preparing for trial Dr. Corvin was contacted by Kara Richards-Baker who was the mitigating specialist that the defense hired on this case. She was familiar with Dr. Corvin's work and he was hired to evaluate the Applicant. Dr. Corvin went to interview the Applicant on November 20, 2012, in preparation for this case. (PCR Tr. Vol. I p. 975). That examination lasted over three and a half hours. (PCR Tr. Vol. I p. 975). During this examination Dr. Corvin took notes from what was told to him by the Applicant. Within those notes it states that the Applicant told him that he used marijuana from age 18 until 1993 some seventeen years. (PCR Tr. Vol. I p. 985). The Applicant told him that "he loved to smoke marijuana." (PCR Tr. Vol. I p. 985). Applicant also told Dr. Corvin that he used valium, tried powdered cocaine, and used acid once. Applicant also told Dr. Corvin that he and Angie did the bills together and that Applicant was angry because Angie was getting loans from a check cashing place. (PCR R. Vol. I Tr. p. 981-982). Applicant also informed Dr. Corvin that he was following Angie and her new boyfriend around. (PCR Tr. Vol. I p. 984). And on the day of the incident, he actually drove by the house of the child he murdered witnessing her at home with her mother. (PCR Tr. Vol. I p. 984). After this conversation, Dr. Corvin telephoned Ms. Richards and spoke for thirty minutes about this interview. (PCR Tr. Vol. I p. 976). After this conversation Dr. Corvin was not called to testify in this trial.

At the PCR hearing, Dr. Corvin opined, like Dr. Calloway, that Applicant was intellectually disabled. Dr. Corvin also discussed the fact that the Applicant was suffering from major depression

FILED
2025 APR 3 11 9:09
CLERK OF COURT
DISTRICT OF COLUMBIA

at the time of the crime due to his break-up with his wife, (PCR Tr. Vol. 1 p. 973), a fact that was relayed to the jury through the testimony of Dr. Schwartz-Watts (now Maddox) during trial, (R. pp. 2981-2982; 2985). Thus, Defense Counsel presented a diagnosis, and the relevant medical information to the jury without the damaging information from Dr. Corvin. The defense not calling Dr. Corvin as a witness was a reasonable trial strategy.

The long-term drug use, the fact that he paid bills with his wife, along with admissions that would show Applicant followed his wife and rode by the victim's house on the day of the murder, would have been damaging to, the defense. Dr. Corvin admitted that if Solicitor Barnett was to ask him about all of the detrimental statements Applicant made to him that he would have to admit he was told all these things. (PCR Tr. Vol. 1 pp. 1005-1006). The fact the defense decided not to use Dr. Corvin when the same basic information was relayed to the jury in other ways revealed a reasonable strategy. Applicant has failed to show ineffective assistance of counsel.

Further, Applicant made a lengthy presentation from yet another mitigation specialist in the PCR hearing, Dr. Andrews – but that was merely recasting the background information and counsel, with their trial experts had already investigated and considered that information. Again, Applicant has failed to show ineffective assistance of counsel.

Alternatively, even if the decision could support deficient representation, there would be no prejudice. Indisputably, there was ample evidence presented in mitigation. The evidence in aggravation, however, was astonishingly heavy. The mere fact that he shot a child to hurt his estranged wife boyfriend is a circumstance that most jurors would find very difficult to weigh any less in face of one or two more points in a vast array of mitigation. *See Wong v. Belmontes*, 558 U.S. 15, 288 (2009) (“Schick’s mitigation strategy failed, but the notion that the result could have

FILED
2025 MAR 27 AM 9:09
CLERK OF COURT
NEW HAMPSHIRE
COUNTY

been different if only Schick had put on more than the nine witnesses he did, or called expert witnesses to bolster his case, is fanciful.”).

Applicant is not entitled to any relief, and this Court grants none.

11(d)(3) Applicant failed to show that counsel was ineffective in failing to present character witnesses where sufficient mitigating evidence going to lack of future dangerousness, adaptability to confinement, and good character was presented

Applicant claims that trial counsel was ineffective for failing to adequately investigate and present expert testimony regarding Applicant’s good character generally, and ability to adapt to incarceration. Evidence of adaptability to prison life can be demonstrated in a number of ways, including the provision of evidence and testimony that a defendant has been a well-behaved and disciplined prisoner in jail. *See Skipper v. South Carolina*, 476 U.S. 1, 7 n. 2 (1986). Further, “[a] defendant who alleges a failure to investigate by counsel must allege with specificity what the investigation would have revealed and how it would have altered the outcome....” *United States v. Green*, 882 F.2d 999, 1003 (5th Cir.1989).

Defense Counsel presented several character witnesses during the penalty phase of Applicant’s trial, including a pastor, former employer, a church acquaintance, Applicant’s cousin, daughter, father, and mother. These witnesses testified extensively to Applicant’s good character and gentle demeanor. Applicant’s former employer, Gail Shook, testified that Applicant was “the most gentle, humble man that I’ve ever met including my husband.” (R. 2759). Applicant’s cousin, Sherry Wofford offered that Applicant was “a loving man,” and “[j]ust as gentle, always caring about everybody, doing everything he can for anybody.” (R. 2990). Applicant’s daughter testified that Applicant was “kind, gentle, caring man.” (R. 3020). Brittany Fowler, the mother of Applicant’s grandson, described Applicant as “[v]ery kindhearted,” and stated that he would give you the shirt off his back.” (R. 3026). Norm Uber, an acquaintance from church, described

Applicant as a “gentle man.” (R. 3031). Cletus Blackwell, Applicant’s father, testified that Applicant was “a good boy,” and no trouble. (R. 3037). He further iterated that Applicant did not fight others as a kid despite being larger. (R. 3038). Applicant’s brother-in-law described Applicant as “a really good person,” and “[k]ind and gentle.” (R. 3057). Applicant’s pastor provided the following testimony regarding Applicant:

Well, Ricky is - - I summarize his personality as being phlegmatic maybe, laid back, easy going, did not like to be at any conflicts. He was always smiling, had a little grin all the time, easy going, very cooperative, gentle. Just a lot of good qualities.
(R. 3072).

Moreover, witnesses repeatedly emphasized that in their opinion this murder was directly tied to the breakup of Applicant’s marriage. (See R. 3020; 3035; 3060; 3086). Lastly, in regard to testimony provided by the detention officer concerning Applicant’s hoarding of detergent and medication, Defense Counsel conducted a thorough cross-examination for the purpose of minimizing any judgment on Applicant’s ability to adapt to prison. (See R. 2650-2652). Further, the records referenced at trial sufficiently showed very little prior by way of a prior criminal record and no record of violence. The fact that Defense Counsel did not present specific expert testimony regarding lack of future dangerousness (though, arguably, some came through Dr. Maddox’s testimony), simply does not show a reasonable probability of a different result. All in all, the basic substance of the information was presented. Applicant fails in his *Strickland* burden of proof.

In the alternative, if some deficiency in representation could be found, Applicant has failed to show a reasonable probability of a different result. First, the basic facts were admitted, clearly on character, and on ability to a prison environment, even if a corrections “expert” did not tell the jury those basic facts existed. Second, the evidence in aggravation was astonishingly heavy. The mere fact that he shot a child to hurt his estranged wife boyfriend is a circumstance that most jurors

FILED
2018 APR 23 4 09 PM
CLERK OF COURT
SEALY COUNTY
MISSOURI

Applicant's reliance on *Caldwell v. Mississippi*, 472 U.S. 320, 105 S.Ct. 2633 (1985), and *State v. Davis*, 306 S.C. 246, 411 S.E.2d 220 (1991), to show the statutory language is facially invalid and constitutionally wrong as included in the charge is misplaced. These cases cannot afford relief primarily because it is undisputed that the trial court here plainly instructed the jury that it was the jury's decision on the sentence that was controlling. Indeed, the very reasons identified as supporting reversal in *Caldwell* and *Davis*, which are far removed from the factual basis here, well-demonstrate the flaw in Applicant's allegation of error.

In *Caldwell*, the Supreme Court found "it is constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere." 472 U.S. at 328–29, 105 S.Ct. 2633. The prosecution pointedly told the jury its sentencing decision was "not the final decision," that its "job is reviewable" and "the decision you render is automatically reviewable by the Supreme Court." *Id.* at 325–26, 105 S.Ct. 2633. Additionally, the trial judge endorsed and supported those comments in stating, "I think it proper that the jury realizes that it is reviewable automatically as the death penalty commands." *Id.* at 325, 105 S.Ct. 2633. Concluding that "the State sought to minimize the jury's sense of responsibility for determining the appropriateness of death," the Supreme Court vacated the death penalty:

This Court has always premised its capital punishment decisions on the assumption that a capital sentencing jury recognizes the gravity of its task and proceeds with the appropriate awareness of its "truly awesome responsibility." In this case, the State sought to minimize the jury's sense of responsibility for determining the appropriateness of death. Because we cannot say that this effort had no effect on the sentencing decision, that decision does not meet the standard of reliability that the Eighth Amendment requires. The sentence of death must therefore be vacated.

FILED
2025 APR 23 AM 9:09
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

here expressly informed the jury that its sentencing recommendation “will be followed” which is in sharp contrast to *Davis*. It is also completely consistent with established case law on this issue. See *State v. Sims*, 304 S.C. 409, 421-22, 405 S.E.2d 377, 384 (1991) (holding the instruction “whatever you recommend, will be the sentence that will be given to a defendant” informed the jury “that it was to make the ultimate decision as to [the defendant’s] fate.”); *State v. Middleton*, 295 S.C. 318, 325-26, 368 S.E.2d 457, 461(1988) (concluding the instruction, “the ultimate punishment of the defendant will be in your hands if you as a member of the trial jury have found the defendant guilty” told the jury it was vested with making a decision as to the defendant’s fate); *State v. Bellamy*, 293 S.C. 103, 107, 359 S.E.2d 63, 65 (1987) *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (“The idea should be conveyed to the jury that its sentencing recommendation will be followed.”); *State v. Linden*, 276 S.C. 304, 310-11, 278 S.E.2d 335, 338-39 (1981) (“To instruct the jury that it will recommend what sentence the convicted murderer will be given is not improper and does not mask the true nature of the jurors responsibility at this phase of trial”). It is so in other jurisdictions where the statute similarly sets out the jury recommends and the judge imposes the sentence. See, for example, *Brockman v. State*, 739 S.E.2d 332, 358 (Ga. 2013) *cert. denied* 134 S.Ct. 521 (2013) (finding, in the alternative, procedurally barred claim was without merit where “it was clear from the charge that the recommendation would be binding on the trial court”); *Treadway v. State*, 924 N.E.2d 621, 639 (Ind. 2010) (“merely referring to the jury’s determination as a ‘recommendation’—the term used in the statute—did not run afoul of *Caldwell* because there was no intimation to the jury that its recommendation was

judge’s] instructions.”); *State v. Ard*, 332 S.C. 370, 386, 505 S.E.2d 328, 336 (1998) (holding in a capital case that jurors are presumed to follow the trial court’s instructions); *State v. Pierce*, 289 S.C. 430, 346 S.E.2d 707 (1986) (finding jurors are presumed to follow the law as instructed); see also *Weeks v. Angelone*, 528 U.S. 225, 234 (2000) (holding in a capital case that a jury is presumed to follow its instructions.”).

‘only a preliminary step’ and no suggestion that the jury was ‘not responsible’ for the ultimate sentence.”). Applicant’s allegation of ineffective assistance (or any error in regard to the charge) necessarily fails as a matter of law.

Lastly, in regard to Applicant’s reliance on *Hurst v. Florida*, 577 U.S. 92 (2016) (which was decided after the 2014 trial), and *Ring v. Arizona*, 536 U.S. 584 (2002), that reliance is misplaced. *Hurst* applied *Ring* to invalidate a statutory scheme that allowed an advisory opinion by the jury for sentencing. *Hurst*, at 99 (“As with *Ring*, a judge increased Hurst’s authorized punishment based on her own fact-finding. In light of *Ring*, we hold that Hurst’s sentence violates the Sixth Amendment.”). As noted in the parenthetical, this scheme resulted in factual determinations by the trial judge in violation of the right to a jury trial. The statute here, the case law in this jurisdiction, and the charge and sentence in this case specifically show there is no like circumstances here. Again, though the word recommendation is used, it was underscored clearly to the jury that its determination would be followed and was in fact followed in sentencing. There is no Sixth Amendment violation. Nothing demonstrates that counsel not challenging the statutory language and/or charge was “outside the wide range of professionally competent assistance.” *Strickland*, 466 U.S. at 690. To the contrary, given the established state of the law, counsel had no reason to challenge the constitutionality of Section 16-3-20, either on its face or on these facts. *See, e.g., Maryland v. Kulbicki*, 577 U.S. 1 (2015) (summarily reversing the Court of Appeals of Maryland for failing to view counsel’s representation as of the time of trial); *Harrington v. Richter*, 562 U.S. 86, 107 (2011) (finding error where “the Court of Appeals failed to ‘reconstruct the

circumstances of counsel's challenged conduct" and "evaluate the conduct from counsel's perspective at the time."³¹ Applicant has failed in his burden of proof.

Applicant is due no relief, and this Court grants none.

11(d)(6) *Applicant failed to show either deficient performance or the required prejudice to support an ineffective assistance claim where counsel investigated and attempted to present evidence of remorse and acceptance of responsibility; however, the witnesses could not remember and this evidence would not have changed the outcome of the trial.*

The factual basis for this claim was developed at trial and addressed in the direct appeal. The Record shows that before the records custodian was called, Defense Counsel advised the trial judge 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. 2960, lines 18-25). Defense Counsel advised that he would present Ms. Gracie Williams, a record custodian from the Spartanburg Regional Hospital. (R. 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. 2962, lines 11-18; 2965, lines 3-5). The substance of the notes was 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

³¹ Indeed, since its 1984 decision in *Strickland*, the Supreme Court has consistently applied the rule of contemporary assessment of counsel's conduct. See, e.g., *Rompilla v. Beard*, 545 U.S. 374, 381, 125 S.Ct. 2456 (2005); *Wiggins v. Smith*, 539 U.S. 510, 523, 123 S.Ct. 2527 (2003); *Lockhart v. Fretwell*, 506 U.S. 364, 372, 113 S.Ct. 838 (1993); *Burger v. Kemp*, 483 U.S. 716, 789, 107 S.Ct. 3114 (1987); *Kimmelman v. Morrison*, 477 U.S. 365, 384, 106 S.Ct. 2574 (1986).

prayers in his heart, asked for prayers for the family. We prayed ...
the Lord's Prayer together.

(R. 2961 , line 25 - 2962, line 2; 2963, line 24 - 2964, line 6).

The State objected noting the information was not in the nature of a diagnosis; the witnesses were available; and, lastly, the notes were more prejudicial than probative. (R. 2962, line 20 - 2963, line 4; 2964, lines 14-23). The State relied upon *State v. Burroughs*, 328 S.C. 489, 501, 492 S.E.2d 408, 414 (Ct. App. 1997), which found statements not necessary to medical treatment or diagnosis were inadmissible hearsay. 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. 2963, lines 17-19). The trial judge found that the chaplain's notes were not admissible:

...I assume the pertinent portions are the parts that I discussed earlier that state the patient was struggling with guilt, grandchildren he loved them. He was struggling with his actions and what had been done, and another entry, the next Day, by a different individual said but he was sad, had some prayers in his heart, asked for the family. We prayed the Lord's Prayer together.

The case cited by Mr. Barnette does appear to be on point. Also the exception to the hearsay rule for regularly kept business records states that matters which are in the nature of an opinion will not be admitted as an exception to the hearsay rule from a regularly kept business record.

It appears that the quotes in here that describe the defendant would be in the form of opinions given by the individuals involved, and therefore, I'll grant the State's motion.

(R. 2965, line 15 - 2966, line 6).

On appeal, Applicant argued the trial judge erred in not allowing him to present his evidence of remorse. (Return Attachment 2, p. 93). Our Supreme Court disagreed. The Court

found not only that the trial judge did not err, but even if the ruling had been error, it would only have been harmless in light of other evidence of record:

..we find the trial court correctly excluded the document as it contained inadmissible subjective opinions and judgments, in particular the notations that Blackwell was “struggling with guilt” and “struggling with his actions.”

Nonetheless, even if the trial court erred in excluding the chaplains’ notes, we find the error harmless as the evidence was cumulative to other evidence in the record of Blackwell’s remorse. *See State v. Northcutt*, 372 S.C. 207, 221, 641 S.E.2d 873, 881 (2007) (“Although it was error to exclude the letter written from Appellant to Ms. Northcutt expressing remorse, the error was harmless. The record contains evidence of Appellant’s remorse. Appellant was not prejudiced, nor was the outcome of the trial affected.”).

Specifically, as mitigation evidence, Blackwell presented: (1) Dr. Donna Schwartz-Watts, a psychiatrist who evaluated Blackwell, who testified that “[i]t’s very hard for [Blackwell] to accept what happened and what he’s done,” and “he’s very sad about it”; (2) Heather Bryant, his daughter, who testified that “he regrets what he has done” and “suffers from that every day”; and (3) Ken Rice, his pastor, who testified that Blackwell told him “God’s forgiven me but I can’t forgive myself.”

Blackwell, 420 S.C. at 160, 801 S.E.2d at 730–31.

During the hearing both Reverends Moon and Hesse testified. They both did not remember if the Applicant told them if he was ever sorry for what he done. (PCR Vol 1 T. p. 1238-1239).

In short, whether counsel erred or not, Applicant has failed to show a reasonable probability of a different result. However, the Record supports that Applicant failed to carry his *Strickland* deficient performance burden of proof.³² Defense counsel explained their reason for not calling

³² As noted above, several witnesses were introduced during the penalty phase who testified to Applicant’s remorse. (Dr. Maddox: “He has a difficult time dealing with what he’s done and he’s very sad about it.”); R. 3020 (Heather Bryant: “My daddy was pushed to the extinct[3ic] to do what he did, and he regrets what he has done. He suffers from that everyday.”); R. 3084 (Ken

the witnesses – they possessed little to no memory of the counseling they had provided. Thus, counsel had specific, reasonable cause not to present the witnesses. This informed decision does not support any finding of deficient performance. *See Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992) (Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel).

During the PCR hearing trial counsel for the Applicant Mr. William McGuire testified. During his testimony he stated:

“I thought the notations in the record was good – were good. And my recollection, my recollection is in talking to Kara that I got more of a feeling that their memories were a little fuzzier than maybe her memo made out to be. For instance, one of the chaplains said, even though the medical records said they prayed the Lord’s prayer together, I think in the interview she didn’t remember that, but said well, if its on the record, I probably did. So I thought – my recollection is that their memory was fuzzier than maybe Kara’s memos would indicate.”

(PCR vol. 1 Tr. p. 310-311)

Trial counsel made a judgment call (one well supported by his knowledge of the facts) not to put those witnesses on the stand because at the time of trial they had no recollection of the events – as they do not know. Applicant has failed to carry his burden of proof.

Applicant is due no relief and this Court grants none.

Rice: “The next time I went to see him he said I’ve - - God’s forgiven me, but I can’t forgive myself.”).

FILED
2025 APR 23 AM 9:10
CLERK OF COURT
SPRINGFIELD COUNTY
MISSOURI

11(e) Applicant's allegation of false evidence based on Investigator Williams testimony fails. There has been no showing of any false evidence presented. Further, Investigator Williams was never found to have committed any wrongdoing, and the matter alluded to in Applicant's argument occurred after trial. There is not even sufficient evidence to show some impeachment value. Applicant's right to due process was not violated.

Applicant has failed to show any evidence indicating that the testimony given by Investigator Williams was false, much less that the State was aware of such falsity. The claim, as presented, does not rise beyond mere speculation. *See Glover v. State*, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995) ("The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice."). During his PCR testimony Solicitor Barnett explained the situation regarding Investigator Williams. Within his testimony Solicitor Barnett stated:

"In 2018, he was let go by the sheriff's department. There was a letter sent out. We received a copy of it. I thought abundance of caution that I needed to let the defense bar know, obviously. From there--there was kind of indication that he may have falsified or gave false information on the search warrant for an affidavit. So, we released the --- I think we sent a copy to the Attorney Generals office so you could forward to them in this case."

"What I did was I referred the case out. There was a SLED investigation done. Basically, the first circuit reviewed this. They didn't find any false information from what I understand from reading this letter. Now I wasn't involved in the investigation, I didn't talk to anybody I just tell you what the findings was on the letter that we received."

Q. They didn't prosecute Mr. Williams for making a false statement on the search warrant in 2018?

A. Right.

(PCR Tr. Vol. 3 pp. 31 l. 24 – p. 32 l. 25).

Simply, on the matter Applicant alludes to, after investigation, Investigator Williams was not prosecuted at all. At any rate, the event referenced as possible impeachment and it could

only be impeachment if anything at all since it has no connection whatsoever to the facts and investigation of the murder of the eight-year old victim in this matter – occurred in 2018 well after his testimony in the present case. This allegation has no merit.

Applicant is not entitled to any relief, and this Court grants none.

11(f)(1) *The allegation that appellate counsel failed to adequately raise and brief all legal and factual grounds has not been proven by the Applicant, nor has Applicant shown prejudice. Appellate counsel raised all relevant issues pertaining Applicant's trial as determined in Appellate counsel's professional opinion.*

Contrary to Applicant's allegation, the records before this Court confirm that Appellate Counsel adequately raised and briefed the issue of Applicant's intellectual disability. "Generally, in analyzing a claim of ineffective assistance of appellate counsel, this Court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel." *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009) (citing *Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999)). "Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance." *Id.* In order to show that he was prejudiced by appellate counsel's performance, a PCR applicant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625.

On direct appeal, Applicant was represented by Chief Appellant Defender Robert Dudek and Assistant Appellate Defender David Alexander. In he Brief of Appellant, counsel raised seven separate and distinct issues spanning one hundred and eleven pages. One of the issues raised was

FILED
2022 APR 23 AM 9:10
CLERK OF COURT
SPITZER COUNTY
ALBANY, NY

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.

(Final Brief of Appellant).

Appellate counsel devoted forty-five pages to this particular argument. Counsel thoroughly addressed each prong required for a finding of intellectual disability. *See* Section 16-3-20(C)(b)(10) (defining mental retardation as: “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.”). Counsel further detailed the strength of Applicant’s case in regard to each prong, as well as the investigation conducted and conclusion reached by Applicant’s expert, Dr. Calloway. Counsel presented a constitutionally sufficient analysis detailing Applicant’s theory that the trial court incorrectly weighed the experts’ testimony and opinions. Further, Mr. Alexander provided supplemental authority to Court on September 12, 2016, March 29, 2017, and May 4, 2017.³³ (Return Attachment 11).

Despite counsel’s adequate presentation of the issue, Applicant’s direct appeal netted him no relief. Our Supreme Court found that the trial court’s credibility determination in regard to the experts was appropriate and supported by the Record:

After thoroughly reviewing the record, we conclude Blackwell has not shown the trial court committed an error of law or that its decision is unsupported by the evidence or against its preponderance. Accordingly, we find the case properly proceeded as a capital trial.

Blackwell, 420 S.C. at 141–43, 801 S.E.2d at 720–22.

³³ The supplements provided cited and referenced both *Hall v. Florida*, 134 S.Ct. 1986 (2014) and *Moore v. Texas*, 137 S.Ct. 1039 (2017). (Return Attachment 11).

FILED
2025 APR 23 04 51:10
CLERK OF COURT
SPARTANBURG COUNTY
FAY W. BOY

Applicant cites to *Patrick v. State*, 349 S.C. 203, 562 S.E.2d 609 (2002), in support of his claim of ineffective assistance of appellate counsel. There, our Supreme Court found ineffective assistance when appellant counsel “devoted three short paragraphs to [the issue on appeal], did not give any useful analysis, and only cited one case.” *Id.*, at 208, 562 S.E.2d at 611.

The appeal argument at issue here clearly does not fit the same mold as that found in *Patrick*. Again, appellate counsel devoted **forty-five pages** of analysis to the intellectual disability issue and cited to **over thirteen different cases**, including *Hall v. Florida*, which Applicant has also cited.

Further, Applicant again cites *Moore v. Texas*, however, that case was clearly not available prior to briefing in the appeal and does not bear on whether counsel was ineffective in his briefing. *See Gilmore v. State*, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) (“We have never required an attorney to be clairvoyant or anticipate changes in the law....” (citing *Thornes v. State*, 310 S.C. 306, 309–10, 426 S.E.2d 764, 765 (1993))), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999); *Thornes*, 310 S.C. at 309–10, 426 S.E.2d at 765 (“This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial.”). However, as noted above, appellate counsel provided the Court with additional cases, which included *Moore*, and the Court found the holding in *Moore* had no impact on the decision:

Although the trial court did not have the benefit of the USSC’s recent decision in *Moore v. Texas*, — U.S. —, 137 S.Ct. 1039, 197 L.Ed.2d 416 (2017), we find the court’s analysis comports with this decision. In *Moore*, the defendant was convicted of capital murder and sentenced to death for fatally shooting a store clerk during a robbery that occurred when the defendant was twenty years old. *Id.* at 1044. Subsequently, the defendant sought state habeas relief. *Id.* Pursuant to *Atkins* and *Hall*, a Texas habeas court determined that the defendant was intellectually disabled and therefore, recommended to the Texas Court of Criminal Appeals

2025 APR 23 AM 9:10

FILED

CLERK OF COURT
STATE OF TEXAS
CRIMINAL COURT

(“CCA”) that the defendant be granted relief. *Id.* at 1045-46. The CCA disagreed with the recommendation and found the habeas court erred by not following the CCA's decision in *Ex Parte Briseno*, 135 S.W.3d 1 (Tex. Crim. App. 2004), wherein the CCA adopted the definition of and standards for assessing intellectual disability based on a 1992 edition of the American Association on Mental Retardation manual. *Id.* at 1046. The USSC granted certiorari “to determine whether the CCA's adherence to superseded medical standards and its reliance on *Briseno* comply with the Eighth Amendment” and the Court's precedents. *Id.* at 1048. The USSC vacated the CCA's judgment, finding “[t]he CCA's consideration of [the defendant's] adaptive functioning ... deviated from prevailing clinical standards and from the older clinical standards the court claimed to apply.” *Id.* at 1050. Further, the USSC rejected the CCA's use of the *Briseno* factors, which the Court deemed an “invention of the CCA untied to any acknowledged source.” *Id.* at 1044.

Here, the trial court made no reference to the impermissible *Briseno* factors. Furthermore, given the fact that Blackwell's I.Q. scores were at the lower end of the spectrum, the court correctly considered Blackwell's adaptive functioning using the current clinical standards presented by the medical experts. The court, as required by *Moore*, carefully considered and weighed Blackwell's adaptive strengths against his adaptive deficits. While the dissent may believe the trial court overemphasized Blackwell's adaptive strengths, any significance assigned to these adaptive strengths was based on the court's assessment and credibility determination of the expert testimony.

Blackwell, 420 S.C. at 143, 801 S.E.2d at 721 n. 11.

Consequently, the Record supports that appellate counsel provided constitutionally sufficient representation on direct appeal. Furthermore, the independent assessment reached by our Supreme Court that there was no trial court error in finding Applicant failed in his burden of proving intellectual disability all but forecloses a finding of prejudice. There is no reasonable probability of a different result.

Applicant is due no relief, and this Court grants none.

11(f)(2)(3) The introduction of autopsy photographs and the testimony of Mr. Reggie Frye were both admissible, thus, appellate counsel was not ineffective in failing to raise these issues on appeal.

When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine “whether appellate counsel failed present significant and obvious issues on appeal.” *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. *Id.*

In regard to the first issue, during the punishment phase of Applicant’s trial, the defense moved pursuant to Rule 403, SCRE to suppress State’s Exhibit No. 60-72, which consisted of photos that depicted the deceased victim. The defense argued that other photos of the victim had already been admitted and the current photos were taken after the body had been moved. (R. 2695-2698; 2704-2705). The trial court granted a part of that motion, and excluded State’s Exhibit No. 61, 62, 63 and 64. However, after identification by a forensic pathologist, the judge admitted remaining photographs. He held that their probative value outweighed their prejudicial effect, and that they were relevant to show the circumstances of the crime. (R. 2709-2711). The trial court further cited *State v. Torres*, 390 S.C. 618, 703 S.E.2d 226 (2010), *State v. Rosemond*, 335 S.C. 593, 597, 518 S.E.2d 588, 590 (1999); *State v. Burkhardt*, 371 S.C. 482, 487, 640 S.E.2d 450, 453 (2007), to support its position that autopsy photographs of victim are admissible in the sentencing phase of a capital murder trial for use by the doctor who performed the autopsy for the purpose of illustrating the nature of the injuries. (R. 2705-2706).

There can be no finding of *Strickland* deficiency or prejudice because admission of the photos under the existing and relevant case law was proper. “The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court.” *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). “If the offered photograph serves

to corroborate testimony, it is not an abuse of discretion to admit it.” *Id.* “A trial judge’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances.” *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 207 (Ct. App. 2008) (internal quotation marks omitted). *See also State v. Collins*, 409 S.C. 524, 535, 763 S.E.2d 22, 28 (2014) (quoting *Nichols v. State*, 267 Ala. 217, 100 So.2d 750, 756 (1958) (“The mere fact that an item of evidence is gruesome or revolting, if it sheds light on, strengthens or gives character to other evidence sustaining the issues in the case, should not exclude it.”)).

In *State v. Torres* the Supreme Court of South Carolina held that “[i]n the sentencing phase of a capital murder trial, the scope of the probative value is much broader than the guilt phase. *Torres*, 390 S.C. at 623, 703 S.E.2d at 229 (citing *State v. Kornahrens*, 290 S.C. 281, 289, 350 S.E.2d 180, 186 (1986)). In addition, the Court held “that autopsy photographs may be presented to the jury in an effort to show the circumstances of the crime and character of the defendant.” *Torres*, 390 S.C. at 623, 703 S.E.2d at 229 (citing *Rosemond*, *supra*; *Burkhart*, *supra*). Here, in compliance with *Torres*, the State introduced the photographs during examination of Dr. Wren illustrating the number of injuries, location of the injuries, and manner in which the injuries were committed. *See id.*, (“If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.”) (quoting *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353(1996)); *see also State v. Martucci*, 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct. App. 2008) (“Admitting photographs which serve to corroborate testimony is not an abuse of discretion.”); *State v. Kelsey*, 331 S.C. 50, 76, 502 S.E.2d 63, 76 (1998) (photographs of various bone and bomb fragments and clothing found at crime scene were admissible in murder prosecution to corroborate testimony concerning condition of victim’s body as first discovered by police at crime scene, and location of bone and bomb fragments supported testimony that bomb had been detonated in

FILED
2025 APR 23 AM 9:10
CLERK OF COURT
PAPENBURG COUNTY
FLORIDA

victim's mouth). Mr. Dudek testified during the PCR hearing regarding the crime scene and autopsy photographs. He testified in his assessment that the Court would consider this proper evidence of how Applicant left the victim, and further, case law supported that if a pathologist says the photographs will assist his testimony, they will come in. (PCR Tr. Vol. 2 p. 9). The case law shows that was not a faulty assessment; therefore, there was no deficient performance.

Applicant is also unable to show deficiency for failure to raise the issue of Reggie Frye's testimony. During trial, the defense called Applicant's father to the stand. During cross-examination, the State questioned Applicant's father about whether he knew Reggie Frye and had had a conversation with him regarding the fact that he had involuntarily locked up Applicant's gun in order to prevent Applicant from gaining access to it. Applicant's father denied knowing Reggie Frye and claimed he did not recall having any such conversation with him. (R. 3048-3052). Later, during the punishment phase of Applicant's trial, the defense recalled Applicant's father and asked the same questions. During the State cross-examination, Applicant's father admitted to knowing Mr. Frye, but again denied recalling any conversation about locking up Applicant's gun. (R. 3115-3117). The State then sought to offer testimony from Mr. Frye on the basis of the father's inconsistent statement. The State cited *State v. Stokes*, 381 S.C. 390, 673 S.E.2d 434 (2009) to support its position. (R. 3117-3119). Over the defense's objection, the trial court permitted Reggie Frye to testify as to his conversation. (R. 3119-3120). Mr. Frye testified to a conversation he had had with Applicant's father in which the father admitted that he had seized Applicant's gun because he was afraid that Applicant was going to hurt himself or someone else. He testified further that the father also acknowledged that Applicant had broken into the gun case prior to the murder and retrieved the murder weapon. (R. 3127).

As to Applicant's allegations of hearsay, under the rules of evidence, a prior inconsistent statement may be admitted when the proper foundation has been laid:

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible.

Rule 613(b), SCRE.

Further, in *State v. Stokes*, our Supreme Court affirmed under similar circumstances:

Thus, it is the opportunity to cross-examine that is constitutionally protected. In the instant case, appellant had that opportunity. It is undisputed [witness] appeared at trial, was available for cross-examination, and could have been recalled after the statement was admitted.

Stokes, 381 S.C. at 402, 673 S.E.2d at 440.

During Applicant's trial, Mr. Frye was cross-examined by Defense Counsel. (R. 3128-3131). In addition, Mr. Frye's testimony fell under the hearsay exception set forth under Rule 613(b). In regard to relevancy, the State offered, and the trial court accepted premeditation as sufficient reason to introduce the evidence. (R. 3118). The statement supported that Applicant took affirmative steps to acquire his firearm prior the victim's murder.

Therefore, there can be no finding of ineffectiveness of appellate counsel because the testimony of Reggie Frye was both permissible under Rule 613(b) and relevant to the level of applicant's malice and culpability. Further, the admission of the contested photos were proper under the existing and relevant case law. And, there is no prejudice were there is no reasonable probability that relief would be granted based on the then relevant and controlling case law. Applicant's claims to the contrary are without merit.

Applicant is due no relief, and this Court grants none.

FILED
2025 APR 23 AM 9:10
CLERK OF COURT
SPRINGFIELD COUNTY

11(d)(9) and 11(f)(4)

Trial counsel could not be ineffective in failing to “raise and argue all legal and factual grounds” for a sentence less than death “pursuant to 16-3-20” and proportionality review under 16-3-25(C). Further, appellate counsel is not ineffective for failing to challenge proportionality review as the review is conducted automatically by the Supreme Court of South Carolina on direct appeal review.

Applicant seeks to “reserve[] his proportionality claims for review by the Supreme Court and does not seek a ruling” on those claims in 11(d)(9) and 11(f)(4). Again, whether withdrawn or ruled upon, these allegations cannot support relief. The statutory proportionality review is reserved solely for our Supreme Court. *See* S.C. Code Ann. § 16-3-25(C). Further, the Court already conducted the required review under the statute. *Blackwell*, 420 S.C. at 168, 801 S.E.2d at 735. While there is nothing to indicate that Applicant could be entitled to another review, this Court is neither the place for that review, nor a forum for an appeal of the direct appeal review decision. This Court dismisses the claim.³⁴

³⁴ This Court interprets Applicant’s reference to “reserve[ing] the proportionality claims” for later review to be a request to withdraw the claims in this action. Ineffective assistance claims are properly brought in PCR. *See generally Al-Shabazz, supra*. Further, this Court can neither reserve nor allow a party to “reserve” issues not heard. Thus, the Court rules only on waiver and dismissal.

CONCLUSION

For all the foregoing reasons, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that require this Court to grant any relief. This application for post-conviction relief must be denied and dismissed with prejudice.

IT IS THEREFORE ORDERED

1. That this application for post-conviction relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the South Carolina Department of Correction until such time as his death sentence may be carried out. .

IT IS SO ORDERED this _____ day of _____, 2025

Daniel D. Hall, Circuit Court Judge
By Special Assignment

_____, South Carolina.

FILED
2025 APR 23 AM 9:10
CLERK OF COURT
SPARTANBURG COUNTY
S.C.

| | | |
|----------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | SEVENTH JUDICIAL CIRCUIT |
| COUNTY OF SPARTANBURG |) | |
| Ricky Lee Blackwell, #6033 |) | C/A No. 2018-CP-42-00928 |
| |) | (Capital PCR) |
| Applicant, |) | |
| |) | RESPONSE TO APPLICANT'S |
| vs. |) | MOTION TO ALTER OR AMEND |
| |) | JUDGMENT |
| State of South Carolina, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

This is in response to the Applicant's motion to alter or amend judgment pursuant to Rule 59(e) SCRCP. The State submits that Applicant fails to show any error that should prompt any substantive change in the Court's final order. Applicant has failed to prove counsel was ineffective and he was not allowed to pursue the stand-alone issue alleging intellectual disability since that was previously presented and ruled upon, including a review by Supreme Court of South Carolina. To the extent Applicant points to mere scrivener's error on two pages,¹ that fails, by definition, to show any substantive error to correct. In fact, Respondent submits that the only alterations potentially to address would be for correction of those few, minor scrivener's errors. Applicant's other points rest on his mere disagreement with the findings of facts and conclusions of law in this Court's order. That is insufficient to warrant any change. The final decision of the PCR Court was lawful and should remain undisturbed.

¹ Counsel was provided the order and could have raised most of the complaints in *Fishburne* review. See *Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019). Either the complaints were not caught by counsel either (which shows the minor nature of the complaints), or counsel failed to adequately engage in the process contemplated. If the latter holds, the Court should not reward a delay in bringing potential issues to the Court's attention when counsel has an opportunity to do so earlier. Even so, counsel's alleged errors in the Rule 59 motion are without impact to the decision.

FILED
 05 MAY 23 PM 12:11
 CLERK OF COURT
 SPARTANBURG COUNTY
 SOUTH CAROLINA

INTRODUCTION

This Court heard evidence in this matter over a lengthy period: March 27-31, 2023, July 31 – August 2, 2023, and December 15, 2023. Moreover, at the conclusion of the hearing, this Court allowed both sides to file post-hearing briefs. The parties filed briefs with Applicant also filing a reply. This Court informed all parties involved that he would come with a decision on February 10, 2025. This Court then issued a decision on January 28, 2025, denying Applicant post-conviction relief, and directed the State to provide a proposed order and consistent with State practice, to allow opposing counsel to review the order. The State submitted a proposed order as directed on March 21, 2025. The PCR Court signed and filed this order in the Spartanburg County Clerk of Court's Office on April 7, 2025.

Applicant filed a motion to amend or alter judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and claims to raise errors in the order that were not previously addressed in the post-hearing briefing. The State submits Applicant is merely rehashing rejected positions and arguments and no modification of substance is warranted.

DISCUSSION

The purpose of Rule 59(e), SCRCPP to alter or amend the judgment is to request the trial judge to “reconsider matters properly encompassed in a decision on the merits.” *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992), *quoting*, *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 200, 108 S.Ct. 1717, 1720 (1988).

Applicant submits he determines there were “many error or misstatements of the record.” As demonstrated below, his complaints do not demonstrate substantive error at all. The State makes the following arguments against Applicant’s allegations regarding “misstatements” and “errors” supposedly made within the final order of the PCR Court.

FILED
2025 MAY 28 PM 12:11
CLERK OF COURT
SPARTANBURG COUNTY
JANAY W. COX

Applicant's Alleged "Errors" or "Misstatements"

1. Applicant argues error in the assertion that the notice of intent to seek the death penalty was filed on August 11, 2011, when during the hearing, notice was entered as an exhibit revealing a date of July 9, 2009. A mere review of the public index for Spartanburg County confirms that notice was filed on August 11, 2011, which was the date used. There is no error.²
2. Applicant argues that this Court never made a decision regarding the stand-alone *Atkins* issue, unlike what is stated within the signed order.
 - On page 14 of the order it states, "This Court has already announced its conclusion finding the issue may not be heard because, 'The Atkins issue has been answered by the Supreme Court.'" During the hearing when the Applicant raised that he is barred from being executed under *Atkins v. Virginia* this Court stated, "Well that's not the PCR issue am I correct? The PCR issue is not what you just stated. The PCR issue is whether ineffective assistance of counsel." (PCR Tr. Vol. 1 p. 597 l. 13-16). This Court went on to further state, "I mean the *Atkins* issue has been answered by our Supreme Court that he had that on appeal." (PCR Tr. Vol. 1 p. 597 l. 18-20). This Court later asked of the Applicant's counsel, "So tell me again how it is relevant to the ineffective assistance of counsel in a PCR?" (PCR Tr. Vol. 1 p. 597 l. 20-21). It is clear by the reading of the record this Court made a decision regarding the stand-alone issue raised by the Applicant. The conclusion was that the *Atkins* issue was answered by the Supreme Court, so the only issue remaining was the ineffective assistance of counsel.

This Court did not think this issue was viable due to the fact it was raised during the trial, decided by the trial judge, and jury, and affirmed by the South Carolina Supreme Court. The mentioning of the decision of this Court in the final order relating to this issue was correct. Within the order this Court stated, "The Court reiterates and affirms that ruling here." It was clear that the freestanding claim is barred due to it being already decided by the Supreme Court. The identical conclusion raised by this court during this PCR hearing.

² Moreover, there was no question to the fact that all parties knew the case had been noticed as a capital case, and Applicant did not seek to litigate a particular date, received, filed or otherwise. There is no logical reason to challenge the Clerk's entry at this time.

3. Applicant argues that within the order it states that the Applicant relied on the three expert opinions of Dr. Susan Knight, Dr. Gordon Brown and Dr. Ginger Calloway.

- Applicant argues that this is error, the Applicant states he relied on the opinions by doctors Knight, Brown and Corvin within their argument for PCR. While those opinions are addressed in the order, also addressed is the Calloway opinion. Applicant also repeatedly challenged the trial presentation for not convincing the trial judge and later the jury of the correctness of the Calloway opinion. To the extent that Applicant wishes to disavow the opinion, the State will not object, but that lends even more support to the weakness of the record for a credible, viable opinion on intellectual disability.

Moreover, the Calloway opinion was bound to review of the trial evidence. This Court mentions that the trial judge did not give significant weight to Dr. Calloway's opinion, citing to our Supreme Court's opinion in *Blackwell v. State*, 420 S.C. 127, 801 S.E.2d 713 (2017), that resolved the trial court "discounted some of Dr. Calloway's findings as it questioned whether 'adequate information' was used and believed Dr. Calloway improperly 'made' subjective determinations concerning the results obtained and weighed responses of various informants differently." *Blackwell*, 420 S.C. at 141, 801 S.E.2d at 720. That is a measure also bound to be discussed as this Court found the identical errors by Dr. Knight's repeated instances of disregarding information, or relying on incorrect facts – an opinion which influenced Dr. Brown in changing his opinion. This caused this court to question both doctors' credibility – a valid concern based on our Supreme Court precedent.

This court's final ruling stated, "Thus this Court finds Applicant's argument that these three (rejected opinions) conclusively demonstrate Applicant is intellectually disabled lacks merit." The opinion was rejected on its lack of credibility at trial, not by any act of counsel or error by the trial judge, as this Court rejected the others. There is no error in the findings made by this Court.

To the extent Applicant now argues he was relying upon Dr. Corvin's opinion rather than Calloway's, his argument of error in the order still must be rejected. Dr. Corvin was a trial level expert, and Applicant spent much time in attempting to convince the Court that trial counsel should have presented Dr. Corvin at trial. That claim was properly rejected under the *Strickland* analysis in the order. Moreover, as stated by this Court during the hearing, and affirmed in the order, the stand-alone claim is barred.

4. Applicant argues that incorrect names were used within the order for individuals never contacted by Dr. Knight for an assessment of Applicant's adaptive functioning.
- The State agrees the names relating to the witnesses Dr. Knight failed to contact were misspelled once in the order. The State would consent to a replacement page with the corrected names. However, this does not change the fact that Dr. Knight failed to speak

to any of them or other individuals who worked with Applicant who gave clear statements regarding Appellant's ability to work, his normal behavior, and his ability to read labels of complex hazardous chemicals while working at Jacobson. This failure does not make her assessment of the Applicant's adaptive functioning reliable.

5. Applicant complains, regarding the discussion of Dr. Corvin's testimony, that the order does not mention that Applicant had a normal CT scan.³ That is logically so since that did not go to the reason referencing that particular testimony in that part of the order.

- The information raised in the order related to the multiple conclusions all found in the record. This Court stated this information because this was yet another example of an Applicant expert not being provided with pertinent information which brings the final diagnoses into question. The fact the Applicant had a normal CT scan is not relevant to this Court's narrative in this matter.⁴ In order for the court to come to a conclusion that the findings of an expert are not credible this Court must provide a reason. The denial of evidence revealing the Applicant was in a bad truck accident where he was knocked unconscious should have been provided to Dr. Corvin. A physician cannot make a valid diagnoses if a complete medical history is not provided. This affects a doctor's credibility which must be considered by this Court.

Dr. Corvin was initially contacted as a trial expert. (PCR Tr. Vol. 1 p. 958 l. 25 – p. 959 l. 12). However, during the PCR he gave his opinion regarding the Applicant's head injury after an ATV accident concluding, "So a single concussive injury typical mechanism of injury and the declaration injury and a four-wheel accident, you had a concussion, normal imaging and it cleared." However, Dr. Corvin was not given information on a second accident while Applicant was driving a long-distance truck where he was knocked unconscious. (PCR Tr. Vol. 1 p. 991 l. 13-16). The reference to Dr. Corvin was due to information not relayed to him thereby affecting his credibility.

Within his Rule 59(e) motion the Applicant argues that the failure to ask Dr. Corvin to testify was not due to the damaging information relayed to Dr. Corvin by the Applicant. He argues that this is not proven due to the fact Dr. Corvin was phoned by Kara Richards to testify during the *Atkins* hearing only on the issue of Xanax and what it does to the body. This further proves the defense raised by the State which was placed in the order. If trial counsel wished Dr. Corvin to testify thereby exposing this damaging

³ The transcript will be available to each Appellant Court for review. The order cannot possibly include all of the facts that occurred during the hearing or the order would consist of thousands of pages.

⁴ Notably, the inclusion would lead to more change on a collateral issue not necessary to that part of the order. As Dr. Corvin admitted, CT scans do not always reveal brain damage. (PCR Tr. Vol. 1 p. 1015 l. 10-13). Thus, there is simply little reason to place the point up for consideration only to knock it down again.

information they would not have limited his testimony, and wished him to testify also during the trial. However, all of the information that he would testify to was already going to be relayed to the jury through Dr. Calloway⁵ and Schwartz-Watts Maddox. The physicians who actually testified were unaware of the information relayed to Dr. Corvin by the Applicant.

6. The order referencing Ground 11(b)(6) when it was 11(b)(7) in the third amended application was done in error.

- The order does reference Ground 11(b)(6) when on the third amended applicant it was 11(b)(7). This issue is identical and the findings are the same if it was 11(b)(6) or 11(b)(7). This was just a scrivener's error. This had no bearing on the final decision or the reasons raised regarding the decision of this Court. The State would have no objections to a replacement page being placed into the order with the correct number.

7. The Applicant argues that both Reverend's Moon and Hesse testified that the Applicant showed remorse which should have been included in the order. This was not the reason this issue was brought up. This issue was presented by the Applicant to reveal an ineffective assistance of counsel due to trial counsel not calling either Reverend to testify.

- Both Reverend's Moon and Hesse testified during the PCR hearing. The order stated that they both testified that the Applicant never told them he was sorry for what he had done, the order is correct. (PCR Tr. Vol. 1 p. 1238 l. 7-13; p. 1283 l. 22-24) There is no legal reason why this should be changed. Especially since any remorse or lack thereof was not the reason this was mentioned. This Court raised the fact that when questioned by trial counsel there was not much that these two witnesses could remember. Trial counsel was not ineffective by not calling either Reverend to testify. Trial counsel instead attempted to get their notes into evidence because they could not remember much and would not have made effective witnesses.

Consequently, other than the minor scrivener errors noted, Applicant merely rehashes his argument that, after full briefing, had previously been rejected. No modification to the Court's sound findings of fact or conclusions of law is warranted.

⁵ During his testimony Dr. Corvin spoke highly of Dr. Calloway's credentials, actually stating that she was the best in the United States in terms of knowledge of intellectual assessment. (PCR Tr. Vol. 1 p. 960 l. 15-19).

FILED
2025 MAY 28 PM 12:11
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. OAK

The Proposed Order Process

Applicant also objects to the Court's adoption of the proposed order offered by the State. To be clear, this Court announced its decision prior to requesting the proposed language. Further, this Court has already ruled on the *Simmons* issue barring the intellectual disability claim on the record. Further still, the Court received full briefing on the points of contest. There is no error generally in a PCR judge requesting a proposed order, and no error evident in this case in considering and adopting the proposed language.

As a first, and rather dispositive point, no case supports a prohibition on the proposed order process in these actions. A challenge to the adoption of a proposed order in a capital post-conviction relief context was presented in *Hall v. Catoe*, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004). However, our Supreme Court, though they had the opportunity to do so, did not prevent the practice of submitting a proposed order:

Although we *strongly encourage* PCR judges to draft their own findings of fact and conclusions of law in death penalty cases, we also acknowledge that in all other cases, *it is common practice* for judges to ask a party to draft a proposed order for the sake of efficiency.

Id., at 365, 601 S.E.2d at 341 (emphasis added).

Notably, not only did our Court not ban the proposed ordered process, it did not even find the *Hall* order – an order that resulted from the proposed order process – to be deficient. Rather, the Court ultimately concluded the process produced an acceptable order finding “the evidence sufficiently indicates the PCR judge spent an adequate amount of time reviewing the order before adopting it.” *Id.* Consistent with *Hall*, our Court has also expressed approval, with careful review of the proposed language, in non-capital cases.

In *Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589-90 (2013), the Court acknowledged once again that the practice of calling for proposed orders from litigants remains

FILED
2025 MAY 28 PM 12:11
CLERK OF COURT
SPARTANBURG COUNTY
AMY C. COOPER

routine. Notably, in doing so, the Court cited to *Hall v. Catoe*, and cautioned that particular care must be taken in review:

... The preparation and finalization of a PCR order is often a collaborative effort. We recognize the prevailing party often prepares a proposed order for the PCR court. *See Hall v. Catoe*, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004) (“[I]t is common practice for judges to ask a party to draft a proposed order for the sake of efficiency.”). When counsel for either side prepares the proposed order, the order must include findings of fact and conclusions of law as to all issues raised by an applicant. A copy of the proposed order should be transmitted to opposing counsel. Opposing counsel should promptly review the proposed order and alert preparing counsel and the PCR court as to any deficiencies in the proposed order. Because the PCR judge will ultimately be signing the order, the PCR judge must carefully review the proposed order to ensure it includes appropriate findings of fact and conclusions of law as to all issues raised. Once a proposed order is finalized, signed by the PCR judge, filed, and served upon the parties, the parties should thoroughly review the final order to make sure all issues raised were adequately addressed as required by section 17-27-80 and Rule 52(a); if they were not, a timely Rule 59(e) motion should be filed, requesting the PCR court to address the appropriate issues. ...

Id., at 516, 832 S.E.2d at 589-90.

Simply, the process of submitting proposed orders is built into our rules, (*see* Rule 5(b)(3), SCRCPP), and custom, *Hall, supra*. Further, a long line of precedent allows the acceptance of proposed order language where the court independently reviews and adopts the language as its own. *See, e.g., Jefferson v. Upton*, 560 U.S. 284, 293-94 (2010) (acknowledging prior holdings that “verbatim adoption of findings of fact prepared by prevailing parties” should be treated as findings of the court though recognizing it had “also criticized that practice”) (citing *Anderson v. Bessemer City*, 470 U.S. 564, 572 (1985))⁶; *United States v. El Paso Nat. Gas Co.*, 376 U.S. 651,

⁶ Though the Supreme Court in *Anderson* noted the criticism, the Court ultimately resolved “that even when the trial judge adopts proposed findings verbatim, the findings are those of the court and may be reversed only if clearly erroneous.” *Anderson*, 470 U.S. at 572.

656 (1964) (in reviewing the order from district court adoption of entirety of proposed order, “Those findings, though not the product of the workings of the district judge’s mind, are formally his; they are not to be rejected out-of-hand, and they will stand if supported by evidence.”); *Tennille v. W. Union Co.*, 785 F.3d 422, 440 (10th Cir. 2015) (“the fact that the district court adopted the order drafted by the parties, alone, does not establish that the district court failed to exercise its judgment independently”); *Patton v. State*, 784 So. 2d 380, 388 (Fla. 2000) (rejecting challenge to verbatim adoption noting, “[t]he court chose to adopt the State’s arguments as an accurate and well-documented reflection of the facts and law pertaining to the issues.”). *Cf. Burr v. Jackson*, 19 F.4th 395, 407 (2021) (“in light of evidence that Burr was on notice of the proposed order and that the state court judge exercised judicial discretion in adopting the State’s proposed order” federal court applied deference to the state court adjudication); *Young v. Catoe*, 205 F.3d 750, 755 n. 2 (4th Cir. 2000) (“disposition of a petitioner’s constitutional claims [through adoption of one party’s proposed language] is unquestionably an ‘adjudication’ by the state court”).

In fact, there is even more reason to accept the practice in capital practice because the cases are well-developed and include the presentation of post-trial briefing. *See* S.C. Code Ann. § 17-27-160(D) (allowing for receipt of “post trial briefs” prior to making “specific findings of fact and ... the judge’s conclusions of law”). Those submissions are necessarily presented in a litigant’s preferred phrasing. Whether taken from a document titled “post-trial brief” or a document submitted as a proposed order, if the PCR judge, after careful consideration, adopts the language offered, that language “becomes the Court’s order.” *Anderson*, 470 U.S. at 572.

In this case, the parties were provided ample opportunity to set out the respective positions and this Court had ample opportunity to consider those positions, both in the extensive hearing and in the extensive post-hearing briefing. Moreover, this Court indicated its decision before

FILED
2023 MAY 28 PM 12:11
CLERK OF COURT
SPARTANBURG COUNTY
AMERICAN BAR ASSOCIATION

requesting a proposed order, lending even more support to the critical question of whether the court exercised its judgment. The evidence here supports that this Court did so. Applicant's argument sounds neither in law nor fact.

CONCLUSION

WHEREFORE, having responded to the motion to alter or amend, Respondent submits that Applicant fails to show any error of substance that would warrant a change in the order, and that the motion, therefore, should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

ANTHONY MABRY
Senior Assistant Attorney General

TOMMY EVANS, JR.
Assistant Attorney General

By: s/Tommy Evans, Jr.
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-6305

ATTORNEYS FOR RESPONDENT

May 16, 2025
Columbia, South Carolina

FILED
2025 MAY 28 PM 12:11
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

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

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C/A No. 2018-CP-42-00928
(Capital PCR)

CERTIFICATE OF SERVICE

I, Brandy Rankin, hereby certify that I have served the Respondent's *Response to Applicant's Motion to Alter or Amend Judgment* in the foregoing action by depositing a copy in the United States Mail and also via email to counsel for Applicant addressed as follows:

E. Charles Grose, Jr., Esq.
Grose Law Firm
305 Main Street
Greenwood, South Carolina 29646
Email: Charles@GroseLawFirm.com

Lindsey S. Vann, Esq.
Justice 360
900 Elmwood Avenue, Suite 200
Columbia, South Carolina 29201
Email: Lindsey@Justice360sc.org

This is the 16th day of May 2025.

Brandy Rankin
Brandy Rankin, Legal Assistant

2025 MAY 28 PM12:11
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

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

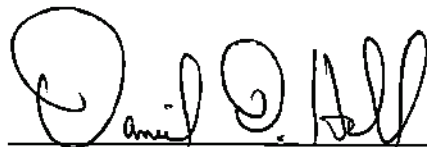
C/A No.: 2018-CP-42-00928
(Capital PCR)

ORDER

DENYING APPLICANT'S MOTION TO
ALTER OR AMEND JUDGMENT

After careful consideration, Applicant's Motion to Alter or Amend Judgment is
DENIED.

IT IS SO ORDERED this 10th day of June, 2025



Daniel D. Hall, Circuit Court Judge
By Special Assignment

York

South Carolina.

CLERK OF COURT
SPARTANBURG COUNTY
JUN 16 2025

2025 JUN 16 PM 4:16

FILED



State of South Carolina
The Circuit Court of the Sixteenth Judicial Circuit

Daniel D. Hall
Judge

Moss Justice Center
1675-1J York Highway
York, SC 29745-7434
Phone: (803) 628-3048
Fax: (803) 628-3139
dhalij@sccourts.org

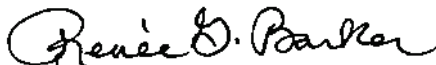
June 10, 2025

Amy W. Cox
Spartanburg County Clerk of Court
P. O. Box 3483
Spartanburg, SC 29304-3483

Dear Ms. Cox:

Please send clocked copies of the enclosed Order to all parties.

Thank you!!


Renee G. Barker
Administrative Assistant
The Sixteenth Judicial Circuit
1675 – 1J York Highway
York, SC 29745

FILED
2025 JUN 16 PM 4:16
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

| | | |
|--------------------------|---|-----------------------|
| STATE OF SOUTH CAROLINA |) | |
| |) | COURT OF COMMON PLEAS |
| COUNTY OF GREENWOOD |) | 2018-CP-42-00928 |
| |) | |
| |) | |
| |) | |
| |) | |
| RICKY LEE BLACKWELL, |) | |
| PLAINTIFF, |) | |
| |) | |
| vs. |) | TRANSCRIPT OF RECORD |
| |) | |
| STATE OF SOUTH CAROLINA, |) | |
| DEFENDANT. |) | |
| _____ |) | |

date, 2001^ 2002 ^ 2003
city, South Carolina

B E F O R E:

THE HONORABLE DANIEL HALL, JUDGE.

A P P E A R A N C E S:

LINDSEY S. VANN, ESQ.
CHARLES GROSE, ESQ.
Attorney for the Plaintiff

TOMMY EVANS, JR., ESQ.
Attorney for the Defendant

Recorded by WebEx
Transcribed by Penny M. Johnson

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

1 THE COURT: We're on the record in 2018-CP-42-00928.
2 This is Ricky Lee Blackwell vs. The State of South Carolina.
3 This is what we refer to as a death penalty PCR. This
4 simply this afternoon is a status conference. I wanted to
5 do it on the record in case there were any issues that we
6 needed to preserve about -- I think there were some
7 discovery issues. And I'm not sure whether there was a
8 motion that I needed to rule on as far as a more definite
9 statement.
10

11 Let me talk about the discovery issue first. I think
12 that was in regards to DSS materials that I had received.
13 When I looked through that material, half of it or a little
14 more than half of it were investigations into children and
15 family members after Mr. Blackwell was convicted. So none
16 of that would be relevant or have anything to do with this
17 particular case.

18 Then the other half or part of it involved various
19 times when Mr. Blackwell and his wife were the subjects of
20 reports to DSS. I assume that Mr. Blackwell would have been
21 entitled to those himself, right? Did he request them? Did
22 y'all get his permission to get those records?

23 MS. VANN: We do have releases from him, but DSS will
24 not release any records without a court order, which is why
25 we had to do it under the court order. Most of the other

1 records we were able to receive have been released.

2 THE COURT: Mr. Evans.

3 MR. EVANS: Your Honor, it's been my experience that a
4 lot of state agencies are not allowed to release this
5 information even with the consent of the person who was
6 involved. And the reason being because this is the type of
7 information that they don't want --

8 THE COURT: Yeah, I understand that.

9 MR. EVANS: -- people to see, so it has to be a court
10 order.

11 THE COURT: And I, in essence, did issue that order.
12 They sent me the materials. And I think that left the Court
13 in a position to determine what might be relevant or not.

14 Do y'all have any position as far as DSS records
15 involving Mr. Blackwell prior to his arrest for the murder?

16 MR. EVANS: The only issue we would have is we would
17 like to have privilege to those records, also.

18 THE COURT: Right.

19 MR. EVANS: That's the only issue. That's the reason
20 why we filed our motion for under seal because we were told
21 that there was a signed ex parte order releasing those
22 records --

23 THE COURT: Well, there was an issue -- we're not going
24 to debate on the ex parte order. It is what it is and,
25 certainly, those records had not been divulged to anybody,

1 except the Court has been provided with them.

2 So what do I need to do to properly give both of y'all
3 Mr. Blackwell's records that go from -- they're primarily
4 in the 2009 -- everything that pertains to Mr. Blackwell
5 involved from April of 2009 until March of 2010. The Court
6 finds that both parties are entitled to that information.
7 I'll be glad to sign an order to that effect.

8 Y'all help educate Judge Hall. Does that make sense?

9 MS. VANN: Yes, Your Honor. I think that makes sense.
10 In the order that said work on with DSS, they had reviewed
11 that before you actually sent them. And they explicitly say
12 that records that had to do with Mr. Blackwell would be
13 turned over to his attorneys. So I think that falls in line
14 with what DSS --

15 THE COURT: It means they said they would turn them
16 over?

17 MS. VANN: Yes.

18 THE COURT: Then why are we here?

19 MS. VANN: I --

20 THE COURT: Oh, you mean the order -- okay.

21 MS. VANN: The order that you --

22 THE COURT: I got you.

23 MS. VANN: -- said DSS had to --

24 THE COURT: I got you. All right. Then I have those
25 records and I can give them to one side and y'all can copy

1 them and give them to the other, or how do y'all want me to
2 do that?

3 MS. VANN: Sure, Your Honor, that's fine.

4 MR. EVANS: I have no objection to that, Your Honor.
5 There's something else, also. We would, also, like
6 information regarding ex parte orders regarding any experts
7 for any investigations. It's our position that as to the
8 Tims (ph) case, those orders are not privy to PCRs.

9 THE COURT: I have not signed any in the last year, I
10 don't think. Any orders that I have signed up until this
11 point, ex parte orders?

12 MR. EVANS: Yes, sir.

13 THE COURT: Those would certainly all be in the clerk's
14 file in Spartanburg.

15 What's the position, Ms. Vann or Mr. Grose?

16 MS. VANN: Your Honor, our position is that they are
17 not entitled to those and that we are entitled to ex parte
18 proceedings for funding. The Tims case is from before,
19 there was a statute that had to do specifically with capital
20 post-conviction representation. The capital PCR statute,
21 which is 17-27-160 says that counsel appointed in these
22 cases shall be compensated for funding provided in Section
23 16-3-26 in the same manner as appointed trial counsel. And
24 16-3-26(b) provides for ex parte proceedings for funding.

25 So we do not believe that they are entitled to those.

1 I do have those statutes here if you would like me to hand
2 them up.

3 THE COURT: I can pull them up right here. 17 what?

4 MS. VANN: 17-27-160(b) .

5 THE COURT: Let me hear from Mr. Evans on his position
6 on the statutes.

7 MR EVANS: Thank you, Your Honor. As for a statute
8 being written after Tims was decided, attached to my motion
9 was an order an order from State v. Stanko, which the
10 Supreme Court -- which was written by the Supreme Court in
11 2015. Basically, that order reiterates Tims, that,
12 basically, ex parte orders is not for investigation and,
13 also, experts [indiscernible].

14 The statute that is related to by opposing counsel,
15 17-27-160(b), which equates the statute regarding funding in
16 a death penalty case equivalent to funding given to
17 attorneys, which is 16-3-26(b)(1)(2). However, it does not
18 mention actual experts and investigations. And the reason
19 why in Tims and in Stanko the Supreme Court made this
20 opinion is because in 16-3-26(c), it specifically says upon
21 finding of ex parte proceedings that investigators, experts
22 or other services that are reasonably necessary for the
23 representation of defendants in connection with issues
24 related to guilt or sentence.

25 This is a PCR proceeding, Your Honor. This has nothing

1 to do with finding the guilt or sentence of the actor.
2 There are different issues related to this than you will
3 have in the actual trial. The Defendant [sic] doesn't have
4 a right to a jury. He's not indicted. The applicant
5 actually has the burden of proof, the State does not. So
6 our position is the ex parte portion of 16-3-26 does not
7 relate to PCRs. It only relates to the actual cases that
8 are pending, death penalty cases that are pending.

9 THE COURT: Ms. Vann, any response?

10 MS. VANN: Yes, Your Honor. So just as a reminder,
11 this is an issue that came up earlier this year and we filed
12 a full response in opposition to their motion on February
13 21st, 2022. So we have made that filing. There are some
14 exhibits to that.

15 Just a couple of points, first, it's not well settled
16 that we are not entitled to ex parte proceedings in capital
17 PCR cases. The [indiscernible] Inman case, which is
18 attached to our pleading in February, the PCR judge ruled
19 that the applicant was entitled to ex parte funding
20 proceedings in that case. And similarly in the Steven Corey
21 Bryant case, these are both after the Stanko unpublished
22 order was released. The Judge in Steven Corey Bryant ruled
23 that ex parte funding proceedings were appropriate. That's,
24 also, attached to our February 21, 2022 pleading.

25 I will say, the case in Stanko is much different from

1 the case that is here. In Stanko, the issue that was
2 presented was whether the trial -- the PCR judge had made an
3 appropriate ruling on funding. And so that raised funding
4 as a specific issue in a later proceeding. So that kind of
5 brought the issue of funding to a non-ex parte proceeding.
6 Whereas here, we have not raised any motion to continue
7 based on funding. We have not challenged your decisions on
8 funding. We really haven't raised that in any other issue.

9 THE COURT: Well, I mean, you requested the funding and
10 the Court approved the funding. What was there for you to
11 -- what was there for you to object to?

12 MS. VANN: Well, I'm just saying that in the Stanko,
13 that was different because in a proceeding on appeal, we
14 have raised the issue of whether the funding decisions were
15 appropriate or not. So that kind of brought it into a
16 question that the State had to respond to.

17 THE COURT: Help educate me. What's the prejudicial
18 effect to your client for them to know that the Court
19 approved funding for -- certain amount of funding for
20 experts in a civil case?

21 MS. VANN: Well, Your Honor, we have already disclosed
22 who those experts are to the State through our discovery
23 proceeding. But they're not asking just for who did you
24 authorize spending for. They want our funding request.
25 They want your funding orders. In order to get the funding,

1 we have to present you with information --

2 THE COURT: I understand that. What is the prejudice
3 for them having that?

4 MS. VANN: The prejudice is that it would -- first of
5 all, the prejudice is that Mr. Blackwell, if he were not
6 indigent would not have to turn over any of this
7 information. He could hire his own experts and they would
8 -- you know, we wouldn't have to turn over --

9 THE COURT: All he's requesting is information.

10 MR. EVANS: We're requesting the information regarding
11 the experts and how much money they received.

12 THE COURT: Right.

13 MR. EVANS: To be honest with you, Your Honor, even if
14 he wasn't indigent, we would still make this request. That
15 goes to your veracity as an expert. I mean, if you're
16 getting paid \$300 an hour, I think it's fair --

17 THE COURT: I'm not sure why you are fighting it. It
18 was approved. You got the funding. What you did with it, I
19 don't know. But tell me where we are as --

20 MS. VANN: If that's what they're asking for, that's
21 fine, but their motion asked for an order unsealing ex parte
22 funding motions request and orders issued. So we are
23 objecting because we don't want to turn over all the factual
24 basis, our investigation, our strategic reasons for why we
25 needed the funding in the first place, the information that

1 we had to put in the motions to show that it was reasonably
2 necessary.

3 MR. EVANS: Your Honor, this is not a come to trial.
4 We know the strategic decisions because it's in the
5 application. So we already know that.

6 THE COURT: Okay. I'll rule on divulging that
7 information by the middle of next week.

8 MR. EVANS: Thank you, Your Honor.

9 THE COURT: What else do we have left that we need to
10 talk about?

11 MR. EVANS: One other thing that either it can be given
12 to us by the defense or through the Court, we would, also,
13 like a consent order for medical records at Department of
14 Corrections. If he is -- has these infirmities that they
15 say he does, we would like the medical records from the
16 Department of Corrections and make a determination of
17 whether or not they have been treating him.

18 THE COURT: They're requesting his medical records from
19 the Department of Corrections that I'm sure you have.

20 MS. VANN: You're requesting medical records since his
21 conviction?

22 MR. EVANS: Yes.

23 MS. VANN: I am not sure how that's relevant to any of
24 the things that we have raised. We have raised that he is
25 -- that his trial counsel were ineffective, so I can see how

1 maybe his medical records prior to the trial would be
2 relevant, but we have not raised any claims that would have
3 any bearing on since he has been incarcerated.

4 MR. EVANS: Your Honor, the first claim they are
5 raising is that he is intellectually deficient and,
6 therefore, should not get the death penalty. Well, if
7 that's the case, Your Honor, that is something that doesn't
8 go away. You cannot cure that. Therefore, we would like to
9 know what is going on with him while in the Department of
10 Corrections. Was he being treated for that? Was he doing
11 any testing, anything like that? Anything to show
12 intellectual deficiency? I mean, we don't know.

13 Therefore, I think we have a right to these records
14 because they're saying he's deficient. He was deficient
15 before the incident occurred. And because of that, he
16 shouldn't get the death penalty in the first place. Well,
17 then, Your Honor, that doesn't go away. So if he's still
18 deficient, then DSS -- I mean, DOC records will show that.
19 So I think we have a right to those.

20 THE COURT: Does the State have his medical records
21 when he was in detention in Spartanburg?

22 MR. EVANS: Yes, we have those.

23 THE COURT: So it is any medical records after his
24 conviction when he was transported to the Department of
25 Corrections?

1 MR. EVANS: Yes, sir.

2 THE COURT: All right. I'll rule on that by the middle
3 of next week as well.

4 MS. VANN: I would just point out that the Department
5 of Corrections does not test for intellectual disability. I
6 don't believe anything the Department of Corrections does --
7 I think anything with intellectual disability would normally
8 be in an inmate's medical records at the Department of
9 Corrections unless there was some sort of diagnosis --
10 unless there was a finding pretrial.

11 MR. EVANS: Well, we don't know either, that's I would
12 like the records. If it's not there, we're fine.

13 THE COURT: All right. I'll rule on that by the end of
14 next week as well.

15 What else?

16 MR. EVANS: I think the last thing is date certain
17 about discovery from the Defense, Your Honor.

18 THE COURT: So where do we stand, Mr. Grose, as far as
19 --

20 MR. GROSE: Did you get the memorandum and attachments
21 that we sent --

22 THE COURT: I have those.

23 MR. GROSE: They have everything that our experts have.
24 The only thing that is outstanding is that Dr. Andrews is
25 still working on her social history report that will be

1 relied on by Dr. Knight and Dr. Corbin at the hearing. But
2 they have every single document that Dr. Andrews has.

3 THE COURT: Let me get this straight just so I can
4 figure this out. I've never done a death penalty PCR, so a
5 lot of this is educating Judge Hall. But you have an expert
6 who issues an opinion, but then you have two more experts to
7 examine your expert's opinion. Is that where we are?

8 MR. GROSE: Yes, sir. Experts all the time rely on
9 opinions of other experts. A common example is I fall and
10 break my arm, I go --

11 THE COURT: I understand that, but in this particular
12 case, though, you hired -- your expert was Dr. Andrews?

13 MR. GROSE: Right.

14 THE COURT: What are the two other experts? Is Dr.
15 Andrews expected to testify?

16 MR. GROSE: Dr. Andrews is expected to testify. Dr.
17 Andrews is a social historian by training, education and
18 profession. She is not an intellectual disability expert.
19 She is not a forensic psychiatrist. Dr. Knight, who is
20 going to testify at the hearing, is the intellectual
21 disability expert. As part of her evaluation, one of the
22 things that she needs to be aware of is Mr. Blackwell's
23 social history --

24 THE COURT: So we're really two experts who have
25 information that hasn't been divulged?

1 MR. GROSE: Well --

2 THE COURT: Dr. Andrews, Dr. Knight and who was the
3 third person?

4 MR. GROSE: Dr. Corbin.

5 THE COURT: Dr. Corbin?

6 MR. GROSE: Corbin, C-O-R-B-I-N.

7 THE COURT: All right, Dr. Corbin.

8 MR. GROSE: And that's not correct that this
9 information has not been divulged. The State has all the
10 documentation that we have provided to Dr. Andrews, Dr.
11 Knight and Dr. Corbin. They, also, have the entire file
12 that Dr. Corbin had prior to Mr. Blackwell's trial because
13 he was retained by Defense counsel and not presented at the
14 trial. Actually, they did not complete the investigation --

15 THE COURT: Just tell me what they don't have that you
16 intend to give them.

17 MR. GROSE: What they don't have that we intend to give
18 them is the written social history report from Dr. Andrews.

19 THE COURT: Anything else?

20 MR. GROSE: That is it.

21 THE COURT: All right.

22 MR. GROSE: Unless we come into possession of something
23 that we don't have right now. But we have given them all
24 the information that all the experts have.

25 THE COURT: And when do you anticipate you will have

1 the written social report from Dr. Andrews?

2 MR. GROSE: We're anticipating by the end of this
3 month, Your Honor.

4 THE COURT: Okay. So that would be by October the 1st?

5 MR. GROSE: Yes, sir.

6 THE COURT: Mr. Evans, does the Court need to sign an
7 order, a scheduling order that all discovery must be
8 completed by October the 1st?

9 MR. EVANS: Yes, Your Honor, we would appreciate it.

10 THE COURT: If you'll prepare that order, I'll sign
11 that order.

12 MR. EVANS: One final thing, Your Honor. In our return
13 to motion, we -- that's for a motion to dismiss State's --
14 we would ask for leave to file a brief regarding that motion
15 prior to the hearing starting? Of course, we would give
16 Defense counsel time to respond.

17 MR. GROSE: And I would -- I mean, this is the first
18 we've heard of this. I mean, this is kind of like during
19 trial week in these status conferences and they bring up --

20 MR. EVANS: Your Honor --

21 THE COURT: Hold on a minute.

22 MR. GROSE: Well, it's like a motion for more definite
23 and certain, I think it's sort of a throw-away thing that
24 they put in a lot of these pleadings. If they're going to
25 do that, if they're going to file something at this late

1 date, all I'm asking for is you give them a deadline to file
2 it by so we don't have to rely on what their interpretation
3 is of how long we have to be able to respond.

4 MR. EVANS: That's fine, Your Honor.

5 THE COURT: When do you --

6 MR. EVANS: Middle of October.

7 THE COURT: I'm sorry?

8 MR. GROSE: I thought you said October 1st.

9 MR. EVANS: Well, we don't have the social history yet
10 --

11 THE COURT: Hold on a minute. I think if we give you
12 till October the 10th, that will be three weeks before the
13 trial date.

14 MR. EVANS: That will be fine.

15 MR. GROSE: And I don't mean to argue the point, but I
16 don't see how them getting a social history report when they
17 have all these records is going to somehow support a motion
18 to dismiss --

19 THE COURT: Well, it may not. They're lawyers. They
20 have a right to file whatever motions they deem appropriate.
21 If they Court needs to rule on them, we will. But I'm not
22 going to tell him how to try his case and what motions he
23 can or can't file. I'll deal with them once they're filed.

24 So Mr. Evans, in your order as far as a date certain
25 for discovery, also, include October the 10th as the date by

1 which any motions that you file have to be in by that time.

2 MR. EVANS: Will do, Your Honor.

3 THE COURT: Is there anything else we need to deal
4 with?

5 MR. EVANS: The State has nothing else.

6 THE COURT: From Mr. Blackwell?

7 MS. VANN: I brought a courtesy copy of what we filed
8 yesterday if you'd like a copy of it?

9 THE COURT: Is that what you e-mailed --

10 MS. VANN: Yes, Your Honor. I e-mailed the pleading
11 and the exhibit.

12 THE COURT: Well, if you've got a copy -- I mean, I
13 have it right here in front of me electronically, but
14 sometimes it helps if I have the hard copy.

15 Is there anything else we need to deal with as far as
16 status conference or motions today?

17 MS. VANN: No, Your Honor.

18 THE COURT: Thank y'all.

19 MS. VANN: Thank you.

20 THE COURT: If the Court needs to be involved between
21 now and October the 31st, just let me know and I'll do what
22 I need to so we're ready to go on October the 31st.

23 MR. EVANS: Thank you.

24

25

CERTIFICATE OF TRANSCRIBER

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

November 17, 2025

Penny M. Johnson
Penny M. Johnson
Transcriber

| | | |
|--------------------------|---|------------------------------|
| State of South Carolina |) | In the Court of Common Pleas |
| |) | Seventh Judicial Circuit |
| County of Spartanburg |) | Case No. 2018-CP-42-00928 |
| |) | |
| Ricky Lee Blackwell, |) | |
| |) | |
| Applicant, |) | |
| |) | |
| -vs- |) | Transcript of Record |
| |) | |
| State of South Carolina, |) | |
| |) | |
| Respondent. |) | |
| |) | |

October 19, 2022
Held in Greenwood County

B E F O R E:

The Honorable Daniel Hall, Judge

A P P E A R A N C E S:

Charles Grose, Esquire
Lindsey Vann, Esquire
Attorneys for the Applicant

Tommy Evans, Esquire
Melody Brown, Esquire
Attorneys for the State

Proceedings taken down electronically

Transcribed by:
Krystal J. Smith
Official Circuit Court Reporter III

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

| <u>WITNESS/DESCRIPTION</u> | <u>PAGE NUMBER</u> |
|--|--------------------|
| Motion for Continuance..... | 4 |
| Ruling Granting Continuance..... | 17 |
| Motion for SCDC Records..... | 19 |
| Ruling Granting Access to Records..... | 23 |
| Court Reporter Certification..... | 25 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID.</u> | <u>EV.</u> |
|------------|--------------------|------------|------------|
|------------|--------------------|------------|------------|

(No Exhibits Presented)

COURT REPORTER LEGEND

| | | |
|----------|-------|--|
| dashes | -- | intentional or purposeful interruption |
| | | or change in thought |
| ellipses | . . . | trailing off |
| [ph] | | phonetically written |
| [sic] | | written as said |

1 OCTOBER 19, 2022

2 (WHEREUPON, the proceedings began at 11:06 a.m.)

3 THE COURT: All right. We're on the record in the case
4 of Ricky Lee Blackwell versus the State of South Carolina.
5 This is a death penalty PCR, post-conviction relief case that
6 this Court was assigned some years ago. This is 2018-CP-42-
7 00928.

8 This case was scheduled for an evidentiary trial the week
9 after next to begin in Spartanburg County. We are located
10 today here in Greenwood County where I'm currently holding
11 court. Present in the courtroom are the lawyers for the
12 State, Mr. Brown -- I'm sorry -- Mr. Evans.

13 MR. EVANS: Yes, sir.

14 THE COURT: And I'm sorry. Your name again?

15 MS. BROWN: Melody Brown, Your Honor.

16 THE COURT: Ms. Brown. Mr. Evans and Melody Brown.
17 Representing Ricky Lee Blackwell are Lindsey Vann and Charles
18 Grose.

19 I believe the issue before the Court is a motion for
20 continuance filed on behalf of the State. And so, Mr. Evans,
21 I'll be glad to hear from you.

22 MR. EVANS: Thank you, Your Honor. May it please the
23 Court. I'm Tommy Evans, Assistant Attorney General,
24 representing the State of South Carolina.

25 Your Honor, this is something the State doesn't normally

1 do. As a matter of fact, I think in 30 years of practicing
2 law, this is the third time that I've moved for a continuance.
3 The reason why we feel it being necessary is because it's so
4 important for the State to be prepared to go forward in this
5 hearing that was scheduled by the Court on October 31st.

6 As I would like to remind the Court, back in November --
7 this case was originally scheduled to be heard on November
8 5th, 2018. At that time, the applicant moved for a
9 continuance because they said they would not be ready to go
10 forward because they needed extra investigation to be
11 completed and also experts needed to be contacted in order to
12 be prepared to go forward on that day.

13 In January, the Court -- in January of this year, the
14 Court scheduled the case to be heard in October 2022. At that
15 time and since then, the State has made the Court aware of
16 their concerns about getting discovery in time in order to
17 prepare our investigation and prepare for that case. We
18 actually raised that to the Court's attention in August of
19 this year, and the Court ordered a date certain for discovery
20 to be completed in October.

21 In September, we received over 16,000 pages of discovery
22 in this case. In that, there were certain items in that
23 discovery that the applicant had since 2001 -- 2021 that were
24 not given to us, including an affidavit and also records from
25 a geneticist that tested Mr. Blackwell from blood that was

1 drawn in 2020 by the Greenwood Diagnostic Center and also
2 testing that he done and an affidavit he wrote in 2021.

3 This information was at the end of some discovery we
4 received from the Greenwood Detention Center -- I mean, the
5 Spartanburg Detention Center. Excuse me, Your Honor. And our
6 concern was at that time that in order to be prepared, we must
7 look through all the discovery to figure out exactly what we
8 had, where it was, and what it pertained to in order to
9 properly prepare our experts and also properly have any type
10 of sufficient cross-examination of the experts that they may
11 decide to call to this case.

12 Of course, I'm sure that the applicant will argue that we
13 knew the allegations from their application. However, you
14 cannot properly prepare any defense just from allegations.
15 You need actual doctors' reports. You need actual discovery
16 in order to find out what the doctor used in order to make the
17 final determination.

18 The actual bulk of discovery that we received in this
19 case, like I said before, we got in September of this year.
20 The final report made by Dr. Knight, who examined the
21 applicant, we got -- I think the final report was made October
22 1st. The final report of the social historian, Dr. Andrews,
23 was made on September 30th.

24 Honestly, Your Honor, if we knew that that much discovery
25 would come in October -- in September of this year, we

1 probably would have asked the Court to give a date certain in
2 June or July in order for us to be prepared for this case, but
3 at this time right now, we are not ready to go forward on
4 October 31st. We are asking the Court just for a month and a
5 half continuance until December of this year or when the Court
6 is prepared and have time after that. They've had four years
7 to prepare the investigation. We ask for another month and a
8 half. That's all we're doing.

9 As I said before, this is something we don't do often.
10 This is something I don't do often, of course, but I would
11 like to be prepared to go forward. It's important for the
12 people of the state of South Carolina that we are prepared to
13 represent them, as it's important for the applicant's
14 attorneys to be prepared to represent him.

15 This is a very important situation. This is a death
16 penalty case. We think that it's sufficient for the Court to
17 not only have sufficient information from the applicant but
18 also the State to make a qualified and justified determination
19 in this proceeding. Therefore, at this time we would ask for
20 a continuance of this case.

21 There is also another matter that we had raised
22 previously with the Court regarding the medical records from
23 SCDC. I don't know if the Court wants to hear me on that
24 matter.

25 THE COURT: Let me do this. Let me hear their response

1 on the continuance, and then I'll come back to you on your
2 motion for the medical records.

3 MR. EVANS: Thank you, Your Honor.

4 THE COURT: All right. Mr. Grose?

5 MR. GROSE: Your Honor, as you're aware from our filing,
6 we're --

7 THE COURT: I have read the briefs, the motion and the
8 briefs.

9 MR. GROSE: As you're aware of that, we are opposing the
10 continuance because we've been working for this date, and
11 we've been doing things with our experts to be prepared for
12 it. I think our pleading tries to correct some of what we
13 believe is misleading information that's been given to the
14 Court as regards to discovery. I would also reference the
15 pleading that we filed the last time we were in front of Your
16 Honor here in Greenwood where we also tried to do this.

17 As far as the intellectual disability claim, that is one
18 of the -- that is a number of claims in the PCR application.
19 The Attorney General's Office is aware from handling the
20 direct appeal that the intellectual disabilities is an issue
21 with Mr. Blackwell. They are aware from handling the direct
22 appeal that when Judge Couch denied the finding under Atkins
23 on intellectual disability, Judge Couch listed out several
24 things that trial counsel did not provide for his
25 consideration, particularly to determine the third prong of

1 intellectual disability, whether or not it was present during
2 the developmental period.

3 So that is something that they have known from the
4 beginning. At least by the time we filed the first and second
5 amended application on back-to-back days, we've had a number
6 of claims in there with regards to intellectual disability.

7 With regards to discovery, in probably 2018 or 2019, you
8 have it in these pleadings. We obtained trial counsel's
9 files, and we provided those to them. We also got the file of
10 Dr. Ginger Calloway, who was the expert for the defense team
11 on Atkins. We also got the file of Kara Richards, who was the
12 mitigation investigator. We also got the file of Dr. Corbin,
13 who was a forensic psychiatrist that was consulted by the
14 defense that wasn't called to trial, and we provided them with
15 all of that information.

16 There was a lot of records that had been collected, and
17 they were in those files and they were in trial counsel's
18 files. And quite frankly, if they read the discovery, there
19 was some memorandums and emails in there talking about how
20 there was a breakdown in trial counsel presenting the
21 intellectual disability claim. So they -- they've had that
22 for years.

23 As we were getting closer to the trial, we did do the
24 genetic testing. What they left out is, is that when we filed
25 the third amended application a year ago, we put in there that

1 Ricky Blackwell has a defective gene, that he inherited from
2 his mother because she also has it, that is associated with
3 intellectual disability, which is a critical piece of
4 information for the presence of prongs one and two during the
5 developmental period. Obviously, if you're born with it, it's
6 present in the -- in the developmental period. So they were
7 aware of that then.

8 It was an oversight that we didn't attach the report to
9 it. The report, a big part of it is a curriculum vitae. Part
10 of it is the underlying test that was done at the genetic
11 center or run at the genetic center here in Greenwood.
12 They've had that application, and they never asked us what is
13 it that you say that he has this gene, and so they -- they
14 also did not follow up.

15 He references that it was at the tail end of some of the
16 discovery that was provided. That may be true, but it was
17 also identified in the cover letter that that was -- that that
18 was being included. So they could turn right to those pages
19 because the pages were Bates stamped. They knew exactly which
20 pages that they were on.

21 It's also been a little bit of a moving target what
22 they're asking the continuance for. Today they're talking
23 about Dr. Cunniff, the geneticist. When they sent us emails
24 asking if we would consent to continuing this hearing, they
25 said -- and you have the emails in our package. They said

1 they wanted to depose Dr. Corbin, and they said they wanted to
2 depose Dr. Calloway.

3 Well, they've had Dr. Corbin's information for years
4 because we gave them Dr. Corbin's file that he had prepared
5 when he had been retained by the trial team and not called.
6 They knew in December of last year that we had retained Dr.
7 Corbin to complete the investigation that was not completed by
8 trial counsel. They knew that we had retained him because we
9 put that in a pleading last year.

10 We also identified Dr. Andrews, who is the social
11 historian. We also identified Dr. Susan Knight, who is doing
12 the intellectual disability evaluation. They've had that
13 information, and they've known about Dr. Calloway because Dr.
14 Calloway testified for the defense in the Atkins hearing,
15 testified for the defense in the -- the trial of the case, and
16 we gave them Dr. Calloway's file years ago.

17 You also know from the cover letters that we put in our
18 production with regards to the information that we've been
19 giving them in the last two months that a lot of it is
20 duplicate. What we did was we gave them files that contained
21 the information that we gave to our experts so it would be
22 transparent exactly what the expert has, and I'm not going to
23 say there's not some things that weren't in the original
24 discovery, but a lot of these records that we gave the experts
25 came from trial counsel's file that they've had for years.

1 And as far as Ginger Calloway is concerned, we sent them
2 some interrogatories and requests to produce just to make sure
3 that we weren't missing anything. They have listed Dr. Ginger
4 Calloway, a forensic psychologist, on -- on their witness list
5 and represent that Dr. Ginger Calloway conducted numerous
6 tests on applicant and will testify as to the nature of these
7 tests, the work and research conducted in coming up with her
8 final diagnosis. So, like I said, they've been aware of her
9 for a very long time. It was just in the last month or so
10 that they said they wanted to depose her and they wanted to
11 depose Dr. Corbin.

12 The other thing that's interesting about these answers to
13 interrogatories, we asked them the standard question, list the
14 names and addresses of any expert witnesses who the party
15 proposes to use as a witness at the trial of this case, and
16 they say none exist at this time. Well, as part of Dr. Knight
17 conducting the Atkins evaluation -- and they have the report.
18 I mean, she interviewed Dr. Brown. Dr. -- I think his first
19 name is Edgar Brown, Dr. Edgar Brown, who is a doctor who used
20 to be employed by the South Carolina Department of
21 Disabilities and Special Needs.

22 And in that -- in that part of that evaluation, Dr. Brown
23 represented to Dr. Knight that he had been contacted by the
24 State and told that he might need to testify in the PCR
25 hearing in October. And again, they've known about Dr. Brown

1 because Dr. Brown is the one who testified for the solicitor
2 in the Atkins hearing. They chose not to call him in the
3 trial, but they've known about Dr. Brown for years, and he's
4 an expert on intellectual disabilities. I would presume that
5 they could show those genetic results to Dr. Brown.

6 What I find is curious is, is that we know that Dr. Brown
7 has said to us or to our expert that he's been told to
8 testify. It's interesting that they don't list him here,
9 which has raised a concern with us about what Dr. Brown's
10 testimony might be now because, as I alluded to at the
11 beginning of this argument, in the order denying the finding
12 of Atkins, the trial judge, Judge Couch, gave a roadmap of all
13 the things that were not available to him that could have
14 affected the determination on Atkins and particularly as
15 existed as to prong three.

16 I don't think Dr. Brown had any problem finding that
17 there was deficits in intellectual functioning and deficits in
18 adaptive functioning. Where he had the problem was finding
19 that that existed in the developmental period, and it just was
20 not enough information was provided.

21 So the reason I bring this up is, is we've begun to
22 wonder if their expert hasn't fallen out from under them and
23 that that's what some of this is all about. And if that is
24 the case, I think that they have a duty to inform the Court
25 and to inform us that the expert that testified for the

1 government at the trial may have a different opinion now. I
2 don't know if he does or he doesn't. It's just curious he's
3 not identified as an expert when we know that they told him to
4 be prepared to testify.

5 THE COURT: All right. Have you -- do you intend to
6 depose Dr. --

7 MR. GROSE: No, sir.

8 THE COURT: -- Brown?

9 MR. GROSE: No, sir. We -- we intend -- we -- in that
10 letter or in that packet of information that we attached to
11 our pleading for today, it may be a combination of letters,
12 but there's a roadmap of who our experts are, what they're
13 going to testify about, a summary of their testimonies. We've
14 provided reports for Dr. Knight and Dr. Andrews, and we've
15 listed all of our witnesses.

16 THE COURT: All right.

17 MR. GROSE: Lay witnesses and expert witnesses, and --
18 and that has not changed. We may not call all of those
19 witnesses, but those are the witnesses that we think we may
20 call and wanted to give them notice of that as part of the
21 discovery process.

22 THE COURT: All right. Let me hear from Mr. Evans
23 briefly in response.

24 MR. EVANS: Thank you, Your Honor.

25 First of all, to say that my office handled the appeal in

1 this case, so we should be prepared from the appeal, totally
2 different situation, totally different argument regarding this
3 case and PCR. I mean, it doesn't make sense.

4 First of all, I wasn't even in the office when the case
5 was appealed. So how can I say, okay, since it's done under
6 appeal, I can just follow what they did on appeal and be able
7 to be prepared in a PCR case? That's not the way it works,
8 Your Honor. For them to say that, okay, since certain things
9 was in the application, we should be prepared to go forward,
10 that's like saying a defense attorney should be prepared to go
11 forward in the trial because there's an indictment and no
12 discovery. How can you expect the defense attorney to be able
13 to do that?

14 We know what the allegations are, but we need to know
15 what they had, when they got it, what the doctor used to make
16 his final determination, and to be able to look at the records
17 that they provided to us, a big chunk of it in September, to
18 make a sufficient cross-examination of these doctors or these
19 experts that they decide to testify in order to make a
20 sufficient presentation to this Court on the State's side.

21 As for Dr. Corbin and Dr. Calloway, we wasn't aware Dr.
22 Corbin would be called to testify until September 1st when
23 they give us that big chunk of discovery. I think it's
24 important for Dr. Corbin to be deposed, the reason being
25 because they say Dr. Corbin, one, is going to be testifying as

1 a fact witness, not an expert, and two, he didn't write a
2 report, but he looked at a ton of discovery on the case that
3 occurred eight years ago. I think it's important to find out
4 from Dr. Corbin how he'd be able to remember something from
5 eight years ago, and during a deposition I think it would be
6 important for us to request any notes that he has and is using
7 to testify from in order for us to make the determination of
8 what he knew then and how he's able to testify in this case
9 right now.

10 As to Dr. Brown, right now Dr. Brown is not going to be
11 called by us as an expert but as a fact witness. And as far
12 as I know, he hasn't changed his opinion regarding this case.
13 That's the reason why he wasn't included in the
14 interrogatories because we're not -- we're not -- if we call
15 him -- we may not even call him. It'll be as a fact witness
16 and not as an expert.

17 As -- as I said before, we are just not prepared to go
18 forward. That is not a rule that the State is going before
19 the Court. That is something I do not do, Your Honor. I
20 don't try to delay cases because things are not going my way.
21 I was a public defender when I first started. Things don't go
22 my way a lot of times in the courtroom. That's just the way
23 it is. I just would like both sides to be prepared to present
24 their case sufficiently to the Court and let the Court decide
25 as the Court wishes, Your Honor, and that's the reason why we

1 presented this motion.

2 THE COURT: All right. Well, I have reviewed the brief
3 -- the motion, the briefs. Everything that's been argued
4 today in essence is a repetition of what was in the motion and
5 the briefs.

6 The Court has granted a continuance several times. This
7 has been a very tedious PCR case. However, we have been
8 interrupted by Covid in the middle of all of it. We've had
9 the uniqueness of one of the issues about intellectual
10 disability and a defective gene associated with developmental
11 -- a developmental period in an individual's life that makes
12 it certainly unique from most any other type PCR case. This
13 is a civil case, and the Court has been liberal in extending
14 continuances in the past and I'm going to grant the motion to
15 continue.

16 What I'd like to do is -- I checked with Spartanburg
17 Clerk of Court and looked at my schedule. It looks like the
18 first time that we could schedule for a date certain, which is
19 certainly what we need to do, would be March the 27th, the
20 week of March 27th. I took into consideration that Ms. Vann
21 indicated that she would not be available in January because
22 of a trial scheduled that she has, and then looking at my
23 schedule and the Spartanburg court schedule that the week of
24 March the 27th would be the time where this Court would like
25 to set it for that evidentiary trial.

1 Now, do y'all have any initial response to March the
2 27th?

3 MR. EVANS: We have no objection to that, Your Honor.

4 THE COURT: All right.

5 MS. VANN: That will work for me, Your Honor.

6 THE COURT: I'm sorry?

7 MS. VANN: That will work for me, Your Honor.

8 THE COURT: Okay.

9 MR. GROSE: I've checked my calendar. That works for me.

10 THE COURT: Okay. All right. Mr. Evans, if either you
11 or Ms. Brown will prepare the appropriate order granting the
12 motion for continuance and setting it for a date certain for
13 -- well, don't -- don't prepare the order until I notify you
14 because I have one more hoop to jump through, and that's Court
15 Administration. They have to give me approval for that.

16 Mr. Grose?

17 MR. GROSE: The only thing that I would add is, is, you
18 know, we do have witnesses that are out-of-state, including
19 the experts. We need to -- this is far out. So hopefully
20 they don't already have any commitments that week.

21 THE COURT: And you had indicated in one of the
22 correspondences it appeared that several of them were going to
23 -- were to appear virtually.

24 MR. GROSE: We had -- Dr. Cunniff was requesting to
25 appear virtually. He's the geneticist. We have two lay

1 witnesses that live out of state that would be convenient to
2 appear virtually. Mr. Dudick and Mr. Alexander from the
3 Appellate Defense Division have asked to appear virtually. We
4 haven't really talked about that.

5 THE COURT: All right. Well, March 27th ought to be
6 sufficient time to get everybody on board and for them to --
7 they need to rearrange their schedules to meet the time frame
8 here so that we can get it done that week. On the other hand,
9 y'all ought to be able to flesh out every other remaining
10 issue so that we have a clean slate going forward the week of
11 March 27th.

12 Mr. Evans, did you -- you look like -- I mean, you
13 appeared you needed to rise to --

14 MR. EVANS: I would just say we should be prepared by
15 then.

16 THE COURT: Okay.

17 MR. EVANS: So that'll be -- that's not going to be an
18 issue.

19 THE COURT: Okay. All right.

20 MR. EVANS: The only thing I want to reiterate to the
21 Court is the actual motion we made with the SCDC records.

22 THE COURT: All right. We're going to get to that right
23 now. Let's -- let me hear you on that motion.

24 MR. EVANS: I raised the Court's attention I think back
25 in September about SCDC records, medical records. Of course,

1 because of HIPAA, we are not allowed to receive these records
2 by a simple subpoena or a request. It has to be a court order
3 from the Court.

4 They are arguing intellectual disability. We are not
5 sure if there are records that will show he is or is not, but
6 I think that it's important for us to have possession of those
7 records in order to make a determination. There could be some
8 things to help the applicant in the records. I don't know,
9 but I think in order to have a complete case for this Court
10 for this Court to make an educated opinion, we need all the
11 evidence that we can possibly get.

12 And therefore, I would ask this Court to make an order
13 for those records in order for us to have those records in our
14 possession and, of course, in applicant's possession so we can
15 go through those records and make a determination if there's
16 anything, any tests or anything done by SCDC, that would show
17 that intellectual disability does not exist.

18 As we all know, intellectual disability is something
19 you're born with. It's something that doesn't go away. So if
20 he is intellectually disabled, he will still have it while
21 being on death row right now. Therefore, if there's any
22 records showing he is or is not, I think that is important for
23 us to have that in our possession, and the only way we can get
24 it is an order from this Court, Your Honor.

25 THE COURT: All right. Mr. Grose?

1 MR. EVANS: Thank you, Your Honor.

2 MR. GROSE: I sense that you're probably going to give
3 them access to those records based on the WebEx status
4 conference that we had yesterday. I would just want to point
5 the Court to Section 6 of our memorandum, which is page 9 and
6 10, regarding the State's unresolved request for SCDC medical
7 records.

8 Of course, at that point we're drafting this, we're
9 arguing that that's not good cause, but in the second
10 paragraph, we explain why the medical records are not relevant
11 to the claim. The issue that I was referring to earlier was
12 about the presence or absence of -- well, really the presence
13 of prong one and two, the limitations in intellect and the
14 limitations in adaptive functioning. There's already evidence
15 in the record about those.

16 The question is, is did they exist during the
17 developmental period, and there's two issues with that. The
18 SCDC records are not going to give us any information about
19 the developmental period because those were only after his
20 conviction as an adult. And second, the Supreme Court in the
21 *Moore v. Texas* case, you know, it talked about how functioning
22 in prison is not part of the standard of care for determining
23 intellectual disability because you have to look at the
24 adaptive functioning and those deficits as they present in the
25 community and not during incarceration.

1 And I say that for two reasons. One is I don't want the
2 Court to be left here today that those records are somehow
3 going to be diagnostic. Yes, we did oppose them having access
4 to them. This is the reason why. Even though we oppose that
5 motion, we sent the Court an alternate order that would allow
6 them to be released without containing any findings or facts
7 regarding how those records might or might not relate to
8 intellectual disability because that's something that you're
9 going to have to decide when you hear from the witnesses in
10 the case.

11 And so we would ask that -- like I say, we think you're
12 inclined to release them. We would ask that the order just be
13 a simple order ordering them to be released, and then at the
14 hearing when you have the benefit of the testimony and the
15 time to consider it, you can determine what the relevance of
16 those records are to intellectual disability.

17 THE COURT: And I appreciate that, and I think that's
18 where we are. Mr. Evans, is that correct? I mean, the Court
19 is going to order that those records need to be released, SCDC
20 records.

21 As far as them being able to be used as evidence in the
22 case is something to be determined later. This is simply a
23 discovery issue about being able to access those records. And
24 as you've stated yourself, you're not even sure what -- you
25 don't know what's in the records and you don't know how

1 they're going to be used, and that would be determined later.

2 Did you have any kind of response to Mr. Grose?

3 MR. EVANS: The only response I would have is they --
4 they were welcome to give us his records when he was in the
5 county jail at the detention center. I don't see any
6 difference between that and SCDC.

7 THE COURT: All right. Well --

8 MR. EVANS: I don't understand why we cannot have those
9 records also for discovery period purposes, not for making a
10 determination for intellectual disability. I don't even know
11 what's in the records.

12 THE COURT: All right.

13 MR. GROSE: The records from the county jail have to do
14 with his adaptability to confinement, and the records that we
15 gave them from the county jail were prior to the conviction
16 and the sentence, which means that they were available to
17 trial counsel. And so those -- I -- those are a little
18 different, but --

19 THE COURT: I understand that. I'm going to -- I'm going
20 to grant the motion for the -- for an order requiring SCDC to
21 provide the State with his medical records while he's in the
22 Department -- while he's in SCDC, and I think, as Mr. Grose
23 suggested, that needs to be the extent of the order for those
24 records, and then we'll deal with any other issues that may or
25 may not come out of those records later on if we need to.

1 Does that make sense?

2 MR. EVANS: Yes, Your Honor.

3 THE COURT: All right.

4 MR. GROSE: Yes, sir.

5 THE COURT: All right. Anything else we need to take up?

6 MR. EVANS: No, Your Honor.

7 THE COURT: All right. We're set for March the 27th. I

8 do need to contact Court Administration. Hopefully, that

9 shouldn't be a problem. The only issue would be a court

10 reporter. Hopefully, they can have that worked out between

11 March 27th.

12 All right. Thank you. That concludes this hearing.

13 MR. EVANS: Thank you, Your Honor.

14 MS. BROWN: Thank you, Your Honor.

15 (WHEREUPON, the proceedings ended at 11:38 a.m.)

16

17 --- END REQUESTED TRANSCRIPT ---

18

19

20

21

22

23

24

25

)

)

)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter III for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 24, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina, held in Greenwood County on the 19th day of October, 2022, to the best of my ability based upon the audio and records provided.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

s/ Krystal J. Smith

Court Reporter

Florence, South Carolina

September 13, 2023