

RECEIVED

Jun 12 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No. 2026-000115

BOBBY WAYNE STONE, ... RESPONDENT,

v.

STATE OF SOUTH CAROLINA, ... PETITIONER.

**APPENDIX
VOLUME 2 OF 2**

E. CHARLES GROSE, JR.
Grose Law Firm
305 Main Street
Greenwood, South Carolina 2946
(864) 538-4466

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

ATTORNEYS FOR RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General

R. BRANDON LARRABEE
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803)734-6305

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit
215 N. Harvin Street
Sumter, South Carolina 29150

ATTORNEYS FOR PETITIONER

INDEX

ORDER GRANTING POST-CONVICTION RELIEF.....	1
JULY 30-31, 2024 EVIDENTIARY HEARING TRANSCRIPT	24
AMENDED POST-CONVICTION RELIEF APPLICATION.....	369
RETURN TO AMENDED APPLICANT AND MOTION TO DISMISS	375
RESPONSE IN OPPOSITION TO STATE’S MOTION TO DISMISS.....	416
ORDER GRANTING MOTION TO DISMISS IN PART AND DENYING IN PART	576
ORDER FOR ATKINS EVALUATION.....	592
FOLLOW-UP ORDER REGARDING ATKINS EVALUATION.....	605
ADMINISTRATIVE ORDER (RE: ATKINS EVALUATION)	610
NOTICE OF MOTION TO COMPEL PURSUANT TO RULE 37, SCRCP	614
RESPONSE IN OPPOSITION TO THE STATE’S MOTION TO COMPEL	634
ORDER ON RESPONDENT’S MOTION TO COMPEL	640
ORDER ON RESPONDENT’S MOTION TO COMPEL FOLLOWING IN CAMERA REVIEW	646
MOTION TO COMPEL	648
ORDER ON APPLICANT’S MOTION TO COMPEL	655
MOTION TO COMPEL	656
MOTION FOR DATA CERTAIN DETERMINATION FOR FINALIZING DISCOVERY	664
APPLICANT’S TRIAL BRIEF	671
RESPONDENT’S PRE-TRIAL HEARING BRIEF	692
APPLICANT’S POST-HEARING BRIEF.....	709
RESPONDENT’S AMENDED POST-HEARING BRIEF.....	739

APPLICANT’S POST-HEARING REPLY BRIEF	786
JULY 31, 2026, MEMORANDUM ORDER (ANNOUNCING RULING)	808
RESPONDENT’S MOTION TO RECONSIDER, ALTER, OR AMEND	810
APPLICANT’S RESPONSE TO MOTION TO RECONSIDER, ALTER, OR AMEND	823
ORDER ON STATE’S MOTION TO ALTER OR AMEND	832
JULY 30, 31, 2024 EXHIBITS	
APPLICANT’S 1 – CV OF DR. BOYD	834
APPLICANT’S 2 – DR. BOYD’S REPORT	846
APPLICANT’S 3 – APPLICANT’S RECORDS	860
APPLICANT’S 4 – CV OF DR. HALL	919
STATE’S 1 – CV OF DR. VITACCO.....	926
STATE’S 2 – CV OF DR. KRUSE	956
COURT’S 1 – DR. HALL’S REPORT	965

decided until seven years after his petition was filed. Preclusion also will not operate where "a new determination is warranted in order to take account of an intervening change in the applicable legal context." *Id.* Again, *Atkins* has starkly changed the applicable legal context for mental retardation determinations. Finally, preclusion will not be invoked where "there is a clear and convincing need for a new determination of the issue a) because of the potential adverse impact of the determination on the public interest.... and b) "because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action." *Id.* Once again, each of these exceptions applies. Allowing Mr. Elmore to litigate an issue that would categorically exempt him from the death penalty is in the public interest. In fact, the South Carolina Supreme Court has said it will not apply collateral estoppel where "*any countervailing considerations*" favoring relitigation exist. *Beall v. Doe*, 281 S.C. 363, 370, 315 S.E.2d 186, 190 (1984). *See also, Johns v. Johns*, 309 S.C. 199, 203, 420 S.E.2d 856, 859 (Ct. App. 1992) (*res judicata* will not be applied where "it will contravene other important public policies"). Preventing a person who is constitutionally ineligible for the death penalty from being executed is an important public policy. As Mr. Elmore has demonstrated, such circumstances exist here.

III. CONCLUSION.

Mr. Elmore is entitled to have this Court determine whether or not he is constitutionally eligible for the death penalty under *Atkins v. Virginia*. Allowing him to do that now would in no way prejudice the State or frustrate the State's goal of finality. The bottom line is that the State can nor more execute a mentally retarded person than it can execute a twelve-year-old or a shoplifter, regardless of when a mentally retarded person's status was brought to the attention of the court.

Wherefore, Mr. Elmore prays that the Court deny Respondent's motion to dismiss.

Respectfully submitted,

J. Christopher Jensen
Cowan, Leibowitz & Latman, PC
1133 Avenue of the Americas
New York, NY 10036
(212) 790-9200

Diana L. Holt
Diana Holt, LLC
P.O. Box 6454
Columbia, SC 29260
(803) 782-1663
Member SC Bar

John H. Blume
Cornell Law School
112 Myron Taylor Hall
Ithaca, NY 14853
(607) 255-1030
Member SC Bar

Marta K. Kahn
Attorney at Law
PO Box 65871
Baltimore, MD 21209
(410) 466-4654

BY:


Counsel for Applicant

November __, 2006
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENWOOD)

C/A No. 05-32-CP-1205

Edward Lee Elmore)

Applicant,)

V.)

Certificate of Service

STATE of SOUTH CAROLINA,)

Respondent.)

I certify that I have served Applicant's Return to the State's motion to Dismiss the PCR Application pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), by delivering a copy to Respondent, on November 21, 2006, by depositing a copy of it in the U.S. Mail, postage paid and addressed to Donald J. Zelenka, Office of the South Carolina Attorney General, P.O. Box 11549, Columbia, South Carolina 29211.

By: 

Diana L. Holt
DIANA HOLT, LLC
P.O. Box 6454
Columbia, S.C. 29260
(803) 782-1663
Counsel for Mr. Elmore

November 21, 2006

Exhibit E

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD) COURT OF COMMON PLEAS
Edward Lee Elmore, #4293) 05-CP-24-1205
Applicant,)
v.) RESPONDENTS REPLY TO RETURN TO
State of South Carolina,) MOTION TO DISMISS APPLICATION AS
Respondent.) BARRED AS UNTIMELY
AND ALTERNATELY BARRED
AS ISSUE PRECLUSION
FROM 90-CP-24-1404

FILED COMMON PLEAS
6TH JUDICIAL CIRCUIT
GREENWOOD, S.C.
2006 DEC 22 PM 1:03

h
41
The Respondent,¹ above-named, hereby make a Reply to the Applicant's November 22, 2007 Return to State's Motion to Dismiss to the state post-conviction relief application filed on September 27, 2005. For reasons set forth below, Respondents continue to assert that the claim must be dismissed and application denied as barred as untimely under the statute of limitations, Section 17-27-45, S.C. Code Ann. (1976). The Applicant has presented no reasons why he could not have timely filed his application within either one year after Atkins v. Virginia was decided or one year after Franklin v. Maynard was decided or one year after his initial PCR appeal was decided. The Applicant has made no showing and stated no factual assertion that there were any (1) extraordinary circumstances, (2) beyond his control or external to his own conduct, (3) that

¹In the application, Elmore asserts as Respondents "Jon E. Ozmint, Director SC of Dept. Of Corrections, et al." as Respondents. This is incorrect. Pursuant to amended South Carolina Rules of Civil Procedure, Rule 71.1(c), this action must be styled in the following manner:

(c) Independent Action. An application filed under the Act is an independent civil action which should be separately filed and indexed by the clerk of court. The caption in all post-conviction relief actions shall read: *Full Name and Prison number (if any) of Applicant v. State of South Carolina.*

As amended, April 27, 2004.

ATTEST A TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S. C.

prevented him from filing on time.

Alternately, the petition must be barred because the claim is refuted by the Applicant own evidence in the earlier action.

I.

THE STATUTE OF LIMITATIONS ISSUE AND ATKINS CLAIMS.

The Applicant asserts that he is entitled to equitable tolling from the one year statute of limitations. However, a review of his November 2006 pleading fails to reveal any reason or basis as to why his claim should be equitably tolled. To the contrary, he gives no reason why the claim could not have been filed sooner and certainly within the applicable statute off limitations. He reveals no impediment, no misunderstanding , no basis that anything preventive a timely filing. Instead, he merely states that it was not filed and that because he is asserting mental reatrdation he should not be confronted with complying with any statute of limitations for a state legislatively created state post-conviction relief procedure. Failing to state a basis for his delay, it must be dismissed. Even if equitably tolling exists, absent any basis for the equitable delay, it must be dismissed.

In the present application, filed September 27, 2005, **more than one year after the rehearing on certiorari was denied by the South Carolina Supreme Court on September 20, 2004**, Elmore, through current federal habeas corpus counsel, Diana L. Holt, J. Christopher Jensen, John Blume and Marta Kahn made a second state post-conviction relief application, alleging:

GROUND A

Applicant may not be executed consistent with the Eighth and Fourteenth Amendments to the United States Constitution because he is mentally retarded.

In *Atkins v. Virginia*, 536 U.S. 304 (2002), the Supreme Court held that it violates the Eighth and Fourteenth Amendments to execute someone who suffers from mental retardation. Mental retardation is established when a person has significantly sub-average general intellectual functioning, concurrently with deficits in adaptive functioning, both manifesting during the developmental period. See *Atkins*, supra. 122 S.Ct. At 2252; *Penry v. Lynaugh*, 492 U.S. 302, 307-09, n. 1(1989). On information and belief, Mr. Elmore suffers from mental retardation. Records, reports from family members and teachers, intelligence testing scores, **and the opinions of one or more mental health experts supports this diagnosis.**² Thus , Mr. Elmore may not be executed.

Application for PCR , p. 2 of 12. ³

 Contrary to this allegation, counsel for Elmore conceded at the November 21, 2006 status teleconference call that they did not have any present expert opinion declaring that Elmore actually suffered from mental retardation. To the contrary, it was admitted that neither Dr. Jonathan Venn nor Dr. George Woods had yet opined that Elmore suffered from mental retardation as a diagnosis. Further, counsel for Elmore was unable to state the diagnosis of an earlier examiner, Denis Keyes, upon whom testing Dr. Venn relied upon in the 1990 state PCR proceedings.

³ Elmore, through the same counsel, raised this same substantive federal constitutional claim for the first time in the pending federal habeas corpus action, *Elmore v. Ozmint*, 4:04-22310 as ground XVIII (18) in their petition filed on **July 5, 2005**. The Respondents made a Return and Motion for Summary Judgement inn federal court on **September 6, 2005** requesting that the matters including his newly asserted mental retardation claim be dismissed. In response to Respondents' motion, Elmore responded to the federal court on **September 26, 2005** that he was simultaneously filing this state PCR application in Greenwood raising this claim. In his September 26, 2005 response in federal court, without citations or records, Elmore contended:

- A. His difficulties with intellectual functioning were demonstrated throughout his school records asserting:
1. He repeated first grade and was still in second grade at age 9.
 2. In third grade, at nearly age 12, Petitioner's IQ was measured as 58 by the Peabody Picture Vocabulary Test and 72 according to the Slosson Intelligence Test.
 3. Prior to his trial in 1983, he scored a 71 on an IQ test administered by the State Hospital.

Respondents made a return and motion to dismiss on January 27, 2006 asserting that the matter must be dismissed under Section 17-27-45 because it was filed out of time. The untimeliness of the application existed because more than one year had passed from each of the critical statute of limitations dates, including the denial of the petition for rehearing denying certiorari by the South Carolina Supreme Court (September 20, 2004), the denial of certiorari in

B. Elmore claimed deficits in adaptive functioning were demonstrated by;

- 
1. His difficulties in communicating demonstrated throughout the record (no cites);
 2. Elmore has never lived independently;
 3. Elmore has never held a job requiring more skills than a house painter;
 4. He has difficulty solving problems; and
 5. He has difficulty remembering when major events in his life occurred. (Citing App.p. 1846, 1851).

App.p. 1846 involves a reference to Dr. Jonathan Venn's earlier state PCR testimony wherein he testifies as a *defense* expert in psychology that Elmore's testing "indicate that Elmore has an I.Q. of seventy-five, which is in the borderline range of intellectual functioning . . . a low score Mr. Elmore is not mentally retarded, but he's just a notch above being mentally retarded." and that Elmore's performance on the Halstead- Reitan Neuropsychological Battery revealed that "his performance is consistent with an individual who operates at a very low level of intelligence. He has a lot of difficulty solving problems, remembering and figuring things out."

App.p. 1951 again refers to Dr. Venn's examination as an expert witness for the defense when he testified that in his interview with Elmore, "he could not remember what grades he had repeated in school. He told me that he had finished the 8th grade and gone on to the ninth grade, which the school records show is not true. It is also evident from records of the South Carolina Department of Mental Health, where Elmore was a patient in 1982, that his poor memory is also evident in those records. He told them he had gone to the ninth grade, which wasn't true. Also that Elmore's father died when he was two years old. Dr. Venn opined that he has a very poor memory and that he was not able to remember accurately. Dr. Venn also stated that he had done a test for "memory malingering", but concluded that he was not trying to pretend that he had a memory problem.

the PCR appeal (July 12, 2004), the intervening decision in Franklin v. Maynard, 356 S.C. 276, 588 S.E.2d 604, 606 (December 3, 2003), and the decision date in Atkins v. Virginia, 536 U.S. 304 (June 20, 2002). Since more than one year had passed any time there could have been equitable tolling, Respondents submit it must be dismissed. Assuming arguendo that his time for tolling extended throughout the state PCR process, a process where he was never granted relief, until rehearing was denied on September 20, 2004 tolling, Elmore had until September 20, 2005 to file. Even under that logic, he failed to do so and it must be dismissed. However, he had a duty to file his claim sooner than that based upon his knowledge of the factual predicate he is basing his assertion upon.

In his November 22, 2006 return to the State's motion, Elmore makes the following claims as to why his action should not be dismissed as untimely. First, he claims that he is entitled to equitable tolling because Franklin created a procedure for those already under the sentence of death to bring a second action to raise a mental retardation claim. Remarkably, Elmore asserts that "although the statute does indicate that under ordinary circumstances this right must be exercised within one year, the court [in Franklin] made no reference to the application of the statute of limitations in a case in which the claim at issue categorically exempts the applicant from a death sentence. . ." *Return to Motion to Dismiss*, p. 2-3. He asserts the issue is split into two issues : whether the statute can be tolled and whether the statute should be tolled. *Id.* p. 3.

1. Does Equitable Tolling in General Apply to Section 17-27-45.

The South Carolina Supreme Court has never held that equitable tolling applies to the PCR proceedings. In Gary v. State, 347 S.C. 627, 557 S.E.2d 662 (2001), the Court was

presented with whether equitable tolling existed and applied to a situation where the pleading was mailed within the statutory limits but not received by the Clerk's Office until after. The court expressly did not address the claimed defense to the statute of limitations. See Gary, id. at 347 S.C. 627, n. 2 ("We express no opinion on the validity of this defense to the statute of limitations"). Instead, concluding that there was a procedural flaw in the motion hearing as a matter of state law, it remanded the matter back to the court for appointment of counsel and hearing on the claim of equitable tolling. This holding neither supports nor defeats either position. His bare assertion that the Court would not have ordered that the applicant be appointed counsel to argue the equitable tolling issue before it if equitable tolling would not have been available, is a complete mis-reading of the Court's opinion. Simply put, when the Supreme Court states it expresses no opinion it means what it says.

The reliance on Mackey v. State, 357 S.C. 666, 595 S.E.2d 241 (2004) is equally misplaced. In Mackay, the Supreme Court held that the trial court should have dismissed the criminal charges, because the solicitor entered a nolle prosequi and thereafter failed to re-indict the defendant upon those charges. Elmore notes that the PCR court had initially dismissed the matter under the statute of limitations. However, a review of the certiorari petition and return of Respondents reveals that the matter was raised in the PCR appeal by the parties as purely on of subject matter jurisdiction. In fact, the Respondents State of S.C. in the Return to the petition for writ of certiorari on December 19, 2001 only addressed the matter as subject matter jurisdiction and did not raise any assertion that the matter should have been dismissed as belated under 17-27-45, abandoning any statute of limitations defense. It is understandable why the Court did not address it in the opinion. Like Gary though, it does not support the position where statute of

limitations in South Carolina are not jurisdictional , but procedural bars.

Respondents would assert that the statute, Section 17-27-45 does not authorize equitable tolling. The Applicant has made no showing and stated no factual assertion that there were any (1) extraordinary circumstances, (2) beyond his control or external to his own conduct, (3) that prevented him from filing on time. Instead, under the Applicant's apparent basic theory, an Eighth Amendment constitutional claim has no time requirements for filing. Caselaw and legislative statutory construction does not support this concept. The first place to look is the statute of limitations itself to determine the legislative intent for state post-conviction relief.⁴ In particular, Section 17-27-45(B) establishes that a constitutional claim must be raised within one year stating "**not later than one year after the date on which the standard or right was determined to exist.**" This statute must be given its plain meaning. ⁵To accept the position

⁴Respondents note that this discussion is based upon the state statutory remedy of state post-conviction relief under Section 17-27-10, et seq. This determination of legislative intent does not impact upon a habeas corpus action in the original jurisdiction of the South Carolina Supreme Court. See, Butler v. State, 302 S.C. 466, 397 S.E.2d 87 (1990). See Green v. Maynard, 349 S.C. 535, 538, 564 S.E.2d 83, 84 (2002), McWee v. State, 357 S.C. 403, 593 S.E.2d 456 (2004).

⁵In interpreting the meaning of the statute of limitations, the Court applies the same rules of construction used to interpret statutes and rules. Maxwell v. Genez, 356 S.C. 617, 591 S.E.2d 26 (2003); Green v. Lewis Truck Lines, Inc., 314 S.C. 303, 443 S.E.2d 906 (1994). If a statute's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced. See Maxwell, 356 S.C. at 617, 591 S.E.2d at 26; Knotts v. S.C. Dep't of Natural Resources, 348 S.C. 1, 10, 558 S.E.2d 511, 516 (2002). Courts should consider not only the particular clause in which a word may be used, but the word and its meaning in conjunction with the purpose of the whole rule and the policy of the rule. S.C. Coastal Council v. S.C. State Ethics Comm'n, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991) (applying this rule of construction to a statutory provision). In construing a statute, language in the rule must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Mun. Ass'n of S.C. v. AT & T Communications of Southern States, Inc., 361 S.C. 576, 606 S.E.2d 468 (2004) (applying this rule of construction to a statutory provision). Plainly, this statute was created to insure expeditious and efficient proceedings to bring to finality

of the petitioner eviscerates the plain meaning of the statute. His argument must fail.

23
13
48

In this September 27, 2005 PCR application, Elmore, for the first time in State Court, claims that he is actually mentally retarded. Based on this assertion, he further asserts that pursuant to the 2002 decision in Atkins v. Virginia, 536 U.S. 304 (June 20, 2002), his 1987 death sentence cannot be carried out. Respondents submit that review of the three trial proceedings, the entire post-conviction relief proceeding, including the PCR appeal reveal that the Petitioner has never presented this constitutional claim for relief in any matter in state court, but more importantly claim before that Elmore was not mentally retarded through their own experts.

On November 3, 2003, South Carolina had established a pre-trial procedure for determining mental retardation in capital cases in light of Atkins. In Franklin v. Maynard, 356 S.C. 276, 588 S.E.2d 604, 606 (2003)⁶, the court initially established that it would not change the existing statutory definition of mental retardation in the murder statute. Concerning cases that had already been sentenced to death, the South Carolina Supreme Court declared that it would not create any new procedure because the procedures already existed in the uniform post-conviction relief act, Section 17-27-10, et seq. The Court specifically stated:

While petitioners argue we should establish procedures for cases where the defendant was sentenced to death prior to Atkins, such procedures already exist. A death row inmate who claims he is mentally retarded and, as a result, not subject to the death penalty, may institute post-conviction relief (PCR) proceedings because his sentence is in violation of the Constitution and exceeds the maximum

South Carolina criminal judgements. In a analogous federal habeas statute of limitations setting, "[T]his high bar is necessary to effectuate the "AEDPA's statutory purpose of encouraging prompt filings in federal court in order to protect the federal system from being forced to hear stale claims." See Guillory v. Roe, 329 F.3d 1015, 1018 (9th Cir.2003).

⁶ It should be noted that Franklin was represented by current Elmore counsel John Blume in that action.

authorized by law. [FN7] See S.C.Code Ann. §§ 17-27- 20(a) and -160 (2003). As with other PCR claims, the applicant must show he or she is mentally retarded by a preponderance of the evidence. See, e.g., Singleton v. State, 313 S.C. 75, 437 S.E.2d 53 (1993) (competency for execution). If mental retardation is proven, the PCR court will vacate the death sentence and impose a life sentence.

h
49
Franklin at 606. The Supreme Court specifically held that an applicant was not barred from raising the mental retardation issue in a second PCR application. See S.C.Code Ann. § 17-27-45(B) (2003) (when court whose decisions are binding upon this Court holds United States Constitution imposes upon state criminal proceedings substantive standard not previously recognized or right not in existence at time of state court trial, and if standard or right is intended to be applied retroactively, PCR application may be filed).

The Applicant misreads Franklin. He contends that it established a new definition of mental retardation for Atkins purposes. It did not. It stated it would not change the existing definition. He contends it established a new procedure for raising Atkins type issues for those already sentenced to death. It did not - it held that the existing state post-conviction relief procedure covered those type of claims. In other words, for death sentenced individuals situated like Elmore Franklin did not establish anything that did not exist upon passage of Section 17-27-45.

The Applicant implicitly admits that the factual predicate he relies upon existed well before Atkins was decided. Therefore, his requirement was that he had to file the claim within one year after Atkins was decided. He did not do so. In his pleading, he asserts that he did not do so because he expected to be successful in his pending PCR appeal from his initial PCR because certiorari had initially been granted which he perceived as a likelihood the matter would be reversed. This is unworthy of comment. First, if the Applicant had a viable claim that would

remove the possibility of a death sentence, there is no inhibitor to file a second timely petition while the other matter was pending.

2
1410
Elmore seeks sanctuary from the statute of limitations from an assertion that he could not do anything while his PCR appeal was pending. This is incorrect and current counsel should know that based upon their past actions and those in a class of inmates counsel represented in Franklin. Death sentenced inmate Thomas L. Davis had certiorari pending and filed a motion to hold in abeyance the PCR appeal and litigate the mental retardation issue in a second state PCR action. The South Carolina Supreme Court stayed the matter on PCR appeal and allowed the litigation of the second PCR action. Similarly, a second PCR action was filed within one year of Atkins by other death row inmates, including those represented by present Elmore counsel made different actions on behalf of other death sentenced inmates raising mental retardation issues while other collateral actions were pending. Larry E. Hall filed a second PCR action alleging an Atkins claim on June 19, 2003 in Hall v. State, 03-CP-39-936 by current Elmore counsel John Blume while a PCR appeal was pending.⁷ Fred Singleton filed a second PCR action raising an Atkins claim on June 18, 2003 in Singleton v. State, 2003-CP-36-256, through current Elmore counsel John Blume while his death sentence had already been stayed due to incompetency to be executed. William Bell filed a second PCR action raising an Atkins claim on June 18, 2003 in

⁷On September 19, 2002, the pending PCR appeal of Larry Hall was stayed upon Hall's motion and a motion to remand was denied without prejudice to Hall's right to renew the motion until the South Carolina Supreme Court decided *Ellis Franklin, et al v. Gary Maynard* in its original jurisdiction concerning treatment of mental retardation issues in capital cases in light of Atkins v. Virginia, supra. It is evident that Hall's application was made to remove any question of timeliness under the South Carolina State post-conviction act statute of limitations, Section 17-27-45(B). In Hall v. Catoe, 360 S.C. 353, 601 S.E.2d 335 (Aug. 9, 2004), the South Carolina Supreme Court granted relief in the collateral action.

Bell v. State, 2003-CP- 04-1857 through present Elmore counsel Diana Holt .⁸

2
411

The Franklin Court did not declare that the statute of limitations did not exist under the PCR statute for these 8th Amendment claims as Elmore now asserts. To the contrary, it relied upon the PCR statute of limitations as evidencing the ability to assert the 8th Amendment claim in state court by the reference to Section 17-27-45(B) which explicitly required it to be raised within one year after the [Atkins 8th Amendment] standard was determined to exist by the United States Supreme Court. Therein, the General Assembly declared:

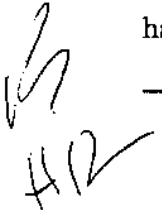
(B) When a court whose decisions are binding upon the Supreme Court of this State [the United States Supreme Court] or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, **an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.**

(Emphasis added). Clearly, the standard or right was declared to exist when Atkins was decided on June 20, 2002. Both the General Assembly in passing Section 17-27-45 contemplated this scenario in its establishment and the South Carolina Supreme Court relied upon it and did not abrogate it as the existing procedure, a procedure that Elmore has failed to timely follow.

⁸It was evident that this application by Bell was also made to remove any question of timeliness under the South Carolina State post-conviction act statute of limitations, Section 17-27-45(B), even though he was involved in a another action. Bell was at that time under a federal court stay of execution while he pursued federal habeas corpus relief. On June 12, 2003, the United States Court of Appeals entered an order denying habeas relief in Bell v. Ozmint, 332 F.3d 229 (4th Cir June 12, 2003). William Bell sought a subsequent petition for rehearing and rehearing en banc on July 8, 2003. He then sought certiorari in the United States Supreme Court that was denied. Bell v. Ozmint, 540 U.S. 1153 (Jan. 20, 2004).

2. *The Application Must Be Barred As Untimely under Section 17-27-45.*⁹

Respondents submit that even if the general issue can be raised under Atkins and Franklin, the application, like any other constitutional claim raised in state PCR must be timely made. The record reveals that Elmore has not previously attempted to raise this "same constitutional claim" in state court at any time prior to September 27, 2005. At no time after either Atkins or Franklin was decided did Elmore seek to present a second PCR application until September 27, 2005 contemporaneously with its response to the state's response to his federal habeas application in federal court.¹⁰ At no time did he attempt to *timely* file the action in state



⁹§ 17-27-45. Filing procedures for post conviction relief applications.

(A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

(B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, **an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.**

(C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter *within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.*

(Emphasis added).

¹⁰It must be noted that the statute of limitations in state PCR matters is not tolled by the filing of a federal habeas corpus action. Green (Malcolm) v. State, 353 S.C. 29, 576 S.E.2d 182 (2003).

court within the statutory limitations period set out in the PCR Act, Section 17-27-45(b) within one year after discovery of the constitutional claim.¹¹ Instead, Elmore waits until *after* the statutory period has run in state court to belatedly present the matter for the first time in federal court.¹² The Applicant waited after any potential equitable tolling occurred during the Franklin, after the PCR appeal had been completed and over a year had passed before he filed the belated PCR action. The application must be dismissed as untimely.

3. Equitable Tolling Principles Are Inapplicable to This Case.

1h
HB
As set forth above and below, Elmore has stated no circumstances that prevented him from filing his application on time - he only makes the bare conclusion that he has been diligent in pursuing his court remedies related to his other claims, but not this particular free-standing 8th Amendment mental retardation claim. In his return to the State's Motion to Dismiss, Elmore erroneously cites to Wham v. Shearson Lehman Brothers, Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501-502 (Ct. App. 2004) as establishing the principles for equitable tolling in South Carolina. Elmore is incorrect. Wham did not even involve a statute of limitations defense, and certainly not one of equitable tolling. The cited factors involved whether a summons which informed defendant that plaintiff would apply "for the relief demanded in the complaint" upon

¹¹ As noted previously, the Applicant is relying upon materials and testimony presented in the earlier PCR action to support his claim. Implicitly, Applicant was aware of these facts at the time of the prior testimony in 1995.

¹² In his pleading, Elmore is relying upon the testimony presented at the 1995 PCR proceeding. Atkins was decided on June 20, 2002. **He had until June 20, 2003 to file another PCR asserting this claim under Section 17-27-45.** Further, if we assume that the decision date of Franklin v. Maynard, supra. was the trigger date, Elmore had until December 3, 2004 to file this matter. If the trigger date was one year from when his when certiorari was denied on July 12, 2004 or September 20, 2004 when the rehearing was denied and remittitur issued. Under any of these theories, his September 27, 2005 application dated September 26, 2005 was untimely.

failure to answer was sufficient to provide notice to defendant that judgment by default would be rendered against it for failing to appear, and that the magistrate erred in denying motion for relief from default judgment by employing "excusable neglect" standard rather than "good cause" standard. These are the standards for a default judgement, not equitable tolling of a statute of limitations. Neither of these conclusion in Wham address either the existence or standards for equitable tolling a statute of limitations case in South Carolina.

15
AC4
Assuming the existence of equitable tolling, guidance may be found in the 1996 Antiterrorism and Effective Death Penalty Act, (AEDPA) 28 U.S.C. 2244 and its application to the federal habeas statutes of limitations.¹³ Respondents do not contend these standards are binding, but reveal of similar and appropriate framework for analysis if there is equitable tolling. It has been held by some federal courts that the AEDPA's statute of limitations is subject to equitable tolling. Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir.2000); see also, Aaron G. McCullough, *Note, For Whom the Court Tolls: Equitable Tolling of the AEDPA Statute of Limitations in Capital Habeas Cases*, 62 Wash. & Lee L.Rev. 365, 384 (2005) ("Every court to address the issue has determined that the AEDPA's deadline is a statute of limitations subject to equitable tolling."). The Fourth Circuit has cautioned that equitable tolling is rarely warranted:

Any invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would

¹³The Supreme Court has never addressed squarely the question whether equitable tolling is applicable to AEDPA's statute of limitations. See Pace v. DiGuglielmo, 544 U.S. 408, 418 n. 8 (2005). Because petitioner assumes that equitable tolling applies and because he is not entitled to equitable tolling under any standard, application of the principle will be assumed for purposes of this portion of the argument. Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way. Pace, 544 U.S. at 418.

loose the rule of law to whims about the adequacy of excuses, divergent subjective notions of fair accommodation. We believe, therefore, that any resort to equity must be reserved for those rare instances where—due to circumstances external to the party's own conduct—it would be unconscionable to enforce the limitation period against the party and gross injustice would result.

Harris, 209 F.3d at 330.

16
#15
For equitable tolling to apply, it has been held that a defendant must establish that (1) extraordinary circumstances, (2) beyond his control or external to his own conduct, (3) prevented him from filing on time. Rouse v. Lee, 339 F.3d 238, 247 (4th Cir.2003) (en banc); Spencer v. Sutton, 239 F.3d 626, 630 (4th Cir.2001). See also, Marsh v. Soares, 223 F.3d 1217, 1220 (10th Cir.2000) (equitable tolling is appropriate only "when an inmate diligently pursues his claims and demonstrates that the failure to timely file was caused by extraordinary circumstances beyond his control"). Because the doctrine is discretionary and "turns on the facts and circumstances of a particular case, equitable tolling does not lend itself to bright-line rules" of application. Harris, 209 F.3d at 330 (quoting Fisher v. Johnson, 174 F.3d 710, 713 (5th Cir.1999)).

"Attorney error, miscalculation, inadequate research, or other mistakes have not been found to rise to the 'extraordinary' circumstances required for equitable tolling." Fahy v. Horn, 240 F.3d 239, 243 (3d Cir.2001). See also Lacava, 398 F.3d at 276-77 (attorney's failure to notify petitioner of the state court's disposition of his case did not rise to the level of an extraordinary circumstance); Schlueter v. Varner, 284 F.3d 69, 76-78 (3d Cir.2004) (attorney's misconduct did not constitute an extraordinary circumstance where that attorney did not keep his promise to file petitioner's PCRA petition on time and failed to communicate further with petitioner about the status of his petition.); Johnson v. Hendricks, 314 F.3d 159, 162-63 (3d Cir.2002) (equitable tolling is not warranted where the petitioner relied on erroneous advice from his state public

defender that he had one year from the date of denial of post-conviction relief to file his federal habeas petition).

2
#16
In Turner v. Johnson, 177 F.3d 390, 392 (5th Cir.), the Court held that neither petitioner's unfamiliarity with legal process nor his lack of representation during applicable filing period merits equitable tolling of the one-year period of limitation on federal habeas petitions, regardless of whether this unfamiliarity is due to illiteracy or any other reason. Indeed, equitable tolling is not often granted. See also United States v. Sosa, 364 F.3d 507, 511- 13 (4th Cir.2004). While Petitioner states that it would be unconscionable to enforce the limitations period against him, he does not set forth any basis which would support a finding that it would be unconscionable to enforce the limitations period, or that a gross injustice would result from such enforcement.

However, the limitations period may be equitably tolled if petitioner can demonstrate that (i) "extraordinary circumstances prevented him from filing his petition on time," Smith v. McGinnis, 208 F.3d 13, 17 (2d Cir.2000), and (ii) he "acted with reasonable diligence throughout the period he seeks to toll." *Id.*; see also Valverde v. Stinson, 224 F.3d 129, 133 (2d Cir.2000) (confiscation of legal papers may be sufficient to establish potential basis for equitable tolling); but see Hizbullahankhamon v. Walker, 255 F.3d 65, 75 (2d Cir.2001) (even with extraordinary circumstances early in the statutory period, petitioner must show he diligently pursued the application in the time remaining). On the present record, there is no basis for equitable tolling because there has been no claim that he was prevented from timely filing by an extraordinary circumstance.

Nor is petitioner entitled to equitable tolling based on his argument that he is actually innocent of the death penalty due to his alleged mental state. Equitable tolling is not

14
#17

permitted merely because petitioner believes he is entitled to relief. See Melancon v. Kaylo, 259 F.3d 401, 408 (5th Cir.2001) ("Equitable tolling applies principally where the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his rights."). Even a claim of actual innocence does not constitute a "rare and exceptional" circumstance sufficient to toll the statute of limitations. See, e.g. Felder v. Johnson, 204 F.3d 168, 171 (5th Cir.), cert. denied, 531 U.S. 1035, 121 S.Ct. 622, 148 L.Ed.2d 532 (2000); Fites v. Quarterman, No. 3-06-CV-0559-M, 2006 WL 2356017 (N.D.Tex. Aug. 15, 2006); Garcia v. Dretke, No. 3-05-CV-2334-B, 2006 WL 249951 at *2 (N.D.Tex. Jan.11, 2006); Mason v. Cockrell, No. 3-03-CV-0483-H, 2003 WL 21488226 at *2 (N.D.Tex. Apr.23, 2003). Without a basis for statutory or equitable tolling of the AEDPA limitations period, petitioner's claims are time-barred and should be dismissed.

Further, he contends that a mental retardation claim is somehow unique. This claim is simply a claim that he is entitled to relief under the 8th Amendment from his sentence. *[Respondents note that the Applicant has not even contended that there was anything that prevented this claim from being raised at trial or in the initial state PCR actions initially to preserve the claim in the same manner as Atkins did]*. As noted at the status hearing, in Hedrick v. True, 443 F.3d 342 (4th Cir. 2006), the 4th Circuit held in the alternative that an Atkins claim could be procedurally barred in state court. A review of Hedrick is particularly probative because Hedrick, like Elmore, failed to timely avail himself of the state court procedures to raise an Atkins claim and was found to be barred from doing so by the federal courts. Like Hedrick, there is nothing in this record or his pleadings that suggest that Elmore was impeded from raising his claim in a timely manner consistent with Section 17-27-45. The Fourth Circuit barred the Atkins

claim from consideration. This court should do the same. See also, Bowling v. Commonwealth, 163 S.W. 3d 361 (Ky 2005)(inmate waived right to raise Atkins claim by not asserting the claim in a trial after the procedure was established).

II. The Applicant Is Bound By His Prior Evidence From His Own Experts In 1995 That He Is Not Mentally Retarded.

12
#18
Respondents also submit that he is procedurally barred under the unique circumstances from raising this claim(or relitigating) the issue of Elmore's mental status. In the 1990 state PCR proceeding, certain salient factual issues were developed. First, there was never any conclusion by a state witness that Elmore presently suffered under mental retardation. To the contrary, Elmore's own expert psychological witness at the 1996 PCR hearing, Dr. Jonathan Venn opined, within his area of expertise that he had a diagnostic impression that the only mental disorder Elmore had was "borderline intellectual functioning." He stated that the Wechsler Adult Intelligence Test was administered a few months earlier by Dr. Denis Keyes¹⁴ and that he

¹⁴Denis Keyes is a certified school psychologist, a Ph.D. in special education, and a professor of special education at the College of Charleston. U.S. v. Webster, 392 F.3d 787, 793, n. 10 (5th Cir 2004). See Dennis W. Keyes, William J. Edwards & Timothy J. Derring, Mitigating Mental Retardation in Capital Cases: Finding the "Invisible" Defendant, 22 Mental & Physical Disability L.Rep. 529, 530-31 (1998) (comparing definitions of mental retardation given by the American Association on Mental Retardation and the American Psychiatric Association); Denis Keyes, William Edwards & Robert Perske, People with Mental Retardation Are Dying, Legally: At Least 44 Have Been Executed, 40 Mental Retardation 243, 243-44 (2002); Caroline Everington & Denis W. Keyes, Mental Retardation, 8 THE FORENSIC EXAMINER 31, 34 (1999); Denis W. Keyes et al., "Mental Retardation and the Death Penalty: Current Status of Exemption Legislation," 21 Ment. & Phys. Dis. L. Rep. 687 (1997). He has been declared a specialist in mental retardation. Washington v. Johnson, 90 F.3d 945 (5th Cir 1996). Keyes, has appeared on ABC's 20-20 and as a guest expert on CNN Presents OnLine conference. He is a Fellow of the American Association on Mental Retardation. 22 Mental & Physical Disability L. Rep. 529, *537.

Dr. Keyes website has a plethora of information about his area of expertise.
<http://www.cofc.edu/%7Ekeyesd/indexold.htm> .

reviewed the results which indicated Elmore had an I.Q. of 75 which is in the borderline range of intellectual functioning. App.p. 1845-46. **He unequivocally stated as the defense specialist that "this is a low score. Mr. Elmore is not mentally retarded, but he is just a notch above being mentally retarded."** App.p. 1846. On cross-examination by the Respondents, Dr. Venn stated that "I do not consider him to be mentally retarded. App.p. 1853, ll. 21- 1854, l. 4. ¹⁵

13
19
Extraordinarily, the Petitioner, in his application has relied upon the same expert testimony of Dr. Venn to support the claim he concluded did not exist with Mr. Elmore - mental retardation. Respondents respectfully submit that the Petitioner should be procedurally barred from asserting this claim in federal court in habeas corpus where he presented evidence in the state court proceeding that Elmore was not, in fact, mentally retarded. The record also reveals that at the time of the 1995 PCR hearing, Elmore was actually tested by Denis Keyes, an expert in the determination of mental retardation according to various courts, and his testing was additionally relied upon by Dr. Venn to report no mental retardation. ¹⁶

¹⁵ In the Brief of Petitioner in the earlier PCR Appeal, Elmore made reference to a measurement of Elmore's I.Q. at the State Hospital of 71 and generally asserted without reference that school records revealed a much lower I.Q. Brief of Petitioner, p. 63, n. 79. Two factors must be recognized. Dr. Venn testified that he had reviewed school records in rendering his opinion. App.p. 1842, ll. 7-18, p. 1844, ll. 16-17.

The March 16, 1982 Report of the State Hospital reported : " . . .He was of dull normal intelligence with an IQ of 71 but possibly he is able to function at a higher level. . . Report, March 16, 1982.

¹⁶ Based upon this extraordinary reversal of course claim from the earlier state PCR proceeding, Respondents continue to request the disclosure of Dr. Keyes written report, opinion and testing , if in existence at this time, of his 1991-1995 testing of Elmore or other documents and reports, in addition to his school records in discovery. It was requested at the initiation of these proceedings from counsel and has not been provided despite the fact that current counsel has relied upon it and Dr. Venn's opinions throughout the litigation since 1990. The failure to reveal this relied upon testing speaks volumes about the baselessness of the allegation and why

Respondents submit that he must be procedurally barred from raising this claim under concepts of res judicata, issue preclusion and collateral estoppel.

13
#10 The Applicant contends that Dr. Venn's earlier evaluation was not intended to be a diagnosis of mental retardation. He claims that during the state of his PCR hearing a technical diagnosis of mental retardation was not relevant and asserts that mental retardation was not a mitigating factor at the time of the trials. Return to Motion, p 9. The Applicant is in error - the existence of mental retardation has always been a mitigating factor in a capital case since the bifurcated proceedings were established. It must be recognized that the issue of whether Elmore was mentally retarded was before the PCR court in 1990-1995 because evidence of mental retardation was a mitigating factor as a matter of state law and defense counsel's failure to present the claim could have supported a claim of ineffective assistance of sentencing counsel, even though it was expressly a defined "statutory mitigating circumstance" until 1992. See State v. Shaw, 273 S.C. 194, 255 S.E.2d 799 (1979); State v. Middleton, 295 S.C. 318, 368 S.E.2d 457 (1988); Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998) (issue is whether evidence of mental retardation was adequately investigated and presented at 1987 resentencing hearing as mitigating evidence¹⁷). ¹⁸ In his November 2006 pleading, Elmore, for the first time states that he

compliance with the discovery request is demanded and defeats the assertion that in the 1990 proceedings that Elmore, through counsel Blume, Holt and Jensen did seek to prove that Elmore was mentally retarded, albeit unsuccessfully because their experts opined that he did not meet the diagnosis. Respondents await the concealed, yet potentially dispositive materials from Dr. Keyes.

¹⁷ As the Supreme Court stated in Jones concerning the 1987 resentencing proceeding: "At the sentencing hearing, the mentality of Jones was the focus of his mitigation case. **827 His counsel's strategy was not to portray Jones as being under active mental and emotional disturbance, but rather to emphasize his mental retardation, as evidenced by his upbringing. [FN3] This strategy obviously did not succeed. Just because it was unsuccessful does not mean

AB
#21.
“did not seek to prove that he was mentally retarded” in the earlier PCR action. Return to Motion, p. 9. As noted below, this assertion is not supported by the PCR record because he reveals that he had Elmore tested for mental retardation by Dr. Denis Keyes and subsequently used by Dr. Venn. Their determination was that he was not mentally retarded. Otherwise, like the Applicant in Jones, he would have presented those findings concerning the existence of mental illness. The problem with Elmore’s analysis is that he wants to *change* the conclusion of “no mental retardation”, but “Borderline intellectual function” to a reasonable degree of certainty in his area of expertise from 1995 to “mental retardation.” Dr. Venn attempts to undermine his own qualification and expertise and now contends that he had not evaluated Elmore for mental retardation¹⁹ and did not consider that any with an I.Q. over 70 could be mentally retarded and did not use the so-called Flynn effect in his analysis which Elmore suggests would automatically raise his I.Q. testing level and must be decreased. As stated earlier at the status conference, Elmore conceded that they possessed no expert opinion at this time that Elmore is mentally

that Jones can now recharacterize the evidence and claim that counsel did not adequately present mitigation evidence. *The "new" evidence is the same as the "old" evidence. At best, it is a fancier mitigation case. If the evidence was not persuasive in the first case, the defendant does not get a second chance. Otherwise, there would never be an end to litigation.*” Id. Emphasis added.

¹⁸In State v. Tyner, 273 S.C. 646, 258 S.E.2d 559 (1979), the distinction between “mental retardation” and “borderline mental retardation” was the distinction in whether certain mitigating factors would be charged. In light of expert testimony to effect that defendant, who was a borderline mental retardate, could communicate on a college level, trial court did not err in refusing to submit to jury as mitigating circumstances statutory sections providing that murder was committed under influence of mental or emotional disturbance or that defendant’s capacity to appreciate criminality of his conduct or conform his conduct to requirements of law was substantially impaired.

¹⁹If not, Dr. Keyes did test him for mental retardation. Under the Petitioner’s present theory, what was the reason for that testing - what was Keyes result in 1995 or before ?

16
422
retarded and were still investigating it, despite the averments in the application. Second, the court have not held that the Flynn effect and a reduction in the SEM is the required testing standard. In Hedrick v. True, 443 F.3d 342, 367-68 (4th Cir. 2006), the Court found that a defendant who claimed that because he scored a 76 on WAIS -III and asserted that taking the SEM into account that his true IQ score was between 71 and 81, coupled with evidence of low performance in school demonstrated MR, "only speculation on our part would lower [defendant's] IQ score of 76. As [defendant] concedes, the SEM could either raise or lower [defendant's] IQ score of 76. ... The fact that the SEM could potentially increase his score to 81 . . . The fact that the SEM could either raise or lower defendant's IQ score and the paucity of evidence indicative of mental retardation constrained the court to conclude that [defendant] had not met his evidentiary burden with regard to his Atkins claim." Walton v. Johnson, 440 F.3d 160 (4th Cir. 2006)(en banc) (defendant obtained IQ scores of 77 when trial expert tested him a few months after he turned 18; defendant argued that his IQ should have been reduced to 74 because of Flynn Effect²⁰ and even lower because of SEM; Fourth Circuit rejected argument on basis that defendant could only speculate that SEM actually lowered his IQ score). See also, Walker v. True, 399 F.3d 315 (4th Cir. 2005)(Atkins claim brought initially in federal court is remanded noting defendant's argument that Flynn effect and SEM should reduce IQ scoring, but 4th Circuit does not approve

²⁰"The premise of the 'Flynn Effect' is that IQ scores increase over time and that IQ tests that are not re-normed to take into account rising IQ levels will overstate a testtaker's IQ score." Walton, 440 F.3d 160, at 177 n. 22. The Weschler Adult Intelligence Scales test (the "WAIS") is the standard instrument in the U.S. for assessing intellectual functioning. According to the Flynn effect recognizes that norm IQ scores across a population have increased approximately 3 points per decade. Dr. Flynn is a political scientist --not a licensed psychiatrist or psychologist. See Berry v. Epps, 2006 WL 2865064, *35 (N.D.Miss. 2006).

the Flynn effect, but directed the lower court to consider the persuasiveness of the evidence and consider whether Virginia's MR statute permitted application of the SEM).

Here, the Applicant's IQ score of 75 with a +/- 5 points means 70-80 IQ possibilities. Nevertheless, the testing of Dr. Keyes, the mental retardation expert that Elmore relied upon may have accounted for all these factors.

Elmore contends that res judicata does not apply in this setting because a determination of the Applicant's mental retardation was not the focus of the earlier proceedings. Return to Motion, p. 11. This is a misstatement of the earlier action because a determination of Elmore's intellectual functioning level was a focus of the initial PCR proceedings - it was just that Elmore could not prove MR. It is folly to think that Elmore would abandon a determination of MR in favor of "borderline intellectual functioning" underlying the determination of ineffective assistance of counsel for failing to present such evidence, particularly where he had employed the national expert on mental retardation and the death penalty to assess it. Simply put, had Elmore been able to prove MR in 1995 to support his ineffective assistance claim for failing to present his low IQ level to the jury to support the available statutory mitigating circumstances, he would have done so. He was unable to do that and could only prove a higher level of low intellectual functioning. His retrospective disagreement must be ignored in light of the conclusive record from 1995.

Under res judicata, a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated and as to issues that might have been litigated in the first action. Sub-Zero Freezer Co. v. R.J. Clarkson Co., 308 S.C. 188, 417 S.E.2d 569 (1992); Treadaway v. Smith, 325 S.C. 367,

479 S.E.2d 849 (Ct.App.1996); Foran v. USAA Cas. Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct.App.1993). Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between these parties. Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999); Rogers v. Kunja Knitting Mills, U.S.A., 336 S.C. 533, 520 S.E.2d 815 (Ct.App.1999). Res judicata prevents a litigant "from raising *any issues which were adjudicated* in the former suit and any issues which might have been raised in the former suit." Hilton Head Ctr. of South Carolina, Inc. v. Pub. Serv. Comm'n of South Carolina, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987); accord Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999). "Res judicata is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties and their privies. Res judicata ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues." James F. Flanagan, *South Carolina Civil Procedure* 642 (2d ed.1996).

To establish res judicata, the defendant must prove three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504 (1986); Rogers, 336 S.C. at 537, 520 S.E.2d at 817; Owenby v. Owens Corning Fiberglas, 313 S.C. 181, 437 S.E.2d 130 (Ct.App.1993). Even when the defendant meets all of the required elements, res judicata will not be applied "where it will contravene other important public policies; the courts must *305 weigh the competing public policies." Johns v. Johns, 309 S.C. 199, 203, 420 S.E.2d 856, 859 (Ct.App.1992).

Collateral estoppel differs from res judicata. This distinction is explained in Beall v. Doe,

281 S.C. 363, 315 S.E.2d 186 (Ct.App.1984):

The doctrines of res judicata and collateral estoppel are ... two different concepts. A final judgment on the merits in a prior action will conclude the parties and their privies under the doctrine of res judicata in a second action based on the same claim as to issues actually litigated and as to issues which might have been litigated in the first action. Under the doctrine of collateral estoppel, ... the second action is based upon a different claim and the judgment in the first action precludes relitigation of only those issues "actually and necessarily litigated and determined in the first suit."

Id. at 369 n. 1, 315 S.E.2d at 190 n. 1.

4
#25
"Under the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim." Richburg v. Baughman, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986). The factors to consider in determining whether the defense of collateral estoppel exists and whether the issues were actually litigated in the first suit include: whether privity exists, whether the doctrine is used offensively or defensively, and whether the party adversely affected had a full and fair opportunity to litigate the relevant issue effectively in the prior action. Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct.App.1997). The party asserting collateral estoppel must prove that the issue was actually litigated and directly determined in the prior action and that the matter or fact directly in issue was necessary to support the first judgment. Carrigg v. Cannon, 347 S.C. 75, 552 S.E.2d 767 (Ct.App.2001); Beall v. Doe, 281 S.C. 363, 315 S.E.2d 186 (Ct.App.1984). Only a party to a prior action or one in privity with the party can be

precluded from relitigating an issue on the basis of offensive collateral estoppel. Carrigg, 347 S.C. at 80, 552 S.E.2d at 770.

There are numerous exceptions to the application of res judicata and collateral estoppel. In Pye, the court adopted the Restatement (Second) of Judgments section 28, which states:

Although an issue is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the parties is not precluded in the following circumstances:

(1) The party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action; or

(2) The issue is one of law and (a) the two actions involve claims that are substantially unrelated, or (b) a new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the laws; or

(3) A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them; or

(4) The party against whom preclusion is sought had a significantly heavier burden of persuasion with respect to the issue in the initial action than in the subsequent action; the burden has shifted to his adversary; or the adversary has a significantly heavier burden than he had in the first action; or

(5) There is a clear and convincing need for a new determination of the issue (a) because of the potential adverse impact of the determination on the public interest or the interests of persons not themselves parties in the initial action, (b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action, or (c) because the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.

Pye, 325 S.C. at 437-38, 480 S.E.2d at 460-61.

In Beall v. Doe, the court adopted section 29 of the Restatement (Second) of Judgments:

A party precluded from relitigating an issue with an opposing party, in accordance with §§ 27 and 28, is also precluded from doing so with another person unless the fact that he lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue. The circumstances to which considerations should be given include those enumerated in § 28 and also whether:

- AS
#127
- (1) Treating the issues as conclusively determined would be incompatible with an applicable scheme of administering the remedies in the actions involved;
 - (2) The forum in the second action affords the party against whom preclusion is asserted procedural opportunities in the presentation and determination of the issue that were not available in the first action and could likely result in the issue being differently determined;
 - (3) The person seeking to invoke favorable preclusion, or to avoid unfavorable preclusion, could have effected joinder in the first action between himself and his present adversary;
 - (4) The determination relied on as preclusive was itself inconsistent with another determination of the same issue;
 - (5) The prior determination may have been affected by relationships among the parties to the first action that are not present in the subsequent action, or apparently was based on a compromise verdict or finding;
 - (6) Treating the issue as conclusively determined may complicate determination of issues in the subsequent action or prejudice the interests of another party thereto;
 - (7) The issue is one of law and treating it as conclusively determined would inappropriately foreclose opportunity for obtaining reconsideration of the legal rule upon which it was based;
 - (8) Other compelling circumstances make it appropriate that the party be permitted to relitigate the issue.

Beall, 281 S.C. at 371, 315 S.E.2d at 190-91.

Respondents submit the conclusions in the first PCR action by the concession buy the defense experts that Elmore was not mentally retarded as a matter of fact act as collateral

estoppel to the claim that he is mentally retarded. See Koon v. State, 358 S.C. 359, 364-365, 595 S.E.2d 456, 459 (2004) ("Because petitioner previously litigated and lost this argument before the Court of Appeals and on certiorari to this Court, *petitioner should be precluded from making the same argument in his Austin brief.* Jinks v. Richland County, 355 S.C. 341, 585 S.E.2d 281 (2003) (collateral estoppel prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action); Doe v. State, 294 S.C. 125, 363 S.E.2d 106 (1987). However, because the precise issue litigated did not involve subject matter jurisdiction, *and because the State failed to raise collateral estoppel as an affirmative defense in its brief*, we have addressed the issue on the merits."').²¹

28. Here, the issue of Elmore's mental retardation was settled by the defense testimony in the initial PCR. He should be equitably estopped by ignoring his own evidence that Elmore is not mentally retarded to support his new claim that he is mentally retarded. This dichotomy cannot simultaneously exist in the Applicant's case. He must be bound by his 1990 presentation. His allegation must be denied where Elmore's own evidence rejected the existence of mental retardation.²²

²¹ Res judicata includes the related concepts of claim preclusion and issue preclusion. Issue preclusion "forecloses the relitigation of issues of fact or law that are identical to issues which have been actually determined and necessarily decided in prior litigation." Sedlack v. Braswell Servs. Group, Inc., 134 F.3d 219, 224 (4th Cir.1998) (internal quotation marks and citation omitted). Claim preclusion bars claims in later litigation arising from the same cause of action as an earlier case in which final judgment on the merits has been entered. It is broader, extending to claims that were not but "might have been presented" in the earlier case. In re Varat Enters., Inc., 81 F.3d 1310, 1315 (4th Cir.1996). Both doctrines serve to limit relitigation of issues settled in separate, prior litigation.

²²It must be recognized that the issue of whether Elmore was mentally retarded was before the PCR court in 1990-1995 because evidence of mental retardation was a mitigating factor as a matter of state law and defense counsel's failure to present the claim could have

Since Elmore was determined by the defense experts in 1995, he gains no entitlement under Atkins to a new sentence. The exceptions to issue preclusion do not apply in Elmore's case:

(1) The party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action;

This has no applicability to Elmore's situation. Elmore would have benefitted by a determination in 1995 that he was, in fact, mentally retarded in his 1990 PCR action and if the court had not so determined, could have appealed on that matter, as it related to counsel failure to present mitigating evidence in support of allegation 9(b).

(2) The issue is one of law and (a) the two actions involve claims that are substantially unrelated, or (b) a new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the laws; or

Although the Atkins issue is one of law, its applicability to those determined to be mentally retarded is a fact. If the PCR court had determined that Elmore was in fact mentally retarded, this fact may have barred relitigation on the claim. Here, though the defense experts in 1995, after reviewing school records and psychological tests of Elmore concluded that he was not mentally retarded - the defense own retained experts - one the specialist in the state for such determinations, Dr. Denis Keyes. The tests to determine MR have not changed since 1995 and the result in 1995 would have supported the defense position at that time. The actions were substantially related.

supported a claim of ineffective assistance of sentencing counsel. See State v. Shaw, 273 S.C. 194, 255 S.E.2d 799 (1979); State v. Middleton, 295 S.C. 318, 368 S.E.2d 457 (1988); Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998).

(3) A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them; or

This exception plainly has no applicability to Elmore. As noted above, at the first PCR action, Elmore was evaluated by two experts in the field; Dr. Denis Keyes, a national expert on mental retardation, and Dr. Jonathan Venn who reviewed and relied upon Dr. Keyes testing.

(4) The party against whom preclusion is sought had a significantly heavier burden of persuasion with respect to the issue in the initial action than in the subsequent action; the burden has shifted to his adversary; or the adversary has a significantly heavier burden than he had in the first action; or

13
#30 This exception has no applicability. The burden remains on Elmore to prove by a preponderance of the evidence.

(5) There is a clear and convincing need for a new determination of the issue (a) because of the potential adverse impact of the determination on the public interest or the interests of persons not themselves parties in the initial action, (b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action, or © because the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.

The applicant claims that after Atkins, his incentive to get a determination of mental retardation increased because a finding, if supported by the evidence, would now preclude a death sentence, whereas before, at most, it would allowed for a new sentencing proceeding where such evidence would have been admitted as mitigation. However, the incentive to develop and determine the existence of a significant mitigation factor of mental retardation was the same - to undermine confidence in the determination of the death penalty. Had either Dr. Keyes or Dr. Venn opined in 1995 that Elmore was mentally ill, it would have been more powerful and probative for the Applicant than the opinion that he was not mentally retarded but did not a low

I.Q. To suggest otherwise undermines the Court's decision in Atkins. Elmore had the opportunity to litigate and investigate the existence of his MR.

Respondents agree that Franklin allows for the Atkins issue to be raised in a new PCR action, but it does not similarly require re-litigation of the existence of mental retardation where the defense affirmatively disproved its existence in 1995 or the request is beyond the statute of limitations from the development of the standard. His suggestion otherwise is without merit. The Applicant has failed to make a prima facie showing of mental retardation. The Application must be dismissed.²³

IV.

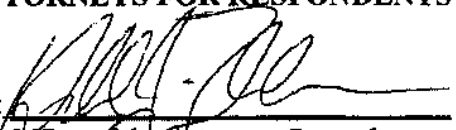
Each and every allegation contained within the Petition not hereinbefore either expressly admitted, qualified or explained is hereby denied.

WHEREFORE, the Respondents request that the Petition be denied and dismissed.

Respectfully submitted,

DONALD J. ZELENKA
Assistant Deputy Attorney General
ID No. 4425

ATTORNEYS FOR RESPONDENTS

By: 

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-6305

December 21, 2006

²³ As stated, the Respondents previously filed discovery requests this date in the form of interrogatories and motion to produce. As of this date, they still have not received the testing results or opinions and reports of Dr. Denis Keyes.

CERTIFICATE OF SERVICE

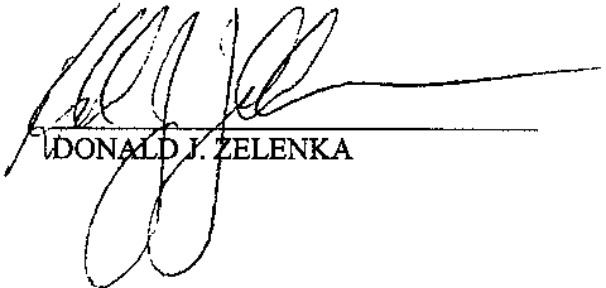
I, Donald J. Zelenka, hereby certify that I have served the *Respondents Reply to Return to Motion to Dismiss Application as Barred as Untimely and Alternately Barred as Issue Preclusion from 90-CP-24-1404* in the foregoing action by depositing copies in the United States mail, postage prepaid, to the following:

J. Christopher Jensen, Esquire
Cowan, Leibowitz & Latman, PC
1133 Avenue of the Americas
New York, NY 10036

John H. Blume, Esquire
Cornell School of Law
112 Myron Taylor Hall
Ithaca, NY 14853

Diana L. Holt, Esquire
P.O. Box 6454
Columbia, SC 29260

This 21st day of December, 2006.



DONALD J. ZELENKA

Exhibit F

State of South Carolina)

County of Greenwood)

Judgment In A Civil Case

Common Pleas Court

Case# 2005-CP-24-1205

EDWARD LEE ELMORE

Plaintiff

STATE OF SOUTH CAROLINA

Defendant

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issue have been tried and a verdict rendered.
- ☒ DECISION BY COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED. (CHECK REASON) ☐ rule 12b, SCRPC ☐ rule 41(a), SCRPC (vol. Nonsuit); ☐ rule 43(k), SCRPC (settled); ☐ other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ rule 40(j), SCRPC; ☐ bankruptcy; ☐ other

IT IS ORDERED AND ADJUDGED:

- ☒ See attached order:
☐ Statement of Judgment by Court;

ORDER- MOTION TO DISMISS IS DENIED

Dated at Greenwood, South Carolina, this 13TH day of JUNE 2007;


HON. J MARK HAYES
Presiding Judge

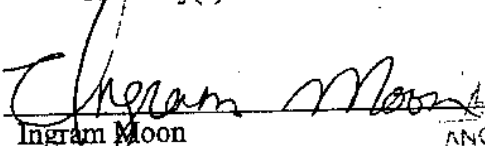
This judgment was entered on the 18TH day of JUNE 2007,
and a copy mailed first class this 25TH day of JUNE 2007,
to attorneys of record or to parties (when appearing pro se) as follows:

DIANA HOLT

Attorney(s) for Plaintiff

DONALD ZELENK

Attorney(s) for Defendant


Ingram Moon
Clerk of Court

ANGELINE HURST
CCCP AND GS
GREENWOOD COUNTY
S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)
)
)
Edward Lee Elmore, #4293)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C.A. No. 2005-CP-24-1205

ORDER

FILED OCT 13 2007
CLERK OF COURT
2007 OCT 13 PM 12:06

This case involves a PCR application of a death penalty inmate. In his application, he claims that he is not eligible for the death penalty due to his mental retardation. His present PCR was filed after the United States Supreme Court decision in *Atkins* and the SC Supreme Court decision in *Franklin v. Maynard*. These two decisions established that a mentally retarded inmate is not eligible for the death penalty, and also articulated the procedure for an inmate claiming mental retardation, who was sentenced to the death penalty prior to the *Atkins* decision, to challenge his death sentence by means of a PCR application, even if successive, in state court, as previously proscribed by the legislature.

The State seeks to have the present PCR dismissed due to it being beyond the statute of limitation, and thus, untimely. The State presents reasonable and rational arguments to support its position and buttresses its stance with references to factual testimony previously presented, concerning the mental state of the defendant.



FILED COPY
Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S.C.

The defense offers the theory of equitable tolling and then argued facts and inferences that they suggest will show the defendant is mentally retarded and not death penalty eligible.

After a review of the information provided by the attorneys, the Court is denying the State's motion to dismiss at this time. In deciding this motion, the court has viewed the record in a light most favorable to the non-moving party and has drawn all reasonable inferences in a manner most favorable to the non-moving party. The court is aware of some appellate precedents that provide verbiage to support a more relax standard in ruling on a motion to dismiss in a PCR action such as the present one. However, this court declines to apply a relaxed standard to the issues presently before it. Applying the announced standard, the court cannot rule, as a matter of law, that the applicant's PCR application should be dismissed. Both the United States Supreme Court and the South Carolina Supreme Court desire a substantive review of the mental status of pre-*Atkins* death penalty sentenced inmate claiming mental retardation. The South Carolina Supreme Court in *Franklin* made clear that the legislative mandated process of filing a post conviction relief application was the proper means to address the inmate's mental issues, even though the PCR application filed to address the mental retardation issue may be successive.

In ruling on motions to dismiss, a court must deny the motion if additional facts need to be developed and/or the law applicable to the facts needs to be developed. Here, defense counsel made statements during the hearing that placed the timing of the defense's awareness or knowledge of the mental retardation as a factual matter for the court to decide. In a non-PCR case, the Court of Appeals has indicated that when counsel makes such factual assertions during



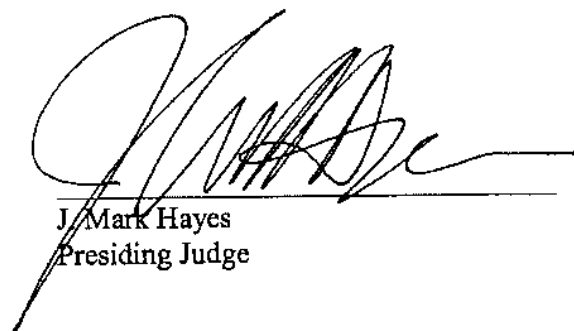
a hearing involving dispositive motions, a lower court should act cautiously before granting the dispositive motion. In ruling on motions as the one presently before the court, the court does not look to the weight or credibility of the non-moving party's evidence.

This decision should be not read to preclude the State or the applicant from subsequently presenting the statute of limitation (including the collateral issue related to the timing of the assertion of the mental retardation issue) arguments and defenses once the case is developed factually.

Based on the above, the State's present motion to dismiss is denied without prejudice.

Additionally, at the hearing representatives from the agency responsibility for performing the evaluation were present and made statements to the court indicating the evaluation process may take several months. The court wishes the parties to update the court on the evaluation issue and also wishes to be updated on the status of the case. The court requests that the attorneys contact the Court within 10 days of receipt of this order to schedule a mutually convenient time for a status conference. The parties may wish to contact the evaluating agency to receive and update from them and/or ask that they participate in the status conference.

Dated at Spartanburg, South Carolina,
this 13th day of June, 2007.



J. Mark Hayes
Presiding Judge

Exhibit G

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2005CP2401205

Edward Lee Elmore vs. Jon E Director Ozmit

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED:

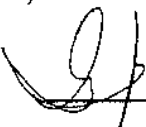
☒ See attached order;

☐ Statement of Judgment by the Court;

Order Granting Post Conviction Relief Vacating Death Sentence and Remanding to Court of General Sessions for Entry of Life Sentence

Dated at Greenwood, South Carolina, this 1st of February, 2010.

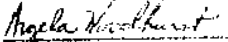
Court Reporter:


PRESIDING JUDGE - Honorable J. Mark Hayes II

This judgment was entered on the 4th of February, 2010, and a copy mailed first class this 4th of February, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Diana L. Holt Attorney at Law P.O. Box 6454
Columbia, SC 29260
John H. Blume III Blume Weyble & Lominack,
LLC P.O. Box 11744 Columbia, SC 29211
J Christopher Jensen Cowan Leibowitz &
Latman Pc 1133 Avenue Of The Americas New
York, NY 10036
Marta K Kahn Attorney At Law Po Box 65871
Baltimore, MD 21209

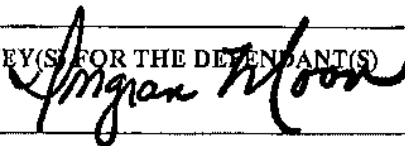
Donald J Zelenka Attorney General'S Office Po
Box 11549 Columbia, SC 29211

ATTEST A TRUE COPY

ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S. C.

ATTORNEY(S) FOR THE PLAINTIFF(S)

SCRCP APP-24/FORM 4

ATTORNEY(S) FOR THE DEFENDANT(S)

A handwritten signature in black ink, appearing to read "Ingram B. Moon", is written over the line for the defendant's attorney.

Ingram B. Moon - Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

05-CP-24-1205

EDWARD LEE ELMORE,)
Applicant,)
-VS-)
STATE OF SOUTH CAROLINA)
and Jon Ozmint,)
Respondents.)

ORDER GRANTING POST CONVICTION
RELIEF PURSUANT TO *Atkins v. Virginia*
536 US 304 (2002), VACATING DEATH
SENTENCE and REMANDING TO COURT
OF GENERAL SESSIONS FOR ENTRY OF
LIFE SENTENCE

I. INTRODUCTION.

This is a Post Conviction Relief (PCR) matter filed by Edward Lee Elmore, a death sentenced inmate. Applicant alleges, pursuant to the South Carolina Supreme Court's decision in *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003), that he is mentally retarded and thus his death sentence violates the Eight Amendment to the United States Constitution. See *Atkins v. Virginia*, 536 U.S. 304 (2002) (holding that persons with mental retardation are categorically ineligible for capital punishment). After the parties completed discovery and other pretrial matters were ruled upon, this Court convened an evidentiary hearing on May 5-6, 2009, at the Broad River Correctional Institution. Based on the evidence and record of this proceeding, the Court finds that the applicant is mentally retarded as that condition is defined under South Carolina law and for purposes of the application of the *Franklin* and *Atkins* cases. Therefore, the Court hereby vacates applicant's death sentence and remands the case to the Greenwood County Court of General Sessions for imposition of a life sentence.

FILED COURT 106 11 PM
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
2010 FEB 4 PM 1:50
ATTEST A TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S. C.

II. LEGAL FRAMEWORK.

In 2002, the United States Supreme Court ruled that the Eighth Amendment to the United States Constitution prohibits the execution of persons with mental retardation. *Atkins*, 536 U.S. at 321. The Eighth Amendment, in part, prohibits the government from inflicting cruel and unusual punishment. The United States Supreme Court categorically excluded from execution mentally retarded persons and mandated such a categorical exemption as part of this nation's death penalty jurisprudence.¹

The Supreme Court left it primarily to the states to establish appropriate procedures for determining whether capital litigants are mentally retarded and thus, ineligible for capital punishment. *Id.* at 317. In *Franklin*, 356 S.C. at 280, 588 S.E.2d at 606, the South Carolina Supreme Court delineated such a procedure in a post-conviction relief action brought by a death-sentenced person:

A death row inmate who claims he is mentally retarded and, as a result, not subject to the death penalty, may institute post-conviction relief (PCR) proceedings, because his sentence is in violation of the Constitution and exceeds the maximum authorized by law. As with other PCR claims, the applicant must show he or she is mentally retarded by a preponderance of the evidence. If mental retardation is proven, the PCR court will vacate the death sentence and impose a life sentence. (Internal citations omitted).

Our Supreme Court held that the applicable definition of mental retardation is found in

¹ The Supreme Court reasoned and held that "by definition, [mentally retarded persons] have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others." *Id.* at 318.

the current death penalty statute. *Id.* 356 S.C. at 278-79, 588 S.E.2d at 605.²

Statutory Definition of Mental Retardation.

South Carolina's statute defines mental retardation as "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period." S.C. Code Ann. §16-3-20 (C)(b)(10). This same definition is found in the South Carolina Mental Retardation Act, *see* S.C. Ann. §44-20-30(11), and in the Mental Retardation Regulations, *see* 88 S.C. Code Ann. Regs. 210(K). Thus, the definition of mental retardation consists of three prongs: (1) subaverage intellectual functioning, (2) limitations in adaptive functioning, and (3) a manifestation of these attributes before age eighteen (18). For clarity purposes, even though much of the testimony and evidence presented was in the nature of a clinical diagnosis of mental retardation, this court, in determining whether applicant has met his burden of proof of establishing mental retardation, has applied the evidence to the legislature's definition of mental retardation. *See Franklin*, 356 S.C. at 278-9, 588 S.E.2d at 605, citing with approval S.C. Code § 16-3-20(C)(b)(10) (2003), 44-20-30(11) (2002), and 44-26-10(11).

² The practical effect of *Atkins* and *Franklin* requires a trial court to conduct an evidentiary hearing as to mental retardation after the Applicant's culpability for the crime has already been established. No challenge was presented by either the Attorney General or the Applicant to *Atkins* or *Franklin*. Both sides agreed that the legal precedent of *Atkins* and *Franklin* controlled this Court's review of the Applicant's mental retardation claim.

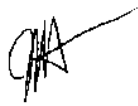
Additionally, during the hearing before this Court, the Court was not informed or presented any facts concerning the crime which lead to the imposition of the death penalty. Neither the Attorney General nor the Applicant contended that the facts which resulted in the Applicant's conviction were relevant to the issue presently before this Court. Both sides concurred that the issue of mental retardation was to be decided excluding consideration of the Applicant's culpability of the crimes for which he was convicted. Thus, the legal test and the facts to be applied to that test were narrow; i.e. whether Applicant was mentally retarded as defined by South Carolina law.

III. LEGAL ANALYSIS AND FACTUAL FINDINGS.

To determine whether the applicant has met the three prong test for mental retardation, the Court applied the preponderance of evidence test to the information presented. This Court has examined the evidence presented to determine which evidence is of greater weight – or more convincing – the evidence which as a whole shows that a fact sought to be true is more probable than not true. The word preponderance means something more than weight; it denotes a superiority of weight, or outweighing. The degree of proof which this Court has applied in determining if applicant met his burden of proof is whether the evidence, when viewed as a whole, demonstrated the fact to be proved is more probably true than not. The burden of proof never shifted from the applicant and was not measured by this Court simply by the number of witnesses called in support of a fact or against a fact.

After reviewing the evidence presented, the testimony of the witnesses, and arguments put forth, the Court finds the applicant has proved by a preponderance of the evidence that he is mentally retarded.

This Court gave significant weight to the testimony of Dr. Donna Culley regarding all three prongs of the mental retardation calculus. Dr. Culley was appointed to perform an independent evaluation for the Court. Dr. Culley is a licensed clinical psychologist employed by the Department of Developmental and Special Needs (“DDSN”). Her primary job responsibility is to conduct forensic evaluations for DDSN. Dr. Culley was appointed as an expert to assist the



Court in making a determination of the issue of mental retardation.³

An important aspect of Dr. Culley's evaluation and opinion is that DDSN is the state agency in South Carolina statutorily charged with assessing possible mental retardation in individuals. Whether the individuals voluntarily or involuntarily consent to the mental retardation assessment, DDSN, when requested by any one of eight statutorily delineated categories of state officials, including prosecutors, perform evaluations to determine mental retardation. S.C. Code Ann. § 44-20-450, *and see* § 44-23-410.

In this matter, the South Carolina Attorney General's office specifically requested that the Court order a DDSN examination of the applicant. The Attorney General requested "examiners, who are experienced and trained clinicians and at least one whose expertise is in the field of mental retardation and who is skilled in the administration and interpretation of psychometric (IQ) tests and in the assessment of adaptive behavior and the impact of intellectual

³ The Court raised a concern at the evidentiary hearing about one of applicant's counsel being present in the room while Dr. Culley performed her assessment of the applicant. As expressed at the hearing, the attendance by counsel during Ms. Culley examination of the applicant is disturbing. Applicant's counsel presence during the assessment gives the appearance of ignoring this Court's prior order; an order which attempted to assure the integrity of the assessment by prohibiting such conduct. Nevertheless, I cannot find information in the record that Dr. Culley's opinions should be disregarded or were tainted by the presents of counsel. However, counsel's presence has allowed Dr. Culley's opinions to be properly questioned by the Attorney General's representative. After the evidentiary hearing, both sides have submitted information in an attempt to supplement the record on the issue of counsel's presence when Dr. Culley performed her evaluation. Given the reliance this court is placing on Dr. Culley's opinion, the additional submissions have been reviewed to determine if counsel's presence had any bearing on the issue of improperly influencing or otherwise affecting Dr. Culley's opinion. None is apparent from the reading of these documents. However, this court draws no official conclusions from the additional information presented. Neither party has sought permission to supplement the record and no motions have been filed with the court for consideration of this information. Therefore, absent a cursory review, this additional information has not been considered at this time in this decision and any future use of this information as it relates to the present matter before this Court rests exclusively with the parties or the attorneys.



impairment in an individual's life," to conduct a mental retardation assessment of applicant. See Respondent's Motion for an Evaluation of Applicant for Mental Retardation at p. 2. The Court is aware from all of the evidence submitted that DDSN examiners have conducted mental retardation assessments, at one time or another, of every death-sentenced post conviction claimant seeking relief pursuant to *Atkins*.

While the decision of this Court was not based upon the number of witnesses called by either side, the applicant did present, in addition to Dr. Culley, three additional expert witnesses who testified that applicant met all three criteria for mental retardation. Applicant's witnesses administered a number of different tests and measures assessing and evaluating applicant's intellectual and adaptive functioning. On the adaptive functioning prong, the Court found Dr. George Woods' testimony especially helpful and persuasive as to the existence of deficits in applicant's adaptive functioning limitations. The State's expert witness (Dr. Roger Moore) was enlightening from the position of providing information to discredit the methodology or protocol used by some of the applicant's witnesses. He did point out areas where an evaluation of the evidence should occur when determining if the case presented by applicant was reliable and also as to accepting or rejecting the testimony of the applicant's experts. His information was valuable to critiquing the testimony of the other witnesses and in understanding and weighing the value of the evidence in making a determination of the applicant's mental health/mental retardation status as required under South Carolina law. His testimony was carefully considered in evaluating the evidence and opinions of the other witnesses.⁴ Nevertheless, for the reasons

⁴ The Attorney General's expert did not perform a mental retardation evaluation of the Applicant. Additionally, no expert opinion was presented to this Court that the Applicant was not mentally retarded.

which will be set forth in detail below, the Court finds that applicant has satisfied his burden of demonstrating by a preponderance of the evidence that he has significantly subaverage intellectual functioning, existing concurrently with deficits in adaptive functioning and that the onset of his disability was during the developmental period.

A. SIGNIFICANT SUBAVERAGE INTELLECTUAL FUNCTIONING.

The first prong of mental retardation diagnosis requires an individual to display significant subaverage intellectual functioning. Determinations regarding a person's intellectual functioning are made primarily by referring to intelligence tests.

i. Intelligence Quotient Testing and Scores.

This Court is persuaded by a preponderance of the evidence that Mr. Elmore's intellectual functioning is significantly subaverage based upon the results of the intellectual quotient ("IQ") test administered to him over the years. All experts who assessed applicant consistently described him as cooperative and as having given his best effort. No expert found that applicant attempted to skew the results of the testing to secure a favorable result. The fact that applicant's scores on tests and other measures has been consistent -- consistently significantly subaverage -- since he first entered school at the age of six years and over his lifetime, with no significant deviation, greatly diminishes the possibility that applicant is malingering.

According to the DDSN report, significantly subaverage intellectual functioning "refers to performance that is two or more standard deviations below the population mean." DDSN Report at p. 11. Based upon the expert testimony and the DDSN report prepared for the Court,

this Court concludes that the standard error of measurement ("SEM") is helpful in accurately assessing applicant's intellectual functioning.⁵ The DDSN report specifically included a definition of SEM as being "[t]he amount an observed score is expected to fluctuate around the true score. About 95% of the time the obtained score will vary by less than plus or minus two standard errors from the actual true score." *Id.*

Dr. Culley recounted in her report submitted to the Court that four IQ tests were administered to applicant from the age of twelve through the age of thirty-four. Dr. Culley testified consistent with her report regarding those tests and the proper interpretation of the results. It is Dr. Culley's expert opinion, as set forth in her report and in her testimony at the PCR hearing, that "all of the test data indicate that Mr. Elmore meets the DSM-IV-TR criteria for significantly subaverage intellectual functioning (Criterion A). All of applicant's IQ tests fall within the range of mental retardation as defined by the DSM-IV-TR including those that were obtained during [applicant's] developmental period (61, 72, 58) and those during adulthood (71, 75)." DDSN Report at p. 8. The developmental period is defined as being "the period between birth and before 18 years of age" by DDSN. DDSN Report at p. 11. Further, DDSN definitively states that mental retardation cannot begin or develop after the age of 18 years." *Id.* Thus, Dr. Culley's more relevant finding is that applicant suffered from significant subaverage

⁵Expert evidence showed that consideration of SEM, which is an "estimate of the amount of error usually attached to an examinee's obtained score," see Jerome M. Sattler, *Assessment of Children*, 28 (3rd ed. 1992), is critical and "must be part of any decision concerning a diagnosis of mental retardation." Mental Retardation: Definition, Classification, and Systems of Supports, 57(American Association on Mental Retardation, 10th ed. 2002) ("AAMR Manual"). In addition, courts across the country have made clear that SEM is an important consideration when deciding whether a person is mentally retarded. See e.g., *Walker v. True*, 399 F.3d 315, 322 (4th Cir. 2005); *Walton v. Johnson*, 407 F.3d 285, 296 (4th Cir. 2005); *United States v. Davis*, 611 F.Supp.2d 472 (D.Md.,2009).

intellectual functioning prior to his eighteenth birthday.

Dr. Culley's report included the following summary of previous psychological test results of intellectual functioning:

2-25-1971	Tested by Abbeville School District Slosson Intelligence Test		
		IQ Score:	72
2-26-1971	Tested by Abbeville School District		
	Picture Peabody Vocabulary Test	IQ Score:	58
3-16-1982	Tested by William Ward, Psychologist III		
	Wechsler Adult Intelligence Scale-Revised	Verbal IQ Score:	75
		Performance IQ Score:	65
		Full Scale IQ Score:	71
1-30-1993	Tested by Denis Keyes, Ph. D.		
	Wechsler Adult Intelligence Scale-Revised	Verbal IQ Score:	81
		Performance IQ Score:	69
		Full Scale IQ Score:	75

Subsequent to issuing her report, Dr. Culley was provided with the results of two additional WAIS-III IQ test results and raw data of testing conducted on applicant in 2004 and 2007 by a defense retained expert. The tests results were a 2004 full scale IQ score of 72 (Verbal IQ 80 and Performance IQ 67) and a 2007 full scale IQ score of 65 (Verbal IQ 72 and Performance IQ of 65). Dr. Culley testified at the PCR hearing, as did Dr. McKee, Dr. Everington and Dr. Woods, that the additional test results were consistent with the other IQ test scores and thus this court can conclude that applicant has significantly subaverage intellectual

functioning.

In sum, the evidence at the PCR hearing established that all of applicant's IQ scores are in the significantly subaverage intellectual functioning range and this Court is persuaded that applicant's test scores are an accurate measure of his intellectual functioning, and the scores place him within the mental retardation range of significantly subaverage intellectual functioning. Even those scores that fall within the SEM area are consistent with mild mental retardation, and applicant has no IQ scores that exceed the SEM.

ii. Additional Indicators of Intellectual Functioning.

a. *Academic Achievement Prior to Age 18.*

Applicant's educational history supports the existence of significant intellectual defects. The reports and testimony presented at the PCR hearing revealed that applicant failed and repeated the first grade twice, he failed and repeated second grade once, he did not complete third grade until he was twelve years old, and he completed fourth grade at the age of thirteen. Although he entered the fifth grade at the age of fifteen, he ended up withdrawing from school shortly after the school year commenced. The school records do not indicate that applicant was placed in special education classes. However, special education classes did not exist in this state until approximately 1975, which was after applicant had already left school for good. DDSN Report at p. 3.

Applicant's school records provide significant evidence that applicant performed in the mental retardation range of intellectual function. Dr. Culley's report contained the following summary of all standardized testing reflected in the school records:

Mr. Elmore was identified as early as the 1st grade by the Metropolitan Readiness Tests to be a "poor risk" for both Reading Readiness and Number Readiness. His

Total Readiness Status fell at the 1st percentile rank. He was administered the California Short-Form Test of Mental Maturity in the 1st and 2nd grade ... In 1969 the CTMM was administered and resulted in a Total IQ score of 61. This score would be consistent with intellectual functioning in the mild range of mental retardation. In 1971, Mr. Elmore was 12 years old and in the 3rd grade. He was administered the Slosson Intelligence Test for Children and Adults and produced an IQ score of 72. He was also tested with the Peabody Picture Vocabulary Test and produced an IQ of 58. Both of these scores would be consistent with mild mental retardation. In summary, there are three tests from the school records that report IQ scores and all of these fall within the range of mental retardation as defined by the DSM-IV-TR. DDSN Report p. 7.

The Court places confidence in these records because they were made prior to any allegations of wrongdoing against applicant and prior to applicant's having any reason to attempt to skew results.

b. Academic Achievement Testing Results After Age 18.

Applicant was administered academic achievement testing by Geoff McKee, Ph.D. and Caroline Everington, Ph.D., both of whom issued reports and testified before this Court at the PCR hearing. Both experts reported that applicant's scores on academic achievement testing were consistent with his testing prior to adulthood and, thus, with mental retardation. Dr. McKee testified that he administered the Wide Range Achievement Test ("WRAT"), Fourth Edition, math computation and word reading subtests. He reported that applicant scored in the second percentile, with a standard score of 70 on the reading subtest, which after being normed, is equivalent to a fourth grade level. Likewise, applicant scored a standard score of 65 on the math subtest, which equates to the first percentile, with a grade equivalent of between second and third. Dr. Everington administered the WRAT, Third Edition and the Kaufman Functional Academics Skills Test ("K-FAST") tests to applicant. His scores on those tests were all within the mental retardation range, with grade equivalents being all at or below the second percentile

and the second grade level, and all were consistent with his pre-adult test results. Thus, the Court finds that all intellectual and academic testing over the course of applicant's life has consistently resulted in scores that are consistent over time and places applicant within the mental retardation range.

iii. Conclusion.

After considering all of the evidence in applicant's case, this Court finds by a preponderance of the evidence that applicant has significantly subaverage intellectual functioning and, therefore, applicant meets the first prong of the statutory definition of mental retardation of subaverage general intellectual functioning. *See Franklin*, 356 S.C. 276, and SC Code § 16-3-20(C)(b)(10).

B. DEFICITS IN ADAPTIVE BEHAVIOR

The second requirement for a diagnosis of mental retardation looks to the expression of intellectual deficits in the life of an individual.

i. Definitions of Adaptive Functioning Deficits.

South Carolina's definition of mental retardation refers without elaboration to "deficits in adaptive behavior." S.C. Code Ann. § 16-3-20(C)(b)(10) (2003). The subaverage intellectual functions must exist concurrently with deficits in adaptive behavior. Similarly, *Atkins* refers to "significant limitations in adaptive skills such as communication, self-care, and self-direction." *Atkins*, 536 U.S. at 318. Even though the legal test for determining mental retardation being applied by this Court is found in SC Code § 16-3-20, *Atkins* provides some insight, even though not mandatory from an analytical position, as to the United States Supreme Court examination of mental retardation. *Atkins* quoted approvingly two professional sources to define mental

retardation. The first is the American Association on Mental Retardation (AAMR) definition. *Id.* at 308 n.3. According to the AAMR, a person has mental retardation when significantly subaverage intellectual functioning “exists concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.” AAMR Manual, *supra* at 22. The American Psychiatric Association’s phrasing of the adaptive functioning requirement, also quoted by the *Atkins* Court, is virtually identical. South Carolina DDSN looks at adaptive behavior as being “[r]elated to an individual’s typical performance during daily routines and changing circumstances” ... “and as referring to an individual’s ability to function and meet his needs independently and the social demands of the environment for his age” ... which “can be influenced by education, motivation, personality characteristics, mental disorders, etc.” DDSN Report at p. 11. Again, while the American Association on Mental Retardation and The American Psychiatric Association’s phraseology, as well as the language contained in the DDSN report, does not alter the legal definition contained in S.C. Code § 16-3-20(C)(b)(10), this information is helpful to the Court in determining the analytical process utilized by the experts who testified and issued opinions in this case. Taken as a whole, these definitions are harmonious, and provide sufficient guidance to the Court in evaluating applicant’s adaptive functioning.

ii. Applicant’s Adaptive Functioning.

The Statutory Definition.

Once again, as previously noted, the Attorney General specifically requested that the Applicant be evaluated in regard to his claim of mental retardation by the Department of



Disabilities and Special Needs. This Court granted the Attorney General's request which resulted in the applicant being evaluated by Dr. Donna Culley. A review of her report and testimony reflect a detailed professional and credible analysis of the information that resulted in her opinion that the applicant demonstrates concurrent deficits in adaptive functioning. Her opinions were based on reasonable professional criteria. She reasoned and concluded that "all measures indicate significant limitations in adaptive functioning in the skill areas of communication, self-care, home living, social/interpersonal skills, functional academics skills, health, and safety," a conclusion which this Court believes has been demonstrated by a preponderance of the evidence. DDSN Report at pp. 12-13. Thus the second prong of the statutory test for mental retardation was satisfied. Dr. Culley's testimony and this conclusion were supported by other evidence presented during the hearing.

a. functional academics.

Applicant presented substantial evidence regarding his functional academic limitations. Applicant failed the first grade twice and the second grade once. It took applicant *five years* to move beyond the first two grade levels. Applicant finally gave up and quit school in the fifth grade at the age of thirteen, though he did give eighth grade a two week try before he floundered and dropped out for good at the age of fifteen. The school records are especially helpful because they provide a contemporaneous record of applicant's performance at a time predating criminal charges against him. His deficits in this area were further confirmed by the achievement testing administered by Dr. McKee and Dr. Everington. Their testing indicated that applicant's reading, spelling and math abilities are currently at the fourth grade level or below. Additionally, the evidence revealed that applicant had difficulty with practical tasks such as balancing a

checkbook and even today lacks the ability to do simple conversions such as inches to feet needed for basic measurements. Given the totality of the evidence, the Court finds by a preponderance of the evidence that applicant exhibited deficits in functional academics prior to the age of 18 which continued into adulthood.

b. work

The only jobs applicant has ever held were in the capacity as an unskilled laborer. Dr. Culley provided this work history for applicant to the Court:

Mr. Elmore reported his first jobs to be raking leaves, picking up pecans and collecting coke bottles on the road to sell to stores when he was a young child. His first formal employment was with a "factory that made thread and cloth" where his older sister worked. He reported his job duties included cleaning up and running a machine that made the cloth. He reported working for Milliken where he "made the dye." He described times when they had to "shut down the line" when he "messed up." He stated that he worked at yet another factory for approximately two months that made cloth and that he ran a machine.

Mr. Elmore described working with his brother for a man by the name of Clarence Aiken. He stated they would paint and clean houses inside and out and would clean windows and carpets. He indicated that the amount they were paid depended on the job and stated that they were paid in cash. He reported that he also did work on the side by himself such as cleaning gutters and windows and painting. When asked how much he earned working on his own, he stated, "they buy the paint and tell me how much they'll pay me." DDSN Report at p. 4.

Dr. Culley and other experts who testified at the PCR hearing confirmed that applicant's work history was consistent with mental retardation. Based on the totality of the evidence, this Court finds that applicant has substantial deficits in this adaptive skill area.

c. communication

George Woods, M.D., related the clearest assessment of applicant's deficits in adaptive functioning in the area of communication. Dr. Woods noted that while applicant's verbal skills are, relevantly speaking, applicant's strong suit. Applicant's ability to communicate is not all

that it appears to be. Dr. Woods explained the dichotomy arising from the appearance of adequate communication skills by applicant and the reality of applicant's deficiency in adaptive skills in communication, as follows:

Mr. Elmore has significant limitations in all three adaptive skill areas: conceptual (Communication, Functional Academics, and Self-Direction), social (Interpersonal Skills), and practical (Occupational Skills, Home Living, Community Use, and Health and Safety). Mr. Elmore has significant defects in the conceptual domain. While Mr. Elmore is able to verbally express himself adequately, although concretely, this is the product of forty-eight years experience coping with his difficulties and learning how to "pass."⁶ However, Mr. Elmore is unable to entertain abstract concepts, no matter how elementary. Woods Report at p. 8.

While Mr. Elmore is pleasant and conversational, the results of a recently administered Test of Adolescent and Adult Language (TOAL) 3, a comprehensive test of language, indicate his abilities are severely limited. His highest score, which 91% of the population would have surpassed, was on the Speaking Grammar subtest (ninth percentile). His scores on the remaining seven subtests, including inter alia Listening, Reading, and Writing, placed him in the first and second percentiles. When pressed to operate on a complex level, his deficiency in abstract communication and comprehension is apparent. He suffers from alexithymia, or severe poverty of thought. Alexithymia is a quantitative decrease in access to words, concepts, and meaningful connections. Woods Report at p. 9.

Dr. Woods testimony at the PCR hearing was consistent with his report. Based on Dr. Woods assessment and the relevant testing conducted by Drs. Everington and McKee, the Court finds by a preponderance of the evidence that applicant has significant limitations in the

⁶In discussing the concept of "passing" in the mentally retarded, Dr. Woods explained that "the stigma of being adjudged mentally retarded may be great, many retarded individuals will go to great lengths to "pass" as normal. 'Hence, their lives are directed toward the fundamental purpose of denying that they are in fact mentally incompetent. [They] must at all times attend to the practical problems of seeming to others to be competent and of convincing themselves that this is so.' Robert B. Edgerton, THE CLOAK OF COMPETENCE 131-32 (University of California Press 1993). Thus mentally retarded individuals may be able to appear to achieve a degree of "normal" living by, for example, driving a car, reading a newspaper, or even gaining employment. Woods report at p. 7.

communication skills area.

d. home living

The evidence before the Court established that applicant never lived independently. He lived with his mother most of his life. At the age of twenty he did have a girlfriend, who was nearly ten years older than applicant, and he lived with her for periods of time during the course of what was described as their two year on-again/off-again relationship. He would return to his mother's residence during the "off again" periods of his relationship with his girlfriend.

Applicant was not able to maintain a checking account and he did not pay bills. Dr. Culley recounted applicant's failures at banking and other basic skills necessary to functional home living:

Mr. Elmore stated that some of his jobs paid him by check and he would cash them at the bank. He said that he had an account at "a bank in my hometown", but he "wrote too many checks and they charged me with bad checks" because he "wasn't keepin' up with how much money." Mr. Elmore never paid bills but would give money to his mother and his girlfriend who paid for the household expenses. Mr. Elmore said he had a driver's license and a car, but did not pay the insurance for the vehicle. He received tickets for driving without a license and uninsured vehicle. His car was insured in his girlfriend's name prior to his arrest. When asked how much money he was paid for his painting work, applicant responded that the employer would set applicant's pay for the work after the job. DDSN Report at p. 8.

The Court finds by a preponderance of the evidence that applicant has significant limitations in the home living area.

e. health and safety

Applicant has significant deficiencies in health and safety skills. Dr. Woods recounted an anecdote about one of the painting jobs applicant attempted to do that illustrates applicant's deficiencies in health and safety matters, as follows:



One of these jobs was to paint the outside of a funeral home. The ladder Mr. Elmore used was too short to reach the top of the building, so Mr. Elmore decided to put the ladder flush against the building. He then tied a broom handle to the end of the brush to get even higher. When Mr. Elmore started climbing this perpendicular ladder he fell to the ground and hurt his ankle. Mr. Elmore remembers the funeral home director commenting that at least Mr. Elmore was at the right building. Woods Report at p. 12.

According to Dr. Woods, the funeral home story "provides a glimpse into a series of Mr. Elmore's cognitive deficits, particularly visual spatial coordination." Dr. Woods explained that applicant's "thinking was much more consistent with the concrete perceptive skills of a child." Dr. McKee testified that his testing of applicant in the area of health and safety revealed that applicant's normed score was lower than the average score of mildly mentally retarded adults on the Independent Living Scale test instrument, which is an individually administered test and is normed on a variety of clinical populations, one of which is adults suffering with mild mental retardation. Again, Dr. Woods provided several examples in his report and testimony that the Court finds persuasive on this point. Dr. Woods said that applicant's inability to protect himself from dangerous chemicals on the job by wearing protective gear was indicative of deficits in applicant's health and safety skills, as was his failure to take medication for hypertension. *Id.* at 13. Based on the record evidence, this Court finds by a preponderance of the evidence that applicant has significant limitations in the health and safety area of adaptive functioning.

f. self-direction

All evidence indicated that applicant never had a life plan, a plan for a career or job, or a plan for raising or supporting a family. Dr. Woods reached that opinion in his assessment of applicant. Woods Report at p. 10. There was no evidence to the contrary in the record before the Court. Thus, the Court finds by a preponderance of the evidence that applicant has significant

limitations in the self-direction skill area. The Court notes that this conclusion is further supported by the severe intellectual and academic deficits previously noted.

g. social skills

By most accounts, applicant exhibits substantial deficits in social skills. He has never lived on his own. He has only formed relationships with family and has seldom formed relationships outside of family, although he did have an on again, off again relationship with a woman for a couple of years. Dr. Woods said applicant's relationship with the girlfriend was more like a mother-child relationship, in the day-to-day aspects of it. Applicant was never married and he has no children. He is described as a loner. As a teenager, the evidence indicates he interacted better with younger children than his own peers due to his limited cognitive abilities. He often avoided large family gathering because he was not comfortable in groups. Although applicant is universally described as a pleasant person with a compliant manner, his social skills are widely reported to be simple and superficial. Based on a preponderance of all the evidence presented, the Court finds that applicant has significant deficits in the social skills area of adaptive functioning.

h. community use

Dr. Caroline Everington conducted testing using the Scales of Independent Living-Revised (SIB-R"), which consisted of interviews of applicant and of individuals who knew applicant well about applicant's related abilities at the time of and prior to his arrest in 1982. Applicant scored a standard score of 52 on the community living skills portion of the SIB-R, which places him below the first percentile. She also testified that he was not able to use a phone book. The Court was provided information that applicant was able to drive a car and eventually

earned a driving license at the age of approximately twenty years. As Dr. Woods stated, people with mental retardation do have some relative strengths interspersed among the many weaknesses. After careful consideration of all the evidence presented, the Court finds by a preponderance of the evidence that applicant demonstrated deficiencies in community skills.

i. self-care

Dr. Culley reported that applicant demonstrated deficiencies in the skill area of self-care on all measures of tests administered to applicant by Dr. McKee and Dr. Everington. DDSN Report at p. 10. Dr. Woods recounted several practical examples of applicant's deficiency in self-care, as well. According to Dr. Woods, applicant failed to take medication for his diagnosed hypertension and applicant had failed to seek medical care before his arrest. Although many reporters describe applicant as being neatly dressed and as demonstrating good hygiene, those aspects of self-care do not render applicant sufficiently more skilled at self-care than they would a seven year old child who was able to dress and clean himself without help. Self-care skills require that someone be able to obtain water service and pay for it, to obtain housing in which to keep clothing and perform a hygiene routine, or to shop for food and prepare balanced and healthy meals. Applicant has never demonstrated that he can live on his own and care for his day-to-day needs in the sense that an adult living independently must be able to accomplish. Thus, the Court finds by a preponderance of the evidence that applicant is deficient in the skill area of self-care.

iii. Conclusion.

Based on the above, and when considering the evidence as a whole, the Court finds by a preponderance of the evidence presented that applicant has proven that he satisfies the second

prong of the statutory definition of mental retardation.

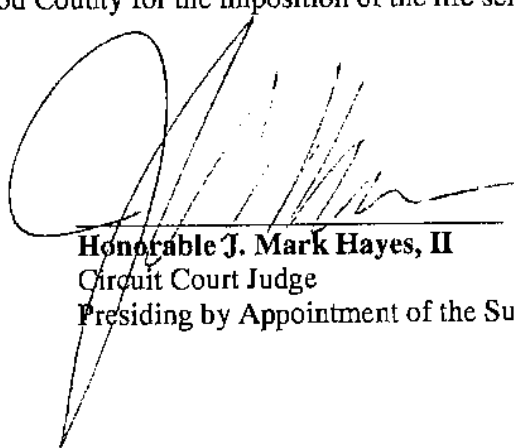
C. ONSET OF DEVELOPMENTAL DEFICITS BEFORE AGE EIGHTEEN.

The Court finds that the third prong of the statutory definition of mental retardation is not contested from the evidence. The greater weight of the evidence demonstrates that the onset of mental retardation was during the developmental period. The record is replete with evidence that applicant suffered significant subaverage intellectual functioning and deficits in adaptive skill functioning commencing at a very early age and that persisted throughout the developmental period and to this day.

IV. CONCLUSION

The Court finds that, by a preponderance of the evidence, the applicant has met his burden of proof in demonstrating that he suffers from mental retardation, as defined by the law of this state. See S.C. Code Ann. §16-3-20 (C)(b)(10) and §44-20-30(11). Therefore, because the applicant suffers from mental retardation, he is ineligible for the death penalty. *Atkins v. Virginia*, 536 U.S. 304 (2002). In Accordance with *Franklin*, the sentence of death is vacated and a life sentence shall be imposed. To the extent necessary, this matter is remanded to the Court of General Sessions in Greenwood County for the imposition of the life sentence.

AND IT IS SO ORDERED.



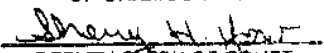
Honorable J. Mark Hayes, II
Circuit Court Judge
Presiding by Appointment of the Supreme Court

February 1, 2010
Spartanburg, South Carolina

Exhibit H

RECORDED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2016 JUL 15 PM 2:47) FOR THE THIRD JUDICIAL CIRCUIT
 COUNTY OF SUMTER)
 JAMES A. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.
 Stephen Cory Bryant,) Case No. 2016-CP-43-828
 Applicant)
)
 vs.) **Order Denying State's Motion to Dismiss**
)
)
 State of South Carolina,)
 Respondent.)
 _____)

CERTIFIED TRUE COPY
 OF ORIGINAL FILED

 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

This matter came before this Court on June 21, 2016 on the State's motion to dismiss the applicant, Stephen Cory Bryant's, application for post-conviction relief.¹ After considering the pleadings, supporting documentation, and argument of counsel, the Court finds that the State's motion to dismiss should be denied.

FACTUAL AND PROCEDURAL BACKGROUND

On August 18, 2008, Mr. Bryant pled guilty to three counts of murder, armed robbery, two counts of first-degree burglary, second-degree burglary, second-degree arson, assault and battery with intent to kill, possession of a stolen handgun, and threatening the life of a public official. On September 11, 2008, the Honorable Thomas A. Russo found the murder of Willard Tietjen was committed during the commission of an armed robbery and sentenced Bryant to death. The Court imposed additional sentences, including several concurrent life sentences without the possibility of parole. The South Carolina Supreme Court affirmed the convictions and sentences on January 7, 2011. *State v. Bryant*, 390 S.C. 638, 704 S.E.2d 344 (2011).

¹ Mr. Bryant also filed an application for post-conviction relief in Case Number 2016-CP-43-829, and the State's Motion to dismiss that case is addressed by separate order. Additionally, the Court appointed Diana Holt and Charles Grose to represent Mr. Bryant regarding the current state court proceedings.



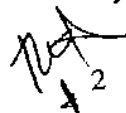
Mr. Bryant's initial application for post-conviction relief was filed on May 10, 2011. The Honorable R. Ferrell Cothran, Jr. denied post-conviction relief, and the Supreme Court of South Carolina denied Bryant's petition for a writ of *certiorari* to review the lower court's denial on March 4, 2015. The Supreme Court denied the petition for rehearing and issued the remittitur on May 6, 2015. The Supreme Court of the United States subsequently denied Mr. Bryant's petition for a writ of *certiorari* on November 30, 2015. *Bryant v. South Carolina*, 136 S. Ct. 545 (2015).

On June 19, 2015, Mr. Bryant filed motion for stay of execution and for appointment of counsel in the United States District Court for the District of South Carolina so that he could pursue a petition for writ of *habeas corpus*.² On June 24, 2015, the Honorable David C. Norton granted the stay of execution for ninety days. Also on June 24, 2015, the Honorable Bristow Marchant appointed Charles Grose and Jon Sheldon³ to represent Mr. Bryant. By order dated September 18, 2015, Judge Norton extended the stay of execution until January 14, 2016. Pursuant to Judge Norton's order dated January 13, 2016, Mr. Bryant filed his "place holder" petition for writ of *habeas corpus* on January 14, 2016. Also on January 14, 2016, Judge Norton extended the stay of execution until "resolution of Petitioner's *habeas corpus* petition." On April 28, 2016, Mr. Bryant amended his *habeas* petition.

Also on April 28, 2016, Mr. Bryant served two applications for post-conviction relief. The first application alleges his Intellectual Disabilities makes him ineligible for the death penalty. *See Hall v. Florida*, 134 S. Ct. 1986 (2014); *Atkins v. Virginia*, 536

² *Bryant v. Stirling et. al.*, Civil Action Case Number 9:16-cv-01423-DCN-BM.

³ Mr. Sheldon is admitted to the practice of law in Virginia. The District Court admitted him *pro hac vice* to represent Mr. Bryant.


2

U.S. 304 (2002); and *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003). The second application alleges several claims for post-conviction relief that have not been exhausted in state court because of ineffective assistance of prior post-conviction counsel. Contemporaneously with serving these applications for post-conviction relief, Mr. Bryant moved to stay the District Court proceedings pending exhaustion of state remedies.

On May 24, 2016, the State served its motions to dismiss these actions. By written order dated May 31, 2016, the Honorable Costa M. Pleicones, Chief Justice of the South Carolina Supreme Court, assigned this Court for the sole "purpose of hearing and ruling on the motions to dismiss filed by the State." On June 10, 2016, Mr. Bryant filed his memorandums on opposition to the State's motions to dismiss.⁴ On June 21, 2016, this Court convened a hearing.

CONCLUSIONS OF LAW

The Supreme Court of the United States observed:

Our independent evaluation of the issue reveals no reason to disagree with the judgment of the legislatures that have recently addressed the matter and concluded that death is not a suitable punishment for a mentally retarded criminal. We are not persuaded that the execution of mentally retarded criminals will measurably advance the deterrent or the retributive purpose of the death penalty. Construing and applying the Eighth Amendment in the light of our evolving standards of decency, we therefore conclude that such punishment is excessive and that the Constitution places a substantive restriction on the State's power to take the life" of a mentally retarded offender.

⁴ Mr. Bryant's memorandum in this case incorporated by reference his memorandum in Case Number 2016-CP-43-829.

Atkins v. Virginia, 536 U.S. 304, 321, 122 S. Ct. 2242, 2252, 153 L. Ed. 2d 335 (2002) (internal quotations and citations omitted). *Atkins*, accordingly, held that offenders suffering from Intellectual Disabilities⁵ are not eligible for capital punishment.

S.C. Code Ann. § 17-27-20(A)(1) provides:

Any person who has been convicted of, or sentenced for, a crime and who claims that the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

This Court concludes that § 17-27-20(A)(1) authorizes this action. *Atkins's* and *Hall's* prohibition against executing people with Intellectual Disabilities is rooted in prohibition against cruel and unusual punishment found in the Eighth Amendment of the United States Constitution. The constitutional prohibition against executing people with Intellectual Disabilities presents special considerations, first addressed by our Supreme Court in *Franklin*.⁶ For post-*Atkins* trial cases, *Franklin* established a procedure where the trial judge first considers whether Intellectual Disabilities has been for determining Intellectual Disabilities in future capital trial cases. *Franklin* declined to adopt a definition of Intellectual Disabilities “different from the one already established by the legislature in S.C. Code Ann. § 16-3-20(C)(b)(10)” or “establish procedures for cases where the defendant was sentenced to death prior to *Atkins*, [because] such procedures already exist” under the Uniform Post-Conviction Relief Act. 356 S.C. at 278-81, 588

⁵ The terms “Mental Retardation” and “Intellectual Disabilities” are interchangeable. Previous opinions of this Court have employed the term “mental retardation.” See *Hall*, 134 S. Ct. at 1990 (“This opinion uses the term “intellectual disability” to describe the identical phenomenon” of mental retardation).

⁶ And see *State v. Laney*, 367 S.C. 639, 627 S.E.2d 726 (2006) (reaffirming procedures established in *Franklin*). *Laney* involved a direct appeal of a capital sentence and not a post-conviction relief procedure.



S.E.2d at 606.

Franklin, therefore, did not expressly address the situation where a defendant is sentenced to death after *Atkins* but does not discover he suffers from Intellectual Disabilities until after the conclusion of his post-conviction relief action. The natural extension of *Franklin*, however, allows this action to proceed, and if Mr. Bryant Intellectual Disabilities "is proven, the PCR court will vacate the death sentence and impose a life sentence." *Id.* Because of the unique considerations involved, Mr. Bryant cannot be precluded from raising Intellectual Disabilities at this time in this manner. This procedure is authorized under *Franklin v. Maynard* and the Uniform Post-Conviction Relief Act and has previously been utilized by other courts in our state in *Edward Lee Elmore v. State*, Greenwood County Case Number 2005-CP-24-1205

Relying on *Drayton v. Evatt*, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993), the State contends Mr. Bryant "freestanding claim of error cannot be reached" because "[i]ssues 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." Motion to Dismiss, pp. 12-13. Respondent is mistaken. *Atkins* sets forth a categorical ban under the Eighth Amendment, which is qualitatively different from other kinds of constitutional violations at trial that may be subject to procedural default. The United States Supreme Court has held that the states are *prohibited* by the constraints of the Eighth Amendment from executing persons with mental retardation. *Atkins*, 536 U.S. at 320 (holding that executing the mentally retarded is "excessive and that the Constitution 'places a substantive restriction on the State's power to take the life' of a mentally retarded offender"). Mental retardation is "a condition, the existence of which disqualifies a

105

person from capital punishment.” *Davis*, 611 F.Supp.2d at 474. As such, Mr. Bryant’s *Atkins* claim cannot be waived on the basis that his trial counsel failed to raise it. Respondent’s argument advances a result whereby the state may circumvent the clear confines of the Eighth Amendment simply because a PCR applicant was further denied the protections of the Sixth Amendment right to the effective assistance of counsel.⁷

Post-conviction relief, moreover, is not limited to claims of ineffective assistance of counsel, but rather extends to any constitutional violation. *See e.g. Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006) (post-conviction relief granted based on solicitor’s failure to disclose impeachment evidence constituted *Brady* violation, and State’s failure to correct co-defendant’s false testimony at trial). In deciding this motion, the Court took judicial notice of a number of court filings in *Edward Lee Elmore v. State*, *supra*,⁸ where a successor post-conviction relief action was utilized to adjudicate Mr. Elmore’s

⁷ An analogy demonstrates the error of respondent’s argument. In *Roper v. Simmons*, 543 U.S. 551 (2005), the United States Supreme Court held that the Eighth Amendment bans the execution of individuals who were under age of 18 at the time of the crime. The Court based its holding in *Roper* on much of the same reasoning as in *Atkins*. Going forward, if trial counsel were to fail to discover and raise the argument that a criminal defendant is categorically exempt from the death penalty under *Roper*, respondent would apparently argue that the State could nonetheless execute that defendant, despite the clear Eighth Amendment ban, absent a showing of ineffective assistance of counsel. Such a result would be legally incorrect. And for the same reason, executing a mentally retarded offender absent a showing of ineffective assistance of counsel would likewise be the wrong result.

⁸ These court documents are (1) Mr. Elmore’s Application for post-conviction relief alleging Intellectual Disabilities pursuant to *Atkins v. Virginia*; (2) the State’s return and motion to dismiss as barred and untimely and alternatively barred as issue preclusion; (3) Mr. Elmore’s return to State’s motion to dismiss; (4) the State’s reply to return to motion to dismiss; (5) the Honorable J. Mark Hayes, II’s order denying State’s motion to dismiss; and (6) Judge Hayes’ order granting post-conviction relief pursuant to *Atkins v. Virginia*, vacating death sentence and remanding to Court of General Sessions for entry of life sentence.

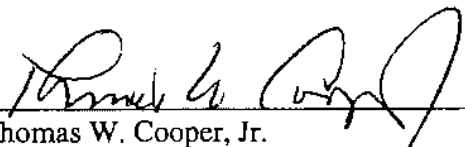
12
6

Intellectual Disabilities. Additionally, holding that an *Atkins* claim is subject to procedural default would result in an unnecessary waste of judicial time and resources and, based on a incorrectly applied technicality, the wrongful execution of a person who is Constitutionally ineligible for the death penalty.

This Court, therefore, finds it appropriate for the post-conviction court to address Mr. Brant's *Atkins* claim, and, if appropriate, grant relief by entering an order vacating the death sentence and imposing a life sentence in accordance with *Franklin v. Maynard*.

Therefore, it is ordered that the State's motion to dismiss this action is denied.

IT IS SO ORDERED.



Thomas W. Cooper, Jr.
Presiding Jndge by Special Assignment of the South
Carolina Snpreme Court

July 13, 2016
Manning, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
BOBBY WAYNE STONE, SK)
Applicant,)
v.)
THE STATE OF SOUTH CAROLINA.)
Respondent.)

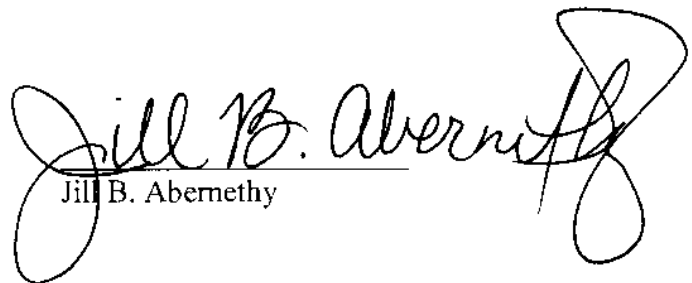
RECORDED
2018 JUL 26 PM 1:03
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

IN THE COURT OF COMMON PLEAS
Case No.: 2018-CP-43-1025

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Applicant's Response in Opposition to State's Motion to Dismiss was served by first class United States mail, postage prepaid, this 25th day of July, 2018, upon the following:

Alphonso Simon
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211


Jill B. Abernethy



State of South Carolina
The Circuit Court of the Twelfth Judicial Circuit

Michael G. Nettles
Judge

Florence City-County Complex
180 North Irby Street, MSC-XX
Florence, SC 29501
Phone: (843) 292-7433
Fax: (843) 292-7436
mnettlsg@sccourts.org

February 20, 2019

The Honorable James C. Campbell
Clerk of Court for Sumter County
Sumter County Judicial Center
215 North Harvin Street
Sumter, SC 29150-4974

RECORDED
2019 FEB 22 PM 2:03
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Re: *Bobby Wayne Stone v. State of South Carolina*, 2018-CP-43-01025

Dear Mr. Clerk:

Please find enclosed with this letter Judge Nettles' order granting in part and denying in part Respondent's Motion to Dismiss. I ask that you please file the enclosed order and also pursuant to Rule 71.1(f), SCRCP, that you please provide a copy of this order to the parties. I appreciate your attention to this matter. Should you require anything further please do not hesitate to contact me at the information listed above.

Sincerely,

W.H. McAbee III
Law Clerk

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
2019 FEB 22 PM 2:03

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Bobby Wayne Stone, SK # 50
Applicant,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

C/A No.: 2018-CP-43-01025

v.

The State of South Carolina,
Respondent,

**ORDER GRANTING MOTION TO
DISMISS IN PART AND DENYING
IN PART**

(CAPITAL CASE)

This matter comes before the Court by way of Applicant's Second Application for Post-Conviction Relief ("PCR"). Respondent has filed a motion seeking summary dismissal of Applicant's PCR action asserting that it is procedurally barred as successive, that it is barred by the applicable statute of limitations, and that Applicant's claim for relief under *Atkins v. Virginia*¹ is not cognizable in a PCR action. The Court having been fully apprised of both parties written submissions, and by their oral arguments, finds that Respondent's motion should be granted in part, denied in part, and that the issue of whether Applicant is entitled to relief under *Atkins v. Virginia* should be set for an evidentiary hearing on the merits.

PROCEDURAL HISTORY

Applicant, Bobby Wayne Stone, is currently confined on Death Row at Kirkland Correctional Institution pursuant to orders of commitment issued by the Sumter County Clerk of Court. Applicant was indicted by the Sumter County Grand Jury in August, 1996, for murder, first-degree burglary, and possession of a weapon during a violent crime. Applicant was tried

¹ 536 U.S. 304, 122 S.Ct. 2242 (2002).

before the Honorable R. Markley Dennis, Jr., and a jury. Applicant was represented at this first trial by Cameron B. Littlejohn, Jr. Esq., and James H. Babb, Esq. The jury found Applicant guilty of all charges as indicted. The jury found the existence of two aggravating factors and recommended a sentence of death. Judge Dennis sentenced Applicant to death, a consecutive term of thirty (30) years for first-degree burglary, and to five (5) years consecutive on the weapons charge.

Applicant appealed his conviction and sentence to the South Carolina Supreme Court. The Supreme Court affirmed Applicant's conviction but reversed the sentence of death and remanded the case for resentencing. *See State v. Stone (Stone I)*, 350 S.C. 442, 567 S.E.2d 244 (2002). Applicant was resentenced by the Honorable Howard P. King and a jury. Applicant was again represented by Messrs. Babb and Littlejohn. The resentencing jury found the existence of one aggravating factor and recommended a sentence of death. Judge King resentenced Applicant to death. Applicant appealed from this sentence to the South Carolina Supreme Court. The Supreme Court affirmed Applicant's second sentence of death in a published opinion. *See State v. Stone (Stone II)*, 376 S.C. 32, 655 S.E.2d 487 (2007). Applicant did not petition the Supreme Court of the United States for certiorari.

Applicant filed his first application for PCR on April 10, 2008. The undersigned was assigned as presiding judge for Applicant's first PCR application by order of the South Carolina Supreme Court. Applicant was represented in his first PCR by John H. Blume, Esq. and Robert E. Lominack, Esq. Applicant raised a multitude of issues in his first PCR application. The Court convened an evidentiary hearing on April 23-24 and August 10, 2012.² On May 2, 2013, the Court entered its Order of Dismissal dismissing all of Applicant's claims for PCR. Applicant filed

² At the conclusion of the hearing on August 10 the Court, with the consent of the Applicant, relieved Mr. Lominack as counsel and substituted Emily Paavola, Esq., as co-counsel with Mr. Blume.

a motion pursuant to Rule 59(e), SCRPC, to alter or amend the judgment on May 10, 2013. The State also filed a Motion to Alter or Amend the Judgment on May 10, 2013. The Court convened a hearing on the motions on August 2, 2013. The Court filed its Amended Order on August 14, 2013, again denying the application for PCR.

Applicant timely appealed the Circuit Court's denial of PCR. The South Carolina Supreme Court granted certiorari on July 23, 2015. By published opinion on February 8, 2017, the South Carolina Supreme Court affirmed the PCR Court's dismissal. The Supreme Court issued a modified opinion on March 29, 2018, in which it again affirmed the PCR Court. *See Stone v. State (Stone III)*, 419 S.C. 370, 798 S.E.2d 561 (2017). Applicant petitioned the Supreme Court of the United States for a Writ of Certiorari on August 24, 2017. The Court denied the Petition for Writ of Certiorari on October 30, 2017. *See Stone v. South Carolina*, 138 S.Ct. 392 (Mem.) (2017). Having exhausted all state remedies Applicant filed a petition for a Writ of Habeas Corpus in the United States District Court for the District of South Carolina. *See Stone v. Davis*, C/A No. 2:17-cv-01221-MGL-MGB. The Honorable Mary Geiger Lewis, United States District Judge, entered a stay of execution which remains in effect until the conclusion of Applicant's federal habeas action. Furthermore, Judge Lewis has stayed Applicant's federal habeas action until Applicant's second state PCR action is complete.

Applicant filed the present PCR action on June 5, 2018. The State filed its Return and Motion to Dismiss on August 28, 2018. The undersigned was appointed as presiding judge over this successive PCR by order of the Supreme Court dated November 28, 2018. Furthermore, the order of the Supreme Court required this Court to issue an order ruling on Respondent's Motion to Dismiss within forty-five (45) days from the date of the order. The Supreme Court extended the time for this Court to issue its order on Respondent's Motion to Dismiss to February 25, 2019

by an order dated January 16, 2019. The Court convened a hearing at the Marc J. Westbrook Judicial Center in Lexington, South Carolina, on January 25, 2019.

FACTUAL BACKGROUND

The factual history of this case is adequately presented in the South Carolina Supreme Court's opinions in *Stone I*, *Stone II*, and *Stone III*. For the sake of brevity the Court will recount the facts as they were stated by the Supreme Court in *Stone III*:

"Bobby Wayne Stone shot and killed Charlie Kubala of the Sumter County Sheriff's Office....Stone began the day of February 26, 1996, by purchasing beer and two firearms—a .410 bore shotgun and a competition-grade .22 caliber semi-automatic pistol. He spent the remainder of the day roaming through the woods, drinking the beer and shooting the guns. Later that afternoon, Stone wandered into the backyard of Ruth Griffith. In Stone's statement to the police, he said he and Griffith were "old drinking buddies." Griffith denied that, and claimed she knew Stone only because he previously dated her niece and had been to Griffith's house to pick up her niece. Griffith's adult daughter, Mary Ruth McLeod, was living with Griffith and was at the house when Stone arrived. McLeod asked Stone—who was standing in the yard holding a beer can and his newly-purchased pistol—to leave the property. Stone complied, but McLeod had already called 911. Sergeant Charles Kubala arrived at Griffith's house at 6:06 p.m. By then, Stone had returned to the woods, so Sergeant Kubala checked the scene, spoke with McLeod and Griffith, and left. A short time later, Griffith heard gunshots in her yard and then someone banging on the inside door of her side porch. McLeod had left the house, so Griffith called her neighbor—Landrow Taylor—who came over and called 911 from inside Griffith's home. Sergeant Kubala once again responded to the call, arriving at 7:07 p.m. Stone was still on the side porch, banging on the door and holding his pistol in his hand. Taylor and Griffith remained inside while Sergeant Kubala went around the house toward the side porch. From inside, Taylor and Griffith heard someone yell "halt" or "hold it," followed immediately by three or four gunshots. Stone struck Sergeant Kubala with two of the shots—once in the neck and once in the ear—and Sergeant Kubala died on the scene. After hours of searching, Sumter County Sheriff's officers found Stone in the woods, lying motionless between two logs with the murder pistol beneath his body. Early the next morning, Stone gave a statement in which he confessed to the shooting. He claimed it was an accident, however, explaining, 'I just turned from the house door and the gun went off on the porch and I ran.'"

419 S.C. at 378-79, 798 S.E.2d at 565-66.

ALLEGATIONS

Applicant has asserted four claims in this second PCR applications. First, Applicant has alleged his sentence of death is in violation of the Eighth Amendment. Particularly Applicant claims that he is intellectually disabled within the meaning of *Atkins v. Virginia* and, therefore, is constitutionally unable to be executed. Second, Applicant has asserted an ineffective assistance of counsel claim in that trial counsel failed to investigate and present evidence that Applicant is intellectually disabled. Third, Applicant has asserted an ineffective assistance of counsel claim in that trial counsel was ineffective in failing to retain a forensic pathologist, crime scene reconstruction expert, and other similar expert assistance, to prove that the facts and circumstances of the crime were consistent with an accident theory. Finally, Applicant alleges that there are now material facts not previously presented and heard that requires vacation of his conviction or sentence in the interest of justice.

ANALYSIS

A. Atkins Claim

Applicant has alleged that he is categorically barred from execution as he is intellectually disabled. The Eighth Amendment provides that “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” It is of course axiomatic that the constraints of the Eighth Amendment are binding on the states pursuant to the Due Process Clause of the Fourteenth Amendment. *Roper v. Simmons*, 543 U.S. 551, 560, 125 S.Ct. 1183, 1190 (2005). Pursuant to *Atkins v. Virginia* the Eighth Amendment categorically prohibits the execution of a person who is intellectually disabled.³ 536 U.S. at 321, 122 S.Ct. at 2252. It is

³ The Supreme Court of the United States has indicated that the term “intellectual disability” replaces, and has the same meaning as, what was previously referred to as “mental retardation.” *Hall v. Florida*, 572 U.S. 701, 704 (2014).

of course undisputed that trial counsel never raised the issue of whether Applicant was intellectually disabled at trial. The State has moved to dismiss the present case as time barred and as successive. The Court finds that in the present case that this issue is deserving of a hearing on the merits.

As noted above *Atkins* represents a complete categorical bar on the execution of the intellectually disabled. *See Moore v. Texas*, 581 U.S. ___, 137 S.Ct. 1039, 1048 (2017) (“In *Atkins v. Virginia*, we held that the Constitution ‘restrict [s] ... the State’s power to take the life of’ *any* intellectually disabled individual.”) (emphasis original). As such if Applicant is in fact intellectually disabled then he cannot be executed under any circumstances. The Respondent has moved to dismiss the action as improperly successive under S.C. Code Ann. § 17-27-90. “This statute forbids a successive PCR application unless an applicant can point to a ‘sufficient reason’ why the new grounds for relief he asserts were not raised, or were not raised properly.” *Aice v. State*, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). The Court is not unsympathetic to Respondent’s position. Successive PCR applications are, as a general rule, highly disfavored. *Id.* “Without finality, the criminal law is deprived of much of its deterrent effect. The fact that life and liberty are at stake in criminal prosecutions ‘shows only that ‘conventional notions of finality’ should not have *as much* place in criminal as in civil litigation, not that they should have *none*.’ *Teague v. Lane*, 489 U.S. 288, 309, 109 S.Ct. 1060, 1074-75 (1989) (*quoting* Friendly, *Is Innocence Irrelevant? Collateral Attacks on Criminal Judgments*, 38 U.Chi.L.Rev. 142, 150 (1970)) (emphasis original).

The Uniform Post-Conviction Relief Act clearly allows for attacks on sentences which are in violation of the Federal or State Constitutions. *See* S.C. Code Ann. § 17-27-20(A)(1). The State contends that as Applicant could have raised this issue during his last sentencing the issue is

procedurally barred. *Gibson v. State*, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998). The Court finds whether or not Applicant knew, or should have known, he was intellectually disabled at the time of his resentencing is an issue that cannot be resolved solely on the record before the Court. “Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief.” *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005); S.C. Code Ann. § 17-27-70(b), (c). “When considering the State’s motion for summary dismissal of an application, where no evidentiary hearing has been held, the PCR judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant.” *Mose v. State*, 420 S.C. 500, 505-06, 803 S.E.2d 718, 720 (2017) (citing *Leamon*, 363 S.C. at 434, 611 S.E.2d at 495). Assuming all the facts of Applicant’s petition are in fact true then Applicant was not aware of his potentially being intellectually disabled.⁴ So at least at this juncture the Court is unwilling to say that Applicant could have raised this issue at resentencing.

Furthermore, and as explained above, the Eighth Amendment categorically prohibits the execution of an intellectually disabled person. As the Court has explained it is not unsympathetic to the State’s procedural concerns. However, this fails to take into account that “death is different.” “Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.” *Woodson v. North Carolina*, 428 U.S. 280, 305, 96 S.Ct. 2978, 2991 (1976). If the Court were to follow the State’s arguments it would be to

⁴ The Court likewise finds that a review of the record in this case shows potential notice at no earlier than Applicant’s first PCR action.

completely disregard whether death is even an allowable punishment in this specific case. In essence the State would have the Court raise form over substance. This type of artificial line drawing, without any reference to the wider view of the case, has explicitly been discouraged by the Supreme Court of the United States. In *Hall* the Supreme Court warned that courts should not enforce rigid rules which create an unacceptable risk that persons with intellectual disability will be executed. 572 U.S. at 704, 134 S.Ct. at 1990. As the Court further explained “The death penalty is the gravest sentence our society may impose. Persons facing that most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution.” *Id.* at 724, 134 S.Ct. at 2001. To deny Applicant a chance to show that he is intellectually disabled is to deny him the fair opportunity the Constitution requires.

Respondent has countered that Applicant is not without a remedy as he has at least two avenues of relief. First, that Applicant may seek habeas corpus in the state courts. Secondly, Applicant can pursue whatever avenues are available to him in his federal habeas action. As a first matter it is highly debatable about whether this case would even qualify for habeas relief under the Constitution of 1895. “The availability of habeas corpus has been severely limited by the Uniform Post Conviction Procedure Act.” *Gibson v. State*, 329 S.C. 37, 40, 495 S.E.2d 426, 428 (1998). “However, habeas corpus continues to be available as a constitutional remedy provided a petitioner qualifies for this extraordinary relief and clears the procedural hurdles.” *Id.* at 41, 495 S.E.2d at 428. “Habeas corpus is available only when other remedies, such as PCR, are inadequate or unavailable.” *Id.* “The [PCR] Act is broadly inclusive and will *rarely* be inadequate or unavailable to test the legality of the detention.” *Id.* (emphasis added). Even if the Court were to assume that the State is in fact correct on its procedural assertion then it has failed

to show how the end result in this court would be measurably different. As our Supreme Court has explained:

“[Petitioner] will bear the burden to prove a sufficient reason why the present claims were not raised in their previous applications. If they are unable to meet their burden of proof, the applications may be dismissed as successive. Further, if petitioners can show upon remand that PCR is unavailable, all other remedies have been exhausted, and the issues raised now could not have been raised in their prior PCR applications, the lower court may treat the applications as habeas petitions and provide a hearing on their constitutional claim.”

Id at 42, 495 S.E.2d at 429.

Here, assuming the State is correct, PCR would be unavailable, all other remedies are exhausted, and, viewing the Applicant’s petition as factually correct as the Court must⁵, the issue could not have been raised previously.⁶ The Court would be forced to treat this application as a habeas petition and consider Applicant’s constitutional claim. Essentially the State urges this Court to partake in the legal equivalent of carrying coal to Newcastle. The Court finds that the interests of justice and judicial economy do not favor such a routine.

The position that this case should be left to the federal courts is likewise unpersuasive. The Court is unaware of any authority that requires it to decline to hear a case simply because Applicant could potentially receive relief in another forum. “For it is a time-honored maxim of the Anglo-American common-law tradition that a court possessed of jurisdiction generally must exercise it.” *Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493, 496-97, 91 S.Ct. 1005, 1009 (1971). Simply because Applicant could go to federal court and potentially gain relief does not relieve this Court of its duty to determine a case before it. The State provided the Court with a long list of hypothetical scenarios in which Applicant could potentially gain relief. However,

⁵ The allegations in a habeas petition, like in a PCR application, must be treated as true for purposes of dismissal before a hearing. *Tillman v. Manning*, 241 S.C. 221, 223-24, 127 S.E.2d 721, 721-22 (1962).

⁶ Even assuming that Applicant knew of a claim of intellectual disability in his first PCR action the State would have of course argued that it was not cognizable as a freestanding claim in PCR. So under the State’s theory Applicant was unable to have raised this issue in his previous PCR.

whatever merit this may or may not have⁷ it is not this Court's place to try and discern what a federal district judge may or may not do. Simply put this Court has a duty to hear Applicant's claim and the State has not shown sufficient cause to dismiss the claim summarily.

Furthermore, this is not the first time that a court has been called upon to deal with such a case. The Honorable Thomas W. Cooper, Jr., dealt with a case which sat in almost the exact same procedural posture. *See* Order Denying State's Motion to Dismiss, *Bryant v. State*, 2016-CP-43-00828 (July 13, 2016). The Court reviewed Judge Cooper's order, which was included in Applicant's reply to the State's motion, and finds much of it persuasive. So contrary to the State's position the Court is not completely tilling new earth with its decision.⁸

Therefore, for the reasons above the Court finds it appropriate to deny the State's motion to dismiss as to Applicant's freestanding *Atkins* claim. The Court finds that Applicant should be allowed to proceed forward on this claim. It will now be Applicant's burden to show by a preponderance of the evidence that he is intellectually disabled as that term is defined in S.C. Code Ann. § 16-3-20(C)(b)(10). *Franklin*, 356 S.C. at 278-79, 588 S.E.2d at 605.

B. Ineffective Assistance of Counsel-Atkins Claim

⁷ It is almost certain that Applicant's claim would be considered to be procedurally defaulted in federal court. *See Prieto v. Zook*, 791 F.3d 465, 468 (4th Cir. 2015). However, it is possible that Applicant's claim could be reviewed *de novo* pursuant to *Martinez v. Ryan*, 566 U.S. 1, 132 S.Ct. 1309 (2012). In this case the Respondent is in no better position than if the claim is heard in this Court. Should this Court ultimately rule against Applicant then Respondent is entitled to deferential review under the Antiterrorism and Effective Death Penalty Act (AEDPA). 22 U.S.C. § 2254(d).

⁸ Applicant also included orders from the Honorable J. Mark Hayes in *Elmore v. State*, 2005-CP-24-01205 (June 13, 2007), and the fact that the Honorable Doyet A. Early III has not dismissed an *Atkins* claim in a successive PCR in *Aleksey v. State*, 2015-CP-38-00764. The Court declines to consider either of these cases as persuasive. As a first matter both Elmore and Aleksey were sentenced pre-*Atkins* unlike Stone who was sentenced post-*Atkins*. Unlike Stone both Elmore and Aleksey had no choice but to bring their claim in a successive PCR action. *See Franklin v. Maynard*, 356 S.C. 276, 280, 588 S.E.2d 604, 606 (2003) fn. 7. Furthermore, as to the case concerning Aleksey the Court views the fact that Judge Early has not ruled on the State's motion to dismiss as unpersuasive either way.

Applicant has also alleged that trial counsel was ineffective for failing to raise the issue of his intellectual disability in his re-sentencing. The Court finds that this claim is improper for two reasons.

As a first matter it is unduly duplicative in view of the fact that the Court is hearing Applicant's freestanding *Atkins* claim. Under the Sixth Amendment every defendant is entitled to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 683, 104 S.Ct. 2052, 2061 (1984). Counsel's performance is measured by "an objective standard of reasonableness" *Stone III*, 419 S.C. at 380, 798 S.E.2d at 566 (quoting *Wiggins v. Smith*, 539 U.S. 510, 521, 123 S.Ct. 2527 (2003)). The Court must presume counsel "rendered adequate assistance and exercised reasonable professional judgment." *Id.* Applicant is required to show that: "(1) counsel's representation fell below an objective standard of reasonableness and (2) but for counsel's error, there is a reasonable probability that the outcome of the proceeding would have been different." *Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005). Even assuming that Applicant could make out the first prong of *Strickland* the second prong would still require him to show that he is in fact intellectually disabled. This is of course what the Court has already decided to determine. Should the Court determine that Stone is in fact intellectually disabled then he is barred from execution. Whether or not his trial counsel was ineffective becomes wholly redundant.

As a second matter the State is correct in that this claim is barred as successive. S.C. Code Ann. § 17-27-90 clearly mandates that any claim for relief available to a defendant must be raised in the applicant's first PCR action. "In order to be entitled to a successive PCR application, the applicant must establish that the grounds raised in the subsequent application could not have been raised in the previous application." *Odom v. State*, 337 S.C. 256, 261, 523

S.E.2d. 753, 755 (1999). Here Applicant could have raised a claim that trial counsel had failed to effectively investigate a claim of intellectual disability by the time of his first PCR hearing. At pg. 4153 of the appendix in Applicant's appeal from the denial of his first PCR application the following colloquy occurred between PCR counsel and Applicant's expert:

Q [Mr. Blume]: And so the low cognitive functioning when he was a young child and the Bender Score when he was a young child, what do they suggest to you?

A [Dr. Merikangas]: That he was suffering from mental deficiency, probably mental retardation.

Clearly then from at least 2012, when that exchange occurred, PCR counsel was on notice that there was a chance that Applicant was intellectually disabled. The proper course would have been for PCR counsel to have moved to have amended the application to have asserted a claim of ineffective assistance of counsel for not having raised this issue to the trial court.⁹ To allow Applicant to raise this claim for the first time in this successive application involves the natural problem that to do so would essentially require a finding by this Court that PCR counsel in the first application was ineffective. However, it is now firmly established that prior ineffective assistance of PCR counsel is not by itself sufficient to allow a successive PCR action. *See Robertson v. State*, 418 S.C. 505, 514, 795 S.E.2d 29, 33 (2016); *see also Kelly v. State*, 404 S.C. 365, 365, 745 S.E.2d 377, 377 (2013). Therefore, this claim is barred as successive under the Uniform Post-Conviction Relief Act.

C. Ineffective Assistance-Failure to Retain Experts

⁹ The Court is aware that the State would hold that the same is true for the freestanding claim of intellectual disability. However, as noted in *Hall* persons facing execution "must have a fair opportunity to show that the Constitution prohibits their execution." 572 U.S. at 724. Thus, Applicant's freestanding claim should be allowed to go ahead so that he may have the "fair opportunity" that the Constitution requires. The Supreme Court has indicated that there is no such requirement when the claim is brought as one of ineffective assistance. Furthermore, as the State argues now, and would have likely argued then, such an issue shouldn't be raised in PCR.

Applicant also alleges that he was denied effective assistance of trial counsel due to counsels' failure to retain "a forensic pathologist, crime scene reconstruction expert, and other similar expert assistance to prove the facts and circumstances of the crime were consistent with an accident theory." This claim is barred as successive as this Court, and the South Carolina Supreme Court, have already decided this issue.

As the Supreme Court noted in *Stone III* "Stone argues trial counsel failed to properly implement the strategy because they did not thoroughly investigate and present evidence supporting the accidental shooting theory." 419 S.C. at 404, 798 S.E.2d at 579. The issue of whether Applicant's trial counsel properly retained experts to argue an accident theory of the case was fully vetted by the first PCR court and by the South Carolina Supreme Court. As to the guilt phase the Supreme Court noted "We find trial counsel's approach to the accident theory in general, and hiring of Girndt in particular, was reasonable." *Id* at 405, 798 S.E.2d at 580. The Supreme Court further noted:

"Stone argues, however, trial counsel should have found another expert—one who would testify the shooting was an accident. The PCR court found trial counsel was reasonable in making the decision not to pursue another expert. The evidence supports this finding, and we agree. The "prevailing norms" that guide our judgment as to whether counsel's performance was reasonable do not require counsel to pursue a second expert after a qualified expert has given an adverse opinion." *Id* at 406, 798 S.E.2d at 580-81.

Furthermore, the Supreme Court found that during the resentencing "The PCR court found trial counsel's performance in this respect was reasonable. The evidence supports the finding." *Id* at 407, 798 S.E.2d at 581. This ground has been fully adjudicated and is therefore barred by § 17-27-90.

D. New Found Evidence

Applicant also claims that there are new technological advancements, which were not available at trial, which support his accident defense. Again the Court finds that this claim is

barred as successive and is barred by the law of the case. The Court finds that any attempt to elicit new evidence showing accident would be futile. Under no theory would it be probable that a jury would have found Applicant not guilty via the defense of accident. As the undersigned noted in his order in Applicant's first PCR:

"Applicant cannot show entitlement to accident as he must not only have been acting lawfully, but must also show that he used due care in the handling of the weapon. *State v. Burriss*, 334 S.C. 256, 513 S.E.2d 104 (1999). Not only was Applicant behaving unlawfully many times over but, by no stretch, can invading an enclosed porch and banging on the back door with a loaded pistol in one's hand be considered due care. Since Applicant was not entitled to either an involuntary manslaughter or accident charge under any view of the evidence, then counsel could not have been deficient nor Applicant prejudiced from the failure to get an expert to support his statement." *State v. Stone*, 2008-CP-43-00905 (August 12, 2013) (Nettles, J.).

The same problem is presented to Applicant here. In view of the record it matters little what new evidence Applicant brings forward. The evidence shows that under no variation of the facts would Applicant be entitled to a charge of accident. This Court considered in great detail the claim of accident in Applicant's prior PCR action. His claim of new technology is an attempt to repackage his previous PCR's accident claims in a new form. "The 'new' evidence is the same as the 'old' evidence.... If the evidence was not persuasive in the first case, the defendant does not get a second chance. Otherwise, there would never be an end to litigation." *Jones v. State*, 332 S.C. 329, 339, 504 S.E.2d 822, 827 (1998). The evidence of an accident was unpersuasive in the first case because legally Applicant was not entitled to a charge on accident. The proposed "new" evidence of Applicant does nothing to change this fact.

Furthermore, in the prior litigation Applicant never appealed from this Court's determination that the facts simply do not support a defense of accident. Thus, this issue is now the law of the case. "Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on

appeal, but expressly rejected by the appellate court.” *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 571, 776 S.E.2d 397, 403 (Ct. App. 2015) (quoting *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009)). “In other words, ‘[t]he doctrine of the law of the case prohibits issues [that] have been decided in a prior appeal from being relitigated in the trial court in the same case.’” *Id* (quoting *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997)).

“While the doctrine is ordinarily applied in later stages of the same lawsuit, it also has application to different lawsuits between the same parties.” *In re PHC Assoc.*, 949 F.2d 585, 592 (2nd Cir. 1991) (citing *Schupak v. Califano*, 454 F.Supp. 105, 114 fn. 17 (E.D.N.Y. 1978)). This Court, as a matter of law, determined that Stone could not have established a defense of accident due to the fact that he was acting unlawfully and with undue care. Applicant was required to appeal that ruling at the same time that he appealed all other issues in *Stone III*. His failure to do so is inexcusable and this Court will not consider again issues it found to be unpersuasive almost six years ago. This claim is barred both as successive and as precluded by the law of the case doctrine.

CONCLUSION

The Court has determined that it is required to hold an evidentiary hearing into whether Applicant’s claim of intellectual disability is well-founded. Therefore, the Court will allow Applicant to proceed with this successive PCR action on the grounds that his execution may be in violation of the Eight Amendment due to his intellectual disability. The Court does this in order to provide Applicant with the “fair opportunity to show that the Constitution prohibits [his] execution.” *Hall*, 527 U.S. at 721, 139 S.Ct at 2001. This will be the sole claim that will be before the Court. The Court finds that Applicant’s other claims are all barred for the reasons

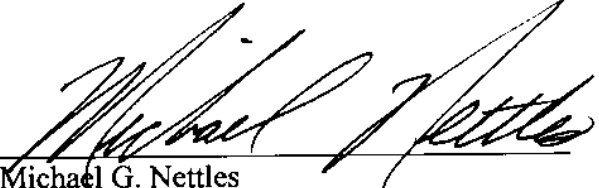
stated previously. Therefore, the Court dismisses the other grounds raised in the Application pursuant to the State's motion. This Court is required by the November 28 order of the Supreme Court to issue a scheduling order in this matter within forty-five (45) days from the date of this order. The parties are directed to plan a date and time for a status conference in this matter no later than fifteen (15) days from the date of this order. Furthermore, the final hearing on the merits of this application must be held within one-hundred and eighty (180) days of the date of the status conference pursuant to S.C. Code Ann. § 17-27-160(C).

The Court does desire to impress upon Applicant that this is the *sole* claim that the Court will consider. The fact that the Court is considering this successive application is due solely to the special protections that the Eighth Amendment gives to those who are potentially intellectually disabled and facing sentence of death. This is not designed to be a process whereby a host of new claims are brought to bear in a second round of PCR litigation. Therefore, the Court finds that, absent truly extraordinary circumstances, it will prohibit the filing of any further amended applications.

Therefore, for the foregoing reasons the Court **GRANTS** the State's Motion to Dismiss as to the ineffective assistance of counsel claims, and as to the claim of newly discovered material facts. The Court **DENIES** the State's Motion to Dismiss as to the claim of intellectual disability.

AND IT IS SO ORDERED!

February __, 2019
Florence, South Carolina


Michael G. Nettles
Presiding Judge by Special Assignment of the South
Carolina Supreme Court

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP4301025

Bobby Wayne Stone

2019 JUL -9 AM 9:41

South Carolina State of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: **See attached Order.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

2099

7/9/2019

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Emily C. Paavola 900 Elmwood Ave. Suite 200 Columbia,
SC 29201
E. Charles Grose Jr. 404 Main Street Greenwood, SC 29646

Alan McCrory Wilson S.C. Attorney General's Office PO
Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

James C. Campbell - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Bobby Wayne Stone, SK 5051
Applicant,

v.

The State of South Carolina,
Respondent.

RECORDED
2018 JUL - 26
IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
JUL 26 2018

CLERK OF COURT
JUL 26 2018

**ORDER FOR *ATKINS* EVALUATION
BY DEPARTMENT OF DISABILITIES
AND SPECIAL NEEDS**

CASE NUMBER: 2018-CP-43-01025

WPK
#1

This matter concerns Respondent's motion in open court for Applicant, Bobby Wayne Stone, to be evaluated for intellectual disability (ID).¹ Applicant filed written objections to the State's proposed order for evaluation and submitted his own proposed order. The Court, having considered all relevant legal issues raised by the Applicant, grants the State's motion for an evaluation, but directs further hearing and argument on the issues related to the safeguards requested by Applicant's counsel concerning the interview and report.

BACKGROUND

Applicant was sentenced to death after being convicted of murder, first-degree burglary, and possession of a firearm during a violent crime. Applicant is on death row at Kirkland Correctional Institution. He is proceeding in a successive post-conviction relief (PCR) action in order to determine whether he is intellectually disabled. If Applicant is intellectually disabled, the Eighth Amendment prohibits his execution. *See Atkins v. Virginia*, 536 U.S. 304 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003). The Court convened a status

¹ Formerly known as mental retardation.

conference on the record, with the Applicant present, on May 30, 2019, at the Sumter County Courthouse. The State moved for an order requiring the Applicant to submit to a mental evaluation before the South Carolina Department of Disabilities and Special Needs (DDSN) for the presence or absence of ID. Counsel for Applicant did not oppose the State's motion, but did object to certain particulars in the State's proposed order. The objections are addressed below. Many of the issues would be better addressed at the hearing on the merits.

OBJECTIONS

I. Practice Effect

Applicant's first objection is to DDSN conducting additional Wechsler Adult Intelligence Scales, 4th Edition (WAIS-IV) testing. Applicant's objection is grounded in what is commonly termed as the "practice effect" observed in IQ tests. When measuring IQ, "a 'practice effect' is an inflated score as a result of the examinee having been exposed to multiple repetitions of the same or similar test." *Wiley v. Epps*, 668 F.Supp.2d 848, 896 (N.D. Miss. 2009). The American Association of Intellectual and Developmental Disabilities (AAIDD)² describes the practice effect as follows:

The practice effect refers to gains in IQ scores on tests of intelligence that result from a person being retested on the same instrument.... For example, the [Wechsler Adult Intelligence Scale-Third Edition] Manual presents data showing the artificial increase in IQ scores when the same instrument is readministered within a short time interval. The [] Manual also reports average increases between administrations with intervals of 2 to 12 weeks. For this reason, established clinical practice is to avoid administering the same intelligence test *within the same year* to the same individual because it will often lead to an overestimate of the examinee's true intelligence.

United States v. Wilson, 922 F.Supp.2d 334, 351-52 (S.D.N.Y. 2013) (citing AAIDD 2010 Manual at 38) (emphasis added) *reconsidered on other grounds by United States v. Wilson*, 170 F.Supp.3d 347 (S.D.N.Y. 2016).

² Formerly known as the American Association on Mental Retardation (AAMR).

“The theory behind the practice effect ‘is that because IQ assessments rely upon novel tasks and instructions to assess ability and performance, an instruction given on a test will be more familiar to the examinee and more quickly implemented on subsequent presentations.’” *Id* (quoting *Wiley*, 668 F.Supp.2d at 896).

It is undisputed that the last IQ test administered to Applicant was on November 9, 2017, which is beyond the one-year mark suggested by the AAIDD. As one court has noted “no expert has suggested that, after a very long interval, the practice effect would still be expected to increase a person's test scores by an average of 5 to 8 points, or for that matter by any particular number of points.” *Id* at 353. The medical community’s diagnostic framework would be considered in the legal determination of whether Applicant is intellectually disabled. *Hall v. Florida*, 572 U.S. 701, 721, 134 S.Ct. 1986, 188 L.E.2d 1007 (2014). The Court declines to restrict DDSN from administering another WAIS-IV test if it believes it to be helpful in informing its analysis. The objection is overruled.

WPM
#3

II. *Flynn Effect*

Applicant’s second objection is to the use of “any old or outdated IQ tests.” Essentially, Applicant argues that the only test which is currently in date is the WAIS-IV. This is essentially an objection to any tests which would be particularly susceptible to the “Flynn effect.” “Put simply, the ‘Flynn Effect’ refers to the tendency for scores on an IQ test normed for one particular age group on one date to increase when that same test is given to others many years later.” *Ex parte Cathey*, 451 S.W.3d 1, 12 (Tx. Ct. Crim. App. 2014). Neither the U.S. Supreme Court nor the South Carolina Supreme Court have ever addressed the Flynn effect.

WPK
#4

The Court finds that it is inappropriate at this stage to delve into this area. There is an argument as to whether, and to what extent, the Flynn effect is to be considered in the Court's analysis. As an example, the Diagnostic and Statistical Manual, 5th Edition at 37 (DSM-5) of the American Psychological Association (APA) states that the Flynn effect *may* cause an effect on test scores. However, the AAIDD 2010 Manual at 37 and the AAIDD published "The Death Penalty and Intellectual Disability" at 158 posit that the Flynn effect is the scientific consensus. Nor is there any consensus among this nation's courts as to whether to use the Flynn effect. *See, e.g., Ledford v. Warden, Ga. Diagnostic and Class. Prison*, 818 F.3d 600, 637 (11th Cir. 2016) (The decision on whether to consider the Flynn effect is left to the fact finder in the first instance); *Hooks v. Workman*, 689 F.3d 1148, 1170 (10th Cir. 2012) (Recognizing there is no clearly established Supreme Court precedent that requires the use or recognition of the Flynn effect); *Cathey*, 451 S.W.3d at 14-19 (Recognizing that while the Flynn effect is recognized, there is no scientific consensus on whether to adjust full scale scores for it); *Black v. Carpenter*, 866 F.3d 734, 749 (6th Cir. 2017) (Discussing that while the Flynn effect is a scientific fact, the court was hesitant to use it in *Atkins* determination); *McManus v. Neal*, 779 F.3d 634, 653 (7th Cir. 2015) (Acknowledging that while the Flynn effect is accepted in the field it isn't common practice to adjust scores for its effect.). It is also asserted that the Fifth Circuit as a rule declines to accept the Flynn effect as scientifically valid while not rejecting it outright. *In re Cathey*, 857 F.3d 221, 227 fn. 33 (5th Cir. 2017).

This stage of the proceeding is not the proper time for the Court to be deciding that DDSN, as a part of the medical community's diagnostic framework, is precluded from using tests that may be particularly subject to the Flynn effect. At the final hearing on the merits, the Applicant may attack any such test or argue that its scores should be downgraded. The Applicant has failed to

demonstrate how anything in the medical community literature, or in the law, mandates that such tests not be used.³ Applicant's objection to DDSN using any IQ test other than the WAIS-IV is overruled.

III. Evaluation of Mental Health & Malingering

WAC #5
Applicant further objects to DDSN doing any testing for either mental illness and/or malingering. Applicant correctly notes that a person with intellectual disability can frequently have a coexistent mental illness. *See Moore v. Texas*, 581 U.S. 1039, 137 S.Ct. 1039, 1051 (2017) ("As mental-health professionals recognize, however, many intellectually disabled people also have other mental or physical impairments, for example, attention-deficit/hyperactivity disorder, depressive and bipolar disorders, and autism."); *see also* DSM-5 at 40. Specifically, what the Supreme Court criticized in *Moore* was the Texas Criminal Court of Appeals mandate that an *Atkins* petitioner "show that his adaptive deficits were not related to 'a personality disorder.'" 137 S.Ct. at 1051. *Moore* does not preclude considering whether an *Atkins* applicant has a mental illness. Indeed, such evidence could be highly relevant outside of the category of adaptive deficits. As an example, in *Carroll v. Sec'y, DOC*, the Court found that the habeas petitioner's severe mental illness may have caused an abnormally low IQ test score. 574 F.3d 1354, 1369 (11th Cir. 2009). If such information were to exist, it may be relevant for the Court to consider when examining Applicant's IQ scores. There has not been a sufficient showing that an examination for mental illness would be clearly contrary to any diagnostic framework of the medical community. Applicant points to nothing from either the APA or the AAIDD that states

³ As a further matter if the Court were to delve into the reliability of the Flynn effect at this point it would essentially mean the parties would be forced to engage in an interlocutory hearing on the *Jones* factors. *See State v. Council*, 335 S.C. 1, 19, 515 S.E.2d 508, 519 (1999) (Court must consider: "(1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures."

that an examination for mental illness is not permissible during an examination for intellectual disability. Likewise, Applicant's passing reference to *Moore* is unavailing as the Supreme Court merely warned against requiring a prisoner to show that adaptive deficits were not caused by some other source.⁴ Therefore, the Applicant's objection in this regard is also overruled.

WAC #6
Applicant further objects to the giving of any tests designed to determine whether or not he is malingering. Applicant asserts that there are no tests specifically designed to test whether a person with intellectual disabilities is malingering. This may be correct, but this alone does not show that persons who claim they are intellectually disabled are *not* tested for malingering as Applicant claims. Indeed, both cases which Applicant cites, *Allen v. Wilson*, 2012 WL 2577492, *1, *7, and *United States v. Smith*, 790 F.Supp.2d 482, 499 (E.D. La. 2011), involved prisoners who were in fact examined for malingering. While the court in *Smith* did discount the tests for malingering as unpersuasive, this clearly shows that Applicant's criticism goes to the weight of any evidence of malingering and is best reserved for the hearing on the merits.⁵ The Applicant has failed to establish that a test for malingering is not a part of the established diagnostic framework for determining intellectual disability. It should be up to DDSN to determine the appropriate testing protocol.

It will then be up to the Court at a later stage to evaluate whether tests for malingering are an accepted part of the diagnostic framework for determining whether a prisoner has an intellectual disability. "In the *Atkins* context malingering has been described as the 'deliberate feigning of mental retardation in order to avoid the death penalty.'" *Clemons v. Thomas*, 2016 WL 1180113

⁴ The Court's opinion in *Moore* is less than clear. However, this Court is of the view that the Court was more speaking to the idea that it was not in accord with medical standards to require a person who demonstrates adaptive deficits to then also demonstrate that they were not caused by another source.

⁵ Furthermore, the court in *Allen* merely stated that there were not specific tests for malingering and that the examiner in that case followed the protocol designed to test for malingering.

*1, *24 (N.D. Ala. 2016) (*quoting Thomas v. Allen*, 614 F.Supp.2d 1257, 1302 (N.D. Ala. 2009)). As the Supreme Court of Pennsylvania has noted, "The prospect of malingering and the incentive to slant evidence to influence a finding of mental retardation are relevant considerations to argue to the *Atkins* factfinder in an appropriate case, not only for purpose of assessing the defendant's post-*Atkins* intelligence and aptitude test results, but also in assessing the defendant's overall case for *Atkins* relief from the death penalty." *Commonwealth v. DeJesus*, 58 A.3d 62, 85 (Penn. 2012). Furthermore, a prohibition on testing for malingering is a double-edged sword. Malingering may be evidence for this Court to evaluate an IQ test. *See State v. Hill*, 894 N.E.2d 108, 113 (Ohio Ct. App. 2008). Conversely, a showing that Applicant is not malingering may give greater credence to the resulting IQ score. *See Thomas*, 614 F.Supp.2d at 1302. Furthermore, even if Applicant were found to be malingering on a test administered by DDSN, this does not preclude a finding of intellectual disability. *Hill*, 894 N.E.2d at 130 ("Although appellant may be manipulative and a malingerer, he can still be and is mentally retarded."). Applicant's objection to testing for malingering is overruled.

WPM
#7

IV. Other Objections

- A. Scheduling. Applicant objects to the language in the State's proposed order that Applicant complete his evaluation and investigation within sixty (60) days. The Court finds that this objection is well-founded. Such a timeframe is not possible. However, the Court declines, at this time, to set this time limit, and the mandated scheduling order will be addressed by this Court separately.
- B. Limitations and safeguards related to evaluation. As to the language in the Applicant's proposed order which would further limit DDSN's examination, the Court construes that language as forming objections and raising requests that (1)

counsel for Applicant be allowed to attend the examination and (2) that DDSN not include any inculpatory statements concerning Applicant's underlying criminal conviction in this case or be compelled to testify "regarding statements made by Mr. Stone during the court-ordered evaluation for any purpose other than to determine whether Mr. Stone has an Intellectual Disability."

These appear to deal with Mr. Stone's Fifth and Sixth Amendment rights. The State argues that the Applicant has no right to counsel to be present during the actual evaluation.⁶ Applicant's Counsel may certainly be present at the evaluation site and confer with the Applicant prior to the meeting with the examiners.

As to the Applicant's assertion that he cannot be required or compelled to make potentially inculpatory statements at the examination, this court is struggling with why the examiners would need to ask questions about the murder itself or to question what was done in furtherance of its commission or in any concealment effort surrounding its commission. Whether the Applicant currently suffers from ID seemingly can be decided without delving into such questions.

The State argues that the Applicant has raised the issue of ID, thus waiving rights,

WAC #8

⁶ First, there is precedent that Applicant has no federal constitutional right to counsel in these proceedings. *Pennsylvania v. Finley*, 481 U.S. 551, 555, 107 S.Ct. 1990, 95 L.E.2d 539 (1987). The Court is unsure whether or not Applicant can rely on the Sixth Amendment to argue that counsel should be allowed to attend the examination. It is true that Applicant has the right to consult with counsel concerning the examination prior to such examination. See *Thorson v. State*, 895 So.2d 85, 123 (Miss. 2004) (citing *Estelle v. Smith*, 451 U.S. 454, 470-71, 101 S.Ct. 1866, 68 L.E.2d 359 (1981)). However, the South Carolina Supreme Court has spoken directly to this issue. In *State v. Hardy*, the Supreme Court found that mental evaluations are not critical stages of a proceeding, and, therefore, the Sixth Amendment's right to counsel does not attach. 283 S.C. 590, 592, 325 S.E.2d 320, 322 (1985). As the Court explained, "The presence of counsel is not only unnecessary from a constitutional standpoint, it is also undesirable from a clinical perspective, for it would undoubtedly hinder the psychiatrist from effectively examining the defendant." *Id.*

and that the determination of guilt has been established.⁷ Applicant requests that certain procedural safeguards found in the case of Steven Bixby be used here. *See State v. Bixby*, 388 S.C. 528, 560, 698 S.E.2d 572, 560 (2010). The State argues that *Bixby* is fundamentally different from Applicant's case. First, Mr. Bixby was being examined pre-trial instead of being examined after conviction. Secondly, the Supreme Court in *Bixby* never actually approved of the trial court's safeguards, instead it found that under S.C. Constitution Art. I, § 12, the safeguards rendered any of Bixby's testimony uncompelled thus preventing a finding of transactional immunity. *Id.*⁸ Finally, and most importantly, the State argues that the Applicant has no Fifth Amendment right as it relates to the convictions under review in this Court. Once a sentence has become fixed and the judgment of conviction has become final, there is no privilege against self-incrimination. *Mitchell v. United States*, 526 U.S. 314, 326, 119 S.Ct. 1307, 143 L.E.2d 424 (1999). Thus, the State maintains that the Applicant is in a far different position than Bixby, whose examination was conducted pre-trial.

WPM
#6

⁷ The State concedes that *Estelle v. Smith* established that a prisoner has a right not to be forced to give inculpatory statements where he neither requested an evaluation nor had placed his mental state into issue, but that the Supreme Court limited this in *Buchanan v. Kentucky* where it held, "if a defendant requests such an evaluation or presents psychiatric evidence, then, at the very least, the prosecution may rebut this presentation with evidence from the reports of the examination that the defendant requested. The defendant would have no Fifth Amendment privilege against the introduction of this psychiatric testimony by the prosecution." 483 U.S. 402, 422-23, 107 S.Ct. 2906, 97 L.E.2d 336 (1987). Here Applicant put his mental state into issue by claiming that he is intellectually disabled, and the State maintains that fairness requires that the State have access to all of Applicant's statements to be able to rebut any evidence of intellectual disability. *Id.* (citing *Kansas v. Cheever*, 571 U.S. 87, 93, 134 S.Ct. 596, 187 L.E.2d 519 (2013)).

⁸ The Court's full quote is as follows: "Here, however, Appellant was not compelled to offer self-incriminating testimony during his mental evaluation, thus transactional immunity cannot exist. Appellant's attorney was present at his mental evaluation and was able to object to any questions. Furthermore, by order of the court, any inculpatory statements which may have been in the report were redacted. Because Appellant was not compelled to testify against himself, the court-ordered mental evaluation did not confer transactional immunity upon him." *State v. Bixby*, 388 S.C. 528, 560, 698 S.E.2d 572, 560 (2010).

The court has notified the attorneys that further consultations and hearings appear to be necessary and has directed the attorneys to arrange such proceedings. Unless an agreement is reached and incorporated into a consent order, the attorneys are to arrange to have the proposed examiners from DDSN appear to show whether they expect it to be necessary to ask the types of questions that are the subject of the Applicant's current objections.

ORDER FOR DDSN EVALUATION

IT IS ORDERED, that an evaluation is to be completed by a qualified examiner or examiners designated by SCDDSN who are experienced and trained clinicians, and at least one of whom has expertise is in the field of intellectual disability. The examiner(s) must be skilled in the administration and interpretation of intelligence quotient (IQ) tests and in assessment of adaptive behavior and the impact of intellectual impairment in an individual's life. The court-ordered examination is not limited to any specific IQ testing, but may include testing to screen for the presence and/or absence of mental illness or malingering, as deemed necessary and/or appropriate by the examiners for the purposes of determining the existence or lack thereof of intellectual disability. In addition, the standard error of measurement must be taken into account when reviewing intellectual disability claims.

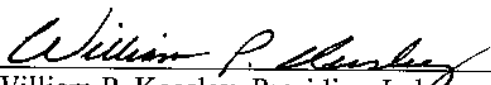
IT IS ORDERED, that the examination will also include appropriate testing and review of documents, materials, and witnesses concerning presence and/or absence of adaptive behavior characteristics. The standard used in the evaluation, consistent with South Carolina law, is ordered to be whether Applicant has intellectual disability, previously "mental retardation," which means "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period." S.C. Code Ann. § 16-3-20.

IT IS ORDERED, that the evaluation(s) are to be conducted at a time and place designated by the court-ordered neutral examiners, with reasonable prior notice to Applicant and his appointed counsel and Respondent's counsel. However, this Order does not decide the issue of whether counsel for the Applicant or Respondent may personally attend or participate in the actual interview/evaluation. This Order does not preclude either Applicant or Respondent from retaining their own mental health experts for purposes of this intellectual disability claim.

#11
IT IS ORDERED, that the examiner(s) designated by SCDDSN shall be available during the week that any evidentiary hearing is scheduled to testify concerning the court-ordered evaluation by the Department. At the present time, no date has been set for the hearing. Written reports from the designated examiner(s) are to be provided to the Court as a court-ordered evaluation by a neutral examiner. The Court is not ruling at this time on the issue of whether or to what extent an *in camera* review of the report may be necessary before copies are to be provided to the Office of the Attorney General and to Applicant's counsel.

AND IT IS ORDERED.

July 3, 2019


William P. Keesley, Presiding Judge
by Special Assignment of the Supreme Court of
South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
IN THE COURT OF COMMON PLEAS

RECORDED

2020 JAN 6 AM 11:15

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP4301025

Bobby Wayne Stone

South Carolina State of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: **See attached Order.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

1/6/2020

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

E. Charles Grose Jr. 404 Main Street Greenwood, SC 29646
Hannah Lyon Freedman 900 Elmwood Ave. Suite 200
Columbia, SC 29201

Alan McCrory Wilson S.C. Attorney General's Office PO
Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

Court Reporter

James C. Campbell - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Bobby Wayne Stone, SK 5051
Applicant,

v.

The State of South Carolina,
Respondent.

**FOLLOW-UP ORDER REGARDING
ATKINS EVALUATION**

RECORDED
2020 JAN 13 PM 3:46
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

CASE NUMBER: 2018-CP-43-01025

Heard: December 13, 2019 at Westbrook/Lexington County Judicial Center
Counsel for the Applicant: Charles Grose, Esquire and Hannah Freedman, Esquire
SC Attorney General's Office: Senior Assistant Deputy Attorney General Melody Brown
Attorney for Dept. of Disabilities and Special Needs: Tana G. Vanderbilt, General Counsel
Court Reporter: Stacy S. Johnson

WPOL
#1
This order addresses issues unresolved by the prior order dated July 3, 2019. That order addressed the Respondent's motion for the Applicant, Bobby Wayne Stone, to be evaluated for intellectual disability (ID).¹ In the prior order, this court ruled, in part: (1) that an evaluation is to be completed by a qualified examiner or examiners designated by the South Carolina Department of Disabilities and Special Needs (SCDDSN), with certain specifications set forth for the examination; (2) that the standard used in the evaluation is to be whether the Applicant has intellectual disability, which means "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period." S.C. Code Ann. § 16-3-20; (3) that the evaluation(s) are to be conducted at a time and

¹ Formerly known as mental retardation.

place designated by the court-ordered neutral examiners, with reasonable prior notice to Applicant and his appointed counsel and Respondent's counsel.

The prior order did not decide the issue of whether counsel for the Applicant or Respondent may personally attend or participate in the actual interview/evaluation. It also did not rule on whether or to what extent an *in camera* review of the report may be necessary before copies are to be provided to the Office of the Attorney General and to Applicant's counsel.

Having heard the arguments of counsel and the affidavits presented, the court directs the following:

- (1) Attorneys may be present at the site where the examination takes place, consistent with other SCDDSN examinations that have allowed attorneys to be present in the past, but they are not allowed to be in the room where the examination takes place.
 - a. Counsel for SCDDSN indicated that on previous occasions where counsel was allowed to be present, the defendant's or applicant's attorney was in a separate room where the attorney could hear the questions and responses, but not be in the examination room.
 - b. The examination is to be conducted according to the clinical standards deemed appropriate by the designated examiners, and the attorneys are not allowed to have contact with the Applicant, unless allowed by the examiners.
 - c. The Applicant's attorneys agree that they are not to be present for any standardized testing. Neither the Applicant's attorney, nor the attorneys for the State or SCDDSN, are allowed to be present or within earshot of anything that takes place for any standardized testing, unless the designated examiners permit them to do so.

WPK
#2

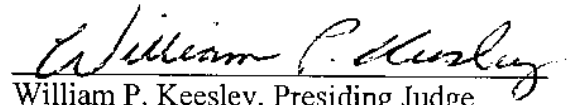
d. The Applicant's motion to exclude the Attorney General's office from being present is denied. A representative of the Attorney General's office, as well as counsel for SCDDSN, may be present, subject to the same limitations set forth above.

(2) The court finds no reason to require the report to be reviewed *in camera* prior to its dissemination to the attorneys. A copy of the report is to be provided to the undersigned judge, as well as to Applicant's counsel, the Office of the Attorney General, and the General Counsel for SCDDSN listed at the beginning of this order.

(3) In all other respects, the order issued on July 3, 2019, remains in full force and effect.

AND IT IS ORDERED.

#3 December 30, 2019


William P. Keesley, Presiding Judge
by Special Assignment of the Supreme
Court of South Carolina

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
IN THE COURT OF COMMON PLEAS**

RECORDED

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP4301025**

Bobby Wayne Stone	2020 SEP 28 PM 4:20 JAMES C. CAMPBELL CLERK OF COURT SUMTER COUNTY, SC	South Carolina State of
PLAINTIFF(S)		
DEFENDANT(S)		
Submitted by: Clerk of Court		
Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant		

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):**

☐ Rule 12(b), SCRCP;
☐ Rule 41(a), SCRCP (Vol. Nonsuit);

☐ Rule 43(k), SCRCP (Settled);
☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):**

☐ Rule 40(j) SCRCP;
☐ Bankruptcy;

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed;
☐ Reversed;
☐ Remanded;
☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: **See attached Order.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

2099	9/28/2020
Circuit Court Judge	Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

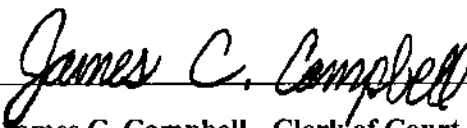
E. Charles Grose Jr. 404 Main Street Greenwood, SC 29646
Hannah Lyon Freedman 900 Elmwood Ave. Suite 200
Columbia, SC 29201

Alan McCrory Wilson S.C. Attorney General's Office PO
Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter


James C. Campbell - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Bobby Wayne Stone, SK 5051
Applicant,

v.
The State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Case Number: 2018-CP-43-01025

ADMINISTRATIVE ORDER

RECORDED
2020 SEP 28 PM 3:40
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

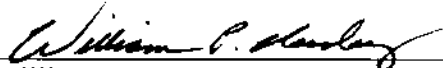
Heard: September 24, 2020 via video conference
Attorneys for Applicant: E. Charles Grose, Jr., Esquire
Hannah L. Freedman, Esquire
Attorney for Respondent: Melody J. Brown, Sr. Asst. Dep. Atty. Gen.
Attorney for DDSN: Constance D. Holloway, Gen. Counsel
Court Reporter: Natalie Dahl

WPC
#1
At a status conference hearing today, the court was updated regarding the posture of this case. As a result, the following directives are issued:

- (1) Within two weeks, the attorneys for the applicant are to submit to the designated examiner for Disabilities and Special Needs (DDSN) copies of relevant documents contained in the judicial record concerning matters that examiners normally rely upon in their assessment of intellectual disability. Any other relevant records that the applicant's counsel have in their possession should also be provided for the examiners' preliminary review. The court requests that the contact information for any family member or other witness that the applicant's expert has contacted or plans to contact be obtained by applicant's counsel. If there is an objection to turning that information over to the DDSN's examiner, a hearing should be scheduled.

(2) The attorney for DDSN will consult with the examiners and determine what restrictions and protocol related to Covid-19 are in place for examinations.

IT IS SO ORDERED, this 24th day of September, 2020



William P. Keesley, Presiding Judge
by Special Assignment

#2



RECORDED
2023 MAY 11 PM 4:20
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ALAN WILSON
ATTORNEY GENERAL

May 8, 2023

The Honorable James C. Campbell
Sumter County Clerk of Court
215 N. Harvin Street
Sumter, South Carolina 29150

Re: Bobby Wayne Stone v. State of South Carolina
Case No: 2018-CP-43-1025

Dear Mr. Campbell:

Enclosed please find, for filing in your office, the original and one (1) copy of Respondent's Notice and Motion to Compel Pursuant to Rule 37, SCRCP, along with a Certificate of Service for filing in your office in connection with the above referenced case.

Please file the original motion and return a certified copy to me in the self-addressed envelope provided for your convenience.

Sincerely,

Melody J. Brown
Senior Assistant Deputy Attorney General

MJB/abb
Enclosure

cc: The Honorable William P. Keesley (Via email and US Mail)
E. Charles Grose, Jr., Esquire (Via email and US Mail)
Hannah M. Freedman, Esquire (Via email and US Mail)
Victim Advocacy Division

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

RECORDED

2023 MAY 11 PM 4:20 CASE NO: 2018-CP-43-1025

BOBBY WAYNE STONE, #5051

vs.

STATE OF SOUTH CAROLINA

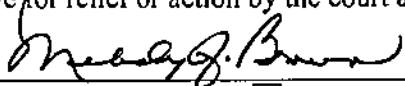
Defendant.

JAMES C. CAMPBELL

CLERK OF COURT
SUMTER COUNTY, S.C.

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney: E. Charles Grose, Jr. Esquire, Bar No. _____ Address: 305 Main Street, Greenwood, SC 29646 Hannah Freedman, Esquire 900 Elmwood Avenue, Suite 200 Phone: _____ Fax _____ E-mail: Charles@groselawfirm.com Other: _____	Defendant's Attorney: Melody J. Brown, Bar No. 14244 Address: PO Box 11549 Columbia, SC 29211 Phone: 803-734-6305 Fax _____ E-mail: MBrown@scag.gov Other: _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Compel Discovery Estimated Time Needed: 30 Minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant May 8, 2023 Date submitted	
SECTION III: Motion Fee ☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____ ☐ State Agency v. Indigent Party ☒ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP)	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Bobby Wayne Stone, #5051,

Applicant,

v.

State of South Carolina,

Respondent.

RECORDED IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2023 MAY 11 PM 4:21

JAMES C. CAMPBELL No. 2018-CP-43-01025
CLERK OF COURT (Capital PCR)
SUMTER COUNTY, S.C.

NOTICE AND MOTION
TO COMPEL PURSUANT TO
RULE 37, SCRPC

TO: E. Charles Grose, Jr., Esq.
The Grose Law Firm
305 Main Street
Greenwood, SC 29646
charles@groselawfirm.com

Hannah Freedman, Esq.
Justice 360
900 Elmwood Ave, Suite 200
Columbia, SC 29201
hannah@justice360sc.org

ATTORNEYS FOR APPLICANT.

YOU WILL PLEASE TAKE NOTICE that Respondent hereby moves the Court for an Order to compel Applicant to make a proper response to Respondent's requests for production of documents. The motion is made pursuant to Rule 37(a), SCRPC.

BASIS TO ASSERT NON-COMPLIANCE

1. Respondent served specific requests for production of documents pursuant to Rule 34, SCRPC and S.C. Code § 17-27-150(B), on above listed counsel on March 6, 2023. (Attachment 1). These requests were sent both by email and by U.S. Mail. (Attachment 1). Applicant was required to serve specific written responses upon counsel for Respondent within 30 days after service. Rule 34(b), SCRPC. By Respondent's calculation, responses were due on or before Wednesday, April 5, 2023. Applicant did not comply.

2. Under the provisions of Rule 34(b), SCRPC, Applicant was required, in a written response, to "state, with respect to each item or category, that inspection and related activities

will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated.” *Id.* Further, should privilege be claimed, Applicant was required to assert that privilege over identified materials in the written response and produce a specific privilege log. Rule 34(b), SCRCF and Rule 26(b)(5), SCRCF. Applicant was noticed of these requirements within the requests. (Attachment 1).

3. By letter dated April 18, 2023, received on April 20, 2023, Applicant provided 3 items: one CV for Dr. Sara Boyd, Ph.D.; one report from Dr. Sara Boyd dated December 23, 2022; and one report from Dr. Sara Boyd dated April 10, 2023. Applicant did not specifically address the individual requests as required under the rules. (*See* Attachment 1, Requests 1-6).

4. To resolve the lack of a proper response, Respondent wrote to counsel for Applicant on April 27, 2023. (Attachment 2). Counsel responded via email apparently relying on the April 18, 2023 letter with the limited disclosures as listed above. (Attachment 3). To date, no written response has been received as to “each item or category” requested. No privilege log has been provided describing the excluded materials.

5. The absence of proper compliance is substantially interfering with development of the defense and delaying the investigation and development of a separate opinion on the core matter – whether Applicant, who admittedly has tested well above a 75 IQ level, may show by credible evidence and a preponderance of the evidence, intellectual disability. In particular, the claim regarding adaptive functioning is based on facts certainly more readily (if not solely more) identifiable and accessible to Applicant than Respondent. The withheld information prevents the full and fair investigation of the issue before the Court.

6. Additionally, due to Applicant’s non-compliance, it is likely that the hearing in this matter will be further delayed as Respondent cannot fully and fairly prepare in the absence

of facts known to but withheld by Applicant. In particular, the specific responses will determine who to interview and/or depose and to what extent – a basic function of civil litigation discovery that, at this point, is being thwarted by non-compliance with established discovery rules.

RESPONDENT'S REQUEST TO RESOLVE WITHOUT A MOTION

Pursuant to Rule 11(a), SCRPC, Respondent attempted in good faith to resolve this matter without the necessity of filing this motion. (Attachment 2). Applicant's counsel failed to remedy the non-compliance. (Attachment 3).

WHEREFORE, based on the foregoing, Respondent moves the Court for an Order directing a proper response as required under the rules so that Respondent may continue fair development of the defense in this case.

Respectfully submitted,

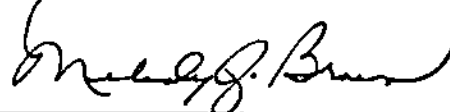
ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
SC Bar No: 14244
mbrown@scag.gov

P. O. Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

BY:



MELODY J. BROWN
ATTORNEYS FOR RESPONDENT

May 8, 2023.
Columbia, South Carolina.

Bobby Wayne Stone v. State of South Carolina
2018-CP-43-1025

Notice and Motion to Compel Pursuant to Rule 37, SCRPC

Attachment 1

**Request for Production of Documents, Certificate of
Service and Email Notice dated March 6, 2023**

RECORDED
 2023 MAY 11 PM 4:21
 IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
 COUNTY OF SUMTER)
 JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

Bobby Wayne Stone, #5051,)
)
 Applicant,)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

C/A No. 2018-CP-43-01025
 (Capital PCR)

RESPONDENT'S REQUESTS
 FOR PRODUCTION OF DOCUMENTS

TO: E. Charles Grose, Jr., Esq. Hannah Freedman, Esq.
 The Grose Law Firm Justice 360
 305 Main Street 900 Elmwood Ave, Suite 200
 Greenwood, SC 29646 Columbia, SC 29201

ATTORNEYS FOR APPLICANT.

To follow are requests for production of documents directed to the applicant in this matter pursuant to Rule 34 of the South Carolina Rules of Civil Procedure and S.C. Code § 17-27-150(B). The responses should be served upon Senior Assistant Deputy Attorney General Melody J. Brown, at Post Office Box 11549, Columbia, South Carolina, 29211-1549. Please note that the scope of the request is governed by Rules 26(b) and 34(a) of the South Carolina Rules of Civil Procedure.

Also, please note that Rule 34(b) provides that "[t]he party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms

for producing electronically stored information, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. If objection is made to the requested form or forms for producing electronically stored information (or if no form was specified in the request) the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.”

If any document is withheld on the grounds that the document is subject to a claim of privilege, confidentiality, or that the document(s) are not in the custody or control of Applicant or for any other reason: (a) state the reason for withholding the document; (b) identify the person(s) who have knowledge about the information being withheld and their relationship to the Applicant; (c) identify by document the author, date, and subject matter and identify each person who received a copy of the document (identification will not be considered as a waiver of your claim of privilege or confidentiality); and, (d) identify the present custodian of the document, their relationship to the Applicant, and the document’s present location.

The requests for production of documents are as follow:

1. Any and all documents, electronically stored information, correspondence, or other data which relate to the claim of intellectual disability, but excluding the following:

- (a) Documents which have been provided to Applicant by the Office of the Attorney General, including copies of the documents the Attorney General provided to the South Carolina Department of Disabilities and Special Needs (DDSN) on or about December 9, 2020 with

copies to Applicant at that time;

(b) Documents previously provided by Applicant in the October 8, 2020 disclosures to DDSN and provided to the Attorney General's office at that time;

(c) The affidavit of Pamela Blume Leonard dated October 10, 2022, and provided by Applicant to the undersigned by email dated January 27, 2023.

2. The reports and/or summaries of the experts or other professionals retained and consulted in preparation for this post-conviction relief case, including medical, scientific or investigative experts or other professionals.

3. Any and all documents, electronically stored information, notes, files, reports, tests and/or other written or recorded materials or other data created or identified by each expert and/or other professionals retained and consulted for this post-conviction relief case which relate to Applicant's mental ability and/or adaptive functioning.

4. Any and all documents, electronically stored information, notes, files, reports, tests and/or other written or recorded materials or other data that each expert expected to testify on the issue of intellectual disability has relied upon in reaching his or her opinion.

5. Any and all documents, electronically stored information, notes, files, reports, tests and/or other written or recorded materials or other data known to Applicant, or Applicant's expert(s) or other professionals, that are not included in the report(s) and/or opinion(s) on intellectual disability but relate to Applicant's mental ability and/or adaptive functioning.

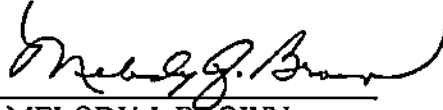
6. A current *curriculum vitae* of all experts expected to testify at the post-conviction relief hearing.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
P. O. Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305
mbrown@scag.gov

BY: 
MELODY J. BROWN
ATTORNEYS FOR RESPONDENT

March 6, 2023.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Bobby Wayne Stone, #5051)

2018-CP-43-1025
Capital PCR Action

Applicant,)

v.)

AFFIDVAIT OF SERVICE

State of South Carolina,)

Respondent.)

1. I am counsel for Respondent in the above-captioned action.

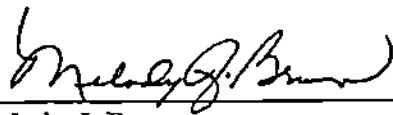
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Respondent's Requests for Production of Documents, in the above-captioned matter on the following attorneys via email and by depositing same in the United States mail, postage prepaid:

E. Charles Grose, Jr., Esquire
305 Main Street
Greenwood, South Carolina 29646
charles@groselawfirm.com

Hannah Freedman, Esquire
Justice 360
900 Elmwood Avenue, Suite 200
Columbia, South Carolina 29201
hannah@justice360sc.org

DATED this 6th day of March, 2023.



Melody J. Brown
Senior Assistant Deputy Attorney General

Angela Brown

From: Angela Brown
Sent: Monday, March 6, 2023 2:45 PM
To: Hannah Freedman; Charles Grose
Cc: Melody Brown
Subject: Bobby Wayne Stone, #5051
Attachments: Stone, Bobby - Respondent's Request for Production of Documents - March 6, 2023 (03234951xD2C78).PDF

Counsel, please find attached a courtesy copy of Respondent's Request for Production of Records in regards to the above referenced case. The original request has been placed in today's mail to your attention.

Thank you,

Angela Bennett Brown, Administrative Coordinator
Office of the South Carolina Attorney General
Criminal Division | Office 803-734-0368 | Abennett@scag.gov
P.O. Box 11549 | Columbia, SC 29211



Bobby Wayne Stone v. State of South Carolina
2018-CP-43-1025

Notice and Motion to Compel Pursuant to Rule 37, SCRCP

Attachment 2
Rule 11 Letter and Email dated April 27, 2023



ALAN WILSON
ATTORNEY GENERAL

April 27, 2023
(Via Email and U.S. Mail)

E. Charles Grose, Jr., Esq.
The Grose Law Firm
305 Main Street
Greenwood, SC 29646
charles@groselawfirm.com

Hannah Freedman, Esq.
Justice 360
900 Elmwood Ave, Suite 200
Columbia, South Carolina 29201
hannah@iustice360sc.org

Re: Bobby Wayne Stone, #5051, v. State of South Carolina
C/A No. 2018-CP-43-01025

Dear Mr. Grose and Ms. Freedman,

Pursuant to Rule 11(a), SCRCP, I write to consult before filing a motion to compel discovery in the above case. Respondent seeks proper and full responses in regard to its requests for production of documents served on March 6, 2023. By my calculation, responses were due on or before Wednesday, April 5, 2023. The responses are today approximately three weeks overdue. As such we are respectfully requesting responses within one week of the date of the letter to avoid the necessity of filing a motion to compel.

Respondent received, on April 20, 2023, copies of two reports by Dr. Boyd and a CV for Dr. Boyd. However, a proper response to the production requests requires a "written response" as to "each item or category" requested and must include objections, if any, along with a privilege log should privilege be claimed. See Rule 34(b), SCRCP and Rule 26(b)(5), SCRCP.

Thank you for your attention to this matter. I sincerely hope this may be resolved without the necessity of a motion.

(Kind regards,

Melody J. Brown
Senior Assistant Deputy Attorney General

Angela Brown

From: Angela Brown
Sent: Thursday, April 27, 2023 11:23 AM
To: Charles Grose; Hannah Freedman
Cc: Melody Brown
Subject: Bobby Wayne Stone v. State of South Carolina
Attachments: 03277630.pdf

Counsel, please find attached the state's letter pursuant to Rule 11(a), SCRCP for production of documents related to Bobby Wayne Stone. A copy of this letter will be placed in today's mail addressed to each of you.

Thank you,

Angela Bennett Brown, Administrative Coordinator II
Office of the South Carolina Attorney General
Criminal Division | Office [803-734-0368](tel:803-734-0368) | Abennett@scag.gov
P.O. Box 11549 | Columbia, SC 29211



This email, together with any attachments, may be legally privileged. If you have received it in error, please notify the sender immediately, and then delete it from your system. This email and any replies to this email may be subject to disclosure under the Freedom of Information Act.

Bobby Wayne Stone v. State of South Carolina
2018-CP-43-1025

Notice and Motion to Compel Pursuant to Rule 37, SCRC

Attachment 3

**April 27, 2023 from Hannah Freedman, with copy of
April 18, 2023 letter (Without Attachments)**

Angela Brown

From: Hannah Freedman <hannah@justice360sc.org>
Sent: Thursday, April 27, 2023 12:41 PM
To: Angela Brown
Cc: Charles Grose; Melody Brown
Subject: Re: Bobby Wayne Stone v. State of South Carolina
Attachments: 2023.04.18 Stone Discovery Production.pdf

Good afternoon,

Thank you for letting us know. Our discovery responses went out in the mail on April 18th; I apologize if they have yet to reach your office. Please find a copy attached to this email, and of course, please do not hesitate to contact us should you have any questions regarding the discovery or otherwise. I hope you all have a nice end to the week.

Sincerely,
Hannah Freedman

On Apr 27, 2023, at 11:23 AM, Angela Brown <abennett@scag.gov> wrote:

Counsel, please find attached the state's letter pursuant to Rule 11(a), SCRCP for production of documents related to Bobby Wayne Stone. A copy of this letter will be placed in today's mail addressed to each of you.

Thank you,

Angela Bennett Brown, Administrative Coordinator II
Office of the South Carolina Attorney General
Criminal Division | Office 803-734-0368 | Abennett@scag.gov
P.O. Box 11549 | Columbia, SC 29211

<image001.png>

This email, together with any attachments, may be legally privileged. If you have received it in error, please notify the sender immediately, and then delete it from your system. This email and any replies to this email may be subject to disclosure under the Freedom of Information Act.

<03277630.pdf>

April 18, 2023

Melody J. Brown, Esq.
Ed Brown, Esq.
P.O. Box 11549
Columbia, S.C. 29211

RE: Bobby Stone v. State of South Carolina, Case No. 2018-CP-43-01025

Dear Counsel:

Please find enclosed the requested discovery regarding Mr. Bobby Stone. There are three (3) packets included. Please let us know if you have any questions.

Respectfully,



Cierra Negron-Saullo
Legal Assistant

Enclosure

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER THIRD JUDICIAL CIRCUIT

RECORDED
2023 MAY 11 PM 4:23

Bobby Wayne Stone, #5051 JAMES C. CAMPBELL 2018-CP-43-1025
CLERK OF COURT
SUMTER COUNTY, S.C. *Capital PCR Action*

Applicant,)

v.)

State of South Carolina,)

Respondent.)

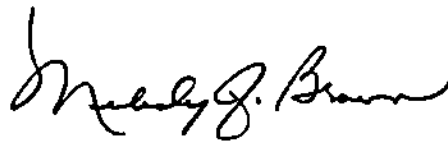
AFFIDVAIT OF SERVICE

1. I am counsel for Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Notice and Motion to Compel Pursuant to Rule 37, SCRPC, Attachments to the Motion, Motion Cover Sheet and Certificate of Service in the above-captioned matter on the following attorneys via email and by depositing same in the United States mail, postage prepaid:

E. Charles Grose, Jr., Esquire
305 Main Street
Greenwood, South Carolina 29646
charles@groselawfirm.com

Hannah Freedman, Esquire
Justice 360
900 Elmwood Avenue, Suite 200
Columbia, South Carolina 29201
hannah@justice360sc.org

DATED this 8th day of May, 2023.



Melody J. Brown
Senior Assistant Deputy Attorney General

THE STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

Bobby Wayne Stone,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2018-CP-43-001025

Response in Opposition to the State's
Motion to Compel Discovery Pursuant to
Rule 37, SCRCP

RECORDED
2023 JUN 31 PM 2:41
CLERK OF COURT
SOUTH CAROLINA

To: The Honorable William P. Keesley, Presiding Judge by Special Assignment of the
South Carolina Supreme Court

Bobby Wayne Stone, an indigent, death-sentenced inmate, responds to the State's Motion
to Compel Discovery Pursuant to Rule 37, SCRCP ("Motion").

I. RELEVANT PROCEDURAL HISTORY.

Mr. Stone seeks post-conviction relief ("PCR") because he is ineligible for a death sentence
under the Eighth Amendment because he is a person with intellectual disability. *See Atkins v.*
Virginia, 536 U.S. 304 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003).¹ Both
Dr. Sara Boyd, Mr. Stone's retained expert, and Dr. Alicia Hall, the examiner designated by the
Department of Disabilities and Special Needs ("DDSN") opine that Mr. Stone meets the diagnostic
criteria for a person with intellectual disability.²

¹ Since *Atkins* and *Franklin*, the term "Intellectual Disability" has replaced the term "Mental
Retardation." *See, e.g., State v. Blackwell*, 420 S.C. 127, 135, n. 2, 801 S.E.2d 713, 717, n. 2
(2017):

² Concurrently with this response, Mr. Stone is filing a motion for a scheduling order. It is unclear
what discovery remains pending in this matter, as discovery has been ongoing since 2018 and the
evaluations have been concluded. Mr. Stone is ready and able to move to a hearing on his
application for post-conviction relief.

On March 6, 2023—more than three months after receiving Dr. Hall’s written report—the State served Respondent’s Request for Production of Documents requesting production several kinds of documents related to Mr. Stone’s claim that he is a person with intellectual disability and is therefore legally exempt from the death penalty. As set forth in Respondent’s Request for Production, several categories of documents were specifically exempted from production:

- a. Documents which have been provided to Applicant by the Office of the Attorney General, including copies of the documents the Attorney General provided to the South Carolina Department of Disabilities and Special Needs (DDSN) on or about December 9, 2020 with copies to Applicant at that time;
- b. Documents previously provided by Applicant in the October 8, 2020 disclosures to DDSN and provided to the Attorney General’s office at that time;
- c. The affidavit of Pamela Blume Leonard dated October 10, 2022, and provided by Applicant to the undersigned by email dated January 27, 2023.

Motion, Attachment 1, pp. 2-3.

On April 18, 2023, Mr. Stone responded to Respondent’s Request for Production of Documents by mailing the State copies of three documents: (a) curriculum vitae for Dr. Sara Boyd, (b) draft report authored by Dr. Boyd dated December 23, 2022, and (c) final report from Dr. Boyd dated April 10, 2023. Exhibit A. On April 27, 2023, the State wrote to Mr. Stone’s counsel about their belief that the response to the request for production was inadequate given the lack of a formal written response. Motion, Attachment 2. At the time, counsel for Mr. Stone was confused by the request and emailed the State:

Thank you for letting us know. Our discovery responses went out in the mail on April 18th; I apologize if they have yet to reach your office. Please find a copy attached to this email, and of course, please do not hesitate to contact us should you have any questions regarding the discovery or otherwise.

Exhibit B.

On May 8, 2023, the State filed the motion to compel. The State's main complaint is "no written response has been received as to 'each item or category' requested." Motion, p. 2, ¶ 4. In an effort to settle the pending motion compel without requiring further court intervention and oversight of the discovery process, Mr. Stone sent a formal written response to the State's Request for Production of Documents request on May 30, 2023. Exhibit C. Counsel for Mr. Stone also communicated with the State about resolving the discovery matter. Exhibit D.

II. LEGAL AUTHORITY.

This Court should deny the State's motion to compel. Pursuant to the South Carolina Rules of Civil Procedure, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . ." Rule 26(b)(1), SCRPC. The South Carolina Supreme Court recognizes the "scope of discovery is broad," but that "there are limits." *Oncology & Hematology Assoc. v. S.C. Dep't Health & Envtl. Control*, 387 S.C. 380, 387, 692 S.E.2d 920, 924 (2010). "Although the scope of discovery is broad, requests must show a reasonable expectation of obtaining information that will aid in the dispute's resolution. Thus, discovery requests must be 'reasonably tailored' to include only relevant matters." *Id.* at 388, 692 S.E.2d 924-25 (quoting *In re CSX Corp.*, 124 S.W.3d 149 (Tex. 2003)). In light of these limitations, the Court cautioned that "[t]he trial court abuses its discretion by ordering discovery that exceeds that permitted by the rules of procedure." *Id.*

To determine whether the State is entitled to the specific discovery requested, the Court must determine what is "relevant to the subject matter involved in the pending action." Rule 26(b)(1), SCRPC. However, parties are entitled to withhold information that would be otherwise

discoverable “by claiming that it is privileged or subject to protection as trial preparation material.” Rule 26(b)(5)(A), SCRCF.

In response to the motion to compel, Mr. Stone already complied with Respondent’s request for production at this juncture. *See* Exhibits A and C. To the extent the State believes that any response was inadequate, they have not informed Mr. Stone’s counsel of the reasons they believe the response to be inadequate, the reasons they consider Mr. Stone’s objections to be improper, or informed counsel of the items or documents they believe to be missing. Several specific documents were noted as exempted from the request. Counsel, when considering the prior productions, the exempted materials, and their most recent disclosure of Dr. Boyd’s report, draft report, and curriculum vitae are unaware of any other documents, besides those specifically objected to in Mr. Stone’s response to the request, that would need to be produced in response to this request for production. Court intervention appears unnecessary at this time without a more specific articulation from Respondent about what is believed to be missing or withheld.

To the extent the State seeks information regarding Dr. Boyd, the State has the information provided by Mr. Stone’s counsel to Dr. Boyd. *Compare* Motion, Attachment 1, p 3 (exempting materials provided to DDSN) *with* Exhibit C, p. 2, Request 1, ¶ (b) (noting “[t]he documents that counsel provided to DDSN are the same documents that counsel provided to Dr. Sara Boyd”).

Moreover, as set forth in Mr. Stone’s response to the request for production, to the extent the State seeks disclosure of any further documents produced by Pamela Blume Leonard in the course of her role as a mitigation investigator for Mr. Stone, such documents constitute work product and are exempt from disclosure. *See* Rule 26(b)(3),(5), SCRCF. *See also* *Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 294, 692 S.E.2d 526, 530 (2010) (“The attorney work product doctrine protects from discovery documents prepared in anticipation of litigation, unless

a substantial need can be shown by the requesting party"). In order to overcome the work product doctrine, the party requesting disclosure of such items must provide a showing that there is a substantial need of the materials and that [the party] is unable without undue hardship to obtain the substantial equivalent of the materials by other means." *Id.*

Ms. Leonard's materials were produced solely in anticipation of litigation as part of her role as a member of Mr. Stone's legal team. The State makes no showing that there is a substantial need for any materials produced by Ms. Leonard during the course of her work on this case. Nor have they articulated an undue hardship in obtaining the substantial equivalent of these materials. Finally, any further discovery into Ms. Leonard's mitigation investigation efforts that is broader than the limited discovery the undersigned has already consented to regarding the affidavit about her interview with Mrs. Mary Cook is irrelevant. Exhibit C, pp. 2-3, Request 2, ¶ (b); *see also* Exhibit D, p. 2.

III. CONCLUSION.

For the foregoing reasons, this Court should deny the State's motion to compel.

Respectfully submitted,

/s/ E. Charles Grose, Jr.
E. Charles Grose Jr. (66063)
The Grose Law Firm
305 Main Street
Greenwood, S.C. 29646
(864) 538-4466
charles@groslawfirm.com

/s/ Rosalind Major
Rosalind S. D. Major (106017)
Justice 360
900 Elmwood Ave., Suite 200
Columbia, S.C. 29201
(803) 765-1044
rosalind@justice360sc.org

July 28, 2023.

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)
)
Bobby Wayne Stone,)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2018-CP-43-001025

Certificate of Service

I certify that I have served a copy of this pleading on the State of South Carolina, by emailing at copy to counsel, at counsel's AIS email address, as reflected below:

Melody Jane Brown, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549
mbrown@scag.gov

Tommy Evans, Jr., Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211
tommyevansjr@scag.gov

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
(864) 538-4466

July 28, 2023
Greenwood, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Bobby Wayne Stone, #5051,
Applicant,

v.

State of South Carolina,
Respondent.

RECORDED

2023 SEP 29

PH 3: 26

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

C/A No. 2018CP4301025

**ORDER ON RESPONDENT'S
MOTION TO COMPEL**

Heard: September 12, 2023 in Lexington, South Carolina by Consent

Applicant's Attorneys: E. Charles Grose, Jr. and Rosalind Major

Respondent's Attorneys: Melody J. Brown, Tommy Evans, and Julianna Battenfield

Court Reporter: Digital – Melinda D. Jones

WPK
#1

The State moves to compel responses to its request for production. The requests, on their face, support the State's contention that non-privileged documents must be provided. However, in order to make the determination of what is protected, the Applicant's counsel must provide a privilege log and allow the court to conduct an *in camera* review. The privilege log and materials that are claimed to be privileged must be supplied to the court within 45 days in order to protect the claims of privilege.

This post-conviction relief (PCR) application seeks a determination of whether Bobby Wayne Stone, who has been sentenced to death, is a person with intellectual disability and therefore exempt from the death penalty under *Atkins v. Virginia*, 536 U.S. 304 (2002). Both Dr. Sara Boyd, Applicant's retained expert, and Dr. Alicia Hall, the examiner designated by the Department of Disabilities and Special Needs ("DDSN") have issued reports opining that the Applicant meets the diagnostic criteria for intellectual disability.

On March 6, 2023—more than three months after receiving Dr. Hall's written report—the

State served a Request for Production for production of several kinds of documents related to Applicant's claim. The State agreed that certain categories of documents are to be excluded from production:

- a. Documents which have been provided to Applicant by the Office of the Attorney General, including copies of the documents the Attorney General provided to DDSN on or about December 9, 2020 with copies to Applicant at that time;
- b. Documents previously provided by Applicant in the October 8, 2020 disclosures to DDSN and provided to the Attorney General's office at that time;
- c. The affidavit of Pamela Blume Leonard dated October 10, 2022, and provided by Applicant via email dated January 27, 2023.

The responses were due by Wednesday, April 5, 2023 under Rule 34(b), SCRPC.

Applicant did not meet that deadline. On April 18, 2023, counsel for Mr. Stone mailed to the State copies of three documents: (a) curriculum vitae for Dr. Sara Boyd, (b) draft report authored by Dr. Boyd dated December 23, 2022, and (c) final report from Dr. Boyd dated April 10, 2023. On April 27, 2023, the State objected to the lack of a formal written response. On May 8, 2023, after appropriate consultation, the State filed this motion to compel.

Counsel for Mr. Stone sent a formal written response to the State on May 30, 2023. At the hearing, the State clarified that it is seeking the entirety of Applicant's mitigation investigator's file, except what may be privileged.

DISCUSSION

Pursuant to the South Carolina Rules of Civil Procedure, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . ." Rule 26(b)(1), SCRPC. The South Carolina Supreme Court recognizes the "scope of discovery is broad," but that "there are limits." *Oncology & Hematology Assoc. v. S.C. Dep't Health & Envtl. Control*, 387 S.C. 380, 387, 692 S.E.2d 920, 924 (2010).

“Although the scope of discovery is broad, requests must show a reasonable expectation of obtaining information that will aid in the dispute’s resolution. Thus, discovery requests must be ‘reasonably tailored’ to include only relevant matters.” *Id.* at 388, 692 S.E.2d 924-25 (quoting *In re CSX Corp.*, 124 S.W.3d 149 (Tex. 2003)). In light of these limitations, the Court cautioned that “[t]he trial court abuses its discretion by ordering discovery that exceeds that permitted by the rules of procedure.” *Id.*

To determine whether the State is entitled to the specific discovery requested, the Court must determine what is “relevant to the subject matter involved in the pending action.” Rule 26(b)(1), SCRCP. However, parties are entitled to withhold information that would be otherwise discoverable “by claiming that it is privileged or subject to protection as trial preparation material.” Rule 26(b)(5)(A), SCRCP. Parties can discover trial preparation material, “only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means.” Rule 26 (b)(3), SCRCP.

The Applicant concedes that the State has made a showing that there is a substantial need for some of the underlying information requested as it relates directly to the underlying question of whether the Applicant is a person with intellectual disability. This includes information about names of people who might have information about the Applicant’s adaptive functioning. The Applicant argues that the State has failed to make a showing that it is unable to obtain the subsequent equivalent of the Applicant’s mitigation investigator’s file without undue hardship. The Applicant cites to interview memos mentioned by the State as establishing that the State has been able to obtain this information without access to the work product in the file of Applicant’s counsel.

The State contends that the absence of proper compliance is substantially interfering with development of the defense and delaying the investigation and ability to take complete depositions. (See Motion, p. 2-3). The State offered documents recounting their own independent investigative efforts. In an example that more information appears to be available, the State offered that its investigator located Applicant's former live-in girlfriend, Michelle Bailey Price. According to the investigative summary, Ms. Price indicated that she had information that directly goes to adaptive functioning, *i.e.*, that Mr. Stone "helped with bills and the cooking and cleaning," and indicated knowledge of at least some details going to school and work. (Hearing Court Exhibit, Investigative Notes, Interview of Michelle Bailey Price). This witness, however, does not appear as a source on the DDSN report dated December 1, 2022. The State asserted that it has tried to investigate the information in the exhibit, with little success, apart from the summary of information from Ms. Price. The State argues that obtaining potential leads on this subject have proven to be sparse.

WPK #4
The State asserted that the information that is of critical importance is information held by individuals best known to the Applicant –those individuals who knew him best – people with whom he spent time, worked, etc. The State argues that claims of work-product privilege must be preserved by providing a privilege log. Further, the State argues that Rule 26(b)(3), SCRPC, permits production of documents prepared for litigation, where the opposing party shows "substantial need ... and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means." *See also* Rule 26(b)(4)(B), SCRPC (may obtain "facts known or opinions held" by expert not to be called at trial upon Rule 35(b) showing or "showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means."). The State emphasized that it was not attempting to obtain impressions, but facts and identity of those who would have relevant facts.

The State also argued that relevant testing should be disclosed, including testing known or knowable to the Applicant's counsel from the trial or other PCR actions. This relates to the DSM-5-TR¹ provision that both IQ testing and neuropsychological testing should be considered in making a diagnosis of intellectual disability. The State maintains that any such testing was not disclosed to the State in prior actions because there was no allegation of intellectual disability. However, any such information would now be relevant and known, or certainly more knowable, by the Applicant than the State.

The State pointed out that the DDSN report reflected that the examiner considered the matter to be close and that adequate and complete information is critically important for reliable opinions. The State argued that the experts and the court should have all available information that may be discovered and produced in order to make informed determinations.

WR
#5 In opposing the motion, the Applicant argued that the materials submitted as a result of Respondent's investigation show the State has the ability to investigate without obtaining information that is the Applicant's work product. The Applicant noted that the discovery requests were not submitted until after the DDSN report was completed, and argued that the State had the opportunity to submit documentation to DDSN as the Applicant did.

FINDINGS AND CONCLUSIONS

The Court rejects the Applicant's argument that the discovery request was not timely. The parties were aware that DDSN was acting as the Court's witness and that the report would be shared with both parties. Further, the State has been candid in prior hearings and status conferences to advise that it would review the report in order to make an informed decision about whether the

¹ The American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition Text Revision (2022).

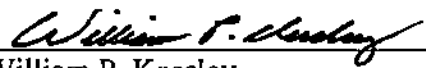
State would need an expert. There has not been a sufficient showing of undue delay.

The Court agrees that information held by individuals best known to the Applicant is critical. The reason that the Applicant wanted a qualified and trained investigator was to find and collect information relevant to adaptive functioning. It was reported to this Court that such investigation spanned several years with multiple interviews. Respondent's discovery of a witness who was a former live-in girlfriend was not identified as a source of information for the DDSN evaluation, and this indicates that more information of a critical nature might be available.

Experts should have all available information in order to make informed determinations and assist the Court. Eventually, the Court will be called upon to decide whether the Applicant has carried his burden of showing intellectual disability. As such, the Court should also have all the relevant and necessary information to make that determination.

#6 THEREFORE, IT IS ORDERED that the motion is granted; provided, however, that the Applicant is permitted to submit a privilege log and the related documents for *in camera* review within 45 days from the date that this order is filed. *See* Rule 26 (b)(5), SCRCP. If the privilege log and documents are submitted in a timely fashion, the Court plans to conduct the required review before determining whether disclosure of those specific documents is warranted and whether documents are protected by a privilege that is asserted.

AND IT IS SO ORDERED.



William P. Keesley
Circuit Court Judge

September 26, 2023

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Bobby Wayne Stone, #5051,
Applicant,

v.

State of South Carolina,
Respondent.

RECORDED

2024 JAN 22

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

C/A No. 2018CP4301025

**ORDER ON RESPONDENT'S
MOTION TO COMPEL
FOLLOWING *IN CAMERA* REVIEW**

Originally Heard: September 12, 2023 in Lexington, South Carolina by Consent
Applicant's Attorneys: E. Charles Grose, Jr. and Rosalind Major
Respondent's Attorneys: Melody J. Brown, Tommy Evans, and Julianna Battenfield
Court Reporter: Digital – Melinda D. Jones

WPH
#1

On September 26, 2023, following a hearing held on September 12, 2023, an order was issued requiring non-privileged documents to be provided to the State by the Applicant.¹ The order directed Applicant's counsel to provide responses, but allowed submission of a privilege log. The log and 18 documents were supplied, and an *in camera* review was conducted. Seven of the documents contained no claim of privilege. Having considered the log, and having compared the redacted and unredacted documents, the court finds that the claims of privilege are appropriate and that the redacted disclosure from the Applicant that was supplied to the court is sufficient, with one exception. The court does not find a sufficient reason being provided to redact the first line below the heading of "School Psychologists" that lists a name of a Ph.D., nor has a sufficient reason been shown to redact the year beside his name on Document 9 (Bates Stamp 000016).

THEREFORE, IT IS ORDERED that the redacted documents and privilege log supplied to the court for *in camera* review, with the one modification provided above, must be furnished to

¹ Reference is craved to the prior order for a more specific statement of the rulings.

the State within 10 days from the date that this order is received by Applicant's counsel from the Clerk of Court. A copy of the privilege log, the unredacted documents, and the redacted versions will be filed under seal to preserve them for any necessary review.

AND IT IS SO ORDERED.


William P. Keesley
Circuit Court Judge
By Special Assignment

January 11, 2014

#2

The Grose Law Firm, LLC
305 Main Street, Greenwood, South Carolina 29646

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

February 23, 2024

The Honorable James C. Campbell
Clerk of Court, Sumter County
215 North Harvin Street
Sumter, SC 29150-4974

Re: *Bobby Wayne Stone v. State of South Carolina*
Case Numbers 2018-CP-43-01205

1025

RECORDED
2024 FEB 26 PM 2:51
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Dear Mr. Campbell:

Enclosed for filing, please find Mr. Stone's Motion to Compel Discovery, along with certificates of service.

Thank you for your attention to this matter. Please let me know if I can answer any questions or provide additional information.

With kindest regards, I am

Yours very truly,

s/E. Charles Grose, Jr.
E. Charles Grose, Jr.

cc: The Honorable William P. Keesley (via email)
Rosalind Major, Esquire (via email)
Melody J. Brown, Esquire (via email)
Tommy Evans, Esquire (via email)

STATE OF SOUTH CAROLINA

COUNTY OF Sumter

Bobby Wayne Stone,

Plaintiff,

vs.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
3rd JUDICIAL CIRCUIT

CASE NO.: 2018-CP-43-001025

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

RECORDED
2024 FEB 26 PM 2:51
JAMES G. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Plaintiff's Attorney: Charles Grose, Bar No. 66063 Address: 305 Main Street, Greenwood, SC 29646 Phone: 864-538-4466 Fax 864-538-4405 E-mail: charles@groselawfirm.com Other: _____		Defendant's Attorney: Melody Brown, Bar No. _____ Address: S.C. Attorney General's Office Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Compel Estimated Time Needed: 15 Minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <i>s/E. Charles Grose, Jr.</i> Signature of Attorney for ☒ Plaintiff / ☐ Defendant Feb. 23, 2024 Date submitted			
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2024 FEB 26 PM 2:51

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Bobby Wayne Stone,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No. 2018-CP 43-001025

Applicant,

v.

**APPLICANT'S MOTION TO COMPEL
DISCOVERY**

State of South Carolina,

Respondent.

Pursuant to the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, S.C. Code § 17-27-150(B), the South Carolina Rules of Civil Procedure, and other applicable federal and state law, Applicant Bobby Wayne Stone, a death-sentenced inmate in capital post-conviction proceedings, requests this Court to compel production of withheld discovery. The factual and legal bases for this motion are set forth below.

I. Introduction

Bobby Stone was convicted and sentenced to death in January 1997, for the shooting death of a Sumter County Sheriff Deputy. On direct appeal, the South Carolina Supreme Court reversed the death sentence and remanded for sentencing. *State v. Stone*, 350 S.C. 442, 567 S.E.2d 244 (2002). Stone was resentenced to death on February 27, 2005. Stone's death sentence was then affirmed on direct appeal. *State v. Stone*, 376 S.C. 32, 665 S.E.2d 487 (2008). His claims for relief were denied during his initial post-conviction relief ("PCR") proceedings at the trial court, and the South Carolina Supreme Court affirmed the lower court's denial of post-conviction relief. *Stone v. State*, 419, S.C. 370, 798 S.E.2d 561 (2017). No *Atkins* claim was raised in any of these prior proceedings.

On June 5, 2018, Applicant initiated the current proceedings by filing a second-in-time PCR application raising an *Atkins* claim, which was discovered during the investigation in Applicant's federal proceedings but had not been exhausted in state court. This matter was initially before Judge Nettles, who denied Respondent's motion to dismiss the PCR action. After Judge Nettles recused himself from the case, the South Carolina Supreme Court ultimately appointed this Court to maintain exclusive jurisdiction over this matter going forward. The evidentiary hearing in this matter is currently anticipated to occur the week of June 10, 2024.

In preparation for the hearing in this case, Applicant served a Standard Set of Interrogatories and Applicant's First Requests for Production on Respondent on December 5, 2023. Exhibit A. On January 2, 2024, Respondent provided bare responses to each interrogatory and request for production. Exhibit B.¹ No information about what to anticipate from Respondent at the upcoming hearing was disclosed to Applicant through these responses.

II. Applicant has not been provided any information about witnesses that Respondent intends to call at the evidentiary hearing in this case

Respondent has informed undersigned counsel and the Court for well over a year that it intends to call at least some witnesses, including one or more expert witnesses, at Mr. Stone's *Atkins* hearing. Most recently, at the February 9, 2024 status conference, Respondent indicated that it intended to call possibly two expert witnesses and provide new information to D.D.S.N. At that status conference, Respondent told this Court that it would identify lay and expert witnesses during the week of February 13, 2024. When the identification of witnesses did not occur, on

¹ In essence, Respondent indicated that it would refuse to provide any information, including that already known to it and information that Applicant is entitled to obtain through discovery, until this Court issued its order on Respondent's Motion to Compel. This Court issued its order on January 11, 2024. Applicant served copies of those documents on Respondent on January 22, 2024 and filed a Certificate of Compliance with this Court on the same day. Respondent has not provided any discovery information of any kind to Applicant since receiving those documents.

February 16, 2024, Applicant's counsel sent a discovery letter to Respondent requesting the disclosure of the witnesses and amended responses to both his Interrogatories and Requests for Production by February 23, 2024 to resolve this matter without court intervention. Exhibit C. As of the filing of this motion, there has been no response from Respondent.

III. Applicant is entitled to this information, particularly who Respondent intends to call as witnesses at the evidentiary hearing.

Mr. Stone is entitled to know who the State intends to call as witnesses and information about what the basic facts and issues central to Respondent's case are. "The entire thrust of our discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party." *In re Anonymous Member of S.C. Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001) (citing *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997)). The discovery process is designed to "make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." *Id.* (quoting *United States v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958)). The South Carolina Rules of Civil Procedure clearly anticipate the disclosure of this information in the discovery period. *See* Rule 26, SCRPC. This obligation to disclose is ongoing as parties have a duty to "promptly" supplement any discovery responses as new information becomes known to the party. Rule 26(e), SCRPC.

Respondent's failure to comply with its discovery obligations has left undersigned counsel completely in the dark about what Respondent's case will consist of at the evidentiary hearing. The identity of the witnesses needs to be disclosed as soon as possible in order to allow counsel to depose the witnesses, do independent investigation into the veracity of their proposed testimony, and develop any necessary rebuttal evidence. Without this information, Applicant is unable to properly and fully prepare for the hearing in this case which could result in a delay of the

proceedings. As Respondent has neither responded to Applicant's correspondence about this or provided supplemental responses, as required by Rule 26(e), Applicant respectfully asks the Court to compel the disclosure of this information.

IV. Conclusion

For the foregoing reasons, Mr. Stone requests that this Court compel disclosure of all material requested in Applicant's Standard Set of Interrogatories and First Request For Production.

Respectfully submitted,

s/E. Charles Grose, Jr.
E. Charles Grose (66063)
Grose Law Firm
404 Main Street
Greenwood, SC 29646
(864) 538-4466

s/Rosalind S. D. Major
Rosalind S. D. Major (106017)
Justice 360
900 Elmwood Ave., Suite 200
Columbia, SC 29201
(803) 765-0144

Counsel for Bobby Wayne Stone

February 23, 2024

THE STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Bobby Wayne Stone,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2018-CP-43-001025

Certificate of Service

I certify that I have served a copy of this pleading on the State of South Carolina, by emailing at copy to counsel, at counsel's AIS email address, as reflected below:

Melody Jane Brown, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549
mbrown@scag.gov

Tommy Evans, Jr., Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211
tommyevansjr@scag.gov

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
(864) 538-4466

February 23, 2024
Greenwood, South Carolina

RECORDED
2024 FEB 26 PM 2:54
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Bobby Wayne Stone, #5051,
Applicant,

v.

State of South Carolina,
Respondent.

RECORDED

2024 APR -1

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY S.C.

C/A No. 2018CP4301025

**ORDER ON APPLICANT'S
MOTION TO COMPEL**

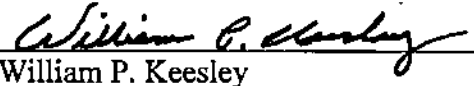
Heard: March 28, 2024 via Webex Virtual Courtroom, by consent
Applicant's Attorneys: E. Charles Grose, Jr. and Rosalind Major
Respondent's Attorney: Tommy Evans, Jr., Office of the Attorney General
Court Reporter: None – Webex Recording Procedure
Applicant's presence was waived

The applicant moves to compel the State to provide the names of the witnesses that it intends to call, including expert witnesses. The court directs that the names of all witnesses for the State be provided to the Applicant's attorneys, in writing or via email, no later than April 19, 2024.

A lay witness was named during the hearing, Ms. Michelle Bailey-Price, who was identified as the girlfriend of the decedent. An expert witness for the State was also named, Dr. Michael Vitacco, who was identified as a forensic psychologist in Augusta, Georgia. A consulting expert is reviewing materials, and the State indicated a need of about two weeks in order to decide whether that expert is expected to testify. The court is granting slightly over three weeks. Finally, there may have been an indication at a prior hearing about another lay witness, and if there are any other witnesses for the State, they must be named by April 19, 2024.

AND IT IS SO ORDERED.

March 28, 2024


William P. Keesley
Circuit Court Judge
By Special Assignment

The Grose Law Firm, LLC

305 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.

Phone: 864-538-4466 Fax: 864-538-4405

E-mail: charles@groselawfirm.com

Web: GroseLawFirm.com

July 10, 2024

The Honorable James C. Campbell
Clerk of Court, Sumter County
215 North Harvin Street
Sumter, SC 29150-4974

Re: *Bobby Wayne Stone v. State of South Carolina*
Case Numbers 2018-CP-43-~~01205~~
1025

Dear Mr. Campbell:

Enclosed for filing, please find Mr. Stone's Motion to Compel Discovery, along with certificates of service.

Thank you for your attention to this matter. Please let me know if I can answer any questions or provide additional information.

With kindest regards, I am

Yours very truly,

s/E. Charles Grose, Jr.
E. Charles Grose, Jr.

cc: The Honorable William P. Keesley (via email)
Rosalind Major, Esquire (via email)
Melody J. Brown, Esquire (via email)
Tommy Evans, Esquire (via email)

2024 JUL 15 PM 3:55
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

RECORDED

RECORDED

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

2024 JUL 15 PM 3:55
IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Bobby Wayne Stone,

JAMES C. CAMPBELL

CLERK OF COURT Case No. 2018-CP 43-001025

SUMTER COUNTY, S.C.

Applicant,

v.

**APPLICANT'S MOTION TO COMPEL
DISCOVERY**

State of South Carolina,

Respondent.

Pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, S.C. Code § 17-27-150(B), the South Carolina Rules of Civil Procedure, and other applicable federal and state law, Applicant Bobby Wayne Stone, a death-sentenced inmate in capital post-conviction proceedings, requests this Court to compel production of withheld discovery. The factual and legal bases for this motion are set forth below.

I. Introduction

Bobby Stone was convicted and sentenced to death in January 1997, for the shooting death of a Sumter County Sheriff Deputy. On direct appeal, the South Carolina Supreme Court reversed the death sentence and remanded for sentencing. *State v. Stone*, 350 S.C. 442, 567 S.E.2d 244 (2002). Stone was resentenced to death on February 27, 2005. Stone's death sentence was then affirmed on direct appeal. *State v. Stone*, 376 S.C. 32, 665 S.E.2d 487 (2008). His claims for relief were denied during his initial post-conviction relief ("PCR") proceedings at the trial court, and the South Carolina Supreme Court affirmed the lower court's denial of post-conviction relief. *Stone v. State*, 419, S.C. 370, 798 S.E.2d 561 (2017). No *Atkins* claim was raised in any of these prior proceedings.

On June 5, 2018, Applicant initiated the current proceedings by filing a second-in-time PCR application raising an *Atkins* claim, which was discovered during the investigation in Applicant's federal proceedings but had not been exhausted in state court. This matter was initially before Judge Nettles, who denied Respondent's motion to dismiss the PCR action. After Judge Nettles recused himself from the case, the South Carolina Supreme Court ultimately appointed this Court to maintain exclusive jurisdiction over this matter going forward. The evidentiary hearing in this matter is currently scheduled to occur on July 30, 2024.

In preparation for the hearing in this case, Applicant served a Standard Set of Interrogatories and Applicant's First Requests for Production on Respondent on December 5, 2023. Exhibit A. On January 2, 2024, Respondent provided bare responses to each interrogatory and request for production. Exhibit B.¹ No information about what to anticipate from Respondent at the upcoming hearing was disclosed to Applicant through these responses. Applicant filed a motion to compel and on March 28, 2024, this Court ordered Respondent disclose any and all witnesses it intended to call at the upcoming hearing to Applicant by April 19, 2024.

On April 17, 2024, Respondent informed Applicant that it intended to call Dr. Kimberly Kruse, PSYD, as an expert witness at the upcoming hearing and provided a copy of her curriculum vitae via email. Exhibit C at 2. Following this disclosure, Applicant served notices of depositions on both of Respondent's expert witnesses and requested "information about what [Dr. Kruse] has reviewed, any opinions she has rendered, and anything else previously requested in our standard

¹ In essence, Respondent indicated that it would refuse to provide any information, including that already known to it and information that Applicant is entitled to obtain through discovery, until this Court issued its order on Respondent's Motion to Compel. This Court issued its order on January 11, 2024. Applicant served copies of those documents on Respondent on January 22, 2024 and filed a Certificate of Compliance with this Court on the same day. Respondent has not provided any discovery information of any kind to Applicant since receiving those documents.

interrogatories and request for production of documents. Exhibit C at 3. Respondent responded that, pursuant to Rule 33, it was “not responsible for informing you of what Dr. Kruse has reviewed to form her opinion.” Exhibit C. at 4. After Applicant responded that the request for these documents was made in line with its request for production of documents, Respondent replied that “[s]he reviewed the discovery,” but provided no specific information about which documents she had received. Exhibit C at 5–9.

Applicant deposed Dr. Kruse on June 19, 2024. At Dr. Kruse’s deposition, she brought a copy of the documents she had been provided by the state, which was entered into the deposition record as Exhibit 2. *See* Exhibit D. Additionally, Dr. Kruse indicated on the record that she would provide Respondent with a list of cases she had previously testified in so that it could be provided to Applicant.

After reviewing their files and the documents previously provided in discovery in this case, Applicant identified eleven documents on the list Dr. Kruse brought to the deposition that they did not have from the previous discovery in this case. On June 28, 2024, Applicant emailed Respondent requesting the eleven identified documents and also requesting production of the case list Dr. Kruse mentioned at the deposition, in line with Applicant’s prior requests for production.² Exhibit E. On July 2, 2024, after receiving no response, Applicant sent a follow-up email

² Applicant specifically requested the documents with the following file names (as listed in Exhibit D): (1) Stone.Inmate Request (02587786xD2C78).pdf; (2) Stone.RTS Kiosk Messages (02588260xD2C78).pdf; (3) Bobby Stone SCDC No. 5051 (003) (02587795xD2C78).pdf; (4) Bobby Stone SCDC No. 5051AR (02587788xD2C78).pdf; (5) Bobby Stone SCDC No. 5051 (003) (02587789xD2C78).pdf; (6) IMG_0221 (03377568xD2C78).jpg; (7) IMG_0222 (03377569xD2C78).jpg; (8) IMG_0217 (03377567xD2C78).jpg; (9) IMG_0205 (03377566xD2C78).jpg; (10) IMG_0204 (03377571xD2C78).jpg and; (11) IMG_0203 (03377570xD2C78).jpg.

requesting these documents. Exhibit F. Respondent has yet to reply to either of Applicant's requests for this discovery.

II. Applicant is entitled to this information, which Respondent has known about as requested discovery since December 5, 2023, and for which Respondent has offered no valid reason for not producing.

"The entire thrust of our discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party." *In re Anonymous Member of S.C. Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001) (citing *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997)). The discovery process is designed to "make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." *Id.* (quoting *United States v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958)). South Carolina Rule of Civil Procedure³⁴ allows for the exchange of documents and electronically stored information between the parties as part of the discovery process without requiring court intervention. Rule 34, SCRCP. The South Carolina Rules of Civil Procedure clearly anticipate the disclosure of this information in the discovery period. *See* Rule 26, SCRCP. This obligation to disclose is ongoing as parties have a duty to "promptly" supplement any discovery responses as new information becomes known to the party. Rule 26(e), SCRCP.

Mr. Stone is entitled to the requested documents pursuant to his First Requests for Production. Exhibit A. In those requests, which were made in line with Rule 34, Applicant requested, *inter alia*, "[t]he reports and/or summaries of the experts retained . . . in preparation for the post-conviction relief hearing and any and all documents, notes, files, tests, reports and/or written and recorded materials upon which the expert has relied in reaching his or her opinion." Exhibit A at 13. This is the precise kind of information recognized as relevant and contemplated as discoverable in Rule 34.

While Respondent had not disclosed Dr. Kruse at the time of its initial response to Applicant's request for production, that does not absolve it of its continuing obligation to "promptly" supplement any discovery responses as it came to know new information. Rule 26(e), SCRCF. Respondent provided the requested documents to Dr. Kruse on April 5, 2024. *See* Exhibit D. Despite this, Respondent did not produce any of those documents to Applicant; instead just saying that she had reviewed "the discovery." Exhibit C at 5. Following Dr. Kruse's deposition, Applicant attempted to make this discovery production less burdensome for Respondent by comparing Dr. Kruse's list with their own files and requesting only eleven specific documents from the thirteen-page list of files she received that were not identifiable from their files and the previous discovery in this case. Nevertheless, Respondent has ignored Applicant's requests and their ongoing obligation to provide discovery responsive to Applicant's First Request for Production.

These files are directly relevant to the work Dr. Kruse has done in this case and any opinions she may offer at the upcoming hearing in this case, which is currently scheduled for July 30, 2024. Without this information, Applicant is unable to properly and fully prepare for the hearing in this case which could result in a delay of the proceedings. As Respondent has neither responded to Applicant's correspondence about this or provided supplemental responses, as required by Rule 26(e), Applicant respectfully asks the Court to compel the disclosure of this information as well as any other responsive documents that have been provided to Dr. Kruse since her June 19, 2024 deposition.

III. Conclusion

For the foregoing reasons, Mr. Stone requests that this Court compel disclosure of all material requested in Applicant's First Request For Production.

Respectfully submitted,

s/E. Charles Grose, Jr.

E. Charles Grose (66063)

Grose Law Firm

305 Main Street

Greenwood, SC 29646

(864) 538-4466

s/Rosalind S. D. Major

Rosalind S. D. Major (106017)

Justice 360

900 Elmwood Ave., Suite 200

Columbia, SC 29201

(803) 765-0144

Counsel for Bobby Wayne Stone

July 10, 2024

THE STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Bobby Wayne Stone,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2018-CP-43-001025

Certificate of Service

RECORDED
2024 JUL 15 PM 3:50
JAMES C. CAMPBELL
CLERK OF COURT
SOUTH CAROLINA

I certify that I have served a copy of this pleading on the State of South Carolina by emailing at copy to counsel, at counsel's AIS email address, as reflected below:

Melody Jane Brown, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549
mbrown@scag.gov

Tommy Evans, Jr., Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211
tommylevansjr@scag.gov

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
(864) 538-4466

July 10, 2024
Greenwood, South Carolina



RECORDED
2024 JUL 17 PM 3:30
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ALAN WILSON
ATTORNEY GENERAL

July 12, 2024

The Honorable James C. Campbell
Sumter County Clerk of Court
Sumter County Judicial Center
215 North Harvin Street
Sumter, South Carolina 29150

Re: Bobby Wayne Stone v. State of South Carolina
Case No: 2018-CP-43-1025

Dear Mr. Campbell:

Enclosed please find, for filing in your office, the original and one (1) copy of Respondent's Motion for Date Certain Determination for Finalizing Discovery, along with Proof of Service for filing in your office in connection with the above-referenced case.

Please file the original motion and return a copy marked accordingly to me in the self-addressed envelope provided for your convenience.

Sincerely,

s/ Tommy Evans, Jr.
Tommy Evans, Jr.
Assistant Attorney General

:dmd

Enclosures

cc: The Honorable William P. Keesley (w/encls.)
E. Charles Grose, Jr., Esq. (w/encls.)
Allison Franz, Esq. (w/encls.)
Victim Advocacy Division

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

RECORDED

2024 JUL 17 PM 3:30 CASE NO. 2018-CP-43-001025

BOBBY WAYNE STONE,

vs.

STATE OF SOUTH CAROLINA,

Defendant.

JAMES S. CAMPBELL
Plaintiff,)
JAMES S. CAMPBELL
Attorney at Law,)
S.C.)
MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney:

E. Charles Grose, Jr. & Allison Franz, Esq., Bar
No. 66063 & 105189

Address:

305 Main St., Greenwood, SC 29646
900 Elmwood Ave., Columbia, SC
Phone: 864-538-4466 Fax 864-538-44058
803-765-1044

E-mail: chasgrose@gmail.com Other:
allison@justice360sc.org

Defendant's Attorney:

Tommy Evans, Jr., Bar No. 65282

Address:

P.O. Box 11549, Columbia, SC 29202
Phone: 803-734-6305 Fax 803-734-4035
E-mail: TommyEvansJr@scag.gov Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

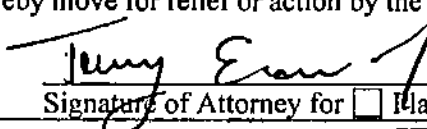
Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff/☒ Defendant

July 12, 2024
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☒ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
Bobby Wayne Stone,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)

RECORDED
2024 JUL 17 PM 3:31
JAMES B. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No.: 2018-CP-43-001025

**MOTION FOR DATE CERTAIN
DETERMINATION FOR FINALIZING
DISCOVERY**

The Respondent at this time will move for this court to set a date for the finalizing any discovery in the above referenced case. There has been ongoing discussion between the parties regarding discovery that has been shared or not shared. Neither side wishes to receive discovery at the last hour right before the hearing without the ability to prepare. This Court has set a date for July 30, 2024, for this case to be heard. In order not to burden the Court with any further discovery motions, Respondent respectfully requests that this Court set a date certain for the finalization of discovery. As part of this order the Respondent would request that any discovery revealed after this date would not be allowed into evidence.

Respectfully submitted,

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General

By: s/ Tommy Evans, Jr.
TOMMY EVANS, JR.
Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6305

ATTORNEYS FOR RESPONDENT

July 12, 2024
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Bobby Wayne Stone,

Applicant,

vs.

State of South Carolina,

Respondent.

RECORDED
IN THE COURT OF COMMON PLEAS
2024 JUL 17 PM 3:01
Case No.: 2018-CP-43-001025
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

PROOF OF SERVICE

I, **Donna D'Alessio**, an employee of the Respondent and legal assistant to Tommy Evans, Jr., of counsel for the Respondent, the Motion for Date Certain Determination for Finalizing Discovery has been forwarded to Appellant's counsel, to:

E. Charles Grose, Jr., Esq.
The Grose Law Firm
305 Main Street
Greenwood, SC 29646

Allison Franz, Esq.
Justice 360
900 Elmwood Ave, Suite 200
Columbia, South Carolina 29201

I further certify that all parties required by Rule to be served have been served.

This 12th day of July, 2024.

Respectfully submitted,

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General

By: s/ Tommy Evans, Jr.
TOMMY EVANS, JR.
Assistant Attorney General
Office of the Attorney General
P.O. Box 11549

Columbia, SC 29211-1549
(803) 734-6305

ATTORNEYS FOR RESPONDENT

July 12, 2024
Columbia, South Carolina



ADVANCING EQUALITY IN THE
CRIMINAL JUSTICE SYSTEM

900 ELMWOOD AVENUE
SUITE 200
COLUMBIA, SC 29201

OFFICE 803.765.1044
WWW JUSTICE360SC.ORG

July 22, 2024

The Honorable James C. Campbell
Sumter County Judicial Center, third floor
215 N. Harvin Street
Sumter, SC 29150

RECORDED

2024 JUL 25 P 3: 31

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Re: *Bobby Wayne Stone v. State of South Carolina*, No. 2018-CP-43-001025

Dear Mr. Campbell,

Please find enclosed the original and a copy of Applicant's pre-trial brief for filing, along with a certificate of service. Also enclosed is a pre-addressed and pre-stamped envelope for the return of the file stamped copy.

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

Sincerely,

Rosalind Major

Enclosure

COPIES RETURNED

THE STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Bobby Wayne Stone,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2018-CP-43-1025

RECORDED

2024 JUL 25 P 3:31

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

APPLICANT'S PRE-TRIAL BRIEF

Applicant, Bobby Wayne Stone, by and through undersigned counsel, submits his Pre-Trial Brief pursuant to South Carolina Rules of Civil Procedure 16(c) as follows:

I. PRE-TRIAL MATTERS

This Court has scheduled a hearing to commence on July 30, 2023 to determine whether Applicant, Bobby Wayne Stone, is a person with intellectual disability and therefore ineligible for the death penalty pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002). Applicant is represented by E. Charles Grose of The Grose Law Firm, 305 Main Street, Greenwood, SC 29464, and Rosalind S.D. Major of Justice 360, 900 Elmwood Avenue, Suite 200, Columbia, SC, 29201. At the time of submission of this pre-trial brief, Applicant is unaware of any issues that need to be addressed at the commencement of the evidentiary hearing on July 30, 2024.

II. STATEMENT OF FACTS

Applicant, Bobby Stone, is an indigent, death-sentenced inmate. His application for post-conviction relief raises a single ground for relief, which is that his "death sentence violates the Eighth and Fourteenth Amendments to the United States Constitution because he is intellectually disabled." See *Atkins v. Virginia*, 536 U.S. 304 (2002); *Hall v. Florida*, 572 U.S. 701 (2014); *Moore v. Texas*, 581 U.S. 1 (2017); see also *Franklin v. Maynard*, 356 S.C. 276, 278–79, 588

S.E.2d 604, 605 (2003) (defining intellectual disability¹ as “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period”); S.C. Code Ann. § 16-3-20(c)(b)(10) (2018) (same).

This Court previously granted the State’s motion to require Mr. Stone to submit to an evaluation by the South Carolina Department of Disabilities and Special Needs (“DDSN”) to determine whether he is a person with intellectual disability. Pursuant to the order, the examiner was to use appropriate testing and review of documents, materials, and witnesses to determine whether Mr. Stone is a person with intellectual disability under the definition provided in S.C. Code Ann. § 16-3-20. *Id.* The Court’s Order also noted that either party may retain their own mental health experts regarding the intellectual disability claim. *Id.*

On behalf of DDSN, Dr. Alicia V. Hall conducted a clinical interview of Mr. Stone on March 23, 2021. Mr. Stone’s interview lasted approximately two hours and thirty minutes. After analyzing the interview with Mr. Stone, conducting her own interviews with multiple witnesses, and reviewing available records,² Dr. Hall concluded that Mr. Stone meets all the criteria to be diagnosed as a person with intellectual disability because Mr. Stone has significant deficits in intellectual and adaptive functioning, and these deficits manifested themselves during Mr. Stone’s developmental period.

Mr. Stone also retained a licensed clinical psychologist, Dr. Sara Boyd, to conduct an

¹ The Supreme Court has instructed that the term “intellectual disability” replaces and has the same meaning as what was previously referred to as “mental retardation.” *Hall*, 572 U.S. at 704 (citing *Rosa’s Law*, 124 Stat. 2643).

² Relevant records include schooling, criminal, and medical records, as well as affidavits from relevant educational officers and physicians. The records also include both childhood IQ scores and recent IQ testing conducted by Dr. Sara Boyd on November 9, 2017 (including the underlying raw data from Dr. Boyd’s IQ test administration).

Atkins evaluation. Dr. Boyd interviewed Mr. Stone and administered the *Wechsler Adult Intelligence Scale—Fourth Edition (WAIS-IV)*. Based on the WAIS-IV test, and other information she reviewed, Dr. Boyd found Mr. Stone to have significantly subaverage intellectual functioning. Dr. Boyd reviewed all available records and conducted interviews with ten collateral witnesses who observed Mr. Stone’s functioning across various domains and time periods of his life (e.g., family, friends, teachers, and coworkers). Like Dr. Hall, Dr. Boyd also concluded that Mr. Stone meets the formal diagnostic criteria for intellectual disability according to South Carolina law, the DSM-5³, and the American Association on Intellectual and Developmental Disabilities (“AAIDD”) criteria.

III. RELEVANT LEGAL AND CLINICAL STANDARDS

The Eighth Amendment’s prohibition against cruel and unusual punishment bars “the execution of persons with intellectual disability.” *Hall*, 572 U.S. at 704; *Atkins*, 536 U.S. at 321. The United States Supreme Court held in *Atkins*, and has reaffirmed in a series of decisions since creating the categorical bar in 2002, that executing individuals with intellectual disability “contravenes the Eighth Amendment, for to impose the harshest of punishments on [these defendants] violates his or her inherent dignity as a human being.” *Hall*, 572 U.S. at 708; *Atkins*, 536 U.S. at 321 (concluding that “the Constitution places a substantive restriction on the State’s power to take the life of a[n intellectually disabled] offender”) (quotation omitted). The Court’s holding is rooted in the class characteristics of persons with intellectual disability, including their

³ The DSM-5 refers to the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders, which was published in 2013. Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (2013) [hereinafter DSM-5]. The DSM is a diagnostic tool to create a standard classification system of mental disorders for mental health professionals published by the American Psychological Association. Between different editions of the DSM, the American Psychological Association releases a Text Revision edition of the clinical standards. The most recent text revision was released in 2022. Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition Text Revision (2022) [hereinafter DSM-5-TR].

“diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.” *Atkins*, 536 U.S. at 318. These diminished capacities led the Court to conclude that individuals with intellectual disability are “categorically less morally culpable than the average criminal.” *Id.* at 316; *Hall*, 572 U.S. at 726. Therefore, “no legitimate penological purpose is served by executing the intellectually disabled” because the severity of the appropriate punishment necessarily depends on the offender’s culpability. *Hall*, 572 U.S. at 704; *Atkins*, 536 U.S. at 320.⁴

While the Court left to the States “the task of developing appropriate ways to enforce the restriction on executing the intellectually disabled,” that discretion “must be informed by” and cannot be inconsistent with “the medical community’s diagnostic framework.” *Moore*, 581 U.S. at 12–13 (internal quotation marks omitted); *Hall*, 572 U.S. at 719, 721. South Carolina has defined intellectual disability as “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.” S.C. Code Ann. § 16-3-20(c)(b)(10) (2018). This definition comports with the medical community’s generally accepted definition of intellectual disability which identifies three required

⁴ Specifically, neither deterrence nor retribution justifies executing individuals who have intellectual disability. *Atkins*, 536 U.S. at 319–20; *Hall*, 572 U.S. at 708–09. First, individuals with intellectual disability will not be deterred from committing crimes by the threat of capital punishment because they are less able to “make the calculated judgments that are the premise for the deterrence rationale.” *Hall*, 572 U.S. at 709. They are less able to “process the information of the possibility of execution as a penalty and, as a result, control their conduct based upon that information.” *Atkins*, 536 U.S. at 320. Second, executing individuals with intellectual disability does not accomplish retributive goals because their diminished intellectual capacity “lessens moral culpability and hence the retributive value of the punishment.” *Hall*, 572 U.S. at 709; *Atkins*, 536 U.S. at 319. Moreover, individuals with intellectual disability face a “special risk of wrongful execution” because they are more likely to give false confessions, are often poor witnesses, and are less able to give meaningful assistance to their counsel. *Atkins*, 536 U.S. at 305, 318, 320; *Hall*, 572 U.S. at 709.

diagnostic criteria: (1) significantly subaverage intellectual functioning; (2) deficits in adaptive functioning; and (3) onset of these deficits during the developmental period.⁵ *Hall*, 572 U.S. at 710; *Atkins*, 536 U.S. at 308, n.3; *Moore*, 581 U.S. at 7; *Franklin*, 356 S.C. at 278–79, 588 S.E.2d at 605 (affirming the applicable definition of intellectual disability in the death penalty statute, defining that condition as “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period”); DSM-5-TR at 37.

Since *Atkins* was decided, every court in South Carolina to address an *Atkins* issue has relied on the clinical definitions, instructions, and guidelines of the American Psychiatric Association (“APA”) and the AAIDD to inform the court’s analysis in compliance with the Supreme Court’s instruction in *Hall* and *Moore*.⁶ See, e.g., Order Finding Defendant Mentally

⁵ Experts conducting intellectual disability evaluations in the *Atkins* context are similarly required to conform to current clinical standards. Courts consistently find experts who fail to adhere to clinical consensus not credible. See, e.g., *Smith v. Sharp*, 935 F.3d 1064, 1081–82 (10th Cir. 2019) (rejecting an expert’s assertion that the defendant was malingering where the expert was relatively inexperienced with persons with intellectual disability, was at odds with more experienced experts, and could not conclude that the defendant did not have intellectual disability); *In re Lewis*, 417 P.3d 756, 763–64 (Cal. 2018) (rejecting expert’s race-based IQ score adjustment because doing so is inconsistent with the AAIDD’s recommendations); *United States v. Roland*, 281 F. Supp. 3d 470, 516 (D. N.J. 2017) (dismissing expert opinions about test invalidity because they did not rely on “standard clinical practice” for assessing test validity); *Oats v. State*, 181 So. 3d 457, 469–70 (Fla. 2015) (discounting the testimony of an expert who incorrectly testified that a diagnosis before the age of 18 was required and applied a strict IQ cutoff of 70 contrary to *Hall*); *Thomas v. Allen*, 614 F. Supp. 2d 1257, 1298–99 (N.D. Ala. 2009), aff’d, 607 F.3d 749 (11th Cir. 2010) (rejecting the state’s expert’s opinion because he failed to follow clinically accepted methods and “simply ignored the generally-accepted practice of all competent professionals.”).

⁶ The APA and the AAIDD (formerly known as the American Association of Mental Retardation (“AAMR”) from 1987 to 2007) are the leading psychological organizations in the country on Intellectual Disability. The current medical diagnostic standards for intellectual disability—upon which courts routinely rely—are best found in the current editions of the AAIDD’s clinical manual and the APA’s “Diagnostic and Statistical Manual of Mental Health Disorders” (the “DSM”). See, e.g., *Atkins*, 536 U.S. at 308, 353; *Hall*, 572 U.S. at 704–05, 722; *Moore*, 581 U.S. at 7.

Retarded in *South Carolina v. Pearson*, 96-GS-32-3338; Order Granting Post-Conviction Relief in *Franklin v. South Carolina*, 96-CP-45-117, Order Granting Post-Conviction Relief in *Elmore v. South Carolina*, 05-CP-24-1205; Order Granting Post-Conviction Relief in *Simmons v. South Carolina*, 05-CP-18-1368; Order Granting Post-Conviction Relief in *Bell v. State*, 03-CP-04-1857; Order Finding Defendant Intellectually Disabled in *State v. Brown*, 2011-GS-30-1523.⁷ Both the APA and the AAIDD employ the same three-pronged definition embodied in South Carolina’s statutory definition and embraced by the South Carolina Supreme Court in *Franklin*.

a. Prong 1—Significantly Subaverage Intellectual Functioning.

The first prong of the intellectual disability inquiry considers whether the individual displays significantly subaverage intellectual functioning. A person meets the subaverage intellectual functioning component if his or her full-scale IQ is “approximately two standard deviations below the mean, considering the standard error of measurement for the specific assessment instruments used and the instrument’s strengths and limitations.” INTELLECTUAL DISABILITY: DEFINITION, CLASSIFICATION, AND SYSTEMS OF SUPPORTS 29 (AAIDD, 12th ed. 2021) [hereinafter AAIDD-12].

This is typically understood as a score of approximately 75 and below. *See Atkins*, 536 U.S. at 309 n.5. However, the proper interpretation of an IQ score involves much more than observing the reported result and taking that number at face value. Courts and clinicians both recognize that determining whether an individual has significantly subaverage intellectual functioning must take into consideration more than an individual’s strict IQ score, as “intellectual disability is a condition, not a number.” *Hall*, 572 U.S. at 723; *Moore*, 581 U.S. at 15; *Brumfield v. Cain*, 576 U.S. 305, 316 (2016); DSM-5-TR at 42.

⁷ Undersigned counsel will provide these unpublished orders to the Court for review upon request.

There are a variety of other factors regarding the administration of an IQ test—including whether the appropriate testing instrument was used, whether the test was properly administered and scored, and so forth—which must be evaluated to determine the validity of any particular score. *See Hall*, 572 U.S. at 722–23 (courts “must afford these test scores the same studied skepticism that those who design and use the tests do, and understand that an IQ test score represents a range rather than a fixed number”). When assessing whether a defendant meets the subaverage intellectual functioning prong, courts thus must also consider these factors that can affect the reliability of IQ test scores, including the nature of the test, the method by which the test was administered, the standard error of measurement, the Flynn Effect, and the accuracy of reported test scores.⁸

i. Nature of the Test and Method of Testing

A court making an intellectual disability determination must consider the nature of the IQ tests in the individual’s records and the method of testing. Only scores from individually administered standardized IQ testing provide reliable data for assessing whether a person meets the intellectual functioning prong.⁹ “Standardized, individually administered intelligence tests . . .

⁸ Several courts have found that an individual was a person with intellectual disability despite having IQ test scores in the 80s or 90s. *See, e.g., Pruitt v. Neal*, 788 F.3d 248, 253–54, 270 (7th Cir. 2015) (finding the defendant intellectually disabled with IQ scores of 52, 76 and 93); *Wilson*, 170 F. Supp. 3d at 363, 392 (E.D.N.Y. 2016) (finding the defendant intellectually disabled with reported IQ scores of 84, 78, 78, 70, 80, 84, 76 and 80); *Jackson v. Payne*, 9 F.4th 646 (8th Cir. Aug. 13, 2021) (finding the defendant intellectually disabled with reported IQ scores of 81, 74, 73, and 72); *Branch v. Epps*, 844 F. Supp. 2d 762, 772–73 (N.D. Miss. 2011) (finding the defendant intellectually disabled with reported IQ scores of 68, 84, 68 and 60); *People v. Superior Court*, 155 P.3d 259, 261, 267–69 (Cal. 2007) (finding the defendant intellectually disabled with reported IQ scores of 81, 92, 78 and 77); *Pennsylvania v. Gibson*, 925 A.2d 167, 170–71 (Pa. 2007) (finding the defendant intellectually disabled with reported IQ scores of 67, 81 and 74); *Nixon v. State*, No. SC15-2309, 2017 WL 462148, at *1 (Fla. Feb. 3, 2017) (holding that an IQ score of 80 is not dispositive of a finding of significantly subaverage intellectual functioning).

⁹ Tests that have been used to measure intellectual ability in educational contexts, for example, to

provide a ‘global (general factor) IQ measure of intellectual functioning.’” *Coleman v. State*, 341 S.W.3d 221, 244–45 (Tenn. 2011) (quoting INTELLECTUAL DISABILITY: DEFINITION, CLASSIFICATION, AND SYSTEMS OF SUPPORTS 5, 41 (AAIDD, 11th ed. 2010) [hereinafter AAIDD-11]). The Weschler Adult Intelligence Scales (WAIS) IQ test has been repeatedly identified as one of the “gold standard” tests for accurately and reliably determining IQ. *Hall*, 572 U.S. at 734; *Rivera v. Quarterman*, 505 F.3d 349, 361 (5th Cir. 2007); *United States v. Smith*, 790 F. Supp. 2d 482, 491 (E.D. La. 2011).

However, courts must be mindful that even the “gold standard” tests are not without limitations. Because IQ tests are “indirect rather than direct measures of intelligence” these tests are not “actuarial determinations . . . and contain a potential for error.” *Coleman*, 341 S.W.3d at 245. Therefore, the IQ score – standing alone – is not the only factor considered and should not be the only deciding factor in determining if prong one has been satisfied.¹⁰ *Id.* at 246. *See also* DSM-5-TR at 42.

ii. The Standard Error of Measurement

Each IQ test has an inherent “standard error of measurement” or “SEM,” which must be

address questions about the student’s academic strengths and limitations and what types of special educational services should be provided should not be relied upon when evaluating whether a defendant has significantly subaverage intellectual functioning. The clinical literature has long been clear that global measures of intelligence (i.e., “a full-scale IQ test”) should be used for making a diagnosis of intellectual disability. AAIDD-12 at 28-29. The Wechsler series of IQ tests, which include the Wechsler Adult Intelligence Scale (WAIS), is one example of an individually administered, comprehensive and standardized measure of full-scale IQ. By contrast, group administered and/or short-form screening instruments, such as the Slosson Intelligence Test or the Peabody Picture Vocabulary Test, and others, do not measure global intelligence. *See* DSM-5-TR at 38 (“Invalid scores may result from the use of brief intelligence screening tests or group tests.”).

¹⁰ The practice of “using intelligence tests in isolation is analogous to using only the LDL serum cholesterol level to diagnose risk of heart disease. It is clear that other factors (e.g., HDL) must [also] be considered.” RANDY W. KAMPHAUS, CLINICAL ASSESSMENT OF CHILD AND ADOLESCENT INTELLIGENCE 586 (2d ed. 2005).

considered. As the Supreme Court explained in *Hall*:

The SEM reflects the reality that an individual's intellectual functioning cannot be reduced to a single numerical score. For purposes of most IQ tests, the SEM means that an individual's score is best understood as a range of scores on either side of the recorded score. The SEM allows clinicians to calculate a range within which one may say an individual's true IQ score lies. . . . Even when a person has taken multiple tests, each separate score must be assessed using the SEM, and the analysis of multiple IQ scores jointly is a complicated endeavor.

572 U.S. at 713. The standard error of measurement is “a statistical fact, a reflection of the inherent imprecision of the test itself.” *Moore*, 581 U.S. at 13; *Hall*, 572 U.S. at 713. “The imprecision in the testing instrument means that an individual's score is best understood as a range of scores on either side of the recorded score . . . within which one may say an individual's true IQ score lies.” *Moore*, 581 U.S. at 13. The standard error of measurement for IQ tests is considered to be up to five points on either side of the IQ score. AAIDD-12 at 35–36; Simon Whitaker, *Error in the Estimation of Intellectual Ability in the Low Range Using the WISC-IV and WAIS-III*, 48 *Personality and Individual Differences* 517, 517 (2010). This error means that the true IQ score of an individual who obtains a score of 70 on a test can lie anywhere between the range of 65 to 75. AAIDD-12 at 35–36.

Often, defendants have multiple IQ scores from various points in their lives. In *Hall*, the Court noted that “the analysis of multiple IQ scores jointly is a complicated matter.” *Hall*, 572 U.S. at 714. The Court went on to say, however, that “when a defendant's IQ test *score* falls within the test's acknowledged and inherent margin of error, the defendant must be able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits.” *Id.* at 723 (emphasis added). In both *Hall* and *Moore*, the Court relied on the defendant's lowest test score range to hold that analysis of adaptive deficits was required. Lower courts have followed the

mandate in *Hall* and *Moore* and require analysis of adaptive functioning if at least one test score produces an IQ range that falls at or below 75.¹¹

iii. The Flynn Effect

Standardized IQ tests are most often normalized, or “normed,” to reflect a bell curve distribution with a mean of 100 and a standard deviation of 15. See Geraldine W. Young, *A More Intelligent and Just Atkins: Adjusting for the Flynn Effect in Capital Cases*, 65 VAND. L. REV. 615, 621–22 (2012). Thus, “an individual’s score is meaningful only in relation to the scores of other people who took the same test.” *Smith*, 813 F.3d at 1184. The Flynn Effect refers to the widely recognized phenomenon that IQ scores increase roughly 0.33 points per year as IQ tests age and test norms become obsolete. AAIDD-11 at 37; AAIDD-11 User’s Guide at 23; DSM-5-TR at 38; see also *United States v. Hardy*, 762 F. Supp. 2d 849, 858 (E.D. La. 2010). There is a clinical consensus that IQ scores obtained with older tests must be corrected for norm obsolescence. AAIDD-12 at 37; Randy G. Floyd et al., “Theories and Measurement of Intelligence,” in L.M. Glidden et al. eds., APA HANDBOOK OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES: FOUNDATIONS (2021). Flynn correction requires that IQ scores be adjusted downward approximately 0.33 points for every year after a test has been normed. For example, if a person obtains a score of 70 in 2020 on an IQ test that was normed in 2010, the score should be corrected to 66.7 ($0.33 \times 10 \text{ years} = 3.3$; $70 - 3.3 = 66.7$). AAIDD-12 at 42. Both the AAIDD and DSM-5-

¹¹ See, e.g. *United States v. Wilson*, 170 F. Supp. 3d 347 (E.D.N.Y. 2016) (“the court interprets *Hall* to require a prong 2 analysis if any IQ test, evaluated in the context of a 95% [confidence] interval, reflects a range falling to 70 or below.”); *Jackson v. Payne*, 9 F.4th 646, 653 (8th Cir. 2021) (holding that “the district court ‘had to move on to consider [Jackson’s] adaptive functioning’” because the lower end of his full range of scores fell below 70 (quoting *Moore*)); *Wright v. State*, 256 So. 3d 766, 771 (Fla. 2018) (noting that the Court “followed *Moore*’s subsequent instructions” and considered adaptive functioning because one of the defendant’s scores resulted in a range the lower end of which fell below 70).

TR recognize the Flynn Effect. AAIDD-12 at 42; DSM-5-TR at 38. South Carolina courts have also consistently recognized the validity of the Flynn Effect.¹²

The purpose of correcting for the Flynn Effect “is not to correct for possible changes in actual intelligence in an individual or subgroup but rather to ensure that all individuals are measured by the same yardstick when being compared to an arbitrary (70 or 75) general population diagnostic criterion.” *United States v. Hardy*, 762 F. Supp. 2d 849, 858 (E.D. La. 2010) (quoting Stephen Greenspan, *Flynn-Adjustment is a Matter of Basic Fairness: Response to Roger B. Moore, Jr.*, Psychol. Mental Retardation & Dev’l Disabilities, Vol. 32, No. 3 at 8 (2007) (S-29)). Clinicians have recognized the elevated importance of the Flynn Effect in cases involving a possible intellectual disability diagnosis because people with lower IQ may be particularly susceptible to the Flynn Effect as research suggests that the Flynn Effect may be slightly larger in lower ranges of intellectual functioning. *Hardy*, 762 F. Supp. 2d at 859 (citing Caroline Everington & J. Gregory Olley, *Implications of Issues in Atkins v. Virginia, Defining and Diagnosing Mental Retardation*, 8 J. Forensic Psychol. Practice 1, 7 (2008), and Tomoe Kanaya et al., *The Flynn Effect and U.S. Policies: The Impact of Rising IQ Scores on American Society Via Mental Retardation Diagnoses*, 58 AM. PSYCHOL. 778, 787 (2003)); see also Tomoe Kanaya et al., *The Rise and Fall of IQ in Special Ed: Historical Trends and Their Implications*, 41 J. School Psychol. 453, 456 (2003).

¹² See, e.g., Order Finding Defendant Mentally Retarded in *South Carolina v. Pearson*, 96-GS-32-3338; Order Granting Post-Conviction Relief in *Franklin v. South Carolina*, 96-CP-45-117, Order Granting Post-Conviction Relief in *Elmore v. South Carolina*, 05-CP-24-1205; Order Granting Post-Conviction Relief in *Simmons v. South Carolina*, 05-CP-18-1368; Order Granting Post-Conviction Relief in *Bell v. State*, 03-CP-04-1857; Order Finding Defendant Intellectually Disabled in *State v. Brown*, 2011-GS-30-1523.

iv. Accuracy of Test Scores

In order to determine whether a test score is reliable, clinicians must consider a variety of factors. AAIDD-12 at 38–40. Examiners must use clinical judgment in interpreting test scores, which means that they must consider any sources of potential measurement error and corroborate information using multiple sources. *Id.* at 40. Possible sources of measurement error that could cause an IQ score to be unreliable include the environment in which the test was given, the behavior of both the examiner and the participant, and errors in score calculation. AAIDD-12 at 38–40. Clinicians should also look to the specificity and sensitivity of the testing instruments to determine their accuracy. *Id.* at 40.

At the evidentiary hearing, Mr. Stone will present evidence sufficient to establish by a preponderance of the evidence that he has significantly subaverage intellectual functioning.

b. Prong 2—Deficits in Adaptive Behavior.

The second element of a diagnosis of intellectual disability is deficits in adaptive behavior. In order to show a deficiency in adaptive behavior, an individual must demonstrate deficits in one of three skill areas: conceptual, social, or practical. *Moore*, 581 U.S. at 15–16; AAIDD-12 at 31; DSM-5-TR at 37. The social domain “involves awareness of others’ thoughts, feelings, and experiences; empathy; interpersonal communication skills; friendship abilities; and social judgment.” DSM-5-TR at 42. The practical domain “involves learning and self-management across life settings, including personal care, job responsibilities, money management, recreation, self-management of behavior, and school and work task organization.” *Id.* The conceptual domain includes “competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving, and judgment in novel situations.” *Id.* Adaptive deficits exist when at least one domain “is sufficiently impaired that ongoing support is needed for the

person to perform adequately across multiple environments, such as home, school, work, and community.” DSM-5-TR at 42.

Both courts and clinicians recognize adaptive behavior as a crucial element of an intellectual disability diagnosis because it reveals deficits that may not be readily apparent on the sole basis of an IQ score. *Hall*, 572 U.S. at 712 (“[T]he medical community accepts that [adaptive behavior] evidence can be probative of intellectual disability, including for individuals who have an IQ test score above 70.”), 722 (“IQ test scores are approximations of conceptual functioning but may be insufficient to assess reasoning in real-life situations and mastery of practical tasks.”); DSM-5-TR at 42; AAIDD-12 at 34. No single source of information will sufficiently capture enough data for such a finding, and thus the clinical guidelines call for a “comprehensive assessment of adaptive behavior.” *United States v. Roland*, 281 F. Supp. 3d 470, 530 (D.N.J. 2017).

i. Focusing on Adaptive Deficits

In evaluating adaptive behavior, courts should look broadly at the individual’s typical ability to learn and perform basic skills and to adjust his behavior to changing situations. AAIDD-12 at 29–31, 38–39. Individuals with intellectual disabilities will typically demonstrate both strengths and limitations in adaptive behavior. AAIDD-12 at 40. However, courts must focus on an individual’s adaptive *deficits* rather than his adaptive strengths. *Moore*, 581 U.S. at 15 (reversing the lower court’s prong 2 analysis because the lower court “overemphasized Moore’s perceived adaptive strengths” and “the medical community focuses the adaptive-functioning inquiry on adaptive *deficits*”); *see also* AAIDD-12 at 40 (“Recognizing that all people with ID have strengths, but that the diagnosis of ID focuses on their significant limitations.”).

ii. Retrospective Assessments

The clinical guidelines recognize that some people with intellectual disability, particularly

mild intellectual disability, might not have been properly evaluated and diagnosed during the developmental period, making retrospective assessment necessary. AAIDD-12 at 41. When assessing adaptive functioning deficits, clinicians and courts alike should consider a wide array of information from as many sources as possible, including school records, medical records, and previous psychological evaluations; or interviews with multiple people who know the person, such as family members, teachers, neighbors, or job supervisors. AAIDD-12 at 39, 41–42; *see also Jackson*, 9 F.4th at 658 (recognizing “The DSM-5 anticipates that standardized testing for adaptive functioning is not always an available option” and courts must look at “additional information”); *United States v. Davis*, 611 F. Supp. 2d 472, 492 (D. Md. 2009) (finding that “the best way to retroactively assess a defendant’s adaptive functioning is to review the broadest set of data possible, and to look for consistency and convergence over time.”). Although standardized tests for adaptive functioning are useful, the clinical standards recognize that they are not always feasible to conduct, AAIDD-12 at 38–39, and courts should nevertheless “assess such test scores in light of the circumstances of each case and in light of all other relevant evidence regarding adaptive functioning” *Reeves v. State*, 226 So. 3d 711, 742 (Ala. Crim. App. 2016); DSM-5-TR at 42.

iii. Prison Behavior

The adaptive behavior assessment must focus on actual everyday functioning in the outside world, not functioning in a controlled setting, such as a prison. *Moore*, 581 U.S. at 16 (cautioning against reliance on adaptive strengths developed in prison); AAIDD-12 at 42 (“[A]daptive behavior refers to typical functioning and not to capacity or maximum functions” and “limitations in present functioning are considered within the context of community environments typical of the individual’s age peers and culture.”). Clinicians widely acknowledge that it is not appropriate to

analyze an individual's adaptive functioning based off behavior in prison. *Moore*, 581 U.S.at 16; *Montgomery*, 2014 WL 1516147, at *48 (noting that clinicians consider prison to be an “artificial environment” that does not provide a reliable assessment of intellectual disability); DSM-5-TR at 42 (“Adaptive functioning may be difficult to assess in a controlled setting (e.g. prisons, detention centers); if possible, corroborative information reflecting functioning outside those settings should be obtained.”); *Davis*, 611 F. Supp. 2d at 494; *Smith*, 790 F. Supp. 2d at 517-18. Thus, although an individual may exhibit certain adaptive strengths in prison, courts should note that such observations are not appropriately representative of the individual's true adaptive functioning.

iv. Masking

Examining a wide variety of information is particularly important because individuals with intellectual disability often attempt to compensate for their limitations through behaviors that mask their disability. ROBERT B. EDGERTON, *THE CLOAK OF COMPETENCE: STIGMA IN THE LIVES OF THE MENTALLY RETARDED* 158–59 (1st ed. 1967). Often, individuals will “mask their deficits and attempt to look more able and typical than they actually are.” *United States v. Hardy*, 762 F. Supp. 2d 849, 854–55 (E.D. La. 2010). “It has long been recognized in the field that one of the most commonly encountered characteristics of individuals who have intellectual disability is their intense motivation to mask their limitations.” James W. Ellis, Caroline Everington, & Ann M. Delpha, *Evaluating Intellectual Disability: Clinical Assessments in Atkins Cases*, 46 Hofstra L. Rev. 1305, 1367 (2018); *see also* AAIDD-11 at 51–52 (“[P]ersons with higher IQ scores are more likely to mask their deficits and attempt to look more able and typical than they actually are.”). Quite simply, there is such an intense stigmatization of individuals who are labeled as intellectually disabled that such individuals will go to tremendous lengths to hide their intellectual and functional deficits and present themselves as functioning normally, which may make intellectual disability

difficult to detect. *Id.* at 1367–68; AAIDD-11 at 52 (“‘[M]ental retardation’ has been a particularly stigmatizing and pejorative label that leads most individuals with this label to fight hard not to be identified as ‘MR.’”). Higher-IQ individuals with intellectual disability “frequently present a mixed competence profile. They typically have a history of academic failure and marginal social and vocational skills.” *Hardy*, 762 F. Supp. 2d at 854–55 (quoting Robert L. Schalock et al., *User’s Guide: Mental Retardation Definition, Classification and Systems of Supports—10th Edition* 18 (AAIDD 2007)). Moreover, people with intellectual disabilities “typically have a strong acquiescence bias or a bias to please that might lead to erroneous patterns of responding.” *Id.*

v. Stereotypes

Stereotypes of what individuals with an intellectual disability should look or act like “should spark skepticism.” *Moore*, 581 U.S. at 18 (rejecting the Texas appellate court’s reliance upon lay stereotypical perceptions of Moore’s intellectual functioning including education in normal classrooms, his father’s reaction to his academic challenges and his sister’s perceptions of his intellectual disabilities) (citing AAIDD-11); *see also* AAIDD-11 at 26, 151 (criticizing the “incorrect stereotypes” that persons with intellectual disability “never have friends, jobs, spouses, or children”). Incorrect—but widely held—stereotypes about people with intellectual disability include that they (1) “look and talk differently from persons from the general population”; (2) “are completely incompetent and dangerous”; (3) “cannot do complex tasks”; (4) “cannot get driver’s licenses, buy cars, or drive cars”; (5) “do not and cannot support their families”; (6) “cannot romantically love or be romantically involved”; (7) “cannot acquire vocational and social skills necessary for independent living”; and (8) “are characterized only by limitations and do not have strengths that occur concomitantly with the limitations.” *Id.*; *Roland*, 281 F. Supp. 3d at 480;

AAIDD-11 at 26.¹³

vi. Comorbid Disorders and Related Conditions

Additionally, the existence of comorbid disorders is not evidence that a person does not also have an intellectual disability. *Moore*, 581 U.S. at 17; *Brumfield*, 576 U.S. at 319–22 (noting that the diagnostic criteria for intellectual disability do not include an exclusion criterion; therefore, the diagnosis should be made regardless of and in addition to the presence of another disorder).¹⁴ Similarly, the existence of a learning disability in someone’s school records also cannot necessarily exclude an individual from a diagnosis of intellectual disability.¹⁵ While learning and intellectual disabilities are often confused, the two disorders are fundamentally different: intellectual disability is a neurodevelopmental disorder that profoundly affects an individual’s actual intelligence, while a learning disability interferes with an individual’s academic performance but does not necessarily reflect intellectual or adaptive deficits. DSM-5-TR at 37–38, 76–78. Accordingly, evaluators should take care to carefully and thoroughly assess whether a person meets the diagnostic criteria for intellectual disability using knowledgeable informants to collect information and context about an individual’s functioning. DSM-5-TR at 42, 45.

At the evidentiary hearing, Mr. Stone will present evidence sufficient to establish by a preponderance of the evidence that he has adaptive functioning deficits.

¹³ People with Intellectual Disability are also stereotyped as being dangerous. See Patrick Corrigan et al., *An Attribution Model of Public Discrimination Toward Persons with Mental Illness*, 44 J. HEALTH & SOC. BEHAV. 162, 163 (2003).

¹⁴ In particular, attention deficit hyperactivity disorder (ADHD) is one of the disorders that co-occurs most frequently in individuals with intellectual disability. DSM-5-TR at 45.

¹⁵ There are many reasons why a person with intellectual disability might not have received an earlier diagnosis of intellectual disability during his school years and instead might be classified in his school records as having a specific learning disability. See AAIDD-11 at 102.

c. Prong 3—Onset During the Developmental Period.

Finally, because intellectual disability is a developmental disorder, the third prong of the definition is onset during the developmental period¹⁶. See DSM-5-TR at 37; AAIDD-12 at 33. To satisfy this prong, there must be some evidence that an individual's deficits began during the developmental period. The analysis of age of onset does not require an individual to have been diagnosed with intellectual disability during the developmental period; instead, the signs of intellectual disability need only have *manifested* before that age. See *Brumfield*, 576 U.S. at 308; *Oats*, 181 So. 3d at 469; AAIDD-12 at 41–42. The age of onset prong also does not require that a defendant show deficient IQ scores (or any IQ scores) during the developmental period. See AAIDD-12 at 41–42; *Roland*, 281 F. Supp. 3d at 478; *Nicholson v. Branker*, 739 F. Supp. 2d 839, 857 (E.D.N.C. 2010); *State v. Covington*, 2019 WL 368915, at *3 (Sup. Ct. N.V. Jan. 22, 2019) (holding that the defendant was intellectually disabled although the defendant was not placed in special education classes nor subjected to intelligence testing before the age of eighteen).

At the evidentiary hearing, Mr. Stone will present evidence sufficient to establish by a preponderance of the evidence that he had subaverage intellectual functioning and deficits in adaptive functioning that onset in the developmental period.

CONCLUSION

In post-conviction proceedings, the applicant bears the burden of proving his allegations by a preponderance of the evidence. Over the course of the evidentiary hearing, Mr. Stone anticipates presenting the Court with evidence demonstrating that he meets all three prongs of the

¹⁶ South Carolina's legal definition of intellectual disability uses the term "developmental period," without reference to a specific age. S.C. Code. Ann. § 16-3-20(c)(B)(10). Similarly, the DSM-5-TR does not assign a specific age to the developmental period. DSM-5-TR at 37, 42. The AAIDD defines the developmental period "operationally as before the individual attains age 22." AAIDD-12 at 32.

above definition of intellectual disability, by a preponderance of the evidence, and he is therefore exempt from the death penalty in accordance with *Atkins*.

Respectfully submitted,

s/E. Charles Grose, Jr.
E. Charles Grose (66063)
Grose Law Firm
404 Main Street
Greenwood, SC 29646
(864) 538-4466

s/Rosalind S. D. Major
Rosalind S. D. Major (106017)
Justice 360
900 Elmwood Ave., Suite 200
Columbia, SC 29201
(803) 765-0144

Counsel for Bobby Wayne Stone

July 22, 2024.

THE STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Bobby Wayne Stone,

vs.

State of South Carolina,

Respondent.

RECORDED

2024 JUL 25 P 3:31

JAMES O. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2018-CP-43-001025

Certificate of Service

I certify that I have served a copy of this pleading on the State of South Carolina, by emailing at copy to counsel, at counsel's AIS email address, as reflected below:

Melody Jane Brown, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549
mbrown@scag.gov

Tommy Evans, Jr., Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211
tommyevansjr@scag.gov

By s/Rosalind S.D. Major

Rosalind S.D. Major
Justice 360
900 Elmwood Ave., Suite 200
Columbia, SC 29201
(803) 765-1044

July 22, 2024
Columbia, South Carolina



ALAN WILSON
ATTORNEY GENERAL

April 18, 2025

The Honorable James C. Campbell
Sumter County Clerk of Court
215 N. Harvin Street
Sumter, South Carolina 29150

Re: Bobby Wayne Stone v. State of South Carolina
Case No: 2018-CP-43-1025

Dear Mr. Campbell:

Enclosed please find, for filing in your office, the original and one (1) copy of Respondent's Pre-Trial Brief, along with a Certificate of Service for filing in your office in connection with the above-referenced case.

Please file the original brief and return a certified copy to me in the self-addressed envelope provided for your convenience.

Sincerely,

Melody J. Brown
Senior Assistant Deputy Attorney General

MJB/abb
Enclosure

cc: The Honorable William P. Keesley (Via email only)
E. Charles Grose, Jr., Esquire (Via email and US Mail)
Rosalind S.D. Major, Esquire (Via email and US Mail)
Victim Advocacy Division

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Bobby Wayne Stone, #5051,)
) C/A No. 2018-CP-43-01025
) (Capital PCR)
) Applicant,)
v.)
State of South Carolina,)
) Respondent.)
) **RESPONDENT'S PRE-TRIAL BRIEF**

The captioned matter is a successive capital post-conviction relief action. This Court will hold an evidentiary hearing beginning Tuesday, July 30, 2024, in the Sumter County Courthouse, on Applicant's one claim – that he is intellectually disabled¹ and exempt from execution. *See Atkins v. Virginia*, 536 U.S. 304 (2002).² Respondent, State of South Carolina, respectfully submits this pre-trial brief in advance of the hearing.

Relevant Procedural History

On July 3, 2019, this Court issued an order for an evaluation by neutral court examiners from the South Carolina Department of Disabilities and Special Needs (“DDSN”), that was filed July 9, 2019. The Court also issued a follow-up order on December 30, 2019, that was filed on

¹ The medical community and courts previously referenced an individual with this condition as being “mental retarded,” but the modern term is “intellectually disabled.” The specific condition is the same, and the terms can be used interchangeably, with preference for the modern “intellectual disability.” *See Hall v. Fla.*, 572 U.S. 701 (2014); *State v. Stanko*, 402 S.C. 252, 283, 741 S.E.2d 708, 724 n.1 (2013) (recognizing change in terminology).

² This Court has previously heard arguments on, and denied, the State's motion to dismiss the action. However, the State submits that after the hearing and consideration of the evidence presented, this Court may still apply the procedural bars – especially where the hearing dispositively shows that the evidence relied upon was available to prior counsel – either as a basis for dismissal or as an alternative basis for dismissal. *See McCoy v. State*, 401 S.C. 363, 370, 737 S.E.2d 623, 627 (2013) (though summary dismissal without a hearing was improper where there was a question on whether there was “sufficient reason” to allow a successive action, the “claim may ultimately prove to be untimely, successive, or perhaps unsuccessful on the merits”).

January 6, 2020. This Court received a written report by the DDSN examiner, Dr. Alicia V. Hall, PhD, on December 2, 2022. Dr. Hall, while acknowledging the difficulty of the determination based on the information and informants provided, and the interviews conducted, opined as follows:

A determination of whether Mr. Stone is intellectually disabled is within the domain of the Court. However, I respectfully offer the opinion, based on the totality of the data, that Mr. Bobby Wayne Stone, meets the diagnostic criteria for intellectual disability as defined in the South Carolina Code of Laws.

(DDSN Report, at 12).

Since that time, this Court has been advised that additional investigations and interviews have been conducted and additional experts in the field have been consulted. There is a split of opinion in this matter. Therefore, this Court will be considering both pronounced differences and nuanced differences in these various opinions in making credibility determinations and/or the assignment of weight. The State submits this pre-trial brief to address the correct framework for the required legal determination. Further, this brief includes an additional issue to be briefed by the Respondent: Whether *Atkins* should be revisited given the Supreme Court's own recognition of the lack of guidance in defining the Eighth Amendment determination to be made.

Atkins v. Virginia

Atkins is not an intellectual disability case; rather, *Atkins* is an Eighth Amendment case. 536 U.S., at 321. To be sure, the Supreme Court has referenced "prevailing clinical standards" in determining the condition. *Id.* See also *Moore v. Texas*, 581 U.S. 1, 15 (2017). Yet, the Court has been equally clear that clinical opinions neither dominate nor control the decision to be made under the Eighth Amendment. *Hall v. Fla.*, 572 U.S. 701, 721 (2014) ("views of medical experts ... do not dictate the Court's decision"); *id.* ("The legal determination of intellectual disability is

distinct from a medical diagnosis, but it is informed by the medical community's diagnostic framework"); *id.*, at 736 n. 12 ("organizations might recommend examining evidence of adaptive behavior even when an IQ is above 70, but that sheds no light on what the *legal* rule should be given that most States appear to require defendants to prove each prong separately by a preponderance of the evidence") (emphasis in original); *see also Moore*, 581 U.S., at 13 ("being informed by the medical community does not demand adherence to everything stated in the latest medical guide"); *id.*, at 22 ("clinicians, not judges, should determine clinical standards; and judges, not clinicians, should determine the content of the Eighth Amendment") (Roberts, C.J., dissenting). *Cf. Kansas v. Crane*, 534 U.S. 407, 413 (2002) ("the science of psychiatry, which informs but does not control ultimate legal determinations, is an ever-advancing science, whose distinctions do not seek precisely to mirror those of the law"). Notably, the medical profession recognizes its own limitations in legal matters.

The American Psychological Association in the *Diagnostic and Statistical Manual of Mental Disorders*, 5th Ed., Text Revision, (DSM-5-TR), 29, sets out in its "Cautionary Statement for Forensic Use of DSM-5," that there exists an "imperfect fit between the questions of ultimate concern to the law and the information contained in a clinical diagnosis." The caution continues that "[i]n most situations, the clinical diagnosis of a DSM-5 mental disorder such as intellectual developmental disorder (intellectual disability) ... does not imply that an individual with such condition meets legal criteria for the presence of a mental disorder ... or specified legal standard...." *Id.* The conclusion is inescapable that the legal determination on exemption is separate and "distinct" from medical opinion. *See Hall, supra*. Thus, courts presented with evidence going to a claim of intellectual disability are guided by the same

principles that always guide admissibility of witness testimony, and factfinders are guided by the same principles that always guide credibility and weight.

Determining Intellectual Disability for Eighth Amendment Purposes

As recognized by the Supreme Court: “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*.” *Atkins*, 536 U.S. at 317 (emphasis added).³ ⁴ When interpreting the Eighth Amendment, the Supreme Court first looks to the States, particularly legislative enactments, for evidence that a certain, identified (or identifiable) category of defendants may be exempt from capital punishment. *Id.*, at 311. *See also Roper v. Simmons*, 543 U.S. 551, 564-565, 578 (2005) (in excluding “offenders who were under the age of 18 when their crimes were committed” from capital punishment referencing consensus from the States); *Enmund v. Fla.*, 458 U.S. 782, 789, 798 (1982) (consulting legislative patterns in excluding those defendants who “did not kill or intend to kill” from capital punishment); *Coker v. Georgia*, 433 U.S. 584 (1977) (consulting legislation patterns in exempting defendants from capital punishment in a non-homicide case). This is true when the Court also considered whether there was a consensus on

³ Interestingly, on return to state court, a Virginia jury found *Atkins* did not carry his burden of proof to show that he was, in fact, mentally retarded. The Supreme Court of Virginia subsequently reversed for new proceedings, however, finding error in an expert’s qualification and in a jury instruction. The case ultimately resolved on a different basis which allowed *Atkins* to be sentenced to life imprisonment. As one commentator has noted: “Ironically, this decision had nothing to do with the issue addressed by the Supreme Court in his case - namely, the execution of mentally retarded individuals.” Judith M. Barger, *Avoiding Atkins v. Virginia: How States Are Circumventing Both the Letter and the Spirit of the Court’s Mandate*, 13 Berkeley J. Crim. L. 215, 223 (2008). As the title of the article suggests, many defense-oriented writings have posited that the States are not exempting as many defendants as should be exempted under a generous “spirit” of the law. *Id.* This again goes to the very limitations several members of our current Supreme Court have identified in the vague treatment given the exemption. As will be argued *infra*, that is a weighty reason that the exemption should be revisited, particularly as to what consensus truly exists.

⁴ The prevalence of true intellectual disability occurrences are limited estimated at “approximately 1%” of the general population, DSM-5, at 38, or stated differently, “10 per 1,000” individuals, DSM-5-TR, 43.

generally accepted ways of measuring intellectual disability such as a bright line cut off on IQ scores. *Hall*, 572 U.S., at 721. Moreover, the Supreme Court expressly left to the States, not the medical profession, the method for determining the category of defendants protected by the exemption. *Atkins*, 536 U.S. at 317. The troubling deficiency, however, is that it did not clearly do more.

The Court has recognized that bright line rules are abrupt. *See Roper*, 543 U.S., at 574. That they can be. However, they have also provided much needed clarity as to the precise group that falls under a given exemption. The Court's reasoning in *Roper* as it determined another exemption to capital punishment is a good example:

Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the reasons we have discussed, however, a line must be drawn. The plurality opinion in *Thompson* drew the line at 16. In the intervening years the *Thompson* plurality's conclusion that offenders under 16 may not be executed has not been challenged. The logic of *Thompson* extends to those who are under 18. The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest.

Id. Thus, when defining categories for exemption, a line must be drawn. *Id.* Notably, the Court also utilized the age of 18 in the *Atkins* decision in defining the category for exemption. 536 U.S., at 318. The age determination may aid in differentiating between true intellectual disability and later acquired disabilities given that "neurocognitive disorders, which are characterized by a loss of cognitive functioning" differ from intellectual disability. *See DSM-5-TR*, 45. To be sure, nothing prevents diagnosis of both. It is simply that the diagnostic criteria for both must be met as they are separate and distinct conditions. *Id.* At any rate, the definition in *Atkins* is the

definition that the Supreme Court considered in finding a consensus for Eighth Amendment purposes.

South Carolina's Definition of Intellectual Disability for Atkins Claims

Our Supreme Court adopted as controlling in the capital context the definition of mental retardation reflected in S.C. Code Ann. § 16-3-20 (C)(b)(10), part of the murder statute's capital provisions: "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period." *Franklin v. Maynard*, 356 S.C. 276, 278, 588 S.E.2d 604, 605 (2003). Specifically:

"Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

S.C. Code Ann. § 16-3-20 (C)(b)(10).

This largely follows the clinical definition referenced in *Atkins*: "...clinical definitions of mental retardation require not only subaverage intellectual functioning, but also significant limitations in adaptive skills such as communication, self-care, and self-direction that became manifest before age 18." 536 U.S. at 318. The Supreme Court also noted the definition so phrased in *Atkins* was roughly the same as that announced by the American Association on Mental Retardation (AAMR); the American Psychiatric Association (APA), and consistent with the IQ range then identified in the DSM ("IQ level of 50-55 to approximately 70"). *Id.*, at 318 n. 3.⁵ It also generally follows the definition recognized by the American Association on

⁵ If one applies a true Eighth Amendment exemption analysis, "[a]t most, *Atkins* may be said to have prohibited the death penalty for those who were 'mentally retarded' based upon a national consensus about what society believed that meant in 2002." *Ex parte Segundo*, 663 S.W.3d 705, 712-13 (Tex. Crim. App. 2022). This is generally supported in the Supreme Court's treatment of the test. The Court has consistently referenced the condition as "the generally accepted, uncontroversial intellectual-disability diagnostic definition, which identifies three core elements: (1) intellectual-functioning deficits (indicated by an IQ score 'approximately two standard deviations below the mean'—i.e., a score of roughly 70—adjusted for 'the standard error of measurement,' ... ; (2) adaptive deficits ('the inability to learn basic

Intellectual and Developmental Disabilities (AAIDD). *Moore v. Texas*, 586 U.S. 133, 135 (2019).

Our Supreme Court has, in fact, recognized that the Supreme Court of the United States explained the definition upon which it found consensus, “‘which required not only sub-average intellectual functioning, but also significant limitations in adaptive skills such as communication, self-care, and self-direction that manifested before age eighteen.’” *State v. Blackwell*, 420 S.C. 127, 139, 801 S.E.2d 713, 719 (2017) (citing *State v. Stanko*, 402 S.C. 252, 286, 741 S.E.2d 708, 726 (2013)). Our Court adheres, however, to the statutory definition. *Id.* Further, our Court has reasoned that the Supreme Court’s *Moore* decision requires no different approach. *Id.*, 420 S.C. at 144, 801 S.E.2d at 721 n.11.

In particular, the Supreme Court in *Moore* was primarily concerned with application of non-medical factors for guidance. *Id.* One of the Supreme Court’s concerns in *Moore* was that the non-medical factors appeared to rest more on stereotypes than facts for clinical evaluation. *Moore*, 581 U.S., at 18; see also *Moore (II)*, 586 U.S., at 137. In example of the Texas court’s reliance on “stereotypes,” the Supreme Court compared the lower court ruling’s that “evidence that Moore ‘had a girlfriend’ and a job as tending to show he lacks intellectual disability,” with these sources: “AAIDD–11, at 151 (criticizing the ‘incorrect stereotypes’ that persons with intellectual disability ‘never have friends, jobs, spouses, or children’), and Brief for APA et al. as *Amici Curiae* 8 (“[I]t is estimated that between nine and forty percent of persons with intellectual

skills and adjust behavior to changing circumstances,’ ... and (3) the onset of these deficits while still a minor.” *Moore v. Texas*, 581 U.S. 1, 7 (2017) (citations omitted). See also *Hall*, 572 U.S., at 736 (noting though “organizations might recommend examining evidence of adaptive behavior even when an IQ is above 70, but that sheds no light on what the *legal* rule should be given that most States appear to require defendants to prove each prong separately by a preponderance of the evidence”) (emphasis in original). Accord *Shoop v. Hill*, 586 U.S. 45, 52 (2019) (*per curiam*) (vacating lower court opinion in a federal habeas corpus appeal where the Court of Appeals relied upon *Moore* to grant relief when *Moore* was not in existence when the state court decided the issue).

disability have some form of paid employment’).” 586 U.S., at 142. In other words, a superficial glance at such evidence is not sufficient. But neither is a superficial glance at stereotypical deficits. A robust look at the evidence is required.

Moreover, all three prongs are required to be met. Courts do not find a lone showing of difficulties in adaptive functioning to be sufficient. *Hall*, 572 U.S., at 737 n. 12 (“The longstanding views of professional organizations have also been that intellectual functioning and adaptive behavior are independent factors.”); *United States v. Roof*, 10 F.4th 314, 380 (4th Cir. 2021) (“Although ‘significant limitations in adaptive skills such as communication’ are part of the *Atkins* test, *id.*, they are not sufficient by themselves to render a defendant mentally incapacitated.”) (citing *Hall*, 572 U.S., at 711-14 (holding that mental incapacity per *Atkins* requires deficits in intellectual functioning *in addition to* deficits in adaptive functioning)). *Roof* attempted to fall under *Atkins* based on alleged limitations in function, though he had scored 125 in his IQ testing. 10 F.4th at 38. South Carolina has rejected a similar argument based on general “alleged mental abnormalities” other than intellectual disability. *Stanko*, 402 S.C. at 284-288, 741 S.E.2d at 724-726 (defendant’s claim of brain damage, though refuted by other evidence, with evidence arguably demonstrating his “inability to adapt,” would not support finding “an inability to communicate or care for himself adequately, or sub-average intellectual functioning”).

Consequently, a defendant bears the burden of showing all three prongs of intellectual disability distinctly to fall under the South Carolina definition for *Atkins* exemption.

Burden of Proof

In showing the above condition exists, the defendant (or in collateral action, the applicant) bears the burden of proof by a preponderance of the evidence. *Franklin*, 356 S.C. at

279, 588 S.E.2d at 606. Preponderance has been described as “the greater weight of the evidence.” *Blackwell*, 420 S.C. at 163, 801 S.E.2d at 732; *see also Frazier v. Frazier*, 228 S.C. 149, 168, 89 S.E.2d 225, 235 (1955) (“A ‘preponderance of the evidence’ stated in simple language, is that evidence which convinces as to its truth.”). *Accord* S.C. Code § 63-7-20 (for purposes of the Children’s Code, defining “preponderance of evidence” as that “when fairly considered, is more convincing as to its truth than the evidence in opposition”).

No Definitive Cause is Connected to Intellectual Disability

The DSM-5-TR at 45 sets out that “[a] diagnosis of intellectual developmental disorder [a/k/a “intellectual disability”] should not be assumed because of a particular genetic or medical condition.” *See also The Death Penalty and Intellectual Disability*, 80 (Edward A. Polloway, ed. 2015) (“identification of brain pathology, typically from neuropsychological test results, is not in itself sufficient to establish a diagnosis of ID”). That is not say that other conditions may appear. In fact, in true cases of intellectual disability, other mental conditions are “frequent.” DSM-5-TR, at 45. However, simple identification of a risk factor – physiological or environmental – does not warrant a diagnosis⁶ but may be a reason to further investigate. *Moore*, 581 U.S., at 16 (noting that “clinicians rely on such factors as cause to explore the prospect of intellectual disability”).

Flynn Effect

The Supreme Court has not accepted the *Flynn Effect* for discounting IQ scores. It has described the effect as “a controversial theory involving the inflation of IQ scores over time” that results in reducing scores. *Dunn v. Reeves*, 594 U.S. 731, 736 (2021). The only adjustment to scores that the Court has found must be applied is the standard error of measurement (SEM).

⁶ Even “[a] genetic syndrome linked to intellectual developmental disorder should be noted as a concurrent diagnosis” if an individual is given an intellectual disability diagnosis. DSM-5-TR, at 45.

Hall, supra; Moore, supra. That is not a clinical permissive step, but a limitation acknowledged by clinicians and by the testing instruments. *See Hall*, 572 U.S., at 723 (underscoring the significance of IQ testing, but including the caution that “in using these scores to assess a defendant’s eligibility for the death penalty, a State must afford these test scores the same studied skepticism that those who design and use the tests do”),⁷ *see also id.*, at 712 (“The professionals who design, administer, and interpret IQ tests have agreed, for years now, that IQ test scores should be read not as a single fixed number but as a range.”).

However, the *Flynn* effect is not the SEM, and it is not, under the Eighth Amendment analysis at issue, an adjustment that must be applied. Nor should it when viewed under current comments of the possibility of the effect in current manuals. For example, the DSM-5-TR, simply acknowledges that scores “may” be “affect[ed]” by “practice effects” and the “Flynn effect.” *Id.*, at 38. The text does not establish a norm for its application. In contrast, the text does acknowledge limitations in reliance on screening tests or group testing, and tests not “normed for the individual’s sociocultural background and native language.” *Id.* Further, the text cautions that “[i]ndividual cognitive profiles based on neuropsychological testing as well as cross-battery intellectual assessment (using multiple IQ or other cognitive tests to create a profile) are more useful for understanding intellectual abilities than a single IQ score.” *Id.*

Elements of Prong Two: Adaptive Functioning

The DSM-5-TR sets out that prong two, adaptive functioning, means “impairment in everyday adaptive functioning in comparison to an individual’s age-, gender- and socioculturally

⁷ The Supreme Court recognizes that the IQ result is more readily framed with the SEM range than a single number. *Hall*, 572 U.S., at 723. That is generally consistent with clinical practice. *See* DSM-5-TR, at 38, (“Individuals with intellectual developmental disorder have scores of approximately two standard deviations or more below the population mean, including a margin for measurement error (generally ± 5 points),” which is generally “a score of 65-75 (70 ± 5).”). Ranges are no longer used for determining *level of severity*, but that is separate than determining the first prong, *i.e.*, “deficits in general mental abilities. DSM-5-TR, at 38 (separating “specifiers” from “diagnostic features”).

matched peers....” *Id.*, at 38. This showing is made “when at least one domain of adaptive functioning – conceptual, social, or practical – is sufficiently impaired that ongoing support is needed in order for the person to perform adequately across multiple environments, such as home, school, work, and community.” *Id.*, at 42. Conceptual “involves competency in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving, and judgement in novel situations, among others.” *Id.* Social “involves awareness or others’ thoughts, feelings, and experiences; empathy; interpersonal communication skills; friendship abilities; and social judgment, among others.” *Id.* Practical “involves learning and self-management across life settings, including personal care, job responsibilities, money management, recreation, self-management of behavior, and school and work task organization, among others.” *Id.* However, the prong is only met if an area is “sufficiently impaired” such that “ongoing support is needed in order for the person to perform adequately across multiple environments, such as home, school, work, and community.” *Id.*

Credibility, Weight, and the Burden of Proof

Many *Atkins* cases turn on credibility and weight of the evidence. Courts have considered a variety of reasons to find some experts more credible or that their opinions should be assigned more weight. *See generally Hill v. Shoop*, 11 F.4th 373, 394 (6th Cir. 2021), *cert. denied*, 213 L. Ed. 2d 1134, 142 S. Ct. 2579 (2022) (noting the state court was called upon to resolve a difference in opinions given by “[t]hree credentialed and independent physicians”). In particular, as to the second prong, “[b]ecause of the relative subjectivity of the adaptive behavior analysis, the importance of clinical judgment becomes greater under prong two than under prong one. When assessing adaptive behaviors, therefore, courts must make their own independent

determinations of the clinicians' judgment and credibility." *United States v. Candelario-Santana*, 916 F. Supp. 2d 191, 211 (D.P.R. 2013).

Factors that courts have considered in weighing credibility have included the failure to use accepted testing instruments, *Haliburton v. State*, 331 So. 3d 640, 650 (Fla. 2021); whether the information on adaptive functioning deficits is corroborated, *Bourgeois v. Watson*, 977 F.3d 620, 635 (7th Cir. 2020); the depth, or lack thereof, of critical review, *Bryant v. State*, C/A 2016-CP-43-828 (Sumter County, filed Jan. 4, 2019); or even opposition to the death penalty clouding the expert's judgment, *Commonwealth v. Flor*, 259 A.3d 891, 917 (Pa. 2021). Our Supreme Court has underscored trial courts tasked with considering a claim of intellectual disability will be "the sole judge[s] of the credibility of the witnesses and the weight to be given their testimony...." *State v. Blackwell*, 420 S.C. 127, 140, 801 S.E.2d 713, 720 (2017). Importantly, the distinction between medical and legal determinations still controls.

Reason to Revisit the Exception under the Eighth Amendment

The *Atkins* decision was not unanimous. The dissent, authored by Justice Scalia and joined by Chief Justice Rehnquist and Justice Thomas, criticized the majority's opinion lack of consensus by "objective factors" such as legislative enactments. 536 U.S., at 341-344 (Scalia, J., dissenting).⁸ The dissent also recognized, for Eighth Amendment analysis, "the peril of discerning a consensus where there is none." *Id.*, at 345-347. The dissent posited that the majority must have believed that there is an "inability of judges or juries to take proper account of mental retardation," yet the legal system is based on the ability of judges or juries to consider the facts of each case. *Id.*, at 349. The dissent also questioned the majority's reasoning on

⁸ Chief Justice Rehnquist also authored his own dissent and underscored his agreement "that the Court's assessment of the current legislative judgment regarding the execution of defendants like [Atkins] more resembles a *post hoc* rationalization for the majority's subjective preferred result rather than any objective effort to ascertain the content of an evolving standard of decency." 536 U.S., at 322 (Rehnquist, C.J., dissenting).

culpability, deterrence, excessive punishment, and “special risks” the majority referenced. *Id.*, at 349-352. The dissent also correctly recognized that the necessary reliance on soft science would increase litigation and inmates would “claim[] for the first time, after multiple habeas petitions, that they are retarded.” *Id.*, at 353-354. Lastly, the dissent noted the premature nature of “enshrin[ing]” an exemption based upon limited experience from a handful of jurisdictions, and candidly noted “if the practical difficulties” of determinations “do not appear,” then it would be likely that the majority of States would follow suit. *Id.*, at 348 and 354. In the interim, the Court has seen just the opposite – the “practical difficulties” not only have been proven in a long line of cases, but the Court has also begun to recognize the express lack of guidance in *Atkins* cases has increased the difficulty in complying with the exemption.

Notably, Justice Alito observed in a later case considering one State’s attempt to comply with the exemption that “[u]nder our modern Eighth Amendment cases, what counts are our society’s standards—which is to say, the standards of the American people—not the standards of professional associations, which at best represent the views of a small professional elite.” *Hall*, 572 U.S., at 731 (Alito, J., dissenting).

In another case, Chief Justice Roberts, joined in dissent by Justice Thomas and Justice Alito, similarly remarked that the “Court’s precedents ... establish[] that the determination of what is cruel and unusual rests on a judicial judgment about societal standards of decency, not a medical assessment of clinical practice.” *Moore v. Texas*, 581 U.S. 1, 29 (2017) (Roberts, C.J., dissenting). The dissent highlighted “the lack of guidance ... offer[ed] to States seeking to enforce the holding of *Atkins*.” *Id.*

When Moore returned to the Supreme Court, the Chief Justice, writing a separate concurring opinion, again affirmed that in his view, “the majority’s articulation of how courts

should enforce the requirements of *Atkins v. Virginia* ... lacked clarity.” *Moore v. Texas*, 586 U.S. 133, 143 (2019) (Roberts, C.J., concurring). Justice Alito, joined by Justice Thomas and Justice Gorsuch, dissented, similarly noting the lack of guidance to the States. *Id.*, at 143-144.

As Justice Scalia alluded to in his *Atkins* dissent, the exemption recognition was, at best, premature, as there was no consensus in identifying the group of individuals to be exempt. Had there been, the Court would have announced a bright line test with the type of definitive clarity (if not the simplicity) in *Roper*. As it stands, precedent has continued to reflect a difficulty in determining the defendants meant for exemption and calls for expansion of the exemption abound. Unacceptably, the soft definition could lead to discarding a duly returned jury verdict – the very epitome of society’s view – in favor of ever evolving concepts from the medical profession or simple disagreement with the jury’s assessment of the evidence by a later reviewing court. That does not honor the Eighth Amendment. The exemption should be revisited for modification and clarification, and, if that cannot be done upon further review and consideration, then the exemption itself should be revisited. Respondent respectfully suggests that indications in the case law warrant a revisiting of the *Atkins* exception.

Respectfully submitted,

ALAN WILSON
Attorney General of South Carolina

DONALD J. ZELENKA
Deputy Attorney General

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

TOMMY EVANS, JR.
Assistant Attorney General
SC Bar No. 65282

By: s/Melody J. Brown.

By: s/Tommy Evans.

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

July 29, 2024

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Bobby Wayne Stone, #5051)

2018-CP-43-1025
Capital PCR Action

Applicant,)

v.)

AFFIDAVIT OF SERVICE

State of South Carolina,)

Respondent.)

1. I am an employee of Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy¹ of the **Respondent's Pre-Trial Brief and Certificate of Service** in the above-captioned matter on the following attorneys by depositing same in the United States mail, postage prepaid:

E. Charles Grose, Jr., Esquire
305 Main Street
Greenwood, South Carolina 29646
charles@groselawfirm.com

Rosalind S.D. Major, Esquire
Justice 360
900 Elmwood Avenue, Suite 200
Columbia, South Carolina 29201
rosalind@justice360sc.org

DATED this 18th day of April, 2025.



Angela Brown
Administrative Coordinator

¹ This pre-trial brief was previously provided to the Court and the parties in advance of the July 30-31, 2024, hearing. This copy is served to give notice of its formal filing with the Clerk of Court.

February 4, 2025

The Honorable James C. Campbell
Sumter County Judicial Center, third floor
215 N. Harvin Street
Sumter, SC 29150

Re: *Bobby Wayne Stone v. State of South Carolina*, No. 2018-CP-43-001025

Dear Mr. Campbell,

Please find enclosed the original and a copy of Applicant's post-hearing brief for filing, along with a certificate of service. Also enclosed is a pre-addressed and pre-stamped envelope for the return of the file stamped copy.

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

Sincerely,

Rosalind Major

Rosalind Major

Enclosure

RECORDED
2025 FEB -6 PM 2:01
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

THE STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2018-CP-43-01025

BOBBY WAYNE STONE,
Applicant,
vs.

STATE OF SOUTH CAROLINA,
Respondent.

RECORDED
2025 FEB -6 PM 2:01
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

APPLICANT'S POST-HEARING BRIEF

E. Charles Grose, Jr. (66063)
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
charles@groselawfirm.com

Rosalind S.D. Major (106017)
Justice 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201
(803) 765-1044
rosalind@justice360sc.org

Attorneys for Bobby Wayne Stone

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
I. RELEVANT LEGAL AND CLINICAL STANDARDS	1
II. STONE IS A PERSON WITH INTELLECTUAL DISABILITY	5
a. Significantly Subaverage Intellectual Functioning.....	6
b. Deficits in Adaptive Behavior.....	12
i. Conceptual Skills	13
ii. Practical Skills	16
iii. Social Skills	19
c. Onset During the Developmental Period	21
d. Evaluative Process and Clinical Judgment	22
CONCLUSION.....	24

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Atkins v. Virginia</i> , 536 U.S. 304 (2002)	<i>passim</i>
<i>Bell v. State</i> , 03-CP-04-1857 (S.C. Ct. Comm. Pleas Nov. 16, 2016)	2, 4
<i>Brumfield v. Cain</i> , 576 U.S. 305 (2015)	3, 5
<i>Elmore v. South Carolina</i> , 05-CP-24-1025 (S.C. Ct. Comm. Pleas Feb. 1, 2010)	2
<i>Franklin v. Maynard</i> , 356 S.C. 276, 588 S.E.2d 604 (2003)	1, 2
<i>Franklin v. South Carolina</i> , 96-CP-45-117 (S.C. Ct. Comm. Pleas Jan. 26, 2011)	2
<i>George v. State</i> , 99-CP-26-1715 (S.C. Ct. Comm. Pleas Jan. 9, 2007)	2
<i>Hall v. Florida</i> , 572 U.S. 701 (2014)	1–4, 9
<i>Hamm v. Smith</i> , 604 U.S. 1 (2024)	3
<i>Moore v. Texas</i> , 581 U.S. 1 (2017)	1–4
<i>Oats v. State</i> , 181 So.3d 457, (Fla. 2015)	5
<i>Rivera v. Quarterman</i> , 505 F.3d 349 (5th Cir. 2007)	9
<i>Simmons v. South Carolina</i> , 05-CP-18-1368 (S.C. Ct. Comm. Pleas Oct. 15, 2013)	2
<i>South Carolina v. Pearson</i> , 96-GS-32-3338 (S.C. Ct. Gen. Sess. Dec. 14, 2005)	2
<i>State v. Blackwell</i> , 420 S.C. 127, 801 S.E.2d 713 (2017)	5
<i>State v. Brown</i> , 2011-GS-30-152 (S.C. Ct. Gen. Sess. Apr. 14, 2016)	2
<i>United States v. Roland</i> , 281 F. Supp. 3d 470 (D.N.J. 2017)	4
<i>United States v. Smith</i> , 790 F. Supp. 2d 482 (E.D. La. 2011)	9
 <u>Statutes</u>	
S.C. Code § 16-3-20(C)(b)(10)	2

Other Authorities

- AAIDD, *Intellectual Disability: Definition, Diagnosis, Classification, and Systems of Support*, Twelfth Edition 13 (2021) (“AAIDD-12”) *passim*
- Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition Text Revision (2022) (“DSM-5-TR”) *passim*
- Daniel, M.H., “Scatter” and the Construct Validity of FSIQ: Comment on Fiorello et al., in APPLIED NEUROPSYCHOLOGY, 14, 291-295 (2007) 11–12
- Freberg, M.E., et al., *Significant Factor Score Variability and the Validity of the WISC-III Full Scale IQ in Predicting Later Academic Achievement*, in APPLIED NEUROPSYCHOLOGY, 15, 13-139 (2008) 11–12
- Kotz, K.M., et al., *Validity of the General Conceptual Ability Score From the Differential Ability Scales as a Function of Significant and Rare Interfactor Variability*, in SCHOOL PSYCHOLOGY REVIEW, 37(2), 261-278 (2008)..... 11–12
- McGill, R.J., *Invalidating the Full Scale IQ Score in the Presence of Significant Factor Score Variability: Clinical Acumen or Clinical Illusion?*, in ARCHIVES OF ASSESSMENT PSYCHOLOGY, 6(1), 49-79 (2016) 11–12
- Randy G. Floyd, et al., *Theories and Measurement of Intelligence* in 1 AMERICAN PSYCHOLOGICAL ASSOCIATION HANDBOOK OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES (Laraine Masters-Glidden ed. in chief, Leonard Abbeduto, Laura Lee McIntyre, Marc J. Tasse eds. 2021)..... 11–12
- Watkins, M., et al., *Validity of the Full Scale IQ When There is Significant Variability Among WISC-III and WISC-IV Factor Scores*, in APPLIED NEUROPSYCHOLOGY, 14(1), 13-20 (2007) 11–12

This matter is before the Court on Applicant Bobby Wayne Stone's application for post-conviction relief. Stone alleges that he is a person with intellectual disability, and he is therefore constitutionally ineligible for the death penalty pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002). On July 30–31, 2024, this Court held an evidentiary hearing and heard evidence from both parties. Both experts who evaluated Stone offered opinions that he meets the diagnostic criteria for intellectual disability. Applicant, Bobby Wayne Stone, by and through undersigned counsel, now submits his Post Hearing Brief as follows:

I. RELEVANT LEGAL AND CLINICAL STANDARDS

Persons with intellectual disability are categorically ineligible for the death penalty. *See Atkins v. Virginia*, 536 U.S. 304 (2002); *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003). This categorical exemption recognizes that, as a class, persons with intellectual disability are less morally culpable, and therefore, less deserving of the death penalty. This is because intellectual disability impairs a person's ability to make "calculated judgments," to "control impulses," and "to abstract from mistakes and learn from experience." *Atkins*, 536 U.S. at 316–20; *Hall v. Florida*, 572 U.S. 701, 708–09 (2014). The Court's holding in *Atkins* is rooted in the class characteristics of persons with intellectual disability, including their "diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others." *Atkins*, 536 U.S. at 318. While states are left with "the task of developing appropriate ways to enforce the restriction on executing the intellectually disabled," that discretion is "not unfettered", and "must be informed by the medical community's diagnostic framework." *Moore v. Texas*, 581 U.S. 1, 12–13 (2017) (quoting *Hall*, 572 U.S. at 719). When assessing intellectual disability, the states and courts cannot disregard current medical standards in favor of older clinical

standards or lay stereotypes about intellectually disabled people. *Moore*, 581 U.S. at 13, 18–20.

In South Carolina, the legal definition of intellectual disability is set forth in S.C. Code § 16-3-20(C)(b)(10), which defines intellectual disability as “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.” *Franklin*, 356 S.C. at 278–79, 588 S.E.2d at 605. Intellectual disability must be proven by a preponderance of evidence at a hearing. *Id.* at 279, 588 S.E.2d at 606 (citations omitted). Since *Atkins* was decided, the Supreme Court and South Carolina courts have consistently relied on the clinical definitions, instructions, and guidelines of both the American Psychiatric Association (“APA”) and the American Association on Intellectual and Developmental Disabilities (“AAIDD”) to inform the court’s analysis of whether the diagnostic and legal criteria for intellectual disability are satisfied.¹ *See Atkins*, 536 U.S. at 308 n.3; *Hall*, 572 U.S. at 710; *Moore*, 581 U.S. at 1; APA, *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition Text Revision 37 (2022) [hereinafter “DSM-5-TR”]; AAIDD, *Intellectual Disability: Definition, Diagnosis, Classification, and Systems of Support*, Twelfth Edition 13 (2021) [hereinafter “AAIDD-12”]. The South Carolina statute, the APA, and the AAIDD recognize three diagnostic criteria: (1) significantly subaverage intellectual functioning, (2) deficits in adaptive behavior, and (3) manifestation during the developmental period. *See* DSM-5-TR at 38; AAIDD-12 at 13.

A person meets the significantly subaverage intellectual functioning prong if his

¹ *See, e.g.*, Order Finding Defendant Mentally Retarded in *South Carolina v. Pearson*, 96-GS-32-3338; Order: Finding of Mental Retardation in *George v. State*, 99-CP-26-1715; Order Granting Post-Conviction Relief in *Franklin v. South Carolina*, 96-CP-45-117, Order Granting Post-Conviction Relief in *Elmore v. South Carolina*, 05-CP-24-1205; Order Granting Post-Conviction Relief in *Simmons v. South Carolina*, 05-CP-18-1368; Order Granting Post-Conviction Relief in *Bell v. State*, 03-CP-04-1857; Order Finding Defendant Intellectually Disabled in *State v. Brown*, 2011-GS-30-152. Counsel will provide these unpublished orders to the Court for its convenience.

intellectual functioning, as measured by a comprehensive standardized IQ test, is approximately two standard deviations below the population mean. AAIDD-12 at 29; DSM-5-TR at 38. This means a full-scale IQ score of approximately 75 or below when assessed on a comprehensive standardized IQ test that is individually administered according to the proper protocols. DSM-5-TR at 38, 42; AAIDD-12 at 29; *Atkins*, 536 U.S. at 309 n.5 (“It is estimated that between 1 and 3 percent of the population has an IQ between 70 and 75 or lower, which is typically considered the cutoff IQ score for the intellectual functioning prong of the mental retardation definition.”). However, the proper interpretation of an IQ score involves much more than observing the reported result and taking that number at face value. There are a variety of scientific factors that must be considered, including the standard error of measurement, and the effects of norm obsolescence. Courts and clinicians both recognize that determining whether an individual has significantly subaverage intellectual functioning requires consideration more than mere observation of an individual’s reported test scores, as “intellectual disability is a condition, not a number.” *Hall*, 572 U.S. at 723; *Moore*, 581 U.S. at 15; *Brumfield v. Cain*, 576 U.S. 305, 316 (2015); *Hamm v. Smith*, 601 U.S. 1, 2 (2024); DSM-5-TR at 42. Because of this, the Court has held that when a person has an IQ score in the intellectually disabled range, a court must continue its analysis and consider all the evidence related to intellectual disability, including evidence related to adaptive behavior and the age of onset. *Moore*, 581 U.S. at 12, 15; *Hall*, 572 U.S. at 723.

Adaptive behavior refers to typical activities of everyday living in a community setting. Hrg. at 14–15, 60, 186–187; AAIDD-12 at 29. To satisfy this criterion, an individual must demonstrate deficits in one of three skill areas of adaptive behavior: conceptual, social, or practical. *Moore*, 581 U.S. at 15–16; AAIDD-12 at 31; DSM-5-TR at 37. Evaluation of adaptive behavior looks at a person’s typical behavior in the community without support. AAIDD-12 at 29–31, 38–

39, 42; DSM-5-TR at 42. Adaptive deficits exist when at least one domain “is sufficiently impaired that ongoing support is needed for the person to perform adequately across multiple environments, such as home, school, work, and community.” DSM-5-TR at 42. *See also*, DSM-5-TR at 37, AAIDD-12 at 29–31.

Both courts and clinicians recognize adaptive behavior as a crucial element of an intellectual disability diagnosis because it reveals deficits that may not be readily apparent on the basis of an IQ score alone. *Hall*, 572 U.S. at 712 (“[T]he medical community accepts that [adaptive behavior] evidence can be probative of intellectual disability, including for individuals who have an IQ test score above 70.”), 722 (“IQ test scores are approximations of conceptual functioning but may be insufficient to assess reasoning in real-life situations and mastery of practical tasks.”); DSM-5-TR at 42; AAIDD-12 at 34. A clinically accurate assessment of adaptive behavior relies on a thorough collection of data about an individual’s typical behavior in a community setting. AAIDD-12 at 42. No single source of information will sufficiently capture enough data for a reliable determination, and thus the clinical guidelines call for a “comprehensive assessment of adaptive behavior.” *United States v. Roland*, 281 F. Supp. 3d 470, 530 (D.N.J. 2017); AAIDD-12 at 37–40; Order Granting Post-Conviction Relief in *Bell v. State*, 03-CP-04-1857 at 10–11.

In evaluating adaptive behavior, courts should look broadly at the individual’s typical ability to learn and perform basic skills and to adjust his behavior to changing situations. AAIDD-12 at 29–31, 38–39. Individuals with intellectual disabilities will typically demonstrate both strengths and limitations in adaptive behavior. AAIDD-12 at 40. However, courts must focus on an individual’s adaptive *deficits* rather than his adaptive strengths. *Moore*, 581 U.S. at 15 (reversing because the lower court “overemphasized Moore’s perceived adaptive strengths” whereas “the medical community focuses the adaptive-functioning inquiry on adaptive *deficits*”);

see also AAIDD-12 at 40 (“Recognizing that all people with ID have strengths, but that the diagnosis of ID focuses on their significant limitations.”).

Intellectual disability is a developmental disorder, requiring that deficits in both intellectual functioning and adaptive functioning manifest during the individual’s developmental period. DSM-5-TR at 38, 42; Hrg. at 13–14. The analysis of age of onset does not require an individual to have been diagnosed with intellectual disability during the developmental period; instead, the signs of intellectual disability need only have *manifested* before that age. See AAIDD-12 at 32–33; DSM-5-TR at 42; Hrg. at 103, 203–204; *Brumfield*, 576 U.S. at 308–10; *State v. Blackwell*, 420 S.C. 127, 172–73, 801 S.E.2d 713, 737 (2017); *Oats v. State*, 181 So.3d 457, 469 (Fla. 2015). The AAIDD currently defines the developmental period as up to age 22. AAIDD-12 at 13; Hrg. at 15–16, 202. The DSM-5-TR does not assign an age to the developmental period. DSM-5-TR at 37.

At the evidentiary hearing, Stone presented evidence sufficient to establish by a preponderance of the evidence that he had subaverage intellectual functioning and deficits in adaptive functioning that manifested during the developmental period. He is therefore categorically ineligible for a death sentence pursuant to *Atkins* and its progeny. See *Atkins*, 536 U.S. at 321.

II. STONE IS A PERSON WITH INTELLECTUAL DISABILITY

The evidence presented at the PCR hearing demonstrates that Stone is a person with intellectual disability. This conclusion is largely uncontested. Stone’s expert, Dr. Sarah Boyd,² and

² Dr. Sarah Boyd is a board certified clinical and forensic psychologist and evaluated Stone for intellectual disability in these PCR proceedings. Hrg. at 5, 18; App. Ex. 1. She has worked in private practice, as adjunct faculty for the University of Virginia, and as a caregiver for people with developmental disabilities who required institutionalized care. Hrg. at 5-6, 9-11; App. Ex. 1. Alongside authoring several publications on providing care for people with developmental disabilities, Dr. Boyd is a member of the AAIDD and Division 33 of the APA, which is focused on intellectual and developmental disabilities and was a member of the Developmental Disabilities

the Court's appointed expert, Dr. Alicia Hall,³ both conducted full assessments, and both experts uniformly agreed that based on their comprehensive evaluations, Stone is a person with intellectual disability. Hrg. at 21, 107, 203, 207; Court Ex. 1 at 13. As discussed more fully below, the State offered testimony from two witnesses who critiqued certain aspects of Dr. Boyd's and Dr. Hall's assessments, but neither witness evaluated Stone. The State's experts had no prior *Atkins* experience, did not meet with Stone, failed to interview any collateral witnesses, and conducted no testing. In other words, every expert who has actually evaluated Stone for intellectual disability has come to the same conclusion – he meets the diagnostic criteria for intellectual disability.⁴

a. Significantly Subaverage Intellectual Functioning

The evidence presented at the PCR hearing establishes Stone has significantly subaverage

Council for the state of Kentucky, which advised the state on appropriate testing for evaluating intellectual disabilities for the purpose of receiving state benefits. Hrg. at 9, 11–12. Over the course of her career, she has conducted over 500 intellectual disability evaluations. Hrg. at 10. At the PCR hearing, this Court qualified Dr. Boyd as an expert in psychology and intellectual disability. Hrg. at 13.

³ Dr. Alicia Hall is a forensic psychologist at the Department of Disabilities and Special Needs (“DDSN”) who conducted the court-ordered *Atkins* evaluation of Stone for these PCR proceedings. Hrg. at 153, 155–157, 159–160. Dr. Hall began working at DDSN in 2014 and has conducted various evaluations for the agency since that time. Hrg. at 155. Prior to working at DDSN, Dr. Hall worked in the Department of Neuropsychiatry and Behavioral Sciences for the University of South Carolina School of Medicine and the Department of Mental Health. Hrg. at 154–155. Over the course of her career, she has conducted over 1000 forensic evaluations and she has participated in nine *Atkins* evaluations. Hrg. at 156–158. At the PCR hearing, this Court qualified Dr. Hall as an expert in forensic psychology with a specialty in assessing and diagnosing intellectual disability. Hrg. at 159.

⁴ No South Carolina court has ever rejected an *Atkins* claim when the court's appointed DDSN examiner found the inmate to be a person with intellectual disability. *See, e.g.*, Order Granting Post-Conviction Relief in *Franklin v. South Carolina*, 96-CP-45-117, Order: Finding of Mental Retardation in *George v. State*, 99-CP-26-1715, Order Granting Post-Conviction Relief in *Elmore v. South Carolina*, 05-CP-24-1205; Order Finding Defendant Intellectually Disabled in *State v. Brown*, 2011-GS-30-152.

intellectual functioning. Stone has been administered four comprehensive full-scale IQ tests during his lifetime: three during his childhood and one administered by Dr. Boyd in 2017 when Stone's then-current counsel asked her to administer the test as part of their investigation into his case. Hrg. at 39–43, 177–180, 185. Both Dr. Boyd and Dr. Hall testified that the appropriate evaluation of this prong considers any valid full-scale IQ testing along with any other evidence about intellectual functioning. Hrg. at 25–28, 34–36, 42–44, 182–187; Court Ex. 1 at 8–11. Both experts considered each of these tests in their evaluations of Stone. Hrg. at 39–43, 177–180, 185. Because it is considered clinical best practices to consider the effects of norm obsolescence in *Atkins* evaluations, both Dr. Boyd and Dr. Hall applied the Flynn effect calculations to these four scores.⁵ As both Dr. Boyd and Dr. Hall testified, Stone's childhood scores are consistent with the results of his 2017 IQ test and all cluster around the range considered to be significantly subaverage. Hrg. at 39, 56–57, 185–186. Considering these scores holistically with the adaptive functioning information available in Stone's history, as required by the clinical standards, led both experts to opine that this diagnostic criterion is satisfied, and Stone has significantly subaverage intellectual functioning. Hrg. at 39, 52, 54, 56–57, 185–187, 189.

Stone took three Wechsler scales during his childhood as part of school facilitated evaluations to determine the necessity of special education services. In 1975, Stone's IQ was tested using the Weschler Intelligence Scale for Children ("WISC"), on which Stone obtained a full-scale IQ of 86. App. Ex. 3 at 50; Hrg. at 48–49, 176. Stone was 9 years old at the time of this testing and the results were reported in a special education services evaluation report. App. Ex. 3 at 50; Hrg.

⁵ As was testified to at the hearing, recognizing the Flynn effect or "norm obsolescence" and applying it to scores from tests with outdated norms at the time of their administration is accepted within the scientific community, is "encourage[d]" by the "authoritative guidance", and is "really considered to be best practices in *Atkins* evaluations." Hrg. at 31–32, 176–177.

at 48. The WISC was normed in 1949. Hrg. at 48. When accounting for norm obsolescence, this score adjusted to 77.42.⁶ Hrg. at 51, 177; Court Ex. 1 at 8–9, 11. The following year, in 1976, Stone was administered the Weschler Intelligence Scale for Children-Revised (“WISC-R”), on which Stone obtained a full-scale IQ of 78. App. Ex. 3 at 52–53; Hrg. at 51–52, 179. Stone was 11 years old at the time of this testing and the results were reported in a special education services reevaluation report. App. Ex. 3 at 52–54; Hrg. at 52. Given that the WISC-R was published less than a year before it was administered to Stone, the norms were still current at the time he took it. Hrg. at 51–52, 179. In 1979, Stone was tested again using the WISC-R and his full-scale IQ from this test was reported in a special education services reevaluation report as “between 69 and 75.” Hrg. at 43, 54–55, 179–180; App. Ex. 3 at 55–56. Stone was 14 years old at the time of this testing. When accounting for norm obsolescence, this range was adjusted to “approximately 67 to 73.” Hrg. at 179–180. Following the special education services reevaluation where this score was obtained, Stone’s special education placement was adjusted to be “EMH” or “educable mentally handicapped.” Hrg. at 55, 180; App. Ex. 3 at 56. As explained at the hearing, “educable mentally handicapped” is an outdated term that is “parallel to what we now call mild intellectual disability,” and schools now explicitly classify students with EMH level functioning as intellectually disabled. Hrg. at 55–56, 180, 196.

⁶ As both Dr. Boyd and Dr. Hall testified to, information uncovered in collateral interviews indicated this score should be viewed with some skepticism. Information from a school psychologist who worked in the district when Stone was in school and being assessed for special education services reported in an interview that the school psychologist who conducted this IQ test was known for regularly conducting the testing in a manner that was a “very significant departure” from how the tests are supposed to be administered. Hrg. at 49–50. IQ tests contain subtests within them and the school psychologist who oversaw Stone’s 1974 evaluation would regularly set up multiple stations in a cafeteria for each subtest and have students cycle through them, with different examiners overseeing each subtest. *Id.* Regardless, when accounting for norm obsolescence, this score was similar to all of Stone’s other scores. Hrg. at 51–54.

Stone also took an IQ test in his adulthood. In 2017, Dr. Boyd administered the Wechsler Adult Intelligence Scale, 4th Edition (“WAIS-IV”) on which Stone obtained a full-scale IQ of 79.⁷ Stone was 52 years old at the time of this testing. The WAIS-IV was normed in 2004. When accounting for norm obsolescence, this score is adjusted to 75.66. Hrg. at 39–42, 185; Court Ex. 1 at 8–9, 11. Dr. Boyd found that Stone put forth good effort on the testing she conducted and that the results were valid. Hrg. at 36–37. Dr. Hall additionally testified that the WAIS-IV has a “built-in malingering assessment” and Stone “did not have poor effort based on that embedded validity measure.” Hrg. at 271–272; Court Ex. 1 at 12–13. Both Dr. Boyd and Dr. Hall testified that there were no indications of malingering at any point in their evaluations of Stone. As Dr. Boyd testified,

“I would say on balance there isn't any information that suggests he's malingering. Not from testing, not from the history, and then if you look at his IQ test scores over time, too, once you account for obsolescence, they also hang pretty close together, which is consistent with that idea that each test is sort of, you know, getting close in terms of an estimate of the actual number; and so they are kind of clustering together, which suggests that, on balance, his true IQ score is somewhere around where those numbers meet.”

Hrg. at 38.

The WAIS-IV and the other Wechsler scales have been repeatedly identified as the “gold standard” for accurately and reliably determining IQ. *Hall*, 572 U.S. at 734; *Rivera v. Quarterman*, 505 F.3d 349, 361 (5th Cir. 2007) (recognizing “the Wechsler Adult Intelligence Scales (WAIS-III) IQ test [is] a test which both parties agree is the best full-scale IQ test available in English.”); *United States v. Smith*, 790 F.Supp.2d 482, 491 (E.D. La. 2011) (“Psychologists use IQ testing to measure intelligence and the WAIS–III is a gold standard for this testing.”). Dr. Boyd and Dr. Hall both testified that the Wechsler measures are widely used tests that would be considered an

⁷ Dr. Hall considered this testing as part of her evaluation. As she testified, she did not simply rely on the testing as reported by Dr. Boyd. Rather, she obtained the raw testing data and protocols used on Stone’s 2017 testing from Dr. Boyd and rescored the test herself, in line with the clinical guidelines and best practices. Hrg. at 163, 271. Her scoring of this test and opinions of the effects of norm obsolescence on the score were consistent with Dr. Boyd’s.

acceptable, valid intelligence test. Hrg. at 26, 39–40, 175–176, 184–185. Stone’s scores on these four Wechsler IQ tests were approximately two standard deviations or more below the mean, which is in a range that is consistent with having significantly subaverage intellectual functioning. Hrg. at 56–57, 185–186. Both experts also testified that “the scores cluster together” around the “margin” for mild intellectual disability, which is “typical for individuals in the capital setting.” Hrg. at 38–39, 52, 56, 185–187.⁸

Dr. Hall opined that in Stone’s case, “we can see consistently, throughout his lifetime, he has had scores within the ID range on intellectual or IQ tests, as well as his academic functioning was significantly below his same age peers.” Hrg. at 189. As Dr. Hall testified, the clinical standards counsel using a holistic approach to determine whether or not prong one is satisfied, considering IQ testing alongside other information about a person’s academic functioning. Hrg. at 189. Given the convergence of Stone’s IQ scores around the significantly subaverage intellectual functioning in conjunction with the available information about his adaptive functioning, Dr. Hall opined that this diagnostic criterion was satisfied. Hrg. at 189.

Respondent’s experts’ testimony critiquing Dr. Boyd’s and Dr. Hall’s conclusions on prong 1, is refuted by consensus clinical standards.⁹ Dr. Kruse was retained by Respondent “[t]o

⁸ As Dr. Boyd explained, this is typical in the capital context because “people aren’t arguing a lot about the people that are, you know, significantly lower than that [range].” Hrg. at 56–57. Dr. Hall similarly testified that “it is not unusual for you to see this type of progression in kids who have mild ID or -- you know, or kids who are right on the -- a cusp of intellectual disability,” with their IQ scores and as “demands . . . become beyond the person’s development, you then can see a significant difference between the functioning of their neurotypical peers in comparison to what the person with intellectual disability can do.” Hrg. at 183. Dr. Hall saw this specific pattern in Stone’s case. *Id.*

⁹ At the hearing, Respondent presented Dr. Michael Vitacco and Dr. Kimberly Kruse as expert witnesses during its case in chief. Hrg. at 284–322. Neither Dr. Vitacco nor Dr. Kruse were asked to conduct an evaluation of whether Stone meets the diagnostic criteria for intellectual disability. Hrg. at 289, 305–306.

review records and provide an opinion on intellectual functioning,” Hrg. at 305–306. She did not perform any tests on Stone and has never conducted an *Atkins* evaluation. Hrg. at 306, 316. Dr. Kruse reviewed the raw data from Dr. Boyd’s 2017 administration of the WAIS-IV and testified that Stone had “a disparity in index scores” and although “[a] lot of people have variability,” Stone had “more than a 20 point gap between his highest index score and his lowest.” Hrg. at 301–311. Because of this index score or part score variance, she was of the opinion that Stone’s intellectual functioning was more indicative of a learning disability instead of an intellectual disability because the part scores were “above the cut off.” Hrg. at 311–312.

However, as Dr. Kruse acknowledged, the clinical guidelines clearly state that “there’s no reason to question the validity of the full-scale IQ, even in individual cases where there is significant factor/part score variability.” AAIDD-12 at 28, Hrg. at 320. The medical community’s clinical consensus establishes that “part score interpretation should not be standard practice during the consideration of ID diagnosis and eligibility.”¹⁰ Part score discrepancy is not unusual among individuals with intellectual disability, as they tend to have areas of relative strength and weakness just as other people do. “The typical person with an IQ of 70 has at least one part score in the average range of 90 or higher.”¹¹ As demonstrated by the results of numerous studies, variability in part scores does not weaken the relationship between FSIQ and its predictive value for long-term achievement outcomes.¹² Thus, there is “no scientific foundation” for the idea that part score

¹⁰ Randy G. Floyd, et al., *Theories and Measurement of Intelligence* in 1 AMERICAN PSYCHOLOGICAL ASSOCIATION HANDBOOK OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES 385, 412-413. (Laraine Masters-Glidden ed. in chief, Leonard Abbeduto, Laura Lee McIntyre, Marc J. Tasse eds. 2021) [hereafter, *Theories*].

¹¹ *Id.* at 413.

¹² See Kotz, K.M., et al., *Validity of the General Conceptual Ability Score From the Differential Ability Scales as a Function of Significant and Rare Interfactor Variability*, in SCHOOL

variability invalidates the FSIQ.¹³ Dr. Kruse acknowledged she was not questioning the full-scale IQ. Hrg. at 320. Moreover, if there was a clinically legitimate concern about the data from Dr. Boyd's IQ testing, Dr. Hall would have acknowledged concerns about part score variability in her evaluation of whether Stone satisfied this diagnostic criterion. Rather, Dr. Hall raised none of these concerns, opining that based on the wealth of evidence considered in her assessment, Stone had significantly subaverage intellectual functioning. Hrg. at 189.

b. Deficits in Adaptive Behavior

The evidence presented in PCR establishes that Stone has adaptive deficits in all three domains – conceptual, social, and practical – and that these deficits have manifested throughout his life. As Dr. Boyd testified, for this diagnostic criterion to be satisfied, the clinical standards only require an evaluator to determine that deficits exist in one domain, but it is not uncommon for intellectually disabled people to “have impairments across multiple domains.” Hrg. at 63. At the hearing, Dr. Boyd testified that, in her opinion, this diagnostic prong “was very clearly satisfied in [Stone's] case. Hrg. at 75. In Dr. Boyd's opinion, Stone showed the “most impairment” in his conceptual domain, his “[s]econd greatest area of impairment” is in the practical domain, and he has “significant impairment” in the social domain, although he also had some relative strengths in the social domain. *Id.* Dr. Hall similarly opined that Stone had deficits present in all three adaptive

PSYCHOLOGY REVIEW, 37(2), 261-278 (2008); Watkins, M., et al., *Validity of the Full Scale IQ When There is Significant Variability Among WISC-III and WISC-IV Factor Scores*, in APPLIED NEUROPSYCHOLOGY, 14(1), 13-20 (2007); Freberg, M.E., et al., *Significant Factor Score Variability and the Validity of the WISC-III Full Scale IQ in Predicting Later Academic Achievement*, in APPLIED NEUROPSYCHOLOGY, 15, 13-139 (2008); Daniel, M.H., “Scatter” and the Construct Validity of FSIQ: Comment on Fiorello et al., in APPLIED NEUROPSYCHOLOGY, 14, 291-295 (2007); McGill, R.J., *Invalidating the Full Scale IQ Score in the Presence of Significant Factor Score Variability: Clinical Acumen or Clinical Illusion?*, in ARCHIVES OF ASSESSMENT PSYCHOLOGY, 6(1), 49-79 (2016).

¹³ *Theories* at 413.

functioning domains, but in her opinion, he had a relative adaptive strength in the practical domain. Hrg. at 191–192; Court Ex. 1 at 11–13.

i. Conceptual Skills

Conceptual skills are “basically academic skills.” Hrg. at 60.¹⁴ Individuals with conceptual domain deficits “have difficulty learning academic skills like reading, writing, understanding time and money, things like that, and they need additional support to meet age-related expectations.” Hrg. at 62. Conceptual domain deficits commonly manifest in children as being held back in school or being placed in remedial or special education. In adults, these deficits commonly manifest as “problems with good judgment, with reasoning, with forecasting consequences,” and might include naiveté and gullibility and problems with “functional academic skills.” Hrg. at 62–63. Evaluating someone’s conceptual domain functioning includes assessing “how they did in school,” but also an evaluator would assess someone’s job history and if that history included jobs that require someone to “use a lot of academic skills.” Hrg. at 76. As Dr. Hall testified, school records are records that are commonly relied on for *Atkins* evaluations because someone’s “deficits have to be present during the developmental period, and so school records are contemporaneous records that allow us to get an insight into the person’s functioning during the developmental period, you know, particularly if we’re talking about a person who is well outside of the developmental period.” Hrg. at 164. As Dr. Boyd testified, Stone has “longstanding conceptual impairment,” that is apparent from his school records and special education history and continued through his adulthood. Hrg. at 76.

Stone’s educational history is replete with evidence of academic difficulties. After failing

¹⁴ The DSM-5-TR recognizes the conceptual domain includes “competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving, and judgment in novel situations.” DSM-5-TR at 42.

most of his classes, Stone had to repeat the first grade. App. Ex. 3 at 40–42; Hrg. at 76–77. After completing the first grade for the second time, Stone progressed through the second and third grades with overall low academic performance. App. Ex. 3 at 21–22, 29; Hrg. at 77–78. After failing the fourth grade and because of his ongoing academic struggles, Stone was referred for a psychological evaluation at Lemiera Elementary when he was 9 years old to assess whether he would benefit from special education services. App. Ex. 3 at 50–51; Hrg. at 76, 78–80, 171–172. As a result of this evaluation, Stone was placed in the “learning disability resource room.” App. Ex. 3 at 50; Hrg. at 81. Resource rooms are “the special education setting,” which “allows students to get extra attention” for their needs. Hrg. at 138, 171. Stone’s concern was “academic functioning,” including “reading” and “math skills,” and his time in resource rooms “would be a time where they strengthen those skills, helped him and reinforced the lessons that he would be learning in his regular classroom setting.” Hrg. at 171–172. Even with these additional academic supports in place, his grades were “not significantly improved” in his second attempt at fourth grade. Hrg. at 80; App. Ex. 3 at 21–22.

Stone continued to struggle academically as he entered middle school. In a reevaluation of his special education services when he was in the sixth grade, the school psychologist recognized Stone required continued special education services and recommended he “work with the L.D. resource teacher on a regular basis and coordinate specific exercises into regular classroom activities and instruction” for the classes he took outside of the resource classroom. App. Ex. 3 at 52–54; Hrg. at 81. Academic testing conducted by the school in this period of Stone’s academic history consistently reported he was achieving at one to two grades lower than his grade level. App. Ex. 3 at 52–54; Hrg. at 81–82, 179. Despite this, Stone’s poor grades resulted in him failing the sixth grade. He was placed into the seventh grade instead of being required to repeat. App. Ex.

3 at 23–24, 33–34; Hrg. at 85.

Stone’s special education needs were reevaluated in the seventh grade. App. Ex. 3 at 54–54. During this evaluation, Stone’s special education services were increased with the school psychologist recognizing that “[a]t this time Bobby no longer qualifies for LD-Resource. He does qualify for EMH-Resource and a change of placement is necessary.” App. Ex. 3 at 55; Hrg. at 85–86. As explained at the hearing, EMH is an outdated term that means “educable mentally handicapped” which in current terminology would be referred to as intellectually disabled. Hrg. at 86, 173, 180, 196. As Dr. Boyd explained, the expectation for EMH students “is that not only would [they] get more intensive services, but they might also modify some of the academic objectives to include more goals related to -- like vocational practical jobs skills and things like that.” Hrg. at 86. Despite his increased academic services, Stone still struggled. After earning only Ds in his eighth-grade year, he entered high school where he received primarily Cs and Fs in his coursework. App. Ex. 3 at 23–26; Hrg. at 88–89. Shortly after the end of his ninth-grade year, Stone dropped out of high school. App. Ex. 3 at 25–26; Hrg. at 88–90, 173. Stone’s highest score on academic achievement testing around this time showed that his vocabulary was at a sixth-grade level. App. Ex. 3 at 31; Hrg. at 89. His scores on other academic skills like arithmetic, expression of language, and concepts ranged from a second-grade level to a fifth-grade level. *Id.* After he left school, Stone was employed doing “relatively menial, physical work,” such as tree trimming, which was “physically demanding,” but was “work that was not reliant on advanced academic skills.” Hrg. at 90. None of these jobs required Stone to complete “complicated multi-step processes.” Hrg. at 92.

In sum, Stone consistently performed poorly in academic settings, including:

- Failing and repeating the first grade. App. Ex. 3 at 40–42.
- Poor grades and academic testing in the second, third, and fourth grade. Stone

consistently performed at least one grade level below his placement on academic testing in second, third, and fourth grade. App. Ex. 3 at 20–22, 29.

- Failing the fourth grade, resulting in referral for special education services, after which Stone was categorized as requiring “LD Resource” special education service, App. Ex. 3 at 20–22, 50–51.
- Despite having special education services, continued poor grades throughout fourth, fifth, and sixth grade. App. Ex. 3 at 20–24.
- Placement instead of promotion into seventh grade. App. Ex. 3 at 23–24.
- Reclassification of Stone from “LD resource” to requiring “EMH” services in seventh grade, a classification defined in today’s language as intellectual disability. App. Ex. 3 at 55, Hrg. at 86, 173, 180, 196.
- Continued poor academic performance before dropping out of high school in ninth grade. App. Ex. at 23–26.
- Stone’s final academic testing before leaving school indicated Stone was performing at a sixth-grade level in reading, a third-grade level in language, and a fourth-grade level in mathematics, and a fourth-grade level overall. App. Ex. 3 at 31.

Based on all of this information, Dr. Boyd opined that Stone’s conceptual domain functioning is “significantly impaired and has been since at least early childhood.” Hrg. at 92. Dr. Hall similarly testified that Stone “was definitely having deficits in his academic areas, which is commensurate with individuals” who have intellectual disability. Hrg. at 174–175.

ii. Practical Skills

The practical domain includes the “daily living skills,” including the ability to dress and feed yourself, doing laundry, cleaning yourself and your living environment, making medical decisions, using money to make purchases, and work skills like learning skilled job tasks and

meeting the demands of jobs without assistance or supervision.¹⁵ Hrg. at 190–191. As Dr. Boyd explained, assessing the practical domain includes assessing questions like “can they cook a simple meal? Can they read a recipe and follow it? If the -- if there's an incident, do they -- you know, where somebody gets hurt, do they know, like, when to seek help? Do they know how to do -- you know, do they know what's first aid versus when to take somebody to the emergency room?” Hrg. at 93. Practical domain considerations also include evaluating where a person “can navigate in the community safely, including tasks like using public transportation, communication devices, things like that. So, it's very much the sort of living in the community part aside from interacting with other people or having to use academic skills.” Hrg. at 93. As the clinical standards explain, adaptive functioning refers to a person’s “typical functioning”, not maximum functioning or functioning with support. AAIDD-12 at 29–31, 38–39, 42; DSM-5-TR at 42. Because of this, part of evaluating adaptive skills includes “looking at not just how are they doing in their day-to-day life . . . [but also] how is this person getting help and how formal or informal has it been.” Hrg. at 68. As Dr. Boyd testified, Stone “hasn’t demonstrated the ability to do [the daily tasks of living] without somebody doing them for him.” Hrg. at 94.

“Stone “never really lived independently,” as throughout his lifetime he would go back and forth between his family home and the homes of his romantic partners. Hrg. at 201. Since childhood, Stone “tended to rely” on other people for assistance with “a lot of the household tasks.” Hrg. at 93, 200. These other people were typically women, including his mother and romantic partners, who operated as “[s]ignificant natural supports,” allowing Stone to participate in society. Hrg. at 93. They would take care of “cleaning the house; keeping up with appointments, including

¹⁵ The DSM-5-TR recognizes the practical domain “involves learning and self-management across life settings, including personal care, job responsibilities, money management, recreation, self-management of behavior, and school and work task organization.” DSM-5-TR at 42.

his appointments; you know preparing meals, planning meals, budgeting money. . . [and] housework.” Hrg. at 93–94, 200. Dr. Hall confirmed that she “was never able to establish that Mr. Stone actually had the capacity to do these things independently.” Hrg. at 202. Once he started working, Stone would “bring the money home that he made from his jobs home, and then the partner or his mother would manage that money.” Hrg. at 94, 200. Stone’s “job was to take care of the outside of the house,” and he would contribute to the household through tasks like “mowing, and you know, tinkering with things that needed to be repaired or whatever outside the house.” Hrg. at 94, 200. He learned how to do most of these tasks by “watching his stepfather do things,” and imitating them. Hrg. at 97. As Dr. Hall explained, while this separation of household labor could be understood in “traditional” gender roles, “[t]he difference would be capacity,” and she was “never able to establish that Mr. Stone actually had the capacity to do these things independently.” Hrg. at 201–202.

Stone also required help with daily tasks of living outside of the home. Stone “didn’t manage a bank account, he didn’t write checks, [and] never had a credit card.” Hrg. at 95. No one remembered an incident of Stone filling out paperwork, or “sign[ing] a contract for something like a lease.” Hrg. at 95. Following his departure from school, Stone held a number of “menial” jobs that largely consisted of “physical” tasks, mostly working trimming trees. Hrg. at 90, 229. While his jobs included “very physically demanding” tasks, it was “work that was not reliant on advanced academic skills.” Hrg. at 90. As Stone’s friend and co-worker Frankie Norton reported, for these jobs, Stone “went to the [s]ite and the boss told [him] what to do and [he] did it, and these weren’t complicated multi-step processes.” Hrg. at 91–92. Norton further shared that Stone “got to work on time, he was a hard worker; however, he never would -- he was just a worker.” Hrg. at 194. He went on to explain that Stone “didn’t take initiative, never was assigned a supervisory position,

was never a person who would be required to fill out the paperwork or even really interact with the clients. . . [h]is role was strictly laborer.” Hrg. at 194.

Additionally, while Stone was able to obtain employment, “he wasn’t somebody who would go, like, fill out a job application and then do an interview and get a job.” Hrg. at 191. Rather, his stepfather “would typically secure some kind of employment for him,” even working for his tree business where he “supervised him with some tasks as well, personally and directly on the job.” Hrg. at 94–95, 191, 194. As Dr. Hall testified, Stone “would gain employment through a family or a friend, lose that employment, and then require assistance of a family or a friend to get another position.” Hrg. at 229.

Based on this information, Dr. Boyd opined that Stone had a deficit in his practical domain functioning. Hrg. at 93. Dr. Hall similarly opined that Stone “had some deficits in practical” skills, although she acknowledged his strong work ethic was a potential relative adaptive strength. Hrg. at 190–192. However, as Dr. Hall explained, “just because Mr. Stone was a hard worker and took pride in his work, doesn’t negate the deficits that he had. So we’re really looking at not whether or not somebody can do something, but we’re looking at the deficits that they have in comparison to their same age peers.” Hrg. at 192. Additionally, Dr. Hall gathered evidence that Stone had supports in the community that allowed him to function more typically, as “he always relied on other people to help him navigate,” it. Hrg. at 268. Accordingly, she opined that Stone had practical domain deficits. Hrg. at 192.

iii. Social Skills

Social skills involve the many components of social interaction, including a person’s ability to meet and interact with people, interpersonal communication skills, regulate behavior and emotion in an age-appropriate fashion, read social cues, and friendship abilities, including the

ability to maintain equal interpersonal relationships. DSM 5-TR at 39, 42. As Dr. Boyd testified, evaluating a person's social skills requires understanding "what's a person's social judgment like, do they understand the social rules. . ." and assessing questions like "do they have good judgment about who they're friends with, do they understand that other people's motives towards them." Hrg. at 60. As Dr. Hall further explained, this is not just "if they can just have social relationships [be]cause folks on the ID scale tend to be pretty social, but we're talking about high order social ability so that it's more than just understanding social norms and social relationships, but can they infer about the quality of social relationships." Hrg. at 191. This includes an assessment of if "they know when people are taking advantage of them," as social domain deficits commonly present as "gullibility and vulnerability to manipulation." Hrg. at 98, 191. Stone has deficits in the social domain.

As people who knew him as a child remember, Stone "was not a good judge of character," when it came to friendships, and "there were people who he hung around with that would take advantage of him, that would get him to do things that were -- they classified as "illegal" or just not kind[of] -- you know, things that could possibly get him into trouble." Hrg. at 199–200. These people would "mistreat him," and "would do things to show him that they weren't trustworthy but he wouldn't accept it and wouldn't necessarily pick up on that this is going to happen again if I make myself vulnerable to it." Hrg. at 99. Friends remember that "if somebody was, you know, nice to him, Mr. -- to Mr. Stone, that he would think that, that person was their friend, and he would be kind [of] loyal to that person." Hrg. at 194. For example, people who knew him as a teenager reported a time where some acquaintances of Stone's "stole a vehicle of some kind from him . . . [b]ut he was partying with them the next weekend."

Both Dr. Boyd and Dr. Hall considered Stone's social judgment and social relationships

and opined that he had social domain deficits, beginning in at least his adolescence. Hrg. at 74, 99–100, 102, 206, 276. While Dr. Boyd opined that Stone had some relative strengths in his overall adaptive functioning in the social domain, she recognized appropriately that the presence of strengths “is extremely common,” and does not detract from the reality of existing adaptive deficits. Hrg. at 63–65, 75, 99.¹⁶ As she recognized, “social skills are where most people with ID try to pick up a little bit of the slack in terms of masking their problems and trying to sort of fly under the radar of detection.” Hrg. at 100. Overall, when considering the convergence of the available evidence, Dr. Boyd opined that despite the existence of some strengths, Stone still had deficits in this domain. Hrg. at 75, 99–100.

c. Onset During the Developmental Period

Overwhelming evidence demonstrates Stone’s deficits in both intellectual functioning and adaptive functioning manifested when Stone was in his developmental period. Stone’s academic records, admitted at the hearing as Applicant’s Exhibit 3, were generated during Stone’s developmental period and document his intellectual functioning and adaptive behavior deficits. Not only do these records show Stone’s continuous decline in academic performance throughout his schooling despite having special education services in place, they also include a school determination that Stone is a person with intellectual disability. App. Ex. 3 at 56.¹⁷ Both experts

¹⁶ In explaining these relative adaptive strengths, Dr. Boyd explained that she learned that “as a kid, [Stone] was like a fairly likeable child, that at times it was -- you know, he could be outgoing and that he really liked -- like he related to younger kids and was good at playing with them,” and “he did have dating relationships” and friendships, although, “it doesn’t sound like they were really the best friendships.” Hrg. at 100.

¹⁷ Stone’s school records contain not only information about Stone’s childhood IQ testing and conceptual domain functioning, but also include results from an adaptive behavior instrument he was administered as part of a special education services evaluation. App. Ex. 3 at 55. This scale would have been completed by “an informant giving information about” Stone at the time of his evaluation. Hrg. at 182. The results of this scale showed Stone had “quite poor adaptive

testified that the school records are “strongly supportive” and provide “contemporaneous data” that Stone’s significantly subaverage intellectual functioning and adaptive deficits onset during the developmental period. Hrg. at 21, 104, 204–205. Additionally, Dr. Boyd and Dr. Hall both conducted collateral interviews as part of their evaluations, focusing on witnesses who knew Stone during the developmental period. Hrg. at 19, 101–102, 167, 193. The data collected from these witnesses was consistent with the school records and is supportive of a determination that Stone is a person with intellectual disability. Hrg. at 104, 206. As Dr. Boyd highlighted that in Stone’s case, there is “the absence of something else that would be explanatory,” for his functioning other than an intellectual disability diagnosis. Hrg. at 104. Accordingly, Dr. Boyd and Dr. Hall both opined that the onset during the developmental period prong was satisfied in his case. Hrg. at 104, 204–205.

d. Evaluative Process and Clinical Judgment

In all evaluations of intellectual disability, the clinical guidelines underscore the importance of a proper evaluative process and the utilization of appropriately used clinical judgment. *E.g.*, AAIDD-12 at 36–44. As the clinical standards recognize, “professionals working in the ID field frequently encounter difficult or complex diagnostic situations that require a judgment based on extensive data obtained from multiple sources, specialized training in assessment and test interpretation, direct experience with those with whom the profession is working, and specific knowledge of the person with ID.” AAIDD-12 at 36. Accordingly, clinicians evaluating someone for intellectual disability must use “not only best practice guidelines, professional standards, and professional ethics, but also clinical judgment.” *Id.*

functioning” when it was administered in 1979, when he was 14 years old. Hrg. at 72–73; App. Ex. 3 at 55.

Clinical judgment “is a special type of judgment that . . . emerges from the clinician’s training and expertise, specific knowledge of the person [being evaluated] . . . extensive data, and the use of critical thinking skills.” AAIDD-12 at 37–38. Accordingly, clinical judgment should be used “consistent with currently published professional standards.” AAIDD-12 at 37. As the guidelines recognize, “clinical judgment strategies,” including “conducting or accessing a thorough history, conducting or accessing broad-based assessments, and synthesizing obtained information” are a key feature of “every diagnosis.” AAIDD-12 at 38. Part and parcel of these strategies includes collecting extensive information from a wealth of sources which includes “interviewing multiple respondents” who have information about a “person’s typical performance across all three domains of adaptive behavior,” and “reviewing thoroughly all available records including educational, social, and medical, that might contain collateral information regarding the person’s adaptive behavior.” AAIDD-12 at 38–39. Similarly, evaluators must synthesize and corroborate “information from multiple sources,” in determining whether both the diagnostic criterion are satisfied and to resolve questions of faking in any given case. AAIDD-12 at 39–41. Accordingly, evaluators use their clinical judgment to “piece things together” and assess “how much convergence” is there in “all the data together” to determine whether an intellectual disability diagnosis is proper. Hrg. at 35–36, 202–203.

This is precisely what Dr. Boyd and Dr. Hall did in Stone’s case. Both experts considered a wealth of data from all available records and conducted significant collateral interviewing. They synthesized this information, including both “data to suggest that he has intellectual disability” and “some things that don’t quite fit intellectual disability.” Hrg. at 202–203. Considering the totality of the data available to them and gathered in their evaluations, each utilized their clinical judgment and opined that each diagnostic criterion was satisfied in Stone’s case and that Stone is

a person with intellectual disability. Hrg. at 21, 107, 207; Court Ex. 1 at 13. As Dr. Hall concluded, “when you look at that convergence, when you look at the data all together . . . my clinical judgment [is] for a positive for intellectual disability. Hrg. at 203.

CONCLUSION

In post-conviction proceedings, the applicant bears the burden of proving his allegations by a preponderance of the evidence. Given that the only two expert witnesses who conducted clinically appropriate assessments of intellectual disability, one of whom was retained by the defense and the other the Court’s designated examiner, both testified that Stone is a person with intellectual disability, he has carried his burden demonstrating that he meets all three prongs of the above definition of intellectual disability, by a preponderance of the evidence, and he is therefore exempt from the death penalty in accordance with *Atkins*.

Respectfully submitted,

s/E. Charles Grose, Jr.
E. Charles Grose (66063)
Grose Law Firm
305 Main Street
Greenwood, SC 29646
(864) 538-4466

s/Rosalind S. D. Major
Rosalind S. D. Major (106017)
Justice 360
900 Elmwood Ave., Suite 200
Columbia, SC 29201
(803) 765-0144

Counsel for Bobby Wayne Stone

February 4, 2025.

RECORDED

2025 FEB -6 PM 2:01
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) FOR THE THIRD JUDICIAL CIRCUIT

BOBBY WAYNE STONE,

)
Applicant,)

Case No. 2018-CP-43-001025

vs.)

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)

)
Respondent.)
)
_____)

The undersigned certifies that a copy of Applicant's Post-Hearing Brief was served was served by email to the AIS email addresses, pursuant to Section (b) of the Supreme Court of South Carolina's May 6, 2022 Order, this 4th day of February, 2025, upon the following

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

By s/Rosalind S.D. Major

Rosalind S.D. Major
Justice 360
900 Elmwood Ave., Suite 200
Columbia, SC 29201
(803) 765-1044

February 4, 2025



RECORDED

2025 JUN 12 AM 11:13

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ALAN WILSON
ATTORNEY GENERAL

June 9, 2025

The Honorable James C. Campbell
Sumter County Clerk of Court
215 N. Harvin Street
Sumter, South Carolina 29150

Re: Bobby Wayne Stone v. State of South Carolina
Case No: 2018-CP-43-1025
Capital PCR

Dear Mr. Campbell:

Enclosed please find for filing in your office an original and one (1) copy of Respondent's Amended Post-Hearing Brief, along with Affidavit of Service for filing in your office in connection with the above-referenced case.

Please file the original brief and return a filed copy to me in the self-addressed envelope provided for your convenience. Thank you.

Sincerely,

s/ R. Brandon Larrabee
R. Brandon Larrabee
Assistant Attorney General

:dmd
Enclosures

cc: The Honorable William P. Keesley (Via email only)
E. Charles Grose, Jr., Esquire (Via email and US Mail)
Rosalind S.D. Major, Esquire (Via email and US Mail)
Victim Advocacy Division

COPIES RETURNED
COPIES RETURNED

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Bobby Wayne Stone, #5051,

Applicant,

v.

State of South Carolina,

Respondent.

RECORDED
IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
2025 JUN 12 AM 11:14
JUL 12 2025
C/A No. 2018-CP-43-01025
(Capital PCR)

RESPONDENT'S AMENDED POST-HEARING BRIEF

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General

R. BRANDON LARRABEE
Assistant Attorney General

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

ATTORNEYS FOR RESPONDENT

April 17, 2025
Amendment Filed: June 9, 2025
Columbia, South Carolina

INDEX

INTRODUCTION.....	1
SUMMARY OF ARGUMENT.....	1
STATEMENT OF THE CASE.....	3
Procedural History	3
Facts Established at Trial.....	12
ALLEGATION FOR POST-CONVICTION RELIEF	16
DISCUSSION.....	16
The <i>Atkins</i> Determination.....	17
The Definition to Apply.....	18
The Applicable Definition.....	19
Analysis	22
Applicant's Expert.....	23
The Court's Expert.....	26
Respondent's First Expert in Forensic Psychology.....	31
Respondent's Second Expert in Forensic Psychology.....	33
Respondent's Fact Witness: Dr. Elaine Harris, School Psychologist.....	36
Flynn Effect.....	38
Suggestion to Revisit <i>Atkins</i>	40
CONCLUSION.....	42

INTRODUCTION

An evidentiary hearing in the captioned capital post-conviction relief (PCR) matter was held on July 30-31, 2024, to receive testimony and evidence on the sole issue before the Court: whether Applicant, Bobby Wayne Stone, has carried his burden of proof in convincing this Court that he is intellectually disabled and exempt from capital punishment pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002) and *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003). Respondent submits that based on the totality of the evidence, he cannot. The greater weight of the case firmly and consistently supports that Applicant has not, does not, fall under the intellectual disability exemption.

SUMMARY OF THE ARGUMENT

Our Supreme Court has instructed that in order to have a death-sentence set aside under *Atkins*, a PCR “applicant must show he or she is mentally retarded by a preponderance of the evidence.” *Franklin v. Maynard*, 356 S.C. 276, 280, 588 S.E.2d 604, 606 (2003).¹ This requires a convincing, *i.e.*, credible, persuasive, and factually supported, showing that he has “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior [that] manifested during the developmental period.” *State v. Blackwell*, 420 S.C. 127, 139, 801 S.E.2d 713, 719 (2017), quoting S.C. Code Ann. § 16-3-20(C)(b)(10) (2015). Applicant’s case fails as the necessary underpinnings for the diagnosis are faulty.

Applicant first claims he may show, by a preponderance of the evidence, that he had significantly subaverage intellectual functioning during the developmental period, but his IQ tests

¹ Though the case law, mitigation statutory provisions, and definitional statute referenced in *Franklin* all use the term “mentally retarded,” our courts recognize the modern term “intellectually disabled” to describe the same, specific condition. *State v. Stanko*, 402 S.C. 252, 283, 741 S.E.2d 708, 724 n. 1 (2013), citing S.C. Code Ann. § 44-20-30 (Supp.2011), *amended by* 2011 Act No. 47, § 13 (2011) (recognizing the change in terminology).

and demonstrated level of functioning do not support his claim. Developmental period testing shows scores of 86, 78, a range that included 69 to 75, and 67 to 73. And, being tested in adulthood, specifically for this action, he received a full-scale score of 79, which even adjusted downward using the controversial *Flynn* effect, was according to the Court's expert, at the lowest, 76.03. DDSN Report, p. 10. (*See also* PCR Tr. 185). But that discounting is not a mandatory application and not generally used apart from discounting a capital defendant's scores to edge him closer to exemption. That should not be accepted. Applicant simply cannot credibly show a score within the generally accepted range of 70 to 75 for mild levels of intellectual disability.² As the Court's expert agreed, one generally cannot test higher than real ability. (*See* PCR Tr. p. 257).

Applicant also relies on school records to show significantly subaverage function through academic struggles, (*see* PCR Tr. p. 81, 84); yet, he was identified as essentially having a learning disability, which is distinct from intellectual disability, and also a vision issue, all while sharing an environment at home that was not conducive to good studying habits, and that valued hard work over formal education. (*See* PCR Tr. p. 226-228). Indeed, in considering an allegation of ineffective assistance in the mitigation presentation, our Supreme Court quoted from the trial social worker as she "described how this difficult family structure led to problems with school and employment...." *Stone v. State*, 419 S.C. 370, 402, 798 S.E.2d 561, 578 (2017). Moreover, other

² *See Atkins*, 536 U.S. at 309 n. 3 (observing "'Mild' mental retardation is typically used to describe people with an IQ level of 50-55 to approximately 70."); *id.*, at 309 n. 5 ("an IQ between 70 and 75 or lower ... is typically considered the cutoff IQ score for the intellectual function prong of the mental retardation definition."); *see also* American Association on Intellectual and Developmental Disabilities ("the AAIDD"), *The Death Penalty and Intellectual Disability* (2014) ("Variability of IQ Test Scores" by Stephen Greenspan and J. Gregory Olley, describing the "conventional upper limit of 70-75"); PCR Tr. p. 186 testimony of Dr. Alicia Hall, "significant cognitive deficits or intellectual deficits" equates with levels that are "at least two standard deviations below th[e] mean of 100, which would be 70 or below...." However, applying the test's standard error of measurement, the level "can actually go up to about 75 and still meet criteria for intellectual disability because their adaptive functioning is so impaired.");

school-age records indicate his academic problems continued in high school until Applicant dropped out after his ninth grade year; however, and tellingly, once Applicant was placed into Birchwood High School, which is part of the South Carolina Department of Juvenile Justice, where attendance was no optional, he maintained C's and B's in remedial classes, including a course in economics. (PCR Tr. pp. 90 and 138-140; 239-241). Together, his scores and records do not support the first prong of an intellectual disability diagnosis.

Applicant next claims that he may show, by a preponderance of the evidence, that he has deficits in adaptive behavior. This is the most subjective prong of the analysis, and it is here that the facts his expert relies upon (which were, unfortunately, shared with the court's expert to taint that opinion, as well), are shown to be insufficient, incomplete, or just simply wrong. *See United States v. Candelario-Santana*, 916 F. Supp. 2d 191, 211 (D.P.R. 2013) (“[b]ecause of the relative subjectivity of the adaptive behavior analysis, the importance of clinical judgment becomes greater under prong two than under prong one. When assessing adaptive behaviors, therefore, courts must make their own independent determinations of the clinicians’ judgment and credibility.”). There is a long listing of facts that could either be interpreted differently, or facets of those facts not considered, which undermines the fullness of the factual picture used to make the diagnosis. Indeed, very little is mentioned at all about the great wealth of evidence from the prior proceedings. For example, the Court’s expert was not provided school records that Applicant frequently fell asleep in his classes – a point that the trial-level social worker found important. (See PCR Tr. 227). And, quite simply, if the general, under-investigated “facts” Applicant’s relies upon could be better explained with cultural or socio-economic causes (consistent with prior defense position), he cannot carry his burden by a preponderance of the evidence; the omission of facts led to reliance on surface or unchallenged conclusions insufficient to support the diagnosis. Though the Court

need not evaluate this prong as the first prong is solidly not met, if the Court chooses to do so, Applicant fails to show a credible, persuasive case.

In sum, Applicant has not shown he is exempt from capital punishment under *Atkins*, because he fails to make a case for intellectual disability. Relief should be denied.

STATEMENT OF THE CASE

Procedural History

During the August 1996 term, the Sumter County Grand Jury indicted Applicant for murder, burglary in the first degree, and possession of a weapon during a violent crime. On January 21, 1996, the State gave notice of intent to seek the death penalty. (App. p. 2097).³ The Honorable R. Markley Dennis was assigned to preside over the proceedings. Cameron B. Littlejohn, Esq., and James H. Babb, Esq., represented Stone on the charges. After a jury trial beginning on January 23, 1997, Applicant was found guilty as charged. After the statutory 24-hour waiting period, the sentencing phase began. On January 28, 1997, the jury found the existence of two aggravating factors – the murder was committed during the commission of a burglary first degree; and the murder of a legal law enforcement officer during or because of the performance of his official duties – and determined death was the appropriate sentence. (App. p. 265). Judge Dennis imposed the death sentence for murder, a consecutive thirty years on the burglary conviction, and five, consecutive, years for possession of a weapon during the commission of a violent crime. (App. p. 269-70).

³ Citation to “App.” refer to the appendix Applicant submitted to the Supreme Court of South Carolina in the appeal from the first denial of post-conviction relief. These documents were filed with the State’s Return as attachments.

Direct Appeal

Applicant filed a timely notice of appeal on January 31, 1997. After briefing by both sides, oral arguments was held before the Supreme Court of South Carolina on May 16, 2002. On July 15, 2002, the Supreme Court issued their decision affirming the conviction; however, they reversed and remanded the penalty phase. *State v. Stone*, 350 S.C. 442, 567 S.E.2d 244 (2002).

Resentencing After Appeal Relief

On February 22, 2005, the resentencing hearing began before a new jury. The Honorable Howard P. King presided. Mr. Littlejohn and Mr. Babb continued to represent Applicant. On February 27, 2005, this jury found the State had proven beyond a reasonable doubt that the murder was of a law enforcement officer during or because of the performance of his official duties and similarly assessed Applicant deserved a sentence of death. (App. p. 3630). As required, Judge King imposed the jury's sentencing determination and Applicant was again sentenced to death. (App. p. 3637).

Direct Appeal After Resentencing

After completion of briefing, oral arguments were held before the South Carolina Supreme Court on November 14, 2007. On December 20, 2007, the Supreme Court issued their opinion affirming Applicant's sentence of death. *State v. Stone*, 376 S.C. 32, 655 S.E.2d 487 (2007). A petition for rehearing was filed by the Applicant, this petition was denied on January 23, 2008.

First PCR Action

Applicant filed an initial PCR application on April 1, 2008. (R. pp. 3978-3983). John H. Blume, Esq., and Robert E. Lominack, Esq., represented Applicant in the action, with Emily Paavola, Esq., replacing Mr. Lominack at the conclusion of the hearing for the remainder of the proceedings. (See App. 4501).

On April 23, 2012, the Honorable Michael G. Nettles presided over an evidentiary hearing.

Applicant presented several experts regarding the following claim:

4) Counsel failed to conduct a reasonable investigation into potentially mitigating evidence regarding applicant's impoverished childhood and the family dysfunction resulting from the essentially polygamous household in which he was raised, applicant's very low intellectual functioning, and neurological damage from exposure to dangerous neurotoxins and other chemicals as well as the maternal ingestion of alcohol during the developmental period. Counsel failed to gather relevant social history, educational and medical records which would have corroborated the mitigating evidence that was presented at applicant's trial. Counsel also failed to investigate, develop and present evidence of applicant's good character.

(Return to Amended Application, at 6).

Notably, mental retardation was mentioned during the hearing and had been considered during the preparations for the resentencing proceeding.

Trial counsel, Mr. Babb, testified to his preparation for a possible mitigation case. (*See* App. 4353). He testified he was "aware that Mr. Stone's IQ had been diagnosed as below normal." (App. 4362). However, in cross-examination, Mr. Babb identified his notes from discussions with his defense team, and his contemporaneous notes reflected, "Not retarded, but a low IQ." (App. 4397). Further, trial co-counsel, Mr. Littlejohn, though not addressing adaptive functioning specifically, testified that Applicant's "family and friends ... were behind him," available to the defense, and offered an interesting note that did reflect on Applicant's ability: "[w]hen he was in jail one time, he ... sponsored a tournament or a lottery or something for ... some lady that was undergoing some health problems...." (App. 4483).

Applicant called Dr. Merikangas, M.D., a neurologist and psychiatrist, at the hearing in the first PCR action. The doctor responded on cross-examination, that he was "not exactly" testifying that Applicant was not mentally retarded, only that "we don't have the evidence that would prove

mental retardation,” specifically, “his adaptive living scales” that would have been given. (App. 4137). However, he also testified that he “was the medical director of the mental retardation treatment unit at the University of Pittsburgh between the times of 1973-1979” and, though they did not use the DSM definitions, he considered the diagnosis to require “global assessment of the patient....” (App. 4139). Dr. Merikangas rejected finding that Applicant had “a callous disregard for the rights of other,” and noted that Applicant was “caring for a schizophrenic patient in the jail now, taking care of his mental, physical, and bodily needs as a compassionate caregiver.” (App. 4141). Dr. Merikangas testified that his review of Applicant’s school records reflected “problems with visual coordination and integration” and opined that Applicant “has functioning in the borderline range in intelligence, substantial deficits in the performance area.” (App. 4146-4147). On redirect, PCR counsel, Mr. Blume, asked about the school records with IQ testing of 78 at age 11, and at age 14, a range of 69-75, which Dr. Merikangas agreed was the “basis of the school system determining Mr. Stone had mental retardation or was educably mentally retarded.” (App. 4152). He even agreed with defense counsel’s question that the information could “suggest” to the doctor there was “probable” mental retardation. (App. 4153).

PCR counsel, Mr. Blume,⁴ even underscored, in the motion to reconsider, that the second sentencing jury “was not informed that [Applicant] was repeatedly evaluated in school and found to have an IQ score as low as 69-75, which is in the mental retardation range,” and to be “educably mentally handicapped (i.e., mentally retarded) or that his academic achievement scores

⁴ Mr. Blume has authored articles about the *Atkins* exemption, *see for example*, John H. Blume et. al., *Of Atkins and Men: Deviations from Clinical Definitions of Mental Retardation in Death Penalty Cases*, 18 Cornell J.L. & Pub. Pol’y 689, 698–700 (2009); and has contributed to resources such as one produced by the American Association on Intellectual and Developmental Disabilities (“the AAIDD”), *The Death Penalty and Intellectual Disability* (2014) (“Analysis of *Atkins* Cases,” with Karne L. Salekin).

consistently indicated low intellectual functioning.” (App. 7291). Further, Mr. Blume argued at the hearing on the motion to reconsider that PCR court should reconsider the finding that Applicant’s “low intellectual functioning was thoroughly presented to the sentencing jury at trial” was “not accurate” because the social worker did not have a “complete set of his school records” include those “which indicated that he had an IQ in the mental retardation range and he had been found by the school system in Sumter County to be what was called educable mentally handicapped or what we would now today call intellectually disabled or mentally retarded.” (App. 7309).⁵ However, though counsel made this argument in regard to presentation of mitigation, counsel did not claim that Applicant was intellectually disabled as would satisfy *Atkins* exemption.

On August 14, 2013, the PCR Court issued an amended order⁶ denying the application for post-conviction relief. (App. p. 7339-70). Applicant appealed.

PCR Appeal

The South Carolina Supreme Court granted Applicant’s petition for writ of certiorari and reviewed these issues, as framed by our Supreme Court:

(1) whether Stone’s trial and appellate counsel were ineffective in dealing with victim impact evidence, (2) whether Stone’s trial counsel was ineffective in investigating and presenting evidence of brain damage, and (3) whether Stone’s trial counsel was ineffective in investigating and presenting evidence of the accident theory of the case.

⁵ Evidence offered, even if the condition is rejected by the factfinder as an exemption, may still be considered in mitigation. *See State v. Laney*, 367 S.C. 639, 649, 627 S.E.2d 726, 732 (2006) (“if not found as a threshold issue, mental retardation continues to be a mitigating circumstance under statutory law”); *see also* S.C. Code Ann. § 16-3-20(C)(b)(10) (retaining mental retardation as a statutory mitigating circumstance).

⁶ The amended order was a result of motions to alter or amend submitted by both Applicant and the State and again denied all relief. (*See* App. 7291-7307 and 7336-7337).

Stone v. State, 419 S.C. 370, 379, 798 S.E.2d 561, 566 (2017).

After the submission of briefs by both parties, oral arguments were held on March 23, 2016. The Supreme Court issued an opinion on March 29, 2017, affirming the decision of the PCR court. *Stone v. State*, *supra*.

Federal Habeas Corpus Proceedings, C/A 2:17-cv-01221-MGL-MGB

Having completed his ordinary state remedies, Applicant filed a petition for writ of habeas corpus in the federal district court. Applicant filed a petition on March 26, 2018, with a supplement filed on March 29, 2018. The filing allows for a stay of execution until completion of the action. However, Applicant moved to stay those proceedings to return to state court and attempt to litigate his successive PCR action. That action remains stayed with the parties filing periodic status reports.

Second PCR Action, C/A 2018-CP-43-1025

On June 5, 2018, Applicant filed this latest application for relief which he amended on July 26, 2018. In his amended application, Applicant alleged (1) that he is intellectually disabled, therefore, he is not eligible for the death penalty; (2) ineffective assistance of counsel for failing to investigate the claim of intellectual disability; and (3) ineffective assistance in the “failure to retain a forensic pathologist, crime scene reconstruction expert and other similar expert assistance to prove that the facts and circumstances of the crime were constituent with an accident theory.” (July 25, 2018, Application, filed July 26, 2018, at 2-3).⁷ Respondent filed a return to the original application, a return to the amended application, and also moved to dismiss the action as untimely and improper successive; and, additionally, his Eighth Amendment/*Atkins* claim was not

⁷ The amendment added the claim of ineffective assistance of counsel regarding investigation of alleged intellectual disability.

cognizable under the Simmons Doctrine⁸ as it constitutes a trial claim that was available during the resentencing. (Return to Amended Application, dated August 24, 2018, filed August 28, 2018, at 22-30). Judge Nettles was previously assigned this matter, and, by order filed February 22, 2019, granted the State's motion in part, and denied in part, ruling first that the *Atkins* claim could continue and be heard on the merits with Applicant bearing the burden of proof; second, that the ineffective assistance claims were barred as untimely and improperly successive; and third, that the offered "new" evidence was not new at all, noting not only had the "accident" theory had been explored in the prior PCR action but was also barred under "law of the case." (Order filed February 22, 2019). This Court was subsequently assigned the matter.

By order dated July 3, filed July 9, 2019, this Court directed the South Carolina Department of Disabilities and Special Needs to conduct an *Atkins* evaluation. By order dated December 30, 2019, and filed January 3, 2020, this Court "addresse[d] issues unresolved by the prior order dated July 3, 2019," and addressed issues of presence at the evaluation, and receipt of the DDSN report. Subsequently, this Court, along with counsel for the parties, received the DDSN report by the court's expert, Dr. Alicia V. Hall, Ph.D., on December 2, 2022.

⁸ 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 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.").

Dr. Hall began her conclusion with the acknowledgment that “Mr. Stone’s case presents a complexity that does not lend it to an obvious decision.” DDSN Report, p. 12. She opined that evidence presented argued both for and against the diagnosis of intellectual disability. DDSN Report, p. 12. She resolved that to properly resolve the matter required “in-depth analysis....” DDSN Report, p. 12. Ultimately, she concluded, based on the materials she had available, that Applicant “appears to meet criteria on the first prong,” and that he “has met the second prong” based on that evidence, as well. DDSN Report, p. 12. Dr. Hall deferred to this Court to make the determination, but shared her “opinion, based on the totality of the data,” available to her that Applicant met the criteria under S.C. Code § 16-3-20 (C)(b)(10)(2003), *i.e.*, “significant subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.” DDSN Report, p. 12 and p. 1. The State advised that upon review of the DDSN evaluation, it assessed that additional expert review was prudent.⁹

An evidentiary hearing was held on July 30-31, 2024. Present before the Court was Applicant along with his counsel Rosland Major, Esq., and Charles Grose, Esq. Representing the State of South Carolina was Melody J. Brown, Senior Assistant Deputy Attorney General, with Assistant Attorneys General Tommy Evans, Jr., and R. Brandon Larrabee. The Court heard from four experts in the mental health field, and a former school psychologist in the district where Applicant attended. At the conclusion of this hearing, this Court allowed the submission of post-hearing briefs following the receipt of the transcripts. Applicant has previously submitted his post-hearing brief. This brief of Respondent follows.¹⁰

⁹ The Court’s July 2019 order provided that neither party was prohibited “retaining their own mental health experts for purposes of this intellectual disability claim.”

¹⁰ This Court has previously rejected the State’s arguments that the entire action is barred as improperly successive and untimely and/or by S.C. Code Ann. § 17-27-20(B) and the Simmons

Facts Established at Trial

Guilt Phase

Applicant began the day of February 26, 1996, purchasing beer and two guns, one a .410 bore shotgun and another a competition grade .22 caliber semi-automatic. Applicant spent most of the day shooting in the woods. *Stone*, 419 S.C. at 378, 798 S.E. at 565. That evening Mary Ruth McLeod was at the home of her mother Ruth Griffith when they heard a knocking at the back door, Ruth pulled the curtain back and saw Applicant. (Supp. App. pp. 229-32, pp. 259-60, pp. 291-42). Ruth told her daughter that Applicant was outside, and she did not want him in her house. Ms. McLeod went outside and approached Applicant. She told him to “go home.” Applicant initially headed to a shed in Ms. Griffith’s backyard. With more prompting Applicant decided to head back to the woods. As he walked away Ms. McLeod saw Applicant had something under the back of his jacket. Ms. McLeod walked to the edge of the woods to make sure he was headed home. She then saw Applicant standing there, holding a shotgun, arms crossed, staring back at the house. (Supp. App. pp. 232, 264-65, 279; App. pp. 2942-46, 2969-71).

Ms. McLeod then went back inside the house and dialed 911. Sergeant Charlie Kubala of the Sumter County Sheriff’s Department arrived. Sergeant Kubala reported arriving at 6:06pm. Once he arrived Ms. McLeod and Ms. Griffin explained to him what happened. They walked to the edge of the woods and saw that Applicant had left. Sergeant Kubala told them to call him if they had any more trouble. (Supp. App. pp. 232-33; App. pp. 2946-48).

Shortly after Sergeant Kubala left, Ruth heard gunshots in the backyard. At 6:47 pm she called her neighbor Landrow Taylor, who also heard the shooting and promptly responded next

Doctrine. Though the State maintains those defenses for purposes of appeal, those defenses are not re-argued in this briefing.

door to Ms. Griffith house. They both then heard someone attempting to enter Ms. Griffith's car by jiggling the car door handle that was parked right outside the bedroom window. They dialed 911 again at 7:02pm. As they went to the living room, they heard someone banging on a rarely used side door. Mr. Taylor then yelled "[W]hat are you trying to do back there?" There was then a moment of silence, then the beating started back. (Supp. App. pp. 234-38, 255-56, 283-84)

Sergeant Kubala reported back on the scene. Mr. Taylor went out to the front porch and motioned for the deputy. Sergeant Kubala walked around the corner of the house. Mr. Taylor and Ms. McLeod then heard someone shout either, "Halt," or "Hold it," followed immediately by three or four gunshots. As Mr. Taylor ran back to the front porch, Deputy John Prince arrived in his cruiser. Mr. Taylor saw Sergeant Kubala's flashlight and walkie-talkie lying on the ground. He yelled to Deputy Prince that Sergeant Kubala was around the side of the house. Ms. McLeod again called 911 to let them know that Sergeant Kubala was shot. (Supp. App. pp. 240-42, pp. 285 -87, App. p. 3065).

Deputy Prince shined his flashlight, and saw Sergeant Kubala. Sergeant Kubala was on the ground, face up, bleeding profusely from his mouth and neck. Deputy Prince saw Sergeant Kubala's gun near his fingertips, and his walkie talkie. His flashlight was between his body and his right arm. Deputy Prince rolled Sergeant Kubala over attempting to clear his airway, then another gunshot rang out. Deputy Prince took cover at the corner of the house. (Supp. App. pp. 287, 90, 299-301; App. p. 3066-67. 3069-71).

Emergency Medical Services (EMS) and other officers soon arrived. Because Deputy Prince heard another shot, law enforcement cleared a nearby shed in the area. EMS found Sergeant Kubala not breathing and without a pulse. Sergeant Kubala was pronounced dead at the scene. He

died from one gunshot that entered his right ear, and another that entered his neck. (App. p. 3068, 3087-88, 3183-92).

Law enforcement looked around the woods and found Applicant lying near a log with the murder weapon under him. Bullets from that gun, and those was found in Sergeant Kubala's body was later sent to the South Carolina Law Enforcement Division (SLED) for identification. SLED conclusively matched the gun to two bullet fragments and one bullet found in Sergeant Kubala's body. The .22 pistol also matched three spent .22 cartridge cases found on the side porch as well as casings found in the nearby woods. Seargeant Kubala's 9mm service pistol was found fully loaded and had not been fired. (App. p. 3091, 3202, 3229, 3279, 3285-97).

After his arrest Applicant gave a statement to law enforcement. Applicant admitted to being at Ms. McLeod house earlier that day. Applicant claimed that as soon as he entered the back yard a women he did not know came out of the house "raising cane" at him telling him to get off the property. Applicant returned to the woods, found and paid David who left. Applicant then walked around the woods shooting the guns and finishing off a beer. Around dark he returned to Ms. McLeod's house. Applicant told law enforcement that he walked up the steps to the little screen porch, sat down the shotgun, but he kept the .22 in his right hand. Applicant admitted he started beating on the inside door, which he broke because he hit it so hard. Applicant then stated that he heard a man's voice yelling outside the house, as he turned, the gun went off. Applicant then ran into the woods. In his statement, Applicant claimed that his gun only went off once, he stated that he never saw Sergeant's Kubala or his patrol car. (App. pp. 3160-69).

Sentencing Phase

During the sentencing phase of the trial Applicant called social worker TeAnne Oehler to explain Applicant's personal background. She stated that Applicant grew up in poverty and

described his mother's affair with an abusive and drinking man, Wesley Miles. She theorized this upbringing led to Applicant's poor performance in school and frequent troubles with the law, which began with an arrest for stealing a car. Ms. Oehler concluded his background affected his judgment and decision making. (App. p. 3391-414). During cross-examination Ms. Oehler admitted she believed Applicant had anti-social personality disorder and a problem with authority figures, and she admitted knowledge of his extensive history of burglary and theft. (App. pp. 3426-30).

Applicant's paternal aunt Bernice, his sister Melinda, and his niece Linda testified about Applicant's parents, his upbringing and his family, and their relationship with Applicant. (App. pp. 3431-35, 3446-51, 3457-670).

Ms. Griffith's sister-in-law Mary Wilson testified, she stated her daughter Michelle was living with Ms. Griffith at some point in the 90's and Applicant would visit her there. She also testified that Applicant did some work for Ms. Griffith and sometimes all of them would go out to a honky tonk. Supposedly, Ms. Griffith admitted drinking beer and smoking marijuana with the Applicant.

Psychopharmacologist Dr. Andrew Morton described the effects of Applicant's drinking on his brain, and on his judgment and decision making. (App. p. 3485-509). Former warden James Aiken also testified as to the Applicant's ability to adapt to prison, despite the commission of some infractions. Mr. Aiken was asked to describe Applicant's life in prison. Mr. Aiken testified that Applicant would be in the company of many dangerous people, and that Applicant is relatively old and vulnerable to violent and sexually aggressive inmates. Mr. Aiken also was allowed to testify that regardless of whether Applicant was good in prison or bad in prison, SCDC could safely contain him "under the gun" for the rest of his life. (App. 3522-36).

ALLEGATION FOR POST-CONVICTION RELIEF

As referenced above, the only issue allowed to proceed to hearing was the *Atkins* issue, which Applicant framed as follows:

- 10 & 11(a) Applicant's death sentence violates the Eighth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution due to the fact he is intellectually disabled. Because Applicant has significantly subaverage intellectual functioning existing concurrently with deficits in adaptive functioning, both of which began before he was eighteen years old, he is ineligible for capital punishment. *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).

DISCUSSION

The history of this action shows that a claim of intellectual disability was rejected during investigation at the trial level and was, apparently, rejected as a claim in the initial post-conviction relief proceedings. Specifically, the record shows that trial counsel, in consultation with the defense team, noted in regard to Applicant, "Not retarded, but a low IQ," (App. 4397), and the first PCR team developed all manner of information on intellectual functioning, even referencing a specter of mental retardation, but specifically did not raise an *Atkins* claim. Respondent submits that is so because the totality of the facts does not support the diagnosis. Even the Court's own expert, on limited context which is more fully shown below, admits that Applicant "has a history of intellectual functioning both in the ID range *and outside of it*." DDSN Report, p. 12 (emphasis added). That concession alone militates in favor of finding Applicant fails to carry his burden of proof here. But further, this Court has heard from experts Dr. Michael Vitacco and Dr. Kimberly Kruse who have offered well-informed and supported opinions that align with the prior treatment of the known information: the facts show Applicant is not intellectually disabled.

In essence, this Court is now tasked with evaluation of the outlier opinions. In doing so, this Court must critically consider the basis for the diagnosis. That is where Applicant has failed. *First*, Applicant fails to show proper consideration of the intellectual function prong, discounting the attained score with a theory only beneficial in “best practices” to a death sentenced inmate, and ignoring the consistency of the 79 IQ range, which could be as high as 83. *Second*, the factual support cited relies on assumed or incorrectly investigated matters that were either wrong or incomplete. This renders the diagnosis infirm. Unfortunately, the first faulty basis and opinion was shared between Applicant’s expert here and the Court’s expert, which caused the infirmity to be repeated. Viewed in light of the totality of the evidence and without bias, this case remains as it has been; one that shows the defendant is not intellectual disability and is eligible for capital punishment – punishment assessed by two separate juries and that has been undisturbed on review. It should remain undisturbed here.

The Atkins Determination

Atkins is not an intellectual disability case for medical professionals; rather, *Atkins* is an Eighth Amendment case. *Atkins*, 536 U.S. at 321. And it is well-established at this point that “[n]ot all people who claim to be mentally retarded will be so impaired as to fall within the range of mentally retarded offenders *about whom there is a national consensus*.” *Atkins*, 536 U.S. at 317 (emphasis added).¹¹

In nearly every *Atkins* case, qualified experts offer competing opinions. The Court’s critical review often turns on the factual basis and the methods and practices relied upon. To be sure, the Supreme Court has referenced “prevailing clinical standards” in determining the

¹¹ The prevalence of true intellectual disability occurrences is limited estimated at “approximately 1% of the general population. DSM-5, at 38, or stated differently, “10 per 1,000” individuals. DSM-5TR, 43.

condition. *Id.*, See also, *Moore v. Texas*, 581 U.S. 1, 15 (2017). Yet, the Court has been equally clear that clinical opinions neither dominate nor control the decision to be made under the Eighth Amendment. *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003) (“The defendant shall have the burden of proving he or she is mentally retarded by a preponderance of the evidence”); *Hall v. Florida*, 572 U.S. 701, 721 (2014)(“views of medical experts ... do not dictate the Court’s decision”) *Id.* (“The legal determination of intellectual disability is distinct from a medical diagnoses, but it is informed by the medical community’s diagnostic framework”); *Id.*, at 736 n. 12 (“organizations might recommend examining evidence of adaptive behavior even when an IQ is above 70, but that sheds no light on what the *legal* rule should be given that most States appear to require defendants to prove each prong separately by a preponderance of the evidence”)(emphasis in original); see also, *Moore*, 581 U.S. at 13 (“being informed by the medical community does not demand adherence to everything stated in the latest medical guide”); *Id.* at 22 (“clinicians, not judges, should determine clinical standards; and, judges, not clinicians should determine the content of the Eighth Amendment”) (Roberts, C.J., dissenting). *Cf. Kansas v. Crane*, 534 U.S. 407, 413 (2002)(“the science of psychiatry, which informs but does not control ultimate legal determination, is an ever-advancing science, whose distinctions do not seek precisely to mirror those of the law”).

Notably, the medical profession recognizes its own limitations in legal matters. The American Psychological Association in the *Diagnostic and Statistical Manual of Mental Disorders*, 5th Ed., Text Revision, (DSM-5-TR), 29 sets out its “Cautionary Statement for Forensic Use of DSM-5,” “that there exists an ‘imperfect fit between the questions of ultimate concern to the law and the information contained in a clinical diagnosis.’” The caution continues that “[i]n most situations, the clinical diagnoses of a DSM-5 mental disorder such as intellectual developmental

disorder (intellectual disability) ... does not imply that an individual with such condition meets legal criteria for the presence of a mental disorder ... or specified legal standard...” *Id.* The conclusion is inescapable that the legal determination on exemption is separate and “distinct” from medical opinion. *See, Hall, supra.*

Thus, courts presented with evidence going to a claim of intellectual disability are guided by the same principles that always guide admissibility of witness testimony, and factfinders are guided by the same principles that always guide credibility and weight.

The Applicable Definition

In *Franklin* our Supreme Court instructed courts to follow the definition of mental retardation, now intellectual disability, found in the murder statute, capital provisions:

“Mental retardation” means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period.”

S.C. Code Ann. §16-3-20(C)(b)(10).

This largely follows the clinical definition referenced in *Atkins*, “... clinical definitions of mental retardation require not only subaverage intellectual functioning, but also significant limitations in adaptive skills such as communication, self-care, and self-direction that became manifest before age 18.” *Atkins*, 536 U.S. at 318. The Supreme Court noted the definition so phrased in *Atkins* was roughly the same as that announced by the American Association on Mental Retardation (AAMR); the American Psychiatric Association (APA), and consistent with the IQ range then identified in the DSM (IQ level of 50-55 to approximately 70). *Id.*, at 318 n.3¹² It also

¹² If one applies a true Eighth Amendment exemption analysis, “[a]t most, *Atkins* may be said to have prohibited the death penalty for those who were ‘mentally retarded’ based upon a national consensus about what society believed that meant in 2002.” *Ex parte Segundo*, 663 S.W.3d 705, 712-13 (Tex. Crim. App. 2022). This is generally supported in the Supreme Court’s treatment of the test. The Court has consistently referenced the condition as “the generally accepted,

generally follows the definition recognized by the American Association on Intellectual and Developmental Disabilities (AAIDD) *Moore v. Texas*, 586 U.S. 133, 135 (2019). Though recognizing reference is occasionally made to other considerations, our Court adheres to the state statutory definition. *State v. Blackwell*, 420 S.C. 127, 139, 801 S.E.2d 713, 719 (2017).

Moreover, in *Blackwell*, our Court reasoned that the Supreme Court’s *Moore* decision, which addressed a Texas test in comparison with medically accepted approaches, requires no different approach. *Id.*, 420 S.C. at 144, 801 S.E.2d at 721 n. 11. The Supreme Court in *Moore* was primarily concerned with application of non-medical factors for guidance. *Id.* Specifically, one of the Supreme Court’s concerns in *Moore* was that the non-medical factors appeared to rest more on stereotypes than facts for clinical evaluation. *Moore*, 581 U.S. at 18, *see also*, *Moore (II)*, 586 U.S. at 137. An example of the Texas court’s reliance on “stereotypes,” the Supreme Court compared the lower court’s rulings that “evidence that Moore ‘had a girlfriend’ and a job as tending to show he lacks intellectual disability,” with these sources: “AAIDD – 11 at 151 (criticizing the ‘incorrect stereotypes’ that persons with intellectual disability ‘never have friends, jobs, spouses, or children’) and Brief for APA et al. as *Amici Curiae* 8 ([I]t is estimated that between nine and forty percent of persons with intellectual disability have some form of paid employment’). 586

uncontroversial intellectual-disability diagnostic definition, which identifies three core elements: (1) intellectual-functioning deficits (indicated by an IQ score ‘approximately two standard deviations below the mean’ – *i.e.* a score of roughly 70 – adjusted for ‘the standard error of measurement.’ ...; (2) adaptive deficits (‘the inability to learn basic skills and adjust behavior to changing circumstances’ ... and (3) the onset of these deficits while still a minor.” *Moore v. Texas*, 581 U.S. 1, 7 (2017). (citations omitted). *See also*, *Hall*, 572 U.S. at 736 (noting through “organizations might recommend examining evidence of adaptive behavior even when an IQ is above 70, but that sheds no light on what the *legal* rule should be given that most States appear to require defendants to prove each prong separately by a preponderance of the evidence”)(emphasis in original). *Accord Shoop v. Hill*, 586 U.S. 45, 52 (2019)(*per curiam*) (vacating lower court opinion in federal habeas corpus appeal where the Court of Appeals relied upon *Moore* to grant relief when *Moore* was not in existence when the state court decided the issue.

U.S. at 142. In other words, a superficial glance at such evidence is not sufficient. But neither is a superficial glance at stereotypical deficits. A robust look at the evidence is required.

Moreover, all three prongs are required to be met. Courts do not find a lone showing of difficulties in adaptive functioning to be sufficient. *Hall*, 572 U.S., at 737 n.12 (“The longstanding views of professional organizations have also been the intellectual functioning and adaptive behavior of independent factors.”); cf. *United States v. Roof*, 10 F.4th 314, 380 (4th Cir. 2021) (“Although ‘significant limitations in adaptive skills such as communication’ are part of the *Atkins* test, *id.*, they are not sufficient by themselves to render a defendant mentally incapacitated.”). South Carolina has rejected a similar argument based on general “alleged mental abnormalities” other than intellectual disability. *Stanko*, 402 S.C. at 284-288, 741 S.E.2d at 724-726 (defendant’s claim of brain damage, though refuted by other evidence, with evidence arguably demonstrating his “inability to adept,” would not support finding “an inability to communicate or care for himself adequately, or sub-average intellectual functioning.”).

Credibility, Weight and the Burden of proof

A defendant (or PCR applicant) bears the burden of showing all three prongs of intellectual disability to fall under the South Carolina definition. For this, then, he must present credible and persuasive evidence. Courts have considered a variety of reasons to find some experts more credible or that their opinions should be assigned more weight even if the qualifications are equally matched. *See generally, Hill v. Shoop*, 11 F.4th 373, 394 (6th Cir. 2021), *cert. denied*, 213 L.Ed.2d 1134, 142 S.Ct. 2579 (2022) (noting the state court was called upon to resolve a difference in opinions given by “[t]hree credentialed and independent physicians”).

In evaluation of a diagnosis, courts have considered whether the information on adaptive functioning deficits is corroborated, *Bourgeois v. Watson*, 977 F.3d 620, 635 (7th Cir. 2020), the

depth, or lack thereof, of critical review, *Bryant v. State*, C/A 2016-CP-43-828 (Sumter County, filed Jan. 4, 2019); or even if opposition to the death penalty generally has clouded the expert's judgment, *Commonwealth v. Flor*, 259 A.3d 891, 917 (Pa. 2021). Our Supreme Court has underscored trial courts tasked with considering a claim of intellectual disability will be "the sole judge[s] of the credibility of the witnesses and the weight to be given their testimony...." *State v. Blackwell*, 420 S.C. 127, 140, 801 S.E.2d 713, 720 (2017). A failure to consider known facts (or have those facts provided to an expert) is cause to find a lack of credibility. See *Commonwealth v. Flor*, at 917 ("The PCRA court, as with Appellant's earlier expert witnesses, found Dr. Martell lacking in credibility by essentially cherry-picking information to support a predetermined conclusion" and "[t]he shortcomings perceived by the PCRA court were compounded by the mutual reliance by the experts upon one another's reports"). In particular, as to the second prong, "[b]ecause of the relative subjectivity of the adaptive behavior analysis, the importance of clinical judgment becomes greater under prong two than under prong one." *United States v. Candelario-Santana*, 916 F.Supp.2d 191, 211 (D.P.R. 2013).

As is always the case, "[c]ourts are not required to credit expert testimony." *Ybarra v. Gittere*, 69 F.4th 1077, 1092 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 2582, 219 L. Ed. 2d 1241 (2024).

Analysis

At the evidentiary hearing, this Court first heard from Applicant's expert. The discussion here will begin with that witness's testimony as that witness first shows the deficiencies that are ultimately demonstrated. The Court's expert, Dr. Hall, received the faulty information and even jointly interviewed the limited individuals identified by Applicant's team. This led to share infirmity as is shown below.

Applicant's Expert

Applicant called Dr. Sarah Boyd, who was found qualified as an expert in psychology of intellectual disability (PCR Tr. p. 13). Dr. Boyd admitted that she is opposed to the death penalty. (PCR Tr. p. 110). She testified that she gave Applicant an IQ test to assist in the diagnosis of intellectual disability. (PCR Tr. p. 109). In her report the result of the IQ test was a 79. (PCR Tr. p. 115). Dr. Boyd testified that, according to records, Applicant's initial IQ test score was 86. (PCR Tr. p. 114). This test was given before he was 10 years old. Dr. Boyd testified that this test was "possibly tainted" (PCR Tr. p. 114). Yet, Applicant's second test showed he scored 78 and his test in 2017 while awaiting this hearing he scored 79. (PCR Tr. p. 115). At the age of 14 Applicant was once again given an IQ test with a score 66-76. (Dr. Boyd's report pg. 8). However, this test was given at age 14, close to when Applicant finally dropped out of school in the 9th grade. Dr. Boyd confirmed that Applicant never tested under 70. (PCR Tr. p. 115).

Applicant, while in school, was diagnosed as having a learning disability and designated educable mentally handicapped.¹³ Pursuant to South Carolina law, students who are so designated are, "pupils of legal school age whose intellectual limitations require special classes or specialized education instruction to make them economically useful and socially adjusted." S.C. Code Ann. §59-21-510. Dr. Boyd admitted that this is a category for learning and not a mental health diagnoses. (PCR Tr. p. 118). She also admitted that this definition will not be found in the DSM-5 or the AAIDD. (PCR Tr. p. 118).

Returning to Dr. Boyd's testimony, she referenced acts or actions that are quite common among many individuals as evidence of deficits in adaptive functioning. Moreover, she found

¹³ As would be shown by a school official who later testified, Dr. Boyd's assumptions about Applicant's testing and designations in school were wrong. That is discussed further below.

deficits casually where details undermined that determination. For instance, Dr. Boyd relied in part on the fact Applicant had to take the driver's test twice. (Dr. Boyd's report pg. 12). However, Applicant passed the *written* portion of the exam on the *first* try. (PCR Tr. p. 252). Dr. Boyd also discussed that the Applicant only worked jobs that were "typical physical menial labor," jobs that did not require complex math, reading and writing skills. (PCR Tr. p. 130). Notably, in her report, Dr. Boyd used as an example of jobs that Applicant could not hold were an accountant, professional writer or engineer. (Dr. Boyd's report p. 6). That is clearly true of a large portion of society. Moreover, Dr. Boyd admitted during the PCR hearing that people with only a ninth-grade education, such as Applicant, do not qualify for these types of jobs. (PCR Tr. p. 131). Dr. Boyd's comparison scale for ability is unreasonable.

Dr. Boyd also used as examples of deficits in adaptive functioning the fact Applicant did not have a checking account and that he paid bills in cash or gave his check to his live-in girlfriend so she can pay the bills. However, during her testimony, Dr. Boyd admitted that many people do not have checking accounts, that it could be possible that Applicant does not trust banks which would not make him intellectually disabled. (PCR Tr. p. 127). Applicant also did not have credit or debit cards, but Dr. Boyd admitted that many people, especially poor people, do not possess debit or credit cards. (PCR Tr. p. 128). Dr. Boyd also related the fact that Applicant's family informed her that he never planned a trip or purchased a ticket. However, she admitted that his family was of modest means; therefore, none may have taken such trips because they could not afford it. Dr. Boyd admitted that the fact the Applicant never planned trips could have nothing to do with intellectual disability and more to do with finances, that he just did not have the money to go on trips. (PCR Tr. p. 128). Her speculation and comparisons are in tension with clear, clinical

standards that provide the relevant deficits identified for the diagnosis “must be directly related to the intellectual impairments” described. *See* DSM-5, p. 38.

Further, Dr. Boyd discussed information on Applicant’s home life. She stated that Applicant was not able to do housework, and he left that up to his mother and then to the women he lived with, while he did all the yard work and fixed the cars. But Applicant told Dr. Boyd that this was an agreement between them. (PCR Tr. p. 134). Dr. Boyd never spoke to Mary Hunt, Mary Cook or Michelle Price the three women that the Applicant once lived with to explain the work arrangements around the house to contrast *ability* with cultural expectations or preferences. (PCR Tr. p. 112). However, Applicant told her that he felt that was the appropriate partition of responsibility. (PCR Tr. p. 134). Again, that “direct[]” relationship to impairment is lacking.

Dr. Boyd also asserted in her report that Applicant’s family told her that he did not share much concerning his thoughts and feelings. However, the report also reflects that he was easy to get along with and that he was vulnerable to exploitation. (Dr. Boyd’s report p. 11). As an example, she related a story provided to her by Applicant’s sister, the gist of which was that Applicant’s car was stolen by his friends, but Applicant was back with them partying the next day. (PCR Tr. p. 125). When asked about the possibility of the sister’s story not being true, Dr. Boyd stated that it’s possible that the event was mischaracterized to her and admitted that there were a number of possibilities of what actually happened. (PCR Tr. p. 126). Yet, Dr. Boyd admitted to using this in her assessment of adaptive functioning even though this information could be false. (PCR Tr. p. 126).

During her testimony Dr. Boyd also discussed the very low grades that Applicant had in school. Applicant made mostly D’s and F’s during his period in school up to the point he dropped out in the ninth grade. (PCR Tr. p. 137). However, his high school records revealed that Applicant

missed many days from school. In English he missed sixteen days; in math lab he missed 9 days; he missed twenty-three days in Civics; fourteen in General Science; and nine in physical education. (PCR Tr. p. 137). Dr. Boyd admitted that Applicant missed numerous days in school while in high school, which could have played a part as to his poor grades. (PCR Tr. p. 137). Absent from her consideration was the lack of stability in the home life, and the Stone children would fall asleep in class. (See PCR Tr. p. 226-227). But the records from Birchwood high school, part of DJJ, show Applicant made B's and C's in remedial classes. She did not address structured learning and supports away from the family setting as affecting her opinion, but Dr. Boyd agreed that this would be a more structured setting where he would be forced to go to class. (PCR Tr. p. 139). She also agreed that home life can certainly contribute to a child's problems in school. (PCR Tr. p. 140).

Notably, the conclusion that lower scores and grades were likely due to his chaotic home life and not intellectual disability is not new. That was the theme in the trial-level proceedings. See *Stone v. State*, 419 S.C. at 402, 798 S.E.2d at 578 (noting social working “described how this difficult family structure led to problems with school and employment...”); (App. 3406-3408, 3412). It is a better fit.

Further, Dr. Boyd's lack of precision and omission of the prior investigations and testimony led to taint in the opinion offered in this case by the Court's expert, which is next discussed.

The Court's Expert

Applicant called the court's witness *after* his witness testified; the testimony shows the reason for this – the opinions were hopelessly intertwined, and just as hopelessly ill-informed.

To her credit, Dr. Alicia Hall testified that this case was not easily resolved and required consideration of the details, (PCR Tr. 210); however, Dr. Hall did not review the information available from prior actions in any detail, and particularly orders and opinions, as she was

attempting to avoid consideration of the facts of the crime, (PCR Tr. p. 214-215). In reviewing records, Dr. Hall, much like Dr. Boyd, defaulted to generalities rather than specific information. (See PCR Tr. p. 217, 225). The testimony and reports show the troubling, in tandem synergy. And, though Dr. Hall agreed that “there was some difficulty in the family that could impact Mr. Stone’s schooling and his behavior as an adult,” (PCR Tr. p. 216), like Dr. Boyd, Dr. Hall rejected that which was firmly shown to be much more consistently tied (as the defense had done on the trial level) with Applicant’s disadvantages or general upbringing than an impairment in functioning.

For example, declining to do housework, she agreed, was actually quite consistent with his expressed intent to do what he wanted when he was an adult having worked excessively hard as a child. (PCR Tr. 220-221). Further, the division of work with a girlfriend doing “inside chores,” she agreed, was reported as being the type of division of work that was customary to him. (PCR Tr. 221). She admitted that Applicant did other work such as outside work and automobile care. (PCR Tr. 221-222). She also admitted that his mother taught him to cook, yet she asked nothing about what that meant and how much he understood – such as asking about recipes he followed, methods he used – nothing that would be “helpful” in determining his ability to think through and accomplish cooking tasks. (PCR Tr. p. 222).

Further, Dr. Hall agreed that intellect essentially rested on two foundations: genes and environment. (PCR Tr. p. 223). However, though patterns showing mental retardation in family members may be a helpful data point, there were no diagnosis of mental retardation, but his siblings – from the same household (*i.e.*, environment) – did have handicaps. (PCR Tr. pp. 223-224). Further, Applicant’s brother Jerry had a hearing issue, while Applicant had a neurological vision issue. (PCR Tr. 226). This again explains necessary support that were not directly related to intellectual functioning impairment. Dr. Hall did not review the sentencing mitigation testimony

from the trial-level social worker so she was unaware of the testimony that the Stone children would often attend school and be sleepy and she received that information from no other source. She testified that she was unaware of school records that Applicant would fall asleep in his classes. (PCR Tr. 227). She agreed, though, that it would not be conducive to learning. (PCR Tr. 227).

Again, having not reviewed the sentencing phase testimony, she was not aware of the particulars of Applicant's mother's parenting skills (or lack thereof), but she was aware that Applicant's mother worked hard, valued hard work, and encouraged Stone to work as a child. (PCR Tr. p. 228). And she agreed that Applicant took satisfaction in his work as an adult, and kept his job with a tree service, showing up on time and where he should be on the specific day, and completing his work without reports or errors or repeated attempts. (PCR Tr. p. 228-229). And though she found deficits in having friends suggest work for him, he also worked construction on the side ("under the table") and that is commonly the time of work contracted by word of mouth. (PCR Tr. p. 230).

In the same discounting or negative vein, Dr. Hall considered reports by Applicant's friend, that Applicant wanted to be a "nice guy," was evidence he was easily led, but agreed that Applicant could either want to be a "nice guy" or use a "nice guy" approach to manipulate (recall that he was diagnosed with antisocial personality disorder and had a history of stealing, another data point that Dr. Hall did not read, nor was provided evidence of otherwise). (PCR Tr. pp. 231 – 233).

And as far as relationship information is concerned, Dr. Hall depended on Applicant's friend, Frankie Norton, to opine about specific with the relationship with Ms. Price, but admitted that the better information would come from the two people actually in the relationship. (PCR Tr. p. 235). Dr. Hall also agreed that Applicant maintained work to provide financially for his girlfriends, a point he was proud of. (PCR Tr. p. 234). Dr. Hall also agreed that it would make

sense that Applicant learned about checks or debit cards later in life given a very disadvantaged background. (PCR Tr. p. 235-236).

She recognized that, through review of the DJJ records, it appeared that supports in learning aided Applicant, but then also recognized that school records showed that Applicant moved a lot. She agreed that attending different schools would impact a child with a learning disability more than a child without one. (PCR Tr. pp. 240-242). Further, he had, without doubt, a neurological vision problem that required support. (PCR Tr. pp. 242-243). Thus, again, the known factual record supports the prior position of the defense team and not the instant opinion.

Other evidence also undermines her diagnosis. Though Dr. Hall was concerned about the “cloak of competence” and wanted to ensure she was obtaining correct and critical information for evaluation, she often judged Applicant’s responses with an eye toward simple rejection of his explanations, rather than considering his background and upbringing as part and part of Applicant’s response. For instance, when he responded about not having lived on his own, he told her it was a choice, and for this reason: “It just puts more work on me.” (PCR Tr. p. 244). But, on cross-examination, she agreed that reason was consistent with the fact that he had to work very hard as a child, and that he wanted to do what he wanted to as an adult. (PCR Tr. pp. 244-245). When he described removing a tree, she did not evaluate the information on his response, but only because it “did not appear” to be as explicit as perhaps it should be. (PCR. Tr. p. 245). Regarding his responses as to how to go about getting an apartment, she assessed “hesitancy” as his implicit acknowledgement of inability to quickly answer but agreed that could be because he’s been in SCDC for many, many years. (PCR Tr. p. 247). *See also* DDSN Report, p. 11. Moreover, his answers when given were not wrong, and in the “open-ended question” about things to do if he should be released, he came up, on the spot, with a plan, to get a job; get a camper, stay with his

brother until he could get a place of his own; determine how much is needed for a deposit and first month's rent; get the lights turned on; get furniture and clothes; make a budget, etc. (See PCR Tr. p. 249).¹⁴ Yet, she interpreted that as "struggling," though she also admitted the responses did reflect thought and foresight. (PCR Tr. p. 250). And, perhaps most troubling, Dr. Hall relied on "that *word was* that when he was in the community, there was not a time when he did not require the assistance of other people to be successful." (PCR Tr. pp. 250-251).¹⁵ That was a *concept* advanced by Applicant in this proceeding, but it was not a fact, and a point rejected personally by Applicant, which was supported by his record of his upbringing. That is unfortunate evidence of confirmation bias, not fair evaluation. And examples of that continued.

For instance, as to driving, Dr. Hall did not include anything in her report about tests and skills, but in her notes, Applicant admitted not passing the driving test on his first attempt. And his license lapsed, but it lapsed because he was incarcerated, not for failing to recognize and meet obligations to keep current. (PCR Tr. pp. 251-252). But he had passed the *written* portion of the test. (PCT Tr. p. 252). However, Dr. Hall did not consider any of this important information to include in the report. Applicant also reported a health scare and his affirmative steps to address his health problems even within the confines of institutional restrictions; and also reported his aid to another inmate who cannot help himself. (PCR Tr. pp. 252-253). Another item in the notes was Applicant's very complete answer on what to do if he saw smoke; leave, report it, do not yell

¹⁴ The discussion from the notes and at the hearing appear to blend some responses as to general "tell someone how to get an apartment" questioning and what to do should he leave prison. However, the basic gist is how to handle obtaining a place to live.

¹⁵ Dr. Hall's report reflects that she received information second hand via an investigation for Applicant in this action that a person reported "the applicant was dependent on others to take care of him." DDSN Report, p. 6. Yet the quote in the section is specifically tied to a generational/cultural fact: "Maybelle cooked for them and the women did the other chores like laundry." DDSN Report, p. 6. The characterization and later reference to "word" received very much is dependent on an adversarial position rather than unbiased view of direct evidence.

fire because if someone dies, you would be “legally responsible.” (PCR Tr. p. 254). Yet, that was not referenced in the report.

As to evidence that brings developmental period testing and his current score into context, Dr. Hall agreed that Applicant reported drug use especially about the high school level when he would have taken an achievement test, and agreed that, at that time, Applicant was, at the time, “cutting school a lot.” (PCR Tr. 254-256). Yet, even with that background, his current score was 79 on a recognized testing instrument. (PCR Tr. 256). With the test standard error of measurement, that could mean his true score was as high as 83. (PCR Tr. 256-257). And, though she applied the Flynn effect, she acknowledged the limitations, and that it was only “best practice” in *Atkins* cases – not standard medical practice. (PCR Tr. p. 258). Further, when the AAIDD manual references application of the Flynn effect, it also acknowledges the limitations and lack of agreement. (PCR Tr. p. 259). There is even evidence that there is some “reverse” Flynn effect, and noted disagreement on whether the discounting of the score is the same for each year. (PCR Tr. p. 260-261). Dr. Hall admitted that the recent score, 79, was consistent with the borderline (not intellectually disabled) range which was established in the school records. (PCR Tr. p. 261). Again, the score, under the calculation measures regularly applied to the test, the type of range approved of in *Hall v. Florida*, places his 79 score as high as 83 and not near the generally 70 level. (PCR Tr. 263).

Respondent's First Expert in Forensic Psychology

Respondent called Dr. Michael Vitacco who was found qualified as an expert in the field of forensic psychology. (PCR Tr. p. 288). Dr. Vitacco expressly considered the methodology of the forensic psychologists who found Applicant intellectually disabled in rendering their opinion. (PCR Tr. p. 288-289).

During his testimony, Dr. Vitacco set out several concerns in the methods that were used by Dr. Boyd and Dr. Hall to reach their conclusions. First, Dr. Vitacco concerned about the shared data and the shared interviews. (PCR Tr. p. 289). Dr. Vitacco called this “Groupthink” this is when you get into an idea where you’re sharing information and sharing data you develop opinions together. (PCF Tr. p. 289). Dr. Vitacco testified that they did interviews together and the IQ testing was only done by Dr. Boyd, but it was relied solely by Dr. Hall. (PCR Tr. p. 290). Dr. Hall considered herself an “amicus psychologist,” or appointed by the Court, and should reflect her opinion would be objective and neutral. However, Dr. Hall relied heavily on data provided by Dr. Boyd who was hired by Applicant. Dr. Hall stated that she re-scored the test, however, Dr. Vitacco testified that there are several “sub-scales” that cannot be re-scored or scored unless that person actually with the individual while the test is being administered. (PCR Tr. p. 290).

Dr. Vitacco also was unclear as to why the results of the test of memory malingering (TOMM) “came from out of nowhere” being in the second report issued in 2023. (PCR Tr. p. 290-91). Dr. Vitacco was also concerned the TOMM was administered 800 days after the original IQ test was administered. (PCR Tr. p. 291). Dr. Vitacco testified that this was so far away from the best practices and standardization. Dr. Vitacco stated that “in my 30 years of clinical forensic practice, I’ve never seen such a thing, and the rationale for that still even after listening to the testimony yesterday, I still do not understand it.” Dr. Vitacco did not understand doing the TOMM some 800 days after the original test because the TOMM is to provide information about the individual’s effort on the day of the test. (PCR Tr. p. 291). A person’s response, style and effort is not static, it changes. That is why psychologists give the effort testing on the day of the exam. Dr. Vitacco believed to give the test years later and suggest that it was okay is not accurate. (PCR Tr. p. 292).

Dr. Vitacco also had concerns with Dr. Boyd's methods to make a determination regarding adaptive functioning. (PCR Tr. p. 292). Dr. Vitacco thought that the biggest thing was that she made an unfair bar for the Applicant to obtain. Dr. Boyd spoke about the Applicant in his employment wasn't using mathematical or reading skills. (PCR Tr. p. 292). The fact that Dr. Boyd stated that Applicant was not working an employment unsupportive as an accountant, professional writer or engineer which a lot of people do not do, does not make them have intellectual development disorder. (PCR Tr. p. 292).

Dr. Vitacco also thought that Dr. Boyd was considering things as deficits in adaptive functioning that may not actually be deficits. He spoke about how Dr. Boyd mentioned that the Applicant was gullible enough that people that would come and take his car, that they stole his car and he seemed to be okay with it. Dr. Vitacco thought too, on its face, that could be an issue. However, it was not discussed why someone was taking the car – were they taking the car to acquire drugs or to get alcohol? Was the car returned? Dr. Vitacco thought that there were all sorts of questions that could have been answered if Dr. Boyd dig deeper into that issue. (PCR Tr. p. 293).

Respondent's Second Expert in Forensic Psychology

Also testifying during the PCR hearing was Dr. Kimberly Kruse. As Dr. Vitacco, Dr. Kruse was found qualified as an expert in the field of forensic psychology. (PCR Tr. p. 305). However, unlike Dr. Vitacco, Dr. Kruse was asked to provide an opinion on intellectual functioning. (PCR Tr. p. 306). Dr. Kruse's review did more than any expert to link the known facts of this case, *i.e.*, history, and prior records and diagnosis, with review for this case. She noted that for the trial proceedings, Applicant was examined by Dr. Harold Morgan, who diagnosed Applicant with antisocial personality disorder. (App. p. 68-69; *see also* App. 3426 (social worker's testimony also finding ASPD)). As explained by Dr. Kruse antisocial personality disorder is:

is one that involves a pattern of maladaptive behaviors over years that ignore social norms or rules, tend to break laws, have difficulty with impulsivity, someone who is possibly going to lack empathy at times, and someone who might be out to get things for themselves.

(PCR Tr. p. 307).

Dr. Kruse also gave more detailed analysis as to what the various testing meant as to function, and the causes of learning difficulties.

Dr. Kruse testified that Applicant had a non-verbal brain disorder. Which is explained as affecting the non-verbal aspects of learning; Anything that does not involve language vocabulary. This relates to visual special skills being able to see the big picture or the whole of something versus the details. (PCR Tr. p. 307). Non-verbal learning disorder is different than intellectual disability they are not synonymous. (PCR Tr. p. 307).

Dr. Kruse also testified about Applicant's previous IQ scores as found in his school records – clearly within the developmental period. He scored 86, 78, 69–75, and, as an adult, 79. (PCR Tr. p. 309). She noted Applicant had a drop in scores from age 11 and 14 (as had been discussed at the trial level (first sentencing), *see* App. 142). Dr. Kruse related that to his known difficulty in the educational environment caused by Applicant's difficult home setting, which was manifested in his falling asleep at school, missing days at school, and also due to the fact he moved about eight times to nine schools during his educational career. (PCR Tr. p. 309). Dr. Kruse estimated that Applicant would have a decrease in a measured score, that would be reflected in his school records at that time. (PCR Tr. p. 309).

In examining his IQ scores Dr. Kruse noticed that his lowest score was perceptual reasoning. Dr. Kruse explained that perceptual reasoning aligns with what she had described about non-verbal learning disorder. It is how one perceive the environment and how they are able to reason with it. (PCR Tr. p. 310). Dr. Kruse explained that there was a twenty-point gap between

the Applicant's highest index score and his lowest which equates to a learning disorder, which was identified while the Applicant was in the fourth grade. (PCR Tr. p. 311). At age fourteen the Applicant was diagnosed as being educable mentally handicapped. Dr. Kruse explained that this was a classification that is used for someone with learning difficulties, but they can learn. This is how they would place them in supportive environments. (PCR Tr. p. 311). Dr. Kruse explained that this is different than educable training handicapped which would go into a setting of being more vocational or basic task driven versus general learning. (PCR Tr. p. 312).

In Dr. Kruse's opinion the Applicant had a learning disability and did not have intellectual developmental disorder. Moreover, even applying competence intervals, the Flynn effect, his scores still fall above the cut off. (PCR Tr. p. 312).

Dr. Kruse also explained that the TOMM is a test of effort and can pick up malingering. However, it is meant to guide the person administering the test on how to proceed. It is kind of a gauge on how well this person can participate with what your about to do. (PCR Tr. p. 313). She has never seen this test administered almost two years after the initial test. (PCR Tr. p. 313). Dr. Kruse explained to administer this test this long after the initial test she would not be sure what they would be measuring. It would not apply to anything that was done previously, certainly not done years before. (PCR Tr. pp. 313-314).

Further, when looking at the records as it relates to adaptive functioning Dr. Kruse did not find deficits in adaptive functioning, she found just the opposite. (PCR Tr. p. 314). Dr. Kruse found many examples of Applicant performing well across domains. Applicant had sustainable long-term relationships, he drove a car and was promoted at his job. That Applicant chose to live with people and do certain task at home but not others is very common. Dr. Kruse thought that there

were many things that could be found that support Applicant's abilities in adaptive functioning. (PCR Tr. p. 314).

As for the Flynn effect, Dr. Kruse thought that it was necessary after the first test to be used to gauge a person's performance but even after the first test if you apply it, Applicant's scores are still within range. (PCR Tr. p. 314). Dr. Kruse testified that the second time a test was performed there was no reason to apply the Flynn effect and in that case his score was well above the cut off for intellectual developmental disorder and that was during the developmental period. (PCR Tr. p. 315). In her opinion, Applicant cannot meet the criteria for being intellectually disabled. She opined that there is a preponderance of data to support that the Applicant cannot be consider intellectually disabled.

Respondent's Fact Witness: Dr. Elaine Harris, School Psychologist

Respondent called Dr. Elaine Harris to testify. Dr. Harris was a school psychologist in Sumter School District 17, where Applicant attended school. Dr. Harris began her employment on August 29, 1977, (PCR Tr. p. 330), she retired in 2015. (PCR Tr. p. 338). Though Applicant's expert, and in turn, the Court's expert relying on the same, leaned heavily on cold records and presumptions, Respondent presented the only witness who was present for any of the assessments during Applicants' developmental period. Not only was Dr. Harris one of the psychologists who was working for the school district where Applicant attended school all during the developmental period, Dr. Harris actually administered one of the IQ tests to Applicant during these school years. (PCR Tr. p. 332).

Dr. Harris testified about what was known then as "arena testing." (PCR Tr. p. 331). Dr. Harris explained that in "arena testing" students would rotate among a number of different stations during IQ tests. The training of individuals administering each of the stations varied. (PCR Tr. p.

331). However, Dr. Harris did also state that she never administered an IQ assessment through “arena testing.” (PCR Tr. p. 331). Dr. Harris also testified that Sumter School District 17 did not, as a matter of standard practice, use “arena testing.” (PCR Tr. p. 332).¹⁶

Further, Dr. Harris testified that at the time of testing, as the law was interpreted, Applicant qualified as being in the educable mentally handicapped range, because of his full-scale IQ, even though Applicant had some areas in the average range. (PCR Tr. p. 337). Dr. Harris stated that since that time, the definition for being intellectually disabled had been refined. Now you have to find pervasive below average functioning on everything. (PCR Tr. p. 337) This qualification is more in line with the qualifications found in the DSM-5 and the AAIDD where you don’t only look at the IQ scores to determine intellectual disability.

Dr. Harris testified that the school psychologists were becoming aware that by using the full-scale IQ scores, they were over-placing black males into the program, thus began to rethink how they were looking at intelligence for this population. (PCR Tr. p. 338). Dr. Harris stated during her testimony, “In this particular instance he would not have been found as ID.” (PCR Tr. p. 339). As Dr. Harris stated during her testimony’

I would not consider him under as the practices, the program, the way we switched to looking at it as we gained more understanding.

¹⁶ In his post-hearing brief, Applicant argues that “[i]nformation from a school psychologist who worked in the district when Stone was in school” revealed that “the school psychologist who conducted [a 1975] IQ test was known for regularly conducting the testing in a manner that was a ‘very significant departure’ from how the tests are supposed to be administered.” Br. 8 n. 6. Dr. Susan Boyd testified about the potential use of arena testing (though she did not use that term) by one of the psychologists involved in that assessment. (PCR Tr. p. 49-50). In explaining her testimony, Dr. Boyd said she spoke to two psychologists about the testing and named Dr. Harris as one of the psychologists to whom she spoke. (PCR Tr. p. 49). At the hearing, Dr. Harris recalled a conversation about Stone’s assessments with two women, (PCR Tr. pp. 340-41); one of these could have been Dr. Boyd. Further, in Dr. Boyd’s report she states that she spoke to “Elanie and Joseph Harris” about testing at this time. (Dr. Boyd’s report p. 8). However, the assessment that Applicant questions was conducted in 1975, before Dr. Harris began working at Sumter School District 17.

School psych was a relatively new field when I entered into it. So but then we grew a lot, and I think I also acquired a lot more skills with what I was doing and understanding but we did move to make it rather difficult to qualify as intellectually disabled.

PCR Tr. p. 339.

Even if she does not recall her assessment of Applicant more than forty years ago, Dr. Harris was the only witness at trial who was directly involved in one of the assessments during his developmental period. But Applicant does not appear to mention any of her testimony by name in his post-hearing brief, even though one of the experts seemingly relied on comments by Dr. Harris to call the 1975 IQ score into question. This greatly damages credibility of his witness (and the “facts” he presented to the court’s witness which in turn also lessens the credibility of that conclusion). Notably, the surety of what the records truly mean is critical. In an Arizona case, it made the difference between not finding intellectual disability and finding intellectual disability.

This passage is instructive:

The school records reviewed by the trial court in 2005 appeared to suggest good adaptive skills, but when fully explained in 2009 and properly understood, those records instead establish that Grell has suffered from adaptive behavior deficits since he was a young child. These school records, notably, were created in Grell’s youth, for an educational purpose unrelated to these proceedings or any other litigation. The teachers and social workers who relied on them had no motive to fabricate or distort their observations or findings.

State v. Grell, 291 P.3d 350, 353 (Ariz. 2013).

Dr. Harris’ testimony undermines the Applicant’s argument in another way. In his post-hearing brief, Applicant repeatedly argues that a finding of educable mentally handicapped during Stone’s younger years is more or less directly equivalent to a finding of intellectual disability in the current context. But it is more complicated than that, as Dr. Harris’ testimony shows. Based on her review of the Applicant’s assessment from 1979, Dr. Harris concluded that by the time she

retired in 2015, Applicant *would not* have been considered intellectually disabled. While that assessment is of course not binding on this court – Dr. Harris is a medical practitioner, while the ruling in this case must be grounded in legal standards – it is instructive given Applicant’s attempt to transform a decades – old label into a current diagnoses. It is not that simple, and it does not aid in carrying his burden of proof.

Flynn Effect

The Supreme Court has not accepted the *Flynn Effect* for discounting IQ scores. It has described the effect as "a controversial theory involving the inflation of IQ scores over time" that results in reducing scores. *Dunn v. Reeves*, 594 U.S. 731, 736 (2021). The only adjustment to scores that the Court has found must be applied is the standard error of measurement (SEM). *Hall, supra*; *Moore, supra*. That is not a clinical permissive step reserved to discretion, but a uniformly recognized limitation on establishing a confidence level, acknowledged by clinicians and by the testing instruments. *See Hall*, 572 U.S. at 723 (underscoring the significance of IQ testing, but including the caution that "in using these scores to assess a defendant’s eligibility for the death penalty, a State must afford these test scores the same studied skepticism that those who design and use the tests do"),¹⁷ *see also id.*, at 712 ("The professionals who design, administer, and interpret IQ tests have agreed, for years now, that IQ test scores should be read not as a single fixed number but as a range.") The *Flynn* effect is not the SEM, and it is not, under the Eighth

¹⁷ The Supreme Court recognizes that the IQ result is more readily framed with the SEM range than a single number. *Hall*, 572 U.S. at 723. That is generally consistent with clinical practice. *See DSM-5-TR*, at 38, ("individuals with intellectual developmental disorder have scores of approximately two standard deviations or more below the population mean, including a margin for measurement error (generally ± 5 points)," which is generally "a score of 67-75 (70 ± 5)"). Ranges are no longer used for determining *level of severity*, but that is separate than determining the first prong, *i.e.*, "deficits in general mental abilities. *DSM-5-TR*, at 38 (separating "specifiers from "diagnostic features").

Amendment analysis at issue, an adjustment that must be applied. Nor should it when viewed under comments regarding its use in current manuals.

For example, the DSM-5-TR, simply acknowledges that scores “may” be “affect[ed]” by “practice effects” and the “Flynn effect.” *Id.*, at 38. The text does not establish a norm for its application. Even the AAIDD notes its limitations. (PCR Tr. p. 259). And as set out above, it is not uniformly used. To reserve the “best practice use” for *Atkins* use only is particularly questionable and raises issues of bias. If there is particular, specific cause for concern, as the DSM-5 suggests clinicians “may” apply the theory (as Dr. Kruse suggested in regard to one particular test), but uniformly applying the questionable theory to discount a death sentenced inmate’s score, again, only shows bias, not clinical standard. This Court should reject its general use here.

Suggestion to Revisit Atkins

Respondent previously briefed the issue of revisiting *Atkins*, (Respondent’s Pre-trial Brief, pp. 12-14), and continues to assert that it would be wise to do so.

The *Atkins* decision was not unanimous. The dissent, authored by Justice Scalia and joined by Chief Justice Rehnquist and Justice Thomas, criticized the majority’s opinion lack of consensus by “objective factors” such as legislative enactments. *Atkins*, 536 U.S. at 341, 344 (Scalia J. dissenting).¹⁸ The dissent also recognized, for Eighth Amendment analysis, “the peril of discerning a consensus where there is none.” *Id.*, at 345-347. The dissent posited that the majority must have believed that there is an “inability of judges or juries to take proper account of mental retardation,” yet the legal system is based on the ability of judges or juries to consider the facts of each case.

¹⁸ Chief Justice Rehnquist also authored his own dissent and underscored his agreement “that the Court’s assessment of the current legislative judgment regarding the execution of defendants like [Atkins] more resembles a *post hoc* rationalization for the majority’s subjective preferred result rather than any objective effort to ascertain the content of an evolving standard of decency.” *Atkins*, 536 U.S. at 322 (Rehnquist C.J. dissenting).

Id., at 349. The dissent also questioned the majority’s reasoning on culpability, deterrence, excessive punishment, and “special risks” the majority referenced. *Id.*, at 349-352. The dissent further correctly recognized that the necessary reliance on soft science would increase litigation and inmates would “claim[] for the first time, after multiple habeas petitions, that they are retarded.” *Id.*, at 353-354. In the interim since *Atkins* to now, the Court has seen the “practical difficulties” and has also begun to recognize the express lack of guidance in *Atkins* cases has increased the difficulty in complying with the exception.

Notably, Justice Alito observed in a later case considering one State’s attempt to comply with the exception that “[u]nder our modern Eighth Amendment cases, what counts are our society’s standards – which is to say, the standards of the American people – not the standards of professional associations, which at best represent the views of a small professional elite.” *Hall*, 572 U.S., at 731 (Alito, J., dissenting).

In another case, Chief Justice Roberts, joined in dissent by Justice Thomas and Justice Alito, similarly remarked that the “Court’s precedents ... establish[] that the determination of what is cruel and unusual rests on a judicial judgment about societal standards of decency, not a medical assessment of clinical practice.” *Moore v. Texas*, 581 U.S. 1, 29 (2017). (Roberts, C.J., dissenting). The dissent highlighted “the lack of guidance ... offer[ed] to States seeking to enforce the holding of *Atkins*.” *Id.*

When *Moore* returned to the Supreme Court, the Chief Justice, writing a separate concurring opinion, again affirmed that in his view, “the majority articulation of how courts should enforce the requirements of *Atkins v. Virginia* ... lacked clarity,” *Moore v. Texas*, 586 U.S. 133, 143, 2019)(Roberts, C.J., concurring). Justice Alito, joined by Justice Thomas and Justice Gorsuch, dissented, similarly noting the lack of guidance to the States. *Id.*, at 143-144.

As Justice Scalia alluded to in his *Atkins* dissent, the exemption recognition was, at best, premature, as there was no consensus in identifying the group of individuals to be exempt. Had there been, the Court would have announced a bright line test with the type of definitive clarity (if not the simplicity) in *Roper*. As is stands, precedent has continued to reflect to difficulty in determining the defendants meant for exemption and calls for expansion of the exemption abound. Unacceptably, the soft definition could lead to discarding a duly returned jury verdict – the very epitome of society’s view – in favor of ever evolving concepts from the medical profession or simple disagreement with the jury’s assessment of the evidence by a later reviewing court. That does not honor the Eighth Amendment. The exemption should be revisited for modification and clarification, and, if that cannot be done upon further review and consideration, then the exemption itself should be revisited. Respondent respectfully suggests that indications in the case law warrant a revisiting of the *Atkins* exception.

CONCLUSION

WHEREFORE, based on the foregoing, Respondent submits that Applicant has failed to prove beyond a preponderance of the evidence that he is intellectually disabled.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General

R. BRANDON LARRABEE
Assistant Attorney General

By: *s/Melody J. Brown*
s/Tommy Evans, Jr.
s/ R. Brandon Larrabee

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

ATTORNEYS FOR RESPONDENT

April 17, 2025
Amendment Filed: June 9, 2025
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

) REIN THE COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT
2025 JUN 12 AM 11:14

Bobby Wayne Stone, #5051

) JAMES J. SELL
) CLERK OF COURT 2018-CP-43-01025
) SUMTER COUNTY S.C. Capital PCR*

Applicant,

v.

AFFIDVAIT OF SERVICE

State of South Carolina,

Respondent.

1. I am an employee of Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Respondent's Amended Post-Hearing Brief and Affidavit of Service** in the above-captioned matter on the following attorneys via email and by depositing same in the United States mail, postage prepaid, and addressed as follows:

E. Charles Grose, Jr., Esquire
305 Main Street
Greenwood, South Carolina 29646
charles@groselawfirm.com

Rosalind S.D. Major, Esquire
Justice 360
900 Elmwood Avenue, Suite 200
Columbia, South Carolina 29201
rosalind@justice360sc.org

DATED this 9th day of June, 2025.

s/ Donna D'Alessio

Donna D'Alessio,
Legal Assistant

May 2, 2025

The Honorable James C. Campbell
Sumter County Judicial Center, third floor
215 N. Harvin Street
Sumter, SC 29150

RECORDED
2025 MAY -5 PM 3:11
JAMES C. CAMPBELL
JUDICIAL CENTER
SUMTER COUNTY, S.C.

Re: *Bobby Wayne Stone v. State of South Carolina*, No. 2018-CP-43-001025

Dear Mr. Campbell,

Please find enclosed the original and a copy of Applicant's Post-Hearing Reply Brief for filing, along with a certificate of service. Also enclosed is a pre-addressed and pre-stamped envelope for the return of the file stamped copy.

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

Sincerely,

Rosalind Major

Rosalind Major

Enclosure

cc: Judge William P. Keesley
Melody Brown, Esq.
Tommy Evans, Esq.
Brandon Larrabee, Esq.

)

1

1

1

)

1

)

Case No. 2018-CP-43-01025

RECORDED
2025 MAY -5 PM 3:12
JAN 20 2025
S. L. H. S. C.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
I. Respondent’s Complaints About This Claim Not Being Raised Previously are Barred by the Law of the Case.....	1
II. Respondent’s Arguments Addressing the Merits of Stone’s Claim Have Been Rejected by the United States Supreme Court and are at odds with the Clinical Consensus of the Medical Community	2
a. Dr. Boyd and Dr. Hall both properly assessed Stone’s adaptive functioning	3
b. Respondent attempts to convince this Court to run afoul of <i>Moore v. Texas</i>	5
c. Neither of Respondent’s experts can offer a diagnostic opinion about whether Stone is a person with intellectual disability.....	7
III. This Court Can and Should Apply the Flynn Effect in Stone’s Case	9
IV. Respondent Makes Several Inaccurate or Misleading Representations to the Court	12
a. Educable mentally handicapped is a classification used by schools that is congruent with intellectual disability	12
b. Stone has a family history of intellectual disability	14
CONCLUSION.....	14

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Aleksey v. State</i> , 2015-CP-38-00764 (S.C. Ct. Comm. Pleas June 7, 2017).....	2
<i>Atkins v. Virginia</i> , 536 U.S. 304 (2002)	<i>passim</i>
<i>Bell v. State</i> , 03-CP-04-1857 (S.C. Ct. Comm. Pleas Nov. 16, 2016)	10–11
<i>Brumfield v. Cain</i> , 854 F.Supp.2d 366, 390–92 (M.D.La. 2012).....	11
<i>Bryant v. South Carolina</i> , 2016-CP-43-828 (S.C. Ct. Comm. Pleas July 13, 2016).....	2
<i>Elmore v. South Carolina</i> , 05-CP-24-1025 (S.C. Ct. Comm. Pleas June 18, 2007).....	2
<i>Elmore v. South Carolina</i> , 05-CP-24-1025 (S.C. Ct. Comm. Pleas Feb. 1, 2010)	9–10
<i>Franklin v. South Carolina</i> , 96-CP-45-117 (S.C. Ct. Comm. Pleas Jan. 26, 2011)	9–10
<i>George v. State</i> , 99-CP-26-1715 (S.C. Ct. Comm. Pleas Jan. 9, 2007)	9
<i>Hall v. Florida</i> , 572 U.S. 701 (2014).....	7, 9–10
<i>In re Noel Jackson</i> , RIC475367/CR23480 (Cal. Sup. Ct. July 29, 2016).....	11
<i>Jackson v. Payne</i> , 9 F.4th 646 (8th Cir. 2021)	11
<i>Kansas v. Garcia</i> , 589 U.S. 191 (2020)	12
<i>Lifschultz Fast Freight, Inc. v. Haynsworth, Mation, McKay & Guerard</i> , 334 S.C. 244, 245, 513 S.E.2d 96, 96–97 (1999).....	1
<i>Maldonado v. State</i> , No. 51,612-02 (Tex. Dist. Ct. Dec. 13, 2012).....	11
<i>Moore v. Texas</i> , 581 U.S. 1 (2017).....	5–7, 9–10
<i>Moore v. Texas</i> , 586 U.S. 133 (2019).....	5–6
<i>Russell v. Mississippi</i> , No. 10,130 (Miss. Cir. Ct. Dec. 31, 2014).....	11
<i>Simmons v. South Carolina</i> , 05-CP-18-1368 (S.C. Ct. Comm. Pleas Oct. 15, 2013).....	10
<i>Smith v. Schiro</i> , 813 F.2d 1175 (9th Cir. 2016)	11
<i>South Carolina v. Pearson</i> , 96-GS-32-3338 (S.C. Ct. Gen. Sess. Dec. 14, 2005).....	10–11

<i>State ex rel. Johnson v. Blair</i> , 628 S.W.3d 375 (Mo. 201).....	11
<i>State v. Brown</i> , 2011-GS-30-152 (S.C. Ct. Gen. Sess. Apr. 14, 2016).....	9–11
<i>State v. Dumas</i> , No. 14CR-2806 (Ohio Ct. Comm. Pleas Dec. 2, 2015).....	11
<i>State v. Williams</i> , No. 2023-T-008, 2023 WL 8440882 (Ohio Ct. App. Dec. 4, 2023).....	11
<i>Stone v. State</i> , No. 2018-001260 (S.C. Nov. 28, 2018).....	1
<i>Stone v. State</i> , 2018-CP-43-001025 (S.C. Ct. Comm. Pleas Feb. 20, 2019).....	1
<i>Stone v. State</i> , 2018-CP-43-001025 (S.C. Ct. Comm. Pleas Sept. 26, 2023)	5
<i>Terry v. State</i> , No. 1997-006197 (S.C. Apr. 6, 2022).....	1–2
<i>Terry v. State</i> , No. 2022-CP-32-00924 (S.C. Ct. Comm. Pleas Dec. 8, 2022).....	2
<i>Thomas v. Allen</i> , 614 F.Supp.2d 1257 (N.D.Ala. 2009).....	11
<i>Thomas v. Allen</i> , 607 F.3d 748 (11th Cir. 2010).....	11–12
<i>United States v. Davis</i> , 611 F.Supp.2d 472 (D.Md. 2009)	12
<i>United States v. Lewis</i> , 2010 WL 5418901, 2010 U.S. Dist. LEXIS 138375 (N.D. Ohio Dec. 23, 2010).....	11
<i>United States v. Roland</i> , 281 F.Supp.3d 470 (D.N.J. 2017)	11
<i>United States v. Smith</i> , 790 F.Supp.2d 482 (E.D.La. 2011)	11
<i>Wiley v. Epps</i> , 668 F.Supp.2d 848 (N.D.Miss. 2009).....	11
<i>Woods v. State</i> , No. 2019-001713, 2019 WL 6898088 (S.C. Dec. 18, 2019)	1

Other Authorities

AAIDD, <i>Intellectual Disability: Definition, Diagnosis, Classification, and Systems of Support</i> , Twelfth Edition 13 (2021) (“AAIDD-12”)	<i>passim</i>
CHRISTOPHER SANFORD ET. AL., INTERNATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH, THE POST-HIGH SCHOOL OUTCOMES OF YOUNG ADULTS WITH DISABILITIES UP TO 6 YEARS AFTER HIGH SCHOOL: KEY FINDINGS FROM THE NATIONAL LONGITUDINAL TRANSITION STUDY-2 (NLTS2) (2022)	6

Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition Text Revision (2022) ("DSM-5-TR)	<i>passim</i>
South Carolina Department of Education, Special Education Regulations, Introduction and R43- 243.1.1, 23 S.C. Reg. 72–73 (1999)	13
U.S. Const. Art. VI, Cl. 2	12

Applicant, Bobby Wayne Stone, by and through undersigned counsel, respectfully submits the following in reply to Respondent's Post-Hearing Brief ("Resp. Brief"). As discussed thoroughly in Applicant's Opening Brief, Applicant has satisfied his burden of proof and demonstrated he is a person with intellectual disability, exempt from the death penalty pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002). This Reply does not rehash the evidence discussed in the prior briefing. Rather, it focuses primarily on Respondent's misrepresentations and erroneous characterizations of the record evidence and appropriate considerations in assessing the merit of an *Atkins* claim.

I. Respondent's Complaints About This Claim Not Being Raised Previously are Barred by the Law of the Case.

Respondent requests that this Court not consider Stone's claim because it was not raised in prior post-conviction proceedings. Resp. Brief at 3–4, 29, 33. This argument has been rejected by the Supreme Court of South Carolina as it allowed this PCR action to proceed and designated this Court to resolve its merits and in this Court's prior ruling on Respondent's motion to dismiss. Order, *Stone v. State*, No. 2018-001260 (S.C. Nov. 28, 2018); Order Granting In Part and Denying In Part Respondent's Motion to Dismiss, *Stone v. State*, 2018-CP-43-001025 (S.C. Ct. Comm. Pleas Feb. 20, 2019). Thus, the law of the case doctrine resolves this issue conclusively. *Lifschultz Fast Freight, Inc. v. Haynsworth, Mation, McKay & Guerard*, 334 S.C. 244, 245, 513 S.E.2d 96, 96–97 (1999).

The South Carolina Supreme Court has done the exact same thing in other cases. *E.g.*, Order, *Terry v. State*, No. 1997-006197 (S.C. Apr. 6, 2022); *Woods v. State*, No. 2019-001713, 2019 WL 6898088 (S.C. Dec. 18, 2019) (reversing the PCR court's order dismissing an *Atkins* claim and remanding for an evidentiary hearing on the merits of the claim). Furthermore, four other Circuit Court judges in South Carolina have found PCR applications raising freestanding *Atkins*

claims in capital cases cognizable, granted the applicants evidentiary hearings, and reached the merits on the matter, even where the issue of intellectual disability could have been litigated at trial or during initial PCR proceedings. *See* Order Denying Motion to Dismiss, *Elmore v. State*, No. 2005-CP-24-1205 (S.C. Ct. Comm. Pleas June 18, 2007); Third 120 Day Status Report, *Aleksey v. State*, No. 2015-CP-38-00764 (S.C. Ct. Comm. Pleas June 7, 2017); Order, *Bryant v. South Carolina*, 2016-CP-43-828 (S.C. Ct. Comm. Pleas July 13, 2016); Order Denying Respondent's Motion to Dismiss, *Terry v. State*, 2022-CP-32-00924 (S.C. Ct. Comm. Pleas Dec. 8, 2022).¹ In those cases, as in Stone's, the Supreme Court of South Carolina has permitted consideration of the claims, including in several cases where the claims were discovered significantly later in the proceedings than in Stone's case. For example, in *Terry*, the Supreme Court of South Carolina stayed Mr. Terry's execution to allow consideration of his *Atkins* claim even though Mr. Terry had otherwise completed the course of his ordinary state and federal post-conviction review proceedings at the time the claim arose. Order, *Terry v. State*, No. 1997-006197 (S.C. Apr. 6, 2022).

II. Respondent's Arguments Addressing the Merits of Stone's Claim Have Been Rejected by the United States Supreme Court and are at odds with the Clinical Consensus of the Medical Community.

Respondent's main arguments are based on fundamental misunderstandings of what is required when assessing intellectual disability and on misrepresentations of the information and evidence before the Court. Both Dr. Hall and Dr. Boyd, the only two experts who evaluated Stone, conducted clinically proper and thorough evaluations, and determined Stone is a person with intellectual disability. Hrg. at 21, 107, 203, 207; Court Ex. 1 at 13.

¹ Copies of these orders are attached to this Reply as Attachment A.

a. Dr. Boyd and Dr. Hall both properly assessed Stone's adaptive functioning.

Respondent asks this Court to reject the conclusions of both Dr. Boyd and Dr. Hall because the doctors “jointly interviewed” some of the collateral witnesses, which Respondent maintains resulted in faulty information being passed to Dr. Hall and ultimate opinions that were “hopelessly intertwined.” Resp. Brief at 22, 26. This is simply a misrepresentation of what happened during the course of Dr. Boyd’s and Dr. Hall’s evaluations.

Dr. Boyd testified that she conducted collateral interviews for her evaluation several times between 2019 and 2022. Hrg. at 19, 72, 101–102, 111. For these interviews, Dr. Boyd explained that she did some of them “on my own, and then there was a series of them in 2022 that Dr. Hall and I did in parallel.” Hrg. at 111. Dr. Hall also conducted some of her collateral witness interviews on her own. Hrg. at 167, Court Ex. 1 at 3. Dr. Boyd went on to clarify that for the parallel interviews, she and Dr. Hall “were meeting with the same person at the same time, but we each had our own list of questions, and then each one of us would ask our questions, the other one would go next.” *Id.* While they were present and heard the answers in these parallel interviews, neither doctor shared information, notes, research, diagnostic opinions, or their reports with one another at any point in their evaluations. *Id.* Further, each expert was able to receive the information directly from the witnesses, ask their own clarifying questions, and make independent observations of the witness. Respondent provides no support for its allegation that this process was improper because there is none.

Respondent creates additional fictitious problems with the collateral interviews considered in Dr. Hall’s evaluation. Respondent claims that Dr. Hall only interviewed “the limited individuals identified by Applicant’s team.” Resp. Brief at 22. This is wrong for several reasons. Dr. Hall explicitly testified that she herself identified the collateral witnesses she hoped to interview in

Stone's case. As she explained, she begins her evaluative process by sending DDSN's general counsel "a list of records and individuals I would like to interview to begin the process," so that general counsel can communicate with the parties to help obtain those sources of information. Hrg. at 159–160. This is exactly what happened here, and Stone's counsel helped coordinate the interviews with DDSN at the agency's request. Dr. Hall further testified that when conducting an evaluation, she considers any information available and is willing to review information from any party. Hrg. at 213–214. Respondent could have identified and provided additional collateral witnesses or information to Dr. Hall for her consideration at any point prior to the July 2024 evidentiary hearing in this case but chose not to.² Thus Respondent is in no position to complain about who the experts did and did not interview.

Respondent attempts to further undermine the information obtained by Dr. Hall in these collateral interviews by providing several hypothetical alternative meanings to statements made by the witnesses to Dr. Hall. Resp. Brief at 25–31. The State does so without any support. Respondent was aware of who the collateral witnesses were well in advance of the evidentiary hearing. Dr. Hall submitted her report to the Court and the parties in December 2022, nearly two years before the evidentiary hearing in this matter. Court's Ex. 1. Respondent could have (and did

² In a similar vein, Respondent suggests Dr. Hall had inadequate background information about Stone because she did not review the transcripts from Stone's prior legal proceedings in this case, specifically the testimony from a single social worker at one of Stone's prior proceedings who discussed information about Stone's upbringing. Resp. Brief at 27–28. Again, had they thought this information was necessary as a part of an intellectual disability evaluation, Respondent could have provided any of these transcripts to Dr. Hall for her consideration. Hrg. at 213–214. They chose not to. Moreover, this suggestion ignores that as part of her evaluation, Dr. Hall reviewed the testimony of Dr. Arlene Andrews, a social historian and licensed social worker who conducted an extensive social history of Stone in advance of his 2012 PCR proceedings, and who pointed out the obvious defects in the trial social worker's opinions including, of special relevance here, that she did not review the school records finding Stone to be educably mentally handicapped. Court Ex. 1 at 3.

in fact) talk to some of these witnesses as well as several other collateral witnesses before the evidentiary hearing. Respondent was well within its right to either request Dr. Hall talk to specific collateral witnesses to ascertain if they would have answered in line with Respondent's hypotheticals prior to the hearing or to call any of these witnesses at the evidentiary hearing to ask what they meant by the specific responses Dr. Hall reported. They chose not to do so.³

b. Respondent attempts to convince this Court to run afoul of Moore v. Texas.

The bulk of Respondent's submissions to this Court as to why Stone's intellectual disability claim fails are attempts to attribute Stone's academic functioning deficits to other experiences in his upbringing are based on stereotypes about people with intellectual disability, and are in clear contravention of legal precedent and clinical practice. *E.g.*, Resp. Brief at 27–30, 34. Following Respondent's suggestions would run afoul of *Moore v. Texas*, 581 U.S. 1 (2017) ("*Moore I*"); *Moore v. Texas*, 586 U.S. 133 (2019) ("*Moore II*").

Respondent maintains that Dr. Boyd's and Dr. Hall's determinations that Stone has adaptive deficits are incorrect because some of the behaviors were "better" explained as being caused by Stone's childhood "disadvantages," poverty, and a "difficult family structure." Resp. Brief at 2, 24–26. This is precisely what the Texas court tried to do in *Moore I*. 581 U.S. at 16. But, as the Supreme Court recognized, poverty, improper parental supervision, and childhood abuse all "count in the medical community as 'risk factors' for intellectual disability." *Id.* (citing AAIDD-11); *see also* AAIDD-12 at 77, 92; Hrg. at 106–107. The medical community relies "on such factors as

³ This Court also granted Respondent's motion to compel production of Stone's mitigation investigator's file for the specific purpose of discovering potential collateral witnesses with information about Stone's functioning should Respondent desire to talk with them before the evidentiary hearing in this matter. Order on Respondent's Motion to Compel, *Stone v. South Carolina*, 2018-CP-43-001025 (S.C. Ct. Comm. Pleas Sept. 26, 2023).

cause to explore the prospect of intellectual disability further, not to counter the case for a disability determination.” *Moore I*, 581 U.S. at 16. Accordingly, it is improper for a court to rely on these kinds of causal explanations—which are in actuality known risk factors for intellectual disability—to undermine the case for an intellectual disability determination. This Court should not do so.

Respondent also asks this Court to rely on stereotypes to find Stone is not a person with intellectual disability. Respondent suggests that people with intellectual disability cannot obtain employment, be hardworking,⁴ obtain drivers licenses, cook, have friendships, or have meaningful romantic relationships. Resp. Brief at 27–30, 34. As the testimony at the hearing established, and research confirms, these are all things that people with mild intellectual disability can do. Hrg. at 56, 64–65, 95–97, 234–238, 267–268; CHRISTOPHER SANFORD ET AL., INTERNATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH, THE POST-HIGH SCHOOL OUTCOMES OF YOUNG ADULTS WITH DISABILITIES UP TO 6 YEARS AFTER HIGH SCHOOL: KEY FINDINGS FROM THE NATIONAL LONGITUDINAL TRANSITION STUDY-2 (NLTS2) (2011). Moreover, in *Moore I*, the Texas court had, in part, rejected Moore’s *Atkins* claim through the application of factors from a pre-*Atkins* case which were all grounded in “lay perceptions of intellectual disability.” 581 U.S. at 18 (discussing the *Briseno* factors). The United States Supreme Court made clear that reliance on stereotypes is improper and “should spark skepticism.” *Id.*⁵

Finally, Respondent represents to this Court that any adaptive deficits “must be directly related to the intellectual impairments,” citing the DSM-5. Resp. Brief at 25. To do so would be

⁴ For example, Respondent represents that because Stone could “maintain[] work to provide financially . . . a point he was proud of,” he cannot have adaptive deficits. Resp. Brief at 28.

⁵ In revisiting Moore’s case in *Moore II*, the United States specifically identified relying on Moore having a girlfriend and having a job as inappropriate stereotypes the CCA relied on in discrediting the presence of adaptive deficits. *Moore II*, 586 U.S. at 142.

contrary to the clinical guidance. The DSM-5 is the only version of the DSM to ever contain this kind of nexus language about adaptive deficits in its guidance on intellectual disability. More importantly, the language was specifically removed from DSM-5-TR, the most current clinical guidance on diagnosing intellectual disability, because it led to exactly the type of erroneous assertions made by Respondent in this case. DSM-5-TR at 37–46. In *Moore I*, the Texas court had applied a 1992 clinical definition for intellectual disability to Moore’s case. 581 U.S. at 9, 20. The United States Supreme Court made clear that states (and accordingly the courts) cannot disregard current clinical standards in favor of their “desire to define intellectual disability as they wish[.]” *Id.* at 20. As the Supreme Court recognized, the most current editions of the DSM and AAIDD’s clinical manual provide “the best available description of how mental disorders are expressed and can be recognized by trained clinicians.” *Id.* (citing DSM-5; *Hall v. Florida*, 572 U.S. 701, 704–705 (2014); *Atkins*, 536 U.S. at 308 n. 3). There is no question after *Moore I* that Respondent’s arguments have been authoritatively rejected by the United States Supreme Court.

c. Neither of Respondent’s experts can offer a diagnostic opinion about whether Stone is a person with intellectual disability.

Respondent presented two forensic psychologists at the evidentiary hearing, Dr. Michael Vitacco and Dr. Kimberly Kruse. Neither expert had relevant prior experience in *Atkins* cases nor were they asked to conduct an evaluation in this case. Hrg. at 289, 296, 298–299, 306. Rather, they were called to offer criticisms about aspects of Dr. Boyd’s and Dr. Hall’s evaluations based on limited information about the evaluations. In doing so, they also provided this Court with testimony that is contrary to the clinical guidance on diagnosing intellectual disability. This Court should give little weight to their testimony in considering Stone’s *Atkins* claim.

Dr. Vitacco testified “I have not done *Atkins* evaluations,” and that he “was not asked” to give an opinion regarding intellectual disability in Stone’s case. Hrg. at 289, 296, 298–299. The

only work Dr. Vitacco did in this case was read the reports produced by Dr. Boyd and Dr. Hall. Hrg. at 298. He was not provided with any other records or the underlying data from Stone's psychological testing. Hrg. at 298–299. He never met Stone or conducted any interviews with him or any collateral witnesses. Hrg. at 298. His opinions consisted entirely of distinct criticisms of some of the protocols used by Dr. Boyd and Dr. Hall.⁶ Despite these criticisms, he acknowledged that the “overall protocol” used by both Dr. Boyd and Dr. Hall “was appropriate.” Hrg. at 297.

Dr. Kruse was similarly asked by Respondent “[t]o review records,” not to provide a diagnostic opinion. Hrg. at 306. As Dr. Kruse acknowledged, she has never done an *Atkins* case before. Hrg. at 316. She never met Stone or conducted any testing of him. Hrg. at 306, 317. She also never conducted collateral witness interviews. Hrg. at 320. Rather, Dr. Kruse testified that based on her record reviews, she believed he had a learning disability instead of intellectual disability because of a part-score variance in some of Stone's IQ testing. Hrg. at 311–312. As discussed in Stone's post-hearing brief at length, this opinion directly contradicts the clinical

⁶ Dr. Vitacco's main concerns were Dr. Boyd's and Dr. Hall's use of the Flynn effect and parallel collateral witness interviews, Hrg. at 289, 296, which are discussed elsewhere in this brief. He raised one additional “concern” which was Dr. Boyd administering the Test of Memory Malinger (TOMM) to Stone in 2020, instead of at the time she administered Stone's IQ testing. *E.g.*, Hrg. at 290–292. The TOMM is an instrument designed to measure “memory malinger,” and was administered because many effort measures are inappropriate to administer to people with intellectual disability and there is not a malinger assessment specifically designed to test for malingered intellectual disability. Hrg. at 35–36, 121. This is a non-issue because no expert has opined that Stone was malinger at any time and no expert has raised any issues with how Dr. Boyd's conducted the IQ testing to undermine its validity. Hrg. at 36–38, 184–185, 271–272, 320; Court Ex. 1 at 12. Both Dr. Boyd and Dr. Hall testified that they did not have any concerns that Stone was malinger because there was historical information from Stone's childhood to confirm the diagnosis and it was evident from their interactions with him that Stone was putting in effort as “he did not want to be thought of as someone who wasn't, you know, as he put it smart,” and Hrg. at 36–38, 271–272; Court Ex. 1 at 11–12. Dr. Boyd explained that she administered the malinger test after being retained to do an entire evaluation of whether Stone is intellectually disabled because “[she] wanted to make sure that [she] did give him some kind of an effort assessment at some point in the process.” Hrg. at 38, 119–121.

guidelines. App. Brief at 10–12. Moreover, Dr. Kruse acknowledged that these diagnoses are not necessarily mutually exclusive, and someone “can have learning disorder and intellectual developmental disorder.” Hrg. at 312.⁷

Dr. Boyd and Dr. Hall, the only two doctors who evaluated Stone, opined that he meets the diagnostic criteria and is a person with intellectual disability. Hrg. at 21, 107, 203, 207; Court Ex. 1 at 13. They did so based on thorough assessments conducted in accordance with the best practices as set forth in the clinical guidelines. This Court should reach the same conclusion.⁸

III. This Court Can and Should Apply the Flynn Effect in Stone’s Case.

Respondent submits that this Court should not apply the Flynn effect in Stone’s case. Resp. Brief at 39–40. Ignoring the Flynn effect would be contrary to both the clinical consensus practice and the manner in which the majority of courts have assessed IQ scores in the *Atkins* context.

Courts considering *Atkins* claims are required to be “informed by the views of medical experts,” when assessing if a person is intellectually disabled. *Moore I*, 581 U.S. at 13 (quoting *Hall*, 572 U.S. at 721). In doing so, courts should rely on “the most recent (and still current) versions of the leading diagnostic manuals.” *Id.* The current leading diagnostic manuals are the

⁷ See also DSM-5-TR at 45 (explaining specific learning disorders “may co-occur with intellectual developmental disorder. Both diagnoses are made if full criteria are met for intellectual developmental disorder and a communication disorder or specific learning disorder.”). The United States Supreme Court has recognized that “many intellectually disabled people also have other mental or physical impairments,” and the existence of a coexisting condition “is not evidence that a person does not also have intellectual disability.” *Moore I*, 581 U.S. at 17.

⁸ No South Carolina court has ever rejected an *Atkins* claim when the court appointed DDSN examiner found the inmate to be a person with intellectual disability. See, e.g., Order Granting Post-Conviction Relief in *Franklin v. South Carolina*, 96-CP-45-117 (S.C. Ct. Comm. Pleas Jan. 26, 2011); Order: Finding of Mental Retardation in *George v. State*, 99-CP-26-1715 (S.C. Ct. Comm. Pleas Jan. 9, 2007); Order Granting Post-Conviction Relief in *Elmore v. South Carolina*, 05-CP-24-1205 (S.C. Ct. Comm. Pleas Feb. 1, 2010); Order Finding Defendant Intellectually Disabled in *State v. Brown*, 2011-GS-30-152 (S.C. Ct. Gen. Sess. Apr. 14, 2016).

Diagnostic and Statistical Manual of Mental Disorders, 5th edition text revision (“DSM-5-TR”), which is published by the American Psychological Association, and *Intellectual Disability: Definition, Diagnosis, Classification, and Systems of Support*, 12th edition (“AAIDD-12”), which is published by the American Association on Intellectual and Developmental Disabilities.⁹ Hrg. at 16–17, 187, 319. Since *Atkins* was decided, every court in South Carolina to address an *Atkins* issue has relied on the clinical definitions, instructions, and guidelines of the APA and the AAIDD to inform the court’s analysis in compliance with the Supreme Court’s instruction in *Hall* and *Moore*.¹⁰

Both the DSM-5-TR and the AAIDD-12 explicitly recognize the legitimacy of the Flynn effect and the practice of accounting for norm obsolescence. DSM-5-TR at 38; AAIDD-12 at 42. The clinical consensus is clear that “[c]urrent best practice guidelines recommend that in cases in which an IQ test with aged norms is used as part of a diagnosis of ID, a correction of the full-scale IQ score of 0.3 points per year since the test [] norms were corrected is warranted.” AAIDD-12 at

⁹ The United States Supreme Court has repeatedly recognized the AAIDD’s clinical manual and the DSM as the best sources for the current medical guidance for how to properly evaluate intellectual disability. *See, e.g., Atkins*, 536 U.S. at 308, 353; *Hall*, 572 U.S. at 704–05, 722; *Moore*, 581 U.S. at 7.

¹⁰ *See, e.g.,* Order Finding Defendant Mentally Retarded in *South Carolina v. Pearson*, 96-GS-32-3338 (S.C. Ct. Gen. Sess. Dec. 14, 2005); Order Granting Post-Conviction Relief in *Franklin v. South Carolina*, 96-CP-45-117 (S.C. Ct. Comm. Pleas Jan. 26, 2011), Order Granting Post-Conviction Relief in *Elmore v. South Carolina*, 05-CP-24-1205 (S.C. Ct. Comm. Pleas Feb. 1, 2010); Order Granting Post-Conviction Relief in *Simmons v. South Carolina*, 05-CP-18-1368 (S.C. Ct. Comm. Pleas Oct. 15, 2013); Order Granting Post-Conviction Relief in *Bell v. State*, 03-CP-04-1857 (S.C. Ct. Comm. Pleas Nov. 16, 2016); Order Finding Defendant Intellectually Disabled in *State v. Brown*, 2011-GS-30-1523 (S.C. Ct. Gen. Sess. Apr. 14, 2016). Applicant has previously provided copies of these orders to the Court but will happily furnish additional copies for the Court’s convenience upon request.

42. In line with this clinical guidance, both experts who evaluated whether Stone is intellectually disabled applied the Flynn effect as part of their evaluation. Hrg. at 31–32, 40–42, 176–177.¹¹

Additionally, courts in South Carolina have routinely accepted the Flynn effect in *Atkins* cases. See Order Finding Defendant Mentally Retarded, *South Carolina v. Pearson*, 96-GS-32-3338 (S.C. Cir. Ct. Gen. Sess. Dec. 14, 2005); Order Granting Post-Conviction Relief Pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), Vacating Death Sentence, *Bell v. South Carolina*, 03-CP-04-1857 (S.C. Ct. Comm. Pleas Nov. 16, 2016); Order, *South Carolina v. Brown*, 2011-GS-30-1523 (S.C. Ct. Gen. Sess. Apr. 14, 2016). No South Carolina court considering an *Atkins* issue has ever found it was inappropriate to apply the Flynn effect. Similarly, courts across the country have also acknowledged it is appropriate to consider norm obsolescence when considering IQ scores as part of an *Atkins* claim.¹² In line with the medical community’s best practices and how other courts

¹¹ Both of Respondent’s expert witnesses acknowledged that it is not inappropriate to apply the Flynn effect and there was nothing wrong with either Dr. Boyd or Dr. Hall applying the Flynn effect in their evaluations of Stone. Hrg. at 299–300 (Dr. Vitacco acknowledging that he “personally wouldn’t use the Flynn effect, but it’s a judgement call,” agreeing he “didn’t have any criticism of either of the experts for using it,” and acknowledging the Flynn effect is mentioned and encouraged by the clinical standards), 314–315 (Dr. Kruse stating that applying the Flynn effect “is not mandatory,” but acknowledging “there’s a place for the Flynn effect” when evaluating someone’s IQ scores) .

¹² *State v. Williams*, No. 2023-T-008, 2023 WL 8440882, at *4, 23–24 (Ohio Ct. App. Dec. 4, 2023); *State ex rel. Johnson v. Blair*, 628 S.W.3d 375, 382–83 (Mo. 2021); *Jackson v. Payne*, 9 F.4th 646, 654–55 (8th Cir. 2021); *United States v. Roland*, 281 F.Supp.3d 470, 501–03 (D.N.J. 2017); Order Granting Habeas Corpus Relief, *In re Noel Jackson*, RIC475367/CR23480 (Cal. Sup. Ct. July 29, 2016), at 30; *Smith v. Schiro*, 813 F.2d 1175, 1184–85 (9th Cir. 2016); Decision Barring the Death Penalty, *State of Ohio v. Willie L. Dumas*, No. 14CR-2806 (Ohio Ct. Comm. Pleas Dec. 2, 2015); Order Granting Post Conviction Relief, *Russell v. Mississippi*, No. 10,130 (Miss. Cir. Ct. Dec. 31, 2014); Court’s Partially Adopted Findings of Fact and Conclusions of Law, *Maldonado v. State*, No 51,612-02 (Tx. Dist. Ct. Dec 13, 2012); *Brumfield v. Cain*, 854 F.Supp.2d 366, 390–92 (M.D.La. 2012); *United States v. Smith*, 790 F. Supp. 2d 482, 491 (E.D.La. 2011); *United States v. Lewis*, 2010 WL 5418901, 2010 U.S. Dist. LEXIS 138375, at *14–17, 29–30 (N.D. Ohio Dec. 23, 2010); *Wiley v. Epps*, 668 F.Supp.2d 848, 894 (N.D.Miss. 2009); *Thomas v. Allen*, 614 F.Supp.2d 1257, 1280–81 (N.D.Ala. 2009), *affirmed* in *Thomas v. Allen*, 607 F.3d 749 (11th Cir.

have considered this issue, the Court should accept Dr. Hall's and Dr. Boyd's clinical judgment to apply the Flynn effect to their assessments of Stone's IQ scores.

IV. Respondent Makes Several Inaccurate or Misleading Representations to the Court.

Respondent's brief contains several inaccuracies about Stone, his family, and what is required under the clinical guidelines. While it is not worth rehashing every single inaccuracy, several warrant identifying for the Court, as they are pertinent to the Court's consideration of whether Stone is a person with intellectual disability.¹³

a. Educable mentally handicapped is a classification used by schools that is congruent with intellectual disability.

Respondent misleads this Court regarding what the term educable mentally handicapped meant at the time Stone was in school and the function it plays in the school system. Resp. Brief at 35, 37–38. In doing so, Respondent represents that for such a classification, the individual “could not learn,” and attempts to get this Court to understand the term under the definition of the term as Dr. Harris understood it at the time of her retirement from the school system in 2015. Resp. Brief at 37–38. This is the improper analysis of the term and the information before the Court indicates that Stone's classification as educable mentally handicapped is supportive of finding he is a person with intellectual disability.

2010); *United States v. Davis*, 611 F.Supp.2d 472, 478, 485–89 (D.Md. 2009). Copies of all unreported orders cited within this footnote are attached to this Reply as Attachment B.

¹³ In an attempt to avoid reversal of Stone's death sentence due to his intellectual disability, Respondent suggests this Court should instead “revisit” *Atkins*. See Resp. Brief at 40–42. *Atkins* and its progeny are well-established federal law. “The Supremacy Clause provides that the Constitution, federal statutes, and treaties constitute “the supreme Law of the Land.”” *Kansas v. Garcia*, 589 U.S. 191, 202 (2020) (quoting U.S. Const. Art. VI, Cl. 2). Respondent provides no authority for its position that this Court has the ability to override the United States Supreme Court and this Court should disregard its suggestion to do so.

It is clear that at the time of Stone's schooling, the classification of educable mentally handicapped was essentially parallel with the diagnostic criteria for intellectual disability. As Dr. Hall testified, in order to qualify for the educable mentally handicapped classification at school, a student would need to "have below average or sub-average intellectual functioning in conjunction with deficits of adaptive behavior." Hrg. at 169. She explained that "schools actually call it 'intellectual disability' right now." Hrg. at 173, 196. The regulations governing special education in effect around when Stone was in school confirm understanding the classification as essentially parallel to diagnosing someone with intellectual disability. *See* Attachment C, South Carolina Department of Education, Special Education Regulations, Introduction and R43-243.1.1, 23 S.C. Reg. 72-73 (1999) (merging several classifications including educable mentally handicapped into "one category of Mental Disability," to align with federal definitions of the term and explaining that "[m]ental disability means mental retardation, which is defined as significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a student's educational performance").

It was well-established at the hearing that "educable mentally handicapped" was a designation used by the Sumter County school system to classify students as needing special education supports and services parallel to the kinds of supports and services needed by individuals with mild intellectual disability. Hrg. at 55-56, 169, 173, 180, 196, 217. As Dr. Hall explained, based on her expertise at DDSN, this term is a school classification because "schools do not diagnose" and instead classify students to allow them to "get access to school services." Hrg. at 217-218.

As established at the hearing and discussed more thoroughly in Applicant's post-hearing brief, Stone's special education placement was adjusted to be educable mentally handicapped when he was in the seventh grade. Hrg. at 76, 85–86, 173, 180. This is highly indicative, in fact conclusive, of Stone's functioning deficits being present during the developmental period. This information, considered alongside the wealth of other information considered by Dr. Boyd and Dr. Hall in their assessments of Stone, led both doctors to opine Stone meets the diagnostic criteria for intellectual disability. Hrg. at 21, 107, 203, 207; Court Ex. 1 at 13.

b. Stone has a family history of intellectual disability.

Respondent represents that no one in Stone's family had a history of intellectual disability. Resp. Brief at 27. Even if true this would be irrelevant, as many families have a single child with intellectual disability, but the record establishes it is not true. Stone and all his siblings were identified as having difficulties in school requiring special education early on in their educational history. Both of his sisters and his brother were all classified as educable mentally handicapped, i.e., persons with intellectual disability, by the Sumter County school system. Hrg. at 101, 106–107, 117, 166–170, 223–224. While not determinative of whether Stone is intellectually disabled, the clinical guidance recognizes that intellectual disability can often be seen across families and recognizes that a comprehensive evaluation requires identifying “genetic and nongenetic etiologies.” DSM-5-TR at 42, 44; AAIDD-12 at 33, 39-40.

CONCLUSION

For the reasons stated in this reply and in Stone's Post-Hearing Brief, this Court should find Stone intellectually disabled and ineligible for the death penalty.

Respectfully submitted,

s/E. Charles Grose, Jr.
E. Charles Grose (66063)
Grose Law Firm

305 Main Street
Greenwood, SC 29646
(864) 538-4466

s/Rosalind S. D. Major
Rosalind S. D. Major (106017)
Justice 360
900 Elmwood Ave., Suite 200
Columbia, SC 29201
(803) 765-0144

Counsel for Bobby Wayne Stone

May 2, 2025.

RECORDED

THE STATE OF SOUTH CAROLINA } IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER } FOR THE THIRD JUDICIAL CIRCUIT

BOBBY WAYNE STONE,

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

Case No. 2018-CP-43-001025

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Applicant's Post-Hearing Reply Brief was served was served by email to the AIS email addresses, pursuant to Section (b) of the Supreme Court of South Carolina's May 6, 2022 Order, this 2nd day of May, 2025, upon the following:

Melody Brown, mbrown@scag.gov

Tommy Evans, Jr., tommyevansjr@scag.gov

Brandon Larrabee, brandonlarrabee@scag.gov

By s/Rosalind S.D. Major

Rosalind S.D. Major

Justice 360

900 Elmwood Ave., Suite 200

Columbia, SC 29201

(803) 765-1044

May 2, 2025

RECORDED
2025 JUL 31 AM 10:26

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
BOBBY WAYNE STONE,)
Applicant,)
- vs. -)
STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS
Case Number: 2018CP4301025
MEMORANDUM ORDER

Heard: July 30-31, 2024, at the Sumter County Judicial Center
Applicant's Attorneys: Charles Grose, Esquire and Rosalind Major, Esquire
Respondent's Attorneys: Melody J. Brown, Sr. Asst. Dep. Atty. Gen., Tommy
Evans, Jr., AAG, and R. Brandon Larrabee, AAG
Court Reporter: Brandi Berry

CJ/PLC #1

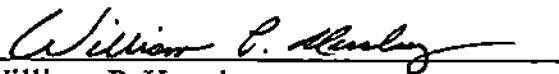
Sergeant Charlie Kubala of the Sumter County Sheriff's Department was murdered by the Applicant on February 26, 1996. For this heinous crime of killing a law enforcement officer acting in the line of duty, the Applicant has been sentenced to death by two juries. The sole issues before the court are whether the Applicant has proven that he is intellectually disabled and exempt from capital punishment pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002) and *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003) and whether he can pursue relief through this action. Those cases establish binding precedent that a person who is

intellectually disabled cannot be executed for his crime. The Applicant has met the necessary burden of proof and is eligible to pursue it through this action.

The attorneys for the Applicant are to submit a more detailed proposed order granting the relief requested. That proposed order is to be forwarded directly to the undersigned judge and his law clerk in an email attachment in Microsoft Word format within 20 days, with copies to opposing counsel in the same manner and at the same time. Due to the age of this case, requests for additional time shall be limited.

AND IT IS SO ORDERED.

#2


William P. Keesley
Circuit Judge, acting on Special Assignment
by the Supreme Court of South Carolina

July 28, 2025



RECORDED

2025 NOV 26 PH 2: 18

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ALAN WILSON
ATTORNEY GENERAL

November 24, 2025

The Honorable James C. Campbell
Sumter County Clerk of Court
215 N. Harvin Street
Sumter, South Carolina 29150

Re: Bobby Wayne Stone, #5051 v. State of South Carolina
C/A No.: 2018-CP-43-1025
Capital PCR

Dear Mr. Campbell:

Enclosed please find, for filing in your office, the original and one (1) copy of Respondent's Motion to Reconsider, Alter, or Amend Pursuant to Rule 59(E), along with an Affidavit of Service for filing in your office in connection with the above-referenced case.

Please file the original brief and return a copy to me in the self-addressed envelope provided for your convenience.

Sincerely,

Melody J. Brown
Senior Assistant Deputy Attorney General

MJB/dmd
Enclosures

cc: The Honorable William P. Keesley (Via email and Via US Mail)
E. Charles Grose, Jr., Esq. (Via email and via US Mail)
Rosalind S.D. Major, Esquire (Via email and via US Mail)
Victim Advocacy Division (w/copy of encls.)

STATE OF SOUTH CAROLINA **RECORDED** IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER **2025 NOV 26 PM 2: 18** **THIRD JUDICIAL CIRCUIT**
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER CO., S.C.
Bobby Wayne Stone, #5051, C/A No. 2018-CP-43-01025
(Capital PCR)
Applicant,
v.
State of South Carolina,
Respondent.

**MOTION TO RECONSIDER, ALTER,
OR AMEND PURSUANT TO RULE 59(E)**

On November 12, 2025, this Court issued an order granting Applicant Bobby Wayne Stone his requested relief under *Atkins v. Virginia*, 536 U.S. 304 (2002). This followed pre-hearing briefing, an evidentiary hearing, and post-hearing briefing from the parties. The State now respectfully moves for this Court to reconsider, alter, or amend its judgment pursuant to Rule 59(e).

The State bases its request of three grounds. First, the State respectfully contends that this Court made an error of law in using the so-called Flynn Effect to lower Stone's IQ scores when considering his claim of intellectual disability. Second, the State respectfully argues that this Court should reconsider its decision that Stone has met his burden to prove intellectual disability in light of his multiple, consistent IQ scores that largely fall outside the range that courts have found persuasive when considering intellectual disability. And finally, the State respectfully restates its argument that *Atkins* should be reconsidered and clarified.¹

¹ Because of the Court's familiarity with the matter, the State forgoes the procedural history and factual summary. Further, the State maintains all its arguments as previously submitted to the Court. This motion narrowly focuses on legal error that Respondent submits is now shown in the Court's order.

ARGUMENT

I. Respectfully, this Court should reconsider its order because the Court incorrectly accounted for the so-called Flynn Effect.

In its order granting Stone post-conviction relief, this Court adjusted Stone's IQ scores to account for the so-called Flynn Effect. Respectfully, neither South Carolina's appellate courts nor the United States Supreme Court have accepted the Flynn Effect as an appropriate consideration in intellectual disability, and this Court should not have considered it.

Intellectual disability is defined in South Carolina law as "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period." *Franklin v. Maynard*, 356 S.C. 276, 279, 588 S.E.2d 604, 605 (2003) (quoting S.C. Code Ann. § 16-3-20(C)(b)(10) (2003)); *see also* S.C. Code Ann. § 44-20-30 (West) (" 'Intellectual disability' means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.").

The United States Supreme Court has seemingly set a guidepost—though not a strict mile marker—around an IQ score of 70 to 75. But it is slightly more nuanced than that, and the nuances here matter. In *Atkins*, the Supreme Court did say that "an IQ between 70 and 75 or lower . . . is typically considered the cutoff IQ score for the intellectual function prong of the mental retardation definition." *Atkins v. Virginia*, 536 U.S. 304, 309, 122 S. Ct. 2242, 2245, 153 L. Ed. 2d 335 (2002). In *Hall v. Florida*, though, the Court itself noted that it had also cited a range with a maximum of 70 in the same opinion. *See* 572 U.S. 701, 719, 134 S. Ct. 1986, 1998–99, 188 L. Ed. 2d 1007 (2014); *see also Atkins*, 536 U.S. at 308 n.3, 122 S. Ct. at 2245 n.3 ("'Mild' [intellectual disability] is typically used to describe people with an IQ level of 50–55 to approximately 70."). The Court discussed the same topic again in *Brumfield v. Cain* and again noted the interplay between the

standard error of measurement and the range of scores that should be taken into account when considering a finding of intellectual disability. See *Brumfield*, 576 U.S. 305, 314–316, 135 S. Ct. 2269, 2276–79, 192 L. Ed. 2d 356 (2015).² See also *Moore v. Texas*, 581 U.S. 1, 13, 137 S. Ct. 1039, 1049, 197 L. Ed. 2d 416 (2017) (“*Hall* instructs that, where an IQ score is close to, but above, 70, courts must account for the test’s ‘standard error of measurement.’” (quoting *Hall*, 572 U.S. at 713, 134 S. Ct. at 1995)).

The Supreme Court has made it clear, then, that while there is no harsh numerical cutoff, a score of between 70 and 75—maybe a little above—should at least prompt further consideration by the court. This is where the significance of this Court’s decision to apply the Flynn Effect makes the difference; without the Flynn Effect, the Court found in its order, Stone’s scores would be 86, 78, 69–75, and 79. Stone must build his case that a preponderance of the evidence supports relief on those numbers—most of them comfortably above 75. And even with the Flynn Effect, at least two and as many as three of Stone’s IQ scores don’t hit 75.³

The United States Supreme Court has *referenced* the Flynn effect before, but that reference hardly encourages this Court and others to apply the effect. Just four years ago, in *Dunn v. Reeves*, the Supreme Court described “the so-called Flynn Effect” as “a controversial theory involving the inflation of IQ scores over time.” 594 U.S. 731, 736, 141 S. Ct. 2405, 2408, 210 L. Ed. 2d 812 (2021) (per curiam). While the Flynn Effect was not directly implicated in its decision, the majority observed the lower court’s statement that using the Flynn Effect ““has not been accepted as

² Interestingly, the *Brumfield* Court also observed that in that case, there was no “evidence of any higher IQ test score that could render the state court’s determination reasonable.” *Id.* at 316, 135 S. Ct. at 2278. In the current case, of course, there is.

³ This Court found that, adjusted for the Flynn effect, one of Stone’s scores is “between 75 or 76.”

scientifically valid by all courts' and was 'not settled in the psychological community.'" *Id.* at 736–37, 141 S. Ct. at 2409 (quoting *Reeves v. State*, 226 So.3d 711, 739 (Ala. Ct. Crim. App. 2016)).

Other courts have advised caution when using the Flynn effect. In *Ex parte Cathey*, the Texas Court of Criminal Appeals “agree[d] that factfinder may ‘consider’ the concept of the ‘Flynn Effect’ in assessing the validity” of IQ scores, but “only in the way that they consider an IQ examiner’s assessment of malingering, depression, lack of concentration, and so forth.” 451 S.W.3d 1, 5 (Tex. Ct. Crim. App. 2014). The *Cathey* Court closely examined the Flynn Effect and conceded that it was “generally valid,” *id.* at 12–14, but cautioned that the applicant in that case “failed to offer sufficient data to support a finding that ordinary clinicians in their normal work actually do subtract points from IQ scores to account for the Flynn Effect,” *id.* at 15. As a result, the *Cathey* Court reasoned, the lower court erred in using the Flynn Effect the way it did. “These considerations should be noted in the interpretative narrative, but *the IQ test score itself may not be changed.*” *Id.* at 18 (emphasis added).

Some experts in the field have also pushed back against using the Flynn Effect. A 2017 article by a board-certified forensic psychologist and a board-certified neuropsychologist bluntly stated, “[s]ubtracting IQ points based on the Flynn effect is not an accepted practice within psychology.” Leigh D. Hagan & Thomas J. Guilmette, *The Death Penalty and Intellectual Disability Not So Simple*, CRIM. JUST. (Fall 2017), at 21. They distinguished taking into account the standard error of measurement from using the Flynn Effect.

Altering an obtained score and calling it a “correction” does not make it correct. The professionally responsible posture is to report the score and explain in the narrative the impact of relevant factors that could introduce error, including the Flynn effect and, when relevant, practice effect, intentional underperformance, and other scientifically substantiated considerations.

*Id.*⁴ Given the significant conversation that has surrounded the Flynn Effect in psychology, the State would respectfully ask this Court to reconsider its application of the effect here.

There was evidence of this ambiguity when this Court conducted its hearing as well. Dr. Michael Vitacco, for example, testified that he had not worked with the Flynn Effect—but because he had not done *Atkins* evaluations, and that is primarily where the Flynn Effect is used. (Tr. 296, 299–300). Even then, Dr. Vitacco said that the Flynn Effect is not always used in *Atkins* evaluations. (Tr. 297).⁵ Dr. Kimberly Kruse also noted that she does not generally use the Flynn Effect, though it might be appropriate in some cases. (Tr. 314–15). The only instance here where Dr. Kruse said the use of the Flynn Effect might be advisable was the first result, which would still show Stone’s IQ as 77. (Tr. 314–315; Order Granting Post-Conviction Relief Pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), at 11). And the testimony was not limited to the State’s witnesses. The Court’s expert acknowledged that “as a field, we are still - - try[ing] to figure out what it is,” and it is only considered “best practices” when evaluating a death-sentenced inmate for exemption. (Tr. 258). Further, IQ test instructions – found so persuasive in *Hall* – do not direct the Flynn Effect be applied. (Tr. 258). Further still, it is not applied in “school placement or support or social security” settings, (Tr. 258), but only to consider exemption. That is so far removed from the Supreme Court instruction to consider *accepted* medical norms as to be its opposite.

⁴ While the results are likely outdated by now, Hagan and Guilmette noted that they were involved in a survey, with the results published in 2008, showing that a large majority of doctoral professors “never taught their students to adjust or recalculate IQ scores,” and that board-certified school psychologists rarely used them. *Id.* at 24–25.

⁵ Dr. Vitacco also noted that some studies were suggesting that, at least in some countries, the Flynn Effect was slowing or even reversing in some countries. (Tr. 297). Similarly, Dr. Hall agreed with the uncertainty, including that it may be reversing, and also that, if an actual “effect” at all, it may not be a “linear” effect, or stated differently, the perceived increase to account for may not be supportive of a pat number to discount. (Tr. 261).

The State would also respectfully ask the Court to reconsider its reliance on three unpublished circuit court decisions to supports its use of the Flynn Effect—in part because they can easily be distinguished. For example, in *Pearson*, the applicant’s raw IQ scores were between 62 and 72. *See Order, State v. Pearson*, Case No. 96-GS-32-3338 (S.C. Cir. Ct. Gen. Sess. Dec. 14, 2005) at 4. The court simply found that the Flynn Effect made the evidence even more compelling. *Id.* at 5. Aside from the range of the 1979 IQ test, Stone’s raw score results as found by this Court were not as low as the applicant in *Pearson*. The order in *Brown* mentions the Flynn Effect once. *See Order, State v. Brown*, Case No. 2011-GS-30-1523 (S.C. Cir. Ct. Gen. Sess. Apr. 14, 2016), at 4–5 (“Dr. Hall does note in her report that she ran the numbers for an adjusted IQ of the Defendant per the ‘Flynn Effect’ algorithm which takes into account his repetitive testing over time.”).⁶ As for *Bell*, the Court stated that all of the expert witnesses in that case agreed that the Flynn Effect should be applied—no small consideration when the applicant has the burden of proof. *See Order, Bell v. State*, Case No. 2003-CP-04-1857 (S.C. Cir. Ct. Comm. Pl. Nov. 18, 2016), at 9. Crucially, those cases have not been tested in the appellate process. The orders merely show that the *result* was not appealed; not that there was agreement with a particular fact, method, or principle. In light of the discrete testimony here, from witnesses on each side of the issue, there was *no* evidence the effect (if indeed it exists) *must* be accounted for and higher scores *must* be discounted in a particular way.⁷

⁶ The *Brown* Court’s description of the Flynn Effect appears to either misconstrue the reason for its use, or rests on a separate theory that was inadvertently and incorrectly referred to as the Flynn Effect. Either choice does not lend actual support for the decision here.

⁷ Further, always defaulting to the lowest number in the range is equally questioned here for support. Testimony from the evidentiary hearing would support the opposite of consistently discounting the highest scores. (Tr. 257, “agreeing that one “can’t generally, a rule, test better than your intellect will allow”). And, in the instant case, As Dr. Hall confirmed, recent testing

The State would respectfully ask this Court to reconsider its decision in the absence of binding precedent to adjust Stone's IQ scores because of the Flynn Effect.

II. Respectfully, the Court did not adequately consider the weight that multiple similar test scores should carry in its consideration of Stone's claim.

This Court also found Stone intellectually disabled despite remarkable consistency in his scores. While this is not determinative, the State respectfully argues that it should have weighed more heavily in the analysis. And the State would bring to the Court's attention that during the course of this litigation, the United States Supreme Court is considering the effect of multiple test scores.

"This Court"—i.e., the Supreme Court of the United States—"has not specified how courts should evaluate multiple IQ scores." *Hamm v. Smith*, 604 U.S. 1, 2, 145 S. Ct. 9, 10, 220 L. Ed. 2d 180 (2024). But it is about to do so. In June, following a remand, the Supreme Court granted certiorari on a petition to hear arguments in *Hamm v. Smith* to consider the question of "[w]hether and how courts may consider the cumulative effect of multiple IQ scores in assessing an *Atkins* claim."⁸

The effect of multiple scores is particularly critical here, when the burden is on Stone to "show that he . . . is [intellectually disabled] by a preponderance of the evidence." *See Franklin v. Maynard*, 356 S.C. at 280, 588 S.E.2d at 606. In other words, the State did not have to prove that Stone is not intellectually disabled despite having one score that might be below 70; Stone had to show that he is intellectually disabled despite having three scores of 78 or above. He did not reach

demonstrated Stone's IQ could be as high as 83. (Tr. 261). The argument on misevaluation of multiple scores is more fully set out in Section II.

⁸ See the Supreme Court's online docket for *Hamm* at <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/24-872.html>.

that standard. And given that the United States Supreme Court is currently determining how multiple scores should be considered, it is clear that this area of law is unsettled. Respectfully, there is no controlling case law compelling this Court to ignore the effect of multiple, consistent IQ scores and consider what that means for the holistic review envisioned by the U.S. Supreme Court. *But see Hall*, 572 U.S. at 714, 134 S. Ct. at 1995–96 (“In addition, because the test itself may be flawed, or administered in a consistently flawed manner, multiple examinations may result in repeated similar scores, so that even a consistent score is not conclusive evidence of intellectual functioning.”).

III. Respectfully, this Court should find that *Atkins* should be reviewed and clarified.

The State would also respectfully renew its contention that the *Atkins* decision needs clarification. The *Atkins* decision was not unanimous. The dissent, authored by Justice Scalia and joined by Chief Justice Rehnquist and Justice Thomas, criticized the majority’s opinion lack of consensus by “objective factors” such as legislative enactments. *Atkins*, 536 U.S. at 341, 344 (Scalia, J., dissenting).⁹ The dissent also recognized, for Eighth Amendment analysis, “the peril of discerning a consensus where there is none.” *Id.* at 345–47. The dissent posited that the majority must have believed that there is an “inability of judges or juries to take proper account of mental retardation,” yet the legal system is based on the ability of judges or juries to consider the facts of each case. *Id.* at 349. The dissent also questioned the majority’s reasoning on culpability, deterrence, excessive punishment, and “special risks” the majority referenced. *Id.* at 349–52. The dissent further correctly recognized that the necessary reliance on soft science would increase

⁹ Chief Justice Rehnquist also authored his own dissent and underscored his agreement “that the Court’s assessment of the current legislative judgment regarding the execution of defendants like [Atkins] more resembles a *post hoc* rationalization for the majority’s subjective preferred result rather than any objective effort to ascertain the content of an evolving standard of decency.” *Atkins*, 536 U.S. at 322 (Rehnquist C.J. dissenting).

litigation and inmates would “claim[] for the first time, after multiple habeas petitions, that they are retarded.”¹⁰ *Id.* at 353–54. In the interim since *Atkins* to now, the Court has seen the “practical difficulties” and has also begun to recognize the express lack of guidance in *Atkins* cases has increased the difficulty in complying with the exception.

Notably, Justice Alito observed in a later case considering one State’s attempt to comply with the exception that “[u]nder our modern Eighth Amendment cases, what counts are our society’s standards—which is to say, the standards of the American people—not the standards of professional associations, which at best represent the views of a small professional elite.” *Hall*, 572 U.S. at 731 (Alito, J., dissenting).

In another case, Chief Justice Roberts, joined in dissent by Justice Thomas and Justice Alito, similarly remarked that the “Court’s precedents . . . establish[] that the determination of what is cruel and unusual rests on a judicial judgment about societal standards of decency, not a medical assessment of clinical practice.” *Moore v. Texas*, 581 U.S. 1, 29 (2017) (Roberts, C.J., dissenting). The dissent highlighted “the lack of guidance . . . offer[ed] to States seeking to enforce the holding of *Atkins*.” *Id.*

When Moore returned to the Supreme Court, the Chief Justice, writing a separate concurring opinion, again affirmed that in his view, “the majority articulation of how courts should enforce the requirements of *Atkins v. Virginia* . . . lacked clarity,” *Moore v. Texas*, 586 U.S. 133, 143 (2019) (Roberts, C.J., concurring). Justice Alito, joined by Justice Thomas and Justice Gorsuch, dissented, similarly noting the lack of guidance to the States. *Id.* at 143–44.

As Justice Scalia alluded to in his *Atkins* dissent, the exemption recognition was, at best, premature, as there was no consensus in identifying the group of individuals to be exempt. Had

¹⁰ This is the term that was used at the time for intellectual disability and is quoted verbatim.

there been, the Court would have announced a bright line test with the type of definitive clarity (if not the simplicity) in *Roper*. As is stands, precedent and this case continue to reflect the difficulty in determining the defendants meant for exemption. The soft definition could lead to discarding a duly returned jury verdict—the very epitome of society’s view—in favor of ever evolving concepts from the medical profession or simple disagreement with the jury’s assessment of the evidence by a later reviewing court. That does not honor the Eighth Amendment. The exemption should be revisited for modification and clarification, and, if that cannot be done upon further review and consideration, then the exemption itself should be revisited. Respondent respectfully suggests that indications in the case law warrant a revisiting of the *Atkins* exception.

CONCLUSION

For all the above reasons, the State would ask this Court to reconsider, alter, or amend its judgment to find that Stone has not met his burden by a preponderance of the evidence because the Flynn Effect should not be applied; there is no controlling case law to compel this Court to disregard the multiple, consistent IQ scores here; and to consider that the *Atkins* exemption itself is in need of clarification.

Respectfully submitted,

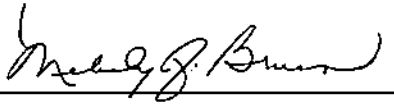
ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General

R. BRANDON LARRABEE
Assistant Attorney General

By: 

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

ATTORNEYS FOR RESPONDENT

November 24, 2025
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Bobby Wayne Stone, #5051

2018-CP-43-01025

Capital PCR

Applicant,

v.

AFFIDVAIT OF SERVICE

State of South Carolina,

Respondent.

1. I am an employee of Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Respondent's Motion to Reconsider, Alter, or Amend Pursuant to Rule 59 (E) and Affidavit of Service** in the above-captioned matter on the following attorneys via email, and by depositing same in the United States mail, postage prepaid, and addressed as follows:

E. Charles Grose, Jr., Esquire
305 Main Street
Greenwood, South Carolina 29646
charles@groselawfirm.com

Rosalind S.D. Major, Esquire
Justice 360
900 Elmwood Avenue, Suite 200
Columbia, South Carolina 29201
rosalind@justice360sc.org

DATED this 24th day of November, 2025.

s/ Donna D'Alessio

Donna D'Alessio,
Legal Assistant

RECORDED

2025 DEC -5 PM 1:45

December 2, 2025

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

The Honorable James C. Campbell
Sumter County Judicial Center, third floor
215 N. Harvin Street
Sumter, SC 29150

Re: *Bobby Wayne Stone v. State of South Carolina*, No. 2018-CP-43-001025

Dear Mr. Campbell,

Please find enclosed the original and a copy of Applicant's Response to Respondent's Motion to Reconsider, Alter, or Amend Judgment for filing, along with a certificate of service. Also enclosed is a pre-addressed and pre-stamped envelope for the return of the file stamped copy.

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

Sincerely,

Rosalind Major

Rosalind Major

Enclosure

cc: Judge William P. Keesley
Melody Brown, Esq. (via email)
Tommy Evans, Esq. (via email)
Brandon Larrabee, Esq. (via email)

RECORDED

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Bobby Wayne Stone, JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No. 2018-CP 43-001025

Applicant,

v.

State of South Carolina,

Respondent.

**RESPONSE TO RESPONDENT'S
MOTION TO RECONSIDER, ALTER,
OR AMEND JUDGMENT**

Applicant, Bobby Wayne Stone, respectfully submits his response to Respondent's Motion to Reconsider, Alter, or Amend Judgment. For the most part, Respondent's arguments are a rehash of its prior submissions, which have been refuted by the record evidence and thoroughly considered and rejected by this Court in its well-reasoned order. However, several points from Respondent's motion warrant a response, which are included in this return. Ultimately, the Court's determination that Stone is a person with intellectual disability was thoughtfully considered and grounded in the evidence before the Court, and Respondent offers no valid reason to disturb this Court's prior order.

I. Applicant has a developmental period IQ test score that is clearly within range for a finding of significantly subaverage intellectual functioning.

Most of Respondent's submissions to the Court about why it should reconsider its order are centered on the evidence about Applicant's IQ test scores. Mot. at 2–8. In doing so, Respondent focuses on the appropriateness of considering norm obsolescence, *see infra*, and asks the Court to give weight to only some of Applicant's test scores. While the Court is required to consider more than only IQ testing when assessing if the subaverage intellectual functioning prong is satisfied, App. Post-Hearing Brief at 2–3, 6–12, the IQ testing in Stone's case includes a score

that is clearly within range for a finding of intellectual disability even without consideration of norm obsolescence.

The evidence before the Court includes undisputed evidence that Applicant was IQ tested three times during the developmental period. App. Ex. 3 at 50–56; Court’s Ex. 1 at 7–8. These scores resulted in Stone’s initial and continued placement in special education services until he ultimately dropped out of high school. App. Ex. 3 at 50–56; Hrg. at 47–56, 79–81, 171–173, 180. Stone’s third developmental IQ test score was a Weschler Intelligence Scale for Children-Revised (“WISC-R”), which was administered in 1979 when he was 14 years old. Stone obtained a full-scale IQ of “between 69 and 75.” Hrg. at 43, 54–55, 179–180; App. Ex. 3 at 55–56. Following the special education services reevaluation where this score was obtained, Stone’s special education placement was reclassified as “EMH” or “educable mentally handicapped,” a designation equivalent to a diagnosis of intellectual disability.¹ Hrg. at 76, 85–86, 173, 180; App. Ex. 3 at 56; Order at 11–12.

Thus, without any consideration of how outdated the testing norms of the WISC-R were at the time, this developmental period IQ score is within the range that is considered significantly subaverage for the purposes of an intellectual disability diagnosis. *See, e.g.*, DSM-5-TR at 38 (recognizing 65 to 75 as the general range of IQ scores expected for someone to satisfy prong one of the diagnostic criteria); *Hall*, 572 U.S. 701, 722 (2014) (recognizing that “IQ test scores are

¹ As the hearing evidence established, “educable mentally handicapped” is an outdated school classification that is “parallel to what we now call mild intellectual disability,” and schools now explicitly classify students with EMH level functioning as intellectually disabled. Hrg. at 55–56, 180, 196. As Dr. Hall testified, to qualify for the educable mentally handicapped classification at school, a student would need to “have below average or sub-average intellectual functioning in conjunction with deficits of adaptive behavior.” Hrg. at 169. She explained that “schools actually call it ‘intellectual disability’ right now.” Hrg. at 173, 196.

approximations of conceptual functioning” and that someone satisfies prong 1 with “an IQ test score between 70 and 75 or lower”) (quoting *Atkins v. Virginia*, 536 U.S. 304, 309 n.5 (2002)). This is highly supportive of the Court’s finding that prong 1 was satisfied and the Court should not disrupt that finding.²

2. *It was appropriate for this Court to consider the Flynn Effect in analyzing Applicant’s test scores.*

It was wholly appropriate for this Court to consider norm obsolescence, also known as the Flynn Effect, in reviewing Stone’s IQ scores. Applying the Flynn effect is in line with the clinical consensus practice in diagnosing intellectual disability, the evidence before the Court in this case, and how most courts have considered the issue. Respondent offers no binding precedent or otherwise persuasive arguments to require the Court to reconsider its appropriate application of the Flynn effect in its order.

Courts considering *Atkins* claims are required to be “informed by the views of medical experts,” when assessing if a person is intellectually disabled. *Moore I*, 581 U.S. at 13 (quoting *Hall*, 572 U.S. at 721). In doing so, courts should rely on “the most recent (and still current) versions of the leading diagnostic manuals.” *Id.* The current leading diagnostic manuals are the Diagnostic and Statistical Manual of Mental Disorders, 5th edition text revision (“DSM-5-TR”), which is published by the American Psychological Association, and *Intellectual Disability: Definition, Diagnosis, Classification, and Systems of Support*, 12th edition (“AAIDD-12”), which

² Intellectual disability is a developmental disability, and a diagnosis requires manifestation of the deficits in both intellectual and adaptive functioning within the developmental period. See AAIDD-12 at 32–33; DSM-5-TR at 38, 42; Hrg. at 103, 203–204; *Brumfield v. Cain*, 576 U.S. 306, 308–10 (2015). Because of this, some courts have given more weight to in-range IQ scores from testing that was administered on a person when they were in the developmental period. *E.g.*, *Pruitt v. Neal*, 788 F.3d 248, 266 (7th Cir. 2015); *Smith v. Schiro*, 813 F.3d 1175, 1185–86 (9th Cir. 2016); *Jackson v. Norris*, 448 F.Supp.3d 1028, 1044–46 (E.D.Ark. 2020).

is published by the American Association on Intellectual and Developmental Disabilities.³ Hrg. at 16–17, 187, 319. Both the DSM-5-TR and the AAIDD-12 explicitly recognize the legitimacy of the Flynn effect and the practice of accounting for norm obsolescence. DSM-5-TR at 38; AAIDD-12 at 42.

Since *Atkins* was decided, every court in South Carolina to address an *Atkins* issue has relied on the clinical definitions, instructions, and guidelines of the APA and the AAIDD to inform the court’s analysis in compliance with the Supreme Court’s instruction in *Hall* and *Moore*.⁴ No South Carolina court considering an *Atkins* issue has ever found it was inappropriate to apply the Flynn effect and courts across the country have similarly acknowledged it is appropriate to consider norm obsolescence when considering IQ scores as part of an *Atkins* claim.⁵

³ The United States Supreme Court has repeatedly recognized the AAIDD’s clinical manual and the DSM as the best sources for the current medical guidance for how to properly evaluate intellectual disability. *See, e.g., Atkins*, 536 U.S. at 308, 353; *Hall*, 572 U.S. at 704–05, 722; *Moore*, 581 U.S. at 7.

⁴ *See, e.g.,* Order Finding Defendant Mentally Retarded in *South Carolina v. Pearson*, 96-GS-32-3338 (S.C. Ct. Gen. Sess. Dec. 14, 2005); Order Granting Post-Conviction Relief in *Franklin v. South Carolina*, 96-CP-45-117 (S.C. Ct. Comm. Pleas Jan. 26, 2011), Order Granting Post-Conviction Relief in *Elmore v. South Carolina*, 05-CP-24-1205 (S.C. Ct. Comm. Pleas Feb. 1, 2010); Order Granting Post-Conviction Relief in *Simmons v. South Carolina*, 05-CP-18-1368 (S.C. Ct. Comm. Pleas Oct. 15, 2013); Order Granting Post-Conviction Relief in *Bell v. State*, 03-CP-04-1857 (S.C. Ct. Comm. Pleas Nov. 16, 2016); Order Finding Defendant Intellectually Disabled in *State v. Brown*, 2011-GS-30-1523 (S.C. Ct. Gen. Sess. Apr. 14, 2016). Applicant has previously provided copies of these orders to the Court but will happily furnish additional copies for the Court’s convenience upon request.

⁵ *State v. Williams*, No. 2023-T-008, 2023 WL 8440882, at *4, 23–24 (Ohio Ct. App. Dec. 4, 2023); *State ex rel. Johnson v. Blair*, 628 S.W.3d 375, 382–83 (Mo. 2021); *Jackson v. Payne*, 9 F.4th 646, 654–55 (8th Cir. 2021); *United States v. Roland*, 281 F.Supp.3d 470, 501–03 (D.N.J. 2017); Order Granting Habeas Corpus Relief, *In re Noel Jackson*, RIC475367/CR23480 (Cal. Sup. Ct. July 29, 2016), at 30; *Smith v. Schiro*, 813 F.2d 1175, 1184–85 (9th Cir. 2016); Decision Barring the Death Penalty, *State of Ohio v. Willie L. Dumas*, No. 14CR-2806 (Ohio Ct. Comm. Pleas Dec. 2, 2015); Order Granting Post Conviction Relief, *Russell v. Mississippi*, No. 10,130 (Miss. Cir. Ct. Dec. 31, 2014); Court’s Partially Adopted Findings of Fact and Conclusions of Law, *Maldonado v. State*, No 51,612-02 (Tx. Dist. Ct. Dec 13, 2012); *Brumfield v. Cain*, 854 F.Supp.2d 366, 390–92

Respondent encourages this Court to reconsider applying the Flynn effect because “[s]ome experts in the field have also pushed back against using the Flynn effect.” Mot. at 4-5. Respondent points to a single study in support of this assertion. Far from being an active debate, however, the definitive diagnostic manuals have squarely recognized and embraced the impact of the Flynn Effect, recognizing the legitimacy of accounting for norm obsolescence in all assessment and evaluation contexts. DSM-5-TR at 38; AAIDD-12 at 42. Moreover, at the hearing, all four experts testified about the Flynn Effect and norm obsolescence. These experts all testified that it is appropriate to apply the Flynn Effect. Hrg. at 31–32 (Dr. Boyd explaining what the Flynn effect is, that the “authoritative guidance encourages [evaluators] to utilize” it, and that it is recommended for all IQ testing); 176–177, 258–259 (Dr. Hall explaining that the Flynn effect is something that’s accepted in the scientific community, permitted by the diagnostic guidance, and considered best practices in *Atkins* contexts); 299–300 (Dr. Vitacco stating that he “didn’t have any criticism of either of the [evaluating] experts for using” the Flynn effect and acknowledging the Flynn effect is mentioned and encouraged by the clinical standards); 314–315 (Dr. Kruse stating that applying the Flynn effect “is not mandatory,” but acknowledging “there’s a place for the Flynn effect” when evaluating someone’s IQ scores). Accordingly, the Court did not err in considering this as part of its consideration of the evidence about Stone’s intellectual functioning.

(M.D.La. 2012); *United States v. Smith*, 790 F. Supp. 2d 482, 491 (E.D.La. 2011); *United States v. Lewis*, 2010 WL 5418901, 2010 U.S. Dist. LEXIS 138375, at *14–17, 29–30 (N.D. Ohio Dec. 23, 2010); *Wiley v. Epps*, 668 F.Supp.2d 848, 894 (N.D.Miss. 2009); *Thomas v. Allen*, 614 F.Supp.2d 1257, 1280–81 (N.D.Ala. 2009), *affirmed* in *Thomas v. Allen*, 607 F.3d 749 (11th Cir. 2010); *United States v. Davis*, 611 F.Supp.2d 472, 478, 485–89 (D.Md. 2009). Copies of all unreported orders cited within this footnote have been previously provided to the Court and counsel will happily furnish additional copies at the Court’s request.

3. *Irrespective of Respondent's representations to the Court, the analysis of the significantly subaverage intellectual functioning prong is not limited to IQ testing and the Court's analysis of this diagnostic prong appropriately considered both Stone's IQ testing and other evidence when concluding that this prong was satisfied.*

Assessment of whether a person satisfies the intellectual functioning diagnostic prong requires considering more information than simply IQ testing. Courts and clinicians both recognize that determining whether an individual has significantly subaverage intellectual functioning requires consideration more than mere observation of an individual's reported test scores, as "intellectual disability is a condition, not a number." *Hall*, 572 U.S. at 723; *Moore*, 581 U.S. at 15; *Brumfield v. Cain*, 576 U.S. 305, 316 (2015); DSM-5-TR at 42; AAIDD-11 at 31, 36; AAIDD-12 at 41.⁶ At the hearing, significant evidence was presented that an appropriate evaluation of this diagnostic prong considers any valid full-scale IQ testing along with any other evidence about intellectual functioning. Hrg. at 25–28, 34–36, 42–44, 182–187; Court Ex. 1 at 8–11.

The Court's analysis appropriately followed this guidance in its order finding Stone is a person with intellectual disability. In analyzing the significantly subaverage intellectual functioning prong, the Court did consider the evidence about the four full-scale IQ tests Stone took

⁶ Both the DSM-5-TR and publications from the AAIDD recognize this explicitly. As the DSM-5-TR explains:

IQ test scores are approximations of conceptual functioning but may be insufficient to assess reasoning in real-life situations and mastery of practical tasks. For example, a person with deficits in intellectual functioning whose IQ score is somewhat above 65–75 may nevertheless have such substantial adaptive behavior problems in social judgment or other areas of adaptive functioning that the person's actual functioning is clinically comparable to that of individuals with a lower IQ score. Thus, clinical judgment is important in interpreting the results of IQ tests, and using them as the sole criteria for the diagnosis of an intellectual developmental disorder is insufficient.

DSM-5-TR at 42. The AAIDD similarly recognizes that IQ scores are "far from perfect" and guides clinicians to consider IQ scores alongside all relevant information about a person's functioning. AAIDD-11 at 31, 36; AAIDD-12 at 38, 41.

throughout his life. Order at 11. However, the Court also properly considered the evidence about Stone's special education evaluations and other academic testing and functioning. Order at 12-14. The Court discussed the kinds of special education services Stone received, Stone's assessed mental age, Stone's reading level, and overall academic performance over time. *Id.* This Court appropriately considered the totality of this evidence in reaching its conclusion that the significantly subaverage intellectual functioning prong was satisfied and Respondent's arguments to the contrary are unfounded.

CONCLUSION

For the reasons set forth above, as well as for the reasons presented at Stone's PCR hearing and in his previous submissions to the Court, this Court correctly determined that Stone is a person with intellectual disability and therefore ineligible for the death penalty pursuant to *Atkins v. Virginia*, 534 U.S. 204 (2002). Therefore, Respondents Motion to Reconsider, Alter, or Amend Judgment should be denied.

Respectfully submitted,

s/E. Charles Grose, Jr.
E. Charles Grose (66063)
Grose Law Firm
305 Main Street
Greenwood, SC 29646
(864) 538-4466

s/Rosalind S. D. Major
Rosalind S. D. Major (106017)
Justice 360
900 Elmwood Ave., Suite 200
Columbia, SC 29201
(803) 765-0144

Counsel for Bobby Wayne Stone

December 2, 2025.

RECORDED

THE STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
BOBBY WAYNE STONE,)
Applicant,)
vs.)
STATE OF SOUTH CAROLINA,)
Respondent.)
_____)

2018 DEC -5) PM 1:55
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C. Case No. 2018-CP-43-001025

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Applicant's Response to Respondent's Motion to Reconsider, 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 2nd day of December, 2025, upon the following

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

By s/Rosalind S.D. Major

Rosalind S.D. Major
Justice 360
900 Elmwood Ave., Suite 200
Columbia, SC 29201
(803) 765-1044

December 2, 2025

RECORDED

2025 DEC 30 AM 10:52

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Bobby Wayne Stone, #5051,
Applicant,

v.

State of South Carolina,
Respondent.

JAMES C. JAMPEN
CLERK OF COURT
SUMTER COUNTY, S.C.

THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

C/A No. 2018CP4301025

**ORDER ON STATE'S MOTION TO
ALTER OR AMEND**

The State's motion to alter or amend the order finding that the Applicant suffers from intellectual disability and is entitled to relief under *Atkins*¹ is respectfully denied. The parties were notified that the court would decide the motion on written submissions under Rule 59(f), SCRCP. Having reviewed those materials, the logic and reasoning set forth in the response filed on behalf of the Applicant is adopted.

WPK
#1

The State's motion was based on three grounds. The first is that the court erred in using the Flynn Effect to lower the Applicant's IQ scores. The court fully considered that issue in making its prior ruling, and the prior order expressed some concern about the underlying premise of the Flynn Effect. Nonetheless, the response explains in detail why this evidence was utilized as part of the court's ruling, and that reasoning is reinstated and adopted. The second assertion of error is that the court failed to give proper weight to "consistent IQ scores that largely fall outside the range" of intellectual disability. Again, the court considered all the evidence and, after reconsideration, adopts the reasoning set forth in the Applicant's response. The third assertion of

¹ *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 251 L.Ed.2d 335 (2002)

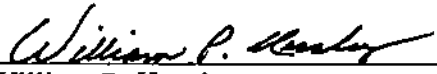
error is that *Atkins* should be reconsidered and clarified. The court followed what it believed to be applicable precedent.

As expected, the State's arguments are well stated and reflect considerable knowledge of the issues. However, the Applicant's response is equally impressive and addresses the first two objections in detail. The Applicant's arguments in opposition to the motion are found to be persuasive. As for revisiting *Atkins*, this court believes that precedent is binding at this point and has attempted to follow it in determining the findings and conclusions that were reached.

The extreme gravity and horrendous impact of Mr. Stone's inexcusable murder of a law enforcement officer who was acting in performance of his duties are not lost upon the court. Family and friends of the victim were present throughout the process after years of delays, and the court is mindful that Sergeant Charlie Kubala was more than an officer to them and many others. The determinations made are those which this court believes to be required under the law.

#2 THEREFORE, IT IS ORDERED that the State's motion to alter or amend is respectfully denied.

AND IT IS SO ORDERED.



William P. Keesley
Circuit Court Judge

December 22, 2025



Sara Boyd, Ph.D. Licensed Clinical Psychologist

ph: 571.317.0979 | fax: 844.598.6534

*Institute of Law, Psychiatry, & Public Policy at the University of Virginia, &
Boyd Forensic Psychology Services, LLC*

EDUCATION

Graduate:

Doctor of Philosophy, Clinical Psychology, University of Kentucky, August 2013.
Dissertation title: *Personality and Personality Disorder in Adults with Intellectual Disabilities*.

Master of Science, Clinical Psychology, University of Kentucky, 2010.

Master of Science, Counseling Psychology, University of Kentucky, 2005.

Certificate in Developmental Disabilities, University of Kentucky, 2005.

Undergraduate:

Bachelor of Science, Psychology, University of Illinois, May 2003.

PROFESSIONAL LICENSES & CREDENTIALS

Licensed Clinical Psychologist, Virginia Department of Health Professionals, July 3, 2014 to present. License number: 0810005036

Licensed Clinical Psychologist, District of Columbia Department of Health Professional Licensing, February 10, 2015 to present. License number: PSY1001030

Licensed Clinical Psychologist, West Virginia Board of Examiners of Psychologists, August 24, 2016 to present. License number: 1154

National Register Health Psychologist #54431

CLINICAL EXPERIENCE & EMPLOYMENT

Institute of Law, Psychiatry, and Public Policy, University of Virginia Health System, Licensed Clinical Psychologist/Forensic Evaluator. Charlottesville, Virginia. June 2016 to Present.

Providing forensic evaluation and consultation in adult and juvenile criminal and civil matters. Supervising postdoctoral fellows and graduate students, and developing professional trainings for forensic evaluators and attorneys.

Woodbridge Psychological Associates, P.C., Licensed Clinical Psychologist, Woodbridge, Virginia, September 2014 to June 2016.

Providing forensic evaluation and consultation in adult and juvenile criminal and civil matters.

Institute of Law, Psychiatry, and Public Policy, University of Virginia Health System, Forensic Psychology Postdoctoral Fellow, Charlottesville and Staunton, Virginia, August 2013 to August 2014.

Postdoctoral fellowship was comprised of two primary assignments: Western State Hospital, and Institute of Law, Psychiatry, and Public Policy clinic at the University of Virginia.

Western State Hospital—Virginia Department of Behavioral Health and Developmental Services

- Conducted mental state at the time of offense and competency to stand trial evaluations in an inpatient forensic setting.
- Provide training and consultation on intellectual disability, forensic, domestic/sexual violence, and LGBTQ-related topics for mental health providers.

Institute of Law, Psychiatry, and Public Policy

- Conducted gender dysphoria evaluations for Virginia Department of Corrections, general psychological evaluations, sex offender risk assessment, violence risk assessment, mental state at the time of offense, and competency to stand trial evaluations in an outpatient forensic clinic.
- Developed and provided training and consultation services to private and public mental health professionals.

Westchester Jewish Community Services, APA-Accredited Internship, Psychology Fellow, Yonkers and Hartsdale, New York, July 2012 to July 2013.

Pre-doctoral Internship at community mental health agency comprised of rotations in a treatment and evaluation program for juvenile sex offenders, court assessment program, treatment center for survivors of trauma and abuse, a program for individuals with developmental disabilities (DD), an autism evaluation clinic, and a learning center. Provided consultation to multidisciplinary teams on such matters as psychological assessment, research, and empirically-based treatment.

Treatment Center for Trauma and Abuse

- Utilized Skills Training in Affective and Interpersonal Regulation/Narrative Story-Telling (STAIR/NST), Trauma-Focused Cognitive Behavioral Therapy (TF-CBT), Prolonged Exposure, behavioral activation, and other empirically-based methods to treat child, adolescent, and adult survivors of trauma, sexual and physical abuse, and domestic violence.
- Conducted focal and comprehensive psychological assessments to assist in treatment planning. Provided feedback to clients, families, and clinicians.

Autism Evaluation Program

- Assessed and determined diagnoses of adults and children referred due to suspected Autism Spectrum Disorders (ASDs). Utilized ADOS-2, adaptive functioning, intellectual ability, achievement and neuropsychological measures, in addition to in-depth clinical interview, collateral interviews, and record review.

Developmental Disabilities Program

- Utilized cognitive-behavioral therapy (CBT) and parent management training interventions with children and adults with intellectual and developmental disabilities (ID/DD) and their families.
- Provided diagnostic clarification, crisis management services, and psychotherapy to individuals recently discharged from inpatient settings.
- Co-led a social skills group for 5- and 6-year-old children with ASDs.

Juveniles Starting Over Program

- Conducted risk and safety assessments, including ERASOR, for adjudicated juvenile sex offenders and children and adolescents with sexual behavior problems.
- Provided individual and family therapy to adjudicated juvenile sex offenders and non-adjudicated youth with sexual behavior problems.

Court Assessment Program

- Co-evaluated custody/visitation, termination of parental rights, delinquency, abuse/neglect, and probation cases.
- Co-performed specialized evaluations of juvenile sex offenders.
- Consulted to psychiatrists, judges, court staff, and guardians.
- Conducted brief psychoeducational screenings.

Learning Center

- Conducted comprehensive and focal cognitive, educational, and personality assessments of children, adolescents, and adults.
- Evaluated individuals with potential learning disabilities, executive function deficits, Attention-Deficit Hyperactivity Disorder (ADHD), and other psychiatric diagnoses.
- Developed comprehensive educational, social, and vocational recommendations as part of an integrative written report, and provided feedback to clients, families, and clinicians.

Bluegrass Mental Health/Mental Retardation Board, Eastern State Hospital, Forensic/Inpatient Psychology Trainee, Lexington, Kentucky, June 2010 to July 2011.

Provided forensic assessments to individuals with serious mental disorders in an inpatient setting. Assisted in evaluations of competency to stand trial and criminal responsibility for misdemeanors and felonies. Consulted to psychologists on forensic cases involving individuals with ID/DD. Administered adjunct malingering and

neuropsychological testing for the supervising forensic psychologist. Other rotations included assessment and individual and group therapy on a high-risk unit, geriatric/medically fragile unit, and a day treatment program. Developed special expertise in intervention and testing of dually diagnosed consumers with ID/DD and severe mental illness.

University of Kentucky, Harris Psychological Services Center, Graduate Student Therapist, Lexington, Kentucky, July 2007 to July 2011.

Assessed risk as part of employment screening for weapons-handling personnel at an international security company. Conducted integrative assessments for ADHD and learning disabilities. Provided individual psychotherapy for clients with ASDs, major depression, adjustment disorder, conversion disorder, generalized anxiety disorder, post-traumatic stress disorder, and borderline personality disorder.

University of Kentucky, Harris Psychological Services Center, Social Skills Group Co-Leader, Lexington, Kentucky, September 2008 to December 2008.

Conducted intakes for potential group members, and co-led a manualized skills-based intervention group for children with social impairments. Met with parents to exchange feedback, and conducted pre- and post-intervention behavioral assessments. Group members had ASD and/or anxiety disorders.

University of Kentucky, Harris Psychological Services Center, Assessment Coordinator, Lexington, Kentucky, July 2007 to August 2008.

Responsible for all aspects of outpatient clinic testing. Supervised assessments; performed intakes; participated in administrative meetings to determine the appropriateness and disposition of potential clients; reviewed clinic policies and procedures; researched, identified, and ordered new instruments; engaged in community outreach; and maintained clinic assessment records.

Bluegrass Rape Crisis Center, Crisis Counselor Trainee, Lexington, Kentucky, September 2005 to September 2006.

Provided crisis counseling services at a community agency for survivors of sexual assault. Accompanied survivors (including survivors with disabilities) to the local emergency room, provided advocacy and support throughout the medical examination and detectives' questioning, and answered crisis line calls.

Center for Women, Children, and Families, Counseling Psychology Trainee, Lexington, Kentucky, January 2006 to May 2006.

Led psychoeducational groups for adult survivors of domestic violence who had lost custody of their children and were seeking reunification. Conducted intakes and provided individual CBT to children and adults. Diagnoses included Fragile X and other developmental disabilities, post-traumatic stress, adjustment, acute stress, and major depressive disorders.

RESEARCH EXPERIENCE

Westchester Jewish Community Services, Co-Principal Investigator, "Sexual Knowledge and Attitudes of Adolescents and Young Adults with Developmental Disabilities, Before and After a Psycho-Educational Intervention." White Plains and Hartsdale, New York, July 2012 to July 2013.

Co-originated study concept, developed methodology, identified appropriate assessment instruments, and generated hypotheses for a study examining outcomes for adolescents and young adults with ASDs who participated in a psycho-educational healthy sexuality group.

Variables include sexual knowledge and attitudes, Axis I psychopathology, and intellectual functioning.

University of Kentucky, Principal Investigator, "General Personality, Personality Disorder, Psychopathology, and Adaptive Functioning in Adults with Intellectual Disabilities." Lexington, Kentucky, October 2011 to August 2013.

Wrote literature review, developed study methodology and hypotheses, obtained IRB approval, recruited participants from vulnerable populations, and collected, analyzed, and interpreted data. Dissertation.

University of Kentucky, Co-Investigator, "Gender Identity, Sexual Orientation, and Personality." Lexington, Kentucky, September 2012 to present.

This project is comprised of three studies examining the relations among non-normative gender identity, personality, and sexuality. Generated research idea, developed study methodology, obtained IRB approval, and collected, analyzed, and interpreted data for study one. Co-principal investigator: Tory Eisenlohr-Moul, Ph.D.

University of Kentucky, Widiger Personality Laboratory, Graduate Research Partner, Lexington, Kentucky, September 2005 to July 2012.

Administered the Personality Disorder Interview-IV and Structured Interview for the Five Factor Model to participants in studies of personality disorders; generated ideas for laboratory research; co-developed methodology for studies of Five Factor Model personality; coded semi-structured interviews for reliability; read and critiqued papers submitted for publication; and identified test items for use in Five Factor Model research. Principal Investigator: Thomas Widiger, Ph.D.

University of Kentucky, Department of Behavioral Sciences, Graduate Research Assistant, Lexington, Kentucky, June 2008 to May 2010.

Collected, analyzed, and interpreted data, co-authored manuscripts, and wrote annual reports for funding sources.

University of Kentucky, Preservice Health Training Project, Research Assistant, Lexington, Kentucky, August 2005 to June 2008.

Assisted in a project evaluating outcomes of online training modules for health professionals serving people with disabilities. Co-authored six manuscripts published in peer-reviewed journals; collected, analyzed, and interpreted data; co-developed study methodology; and coordinated and edited contributions by co-authors. Principal Investigator: Harold Kleinert, Ed.D.

University of Illinois, Korol Sex Steroids and Behavior Rodent Laboratory, Research Assistant, Lexington, Kentucky, May 2002 to August 2002.

Assisted in a study of rodent spatial navigation strategies, resulting in a *Neuroscience* publication. Performed rodent surgeries, including ovariectomy and cannulae implantation in the striatum and hippocampus, tested rodent behavior, and performed histology on frozen brain tissue. Principal Investigator: Donna Korol, Ph.D.

PUBLICATIONS

Boyd, S. E. (2012). Five Factor Model personality functioning in adults with intellectual disabilities. In T.A. Widiger & P.T. Costa (Eds.), *Personality Disorders and the Five Factor Model of Personality* (3rd ed.) (pp. 209 - 217). Washington, D.C.: American Psychological Association.

Adams, Z., and **Boyd, S.E.** [shared first-authorship] (2010). Ethical challenges in the treatment of individuals with intellectual disabilities. *Ethics and Behavior*, 20, 407-418.

Boyd, S., Sanders, C., Kleinert, H., Huff, M., Lock, S., Johnson, S., et al. (2008). Virtual patient training to improve reproductive healthcare for women with intellectual disabilities. *Journal of Midwifery and Women's Health*, 53, 453-460.

Kleinert, H. K., Fisher, S., Sanders, C., & **Boyd, S.** (2007). Improving physician assistant competencies in developmental disabilities using virtual patient modules. *Journal of Physician Assistant Education*, 18, 33-40.

Kleinert, H. K., Sanders, C. B., Mink, J., Nash, D., Johnson, J., **Boyd, S.**, et al. (2007). Improving student dentist competencies and comfort in delivering care to children with developmental disabilities using a virtual patient module. *Journal of Dental Education*, 71, 279-286.

Knudsen, H. K., Studts, J. L., **Boyd, S. E.**, & Roman, P. M. (2010). Structural and cultural barriers to the adoption of smoking cessation services in addiction treatment organizations. *Journal of Addictive Diseases*, 29, 294-305.

Knudsen, H. K., **Boyd, S. E.**, Studts, J. L. (2010). Substance abuse treatment counselors and tobacco use: a comparison of comprehensive and indoor-only smoking bans. *Nicotine and Tobacco Research*, 12, 1151-1155.

Sanders, C. L., Kleinert, H. K., Free, T. F., Slusher, I., Clevenger, K., Johnson, S., **Boyd, S. E.** (2007). Caring for children with intellectual and developmental disabilities: Virtual patient instruction improves students' knowledge and comfort level. *Journal of Pediatric Nursing*, 22, 457-466.

Sanders, C. L., Kleinert, H. K., Free, T. F., Slusher, I., Clevenger, K., **Boyd, S.**, et al. (2007). Caring for children with intellectual and developmental disabilities: Virtual patient instruction improves students' knowledge and comfort level. *Journal of Pediatric Nursing*, 22, 457-466.

- Sanders, C. L., Kleinert, H. K., **Boyd, S. E.** Herren, C., Theiss, L., & Mink, J. (2008). Virtual patient instruction for dental students: can it improve dental care access for persons with special needs? *Special Care Dentistry*, 28, 205-213.
- Sanders, C. L., Kleinert, H. K., Free, T. F., Slusher, I., Clevenger, K., **Boyd, S.**, et al. (2008). Developmental disabilities: improving competence in care using virtual patients. *Journal of Nursing Education*, 47, 66-73.
- Widiger, T. A., & **Boyd, S.** (2009). Personality disorder assessment instruments. In J. N. Butcher (Ed.), *Oxford handbook of personality assessment (3rd ed.)*(pp. 336-363). New York: Oxford University Press.
- Zurkovsky, L., Brown, S. L., **Boyd, S.**, & Korol, D. L. (2007). Estrogen modulates learning in female rats by acting directly at distinct memory systems. *Neuroscience*, 144, 26-37.

TEACHING & TRAINING EXPERIENCE

Capital Area Immigrants' Rights (CAIR) Coalition, Detained Children's Program webinar presenter: Detention Conditions, Health Impact of Detention on Children, & Legal Issues of Children's Detention. Washington, DC, July 2019.

One of three presenters providing overviews of legal, health, and psychological realities and risks for immigrant children in detention. Webinar attendees were stakeholders and grant foundations.

University of Virginia Health Services, Panelist: How Experience Might Inform Ethical Practice. Transgender Youth and Systems-Level Reforms for Girls. Charlottesville, VA, April 2019.

One of three panelists reviewing potential ethical considerations, and responding to training participant questions, regarding forensic assessment of transgender and gender non-conforming individuals.

District of Columbia Department of Behavioral Health, Training Presenter. Washington, D.C., December 2018.

Developed training materials and presented on the topic of adjudicative competency restoration for adults with Intellectual Disabilities.

National Legal Aid & Defender Association Presenter. Philadelphia, PA, June 2018.

Developed training materials, and co-presented with Joette James, Ph.D., as well as presenting (solo) regarding accommodations-related assessments for defendants with cognitive and psychiatric disabilities, and about psychopathy and Antisocial Personality Disorder, respectively.

Georgetown Juvenile Justice Initiative and National Juvenile Defender Center Symposium: Race and Juvenile Justice 50 Years after Gault Presenter/Panelist. Washington, D.C., May 2017.

Co-panelist with Daniel Murrie, Ph.D., for discussion of race and risk assessment of juveniles.

Georgetown Juvenile Justice Center Presenter. November 2016.

Developed and presented a training for public defenders regarding common errors in risk assessment reports and strategies for critical reading of risk assessment evaluations.

Superior Court Judicial and Senior Manager Spring Conference Presenter. Washington, D.C., April 2015.
Developed and presented training materials for Superior Court Judges as part of a panel on risk assessment of juvenile and adult defendants.

Training for Attorneys Preparing to Represent Defendants on the Prince William Mental Health Court Docket. Manassas, Virginia, April 2015, April 2016, & April 2018.
Prepared and presented a training for attorneys and judges about psychiatric disorders and forensic psychology considerations relevant to defendants with suspected or confirmed psychiatric disorders.

Institute of Law, Psychiatry, and Public Policy, Presenter. Charlottesville, Virginia, 2014 to 2018.
Developed and presented training curriculum for forensic evaluators assessing risk-related online behaviors in juveniles.

Institute of Law, Psychiatry, and Public Policy, Presenter. Charlottesville, Virginia, October 2014 to 2017.
Developed and presented training curriculum for evaluating competency to stand trial and mental state at the time of offense in defendants with intellectual disabilities and borderline intellectual functioning.

Institute of Law, Psychiatry, and Public Policy, Training Faculty. Richmond, Virginia, and Charlottesville, Virginia, May 2015 and September 2014.
Developed and presented a one-day training curriculum on assessing online behavior of forensic evaluatees, with emphasis on issues relevant to problematic sexual behavior online, applicable statutes, and recommendations for supervision.

Washington, District of Columbia, Department of Behavioral Health, Presenter. August 2014.
Developed and presented a training curriculum on evaluating adjudicative competency of defendants with intellectual disabilities. Trainees were forensic psychologists and psychiatrists employed by the Department of Behavioral Health.

Department of Behavioral Health and Developmental Services, Presenter. August 2014.
Developed and presented a grand rounds for mental health service providers at Western State Hospital; topic was introduction to internet culture, and how and why to query online activities of individuals with severe mental illness.

Department of Behavioral Health and Developmental Services, Presenter. July 2014.
Developed and presented Psychology Department inservice training concerning adapting empirically-supported PTSD treatments for inpatient forensic populations.

Department of Behavioral Health and Developmental Services, Training Facilitator, Richmond, Roanoke, and Newport News, Virginia, April 2014 to May 2014.
Developed and presented a training curriculum on customizing outpatient restoration of competency to stand trial services for individuals with intellectual disabilities. Trainees were community mental health providers.

Institute of Law, Psychiatry, and Public Policy, Presenter. Charlottesville, Virginia, March 2014.
Developed and presented training curriculum on assessing online behavior of forensic evaluatees, with emphasis on issues relevant to problematic sexual behavior online.

Western State Hospital, Department of Behavioral Health and Developmental Services, Presenter, Staunton, Virginia, November 2013.

Developed and presented a grand rounds for mental health providers, concerning personality disorders in adults with intellectual disabilities, also developed and presented a psychology department inservice training focused on adapting evidence-based trauma treatment interventions for inpatient forensic populations.

Westchester Jewish Community Services, Instructor, Yonkers and Hartsdale, New York, September 2012 to July 2013.

Developed training curriculum on assessing online activity of children, adolescents, and young adults.

Presented training to an outpatient trauma treatment center, a violence intervention and prevention program, and a program for teen parents.

University of Kentucky, University Center for Excellence in Developmental Disabilities, Curriculum Development and Project Coordinator, Lexington, Kentucky, January 2012 to July 2012.

Originated concept, generated learning objectives and teaching strategies, and developed content for an inter-disciplinary, multi-media online training for mental health professionals to provide more competent and ethical care to adults with ID/DD. Wrote scripts, cast actors, and filmed and edited illustrative video vignettes. Applied for and obtained continuing education credits from the Kentucky Psychological Association.

University of Kentucky, Teaching Assistant, Lexington, Kentucky, 2011.

Taught Learning and Cognition -- online section (Summer Session 2011); and, Introduction to Psychology -- four sections (Fall 2011).

University of Kentucky, Human Development Institute, Instructor, Lexington, Kentucky, 2008 to 2011.

Lectured on sexual abuse of adults with disabilities to students enrolled in the interdisciplinary Graduate Developmental Disabilities Certificate Program. Converted lecture to online format for the distance learning section of program.

Migrant Network Coalition, Workshop Co-Leader, Lexington, Kentucky, August 2010.

Researched and developed materials and co-led a training workshop on the intersection of disability and immigration status.

University of Kentucky, Department of Behavioral Sciences, Graduate Student Trainee, Lexington, Kentucky, August 2007 to May 2009.

Developed training materials and facilitated *in vivo* experiences to prepare medical students for treating patients with DD and their families. Developed student/family mentorship program, still in use by the medical school.

University of Kentucky, Human Development Institute, Project Supervisor, Lexington, Kentucky, November 2007 to July 2008.

Researched and developed instructional content of a multi-media online training package for direct service professionals who support adults with DD. Coordinated marketing and distribution of training program to

Medicaid waiver providers. Funded by the Kentucky Department of Behavioral Health, Developmental and Intellectual Disabilities.

University of Kentucky, Preservice Health Training, Project Assistant, Lexington, Kentucky, August 2005 to June 2008.

Helped identify training needs of professionals (e.g., dentistry, nursing, women's health) treating individuals with ID/DD; researched and wrote content for training materials; and co-scripted video vignettes for an award-winning series of online, multi-media, interdisciplinary training modules.

Project SAFE (Safety and Accessibility for Everyone), Coordinator, Frankfort, Kentucky, September 2005 to September 2006.

Created and presented three trainings on the topic of sexual and domestic violence perpetrated against individuals with disabilities. Audience included team members from a coalition of state agencies dealing with sexual assault, domestic/interpersonal violence, disability rights, and crime victims' advocacy.

Commonwealth of Kentucky, Coalition of State Disability and Employment Agencies, Training Facilitator, Frankfort, Kentucky, April 2005 to June 2005.

Coordinated disability-awareness trainings, led by facilitators with disabilities, for state employees of Kentucky One-Stop Job Centers.

PRESENTATIONS

Boyd, S. (chair), Brodsky, S., Murrie, D.M., & Stejskal, W.J. (2016, March). Bias in Forensic Mental Health Evaluations. Symposium at the American Psychology-Law Society Conference. Atlanta, Georgia.

Boyd, S., Barretto, R., & Zelle, H. (2015, June). *Using Advance Directives for Self-Advocacy and Planning: An Overview and Example of the Process*. Presentation at the 14th Annual Philadelphia Trans Health Conference. Philadelphia, PA.

Boyd, S. (2010, November). *Personality, motives, and adaptive functioning in adults with intellectual disability*. Poster presented at the Association of University Centers on Disability conference, Crystal City, VA.

Boyd, S., & Adams, Z. (2008, April; shared first authorship). *Ethical considerations in the treatment of individuals with Intellectual Disability*. Award Presentation session at the annual American Psychological Association conference, Boston, MA.

Boyd, S. (2008, month) *Traits, motives, and behavior: comparing the NEO PI-R and the Reiss Profile*. Poster Presented on September 26 at the 2008 Society for Research in Psychopathology conference, Pittsburgh, PA.

Kleinert, H. K., Caldwell, S., **Boyd, S.** (2006, October). *Interactive virtual training for residential physicians and student dentists on caring for patients with developmental disabilities*. Concurrent session presented at the annual Association of University Centers on Disability conference, Washington, D.C.

ADVOCACY & COMMUNITY SERVICE

University of Kentucky, Department of Psychology, Diversity Committee Founding Member, Lexington, Kentucky, February 2012 to August 2012.

Identified need, and assisted in assembling members and faculty support for, a graduate student-led committee to revise departmental policies relating to sexual and gender minority students and Psychology Department clinic clients. Advised faculty and community supervisors regarding training requirements, materials, and procedures. Developed multimedia training materials ultimately implemented in graduate curriculum.

Project SAFE (Safety and Accessibility for Everyone), Coordinator, Frankfort, Kentucky, September 2005 to September 2006.

Created project to increase physical and attitudinal accessibility of domestic violence shelters and rape crisis centers in Kentucky. Identified and invited representatives from state agencies addressing domestic and sexual violence, disability rights, and crime victim advocacy to provide project leadership. Scheduled and led meetings. Project SAFE became an ongoing organization and was awarded a three-year Department of Justice Violence Against Women Act grant for \$750,000 in 2008.

Consumer Advisory Council of Kentucky, Board Member, Frankfort, Kentucky, November 2006 to November 2008.

Assisted in senior level decision-making regarding priorities and policies of the Human Development Institute, with special emphasis on creating an inclusive environment for people with disabilities. Reviewed and provided feedback on Institute research, funding, and grant applications. Monitored organization's compliance with the strategic plan.

SUPERVISION

Institute of Law, Psychiatry, & Public Policy Graduate Student and Postdoctoral Fellow Supervisor, Charlottesville, Virginia. August 2017 to present.

Supervised graduate students and postdoctoral fellows in reviewing and conducting forensic psychological evaluations. Presented at case conferences for student and practitioner attendees.

Westchester Jewish Community Services, Clinical Psychology Extern Supervisor, Hartsdale, New York, September 2012 to July 2013.

Supervise a graduate-level psychology extern in providing evidence-based treatments to a clinic population. Discuss differential diagnoses, case formulations, treatment goals, interventions, and collateral services. Provide ongoing feedback and conduct formal written evaluations.

University of Kentucky, Student Supervisor, Lexington, Kentucky, May 2008 to June 2012.

Supervised four undergraduate student assistants in laboratories investigating psychopathology, personality, and self-regulation. Oversaw data collection and analysis, manuscript preparation, and conference presentations. Provided guidance on professional development, including graduate school applications.

HONORS

2012 Research Endowment Award, from the Human Development Institute, University of Kentucky.

2011 Research Funding Award, from the Department of Psychology, University of Kentucky.

2008 Winner, American Psychological Association (APA) of Graduate Students ethics paper contest.
Awarded at the APA annual conference in Boston, MA, August 2008. Paper, co-authored with Z.W. Adams, titled: Ethical Considerations in Psychotherapy with Adults with Intellectual Disabilities.

2008 Research Funding Award, from the Department of Psychology, University of Kentucky.

2007 Burberry Award, from the Human Development Institute, University of Kentucky, a University Center for Excellence in Developmental Disabilities.

This award recognizes outstanding academic achievement and advocacy efforts in graduate student trainees.

2006 Travel Award, from the Department of Psychology, University of Kentucky.

2006 Anne Rudiger Award, from the Association of University Centers on Disability (AUCD).

This national award recognizes academic and advocacy-related achievement among graduate student trainees in the AUCD network.

1998-1999 James Scholar Honors Program, University of Illinois.

PROFESSIONAL MEMBERSHIPS

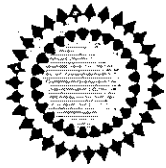
American Psychological Association (APA)

APA Division 33: *Intellectual and Developmental Disabilities/Autism Spectrum Disorders*

APA Division 35: *Society for the Psychology of Women*

APA Division 46: *American Psychology-Law Society*

APA Division 56: *Trauma Psychology*



BOYD
FORENSIC
PSYCHOLOGY
SERVICES

Sara Boyd, Ph.D., ABPP. Licensed Clinical Psychologist

ph: 571.317.0979 | fax: 844.598.6534

April 10, 2023

Hannah Freedman, Esq.
Justice 360
900 Elmwood Avenue, Suite 200
Columbia, South Carolina 29201

Re: *Bobby Wayne Stone*
Original case no. 1996-GS-43-698

Attorney Freedman,

At your request, I have initiated a psychological evaluation of your client, Bobby Wayne Stone. This letter provides a report of my evaluation procedures and findings thus far, specifically with regard to information related to his intellectual ability, history of adaptive functioning, and the possibility that a diagnosis of Intellectual Disability could be applicable. As you know, Mr. Stone was convicted of murder, burglary, and possession of a weapon during a violent crime in 1997. He is currently incarcerated on South Carolina's death row in Columbia, South Carolina.

SOURCES OF INFORMATION

I interviewed Mr. Stone on November 9, 2017, at the South Carolina death row outside of Columbia, South Carolina. I also administered the *Wechsler Adult Intelligence Scale—Fourth Edition (WAIS-IV)* at the time of that interview. WAIS-IV administration required approximately 45 minutes. I conducted the following collateral interviews after I met with Mr. Stone:

- Omega Golden, via video conference, on September 22, 2022
- Jerry Stone, in person, on January 21, 2020, and July 25, 2022
- Frankie and Tracy Norton, in person, on July 25, 2022.

- Elaine Steel Harris and Dr. Joseph Harris, in person on January 20, 2020
- Kim Stone, Linda Denise Parrott-Brotherton, and Melinda Parrott, in person, May 9, 2018
- Joy Klotzel, in person, on January 20, 2020, and July 25, 2022

In addition to the interviews, I also reviewed copies of the following:

- 1) Mr. Stone's available educational records (59 pages).
- 2) Mr. Stone's records from the Social Security Administration (3 pages).
- 3) Statement of Mr. Stone, with a narrative introduction from Investigator Joseph K. Gallimore, dated February 27, 1996 (13 pages).
- 4) Medical records for Mr. Stone, some of which had poor legibility due to the quality of the copy.
- 5) South Carolina Department of Corrections records for Mr. Stone (585 pages).
- 6) Psychological report dated October 12, 1976 (8 pages).
- 7) Atkins evaluation report dated December 1, 2022, authored by Alicia Hall, Ph.D., Chief Examiner/Supervisor of the Office of Clinical Services at the South Carolina Department of Disabilities and Special Needs (13 pages).
- 8) Affidavit of Dr. Fred Bookstein, dated September 2, 2010, with accompanying report (13 pages).
- 9) Affidavit of Dr. Ruben C. Gur, dated November 19, 2011, with accompanying report (6 pages).
- 10) Summary of testing results and letter from Harold C. Morgan, M.D., dated January 25, 1997 (4 pages).
- 11) Affidavit of Dr. James Shine, dated August 19, 2010 (5 pages).
- 12) Records related to Mr. Stone's criminal history (89 pages).
- 13) Documentation related to prior proceedings, including
 - a. Summary of 2015 retrial transcript (76).
 - b. Third amended application for post-conviction relief, dated March 22, 2012 (7 pages).
 - c. Transcript of Dr. Andrews testimony (56 pages).
 - d. Petition for a writ of *habeas corpus* by a person in state custody (46 pages).
- 14) Medical records pertaining to Mr. Stone's immediate family members, including Jerry, Melinda, and Tammy.

RESPONSE TO INFORMED CONSENT PROCESS

At the beginning of the evaluation, I informed Mr. Stone regarding the nature, scope, and purpose of the evaluation, including the relevant limits on confidentiality and privilege. I explained that a copy of the ensuing report would be sent to his attorneys and likely later provided to Court personnel.

When I asked Mr. Stone about his understanding of why we were meeting, to check his comprehension and recollection, he stated, "I didn't have a clear picture why we was meeting until you told me...They done some testing back at VCR, apparently I have a missing part of my brain. Other than that I think I'm basically pretty normal." He then engaged in a lengthy digression about his case with an unclear point, and had to be redirected back to the interview. He agreed to proceed with the evaluation and was cooperative with all evaluation tasks.

REVIEW OF DIAGNOSTIC CRITERIA FOR INTELLECTUAL DISABILITY

Relevant Legal Definitions & Case Law for this Evaluation: In South Carolina, the definition of Mental Retardation¹ is synonymous with Intellectual Disability, and is defined in S.C. Code Ann. § 16-3-20 (C)(b)(10)(2003) as "significant subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period." If an individual meets criteria for Intellectual Disability, the Eighth Amendment precludes the person's execution by the state (see *Atkins v. Virginia*, 536 US 304, 2002).

Descriptions of Relevant Diagnostic Criteria: In the United States, psychological evaluators commonly reference two major authorities for definitions and criteria of Intellectual Disability (ID). The American Association on Intellectual and Developmental Disabilities (AAIDD; formerly American Association on Mental Retardation) is a well-established professional organization concerned with research on intellectual and developmental disabilities, promulgation of best practices, and public policy advocacy. Historically, AAIDD has pioneered revisions and additions to the definition and criteria for ID in response to research findings and shifts in disability-related cultural norms, and the American Psychiatric Association's Diagnostic and Statistical Manual (currently in its fifth edition) has incorporated AAIDD changes in subsequent revisions and updates to their standard classifications and descriptions. The Diagnostic and Statistical Manual—Fifth Edition (DSM 5) is typically recognized by mental health professionals in the

¹ Mental retardation is the older terminology for the same condition. Intellectual Disability is a condition that includes developmental onset, significantly sub-average intellectual functioning, and significantly subaverage adaptive functioning in the community.

United States as the authoritative text for 1) What mental health disorders are formally recognized as such, and 2) Diagnostic criteria required to make a psychiatric disorder diagnosis.

The AAIDD and DSM 5 definitions of ID are closely aligned, in that both refer to three essential components required to make a diagnosis of ID: Significantly subaverage intellectual functioning as assessed by individual standardized intelligence testing, deficits in adaptive functioning across multiple areas of life, and onset during the developmental period.

See below for a comparison of DSM 5 and AAIDD criteria (continued onto the next page):

Criterion	DSM 5	AAIDD (12th Edition)
<i>Significantly subaverage intellectual functioning</i>	"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...Individuals with intellectual disability have scores of approximately two standard deviations or more below the population mean, including a margin for measurement error (generally +5 points). On tests with a standard deviation of 15 and a mean of 100, this involves a score of 65–75 (70 ± 5). Clinical training and judgment are required to interpret test results and assess intellectual performance."	<i>Significant Limitations in Intellectual Functioning:</i> The term "Intellectual Functioning" refers to intelligence (i.e. general mental ability), which includes "reasoning, planning, solving problems, thinking abstractly, comprehending complex ideas, learning quickly, and learning from experience." Intellectual functioning is measured through administration of a standardized measure of IQ, and a diagnosis of ID requires (in part) "An IQ score that is approximately two standard deviations below the mean, considering the standard error of measurement for the specific assessment instruments used and the instrument's strengths and limitations." "It is clear from this significant limitations criterion used in this Manual that AAIDD (just as the American Psychiatric Association, 2000) does not intend for a fixed cutoff point to be established for making a diagnosis of ID."

Deficits in Adaptive Behavior	"Adaptive functioning refer[s] to how well a person meets community standards of personal independent and social responsibility, in comparison to others of similar age and cultural background... Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments such as home, school, work, and community."	"Performance on a standardized measure of adaptive behavior that is normed on people with and without ID that is approximately two standard deviations below the mean of either (a) One of the following three types of adaptive behavior: Conceptual, Social, and Practical or (b) An overall score on a standardized measure of conceptual, social, and practical skills. "Practical skills: Activities of daily living (personal care), occupational skills, use of money, safety, health care, travel/transportation, schedules/routines and use of telephone. Conceptual skills: Language, reading and writing, and money, time, and number concepts. Social skills: Interpersonal skills, social responsibility, self-esteem, gullibility, naiveté, (i.e., wariness), follows rules/obeys laws, avoids being victimized, and social problem-solving."
Onset During Developmental Period	"Intellectual and adaptive deficits are present during childhood or adolescence."	"Generally before age 18"

These criteria, and their assessment, are described in more detail in the *Psychological Assessment* and *Findings* sections of this report.

HISTORY

Relevant Background: Mr. Stone's early life history was remarkable for substantial conflict and disruption of family relationships, as well as exposure to poverty-related deprivation, abuse and neglect. Prior evaluators noted that Mr. Stone's self-appraisal of the violence and trauma he experienced as an adult was not reflective of the unusual degree of severity and chaos reflected in the family history and his own personal experiences. It appeared that physical and psychological abuse, as well as material deprivation, were essentially normalized within Mr. Stone's family, based on my interviews of both Mr. Stone and his family members. There was evidently family history of alcohol abuse in Mr. Stone's father and uncles. History of serious mental disorder in Mr. Stone's family was supported by his characterization of an aunt who was "in and out of [mental] hospitals her whole life." His parents had a somewhat unusual marital arrangement in that Mr. Stone's parents openly pursued other relationships, and his mother had another stable long-term adult male partner who also resided on the family's property.

There were a number of potential causes of Intellectual Disability (ID) that emerged from the interviews and record review I conducted. Several of Mr. Stone's family members had intellectual impairments, and records contained information that was strongly suggestive of some degree of cognitive impairment and poor educational attainment in Mr. Stone's parents, and Mr. Stone's siblings indicated that they were all in Special Education for learning-related disabilities, including "mental retardation." His sister, for example, received Special Education services with a classification that is essentially synonymous with the condition that we currently call Mild ID. Mr. Stone's brother, Jerry, also received Special Education services due to ID. In other words, the historical information showed significant genetic risk of low intellectual ability for Mr. Stone. Mr. Stone was also exposed to violence in childhood, and he had encountered environmental/teratogenic factors that increase risk of ID.

Educational history for Mr. Stone included attendance until 10th grade, when he left school and began working. He repeated early grades, which is relatively common in children with ID, but his grades over time varied with poorer performance in classes that focused more on abstract and academic skills rather than practical, hands-on learning. His academic achievement (i.e., his development of academic skills such as math and writing) was low, and he was substantially below what would be expected for an intellectually typical child. It appeared that, as time when on and academic task demands increased, Mr. Stone showed a widening gap as he fell further behind his peers, and by early high school he was performing several grade levels below what would be expected, with particularly low scores related to language skills. It is common for children who function in the mild range of ID to show increasing difficulty, and more evident cognitive deficits, as they progress through school and encounter more challenging academic task demands and (generally speaking) less direct support from educators to complete work.

Employment history was limited to physical labor such as working in a factory, "tree work," construction, and informal car repair.² Mr. Stone did not report, and records did not reflect, a history of employment that would be unsupportive of an ID diagnosis, for example working as an accountant, professional writer, or engineer. The demands of his employment history were not particularly reliant on math or reading skills. He did not progress to take on managerial responsibilities, and it appeared that most of his work was obtained via word of mouth based on collateral interviews.

² Although people with ID are, as a group, significantly underemployed and with high unemployment rates, between 10-20% of people with ID are competitively employed. Employment status of people with developmental disabilities may be more closely related to lack of practical job skills than barriers arising directly from low IQ *per se*.

Social history included no marriages and no children, but Mr. Stone had a history of stable cohabitation with age-appropriate female partners. Based on the interviews I conducted, it appeared that Mr. Stone had a division of labor in his long-term dating relationships, whereby he managed yard work, vehicles, and making income outside the home, and his female partners managed administrative work such as paperwork and bill paying. No one I interviewed indicated that they had seen Mr. Stone independently utilize a credit card or debit card. No one I interviewed indicated that they believed Mr. Stone to be capable of understanding and signing complex legal documents such as loan paperwork. So, to the extent that Mr. Stone lived away from his immediate family, he relied on women with whom he had intimate relationships to provide natural supports that helped him to live in the community with help.

Medical history was remarkable for head injuries and the presence of neurological/imaging abnormalities suggestive of prenatal insult. One head injury occurred as a result of a transmission falling on his head when Mr. Stone was in his early 30s. He had another head injury as the result of a fall at home, also evidently occurring after age 18, and he stated that he recalled that he "fell out of a [moving] car" around age eight. Mr. Stone appeared uncertain about whether or not these injuries resulted in loss of consciousness, and although he had some medical evaluation after the automobile transmission fell on his head, those records were not available. Mr. Stone had neurological evaluations conducted in the past, including a report from Dr. Bookstein in 2010, and the findings included abnormalities. However, the report indicated that most of the abnormalities appeared to either result from prenatal insult (e.g. alcohol exposure in utero) or some other early gestational problem. Dr. Bookstein concluded:

Whenever other evaluators of Mr. Stone find him to have characteristic neurodevelopmental problems such as executive function deficits, difficulties in impulse control, or poor judgment...findings like these help account for those deficits by a cause operating before he was born.

Mental Health History: Mr. Stone did not provide an account of symptoms consistent with, and his records were not consistent with, a history of serious mental illness such as Schizophrenia or Bipolar Disorder. He did have a history of substance abuse that included alcohol use and cannabis use as an adolescent, and he did not report major health, employment, social, or legal problems directly arising from substance use, development of tolerance or dependence, or failed attempts to reduce substance use. He had never been psychiatrically hospitalized, based on the information I reviewed. He was not exhibiting major mental health problems when I met with him for testing in 2017. He did have a lengthy and serious history of exposure to events that would qualify as traumatic stressors according to the Diagnostic and Statistical Manual, Fifth Edition, and he described some symptoms and patterns of behavior consistent with

hypervigilance, trauma-related cognitions and beliefs, and avoidance during our clinical interview. These symptoms did not appear to be especially explanatory, however, with respect to Mr. Stone's intellectual functioning.

Prior Assessment History: Mr. Stone was evaluated in childhood, before age 10, and obtained a Full Scale IQ³ score of 86 on the Wechsler Intelligence Scale for Children (WISC) in 1975. His verbal abilities were stronger than his nonverbal abilities according to these results. However, interview with Elaine and Joseph Harris, both of whom were serving as school psychologists in the district around this time, suggested that the IQ testing procedures commonly used in the district at that time were not in keeping with standard test administration and would have produced results of questionable validity.⁴ In any event, the score is not as much of an outlier when norm obsolescence is taken into account (i.e., the WISC administration with Mr. Stone was undertaken when the measure was significantly outdated with respect to norms, and an appropriate statistical adjustment would bring the Full Scale IQ score down by several points).

In 1976, more than a year after the WISC administration, Mr. Stone was tested using the WISC-R, which was the revised and updated version of the same type of test that was administered to Mr. Stone in 1975. His results were more consistent with what would be expected given his other testing results, his history, and his recent testing results. Specifically, he had a Full Scale IQ score of 78, also with a relatively large discrepancy between verbal and nonverbal abilities.

In 1979, Mr. Stone was again tested using the WISC-R, and his results were reported as a confidence interval. His Full Scale score interval was 69-75 (which suggests an index score of about 71), with a Verbal IQ of 73-81 and a Performance IQ of 66-76. At the time of this assessment, he was also tested for academic achievement and adaptive behavior, suggesting that the evaluators suspected ID at that time. At the time of that testing at age 14, most of his academic achievement was between 2nd to 4th grade levels. His adaptive functioning was reportedly below normal according to formal testing, consistent with impaired adaptive functioning with onset during childhood.

Validity Considerations: When I met with him to conduct testing, Mr. Stone described his current mood, cognitive (e.g., memory, attention), and medical functioning, including his

³ For context, the Wechsler measures utilize standardized scores that are transformed using population norms to produce a normal distribution. On Wechsler measures, a score of 100 is perfectly average; most people obtain scores falling between 85 and 115.

⁴ For example, the school psychologists recalled that the IQ tests were conducted in separate stations for each subtest, with a different test administrator at each station, and multiple students tested at the same time. This is a major departure from standard WISC administration, which is intended to be an individual administration with the same examiner and not conducted in a group setting.

medications, recent sleep patterns, and illnesses/pain complaints. He did not report any issues with his mental or medical status that would be likely to substantially interfere with his ability to produce valid testing results on the WAIS-IV.

Concerning response style (i.e., how Mr. Stone approached the WAIS-IV testing), Mr. Stone stated that he was prepared to do his best and he was mildly defensive about the implication that his testing might show intellectual impairment. While completing the testing, he showed good persistence, even as the items became more difficult. His pattern of results was consistent with responses provided by cognitively impaired individuals (e.g., he gave concrete responses to Similarities subtest items, generated more errors as items became more challenging, etc.), and I did not observe any indications of dissimulation or inadequate effort. Thus, his testing results appear to be a valid reflection of his intellectual functioning.

Wechsler Adult Intelligence Scale—Fourth Edition Results: Mr. Stone's Indices, Full Scale IQ, and General Ability scores are provided below. Individual subscale results are provided in Appendix A.

<u>Index Name</u>	<u>Composite Score</u>	<u>Percentile rank⁵</u>
Verbal Comprehension Index	89	23 rd
Perceptual Reasoning Index	75	5 th
Working Memory	86	18 th
Processing Speed	84	14 th
<i>Full Scale</i>	79	8 th

The Full Scale IQ is intended to provide a global summary of overall intellectual ability. The Verbal Comprehension, Perceptual Reasoning, Working Memory, and Processing Speed Indices summarize more narrow domains of ability, namely verbal reasoning, nonverbal reasoning, ability to hold and manipulate verbally-presented information for short periods of time, and ability to fluently reason with simple visual material, respectively.

Mr. Stone obtained his highest score on the Verbal Comprehension Index, consistent with his historical pattern dating to childhood. His score of 89 falls in the bottom quartile for individuals in his age group. This means that he has some degree of impairment with regard to his verbal

⁵ Percentile rank provides a reference point for comparing these scores to other individuals. For example, a percentile rank of 4 means that less than 4% of similarly-aged individuals in WAIS-IV samples obtained lower scores (i.e., the score is unusually low).

abilities, but the verbal ability is a relative strength compared to, for example, his nonverbal reasoning abilities.

Working Memory score (86, percentile = 18th) was similar to the Processing Speed Index (84, percentile = 14th). These indices measure an individual's ability to hold verbally presented information in their mind, and reason with it, for short periods of time, as well as the person's fine motor skills and the fluency of their nonverbal reasoning.

The next highest Index score was the Processing Speed Index, reflecting Mr. Stone's ability to fluently reason with simple visual material (e.g., determining the presence or absence of a target symbol among a collection of symbols). He obtained an Index score of 84 (percentile = 14th), which, like the Working Memory Index score, falls into the Low Average range.

Lowest Index score was obtained on the Perceptual Reasoning Index (75, percentile = 5th). This score was very low, falling into the Borderline range. Taken together with his other scores, this result indicates that Mr. Stone's ability to reason with nonverbal information was a weakness compared to his other abilities. The score was also low compared to similarly-aged peers.

The Full Scale IQ score for this administration was 79 before accounting for norm obsolescence. With an administration date of 2017, and norming year for the WAIS-IV of 2006, this is an 11 year difference, and should result in a Flynn correction to address population norm obsolescence of about 3.33 points (i.e., about 1/3 of a point per year since the test was normed), reducing the estimated Full Scale IQ score to about 75.66. Of note, this type of Flynn correction is routinely used and has been endorsed by the American Association on Intellectual and Developmental Disabilities, including in the text published by AAIDD.⁶

Effort/Validity Testing: I utilized the Test of Memory Malingering (TOMM), which can be suitable for assessing individuals with ID. Other types of effort/malingering/deception measures have unacceptably high false positive rates with individuals with ID.⁷ Mr. Stone obtained a score of 49 on Trial 1, and 50 on Trial 2 of the TOMM administration on January 21, 2020. These scores show (a) improvement in results across sequential trials, and (b) results falling above traditional cutoff score of 45 (out of a possible total of 50) for the TOMM. When assessing effort and validity with respect to ID, evaluators can also rely on historical collateral information that supports or

⁶ Schalock, R., Luckasson, R., & Tassé, M.J. (2021). *Intellectual disability: Definition, diagnosis, classification, and systems of supports* (12th ed. of AAIDD definition manual). American Association on Intellectual and Developmental Disabilities.

⁷ Salekin, K. L., & Doane, B. M. (2009). Malingering intellectual disability: The value of available measures and methods. *Applied Neuropsychology*, 16(2), 105-113.

disputes the duration and type of impairment, integrating that information with testing results such as the TOMM.

Adaptive Functioning: I initiated adaptive functioning assessment of Mr. Stone, meeting with his family members in South Carolina on May 9, 2018, and I conducted additional interviews and follow-up interviews with surviving family members in July of 2022. The family members corroborated Mr. Stone's reported history of academic and psychiatric problems. I did not administer standardized adaptive functioning assessment at that time because the family members I interviewed either (a) did not have sufficient knowledge of Mr. Stone's independent functioning in the community, or (b) were too impaired to complete the observer rating measure.

Because it was not feasible to administer standardized adaptive functioning assessments to collaterals, I assessed the domains of adaptive functioning by integrating information from interviews and records. This approach is described in the AAIDD 2021 manual as suitable for adaptive functioning assessment when individual raters who can provide comprehensive observations across domains and over time are not available.

Social Skills Domain: Mr. Stone had mixed social functioning over the course of his life. His social impairments reportedly included difficulty ascertaining the intentions and motives of other people. According to collateral sources and records, Mr. Stone has had significant difficulty trusting people outside of his family, and even within his family he did not share much regarding any internal conflicts or his thoughts or feelings. He impressed as an individual who has utilized stoicism and invalidation of his own emotions to cope with both the abuse and neglect he experienced as a child as well as his difficulties learning to function in the community and at school. The Social domain was an area of relative strength for Mr. Stone even though he was below-average in his development and use of social skills, because Mr. Stone was able to form and maintain close long-term relationships. He benefitted from developing social bonds with relatively higher-functioning people, including intimate partners, who provided informal supports for Mr. Stone. He evidently attempted to reciprocate to some degree with respect to these arrangements, taking responsibility for bringing home income, and maintaining the exterior of the home/yard. His family members remarked that, although Mr. Stone had the seemingly positive quality of being "easy to get along with," he was vulnerable to exploitation and deception, and "when it comes to women they would walk all over him." Collateral sources also reported that Mr. Stone was exploited at times by people whom he believed to be his friends. For example, his sister stated, "He had his car stole by his friends, but he'd be back partying with them the next day."

Practical Domain: The practical domain of adaptive functioning generally refers to home and community independent living skills, such as household management, health and safety, and transportation/navigating the community. Family members reported that, although Mr. Stone ultimately obtained a drivers license, he had to take the test more than once. He did not have a checking account, and when he handled bill paying he would bring cash to the vendor rather than writing a check. He was generally sufficiently clean and groomed according to family members. Family members stated they never knew him to plan a trip or to purchase tickets for transportation such as a plane or train. Regarding health and safety, family members explained that Mr. Stone did not want to go to the doctor, even when he was injured. For example, family members recalled that he injured his arm at one point, but he just borrowed a sling and attempted to treat the condition himself rather than seeking medical care.

Conceptual Domain: The Conceptual domain of adaptive functioning refers to the use of academic-type skills such as reading, writing, and math as well as use of money, number concepts, and time. Review of Mr. Stone's history showed that he typically performed physical, menial labor that did not require complex math or writing skills. His academic achievement testing results were consistent with substantially impaired academic abilities, as was his academic performance as reflected in available academic records. He was reportedly able to write letters, but family members stated that Mr. Stone "has some trouble writing," and spelling.

In summary, the information I reviewed indicated that Mr. Stone has longstanding impairments of adaptive functioning across domains, with the most pronounced impairment in the Conceptual and Practical domains and a relative strength in the Social domain.⁸ Furthermore, the information I reviewed showed that his impairments may be heritable (and present since birth),⁹ and affected his academic performance and other facets of adaptive functioning as a child, which indicates onset during the developmental period.

Opinion Summary: Mr. Stone is an individual who meets formal diagnostic criteria for ID according to both the DSM-5 and the AAIDD criteria. Specifically, his tested IQ is roughly two standard deviations below the mean when measured with standardized, normed, individually-administered testing. His case illustrates a common phenomenon of a person who is in the Mild range of ID relying extensively on natural and informal supports, and thus not continuing to receive the disability-specific formal supports that they may have received in school. He relied

⁸ In my experience, this is not an uncommon presentation, particularly in people who have utilized agreeableness and an easy-going interpersonal style to mask their intellectual deficits and obtain help from others.

⁹ Because there were several potential causes or contributing factors, it is possible that there were multiple insults which accumulated or exacerbated Mr. Stone's impairments.

on both his family members—particularly his mother and sisters—as well as live-in girlfriends to assist and guide him with respect to household management, money management, self-care, and health/safety. Even with these natural supports, his functioning was evidently fairly marginal and he exhibited poor judgment with respect to his selection of friends and acquaintances. Mr. Stone likely carried an unusually high degree of genetic risk for low intellectual ability given that IQ is fairly heritable and he had multiple first degree family members with ID. After he was born, he had head injuries, was exposed to physical abuse, and experienced poverty-related deprivation, and these all could have contributed to his low intellectual ability as well. In any event, he had deficits that emerged during the required developmental period, has scored about two standard deviations below the mean on formal IQ testing, and has demonstrated adaptive functioning impairments that were evident and documented since childhood.

The vast majority of people with ID function in the Mild range of impairment, and this appears to be the correct severity specifier for Mr. Stone. Individuals with his collection of impairments are likely to be cognitively stable for the foreseeable future, barring additional head injuries or the emergence of new conditions (e.g., dementia) that could further compromise his cognitive functioning.

Please contact me if you have further questions or concerns, or if I can be of assistance to you or the Court.

Respectfully submitted,



Sara E. Boyd, Ph.D., ABPP
Licensed Clinical Psychologist
Board Certified Forensic Psychologist
American Board of Professional Psychology

APPENDIX A: Detailed WAIS-IV Subtest Results

Index Level Discrepancy Comparisons

Comparison	Score 1	Score 2	Difference	Critical Value .05	Significant Difference Y/N	Base Rate by Overall Sample
VCI - PRI	89	75	14	7.78	Y	15.2
VCI - WMI	89	86	3	8.31	N	42.8
VCI - PSI	89	84	5	11.76	N	39.1
PRI - WMI	75	86	-11	8.81	Y	20.3
PRI - PSI	75	84	-9	12.12	N	28.5
WMI - PSI	86	84	2	12.47	N	45.7
FSIQ - GAI	79	80	-1	3.29	N	44.9

Base Rate by Overall Sample.

Statistical significance (critical value) at the .05 level.

Verbal Comprehension Subtests Summary

Subtest	Raw Score	Scaled Score	Percentile Rank	Reference Group Scaled Score	SEM
Similarities	24	9	37	10	1.04
Vocabulary	41	11	63	12	0.73
Information	5	4	2	5	0.73

Perceptual Reasoning Subtests Summary

Subtest	Raw Score	Scaled Score	Percentile Rank	Reference Group Scaled Score	SEM
Block Design	24	6	9	6	0.95
Matrix Reasoning	8	5	5	4	0.95
Visual Puzzles	7	6	9	5	0.85

Working Memory Subtests Summary

Subtest	Raw Score	Scaled Score	Percentile Rank	Reference Group Scaled Score	SEM
Digit Span	21	7	16	6	0.73
Arithmetic	12	8	25	9	0.90

Processing Speed Subtests Summary

Subtest	Raw Score	Scaled Score	Percentile Rank	Reference Group Scaled Score	SEM
Symbol Search	20	6	9	5	1.56
Coding	55	8	25	7	1.20

VACCINATION INFORMATION
IMMUNIZATION

(First) Middle Last (Last name)
Date of Birth (MM/DD/YYYY)
Sex (M/F)
Child's race (M/N)
Child's ethnicity (M/N)
Child's religion (M/N)
Child's medical history (M/N)
Child's current health status (M/N)
Child's current medications (M/N)
Child's current allergies (M/N)
Child's current immunizations (M/N)
Child's current immunization dates (M/N)
Child's current immunization status (M/N)

Immunization	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY
MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY
MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY
MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY
MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY
MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY
MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY
MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY
MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY
MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY	MM/DD/YYYY

CERTIFICATE OF IMMUNIZATION
South Carolina Department of Health
and Environmental Control

Child's name: Kylee Marie Smith
Child's birth date: 08/21/08
Child's sex: Female
Child's race: White
Child's ethnicity: Hispanic
Child's religion: Catholic
Child's medical history: None
Child's current health status: Good
Child's current medications: None
Child's current allergies: None
Child's current immunizations: MM/DD/YYYY
Child's current immunization dates: MM/DD/YYYY
Child's current immunization status: MM/DD/YYYY

I certify that the child named above meets minimum immunization standards and is in compliance with regulations set forth by the South Carolina Department of Health and Environmental Control as listed within this certificate.

Signature of Parent or Guardian: [Signature]
Signature of Medical Professional: [Signature]

Date: 08/21/08

State: SC

Local Health Department: 000000

Laura Sue Matula
AUG 20 '08

Records/Transcripts Division
Sumter School District 17

This certificate permits

☒ Child has health problem. Immunizations will be resumed and/or completed within 120 days.
(Check ☒ none)

Authorized Medical Signature _____ Date _____

For conditional certificate, dates of immunizations must be entered.

IMMUNIZATION & TUBERCULIN TEST RECORD

DIP					
16					
ITANUS					
POLIO					
MEASTEN					
RUBELL					
161051					

Coobby Wapye Hone

Child's Full Name

9-13-66

Date of Birth

Marble Stone

Full Name of Parent or Guardian

I certify that the child named above meets minimum immunization standards and is in compliance with regulations set forth by the South Carolina Department of Health and Environmental Control as listed within this certificate.

Authorized Medical Signature

Parents: After school registration, keep this form with your child's health records.

1-26-77

Date _____

Jullington

4-7-81

SUMMER SCHOOL DISTRICT NUMBER TWO
SOUTH CAROLINA
WIDE TRANSFER

NAME OF PUPIL STONE, BOWEN W. SEX M RACE W GRADE 8
NAME OF PARENT Marybelle Stone ADDRESS 7
BIRTHDATE 9 19 65 DATE OF ENTRANCE 3/80
DATE OF WITHDRAWAL 1-23-81 REASON FOR TRANSFER MOVED TO DIST #17
WAS PUPIL COUNTED IN 10 DAY ENROLLMENT? YES 15 DAY ENROLLMENT? YES

ELEMENTARY SCHOOL RECORD

STANDARDIZED TEST RECORD

GRADE	DATE	GRADE	SCORE	INTELLIGENCE	TESTS
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
ART					
REMARKS					

ACHIEVEMENT CA SCORE NORM

RTBS 14.78 = 37.56
Reading = 3.8
Math = 4.1
RTBS = 3.3

DAYS DETENTION

DAYS PRESENT

TIME TAKEN

PROMOTION

PROMOTION CODE - 745-PROMOTED SO- STABLE

GRADING SYSTEM

1-100

11-100

12-100

13-100

14-100

15-100

16-100

17-100

18-100

19-100

20-100

21-100

22-100

23-100

24-100

25-100

26-100

27-100

28-100

29-100

30-100

31-100

32-100

33-100

34-100

35-100

36-100

37-100

38-100

39-100

40-100

41-100

42-100

43-100

44-100

45-100

46-100

47-100

48-100

49-100

50-100

- S.C. School record on file
- LD-Res 1979-80
- Attendance Record 1980-81:

Robert M. Morgan
Principal
Mauldin Middle School
NAME OF SCHOOL

Debra Sue Matula
Principal
AUG 20 '08

Records/Transcripts Division
Summer School District #7

4-7-81

NAME OF PUPIL STONE, BOBBY W. SEX M RACE W GRADE 8
NAME OF PARENT Maybelle Stone ADDRESS 7
BIRTHDATE 9 19 65 DATE OF ENTRANCE 3/80
MONTH DAY YEAR
DATE OF WITHDRAWAL 1-23-81 REASON FOR TRANSFER MOVED TO DIST. #17
WAS PUPIL COUNTED IN 10 DAY ENROLLMENT? YES 35 DAY ENROLLMENT? YES

STANDARDIZED TEST RECORD

[illegible]

DAYS BELONGING						180/75
DAYS PRESENT						74/64
TIMES TARDY						0/1
PROMOTION						YES/YES

PROMOTION CODE - YES-PROMOTED NO-RETAINED
ADV. - ADVANCED

GRADING SYSTEM:

- A--95-100
B--85-94
C--75-84
D--70-74
F--BELOW

ADDITIONAL COMMENTS:

- ADDITIONAL COMMENTS:
- S.C. Shot record on file
 - LD-Res. 1979-80
 - Attendance Record (1980-81):
DB-95
A-7
T-10

EXTRA CURRICULAR RECORD

GRADE	7181				
PUBLICATIONS					
BAND					
VOCAL MUSIC					
ORCHESTRA					
DRAMATICS					
STUDENT COUNCIL					
SAFETY PATROL	✓✓				Capt. - 1980
CLASS OFFICER					
CLUB					

Roger M. Glasgow
 SCHOOL COUNSELOR
 Manchester Middle
 NAME OF SCHOOL.

This card is to be left in folder only as long as student is in school.

Name Henry Belling Jr (Last) (First) (Middle) Circulate 9/12/65

No information on this card may be released without permission of parent.

RECORD OF APTITUDE TESTS

Test	Date Given Mo/Day/Year	Name of Test	Language I.Q.	Non-Language I.Q.	Total I.Q.	Test Given By
2	9/12/65	S.F.T.P. Academic Aptitude	84	91	86	M. Benton
4	10-75	CITBS	70	84	75	Bivens
5	Apr '76	CITBS	82	82	80	Conxon/Minton

(If scores are supplied on scored labels, attach neatly in chronological order.)

RECORD OF APTITUDE TESTS

(If scores are supplied on profile sheets, attach sheet to this card.)

RECORD OF INTEREST INVENTORIES

Psychological Evaluation on File Yes ☐ No ☒ Date 4/17/72
Sumter School District No. 17; Form # 3 (5/17/72)

Diana Sue Matula
Henry Belling Jr
AUG 20 '78

Records/Transcript
Sumter School

This card is to be left in folder only as long as student is in school.

Name

Storey Bobby Wayne
(Last) (First) (Middle)

Birthdate

9/19/65

No information on this card may be released without permission of parent.

RECORD OF INTELLIGENCE TESTS

Grade	Date Given Mo/Day/Year	Name of Test	Language I.Q.	Non-Language I.Q.	Total I.Q.	Test Given By
<i>2</i>	<i>9/26/73</i>	<i>S.F.T. of Academic Aptitude</i>	<i>84</i>	<i>91</i>	<i>86</i>	<i>N. Benton</i>
<i>4</i>	<i>10-75</i>	<i>CTBS</i>	<i>70</i>	<i>84</i>	<i>75</i>	<i>Bivens</i>
<i>5</i>	<i>Apr. 78</i>	<i>CTBS</i>	<i>82</i>	<i>82</i>	<i>80</i>	<i>Computer</i>

RECORD OF APTITUDE TESTS

(If scores are supplied on gummed labels, attach neatly in chronological order.)

RECORD OF INTEREST INVENTORIES

(If scores are supplied on profile sheets, attach sheet to this card.)

Psychological Evaluation on File Yes No Date

Sumter School District No. 17; Form # 3 (5/17/72)

129.5

I. NAME: Stone Bobby Wayne
 (PRINT) LAST FIRST MIDDLE
 RECORD STARTED DATE: 4/27/77 SCHOOL: Eastern GRADE: 4
 SEX: M BIRTH: 9 19 65 Fluence NC
 MONTH DAY YEAR TOWN STATE
 RACE: W AUTHORITY FOR BIRTH DATA: 139-65-037899

II. IN PHOTOGRAPH: [PASTE]
 III. FAMILY DATA (USE PENCILS)
 NAME: Bobby Stone ADDRESS: 1455 Hwy 123
 FATHER: Maybell Floyd OCCUPATION: housewife
 MOTHER (MAIDEN NAME): [blank] NUMBER OF CHILDREN: 2
 GUARDIAN: [blank] BOYS: 2
 PUPIL LIVES WITH: [blank] GIRLS: 2

IV. TRANSFER — DROP-OUT — RE-ENTRY RECORD
 DATE: [blank] SCHOOL & GRADE LEFT: [blank] REASON: [blank] DATE RE-ENTERED: [blank] SCHOOL & GRADE RE-ENTERED: [blank] REMARKS: [blank]
 AGE: [blank]
 GRADE: [blank]

VI. ELEMENTARY SCHOOL RECORD
 GRADE: 4 (40-45)
 YEAR: 1977
 READING: C
 WRITING: D
 ARITHMETIC: D
 SPELLING: F
 LANGUAGE: 1st
 SCIENCE: [blank]
 GEOGRAPHY: [blank]
 HISTORY: [blank]
 SOCIAL STUDIES: 17
 MUSIC: S
 ART: S
 Health and Safety: C
 Conduct: B

VII. SECONDARY SCHOOL RECORD
 YEAR: [blank] GRADE: [blank] WKS. IN SCH. YR.: [blank] HRS. MARK: [blank] PER: [blank] 1ST 2ND 3RD 4TH
 SUBJECTS: [blank]
 UNITS FOR YEAR: [blank] UNITS TO DATE: [blank] DAYS ABSENT: [blank]
 YEAR: [blank] GRADE: [blank] WKS. IN SCH. YR.: [blank] HRS. MARK: [blank] PER: [blank] 1ST 2ND 3RD 4TH
 SUBJECTS: [blank]
 UNITS FOR YEAR: [blank] UNITS TO DATE: [blank] DAYS ABSENT: [blank]
 YEAR: [blank] GRADE: [blank] WKS. IN SCH. YR.: [blank] HRS. MARK: [blank] PER: [blank] 1ST 2ND 3RD 4TH
 SUBJECTS: [blank]
 UNITS FOR YEAR: [blank] UNITS TO DATE: [blank] DAYS ABSENT: [blank]

INDIVIDUAL PUPIL PROGRESS IN READING SUMMER SCHOOL DISTRICT NO. 17

NAME Stansbury, Ruby

READINESS SCORE _____
 1st Test _____
 2nd Test _____
 3rd Test _____

Grade Reading Level	Book Work Done		American	English	Handbook, Brack	Check	Self-Inspection	BASAL TEST			COMMENTS	Teacher's Grade Year
	Book	Work Done						1st	2nd	3rd		
Readiness or Before Reading	() () () () ()		1 First Step 2 Second Step 3 Third Step			() () ()	Level 1					
Pre-Primer	() () () () ()		4 And So You Go 5 Be On the Go 6 Can You	() () () () ()	Sun the PP1 A Happy Morning PP2 A Magic Afternoon PP3	() () ()	Level 2					
Primer	() () () () ()		7 Days and Ways	() () () () ()	Sun and Shesha	() () ()	Level 3	4/6	4/6	1, 5, 6	4/6	1974-1975
First Reader	() () () () ()		8 Each and All	() () () () ()	5/6 The World of Surprises Together We Go	() () ()	Level 4	4/6	4/6	1, 5, 6	4/6	1975-1976
2 nd	() () () () ()		Far and Away	() () () () ()	The World of Surprises	() () ()	Level 5	4/6	4/6	1, 5, 6	4/6	1976-1977
3 rd	() () () () ()		Gold and Silver	() () () () ()	Going Places Seems Possible	() () ()	Level 6	4/6	4/6	1, 5, 6	4/6	1977-1978
4 th	() () () () ()		High and Wide	() () () () ()	Widening Circles	() () ()	Level 7					
5 th	() () () () ()		Ideas and Images	() () () () ()	Ring Around the World	() () ()	Level 8					
6 th	() () () () ()		Jays and Journeys	() () () () ()	Goals in Reading (Skills) Much More (Lit.)	() () ()						
7 th	() () () () ()		Kings and Things	() () () () ()	Reading to Learn (Skills) Wider Than the Sky (Lit.)	() () ()						
8 th	() () () () ()		Landings and Landings	() () () () ()	Reading Power (Skills) First Explorer (Lit.)	() () ()						

Laura Sue Matula

Ruby B.
AUG 20 '08

Records/Manuscripts Division
 Summer School District 17

INDIVIDUAL PUPIL PROGRESS IN READING

SUMTER SCHOOL DISTRICT NO. 17

NAME Stone

Bobby First

READINESS SCORE

Total

(Word Rating:
Superior, Avg.
Peer Risk, etc.)

Reading

BASAL TEST

COMMENTS:

Trad. Reading Level	Check Book Work Book	American	Check Book Work Book	Harcourt, Brace	Check Book Work Book	Scott, Foresman	Date of Test	Rating (Sup., Avg., etc.)	1 - Fluently 2 - Independently 3 - With Comprehension 4 - Haltingly 5 - Dependently 6 - Poor Comprehension	Teacher Name, Grade, Year
Readiness or Before Reading	() () () () () ()	1-First Step 2-Second Step 3-Third Step			() ()	Level 1				
Pre-Primer	() () () () () ()	4-And So You Go 5-Be On the Go 6-Can You	() () () () () ()	Sun Up PP1 A Happy Morning PP2 A Magic Afternoon PP3	() ()	Level 2				
Primer	() ()	7-Days and Ways	() ()	Sun and Shadow	W H	Level 3	7/14/55	W H	1, 5, 6	Rogers III 1974-1975
First Reader	() ()	8-Each and All	W H	5-76 Mitchell Jr. 7 Together We Go	W H	Level 4	Completed; not tested.	1, 5, 6		Rogers 3rd 74-75
2 ¹	() ()	Far and Away	W H	Completed - not tested The World of Surprises	() ()	Level 5) 6)	5/16 H H	2, 3		5-76 H H Mitchell Jr.
2 ²	() ()	Gold and Silver	() ()	Going Places, Seeing People	() ()	Level 7) 8)	3/27/55 H H	4, 5, 6		2nd 4, 5 1977-78
3 ¹	() ()	High and Wide	() ()	Widening Circles	() ()	Level 9) 10)				
3 ²	() ()	Ideas and Images	() ()	Ring Around the World	() ()	Level 11) 12)				
4	() ()	Joys and Journeys	() () () ()	Goals in Reading (Skills) Much Majesty (Lit.)						
5	() ()	Kings and Things	() () () ()	Reading to Learn (Skills) Wider Than the Sky (Lit.)						
6	() ()	Launchings and Landings	() () () ()	Reading Power (Skills) First Splendor (Lit.)						

NAME Stone Bobby
 Last First

Trad. Reading Level	Check		Open Highways	Check		Other	Check		Encycl. Brit. Lang. Exp. in Reading L. E. I. R.	BASAL TEST		COMMENTS:	Teacher Name, Grade, Year
	Book	Work Book		Book	Work Book		Book	Work Book		Date of Test	Rating (50% Avg. etc.)		
Readiness or Before Reading	() ()		Starter Cards	() ()			()		Level 1 Unit 1-2				
PrePrimer				() ()			()		Unit 3-4				
Primer	() ()		Ready to Roll 1	() ()			()		Unit 5-6				
First Reader	() ()		Rolling Along 1 st	OK						3/12/74	77 Avg.	3, 4, 5	2nd W. Thayer '74
Second Reader	() ()		More Power 2 nd Moving Ahead 2 nd	() ()		Completed skills 5/30/74 Did not test!	()		Level II Unit 1-2-3 Unit 4-5-6			3, 4, 5	W. Thayer '74
Third Reader	() ()		Splendid Journey 3 rd Speeding Away 3 rd	() ()			()		Level III Unit 1-5				
Fourth Reader	() ()		Open Highways 4	() ()									
Fifth Reader	() ()		Open Highways 5	() ()									
Sixth Reader	() ()		Open Highways 6	() ()									

Form A 96-3 (11)

SOUTH CAROLINA CUMULATIVE SCHOOL HEALTH RECORD

Page 1

NAME OF PUPIL

(Last, First, Middle)

Stone, Bobby

School

(in Pencil)

Carter Elementary

NAME OF PARENT - GUARDIAN

Bobby Stone

RESIDENCE ADDRESS

(in Pencil)

BUSINESS ADDRESS

(in Pencil)

FAMILY PHYSICIAN

(in Pencil)

Birth Year

65

Month

2

Day

18

Birth Certificate

Checked By

Date

Sex

M

Race

W

PHONE

(in Pencil)

PHONE

(in Pencil)

DENTIST

(in Pencil)

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

COMMENTS (By Whom - Date)

Headache (Frequent)

Rheumatic Fever

Diabetes

Sore Throat (Frequent)

Heart Trouble

Convulsions

Ear Infections (Frequent)

Asthma-Allergy

Muscle or Bone Weakness

Other Illnesses, Injuries or Operations:

SCREENING PROCEDURES

COMMENTS - FOLLOW-UP (By Whom - Date)

GRADE	Pre-School	1	2	3	4	5	6	7	8	9	10	11	12
DATE (Year)		1974	1975	1976	1977	1978	1979	1980	1981	1982			
Height	Fall												
In Inches	Spring	45	48	51	54	57	60	63	66	69	72	75	78
Weight	Fall												
In Lbs.	Spring	44	50	55	61	67	73	79	85	91	97	103	109
Vision	Both Eyes												
Without	R												
Glases	L												
Vision	Both Eyes												
With	R												
Glases	L												
Type of Test													
Person Giving Test													
(Give Initials)													
Hearing	R												
L													
Type of Test													
Person Giving Test													
(Give Initials)													

TEACHERS' OBSERVATIONS (Code: X-Condition Observed; C-Condition Corrected)

COMMENTS - FOLLOW-UP (By Whom - Date)

GRADE	Pre-School	1	2	3	4	5	6	7	8	9	10	11	12
DATE		1974	1975	1976	1977	1978	1979	1980	1981	1982			
Abnormal Gait													
Poor Posture													
Skin Lesions													
Stomach Issues													
Poor Food Habits													
Frequent Headaches													
Infected Eyes													
Squinting-Crossed Eyes													
Reads Too Close-Too Far													
Frequent Inattention													
Reading Difficulties													
Mouth-Tooth													
Frequent Colds													
Frequent Sore Throat													
Marked Aggressiveness													
Undue Shyness													
Speech Defect													
Tics or Stuttering													
Nail Biting													
Undue Restlessness													
Excessive Use of Toilet													
(Other)													

Refer to South Carolina Manual for Use of the Cumulative School Health Record.

Attach additional pages as needed for all sections of this record.

FLORENCE COUNTY HEALTH DEPARTMENT

Date: Aug. 13, 1972
 Name: BOBBY WAYNE STONE
 Sex: Male
 Birthdate: September 19, 1946
 Date: Oct. 26, 1965
 This is a true certification of name and birth date recorded in this office.
 COUNTY REGISTRAR

Laura Sue Mahala
L. Mahala
 AUG 20 '08

Records/Transcripts Division
 Summer Session District 17

FLORENCE COUNTY HEALTH DEPARTMENT
 Florence, S. C.

Date Issued Aug. 13, 1973 No. 125-65-037899

NAME BOBBY WAYNE STONE Sex Male

Birthdate September 19, 1965 File Date Oct. 26, 1965

Birthplace Florence County, S. C.

This is a true certification of name and birth facts recorded in this office.

COUNTY REGISTRAR *Manfred Hordley*
 Deputy County Registrar

PERMANENT RECORD PREPRIMARY GRADE SIX SCHOOL DISTRICT NO. 17, SUMMER, S.C.

PUPIL'S NAME Wendy Kelley BIRTH DATE 11/10/65 ADDRESS 11111111111111111111

District 17 ADMITTING SCHOOL Central SCHOOL RECEIVED FROM Summerville, S.C. YEAR 1975

ACHIEVEMENT RECORD

Pre-Primary - School (Check below to indicate satisfactory achievement)

	1st Year	2nd Year	3rd Year	4th Year	5th Year	6th Year
Knows colors						
Numbers 1-10 (recognition counting)						
Simple addition						
Completes tasks						
Interest in books						
Keeps left and right						
Continuance skills						
Follows directions						
Days belonging						

RECOMMENDATIONS

First Year _____
 Second Year _____
 Third Year _____

SCHOOL Central GRADE 2 YEAR 77 TEACHER M. B. Bostick

(E.M.H.) LOW | AVERAGE | HIGH

ACADEMIC LEVEL OF PUPIL IN PRESENT CLASS (check one) _____

PUPIL'S ADJUSTMENT TO GROUP SITUATION (check one) _____

RECOMMENDATION FOR NEXT YEAR (check one) _____

PUPIL IS APPARENTLY WORKING UP TO _____ NOT WORKING UP TO _____ MENTAL ABILITY _____
 Days Belonging _____ Days Absent _____ Teacher's Signature (Full name) _____

SCHOOL Central GRADE 2 YEAR 77 TEACHER M. B. Bostick

(E.M.H.) LOW | AVERAGE | HIGH

ACADEMIC LEVEL OF PUPIL IN PRESENT CLASS (check one) _____

PUPIL'S ADJUSTMENT TO GROUP SITUATION (check one) _____

RECOMMENDATION FOR NEXT YEAR (check one) _____

PUPIL IS APPARENTLY WORKING UP TO ☒ NOT WORKING UP TO ☐ MEASURED MENTAL ABILITY _____
 Days Belonging _____ Conference date _____ Days Absent _____ Teacher's Signature (Full name) _____

Laura Sue Matula
Handwritten Signature
 AUG 20 '08

Records/Transcript Division
 Summer School District 17

PERMANENT RECORD PREPRIMARY GRADE SIX SCHOOL DISTRICT No. 17 SUMTER, S. C.

PUPIL'S NAME Steve Billy BIRTH DATE 9/19/55 ADDRESS 711 Ravenel St

DATE OF ENTRY 8/13/63 ADMITTING SCHOOL Central SCHOOL RECEIVED FROM Johns Creek, S.C. YEAR 1973

ACHIEVEMENT RECORD (Check below to indicate satisfactory achievement)

	First Year	Second Year	Third Year		First Year	Second Year	Third Year
Knows colors				Alphabet recognition			
Numbers 1 to 10 (recognition counting)				Positive self image			
Music interest				Assumes responsibility			
Completes tasks				Personal hygiene			
Interest in books				Discriminates differences			
Knows left and right				Discriminates similarities			
Communications skills				Problem solving skill			
Follows directions				Other			
Days belonging				Days present			

RECOMMENDATIONS
First Year _____
Second Year _____
Third Year _____

SCHOOL Central GRADE 2 YEAR 73-74 TEACHER N. Benton

E.M.H.	LOW	AVERAGE	HIGH

ACADEMIC LEVEL OF PUPIL IN PRESENT CLASS (Check one) ☐ Satisfactory ☐ Needs Improvement

PUPIL'S ADJUSTMENT TO GROUP SITUATION: (Check one) ☐ Improving ☐ Needs Improvement

E.M.H.	FIRST	TRANSITIONAL	REGULAR	SECOND	OTHER (State)

RECOMMENDATION FOR NEXT YEAR: (check one)

PUPIL IS APPARENTLY WORKING UP TO ☐ NOT WORKING UP TO ☐ MENTAL ABILITY

Days Belonging 117 Conference date _____ Days Absent _____ Tardy 7 Teacher's Signature (Full name) Nancy Benton

SCHOOL Lemira GRADE 2 YEAR 1973-74 TEACHER W. Myers

E.M.H.	LOW	AVERAGE	HIGH

ACADEMIC LEVEL OF PUPIL IN PRESENT CLASS: (Check one) ☒ Satisfactory ☐ Needs Improvement

PUPIL'S ADJUSTMENT TO GROUP SITUATION: (Check one) ☒ Improving ☐ Needs Improvement

E.M.H.	SECOND	TRANSITIONAL	REGULAR	THIRD	OTHER (State)

RECOMMENDATION FOR NEXT YEAR: (Check one)

PUPIL IS APPARENTLY WORKING UP TO ☒ NOT WORKING UP TO ☐ MEASURED MENTAL ABILITY

Days Belonging 132 Conference date Did not come for appl Days Absent 5 Tardy 12 Teacher's Signature (Full name) Willie Mae Myers

Form 2-4a (5-17-72)

Name John J. ... Birthdate ... ELEMENTARY SCHOOL RECORD
 SCHOOL ... GRADE ... YEAR 19... TEACHER ...
 ACADEMIC LEVEL OF PUPIL IN PRESENT CLASS: (check one)
☐ F.M.H. ☐ LOW ☐ AVERAGE ☐ HIGH
☐ Satisfactory ☐ Needs Improvement
☐ Improving
 PUPIL'S ADJUSTMENT TO GROUP SITUATION: (check one)
☐ F.M.H. ☐ SECOND ☐ TRANSITIONAL ☐ REGULAR THIRD ☐ OTHER (state)
 RECOMMENDATION FOR NEXT YEAR: (check one)
☐ F.M.H. ☐ SECOND ☐ TRANSITIONAL ☐ REGULAR THIRD ☐ OTHER (state)
 PUPIL IS APPARENTLY WORKING UP TO ☐ NOT WORKING UP TO ☐ MEASURED MENTAL ABILITY
 Days Belonging ... Conference Date ...
 Days Absent ... Tardy ... Teacher's Signature (Full name) ...

Grade	Teacher	Date Entered	19...	19...	Grade	Teacher	Date Entered	19...	19...	Grade	Teacher	Date Entered	19...	19...
Grade 3	Teacher <u>...</u>	Date Entered <u>...</u>	19...	19...	Grade 4	Teacher <u>...</u>	Date Entered <u>...</u>	19...	19...	Grade 5	Teacher <u>...</u>	Date Entered <u>...</u>	19...	19...
School <u>...</u>	Grading Periods	Subject	1	2	3	4	5	School <u>...</u>	Grading Periods	Subject	1	2	3	4
Reading		Reading						Reading		Reading				
Writing		Writing						Writing		Writing				
Arithmetic		Arithmetic						Arithmetic		Arithmetic				
Spelling		Spelling						Spelling		Spelling				
Language		Language						Language		Language				
Social Studies		Social Studies						Social Studies		Social Studies				
Science		Science						Science		Science				
Days Belonging <u>...</u>	Conference Date <u>...</u>	Days Belonging <u>...</u>	Conference Date <u>...</u>	Days Belonging <u>...</u>	Conference Date <u>...</u>	Days Belonging <u>...</u>	Conference Date <u>...</u>	Days Belonging <u>...</u>	Conference Date <u>...</u>	Days Belonging <u>...</u>	Conference Date <u>...</u>	Days Belonging <u>...</u>	Conference Date <u>...</u>	Days Belonging <u>...</u>
Home Visit: Yes ☐ No ☒	Teacher's Signature <u>...</u>	Home Visit: Yes ☐ No ☒	Teacher's Signature <u>...</u>	Home Visit: Yes ☐ No ☒	Teacher's Signature <u>...</u>	Home Visit: Yes ☐ No ☒	Teacher's Signature <u>...</u>	Home Visit: Yes ☐ No ☒	Teacher's Signature <u>...</u>	Home Visit: Yes ☐ No ☒	Teacher's Signature <u>...</u>	Home Visit: Yes ☐ No ☒	Teacher's Signature <u>...</u>	Home Visit: Yes ☐ No ☒

Explanation of Grades
 A Excellent B Good C Average D Poor F Failure

Laura Sue Matula
Laura Sue Matula
 AUG 20 '98

Records/Trans
 Sumter S

Name Burns, W. W. Birthdate 9-19-65 ELEMENTARY SCHOOL RECORD
 SCHOOL Lincoln GRADE 3 YEAR 14-5 TEACHER Rogers

ACADEMIC LEVEL OF PUPIL IN PRESENT CLASS: (check one)

E.M.H. ☐ LOW ☐ AVERAGE ☐ HIGH

PUPIL'S ADJUSTMENT TO GROUP SITUATION: (check one)

☐ Satisfactory ☐ Needs Improvement
☐ Improving ☐ Improvement

RECOMMENDATION FOR NEXT YEAR: (check one)

E.M.H. ☐ SECOND ☐ TRANSITIONAL ☐ REGULAR THIRD ☐ OTHER (state)

PUPIL IS APPARENTLY WORKING UP TO ☒ NOT WORKING UP TO ☐ MEASURED MENTAL ABILITY

Days Belonging 130 Conference Date October
 Days Absent 10 Tardy 5 Teacher's Signature (Full name) W. W. Rogers

Grade 3 Teacher Rogers
 Date Entered 8-28-74 School Lincoln
 Subject Grading Periods:
 Reading A A B B
 Writing C D A C
 Arithmetic C B C C
 Spelling C C C C
 Language C C C C
 Social Studies C C C C
 Science C C C C
 Days Belonging 130 Absent 4 Tardy 5
 Conference Date October
 Home Visits: Yes ☐ No ☒
 Assigned to W. W. Rogers
 Teacher's Signature W. W. Rogers

Grade 4 Teacher Burns
 Date Entered 10-15-74 School Lincoln
 Subject Grading Periods:
 Reading C B A C
 Writing D C C F
 Arithmetic C D C C
 Spelling C D C C
 Language C B C C
 Social Studies C C C C
 Science C C C C
 Days Belonging 130 Absent 4 Tardy 5
 Conference Date October
 Home Visits: Yes ☐ No ☒
 Assigned to W. W. Rogers
 Teacher's Signature W. W. Rogers

Grade 4 Teacher Burns
 Date Entered 10-15-74 School Lincoln
 Subject Grading Periods:
 Reading C B A C
 Writing D C C F
 Arithmetic C D C C
 Spelling C D C C
 Language C B C C
 Social Studies C C C C
 Science C C C C
 Days Belonging 130 Absent 4 Tardy 5
 Conference Date October
 Home Visits: Yes ☐ No ☒
 Assigned to W. W. Rogers
 Teacher's Signature W. W. Rogers

Grade 5 Teacher Burns
 Date Entered 10-15-74 School Lincoln
 Subject Grading Periods:
 Reading B B B D
 Writing D F D D
 Arithmetic A A D D
 Spelling A B B B
 Language A F D D
 Social Studies A F A D
 Science C C A B
 Days Belonging 130 Absent 4 Tardy 5
 Conference Date October
 Home Visits: Yes ☐ No ☒
 Assigned to W. W. Rogers
 Teacher's Signature W. W. Rogers

Grade 5 Teacher Burns
 Date Entered 10-15-74 School Lincoln
 Subject Grading Periods:
 Reading B B B D
 Writing D F D D
 Arithmetic A A D D
 Spelling A B B B
 Language A F D D
 Social Studies A F A D
 Science C C A B
 Days Belonging 130 Absent 4 Tardy 5
 Conference Date October
 Home Visits: Yes ☐ No ☒
 Assigned to W. W. Rogers
 Teacher's Signature W. W. Rogers

Grade 5 Teacher Burns
 Date Entered 10-15-74 School Lincoln
 Subject Grading Periods:
 Reading B B B D
 Writing D F D D
 Arithmetic A A D D
 Spelling A B B B
 Language A F D D
 Social Studies A F A D
 Science C C A B
 Days Belonging 130 Absent 4 Tardy 5
 Conference Date October
 Home Visits: Yes ☐ No ☒
 Assigned to W. W. Rogers
 Teacher's Signature W. W. Rogers

Explanation of Grades: A-Excellent B-Good C-Average D-Poor E-Failure

Form 1
Rev. 11/73

PERMANENT RECORD CARD

MIDDLE SCHOOL

Last Name Stone First Bobby Middle Wayne NOY None ADDRESS _____
 ENTERED FROM Home GRADE 6 DATE 8/28/78 DOB 9/14/65

PARENT OR GUARDIAN Mrs. and Mr. Bobby A. Stone TEL. NO. _____ (use pencil)

Home Room Teacher				Home Room Teacher			
Section 1		1978-1979		Section 2		1979-1980	
Gr. <u>6</u>		Date Entered <u>8/28/78</u>		Gr. <u>6</u>		Date Entered <u>1/26/79</u>	
Subject	Level	Teacher	Gr.	Subject	Level	Teacher	Gr.
Reading	Res.	Edmonds	D F D	English	B	Thomas	D F D
Writing				Mathematics	B	Santer	C F D
Arithmetic	R	Baker	D D D	Science	E	J. S. Kline	D D D
Spelling				Social Studies	R	Mills	C F D
Language	R	Brown	F F F	Home Ec. shop			
Social Studies	R	Edmonds	F F F	Personal Typing			
Science	R	Marshall	F F F	Health	B	Buller (Nurse)	C D D
P.E./Health		Kenny	F F	Art/Music		Kenny/Edmonds	B F
P.E./Health		Kenny	B B				

Days Belonging 90 Days Absent 2 Times Tardy 0
 Days Belonging 90 Days Absent 1 Times Tardy 1

Promoted To PLACED 7 Retained In _____

Home Room Teacher				Home Room Teacher			
Section 1		1979-1980		Section 2		1980-1981	
Gr. <u>7</u>		Date Entered <u>8/28/78</u>		Gr. <u>7</u>		Date Entered	
Subject	Level	Teacher	Gr.	Subject	Level	Teacher	Gr.
English	B	Davis	F	English			
Mathematics	B	Edmonds	F	Mathematics			
Science	B	Edmonds	F	Science			
Social Studies	B	Edmonds	F	Social Studies			
P.E./Health		Kenny	F	P.E.			
Art				Home Ec. shop			
Music				Personal Typing			
	B. Thomas	F					

Days Belonging 90 Days Absent 7 Times Tardy 0
 Days Belonging _____ Days Absent _____ Times Tardy _____

Promoted To _____ Retained In _____

Good C Average D Poor F No Credit

Photograph

Laura Sue Matula
Shelley
 AUG 20 '08

Records/Transcripts Division
 Sumner School District 17

PERMANENT RECORD CARD

MIDDLE SCHOOL

Last Name Stone First Billy Middle Warren BOY ☒ GIRL ☐ ADDRESS 111 Keweenaw St.
 ENTERED FROM Seminar GRADE 6 DATE 8/28/54 D.O.B. 9/19/25

PARENT OR GUARDIAN Mrs. Andrew Stone TEL. NO. 343-7516

Gr. 6 Home Room Teacher Mr. K. Quest Section 5 19 54 to 19 55 Date Entered 8/28/54
 Gr. 6 Home Room Teacher Mr. K. Quest Section 5 19 54 to 19 55 Date Entered 8/28/54

Subject	Level	Teacher	Grade	Level	Teacher	Grade
Reading	Res.	Edmonds	D	English	Thompson	D
Writing	Res.	Edmonds	D	Mathematics	St. John	D
Arithmetic	Res.	Edmonds	D	Science	St. John	D
Spelling	Res.	Edmonds	D	Social Studies	St. John	D
Language	Res.	Edmonds	D	P.E.	St. John	D
Social Studies	Res.	Edmonds	D	Home Ec. Shop	St. John	D
Science	Res.	Edmonds	D	Personal Typing	St. John	D
P.E./Health	Res.	Edmonds	D	Reading	St. John	D
Art	Res.	Edmonds	D	Music	St. John	D

Days Belonging 90 Days Absent 2 Times Tardy 0
 Days Belonging 90 Days Absent 2 Times Tardy 0

Promoted To PLACED IN Retained In PLACED IN
 Promoted To PLACED IN Retained In PLACED IN

Subject	Level	Teacher	Grade	Subject	Level	Teacher	Grade
English	Res.	Davis	D	English	Res.	Davis	D
Mathematics	Res.	Robert	D	Mathematics	Res.	Robert	D
Science	Res.	Thomas	D	Science	Res.	Thomas	D
Social Studies	Res.	Thomas	D	Social Studies	Res.	Thomas	D
P.E./Health	Res.	Thomas	D	P.E./Health	Res.	Thomas	D
Art	Res.	Thomas	D	Art	Res.	Thomas	D
Music	Res.	Thomas	D	Music	Res.	Thomas	D

Days Belonging 90 Days Absent 4 Times Tardy 0
 Days Belonging 90 Days Absent 4 Times Tardy 0

Promoted To PLACED IN Retained In PLACED IN
 Promoted To PLACED IN Retained In PLACED IN

Grading System: A - Excellent; B - Good; C - Average; D - Poor; F - No Credit

Photograph

NAME Stone, Bobby ^(Do not print) ADDRESS 409 B 1/1K
ENTERED FROM Bates Middle, GRADE 9 DATE 8/3/65 (Use pencil) D.O.B. 9/19/65
PARENT OR GUARDIAN Mrs. Maubelle Stone TEL. NO.

STONE ROBBY						STONE ROBBY					
GR-39 HMR-217						GR-10 HMR-WO					
	DAYS	GRADES	UNT				DAYS	GRADES	UNT		
	ARS	S1	S2	FHL	CN		ARS	S1	S2	FNL	CN
JUNISE	TEACHER	15	F	F	E	-FNG I TA					
MAYE L A	TEACHING	18	F	F	F	-G MATH I					
NATHAN L A	FEEHAR	9	F	C	C	WASH LAB-V					
PATRICIA P	PROCTIE	23	F	F	F	-GEN HND					
RIN SCI	THOMPSON	14	F	F	F	-RESABLE					
ROBINCE	KLOTZLE	9	F	B	B	END ART I					
DAVIS ED T	MARTEN	16	F	D	D	PH WOOD					

SEX-	AGE-	HT-	WT-	HAIR-	COMPLEX-	SCARS-	TAT-	VR CR-	PPR CR-	TOT CR-
SEX- 3	AGE- 19	HT- 6	WT- 1.00	HAIR- 3	COMPLEX- 3	SCARS- 3	TAT- 1	VR CR- 3.00	PPR CR- 3.00	TOT CR- 3.00
SEX- 1.000	AGE- 1.000	HT- 1.000	WT- 1.000	HAIR- 1.000	COMPLEX- 1.000	SCARS- 1.000	TAT- 1.000	VR CR- 1.000	PPR CR- 1.000	TOT CR- 1.000
SEX- 1.000	AGE- 1.000	HT- 1.000	WT- 1.000	HAIR- 1.000	COMPLEX- 1.000	SCARS- 1.000	TAT- 1.000	VR CR- 1.000	PPR CR- 1.000	TOT CR- 1.000

[illegible]

~~Leanne Sue Matyska~~
Leanne Sue Matyska
 AUG 20 1988

Records/Transcripts Division
Summer Session/District 17

HIGH SCHOOL PERMANENT RECORD CARD School District Seventeen Sumter, S.C.

NAME Stone Bobby (Boy/Girl) ADDRESS 409 Bell
 ENTERED FROM Bates Middle GRADE 9 DATE 8/5/81 (use pencil) D.O.B. 9/19/65
 PARENT OR GUARDIAN Mrs. Mariabelle Stone TEL. NO. _____

STONE BOBBY, RI-0690 YR-1981-82 GR-10 HMRM-WD 81-0690 YR-1982-83

COURSE	TEACHER	DAYS		GRADES		UNT	COURSE	TEACHER	DAYS		GRADES		UNT
		ABS	S1	S2	FNL				CR	ABS	S1	S2	
ENG 101A	RICHBURG	16	F	F	F		ENG 101A	PRICE	23	MF			
MATH LAB	FREEMAN	19	F	C	C	1.00	MATH LAB-V	HUNTER		MF			
CIVICS B	DOCHETTE	23	F	F	F		GEN SCIE	AKINDER	21	MF			
GEN SCIE	THOMPSON	14	F	F	F		RESOURCE	THOMPSON		MF			
RESOURCE	KLOTZLE	19	B	B	B	1.00	IND ART I	FULWOOD	25	MF			
PHYS ED I	MARTIN	16	F	D	D	1.00							

ABSEX-3 ABSUNEX-18 YR-16 YR CR-13.00
 GPR-1.000 PRE CR-3.00
 CGPR-1.000 RANK-605/775 TOTCR-13.00

1. Home Room Teacher _____ Grade _____ School Level _____ Date Entered _____

Subject	Teacher	Days	Level	Grade	Score	Unit
English						
Math						
Science						
Social Studies						
Physical Education						
Art						
Music						
Health						
Foreign Languages						
Other						

Days Absent: Excused _____ Total _____
 Days Absent: Unexcused _____ Total _____
 Times Tardy _____

2. Home Room Teacher _____ Grade _____ School Level _____ Date Entered _____

Subject	Teacher	Days	Level	Grade	Score	Unit
English						
Math						
Science						
Social Studies						
Physical Education						
Art						
Music						
Health						
Foreign Languages						
Other						

Days Absent: Excused _____ Total _____
 Days Absent: Unexcused _____ Total _____
 Times Tardy _____

WITHDREW 10/05/81 Date _____ Reason _____
 RETURNED 11/30/81 Date _____ Reason _____
 WITHDREW 10-15-82 Date _____ Reason _____
 GRADUATED _____ Date _____ TOTAL UNITS _____
 GRADE POINT RATIO _____ RANK _____
 DIPLOMA _____ CERTIFICATE _____
 CREDITS SENT TO _____ Date _____
 CREDITS SENT TO _____ Date _____
 Grading System: A - Excellent; B - Good; C - Average; D - Poor; F - No credit

Student's Name Stone, Bobby Wagoner Home Address 409 Bulk Tel. No. _____
 (on birth certificate) Last First Middle (use pencil) (use pencil)
 Birthdate 9/19/65 Birthplace Shreveport, La., U.S. Birth Cert. No. 65-637899 Soc. Sec. No. _____ Sex MA Race W
 Date of Entrance 8/28/78 School Entered Central School Formerly Attended Jacksonville
 FAMILY NAME Stone

SI

SUMNER HIGH SCHOOL
UNPAID FEES AND DUES

Student's Name Bobby Stone Year 8182 Grade 9
 Instructional Fees: _____
 Lost Books: _____
 Title _____
 Other: (Candy, etc.) _____
 TOTAL: _____

CORD—GRADES 1-12

Read Carefully

Concerning recordkeeping and use of this

Entries in black ink except for addresses
numbers. Use pencil for these.

data indicated as needed.

a locked space and allow use only by
personnel in a designated area.

Information except that on folder or per-
mission without specific permission of

In order to be
following forms
back:

1. The current
2. Health record
3. Test record card
4. Permanent record
5. Student progress
6. Reading progress

- Permanent record binders if desired

Transferred to:

School Central Date 8/28/78
 School _____ Date _____
 School _____ Date _____

Student withdrew from school on _____ Date _____
 Reason for withdrawal: _____

5. Notify parents when information is released.

6. In general, give out no information by telephone.

7. Destroy all materials which may have been added temporarily as soon as they cease to be useful.

8. Do not keep confidential information from school psychologists in this folder.

9. Study the report on collection, use, maintenance, and discrimination of information about students and follow the guidelines.

Laura Sue Matula
L. Matula
 AUG 20 '78
 Records/Transcripts
 Sumner School District

Student's Name Stone, Bobby Wayne Home Address 409 Belk Tel. No. _____
 (on birth certificate) Last First Middle (use pencil)
 Birthdate 9/19/65 Birthplace Shreveport, La. Birth Cert. No. 65-637899 Soc. Sec. No. _____ Sex M Race W
 Date of Entrance 8/28/73 School Entered Central School Formerly Attended Jacksonville
 FAMILY NAME Stone

2nd
page

SI

SUMTER HIGH SCHOOL
UNPAID FEES AND BILLS

In order to be
following forms
back:

1. The current
2. Health record
3. Test record c
4. Permanent re
5. Student progr
6. Reading progr.
- Permanent record binders if desired

Bobby Stone Student's Name 81-82 Year 9 Grade
 Instructional Fees: \$ 12.00
 Lost Books: \$ _____
 Title _____ \$ _____
 Other: (Candy, etc.) \$ _____
 TOTAL: \$ _____

CORD—GRADES 1-12

Read Carefully

Concerning recordkeeping and use of this

entries in black ink except for addresses
numbers. Use pencil for these.

data indicated as needed.

a locked space and allow use only by
personnel in a designated area.

nation except that on folder or per-
card without specific permission of

Transferred to:

School Central Date 15 Jun 77
 School _____ Date _____
 School _____ Date _____

Student withdrew from school on _____ Date _____

Reason for withdrawal: _____

5. Notify parents when information is released.

6. In general, give out no information by telephone.

7. Destroy all materials which may have been added
temporarily as soon as they cease to be useful.

8. Do not keep confidential information from school
psychologists in this folder.

9. Study the report on collection, use, maintenance, and
discrimination of information about students and follow
the guidelines.

Student's Name Stone, Bobby Wayne Home Address 409 Burk Tel. No. _____
 (Use pencil)
 Birthdate 9/19/62 Birthplace Shreveport, La. Birth Cert. No. 65-637899 Soc. Sec. No. _____ Sex M Race W
 Date of Entrance 8/28/73 School Entered Central School Formerly Attended Jacksonville



1977-78

FAMILY DATA					
Parents Guardian	NAME	Address if different from pupil's	Living?	In the home?	Date on which family data is recorded. Use pencil.
Father	<u>Bobby D. Stone</u>		<u>yes</u>	<u>yes</u>	<u>9/28/73</u>
Mother	<u>Maybelle Stone</u>		<u>yes</u>	<u>yes</u>	<u>9/28/73</u>
Guardian					
	Relationship				

is immediately below may be used for noting any change in status of pupil with respect to parent or guardian.



ORD OF STANDARDIZED ACHIEVEMENT TESTS

Grades 1 - 6

				Grade Placement Scores Only										Write in names of sub-tests	
Grade	Name	Form	Date Given	Language Arts		Mathematics	Science	Other (specify)	Total	Norm					
2	Nietzsche Achievement Test	II	A 12.2.74	18	22	19	30	16							
4	Cybs	1													
3															

Psychological Evaluation Given: Yes ☐ Date: _____

Laura Sue Matulis

Shirley B.
AUG 20 '08

Records/Transcripts Division
Sumner School District

RECORD OF STANDARDIZED ACHIEVEMENT TESTS Grades 7-12

Grade Placement Scores, Percentiles, or Stanines. Specify which. Write in sub-tests.																		
Grade	Name of Test	Level	Form	Date Given	Language Arts				Mathematics				Social Studies	Science	Other Specify	Total	Norm	
NAME	GRADE	DATE	FORM	LEVEL	READING		LANGUAGE		ARITHMETIC		MATHEMATICS		TOTAL	TOTAL	BATTERY	REFR	STAN	S.S.
					COMP	SCORE	COMP	SCORE	COMP	SCORE	COMP	SCORE						
					COMP	SCORE	COMP	SCORE	COMP	SCORE	COMP	SCORE						
					COMP	SCORE	COMP	SCORE	COMP	SCORE	COMP	SCORE						
STONE BOBBY	90617-7778-001-023	03/82	NP	18	23	19	4	6	7	2	9	5	13	5	4	25	27	17
			RS	11	15	26	5	8	7	20	12	5	5	22	68	8	14	11

If scores are reported on gummed labels, attach neatly in chronological order

EXTRA - CURRICULAR ACTIVITIES

Grade	Activity - Office - Honors	Grade	Activity - Office - Honors	Grade	Activity - Office - Honors

I. NAME (PRINT) LAST Stone FIRST Bobby MIDDLE Wayne SEX M BIRTH 9 19 65 Florence S.C. MONTH DAY YEAR TOWN STATE
W RACE AUTHORITY FOR BIRTH DATA: 139-65 037899

RECORD STARTED: DATE 4/27/77 SCHOOL Eastern GRADE 4
II. 1st PHOTOGRAPH PASTE
III. FAMILY DATA (USE PENCIL)
NAME Bobby Stone ADDRESS Rt. 5 Box 133 PHONE
FATHER
MOTHER (MAIDEN NAME) Maybell Floyd OCCUPATION housewife
GUARDIAN
PUPIL LIVES WITH (RELATION)
IV. TRANSFER — DROP-OUT — RE-ENTRY RECORD
DATE SCHOOL & GRADE LEFT REASON DATE RE-ENTERED SCHOOL & GRADE RE-ENTERED REMARKS
V. 2nd PHOTOGRAPH PASTE
NUMBER OF CHILDREN BOYS 2 GIRLS 2
DATE: AGE: GRADE:

VI. ELEMENTARY SCHOOL RECORD
GRADE: 4 (40 days) YEAR 1976-77
READING C
WRITING D
ARITHMETIC D
SPELLING F
LANGUAGE D+
SCIENCE
GEOGRAPHY
HISTORY
SOCIAL STUDIES D
MUSIC S
ART S
Health and Safety C
Conduct B
UNITS FOR YEAR
UNITS TO DATE
DAYS ABSENT
DAYS BELONGING 40
DAYS PRESENT 39
TIMES TARDY 1
PROMOTION* yes
*PROMOTION CODE: YES-PROMOTED NO-RETAINED ADV-ADVANCED
DEFINITION OF MARKS: A 90-100 B 80-89 C 70-79 D 60-69 F 50-59 I 40-49 BELOW 40 INCOMPLETE

VII. SECONDARY SCHOOL RECORD
YEAR: GRADE: Wks. in Sch. Yr. Hrs. per Wk. MARK 1ST 2ND UNITS
SUBJECTS
UNITS FOR YEAR
UNITS TO DATE
DAYS ABSENT
YEAR: GRADE: Wks. in Sch. Yr. Hrs. per Wk. MARK 1ST 2ND UNITS
SUBJECTS
UNITS FOR YEAR
UNITS TO DATE
DAYS ABSENT
YEAR: GRADE: Wks. in Sch. Yr. Hrs. per Wk. MARK 1ST 2ND UNITS
SUBJECTS
UNITS FOR YEAR
UNITS TO DATE
DAYS ABSENT
YEAR: GRADE: Wks. in Sch. Yr. Hrs. per Wk. MARK 1ST 2ND UNITS
SUBJECTS
UNITS FOR YEAR
UNITS TO DATE
DAYS ABSENT
Official Copy
Joan Caranica
12/5/08

VIII. STANDARDIZED TEST RECORD
DATE GRADE FORM INTELLIGENCE TESTS C. A. M. A. I. Q.
IX. GRADUATION DATA
GRADUATION DATE: NAME OR SIGNATURE OF PRINCIPAL:
NO. IN CLASS: RANK IN CLASS: COURSE COMPLETED:
X. HEALTH RECORD (check — give year if possible)
SCURF: CHICKEN POX: MEASLES: WHOOPING COUGH:

1. NAME (PRINT) STONE, BOBBY WAYNE		SEX M	BIRTH: 9 / 19 / 65	TOWN SC	STATE SC
RECORD STARTED: DATE 3/80 SCHOOL Manchester 7		RACE W	AUTHORITY FOR BIRTH DATA Birth Cert # 139-65-03789		

II. 1st PHOTOGRAPH PASTE	III. FAMILY DATA (USE PENCIL)		NAME	CHANGE IN FAMILY STATUS	ADDRESS	PHONE	OCCUPATION	NUMBER OF CHILDREN	V. 2nd PHOTOGRAPH PASTE
	FATHER				RT. 2 Box 687-2				
	MOTHER (MAIDEN NAME)		Maybelle Stone		Sumter, S.C.				
	GUARDIAN								
	PUPIL LIVES WITH		Parents	(RELATION)					

IV. TRANSFER — DROP-OUT — RE-ENTRY RECORD					
DATE	SCHOOL & GRADE LEFT	REASON	DATE RE-ENTERED	SCHOOL & GRADE RE-ENTERED	REMARKS
6-78	LEMIRA-5	8-78		BATES-6	
1-80	BATES-7	1-80		MANCHESTER-7	
1-81	MANCHESTER-8		1-81	BATES-8	

VI. ELEMENTARY SCHOOL RECORD												VII. SECONDARY SCHOOL RECORD																																																																																																																																																								
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th>GRADE:</th> <th>YEAR IN</th> <th>READING</th> <th>WRITING</th> <th>ARITHMETIC</th> <th>SPELLING</th> <th>LANGUAGE</th> <th>SCIENCE</th> <th>GEOGRAPHY</th> <th>HISTORY</th> <th>SOCIAL STUDIES</th> <th>MUSIC</th> <th>ART</th> </tr> <tr> <td>6</td> <td>74</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>7</td> <td>79</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>8</td> <td>80</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>9</td> <td>81</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>10</td> <td>82</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>11</td> <td>83</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>12</td> <td>84</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>												GRADE:	YEAR IN	READING	WRITING	ARITHMETIC	SPELLING	LANGUAGE	SCIENCE	GEOGRAPHY	HISTORY	SOCIAL STUDIES	MUSIC	ART	6	74												7	79												8	80												9	81												10	82												11	83												12	84												<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th>YEAR:</th> <th>GRADE:</th> <th>WKS. IN SCH. YR.</th> <th>HRS. PER WK.</th> <th>MARK</th> <th>UNITS</th> <th>WKS. IN SCH. YR.</th> <th>HRS. PER WK.</th> <th>MARK</th> <th>UNITS</th> <th>WKS. IN SCH. YR.</th> <th>HRS. PER WK.</th> <th>MARK</th> <th>UNITS</th> <th>WKS. IN SCH. YR.</th> <th>HRS. PER WK.</th> <th>MARK</th> <th>UNITS</th> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>												YEAR:	GRADE:	WKS. IN SCH. YR.	HRS. PER WK.	MARK	UNITS	WKS. IN SCH. YR.	HRS. PER WK.	MARK	UNITS	WKS. IN SCH. YR.	HRS. PER WK.	MARK	UNITS	WKS. IN SCH. YR.	HRS. PER WK.	MARK	UNITS																			
GRADE:	YEAR IN	READING	WRITING	ARITHMETIC	SPELLING	LANGUAGE	SCIENCE	GEOGRAPHY	HISTORY	SOCIAL STUDIES	MUSIC	ART																																																																																																																																																								
6	74																																																																																																																																																																			
7	79																																																																																																																																																																			
8	80																																																																																																																																																																			
9	81																																																																																																																																																																			
10	82																																																																																																																																																																			
11	83																																																																																																																																																																			
12	84																																																																																																																																																																			
YEAR:	GRADE:	WKS. IN SCH. YR.	HRS. PER WK.	MARK	UNITS	WKS. IN SCH. YR.	HRS. PER WK.	MARK	UNITS	WKS. IN SCH. YR.	HRS. PER WK.	MARK	UNITS	WKS. IN SCH. YR.	HRS. PER WK.	MARK	UNITS																																																																																																																																																			

VIII. STANDARDIZED TEST RECORD												IX. GRADUATION DATA											
DATE	GRADE	FORM	INTELLIGENCE TESTS	C. A.	M. A.	I. Q.	GRADUATION DATE	RANK IN CLASS	NAME OR SIGNATURE OF PRINCIPAL	COURSE COMPLETED													

X. HEALTH RECORD (check — give year if possible)											

PERMANENT RECORD CARD

MIDDLE SCHOOL

Last Name Stone First Bobby Middle Wayne BOY ☒ GIRL ☐ ADDRESS 711 R.
(use pencil)
ENTERED FROM Lemira GRADE 6 DATE 8/28/78 D.O.B. 9/19/65
PARENT OR GUARDIAN Mr. and Mrs. Bobby A. Stone TEL. NO. _____
(use pencil)

Gr. <u>6</u> Home Room Teacher <u>R. Guest</u> Section <u>5</u> 19 <u>78</u> 19 <u>79</u> Date Entered <u>8/28/78</u>						Gr. _____ Home Room Teacher _____ Section _____ 19____ 19____ Date Entered _____					
Subject	Level	Teacher	I	Grades II	Av.	Subject	Level	Teacher	I	Grades II	Av.
Reading	Res.	Edmonds	D	F	D	English					
Writing						Mathematics					
Arithmetic	R	Golden	D	D	D	Science					
Spelling						Social Studies					
Language	R	Bowen	F	F	F	P.E.					
Social Studies	R	Guest	F	F	F	Home Ec. Shop					
Science	R	Marsh	F	F	F	Personal Typing					
P.E./Health		Kinney	D								
PE/Health		Kinney		B	B						
Days Belonging			90	90	180	Days Belonging					
Days Absent			2	4	6	Days Absent					
Times Tardy			0	0	0	Times Tardy					

Promoted To <u>PLACED 7</u> Retained In _____						Promoted To _____ Retained In _____					
Gr. <u>7</u> Home Room Teacher _____ Section <u>7-6</u> 19 <u>79</u> 19 <u>80</u> Date Entered <u>AUG 29 '79</u>						Gr. _____ Home Room Teacher _____ Section _____ 19____ 19____ Date Entered _____					
Subject	Level	Teacher	I	Grades II	Av.	Subject	Level	Teacher	I	Grades II	Av.
English	B/LD	DAVIS	D			English					
Mathematics	B	TOLBERT	F			Mathematics					
Science		MUNNAY	F			Science					
Social Studies		OLSON	D			Social Studies					
P.E./HEALTH		KINNEY	C			P.E.					
Art						Home Ec. Shop					
Music						Personal Typing					
	B	THOMAS	C								
Days Belonging			90			Days Belonging					
Days Absent			4			Days Absent					
Times Tardy						Times Tardy					

Promoted To _____ Retained In _____

Grading System - A - Excellent; B - Good; C - Average; D - Poor; F - No Credit

Photograph

COUNTY SUTTER

DIST 17 SCHOOL 022

INDIVIDUAL TEST RECORD

S2

COMPREHENSIVE TESTS OF BASIC SKILLS
EXPANDED EDITIONCTBS
RE 104701NAME ▶ JAMES L.A.
SCHOOL ▶ BATES MIDDLE
CITY ▶TEACHER ▶ L. J. S. J. S.
GRADE ▶ 5.1
DATE OF TESTING ▶ 4/7/79BATCH ▶ 10112
GROUP ▶ 101
RUN DATE ▶ 4/21/79

TEST	RS	SS	LP	NS	NATIONAL PERCENTILE
READING VOCABULARY	033	516	62	6	XXXXX
READING COMPREHENSION	038	507	75	6	XXXXX
TOTAL READING	071	532	69	6	XXX
SPELLING	049	623	93	8	XXXXXXXX
LANGUAGE MECHANICS	016	534	63	6	XXXXXXXX
LANGUAGE EXPRESSION	031	613	81	7	XXXXXXXX
TOTAL LANGUAGE	096	595	90	8	XXXX
MATHEMATICS COMPUTATION	038	464	51	5	XXXXX
MATHEMATICS CONCEPTS	018	484	56	5	XXXXXXXX
MATHEMATICS APPLICATIONS	020	505	61	6	XXXXXXXX
TOTAL MATHEMATICS	076	472	54	5	XXXX
TOTAL BATTERY	243	523	73	6	XX
REFERENCE SKILLS	012	464	35	4	XXXXXXXX
SCIENCE	026	563	76	7	XXXXXXXX
SOCIAL STUDIES	027	545	73	6	XXXXXXXX

STUDENT CODES = 001

1 2 5 10 20 30 40 50 60 70 80 90 95 98 99

READING VOCABULARY

TRANSLATION
RECALL OF SYNONYM
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 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40

LANGUAGE MECHANICS

RECOGNITION/APPLICATION
PUNCTUATION CAPITALIZATION
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20

LANGUAGE EXPRESSION

RECOGNITION/APPLICATION	TRANSLATION	INTERPRETATION	ANALYSIS
USAGE	DICTION	SYNTACTIC RELATION	ORGANIZATION
21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44	45 46 47 48 49 50 51 52 53 54 55		

READING COMPREHENSION

RECOGNITION/APPLICATION	TRANSLATION	INTERPRETATION	ANALYSIS
LITERAL RECALL	REWORDING	CONTEXT CLUES	MAIN IDEA
6 13 16 21 22 26 33 34	8 20 23 36 41 45	7 9 14 15 28	2 12 24 38 44
19 30 32 39	1 10 11 17 31 37 42 43	3 4 5 18 25 27 29 35 40	

SPELLING

RECOGNITION/APPLICATION	TRANSLATION
RECALL OF RULE	CONTEXT CLUES
1 2 3 4 5 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 39 40 41 44 45 46 50	6 31 38 42 43 47 48 49

MATHEMATICS COMPUTATION

APPLICATION
ADDITION SUBTRACTION MULTIPLICATION DIVISION
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 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48

MATHEMATICS CONCEPTS

RECOGNITION	INTERPRETATION/ANALYSIS		
ALPHABET	NUMBER SYSTEMS	MEASUREMENT	PROBLEM SOLVING
10 13 14 15	1 2 6 7 8 9 16 22	11 12 19 20	3 4 5 17 18 21 23 24
+ + - +	+ + + + - + + +	+ - - -	+ - + + + + + +

MATHEMATICS APPLICATIONS

INTERPRETATION	ANALYSIS
NUMBER SYSTEMS	MEASUREMENT
27 28 29 30 31 33 34 38 41 43	26 32 35 36 37 39 42 45 47 48 49 40 44 46 50

REFERENCE SKILLS

RECOGNITION/APPLICATION												
PARTS OF A BOOK	DICTIONARY SKILLS						LIBRARY USE					
14 15 16 17	6	7	8	9	10	18 19 20	1	2	3	4	5	11 12 13
+	+	+	+	+	+	+	+	+	+	+	+	+

SCIENCE

RECOGNITION		CLASSIFICATION		QUANTIFICATION		INTERPRETATION OF DATA		PREDICTION FROM DATA		HYP. EVAL. & DESIGN ANAL.																											
26	27	28	29	30	31	5	6	7	8	9	10	22	1	2	3	12	19	32	11	13	14	23	34	35	15	16	17	18	20	24	25	4	21	35	33		
+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+

SOCIAL STUDIES

RECOGNITION	TRANSLATION	INTERPRETATION	APPLICATION	ANALYSIS
13 18 22 23 24 26 27 28 29 30 31 33 35	4 6 7 8 19 20 21	1 9 10 17 34	3 11 14 16 25 27 36 37	2 5 12 15

SC-1000-00000000 BY SC-0001-0001

LEGEND

RS
SS
LP
NS
A SCORE
GRADE EQUIVALENT
SCALE SCORE
NATIONAL PERCENTILE RANKAAGE
AASS
DIFF
LPANTICIPATED ACHIEVEMENT GRADE EQUIVALENT
ANTICIPATED ACHIEVEMENT SCALE SCORE
DIFFERENCE BETWEEN OBTAINED AND ANTICIPATED SCORE WHEN SIGNIFICANT
LOCAL PERCENTILE RANK

CONDITIONAL CERTIFICATE OF IMMUNIZATION

This certificate permits

(First Middle Last) Date of Birth
to be enrolled in a school in South Carolina on a temporary basis under one of the following conditions (check one box below):

- ☐ Child has received one or more immunizations and will complete them within 120 days.
- ☐ Transfer student admitted pending receipt of immunization records.
- ☐ Child has health problem. Immunizations will be resumed and/or completed within 120 days.
(Check (✓) one)

P.H.M.D. ☐ Priv. M.D. ☐ Mil. M.D. ☐

Authorized Medical Signature Date

For conditional certificate, dates of immunizations must be entered.

IMMUNIZATION & TUBERCULIN TEST RECORD

DTP							
Td							
TETANUS							
POLIO							
MEASLES							
RUBELLA							
TB TEST							

CERTIFICATE OF IMMUNIZATION South Carolina Department of Health and Environmental Control

Bobby Wayne Stone
Child's Full Name

9-19-66
Date of Birth

Maybelle Stone
Full Name of Parent or Guardian

I certify that the child named above meets minimum immunization standards and is in compliance with regulations set forth by the South Carolina Department of Health and Environmental Control as listed within this certificate.

S. R. Stein, M.D.
Authorized Medical Signature

Parents: After school registration, keep this form with your child's health records.

8-26-77
Date

DHEC 1125 80M (Rev. 5/75)

I. NAME (PRINT) Sto Bobby Wayne
 LAST FIRST MIDDLE

SEX M BIRTH 9 19 65 Florence
 MONTH DAY YEAR TOWN STA

RACE W AUTHORITY FOR BIRTH DATA 139-65 037899

RECORD STARTED: DATE 4/27/77 SCHOOL Eastern GRADE 4

CUMULATIVE RECORD
 SUMTER COUNTY SCHOOL DISTRICT NUMBER TWO
 SUMTER, SOUTH CAROLINA

XIX. TRANSCRIPTS		
DATE	TO WHOM SENT	REASON
9-14-77	Lemira School	Transferred
Transferred to Lemira - Sumter Dist. 17		

XX. OTHER SIGNIFICANT DATA

NAME (PRINT) **STONE, BOBBY WAYNE** SEX **M** MONTH **9** DAY **19** YEAR **65** TOWN **S** STATE **S**

RECORD STARTED: DATE **3/80** SCHOOL **Manchester 7** GRADE **7** RACE **W** AUTHORITY FOR BIRTH DATA: **Birth cert # 139-65**

NO READING CALED

PHONE

CUMULATIVE RECORD
SUMTER COUNTY SCHOOL DISTRICT NUMBER TWO
SUMTER, SOUTH CAROLINA

XIX.		TRANSCRIPTS	
DATE	TO WHOM SENT	REASON	
4-7-81	BATES MIDDLE SCHOOL	MOVED	
Transferred to Bates - Sumter Dist. 17			

NAME	CTBS	FORM/LEVEL	S2 GE	VOCAB	READING			MECH	LANGUAGE			ARITHMETIC/MATHEMATICS				TOTAL BATTERY	REFR	SCIES.S.
					COMPR	TOTAL	EXPR		SPELL	TOTAL	COMPU	CONCEPTS	APPLI	TOTAL				
STONE BOBBY				3.6	4.0	3.8	2.7	5.0	2.3	3.2	3.9	6.6	2.6	4.1	3.7	3.3		
765E-003-004				373	417	386	380	477	350	385	371	469	317	376	356	373		
				7	17	10	10	30	4	9	8	37	3	10	8	9		

Child's name Bobby Wayne Stone

Date of Birth September 19, 1965

Birth Certificate OK

Place of birth Florence

Father's name Bobby Q. Stone

Father's occupation Union Iron Co.

Father's education _____

Father's place of birth _____

Mother's name Maybelle Lloyd Stone

Mother's occupation _____

Mother's education _____

Mother's place of birth _____

Home address Poston, S.C.

Telephone number _____

(W.H. Newby)

With whom does the child reside? Parents

Family doctor Dr. Fowler

Will your child ride a bus? Yes

Number of brothers and sisters 2 sisters 1 brother

Grade 1

No kindergarten

I. NAME (LAST) (FIRST) (MIDDLE) MALE ☒ DATE OF BIRTH YR. MO. DAY PLACE OF BIRTH TOWN STATE NATIONALITY
FEMALE ☐ CODE

DATE	LOCAL ADDRESS*	PHONE*	DATE OF ATTENDANCE*	NAME OF SCHOOL*	DATE	SCHOOL AND GRADE LEFT	REASON	DATE RE-ENTERED	SCHOOL AND GRADE RE-ENTERED
7-73	Boston, 3.2		8-30-71	Johnsonville	1-13-72	Johnsonville, N.Y.	Transferred		

III. FAMILY DATA	MOTHER	FATHER	II. DROP-OUT AND RE-ENTRY RECORD	IV. PHOTOGRAPH
NAME OF PARENTS			CODE FOR REASONS FOR LEAVING SCHOOL	 1971-72
HOME ADDRESS*			TR—TRANSFERRED EP—EMPLOYMENT PERMIT D—DEAD	
NATIONAL DESCENT			PI—PERMANENT ILLNESS OA—OVER LEGAL AGE M—MARRIED	
DATE NATURALIZED			DATE AND GRADE RECORD STARTED 8-30-71	
LANGUAGE IN HOME			NUMBER CHILDREN IN FAMILY: 4	
OCCUPATION*			BOYS* 2 GIRLS* 2	
EDUCATION*			REMARKS REGARDING HOME CONDITIONS:	
MARITAL STATUS*			DATE	DATE 1-19-71
DECEASED				AGE 6
WITH WHOM DOES CHILD RESIDE*				GRADE 1

V. ELEMENTARY SCHOOL RECORD										VI. SECONDARY SCHOOL RECORD										
YEAR	7TH GRADE		8TH GRADE		9TH GRADE		10TH GRADE		11TH GRADE		12TH GRADE		13TH GRADE		14TH GRADE		15TH GRADE		16TH GRADE	
SUBJECTS	KDG.	1ST GRADE	2ND GRADE	3RD GRADE	4TH GRADE	5TH GRADE	6TH GRADE	7TH GRADE	8TH GRADE	9TH GRADE	10TH GRADE	11TH GRADE	12TH GRADE	13TH GRADE	14TH GRADE	15TH GRADE	16TH GRADE	17TH GRADE	18TH GRADE	
ARITHMETIC																				
READING																				
LANGUAGE GRAMMAR																				
HANDWRITING																				
SPELLING																				
S.S.																				
GENERAL SCIENCE																				
AGRICULTURE																				
PHYSIOLOGY																				
HYGIENE																				
HOUSEHOLD ARTS																				
INDUSTRIAL ARTS																				
ART																				
MUSIC																				
DAYS PRESENT	75 83 87 80																			
DAYS ABSENT	6 7 3 5																			
TIMES TARDY																				
REMARKS																				
VII.																				

YEAR	XIV.

SOUTH CAROLINA CUMULATIVE SCHOOL HEALTH RECORD

NAME OF PUPIL (Last, First, Middle) <i>Stone, Bobby Wayne</i>		Birth: Year <i>1965</i> Month <i>9</i> Day <i>19</i>
SCHOOL (In Pencil) <i>Jacksonville</i>		Birth Certificate Checked by: _____ Date _____
NAME OF PARENT - GUARDIAN <i>Bobby + Maybelle Stone</i>		Sex <i>M</i> Race <i>W</i>
HOME ADDRESS (In Pencil) <i>Paston</i>		PHONE (In Pencil) _____
BUSINESS ADDRESS (In Pencil) _____		PHONE (In Pencil) _____
FAMILY PHYSICIAN (In Pencil) <i>Dr. Fowler</i>		DENTIST (In Pencil) _____

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

COMMENTS (By Whom - Date)

Headache (Frequent)		Rheumatic Fever		Diabetes	
Sore Throat (Frequent)		Heart Trouble		Convulsions	
Ear Infections (Frequent)		Asthma-Allergy		Muscle or Bone Weakness	
Other Illnesses, Injuries or Operations:					

SCREENING PROCEDURES

COMMENTS - FOLLOW-UP (By Whom - Date)

GRADE	Pre-School	1	2	3	4	5	6	7	8	9	10	11	12
DATE (Year)		<i>7/72</i>	<i>7/73</i>										
Height	Fall	<i>5'3"</i>	<i>5'2"</i>										
In Inches	Spring	<i>41</i>	<i>43</i>										
Weight	Fall	<i>145</i>	<i>144</i>										
In Lbs.	Spring	<i>142</i>	<i>142</i>										
Vision	Both Eyes	<i>20/20</i>											
Without	R	<i>20/20</i>	<i>20/20</i>										
Glasses	L	<i>20/20</i>	<i>20/20</i>										
Vision	Both Eyes												
With	R												
Glasses	L												
Type of Test		<i>7/72</i>	<i>5</i>										
Person Giving Test (Give Initials)		<i>Bb</i>	<i>Bb</i>										
Hearing	R	<i>✓</i>	<i>✓</i>										
	L	<i>✓</i>	<i>✓</i>										
Ty Test		<i>2</i>	<i>2</i>										
Person Giving Test (Give Initials)		<i>Bb</i>	<i>Bb</i>										

TEACHERS' OBSERVATIONS (Code: X-Condition Observed; C-Condition Corrected)

COMMENTS - FOLLOW-UP (By Whom - Date)

GRADE	Pre-School	1	2	3	4	5	6	7	8	9	10	11	12
DATE													
Abnormal Gait													
Poor Posture													
Skin Lesions													
Tires Easily													
Poor Food Habits													
Frequent Headaches													
Inflamed Eyes													
Squinting-Crossed Eyes													
Reads Too Close-Too Far													
Frequent Inattention													
Hearing Difficulties													
Mouth-Teeth													
Frequent Colds													
Frequent Sore Throat													
Marked Aggressiveness													
Undue Shyness													
Speech Defect													
Tics or Mannerisms													
Nail Biting													
Undue Restlessness													
Excessive Use of Toilet (Other)													

INDIVIDUAL PUPIL PROGRESS SHEETS

NAME Bobby Stone

First Reader Level	Date	Reader Page Completed	Workbook Page Completed
<u>SCOTT FORESMAN SERIES</u>			
We Read Pictures			
We Read More Pictures			
Before We Read	10-27-73		✓
Sally Dick and Jane	3-3-73	✓	
Fun With Our Family	3-8-73	✓	
Fun Wherever We Are	3-12-73	✓	
Guess Who			
Fun With Our Friends			
More Fun With Our Friends			
The New We Three			
<u>ECONOMY COMPANY</u>			
Phonetic Keys To Reading			
Tag	1-10-73		96
Dot and Jim	5-15-73		96
All Around			
<u>HOUGHTON MIFFLIN SERIES</u>			
Getting Ready To Read			
Tip			
Tip and Mitten			
The Big Show			
Jack and Janet			
Up and Away			
Listen and Learn			
Listen and Do			
Starting concept cards	2-23-73	✓	✓
Ready to Read	4-12-73	93	104
Reading Along	5-23-73	82	70

SIXTIES EDITION
BASIC READING TEST

to accompany

BEFORE WE READ

Marion Monroe Helen M. Robinson

The New Basic Readers

CURRICULUM FOUNDATION SERIES®

**SCOTT, FORESMAN
 AND COMPANY**

ATLANTA
 DALLAS
 GLENVIEW
 PALO ALTO
 OAKLAND, N.J.

NAME Bobby Stone
 SCHOOL Johnsonville GRADE 1
 TEACHER Bactus

DATE OF TEST 11-8-72
 DATE OF BIRTH 9-19-65
 AGE: YEARS 7 MONTHS 2

INTELLIGENCE TEST _____ DATE GIVEN _____ I.Q. _____

COMMENTS _____

SUBTEST	POINTS
I. Sentence Meaning	<u>14</u>
II. Sensory Images	<u>14</u>
III. Motives	<u>8</u>
IV. Relationships	<u>11</u>
V. Visual Perception	<u>16</u>
VI. Auditory Perception	<u>18</u>
Total Points (or per cent correct)	<u>81</u>
Percentile	_____
Rating <u>Low</u>	_____

Individual Profile

SENTENCE MEANING	SENSORY IMAGES	MOTIVES	RELATIONSHIPS	VISUAL PERCEPTION	AUDITORY PERCEPTION
(14)	(14)	14	15	24	19
			14	23	
			13	22	
12	12	12	12	21	(18)
			(11)	20	17
10	10	10	10	19	16
			9	18	15
8	8	(8)	8	17	14
			7	(16)	13
6	6	6	6	12-15	10-12
0-4	0-4	0-4	0-5	0-11	0-9

Percentiles shown are based on 1967 and 1968 scores.

TOTAL POINTS	0-69	71	76	80	82	84	85	86	88	89	90	91		92	93	94	95		96	98-100
PERCENTILE	1-4	5	10	15	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	95-99
RATING	VERY LOW			LOW			AVERAGE									HIGH			VERY HIGH	

MEDIAN 90

COPYRIGHT© 1963 BY SCOTT, FORESMAN AND COMPANY
 Printed in the United States of America. International Rights Reserved.

Metropolitan Readiness Tests

FORM

A

by GERTRUDE H. HILDRETH, NELLIE L. GRIFFITHS, MARY E. MCGAUVAN

NAME Bobby Stone BOY ☒ GIRL ☐ DATE OF TESTING 1971 10 4
Year Month Day
 TEACHER Rowlin SCHOOL J. C. M. DATE OF BIRTH 65 9 19
Year Month Day
 CITY Plumville COUNTY Gloucester STATE D.C. PUPIL'S AGE Yrs 6 Mos. 1
 GRADE 1- NUMBER OF MONTHS KINDERGARTEN TRAINING

TEST	RAW SCORE
1. WORD MEANING	3
2. LISTENING	8
3. MATCHING	4
4. ALPHABET	3
5. NUMBERS	8
6. COPYING	2
Total Score, Tests 1-6	28
Percentile Rank	10
Letter Rating	D

Readiness status, recommendation, other scores, remarks:

79- I.Q.



Metropolitan Readiness Tests

FORM
A

by GERTRUDE H. HILDRETH, NELLIE L. GRIFFITHS, MARY E. MCGAUVAN

NAME Bobby Stone BOY ☒ GIRL ☐ DATE OF TESTING 72 9 20
Year Month Day

TEACHER P. Tanner SCHOOL Johnsonville DATE OF BIRTH
Year Month Day

CITY Johnsonville COUNTY Florence STATE S.C. PUPIL'S AGE Yrs Mos.

GRADE 1 NUMBER OF MONTHS KINDERGARTEN TRAINING

TEST	RAW SCORE
1. WORD MEANING	<u>4</u>
2. LISTENING	<u>12</u>
3. MATCHING	<u>8</u>
4. ALPHABET	<u>15</u>
5. NUMBERS	<u>14</u>
6. COPYING	<u>6</u>
Total Score, Tests 1-6	<u>59</u>
Percentile Rank	<u>59</u>
Letter Rating	<u>C</u>

Readiness status, recommendation, other scores, remarks:



NAME Bobby Stone DATE OF BIRTH 9-9-65
 SCHOOL Jacksonville E.
 I.O. _____ TEST _____ DATE _____

INDIVIDUAL CUMULATIVE RECORD

Scott, Foresman Reading Tests

SCOTT, FORESMAN AND COMPANY Atlanta, Dallas, Glenview, Philadelphia and Chicago, N.J.

OPEN HIGHWAYS TESTS/GRADES 1-4

STARTER CONCEPT CARD

Subtests	Scores
I. Scrutiny	10
II. Ph.-Gr. Relationships	28
III. Concepts	8
Total	46
Percentile	65 Ave.

DATE TESTED 2-1-73

AGE 1-B
GRADE

READY TO ROLL

Subtests	Scores
I. Scrutiny	10
II. Ph.-Gr. Relationships	12
III. Concepts	10
IV. Comprehension	2
Total	34
Percentile	38 Ave.

DATE TESTED 4-15-73

AGE 1-B
GRADE

ROLLING ALONG

Subtests	Scores
I. Scrutiny	
II. Ph.-Gr. Relationships	
III. Concepts	
IV. Comprehension	
Total	
Percentile	

DATE TESTED

AGE
GRADE

MORE POWER

Subtests	Scores
I. Ph.-Gr. Relationships	
II. Word Study	
III. Comprehension	
IV. Pre-Dictionary Skills	
Total	
Percentile	

DATE TESTED

AGE
GRADE

MOVING AHEAD

Subtests	Scores
I. Ph.-Gr. Relationships	
II. Word Study	
III. Comprehension	
IV. Pre-Dictionary Skills	
Total	
Percentile	

DATE TESTED

AGE
GRADE

SPLendid JOURNEY

Subtests	Scores
I. Ph.-Gr. Relationships	
II. Word Study	
III. Comprehension	
IV. Pre-Dictionary Skills	
Total	
Percentile	

DATE TESTED

AGE
GRADE

SPEEDING AWAY

Subtests	Scores
I. Ph.-Gr. Relationships	
II. Word Study	
III. Comprehension	
IV. Pre-Dictionary Skills	
Total	
Percentile	

DATE TESTED

AGE
GRADE

OPEN HIGHWAYS, 4

Subtests	Scores
I. Word and Phrase Meaning	
II. Sentence and Paragraph Meaning	
III. Main Idea	
IV. Relationships	
V. Scrutiny-Context	
VI. Phonetic Analysis	
VII. Structural Analysis	
VIII. Dictionary	
Total	
Percentile	

DATE TESTED

AGE
GRADE

NOTE:

Scores at or below the 25th percentile can be circled in color.

STARTER CONCEPT CARDS

reading test

OPEN HIGHWAYS

a diagnostic and developmental reading program

Bobby Stone

NAME

DATE OF TEST

2-1-73

DATE OF BIRTH

SCHOOL

Johnsonville Elem.

GRADE

AGE

YEARS

MONTHS

TEACHER

Backus

COMMENTS

Subtest	points	Individual profile									
I. Scrutiny	<i>10</i>	0-1	2	3	4	5	6	7	8	9	<i>(10)</i>
II. Phonemic-Graphemic Relationship	<i>28</i>	0-3	6	9	12	15	18	21	24	<i>27</i>	<i>30</i>
III. Concepts	<i>8</i>	0-1	2	3	4	5	6	7	<i>(8)</i>	9	10
total	<i>46</i>	<i>average</i>									

Percentile — 65

Unstandardized Edition

COPYRIGHT © 1967 BY SCOTT, FORESMAN AND COMPANY, Glenview, Illinois 60025. All Rights Reserved. Printed in the United States of America. Regional offices of Scott, Foresman and Company are located in Atlanta, Dallas, Glenview, Palo Alto and Oakland, N.J.

READY TO ROLL

reading test

Marlon Monroe/Helen M. Robinson

OPEN HIGHWAYS

a diagnostic and developmental reading program

NAME <i>Stone, Bobby</i>		DATE OF TEST <i>April 12, 1973</i>	
DATE OF BIRTH		SCHOOL <i>Johnsonville</i>	GRADE <i>1-B</i>
AGE	YEARS	MONTHS	TEACHER <i>Mrs. Backus</i>

subtest	scores	individual profile
I. Scrutiny	<i>10</i>	0-1 2 3 4 5 6 7 8 9 <i>10</i>
II. Phoneme-Grapheme-Relationships	<i>12</i>	0-2 3 4 5 6 7 8 9 10 11 <i>12</i> 13 14 15 16 17 18 19 20
III. Concepts	<i>10</i>	0-1 2 3 4 5 6 7 8 9 <i>10</i>
IV. Comprehension	<i>2</i>	0-1 <i>2</i> 3 4 5 6 7 8 9 10
total	<i>34</i>	(Scores to the left of the dotted line are at or below the 25th percentile.)
percentile	<i>30</i>	
rating	<i>average</i>	

total	0-21	22	26	29	31	33	35	37	38	40	41	42	43	44	45	46	47	48	49	50
percentile	0-4	5	10	15	20	25	30	35	40	45	50	55	60	65	70	80	85	95	97	98-99
rating	very low		low			average										high		very high		
median 41																				

median 41

Standardized Edition

COPYRIGHT 1969 BY SCOTT, FORESMAN AND COMPANY, Glenview, Illinois 60025. Philippines Copyright 1969 by Scott, Foresman and Company. All Rights Reserved. Printed in the United States of America. Regional offices of Scott, Foresman and Company are located in Atlanta, Dallas, Glenview, Palo Alto, Oakland, N.J., and London, England.

CONFIDENTIAL
For Professional Use Only

SUMMARY OF RESULTS PSYCHOLOGICAL EVALUATION

Name: Bobby Stone Dob: 9-19-65 Age: 9.5
School: Lemira Elem. Grade: 3
Test Date(s): WISC 2-18-75 SIT 12-12-74 PPVT 12-12-74 ITPA 12-20-74
Referring Teacher(s): C. Rogers
1. WISC Verbal I.Q. 97 Performance I.Q. 76 Full Scale I.Q. 86

PRORATED

Scaled Scores

Verbal Tests

Information	_____
Comprehension	_____
Arithmetic	_____
Similarities	<u>12</u>
Vocabulary	<u>11</u>
Digit Span	<u>6</u>

Performance Tests

Picture Completion	<u>6</u>
Picture Arrangement	_____
Block Design	<u>7</u>
Object Assembly	_____
Coding	_____
Mazes	_____

WISC profile already on record no

Bobby attained a verbal IQ of 97, performance IQ of 76, and a full scale IQ of 86. Test results reveal a good capacity for concept formation and for abstract reasoning at the verbal level along with good word knowledge and expressive vocabulary. Weaknesses are in visual perception, visual memory and alertness to details, and in rote and immediate memory. Wide variance in scores indicate deficits in sequencing and spatial abilities at the performance level.

2. Slason Intelligence Test
CA 9.3 MA 8.2 IQ 88

3. Peabody Picture Vocabulary Test From A
Raw score 63 MA 7.6 IQ 86

4. Illinois Test Of Psycholinguistic Abilities
Mean SS 32.4 AR 26 VR 39 VM 39 AA 34 AM 30 VA 23 VC 33 VE 28
GC 36 ME 36 AC 30 SB 43 (over)

Recommendation:

L.D. Resource

Russell J. Trader
Russell J. Trader, Ph.D.
School Psychologist

4. ITPA

Bobby cooperated well during the testing and seemed to enjoy most of it. The examiner noticed that his eyes did not seem to work together properly. Bobby's scores indicate an erratic pattern of strengths and weaknesses. He seems strongest in the visual areas except for visual association.

CONFIDENTIAL

For Professional Use Only
PSYCHOLOGICAL REPORT

Student's Name Bobby Stone Date October 12, 1976
Birthdate September 19, 1965 Age 11.1 Sex male
School Lemira Elementary Teacher Bivens Grade 4
Reason(s) for Referral: Re-evaluation

Behavioral Observations:

Bobby was friendly, pleasant and cooperative. Although he put forth good effort, his attitude was one of indifference.

Test Interpretations and Educational Implications: (Use back, if necessary.)

Bobby attained a Verbal I.Q. of 90, Performance I.Q. of 70, yielding a Full Scale I.Q. of 78. This would indicate major problems in visual-motor coordination and integration.

His strength is in arithmetic reasoning and facility with numbers, and ability to recall auditory information in proper sequence and detail.

Make extensive use of visual tracking exercises. These may be timed as progress is made. Use Dubnoff perceptual-motor writing exercises. Make use of jigsaw puzzles, crossword puzzles, scrabble and analogy games. Cut up words and sentences that can be arranged to make logical sentences.

Apply the use of meaningful practice and drill, emphasize copy work from the blackboard and books, and use rote drills whenever possible.

CONFIDENTIAL

For Professional Use Only

Test Results:1. Intelligence Test WISC-R Date 10-12-76

(a) Raw score _____ Mental Age _____ I.Q. Score _____

(b) Verbal I.Q. 90 Performance I.Q. 70 Full Scale I.Q. 78Verbal Tests

Information	<u>8</u>
Similarities	<u>6</u>
Arithmetic	<u>11</u>
Vocabulary	<u>8</u>
Comprehension	_____
(Digit Span)	<u>9</u>

Performance Tests

Picture Completion	<u>6</u>
Picture Arrangement	<u>8</u>
Block Design	<u>5</u>
Object Assembly	<u>4</u>
Coding	<u>4</u>
(Mazes)	_____

2. Test Peabody Picture Vocabulary Test Date 10-12-7674 Raw Score 9.6 Mental Age 90 Other, specify IQThis test results indicate low average psychological functioning.3. Test Bender-Gestalt Date 10-12-766 Raw Score 6 Yr. Lev. Mental Age _____ Other, specify _____This test results indicate low psychological functioning.4. Achievement Test Wide Range Achievement Test Date 4-26-76Grade levels: 2.5 Reading 2.5 Arithmetic _____ Spelling _____

Percentile: _____

5. Adaptive Behavior Scale _____

Date _____

Raw Score _____ Mental Age _____ Social Age _____

This test results indicate _____

If supplementary testing is needed, use back of page to record results. (over)

Recommendations:

Test data indicates that Bobby is functioning overall in the borderline range of intelligence, with substantial deficits in the performance area. He will need concentrated help to remediate these visual-motor problems. He should work with the L.D. resource teacher on a regular basis and coordinate specific exercises into regular classroom activities and instruction.




Evaluator

(circle level) (EE) Psy. 1, 2, 3

6. Draw-A-Man 10-28-76

Total Points 9 CA 11.1 MA 5.3 IQ 48

Very low psychological functioning.

7. WISC-R 10-12-76

On the WISC his average score in Auditory/Language is 7, Visual is 4, Haptic/Sensory Motor is 4. Based on his low performance in the Haptic/Sensory Motor area and the Bender-Gestalt and Draw-A-Man, it appears that his primary dysfunction is in the Haptic/Sensory Motor area.

PSYCHOLOGICAL REPORT

CONFIDENTIAL

For Professional Use Only

Student's Name Bobby Stone Date 791101
Birthdate 650919 Age 14-1 Sex Male
School Bates Middle Teacher Davis Grade 7th

Reason for Referral: Re-evaluation for continued LD-Resource placement.

Behavior Observation: Bobby was cooperative. He appeared to be putting forth good effort.

Bobby is very small for his age, several inches below five feet. A brief, informal motor screening did not indicate any major coordination problems.

Test Results: The WISC-R indicates Verbal Skills range between 73 and 81, Performance between 66 and 76, and Full Scale between 69 and 75. This should reflect Bobby's functioning two-thirds of the time.

All Verbal skills were below the normal range, except Arithmetic (8) and Comprehension (8). Vocabulary (4) was the weakest Verbal area.

All Performance skills were below the normal range, except Picture Arrangement (9) and Object Assembly (8). Coding (2) and Block Design (3) were the lowest test areas.

The PPVT indicated receptive vocabulary was at the 9th percentile, in the slow learner range of functioning.

The Bender, with 4 errors, was below the 5th percentile, at a quality level expected of the average 8-5 year old.

The WRAT indicated achievement for Math was at the 3.6 grade level and 2nd percentile, Reading at 4.2 and 4th percentile, and Spelling at 2.9 and 1st percentile. Standard Scores were 70, 73, and 66, respectively.

The AAMD indicated adaptive functioning generally below the normal range. Only Numbers and Time, Vocational Activity and Responsibility were in the normal range. Independent Functioning (IQ equivalent = 56) and Economic Activity (IQ equivalent = 59) were the lowest areas.

Educational Implications: At this time Bobby is functioning overall in the EMH range. His verbal scores have dropped considerably, from the normal range to slow learner. Vocabulary and Digit Span measures fell 4 scaled scores. Achievement is at or below expected levels.

Activities to develop Vocabulary skills could include improving concepts (up-down, first-last), word games, completing story begun by teacher, describing in detail an object and explaining a game.

Activities to develop Block Design skills could include sorting by category, copying designs, copying cutting and folding exercises, figure-ground reproducing designs from memory and model kits.

Activities to develop Coding skills could include copying symbols from memory, tracing geometric shapes, timed activities, identifying a letter traced on palm (eyes closed) and deciphering.

Recommendations:

1. At this time Bobby no longer qualifies for LD-Resource. He does qualify for EMH-Resource and a change of placement is necessary.

Eleanor Morris
Psychologist I

Robert Evans
Psychologist II

CERTIFICATE OF

Birchwood High School

COLUMBIA, SOUTH CAROLINA

This Certifies That

BOBBY STONE

has been a student in our Training Course in

AUTO MECHANICS

for a total of

66 HOURS

In Witness Hereof we have hereunto affixed our signatures and seal at Columbia,

South Carolina, this

2nd

day of

MARCH

1953

Charles J. Fulsberg
Chairman of the Board

Thomas D. Mockay
Instructor

J. Blaine Koller

South Carolina Department of Youth Services

SCHOOL: Birchwood High

NAME: Stone, Bobby

BIRTHDATE: 9-19-65

COMMITMENT DATES: 1. 10-6-82 TO: 3-4-83

2. _____ TO: _____

3. _____ TO: _____

4. _____ TO: _____

Enrolled in Title I Classes:

Math Yes _____ No ☒

Reading Yes _____ No ☒

Enrolled in Special Education: Yes _____ No ☒

If yes, which category: EMH _____ EH _____ LD _____ SPEECH _____

35 - day enrollment: Yes ☒ No _____

COMMENTS: We recommend a vocational
program for Bobby.

S/ Sara Barefoot
Guidance Counselor

If further information is needed, please call 758-6422

SOUTH CAROLINA DEPARTMENT OF YOUTH SERVICES

School Scholarship Record

- ☒ Birchwood High School
- ☐ Willow Lane Junior High School

Student STONE, BOBBY WAYNE Race W Sex M DOB 9-19-65
 Last, First Middle Month/Day/Year

Home Address 409 Belk St. Sumter, S.C. 29150 Phone 775-7453
 Street or Box Number City County ZIP Code

Parents or Guardians Mae Bell Stone

Last School Attended Sumter High County Sumter Grade _____ Phone _____

Transcript Received: ✓ YES NO Date (Graduated, Passed GED) _____
 (Check one) (Circle one) Month Day Year

Commitment Date(s)	Withdrawal Date(s)	Transcript Sent To	Date
<u>10-6-82</u>	<u>3-4-83</u>	<u>Beac Johnson</u>	<u>3-7-83</u>

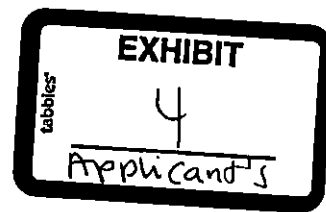
CURRICULUM CODE: I. Remedial Curriculum; II. Regular Curriculum; III. G.E.D. or college Preparatory Curriculum.

GRADING SCALE	NUMERICAL SCALE
A= Excellent	93-100
B= Commendable	87-92
C= Satisfactory	76-86
D= Needs Improvement	70-75
F= No Credit	69 and below
* = Enrolled less than 10 days	

School: <u>Birchwood</u>		Year: <u>82-83</u>		Grade: <u>10</u>		Curriculum: <u>7</u>		Counselor's Comments	
SUBJECT	TEACHERS	Hrs. per Week	1st	2nd	3rd	4th	5th	Final	F. D. CR
English I	<u>Wynne</u>	<u>5</u>	<u>✓</u>	<u>5</u>	<u>C</u>	<u>33</u>	<u>C</u>	<u>23</u>	<u>C</u> <u>61</u>
Math II	<u>Bando</u>	<u>5</u>	<u>✓</u>	<u>6</u>	<u>C</u>	<u>35</u>	<u>C</u>	<u>23</u>	<u>C</u> <u>64</u>
Economics	<u>Jelger</u>	<u>5</u>	<u>✓</u>	<u>8</u>	<u>B</u>	<u>34</u>	<u>C</u>	<u>24</u>	<u>B</u> <u>66</u>
Gen. Science	<u>Hypatrick</u>	<u>5</u>	<u>✓</u>	<u>5</u>	<u>C</u>	<u>31</u>	<u>C</u>	<u>23</u>	<u>C</u> <u>59</u>
Auto Mech.	<u>Mackey</u>	<u>10</u>	<u>✓</u>	<u>6</u>	<u>C</u>	<u>31</u>	<u>C</u>	<u>23</u>	<u>C</u> <u>60</u> <u>1/2</u>

TOTAL CREDITS FOR YEAR 1/2

Alicia V. Hall, PhD



OFFICE ADDRESS

Clinical Services
SCDDSN
Post Office Box 4706
Columbia, SC 29240
Office: (803) 898-9695

EDUCATION

WILLIAM S. HALL PSYCHIATRIC INSTITUTE

Columbia, SC. APA Approved Clinical Internship in Clinical Psychology (a partnership between the South Carolina Department of Mental Health and the University of South Carolina, School of Medicine); Completed: September, 2002. Director: William Gore, Ph.D.
2001-2002

UNIVERSITY OF SOUTH FLORIDA

Tampa, FL. Doctor of Philosophy, Ph.D. in Clinical Psychology with a minor in Forensics. Dissertation Title: "Body Image as a Function of Colorism: Testing a Theoretical Model"
Completed: April 30, 2003. Graduation: August 8, 2003
Major Professor: James Epps, Ph.D.
1994-2003

INDIANA STATE UNIVERSITY

Terre Haute, IN. Master of Arts, MA in Experimental Psychology. Thesis Title: "The influence of skin color and facial features on perceptions of Black female attractiveness" Major Professor: Veanne Anderson, Ph.D.
1992-1994

LAFAYETTE COLLEGE

Easton, PA. Bachelor of Arts, AB in Psychology with a minor in Black Studies.
Advisor: Dr. Karen Bassow, Ph.D.
1988-1992

EMPLOYMENT HISTORY

Psychologist II/Clinical Supervisor: South Carolina Department of Disabilities and Special Needs.

Responsibilities are best described as follows:

1. Serves as an Administrative Liaison and provides chief examiner duties as Clinical Supervisor/Chief Examiner.
2. Ensures and reviews CST reports submitted by direct reports are completed and provides feedback to examiners regarding clinical issues and opinions while ensuring there is not a conflict regarding agency policies/directives.
3. Acts as liaison between Clinical Services Forensics and the Judicial system.
4. Serves as liaison between DDSN Clinical Services-Forensics and SCDMH Forensic Evaluation Service and (MUSC) Medical University of South Carolina Forensics.
5. Provides supervision (administrative and clinical) to the second lead forensic examiner position for DDSN and provides on-going consultation and oversight to psychology staff and contractors who serve as primary and secondary examiners.
6. Complete evaluations in capital murder/death penalty cases related to the Atkins vs. Virginia decision.
7. Provide expert testimony as necessary to the court
8. Administrative duties as required.

Supervisor: Janet Priest, Associate State Director of Operations 4/17/2024 to present

Chief Examiner: South Carolina Department of Disabilities and Special Needs.

Responsibilities are best described as follows:

1. Provide competency evaluations statewide for juveniles and adults with developmental disabilities or traumatic brain injury being adjudicated in family and general sessions courts.
2. Write the report and submit the evaluation to the court with in ten days of completing the evaluation.
3. Work jointly with examiners from the South Carolina Department of Mental Health on cases related to competency for defendants suspected of having a dual diagnosis of mental retardation and mental illness.
4. Complete evaluations in capital murder/death penalty cases related to the Atkins vs. Virginia decision.
5. Provide expert testimony as necessary to the court.
6. Supervises lead examiner position for DDSN at Central Office and provides on-going consultation and oversight to psychology staff and contractors who serve as primary and secondary examiners.
7. Provides ongoing consultation and assistance for psychology staff who serve as secondary examiners.
8. Administrative duties as required.

Supervisor: Janet Priest, Associate State Director of Operations 2/1/2014 to present

Forensic Psychologist: South Carolina Department of Disabilities and Special Needs.

Responsibilities are best described as follows:

1. Provide competency evaluations for juveniles and adults with developmental disabilities or traumatic brain injury being adjudicated in family and general sessions courts.
2. Write the report and submit the evaluation to the court with in ten days of completing the evaluation.
3. Provide expert testimony as necessary to the court.

Supervisor: Gordon E. Brown, PhD 05/2010 to 2/1/2014

Lead Consultant: Autism Treatment Network. University of South Carolina School of Medicine, Department of Neuropsychiatry. A joint effort between the University of South Carolina School of Medicine and Greenville Hospital System funded by the Fullerton Foundation. Responsibilities are best described as follows:

1. Provides consultations for physicians via telepsychiatry throughout the Midlands and Upstate of South Carolina.
2. Educate and train pediatricians on ASDs and the importance of early screening and interventions.

Supervisor: Harry H. Wright, MD, MBA, and Ruth Abramson, PhD 08/07- 8/17

Chief Psychologist: The Developmental Specialties Clinic. Columbia Area Mental Health, SC Department of Mental Health.

Responsibilities are best described as follows:

1. Participates in a multidisciplinary specialty outpatient evaluation clinic that provided diagnostic clarification, treatment recommendations and referral sources.
2. Supervises first year Child Psychiatry Residents and Social Work Interns.
3. Provide individual, group and family therapy for children and adolescents with ASD.
4. Provide comprehensive diagnostic evaluations using the ADI-R and ADOS.

Supervisor: Monica McConnell, PhD 07/06- 7/14

Chief Psychologist: Forensic Evaluation Service, South Carolina Department of Mental Health

Responsibilities are best described as follows:

1. Provide competency evaluations for juveniles and adults with developmental disabilities or traumatic brain injury being adjudicated in family and general sessions courts.
2. Write the report and submit the evaluation to the court with in ten days of completing the evaluation.
3. Provide expert testimony as necessary to the court.

Supervisor: Jeffery Musick, PhD 07/07 to 05/10

Assistant Research Professor: The Autism and Asperger's Research Project. University of South Carolina School of Medicine, Department of Neuropsychiatry. A joint effort between Duke University and the University of South Carolina, School of Medicine. Responsibilities are best described as follows:

1. Provided comprehensive psychological evaluations for Asperger's and Autistic research participants
2. Conducted clinical interviews with enrolled families using the ADI-R, ADOS and the Vineland.
3. Designs and assists staff in research activities especially statistical analysis.

Supervisors: Ruth Abramson, Ph.D.; Harry Wright, M.D. 11/02- 12/06

Assistant Research Professor: (Co-Investigator) Biomarkers in Autism of Aripiprazole and Risperidone Treatment (BAART). University of South Carolina School of Medicine, Department of Neuropsychiatry. A joint effort between Medical University of South Carolina, and the University of South Carolina, School of Medicine. Responsibilities are best described as follows:

1. Provided comprehensive psychological evaluations for Asperger's and Autistic research participants using the ADI-R, ADOS, Vineland and SB 5.

Supervisor: Ruth Abramson, Ph.D. 08/10- present

Clinical Psychology Intern; William S. Hall Psychiatric Institute (APA Approved). A joint effort between the South Carolina Department of Mental Health and the University of South Carolina, School of Medicine. Responsibilities are best described as follows:

First Six Month Rotation: Child and Adolescent

1. Provided individual and group therapy to children and adolescents in inpatient and outpatient settings.
2. Participates in a variety of multidisciplinary specialty outpatient evaluation clinics (Developmental Disorders Clinic, Infant Evaluation Clinic and General Child and Adolescent Clinic) that provided diagnostic clarification, treatment recommendations and referral sources.
3. Provided individual and group therapy to children in school settings.
4. Provided individual and family therapy to children in Children's Day Treatment Program.
5. Provided comprehensive evaluations to help with diagnostic clarification in inpatient and outpatient settings
6. Conducted forensic evaluations of alleged victims of child abuse.

Supervisors: Jerome H. Hanley, Ph.D.; Angela Forand, Ph.D.; George R. Holmes, Ph.D.; George Rekers, Ph.D.; Monica McConnell, Ph.D., and Allison DeFelice, Ph.D.

Second Six Month Rotation: Adult

1. Provided individual and group therapy to adults in outpatient settings.
2. Provided comprehensive psychological evaluations of adults in inpatient and outpatient settings to assist with forensic issues such as determination of competence, criminal responsibility and malingering.
3. Conducted disability evaluations for the Social Security Administration.
4. Conducted evaluations of possible learning disabilities in outpatient adults.
5. Conducted forensic evaluations of alleged victims of child abuse.

Supervisors: George Rekers, Ph.D., Allison DeFelice, Ph.D and William Gore, Ph.D. 9/01-9/02

AV Hall, PhD

Updated April 20, 2024

Teaching Experience

Affiliate Assistant Professor; Department of Neuropsychiatry and Behavioral Science, University of South Carolina School of Medicine. Responsibilities are best described as follows:

1. Prepared and gave class lecture to medical students, residents, and fellows

Supervisor: Meera Narasimhan, MD, Chair Department of Neuropsychiatry and Behavioral Science.
4/22-present

Instructor; Human Development, Abnormal Psychology, Human Sexuality, Abnormal Child Behavior and Advanced Forensic Psychology, Department of Psychology, University of South Carolina.

Responsibilities are best described as follows:

1. Prepared and gave class lectures
2. Assigned and graded research papers and projects, homework and exams.

Supervisor: Alexandria Reynolds, Ph.D. 8/05- present

Adjunct Professor; General Psychology, Department of Social and Behavioral Sciences, Midlands Technical College. Responsibilities are best described as follows:

1. Prepared and gave class lectures
2. Assigned and graded research papers and projects, homework and exams. Supervisor: Paul Livingston, Ph.D.
8/03- 5/05

SPECIALTY TRAINING

Atkins Evaluations: Procedures, Psychometrics, and Recommendations

American Academy of Forensic Psychology, Palo Alto university

Friday, December 8, 2023

Neuropsychology and Forensic Mental Health Evaluations: Foundations, Practical Applications and Ethical Considerations

American Psychology-Law Society Conference

Wednesday, March 9th, 2016

ADOS Research Training

Weill Cornell Medical College, Center for Autism and the Developing Brain

April 9-11, 2015

ADOS Clinical Training

Vanderbilt Kennedy Center, Treatment & Research Institute for Autism Spectrum Disorders

January 8 & 9 2015

Evaluation of Intellectual Disability in Capital Cases: Twelve Years Post Atkins

American Psychology-Law Society Conference

Wednesday, March 5th, 2014

PCIT of the Carolinas Learning Collaborative

Duke University

August, 2010 –October, 2011

AV Hall, PhD

Updated April 20, 2024

STAT-MD Training
Medical University of South Carolina
June 17-18, 2011

ADI-R Clinical and Research Training By Latha Soorya
Medical University of South Carolina
2010

ADOS Clinical and Research Training
University of Michigan Autism &
Communication Disorders Center (UMACC)
June 2005

ADI-R Clinical and Research Training
Duke University Center for Human Genetics
December 2002

PROFESSIONAL MEMBERSHIPS

Registrant #52349, National Registrar of Health Service Providers in Psychology
APA Division 41: American Psychology-Law Society
South Carolina Autism Society
Autism Society of America
South Carolina Psychological Association
International Society of Autism Researchers
South Carolina Association of Black Psychologist
Association of Black Psychologist- National
American Association on Intellectual and Developmental Disabilities

PROFESSIONAL ACTIVITIES

Abstract Reviewer

AP-LS Annual Conference 2015 San Diego
APA Division 41: American Psychology-Law Society

Awards Committee Member

International Society of Autism Researchers
2011 to 2018

Board Member

Institutional Review Board (IRB) for the South Carolina Department of Mental Health, Specialty Area: Special
Interest of Children 2009 to present

COLLOQUIUM/WORKSHOPS CONDUCTED (Limited)

Hall, A.V. Autism & Asperger's Disorder: Making the Diagnosis and Understanding the Differentials. USC
Counseling Center, In service training for psychologist. Feb, 16, 2011.

AV Hall, PhD
Updated April 20, 2024

Hall, A.V. Mental Health & the Child with Special Needs. Family Connection Hopes and Dreams Conference 2013. March, 08, 2013.

Hall, A.V. Mental Health & the Child with Special Needs. Family Connection Hopes and Dreams Conference 2014. Feb, 08, 2014.

Hall, A.V. Managing Sexual Behavior. Family Connection Hopes and Dreams Conference 2014. Feb, 08, 2014.

Hall, A.V. Managing Disruptive Behavior. Family Connection Hopes and Dreams Conference 2015. Feb, 06, 2015.

Hall, A.V. Sexuality & Individuals with Developmental Disabilities. Advocacy-Links Webinar. May 18, 2018.

Hall, A.V. Care and Support of Adolescents/Adults with Autism Spectrum Disorder. The Staff Development Committee of Columbia Area Mental Health Center, Webinar. July 20, 2022.

PAPERS PRESENTED (limited)

Hall, A. V.; Abramson, R. K.; Wilkinson, E. E.; Kinsman, A.; Kelly, D. P.; and Wright H. H. *South Carolina Autism Treatment Network: Using Telepsychiatry to Increase Early Identification and Screening In Pediatric Practices*. Presented at International Meeting For Autism Research, Poster Session 116 Services I, May 13, 2011

Hall, A. V.; Abramson, R. K. and Wright H. H. *South Carolina Autism Treatment Network: Building Bridges of Collaboration and Support to Increase Early Identification and Autism Spectrum Disorder Screening in Pediatric Practices*. Presented at the 59th Annual Meeting of The American Academy of Child and Adolescent Psychiatry, New Research Poster Presentation 1.19, October 24, 2012

Abramson, R. K.; Hall, A. V.; Boccanfuso, L.; Scarborough, S. A *Methodological View of Robot-Assisted Autism Therapy*. Presented at the Lowcountry Autism Consortium Autism Forum, Paper Presentation Augmentative & Alternative Communication, September 07, 2013

Boccanfuso, L.; Scarborough, S.; Abramson, R. K.; Hall, A. V.; Wright H. H.; and O'Kane, J. A *New Robot Prototype for Promoting Spontaneous Speech & Joint Attention in Children With ASD*. Presented at American Speech-Language-Hearing Association, Paper Presentation 5673, November 22, 2014

Abramson, R. K.; Hall A. V.; Stuck, S.; Ravan S.; Charles, J; Williams J.; and DeVane L. *Changes in Sleep Habits during Drug Treatment of ASD*. Presented at International Meeting For Autism Research, Poster Session 162.111 Interventions - Pharmacologic, May 12, 2017

PUBLICATIONS (limited)

Hall, A.V., Godwin, M., Wright, H.H., & Abramson, R.K. (2007) Criminal Justice Issues and Autistic Disorder. In R. Gabriels & D. Hill (Ed.), *Growing up with autism: Beyond Early Intervention*. New York: Gilford Press, 272-292.

Cuturic, M., Abramson, R. K., Moran, R. R., Hardin, J. W., Hall, A. V.; (2011) Clinical correlates of low serum carnitine levels in hospitalized psychiatric patients. *World J Biol Psychiatry*. Feb.

Boccanfuso, L., Scarborough, S., Abramson, R.K, Hall, A. V., Wright, H.H & O’Kane, J.M.; (2016) A low-cost socially assistive robot and robot-assisted intervention for children with autism spectrum disorder: field trials and lessons learned. *Autonomous Robots*, doi:10.1007/s10514-016-9554-4

De Vane C.L., Charles J.M., Abramson R.K., Williams J.E., Carpenter L.A., Ravan S., Gwynette F., Stuck C.A., Geesey M.E., Bradley C., Donovan J.L., Hall A.V., Sherk S.T., Powers N.R., Spratt E., Kinsman A., Kruesi M.J., Bragg J.E. Jr.; (2019). Pharmacotherapy of Autism Spectrum Disorder: Results from the Randomized BAART Clinical Trial. *Pharmacotherapy*, doi: 10.1002/phar.2271. [Epub ahead of print]

Curriculum Vitae

Michael J. Vitacco, Ph.D., ABPP

Business Address:

Augusta University

Professor of Psychiatry and Health Behavior

Professor in the Institute of Public and Preventive Health

Email: mvitacco@augusta.edu

LICENSES and CERTIFICATIONS

- Board Certified in Forensic Psychology by the American Board of Professional Psychology #8154 (October, 2015)
- Wisconsin Psychology License # 2794-57 (March, 2009)
- Georgia Psychology License # PSY003456 (April, 2011)
- North Dakota Psychology License # 589 (August, 2021)
- South Carolina Psychology License # 1793 (March, 2023)
- Authority to Practice Interjurisdictional Telepsychology (APIT, November, 2022)

EDUCATION

09/2002 To 08/2003	Postdoctoral Fellowship University of Massachusetts Medical School The Law and Psychiatry Program Specialization: Clinical Forensic Psychology
09/2001 To 08/2002	Psychology Predoctoral Internship University of North Carolina School of Medicine at Chapel Hill and The United States Department of Justice Department of Psychiatry and Behavioral Sciences Specialization: Clinical Forensic Psychology Approved by the American Psychological Association (APA)
09/1997 To 10/2002	University of North Texas, Denton, Texas APA-approved Clinical Psychology Program <u>Major Professor:</u> Richard Rogers, Ph.D., ABPP Doctor of Philosophy (Ph.D.) <u>Doctoral Dissertation:</u> Construct Validity of Psychopathy in Mentally Disordered Offenders: A Multi-Trait Multi-Method Approach. <u>Date defended:</u> 10/03/2002 Master of Science (M.S.) <u>Master's Thesis:</u> Adolescent Psychopathy in an Adjudicated Population: The Role of Sensation Seeking, Impulsivity, and Externalizing Disorders. <u>Date defended:</u> 12/11/1999
1988-1993	Bachelor of Science, Cum Laude University of Wisconsin Oshkosh Major: Psychology

FACULTY POSITIONS**07/2020
To
Present****Professor
Institute of Public and Preventive Health
Department of Psychiatry and Health Behavior
Augusta University**

Work on self-and faculty-generated grant-funded research projects.
Mentor students on research projects. Participate in case-based learning (CBL) for first-year medical students.

**07/2015
To
07/2020****Associate Professor of Psychiatry and Health Behavior
Director of Forensic Psychology Training
Augusta University
Licensed Psychologist****East Central Regional Hospital, Augusta, Georgia**

Faculty member as part of a partnership between Augusta University and East Central Regional Hospital. Direct a fellowship program in forensic psychology. Developed and provide supervision in a Forensic Psychology Internship Track as part of the MCG/VA APA approved predoctoral internship site. Evaluate individuals for criminal responsibility, competency to stand trial, and violence risk. Testify in various courts on issues of criminal responsibility, competency to stand trial, and civil commitment.

**05/2018
To
07/2020****Associate Professor
Institute of Public and Preventive Health
Augusta University**

Consult and work with staff on collaborative research projects with faculty and students from the Institute of Public and Preventive Health (IPPH). Work with students as needed in the implementation and development of research projects. Attend faculty meetings and serve on faculty search committee.

**01/2011
To
06/15****Assistant Professor of Psychiatry and Health Behavior
Director of Forensic Psychology Training
Augusta University
Licensed Psychologist****East Central Regional Hospital, Augusta, Georgia**

Faculty member of the partnership between Georgia Regents University and East Central Regional Hospital. Developed and direct a fellowship program in forensic psychology that includes two postdoctoral fellows. Evaluate individuals for criminal responsibility, competency to stand trial, and violence risk. Testify in various courts on issues of criminal responsibility, competency to stand trial, and civil commitment. Supervise students including psychology practicum students, medical residents, and psychology predoctoral interns.

**2018
To
Current**

**St. John's University
Post Graduate Program Forensic Psychology
Queens, New York**

Provide didactic and consultative training to clinical psychologists pursuing post-graduate certification in forensic psychology. I provide in-person training at least once a year on forensic assessment, with an emphasis on malingering and response styles. This includes practical training and lectures conducted in a 7-hour course.

**2013
To
Current**

**Adjunct Professor of Clinical Psychology
Georgia Southern University
Statesboro, Georgia**

Supervise students' theses with forensic and personality assessment emphases. Teach undergraduate class on forensic psychology. Work with students on research development and implementation. In Spring of 2017 developed and taught an Introduction to Forensic Psychology class to undergraduate students.

**2010
To
2014**

**Adjunct Professor of Biological Psychology
University of New Orleans
New Orleans, Louisiana**

Part of the adjunct faculty developing a project dealing with stress hormones and callous unemotional traits in males and females placed in secure detention facilities. Member of a research team that received grant funding from the National Institute of Mental Health for studying stress hormones in adolescent female offenders. Serve as a committee member for student theses focusing on biological markers of antisocial behavior.

**2007
To
2014**

**Adjunct Professor of Clinical Psychology
Cardinal Stritch University
Milwaukee, Wisconsin**

Was responsible for teaching Ethics and Advanced Research Design and Statistics to Master's students enrolled in a clinical psychology program. Currently, remain on adjunct status to supervise students' theses with forensic and personality assessment emphases.

2010

**Adjunct Professor of Clinical Psychology
Milwaukee School of Professional Psychology
Milwaukee, Wisconsin**

Teaching duties included Measurement and Statistics to Doctoral students in clinical psychology.

CLINICAL POSITIONS**2019
To
Current****Forensic Institute
Augusta University
Augusta, Georgia**

Member of a multidisciplinary team that conducts various forensic examinations. These evaluations include mitigation, fitness for duty, parental capacity, and independent medical examinations. Expert witness testimony is often required and provided in these evaluations.

**2023
To
Current****VP Forensic Psychology
Private Practice Forensic Consulting Firm
Partner**

Partner is a forensic psychology private practice that conducts independent evaluations of mental health in criminal forensic and civil matters. These include evaluations of insanity, competency to proceed to trial, fitness for duty, and violence risk assessment. Also consult with attorneys in the preparation of testimony and critiques of psychological evaluations.

GRANTS

SAMSHA Gains Center's Learning Collaborative: Competency to Stand Trial/Competency Restoration. March 13, 2019 to March 13, 2020. Role: Co-Principal Investigator. Provide technical and educational support for making changes in competency to stand trial evaluations in Georgia. Total Direct Costs: This is a technical grant that was awarded to provide learning collaborative for state agencies. My role is to facilitate meetings and trainings with other members of the team and provide support for changes within competency evaluations with licensed psychologists and psychiatrists within the Georgia Department of Behavioral Health and Developmental Disabilities.

Evaluating the Impact of Violence Risk Predictions on Legal Decision-Making: A Comparison of Expert Communication Methods, National Science Foundation, Decision, Risk and Management Program (Co-I: with Ashley Batastini, Ph.D.). (2018). Funds requested: \$184,985. (not funded).

R21MH093675. August 1, 2011 to August 1, 2013: "Biobehavioral mechanisms for severe disruptive behavior symptoms in adolescent girls." *Principal Investigator*: Elizabeth Shirtcliff. *Agency*: National Institute of Mental Health, National Institute of Drug Abuse. *Role*: Co-Investigator/Consultant. *Total direct costs*: \$275,000 (Funded). My role was to assist in the overseeing of data collection, management, statistical analyses, and write-up of results for biological specimens and psychological measures collected on incarcerated adolescent females.

OJA637550. May 1, 2006 to 2010: "Treatment for Chronically Antisocial Adolescents: Monitoring Cortisol Levels and Behavioral Change in Violent Juveniles" Principal Investigator: Michael Caldwell. Agency: Office of Justice Administration. Role: Co-Principal Co-Investigator/Consultant.
Total direct costs: \$50,000 (Funded).
My role was to integrate psychopathy/callous measures into an ongoing study on the efficacy of a therapeutic intervention for incarcerated adolescents. This award provided pilot data for a longitudinal study on developmental changes in adolescents' psychobiology and the study of psychopathy.

BOOKS

Batastini, A.B. & **Vitacco**, M.J. (Eds). (2020). Forensic Mental Health Evaluations in the Digital Age: A Practitioner's Guide to Using Internet-Based Data. New York, Springer International Publishing.

Vitacco, M.J. Conducting Conditional Release Evaluations. Under contract with Oxford Press.

PEER REVIEWED PUBLICATIONS

Lord, M., Batastini, A. B., Smith, C., Vitacco, M. J., & Eddy, T. (in press). Social media as collateral: The impact of evidence source and defendant race in determinations of threat. *Behavioral Sciences and the Law*.

Tacke, L. J., Lishner, D. A., Knepple Carney, A., **Vitacco**, M. J., Saltigerald, B., Jacquez, H. R., Hillman, V., Meendering, M., Burgess, B., Smith, A., & Neumann, C. S. (2023). Psychopathy and COVID-19: Callousness, impulsivity, and motivational reasons for engaging in prevention behavior. *Social and Personality Psychology Compass*, 17(12).

Aguiar, R., **Vitacco**, M.J., Porter Staats, M., & Dzurny, T. (2023). Psychopathy and callous-unemotional traits in adolescence: A systematic review of cultural inclusion and meta-analysis of fMRI neural correlates. *Journal of Criminal Justice*, 86, 1-14.

Vitacco, M.J. (2023). The insanity defense. Oxford Bibliographies.

Vitacco, M.J., Randolph, A.M., Soroko, K., Velez, J., & Sigurdsson, D. (2023). Evaluating feigning in individuals with intellectual disabilities in criminal cases: A cautionary tale. *Journal of Intellectual Disabilities and Offending Behavior*, 14, 1-13.

Jones, A.C.T., Batastini, A.B., Vitacco, M.J., Standridge, R. L., & Knuth, S B. (2023). Attorneys, tell your clients to think before they post: Social media data may influence how evaluators view their parental fitness. *Family Court Review*, 61, 545-562.

Roberson, A., & **Vitacco**, M. J. (2022). Jail-based competency restoration: What's out there and what's missing. *Journal of Correctional Health Care*, 28, 230–235.

Vitacco, M. J., Batastini, A. B., & Smith, C. (2022). Conditional release and cannabis use: Concerns and challenges for community reintegration. *Behavioral Sciences & the Law*, 40, 261-270.

- Kastner, R. M., **Vitacco**, M. J., Anderson, K., & Batastini, A. B. (2022). Risk assessment and provisional discharge: Predictive utility of the HCR-20. *Psychology, Public Policy, and Law*, 28, 332–343.
- Gottfried, E., Mulay, A.M., Schenk, A.M., & **Vitacco**, M.J. (2022). MMPI-2-RF differences between violent offending and institutional violence among incarcerated women. *Violence and Victims*, 37, 497-514.
- Vitacco**, M.J., Randolph, A.M., Nelson Aguiar, R.J., & Porter Staats, M.L. (2021). Limitations using neuroimaging to reconstruct mental state after a crime. *Cambridge Quarterly Clinical Neuroethics*, 4, 694-701.
- Batastini, A. B., **Vitacco**, M. J., Jones, A. C. T., & Davis, R. M. (2021). Perceived credibility of social media data as a collateral source in criminal responsibility evaluations using an experimental design. *International Journal of Forensic Mental Health*, 20, 317-332.
- Mulay, A., Gottfried, E., Mulis, D., & **Vitacco**, M.J. (2021). The use of telehealth videoconferencing in forensic evaluations: Moving forward in times of COVID-19. *Journal of Forensic Psychology Research and Practice*, 1-17.
- Olver, M.E., Stockdale, K.C., Neumann, C.S., Hare, R.D., Mokros, A., Baskin-Sommers, A., Brand, E., Folino, J., Cacono, C., Gray, N.S., Kiehl, K., Knight, R., Leon-Mayer, E., Meloy, JR., Roy, S., Salekin, R.T., Snowden, R., Thomson, N., Tillem, S., **Vitacco**, M.J., & Yoon, D. (2020) Reliability and validity of the Psychopathy Checklist-Revised in the assessment of risk for institutional violence: A cautionary note on DeMatteo et al. (2020). *Psychology, Public Policy, and Law*, 26, 490-510.
- Hare, R.D., Olver, M., Stockdale, K., Neumann, C.S., Mokros, A., Baskin-Spmmers. A., Brand, E., Folino, Gocono, C., Gray, N.S., Kiehl, K., Knight, R., Leon-Mayer, E., Meloy,J., Roy, S., Salekin, R.T., Snowden, R., Thomson, N., **Vitacco**, M.J., Wong, S., & Yoon, D. (2020). The PCL–R and capital sentencing: A commentary on “Death is different” DeMatteo et al. (2020a). *Psychology, Public Policy, and Law*, 26, 519-522.
- Vitacco**, M.J., Gottfried, E., Lilienfeld, S.O., & Batastini, A.B. (2020). The limited relevance of neuroimaging in insanity evaluations. *Neuroethics*, 13, 249-260.
- Dexter, E., & **Vitacco**, M.J. (2020). Strategies for assessing and preventing inpatient violence in forensic hospitals: A call for specificity. *European Psychologist*, 26, 1-9.
- Britt, J., Patton, C.C., Remaker, D., **Vitacco**, M.J., & Prell, L. (2019). Predicting violence and recidivism in female parolees: A state-wide sample. *International Journal of Law & Psychiatry*, 66.
- Gay, J.G., Lishner, D.A., **Vitacco**, M.J., & Beussink, C. (2019). Deconstructing the association between psychopathy and political orientation: Is it attributable to moral intuitions or moral competency? *Personality and Individual Differences*, 149, 128-134.
- Patton, C.L., Johnston, E.L., Lillard, C.K. & **Vitacco**, M.J. (2019). Legal and clinical issues regarding the *pro se* defendant: Guidance for practitioners and policy makers. *Psychology, Public Policy, & Law*, 25, 196-211.

- Batastini, A.B., **Vitacco**, M.J., Coaker, L.C., & Lester, M.E. (2019). Communicating violence risk during testimony. Do different formats lead to different perceptions among jurors. *Psychology, Public Policy, & Law*, 25, 92-106.
- Batastini, A. B., Hoeffner, C. E., **Vitacco**, M. J., Morgan, R. D., Coaker, L. C., & Lester, M. E. (2018). Does the format of the message effect what is heard? A two-part study on the communication of violence risk assessment data. *Journal of Forensic Psychology: Research and Practice*, 1, 44-71.
- Coffey, A.C., Batastini, A.B., & **Vitacco**, M.J. (2018). Clues from the digital world: A survey of clinicians' reliance on social medial as collateral data in forensic evaluations. *Professional Psychology Research and Practice*, 49, 345-354.
- Cox, J., Fairfax-Columbo, J., DeMatteo, D., **Vitacco**, M.J., Kopkin, M.R., Parrott, C.T., & Bownes, E. (2018). An update on the role of the Violence Risk Appraisal Guide and the Historical Clinical Risk-20 in United States case law. *Behavioral Sciences & the Law*, 36, 517-531.
- Vitacco**, M.J., Balduzzi, E., Rideout, K., Banfe, S., & Britton, J. (2018). Reconsidering risk assessment with insanity acquittees. *Law and Human Behavior*, 42, 403-412.
- Hampton, S.L., **Vitacco**, M.J., & Kosson, D.S. (2018). Construct validity of the three-factor model of the Interpersonal Measure of Psychopathy. *Criminal Justice and Behavior*, 45, 1613-1633.
- Gay, J., **Vitacco**, M.J., Hackney, A., Beussink, C., & Lilienfeld, S.O. (2018). Relations among psychopathy, moral competence, and moral intuitions in student and community samples. *Legal and Criminological Psychology*, 23, 117-134.
- Johnson, M., **Vitacco**, M.J., & Shirtcliff, E.A. (2018). Callous-unemotional traits and early life stress predict altered treatment effects on stress and sex hormone functioning in incarcerated male adolescents. *Stress*, 21, 110-118.
- Vitacco**, M.J., Gottfried, E.D., & Batastini, A. (2018). Using technology to improve the objectivity of criminal responsibility evaluations. *Journal of the American Academy of Psychiatry and the Law*, 46, 71-77.
- Wahl, K.D., **Vitacco**, M.J., Ryba-Panza, N., & Hyde, T.F. (2018). Utility of the Inventory of Legal Knowledge in detecting feigning: An analogue study. *Journal of Forensic Psychiatry and Psychology*, 3, 483-497.
- Steinert, S.W., Lishner, D.A., **Vitacco**, M.J., & Hong, P.Y. (2017). Conceptualizing successful psychopathy: An elaboration of the moderated-expression model. *Aggression and Violent Behavior*, 36, 44-51.
- Beussink, C., Hackney, A., & **Vitacco**, M.J. (2017). The effects of perspective taking on empathy-related responses in college student higher in callous traits. *Journal of Personality and Individual Differences*, 119, 198-203.
- Gottfried, E., **Vitacco**, M.J., & Steadham, J. (2017). The relationship between feigned psychiatric symptoms and feigned lack of legal knowledge among a multi-site sample of forensic inpatients. *International Journal of Forensic Mental Health*, 1-10.

- Gottfried, E., Hudson, B.L., **Vitacco**, M.J., & Carbonell, J. (2017). Improving the detection of feigned knowledge deficits in defendants adjudicated incompetent to proceed. *Assessment*, 24, 232-243.
- Gay, J.G., **Vitacco**, M.J., & Ragatz, L.L. (2017). Mental health symptoms predict competency to stand trial and competency to stand trial restoration. *Legal and Criminological Psychology*, 23, 230-240.
- Vitacco**, M.J. (2016). Insanity acquittees in the community: Legal foundations and clinical conundrums. *Fordham Urban Law Review; Special issue on Mental Health, the Law, & the Urban Environment*, Vol. XLIII, No. 3, 847-868.
- Prell, L., **Vitacco**, M.J., & Zavodny, D. (2016). Predicting violence and recidivism in a large sample of males on probation or parole. *International Journal of Law and Psychiatry*, 49, 107-113.
- Vitacco**, M.J., Tabernik, H.E., Zavodny, D., Bailey, K., & Waggoner, C. (2016). Projecting risk: The Importance of the HCR-20 "R" scale in predicting outcomes with forensic patients. *Behavioral Sciences & the Law*, 34, 308-320.
- Tabernik, H.E., & **Vitacco**, M.J. (2016). Psychosis, drug use, and dangerousness: Moving towards a model for assessing dangerousness in insanity acquittees. *Behavioral Sciences & the Law*, 34, 295-307
- Green, D., **Vitacco**, M.J., & Felthous, A. (2016). Introduction to special issue on conditional release. *Behavioral Sciences & the Law*, 34, 249-256.
- Watts, A.L., Salekin, R.T., Grimes, R.D., Rosenbaum, J., Waldman, I.D., **Vitacco**, M.J., & Lilienfeld, S.O. (2016). Psychopathy: Relations with three conceptualizations of intelligence. *Journal of Personality Disorders*, 7, 269-279.
- Gottfried, E., Schenk, A., & **Vitacco**, M. (2016). Retrospectively assessing for feigning in criminal responsibility evaluations: Recommendations for clinical practice. *Journal of Forensic Psychology Practice*, 16, 118-128.
- Neller, D.J., **Vitacco**, M.J., Magaletta, P.R., Brooke Phillips-Boyles, A. (2016). Eliciting responsivity: Exploring programming interests of Federal inmates as a function of security classification. *Journal of Offender Therapy and Comparative Criminology*, 60, 423-434.
- Gay, J., Ragatz, L.L., & **Vitacco**, M.J. (2015). Mental health symptoms and their relationship to specific deficits in competency to proceed to trial evaluations. *Psychiatry, Psychology, and Law*, 22, 780-791.
- Ragatz, L.L., **Vitacco**, M.J., & Tross, R. (2015). Addressing the rational understanding prong in competency to stand trial assessment. *Journal of Offender Therapy and Comparative Criminology*, 59, 1505-1519.
- Lishner, D.A., Hong, P.Y., **Vitacco**, M.J., Lixin, J., & Neumann, C. (2015). Psychopathy, Narcissism, and Borderline Personality: A Critical Test of the Affective Empathy-Impairment Hypothesis. *Journal of Personality and Individual Differences*, 86, 257-265.

- Vitacco**, M.J., Shirtcliff, E.S., Dismukes, A., & Johnson, M. (2015). Biomarkers, science, and the prediction of violence: Clinical and legal issues. *Science in the Courtroom: The Science of Aggression and Violence in the Courts*
- Welch, L., & Vitacco, M. Critical Synthesis Package: Kessler Psychological Distress Scale. (2015). MedEdPORTAL; 2015.
- Gowensmith, W.N., Bryant, A., & **Vitacco**, M.J. (2014). Decision-making in post-acquittal hospital release. How do forensic evaluators make their decisions? *Behavioral Sciences & the Law*, 32, 599-607.
- Marshall, D.J., **Vitacco**, M.J., Read, J.B. & Haraway, M. (2014). Predicting voluntary and involuntary readmissions to forensic hospitals by insanity acquittees in Maryland. *Behavioral Sciences & the Law*, 32, 627-640.
- Gostisha, A., **Vitacco**, M.J., Brieman, C., Merz, J.L., Graf, A.R., & Shirtcliff, E.A. (2014). Beyond physiological hypoarousal: The role of context and callous-unemotional traits in incarcerated adolescent males. *Hormones and Behavior*, 65, 469-479.
- Vitacco**, M.J., Vauter, R., Erickson, S.K., Ragatz, L. (2014). Evaluating conditional release in Not Guilty by Reason of Insanity acquittees: A prospective follow-up study in Virginia. *Law and Human Behavior*, 38, 346-356.
- Vitacco**, M.J., Neumann, C.S., & Pardini, D. (2014). Predicting future criminal offending in a community-based sample of males using self-reported psychopathy. *Criminal Justice and Behavior*, 41, 345-363.
- Dismukes, A., Johnson, M.M, **Vitacco**, M.J., Iturri, F., & Shirtcliff, E.A. (2014). Coupling of the HPA and HPG axes in the context of early life adversity. *Developmental Psychobiology*, 57, 705-718.
- Johnson, M.M., Dismukes, A.R., **Vitacco**, M.J., Brieman, C., Fleury, D., & Shirtcliff, E.A. (2014). Psychopathy's influence on the coupling between hypothalamic-pituitary-adrenal and gonadal axes among incarcerated adolescents. *Developmental Psychobiology*, 56, 448-458.
- Vitacco**, M.J., & Buckley, P. (2013). Substance abuse comorbidity in schizophrenia: Conceptual and clinical issues. *Psychiatric Annals*, 43, 454-458.
- Vitacco**, M.J., Erickson, S.K., & Lishner, D.A. (2013). Holding psychopaths morally and criminally culpable. *Emotion Review*, 5, 423-425.
- Welch L., & Vitacco M. Critical Synthesis Package: Approaches and Study Skills Inventory for Students (ASSIST). MedEdPORTAL (2013). Available from: www.mededportal.org/publication/9404
- Vitacco**, M.J., & DeGroot, J. (2013). Dangerousness and mental health treatment: Civil commitment in the United States. *International Psychiatry*, 10, 40-42.
- Lishner, D.A., **Vitacco**, M.J., Hong, P.Y., Mosley, J., Miska, K.J., & Stocks, E. L. (2012). Evaluating the relation between psychopathy and affective empathy: Two

- preliminary studies. *International Journal of Offender Therapy and Comparative Criminology*, 56, 1161-1181.
- Vitacco**, M.J., Erickson, S.K., Kurus, S., & Apple, B. (2012). The Role of the Violence Risk Appraisal Guide and Historical, Clinical, Risk-20 in U.S. Courts: A Case Law Survey. *Psychology, Public Policy, & Law*, 18, 361-391.
- Vitacco**, M.J., Gonsalves, V., Tomony, J., Smith, B., & Lishner, D.A. (2012). Can standardized measures of risk predict inpatient violence? Combining static and dynamic variables to improve accuracy. *Criminal Justice and Behavior*, 39, 589-606.
- Erickson, S.K., & **Vitacco**, M.J. (2012). Punishment and predators. *Psychology, Public Policy, and Law*, 18, 1-17.
- Vitacco**, M.J., Erickson, S.K., Kurus, S., Apple, B., Lamberti, J.S., & Gasser, D. (2011). Evaluating conditional release in female insanity acquittees: A risk management perspective. *Psychological Services*, 8, 332-342.
- Buckley, P., Citrome, L., Nichita, E., & **Vitacco**, M.J. (2011). Psychopharmacology of aggression in schizophrenia. *Schizophrenia Bulletin*, 37, 930-936.
- Lishner, D.A., Swin, E.R., Hong, P.Y., & **Vitacco**, M.J. (2011). Psychopathy and emotional intelligence: Global or facet-specific association? *Journal of Personality and Individual Differences*, 50, 1029-1033.
- Vitacco**, M.J., & Kosson, D.S. (2010). Understanding psychopathy through an evaluation of interpersonal behavior: Testing the factor structure of the Interpersonal Measure of Psychopathy in a large sample of jail detainees. *Psychological Assessment*, 22, 638-649.
- Rogers, R., **Vitacco**, M.J., & Kurus, S. J. (2010). Assessment of malingering: The stability of SIRS scales in an inpatient forensic setting. *Journal of the American Academy of Psychiatry and the Law*, 38, 109-114.
- Vitacco**, M.J., Neumann, C.S., & Caldwell, M.F. (2010). Predicting antisocial behavior in high-risk male adolescents: Contributions of psychopathy and instrumental violence. *Criminal Justice and Behavior*, 37, 833-846.
- Saleh, F.M., Martin, M., Grudzinskas, A. J., & **Vitacco**, M.J. (2010). Paraphilias with co-morbid psychopathy: Clinical and legal considerations. *Behavioral Sciences & the Law*, 28, 211-223.
- Vitacco**, M.J., Caldwell, M., Ryba, N., Malesky, A., & Kurus, S. (2009). Assessing risk in adolescent sex offenders: Recommendations for clinical practice. *Behavioral Sciences & the Law*, 27, 929-940.
- Vitacco**, M.J., Rogers, R., & Gabel, J. (2009). The effects of feigning on competency evaluations: An investigation of the ECST-R. *Assessment*, 16, 249-257.
- Vitacco**, M.J., Malesky, L.A., Erickson, S.K., Leslie, W., Croysdale, A., & Bloechl, A. (2009). Measuring attitudes toward the insanity defense in venirepersons: Refining the IDA-R in the evaluation of juror bias. *International Journal of Forensic Mental Health*, 8, 62 - 70.

- Vitacco**, M.J., VanRybroek, G.J., Rogstad, J., Yahr, L.E., Tomony, J., & Saewert, E. (2009). Predicting short-term institutional aggression in forensic patients: A multi-trait method for understanding subtypes of aggression. *Law and Human Behavior*, 33, 308-319.
- Shirtcliff, E.A., **Vitacco**, M.J., Graf, A.R., Gostisha, A.J., Merz, J.L., & Zahn-Waxler, C. (2009). Neurobiology of empathy and callousness: Implications for the development of antisocial behavior. *Behavioral Sciences and the Law*, 27, 137-171.
- Caldwell, M.F., Ziemke, M., & **Vitacco**, M.J. (2008). An examination of SORNA as applied to Juveniles. Evaluating the ability to predict sexual recidivism. *Psychology, Public Policy, and Law*, 14, 89-114.
- Vitacco**, M.J., Van Rybroek, G.J., Erickson, S.K., Rogstad, J., Tripp, A., Harris, L., & Miller, R. (2008). Developing services for insanity acquittees released into the community: Maximizing success and minimizing recidivism. *Psychological Services*, 5, 118-125.
- Vitacco**, M.J., Jackson, R., Rogers, R., Neumann, C.S., Miller, H., & Gabel, J. (2008). Detection strategies for malingering with the Miller Forensic Assessment of Symptoms Test: A confirmatory factor Analysis of underlying dimensions. *Assessment*, 15, 97-103.
- Vitacco**, M.J., Neumann, C.S., & Wodushek, T. (2008). Differential relationships between the dimensions of psychopathy and intelligence: Replication in an adult offender sample. *Criminal Justice and Behavior*, 35, 48-55.
- Vitacco**, M.J., Caldwell, M. F., VanRybroek, G. J., & Gabel, J. (2007). Psychopathy and behavioral correlates of victim injury in serious juvenile offenders. *Aggressive Behavior*, 33, 537-544.
- Vitacco**, M.J. (2007). Psychopathy and Antisocial tendencies: A reply to Cooke, Michie, and Skeem. *British Journal of Psychiatry*. Letter published on-line, May 30, 2007.
- Erickson, S.K., Ciccone, J.R., Schwarkopf, S.B., Lamberti, J.S., & **Vitacco**, M.J. (2007). Legal fallacies of antipsychotic drugs. *Journal of the American Academy of Psychiatry and Law*, 35, 235-246.
- Jackson, R.L., Neumann, C.S., **Vitacco**, M.J. (2007). Impulsivity, anger, and, psychopathy: The moderating effect of ethnicity. *Journal of Personality Disorders*, 21, 289-304.
- Vitacco**, M.J., Rogers, R., Gabel, J., & Munizza, J. (2007). An evaluation of malingering screens with competency to stand trial patients: A known-groups comparison. *Law and Human Behavior*, 31, 249-260.
- Erickson, S.K., Lilienfeld, S.O., & **Vitacco**, M.J. (2007). A critical examination of the suitability and limitations of psychological tests in family court. *Family Court Review*, 45, 157-174.
- Erickson, S.K., Lilienfeld, S.O., & **Vitacco**, M.J. (2007). Failing the burden of proof: The science and ethics of projective tests in custody evaluations. *Family Court Review*, 45, 185-192.
- Bloechl, A.L., **Vitacco**, M.J., Neumann, C.S., & Erickson, S.K. (2007). An empirical investigation of insanity defense attitudes: Exploring factors related to bias. *International*

Journal of Law and Psychiatry, 30, 153-161.

- Vitacco**, M.J., Neumann, C.S., Caldwell, M., Leistico, A.R., & Van Rybroek, G.J. (2006). Testing factor models of the Psychopathy Checklist: Youth Version and their association with instrumental violence. *Journal of Personality Assessment*, 87, 74-83.
- Vitacco**, M.J., & Van Rybroek, G.J. (2006). Treating insanity acquittees with personality disorders: Implementing dialectical behavior therapy. *Journal of Forensic Psychology Practice*, 6(2), 1-16.
- Vitacco**, M.J., & Vincent, G. M. (2006). Applying adult concepts to youthful offenders: Psychopathy and its implications for risk assessment and juvenile justice. *International Journal of Forensic Mental Health*, 5, 29-38.
- Caldwell, M.F., **Vitacco**, M.J., & Van Rybroek, G.J. (2006). Are violent delinquents worth treating? A cost-benefit analysis. *Journal of Research in Crime and Delinquency*, 43, 148-168.
- Poythress, N.G., Douglas, K.S., Falkenbach, D., Cruise, K., Lee, Z., Murrie, D. C., & **Vitacco**, M.J. (2006). Internal consistency reliability of the self-report Antisocial Process Screening Device. *Assessment*, 13, 107-113.
- Erickson, S. K., **Vitacco**, M.J., & Van Rybroek, G. J. (2005). Beyond overt violence: Wisconsin's progressive civil commitment statute as a marker of a new era in mental health law. *Marquette Law Review*, 89, 359-405.
- Neumann, C.S., **Vitacco**, M.J., Hare, R.D., & Wupperman, P. (2005). Reconstructing the reconstruction of psychopathy. A comment on Cooke, Michie, Hart, and Clarke. *Journal of Personality Disorders*, 19, 624-640.
- Vitacco**, M. J., Rogers, R., Neumann, C. S., Harrison, K. S., & Vincent, G. (2005). A comparison of factor models on the PCL-R with mentally disordered offenders: The development of a four-factor model. *Criminal Justice and Behavior*, 32, 526-545.
- Vitacco**, M.J., Neumann, C.S., & Jackson, R. (2005). Development of a four-factor model of psychopathy: Associations with ethnicity, gender, violence, and intelligence. *Journal of Consulting and Clinical Psychology*, 73, 466-476.
- Vitacco**, M.J., & Packer, I. (2004). Mania and insanity: An analysis of legal standards and recommendations for clinical practice. *Journal of Forensic Psychology Practice*, 3, 83-95.
- Vincent, G.M., **Vitacco**, M.J., Grisso, T., & Corrado, R.R. (2003). Subtypes of adolescent offenders: Affective explanations of psychopathy. *Behavioral Sciences and the Law*, 21, 695-712.
- Rogers, R., Sewell, K. W., Martin, M., & **Vitacco**, M. J. (2003). Detection of feigned mental disorders: A meta-analysis of the MMPI-2 and malingering. *Assessment*, 10, 160-177.
- Vitacco**, M.J., Rogers, R., & Neumann, C.S. (2003). The Antisocial Process Screening Device: An examination of its construct and criterion validity. *Assessment*, 10, 143-150.

- Neumann, C.S., **Vitacco**, M.J., Robertson, A., & Sewell, K. (2003). Longitudinal assessment of callous/impulsive traits, substance abuse, and symptoms of depression among adjudicated adolescents: A latent variable approach. In J. A. King, C. Ferris, & I., Lenderhendler (Eds.). *Roots of Mental Illness in Children, NYAS Annals, 1008*, 300 - 304.
- Vitacco**, M. J., Neumann, C.S., Ramos, V., & Roberts, M. (2003). *Ineffective parenting: A precursor to psychopathic traits in Hispanic females*. In J. A. King, C. Ferris, & I. I. Lenderhendler (Eds.). *Roots of Mental Illness in Children, NYAS Annals, 1008*, 276 - 281.
- Rogers, R., **Vitacco**, M.J., Cruise, K. R., Sewell, K.W. & Neumann, C.S. (2002). Screening for adolescent psychopathy among at-risk youth: Initial validation of the Survey of Attitudes and Life Experiences (SALE). *Assessment, 9*, 343-350.
- Vitacco**, M.J., Neumann, C.S., Robertson, A.A., & Durrant, S.L. (2002). Contributions of impulsivity and callousness in the assessment of adjudicated males: A prospective study. *Journal of Personality Assessment, 78*, 87-103.
- Rogers, R., Sewell, K.W., Grandjean, N., & **Vitacco**, M.J. (2002). Feigned mental disorders and their effects on specific competency measures. *Psychological Assessment, 14*, 177-183.
- Rogers, R., **Vitacco**, M.J., Jackson, R.L., Martin, M., Collins, M., & Sewell, K.W. (2002). Faking psychopathy? An examination of response styles with antisocial youth. *Journal of Personality Assessment, 78*, 31-46.
- Vitacco**, M.J. & Rogers, R. (2001). Predictors of adolescent psychopathy: The role of impulsivity, hyperactivity, and sensation seeking. *The Journal of the American Academy of Psychiatry and the Law, 29*, 374-386.
- Rogers, R., Grandjean, N., Tillbrook, C.E., **Vitacco**, M.J., & Sewell, K.W. (2001). Recent interview-based measures of competency to stand trial: A critical review augmented with research data. *Behavioral Sciences and the Law, 19*, 503-518.

MANUSCRIPTS UNDER REVIEW

- Vitacco**, M.J., Randolph, A.M., Gay, J.G., & Gottfried, E. (under review). Problematic forensic expert witnesses: Recommendations for improving professional integrity.
- Vitacco**, M.J., Nelson-Aguiar, R., Porter-Staats, M., & Coleman, S. (under review). Neuroscience and the insanity defense: Trying to put a round peg in a square hole.

BOOK CHAPTERS

- Batastini, A. B., Lord, M., Guyton, M., & **Vitacco**, M. J. (in press). Technological advancements and recommendations for conducting forensic evaluations. In P. Zapf & A. Fanniff (Eds.) *APA Handbook of Forensic Psychology, 2nd Edition*. APA Publishing.
- Vitacco**, M.J., & Coleman, S. (in press). Insanity evaluations in the age of neuroimaging. In Pica, E., Pozzulo, J., & Ross, D. (Eds). *The Impact of Technological Advances on the Legal System: Psychological Implications for Eyewitness Accuracy*. Routledge Press.

- Vitacco**, M.J., Batastini, A.B., Jones, A., & Clary, C. (2023). Mental Health Challenges and Considerations with Individuals in Rural Jails. In Barber-Rioja, V., Garcia-Mansilla, A., Subedi, B. & Batastini, A. (Eds.). *Handbook of mental health assessment and treatment in jails*. Oxford University Press.
- Batastini, A.B., Lord, M., & **Vitacco**, M.J. (2023). Using social media data in forensic evaluations: Addressing bias. In Liell, G.C., Fisher, M.J., & Jones, L.F. (Eds.). *Challenging bias in forensic psychological assessment* (pp. 278-295). London, Routledge Press.
- Gottfried, E., **Vitacco**, M.J., Rogers, R., & Gay, J.G. (2021). Psychopathy and response styles in sex offenders, Second Edition. In F. Saleh, A. Grudzinskas, J. Bradford, & D.J. Brodsky (Eds.), *Sex offenders: Identification, Risk Assessment, Treatment, and Legal Issues* (pp. 228-251). New York, NY: Oxford University Press.
- Vitacco**, M.J., Green, D., Gottfried, E., & Griswold, H. (2020). Psychopathy and conditional release. In Felthous, A. (Ed.) *International Handbook on Psychopathic Disorders* (pp. 573-596). West Sussex, England: John Wiley & Sons, Ltd.
- Batastini, A. B., Jones, A. C T., Miller, O. K., & **Vitacco**, M. J. (2020). An introduction to internet-based data and its relevance to forensic mental health assessments. In Batastini, A.B, & Vitacco, M.J. (Eds.), *Forensic mental health evaluations in the digital age: A practitioner's guide to using internet-based data* (pp. 1-22). New York: Springer International
- Vitacco**, M.J. Sigurdsson, D., Randolph, A.M., & Batastini, A.B. (2020). Using Social Media in Conducting Evaluations of Criminal Responsibility In Batastini, A.B, & Vitacco, M. (Eds.), *Forensic mental health evaluations in the digital age: A practitioner's guide to using internet-based data* (p. 24-48). New York: Springer International
- Batastini, A.B., **Vitacco**, M.J., Bozeman, A. R., & (2020). General recommendations for integrating internet-based data in forensic mental health assessments and what we still need to know. In Batastini, A.B., & Vitacco, M.J. (Eds.), *Forensic mental health evaluations in the digital age: A practitioner's guide to using internet-based data* (pp.227-238). New York: Springer International
- Vitacco**, M.J., Lishner, D.A., Gay, J.G., & Trice, A. (2019). In M. Delisi (Ed.), *Psychopathy and empathy*. Routledge International Handbook of Psychopathy and Crime (pp. 46-57). New York, NY: Routledge International Press.
- Vitacco**, M.J. (2018). Syndromes associated with deception. In R. Rogers (Ed.), *Clinical Assessment of Malingering and Deception, Fourth Edition* (pp. 83-97). New York, NY: The Guilford Press.
- Lillard, C., Johnson, J. C., & **Vitacco**, M. J. (2017). Psychopathy and Violence. In P. Sturmey (Ed.), *The Wiley Handbook of Violence and Aggression* (Vol 2; Ch. 56; pp. 1-12). Hoboken, NJ: John Wiley & Sons Publisher.
- Vitacco**, M. J., & Tabernik, H. (2016). Structured Assessment of Malingering. In R. Rosner, & C. Scott (Eds.), *Principles and Practices of Forensic Psychiatry* (pp. 729-738). Taylor & Francis Publishing Company.

- Vitacco**, M.J., Neumann, C.S., Welch, L., & Buckley, P. (2016). Psychopathy Assessment. In R. Jackson & R. Roesch (Eds.), *Teaching Forensic Assessment*, (pp. 116-130). San Francisco, CA: Lawrence Erlbaum.
- Schenk, A., Gottfried, E., & **Vitacco**, M.J. (2016). Conducting criminal responsibility evaluations: Best practices for forensic clinicians. In T. Masson (Ed.), *Inside Forensic Psychology* (pp. 36-54). Westport, CT: Prager Publishing.
- Kosson, D.S., **Vitacco**, M.J., Swogger, M.T., & Steuerwald, B.L. (2015). Emotional experiences of the psychopath. In C. Gacano (Ed.), *The Clinical and Forensic Assessment of Psychopathy: A Practitioners Guide*, 2nd Edition, (pp. 32-53), Mahwah, NJ: Lawrence Erlbaum
- Neumann, C.S., **Vitacco**, M.J., & Mokros, A. (2015). Using both variable-centered and person-centered approaches to understanding psychopathic personality. In C. Gacano (Ed.), *The Clinical and Forensic Assessment of Psychopathy: A Practitioners Guide*, 2nd Edition (pp. 73-96), Mahwah, NJ: Lawrence Erlbaum
- Tabernik, H., & **Vitacco**, M.J. (2015). Finding the truth in lies: A practical guide to the assessment of malingering. In D. Bhugra & G.S. Malhi (Eds.), *Troublesome Diagnoses* (pp. 85-99), New York, NY: Wiley-Blackwell.
- Neller, D.J., & **Vitacco**, M.J. (2015). Institutional violence risk: Theory, assessment, and management. In C.S. Pietz and C.A. Mathison (Eds.), *Violent Offenders: Understanding and Assessment*, (pp.269-288). New York, NY: Oxford University Press.
- Vitacco**, M.J., & Salekin, R.T. (2013). Adolescent psychopathy and the law. In K. Kiehl & W. Sinott Armstrong (Eds.), *Handbook of Psychopathy and the Law* (pp. 206-224). New York, NY: Oxford University Press
- Vitacco**, M.J., Lishner, D., & Neumann, C.S. (2012). Psychopathy Assessment. In H. Hakkanen-Nyholm & J. Nyholm, *Psychopathy and the law: A practitioner's guide* (pp. 19-38). West Sussex, UK: John Wiley and Sons.
- Jackson, R., & **Vitacco**, M.J. (2012). Structured and unstructured interviews. In D. Faust (Ed), *Coping with Psychiatric and Psychological Testimony*, 6th Edition (pp. 302-310). New York, NY: Oxford University Press
- Vitacco**, M.J., Lillienfeld, S.O., Erickson, S., & Wood, J. (2012). Challenging objective and projective personality testing. In D. Faust (Ed.), *Coping with Psychiatric and Psychological Testimony*, 6th Edition (pp. 335-362). New York, NY: Oxford University Press.
- Vitacco**, M.J., Salekin, R.T., & Rogers, R. (2010). Forensic issues in the assessment of adolescent psychopathy (pp. 374-397). In R. Salekin and R. Lynam (Eds.), *Handbook of Child and Adolescent Psychopathy*. New York, NY: The Guilford Press.
- Vitacco**, M.J., & Rogers, R. (2010). Assessment of Malingering in Correctional Settings. In C. Scott (Ed.). *Clinical Handbook of Correctional Psychiatry*, 2nd Edition (pp. 255-276). Washington, DC: American Psychiatric Publishing Press.

- Vitacco, M.J., & Rogers, R.** (2009). Psychopathy and response styles in sex offenders. In F. Saleh, A. Grudzinskas, J. Bradford, & D.J. Brodsky (Eds.), *Sex offenders: Identification, Risk Assessment, Treatment, and Legal Issues*. (pp. 130-143). New York, NY: Oxford University Press.
- Vitacco, M.J.** (2008). Syndromes associated with deception. In R. Rogers (Ed.), *Clinical Assessment of Malingering and Deception, Third Edition* (pp. 39-50). New York, NY: The Guilford Press.
- Vitacco, M.J., & Neumann, C.S.** (2008). Clinical assessment of psychopathy. In R. Jackson (Ed.), *Teaching Forensic Assessment* (pp. 129-152). San Francisco, CA: Lawrence Erlbaum.
- Vitacco, M.J., & Rogers, R.** (2005). Assessment of Malingering in Correctional Settings. In C. Scott (Ed.), *Clinical Handbook of Correctional Psychiatry* (pp. 133-150). Washington DC: American Psychiatric Publishing Press.
- Rogers, R., & **Vitacco, M.J.** (2002). *Forensic assessment of malingering and related response styles*. In B. Van Dorsten (Ed.), *Forensic Psychology: From classroom to courtroom* (pp. 83-104). New York, NY: Kulwer Academic Press.

ENCYCLOPEDIA ENTRIES

- Vitacco, M.J., & Ragatz, L.** (2017). The Insanity Defense. In C.J. Shreck, M.J. Leiber, K. Welch, & H. Ventura-Miller (Eds.), *Encyclopedia of Juvenile Delinquency and Justice*.
- Vitacco, M.J., & Christopher, S.** (2016). Malingering: Forensic evaluations. In J.A. Moenssens (Ed.), *Wiley Encyclopedia of Forensic Science, 2nd Edition*. Chichester, UK: John Wiley and Sons.
- Christopher, S. & **Vitacco, M.J.** (2016). Treatment: Mandated mental health treatment. In J.A. Moenssens (Ed.), *Wiley Encyclopedia of Forensic Science, 2nd Edition*. Chichester, UK: John Wiley and Sons.
- Christopher, S. & **Vitacco, M.J.** (2016). Treatment: Right to refuse mental health treatment. In J.A. Moenssens (Ed.), *Wiley Encyclopedia of Forensic Science, 2nd Edition*. Chichester, UK: John Wiley and Sons.
- Christopher, S. & **Vitacco, M.J.** (2016). Treatment: Right to mental health treatment. In J.A. Moenssens (Ed.), *Wiley Encyclopedia of Forensic Science, 2nd Edition*. Chichester, UK: John Wiley and Sons.
- Vitacco, M.J.** (2009). Malingering: Forensic evaluations. In J.A. Moenssens (Ed.), *Wiley Encyclopedia of Forensic Science* (pp. 1657-1663). Chichester, UK: John Wiley and Sons.
- Vitacco, M.J. & Erickson, S.K.** (2009). Treatment: Mandated mental health treatment. In J.A. Moenssens (Ed.), *Wiley Encyclopedia of Forensic Science* (pp. 2576-2580). Chichester, UK: John Wiley and Sons.
- Vitacco, M.J. & Erickson, S.K.** (2009). Treatment: Right to refuse mental health treatment. In

J.A. Moenssens (Ed.), Wiley Encyclopedia of Forensic Science (pp. 2584-2587).
Chichester, UK: John Wiley and Sons.

Vitacco, M.J. & Erickson, S.K. (2009). Treatment: Right to mental health treatment. In J.A. Moenssens (Ed.), Wiley Encyclopedia of Forensic Science (pp. 2580-2584). Chichester, UK: John Wiley and Sons.

OTHER PUBLICATIONS

Vitacco, M.J., Green, D., & Felthous, A. (2014). Introduction the special issue on Conditional Release. *Behavioral Sciences & the Law*, 32, 553-556.

Vitacco, M. J., Viljoen, J., & Petrila, J. (2009). Introduction to the special issue on Adolescent Sex Offending. *Behavioral Sciences & the Law*, 27, 857-861.

Vitacco, M.J. (2007). Review of the book: Handbook of Psychopathy. *Psychiatric Services*, 58, 417-418.

Vitacco, M.J., & Van Rybroek, G. J. (2007). Treating antisocial and borderline personality disorders in forensic hospitals: Challenges and principles for effective treatment. *Midwest Association of State Mental Health Organizations*, Volume 2.

Vitacco, M. J., & Packer, I. (2003). Review of Wisconsin's Fifth Standard for civil commitment. *The Journal of the American Academy of Psychiatry and the Law (Legal Digest)*, 31, 264 - 266.

Vitacco, M. J. & Silverthorn, P. (2000). Review of the book: Delinquency and crime: Current theories. *Journal of Clinical Child Psychology*, 29, 143 - 144.

PEER REVIEWED PRESENTATIONS AT PROFESSIONAL MEETINGS

Vitacco, M.J., Weinberg, C., Wahl, K., & Vitacco, L. (accepted). The Inventory of Legal Knowledge in forensic practice. Submitted to the International Academy of Law and Mental Health, Barcelona, Spain.

Gay, J., Helmerichs, A., Hackney, A., & **Vitacco**, M.J. (2024, March). The use and misuse of protective factors in violence risk assessment. Poster presented at the American Psychology-Law Society, Los Angeles, California.

Weinberg, C., **Vitacco**, M.J., & Wahl, K. (2024, March). Evaluating feigned incompetency: Consideration of the Inventory of Legal Knowledge. Poster accepted under review for 2024 Southeastern Psychological Conference, Orlando, FL.

Sandlin, S., Coleman, S., & **Vitacco**, M.J. (2023, June). Community treatment and violence: What happens to the insanity acquittee after release. Paper presented at the International Association of Forensic Mental Health. Sydney, Australia.

Vitacco, M.J., & Gottfried, E. (2023, June), Testing alternative scoring for the Inventory of Legal Knowledge with forensic patients. Paper presented at the International Association of Forensic Mental Health. Sydney, Australia.

Vitacco, M.J., Randolph, A.M., Sigurdsson, D., Soroko, K., & Valez, J. (2022, June). Evaluating

feigning in individuals with intellectual disabilities in competency cases. Paper presented at the annual meeting of the International Association of Forensic Mental Health, Berlin, Germany.

- Vitacco**, M.J., Randolph, A.M., Sigurdsson, D., Soroko, K., & Valez, J. (2022, March). Evaluating malingering in individuals with intellectual disabilities in competency cases. Paper presented at the annual meeting of the American Psychology Law Society, Denver, CO.
- Aguiar, R., Porter-Staats, M., **Vitacco**, M.J., & Dzurny, T. (2022, March). Neural correlates of psychopathy and cultural inclusion: A systematic review and meta-analysis. In D. Faust (Chair). Symposium presented at the annual meeting of the American Psychology Law Society, Denver, CO.
- Dzurny, T., Aguiar, R., Porter-Staats, M., & **Vitacco**, M.J. (2022, March). Systematic review of neural correlates of psychopathy in adolescent offenders. Poster presented at the annual meeting of the American Psychology Law Society, Denver, CO.
- Fonzi, L., Lodovic, J., Robles, K., Tuder, S., Gowensmith, M., Batastini, A., & **Vitacco**, M.J. (2021, March). Perceived credibility of social media as a collateral source in forensic evaluations. Poster virtually presented at the annual meeting of American Psychology-Law Society.
- Maguno-Mire, G., Gallagher, A., Wright, J., Allen, K., **Vitacco**, M.J., Stephenson, N., Mikolajewski, A.J., & Thompson, J. (2020, March). Risk assessment and conditional release decision-making: Outcomes and future directions. In M.J. Vitacco (Chair) *Conditional Release and violence risk assessment: From the hospital to the community*. Symposium presented at the annual meeting of the American Psychology Law Society, New Orleans, LA.
- Vitacco**, M.J., Rideout, K., & Balduzzi, E. (2020, March). Treating insanity acquittees in the community: Risk reduction and maintenance. In M.J. Vitacco (Chair) *Conditional Release and violence risk assessment: From the hospital to the community*. Symposium presented at the annual meeting of the American Psychology Law Society, New Orleans, LA.
- Kastner, R., **Vitacco**, M.J., & Anderson, K. (2020, March). The HCR-20 in predicting conditional release decisions. In M.J. Vitacco (Chair) *Conditional Release and violence risk assessment: From the hospital to the community*. Symposium presented at the annual meeting of the American Psychology Law Society, New Orleans, LA.
- Jones, A., Davis, R., Batastini, A.B., & **Vitacco**, M.J. (2020, March). Social media bias in parental fitness evaluations: Forensic expert and layperson perceptions. Paper presented at the annual meeting of the American Psychology Law Society, New Orleans, LA.
- Batastini, A. B. & **Vitacco**, M. J. (2019, March). Perceived credibility of social media data as a collateral source in forensic mental health assessment. In A.B. Batastini (Chair), *Applications of Technology in Psychology-Law Contexts*. Symposium at the annual meeting of the American Psychology Law Society, Portland, Oregon.
- Manguno-Mire, G., Gallagher, A., Wright, J., & **Vitacco**, M. (2019, March). *Risk Assessment in*

the Context of Clinical Release Decision-Making. Paper presented at the annual meeting of the American Psychology-Law Society, Portland, OR.

Britt, J.Y., Patton, C., Remaker, D., **Vitacco**, M. J., & Prell, L. (2019, March). *Prediction of Violence Risk in Female Parolees.* Paper presented at the annual meeting of the American Psychological Law Society, Portland, OR.

Johnson, M., Dismukes, A., **Vitacco**, M.J., Miocevic, O., White, S., & Shirtcliff, E. (2018, August). Sex differences in diurnal cortisol, testosterone, and DHEA functioning in incarcerated adolescents. Poster presentation at the annual meeting of the International Society for Psychoneuroendocrinology, San Francisco, CA.

Batastini, A.B., Coffey, C.A., & **Vitacco**, M.J. (2018, March). Social networking sites as collateral data in forensic mental health evaluations. Symposium presented at the annual meeting of the American Psychology-Law Society, Memphis, TN.

Kois, L., Hunter, S., Meaux, L., **Vitacco**, M.J., & Packer, I. (2018, March). Mental state at the time of the offense. Symposium presented at the annual meeting of the American Psychology-Law Society, Memphis, TN.

Patton, C. L., **Vitacco**, M., & Lillard, C. K. (2018, March). *Assessing pro se competence in the wake of Indiana v. Edwards.* Paper presented at annual meeting of the American Psychology-Law Society, Memphis, TN.

Gay, J., **Vitacco**, M., Lishner, D., & Beussink, C. (2018). Political affiliation as a mediator between psychopathy and moral decision making. Paper presented at the annual meeting of the American Psychology-Law Society, Memphis, Tennessee.

Patton, C.L., **Vitacco**, M.J., & Lillard, C.K. (2018, March). *Assessing pro se competence in the wake of Indiana v. Edwards.* Paper presented at the annual meeting of the American Psychology-Law, Memphis, TN.

Vitacco, M.J. (2017, July). Violence risk assessment and conditional release in insanity acquittees: What have we learned? Paper presented at the International Academy of Law and Mental Health, Prague, Czech Republic.

Prell, L., **Vitacco**, M.J., & Zavodny, D. (2017, July). Predicting violence and recidivism in a large sample of males on probation or parole. Paper presented at the International Academy of Law and Mental Health, Prague, Czech Republic.

Batastini, A. B., **Vitacco**, M. J., Coaker, L. (2017, March). *Evaluating Understanding of Violence Risk Data: A Multi-Method Comparison Among Jurors and Judges.* Paper presented to the annual meeting of the American Psychology-Law Society, Seattle, WA.

Gay, J., **Vitacco**, M. J., Hackney, A., Beussink, C. & Lilienfeld, S. (2017, March). *The relationship between psychopathy, moral intuitions, and moral judgment.* Paper presented to the annual meeting of the American Psychology-Law Society, Seattle, WA.

Guyton, M., Conroy, M.A., Channell, S., **Vitacco**, M.J., & Packer, I. (2017, March). *Supervision of forensic assessment.* Symposium presentation at the annual meeting of the American Psychology-Law Society, Seattle, WA.

- Gottfried, E., **Vitacco**, M.J., & Steadham, J. (2017, March). *The relationship between feigned psychiatric symptoms and feigned lack of legal knowledge among a multi-site sample of forensic inpatients*. Poster presented at the annual meeting of the American Psychology-Law Society, Seattle, WA.
- Felthous, A., **Vitacco**, M.J., Gowensmith, W. N., & Novosad, D. (2017, February). Glad Tidings About Not Guilty by Reason of Insanity (NGRI): The benefit of conditional release. Symposium presented at the American Academy of Forensic Sciences, New Orleans, LA.
- Steinert, S., Lishner, D. A., Kovacs, K., Rapp, E., Wenzel, T., Hong, P. H., & **Vitacco**, M. J. (2017, January). Emotional callousness and vicarious emotional reactions to the misfortune of others. Poster presented at the 18th annual meeting of the Society for Personality and Social Psychology, San Antonio, TX.
- Vitacco**, M.J., Balduzzi, E., Rideout, K., Banfe, S., & Britton, J. (2016, March). Predicting outcome using risk assessments with insanity acquittees on conditional release. Paper presented at the annual meeting of the American Psychology-Law Society, Atlanta, GA.
- Johnson, M., **Vitacco**, M.J., Dismukes, A., & Shirtcliff, E. (2016, March). Callousness predicts flattened cortisol functioning across time in incarcerated adolescents. Paper presented at the annual meeting of the American Psychology-Law Society, Atlanta, GA.
- Koplin, M., Cox, J., Parrott, C.T., Fairfax-Culumbo, J., DeMatteo, D., & **Vitacco**, M.J. (2016, March). The role of the Historical, Clinical, Risk-20 in United States Courts: A case law review. Paper presented at the annual meeting of the American Psychology-Law Society, Atlanta, GA.
- Gay, J., **Vitacco**, M.J., & Ragatz, R. (2016, March). Mental health outcomes and their relationship to competency outcomes. Poster presented at the annual meeting of the American Psychology-Law Society, Atlanta, GA.
- Steinert, S. W., Kelso, S. L., Hanson, M. D., Lishner, D. A., Hong, P. Y. & **Vitacco**, M. J. (2015, November). A replication and aggregation of psychopathic callous affect as a predictor of empathic concern and happiness toward those in need. Poster presentation at annual meeting of the Association for Behavioral, and Cognitive Therapies, Chicago, IL.
- Hanson, M.D., Steinert, S.W., Kelso, S.L., Ebert, A.R., Lishner, D.A., Hong, P.Y., & **Vitacco**, M.J. (2015, August). Psychopathy ability emotional intelligence: A re-analysis of Lishner, Swim, Hong, & **Vitacco** (2011). Poster presented at the American Psychological Association, Washington, D.C.
- Gottfried, E., Schenk, A., **Vitacco**, M., & Carbonell, J. (2015, June). Prison violence in female offenders: Differences on the MMPI-2-RF. Poster presented at the 50th Annual Symposium on Recent MMPI Research, Minneapolis, MN.
- Miller, T., Pionk, T., Kelso, S., Steinert, S.W., Hanson, S.W., Lishner, D.A., Hong, P.Y., & **Vitacco**, M.J. (2015, May). Psychopathic callous affect as a predictor of empathic concern and positive affect toward those in need. Poster presented at the Midwestern Psychological Association, Chicago, IL.
- Gay, J., Ragatz, L., & **Vitacco**, M. (2014, April). Psychiatric symptoms and criminal behavior in competency to stand trial evaluations. Poster presented at the Southeastern

Psychological Association, Nashville, Tennessee

Vitacco, M.J., Tabernik, H., Zavodny, D., & Smith-Bailey, K. (2014, March). Risk assessment and decision making in forensic patients under consideration for release. Paper presented at the American Psychology Law Society, New Orleans, LA

Bryant, A., Gowensmith, W., & **Vitacco**, M.J. (2014, March). Decision-making in post-acquittal hospital release: How do forensic evaluators make their decisions? Paper presented at the American Psychology Law Society, New Orleans, LA

Marshall, D., Reed, J., & **Vitacco**, M.J. (2014, March). Predicting Voluntary and Involuntary Re-admissions to Forensic Hospitals by Insanity Acquittees in the State of Maryland: A three-year follow-up. Paper presented at the American Psychology Law Society, New Orleans, LA

Dismukes, A., **Vitacco**, M.J., Johnson, M., Lee, Y., & Shirtcliff, E.A. (2014, March). Early life stress and callous-unemotional traits influence testosterone's diurnal rhythm: Implications for juvenile justice. Paper presented at the American Psychology Law Society, New Orleans, LA

Tabernik, H., Montes, O., Christopher, S., Rideout, K., & **Vitacco**, M.J. (2014, March). Homicide and the insanity defense in Georgia. Poster presented at the American Psychology Law Society, New Orleans, LA.

Lee, Y., Dismukes, A. R., **Vitacco**, M.J., Shirtcliff, E.A. (2014, March). Diurnal rhythm of testosterone with callous traits among incarcerated adolescent males. *Poster presented at the Society for Research on Adolescence*, Austin, TX.

Johnson, M., Dismukes, A., Shirtcliff, E., & **Vitacco**, M.J. (2013, May). Coupling between HPA and HPG hormones among Incarcerated adolescents: The Influence of callous-unemotional Traits. Society for the Scientific Study of Psychopathy, Washington, DC.

Dismukes, A.R., Johnson, M., **Vitacco**, M.J., Shirtcliff, E.A. (2013, April). Shared Role of Hypothalamic-Pituitary-Adrenal and -Gonadal Hormones in the Development of Callous Unemotional Traits and Response to Life Stress Exposure. *Presented at Society for Research on Child Development*, Seattle, WA.

Vitacco, M.J., Stredny, R., & Ragatz, L. (2013, March). Evaluating conditional release in NGRI acquittees: An extended prospective follow-up study. American Psychology Law Society, Portland, OR.

Allen, V., Hackney, A., Rosenberg, R., & **Vitacco**, M.J. (2013, January). Psychopathy and attachment: Can secure attachment priming be beneficial? Poster presented at the Social Psychology and Law Preconference, SPSP, New Orleans, LA.

Shirtcliff, E.A., Essex, M.J., Pollak, S.D., **Vitacco**, M.J. (2012, October). Life stress exposure is consistently linked to cortisol's diurnal rhythm. Paper presented at the American Academy of Child and Adolescent Psychiatry, San Francisco, CA.

Wampler, M., Dismukes, A., **Vitacco**, M.J., Shirtcliff, E.A. (2012, September). Psychopathy's Influence on the Interplay of Cortisol with Testosterone and DHEA. Poster presented at Society for Behavioral Medicine, New Orleans, LA.

- Johnson, M.M., Dismukes, A.R., **Vitacco**, M.J., Shirtcliff, E.A. (2012, September). Coupling between hypothalamic-pituitary-adrenal and –gonadal axes among incarcerated adolescents: The influence of psychopathic traits and histories of abuse. Poster presented at the Society for Psychophysiological Research, New Orleans, LA.
- Dismukes, A., Wampler, M., Vitacco, M.J., Shirtcliff, E.A. (2012, April). Abuse and the coupling of cortisol with testosterone and dhea in adolescent males. Poster presented at the Wisconsin Symposium on Emotion, Madison, Wisconsin.
- Shirtcliff, E.A., **Vitacco**, M.J., Gostisha, A., Del Giudice, M. (2012, March). Beyond physiological hypoarousal: Adaptive calibration of cortisol and callous-unemotional traits in incarcerated adolescent males. Paper presented at the Society for Research on Adolescence, Vancouver, British Columbia.
- Vitacco**, M.J., Lishner, D.A., & Hong, P.Y. (2012, March). Evaluating the relation between psychopathy and affective empathy. Poster presented at the American Psychology and Law Society, San Juan, Puerto Rico.
- Vitacco**, M.J., Shirtcliff, E.A., Brieman, C., & Dismukes, A. (2012, March). Beyond physiological hypoarousal: The role of context and callous-unemotional traits in incarcerated adolescent males. Poster presented at the American Psychology and Law Society, San Juan, Puerto Rico.
- Tribble, S., **Vitacco**, M.J., & Kosson, D.S. (2011, May). Construct validity of the three-factor model of the Interpersonal Measure of Psychopathy. Poster presented at the Society for the Scientific Study of Psychopathy, Montreal, Canada
- Gostisha, A., Shirtcliff, E.A., **Vitacco**, M.J., Graf, A., Brieman, C., & Merz, J. (2011, May). Neuroendocrine function of incarcerated youth: A mechanism for the development of psychopathic traits. Poster presented at the Society for the Scientific Study of Psychopathy, Montreal, Canada.
- Gostisha, A., Shirtcliff, E.A., **Vitacco**, M.J., Graf, A., Brieman, C., & Merz, J. (2011, May). Neuroendocrine function of incarcerated youth: A mechanism for the development of callous traits. Paper presented at the Society for Research in Child Development, Montreal, Canada.
- Lishner, D.A., Hong, P.Y., Han, K.H., **Vitacco**, M., J., & Stocks, E.L. (2011, February). *Is impairment in affective empathy a core feature of psychopathy?* Poster presented at the 12th annual meeting of the Society for Personality and Social Psychology, San Antonio, Texas,
- Erickson, S.K., & **Vitacco**, M.J. (2010, April). The problem of psychopathy as an excuse. Paper presented at the American Academy of Psychology Law, Vancouver, BC.
- Gostisha, A., **Vitacco**, M.J., Graf, A., Brieman, C., Shirtcliff, E.A., (2009, July). *Endocrine Correlates of Psychopathy and Callous/Unemotional Traits in Incarcerated Youth*. Poster Presented at the International Society for Psychoneuroendocrinology, San Francisco, CA.

- Gostisha, A., **Vitacco**, M.J., Shirtcliff, E.A., Brieman, C., Graf, A., Merz, J.L. (2009, April). *Neuroendocrine Correlates of Psychopathy and Callous/Unemotional Traits*. Poster Presented at the Society for the Scientific Study of Psychopathy, New Orleans, LA.
- Vitacco**, M.J., Neumann, C.S., Caldwell, M.F., & Van Ryborek, G.J. (2007, October). *Psychopathy and antisocial behavior in adolescents: A prospective longitudinal follow-up*. Poster presented at the Society for Research in Psychopathology, Iowa City, IA.
- Malesky, A., Leslie, W., **Vitacco**, M.J., & Croysdale, A. (2007, August). *Jurors attitudes toward the insanity defense*. Paper presented at the American Psychological Association, San Francisco, CA.
- Vitacco**, M. J., & Neumann, C. S. (2006, October). *Differential relationships between the dimensions of psychopathy and intelligence*. Poster presented at the Society for Research in Psychopathology, San Diego, CA.
- Vitacco**, M. J., Gabel, J., & Munizza, J. (2006, May). *Assessing malingering in pretrial evaluations: A comparison of measures*. Paper presented at the Midwestern Psychological Association, Chicago, IL.
- Vitacco**, M. J., Rogstad, J., Saewert, E., & Neumann, C. S. (2006, May). *Predicting inpatient violence: A multi-trait assessment*. Paper presented at the Midwestern Psychological Association, Chicago, IL.
- Saewert, E., **Vitacco**, M. J., Neumann, C. S., & Rogstad, J. (2006, March). *A Confirmatory factor analytic approach to understanding inpatient violence*. Paper presented at the American Psychology and Law Society, St. Petersburg, FL.
- Vitacco**, M. J., Caldwell, M., Van Rybroek, G. J., & Gabel, J. (2006, March). *Psychopathy and behavioral correlates of victim injury in serious juvenile offenders*. Paper presented the American Psychology and Law Society, St. Petersburg, FL.
- Vitacco**, M. J., Rogers, R., Gabel, J., & Munizza, J. (2006, March). *Evaluating screens for malingering: A known groups design*. Paper presented at the American Psychology and Law Society, St. Petersburg, FL.
- Neumann, C. S., Strunk, J., & **Vitacco**, M. J. (2005, October). *Longitudinal latent variable relations of substance use, symptoms of depression, and conduct disorder in a nationally representative sample of male and female adolescents*. Paper presented at the Society for Research in Psychopathology, Coral Gables, FL.
- Neumann, C. S., **Vitacco**, M. J., Jackson, R. L. (2005, July). *Latent structure of the PCL:SV in African American and European American male psychiatric outpatients and its association with anger and impulsivity*. Poster presented at the Society for the Scientific Study of Psychopathy, Vancouver, Canada.
- Vitacco**, M. J., Neumann, C. S., Caldwell, M., & Leistico, A.M. (2005, May). *Personality traits and instrumental violence in antisocial adolescents*. Paper presented at the Midwestern Psychological Association, Chicago, IL.
- Bloechl, A., & **Vitacco**, M.J. (2005, May). *Measuring attitudes toward the insanity defense: An empirical investigation*. Paper presented at the Midwestern Psychological Association,

Chicago, IL.

- Vitacco**, M.J., Rogers, R., & Neumann, C.S. (2005, March). *Psychopathy and Comorbidity in Mentally Disordered Offenders*. Paper presented in the symposium Psychopathy, Comorbidity, self-control, and legal issues. American Academy of Psychology and Law, LaJolla, CA.
- Erickson, S.K., & **Vitacco**, M.J. (2005, March). *Psychopathy and legal proceedings: Limitations and guidelines for forensic clinicians*. Paper presented in the symposium *Psychopathy, Comorbidity, self-control, and legal issues*. American Academy of Psychology and Law, LaJolla, CA.
- Vitacco**, M. J., Neumann, C.S., Caldwell, M., & Leistico, A. M. (2005, March). *The importance of the interpersonal facet of psychopathy in risk assessment: A comparison of two clinical samples*. Paper to be presented in the symposium Personality in Forensic Populations: Structure and Linkages to Violence. American Academy of Psychology and Law, LaJolla, CA.
- Neumann, C.S. & **Vitacco**, M.J. (2004, October). *Psychopathy and symptoms of psychopathology in the prediction of a latent variable linear growth in violence*. Poster presented at the Society for Research in Psychopathology, St. Louis, MO.
- Vitacco**, M.J., & Munizza, J. (2004, April). *An analysis of competency to stand trial defendants: Linking clinical symptoms to psycholegal deficits*. Paper presented at the Midwestern Psychological Association, Chicago, IL.
- Karpenko, V., & **Vitacco**, M.J. (2004, April). *Internalizing disorders and psychopathic traits in adjudicated males: Mutually exclusive or clinically related?* Paper presented at the Midwestern Psychological Association, Chicago, IL.
- Vincent, G.M., **Vitacco**, M.J., Grisso, T., & Corrado, R.R. (2004, March). *Recidivism and subtypes of adolescent offenders: Psychopathy and risk assessment*. Paper presented at the American Academy of Psychology and Law, Scottsdale, AZ.
- Vitacco**, M.J., Neumann, C.S., & Jackson, R. (2004, March). *The four-factor model of psychopathy and its associations with violence, intelligence, gender, and ethnicity*. Paper presented at the American Academy of Psychology and Law, Scottsdale, AZ.
- Vincent, G.M., **Vitacco**, M.J., Grisso, T., & Corrado, R.R. (2004, March). Subtypes of adolescent offenders: Re-evaluating the notion of the fledgling psychopath. Paper presented at the Society for Research in Adolescence, Baltimore, MD.
- Vitacco**, M.J., Neumann, C.S., & Jackson, R.L. (2003, October). *Development of a four-factor model of psychopathy on the PCL:SV: Associations with ethnicity, gender, and intelligence*. Poster presented at the Society for Research in Psychopathology, Toronto, Canada.
- Vitacco**, M. J., Neumann, C.S., Jackson, R., & Vincent, G.M. (2003, July). *Development of a four-factor model on the PCL:SV and its relationship with verbal intelligence: Results from the MacArthur Violence Risk Assessment Study*. Poster presented at the Developmental and Neuroscience Perspectives on Psychopathy, Madison, WI.

- Rogers, R., Martin, M., Sewell, K. & **Vitacco**, M.J. (2003, March). *A Meta-analytic Review of MMPI-2 Malingering*. Paper presented at the Society for Personality Assessment, San Francisco, CA.
- Vitacco**, M.J., Rogers, R., & Neumann, C.S. (2002, March). *The Psychopathy Screening Device: An examination of its construct and criterion validity*. Paper presented at the American Psychology-Law Society, Austin, TX.
- Rogers, R., **Vitacco**, M.J., & Sewell, K.S. (2002, March). *Advances in the assessment of malingering: A meta-analysis of the MMPI-2*. Paper presented at the American Psychology-Law Society, Austin, TX.
- Rogers, R., **Vitacco**, M.J., Cruise, K., & Sewell, K.W. (2002, March). *Screening for adolescent psychopathy among at-risk youth: Initial validation of the Survey of Attitudes and Life Experiences (SALE)*. Paper presented at the American Psychology-Law Society, Austin, TX.
- Rogers, R., **Vitacco**, M.J., Jackson, R., Martin, M., Collins, M., & Sewell, K.W. (2001, March). *Faking psychopathy? Response styles with antisocial youth*. Paper presented at the Society for Personality Assessment Midwinter Meeting, Philadelphia, PA.
- Cruise, K.R., **Vitacco**, M.J., Rogers, R., & Jackson, R. (2000, April). *Preliminary analysis of malingering in dually diagnosed offenders*. Poster presented at the Southwestern Psychological Association, Dallas, TX.
- Vitacco**, M.J., Rogers, R., Neumann, C.S., Durrant, S.L., & Collins, M. (2000, March). *Adolescent psychopathy: Contributions of sensation seeking, impulsivity, and ADHD*. Paper presented at the American Psychology-Law Society, New Orleans, LA.
- Durrant, S.L., Silverthorn, P., Ramos, V., **Vitacco**, M.J., & Long, M. (1999, November). *Characteristics of children with behavior disorders who drop out of therapy*. Poster presented at the Association for Advancement of Behavior Therapy, Toronto, Canada.
- Roberts, M.K., **Vitacco**, M.J., Silverthorn, P., Ramos, V., & Durrant, S.L. (1999, April). *Parenting styles in the development of psychopathy in adolescent females*. Paper session presented to the annual meeting of the Southwestern Psychological Association, Albuquerque, NM.
- Silverthorn, P., **Vitacco**, M.J., Durrant, S.L., Robertson, A.R., & Neumann, C.S. (1998, November). *Protective and risk factors in adjudicated adolescents*. Poster presented at the Association for the Advancement of Behavior Therapy, Washington, DC.

TRAINING PRESENTATIONS and GRAND ROUNDS

- Vitacco**, M.J. (2024, October). Dealing with high conflict parents in child custody cases. Presentation given at the Augusta Area Continuing Legal Education Seminar, Evans, GA.
- Vitacco**, M.J. (2023, 2019, February). Comprehensive assessment of malingering. Seven-hour workshop provided to participants and sponsored by the American Academy of Forensic Psychology in Charleston. South Carolina.

- Vitacco, M.J.** (2022, October). Competency to stand trial evaluation and restoration with individuals diagnosed with intellectual development disorder. Three-hour virtual presentation provided to New Mexico forensic examiners, Albuquerque, New Mexico.
- Vitacco, M.J.** (2022, August). Forensic Ethics: A vignette-based approach. Five-hour virtual presentation provided to Larned State Hospital, Larned Kansas.
- Vitacco, M.J.** (2022, July). Conditional release evaluations: The basics. Virtual Grand Rounds presentation sponsored by the University of New Mexico Department of Law and Mental Health Division.
- Vitacco, M.J.** (2022, March). Malingering in correctional settings: Barriers to accurate assessment. Ninety-minute virtual presentation sponsored by American Psychology Association, Division 19 (Psychologists in Public Service).
- Vitacco, M.J.** (2022, March). Adolescent depression: Awareness and prevention. One-hour virtual presentation sponsored by Adoption-Share, Brunswick, GA.
- Vitacco, M.J., & Hardison, E.O.** (2021, April). The impact of trauma and its presentation in the classroom: Applying science to practice. CSRA, RESA, PBIS Mental Health Summit. One-hour presentation, Columbia Co, Georgia.
- Vitacco, M.J.** (2021, February). Malingering in forensic evaluations. Four-hour virtual workshop sponsored by the American Academy of Forensic Psychology.
- Vitacco, M.J.** (2021, February). Forensic evaluations in the digital age. Virtual Grand Rounds presentation sponsored by the University of New Mexico Department of Law and Mental Health Division.
- Vitacco, M.J.** (2021, January). Forensic evaluations in the digital age. Four-hour virtual workshop sponsored by the American Academy of Forensic Psychology.
- Vitacco, M.J.** (2021, January). Treating the nexus. Preparing insanity acquittees for community return. Virtual Grand Rounds presentation for Ohio Forensic Hospitals, Columbus, OH.
- Vitacco, M.J.** (2020, December). Neurolaw and the insanity defense: Pseudoscience and the courtroom. Grand Rounds presentation at Augusta University, Augusta, GA.
- Vitacco, M.J.** (2020, August). The effective expert witness: How to navigate legal and ethical dilemmas. Three hour and 30-minute virtual presentation provided to Larned State Hospital, Larned Kansas.
- Vitacco, M.J.** (2020, August). Malingering evaluations. Three hour and 30-minute virtual presentation provided to Larned State Hospital, Larned Kansas.
- Vitacco, M.J.** (2020, March). Comprehensive Assessment of Malingering. Three hour and 30-minute presentation provided to North Dakota State Hospital, Jamestown, North Dakota.
- Vitacco, M.J., & Batastini** (2020, March). A. Forensic evaluations in the age of social media. Three hour and 30-minute workshop presented at the American Psychology and Law Society Annual Conference, New Orleans, Louisiana.

- Vitacco, M.J.** (2019, September). Conducting criminal responsibility evaluations. Six-hour workshop presented to the Georgia Department of Behavioral Health and Developmental Disabilities, Peachtree City, GA.
- Vitacco, M.J.** (2019, August). Malingering evaluations. Training provided to the United States Air Force, Webinar for psychologists and lawyers in the United States and Europe.
- Vitacco, M.J.** (2019, May). Insanity acquittees in the community: From the forensic report to release. The Robert Miller Memorial Lecture. University of Colorado School of Medicine, Denver, CO.
- Vitacco, M.J.** (2019, May). Violence risk assessment with conditionally released insanity acquittees: Promises and pitfalls. Two-hour presentation to Colorado Mental Health Institute at Pueblo, Pueblo, CO.
- Vitacco, M.J.** (2018, August). Unmasking the sane: Hervey Cleckley's influence on psychopathy. Grand Rounds presentation at Augusta University, Augusta, GA.
- Vitacco, M.J.** (2018, August). Conducting evaluations of criminal responsibility. Seven-hour presentation for the Department of Mental Health, Larned, Kansas.
- Vitacco, M.J.** (2017, November). Determining risk for insanity acquittees. Four-hour presentation for the Ohio Department of Mental Health and Addiction Services, Columbus, Ohio.
- Vitacco, M.J.** (2015, September). Structured approaches to assessing malingering: Implications for clinical practice. Grand Rounds presentation for the Medical University of South Carolina, Charleston, SC.
- Vitacco, M.J.** (2014, June). Insanity acquittees in the community: Implications for public policy and mental health treatment. Grand Rounds presentation for Augusta University, Augusta, GA., and the South Carolina Department of Mental Health, Columbia, South Carolina.
- Vitacco, M.J.** (2011, August). Dynamic risk factors and inpatient Violence: Developing strategies for effective risk management. Grand Rounds presentation for the South Carolina Department of Mental Health, Columbia, South Carolina.
- Vitacco, M.J.** (2011, May). Dynamic risk factors and inpatient Violence: Developing strategies for effective risk management. Grand Rounds presentation for the Department of Psychiatry and Health Behavior at Augusta University, Augusta, GA.

OTHER PRESENTATIONS

- Vitacco, M.J.** (2019, February). Chronic stress and behavior in adolescence. Presentation to McDuffie Board of Education, Thompson, GA.
- Vitacco, M.J.** (2013, August). Introduction to psychology and the law. Presentation to the Annual Georgia Psychological Association Professional Development Conference, Atlanta, GA.
- Vitacco, M.J.** (2013, September). Violence risk assessment in adults: A primer. Presentation for

the Wisconsin Department of Juvenile Justice/Lincoln Hills School, Irma, WI.

Vitacco, M.J. (2013, January). Criminal responsibility and the psychopath: Holding psychopaths criminally and morally responsible. Presentation for the Psychology Department at the University of New Orleans, New Orleans, LA.

Vitacco, M.J. (2012, October). Mental Health and the Criminal Justice System. Presentation for the National Alliance on Mental Illness, Augusta, GA.

Vitacco, M.J. (2011, November). Competency to stand trial evaluations: A journey through case law. Presentation for the Richmond County Public Defenders, Augusta, GA.

Vitacco, M.J. (2010, November). Predicting violence in forensic inpatients: The importance of evaluating dynamic risk factors. Presentation given at Rosalind Franklin School of Medicine and Science, North Chicago, IL.

Vitacco, M.J. (2010, March). Insanity, risk assessment and treatment of mentally disordered offenders. Presentations given at the University of Wisconsin Oshkosh, Oshkosh, WI and Maranatha College, Watertown, WI.

Vitacco, M.J. (2006, November). Psychopathy, risk assessment, and violence. Presentation given at Luther College, Decorah, Iowa.

Van Rybroek, G.J., & **Vitacco, M.J.** (2006, March). Evaluating services for conditionally released insanity acquittees. Paper presented at the Client Centered Teamwork: Essentials of Mental Health Care, Madison, WI.

PREVIOUS CLINICAL POSITIONS

04/2009 To 12/2010	Licensed Psychologist/Associate Director of Research Mendota Mental Health Institute, Madison, WI <u>Responsibilities:</u> Co-directed a research program on a variety of forensic topics including violence, forensic assessment, and malingering. Provided mental health treatment to forensic patients found not guilty by reason of insanity. Provided treatment for forensic patients diagnosed with major mental illnesses and personality disorders. Conducted various forensic evaluations.
08/2003 To 03/2009	Psychological Associate/Associate Director of Research Mendota Mental Health Institute, Madison, WI <u>Responsibilities:</u> Implemented and co-directed a research program on a variety of forensic topics including youth violence and malingering. Worked on a unit designed to provide mental health treatment for forensic patients found not guilty by reason of insanity that have major mental illness and comorbid personality disorders. Conduct forensic evaluations and psychological testing. Provide didactic trainings to predoctoral psychology interns and practicum students.

EDUCATIONAL CLINICAL POSITIONS

09/2002 **Postdoctoral Fellow**

**To
08/2003**

**University of Massachusetts Medical School, Worcester, MA
The Law and Psychiatry Program**

Responsibilities: Conducted supervised evaluations of competency to stand trial, criminal responsibility, dangerousness, and aid in sentencing at Bridgewater State Hospital, Worcester State Hospital, and the Boston Court Clinic. As part of the fellowship, I testified as an expert witness in competency to stand trial and civil commitment cases. Attended and participated in seminars in landmark legal cases, forensic-related issues, and mental health law.

**9/2001
To
08/2002**

**Predoctoral Clinical Psychology Intern
University of North Carolina Medical School at Chapel Hill
NC and The United States Department of Justice
Specialization: Clinical Forensic Psychology**

Responsibilities: Conducted forensic evaluations at the Federal Medical Center including evaluations of competency to stand trial, criminal responsibility, and dangerousness. Developed and implemented a Dialectical Behavior Therapy program for inmates with borderline personality disorder. Completed rotations at the University of North Carolina Medical School performing child custody and parental competency evaluations, and neuropsychological assessment of adults with traumatic brain injuries. I completed a rotation on the Crisis Service where I completed assessments and brief therapeutic interventions in the emergency department. I also completed a rotation doing interventions for families in crisis.

EDITORIAL ACTIVITIES

1. Co-editor for special issue of Behavioral Sciences & the Law. Social media and forensic evaluations (2023).
2. Co-editor for special issue of Behavioral Sciences & the Law: Conditional Release (2014), volume 5.
3. Co-editor for two special issues of Behavioral Sciences and the Law: Adolescent Sex Offending (2009 and 2010). Behavioral Sciences & the Law, volumes 27 (4) and 28 (1).

REVIEWER ACTIVITIES

1. Reviewer for Psychological Assessment (2005 - 2010)
2. Reviewer for Psychiatric Research (2020 to present)
3. Reviewer for Journal of Forensic Psychiatry and Psychology (2008-2015)
4. Reviewer for Criminal Justice and Behavior (2006-present)
5. Reviewer for Law and Human Behavior (2004-2019)
6. Reviewer for Personality and Individual Differences (2006, 2007)
7. Reviewer for Archives of General Psychiatry (2006)
8. Reviewer for Journal of Criminal Justice (2006, 2007)
9. Reviewer for Journal of Personality Assessment (2006-2016)
10. Reviewer for Journal of Forensic Psychology Practice (2005 to present)
11. Reviewer for Assessment (2005-2007)
12. Reviewer for Journal of Psychopathology and Behavioral Assessment (2009-2017)
13. Reviewer for International Journal of Forensic Mental Health (2010-2019)
14. Reviewer for Psychiatric Services (2009 – 2010)

15. Reviewer for Psychological Services (2012-2016)

PROFESSIONAL ACTIVITIES

Member of the International Academy of Law and Mental Health.

Member of the American Psychology-Law Society (Division 41) of the American Psychological Association.

Member of Georgia Psychological Association.

Committee member for 2023 Georgia Psychological Association annual conference.

.

DR. KIMBERLY KRUSE, PSYD



11 RICHLAND MEDICAL PARK DRIVE

Columbia, SC 29203

Office# (803) 434-4800 / Fax# (803) 434-4878

DrKimberlyKruise@gmail.com



Core Qualifications

- Licensed by the SC Board of Examiners in Psychology / American Association of State Psychology Boards (AASPB)
- American Psychological Association (APA) accredited education and training
- Credentialed across multiple medical and government institutions, to include the Medical University of South Carolina (MUSC), Prisma Health Hospital, the US Department of Veteran's Affairs (VA), the US Department of Labor (SCDDS) and the US Department of the Interior (SCWCC)
- Network, newsprint, and TV broadcast media contributor
- Grant-awarded researcher
- Experienced, court appointed / qualified expert witness: Civil, Commercial and Criminal Litigation, Capital Murder, Competency, Capacity, Personal Injury, Medical Malpractice

Professional Experience

2008 to Current **Chief Neuropsychologist / Director of Psychodiagnostics in Behavioral Medicine**

Prisma Health Hospital System, Midlands

Evaluate and diagnose committed or voluntary status inpatient populations for mental status; Assess for imminent risk of suicide and homicide; Consult with treatment teams regarding patient prognosis and care; Assess altered mental status in the ED; Provide hospital quality assurance consultation; Serve as Chair - Prisma Health Violence Committee

2009 to Current **Assistant Professor / University of South Carolina School of Medicine**

USC Department of Neuropsychiatry and Behavioral Medicine

Provide clinical training and education as an attending in a hospital setting to medical students/residents/fellows

2009 to Current **Public Speaker / Expert Consultant**

Nationwide

Develop and deliver presentations to news media, professionals, and community groups on neuropsychiatric issues, to include neuropsychological disorders, forensic evaluations, and the impact of current events on the general public

2011 to Current **Contractor for SC Disability Determination Services**

Columbia, SC

Perform mental status examinations for differential diagnosis and overall workforce capability

2014 to Current **CEO / Neurobehavioral Diagnostics LLC**

Nationwide

Deliver forensic consultation, neuropsychological testing, and other psychiatric evaluative services under contractual and private statuses; Provide performance coaching in the forms of lifestyle, public perception, and moral/ethical decisions; Develop resources and training for privatized and public organizations to include military/paramilitary groups, as well as professional/semiprofessional leagues

2014 to Current **Contractor for U.S. Department for Veteran's Affairs and Veteran Evaluation Services**

Salisbury, NC, Charlotte, NC and Columbia, SC

Perform compensation and pension exams to assess for service connected diagnosis/prognosis, to include TBI, PTSD, substance addiction, and adjustment based disorders

2016 to Current **Team Neuropsychologist**

University of South Carolina Athletics, USC Sports Medicine / South Carolina State University, SC State Athletics

Provide diagnostic and functional evaluations for disrupted athletic performance in the setting of TBI/concussion, learning disorder, ADHD, and maladaptive behavior

2018 to Current **Neuropsychologist / University of South Carolina Medical Group**

Senior Primary Care

Provide diagnostic neurocognitive evaluations and treatment planning for geriatric populations

2018 to Current **Neuropsychologist / Medical University of South Carolina Hospital System (MUSC)**

Contracted Specialist

Complete referral based exams on patients with complex neurologic/medical presentations

2008 to 2010 **Post-Doctoral Supervisee in Clinical / Neuropsychology**

Palmetto Health Hospital

Administer neuropsychological and psychological assessments; Consult with referring physicians, treatment teams and patients; Develop and maintain collaborative relationships with hospital administration and clinical staff

2002 to 2004 **Community Prevention Specialist**

The House Next Door, Deltona, FL

Design government funded studies and provide research-based consultation to state organizations, to include DJJ; Develop/implement treatment plans for court-mandated adolescent and adult clients; Engage in programmatic development and expansion projects for state funded partnerships

2000 to 2002 **Mental Health Technician**

Act Corporation, Daytona Beach, FL

Manage court mandated processes and procedures in a non-profit specialty outpatient clinic with \$2.5 million-dollar annual revenue; Refer dually diagnosed adults for substance abuse/mental health treatment in the criminal justice system

Educational Background

2008 to 2010 **Post-Doctoral Neuropsychology Resident**

Palmetto Health Hospital, Columbia, SC

Specialty: **Neuropsychology**

2003 to 2008 **Florida School of Professional Psychology / Tampa University**

Nationally APA-Accredited Program, Tampa, FL

Master of Arts / Doctor of Psychology

Major: **Clinical Psychology**

2001 to 2003 **University of Central Florida / UCF**

Orlando, FL

Bachelor of Arts

Major: **Psychology** / Minors: **Sociology & Spanish**

1999 to 2001 **Daytona Beach Community College / DBCC**

Daytona Beach, FL

Associate of Arts

Major: **General Psychology**

Doctoral Experiential Training

2007 to 2008 **Johns Hopkins Affiliate / John L. Gildner - RICA, Rockville, MD**

APA-Accredited Pre-doctoral Internship with Forensic and Neuropsychological Rotations

Directors of Training: Dr. Christine Cariello, Psy.D. / Dr. Joan Donahue, Ph.D.

Supervisors: Dr. Elissa Stieglitz, PhD. / Dr. Dara Spey, Ph.D. / Dr. Dan Eagen, Ph.D. /

Dr. Prabha Menon, Psy.D. / Dr. Monya Cohen, Ph.D.

Complete court mandated neuropsychological and forensic evaluations; Provide testimony on empirical data and assessment findings at court hearings; Present cases and provide consultation to interdisciplinary staff during grand rounds; Provide individual, family, and group therapy in residential and outpatient settings; Maintain effective therapeutic relationships with children, adolescents, and adults; Work with seriously emotionally disabled (SED) individuals with complex medical and psychiatric disorders; Address issues surrounding adoption and attachment-disordered behavior; Provide daily crisis intervention; Assess for psychosis and suicidal/homicidal ideation

2006 to 2007 **Girls and Boys Town of Central Florida, Orlando, FL**

Doctoral Externship

Supervisors: Dr. David Parlapiano, Ph.D. / Dr. Michelle Butler, Psy.D.

Supervise administration/scoring/interpretation of neuropsychological and psychological testing instruments; Provide individual, family, and group therapy to diverse, low SES populations; Maintain effective therapeutic relationships with children, adolescents, and adults; Develop and implement case-specific intervention plans addressing substance abuse and mild to severe mental illness; Assess for and address psychosis and suicidal/homicidal ideation; Provide psychoeducation/consultation to parents and child-care professionals on topics including behavior modification, anger management, and self-care; Engage in interdisciplinary collaboration with physicians and care team

2005 to 2006 **Psychological Wellness for Children and Families, Altamonte Springs, FL**

Doctoral Externship

Supervisors: Dr. Barbara Mara, Ph.D. / Dr. Stacey Carmichael, Ph.D.

Conduct comprehensive forensic, psychological, and neuropsychological evaluations with inpatient and outpatient populations of all ages; Administer, score, and interpret results from various testing measures, i.e., intelligence, achievement, objective, projective, neuropsychological, personality profiling, violence risk assessment, trial competency, functional capacity; Complete clinical reports with DSM based diagnostic impressions and treatment recommendations

Publishing / Research / Professional Presentations

- SOUTH CAROLINA PSYCHOLOGICAL ASSOCIATION (SCPA) ANNUAL CONFERENCE

Keynote Speaker

2022; Forensic Evaluation and Capacity Assessment

- CORTICAL & SUBCORTICAL DISRUPTION IN HUNTINGTON'S DISEASE

Chief Neuropsychologist - Head Named Researcher / USC School of Medicine, Neurology

2018; Investigation of neurocircuitry via evaluation of HD diagnoses for brain mapping

- CORTICAL & SUBCORTICAL DISRUPTION IN HUNTINGTON'S DISEASE

Chief Neuropsychologist - Head Named Researcher / USC School of Medicine, Neurology

2018; Investigation of neurocircuitry via evaluation of HD diagnoses for brain mapping

- EXECUTIVE DISORDERS IN THE GERIATRIC POPULATION

AAGP Specialist Researcher - USC School of Medicine, Neuropsychiatry and Behavioral Medicine

2016; Comprehensive literature review on executive based disorders / prevalence rates, age 65 and older; Review of testing instruments for differential diagnosis of inattention

- NORMAL PRESSURE HYDROCEPHALUS PRESENTATIONS IN BEDSIDE EXAMINATIONS

J Neurol Neurosurg Psychiatry, 74(9), 1272–1277

2014; Case reviews for presentation APA

- ROLES OF NEUROPHYSIOLOGY

DD, University of Tampa Press (See enclosed abstract, Appendix A)

2008; *Roles of neurophysiology and present-oriented consciousness in affect regulation.*

- NEUROCOGNITIVE DYSFUNCTION AND CORTISOL

The Maryland Gazette. w., Jan. 17, 2007- Feb. 25, 2008

2007; Data collection via double-blind study of psychoneurological impact of stress on work output and performance; analyzed for performance enhancement biofeedback

- DEMOGRAPHIC RECIDIVISM

Head Investigative Researcher, Department of Juvenile Justice

2006; Monitor and analyze data surrounding demographic recidivism in juvenile delinquents throughout 13 counties; Track participants' behaviors/attitudes via CBT; Provide consultation to DJJ on intervention effectiveness

-FORENSIC BASED INTERVENTION OUTCOME MONITORING

Head Investigative Researcher, Department of Juvenile Justice

2005; Compare participants' use of alcohol and/or illegal drugs before, during, and after Functional Family Therapy (FFT); Analyze data; Provide consultation to DJJ on intervention effectiveness

Didactic Training

2021-2022

MRI Brain Scan Correlates for individuals with PTSD & TBI; COVID-19 Neurodiagnostic Studies; Comprehensive didactic study pertaining to brain origins of major descending motor systems, including corticospinal, rubrospinal, reticulospinal and vestibulospinal pathways; origins of major chemical

neurotransmitter systems, including the basal forebrain cholinergic and histaminergic systems, as well as brainstem origins of monoaminergic pathways

2019-2020

Marquette University Neuroanatomical Dissection of the Human Cadaver, to include full craniotomy and laminectomy, Proficiency demonstrated via brain dissection; Discussion of functional specializations of the primary visual, somatosensory, motor, auditory, speech and olfactory cortices; Identify the Circle of Willis on a human brain specimen and common sites of cerebrovascular accident; the ventricular system and route of CSF circulation; the meninges and functions of cranial nerves; Discuss chemical neuroanatomy of neuronal systems, including ascending monoaminergic systems involved in mood, reward, attention and arousal; functional implications of lesions and pathologies within the neuraxis; major parallel circuits through components of the basal ganglia, and understand the 3-dimensional relationships of the caudate nucleus, putamen, globus pallidus, subthalamic nucleus, substantia nigra and thalamus

2017-2018

Harvard Intensive Review of Neurology, Screening Measures of Neuropsychological Impairment, TBI Psychometric Administration, Scoring, and Interpretation, Trauma Informed Care, Life Space Crisis Intervention, Child Psychopharmacology, Cognitive Training for Executive Dysfunction, Structural Family Therapy, Nonverbal Learning Disorders of the Autistic Spectrum, Head Injury Evaluation in Sports

2015-2016

Harvard Neurology Annual Update Symposium; Environment Loaded Behavior Modification, Distinguishing Delirium vs Persisting Brain Dysfunction, Modern Psychopharmacology, Diversity and Ethics in Practice, Client Empowerment and Character Building, Ecological Treatment Models, Hospital Leadership

Honors and Awards

Golden Key International Honor Society, Psi Chi National Honor Society, Top 5% in UCF's

Graduating Class of 2003, UCF President's Award for Honor Roll, Dean's List in the College

Of Arts and Sciences, Florida Merit Scholar, Bright Futures Scholar

Appendix A

Abstract

A comprehensive literature review that attempts to illuminate the effects of intuitive mindfulness among various facets of affect regulation was conducted. This analysis used the professional literature examining brain physiology to recognize main neurological mechanisms underlying affect regulation and explore empirical findings in relation to the cause of dysautonomias. Specific focus was placed on identifying and analyzing scientific knowledge that would assist in answering the following research questions: Do mindfulness therapies improve autonomic regulation? Can mindfulness-based affect regulation be effectively utilized by individuals with autonomic pathologies? The results of this paper are anticipated to identify methods of present-oriented consciousness, which when utilized, may diminish the detrimental consequences of negative emotional exaggeration. These results will serve as a psychoeducational guide for modifying and controlling affect in versatile contexts. The compounded literature gave rise to additional questions that may foster further research efforts aimed to provide alternative-based, empirically supported treatments for autonomic pathologies and pervasive diagnoses.

Michelle G. Fry, J.D., Ph.D.
State Director
Janet Brock Priest
Associate State Director
Operations
Lori Manos
Associate State Director
Policy
Constance Holloway
General Counsel
Harley T. Davis, Ph.D.
Chief Administrative Officer
Quincy Swygert
Chief Financial Officer
Greg Meetze
Chief Information Officer



South Carolina
Department of Disabilities
and Special Needs

3440 Harden Street Ext (29203)
PO Box 4706, Columbia, South Carolina 29240
803/898-9600
Toll Free: 888/DSN-INFO
Home Page: www.ddsn.sc.gov

COMMISSION
Stephanie M. Rawlinson
Chairman
Barry D. Malphrus
Vice Chairman
Robin B. Blackwood
Secretary
Gary Kocher, M.D.
Eddie L. Miller
David L. Thomas
Michelle Woodhead

**EVALUATION FOR THE PRESENCE OF INTELLECTUAL DISABILITY
PURSUANT TO ATKINS v. VIRGINIA**

Name:	Bobby Wayne Stone	Gender:	Male
Date of Evaluation:	3/23/2021	Race:	Caucasian
Place of Evaluation:	SCDDSN Midlands Center Columbia, SC	Date of Birth:	09/19/1965
		Age:	55 years

Examiner: Alicia V. Hall, Ph.D.
Licensed Clinical Psychologist

PURPOSE OF EVALUATION

This evaluation was conducted pursuant to the United States Supreme Court's decision in the *Atkins v. Virginia*, 536 US 304 (2002). As such, the South Carolina Department of Disabilities and Special Needs (DDSN) was required to evaluate Mr. Stone to determine whether he has an Intellectual Disability. The evaluation was necessary because the Defendant Bobby Wayne Stone, "is proceeding in a successive post-conviction relief (PCR) action in order to determine whether he is intellectually disabled. If Applicant is intellectually disabled, the Eighth Amendment prohibits his execution." See *Atkins; Franklin v Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003). The standard to be used in this evaluation is established in the *Franklin* ruling as the definition provided in S.C. Code Ann. § 16-3-20 (C)(b)(10)(2003) for mental retardation which is "significant subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period."

LIMITS OF CONFIDENTIALITY

Before the interview started, Mr. Stone was advised of the purpose of the evaluation, and that the results and content of the evaluation would be communicated to the judge. In addition, he was informed of the possibility that the examiner might be called to testify regarding the content and results of the evaluation.

EVALUATION PROCEDURES

Mr. Stone was interviewed for approximately two hours and thirty minutes on 3/23/2021 by the undersigned.

SOURCES OF INFORMATION

Third Amended Application for Post-Conviction Relief CA No. 08-CP-43-905
Court of Common Pleas PCR Hearing Transcript by Rema K. Gnatt Thomas dated 8/23 & 8/24, 2012
Affidavit of Dr. Fred Bookstein dated 9/2/2010
Magnetic Resonance Image (MRI) Report by Fred L. Bookstein, PhD, date 8/6/2010
Affidavit of Dr. Ruben C. Gur dated 11/19/2011
Affidavit of Pamela Blume Leonard, Private Investigator dated 10/10/2022
Quantitative Analysis of Neuroimaging Data Report by Ruben C. Gur, PhD dated 12/5/2011

Raw Psychological Data from Sara Boyd, PhD dated 11/09/2017

Faxed Letter from Harold C. Morgan, MD dated 1/25/1997

Affidavit of Dr. James Shine dated 8/19/2010

Memorandum of Historical Data on Environmental Contamination in Turkey Creek from James Shine, PhD dated 8/6/2010

Social Security Administration Itemized Statement of Earnings dated 1975-2018

Tuomey Regional Medical Records dated 3/17/1995, 7/20/1994, & 2/27/1996

Transcript of testimony of Dr. Arelene Bowers Andrews not dated

Interviews

Joy Klotze, retired special education teacher, Sumter County Schools on 7/25/2022

Jerry Stone, brother, dated 7/25/2022

Frankie and Tracy Norton, friends of Mr. Stone, dated 7/25/2022

Elaine Steele Harris & Dr. Joseph Harris, retired school Psychologist, Sumter County Schools, on 7/26/2022

Omega Golden, Mr. Stone's 6th grade teacher, on 9/22/2022

SCDC Records

Email from Alexandra Zimmer, Administrative Coordinator, Office of the Deputy Director for Operations dated 5/19/2021

Grievance Applications

Inmate Request Forms

Warden's Jacket

School Summary undated

School Records including

Certificate of Immunization

Sumter School District Number Two Pupil Transfer Form

Permanent Record of Psychological Test

Records of Standardized Achievement Test Grades 1, 2 – 4, 6, 9

Individual Pupil Progress in Reading dated 1974-1977

South Carolina Cumulative School Health Record

Elementary School Permanent Record Grades 3 -5

Middle School Permanent Record Grades 6 -8

High School Permanent Record of Grades 9 -10

Basic Reading test Protocol Grades 1 -2

Summary of Results Psychological Evaluation date 2/18/1975

Psychological Report by Allie Lallis dated 10/12/1976

Psychological Evaluation by Elain Harris & David Evans dated 11/01/1979

Birchwood High School Auto Mechanic Training Course Certificate dated 3/2/1983

Birchwood High School School Scholarship Record dated

Department of Youth Services Form dated 3/7/1983

AAMD Adaptive Behavior Scale Protocol 1974 Revision no name or date listed

AAMD Adaptive Behavior Scale Manual 1975 Revision

Mr. Stone's Family records

Psychoeducational Reports for Jerry Stone

School Records for Jerry Stone (sibling)

School Records for Melinda Stone (sibling)

School Records for Tammy Stone (sibling)

SC Sanatorium Admission and Discharge Sheet for Maybelle Stone (mother) dated 7/18/1968

Medical records from SC Sanatorium for Maybelle Stone (mother) dated 4/11/1968 -07/16/1968

SC Sanatorium Admission and Discharge Sheet for Bobby O. Stone (father) dated 7/18/1968

Medical Records form SC Sanatorium for Bobby O. Stone (father) dated 4/5/1968 -10/16/1968

RELEVANT HISTORY

History in this section is as provided by Mr. Stone in the interview on 05/23/2021 and supplemented by available records. He appeared to be a good historian. Mr. Stone is currently incarcerated on death row at Kirkland Correctional Institution in Columbia, Richland County, South Carolina (SC). He is serving his sentence after being convicted of Murder, Burglary First Degree, and Possession of a Firearm during a Violent Crime.

FAMILY HISTORY

Bobby Wayne Stone is a 55-year-old Caucasian male who was born and raised in Poston, Florence County, SC. He reported he and his family moved to Sumter, SC in 1973. Mr. Stone stated he lived in Sumter until he was incarcerated. He reported his parents were married, but he was raised primarily by his mother, Maybelle Stone. He indicated his father Bobby O. Stone, was inconsistent in his life. He stated "Dad was never there; he was in and out. Mom was there." Available records suggest his father was an alcoholic which may have contributed to his parents' separation. According to the SC Sanatorium records, Mrs. Stone was a homemaker. Before becoming a full time mother, Mrs. Stone worked in the sewing room of the Cover Manufacturing Company. Once she and her husband separated, she returned to work as a domestic. Mr. Bobby O. Stone worked as a truck driver for an "Ice and Fuel Company." Mr. Stone reported he has two sisters and a brother. He stated he is the second oldest child of the four siblings. Mr. Stone described his relationship with his parents and siblings as good. He described growing up as "It was fun but a lot of work." He went on to say he and his siblings had a variety of chores such as gardening, cutting wood, etc. He reported his parents and his sisters are deceased. He reported he was incarcerated when he learned his father died. He recalled he was 31 years old when his mother died of a heart condition. Mr. Stone reported his younger sister, Tammy, also died from a from a heart condition. In December 2020, Mr. Stone's eldest sister Linda (Melinda) passed from cancer. When asked how the losses affected him, he appeared stoic. Mr. Stone stated, "It wasn't a lot I could do." He did not recall how or if he was impacted by these loses. Mr. Stone reported he has never been married and has no children.

Very little is known about his birth and early development. Mr. Stone reported to his knowledge his birth and early development were unremarkable. Mr. Stone said he has no history of sexual abuse, emotional abuse, or neglect. He reported his stepfather "would beat me sometimes." He reported this physical abuse in a very nonchalant manner. This is in contrast to Dr. Arelene Bowers Andrews testimony; she stated found a history of "extreme violence to which he was exposed, including child abuse as well as into adulthood threats of severe violence by Eugene Miles . . ." while she was conducting a social history of Mr. Stone.

It is noted that Mr. Stone's immediate family includes individuals who also have intellectual impairments. Records from SC Sanatorium reported Mr. Stone's parents had limited education, both having completed sixth grade. During a treatment team meeting on 10/3/1968, Dr. Bynoe described Mr. Bobby O. Stone as, "not have too much education or intelligence." Psychological testing was reported by a Mr. Nissen. He stated Mr. Bobby O. Stone's Beta¹ IQ was 88 and his reading and math skills were at the third grade level. Sumter County School District 17 records indicate Mr. Stone's older sister, Melinda Stone, was classified as an Educable Mentally Handicapped (EMH is currently referred to as Intellectual Disability) student. *(EMH students have demonstrated significantly subaverage general intellectual functioning that exists concurrently with deficits in adaptive behavior, usually manifested during the developmental period, which adversely affects their educational performance)* In the sixth grade, Melinda Stone's aptitude testing indicated her verbal skills were at the second grade level. She was performing at the third grade level in math. School records also show Mr. Jerry Stone, younger brother of the applicant, was also identified as an Educable Mentally Handicapped student and placed in resource program through his high school career.

¹ The Beta IQ test was published in 1934. It is test of nonverbal intellectual ability has various occupational and educational applications, principally in evaluating the employment readiness of potential employees.

EDUCATIONAL HISTORY

Mr. Stone reported he last attended Sumter High School, where he was in the 10th grade. He reported he did not graduate from high school. He recalled he dropped out in the 10th grade. He stated he dropped out because "they just promoted me. I didn't always catch on to the right thing. I didn't have any confidence, [because] I was in slow classes." School records indicate the applicant repeated or failed grades in elementary and middle school. He repeated 4th grade and was socially promoted from 6th grade to the 7th grade. Mr. Stone stated he was enrolled in Special Education classes. He could not recall when he was placed in special education but reported "all my classes were slow." According to his special education records, he was evaluated for special education services while he was repeating the fourth grade and still struggling academically. He was initially classified as a student with a Learning Disability (LD) in the fourth grade. (*Learning Disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations.*) He was placed in LD resource program (i.e. a remedial classroom where students with educational disabilities, such as specific learning disabilities, are given direct, specialized instruction, academic remediation, assistance with homework and related assignments individually or in groups) to meet his educational needs. When Mr. Stone was in the 7th grade, he was reevaluated for "continued LD-Resource placement." As a result of the reevaluation, Mr. Stone's special education classification was changed to Educable Mentally Handicapped (EMH), now referred to as Intellectual Disability. He was placed in the EMH self-contained program. However, the School Scholarship Record for Birchwood High School indicated Mr. Stone was in regular education in the 10th grade except English class, which was remedial. His other classes Math, Economics, General Science, and Auto Mechanics were in the general education setting. He earned Cs (satisfactory) in most subjects, and a B (commendable) in Economics. As previously stated, Mr. Stone shortly thereafter dropped out of high school. Mr. Stone reported he has not earned his GED diploma.

The limited available school records show Mr. Stone's academic performance in the 1st through 9th grades varied. Early in his academic career, he typically earned Cs with some As and Bs. In second attempt at 4th grade there appears to be a significant decrease in his academic performance. His performance consisted of Cs, Ds, and Fs. By the time the applicant was in the 6th grade, his academic performance was consistently poor. He earned mostly Ds and Fs in his academic courses. In high school, Mr. Stone was earning Fs in his classes. In the 2nd grade, Mr. Stone was administered the Metropolitan Achievement Tests (MAT). The MAT is nationally standardized achievement tests administered to all students in grades 1st through 8th. At this time, Mr. Stone was 8 years old. His score on the MAT indicated his language arts skills and spelling were on the 1st grade level, whereas, his math skills were at the 3rd grade level. In the 3rd, 4th, and 9th grades Mr. Stone was administered the California Tests of Basic Skills (CTBS). This is also a standardized group administered achievement test frequently given to school age children to measure their academic skills. Students receive three scores for each academic area, a scale score, a national percentile (NP) and a grade equivalent (GE). (*The National Percentile score ranks raw scores from highest to lowest and shows where an individual's raw score falls in comparison. The lowest score that is reported is 1; the highest is 99.*) Mr. Stone's scores on this test in the 3rd and 4th grades were below grade level. He was on average about a year behind his peers. Looking at his 9th grade scores, one notices he has fallen significantly behind academically. These scores suggest in comparison to his ninth-grade cohort, Mr. Stone scored in the extremely low range. The results of the 9th grade CTBS are presented in the table below:

Content Area	Scale Score	NP	GE
Reading	474	19	6.2
Vocabulary	476	18	6.4
Comprehension	481	23	5.9
Language	335	2	2.4

Mathematics	370	5	3.9
Computations	396	9	4.7
Concepts	384	5	3.9
Procedures	428	13	5.0
Optional Areas			
Science	485	27	6.4
Social Studies	446	17	5.0
Total Score	366	4	4.0

These scores appear to indicate Mr. Stone was significantly behind his 9th grade peers academically in the areas of reading, language, math and social studies. Mr. Stone was reading at the 6th grade level, his language skills were at the 2nd grade level, math 3rd grade level, and social studies was at the 5th grade level. The data suggest he was performing three or more grade levels below the grade he was in at the time.

EMPLOYMENT HISTORY

Mr. Stone reported a history of being gainfully employed. He reported he has worked in a variety of blue-collar jobs including: "meat processing, cars, constructions, and tree work." He reported his longest position was at Wilson Tree Company. He reported he worked his way up in the company. He stated he started out as a "ground man. I was pulling ropes, and picking up brush." He stated he became a "top climber and a bucket operator." Mr. Stone was able to describe in some detail how to safely remove a tree. He explained that being a top climber was considered "specialty work, because it is hard work and not a lot of people want to do it." Mr. Stone stated most of his employment opportunities were jobs that required working outside. He stated the only "inside job" he had was at Carolina Golden, a meat processing plant. He reported he often worked under the table when he worked construction. Mr. Stone related when work was unavailable he would receive unemployment benefits, while he looked for employment. According to the Social Security Administration, Mr. Stone had 4 jobs from 1987 to 1993.

Collateral informants confirmed Mr. Stone's report of his employment history. Mr. Frankie Norton, a friend and former coworker, described Mr. Stone as a hard worker. They worked together at a landscaping company. Mr. Norton related his friend would come to work on time and complete the tasks assigned to him. He went on to say, Mr. Stone was never promoted to a supervisory position or tasked with completing the routine paperwork required for each job site. Mrs. Mary Cook, former paramour, noted Mr. Stone was a hard worker and always maintained employment. She clarified that as far as she knew he had "never filled out a job application . . ." Mrs. Cook went on to relate that every job Mr. Stone was hired for, he got through his mother's boyfriend Eugene Miles.

RELATIONSHIP HISTORY

Romantic

Mr. Stone reported he is single, never married and has no children. He stated he has had several romantic relationships in the past. He related he had lived with multiple women. When asked about Mary Hunt, a woman referred to as his common law wife in the SCDC records, Mr. Stone acknowledge he and Mary lived together as man and wife. He could not recall exactly how long they were together but he was able to relate the ins and outs of their relationship. He described her as "She was good looking. She was a good mother and good person." Mr. Stone reported, "We got along pretty good, Mary did the inside of the house, I got to take care of the lawn." He related that he would hand over his paycheck to Mary and she would pay the household bills. He stated, "She was in charge of the money. I would cash my check at the grocery store and give it to her." He related he did help around the house. He stated his mother made sure he could cook, clean and do the laundry. He just preferred to have Mary do it. Mr. Stone reported when he wasn't living with a girlfriend, he lived with his mother. When asked if he ever has lived independently, he stated "No. I never wanted to. It just puts more work on me."

In the affidavit submitted by Pamela B. Leonard, Private Investigator, (10/10/2022), she related the interview she had with Mrs. Mary Cook, Mr. Stone's former live-in girlfriend. Mrs. Cook related she was best friends with Melinda Stone, (Mr. Stone's older sister) and had know the family for most of her life because they were neighbors when they were young. Mrs. Cook reported she and Mr. Stone became a couple shortly after she divorced. She related they (Mr. Stone, her son, and she) lived with Mr. Stone's mother, Maybelle Stone. Mrs. Cook recalled their relationship as lasting a year or two, ending when he was arrested. She described Mr. Stone as "immature and different from his peers." She stated Mr. Stone was never a father figure to her young son. He played more of the role of a friend. Mrs. Cook related the applicant was dependent on others to take care of him. He did not contribute to the household chores, like cooking and cleaning. She stated, "Maybelle cooked for them and the women did the other chores like laundry."

In the interview with Frankie and Tracey Norton, they recalled Mr. Stone having a long-term relationship with Michelle Price. Mr. Norton believed the relationship lasted approximately four years. He stated "Michelle handled all the bills. She did all the cooking, cleaning and laundry too." He went on to say that he believed Ms. Price lived with Mr. Stone on the family property but could not say for certain that they never lived in their own apartment.

Friends/Acquaintances

Mr. Norton reported he met Mr. Stone when he was about 13 or 14, and the applicant would have been 17 or 18. He related he met Mr. Stone through his stepbrother. He described their relationship as one in which they would "hang out." Mr. Norton stated, "We would go fishing, mudding, there was drinking." He described Mr. Stone as "someone who always wanted to be the nice guy." Mr. Norton believed Mr. Stone's "wanting to be the nice guy" may have contributed to his falling into the wrong crowd. His tendency to go along with his peers often meant he was easily led by others. Mr. Norton did not recall sharing confidences with Mr. Stone. He stated, "He would not talk about his problems to people." This confirms how Mr. Stone described his social relationships. He stated he tended to talk to his family (mom or sister) about any problems he was having. He did not share his struggles with outside people.

MEDICAL HISTORY

Mr. Stone reported overall his health is okay. He reported he has been diagnosed with hypertension and diabetes. He reported when he was diagnosed with hypertension, approximately 6 months prior, he was very invested in getting healthy. He improved his eating habits and exercised. As a result, he has lost a significant amount of weight. He reported he was recently diagnosed with diabetes. He stated he has been prescribed metformin and the nurse monitors his glucose and A1C weekly. He reported he takes a medication to address the hypertension but could not recall the name. Mr. Stone stated he is compliant with his medication and medical appointments. Mr. Stone reported he has had two head injuries in his lifetime, one resulting in loss of consciousness. He stated he was changing a light bulb, fell off the stool and landed on his head. He reported he was hit in the head by a transmission when he was 30 or 31 years old. He was taken to the hospital. He reported no lasting effects of either head injury. He stated he had headaches for some time afterward but the headaches resolved themselves.

Records from the South Carolina Department of Corrections confirmed Mr. Stone's report of his health. The records also indicated he has requested and received dental care. His diet has been changed to include less meat and more vegetables.

PSYCHIATRIC HISTORY

Mr. Stone has no history of psychiatric hospitalization and outpatient mental health treatment. He denied a history of suicidal or homicidal thoughts. During this evaluation, there were no indications of the presence of mental illness. The South Carolina Department of Corrections records did not indicate a history of mental health treatment.

SUBSTANCE ABUSE

Mr. Stone reported a history of drug abuse. He stated he has regularly used cannabis and alcohol. He stated he smoked cannabis every day, from his teens until he was in his 40s. He was unable to recall how much cannabis he smoked daily. He stated he tended to smoke it in a "joint or a bong, so it [the amount of cannabis] would just depend." Mr. Stone reported his alcohol use tended to be limited to social events or "partying." He related he began imbibing as a teen. He stated he has imbibed until he was intoxicated and has a DUI on his record. He denied experiencing symptoms of dependence (such as experiencing cravings, mood swings, changes in appetite and sleep, spending money earmarked for household bills, or work-related problems) when he was regularly using cannabis or alcohol. He denied experiencing symptoms of withdrawal when cannabis or alcohol were unavailable to him. Mr. Stone related he had experimented with cocaine, huffing gas, Xanax pills. He denied use of other illicit drugs.

DDSN HISTORY

Mr. Stone has not previously been evaluated by DDSN. He has never been referred to DDSN for an evaluation of eligibility for services, nor has he been evaluated regarding competency to stand trial by DDSN.

PREVIOUS PSYCHOLOGICAL EVALUATIONS

Mr. Stone has been evaluated on several occasions throughout his lifespan.

(Sumter School District Two)

02/18/1975	Wechsler Intelligence Scale for Children	Full Scale IQ	86
Age 9		Verbal IQ	97
		Performance IQ	76

Slosson Intelligence Test	IQ	88
	Mental Age	8.2
	Chronological Age	9.3

Peabody Picture Vocabulary Test	IQ	86
	Mental Age	7.2

10/12/1976	Wechsler Intelligence Scale for Children-R	Full Scale IQ	78
Age 11		Verbal IQ	90
		Performance IQ	70

Peabody Picture Vocabulary Test	IQ	90
	Mental Age	9.6

(Sumter School District 17)

11/01/1979	Wechsler Intelligence Scale for Children-R	Full Scale IQ	69-75
Age 14		Verbal IQ	73-81
		Performance IQ	66-76

Peabody Picture Vocabulary Test	Receptive Vocabulary	9 th percentile
	Mental Age	slow learner

Wide Range Achievement Test	Math	70 (3.6 grade)
	Reading	73 (4.2 grade)
	Spelling	66 (2.9 grade)

AAMD Adaptive Behavior Scales	Adaptive Functioning	Below normal
	Numbers and Time	Normal
	Vocational Activity	Normal

Responsibility	Normal
Independent Function	56
Economic Activity	59

Sara Boyd, PhD evaluated Mr. Stone on 11/09/2017 (age 52). She administered the Wechsler Adult Intelligence Scale - Fourth Edition (WAIS-IV). The results of his evaluation are summarized below:

Wechsler Adult Intelligence Scale - Fourth Edition (WAIS-IV)

The WAIS-IV is an individually administered battery of tests for assessing the intellectual abilities and cognitive strengths and weaknesses of adolescents and adults between the ages of 16 and 69 years. This test yields five composite scores: Verbal Comprehension Index (VCI), the Perceptual Reasoning Index (PRI), the Working Memory Index (WMI), and the Processing Speed Index (PSI). For each of the composite scales, the distribution of sum of scaled scores is converted to a scale of standard scores with a mean of 100 and a standard deviation of 15. Therefore, a score of 100 on any of these five composites is equivalent to the average performance of an adult at that particular age on each composite. The VCI and the PRI consists of three core subtests. The PSI and the WMI consists of two core subtests. The scaled scores for each subtest range from 1-19, with a mean score of 10 and a standard deviation of 3. Mr. Stone's protocol was scored using the WAIS-IV Scoring Assistant®. The Full Scale IQ (FSIQ) is usually considered to be the most representative measure of global intellectual functioning. It is the aggregate of the Verbal Comprehension Index (VCI), the Perceptual Reasoning Index (PRI), the Working Memory Index (WMI), and the Processing Speed Index (PSI). His Indices range from 75 on the PRI (5th percentile) to 89 on the VCI (23rd percentile). The 14-point difference between the VCI and PRI scores is statistically significant at the .05 level. A difference of this magnitude or greater was obtained by 15.20% of the individuals in the WAIS-IV standardization sample. The 11-point difference between the PRI and WMI scores is statistically significant at the .05 level. A difference of this magnitude or greater was obtained by 20.30% of the individuals in the WAIS-IV standardization sample. While these score differences are statistically significant, they are not clinically significant. Thus, the Full Scale IQ will be reported and interpreted. Mr. Stone earned a FSIQ of 79 which ranks his overall ability in the **Borderline** range of intellectual functioning. His overall thinking and reasoning abilities exceed those of approximately 8% of adults his age. The scores appear to be a valid estimate of his intellectual functioning. The results of the WAIS-IV are as follows:

Index/Subtest	Score	95% CI	Percentile	Descriptive Category
Verbal Comprehension (VCI)	89	84-95	23	Low Average to Average
Similarities	09			
Vocabulary	11			
Information	04			
Perceptual Reasoning (PRI)	75	70-82	05	Borderline to Low Average
Block Design	06			
Matrix Reasoning	05			
Visual Puzzles	06			
Working Memory (WMI)	86	80-94	18	Low Average to Average
Digit Span	07			
Arithmetic	08			
Processing Speed (PSI)	84	77-94	14	Borderline to Average
Coding	06			
Symbol Search	08			
Full Scale IQ	79	75-83	08	Borderline to Low Average

BEHAVIORAL OBSERVATIONS/MENTAL STATUS EXAMINATION

Mr. Stone was interviewed on 5/23/2020 at the Midlands Center in Columbia, SC. Mr. Stone was cooperative during the interview. He appeared to be a good historian. Mr. Stone was appropriately attired in the standard institutional uniform. Grooming and hygiene were adequate. Sensory systems appeared intact. Eye contact was good. He was alert and oriented in all spheres. Speech was normal in rate and volume and articulation was clear. Attention and concentration skills appeared to be adequate in interview. There was no indication of psychomotor agitation or slowing, and no unusual mannerisms were noted. Affect was congruent with the topic of conversation. Mood appeared to be normal; he described his current mood as "good." Mr. Stone reported no suicidal or homicidal ideation or intent. He denied experiencing visual (e.g. seeing objects not present) and auditory hallucinations (e.g. hearing voices), and none were evident in interview. No delusional (i. e., false fixed beliefs) material was elicited. His thought process was logical and coherent. Insight and judgment were adequate.

It is important to note that during the interview, Mr. Stone would become annoyed when required to give more than a superficial answer. He appeared very concerned about appearing less capable than his peers. When the examiner posed questions, he did not know multiple times, Mr. Stone would sign and say "I don't know what to tell you" or "I don't understand the question." This is not to suggest he was trying to present himself as more impaired but rather how he attempts to mask his deficits. This allows him to protect his self-esteem and is indicative of his deficits in social-emotional coping skills.

DEFINITION OF INTELLECTUAL DISABILITY

Intellectual Disability is defined by the Diagnostic and Statistical Manual, Fifth Edition, (DSM-5), using three criteria. Criterion A is "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." Criterion B states "Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community. The final Criterion C requires "Onset of intellectual and adaptive deficits during the developmental period."

The Flynn Effect Adjustment

The Flynn Effect is an error that is related to the use of outdated norms for scoring and interpreting IQ scores (see for example, Flynn, 1984, 1987, 1999, 2000). James Flynn, a New Zealand political scientist, has studied the gradual rise in measured IQ scores for decades, and his research has found that with each passing year there is an average increase in IQ of 0.33 points, ultimately resulting in an increase of approximately 3 points per decade. The American Psychological Association Dictionary of Psychology (2006) defines the Flynn Effect as:

"the gradual rise of IQ level that has been observed since the time when records of IQs first were kept. Although the average IQ remains 100, due to periodic re-norming of IQ tests, raw scores have been rising. These increases have been roughly 9 points per generation (i.e., 30 years). The gains have been unequally distributed across the different abilities, with fluid abilities show substantially greater gains than crystallized abilities." (p.382)

A controversial issue is whether IQ scores should be adjusted in accordance with the calculated rise in scores. The method for correction is quite simple and is as follows: First count the years from publication to testing, multiple this number by .33 and subtract this number from the obtained IQ. For example, if a person obtained a score of 76 in 2011 on a test published in 2005, the resulting score would be 74 ($0.33 \times 6 = 1.98$; $76 - 1.98 = 74.02$). At the time of writing, adjusting for the Flynn Effect is not done by all practicing clinicians, but it is recommended by many scholars and supported by the AAIDD (See AAIDD, 2010, pg. 37).

It appears Mr. Stone was administered a standardized individual intelligence test on three occasions during the developmental period as a part of an educational evaluation. The first time was in 1975. Mr. Stone was nine years old. He was administered the Wechsler Intelligence Scale for Children, (WISC). It was published in 1949. Mr. Stone earned a full scale IQ (FSIQ) score of 86. Therefore his FSIQ, with the Flynn Effect Adjustment ($0.33 \times 26 = 8.58$; $86 - 8.58 = 77.42$), is 77.42, which is in the Borderline range. The following year, he was re-evaluated at age ten. He was administered the updated Wechsler Intelligence Scale for Children, Revised (WISC-R). The WISC-R was published in 1974. Mr. Stone earned a full scale IQ (FSIQ) score of 78. This score is in the borderline range. The Flynn Effect Adjustment is unnecessary, for the scores recorded in 1975 because they are based on the most current norms of the time. It is important to note, the nine point "drop" in Mr. Stone's Full Scale IQ is not a sign of intellectual decline. It is what one would expect to see when the individual's intellectual functioning is measured with the updated norms in comparisons to the older norms. Mr. Stone's Full Scale IQ (78) in 1975 is not significantly different from the Flynn corrected score IQ score (77.42). In 1979 (age 14), he was re-evaluated as part of the IDEA ACT that requires students in special education be evaluated triennially. Once again, he was administered the Wechsler Intelligence Scale for Children, Revised (WISC-R). Mr. Stone earned a full scale IQ (FSIQ) score between 69 and 75. Therefore his FSIQ, with the Flynn Effect Adjustment ($0.33 \times 5 = 1.65$; $69 - 1.65 = 67.35$; $75 - 1.65 = 73.35$), is between 67.35 and 73.35.

It appears that next time Mr. Stone was administered a standardized individual intelligence test was as a part of these legal proceedings, when he was 52 years old. Mr. Stone was administered the Wechsler Adult Intelligence Scale, Fourth Edition (2008). Mr. Stone's earned a FSIQ of 79, with the Flynn Effect Adjustment ($0.33 \times 9 = 2.97$; $79 - 2.97 = 76.03$) his FSIQ is 76.03. The scores obtained in 1975, 1979 and 2017 were not significantly different and fall in the Borderline range.

Adaptive Functioning

The second criterion for a diagnosis of Intellectual Disability is concurrent deficits in adaptive functioning. Adaptive functioning is defined by DSM-5 as "how effectively individuals cope with common life demands and how well they meet standards of personal independence expected of someone in their particular age group, sociocultural background, and community setting." This is further defined as requiring deficits in present adaptive functioning in at least two of the following areas: communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

The AAIDD, alternatively, defines adaptive behavior as "the collection of conceptual, social, and practical skills that have been learned and are performed by people in their everyday lives." On appropriate standardized measures of adaptive behavior, "significant limitations in adaptive behavior are operationally defined as performance that is approximately two standard deviations below the mean of either (a) one of the following three types of adaptive behavior: conceptual, social, or practical or (b) an overall score on a standardized measure of conceptual, social, and practical skills." [Quotes are from Intellectual Disability: Definition, Classification, and Systems of Supports, the eleventh edition of the AAIDD Definition Manual, 2010, page 43].

Adaptive functioning is much more difficult to quantify than intelligence. In Mr. Stone's case, there is record of a formal assessment of his level of adaptive functioning, during the developmental period. During the triennial assessment special education psychoeducational assessment, Mr. Stone's adaptive functioning was assessed using the AAMD Adaptive Behavior Scales. The AAMD Adaptive Behavior Scale is "designed to evaluate an individual's skills and habits in ten behavior domains considered important to the development of personal independence in daily living (AAMD Adaptive Behavior Scales Manual, 1979, pg. 6)." Mr. Stone's overall adaptive functioning was rated as below normal. He was rated as with in the normal range on "Numbers and Time, Vocational Activity and Responsibility. Independent Functioning (IQ equivalent=56) and Economic Activity (IQ equivalent=59) were the lowest areas." This suggest Mr. Stone was exhibiting adaptive functioning deficits during the developmental period.

During the interview, Mr. Stone often described his adult life in terms that would generally indicate average levels of adaptive functioning. He reported he worked regularly. He stated he enjoyed working. He would get himself to work independently. He was able to keep up with his work schedule. Mr. Stone stated he was responsible for half of the rent and utilities. But he would just turn his check over to his girlfriend. He related he contributed to maintaining the household by doing "the outside work." He stated Mary or his mom kept up the inside work. Mr. Stone stated cooking is not a strength but his mother made sure he could cook. He related he was fastidious about his hygiene. However, when asked questions that required detail or would demonstrate the depth of his knowledge base, Mr. Stone had difficulty answering the questions. For example, when asked how one would go about renting an apartment. Mr. Stone assured the undersigned he knew how to do it. When pressed, he became irritated. He stated he didn't understand the question. The examiner rephrased the question, by asking to explain to a young person who was looking to move out of the family home for the first time, how to get an apartment. Mr. Stone finally answered "You have to save up for the deposit and first month's rent, get the lights turned on, get furniture. You need money for that too." When asked how does one get the lights turned on he stated, "Go the light company." During this portion of the interview, Mr. Stone appeared concerned about not being perceived as "slow."

Mr. Stone has some potential strengths in adaptive functioning, particularly in practical skills domain, but by definition according to the AAIDD, those cannot outweigh significant limitations. [Quotes are from Intellectual Disability: Definition, Classification, and Systems of Supports, the eleventh edition of the AAIDD Definition Manual, 2010, page 47]. Anecdotal information and the formal testing by Sumter County Schools indicates deficits in overall his adaptive functioning and specifically his Independent Functioning and Economic Activity were the extremely low range. While, he was able to maintain employment it was always with the assistance of a friend or family member. It does not appear, he has ever gained employment independently. And it is clear Mr. Stone would not have been able to manage as successfully as he did in the community, in the home and at work without the ample support he received from Mrs. Stone and his live-in girlfriends, Mary Cook and Michelle Price. His ongoing support satisfies the DSM-5 requirement that "Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community."

Age of Onset

The third prong of the diagnosis of Intellectual Disability is age of onset, which must be established within the developmental period. Mr. Stone did not receive a formal diagnosis of intellectual disability during the developmental period. However, he did exhibit cognitive deficits during the developmental period. He was evaluated by his local school district due to his poor performance in school. He was initially classified with a specific learning disability, not an intellectual one. Then in 1979 (at age 14), his classification was changed to Educable Mentally Handicapped (EMH). But by the time he was attending Birchwood High School, Mr. Stone was in the general education setting for all his classes except English. He was performing in a satisfactory manner academically. In regards to adaptive functioning, as previously noted, Mr. Stone has exhibited significant adaptive deficits across the life span.

Malingering

According to DSM-5 malingering is as the intentional production of false or grossly exaggerated physical or psychological problems, motivated by external incentives such as avoiding military duty, avoiding work, obtaining financial compensation, evading criminal prosecution, or obtaining drugs. Mr. Stone appeared to cooperate fully with this evaluation. There was no indication of him malingering during the interview. Formal effort testing was administered by Dr. Boyd. Mr. Stone's performance was within normal limits indicating he made no attempt to feign or exaggerate cognitive impairment. In addition, there are embedded validity indicators in the WAIS-IV. The psychological literature has noted the tasks that make up the PSI Index (Coding and Symbol Search) as embedded validity indicators. A PSI score ≤ 79 , Coding scale score ≤ 5 , Symbol Search scaled score ≤ 6 , and the Coding-Symbol Search scaled score difference ≥ 5 are indicators of poor effort. Mr.

Stone's PSI score was 84, Symbol Search score was 8, Coding score was 6, and the Coding-Symbol Search difference score was 2. All of the four indicators suggest Mr. Stone gave good effort on the IQ test. This suggest the results obtained by Dr. Boyd are likely a valid estimate of Mr. Stone's true intellectual functioning. Again, the scores obtained during the 2017 evaluation are consistent with Mr. Stone's previous intellectual functioning.

DIAGNOSTIC SUMMARY AND CONCLUSIONS

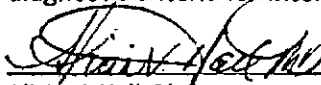
Mr. Stone's case presents a complexity that does not lend it to an obvious decision. He has a history of intellectual functioning both in the ID range and outside of it. He has consistently worked, has been described as a hard worker and a good person to work with. He has maintained long term romantic relationships. All of this would suggest, Mr. Stone is functioning higher than an individual who truly has ID. But this is just a surface level analysis. Mr. Stone's case requires a more in-depth analysis as established by *Hall vs. Florida*, 572 U.S. 701 (2014) and reaffirmed in *Moore vs. Texas*, 586 U.S. __ (2019).

A diagnosis of Intellectual Disability must meet all three specific criteria. It requires concurrent significant deficits in intellectual and adaptive functioning, with an age of onset during the developmental period. Mr. Stone does have deficits in intellectual functioning. His intellectual functioning measured in the borderline range but within the range of individuals who have been adjudicated to have Intellectual Disability. His deficits in intellectual functioning are evidenced by his limited reasoning and problem-solving skills, planning ability, abstract thinking, judgment, and academic learning, confirmed by multiple academic assessments and standardized intelligence testing (WISC, WISC-R, WAIS-4 and Peabody). Thus, Mr. Stone appears to meet criteria on the first prong of the Intellectual Disability diagnosis. Moreover, Mr. Stone has not been able to translate his cognitive capacity to function successfully and independently in the world. This brings us to the second prong of the Intellectual Disability diagnosis.

The second prong of the Intellectual Disability diagnosis is concurrent significant deficits in adaptive functioning in one or more activities of daily life and across multiple environments, such as home, school, work, and community. Mr. Stone exhibited academic deficits in school. School records show his grades and his performance on educational standardized tests indicated he was academically behind his peers. The formal testing by Sumter County Schools indicated Mr. Stone had significant deficits in overall his adaptive functioning when compared to his peers. Prior to his incarceration, Mr. Stone reported he had several romantic relationships and maintain gainful employment. He reported he has never lived independently and relied on his family and girlfriends to complete domestic duties. While he couches it as he did not want to do these chores, his friends and former live in girlfriend were unsure if he was unable to complete the tasks. The preponderance of the evidence suggests that without support from his family and paramours, his functioning would be limited in one or more activities of daily life and across multiple environments, at home, at work, and in the community. Therefore, Mr. Stone has met the second prong of the Intellectual Disability diagnosis.

The final prong of the Intellectual Disability diagnosis is the onset of deficits in the developmental period. School records indicate Mr. Stone's intellectual and adaptive deficits were present during the developmental period. Hence, he meets the final prong of the Intellectual Disability diagnosis.

A determination of whether Mr. Stone is intellectually disabled is within the domain of the Court. However, I respectfully offer the opinion, based on the totality of the data, that Mr. Bobby Wayne Stone, meets the diagnostic criteria for intellectual disability as defined in the South Carolina Code of Laws.


Alicia V. Hall, Ph.D.
Chief Psychologist, SC License # 1068
Licensed Clinical Psychologist
SCDDSN Central Office

Date signed: 12/1/2022

Michelle G. Fry, J.D., Ph.D.
State Director
Janet Brock Priest
Associate State Director
Operations
Lori Manos
Associate State Director
Policy
Constance Holloway
General Counsel
Harley T. Davis, Ph.D.
Chief Administrative Officer
Quincy Swygert
Chief Financial Officer
Greg Meetze
Chief Information Officer



**South Carolina
Department of Disabilities
and Special Needs**

3440 Harden Street Extension
Columbia, South Carolina 29203
(803) 898-9600
Toll Free: 888/DSN-INFO
Home Page: ddsn.sc.gov

COMMISSION
Stephanie M. Rawlinson
Chairman
Barry D. Malphrus
Vice Chairman
Robin B. Blackwood
Secretary
Gary Kocher, M.D.
Eddie L. Miller
David L. Thomas
Michelle Woodhead

Dec 1, 2022

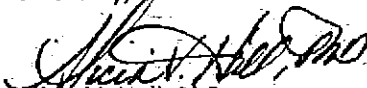
Aaron McCall
Law Clerk to
Honorable William Keesley
P O Box 10
127 Courthouse Square
Edgefield, SC 29824-0010

RE: Bobby Wayne Stone
2018-CP-43-01025

Enclosed for filing, please find the Atkins Evaluation Report as required by Judge Keeley's order dated July 3, 2019. By copy of this letter, we will also provide Counsel with a copy of the Atkins Evaluation Report.

If you have any questions please feel free to contact me (803) 898-9694 (ahall@ddsn.sc.gov) or Constance Holloway, DDSN General Counsel, (803) 898-9683 (Constance.Holloway@ddsn.sc.gov).

Sincerely,


Alicia V. Hall, PhD
Chief Examiner/Supervisor
Office of Clinical Services
Operations Division

cc: Hannah Freedman, Esq., Justice 360
Charles Grose, Esq, Grose Law Firm
Melody Brown, Esq, SC Assistant Attorney General
Constance Holloway, Esq. General Counsel, SCDDSN
DDSN File