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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CALHOUN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2014- 002131

Mikal D. Mahdi, #5238

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

Vol. VI of XXVIII

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1 he's gaining from it, but the overwhelming majority of
2 these offenses that he's written up for are impulsive.
3 They're angry exchanges or outbursts which he fully well
4 knows will be responded to with even more severe forms of
5 treatment.

6 This is what I mean when I say that the pattern of
7 behavior is a pattern of behavior which appears to have an
8 underlying psychological basis for it. This is not
9 somebody who devises elaborate plans and victimizes other
10 people. There are instances in which there are outburst
11 and there are even some instances in which there is
12 aggression, but it's ---it appears to be impulsive and
13 impulsive in ways that don't gain him anything except more
14 punishment and worse treatment.

15 Q When Mr. Mahdi is released from Wallens Ridge State
16 Prison in May of 2004 have any of his life-long mental
17 health issues been addressed either at Wallens Ridge or
18 the prior adult Department of Corrections institution?

19 A No, and not -- no, not remotely in the adult
20 institutions, not an iota of it in the adult institutions.

21 Q And was there a plan put into place to provide some
22 type of aftercare requirements for any type of treatment
23 after he left Wallens Ridge State Prison?

24 A No, and there was no transitional program even to
25 ease him out of prison. Realize, he was in among the most

1 severe kind of confinement possible. The last year and a
2 half of this confinement was at a super-max prison which
3 whatever else it does does not prepare somebody to live in
4 a free society. Prisoners who come out of these
5 institutions have a notoriously difficult time reentering
6 into free society because of the isolation to which they
7 have been exposed. There was no transitional facility.
8 There was no process that he was brought through to
9 reacquaint him with the norms of social interaction, what
10 life in the free world is like, and, certainly, no
11 provision for aftercare or psychiatric treatment.

12 MR. LOMINACK: Court's indulgence. Nothing further.
13 Thank you.

14 THE COURT: Mr. Mabry.

15 CROSS-EXAMINATION

16 BY MR. MABRY:

17 Q Dr. Haney, were you the pretend warden in this
18 pretend prison in the pretend basement in 1970?

19 A No, I was not.

20 Q Were you a pretend inmate or a pretend guard?

21 A No, I wasn't.

22 Q Okay. I want to talk about Mr. Mahdi at the Carter
23 Center. He went to the Carter Center first by making up a
24 story that his aunt had abused him. Are you still with
25 me?

1 A I am.

2 Q You know about that; right?

3 A Yes, I read the circumstances. I was here for her
4 testimony.

5 Q Okay. And he, basically, called the police and told
6 them his aunt had abused him and he tried to make the
7 injuries look worse than they were and put ketchup on
8 himself and ashes or whatever. Would you classify that as
9 manipulative behavior on his part?

10 A It was in part manipulative. It was other things,
11 but it was that, too.

12 Q All right. Now, are you aware that his first
13 commitment as an adult in the Virginia Department of
14 Corrections a psychologist looked at him when he was first
15 brought in?

16 A Yes.

17 Q And, in fact, that psychologist diagnosed him with
18 intermittent explosive disorder and antisocial personality
19 disorder; is that not correct?

20 A Yes. That occurred when he was processed in the
21 adult Virginia Department of Corrections.

22 Q Okay. And when Mr. Mahdi was at the Carter Center he
23 was receiving intensive treatment, was he not?

24 A He was, yes.

25 Q Okay. And despite the fact that he received

1 intensive treatment, he had to be isolated on six
2 different occasions, did he not?

3 A I don't recall the exact number. I did see
4 indications that he did get into trouble while he was at
5 the Carter Center and they put him in a special room at
6 one point.

7 Q Okay.

8 A I don't know how many instances there were.

9 Q He was hitting other patients; isn't that correct?

10 A I recall a fight or two. He was also at times
11 talking out loud disrespectfully to the staff at times.

12 Q Well, it was more than just a fight or two. They
13 were -- He was actually the one doing the hitting to the
14 other students or patients in the Carter Center. They
15 weren't hitting him. He was hitting them. Do you
16 remember that?

17 A I remember them being -- I thought they were fights.
18 That's how I thought they had been described.

19 Q Okay. And he also threatened the staff there, made
20 verbal threats to staff employees?

21 A It's possible. I don't recall that specifically.

22 Q And he also attempted to escape from the facility
23 while he was there?

24 A I don't recall that. It could have been in the
25 records. I don't recall seeing that.

1 Q All right. And do you recall him pulling a fire
2 alarm while he was there?

3 A No. I don't.

4 Q Setting off the fire alarm and then having to be
5 disciplined for that?

6 A I don't recall reading that.

7 Q Do you remember him throwing chairs?

8 A I remember some outbursts, yes.

9 Q Kicking windows?

10 A I think kicking his door.

11 Q Kicking his door. And these are all while he's
12 receiving intensive treatment at the Carter Center?

13 A Yes. He was very troubled even at age nine.

14 Q Well, he wanted out, too, didn't he? He said he
15 didn't want to be there.

16 A Well, I don't have any doubt that he wanted out.
17 Most people who are hospitalized want out, but he was also
18 kept there for two months.

19 Q And he was released after 60 days and, basically, the
20 note stated his depression had lifted at the end of the 60
21 days and he was discharged to his aunt and uncle?

22 A I don't recall the depression had lifted. I recall
23 him having made some improvement and he was certainly
24 released.

25 Q He was given cognitive therapy and had increased

1 ability to express his feelings, improved affect,
2 decreased self-derogatory statements, no suicidal or
3 homicidal ideations, and that's on October 19, 1992. Do
4 you remember that?

5 A Yes, I do. He had shown some improvement and that's
6 why they released him.

7 Q And he went home to live with his aunt and uncle and,
8 in fact, when he found out his brother was living with his
9 father then he began engaging in outbursts and that type
10 of behavior in their home, did he not?

11 A He did, yes. I heard his Aunt Lawanda's testimony
12 and it is reflected in some of the records I saw.

13 Q And, in fact, the behavior got so bad that they
14 decided to return him -- Mr. Mahdi to his father?

15 A Yes. He was 10 or 11 years old when he went back to
16 live with his dad.

17 Q Now, do you remember in the records where Mr. -- both
18 his aunt and his uncle and his -- and Mr. Mahdi --
19 indicated that he used threats or talk of suicide when he
20 didn't get his way?

21 A I don't -- I don't recall that exactly. I don't
22 recall that. I listened to his aunt's testimony this
23 morning. I don't hear her say that. I don't recall
24 having seen that in the records.

25 Q Do you remember her testifying that that's what they

1 told the the police when they came to the house that day
2 when he asked for the officer's gun that he talks about
3 suicide when he doesn't get his way?

4 A I'm not sure I heard her say it was when he didn't
5 get his way. I think I heard her say that he had said on
6 a number of occasions, Why don't you shoot me or just
7 shoot me, and she wasn't sure what that meant or whether
8 he had heard somebody say it on television and so on.

9 Q Okay. Did Mr. Mahdi threaten to commit suicide when
10 he was in the Department of Juvenile Justice?

11 A Yes, he did.

12 Q Okay. In fact, before he made that threat in the
13 Department of Juvenile Justice I believe about a month
14 before he said if he was not released --

15 THE COURT: What do you need?

16 MR. MABRY: Defendant's exhibits.

17 This is Defendant's Exhibit 3. He said if he didn't
18 get out of DJJ when he was supposed to he was going to
19 start F'ing people up or acting crazy. Do you remember
20 that?

21 THE WITNESS: Yes, I saw this before.

22 Q And then there is another report after that where he
23 talks about if he didn't get out of DJJ on time they were
24 going to find him hanging in his cell. Do you remember
25 that?

1 A Yes, I do.

2 Q And then a couple of weeks later he puts a sheet
3 around his neck but he doesn't actually hang himself. Do
4 you remember that?

5 A Yes, I do.

6 Q Okay. And they put him on suicide watch; is that
7 correct?

8 A Correct.

9 Q And then after they take him off of suicide watch or
10 they reduced it to 15 minutes, Defendant's Exhibit 4
11 actually shows that he told his counselor that he was not
12 suicidal. The threats of suicide to were simply his
13 attempt to get a different placement within the Department
14 of Juvenile Justice, more recreation time; is that
15 correct?

16 A Yes. He says a lot of things here, but among them he
17 talks about wanting to get out of -- get out of the unit
18 that he was in --

19 Q Okay.

20 A -- because nothing was happening there and --

21 Q So he ---

22 A -- he wasn't getting any programs and he was
23 frustrated and upset and he threatened suicide, yes.

24 Q Well, actually, the records show that he was -- he
25 was having in programs at DJJ. They actually did testing

1 on him when he came in the first time and they did
2 additional testing the second time when he came in. Isn't
3 that correct?

4 A They did extensive testing.

5 Q They did extensive testing on him and they
6 recommended that he be placed in an anger management
7 program. Do you remember that?

8 A I do.

9 Q And he went in the anger management program and they
10 taught him anger management skills but he was kicked out
11 of the anger management program. Do you remember why?

12 A Yes. He was in conflict with somebody and,
13 obviously, he needed more than that anger management
14 program was providing.

15 Q They also -- He went to other programs while he was
16 there at DJJ, did he not?

17 A Yes.

18 Q Beside anger managements?

19 A There are some programs reflected.

20 Q And he had a psychologist seeing him while he was
21 there at DJJ; correct?

22 A He had periodic visits from one or two different
23 psychologists. Sometimes when he was in isolation --

24 Q Right.

25 A -- they would go down and visit him and talk to him.

1 Other times they would see him in the general population.

2 Q Okay. Did you look at Mr. Mahdi's records while he's
3 been here in South Carolina --

4 A No.

5 Q -- Adult Department of Corrections?

6 A The records I was sent stopped when he left Wallens
7 Ridge.

8 Q Would it surprise you to know that he has not been
9 treated with any kind of psychiatric medication in six or
10 seven years that he's been in the South Carolina
11 Department of Corrections?

12 A It wouldn't surprise me at all.

13 Q Would it surprise you that he hasn't complained of
14 any depression, hasn't complained of any mental illness in
15 the six or seven years he's been here?

16 A No. It wouldn't surprise me. He hasn't complained
17 of those things since he became an adult. That's not an
18 uncommon pattern.

19 Q Okay.

20 A That doesn't mean he doesn't have those things. It
21 means he hasn't complained.

22 Q But you hadn't seen his records while he's been here
23 in the South Carolina Department of Corrections?

24 A No. I am simply saying not having complained about
25 something is different from actually not suffering from

1 it.

2 Q Did he have IQ testing when he was growing up?

3 A Yes, he did.

4 Q And did he have a very high IQ?

5 A He does. Yes, he does.

6 Q And did he tell you that he had been -- Did you talk
7 to Mr. Mahdi?

8 A Yes.

9 Q Have you interviewed him? Did you talk to him about
10 what happened from the time he left Wallens Ridge until he
11 committed these crimes?

12 A No.

13 Q Why is that?

14 A Because it wasn't part of what I was asked to do. I
15 was asked to evaluate his institutional record up to and
16 including Wallens Ridge.

17 Q So, you can't tell us whether his
18 institutionalization had anything to do with the crimes he
19 committed in this case?

20 A I don't have the details of those crimes. I didn't
21 talk to him about it. I don't have any of the records. I
22 can only talk about what I believe that
23 institutionalization did to him.

24 Q Did to him, but you can't tell us if it had anything
25 to do with the commission of these crimes?

1 A Not in a specific way. To the extent to which it
2 changed him to the extent that these problem I've been
3 talking about were never addressed, I think the most
4 reasonable assumption is that he left the institution with
5 the problems he entered with and to the extent with which
6 they were related to what happened that, of course, would
7 make the connection.

8 Q But you ---

9 A I wasn't asked to do that.

10 Q But you don't know what the facts are of this murder,
11 do you?

12 A No. I've said that. I don't -- I don't know other
13 than that it happened and when it happened.

14 Q You don't know what happened to -- what happened in
15 Virginia that caused him to leave Virginia and come down
16 here?

17 A I didn't talk to him about it and haven't reviewed
18 records about his life since he left Wallens Ridge.

19 Q So, you don't know if Wallens Ridge or any other
20 prison was a motivating factor in committing these
21 murders?

22 MR. LOMINACK: Objection. Asked and answered.

23 THE COURT: Overruled.

24 THE WITNESS: I don't know the connection because I
25 don't know the specifics of those events. I know there's

1 about a two-month period that he was out after he left
2 Wallens Ridge when these crimes occurred, but in terms of
3 exactly what influenced or affected him in addition to his
4 experiences, no, I don't know.

5 Q He went to juvenile incarceration the first time
6 after first breaking in a car and stealing something?

7 A Yes.

8 Q And escaping from police custody and being placed on
9 probation and then breaking into two houses and stealing
10 guns?

11 A Correct.

12 Q Okay. So, his incarcerations as a juvenile couldn't
13 have anything to do with those first two crimes that he
14 committed?

15 A No, I don't think I suggested that. Of course not.
16 I suggested that he had longstanding underlying problems
17 which had never been dealt with including the time he went
18 into the juvenile system.

19 Q And while he was at DJJ the first time in 1997 he had
20 disciplinary problems at that time, did he not?

21 A Yes, I think I have described that. He did. He had
22 them almost immediately and he had them continuously.

23 (WHEREUPON, Defendant's Exhibit No. 6 was marked for
24 identification only.)

25 MR. LOMINACK: No objection, Your Honor. This has

1 already been admitted as well.

2 (WHEREUPON, Defendant's Exhibit No. 6 was admitted
3 into evidence.)

4 Q This is Defendant's Exhibit 6. These are
5 disciplinaries when he was in the Department of Juvenile
6 Justice and I tabbed them when they start and where the
7 next begins so they are easier to look at. You had talked
8 about some of his disciplinaries there in DJJ. Would you
9 tell me why he would throw a chair at a teacher at the
10 Department of Juvenile Justice?

11 A This is --

12 THE COURT: Hold on a second.

13 MR. LOMINACK: Your Honor, I object. If he would
14 like to direct him to a particular page.

15 MR. MABRY: Oh, I'm sorry.

16 THE COURT: I don't know how he can tell why he threw
17 the chair.

18 MR. LOMINACK: To the extent it is written anywhere,
19 if he could direct him to the page. Otherwise, I think he
20 is asking him to do the impossible.

21 THE COURT: Sustained.

22 MR. MABRY: It is January 21, '99, threw a chair at
23 Ms. Woolridge.

24 THE COURT: And the question was for him to tell
25 you why ---

1 MR. MABRY: Yea. My question is did his prior
2 incarceration cause him to throw the chair at his school
3 teacher?

4 THE COURT: In your opinion.

5 Q In your opinion.

6 A His prior incarcerations?

7 Q Right.

8 A No. I think his prior problems, his prior untreated
9 unaddressed, deep-seated problems led him to do a lot of
10 irrational, immature, impulsive things that he, of course,
11 shouldn't have done but he did nonetheless I don't think
12 for reasons he could even tell.

13 Q Okay. On January 20 of '99 he made a sexual gesture
14 to one of his teachers. Did that have something to do
15 with his upbringing?

16 A Yea. I think it did.

17 Q Okay.

18 A I think most of his disruptive and dysfunctional
19 behavior had everything to do with his upbringing.

20 Q Okay. So, all of his disciplinaries at DJJ were
21 based on what happened to to him growing up, not by any
22 choices that he made. Is that your testimony?

23 A No. You're pushing it a little farther than I am
24 prepared to go. I am not suggesting that he's not making
25 the choices. Certainly, as an older person, of course,

1 he's made the choices. The question is how impaired are
2 those choices by virtue of the experiences he's had that
3 preceded them. You're describing behavior that is very
4 consistent with behavior that he engaged in as a
5 9-year-old little boy who is manifesting profound trauma
6 and multiple risk factors to which he's been exposed which
7 have resulted in him expressing at age nine he doesn't
8 want to live anymore and being described -- elaborately
9 described -- by the psychologist who saw him as having
10 deep-seated problems that have to do with abandonment
11 issues, not understanding who he is, whether anybody cares
12 for him, et cetera, et cetera.

13 Those problems were there at nine when whatever
14 choices he was making at nine to do things like this can't
15 be understood as choices that a fully responsible person
16 is making and the fact that those things were not
17 addressed adequately and carefully as manifested by the
18 fact that the same kinds of problems reemerged later --
19 You can put the psychiatric hospital records alongside of
20 the juvenile justice records and they say the same things
21 about the deep-seated nature of his problems --
22 unaddressed and leading to these kinds of issues.

23 They're all connected and they impair his ability to
24 make good choices, wise choices, caring choices.

25 Q Do you remember him trying to escape from DJJ by

1 pulling a female guard into a room and taking her radio
2 away and then trying to get the keys from another guard?

3 A Yes. I remember that incident being written up where
4 he tried to get somebody over the radio to bring the keys.

5 Q Right. And do you attribute that to his childhood as
6 well?

7 A I attribute all of this irrational, impulsive
8 behavior to a preexisting set of very significant problems
9 that were never adequately dealt with at any point in his
10 life.

11 Q Is escaping from prison an irrational behavior,
12 impulsive behavior?

13 A It depends. I don't know the circumstances. I can
14 imagine it being that and I can imagine it being something
15 else, of course.

16 Q You just said you don't know the circumstances. I
17 assume that you reviewed the records including the
18 disciplinary records from DJJ. Am I correct?

19 A Yes, of course.

20 Q You've read the records and you've read what
21 happened. So, was it -- was it an impulsive act or was it
22 a planned escape attempt from the Department of Juvenile
23 Justice?

24 A I thought you were talking about prison. I didn't
25 realize you were talking about this incident in --

1 Q I'm talking about --

2 A -- the Department of Juvenile Justice.

3 Q -- this incident.

4 A I'm not sure what the question is. Are you asking me
5 do I think that was impulsive? I think in many respects,
6 of course, it was impulsive. It was pointless. This is
7 an intelligent young man. That was a plan that was
8 irrational. It was wrong and it is a good thing that he
9 was stopped in his attempt to implement it, but it was
10 utterly and completely irrational, far beneath his
11 intelligence level, and the product, I think, of impaired
12 thinking on his part.

13 Q What about hitting a teacher?

14 THE COURT: All right, Mr. Mabry. He's answered they
15 all are in his opinion what he said. So, let's move on.

16 MR. MABRY: Okay. That's fine. I understand your
17 ruling.

18 Did Mr. Mahdi tell you about the different jobs that
19 he had had?

20 THE WITNESS: I didn't talk to him about his
21 employment history. I don't know his employment history.

22 Q All right. So you don't know what effect his
23 childhood had on his employment?

24 A I was examining just the institutional history,
25 institutional behavior, and carefully documented in the

1 files that I looked at. I don't know his employment
2 history.

3 Q Now, before he went to adult prison he was out for
4 some period of time and then he stabbed a maintenance
5 worker at an apartment complex while trying to break into
6 an apartment.

7 A It said about five months between the juvenile and
8 the adult incarceration.

9 Q Do you attempted that attempted break-in of the
10 apartment and the assault on Mr. Rivera to his childhood
11 problems?

12 A Counselor, he is the product of these experiences and
13 these experiences produced in him a very serious set of
14 problems. Absent the intervention of effective treatment
15 and therapy which he didn't get, of course, this was an
16 influence on him. We are all a product of the experiences
17 that we've had and when they've been that profoundly
18 damaging and traumatic they create these kinds of problems
19 in someone's life.

20 That is not the whole story. That is not the entire
21 analysis, but that is an important component of what it is
22 who makes him who he is and what it is that accounts for
23 what he does.

24 Q How old was he when he assaulted Mr. Rivera?

25 A Well, he would have just gotten out of the juvenile

1 justice system. So, he was about 17, 18 years old. I am
2 assuming he was 18 because he was tried as an adult. I
3 can look at the dates exactly if you want, but he got out
4 of the juvenile system when he was around 17. He was out
5 for five months. So he was 18 I would assume.

6 Q And what particularly from his childhood caused him
7 to go to this apartment complex and break in and then
8 assault Mr. Rivera?

9 A The fact that he was there, the fact that he was back
10 to committing crimes, the fact that he was not as a guy
11 with 118 IQ didn't have an education, wasn't gainfully
12 employed, wasn't making use of the things -- the resources
13 that he had and the talents that he otherwise had he lived
14 a different life been able to take advantage of. All of
15 those thing are part and parcel why all of us do what we
16 do. That is the essence of what a social history tells us
17 is that we are in certain respect the product of the
18 things that have happened to us.

19 For most of us those things can shape us in a
20 positive way or they give us some degrees of freedom. We
21 got some resiliency. We can take the potential we have
22 and use it. When somebody has been as severely damaged as
23 he's been by those truly awful experiences which he
24 underwent then your ability to make the best of what you
25 have is severely compromised and that accounts in my

1 opinion for his behavior over his life course.

2 Q Did he get his GED after he got out of the Department
3 of Juvenile Justice?

4 A Yes, I believe he did.

5 Q Did he get 16 credits from a community college?

6 A Yes. He tried to get his education when he got out.
7 Yes.

8 Q And once he got to adult prison then he continued to
9 engage in disciplinary violations before Wallens Ridge.
10 Before he ever got to Wallens Ridge he set fire to his
11 cell at one prison?

12 A Yes. I think I have made it very clear that the
13 pattern of institutional behavior was very similar and it
14 occurred in the processing unit, the reception center that
15 he went to in the Department of Corrections in Virginia,
16 the very first prison that he went to -- Nottoway -- and
17 it continued at Wallens Ridge.

18 Q I want to understand this correctly. Before
19 Mr. Mahdi ever went to a juvenile prison he had broke into
20 a house or two houses and stold some guns?

21 A Yes.

22 Q Because that's what happened in this case. He broke
23 into a house in Virginia and stold some guns. So he did
24 that back when he was a juvenile; right?

25 A Yes, he did.

1 Q Before he went to Wallens Ridge?

2 A Correct.

3 Q And he had committed theft crimes before he ever went
4 to juvenile justice?

5 A Yes. I think we've talked about his juvenile record.
6 There is no question about that. That's what got him into
7 trouble. That's what got him on probation and eventually
8 he got his probation was revoked and he for additional
9 offenses he went into the juvenile justice system. Yes.

10 Q And he had -- In this case he stole a car from
11 Virginia and eventually drove to South Carolina. He had
12 committed larcenies before he went to DJJ before he was
13 ever confined in any institution; is that correct?

14 A Yes, if you don't take the psychiatric hospital in
15 account, but, yes ---

16 Q Okay.

17 A -- before any correctional institution.

18 Q Before any correctional institution. And before he
19 went into an adult institution he committed a serious
20 assault on someone while trying to break into an
21 apartment?

22 A He did. That's what led to him being placed in the
23 adult system.

24 Q Doctor, you've written numerous articles over the
25 years; am I correct?

1 A Yes.

2 Q In fact, you wrote one article called, Hiding from
3 the Death Penalty?

4 A I did.

5 Q Are you morally opposed to the death penalty?

6 A I am.

7 Q Thank you, sir.

8 THE COURT: Redirect?

9 MR. LOMINACK: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. LOMINACK:

12 Q Mr. Mabry suggested that when Mr. Mahdi was released
13 from the Walter Carter Center that he was no longer
14 depressed. Do you recall what the discharge diagnosis was
15 from the Walter Carter Center?

16 A I can tell you it included depression certainly which
17 is why I said that he had not been diagnosed or was not
18 regarded as having had his depression lifted.

19 Q Would you argue with me if I told you it was major
20 depression?

21 A No, I wouldn't argue with you.

22 Q Is that a serious diagnosis for a 9-year-old kid?

23 A Yes, and, certainly, when combined with suicidality
24 it is a very serious diagnosis.

25 Q And Mr. Mabry was asking about, basically,

1 Mr. Mahdi's affect, how he dealt with situations in
2 institution. Can exposure to long-term trauma as a child
3 affect how you're able to address those situations?

4 A Yes. It frequently does which is why I spend time
5 talking about what that earlier trauma had been and how
6 extensively that earlier trauma itself had been described
7 and also its consequences were described in the Carter
8 Center. That's exactly what they were talking about.
9 That's exactly the psychological picture of him and it
10 remained largely unchanged as he went through the rest of
11 his life because it was not effectively addressed.

12 MR. LOMINACK: Thank you, Your Honor.

13 THE COURT: All right. Can Dr. Haney be released so
14 he can -- you got a plane this afternoon? Next witness.

15 MR. LOMINACK: I would call Dr. deRosset Myers to the
16 stand.

17 DEROSSET MYERS, JR., after being duly sworn,
18 testified as follows:

19 THE COURT: Make yourself comfortable. Give us your
20 full name and spell your last for the record, please.

21 THE WITNESS: DeRosset Myers, Jr. What was the
22 second thing you wanted?

23 THE COURT: Spell it.

24 THE WITNESS: Okay. That's small D-E capital
25 R-O-S-S-E-T, Myers, M-Y-E-R-S

1 DIRECT EXAMINATION

2 BY MR. LOMINACK:

3 Q Good afternoon. Where are you employed now?

4 A I am currently working with Lake Psychological
5 Services.

6 Q And what are you doing?

7 A I am in private practice full time.

8 Q As a?

9 A As a clinical psychologist, licensed clinical
10 psychologist.

11 Q How long have you been in private practice?

12 A I started private practice in 1991 on a part-time
13 basis with the University Specialty Clinics which is the
14 private practice for the school of medicine and department
15 of neuro-psychiatry in Columbia. I went into full-time
16 private practice the first of November of last year, 2010.

17 Q If you could just briefly describe your educational
18 and professional background.

19 A I graduated from Princeton University in 1971 with an
20 AB in sociology. In 1987 I graduated from the University
21 of South Carolina with a Ph.D in clinical psychology. I
22 did internship training in Chicago at Illinois Masonic
23 Medical Center and then did post-doc in pediatric oncology
24 in Houston, Texas in the late 80's.

25 THE COURT: Pediatric what?

1 THE WITNESS: Oncology. Cancer.

2 THE COURT: And then now you're a clinical
3 psychologist?

4 THE WITNESS: I was a clinical psychologist there,
5 yes, in mental health section --

6 THE COURT: I see. I see.

7 THE WITNESS: -- to help children and parents who are
8 being treated for cancer.

9 Q And before you went into private practice in 2010
10 where did you work?

11 A I worked at the WS Hall Psychiatric Institute which
12 is the part of the Department of Mental Health.

13 Q I assume you worked there as a clinical psychologist?

14 A I worked there as a clinical psychologist but in a
15 number of different capacities. That's correct.

16 Q And were you in charge of conducting evaluations of
17 adolescents when you worked at the Department of Mental
18 Health?

19 A I was. I was also in charge -- I was the director --
20 ended up being director of the clinical psychology
21 internship training program in which capacity I was
22 responsible for supervising and training and overseeing
23 conducting of psychological evaluations by the clinical
24 psychology interns.

25 Q I hesitate to ask, but how many evaluations do you

1 think you've conducted or supervised?

2 A It would be in the thousands.

3 (WHEREUPON, Applicant's Exhibit No. 29 was marked for
4 identification only.)

5 Q Did I ask you to provide to me an updated copy of
6 your CV?

7 A Yes, you did.

8 Q And is that such a copy?

9 A Yes, it is.

10 MR. LOMINACK: Your Honor, I would move Applicant's
11 no. 29 into evidence.

12 THE COURT: No objection. I assume without
13 objection.

14 MR. MABRY: No objection.

15 THE COURT: Thank you, sir. I practiced too long.
16 (WHEREUPON, Applicant's Exhibit No. 29 was admitted
17 into evidence.)

18 MR. LOMINACK: Your Honor, at this time I would move
19 to qualify Dr. Myers as an expert in child and adolescent
20 psychology.

21 THE COURT: Without objection. No objection;
22 correct?

23 Q Dr. Myers, what were you asked to do in this case?

24 A To evaluate the record of Mr. Mahdi with respect to
25 developmental issues that were relevant to the first 16 or

1 17 years of his life.

2 Q And were you asked to address his youth and
3 adolescence because that has, in fact, been your primary
4 focus and expertise over the years?

5 A That's correct.

6 Q What were you provided?

7 A I was provided with this fairly large mound of
8 information here which I was asked to review and also -- I
9 don't think it's included in this, but I also had a
10 transcript of portions of the trial that he had I guess
11 where he was sentenced.

12 Q All right. So you reviewed the two volumes of the
13 materials. If you could tell the court what major themes
14 jumped out at you after you reviewed those materials.

15 A There were several themes that jumped out and one way
16 of organizing this is to think in terms of a hierarchy of
17 needs. The first need that we all have is for food,
18 shelter, and protection, and I was struck by the apparent
19 extent of the poverty of the family that he grew up in.

20 I -- secondly and related to that I was struck by the
21 number of moves that took place in his life. I was
22 counting the number of schools he went to and by the time
23 he was 8 years old he had been in six different schools.
24 He had lived in three different cities.

25 I was struck by the fact that there seemed to have

1 been a good deal of violence in his family of origin and I
2 was struck with the fact that there seemed to be a lot of
3 psychopathology there. I was aware of the fact that his
4 father had been institutionalized and had symptoms of
5 mental illness before he was institutionalized and,
6 finally, I was strongly impressed by the extent of kind of
7 psychopathology in the family.

8 Q All right. In your opinion -- and we'll get to those
9 more specifically -- but did those things play a role and
10 did they impact Mr. Mahdi's mental health?

11 A Absolutely. Those would all be factors that would to
12 use the term that Dr. Haney used would put him at risk for
13 mental health problems.

14 Q And, ultimately, do you have an opinion as to whether
15 or not he suffered from my mental health disorders as a
16 child and adolescent?

17 A Yes, I do.

18 Q And what are those?

19 A Well, the first one is clearly documented in the
20 record and that is major depression. He was diagnosed
21 with that when I believe he was 9 years old when he went
22 to the Carter Center. The second thing that really struck
23 me -- and this is an area of particular interest to me --
24 is I think he has a severe attachment disorder.

25 THE COURT: Severe what?

1 THE WITNESS: Attachment.

2 Q If you could, describe what an attachment disorder
3 is.

4 A An attachment disorder is a -- it's a pervasive way
5 of dealing with other people in the world that's marked --
6 if you look at the diagnostic and statistical manual there
7 are two different varieties. One is kind of permissive
8 attachment to people where someone who hasn't had stable
9 figures that they've been able to depend on as a very
10 young child will seek out any figure and attempt to attach
11 to those to that person and sort ofglom on to the person.
12 The other is a more kind of ambivalent attachment style
13 where the person assumes the characteristics of someone
14 who is quite independent, who doesn't need help from
15 anybody, who has difficulty establishing relationships as
16 sort of a self-protective measure.

17 Q If that happens at a young age and somebody has to
18 assume the roles of independence, do they miss out on some
19 of the developmental milestones that a normal child would
20 meet?

21 A Well, the way that we learn is exclusively as a young
22 child through experience and to the extent that you miss
23 out on experiences in modeling -- and modeling is just
24 having the opportunity to observe other people perform
25 tasks in one way or another -- then you miss out on some

1 of the critical sources of information and training and
2 practice that all of us hopefully had as younger children.

3 Q What is the best treatment for an attachment
4 disorder?

5 A The -- Really, the only treatment for attachment
6 disorder is for the person to find somebody who is a
7 stable, nurturant member of his community who is also able
8 to set limits and who is available on a very regular basis
9 and when I say regular basis I mean preferably on a daily
10 basis which is what, you know, the role that a mother or
11 less traditionally a father would serve in rearing a young
12 child.

13 Q Now, the mother or father aren't the only people that
14 can serve that role?

15 A That's correct.

16 Q Did the fact that Mr. Mahdi moved so many times
17 affect whether or not he was able to find somebody on a
18 long-term basis to whom to attach?

19 A Well, it certainly would have had an effect in the
20 sense that had he found somebody who was an appropriate
21 attachment figure, somebody who was sensitive to his
22 needs, responsive to his needs, able to give him the
23 support and nurturance that he needed, he physically
24 wouldn't have been able to maintain that relationship just
25 because he moved.

1 You look puzzled. Does that not answer your
2 question?

3 A Absolutely answered my question. My puzzlement has
4 nothing to do with you and everything to do with me.
5 Let's talk about depression for a moment. You said that
6 that was obvious from the records. What are you talking
7 about?

8 A Well, the first formal diagnosis of depression comes
9 when he's admitted to the Charles Carter Center in
10 Baltimore when he's 9 years old and it's -- it is a
11 diagnosis that's supported from multiple sources. The
12 psychiatrist describes him as sad, suicidal. The
13 psychologist describes him in pretty much the same terms.
14 The social worker who does the evaluation talks about how
15 he doesn't really seem to have anything much to hope for.

16 There are also repeated illusions to his having made
17 multiple suicide threats, one of which resulted in his
18 being hospitalized.

19 MR. LOMINACK: Your Honor, to make things a little
20 more efficient I have extracted some of the pages from the
21 large binders and Dr. Myers has highlighted them. I've
22 made copies so that we would all know what page we were
23 talking about and where. I don't intend to admit these
24 separately, obviously.

25 THE COURT: Certainly.

1 Q Did you bring your set of highlighted documents,
2 Dr. Myers?

3 A Yes, I did.

4 MR. LOMINACK: I am going to hand to the state the
5 complete set of what we're going to talk about and I will
6 hand up to the court individually as we go through them.

7 THE COURT: Thank you.

8 Q Dr. Myers, I'm looking at page 127 and it's titled
9 Interim Psychiatric Evaluation and this is from the Walter
10 Carter Center. I take it by Interim Psychiatric
11 Evaluation obviously he's been there for some period of
12 time and they're checking in and providing an update on
13 how he's doing; is that right?

14 A That -- I -- I am not familiar with that term, but
15 that certainly seems to be what has happened when the
16 psychiatrist dictates this report , yes.

17 Q All right. And if you could turn to page 128,
18 please. Obviously, page 127 -- I don't want to belabor
19 the points that we've already heard about.

20 THE COURT: Well, now, wait a minute. That may not
21 be an interim report because he was admitted on August 23,
22 '92 and this report was dated when? Or does it have a
23 date?

24 MR. LOMINACK: It doesn't have --

25 THE WITNESS: It looks like -- if you look at the

1 bottom of the last page it looks like 9/2 would have been
2 a time when it probably was dictated, recorded probably
3 the R stands for recorded and T stands for transcribed on
4 the 15th. I don't know that for sure, Your Honor.

5 THE COURT: All right. That's good enough.

6 MR. LOMINACK: I didn't mean to mislead. I was just
7 reading the Interim Psychiatric Evaluation.

8 THE COURT: I am not suggesting you were.

9 Q All right. If you could look at page 128 and at the
10 bottom there is a section titled Admission Mental Status
11 Examination. What is a mental status examination?

12 A It is -- how best to describe it? It is a
13 description of the way a child or adult presents in the
14 clinical opinion of the person who is doing the mental
15 status exam. It generally addresses issues of behavior as
16 well. So, it addresses both the person's expression and
17 mood, the way he comes across, and salient features of
18 this behavior.

19 Q And this is something that you're trained to observe?

20 A It's a standard part of virtually any psychiatric
21 psychological evaluation.

22 Q All right. Before we discuss that paragraph
23 specifically, is it common for a 9-year-old to be admitted
24 as an inpatient in a psychiatric ward?

25 A No, it's very uncommon. In the 25 years I worked in

1 children adolescent services at Hall Institute it was
2 regularly the case that we would have two to three times
3 as many adolescent patients as child patients. The child
4 unit was regularly had very -- had just fewer patients.
5 So, it is much more unusual for young children to be
6 admitted.

7 Q All right. Let's look at that mental status
8 examination. What was noted about Mikal during their
9 observations?

10 A Well, the psychiatrist noted ed that he had sad eyes
11 which is just an illusion to the expression he had on his
12 face. I think he sounds like he was irritable when he was
13 being interviewed because he had already been interviewed
14 by a lot of people which does happen during the admission
15 process.

16 He describes his mood as sad. The psychiatrist said
17 that his affect is restrictive appropriate. What that
18 means is his range of expression was not as broad as one
19 would expect of a child that age, but it was inappropriate
20 in the sense that he didn't laugh when he talked about sad
21 things or cry when he talked about things that normally
22 would be seen as happy. His eye contact was poor and he
23 did say that -- He said he wanted to jump off a bridge or
24 shoot himself or kill himself with his bow and arrow.

25 Q So, that was the 9-year-old Mikal saying that he was

1 going to kill himself with his own bow and arrows?

2 A Correct.

3 Q And what is it that the psychiatrist noted that Mikal
4 wanted?

5 A He wanted to be with his family. He wanted his
6 family to be back together.

7 Q And have you ever observed a psychiatrist conduct an
8 evaluation like this or an interview?

9 A Yes.

10 Q Do they normally ask a patient what three wishes --
11 if he had three wishes what they they be?

12 A That's a pretty standard thing. Psychologists
13 typically do the same thing.

14 Q And here they note that he had only one wish; is that
15 right?

16 A Yea. He said he just wanted his family to be back
17 together which would be consistent with the description of
18 someone with constricted affect. This is a child who is
19 not thinking broadly. His focus is pretty narrow. Pretty
20 narrow.

21 Q All right. And on page 131 what was the diagnosis at
22 that time?

23 A It was major depression, single episode, with the
24 rule out of post traumatic stress disorder.

25 Q What does rule out post traumatic stress disorder

1 mean?

2 A It just means that we're not sure. There's some
3 evidence that he may have it, but we don't have enough
4 information to make -- either to definitely say he does or
5 definitely say he doesn't.

6 Q All right. The term depression is thrown around
7 quite a bit. Maybe we've all become desensitized to it,
8 but is the diagnosis of major depression in a 9-year-old
9 child something that you've commonly seen in your
10 experience?

11 A No. Typically even when there is depression children
12 will get a diagnosis of depression not otherwise specified
13 or adjustment disorder with depression. It is rare that
14 you get a diagnosis such as major depressive disorder to
15 someone that young.

16 Q What is the difference between major depressive
17 disorder and depression not otherwise specified or NOS?

18 A NOS is sort of a wastebasket, frankly. It is when
19 the child doesn't meet full criteria for one of the other
20 diagnoses either because of lack of information or because
21 of his age, but you're clinically certain that there is a
22 significant depression that exists.

23 Q And did the psychiatrist have a recommendation for
24 treatment of the major depression?

25 A He suggested that Mr. Mahdi be started on tricyclic

1 antidepressant medication which was the treatment
2 medication of choice at that time.

3 Q And do you know whether or not Mr. Mahdi was started
4 on medication?

5 A He was not. His -- It was recommended to his aunt
6 and uncle and they refused that treatment.

7 Q Now, let's stop for a moment. Based on the records
8 that you've seen do you have any reason to dispute the
9 Walter Carter Center evaluation and the diagnosis of major
10 depression?

11 A No. I think it's consistent with the symptoms that
12 he presented with. It's consistent with the problems that
13 he -- It seemed to have been building up over the years
14 before he even went to Baltimore and the hospital staff
15 had 60 days to evaluate him during which period they, you
16 know, had 24-hour information on how he was doing. So,
17 they had an enormous amount of data to make a diagnosis.

18 Q By the way, are psychiatrists and psychologists
19 trained to think about and observe signs that somebody is
20 exaggerating or malingering?

21 A Yes, they are and I think especially -- my experience
22 is especially in a hospital context there's almost always
23 a premium on bed space. There is more demand than there
24 is supply, and one of the things that you need to make
25 sure of is that you don't fill up beds with children who

1 don't need the services. The second part of that is that
2 in South Carolina and I believe I'm accurate in saying
3 this from reading the record that there was some sort of
4 hearing -- judicial process -- where the psychiatry team
5 was asked to review the data to either recommend that he
6 be maintained in the institution or released and their
7 recommendation was that he be maintained and you need to
8 have a diagnosis to do that.

9 Q And in your experience is 60 days a pretty long time
10 for a 9-year-old to be maintained as an inpatient?

11 A It is a very long time.

12 Q All right. Now, there is also a social worker
13 assessment beginning on page 133 and let me stop and ask
14 is it common for in a setting like this or a department of
15 mental health for a psychologist and a psychiatrist and a
16 social worker to work together as a team?

17 A That's a model that almost all psychiatric treatment
18 in institutions anyway and often in outpatient settings is
19 based on. The reason is the that the orientations of
20 different -- often there's a -- typically there is a
21 nursing assessment as well. I didn't see a nursing
22 assessment in here.

23 The reason is that it provides three kind of
24 different perspectives on the same person. It allows you
25 to verify and validate the information that you get and it

1 also kind of divides out the task of gathering information
2 so that a number of different people are contributing to
3 the same picture.

4 Q And Walter Carter Center was following that model as
5 far as you could tell?

6 A That's the -- yea, that's correct.

7 Q Okay. If you could look at the bottom of page 134
8 and describe what the social worker's observations were
9 about Mikal.

10 A She says that -- It was a she. She says that he
11 appeared depressed and sometimes angry. He continued to
12 express suicidal ideation and apparently he told her that
13 what he wanted was he wanted his family to get back
14 together and if they wouldn't get back together he wanted
15 to kill himself.

16 Q And you just said he -- and she said she recognized
17 that he was depressed and sometimes angry. Those sound
18 like they're mutually exclusive. How can somebody, a
19 9-year-old, who is depressed also be angry?

20 A Well, the classic formulation understanding of
21 depression -- and I think that is frequently true -- is
22 that depression is anger turned inward. Typically people
23 are depressed because of external circumstances or events
24 that are uncomfortable and make them angry.

25 One of the ways of dealing with that anger is to lash

1 out. Another way is to sort of turn the anger inwards in
2 which case you end up with somebody who looks depressed.
3 So, at the same time you have both feelings of despondency
4 and anger in the same individual and you can have these
5 two -- you can have expression of these two kind of
6 apparently contradictory feelings express themselves at
7 different times.

8 Q Okay. Right above that paragraph it says Axis Five
9 and then it says 30. Is that axis five -- is that the
10 global assessment of functioning score?

11 A Yes, it is.

12 Q And what is that? What is a GAF score?

13 A It is just an assessment of essentially how severely
14 a person is limited in his functioning based on his
15 psychiatric condition.

16 Q Is 30 low?

17 A Thirty is extremely low. I'm not sure if I have seen
18 30 in a child that age before. Forty or fifty is very,
19 very low score. At 30 you're typically -- your mental
20 illness is having sufficient impact that you're unable to
21 take care of almost any of the the normal age appropriate
22 demands of daily living.

23 MR. LOMINACK: Your Honor, I am going to hand up to
24 the court the psychologist's report from these records.
25 Now beginning at page 137 is a psychology evaluation. I

1 assume this is type of report that you would type up after
2 conducting an evaluation; is that right?

3 A That's correct.

4 Q All right. And ---

5 MR. MABRY: Where are you?

6 MR. LOMINACK: 137 --

7 MR. MABRY: Okay.

8 MR. LOMINACK: -- is where it begins.

9 And if you look at page 138 if you could describe
10 what the psychologist saw in the behavioral observations.

11 THE WITNESS: And I might point out behavioral
12 observations is in large measure interchangeable with a
13 mental status exam so it's roughly the equivalent to what
14 in psychiatric was called a mental status exam. Again, I
15 think I am correct in saying it was a she. Yea.

16 The psychologist found that Mr. Mahdi was -- She
17 described as slow moving and soft spoken and that he never
18 established eye contact -- consistent eye contact. That
19 eye contact was just fleeting.

20 Q Was that consistent with the psychiatrist's
21 observations?

22 A He made the same observation, I believe, that eye
23 contact was very poor.

24 Q Now, I'm sure the court knows this so we don't need
25 to cover this. Psychologists give tests. Psychiatrists

1 don't. Are there some tests listed that this psychologist
2 administered to Mr. Mahdi?

3 A She gave a very -- what in my opinion is a very
4 comprehensive psychological battery, yes.

5 Q And did -- In the second paragraph under behavioral
6 observations did the psychologist describe observations of
7 Mr's. Mahdi behavior as he was taking the test?

8 A Yes, she did. She observed that as he became more
9 frustrated he became more oppositional. So, if he felt
10 like he weren't doing well or wasn't able to perform
11 adequately -- and this would typically be on the IQ
12 testing where there are right or wrong answers -- he would
13 -- he would become oppositional. She felt that his
14 depression sort of was the underlayment of that or
15 foundation of that behavior.

16 Q All right. Let's slow down.

17 A She also -- She also observed that he was unable to
18 accept praise from her when she tried. One of the things
19 you do with young children is you want to encourage them
20 to give their best performance and you do that through
21 social praise. Sometimes you'll offer a reward like candy
22 or something like that and he wasn't buying it. He
23 essentially accused her of just trying to make him feel
24 better and not being sincere when she was positive in her
25 reaction to him.

1 Q Let's back up a second. You say openly oppositional.
2 What does that mean?

3 A When I use the expression I mean somebody is not
4 willing to comply with the task. If I ask him to put
5 block together and they say no or they just scramble them
6 around.

7 Q Then she goes on to explain why she believes she's
8 seeing that behavior.

9 A That's correct.

10 Q And she believed it was because of the underlying
11 themes of depression; is that right?

12 A Depression and anxiety, yes.

13 Q What -- On page 139 what was Mr. Mahdi's IQ at the
14 time?

15 A His full scale -- test full scale IQ at that time was
16 95.

17 Q Does that reflect his true potential?

18 A No. I can say that with assurance. I believe the
19 first time he was given psychological testing at DJJ --
20 although I am not positive about that -- I think his full
21 scale IQ was 118. There are lots of reasons why you can
22 obtain an IQ score that is low besides somebody misscoring
23 the test or, you know, giving away the answers. There is
24 no reason for an abnormally high IQ. So I think 118 is
25 the best estimate which would put him close to the top of

1 the high average range.

2 Q And the difference between 95 and 118, is that a
3 significant difference?

4 A It's statistically significant. That's correct.

5 Q And do you have any opinions as to why his score may
6 have been so low or relatively low at the time of this
7 testing?

8 A I think it was because he was depressed and he wanted
9 the -- One of the central features of depression is a loss
10 of energy, a lack of motivation, and these are all things
11 that would have a negative impact on his IQ score.

12 Q All right. And on page 140 there is a description
13 that you've highlighted about projective testing. What is
14 projective psychological testing?

15 A Projective psychological testing is a method about
16 assessing personality where you present the person with an
17 ambiguous stimulus. It can be anything from -- well, from
18 asking them to draw a picture of a person or their family
19 where you haven't told them what to do except besides draw
20 a picture to giving illustrations and asking them to tell
21 a story to using a technique called the Rorschach which
22 most people are familiar with where you give ink blots
23 that have no particular content at all but you ask the
24 person to tell you what they see.

25 Q And what were the results of the testing?

1 A Well, she had a number of results. Her first one was
2 that he was profoundly depressed; that he was preoccupied
3 with death and significant losses. She felt that testing
4 pointed towards anxiety and occasionally disexpansiveness.
5 It is a tendency to, you know, act or talk as if you're
6 more powerful or confident than you really are.

7 She picked up some evidence of loose thinking of
8 irrational thoughts, not being very well organized. She
9 said there was a possibility of past experiences with
10 trauma and she said that finally -- not finally. She said
11 he had poor mechanisms of coping with both internal and
12 external stress -- internal stress just being feelings
13 that we're uncomfortable with, external stress being
14 things that happen to us that we don't like.

15 Finally, that she thought there is a lot of
16 underlying anger and potential for acting out for showing
17 out that anger.

18 Q All right. You mentioned the Rorschach test. The
19 projective testing, is this something that a 9-year-old
20 can plan to answer in a certain way to achieve these
21 findings of depression?

22 A Well, especially the Rorschach test it is a test that
23 most bright adults couldn't fake. It takes -- Typically,
24 it takes one to two semester of graduate training just to
25 master the skills you need to interpret the responses to

1 the testing. It's not at all clear what a particular
2 response means or what the psychologist is looking for.

3 Q All right. And based on this psychological
4 evaluation on page 141 at the second paragraph what was
5 the psychologist concerned about?

6 A She thought he was -- that he was at risk for
7 misinterpreting environmental cues and that he had a lot
8 of negative thoughts about himself and his world and his
9 future and she thought that this kind of -- this cognitive
10 or thinking set put him at risk for acting out in the
11 future.

12 Q And on page 142 what did she believe he needed at the
13 time?

14 A Well, I'll quote her. She said a highly structured
15 and safe residential educational environment in which he
16 can experience protection, nurturance, appropriate limit
17 settings which I think makes a lot of sense in light of
18 his background and the things that were conspicuously
19 absent when he was a youngster or -- he was a youngster
20 when this was done -- when he was very young.

21 Q So, had you been the psychologist and seeing the
22 results of the testing and the other psychiatrist
23 evaluations would you have agreed with that recommendation
24 that he needs some highly-structured environment?

25 A Right. I think he would have been a good candidate

1 for a group home possibly or actually he seemed to be
2 doing pretty well in the Burwell family -- perhaps going
3 back to that family with a lot of support. The only other
4 thing that I would have included in my recommendation
5 would have been that I think a child with this level of
6 depression would have benefitted from antidepressant
7 medication.

8 Q And you've heard the testimony that he didn't get
9 antidepressant medication. Was he ultimately removed from
10 the Burwell home and sent back to live with his dad
11 Shareef Mahdi?

12 A Sometime later he was sent back from the Burwell home
13 to rural Virginia, yes.

14 Q And I take it -- or do you think that was a highly
15 structured and safe environment that he needed at the
16 time?

17 A From what I read from the record and from what I've
18 heard it was both highly unstructured and very
19 non-nurturing.

20 Q All right. Now, Mr. Mabry has talked about this on a
21 couple of occasions. There is no doubt that Mr. Mahdi
22 acted out while he was at Walter Carter Center; right?

23 A Repeatedly.

24 Q What do they call that? What is the term they would
25 use? Not isolation but ---

1 A Seclusion.

2 Q Seclusion. All right. Why do they use seclusion?

3 A The only acceptable use for seclusion is to protect
4 someone from himself or other people. It's the most
5 restrictive intervention that you can have and it should
6 never be used until you've exhausted all of your other
7 options which includes talking and medication and removal
8 from whatever the child is upset about.

9 Q And in your experience in a setting like this is it
10 uncommon to see a child act out in ways similar to
11 Mr. Mahdi's behavior?

12 A No. It's fairly common and, in fact, the JCAHO
13 accreditation of hospitals require psychiatric hospitals
14 to monitor trends in seclusion because it is such a -- it
15 is both common and it's very intrusive.

16 Q Was there anything noteworthy to you about the ways
17 in which Mikal acted out at the Walter Carter Center the
18 times he got in trouble?

19 A As I -- I've read through the record and the
20 psychiatrist I think said he was secluded three times. I
21 counted four times and I gather from some of the tests --
22 some of the questions that maybe I missed a couple. Maybe
23 there were more than four times that he was secluded. It
24 seemed to me that the initial seclusions required a
25 maximum control with forced medication through injections.

1 As you move through the record even when you require
2 seclusion he is willing to take medication orally and
3 seems to be able to be talked down more quickly so that
4 suggests that he's become better able to soothe himself.

5 Q All right. By the time he's discharged what was his
6 diagnosis?

7 A The discharge diagnosis was -- I know it's major
8 depression.

9 Q Page 149.

10 A Major depression and it looks like it is still rule
11 out post traumatic stress disorder. So the only firm
12 diagnosis is major depression single episode.

13 Q And despite that serious diagnosis were there
14 indications from the mental health staff there that he was
15 benefiting from the therapy at Walter Carter Center?

16 A Yes, he was -- They seemed to think he was better
17 when he left -- certainly better when he left than when he
18 came in.

19 Q All right. Did anything stick out to you about what
20 he was not diagnosed with at Walter Carter Center?

21 A Yes. The issue was raised by the psychologist. I
22 don't know whether she said rule out or whether she did
23 diagnosis of oppositional defiant disorder which is kind
24 of a precursor to conduct disorder which is a precursor to
25 antisocial personality disorder. I was struck by the fact

1 that he wasn't given that diagnosis in spite of the fact
2 that he certainly had -- you know, he was -- had a history
3 of being oppositional. He had a history of behaviorally
4 acting out with aggression.

5 Q Did that suggest to you that they believe the
6 depression was the root of the problem?

7 A Well, you know, a diagnosis of a conduct disorder
8 oppositional defiant disorder is based exclusively on
9 observation of overt behavior. Depression, obviously,
10 gets internal feelings and things like that and what it
11 suggests to me is that they thought that this behavior was
12 -- the behavior that you might have labeled oppositional
13 defiant was symptomatic of the depression he had, yes.

14 Q Once he was discharged from Walter Carter Center did
15 you note any progress in his behavior?

16 A The records suggest that he did pretty well
17 throughout the rest of the year. I think there was a
18 teacher who -- and I don't remember her name right now --
19 who took a particular interest in him and I think the
20 record reflects that he was doing better at work. He was
21 cooperating better in groups and I believe based on the
22 testimony of his Aunt, Dr. Burwell, that she wasn't aware
23 of disciplinary problems until the following year at
24 school.

25 Q All right. And as you testified earlier ultimately

1 he goes back with Shareef Mahdi and later is tested as
2 part of a special education eligibility assessment at
3 school. Did you review those records?

4 A Yes, I did.

5 Q What was the school's major concern when they
6 conducted this assessment?

7 A Well, there were two concerns. He was not performing
8 well, particularly in reading which had been a consistent
9 problem and he -- his behavior wasn't particularly good at
10 school. He had been a problem.

11 Q All right. Let's be clear. They weren't concerned
12 he was mentally retarded or anything like that; right?

13 A Oh, no. No. They were concerned about his learning
14 disability and about his emotional status.

15 Q All right. And did they conduct psychological
16 testing as part of that assessment?

17 A Yes, they did. It looks like that evaluation was on
18 March 28 of 1994 when he was in the fourth grade back in
19 Virginia.

20 MR. LOMINACK: I am going to hand the court the
21 psychological evaluation beginning at page 56.

22 All right. Now, on page 57 what is his full scale IQ
23 at this point?

24 THE WITNESS: It is 118. I originally said I thought
25 that was while at DJJ. It wasn't. It was when he was

1 back in Virginia. I guess he was 11 years old then.

2 Q And it appears that projective psychological testing
3 was administered again. Were the results of this testing
4 consistent with the results of the Walter Carter Center?

5 A Yea, they really were. I mean, what the psychologist
6 says is -- they put depressant tendencies, lack of
7 self-esteem, feelings of hopelessness which are quite
8 consistent with what the psychologist in the Carter Center
9 found when she evaluated I guess about a year and a half
10 earlier.

11 Q All right. On page 58 does the psychologist at the
12 time note whether or not Mikal seemed to be benefiting or
13 seemed to be doing better in school overall?

14 A Well, she said that he was doing better in school,
15 but he still had problems with what she described -- what
16 she characterized as persistent with both his adjustment
17 -- Well, primarily his adjustment. She suggests he needs
18 mental health intervention at that time.

19 Q All right. Was he ultimately found eligible for
20 special education?

21 A He was.

22 Q And did you see any evidence that he received any
23 significant mental health intervention?

24 A Well, it was -- The records were pretty thin. I did
25 not see much evidence of mental health intervention. I

1 think the -- I think the school did best it could to
2 address his needs. I don't know whether or not they had a
3 counselor -- I don't know whether they had a counselor
4 on the staff at that point. I think one of the problems
5 was he was -- even if they had, he wasn't being taken to
6 school on a regular basis.

7 Q And, ultimately, did there come a time that his
8 father took him out of school?

9 A Yes.

10 Q Did he ever rush to a normal public school?

11 A Not normal public school. He was in school when he
12 was at DJJ, but as far as I can tell from the records he
13 never returned to a community public school.

14 Q And what happened between the time of the special ed
15 evaluation and when he is 14 years old and sent to DJJ?

16 A You know, he lives with his -- He lives as far as I
17 can tell in Virginia with his family. Again, the record
18 is thin. I don't find much information about treatment or
19 involvement in any community resources or anything else.
20 I do know that it's documented during that period his
21 father's mental health deteriorated fairly significantly.

22 Q All right. Then he goes to DJJ and he's evaluated
23 there as well.

24 I am going to hand to the court what begins at page
25 408 which is part of the psychological evaluation at DJJ.

1 Now, it seems that we start to notice some
2 differences in how he's being described at this point and
3 I'm talking about page 409, the behavioral observations.
4 What did you note there?

5 A Well, he had been described in sort of gentle terms
6 before. At this point he's described as angry, alienated,
7 tough youth and at the time of the evaluation apparently
8 he had already been involved in an altercation which I
9 assume is just a euphemism for a fight in the cottage of
10 the area where he was housed.

11 Q And on page 410 do these observations continue?

12 A Uh-huh. They do. Yes. The psychologist Dr. Shumate
13 says got a lot of negative attitudes towards authority.
14 He doesn't like rules. He doesn't like limits. He is
15 poorly socialized, isn't sensitive to the rights and
16 privileges of other people and she attributes his poor
17 socialization to his dysfunctional family -- the family he
18 grew up in and then goes on -- actually, the next
19 paragraph, the third from the top -- to say she thinks his
20 conduct disorder probably can be traced back to
21 incompetent parenting and poor guidance, poor supervision,
22 and poor monitoring and an unstable, nomadic,
23 dysfunctional family.

24 Q And on page 411 -- so, based on his observations and
25 his testing what does he recommend happen to Mikal?

1 A Recommends out-of-home placement which would be
2 something like a group home or residential treatment
3 facility. The psychologist doesn't specify which one
4 specifically.

5 Q And that's similar to the recommendation earlier that
6 suggested he needed to be in a highly-structure
7 environment?

8 A That's correct.

9 Q And from what we know from the records was the home
10 that Shareef Mahdi had fit either of these descriptions?

11 A What we know from the record is it's pretty much the
12 antithesis of those specifications.

13 Q All right. Just to keep things moving, the social
14 worker later noted an absence of a positive adult role
15 model. Can you discuss why that observation was important
16 to your earlier discussion of attachment disorder?

17 A Well, the sort of lifeline for a child or the way out
18 of kind of a chronic pattern of maladaptive attachments is
19 to be able to find somebody in your environment. That can
20 be a football coach, a basketball coach. It can be -- I
21 have known children who have gotten assigned to work with
22 a janitor who have gotten close to the janitor and have
23 picked up the kind of life skills and wisdom that you can
24 from the older person. It also affords somebody a chance
25 to kind of alter the way they understand relationships.

1 Somebody who comes from -- somebody who lacks
2 attachment sort of sees relationships as temporary, as
3 threatening, doesn't believe that people can be depended
4 on and essentially sets up situations that are
5 self-fulfilling. If you have consistent contact with
6 somebody who has the qualities that you've missed out on
7 sometimes you can kind of readjust that view of what to
8 expect and as a consequence you adjust the way people
9 react to you in the world.

10 Q All right. And after seven months Mikal was
11 discharged from DJJ and to whom was he discharged? Where
12 did he go?

13 A I believe he went back to his father in Virginia.

14 Q And do you know about how long he was with his father
15 before he ends up back in DJJ?

16 A Two weeks.

17 Q I'm sorry?

18 A Two weeks, I believe.

19 Q And we've heard the discussion of the circumstances
20 surrounding that. Let's not go into it again, but the
21 context of how he ended up back in DJJ, would that have
22 affected his attitude about going back?

23 A Well, it certainly would have reinforced his belief
24 that you can't depend on people -- I think especially the
25 fact that his father either egged him on or participated

1 in the stand-off with the police and then when the police
2 came in blamed it all on him. The lesson from that would
3 have been that you shouldn't trust people because they'll
4 tell you one thing and do an entirely different thing.

5 Q And it goes into DJJ and, again, has more
6 psychological testing and I'm handing up to the court that
7 report beginning at 554. Does this evaluation result in
8 similar findings as the evaluation just a few months
9 before at his first admission?

10 A Yes, it does. The psychologist thought that he was
11 dysphoric which means he was unable to take pleasure from
12 things we normally take pleasure in. He was emotionally
13 immature and by this point he had conduct disorder -- that
14 he didn't have a good understanding of his emotions and
15 kind of responded in a global manner which just means that
16 he doesn't make fine distinctions between fear, anger,
17 sadness, all of those other fine gradations, and responds
18 as if -- you know, he might respond to fear as if he were
19 being threatened and he were angry.

20 Q And are the revelations from that testing that he was
21 anxious, emotionally immature, and so on -- are those
22 findings consistent with attachment disorder?

23 A Yes, they are.

24 Q Are they also consistent with depression?

25 A Yes, they are. There is an overlap between the two,

1 yea.

2 Q All right. And then just a few more questions. At
3 page 772 at DJJ Dr. Haney talked about the type of contact
4 you get and it may be briefer than at Walter Carter
5 Center. I am handing up the the report of contact at the
6 Department of Juvenile Justice beginning at page 770 and
7 if you'll look at 772 this describes one of those
8 contacts, and what does the psychologist even during that
9 brief contact feel that Mikal needed?

10 A That he needs an ongoing therapeutic relationship
11 with somebody who would be willing to kind of persevere
12 through periods of oppositional behavior and rejection,
13 and that sort of thing.

14 Q In other words, does he seem to be addressing the
15 attachment order -- attachment disorder --

16 A Yes.

17 Q -- that you're concerned about?

18 A Yes.

19 Q Later some psychologists describe the behavior that
20 you've described and this is on page 868. What did they
21 say his symptoms were most consistent with?

22 A They described his melancholic depressive symtoms,
23 his suicidal gestures, disruptive behavior, oppositional
24 defiance and the irrational thought pattern and the
25 psychologist here -- well, it looks like it's a psychology

1 trainee and a Ph.D. The psychologist's supervisor said
2 they were consistent with the diagnosis of major
3 depression and they said at least moderate to severe.

4 Q So, all of those symptoms -- not just the sadness and
5 the suicidal gestures, but also the disruptive behavior
6 and oppositional defiance disorder they say are symptoms
7 of major depression?

8 A That's correct.

9 Q Looking back through his childhood from DJJ back down
10 to special ed testing and Walter Carter Center testing,
11 does it appear that in his history people recognized Mikal
12 was suffering?

13 A Yes.

14 Q And does it appear to you at least that the
15 evaluations were both well done and had appropriate
16 recommendations?

17 A I was particularly impressed with the evaluation that
18 was done at the Carter Center. It was comprehensive. I
19 thought -- having edited hundreds and hundreds of
20 evaluations that psychology interns had done it struck me
21 as one that was very well integrated and was both
22 internally consistent and consistent with the external
23 information, yes.

24 Q And at these different windows of opportunity do you
25 feel like the recommendations by the expert were met once

1 he left their particular institution?

2 A Virtually never.

3 MR. LOMINACK: Court's indulgence.

4 Thank you, Dr. Myers.

5 THE WITNESS: May I have a cup of water?

6 THE COURT: Yes, sir.

7 THE WITNESS: Thank you very much.

8 MR. MABRY: Are you ready?

9 THE WITNESS: I am ready.

10 CROSS-EXAMINATION

11 BY MR. MABRY:

12 Q I don't have a lot of questions. I had a letter in
13 here I was looking for. This is a letter from Brunswick
14 County School.

15 I am moving to admit Defendant's Exhibit 2.

16 (WHEREUPON, Defendant's Exhibit No. 2 was marked for
17 identification and received into evidence.)

18 Q That's where Mr. Mahdi was referred for special
19 education services --

20 A Yes.

21 Q -- to see if he needed to be in special education?
22 And that, basically, talks about the fact that at the
23 bottom of the first page he was referred because of
24 classroom behavior and -- I can't remember what it says.

25 A It says he's referred because of behavior problems,

1 exhibits inappropriate disruptive behavior.

2 Q Inappropriate disruptive behavior. Okay. And it
3 also indicates that his father is involved in the whole
4 process?

5 A It does.

6 Q Okay.

7 A I've got a copy of it.

8 Q Sure. The father reports I believe that he had
9 trouble when he was reading? He would get frustrated when
10 he was reading?

11 A Yes. That sounds right.

12 Q And he thought maybe that was the problem to get
13 frustrated and cause him to act out at school. Do you
14 remember that?

15 A Yea. Yes, that sounds right.

16 Q Okay. It also says in there Mikal -- Mikal's
17 out-of-school activities -- this is on the last page --
18 going fishing?

19 A Uh-huh.

20 Q Hiking and doing his chores. And then do you know
21 who was taking him fishing and hiking and who was making
22 him do chores?

23 A I do not.

24 Q And he also said his father wants him to grow up to
25 be a decent human being. Mikal says he wants to have

1 money. Is that right?

2 A That's correct.

3 Q They kind of had opposite viewpoints of what they
4 wanted; right?

5 THE COURT: Now, wait a minute. You can be a pretty
6 decent human being.

7 MR. MABRY: Kind of opposite. I didn't mean it that
8 way.

9 Q He also said his son is cooperative at home and is
10 good to help out; right?

11 A That's what he says.

12 Q Okay. Now, exactly -- In this case you reviewed his
13 records up until he left DJJ?

14 A I -- through DJJ. Through DJJ. I had access to all
15 of the records. I looked over all the records, but I gave
16 special -- I gave my attention to the early records. I
17 got the whole set of them.

18 Q All the records. When you say all the records you're
19 talking about his adult records in Virginia Department of
20 Corrections?

21 A I guess these go into the adult time, yea.

22 Q Do you remember that when he was incarcerated in the
23 adult Department of Corrections he was looked at by a
24 psychologist and they diagnosed him with antisocial
25 personality disorder?

1 A I heard that testified to. I did not review those
2 records carefully. If I saw that written I don't remember
3 it.

4 Q What is antisocial personality disorder?

5 A It's a pattern of behavior in which a person
6 disregards the rights of other people, feels entitled to
7 have whatever he wants to, is typically associated with
8 criminal behavior but not necessarily. But that's a
9 typical manifestation.

10 Q Do you disagree with that diagnosis of Mr. Mahdi?

11 A I think that from what I know of the record it sounds
12 like that would be a justifiable diagnosis at the time. I
13 don't think it would be -- Certainly, it wouldn't provide
14 a full picture of what he was like when he was a teenager
15 before he got into the adult system, but I really don't
16 feel like I can make any kind of definitive statements
17 about after he got into that system.

18 Q You don't feel qualified in that area?

19 A I didn't review the record very carefully in that
20 area.

21 Q Okay. Well, let me ask you one thing about his DJJ
22 records. Do you remember a record in there where the DJJ
23 person was talking to Mr. Mahdi about his crimes and the
24 DJJ psychologist said Mr. Mahdi describes his criminal
25 behavior in methodical, well-thought-out adult -- in an

1 adult type way?

2 A Not specifically. If you can direct me, I'm not ---

3 Q I can't remember exactly where, but he says we need
4 to watch out for this individual.

5 A Right. I certainly remember where he says that we
6 are liable to be faced with someone who is going to be
7 very difficult to deal with unless he gets the treatment
8 he needs.

9 Q And he said this person may end up in the adult
10 Department of Corrections?

11 A I think in the context of saying unless he gets
12 treatment now he is going to end up -- he is liable to end
13 up in adult corrections is my recollection.

14 Q And he also stated that Mr. Mahdi was -- had aged
15 well beyond his years. He was more like an older teenager
16 than a younger teenager?

17 A I think so, yes, in terms of some of his criminal
18 behaviors, yes.

19 Q Do you agree with Mr. Mahdi's IQ test that shows that
20 he is a 118, 119?

21 A I have no reason not to accept that as the accurate
22 and best estimate of his level of intelligence, yea.

23 Q Thank you, sir.

24 THE COURT: Redirect, if any.

25 MR. LOMINACK: No, Your Honor. Thank you.

1 THE COURT: Thank you. You may step down. Let's
2 take a short break.

3 (Whereupon, a break was taken.)

4 DONNA M. SCHWARTZ-WATTS, after being duly sworn,
5 testified as follows:

6 THE COURT: Okay. Give us your full name.

7 THE WITNESS: Donna Marie Schwartz-Watts.

8 S-C-H-W-A-R-T-Z-W-A-T-T-S.

9 DIRECT EXAMINATION

10 BY MS. NORRIS:

11 Q Dr. Watts, how are you employed?

12 A Well, at this minute I am the -- I'm engaged in the
13 private practice of forensic psychiatry, but I also work
14 full time over at the Department of Mental Health now at
15 the Bryan Hospital in what's called Lodge D which is an
16 acute unit where we give care to psychiatric patients.

17 Q Prior to that time --

18 THE COURT: You got a CV? We'll all stipulate to --
19 Strike that. The state will stipulate to her
20 qualifications. She'll be admitted as an expert in
21 psychiatry.

22 (WHEREUPON, Applicant's Exhibit No. 30 was marked for
23 identification and received into evidence.)

24 Q Dr. Watts, did you evaluate Mikal Mahdi?

25 A I did.

1 Q And at the end of your evaluation did you prepare a
2 report?

3 A I did.

4 (WHEREUPON, Applicant's Exhibit No. 31 was marked for
5 identification only.)

6 Q Let me show you Applicant's 31. Is that your report?

7 A It is. It's a copy, yes.

8 MS. NORRIS: Your Honor, I'd offer Applicant's 31.

9 THE COURT: Any objection?

10 MR. MABRY: Which one is that? The report?

11 THE COURT: It is her evaluation report dated 3/6/11.

12 MR. MABRY: No. No objection.

13 THE COURT: Without objection.

14 MR. MABRY: Assuming she is going to testify to it.

15 MS. NORRIS: She is.

16 (WHEREUPON, Applicant's Exhibit No. 31 was admitted
17 into evidence.)

18 Q Dr. Watts, in your report did you list all of the
19 sources of your information?

20 A I did.

21 Q And to just sum it up was it a couple of notebooks of
22 records like the judge has got up there?

23 A Yes, it was and it was also some e-mail attachments
24 that would have been the transcripts of Mr. Mahdi's prior
25 court hearings, some of the witnesses -- also some records

1 from Dr. McKee.

2 Q How many times did you see Mr. Mahdi?

3 A Three times.

4 Q In your evaluation of him did you address with him
5 issues including the crimes on up to now?

6 A Yes.

7 Q So, we didn't -- nobody put a limit on you to stop
8 here. All of that information was available to you?

9 A Correct.

10 Q And if you would just tell us your overall conclusion
11 and then we'll discuss it after that.

12 A Sure. Your Honor, I've done a lot of death penalty
13 cases and Mr. Mahdi is one of the most unique individuals
14 I have ever evaluated. He has a number of mental
15 illnesses and some that -- one that's rare that I haven't
16 seen very often. In the 22 years I've been doing this I
17 have only diagnosed one other person with reactive
18 attachment disorder.

19 He is very unique. He is incredibly intelligent. He
20 has a number of mental illnesses though and I think that
21 they certainly impacted this crime and related to the
22 charges.

23 Q And what were the mental illness?

24 A He clearly and has consistently met the criteria for
25 major depression and that has been present from ages of

1 nine even through some into his adulthood and there is
2 plenty of records that document that just through the
3 course of his history. You can watch him growing up
4 becoming a teenager, becoming a young adult, and those
5 were persistent and they were present in my opinion at the
6 time of the crime.

7 I also diagnosed him with anxiety disorder. He
8 doesn't meet the full criteria for post traumatic stress
9 disorder but he certainly has an anxiety disorder that's
10 been persistent. The reactive attachment disorder which
11 Dr. Myers discussed a little bit earlier, but I also
12 agreed on that diagnosis.

13 I also diagnosed him with two personality disorders.
14 He has a paranoid personality disorder and antisocial
15 personality disorder.

16 Q Now, talking about the major depression in your
17 report you listed major depression recurrent with
18 psychotic features and remission. Explain to me what all
19 that means.

20 A Sure. Major depression is a major mental illness.
21 It is a disorder of mood. To meet that diagnosis you have
22 to two weeks in a row where you feel horrible. You don't
23 sleep. You don't eat. You have a depressed mood. You
24 have poor judgement and recurrent means he's had those
25 episodes beginning at age nine but there have been periods

1 through his adulthood, childhood, adolescence where he has
2 acute depressiong. so, recurrent means he's had more than
3 one episode.

4 With psychotic features means in the past when he was
5 nine and also there is a period of time when he's at DJJ
6 where his thinking became disorganized. That's a
7 complication of depression. So, that's an appropriate
8 characterization for him as well and in remission means he
9 does not have it at present. There is no evidence. I met
10 with him last week and he is not depressed right now. So,
11 in remission is how you would qualify it.

12 Q What would you typically see as a psychiatrist in a
13 9-year-old or 14-year-old boy that has major depression?
14 What outwardly would you expect to see?

15 A It depends on the age and your circumstances and your
16 behaviors and your environment, but certainly suicidal
17 ideation that Mr. Mahdi has had has been very consistent
18 with childhood depression. You have a dysphoric mood
19 where you don't have joy. You don't experience pleasure.
20 You don't feel well. You don't enjoy living. You have
21 low energy. You have problems concentrating. You have
22 problems functioning. You can have a very irritable mood
23 both in children and adults. I see that, especially
24 adolescent males. You can have excessive guilt. You
25 blame yourself for things.

1 Q How about aggression?

2 A Absolutely. Irritability is associated with
3 depression absolutely.

4 Q And your next one was reactive attachment disorder of
5 childhood inhibited type. Tell me what in the world that
6 means.

7 A Yes. I have only diagnosed that one other time.
8 Again, that's a very rare disorder. You don't see that a
9 lot in adults, but it's so clear. He so clearly meets
10 that criteria.

11 What it means, Your Honor, there's two different
12 types like Dr. Myers said and you see it clinically. The
13 children that have the disinhibited type of reactive
14 attachment disorder they're the ones when you walk into a
15 hospital they come and hug you. They don't even know you
16 and every time somebody new walks in they'll hug you or
17 they'll ask you lots of questions. They'll follow you
18 around and they're -- they require a lot of attention.

19 The inhibited type are the children that are detached
20 and if you look through Mr. Mahdi's records just from
21 childhood all the way through even adulthood you will
22 often see him described as detached. It doesn't mean he
23 doesn't care. He is just detached. He does not know how
24 to attach. He does not know how to have a relationship --
25 a give-and-take relationship with a person and so it's a

1 disorder of attachment.

2 He's not able to attach in relationships. It's not
3 his his fault. It's not that he doesn't choose to. He
4 doesn't have the ability to do that because he didn't have
5 the tools he needed as a child. It's a developmental
6 issue. He didn't have those tools to do that.

7 Q And in particular with Mr. Mahdi's background can you
8 sort of -- can you pinpoint the etiology -- where this
9 came from?

10 A To a degree certainly. There is enough records here
11 as Dr. Myers mentioned, but I just want to make it so
12 clear how important this is. When you're a child one
13 disruption from your attachment as a child -- if you're a
14 3-year-old and your mom goes to the hospital, you know,
15 for a few weeks for a surgery, that's a very important
16 disruption in development. Children -- if you take a
17 3-year-old that his mom is in the hospital you might see
18 regressed behavior. They might -- you might have had them
19 toilet trained and they wet the bed again, those sort of
20 things.

21 So, just one disruption can be traumatic for a child
22 and it certainly affects development. When you've had
23 numerous -- the amounts of disruptions he had in his
24 childhood, I have never seen anything like it. He went
25 from parent. His mother was in the house. She was

1 abused. She leaves. He is raised by a father who has
2 some mental illness but at times would be there available
3 to try to raise him. He moves to his aunt and uncle. He
4 has a grandmother.

5 But not only that, normally, a child can handle some
6 disruption in their parents where they live, but usually
7 that's counteracted by you're in a stable school
8 environment, maybe you had a teacher that cared about you.
9 He didn't even have a stable school environment. He moved
10 six different times during the same period of time. So,
11 there was nobody there that would have been able to help
12 them with those issues.

13 Children -- there's plenty of people who their
14 parents may be out of the home. They may have to move.
15 They may have to change schools, but when you take all of
16 those things that happened at one time the effects are
17 overwhelming. So, I suspect that it had to lot to do with
18 lack of mom, multiple moves, multiple caretakers, multiple
19 changes in school. There was just no stability in his
20 early development at all.

21 Q And you've diagnosed paranoid personality disorder.
22 What is that?

23 A Yes. And Mr. Mahdi is smiling, but he has a long
24 pattern. It's very difficult for him to trust others. He
25 is incredibly suspicious of me, Your Honor. He does not

1 trust me at all and he's had a very difficult time
2 relating to me, but if you'll look throughout his records
3 he's had periods of time where people are evaluating him
4 whether they're treating him. He is very suspicious of
5 people's intentions. He believes that people mean him
6 harm and it's very, very difficult for him to trust
7 others.

8 Q And antisocial personality disorder. Give us the
9 basic explanation of that one.

10 A Yes. He clearly meets the criteria for that disorder
11 as well, Your Honor. He's had some repeated run-ins with
12 the law, but there are some things that are very
13 different. The typical person with antisocial personality
14 is charming. They use others and exploit them. He
15 doesn't do that. He doesn't attach to people. He doesn't
16 befriend people to gain something from them. He does not
17 attach at all. He meets the criteria more because he's
18 certainly had some reckless behaviors. He's had some
19 aggressive behaviors and he's had a history of run-ins
20 with the law.

21 Q There were references in his records from DJJ in
22 particular where examiners basically said that the
23 etiology of the conduct disorder which I understand is the
24 precursor to antisocial, but their feeling was the conduct
25 disorder was pretty much a direct result of the nomadic

1 life and chaos -- the sort of things that you're talking
2 about. Do you agree with that?

3 A Yes and more. It's also associated with depression.
4 I have been working for 15 years at DJJ with the kids.
5 It's very common with adolescents. When they're depressed
6 they're irritable. They're aggressive and they can
7 exhibit some of those same behaviors.

8 So, it's not uncommon when you're depressed. For
9 example, you might have a mom who never spansks her child
10 and when she has depression she can even get violent.
11 It's also common to see those kinds of behavior with
12 depression as well.

13 Q Now you had also diagnosed -- and I skipped over this
14 one -- when anxiety NOS. Tell me what that is.

15 A Yes. Mr. Mahdi has been exposed to a lot of trauma
16 during his development and I'm sure that the court's heard
17 about that. He gave me some details. He remembers one
18 incident where his father hit his mother and they were in
19 the basement. He stated that his mother would ride his
20 father. So, he certainly has witnessed some violence.
21 He's witnessed violence in the institutions. He also had
22 someone fire a gun -- a weapon at him at a cookout on
23 occasion. So, he's been around a lot of violence.

24 He doesn't meet the full criteria for PTSD, Your
25 Honor, because he denies that he reexperiences these

1 traumas. One of the symptoms that you have to have is
2 that you either have to have dreams or something can
3 remind you of the trauma and it's very unpleasant. He
4 denies that symptom, but he certainly avoids talking about
5 them. He has all of the other features of post traumatic
6 stress disorder in my opinion.

7 Q And in your assessment taking his background all of
8 the way up to when he gets out of prison and there is only
9 a two-month period prior to this crime spree, in your
10 opinion was he suffering these same diagnoses that you
11 have given at that time?

12 A Absolutely.

13 Q Okay. How do you know that? How can you be certain?

14 A Well, a number of reasons. First of all, the major
15 depression -- it's present. One of the things that amazed
16 me, not only did he have access to mental healthcare at
17 age nine where he had a very good workup, even when he's
18 no longer in mental health the schools pick up that he's
19 depressed. The way that we know that he remains
20 depressed -- I tried to look at each year when I was
21 looking at his major depression and if you go through each
22 year he was in the hospital in the 1992. Well, in 1994
23 he's in the school and they give him projective testing
24 which shows he's depressed, lacks self esteem, feel
25 hopeless. They give him the behavior scale in 1994 that

1 he blames himself excessively with the guilt that you see
2 in depression. Resistance, extreme sadness. He can't
3 cope with his low self esteem. Then three years later in
4 DJJ, no interest, no hobbies. He doesn't know what he
5 wants to do when he grows up. He has no goals, no firm
6 plans or what he wants to do in life. 1997, he has
7 another evaluation it says where he describes his parents
8 in a detached manner. He has depressive tendencies,
9 feelings of hopelessness. 1998, a year later, information
10 shows major depression, moderate. He needs major mental
11 health services. 1998 -- that that's a typo in my
12 report -- I apologize -- on page five. He complains of
13 extreme tiredness and weight loss while he's in detention.
14 He loses 12 pounds. He had a personality assessment in
15 November of 1998. They describe him as dysphoric which is
16 sad. He can't soothe himself. He's guarded and
17 mistruthful of others -- basically, all the things I still
18 see in him today.

19 He got suicidal when he was in DJJ finally to the
20 point that they actually gave him treatment because they
21 recognized that he was depressed. He had tied a sheet
22 around his neck. He tried to electrocute himself. He was
23 seen by two psychologists during that period of time and
24 they described him as depressed and irrational. That
25 would have have been one of the psychotic episodes that he

1 had. Angry and hostile. They even stated during times of
2 stress his ability to think coherently and logically was
3 compromised. He had believed there was a conspiracy
4 against him and had some persecutory ideas.

5 Age 17. So here we go all of the way through
6 childhood. Age 17. Officer -- and I don't mean to
7 mispronounce his name -- Koehler testified in the trial
8 that he begged officers to shoot him when he was arrested
9 for slashing his mother's tires. In 2001 when he goes
10 into the Department of Corrections in Virginia he is
11 diagnosed with intermittent explosive disorder and
12 antisocial personality, but, again, some some aggressive
13 behaviors and it was really interesting there because he
14 denies that he had ever had any inpatient treatment. He
15 denied that he had ever had any suicide attempts although
16 there are records to the contrary of that.

17 He had been on a hunger strike in Lee County before
18 his first trial and I think the most significant factor
19 that helped me is Anthony Crutchfield's statement in July
20 21, 2004, something he said. He states, but if I heard
21 him say shit like he don't give a fuck, he ain't got shit
22 to live for. So, again, if you just look throughout his
23 development from the time he's 9 every year there is
24 documentation that shows this depression is long lasting.

25 So, there is no reason to believe in July of 2004

1 which is shortly before this crime -- he had no treatment.
2 He never got antidepressant medications. There is no
3 reason to suspect it would have been better.

4 Q And with the major depression aside from whether a
5 person actually attempts to commit suicide, do you often
6 see basically recklessness or lack of concern of whether
7 you get killed or things of that nature?

8 A That's correct. That is called passive suicidal
9 ideation. A lot of people don't try to hurt themselves.
10 It depends how severe their depression is, but they don't
11 care if they live. You know, some people would just say I
12 wish the Lord would take me. Some people are more
13 reckless. They might drink and drive. They may engage in
14 very thrill-seeking behavior that would risk harm to
15 themselves or others, but that is certainly one of the
16 symptoms. You don't care.

17 Again, the other disorders that -- the reactive
18 attachment disorder has been present since childhood.
19 That's been clearly defined by the record. There is one
20 record that states in the father's home they got along but
21 that's because they stayed out of each other's way and one
22 of the most interesting things Mr. Mahdi told me last week
23 and I thought it was very telling, Your Honor -- He has
24 feelings. He has feelings of tenderness, certainly
25 towards his dad. He knows his dad tried to raise him and

1 Mr. Mahdi is so intelligent. He described his dad as
2 reactive and that's why he became so pragmatic because he
3 didn't really want to be like his father.

4 He recognized that his father had compassion for him
5 and cared for him, but who he is the closest to is
6 grandmother and the way he described their relationship --
7 he said it was like he was a pet puppy -- that while he
8 was around he would be patted on the head or pleasant but
9 no one took time to interact. It would be like a puppy
10 that's a nuisance; that he felt affection at times and
11 felt that people wanted to pay attention to him, but it
12 was more a source of entertainment and not the
13 responsibility.

14 So, the records I think are very clear. When you
15 have that from childhood it persists. The thing that's
16 very interesting to me, Your Honor, about him -- He's a
17 very good-looking, very intelligent young man and he got
18 out of prison and what he didn't have was long-term
19 relationships with females which I think would have
20 affected some of his behaviors. He didn't have that
21 chance. Many times you can have people with attachment
22 disorders but as they grow up they have -- the society
23 will give them some of the tools that they need to be able
24 to adapt and here is this very articulate, intelligent
25 young man and it's surprising to me he doesn't have

1 children. He hasn't had relationships. He hasn't lived
2 with a lover. He has not had some of the normal
3 developmental things that you'll see. So, I think it's
4 very clear that he was suffering from that at the time of
5 this crime as well.

6 The personality disorders, they've been -- those are
7 longstanding patterns of how you deal with the world and
8 so they were present at the time as well.

9 Q And you mentioned that he had been diagnosed in
10 prison in Virginia with intermittent explosive disorder.
11 What is that?

12 A That's a disorder of impulse control where he can
13 become violent, but it's out of proportion to whatever the
14 provocation is. So, for example, I have a gentleman in
15 the hospital. He wanted his medicine. We didn't get it
16 in time and he kicked out the window today. That would be
17 the kind of behavior you would see instead of just
18 verbalizing or being able to use words to describe your
19 frustration. The aggression that you have is so out of
20 proportion to what the provocation is.

21 Q In your opinion does Mr. Mahdi meet the criteria for
22 intermittent explosive disorder?

23 A No. I don't consider -- He is not and I think
24 Mr. Mabry -- I've heard some of his questions. He's not
25 an impulsive person by nature.

1 Q Dr. Watts, when Mr. Mahdi committed the crimes in
2 this case and recognizing there is burglary and grand
3 larceny as well, but in particular the murder of Captain
4 Jimmy Myers, was this young man able to know right from
5 wrong?

6 A Absolutely.

7 Q Understanding that, was he still impaired with the
8 same mental illnesses that you've diagnosed?

9 A Sure.

10 Q And is that based on just you know they've been there
11 pretty much all of his life or is there anything in
12 particular that you found in your evaluation that tells
13 you that those mental illnesses were part of his thinking,
14 his make up at the time?

15 A That's a good question. I know by the course of his
16 illnesses. I know by the history that I have that they
17 would have been present at the time. What amount of
18 symptoms he had? No, but I think they're clearly there.

19 One of the first things Mr. Mahdi said he thought
20 that killing somebody shows a lack of discipline. He is
21 very upset with what he did. He said there was -- he
22 doesn't -- he's not -- he seems business like when he says
23 something like that and that's not because he's not
24 empathic. Again, that's his inability to attach, but
25 that's very -- He is very dysphoric about that, but I

1 think what's more important is what was going on with him.
2 He had just gotten out of prison. He is not out but just
3 eight weeks or whatever. He's not settled. He's not
4 living in the home with his grandmother. He is living on
5 his own. He's got a lot of stress. He is not ready to
6 deal with this.

7 So, those illnesses were certainly in effect. Now,
8 he did not kill this officer because of PTSD. He did not
9 kill Officer Myers because of his depression. He wasn't
10 irritable. He was at a point in my opinion it's a robbery
11 gone bad. He is at a place. He gets surprised and he
12 kills a person.

13 So, they're present but in terms of like having a
14 statutory mitigator that they diminished his capacity, I
15 don't see that.

16 Q You don't see that?

17 A No. There's some things that are present. For
18 example, the one area that it may relate is where he
19 believed he was in danger. What he told me and also
20 what's in Dr. Martin's records is that the reason he shot
21 the officer was he thought he was going to be attacked.
22 So, you could have some of the anxiety could have
23 diminished his capacity in that sense, but in terms of him
24 being -- having a major depression and being irritable and
25 shooting someone because he got into a fight with them,

1 no.

2 Reactive attachment disorder -- just shooting someone
3 because he didn't care, no, but I think probably the
4 anxiety disorder would be related.

5 Q And when you're talking about how Mr. Mahdi described
6 his feelings about that to you would you characterize it
7 as remorse?

8 A Oh, yes. The two remarks that he told me -- he said
9 it was unnecessary to kill the man and he felt very badly
10 about it and the other thing that he said killing someone
11 is selfish and it shows a lack of discipline.

12 Q The -- you mentioned that you had also reviewed
13 Dr. Martin and Dr. McKee's files?

14 A Yes.

15 Q Starting with Dr. McKee, did it appear to you that
16 Dr. McKee was looking for mitigating information as
17 opposed to competency and capacity at the time of the
18 offenses?

19 A No. In my opinion Dr. McKee --

20 MR. MABRY: Objection.

21 THE COURT: Whoa. She's trying to say what the
22 doctor that's going to testify tomorrow did or didn't do?

23 MS. NORRIS: I am just asking her basis --

24 THE COURT: Is that pitting witnesses?

25 MR. MABRY: We object. That's speculation. She

1 doesn't know --

2 THE COURT: Well, it is and it's also -- he is going
3 to be here tomorrow to testify. I am going to sustain
4 that. He's coming tomorrow and to be asking my friend
5 here to speculate as to what that guy was doing or not
6 doing, I am going to sustain that.

7 MS. NORRIS: I understand. Thank you, Your Honor.

8 Dr. Watts, in Dr. Martin's file did he have the same
9 amount of records available to you?

10 THE WITNESS: No. And I know that. I spoke with
11 Dr. Martin yesterday. I consulted with him and so I asked
12 him what records he had and he did not have the school
13 records. He did not have a lot of the correctional
14 records. There were more records available that he did
15 not have access to.

16 Q And why are school records relevant to a forensic
17 psychiatrist in a murder case to look at?

18 A Well, sometimes they are and sometimes they aren't.
19 I think in Mr. Mahdi's case they are relevant because they
20 show the school sometimes where the people diagnose the
21 depression. So it fills in the history and lets you know
22 the length of the depression and that school teachers and
23 lay people could pick up that he was depressed as a child
24 versus a mental health professional. So, I think it's
25 important in this case.

1 I think it's also important because you see the
2 number of schools that he attended and you wouldn't have
3 that information unless you had those record.

4 MS. NORRIS: No further questions, Your Honor.

5 THE COURT: Mr. Mabry?

6 CROSS-EXAMINATION

7 BY MR. MABRY:

8 Q Dr. Schwartz-Watts, part of your evaluation was
9 interviewing Mr. Mahdi. I want to go back and talk about
10 when he left Wallens Ridge State Prison -- what he told
11 you. Tell me what he told you why he left the State of
12 Virginia.

13 A I don't know if he did. Let me just phrase my
14 answers to you, Mr. Mabry. He does not like me. He does
15 not trust me. He does not give me very much information
16 at all.

17 Q Okay.

18 A And even during the course of one of the interviews I
19 almost had to stop the interviews because I felt like it
20 was self-defeating. He was so suspicious of me, things
21 that were obvious that I was trying to confront him with
22 in record he would deny them. So, keep in mind he has
23 been guarded somewhat in the information that he's given
24 me.

25 My understanding was he was leaving Virginia -- I am

1 trying to get you exactly what he said. He was talking
2 about -- I have a notation here that says Virginia to
3 north Carolina. It looks like it says artificial drugs.
4 I don't know what that means.

5 Q Okay.

6 A Break the law, did something, make money.

7 Q He did something to make money when he left Virginia?

8 Okay. I believe you indicate in your report that you
9 reviewed Dr. McKee's notes?

10 A Correct. That's where I got more of the information
11 from. So that's why -- it didn't come from Mr. Mahdi as
12 much as it came from my resources because it looks like in
13 reviewing the notes of Dr. Martin and Dr. McKee that he
14 was more conversive with them.

15 Q Okay. And you looked at that material in forming
16 your opinion in this case; is that correct?

17 A Yes. Yes.

18 Q All right. And, in fact, what he told Dr. Martin and
19 Dr. McKee is that he planned to rob a drug dealer in
20 Virginia.

21 MS. NORRIS: Objection, Your Honor. How would she
22 know what he told him?

23 THE COURT: Well, she's reviewed those records to
24 make her opinion today. So you can ask did you see that
25 that in those records? Did you use that in forming your

1 opinion? If you're speculating, you can't do that.

2 MS. NORRIS: I would ask that he show her precisely
3 what he's talking about.

4 MR. MABRY: I'm asking based on her memory. She's
5 reviewed the records. I'll be glad to get them.

6 THE COURT: Well, just ask the question.

7 Q Yes. Do you remember in reviewing Dr. McKee and
8 Dr. Martin's records of his basically telling them how --
9 what happened in Virginia and why he came down here? Did
10 he explain to them that he had planned to commit a robbery
11 in the State of Virginia of a drug dealer? Do you
12 remember reading that in the records?

13 A Not verbatim, but that's certainly consistent. I
14 think that was some illegal behaviors up in Virginia that
15 would result in him making that statement.

16 Q Do you remember reading in Dr. Martin and Dr. McKee's
17 notes that he told them that he enlisted or gained the
18 support of two other individuals -- Mr. Crutchfield who
19 you said you read his statement --

20 A Yes.

21 Q And a Bernard Singleton to commit this robbery with
22 him? Do you remember reading that in their notes?

23 A I remember Mr. Crutchfield. Mr. Singleton's name is
24 not familiar with to me.

25 Q Do you remember reading in Dr. Martin or McKee's

1 notes that Mr. Mahdi told them that he and Mr. Singleton
2 and Mr. Crutchfield were involved in the murder of another
3 person in Richmond, Virginia?

4 A Yes. I believe -- I think it's Dr. Martin's notes.
5 So I don't -- I was not sure if that was in Dr. McKee's.

6 Q Okay. And do you remember Mr. Mahdi telling
7 Dr. McKee and Dr. Martin or either one that he actually
8 stabbed this individual in Richmond, Virginia and
9 Mr. Singleton shot the individual and they robbed him?

10 A I don't recall that.

11 Q Okay. Do you remember him telling Dr. Martin that he
12 then took the victim's gun and shot him again even though
13 he knew the victim was dead?

14 A There's bit and pieces but not in that context.
15 You're providing more than I think what was in the
16 records.

17 Q Okay. Well, do you remember him telling Dr. Martin
18 and Dr. McKee that the reason he left Virginia was because
19 the police had begun to follow him around investigating
20 the homicide and they were also talking to his
21 co-defendants about this homicide in Richmond that he was
22 involved in?

23 A Again, that would be consistent with my general
24 knowledge, but I still think -- I put it this way. I
25 couldn't get that much content based out of what was in

1 those notes than what you're providing.

2 Q Okay. And he left -- Do you remember him telling
3 Dr. Martin once left Virginia he felt -- he was a little
4 paranoid when he was in Richmond because the police were
5 watching him but once he left Virginia and into North
6 Carolina he felt fine because he felt like he was free and
7 clear. Do you remember that?

8 A No.

9 Q Okay. But you know he went to North Carolina and
10 then he committed a murder in North Carolina?

11 A Correct.

12 Q In fact, he went into a convenience store and shot a
13 clerk during a robbery there?

14 A Yes.

15 Q Was -- to your knowledge was anybody threatening him
16 at that time? Was there any police following him at that
17 time in North Carolina?

18 A I don't know and that would be a whole separate --
19 you know I'd have to have all of those evaluations to look
20 at his mental state and what happened.

21 Q Well, I am more interested in was he depressed at
22 that time when he went into North Carolina and committed
23 the murder?

24 A I didn't ask him about those. He would have been
25 suffering from major depression, certainly, in my -- you

1 know, he still had it at that time and certainly after he
2 had -- but whether that day if that had anything to do
3 with that crime I don't know.

4 Q I show you State's Exhibit 91.

5 THE COURT: This is State's Exhibit 91 in ---

6 MR. MABRY: From the trial.

7 THE COURT: From the trial.

8 Q Eighty-nine, 90 and 91. Does that appear to be
9 Mr. Mahdi shooting the clerk in Winston Salem, North
10 Carolina?

11 A It does.

12 Q And does he appear to be suffering from major
13 depression while he's committing that offense?

14 A I don't know. You can't tell from a picture like
15 that. He looks very angry.

16 Q Didn't look very sad, does he?

17 THE COURT: Let me see it.

18 THE WITNESS: He looks angry.

19 Q Do you know of anything that that clerk did that
20 provoked Mr. Mahdi into shooting him?

21 A No.

22 Q And then shooting him again on the floor?

23 A No.

24 Q When was the last time there was any documentation of
25 Mr. Mahdi being depressed?

1 A In my opinion the statement of Mr. Crutchfield.

2 Q Mr. Crutchfield's statement that he said I don't have
3 anything to live for?

4 A "I don't give a fuck. I ain't got shit to live for."
5 Yes.

6 THE COURT: Crutchfield was who?

7 MR. MABRY: Crutchfield is his co-defendant in --

8 THE COURT: In Virginia?

9 MR. MABRY: -- Virginia.

10 THE WITNESS: And then the last thing he said he
11 wasn't a conversation type person. So, in my opinion that
12 means that he was quiet. He kept to himself and that
13 Mr. Crutchfield recognized he had a sense of foreshortened
14 future which is a symptom of depression. You don't think
15 you're going to live long. You have no goals. You have
16 no reason to live and you don't care. Those are certainly
17 symptoms of depression.

18 Q Well, he could have had a feeling of foreshortened
19 future based on the fact that somebody shot at him at a
20 cookout; right?

21 A Sure. Absolutely. That could be as well, but again
22 when you take that in context and look at the history that
23 he has and these are symptoms that he's had before and
24 they're documented from age nine, 1994, 1997, 1998, 2000,
25 it's more consistent with depression.

1 Q Well, we're going to get to that exactly. I want to
2 know when is there some documentation of him -- when is
3 the last time there is documentation of him suffering from
4 depression?

5 THE COURT: She just answered that was Crutchfield.
6 You talking about --

7 Q Medical or some kind of professional.

8 A Well, my opinion is in looking at these records that
9 professionally he meets this criteria. At age 17 he begs
10 officers to shoot him when he's arrested for slashing his
11 mother's tires. That's hardly an offense that you're
12 going to do a lot of time for.

13 Q I am not arguing with you. I am telling you when was
14 the last --

15 THE COURT: Asking.

16 MR. MABRY: -- documented depression?

17 THE WITNESS: In my opinion?

18 Q Uh-huh.

19 A The time -- again, based on Mr. Crutchfield's
20 statement I think it's still existing there. Age 17 which
21 he would have been -- Let's see. Eighty-three. That
22 would be 2001. At age 17 it would have been 2001 and then
23 he goes into the Department of Corrections and then
24 certainly in 2004.

25 Q Now, are there any -- he went in the Department of

1 Corrections and he's diagnosed as antisocial and
2 intermittent explosive disorder.

3 A Yes.

4 Q Did he receive any kind of treatment in the Virginia
5 Department of Corrections for depression or any mental
6 illness?

7 A I don't have a lot of those records. The records I
8 have again were the psychologist and his name is Keyachoe
9 (phonetic) I believe that evaluated him when he went into
10 that system and certainly noted that there are some
11 intermittent explosive disorders and maybe mental illness.
12 It's just not the one I agree, but that's an axis one
13 illness. That's treatable.

14 Q Okay.

15 A It is a psychiatric condition, but I don't see -- in
16 looking at those records I don't see depression. I don't
17 see where he had evaluations or treatment during that
18 period of time or somebody cared enough -- for example,
19 the DJJ people, where they referred him for treatment.

20 Q All right.

21 A So I think that it's very fair to say 2001 would
22 probably be that last period where there is clear
23 documentation other than some of the observation by his
24 co-defendant.

25 Q I am not arguing with you. I am just trying -- What

1 documentation are you referring to? The 2001 was
2 antisocial personality disorder and explosive disorder. I
3 am talking about there is nothing in those adult records
4 at DJJ -- I mean, adult prison records in Virginia that
5 says he's suffering from depression or he's being treated
6 for depression, does it?

7 A That correct, but what they do say is he denies that
8 he's ever been treated before. He denies that he's had
9 suicidal attempts. So he's not being honest with them.
10 He's not disclosing information they need to be able to
11 treat him, but in 2001 he's 17. So before he went to the
12 prison when he slashed his mother's tires he's begging
13 officers to shoot him. So, in my opinion --

14 Q That's depression?

15 A Yes.

16 Q And when he gets out of adult prison in 2004 --

17 A Yes.

18 Q Spring of 2004?

19 A Yes.

20 Q Is there any documentation by a doctor, psychologist,
21 parole officer, anybody like that until he leaves Virginia
22 that he is suffering from depression or he's being treated
23 for depression?

24 A No.

25 Q Now, when he's arrested in Florida three days after

1 he murders Captain Myers he's brought from Florida to
2 South Carolina?

3 A Yes.

4 Q Do you know of any records that he was treated for
5 depression in the Florida jail before he waived
6 extradition?

7 A No.

8 Q Any records he complained of depression?

9 A No. He would not ever complain of depression. He
10 wouldn't ask for help. He wouldn't be the kind of person
11 to -- but there is no records of it, but he wouldn't
12 solicit that kind of help.

13 Q All right. He was brought back up here to South
14 Carolina after he waived extradition and he -- am I
15 correct he was held as a safekeeper in the South Carolina
16 Department of Corrections from 2004 until his trial and
17 then from his trial until a guilty plea and sentence until
18 now?

19 A That's correct.

20 Q So 2004 to 2011. Is there any documentation within
21 the Department of Corrections including their psychiatric
22 notes or visits with him that he was suffering from
23 depression or he was being given medicine. He has not
24 been medicated at all, but in my opinion there's documents
25 that show evidence of depression. He was on a hunger

1 strike in the county before his trial.

2 Q Okay.

3 A He was very irritable and aggressive and threatened
4 to harm people in the Department of Corrections. He -- I
5 believe he actually threatened to kill one of the workers
6 that had something to do with grievance forms and that
7 sort of thing. Also there is a record in the Department
8 of Corrections while he's been at super-max where he
9 complained of not feeling well -- just not feeling well.

10 Q Run down?

11 A Yes.

12 Q Tired and run down?

13 A Yes.

14 Q Okay. Why was he on suicide strike before his trial?

15 A He says it's because he was protesting the conditions
16 of Lee County.

17 Q Right. Actually, he wanted to get back. He didn't
18 like being in safekeeper status and he wanted to be in Lee
19 County. Isn't that why he went on the hunger strike?

20 A I am not sure. What I saw on his form is what was
21 saying it was a peaceful -- he was protesting --

22 Q Right.

23 A -- that they weren't getting showers. He was
24 protesting that they weren't being taken out for rec --
25 just the living conditions were deplorable in his

1 opinions.

2 Q So, that's what the hunger strike was for?

3 A Could be. But, again, when you're a psychiatrist and
4 this is somebody that's been suicidal before -- he tied a
5 sheet around his neck and tried to electrocute himself --
6 I'm concerned. That's not normally the way he's acting
7 out when he's had an issue with a correctional facility.
8 So he's harming himself by doing that.

9 Q I show you Defendant's Exhibit 4. I ask you to look
10 at that first paragraph. This was after he tied the sheet
11 around his neck in DJJ.

12 A Yes.

13 Q Did he tell the psychologist there that he was not
14 really suicidal; that he wanted to get in a different
15 place where he could get more recreation time?

16 A Absolutely. And he tells me those things, too. He
17 denies that he's ever been depressed, Your Honor. I went
18 through at length and tried to go through each of these
19 hospitalizations and to this date he denies. He thinks
20 that people have made those records up. He denies he said
21 these things. He's denied that he asked police to kill
22 him. He denies those to this date.

23 Q And he's repeatedly stated over the last six years
24 while he's been in super-max that there is nothing wrong
25 with him?

1 A That's correct.

2 Q And he hadn't been given any medication?

3 A No.

4 Q Did Mr. Mahdi commit burglaries and thefts before he
5 went to DJJ?

6 A Yes, but I believe -- I may have misread the records.
7 I thought it was the same person. When I was looking at
8 the incident reports it looked like a Delaney and it was
9 two guns from the same person, yes, I'm aware that he was
10 convicted. I believe he broke and entered and took guns.

11 Q Broke in somebody's house and stold guns?

12 A Yes, but it looked like it --

13 Q May have broke in twice?

14 A It looked like it was the same person and it looked
15 like it was the same gun.

16 Q Okay. And then when he got out of adult prison in
17 Virginia he did the same thing and broke in Amanda
18 Weaver's house and stold a .380 gun?

19 A Correct.

20 Q And he also broke in Captain Myers' shed?

21 A Correct.

22 Q He left Virginia. He stold a car, but he also stold
23 a car tag from a different location, did he not?

24 A Correct.

25 Q He is pretty smart, isn't he?

1 A Absolutely. He is very intelligent. He above
2 average in intelligence and very perceptive.

3 Q And when he got down to South Carolina the car broke
4 down; so he carjacked another car, but he took the license
5 plate off of the Virginia car and put it on the Expedition
6 that he carjacked in Columbia; is that right?

7 A That's correct. Yes, that's my understanding.

8 Q And then when he drives to Calhoun County and tries
9 to pass a fraudulent credit card they call the police and
10 he sees the police coming and so that's when he runs
11 through the woods to escape?

12 A Correct.

13 Q Did he tell you that he zig-zagged when he was
14 running from the police?

15 A No.

16 Q Did he tell you his father taught him how to zig-zag
17 and get away from bloodhounds?

18 A He told me his father taught him when he was supposed
19 to be in school during the period of time when he was not
20 in school that his father taught him how to fire guns.

21 Q Uh-huh taught him how to shoot?

22 A Absolutely.

23 Q Okay.

24 A But in terms of the zig-zag specifically I didn't
25 know that, but he certainly -- his father spent a lot of

1 time teaching him things that perhaps are necessary or
2 not. I can't speak for his father.

3 Q He broke into Captain Myers's cabin and converted a
4 shotgun into a sawed-off shotgun?

5 A Yes.

6 Q And then painted it black?

7 A Yes.

8 Q Didn't seem depressed at that time?

9 A No.

10 Q You don't think he was?

11 A It's hard to say. Was he -- When you're depressed
12 you don't have to be depressed every minute of the day all
13 day long, but if he's doing this in an attempt to get shot
14 by the police or because he doesn't care or he's going to
15 go out with a bang, yes, that can reflect depressive
16 affect. You can't take one behavior because there's so
17 many things that affect your behavior, but the point is
18 he's still depressed. If you have a depression and it's
19 not treated and you have pretty much about a 10-year
20 history and it's pretty well documented, there is no
21 reason to think it's going to go away.

22 Now, on that day he may not have been depressed at
23 all.

24 Q Okay.

25 A But he's still affected by the condition. There's a

1 lot of people -- his depression is in remission today but
2 it still affects him.

3 Q When did it go into remission?

4 A I believe probably between the first or second time
5 or the second or third time I saw him.

6 Q When did you first see him?

7 A February 2, 2010.

8 Q Okay.

9 A So probably around the summertime last year or
10 June 17 there was a difference. He was very angry with me
11 when I saw him last week, Your Honor. He felt like when I
12 saw him in February he was not quite right. He was upset
13 about having been taken to super-max. He was upset about
14 his behaviors and so he was not in sorts and I believe by
15 the time June came he was getting more situated and by the
16 time I saw him last week he was smiling. I had never seen
17 him smile before.

18 He obviously is relating very well to his attorneys
19 and very good relationship with her. So, those were
20 behaviors I had not seen. I saw him the first time with
21 Mr. Lominack and he was very suspicious. He was very
22 guarded. I saw a change in him probably in the last year.

23 Q Did -- After he killed Captain Myers did he pour gas
24 on his body and pour gasoline in the cabin to try to burn
25 and cover up the evidence?

1 A Yes.

2 Q Did he steal his guns and his truck?

3 A Yes.

4 Q And did he take a tag off of one truck and put it on
5 another?

6 A Yes.

7 Q And then he drove to Jacksonville, Florida?

8 A Wherever Satellite Beach is, yes.

9 Q Well, first he went to Jacksonville and sold the
10 murder weapon from the North Carolina murder and he sold
11 the .22 he killed Captain Myers with to get rid of them
12 and get money; right?

13 A Yes.

14 Q And then he went to Satellite Beach?

15 A Yes.

16 Q Did he tell you about swimming in the ocean in
17 Satellite Beach?

18 A I don't remember.

19 Q Did he tell you a lady came up to him and thought he
20 was a police officer and starting reporting a crime and he
21 told her it wasn't his jurisdiction. Do you remember
22 that?

23 A No. Mr. Mabry, what I am saying, I think his anxiety
24 disorder had something to do with the crime.

25 Q Why is that?

1 A Well, this is a man that's been raised in violence
2 and aggression and has seen his mother beaten, has seen
3 his grandmother who was the most attachment he's ever had
4 beaten. He's witnessed a lot of violence in juvenile
5 settings and adult settings. He's been a potential victim
6 and he's perpetrated acts of violence.

7 Q I just wanted to ask you a lot of those acts of
8 violence in juvenile and adult prisons he actually
9 perpetrated himself --

10 A Well, some, absolutely. Some and some not.

11 Q -- against guards?

12 A He gives a very good example. There is an inmate in
13 one of the prisons that had a trach in the larynx and the
14 box didn't have a battery and when he tried to assist this
15 person the person got tased. He got tased, but the point
16 is he's been exposed to abuse.

17 Q He's dealt it out, hadn't he?

18 A Certainly. Certainly.

19 Q Guards, teachers, other prisoners?

20 A Certainly. Certainly, but, again, just getting back
21 though, I think the way the anxiety -- the depression had
22 nothing to do with this crime. He was suffering from
23 that. That's a mental illness he had at the time of the
24 crime. The only illness that has anything probably to do
25 with this crime -- this specific crime -- would be his

1 anxiety disorder. He overreacts. He is physiologically
2 aroused. The best way I can describe it if you're almost
3 in a car wreck, you know, and you're very frightened. It
4 takes a while before your heart rate calms down before you
5 can calm down and think. What he tells me and I looked in
6 Dr. Martin's report is he was fearful at that time. So,
7 in terms of him shooting a gun because he was irritable or
8 he hated men or he hated people, that's not what happened.
9 He perceived that he was in danger.

10 Q Or he might have been anxious?

11 A Sure.

12 Q Well, I mean, someone that breaks in somebody's
13 house, they're not supposed to be in there -- their shed.
14 They're not supposed to be in there and they see the owner
15 coming they would naturally be anxious, would they not?

16 A Absolutely. Certainly.

17 Q Did you talk to his brother Saleem?

18 A No.

19 Q Was he -- would not talk to you?

20 A No, we had a social worker for that. I don't think
21 the court would appreciate me filling in for things
22 that -- I met the doctor and I'm very aware --

23 Q I understand. Mr. Mahdi's talk of suicide hasn't
24 been very successful, has it?

25 A No, he's not had any -- Well, I don't know how

1 serious his attempts were back at DJJ -- the electrocution
2 one, but he certainly has not. He's not -- This is not a
3 man that that would cut his wrist for attention or if he
4 becomes suicidal and he is serious he will do it.

5 Q And he is still here?

6 A That's correct.

7 Q Obviously. That all I would have, Your Honor.

8 THE COURT: Ms. Norris, anything else?

9 MS. NORRIS: No, sir.

10 THE COURT: Thank you, ma'am. You are excused to go.

11 THE WITNESS: Thank you.

12 THE COURT: All right. As we discussed in chambers
13 we could call Josh Koger, but we're going to be here a
14 while. Let's start at nine in the morning. Is that an
15 imposition to anybody? Thank you.

16 MS. NORRIS: Not to us.

17 THE COURT: Thank you, ma'am. We'll just see how
18 it's going tomorrow. If we see that we're not going to
19 finish I may break it off about 3 o'clock tomorrow. Y'all
20 have done pretty solid and I've got -- as I told you I am
21 a pallbearer in one of my buddy's funerals; so I got to be
22 in Charleston later.

23 All right. We'll just break. I'll see y'all at nine
24 in the morning. Anything y'all need for the record before
25 we leave? Mr. Mabry?

1 MR. MABRY: I don't think so.

2 THE COURT: Ms. Norris?

3 MS. NORRIS: No, sir.

4 (WHEREUPON, the proceedings were concluded for the
5 day and were reconvened on March 11, 2011 as
6 follows:)

7 THE COURT: Call your next witness.

8 MR. LOMINACK: The applicant rests.

9 MR. MABRY: I have several motions, Your Honor, at
10 this time.

11 THE COURT: Well, I understand what your motions are
12 going to be. In the interest of time and trying to
13 complete everything today I think I'll do those motions
14 I'll hear them later on. I am going to make a complete
15 record.

16 MR. MABRY: Yes, sir.

17 THE COURT: I mean, I assume that you got motions for
18 directed verdict?

19 MR. MABRY: They are. They're very short.

20 THE COURT: Well, let's go. Let's just do it in
21 order if they're very short.

22 MR. MABRY: The first one is in -- the first
23 applicant's ground is that counsel was ineffective for
24 failing to object to Judge Newman punishing the applicant
25 for pleading guilty. There is absolutely no evidence of

1 that under the order whatsoever.

2 THE COURT: In the order or in this record here?

3 MR. MABRY: In this record here either. So, I move
4 for a directed verdict on that ground. The next ground is
5 counsel failed to adequately advise applicant of the
6 advantages of jury sentencing over judge sentencing which
7 resulted in the applicant pleading guilty waiving his
8 right to a jury trial. There is absolutely no evidence of
9 that in the record. So, we would move for a directed
10 verdict on that ground.

11 Then counsel failed to assert the applicant's death
12 sentence violates the cruel and unusual punishment of the
13 Eighth Amendment due to his developmental deficits. There
14 is absolutely no evidence of that in the record.

15 And then finally there is a free-standing claim which
16 can't be raised here anyway, but applicant's death
17 sentence violates cruel and unusual punishment clause
18 because of the juvenile mentality or mental age of a
19 juvenile. There has been no testimony that he has the
20 mental age of a juvenile whatsoever and it is a
21 free-standing claim as well. We move for directed verdict
22 on each of those grounds.

23 THE COURT: All right. Any other grounds? Any other
24 reason?

25 MR. MABRY: No, sir. The only other ground is

1 counsel failed to adequately investigate, develop, present
2 mitigating evidence regarding his social background,
3 history, and mental history and I think there is some
4 evidence of that they've offered.

5 THE COURT: Thank you. All right. I'll take it --
6 unless y'all want to respond to them, I am going to hold
7 them in abeyance, make a full record. If you want to send
8 me a brief on your response or however you want to handle
9 it ---

10 MR. LOMINACK: That's fine, Your Honor.

11 THE COURT: We can see what kind of time we've got at
12 the end of the day. We can respond then or I'll give you
13 time in the future. You may call your first witness.

14 MR. LOMINACK: Your Honor, I just wanted to bring up
15 two short matters. One is that yesterday when I was
16 questioning Dr. Haney about the materials he reviewed
17 regarding Wallens Ridge State Prison the Court obviously
18 made it clear that you were not going to admit those
19 materials and I didn't want to argue with the court. I
20 would ask that this be marked. It's not going to be
21 admitted, but made part of the record. These materials
22 were provided to Mr. Mabry.

23 THE COURT: Sort of like a proffer?

24 MR. LOMINACK: Yes, Your Honor.

25 THE COURT: Absolutely you may do that.

1 (WHEREUPON, Applicant's Exhibit No. 32 was marked for
2 identification only.)

3 THE COURT: Anything else?

4 MR. LOMINACK: Your Honor, we would ask that the
5 state's witnesses -- the respondent's witnesses be
6 sequestered for today's hearing

7 MR. MABRY: We object. They had -- none of their
8 witnesses were sequestered.

9 THE COURT: And the witnesses are, I assume, two
10 seasoned lawyers.

11 MR. MABRY: Yes, sir.

12 THE COURT: Somewhat seasoned.

13 MR. MABRY: Private investigator and mitigation
14 investigator.

15 THE COURT: That's discretionary. We haven't
16 sequestered any witnesses all week.

17 MR. MABRY: No, sir.

18 THE COURT: These people have already been through
19 the trial. I don't see where that would in any way
20 prejudice your client and I would respectfully deny it.

21 MR. LOMINACK: Thank you, Your Honor.

22 MR. MABRY: I would call Jim Gordon to the stand,
23 please.

24 JAMES GORDON, JR., after being duly sworn,
25 testified as follows:

1 DIRECT EXAMINATION

2 BY MR. MABRY:

3 Q Tell us your name, please.

4 A James Gordon, Jr..

5 Q Mr. Gordon, where do you live?

6 A 1939 O'Riley Street, Orangeburg, South Carolina.

7 Q What is your occupation?

8 A Private investigator.

9 Q Were you the private investigator retained to work on
10 this case and assist the trial lawyers --

11 A Yes.

12 Q -- Mr. Grant, Mr. Walters and Mr. Koger?

13 A Yes.

14 Q Do you remember kind of what you did in the case?
15 What was your main role in the case?

16 A The case was very difficult mainly because we didn't
17 know our client very well.

18 Q He was not from Orangeburg?

19 A No and the main thing was to try and find out some
20 information about him, who he was, things of this sort and
21 through the mitigation investigator we started working on
22 it because of what he was accused of and we all kind of
23 worked around that mainly to try and find out exactly who
24 he was and information on him.

25 Q Okay. Did you eventually determine he was from

1 Virginia?

2 A Oh, yes.

3 Q Okay. And then attempts were made to locate his
4 family?

5 A Attempts were made to locate his family and relatives
6 and we kind of successfully did that.

7 Q Okay. And I believe you were involved in trying to
8 locate his mother?

9 A Well, we found -- Yea. We found his mother through
10 the mitigation office investigator. She had a list of
11 names and addresses and so we used that.

12 Q Do you remember being involved also with attorneys
13 from North Carolina and their mitigation investigator up
14 there?

15 A There was one particular investigator -- a female
16 investigator -- that we had was had corresponded with, but
17 it was mainly through our mitigation office. They met at
18 a certain time and she brought us some information back.

19 Q Okay.

20 (WHEREUPON, Defendant's Exhibit No. 7 was marked for
21 identification only.)

22 Q I show you Defendant's Exhibit No. 7. Is this --
23 Well, first of all, did you have team meetings?

24 A Team meetings.

25 Q Would that have involved you, the mitigation

1 investigator?

2 A Psychiatrist.

3 Q Psychiatrist, psychologist, the lawyers?

4 A The lawyers, yes.

5 Q Is this a memorandum from one of those meetings,
6 Defendant's Exhibit 7?

7 A Yes, it is.

8 Q I want to direct you to paragraph two. What was
9 discussed at that meeting regarding Mikal Mahdi's Uncle
10 Carson?

11 A At that -- In that particular paragraph we noted that
12 Mahdi was living with his Uncle Carson and his Uncle has
13 three children and it seems that the Uncle had classified
14 Mahdi as a demon because of all the things that he --
15 troubles that he was getting into.

16 Q Okay. Did he also indicate that there was conflict
17 in their home?

18 A Yes.

19 MR. MABRY: Without objection, I believe, Your Honor.

20 THE COURT: It is.

21 (WHEREUPON, Defendant's Exhibit No. 7 was admitted
22 into evidence.)

23 MR. MABRY: That's all the questions I have of this
24 witness.

25 THE COURT: Cross, either one?

1 CROSS-EXAMINATION

2 BY MS. NORRIS:

3 Q Mr. Gordon, good morning. I am Teresa Norris. That
4 conversation that you're talking about I see down there at
5 the bottom of that last Defendant's Exhibit and I show you
6 my copy while the judge is looking at it, where did that
7 information come from?

8 A That came from Janet Holahan.

9 THE COURT: H-O-L-A-H-A-N.

10 THE WITNESS: Yes. This was passed -- the
11 information was passed on to our mitigation officer when
12 they met. She brought -- that was brought down ---

13 Q So, from your recollection it was Janet Holahan. Do
14 you know who she is?

15 A She's an investigator in North Carolina, I think.

16 Q So, if I am understanding your testimony Janet told
17 your mitigation investigator and your mitigation
18 investigator told it?

19 A Yes. That's my understanding.

20 Q You personally didn't talk to Uncle Carson; is that
21 correct?

22 A Not on this particular case. I have met her years
23 later --

24 THE COURT: Met who?

25 THE WITNESS: -- at a conference. Janet Holahan.

1 THE COURT: Met who?

2 THE WITNESS: Janet Holahan.

3 THE COURT: No. She's asking did you talk to uncle
4 Carson?

5 THE WITNESS: Oh, to Uncle Carson? No. I talked to
6 the mother and another uncle that was at the house when we
7 went to Virginia.

8 Q You talked to Mikal Mahdi's mother?

9 A No, grandmother.

10 Q And the uncle that lived with her, Nathan, Jr.?

11 A Yes. Right. Right.

12 Q Thank you, sir.

13 THE COURT: Redirect?

14 MR. MABRY: Just quickly.

15 REDIRECT EXAMINATION

16 BY MR. MABRY:

17 Q Was Nathan assistance to you when you met with him?

18 A Nathan?

19 Q Right. The uncle.

20 THE COURT: The uncle.

21 THE WITNESS: The uncle? No.

22 Q What do you remember about ---

23 A We saw him come in and we saw him left. That's all I
24 can remember. There wasn't much conversation between him
25 at all.

1 Q Okay.

2 A Most of it was with the grandmother.

3 THE COURT: All right. You may step down.

4 MR. MABRY: Thomas Martin.

5 THOMAS V. MARTIN, after being duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MABRY:

9 Q Can you tell us your name, please?

10 A Thomas Victor Martin; M-A-R-T-I-N.

11 Q And what is your occupation, Mr. Martin?

12 A I am a private forensic and general psychiatrist in
13 Columbia, South Carolina.

14 Q Can you give us your background and training?

15 A I graduated from the University of Maryland with a
16 bachelor of science in psychology in 1979. I graduated
17 from Hood College in Maryland in 1984 with a master of
18 science in applied medicine. I graduated from the
19 Uniformed Services University School of Medicine in 1988
20 with a medical doctorate degree.

21 THE COURT: In psychiatry?

22 THE WITNESS: In medicine and then I completed a
23 four-year general psychiatric residency in San Antonio,
24 Texas and completed that and graduated with a
25 certification in psychiatry in 1992 and I practiced for a

1 number of years and I came to South Carolina and completed
2 a forensic psychiatry fellowship here at USC in 2000. I
3 have been essentially in private practice pretty much the
4 time since.

5 Q Okay. Have you ever testified in court as an expert
6 in forensic psychiatry?

7 A Yes, sir.

8 Q Approximately how many times?

9 A More than 200 times.

10 THE COURT: All right. They'll stipulate to his
11 qualifications, will you not?

12 MS. NORRIS: Yes, sir.

13 THE COURT: There is no objection to his
14 qualification as a forensic psychiatrist?

15 MR. LOMINACK: No, Your Honor. I do want to place
16 this on the record. I would ask the court to note our
17 continuing objection to Dr. Martin testifying based on our
18 prior assertion of the attorney-client privilege. I don't
19 want to object, obviously, to every question and I would
20 ask that that objection be noted.

21 THE COURT: Very well. That's the matter that I
22 issued an oral order on and y'all filed an appeal which
23 was found to be interlocutory. You filed a Writ of Cert
24 which was denied, but there's never been a written order
25 but it's in the record as to what the order was, i.e., to

1 turn over the records that you had from Dr. Martin to the
2 state and you'll be protected as to Dr. Martin and I think
3 there was one other doctor.

4 MR. LOMINACK: Dr. McKee.

5 THE COURT: McKee. So you're fully protected on the
6 record and your objection is noted.

7 MR. LOMINACK: Thank you, Your Honor.

8 THE COURT: And you can just put his CV in and -- Do
9 you have a CV with you?

10 THE WITNESS: No, sir.

11 THE COURT: I think he's testified enough --

12 MR. MABRY: Yes, sir.

13 THE COURT: -- to be qualified.

14 Q Dr. Martin, have you ever testified in a capital case
15 before?

16 A Yes, sir.

17 Q Approximately how many times?

18 A I would guess maybe three times.

19 Q And in capital cases what are you -- what portion of
20 the trial are you usually involved in?

21 A I believe it would be called the sentencing phase.

22 Q And what type of evidence do you offer or what type
23 of testimony do you offer in the sentencing phase?

24 A Well, based on the request of the defense
25 attorneys -- and it has been defense attorneys each

1 time -- I am asked to provide a psychiatric evaluation of
2 the individual. Usually, I would include competency to
3 stand trial, criminal responsibility, capacity to conform
4 one's behavior to the requirements of the law. If there
5 are any mitigating circumstances due to a major mental
6 illness or personality disorder I would be asked to
7 comment and formulate an opinion on that.

8 Q All right. And were you asked to perform such an
9 evaluation on the defendant in this case Mikal Mahdi?

10 A Yes, sir.

11 Q And what was your -- Well, first of all, tell me what
12 documents you reviewed.

13 THE COURT: Well, before you do that, who asked you
14 to do it?

15 MR. MABRY: I'm sorry.

16 THE WITNESS: Mr. Carl Grant's office asked me to
17 perform a psychiatric evaluation.

18 Q Mr. Mahdi's attorney --

19 A Yes, sir.

20 Q -- in this case? What documents did you review? Can
21 you tell us?

22 A Certainly. I reviewed a police investigation file
23 that was primarily of South Carolina. I also reviewed a
24 psychological or, yea, psychological chronology report I
25 believe provided by one of the team leaders covering the

1 Carter Center admission back in 1992. I also reviewed the
2 records from the Walter Carter Center that took place
3 between August of 1992 and October of 1992.

4 I also reviewed the necropsy report and the pathology
5 report on the deceased and I also reviewed interviews that
6 were typed and prepared by Ms.~Tarr that included
7 interviews of family members: The father, the uncle, and
8 so forth. I also attended three team meetings where I
9 believe just about every team member were present
10 including the attorneys and these were held at Mr. Grant's
11 office.

12 Q And what would be discussed at those team meetings?

13 A Well, team meetings were formed to cover different
14 aspects of a defense for Mr. Mahdi. Mine was the for
15 psychiatric. The only other member that I actually knew
16 personally is Dr. Geoff McKee. He is a forensic
17 psychologist. He and I had worked together before in the
18 past and we worked together -- well, at least in concert
19 together in this case. There were other individuals like
20 socialworkers, mitigation specialist, jury selection
21 specialist, and so forth, a private investigator which
22 there's already been testimony.

23 I attended those meetings. I attended three. I
24 don't know if there were any more after I attended three.

25 Q Okay. And would the other people involved in this

1 case be discussing at the team meetings what they had
2 found out about the defendant?

3 A Yes.

4 Q Like his background, things that occurred in his
5 life?

6 A Yes, sir.

7 Q And in addition did you interview Mr. Mahdi, and if
8 you did how many times did you interview Mr. Mahdi?

9 A I interviewed Mr. Mahdi two times in super-max over
10 at Kirkland. The first time was December 30 of 2005. The
11 second time is February 3, 2006.

12 Q Okay. And as part of that you take a history of
13 Mr. Mahdi at least as far as the events that occurred that
14 led up to the murder?

15 A Yes, sir.

16 Q Okay. If you would, share with the court what
17 Mr. Mahdi told you -- basically, where was he before these
18 murders occurred and how did he end up in South Carolina?

19 A Well, Mr. Mahdi told me that he came from Virginia,
20 was born and raised in Virginia. I didn't go into great
21 detail, but he said there was something to do with a
22 murder that he had committed in Virginia and he was
23 leaving Virginia in order to, quote, avoid homicide
24 detectives, end quote, and in his transport from Virginia
25 by vehicle he came through North Carolina.

1 He had told me also that he had murdered I believe in
2 a bad drug deal another individual which he thought had
3 not been discovered -- at least that he was perhaps a
4 suspect. That murder -- I didn't have any material on
5 that --

6 Q Okay.

7 A -- because he said it was unreported and then he
8 moved from North Carolina down to South Carolina on his
9 way to Florida.

10 Q Why was he going -- Where was he going in Florida?
11 Do you know?

12 A Well, I know he went to Satellite Beach in Florida.
13 I don't recall exactly why he was going there. He may
14 have had family down there.

15 Q Okay.

16 A But he was on his way down there and then the
17 incident that took place in South Carolina which I was
18 asked to evaluate his mental status surrounding took place
19 in Calhoun County.

20 Q He didn't -- The initial murder you talked about in
21 Virginia, do you remember or either one was there anyone
22 else involved in those homicides?

23 A I thought there was a co-defendant, but, again, like
24 I said I didn't go into any details since that wasn't part
25 of the question posed to me.

1 Q Okay. And I guess you discussed the homicide in this
2 case?

3 A Yes, sir.

4 Q Did you also get his background as far as his -- Did
5 he talk about his life history and those type of things?

6 A Yes. I typically cover at least a cursory review of
7 developmental history in cases like this. Cases like
8 this -- capital murder cases -- typically have other
9 specialists that dwell only on that which I find to be
10 very helpful. So, instead of spending a great deal of
11 time going through details of developmental history I get
12 the main points that are pertinent to him and those
13 questions that I might have about his developmental
14 history and I compare essentially my findings with the
15 person who has actually gone out and interviewed some of
16 the individuals in his early life.

17 Q Are you talking about like a social worker?

18 A Yes.

19 Q Ms. Hammock in this case?

20 A Yes, I believe that is.

21 Q Okay. And did Mr. Mahdi ever relate to you that he
22 had been in special education?

23 A Yes. He said he was in special education and that
24 that was an incorrect placement for him.

25 Q Did he tell you whether he tried to get out of

1 special education or not?

2 A Yes. He, quote, begged the principal, unquote, and
3 it was unsuccessful.

4 Q What about his father? Did he try to get his father
5 to take him out of special ed?

6 A Yes, I believe so. I think his father eventually by
7 his report home-schooled him, but he had a very poor
8 relationship with his father.

9 Q And, Doctor, after reviewing all of the materials
10 that you reviewed including the Carter Center, the things
11 that you learned through team meetings, and your
12 conversations with Mr. Mahdi, did you form an opinion
13 whether he suffered from my major mental illness or not?

14 A I believe -- and this is somewhat consistent with
15 what I found in the Carter Center reports is that he had a
16 behavioral problem that led to a lot of failed
17 relationships, interactions that were hostile aggressive,
18 sometimes quite violent in nature, and that he had some
19 depressive issues that were, I believe, to be subsequently
20 recurrent due to failure to integrate into society.

21 I found that he was a loner; that he had -- He
22 actually attributed a lot of his attitude and outlooks on
23 life to his father almost in a condemning way and that he
24 was essentially becoming a racist militant in his own way.
25 His outlook on life was quite violent. His way of

1 surviving is by force. He seemed to have no difficulty
2 talking about killing people if necessary in order to
3 achieve independence.

4 He had a difficult time maintaining employment and he
5 didn't seem to have remorse about any of the circumstances
6 that were violent in his past, and even though I thought
7 he had some depressive issues, I wasn't really clear that
8 he had any developmental intellectual issues. I did know
9 that he had an average IQ that was tested at least in the
10 Carter Center in '92 that is not difficult to fake a low
11 IQ but it is near impossible to fake a high IQ and he had
12 an IQ of 95 and 100 being the norm.

13 Q At the Carter Center?

14 A At the Carter Center. And so I put with the
15 information I gathered from the team meetings where he was
16 very manipulative in his family and society making
17 recurrent suicidal threats. I believe even his uncle
18 reportedly had said he does this all the time to get his
19 way; that his ability to follow social norms, adhere to
20 authority was pretty much difficult to impossible at
21 times. So I actually made the diagnosis of antisocial
22 personality disorder for Mr. Mahdi as the primary
23 diagnosis.

24 Q Did you classify him as a psychopath?

25 A A psychopath is actually not a diagnosis, but an

1 antisocial personality disorder with an individual who is
2 quite violent is typically considered a psycho or
3 sociopath.

4 Q And did you relay your findings to his attorneys
5 Mr. Grant -- I'm sorry; Mr. Walters -- Mr. Grant,
6 Mr. Walters, or Mr. Koger?

7 A Yes. Specifically I called Mr. Walters after our
8 third team meeting -- I believe it was November 16,
9 2006 -- and told Mr. Walters that my findings just as I
10 told you and I was not sure how helpful this would be for
11 his case.

12 Q Did -- In talking to Mr. Mahdi did he appear to be
13 acting under any influence of any depression at the time
14 he committed this crime in South Carolina?

15 A No, sir.

16 Q Do you remember whether -- and explain that. What
17 was it about how he described the crime here or crimes
18 here in South Carolina?

19 A Well, the two crimes that we focused on here one more
20 than the other was how he appropriated a vehicle early in
21 the morning of I believe it was July 18 of 2004.
22 Essentially, I think that was a carjacking and it was part
23 of his efforts to flee from previous crimes in North
24 Carolina and Virginia on his way to Florida.

25 Well, he somehow or another stumbled upon this cabin

1 or shed -- I have never seen it in person -- in Calhoun
2 County and went inside and evidently spent several hours
3 there in the wee early hours of the morning I believe
4 originally or maybe it was in the early afternoon. I
5 can't remember, but anyway I believe it was dark, and
6 sometime towards the end of the stay there someone tried
7 to get in and appeared to not have a key.

8 I thought that Mr. Mahdi described very clearly to me
9 what he was feeling and what he was perceiving during this
10 event. There was no talk of feeling depressed, psychotic.
11 There is no evidence of that the way he described the
12 events at all. They were actually quite coherent. He
13 believed that the other individual may not have owned this
14 cabin because they didn't seem to have a key or at least
15 that's how they told me and he confronted this person and
16 he originally had told me that he acted in self-defense
17 because he thought this individual was going to shoot him.
18 So, instead before he could harm him he shot him multiple
19 times until he -- in fact, after he was down he shot him.

20 Q Did he describe how many times?

21 A I believe he said 15 times.

22 Q Okay. And he shot -- Did he describe to you whether
23 he shot him after the person was on the floor?

24 A Yes. Yea.

25 Q Did he describe where he shot the person?

1 A I think he said in the head.

2 Q Okay. And did he describe to you what he did after
3 this person was killed?

4 A Yes. He proceeded to try to burn the victim. I
5 believe he found some sort of diesel fuel which I think he
6 said burned too slowly and then I am not exactly sure how
7 much of everything was that got burned. I believe the
8 victim's body was burned because when discovered by
9 authorities they originally thought it was electrocution.
10 So, he attempted to burn so it would help perhaps cover
11 some of the evidence that he may have left there.

12 Q And did he tell you whether or not he knew this
13 person was a police officer?

14 A He said he realized it was a police officer when he
15 got in the individual's vehicle that he took from the
16 cabin and he could see it was an unmarked police vehicle.

17 Q And did he take anything from the cabin? Did he
18 steal anything from the cabin?

19 A He may have taken firearms, but I can't remember
20 exactly and somehow he got the keys.

21 Q And did he steal the truck?

22 A Yea.

23 Q And where did he tell you he went?

24 A He was heading to Florida.

25 Q And what happened in Florida?

1 A I believe -- well, he was apprehended in Florida.

2 Q I'm talking about before he was apprehended. Do you
3 remember him describing anything that occurred?

4 A Let's see. I believe he had the same vehicle all the
5 way down to Florida. I can't remember off the top of my
6 head.

7 Q Okay. Did -- was there any indication to you that he
8 was acting under depression when he was in Columbia and
9 took the Expedition?

10 A The vehicle Expedition?

11 Q Right, sir. One moment please. If I could have just
12 a moment, Your Honor. I'm looking for something. Let me
13 hand you the notes. I'm looking for what he described the
14 period in Florida after he got there. Maybe you can help
15 me locate it.

16 A Certainly. Yes, I did make a note here.

17 Q What was that?

18 A It was on page eight. At the top of the page I have
19 noted here that something about other vehicle calls the
20 police on the cellphone, passenger physically stops him
21 from leaving or attempting to get an assault rifle and the
22 next paragraph says -- the patient was not prepared, but
23 wearing a bullet-proof vest originally and a swimsuit.
24 This was a Satellite Beach near NASA. The cops tracked
25 him down. He did not resist arrest. They essentially

1 arrested him there.

2 Q Okay.

3 A I don't know if that's exactly what you were looking
4 for.

5 Q What is the next sentence. Is that a quote from
6 Mr. Mahdi?

7 A Yes. If they were in quotations in there, that's
8 exactly what Mr. Mahdi said. Quote, I was justified.
9 Great leaders or mass murderers, people only understand
10 force.

11 Q Okay.

12 MR. LOMINACK: I object on relevance. I don't think
13 he's established -- He's trying to introduce all of the
14 notes from the evaluation. I don't think he's established
15 that those notes are relevant to what we're here for
16 today, especially because he hasn't linked any of those
17 notes to trial counsel's knowledge and, of course, that's
18 what matters. In addition to that objection, I would also
19 note our continuing objection.

20 THE COURT: Very well. Overruled.

21 (WHEREUPON, Defendant's Exhibit No. 8 was marked for
22 identification and received into evidence.)

23 Q Dr. Martin, is that a copy of your notes from your
24 discussion with Mr. Mahdi and the team meetings that you
25 were involved in?

1 A These are a copy of my notes, but it doesn't -- They
2 do not include the three team meeting notes.

3 Q Okay. I'm sorry.

4 THE COURT: Do not include what?

5 THE WITNESS: The three team meeting notes.

6 Q Dr. Martin, how did Mr. Mahdi appear to you as far as
7 his intelligence?

8 A Well, I thought he was of average intelligence. It
9 was easy to understand him. He seemed to be able to
10 understand me.

11 Q Was he coherent when you met with him?

12 A Yes.

13 Q Did he have any problem remembering events that took
14 place in his life?

15 A He didn't appear to.

16 Q Did he have any problem remembering the events that
17 took place from the time he left Virginia until coming to
18 South Carolina and to Florida?

19 A No, but I mainly focused on what happened in South
20 Carolina.

21 MR. MABRY: Okay. That's all the questions I have,
22 Your Honor.

23 THE COURT: Cross.

24 CROSS-EXAMINATION

25 BY MR. LOMINACK:

1 Q Good morning, Dr. Martin.

2 A Good morning.

3 Q Now, you dealt with Carl Grant at first; right?

4 A That's correct.

5 Q That is who hired you?

6 A That's correct.

7 Q And he provided you with --

8 THE COURT: Let me get something cleared up right
9 here. Carl Grant was initially appointed or how does this
10 work?

11 MR. LOMINACK: Yes, sir.

12 THE COURT: Along with whom?

13 MR. LOMINACK: With Mr. Walters. Carl Grant
14 subsequently was involved in a motorcycle accident.

15 THE COURT: That's correct, and he had to -- down in
16 Myrtle Beach or somewhere and he had to get out of all of
17 his cases and then Mr. Koger came aboard?

18 MR. MABRY: That's correct.

19 MR. LOMINACK: Mrs. Hudgens came on board and had to
20 quickly get off and then Mr. Koger.

21 THE COURT: Ms. Hudgens?

22 MR. LOMINACK: Kathleen Hudgens who is now at the
23 public defender's office. She was briefly appointed.

24 THE COURT: Thank you.

25 Q Dr. Martin, so the materials that you got were from

1 Mr. Grant?

2 A That's correct.

3 Q And do you remember at one of these team meetings you
4 were told that all records requests were going to go
5 through Dr. Walters' office -- I mean Mr. Walters' office
6 and this is after Mr. Grant is off the case. You're
7 meeting with now Mr. Walters and he indicated that all
8 records were going to go through his office. Do you
9 remember that?

10 A I don't exactly remember when Mr. Grant had the
11 motorcycle accident. I believe it was towards the end of
12 my activity on the case. So I can't remember exactly
13 whether or not that was said or not. I saw Mr. Grant and
14 Mr. Walters together and I didn't think of it in any other
15 way than that. I knew that -- I think he disappeared at
16 the end, Mr. Grant did, because he had the accident, and I
17 think that was way subsequent to me seeing Mr. Mahdi.

18 Q Okay. Do you recall even before Mr. Grant got off
19 the case that Mr. Walters indicated that all records
20 requests would go through his office?

21 A I believe so and billings. I think that may be true.

22 Q So, any records that you were going to get from that
23 point on would come from his office?

24 A I would presume so because my last contact with the
25 team was with Mr. Walters.

1 Q Now, depression doesn't just make people sad; right?

2 A Well, if you're not sad it is hard to be not
3 depressed.

4 Q Well, you can -- Depression can manifest in
5 irritability; right?

6 A Yes, it could.

7 Q Anger?

8 A It could.

9 Q It does; right?

10 A On some occasions, yes, to a certain degree.

11 Q And outbursts?

12 A Perhaps.

13 Q Perhaps or it does?

14 A Classic depression is more reclusive, withdrawn, low
15 self esteem, lack of interaction with society.

16 Manifesting as aggression and violence is pretty rare.

17 Q How about in children? It's pretty common for a
18 child who's diagnosed with major depression to show
19 symptoms of anger, outburst, irritability?

20 A And physical symptoms, yes.

21 Q Okay. Now, you have seen this before; right?

22 A Yes.

23 Q DSM-IV-TR?

24 A Yes.

25 Q And that was -- this is the most current version and

1 this is also the version that would have been current as
2 of 2005, 2006; right?

3 A It may have been DSM-IV, but I don't remember exactly
4 when text revised come out.

5 Q And the next revision is coming out maybe in a couple
6 of years, maybe in the next 10 years. This is your Bible?

7 A No, sir.

8 Q This isn't?

9 A That's a guidebook, sir.

10 Q This is what psychiatrists use to diagnose?

11 A They can that, yes, but that is a guidebook. That is
12 definitely not a hard core answer.

13 Q This is what every psychiatrist when they write a
14 code -- Let me ask you this. Do you ever get paid by
15 insurance companies?

16 A Actually, no.

17 Q You have never gotten paid by an insurance company?

18 A Maybe on a rare occasion. I know what you're asking,
19 sir. I don't know your name.

20 Q Dr. Martin, let me slow down for a minute. I'm not
21 trying to attack you.

22 THE COURT: Let's just --

23 Q Have you --

24 THE COURT: Let's just all be calm.

25 Q You have been paid by insurance companies; right?

1 A I would say rarely because I typically don't accept
2 insurance.

3 Q You have been paid by insurance companies?

4 A All right, sir, at least once, yes, I'm sure I have.

5 Q And in order to be paid by an insurance company you
6 have to enter a code for your diagnosis; right?

7 A Oh, yea, CD code. Yes.

8 Q Okay. And that code comes from the DSM-IV-TR or
9 whatever DSM is in operation at that time?

10 A Or the CDB codes.

11 Q And so when you got paid by that insurance company at
12 least once you did use the codes from the DSM-IV or
13 whatever DSM?

14 A Or the CDB book.

15 Q And you would agree that this is a book that's
16 commonly used by psychiatrists --

17 A Yes.

18 Q -- in the field of forensic psychiatry and every
19 other mental health field?

20 A Yes, but it is not the answer. It is a guidebook.
21 Let me make sure that's clear.

22 Q Let me hand that to you and you can read and look up
23 when you're done reading 349.

24 A Okay. I am familiar with that.

25 Q That -- According to the DSM anger is a symptom of

1 depression especially in children; right?

2 A Yes, which I have already testified to.

3 Q Okay. And that does occur; right?

4 A Yes, it does.

5 Q Occurs enough for them to note it in the DSM?

6 A Yes.

7 Q As a symptom of depression; right?

8 A Yes, it can be.

9 Q Now, Dr. Martin, when you're evaluating somebody it's
10 better to have more information than less?

11 A That's usually the case, yes.

12 Q Well, is it ever not the case?

13 A Well, you can get more information that you don't
14 really need because it keeps on being the same stuff over
15 and over again. I've had plenty of those where you almost
16 get too much information. You don't actually need all
17 that.

18 Q So, if you got the same information that was
19 consistent, wouldn't that bolster whatever underlying
20 opinion you came to?

21 A Yea, it would be confirming.

22 Q So, in other words, if you had one IQ test just
23 hypothetically that said 87 and another IQ test that said
24 89 and another one that said 88, you'd feel pretty
25 comfortable in saying that that person's IQ is within, you

1 know, the standard deviation of error was 85 to 90; right?

2 A Yes, sir.

3 Q That wouldn't be the case if those IQ scores were all
4 over the place. That makes it a little complicated,
5 doesn't it?

6 A Yes. Like I testified earlier it is hard to fake a
7 high IQ or a higher value IQ. It's easy to not put forth
8 any effort and appear to have a lower IQ.

9 Q And, obviously, you don't administer IQ tests?

10 A No, I do not.

11 Q The psychologist would do that?

12 A Yes.

13 Q And they would administer any kind of psychological
14 testing?

15 A For the most part, yes.

16 Q Have you ever used a psychologist to help in an
17 assessment?

18 A Yes.

19 Q Now, you did not have Mr. Mahdi's school records;
20 right?

21 A That's correct.

22 Q You knew he had been in special ed, right?

23 A That's what he told me.

24 Q And you didn't have any reason to doubt that; right?

25 A No, not at the time.

1 Q And you know that part of the special ed eligibility
2 assessment would be psychological testing; right?

3 A Yes.

4 Q And you did not request that information from
5 Mr. Walters, did you?

6 A I believe that was coming from another specialist in
7 the team.

8 Q And that wasn't -- You didn't need to deal with it?

9 A Well, I was going to listen to it, but I didn't need
10 to ask for it myself.

11 Q And you didn't need to review it?

12 A No. We would have reviewed it together in the team
13 meeting.

14 Q Have you ever reviewed -- you have never reviewed the
15 psychological testing that was conducted in 1994, did you?

16 A It was in 1992 and, yes, I did.

17 Q You reviewed the Walter Carter Center psychological
18 testing; right?

19 A That's correct.

20 Q You never reviewed the psychological testing that was
21 associated with the special education eligibility; right?

22 A If that was in 1994, no, I did not.

23 Q Okay. You never reviewed his Department of Juvenile
24 Justice records; right?

25 A I never had those.

1 Q You didn't review the Department of Corrections
2 records; right?

3 A No, I didn't have those.

4 Q You did not review any family psychiatric records;
5 right?

6 A No. The family history and developmental history was
7 by another team member.

8 Q You didn't review any family psychiatric history
9 records?

10 A I did not have them, no.

11 MR. LOMINACK: Your Honor, I'm sorry. I've lost an
12 entire binder.

13 You noted on direct that there were indications of
14 recurrent depression; right?

15 THE WITNESS: Yes, sir.

16 Q And the Walter Carter Center records -- Well, first
17 of all, the evaluation at the Walter Carter Center was
18 done in an inpatient setting; right?

19 A That's correct.

20 Q Over 60 days almost; right?

21 A Between August, I believe, and October.

22 Q And a psychiatrist was involved; right?

23 A Yes, I believe so.

24 Q A psychologist was involved?

25 A Yes, sir.

1 Q And social workers were involved?

2 A Nurses and so forth.

3 Q And that's kind of standard at an inpatient setting;
4 right?

5 A That's correct.

6 Q And that's the way you do it; right?

7 A In my opinion, yes.

8 Q And his admission diagnosis was major depression;
9 right?

10 A To rule out adjustment disorder.

11 Q And rule out PTSD; right?

12 A Yes, sir.

13 Q His discharge diagnosis was major depression; right?

14 A I believe so.

15 Q And rule out PTSD?

16 A Uh-huh.

17 Q You had no reason to question those diagnoses; right?

18 A Well, I did ask Mr. Mahdi something to support those
19 diagnoses. I didn't ask him to defend the Carter reports.
20 In fact, I didn't ask him to defend any reports, but I
21 asked him about materials or times of his life during that
22 time and I sensed as I said on direct that he had some
23 elements of depression, but I couldn't get anything that
24 supported PTSD.

25 Q And they didn't diagnose him with PTSD. They had a

1 rule-out diagnosis; right?

2 A Rule-out diagnosis means they're still considering
3 it --

4 Q Right.

5 A -- but I never saw it definitive.

6 Q It means they were concerned about it and they saw
7 maybe some symptoms of anxiety but didn't have enough
8 information to meet every criteria that you have to meet
9 to diagnose it?

10 A That's right.

11 Q But they did think he met all of the criteria for
12 major depression?

13 A Yes.

14 Q As a 9-year-old --

15 A Yes, sir.

16 Q -- right? And you didn't review those records and
17 say they did anything wrong; right?

18 A No, I didn't say that.

19 Q It was a good evaluation; right?

20 A It was a good report. I wasn't there. So I don't
21 know how thorough the evaluation. It looked pretty
22 thorough to me.

23 Q The psychological testing was consistent in that
24 report with depression; right?

25 A Yes, it was.

1 Q And the psychiatrist's report found depression?

2 A That's correct.

3 Q And the social worker also noted depression?

4 A That's correct.

5 Q So, it was unanimous among the team; right?

6 A It seemed like it.

7 Q All right. Let's look at -- Judge, could I have
8 Volume I?

9 THE COURT: Sure.

10 Q I am going to hand that to you. By the way, does
11 this appear to be the records you were provided?

12 A That's not fair.

13 THE COURT: That's not.

14 Q Here you go. If you could look through that and
15 indicate whether I am missing anything from that stack
16 that you were providing.

17 THE COURT: Well, he's reviewed a lot of records.
18 You're representing to us what?

19 MR. LOMINACK: That those are the records he provided
20 to us and indicated that that was all that he was given.

21 A Well, if those are the ones I testified about on
22 direct and there are no pages missing I would say yes.

23 THE COURT: Okay. That's fair.

24 Q Would it be fair to say that once you take out the
25 Carter Center records the rest of this is incident reports

1 and autopsy reports; right?

2 A Yes. I have I believe some -- if you take out
3 everything that had to do with the Carter Center --

4 Q Yes.

5 A -- I believe so.

6 Q Okay. All right. If you could turn to the school
7 records -- there is an index right there and it'll tell
8 you what tab the school records are in. Flip to that tab
9 and then turn to page 19.

10 THE COURT: Is the bate stamp on the top?

11 Q Yes. That's the bate stamp at the top right corner.
12 And that's a school report from a teacher; right?

13 A It appears to be.

14 Q And she indicates that she wishes Mikal was happier
15 there; right?

16 THE COURT: Point it out to him.

17 Q First sentence on the only note.

18 A "I do wish he were happier."

19 Q She wishes he were happier there; right?

20 A Right.

21 Q Then if you could turn to page 33 -- Now this is a
22 record -- you've never seen these records; right?

23 A That's correct.

24 Q If you could turn to page 33 in that same tab set of
25 documents.

1 THE COURT: When was that last one dated -- I wish I
2 were happier?

3 MR. LOMINACK: In 1990, Your Honor.

4 THE COURT: Thank you.

5 Q And then, Dr. Martin, on page 33 that's a letter
6 dated March 6 of 1992 and it's addressed to Mr. Mahdi's
7 aunt and uncle and that's a letter from the principal
8 indicating that he had made a statement that concerned the
9 principal; right?

10 A I would imagine so.

11 Q You never saw that before today; right?

12 A I didn't see any school records.

13 Q And then if you could turn to page 47 that's a '93,
14 '94 school year report and if you could look down at the
15 bottom right hand corner of the teacher comments he
16 doesn't always appear to be motivated, seems to be in a
17 rut.

18 THE COURT: Is that a question?

19 Q That's what it says; right?

20 A I see that in here, yes.

21 Q Those early descriptions are consistent with what the
22 Walter Carter Center evaluators found out with the
23 psychological testing and their mental status observations
24 and that was this was a sad child?

25 A Yes and that's what he told me sometimes himself.

1 Q And, ultimately, a child diagnosed with depression?

2 A Yes.

3 Q Is it common -- it isn't common to diagnose a
4 9-year-old with major depression; right?

5 A Was that it is common?

6 Q It is not common to diagnose a 9-year-old with major
7 depression.

8 A Well, I don't know the statistic on that, but I would
9 say major mental illness in children is less likely than
10 in adults. It is not as common.

11 Q We won't go through page by page since you did review
12 the Walter Carter Center records, but you remember that he
13 was described as having sad eyes?

14 A Yes, sir.

15 Q And restricted affect?

16 A Yes.

17 Q And you talked about faking or malingering and a low
18 IQ score. There is no indication in the psychological
19 report that you reviewed that he faked that IQ score;
20 right?

21 A I never said faked or malingered, but people don't
22 put forth a good effort and have a lower IQ score than
23 someone who may be in better spirits.

24 Q And one of the reason somebody may not put forth good
25 effort is that they're depressed; right?

1 A That's correct.

2 Q And, in fact, that was the reason that the
3 psychologist believed that that score was lower than his
4 potential; right?

5 A I believe that's the words they used.

6 Q Depression and anxiety?

7 A Yes.

8 Q When he was at the Walter Carter Center the only
9 thing that Mr. Mahdi wanted back was his family; right?

10 A I don't remember if that's the only thing he wanted
11 back, but I know he wanted an intact family.

12 Q Have you ever conducted an examination and you asked
13 a patient if they had three wishes what would they be?

14 A Yes.

15 Q Is that a standard question to ask as part of an
16 evaluation.

17 A Usually of young people, yes.

18 Q And in this case you recall when he was asked that he
19 gave one reason?

20 A Yes and if there were others I don't remember.

21 Q The global assessment of functioning score of 30,
22 that's low, isn't it?

23 A That's very low.

24 Q The special ed evaluation that had psychological
25 testing in it, you never reviewed that.

1 THE COURT: Is that a question?

2 Q I am going to ask if you can review that now.

3 THE COURT: Where is it?

4 MR. LOMINACK: I am getting to that, Judge. Here we
5 go. Again, Your Honor, since this has been admitted I am
6 going to hand him up separate documents but not try to
7 enter them in separately. This is page 63.

8 THE COURT: What page?

9 MR. LOMINACK: 63. I think that would be out of tab
10 two, Judge.

11 And you see from that report that he was found
12 emotionally disabled on page 63; right?

13 THE WITNESS: That's correct.

14 THE COURT: That's the records from the Carter
15 Center? No, I'm sorry. The records from where?

16 MR. LOMINACK: The public school system.

17 THE COURT: Public school.

18 MR. LOMINACK: This is their special education
19 assessment or at least part of it.

20 Q And if I could get you to turn to tab two on 54.
21 That first paragraph discusses Mikal's negative feelings
22 about himself; right?

23 A The part where he says he feels good about himself at
24 times?

25 Q At times and then look a couple of lines down. He's

1 been suffering from depression and becoming forgetful due
2 to that problem; right?

3 A Yes, but you're taking it out of context. He also
4 has a lot of positive affirmations in here as well.

5 Q I'm sorry. What?

6 A I believe you're taking it out of context because
7 there is a lot of affirmation about him as well; things
8 that are good said about him in terms of around the house.
9 He is more reclusive. He does like to play Nintendo. He
10 isn't as outgoing as he was. He stays close to him home.
11 He doesn't always recognize dangerous things that might
12 hurt him, but he helps out at home with meal preparation.
13 Things at school are beginning to improve, but, yes, it
14 does have what you stated as well.

15 Q And it suggested there was a time he was happy but
16 now he's becoming more reclusive and they're concerned
17 about it; right?

18 A Well, amongst other things that they're pleased that
19 he's also -- if I can read into it -- that he's also
20 improving in other ways.

21 Q All right.

22 A I am not going to presume to know everything they
23 were thinking.

24 Q Well, sure, and having never reviewed this set of
25 materials --

1 A That's right.

2 Q -- it is out of context for you; right?

3 A Well, I put it more in context than what your
4 question originally asked.

5 Q And you have no reason to question their finding that
6 he was emotionally disabled; right?

7 A No, because people who are emotionally disabled are
8 classified as emotionally disabled or even placed in
9 Special Education classes are sometimes behavioral
10 problems. Sometimes that's fueled by depression.
11 Sometimes that's incorrigible behavior. They're truant or
12 having problems with conduct disorder. It could be a
13 number of things.

14 Q And you're aware that the psychological testing
15 conducted as part of that assessment found depression;
16 right?

17 A Yes, as well as other acting-out behaviors. He was
18 actually acting out. Just look you stated earlier on, he
19 was irritable. He spoke back. He was disrespectful.
20 That's how you youthful depression also manifests in a
21 young person. I agree.

22 Q Wait a minute. What of those behaviors were in the
23 special ed report that you never reviewed?

24 A No, I didn't. This was in the other reports or just
25 listening to him tell me.

1 Q The psychological testing as part of the special ed
2 report found depression. You're aware of that, right?

3 A That's what you told me, yes. I saw that here.

4 Q Do you have any reason to dispute that?

5 A Well, I haven't had a chance to look over the whole
6 report, so, no.

7 Q Okay. It's clear that your primary focus was to
8 evaluate him at the time of the crime and you said that on
9 direct; right?

10 A That's correct.

11 Q And you left it to others to deal with the
12 developmental time period in his life?

13 A I would have incorporated their input as well. I
14 believe understanding everyone's entire life is perhaps
15 very important in development as well as how we got to be
16 where we are today. It wasn't my primary focus however.
17 I did rely on other team members which is typically what
18 happens in a case like this.

19 Q Sure.

20 A I can't say that other people did not have these
21 particular documents. I know that I did not personally
22 have them.

23 Q And that's only because you didn't need them for what
24 you were doing, but anybody who was going to assess his
25 whole life and what may have impacted him as a young child

1 would have needed that stuff; right?

2 A I agree.

3 Q Okay.

4 THE COURT: Is that it?

5 MR. LOMINACK: One second, Your Honor.

6 THE COURT: Hold on one second, Mr. Mabry. Let him
7 get his stuff together.

8 MR. MABRY: Yes, sir.

9 THE COURT: All right. Do we have any records that
10 he's got in his hand up here that we need to put in the
11 record? I don't think so. I think he's just got copies
12 of what y'all have.

13 MR. LOMINACK: That's already in the record. Thanks.

14 THE COURT: Mr. Mabry, redirect.

15 REDIRECT EXAMINATION

16 BY MR. MABRY:

17 Q Dr. Martin, is there anything that you've heard here
18 today or looked at here today that changed your opinion in
19 this case?

20 A No, sir.

21 Q And if you had that his DJJ records and they showed
22 over 40 disciplinary violations and him reporting that he
23 malingered a suicide would that be consistent or
24 inconsistent with your findings in this case?

25 A There is no if there because that was reported to me.

1 I did not see those records, but I learned that he had a
2 long history of violent and acting out behavior and I
3 agree with the other gentlemen that, yes, it could be
4 partially due to some depressive manifestations, but he
5 was also able to pretty much take care of himself as he
6 reported to me. He just used force to become more
7 independent and I quote.

8 Q And is that consistent or inconsistent with
9 antisocial personality disorder?

10 A It is very consistent.

11 MR. MABRY: Thank you, sir.

12 THE COURT: All right. Dr. Martin, I'll let you step
13 down. Is he excused from his subpoena? Gentlemen,
14 ladies?

15 MR. MABRY: Yes, sir. I subpoenaed him. Dr. Geoff
16 McKee.

17 GEOFFREY R. MCKEE, after being duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MABRY:

21 Q Will you tell us your name, please?

22 A My name is Geoffrey R. McKee. First name is spelled
23 G-E-O-F-F-R-E-Y. Last name is spelled M-C-K-E-E.

24 Q Mr. McKee, what do you do for a living? What is your
25 profession?

1 A I am a forensic psychologist, board certified. I
2 work full time for the Department of Mental Health in
3 forensic evaluation service. I have a private practice in
4 forensic psychology and I give lectures as clinical
5 professor in the Department of Neuropsychiatry for the
6 University of South Carolina School of Medicine.

7 Q And can you just give us your educational background
8 and training?

9 A I received my bachelors degree from Coe College in
10 Cedar Rapids, Iowa in 1965, master's degree in education
11 in counseling psychology at the University of ---

12 MS. NORRIS: Your Honor, we're happy to stipulate
13 to--

14 THE COURT: Very well.

15 MS. NORRIS: -- Dr. McKee.

16 THE COURT: And what is the highest educational
17 degree that you have, Doctor?

18 THE WITNESS: Well, I have a Ph.D in counseling
19 psychology University of Missouri, Columbia, 1969 and I'm
20 a Board Certified Forensic Psychologist by the American
21 Board of Professional Psychology.

22 THE COURT: Thank you.

23 Q Dr. McKee, were you retained as an expert in this
24 case, the State versus Mikal Mahdi?

25 A I was.

1 Q What was -- What were you to do in this case?

2 A I conducted a forensic psychological evaluation of
3 Mr. Mahdi focusing on establishment of diagnosis,
4 establishment of opinion regarding competency to stand
5 trial, opinion regarding his mental state at the time of
6 the offense, and to assist the defense in other issues
7 that might be relevant to mitigation.

8 Q And exactly can you tell us exactly what you did?

9 A I reviewed a number of records, principally Rule Five
10 documents. Subsequent to my interview of Mr. Mahdi on
11 January 10 of 2006 I subsequently to that consulted with
12 Mr. Grant -- Carl B. Grant -- and experts on the 26th of
13 March of 2006. If I could back up for a minute.

14 Q Sure.

15 A I had an initial consultation with Mr. Grant on
16 September 27, 2005, did the evaluation of Mr. Mahdi on
17 January 10, 2006, reviewed annotated records. These were
18 discovery documents on the 12th of January. On 13th of
19 January, 2006, I scored and interpreted the tests I
20 administered to Mr. Mahdi. On the 25th of January of 2006
21 I had a consultation with Mr. Grant and other experts. I
22 subsequently had a meeting on the 29th of March of 2006
23 with Mr. Grant and Mr. Walters and then had a meeting -- I
24 then -- I then I believe had a meeting on the 14th of
25 November of 2006 with Mr. Walters and a Mr. Jim Gordon,

1 Ms. Paige Tarr, Dr. Thomas Martin, Ms. Marjorie Hammock.
2 I believe that was it.

3 Q And at those team meetings would the other
4 professionals involved in the case relate what they had
5 uncovered about the defendant --

6 A Yes.

7 Q --or gathered information?

8 A Yes.

9 Q And did you interview Mr. Mahdi in this case?

10 A I did.

11 Q And when did that occur? Do you remember and how
12 long that interview was?

13 A I interviewed Mr. Mahdi on the 10th of January, 2006,
14 at Kirkland Correctional Institution SMU which I believe
15 stands for Special Management Unit or Secure Management
16 Unit. That was for a three-hour period from one to four
17 in the afternoon of the 10th of January, 2006.

18 Q All right. And during that interview did Mr. Mahdi
19 relate to you his -- basically his social background, who
20 his parents were, where he was born, where he went to
21 school --

22 A Yes.

23 Q -- those kinds of things?

24 A Yes.

25 Q Did he ever relate to you that he had been in special

1 education classes?

2 A He told me that he had been put in special education
3 -- that he had been put in special education classes. I
4 am not exactly sure when. He thought it was in the fourth
5 grade.

6 Q Okay.

7 A At least was according to my notes here.

8 Q Did he relate anything else to you about those
9 classes, whether he thought he should be there or
10 shouldn't be there or what it was for?

11 A Well, he thought -- at least he told me that he
12 thought that the VA public schools had put him in special
13 education classes for extra money, but he told me that he
14 had scored 131 on an IQ test and he said that he had done
15 well on that test so he would not have to go to special
16 education. He said after he was put in special education
17 he says I had no incentive to apply myself academically.

18 Q Did you discuss with Mr. Mahdi the events that led
19 him to being in South Carolina and the events surrounding
20 this crime itself?

21 A I did.

22 Q What did he relate to you had occurred in Virginia --
23 why he left Virginia and came to South Carolina?

24 A Just give me a minute, please.

25 Q Sure.

1 A He had told me that he had felt that his life was in
2 danger; that he had been afraid to leave the house because
3 he thought he would be a target to the cops or to a guy
4 who wanted to kill him because of a rumor that he,
5 Mr. Mahdi, had heard that he, Mr. Madhi, had killed this
6 other guy's cousin and so he decided to leave Virginia and
7 to come south ultimately to Florida where I believe that
8 he said that he had friends.

9 Q Okay. Did he tell you about any homicide that was
10 committed in Virginia before he left involving he and some
11 other individuals?

12 A He had told me that he had with another person was --
13 that he and this other person were going to force another
14 person to make meth and he told me that this other person
15 went to rob this person who shot back and he told me that
16 he was just there and not the trigger man, but the man got
17 killed and so apparently there was some sort of homicide
18 that he was at least present for.

19 Q Did you discuss the facts of this case, the murder in
20 South Carolina with him, how it occurred and how it came
21 about?

22 A I did.

23 Q After your review of the records that you had -- and
24 I believe that you also performed some testing on
25 Mr. Mahdi?

1 A I did.

2 Q And what was -- When did that take place?

3 A That took place at the same time I interviewed him.
4 I administered to him the personality assessment screener,
5 the information and orientation questions from the
6 Wechsler Memory Scale, Third Edition.

7 Q Okay.

8 A And with that I also -- I used that as a device for
9 measuring short-term or sometimes expressed as working
10 memory and then I administered to him as well in the
11 evaluation of competency to stand trial revised atypical
12 presentation scale developed by Richard Rogers who is a
13 board certified forensic psychologist.

14 Q Okay. After your testing, your interview with
15 Mr. Mahdi, and your review of the records, did you form an
16 opinion or reach a result of your evaluation of Mr. Mahdi?

17 A I did.

18 Q Okay. Would you tell us what your determination was?

19 A My diagnostic impression was antisocial personality
20 disorder with history of -- antisocial personality
21 disorder, a history of alcohol abuse. It was my opinion
22 that he was competent to stand trial. It was my opinion
23 that he did not suffer from a mental disease or defect at
24 the time of the alleged offense that would impair his
25 ability or capacity to know right from wrong or to conform

1 his conduct to the requirements of the law.

2 Q Other than antisocial personality disorder do you
3 believe he was acting under any mental illness at the time
4 he committed the murder in South Carolina?

5 A I did not believe he was suffering from a mental
6 illness at the time of the alleged offenses other than
7 antisocial personality disorder.

8 Q Can you tell us what did he tell you about the murder
9 of Captain Myers, how that came about?

10 A He stated that he had traveled again south and in a
11 car. He had stolen the car at a dealership further north
12 and put different tags on the car and that the gasket of
13 the car broke down in Columbia and he told me he had to
14 steal another car. He stated that he had left the car in
15 a lot after it had broken down.

16 He walked around for a couple of days and then he got
17 an Expedition and he stated he didn't -- he wasn't aware
18 that he had -- that there was an alarm on the car and that
19 he had the owner's wallet and credit cards but that the
20 owner of those credit cards had shut off the cards
21 quickly. He said he had gas for about 16 miles.

22 He then described breaking into the cabin, hiding
23 when he heard someone trying to enter, and he stated after
24 the person entered he, Mr. Mahdi, came up from beneath a
25 table with a .22 pointed. He said the man backed up and

1 he said that the man then reached under his shirt and that
2 he, Mr. Mahdi, shot the man six times.

3 Q Okay. And after he shot Captain Myers did he explain
4 to you what happened then?

5 A He told me that he dragged the body from the porch to
6 the shed. He started a fire with diesel fuel. He left in
7 the victim's truck. He found the man's gold shield and
8 Mini 14 and bulletproof vest in the truck and realized
9 that the man was a police officer. He told me that he
10 then drove to Jacksonville, Florida where he switched
11 plates on the truck and sold two of his guns for money for
12 gasoline and hotel and food.

13 He then told me that he decided to ditch the truck in
14 the wildlife preserve. He killed an alligator and tried
15 to eat it with barbeque sauce and he took only one bite.
16 Then he went to his truck and drove the backroads, not on
17 I95 until he saw a sign for Cocoa Beach.

18 Q Okay. This is a document shows you reviewed and
19 notated some medical records. Do you remember which
20 medical records we're talking about?

21 A I believe that was the Walter P. Carter Center
22 medical records.

23 Q Okay. Is that -- Did you prepare this? Is that your
24 work?

25 A Off the top just looking at the first few pages, no,

1 this is not my work.

2 Q Okay. But you did review and notate the records from
3 the Walter Carter Center? At least that's ---

4 A I did; the ones for 8/23. I don't recall how large a
5 record the hospital record was. They were the records
6 from 8/23/92 to 10/23/92.

7 Q Dr. McKee, did you report your findings to the
8 attorneys who were representing Mr. Mahdi?

9 A I did.

10 MR. MABRY: That's all I have.

11 THE COURT: Ms. Norris.

12 CROSS-EXAMINATION

13 BY MS. NORRIS:

14 Q Good morning Dr. McKee.

15 A Good morning.

16 Q You testified you reviewed Rule Five documents. Is
17 that your entire file there in front of you?

18 A I believe it is.

19 Q Would it be a fair characterization to say that's
20 about a half an inch thick?

21 A I'll make it an inch, I think.

22 Q An inch.

23 A Well --

24 Q That's fine. I am not going to argue with you.

25 A It's certainly less than 2 inches.

1 Q We'll stay it's an inch. And you did review the
2 Walter P. Carter Center; right?

3 A I did.

4 Q And those in themselves are pretty lengthy, another
5 inch or two?

6 A I would say so.

7 Q But you didn't review this young man's school
8 records? Am I correct about that?

9 A I believe I did not.

10 Q You didn't review his ---

11 A I don't recall that I did, no.

12 Q You don't recall? You don't have any note on it?

13 A That's correct.

14 Q Nothing in your time records?

15 A It's not in my time records, no.

16 Q You didn't review his juvenile justice records?

17 A No.

18 Q Didn't review his adult prison record?

19 A No.

20 Q Didn't talk to anybody outside of Mikal Mahdi and
21 those team meetings?

22 A That's correct. I did subsequent, actually walking
23 back from the SMU, talk to Captain Grant and I asked -- I
24 recall asking -- excuse me; Captain Lane; excuse me; Gary
25 Lane -- how was Mr. Mahdi doing there at the SMU? The

1 captain said he was doing fine.

2 Q And when you said you had those team meetings I
3 understand is it fair to characterize it as you're relying
4 on other members in the team for information?

5 A Yes.

6 Q And if one of those team members was a weak link, you
7 had no way to know that?

8 A I am not sure what you mean by the weak link.

9 Q I mean, if one of the other team members had not
10 adequately done their job and gathered the information,
11 there was no way for you to know that?

12 A That is correct. I would not have known that.

13 Q And in terms of you mentioned that you were looking
14 for whatever was relevant to mitigation. Is that a fair
15 characterization?

16 A Yes.

17 Q All right. The testing that you gave, one of them
18 you referred to as a screener?

19 A That's correct.

20 Q What is a screener?

21 A A screener is an abbreviated scale. In this instance
22 the personality assessment screener is derived from the
23 personality assessment inventory and it is those -- it is
24 a briefer scale. Rather than 344 items it has 24 items
25 which have the highest of loading correlations with the

1 various scale scores that are in the personality
2 inventory.

3 Q It is abbreviated.

4 A It's abbreviated.

5 Q So, if you wanted to know everything that there was
6 about a person about their life, you wouldn't just give
7 that test; right?

8 A I might not just give that test.

9 Q And the other tests that you gave were related to
10 whether he was competent to stand trial?

11 A Well, that was part of it. The other part of it was
12 the atypical presentation scale is derived from the
13 evaluation for competency to stand trial revised by
14 Richard Rogers. What this scale does is to assess whether
15 the person that you're testing might be malingering
16 psychotic symptoms such as voices and visual
17 hallucinations, delusions, as well as non-psychotic
18 symptoms such as excessive anxiety or depression -- both
19 of those as relevant to and specific to a court procedures
20 and being in the court.

21 It's a wonderful scale because it has direct
22 relevance to the person's descriptions of how he might act
23 or has acted in court. Mr. Mahdi was not malingering
24 psychotic symptoms. He -- When I interviewed him he
25 stated that he had not ever been hearing voices or seeing

1 things and evidenced no psychotic symptoms during the
2 presentation and as well he on this scale -- on the ATT or
3 atypical presentation scale -- he was not attempting to
4 malingering excessive anxiety or depression.

5 Q And so you had that testing?

6 A Uh-huh.

7 Q And you had the records from and, I guess, 2005,
8 2006. Which one did you test him in?

9 A Oh, when did I test him?

10 Q Uh-huh.

11 A I tested him on January 10 of 2006.

12 Q Okay. Almost 23 years old and then you had his
13 records from his hospitalization when he was at age nine?

14 A Uh-huh.

15 Q Is it fair to say you didn't have any other records
16 before age nine, any after that?

17 A Other than the discovery documents.

18 Q Your testing.

19 A Yea. That's right. No other records. That's not to
20 say I didn't have other information which is what
21 Mr. Mahdi had provided to me.

22 Q I understand. That information and Mr. Mahdi. As an
23 expert in mental health is it fair to say that the more
24 information you have the better evaluation you're going to
25 have in terms of overall assessment?

1 A Assuming adequate reliability and validity of that
2 information I would say yes.

3 Q And, in fact, some mental illnesses, for example,
4 schizophrenia, you can't diagnose it unless you have
5 symptomology, apparent effects over a period of time;
6 correct?

7 A Well, you have to have that symptomology. It has got
8 to last a certain duration --

9 Q That's ---

10 A -- to separate schizophrenia from other kinds of
11 diagnoses.

12 Q So, some things unless you've got at least a
13 six-month period or longer or shorter, some things you
14 can't even accurately diagnose unless you know information
15 over that entire time period?

16 A That's possible. It would depend upon what
17 particular diagnosis or set of diagnoses that you're
18 talking about.

19 Q Just generally, some diagnoses -- schizophrenia,
20 depression. Use those two. You got to have a time
21 period; right?

22 A Possibly. It depends on what kind of depression
23 you're talking about.

24 Q How about major depression with psychotic features?

25 A That is something that could occur and could be a

1 diagnosis that's rendered and it could appear at one point
2 and not another.

3 Q And would it be important if you had records -- if
4 you were diagnosing that to have records from previous in
5 life at different time periods that supported that
6 information?

7 A Yes.

8 Q Thank you, Dr. McKee.

9 REDIRECT EXAMINATION

10 BY MR. MABRY:

11 Q Dr. McKee, would the things that Mr. Mahdi told you
12 about his life history be contained in your notes?

13 A They would.

14 Q Let me show you these. Is that a copy of your notes?

15 A I believe so. These are each of my notes.

16 MR. MABRY: We'd move these into evidence, Your
17 Honor.

18 THE COURT: Any objection other than what's been
19 previously stated by Mr. Lominack?

20 MS. NORRIS: (Shakes head.)

21 THE COURT: And they are subject to the running
22 objection.

23 (WHEREUPON, Defendant's Exhibit No. 9 was marked for
24 identification and received into evidence.)

25 Q Dr. McKee, if you had had Mr. Mahdi's juvenile

1 justice records and his adult prison records and they show
2 repeated disciplinary violations as a juvenile, as an
3 adult in Virginia, and as an adult in South Carolina,
4 would that be consistent or inconsistent with your
5 diagnosis in this case?

6 A It would be consistent with my diagnosis.

7 Q Thank you, sir.

8 THE COURT: Doctor, hindsight is 20/20. Do you think
9 now that you needed additional records to make or prepare
10 your forensic psychological diagnosis in this case or your
11 report in this case?

12 THE WITNESS: No.

13 THE COURT: Thank you. You may step down. May he be
14 released from his subpoena?

15 MR. MABRY: Yes, sir.

16 THE COURT: Let's take a quick morning bathroom
17 Co-cola break. We'll start back in about ten minutes.

18 (Whereupon, a break was taken.)

19 PAIGE M. HAAS, after being duly sworn, testified
20 as follows:

21 DIRECT EXAMINATION

22 BY MR. MABRY:

23 Q I did not state your name correctly.

24 A Thank you. My husband wouldn't ---

25 Q He wouldn't like that?

1 A No.

2 Q Give us your full name.

3 A Page Munn Haas.

4 Q Okay. And you were formerly Paige Munn Tarr; is that
5 right?

6 A Yes.

7 Q When you worked on this case?

8 A Yes.

9 Q Tell the Judge what your -- what you did in this
10 case, what was your position?

11 A Mitigation specialist or mitigation investigator.

12 Q Okay. You might have to speak up just a little bit
13 so the court reporter can hear you.

14 A Sorry.

15 Q And do you remember approximately how many hours you
16 worked on this case?

17 A I don't know.

18 (WHEREUPON, Defendant's Exhibit No. 10 was marked for
19 identification only.)

20 Q Paige, how did you first get involved in this case?
21 Who contacted you? Do you remember?

22 A I believe it was Carl Grant or Carl Grant's office.

23 Q And had you served as a mitigation investigator or
24 specialist on previous capital cases?

25 A I had.

1 Q All right. How many do you think you've worked on?

2 A Since the end of 1994 until 2006 was about the last
3 cases I did. I don't know. Both in state and federal
4 court?

5 Q Yea. Just give me an approximate number.

6 A Thirty or forty.

7 Q Okay. And I want to show you Defendant's Exhibit 10.
8 Is this a letter you wrote to Mr. Walters in the case on
9 November 6 of 2006?

10 A Yes, it is.

11 Q All right. And in that letter what does that letter
12 indicate how many hours you had spent on the case at that
13 point in time?

14 A It said approximately 170 hours thus far.

15 THE COURT: 170 or 107?

16 THE WITNESS: 170.

17 Q And did it indicate that you anticipated doing more
18 work?

19 A It said, yes, to get ready for trial is what the
20 letter states.

21 Q And how many hours did you anticipate having to work
22 getting ready for trial?

23 A An additional 75.

24 MR. MABRY: Okay. We'd move that into evidence at
25 this time, Your Honor.

1 THE COURT: Any objection?

2 MS. NORRIS: No, sir.

3 (WHEREUPON, Defendant's Exhibit No. 10 was admitted
4 into evidence.)

5 Q If you would describe for the Judge the first thing
6 that you did in the case and any difficulties that were
7 involved in this case.

8 A According to this -- I don't know if this is the
9 first time sheet that I did. It looks like I interviewed
10 the client at Kirkland Correctional.

11 Q Okay. And what was the reason for doing that?

12 A Typically in these cases we spend a lot of time
13 trying to get to know the client. We usually try to let
14 the jury know, you know, who the client is or was.

15 Q And are you getting background information, that kind
16 of thing?

17 A Correct.

18 Q Who his family is?

19 A Right.

20 Q Where was Mr. Mahdi's family located as you recall?

21 A A good number in Lawrenceville, Virginia, some in
22 Baltimore, and his father in Philadelphia and then a few
23 in Richmond, Virginia.

24 Q Did you do any work in obtaining records on behalf of
25 the defense team -- Mr. Mahdi's school records?

1 A Yea. I remember sending off requests to different
2 schools, different hospitals.

3 Q All right.

4 A I am trying to look and see if I can remember.

5 Q Would you have requested records from -- Was it your
6 common practice to request records from any school that he
7 informed you that he went to?

8 A Correct.

9 Q Or his family told you he went to?

10 A Right.

11 Q And would you have also requested any psychiatric
12 records?

13 A Yes.

14 (WHEREUPON, Defendant's Exhibit No. 11 was marked for
15 identification only.)

16 Q I show you what's been marked Defendant's Exhibit
17 11 -- and I move in without objection. Can you tell us
18 what that is?

19 A That's a psychiatric chronology.

20 (WHEREUPON, Defendant's Exhibit No. 11 was admitted
21 into evidence.)

22 Q Did you prepare that? That's my question.

23 A Yes. Yes, I did.

24 Q Okay. And is this a summary that you prepared for
25 the attorneys or the other people on the team?

1 A Right.

2 Q From Walter Carter Center?

3 A Right.

4 Q Did you actually go and try to locate the family
5 members before anybody else talked to them?

6 A I did go speak to family members. I think as far as
7 South Carolina people were concerned?

8 Q No. I'm talking about family members. Did you go to
9 Richmond?

10 A I did.

11 Q Did you go one time by yourself?

12 A I did go once by myself through Virginia and to
13 Baltimore and then to Philadelphia and then I returned
14 with a social work expert.

15 Q All right. So, do you remember approximately when
16 it was the first time you went up, if you remember?

17 A I know we went one time in March.

18 Q Okay. And who did you con -- Do you remember who all
19 you contacted or who were you looking for when you went up
20 the first time?

21 A Grandmother, aunts, and uncles. That was the main
22 focus of that trip.

23 Q What about the mother? Were you looking for her at
24 that time, too, or was that later?

25 A Yea. I would have gone to -- We went to Richmond,

1 Virginia, to try to speak to the mother or I went one time
2 and then I went back again.

3 Q Okay. So, there was one trip by yourself?

4 A Right.

5 Q The second trip who went with you?

6 A Marjorie Hammock.

7 Q Okay. And can you tell me who you spoke to when you
8 went up the second time?

9 A Nancy Burwell and Nathaniel Burwell ---

10 Q I'm sorry. You're going to have to speak up.

11 A I'm sorry. Nancy Burwell, Nathaniel Burwell.

12 Q Nancy is the grandmother?

13 A Right.

14 Q Nathaniel Burwell. That's Nathan?

15 A Yes.

16 Q Who is Ms. Pearson?

17 A I don't recall. I'm thinking it was a teacher.

18 Q Okay. And then you went to Richmond and who did you
19 interview there?

20 A Well, I ended up speaking by phone to Vera Mahdi.

21 Q Tell the Judge what happened when when you went to
22 see Mrs. Mahdi at her home.

23 A I don't remember. I know this happened in the second
24 time. The first time I was supposed to be able to talk to
25 her and was unable to because she wouldn't come out of her

1 house. The second time she had agreed to see us but when
2 we got there she said that she was sorry but she had to
3 wash her hair and would not be able to come outside or
4 talk to us -- did speak by phone like from the inside of
5 the house to us like on the speaker phone on the
6 cellphone. So, we did talk to her by phone outside of her
7 house -- you know, her inside of her house and us outside
8 of the house.

9 Q Okay. And who is Corliss Artis and Sophie Gee?

10 A I'm thinking those are maternal aunts.

11 Q Okay. Were you able to meet with them and talk to
12 them?

13 A I don't recall if -- I do have it here. I mean, I am
14 assuming I did.

15 Q This is your bill for services?

16 A Right.

17 Q Let me have that. We'll mark it.

18 (WHEREUPON, Defendant's Exhibit No. 12 was marked for
19 identification and received into evidence.)

20 Q Did you after that I guess you came back to Columbia
21 from Richmond?

22 A I assume so.

23 Q Okay. And then did you take a trip to Philadelphia
24 Pennsylvania?

25 A I did.

1 Q And what was your purpose in going to Philadelphia?

2 A To try and locate and speak with his father.

3 Q All right. Were you able to locate and speak with
4 his father?

5 A I was.

6 Q And did you also go to Baltimore?

7 A I did.

8 Q And who did you interview in Baltimore?

9 A The aunt and uncle -- Carson and Lawanda Burwell.

10 Q Okay. Did you also interview Kathy Burwell?

11 A Right.

12 Q And that's -- Is that another aunt?

13 A It is.

14 Q In July did you travel to -- Well, I don't know if
15 you -- Did you talk with the North Carolina attorneys and
16 their mitigation investigator?

17 A I did.

18 Q That's Mark Rabil and Janet Holahan?

19 A Yes.

20 Q What had they done? Had they done some work as well
21 on the case?

22 A They had.

23 Q Who had they talked to? Do you know?

24 A I don't remember every single person. I know they
25 spent a good bit of time with the family already.

1 Q Did you try to speak with the brother -- Mr. Mahdi's
2 brother Saleem?

3 A I did. I was not the person making like the military
4 request personally. I just was -- you know, if we were
5 able to obtain time with him, I would have wanted to --
6 definitely wanted to.

7 Q But were you able to talk to him?

8 A I did not.

9 Q Now, you interviewed Mr. Mahdi. Is this a copy -- on
10 December 22, 2005, is this a copy of your interview notes
11 with Mr. Mahdi?

12 A Yes. It looks like my notes.

13 Q Ms. Hammock would have been present as well?

14 A Yes, that's what it says.

15 Q I wanted to direct your attention down to the fifth
16 paragraph. Did Mr. Mahdi tell you that he does not
17 consider himself a religious person. His parents are both
18 Moslem. They took him to mosque, but he never bought into
19 any of that or any of it. He is someone who must see
20 something to believe in it.

21 A Yes.

22 Q Is that correct?

23 A That's what I have here.

24 Q And going down to the last paragraph did Mr. Mahdi
25 tell you that he first got into trouble at 14. He was

1 picked up from breaking and entering of houses and stores.
2 He says he was never convicted but the Judge still had the
3 discretion to send him to juvenile detention. He was
4 released in the spring of 1999 at 16 to go live with his
5 father. He also spent some time living with his mother at
6 this point as well. Is that correct?

7 A That's what it says here.

8 Q And the next page did Mr. Mahdi also tell you he had
9 worked some different jobs during this period including
10 framing, roofing, auto-detailing, fast food?

11 A Yes.

12 Q And he also did some petty drug dealing and breaking
13 and entering during that this time.

14 A That's what it has here.

15 Q And did he also tell you he stayed out of trouble for
16 two years before he was charged with and subsequently
17 plead guilty to malicious wounding ABHAN in Virginia?

18 A That's what I stated here on this.

19 Q Okay. The next paragraph did Mr. Mahdi tell you he
20 was rarely taken to the doctor as a child. He received
21 his shots from the Health Department. He believes he was
22 taken to the hospital only for major accidents. He once
23 broke his leg doing tricks on his bicycle and was taken to
24 the ER in Emporia, Virginia, and spent the summer on
25 crutches and he also broke his arm when he fell off the

1 monkey bars while playing chicken. He is unsure when he
2 received treatment following this incident. Do you
3 remember him telling you that?

4 A I don't recall that conversation, but...

5 Q You took it down?

6 A Yes.

7 Q Okay. Now, you interviewed his father?

8 A I did.

9 Q And were you impressed with his father or did you
10 think he would be a favorable witness for Mr. Mahdi?

11 A I just -- I don't know what kind of witness he would
12 have been for Mr. Mahdi. I just -- all I know was trying
13 to get any kind of information being the person that
14 helped raise him. You know, it was not the main focus,
15 but we did spend a lot of time with him talking a lot
16 about his beliefs -- personal beliefs.

17 Q Okay. And did you also write up your notes talking
18 with uncle -- his Uncle Carson Burwell in Baltimore?

19 A Yes.

20 Q I ask you to turn over to the second -- is that your
21 summary of your interview --

22 A It is.

23 Q -- with Carson? If you'll go to the second page,
24 the fourth paragraph. If you would just kind of read that
25 paragraph for the court, what did Mr. Mahdi -- What did

1 Mr. Carson Burwell tell you occurred when Mr. Mahdi was
2 with him?

3 A Are you saying start with after Lawanda?

4 Q Yea, after Lawanda.

5 A He runs off. They do not realize that he has gone
6 off to call 9-1-1 and inform the police that he had just
7 been beaten. He also takes soot from the fireplace and
8 ketchup to enhance his appearance for when the police
9 arrive. The police get there -- get there and Lawanda and
10 Carson explain the situation. The police are about to
11 leave when Mikal asks one guy for his gun. The policeman
12 asks why and he says because he is just going to go on
13 kill himself if they're going to just leave him there at
14 that house.

15 Carson still laughs about this today because he feels
16 Mikal was just being manipulative and really wasn't
17 struggling. Carson and Lawanda tell the officer to ignore
18 him; he says he is going to kill himself all the time.
19 This is what leads them to take Mikal to the Carter
20 Center.

21 Q So, Carson informed you that Mikal was being
22 manipulative in this incident?

23 A That was his impression.

24 Q Okay. And did Carson also tell you that he and
25 Lawanda thought that the psychiatrist treating Mikal was

1 the Carter Center was completely insane herself?

2 A That's what I reported here.

3 Q And they didn't agree with her on her treatment ideas
4 and giving Mikal drugs and those kind of things?

5 A Apparently that's what they thought.

6 Q Were you ever able to speak with the mother actually
7 in person?

8 A I don't think so.

9 Q You were never able to speak to the brother Saleem?

10 A No.

11 Q And after you did these interviews did you relay what
12 you found, what you discovered to the trial attorneys in
13 the case? Did you provide them these summaries and
14 discuss with them, you know, what you ---

15 A I provided summaries and, yea, relayed back to them
16 the information, you know, collected.

17 Q I have one other question. I'm sorry. Let me show
18 you this document. It's Defendant's Exhibit 7. It's
19 paragraph two.

20 THE COURT: Seven is what?

21 Q That is the summary of the team meeting of March 19,
22 2006. Do you remember speaking with Ms. Holahan? I think
23 it's Holahan -- from North Carolina? About her interview
24 with Carson?

25 A I remember speaking to her a number of times.

1 Q Do you remember relaying this information in
2 paragraph two at the team meeting?

3 A I do not remember doing it. If that's what it
4 says --

5 Q Okay.

6 A -- I guess that's ---

7 Q You just don't remember?

8 A No.

9 Q You don't actually remember doing it?

10 A No, I don't remember that.

11 Q If you found out information from Ms. Holahan and
12 dealing with one of the potential witnesses in the case
13 like an aunt or uncle would you have relayed that at a
14 team meeting whether it's something good about the witness
15 or something bad about the witness?

16 A Yes, I would have relayed it.

17 Q Okay. That's all I have, Your Honor.

18 THE COURT: Ms. Norris?

19 CROSS-EXAMINATION

20 BY MS. NORRIS:

21 Q Good morning, Mrs. Haas. Is it my understanding that
22 Carl Grant hired you in the case?

23 A I believe so.

24 Q And then once he got off the case which trial
25 attorney were you directly responding to if there was a

1 distinction?

2 A To Glenn.

3 Q Glenn Walters?

4 A Yes.

5 Q And I think Mr. Mabry hit the point of who you
6 interviewed. Nancy Burwell. You recall her, the
7 grandmother?

8 A Right.

9 Q Was she someone who you felt would be a good witness
10 for Mikal Mahdi?

11 A Yea, potentially, yes.

12 Q And did she, in fact, attend the sentencing hearing?

13 A She did.

14 Q And Uncle Nathan that lived with her, was he helpful
15 at all?

16 A I didn't feel so but...

17 Q And Carson Burwell that we've got your memo in there,
18 Carson wasn't hostile to Mikal at all, was he?

19 A No, he wasn't hostile.

20 Q So even if he used the word demon to describe Mikal
21 when he was an 8- to 10-year-old, that didn't mean that he
22 wasn't going to help in any way?

23 A Right. He had a lot of other information.

24 Q Pretty good information, didn't he?

25 A Correct.

1 Q And Lawanda Burwell -- was she cooperative with you
2 in your interview?

3 A Yes.

4 Q Nothing about her that said she hated Mikal and
5 wanted nothing to do with him?

6 A No.

7 Q And you also listed Vera Mahdi and I understand you
8 couldn't talk to her?

9 A Right.

10 Q Corliss Artis. Do you remember her at all?

11 A I don't.

12 Q Do you remember Sophia Gee at all?

13 A I just remember those names, but I don't remember
14 them.

15 Q Do you recall whether you've met with them
16 individually or did you meet with all of those folks in
17 Richmond there -- Vera, Corliss, and Sophia together?

18 A Well, I know I didn't meet with them together because
19 the mother never came out of her house. So...

20 Q So Vera wasn't there, but can you say one way or the
21 other whether you saw ---

22 A I just don't...

23 Q And in Philadelphia you saw Shareef and you saw Kathy
24 Burwell. Did you ever talk to Rose Gupton?

25 A I do not think so.

1 Q Do you have any idea who she is?

2 A No.

3 Q How about Myra Harris?

4 A I don't recall that name.

5 Q No idea who she is?

6 A No.

7 Q Carol Wilson?

8 A I might have known these names at the time, but, no,
9 right now I have no idea.

10 Q Sharon Pond?

11 A No.

12 Q Billy Smith?

13 A No.

14 Q Dora Wynn?

15 A No.

16 Q Sandra Wynn Burwell?

17 A The name is familiar because of the Burwell but I
18 don't -- couldn't tell you.

19 Q Sheriff James Woodley?

20 A I don't recall, but I don't think I am going to
21 recall.

22 Q Mayor Douglas Pond?

23 A No.

24 Q It understand. It's been a long time, but you don't
25 recall. Do you have any file now whatsoever?

1 A No.

2 Q Were you -- When you obtained records and I see from
3 your time sheets and we've seen the Walter P. Carter
4 Center records -- when you obtained these records did you
5 give them to the trial attorneys?

6 A I assume so. That was what I normally do.

7 Q And it was the trial attorneys' responsibility as far
8 as you -- as far as you knew of whether those records went
9 from the trial attorneys to the psychiatrist?

10 A Right.

11 Q To the psychologist, to the social worker?

12 A Right.

13 Q And if the social worker testified during the
14 trial -- and the trial record will reflect this -- that
15 she only saw a summary of school records, would that
16 surprise you at all?

17 A No.

18 Q In your experience do you generally want a social
19 worker looking at somebody's summary or do you want them
20 to have the entire record?

21 A I would want them to have whatever documents are, you
22 know, in existence or in my...

23 Q And -- in general, in capital litigation from a
24 defense presenting a case for life --

25 A Right.

1 Q -- is it true that every single paper you can find
2 about your client, about your client's life, all of that
3 information you want to go to your experts?

4 A Yes.

5 Q And do you have any personal knowledge whatsoever of
6 whether that happened in this case?

7 A I don't -- yea, I don't know honestly.

8 Q In general, interacting with the team from your
9 observation what was the attitude, if you will, of the
10 trial lawyers about mitigation and what you were doing --
11 trial lawyers being Glenn Walters and Josh Koger?

12 A I mean, it's a fairly typical thing that the trial
13 lawyers are going to be concerned with the first phase
14 because for one thing it comes first. So, it's also
15 not -- Mitigation is not something I think everybody does
16 on a daily basis practicing law. So, I do feel like it
17 was not the main thing that everyone was focused on.

18 Q Did you feel like you were hired because they thought
19 it was really important to do that or because somebody
20 told them they had to have somebody like you?

21 A I feel like that it was important to have somebody
22 with my type -- you know, under the category of mitigation
23 investigator specialist, something in that range.

24 Q Now, Mr. Mahdi plead guilty after jury selection or
25 during jury selection. Did you have anything at all to do

1 with the discussions with him, the decision?

2 A No, I did not.

3 Q Did it surprise you that that happened?

4 A It did surprise me.

5 Q Why?

6 A Because I just didn't know anything about it and I
7 just remember coming to court and finding out that was
8 going to occur.

9 Q And during the sentencing hearing and the record will
10 reflect that the two defense witnesses were Marjorie
11 Hammock, social worker, and James Aiken, a prison
12 expert -- corrections expert, if you will. Did you think
13 that it was important for Mikal Mahdi -- for any guy
14 facing the death penalty to have live witnesses, people
15 that cared about him there?

16 A I personally always would like real -- just people to
17 testify and not have a bunch of experts, but it just -- I
18 mean, it depends on the case.

19 Q Do you -- Were you present during the sentencing
20 phase when those witnesses testified?

21 A I would assume so. I usually always would be present
22 during the mitigation phase unless I needed to be out of
23 the courtroom preparing somebody -- you know, another
24 witness or looking for somebody.

25 Q So, you assume you were. As a normal course you were

1 there?

2 A Yes.

3 Q Do you have any recollection at all of Ms. Hammock's
4 testimony?

5 A I don't.

6 Q Now, there's been reference to Mr. Mahdi's North
7 Carolina team. What was -- Well, early on you said that
8 you had talked to Ms. Holahan and those folks --

9 A Right.

10 Q -- a number of times? Were you working with them,
11 working together initially --

12 A Yes.

13 Q -- when Carl Grant was on the case?

14 A Yes.

15 Q Did that continue when Carl Grant was off the case
16 and Mr. Walters was lead counsel?

17 A It didn't seem that way.

18 Q And were you, in fact, instructed not to assist, not
19 to work with the North Carolina team?

20 A I don't remember being told not to. I just remember
21 feeling that way. I can't tell you why I felt that way,
22 what changed my opinion because I, you know, don't have
23 any independent recollection of being told not to but...

24 Q You felt you shouldn't cooperate or you felt like
25 that was what the attorneys wanted?

1 A I felt that -- You know, I felt like ---

2 MR. MABRY: I am going to object. That's ---

3 THE COURT: Unless she knows, but we've been sitting
4 up here talking about her feelings?

5 THE WITNESS: Yea.

6 THE COURT: That's not -- If she's got something
7 concrete let her testify about it, but I am not here to
8 listen to her feelings. If she has an independent
9 specific recollection --

10 Q Do you have ---

11 THE COURT: -- but I feel like this and I feel like
12 that, that's not proper.

13 MS. NORRIS: I understand, Judge.

14 Do you have a specific recollection of one of the
15 trial attorneys telling you not to cooperate with the
16 North Carolina team?

17 THE WITNESS: I don't have -- I do not have an
18 independent specific recollection of that being said.

19 Q Mrs. Haas, understanding that you don't have a file
20 now would you have turned over your entire file to the
21 trial attorneys?

22 A That would be what I would normally, yes, do.

23 Q Thank you.

24 THE COURT: Mr. Mabry, redirect.

25 MR. MABRY: Yes, sir.

REDIRECT EXAMINATION

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BY MR. MABRY:

Q Mrs. Haas, you testified that you were involved in a lot of these death penalty cases but this one was a little different. You weren't actually asked to be in involved in the trial preparation of the witnesses, were you?

A No, not -- I mean, other than the social worker.

THE COURT: All right. Have a seat, Mr. Grant.

Q You're going to have to speak up.

A Okay. Sorry.

Q It's hard for us to hear you.

A Yea.

Q Mr. Grant -- I mean Mr. Walters and Mr. Koger didn't ask you to be involved in the trial preparation in deciding who the witnesses were that were going to be called; is that correct?

A I remember sitting at a table at a discussion in Saint -- I guess we were in Calhoun County at the time.

Q Uh-huh.

A But I don't recall -- I remember being told who was going to testify.

Q Okay. You were told who was going to testify. And in other cases you were actually involved in participating in the decision on who was going to be called?

A Right.

1 Q In this case you were more of a conduit. You
2 gathered the information and you provided it to the
3 lawyers?

4 A Right.

5 Q Okay. Did you request his DJJ records from Virginia
6 and get those?

7 A I remember receiving two large packets of information
8 from whatever they call their juvenile.

9 Q DJJ? And would you have provided those to trial
10 counsel?

11 A Yes, I normally would. I don't remember
12 independently driving them over there --

13 Q Right.

14 A -- and making copies, but, yes, I would've.

15 Q And did you also get his adult records from Virginia
16 prison?

17 A I don't remember receiving them, but I remember
18 requesting them.

19 Q Okay. And would you have gotten his records from the
20 South Carolina Department of Corrections?

21 A I remember having them. I don't know if I was the
22 one who requested them.

23 Q Okay. Did you also go to the schools that he went
24 to?

25 A I did.

1 Q And did you talk with people there at the schools?

2 A I spoke to individuals at the elementary school in
3 Lawrenceville.

4 Q Do you remember how many people?

5 A No.

6 Q Who it was?

7 A Some nice teachers that remember him, not necessarily
8 people that spent lots and lots of time with him while he
9 was there --

10 Q Right.

11 A -- but were familiar with him.

12 Q Did you go to any other schools besides the ones in
13 Lawrenceville?

14 A I remember speaking with individuals from a school in
15 Baltimore, but I don't remember ---

16 Q Totaro?

17 A That sounds familiar.

18 Q You did speak with the people at Baltimore school?

19 A I spoke by phone.

20 Q And when you -- I guess when you spoke to them you
21 were taking down their names and contact information in
22 case they were favorable witnesses?

23 A Right.

24 Q Did you -- if you had done a summary for Ms. Hammock
25 of his school records --

1 A Yes.

2 Q -- would you have put in all of the pertinent
3 information that you thought was helpful to Mr. Mahdi?

4 A Yes.

5 Q And have you done summaries for experts in previous
6 cases?

7 A Yes, almost all of the cases.

8 Q I'm sorry?

9 A Yes, almost all of the cases I would have worked on.

10 Q That's all I have.

11 THE COURT: All right. You may step down. Thank
12 you. May she be excused from her subpoena?

13 MR. MABRY: Yes, sir.

14 THE COURT: All right. You're free to leave, ma'am.
15 Next witness.

16 MR. MABRY: Mr. Grant.

17 CARL B. GRANT, after being duly sworn, testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. MABRY:

21 Q Tell us your name, please.

22 A Carl B Grant, sir.

23 Q And Mr. Grant, where are you employed? What is your
24 profession?

25 A I am a lawyer and I am employed with the Law Firm of

1 Carl B. Grant.

2 Q How long have you been practicing law?

3 A This is now my 26th year.

4 Q And prior to this case had you ever been involved in
5 a death penalty case before?

6 A I was thinking about that and I was trying to
7 remember. Oh, of course I have. Yes, I have been
8 involved in a death penalty case before this one, yes.

9 Q Which case was that?

10 A I certainly remember State versus Maurice Dooley.
11 Others I don't know whether they before this or not.

12 Q How many have you been involved in in all, do you
13 think?

14 A I think approximately five including this one.

15 Q And do you remember when you were initially appointed
16 on this case?

17 A Yes, sir. I was appointed December 13, 2004
18 according to my notes.

19 Q And who was appointed with you on this case?

20 A Mr. Walters. Glenn Walters.

21 Q At the same time?

22 A I don't think it was at the same time.

23 Q Pretty close?

24 A I think so.

25 Q And did you immediately begin your investigation,

1 file review?

2 A Well, yes. When you say immediately --

3 Q Right?

4 A Relatively so. Obviously, once we started getting
5 the information, yes.

6 Q And at some point did you put together a death
7 penalty team or defense team?

8 A Yes, sir, I did.

9 Q Okay. If you would tell the court who were the
10 people on that team.

11 A Okay. Ms.~Tarr -- I think that was Paige that just
12 left the witness stand. She was our mitigation
13 specialist.

14 Q Why did you retain her?

15 A I don't remember when she was retained.

16 Q I mean why did you retain her?

17 A Oh, did you say why?

18 Q Was she recommended?

19 A She was recommended to me by a colleague of mine who
20 I have much respect for, attorney Jeff Bloom. In fact
21 most if not all the experts came from the recommendations
22 of Jeff Bloom.

23 Q All right. And who else did you have besides
24 Ms.~Tarr?

25 A Don Girndt who I believe was a retired SLED agent as

1 a crime scene investigator.

2 Q Uh-huh.

3 A Marjorie Hammock who is a licensed social worker,
4 Dr. Geoffrey McKee who is a psychologist, clinical
5 psychologist, and Dr. Thomas Martin, a forensic
6 psychiatrist and private investigator James Gordon.

7 Q Okay. And what were Dr. Martin and Dr. McKee to do?
8 What was their role in the case?

9 A Well, yes, sir, Dr. Martin was to evaluate Mr. Mahdi
10 to determine whether or not we would have any basis to
11 stand upon an insanity defense. Dr. McKee as the clinical
12 or forensic -- well, clinical psychologist, he would do
13 various testing on Dr. -- excuse me; Mr. Mahdi.

14 Q Would Mr. Martin also be looking for any kind of
15 mitigation, mental health mitigation that you could find?

16 A He would.

17 Q And did you provide to him the records you believed
18 they needed for them to make their evaluations of
19 Mr. Mahdi?

20 A Yes, sir. I remember -- after reviewing my notes --
21 the pertinent notes that you were kind enough to provide
22 me -- I remember in a letter I wrote to each expert giving
23 them everything that I thought they needed to perform
24 their professional obligations of the case and I asked
25 them if they needed anything else to please let me know.

1 Q Okay. Did -- Can you tell us before you left the
2 case did they report back to you what their findings were?

3 A I believe they did.

4 Q What ---

5 A Well, I know what their findings certainly were not.

6 Q Okay.

7 A That is there was not any basis for an insanity
8 defense under McNaughton.

9 Q Okay. Was there anything that you could use in
10 mitigation in the penalty phase?

11 A Again, nothing that I can remember that could have
12 been used in the penalty phase. In fact, if I remember
13 correctly the things that were presented by Dr. McKee some
14 of it actually could have been irritating as far as
15 personality and things that would indicate that maybe we
16 were dealing with someone who -- in other words, not
17 somebody who would be painted in a good light in front of
18 a jury.

19 Q All right. And did you rely on those experts as far
20 as Mr. Mahdi's psychological makeup?

21 A Yes, sir. These experts were -- They are well known
22 by the bench and bar of South Carolina, well respected,
23 with a vast amount of experience often used by veteran
24 criminal defense attorneys in these types of cases. So,
25 absolutely.

1 Q Did you have any trouble communicating with
2 Mr. Mahdi?

3 A I did not.

4 Q And did he strike you as being intelligent, not
5 intelligent?

6 A He struck me as -- his cognitive ability, I didn't
7 see my difficulty with that. His ability to understand
8 the terms and concepts that I was using in discussing his
9 case, I don't remember any difficulties with that. In
10 fact, I remember that he impressed me as having I would
11 say comparatively speaking a fairly extensive vocabulary.
12 He often spoke as though he was someone who had more
13 education than I thought he had.

14 Q Did you remember him -- talking to him about the
15 events of this case, how he came, why he left Virginia,
16 how he got to South Carolina, if you recall?

17 A A lot of this stuff is real vague to me.

18 Q Okay.

19 A Of course, it's been many years and this entire
20 incident makes me reflect upon why I had to get out of
21 this case, but if I remember correctly he was coming from
22 Virginia because he was running from an incident that
23 occurred there where he was involved in supposedly in
24 somebody being killed or stabbed and that's what brought
25 him to North Carolina and then the North Carolina incident

1 brought him to South Carolina and it was like a domino
2 effect.

3 Q Okay. What was the problem that you were going to
4 have to deal with in this case from North Carolina?

5 A The fact that a person was shot and killed in North
6 Carolina. Again, if I remember correctly, it was a
7 convenience store and essentially it was like an
8 execution-style murder where the convenience store owner
9 or clerk was essentially still reaching up and then he was
10 pretty much shot several times. Again, that's just the
11 best of my recollection, yes, sir.

12 Q Okay. And as part of your investigation did you
13 obtain his juvenile records from Virginia and his records
14 from the Department of Corrections in Virginia?

15 A These were all the tasks that were delegated to
16 Ms.~Tarr --

17 Q Right.

18 A -- and also to Ms. Hammock -- again, trusted
19 professionals who normally are very competent in that
20 responsibility and, yes, they did get what I thought was
21 everything that we felt we we needed at the time.

22 Q Do you remember Mr. Mahdi having a good or bad record
23 in prison in Virginia?

24 A I don't really remember.

25 Q What about in South Carolina in prison?

1 A Again, I don't remember.

2 Q Okay. And did Ms. Tarr and Ms. Hammock to your
3 knowledge go out and investigate the mitigation part of
4 the case -- who from the family or friends could come
5 speak on Mr. Mahdi's behalf?

6 A Yes, sir, they did.

7 Q And did you ever talk to any of those family members
8 yourself?

9 A I may have, but if I did I don't have a specific
10 recollection as to what they may have told me. I normally
11 would want to speak to those people myself, and, again, if
12 I remember the way we kind of had the team set up at the
13 time normally as the lead counsel in these type of cases I
14 try to focus on guilt and innocence and the case in chief
15 and I would have the co-counsel primarily focus on the
16 mitigation stage of it, but regardless I try my best to
17 make sure that I speak to the pertinent witnesses when
18 there is an opportunity to do so.

19 Q All right. Why is it you split up the guilt and the
20 penalty phase between the two attorneys? Is there a
21 reason?

22 A Yes, sir. The death penalty case is a lot of work
23 and if one lawyer tries to do it all it becomes
24 overbearing. So to divide the work load in that way makes
25 it a whole lot easier for the case to be presented.

1 Q Okay. Did -- so you -- Mr. Walters was more
2 responsible for the penalty phase preparation?

3 A Well, we were co-counsel, but, again, that's the best
4 of my recollection as to how we had it set up.

5 Q Did you receive reports back from Ms.~Tarr and
6 Ms. Hammock about the progress and investigation?

7 A I'm sure that I did, but I have no recollection as to
8 what the substance of those reports were.

9 (WHEREUPON, Defendant's Exhibit Nos. 13 & 14 were
10 marked for identification only.)

11 Q I am going to show you Defendant's Exhibit 13 and 14.
12 THE COURT: Any objection?

13 MS. NORRIS: No, sir.

14 (WHEREUPON, Defendant's Exhibit Nos. 13 & 14 were
15 admitted into evidence.)

16 Q Are these letters that you wrote to Dr. McKee and
17 Dr. Martin that you referred to earlier?

18 A Yes, sir.

19 Q Did you also have team meetings with these experts --

20 A Yes, sir.

21 Q -- where everybody was present --

22 A Yes, sir.

23 Q -- Ms. Hammock, Ms.~Tarr, the experts, Mr. Girndt?

24 A And Mr. Walters.

25 Q And Mr. Walters.

1 A Yes, sir.

2 Q Would everyone talk about, basically, what they had
3 found out?

4 A Absolutely.

5 (WHEREUPON, Defendant's Exhibit No. 15 was marked for
6 identification only.)

7 Q I show you Defendant's Exhibit 15, Mr. Grant. Is
8 this a copy of your invoice for the work you did on this
9 case?

10 A Yes, sir. It appears to be.

11 Q Okay. Does that set forth in there the various
12 things you did while you were working on the case?

13 A Yes, sir, it does.

14 (WHEREUPON, Defendant's Exhibit No. 16 was marked for
15 identification only.)

16 Q I show you Defendant's Exhibit 16.

17 I guess I need to move 15 into evidence without
18 objection.

19 THE COURT: Thank you.

20 (WHEREUPON, Defendant's Exhibit No. 15 was admitted
21 into evidence.)

22 Q This is Defendant's Exhibit 16 I believe without
23 objection.

24 MS. NORRIS: No objection.

25

1 (WHEREUPON, Defendant's Exhibit No. 16 was admitted
2 into evidence.)

3 Q Can you tell us what this -- what you're looking at
4 there?

5 A Defendant's Exhibit 16 is a motion for a continuance
6 of the trial.

7 Q Okay. Do you remember the purpose of that motion for
8 continuance?

9 A To the best of my recollection I think we filed this
10 motion after we visited the lawyers in North Carolina who
11 were working on the case there and once we got to North
12 Carolina and met with them we discovered that there was
13 going to be a whole lot more information that we would
14 need in order to adequately present Mahdi's case on the
15 case in South Carolina and the time was getting short.
16 The trial date was coming up and we felt we needed more
17 time to get the information and that's why we filed the
18 motion.

19 Q And that information was his background, family, the
20 mitigation part of the case?

21 A Yes, sir.

22 (WHEREUPON, Defendant's Exhibit No. 17 was marked for
23 identification only.)

24 Q And Defendant's Exhibit 17 without objection -- is
25 this the order of Judge Newman granting the continuance

1 that you requested?

2 A Yes, it is.

3 (WHEREUPON, Defendant's Exhibit No. 17 was admitted
4 into evidence.)

5 Q The case was originally going to trial in January of
6 2006 and y'all asked for, basically, a year -- close to a
7 year to do a thorough mitigation investigation?

8 A Yes, sir. That sounds right.

9 Q And he granted a continuance until November, I
10 believe, of 2006?

11 A Yes, sir.

12 Q And you were involved in a motorcycle accident. When
13 was that?

14 A June 4, 2006.

15 Q Do you remember when you were formally relieved?

16 A My friend and colleague Dick Harpootlian filed a
17 motion for me to be relieved from the case. I saw the
18 motion in the materials you provided me, but I don't know
19 when that was.

20 Q Okay.

21 A But, obviously, after June 4, 2006 I never reentered
22 the case.

23 Q Glenn was will the case from the beginning, though,
24 with you?

25 A Yes.

1 Q All right. That's all I have. Thank you, sir.

2 THE COURT: Cross.

3 CROSS-EXAMINATION

4 BY MS. NORRIS:

5 Q Good morning, Mr. Grant.

6 A Good morning.

7 Q Do you remember Katherine Hudgens being involved in
8 this case?

9 A I do not. Not specifically, I do not.

10 Q All right. And you don't recall specifically when
11 Mr. Walters was appointed, I assume?

12 A No, I don't.

13 Q You said that you had been in approximately five
14 capital cases. Tell me your client's names.

15 A Okay. State versus Hastings Wise. This is a capital
16 case that turned into a plea. State versus Alfred Walker.
17 State versus Maurice Dooley.

18 THE COURT: Where was Dooley from?

19 THE WITNESS: Orangeburg.

20 THE COURT: Didn't you have one in Barnwell?

21 THE WITNESS: Yes, sir.

22 THE COURT: Sonic?

23 THE WITNESS: That was Alfred Walker, yes, sir. And
24 another guy -- a capital case that turned into a plea out
25 of Bishop -- well, Darlington county -- whose name I can't

1 remember, but it turned into a plea. He plead and got
2 life. I think Mr. Walters and I were on that one
3 together, too, and I might be mistaken about that.

4 Q And in your capital cases is it your view that it is
5 important to humanize your client for the judge or the
6 jury?

7 A It is.

8 Q You have been on Oprah Winfrey talking about that,
9 haven't you?

10 A I have.

11 Q And you mentioned that you hired Dr. McKee and
12 Dr. Martin and I believe you used the sentence, I gave
13 them what I thought they needed?

14 A Right.

15 Q You didn't give them everything you had in your file,
16 I assume?

17 A Well, when I say that I gave them what I thought they
18 needed I'm indicating that I gave them the materials.
19 When you say everything, I don't know that I would have
20 held anything back that they would need to do an
21 evaluation, but that's why I left it open. If I am giving
22 you something and it's not enough to do your evaluation,
23 let me know and I don't remember them coming back saying
24 they needed some additional information.

25 Q And when you hired them you were focusing on the

1 trial phase -- the guilt, innocence?

2 A Right.

3 Q And I assume as part of that you wanted to know
4 whether Mr. Mahdi was competent?

5 A Yes.

6 Q And you mentioned the insanity defense. You wanted
7 to know whether he had an insanity defense?

8 A Right.

9 Q And that was your primary focus when you hired those
10 doctors. Is that accurate?

11 A As -- That as well as any possible mitigating
12 evidence as well. You know, in these type of cases you
13 obviously want the big ticket item, but in a capital case
14 you glean everything that you possibly can to help your
15 client.

16 Q Thank you, sir.

17 MR. MABRY: No questions.

18 THE COURT: All right. May Mr. Grant be excused to
19 go back to -- I mean go back to practicing law?

20 MS. NORRIS: No objection.

21 THE WITNESS: Thank you, Judge.

22 THE COURT: Anybody need the bathroom? We okay?

23 MR. MABRY: Mr. Walters.

24 GLENN WALTERS, SR., after being duly sworn,
25 testified as follows:

DIRECT EXAMINATION

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BY MR. MABRY:

Q Good morning.

A Good morning, sir.

Q Tell us your name, please.

A Glenn Walters, Sr.

Q Mr. Walters, how old are you today?

A I am 46.

Q Where do you practice?

A Orangeburg, South Carolina.

Q How long have you been a practicing attorney?

A About 22 years.

Q How long have you been practicing criminal law?

A About 21 or 22 years.

Q Okay. And were you appointed on this case State
versus Mikal Mahdi?

A Yes.

Q And do you remember when you were appointed on this
case?

A It was either late 2004 or during 2005. I believe
Ms. Hudgens had a conflict.

Q Okay.

A I hope I pronounced her name correctly. Hudgens.

Q Yea, Katherine Hudgens.

1 (WHEREUPON, Defendant's Exhibit No. 18 was marked for
2 identification only.)

3 Q I show you what's been marked Defendant's Exhibit 18.
4 Is that your timesheet showing everything you did, at
5 least what you reported that you did? I know you did more
6 than that, I'm sure.

7 A It appears to be my signature. It's been a number of
8 years.

9 MR. MABRY: I move that into evidence, Your Honor.

10 MR. LOMINACK: No objection, Your Honor.

11 (WHEREUPON, Defendant's Exhibit No. 18 was admitted
12 into evidence.)

13 Q And, Mr. Walters, do you remember meeting with Mikal
14 Mahdi?

15 A Yes.

16 Q And do you remember talking with him about the
17 circumstances of this case?

18 A On several occasions.

19 Q What was your impression of Mr. Mahdi as far as his
20 intellectual abilities?

21 A I am not a psychiatrist or psychologist, but he
22 understood our dialogue. We always had a constructive
23 dialogue. Most importantly he understand exactly what he
24 was charged with and the offense itself and he had a good
25 understanding the proceedings that he had to go through.

1 Q Okay. Did you discuss with him the events that led
2 him to be down here in South Carolina?

3 A Yes.

4 Q What did he relate to you? Why did he leave Virginia
5 and then what occurred?

6 A He essentially said -- He started off with he
7 described the situation as he was with some other
8 individuals and he wanted to create an artificial drought
9 and those are his words. The artificial drought they
10 wanted to create was is they would kill a number of drug
11 dealers and essentially everyone would have to buy drugs
12 from Mr. Mahdi and his associates, and in the process of
13 creating that artificial drought there was an individual
14 that was killed and as a result of that there was an
15 investigation that was going on and in addition to that
16 there were other skirmishes that were going on and he
17 decided to leave Virginia. I believe he traveled on 95
18 headed south.

19 Q To North Carolina?

20 A Yes.

21 Q And what happened in North Carolina?

22 A He attempted to go into I believe it was a gas
23 station. It's on film. He went into the gas station.
24 It's on black and white film. What he did was is he
25 walked inside the gas station and I believe he tried to

1 purchase a bottle of beer. He placed the bottle of beer
2 on the counter and the attendant at the store came
3 forward. He was ringing him up. He turned to the left
4 and looked around and he pulled a weapon out, pulled a gun
5 out, shot the individual several times, and then the
6 individual attempted to try to crawl back up on the
7 counter so you see an arm that comes back up on the
8 counter, and Mr. Mahdi leaned over the counter and popped
9 him again, and at that time other individuals were coming
10 inside the convenience store. He grabbed his beer and he
11 just walked out the door.

12 Q Okay. So that's on videotape. You had that to deal
13 with; right?

14 A Yes. It was on videotape, the actual murder itself.

15 Q Okay. And what did he tell you about what occurred
16 after he got to South Carolina?

17 A He left North Carolina, attempted to travel to South
18 Carolina. He arrived in South Carolina. There was
19 problems with the vehicle he was riding in. So what he
20 did was he is arrived in Columbia and he was over near
21 Washington Street and he got in the Oliver Gospel Mission.
22 When he got to the mission he pretended to be a homeless
23 person and destitute and he got inside of the mission and
24 he was using the facilities at the mission.

25 While he was at the mission he would be out during

1 the day and then he figured out that at night -- I'll use
2 his words -- he referred to it as the Ho Stro.

3 THE COURT: The what?

4 THE WITNESS: The Ho Stro. These are his words.
5 What he figured out was there was a pickup for homosexuals
6 that wanted to engage in pickups with homosexuals or
7 prostitution or whatever else. So he pretended to be a
8 person that would be on the Ho Stro or engage in that type
9 of homosexual activity and there was an individual that
10 drove up in a vehicle and he pretended to be someone that
11 wanted to be picked up. The individual talked to him and
12 then all of a sudden he carjacked that individual. He was
13 able to take that person's vehicle and then he headed on
14 26 towards Orangeburg, I think. I think it was 26.

15 Q Then what did he tell you occurred at that point?

16 A He continued into Orangeburg and he had a series of
17 credit cards that I think he had taken from the individual
18 that wanted to engage in the activities with him and I
19 believe if memory serves me correct he went to the Wilco
20 Station that's on exit 139. He attempted to use the
21 credit cards. Behind the Wilco Station is a small
22 building -- we call it the cabin -- that Officer Myers had
23 built on some land that he owned, and essentially what
24 happened was is Mr. Mahdi made his way over to that
25 particular facility and he was able to gain entry and he

1 was under a table, and I believe he said Myers walked in
2 and when Myers walked in -- Myers inside that that shop --
3 he went out there to visit it. He had various tools
4 hanging on the wall and, of course, he had some weapons
5 there and there was a small .22 rifle and when Myers came
6 in Mahdi came out from under the table with the rifle and
7 Myers held his hands up and then he attempted to grab his
8 gun and he was shot several times over and over again.

9 When Myers was shot and subdued, Mr. Mahdi made a
10 decision, well, I've got to cover up the evidence. So he
11 thought it was gasoline but it was diesel fuel, and he
12 poured it all over the body and the diesel fuel will not
13 ignite immediately. It takes a significant amount of heat
14 and he couldn't get the fire going. So he attempted to
15 start the fire and he couldn't get it going. So then he
16 gathered the weapons and he jumped in Officer Myers'
17 truck.

18 After he got inside of the truck because Myers was
19 dressed in plain clothes -- he got inside of the truck and
20 he realized, well, I think I shot a police officer because
21 there was I believe blue lights in the vehicle and things
22 of that nature if memory serves me correctly, but also
23 there was a police officer's uniform and a badge and, of
24 course, he continued down the road towards Florida, and in
25 traveling towards Florida he stopped at a gas station.

1 When he stopped at the gas station he needed gas and
2 it was real creative what he did. He went in and he was
3 able to get the pump going and he was able to put gas
4 inside of the vehicle and the attendant was under the
5 impression that gas was still being pumped in the vehicle
6 and, of course, the question was, well, how did you pay
7 for it or did you drive off? How did they know you were
8 getting the gas? What he did was is he was able to tie
9 the hose, I believe, and it continued pumping gas; so if
10 you were a cashier you would think someone was still
11 gassing up and he continued to drive off.

12 He continued to Florida and when he arrived in
13 Florida on his way there he needed money and other
14 resources. So what he did was he attempted to dispose of
15 the vehicle. He went to some neighborhoods that were
16 neighborhoods where somebody would buy a vehicle and, of
17 course, when they examined the vehicle everybody sort of
18 fled because they said it looks like it is a police car --
19 policeman's vehicle.

20 So at that time he tried to sell parts of it and I
21 think he was headed towards -- If memory serves me correct
22 it was Cocoa Beach or Satellite Beach and when he arrived
23 in that area he actually put on the uniform and he was on
24 the beach. What was interesting in our conversation was
25 there was a woman that ran up to him and reported a crime

1 and he actually investigated it with the uniform on and,
2 of course, when he returned to the vehicle at that time
3 the authorities were after him and it was real strange
4 because he was going to jump out of the vehicle he was in
5 that he got from Myers and he was on the highway and he
6 said something interesting to me. He said, well, I don't
7 kill women or children because he was going to shoot this
8 woman and this kid to take their vehicle. He didn't do
9 it.

10 I think he ran into a garage if memory serves me
11 correct. When he ran into the garage what was real
12 strange was he was frightened by the police dog which I
13 thought was strange because of all the murdering that
14 occurred that the animal would scare him, but when the dog
15 scared him they were able to corner him and apprehend him.

16 Q In your conversations with him did you see any
17 problem with his mentality at all?

18 A No. Mr. Mahdi -- as far as his attributes he has
19 executive sense about him. The name Mahdi itself -- Most
20 people aren't are aware, but that name means are Moslem
21 but the Mahdi is supposed to be the person that will
22 return with Jesus Christ to wipe out all the wrongdoers
23 and live on earth seven, nine, or maybe 19 years, and, of
24 course, he operated like an executive. He was able to
25 look at a business model and make decisions.

1 When I meet with a defendant and he tells me I am
2 going to create an artificial drought that shows me that
3 he can define an issue, he's goal-oriented, and he is able
4 to set parameters on what he's like to do. Moreover, he
5 had sort of a comedian-like behavior. On the reports it
6 stated when he was small when he contacted the authorities
7 he ran to the fireplace and put soot all over himself and
8 used ketchup and he alleged that he had been beaten by his
9 aunt.

10 Then he later pretended to be a homeless person at
11 the Oliver Gospel Mission. Then he pretends to be a
12 homosexual and he is able to steal a car. Then he is able
13 to apprehend a policeman's vehicle and he puts on a
14 policeman's uniform and he actually investigates a crime.

15 If I had to do just an assessment of him, he's a
16 college sophomore at any local college here in South
17 Carolina.

18 Q Okay. Y'all had him evaluated anyway by a
19 psychiatrist?

20 A Yes.

21 Q And psychologist?

22 A Every death penalty case you bring someone in to
23 determine if there is an insanity defense, but in addition
24 to that you want to know if this is any type of handicap
25 that he suffered from. He was coherent. We went to the

1 Blair hearing. He was reasonable. He was coherent. He
2 had a clear understanding and there with no confusion.
3 You could have a constructive dialogue and he understood
4 the proceedings.

5 Q Okay. And do you remember what the doctors related
6 to you -- Dr. Martin and McKee?

7 A The road they were headed down was said he is fine,
8 we find no insanity defense here, and there are no
9 impairments. So, our position was we can't keep going
10 down this road and you can't write this report. We don't
11 want a report because there is a reciprocal rule of
12 discovery and you got to produce it.

13 Q Right.

14 A So what happens is that normally when you appoint
15 someone you ask them in the preliminary what's going on.
16 They say the guy has -- has good intelligence and of
17 course they made it clear you can't -- after a
18 psychiatrist and a psychologist have evaluated you and
19 they are both reaching the same conclusion.

20 Q Did -- Let's talk about the mitigation investigation.
21 Who was going the -- other than the psychological things,
22 who was doing the background investigation for you?

23 A Well, it was Paige Tarr, Marjorie Hammock, and Jim
24 Gordon. So the three of them worked together gathering
25 information.

1 Q All right. And did you ever go -- did you ever leave
2 this state and go conduct any part of the investigation
3 yourself?

4 A Two places. We went to Lawrenceville, Virginia.

5 Q Who went?

6 A It was Jim Gordon and Joshua Koger. The three of us
7 went to Lawrenceville Virginia and I think it was Carl
8 along with me, we went to meet with -- and I apologize for
9 your name, Mr. Rabil, Attorney Rabil who is present today.
10 I think we met with him in Winston, Salem.

11 Q Did they tell you what their investigation had
12 uncovered?

13 A Sure. They were very helpful. They are nice people
14 and they had -- I think they have a death penalty center
15 in North Carolina where they are devoted to that and we
16 also went to Lawrenceville to interview the family.

17 Q Who -- Do you remember who you interviewed there?

18 A When we arrived in Lawrenceville we tried to make
19 contacts. We wanted to talk to as many people as we could
20 that day. Nancy Burwell was the grandmother of Mikal
21 Mahdi.

22 Q Uh-huh.

23 A And Mrs. Burwell said she would be available. We
24 said, well, let's get to her and maybe we can find other
25 individuals. So we talked to Mrs. Burwell. Nathan

1 Burwell who is the uncle of Mikal Mahdi and the brother of
2 his father was also present.

3 Q Now, what was his demeanor and was he helpful or
4 not -- Nathan?

5 A Well, Nathan Burwell -- there was a small college
6 there. I think it was named St. Paul.

7 Q Okay.

8 A Nathan -- When we arrived in the yard he drove up.
9 He was slightly overweight and he was inside a Mazda Miata
10 two-seater and his mother told us that he was a dean of
11 men at the college. So he drove up in this Miata and he
12 was slightly overweight. He walked in the house and we
13 introduced ourselves to him, but he had an attitude. He
14 really didn't want to be bothered with us, and my
15 evaluation of him -- He walked in. He is in this car
16 that's too small. He is the Dean of Men. He walks inside
17 of the house. He has an attitude toward us. This is a
18 guy who's probably in his late to early 50's and he's
19 living with his mama and his attitude toward us was, yea,
20 that's my nephew.

21 When we talked to him he was proud of the fact that
22 he had identified his nephew for the North Carolina
23 authorities. I believe he watched the film and said, yea,
24 that's my nephew Mahdi, and instead of sitting down in the
25 living room with Mrs. Burwell, the grandmother, and

1 discussing what could be done for the nephew he started
2 frying fish and he kept walking back and forth down the
3 hall, and my assessment was older guy, looks likes he is
4 unmarried, living with his mama, he is overweight, he's
5 driving a Mazda Miata, and he is out there on the college
6 campus, and he doesn't care about his nephew, and when we
7 got ready to leave he was in the kitchen eating and he
8 just simply said, Y'all take care.

9 Q Okay. And who else did you talk to when you went
10 to ---

11 A Well, we talked to Mrs. Burwell.

12 Q Right.

13 A And Mrs. Burwell -- She was much older. She was a
14 red-haired lady and she was -- Mrs. Burwell was a very
15 proud woman and she was the matriarch of the family, and
16 she was very proud of her Burwell name, but before we met
17 with her we knew the turmoil in the family. Her other
18 son, the brother of Nathan, Carson had made it clear that
19 the problems that existed within Mikal Mahdi's family
20 stemmed from the grandmother and what Carson simply stated
21 was that his mother wanted to have her tubes tied in 1948.

22 Q Uh-huh.

23 A And the father refused to allow her to have her tubes
24 tied. So the impression I got was this woman did not want
25 to have a series of children but she was forced to do so

1 and Carson's comment simply was that Mikal's father Thomas
2 AKA Shareef was neglected and the mother never loved him
3 and cuddled him and took care of him and made sure she
4 addressed his needs. When he would cry she would not pick
5 him up. She would not help him, and, of course, Carson
6 made that clear and said he voiced that with his mother
7 that Thomas went down or spiraled to the bottom because of
8 her behavior.

9 When we arrived to meet with Nancy, Nancy Burwell
10 wanted to brag about the accomplishments of the family.
11 She did not want to address the issues with regard to her
12 grandson and how he got there. So the conversation began
13 with her talking about Mikal Mahdi's great grandfather
14 supposedly was one of the first blacks or first black to
15 graduate from Harvard University. She went on to talk
16 about the other individuals in the family that were also
17 Ivy League grads and the great accomplishments that they
18 achieved.

19 Of course, my opinion was this testimony is not
20 helpful if you're going to brag about the accomplishments
21 and the educational ability of all of these children.
22 When we got to the issue of Thomas or Shareef, very simple
23 conversation. We talked about the issues with Carson and
24 what was going on, what was the dynamics of the family,
25 and why did Mikal end up in the situation, and it was very

1 general conversation.

2 Her conversation stemmed around you know who I am,
3 what we've accomplished, and that fell in line with
4 Carson's other critical statement that he made to Paige
5 Tarr. When Shareef was crying and neglected and wanted
6 his concerns addressed, the mother would be in the mirror
7 attempting to articulate and talk in a certain manner so
8 she would be accepted by white folks and those were the
9 words that were used; that she was more concerned about
10 her public image as opposed to addressing the needs of her
11 children.

12 In this particular case we were talking about a
13 grandson that we needed some honest conversation about
14 what made that marriage dysfunctional. Mikal's father and
15 mother lived within that home of Nancy Burwell and as far
16 as the details of that, she danced around it and she
17 continued to talk about the college and the
18 accomplishments of the entire family.

19 Q Okay. Who else did you talk with on this trip?

20 A I believe that's the only individuals that we talked
21 to. Carson and Lawanda did not live there.

22 Q Right.

23 A But we were in contact with them on the phone.
24 Carson, of course, gave us details about Mr. Mahdi when he
25 was a small boy -- about how -- one, Thomas Burwell was a

1 chauvinist and a controller, but he was unsuccessful in
2 his achievements as the other children, I guess, because
3 he was neglected by his mother. I am not sure. He later
4 joined the marines and he joined the marines and was not
5 really successful in the marines and returned home to
6 Lawrenceville.

7 When he returned home to Lawrenceville he then met
8 Mikal Mahdi's mother. Her birth name was Vera. Thomas
9 changed his name to Shareef and he renamed Mikal's mother.
10 They changed her name from Vera to Tilea. Vera AKA Tilea
11 came from a family of 16 or 17 children where she was
12 neglected and supposedly oppressed. Her mother, it was
13 said, arranged the marriage between Shareef-Thomas and
14 Vera, and, of course, this girl was going to school
15 catching a bus and then the next thing you know she was
16 married to Thomas-Shareef I'll call him from here on out
17 and they moved into Mrs. Burwell's home, the grandmother.

18 When they moved into the grandmother's home you had a
19 girl who is 18 or 19 years old that was living with Thomas
20 Burwell. He then converted to Islam and when he converted
21 to Islam he renamed his wife and then he imposed the
22 restrictions of whatever else on her. So, this was a girl
23 that was dysfunctional within her own home of 16 or 17
24 children. You can see where someone would be forgotten
25 there, and then she marries a guy who has the same

1 problems within his own home and dysfunctional in his
2 family.

3 The father is preaching black power every day,
4 empowerment of the black man, but he can't hold a job. He
5 can't pay his bills. So the result is a son that says I
6 don't believe in the Islamic religion. I don't believe in
7 any religion. You got to show something to me in order
8 for me to believe in it, and you are sitting across the
9 table from a dad that can't bring grits and groceries
10 home.

11 Q Why did y'all not call Carson or Lawanda at the
12 trial?

13 A Carson -- as they said, he laughed after the issue
14 where Mr. Mahdi said he was going to kill himself and that
15 he had been abused, and Carson had a very sadistic sense
16 of humor. One, he wanted to be applauded for recognizing
17 that Mikal could not read and he was going to teach him
18 how to read and that he brought him within his home and he
19 was going to support him and take care of him. Saleem was
20 sent to live with Kathy. When Saleem went to live with
21 Kathy, he tried to burn down the house. So Saleem,
22 Mikal's brother, was sent back to Lawrenceville, Virginia.

23 Mikal was allowed to live in Carson's home, put him
24 in school, he fed him every day, but there was this
25 defiant behavior and the defiant behavior continued and

1 Lawanda had to severely beat him over and over again. It
2 moved from being chastising the child and whipping the
3 child to a significant beating every day, and, of course,
4 Carson even in the interviews admitted that sometimes he
5 would not stop his wife from doing so because he wanted
6 the united front.

7 The straw that broke the camel's back is when he ran
8 away and he called the Department of Social Services
9 authorities and Mikal took the soot and ketchup and
10 claimed he was beating and Carson laughed about it.
11 Carson had a sadistic sense of humor about each event in
12 this child's life as if he was malingering, he was a
13 faker. It was sort of twisted.

14 Then what happened was when Mikal found out that
15 Saleem attempted to burn down his aunt's house and he was
16 sent back home Mikal made it clear you'll never have peace
17 within this home. We're going to send you back. As far
18 as getting Lawanda in the picture, their position was was
19 We're glad he's out of our house. We did the good deed.
20 No one applauded us for it, and now you want us to get
21 involved in attempting to help him in a murder case, and,
22 of course, the vibe we got was is they're not going to
23 help this kid. It's more or less he is getting his just
24 desserts.

25 So, we had grandmother who wanted to save the family

1 name. We had Nathan who is the dean of men frying fish
2 and he just didn't care. He was proud of the fact he
3 identified him. We had Kathy who still harbored
4 resentment about the fact that the other nephew attempted
5 to burn down her house and you had Carson who thought it
6 was funny that this child was threatening to kill himself
7 and then he also blamed his own mother for everything that
8 happened in the family with Mikal Mahdi.

9 Q Okay. Did Carson ever communicate to you that he and
10 Lawanda were not going to be able to help you -- were not
11 going to be able to testify?

12 A If memory serves me correct we contacted them about
13 coming and there was something about he couldn't make it
14 or he really didn't want to be there. I don't want to say
15 something that I don't remember, but I know this. We
16 wanted someone there that would assist Mr. Mahdi in this
17 process. Nancy Burwell said, I'm going to be there; I am
18 coming. The problem with Nancy was is she wanted to
19 explain to a Calhoun County jury all of the accolades of
20 the family and how successful they were. Don't do that.

21 These people -- Some of these people don't know where
22 Harvard University is, but they know what Harvard is and
23 they know about great accomplishments. We don't need
24 testimony coming in to save the family name. We need
25 testimony that directly deals with Mikal Mahdi and the

1 issues that are at affecting him in attempting to mitigate
2 what's going on in his life.

3 Q Was she ever able to do that?

4 A She was older and she was confused and the
5 conversation was a mantra over and over again about her
6 own -- I think she had a master's degree and she talked
7 about English and she talked about the college and the
8 accomplishment, but she never ever got to the meat of the
9 details about what was going on with Mikal and his
10 brother.

11 Q Y'all had her there. That's why you didn't call her
12 as a witness?

13 A Right. Each time you talked to her she would sit
14 down and I think she brought some little pamphlets and
15 booklets about different people in the family and what
16 they had accomplished. It was almost as if she wanted to
17 be absolved of all responsibility and she wanted the world
18 to know that we're still good people. I said, That's not
19 the purpose of this proceeding.

20 Q She wanted to defend the family?

21 A Sure.

22 Q As opposed to helping Mikal.

23 A Anybody would that worked hard and I don't blame her.

24 Q Were you ever able to get the mother to help you at
25 all?

1 A We contacted her by phone. At first when Paige went
2 up there -- and Paige was pretty calm today. She was
3 ranting and raving because they got to the house and she
4 said she had to wash her hair and she wasn't coming
5 outside. We contacted her several times on the phone, but
6 she was withdrawn.

7 So she has remained consistent all of her life. One
8 of 16 or 17 kids, you're forced into a marriage that's
9 arranged really at 17 or 18, you have two children, you
10 got an oppressive husband, he renames you, and then one
11 day she decided I can't take of these children or him or
12 myself. So she disappears and she remained aloof and if
13 you look at the report from Paige Tarr when the father
14 attempted to reestablish a relationship they returned to I
15 think Richmond -- he and Mikal -- to visit with her and I
16 think the police had to forcibly remove Mikal and his
17 father from the mother's home.

18 She at that time was dating a police officer and I
19 believe the father came in with -- He typically preached
20 about black power and the oppression of the white man and,
21 you know, how the family needed to fight against that,
22 but, again, he wasn't holding consistent employment and he
23 was critical of anything that this child attempted to do.
24 Even in our notes it states that when Mikal enrolled in a
25 local college his father criticized him and wanted to know

1 why he was doing that.

2 Q Okay. Were you -- What about his brother? Were
3 y'all able to get him?

4 A Saleem -- I believe his name is Saleem. Saleem at
5 this time was serving either in Afghanistan -- I am not
6 sure where he was serving, and, of course, his testimony
7 was not significant in terms of mitigation.

8 Q Why is that?

9 A Well, one, we have a young man that dedicated himself
10 to the United States military. So dad is preaching about
11 being the black Moslem and destroying the world. This kid
12 didn't believe in the religion and the other brother -- He
13 joined the United states Army, I believe, and, of course,
14 when you ask questions with regards to what causes this
15 family to function this way and can you give us some
16 information that may mitigate what was going on with
17 Mikal, you find that this brother is maybe operating in
18 the same manner.

19 What saved him was was US Military. It is
20 functional. You've got somewhere to live. You're told
21 what to do. So, it got him on his feet and as long as --
22 I believe as long as he stays in the military he'll be
23 fine, but if you allowed to freelance like Mr. Mahdi
24 without the supervision and the control -- his brother is
25 more of an institutional type of behavior and Mr. Mahdi

1 was allowed to freelance and ended up in Florida in a
2 series of murders.

3 Q Were y'all concerned having the brother there saying
4 these are two guys that grew up in the same circumstances
5 and one is in the army and one's ---

6 A Well, number one, I don't think he could make it.
7 Okay?

8 Q Okay.

9 A Number two, his conversation did not address what's
10 going on with Mikal and why we are where we are and can we
11 be honest about your dad's behavior, your mother's
12 behavior, and his behavior as he was growing up. There
13 wasn't an honest, frank discussion about that. I think
14 this is a situation where everybody agreed we're all
15 dysfunctional, but we never had the proper therapy to
16 address it.

17 Q And how were y'all able to address it with Judge
18 Newman? How did you present ---

19 A Well, Marjorie Hammock could present this history of
20 family and articulate the issues that occurred in his life
21 that would attempt to mitigate what was going on and, of
22 course, that's with the assistance of Paige. There was
23 also Mr. Aiken who was an incarcerations expert that would
24 state that Mr. Mahdi would be functional within the jail
25 system. See, the focus of this PCR is that we don't

1 believe that you presented enough to ---

2 MR. LOMINACK: Objection, Your Honor, about what he
3 thinks the focus of the PCR is. I don't think it's
4 relevant.

5 THE COURT: Overruled.

6 THE WITNESS: We had one bigger problem. We had him
7 on film actually killing another man.

8 Q Okay.

9 A So we could March in 100 family members. That
10 jury -- unbeknownst to them, we knew this was a disk
11 sitting in everybody's file that would show an
12 execution-style murder that was going to occur -- that
13 occurred.

14 THE COURT: That sounds like a pretty good breaking
15 point. Food is here. We have been going since 9 o'clock.
16 Let's take a quick, quick break. I don't mean to be
17 intolerable, but let's eat just as quick as you can. No,
18 let's -- you know, whatever you need and everybody let me
19 know when they're ready.

20 Mr. Walters, just take it easy for a second. Don't
21 discuss your testimony with anybody. Make sure the
22 applicant gets his lunch. We'll stand at ease.

23 MR. MABRY: I am almost finished with my direct.

24 THE COURT: Let's finish then. Any more questions?

25 Q I want to show you something and see if you recognize

1 this.

2 (Whereupon, a video was played.)

3 Q Mr. Walters, on the video if you keep running it what
4 does Mr. Mahdi do after he shoots the fellow on the floor?

5 A He grabs his beer and walks on out.

6 Q Does he go around to the cash register and try to get
7 it open?

8 MR. LOMINACK: Objection to the leading.

9 THE WITNESS: I can't remember.

10 Q Whatever is on the video?

11 A Whatever is on the video.

12 Q That's all I have.

13 THE COURT: All right. We'll break for a quick lunch
14 and we'll be back.

15 Mr. Walters, please do not discuss your testimony
16 with anybody.

17 (Whereupon, a lunch break was taken.)

18 MR. MABRY: I need to ask one more question.

19 Mr. Walters, why did you not call Dr. McKee or
20 Dr. Martin in the penalty phase in the sentencing phase?

21 THE WITNESS: Dr. McKee and Martin would not have
22 assisted the mitigation of Mikal Mahdi.

23 Q Why is that?

24 A Their opinion was he was -- didn't have any mental
25 infirmity, he wasn't insane, and certainly he understood

1 what he was doing. So there was no testimony that could
2 be offered to mitigate what had occurred, and, of course,
3 no witness could after anything to deal with what you
4 showed on the television.

5 Q And you believe the diagnosis would have been
6 advantageous to Mr. Mahdi or would it have been the
7 opposite?

8 A The opposite.

9 THE COURT: All right. You may cross examine.

10 MR. LOMINACK: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. LOMINACK:

13 Q So, Dr. McKee was Dr. Martin didn't have anything
14 helpful in terms of Mr. Mahdi's mental health at time of
15 the crime; right?

16 A That's correct.

17 Q That fact what you just said is given that videotape
18 there is nothing you could do to mitigate this case; is
19 that right?

20 A No. What I'm saying is that there are several
21 individuals that we believe could help Mr. Mahdi and we
22 approached those individuals to discuss his upbringing,
23 his family, what shaped and molded and resulted in
24 Mr. Mahdi. They were unwilling to assist us in that
25 process and I went through each of the individuals -- one

1 person whose house was almost burned down by a brother,
2 the other individual that was turned in to the police and
3 had a sadistic sense of humor about the things that were
4 going on with him, the grandmother that was in a state of
5 denial wanted to represent the family was pristine and
6 academically they were sound people, a mother that was
7 withdrawn and as I said someone traveled X number of miles
8 to get to the house and she stated I'm washing my hair and
9 I'll talk to you on the cellphone while you stand outside
10 of my house and I'm inside of the house, an uncle that
11 walked in and bragged about the fact that he identified
12 him for the North Carolina authorities and started frying
13 fish and didn't pay us any attention.

14 Q Pretty odd family; right?

15 A I wouldn't say odd; just maybe dysfunctional.

16 Q Pretty dysfunctional family.

17 A It's not odd, but it's dysfunctional.

18 Q And ---

19 A There are many black families like that.

20 Q And in a case like this that might be something that
21 you'd want to show to the jury and the judge; right?

22 A I believe what you want to show to the jury is that
23 Mikal Mahdi didn't have a chance in life and perhaps you
24 shouldn't take his life. In this particular case we've
25 had people that were just simply indifferent about him.

1 They didn't really care.

2 Q And you didn't speak to any of his special ed
3 teachers; right?

4 A No. No. Specifically when you say special ed are
5 you talking about elementary school, middle school, high
6 school?

7 Q When he was in special education. Did you know he
8 was in special education?

9 A Yes and he had other problems, too. He had tutorials
10 because he couldn't read. I believe his uncle Carson is
11 the one that identified that he couldn't read and he was
12 taught how to read about about 8 years old, I think.

13 Q And why was he in special education?

14 A Well, the home was dysfunctional. One, the mother
15 was withdrawn and I don't believe that his needs were
16 being tended to when he was small, and in addition to that
17 you had a father that he didn't believe in the American
18 system and the opportunities that were available. He only
19 talked about his resentment of integration and what
20 happened to him when he attended an integrated school and
21 public schools.

22 Q Did you ever read the special education records?

23 A I can't remember.

24 Q Do you remember whether you even received them?

25 A I can't remember. I know that we relied on Ms.~Tarr

1 and also Ms. Hammock to get all of the information with
2 regards to his school and his education.

3 Q But as lead counsel you're the supervisor of this
4 operation; right?

5 A Yes.

6 Q And you're in charge of the defense team?

7 A Yes.

8 Q And when it comes time to get ready for trial you
9 along with Mr. Koger decide what the theory of the case is
10 going to be; right?

11 A Sure.

12 Q You decide which witnesses to call; right?

13 A Yes.

14 Q Or in this case which witnesses not to call?

15 A Yes.

16 Q You're responsible for what questions you ask; right?

17 A I would agree.

18 Q And so while you can delegate to Ms.~Tarr and
19 Ms. Hammock and anybody else, ultimately you're in charge
20 of which records they get and what happens in the
21 courtroom; right?

22 A Yes, I would agree.

23 Q And the records all came through your office; right?

24 A Some of the records came through Mr. Grant's office.
25 Some of the records came through my office. At this late

1 date I couldn't tell you. Whatever they have we have a
2 group meeting and that information was shared. There
3 would be information that Marjorie gathered together,
4 information that Paige had gotten. They would get
5 information from Martin and McKee and their interviews and
6 it was a total colloboration everybody was involved in.

7 Q But after Mr. Grant was no longer involved in the
8 case, then the records would come through your office, not
9 his; right?

10 A I would agree if something was sent to me I would
11 attempt to forward it.

12 Q You said attempt to. Is there any reason why you
13 wouldn't forward it?

14 A No.

15 Q And being in special education is mitigating; right?

16 A I would agree.

17 Q So, that's something you'd want the judge or the jury
18 to know about your client; right?

19 A There are a number of factors that can be mitigating
20 with regards to Mikal Mahdi.

21 Q That's one of them?

22 A Sure, among hundreds.

23 Q Now, at the end of the trial Judge Newman asked you
24 to prepare a list of non-statutory aggravating factors.
25 Do you remember that?

1 A Yes.

2 Q I mean non-statutory mitigating factors. Do you
3 remember that?

4 A I barely can. I think he said he had the mentality
5 of a boy or something like that if I can remember.

6 Q Let me hand you this.

7 (WHEREUPON, Applicant's Exhibit No. 33 was marked for
8 identification only.)

9 Q I hand you what's been marked as Applicant's 33.
10 Does that appear to be the sentencing memorandum that you
11 drafted in response to Judge Newman's request?

12 A If it was in the file. I can't sit down and say this
13 is exactly what was submitted. It's unsigned, too, but I
14 believe you came to my office and you got a copy of
15 everything that was inside of the file.

16 Q If I tell you that that was in your file then would
17 you agree that that is the sentencing memorandum that you
18 and Mr. Koger drafted together?

19 A I would agree with that. There is plenty in the
20 file. You got all of my notes. You got documents. You
21 got drafts that weren't submitted. I believe it says that
22 he could adapt to prison life and there was expert
23 testimony as his upbringing and childhood.

24 Q That's a two and a half page document; right?

25 A Uh-huh.

1 Q And I'm not going to get you to count, but would you
2 argue with me if I told you there were six sentences
3 related to his social history in that document?

4 A I don't know. If that's what you count I believe
5 you.

6 Q How many non-statutory mitigating factors are listed
7 in that document?

8 A I think it just states there is going to be testimony
9 from an expert with regards to his turbulent and transient
10 upbringing and that was going to be Marjorie. I am not
11 sure if Paige testified. Mr. Aiken would testify with
12 regards to his adaptability to prison life.

13 Q Well, now do you recall Judge Newman at the end of
14 the case requested that you all submit statutory and
15 non-statutory mitigating factors?

16 A I don't recall that, but if he did, he did.

17 Q And you've done a capital case before. At the end of
18 the case when the judge is going to instruct the jury --

19 A Sure.

20 Q -- he or she will ask you what factors you want
21 instructed; right?

22 A Right.

23 Q So, this was similar. The judge was asking,
24 basically, what you wanted him to consider in the
25 sentencing?

1 A Right. I believe we said we want you to consider his
2 adaptability to prison life and that will be Mr. Aiken
3 and, of course, Marjorie -- I think Marjorie just
4 testified with regard to his social history and the
5 family.

6 Q Okay.

7 Your Honor, I'd move to admit Applicant's 33.

8 MR. MABRY: I hadn't ever seen it before. It's not
9 signed.

10 THE COURT: Well, he said he got out of the file.

11 MR. LOMINACK: It was in the file.

12 THE COURT: I'll give it whatever weight.

13 (WHEREUPON, Applicant's Exhibit No. 33 was admitted
14 into evidence.)

15 MR. LOMINACK: We'll look at the record on appeal.
16 If there was one filed, I suspect it won't be very
17 different.

18 THE COURT: Well, if it's different it is different.

19 Q You said there were a hundred of mitigating factors
20 relating to Mr. Mahdi?

21 A Sure.

22 Q In that document you list two or three?

23 A Uh-huh.

24 Q So, you didn't present to the judge 100 mitigating
25 factors or even six or seven or nine or ten; right?

1 A I presented what we essentially achieved during this
2 entire process of representing him. I presented Marjorie
3 Hammock who went out and interviewed everyone. She has a
4 degree in sociology with regard to the family history and
5 with regard to the factors that may have molded Mr. Mahdi.
6 We talked to all of the family members that we believed
7 would be helpful. It turns out that they were not very
8 helpful and we ended up with Mr. Aiken who is the
9 incarceration expert who was very helpful because he
10 stated Mr. Mahdi could survive within the penal system --
11 that he could be a prisoner in the penal system and he
12 wouldn't be a problem.

13 Q And, of course, Mr. Aiken doesn't have the expertise
14 and didn't testify about Mr. Mahdi's childhood or
15 developmental history; right?

16 A No, Marjorie did that.

17 Q So, there was -- and she was the only other witness.
18 There was one witness to testify about his childhood and
19 upbringing; right?

20 A Who are you referring to?

21 Q Ms. Hammock.

22 A Ms. Hammock was, yes.

23 Q You did not call any other witnesses other than
24 Ms. Hammock or Mr. Aiken?

25 A That's correct.

1 Q And, so, if you could you just said you know hundreds
2 of mitigating factors. Could you discuss what factors you
3 were aware of?

4 A Well, let me explain it this way. The Constitution
5 guarantees you the right to a trial, all right? But it
6 doesn't guarantee you the right to a perfect trial. If
7 you want the sit down and look at Mr. Mahdi, there are a
8 number of factors that, you know, Mr. Mahdi -- you know,
9 he was raised in a house with this man that had some
10 problems.

11 THE COURT: Are you speaking of his dad?

12 THE WITNESS: Yes, his father. His father refused to
13 participate or his position was sort of standoffish and he
14 didn't want to be involved. His mother made it clear she
15 wasn't going to be involved because she was going to wash
16 her hair, and as far as the other sibling he was serving
17 in the military, and as far as the close family -- the
18 aunts -- they made it clear, you know, we're through with
19 this.

20 I don't know if they've come forward at this time,
21 but they were very standoffish when they had to go through
22 a trial with a victim before the court and the police
23 officer that's dead. They seemed as if it was a
24 self-fulfilling prophecy that something bad was going to
25 happen to him anyway.

1 Q Let me back up. I don't mean to argue with you but
2 can you tell me what -- You said there were a lot of
3 mitigating factors that you knew about. Can you just tell
4 me what those were?

5 A I didn't say that. I said there could be hundreds of
6 reasons. If you carefully set out Mahdi for a year you
7 could find numerous things that you never dreamed of if
8 you sat down and talked to him forever. My people went
9 in. They did the best they could. They're experts and
10 they are good at what they do. They garnered all of the
11 information they could and they attempted to put forth the
12 best defense for Mr. Mahdi.

13 Now, in a perfect world there could have been more
14 money spent, more experts hired, but that didn't happen.

15 Q Well, one of the things you do if you got a family
16 that's distrustful or not helpful is you go outside of the
17 family, right, and find other witnesses?

18 A Sure.

19 Q Community members?

20 A You could go to community members.

21 Q Teachers; right?

22 A Maybe. In this particular case with Mr. Mahdi it
23 appears that he was dysfunctional within the school system
24 and from his own statements to us he had some problems
25 within the school system. I think the last document I

1 looked at was -- I think he tried to go to college and his
2 father criticized him. He was in grade school.

3 There was a trouble meeting and Carson tried to help
4 him and as far as other individuals that Ms.~Tarr and
5 Ms. Hammock presented to us that wanted to help Mr. Mahdi,
6 we didn't find many people that wanted to help Mr. Mahdi.

7 Q Well, you said he was dysfunctional in school. Did
8 that suggest to you that maybe it wasn't worth trying to
9 find the teachers who dealt with him?

10 A No. What it suggested to me was is that we wanted an
11 individual that would testify favorably for him and in
12 talking to the immediate family -- you said talk to the
13 immediate family and you go outside of the immediate
14 family. In our search to determine if someone wanted to
15 help Mr. Mahdi, they were standoffish. If you want to
16 find information about someone you start with the family
17 and the family can then relate to you to other people and
18 say maybe these people can assist you. Their position was
19 it started off bad, something bad has happened now, and we
20 knew it was headed this way, and we're not going to jump
21 in an save him.

22 Q Now, one way you find out about potential witnesses
23 is through records; right?

24 A Sure.

25 Q So when you get school records you look and say,

1 That's a teacher that year; that's a teacher of third
2 grade and you go out and find those teachers; right?

3 A Sure.

4 Q And so if you don't get the school records it makes
5 it difficult to create that list of potential witnesses?

6 A Sure.

7 MR. LOMINACK: Judge, if I could get Volume I from
8 you. Thanks.

9 I am going to hand you what's been marked as
10 Applicant's 21. If you could flip to tab two, page 63.

11 THE WITNESS: Is it bated stamped?

12 Q Bate stamped top right corner.

13 A Sixty-three. It says Brunswick County Public
14 Schools.

15 Q Yes.

16 A Okay.

17 Q If you look at that middle paragraph it starts with
18 psychological --

19 A Yes.

20 Q -- and you look at the bottom of that paragraph it
21 says, Projectives reveal depressive and victimization
22 themes, feelings of helplessness, withdrawal, denial and
23 lack of self esteem?

24 A Yes.

25 Q And then if you flip over to page 65 if you look

1 towards the bottom of that page there is a list of
2 signatures; right?

3 A Yes.

4 Q Those were people that agreed noted by the checks on
5 the left with the assessment?

6 A Yes.

7 Q And right above that it says, Description of
8 eligibility committee and it says that they found
9 Mr. Mahdi eligible for this special education program
10 because of his emotional disability; right?

11 A I believe it says he is eligible for emotionally
12 disabled program for recommended assistance in the area of
13 reading.

14 Q Right. And so that by itself could be a
15 non-statutory mitigating factor; right? Mr. Mahdi was
16 emotionally disabled as a child.

17 A It possibly could.

18 Q Is there any reason it couldn't be?

19 A Well, this specifically went to the problems he was
20 having because he couldn't read and that is what Carson
21 was really concerned about and that's why Carson removed
22 -- asked that he come and live with him and Carson -- I am
23 not sure -- Carson was a barber, but somebody in the house
24 was a teacher and they had to teach him how to read and
25 learn phonics all over again and during that time he was

1 about 8 years old and Carson indicated that it was a lot
2 of teasing and harassment because he couldn't read
3 properly and Carson went on to state that if he didn't get
4 a proper foundation in reading he wasn't going to be
5 functional in society and what it says here is he's
6 eligible for the emotionally disabled program with
7 recommended assistance in the area of reading.

8 Q Okay. Now, you never -- you didn't get the special
9 education records; right?

10 A I can't definitively sit here today and say what I
11 got and what I didn't get, but if Ms. Tarr and Ms. Hammock
12 missed the paperwork, they missed the paperwork, but if
13 they got the paperwork it came through. So, I don't want
14 to sit here X number of years later and tell you
15 definitively I put my hands on something or I didn't put
16 my hands on something.

17 (WHEREUPON, Applicant's Exhibit No. 34 was marked for
18 identification only.)

19 Q I hand you what's been marked as Applicant's 34.
20 That's a school experience summary; right? Doesn't that
21 appear to be the summary that you introduced at trial
22 through Ms. Hammock?

23 A I'm not sure what I introduced through Ms. Hammock at
24 trial. If that's the case, that's the case. This is a --
25 it says 1988 Sister Clara Muhammad. It says records not

1 available. It says 9/15/88 K 23 abs., transferred from
2 Clara Muhammad, narrative records not available. Then it
3 says Chamberlayne Elementary, Richmond, Virginia, first
4 grade transferred from Totaro, narrative records not
5 available. It says 1991 through 92, Scotts Branch
6 Elementary School. It says 2nd and 3rd. Placed in
7 average math program and below average reading. It says
8 needs improvement to meet standards for behavior and show
9 respect for reading and written language remain below
10 grade level. Attends special reading and qualifies for
11 chapter one.

12 It then goes on to state placed in average reading
13 and math. Needs improvement in written composition,
14 letter formation, vocabulary, written work, and showing
15 respect for authority. Outstanding in science. Works
16 well in small groups. It goes on the state appears to be
17 stifling his potential. Does not appear motivated. It
18 says Mikal has not attended school since '94 through '95
19 school year. During that was a fifth grader at Totaro.
20 Earned 6 B's an 1 C. His father remove Mikal in order to
21 homeschool him. There was no official information that
22 this schooling had -- and it doesn't finish the sentence.
23 It says 6th 35 Hanover Juvenile. It says 1999 enrolled in
24 academic vocational courses through the Department of
25 Correction Education Services.

1 This document just confirms what we were saying all
2 along. He couldn't read.

3 MR. LOMINACK: Your Honor, I'd move to introduce this
4 into evidence.

5 MR. MABRY: No objection.

6 (WHEREUPON, Applicant's Exhibit No. 34 was admitted
7 into evidence.)

8 Q This document doesn't mention special education;
9 right?

10 A No. What it says is he has a problem reading and
11 he's good in science and works well in small groups and
12 he's not motivated and his daddy took him out of school to
13 homeschool him and they have no official information in
14 regard to this child being homeschooled.

15 Q If you could flip to page 63 in that same tab, tab
16 two.

17 A Okay.

18 Q Look at the very top on the righthand side. It says
19 special programs.

20 A It says emotionally disabled.

21 Q Okay. That's all it says; right? It stops. It says
22 emotionally disabled?

23 A Uh-huh.

24 Q Okay. And look at page 67 in that same tab.

25 A Okay.

1 Q The observer of this form was C. Wilson; right? Top
2 lefthand corner.

3 A Yes.

4 Q And if you look at the second handwritten paragraph
5 it says on the Burks Rating Scale Mikal scored very
6 significant, end quotes, in excessive self blame, poor
7 impulse control, and excessive resistance. Mikal has also
8 exhibited periods of extreme sadness at times; right?
9 That's what that says.

10 THE COURT: Is that a question?

11 Q That's what that says; right?

12 A What you read is correct.

13 Q And this is part of the special education assessment;
14 right?

15 A I assume so. This document you're referring to here
16 has a relationship to this document?

17 Q No, sir.

18 A All right. I want to make sure we're clear about
19 this.

20 Q Yea.

21 A I'll give you that back.

22 Q This ---

23 A You're referring to page -- the bate stamp is 67.

24 Q That's right.

25 A I believe it's one of the individuals that signed at

1 the end of the report. You said there were a number of
2 people that signed before. Let me see.

3 THE COURT: The question was is that part of the
4 special education assessment?

5 THE WITNESS: I believe it is. It's under the
6 section of HCPS, Henrico County Public Schools.

7 Q And so the psychological testing that you reviewed or
8 the sentence we read earlier showed he that was saddened
9 and depressed. This teacher has observed that he's sad
10 and depressed and he was found eligible as an emotionally
11 disabled child; right?

12 A I assume so.

13 Q And that neither made it in this exhibit you
14 introduced at trial or in the testimony?

15 A I'm not sure about the correlation you're attempting
16 to draw. That document says that he has some emotional
17 problems with regard to reading and that he was taken out
18 of school by his dad and they had no record of what went
19 on when he dad took him out of school. What's the
20 correlation you're trying to draw between that document
21 and this document?

22 THE COURT: Just let him ask the questions, please.
23 I know it's hard as a lawyer not to ask the questions.

24 THE WITNESS: Yes, sir.

25 Q Where does it say he has emotional problems because

1 of reading in that document?

2 THE COURT: Which document?

3 Q Applicant's 34.

4 A To answer the question I extrapolate on it and it
5 just says, Appears to be stifling his potential; does not
6 appear motivated.

7 THE COURT: Very well.

8 Q What year is that?

9 A It doesn't state a year beside it. I assume it was
10 '88, but it says '92 Scotts Branch Elementary School above
11 that.

12 Q Okay. And if you don't recall we can get the
13 records, but 1992 is when he went to the Walter P. Carter
14 Center psychiatric hospital; right?

15 A If that's the date, that's the date.

16 Q Okay. The records that we were just looking at -- if
17 you've got 67 still open?

18 A Yes.

19 Q Or if you've got -- turn to 67. That's dated 1994;
20 right?

21 A Yes, 4/6/94.

22 Q So there is no notation in the exhibit you entered in
23 evidence summarizing his school history about the 1994
24 special education assessment; right?

25 A Yes, sir, that's correct.

1 Q Okay. Given that you went through the trouble to
2 summarize his school records, had you had these records
3 you would have included them in that summary; right?

4 A At that time I'm not sure what decision I would have
5 made strategically. Counsel could review all of the
6 records and you could strategically pick what you'd like
7 to enter into the record.

8 Q Okay. Why would you not want the sentencing judge to
9 know that your client was designated as emotionally
10 disabled but you would want him to know that he had
11 problems reading?

12 A Well, I relied on the experts that we hired, and, of
13 course, we went through their testimony and we attempted
14 to take whatever information they had and present it to
15 the judge. Now, if there is one issue within this Volume
16 about him not being able to read or emotionally disabled
17 at this time when he couldn't read and that factor was not
18 put into evidence, we could probably find 100 inside this
19 notebook here that maybe we should have introduced but
20 they weren't.

21 Q And you don't recall ever getting these documents;
22 right?

23 A Today I can't sit here and definitively state that I
24 had my hands on them. All I know is that every time we
25 had the group meeting Ms. Tarr and Ms. Hammock kept me

1 informed of everything.

2 Q Now, the Walter Carter Center records -- you are
3 familiar with those?

4 A Yes.

5 Q You did not introduce those records as an exhibit at
6 trial?

7 A No. I believe Ms. Hammock testified, if memory
8 serves me correct.

9 Q Why would you not introduce the records from his ---

10 A As long as the information is put before the judge it
11 could come through the testimony of Ms. Hammock or it
12 could be presented through the documentation -- one of the
13 two.

14 Q But you agree that being hospitalized at the age of
15 nine for 60 days is important for the judge to know about?

16 A It's important for the judge to be aware of that, but
17 how he's informed could be through written -- through the
18 written documentation or you can have a testimony of an
19 actual witness. Sometimes the testimony of an actual
20 witness is more significant than simply submitting
21 documents.

22 Q All right. But the judge needs to know about that
23 fact?

24 A I would agree.

25 Q That that's clearly mitigating; right?

1 A It could be.

2 THE COURT: What is the name of that place? Walter
3 what?

4 THE WITNESS: Carter.

5 THE COURT: Carter Center.

6 Q In this case was mitigating?

7 A To a degree.

8 Q You just talked about witnesses versus records. You
9 would agree with me that it's nice to have lay witnesses,
10 not just experts; right?

11 A Depending on the case.

12 Q You've heard the cross examinations of experts in the
13 closing. They're getting paid by the hour, hired by one
14 side testifying for them; right?

15 A Sure.

16 Q It's nice to have both, isn't it?

17 A What could be a detriment to your case is to have a
18 witness that has his own personal agenda -- a grandmother
19 that wants to clear the family name and disregard a
20 grandchild. What could be more detrimental is a sadistic
21 uncle who thinks it's funny when you are acting out and
22 going through some serious serious emotional problems in
23 dealing with family. What could be even more detrimental
24 is an aunt that harbors resentment because her house was
25 almost burned down by your brother. What could be more

1 detrimental was another aunt that was turned in to the
2 police and accused of beating you if you are accused of
3 beating someone when you were simply disciplined him.
4 Each of them was a bomb waiting to go off and if you
5 played with it the wrong way they could hurt you.

6 Q So once you found them and decided we can't use them,
7 you stopped the mitigation investigation and decided to
8 rely on an expert to try to get out that information:
9 right?

10 A That is incorrect.

11 Q All right.

12 A You're attempting to characterize it as if we gave up
13 and said simply, This is over and we can't do this. We
14 contacted Saleem. I believe Saleem was serving in the
15 military. We then went back to his mother. We said,
16 well, we know you you stayed in the house and you had to
17 wash your hair. Is there a possibility that you'll come
18 to South Carolina so we can help your son? So we
19 attempted to address the individuals. His mother never
20 stated that she had any ill will towards him. It was just
21 that she was withdrawn. I don't know if it's because of
22 his father or because of the Burwell family, but she was
23 crucial and her position was very passive and we continued
24 to talk to her.

25 Q When you're talking about records you think it's

1 easier for a sentencing body whether it's a judge or jury
2 to understand and ascribe importance to a witness who is
3 describing behavior or do you think it's better just to
4 enter in a diagnosis: Depression?

5 A Depends on the judge.

6 Q Okay. What about Judge Newman? What did you know
7 about him that formed your decisions about whether or not
8 you introduced records or witnesses?

9 A Judge Newman had been in private practice a number of
10 years and he was also a solicitor, and his experience in
11 private practice and also being a solicitor he was well
12 versed in all things that we were talking about with
13 regards to murder cases and witnesses testifying. He is a
14 trial lawyer as opposed to a real estate lawyer. So, he
15 had a well-versed background.

16 Q In criminal law?

17 A In criminal law, yes. He prosecuted people and he
18 defended people.

19 Q And did you know whether he was well versed in mental
20 health testimony as it relates to mitigation?

21 A I can't testify as to that, but I would imagine in
22 his years of experience he's probably dealt with mental
23 health experts in attempting to defend someone.

24 Q Let me get something marked.

25

1 (WHEREUPON, Applicant's Exhibit No. 35 was marked for
2 identification only.)

3 Q Let me hand up what's been marked as Applicant's
4 25 ---

5 THE COURT REPORTER: Thirty-five.

6 Q I mean 35. I'm sorry. That appears to be a draft of
7 your timesheets dated December 19, 2006; right?

8 A Right.

9 MR. LOMINACK: Your Honor, I would move to admit that
10 document.

11 MR. MABRY: I do object because I think it says draft
12 unless there is something important to it.

13 THE COURT: Well, you got the final?

14 MR. MABRY: Sir?

15 THE COURT: Why are we putting the draft in? Is
16 there a final?

17 MR. LOMINACK: It came in from Mr. Walters' file.
18 The respondent has introduced his timesheets and I think
19 from that they will try to draw conclusions about what was
20 done. I think once I go through the differences between
21 the draft and what was ultimately submitted for payment
22 it'll become clear why it's relevant.

23 THE COURT: Go ahead.

24 (WHEREUPON, Applicant's Exhibit No. 35 was admitted
25 into evidence.)

1 Q If you could also take out the timesheet that was
2 entered in by the respondent.

3 A All right.

4 Q I think that's Defendant's No. 18.

5 That's a copy, Judge.

6 THE COURT: Thank you.

7 Q Now, the timekeeping for a lawyer is the bane of our
8 existence, isn't it?

9 A Okay.

10 Q I mean, down to the tenth of an hour -- every six
11 minutes increment we've got to keep track of; right?

12 A I wouldn't agree with that, but we keep time.

13 Q Okay. And we do it contemporaneously?

14 A Yes. Sometimes.

15 Q Well, you're not going to look back a month later and
16 try to figure out how many hours you spent drafting a
17 motion; right?

18 A No. If you don't have a billing system what you do
19 is you write it out on your notes and then you may have to
20 go back and take those notes and put together a bill.

21 Q Okay. And let's look at this draft dated
22 December 19. If you could look at the entry dated
23 7/1/2005.

24 A Okay.

25 Q Motion to substitute counsel.

1 THE COURT: First page of the draft.

2 Q 7/1/2005, Motion to Substitute Counsel (Hudgens) Rule
3 1.7?

4 A Uh-huh.

5 Q How many hours do you have listed for that?

6 A 1.25.

7 Q Okay. Go to Defendant's 18 and look at 7/1/2005.

8 A Right.

9 Q Motion hearing relieving counsel, appointing
10 co-counsel. How many hours do you have for that same
11 hearing?

12 A Out of court, 30 minutes.

13 Q No, 7/1/2005 on Defendant's 18. It is the first
14 page.

15 A First page.

16 Q Near the top.

17 A I have 2.0.

18 Q Okay. And can you explain how that hearing went from
19 that to 2.0?

20 A I can't explain it. I know there was a motion that
21 was made and my secretary kept up -- I think we went to
22 Calhoun County and evidently she went back over it again,
23 but this was the draft.

24 Q All right. And 12/9/2005 on the draft, Conference
25 call with Judge Newman.

1 A Okay. What page is that?

2 Q First page on the draft.

3 A Okay.

4 Q That was .45 hours?

5 A No. It says 0.45.

6 Q Right. And then on Defendant's 18, 12/9/2005,
7 conference call with Judge Newman. How many hours?

8 A Twelve what?

9 Q 12/9/2005.

10 A It says 0.75.

11 Q So that increased?

12 A Instead of 45 it should have been 75.

13 Q All right. If you could look on the draft
14 February 3, 2006.

15 THE COURT: How is this relevant?

16 MR. LOMINACK: Well ---

17 THE COURT: I mean, seriously?

18 MR. LOMINACK: -- two reasons, Judge.

19 THE COURT: Tell me.

20 MR. LOMINACK: They've introduced this document and
21 will use it from here on out to suggest that a number of
22 hours were spent. I've got evidence that those hours may
23 not have been spent.

24 THE COURT: He had a draft copy and he went back and
25 and revised it. I'll take it for that weight, but, I

1 mean, are you going to go through this whole thing and ---

2 MR. LOMINACK: Yes. Yes, Your Honor. And if he has
3 an explanation for why something would change from the
4 draft that was created after the trial to the final
5 submission to OJD, then obviously he can give the
6 explanation.

7 THE COURT: Well, I understand that, but, you know,
8 we all practice law for a long time. We all know how you
9 do draft bills. Sometimes you revise them upwards,
10 downwards depending on after you go back and look at them
11 and I am not going to put a whole lot of weight if he's
12 got a little discrepancy in his draft as opposed to final
13 bill. If you want to go through with it, I'll let you do
14 it but...

15 MR. LOMINACK: Thank you, Your Honor.

16 THE COURT: Seriously, I don't see where this is
17 anywhere relevant to ineffective assistance of counsel.

18 Q On February 3, 2006 on the draft, Travel from
19 Orangeburg to Winston-Salem.

20 A All right.

21 Q 9.5 hours; right?

22 A Uh-huh.

23 Q On Defendant's 18, on February 3, 2006, 10.5 hours?

24 A Okay.

25 Q Is there -- Can you explain now why that would

1 change?

2 A My paralegal went over it and she kept up with me,
3 but I believe we went to Winston-Salem, North Carolina and
4 whatever work was done she made sure she kept up with me,
5 but this was the draft. It is a difference of one hour.

6 Q All right. 3/29/2006 on the draft.

7 A Uh-huh.

8 Q Death team meeting.

9 A All right.

10 Q 2.3.

11 A All right. On the bill we submitted is 1.3. It is
12 one hour less.

13 Q No. On the bill you submitted 3/29/2006, Meeting
14 with defense team experts and co-counsel --

15 A Right.

16 Q -- 2.5; right?

17 A You got to drive from Orangeburg to Columbia, okay?
18 And then you got to have the actual meeting.

19 Q Okay. And the travel from Orangeburg to Columbia is
20 noted right above that time entry --

21 A Right.

22 Q -- on both of these; right?

23 A Uh-huh.

24 Q So, the team meeting though went from 2.3 to 2.5?

25 A Yea.

1 Q Okay.

2 A We missed 20 minutes.

3 Q Okay. 4/27/2006, Conference call with Judge Newman.

4 A Uh-huh.

5 Q On the draft is .30?

6 A Right and on the bill it's 0.75.

7 Q Right. 5/3/2006.

8 A Okay.

9 Q I'm sorry. 7/15/2006.

10 A All right.

11 Q Meeting with Josh Koger, four hours on the draft?

12 A 7/15? Okay. And on this one I had 2.0.

13 Q Okay.

14 A So it dropped.

15 Q And I'm just trying to get a sense of how that would
16 go from four to two. What did you do? Who enters in this
17 draft?

18 A All right. What happens is we write the information
19 out on a yellow pad because if you got a small firm you
20 don't purchase a big accounting system because you're not
21 doing defense work. So what happens is that if I meet
22 Koger at 2 o'clock we make a note on a notepad I met Koger
23 at 2 o'clock. We may discuss the case and Josh may call
24 me back and say, Glenn, are you going to draft that, and
25 the reality is I am probably not going to draft it and he

1 is not going to do it. We're going to call the paralegal
2 and say, You need to go do X, Y, and Z, and then she may
3 turn around and make a note of it and when we finally sit
4 down and look at what we've done for that day, you may
5 have met with Koger for two hours, but by the time he
6 called you back and he said you forgot to go do X, Y, and
7 Z and guess who is actually drafting the paperwork and
8 putting it together? Your paralegal. You got to be paid
9 as a lawyer and, of course, if your staff is working on
10 something you need to recoup that time, too, but each of
11 the instances that you've referred to there is a
12 difference of 20 minutes, there is a reduction in two
13 hours this time, and the other time it was an increase of
14 30 minutes.

15 Q All right. 7/28/2006, Review a file, three and a
16 half hours?

17 A Yea.

18 Q On Defendant's 18?

19 A Yea.

20 Q That goes up to six hours; right?

21 A Right.

22 Q 8/7/2006.

23 A Right.

24 Q Death team meeting.

25 A Uh-huh. Travel to Columbia and evidently they said I

1 went by the law school library. I forgot about that.. I
2 put that in, and, let's see -- I went to the law school
3 for three hours and then I traveled to Columbia. My
4 secretary put it in I did travel to Columbia and there was
5 a death team meeting.

6 Q All right. 9/4/2006, three hours preparation of
7 subpoena to WIS and death team meeting?

8 A Uh-huh.

9 Q And on -- What you submitted for payment it says Case
10 preparation, 4.5 hours?

11 A Right. It is a difference of one hour and 50 minutes
12 and I think if memory serves me correct they carried
13 something on WIS about Mr. Mahdi. I thought we might want
14 it, but I can't remember, but I remember Mr. Mahdi was
15 covered on WIS.

16 Q All right. On 11/4/2006, Meeting with Josh Koger.

17 A Uh-huh.

18 Q Three hours on your draft.

19 A Uh-huh. And it went up five hours.

20 Q It went up to eight hours --

21 A Uh-huh.

22 Q -- in what you submitted?

23 A Right. And let me make sure I am clear about
24 Mr. Koger. Mr. Koger has -- He's a sole practitioner just
25 like I am. So, we could meet at 1 o'clock and Josh may

1 run to a hearing, I may run to a herring, and then we may
2 see each other again. Then we may call each other again.
3 Then we may throw it on my paralegal. Then we may meet
4 again, but there is nothing fraudulent with regards to the
5 hours and we do not have like a large firm. You're
6 talking about discrepancies of an hour and 30 minutes and
7 20 minutes and 40 minutes. As a large firm we don't have
8 a billing system. We don't do defense work. You might
9 have 3 percent of our clients that require an automated
10 billing system.

11 What we've got is that you write it down and you try
12 to keep a record, but you're cross examining me on a draft
13 that we tried to put together, but wasn't a final product.
14 Q But the draft that was created was after that meeting
15 by over a month; right?

16 A Right. And what happens is the paralegal sits down
17 with me and says, You met that day, but you had to do X,
18 Y, and Z, and we go over it and we honestly sign exactly
19 what we bill for, but you're trying to hold me accountable
20 with regards to a draft.

21 THE COURT: All right. I understand where you're
22 going on this. Ask him specifically yes or no and let's
23 get through this timeframe on this bill. I am the fact
24 finder in this and you're sort of questioning all of our
25 mentality on this, to be honest with you.

1 MR. LOMINACK: Well, the other two entries will speak
2 for themselves as part of the record and I can make the
3 argument.

4 THE COURT: Thank you. Move along.

5 MR. LOMINACK: The Court's indulgence.

6 THE COURT: Certainly.

7 Q The Department of Juvenile Justice records -- You
8 were recall that a counselor testified about those records
9 and you cross examined her? Or do you recall that?

10 A You submitted the transcript to me. I went through
11 the transcript and looked over it. So, if it is reflected
12 there, yes.

13 Q Wait. Who submitted a transcript to you?

14 A If the transcript reflects that someone testified, I
15 can't dispute that.

16 Q Okay. I'll give this to you so you'll have it. I
17 don't want to put words in your mouth.

18 A Yes, sir.

19 Q If you could turn to page 1447 in the transcript.

20 A Okay.

21 Q That's the testimony of Linda Coleson who is a
22 counselor at the Department of Juvenile Justice.

23 THE COURT: This is in the trial?

24 MR. LOMINACK: Yes, sir, in the trial.

25 THE COURT: In the sentencing phase, obviously?

1 MR. LOMINACK: That's right.

2 THE COURT: Who called her as a witness?

3 MR. LOMINACK: The state called Linda Coleson as a
4 witness to recount some of Mr. Mahdi's behavior in the
5 Department of Juvenile Justice.

6 THE COURT: And she is the representative from the
7 department from the jail?

8 MR. LOMINACK: One of counselors; right.

9 THE COURT: All right.

10 Q And if you could look at your cross beginning at page
11 1447 and review it and keep this question in mind. You
12 were cross examining Ms. Coleson with the idea that she
13 didn't have the full picture and she was asking the judge
14 to base a decision on her very incomplete information, and
15 then read through that and see if I have correctly
16 characterized your cross examination.

17 A Yes, sir, that's correct.

18 Q And, in fact, in 1451 you come out and tell her, You
19 didn't get the full picture because you're just relying on
20 Mr. Mahdi?

21 A That's correct.

22 Q Right?

23 A Uh-huh.

24 Q And you were rightly complaining that she was either
25 taking things out of context or didn't have the full

1 information?

2 A That's correct.

3 Q Is there any reason why you wouldn't have just at
4 this point when the Department of Juvenile Justice
5 behavior had come out why you didn't introduce his DJJ
6 records?

7 A Well, let's carefully go through what I did on page
8 1447. I asked her, You never talked to the parents?
9 Okay? She never talked to his mother. She never talked
10 to his father. And you had a conversation with a child.
11 She said, Yes, sir, that's how reports are completed. So
12 as far as having a complete picture of what's going on
13 with the kid you just don't have that, do you? It said, I
14 did have access to talking to either his mother or father.
15 All right. Did you talk to his grandmother? She's
16 present the courtroom. Did you talk with her? No, sir.

17 My cross examination addressed her talking to members
18 of the family unlike what we did in our case. We talked
19 to the mother who was resistant. We talked to the father.
20 We talked to the grandmother. We talked to all of the
21 aunts and uncles, and this lady was testifying simply
22 saying I just talked to the kid and that's the only
23 information that I had.

24 MR. LOMINACK: Court's indulgence.

25 If you could turn to page 1756 in the trial

1 transcript. This is from the sentencing phase.

2 MR. LOMINACK: 1756.

3 Q That's right; 1756.

4 A Okay.

5 Q Now, Mr. Koger it appears put Ms. Hammock up as a
6 witness. Who, in fact, talked to her before she testified
7 to prepare? Do you recall?

8 A We had team meetings over and over again and Marjorie
9 participated in all that. Marjorie met with Mr. Grant and
10 he was involved at this time. She met me. She met with
11 Mr. Koger. We had an ongoing dialogue the entire process
12 of representing Mr. Mahdi. So when you say who talked to
13 her -- and she's testified in court before.

14 Q Right.

15 A So she -- she testified and she had full knowledge of
16 what everyone wanted to hear.

17 Q All right. And if you could look at her testimony on
18 page 1756, line 7 through 9.

19 A Yes.

20 Q That's the sum total of her information about Walter
21 Carter Center; right?

22 A Right. He was involuntarily placed in a mental
23 health facility after he was released from that. I am
24 just doing the school part. After he was released from
25 that facility -- the mental health facility -- he stays

1 only with his aunt and uncle for a short period of time.

2 So she related to the judge he was involuntarily
3 placed.

4 MR. MABRY: I am going to object to that --

5 THE COURT: Hold on.

6 MR. MABRY: -- question because that misrepresents
7 the record. There was a chart introduced by Mr. Walters
8 that through Ms. Hammock that lays out ---

9 THE COURT: You can bring all of that on redirect.

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

11 Q She doesn't say involuntarily; right?

12 A What it says in the transcript is it says, Ultimately
13 he leaves school and is placed in -- and it says
14 voluntarily in a mental health facility.

15 Q Okay. That wasn't accurate?

16 A No. The word involuntary is not there. The word
17 voluntary is there.

18 Q Okay. And there is no further description from
19 Ms. Hammock about the behavior that they observed while he
20 was at Walter Carter Center; right?

21 A I don't remember the rest of the transcript here, but
22 she went into the history of the young man.

23 Q Is it fair to say that Judge Newman did not get the
24 full picture of what happened at Walter Carter Center if
25 that's what he heard from Ms. Hammock?

1 A No.

2 Q So what did --

3 A I don't believe I can testify as to what he perceived
4 and believed was the full picture.

5 Q Well, you know what was in the records and you know
6 what she just said.

7 A Sure.

8 Q That one sentence didn't convey the evaluations and
9 the depression they observed?

10 MR. MABRY: I got to object to that.

11 THE COURT: I don't know how in the world Mr. Walters
12 can know what was in Judge Newman's mind. I have listened
13 to everything that happened at Walter Carter Center that
14 you put in, and, obviously, I am the fact finder in this
15 and whether or not that adequately conveys it or not, you
16 know, I'll have to make that decision. It says what it
17 says.

18 Q All right. Tell me why you didn't introduce those
19 records as an exhibit along with Ms. Hammock's testimony?

20 A Ms. Hammock was well qualified and prepared to
21 present the history of Mikal Mahdi. We believe that her
22 verbal testimony was sufficient.

23 Q And was there any reason not to introduce the
24 exhibit?

25 A The issue with regards to any records Ms. Hammock in

1 presenting this information we believe she was well
2 qualified since she testified in court before. We did not
3 go in as if she was a lay witness and simply tell her this
4 is what we want you to do and this is how you should
5 testify. She's testified before in court. She's
6 experienced in death penalty cases, and of course, we put
7 her on the stand and we believe she did a sufficient job.

8 Q And you let her deal with because she's an expert
9 what she's going to say and how far she's going to explain
10 things?

11 A No. I believe Mr. Koger directed her properly
12 through her testimony with regards to the history of Mikal
13 Mahdi.

14 Q Had you ever read the Walter Carter Center records
15 before the trial?

16 A I can't remember. I remember I noted he was placed
17 in the facility and, of course, we went through some
18 records where he was placed in a facility. He was
19 medicated, and, of course, I believe her name was Lawanda
20 and some paperwork it says Owanda and Carson -- they
21 disagreed with either psychiatrist or psychologist that
22 was there in providing medication for Mikal Mahdi.

23 So, we discussed that facility and I believe that was
24 the Carter facility.

25 Q But you -- I am not arguing with you, but you don't

1 know whether you actually reviewed the records?

2 A I would have to say I reviewed the records. I
3 reviewed the records of the facility that he was placed in
4 because Carson and Lawanda disagreed with the diagnosis
5 and the treatment. Now, if that's the same facility as
6 the Carter facility, there was a discussion with regards
7 to the facility he was placed in and there was an
8 objection by Lawanda and Carson as to this child being
9 medicated and the treatment that he was supposed to
10 receive.

11 So, if that's the facility, that's the facility that
12 was discussed. As far as my recollection of going through
13 those records in terms of what you're talking about, I
14 can't remember that, but I know we discussed the facility.

15 Q Do you remember Sheriff Woodley who testified for the
16 prosecution?

17 A Is Woodley -- I'm sorry. I was going to ask you a
18 question. No. No, I don't.

19 Q Okay. If you could turn to page 1426 of the
20 transcript.

21 (WHEREUPON, Applicant's Exhibit No. 36 was marked for
22 identification only.)

23 Q You see Sheriff Woodley's testimony?

24 A Yes.

25 Q And this was a prosecution witness who was called to

1 testify; right?

2 A Right. I remember who he is now.

3 Q Okay. And he was called to testify about the
4 stand-off?

5 A Yes.

6 Q And you knew he was going to testify; right?

7 A Yes.

8 Q Okay. I hand you what's been marked at Applicant's
9 36.

10 MR. MABRY: Witness list? No objection.

11 (WHEREUPON, Applicant's Exhibit No. 36 was admitted
12 into evidence.)

13 Q That's the witness list that was provided to you by
14 the prosecution; right?

15 A Okay.

16 Q And he's listed on page three on that list, I think
17 the last one?

18 A Okay.

19 Q And you did not speak with him before the trial;
20 right?

21 A I can't say yes or no.

22 Q If he says he did not speak with you, you couldn't
23 disagree with that; right?

24 A I couldn't. If he said he didn't, I couldn't
25 disagree with him.

1 Q And there was nothing keeping you from speaking with
2 somebody you knew was going to testify for the state?

3 A No. If memory serves me correct Mikal made a
4 statement about I am going to kill a cop or something and
5 I think these were the police officers that were involved
6 in that altercation where there was a stand-off. If
7 memory serves me correct -- and when a cop shows up and he
8 is going to testify against my client and testify that he
9 said he is going to kill -- I don't think he said he was
10 going to kill a cop. I think that happened at the jail.
11 I got it mixed up.

12 This is where the stand-off occurred where Mikal's
13 father or Mikal, they had some big altercation with the
14 police. I think kill a cop -- maybe that was said at the
15 jail. I maybe got it mixed up.

16 Q All right. Well, but you knew he was going to
17 testify about a significant fact, this stand-off?

18 A Sure.

19 Q And you knew this prosecution was going to rely
20 heavily on that?

21 A Sure.

22 Q You know, a dramatic eight-hour stand-off?

23 A If memory serves correct this is the stand-off. It's
24 not the kill-a-cop issue. That was another event.

25 Q Well, is there any reason not to speak to a witness

1 who is going to come and describe that for a state?

2 A Sure.

3 Q What is the reason not to speak to a witness?

4 A I don't know how many criminal trials you had, but
5 sometimes you got a witness that is going to come in and
6 it's going to be a detriment to your client you have to be
7 very careful. Number one, the witness may not want to
8 talk to you and you may engender a greater resentment
9 towards your client and they may be more adamant on the
10 stand, more visceral on the stand. They may go after you.

11 So, you have to be very careful when you find out
12 there is a witness or victim that's going to testify in a
13 case against you. In this particular case there was a
14 stand-off that occurred in a yard I think somewhere, but
15 the bottom line is that there is no requirement as a
16 defense lawyer that you approach a victim. In this case
17 this cop is considering his police officers or himself --
18 in this particular case he had a confrontation with my
19 client. I keep interjecting the issue with killing a cop.
20 That's a different issue. The confrontation -- you don't
21 go and approach a witness unless you feel comfortable, and
22 in this particular case there is no requirement that you
23 go and talk to this police officer.

24 Q And to be clear do you recall specifically why you
25 did not speak to Sheriff Woodley, putting aside your

1 general ---

2 A I don't remember Sheriff Woodley. I don't remember
3 him by name. I do remember that there was a stand-off
4 that occurred that was I think led by Mahdi's father and
5 in the stand-off they were able to resolve it and nobody
6 was hurt, but as far as the requirement that I go talk to
7 Sheriff Woodley or any other officers involved in that
8 altercation, no.

9 Q I mean, as you sit here today you don't recall a
10 reason why you didn't? Because you don't even recall him;
11 right?

12 A I wasn't going to call him as a witness, though.

13 Q Are you familiar with the American Bar Association
14 Guidelines for the appointment and performance of defense
15 counsel in death penalty cases?

16 A I couldn't quote it to you. I know in South Carolina
17 I think it's five years felony experience.

18 Q I am going to hand this to you to see if that
19 refreshes your recollection. I am, obviously, not going
20 to admit it, Your Honor.

21 MR. MABRY: I am going to object on the ground of
22 relevance. I think the US Supreme Court said it's just
23 American Bar's Guidelines. They're not controlling.

24 THE COURT: He's not admitting it. He just asked him
25 if he knows about it.

1 THE WITNESS: No, sir.

2 Q You never read those?

3 A No, sir.

4 Q And have you ever read the case of Rompilla versus
5 Beard?

6 A No, I can't remember it.

7 Q And have you ever read any cases from the US Supreme
8 Court imposing a duty on counsel to explore evidence that
9 you know the state is going to present by talking to the
10 witnesses?

11 A Sure.

12 Q You do know that?

13 A I can't quote the cases. I am like any other lawyer.
14 You go pull it and you cite them and you say, okay, this
15 is an obligation that you have to do for your client.

16 Q Okay. So, how do you reconcile the case that says
17 you do have a duty to explore the aggravation through
18 talking to witnesses and getting files that you know the
19 state is going to present and your general rule that you
20 may not want ---

21 A What controls that is a lawyer has a right to make
22 strategic decisions that's in the best interest of his
23 client. If you determine that there may be a witness that
24 may be harmful to your client and you may exacerbate their
25 testimony or further, you know, deepen the hole that your

1 client is in by communicating with that person, you have a
2 right to refrain from contacting that individual. You
3 have a right to simply say, okay, I'm aware of what you're
4 going to do, but there is no obligation that I have to
5 approach you.

6 In every criminal case I've tried I did not go out
7 and contact the victim even though I knew the victim may
8 testify against my client. There is no obligation to do
9 that under the rules.

10 Q Well, and, so, how is this calculation made then? I
11 mean, you're looking at the witness list how do you
12 decide which ones may get upset and which ones may be
13 fine?

14 A That's based on your years of experience and
15 evaluation of the case, the facts itself, and you sit down
16 and you look at the sum total of that and then you make a
17 decision whether you want to proceed forward. If it's a
18 sexual molestation case do you approach the victim? You
19 have to sit down and evaluate the facts, but there are
20 also other factors.

21 When you approach a witness, you may have a client
22 that wants to talk to a particular victim. The first
23 thing you tell them is that if you're contact them you
24 could be charged with witness tampering. You could be
25 charged with perjury. In addition to that you could have

1 other problems if you attempt to contact someone and
2 attempt to deal with their testimony.

3 You can hire an investigator sometimes to talk to
4 someone, but, of course, in going through that process you
5 could make it worse for your client by talking to a
6 potential witness.

7 Q And you -- as we sit here today you can't reconstruct
8 how that calculation affected your not getting in touch
9 with Sheriff Woodley?

10 A If I had a crystal ball and knew the guy was going to
11 be nice and affable and we would have a great conversation
12 I would go over and talk to him, but you don't have a
13 crystal ball. You sit down and you simply make decisions
14 based on the facts and the evidence that you have before
15 you and you move forward.

16 Q And you did know that Sheriff Woodley had mitigating
17 information; right?

18 A No.

19 Q You did not?

20 A No.

21 Q And so ---

22 A I can't sit here today and say I remember that.

23 Q Okay.

24 A I do know that there was a stand-off with the police
25 officers in that community. I do also know that the

1 police officers in that community were actively involved
2 in an investigation with regard to someone that was
3 murdered and Mr. Mahdi was on the run.

4 Q During the cross examination of Sheriff Woodley he
5 was questioned about the -- whether or not DSS had
6 investigated Shareef Mahdi. That was during cross
7 examination. Do you recall that?

8 A If that's the case, yes. Okay.

9 Q So, to ask that question you would have to have a
10 good faith basis to ask it; right?

11 A No.

12 Q You don't have to have a good faith basis to ask a
13 question?

14 A Some questions have a good faith base. Some
15 questions are just inquisitive to find out information.
16 Some questions are to probe to get to another issue so the
17 basis of a question -- it doesn't always -- it's not
18 always grounded in some good faith basis. Sometimes you
19 throw questions out there when you have nothing to work
20 with -- all part of trying criminal cases.

21 Q And that would be called a fishing expedition?

22 A You got it.

23 Q Okay. And with Sheriff Woodley, you were fishing?

24 A Sheriff Woodley -- The problem was is that he did not
25 have a good opinion of the Mahdi family. He knew they

1 were problems in that family, but we got a young man who
2 had a stand-off with police.

3 Q Wait a minute.

4 THE COURT: Wait a minute? That's not a question.

5 Q He did not have a problem with -- I apologize, Your
6 Honor. How do you know he had a problem with the Mahdi
7 family if you never spoke to him?

8 A The only conclusion I can draw is that if a police
9 officer has a stand-off with you that means that the
10 defendant has refused to cooperate if you have a stand-off
11 and that's the only assumption you can draw from that when
12 there's something called a stand-off.

13 MR. LOMINACK: Court's indulgence.

14 Now, do you know how old Mr. Mahdi was during that
15 stand-off? I realize it's been a long time. If I told
16 you he was 14 years or 15 years old, would that ---

17 THE WITNESS: He was 13 or 14 years old, yes.

18 Q Given that you know that the state is going to
19 present the evidence about the stand-off --

20 A Uh-huh.

21 Q -- is there any harm in exploring the context and the
22 circumstances surrounding the stand-off when you've got a
23 14-year-old kid?

24 A Sure.

25 Q With a father whom you knew was abnormal; right?

1 A There could be problems. You ask a question that can
2 open another can of worms. We're trying to minimize what
3 we've got. We got him on film murdering someone else.
4 He's already been found guilty for murdering a police
5 officer. In addition to that, we've also got evidence
6 introduced where he was breaking into an apartment. The
7 tenant in the apartment caught him and that tenant was
8 stabbed. In addition to that, we have information from
9 our client that also he carjacked someone which is already
10 going to be introduced. In addition to that, we also have
11 an actual police officer that was killed.

12 So we've got a number of issues on our plate. If you
13 open the door to something that you know nothing about or
14 you're on a fishing expedition, could you make it worse
15 for your client?

16 Q Right. Once you're in the courtroom just to start
17 throwing questions out is a scary proposition; right?

18 A I agree and we got a police officer that's there that
19 said I had a stand-off with this young man that lasted a
20 number of hours. The only thing I can draw from that is
21 defiance. He did not listen to the police and he was
22 resistant to their request, and I am going to approach
23 this police officer and say, hey, can you help me out
24 here? Can you give me something? What do you want to
25 talk about?

1 Q And for that reason -- You've been doing this a long
2 time. One of the first rules of cross examination is
3 don't ask a question to which you don't know the answer;
4 right?

5 A I would agree, but even if you know the answer there
6 is a possibility that this police officer who is trained
7 to testify in court, he can go further. He can make his
8 point. He can hurt you. It might be better to simply
9 leave him alone, but this is years down the road, but at
10 that time that's's the decision that was made under the
11 circumstances.

12 Q But one way you ensure that you don't ask the
13 question to which you don't know the answer is that you
14 find out the information before the trial; right?

15 A That's not correct. What happens is that you can
16 send an investigator out or you can personally and talk to
17 a witness. You can engender the hate right then. They'll
18 contact the solicitor's office and the victim's office and
19 then when you show up at trial you got trouble on your
20 hands because you never should have talked to that person.

21 Normally what I do, if I find out there is a victim
22 and I sort of want to work a deal and I want to work
23 something out, I'll fish around and say, who lives next
24 door to them? You can google people now and find out
25 their neighbors -- there's a nosey neighbor and I say,

1 what kind of person is this lady? They'll tell me what
2 they're like and they'll say they're approachable.
3 They're affable. They're not that bad of a person.

4 Then there is a possibility that you sent an
5 investigator out. Some witnesses or some victims if you
6 send your investigator out they immediately call the
7 police. They ask your investigator for his ID. They
8 contact the solicitor's office and they ask that you
9 please refrain from contacting this particular victim and
10 that can happen in this particular case with a police
11 officer who is trained on the rules and how to handle
12 himself. He is totally different from a lay person.

13 THE COURT: All right, gentlemen. Let's move to
14 another subject. I think you've covered that
15 sufficiently.

16 Q Do you have any strategic reason for failing to
17 object and raise a challenge to the state statute that
18 gives you the choice -- that forces a capital defendant to
19 waive his right to a jury trial upon a plea of guilty?

20 A I can't remember strategically what we did at that
21 time. It was a while back. Whatever the record reflects,
22 that's what we did.

23 Q So if you did not object you do not recall as you sit
24 here today any strategic reason for not objecting?

25 A I can't remember at that time.

1 MR. LOMINACK: Court's indulgence.

2 Two questions. When you're putting up a witness
3 you're asking the questions; right?

4 THE COURT: Mr. Lominack. Please.

5 MR. LOMINACK: Well, Judge, if I ---

6 THE COURT: I mean, everybody knows the lawyer asks
7 the question. You act like you got a second grade jury up
8 here. Please. Come on.

9 Q Well, when you said you were going to leave it to
10 Ms. Hammock to explain what she thought was relevant when
11 she testified, she can't do it unless it's responsive to a
12 question, right?

13 A Sure.

14 MR. LOMINACK: That's all, Judge.

15 THE COURT: Thank you. I don't mean to be fussing,
16 but my goodness gracious. That question went a little
17 beyond.

18 Mr. Mabry, redirect.

19 REDIRECT EXAMINATION

20 BY MR. MABRY:

21 Q As far as the challenge to the statute, did -- When
22 y'all made the decision to -- Mr. Mahdi made the decision
23 to plead guilty, did he want a jury to sentence him or did
24 he want Judge Newman to sentence him?

25 A Our decision was that we wanted Judge Newman to

1 sentence him and the reason was sitting judges that have
2 practiced law for an extensive period of time and are also
3 involved in the prosecution and defense of criminal cases
4 they are desensitized and sort of immune when they hear --
5 not to say anything disparaging, but they've seen plenty
6 of murder cases over and over and over again as opposed to
7 a lay person that may see this film. If you've handled
8 murder case after murder case after murder case, you can
9 focus on the issues. You can take in the significance of
10 the murder itself and the other factors and make a
11 rational decision.

12 If you're the local cashier at the Hardees and this
13 man has already been found guilty of murdering a police
14 officer and unbeknownst to you that all of a sudden you're
15 going to be shown a film of him murdering someone in a gas
16 station in North Carolina the reaction will be totally
17 different possibly -- not guaranteed -- from a judge
18 that's handled murder case after murder case after murder
19 case and even defended murder cases.

20 Q And would there have been any reason to challenge the
21 statute if you wanted the judge to do the sentencing and
22 not the jury?

23 A No. We wanted the judge. It was a couple -- This
24 jury was -- Number one, they react differently to a second
25 murder being shown to them. Two, they were real ansy

1 because it was sometimes towards Christmas and we want to
2 lock them down and keep them there and when you put in
3 those factors together you don't want people to rush and
4 make a decision that would hurt my client.

5 Q Okay. Did -- I show you State's Exhibit 95 from the
6 sentencing phase. Did they introduce at least a portion
7 of Mr. Mahdi's juvenile records?

8 A This is -- this document says Department of Juvenile
9 Justice, Culpepper Juvenile Correctional Center.

10 Q Okay. And those are basically day records, notes
11 taken of what things Mr. Mahdi was saying to them and
12 doing --

13 A Sure.

14 Q -- from it looks like August or September of '99
15 until his release in 2000; is that right?

16 A Yes.

17 Q Now, you know that Mr. Mahdi's DJJ records also had
18 some very bad things in them?

19 A Yes.

20 Q And he had over 40 disciplinary ---

21 A There was over 40 infractions that he had where he
22 was doing things.

23 Q Okay. And as far as Ms. Hammock's testimony -- This
24 is marked Defendant's Exhibit 5 and Exhibit 2 that y'all
25 introduced at the trial. Does that document on the second

1 page indicate exactly what Mr. Mahdi went into the Walter
2 Carter Center for?

3 A The second page it says, Mikal, involuntary admission
4 psychiatric facility after suicide threat gesture. Mikal
5 hospitalized admission D, Axis I, major depression with
6 suicidal ideation, adjustment disorder. It says
7 adjustment disorder, Axis II, developmental reading
8 disorder, Axis III, excessive right arm and right leg
9 fractures. Saleem comes back from Texas after disrupting
10 his aunt's home.

11 THE COURT: That's part of the original we have to do
12 that exhibit like we did the last one. That's part of the
13 original trial.

14 MR. MABRY: I'll just wait.

15 THE COURT: I mean, you can make it an exhibit. We
16 just have to keep one for the original trial and one for
17 this --

18 MR. MABRY: Yes, sir.

19 THE COURT: -- proceeding.

20 MR. MABRY: I move this into evidence, Your Honor,
21 Defendant's 19.

22 MR. LOMINACK: I can't imagine I've got ---

23 MR. MABRY: It's from the trial.

24 THE COURT: It is part of the records that are
25 already in the record but this is what was introduced in

1 the trial of the case.

2 MR. LOMINACK: No objection.

3 THE COURT: Without objection.

4 (WHEREUPON, Defendant's Exhibit No. 19 was marked for
5 identification and received into evidence.)

6 THE COURT: Move along.

7 MR. LOMINACK: Your Honor, I just got a couple
8 questions if I could.

9 THE COURT: I don't -- discretionary recross. I
10 don't ever do it.

11 MR. LOMINACK: Two questions, Judge.

12 THE COURT: Two questions since this is a death
13 penalty.

14 RECROSS-EXAMINATION

15 BY MR. LOMINACK:

16 Q You said murder case after murder case after murder
17 case, but a death penalty case is different than a murder
18 case; right?

19 A The only difference is the sentencing phase and, of
20 course, it is a capital case.

21 Q But the sentencing phase is different than the guilt
22 innocent phase of a murder case?

23 A Sure, yes.

24 MR. LOMINACK: Thank you, Your Honor.

25 MR. MABRY: We ask that he be excused.

1 THE COURT: You want to go back to work or stay with
2 us?

3 THE WITNESS: Your Honor, I need to go back to work.
4 Payroll is due today.

5 MR. MABRY: Josh Koger.

6 THE COURT: All right, Mr. Koger.

7 (WHEREUPON, Defendant's Exhibit No. 20 was marked for
8 identification only.)

9 JOSHUA KOGER, JR., after being duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MABRY:

13 Q Tell us your name, please.

14 A Joshua Koger, Jr.

15 Q What do you do for a living?

16 A Practicing attorney in Orangeburg, South Carolina.

17 Q How long have you been practicing there?

18 A Almost 17 years. Seventeen years in May.

19 Q What kind of practice do you have in Orangeburg?

20 A I have a sole -- I am a solo practitioner. I do
21 criminal, civil, and unfortunately family.

22 THE COURT: And he is a teacher. Tell them all about
23 your teaching.

24 Q Where do you teach?

25 A I instruct in the criminal justice program in

1 evenings at Claflin University in Orangeburg.

2 Q Great. Did you get appointed in this case, State
3 versus Mikal Mahdi?

4 A Yes, I did.

5 Q And do you remember exactly when you were appointed?

6 A It was July of 2006; near the first portion of July.

7 Q I show you Defendant's Exhibit 20 without objection.
8 Is that your time sheet?

9 A That's correct.

10 Q The work you did in this case?

11 A That's correct.

12 (WHEREUPON, Defendant's Exhibit No. 20 was admitted
13 into evidence.)

14 Q And briefly, Mr. Koger, did you discuss with
15 Mr. Mahdi this case and what happened?

16 A Yes, I did.

17 Q Did he have any difficulty in talking with you about
18 this case or understanding what was going on?

19 A No, he didn't.

20 Q What did he explain to you why he left Virginia and
21 came to South Carolina?

22 A Well, he had a legal problem in Virginia. It was an
23 incident that he was a possible suspect in dealing with a
24 shooting. Also, I recall, too, he might have had some
25 type of probation violation or something coming up related

1 to that. So that's why he was leaving. He was leaving
2 Virginia.

3 He was heading towards Florida from the other
4 incident that he was being named a suspect. I think he
5 was heading towards Tampa Bay, Florida, and he went
6 through North Carolina. He had the incident at the
7 convenience store in Winston-Salem, North Carolina. He
8 ended up in Columbia, South Carolina. Of course, he had
9 carjacking in Columbia.

10 Q Right.

11 A And he ended up down in Calhoun County at the gas
12 station off the interstate there and eventually to the
13 dwelling of Mr. Myers.

14 Q Okay. Did y'all retain -- you and Mr. Walters retain
15 two psychiatric or psychological experts to look at
16 Mr. Mahdi?

17 A Well, those two were already on board when I came on
18 board, yes.

19 Q And did they convey to you and Mr. Walters their
20 findings in regard to Mr. Mahdi?

21 A That's correct.

22 Q And as a result did you make a -- you and Mr. Walters
23 make a decision not to call Mr. McKee -- Dr. McKee and
24 Dr. Martin?

25 A That's correct.

1 Q Why was that? Why did you not want to present them
2 in the penalty phase of the trial?

3 A Well, again, earlier we didn't have any type of
4 question about the competency of Mr. Mahdi and his ability
5 to participate in his particular defense and it was
6 nothing in those reports of record that would show a jury
7 or a sentencing judge that he had diminished capacity.
8 So, it was not advantageous in this particular case.

9 Q All right. And were there things in that report that
10 were a disadvantage to your client that could come out on
11 the stand from those two witnesses?

12 A That's my understanding.

13 Q All right. Did -- Tell me about your mitigation
14 investigation. Who was doing that?

15 A Well, again, those parties, of course, were already
16 in place. At the time she was Ms. ~Tarr. She did the
17 mitigation investigations. Jim Gordon did the other
18 investigations. Ms. Hammock did the social history
19 work-up.

20 Q Were you involved in interviewing -- going to North
21 Carolina or Virginia or Philadelphia and interviewing any
22 witnesses?

23 A It wasn't involved in going to North Carolina, nor
24 Philadelphia, but I did went to Lawrenceville I think in
25 October of 2006 with Investigator Gordon and Attorney

1 Walters.

2 Q Who did you met with there?

3 A I met with the grandmother of Mr. Mahdi -- Nancy
4 Burwell -- and also after we started Mr. Nathan Burwell
5 came in.

6 Q All right. Was Nathan Burwell cooperative with
7 y'all's efforts?

8 A Not at all. He -- I think we were there for
9 approximately 15 or 20 minutes that he came in what I
10 presumed to be a lunch break from the school because he
11 worked at the local school at St. Paul College. He came
12 in. I think he spoke. He started doing some things in
13 the kitchen. It was an open area. He started cooking,
14 frying fish, and, you know, really didn't participate and
15 we spoke with him, I think, maybe a total of about three
16 or four minutes.

17 Q And was the grandmother helpful? Was she cooperative
18 with you?

19 A She was cooperative.

20 Q Uh-huh.

21 A But as far as information being helpful --

22 Q Right.

23 A -- again, she wanted to talk about -- One of the
24 first things she wanted to talk about is how much land
25 that the Burwell family owned over the years and their

1 standing in the community. I mean, she was cooperative as
2 much as she could be or as much as she thought she was.

3 Q All right. Y'all ultimately -- y'all had her at the
4 trial; correct?

5 A Most definitely.

6 Q But you decided not to call her?

7 A She was there every day of the trial and we talked to
8 her every day after the trial. We had a set-up in the
9 agriculture room in Calhoun County and we would speak with
10 her and we was trying to get what we needed to prepare her
11 to be a mitigating witness, but she consistently wanted to
12 talk about clearing the family name and we're not these
13 type of people and things of that nature, and really
14 didn't get the point, and, again, at the time she was in
15 her early 80's, too.

16 Q And I believe Mr. Grant had videotaped her at one
17 point. Do you remember that? He took a video statement
18 from her because of her age?

19 A Yes. I remember reading that. Yea, that's what he
20 did.

21 Q Did you try to talk to the mother? Mikal's mother?

22 A It is my understanding that again I didn't personally
23 talk to them. I came the last six months of the
24 representation, but my understanding is that that did
25 occur.

1 Q Okay. And what about the Uncle Carson and his aunt?
2 What do you remember about ---

3 A Now, actually, I was -- We, you know, prior to some
4 investigation by Paige Tarr she testified -- she testified
5 to that today, but actually I recall a conference call --

6 Q Uh-huh.

7 A -- in Attorney Walter's office in which we got Carson
8 on the phone and we had attempted to contact both Carson
9 and I think Lawanda his wife at the time and we finally
10 got in contact with him and he also -- he spoke for both
11 he and Lawanda.

12 Q What did he say?

13 A Well, the first thing he was, you know, we identified
14 ourselves and saying that we need him to be a witness --
15 he and Lawanda to be a witness for Mr. Mahdi. The first
16 thing he was concerned about is, well, his work schedule
17 and then he also concerned about, well, he never wrote me
18 back. I thought it was kind of petty. I think there had
19 been some correspondence between Mr. Mahdi and Carson, and
20 he kept saying two or three times, Well, he never wrote me
21 back which I thought was kind of petty, and then
22 eventually when we pinned him down as far as we need you
23 to come testify in mitigation on behalf of Mr. Mahdi he
24 indicated to us that his testimony probably would not be
25 advantageous or helpful.

1 Q Okay. And did he indicate that his wife wouldn't be
2 coming as well -- wouldn't be able to assist or come?

3 A That's the impression we got that he was speaking for
4 both of them.

5 Q Okay. And did you ever talk to his father Shareef?

6 A I never spoken with him, but it's my understanding
7 that that occurred through Ms. Tarr earlier before I
8 became involved. One thing about his father -- we had
9 discussed the participation numerous times with Mr. Mahdi
10 over there where he was housed about participation of the
11 father and he didn't want his father to participate in
12 this hearing.

13 MR. MABRY: That's all I have, Your Honor.

14 THE COURT: Cross?

15 MR. LOMINACK: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. LOMINACK:

18 Q Good afternoon, Mr. Koger.

19 A How are you doing?

20 Q Good. You just said that Mr. Mahdi didn't want his
21 father to participate?

22 A That's correct.

23 Q But that's not his call; right? That's not his
24 judgment call to make in a mitigation case of capital ---

25 A No, it's not his judgment call, but from the

1 investigation from Ms.~Tarr and from my conversation from
2 Mr. Mahdi we felt that any type of testimony from his
3 father would not be advantageous to Mr. Mahdi's cause.

4 Q And you never talked to Shareef Mahdi yourself;
5 right?

6 A No, I never spoke with him.

7 Q But just generally speaking the client in a capital
8 case doesn't get to decide who you guys go out and speak
9 to and who you call; right?

10 A It's been my general practice I consult with my
11 client and we make joint decisions and then the final call
12 strategically is with the lawyer.

13 Q Right.

14 A Of course, I am going to take -- you know, if my
15 client feels that a witness is not going to be
16 advantageous then I have to really look at that.

17 Q But, ultimately, it's your call and your co-counsel's
18 call?

19 A With consultation with my client.

20 Q And you get to decide which questions to ask?

21 A That's correct.

22 Q I asked Mr. Walters this. Have you ever read the ABA
23 Guidelines on the performance of defense counsel on death
24 penalty cases?

25 A In the particular trial we used the South Carolina

1 Defense Capital Trial Manual.

2 Q And is that a no to my question about whether you've
3 read the ABA guidelines?

4 A I haven't read them.

5 Q How many capital cases had you worked on before
6 getting appointed to Mr. Mahdi's case?

7 A This is my first one in second chair.

8 Q You were in the case about five months?

9 A Yea, from July to December.

10 Q Mr. Walters said that there were a lot -- There could
11 have been lots of mitigating factors in this case given
12 his upbringing and childhood. Do you recall what things
13 struck you as potentially mitigating in Mr. Mahdi's
14 childhood?

15 A Well, we didn't get a lot of -- Again, even -- The
16 five months that I was involved we didn't get a lot of
17 cooperation from the family. The one that stepped forward
18 that wanted to cooperate was Mrs. Burwell. She was there.
19 I was -- My understanding before I came involved she was
20 there from the very beginning and after I became involved
21 she was the main person that would call the office that we
22 were corresponding with. So, other than Mrs. Nancy
23 Burwell, there was no one else that stepped forward from
24 the family.

25 Q And you didn't speak with Lawanda Burwell. You let

1 Carson indicate whether she was going to participate?

2 A Well, we had made several phonecalls there and they
3 would not return the phonecall and Carson -- finally we
4 got in touch with them through Carson, and, you know, he's
5 kind of a domineering personality and he spoke for both of
6 them.

7 Q All right. Now, the fact that a 9-year-old is placed
8 as an inpatient in a psychiatric hospital, that's
9 mitigating; right?

10 A In conjunction with other events it could be.

11 Q Well, just -- it's mitigating all by itself; right?

12 A In conjunction with other evidence it could be. You
13 have to look at the totality of the circumstances, the
14 entire picture. It could be.

15 Q The fact that Mikal Mahdi witnessed violence as a
16 child is mitigating all by itself; right?

17 A Well, that was I think in Ms.~Tarr's report I think
18 he might have been spanked once or twice when he was with
19 Lawanda and Carson. So, that was in the file.

20 Q Oh, and you weren't aware of the violent episodes he
21 witnessed when his father beat his mother and grandmother?
22 Is that what you're saying?

23 A No. I was aware of that.

24 Q Okay. And that's mitigating that a child witnessed
25 violence -- domestic violence; right?

1 A It could be.

2 Q What would keep that from being mitigating?

3 A You know, Mr. Lominack, you're asking a question in
4 isolation. I say in conjunction with -- In this
5 particular case in conjunction with other evidence it
6 could be.

7 Q Okay. Is there any caselaw that requires that
8 childhood domestic violence has to be linked to some other
9 evidence for it to be mitigating?

10 A I don't believe so. That's kind of a ridiculous
11 question.

12 Q Well, in fact, the caselaw is quite the opposite.
13 Have you ever read Lockett versus Ohio?

14 A I have seen the case. It was in my death penalty
15 materials.

16 Q And what does Lockett versus Ohio stand for?

17 A I do not know what it stands for.

18 Q And you understand that mitigating evidence does not
19 have to explain the crime; right?

20 A Sure.

21 Q And it doesn't even have to be linked to the crime;
22 right?

23 A I suppose so.

24 Q Well, legally, that's right; isn't that true?

25 A I suppose so.

1 Q Do you have a question about that in your mind?

2 A I suppose so.

3 Q You suppose so, but ---

4 THE COURT: You asked it three times. I understand
5 his answer. Move along.

6 Q The consistent observations that Mikal Mahdi was
7 negatively impacted as a child by his environment was
8 mitigating; right?

9 A It could be a mitigating circumstances, Mr. Lominack.
10 Could be.

11 Q And the fact that he was diagnosed on several
12 different occasions by numerous mental health
13 professionals with major depression, that's mitigating;
14 right?

15 A In conjunction with everything else, it could be.

16 Q And, of course, the judge can't consider it unless
17 the judge knows about it, and that's your job to present
18 it to the judge; right?

19 A Well, we had Ms. Hammock to testify to his social
20 history.

21 Q And you put Ms. Hammock up; right?

22 A Yes, I did.

23 Q What did you do beforehand to prepare Ms. Hammock for
24 her testimony?

25 A We -- Actually, we had another -- on my billing sheet

1 after I became involved we had two death team meetings,
2 but we actually had one during the week of the trial, not
3 including Don Girndt because he wasn't called as a
4 witness, but we had a death team meeting in the
5 agriculture building right before the trial and that's --
6 we talked about her testimony at that time.

7 Q And then you put her up and then you kind of stopped
8 her testimony right after Walter Carter Center right after
9 he got out and went back to school; right? You didn't
10 have her elaborate beyond that what happened to Mikal as a
11 child; right?

12 A I need to see the testimony.

13 Q I think you've got the transcript up here. If you
14 could flip to I think 1726. I'm sorry; 1739 is where you
15 began examining Ms. Hammock. That's the qualification.

16 A Can you give me a couple of seconds to read it?

17 Q I can give you a little bit of help. If you want to
18 skip the qualifications questions she's qualified on page
19 1745.

20 A Are you referring to near the end?

21 Q Well ---

22 THE COURT: Just rephrase the question or reask the
23 question.

24 Q She stopped her testimony and you didn't ask her to
25 recount any of Mikal's life after the Walter Carter Center

1 years when he returned to school.

2 A What page is that?

3 Q Well, I mean, I guess the question is this. Can you
4 locate any evidence that you presented through Ms. Hammock
5 beyond his elementary school years?

6 A She testified in detail about his time with his
7 father and the abandonment of his mother.

8 Q Well, rather than you having to sit there longer and
9 review the 15 pages of her testimony, let me ask you this.
10 If the record shows that you did not elicit any
11 information from Ms. Hammock about Mikal beyond elementary
12 school, you did not have a strategic reason for that
13 failure; right?

14 A Well, the record reflects what the record reflects.

15 Q Right. And if the record reflects that you stopped
16 eliciting information at about the time of the Walter
17 Carter Center years you would not have had a strategic
18 reason for skipping the rest of Mikal's life?

19 A Well, what I elicited from that testimony and what
20 was eventually put in our memorandum of the aggravating
21 circumstances is that, you know, he grew up in a transient
22 childhood, that his father was ill-equipped to handle the
23 rearing of both he and his brother, and that his mother
24 abandoned him, and Ms. Hammock did that quite well in her
25 testimony.

1 Q You said you met with Ms. Hammock beforehand and
2 y'all obviously prepared. So, you knew that Ms. Hammock
3 had not reviewed the actual school records but had only
4 reviewed the synopsis of the school records; right?

5 A I met Ms. Hammock and whatever she used to do her
6 investigation, that is what we relied upon in court.

7 Q Okay. And if you could just look quickly at 1747.

8 A Okay.

9 Q Ms. Hammock says at line 7, I reviewed a synopsis of
10 his school records.

11 A Okay.

12 Q Okay. And so that didn't surprise you. You knew
13 what she had reviewed and what she hadn't reviewed; right?

14 A I mean, that's on the record.

15 Q Okay. And when you're going to call only one expert
16 witness to recount a client's life, don't you think as the
17 attorney who is in charge of this case it would be wise to
18 make sure that expert reads the actual records about which
19 she will testify?

20 A Again, Ms. Hammock from my understanding when I
21 became aboard she was already in place and she had done
22 this many times before and she was -- I think according to
23 Attorney Grant's earlier testimony he listened to
24 recommendation from Attorney Bloom. As a matter of fact,
25 Attorney Walters and I consulted with him throughout this

1 particular trial. So, we relied upon Ms. Hammock of her
2 experience and she testified to what we needed her to
3 testify to.

4 Q But -- and I am not trying to argue with you --.

5 A Right.

6 Q -- but somebody who's looked at that school timeline
7 that is that long on a page is not going to know as much
8 about his school record as somebody who has read the
9 school records; right?

10 A I would say additional information could have been
11 gleaned from the school records.

12 MR. LOMINACK: Your Honor --

13 THE COURT: Go ahead.

14 (WHEREUPON, Applicant's Exhibit No. 37 was marked for
15 identification only.)

16 Q I am going to hand you what's been marked as
17 Applicant's 37.

18 THE COURT: What is that? A draft copy of the bill?

19 THE WITNESS: It is a draft.

20 MR. LOMINACK: I am going to keep it short. I am not
21 going to go through every one.

22 THE COURT: I'll try to be patient.

23 Q Mr. Koger, can identify Applicant's 37?

24 A This is a draft copy. This is not my final copy.

25 Q Okay. And the first page of that is a fax to Glenn

1 Walters; right?

2 A That's correct.

3 Q And it's dated 12/12/2006?

4 A That's correct.

5 Q After the trial is over.

6 A That's correct.

7 Q And it says please compare and assist in recouping 50
8 hours?

9 A An additional 50 hours.

10 Q Okay. And if you could -- and I am not going to go
11 through each instance, but if you could just turn to the
12 end and tell me how many number of hours were on that
13 draft.

14 A I think you might have given me -- oh, 450. I'm
15 sorry.

16 Q Okay. And if you could, do you have the exhibit that
17 was entered, your final version?

18 A Right here.

19 Q If you could, turn to the last page of that and it's
20 568 hours?

21 A That's correct.

22 Q So a difference of 118?

23 A That's correct.

24 Q About 25 percent increase over the draft?

25 A That's correct.

1 Q Okay.

2 THE COURT: You want to explain that?

3 THE WITNESS: Yes. This was just a draft right
4 here -- what I submitted on December 12. I have a habit,
5 you know, when I'm unsure I am going to under-report hours
6 because I don't want anything questioned that I submit to
7 the court. You want me to compare between the two?

8 THE COURT: No. Don't compare them. I am just
9 asking how did it increase by that amount?

10 THE WITNESS: Well, I actually have my scratch notes
11 in my notebook right here. I can if I be allowed to --

12 THE COURT: Just tell me. You went through your
13 scratch notes. Tell me what you did to increase it.

14 THE WITNESS: All right. A lot of times we would
15 have when Attorney Walters and I would meet on this case
16 we would meet on the weekend and I think a lot of those
17 like initially that I would have eight hours, we would
18 actually meet all day on Saturday and Sunday. So, that
19 would recoup -- that would change from like maybe eight to
20 10 hours, and then I would divide out travel on those
21 particular times.

22 During the actual trial I was getting like maybe four
23 and five hours sleep. So, actually, I was working. I
24 live about an hour away from St. Mathews. So I would
25 include that separately from the hours from the case. So

1 we actually worked during the case about, you know, 15 or
2 16 hours. Again, I would need my scratch notes to make
3 that comparison.

4 I don't have a billing system. I went back through
5 it on my scratch notes and, you know, I added some time on
6 reviewing the file because sometimes I would actually
7 underreport the time in reviewing the file.

8 Q And the scratch notes you talk about, those weren't
9 in the file that you provided to me?

10 A I gave you everything.

11 Q So, the scratch notes would have been in there?

12 A Yea, I didn't take anything out.

13 Q I am not going to go through all of these. I just
14 would like to ask you about two.

15 A Uh-huh.

16 Q On 8/18/06 --

17 A Okay. On the draft or the regular?

18 Q Starting with the draft. Review and proofread
19 motions with Glenn Walters.

20 A Uh-huh.

21 Q Six hours.

22 A Uh-huh.

23 Q And then on the final version it says 7.5; right?

24 A On my final version. Okay, travel. My office is in
25 North, South Carolina, okay? This right here -- reviewing

1 and proofread motion, six hours -- that's the actual time
2 that I proofread and read the motion with Attorney Walters
3 in the Orangeburg office. At the time my office was in
4 North, South Carolina which is 18 miles from Orangeburg.
5 So that .5 is 30 minutes to get to his office. I live in
6 Columbia. I don't live in Orangeburg. So it takes an
7 hour to get from Glenn's office to my home in Columbia.
8 So, that's why I added the 1.5 and that's not reflected on
9 the draft.

10 Q You just didn't note that the first time for some
11 reason?

12 A Right. The actual six hours was the actual what --
13 what the actual meeting, but I didn't put my travel time
14 back and forth on there because I had my -- the final is
15 more detailed. I put my actual travel time.

16 Q What was Mr. Walters supposed to do to assist you in
17 adding time?

18 A We were just comparing notes.

19 MR. LOMINACK: Your Honor, I am going to let the
20 discrepancies speak for themselves.

21 THE COURT: No, sir. I'm not -- maybe I was too
22 short on the fuse last time. If you want to explore it,
23 I'll let you go.

24 MR. LOMINACK: Well ---

25 THE COURT: I mean, it speaks for itself. You're

1 right. I understand the pros and cons of where you're
2 going on this.

3 MR. LOMINACK: I know.

4 I guess rather than going through each one,
5 Mr. Koger -- and this isn't fun to ask; I can tell you
6 that much -- but if there are, you know, 12 or 14
7 instances in which there was literally no entry in the
8 draft and then every single one of them in the final
9 version simply says, Review of file, four hours, and it's
10 always 4.0 hours, I am just trying to figure out how you
11 went from the draft where there is no entry indicating any
12 work done and in the final version it just says review of
13 file, four hours.

14 THE WITNESS: That is just an entry because I just
15 explained to you how I went from 6.0 to 7.5.

16 THE COURT: He is asking about review of files.
17 There was none in the draft but in the final it appears a
18 number of times and it's always the exact same amount --
19 4.0.

20 THE WITNESS: What I would do is my office was in
21 North and I would mostly dedicate the afternoon from one
22 to five. That's why it was always four hours.

23 Q But why wouldn't it end up in the first draft? Where
24 is that information? I mean, I can hardly remember what I
25 did yesterday. How do you remember what you did literally

1 three months before when it wasn't in the draft and a week
2 later before you submitted to OID it shows up?

3 A I had notes everywhere in my file.

4 Q Why didn't those notes go into the draft?

5 A Notes -- You know, actually, what I literally done as
6 far as reviewing the file or what documents I actually
7 read during the four hours? I mean, is that what you're
8 saying?

9 Q No, no. I'm saying when you created the draft there
10 is no time entry. What were you using to create the
11 draft?

12 A There were time entries on sheets of paper.

13 Q Okay. And so you created the draft based on those
14 time entries; right?

15 A It was a draft that was incomplete and then I went
16 through my file.

17 Q Okay.

18 Court's indulgence?

19 THE COURT: Thank you.

20 MR. LOMINACK: Nothing further, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. MABRY:

23 Q You were asked about Ms. Hammock's testimony and I
24 believe -- Do you remember this timeline y'all introduced
25 through Ms. Hammock?

1 A That's according to record; correct?

2 Q Right.

3 A Yes.

4 Q In the case. And does that record not indicate that
5 Mr. Mahdi was committed to DJJ in December of 1997 when he
6 was -- I guess he would have been 14 or 15 years old?

7 A That's correct.

8 Q That is after he went to the Carter Center?

9 A If the records reflect that, that's correct.

10 Q And I am going to show you if you'll turn to page
11 1761 where Ms. Hammock was testifying but she asked, Okay,
12 and to progress further his adolescent years, the same
13 thing? Chaos? And was her answer, Chaos. He's also
14 exposed to his father's outbursts and problems. His
15 father was known to be at odds with the people in the
16 community, with his own family, and with law enforcement.
17 Is that what she testified to?

18 A That's correct. That's reflected in the record.

19 MR. MABRY: That's all I have, Judge.

20 THE COURT: You may step down. Next witness.

21 MR. MABRY: The Respondent rests, Your Honor.

22 THE COURT: Anything in reply?

23 MR. LOMINACK: No, Your Honor.

24 THE COURT: Okay. Any motions by -- Thank you, Josh.
25 You're excused to go.

1 Any motions by the state?

2 MR. MABRY: Yes, sir. We renew our previous directed
3 verdict motions.

4 THE COURT: All right. I'll take those under
5 advisement.

6 Any motions by the Applicant?

7 MR. LOMINACK: Yes, Your Honor. We ---

8 THE COURT: Hold on one second.

9 MR. MABRY: I'm sorry.

10 THE COURT: He forgot something.

11 MR. MABRY: And we move for directed verdict on the
12 amended ground that they added about challenging the
13 statute. All the testimony has been they didn't want a
14 jury to sentence him. They wanted a judge to sentence
15 him.

16 THE COURT: I'll address all of those in the order.

17 MR. LOMINACK: I do have a motion, Your Honor, and
18 that is that the information that has been admitted as
19 evidence as exhibits and through testimony that involved
20 attorney -- previously attorney-client privileged
21 information -- that was waived for the limited nature of
22 allowing Mr. Walters and Mr. Koger to defend their
23 performance.

24 THE COURT: Pursuant to that statute.

25 MR. LOMINACK: Pursuant to the statute.

1 THE COURT: And also my ruling with the psychiatrist
2 and the psychologist. That was pursuant to that statute.

3 MR. LOMINACK: That's right.

4 THE COURT: I assume your motion is to now reinstate
5 the attorney -- Go ahead. I'm sorry.

6 MR. LOMINACK: Well, no, sir, and I want to make it
7 clear, too, that I think the court just said this, but it
8 also involves the attorney-client privilege as it relates
9 to Dr. McKee and Dr. Martin's files and testimony that the
10 court issue an order protecting that information so that
11 it can only be used for the post-conviction proceedings
12 and, obviously, the appeal and for no other proceeding,
13 and the reason for that is that Mr. Mahdi -- Mr. Mahdi
14 shouldn't be ---

15 THE COURT: Put it on the record. I know the exact
16 reason. Go ahead.

17 MR. LOMINACK: Well, Mr. Mahdi shouldn't be forced to
18 choose between pursuing his constitutional right to
19 effective assistance of counsel through these
20 post-conviction processes and his Fifth Amendment right
21 not to incriminate himself and that's the choice he's
22 being placed in if these records are disseminated in any
23 other proceeding.

24 THE COURT: And I am cognizant of what's -- I assume
25 that North Carolina litigation has not yet been disposed

1 and there may be perhaps other litigation involved. When
2 I say litigation I mean -- No opposition to that, is
3 there?

4 MR. MABRY: Well, yes, sir. My problem with that is
5 the waiver of the attorney-client privilege is -- that's
6 it. I mean, my understanding of the law of
7 attorney-client privilege, when the attorney-client
8 privilege is waived, then the information is out there.
9 You can't reinstitute the privilege and protect the
10 information.

11 THE COURT: Well, I am going to protect these
12 proceedings from any further disclosure without order from
13 this court or a higher court.

14 MR. LOMINACK: Thank you, Your Honor.

15 THE COURT: Do me an order, Mr. Lominack. It doesn't
16 have to be anything elaborate but enough to protect your
17 client in these proceedings.

18 MR. LOMINACK: Thank you, Your Honor.

19 THE COURT: All right. Obviously, first of all, let
20 me commend both sides. Notwithstanding the fact that it
21 is a very, very tough case I commend both of you for
22 professionalism, and not only that but the courtesies that
23 you've extended to each other, but not only that I thought
24 you were both very, very well prepared -- most prepared in
25 the case that was presented to me. I thought it was a

1 very thorough matter, and I appreciate that from up here.

2 Secondly, I apologize if I got a little impatient
3 right there a couple of times, Mr. Lominack, particularly
4 to you; so please accept my apology.

5 MR. LOMINACK: None needed, Your Honor.

6 THE COURT: Well, I know that, but, you know, when
7 you've done it as long as I have and you're doing it
8 non-jury sometimes you get a little aggravated. I
9 apologize.

10 MR. LOMINACK: I can be irritating.

11 THE COURT: Maybe I was irritating. I'm glad all the
12 psychiatrists have left.

13 Also, I want to welcome my North Carolina guests.
14 I'm sorry I didn't recognize you earlier. Before we leave
15 I'd like to see you in chambers just to speak.

16 Mr. Mahdi, I think and I'll tell you in my opinion
17 you've been very well represented in these proceedings and
18 good luck to you.

19 THE APPLICANT: Thank you, Your Honor.

20 THE COURT: To the personnel here at SCDC, I want to
21 thank you for accommodating us today, yesterday, and
22 Wednesday. Y'all have been absolutely wonderful and I
23 appreciate the security provided, the courtesies, and your
24 hospitality.

25 Mrs. Myers, my condolences and my heart goes out to

1 you. I know it's difficult for you to have to relive all
2 of this. I appreciate how you conducted yourself.

3 I want to thank everybody. I think the way I want to
4 handle it hereout -- you know, most times a judge -- it's
5 real easy to say y'all do me a proposed order within so
6 many days and I'll look at it.

7 I think in this situation, Ms. Norris and
8 Mr. Lominack, I am going to want -- and I'll ask you what
9 kind of timeframe you want. First thing I want out of
10 y'all is I don't want a long brief or anything of that
11 nature, but I do want with specificity what facts,
12 records, witnesses, or other information that in your
13 opinion the defense counsel or the defendant failed to
14 offer in the mitigation stage in the trial. In other
15 words, you can -- special education assessment from Walter
16 Carter Center, the school records, those sort of things,
17 but I want you to list out what you think were all the
18 facts, records, witnesses, and any other information that
19 was excluded from the mitigation stage that you felt like
20 would have been necessary to present a proper mitigation
21 case or in your opinion a proper mitigation.

22 I want testimony of the mitigating witnesses so I can
23 read what both of those witnesses said. While you're at
24 it, just go ahead and get me -- I don't have a copy of --
25 Give me the testimony of the state's aggravating

1 circumstance in their case in the sentencing phase. Easy
2 thing. Just give me the testimony.

3 MR. LOMINACK: Judge, would you like that in hard
4 copy or I don't know whether you'd rather have it on
5 computer. It doesn't matter to me, but if you've got a
6 preference...

7 THE COURT: We'd rather have the hard copy. Likewise
8 and in addition to that -- Strike likewise. In addition,
9 please present to me the standards that you think are
10 standards that we -- that lawyers have to comply with
11 whether it be caselaw and or guidelines and or whatever
12 source you want to give me in presenting a mitigation
13 case. Then I want you to give me with specificity what
14 you consider the deviations from that standard to be and
15 then once you get that, obviously, send Mr. Mabry a copy
16 and I'll give Mr. Mabry some time to respond to that just
17 by way of letter, and then once I look at all of that and
18 review these proceedings here today then I'll be in a
19 position to render an opinion as to whether or not there
20 was ineffective assistance of counsel, and if it were,
21 whether or not -- I guess the other standard is the
22 prejudicial aspect of it. We'll deal with that once we
23 cross the first bridge.

24 Then once we get to that point in time, then I'll
25 probably ask for some proposed orders and guidance from

1 you to my findings.

2 Mr. Lominack, Ms. Norris, I think you sort of see
3 where I'm coming from. I am trying to get a handle on
4 your position. I know there was a lot presented and I'm
5 sure there are some that are crossovers. I mean, I am
6 sure you're going to say it wasn't presented, and
7 Mr. Mabry will say, well, it may not have been presented
8 in that manner, but here's where it was, and I'm going to
9 give you an opportunity to respond to that, but can you
10 think of anything else that I need to focus in on in
11 trying to reach? I mean, your legal arguments are on the
12 statute and those sorts of things. That's easy to deal
13 with.

14 MS. NORRIS: No, sir. I think that's basically it.
15 What sort of timeframe?

16 THE COURT: Well, you tell me. I mean ---

17 MS. NORRIS: Typically, I ask ---

18 THE COURT: This is not like my non-jury where I say
19 give me 15 days. You tell me what you need.

20 MS. NORRIS: Typically, Your Honor, and I will ask
21 that we be allowed to get the transcript and have 60 days
22 after that.

23 THE COURT: That's certainly fair. If you see that
24 you need additional time, call me.

25 MS. NORRIS: Thank you; sir.

1 THE COURT: I think Mrs. Daveport has -- she was
2 looking up some rule of court reporters that these capital
3 PCR's -- do they get precedent? She's been working --
4 even though she's been staying with her mom at night
5 enjoying her mama's home cooking she's been working on it
6 because she told me some things she's been doing -- the
7 names, et cetera, et cetera.

8 Anything else before we adjourn?

9 MR. MABRY: We got a copy of the record if you want
10 it, Judge -- the aggravating ---

11 THE COURT: That's easy there.

12 MR. MABRY: Yea. I can hand that up to you.

13 THE COURT REPORTER: Judge, that one exhibit. We
14 need to figure out what we're going to do about that one
15 exhibit.

16 MR. MABRY: Yes.

17 THE COURT: Why don't you talk to Applicant's
18 lawyers. Maybe we can -- probably just need to make a
19 copy of it and keep one for the record of trial and one
20 for us. I'll do it however you want to.

21 MR. MABRY: Yes, sir.

22 THE COURT: And, Lisa, if you want to take it with
23 you and make a copy or let one of them make a copy and
24 send it back to us. I assume that the one from the
25 original trial has to be maintained. So why don't you --

1 MR. MABRY: She's got to keep it.

2 THE COURT: -- keep it and make a copy from that and
3 send it to Lisa.

4 MR. MABRY: I will.

5 THE COURT: What exhibit number is it?

6 MR. MABRY: It's 95 from the trial -- State's Exhibit
7 95, Defendant's 19. I'll get the -- I'll have the
8 officer when he returns it, I'll get the clerk to make a
9 copy.

10 THE COURT: That will be fine. Fair enough?

11 MR. MABRY: They can send it back to me and I'll send
12 it to you.

13 THE COURT: Ms. Norris? No objection?

14 MS. NORRIS: No objection.

15 MR. LOMINACK: No objection.

16 THE COURT: All right. Anything else by the state?

17 MR. MABRY: No, sir.

18 THE COURT: By the applicant?

19 MR. LOMINACK: No, Your Honor.

20 THE COURT: Thank y'all very much.

21 (End of transcript of record.)
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina)
County of Aiken)

I, Lisa H. Davenport, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Calhoun County, South Carolina, on the 9 -11 days of March, 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 28, 2011

Lisa H. Davenport, Court Reporter