

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Pickens County
Edward W. Miller, Circuit Court Judge

RECEIVED

OCT 16 2012

S.C. Supreme Court

THE STATE,

Respondent,

v.

JERRY BUCK INMAN,

Petitioner.

**RETURN TO PETITION FOR STAY OF EXECUTION
PENDING POST-CONVICTION RELIEF**

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SI.

The Respondents, above-named, hereby make a Return to the Petition for a Stay of Execution to allow him to file a petition for a writ of certiorari in the United States Supreme Court. Respondent submits under *In Re Stays of Execution In Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), that since at least one of the three proffered issues is preserved, a stay to allow certiorari is appropriate. The Respondent would show this Court the following:

I.

The South Carolina Supreme Court affirmed the judgment of conviction and sentence of death on December 28, 2011 in State v. Inman (Jerry Buck), 395 S.C. 539, 720 S.E.2d 31 (2011). A timely petition for rehearing was filed on January 11, 2012. On January 25, 2012, the Supreme Court of South Carolina denied the petition for rehearing. The remittitur was issued on the same

date, January 25, 2012.

The direct appeal from the conviction and sentence of death was stayed pending the filing and pursuit of a petition for writ of certiorari to the United States Supreme Court in Inman v. South Carolina, No. 11-10798. The South Carolina Supreme Court entered a stay of execution on February 23, 2012 pending certiorari proceeding in the U.S. Supreme Court. Certiorari was denied by the United States Supreme Court on October 1, 2012. Inman v. South Carolina, _ U.S. _ (U.S. October 1, 2012)(cert denied).

II.

PENDING PCR PROCEEDINGS

Inman v. State, 2012-CP-39-918.

MY.
The Petitioner made application for post-conviction relief dated June 19, 2012,¹ filed June 21, 2012 in Pickens County and received from the Clerk of Court on June 25, 2012 by the Office of the Attorney General. Inman v. State of South Carolina, 2012-CP-39-918. The application was prepared and filed by his appellate counsel, Robert M. Dudek. In the June 25, 2012 application, counsel Dudek raised the following allegations:

- I. Ineffective Assistance of Counsel
 - A. Counsel was ineffective for failing to obtain another mitigation expert after Dr. Loring no longer wished to participate because she was intimidated.
 - B. In the alternative, counsel should have continued to prepare with Dr.

¹Pursuant to § 17-27-160(A), “The filing of the application does not automatically stay any sentence of death..”

Loring in the event the judge called the case back to trial as occurred here.

Inman v. State, Application for Post-Conviction Relief, p. 3, Section 10, 11.

The Respondent State of South Carolina made a Return pursuant to § 17-27-160(B) on October 16, 2012. (Copy attached).

III.

The Petitioner, through appointed appellate counsel Robert M. Dudek, asserts in his October 10, 2012 pleading before this Court that he intends to file an application for post-conviction relief in Pickens County raising the following allegations, at a minimum:

- 19
x3.
- I. Whether counsel was ineffective , in derogation of petitioner's right under the Sixth Amendment to the United States Constitution , by failing to retain another expert to continue to work on petitioner's mitigation or defense case after Dr. Marti Loring was intimidated by the solicitor and the trial judge refused to grant a mistrial?
 - II. Whether counsel was ineffective , in derogation of petitioner's right under the Sixth Amendment to the United States Constitution, for assuring Dr. Loring continued working on the case after the judge recessed the case following the solicitor intimidating Dr. Loring?
 - III. Whether counsel was ineffective , in derogation of petitioner's right under the Sixth Amendment to the United States Constitution, by not spending adequate time involving petitioner's family and clergy members in Tennessee especially given the long recess in the case.

Motion, p. 2-3.

III.

Respondent note that these claims will be evaluated in any state PCR setting under the mandates of *Strickland v. Washington*, 466 U.S. 668 (1984).

IV.

In this Court's written order in In Re Stays on April 8, 1996, this Court stated as follows:

If the defendant desires a stay to pursue state post-conviction relief, the defendant must, within ten (10) days of the date of the issuance of the execution notice, file a motion to stay with this Court, setting forth the issues intended to be raised in the application for post-conviction relief. [If the general nature of the issues are appropriate for post-conviction relief], this Court will assign a circuit judge to the case and issue a stay of execution.

(M. J. r. 4.)
In Re Stays, 321 S.C. 546 [bracketed portion not included in published order in West].

Respondents submit that the issues intended to be raised, under the prior precedent of this Court are of "the general nature of issues are appropriate for post-conviction relief," and the entry of the stay would be otherwise be appropriate. However, Respondent submits that under a Strickland v. Washington, 466 U.S. 668 (1984) and Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998) analysis, the Petitioner cannot satisfy his burden of proof on his proffered claims as set forth in the attached Return to the Application for Post-conviction relief.

V.

Therefore, Respondents leave it to this Court under the discrete circumstances presented and the meritless allegation based upon the unique record before this Court on whether this mere presentation of allegations satisfy ""the general nature of issues are appropriate for post-conviction relief," to require the granting of a stay to allow the assignment of a state post-conviction relief judge, appointment of two (2) qualified counsel pursuant to § 17-27-160 to

allow a PCR proceeding to held consistent with Section 17-27-160 and In Re: Stays.

WHEREFORE, Respondent has made a Return to the Motion.

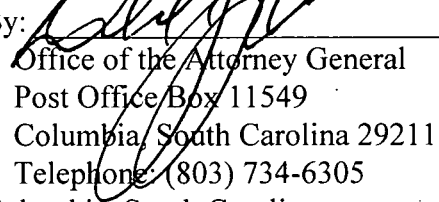
Respectfully submitted,

ALAN WILSON
Attorney General

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Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

ATTORNEYS FOR RESPONDENT

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October 16, 2012.

ATTACHMENT

RESPONDENT'S October 16, 2012 Return - Inman v. State, 2012-CP-39-918

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

JERRY BUCK INMAN, #5256)

C/A No. 2012-CP-39-918

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)

Respondent.)

RETURN OF RESPONDENTS TO
APPLICATION FOR POSTCONVICTION
RELIEF AND REQUEST FOR STATUS
CONFERENCE AND APPOINTMENT
OF COUNSEL

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The Respondent State of South Carolina hereby makes a Return pursuant to § 17-27-160(B) to the application for post-conviction relief dated June 19, 2012,¹ filed June 21, 2012 and received from the Clerk of Court on June 25, 2012 by the Office of the Attorney General. The application was prepared and filed by his appellate counsel, Robert M. Dudek. The Respondent will serve Mr. Dudek with this Return.

The direct appeal from the conviction and sentence of death was stayed pending the filing and pursuit of a petition for writ of certiorari to the United States Supreme Court in Inman v. South Carolina, No. 11-10798. The South Carolina Supreme Court entered a stay of execution on February 23, 2012 pending certiorari proceeding in the U.S. Supreme Court. Certiorari was denied by the United States Supreme Court on October 1, 2012. Inman v. South Carolina, __ U.S.

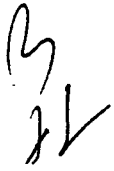
¹Pursuant to § 17-27-160(A), "The filing of the application does not automatically stay any sentence of death.."

_(U.S. October 1, 2012)(cert denied).

On October 10, 2012, the Applicant made a motion for a stay of execution to allow assignment of a judge and pursuit of this PCR proceeding. At the time of this filing, a particular judge has not been assigned nor has counsel been appointed pursuant to Section 17-27-160 and In Re Stays of Execution, 321 S.C.544, 471 S.E.2d 140 (1996). The Respondent would show this Court the following:

I.

The Applicant, Jerry Buck Inman, #5256, is presently a safekeeper pending a sentence of death and also serving a term of years sentence pursuant to orders from the Clerk of Court for Pickens County.

The Appellant, Jerry Buck Inman, was indicted at the November 2006 term of the Court of General Sessions for Pickens County for murder (2006-GS-39-2225), kidnapping (2006-GS-39-2224), criminal sexual conduct in the first degree (2006-GS-39-2223), and burglary in the first degree (2006-GS-39-2222). The circumstances of the charges involve the May 26, 2006 murder of Tiffany Souers.

The State, through Solicitor Robert M. Ariail of the Thirteenth Judicial Circuit timely noticed Inman of its intent to seek the death penalty on August 22, 2006 pursuant to S.C. Code, Section 16-3-26 (1976). On March 13, 2007, the Honorable Edward W. Miller was assigned by Order of the South Carolina Supreme Court to the case.²

² On August 17, 2007, Inman filed a Motion to Determine the Mode of Trial. In the motion counsel informed the judge of an intent to enter a guilty plea to murder and demand a jury trial for sentencing. ROA. 1202. The state informed the court that it did not consent to this plea in light of precedent of the South Carolina Supreme Court. ROA 1204.

A hearing was held on September 14, 2007 concerning the mode of trial motion. The

The Proceedings Prior to the Guilty Plea

On August 19, 2008, a competency hearing was held. Judge Miller was again informed that Inman sought to tender a guilty plea to murder. R. 913, August 19, 2008, Tr.p. 3, l. 20-21. The hearing initially concerned Inman's competency to stand trial was held.³ The Appellant was determined to be competent to stand trial.

Inman then entered guilty pleas to the charges on that date. ROA p. 911-975, August 19, 2008 Tr. p. 1- 65. He was represented by James W. Bannister, John W. DeJong, and Symmes W. Culbertson of the Greenville Bar. Judge Miller stated that sentencing was deferred until September 6. Id. Tr.p. 54.

As to the factual basis of the plea, the South Carolina Supreme Court described the crime in the following manner:

On the evening of May 25, 2006, Tiffany Marie Souers (the Victim), a rising junior at Clemson University, was alone in her off-campus apartment as her roommates were gone for the day. When one of her roommates returned to the

trial judge denied the request to attempt to enter a guilty plea to the charges. ROA, 830. Sept. 14, 2007 Tr.p. 54. A written order was entered on November 15, 2007. ROA _.

The Petitioner filed a notice of appeal from the November 15, 2007 Order to the South Carolina Supreme Court. On January 9, 2007, without requiring a response or pleading from the State, the South Carolina Supreme Court entered its Order dismissing the notice of appeal "without prejudice."

The Petitioner's counsel next sought certiorari to the United States Supreme Court. On June 8, 2008, the United States Supreme Court denied the petition for writ of certiorari. Inman v. State of South Carolina, No. 07-1298, 128 S.Ct. 2098 (June 8, 2008).

³Dr. Donna Schwartz-Watts testified as a defense expert at the competency portion. She stated that he was competent to understand the proceedings and had the capacity to communicate with counsel. ROA. 916, August 19, 2008 Tr.p. 6. She found he had a history of having a "mood disorder" and being treated for depression. She stated from the first time she met Inman in September 2006 he had a desire to plead guilty and knows what he is doing. She stated that he had made it clear to her that he wished to receive a death sentence and felt he deserved to die for what he had done. ROA. 920-21, August 19, 2008 Tr.p. 10-11.

apartment during the afternoon of May 26, 2006, she discovered the Victim's partially-clad body on the bedroom floor. An autopsy revealed the Victim had been sexually assaulted and died as the result of asphyxia due to ligature strangulation with a bathing suit top. Surveillance photographs taken during the early morning hours of May 26, 2006 captured a male, whose face was covered by a bandana, attempting to use the Victim's ATM card at two different bank machines in Clemson.

On June 5, 2006, law enforcement was able to identify Inman as the Victim's perpetrator based on DNA evidence obtained from the crime scene and processed through the National DNA Database, which had Inman's DNA evidence on file due to his prior out-of-state convictions for sexual offenses in 1987 and 1988. Using this information, law enforcement conducted a well-publicized nationwide search for Inman. On June 6, 2006 at approximately 11:45 p.m., law enforcement apprehended Inman in Dandridge, Tennessee.

Shortly after his arrest, Inman orally confessed to the crimes involving the Victim. Within the course of the next three hours, Inman gave separate written statements to an agent with the Tennessee Bureau of Investigation and to agents with the South Carolina Law Enforcement Division (SLED). In these two statements, Inman again confessed to the charged crimes and recounted in detail the events underlying these crimes. When asked to sign these statements, Inman declined and stated "we still have to go to court."

State v Inman (Jerry Buck), 395 S.C. 539, 720 S.E.2d 31 (2011).

The September Sentencing Proceeding

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24 - On September 8-11, 2008, Judge Miller held a non-jury sentencing proceeding as a result of the guilty plea to murder. Testimony was received from state witnesses Holly Bergman, Christina Morello, G.W. McCoig, Jeffrey Kindley, S. _____ C _____, V _____ P _____, Michael Hannon, Rhonda Jackson, J _____ G _____ and Dr. Eric Christensen. R., September 8, 2008 Tr. P. 1-243.⁴ The defense in mitigation initially presented Dr. David Price, Dr. Marti Loring and Claude Tournay, James Aiken, D _____ B _____ and Rev. David Hensley. ROA p. 255-410.

The State's Case at Sentencing.

Evidence was presented through the victim's roommate, **Holly Bergman**, that Tiffany

⁴The "September 8, 2008 Tr." encompasses the proceedings from September 8-11, 2008.

Souers was a Clemson civil engineering major and a dedicated student. ROA p. 39-40. She was described as being close to her family and would constantly be on the telephone with her mother and with her siblings. She was able to give good advice. She was described further as very outgoing and easily made friends. ROA p. 41-42. In describing how Tiffany's death affected her, it was like losing a sister. ROA p. 43. The violence of her death made it more difficult. ROA p. 43-44.

On cross-examination, it was pointed out that Tiffany was also involved in national charity organizations. She was also described as a dedicated member of the Catholic Church. ROA p. 47.

Another roommate, **Christina Morello**, similarly described Tiffany Souers. She presented photographs of school events at Clemson that they participated in. ROA p. 50-52. She described the victim's contagious laugh. ROA p. 53. She also helped in the community in addition to her school work. Her death affected Ms. Morello in many ways. ROA p. 54-55.

She noted that everyone who met Tiffany was her friend. In addition, she was the type of person that showed compassion and cared for others. ROA p. 57.

Chief Deputy G. W. McCoig of the Jefferson County Sheriff's Department in Dandridge Tennessee testified concerning the arrest of Inman on June 6, 2006. ROA p. 60. He stated he stopped after a brief car chase and placed him under arrest. ROA p. 64-65. After reading his Miranda rights, Inman spoke with the officer. During the conversation about the college student, Inman described himself: "after that shit right there, I'm a f__ing animal. ROA p. 68, ll. 21-25.

South Carolina State Law Enforcement Division Agent Jeffrey Kindley testified he

responded to Tennessee after Inman's arrest. Inman made a statement, after waiving Miranda rights. ROA p. 80-86. He described the belongings from Ms. Souers apartment being thrown out as he was driving back to Tennessee and hiding the sheets in the woods. ROA p. 90-91. In describing with Inman the extradition process and whether the charges qualified for the death penalty Inman stopped him and declared: "That's what I want. I killed a 20-year old college student with everything to live for. And he said he deserved the death penalty." ROA p. p. 94; ll. 1-5, p. 98, l. 22 - p. 99, l. 2.

S. ___ C. ___ described an event with Inman which occurred December 14, 1987. ROA p. 101. She stated that she was awakened in her apartment by a man with a revolver. She described being tied up by him and being told for her to tie up her roommate. ROA p. 103. With a gun to her head and hands tied, she was penetrated vaginally and anally. ROA p. 105. The assault lasted 20 minutes. Her roommate was forced to watch. He took money and keys, then threatened to kill them if they called the police. As a result, Inman pled guilty to the crime. ROA p. 108.

The prosecution published Inman's **prior convictions**. These included: 1). Dec. 14, 1987 - Sexual Battery - S. _ C. _ - 30 years (8-18-1989), 2). Robbery - 30 years, 3). Armed Burglary - 30 years, 4). Grand Theft Motor Vehicle - 5 years, 5). Kidnapping (2 counts) - 30 years, 6). Aggravated Assault - 5 years, 7). July 10, 1998 - Second Degree Sexual Assault - 20 years - (N.C.) - 9-26-88, and 80. Attempted Escape - February 5, 1991 - one year, ROA p. 112-13.

B. _ B. _ P. _ testified concerning a May 23, 2006 incident with Inman. ROA p. 120. She described taking her daughter to the bus stop that morning. She described returning home at lunch when someone came from behind her, covered her mouth and put a knife to her throat.

ROA p. 122. She screamed and he placed her on the floor tying her hands behind her back. ROA p. 123. He stated he had found \$250, after she had denied having cash in the house. He then forced her into the bedroom from the kitchen. He then forced her pants and underwear down and saw she was on her period. ROA p. 126-27. At that point, he put her into a bedroom closet and told her he was going to take her car and stash it. ROA p. 127. After he left she was able to get to the phone and hit re-dial. The police determined that he had entered the house by cutting a hole in the floor. ROA p. 129. Two weeks later, she saw Inman's photo on CNN and identified him as her attacker. ROA p. 129-130.

Michael Hannon of the Tennessee Bureau of Investigations testified that he responded to Chief McCoig on June 6, 2006 concerning Inman. ROA p. 139-140. He described getting a waiver from Inman on June 7, 2006 at 12:30 a.m. ROA p. 143-46. Subsequently, he stated he spoke with Inman concerning an incident in Rainsville, Alabama. ROA p. 151-52, 157-163. In the statement he gave concerning the May 23, 2006 incident, Inman described breaking into the house by cutting a hole in the vent. ROA p. 163. He stated he entered the house and found a blue bank bag with cash. However, once inside, the owner returned. He confirmed he intended to have sex with her, but she told him she was on her period and he put her into a closet. ROA p. 163, ll. 10-17. He took the money bag and her car which he drove a short distance and parked it and then switched back to his car. ROA p. 163. He described leaving Alabama and then going to South Carolina. ROA p. p. 163, ll. 22-25. He stated that when he got to South Carolina, he was not there a whole day before the incident with Tiffany in Clemson. ROA p. 163-64.

Michael Hannon testified about a subsequent statement Inman made after his arrest describing the rape of a mother with the child in the bedroom. ROA p. 214-15.

Rhonda Jackson, an investigator with the DeKalb County Sheriff's Department in 2006, testified that they developed a suspect from the interview she had with B. P. after she called when she saw the picture of Inman on CNN. ROA p. 169. After she gave Chief McCoig the details of the crime, he agreed to interview Inman about the incident. She subsequently came to Pickens County and interviewed him on June 8, 2006. ROA p. 173-181. Inman gave a detailed statement about the entry into the home and his intent to rape her and the fact he could not do so "because she told me she was on her period... she was a single mom and had a little..." ROA p. p. 183, ll. 2-5. He described leaving.

J. G. from Sevierville, Tennessee testified on May 22, 2006, she woke up and found someone on top of her with a knife to her throat around 5:00. ROA p. 193. He asked her where the money and jewelry was located and she showed him. When they returned to the bedroom, he tied her hands with her bra behind her back. ROA p. 196. Her little girl was crying. He demanded that if she cooperated no one would get hurt. ROA p. 196, ll. 19-23. With her knees on the floor, the man unsuccessfully attempted to rape her from the rear, and then turned her over, continuing to hold the knife against her neck. ROA p. p. 197, ll. 13-20. At that point, he raped her. ROA p. p. 197, l. 23 - p. 198, l. 12. He then took her to the bathroom and made her clean herself with shampoo twice. ROA p. 198. He continued to make them get items and place them on bed. He then placed her and her daughter into the bathroom. ROA p. 200. After ten (10) minutes she left the bathroom, got her purse, and then called the police. ROA p. 200. She next saw him about 2 weeks later on the evening news. ROA p. 201.

On September 9, 2008, **Dr. Eric Christiansen, the forensic pathologist**, testified about the cause and manner of death of Tiffany Souers. He certified that she died as a result of

asphyxia due to ligature strangulation. ROA p. p. 223, ll. 8-9. A bathing suit top was used. He stated she was rendered unconscious before she died. ROA p. 232. He found evidence of trauma or traumatic sexual relations in damage to her body. ROA p. 234. She had extensive bruising around both wrists which suggested a struggle while restrained and bruising above her ankles.

The Defense Case in Mitigation

Dr. David Price

Dr. David Price , an expert in forensic psychology, clinical psychology and neuropsychology, testified about an evaluation of Inman.⁵ He affirmed stated that he had an opinion that at the time of the crime, a factor in the commission of the crime, Inman was under

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⁵ Prior to the beginning of the mitigation testimony, Solicitor Ariail returned to an earlier motion he had made concerning expert witnesses requesting the disclosure of the underlying data. ROA p. 250. In particular, he noted that the experts would be testifying about their opinions based upon underlying data that had not been provided to the State. Solicitor Ariail stated that the disclosure would speed up the process. As he stated: “if fact we don’t know what it is [and] I’m not sure who their experts are.” ROA p. 250, l. 8-11. He requested first, a reasonable amount of time prior to the testimony of the experts of the underlying data upon which they are going to rely, pointing out Dr. Schwartz-Watts prior disclosed report which noted data that the state did not have. He stated this xwas necessary for appropriate and meaningful cross-examination. Second, he requested that since they do not have the documents, that when the experts arrive that he underlying data is brought with them to court. ROA p. 251. Lastly, Solicitor Ariail stated, in a manner to give the court a heads up about the manner that some witnesses had testified in the past. In particular, he pointed out that Dr. Loring, who had a Ph. D. In social work, had a testimonial style that was a “rambling recitation of rank hearsay.” ROA p. 251, l. 17-21. As such, he declared it was difficult to keep things clear on what was her opinion under SCRE Rule 703 and what was “hearsay.” Solicitor Ariail noted that he was not objecting to “opinions”, but did have objection to the parroting of totally uncorroborated hearsay. ROA p: 252-253.

Counsel Bannister objected to the disclosure of the reports and data, contending that would be “per se ineffective.” ROA p. 253, l. 23-25. The Solicitor stated that he did not want a “report,” but the data underlying the opinion, i.e, if the expert says that they looked at prison records from Florida, I want to see the prison records that they reviewed, which is allowed and required under SCRE Rule 703. ROA p: 254. The Court stated he would return to this issue later.

the influence of mental and emotional disturbance, and that his capacity to conform his conduct to the requirements of law was substantially impaired. ROA p. 258. He stated that he had reviewed 15 three to four inch thick notebooks which included records about his family, his incarceration, newspapers, and his mental health treatment records of over 3,000 pages. He confirmed Inman was the subject of mental health treatment for the 19 years he was incarcerated. ROA p. 259. He opined that Inman had a number of mood disorders, including dysthymia (sustained or intermittent depression for over 2 years), major depressive disorder - recurrent type, major depressive disorder - with psychotic features, bipolar disorder and psychorhythmic disorder. ROA p. 260. He noted that Inman had prior diagnosis of personality disorders, including schizoid personality disorder and he opined that he could also be diagnosed with dissociative identity disorder and sexual paraphilia. ROA p. 260. He noted the presence in the records of multiple suicide attempts, suicide ideation and withdrawal. ROA p. 261. He rated him of the Global Assessment of Functioning with a 30 as someone with serious impairment with the ability to communicate and with judgment and profound impairment in overall ability to function. Id. Dr. Price stated the schizoid personality disorder was illustrated by the fact he was an introvert with intermittent relationships within his family.

In the social history, Dr. Price noted that Inman had a genetic predisposition for the mental disorders because his mother had paranoid schizophrenia and father was an alcoholic. ROA p. 265. He stated Inman was raised in a turbulent and unstable environment, began using drugs at age 10, ran away at age 13, living on the streets at 15 and in jail at 17. Id. He noted that this disorder is often associated with depression.

Concerning dissociative identity disorder, he stated that Inman was not very forthcoming

about his illness. However, Dr. Price learned that in discussion with treatment providers and his pastor, Inman will assume a different effect and response which is like changing from one identity to another. He stated that the primary identity is a passive-dependant and depressed person that has difficulty with guilt. ROA p. 268-269. He stated that the evidence of depression, self-mutilation by tattooing and suicidal ideation supports the diagnosis. ROA p. 269. Also that he traveled in his series of sexual assaults is consistent. ROA p. 269.

Dr. Price describe Inman as a serial rapist. He felt it "astounded" him that he was not similarly diagnosed in Florida. He felt the Rapid Risk Assessment for Sexual Offender Recidivism (RRASOR) suggested that he clearly met that criteria. ROA p. 271-272.

Dr. Price found that Inman had significant records for being sexually abused, physically abused, living in an unstable environment with a mother with periods of anger who they thought was depressed. ROA p. 272-273. Dr. Price felt that Inman had one stable relationship - his maternal grandfather who died when he was young. He was abandoned by his father who had sexually abused him and began to act out of conflict at age 10 with drugs, failing school, and winding up on the street. ROA p. 273. In reviewing Inman's crimes, he found similarity from the victim's crimes with Inman's own experiences where his sister was also subject to bondage when she was tied up and the rapes tended to follow a certain pattern - hand tied, kneeling down, lean forward over the bed in an awkward position, suggesting that he was acting out what had happened to him. ROA p. 275. This was part of his "compulsive rape." ROA p. 275. He stated that Inman felt 'shame and loathing about this rape and murder." ROA p. 276. This similar feeling was consistent throughout his records, noting that he had attempted suicide on 7 occasions (six while incarcerated). Id. Dr. Price described the various ways he attempted to kill

himself including slit wrist, cutting his jugular vein, swallowing barbed-wire, and trying to starve himself. ROA p. 279.

Dr. Price stated that Inman's stated that "I killed a 20 year old college student with everything to live for - I deserve to get the death penalty"⁶ statement is consistent with Inman's history and also reflected in his unhappiness and hopelessness while in prison. ROA p. 280-81.


Dr. Price opined that he is a national expert in malingering. He felt that Inman was not malingering based upon his extensive psychiatric history. He noted that Inman instead minimizes the problems and is protective of his parents failings in raising him. ROA p. 283. He felt that Inman had tried to hinder Price's effort to get a life sentence. ROA p. 283. He noted that Inman had talents in being a tattoo artist and had carpentry skills.

Concerning his interaction in prison, Dr. Price found that Inman grew up in prison and was afraid about being released. Particularly, he had stated that after release he had planned to work for a year or two give the money to his mother and then commit suicide. ROA p. 284. Dr. Price concurred with a North Carolina doctor that Inman was a lost soul who would continue to be lost based upon his bad genetic loading with the history of a paranoid schizophrenic mother and alcoholic father. He had been physically and sexually abused and abandoned by his father in the unstable environment. He began getting into trouble at age 10 with drug use, by 13 he was running away and on the streets. Inman had a long history of mood disorder and his family had never been able to teach him to develop normal heterosexual relationships. He had a schizoid personality disorder, developed a dissociative identity disorder and developed sexual paraphilia.

⁶See also, ROA p. 299, Defense exhibit 11.

ROA p. 285.⁷

On cross-examination, Dr. Price conceded that he did not bring the 15 notebooks with him that he reviewed to prepare his opinion and testimony. ROA p. 304-305. He stated that he received the material from counsel Bannister's office. Importantly, he admitted that he was influenced by every document he read. Id. At that point, Solicitor Ariail renewed his request to see all the notebooks that Dr. Price reviewed. ROA p. 306. During the questioning, Dr. Price confirmed that as to child abuse, sometimes Inman would report it happened and other times he would not report it. ROA p. 307-308. He admitted that the history showed the Inman had the ability to make choices inasmuch as he did not kill the victim in Florida, said he would not harm the child in Tennessee, did not kill the North Carolina inmate, but did kill Souers. ROA p. 308-309. Concerning death, Dr. Price stated that Inman did not want to die, but thought that the death penalty was the appropriate penalty and that he was remorseful for it, thinking of himself as "scum." ROA p. 311.

 The defense adjourned for the evening seeking to resolve the record production of material reviewed by Dr. Price and the requested disclosure to the State pursuant to SCRE Rule 705. ROA p. 320-323.

⁷ At that point, the defense proffered a series of exhibits. The Solicitor - noting that no foundation had been laid and they were not authenticated or certified - stated that the exhibits were pure hearsay. ROA p. 287.

Counsel Bannister asserted that since this was a penalty phase of a capital case "rules of evidence are more lax than they would be in the guilt phase of a trial." ROA p. 288, l. 1-4. He opined that it would be more expedient to simply mark the exhibits and have them put in the record so the judge could read them. He felt that they should come in as medical records or business records from the prison. Exhibits 3 - 20 were then marked. Dr. Price stated these exhibits were considered by him in making his opinion. ROA p. 291. See ROA p. 294-304.

Dr. Marti Loring

The testimony of **Dr. Marti Loring, a LCSW licensed clinical social worker and board certified expert in traumatic stress** is involved in arguments II and III.⁸ For purposes of this portion, on September 8, 2009, Dr. Loring was called to testify in mitigation. ROA p. 324-325. After she was initially *voir dire*d, she was qualified as an expert in areas of abuse, trauma, social histories and forensic interviewing. Id. R., P. 326. However, it was briefly developed during the state questioning that Dr. Loring had failed to comply with the state licensing law for out of state licensed social workers. ROA p. 328, l. 1-3. See S.C. Code Ann. § 40-63-200. The prosecution in making the objection to her qualification provided the statute to Judge Miller noting that it carried civil and criminal sanctions. ROA p. 328, l. 19-25. Although she was granted immunity, Dr. Loring initially invoked her Fifth Amendment and initially refused to testify after receiving advised from personal counsel Bill Godfrey, even after being granted immunity. [Dr. Loring would later testify as a Court Witness].

Mitigation Continues

Claude Tournay

The defense then called **Claude Tournay of the Florida Department of Corrections**. He testified that he had reviewed the sexual offender screening and that in 2004 it was determined that he could not find enough criteria to determine a “paraphilic sexual disorder” or diagnosis. Id ROA p. 357, l. 21-25. He testified that in January 2004, he found sadistic behavior, child molestation abnormal sexual behavior and that Inman was being treated for major depression

⁸Respondent incorporates the procedural history set out in that portion by reference to those arguments.

disorder, recurrent. ROA p. 358. Tounay stated that a April 2004 letter from the Florida Department of Corrections stating that Inman - convicted of rape - was a sexually violent predator would have required the Department of Children and Family Services to send three psychologists to review and examine the inmate and determine whether he was a threat to society. If so , he would have been civilly committed to an institution for crimes which occurred after 1993. ROA p. 360. However, Inman's crime had happened before October 1993. However, as a psychiatry inmate, the department made a referral to Tennessee and arrangements for Inman to continue his treatment for his depression. ROA p. 362-63.

James Aiken

James Aiken, an expert regarding the assessment of inmate classification and expert in prison management and prison classification, testified that based upon his record review, Inman would be automatically in a "high security status" due to the life without parole sentence he would receive, that crime he was convicted and his cumulative behavior patterns while previously confined. R. Tr.p. 369. He also noted that Inman had some security threat group and gang related issues that concerned Aiken a great deal. ROA p. 369. He noted the presence of a Swastika tattoo, which suggests in the prison setting membership in a Nazi gang and security threat group. ROA p. 371. Because Inman is a "multiple sex offender," Aiken testified that it gave him added concern because gangs and security threat groups hate them "and will kill them because they have such a distaste for them." ROA p. 371-372. This is because he has the tattoo and is a multiple sex offender. ROA p. 372.

Aiken stated that because of these factors the correctional department would have to put Inman in a security envelope of a single cell with no free movement or interaction with other

inmates since they do not know who would put a hit on him. He would have to be moved with a security escort and 23 hour lock up. ROA p. 376. He stated no other inmate could have access to him because it would violate "the duty to protect." ROA p. 377. Aiken stated that Inman's security status would be "SL-3" which is the highest level.

On cross-examination, Aiken added that his security level is also increased by the fact of publicity and that it was a high profile case that would be known within the inmate population that Inman was a multiple sex offender. Aiken also found significant in his prior prison record evidence of self-mutilation and multiple disciplinaries, including attempted suicide and attempted escapes. He noted that some of his disciplinaries included possession of weapons for either to do harm or for his own protection.

Family Member

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The **Appellant's older sister** testified about her relationship with Inman. She stated that she had a fond memory of him playing "pee-wee" football and she was a cheerleader. She described them getting ready for their roles on Saturday mornings and the family routine. ROA p. 388-89. She also testified about in winter going out from their home in the country across the street into a wooded area and sliding along a creek. She stated that one time they were out there with their cousins and Inman fell through a soft piece of ice and he cried all the way home, noting that he cried frequently as a child. ROA p. 390. She described "sibling rivalry" and fights over jeans between Inman and his sisters because he would wear their jeans and leak ink on them. She stated that he had "seizures" where he would daze, his body stiffen and shake and would sometimes be accompanied by a high fever. ROA p. 392-93. She stated this set him apart from others and prompted a lack of friends. She said that the family moved frequently and lived in

Tennessee, Florida, Texas, and North Carolina. ROA p. 393.

She said that Inman loved pets. She felt, however that Inman did not like himself. She stated that at one time Inman had to share a bedroom with his grandfather to whom he was very close and would talk together for hours. The grandfather passed away when he was 16, which was a turning point in his life. ROA p. 395. Afterwards, Inman began staying out late, became more withdrawn and once ran away from home and was found sleeping outside a church. ROA p. 396.

In describing their mother, she said that she suffered from bipolar disorder and schizophrenia. She said that the mother was affected by her medication and would hear things, talk to herself, and would freak out over the smallest thing. ROA p. 396-97.

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The sister described events when he was age three and living in a trailer in Florida. She stated that she started receiving inappropriate presents such as see through nightgowns. Later they moved to another house in Florida and she claimed that her other grandfather, Mr. Inman Sr. would come into the bedroom she shared with the Appellant [she was 5 and he was 3] and the grandfather would blindfold her and tie her hands to the bed and turn her over and she recalled that it was sexual abuse. She described that the grandfather would leave her in the top bunk and go to the bottom bunk. While she did not know what was happening to the Inman, she heard him crying and they both were threatened. Id. She stated that the step-grandfather also messed with her. ROA p. 400. She described a conversation that she once had with Inman when she stated that she had been sexually abused and he stated that he had been abused also. ROA p. 400-401.

Rev. David Hensley

Reverend David Hensley, Inman's pastor, was presented to testify. However, Inman objected to his testimony based upon the priest -penitent privilege which Inman refused to waive.

ROA p. 402-405. Rev. Hensley then only described the fact that he met with Inman the Friday before with his Bible, grape juice, wafer, and poured water over Inman's head. ROA p. 405.

April 20, 2009 Proceedings

On April 20, 2009, the matter was re-convened for the sentencing hearing. At the outset, counsel Godfrey for Dr. Loring returned with a motion requesting that she be released from her out of state subpoena or for alternate relief. **ROA, 446-47, April 20, 2009 Tr.p. 8-9.**⁹ At the hearing, Judge Miller stated that he wanted the defense to consider calling Dr. Loring as a witness in mitigation. He stated that she was ready willing and able to come testify voluntarily. Counsel Bannister stated that he had certain motions and that they were not in a position to call her as a witness.¹⁰ Counsel called Public Defender John Mauldin as a witness on the misconduct claim. Mr. Mauldin testified about the circumstances concerning the Michael Laney case. ROA 510-549, Tr.p. 72-111. It was essentially his position that the Solicitor office had agreed to a life sentence based upon a desire to have a misconduct claim dropped concerning its questioning of an expert witness, Dr. Everington on the issue of mental retardation.¹¹

Ms. sig.

⁹As set forth below in Argument One, Judge Miller had refused to vacate his certification of Dr. Loring as an material out of state witness at proceedings on April 14, 2009. See ROA 1021-1034, April 14, 2009, Tr.p. 1-14.

¹⁰The defendant made a motion to recuse the 13th Circuit Solicitors Office based upon a claimed prosecutorial misconduct based upon the incidents concerning Dr. Loring. ROA 499-501, Tr.p. 61-63, a motion to determine the role of Solicitor Ariail and the Prosecution team, and a motion to suspend proceedings. Solicitor Ariail responded in writing and orally concerning the claim that they were involved in Dr. Loring's potential arrest and included an affidavit from Mr. Geary in Georgia to support the position. ROA 506-07, Tr.p. 68-69. Response to Motion, ROA 1243.

¹¹In its response to the motion, the Solicitor's office presented a different version of the circumstances that lead up to the life sentence. *Response to Renewed Motion for Mistrial*. ROA 1207. The questioning concerning Dr. Everington was whether she had exceeded the scope of her

This was a matter that the state disputed within its questioning. ROA 549-555, Tr.p. 111-117. The record revealed that the objection to Dr. Everington's testimony in Laney was not to her qualification as an expert in mental retardation, but that she was not qualified in S.C. to administer IQ tests and that only a licensed psychologist could do that type of interpretation. ROA 556, Tr. 118. The claimed terms of a proposed agreement were set out in State Exhibit 25. ROA 565-66, Tr.p. 127-128. However, the initial negotiation was not successful and rejected by the state. ROA 566-67, Tr.p. 128-129. It was developed that the Laney motions based upon alleged prosecutorial misconduct were never ruled upon by a judge and were withdrawn after the death notice was withdrawn. Mauldin confirmed that the stated reason for the state's withdrawal was the victim's family concerns and endless litigation on mental health issues..." ROA 578-79, Tr.p. 140-141.

Laney's other lawyer, Troy Tessier also testified concerning the Laney matter. ROA 580-87, Tr.p. 142-149.

Susan Allen, a juror in the Edens and Holloway case, testified about a dinner the Solicitor's office held for the jurors in the case after the trial was completed. ROA 588-89, Tr.p. 150-151. She stated the issues raised by the office was to seek out what factors influenced them the most in not giving the death penalty. ROA 592-93, Tr.p. 154-155. On cross-examination, the voluntary contact concerning the dinner was pointed out consistent with Judge Hayes instructions to jurors. ROA 595, Tr.p. 157.

Judge Miller again made inquiry of the defense concerning the defense of its intent to call

qualifications as an expert witness - a claim that was ultimately supported by the Board of Psychology. *Exhibit 2 to Response*. ROA. __. The pleading also addressed other collateral issues raised concerning the motions and its contested factual issues.

a social historian, noting this case is going forward. The court was concerned because Dr. Loring is present and ready to go, "but we are not going to set this case up for failure." ROA 603-04, Tr.p. 165-166.

Judge Miller then denied the defense request to call Solicitor Ariail and other prosecutors concerning the raising of an improper issue related to the lack of licensing of Dr. Loring and why the issue was not raised in the earlier trial. ROA 604-05, Tr.p. 166-167.

Desa Ballard , a lawyer who concentrates on legal ethics and professional responsibility, testified that the Solicitor had violated a number of rules of professional responsibility in connection with his earlier examination of Dr. Loring. R. 611, Tr.p. 173.

At the conclusion of the testimony, Judge Miller stated that he would not suspend the proceedings. ROA 633, Tr.p. 195. He further stated that Dr. Loring was going to come and he would not remove them as advocates in the case. ROA 633, Tr.p. 195.

The April 21, 2009 Proceeding

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On Tuesday, April 21, 2009, defense counsel Bannister again advised Judge Miller that the defense was not going to call Dr. Loring as a witness. ROA 639, April 20, Tr. p. 201. Judge Miller stated that he was considering calling Dr. Loring as a "court's witness." ROA 639, Tr. p. 201, ll. 5-6. He stated that his client had pled guilty and asked him to be the sole fact finder in the case. [Defense counsel Bannister concurred with that statement: "That's correct."]. ROA . 639, Tr. p. 201, ll. 11-14. The judge stated that Dr. Loring was the first choice by the defense and "I believe that she can testify without fear." ROA 640, Tr. p. 202, ll. 15-16. After Loring's counsel confirmed that she had gone over the subject matter the prior evening, Judge Miller stated that she had earlier spent up to 9 to 10 hours preparing. Counsel Godfrey stated that she had previously

stated she had reviewed the files 4 to 5 hours, reviewed the file yesterday, has her charts and pictures since they had talked about her testifying as a witness and she had advised him that she felt protected by the court. ROA 641, Tr. p. 203, ll. 7-21.

Counsel Bannister renewed his motion for a mistrial based upon the prosecutorial misconduct claim. ROA 642, Tr. 204. He requested that a life without parole sentence be entered under the 5th Amendment Double Jeopardy Clause. ROA 643, Tr. 205.

The State opposed the motion, citing Fields v. J. Haynes Waters Builders, 376 S.C. 545, 658 S.E.2d 80, 86 (2008), which allowed a court in qualifying an expert witness to look at the statutory requirements for licensing.¹² The State argued that there was no prejudice from the conduct. Dr. Loring is there and able to testify which shows there was no witness intimidation. She was neither threatened nor intimidated. Further, the State noted that this was a bench trial where the trial judge is presumed to be able to differentiate what it feels is improper. ROA 645, Tr. 207.

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Judge Miller initially rejected the double jeopardy motion. He concluded that there was no evidence the State deliberately goaded the defense to make the mistrial motion. ROA 645, Tr. p. 207, ll. 15-19. However, he did not accept the State's position on Fields because there is no question that whether a person is licensed in particular state is a significant factor in determining whether they should be qualified, but when the Solicitor brought up the criminal sanctions, it was improper. ROA 646, Tr. 208. However, the trial judge found it was immediately addressed and resolved with the grant of immunity. ROA 646, Tr. p. 208, ll. 4-7. Judge Miller opined in light of

¹² The State made a written "Response to Renewed Motion for Mistrial and Memorandum" which is incorporated by reference. ROA 1214-1241 "Response").

the administrative order, Baggerly and Fields, that there was no criminal conduct in the witness who arrives solely to testify as an expert witness. ROA 646, Tr. p. 208, ll. 15-18. Relying upon U.S. v. Golding, 168 F.3d 700 (4th Cir. 1999) for a reversal the remarks must be improper (which he found) and such comments or remarks must have prejudicially affected the defendant's substantial rights so as to deprive him of a fair trial.

Judge Miller noted that this was not a jury trial, but a bench trial and the result might have been different. He found that the defendant's rights were not prejudicially affected. Particularly, he found that Dr. Loring was prepared to testify before it occurred and is prepared to testify now according to her attorney. ROA 647, Tr. p. 209, ll. 21-25. Judge Miller stated that in his capacity as fact-finder he is interested in hearing everything that might bear on his decision. He does not find "deliberate prosecutorial misconduct." ROA 648, Tr. 210. Counsel Bannister asserted that had they been provided a jury with the plea, the result would have been different,

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871.
Counsel Bannister next moved for a continuance. He stated that on September 11 when DROA Loring took the 5th, the matters were suspended and he was directed to either fix the problem with DROA Loring or find another social historian. Counsel stated that while he thought it was a red herring until the Supreme Court spoke on the issue, the issue was still decided against them on the licensing issue. The only available expert he asserted he could find was Jan Vogelsang who he sought funding for on January 2 and had less than 4 months to prepare. ROA 651-52, Tr. 213-14. As he asserted at the April 14 hearing, he declared she could not be prepared by April 20. ROA 653, Tr. 215.

Judge Miller noted that there had been discussions throughout that this case was to restart on April 20. ROA 653, Tr. p. 215, ll. 21-25. He stated that according to Ms. Vogelsang's

affidavit she would not be prepared to testify until the first quarter of 2010. ROA 654, Tr. p. 216, ll. 1-13 [It was April 2009 at that time].

Judge Miller stated that Dr. Loring was prepared to testify and had done all her work. He noted that she had been on the case a long time and the court wanted to hear from her. However, he stated that he would not allow the prosecutors to intimidate her. R. 654-55, Tr. 216-17. Judge Miller stated that this case will be finished this week and Vogelsang could be put up. R. 655, Tr. 217.

Counsel Bannister stated he needed a ruling on his continuance and thought he was being told it was denied.

Judge Miller clarified that he would break to let them meet with Dr. Loring since she was present and was prepared to go forward. R. 655, Tr. p. 217, ll. 13-19.

April 22, 2009 Proceeding

On Wednesday April 22, the defense returned to its case in mitigation. R. 656, Tr. 218.

Kenneth McArthur

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Kenneth McArthur, Inman's step-father, testified that he has known Inman since he was four years old. R. 657, Tr. 219. He stated that the September hearing was very stressful for McArthur and his wife, Vera, because of the potential sentence. He stated Vera had been hospitalized in January due to the stress. He stated they love Inman and enjoy having the opportunity to see him in prison. R. 657, Tr. p. 219, ll. 17-24.

At that point, based upon their prior motions, counsel Bannister declared that he was not calling further witnesses. R. 658, Tr. p. 220, ll. 8-12.

The Court Declares Its Intent to Call Dr. Loring

Judge Miller then declared his intent to call Dr. Loring. R. 658, Tr. p. 220, ll. 14-17. He stated that (1) she would aid the fact-finder in the resolution of the case, (2) she was the number one choice for social historian in the case, but the defense has stated it had no contact with her since September, (3) she has been rehabilitated and despite the fact that she refused to testify in September because of her feelings of intimidation (which he ruled was prosecutorial misconduct which did not rise to the level to require reversal or mistrial) which is cured in part by her presence today. "I think it's necessary to put her up to ensure that these claims of due process violations are put to rest." R. 658-59, , Tr. p. 220, l. 14 - p. 221, l. 6.

Defense counsel Bannister objected citing Riddle v. State, 314 S.C. 1, 443 S.E.2d 557 (1994) and SCRE Rule 614. While admitting the right to call a witness was within the court's discretion, he contended it was limited in State v. Anderson, 304 S.C. 551, 406 S.E.2d 152 (1991) to a situation in a criminal case where four prerequisites exist:

(1) the prosecution must be unwilling to vouch for the veracity or integrity of the witness; (2) a close relationship must exist between the accused and the potential court's witness, e.g., accomplices and family members; (3) there must be evidence that the prospective witness was an eyewitness to the transaction upon which the prosecution is based, gave a sworn statement concerning the pertinent facts, and the statement has been contradicted or it is probable that it will be contradicted; and (4) the testimony the witness is to relate must be material, such that without the testimony a miscarriage of justice would likely result.

R. 659-660, Tr. 221-22. Counsel contended that the prerequisites were not met in this case. R. 660, Tr. p. 222, ll. 15-22.

After the defense renewed its motions, the trial judge reminded the defense that Dr. Loring was here voluntarily. R. 661, Tr. p. 223, l. 13.

Judge Miller noted that the notes to SCRE Rule 614 recognize that it is different that the requirements in State v. Anderson, supra. R. 661, Tr. p. 223, ll. 20-24. Second, the trial judge noted that the defense did not contact Dr. Loring and it was not until January that the Court saws the request for funding of a different expert after three (3) months. R. 662, Tr. p. 224, ll. 1-3. Further, Judge Miller noted that he had not been informed that Ms. Vogelsang would not be prepared to testify for another year from that date. R, 662, Tr. p. 224, ll. 3-8. However, being aware of that, the defense did not re-contact Dr. Loring to see if she could be rehabilitated and if she would testify.

It leads me to the conclusion that counsel for the Defendant is more interested in pursuing the misconduct issue than in presenting a full defense. And as a result the assertion that due process is violated is disingenuous because defense counsel has perpetrated the failure to prepare for the social history.

R. 662, Tr. p. 224, ll. 11-16. At that point, Judge Miller called Dr. Loring.

Dr. Marti Loring - Court Witness

Upon the questioning by Judge Miller, Dr. Loring initially indicated that it would not be necessary to have Solicitor Ariail removed from the courtroom to make her feel comfortable. R. 663, Tr. p. 225, ll. 9-20. After revealing her educational and employment background, Dr. Loring was qualified as an expert "in the field of social history, trauma, and abuse." R. 664-65, Tr. p. 226, l. 21 - p. 227, l. 11. After some initial questioning, Dr. Loring stated that she was willing to testify and to do her best, noting that she had not received attorney guidance [from the defense team, not her personal lawyer Mr. Godfrey], had not seen Inman nor had interviewed anyone else since the six months. She admitted she had checked on the well being of health of the step-father, mother, and sister, but had no case discussion with them. R. 667, Tr. 229.

Counsel Bannister made an objection as to “how the witness was procured” and the process as a court witness. R. 668, Tr. 230.

Dr. Loring presented a genogram [Court Exhibit 4] and described in narrative form the different types of interaction between the family members and their problems with drugs, alcohol, mental illness, sexual abuse and violence. R. 670-680, Tr. 232-242. Dr. Loring also presented a timeline of Inman’s life. [Court Exhibit 5] R. 680-82, Tr. 242-44. Dr. Loring further presented a group of photographs and material suggesting as a child that Inman was “still miserable and crying” (R. 682, Tr. p. 244, ll. 22-25) and had indicators of sexual abuser. R. 683, Tr. p. 245, ll. 2-6. She stated that he had headaches and suffered from head beatings, that he accidentally burned his genitals with spilled bleach without medical attention, that he was firmly spanked as a child, that he had seizures, that he was exposed to violence in 1980 involving a dog fight with a cat, that his leg was burned in 1981 in a motorcycle accident. R. 684-86, Tr. 246-48. He also began drug use including alcohol, huffing gas, marijuana, cocaine, and LSD beginning in 1981. R. 686, Tr. 248.

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Inman was exposed in 1984-1986 to a sexually abusive step-brother who was later convicted as a pedophile. R. 686, Tr. 248. Dr. Loring noted she was unable to locate any pictures of Jerry smiling or happy after age 7. R. 687, Tr. 249. In addition, Dr. Loring found that Inman would play with matches and set fire to his step-brother’s mattress, which is a symptom of sexual abuse. R. 687-88, Tr. 249-50. Family members gave him alcohol between 1984-1986.

Dr. Loring described while he was 15, his maternal grandfather suffered a painful and bloody death with throat cancer. R. 688, Tr. 250. She described the closeness between them and apparent guilt Inman felt for his death.

His life in prison was based upon a series of thefts and behaviors and the encouraged use of alcohol lead to the downhill path. R. 689, Tr. 251.

Dr. Loring noted that around 11 or 12, Inman was asking his mother for help, but because of her problems, she could not hear it. After he was caught looking into a neighbor's window, his windows were nailed shut. R. 689-690, Tr. 251-52.

Inman's suicide attempts were again described by her. R. 690, Tr. 252.

Dr. Loring stated Inman was released in 2005 and was out 9 months before the tragedy. He was described as anxious and lost, unable to hold a job or relate to women. R. 690, Tr. 252. However, he was able to mentor his sister's son, who idolized him and was able to get him to stop huffing gas. R. 690-91, Tr. 252-53.

When the Court asked for anything else Dr. Loring might feel was important, counsel Bannister objected based upon "attorney-client" privilege. R. 691, Tr. p. 253, ll. 17-21. Judge Miller directed her to not talk about anything she talked with counsel about. R. 691-92, Tr. p. 253, l. 25 - p. 254, l. 2. A break was then taken and she was allowed to confer with counsel Godfrey. R. 692, Tr. 254.

Dr. Loring then concluded that Inman's early history revealed that he was seen in a "trance-like state" as a child, including the time period it was alleged he was abused as a child. R. 693, Tr. p. 255, ll. 4-18. This history was consistent with his later history of bipolar and having major depression with psychotic features. However, she felt the second half of her conclusions may be interwoven with attorney-client matters. R. 694, Tr. p. 256, ll. 6-14. Counsel Bannister continued his objection to potential disclosure. R. 694-95, Tr. 256-57.

Judge Miller then declared that he was concerned that he was not getting all the

information “because of legal gamesmanship.” R. 696, Tr. p. 258, ll. 5-7. He noted she was no longer under “intimidation” and that because of the immunity there was no valid 5th Amendment claim. The defense had made no effort to contact her. Judge Miller repeated that he believed the defense position was disingenuous when the mistrial motion was based upon their reliance on her expertise which they had felt was significant. R. 696-97, Tr. 258-59.

The defense then briefly cross-examined Dr. Loring that it would not be uncommon for new data to become available over seven (7) months. R. 697-98, Tr. 259-60. Dr. Loring stated that she had not reviewed any psychological profile prepared by the government in the case to her recollection. R. 698-99, Tr. 260-61.

Defense counsel Bannister ended his questioning. He then re-affirmed his prior motions. R. 699-700, Tr. p. 261, l. 4 - p. 262, l. 5.

Judge Miller re-affirmed his earlier order denying the prosecutorial misconduct motion. R. 700, Tr. p. 262, ll. 6-23. Importantly, he declared: “The defense counsel now is participating in the limitation of this evidence [of Dr. Loring] that they intended to offer, which contributes to any Constitutional violation that might exist.” R. 700, Tr. p. 262, ll. 20-23.

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The prosecution, through Deputy Solicitor Strom, briefly cross-examined Dr. Loring. She confirmed that the genogram and timeline were prepared by her in September for her testimony. R. 701, Tr. 263. Dr. Loring clarified her earlier testimony about Inman’s father killing dogs and Jerry giving a neighbor a stray dog to care for. R. 703, Tr. 265. She confirmed that Inman experienced a bad childhood - exposure to violence, sexual abuse, and loss. Dr. Loring admitted that she had reviewed his criminal history including the assaults on females and in prison. R. 706-07, Tr. 268-69. however, she had not reviewed the particular criminal incident in this case. R.

708-09, Tr. 270-71. Dr. Loring was then released. R. 711, Tr. 273.

Counsel Bannister again closed his mitigation case and renewed his prior motions. R. 719, Tr. 281. These included his motion for jury trial sentencing and objection to the trial court calling Dr. Loring as a witness. R. 719-20, Tr. p. 281, l. 8 - p. 282, l. 4.

Closing Arguments and Inman's Request in Sentencing

Closing arguments were then made. R. 720-731, Tr. 282-293 (Solicitor Ariail). Appellant Inman made a personal statement briefly noting his prior history of possibly being molested and abuse is shared with millions, that he had been in prison his entire life, that he can't be rehabilitated and had escaped twice. R. 731, Tr. p. 293, ll. 12-22. He declared "in all reality, there's only one viable sentence to impose for someone like me. And I ask that you impose that sentence." R. 731-32, Tr. p. 293-94, l. 1. Counsel Bannister then made his argument plea in mitigation. R. 732-39, Tr. 294-301.

Judge Miller then took a recess. He then made inquiry of Inman concerning his right to testify. Inman declared he did not wish to testify. R. 740-41, Tr. 302-03. He stated he had discussed it with his lawyers earlier today. R. 741, Tr. p. 303, ll. 5-8.

Judge Miller was advised by the defense to consider statutory mitigators #2 ("the murder was committed while the defendant was under the influence of mental or emotional disturbance"), #6 ("the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired"), and #7 ("age or mentality of the defendant at the time of the crime"). R. 742, Tr. p. 304, ll. 3-4.

The Sentencing

At 6:23 p.m., Judge Miller returned to the courtroom. He entered an Order sentencing the

Appellant to death finding the statutory aggravating factors of burglary in the first degree, kidnapping and criminal sexual conduct in the first degree. R. 743-755, Tr. 305-317. Judge Miller further entered a written sentencing order on April 22, 2009. R. 1045-1053. He also sentenced Inman to thirty (3) years consecutive for burglary in the first degree, 30 years consecutive for criminal sexual conduct in the first degree, and no sentence for kidnapping. R. 754-55, Tr. 316-17.

A motion to reconsider and new trial was made by counsel on jj23, 2009. ROA __. Judge Miller denied the motion on July 17, 2009 and filed July 28, 2009. R. 1248.

THE DIRECT APPEAL

A timely appeal was filed on August 4, 2009. In the direct appeal, the Petitioner asserted the following questions presented:

1. The judge committed reversible error by accepting Inman's guilty plea, despite defense counsel insistence that the judge's refusal to allow jury sentencing was preserved for review by the Supreme Court on direct appeal, because the defense's position rendered the plea conditional and thus invalid under South Carolina law.
2. The judge committed reversible error at sentencing by refusing to grant a mistrial and recuse the Solicitor's Office from any further involvement in the case, despite finding prosecutorial misconduct, where the Solicitor threatened a key defense witness after the judge granted the defense a continuance to obtain a new expert because of his misconduct.
3. The judge committed reversible error at sentencing by refusing to allow the defense to cross-examine the Solicitor and his Deputy on the issue of prosecutorial misconduct, as the Solicitor's intent was directly relevant to that issue.

Final Brief of Appellant, p. 4.

The South Carolina Supreme Court affirmed the convictions and death sentence on December 28, 2011 in State v Inman (Jerry Buck), 395 S.C. 539, 720 S.E.2d 31 (2011). In its pertinent part to this proceeding, the Court held that: (1) trial court acted within its discretion in

refusing to recuse Solicitor's Office as advocates and declining defendant's request to question Solicitor for purposes of asserting prosecutorial misconduct claim;(2) manner in which State conducted voir dire of defense expert concerning her licensing status and whether she was subject to civil and criminal penalties for practicing social work without a license unequivocally constituted witness intimidation; (3) State's prosecutorial misconduct in intimidating a defense witness did not necessitate declaration of mistrial; and (4) sentence of death was appropriate punishment. A petition for rehearing was denied on February 23, 2012.

The Applicant made a Petition for Writ of Certiorari in the United States Supreme Court. It was docketed on ____ . In the petition, Inman, through counsel Dudek made the following questions presented:

- I. Whether the South Carolina Supreme Court's holding that an irrefutable presumption of prejudice no longer applied where there is deliberate prosecutorial misconduct, since the trial judge found prosecutorial misconduct in this case, and the South Carolina Supreme Court also found such prosecutorial misconduct based on clear witness intimidation, since changing the law retroactively in this matter was fundamentally unfair and violated Due Process?
- II. Whether the South Carolina Supreme Court's holding that petitioner did not have a right to call the prosecutors as witnesses during his bench trial to prove intentional prosecutorial misconduct violated petitioner's right to Due Process under the Fourteenth Amendment?
- III. Whether the South Carolina Supreme Court erred by holding the prosecutorial misconduct and witness intimidation in petitioner's case did not result in a death sentence that violated Due Process rights, because the undisputed intimidation of petitioner's chief mitigation witness, Dr. Marti Loring, had an adverse effect on the ability of the defense to present its case in mitigation as guaranteed by the Eighth Amendment to the United States Constitution?

Inman v. State, petition for writ of certiorari, p. 1. The Respondent, through below-sigbed counsel made a Brief in Opposition on August 26, 2012. On October 1, 2012, the United States

Supreme Court denied the petition for writ of certiorari. Inman v. South Carolina, 11-10798, -
U.S. _ (U.S. Oct. 1, 2012).

Respondent attaches and incorporates by reference the following:

DIRECT APPEAL DOCUMENTS

1. Final Brief of Appellant.
2. Final Brief of Respondent.
3. Final Reply Brief of Appellant.
4. State v Inman (Jerry Buck), 395 S.C. 539, 720 S.E.2d 31 (2011).
5. Petition for rehearing by Appellant.
6. State v. Inman, Order, (S.C.S.Ct. February 23, 2012) (petition for rehearing denied).
7. Record on appeal

II.

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In his application for post-conviction relief filed June 21, 2012, through his appellate counsel, Robert Dudek, the Applicant raised the following claims:

- I. Ineffective Assistance of Counsel
 - A. Counsel was ineffective for failing to obtain another mitigation expert after Dr. Loring no longer wished to participate because she was intimidated.
 - B. In the alternative, counsel should have continued to prepare with Dr. Loring in the event the judge called the case back to trial as occurred here.¹³

¹³In the motion for a stay filed in the South Carolina Supreme Court dated October 10, 2012, the Applicant asserted that he would raise at a minimum the following grounds:

- I. Whether counsel was ineffective, in derogation of petitioner's right under the

III.

Respondent respectfully submits that the Applicant will be unable to show a Sixth Amendment violation in this case on the specified issues in light of the record in this case.

On September 10, 2008, Dr. Marti Loring, a LCSW licensed clinical social worker and board certified expert in traumatic stress was called to testify. ROA p. 324-325. Evidence was presented that Dr. Loring had done research therapy focused on abuse trauma. She stated that she had a Masters degree from Bryn Mawr College School of Social Work and a PhD Sociology with a major in Social Psychology from Emory University. ROA p. 325. She stated that she had testified in South Carolina before and courts in other states. She stated that she had been previously qualified in areas of abuse, trauma, social histories and forensic interviewing. Id. R., P. 326. She declared that she had never failed to be qualified as an expert in those areas. Id. Dr. Loring was then offered as an expert in the field of trauma, abuse, forensic and therapeutic interviewing and as a social historian in capital sentencing cases. ROA p. 327, ll. 1-3.

Then Solicitor Ariail *voir dired* her on whether as part of her services in this case had she performed services under her licensed clinical social worker status, which she admitted that she

Sixth Amendment to the United States Constitution , by failing to retain another expert to continue to work on petitioner's mitigation or defense case after Dr. Marti Loring was intimidated by the solicitor and the trial judge refused to grant a mistrial?

- II. Whether counsel was ineffective , in derogation of petitioner's right under the Sixth Amendment to the United States Constitution, for assuring Dr. Loring continued working on the case after the judge recessed the case following the solicitor intimidating Dr. Loring?
- III. Whether counsel was ineffective , in derogation of petitioner's right under the Sixth Amendment to the United States Constitution, by not spending adequate time involving petitioner's family and clergy members in Tennessee especially given the long recess in the case.

Motion, p. 2-3.

did by interviewing Inman and having conversations with him. Id. Tr.p. 327, l. 9-17. She admitted that a fee for those services was being paid to the Center for Mental Health, but denied that she was getting any money for her services. ROA p. 327, ll. 18-25. She declared that she was not licensed in South Carolina. ROA p. 328, ll. 1-3. However, she stated that “custom” is that her license is honored across the country whenever she goes into different states. ROA p. 328, ll. 7-10.

Solicitor Ariail then directed Judge Miller’s attention to S.C. Code Ann. § 40-63-200 which concerned the unauthorized practice of social work. ROA p. 328, l. 11-14. He next noted that a person practicing social work within the state must be licensed prior to performing the services, citing specifically S.C. Code Ann. § 40-63-30. ROA p. 328-329. He noted to Judge Miller that it carried both civil and criminal penalties for violation. He stated that based upon that, he would submit that she is “not qualified as an expert in this state to testify or render those services until she gets licensed.” ROA p. 328, ll. 19-23. Judge Miller asked that he be provided with a copy of the statute after Solicitor Ariail referred to it. ROA p. 328, l. 25.

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In response to the defense argument about his comments, Solicitor Ariail stated that he was raising the licensing issue for the purpose of voir dire. He noted that whether or not he presented an indictment against her was a totally separate issue. ROA p. 331, ll. 1-2. Judge Miller opined that the intent of the statute, § 40-63-200, was to prevent unlicensed persons from opening an office and practicing social work and treatment. ROA p. 331, l. 3-16. He declared that he distinguished what Dr. Loring has done as a retained expert for the defense from that definition of the statute of § 40-63-20. He overruled the objection and concluded that Dr. Loring can testify. ROA p. 331, ll. 17-21.

After the court determined that Dr. Loring was qualified, [ROA p 331, ll. 3-21], counsel Bannister cited State v. Williams, 485 S.E.2d 99, at 102-103 referencing witness intimidation. He complained that Solicitor Ariail's attempt to make the testimony potentially fit within the criminal statute was an attempt to intimidate the witness and thereby violates the defendant's due process rights. He claimed that this was a substantial governmental interference. Counsel Bannister then declared that he did not believe that she would be able to testify absent some assertion from the Solicitor that he would either grant immunity or have some sort of protection for her for it not to be an issue. The prosecution expressly granted immunity from prosecution for her particular acts related to Mr. Inman's case since the trial judge had concluded that she was qualified as a witness that could testify in the area of social work as to the Inman case. ROA p. 333, ll. 2-23. However, he acknowledged that he did not have authority to grant immunity concerning other acts which might have already occurred. ROA p. 333-335. The Court then inquired of defense counsel Bannister if that was satisfactory, and counsel Bannister initially declared: "yes," but suggested that it was a red herring to start with. ROA p. 333, ll. 25.

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After Dr. Loring consulted with her personal counsel [Bill Godfrey], she returned to court and pled the Fifth Amendment, stating that "she felt threatened as a witness in this case, and in other cases in which I've testified in South Carolina at this time." ROA p. 336, ll. 17-24. Judge Miller restated that the Solicitor had granted her immunity so that she would not be prosecuted for your work in this case. ROA p. 337, ll.1-3. She provided the court with a list of prior cases that she had testified in South Carolina and noted that this issue had been raised once before and "it was immediately put to rest." ROA p. 338, ll. 4-7. Dr. Loring, after another break, stated that she had been advised that she had been threatened in regards to her previous cases.

ROA p. 344, ll. 9-10. She stated that her (legal) advice was “that to testify when I’m told that I would be in violation of a criminal statute would affect my professional reputation in other cases and jurisdictions. ROA p. 344, ll. 9-15

On September 11, 2008, defense counsel made a motion for a mistrial based upon the Solicitor’s voir dire of Dr. Loring. Counsel Bannister referred to State v. Williams (Brad), 326 S.C. 130, 485 S.E.2d 99 (1997) and the fact that Solicitor Ariail had cited a statute that it was a crime to practice social work without a South Carolina license. ROA p. 411-12. On behalf of Dr. Loring, counsel Bill Godfrey declared that Dr. Loring sees this issue as a major storm and was upset about testifying in this case. ROA p. 431. He stated that she is licensed in Georgia and has been put on notice by the Solicitor that she was violating a criminal statute. Godfrey declared that Dr. Loring was going to take the 5th Amendment. ROA p. 431, ll. 20-21. Judge Miller then questioned how does she invoke this when she has been granted immunity. ROA p. 431-32. He stated that she had testified in other cases and that there was no statute of limitations. “No one is able to assure her that there are not similar laws in [Tennessee and Michigan]” where she had interviewed people. He stated that she has to declare each year if anything of a criminal or quasi-criminal nature comes up and it could affect her license in Georgia. ROA p. 432.

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Judge Miller deferred the decision on how to handle Dr. Loring’s refusal to testify. However, he did not rule out Dr. Loring’s participation and also stated that if she determines she does not want to participate, he would allow her to show how she was prejudiced. ROA p. 435. The court then adjourned.

On April 20, 2009, the matter was re-convened for the sentencing hearing. At the outset, counsel Godfrey for Dr. Loring returned with a motion requesting that she be released or for

alternate relief. R. 446-47, April 20, 2009 Tr.p. 8-9. He stated that trial court had previously declined to withdraw its earlier certification that she was a material witness. He described proceedings subsequent to that date in Georgia when the Georgia authorities attempted to enforce the out of state subpoena and Judge Miller intervened. He noted that the Georgia circumstances represented further intimidation of her. He urged that she was not a proper witness any more as she was no longer part of the defense team. R. 451, April 20, 2009 Tr.p. 13. If not able to release her, counsel Godfrey argued in the alternative that the matter be suspended so that he can investigate what happened in Georgia and the circumstances surrounding the circumstances of the threats. R. 452-53, Tr.p. 14-15. Counsel Bannister asserted that the defendant's right to witnesses was again chilled by these acts on the part of the state. Judge Miller, however, questioned how it would be chilled since he had declared that he did not intend to call her as his witness. R. 456-57, Tr.p. 18-19. Solicitor Ariail noted in response that the affidavit of Mr. Geary reflects that the Solicitor's Office had nothing to do with the actions in Atlanta and in fact communicated after the judge's email to have the authorities stand down, when the Atlanta authorities thought Dr. Loring was evading service of the subpoena. R. 460-61, Tr.p. 22-23.

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Judge Miller subsequently stated that at the September hearing that noted that he had not completely ruled Dr. Loring out of the case. R. 467, Tr.p. 29. Counsel Bannister stated that absent the September 11, 2008 events, she would have been their witness, but in light of the Solicitor's conduct and the newer events in Georgia, they did not intend to call her as a witness. Whether she is a witness for other purposes was left to the judge. R. 468, Tr.p. 30.

Dr. Loring testified at the motion hearing concerning the events the prior week in Atlanta when she learned that a subpoena was being served at her home. R. 472-73, Tr.p. 34-35. After

getting the paperwork on her return home from writing, she contacted counsel Godfrey since the hearing date on the document in Georgia was missed. She then learned the police had been at her house, but the neighbors explained that she was not home. R. 477-78, Tr.p. 39-40.

She then stated that she had discussions with her counsel and Georgia authorities that she was glad to come to S.C. if the judge wanted her to be here. R. 479, Tr.p. 41, ll. 10-24. She stated she arrived last night to be sure to be here. R. 479-80, Tr.p. 41-42. Upon questioning from counsel Bannister, she stated that she was upset and frightened when she learned about the events in Georgia, did not purposely avoid service of the subpoena and would have been at the Georgia hearing. R. 481, Tr.p. 43. Further, while she found the chain of events alarming, she came prepared for whatever the judge asks with all her equipment and what they had done in her role as mitigation expert. R. 483-84, Tr.p. 45-46.

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Judge Miller questioned her concerning a letter that the Department of Labor Licensing and Regulation had issued dated April 16, 2009. She stated that the letter assuaged her fears before the other activities occurred. R. 495-97, Tr.p. 57-59. [Court Exhibit 3, ROA 1201]. He then asked Dr. Loring to remain. Judge Miller then addressed that he had been contacted by Bill Godfrey the evening of April 16 and advised the police in Georgia had been trying to arrest Dr. Loring . He stated he later called Ben Norris with Georgia law enforcement who advised him that he had been advised to stand down concerning the bench warrant. He then called Mr. Geary with the District Attorneys Office who advised him that he had received a call from S.C. to stand down and the problem was solved. R. 497, Tr.p. 59.

Judge Miller then stated that he wanted the defense to consider calling Dr. Loring as a witness in mitigation. He stated that she was ready willing and able to come testify voluntarily.

Counsel Bannister stated that he had certain motions and that they were not in a position to call her as a witness. Counsel then called a series of witnesses in an attempt to show the solicitors' intent in questioning the Dr. Loring. Subsequently, Judge Miller again made inquiry of the defense concerning the defense of its intent to call a social historian, noting this case is going forward. The court was concerned because Dr. Loring is present and ready to go, "but we are not going to set this case up for failure." R. 603-04, Tr.p. 165-166. Judge Miller then denied the defense request to call Solicitor Ariail and other prosecutors concerning the raising of an improper issue related to the lack of licensing of Dr. Loring and why the issue was not raised in the earlier trial. R. 604-05, Tr.p. 166-167.

At the conclusion of the testimony, Judge Miller stated that he would not suspend the proceedings. 633, Tr.p. 195. He further stated that Dr. Loring was going to come and he would not remove them as advocates in the case. R. 633, Tr.p. 195.

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x39 - On Tuesday, April 21, 2009, defense counsel Bannister advised Judge Miller that the defense was not going to call Dr. Loring as a witness. R. 639, April 20, Tr. p. 201. Judge Miller stated that he was considering calling Dr. Loring as a "court's witness." Id. R. 639, Tr. p. 201, ll. 5-6. He stated that his client had pled guilty and asked him to be the sole fact finder in the case. [Defense counsel Bannister concurred with that statement: "That's correct."]. Id. R. 639, Tr. p. 201, ll. 11-14. The judge stated that Dr. Loring was the first choice by the defense and "I believe that she can testify without fear." R. 640, Tr. p. 202, ll. 15-16. After Loring's counsel confirmed that she had gone over the subject matter the prior evening, Judge Miller stated that she had earlier spent up to 9 to 10 hours preparing. Counsel Godfrey stated that she had previously stated she had reviewed the files 4 to 5 hours, reviewed the file yesterday, has her charts and pictures since

they had talked about her testifying as a witness and she had advised him that she felt protected by the court. Id. R. 641, Tr. p. 203, ll. 7-21. Counsel Bannister renewed his motion for a mistrial based upon the prosecutorial misconduct claim. Id. R. 642, Tr. 204. He requested that a life without parole sentence he entered under the 5th Amendment Double Jeopardy Clause. Id. R. 643, Tr. 205.

Subsequently, Dr. Loring testified as a court witness. R. 658, Tr. p. 220, ll. 14-17. After revealing her educational and employment background, Dr. Loring was qualified as an expert “in the field of social history, trauma, and abuse.” R. 664-65, Tr. p. 226, l. 21 - p. 227, l. 11. After some initial questioning, Dr. Loring stated that she was willing to testify and to do her best, noting that she had not received attorney guidance [from the defense team, not her personal lawyer Mr. Godfrey], had not seen Inman nor had interviewed anyone else since the six months. She admitted she had checked on the well being of health of the step-father, mother, and sister, but had no case discussion with them. R. 667, Tr. 229.

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Counsel Bannister made an objection as to “how the witness was procured” and the process as a court witness. R. 668, Tr. 230.

Dr. Loring presented a genogram [Court Exhibit 4] and described in narrative form the different types of interaction between the family members and their problems with drugs, alcohol, mental illness, sexual abuse and violence. R. 670-680, Tr. 232-242. Dr. Loring also presented a timeline of Inman’s life. [Court Exhibit 5] R. 680-82, Tr. 242-44. Dr. Loring further presented a group of photographs and material suggesting as a child that Inman was “still miserable and crying” (R. 682, Tr. p. 244, ll. 22-25) and had indicators of sexual abuser. R. 683, Tr. p. 245, ll. 2-6. She stated that he had headaches and suffered from head beatings, that he accidentally

burned his genitals with spilled bleach without medical attention, that he was firmly spanked as a child, that he had seizures, that he was exposed to violence in 1980 involving a dog fight with a cat, that his leg was burned in 1981 in a motorcycle accident. R. 684-86, Tr. 246-48. He also began drug use including alcohol, huffing gas, marijuana, cocaine, and LSD beginning in 1981. R. 686, Tr. 248.

Inman was exposed in 1984-1986 to a sexually abusive step-brother who was later convicted as a pedophile. R. 686, Tr. 248. Dr. Loring noted she was unable to locate any pictures of Jerry smiling or happy after age 7. R. 687, Tr. 249. In addition, Dr. Loring found that Inman would play with matches and set fire to his step-brother's mattress, which is a symptom of sexual abuse. R. 687-88, Tr. 249-50. Family members gave him alcohol between 1984-1986.

Dr. Loring described while he was 15, his maternal grandfather suffered a painful and bloody death with throat cancer. R. 688, Tr. 250. She described the closeness between them and apparent guilt Inman felt for his death. His life in prison was based upon a series of thefts and behaviors and the encouraged use of alcohol lead to the downhill path. R. 689, Tr. 251.

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Dr. Loring noted that around 11 or 12, Inman was asking his mother for help, but because of her problems, she could not hear it. After he was caught looking into a neighbor's window, his windows were nailed shut. R. 689-690, Tr. 251-52. Inman's suicide attempts were again described by her. R. 690, Tr. 252.

Dr. Loring stated Inman was released in 2005 and was out 9 months before the tragedy. He was described as anxious and lost, unable to hold a job or relate to women. R. 690, Tr. 252. However, he was able to mentor his sister's son, who idolized him and was able to get him to stop huffing gas. R. 690-91, Tr. 252-53.

When the Court asked for anything else Dr. Loring might feel was important, counsel Bannister objected based upon “attorney-client” privilege. R. 691, Tr. p. 253, ll. 17-21. Judge Miller directed her to not talk about anything she talked with counsel about. R. 691-92, Tr. p. 253, l. 25 - p. 254, l. 2. A break was then taken and she was allowed to confer with counsel Godfrey. R. 692, Tr. 254. Dr. Loring then concluded that Inman’s early history revealed that he was seen in a “trance-like state” as a child, including the time period it was alleged he was abused as a child. R. 693, Tr. p. 255, ll. 4-18. This history was consistent with his later history of bipolar and having major depression with psychotic features. However, she felt the second half of her conclusions may be interwoven with attorney-client matters. R. 694, Tr. p. 256, ll. 6-14. Counsel Bannister continued his objection to potential disclosure. R. 694-95, Tr. 256-57.

Judge Miller then declared that he was concerned that he was not getting all the information “because of legal gamesmanship.” R. 696, Tr. p. 258, ll. 5-7. He noted she was no longer under “intimidation” and that because of the immunity there was no valid 5th Amendment claim. The defense had made no effort to contact her. Judge Miller repeated that he believed the defense position was disingenuous when the mistrial motion was based upon their reliance on her expertise which they had felt was significant. R. 696-97, Tr. 258-59.

The defense then briefly cross-examined Dr. Loring that it would not be uncommon for new data to become available over seven (7) months. R. 697-98, Tr. 259-60. Dr. Loring stated that she had not reviewed any psychological profile prepared by the government in the case to her recollection. R. 698-99, Tr. 260-61. Defense counsel Bannister ended his questioning. He then re-affirmed his prior motions. R. 699-700, Tr. p. 261, l. 4 - p. 262, l. 5.

Judge Miller re-affirmed his earlier order denying the prosecutorial misconduct motion.

R. 700, Tr. p. 262, ll. 6-23. Importantly, he declared: “The defense counsel now is participating in the limitation of this evidence [of Dr. Loring] that they intended to offer, which contributes to any Constitutional violation that might exist.” R. 700, Tr. p. 262, ll. 20-23.

The Sixth Amendment to the Constitution secures to all criminal defendants “the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) (citation omitted). A prisoner seeking collateral relief from his conviction or sentence under Strickland “must demonstrate both that counsel's performance was deficient, and that the defense was thereby prejudiced.” Tice v. Johnson, 647 F.3d 87, 102 (4th Cir.2011). In view of the latitude customarily afforded criminal defense lawyers in formulating strategy, deficient performance will not be adjudged unless, “in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” Strickland, 466 U.S. at 690, 104 S.Ct. 2052. We are thereby constrained to “indulge a strong presumption” that counsel performed reasonably. *Id.* at 689, 104 S.Ct. 2052.

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In the event that the presumption of reasonable performance is successfully rebutted, relief remains unavailable “if the error had no effect on the judgment.” Strickland, 466 U.S. at 691, 104 S.Ct. 2052. The defendant must therefore demonstrate “a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694, 104 S.Ct. 2052. The analysis “requires the court deciding the ineffectiveness claim to ‘consider the totality of the evidence before the judge or jury.’ ” Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir.2011) (quoting Strickland at 695, 104 S.Ct. 2052). In evaluating the evidence, however, “[w]e are not bound ... to view the facts in the light most favorable to the prosecution,”

Tice, 647 F.3d at 111, and the requisite prejudice may be established short of showing that adequate performance “would have resulted ultimately in the defendant's acquittal,” id. (quoting Kyles v. Whitley, 514 U.S. 419, 434, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995)). As dictated by Kyles and Tice, then, Inman may prevail on the prejudice prong though he be unable to show that competent counsel would have secured for him a life sentence, rather than death. Under the discrete circumstances presented in this case, Inman will likely fail in his burden of presenting a reasonable probability that Judge Miller would have sentenced Inman to life rather than death. In determining that a new sentencing hearing was not warranted based upon the Dr. Loring issue, the Supreme Court concluded:

Here, the judge correctly considered that Dr. Loring did not have a South Carolina social worker's license merely as a factor in her qualifications as an expert witness. Having found Dr. Loring qualified as an expert witness, the judge properly called and questioned her as a court's witness. Because Dr. Loring testified, Inman cannot claim he was prejudiced as his counsel declined the opportunity to question Dr. Loring. Williams, 326 S.C. at 135, 485 S.E.2d at 102 (recognizing that governmental intimidation of a witness can be deemed harmless error where the witness nonetheless testifies).

Furthermore, any testimony that was potentially excluded was arguably cumulative to that of Dr. Price, who testified in detail regarding Inman's childhood, his family, his mental health disorders, and his criminal history. Finally, a review of the judge's oral and written orders establishes that he thoroughly considered all mitigating evidence.

Although we find the Solicitor committed prosecutorial misconduct, we conclude Inman's sentence of death was not imposed in violation of his due process rights. See 16C C.J.S. Constitutional Law § 1644 (Supp.2011) (“The touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, and not the culpability of the prosecutor.”). Accordingly, we find the judge did not abuse his discretion in declining to grant a mistrial.

Inman, *supra*. Further, the Supreme Court concluded that the death sentence was proportionate.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel may raise a questions of fact that

cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. CONCLUSION

Each and every allegation in the Application, not hereinabove either expressly admitted, denied, qualified or explained is hereby denied.

WHEREFORE, Respondent submits that the Application for Post-Conviction Relief should be dismissed. In the alternative, that the Court should direct the Applicant to timely serve and file a Amended Application for Post-Conviction Relief specifying all grounds for relief with particularity pursuant to Rule 12(e) within sixty(60) days of the service of this Return and/or after appointment of new counsel, consistent with the policy of In Re Stays, 321 S.C. 544, 471 S.E.2d 140 (1996) and S.C. Code § 17-27-160.

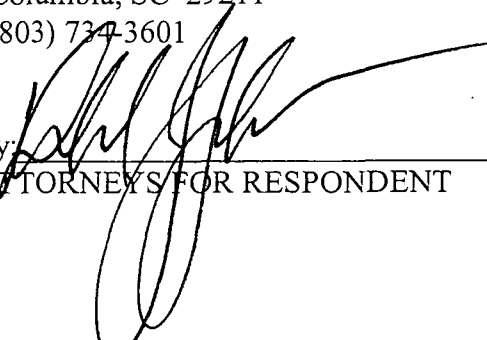
Respectfully submitted,

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By: 
ATTORNEYS FOR RESPONDENT

October 16, 2012

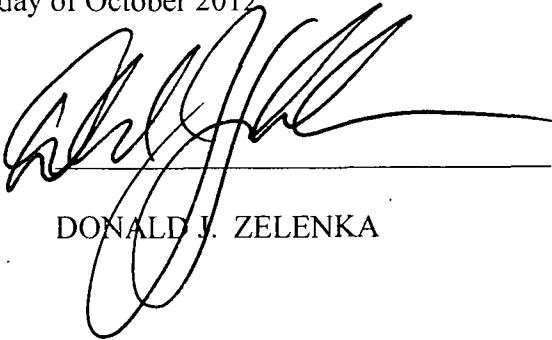
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OCT 16 2012

CERTIFICATE OF SERVICE

S.C. Supreme Court

I, Donald J. Zelenka, hereby certify that I have served the Return to Petition for Stay of Execution in the foregoing action on Robert M. Dudek, Chief Appellate Defender at the South Carolina Office of Indigent Defense, P. O. Box 11330, Columbia, S.C. 29211 by depositing in the InterAgency mail, postage prepaid this 16th day of October 2012.



A handwritten signature in black ink, appearing to read 'Donald J. Zelenka', is written over a horizontal line. The signature is stylized and cursive.

DONALD J. ZELENKA



ALAN WILSON
ATTORNEY GENERAL

October 16, 2012

RECEIVED

OCT 16 2012

S.C. Supreme Court

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P. O. Box 11330
Columbia, SC 29211

Re: The State v. Jerry Buck Inman

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the *Return to Petition for Stay of Execution Pending Post-Conviction Relief* in the above-referenced case for filing. By copy of this letter, I am serving opposing counsel with same.

Sincerely,

Lonetta B. Brawley
Legal Assistant to Donald J. Zelenka
Senior Assistant Deputy Attorney General

/lbb
Enclosure

cc: Robert M. Dudek, Esquire
Sandi Wofford, Victims Assistance