

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
Honorable William P. Keesley, Circuit Court Judge

Appellate Case No. 2019-001104

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S.C. SUPREME COURT

RON O'NEAL FINKLEA, SK6025,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

APPENDIX

DIANA L. HOLT
DIANA HOLT, LLC
P.O. Box 6454
Columbia, South Carolina 29260-6454

JOHN H. BLUME, III
Blume, Norris, Franklin-Best & Young, LLC
900 Elmwood Avenue, Suite #200
Columbia, South Carolina 29201

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
No. 14244

W. JOSEPH MAYE
Assistant Attorney General
No. 100851

Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

ATTORNEYS FOR RESPONDENT

ATTORNEYS FOR PETITIONER

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1 communication with the defendant excuse me -- Teresa
2 Finklea included some very damaging information to the
3 defense; is that correct?

4 A Yeah, there were things that we really didn't care
5 for. I got the e-mail.

6 Q In particular about that e-mail, what concerned you?

7 A You know calling him a bully and saying Junior was a
8 follower and that Junior was somehow scared of Ron. And,
9 you know, she called him a liar. I mean, you know, she
10 was clearly very unhappy with Ron at that point. And
11 she...

12 Q Had she previously indicated to Mr. McDougall before
13 this situation with Dr. Maddox contacting her that she
14 didn't want to be further contacted by the defense team,
15 if she can recall?

16 A You know, it sounds familiar, but I do not have a
17 specific recall of that.

18 Q Why do we provide you a document and ask if that
19 refreshes your recollection?

20 A Yes. But I mean it's obvious that she was willing to
21 respond to Dr. Watts. Apparently, she must have soften
22 that stance at some point?

23 Q Okay. She indicated she wasn't going to come
24 essentially?

25 A That's right.

1 Q And please do not contact me again about this matter;
2 is that correct?

3 A That's correct.

4 Q Even with that information, you still contacted her
5 through Dr. Maddox and she was responding; is that
6 correct?

7 A Donna wanted to get as much information she could,
8 yeah. And that e-mail wasn't directed to her, so it's not
9 like, you know, she was disobeying a direct order to her.
10 You know she reached out in a different capacity and
11 clearly that as a doctor reaching out she was willing to
12 respond to her.

13 Q Okay. And when Dr. Maddox apprised you both through
14 her report and in the discussions that there been
15 circumstances she learned about abuse within the family
16 and that Ron admitted to her that he had been abused.
17 What impact did that have on the way you're going to
18 handle that case at that moment forward while it's still
19 ongoing?

20 A I mean, I think, the first time I heard from her was
21 like during trial. I'm not really sure what we could have
22 done at that point. If I could have stopped the trial,
23 that would have been ideal.

24 Q But you put up Cherena Rolland who testified that
25 some instances of abuse, correct?

1 A That's right.

2 Q You put up Dr. Cherrie who testified that he suffered
3 from post-traumatic stress disorder, which as we've heard
4 is a result of a series of trauma, correct?

5 A That's right. That's how you get there, so evidence
6 of those traumatic series obviously is something you want.

7 Q There was information that you had that mother had
8 shot at the defendant?

9 A Uh-huh.

10 Q Which could lead ---

11 THE COURT: You need to answer that yes or no.

12 A Oh, I'm sorry, yes, sir.

13 Q Okay. Which could lead to a post-traumatic stress
14 disorder assessment, correct?

15 A That's what I understand, yes.

16 Q Dr. Maddox at that time was still going to be able to
17 put into evidence that he suffered from anxiety disorder
18 not otherwise specified ---

19 A That's correct.

20 Q --- which is a step short of post-traumatic stress
21 disorder, but it's still a mental illness that could have
22 additionally been presented which was not inconsistent
23 with what Dr. Frierson said, correct?

24 A That's right. I mean anxiety disorder doesn't have
25 quite the punch as PTSD, but certainly it's in that as

1 Donna Maddox testified is related.

2 Q Okay. So let me ask you why didn't you just put up
3 Dr. Donna Maddox under those circumstances how would it
4 have hurt?

5 A Well, I mean the e-mail speaks for itself. I mean, I
6 didn't really want to come out that -- that he -- I mean,
7 everything's in here that he was a bully, that he was a
8 liar. That he was the leader, that he intimidated the
9 co-defendant. I mean, those were not good things.

10 Q Okay. But it still would have been able to present
11 information at least from Teresa that Ron had indicated
12 that the mother had had aggression towards him in past?

13 A That's true, that's true. If I could have picked out
14 certain parts and not had others, it would have been
15 great, but I don't think that was an option.

16 Q Okay. It was a strategic decision you made at that
17 stage?

18 A Yes.

19 Q Did you ask the defendant whether he agreed or
20 disagreed with that strategic decision?

21 A I do not remember asking Ron that question. I do not
22 remember that.

23 Q When the defendant -- when you learned the defendant
24 had indicated that he had been abused by his mother, did
25 defense team consider putting the defendant on the witness

1 stand to have him testify in more detail about the abuse
2 he had receive in mitigation at that stage?

3 A No, we didn't.

4 Q Okay. Can I ask why not?

5 A Maybe, it was just a gut call, but the thought of
6 putting somebody on the stand and having them subject to
7 cross-examination has lots of potential pitfalls. All I
8 can say is I did not consider that.

9 Q Okay.

10 A And that may have just been my gut sort of knee-jerk
11 belief that it was a bad idea.

12 Q Okay. Let me hit on a different area adaptability to
13 prison life. According to Dr. Maddox report, the defense
14 team had acquired essentially the record life history of
15 the defendant had an understanding of his time in jail and
16 custody in Lexington County and had retained Dr. Jim Aiken
17 former commission of South Carolina Department of
18 Corrections to give his impressions, his opinion on
19 whether Mr. Finklea was adaptable to prison life, correct?

20 A That's correct.

21 Q And why did you chose Jim Aiken as a witness for that
22 admissible mitigating evidence of adaptability at the
23 prison?

24 A I think he's got very respectable background. I
25 mean, he's worked on both sides both for the State. You

1 know, he's been involved in prisons on the -- sort of on
2 the inside as well as a consultant and I've heard Jim
3 testify before. I think, he's well spoken. His
4 credentials -- again, I think his credentials to me are --
5 they appear very solid. And I heard him testify before
6 and he's very common sense and because he's been there he
7 knows who they can control and who they can't. And I
8 certainly -- you know, Ron was no where near close to
9 being deemed predatory which means that according to
10 Aiken, you know, essentially they can house him. He is
11 not going to be a future danger to other people within the
12 prison setting under his sort of calculus or, you know,
13 his schematic about what factors make you adaptable and
14 which ones do not.

15 Q Okay.

16 A I mean, Ron is -- he's best I can tell been
17 exemplary.

18 Q Had you ever been present in other cases where
19 Mr. Aiken had testified if you can recall?

20 A Yes, I'm -- he's been involved in a lot of cases and
21 I'm trying to remember the specific ones. He may have
22 been involved. He may have been involved in Mercer. I
23 think he's been involved in other -- I know he's been
24 involved in other cases. I just can't remember all of
25 them.

1 Q Okay. Is it correct to say that before you retained
2 him to testify you generally knew about the type of
3 testimony he's going to get?

4 A Oh, sure, yes.

5 Q Okay. And so in his testimony was not based upon a
6 one-on-one interview with the defendant, is it?

7 A No, I mean his criteria I want to say it seem pretty
8 objective. I mean, he's looking at, you know, what
9 they've done, what their past is and so it did not involve
10 a face to face.

11 Q Okay. It's basically looking at it like a
12 classification warden would look at it as to where he's
13 going to find the best place to place a defendant in
14 whether it would be a danger to other inmates; is that
15 correct?

16 A Yeah, I think that's right. I think that's right.

17 Q Okay. Were you aware of potential for a psychiatrist
18 or psychologist to testify about a defendant's
19 adaptability to prison?

20 A I think Dr. Cherrie did that.

21 Q And she made a presentation in fact that based upon
22 her knowledge, her experience and his mental illness, he
23 was going to be and had shown to be adaptable to prison;
24 isn't that correct?

25 A In her professional opinion, although admittedly she

1 is not a prison adaptability expert, but she certainly
2 went out and opine the right. She did not see problems
3 with Ron in a prison setting.

4 Q Ms. Armstrong, let me hand you a document and ask you
5 if you recall that from your file?

6 A I do.

7 Q I do. Is that document similar to Plaintiff's
8 Exhibit 4?

9 A I think, it's identical except for the part that says
10 Lisa and Carolyn and ends with Dave or -- yes.

11 MR. ZELENKA: Your Honor, we would move I
12 understand without objection to introduce to this as
13 Respondent's Exhibit 3.

14 THE COURT: Any objection?

15 MS. NORRIS: No, Your Honor, I do not object.

16 THE COURT: Mark three in evidence please.

17 (WHEREUPON, Respondent Exhibit No. 3 was
18 admitted into evidence.)

19 THE COURT: I can read it later unless you need
20 me to stop and read it now?

21 MR. ZELENKA: Pardon me.

22 THE COURT: You need me to stop and read it now?

23 MR. ZELENKA: No, I do not.

24 THE COURT: Okay.

25

1 BY MR. ZELENKA:

2 Q Ms. Kimbrough, I got a copy of that, I believe, right
3 in front of you?

4 A Yes. Yes, sir.

5 Q That information on the top of that exhibit suggest
6 that Mr. McDougall was specifically providing that
7 information to you and Carolyn Graham to make sure you
8 were aware of that. It appears to be as quickly as
9 possible from his unedited notes; is that correct?

10 A It would appear so, yes, sir.

11 Q Okay. And that information includes the interview
12 with the defendant?

13 A Yes, sir.

14 Q And it also includes the interview that he had with
15 Cherena, correct?

16 A Yes, sir.

17 Q Okay. And it also includes a specific reference to
18 Cherena's information about prior abuse that she had come
19 -- become aware of?

20 A That's correct.

21 Q Okay.

22 MR. ZELENKA: Court's indulgence. Beg the
23 Court's indulgence.

24 (WHEREUPON, a pause in the proceedings.)

25

1 BY MR. ZELENKA:

2 Q When you heard about the trauma that Dr. Maddox had
3 indicated she had learned from Teresa and the information
4 that you had when Cherena testified, was that a surprise
5 to you?

6 A Was it a surprise to me that Donna Watts found out
7 about information?

8 Q Yeah, that late in the trial did it appear to be a
9 surprise to you Cherena's information, Dr. Cherrie's
10 post-traumatic stress information was that news to you at
11 that time?

12 A The e-mail from Teresa would certainly have been a
13 surprise because it's coming out of nowhere after, you
14 know, Dave's unsuccessful attempt to talk to her. As far
15 as Dr. Cherrie, I'm quite certain we spoke to her before
16 she went on the stand. So I would have known the
17 substance of what she had to say. Again, we did not have
18 a lot of the information about the abuse. We had snippets
19 and obviously more information would have been a good
20 thing, but we didn't have it.

21 Q Was it indicated to you that Ron's relationship with
22 his mother had been good?

23 A It was.

24 Q And was that from Ron and from his mother or from
25 whom? Where was the source if you can recall?

1 A I mean, there were multiple sources -- I mean,
2 obviously the mother was not forthcoming to us at that
3 time. I mean, you saw that stuff. And that Cherena
4 believed that, you know, he had been abused as a child
5 because they had been married and he had told her this.
6 So there were some evidence of there being a traumatic
7 background. And unfortunately the mother, you know, she
8 was not forthcoming and so we didn't have that.

9 MR. ZELENKA: No further questions.

10 THE COURT: Thank you. Redirect.

11 MS. NORRIS: Thank you, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. NORRIS:

14 Q Ms. Armstrong, I fail to ask you about one other
15 issue in this case, so let me do that.

16 A Okay.

17 Q You were provided -- have you been provided the
18 amended application with the allegations raised here?

19 A I think so.

20 Q And one of those was ineffective assistance for
21 failing to object to the State's closing argument that Ron
22 had a stepson selling drugs and that testimony --
23 basically our allegation is that testimony was based on
24 hearsay and should have been objected to. Do you recall
25 that testimony or that argument?

1 A What I recall is that there was some squabbling over
2 that on the record and -- because we tried to keep certain
3 things out and they were allowed in. And I hope I'm not
4 confusing my issues, but, I think, at some point there was
5 a letter or something that came in. So there was some
6 evidence in the record from which he was arguing that
7 Brandon was selling drugs.

8 Q So ---

9 A Am I confusing issues, I'm sorry. I'm trying to
10 follow you.

11 Q Well, let me just clarify, so to your recollection if
12 you didn't object to that, you should have, but your
13 recollection is you objected?

14 A My recollection is the evidence was allowed in and so
15 he could comment on it in the argument. If I had a basis
16 for objection and I didn't -- I'll put it this way, if I
17 had a basis for objecting and I didn't, then I should
18 have.

19 Q All right. And Mr. Zelenka asked you about an issues
20 list?

21 A Yes, ma'am.

22 Q Do you still have that in front of you or is that
23 exhibit back down here?

24 A I think I've got it. The issues list, yes, ma'am.
25 That's not marked, it's just my copy.

1 Q Okay. It's marked as State's Exhibit 2. And I
2 believe your testimony was that was your list of what you
3 wanted Ms. Graham to investigate?

4 A This is in her handwriting, so I'm surmising that
5 these are the things we talked about because it says you
6 know client Ron Finklea, so clearly it wasn't as general.
7 It was more specific to him, so given that it's in her
8 handwriting, I'm thinking this our discussion about what
9 we wanted.

10 Q Sure. And I don't dispute that. My question is --
11 and that's my fault for not asking clearly. My question
12 is was this list prepared before an investigation was done
13 of the things you wanted to investigate or was this
14 something that was your understanding of this is the
15 information we have we're going to present this?

16 A This had to have been beforehand because when you
17 look, I mean, detail pregnancy, there's no detail.
18 Learning disability, there's nothing. School records,
19 there's no substance. It's just sort of issues and I
20 think that's what that means.

21 Q Mr. Zelenka pointed out that Cherena Rolland
22 testified at least to some limited extent about trauma?

23 A Yes, ma'am.

24 Q So is it fair to say that you had no strategic
25 decision not to present evidence of childhood trauma?

1 A Oh, absolutely not, no.

2 Q And he also ask about Dr. Cherrie do you know what if
3 any information Dr. Cherrie actually had about his history
4 as a child?

5 A No. I don't specifically recall. Her telling me or
6 providing a report, no, I don't have that.

7 Q But you did call her and she testified at least to
8 her opinion based on her time period and pretrial that he
9 had PTSD?

10 A Absolutely, yes.

11 Q So again it's clear that you didn't have any strategy
12 not to present that information?

13 A No, absolutely not.

14 Q And have you been provided prior to this hearing with
15 the information from Jan Bogle saying the charts that she
16 has presented in evidence and I will show you those to
17 make sure.

18 A I did receive an e-mail with charts that I believe
19 Ms. Bogle sign.

20 Q And were you also provided reports from Dr. Knight
21 both on mitigation and adaptability to confinement?

22 A Yes, ma'am.

23 Q And I'm going to show you what's marked as
24 Plaintiff's Exhibit 17, 18, 19 and 20 just to verify
25 that's what you were given and it was represented to you

1 that those would be -- that those were Ms. Bogle's
2 materials?

3 A Yes, ma'am.

4 Q And have you reviewed all of that information?

5 A Yes, I did.

6 Q And if you had had that information available to you
7 from Ms. Moglesain and Dr. Knight, would you have
8 presented that testimony in sentencing?

9 A I believe so.

10 Q No reason strategically not to present evidence of
11 trauma and PTSD that you had already presented at least to
12 some limited extent?

13 A Right. The only caveat we would have needed to get
14 Ron to a point that he would have felt comfortable with
15 it.

16 Q Okay.

17 A But certainly if we had this, I mean, it's your
18 obligation to go to the client and say this is what we
19 have.

20 Q And just so it's clear, Mr. Finklea is sitting in the
21 courtroom today?

22 A Yeah, I'm sorry, yes, ma'am.

23 Q And he has been the whole time to your knowledge
24 through this PCR where all of this was presented?

25 A Absolutely, absolutely.

1 Q And you were asked about some your other cases. In
2 your other cases, your experience in death penalty
3 litigation is it standard to hire a social worker like
4 Mr. Moglesain (sic) to prepare and present evidence about
5 the family history?

6 A It is very common, yes.

7 Q And do you recall why that was not done in this
8 particular case?

9 A Not specifically, no.

10 Q Okay. And I believe Mr. Zelenka asked you about the
11 strategic decision not to present testimony from
12 Dr. Maddox?

13 A Yes.

14 Q And as I understand it that was because of the
15 information she got from Teresa Finklea, Teresa fuller in
16 that e-mail?

17 A That's correct, yes, ma'am.

18 Q And so you made the decision not to present
19 Dr. Maddox, but that was not a decision if I understand
20 correctly not to present testimony about anxiety disorder
21 or PTSD?

22 A Oh, no, no, no that totally we wanted the bad stuff
23 to not be put out there.

24 Q So if you had had Jan Moglesain (sic) or a social
25 worker or some other expert that had the information about

1 PTSD but not that e-mail from Teresa Finklea, you would
2 have presented that?

3 A I think it's pretty likely.

4 Q And Mr. Zelenka ask you about some of your other
5 cases, I believe you mentioned Kevin Mercer who was your
6 first capital trial?

7 A Yes, ma'am.

8 Q And was that right before Ron Finklea?

9 A It was.

10 Q Was Carolyn Graham your mitigation investigator on
11 that case as well?

12 A Yes, she was.

13 Q And do you know whether that case has been reversed
14 in post-conviction relief?

15 A I know exactly why that case was reversed in
16 post-conviction relief.

17 Q Tell us why?

18 A We needed to get school records on Mr. Mercer. Mr.
19 Mercer was from Philadelphia and records for his schooling
20 were requested, but it turns out that my understanding
21 that not all the records are housed in the same place that
22 there's -- I guess, what you would call sort of your
23 standard records and then there's special education
24 records. So we got records of, you know, the standard,
25 but we did not have anything that indicated what his

1 special ED records were. And after the trial, it was
2 discovered that you had to go to both places. Well, we
3 didn't have records from both places.. We had records from
4 one place.. And the other place said, oh, by the way, he
5 meets the criteria for, I guess, what's now called
6 intellectual disability. And so I was disposed and
7 obviously that -- we wanted those records. We didn't get
8 them. We didn't get them, the buck stop with us period
9 end of story and so it was reversed.

10 Q You didn't get them with Carolyn Graham specifically
11 as your mitigation investigator?

12 A That's correct.

13 Q And so the specific legal finding in that case was
14 ineffective assistance of counsel in sentencing for
15 failure to get that information about low intellectual
16 functioning?

17 A That is correct.

18 Q All right. And on some of your other cases was your
19 last capital trial appointment Luzenski Allen Cottrell in
20 Horry county?

21 A I don't know. I'm not sure if that was the last one.
22 It may have been.

23 Q Okay. Well, without going -- and is this case pretty
24 close to the end of when you stop doing capital cases?

25 A I don't think -- that was in -- I quit doing. I had

1 let's see, I had a PCR and then I had -- I think I had
2 two more.

3 Q Okay. And I don't want go into the details and I'm
4 not asking the details, but were you relieved from Mr.
5 Cottrell's case because of allegations by your co-counsel,
6 the Solicitor. And then ultimately Judge Hyman relieved
7 you and there were ethics charges against you?

8 A There were statements that my co-counsel and I made
9 against each other. We did not care for one another.
10 Those allegations were reduced to writing. Solicitor
11 Hembree gave them to Judge Hyman. And based on the fact
12 that if those allegations were true, we would not be -- we
13 would be in trouble. He relieved both of us and we had to
14 go deal with the Office of Disciplinary Counsel. It was
15 later dismissed, but, yes, those were the facts.

16 MS. NORRIS: Thank you, ma'am. I don't have
17 anything further.

18 THE COURT: Recross.

19 MR. ZELENKA: Your Honor, let me ask a point of
20 reference, the allegation which was asserted to be one of
21 the grounds to Ms. Kimbrough excuse me -- Ms. Armstrong is
22 different then the allegations I understood ground to be.
23 Unless, he's ground two 10(b) applicant was denied
24 ineffective assistance of counsel guaranteed by the Sixth
25 and Fourteenth Amendments to the United States

1 Constitution and South Carolina law because counsel failed
2 to object to the Solicitor's holy unsubstantiated
3 assertion during closing argument that applicant had --
4 his stepson, a minor child, selling drugs for the
5 applicant prior to the offenses for which he was arrested.
6 And we would object to any amendment to that allegation.
7 It appears the question that was asked by Ms. Kimbrough
8 about that allegation asserting that that was part of the
9 application is different than what I had received.

10 THE COURT: The question was different or the
11 response was different?

12 MR. ZELENKA: Pardon me.

13 THE COURT: The question was different or the
14 response was different?

15 MS. NORRIS: The question was different. The
16 question was objecting to testimony, not objecting to the
17 closing argument issue.

18 THE COURT: Okay. Did you just misspeak when
19 you said objection to the testimony or did you say
20 objection to the testimony?

21 MS. NORRIS: Well, Your Honor, part of the
22 allegation under 11(b) is -- and this is read from the
23 amended application, second amended application from at
24 the bottom of page three despite there having been no
25 evidence adduced to support the State's assertion. Trial

1 counsel fail to object to the highly prejudicial
2 statement. Again, that is closing argument, so I mean,
3 you know, our allegation is failure to object to that.

4 THE COURT: Closing argument?

5 MS. NORRIS: To the closing argument, but Ms.
6 Armstrong's answer was that she did not object to the
7 closing argument because that was already in evidence. So
8 that extent I do move to amend the application that if
9 that testimony came in without objection, it should have
10 been objected to.

11 MR. ZELENKA: Okay. I have no further
12 questions.

13 THE COURT: So do you object to her request?

14 MR. ZELENKA: No.

15 THE COURT: All right. I think you can step
16 down, but before you go, I want you to stay and just have
17 a seat back out there, all right.

18 MS. ARMSTRONG: Yes, sir.

19 THE COURT: I know we been going two hours and
20 20 minutes, but my name's come up a couple of times and I
21 want to make sure there's no issue.

22 MS. NORRIS: There ---

23 THE COURT: Let me give you all some background
24 because apparently you all don't know these things based
25 on what I've heard. To keep it very short and realizing

1 this was 12 years ago. Judge Westbrook was killed on
2 September 14th 2005 in a car wreck. Of course, nobody
3 expected that to happen. And at the time we only had one
4 chief judge for administrative purposes civil and
5 criminal, if I recall correctly. Sometime shortly after
6 Judge Westbrook's death, Chief Justice Toal call me over
7 to her office and asked me what I needed to make things
8 work over here. And I said the first thing we need to do
9 is split civil and criminal chief justice duty -- chief
10 judge's duty excuse me because this circuit is too big now
11 for that just having one person. She said fine which one
12 do you want. I said it doesn't matter to me. She said
13 you do criminal. Yes, ma'am.

14 When I came back with that responsibility, I
15 set about trying to get a handle on what was going on
16 because I knew just in a general generic courthouse sense,
17 that we had a whole bunch of cases that were really just
18 kind of languishing. And the first thing that I hit upon
19 that was major -- was we had a lot of people sitting in a
20 jail who everybody quote unquote understood were going to
21 be death penalty cases, but there was no notice and there
22 was no motivation or movement or precisely to give a
23 notice. So I met with the Solicitors, I believe, it was
24 Solicitor Riddle who was the main go between with me. And
25 I was -- I recall this because it was so astounding.

1 I said how many cases do you have that are going
2 to be death penalty cases. And, of course, we had a lot
3 of reversals. And they said 18 which was a staggering
4 number. So we set about working on those and trying to
5 get a handle on it and me putting pressure on the
6 Solicitor to go ahead and give the notice so that we could
7 get the attorneys appointed and get a judge appointed.
8 And making that phone call to court administration
9 ultimately wound up being 12, I think, that they wanted
10 judges appointed on. Calling Court Administration and
11 saying we need 12 judges assign to a death penalty case in
12 one county or one circuit -- was a more pleasant
13 conversation than I expected it to be, but it was still a
14 pretty daunting task to make that call. So we had
15 Mr. Radwell, who had been sitting over in the jail for ten
16 years, and we did him in November.

17 So the process was going on and it did take
18 months, but the reason that you all said you have no idea
19 why this took so long, in a nutshell it is, that we were
20 working our way through that. So in May when the two
21 attorneys were appointed, the death notice had been given
22 on May the 8th. And we appointed the attorneys right
23 after that. So if there's anything about my involvement
24 in all this that causes any concern, you all let me know.
25 I honestly don't remember -- I might recall things if I

1 saw the file from the underlying case and what order I
2 issued. And all that as to exactly what we did, but all
3 we were trying to do was to get those cases in the
4 pipeline to start moving and not just have people sitting
5 in jail. And I know Radwell was the first one we focused
6 on because he was in jail for ten years awaiting trial.
7 There was no pressure from either side to push it, it
8 didn't seem to me. And he ultimately he entered no
9 contest plea on the plea. And ultimately those 18 got
10 dropped down to below 12, but that's what was going on.
11 All right. We going to take a ten minute break. Thank
12 you.

13 MS. ARMSTRONG: Your Honor, may I be excused?

14 THE COURT: Yes, I just wanted you to hear that
15 because you said you had no idea what happened.

16 (WHEREUPON, a break was taken.)

17 THE COURT: You have any other witnesses for the
18 applicant?

19 MS. HOLT: No, sir, Your Honor.

20 THE COURT: All right. You want to call your
21 witness? Call your witness.

22 MS. HOLT: I said, no, sir, Your Honor.

23 THE COURT: You said, no, I apologize. Mr.
24 Zelenka, you had ask me in the hallway this morning with
25 counsel present about possibly leaving the record open.

1 You still need to do that?

2 MR. ZELENKA: I would like to leave the record
3 open. I understand the issues the defense team has on
4 this case. That representation was made before
5 Plaintiff's 27 came in which was identified as being the
6 work of Carolyn Graham in and of itself it reflects
7 contact with the victim's family prior to and during the
8 trial and the information that those family members would
9 have testified about. I think that adequately was
10 utilized by the defense counsel or making their
11 determinations. So we do not intend to call Carolyn
12 Graham at this time unless the Court or the defense team
13 has interest in it because I don't believe either of us
14 had subpoenaed her. I mean, if they want to leave the
15 record open to have her testimony come forward on this
16 matter in light of the evidence they put in which revealed
17 the work she did with the family members and contact and
18 communication different than communication which came in
19 with respect to some other indications that were presented
20 to us, we'll withdraw our request.

21 THE COURT: You have any witnesses to offer?

22 MR. ZELENKA: Pardon me?

23 THE COURT: You have any witnesses?

24 MS. NORRIS: No further witnesses, Your Honor,
25 both defense counsel have testified.

1 THE COURT: All right. And do either of you
2 wish to make any type of closing statements, closing
3 arguments?

4 MS. HOLT: No, sir.

5 THE COURT: The State wish to make any type
6 closing?

7 MR. ZELENKA: Well, it's their burden of proof.
8 I think, we've set out and I think it would stand scrutiny
9 in our return addressing all three allegations that was
10 presented here today.

11 THE COURT: Any response to that?

12 MS. HOLT: Your Honor, just that we would
13 request the opportunity to do post-hearing briefing and
14 lay out the arguments in accordance with evidence that was
15 actually presented for the Court, if the Court -- if that
16 suits?

17 THE COURT: I want both of you to send me
18 proposed orders and so you can send me both if you wish.
19 How much time you need?

20 MS. HOLT: Well, ideally, we like to have the
21 transcripts of the hearing available to do to -- to write
22 the propose orders. So 45 days after we get the
23 transcripts is my request?

24 MR. ZELENKA: We would like at least 30 days
25 after they submit their proposed order to respond to it in

1 con, Your Honor.

2 THE COURT: Let's operate on that timeline right
3 now. I'm not gone say I will stick to it though. I may
4 go ahead and try to make a decision depending on how
5 quickly I can read this material. Now, when did you want
6 to make your motion, Ms. Norris? After the ruling is
7 made?

8 MS. NORRIS: No, Your Honor. I need to move to
9 withdraw now as Your Honor maybe aware, but just so the
10 record is clear as of November 1st 2016, I became an
11 employee of Charleston County Public Defender's office, so
12 I'm a Charleston County employee. I stayed on this case
13 to get through the hearing because this case had
14 previously been set for a hearing and was backed up
15 because I was appointed on another case and under an order
16 of protection. So this case got backed up because of me,
17 so in order to fulfill my duties to the court and to
18 Mr. Finklea, I remained through this hearing, but I do
19 need move to withdraw now.

20 THE COURT: And you have anything on that?

21 MR. ZELENKA: Well, the only thing I would add
22 is the case wasn't backed up because of Ms.
23 Norris' involvement. The case had been previously backed
24 up numerous times prior to Ms. Norris' involvement in that
25 particular case, but the most recent continuance was based

1 on that.

2 THE COURT: Do you have anybody in mind to take
3 your spot?

4 MS. NORRIS: I do not, Your Honor, but just so
5 it is clear, no evidentiary hearing had been set prior to
6 my appointment to Mr. Roof.

7 THE COURT: Well, none of that really matters to
8 me. Honestly, I will tell you, I can't make a specific
9 comment because I may be confusing cases, but scheduling
10 any of these cases that involve the death penalty has been
11 particularly arduous for the last couple of years or more.
12 We all know about the incident in Charleston and that kind
13 of trumped everything for a long time. There were other
14 PCR cases I know we had some in the up state, so I just
15 appreciate the fact we finally got it schedule. We
16 finally got it heard. And I just want to move forward
17 from here so, did you have any suggestion about someone
18 serving with you, Ms. Holt?

19 MS. HOLT: I need to inquire -- ask a couple of
20 people. I don't want to -- I haven't done that yet.

21 THE COURT: Can you let me know within a couple
22 of weeks?

23 MS. HOLT: Yes, sir absolutely.

24 THE COURT: I'll just take it under advisement
25 until who's going to come in -- who's being deposed to

1 come in.

2 Mr. Finklea, you okay with another lawyer
3 stepping in?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Thank you very much.

6 MS. HOLT: May I clarify one thing?

7 THE COURT: I apologize, yes, ma'am.

8 MS. HOLT: Ms. Kimbrough was appointed in May of
9 2005.

10 THE COURT: Okay. I had it wrong, I apologize.

11 MS. HOLT: I just wanted -- you were being very
12 candid and forthcoming, but I think according to what you
13 said Judge Westbrook was still alive at that time.

14 THE COURT: I had written down she said May of
15 2006, so I may have misheard her or written it down wrong.

16 MS. HOLT: Your Honor, that's when the notice of
17 intention to seek death was issued in May of 2006.

18 THE COURT: Right. I had that in the record,
19 but I didn't -- I haven't seen. I may have missed it, I
20 haven't seen the order of appointment.

21 MS. NORRIS: Your Honor, if I could hand it up
22 as Plaintiff's Exhibit 6.

23 THE COURT: Okay.

24 MS. HOLT: So the bottom line is I think that
25 would eliminate any concern that anybody here has, Your

1 Honor.

2 THE COURT: Okay. All right. I just can't
3 independently recollect this. I know we were -- the
4 reason the Chief wanted me to stay on and do -- I believe
5 the Chief wanted me to do criminal or I remember her
6 saying that she wanted me to keep doing the things I was
7 doing. I just can't remember what that was. So we may
8 have started trying to -- I don't know where Judge
9 Westbrook was assigned around that time. I know he was
10 killed in Edgefield County coming from McCormick, so he
11 must have been in the circuit a good bit, but again that's
12 water under the bridge. I just primarily want to make
13 sure I didn't have a problem with any involvement I had in
14 the case. This is not an order I drew up. This is
15 something that, I guess, either Ms. Armstrong drew up or
16 Mr. Soltis drew up, but it sure is my signature. All
17 right. Thank you. Thank you all very much.

18 END OF REQUESTED TRANSCRIPT

19

20

21

22

23

24

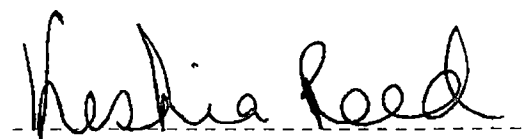
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 95, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Lexington County, South Carolina, on the 7th day of September, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 28th day of January 2018.


Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON) 2010 MAR 7 AM 8:19

RON O'NEAL FINKLEA, SK6025)
) SC C/A No. 2010-CP-32-5076

Applicant,

vs.

ORDER ON POST-CONVICTION RELIEF
 GRANTING NEW SENTENCING

STATE OF SOUTH CAROLINA,

Respondent.

WPK
#1

Central to this case is the difficult issue of whether a death-sentenced inmate, who lied to his trial attorneys and withheld information about traumatic events in his life, can obtain post-conviction Relief ("PCR") when the attorneys failed to discover his history of trauma and present evidence of its impact upon his mental health. State and federal precedent holds that such evidence is critical in mitigation during the sentencing phase. The decision turns on whether sufficient "red flags" from any source were not properly pursued by counsel. The Applicant has established his entitlement to PCR and a new sentencing proceeding based on the failure of his trial attorneys to recognize and develop such evidence and present it in mitigation. Because this is a death penalty case and requires only one juror to hold out in order to avoid a death sentence, the deficiency is prejudicial under *Strickland*¹ and requires a new sentencing phase.²

¹ *Strickland v. Washington*, 466 U.S. at 668 (1994)

² The concealment and lies by the Applicant and his family have caused the court to review this case extensively for any indicia that the Applicant or anyone else intended to place a booby trap into his case to enable relief following an unfavorable result. There is no indication of an effort to game the system by anyone. That determination is supported by the occasions where the Applicant and a family member disclosed information that should have led to the discovery of the evidence in question.

As for the conviction itself, the Applicant committed a calculated, depraved, and torturous act of murdering an innocent man. His attorneys did all that anyone could to properly represent him against the charge. As the Supreme Court of South Carolina noted, he is obviously guilty.

OVERVIEW OF THE ISSUES

PCR is sought on three grounds:³

1. Trial counsel failed to adequately investigate and present mitigating evidence concerning Applicant's extensive childhood trauma and resulting mental health disorders, including post-traumatic stress disorder (PTSD) and obsessive compulsive disorder (OCD). PCR is granted on this ground.

2. Trial counsel failed to investigate and present adequate, specific, and individualized expert testimony concerning Applicant's adaptability to prison. The court finds that the Applicant has failed to prove this assertion.

WPM
#2 3. Trial counsel was ineffective for failing to object to penalty phase direct examination testimony from State's witness Sherry Bolin to the effect that Applicant told her that his stepson

³ The State listed the three grounds in the Applicant's Second Amended Application as follows:

1. Ineffective assistance of counsel for failure to present mitigating evidence, including:
 - a. Applicant's childhood traumas, resulting in Post-Traumatic Stress Disorder ("PTSD");
 - b. PTSD resulting from military training;
 - c. neurological and mental health impairments, including an extensive family history of "seizures" related to brain abnormalities and degenerative brain problems;
2. Ineffective assistance of counsel for failing to object to the State's assertion during closing arguments that Applicant had his minor step-son selling drugs for Applicant prior to the crimes at issue in this case; and
3. Ineffective assistance of counsel for failing to adequately investigate and present expert testimony concerning Applicant's adaptability to prison.

was dealing drugs on Applicant's behalf. (ROA 1866). The Applicant has failed to prove this ground.

In the sentencing phase, "defense counsel's job is to counter the State's evidence of aggravated culpability with evidence in mitigation." *Rompilla v. Beard*, 545 U.S. 374, 380-381 (2005). While *Rompilla* may be argued to be factually distinguishable from the pending case because it involved a failure by counsel to review the file of a prior conviction that they knew the prosecution was going to use in the sentencing phase, the case is sufficiently similar to be instructive.

Mr. Rompilla repeatedly stabbed his victim around the head and neck, beating him with a blunt object, and thereafter setting him on fire. The Supreme Court of the United States, in the opening sentence of *Rompilla* states: "We hold that even when a capital defendant's family members and the defendant himself have suggested that no mitigating evidence is available, his lawyer is bound to make reasonable efforts to obtain and review material that counsel knows the prosecution will probably rely on as evidence of aggravation at the sentencing phase of trial."

The U.S. Supreme Court has given significant deference to standards for performance of counsel adopted by the American Bar Association (ABA Standards). PCR counsel in the present case also does. *Rompilla* quotes from the ABA Standards in existence at the time of Rompilla's conviction:

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. 1 ABA Standards for Criminal Justice 4-4.1 (2d ed. 1982 Supp.).

Penalty phase investigation is unreasonable when counsel performs an initial investigation but fails to pursue "red flags" that would have led a reasonably competent attorney

to investigate further. *Wiggins v. Smith*, 539 U.S. at 534 (finding deficient performance where trial counsel “abandoned their investigation of petitioner’s background after having acquired only rudimentary knowledge of his history from a narrow set of sources”); *Council v. State*, 380 S.C. at 172–73, 670 S.E.2d at 363 (2008) (holding that even though trial counsel had “limited information,” counsel should have been “on notice that . . . additional investigation, could potentially yield powerful mitigating evidence”); *see, e.g., State v. Bright*, 200 So. 3d 710, 726 (Fla. 2016) (holding performance deficient where trial counsel had red flags of a family history of mental illness based on information from a retained psychologist, but did not investigate further); *McNish v. Westbrooks*, 149 F. Supp. 3d 847 (E.D. Tenn. 2016) (holding performance deficient where counsel had records suggesting a history of attempted suicide, depression, blackouts, and traumatic childhood, but failed to investigate further).

In Footnote 7 of *Rompilla*, the Court notes:

WPK #4
Our decision in *Wiggins* . . . cit[ed] the earlier 1989 ABA Guidelines. 539 U. S., at 524 (“The ABA Guidelines provide that investigations into mitigating evidence ‘should comprise efforts to discover *all reasonably available* mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor’ ” (quoting 1989 ABA Guideline 11.4.1.C (emphasis in original))).

BACKGROUND

Ron O. Finklea (the “Applicant”) was convicted for the August 2, 2003 murder of Walter Sykes, a security guard, during an attempted robbery of an ATM. Mr. Sykes was shot twice and set on fire while still alive. The Applicant’s brother-in-law, Mr. Davis, was also present as a co-defendant.

At the time of the crime, the Applicant had fallen into selling and using drugs, as well as drinking excessive amounts of alcohol. Prior to that time, there is evidence that he had done well in the structured life of a soldier in the United States Army until a medical issue required him to

leave the military. He was married to his second wife, who was a soldier deployed to the Middle East at the time of the murder. While she was away, the Applicant squandered funds from their bank account in a drug dealing operation, and he needed money to conceal that from his wife.

The Applicant formerly worked at the Solelectron plant where the murder occurred and knew that an ATM was located in the lobby. The co-defendant's statement indicated that the Applicant considered several possible places to rob, but ultimately determined to steal from the ATM. To gain access required getting a security guard to allow admittance. There is strong evidence of premeditation. After going to the location the preceding night and engaging a different guard about security procedures, the Applicant returned the next night to rob the ATM. About ten days beforehand, the Applicant made an unusual trip to Michigan to retrieve his wife's handgun from his father-in-law. The Applicant and his sister-in-law drove straight to Michigan, staying only about twenty minutes before driving directly back to South Carolina. The Applicant had purchased a gas can and gloves shortly before the killing. He rented a car on the same day that the gas can was purchased and took his sister-in-law with him to rent the car, telling her that he was going to drive to his childhood hometown in Alabama. He left South Carolina after the murder and was arrested in Alabama.

Surveillance video and testimony concerning the Applicant's distinctive clothing established him to be the person who shot Mr. Sykes and set him on fire. There is evidence that the purpose of taking gasoline inside the building was to destroy video evidence, and the ATM was doused with gasoline. However, gasoline was also used to set the victim on fire. The robbery was thwarted when the perpetrators realized that the outer shell of the ATM concealed a safe where the money was located, and they could not access the money.

An identification card dropped just outside the door of the building allowed investigators

to obtain a photograph and information about the Applicant very quickly. Through interviews, they learned of the Applicant's intention to drive to Alabama, and they notified authorities there who arrested him. Items allegedly related to the crime were located in a gulley outside the home of a relative in Alabama.

After the Applicant was arrested, he attempted suicide by hanging. His co-defendant gave a statement that the Applicant made a failed suicide attempt in the Alabama jail using shoe strings, which broke. When Mr. Finklea was returned to South Carolina, he hanged himself, lapsed into a coma, and suffered an anoxic brain injury.

Stephen R. Soltis, Esquire, an experienced criminal trial attorney, was appointed on August 13, 2003. He had served as counsel in several death penalty cases. Mr. Soltis obtained funding for an investigator, David MacDougall, with whom he had worked previously. Second counsel, Melissa J. Kimbrough, Esquire (now Armstrong), also an experienced trial attorney, was appointed on May 25, 2005, in anticipation of this being a death penalty case. Ms. Kimbrough had served second chair counsel in a prior death penalty case. While she was technically the second chair in this trial, she quickly found herself effectively acting as lead counsel. A notice of intention to seek the death penalty was served in May 2006.

Long before Ms. Armstrong was involved and shortly after the Applicant's return to jail from the hospital, Mr. Soltis met with the Applicant on August 19, 2003 at the Lexington County Detention Center. He advised the Applicant that Mr. MacDougall would be interviewing him. He met again with the Applicant around August 22 or 23, 2003. Throughout the PCR hearing, Mr. Soltis was often unable to recall details of his preparation or representation of Mr. Finklea aside from confirming the basic information contained in notes and records.

Defense counsel became convinced and asserted to the trial judge that the Applicant's brain

damage caused him to be unable to recall the crime and to assist his attorneys in his defense. The trial judge held a pretrial competency hearing on July 26, 2007. Trial counsel presented expert testimony from a neuropsychologist, Dr. Tora Brawley, a neurologist, Dr. Kenneth Gaines, and two forensic psychiatrists, Dr. Donna Schwartz-Watts (now Dr. Donna Schwartz-Maddox and hereafter "Dr. Maddox") and Dr. Richard Frierson. All of them testified in support of the Applicant to the effect that he suffered a serious, permanent, and irreversible brain injury in the area of the brain which affects memory. They also testified that none of their testing indicated that the Applicant was malingering. The attorneys were justified in believing that the Applicant had lost his memory of most of the events immediately surrounding the killing.

It is now clear that the Applicant was not truthful with his attorneys and members of the trial defense team about his inability to remember events. However, during the initial interview with the Applicant on August 19, 2003, Mr. MacDougall recorded that the Applicant told him some details of the incident. The notes of the investigator, which were shared with counsel, include the following:

Ron has hazy recollections of this incident from shortly before arriving at Solelectron and returning to jail after the suicide attempt. He appears to have his full faculties this date [August 19, 2003]. He appears to fully understand his situation and was able to provide a lot of detail other than the incident its self (sic) and a few days afterward. It seems to me he is "blacking out" a traumatic incident which is why he cannot provide full details. I do not believe he is lying. [Original italicized]

PCR counsel believes that this report put trial counsel on notice that the Applicant recalled the incident. The Applicant has failed to prove that the trial attorneys knew that the Applicant was malingering until, at the earliest, during the sentencing phase. Having some memory of tangential elements related to the crime and having recall sufficient to properly assist counsel are different things, and the quotation above can reasonably be read to support trial

counsel's position that they believed that the Applicant was unable to recall the incident to a degree sufficient to assist in preparing the defense. To the extent that it is asserted that the investigator's notes reveal a need to examine more fully the effect of trauma upon the Applicant and his degree of recall, the court finds that counsel took reasonable steps to determine the impact of the anoxic brain injury and its impact upon the Applicant's memory. They retained expert witnesses in the field of mental health. Dr. Anna Cherry, a treating psychiatrist at the Lexington County Detention Center, was also consulted.⁴

A major red flag did arise in the investigator's notes about childhood trauma contained in a meeting with the Applicant's first wife, Cherena Roland, on September 15, 2004, in Tacoma, Washington. Mr. MacDougall's notes from that meeting include the following:

WPK
#8
Cherena had some interesting knowledge about Ron's childhood. She told of Ron not having a father at home and his mother being abusive and strange. When he was a child Ron was in the yard and his mother shot a gun at him to make him do something. The mother also believes in voodoo and casts spells on people. His mother has berated Ron in front of Cherena and others including a time the mother said to Ron "Come here you black mother f****r". [Expletive modified]

Cherena recalled a time when Ron, Jr. was two years old and spending the summer in Alabama with his father, Ron, Sr. Cherena got a call to come and get Jr. since Ron had been called back to Fort Bragg. When Cherena got to Alabama, from Tacoma, she was left stranded at the mother's rural home with no car or transportation. Ron's mother, grandmother of Jr., refused to drive Cherena to the airport. She said she had to go to work. Cherena and Jr. ended up walking to town and relying on good Samaritans and the local police to get them to the airport.

⁴ On August 24, 2007, the trial judge found that the Applicant was competent to stand trial. Despite the apparent memory loss, the trial judge found that the Applicant was sufficiently able to cooperate with counsel and to factually and rationally understand the proceedings. The trial judge ruled against defense counsel's efforts to establish that the Applicant was not competent to stand trial and assist in his defense, both as to the guilt phase (which they anticipated losing) and the penalty phase. The defense argued that the Applicant, because of his inability to recall the incident, could not assist in the penalty phase. The attorneys argued before the trial court and the South Carolina Supreme Court that having information from their client about exactly what transpired between the Applicant and the victim made a huge difference in their ability to argue against the imposition of the death penalty. Principally, counsel argued that a perpetrator who kills another in a moment of panic is judged far differently for sentencing purposes than a defendant who orchestrates and carries out a plan to kill and torture.

Based on this note, trial counsel had an obligation to investigate further the issue of the Applicant's denial of traumatic abuse. This note also put trial counsel on notice that the Applicant's mother was at least one of the possible sources of abuse and that any denial of abuse by her required further inquiry and that other potential witnesses of her abuse needed to be interviewed outside her presence. Nonetheless, when Mr. Soltis contacted the Applicant's mother at the Applicant's childhood hometown in Alabama nearly two years after the murder, he apparently accepted the history of no abuse and did not seek to separate potential witnesses from her while asking about any history of trauma.

WPK
#9
Mr. Soltis called the Applicant's mother twice on August 14, 2006, and he went to Alabama to meet with family members around August 26, 2006. While there, he had one large-group interview with ten to twelve of the Applicant's family members. The Applicant's mother was present when Mr. Soltis spoke to the other family members. (PCR Tr. vol. 1, 26-28; Applicant's Ex. 3, p. 16). No evidence of the Applicant having been abused was uncovered in that meeting. No effort was made to separate the Applicant's mother from the other family members in order to discuss the issue of abuse. When Mr. Soltis was told that Mr. Finklea had a rough upbringing, he interpreted that as describing financial hardships and did not question it further to clarify what it really meant.

Mr. Soltis made one other investigative trip when he traveled to the State of Washington to attempt to interview Cherena Roland, who had raised the red flag in her comments to the investigator. The interview never occurred. (PCR Tr. vol. 1, 36-37).

The mitigation specialist hired by the defense counsel, Carolyn Graham, went to Alabama only once. (Applicant's Ex. 8 and PCR Tr. vol. 1, 36-37). She also only met with the

Applicant once, and this meeting occurred after she had already met with his family. (PCR Tr. vol. 1, 31, 88).

The trial began on August 27, 2007. The State asserted that the Applicant was an unredeemable, "calculating, cold-blooded murderer." (ROA 1818, 2237 ("he's got murder and torture on his mind and malice in his heart"), 2243 (describing Applicant as "pure evil")). To make its case, the State focused on the nature of the offense, contending that it was motivated by greed and included acts that were tantamount to "physical torture." (ROA 2216). The State also highlighted the Applicant's character, which it portrayed as bad and manipulative. (ROA 2213). To support that picture, the prosecution presented evidence that the Applicant had sold drugs, owed past-due child support, and manipulated expert witnesses, relatives, friends, and the victim. (ROA 1829-35, 1842, 1863-66, 1879-89, 2232-2235).

WPA #10
The defense was aware of the State's strategy in advance and expected to lose the guilt phase. Trial counsel knew that evidence in mitigation was of paramount importance in this trial. On August 31, 2007, the jury found the Applicant guilty of murder and the related charges.

The sentencing proceeding began on September 4, 2007. In mitigation, the defense portrayed the Applicant as an excellent soldier, family member, and citizen for the great majority of his life. They emphasized redeeming qualities, someone to whom the jurors could justifiably extend mercy, and a person unlikely to commit further crimes while in prison. They argued that his life should be spared because of his current mental condition, his history of non-violence, his history of good conduct, military service, and his adaptability to life in prison.

MITIGATION TESTIMONY AT TRIAL

Unlike many of the cases cited by PCR counsel about deficient performance of trial counsel related to mitigation, this record demonstrates that the trial attorneys knew of the

importance of discovering any trauma in the Applicant's past life, put together a mitigation team, conducted an investigation, and presented mitigation evidence to the jury. During the sentencing phase, counsel presented thirteen witnesses. These included Erica Middleton, the Applicant's cousin (ROA 2035-39), Johnnie Lee Finklea, the Applicant's maternal uncle (ROA 2039-43), Curtis Blunt, the Applicant's older brother (ROA 2043-47), Johnnie Finklea, Sr., the Applicant's grandfather (ROA 2048-51), Betty Finklea Peoples, the Applicant's mother (ROA 2051-61), Nicole Finklea Fantroy, the Applicant's first cousin (ROA 2061-74), Cherena Roland, the Applicant's first wife (ROA 2138-49), and two men who served with the Applicant in the military, Sergeant Major Charlie Turner (ROA 2074-2115) and First Sergeant Vincent Smith (ROA 2131-38). Expert witnesses, Dr. Tora Brawley (ROA 2116-31) and Dr. Richard Frierson (ROA 2162-79) testified about the Applicant's mental condition. James Aiken, a former prison warden and corrections commissioner, testified about the Applicant's adaptability to prison life and that he was deemed extremely unlikely to be a threat to other inmates. (ROA 2189-92). Dr. Anna Cherry (ROA 2149-62), the psychiatrist who consulted with inmates at the Lexington County Detention Center, testified concerning the Applicant's mental state and his conduct while incarcerated.

The testimony from Sergeant Major Turner was glowing. It portrayed the Applicant as a leader who constantly strove to improve himself and those around him, one who had performed commendable service for his country, who supported his fellow soldiers, and was the best soldier that Sergeant Major Turner had encountered in twenty-one years in the Army. (ROA 2074-99). That witness also testified that the Applicant's urinalysis tests were always negative for drugs. (ROA 2114).

First Sergeant Smith described the Applicant as smart, motivated, and dedicated to his

duties in the military, and confirmed that the Applicant's urinalysis tests performed every three months were always clean. (ROA 2132). Sergeant Smith described the Applicant as a good family man and a model soldier.

All of the Applicant's relatives testified about their knowledge of him. Basically, they stated that he was non-violent, a good person, someone not known to use drugs, and a protector. They all testified that it was completely out of character for him to commit this crime. Their depiction of the Applicant was seriously incomplete and, in some respects, false.

If the information collected by the PCR team is accurate, the Applicant's mother, Ms. Betty Finklea Peoples, materially misrepresented the true picture. She testified that the Applicant was a good child and well-behaved his entire life. She testified that she brought him up in school and in church, that he was always respectful of her, and that she loved him dearly. (ROA 2055). She could not understand how her son could have committed this crime, and she believed that he must have gotten involved with the wrong crowd. She testified that she had never known the Applicant to use drugs or even drink alcohol. (ROA 2055). She asked the jury for mercy in sentencing the Applicant. (ROA 2055-56). She said that she was sorry for what happened and asked jurors to spare the Applicant's life. (ROA 2051-61).

The Applicant's ex-wife, Cherena Roland, consistent with the red flag information given to the investigator three years previously, was the only character witness who gave a hint in her testimony that there were negative experiences in the Applicant's childhood. She stated that the Applicant had a "rough younger life," which "caused him to have a lot of insecurities and devalue himself." (ROA 2140-41).

Ms. Nicole Finklea Fantroy, the Applicant's first cousin, described their relationship as being equivalent to that of a brother and sister. They did everything together. She testified that

the Applicant assisted Ms. Fantroy's mother, who experienced seizures. (ROA 2062). She considered the Applicant to be her mentor. (ROA 2063). He kept her from dropping out of high school despite having two children. He was the first in his family to graduate high school, which motivated her to do the same. (ROA 2063). She testified that if it were not for the Applicant, she would not have obtained a college degree. (ROA 2063-64). She testified that the Applicant was raised in church, that they sang together, prayed together, were raised by their parents to have moral values, and that the Applicant certainly has those values. (ROA 2065). She testified that she cannot explain what took place, "but we know that Ron is not a monster, Ron is not a whore monger, Ron is not a drug dealer." She also claimed that she had never seen him around drugs. (ROA 2065). Ms. Fantroy told jurors that the Applicant is not the "monstrous person that had been presented," that the wrong people can often lead others astray, and she pleaded for them to forgive him. (ROA 2066).

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Dr. Anna Cherry, a treating psychiatrist at the Lexington County Detention Center, testified that the Applicant had nightmares and panic attacks, but she never went into detail regarding the Applicant's past. She testified at the trial, "[o]ut of respect for Ron and people he cares about, I'm going to choose not to discuss those things even though it might help him." [Emphasis added.] (ROA 2155-56). Dr. Cherry additionally described the Applicant as a "kind, gentle soul," who would be a "stabilizing influence" in prison, could "deescalate" situations, and got along with correctional officers. (ROA 2152, 2154). When prodded on cross examination, Dr. Cherry explained: "we talked about whether he had had traumatic events in his past, . . . but I did not ask detailed questions because that is not my role. . .[.] We talked about it just enough for me to understand that there was trauma in his past and that he responded to the trauma like someone with PTSD would respond." (ROA 2160).

Defense counsel had planned to call Dr. Maddox in the sentencing phase. That plan unraveled, and the reasons for not calling Dr. Maddox are discussed below. The jury found aggravating circumstances related to the murder and recommended a death sentence.⁵ The trial judge concurred.⁶

UNEXPECTED DEVELOPMENTS DURING SENTENCING PHASE

Dr. Maddox is a highly respected forensic psychiatrist who perhaps has unequalled experience in death penalty cases in South Carolina. In serving as a mitigation expert, her responsibility was to gather records and information about the Applicant's family and his upbringing. According to Dr. Maddox, the mitigation investigation is usually completed by the time she is hired in a case. She then contacts family to affirm findings. In this case, Dr. Maddox cited Ms. Graham, Mr. MacDougall, and others as source information for her findings, and testified that her communication with and receipt of materials was satisfactory. (PCR Tr. vol. 1, 309-10; vol. 2, 17). Dr. Maddox interviewed some family members herself, including the Applicant's mother. (PCR Tr. vol. 1, 316-17). However, she noted that the Applicant's second wife, Teresa, had initially refused to speak with anyone on the matter. (PCR Tr. vol. 1, 318).

⁵ Three statutory aggravating circumstances (murder in the commission of a burglary, murder during a robbery with a deadly weapon, and torture) were submitted for the jury's consideration. The trial judge submitted the following mitigating circumstances to the jury: 1. the defendant has no significant history of prior criminal convictions involving the use of violence against another person; and, 2. the age or mentality of the defendant at the time of the crime. He also instructed jurors that they could consider non-statutory mitigating circumstances, including, but not limited to "the defendant's honorable service in the military ... and his adaptability to prison life."

⁶ On July 26, 2010, the Supreme Court of South Carolina affirmed the convictions and death sentence. *State v. Finklea*, Op. No. 2683, 388 S.C. 379, 697 S.E.2d 543 (2010). Rehearing was denied by order filed on August 19, 2010. The remittitur was issued on August 19, 2010. The Applicant did not seek certiorari in the United States Supreme Court. The issues on appeal were assertions of error as to the Applicant's competency due to his lack of memory and an allegation that the prosecutor improperly stoked the passions of jurors through theatrics and argument.

During her first meeting with the Applicant, Dr. Maddox specifically asked whether there was any childhood abuse. He denied being abused. (PCR Tr. vol. II, 7-8). She also asked about the crime itself, and the Applicant told her that he could not remember the crime. (PCR Tr. vol. 2, 8). At the conclusion of their meeting, Dr. Maddox did not reach a diagnosis, but believed that the Applicant was suffering from a cognitive disorder and obtained further evaluation from Dr. Brawley and Dr. Gaines. (PCR Tr. vol. 2, 8-9).

In subsequent meetings with the Applicant, Dr. Maddox's testimony and corresponding notes indicate that she asked him questions about the crime itself, about the possibility of childhood trauma, and about his relationships with family members. (PCR Tr. vol. 2, 9). The Applicant told her that he had a positive relationship with his mother. (PCT Tr. vol. 2, 14).

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Based on the Applicant's denial of childhood trauma and his having no memory of the crime, Dr. Maddox focused her preparation on the possible mitigating factor of criminal responsibility and whether the co-defendant had pressured the Applicant into committing the robbery. (PCR Tr. vol. 2, 12-13, 18). The co-defendant, Mr. Davis, had a far more extensive criminal history, including an offense involving violence.

Dr. Maddox had been given a sanitized version of the Applicant's life. Dr. Maddox met with the Applicant's family in a group setting for a little over an hour in September 2007, during the sentencing phase of the trial. (PCR Tr. vol. 1, 317-18; PCR Tr. vol. 2, 25). She prepared and updated a report of what she could offer the defense in mitigation. That plan changed when she received an email to her personal email address from the Applicant's second wife, Teresa, on the date that the sentencing phase began – September 4, 2007. Because it came to her personal email, Dr. Maddox did not have a chance to confront the Applicant with the information or discuss it with

defense counsel until September 5, 2007, during the sentencing phase. (PCR Tr. vol. 2, 22) (PCR Tr. vol. 1, 323; vol. 2, 9-10).

The email from Teresa⁷ contains information that was both helpful and harmful to the defense. It read, as follows:

I am not sure if Ron was using any type of drugs. I was deployed as I am now. I know that he had spent most of the money that I had saved. Ron has seen a spiritual advisor on several occasions. I think he probably did have some mental issues. Sometimes he could be so sweet and then others you would have to walk on egg shells around him. Ron and I knew each other for about a year before we were married and everything was good. After about a month into the marriage he started to change. Ron wasn't the person I thought he was. I think he live [sic] in a fantasy world. He would always brag about all the thing [sic] he had. I later found out that just about everything he ever said was a lie. He was always trying to impress and please his mother. I think that he was really afraid of her. He would sometimes tell me about the beatings that he suffered at her hands and how she treated him differently from her other children. I think that there is really something not right with him. He would sometimes have nightmares and he on [o]ccasion wet the bed. He has asked me why do I think GOD put him here. He said he doesn't have a purpose in life. I use [sic] to try and tell him that everyone has a purpose and that he could do great things. I think something was instilled in him as a child. I think he had a terrible childhood. I know that I was not happy in the marriage because no matter what I did Ron seem [sic] to be miserable. It seems like he was always looking for acceptance.

After he became disabled he did change he felt useless [sic]. I was coming back in the army and he felt that I was going to leave him behind. He did not [sic] the idea of me taking care of him.

The relationship with my brother [the co-defendant], I'm not really sure what you are asking. Ron was somewhat of a bully. JR is a follower. I think he was scared of Ron. Ron can be pretty scarey [sic] at times. If there is anything else I can help you with please let me know.

That email, coming after the Applicant was convicted and during the presentation of the sentencing phase evidence, was disastrous. It contained information that undermined the theory of reduced culpability upon which the defense had been built and it introduced undeveloped (and conflicting) information that case law recognizes as important for mitigation in death penalty

⁷ Applicant's Exhibit 26 in the PCR case

cases. When confronted with the email, the Applicant confessed that parts of it were true and that he had been harshly disciplined. (PCR Tr. vol. 2, 9-10; 21). This was the first indication of traumatic abuse that Dr. Maddox had come across in the case, despite interviewing numerous family members. (PCR Tr. vol. 2, 12-14; 16). The Applicant explained that his family was supporting him during the trial, and he said that he did not want to offend them. (PCR Tr. vol. 2, 10).

The defense continued to unravel. Soon after discussing the email with the Applicant, Dr. Maddox encountered the Applicant's first wife by chance in the courtroom. Dr. Maddox asked if Cherena would talk to her, and Dr. Maddox then learned of the abuse in more detail. Dr. Maddox had interviewed Cherena prior to trial, and the information shared about the abuse was new and surprising.⁸ (Tr. 321) (PCR Tr. vol. 1, 301, 319-22). As previously noted, Cherena had raised a red flag about trauma to the investigator three years beforehand, and counsel had a duty to make sure that the reported abuse was called to the attention of Dr. Maddox and covered by the defense team.

Dr. Maddox knew that if she testified and discussed the evidence of abuse, she would also have had to disclose the source of information - Teresa's email - and the damaging information contained therein. (PCR Tr. vol. 2, 19). She expressed her concerns to Ms. Armstrong about testifying. (ROA 2197-98; PCR Tr. vol. 2, 12). The defense team made the decision not to call Dr. Maddox as a witness in mitigation in order to keep the damaging evidence out, at the expense of also excluding the evidence of childhood abuse. (PCR Tr., vol. 1, 325-38). That decision was objectively reasonable under the circumstances, but a sufficient investigation and distribution of information among the defense team beforehand would have averted this situation.

⁸ The Solicitor's interview notes likewise lacked these details of abuse. (Tr. 322).

EVIDENCE DEVELOPED BY PCR TEAM

Following the conviction, the PCR team uncovered evidence of extensive abuse, principally by the Applicant's mother. That evidence is discussed below. Family members and the Applicant, who apparently were reluctant to divulge evidence of abuse to the trial team, provided the PCR team members detailed information when contacted in preparation for this PCR hearing. There is credible evidence that the presence of the Applicant's mother in group meetings with the trial team stymied others from disclosing traumatic events in the Applicant's life. There is also credible evidence that defense attorneys in death penalty cases should know about the need to develop a rapport with the accused and his family in order to elicit such sensitive information. The record here supports the finding that the Applicant has proven, by the greater weight of the evidence, that the attorneys did not take sufficient steps to build a sufficient rapport to break through the barrier of reluctance to disclose abuse, that they should have known to follow up with indications of infliction of trauma by the Applicant's mother, and that they should have had meetings with family members outside of the mother's presence. There is expert testimony that the Applicant, despite the abuse and because of it, has a relationship whereby he goes to extraordinary steps to avoid displeasing his mother.

Since neither the Applicant nor any family member testified in the PCR hearing, the evidence concerning what was uncovered after imposition of the death penalty is what the experts obtained from interviews and reviewing records. Most of this is hearsay, though admissible in the PCR hearing as it was provided in support of opinions given by experts. The evidence reveals the following version of facts, none of which was discovered by trial counsel.

The Applicant was born out of an affair between his mother and a married man, who abandoned them. (PCR Tr. vol. 1, 106–07). The Applicant looked like his father and had darker skin than his siblings, and his mother viewed the Applicant's existence as a constant reminder of the abandonment and the difficulties associated with it. (PCR Tr. vol. 1, 116, 134). She singled him out, inflicting belittling and inhumane treatment in the form of physical and mental retribution. She constantly called him profane names related to his skin color, instilled in him that he was no good just like his father, and inflicted harsh punishments that were cruel, unwarranted, and disproportionate to those she meted out to her other children. (PCR Tr. vol. 1, 114, 133, 233–34). She disparaged his achievements in school (Applicant's Ex. 22, p. 26), and taught him a fatalistic view of life. (Applicant's Ex. 22, p. 43). She denied him recognition for milestones or accomplishments that she acknowledged with her other children.

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The Applicant's family grew up in dire poverty. Significantly, it was hidden from the defense team that his mother sold alcohol and marijuana from their home to supplement her meager income and forced the Applicant and her other children to find customers, pour shots, and cut marijuana. (PCR Tr. vol. 1, 118, 226). Beginning when the Applicant was around seven years old, he was dispatched into dangerous neighborhoods, primarily his own, to gather customers, beating him if he failed to succeed in recruitment. (PCR Tr. vol. 1, 117–18, 226–27).⁹

The Applicant lived in constant fear of unprovoked and severe physical abuse, starting as early as age four or five. (Applicant's Ex. 22, p. 8). The PCR team discovered beatings inflicted

⁹ The PCR evidence established that Applicant grew up in a "high crime area" characterized by drug problems, fights, shootings, and prostitution. (PCR Tr. vol. 1, 136; Applicant's Ex. 18; Applicant's Ex. 22, p. 53). His cousin had to teach him how to protect himself so he did not get hurt. (PCR Tr. vol. 1, 136). His mother would beat him "if [he] didn't stand up to people, and [didn't] fight," but she would also beat him for fighting. (Applicant's Ex. 22, p. 12).

by his stepfather, including beating with a broom handle. (PCR Tr. vol. 1, 123). However, the primary and most egregious abuser was his mother. She locked him in closets for hours at a time. (PCR Tr. vol. 1, 113–14; Applicant's Ex. 22, p. 11), and she beat him on a regular basis with broom handles, axe handles, spatulas, pots, extension cords, water hoses, clothes hangers, belts, and switches, leaving welts and cuts. [See PCR Tr. vol. 1, 128–29, 196–97 describing an occasion where the Applicant's mother beat him at school in front of his classmates (Applicant's Ex. 22, pp. 8, 13)]. She often made him strip naked before beatings (Applicant's Ex. 22, pp. 10, 13, 51) and woke him in the middle of the night to deliver severe beatings for no apparent reason. (PCR Tr. vol. 1, 114; Applicant's Ex. 17). Almost every day of his childhood, he was singled out and/or beaten. (PCR Tr. vol. 1, 113–14). On one occasion, when the Applicant was ten years old, his mother beat him "hellaciously" and locked him in the closet, which led him to cut open his forearm with a knife. (Applicant's Ex. 22, p. 11).

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The Applicant's mother admitted to the PCR team that she inflicted physical punishment, but apparently does not see her conduct as wrongful. (PCR Tr. vol. 1, 127, 130, 169, 196–97, 233–34). These beatings continued into the Applicant's late teen years. (PCR Tr. vol. 1, 125). One of the Applicant's PCR experts, Jan Vogelsang, described the physical abuse that the Applicant suffered as "brutal," "extreme," and akin to "torture[]." (PCR Tr. vol. 1, 129–30).¹⁰

¹⁰ Additionally, the PCR hearing evidence revealed a familial pattern of domestic abuse, violent behaviors, and substance abuse. (PCR Tr. vol. 1, 99). For example, the Applicant's mother was raised by an alcoholic father who was a violent, "mean drunk" and would beat her and her mother frequently. (PCR Tr. vol. 1, 100–03). The Applicant's stepfather also abused Applicant's mother while they were together. (Applicant's Ex. 22, p. 9). This abuse culminated in an incident where his stepfather had his mother "up against the wall," choking her, and shot at her head with his rifle, which misfired. The Applicant never saw his stepfather again after that incident. (Applicant's Ex. 22, p. 9). Additionally, the Applicant's maternal uncle physically abused his wife and children. (PCR Tr. vol. 1, 120).

His mother emasculated him and treated him in ways that were sexually inappropriate. From the time the Applicant was around seven until he left home after graduating high school, she often possessively grabbed him by his genitals, both inside and outside of his clothes. (PCR Tr. vol. 1, 114, 129, 207). During these episodes, she would yell at him, claiming that she could do whatever she wanted to do to him because he belonged to her and was "her property." (PCR Tr. vol. 1, 114). She seemed to be especially likely to behave this way in order to reassert her control whenever the Applicant developed a romantic interest in another woman. (PCR Tr. vol. 1, 114).

The Applicant has a long history of bedwetting, which his mother addressed by wrapping rubber bands around his penis at night well into his teens (PCR Tr. vol. 1, 114, 235), using duct-tape to affix a milk jug to his penis (PCR Tr. vol. 1, 127), and forcing him to sit naked in tubs of ice cold water and sleep naked in the bathtub. (PCR Tr. vol. 1, 114, 128; Applicant's Ex. 17).

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#21 She threatened to beat him with weapons, including guns, knives, and a baseball bat. She threatened to cut off his penis. (PCR Tr. vol. 1, 134). She shot at or threatened him with a gun at least three times during his childhood. (PCR Tr. vol. 1, 200, 205). On one occasion, he entered the house bleeding and his mother fired a gun at him because his blood was soiling the floors. (PCR Tr. vol. 1, 205). She also shot at him in the backyard because she wanted him to do something. (PCR Tr. vol. 1, 200-01). She told him that she would "blow [his] brains out." (Applicant's Ex. 22, p. 10). On yet another occasion, when she was engaging in horseplay with her children and they began getting the better of her, she retrieved her gun, threatened to shoot the Applicant and his sister, and chased them out of the house. (PCR Tr. vol. 1, 202).

The Applicant's mother forbade her children from telling anyone about what went on in their home, threatening to beat them "half to death" if they disobeyed. She carried out her threats by beating the children if they told family members about her behavior. (PCR Tr. vol. 1, 149, 230).

Evidence was also introduced in the PCR case about traumatic events that the Applicant witnessed being inflicted upon those for whom he had greatest affection. His favorite relative as a child was his Aunt Ruby. Her violent boyfriend beat and cut her. (PCR Tr. vol. 1, 121). In one attack, the Applicant witnessed flesh hanging off of her body. (PCR Tr. vol. 1, 121). On two separate occasions, the Applicant found his great uncle and his mother's boyfriend molesting his younger sister. (PCR Tr. vol. 1, 118, 226). He rescued his sister on both occasions. (PCR Tr. vol. 1, 226). When the Applicant and his sister confided in their mother about these sexual assaults, she responded with rage and disbelief. She beat the Applicant's sister in the genitals and blamed her for the molestations. (PCR Tr. vol. 1, 119, 226). When the Applicant was a child, his maternal grandfather shot and killed his pet dog. (PCR Tr. vol. 1, 203). This caused the Applicant to attempt suicide by pulling a car engine over his torso, resulting in him puncturing his legs and bleeding profusely. (PCR Tr. vol. 1, 203-04).

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Dr. Susan Knight, a forensic psychologist, presented evidence that this history of trauma resulted in mental disorders and were "instrumental in shaping an adverse life trajectory." (Applicant's Ex. 22, p. 54). Specifically, she testified that, as a result of the chronic trauma, the Applicant suffers from PTSD with a "specifier of panic attacks," severe OCD, and a history of major depression, all linked directly to his traumatic childhood. (PCR Tr. vol. 1, 227, 259).

Dr. Knight based her opinion on seven clinical interviews with the Applicant, interviews with the Applicant's family members, including the Applicant's mother, a review of memos

detailing interviews that other members of the PCR team conducted, and consultations with the Applicant's former correctional psychiatrist, former forensic psychiatrist, current correctional psychologist, current correctional psychiatrist, and Jan Vogelsang, MSW, who also testified at the PCR hearing. She also reviewed case-related documents and a variety of social history records, including records obtained from schools, prisons, and doctors. She conducted numerous interviews with family, preachers, his former spouse, and friends. (PCR Tr. vol 1, 213-15; Applicant's Ex. 22, pp. 2-7).

According to Dr. Knight, the Applicant's PTSD changes the way that he functions emotionally, cognitively, affectively, and interpersonally—changes that affected Applicant at the time of the offense. (PCR Tr. vol. 1, 249). She further explained that the Applicant's "complex trauma" leads to intrusive memories of abusive experiences, results in frequent panic attacks, causes an underlying, constant anxiety, and makes it difficult if not impossible for the Applicant to trust others. (PCR Tr. vol. 1, 249-52 and Applicant's Ex. 22, p. 43).

Dr. Knight testified that the Applicant had malingered his memory loss and that he actually does recall the crime, but in her opinion he chose to lie because he did not trust his legal team. (PCR Tr. vol. 1, 243). She believes that he struggles to develop trust due to trauma, that he was embarrassed by his own actions, and that he was conditioned not to talk about his problems with anyone other than family. (PCR Tr. vol. 1, 243-44). Dr. Knight confirmed that the Applicant lied to Dr. Maddox about suffering any type of abuse growing up (PCR Tr., vol. 1, 246), but communicated with Dr. Cherry who had developed a rapport with him. Dr. Cherry was not responsible for delving into the Applicant's history or providing him with therapy because she was only treating him medically and trying to get his symptoms under control. (PCR Tr., vol. 1, 241).

Substantial testimony was presented at the PCR hearing that the Applicant's traumatic experiences profoundly affected his adult functioning and psychological status. Jan Vogelsang testified that the Applicant tended to process his emotions in a guarded way. (PCR Tr. vol. 1, 130). In an effort to gain some control over his environment, the Applicant engaged in compulsive behaviors. (PCR Tr. vol. 1, 131, 139). He had significant anxiety. His experiences made it difficult for him to respond to existing conflict or even potential conflict in a measured and logical manner. (PCR Tr. vol. 1, 140, 230-31). He developed nighttime anxiety and sleep deprivation. (Applicant's Ex. 22, pp. 45, 49).

His OCD caused him to obsess over mental images of his abuse and have irrational fears. (PCR Tr. vol. 1, 254-55; Applicant's Ex. 22, p. 47). To help calm himself, he compulsively ordered, straightened, cleaned, and counted items in a manner that disrupted his ability to function. (PCR Tr. vol. 1, 255-57). According to Dr. Knight, his behavior demonstrates a need to bring order to chaos and is likely tied to the chaotic and randomly violent environment in which he was raised. (PCR Tr. vol. 1, 256). She testified that his need to bring order, albeit a bizarre kind of order, to what he perceived as his life spinning out of control provides an explanation of why he decided to commit the robbery, as ill-conceived as that decision was. (PCR Tr. vol. 1, 291-92).

These accounts of a mitigating nature for the Applicant's horrendous crime were notably absent from trial counsel's presentation of the case. There was undeveloped evidence of the following things that a juror could find mitigated against imposition of the death penalty:

- (1) that the Applicant had mental health issues caused by trauma, and the resulting mental health conditions contributed to the development of an irrational, unnecessary, and ill-conceived attempt to resolve his perceived situation;

- (2) that his mental health issues were exacerbated by his separation from the Army, compounded by his wife's subsequent deployment to Iraq and his fear that his wife was going to "move on without him" and "leave him behind." (PCR Tr. vol. 1, 236-37);
- (3) that his mental health issues help explain why he seemingly functioned better in a structured environment (the Army) and, by extension, was evidence of adaptability to prison life; and,
- (4) that the combination of depression, severe anxiety, PTSD, and OCD demonstrate someone not possessing rational faculties of how to address an unexpected turn of events (PCR Tr. vol. 1, 144-46 and Applicant's Ex. 22, p. 44) and were contributing factors in the horrible act of murder and torture.

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According to Dr. Knight, there is evidence that the Applicant suffers severe anxiety when he "can't anticipate" future events and "feels in the dark." (Applicant's Ex. 22, p. 44). After his discharge from the military, the Applicant's symptoms of anxiety and OCD significantly increased (Applicant's Ex. 22, p. 56) as his financial woes worsened. (PCR Tr. vol. 1, 239). Following in his mother's footsteps, he turned to selling drugs. (PCR Tr. vol. 1, 144-45).¹¹ Due to ineptitude and an allegedly unhinged state of mind, he lost money in the process. (PCR Tr. vol. 1, at 146). As Dr. Knight explained, these events exacerbated his symptoms and accelerated his downward spiral. (PCR Tr. vol. 1, 237-39). She further explained that the Applicant lacked coping mechanisms to deal with the "accumulation of stressors" bombarding him, which resulted in very poor decision making. (PCR Tr. vol. 1, 260-61). During this period, the Applicant

¹¹ The court understands that an interpretation of the evidence can be made that is not nearly as sympathetic towards the Applicant as Dr. Knight's recitation. For example, as noted near the conclusion of this order, Sherry Bolin testified that he began selling drugs almost immediately upon his arriving at her house in South Carolina and at a time when his wife was there.

suffered from suicidal thoughts. (Applicant's Ex. 22, p. 16). He began drinking heavily and using marijuana, which further compromised his judgment. His OCD symptoms became particularly severe during this time. The OCD symptoms revealed mental illness and represented the Applicant's attempt to put order and control back into his life. (PCR Tr. vol. 1, 237-38).¹²

Dr. Knight discussed how the Applicant went into "straight out panic mode." (Applicant's Ex. 22, pp. 17, 57). She opined that his traumatic history, difficulty processing conflict in interpersonal relationships, and inability to cope with things that fall outside his control left him prone to making the disastrous decisions that led to murder. (See PCR Tr. vol. 1, 237-39). This offense, in Dr. Knight's opinion, was the culmination of those factors. (PCR Tr. vol. 1, 261; Applicant's Ex. 22, p. 57-58).

DEFICIENT PERFORMANCE REGARDING MITIGATION EVIDENCE

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Trial counsel should have recognized and pursued indications from the Applicant's first wife about trauma and, from that, discovered what the PCR team learned about the extent of the trauma and how it affected his mental health at the time of the murder. In addition, it is apparent that trial counsel did not adequately interview Dr. Cherry. [See the discussion about being surprised by Dr. Cherry's testimony related to PTSD discussed in the Strategic Decisions section below.] Trial counsel knew that Dr. Cherry had a long-term relationship with the Applicant and knowledge of his mental health issues. They called her as a witness on his behalf. Her trial testimony seems to be a desperate attempt to bring out the unexplored trauma. At the PCR hearing, the trial attorneys gave no explanation as to why they did not learn critical information from Dr. Cherry prior to trial. The failure of counsel to explore more fully beforehand what Dr.

¹² There is evidence that the Applicant arranged things in sets of five, was obsessed with pairing things, would not let people enter his home with shoes on, would not drink out of a glass without first boiling it, and engaged in bizarre rituals of cleaning himself and things around him. (See for example PCR Tr. vol. 1, 237-38).

Cherry knew, to build the degree of rapport necessary to effectively follow up on this knowledge, and to discuss the evidence of trauma with the Applicant before trial amounted to deficient representation.

The evidence in mitigation presented at trial was based on what the attorneys knew at the time.¹³ As a result of the undeveloped mitigation evidence and the ultimate decision not to call Dr. Maddox when the foundation of her opinions was pulled from under her during the sentencing phase, trial counsel presented experts who did not address the Applicant's life history. Two experts testified about the anoxic brain injury he suffered after his suicide attempt, but neither adequately addressed whether the Applicant had any mental impairments before or at the time of the incident. (ROA 2118-27, 2129, 2166-68).

The only time that Ms. Armstrong met the Applicant's family was after the trial had begun, during the sentencing phase. She met with them to discuss their upcoming direct examinations. At that point, in the middle of trial, she understandably did not have the ability to spend significant time trying to build rapport, and she did not probe for additional information regarding possible trauma because she assumed that the mitigation specialist and her co-counsel had done so. (PCR Tr. vol. 2, 48-50).

According to the experts presented by the Applicant at the PCR hearing, the result of trial counsel's lack of rapport is that the critical foundation for eliciting information was never established, which infected the Applicant's entire sentencing presentation. Dr. Knight, an expert

¹³ As discussed throughout this order, the court has concerns about the sequencing and length of time spent in development of mitigation evidence on a death penalty case where the attorneys expected a conviction in the guilt phase. Mr. Soltis went so far as to travel to the State of Washington to attempt to interview the Applicant's first wife who had raised a red flag in her comments to the investigator. He knew that was important, but the interview never occurred. (PCR Tr. vol. 1, 36-37). Trial counsel's mitigation specialist, Carolyn Graham, went to Alabama on only one occasion. (Applicant's Ex. 8 and PCR Tr. vol. 1, 36-37). Ms. Graham met with the Applicant only once, and this meeting occurred after she had already met with his family. (PCR Tr. vol. 1, 31, 88).

in forensic psychology, testified credibly that it was especially necessary to build a relationship in order to uncover the type of trauma asserted here because abuse victims will “do anything not to talk about [their trauma]” either out of shame, to avoid being disbelieved, or to avoid reopening old wounds. (PCR Tr. vol. 1, 213, 247– 49). She also noted in her report that the Applicant did not trust his trial counsel “at all” because he saw them so few times. (Applicant’s Ex. 22, p. 33). Further, it is apparent from Dr. Knight’s expert report that most of the character witnesses that trial counsel called during the sentencing phase of Applicant’s trial had specific knowledge regarding Applicant’s abuse, which trial counsel almost certainly would have uncovered had they pursued the information without the Applicant’s mother present and/or after spending the time necessary to develop a greater rapport. (Applicant’s Ex. 22, pp. 20–24).

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The red flags previously identified were of such a nature that trial counsel was obligated to conduct a more thorough investigation. The PCR hearing established that it is extremely likely that the information of trauma would have been developed had the pretrial investigation been properly conducted, and the resulting evidence of mental health issues likely affecting the Applicant’s actions would have been uncovered. Trial counsel did not exercise reasonable diligence.

The result is that the portrait of the Applicant presented in mitigation was substantially incomplete and inaccurate. Trial counsel claimed in closing that the Applicant “had a loving family.” (ROA 2225). The sentencing jury never heard evidence of psychological consequences of chronic abuse and trauma, which the Applicant’s PCR experts assert to be profound.

STRATEGIC DECISIONS

Though trial counsel has leeway to make strategic decisions, those decisions must be conscious and informed before they can be reasonable. *Weik v. State*, 409 S.C. 214, 236, 761

S.E.2d 757, 768 (2014) ("Decisions made in ignorance of relevant, available information cannot be characterized as strategic."). As the Supreme Court in *Wiggins* made clear, there is a difference between a *strategic decision* not to investigate mitigating evidence and a *failure* to investigate mitigating evidence that results from trial counsel's "inattention." 539 U.S. at 526 (noting that the latter is under most circumstances unreasonable). Additionally, even if trial counsel's decision not to pursue mitigating evidence is purportedly "strategic," that decision is only reasonable insofar as it is supported by a reasonable underlying investigation. *Strickland*, 466 U.S. at 690-91 ("strategic choices made after less than complete investigation are reasonable only to the extent that reasonable professional judgments support the limitations on investigation"); *Von Dohlen*, 360 S.C. at 607, 602 S.E.2d at 743. A decision to forego other possible avenues of mitigation is not reasonable if counsel has failed to conduct an investigation sufficient to determine that further investigation would be fruitless. *Wiggins*, 539 U.S. at 523, 527 ("*Strickland* does not establish that a cursory investigation automatically justifies a tactical decision with respect to sentencing strategy.").

Here, the Applicant has proven that no strategic decision was made to refrain from presenting the substantial evidence of trauma and the resulting mental health issues that were uncovered after trial. In fact, the evidence is that trial counsel attempted to explore whether such evidence existed and understood, in general terms, the importance of it. The evidence now known was unknown to trial counsel.

Ms. Armstrong testified that she first heard about the Applicant's childhood trauma during the penalty phase and that her failure to present that evidence was not grounded in any reasoned trial strategy. (PCR Tr. vol. 2, 78). She was also surprised to hear Dr. Cherry's testimony regarding the Applicant's PTSD at trial. (ROA 2204). After Dr. Cherry testified about

the Applicant's PTSD during the sentencing phase, Ms. Armstrong discussed statutory mitigating circumstances with the Court. During that exchange, Ms. Armstrong stated "[w]ith Doctor Cherry's testimony, I'm now somewhat concerned that it would be ineffective to not request some of the more mental health statutory mitigators like the age or mentality of the defendant at the time of the crime. I believe her testimony brought forth a diagnosis of posttraumatic stress disorder." (ROA 2205).

Ms. Armstrong testified that if she had possessed evidence akin to the mitigation evidence presented by Jan Vogelsang and Dr. Susan Knight during the PCR, she definitely would have presented it to the Applicant's trial jury. (PCR Tr. vol. 2, 79).

PREJUDICE PRONG UNDER STRICKLAND

Whether the evidence of trauma and mental illness will be likely to cause a single juror to determine that a death sentence is not warranted is an issue that the court has considered at length in evaluating the prejudice prong of the PCR burden of proof. A defendant suffers prejudice as a result of trial counsel's deficient performance if there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694; *Von Dohlen*, 360 S.C. at 603, 602 S.E.2d at 740-41. A reasonable probability is one sufficient to "undermine confidence in the outcome." *Strickland*, 466 U.S. at 693-94 (noting that this standard is less than a preponderance of the evidence); *Von Dohlen*, 360 S.C. at 603, 602 S.E.2d at 740-41.

When a death sentence is at issue, the inquiry is whether there is a reasonable probability that a person faced with sentencing would have determined that "the balance of aggravating and mitigating circumstances did not warrant death." *Strickland*, 466 U.S. at 695; *Jones v. State*, 332 S.C. 329, 333, 504 S.E.2d 822, 823 (1998). In making that determination, this Court must

consider "the totality of the available mitigation evidence," including both mitigation evidence from trial and from the PCR hearing, and "reweigh[] it against the evidence in aggravation."

Williams v. Taylor, 529 U.S. 362, 397-98 (2000); *Weik*, 409 S.C. at 233, 761 S.E.2d at 767. In reweighing the evidence, this Court must also "appropriately reduce[] the ballast on the aggravating side of the scale." *Porter*, 558 U.S. at 42. After engaging in the constitutionally required reweighing, prejudice exists if "there is a reasonable probability that at least one juror would have struck a different balance." *Wiggins*, 539 U.S. at 536; *Weik*, 409 S.C. at 233, 761 S.E.2d at 767.

Under these standards, and in light of the extensive precedent at both the federal and state levels recognizing that evidence of a defendant's history of trauma and his mental health status at the time of the murder is critical in the mitigation stage of a death penalty case, the court finds that the Applicant has established the prejudice prong. Of particular note in this analysis is the fact that a single juror may stop the imposition of a sentence of death.

When the trial attorneys used the good-guy defense in mitigation, the State turned the positive testimony of the Applicant's witnesses and their inconsistencies against the Applicant by arguing its manipulation theory. In closing, the prosecutor noted that the Applicant's character witnesses all testified "that's not the Ron I knew . . . I just can't believe it, can't understand it" and portrayed their disbelief as evidence of the Applicant's successful manipulation. (ROA 2221, 2233 ("Well he's manipulated his family. . . . He's manipulated the servicemen . . . they say we don't know that Ron.")). The State seized upon the non-specific nature of references to trauma and its resulting impact on the Applicant presented by Dr. Cherry and the Applicant's first wife, as well as the inconsistency of their testimony with what was stated by the other defense witnesses. The prosecution told the jury that both Dr. Cherry and Cherena mentioned "bad stuff"

that happened to the Applicant while he was growing up, but all of his family members testified only to "good things happen[ing] to him." (ROA 2221). The lack of evidence and the inconsistency allowed the State to suggest to the jury that the Applicant had manipulated those two witnesses. (ROA 2221-22, 2232 ("[H]is ex-wife and Doctor Cherry again said, well he said things wasn't so good in Alabama. Which is it? Who is he manipulating? The good side or the bad side?")). Similarly, in response to the testimony from Mr. Aiken about adaptability to prison life, the State posed the same questions: "[Aiken] said I've looked into the records, he's all right, he's good, we can control him. Well, is [Applicant] already manipulating that system?" (ROA 2233).

Furthermore, this is not a case where the mitigating evidence trial counsel failed to discover and present is merely a "fancier" version of the evidence they did present. *Jones*, 332 S.C. at 338-39, 504 S.E.2d at 826-27. In *Jones*, the South Carolina Supreme Court found no prejudice where the PCR evidence "would not have revealed anything significantly different" to the jury than what it heard at trial. *Id.* The PCR testimony in this case, however, was not simply a "more elaborate version" of the evidence and case theory presented at trial. In this case, the sentencing jury did not hear any details about the physical, sexual, and emotional trauma inflicted upon the Applicant, nor was it told about the significant psychological effects of that abuse. The PCR evidence is both quantitatively and qualitatively different from the evidence presented at trial, and counsel's failure to discover and present that evidence deprived the sentencing jury of information that courts have recognized as being important in properly evaluating moral culpability and in weighing the prosecution's arguments about the Applicant being a skillful manipulator.

The Applicant has met his burden of proof on both the performance and prejudice prongs of *Strickland*. Trial counsel failed to discover and present relevant mitigating evidence, and there is a reasonable probability that absent these errors at least one juror would have believed that life imprisonment was the appropriate punishment. Accordingly, this Court grants the Applicant's request for post-conviction relief on this ground.

OTHER GROUNDS FOR RELIEF DENIED

GROUND 2. Trial counsel failed to investigate and present adequate, specific, and individualized expert testimony concerning Applicant's adaptability to prison.

The court finds that the Applicant has failed to prove this assertion. The Applicant challenges the fact that James Aiken, who was admitted as a prison adaptability expert, failed to meet with the Applicant, but relied on the Applicant's military records and correctional files. (ROA 2187-88). The Applicant also raises an allegation of ineffectiveness of counsel in that Mr. Aiken noted that if he had to kill the Applicant to prevent him from posing a threat to society or inmates, he would. (ROA 2191).

Mr. Aiken, a former prison warden and correction's commissioner, testified that the Applicant was extremely unlikely to be a threat to other inmates. (ROA 2189-92). Dr. Cherry, who had a wealth of knowledge about the Applicant, testified strongly in favor of his adaptability based on the real-world experience of her observations over a lengthy period in the Lexington County Detention Center. (ROA 2151-2154).

The Applicant maintains that, in addition to the failure to interview the Applicant in person, counsel was deficient in failing to present empirical evidence of adaptability. Dr. Knight asserted the importance of using objective, data-driven methods to assess future dangerousness and adaptability. (PCR Tr. vol. 1, 265). She stated that interviews with correctional officers

familiar with the person, interviews with the person's correctional psychiatrist, and interviews with the person himself are necessary. (PCR Tr. vol. 1, 262). Dr. Knight used empirical research on prison violence and adaptability in order to predict the Applicant's future behavior (PCR Tr. vol. 1, 265; Applicant's Ex. 23) and concluded that the Applicant "does not present a significant risk for future serious violence in prison" and that none of the empirical risk factors for prison violence apply to him. (PCR Tr. vol. 1, 267).

The testimony of Mr. Aiken, in conjunction with that of Dr. Cherry, undermines the claim of ineffectiveness by counsel on the issue of prison adaptability. A very effective presentation was made that the Applicant would likely pose no threat to other inmates, and counsel performed well within required standards for effective representation. Even if a better presentation could have been made, including empirical data, the Applicant has failed to prove that such a presentation would likely result in a different outcome.

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#34

GROUND 3. Trial counsel was ineffective for failing to object to penalty phase direct examination testimony from State's witness Sherry Bolin to the effect that Applicant told her that his stepson was dealing drugs on Applicant's behalf. (ROA 1866). [As stated in the Application: Ineffective assistance of counsel for failing to object to the State's assertion during closing arguments {emphasis added} that Applicant had his minor step-son selling drugs for Applicant prior to the crimes at issue in this case.]

The Applicant has failed to prove this ground. PCR counsel asserts that trial counsel had a legitimate objection to make under SCRE 403, as the probative value of admitting the evidence was substantially outweighed by the danger of unfair prejudice. It is argued: a) that Ms. Bolin admitted that she had no independent knowledge of the truth of this statement and no corroboration existed; and, b) Ms. Bolin's bias arising from her romantic relationship with the co-defendant's

sister gave her incentives to make Applicant look worse in an effort to reduce the culpability of her girlfriend's brother. Respectfully, these grounds are not likely to support exclusion of the evidence under Rule 403 or a change of outcome based on an objection to the closing argument.

Sherry Bolin's testimony explained motive for the murder and robbery.¹⁴ The Applicant, his wife Teresa, and stepson lived with Ms. Bolin for approximately four months shortly after his discharge from the Army. (ROA 1862; 1864). Bolin testified that the Applicant immediately began selling crack cocaine out of her house. (ROA 1863). She discussed the issue with her roommate, Irena Fuller,¹⁵ and they agreed to confront the Applicant about his actions. (ROA 1863).

Sherry testified that the Applicant apologized for disrespecting their home and said that he would stop. (ROA 1863). Later, Bolin and Fuller had a conversation with the stepson leading to another discussion with the Applicant about having to move out if he would not stop selling drugs. (ROA 1864-65). Ms. Bolin testified that the Applicant told her that Brandon was selling drugs for him. (ROA 1866). Even if Ms. Bolin said that she did not know the truth of the statement about the Applicant using the stepson to sell drugs, it was presented as an admission by the Applicant.

State's Exhibit 89 in the trial was a letter written by the Applicant. (ROA 1914). It states, "Tell my son I love him and Brandon already knows what was what, I kinda let him in on it, I didn't tell him that's Y he had the letter. . . . Brandon son, please change, U_R headed down a

¹⁴ Ms. Armstrong objected to her testimony *in limine*. (ROA 1848). Ms. Armstrong argued that the produced discovery for this witness's statement lacked specificity as to time and place, and was never the basis of a criminal charge. Ms. Armstrong also argued that under *Gardner v. Florida*, 430 U.S. 349 (1977) it would violate the Eighth Amendment to admit evidence that Applicant had not had a chance to deny, explain, or rebut. (ROA 1848; 1850-51; 1853-54). The State responded that the testimony in question was admissible under *State v. Shuler*, 353 S.C. 176, 577 S.E.2d 438 (2003) and *State v. Gaskins*, 284 S.C. 105326 S.E.2d 132 (1985), as bad character evidence. (ROA 1849-50; 1852). Ms. Bolin's testimony was offered in camera and the trial court deemed it admissible with limiting instruction to the jury. (ROA 1854-61).

¹⁵ Irena Fuller, who also testified at trial, is Teresa Fuller's sister. She was also Applicant's sister-in-law at the time. She confirmed the conversations she had with Finklea about dealing drugs with the Mexicans and to stop doing it. ROA 1868-71.

dead end street, U-R just like Tommy, and I know if I came across U. I would put a bullet in your head, having said that Pooh, please listen 2 your mother. . . ." State Exhibit 89, 91, (ROA 1915-16). Solicitor Myers used the testimony of Ms. Bolin and State's Exhibit 89 as a basis to argue that the Applicant had his stepson selling drugs for him. (ROA 2220-21; 2234).

Trial counsel attempted to exclude the evidence now being challenged. Ms. Armstrong objected *in limine* as detailed in Footnote 14 above. (ROA 1848; 1850-51; 1853-54). Once the evidence was allowed over her objection, the prosecution was allowed to comment on it in closing.

As to a specific argument under Rule 403, SCRE, Ms. Armstrong gave a reasonable explanation for her decisions related to objections (PCR Tr. vol. 2, 76). There was more than one source of information about drug dealing and the involvement of the stepson. The Applicant has failed to prove that a Rule 403 objection would have been likely to exclude the evidence.

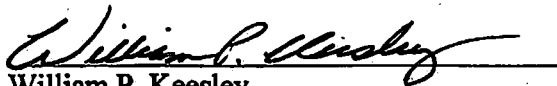
#36 There is also a failure of proof of likelihood of exclusion of this evidence under Rule 403 based on alleged bias related to a romantic relationship. Bias is almost always an issue for cross examination and impeachment.

The Applicant has failed to prove that trial counsel's failure to object fell below an objectively reasonable standard of representation or was independently prejudicial.

CONCLUSION

For the reasons stated above, the sentence of death is vacated and this matter is remanded to the Court of General Sessions of Lexington County for a new sentencing trial.

AND IT IS SO ORDERED.


William P. Keesley
Circuit Judge

March 6, 2019

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP3205076

Ron O Neal Finklea #SK6025

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

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

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

3/7/2019

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on March 7th, 2019, and a copy mailed first class or placed in the appropriate attorney's box on March 7th, 2019, to attorneys of record or to parties (when appearing pro se) as follows:

CPFORM4Cm

SCCA SCRPC Form 4C (Revised 2/17)

John H. Blume III Blume, Franklin-Best & Young 900
Elmwood Ave., Ste 200 Columbia, SC 29201
Diana L. Holt Diana Holt, LLC PO Box 6454 Columbia, SC
29260-6454

Donald J. Zelenka PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

LISA COMER/jp

Court Reporter

Lisa M. Comer - Clerk of Court

Court Reporter:

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

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

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

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Ron O'Neal Finklea, #SK6025

☐ Plaintiff

v.

State Of South Carolina

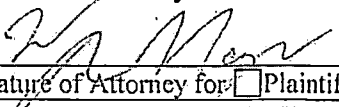
☒ Defendant.**COPY**

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-32-5076

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

Plaintiff's Attorney: Diana L. Holt, Esq., Bar No. 7079 Address: P.O. Box 6454, Columbia, SC 29260-6454 phone: (803) 782-1663 fax: e-mail: other: John H. Blume, III, 900 Elmwood Ave., Suite 200, Columbia, South Carolina 29201	Defendant's Attorney: W. Joseph Maye, Bar No. 100851 Donald J. Zelenka, Esq. & William E. Salter, III Address: P.O. Box 11549 Columbia, SC 29211-1549 phone: (803) 734-6305 fax: (803) 734-4035 e-mail: jmaye@scag.gov other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Alter or Amend Judgment Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant March 18, 2019 Date submitted	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other: MAR 18 11 14 AM '09	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____	

☐ CONTESTED - AMOUNT DUE: _____

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

RON O'NEAL FINKLEA, SK6025)

C/A No. 2010-CP-32-5076

Applicant,)
)
)
)
)

vs.)

**NOTICE OF MOTION AND MOTION
 TO ALTER OR AMEND JUDGMENT
 PURSUANT TO RULE 59(E), SCRC**

STATE OF SOUTH CAROLINA,)
)
)
)
)

Respondent.)
)
)
)
)

On March 7, 2019, the Court sent Respondent a signed and filed copy of the Court's Order granting Applicant a new resentencing proceeding via e-mail. Respondent objects to the Order On Post-Conviction Relief Granting New Sentencing on the grounds the Court made factual findings in the Order that are not supported by the actual record and committed multiple instances of plain legal error in reaching its ruling. Respondent now moves to alter or amend the judgment pursuant to Rule 59(e), SCRC, for the following reasons:

SUMMARY OF ARGUMENTS

As the record only presents the contradicted and unreliable hearsay testimony through expert witnesses, Applicant has failed to present any admissible evidence for which the Court can properly rely as establishing a history of childhood abuse. *Jones v. Doe*, 372 S.C. 53, 62-63, 640 S.E.2d 514, 519 (Ct.App.2006); Rule 703, SCRE. The Applicant and none of his family members testified about the existence of the claimed abuse to satisfy the burden of proof in light

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 LEXINGTON, SC

of the prior sworn family testimony to the contrary. In the absence of such evidence, Applicant has failed to satisfy his burden under *Strickland* for showing his attorneys were ineffective in their efforts to investigate and present mitigating evidence of childhood abuse. This is particularly telling in light of the presumption of competency of the attorneys.

The Order leaves either absent or unaddressed the numerous efforts of counsel and their defense team that were taken specifically toward investigating whether Applicant experienced a history of abuse, and investigative efforts geared toward understanding Applicant's family and upbringing. To the extent that any alleged history of abuse is accurate, which Respondent does not concede, the Order likewise disregards the fact that the defense team's investigative efforts were unsuccessful due entirely to the repeated lies of Applicant and his family over the course of many years of representation.

The Order's many factual deficiencies correspond directly to the Order's failure to properly apply numerous standards set forth in *Strickland v. Washington*. First, the Order deviates from the directives of *Strickland* which hold that the degree to which counsel bears a duty to investigate certain defenses is substantially dependent upon the information he receives from his client, and that counsel is entitled to rely upon that information in shaping his client's defense. *Strickland v. Washington*, 466 U.S. 668, 690, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674 (1984). If the hearsay history of abuse is true, Applicant and his family lied repeatedly to ensure that such abuse was not discovered, but the Order fails to explain how counsel can be ineffective under such circumstances. Under the progeny of *Strickland*, the Order likewise fails to explain how counsel can be ineffective when they are permitted to rely upon the information provided to

them by their qualified experts. *Walton v. Angelone*, 321 F.3d 442, 466 (4th Cir. 2003) (citing *Pruett v. Thompson*, 996 F.2d 1560, 1573 (4th Cir. 1993))

The Order next finds ineffective assistance of counsel under the premise that counsel failed to build a proper rapport with Applicant. *Strickland* does not establish such a duty of counsel, and “good rapport” is not a protection contemplated under the Sixth Amendment. *Morris v. Slappy*, 461 U.S. 1, 12-14, 103 S. Ct. 1610, 1617, 75 L. Ed. 2d 610 (1983). Moreover, such a claim and potential basis for relief is not asserted by any iteration of Applicant’s PCR application. The Order next incorrectly applies the standards of *Strickland* as they concern the strategic choices made by counsel. *Strickland* at U.S. 681, at S. Ct. 2061. The Order presumes that counsel failed to make a strategic choice in selecting a mitigation strategy, due solely to their failure to discover the alleged history of abuse. The Order gives no consideration to the fact that the chosen mitigation strategy was an objectively strong argument that easily outweighed any available alternative for which the investigative efforts toward mitigation defense had been undertaken for years to develop. Next, in conflict with *Strickland*, the Order repeatedly fails to give any deference at all to the actions and decisions of counsel under the circumstances of the case. *Id.* at U.S. 691, at S.Ct. 2066. *Strickland* demands substantial deference in favor of counsel’s decisions; in error, the Order gives practically no deference at all. Lastly, the Order improperly relies upon *Rompilla v. Beard*, 545 U.S. 374, 125 S. Ct. 2456, 162 L. Ed. 2d 360 (2005) as an analogous precedent in which to award relief. *Rompilla* stands for the premise that counsel must review available record evidence he knows the State will reply upon in aggravation; it does not stand for the premise that an attorney must disregard the word of his client and the client’s entire family, in favor of a single hearsay red-flag for which there existed

no corroboration during trial preparation, despite the repeated efforts of counsel and experts to fully investigate Applicant's upbringing.

INADEQUATE FACTUAL RECITATION AND RELIANCE

The Order set forth a handful of significant factual conclusions pertaining to the investigation and presentation of alleged childhood trauma that appear to have been evaluated outside the broader context of the many efforts that were taken by the defense team to investigate such potential mitigation evidence. These factual conclusions likewise appear apathetic to the circumstances and hindrances under which those efforts were taken, and at times the Order entirely disregards vital facts that demonstrate the efforts of counsel. Those contested facts of the Order include:

- That Applicant experienced frequent and substantial childhood abuse, absent properly admissible testimony that can be relied upon to establish that fact;
- That the defense team failed to investigate witness Cherena Roland's initial interview which produced a red-flag reference to Applicant having an abusive and strange mother, with a specific instance where his mother shot at him to make him do something; (Order, p. 8-9; p. 26).
- Applicant's entire family was only interviewed as a group with Applicant's mother present, thereby limiting the likelihood a family member might bring to light Applicant's prior abuse; (Order, p. 9; p. 28)
- The defense team failed to build a sufficient rapport with their client so as to avoid his dishonesty about substantial childhood abuse. (Order, p. 18; p. 26; p. 27; p. 28).

The Order's factual conclusions turn a blind eye to the facts and circumstances surrounding counsel's substantial investigation which satisfied their duty to investigate.

First, and foremost, Respondent does not concede the veracity of the facts underlying the expert testimony admitted at the PCR hearing concerning the Applicant's history of abuse, and

moreover notes that such evidence, being entirely hearsay, cannot serve as the basis for establishing a history of abuse. The Order is in error in this regard. (Order, p. 18).

A fundamental error in granting relief in this matter is the Order's finding that the abuse to which Applicant's experts testified in PCR actually occurred. Neither Applicant, his mother, nor any other family member who supposedly witnessed this abuse testified at the PCR hearing, and no family member has ever testified to this alleged abuse in any other sworn proceeding. In *Jones v. Doe*, 372 S.C. 53, 62-63, 640 S.E.2d 514, 519 (Ct.App.2006), the Court held that Rule 703, SCRE, permits an expert giving an opinion to rely on facts or data "that are not admitted in evidence or even admissible into evidence"; however, it "does not allow for the unqualified admission of hearsay evidence merely because an expert has used it in forming an opinion." "Also, Rule 703 does not allow the admission of hearsay evidence simply because an expert used it in forming their opinion; it only provides the expert can give an opinion based on facts or data that were not admitted into evidence." *High v. High*, 389 S.C. 226, 238, 697 S.E.2d 690, 696 (Ct.App.2010). Although the expert may testify to the inadmissible evidence, "[i]t is received only for the limited purpose of informing the jury of the basis of the expert's opinion and therefore does not constitute true hearsay exception." *Jones v. Doe*, at 519. All of which is to say, that while the Court was permitted to hear hearsay evidence as an underlying basis for the opinions of experts, it was not so entitled to rely exclusively upon the hearsay of experts as proof of the matter asserted, i.e., that Applicant experienced systemic childhood abuse. In order for Applicant to establish that fact, he needed to either testify himself or have any family member with firsthand knowledge of the abuse testify to the abuse question. Applicant and numerous family members were present for the duration of Applicant's PCR hearing. Despite the ease at

which any one of these individuals could have been called to testify, no such witnesses were presented.

In addition to the Applicant's failure to present such witness testimony at the PCR evidentiary hearing, the existing sworn testimony of the family is in contradiction to the alleged history of abuse presented at PCR. The family members each testified at trial as to the wholesome and loving childhood that Applicant grew up with in Alabama. If the underlying facts for which the expert testimony are to be believed, the testimony of family, either old or new, is without question, perjurious.

Thus, the Order fails to properly conclude that Applicant failed in meeting his burden of proof, having failed to present any competent and admissible evidence that the alleged abuse actually occurred. The Court cannot conclude from the evidence within the record that the abuse took place, particularly in light of the evidence the family offered under oath at trial.

Assuming for purposes of *arguendo* that the alleged history of abuse is accurate, the Order repeatedly fails to take into consideration the circumstances which surrounded counsel's efforts.

The most prevalent circumstance inhibiting the efforts of counsel in this case is that Applicant and his family *repeatedly* lied to the members of his defense team, both in individual settings and in group settings. Applicant's and his family's lies are acknowledged tangentially by the Order, but are otherwise ignored in forming its rationale for concluding counsel was deficient in failing to discover a history of abuse. The Order concluded it was instead an issue of poor rapport, and placed the blame entirely on the defense team for not being attentive enough to make Applicant sufficiently comfortable that he would not lie about matters of crucial

importance to his own defense. This holding is perplexing as the records of counsel indicate that Mr. Soltis communicated with his client eleven separate times during the first fourteen months of his representation, and then hired numerous other professionals to assist him. (Respondent's Exhibit 3, p. 5-12). How Applicant could reasonably harbor a distrust of counsel over such a long period of time, and after so many meetings, is without explanation.

The Order's disregard for the deception faced by the defense team and counsels' investigation is an unreasonable and unjustifiable factual recitation that cannot support the grant of relief to Applicant. The Order's failure to recognize the cascading deception and hindered efforts of counsel is as follows:

Defense counsel, Mr. Steve Soltis, was assigned as counsel and immediately hired Dave McDougall as an investigator to conduct some initial interviews. (Respondent's Exhibit 3, p. 5). This information returned some limited hearsay evidence from Applicant's first wife, Cherena Roland, about an abusive and strange mother, and a singular incident of abuse that she claims Applicant told her during their marriage. Also, quite relevant to this hearsay testimony is the fact that this same interview demonstrated that Ms. Roland herself had an extremely negative interaction with Applicant's mother and family while in Alabama (for which Applicant was not present or involved). This portion of the interview can reasonably draw into question a bias toward Ms. Roland reporting negatively, and would certainly raise questions for an attorney evaluating the veracity of her interview. The Order did not undertake to discuss this point.

Contrary to the PCR Court's interpretation of the facts, the information from Ms. Roland's interview was not disregarded; quite the opposite. First, on August 26, 2006, Mr. Soltis himself drove to Alabama to meet with the family. (Respondent's Exhibit 3, p. 20). This was his

first in-person meeting with Applicant's Alabama relatives, and it was performed in a group setting. The Order is silent to the reasonable consideration that professionalism and respect to a client's family would direct that an initial introductory meeting be performed in a less interrogative manner. The Order is also silent to the reasonable consideration that Mr. Soltis anticipated the hiring of trained mitigation experts, and that further individual interviews would be conducted by these experts such that he not need do so himself in this introductory setting.

Regardless, Mr. Soltis concluded his Alabama meeting having not received any indication of abuse from the family, for which his only lead was the hearsay interview of Applicant's clearly unhappy ex-wife. Mr. Soltis returned home and his billing records demonstrate that *his very next step in investigation of Applicant's case was to schedule a meeting with Cherena Roland*. (Respondent's Exhibit 3, p. 20). In order to further investigate her specific information, Mr. Soltis arranged a pre-scheduled meeting with Ms. Roland and flew across the country to Washington State so as to further interview her on the topic of abuse she had previously mentioned. (Respondent's Exhibit 3, p. 20). Unfortunately, his expensive and time-consuming efforts yielded no results as Ms. Roland would not answer her phone, could not be located, and did not meet with Mr. Soltis as she had previously agreed. There is nothing in the record to suggest Mr. Soltis inadequately prepared or failed to properly schedule this interview with Ms. Roland, and his best relocations indicated that he stayed overnight (possibly two nights) in Washington in an effort to complete this follow-up interview. (Tr. Vol I., p. 36, line 20 through p. 37, line 5; p. 64, line 10 through p. 65, line 10). Again, contrary to express directives of *Strickland*, the Order disregards the fact that investigative efforts were taken and is likewise silent to what confidence a reasonable attorney would continue to put in a witness who

demonstrated such behavior. See *Strickland v. Washington*, 466 U.S. 668, 690-91, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674 (1984).

Despite these clearly extensive efforts on the part of Mr. Soltis to further investigate the alleged red flag, the PCR Court's Order merely notes that he flew to Washington, and that the interview never occurred. (Order, p. 9). The context in which Mr. Soltis's efforts were made, and the context in which the interview failed were not discussed within the Order. Moreover, in the Order's later reasoning this effort was not cited as a factual basis for which further investigation was properly attempted. This is one of several instances within the Order which overlooks the actions of counsel to address the childhood abuse, and specifically, Ms. Roland's singular red-flag.

The facts show that Mr. Soltis sought assignment of co-counsel so as to ensure Applicant's case was thoroughly handled. Ms. Lisa Armstrong (formerly Ms. Kimbrough) was appointed to serve as second-chair, and she began her responsibilities as being primarily concerned with Applicant's mitigation defense, while Mr. Soltis focused on the guilt phase of trial. (Tr. Vol I., p. 19-20). Following Ms. Armstrong's assignment to the case, the defense team hired Carolyn Graham as a mitigation investigator. The addition of co-counsel, who's primary focus was mitigation, and the hiring of a mitigation investigator, are in and of themselves two additional steps taken for which to properly evaluate the potential existence of childhood trauma. The Order is silent to this fact.

As Ms. Armstrong testified, Ms. Graham was tasked to "get as much background information as she could get. We wanted to know about his family, about his siblings, about medical care, any psychiatric care, did he have any criminal history, just full-life history

investigation.” (Tr. Vol. II, p. 53, lines 12-19). She continued by testifying that Ms. Graham was hired:

[t]o basically be the boots on the ground to get the information about the family, to find about, you know, *what were the circumstances of his upbringing, interview family members who grew up with them*, where do they live. . . We wanted to know where he came from, you know, who is his family, *what were the moving parts of that family, what were the dynamics*. I mean, we wanted as much information as we could basically.

(Tr. Vol II, p. 55, lines 12-23) (emphasis added). Ms. Armstrong noted that she had worked with Ms. Graham before, had seen her perform excellent work in this role on a prior capital case, and did not need to micromanage her. (Tr. Vol. II, p. 53, line 20 through p. 55, line 8; p. 37, lines 1-11). The Order is silent to the fact that the purpose for Ms. Graham’s hiring was to investigate, *if made available*, evidence of childhood abuse. While Ms. Graham was not available to testify at the PCR hearing, the record indicates that she too traveled to Alabama, stayed overnight, and spent a total of approximately *nine hours* interviewing family members, *presumably individually*, as there is no evidence to suggest a meeting of this length was conducted as a group effort, or that Applicant’s mother was present. (Tr. Vol 1., p. 30-31). The testimony of counsel indicates that Carolyn Graham had performed all that was asked of her and that counsel relied upon her for mitigation information. (Tr. Vol 1, p. 62, lines 17-20; p. 76).

Contrary to the conclusions of the Order, there is no evidence from the Applicant, who bears the burden of proof in this matter, that Ms. Graham’s interviews were limited to a group discussion. In fact, Applicant failed to present the testimony of a single family member to corroborate the hearsay testimony of Applicant’s new experts. Nor did Applicant present any evidence at the evidentiary hearing to draw into question the methods or efficacy of Ms.

Graham's interview process. The Order is silent to this point, and simply presumes that family members were not forthcoming because of the persistent presence of Applicant's mother, a fact not established by the record.

The Order makes almost no reference at all to Ms. Graham's hiring, *which in and of itself is an effort to investigate potential abuse with the family, individually*, but also makes no reference to her extensive efforts spent interviewing family members that again produced absolutely no evidence of abuse. The limited reference the Order does make to Ms. Graham, seeks to criticize her lack of *further* visits and her failure to speak with Applicant before speaking with his family. The Order likewise neglects to reference the hypocrisy of expert Vogelsang's condemnation of meeting with family before meeting the client, when she herself did precisely the same thing in this case.¹ (Tr. Vol I., p. 191). Mr. Soltis testified that he did not recall asking Ms. Graham to go to Alabama again, and that he could not see why such a request would have been necessary at the time, having already testified that Ms. Graham had performed all that was asked of her. (Tr. Vol I., p. 63, lines 20-25). The Order likewise fails to articulate what more an additional visit from Ms. Graham would have provided in the face of obstinately deceitful family members.

The Order contends that the family members called by the defense team at trial had specific knowledge of Applicant's abuse and finds that "trial counsel certainly would have uncovered [Applicant's abuse] had they pursued the information without the Applicant's mother present and/or after spending the time necessary to develop a greater rapport." (Order, p. 28). The Order likewise acknowledges that these same family members portrayed a grossly

¹ Ms. Vogelsang noted that she met with family on March 12, 2017, but did not meet Applicant until May, 2017.

incomplete and incorrect version of Applicant's life *under oath*, but places the blame for that deception at the feet of defense team, despite having hired and deployed Carolyn Graham to extensively interview the family on the topic of and Applicant's upbringing. (Order, p. 12; p. 28) (emphasis added).² To this point, the record also demonstrates that Ms. Armstrong had one-on-one meetings with witnesses, as did Mr. McDougall, as did Dr. Maddox. Inexplicably, the Order gave no consideration to Ms. Graham's investigative efforts, or collectively, the many efforts of the defense team taken to follow up and bolster Mr. Soltis's initial group meeting.

Evidence of abuse was denied by Applicant to the team's forensic psychiatrist, Dr. Maddox. The defense team hired Dr. Maddox (formerly Dr. Schwartz-Watts) to serve as a forensic psychiatrist, and to perform a mitigation investigation for the defense team. Dr. Maddox had experience in this role in approximately 130 other capital murder cases, and she testified that her role included a responsibility to gather information about the family, the person's upbringing, obtain relevant records, and to investigate Applicant's personal life. (Tr. Vol I., p. 304). She testified specifically that she evaluated Applicant four separate times and that during her efforts she sought to discuss with Applicant the possibility of childhood abuse in his past. (Tr. Vol II., p. 7-8; p. 9,13-14). Applicant informed Dr. Maddox unequivocally that he had never been abused and that he had a very positive relationship with his mother. (Tr. Vol II., p. 7-8; p. 14).

Regardless, the facts demonstrate that Dr. Maddox was hired as an expert psychiatrist for the purposes of mitigation investigation, to specifically address whether there existed evidence of childhood abuse, and to then help formulate a mitigation defense based on what information she has available to her. She testified that she received plenty of discovery from Ms. Armstrong in

² However, if in fact the abuse occurred, then the family member(s) could have so testified at the PCR hearing. Again, Applicant failed to meet his burden of proof as a result.

the case and that she received information from Carolyn Graham as well. (Tr. Vol I., p. 309-310; Vol II., p. 17). While the Order attributes fault to the attorneys for not providing the singular interview from Ms. Roland, which was followed by her refusal to meet with Mr. Soltis. Ms. Roland could not have been a witness to childhood abuse, the Order ignores the impact that Applicant and family contact by Dr. Maddox had in her opinions. The Order presumes an error of counsel, where the record gives no indication either way; it is ultimately irrelevant given the extensive investigative effort that was undertaken by the defense team's experts.

One of the most important fact in this case, one that is determinative under the law, is that Applicant told Dr. Maddox that he had not been abused and that he had a good relationship with his mother; this was his story, not just after a single meeting as the Order implies, but after four separate evaluations. (Tr. Vol II., p. 7-9; p. 14). Dr. Maddox testified that she specifically addressed this topic with Applicant, but did not receive any indication of abuse until the date of trial. Dr. Maddox also testified that while she was not hired to conduct a "social history" she was nonetheless meeting with family members to get an understanding of Applicant's relationship to them. (Tr. Vol II., p. 16). The fact that the defense team had their psychiatrist, who was hired specifically to address mitigation evidence, meet with Applicant and family on multiple occasions (in addition to the numerous other meetings from the various other members of the Defense team) runs completely counter to the Order's conclusion that only one meeting took place, *and runs counter to its reliance upon rapport as a basis for relief*. Dr. Maddox testified that had she been informed of abuse, she would have confronted the family with that knowledge. (Tr. Vol II., p. 13). Applicant's lies denied her the opportunity to do so.

Dr. Maddox's professional efforts, despite 130 prior capital cases, produced *zero evidence of abuse, either due to Applicant's lie or because no such abuse actually occurred*, and she consequently directed her focus toward a mitigation theory that co-defendant, who had a history of violent criminal conduct, led Applicant astray. (Tr. Vol I, p. 327). She testified that she did not learn of any history of abuse until receiving Teresa's email during trial. (Tr. Vol II, p. 13-14). This is the same witness that originally told Mr. Soltis and Mr. McDougall that she had no desire to assist them and to not contact her further. Despite the efforts of Dr. Maddox, the Order still concluded that the counsel was ineffective, due to insufficient rapport and failure to interview family members individually.

It is also crucial to recognize that Applicant's statements that he was not abused *and* that he has a good relationship with his mother are the perfect combination of statements that would "throw his defense team off the scent" of his abuse, and would discredit Ms. Roland's earlier interview. It seems strikingly suspicious that the two supposed lies made by Applicant were the precise lies needed to debunk the limited existence of evidence of abuse in counsels' possession. The Order does not address this.

Other factual peculiarities within the Order included Dr. Cherry's testimony, for which the Order characterized as a "desperate attempt" to put forth facts concerning abuse; but the record indicates specifically that she *refused* to go into it, "out of respect for Ron and the people he cares about". (ROA 2155). The defense team testified that they were in frequent communication with Dr. Cherry, and that Ms. Armstrong had specifically spoken with her prior to her testimony and was confident she knew the substance of what Dr. Cherry had to say. (Tr. Vol II, p. 20, lines 8-12; p. 74, lines 8-20). The record demonstrates why the defense team did

not learn of abuse through Dr. Cherry; she specifically withheld it. Moreover, the Order acknowledges that Dr. Cherry was not responsible for delving into Applicant's history or providing him therapy, but was only there to treat him medically and get his symptoms under control. Under this factual concession, the defense team should have no reason to suspect that Dr. Cherry possessed a detailed history of Applicant's abuse, nor would they expect her to withhold such information when she knew it would be beneficial to Applicant. Nevertheless, the Order admonished trial counsel for not learning critical information from Dr. Cherry, despite these various facts. (Order, p. 23; p. 26).

Lastly, the Order mischaracterizes the testimony of Ms. Armstrong as suggesting she had no strategic reason for not presenting the minimal childhood trauma evidence that was available. (Order, p. 29 (citing PCR Tr. vol. 2, 78). The pertinent content of the record states: "So is it fair to say that you had no strategic decision not to present evidence of childhood trauma?" To which Ms. Armstrong replied, "Oh, absolutely not, no." indicating that counsel's assertion *was not fair* to say. This point is bolstered by the fact that Ms. Armstrong testified that it was a strategic decision not to introduce Teresa's letter, which contained evidence of abuse but was detrimental to their existing strategy that Applicant was a good guy led astray by co-defendant. (Tr. Vol II, p. 68, lines 5-18). It is also contradicted by Ms. Armstrong's indication that she would have presented evidence of abuse, had it been available to her. (Tr. Vol II., p. 79). In relation to the defense team's existing mitigation strategy, the entirety of their character witness testimony was focused on Applicant being a good person and having a loving family. *Limited evidence of his mother's mistreatment of him, absent no other corroboration prior to trial*

despite numerous investigations by multiple defense team members, would have been completely counter to their existing mitigation strategy.

Respectfully, none of these matters were included in the Court's analysis when finding that counsel made "no strategic decision in refraining from presenting the substantial evidence of trauma and resulting mental health issues that were uncovered after trial." (Order, p. 29). However, the Court likewise notes that "in fact, the evidence is that trial counsel attempted to explore whether such evidence existed and understood, in general terms, the importance of it." (Order, p. 29). In summary, the record demonstrated repeated efforts by the Mr. Soltis, Ms. Graham, Dr. Maddox, and Ms. Armstrong aimed at uncovering the possible history of childhood abuse, as well as efforts to further evaluate Ms. Roland's earlier interview. These efforts were reasonable under the circumstances. To the extent that evidence of any supposed abuse existed, counsel's reasonable efforts to discover it were thwarted by Applicant's and his family's lies and dishonest dealings. The Order's conclusion that the defense team took no efforts to address the red-flag or seek evidence of childhood abuse is patently inaccurate. The Order's focus on a perceived lack of rapport is a blatant disregard for the many *actions* taken by the defense team to satisfy its duty to investigate the existence of child abuse. The Order's disregard or indifference to Applicant's dishonesty in assisting with his own mitigation renders the Order not factually supported by the record.

IMPROPER APPLICATION OF *STRICKLAND V. WASHINGTON*

Respectfully, the PCR Court has misapplied the standard for granting post-conviction relief set forth in *Strickland v. Washington*, on a number of crucial matters. Any one of which is sufficient to require the Court's March 2, 2019 Order be amended so as to deny relief.

Strickland v. Washington has set forth the standard of review for post-conviction relief proceedings for thirty-five years. Under *Strickland*, an Applicant must demonstrate two separate prongs: deficient performance and prejudice. The Supreme Court provided detailed discussion of how these prongs should be evaluated.

Under the deficient performance prong, the court must be convinced that counsel made errors so serious that he was essentially not functioning as the “counsel” guaranteed by Sixth Amendment. Stated another way, the benchmark for judging the deficient performance is that “counsel’s conduct must so undermine the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984). The question the court must ask is whether counsel’s assistance “was reasonable considering all of the circumstances.” *Id.* at U.S. 688, at S. Ct. 2065. Moreover, judicial scrutiny of counsel’s performance must be “*highly deferential*”, as it is too easy and too tempting for a reviewing court to find one particular act or omission of counsel as unreasonable in light of an unsuccessful defense. *Id.* at U.S. 689, at S. Ct. 2065. The Applicant must demonstrate that the challenged action was not sound trial strategy, under the circumstances. *Strickland* notes that within this prong exists the duty to investigate so that counsel efforts are based on informed professional decisions. *Id.* at U.S. 680, at S. Ct. 2060. Most importantly, the Court acknowledged that there is no precise measurement as to what constitutes sufficient pretrial investigation, merely that it be “reasonably substantial” under the circumstances. *Id.* at U.S. 680, at S. Ct. 2060-61.

a. Failure to properly evaluate whether defense counsel satisfied its duty to investigate

The Order incorrectly applies the standard set forth in *Strickland* concerning the

evaluation of counsels' duty to investigation. *Strickland* confirmed that pursuant to the Sixth Amendment, trial counsel has a duty to investigate mitigating evidence and that such efforts to investigate must be reasonable in light of the circumstances. *Strickland v. Washington*, 466 U.S. 668, 680, 104 S. Ct. 2052, 2060-61, 80 L. Ed. 2d 674 (1984). Pursuant to that duty, Applicant's main allegation was that his defense team failed to investigate and present mitigating evidence. The Order disregards this stated allegation and instead undercuts the issue of this case by concluding that the rapport between Applicant and his entire defense team (all five members) was so poor that he and his family were excused for lying about his history of abuse, thereby negating the extraordinarily extensive investigative efforts taken to uncover his childhood abuse. (Order, p. 26; p. 27; p. 28).

Nowhere in the PCR Application has Applicant alleged that counsel were ineffective for failing to build rapport with him. Moreover, nowhere in *Strickland* is there an affirmative duty to ensure a prosperous rapport with a client so as to detect or avoid his and his family's lies on crucial matters of the defense. See *Morris v. Slappy*, 461 U.S. 1, 12-14 (1983) (rejecting claim that the Sixth Amendment guarantees a defendant the right to a "meaningful relationship" with counsel, in the absence of evidence that counsel was unable to prepare adequately for trial); *Shaw v. United States*, 403 F.3d 528 (8th Cir. 1968); See also *United States v. Golden*, 102 F.3d 936, 942 (7th Cir. 1996) (holding that 6th Amendment does not guarantee the right that attorney and client have a meaningful relationship or good rapport); *United States v. Turk*, 870 F.2d 1304, 1308 (7th Cir. 1989) (holding that the "Sixth Amendment requires the court to satisfy itself that the defendant is adequately represented, not speculate on the complex emotional relationship of a client and her lawyer"). The Order progresses from the concept of a lacking rapport to the

conclusion that the investigation was lacking, without reference or explanation as to why the *numerous efforts* of the defense team to uncover a history of abuse were insufficient, and with no forbearance to the fact that, if there was abuse, then Applicant lied to his attorneys from the very outset of his representation on matters both concerning guilt and mitigation, and did so with such success that he evaded detection by numerous expert malingering tests.

The Order's distortion of the issue is particularly egregious given that *Strickland* specifically contemplates the importance of the information a defendant provides his attorney, and the permissive reliance an attorney may show it. The Supreme Court recognized that:

[t]he reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information. For example, when the facts that support a certain potential line of defense are generally known to counsel because of what the defendant has said, the need for further investigation may be considerably diminished or eliminated altogether. And when a defendant has given counsel a reason to believe that pursuing certain investigations would have been fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable. In short, inquiry into counsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions, just as it may be critical to a proper assessment of counsel's other litigation decisions.

Strickland v. Washington, at U.S. 691, at S.Ct. 2066. The Order bypasses this directive in *Strickland* and attributes deficiency to the rapport, rather than the investigation. *Strickland* contemplated that a defendant bears responsibility for dictating the direction in which his attorney crafts his defense. When Applicant flatly lied about a crucial matter of the trial, as *Strickland* explicitly demands, Applicant's counsel may not be found as unreasonable for having

believed the word of their client.

The record demonstrates repeated efforts to investigate the possible existence of childhood abuse through the interviewing of family members, who were likewise deceitful. If the Order properly returns to the question of whether counsel satisfied their duty to reasonable investigate an avenue of mitigation evidence, i.e. childhood abuse, the record is replete with evidence that such an investigation *was made and exhausted*. These efforts include:

- Mr. Soltis's eleven (11) documented visits or interactions with Applicant during the first fourteen months of his representation, wherein Applicant immediately began to lie to his counsel concerning his memory of the crime;
- The hiring of Mr. McDougall to perform early interviews and investigative efforts;
- Mr. McDougall's contact with Applicant's wife Teresa, who told the defense team that she had no desire to assist in mitigation and demanded she not be contacted further;
- Mr. McDougall's initial interviews producing Ms. Roland's singular incident of abuse, coupled with a reasonable concern for bias;
- Mr. Soltis's trip to Alabama to introduce himself and interview Applicant's family;
- Mr. Soltis's immediate subsequent efforts to arrange a cross-country, in-person meeting with Ms. Roland to discuss her knowledge of abuse, having been given no indication of such abuse from the family;
- The failure of that meeting due *solely* to the refusal of Ms. Roland to appear or even communicate as she had previously agreed to with Mr. Soltis;
- The request and assignment of Ms. Armstrong as co-counsel, primarily focused on the development and presentation of the available mitigation evidence;
- The hiring of Carolyn Graham, a mitigation investigator, whose sole duty was to be the "boots on the ground" individual charged with investigating Applicant's upbringing and to find as much information as she possibly could about his family and early life;
- Ms. Graham's trip to Alabama wherein she interviewed Applicant's family members for approximately nine hours on the various topics of Applicant's life and upbringing, to which none of the witnesses divulged any history of abuse;
- Ms. Graham's meeting and interview with Applicant himself, who provided no indication of abuse;
- The hiring of Dr. Maddox as a forensic psychiatrist to investigate and evaluate the available mitigation evidence so as to help form the best mitigation strategy for Applicant at trial;
- Dr. Maddox's first visit and interview with Applicant, wherein Applicant tells her explicitly that he had not experienced any childhood abuse and that he has a positive relationship with his mother;
- The fact that Dr. Maddox conducted four total evaluations with Applicant, and in none of these meetings did he disclose a history of child abuse or his poor relationship with his

- mother;
- Dr. Maddox's interview with family members, who again failed to divulge a history of abuse;
- Ms. Armstrong's communications with Dr. Cherry, Applicant's treating psychiatrist from the detention center, for which the record demonstrates she was not there to provide therapy, but to diagnose and treat Applicant's symptoms. Wherein, Ms. Armstrong testified that she met with and believed she had fully discussed the testimony for which Dr. Cherry could provide at trial, none of which included a history abuse.
- Dr. Maddox's consultation with Dr. Cherrie, wherein no indication of abuse was provided;
- Ms. Armstrong's individual meetings with the family members chosen to be witnesses, who again did not divulge a history of abuse, but instead fed Ms. Armstrong unequivocal lies about the circumstances of Applicant's upbringing (If his history of abuse is believed to be true at all).

The Order contends that the defense team did not take efforts to further investigate the red-flag incident of abuse from Ms. Roland; the evidence above shows they did so – both specifically, and in general terms. The Order contends that the family was not interviewed individually; the evidence shows that they were – by Ms. Graham, Dr. Maddox, Mr. McDougall, and Ms. Armstrong. The Order contends that counsel were deficient in the building of their rapport with Applicant, but the evidence shows this is unfounded, as Applicant had repeated interactions with Mr. Soltis from the outset of his representation and then subsequent meetings with every single member of the defense team.

A thorough reading of the record demonstrates that counsel did all they could to conduct a reasonably investigation into the possibility of childhood abuse as evidence of mitigation in Applicant's case. Their efforts were met with repeated deceit, by Applicant and his family, which specifically prevented the discovery of Applicant's history of abuse. *Strickland* specifically demands that in such circumstances, counsel cannot be found deficient. *Id.* This application of *Strickland* is not unique and courts have consistently found that a client cannot be permitted to lie or otherwise thwart the mitigation efforts of his counsel and then seek post-

conviction relief for the failures of that mitigation investigation. Thus, trial counsels' performance is not deficient merely because Applicant, his family members, and others were not forthcoming or did not want to cooperate with counsel or perhaps misled them. Also, counsel were entitled to rely on the reasonable evaluations and opinions of the experts they hired. *Id.* See also *DeCastro v. Branker*, 642 F.3d 442, 456 (4th Cir. 2011) ("the state court did not act unreasonably in refusing Petitioner's attempt to upend his conviction and sentence based on the information that he failed to timely provide to counsel"); *Moody v. Polk*, 408 F.3d 141, 148 (4th Cir. 2005) (holding that there is no "minimum number" of meetings necessary for which to satisfy proper preparation to guarantee effective assistance of counsel and holding that *"[i]f Moody had told the truth at the meetings he had with counsel, counsel could have pursued the leads he gave them and acquired all available mitigating evidence. Because of Moody's dishonesty to his own counsel, however, counsel were limited in their possibilities for mitigation investigation."*) (emphasis added); *Lovitt v. True*, 403 F.3d 171, 179 (4th Cir. 2005) ("We think it relevant that the state habeas court found that Lovitt 'did not give counsel permission to speak to members of his family, and he stated to counsel that his family does not care about his situation.' [C]apital sentencing proceedings do not set at naught the basic principle of attorney-client relations: namely that counsel, for all their learning and experience, remain in the end the agents of the one most intimately affected. Lovitt is correct to insist that a client's decision in this regard should be an informed one. At the same time, however, Lovitt's lawyers were hardly ineffective for incorporating their client's wishes into their professional judgment"); *Thomas v. Gilmore*, 144 F.3d 513, 515 (7th Cir. 1998) (*"It is reasonable for a lawyer to place a certain reliance on his client, so that if the client and his family and friends*

throw the lawyer off the scent, here by denying the existence of psychological problems that might have provided an alternative theory of mitigation, the lawyer cannot be faulted for failing to go down the path thus closed off") (citing *Strickland*, 466 U.S. at 691, 699) (emphasis added); *Soria v. Johnson*, 207 F.3d 232, 251 (5th Cir. 2000) (petitioner concealed abuse information despite exhortations to be candid); *Sims v. Singletary*, 155 F.3d 1297, 1316 (11th Cir. 1998). See also *United States v. Pellerito*, 878 F.2d 1535, 1543 (1st Cir. 1989) ("If counsel was ineffective in any sense, it was only because the client rendered him so That is not the sort of 'ineffectiveness' for which relief can be granted"); *Segundo v. Davis*, 831 F.3d 345, 352 (5th Cir. 2016).

The Order disregards the question of whether Applicant's attorneys were reasonable in their "duty to investigate" contemplated by *Strickland*, and moreover, disregards the actual allegation set forth by the Applicant. It instead expands the obligations of counsel to question whether they were approachable enough, or attentive enough, or polite enough, or empathetic enough to satisfy the delicate sensibilities of their particular client so as to ensure that his direct answers given to direct questions are in fact truthful. That is not the purpose of *Strickland*, is in no way contemplated by *Strickland*, and is in direct contradiction to *Strickland*.

Applicant's case is of no distinguishing character to the above cases, and the record confirms both the repeated deception and the proper investigative efforts to conclude that the defense team did not omit or leave unturned the stone for which a history of childhood abuse may rest. The history of childhood abuse was simply buried too deep by Applicant and his family to result in discovery. To conclude otherwise, and to base the grant of relief upon the

perceived lack of rapport is a drastic departure from the application of *Strickland* and its progeny, and is in error.

b. Failure to properly apply Strickland v. Washington as it concerns the evaluation of strategic choice.

The Order improperly concludes that the defense failed to utilize an informed strategic decision in pursuing a mitigation defense strategy based upon an exemplary military history, an otherwise upstanding and successful personal life, and the theory that Applicant was led astray by his co-defendant, who already had a history of criminal violence and manipulation. The Order cites to *Wiggins* noting that ineffective assistance of counsel can be found where an Applicant's attorney make strategic decisions in the ignorance of relevant available information, and that strategy cannot be found where counsel failed to investigate mitigating evidence such that it constitutes inattention. (Order, p. 28). The Order's errors lie in the presumption that the history of abuse was "available" and in that the efforts of counsel previously discussed could possibly be described as "inattention".

The Order fails to properly apply *Strickland* in this regard, and also fails to account for and apply the well-established principle that an attorney is permitted to rely upon the evidence provided by their expert witnesses. Under *Strickland* the Court concluded: "If there is more than one plausible line of defense, the court held, counsel should ideally investigate each line substantially before making a strategic choice about which lines to rely on at trial. If counsel conducts such substantial investigations, the strategic choices made as a result 'will seldom if ever' be found wanting." *Id.* at U.S. 681, at S. Ct. 2061. In correlation to the subsection (a), wherein Respondent discussed at length the Supreme Court's acknowledgment that an attorney

may reasonably rely upon his client for information that dictates the direction the defense takes, the Court states:

strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.

Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information.

Id. at U.S. 690-91, at S. Ct. 2066. The Court recognized that a strategic choice is not, by definition, a perfect choice, but is instead a choice that can be reasonably justified in light of the evidence available following sufficient investigations of counsel and the avenues deemed not worth investigating by the client. *Id.* In this case the defense team's decision to pursue a mitigation strategy based on Applicant's quality life and military service, in conjunction with manipulation by a co-defendant was strategic given that the team had taken direct and extensive efforts to uncover a history of childhood abuse, only to find no such history available, and to be told by their own client that such a history does not exist. Given the numerous efforts of counsel and the deceitful circumstances, it is in error to conclude that no strategic decision existed in pursuing the chosen mitigation strategy as the evidence available, presented no other alternative strategy to even consider.

The Order states, in substantial confusion:

Here, the Applicant has proven that no strategic decision was made to refrain from presenting the substantial evidence of trauma and the resulting mental health issues that were uncovered after trial. In fact, the evidence is that trial counsel attempted to explore whether such evidence existed and understood, in general terms, the importance of it. The evidence now known was unknown to trial counsel.

(Order, p. 29). This reasoning following the Order's initial conclusion in this paragraph is moreso an explanation for why counsel *should not be found ineffective*, as it notes the important evidence *was not discovered* until after trial, but *was explored* and *considered important* to the mitigation investigation.

The Order goes on to note the Ms. Armstrong's failure to present evidence of childhood trauma was not based in a reasoned trial strategy, but in the same breath noted that Ms. Armstrong did not first hear of such evidence until the middle of the penalty phase of trial. This assertion within the Order is also inaccurate as the record clearly indicates that Ms. Armstrong disagreed with PCR Counsel that it was a "fair to say that [Ms. Armstrong] had no strategic decision not to present evidence of childhood trauma". (Tr. Vol II., p. 77-78).

In addition to the fact that the Court misinterprets Ms. Armstrong's response, the Order's reliance upon this exchange is wholly unreasonable for multiple reasons. First, it cannot logically follow that someone would have a strategic reason to exclude evidence of childhood abuse that they were not aware of in the first place, which the Order and record agree was the case. (Order, p. 29; Tr. Vol II., p. 79; p.74-75). Second, Ms. Armstrong testified that when she was finally in possession of sufficient evidence of abuse, after already committing to their previous strategy, she did make a strategic decision to keep that evidence out, given the fact that the email source

for which the evidence originated contained evidence that would have substantially damaged their existing strategy. (Tr. Vol II., p. 68).

The Order also relies upon Dr. Cherry's testimony of having a diagnosis of PTSD and history of abuse, though she specifically testified that she refused to discuss it, as a basis for which the defense team failed to make a strategic decision in the direction it took for presenting a mitigation theme and defense. The Order disregards the fact that Ms. Armstrong testified that she had met with and discussed all that Dr. Cherry had to provide her, and had not been given any information that would have broken open the concealed history of abuse. (Tr. Vol II., p. 74). The Order's conclusions as to the selection of strategic choices in mitigation is convoluted and at times self-contradictory, but it all boils down to the same fact: *the defense team performed a reasonable investigation, but due to the deceit of their client and his family, the defense team was not able to uncover a history of abuse that would present a viable alternative strategy for mitigation.* As such, there can be no condemnation for failing to make a strategic choice in pursuing the only other mitigation theory available.

The Order also fails to discuss or explain how its rationale for granting relief can withstand the precedent that an attorney is permitted to rely upon the information and expertise of his witnesses in developing the defense of a client. *Walton v. Angelone*, 321 F.3d 442, 466 (4th Cir. 2003) (citing *Pruett v. Thompson*, 996 F.2d 1560, 1573 (4th Cir. 1993) (Finding that counsel was entitled to rely on the information obtained from his experts, and that in connection with such information, he is due deference in strategic decisions stemming from that reliance). Moreover, there is no federal constitutional guarantee to the effective assistance of expert witnesses. *Fisher v. Angelone*, 163 F.3d 835, 853 (4th Cir. 1998).

Mr. Soltis and Ms. Armstrong hired experienced, capable, and proper experts specifically for the purpose of conducting interviews and investigations into Applicant family upbringing, and specifically concerning the potential existence of child abuse. Disregarding for a moment the fact that those experts were likewise lied to by all of their interviewees, the hired experts reported back to counsel on the lack of childhood abuse and suggested an alternative strategy for mitigation wherein they demonstrate Applicant's exemplary military career, and the acquiescence to manipulation by his co-defendant. Counsel then pursued the suggested mitigation strategy, given that there was exceptional evidence to support the theory. Counsel cannot be found ineffective for relying upon their experts in such a manner.

The Order's conclusion that counsel failed to make a strategic decision in pursuing their chosen mitigation strategy instead of presenting evidence they did not know existed, despite thorough efforts to discover, is plain legal error and an illogical conclusion. *Strickland* and its progeny, in contrast to the Order's holdings, provide for the reliance upon experts, the reliance upon the client's own statements to his defense team in the forming of his trial strategy, and upon the strategic decisions made when alternative theories are seemingly unavailable. To hold otherwise would be an affront upon the *Strickland* standard.

c. Failure to give substantial deference to the actions of counsel in light of the Applicant's and his family's lies.

As is required under *Strickland*, counsel is entitled to substantial deference by the Court in review of the efforts of counsel. However, the Order gives no deference at all, to say nothing of the fact that "substantial" deference is most certainly absent. It disregards the fact that lead counsel, himself, took efforts to investigate, and after coming up empty hired two well qualified experts to specifically investigate both Applicant and Applicant's family as to the topic of abuse.

The Order specifically acknowledged, but found inexplicably paltry, the fact that Applicant persistently lied to his counsel and defense team throughout their efforts to represent him. The first instance is Applicant's malingering as to his ability to recall the crime in question. This lie managed to fool the entire defense team along with countless experts in the fields of psychology and cognitive function, *who specifically tested him for evidence of malingering*. While the topic of this lie does not address mitigation, it is a striking demonstration of how deceptive and manipulative Applicant was from the outset of his representation, and clashes in stark contrast with the Court's conclusion that Applicant was simply a feeble and emotionally shutoff individual who felt "reluctant to discuss his childhood abuse". This lie was deliberate, elaborate, and persistent, and with no justification, regardless of what relationship existed between counsel and client.

In similar fashion, Applicant continued to lie in ways that drastically influenced how his defense team approached mitigation. As has been discussed, if the history of abuse is true, then most pertinent lies come in the form of outright denials of childhood abuse to the defense team. The Order recognizes that this deception occurred, but gives it absolutely no weight to the evaluation of counsel's performance under the circumstances. This is in error und *Strickland*.

Strickland demands that judicial scrutiny of counsel's performance must be "highly deferential." *Id.* at U.S. 689, at S. Ct. 2065 "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Id.* Here, the Order operates almost entirely in hindsight, and with little regard for the difficulties and circumstances faced by counsel. The Order suggests that counsel

should have known that their rapport with Applicant needed improvement so as to uncover his lies regarding abuse, when the only evidence that poor rapport existed (which Respondent adamantly refutes) was the discovery of the lies Applicant told in the lead up to trial. There resides the Order's circular logic: in order to prevent their client from lying, counsel should have recognized their poor rapport due to the fact that Applicant lied.

Under the Order's holding suggests that the proper resolution in this case would have been for counsel to *assume* that both their client and his entire family are lying to them for multiple years, and then disregard entirely the proposition that those who are lied to successfully, usually do not know it at the time. Had counsel known they were being lied to about the existence of abuse, the alleged deficient failures to discover such abuse would not have occurred in the first place. The Order fails to give any deference at all to the multitude of efforts taken to uncover abuse in the face of repeated deceit, and as such is in error under the express standards of *Strickland*.

d. Improper application of the prejudice prong under Strickland

"An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." The purpose of the Sixth Amendment guarantee of counsel is to ensure that a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* U.S. at 692, at S. Ct. 2052, 2067. Applicant must meet "the burden of showing that the decision reached would reasonably likely have been different absent the errors." *Id.* U.S. 696, at S. Ct. 2069. To establish prejudice with respect to counsel's performance in the sentencing phase, Applicant had to prove that "there is a reasonable probability that, absent the errors, the sentencer-including an appellate court, to

the extent it independently reweighs the evidence, would have concluded that the balance of aggravating and mitigating circumstances did not warrant death.” *Strickland*, 466 U.S. at 695. See also *Porter v. McCollum*, 558 U.S. 38-39 (2009) (per curiam).

Under the prejudice prong, the court presumes that the hearsay history of abuse presented by the PCR team, *for which no family has yet testified*, would be sufficient to convince the jury to not unanimously recommend the death penalty. First, this again presumes that the record contains proof of the abuse, which as discussed has not been set forth in the form of admissible evidence. Second, such a change in sentencing is questionable given the horrific manner in which Applicant performed the murder, and the premeditation accompanied therein. The facts show that Applicant staked-out his employer prior to committing the crime, performed the armed robbery, burned the security guard alive, and was caught on security camera performing the tortuous act. Moreover, the fact that Applicant had been an upstanding citizen and an exemplary soldier for many years works against the contention that his crimes were a result of his harsh upbringing. The sword cuts both ways in this regard. His history can be used to demonstrate he had been an upstanding citizen, absent a history of abuse, but it cannot also be used to demonstrate he is a victim of his environment, as there was absolutely no prior violence despite decades of adult life.

IMPROPER RELIANCE UPON *ROMPILLA V. BEARD* AND THE ABA GUIDELINES AS ANALOGOUS PRECEDENT AND AUTHORITY

The Order improperly analogizes this case to that of *Rompilla v. Beard*. (Order, p. 3). Moreover, the Court cites *Rompilla* favorably for its discussion and reliance upon ABA Standards as a basis for which to judge the actions of counsel in this case. The Order’s legal and factual analysis in both regards is in error.

First, *Strickland v. Washington*, from the very outset of the standard used for evaluation of ineffective assistance of counsel claims held that no particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." The Court went on to say that any such list of rules "would interfere with the constitutionally protected independence of counsel and restrict the wide latitude counsel must have in making tactical decisions." *Strickland v. Washington*, at U.S. 668, at S. Ct. 2065. While a meager reference to these rules is not in error, the Order's reliance upon *Rompilla* and its specific citation to excerpts concerning the ABA rules is in error. It is especially mistaken to do so with apparent disregard for the number of other circumstances faced by counsel due to circumstances previously discussed, and the thorough efforts enumerated above.

Secondly, the Order's reliance upon *Rompilla* is, in and of itself, improper as analogous legal reasoning. Contrary to its application within the Order, *Rompilla* does not stand for the premise that an attorney is not justified in relying upon the explicit information provided by his client on a specific subject matter in mitigation, when reasonably efforts would result in the discovery of mitigation evidence previously unknown to counsel. It is instead a specific holding that counsel cannot be found effective when he blatantly disregards documentary evidence at his disposal for which he knows the prosecutor will rely in presenting its case in aggravation.

In *Rompilla*, counsel was specifically alerted to documentary evidence that concerned his client's past criminal history, and was informed by the prosecutor that he needed to review the information for which they would rely. Counsel neglected to do so. *Rompilla v. Beard*, 545 U.S. 374, 377-80, 125 S. Ct. 2456, 2461, 162 L. Ed. 2d 360 (2005). That is a far cry from having any

similarity to counsel who uncover a single uncorroborated instance of abuse from a witness who upon subsequent efforts chooses to be uncooperative, and when a direct investigation into the issue of abuse is deceitfully denied by the client, and then denied by multiple family members through various individual and group meetings. In *Rompilla*, the Applicant and his family indicated that there was no mitigation evidence available. *Id.* at U.S. 374, at S. Ct. 2458. Whether those asserts were true or not, they had absolutely no relevance to documentary evidence regarding aggravating circumstances for which counsel was given advanced notice of by the State. *Id.*

The Order's reliance upon *Rompilla* is in distinct contrast to that of nearly every circuit court. See *Timberlake v. Davis*, 418 F.3d 702, 703 (7th Cir. 2005) (noting that Applicant mistakenly interprets *Rompilla* as imposing an obligation to search for mitigating evidence in the face of Applicant's indication that none exists, but finding instead that *Rompilla* stands for the premise that an attorney must review the materials available and made known to him as being relied upon by the State in establishing aggravating circumstances); *Hannon v. Sec'y, Dep't of Corr.*, 562 F.3d 1146, 1153 (11th Cir. 2009) (distinguishing *Rompilla* as an matter of counsel failing to obtain or review evidence in aggravation for which the state would rely, and noting the distinguishing fact that neither Applicant or his family indicated a traumatic childhood); *Keith v. Mitchell*, 455 F.3d 662, 671 (6th Cir. 2006) (noting "[t]he Court did not hold, as Keith claims in his supplemental memorandum, that 'counsel must independently investigate mitigating evidence in a capital defendant's background,' but rather that counsel must investigate evidence it knows the state will use against defendant"); *Christian v. Ballard*, 792 F.3d 427, 446 (4th Cir. 2015) (noting that *Rompilla* constitutes the application of counsel's duty to investigate toward

counsel's failure to review a prior conviction file for which he knew the state would rely in aggravation); *Shockman v. Perez*, 715 F. App'x 625, 627 (9th Cir. 2017) (recognizing "in some circumstances, counsel may be required to review a case file from a prior prosecution regardless of what the client does or does not say about it); *Coble v. Quarterman*, 496 F.3d 430, 436 (5th Cir. 2007); *Smith v. Workman*, 550 F.3d 1258, 1273 (10th Cir. 2008); *Bobby v. Van Hook*, 558 U.S. 4, 12, 130 S. Ct. 13, 19, 175 L. Ed. 2d 255 (2009) (distinguishing *Rompilla* from *Wiggins*, and noting *Rompilla* represents a failure by counsel to obtain and review readily available documents).

CONCLUSION

The above discussion demonstrates that the factual and legal conclusions of the Order On Post-Conviction Relief Granting New Sentencing are flawed in such a substantial manner, that it cannot stand as the basis for relief. For the above stated reasons, Respondent moves to Alter or Amend the Judgement pursuant to Rule (59)(e) of the South Carolina Rules of Civil Procedure.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

ED SALTER
Senior Assistant Attorney General

W. JOSEPH MAYE
Assistant Attorney General

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

By: 
ATTORNEYS FOR RESPONDENT

March 18, 2019

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

RON O'NEAL FINKLEA, SK6025)

C/A No. 2010-CP-32-5076

Applicant,)
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)
)
)
)

vs.)

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)
)
)
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)
)

Respondent.)
)
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)

I, W. Joseph Maye, counsel for Respondent, do hereby certify that on this date, I served a copy of the Respondent's Motion to Alter or Amend Judgment in the foregoing action on counsel for Applicant by depositing one copy of the same in the United States mail, first-class postage prepaid, and addressed as follows:

Diana L. Holt, Esq.	John H. Blume III
Diana Holt, LLC	Blume, Norris & Franklin-Best, LLC
P.O. Box 6454	900 Elmwood Avenue, Suite 200
Columbia, SC 29260-6454	Columbia, South Carolina 29201

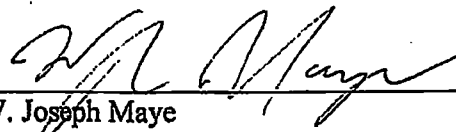
This motion was delivered by hand to the Clerk of Court of Lexington County for filing today. Pursuant to SCRCP 59(g) a copy of this motion is being provided to the Court via email and via United States mail, first-class postage prepaid, and addressed as follows:

The Honorable William P. Keesley
 S.C. Circuit Court
 P.O. Box 10
 Edgefield, South Carolina 29824

FILED
 2010 MAR 18 PM 4:27
 CLERK OF COURT
 LEXINGTON, SC

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

This 18th day of March, 2019.



W. Joseph Maye
Assistant Attorney General

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	2010-CP-32-5067
	)	
RON O'NEAL FINKLEA, SK6025,	)	APPLICANT'S RESPONSE TO
<i>Applicant,</i>	)	RESPONDENT'S MOTION TO
	)	ALTER OR AMEND THE
vs.	)	JUDGMENT
	)	
STATE OF SOUTH CAROLINA,	)	
<i>Respondent.</i>	)	
	)	

I. Introduction.

Applicant, through undersigned counsel, files this reply to Respondent's ("the State"), Motion to Alter or Amend the Judgment. For the reasons set forth below, the State's motion should be denied, as (except for its tone) is largely repetitive of the arguments made in its proposed order. The State has presented no basis to disturb this Court's considered judgment, reflected in the order granting post-conviction relief, that Applicant's trial counsel failed to conduct a constitutionally adequate mitigation investigation, and – as a result of their deficient performance – the jury was deprived of significant mitigating evidence that could have swung the balance from death to life.

II. Reasons the State's Motion Should be Denied.

Applicant will not respond point by point to the State's motion instead choosing to confine his reply to several of the multiple material misrepresentations of fact and law contained in the request to alter or amend the judgment.

A. *The State incorrectly asserts that no admissible evidence of Applicant's childhood abuse was presented at the PCR hearing.*

The State's argument on this point is both refuted by the record and inconsistent with decades of capital trial and post-conviction practice in South Carolina. The essence of the

State's contention seems to be that the detailed evidence of the horrific abuse Applicant was subjected to by his mentally ill mother is defective because it: a) came from expert witnesses; and b) was based on evidence that was not actually admitted at the PCR hearing. St. Mot. at 4-6. Both points are incorrect. As for the latter argument, the two primary sources for the evidence of abuse were Dr. Susan Knight, and Jan Vogelsang (MSW). The State did not object to the qualifications of, or the conclusions reached by, Dr. Knight or Ms. Vogelsang. It is true the State did initially object to Dr. Knight's report on hearsay grounds, (PCR Tr. vol 1, 217 - 224), and the objection was – at the time it was made – sustained by this Court. PCR Tr. vol. 1, 224. However, after cross-examining Dr. Knight extensively about her evaluation (including the findings in and sources for her report), counsel for the State expressly *withdrew* his objection and the report was admitted into the record as Applicant's exhibit 22. PCR Tr. vol. 1, 302.

Thus having put to the side the State's meritless, technical argument, the State's second submission – that the opinions of an expert witness, reached in conformity with the relevant standards in their respective fields and admitted into evidence pursuant to SCRE 702 are not evidence – is easily rebuffed. The evidence was relevant, probative, and admissible. To contend otherwise is the equivalent of asking this Court to dis-invent the wheel. It is standard practice in South Carolina capital trials and capital post-conviction proceedings for attorneys for both the defendant/applicant and the State to call mental health experts who testify in exactly the same manner as did Dr. Knight and Ms. Vogelsang in Applicant's case. Sometimes the witnesses they interviewed in reaching their conclusions are also called to testify to the facts reported to the expert, but often they are not. The same is true of the records the expert relied upon; sometimes the records are admitted into evidence, sometimes they are not. Thus, the proof of the abuse relied upon by this Court in finding that Applicant was deprived of his Sixth Amendment right to

the effective assistance of counsel was exactly the type of evidence which has produced countless life verdicts in capital cases and resulted in post-conviction relief being granted in other capital cases. *See, e.g., Weik v. State*, 409 S.C. 214, 761 S.E. 2d 757 (2014); *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008); *see also Wiggins v. Smith*, 539 U.S. 510, 516 (2003) (post-conviction evidence of abuse resulting in finding of ineffective assistance of counsel was presented by licensed social worker Hans Selvog, who presented findings based on his interviews and record review).

B. This Court correctly found that the trial mitigation investigation was deficient (and prejudicial).

Respondent (mis)characterizes trial counsel's mitigation investigation as extensive and exhaustive. St. Mot. at 20. Nothing could be further from the truth. The list of bullet points at p. 20-21 of the motion (and repeated on multiple occasions throughout the motion) are, for the most part, erroneous, highly misleading, or irrelevant. Rather than tackle each one of them, Applicant will (briefly) summarize what the trial team did.

Lisa Armstrong was primarily responsible for the penalty phase of the trial. She never went to Applicant's childhood home (Alabama); in fact, the only time she met Applicant's family was during the sentencing phase of his trial once they had already arrived in South Carolina to testify on Applicant's behalf. PCR Tr. vol. 2, 49. During these brief meetings, she did not probe them for any additional information regarding the circumstances of Applicant's upbringing. *Id.* She also acknowledged that she did not spend much time attempting to build rapport with Applicant, nor did she ask him about potential childhood abuse, because she assumed (erroneously) the mitigation specialist and her co-counsel, Mr. Soltis had done so. *Id.* at 48-49. Co-counsel Steve Soltis went to Alabama once and conducted one large group interview with ten to twelve of Applicant's family members, including Applicant's abusive

mother. PCR Tr. vol. 1, 26–28.¹ Trial counsel's mitigation specialist, Carolyn Graham, also only went to Alabama on one occasion. She spent little more time there than Soltis and devoted a grand total of about eleven hours interviewing witnesses. *Id.* She also only met with Applicant only once (a meeting which occurred after she had already met with his family). PCR Tr. vol. 1, 31, 88. Neither attorney supervised Graham's work, each believing the other was doing so. PCR Tr. vol. 1, 28-29; vol. 2, 48.

This would be an inadequate social history investigation in any case, but – on these facts – it is clearly unreasonable given the information provided to fact-investigator Dave McDougall by Applicant's ex-wife which should have alerted reasonably competent counsel of the need for a more searching inquiry. In an attempt to shift the focus away from the trial team's lackluster efforts, the State places blame everywhere except where it belongs. In their view, the defense team was stonewalled by Applicant and his family and friends who they characterize as liars involved in "dishonest dealings." St. Mot. at 2, 16. The record, common sense and established precedent, however, establish that trial counsel bears responsibility for the failure to develop and present the evidence which this Court deemed significant.

1. Applicant's initial denials do not absolve the inadequate investigation.

It is true that Applicant initially denied being abused, but that is not uncommon. Persons who have survived horrific abuse are often reluctant to discuss it, and frequently deny it. John Sommers-Flanagan & Rita Sommers-Flanagan, *Clinical Interviewing* 337 (4th ed. 2009). Thus, it is not out of the ordinary for a capital defendant who has been victimized (or his family) to initially deny any childhood abuse out of a sense of shame, a desire to protect their family members, or because it is not clear to them why the information is relevant. Kathleen Wayland, *The Importance of Recognizing Trauma Throughout Capital Mitigation Investigations and*

Presentations, 36 Hofstra L. Rev. 923, 956 (2008); *see also* Sommers-Flanagan & Sommers-Flanagan, *supra*, at 337 ("[T]raumatized people are often reluctant to talk . . . thinking about and talking about trauma brings up extremely uncomfortable feelings; . . . trauma survivors frequently feel guilty about surviving and sometimes ashamed that the traumatic event happened to them.") (internal citation omitted).¹ In order to overcome common barriers to disclosure of traumatic memories, it is imperative, as this Court recognized in the order granting post-conviction relief, for trial counsel to develop a relationship of trust and build rapport with a defendant facing the death penalty. Order at 18; *see also* Sommers-Flanagan & Sommers-Flanagan, *supra*, at 337 ("[W]hen working with traumatized clients, rapport and trust building is a central emphasis; otherwise, clients may be unwilling to share their stories");² *Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*, 36 Hofstra L. Rev. 677, 689 (2008) ("Team members must endeavor to establish the rapport with the client and witnesses").³ This can be, depending on the circumstances, a time-consuming process. *Id.* ("[T]rauma often involves a violation of trust or betrayal (e.g.,

¹ Marudan Sivagurunathan, Treena Orchard, Joy C. MacDermid & Marilyn Evans, *Barriers and Facilitators Affecting Self-Disclosure Among Male Survivors of Child Sexual Abuse: The Service Providers' Perspective*, 88 Child Abuse & Neglect 455, 457 (2019) (survey of service provider's finding "fear, embarrassment, guilt, and shame [are] key barriers to self-disclosure among male [Child Sexual Abuse] survivors"); *see also* Dafna Tener & Sharon B. Murphy, *Adult Disclosure of Child Sexual Abuse: A Literature Review*, 16 Trauma, Violence, & Abuse 391, 395 (2015) ("Another complicating factor is the presence of negative experiences of disclosure during childhood, which may impact future decisions to disclose").

² This is especially true when the attorney fails to build an appropriate working relationship with the capital defendant, which was the case here. *Id.* ("[T]rauma often involves a violation of trust or betrayal (e.g., sexual assault), making it difficult for trauma victims to trust anyone, and especially difficult to trust and confide in a virtual stranger"); *see also* Tener & Murphy, *supra*, at 396 ("[M]ost adults choose to disclose to individuals with whom they have a trusting relationship.").

³ *Id.* at 682 ("[Mitigation specialists] must be able to establish rapport with witnesses, the client, the client's family and significant others that will be sufficient to overcome barriers those individuals may have against the disclosure of sensitive information and to assist the client with the emotional impact of such disclosures.")

sexual assault), making it difficult for trauma victims to trust anyone, and especially difficult to trust and confide in a virtual stranger").⁴

Applicant's trial attorneys could not conduct an adequate investigation into possible mitigating evidence because they failed to build a relationship with Applicant or his family. *See* PCR Tr. vol. 1, 243-44 (Testimony of Dr. Susan Knight) ("[Applicant] didn't have enough contact with [his attorneys] to develop the kind of trust that he needed to Part of that goes back to his history of trauma where just because of the nature of his trauma, he does not trust easy anyway."). This is not because the Applicant asserts (or this Court found) that there is a constitutional right to a "meaningful attorney-client relationship," State Mot. at 18, but because, as this Court recognized in the order granting post-conviction relief, there is a Sixth Amendment obligation to investigate, develop and present the full range of mitigating evidence. Order at 28.

Finally, on the issue of Applicant's disclosure of the abuse, this is not a case where their client was uncooperative or instructed counsel not to contact the family or present evidence of abuse. However, even in cases where the client is "fatalistic," "uncooperative" there is still a need to search for mitigation. *Porter v. McCollum*, 558 U.S. 30, 39 (2009); *see also Rompilla v. Beard*, 545 U.S. 374, 381 (2005) (noting that Rompilla was "uninterested in helping" and that he "was even actively obstructive" to the mitigation investigation, before finding counsel's independent investigation constitutionally inadequate). When confronted directly with the evidence of abuse by Dr. Maddox during the penalty phase of the trial, Applicant did not deny its

⁴ *Supplementary Guidelines, supra*, at 689 ("Team members must conduct in-person, face-to-face, one-on-one interviews with the client, the client's family, and other witnesses Multiple interviews will be necessary to establish trust, elicit sensitive information and conduct a thorough and reliable life-history investigation."); Wayland, *supra*, at 960 ("Give the nature of traumatic experience and barriers to disclosure, there is a need for multiple, repeated interviews over time.").

veracity; rather he acknowledged its truth. PCR Tr. vol. 1, 323. That, however, was too little, too late.

2. Applicant's family members did not commit perjury.

Now we turn to the State's assault against Applicant's family members, which include accusations that some of them (at least the ones who testified at the sentencing phase of Applicant's trial) committed perjury. One can search the trial transcript in vain for any statement from any witness denying that Applicant was abused as a child. Most of the questions posed to the family members were generic character questions and the answers followed suit. *See, e.g.*, ROA 2044, 2049, 2051.4 cites. His mother was asked to describe him, and she did (as a "good child" that she "never had a problem with"). ROA 2054-55. The only witness posed a direct question about Applicant's early life was his ex-wife Cherena, who answered the question in a truncated, but truthful, manner, responding: "He had a hard – he had a rough younger life. I think the stuff that happened to him when he was younger it caused him to have a lot of insecurities to devalue himself." *Id.* at 2141. And, the reasons the questions were not asked is because trial counsel did not know enough to ask, and they did not know enough to ask because they ignored and failed to follow-up on multiple red-flags staring them in the face.

Despite the State's protestations to the contrary, there are numerous cases where courts have found that a death sentenced inmate was denied the Sixth Amendment right to the effective assistance of counsel under precisely the circumstances of this case, i.e., family members testified at trial as to the defendant's good character, asked for mercy, *etc.*, but a more robust (and constitutionally adequate) post-conviction mitigation investigation revealed significant child abuse. For example, in *Bond v. Beard*, 539 F.3d 256 (3rd Cir. 2008), counsel presented generic testimony about the defendant's "good character and willingness to help others," from

family and friends. *Id.* at 279. During post-conviction proceedings, his attorneys discovered that their client “endured an extremely troubled and deprived childhood,” including abuse from his mother, who (as was true here) omitted this from her testimony. *Id.* at 279, 281. The Court rejected precisely the argument made by the State in its most recent submission (St. Mot. at 6, 11-12) holding that it would not “excuse this [deficient mitigation investigation] on the ground that [defendant] and his family members did not tell counsel that his background provided fertile territory for mitigation arguments.” *Id.* at 288. *See also Doe v. Ayers*, 782 F.3d 425, 458-59 (9th Cir. 2015) (mother pled for mercy and omitted abusing client; post-conviction investigation revealed extreme deprivation and abuse from multiple family members); *DeBruce v. Commissioner, Alabama Dept. Of Corrections*, 758 F.3d 1263, 1270-71 (11th Cir. 2014) (mother testified that childhood was, “impoverished . . . [but] otherwise unremarkable;” post-conviction investigation revealed systemic abuse from family members and exposure to gang violence); *Hooks v. Workman*, 689 F.3d 1148, 1202-04 (10th Cir. 2012) (family did not mention abuse at trial, but post-conviction investigation exposed a chaotic childhood of domestic violence and child abuse); *Johnson v. Secretary DOC*, 643 F.3d 907, 932-33, 936-37 (11th Cir. 2011) (father testified about client’s childhood and never referenced abuse; post-conviction investigation revealed defendant was singled out for extreme emotional and physical abuse from parents and grandparents). *Johnson v. Bagley*, 544 F.3d 592, 559-600, 604-06 (6th Cir. 2008) (grandmother was presented at penalty phase as a stable influence; post-conviction investigation revealed she was cruel and violent to the defendant). *Mason v. Mitchell*, 543 F.3d 766, 770, 779-81 (6th Cir. 2008) (family denied abuse during original interviews by the trial defense team and during penalty phase testimony asked for mercy for the defendant; post-conviction investigation uncovered parents drug abuse, trafficking, and abuse and isolation of the defendant). *Council v.*

State, 380 S.C. 159, 164, 177, 670 S.E.2d 356, 358, 365 (S.C. 2008) (mother gave nonspecific childhood testimony at trial omitting impoverished living conditions, childhood neglect and an abusive father).

C. *Trial counsel Soltis did effectively disregard the information of child abuse provided by Applicant's ex-wife.*

The State maintains that Mr. Soltis did not disregard the information from Cherena Roland indicating Applicant had been abused by his mother. St. Mot. 8. While this has been touched on earlier in this pleading, it will briefly be addressed again. The information referred to by the State was provided to Soltis by private investigator McDougall in September 2003. Soltis drove to Alabama for an introductory meeting with Applicant's family *three years later* (in August of 2006). When he arrived, he meet with family members in a group, which he defended (because it is not a useful way to obtain information about abuse and neglect) on the basis that he wanted to be "respectful" and he didn't want to "rush" into hard questions or individual meetings with Applicant's family. St. Mot. at 7 and 8. The State's argument might have some small amount of merit had Soltis in fact treated the initial meeting as an introduction and followed up with additional meetings with individual members of Applicant's family to probe the information provided by Ms. Roland. He did not. Soltis' interaction with Applicant's family began and ended with that one meeting that took place years after he was given reason to believe Applicant was abused by his mother.

In a similar vein, the state maintains that Soltis scheduled a visit with Ms. Roland in Tacoma, Washington to pursue in more detail the information about Applicant's mother's abusive conduct. The inference the State asks this Court to make is that she was a "no-show" and thus the failure to discover the evidence is Ms. Roland's but not Soltis' fault. St. Mot. at 8. As is true with most of the State's argument in the Rule 59(e) motion, the evidence before this

Court tells a different story. On direct examination, when Soltis was asked if he contacted Ms. Roland before traveling to Washington state he responded, "I think it was prearranged. I'm almost positive that it was. Do I recall that individual conversation with her directly? No, I do not. Could it have been done by someone at my office? It could have been." PCR Tr. vol. 1, 37. Mr. Soltis wrote Ms. Roland a letter after his trip, in which he stated that he told Ms. Roland beforehand that he "was going to be in Seattle on business." Applicant's Exhibit 15. However, Soltis' billing entry represents that he claimed, "8 hours" "reviewing the file and meeting with witnesses." Applicant's Exhibit 3 at 20. Thus, the evidence on this point is murky (at best), and at the end of the day is of no relevance. Even had the meeting been prearranged, and even had Ms. Roland not come to the meeting (and there is no evidence at all indicating her reluctance to meet with members of the trial or post-conviction team), one attempt to follow up with a critical mitigation witness is not reasonable. Geographical locations of important witnesses cannot impact or diminish trial counsel's ethical and professional duties, whether the witness be in Pelion, South Carolina, or in Tacoma, Washington.

D. The State's claims that Applicant's ex-wife provided information about "a singular incident" of child abuse is demonstrably false.

The State maintains that Cherena Roland only told the trial defense team of one incident of child abuse. St. Mot. at 7. This claim is easily refuted by the record evidence. Investigator McDougall's notes of his interview with Ms. Roland include the following information:

Cherena had some interesting knowledge about Ron's childhood. She told of Ron not having a father at home and his mother being abusive and strange. When he was a child Ron was in the yard and his mother shot a gun at him to make him do something. The mother also believes in voodoo and casts spells on people. His mother has berated Ron in front of Cherena and others including a time the mother said to Ron "Come here you black motherf***er."

Exhibit 4 at 4 (profanity obscured). This is hardly a description of a single incident of abuse, rather it is a clear statement of a pattern of abusive behavior (“being abusive”) with several examples provided (shooting at him, berating him on multiple occasions “including” the time she used the very derogatory term in the quote above. Any reasonably competent capital trial lawyer would have understood the information provided by Ms. Roland for what it was – evidence of significant abuse that needed to be fully explored. Thus, this Court’s finding that it was deficient performance not to do so is firmly grounded in this record and supported by the decisions of the United States and South Carolina Supreme Courts’ finding ineffective assistance of counsel on similar facts. *See, e.g.,* Order at 3-4.

Additionally, the State characterizes Ms. Roland’s statements that Applicant’s mother left her and her child stranded with no money and no transportation as indicative of her (Roland’s) Cherena’s bias, and thus inferentially as evidence that she was lying about Applicant’s mother’s behavior. St. Mot. at 7 The bias argument fails on multiple fronts. First, and foremost, Ms. Roland was by no means the sole source provider of information regarding the abuse provided in the PCR testimony and exhibits. The information came from multiple sources, including admissions made by Applicant’s mother. Furthermore, this vignette, rather than demonstrating Ms. Roland’s bias, is further corroboration of Applicant’s mother’s spiteful, irrational, vindictive behavior, to wit abandoning her toddler grandson and her daughter-in-law in rural Alabama to fend for themselves, with no money or transportation. It was not proof of bias but another “red flag,” ignored by trial counsel.

E. Trial counsel’s inadequate mitigation investigation is not absolved because they hired and presented expert testimony.

The State asserts that because trial counsel retained and presented testimony from a mental health expert, they cannot be deemed ineffective. St. Mot. at 27. As this Court stated

in the order granting post-conviction relief, this precise contention has been repeatedly rejected by the United States Supreme Court, the South Carolina Supreme Court and numerous other courts. Order at 3-4. For example, trial counsel also secured the assistance of psychological and/or psychiatric evidence in *Wiggins*, 539 U.S. at 516 and *Rompilla*, 545 U.S. at 398-99. However, the Supreme Court held in both cases that due to an inadequate mitigation investigation the jury was deprived of the full range of mitigating evidence. *See also* Order at 3-4 (discussing other cases). That is precisely the case here. Trial counsel's performance was deficient (and the deficiency prejudicial) not because they hired no expert (or the wrong expert) but because they ignored numerous "red flags" indicating that Applicant was physically, sexually, and emotionally abused as a child. Additionally, the record evidence establishes that trial counsel did not provide their mental health expert with the memorandum detailing the statements about Applicant's mother's abusive behavior which resulted in her having an inaccurate, "sanitized" version of Applicant's early life. Order at 17.

F. Ms. Armstrong unequivocally stated that she had no strategic reason for failing to investigate Applicant's child abuse.

The State claims that "this Court mischaracterize[d] the testimony of Ms. Armstrong as suggesting she had no strategic reason for not presenting the minimal childhood trauma evidence that was available." St. Mot. at 15. In fact, the State asserts the opposite, i.e., that Ms. Armstrong said the opposite, i.e., that she did have a strategic reason for not putting that evidence on. *Id.* This argument cannot withstand even minimal record scrutiny. The exchange is as follows: "So is it fair to say that you had no strategic decision not to present evidence of childhood trauma?" To which Ms. Armstrong replied, "Oh, absolutely not, no." PCR Tr. vol 2, 77-78. The State argues this means Ms. Armstrong was indicating that it was "was not fair to say" she had no strategic reason, thus she was raising a strategic reason for doing so. St. Mot. at

15. This Orwellian "newspeak" logic does not pass muster. Removing the double negative from the question makes this obvious: "So, again it's clear that you had a strategy to [fail to] present that information? No, absolutely not. PCR Tr. vol 2, 77-78.

G. *Mr. Finklea did not feign amnesia about the facts of the crime when he was interviewed on August 19, 2003.*

The State asserts on a number of occasions in the motion that post-conviction relief should be denied because Applicant "immediately lied" to his trial counsel feigning memory loss about the night (and facts) of the offense. St. Mot. at 20. But, this is simply not true. In fact, the record reveals that Applicant candidly and unequivocally told members of the defense team in great detail, about the drug dealing plan, how it failed and he had lost all of the family's savings, that he planned the robbery to get some money back from all he had lost, that he, Ron Finklea, shot Walter Sykes, and that Finklea's brother-in-law and co-defendant's role "was to do what as he was told" by Finklea. What is missing from his confession that lead his investigator (not qualified expert) McDougall to opine about memory loss surrounding the details of the crime? The prosecution's case would have been much shorter if it had this confession. As the State's case was, it matched the details of Applicant's confession. What McDougall did record about the details bears repeating *in toto*:

Ron and Teresa had accumulated a large amount of money that, Ron says, came from work and saving. We did not discuss details or expenses. Teresa has spent some time in Iraq and may have received additional money. Ron was getting in excess of Nine Hundred Dollars (\$900.00) per month from the Army.] Ron decided to invest between Twenty and Thirty Thousand Dollars (\$20,000 - \$30,000) with some guys he met playing basketball in Columbia. They were looking for investors to restart their drugs business. He knows them only as "Big L"; "Simp" and "Little Rob." Ron got little or no return on his "investment." He was worried about what Teresa would say when she found out the money was gone. He was desperate for \$\$\$. Ron hatched the idea of taking off the ATM at Solelectron. Ron did not plan to shoot the

security guard only hit him over the head to knock him out. He does not know why (or could not tell me) why he shot the guard. Davis was supposed to do what he was told. When they got to the ATM they realized there was a safe within and they could not get the money. They headed for Alabama. He and Davis committed no other criminal acts before or after Solectron. He has little recollection of the trip to Alabama or what he did while there. He stayed inside a lot and visited friends. He checked his home messages and found one from a female asking him to contact the Lexington County Sheriffs Office. This was the first notice he had that they were looking for him. He does not recall the arrest. He does not recall how he got back to South Carolina. He does not know what became of the gun. He does not believe he made any statement to the police.

Applicant's Exhibit 4. Applicant is at a loss to understand how McDougall characterized all of that detail as coming from Applicant's "hazy recollections." *Id.*

The medical records in counsel and the expert's possession concerning Applicant's attempt to hang himself (which is also a red flag) in the Lexington County jail reflect that Finklea was unresponsive when he was found. He was immediately thereafter transported to Lexington Medical Center and placed on life support. Although originally diagnosed with anoxic brain injury, that diagnosis was changed to "*temporary* anoxic" brain injury after he regained consciousness on August 12, 2003. He was found to have regained "*full cognitive function*" and released from the hospital to the jail that same date. Lexington Medical Center records p. 25. Dr. Maddox acknowledged having the medical records and McDougall's interview memo regarding Finklea's August 18, 2003 confession. PCR Tr. vol. 1 312, 315.

The only thing Applicant didn't know, and could never explain, is *why* he shot Mr. Sykes. Applicant's Exhibit 4. That is still the case. But, his trial counsel's testimony that Applicant always claimed to have no memory of the crimes is to lay blame, at least partially, where it does not belong. When confronted with the facts in Applicant's exhibit 4, they acknowledged being aware of its contents. Why Applicant later claimed to have no memory of

the events may always remain a mystery, but when he was asked directly by his original counsel and his investigator what happened, he told the truth. Thus, his trial counsel knew the truth.

But, at the end of the road, as this Court concluded in the decision to grant post-conviction relief, this is all a red herring. Regardless of whether a capital defendant admits guilt, denies guilt, or asserts to have no memory of the events in question, trial counsel is obligated to conduct a constitutionally adequate mitigation investigation. That did not happen in this case, and as a result, the sentencing jury was never informed of the hellish abuse that Applicant endured throughout his childhood. As this Court correctly concluded, had this evidence been uncovered and presented there is a reasonable probability that at least one juror would have chosen life over death.

INTENTIONALLY LEFT BLANK

III. Conclusion.

For the reasons set forth above, as well as for the reasons presented at Applicant's PCR hearing and in his prior submissions, this Court correctly determined that Applicant was denied his Sixth Amendment right to the effective assistance of counsel. Therefore, the State's Motion to Alter or Amend the Judgment should be denied.

Respectfully submitted,

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

John H. Blume
Cornell Law School
159 Hughes Hall
Ithaca, NY 14853
(607) 255-1030

BY:



COUNSEL FOR APPLICANT

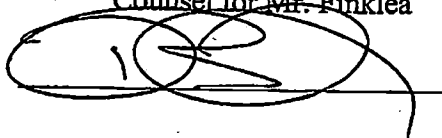
April 30, 2019
Columbia, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
RON O'NEAL FINKLEA,	)	2010-CP-32-5067
Applicant,	)	
v.	)	Certificate of Service
STATE OF SOUTH CAROLINA	)	
Respondents.	)	

The undersigned hereby certifies that a copy of Mr. Finklea's Response to the Respondent's Motion to Alter or Amend the Judgment, in the above-referenced matter has been served upon opposing counsel, by depositing same in the U. S. Mail, postage paid, this 30th day of April, 2019, addressed as follows:

Edgar Salter, Esq.
 Senior Assistant Attorney General
 Joe Maye, Esq.
 Assistant Attorney General
 P.O. Box 11549
 Columbia, SC 29211-1549

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



April 30, 2019
 Columbia, South Carolina

RON O'NEAL FINKLEA, SK6025

C/A No. 2010-CP-32-5076

Applicant,

vs.

**ORDER ON MOTION TO ALTER OR
AMEND**

STATE OF SOUTH CAROLINA,

Respondent.

Following the court's granting of post-conviction relief to the extent that it granted a new sentencing hearing, the respondent filed a motion to alter or amend. Pursuant to Rule 59(f), SCRCPP, the court notified the parties that the motion would be decided on written submissions and both sides filed their briefs. While this was a difficult decision, the court has reconsidered the matter, but does not find any issue of law or fact that was overlooked or not addressed. The motion to alter or amend is denied.

AND IT IS SO ORDERED.

William P. Keesley
William P. Keesley
Circuit Judge

June 10, 2019

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP3205076

Ron O Neal Finklea #SK6025

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

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

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

Circuit Court Judge

Judge Code

6/10/2019

Date

For Clerk of Court Office Use Only

This judgment was entered on June 10th 2019, and a copy mailed first class or placed in the appropriate attorney's box on June 10th 2019, to attorneys of record or to parties (when appearing pro se) as follows:

John H. Blume III Blume, Franklin-Best & Young 900
Elmwood Ave., Ste 200 Columbia, SC 29201
Diana L. Holt Diana Holt, LLC PO Box 6454 Columbia, SC
29260-6454

Donald J. Zelenka PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

LISA COMER/jp

Court Reporter

Lisa M. Comer - Clerk of Court

Court Reporter:

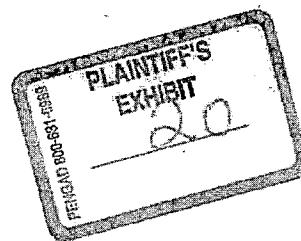
E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are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

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

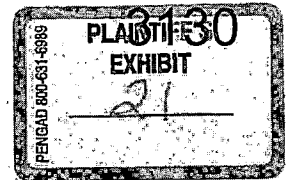
This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ACCUMULATION OF RISK

- Born to mother who failed to show love and affection or nurturing
- Abandoned by father during first year after birth
- Born to a mother who resented his resemblance to his father
- From age of seven, exposed to violent men who beat women
- Expected to sell alcohol and later drugs as a child and adolescence
- Expected to bring customers to his mother's bootlegging business in their home
- Chronic bedwetting led to extreme abuse by his mother
- Made to sit in tubs of ice water
- Mother tied rubber bands to his penis
- Mother duct-taped milk jug to penis
- Mother made him sleep naked in bathtub
- Mother locked him in closet on multiple occasions
- Mother beat him with extension cords, rubber hoses, hangers and belts
- Mother singled him out for particularly violent abuse
- Mother grabbed his genitalia both inside and outside his clothing
- Mother humiliated and degraded him
- Rough community with drugs and violence
- Beaten by mother's boyfriend
- Beaten by stepfather
- Suicidal thoughts pre-adolescence
- No intervention on his behalf

**POSITIVE FACTORS**

- Loving great aunts first seven years
- Success in school
- Structure at home and school
- Military
- Quiet, obedient personality



SUSAN C. KNIGHT, PH.D. ABPP

Telephone: (843) 637-5729; **Facsimile:** (843) 410-2802

Electronic Mail: knight@apsforensic.com

Mailing Address: 1941 Savage Rd., Ste. 100A-606, Charleston, SC 29407

EDUCATIONAL HISTORY:

- | | |
|-------------------------------------|---|
| September 2004 - August 2005 | Postdoctoral Fellowship in Forensic Psychology
University of Southern California
Keck School of Medicine
Dept. of Psychiatry & Behavioral Sciences
USC Institute of Psychiatry & Law
P.O. Box 86125
Los Angeles, CA (ACGME Accredited) |
| September 2003 - August 2004 | Pre-doctoral Internship in Forensic Psychology
U.S. Department of Justice (USDOJ)/Bureau of Prisons
Federal Correctional Complex and Medical Center
Butner, NC (APA Accredited Internship) |
| August 1999 - August 2004 | Doctorate of Philosophy, Clinical Psychology
University of Louisville, Louisville, KY
Department of Psychological and Brain Sciences
(APA Accredited Program) |
| August 1999 - May 2002 | Master of Arts, Clinical Psychology
University of Louisville, Louisville, KY
Department of Psychological and Brain Sciences
[Degree embedded within the Clinical Psychology
Doctoral program, APA Accredited] |
| August 1994 - May 1998 | Bachelor of Arts, Psychology, <i>Magna Cum Laude</i>
Trinity University, San Antonio, TX |

PROFESSIONAL LICENSURE:

- Psychologist, State of North Carolina, License #3407 [June 2007]
- Psychologist, State of South Carolina, License #1053 [May 2007]

BOARD CERTIFICATION:

- ABPP- Board certification in Forensic Psychology awarded by the American Board of Professional Psychology (ABPP) [April 2009]

PROFESSIONAL EXPERIENCE

Clinical and Forensic Psychologist
Applied Psychological Services, LLC
1941 Savage Rd., Ste. 100A-606
Charleston, SC 29407

August 2013 - Present

Responsibilities: Conduct comprehensive forensic psychological evaluations on a wide variety of criminal and civil issues, to include, but not limited to, competency to stand trial, criminal responsibility, violence risk assessments, sexual behavior assessments, sentencing/mitigation, and fitness for duty evaluations. Provide clinical therapeutic services to an adult outpatient population.

Clinical Assistant Professor of Forensic Psychiatry
Community and Public Safety Psychiatry Division
Department of Psychiatry and Behavioral Sciences
Medical University of South Carolina
29-C Leinbach Drive
Charleston, SC 29407

August 2013 - April 2014

Responsibilities: Conduct comprehensive forensic psychological evaluations on a wide variety of criminal and civil issues, and provide consultation to the county, state and federal court systems as necessary. Types of evaluations include competency to stand trial, criminal responsibility, violence risk assessments, sexual behavior assessments, and fitness for duty assessments for health care, public safety and transportation personnel. Provide instruction, teaching and supervision to forensic post-doctoral fellows, medical residents, interns and students on forensic and general clinical psychological issues.

Assistant Professor of Forensic Psychiatry
Associate Director of the Forensic Psychiatry Fellowship
Director - Progressive Professionals Program (PPP)
Department of Psychiatry and Behavioral Sciences
Medical University of South Carolina
29-C Leinbach Drive
Charleston, SC 29407

January 2008-August 2013
July 2008-August 2013
November 2010-August 2013

Responsibilities: Conduct comprehensive psychological forensic evaluations on a wide variety of criminal and civil issues, and provide consultation to the county, state and federal court systems as necessary. Types of evaluations include competency to stand trial, criminal responsibility, violence risk assessments, sexual behavior assessments, and fitness for duty assessments for health care, public safety and transportation personnel. Provide clinical therapeutic services (therapy and psychological assessment) to a general outpatient population as needed. Provide instruction, teaching and supervision to forensic post-doctoral fellows, medical residents, interns and students on forensic and general clinical psychological issues.

Clinical Psychologist
Grew, Morter and Hartye, P.A.
3141 John Humphries Wynd, Ste. 275
Raleigh, NC 27612

April 2007- November 2007

Responsibilities: Provided mental health services in a private practice setting to an outpatient population. Clinical duties included providing short and long term individual therapy, and conducting psychological assessments addressing a wide range of psychological issues. Forensic duties included conducting psycho-legal evaluations and providing consultation as needed for forensic issues.

Clinical Psychologist
Los Angeles County Department of Mental Health
Century Regional Detention Facility- Los Angeles County Jail
Women's Forensic Outpatient Program (WFOP)
11705 S. Alameda St.
Lynwood, CA 90262

September 2005-December 2006

Responsibilities: Provided mental health services to a correctional population, including diagnostic intake interviews, brief therapy, crisis intervention services and psychological assessments. Forensic duties included managing patients in the Misdemeanant Incompetent to Stand Trial (MIST) program, including competency restoration and consultation with the mental health court system.

Forensic Psychologist (Contract Basis)
Metropolitan Detention Center- Los Angeles
Federal Bureau of Prisons
535 N. Alameda St.
Los Angeles, CA 90012

September 2006- December 2006

Responsibilities: Conducted pre-trial and post-trial psychological forensic evaluations for the Federal Bureau of Prisons on a contract basis. Evaluations covered a variety of psycho-legal issues, including competency to stand trial, criminal responsibility, dangerousness evaluations and sentencing issues. Duties included interviews, psychological assessment, report writing and providing consultation and/or testimony to the Federal Court system as needed.

Forensic Psychologist
USC-Keck School of Medicine
Institute of Psychiatry, Law and Behavioral Science
Los Angeles, CA 90086-0125

September 2006-December 2006

Responsibilities: Conducted forensic evaluations for the juvenile court system in Los Angeles addressing a variety of psycho-legal issues. Duties included evaluations, report-writing and providing consultation to the Juvenile Court System.

Postdoctoral Fellow in Forensic Psychology
University of Southern California/Keck School of Medicine
Institute of Psychiatry, Law & Behavioral Science
P.O. Box 86125
Los Angeles, CA 90086-0125

September 2004 – August 2005

Responsibilities: Conducted psychological and legal evaluations for attorneys and courts related to criminal delinquency and dependency issues; evaluation, psychological assessment, and treatment of mentally disordered offenders, including outpatient sex offender treatment. Received specialized training on how to conduct psychological autopsies for the Los Angeles County Coroner's Office.

Pre-doctoral Clinical Psychology Intern
Federal Correctional Complex- Butner
Old N.C. Hwy 75
Butner, NC 27509

August 2003 - September 2004

Responsibilities: Worked in the forensic evaluation program at the Federal Medical Center and conducted federal pre-trial forensic evaluations which involved comprehensive psychological evaluation and report writing. Provided expert testimony to federal court. Worked in the Sex Offender Treatment Program (SOTP), an intensive, residential therapeutic program for male sexual offenders. Employed specialized assessment, didactic, and cognitive-behavioral techniques to evaluate, treat, and manage sexual offenders. Also conducted individual and group therapy, and assisted in managing the special needs of mental health inmates.

Graduate Student Therapist
Outpatient Psychiatry/Ambulatory Care Building
550 S. Jackson St.
Louisville, KY 40202

May 2002- May 2003

Responsibilities: Conducted individual and group psychotherapy as well as psychological testing with a variety of patients presenting at a local hospital for psychological treatment. Conducted initial intake interviews with potential patients presenting for medication and therapy; provided diagnosis, case formulation and treatment recommendations.

Clinic Assistant
University of Louisville/Psychological Services Center
Davidson Hall, Suite 210, Louisville, KY 40292

August 2000- June 2002

Responsibilities: Conducted initial assessment intake interviews with potential clients for the psychology clinic. Assisted in diagnosis, treatment recommendations, and disposition of clients to specialty clinic teams. Maintained client database and records for clinic operation. Coordinated clinic in-services (professional presentations) for students and psychological community at large. Maintained subject records and billing for ongoing research project.

Research Assistant
Central State Hospital/Dept. of Psychology
10510 La Grange Rd.
La Grange, KY 40223

August 1999 - July 2000

Responsibilities: Collected and analyzed data related to program evaluation from all disciplines (nursing, medical staff, psychologists, social workers and pastoral staff). Created and maintained comprehensive research database tracking all patients with a diagnosis of Mental Retardation and all patients with guardians

Caseworker / Case Manager
Crosspoint, Inc.
605 Augusta St.
San Antonio, TX, 78215

May 1998 - December 1998

Responsibilities: This facility provided a structured program of re-socialization for female adults primarily referred from federal correctional and health care facilities. Responsibilities included administration of direct services provided to clients on an individual and/or group basis. Consulted with, and managed interface to local support agencies when and where necessary on behalf of the client.

CLINICAL PRACTICA/PSYCHOTHERAPY EXPERIENCE

Graduate Student Therapist
University of Louisville/Psychological Services Center
Louisville, KY 40292

August 1999 - May 2003

Responsibilities: Conducted individual therapy sessions and a wide variety of full psychological assessments with outpatient clients (adults and children).

Doctoral Practicum Student (Assessment & Therapy)
Kentucky State Reformatory
La Grange, KY 40032

August 2000 - September 2002

Responsibilities: Conducted psychological testing and individual therapy for adult male inmates housed in the Correctional Psychiatric Treatment Unit at a medium security state prison. Compiled and analyzed sex offender data in the Sex Offender Risk Assessment Unit (SORA) at Kentucky State Reformatory.

ACADEMIC APPOINTMENTS:

- **Clinical Instructor**
University of Southern California
Keck School of Medicine
Department of Psychiatry and Behavioral Sciences
Los Angeles, CA 90033

August 2004 - September 2005
- **Adjunct Faculty**
University of Southern California
Department of Psychology
Los Angeles, CA 90089

August 2006 – December 2006
- **Assistant Professor**
Medical University of South Carolina
Department of Psychiatry, Charleston, SC 29425

January 2008 – August 2013
- **Clinical Assistant Professor**
Medical University of South Carolina
Department of Psychiatry, Charleston, SC 29425

August 2013- June 2015
- **Adjunct Professor**
Charleston School of Law
Charleston, South Carolina

May 2011- Present
- **Adjunct Professor**
Cornell University Law School
Ithaca, New York

January 2015- Present

PROFESSIONAL AFFILIATIONS

- American Psychological Association (APA) [1999 to Present]
- American Psychology-Law Society (APLS) [2003 to Present]
- South Carolina Psychological Association (SCPA) [2008 to Present]
- American Board of Professional Psychology (ABPP) [2009 to Present]
- Association for the Treatment of Sexual Abusers (ATSA) [2012 to Present]
- Association of Threat Assessment Professionals (ATAP) [2015 to Present]
- Society of Clinical Child & Adolescent Psychology (SCCAP) [2017 to Present]

SELECTED PRESENTATIONS

1. Knight, S.C. & Einstein, G. (1996). *Aging and Retrieval Inhibition in Prospective Memory*. Paper presented at the National Convention of Undergraduate Research (NCUR) in the Spring of 1997 in Austin, TX.
2. Weaver, C.M., Bock, P., Knight, S. & Gretarsdottir, E. (1999, November). *Demographic Study of 1998 Jefferson County Kentucky Guardianship Population*. Poster presented at the annual meeting of the Kentucky Psychological Association, Louisville, KY. Poster was awarded second prize for graduate research.
3. Knight, S.C., Scanish, J., Fintel, T., & Meyer, R.G. (2002, August). *Characteristic of the Female Sex Offender*. Poster presented at the 2002 APA conference in Chicago, Illinois in the APLS (Division 41) of research.
4. Knight, S.C. (2006). *The Sex Offender's Brain: A review of the etiological evidence towards a neurobiochemical basis*. Lecture presented to faculty, staff and students at the University of Southern California, Department of Psychology, as part of the Continuing Education (CE) colloquia.
5. Mulbry, L. W. & Knight, S.C. (March 2008). *Competency to Stand Trial, Criminal Responsibility and Capacity to Conform*. Presentation to the Charleston County Solicitor's Office.
6. Knight, S.C. (September 2008). *Psychological Autopsy: Determining the Manner of Death Through Investigative Psychological Analysis*. Lecture presented to the Medical University of South Carolina, Department of Psychiatry, Division of Forensic Psychiatry, Day of Discovery conference.
7. Stroud, Z., Knight, S.C., Halavonich, R.H., & Mulbry, L.W. (October 2008). *Mass Shooters: An Antihero of our Time*. Presentation presented at the national American Academy of Psychiatry and Law (AAPL) conference in Seattle, WA.
8. Knight, S.C. (July 2009). *The MMPI-2: Fundamentals of Interpretation*. Lecture to the Medical University of South Carolina Psychology Internship Program.
9. Knight, S.C. (November 2009). *The Disruptive Professional*. Presentation given to the Senior Medical Leadership Council of the South Carolina Hospital Association. Columbia, South Carolina.
10. Knight, S.C. (November 2009). *South Carolina Mental Health Law: How to Proceed with a Mentally Disordered Defendant*. Presentation to the South Carolina Bar Association Distance Learning Division. Columbia, South Carolina.

11. Knight, S.C. (November 2009). *Psychiatric Malpractice: A review of select South Carolina cases*. [Invited Speaker]. Presentation given at the Medical University of South Carolina, Forensic Interest Group Meeting. Charleston, South Carolina.
12. Knight, S.C. (January 2010). *South Carolina Mental Health Law: How to Proceed with a Mentally Disordered Defendant*. Workshop on competency to stand trial and criminal responsibility presented to attorney participants at the Medical University of South Carolina. Charleston, South Carolina.
13. Knight, S.C. (April 2010). *The Mentally Ill Offender: An Epidemic in Courts and Corrections*. [Invited Speaker]. Presentation at the 2010 Mental Health Professionals Collaboration held at the Medical University of South Carolina for mental health professionals statewide. Charleston, South Carolina.
14. Knight, S.C. & Mulbry, L.W. (October 21, 2010). *Automatism: A 15-year review of criminal appellate case law*. Scientific paper presentation at the national American Academy of Psychiatry and Law (AAPL) conference in Tucson, AZ.
15. Knight, S.C. (October 29, 2010). *South Carolina Mental Health Law: How to Proceed with a Mentally Disordered Defendant*. Workshop on competency to stand trial and criminal responsibility presented to the Berkeley County Public Defender's Office.
16. Knight, S.C. & Mulbry, L.W. (January 30, 2011). *School Shooters: A Unique Class of Violent Offenders*. [Invited Speaker]. Presentation to the South Carolina Psychiatric Association (SCPA) statewide conference in Charleston, SC.
17. Knight, S.C. (June 2011). *Legal Insanity and Competence*. [Invited Speaker]. Update in Psychiatry-Mental Illness, Victimization and Criminal Justice. A Forum for Clinicians, Policymakers, Judges, Attorneys and Law Enforcement. Charleston, South Carolina.
18. Knight, S.C. (June 2011). *Relationship Between Mental Illness and Criminal Behavior. Update in Psychiatry-Mental Illness, Victimization and Criminal Justice*. [Invited Speaker]. A Forum for Clinicians, Policymakers, Judges, Attorneys and Law Enforcement. Charleston, South Carolina.
19. Beck, B., Knight, S.C., & Mulbry, L.W. (October 2012). *Robotripping: Dextromethorphan's Link to Violent Crime, Rising Use and Emergent Legislation*. Poster presented at the national meeting of the American Academy of Psychiatry and Law (AAPL), Montreal, Canada.
20. Knight, S.C. (December 2012). *Sexual Predators: Pathology and the Law*. [Invited Speaker]. Judges and Attorneys Substance Abuse and Ethics Seminar, Medical University of South Carolina, Charleston, South Carolina.

21. Knight, S.C. (December 2012). *Legal Competence*. [Invited Speaker]. Judges and Attorneys Substance Abuse and Ethics Seminar, Medical University of South Carolina, Charleston, South Carolina.
22. Knight, S.C. (April 2013). *Legal Competence: Civil Competencies*. [Invited Speaker]. South Carolina Association of Probate Judge's Conference. Columbia, South Carolina.
23. Beck, B., Knight, S. C. & Mulbry, L.W. *Revisions in Gun and Mental Health Laws in the Wake of Newtown*. Poster accepted for presentation at the October 2013 national meeting of the American Academy of Psychiatry and Law (AAPL), San Diego, California.
24. Knight, S.C. (September 2013). *Workplace Violence: Assessment, Intervention and Prevention*. [Invited Speaker]. A Psychiatric Update: Annual conference held by the South Carolina Department of Mental Health.
25. Knight, S.C., Mulbry, L.W., Mullis, D. & Fields, C. (October 2013). *Guns and Psychiatry: Disarming the Mentally Ill*. Grand Rounds Presentation, Medical University of South Carolina, Department of Psychiatry and Behavioral Science.
26. Knight, S.C. (December 2013). *Ethical Considerations in Forensic Evaluations*. [Invited Speaker]. Judges and Attorneys Substance Abuse and Ethics Seminar, Medical University of South Carolina, Charleston, South Carolina.
27. Knight, S.C. (June 2014). *The Mentally Ill Offender: An Epidemic in Courts and Corrections*. [Invited Speaker]. National Judges Association: 35th Annual Education Conference. Charleston, South Carolina.
28. Knight, S.C. (October 2015). *Sentencing re: Miller: Perspective of a Forensic Psychologist in Juvenile Life Without Parole Hearings*. [Invited Speaker]. Columbia, South Carolina.
29. Knight, S.C. (August 2016). *Psychological Assessments in Juvenile Sentencing and Resentencing Cases*. [Invited Speaker]. Representing a Juvenile Facing Life Without Parole Conference. South Carolina Commission on Indigent Defense, Columbia, South Carolina.
30. Knight, S.C. (March 2017). *Navigating the Psycholegal Nexus: The Role of Forensic Psychology*. [Invited Speaker]. Southeastern Psychological Association (SEPA) – National Meeting. Atlanta, Georgia.
31. Knight, S.C., Young, L. & Jones, Z. (March 2017). *Structure and Substance in Sentencing: Legal, Psychological & Mitigation Elements of Miller Proceedings*. [Invited Workshop]. American Psychology-Law Society (AP-LS) – National Meeting. Seattle, Washington.

PUBLICATIONS

1. Oliver, J. M., Knight, S.C., Weaver, C.M., Boyd, A.R. & Meyer, R.G. (2000). Attitudes of board certified forensic psychologists toward critical issues in forensic psychology and the legal system. *Bulletin of the American Academy of Forensic Psychology*, 21 (1), 8-10.
2. Oliver, S.C., Knight, S.C., Weaver, C.M. & Meyer, R.G. (2001). Attitudes of forensic practitioners about competency to stand trial evaluations: Theoretical and practical considerations. *Bulletin of the American Academy of Forensic Psychology*, 22 (1), 20-22.
3. Knight, S.C. & Meyer, R.G. (2003). Gender Identity Disorder: The Case of Bruce/Brenda. In R.G. Meyer's, *Case Studies in Abnormal Behavior* (6th ed.), (pp. 134-140). Boston: Allyn & Bacon.
4. Knight, S.C. & Meyer, R.G. (2007). Forensic Hypnosis. In A. M. Goldstein's (Ed.) *Forensic Psychology: Emerging Topics and Expanding Roles*, NY: Wiley.
5. Gomez, A. & Knight, S.C. (2013). Disclosure of Mental Health Records in Court-Mandated Outpatient Treatment Proceeding and the Health Insurance Portability and Accountability Act (HIPPA). *Journal of the American Academy of Psychiatry and Law*. Vol. 41: 460-641.

Susan C. Knight, Ph.D., ABPP
 Licensed Clinical Psychologist
 Board-Certified Forensic Psychologist
 knight@apstorensic.com

Applied Psychological Services, LLC
 1941 Savage Rd., Ste. 100A-606
 Charleston, South Carolina, 29407
 (843) 637-5729-Phone; (843) 410-2802-Fax

FORENSIC PSYCHOLOGICAL EVALUATION
 (Mitigation Assessment)



Examinee: FINKLEA, Ron

Case Name/#: Ron O'Neal Finklea vs. State of South Carolina / #2010-CP-32-5067

Birth Date: [REDACTED] 1973

Dates of Examinee Interviews: July 29, 2016; April 14, 2017; May 2, 2017; May 26, 2017; June 8, 2017; August 7, 2017; and August 25, 2017

Others Present: Diana Holt, Esq. on May 2, 2017; May 26, 2017; and June 8, 2017

Examiner: Susan C. Knight, Ph.D., ABPP

IDENTIFYING DATA: Mr. Ron O'Neal Finklea is a 43-year-old, divorced, African-American male, presently incarcerated within the South Carolina Department of Corrections, with convictions from Lexington County for Murder [S.C. Code Ann. §16-3-10]; Criminal Conspiracy [S.C. Code Ann. §16-17-410]; Arson, 1st Degree [S.C. Code Ann. §16-11-110(A)]; Attempt to Commit Safecracking [S.C. Code Ann. §16-11-390]; and Possession of a Firearm During Commission of a Violent Crime [S.C. Code Ann. §16-23-490]. His convictions stem from an incident on August 2, 2003. Mr. Finklea was convicted by jury trial on August 31, 2007, and received a sentence of death on September 6, 2007. His case is presently involved in post-conviction relief (PCR) proceedings, which is the impetus for the present evaluation. Mr. Finklea's legal team requested an evaluation of mitigating factors specific to Mr. Finklea's history and background. Therefore, pursuant to this request, this examiner evaluated Mr. Finklea on the above listed dates, at Lieber Correctional Institution, in Ridgeville, South Carolina.

SUMMARY OPINION: Based on the totality of data gathered during the evaluation, to include clinical interviews with Mr. Finklea; interviews with his mother, sister, brother, aunt, niece, cousin, first wife, former girlfriends, childhood friend, and former pastor; review of previously conducted interviews; consultations with his current SCDC psychologist, former treating psychiatrist, and former forensic psychiatrist; review of case-related documents, psychosocial records, and correctional records; and review and consultation of the relevant psychological literature, the following is opined as summarized.

Evaluation data provide strong evidence that Mr. Finklea was subject to severe physical, emotional, and sexual abuse, perpetrated by his mother, from at least ages 4 to 16. This abuse consisted of frequent, violent beatings with multiple types of objects, which left welts, cuts and bruises. He was locked in closets for hours at time; shot at by his mother; and exposed to damaging emotional and verbal abuse. Due to chronic enuresis, his mother wrapped rubber bands around his penis, made him sleep in the bathtub, and forced him to wear his urine-soiled clothing. As he entered puberty, she frequently "grabbed" his genitalia in a painful and possessive manner, both over and under his clothes. Additional adverse factors include paternal abandonment at a very early age, and an abusive stepfather. Further, Mr. Finklea was raised in a violent and drug-infested area. Illicit substances were sold out of his home, with his participation mandated. As a result of his prolonged exposure to such childhood trauma, Mr. Finklea's psychological and interpersonal functioning was significantly and adversely impacted. Such impact resulted in mental disorder and was instrumental in shaping an adverse life trajectory.

Name: FINKLEA, Ron

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SOURCES OF INFORMATION: The following sources of information were reviewed in forming the opinions found in this report:

Discovery/Legal Records

1. Lexington County Arrest Warrant D-675522 for Assault and Battery with Intent to Kill, for J. Davis, dated December 10, 1992;
2. South Carolina Department of Youth Services (SCDYS) Preadjudicatory Transfer (Waiver) Evaluation Report for T. Davis, dated March 8, 1993;
3. Lexington County Sheriff's Department Incident Reports and Booking Forms [R. Gripper], dated March 20, 1997; June 1, 2001; May 13, 2007; and June 4, 2007;
4. Bank of America banking records for R. Finklea, from August 2002 to October 2003;
5. Richland County Sheriff's Department Incident Report, by Dep. Ruhl, Case No# 030 12907-26, dated January 26, 2003;
6. Video recordings from scene of incident taken on August 1, 2003 and August 2, 2003;
7. Narrative of Video Enhancement, with still photographs (video from scene of incident taken on August 1, 2003 and August 2, 2003), by D.B. Mac Dougall;
8. Lexington County Sheriff's Department Incident Reports, Investigative Reports, Crime Scene Report, Death Investigation/Autopsy Report, Search Warrants, Crime Lab records, and additional documents, [Case No# 03-061400], dated August 2, 2003 to May 4, 2006;
9. Evidence photographs taken by law enforcement, from multiple locations, various dates;
10. Autopsy Photographs of the deceased victim, undated;
11. Still photographs from video recording, from scene of incident, taken on August 2, 2003;
12. Lexington County Sheriff's Department Witness Statements of Angel Peters; Jane Gibson; Robin Gripper; Saneakia Greene; Stephanie Pressley; Irena Fuller; Sherry Bolin, and Theodore Davis, dated August 2, 2003; August 4, 2003; August 7, 2003; and September 17, 2003;
13. SLED Evidence Files, entitled 'Arson,' 'DNA,' 'Evidence Processing,' 'Firearms,' 'Chain of Custody,' 'Latent Print,' 'Toxicology' and 'Trace,' and miscellaneous forms, dated from 2003 to 2008;
14. County of Lexington Coroner's Report, by Dep. Coroner F.W. McCurdy, undated;
15. Lexington County Sheriff's Office Incident Report by Dep. Matthews, dated August 4, 2003, with attached handwritten note 'Last Words 2 U Teake,' undated;
16. Lexington County Sheriff's Department 'Suicide Incident' records from August 8, 2003;
17. Lexington County Detention Center Booking forms, for R. Finklea, dated August 8, 2003; and release paperwork, dated September 6, 2007;
18. Lexington County Sheriff's Department Incident Report, by Ofcs. Hatchel and Collins, dated August 12, 2003;
19. State of South Carolina County of Lexington, Court of General Sessions, Order Denying Bond, by the Honorable James W. Johnson, dated August 15, 2003;
20. State of South Carolina, County of Lexington, *The State v. Ron O'Neal Finklea*, Statement of Ron O'Neal Finklea, dated August 19, 2003;
21. Private Investigator [David B. Mac Dougall] 'Interview Reports' conducted from 2003 to 2007 with: Dr. M. A. Cherry; Robin Gripper; Teresa Finklea; Ron Finklea; Cherena Roland; Angel Peters; Stephanie Pressley; Lonnie Watson; Irena Fuller; Sgt. Maj. Charlie Tuner; Sgt. Vincent Smith; Cheryl Avery; Linda Mickens; and Leticia Gilmore;
22. Document entitled 'Investigative Log and Notes' by D.B. Mac Dougall, dates of entry from August 19, 2003 to September 5, 2007;

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23. State of South Carolina, County of Lexington Indictments for Possession of a Firearm while in the Commission of a Violent Crime; Criminal Conspiracy; Arson First Degree; Murder; and Attempt to Commit Safecracking; from Grand Jury May Term 2004;
24. Lexington County Detention Center Inmate Request Forms, dated January 12, 2005; January 20, 2005; January 31, 2005; August 20, 2005; March 6, 2007;
25. Notification to seek death penalty from Donald V. Myers, Esq. to S. Soltis, Esq. and M. Kimbrough, Esq., dated May 8, 2006;
26. Memo/Reports from D.B. Mac Dougall to S. Soltis and L. Kimbrough, dated November 10, 2006; July 10, 2007; August 14, 2007; August 24, 2007; September 1, 2007;
27. Town of South Congaree Incident and Supplemental Reports, from January 23, 2007, to June 4, 2007; and Disposition Sheet for R. Gripper, dated August 10, 2007;
28. Private Investigator [David B. Mac Dougall] Investigation reports and notes, undated, and dated July 10, 2007; August 14, 2007; August 24, 2007; and September 1, 2007;
29. Timeline of video from August 2, 2003, by D.B. Mac Dougall on August 23, 2007;
30. State of South Carolina, County of Lexington, *The State vs. Ron O. Finklea*, Statement of Robin N. Gripper, dated August 29, 2007;
31. Audio Interviews conducted in 2007 by D.B. Mac Dougall with Sgt. Maj. Charlie Turner; Linda Mickens; Irena D. Fuller; Lonnie Watson; David Slagle; Stephanie Pressley; and Vincent Smith;
32. SCDMH, Evaluation Service of Forensic Division, Competency to Stand Trial Evaluation by R. Frierson, MD, dated May 26, 2007;
33. State of South Carolina, County of Lexington, *The State v. Ron Finklea*, Notice of Evidence in Aggravation of the Punishment, dated June 4, 2007;
34. *State of South Carolina v. Ron O. Finklea*, In the Court of the General Sessions for the Eleventh Judicial Circuit Transport Orders, from Lexington County Detention Center to Richland Memorial Hospital, dated June 5, 2007 and August 21, 2007;
35. Medical Impairment Rating Report by Kenneth Gaines, MD, dated July 2, 2007;
36. Electronic Correspondence from D. Schwartz-Watts, MD to L. Kimbrough, dated July 24, 2007;
37. SCDMV 3-Year Driver Record for R. Gripper, dated August 7, 2007;
38. SLED Catch Record for R. Gripper, dated August 9, 2007;
39. State of South Carolina, County of Lexington, *The State v. Ron O'Neal Finklea* Memorandum of Law In re: Defendant's Incompetency to Stand Trial, by M. Kimbrough, dated August 10, 2007;
40. Letter from T. Brawley, PhD., to D. Schwartz-Watts, MD, with Neuropsychology Interview Form, dated August 16, 2007;
41. State of South Carolina Office of the Solicitor, Eleventh Judicial Circuit, letter dated August 20, 2007, with typed notes;
42. Electronic Correspondence from D.B. Mac Dougall, to L. Kimbrough, dated August 26, 2007;
43. Electronic Correspondence from Teresa Fuller to D. Schwartz-Watts, MD, dated September 4, 2007;
44. 'Psychiatric Evaluation' electronic transmission via Yahoo Mail, by Donna-Schwartz-Watts, MD, date of transmission on September 5, 2007;
45. *The State v. Ron O'Neal Finklea*, Statutory Instructions, by Presiding Judge, the Honorable Clifton Newman, dated September 6, 2007;

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46. State of South Carolina, County of Lexington, *The State v. Ron O'Neal Finklea*, Statutory Aggravating Circumstances, Recommendation of the Death Sentence, and Affirmation of the Death Sentence, dated September 6, 2007;
47. Sentencing Sheets for Attempt to Commit Safecracking, Arson 1st Degree, Criminal Conspiracy, and Possession of a Firearm During a Violent Crime, dated September 6, 2007;
48. State of South Carolina, County of Lexington, *The State v. Ron O'Neal Finklea*, Motion to Establish and Preserve Demonstrative Evidence Used at Trial, with accompanying photograph, by M. Kimbrough, dated September 13, 2007;
49. Electronic Correspondence with evaluation notes from D. Maddox, MD, to T. Norris, Esq., dated August 28, 2017;
50. 'Psychiatric Evaluation' report by Donna Schwartz-Watts, MD, undated;
51. Lexington County Sheriff's Office Investigative Report [partial document], entitled 'Peake Statement' undated;
52. Credentials and Qualifications Letter of James Evans Aiken, and Resume of James E. Aiken, undated;
53. Resume of Ron O'Neal Finklea, undated;
54. Handwritten notes, author unidentified, undated;
55. 'Brief Summation of *State v. Finklea*' author unidentified, undated;
56. State of South Carolina, In The Supreme Court, Appeal from Lexington County, *The State (Respondent) v. Ron O. Finklea (Appellant)*, Record on Appeal, Volumes I-V;
57. *State v. Ron O. Finklea*, Trial Transcript Summary, author unidentified, undated;

Psychosocial Records

58. Generational Social Chronology, undated, author unidentified;
59. Records from Monroe County High School for Betty Finklea, dated from 1966 to 1968;
60. Certificate of Live Birth from the District of Columbia for Ron O'Neal Finklea, date of birth October 18, 1973, with date issued of May 16, 1980;
61. Childhood photographs of Mr. Finklea throughout life span, undated;
62. Academic records from the Monroe County Public Schools, for Mr. Ron Finklea, dated from 1980 to 1991;
63. Monroe County Area Vocational Center Masonry Certificates for Ron Finklea, dated May 1989 and May 1990;
64. U.S. Military Records for R. Finklea, dated from October 8, 1990 to February 28, 2002;
65. Medical records from Monroe County Hospital for Betty Finklea, dated from March 9, 1997 to December 15, 2009;
66. Medical records from the Monroe County Hospital for Ron Finklea, dated from August 13, 1997 to July 17, 2002;
67. Medical records from the Department of Veterans Affairs, Central Alabama Veterans Health Care System, dated from August 6, 2002 to October 21, 2002;
68. Medical records from the Department of Veterans Affairs, Williams Jennings Bryan Dorn VA Medical Center, dated from October 25, 2002 to July 10, 2003;
69. Employment history records from Kelly Services, and Shealy Electric, dated November 2002 to May 2003;
70. Records from the Monroe County Jail, dated August 6, 2003;
71. Medical and psychiatric records from the Lexington County Detention Center, dated from August 2003 to September 2007;

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72. *Teresa Fuller Finklea vs. Ron O'Neal Finklea*, 30th Judicial District, Parish of Vernon, State of Louisiana, Judgment of Divorce, dated December 9, 2004;
73. Medical records for Mr. Ron Finklea from Palmetto Health Richland, dated August 20, 2004 and August 24, 2004;
74. Medical, psychiatric and disciplinary records from the South Carolina Department of Corrections, dated from September 6, 2007 to January 31, 2017;
75. Handwritten letters from Mr. Finklea's former girlfriend, Ms. Sophia Reed, to Mr. Finklea, dated from January 10, 2013 to April 6, 2014;
76. Video recording of Mr. Finklea's father, Mr. O'Neal Burgess, taken by D. Holt, Esq., on July 28, 2014;
77. Video recording of Mr. Finklea speaking to his son, Ron Finklea, Jr., taken by D. Holt, Esq., on May 21, 2015;
78. Letter written from Ron Finklea, Jr., to Mr. Ron Finklea, undated, sent via electronic correspondence from D. Holt, Esq., on May 15, 2017;
79. 'Inmate Search Detail Report' for Ron Finklea, from the South Carolina Department of Corrections, accessed on August 30, 2017;

Records Requested / Not Received

80. Academic records from Aiton Elementary School in Washington DC, were requested, however, not received by the submission of the report;
81. Updated medical, psychiatric and disciplinary SCDC records from February 2017 present were requested, however, not received by the submission of this report;

Prior Interviews

82. Interview notes by Nancy Smith, MSW, with Mr. Ron Finklea, on April 19, 2011; May 31, 2011; June 1, 2011; November 29, 2011; February 3, 2012; and February 5, 2012;
83. Interview notes by Nancy Smith, MSW, with Ms. Rosie Finklea, Mr. Johnnie Finklea, Roosevelt Finklea and Curtis Blount, on April 30, 2011;
84. Interview notes by Nancy Smith, MSW, with Ms. Betty Peoples, on April 30, 2011; May 1, 2011; and June 22, 2011;
85. Interview notes by Nancy Smith, MSW, with Mr. Johnnie Finklea, on May 1, 2011;
86. Interview notes by Nancy Smith, MSW, with Mr. Johnnie and Rosie Finklea, on May 2, 2011;
87. Interview notes by Nancy Smith, MSW, with Ms. Chanell Finklea, on May 2, 2011;
88. Interview notes by Nancy Smith, MSW, with Ms. Erica Middleton, on May 3, 2011;
89. Interview notes by Nancy Smith, MSW, with Curtis Blount, on May 3, 2011;
90. Interview notes by Nancy Smith, MSW, with Ms. Ruby Finklea, on May 3, 2011;
91. Interview notes by Nancy Smith, MSW, with Mr. O'Neal Burgess, on May 6, 2011;
92. Interview notes by Nancy Smith, MSW, with Ms. Emma Primm and Ms. Sallie Bullard, on May 8, 2011;
93. Interview notes by Nancy Smith, MSW, with Ms. Sharon Jackson, on June 19, 2011;
94. Interview notes by Nancy Smith, MSW, with Ms. Nicole Fantroy, on June 20, 2011;
95. Interview notes by Nancy Smith, MSW, with Mr. Phillip Peoples, on June 20, 2011;
96. Interview notes by Nancy Smith, MSW, with Ms. Louise Mayhand, on June 21, 2011;
97. Interview notes by Nancy Smith, MSW, with Mr. S. Lipscomb, on September 18, 2011;
98. Interview notes by Nancy Smith, MSW, with Ms. L. Gilmore, on November 29, 2011;
99. Interview notes by Nancy Smith, MSW, with Ms. Robin Gripper, on February 5, 2012;
100. Interview notes by Nancy Smith, MSW with Ms. Amari Anderson, on February 5, 2012;

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101. Interview notes by Nancy Smith, MSW, with Mr. Theodore Davis, on February 6, 2012;
102. Interview notes by Tara Waters, Esq., with Mr. Ron Finklea, on August 28, 2012; and October 1, 2012;
103. Interview notes by Tara Waters, Esq. with Ms. Betty Peoples, on September 12, 2012;
104. Interview notes by Tara Waters, Esq. with Ms. Ruby Finklea, on September 19, 2012;
105. Interview notes by Tara Waters, Esq. with Ms. Erica Middleton, on September 20, 2012;
106. Interview notes by Tara Waters, Esq. with Ms. Chanell Finklea, on August 19, 2015;
107. Interview notes by Tara Waters, Esq., with Ms. Emma Primm, on October 25, 2015;
108. Interview notes by Tara Waters, Esq., with Willie Mae Wigfall, on October 26, 2015;
109. Interview notes by Tara Waters, Esq., with Ms. Sallie Bullard, on October 27, 2015;
110. Interview notes by Tara Waters, Esq., with Mr. and Mrs. R. Fuller, on November 4, 2015;

Current Interviews

111. Clinical Interview with Mr. Ron Finklea, for three hours, on July 29, 2016;
112. Clinical Interview with Mr. Ron Finklea, for three hours and forty-five minutes, on April 14, 2017;
113. Clinical Interview with Mr. Ron Finklea, for approximately four hours, on May 2, 2017;
114. Interview with Mr. Finklea's mother, Ms. Betty Finklea-Peoples, on May 15, 2017;
115. Interview with Mr. Finklea's first cousin, Ms. Erica Middleton, on May 15, 2017;
116. Interview with Mr. Finklea's maternal aunt, Ms. Ruby Finklea, on May 15, 2017;
117. Interview with Mr. Finklea's brother, Mr. Curtis Blount, on May 15, 2017;
118. Interview with Mr. Finklea's former pastor, Rev. Matthew Davis, on May 15, 2017;
119. Interview with Mr. Finklea's childhood friend, Mr. Karlos Beasley, on May 16, 2017;
120. Interview with Mr. Finklea's former girlfriend, Ms. Boneatha Hill, on May 16, 2017;
121. Clinical Interview with Mr. Ron Finklea, lasting approximately three hours and forty-five minutes, on May 26, 2017;
122. Clinical Interview with Mr. Ron Finklea, lasting approximately two hours and forty-five minutes, on June 8, 2017;
123. Interview [by telephone] with Mr. Finklea's sister, Ms. Chanell Finklea on June 18, 2017;
124. Interview [by telephone] with Mr. Finklea's niece, Ms. Kinwin Brown, on June 18, 2017;
125. Interview [by Skype] with Mr. Finklea's ex-wife and mother of his eldest child, Ms. Cherena Roland, on June 26, 2017;
126. Clinical Interview with Mr. Ron Finklea, lasting approximately three hours and forty-five minutes, on August 7, 2017;
127. Clinical Interview with Mr. Ron Finklea, lasting approximately four hours and fifteen minutes, on August 25, 2017;
128. An interview [by telephone] with Mr. Finklea's former girlfriend, and mother of his youngest child, Ms. Sophia Lane [formerly Reed], on August 29, 2017;

Consultations

129. Consultation [by telephone] with Mr. Finklea's former treating psychiatrist at the Lexington County Detention Center, Dr. M. Anna Cherry, on August 22, 2017;
130. Consultation [by telephone] with a member of SCDC's mental health team (psychologist) Cassandra Means, PhD, on August 23, 2017;
131. Consultation [by telephone] with Mr. Finklea's prior forensic psychiatrist, Donna Maddox, MD [formerly Schwartz-Watts], on August 24, 2017;
132. Consultation [by telephone] with SCDC Nursing staff member, Ms. Kirsten Wathen, on August 28, 2017;

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Attempted Interviews/Consultations

133. An interview [by telephone] would have been attempted with Mr. Finklea's ex-wife Teresa Fuller, however, the examiner was informed by counsel that she was not available and/or unwilling to have further involvement in his case;
134. Consultation [by telephone] with Mr. Finklea's treating SCDC psychiatrist, Dr. Leilani Lee, was attempted, however, beyond an initial response, further efforts for consultation were not successful by the submission of this report;
135. The examiner requested interviews with SCDC correctional officers familiar with Mr. Finklea; however, was informed that no officers were available by the submission of this report.

DISCLOSURE OF NON-CONFIDENTIALITY: Prior to the evaluation, Mr. Finklea was provided information regarding the purpose and non-confidential nature of the evaluation. He was informed that any information he provided would not be confidential and would be used to prepare a report for his attorneys, which, at his attorneys' discretion may be distributed to the court. He was also informed that the nature of the evaluation did not include a treatment relationship with the examiner and treatment would not be provided. Mr. Finklea acknowledged understanding the parameters of the evaluation, and agreed to proceed.

EVALUATION DATA: All evaluation data was obtained through interviews with Mr. Finklea, and from relevant collateral interviews and sources where indicated.

Summary of Social History: Mr. Finklea was born on October 18, 1973, in Washington, DC. His mother is Betty Finklea, and his father was O'Neal Burgess. His parents never married, as his father was already married at the time of their relationship. They had a brief relationship, with very little involvement by Mr. Finklea's father after his birth. Several years later, his mother had a child [his younger brother] with another individual, who was Mr. Finklea's stepfather, Roosevelt Blount.

At age 7 or 8, in 1984, he moved to Franklin, Alabama, with his mother, older sister, younger brother, and his stepfather. After moving to Alabama, Mr. Finklea had only one very brief encounter with his father, at age 16, and his father has since passed away. After several years in Franklin, he moved to Monroeville, Alabama, with his mother, siblings, and her new husband, Charlie Peoples, where he was raised until age 17. Violence and drug use were pervasive in this neighborhood. Illicit substances were also sold from his home, of which he was made to participate. Further, there is ample evidence of severe physical, emotional and sexual abuse perpetrated by his mother throughout his entire childhood.

During his schooling, Mr. Finklea had no placement in special education, and no history of significant behavioral problems. In May 1991, he graduated high school, and on June 11, 1991, enlisted in the US Army. He served in the Army until late April 2002, with duty stations to include, Fort Lewis [Washington State], Fort Polk [Louisiana], Fort Bragg [North Carolina], and deployments to Panama and Germany. His primary duties involved supply and logistics.

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In May 1993, at age 19, he married his first wife, Cherena Roland, and his first child, R ■ F ■ J ■, was born in April 1994. His son is now 23 years old, and resides in Tacoma, Washington, with his first child born in April 2017. In 1996, Mr. Finklea and his wife were separated, and their divorce was finalized in 1998. In July 1999, he married a second time, to Teresa Fuller, and has no children from this union. He was divorced from his second wife after his arrest, in December 2004. By all accounts, his marriages were characterized by conflict and infidelity. He has a second child from another union, a son, J ■ R ■ who was born in 2001, and is now 16 years old. This child resides in Texas, with his son's mother, Ms. Sophia Lane.

In April 2002, Mr. Finklea was Honorably separated from the military via temporary medical retirement due to asthma and knee injury. He subsequently resided in Texas, Michigan, Alabama, and in October 2002, moved to South Carolina to be with his family. His wife was deployed to Iraq in February 2003, and he planned to return to active duty in September 2003. Therefore, he was involved in treatment and rehabilitation for his medical conditions through the Veterans Affairs Medical Center in Columbia, South Carolina. He also worked brief terms of employment, including at Solectron Corporation from March to May 2003. At the time of the capital offense on August 2, 2003, he was unemployed, and involved in the sale of illicit drugs.

After the offense, he was arrested in Monroe County, Alabama on August 6, 2003. He was transported to the Lexington County Detention Center on August 8, 2003, on which date he made a serious suicide attempt by hanging. He was emergently hospitalized, and determined to have suffered an acute neurologic injury. He was released to the detention center on August 12, 2003, where he received psychiatric treatment for the duration of his detention. On August 31, 2007, he was convicted by jury trial of his charges, and on September 6, 2007, was sentenced to death. Subsequently, he has received psychiatric services for the entirety of his incarceration.

▪ **TRAUMA/ABUSE HISTORY:** Mr. Finklea has a significant history of trauma and abuse during his childhood and adolescence, which is the primary focus of this report. Accounts of this trauma are detailed below. Information was taken from interviews with Mr. Finklea and collateral sources, both conducted by this examiner and by professionals previously involved in his case.

EXAMINEE Interviews – Present Evaluation [Birth to Age 17]: Mr. Finklea provided the following pertinent data regarding his history of trauma. He reported an extensive history of physical, emotional and sexual childhood abuse perpetrated by his mother, beginning as a young child, to age 16. His first memories of his mother's abuse occurred when they resided in Washington DC, "in between age 4 and 5, I couldn't do anything right, if she told me to make up my bed, and I didn't do it, she would beat me, would yell, anytime I didn't get something right, like homework, she would hit me." His mother would "scream and curse, say 'do it the way I f**king told you to do it,' if she told me to sweep the kitchen, I got beat or slapped."

When asked what she would use to hit him, he stated, "name it, broom handles, spatulas, pots...I remember she hit me on the shoulder with a pot from sweeping the kitchen." He recalled another incident at age 4 or 5, when a "fence hook caught my pants and cut my leg," and "my mom hit me so hard across my back and I fell on the other side of the fence, crying, hit my back on a brick." He also recalled, around the same age, being in church when he "jumped up on the bench to see Jesus and my mom hit me across the lower back and my chin hit the back of the bench."

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She told me, "don't you ever stand your a** up again on the bench or I will break your d**n back." He felt "angry and terrified." He recalled another instance where "my mom smacked me in the face and busted both of my lips when I was riding in the car and needed to use the bathroom, she busted me in the face." In another incident around age 6, "she was kicking me in the side for no reason, and from there, the beating commenced."

As a child, he felt "terrified of mom because of how she was, I truly felt like my mom hated me, because of how she treated me, she treated me worse than an enemy, I could never wrap my brain around that, it didn't matter what I did."

He also reported abusive acts by his stepfather, of which his mother did nothing. For example, at age 6, he left the family's apartment "trying to get away from mom and my stepfather arguing, and I went and got into their car and saw a half-smoked cigarette." His stepfather "snatched me out of the car and got 3 or 4 cartons of Marlboro cigarettes and made me smoke cigarettes." He "was vomiting so bad, and my mom saw this and didn't do anything, I was puking all over myself..." He also reported that his stepfather "would get into the screaming and cursing, grab me, jerk me, shove me," but he would not beat him like his mother. His stepfather engaged in this abuse "if something was wrong with Curt [his brother] or if he started drinking and he drank a lot, when he was drinking I would go in my room." He "would also call me names like my mother did, tell me I'm no good, good for nothing, never amount to anything, your mama don't want you, I don't want you and if you were worth a damn your own daddy would look for you."

At age 7 or 8, Mr. Finklea moved from Washington, DC, to Franklin, Alabama, with his family. He did not recall saying goodbye to his father, as he was no longer in his life at that point. He has only very vague memories of his father "coming around" when they resided in DC, and did not recall frequency, details or quality of their visits. Further, when he left DC, he was separated from his great-aunts, who "loved me," which he did not experience in his mother's home.

Once in Alabama, they resided in a "single-wide mobile home on family property for a couple years," which included his mother, stepfather, and two siblings. He "did not do well" in Alabama due to the "chaotic environment, violent, unfamiliar area" as well as the violence in his home. He also "felt like an outsider in Alabama." Further, once they moved to Alabama, his stepfather "stepped up the abuse." His stepfather was also a "big time drinker" and was frequently overtly intoxicated. He recalled frequent fighting and "screaming" between his mother and Mr. Blount, particularly when his stepfather was drinking. Over the next three years, his mother and stepfather fought often, with his "mother's face swollen, her arms were reddish and bruised looking," and on one occasion, "her hand was cut." His mother stayed with him until they "had a real bad fight," during which "he had his rifle and had her up against the wall...he was choking her and pulled the trigger and it misfired and she ran out of the house." Mr. Finklea "never saw Roosevelt again" and he has since died from cancer.

He recalled life was "terrible" when they moved to Alabama, due to the domestic violence in the home, and the continued abuse from his mother, which became more frequent in Alabama. He recalled one incident in the second or third grade, when his mother came to his school after the teacher called due to Mr. Finklea "wiggling my ears." His mother took this gesture as "threatening," but he explained, "my ears jump when I'm anxious or scared."

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She "took me out [of the classroom] and beat me so hard, I really hated school from then on, I hated school and felt worthless and really struggled with relationships...I saw people [other children] with indifference or an enemy" because his mother instilled this in him. He stated, "looking back, I can see other people's [children's] attempts to make friends" with him during his school years.

He further stated that, in Alabama, "she would strip me naked, the beatings went from inside to outside, she would make me strip outside and beat me outside." He "was getting hit several times a week, three or four times a week, she would beat me excessively...she would up the ante every...so often." The beatings left definitive marks, such as "welts, broken skin, knots, bruises." With regard to the beatings, his mother would say to him, "if you tell anybody I'll kill you." She was also "very unpredictable" with her abuse, and there were no clear rules to follow in order to avoid beatings. He provided the example, of "we were not allowed to open the door" at their home. However, he would receive punishment regardless if he followed this rule, stating, "don't open the door, got in trouble, open the door, got in trouble."

Mr. Finklea described that his siblings were not beaten the way he was, particularly, his brother, who was overtly favored by their mother. He "caught any beating" that was intended for his siblings. For example, when his sister came home with a "bad grade in school," Mr. Finklea took her hand to comfort her, and "my mom snatched her up and beat me, got beat with a plastic broom handle..."

He recalled another incident during this time, when he was watching his little brother, who "fell and hit his head" by accident. He stated, "mom came home and shot at me, she turned her anger on me, said 'you black, big-eye ugly bastard, if you're not going to take care of my baby, I'll blow your brains out.'" He "ran out of the house" and "hid out in the woods until late that night, I really thought she would shoot me, she actually fired it at me, as I was running through the vegetation." He eventually left the woods and went to his grandmother's house. However, when he returned home, his mother "beat me so hard with an extension cord, she made me strip naked, I had open cuts, welts, and I could not wear shorts even though it was really warm, I was battered, bruised and sore." [Of note and pertaining to this incident, Mr. Finklea's military records note that he has two bullet wounds to his left lower leg. However, Mr. Finklea stated he has never been shot, but has scars that look like bullet wounds on his left lower leg. He stated that after the incident where his mother "beat at me and shot at me," he tried to "pick up a car engine and put it on my chest," in an effort to suffocate himself. It was too heavy, and he injured himself, incurring puncture wounds to his leg].

Eventually, he "became so angry and numb to the beatings, I would have to begin crying to get the beatings to stop because she would beat me until I cried." Therefore, he would make himself cry to stop the beating. Further, in order to escape the abuse, he would leave his home for weeks at a time to live with his "Aunt Ruby," his mother's sister. He stated, "I was the biggest riff between my mom and Aunt Ruby," because his aunt did not approve of his mother's treatment of him.

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He also recounted verbal and emotional abuse from his mother, which involved "yelling and cursing." He stated, "the yelling and cursing really had me a nervous wreck, sometimes the beating was better than the yelling." He stated, "she always called me ugly, black, big-eye, no good, useless, not sh**, just like my dad." He vividly recalled her telling him, "I should have been picking peas instead of f**king and making you, I'll never forget it." She would also "slap me and curse me out in public."

He further reported being "locked in the closet quite often, that was one of the good punishments," because he was not being beaten, although sometimes this occurred after a beating. This began in DC and "also in Alabama, up through middle school." He estimated being locked in the closet "for an hour and a half to four hours." If he "needed to pee or use the bathroom, she would make me hold it to the breaking point, if I was thirsty, she did not give me water because she told me I 'would have to piss.'" He stated, "so I learned to adapt my eating and drinking." When in the closet, he recalled "laying on the shoes and talking to my sister from under the door," that it would be "dark, always." He "would justify it by saying, at least she's not beating me..." On one particular occasion, at age 10, he cut his forearm with a knife after his mother beat him "hellaciously and put me in the closet." He "was bleeding and Victim [sister] was crying and I was crying."

Mr. Finklea was asked about his history of bedwetting, since it is well documented in collateral data. The bedwetting "started right after we moved to Alabama." He did not recall ever seeing a doctor for this condition. He "wet the bed through high school." This would happen "often, four to five days a week, lessened as I got older." He was "beat every time I wet the bed." Therefore, he was "scared to go to sleep." In addition, his mother "would come in my room at night and check my pants, even in high school, and wake me up, tell me 'I'm tired of you pissing on my mattress.'" She also "made me sleep in the bathtub, tied a rubber band around my penis, tied a milk jug around my penis, made me sleep in urine [soiled] clothing the whole day on the weekends, smelling of urine, stains on my clothes..." As a child, when in the bathtub at nighttime for punishment, he "created a whole new world in my head to escape, of being with a supportive family, my dad was my dad, my aunt Emma was my mom, my aunt Ruby was my other momma." He "did not wet the bed at Aunt Ruby's house," as much as he did at his mother's house.

In addition to the physical and emotional abuse in the home, Mr. Finklea reported witnessing sexual abuse within his household, with their stepfather and great-uncle both sexually abusing his sister. He was 11 years old, and his sister was 12, when he "walked in" on two separate incidents. During the first, he "walked in and saw my stepfather on top of Victim and his arms wrapped around her, I was hitting on him and pulling on him." They left the bedroom, but "mom did not believe either one of us." He reported a similar incident with his great-uncle, with both he and his sister "running out the back door." They did not tell anyone outside of the family because of "mom's policy" that they never speak about family affairs to outsiders. After speaking about this during one of the evaluation interviews, he reported "nightmares" of these scenarios for over a week afterwards.

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Although male relatives did not sexually abuse him like his sister, Mr. Finklea reported that his mother began to "grab" his genitalia when he was a young teenager. This abuse began "when she thought I had started having sex, in junior high school, she started grabbing on me and talking about chopping it off, would tell me I would get VD." This was "very painful," and occurred over and under his clothes. During such times, she would say, "you are my MF child, and I can yank on whatever I wanted to yank on, if it wasn't for me you wouldn't have any penis to yank on." This "went off and on until mid-way through my 10th grade year, when Pops [mother's husband] told her to stop." He agreed his mother's behavior was a "possessive thing." Due to this type of behavior from her, he noted, "in my relationships, I did not know what was love and what was possessiveness, it was hard to figure out."

When Mr. Finklea was in the 5th grade, and shortly after the dissolution of his mother's relationship to his stepfather, his mother married Charlie Peoples. After their marriage, the family moved twenty-two miles away to the Limestone neighborhood in Monroeville, Alabama. Mr. Peoples was absent from the home for months at a time due to his work as an offshore fisherman. When he was in the home, Mr. Peoples was "better, more involved, showed me attention, took me fishing." However, this attention, "made mom angrier, possessive and aggressive." She seemed "jealous" that her husband would show Mr. Finklea any kind of positive attention. She would say, "that's my child, my property" when he would "try to give me advice or call me outside to talk, she didn't like him doing that." He also stated "they fought about extramarital affairs, on both sides."

Mr. Finklea described the neighborhood of Limestone as primitive and rough, with his street a "dirt road for many years, they paved it when I was in high school." This neighborhood was full of "drugs, violence, guys having sex with underage girls, fights, shootings, drinking and drag racing and crashing cars..." He recalled one instance in graphic detail when "someone was so drunk that he crashed his car and left his face on the steering wheel." At age 14, he witnessed his Uncle Billy and another male in the neighborhood "fighting and Billy hit him and split his skull, and Billy pulled a knife out and both got guns and were waving them around..." This level of violence was very commonplace in the area. There was "also a lot of hood fights, sometimes weapons would be pulled, knives, I saw a lot of knives, people waving guns, fights would break out over games, girlfriends, everybody was drinking..." He described, "basically, it was constant violence" with no real protection or intervention, as, "the police didn't really come to Limestone." He was involved in "some, a couple fights," and stated, "if I didn't stand up to people, and not fight, I got beat [by his mother], and she "also beat me for fighting...I got in trouble either way."

In addition to violence, substance use was also very prevalent in the Limestone neighborhood, with "mainly weed, some crack or cocaine, saw addicts using and selling it, there were heavy drinkers, it was always there, pervasive." Relatedly, once they moved to Limestone, his mother and her new husband began "bootlegging, selling alcohol from the house, a bunch of people coming around, drinking in the yard." He had to assist with selling the alcohol. She also "started selling weed [marijuana] from the home" when he was in the 8th grade. He had to "ride to Mobile to pick it up, we went as a family, got it from a family member in Mobile, we would come home, go in the bathroom, get the checkerboard, and cut it up, bag it up, and mom had me and Chanell selling it, she would be home and had me go get it and bag it up." If he or his sister did not participate in these activities, they would receive beatings.

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Their mother would "compensate" his sister for selling marijuana with a "new outfit," but would not purchase one for him. He reported that his mother rarely purchased new clothing for him during his childhood (e.g., shoes), which made him feel "neglected." Due to these illicit activities, the police "raided Betty's house, looking for drugs, the other dope house called the police on her because she was competition." The police came "at least three times" with "drug dogs" to his mother's home when he was a teenager, but they never found anything, as his mother "would hide the weed in the gulley."

At age 16, Mr. Finklea decided he wanted to meet his biological father, and his cousin took him to Washington DC. He "met a person in an old city building, at his workplace, he reached in his pocket and gave me \$20.00 and tears started rolling down my face, and I gave the \$20.00 to my cousin, I didn't want that, it was such a horrible meeting, and from that point on, I had no interest." Therefore, he attempted no further contact. When asked why he sought out his father, he stated, "I wanted a protector, I wanted somebody to help me, my uncles would not stand up to my mom, my grandfather wouldn't, I had no men in my life to stand up for me." He explained that he was "never able to stand up to her," as he felt "so beat down..."

Therefore, even as he got older, the beatings continued, as "mom beat me all the way through high school because I didn't stand up to her, even in high school, she would make me strip naked and beat me with an axe handle." He cited one instance as a teenager when his mother took him to Monroe County Hospital for an injury, and "the doctors thought I was being abused." He was too scared to report the abuse, even though he was older, and within the safety of the hospital. He recalled his last beating, "during the middle of my senior year in high school, I was sitting on the step of my neighbor's house with my high school sweetheart." His mother had forbid him to see her, and "she pulled up and jumped out and started cursing, and tears came to my eyes, she said 'get your black a** in the house before I kill you' and I went in the house and she beat me with an extension cord, with my shirt off."

In reflecting on his history of abuse, Mr. Finklea believed that he has been "seeking my mom's acceptance my whole life." He recalled one instance of being in a school play in first grade. Afterwards, his mother seemed proud of him, and held his hand "in front of the teachers." He stated, "she never did that, and after that, I wanted to be in every single play because I wanted her to hold my hand and smile at me." However, this never happened again. Instead, he "did not feel she loved me, it felt like I was going to be attacked all the time...she never gave me a positive look, always anger."

He recited another example when he was a few years older, and would dance publicly due to his talents in this area. He "always tried to watch mom for her approval when I was dancing." However, she would become angry with him when he danced for others without demanding compensation, and would say, "if you want my baby to dance, you're going to pay my baby to dance." Despite her anger, he would feel "elated because she called me 'my baby,' it was very rare for her to use that kind of language." He explained that, "she never said she loved me" throughout his whole childhood, but would say that she loved his siblings. Further, he has "no memories of my mother holding me," as a child, and never recalled her celebrating his birthday or other affectionate maternal memories common to childhood.

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In reflection, and as a testament to his mother's abuse and toxic parenting, he recounted the adverse outcomes of her children's lives, stating, "my sister doesn't have anything to do with her, my brother is an alcoholic and addicted to cocaine, and I'm on death row."

At age 16, in 1990, Mr. Finklea "signed up for the delayed entry program" in the U.S. Army, as he saw enlistment as "my only option to get away," from his abusive upbringing. He had "lost hope in college" because his mother constantly told him " 'you ain't sh**, you aren't going to be sh**, just like your daddy' so college felt beat out of me, I did not have the support system." He was "afraid to talk to school personnel" about pursuing college, due to "the 'no talking out of the house' policy." Therefore, he graduated high school on May 28, 1991, at age 17, and on June 11, 1991, began his career with the military. He immediately "enjoyed" the military, and "how everything was structured, I knew what to expect." This was much different than his home environment, with unpredictable violence at any moment.

Of note, his military records reflect that, at age 17, he was of "slender build," weighing 116 pounds, with a height of five feet, three and one half inches. In contrast, his mother was a large woman, and "had me beat by at least 100 pounds on any given day." This size difference lends credence to an increased vulnerability to the reported abuse, particularly as a teenager.

EXAMINEE Interviews – Present Evaluation [Age 17 to Capital Offense]: After leaving his mother's home for the U.S. Army in June 1991, Mr. Finklea publicly portrayed someone with a successful military career. However, he described much dysfunction in his personal relationships and conduct. At his first duty station in Washington State (Fort Lewis), he experimented with LSD with other soldiers and began drinking heavily. He used LSD for "four to six months" but stopped when he "saw a story about acid eating a hole in the brain, and it made an impression on me and I got frightened." Therefore, after approximately six months, he stopped using, and has not used since. In addition, his alcohol consumption significantly tapered off once he left Fort Polk. At this time, he was still a teenager, and described his functioning at Fort Lewis as "fun, hectic, but I didn't know anything about being an adult." Around this time, in May 1993, he married his first wife, Ms. Cherena Roland, and they shortly moved to Fort Polk, Louisiana. They were both teenagers at the time of their marriage, as she was 16 years old, and he was 19 years old.

Once stationed at Fort Polk, he described growing dysfunction within his marriage, citing his move closer to his mother as a significant source of stress. At this time, his mother was "very demanding, asking for money, I would send her money orders, I couldn't say no, it was a very chaotic time." He became "physically, verbally and emotionally abusive" in his marriage, and "was a very angry person because of my mother." He cited significant "stress from dealing with my mom" and "not knowing what marriage, manhood and relationships were about." He described infidelity during this time, and being "controlling" in his relationship. He "felt pressure to come home every weekend, and my family would constantly ask me for money...it felt like I was back at home again."

On April 1, 1994, his son was born, which initially "impacted me tremendously." However, he became "absent, even if I was in the house, I dumped on my family what I knew, no affection at all, we were not a family unit..."

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In May or June 1995, he was deployed to Panama, and his wife returned to Washington State with their son. They never reunited, and divorced in 1998. He stayed in Panama for approximately two years, until 1997. During this time, he "had very little tolerance" of others, and described irritability, frustration and negativity. He believes he "didn't know how to communicate with people," other than giving and receiving orders. Despite his difficulties, he "was not getting into trouble in the military because I didn't want to go back home [Alabama], so I got back in line immediately." However, he believed he was "demoted from Sgt. E-5 to Sgt. E-4 for having female civilians in the barracks," behavior which he described as common with soldiers stationed in Panama. Once he shipped to Fort Bragg, his rank was restored, so he is unsure if he was officially demoted.

From September 1997, until 2001, he was stationed in North Carolina, at Fort Bragg. Although doing well with his military career, he began selling marijuana on base, traveling to Alabama to acquire this substance. He sold marijuana for approximately "seven months, stopped and started." He stated this conduct never came to light. When asked why he engaged in this conduct, he expressed a discomfort in the military, feeling that he "did not fit in." He "loved the military, loved the structure, there were no surprises, but I wasn't comfortable in the military..." and reverted to what he knew, and had been taught, growing up.

Over the summer of 1998, he met his second wife, Teresa Fuller, who was six years older than Mr. Finklea. She had two children, a 12-year old son, and six-year old daughter at the time they met. They moved in together after six months of dating, and in July 1999, were married. His mother disapproved his marriage, and told him "don't you throw your life away."

Of his second marriage, "she seemed to fill a void in my life, very attentive, she would talk to me like a mother type figure." However, she reminded him of his mother as she was "always making demands" on him with regard to finances. With his second wife, his mother "would say she didn't have any priority within the family." Even after his second marriage, he "spent all my free time in Alabama" because he felt such pressure from his mother to be home. His mother "would come back in [his life], wanting me to call her more, I could not put mom on the back burner." He provided the example, of "Teresa would want me to do something, but I wouldn't do it because I thought, what if my mom calls." This caused much stress in his relationship, which was "expressed through physical abuse."

Regarding the conflict in his marriages, he "felt like I didn't deserve anybody being that good to me, always waiting for it go bad, started being destructive, cursing, yelling, putting my hands on them, I felt worthless, felt no good, felt like a terrible person." Even when "I got honors in the military, it felt like I didn't deserve those honors, still felt like I wasn't good enough, still seeking approval from my mother." He stated, "my whole life I felt like I deserved nothing positive, I was in self-destructive mode, I was not happy being happy, what was good for me was being alone." He was "not comfortable with intimacy, I felt so detached, and it was too uncomfortable, so then I lashed out." He described himself as "very destructive" in his relationships.

In 2000, Mr. Finklea met the mother of his second child, Sophia Reed, at a military training course at Fort Lee. She was "also in the military, in the same career field." They "started a sexual relationship" and he continued seeing her after the course ended. Their affair caused much friction within his marriage, and she eventually became pregnant, with his son, J [REDACTED]

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In 2001, he left Fort Bragg, with Teresa, as they were both stationed in Germany. Sophia was already pregnant at this time, and had previously moved to Germany, where his son was born. His time in Germany was "stressful because of my domestic situation." In May 2002, he left Germany. By this time, his wife had "left the military" and moved back to Michigan where her family lived. He left Germany and went to San Antonio, Texas, where his younger son lived with Sophia. He had been placed on the "Temporary Disability Retirement List, TDRL, for asthma and a knee injury." He stated, "it was either TDRL or leave combat, and I didn't want to leave combat." For a while, he traveled back and forth between Michigan and Texas every couple days or weeks, which caused great strain in both relationships. He eventually returned to his marriage with Teresa after she called his mother, and his mother essentially ordered him back to his marriage. He stated, "I fell right in line." Subsequently, Teresa "forbid" him to contact his son, J [REDACTED]

Therefore, in October 2002, he returned to South Carolina, moving in with Teresa, her children, and Teresa's sister. He began to sell marijuana "for a bit," with "Teresa's sister." After one month, he moved to Alabama for several months, living with his mother and working at a local paper mill. He returned to South Carolina shortly before Teresa left for Iraq in early 2003. He moved into the home of Teresa's cousin, with his stepson. At this time, Mr. Finklea "was trying to rehab my knee to get back on active duty, going to Fort Jackson, rehabbing." He began work at Shealy Electric "for a couple months," before taking a job at Selectron through a temporary service "doing logistical stuff..." He "worked there three or four months" before he quit this job.

In addition, during his time in South Carolina, he began selling cocaine and marijuana, with several of Teresa's relatives, traveling at least twice to Alabama. His codefendant was residing with him at this point, whom he stated was also involved with the sale of drugs. When asked why he began selling drugs, he stated, "I was frustrated with not being able to provide as a man, I literally had three families, trying to find my footing and because that was what I knew..." He also described that losing the structure of the military, which had characterized his entire adult life, was very difficult. During this process, he described losing large sums of money, which was reflected in a joint bank account he shared with his wife. He believed she would notice the missing funds, and he was unable to replace the loss.

Eventually, Mr. Finklea "began to lose money" rapidly, and Teresa "started asking about the money." At this time, he reported increasing stress, with things quickly spiraling out of his control. He stated, "stuff fell apart, began to unravel...I was a wreck." He had suicidal thoughts "at least three or four times" during this time." He also experienced strong feelings of worthlessness, which had been pervasive throughout his life, stating "it felt like, why am I here, felt like I should be dead." He was "...stressing out, and angry, drinking more and more." His "insides were in knots..." particularly when Teresa called. He felt more and more pressure to "get the money back" and was a "discombobulated mess." He had a "fear of losing my family, of not being able to go back to the military, the only thing I was good at."

Several months prior to his arrest, he began drinking heavily on a daily basis, "a gallon of Remy Martin [cognac] in a day or day and a half, and Hennessy." He also began smoking "hydro" or potent marijuana, smoking "three or four blunts a day." As he had very little substance use over the course of his life, in a short period of time, he went from not using to heavy use.

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He believes the amount and rapid increase of substance use resulted in "very cloudy thinking, supremely impaired, I cried a lot." He would "be up for days, pacing, walking from the house to the street, after the money started to be missing, it really got hectic." He began to feel "in straight out panic mode, Teresa was calling, checking, calling..." He "felt I was screwing up left and right...."

This sense of "panic," and increasing pressure rapidly intensified up to the time of the capital offense. He described that his mental state, including judgment and decision-making, was significantly impacted by this intensification of anxiety and his sense of losing control. His increasing substance use was also a factor in adversely impacting his mental state.

EXAMINEE Interviews – Prior Data: Previous mitigation specialists involved in his case, Ms. Nancy Smith, and Ms. Tara Waters, conducted multiple interviews with Mr. Finklea in 2011 and 2012. Their interview notes were reviewed for pertinent information related to any history of trauma and abuse.

In *April 2011* [N. Smith], it was documented that "Ron's mother was incredibly abusive. She beat Ron all the time" with Mr. Finklea receiving beatings instead of his siblings. It was also noted, "she beat Ron with whatever she could get her hands on. She used extension cords, switches, belts or other things." Mr. Finklea recalled a beating by his mother at age four, after which he "stabbed" his mother in the leg with a "pocketknife" because he was "so angry." He reported a "busted lip" at age 14 after an "extension cord" she used "come up off his leg and hit him on the lips." He also related an incident during which his stepfather abused him, by hitting him with a broom in his elbow and he "couldn't bend his arm as a result of the beating."

In *May and June 2011* [N. Smith] Mr. Finklea "described his mother as unpredictable...one minute she was hugging him, and the next minute she was beating him." His stepfather, Mr. Peoples "would leave the room when the beatings took place" and "never told Betty to stop..."

In *February 2012* [N. Smith], Mr. Finklea reported having "first learned about drugs from his mother." It was noted that "she sold marijuana" during his childhood, and that "he was in junior high" when "she had him participate in the activities." He and his sister had to "help her with bagging and selling of the marijuana." His mother also had him "do the transactions for her" if she were not home.

In *August 2012* [T. Waters], Mr. Finklea reported beatings from his mother that occurred so often that he "grew so desensitized" in that "over time they stopped having an effect on him. He would not cry or feel pain, but would 'put on a show – flailing and screaming' – to make his mother think her punishment was hurting him." He would also "put himself in a position to take some of the beatings that Chanell and C [siblings] would have otherwise been exposed to." He believed his mother "hated him" so he may as well try to save his siblings." Therefore, he "would get into Betty's line of sight" and "she would always turn her anger to Ron and leave [his siblings] alone." It was also noted that "he would get punished even when he did everything right" therefore, he "quit caring about whether he was doing right at home" or school.

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Mr. Finklea also reported physical abuse from his stepfather, Roosevelt Blount. He noted that his second stepfather, Charlie Peoples, was much more encouraging. However, his mother "would tell him Ron was not his kid," and that "whenever Charlie would build him up, Betty would tear him right down."

In October 2012 [T. Waters], he recounted a church outing, after which his mother "started cussing at him," and "got mean with him" when he wanted to go home to his Aunt Ruby's. When he went into his mother's house, she "beat him and reminded him whose kid he was." He recalled a beating as a teenager, after taking his mother's car, in that his mother "had a belt in her hand and an extension cord on the bar" and "she certainly did beat him."

COLLATERAL Interviews - Present Evaluation: Information obtained from collateral interviews by this examiner is presented below, to include interviews with his sister, maternal cousin, maternal aunt, brother, maternal niece, mother, former girlfriend, childhood friend, and first wife.

Collateral Interview [Sister]: Mr. Finklea's older sister by one year, Ms. Victim indicated the following. Mr. Finklea and Victim are maternally related, and have different fathers. At the outset of the interview, Victim stated that discussing their family's history of abuse "is very depressing for me, so depressing, I cry over and over again." She was clearly emotional during the interview. She and Mr. Finklea were "real close" during their upbringing given their closeness in age. She described him as a "normal child, not a problem child, normal teenager." However, she described abuse and violence in their household, with the "beatings, and the name calling, and the cursing," all perpetrated by their mother. She described their mother as, "an angry person, mean and angry... she can put a face on to be all sweet and nice" [but] she "is a mean, nasty, evil woman, can't trust her."

Victim described very frequent and harsh beatings during their childhood, towards her and Mr. Finklea. The beatings were "with an extension cord, with a water hose, she used a siphon hose, it was more hard and less flexible and didn't bend, she beat us with it, she stuck a clothes hanger in there so it wouldn't bend." The beatings would "leave welts with cuts in the middle." She would "often have to prop pillows under my legs so they wouldn't touch the covers because it hurt so much." She described another example when her mother "took a belt and beat me in the head with the belt buckle... whatever she got in her hands she would beat you with it." She stated their mother "beat us to a pulp, we couldn't even lay in the bed, she never said she was sorry, she was angry."

Of Mr. Finklea, she stated their mother "beat him *so much*, with extension cords, whipped him *so hard*, but he wouldn't cry and I would beg him to cry so she would stop, and he would let out one tear down his cheek, and I'm standing there crying... she beat him so much." She stated Mr. Finklea was "beat every day, every other day, every week, to the point he would move out of the house to Aunt Ruby's, and Aunt Ruby wouldn't let him get beat." She stated their mother also "pulled out a pistol on us," and that Mr. Finklea was "more scared than I was because he got more beatings, *way more often*." Their mother would also "call us names, 'whore,' little MF, 'bubble-eye MF, I could take the physical abuse way much easier than the verbal abuse, I can't get over that, she kept doing it because she knew it hurt."

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Of Mr. Finklea's father, Chanell stated their mother would "say he was no good, he was real black, and tell him [Mr. Finklea], 'you're just like your father.'" She further stated their mother treated their younger brother, C [REDACTED] "very different," and did not physically or emotionally abuse him, for reasons she "don't know."

When asked if she or Mr. Finklea ever reported the abuse to school officials or other authorities, she stated, "we were too scared to report it, she pulled a pistol on us, told us to get out, but Ron said don't leave, if you leave, she will shoot us, she would tell me 'you little old black b***h, I will shoot your feet out from under you.'" "

In addition to the abuse, she also described that Mr. Finklea "had a bedwetting problem, and Betty would say 'ain't nothing wrong with him, he just don't want to get up and go to the mother f***ing bathroom.'" She stated their mother "took a rubber band and wrapped it around the head of his penis, and I had to help him get the rubber band off." Their mother also "tied a gallon milk jug to his penis" to stop the bedwetting.

Chanell also discussed the drug and alcohol sales [boot-legging] that took place in their home at the direction of their mother, stating their mother was "bootlegging her whole life." She stated, "Ron and I had to help cut up the marijuana and measure it out, and bag it up, we had to measure out the liquor and serve it, Betty would have beat the shit out of us if we didn't do it." She stated, "we had to serve the customers, dollar shots, two dollars, had to measure it out and serve it." For her assistance, their mother would "buy me an outfit at the end of the week." Their younger brother "did not have to help." This occurred from the time she was approximately 11 years old, through her teenage years.

She further reported, "my mom believes in witchcraft, voodoo...we knew that she did voodoo, we heard about it, and so we were scared of her." Chanell recalled finding a "hoodoo book" as a teenager, and remembers thinking, "God don't like that!" and feeling scared. She stated, we were more scared of her because of the witchcraft, scared she would put a root on you! I believe she put a root on me so that I couldn't prosper."

When she was a young teenager, Chanell had a daughter, K [REDACTED], who her mother raised. When K [REDACTED] was an adult, she told Chanell, "the same way she used to whoop on ya'll, she beat me." She also related a story of when their mother watched Mr. Finklea's son as a toddler, and "put him in a tub full of ice with no clothes on, he was blue, she stated, 'I'm tired of him pissing everywhere, so I put him in ice.'" She tried to prevent Chanell from taking him out of the ice.

When Chanell was older, around age 19, she had moved out of her mother's house. She stated Betty "came to my house and she tried to hit me with a broom, in my own house, she was mad because I wouldn't sign over my paycheck." She explained their mother "controls" their younger brother's disability check, "she will pay his bills and buy him liquor." Once Mr. Finklea left for the military, Chanell stated her mother's anger and abuse was "diverted to me, now it's me, we haven't spoken in two years...there's nothing I can do about it, just distance myself."

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Collateral Interview [First Cousin]: Mr. Finklea's first *cousin* (daughter of his maternal aunt), Ms. Erica Middleton, was interviewed. Ms. Middleton is 40 years old, and resides in Alabama. She spent a lot of time with Mr. Finklea during their upbringing, and "stayed with Betty a whole lot," meaning she spent a significant amount of time in Mr. Finklea's home during his childhood. She described him as "very smart, a good child."

She was asked how his mother treated him, and she stated, "he was brought up abusive, his mom never expressed love to him." Ms. Middleton stated his mother "was hateful towards him, he would wet the bed and she would put a rubber band around his penis, made him sleep in the tub, put him in the closet and in the outside shed, locked him in there." Ms. Middleton further stated Mr. Finklea's mother would "whoop him, with a switch, belt, or her fists, and he was not a troubled child, anything Chanell did, C [REDACTED] did, she would beat Ron for it." She "would call him all kinds of names, everything she could call him, she did, 'big-eye MF, big ears...'" Ms. Middleton stated, "she would whoop him until he would cry, but he wouldn't cry, he got so used to it as a kid, he didn't cry anymore."

Ms. Middleton stated that his mother "has a black heart, a hateful heart, I don't even visit her anymore, I cut ties with her because she was hateful, she's going to burn in hell." She gave the example of when Mr. Finklea's stepfather, Mr. Peoples "was sick with cancer" his mother would call him "motherf**ker" and other derogatory names.

Collateral Interview [Maternal Aunt]: Mr. Finklea's maternal *aunt*, Ruby Finklea, was interviewed. She is Mr. Finklea's mother's younger sister, and resides in Alabama. She is disabled due to epilepsy. She reported that Mr. Finklea's mother "used to mistreat Ron, beating him, cussing him, and things like that...she would whip him with a belt or switch, she would put him in cold water when he wet the bed, but he didn't wet the bed when he was at my house." She stated Mr. Finklea "would come away to my house after Betty beat him...Chanell and C [REDACTED] were her heart, but not Ron." Ruby stated she "would see the marks on him after Betty's whippings, she would whip him when he was wet [on purpose, as it hurt more] and make him get in the tub, he never fought back, he was just respectful because that was his momma..." Of his mother's personality, Ruby stated, "she would stab you in the back if you turn your back."

Collateral Interview [Brother]: Mr. Finklea's younger *brother*, Mr. Curtis Blount indicated the following. Mr. Blount is 38 years old, disabled, and resides in Alabama. He and Mr. Finklea share the same mother, with different fathers. He is their mother's youngest child, and presented as defensive and protective of his mother. By all accounts, he was not abused as his sister and brother were, possibly related to his diagnosis of leukemia at age two, resulting in stunted growth and medical problems. However, even he acknowledged that his mother would "get two or three switches and tie them together, hit our legs, beat you with whatever she caught you in (e.g., shorts or pants). She "would whoop you for however long to make her point." He reported Mr. Finklea would "get whoopings for bed wetting." Their mother would also "curse us out, call him 'big eye, sit your a** down.'" There was no thought of reporting her abuse, as the family culture was "don't tell stuff outside of the house...we didn't want to take the chance of mom getting mad and [child services] coming to the house" He also acknowledged that "alcohol and weed" were "sold out of the house by mom" during their upbringing.

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Collateral Interview [Niece]: Ms. Kinwin Brown, age 30, is Mr. Finklea's *niece*, his sister's child, who was born when his sister was a young teenager. Therefore, his mother raised Ms. Brown. Of Mr. Finklea, she stated "I had a really good uncle, really good, really smart, he's my favorite uncle, he's like a dad." When asked about any abuse during her childhood, Ms. Brown stated Betty "punished us, got whoopings, if you did something wrong, you got your butt whipped." She stated, "sometimes I would say the beatings were excessive, but from the stories I've heard, I had it easier [than Mr. Finklea and Chanell], I would call those beatings [versus whippings] to be honest." She stated, "I heard from my uncle that he got beat, it was just so much, she hated them, it's like they were a hindrance, it's like they weren't wanted, they would get beat for anything, with anything." She stated Mr. Finklea "would tell me about the beatings way before his arrest, he could have been worried about me [since she was living with Betty], he was very protective." She believes her upbringing with Betty was better, with less physical punishment, as Betty did not "hate" her, as she seemed to hate Mr. Finklea and his sister.

Ms. Brown also acknowledged that Betty was "still selling alcohol from the house" during her upbringing, which brought "a lot of people" to the house. She stated, "it was embarrassing as I got older," to have people know that such activities were going on in her home. Of their neighborhood of Limestone, she "considers it the ghetto" and stated there was drug activity and "a lot of violence" in the neighborhood. She noted, "there is still crime, crime was around when I was coming up, but I was really never allowed to leave the house, Betty was really strict."

Collateral Interview [Mother]: Mr. Finklea's *mother*, Ms. Betty Finklea-Peoples, was interviewed. She is 64 years of age, and resides in Monroeville, Alabama. She presently works in housekeeping at a local motel. She stated Mr. Finklea was born in 1973, in Washington, DC, and they moved to Alabama in 1980. While in DC, she met Mr. Finklea's father, became pregnant, and then "found out he was married," which ended the relationship. She "never heard" from Mr. Finklea's father once they moved to Alabama. Also in DC, she met the father of Mr. Finklea's younger brother, Mr. Roosevelt Blount, who moved in with them when Mr. Finklea was 5 or 6 years old, and then relocated with them to Alabama.

Ms. Peoples presented as guarded and defensive during the interview, particularly when asked about her treatment of Mr. Finklea during his upbringing. However, she acknowledged "spanking" and "whooping" Mr. Finklea as a child, at one point stating, "I couldn't whoop him for everything, if I did, *I would have whooped him to death*." She acknowledged "whooping" Mr. Finklea "with a switch." She noted an instance in elementary school when Mr. Finklea "wiggled his ears, the teacher said he was doing it, and he said he didn't do it, and I went to the school, and I tore him up." [Ms. Peoples often used the phrase 'tore him up' to refer to aggressive beatings]. He was in the "4th grade" at this time. She "tore him up... in front of the class, I took my belt with me." She believed he wiggled his ears "to scare people, other kids would run from him."

She described another incident in which she was angry with Mr. Finklea after he took her car without permission and stated, "If I had found him, *I would have beat him to death*, but the police said, 'we will lock you up,' so I didn't, *I was going to beat him, beat him, beat him*." She stated, "that's the only reason I didn't beat him because the police said I could go to jail" but she was "going to put a baseball bat on him."

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Of the beatings, she would "use what I had to whoop him, *I tore that tail up, but I wouldn't kill him,*" implying that she stopped short of fatally wounding him. She used "a switch, belt, hand...*but I didn't kill him.*" She also acknowledged, "whooping" him "outside" in the yard, as well as inside the home, in that she would "*go outside and tear him up, whoop that butt.*" She did not believe she beat Mr. Finklea more than her other children (despite all reports to the contrary), but did say she "would whoop him longer," and that "his shirt was off a couple times."

Ms. Peoples reported that Mr. Finklea wet the bed when he was young, from approximately 7 or 8 years old, to ages 12 or 13, which occurred "two or three times a week." She "took him to the doctor and they didn't give me a reason." She admitting placing a "rubber band on his penis, so that once he feels full, he will go to the bathroom." She also "put him in the bathtub to sleep, but he still wet the tub." She noted, "he didn't wet the bed at his Aunt Ruby's house" and believed he did so at her house, "because he was lazy."

In addition to the "whoopings" and abuse of Mr. Finklea, she described a violent end to her relationship with Mr. Finklea's stepfather, Mr. Roosevelt Blount, who she described as a "drunk." He "jumped on me, and beat my head, and hit me with a piece of iron." They had a "bad fight and broke up" and "I never saw him again." She later married Charlie Peoples, who was Mr. Finklea's stepfather for the remainder of his upbringing. Mr. Peoples was, "gone six months" at a time due to his work as a commercial fisherman. Ms. Peoples had stepchildren from her marriage to Charlie Peoples. Of those children, she "called DHR [Child Protective Services] and they came and got them, it was too many for me to raise." Essentially, these children were placed in foster care, as she wanted them removed from her home. Further, once married to Charlie Peoples, she acknowledged having sold illicit alcohol from their home in Alabama, "from the shed," but denied any legal difficulties from this operation.

His mother further noted that Mr. Finklea was not social as a child, and "never wanted to go to games or the club as a kid...people thought I only had two children (his sister and brother) because he would stay home so much." When Mr. Finklea did go out, "people would ask me 'where did he come from?'"

[Of note, the interview took place in her home, and Ms. Peoples' great-granddaughter, a two year-old child, was present in the room. Ms. Peoples repeatedly threatened to "pop-pop" this child. This was not said in a light-hearted or joking manner. At one point, she directed the child to retrieve a switch, which was lying on top of the washing machine and bring it to her. She took the switch from the child, and held it in her hand, while she would repeatedly reference using the switch to "pop-pop" the child if the child did not comply. She seemed completely unaware of the inappropriateness of this behavior, particularly as she was being interviewed about physically abusing Mr. Finklea during his upbringing].

Collateral Interview [Former Girlfriend]: Mr. Finklea's former *girlfriend* and high school 'sweetheart' Ms. Boneatha Hill was interviewed. She is a few years younger than Mr. Finklea, and resides in Alabama. She has "good memories" of their relationship, describing him as "sweet." She described Mr. Finklea's mother as "mean," and confirmed reports that she was not allowed on his mother's property, or in her home. She reported one occasion when Mr. Finklea "got in trouble" because his mother saw him talking to her across the street from his house.

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Ms. Hill also described that she [Ms. Hill] was rather controlling in their relationship and "would not allow him to go to either [junior or senior] prom." She also "cut him one time with a knife" due to anger and feeling jealous during their relationship. This incident produced a still noticeable scar on Mr. Finklea's inner forearm.

Collateral Interview [Childhood Friend]: Mr. Karlos Beasley, Mr. Finklea's childhood friend was interviewed. He knew Mr. Finklea "from elementary through high school" and "went straight into the military after high school" as did Mr. Finklea. He had "heard rumors of root in the area" of his mother's home, and described the Limestone neighborhood as a "high crime area." Mr. Beasley "never heard" of Mr. Finklea's mother beating him, but stated, "we were macho, and in defense of our mommas," therefore, he thought it very doubtful Mr. Finklea would have told him.

Collateral Interview [First Wife]: Ms. Cherena Roland, Mr. Finklea's first wife, and mother of his eldest child indicated the following regarding his trauma history. Ms. Roland is three years younger than Mr. Finklea and resides in Washington State. Ms. Roland met Mr. Finklea as a teenager, when they were both living in Washington State, while Mr. Finklea was stationed at Fort Lewis. In May 1993, they married after two years of dating. When they first met, she described him as a "very nice, sweet person" and that he was "small for his age."

Ms. Roland described Mr. Finklea's family as "very toxic," and in particular, his mother, whom she described as a "very angry" person. She was familiar with Mr. Finklea's mother, having met her on several occasions, and having heard about her during their marriage. She described Betty as an "evil person, has a horrible heart, she wouldn't call him by his name in front of me, would call him 'ugly, big-eye, black, mother-f**ker...she was also into voodoo." When asked how Betty treated her, Ms. Roland stated, "combative, she would bring up every other girlfriend in his past, I always had to keep an eye out for her, she was phony, fraudulent, tried to act endearing, but she was belittling, *made me feel like prey*." Looking back, she "feels so bad for her kids," including Mr. Finklea, stating, "she's a wretched person...I don't see any good coming from her."

During their marriage, Ms. Roland would hear stories about Mr. Finklea's history of abuse by his mother. She recalled, "she shot the gun at him when he was little, in elementary school, he would purposefully hide, and tried to live in a little playground area [at school], and the teacher had to talk him out of it to go home, it was his safe place." He "never said any fond memories," of his childhood or mother, and as an adult, "anything she [his mother] needed, he felt like he needed to give her."

When asked if Mr. Finklea mentioned his mother's beatings during the relationship, she stated, "oh yes, Betty was proud of the beatings, she owned it..." She also noted, but it was "defacing for a man to talk about it, and she would grab him by his junk [genitalia] and say this is mine, you're mine." She considered this "sexual abuse, grabbing his genitalia." She also recalled hearing stories of his mother "prostituting Chanell [his sister]." Additionally, when Ms. Roland visited his mother in Alabama during their marriage, she "saw Betty bootlegging when I was at her home."

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Ms. Roland also stated that Mr. Finklea "expressed anger and hurt" over his father's absence in his life, and "his mom would throw it up in his face." She believed this was because Mr. Finklea and his father "looked exactly alike, and Betty talked to him like he was his father."

Their son, 'R ■ J ■,' was born on April 1, 1994, and "he was a good father, really good father." However, she "felt like he could only go so far because he had a block and he couldn't go farther because of his past, he tried to put a mask on it." During the last interaction she had with his mother, she described that Betty was vengeful and angry with her. She arranged it so Ms. Roland was left in Alabama without a way to return home, with no money, and no assistance. Ms. Roland stated she was "helped by a stranger, a woman, to get out of Alabama."

After the birth of their son, Mr. Finklea was stationed in Panama "two to three years" into their marriage. During his time in Panama, Ms. Roland "broke it off, but it was a mutual thing, R ■ J ■, was two years old, or younger" when they separated. She only saw Mr. Finklea a few times after their separation. The offense occurred when their son was 9 years old, and that afterwards, "he always kept in contact with R ■, J ■, but I would not give him a lot of the letters."

Of Mr. Finklea, Ms. Roland stated he "always had pride in being in the military and of his accomplishments...I know getting out of the military hit him hard, and he had a hard time transitioning to civilian life." She stated that "in prison, he's leading his most productive life, he can come into his own, and find peace and solace and be his own man." She stated, "I still love him to this day, *but his childhood ate away his spirit, and he couldn't manage it.*" She believes his mother "is a monster and I'm surprised her children have survived, but they are not really living because she f**ked them up so bad."

COLLATERAL Interviews – Prior Data: Prior mitigation specialists involved in his case, Ms. Nancy Smith, and Ms. Tara Waters, conducted multiple interviews with Mr. Finklea's family members and others in 2011 and 2012. Their interview notes were reviewed for pertinent information related to any history of trauma and abuse. Further, interviews by defense investigator, D.B. Mac Dougall were also reviewed, with pertinent data included; as well as electronic correspondence from Mr. Finklea's second wife, to Donna Schwartz-Watts, MD.

Prior Collateral Interview [Sister]: Data from interviews with his sister, Ms. Chanell Finklea, indicated the following. In May 2011 [N. Smith] she reported a generational history of domestic abuse and violence on the maternal side of the family. Mr. Finklea's maternal grandfather was reportedly physically abusive towards his wife (Mr. Finklea's maternal grandmother), and his children, including Mr. Finklea's mother. Alcoholism was also present in the family, with his maternal grandfather drinking excessively, and was a "drunk."

She reported Mr. Finklea was treated worse than her, or their brother, and was viewed as the "black sheep" of the family. Chanell reported that Mr. Finklea received frequent, excessive and prolonged beatings by their mother, much more so than she or their brother. She "would beat Ron without asking any questions...would just beat him over and over...he'd cry after the beatings..." Their mother would sometimes "beat him in the middle of the night" after which he "would come and crawl" into her bed "and she would try and comfort him." She also received beatings from their mother, and detailed "one beating that was so bad that it hurt to lie down at night."

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Sometimes [she and Mr. Finklea] "were beaten because their mother thought they were spreading family business" to other family. On one of these occasions, their mother "beat them badly" in the front yard "with a hanger that was attached to a water hose." She had to use a pillow to "prop up her legs because her legs hurt so badly." She also related an occasion at age 14 or 15 when their mother brought out a "pistol" with her and Mr. Finklea, and "told her that she would shoot her in the foot if she left the yard."

Chanell recalled another instance where "Betty beat Ron with a brown extension cord and she was hitting him across his back." He "tried to pretend like the constant beatings didn't bother him" and would try not to cry. She "was telling him to cry so the beatings would stop." She recalled another instance when their mother "was trying to beat her between her legs on her vagina." She "kicked her mother and fell into her dresser" and "still got a beating." During this occasion, her "mother hit her with a belt buckle and it left a scar." She stated their mother used "extension cords, water hoses, clothes hangers, belts, switches or whatever was nearby" and "she beat them for no reason."

From Chanell, it was noted, that their mother "would beat them whenever she wanted and for nothing. She would beat them just for laughing when she didn't think they should be laughing." It was noted their mother "would come into their bedroom and beat them in the middle of the night when they were sleeping." She would also "put them in the bathtub and beat them with an extension cord." She beat them in the bathtub so they "couldn't move." She further stated their mother was a "bootlegger," and that if they did not have many customers at the house, she threatened to beat them. She stated Mr. Finklea would sometimes stay with their Aunt Ruby to get away from their mother's beatings.

Neither she nor Mr. Finklea told social services or other authorities about the beatings because "their mother threatened them" with "worse" beatings. She would try to hide "welts" on her body, and missed school due to the marks. They did not tell family, because other adults in the family were also abusive to their children. She stated their stepfather, "Charlie Peoples," "had no problem with Betty beating the kids because he beat his kids also," providing an example of how he beat his children with an "axe handle." They were also somewhat isolated from peers as "they weren't allowed to leave the yard" and "weren't allowed to have sleepovers or friends over to the house."

Chanell also stated that their younger brother's father, Roosevelt Blount, "used to beat" them, and sexually abused her. On one occasion when she was 10 years old, Mr. Finklea "pulled her out of the bedroom" and "they ran to her grandmother's house" to report the attempted rape. However, their mother did not believe them. Mr. Blount was also a "big drinker." He left their home in a violent manner, having shot at them, and "destroyed" their home. He had "took an axe to the house and chopped up most of the furniture...[and] tore the cabinets off..."

Chanell recounted that Mr. Finklea wet the bed as a child, and that "Betty gave Ron beatings for wetting the bed" and "would yell at him," cursing him and calling him names, such as "you pissing bastard." She would also tie a "rubber band around Ron's penis at night" and "Ron came to her room at night to get help with removing the band..." She also "tied a milk jug to his penis" and "made Ron sleep in the bathtub naked with no blankets for punishment for wetting the bed."

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Because of their mother's treatment, Chanell "would wake Ron in the middle of the night and take him to the bathroom so he wouldn't wet the bed." Their mother would not allow Mr. Finklea to go to friends' houses for fear he would "piss all over their mattresses." She stated he "continued to wet the bed though high school."

Chanell stated "Betty beat Ron until he was about 16 years old" and stopped beating her when she was "16 or 17" years old. As an adult, she reported not speaking with her mother for "months" at a time, and "said her mother would find something negative about every situation and then use it against her." She also still calls her names, such as 'whore' and tells her 'you'll never be sh*t.'

In later interview with Chanell in *August 2015* [T. Waters], she reiterated the abuse by their mother, accompanied by yelling, cursing, and belittling behaviors. She clarified that their mother "didn't whip him [Mr. Finklea], she beat him," and that "her beatings left welts with cuts in the center." She stated, "Ron got it the worst," despite the fact that her behavior was much worse as a child. She stated their younger brother was treated differently, and not beaten. She reiterated her mother's choices of items, to include "extension cords, branches from the rubber tree and garden hoses (with hangers inside)." She also reported their mother "pulled a pistol" on her and Mr. Finklea, pointing it at them and ordering them out of the house.

She further reported "mental and emotional" abuse as well, providing the example of Mr. Finklea showing his mother "Honor Roll report cards" and that "she reacted with hatred." Chanell indicated, "she was not supportive of his school success" and "instead questioned how someone 'like him' could possibly make those grades." She reported sexual abuse by their stepfather, Mr. Blount, however, her mother "did not believe her" and the abuse continued. Chanell also stated that when she became pregnant as a teenager, their mother "beat" her and Mr. Finklea "with a broom handle" because she believed Mr. Finklea knew about the pregnancy. She described her mother as "mean and hateful" and she goes long periods without speaking to her.

Prior Collateral Interviews [Aunt]: Interview data from *May 2011* [N. Smith] with his aunt Ruby Finklea indicated the following. His aunt stated Mr. Finklea's mother "started abusing Ron when they got back to Alabama." His mother "put Ron out of the house in the middle of the night in the pouring down rain on several occasions," and he would come to her house "because he'd been forced out of the house." He would also come to her house "crying" when "mad at his mother," which was "often." Ms. Finklea stated his mother "treated Ron like a dog" and "like a zero." She also noted his mother treated Mr. Finklea's siblings differently, buying them things, however, would "get nothing for Ron." She noted Mr. Finklea "had a problem wetting the bed at night." His aunt further described his mother as "mean and hateful" as well as "hateful and thoughtless."

His aunt was again interviewed in *September 2012* [T. Waters], and was described as "very adamant" that Mr. Finklea's mother favored her other children, and "did not give Ron the love a child deserved." During this interview, it was reported she was "unaware" of any physical abuse (despite reporting it during the 2011 interview), but "acknowledged that things may have happened behind closed doors that she was not aware of."

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Prior Collateral Interviews [Cousins]: Interviews with his first maternal cousins, Ms. Nicole Fantroy and Ms. Erica Middleton, indicated the following. They are the daughters of Mr. Finklea's mother's sister, Ruby, and were raised in close proximity to Mr. Finklea in Alabama.

In *June 2011* [N. Smith] Ms. Fantroy stated that Mr. Finklea "was punished more than his siblings" and that "Betty treated Ron differently than his siblings." His mother "was always spanking Ron for the stuff that he did and rarely punished" his siblings. She believed Mr. Finklea "walked a thin line at his house...always trying to make sure that he didn't get in trouble." She "assumes this is the reason that his room was always so neat" as he "didn't want to cause trouble with his mother." She also recalled his mother "making Ron sleep in the bathtub at night" because he would wet the bed, which was "humiliating" for Mr. Finklea. She recalled a specific instance when he was 12 years old, but that she believes he "wet the bed up into his teenage years." She also recalled his mother threatening to put a rubber band on his penis.

In *May 2011* [N. Smith] Ms. Middleton reported Mr. Finklea's mother was "mean to Ron...used to lock Ron in the closet and make him sleep in the bathtub at night." He would come stay at her home "for weeks at a time" to "escape" the abuse in his home. She believes his mother would look at him with "disgust," and "never told Ron that she loved him and she never showed him any affection." She believes "Betty hated her son." It was noted, "no one understood why Betty hated Ron so much. Betty was so hateful to Ron." Ms. Middleton implied that Betty did not treat her other children with so much hatred. She also "made Ron sleep naked in the bathtub as punishment for wetting the bed" and "would call him terrible names all the time." She would "beat Ron with belts and switches" and "beat and yelled at him pretty much every day." She "took everything out on Ron." She "thinks Ron became immune to the whippings because he got them so often." She also stated, "Ron never fought back when his mother beat him, and she beat him all the time." She stated, "Betty never told Ron that she loved him and she never showed him any affection." She described his mother as a "hateful woman."

In an interview from *September 2012* [T. Waters], Ms. Middleton reiterated that she believed Mr. Finklea's mother "hated" him. She recalled an incident when she was at Mr. Finklea's home, and his mother "beat him badly," when he was a teenager. She recalled the interventions of making Mr. Finklea sleep in the bathtub, and a rubber band around his penis. She stated that his mother's "heart is black" and "she was hateful and mean." She reported long periods of not speaking with her aunt.

Prior Collateral Interviews [Mother]: Data from interviews with his mother, Ms. Betty Finklea-Peoples, indicated the following. In *April and May 2011* [N. Smith] she reported that her father, Mr. Finklea's grandfather, was "a drunk," and described a poverty-stricken upbringing. She reported "working in the fields when she was just eight or nine years old." She reported her father beat her with "extension cords" and other items, and she was "proud of the whippings she received." She also reported significant domestic violence perpetrated by her father towards her mother, and that he "beat her with whatever he had in his hands." Her mother would "end up with busted eyes and fists" and a "busted head." Her mother had to seek medical treatment for the abuse and tried to leave her father multiple times. She described her father as an alcoholic.

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Ms. Peoples reported Mr. Finklea's father, "didn't put any time in with Ron" and "did nothing" for Mr. Finklea, "never supported him." He was "married" to someone else during their courtship. She stated, "he disappeared when Ron was about four months old." She next met the father of Mr. Finklea's younger brother, Mr. Roosevelt Blount, and they moved to Franklin, Alabama when Mr. Finklea was seven years old. She reported his younger brother was diagnosed with leukemia at two years of age and required regular chemotherapy treatments, resulting in stunted growth. She and his younger brother's father broke up when Mr. Finklea was approximately 12 years old, and she described a violent altercation, during which he "beat" her with a "piece of iron." It was noted that, "he was drinking and jumping on her...he stomped her stomach...he just about killed her." He left their home after this incident. In 1985, she married Charlie Peoples.

She acknowledged "whooping" Mr. Finklea for not going to school one day, and "wiggling his ears" on another occasion. She recounted a story of wanting to 'put a baseball bat on Ron' after he used her car without permission, however, "the police officer told her not to do that or they would have to arrest her." She reported another time when she took Mr. Finklea to the hospital after he was hit by a car, and "the doctors at the hospital didn't think his injuries were due to an accident. They thought Betty beat him." The doctors "asked Betty if Ron was abused," and "she was quick to state that she never abused Ron."

In a later interview, in *September 2012* [T. Waters], his mother was more upfront in reporting physical abuse towards Mr. Finklea. She admitted that she "tore him up" on numerous occasions and that he was "beaten more" than his siblings. She acknowledged that she went to his school and "took him outside and beat him" after finding out he was wiggling his ears for other students. She acknowledged having made him sleep in the bathtub and putting a rubber band on his penis to stop bedwetting. She also "readily admitted" to "selling liquor out of her home" during Mr. Finklea's childhood and "insinuated" the police "may have been her customers."

Prior Collateral Interview [Cousin]: In *June 2011* [N. Smith], Mr. Finklea's maternal cousin, Mary Jackson was interviewed. She grew up with Mr. Finklea, and indicated the following. She indicated, "Betty used to make fun of Ron. She called him names just about every day." Specific names included " 'big eyed' and 'monkey ears.' " She never witnessed Mr. Finklea beaten by his mother; however, she "saw scars on Ron from whippings that he said were from his mother." She discussed that Mr. Finklea would tell her that his mother "favored" her other children. She did not recall any birthday parties for Ron, however, did recall them for his sister. She noted Mr. Finklea "wet the bed," and the "adults used to talk about it," while others would call him names. She further believed Mr. Finklea was "lacking a father figure and this was something that he desperately needed." She also described Mr. Finklea's Limestone neighborhood as "rough" with "lots of drinking." She was not allowed to go into this neighborhood.

Prior Collateral Interview [Friend]: In *June 2011* [N. Smith] Mr. Phillip Peoples was interviewed. Mr. Peoples is Mr. Finklea's stepfather's nephew, and grew up with Mr. Finklea, whom he considered a friend. He described Mr. Finklea's neighborhood of Limestone as "rough" with "lots of drinking and drugs." He saw shootings in the area, and stated, "there was a small club next door to Ron's family" and "there were a lot of fights and shootings that took place at the club."

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Of Mr. Finklea's family, Mr. Finklea's stepfather "drank heavily" and "would become violent when he was drunk," prompting Mr. Finklea's mother to leave the home with the children. He also noted that Mr. Finklea's mother and stepfather were "bootleggers" and "also sold drugs" including "marijuana when Ron was in high school." Specifically, Mr. Finklea's mother "was very involved in the bootlegging and drug dealing." He also noted that Mr. Finklea's mother "forced" Mr. Finklea's stepfather's children out of the home and into foster care, and "had mood swings all the time."

Prior Collateral Interview [Former High School Teacher]: In September 2011 [N. Smith] Mr. Sam Lipscomb was interviewed. Mr. Lipscomb was Mr. Finklea's high school teacher, who taught masonry. He described Mr. Finklea as "as an ideal student" who was "well-mannered" and that he "never had any trouble with Ron in the classroom." He "could rely on him to help out the other students." Mr. Lipscomb provided more insight into Mr. Finklea's Limestone neighborhood. He described it as a "tough neighborhood that consisted of mostly low income, uneducated families." He estimated that "probably 75% of the youngsters never graduated from high school," therefore he was "so proud of Ron for graduating..." He described, "there was a lot of drug trafficking in the neighborhood, as well as bootlegging," with an estimation that "90% of the men in the Limestone neighborhood have been in jail." He also described Mr. Finklea's stepfather's family (the Peoples) as a "rough bunch."

Prior Collateral Interview [Former High School Teacher]: In June 2011 [N. Smith] Ms. Louise Mayhand, was interviewed. Ms. Mayhand was Mr. Finklea's high school teacher, and had some knowledge of Mr. Finklea's circumstance. It was noted, "the students at school talked about Ron's mother. They told Ms. Mayhand that Betty was a bootlegger." It was also noted that she "said the Limestone neighborhood is a terrible place and she doesn't go there."

Prior Collateral Interview [Former (First) Wife]: In September 2004, defense investigator, D.B. Mac Dougall interviewed Mr. Finklea's first wife, Ms. Cherena Roland. It was reported that Ms. Roland described his mother as "abusive and strange. When he was a child Ron was in the yard and his mother shot a gun at him to make him do something. The mother also believes in voodoo and casts spells on people." She recalled that his mother "berated Ron in front of C [redacted] and others including a time the mother said to Ron, 'come here you black motherf**ker.'" She told of being intentionally stranded by his mother during her last visit who "refused to drive" her to the airport, therefore she walked to town and relied on strangers to assist her in getting home.

Of their marriage, she reported "lots of fights" and "personality disputes," but "only one physical confrontation." It was noted, "he did not hurt her nor were there any bruises or marks." She reported the police were never called to the home. When Mr. Finklea went to Panama, "she had decided she no longer wanted to be married to him" and in 1998, filed for divorce. She noted intermittent child support compliance from Mr. Finklea.

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Prior Collateral Correspondence [Former (Second) Wife]: Electronic correspondence from his second wife, Teresa Fuller-Finklea to D. Schwartz-Watts, MD, in *September 2007* indicated the following. Of Mr. Finklea's childhood, Ms. Fuller wrote, "He was always trying to impress and please his mother. I think that he was really afraid of her. He would sometimes tell me about the beatings that he suffered at her hands and how she treated him differently from her other children. I think that there is really something not right with him. He would sometimes have nightmares and he on occasion wet the bed." He also "asked me why do I think God put him here. He said he doesn't have a purpose in life...I think something was instilled in him as a child. I think he had a terrible childhood."

Regarding their marriage, she referred to him as "miserable" and that "seems like he was always looking for acceptance." She noted, "I think he probably [*sic*] did have some mental issues" in that, "sometimes he could be so sweet and then others you would have to walk on eggshells around him." She further noted he "lived in a fantasy [*sic*] world" and she found out later he had lied frequently. She also noted, "after he became disabled he did change he felt useless" and "he felt that I was going to leave him behind."

▪ **MENTAL HEALTH HISTORY**: Mr. Finklea's mental health history is presented below, per current and prior examinee and collateral interviews, and collateral records. His history is presented in chronological order, to include pre-offense functioning, pre-trial functioning, and functioning during his present incarceration. [Note: A review of psychological symptoms over the course of his life, per his self-report, is presented in a separate section below].

PRE-OFFENSE - Examinee Interviews [Prior Data]: Mr. Finklea's interviews with previous mitigation specialists involved in his case were reviewed for any information related to his psychiatric functioning. In *May and June 2011* [N. Smith], it was noted that Mr. Finklea was "constantly watching, observing, and looking for inconsistencies...looks for things that are out of order and then tries to straighten them. Everything had to be perfectly in place." He reported intolerance of things out of order, or in disarray, and of having to straighten things that were out of line. He reported cleaning the bathtub before and after he took a bath, sometimes having to stop in the middle to clean the bath "if he noticed any film on the tub..." His car was "spotless" and was wiped down daily.

With regard to his focus on germs, and cleanliness, he provided the example of staying in a hotel room, which he would wipe down "before he would sleep in the room because 'people leave pieces of them behind in a room.'" Before checking into a motel room, he "would stop at the store...buy cleaning supplies...would wipe everything in the room down...would take the sheets off the bed and take them to a nearby Laundromat, wash them and put them back on the bed."

He further reported that his mind is "always racing," with difficulty relaxing. He reported counting behaviors, and that he is "obsessed with even numbers." It was noted, "he has a bizarre ritual of speaking/thinking in sentences with words that have an even number of letters, even if it doesn't make sense grammatically. In his head, he will add a letter to a word to make it an even number of letters even if it isn't spelled correctly. He will also add an extra word to a sentence so there is an even number of words in the sentence."

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He reported a history of depression after he “blew out his knee” during the military, while stationed in Germany. He underwent knee surgery, and afterwards, was “prescribed amitriptyline for depression” which he took for several months. He reported not being able to get out of bed due to depression, and feeling “as if he lost control of his body because of the weakness in his knee.” He “didn’t feel confident” and “got depressed because of his inability to move forward.” He also reported depression when feeling rejected by his mother as an adult. It was noted, “he was always trying to win her approval, but it never happened.” Additionally, he reported a history of panic attacks and difficulty sleeping.

PRE-OFFENSE - Collateral Interview [Prior Data]: In June 2011 [N. Smith] his *mother* reported that Mr. Finklea was “real weird” because “he didn’t communicate with too many people growing up.” She also noted he “stuttered since he was a child.” He began to keep his room “very organized” as he got older, with his bed made every morning and his shoes “perfectly lined up in the closet.” His clothing would be “organized separately” by type of item. She thought this was “odd” for a teenager. When he was an adult, and staying with her for a time, he would “bathe” three times daily, and “clean the bathtub before each bath.” He “would wash and sanitize his hands all the time” and “get up in the middle of a conversation and run into the bathroom and wash his hands.” He “brushed his teeth several times a day for 10 to 15 minutes at a time.” He also re-arranged the towels and washcloths in her bathroom “by color.” He was “very concerned” with the neatness of his appearance and frequently cleaned his car.

PRE-OFFENSE - Collateral Interview [Present Evaluation]: Ms. Cherena Roland, Mr. Finklea’s *first wife* described the following to the examiner. After their marriage, they moved to Fort Polk, Louisiana, where Mr. Finklea had been transferred. During their marriage, she described him as a “good person, but he would snap.” She described him as “controlling,” providing the example that “he wanted me to eat how his mother ate during my pregnancy.” At times, he was “very endearing, and very sweet, but had a dark side with anger, he would flip out if the house wasn’t cleaned, or if certain foods weren’t cooked, or cooked in a certain way, it was not a healthy relationship.” He would “cry and apologize,” after he became angry, “like he didn’t know it happened, didn’t remember...like a blackout.”

She also reported “very OCD” behaviors from Mr. Finklea during their marriage, to include “he would get angry if the house wasn’t cleaned, meticulous, he needed it to smell like bleach every day, his clothes were aligned perfectly, he excessively washed his hands and showered, if [due to money] he had to choose between food and cleaning supplies, he would choose cleaning supplies.” She stated, “everything needed to be lined up perfectly, everything in its own space, he was angry if it wasn’t.” He also alphabetized items such as DVD’s, and “would be very aggravated if they were out of place...shoes needed to be lined up just right, and supplies lined up just right.” His clothes were also “arranged by color” and he was overly “fearful of getting sick, germs.”

PRE-OFFENSE - Collateral Interview [Prior Data]: In February 2012 [N. Smith], Mr. Theodore Davis, his *co-defendant*, provided the following information regarding Mr. Finklea’s functioning in the months prior to the capital offense. It was noted that Mr. Finklea “wasn’t very social” and “mostly spent time at home.” He also “drank quite a bit of alcohol” consuming “a case of beer every other day” and “a fifth each week.” He seemed to be easily irritated. He “lined up his shoes in sets of five at the front door.”

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Mr. Finklea's "lucky number" was 5, and there were sets of five items throughout the house. He did not wear shoes in the home, and "made everyone take off their shoes at the front door so as not to track dirt in the home." He also "hung up both his underwear and socks." He was noted as "obsessed about cleaning" and Mr. Davis described him as a "germaphobe." He would wipe down the video controllers, and video games with "bleach" after their use by someone else. He would also alphabetize the videogames. His cleaning was obsessive in the sense that if he "saw a piece of lint on the floor he would sweep the entire floor."

Regarding personal hygiene, Mr. Finklea was reported to have "bathed three or four times a day," washing the bathtub before he got in, cleaning it when he was done, and mopping the floor after each bath. Mr. Davis noted that Mr. Finklea "washed his hands...all the way up to the elbows," which Mr. Davis was required to do in order to obtain food from the kitchen. Mr. Finklea "would only eat certain things and they had to be cooked in a certain way." He would have to "watch Theodore cook if he was going to eat something that Theodore made." If Mr. Finklea were cooking, and "forgot to wash his hands...he would curse himself and throw the food away." His drinking glasses had to be "boiled in water" before use, resulting in broken glasses.

When visiting Mr. Finklea's family in Alabama, Mr. Davis stated Mr. Finklea took his own bed sheets, and sprayed down the room with "orange spray." He would spray the seats of his car, and "kept baby wipes in the car and on him at all times." He also kept a "bath kit" in his car. He would not allow others to have their shoes on in his car, and instead made people "knock them off before you got in the car." He then "placed the shoes on a piece of plastic" until the person was "getting out of the car." Mr. Davis also stated that Mr. Finklea "wouldn't shake hands with someone when he met them...only give them a fist bump and then would wipe his hands down with baby wipes."

Mr. Davis stated Mr. Finklea "would stay in his bedroom for two or three days at a time" and would not come out to eat. He "kept five bottles of water in a cooler" in his room, and put bags of ice in the cooler, as he believed the ice in the refrigerator was "dirty." Mr. Davis said he "wanted to be perfect and the littlest thing would throw him off."

PRE-TRIAL - Examinee Interviews [Present Evaluation]: Aside from several months of an antidepressant, Mr. Finklea reported no formal history of psychiatric treatment prior to his pre-trial detention. On August 8, 2003, three days after his arrest, he attempted suicide by hanging at the Lexington County Detention Center [LCDC]. This attempt resulted in life-threatening circumstance, with subsequent psychiatric treatment to present. He was questioned about his mental state at the time of the suicide attempt. Mr. Finklea vaguely recalled being in the booking area when he first arrived at LCDC on August 8, 2003. However, he recalls very few details, and does not recall the suicide attempt. Once released from the Lexington Medical Center on August 12, 2003, he began psychiatric treatment at the Lexington County Detention Center.

After his return from the hospital, to the time of his sentencing, he recalled feeling "up and down, always felt anxious, like a small asthma attack, having nightmares on the regular, struggled with sleep, became very concerned about the nightmares." He recalled seeing both Dr. Cherry and Dr. Means, as well as taking medication as prescribed. He did not recall his medication regimen in detail, but stated Dr. Cherry was "trying to find balance for me."

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He does not believe he spoke with his treating mental health professionals about his childhood abuse, or if he did, believed he would have provided very little detail. He explained this would have been due to lack of trust, guardedness, ingrained culture of not speaking outside the family, feelings of shame, and lack of any formal therapy opportunity.

Further, although he did experience residual cognitive effects from the suicide attempt, he acknowledged that during the course of his pre-trial detention, he malingered amnesia for the time period surrounding the capital offense. He clarified that he truly does not recall the suicide attempt, but does recall the homicide incident, and did so at the time of trial. In explanation, he stated he is "very guarded, that's who I am." He explained that his mother said, "don't say nothing to nobody," which influenced his decision. Distrust of trial counsel also played a role. He "did not trust" his trial counsel "at all," as he saw them so few times. He was also "very embarrassed to speak about the case, and extremely ashamed" of his offense conduct. Therefore, he "did not trust his attorneys enough" to discuss the homicide offense, and the 'amnesia' provided a way to avoid talking about it. Eventually, as he repeatedly stated he did not recall, he began to believe, "that's what I thought the lawyer(s) wanted me to do..." Of his pretrial examinations that found this amnesia, he feels "very ashamed and humiliated for the doctors who examined me."

Many of the same reasons apply to why he spoke very little about his trauma history during his pretrial detention. He did not trust his attorneys, and was not familiar with them. Therefore, he employed his "natural response" which is "I'm good, I'm okay, that's how I'm conditioned, from my mom to the military." He also did not know to consider his history as abuse, "it was just how it was." Regarding other experts, he felt somewhat "paranoid and on defense" with Dr. Schwartz-Watts, and "didn't trust her." He remembers asking himself, "who are you, who are you working for?" He did not recall a mitigation specialist. He also reiterated that, "we just didn't talk outside the family." He did not recall Dr. Schwartz-Watts asking him about abuse during the trial. However, he "would have felt that he did not want others to speak badly about my mom" particularly as she would have been in the courtroom. He would have felt "intimated and scared" if that had occurred. It was only when his PCR counsel began spending time with him, and developing trust, that he "started talking little by little."

PRE-TRIAL - Collateral Data: Mr. Finklea's psychiatric functioning during his pre-trial detention per collateral records and interviews is presented below in chronological order. [Although his suicide attempt resulted in medical consequences, this event is included under his mental health history due its psychiatric genesis].

Lexington County Sheriff's Department [Detention Center]: Records dated on August 8, 2003, from the Lexington County Detention Center, indicate the following regarding his suicide attempt. Just prior to the suicide attempt, Mr. Finklea had attempted to use the phone in the booking area, but was "having trouble with the phone." He then "went into his cell with no problems." Officers noted no signs of suicidality, distress or disturbance during this time. A short time later, during a recount of inmates, officers found Mr. Finklea "hanging by a sheet from the vent grate in his cell." They attempted to "cut the sheet" from his neck. It had been "double wrapped and double tied." Once on the ground, they noted his "eyes were open, fixed, and dilated, his mouth was open tongue out."

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Officers and medical personnel began life-saving measures (CPR), as he had "no pulse and no heartbeat." Eventually, they "started a heartbeat but breathing was very shallow." During the incident, he "never spoke." EMS was contacted and he was emergently transported to the Lexington Medical Center.

Lexington Medical Center: Records from the Lexington Medical Center indicate that on **August 8, 2003**, he was emergently admitted as "unresponsive" after a suicide attempt by hanging at the detention center, with an admitting diagnosis of "Hypoxic Encephalopathy." He was "ventilated and intubated" and admitted to ICU. The admitting physician noted that "his prognosis is extremely poor, and I doubt the patient will survive." On August 8, 2003, the neurologist noted "I feel his prognosis for life is very poor" with "no response to stimuli." On August 9, 2003, he was in a "deep coma." On August 10, 2003, his mother and grandmother were noted to be at the hospital. A CT scan on August 8, 2003 indicated "a generalized infarction of the brain," however, on August 11, 2003, a CT scan indicated a "more normal appearance," and "cranial CT appears to be within normal limits."

By April 12, 2003, Mr. Finklea had recovered enough for discharge to the detention center. Per his transfer summary, the physician noted his final diagnoses as "Anoxic Brain Injury" and "hypertension." This physician noted, "at this point, his anoxic insult seems to have been only temporary as he seems to have returned to full cognitive function."

Lexington County Detention Center: Mr. Finklea's Lexington County Detention Center psychiatric records detailing his functioning after his suicide attempt, to the time of his trial (**August 2003 to August 2007**), indicated the following. His primary treating psychiatrist was Dr. M. Anna Cherry, from August 2004 to his sentencing. She diagnosed a "severe" Major Depressive Episode, Posttraumatic Stress Disorder and Panic Disorder. At various times, he reported panic attacks, mood and affective lability, anxiety, depression, irritability, sleep disturbance, racing thoughts, hypervigilance, difficulty concentrating, poor appetite, nightmares, helplessness and hopelessness. Medications included trials of Prozac, clonidine, Remeron, Prazosin, Lithium, and Lamictal. Symptoms appeared to respond to medication, with some alleviation, and notes indicated overall improvement.

Former Treating Correctional Psychiatrist [Present Consultation]: This examiner interviewed Dr. Cherry for additional information. She confirmed her diagnosis of PTSD, as well as "Depression and Panic Disorder." She believed he had "vulnerability and risk factors" for PTSD prior to the capital offense, but that the incident "may have been a trigger for the symptoms to come up." However, she did not know for sure, as she did not discuss his pre-offense functioning, including any prior trauma, in any detail. When she first saw Mr. Finklea, she described him as initially "very guarded, shaky, not a whole lot of communication, it may have been a trust issue, probably having depression, emotional shock and PTSD."

She stated, "PTSD and Depression were valid diagnoses and he ended doing rather well" on the combination of medications and "was pretty responsive." She did not recall exactly what she prescribed. However, she did note that he continued to have episodes of enuresis despite the medication. She believed his enuresis resulted from "being locked in a closet for long periods of time." However, she "did not recall [further] specifics" regarding his history of childhood and abuse.

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In explanation, she stated "our role was to treat active symptoms" and so she did not engage in counseling or therapy services with him about his past. She did recall that, "his preference was not to do anything to mar or hurt his mother," and believed "he asked Dr. Schwartz-Watts not to share anything that reflected poorly on his mother." She noted, "he always tried to show respect for his mother."

She did not recall that he was suicidal after his initial attempt. She believed he showed "no violent tendencies, if anything it was the opposite." She "saw no behavior problems at all" and "no problems ever with other people...he was able to deescalate things." She believed his PTSD "made violence intolerable, he tried to create a climate around him that was not chaotic...to avoid conflict." She believed he did this to avoid resurgence of physiological arousal (e.g., anxiety and panic). Dr. Cherry noted that, as she did not have access to his records, and given the amount of time passed since her treatment, she was recalling all detail from memory.

SCDMH Forensics: On February 28, 2007 and March 12, 2007, Mr. Finklea underwent a Competency to Stand Trial evaluation by the South Carolina Department of Mental Health. He was opined competent, with a psychiatric diagnosis of Major Depressive Disorder, Single Episode in Full Remission; and medical diagnoses of History of Asthma; History of Right Knee Meniscus Injury; History of Pyogenic Granuloma; and History of Hypoxic Brain Injury with Residual Encephalopathic Myoclonus and Urinary Incontinence.

At the time of the evaluation, he was under psychiatric treatment, taking trazodone, Lamictal, Prozac, Remeron and clonidine, for depressive symptoms and "recurrent nightmares." He reported "residual side effects" from his prior neurologic injury in August 2003, to include "periodic incontinence as well as involuntary movements of his musculature." The report noted that an MRI from March 16, 2007 "was normal" and an EEG [electroencephalogram] performed on April 18, 2007 "was also normal." It was also noted, "results of a neuropsychological screening examination revealed that Mr. Finklea's performance ranged from low average to average." Regarding social history, SCDMH examiners noted, "there was no known history of abuse or neglect with the exception of an absent father."

Neuropsychologist - T. Brawley, PhD: On May 17, 2007, Mr. Finklea underwent neuropsychological testing by Tora Brawley, Ph.D. IQ testing indicated a Full Scale IQ of 101, Verbal IQ of 107 and Performance IQ of 92. Areas of weakness included "spatial reasoning," significantly impaired manual speed, below average verbal memory, verbal learning, naming, and copying/recall of a complex design. Dr. Brawley concluded that he "is currently experiencing several areas of cognitive deficits or weakness which are consistent with anoxia that can occur as a result of hanging." She further indicated "there was no evidence of an attempt to malingering or exaggerate cognitive symptoms during this evaluation."

Neurologist - K. Gaines, MD: On July 2, 2007, Mr. Finklea underwent a neurological evaluation by Kenneth Gaines, MD. He reported memory disturbance, headaches, dizziness, 'black-out spells,' intermittent jerking in his arms, legs, and facial muscles, eye twitching, sleep disturbance, and bedwetting. The neurologist issued diagnoses of "post hypoxic encephalopathy, self-inflicted hanging; seizures, post hypoxic, controlled; memory loss, mild, post-hypoxic; and dystonia with blepharospasm, myoclonus and hemi facial spasm, post hypoxic."

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Overall, Dr. Gaines found "mild neurological deficit with mainly dystonic motor features and a history of two post-anoxic seizures presently well controlled." He also found Mr. Finklea to have "permanent impairment." He also stated "Mr. Finklea's only impairment that could be graded using the Guides is his memory loss."

Palmetto Health Richland: An MRI of the brain from **August 24, 2007**, performed at Palmetto Health Richland, for "memory loss" indicated "no acute or specific abnormality identified."

Forensic Psychiatrist - D. Schwartz-Watts, MD: Donna Schwartz-Watts, MD, evaluated Mr. Finklea in 2006 and 2007, at the request of his defense team, with the last evaluation date on **September 4, 2007**. Dr. Schwartz-Watts noted that his "family members did not report any abuse or neglect." However, his ex-wife, Teresa Fuller, "reports that Mr. Finklea did disclose he was beaten by his mother as a child and that he was treated differently from the other children." Mr. Finklea "did acknowledge he was harshly disciplined as a child" and "does admit to some abuse in childhood." It was further noted, "he has avoided discussing his abuse."

Dr. Schwartz-Watts noted his diagnoses from the detention center, to include "Adjustment Disorder, Major Depression, Anxiety Disorder, Not Otherwise Specified, Generalized Anxiety Disorder, Posttraumatic Stress Disorder, Closed Head Injury, Tics and Antisocial Traits." At the time of her evaluation, he was prescribed Prozac, Remeron, clonidine and Lamictal, for treatment of "Posttraumatic Stress Disorder and Depression," per his treating psychiatrist. He was noted to "have symptoms consistent with an underlying chronic anxiety disorder" with collateral reports of nightmares and bedwetting. He also reported "panic" when shackled, and "nightmares about being shackled."

She issued psychiatric diagnoses of "Cognitive Disorder, Not Otherwise Specified; Adjustment Disorder with Depressed Mood; Anxiety Disorder, Not Otherwise Specified; and Dependent Personality Traits." She noted that he "suffers from a cognitive disorder and adjustment disorder, which occurred, after his charges" and "has chronic symptoms of anxiety." Medical diagnoses included, "Post Hypoxic Encephalopathy secondary to self-inflicted hanging; Post Hypoxic seizures; Post hypoxic mild memory loss; Post Hypoxic Dystonia with blepharospasm myoclonus and hemi facial spasm."

Regarding mitigating factors, Dr. Schwartz-Watts found, among other findings, "he did admit to some childhood abuse issues which account for his leaving the home at an early age, and... wanting to be accepted." She also found no prior criminal history; no history of childhood antisocial behavior; that "he served honorably in the United States Army, and he has not been a discipline problem in the detention center;" and that his treating psychiatrist "described him as a model detainee."

Former Treating Psychiatrist - M.A. Cherry, MD: On **September 5, 2007**, Dr. M. Anna Cherry, Mr. Finklea's treating psychiatrist at the Lexington County Detention Center testified at his sentencing hearing, and indicated the following regarding his psychiatric history. She initially diagnosed him with depression, which was, "obvious," but then "realized that he actually had Posttraumatic Stress Disorder." She stated he had "nightmares" and "panic attacks." She noted he "required high doses of several medications" to control his symptoms.

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Dr. Cherry further noted that Mr. Finklea “talked very little” of any prior trauma and that “you almost had to dig it out of him.” She seems to reference his trauma as childhood and familial-related in that she stated she knows the “past” of her patients, and that “out of respect for Ron and the people he cares about, I’m going to choose not to discuss those things even though it might help him...” She stated, “what you grow up with determines much [of] what you become. And I see Ron as someone who keeps fighting to not become the kind of person that he could become.” She also noted that she spoke with Mr. Finklea “just enough for me to understand that there was trauma in his past and that he responded to the trauma like someone with PTSD would respond.”

SCDC Incarceration - Examinee Interviews [Present Evaluation]: Mr. Finklea reported that, in the first several years after his sentencing, around 2008 and 2009, he had “lots of racing thoughts, a lack of acclimation to my environment, my mind was on my children, family, career, what I had lost...” He reported family stressors, with emotional upheaval around family issues. Therefore, he continued with his psychiatric medication.

However, around August 2011, he “no longer wanted [psychiatric] medication because they kept adjusting, increasing or changing, and they needed to do lab work and they weren’t doing lab work and so I started to decline medication.” He described feeling frustrated and worried that the necessary lab work was not being conducted as indicated for his medications. He has a history of abnormal lab results when taking a certain psychiatric medication in 2009, which was discontinued when the results came to light. Therefore, he was already sensitive to the issue of maintaining current blood work, and he felt it was safer to stop taking the medication.

In addition, around this time, he “really locked in and became rooted in my faith and blocked everything else out...” He decided, “me and the ‘Most High’ can handle this.” He had also encountered another inmate, who told Mr. Finklea “about psych meds messing with his liver and the negative effects.” He stated, “this scared me and I decided to not take the medication.” During the time he was without medications, from August 2011 to August 2014, he was still symptomatic, but tried to manage on his own.

In approximately August 2014, he “wanted to start medications back, my concentration was shot, could not keep up with conversations or recall what I read, would drift from thought to thought, started having lows and highs, taking things out of context, my brain was in quicksand or mud, so I reconsidered medication.” Without medication, he described a growing exacerbation of symptoms, with “everything started to bother me, mental sluggishness, energy real low, appetite was horrible, getting frustrated by all the things [stressors] I had [tried] blocked out.” His anxiety and irritability had significantly increased, and “I was trying to deal with it myself.” In efforts to cope, he became “extremely robotic, stacking stuff, wiping stuff, that was my day, not getting any sleep.” Therefore, he decided to resume his medications, however, “wanted to keep it to as few as possible.” Since August 2014, he has taken medication to present.

Eventually, as time has passed with his incarceration, he has “moved away from things I have no control over and moved away from the outside, mentally, and I did much better.” Presently, he sees a clinician from the mental health team every 30 days, with regular psychiatrist visits at longer intervals.

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SCDC Incarceration – Collateral Records: SCDC records indicate he has been under psychiatric treatment from September 2007 to January 2017. Once at SCDC, he was continued on medications and routinely monitored by mental health staff. He was given an initial diagnosis of “depression” with “Unspecified Anxiety Disorder” added in later clinical contacts. He has been treated with various combinations of medications, to include: Remeron [antidepressant often used for sleep]; Paxil, Zoloft and Prozac [all antidepressants, also used for anxiety]; Vistaril [antihistamine used for anxiety]; Depakote [anticonvulsant used as mood stabilizer], Neurontin [anticonvulsant used for anxiety and mood stabilization]; and Risperdal [antipsychotic often used for anxiety and/or mood stability].

Over the course of his incarceration, earlier notes reflect that he was initially more symptomatic and distressed, than in later notes. In February 2008, it was noted “...he is experiencing difficulties...is easily agitated, frustrated and he cries more now than before... states he isolates himself from others as well...” He requested a change in medication to assist with his symptoms. In March 2008, he reported hypervigilance, as well as “difficulties falling asleep, concentration is poor and mood swings are ‘very bad.’” Therefore, his medication was increased.

In July 2008, he reported improved functioning, and when depressed, is “now able to recognize that it is not so serious and that he can control these feelings.” He later reported that his medications were working well, and he “communicates that he misses his children and imparts wisdom to them that is spiritual.” In August 2008, he reported difficulties sleeping, with “thoughts bouncing around his head” about his children, which caused difficulties with focus and concentration.

In September 2008, a year into his incarceration, he reported “that he is an emotional mess... some days he is full of energy and other days he can’t get out of bed, small things upset him...is experiencing difficulties focusing, easily distracted, states he cry [sic] for no reason... can’t understand why he is crying. Go to feeling hopeless to he is untouchable.” It was also noted “his sleep and appetite regimen has fallen off a great deal...states he forces himself to eat.” In October 2008, the psychiatrist added a mood stabilizing medication to his existing medication regimen. A diagnosis of “rule out Bipolar Affective Disorder” was noted in addition to his previously established diagnosis of Depression. In subsequent visits, he reported his medications worked well for him, with stabilization of symptoms.

In January 2009, he reported “some anxiety attacks,” with “jumping and racing thoughts, unable to focus,” particularly at nighttime. It was noted, “he has come to know that he can’t control the situation he is current[ly] in.” In February 2009, he reported improved functioning, but with nightmares, that “have now stop [sic] because he is moveing [sic] around the dorn [sic].” In March 2009, he reported “...racing thoughts, restless, fidgets, mood swings, mostly down, less appetite, angry, frustrated.” His mood stabilizer was increased. In May 2009, it was reported, “still has problems with anxiety, and periods of depressed mood, can’t rest at night due to worry...mood more stable, not up and down as much...does get tearful at times...” A diagnosis of “anxiety” was added, and his medications were changed.

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In June 2009, he "continues to stated [*sic*] that he is experiencing raceing [*sic*] thoughts and feeling down. He states that he still have not heard from family...feels that what is going on with him is because he is worried about what may be going on with them." In August 2009, he reported, "he is all over the place...experiencing some anxiety attacks...not sleeping...states that he is stressing about home and his case." He reported having been out of his medications for some time, which "was true," and they were resumed, and adjusted. In September 2009, his medications were changed due to abnormal lab results. In November 2009, he reported, "still has a lot of anxiety and 'anxiety attacks' and nightmares, and his medication was increased, which he later reported as working well. In January 2010, he reported "having difficulties sleeping...he is only getting 2-3 hours of sleep nightly...can't focus and feels anxious." In February 2010, he reported "still some anxiety and nightmares," with some relief from the medication.

In March 2010, he "reports he is experiencing nightmares...gets only two full nights of rest on a weekly bases [*sic*]...the reason for this is due to the nightmares which connects with being hand cuffs." He also reported a poor appetite. He was seen by the psychiatrist, who increased one of his medications due to "having some trouble with concentration and anxiety."

In June 2010, he reported "good" and "stable" functioning, with a request to switch antidepressants. In July and August 2010, he requested an increase in his medications. In August 2010, he reported "doing better but still has intrusive fast thoughts at night." Therefore, a new medication was added. In October 2010, this medication was increased due to "still moody, irritable, anxious..." By December 2010, he reported no difficulties with "everything is okay." In January 2011, he "is doing much better...irritability and anxiety much better. Less moody." His medications were continued, with reports of stable functioning in February 2011 and March 2011. In May and June 2011, he reported mostly stable functioning, but with some depression, poor sleep, and reduced appetite. In early July 2011, his medications were increased due to "mood up and down," with a later July note indicating improved stability.

However, in August 2011, Mr. Finklea "put a sign in his window stating that he is refusing all medications...feels he can get better through his faith and his belief in his Creator he will be fine." Therefore, his medications were discontinued in September 2011. In December 2011, he was discharged from the mental health caseload, with the psychiatrist noting, "allowed to return to mental health if he has a reemergence in symptoms."

In August 2014, Mr. Finklea reported experiencing significant symptoms, including "suffers from anxiety and often has rapid heartbeats. He reports being easily agitated and reports racing thoughts...suffers from exhaustion and his appetite is horrible...reports a childhood history of abuse. Reports that he came off of the medication in 2011 because he did not feel safe taking the medication. He now knows that he needs something to help him through the days." During a later visit in August 2014, he informed the psychiatrist that in 2011, he "wanted to try without his medications...since then he has been having increased anxiety...racing heart, racing thoughts, low energy and feelings of worry." He admitted to "occasional thoughts of wishing he were dead but no plan or intent, identifying his children as protective factors." Therefore, he was placed back onto the outpatient mental health caseload, and prescribed medication.

In September 2014, it was noted, "he has been doing better...anxiety level has decreased since beginning his psych medications...has been resting better. Racing thoughts have slowed down." He reported compliance "would not be an issue for him as he understands that he needs his medications." In November 2014, he reported, "continues to have racing thoughts," with the counselor providing "strategies for thought distraction when fixating on the things that he cannot control;" and in December 2014, he "continues to have issues with anxiety." Therefore, a medication was added to assist with anxiety and racing thoughts. In January 2015, he reported "struggles with racing thoughts...reports he is unable to remain focused on one task at a time...begins to feel anxious and overwhelmed." Later in January, he reported, "symptoms continue including ruminating over everyday stressors and non-stressors...anxiety interrupts his sleep." His medication was increased.

He reported stable functioning in February and March 2015, and improved functioning by April 2015, with "feeling better...concentrating better" which was attributed to his recent medication increase. In June 2015, his medication was again increased due to "intermittent anxiety, reports that sleep fluctuates depending on extent of anxious thoughts, some nights he has many ruminations and difficult to sleep."

In October 2015, his medication was increased due to "anxiety interrupting sleep." In November 2015, Mr. Finklea reported much improvement since the start of his incarceration, stating, "I have made progress." He "reports coping by reading, writing, and studying his Bible...also use resource books." He is "understanding manhood and fatherhood now. I am a different person now." The clinician noted that Mr. Finklea's "thoughts were focused on the progress he has made as a mature man now."

In January 2016, his medication was increased due to "has been having racing thoughts throughout the day after a couple hours in the morning...some difficulties sleeping as well" however, "reports otherwise things are going okay." From February 2016 to December 2016, he reported stable functioning with improved symptoms and coping.

SCDC Incarceration - Collateral Consultation [Present Evaluation]: A member of Mr. Finklea's SCDC mental health team, Cassandra Means, PhD, was interviewed for additional information. Dr. Means has been conducting Mr. Finklea's 30-day mental health follow-ups since early 2016. She also worked at the Lexington County Detention Center during the time of Mr. Finklea's pretrial detention. Therefore, she was previously familiar with his psychiatric functioning.

During her work with him at SCDC, she has never observed any suicidality, homicidality or behavior problems. She has never heard from officers that Mr. Finklea has any problems with the officers or other inmates. When she sees him, he typically presents as "easy to engage," with a denial of major psychiatric symptoms. She stated, "he has his moments, but not often," when he appears sad from his legal circumstance. She described his cell as always "very organized and neat, he's always cleaning it up, moving things around and arranging." She stated, "I feel very comfortable that he would tell me if something is wrong" such as suicidal thoughts or a decompensation in functioning. She believes he is compliant with his medication.

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MEDICAL HISTORY

Examinee Interviews – Present Evaluation: Aside from his hypoxic brain injury described above, Mr. Finklea reported a history of asthma from childhood; knee injury, with surgical intervention; and a prior hernia repair. He reported his asthma is now under control, with no use of an inhaler. He reported episodes of ‘blacking out,’ several times over the years, during which he has fallen, “banged my head,” and “chipped my tooth.” His last episode was in March 2107. He believes these episodes may relate to his neurologic injury from 2003. He believes additional periods of what appear to be neurologic symptoms may be related to acute anxiety episodes.

Collateral Records: Mr. Finklea’s medical history per collateral records is detailed below.

Monroe County Hospital: Records from the Monroe County Hospital indicated that he presented emergently for an asthma attack in July 2002.

Veterans Affairs Medical Center- VAMC: Veterans Affairs Medical Center (VAMC) records indicate a history of treatment at the VA in Central Alabama from August to October 2002 for asthma, with inhaler treatments. Additionally, an X-ray conducted for knee pain indicated “minor abnormality” with “probably minimal narrowing of the medical knee joint spaces.”

VAMC records from Columbia, South Carolina, from December 5, 2002 to July 3, 2003 indicate continued treatment. During his first appointment in December 2002, it was noted, “patient is hoping to go back to active duty late 2003.” Conditions included asthma, described as “severe,” and resulting in shortness of breath. Prescriptions were issued for inhaler treatments to control symptoms. Oral allergy medication was prescribed for “severe allergies” to weeds, grass and pollen. He also reported “constant and daily right knee pain.” MRI results indicated “mild degenerative joint disease at the right knee.” Ibuprofen, 800 mg, was prescribed, with physical therapy exercises recommended. Records note that his knee pain improved over the course of treatment. A note from May 20, 2003 stated, “he is very interested in returning to active duty.”

Lexington County Detention Center: LCDC records from August 2003 to September 2007 indicate asthma, with use of inhalers, a dermatological condition, and medical sequelae from his suicide attempt (e.g., headaches, incontinence).

South Carolina Department of Corrections: SCDC records from September 2007 to January 2017, indicate that, during intake in September 2007, he had a history hypertension, asthma, two inguinal hernia repairs, and “arthroscopic surgery of right knee.” He was prescribed clonidine, for hypertension, and an “Albuterol inhaler” twice daily as needed. These medications were not continued for very long, and he does not presently take them. Records do not reflect major medical illness or conditions requiring outside treatment. Additionally, in August 2015, he reported lightheadedness, dizzy spells, nausea, muscle twitching and spasms, memory difficulties, blind spots, poor balance and “bugs crawling on his brain with no feet.” Vital signs and an EKG were ordered, with a physician note that stated, “sounds embellished.” [Note, this individual did not evaluate Mr. Finklea, and in an interview with the evaluating nurse by this examiner, she stated, “it doesn’t sound like I thought it was embellished.”] In November 2016, he reported occasional blackouts with falls, resulting in minor injury, which he stated have occurred since his suicide attempt in 2003.

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PSYCHOLOGICAL REVIEW OF SYMPTOMS - PRESENT Evaluation

Clinical Impression: Over the course of all interviews, Mr. Finklea presented with stable psychological functioning. He was cooperative, polite, and forthcoming. He presented with good attention to grooming and hygiene, and with good eye contact. His speech was of normal rate, volume and prosody, although he tended to speak more rapidly, with excessive detail, and nervousness during the beginning of the interviews. His psychomotor functioning was within normal limits, however, intermittent facial tics were apparent throughout all interviews. His mood was euthymic, with stable affect, although he appeared anxious at times, particularly when discussing his history of childhood trauma. His thought process was mostly linear, with thought content appropriate to the evaluation. There was no evidence of formal thought disorder, delusions, or psychotic process; major mood disturbance; or overt cognitive dysfunction.

Examinee Reports: During all interviews, Mr. Finklea reported that he was under psychiatric treatment, with regular oversight by mental health staff (e.g., 30-day monitoring). He reported taking Prozac, 40 mg [antidepressant]; and Remeron, 30 mg [antidepressant often used for sleep]. He reported full compliance with his medication. He takes it daily, although administration time of his morning and evening medication can vary by hours each day. He reported good symptom control from his medications.

Mr. Finklea described his daily routine, which is regimented and from which he rarely deviates. He wakes at 3:30 a.m., and proceeds through a routine of prayer, Bible study, television and radio programming, exercise, reading, writing and hygienic activities. He also engages in cleaning and arranging rituals for hours throughout the day. He is awake until approximately 1:00 a.m. He reported that, overall, he "sleeps two to three hours in a 24-hour period." He eats at regular intervals consistent with appetite fluctuation. He reported an average stable mood, with periods of anxiety and racing thoughts. He reported occasional periods of depression, where he feels "sluggish, and my thinking and everything comes slow to me." He reported no overt mood instability or psychotic symptoms, and no present suicidal or homicidal ideation.

However, he acknowledged that over the course of his incarceration, he had has occasional fleeting thoughts of suicidality, but denied any plan, intent, or preparation. These thoughts occur when he feels he is "a burden to people," and when he has "thoughts of the victim's family" and of "my failed fatherhood and manhood." He reported no suicidal thoughts since "2013." He reported no history of homicidal ideation, thoughts of hurting others, or other violent thoughts. He reported no physical altercations of any kind during his incarceration.

When asked about anger, he stated, "no, I understand my environment now, that it's not in my control" which has significantly reduced his anger over the course of his incarceration. Now, he "just gets upset at myself for being here, and abandoning my family, but I don't allow that to spill over to the officers, I'm always respectful to them." He will deal with any feelings of distress by "walk the cell floor, walk, walk, walk, and clean." He also stated that his cell is "always clean, if not, I can't function."

During the course of the interviews, Mr. Finklea reported significant anxiety and worry about "not being able to properly guide" his two sons, with whom he has little contact. He expressed much regret over his failings as a father prior to his arrest. He reported the birth of his first grandchild on April 6, 2017, which had him "really thinking about" his relationships with his sons. He reported reaching out to his oldest son, who wrote him a letter as a first step in their correspondence and repair of their relationship. Of his oldest son, he feels, "I'm so ashamed to face him, terrified to face him, my heart beats fast, very ashamed." He also spoke at length about feeling remorseful, in that the victim in his case "will never know his grandchildren."

- Due to his history of trauma and abuse, Mr. Finklea was specifically questioned regarding the presence (or absence) of trauma-related symptomatology.

Mr. Finklea endorsed frequent and intrusive memories of his childhood abuse, which are distracting, anxiety provoking, and difficult to control. Mr. Finklea stated, "it feels like the past is never the past with me." He specifically identified intrusive memories of "being beat naked, outside, it was so invasive, my mother was so invasive, I felt so exposed." He also has intrusive thoughts about "what she would say" to belittle and demean him. She constantly said, "people ain't sh**" and "you ain't sh**" which was a mantra throughout his childhood. These thoughts provide a sort of running commentary in his mind, which negatively color his self-worth, and impact how he believes others view him. These thoughts result in "strong feelings of unworthiness, feelings of hopelessness, feeling like the story has already been written [with a foregone bad ending] and things will happen because I'm bad." He expressed feelings of helplessness from childhood, as his mother constantly berated him, telling him that 'he was bad,' only 'bad things would happen,' and that he could not change this outcome. Therefore, he learned "to mask my true emotions because it wouldn't do any good or change anything."

Mr. Finklea also reported a history of nightmares, which began in the Lexington County Detention Center, and consist of "being put in chains, recurring nightmares of being put in chains, and put in a slave auction, I could feel the lashes from being beat." He has occasionally had nightmares about his mother, but not often. In discussing intrusive experiences, he reported no 'flashbacks' or known dissociative experiences.

Mr. Finklea reported the chronic presence of "anxiety, always jittery, as long as I can remember, always trying to anticipate, always looking around the corner, trying to get a read on what's going on, trying to be comfortable within my environment." He noted that "being in chains" is a "trigger" for his anxiety; therefore, he does not take recreation, or leave his cell to shower. In addition, he experiences high levels of anxiety when speaking with his mother by telephone (which is very infrequent). He reported his "heart races" and he becomes overtly anxious. He feels "very apprehensive," and "something in my mind says 'watch her.'" He reported a history of feeling "such a high level of being ambushed by mom, that I don't trust her." This feeling carries over to his current interactions, during which he feels very wary and on guard.

Additionally, when things are unpredictable or undefined, he feels very anxious. He stated, "I function much better with structure, I screw up when things are chaotic around me, or when I perceive things to be chaotic." He agreed the term "chaos" applied to his childhood, "to put it mildly," as he "never knew which way to turn, go left or right, if she's sitting in the middle of the kitchen and I go right I get smacked, if I go left, I get cursed."

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In his childhood home, there were no clear expectations or rules, and no sense of predictability with regard to his mother's abuse. Therefore, he was "never safe," in that, "growing up with mom, I never knew what would get me a beating." He explained that when he "feels in the dark and can't figure out the next step," then he "can't anticipate" what might come next, which makes him very anxious. He explained that this is why he outwardly flourished within the rigid and predictable structure of the military. Once placed on medical leave in April 2002, he "just couldn't function without that structure" because the military "had clear expectations," as civilian life did not.

Due to his history of anxiety connected to his childhood trauma, Mr. Finklea reported avoidance behaviors, in that he avoids movies or television shows that depict any kind of harm to a child, including emotional, physical or verbal abuse, or sexual harm. If exposed to such material, he gets "very anxious, a lot of my past rushes up." He "twitches, shaky hands, nervous, heart races, sweaty palms, short of breath, feel like something is pressing on my chest." He "gets up, pacing, my mind is racing," until the symptoms subside. He also has this type of panic reaction without a known trigger, which occurs approximately every three or four months. He has "been having these for a long time." He also has periods of "nervousness" with no known trigger.

Regarding other avoidance behaviors, he has "avoided calling my attorney to avoid any [perceived] criticism, it felt like I was being attacked by my mom again." He understands this feeling is an overreaction and that his attorney is not 'attacking' him. However any type of perceived criticism, particularly from a female, can trigger his anxiety. He is also "quick to feel like I'm a burden to my attorney" and does not ask for things "because I want to avoid bad feelings and feeling that it may get me in trouble."

Mr. Finklea symptoms of hypervigilance in that he "always felt that things would harm me, or get me in trouble, constantly looking around the corner, constantly opening doors [e.g., front door of house] to see what was out there." He "felt under siege the whole time living with mom, it kept me always looking around, and always moving, always re-positioning myself, not wanting someone at my back, felt like everything I did was wrong." In any type of social setting, or just when others are around, Mr. Finklea stated he is always scanning his environment for "potential threats." He "will withdraw if I don't feel comfortable, I'm not an extrovert."

He reported a history of an exaggerated startle response, "as far back as I can remember," stating, "mom did everything loud and with such drama." He stated, "once my environment gets loud, my heart starts racing, have to get defensive [prepared]." He added that he has "constantly [been] in defense posture my whole life, constantly felt like everything is against me, constantly felt like I'm the odd man out..." This startle response was strong when he first came to the Lexington County Detention Center, as the "doors in the jail would make me jump." However, given the frequency of such loud noises in an institutional setting, he has since acclimated and this response has been extinguished for the most part.

Mr. Finklea reported sleep disturbance since childhood. As a child, when he was asleep, his "mom had this way of ambushing me, it caused me to lose a lot of sleep, my mom would wake me up out of sleep, beat me..." (This occurred primarily within the context of Mr. Finklea's bedwetting problems throughout his childhood and adolescence). Therefore, he would "play sleep, to be ready for the beating..." which led to sleep problems into adulthood. He has "never remembered getting 7 to 8 hours of sleep" which he considers "normal." He presently averages two to three and a half hours per night.

Mr. Finklea reported difficulties with concentrating over the course of his life, with racing thoughts a likely culprit. For example, he reported a history of racing thoughts with "thoughts of one thing, then something else, something else" which has occurred since he was young. He stated his "thoughts race when something triggers [reminders of] my failures, my past mistakes, when I feel defenseless or misunderstood, when I don't know who to trust, then will get up and pace and do pushups, write," and has racing thoughts. He will eventually 'burn himself out' and feel exhausted. He clarified that when he is already "anxious or nervous," he "...becomes hyper-focused and aware." Therefore, his thoughts do not race during these times.

Regarding his interpersonal functioning, when he first meets others, he is "real suspicious about people, I have to know who the person is before I take another step [interpersonally]." He believes this stems from childhood, in that, "If my mom ever caught me being near people, I would get beat and so I became suspicious of people." To reduce his anxiety about others' motives or intent, he "is very quick to compartmentalize people." He uses labels such as, "family, ally, friend, foe, harmless..." [and] it helps me know how to deal with my environment when that person is around." He stated, "if I had it my way, I would function in an environment that was highly structured" with regard to others' behavior and his expectations of their behavior.

He described himself as "very guarded" around others, which "goes back to teenage years and childhood." He stated, "I can be with others, but I still feel like I'm isolated, when I'm around others, I feel like I have to be alert all the time." He has also "always felt detached" from others, and "never considered myself as having [real] friendships." He "always felt that there was something wrong with me..." He "was not going to reveal myself to the other person and give them an opportunity to criticize me." He also grew up "very self-conscious because of my mother's constant commenting on me at any time, I felt very exposed." Therefore, he grew up thinking, "don't let people know the slightest thing about you."

Additionally, he has difficulty with eye contact when interacting with others, which stems from his history of abuse. He stated this was one of his mother's peculiarities. He stated, "if I looked too long at her, she accused me of being aggressive, if I looked too short, she accused me of lying, even to this day, I still have an issue, problem with eye contact."

Regarding mood disturbance, Mr. Finklea reported no extended periods of clinical depression, and no extended periods of excessive energy, days without sleep, euphoria, grandiosity, or delusional beliefs. However, prior to his incarceration, he would have "overwhelming feelings of sadness all of a sudden, where I'm suddenly crying, get very withdrawn, even though things were going fine." These episodes lasted approximately seven to eight hours.

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Presently, he reported periods of "three or four days" where he experiences apathy, sadness, tearfulness, and low energy. Relatedly, he is unable to experience positive emotions as an adult because his emotions are "always clouded by suspicions." He "feels responsible for everything that was done to me abuse wise," as he feels like a "terrible person." Additionally, he has had periods of anger, and of feeling constantly irritated, which have resulted in "a couple fist fights" during his military career. These were minor, with no disciplinary infractions. His anger, irritability and mood fluctuation has significantly improved with medication.

- Further, due to strong indicators in collateral data of obsessive-compulsive symptomatology, he was questioned regarding the presence (or absence) of such symptoms.

Mr. Finklea reported a history of excessive cleaning, arranging, and straightening. As a child, he would "go in my room...and clean, if something seemed to be off, I would adjust it, wiping, dusting." He described a present daily routine of at least four hours of cleaning, that includes "make up bed, dust, clean toilet, clean sink, clean under the bed, wipe down the sink, wipe down the walls, and wipe and wax the floor." He described a regimented and exact method to these cleaning activities, engaging in cleaning rituals multiple times per day. He described his cell as "spotless" and that officers refer to his cell as a "hospital."

In addition, he carefully arranges items in his room, by type, and by height of object piles. For example, he has "seven towels, seven boxers, seven t-shirts, etc." Due to his focus on even numbers, he has to place an eighth item behind the pile. Each type of item is particularly arranged. For example, his socks are "arranged in the shape of a pyramid." His clothes are meticulously folded several times, and arranged so that they lay flat. His piles of various items "can't elevate above the towels," or it will visually bother him. His reading materials are arranged "shortest to tallest, to go with the flow of the cell."

With regard to his hygiene items, he "lines them up shortest to tallest." For example, he has 21 deodorant bottles, which are arranged "in three rows of seven." He has "19 tubes of toothpaste, all stood up, arranged by when I got them, I write the date on them of when I received them, newest to oldest." He has "33 bars of soap, arranged in a box formation, according to the brand of soap." However, due to his obsessive focus on even numbers, he sometimes has to take away one of these items, out of sight, so that only an even number of items is showing. This type of organization applies to all of his hygiene items. When asked about collecting so many items, he stated, "I have a fear of running out of hygiene products."

If his products are disturbed, placed out of order, or not neatly arranged according to height, he "feels violated, mad, nervous, I don't immediately know how to fix it." He stated, "any time I feel the flow has been disturbed, I have to fix it right or I can't think, can't sit down, can't sleep, can't eat." During this discussion, after a period of silence during the examination, Mr. Finklea stated he was "scanning my cell in my mind" to see if anything were out of order. In addition, there was a blackboard in the examination room that was noticeably slanted, which bothered him, and he "tried to avoid looking at it" during the interviews.

In discussing these symptoms, Mr. Finklea agreed that he cleans and arranges to reduce chronic underlying anxiety and nervousness," stating, "it's the mechanism that I use." He reported repetitive thoughts of childhood abuse, and repetitive thoughts of harm coming to his children, involving death. He stated, "cleaning helps the anxiety around those thoughts." He also adheres to a strict daily routine to reduce anxiety, and increase predictability. He described that an interruption in his "routine" functioning disturbs him greatly, and he "has to get myself locked [back] in" to feel comfortable. He is hypersensitive to distractions in his environment if they interrupt his routine, particularly if they are unexpected.

Further, in addition to excessive cleaning and rigid arranging, he reported a history of counting behaviors, in that, "as I say words, I count, it has to be even." When the examiner said a particular phrase, he stated, "that has 15 letters, it's not even, so I have to say one plus five in my mind." This type of letter/word counting has interfered with effective communication, as he remains too distracted by the counting. Relatedly, he has to maintain even numbers around him. For example, he has stacks of "seven socks pairs, seven t-shirts, etc." in his room, but he has "an additional item behind the stack to make it eight, so it will be an even number." Additionally, he cannot buy only one item in the canteen, but has to buy two, so it will be an even number.

When asked about his age of 43, and pointing out that it was an odd number, he stated, "yes, but $4 + 3$ is 7, and 7 is the number of completion," making a spiritual reference. He then spontaneously interpreted other numbers using religious references (e.g., $4 + 4 = 8$), and "eight is the perfect number going back to the ancient Egyptians." Mr. Finklea then spoke about wide-ranging spiritual beliefs, within the context of Freemasonry, of which he has been a member since 1995. He explained that numerology is an integral part of his spiritual and cultural beliefs.

Psychological Testing: In the course of evaluating his self-reported symptomatology, on August 25, 2017, Mr. Finklea was administered psychological testing to assess the presence of malingering [exaggeration or fabrication of symptoms]. He was administered the Structured Interview of Reported Symptoms, 2nd Edition [SIRS-2]. Test results indicated no evidence that he was malingering symptoms, with all scales falling within the "genuine range." Additionally, results were not indicative of minimization or defensive responding, as he acknowledged "common interpersonal and psychological problems..."

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DIAGNOSTIC FORMULATION: The following diagnoses are rendered on the bases of the above data and according to the *Diagnostic and Statistical Manual for Mental Disorders, 5th Edition*, (DSM-5).

- **Diagnosis:**
(Previously Axis I and Axis II)
 - Posttraumatic Stress Disorder, With Panic Attacks
 - Obsessive-Compulsive Disorder
 - History of Major Depressive Disorder
- **Medical Conditions:**
(Previously Axis III)
 - History of Asthma [Lifespan]
 - History of Right Inguinal Hernia Repair [1991]
 - History of Right Knee Surgery [1999]
 - History of Hypoxic Brain Injury [2003]

Mr. Finklea is assigned the diagnosis of *Posttraumatic Stress Disorder*, stemming from his childhood history of significant and systemic physical, emotional and sexual abuse. DSM-5 notes the traumatic event(s) can be “threatened or actual physical assault,” which includes “childhood physical abuse,” and “abusive sexual contact.” It is further noted that “the disorder may be especially severe or long-lasting when the stressor is interpersonal and intentional,” both of which directly apply in Mr. Finklea’s case (p. 275). Per DSM-5, multiple categories of symptoms characterize PTSD, which impact one’s functioning in affective, cognitive, and interpersonal domains.

With regard to specific symptoms, Mr. Finklea experiences “*intrusion symptoms*,” comprised of recurrent, involuntary and intrusive memories of the abuse, and related sequelae. These memories are distressing, frequent, and difficult to control. They adversely impact his mood, self-worth, and affective functioning. They are comprised of actual abusive incidents, or of abusive [verbal] commentary perpetrated by his mother. With regard to other intrusion symptoms, he has nightmares of his mother, although these are not as frequent or intense. He also has frequent nightmares about being shackled, which are likely related to his high levels of underlying anxiety. Such nightmares are also referenced in collateral data during his pretrial detention. He reported no known dissociative symptoms or ‘flashbacks’ of the abuse.

He also experiences chronic, underlying *anxiety*, which is a hallmark symptom of PTSD. He reported feeling “jittery” and restless, with constant racing thoughts, and an apprehensive approach to situations. Reference to high levels of anxiety is replete in his records, and he carries diagnoses of an Anxiety Disorder from during his pre-trial detention. Reminders of his trauma spike his anxiety, such as speaking to his mother, and reminders of children being abused, which both result in *marked physiological reactions* (anxiety and panic) to these cues. Further, he reported that anticipating talking about his trauma during the present interviews resulted in high levels of anxiety, such that he felt “terrified for these meetings, I’m a wreck.” In addition, a potent cue to his anxiety is unpredictability, and when things feel out of his control.

He has experienced “*negative alterations in cognitions and mood*” to include feelings of detachment from others; persistent and exaggerated negative beliefs or expectations about himself, others or the world; a persistent negative emotional state; and a persistent inability to experience positive emotions.

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Regarding the first symptom, he has always felt detached and alienated from others. He approaches interpersonal interactions with suspicion and caution, with the feeling that he is damaged, and vulnerable. Regarding the latter three symptoms, he views himself as permanently damaged, believes others cannot be trusted, and experiences the world (e.g., his environment) as threatening. He experiences pervasive feelings of dysphoria, helplessness, unworthiness, very poor self-worth, and pessimistic outlook of the future. He has had great difficulty sustaining positive emotions, and has experienced acute periods of sadness, with no obvious trigger.

He experiences “*marked alterations in arousal and reactivity*” to include a history of sleep disturbance, hypervigilance, irritability, problems with concentration, and history of an exaggerated startle response. He has slept approximately three hours per night for years, with racing thoughts and anxiety keeping him awake. He reports constantly scanning his environment in an apprehensive manner, and “repositioning” himself to manage this apprehension. He reported a longstanding history of irritability, which has improved with psychiatric medication; and has always had difficulty concentrating, particularly due to anxiety and intrusive, racing thoughts. He had a history of exaggerated startle response to loud, unexpected noises prior to his offense, and initially during his pretrial detention. However, this response has been mostly extinguished during his incarceration due to the constant loud noises (e.g., doors slamming).

The clinical specifier ‘*With Panic Attacks*’ is used to indicate the presence of panic attacks that occur within the context of this disorder. Mr. Finklea has discrete episodes of panic symptoms, to include acute nervousness, rapid heart rate, shakiness in his hands, sweaty palms, shortness of breath, and heaviness in his chest. Panic and/or anxiety attacks are also referenced in collateral data as occurring during his pretrial detention, and at SCDC.

Regarding onset, Mr. Finklea’s former treating correctional psychiatrist first diagnosed him with PTSD during his pretrial detention. However, PTSD symptoms have persisted throughout his adolescent and adult life, with a worsening of symptoms from the additional trauma of his legal situation. He is presently under treatment for the most prominent of his PTSD symptoms (e.g., chronic anxiety, sleep disturbance, and negative mood states). Regarding course of disorder, DSM-5 notes that duration of PTSD symptoms varies by individual with “some individuals remain symptomatic for longer than 12 months and sometimes for more than 50 years” (p. 277). Further, as applicable to Mr. Finklea, “...there is evidence that subthreshold presentations are more common than full PTSD in later life and that these symptoms are associated with substantial clinical impairment.” In addition, “symptom recurrence and intensification may occur in response to reminders of the original trauma, ongoing life stressors, or newly experienced traumatic events” (p. 277).

Mr. Finklea is further assigned the diagnosis of *Obsessive-Compulsive Disorder*. Per DSM-5, he has a history of *obsessions* defined by “recurrent and persistent thoughts, urges or images that are experienced...as intrusive and unwanted and...cause marked anxiety and distress.” He “attempts to ignore or suppress such thoughts, urges or images, or to neutralize them with some other thought or action (i.e., by performing a *compulsion*).

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Mr. Finklea experiences *obsessions* in the form of intrusive, repetitive, anxiety-provoking thoughts. These thoughts are of his prior trauma, and thoughts of harm (death) coming to his children. He described engaging in *compulsions* to reduce nervousness and anxiety regarding these thoughts.

As such, he has a history of *compulsions*, which are repetitive behaviors (e.g., cleaning, arranging) and/or mental acts (e.g. counting) that he “feels driven to perform in response to an obsession or according to rules that must be rigidly applied.” Further, “the behavior or mental acts are aimed at preventing or reducing anxiety or distress...” but are “not connected in a realistic way with what they are designed to neutralize or prevent, or are clearly excessive.”

In Mr. Finklea’s case, he has a history of *compulsive straightening, ordering and arranging* of items, so that they are perfectly in place. As a child, he was reported to have perfectly lined up and organized items in his room. As an adult, he has reportedly arranged items by sets (e.g., even numbers, lucky numbers or type), color, alphabet, and height, with distress when things are not lined up in perfect order. Such distress includes mood disturbance, difficulty sleeping, eating and thinking clearly.

Compulsive and excessive cleaning has been previously and presently reported by Mr. Finklea, as well as reported by collateral sources. Such cleaning has included repetitive bathing and other hygienic activities; intrusive and excessive hand washing; and excessive cleaning of the bathtub, his vehicle, and living space. He has gone to great lengths to avoid germs in unfamiliar areas, to include thoroughly cleaning hotel rooms before he stays in them, and washing the sheets before sleeping in a hotel bed. He has reportedly wiped down items with bleach after others use them, and has not allowed shoes to be worn in his living space. He has boiled drinking glasses before using them, and has insisted foods be cooked in a certain manner. He has also been observed with hygienic wipes constantly, with a refusal to shake others’ hands. He has been described as exhibiting negative mood states if things were not perfectly cleaned. Presently, he reports spending at least four hours of cleaning per day, following strict regimens. He has multiple collections of hygienic supplies due to fear of running out.

In addition, *compulsive counting* behaviors have been reported. In particular, counting words in conversations with others, with a focus on even numbers such that he has to rearrange (add or subtract) words or letters to make an even set. This has been very distracting when he communicates with others. He also has a hyper-focus and fixation on numerology, which fuels and adds to the pervasiveness of his counting behavior.

These compulsive behaviors are time consuming (more than one hour a day); and have caused clinically significant distress in his interpersonal and social functioning.

Additionally, Mr. Finklea is assigned the diagnosis of **Major Depressive Disorder, By History**. Collateral records indicate multiple providers issued this diagnosis during his pre-trial detention, and his SCDC records reflect a history of a “depressive disorder.” Although he presently has periods of fluctuating depressive symptomatology, these symptoms are not opined to rise to the level of a Major Depressive Disorder at this time. Further, in his case, certain symptoms typically associated with depression, are better accounted for by PTSD.

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ANALYSIS & CONCLUSION: Based on the totality of data gathered during the evaluation, to include clinical interviews with Mr. Finklea; interviews with his mother, sister, brother, aunt, niece, cousin, first wife, former girlfriends, childhood friend, and former pastor; review of previously conducted interviews; consultations with his current SCDC psychologist, former treating psychiatrist, and former forensic psychiatrist; review of case-related documents, psychosocial records, and correctional records; and review and consultation of the relevant psychological literature, the following is opined.

A comprehensive review of Mr. Finklea's trauma and abuse history strongly support that he experienced prolonged, invasive and intense abuse at the hands of his mother, who was his primary caregiver. Data indicated this abuse spanned from at least age four, to age 16, and was characterized by physically, emotionally and sexually abusive acts.

Regarding the physical abuse, he suffered frequent, violent beatings with multiple types of objects, which left welts, open cuts, bruises and other injuries (e.g. "busted" lips). According to him, and others, his mother would use "extension cords;" an "axe handle;" "switches;" "belts;" a "broom handle;" and a "siphon hose" with a wire hanger inserted. He reported these beatings escalated in frequency and severity, occurring "three or four times a week." As he grew older, he was also made to "strip naked" before the beatings. Further, by all accounts, Mr. Finklea received far harsher and much more frequent beatings than his siblings. Eventually, he described increasing "desensitization" and feeling "numb" to the physical pain.

Emotionally, he recalled feeling "angry;" "terrified;" that his mother "hated" him; and that she "treated me worse than an enemy." He recalled she actually shot at him once, but missed, instilling much fear and apprehension. He described the violence as "very unpredictable" with no rules to follow in order to prevent or avoid the abuse, noting he was punished when he "did everything right." This resulted in a state of learned helplessness, and he described suicidality and hopelessness during his childhood.

Others interviewed described the abuse as "she beat him badly," that he "got beat for anything, with anything;" and that she would "whip him when he was wet" as it hurt more. His sister, who had the most first hand knowledge, indicated their mother "beat him so much;" "whipped him so hard;" and that he was beat "way more often" than she or their brother. She indicated their mother would "beat him over and over" and would sometimes "beat him in the middle of the night." The beatings were "for no reason" and "left welts with cuts in the middle." His aunt saw "marks" when he would come to her house after the beatings, and his cousin saw "scars" from the beatings. His second wife knew of the "beatings," believed Mr. Finklea "had a terrible childhood," and was "really afraid" of his mother.

During interviews, his mother acknowledged harsh physical punishment, including beating and "whooping" him, which she has repeatedly referred to as "tore him up." She indicated multiple times that she "tore him up," but stopped short of killing him. She mentioned using a "switch," and a "belt." She reported having beaten him at school on one occasion. On another occasion, she would have "beat him to death," with a "baseball bat" but for being threatened with jail by law enforcement. She also acknowledged that she beat Mr. Finklea "longer" than her other children, that his "shirt was off," at times and that she beat him "outside."

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Regarding *emotional abuse*, Mr. Finklea was locked in a closet for hours at a time. Water and food were withheld, and he was made to hold his urges to urinate "to the breaking point." His cousin also reported he was locked in the "outside shed." His aunt reported he was made to leave his home "in the middle of the night" when it was "pouring down rain." He was also exposed to very damaging verbal attacks, with his mother repeatedly stating he was "useless" and "no good." She reportedly cursed him, called him names, and made negative comparisons to his father with regard to his skin tone. She "never said she loved him" and he has no memories of maternal affection. His stepfather also belittled him, repeatedly telling him he was not wanted and if he "were worth a damn," his biological father would have found him.

Others witnessed this emotional abuse, reporting his mother "berated him;" "made fun of him;" called him names "every day," such as "ugly" and "black MF;" and attacked his physical appearance (e.g. eyes, ears, skin color). Others stated she "never showed him any affection;" "never told him she loved him;" and "would call him terrible names all the time." His niece believed he was "hindrance" to his mother and unwanted. His aunt stated his mother "treated him like a dog" and "like a zero." Additional reports described his mother as "hateful;" "thoughtless;" "mean;" "angry;" "nasty;" "evil;" whose "heart is black;" and that she "hated" Mr. Finklea. His first wife described her as "combative" "very angry;" "phony, fraudulent;" a "monster;" and that his mother made her "feel like prey." Due to the intensity of such abuse, she believed his "childhood ate away his spirit."

Regarding *sexual abuse*, Mr. Finklea experienced chronic enuresis [bedwetting] during his childhood through to his teenage years. This occurred three to four times a week, and he was "beat every time." At nighttime, his mother would come to his room unexpectedly and "check my pants," in an aggressive manner even when he was a teenager. Therefore, he was "scared" to go to sleep. As a punitive response, his mother made him sleep in the bathtub, and wrapped rubber bands around his penis. These measures were confirmed by multiple collateral sources, including his mother, who explained his behavior as "lazy." There are additional reports that she tied a milk jug around his penis, and for punishment, forced him to wear his urine soaked clothing on the weekends.

Additionally, his mother began "grabbing" his genitalia when he entered puberty, as she believed he was sexually active. This was humiliating, painful, and occurred over and under his clothes. During this conduct, she made threatening comments about "chopping it off," as well as possessive comments, referencing Mr. Finklea's genitalia as belonging to her. His first wife reported that, during their marriage, Mr. Finklea told her about his mother engaging in this behavior, which she described as "defacing" [humiliating] for him.

Over the course of such frequent and painful abuse, Mr. Finklea described feeling as if he had "no protector," as all male relatives in Alabama were maternally related, and would "not stand up" to his mother. Additionally, his first stepfather had been violent and abusive, and his second stepfather witnessed, but did not stop his mother's abuse. Further, neither he nor his siblings attempted to report the abuse to authorities due to fear of his mother. He stated his mother threatened to "kill" him if he told. His brother stated, "there was no thought" of reporting the abuse, as they "didn't want to take the chance of mom getting mad." His sister noted, "we were too scared to report it," and provided an example of their mother pointing a gun at them.

She also noted their mother "threatened" them with "worse beatings," and that they could not tell relatives because they were also "abusive to their children." Therefore, without family or authorities for protection, at age 16, he reached out to his father, who had essentially abandoned him as a very young child. One cousin indicated that he "desperately needed" a "father figure," which he lacked. He traveled to DC to find his father, however, this visit went very poorly. He met his father for approximately ten minutes, during which his father did not seem to recognize him, and offered him twenty dollars. He left feeling humiliated, angry, and hopeless, and returned to his mother's home.

In addition to his own abuse, he was exposed to domestic violence in the home between his mother and stepfathers. He described frequent screaming, cursing and yelling, with his mother suffering injuries resulting in swelling, bruising, and cuts. His stepfather's heavy drinking contributed to the abuse and chaotic home environment. By his and other accounts, their relationship ended very violently, with his mother being shot at, beat with a "piece of iron," and "stomped" in the stomach, after which his stepfather destroyed their furniture with an axe. Collateral reports indicate his second stepfather would become "violent," when drinking, prompting the family to emergently leave their home. Further, his sister was sexually victimized in the home by male relatives, which he witnessed. His mother did not believe them, and no action was taken to prevent further abuse. All of these factors fostered a home environment that was without any protection, safety, or support.

In addition to inside the home, his surrounding community was also characterized by violent activity and drug use, which he described as "chaotic, violent, [and] unfamiliar." He described witnessing very violent acts by his relatives and neighbors, with weapons involved. He also reported pervasive drug use in this area, which he witnessed. Others interviewed described this community as a "high crime area" and "the ghetto," that was "terrible," "rough," and "tough," with "lots of fights and shootings," and "lots of violence." Sources also described "lots of drinking and drugs," "drug trafficking... bootlegging." The residents were described as poor, and uneducated, with the great majority of males having been incarcerated.

His mother and stepfather contributed to the illicit activity of this community, as they sold alcohol and marijuana from their home. Multiple family members have confirmed this activity, including his mother. Both Mr. Finklea and his sister described being forced to participate in selling alcohol and marijuana to his mother's "customers." His sister stated their mother would "beat the sh** out of us if we didn't do it." They also took family trips to obtain the marijuana and had to prepare it for sale. Others outside of the home described his mother and her husband as "bootleggers" who were "very involved," in such activities; with his first wife having seen this activity firsthand. His niece, who is 13 years younger, reported this activity was still taking place in his mother's home during her upbringing.

As a result of this prolonged exposure to childhood trauma, Mr. Finklea's psychological and interpersonal functioning was significantly and adversely impacted. Such impact resulted in longstanding mental disorder and was instrumental in shaping an adverse life trajectory.

Psychologically, and as described above, Mr. Finklea developed symptomatology over the course of his upbringing, best characterized as PTSD, and OCD. In Mr. Finklea, these disorders are derived from similar etiology, as per the relevant literature, when, "OCD stems from early abuse...the obsessional thinking and compulsive behavior have an addictive quality that appears to distract from feelings and thoughts related to painful past traumatic experiences."¹

In his case, the type of trauma at the root of both disorders is termed 'complex trauma' also known as 'complex PTSD.'² In contrast to isolated traumas, these terms are used "*to describe the experience of multiple, chronic and prolonged, developmentally adverse traumatic events, most often of an interpersonal nature (e.g., sexual or physical abuse...) and early life onset. These experiences often occur within the child's caregiving system and include...child maltreatment beginning in early childhood.*"³ Individuals exposed to 'complex trauma' typically experience trauma over a span of developmental periods, as he did from early childhood to mid-adolescence, which adversely impacts development on many levels. Indeed, it is believed that "the most severe forms of PTSD seem to result from certain types of *prolonged childhood abuse, chronic combat experience, or long-term domestic violence.*"⁴

As evidenced in Mr. Finklea's life, the chronicity of complex trauma can result in a "*variety of psychological problems... including depression, anxiety, self-hatred... substance abuse, self-destructive and risk-taking behaviors...[and] problems with interpersonal and intimate relationships...*"⁵ Further, individuals with complex trauma not only "have the classic posttraumatic" symptoms, but also "the way that they view themselves and the world profoundly affects the way that they function and interact with others. *Seeing themselves as defective and vulnerable, but also feeling empty and alone, they approach others with profound mistrust...*"⁶ Therefore, in his case, most significant psychological domains, particularly, interpersonal, affective, and self-identity were characterized by much dysfunction.

In addition, Mr. Finklea's particular trauma history, and resulting dysfunction is compounded by the abandonment of his father, a would be 'protector,' his exposure to domestic and community violence; and to illegal activities, both inside and outside of his home. Combined with his abuse, these factors strengthened pervasive negative perceptions about himself, the world, and others.⁷

¹ James A. Chu, REBUILDING SHATTERED LIVES: TREATING COMPLEX PTSD AND DISSOCIATIVE

² Judith L. Herman, *Complex PTSD: A Syndrome in Survivors of Prolonged and Repeated Trauma*, 5 J. TRAUMA. STRESS 377 (1992).

³ Bessel A. van der Kolk, *Developmental Trauma Disorder*, 35 PSYCHIAT ANN 401, 402 (2005).

⁴ Chu, *supra* note 1, at 28.

⁵ Christine A. Courtois, *Complex Trauma, Complex Reactions: Assessment and Treatment*, 41 PSYCHOTHR. THEOR. RES. PRACT. TRAIN. 412, 413 (2004).

⁶ Chu, *supra* note 1, at 36.

⁷ Center for Substance Abuse Treatment (U.S.), TRAUMA-INFORMED CARE IN BEHAVIORAL HEALTH SERVICES, 74 (2014).

The pervasive dysfunction in Mr. Finklea's life, after leaving his mother's home, was reflected in multiple ways. He had great difficulty in his 'interpersonal and intimate' relationships, which were characterized by conflict, infidelity, and abusive conduct. His first wife reported "fights and personality disputes" with "controlling" behaviors. She said he "could only go so far" before having to "put on a mask" due to deficits in intimacy and relationship functioning. His second wife described their marriage as "miserable," and believed "something was instilled in him as a child" to account for his dysfunction. Both wives noted affective disturbance in that he had episodes of anger, and rapidly shifting emotions.

Of his relationships, he reported, "not knowing what marriage, manhood and relationships were about." This statement reflects his lack of exposure to positive intimate and paternal relationships during his development, which is critical for healthy interpersonal skills in adulthood. Instead, his template for relationships was built on aggression, hostility, distrust, lack of affection, and unpredictability. Therefore, he had no skills or learned behaviors in this area. Social learning theories support that individuals reenact what they observe, as learned behaviors, particularly behavior they observe as children.⁸ It is also well established that children exposed to interpersonal violence in the home often grow up to perpetuate violence in their own homes.⁹ As Mr. Finklea observed very conflictual and abusive interpersonal relationships between his mother and stepfathers, he learned, and then modeled, such interaction in his own relationships.

He also reported feeling "worthless," "no good" and "terrible" as a person, therefore, felt as if he "didn't deserve" the affection or positive attention of his spouses. He felt "so detached" and "too uncomfortable" with intimacy, so he "lashed out." This sense of worthlessness, detachment and feeling undeserving was instilled in him through his abusive experiences, and resulted in impaired ability for healthy interpersonal functioning. Complex trauma can often "result in impairment in developmental processes related to the growth of emotion regulation and associated skills in effective interpersonal behavior."¹⁰ Therefore, his formative abusive experiences negatively impacted his ability for healthy interpersonal relationships, both from a social learning perspective, and from adverse development due to trauma.

Secondly, in addition to dysfunction within his relationships, he also engaged in 'self-destructive and risk-taking behaviors,' outside of his relationships, to include the sale of illicit drugs. For example, despite outward career success and stability, he sold illicit drugs (marijuana) while stationed at Fort Bragg. Such behavior would have been a significant threat to his career if discovered. This conduct was learned as a youth, as his mother was "very involved" in selling marijuana from his home, and mandated his participation by the threat of violence. He was made to go on family trips to purchase this substance, to prepare it for sale, and to sell it. Refusal to participate resulted in harsh physical punishment. Therefore, as with the domestic dysfunction, this conduct is also based on social learning and modeling of early behaviors.

⁸ Albert Bandura, SOCIAL LEARNING THEORY (1977).

⁹ K. D. O'Leary, *Physical aggression between spouses: A social learning theory perspective*, IN HANDBOOK OF FAMILY VIOLENCE (V. B. Van Hasselt, R. L. Morrison, A. S. Bellack, & M. Hersen (Eds., 1988).

¹⁰ Marylene Cloitre, et al., *A Developmental Approach to Complex PTSD: Childhood and Adult Cumulative Trauma as Predictors of Symptom Complexity*, 22 J. TRAUMA. STRESS 399, 400 (2009).

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In addition, the caregivers in his life sanctioned, and participated in this conduct, distorting boundaries of right and wrong in a child's mind. Adults in his Limestone community were also engaged in open criminal activities, to include drug selling. These values were instilled at a critical time, when he was developing his own sense of morality, and codes of behavior.

Further, due to his history of trauma, Mr. Finklea has always experienced a sense of profound worthlessness, and that he is a "terrible" person, who does not deserve positivity, or success. Deep-seated beliefs that one is 'permanently damaged' are very common in individuals having experienced complex trauma, as "*chronically abused individuals often incorporate the lessons of abuse into their sense of self and self worth.*"¹¹ As such, he described feeling very uncomfortable with, and undeserving of, the praise and high marks he received in the military. He also felt "uncomfortable" in the military as if he "didn't fit in" describing a sense of alienation common to trauma survivors. Therefore, reverting to these illicit activities was a better fit with his poor self-image than with a 'respected soldier.'

The dysfunction in Mr. Finklea's life became very apparent around the time of the capital offense. Over the course of the year prior, he had lost stability and structure in multiple areas of his life. Most importantly, he had lost the structure of the military after his medical retirement in April 2002. From ages 17 to 28, he had functioned within the regimented system of the military, which had provided stability, predictability and order, to what had been a very chaotic pre-military existence. This loss of structure resulted in increased anxiety, apprehension, and loss of direction. His first wife stated that leaving the military "hit him hard," noting a difficult 'transition.' His second wife noted he did not believe he had a "purpose" in life, which was exacerbated once his military career was jeopardized by injury.

He had also lost the stability of his marriage, due to building domestic discord, and his wife's deployment to Iraq in early 2003. In addition, he described having "three families" that were in various states of disorder and need, which he felt incapable to manage. The stability of his health was also compromised when he injured his knee. This latter incident appeared to have had a weighty emotional impact, as he felt he "lost control of his body," with an "inability to move forward." He became depressed, and was placed on antidepressant medication. His second wife also noted he "felt useless" after he became "disabled."

His chronic, underlying anxiety intensified with this increasing loss of structure and stability, which created a sense of apprehension and unpredictability. Exposure to increased stressors is a well-established trigger for an increase traumatic symptomatology. This is highlighted by his codefendant's reports of Mr. Finklea's significant compulsions around this time (e.g., rigid, compulsive cleaning and arranging). As Mr. Finklea's life became less structured and more chaotic, he again engaged in self-destructive behavior, with involvement in the sale of illicit substances. As before, this was something that he knew from childhood, taught by his mother, and was thus, familiar to him. However, this activity quickly spiraled out of control, with significant financial consequences. Further, as he was without adequate coping skills for any increased stress, he began heavy substance use, using large amounts of alcohol and marijuana daily, after years of very seldom use.

¹¹ Courtois, *supra* note 5, at 414.

By this time, he felt like things “fell apart;” “began to unravel;” referred to himself as a “wreck;” in “straight out panic mode;” that he was “screwing up;” felt “worthless;” and had suicidal thoughts. He went days without sleep, and was excessively “pacing.” All of this was exacerbated by heavy substance use, which resulted in cognitive impairment (e.g. “very cloudy thinking”). This increasing pressure and anxiety rapidly intensified up to the time of the capital offense, with overwhelming feelings that he was losing control. He acknowledged that the decision to engage in the offense was a way to exert control over the situation, however poorly planned or conceived, referring to the capital offense as “a very broken plan, not rational....”

It should be noted that, during his pretrial detention, Mr. Finklea denied or grossly minimized his history of trauma, even with treating professionals and members of his defense team. It is well established that capital defendants often minimize or deny trauma histories, making it difficult to obtain a comprehensive or detailed understanding of their adverse development.¹² Multiple reasons account for this phenomenon, to include: humiliation and shame around discussing abuse, particularly sexual abuse; desire to avoid feeling vulnerable or appearing weak; ‘traumatic bonding’ with abusers; protection of family members; keeping family ‘secrets;’ distrust of defense team and experts; fear of re-experiencing trauma in a stressful environment (e.g., jail); and lack of insight or other mental disorder preventing disclosure.^{13,14}

Certainly, Mr. Finklea’s history is significant for how he, and his siblings, were never allowed to speak about family affairs outside of the family, or they would be physically punished. This was a pervasive, cultural factor within his family. He is ashamed and humiliated by his childhood abuse, which includes sexual abuse, finding it very difficult to discuss. He also expressed a distrust of counsel, and of defense experts, which is related to his history of abuse. In particular, having experienced ‘complex trauma,’ at the hands of caregivers, his developmental experiences of betrayal, “*can disrupt forming or relying on supportive relationships*” as it “*is exceptionally difficult to override the feeling that someone is going to hurt you, take advantage of you...*”¹⁵ Therefore, developing relationships with his attorneys or case professionals would have been challenging without frequent, supportive contact to develop rapport and trust.

Additionally, individuals who have experienced trauma, particularly those with PTSD, often try to avoid any reminders of past trauma to prevent recurrence of related anxiety and intrusion symptoms. This avoidance was most likely a factor in Mr. Finklea’s case as noted in Dr. Schwartz-Watts’ 2007 report that he “has avoided discussing his abuse;” and in Dr. Cherry’s 2007 testimony, when she stated, “you almost had to dig it out of him,” and that he “talked very little” about such topics.

Therefore, it is likely that multiple factors converged within the course of his case, which prevented discussion, exploration and investigation of his trauma.

¹² Mark D. Cunningham, *Forensic Psychology Evaluations at Capital Sentencing*, IN *LEARNING FORENSIC ASSESSMENT: RESEARCH AND PRACTICE* (Rebecca Jackson & Ronal Roesch, eds. 2015).

¹³ Kathleen Wayland, *The Importance of Recognizing Trauma Throughout Capital Mitigation Investigations and Presentations*, 36 *HOFSTRA L. REV.* 923 (2008).

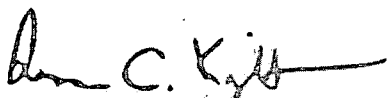
¹⁴ *Rompilla v. Beard*, 545 U.S. 374 (2005).

¹⁵ Center for Substance Abuse Treatment (U.S.), *supra* note 7 at 67.

In sum, Mr. Finklea experienced 'complex trauma' through prolonged, interpersonal, invasive and repetitive abuse, perpetrated by his caregiver, over the course of his development. Exacerbating factors included abandonment by his father; chronic exposure to domestic and community violence; and familial involvement with illicit activities. Therefore, over the course of his upbringing, his development was significantly disrupted due to chronic stress from abuse, and pervasive exposure to negative models, both inside and outside the home. As such, he did not develop the necessary interpersonal skills for successful relationships, adequate coping skills for healthy functioning, or a stable, positive identity. Instead, he developed a very poor sense of self-worth, consistent with feeling damaged, and vulnerable. In addition, he developed traumatic and compulsive symptomatology, expressed in the form of PTSD and OCD, with active symptoms over the course of his life.

These factors converged to result in an adverse life trajectory upon reaching adulthood. Although he was able to maintain a career in very highly structured environment, he had great difficulty functioning with less predictability and structure. His marriages were dysfunctional and reflective of poor affect regulation, and interpersonal skill deficits. He also engaged in self-destructive conduct, consistent with ingrained models of behavior, and very poor self-image. Around the time of the capital offense, he experienced a significant loss of structure and stability in multiple areas of his life, for which he had very poor coping skills. Consequently, he experienced escalating feelings of anxiety, apprehension, and helplessness. All of these factors acted in a cumulative manner to adversely impact his functioning, judgment and decision-making, ultimately resulting in his convictions, and sentence of death.

Respectfully Submitted,



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

September 1, 2017

Date Signed

Susan C. Knight, Ph.D., ABPP
 Licensed Clinical Psychologist
 Board-Certified Forensic Psychologist
 knight@apsforensic.com

Applied Psychological Services, LLC
 1941 Savage Rd., Ste. 100A-606
 Charleston, South Carolina, 29407
 (843) 637-5729-Phone; (843) 410-2802-Fax

FORENSIC PSYCHOLOGICAL EVALUATION

'Future Dangerousness' (Adaptability) Assessment



Examinee: FINKLEA, Ron

Case Name/#: Ron O'Neal Finklea vs. State of South Carolina / #2010-CP-32-5067

Birth Date: [REDACTED] 1973

Dates of Examinee Interviews: July 29, 2016; April 14, 2017; May 2, 2017; May 26, 2017; June 8, 2017; August 7, 2017; and August 25, 2017

Others Present: Diana Holt, Esq. May 2, 2017; May 26, 2017; and June 8, 2017

IDENTIFYING DATA: Mr. Ron O'Neal Finklea is a 43-year-old, divorced, African-American male, presently incarcerated within the South Carolina Department of Corrections, with convictions from Lexington County for Murder [S.C. Code Ann. §16-3-10]; Criminal Conspiracy [S.C. Code Ann. §16-17-410]; Arson, 1st Degree [S.C. Code Ann. §16-11-110(A)]; Attempt to Commit Safecracking [S.C. Code Ann. §16-11-390]; and Possession of a Firearm During Commission of a Violent Crime [S.C. Code Ann. §16-23-490]. His convictions stem from an incident on August 2, 2003. Mr. Finklea was found guilty by jury trial on August 31, 2007, and received a sentence of death on September 6, 2007. His case is presently the subject of post-conviction relief (PRC) proceedings, which is the impetus for the present evaluation. Mr. Finklea's legal team requested an evaluation of his 'future dangerousness' (e.g., adaptability). Therefore, pursuant to this request, this examiner evaluated Mr. Finklea on the dates listed above at Lieber Correctional Institution, in Ridgeway, South Carolina.

SUMMARY OPINION: Based on the totality of data gathered during the evaluation, to include clinical interviews with Mr. Finklea; interviews with his family and others; review of previously conducted interviews; consultations with his SCDC psychologist, his former treating and former forensic psychiatrists; review of legal documents, correctional and psychosocial records; and review of the relevant psychological literature, the following is opined as summarized.

To address the specific referral question, Mr. Finklea's clinical and disciplinary history within a correctional setting was considered in forming the relevant opinions. Mr. Finklea's pre-trial detention and post-sentencing incarceration reflect an approximate confinement of 14 years, from 2003 to present. *Clinically*, mental health services were initiated after a suicide attempt in 2003, which have continued to present. At SCDC, he is classified to 'outpatient mental health' and receives treatment for anxiety and depression. In addition, a thorough review of symptomatology conducted by this examiner support diagnoses of Posttraumatic Stress Disorder and Obsessive-Compulsive Disorder. Records reflect stabilization on psychiatric medication, with good symptom control. *Disciplinary* information indicates only two minor and non-violent infractions during his entire institutional history. An analysis of his 'future dangerousness' (e.g., adaptability) utilized this history; and considered the prevalence of serious violence within correctional institutions, within his correctional department, and within similar inmate groups. Evaluation of individual and/or unique risk factors was also conducted. In sum, available data indicate that Mr. Finklea does not present a significant risk of serious violence within the context of a correctional environment, and has made a positive adjustment to prison.

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23. State of South Carolina, County of Lexington Indictments for Possession of a Firearm while in the Commission of a Violent Crime; Criminal Conspiracy; Arson First Degree; Murder; and Attempt to Commit Safecracking; from Grand Jury May Term 2004;
24. Lexington County Detention Center Inmate Request Forms, dated January 12, 2005; January 20, 2005; January 31, 2005; August 20, 2005; March 6, 2007;
25. Notification to seek death penalty from Donald V. Myers, Esq. to S. Soltis, Esq. and M. Kimbrough, Esq., dated May 8, 2006;
26. Memo/Reports from D.B. Mac Dougall to S. Soltis and L. Kimbrough, dated November 10, 2006; July 10, 2007; August 14, 2007; August 24, 2007; September 1, 2007;
27. Town of South Congaree Incident and Supplemental Reports, from January 23, 2007, to June 4, 2007; and Disposition Sheet for R. Gripper, dated August 10, 2007;
28. Private Investigator [David B. Mac Dougall] Investigation reports and notes, undated, and dated July 10, 2007; August 14, 2007; August 24, 2007; and September 1, 2007;
29. Timeline of video from August 2, 2003, by D.B. Mac Dougall on August 23, 2007;
30. State of South Carolina, County of Lexington, *The State vs. Ron O. Finklea*, Statement of Robin N. Gripper, dated August 29, 2007;
31. Audio Interviews conducted in 2007 by D.B. Mac Dougall with Sgt. Maj. Charlie Turner; Linda Mickens; Irena D. Fuller; Lonnie Watson; David Slagle; Stephanie Pressley; and Vincent Smith;
32. SCDMH, Evaluation Service of Forensic Division, Competency to Stand Trial Evaluation by R. Frierson, MD, dated May 26, 2007;
33. State of South Carolina, County of Lexington, *The State v. Ron Finklea*, Notice of Evidence in Aggravation of the Punishment, dated June 4, 2007;
34. *State of South Carolina v. Ron O. Finklea*, In the Court of the General Sessions for the Eleventh Judicial Circuit Transport Orders, from Lexington County Detention Center to Richland Memorial Hospital, dated June 5, 2007 and August 21, 2007;
35. Medical Impairment Rating Report by Kenneth Gaines, MD, dated July 2, 2007;
36. Electronic Correspondence from D. Schwartz-Watts, MD to L. Kimbrough, dated July 24, 2007;
37. SCDMV 3-Year Driver Record for R. Gripper, dated August 7, 2007;
38. SLED Catch Record for R. Gripper, dated August 9, 2007;
39. State of South Carolina, County of Lexington, *The State v. Ron O'Neal Finklea* Memorandum of Law In re: Defendant's Incompetency to Stand Trial, by M. Kimbrough, dated August 10, 2007;
40. Letter from T. Brawley, PhD., to D. Schwartz-Watts, MD, with Neuropsychology Interview Form, dated August 16, 2007;
41. State of South Carolina Office of the Solicitor, Eleventh Judicial Circuit, letter dated August 20, 2007, with typed notes;
42. Electronic Correspondence from D.B. Mac Dougall, to L. Kimbrough, dated August 26, 2007;
43. Electronic Correspondence from Teresa Fuller to D. Schwartz-Watts, MD, dated September 4, 2007;
44. 'Psychiatric Evaluation' electronic transmission via Yahoo Mail, by Donna-Schwartz-Watts, MD, date of transmission on September 5, 2007;
45. *The State v. Ron O'Neal Finklea*, Statutory Instructions, by Presiding Judge, the Honorable Clifton Newman, dated September 6, 2007;

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72. Medical records for Mr. Ron Finklea from Palmetto Health Richland, dated August 20, 2004 and August 24, 2004;
73. *Teresa Fuller Finklea vs. Ron O'Neal Finklea*, 30th Judicial District, Parish of Vernon, State of Louisiana, Judgment of Divorce, dated December 9, 2004, with relevant attached documents;
74. Medical, psychiatric and disciplinary records from the South Carolina Department of Corrections, dated from September 6, 2007 to January 31, 2017;
75. Handwritten letters from Mr. Finklea's former girlfriend, Ms. Sophia Reed, to Mr. Finklea, dated from January 10, 2013 to April 6, 2014;
76. Video recording of Mr. Finklea's father, Mr. O'Neal Burgess, taken by D. Holt, Esq., on July 28, 2014;
77. Video recording of Mr. Finklea speaking to his son, Ron Finklea, Jr., taken by D. Holt, Esq., on May 21, 2015;
78. Letter written from Ron Finklea, Jr., to Mr. Ron Finklea, undated, sent via electronic correspondence from D. Holt, Esq., on May 15, 2017;
79. 'Inmate Search Detail Report' for Ron Finklea, from the South Carolina Department of Corrections, accessed on August 30, 2017;

Records Requested / Not Received

80. Academic records from Aiton Elementary School in Washington DC, were requested, however, not received by the submission of the report;
81. Updated medical, psychiatric and disciplinary SCDC records from February 2017 present were requested, however, not received by the submission of this report;

Prior Interviews

82. Interview notes by Nancy Smith, MSW, with Mr. Ron Finklea, on April 19, 2011; May 31, 2011; June 1, 2011; November 29, 2011; February 3, 2012; and February 5, 2012;
83. Interview notes by Nancy Smith, MSW, with Rosie Finklea, Johnnie Finklea, Sr., Johnnie 'Billy' Finklea, Roosevelt Finklea, Curtis Blount, Betty Peoples, Chanell Finklea, Erica Middleton, Ruby Finklea, O'Neal Burgess, Emma Primm, Sallie Bullard, Sharon Jackson, Nicole Fantroy, Philip Peoples, Louise Mayhand, Sam Lipscomb, L. Gilmore, Robin Gripper, Amari Anderson and Theodore Davis, dated from April 30, 2011 to February 6, 2012;
84. Interview notes by Tara Waters, Esq., with Mr. Ron Finklea, on August 28, 2012; and October 1, 2012;
85. Interview notes by Tara Waters, Esq. with Ms. Betty Peoples, Ruby Finklea, Erica Middleton, Chanell Finklea, Emma Primm, Sallie Bullard, Willie Mae Wigfall, and Mr. and Mrs. Robert Fuller, dated from September 12, 2012 to November 4, 2015;

Current Interviews

86. Clinical Interview with Mr. Ron Finklea, for three hours, on July 29, 2016;
87. Clinical Interview with Mr. Ron Finklea, for three hours and forty-five minutes, on April 14, 2017;
88. Clinical Interview with Mr. Ron Finklea, for approximately four hours, on May 2, 2017;
89. Interview with Mr. Finklea's mother, Ms. Betty Finklea-Peoples, on May 15, 2017;
90. Interview with Mr. Finklea's first cousin, Ms. Erica Middleton, on May 15, 2017;
91. Interview with Mr. Finklea's maternal aunt, Ms. Ruby Finklea, on May 15, 2017;
92. Interview with Mr. Finklea's brother, Mr. Curtis Blount, on May 15, 2017;

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EVALUATION DATA: All data was obtained through interviews with Mr. Finklea, and from relevant collateral sources where indicated.

Summary of Social History: Mr. Finklea was born on October 18, 1973, in Washington, DC. His mother is Betty Finklea, and his father was O'Neal Burgess. His parents never married, as his father was already married at the time of their relationship. They had a brief relationship, with very little involvement by Mr. Finklea's father after his birth. Several years later, his mother had a child [his younger brother] with another individual, who was Mr. Finklea's stepfather, Roosevelt Blount. At age 7 or 8, in 1984, he moved to Franklin, Alabama, with his mother, older sister, younger brother, and his stepfather. After moving to Alabama, Mr. Finklea had only one very brief encounter with his father, at age 16, and his father has since passed away. After several years in Franklin, he moved to Monroeville, Alabama, with his mother, siblings, and her new husband, Charlie Peoples, where he was raised until age 17. Violence and drug use were pervasive in this neighborhood. Illicit substances were also sold from his home, of which he was made to participate. Further, there is ample evidence of severe physical, emotional and sexual abuse perpetrated by his mother throughout his entire childhood.

During his schooling, Mr. Finklea had no placement in special education, and no history of significant behavioral problems. In May 1991, he graduated high school, and on June 11, 1991, enlisted in the US Army. He served in the Army until late April 2002, with duty stations to include, Fort Lewis [Washington State], Fort Polk [Louisiana], Fort Bragg [North Carolina], and deployments to Panama and Germany. His primary duties involved supply and logistics.

In May 1993, at age 19, he married his first wife, Cherena Roland, and his first child, R [REDACTED] F [REDACTED] J [REDACTED], was born in April 1994. His son is now 23 years old, and resides in Tacoma, Washington, with his first child born in April 2017. In 1996, Mr. Finklea and his wife were separated, and their divorce was finalized in 1998. In July 1999, he married a second time, to Teresa Fuller, and has no children from this union. He was divorced from his second wife after his arrest, in December 2004. By all accounts, his marriages were characterized by conflict and infidelity. He has a second child from another union, a son, J [REDACTED] R [REDACTED] who was born in 2001, and is now 16 years old. This child resides in Texas, with his son's mother, Ms. Sophia Lane.

In April 2002, Mr. Finklea was Honorably separated from the military via temporary medical retirement due to asthma and knee injury. He subsequently resided in Texas, Michigan, Alabama, and in October 2002, moved to South Carolina, to be with his family. His wife was deployed to Iraq in February 2003, and he planned to return to active duty in September 2003. Therefore, he was involved in treatment and rehabilitation for his medical conditions through the Veterans Affairs Medical Center in Columbia, South Carolina. He also worked brief terms of employment, including at Solelectron Corporation from March to May 2003. At the time of the capital offense on August 2, 2003, he was unemployed, and involved in the sale of illicit drugs.

Lexington County Detention Center [LCDC]: On August 8, 2003, Mr. Finklea was transported to the Lexington County Detention Center (LCDC). Hours after his arrival, Mr. Finklea made a serious suicide attempt by hanging. Therefore, he was transported to the Lexington Medical Center, where he was hospitalized until August 12, 2003. He was returned to LCDC, where he was detained until his sentencing on September 6, 2007.

LCDC [Disciplinary Functioning - Collateral Data]: Records from his detention in LCDC did not indicate any type of disciplinary infraction or violation. There are also several 'Inmate Request Forms' submitted by Mr. Finklea, which are polite and appropriate, requesting information on how to communicate with his mother by phone, questions about recreation, classification, and room changes, and a request for a King James Bible.

LCDC [Disciplinary Functioning - Prior Collateral Interviews]: Prior to his trial, defense investigator, D.B. Mac Dougall interviewed two correctional officers at LCDC, both of whom were familiar with Mr. Finklea during his detention. His corresponding 'Interview Reports' indicated the following. Correctional Officer C. Avery indicated that she "supervises" Mr. Finklea at the detention center. It was noted that she described him as an "ideal inmate" who has given her "no problems." She has "never had to write him up," and that "he does what he is supposed to do" and "follows orders." She "has never seen him in a confrontation with other inmates" and "has adapted well to the detention center routine." Correctional Officer L. Mickens indicated, that Mr. Finklea "had adapted well to detention center life." She described him as "quiet and laid back" and that he "never gave her any trouble."

LCDC [Disciplinary Functioning - Examinee's Account]: While at LCDC, Mr. Finklea was housed in three separate areas. For the first [approximate] 12 months, he was housed "in booking, so they could see me at all times," after his suicide attempt. In 'Booking,' he "had at least seven cell-mates, different people would come in and out." He stated the officers would allow him out of his cell at times given the informality of the housing area. He was then moved to "administrative PC" but was not celled alone and "had at least 5 cellmates," with two or three detainees to a cell. He was housed in 'Admin PC' for [approximately] one year. For the last [approximate] two years of his detention, he was housed in "A-pod, population." He had two cellmates, with "three in a room." In A-pod, he would "go out in the dayroom, or outside to a tiny rec field, moving freely with the other inmates." At no time did he ever have problems with officers, or with any other detainees, either in or out of his room. He did not recall any disciplinary infractions, violations, or citations of any kind.

LCDC [Psychiatric/Medical Functioning - Collateral Data]: Records from his detention in LCDC indicated the following regarding his psychiatric and medical functioning. Just prior to the suicide attempt on August 8, 2003, Mr. Finklea had attempted to use the phone in the booking area, but was "having trouble with the phone." He then "went into his cell with no problems." Officers noted no signs of suicidality, distress or disturbance during this time. A short time later, officers found Mr. Finklea "hanging by a sheet from the vent grate in his cell." They attempted to "cut the sheet" from his neck. It had been "double wrapped and double tied." Once on the ground, his "eyes were open, fixed, and dilated, his mouth was open tongue out." Officers and medical personnel began life-saving measures (CPR), as he had "no pulse and no heartbeat." Eventually, they "started a heartbeat but breathing was very shallow." During the entire incident, he "never spoke." EMS was contacted and he was transported to the Lexington Medical Center.

Name: FINKLEA, Ron

Date of Birth: [REDACTED] 1973

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Board-Certified Forensic Psychologist

She did recall that, "his preference was not to do anything to mar or hurt his mother," and believed "he asked Dr. Schwartz-Watts not to share anything that reflected poorly on his mother." She noted, "he always tried to show respect for his mother."

She did not recall that he was suicidal after his initial attempt. She believed he showed "no violent tendencies, if anything it was the opposite." She "saw no behavior problems at all" and "no problems ever with other people...he was able to deescalate things." She believed his PTSD "made violence intolerable, he tried to create a climate around him that was not chaotic...to avoid conflict." She believed he did this to avoid resurgence of physiological arousal (e.g., anxiety and panic). Dr. Cherry noted that, as she did not have access to his records, and given the amount of time passed since her treatment, she was recalling all detail from memory.

LCDC [Psychiatric/Medical Functioning – Examinee's Account]: Mr. Finklea stated he vaguely recalled being in the booking area when he first arrived at LCDC on August 8, 2003. However, he remembers very few details, and does not recall the suicide attempt. After his return from the hospital, to the time of his sentencing, he recalled feeling "up and down, always felt anxious, like a small asthma attack, having nightmares on the regular, struggled with sleep, became very concerned about the nightmares." He recalled seeing both Dr. Cherry, as well as taking medication as prescribed. He did not recall his medication regimen in detail, but stated Dr. Cherry was "trying to find balance for me," with his medications. He does not believe he spoke with her about his childhood abuse, or if he did, believed he would have provided very little detail. He explained this would have been due to lack of trust, guardedness, ingrained culture of not speaking outside the family, feelings of shame, and lack of any formal therapy opportunity.

▪ South Carolina Department of Corrections [SCDC]: Mr. Finklea's sentence with the South Carolina Department of Corrections (SCDC) began on September 6, 2007 to present, representing almost exactly 10 years of incarceration by the submission of this report. He has been maintained in death row housing at Lieber Correctional Institution for the duration of his sentence to date. Aside from transport out of the institution for court dates, he has not been transported to, or held, at other locations, including other institutions or outside hospitals. His history of disciplinary, psychosocial, medical and psychiatric functioning at SCDC per collateral records is presented below in chronological order, followed by Mr. Finklea's account.

SCDC [Disciplinary Functioning - Collateral Records]: Over the course of his approximate ten-year incarceration in SCDC, from September 2007 to September 2017, Mr. Finklea's disciplinary records reflect only two infractions, which are both minor, and non-violent in nature.

On August 11, 2009, he was charged with *Possession of Contraband (817)*, after a "random cell search" yielded a "homemade battery pack" made out of a "deodorant bottle." When officers asked him what the item was, he replied "a battery pack." The infraction was handled through an "administrative resolution" and he was placed on ten days of cell restriction. Mr. Finklea accepted the sanctions, and waived his appeals and rights to a disciplinary hearing.

On August 6, 2010, he was charged with *Possession of Contraband (817)*, after officers found a "large pair of [nail] clippers" and "homemade electric battery pack" in his cell. He was placed on 90 days of canteen and visitation restrictions. The infraction was handled via an "administrative resolution," and it appears that he plead guilty and accepted sanctions.

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They also had "church services on Wednesday, everyone who wanted to come out could come out," and "another Bible study" on Friday night. Mr. Finklea stated he always left his room for these activities. He explained, "we would all come out, go in and out, could take a shower if you wanted to, guys would be out playing cards, using the microwave, using the telephone." The inmates would also "sit at the tables with civilian volunteers, no cuffs or anything." Mr. Finklea reported no problems, disciplinary or otherwise, with this less restrictive setting.

However, in December 2009, significantly more restrictive rules regarding inmate movements, out of cell time, recreation, and the like was instituted. Mr. Finklea stated that "after this, everything changed, it got much more restrictive." For example, during current Kairos visits, the inmates "have to try and watch the films and listen from their cells." Kairos members come to cell doors to speak with inmates, instead of out in the open pod. Inmates now eat alone in the rooms, instead of in the open area, with shower times much more restrictive, and restraints used during all out of cell time.

Regarding any type of work, Mr. Finklea was a "work-out" for six months in 2015, which meant he "came out [unshackled], cleaned up, passed out ice, cleaned out showers, did laundry, my laundry and others' laundry." He was "always out at night" during the time he was a "work-out." When asked how he became a "work-out," he stated that two years ago, he "painted my whole cell white, it was soothing, the brown and gray was hard to take mentally, the officers got me paint, and now it's bright, clean and neat." He also "put 7 coats of wax on top of the white paint." After he painted, "the warden saw my cell... and he wanted me to be a work-out because of my cell cleanliness." He stopped this activity when another inmate, who was "a flat-out racist," also began duties as a workout. Therefore, as he did not wish to be subjected to this type of treatment, he voluntarily discontinued his duties.

Regarding out of cell time, he always 'bathes' at his sink, and does not leave his room for showers. He "had a bad experience in 2014 of being locked in the shower for two hours because they're so short-staffed, guys regularly get locked in the showers." Therefore, he prefers to wash in his room. Similarly, he "does not take rec anymore, I have not been outside in quite a while...everything I can do outside, I can do in my cell, people get stuck in rec" due to officer shortage. He "last took rec two years ago."

His current interpersonal activities involve, on some Mondays, "Kairos comes in and I talk to them at my cell door from 10 minutes to two hours at a time, talk about religion, politics, sports..." On Thursdays, a church deacon has been coming and will "walk cell to cell, been coming 3 or 4 years now, however, he's out with cancer now." He stated, "...I have a lot of love for him, he's a great guy, he does a lot for us." He stated "other people will come from different churches on various days, and some will sing or do a sermon, and I will watch from my cell, and I talk with them because they could be anywhere else and they choose to talk to us."

Although he visits with civilian volunteers, Mr. Finklea has "never" had a personal visit from his family, or any other person, during his incarceration in SCDC. He uses the phone "sporadically" and "not a lot." He has had a "pen-pal who contacts us [inmates] from overseas" as well as a local pen pal. He writes his family more frequently, writing his mother, great aunts, aunt, brother and sister. He also writes his two sons. He "will get some mail back" from his family.

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Over the course of his incarceration, earlier notes reflect that he was initially more symptomatic and distressed, than in later notes. He experienced agitation, depression, crying spells, withdrawal from others, sleep and appetite disturbance, poor concentration, hypervigilance and mood instability. Anxiety, panic attacks, racing thoughts and nightmares were also reported. In the earlier years of his incarceration, he reported much worry over his home, his family, and his children. By 2010 and 2011, notes reflect overall increasing and significant psychiatric stabilization, with much better symptom control. In August 2011, Mr. Finklea began to decline medications due to "feels he can get better through his faith and his belief in his Creator he will be fine." Therefore, in September 2011, his medications were discontinued, and in December 2011, he was removed from the mental health caseload.

In August 2014, Mr. Finklea reported a resumption of symptoms, including anxiety, agitation, racing thoughts, poor appetite, and exhaustion. He also reported a "childhood history of abuse." He previously "did not feel safe taking the medication," but wished to resume treatment, as "he now knows that he needs something to help him through the days." Therefore, he was returned to outpatient mental health care, with his medications restarted. After resuming medication, to present, he has slowly improved. Anxiety with sleep disturbance, racing thoughts, and poor concentration initially predominated the clinical picture, with steady improvement.

By November 2015, it was noted that Mr. Finklea reported much improvement since the start of his incarceration, stating, "I have made progress." He "reports coping by reading, writing, and studying his Bible...also uses resource books." He is "understanding manhood and fatherhood now. I am a different person now." The clinician noted that Mr. Finklea's "thoughts were focused on the progress he has made as a mature man now." Records from January 2016 to January 2017 note consistent improvement, with stable functioning and better coping, as his medications work well to alleviate and control his symptoms.

Over the course of his treatment, records do not indicate any overt suicidality, with no use of suicide precautions for clinical reasons; no homicidality or other violent thoughts or behavior; and no symptoms of psychosis (e.g., hallucinations, delusions, paranoia, bizarre behavior or thought disorganization).

SCDC [Psychiatric Functioning - Collateral Consultation]: A member of Mr. Finklea's SCDC mental health team, Cassandra Means, PhD, was interviewed for additional information. Dr. Means has been conducting Mr. Finklea's 30-day mental health follow-ups since early 2016. She also worked at the Lexington County Detention Center during the time of Mr. Finklea's pretrial detention. Therefore, she was previously familiar with his psychiatric functioning.

During her work with him at SCDC, she has never observed any suicidality, homicidality or behavior problems. She has never heard from officers that Mr. Finklea has any problems with the officers or other inmates. When she sees him, he typically presents as "easy to engage," with a denial of major psychiatric symptoms. She stated, "he has his moments, but not often," when he appears sad from his legal circumstance. She described his cell as always "very organized and neat, he's always cleaning it up, moving things around and arranging." She stated, "I feel very comfortable that he would tell me if something is wrong" such as suicidal thoughts or a decompensation in functioning. She believes he is compliant with his medication.

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Current Functioning: Mr. Finklea described his daily routine, which is regimented and from which he rarely deviates. He wakes at 3:30 a.m., and proceeds through a routine of prayer, Bible study, television and radio programming, exercise, reading, writing and hygienic activities. He also engages in cleaning and arranging rituals for hours throughout the day. He is awake until approximately 1:00 a.m. He reported that, overall, he "sleeps two to three hours in a 24-hour period." He eats at regular intervals consistent with appetite fluctuation. He reported an average stable mood, with periods of anxiety and racing thoughts. Traumatic and obsessive-compulsive symptomatology were also reported in detail, however, he reported no overt mood instability, psychotic symptoms, and no suicidal or homicidal ideation.

Presently, he sees a mental health clinician every 30 days, with regular psychiatrist visits at longer intervals. As of the last interview, he identified his medications as, Prozac, 40 mg, and Remeron, 30 mg. He reported full compliance with his regimen of psychiatric medication. He takes it daily, although administration time of his morning and evening medication can vary by hours each day. He reported good symptom control from his medications.

Clinical Impression: Over the course of all interviews, Mr. Finklea presented with stable psychological functioning. He was cooperative, polite, and forthcoming. He presented with good attention to grooming and hygiene, and with good eye contact. His speech was of normal rate, volume and prosody, although he tended to speak more rapidly, with excessive detail, and nervousness during the beginning of the interviews. His psychomotor functioning was within mostly normal limits, however, intermittent facial tics were apparent throughout all interviews. His mood was euthymic, with stable affect, although he appeared anxious at times, particularly when discussing his history of childhood trauma. His thought process was mostly linear, with thought content appropriate to the evaluation. There was no evidence of formal thought disorder, delusions, or psychotic process; major mood disturbance; or overt cognitive dysfunction.

A thorough review of symptomatology revealed evidence of longstanding mental disorder, best characterized by diagnoses of *Posttraumatic Stress Disorder*, *Obsessive-Compulsive Disorder*, and a *History of Major Depressive Disorder*.

Inmate-on-inmate homicides are also very low. In a Bureau of Justice Statistics (BJS) Report from 2005, it was found that homicides in state prisons have “dipped sharply” over the decades with a drop of “93% from 1980 to 2002.” It was noted, “long term trends show steep declines in rates of state prisoner homicide...”⁸ In a more recent (BJS) Report from 2016, the mortality rate for inmate deaths by homicide in state prisons from 2001 to 2014 was 5 in 100,000 inmates, with homicides accounting for 2% of all inmate deaths.⁹

Further, rates of homicides in prison are lower than in the community at large, and much lower when standardized for demographics. For example, when the community resident population is standardized to match the state prison population for age, race and gender, “the resident population had a homicide rate (35 per 100,000) nearly 9 times the rate of homicide in state prisons.”¹⁰ This finding is indicative of the successful risk management procedures employed by correctional institutions, and lack of criminal motivators to commit homicide in prisons as compared to the community. Overall, “institutional violence is not only an infrequent event but also a low-base rate phenomenon, as a relatively small group of violent individuals is responsible for most of the assaults that occur in institutional settings.”¹¹

Further, within Mr. Finklea’s correctional department of SCDC, there has not been an inmate-on-staff homicide in over thirty-three years.¹² Rates for serious inmate-on-staff assaults, defined as “requiring outside medical attention,” equaled less than one percent of the average daily inmate population from 2011 to 2017.¹³ For example, in 2016, there were 33 “serious” inmate-on-staff assaults, which represented less than 1% of the 2016 SCDC inmate population. This is despite the fact that the 2016 population was comprised of 3,989 homicide offenders, or 18.7% of the total SCDC population, with many more having other violent convictions. The rates of SCDC inmate-on-inmate homicides have also been very low. From 2000 to 2016, the average number of inmate homicides was two per year, with inmate populations in excess of 20,000.¹⁴

3) The prevalence of serious institutional violence should also be examined in inmate groups most similar to Mr. Finklea, to include capital defendants, former death row inmates, and those inmates serving Life Without Parole (LWOP). Reviews of such studies have consistently shown that these groups have engaged in either less institutional violence, or no more than, comparison groups.^{15, 16, 17, 18}

⁸ Christopher J. Mumola, *Suicide and Homicide in State Prisons and Local Jails*, Bureau of Justice Statistics, NCJ 210036, 1, 2 (2005).

⁹ Margaret Noonan, *Mortality in State Prisons, 2001-2014 - Statistical Tables*, Bureau of Justice Statistics NCJ 250150 (2016).

¹⁰ Mumola, *supra* note 8.

¹¹ Daniel Neller & Michael Vitacco, *Institutional Violence Risk: Theory, Assessment and Management*, --- IN VIOLENT OFFENDERS: UNDERSTANDING AND ASSESSMENT 269, 270 (Christina A. Pietz & Curtis A. Mattson, eds., 2015).

¹² Charles Bradberry, SCDC Representative, Electronic Communication (August 30, 2017).

¹³ http://www.doc.sc.gov/research/SystemOverview/Inmate_Assaults_on_Employees_FY11-FY17_v2.pdf.

¹⁴ Bradberry, *supra* note 12.

¹⁵ Jaya Davis & Jon R. Sorenson, *Using Base Rates and Correlational Data to Supplement Clinical Risk Assessments*, 41 J. AM. ACAD. PSYCHIATRY LAW 391 (2013).

Of these, young age is by far the most robust and reliable predictor of prison violence, a finding replicated by many studies. Those inmates younger than age 21 represent the most risk, with one's risk significantly declining by age 30 and beyond.²⁷ In review of Mr. Finklea's case, there is no available evidence that any of these individual risk factors are present. He is 43 years old, well outside of the age-crime curve for violence in prison; has a high school degree; has no history, and thus no pattern, of prison violence; has no prison (or otherwise) gang affiliation; is not serving a short sentence; and is not within the first several years of his sentence.

Aside from those individual risk factors known via research to be associated with prison violence, a complete assessment must include consideration of any factors specific to Mr. Finklea that could increase his risk of violence. Such factors may include chronic homicidal ideation or other psychiatric symptoms (e.g., command hallucinations for violence), or certain case-specific factors. In a thorough review of Mr. Finklea's case, there were no such unique risk factors found.

Finally, and most importantly, Mr. Finklea's past pattern of conduct within an institutional setting is paramount to his assessment. In his case, there is no available evidence to indicate that he has had any history of violent acts toward others, minor or serious, for the entirety of his 14-year incarceration. Research indicates that, "initial acts of violence [are] rare by the ninth year of incarceration;"²⁸ and that "inmates who had served more than nine years without being sanctioned for an assaultive misconduct had a *negligible* incident of such institutional violent misconduct thereafter."²⁹ Further, as with any correctional institution, SCDC has risk management procedures in place to reduce and manage any potential threat or instance of violent misconduct.

In sum, the prevalence of serious prison violence is very low in correctional environments despite a high concentration of violent offenders, with lower rates of violence than in the community at large. Rates of serious violence are also relatively low in his correctional department (SCDC). Rates of violence acts in offender samples similar to Mr. Finklea, have been found to be equal to, or lower, than comparison inmate samples; and he does not have any individual risk factors that would justify elevating his risk above these rates. Additionally, he has served approximately 14 years in confinement without any major or minor violent misconduct, which statistically lowers his risk that he will act out violently in the future. Therefore, he is opined to have made a successful, non-violent adjustment to prison, with the expectation that this trajectory would continue over the course of his incarceration.

²⁶ Mark D. Cunningham, Jon R. Sorenson, Mark P. Vigen & S.O. Woods, *Correlates and Actuarial Models of Assaultive Prison Misconduct Among Violence-Predicted Capital Offenders*, 38 CRIM. JUSTICE BEHAV. 5 (2011).

²⁷ Cunningham, *supra* note 2.

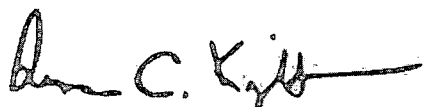
²⁸ Jonathan R. Sorenson & Rocky L. Pilgrim, *An Actuarial Assessment of Violence Posed by Capital Murder Defendants*, 90 J. CRIM. LAW CRIMINOL. 1251, 1263 (2000).

²⁹ Cunningham, *supra* note 19, at 47.

This assessment finds a very low rate of serious violence within correctional institutions, particularly as compared to community rates of violence. Rates of violence in his correctional department of SCDC were similarly low. Comparable inmate groups, such as capital inmates, former death row inmates, and inmates serving LWOP engage in disproportionately lower rates of violence, or no more than, comparison groups. Further, no individual and/or unique risk factors for institutional violence were found in Mr. Finklea's case.

In sum, available data indicate that Mr. Finklea *does not* present a significant risk of serious violence within the context of a correctional environment, and has made a positive adjustment to prison.

Respectfully Submitted,



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

September 1, 2017

Date Signed

Name: FINKLEA, Ron

Date of Birth: [REDACTED] 1973

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S. Knight, Ph.D., ABPP

Board-Certified Forensic Psychologist

Janet Vogelsang, MSW, BCD
12 East Earle Street
Greenville, South Carolina 29609
(864) 271-1777 office
(864) 271-5020 fax
(864) 346-2804 cell



August 1, 2017

EDUCATION:

Masters of Social Work
University of South Carolina 1980

Bachelor of Psychology
Pepperdine University 1977

LICENSES AND CERTIFICATIONS:

South Carolina Board of Social Work Examiners (#102)
American Board of Examiners in Clinical Social Work (#018014)
Alabama State Board of Social Work Examiners (#1667c)

APPOINTMENTS:

American Board of Examiners in Clinical Social Work Board, 2002
South Carolina Crime Victims Advisory Board, Office of the Governor,
1988-1996
Commissioner, City of Santa Monica, Santa Monica City Council, 1984
Governmental Affairs Chair, SC-NASW, 1999-2002
National Organization of Forensic Social Workers Editorial Board, 2011 to
present

PROFESSIONAL MEMBERSHIPS:

National Association of Social Workers South Carolina Chapter (ret.)
Past President

South Carolina Clinical Social Work Association (ret.)
Past President

American Board of Examiners in Clinical Social Work
Past Board Member

WORK EXPERIENCE:

- 1980-1981 Los Angeles Department of Public Social Services, Los Angeles
California, Child Protective Services, Child Placement, Home and
Community Studies, Court Reports and Testimony, Biopsychosocial
Assessments
- 1982-1984 Wolfe and Vogelsang, Private Practice, Santa Monica, California,
Diagnosis and Treatment of Individuals, Families and Groups
- 1984-1985 Baptist Medical Center, Social Work Supervisor, Columbia, South
Carolina, Counseling with Patients and Family, Conducting
Bereave-
ment Groups, Trauma Counselor for the Emergency Room
- 1985-1986 Family Service Greenville, Program Administrator, Domestic Violence
Program, Greenville, South Carolina, Supervised Staff, Conducted
Support
Groups, Therapy for Individuals, Families and Groups, Conducted
Biopsychosocial Assessments and Court Testimony
- 1986-1993 Private Practice, Partner, Behavioral Consultants, Inc., Greenville,
South Carolina, Diagnosis and Treatment for Individuals, Families
and
Groups, Court Testimony, Education and Training,
Biopsychosocial
Assessments
- 1993-1998 Solo Practice, Vogelsang Consulting, Inc., Greenville, South
Carolina, Diagnosis and Treatment for Individuals, Families and
Groups,

Training

Court Testimony, Biopsychosocial Assessments, Education and

1998-2016 Vogelsang Consulting, Inc., expanded to include treatment of learning and other cognitive/intellectual deficits related to neurological impairments

INTERNSHIPS:

1978-1979 Greenville Area Mental Health Center
Diagnosis and Treatment of Mental and Emotional Disorders,
Biopsychosocial Assessments

1979 William Hall Institute
Diagnosis and Treatment of Mental and Emotional Disorders
Biopsychosocial Assessments

1979-1980 Veterans Administration Hospital
Diagnosis and Treatment of Mental and Emotional Disorders
Biopsychosocial Assessments

AREAS OF EXPERTISE AND EXPERIENCE:

Diagnosis and Treatment of Behavioral Problems in Individuals, Families, Groups

Behavioral Responses to and Treatment of Trauma

Addictions and Substance Abuse

Physical, Sexual and Emotional Abuse and Neglect

Biopsychosocial Assessments and presentations of findings to Individuals,
Courts, Institutional Staff, Agency Staff and Other Organizations

Behavioral and Learning Problems Associated with Neurological Impairments

SPEECHES AND TRAINING:

Post Traumatic Stress Disorder
 Survivors of Trauma
 Victimization and the Courts
 Biopsychosocial Assessments
 Family Systems
 Child Welfare and Development
 Resilience

COURT EXPERIENCE:

Child Protection
 Child Custody
 Child Placement
 Termination of Parental Rights
 Adoptions
 Sexual Assault
 Family Violence
 Divorce
 Capital and non-capital criminal cases
 Conducting biopsychosocial assessments and rendering expert opinions in family and criminal courts both state and federal

PUBLICATIONS:

Master's Thesis
 A Multidisciplinary Approach to Child Abuse and Neglect-1980

Crime Victims Handbook
 Advisor-Office of Victim Witness Assistance
 Thirteenth Circuit, Greenville, South Carolina

The Witness Stand: A Guide for Clinical Social Workers in the Courtroom

The Practice of Psychoanalysis: A Specialty of Clinical Social Work (Position
 paper of
 the American Board of Examiners Work Group on Psychoanalysis)

RECOGNITIONS:

Office of the Thirteenth Circuit Solicitor, Greenville, South Carolina, Outstanding and Dedicated Service

National Association of Social Workers, 1987 Spring Symposium, Outstanding Service

National Association of Social Workers, 1985-1988, South Carolina PACE Representative, Outstanding Service

National Association of Social Workers, 1987-1989, Board of Directors, Contribution to the Profession of Social Work

AWARDS:

Social Worker of the Year, 2002, SC-NASW

Alumnus of the Year, 2002, University of South Carolina College of Social Work

Outstanding Leadership in the Advancement of the Social Work Profession, 2002, SCSCSW

South Carolina Senate Motion, 2002, for Outstanding Leadership in the Profession of Social Work

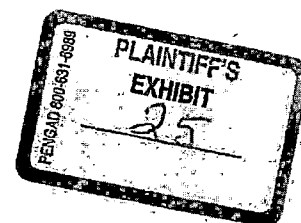
South Carolina House of Representatives, 2002, House Resolution H.4838, for Leadership of the South Carolina Chapter of the National Association of Social Workers

Psychiatric Evaluation

Identifying Information: Ron O. Finklea is a thirty-three year old African American male evaluated pursuant to a request from his attorney, Melissa Kimbrough to determine if he has any mitigating factors for his capital charges in Lexington County. He was found guilty of Murdering Walter Sykes on 8/2/03.

Sources of Information

Soletron ATM Video 5/1/06
 Cassette 911 call 8/2/03
 Crime Scene Photos
 Autopsy Photos Walter Sykes
 12 Coroner Poloroid Photos
 Evidence #81 6/1/06
 Birth Certificate Ron O'Neal Finklea
 DD Form 1966 declaring Mr. Finklea born out of wedlock
 Awards from Vocational rehabilitation, Monroe County 1989-1990
 Army Certificates 1991
 Order of physical disability 2/28/02
 Certificate of Recognition (participation in Cold War)
 Certificate of Achievements Emergency Management Institute, 1999
 Certificate Army Institute for Professional Development 1999
 Certificates NCO Career Nonresident Program 1996
 Certificate Army Achievement Medal 1995
 Physical Examination 1990
 NCO Evaluation reports 1998, 1999, 2000, 2001
 Order of Promotion to Staff Sergeant 4/2000
 Service School Academic Report 4/2000
 Certificate Outstanding Performance Quartermaster School 2/2000
 Certificate of Achievement Support Battalion 1999
 Announcement Good Conduct Medal Award 1994, 1998
 Evaluations: 6/06, 7/27/07, 8/24/07, 9/4/07
 Verbal report Neuropsychological testing 6/14/07
 Letter to Ms. Kimbrough from undersigned July 24, 2007
 Report Dr. Kenneth Gaines 7/2/07
 Report Dr. Tora Brawley 8/16/07
 Testimony of Dr. Richard Frierson
 Testimony Dr. Gaines, Dr. Brawley
 DJJ Records Theodore Davis, Jr 1992
 Indictment for Kidnapping (Theodore Davis) 1993
 Indictment for ABITK 1993 (Theodore Davis)
 Military Records Ron O'Neal Finklea
 Military medical Records
 Resumes Mr. Finklea
 SLED Records
 Lexington County Detention Center Medical records



Lexington Medical Center Records
 Lexington County Mental Health Center Records
 Prison Health Services Records
 Incident reports related to hanging 8/8/03
 School records
 Warrants Murder, Arson First degree, Possession of a Firearm while in the commission
 of a violent crime, Unlawful Carrying of a Pistol
 Evidence/property record
 Coroner Incident and Supplemental Report
 Autopsy report Walter Sykes
 Receipts
 Auto records Mercury Tracer
 Budget Rental Car records
 Receiving medical Screening LCDC 8/13/03
 Inmate Visit History
 Inmate Request Forms
 Incident Report Prisoner Transport 8/12/03
 Incident report Death Under Investigation 8/2/03
 Crime Scene Report 8/8/03
 Affidavit to search Limestone Road
 Notes of Interview with Sherry Bolin
 Notes from Interview James Banks
 Notes from interview Saneakia Greene
 Interview Notes from Angel Peters
 Interview Notes with Leticia Gilmore and Marissa Casey
 Notes from Robert Fuller conference call
 Interview Notes with Ed Brown
 Interview Notes of Ed Brown
 Interview Notes of Robin Gripper
 Conference Call Notes to Jane Gibson
 Interview Notes of Stephanie Pressley
 Interview notes John Leaphart
 Interview Notes George Brothers
 Notes entitled Dale Cook
 Interview Notes Betty Finklea and Roas Finklea
 Interview Notes Charlie Peoples
 Interview Notes Cherena Roland
 Statement and Interview Notes of Theodore Davis 8/7/03
 Drug Screen results Ron Finklea 11/6/02, 8/8/03
 Statement of Irena Fuller 8/4/03
 Interview Betty Peoples 9/3/07, 9/4/07
 Interview Curtis Blount 9/3/07
 Interview Johnny Finklea , Sr (grandfather) 9/3/07
 Interview Erika Middleton 9/3/07
 Interview Johnny Finklea, Jr (uncle) 9/3/07
 Interview Nicole Fantroy 9/3/07

Written communication Teresa Fuller 9/4/07
 Telephone Interview Dr. A. Cherry 9/4/07
 Poems and letter written by Ron Finklea

Developmental History:

Mrs. Betty Peoples reports she had a normal pregnancy and delivery of Ron Finklea. She denies any developmental abnormalities in Mr. Finklea. She reports he was born out of wedlock. She states Mr. Finklea was an easy child who minded her well. She described him as loving. Mr. Finklea's cousin, Nicole Fantroy reports that Mr. Finklea did not have difficulties in school, but that he didn't always apply himself. She states he was well liked in school because he could dance very well, like MC Hammer. Mr. Finklea's family members did not report any abuse or neglect. Teresa Fuller, the former wife of Mr. Finklea reports that Mr. Finklea did disclose he was beaten by his mother as a child and that he was treated differently from the other children. Mr. Finklea did acknowledge he was harshly disciplined as a child. Mr. Finklea had a large extended family and his grandmother or Aunt Ruby would care for him in his mother's absence.

Medical History:

Mr. Finklea had a history of asthma, which has been controlled with inhalers and developed in early adulthood. He was temporarily medically retired from the US Army for knee surgery. Medical records allude to knee surgery from the VA Hospital in 2000. These records were requested but are not available. Mr. Finklea was hospitalized at Lexington Medical Center after he hung himself in the detention center on 8/8/03. He was admitted in "a very anoxic state with myoclonus...A CT scan of the head did reveal a generalized infarction of the brain." He was given a poor prognosis for life. He was in "a deep coma." He was reported to have tonic jerking upon admission. He recovered and returned to the jail on 8/12/03. His discharge diagnosis was anoxic brain injury and hypertension. He was transferred with "some weakness in arm". At the jail, he began to complain of headaches and blackouts. He was also treated for cellulitis in his thumb. There are various requests for medical services where Mr. Finklea reported headaches and blackouts. In a request dated 5/27/04, Mr. Finklea complained of a headache and temporary blackout on 5/25/04. He reported blackouts on 7/28/04 and 6/13/0. The inmate request for medical services on 6/13/04 indicated: "had another severe headache, followed with a more severe blackout (I only remember being helped to a seat). Cellmate stated I fell first on him and then used the restroom (not on him) and blacked out. I fell the second time in the back corner (Duty nurse and Sgt Nathan came to check me. His present medications are psychiatric and medical in nature. He receives Clonidine for hypertension and anxiety. He receives Lamictal for his mood and post-hypoxic seizures. He has been prescribed various medications for urinary incontinence including Imipramine and DDAVP. He also receives inhalers for his asthma.

Mental Health History:

Mr., Finklea had no prior history of mental health treatment before his confinement. He has been seen regularly by mental health at the detention center and diagnosed with Adjustment Disorder, Major Depression, Anxiety Disorder, Not Otherwise Specified, Generalized Anxiety Disorder, Post Traumatic Stress Disorder, Closed Head Injury, Tics

and Antisocial Traits. Telephone interview of his treating psychiatrist reveals that he is treated for Post Traumatic Stress Disorder and Depression. Dr. Cherry reports he has not been receiving his Lamictal as prescribed. He is on medications for anxiety and depression including: Prozac, Remeron, Clonidine, and Lamictal. Mr. Finklea does have symptoms consistent with an underlying chronic anxiety disorder. Ms. Teresa Fuller reports that Mr. Finklea would "sometimes have nightmares and on occasion wet the bed." Mr. Finklea does report symptoms consistent with anxiety. He describes feelings of panic when he is shackled. He reports nightmares about being shackled when he is not supposed to be. He does admit to some abuse in childhood. He denies sexual abuse. He reports improvement in these symptoms with his present medication regimen. He has avoided discussing his abuse.

Substance Abuse History:

There are no records of substance abuse. Mr. Finklea reports that he used marijuana at age 14. He admits he will drink beer on occasion and has not had more than three at a time. Mr. Finklea does not report using drugs such as crack cocaine. There has been no evidence to date Mr. Finklea's cousin, Nicole Fantroy reports that Mr. Finklea's face was "drawn" when she saw him in Alabama before he turned himself in. Notes from an interview of Mr. Theodore Davis reports that he and Mr. Finklea "never smoked together." There is not enough history to diagnose him with any substance abuse disorder. He had a negative urine drug screen in 11/02. A urine drug screen on 6/8/03 was negative.

School History:

Mr. Finklea's school transcript and achievement tests were available for review. Mr. Finklea completed twelfth grade. He did not repeat any grades and there is no evidence he was in special classes. His grades were average to below average and his achievement was below average. His performance on military tests was above average.

Personal History:

Mr. Finklea was born in Washington DC on 10/18/73. No father was listed on his birth certificate. Records from Greater Southeast Community Hospital were requested but not available. When he was six years old, his family moved to Monroeville, Alabama. When he was 16, he received a special recognition achievement award in Masonry. He completed a two-year course study in Masonry in 1990. He graduated from Monroe High School in 1991. He joined the United States Army nine days after graduation. He completed Basic Training at Fort Jackson. He completed a Supply Unit Specialist Course in Fort Jackson on 10/15/91. He was stationed in Tacoma, Fort Polk, Louisiana, Panama, Fayetteville and Germany. He temporarily retired due to physical disability on 4/24/02. He was an E-6. Mr. Finklea married Chérena Pierce in 1993. They had a son, R [REDACTED] F [REDACTED], J [REDACTED] eleven months later. While Mr. Finklea was in Panama, his wife and son resided in Tacoma. They separated in 9/96 and were divorced in Washington State in 1998. On 7/30/99, Mr. Finklea married Teresa Fuller Anderson in Fayetteville. Mrs. Fuller reports that Mr. Finklea seemed to be miserable, and that he was always looking for acceptance. Mr. Finklea had a temporary medical retirement on 4/24/02 after he injured his knees and back. In 5/02, Mr. Finklea worked in Michigan, where his wife and

her family resided. In 11/02, Mr. Finklea, his wife and her children moved to St. Mathews. In 2/03, Mr. Finklea's wife was sent to Iraq. Teresa Fuller reports that he felt useless after his disability and felt she would leave him behind.. In 3/03, Mr. Finklea began employment with Solectron. He was to return to Active Duty in 9/03. Teresa Fuller did report that Mr. Finklea had spent most of her savings.

Mental Status Examination:

Mr. Finklea looks older than his stated age. He has noticeable motor tics in the ocular area and his lower face. He maintains good eye contact. He is cooperative. His speech is soft in tone but normal in rate. His thinking is goal-directed. He is not psychotic. He is not suicidal or homicidal. His affect is constricted but he is able to smile. He also cried softly when discussing unpleasant childhood issues and his separation from Ms. Fuller. He reports long term memory impairments for two months prior to his arrest and for two weeks after his return to the detention center after his hanging. He is oriented and alert. He reports some impairment in concentration at times, although formal testing was normal. He was able to register three items and recall two correctly after five minutes. His judgment is presently good. His insight is fair.

Results of Testing:

Mr. Finklea does have some cognitive deficits upon neuropsychological evaluation. He has some deficits in spatial reasoning, manual speed, verbal memory for prose passages, verbal learning and ability to copy and recall a complex design. . Neurological evaluation revealed he had blepharospasm movements of the eyelids and hemi facial spasm of the lower face muscles. He was diagnosed with post hypoxic encephalopathy, post hypoxic seizures that are well controlled, mild memory loss and dystonias.

Diagnosis:

Axis I) Cognitive Disorder, Not Otherwise Specified (P)

Adjustment Disorder with Depressed Mood

Anxiety Disorder, Not Otherwise Specified

Axis II) Dependent Personality traits

Axis III) Asthma, Allergy to seafood, Hypertension

Post Hypoxic Encephalopathy secondary to self-inflicted hanging, Post Hypoxic seizures; Post hypoxic mild memory loss, Post Hypoxic Dystonia with belpharospasm, myoclonus and hemi facial spasm.

Opinions:

1. Presently, Mr. Finklea suffers from a cognitive disorder and adjustment disorder, which occurred, after his charges. Although he has chronic symptoms of anxiety, there is no evidence this mental disorder prevented him from knowing right or wrong. There is no evidence this mental disorder affected his capacity to conform

his behavior to the requirements of the law. There is no evidence this disorder would have caused him serious difficulty conforming his behavior to the requirements of the law. Presently, his symptoms have been well controlled with medications.

2. Although there is a report by a family member, which may imply substance abuse, there is no evidence that Mr. Finklea was under the influence of drugs at the time of his offense.
3. While Mr. Finklea's codefendant has a prior criminal history including a violent crime, there is no evidence to determine if he was under the influence of his codefendant.
4. Mr. Finklea does not have a prior criminal history.
5. Regarding Mr. Finklea's mentality, there is no history of suspensions or expulsions from school, fighting or other childhood antisocial behavior. He adjusted well in the military. He was disciplined once for having a female in the barracks. He did admit to some childhood abuse issues which account for his leaving the home at an early age, and as Ms. Fuller reported, wanting to be accepted.
6. Regarding other potential mitigation, he served honorably in the United States Army, and he has not been a discipline problem in the detention center. Dr. Cherry has described him as a model detainee.

Donna Schwartz-Watts, M.D.

From: donna watts <donnasw1963@yahoo.com>
To: Lisa Kimbrough <lisajkimbrough@yahoo.com>
Cc: carolyn <cgrahams@aol.com>
Subject: Fwd: Re: Forensic Psychiatrist from USC
Date: Tue, 4 Sep 2007 7:09 am

Note: forwarded message attached.

Park yourself in front of a world of choices in alternative vehicles.
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Attached Message

From: teresa.fuller@us.army.mil
To: donna watts <donnasw1963@yahoo.com>
Subject: Re: Forensic Psychiatrist from USC
Date: Tue, 04 Sep 2007 13:37:05 +0400

Hello Doctor Watts,

I am not sure if Ron was using any type of drugs. I was deployed as I am now. I know that he had spent most of the money that I had saved. Ron has seen a spiritual advisor on several occasions. I think he probably did have some mental issues. Sometimes he could be so sweet and then others you would have to walk on egg shells around him. Ron and I knew each other for about a year before we were married and everything was good. After about a month into the marriage he started to change. Ron wasn't the person that I thought he was. I think he live in a fantasy world. He would always brag about all the thing he had. I later found that just about everything he ever said was a lie. He was always trying to impress and please his mother. I think that he was really afraid of her. He would sometimes tell me about the beatings that he suffered at her hands and how she treated him differently from her other children. I think that there is really something not right with him. He would sometimes have nightmares and he on occasion wet the bed. He has asked me why do I think GOD put him here. He said he doesn't have a purpose in life. I use to try and tell him that everyone has a purpose and that he could do great things. I think something was instilled in him as a child. I think he had a terrible childhood. I know that I was not happy in the marriage because no matter what I did Ron seem to be miserable. It seems like he was always looking for acceptance.

After he became disabled he did change he felt useless. I was coming back in the army and he felt that I was going to leave him behind. He did not the idea of me taking care of him.

The relationship with my brother, I'm not really sure what you are asking. Ron was somewhat of a bully. JR is a follower. I think he was scared of Ron. Ron can be pretty scary at times. If there is anything else I can help you with please let me know.

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

From: donna watts
Date: Monday, September 3, 2007 4:10
Subject: Forensic Psychiatrist from USC
To: teresa.fuller@us.army.mil

> Hi Ms. Fuller,
> I am sorry I am unaware of your rank, and do not know how to
> address you.
> I am Donna Schwartz-Watts, M.D. I am a board certified Forensic
> Psychiatrist and I work at the USC School of Medicine. I was



> retained by Melissa Kimbrough to perform an evaluation of Mr.
> Finklea for sentencing purposes as well as other legal purposes.
> I testified in his competency hearing.
> Mr. Finklea did suffer some brain damage after he was found
> hanging in his cell. he reports he doesn't recall any information
> for two months before his crime and afterwards until he was
> returned to the jail from the hospital.
> I am at a loss how someone can go thirty years without a
> criminal record, be a good soldier and then commit this type of
> crime. I wonder if he was using drugs. I wonder if he was in
> financial trouble etc. Anything you wish to tell me about him
> would be greatly appreciated.
> I have no evidence that he had a mental illness before all of this.
> Did you ever know him to see spiritual advisors?
> Did you see a change in him after he became disabled?
> Do you know why he went to Alabama so often?
> What are your thoughts about the nature of his relationship with
> your brother?
>
> Anything you can tell me would be helpful, and I do appreciate
> your time.
> Sincerely,
> Donna S. Watts, MD
>
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>
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> -----
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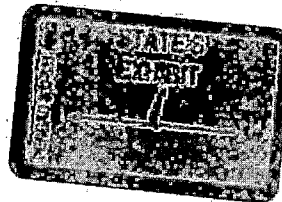
FINKLEA INTERVIEWS

3/12/17 Erica Middleton
 3/13/17 Betty Peoples
 3/13/17- Chanell Finklea
 6/17/17
 3/14/17 Betty Peoples
 3/20/17 Betty Peoples
 3/21/17 Cherena Roland
 3/21/17 Ron Finklea, Jr.

4/15/17 Emma Primm
 4/17/17 Willie Mae Wigfall
 4/17/17 Antionette Burgess

5/11/17 Ron Finklea
 6/8/17 Ron Finklea

6/16/17 Sharon Jackson
 6/17/17 Zeke
 6/17/17 Dale Finklea
 6/17/17 Mary Nell Jackson
 6/17/17 Rosie Mae Finklea
 6/17/17 Johnny Finklea
 6/17/17 Rev. Mathew Davis
 6/17/17 Tasha Jackson
 6/17/17 Ruby Finklea
 6/17/17 Betty Peoples



Community Visits

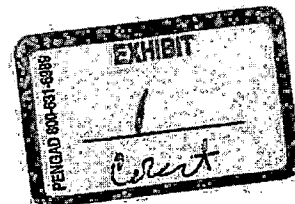
Limestone
 Franklin
 Frisco City
 Monroeville

Consultations

Donna Maddox
 Susan Knight

RECORDS

School, medical, military, investigative notes, legal, videos



Trial Team Chronology

8/2/03 Murder

8/7/03 Statement

Video -- "Well, if that's me, I'm fucked"; "if that's me, I don't remember it"

8/13/03 Steve Soltis Appointed

8/18/03 \$1500 Funds for Paralegal

7/1/04 \$2500 for Media -- Change of Venue Motion

8/19/03 Dave MacDougall -- 5.0 hours for Meeting with Steve Soltis & 1st Meeting with Ron Finklea

8/28/03 Short call to Teresa Finklea

9/2/03 3.0 hours for Meeting & Interview with Teresa Finklea & Soltis

9/12/03 Met with Ron Finklea

8/10/04 Dave MacDougall sent letter and called Cherena Roland

9/15/04 5.0 hours "Travel & Interview with Cherena Roland in Tacoma, WA"

Memo indicates she told of Betty being "abusive and strange"; shooting at Ron as child; believing in "voodoo"; and berating Ron with "black motherfucker," etc.

5/26/05 Lisa Kimbrough Appointed

5/8/06 Notice of Intent to Seek the Death Penalty (ROA 2352)

6/8/06 Dave MacDougall -- 3.0 hours meeting with Soltis & Armstrong

6/17/06 Dave MacDougall -- 3.0 hours "Prepare Investigative Report & evidence copies for counsel"

6/19/06 Dave MacDougall -- 1.0 hour "Deliver report and Attachments to Kimbrough & Soltis"

Summer 2006 Donna Schwartz-Watts, M.D. contacted

Report indicates eval in 6/06? -- but no funding available for her then?

8/4/06 \$5000 for Fact Investigator (Dave MacDougall)

 \$5000 for Mitigation Investigator (Carolyn Graham)

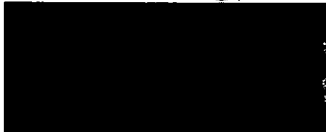
 \$2500 for Forensic Psychiatrist (Donna Schwartz-Watts, M.D.)

MOTHER:**BETTY FINKLEA PEOPLES**

[REDACTED]

SS# [REDACTED]**DOB:** [REDACTED]-1952**AKA:** [REDACTED]-1952

[REDACTED]

**STEP-FATHER****CHARLIE PEOPLES****FATHER:****O'NEAL BURGESS****(Unknown) (Common-Law)****No name on Ron's Birth Certificate****BROTHER:****CURTIS BLOUNT****27 years of age****Mother: Betty Finklea Peoples****Father: Roosevelt Blount (Deceased)**

SISTER:**CHANNELL FINKLEA****34 years of age****Father: Julius Stallworth**


MATERNAL GRANDFATHER:**JOHNNY FINKLEA, SR.****72 years of age**MATERNAL GRANDMOTHER:**ROSA FINKLEA****71 years of age**


BETTY FINKLEA PEOPLES:BROTHERS:**JOHNNY FINKLEA, JR.****52 years of age**# 

ROOSEVELT FINKLEA**48 years of age**


BETTY FINKLEA PEOPLES:

SISTERS:

RUBY FINKLEA

51 years of age

[REDACTED]

(Nicole's Mother)

FLORA FINKLEA

34 years of age

[REDACTED]

FIRST COUSIN: ***Family Historian**

NICOLE FANTROY

30 years of age

[REDACTED]

NICOLE'S SISTER:

ERIKA MIDDLETON

[REDACTED]

SECOND COUSIN:

LORENE JACKSON

[REDACTED]

GLORIA JACKSON

BETTY FINKLEA:

Mother

Works in a seafood restaurant.

Betty Finklea will tell you that Ron was always helping her around the house and was always "getting onto the other kids for not helping out" he always wanted everyone to get along and do well. He was the "peacemaker". Jr. High he told his Mom he was going into the Army to make a better life for himself and for her. He left a few days after graduation. He always sent back money and made sure she was ok. Never knew Ron to do anything "wrong" at all. No drugs, no alcohol. His idea of a good time was going to his cousin's Nicole Fantroy and listen to music and dance. Ron was THE BEST when it came to dancing.

CURTIS BLOUNT:

Brother

Works with a furniture company.

Curtis Blount will tell you about the same as Miss Betty. He knows for sure Ron was never involved in any type of drug activity.

does have a criminal history of possess of marijuana and DUI**

CHANNELL FINKLEA:

Sister

Works for Kentucky Fried.

The same. Gets very emotional when talking about Ron. Loves her brother very much.

JOHNNY FINKLEA, SR:

Grandfather

Retired Woodsman.

Loves his grandson. He is the one that talked his grandson into turning himself in and he is friends with the local sheriff. Been in Ron's life since he was born. Took him to the bus station when he left for the Army. Tells story of everyone crying and Ron laughing and smiling at everyone as he left. He was off to do better for them all.

JOHNNY L. FINKLEA:

Uncle

Did not speak with. Only through Nicole. Left several messages. He decided this week that he is coming with everyone to help Ron.

NICOLE FANTROY:

Work for Insurance Agency.
Cousin

Nicole is driving everyone from Alabama in a van to Lexington on Sunday.
Knows all about the family. She and Ron were the very best of friends. Ron spent most all of his free time at her home and they would spend all of their time...listening to music and dancing.
She is one of the nicest people I have ever spoken to.

ERIKA MIDDLETON:

Same as Nicole. She is Nicole's sister.

LORENE JACKSON:

Cousin

Tells stories of Ron spending time with his cousins and always after them all "to do better".
Tells stories of how you never wanted Ron to know if you did anything "bad".. He would be after you if he knew. She is as nice as the other cousins.
