

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2018-001137

John Edward Washington,.....Petitioner,

vs.

State of South Carolina,.....Respondent.

APPENDIX

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State of South Carolina) In the Court of General Sessions
County of Richland) Fifth Judicial Circuit
2014-GS-40-0378

The State of South Carolina,)
Plaintiff,)
vs.) Transcript of Record
John Washington,)
Defendant.)

February 5, 2015
Columbia, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge

A P P E A R A N C E S:

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Attorney for the State

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Attorney for the Defendant

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Circuit Court Reporter

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No Exhibits Introduced.

1 (PRIOR THE START OF THE HEARING, THE DEFENDANT IS DULY
2 SWORN.)

3 THE COURT: Yes, ma'am.

4 MS. CAVANAUGH: Thank you, Your Honor. Standing
5 before you is John Washington represented by his lawyer,
6 Johnny Gasser of the private bar. Kathryn Cavanaugh for
7 the state. Mr. Washington is here to plead guilty to
8 indictment for murder. It's 2014-GS-40-00387.

9 THE COURT: Okay. Thank you, ma'am.

10 All right, Mr. Gasser, you represent Mr. Washington?

11 MR. GASSER: I do, Your Honor.

12 THE COURT: And you've had an opportunity to meet with
13 him and review the evidence the state has against him
14 regarding this charge of murder?

15 MR. GASSER: Yes, sir, Your Honor. The offense took
16 place on September 14, 2013, and as of last night, I have
17 met with him eighteen times at the Richland County
18 detention center.

19 THE COURT: Okay, and he has actively participated in
20 y'all's discussions?

21 MR. GASSER: Yes, sir.

22 THE COURT: Okay. You have advised him of the law
23 that applies in this situation and the possible sentence
24 he's facing?

25 MR. GASSER: Yes, sir. We have discussed the law. I

1 actually made copies of the statutes, including the
2 subsequent statutes of not only murder but voluntary
3 manslaughter, and he's had an opportunity -- not only have
4 we verbally discussed -- but to read the law himself.

5 THE COURT: Okay. He understands he's facing a
6 minimum sentence of thirty years in jail and a maximum
7 sentence of life?

8 MR. GASSER: He does, Your Honor, and I also told --
9 we also had discovery. I had spoken to an assistant
10 counsel in the South Carolina Department of Corrections
11 General Counsel's office. Confirmed that whatever sentence
12 you give short of life is a day-for-day sentence. He
13 understands that.

14 THE COURT: Okay. All right. He is aware he has the
15 constitutional right to a jury trial?

16 MR. GASSER: He is, Your Honor.

17 THE COURT: He has indicated to you he wishes to plead
18 guilty as charged?

19 MR. GASSER: Yes, sir.

20 THE COURT: And you believe it's in his best interest
21 to do so?

22 MR. GASSER: Given the facts and circumstances of this
23 case and the law in South Carolina, I believe so. I'd also
24 like to put on the record I have reviewed the facts of this
25 case, particular -- certain -- whether or not there were

1 any defenses available to Mr. Washington, not only
2 obviously with my client, but with a number of other
3 veteran lawyers of the Richland County bar.

4 THE COURT: All right. Okay.

5 EXAMINATION BY THE COURT:

6 Q. Mr. Washington, you are sixty years old?

7 A. Yes, sir.

8 Q. Okay. Tell me a little bit about your educational
9 background, please, sir.

10 A. Just high, high school, sir, and a little trade
11 school.

12 Q. All right, sir. Where did you go -- high school grad?

13 A. Yes, sir.

14 Q. Graduate?

15 A. Yes, sir.

16 Q. What high school did you graduate from?

17 A. Scotts Branch High School in Summerton, South
18 Carolina.

19 Q. Yes, sir, in Clarendon County?

20 A. Yes, sir.

21 Q. What year did you graduate from Scotts Branch?

22 A. '73.

23 Q. All right, sir, and before you were arrested, were you
24 working somewhere?

25 A. Yes, sir.

1 Q. Where were you working?

2 A. I was working at -- had to do with the South Carolina
3 Army National Guard.

4 Q. All right. How long have you been with the Army
5 National Guard?

6 A. A total of thirty-six years, sir.

7 Q. All right. Mr. Washington, have you ever been treated
8 for any mental health issues?

9 A. Yes, sir.

10 Q. Okay. Were, were you -- are you -- were you presently
11 being -- I mean, were you being -- are you being treated
12 now?

13 A. Under the medication that was prescribed for me,
14 but...

15 Q. Okay. Okay. Before you were arrested, had you been
16 treated for any mental health issues?

17 A. I was being treated, yes, sir.

18 Q. Okay. Do you mind telling me what you were being
19 treated for?

20 A. Depression.

21 Q. All right, sir, and you are taking depression
22 medication now?

23 A. Yes, sir.

24 Q. Does that medication affect your ability to understand
25 what you're doing here today?

1 A. No, sir.

2 Q. Okay. All right, sir, have you ever been treated for
3 any alcohol or drug dependencies?

4 A. No, sir.

5 Q. Okay, and today you're not under the influence of any
6 alcohol or illegal drugs, are you?

7 A. No, sir.

8 Q. You are thinking clearly today?

9 A. Yes, sir.

10 Q. You understand exactly what you're doing?

11 A. Yes, sir.

12 Q. Your attorney has indicated to me that he has met with
13 you numerous times.

14 A. Yes, sir.

15 Q. And reviewed the evidence the state has against you
16 regarding this charge.

17 A. Yes, sir.

18 Q. He has also explained to you the law that applies?

19 A. Yes, sir.

20 Q. Advised you of your possible sentence?

21 A. Yes, sir.

22 Q. You understand the minimum sentence is thirty years,
23 the maximum sentence is life, and it's a day-for-day
24 sentence?

25 A. Yes, sir.

1 Q. You understand if you plead guilty, you give up your
2 right to remain silent. You understand that? You do
3 understand that, correct? You have the right to remain
4 silent and require the state to prove your case. But if
5 you plead guilty, you have to admit to me you are, in fact,
6 guilty of this charge. You understand that?

7 A. Yes, sir.

8 Q. Okay. All right, and if you give up your right, you
9 give up your right to confront witnesses or establish a
10 defense on your own. Do you understand that?

11 A. Yes, sir.

12 Q. Do you understand if we went to trial and you chose
13 not to testify, I'd advise the jury that they could not
14 hold that against you?

15 A. Yes, sir.

16 Q. You understand that?

17 A. Yes, sir.

18 Q. Okay. Do you want a jury trial on this charge?

19 A. No, sir.

20 Q. You want to go forward with the guilty plea?

21 A. Yes, sir.

22 Q. Understanding the consequences of your plea and the
23 possible sentence, possible sentence that you're facing,
24 you understand that?

25 A. Yes, sir.

1 Q. Okay. Has anyone promised you anything to get you to
2 plead guilty here today?

3 A. No, sir.

4 Q. Has anyone threatened you or forced you in any manner
5 whatsoever to get you to plead guilty?

6 A. No, sir.

7 Q. You are doing this and freely and voluntarily?

8 A. Yes, sir.

9 Q. Okay. Have you, in your meetings with Mr. Gasser, has
10 he responded and answered all the questions that you've
11 asked him?

12 A. Yes, sir, he has.

13 Q. Have you understood everything he's told you?

14 A. Yes, sir.

15 Q. Are you satisfied with his services as your attorney?

16 A. Yes, sir, I am.

17 Q. Do you need any more time to talk with him?

18 A. No, sir.

19 Q. Okay. You are ready this morning to go forward with
20 your guilty plea?

21 A. Yes, sir.

22 Q. Okay.

23 THE COURT: All right, Ms. Cavanaugh.

24 MS. CAVANAUGH: Thank you, Your Honor. Just to give
25 you a little background on the victim, Ms. Zelda Kollock,

1 she was fifty-one years old at the time of her death. She
2 was a USC graduate and was a licensed social worker. She
3 retired from the Department of Social Services in 2012. At
4 the time of her death, she was living in Charlotte
5 part-time and was working for Gaston County Division for
6 Adult and Aging Services. She is survived by two of her
7 brothers, Barry and Raymond, who are present here in the
8 courtroom, along with other family members and friends,
9 Your Honor.

10 This incident did occur September 14, 2013, around 8
11 p.m. at the victim's residence, which was located at 616
12 Cottontail Court in Richland County. The victim and the
13 defendant had a romantic relationship for several years,
14 Your Honor, before this. At some point that relationship
15 had been broken off, and the victim did not want any
16 further contact with Mr. Washington. However, he continued
17 to contact her and pursue Ms. Kollock.

18 Leading up to this night, the victim had become very
19 concerned for her personal safety and believed that the
20 defendant had reached a point to where he was actually
21 stalking her. She reached out to a local lawyer, Stephen
22 Hudson, who had actually sent the defendant a cease and
23 desist letter prior to this incident, Your Honor. However,
24 on the night of September 14, 2013, Richland County
25 deputies were dispatched to the victim's home. It started

1 out as a domestic disturbance call; however, quickly
2 escalated to a homicide.

3 Earlier on this night around 7 o'clock, the victim was
4 outside with her neighbor Loretta Daily in front of Ms.
5 Daily's house. They were making plans that evening to
6 actually spend the night together and decorate each other's
7 homes for the fall. As I stated, around 7 p.m. the
8 defendant drove by very slowly to where they were standing
9 in the front yard and said hi, Zelda. Zelda is the victim.
10 The victim did not respond to him, and immediately
11 responded oh. So you're not going to say anything to me.
12 At that point, he drove off from the neighborhood.

13 About an hour later when Ms. Kollock was back in her
14 home, the neighbor, Loretta, witnessed the defendant speed
15 into her driveway, the victim's driveway. She saw the
16 victim rush -- the neighbor witnessed the victim rush back
17 into her home and tried to lock the door before Mr.
18 Washington was able to get inside the front door. However,
19 he chased her inside.

20 The neighbor heard her screaming, and Loretta
21 immediately called 911. While Loretta was on the phone
22 with the 911 dispatcher -- you can actually hear the victim
23 screaming for help, and then you hear the gunshots wounds
24 in the background -- or, excuse me, the gunshots in the
25 background.

1 As Loretta was on the phone with 911, she saw -- and
2 other neighbors actually witnessed this, too -- saw the
3 defendant try to leave the garage. However, he realized
4 that because the victim had fallen so close to the garage
5 door that the garage door was unable to close. So, he drug
6 her back through under the garage -- further into the
7 garage so the garage door would close and then sped off.

8 The defendant shot the victim three different times.
9 Two were at an intermediate range, which means the gun was
10 at least 6 to 18 inches away from the victim when she was
11 shot. One was to the right side of the head; one gunshot
12 wound was to her left back. Those were actually the, the
13 wounds that were close range, and then there was another
14 bullet that penetrated the right side of the victim's head.
15 All of these were the cause of the victim's death, Your
16 Honor.

17 When Richland County arrived to the house, two of the
18 victim's neighbors were actually trying to get into the
19 garage to render aid; however, they weren't able to get
20 into the garage. The deputies had to use a baseball bat to
21 get inside the home. All the doors were locked. When they
22 found the victim in the garage, there was an excessive
23 amount of blood around her and when EMS arrived, she had no
24 vital signs at that time. All of the blood that was
25 surrounding the victim, pursuant to the DNA analysis, did

1 match the victim, Your Honor.

2 Within a short period of time, within an hour, the
3 defendant had wrecked his vehicle on the entrance ramp to
4 I-77 at Killian Road, totaling his vehicle. His vehicle
5 was actually on its side when the deputies arrived. He was
6 immediately transported to Richland County -- excuse me,
7 Richland Memorial Hospital. When the investigators arrived
8 and advised him of his rights, he declined to speak to
9 them.

10 A search warrant was executed at the defendant's home.
11 Approximately thirty-five rounds of ammunition was found in
12 his master bedroom; however, the gun was not recovered in
13 this case, Your Honor.

14 Beg the court's indulgence.

15 THE COURT: Yes, ma'am,

16 (A PAUSE.)

17 MS. CAVANAUGH: Your Honor, at the appropriate time,
18 the victim's family would like to address the court.

19 THE COURT: Okay, and, Ms. Cavanaugh, does Mr.
20 Washington have any prior record?

21 MS. CAVANAUGH: He has no prior record, Your Honor.

22 THE COURT: After I, after I take Mr. Washington's
23 plea, I'll want to hear the victim's family, and then I'll
24 let you speak. If anybody's going to speak for Mr.
25 Washington, we'll do that at that point. Is that all

1 right?

2 MR. GASSER: Yes, sir.

3 MS. CAVANAUGH: And, Your Honor, if I could respond as
4 far as sentencing is concerned?

5 THE COURT: Yes, ma'am.

6 MS. CAVANAUGH: After. Whatever you think is
7 appropriate.

8 THE COURT: Okay, what I intend to do is have the
9 victim's family speak. I'll let you speak so that Mr.
10 Gasser can respond at the very end, okay? Thank you,
11 ma'am.

12 EXAMINATION BY THE COURT RESUMES:

13 Q. All right, Mr. Washington, you've heard what the
14 solicitor has told me about the circumstances that led to
15 your arrest on this charge?

16 A. Yes, sir.

17 Q. Do you agree with what I was told?

18 A. Yeah. Yes, sir.

19 Q. Okay. All right, sir. The indictment that I have is
20 indictment number 2014-GS-40-387. It is an indictment for
21 murder. It was true billed by the grand jury on March 13,
22 2014. The allegations in the indictment are that you did
23 in Richland County on or about September 14, 2013, kill the
24 victim, Zelda Kollock, with malice aforethought, either
25 expressed or implied, by means of a gunshot wound, and that

1 the victim did die as a proximate result thereof in
2 violation of the laws of this state. Do you understand the
3 allegations contained in this indictment?

4 (A PAUSE AS DEFENDANT BEGINS TO COLLAPSE.)

5 MR. BARRY KOLLOCK: That's a fake. That's a fake.

6 DEPUTY: Sir.

7 THE COURT: You're going to need to leave the
8 courtroom.

9 DEPUTY: Quiet.

10 THE COURT: Would you take him out, please? Would you
11 take the gentleman out? I'm not going to have any
12 outbursts in the courtroom.

13 MR. BARRY KOLLOCK: Fake, man.

14 THE COURT: Ladies and gentlemen, if, if anybody ---

15 MR. BARRY KOLLOCK: Fake, man.

16 THE COURT: If anybody ---

17 MR. BARRY KOLLOCK: Let me get to him. Let me get to
18 him -- don't calm down, man. My sister's gone, man. My
19 sister's gone, man. She'll never be back.

20 DEPUTY: Sir.

21 MR. BARRY KOLLOCK: You took my...

22 (A PAUSE AS MR. BARRY KOLLOCK IS ESCORTED FROM THE
23 COURTROOM.)

24 THE COURT: All right, ladies and gentlemen, I know
25 this is a very serious matter and it's very emotional, but

1 I'm not going to have any outbursts in the courtroom. If
2 you cannot maintain your, your emotions, I'm going to give
3 you an opportunity to leave now.

4 Anybody else needs to leave now, you are welcome to
5 leave, but if I have outbursts, you are facing jail time
6 for contempt of court. Does everybody understand that?

7 All right. Okay. Now.

8 CLERK OF COURT: He locked his knees, Your Honor.

9 THE COURT: He can -- if he's ---

10 CLERK OF COURT: He locked his knees, Your Honor.

11 MR. GASSER: Yeah, he has -- his knees -- Your Honor,
12 his military background, he was standing straight at
13 attention and he locked his knees, which made him
14 somewhat...

15 THE COURT: Okay. All right.

16 (A PAUSE.)

17 EXAMINATION BY THE COURT:

18 Q. Mr. Washington, just a moment ago I read the, the
19 indictment to you. Did you understand? Did you hear what
20 I said? I know you were beginning to faint, so to speak.
21 Did you understand what I said, or do I need to reread the
22 indictment?

23 A. I, I understand, sir.

24 Q. Okay. All right, sir. Now, Mr. Washington, how do
25 you plead to this charge?

1 (A PAUSE AS DEFENDANT BEGINS TO COLLAPSE.)

2 Q. Do we need to take a break?

3 A. Yeah.

4 THE COURT: Mr. Counselor, do we need to take a break?

5 MR. GASSER: Could we take a few, just a few minutes,
6 Your Honor?

7 THE COURT: Okay. Okay. We'll sit here.

8 (A PAUSE.)

9 THE COURT: All right. Now, Mr. Washington, you've
10 nearly fainted twice, okay? Are you thinking clearly right
11 now? Do we need to -- or we need to stand down?

12 DEFENDANT: I'm thinking clearly, sir. I, I --
13 probably dehydration. I, I don't drink a lot of water, and
14 a few years ago I, I did faint during jury duty. I've had
15 two different dehydration incidents.

16 THE COURT: Okay. All right.

17 DEFENDANT: But I'm -- I, I feel I'm okay, sir.

18 THE COURT: Okay.

19 And, Mr. Gasser, you've been meeting with him like
20 that. You believe he understands what he's doing right now
21 and can go forward, or do we need to stand down?

22 MR. GASSER: Your Honor, and I was going to address
23 that, but this is a good time to do that.

24 THE COURT: Yes, sir.

25 MR. GASSER: Since you're -- based on your question,

1 we -- I thoroughly looked into the idea of competency
2 during the time, particularly since he was in a significant
3 motor vehicle accident after this incident in which he had
4 a closed-head injury. That during my times and meeting
5 with him, I felt that particularly as the weeks went on
6 after this incident that he, he was thinking with clarity.
7 He was extremely lucid. He's an intelligent man. We spent
8 a significant amount of time, as you can imagine, together
9 over the eighteen times that we have met. I met with him
10 again this morning.

11 I also talked about these issues of competency with
12 his ex-wife, Sheila Washington, who's in the courtroom, and
13 she will be addressing the court shortly, Your Honor. And
14 she has also on a regular basis, two to three times a week,
15 had telephonic communication with Mr. Washington. She is
16 somebody that has known him for, for thirty years. Has
17 also indicated to me that she knows, she knows John.
18 She's had conversations with John. She's talked about a
19 variety of subject matters. She believes John to be lucid,
20 and he understands what he's doing in his decision-making
21 process.

22 THE COURT: All right, sir. Now, this morning after
23 -- I mean, he is -- in his present situation now he's
24 sitting down, which is fine with the court because he's,
25 he's nearly fainted twice. Do you need to talk with him

1 and make sure he's okay, or you think he's okay? You're
2 telling me right now he's okay? .

3 MR. GASSER: Have one moment?

4 THE COURT: Have plenty of time.

5 (COUNSELOR CONFERS WITH DEFENDANT.)

6 MR. GASSER: Your Honor, I'm satisfied that he knows
7 what he's doing today, what's going on right this -- at
8 this moment.

9 THE COURT: Okay. All right.

10 EXAMINATION BY THE COURT:

11 Q. Mr. Washington, I'm going to ask you again, though.
12 Are you thinking clearly this morning?

13 A. Yes, sir.

14 Q. Do you know exactly what you're doing?

15 A. Yes, sir.

16 Q. It's my understanding that you are going to plead
17 guilty to the charge of murder.

18 A. Yes, sir.

19 Q. You're facing a minimum of thirty years and a maximum
20 of life in jail. Do you understand that?

21 A. Yes, sir.

22 Q. My understanding, you're sixty years old. Is that
23 correct?

24 A. Yes, sir, correct.

25 Q. Do you realize that any sentence you get for this is

1 essentially a life sentence? You understand that?

2 A. Yes, sir, I do.

3 Q. Okay. You are ready to proceed?

4 A. Yes, sir.

5 Q. Okay. Do you need me to repeat the indictment to you?

6 A. No, sir.

7 Q. Okay. Did you understand the allegations of the
8 indictment, which basically are that you killed Zelda
9 Kollock with malice aforethought by means of shooting her
10 with a gun? Do you understand that?

11 A. Yes, sir.

12 Q. All right, sir. How do you plead to this charge of
13 murder?

14 A. Guilty, sir.

15 Q. All right. Mr. Washington, I've gone over this a
16 number of times with you. You understand if I accept your
17 guilty plea of murder, it will be a conviction on your
18 record, and whatever sentence I give you is a day-for-day
19 sentence. You understand that?

20 A. Yes, sir, I do.

21 Q. You understand you got ten days to appeal my decision?

22 A. Yes, sir.

23 Q. Okay. All right, sir. Do you want me to accept your
24 guilty plea?

25 A. Yes, sir.

1 THE COURT: Mr. Washington, I find that your decision
2 to plead guilty to this charge is freely, voluntarily,
3 intelligently made. I find you've had the advice and
4 counsel of a competent lawyer. I find that you're
5 satisfied with the services of your lawyer. I find that
6 there is a factual basis for you to plead guilty to this
7 charge. I find that you understand the charges against you
8 and the consequences of your plea of guilty, and I am going
9 to accept your guilty plea.

10 All right, Ms. Cavanaugh, what I'd ask now is if
11 anybody from the victim's family wanted to speak, I'd like
12 to hear from them now. And then after that, I'd like to
13 hear from you regarding sentencing.

14 MS. CAVANAUGH: Yes, Your Honor. I believe Raymond
15 Kollock first would like to speak to Your Honor and address
16 the court.

17 THE COURT: Okay.

18 MS. CAVANAUGH: He's the victim's brother.

19 THE COURT: All right. Is there a way for him to come
20 down to the microphone, or is that -- oh. There's no
21 microphone.

22 (A PAUSE.)

23 THE COURT: Your name, please, sir.

24 MR. RAYMOND KOLLOCK: Good morning, Your Honor. My
25 name is Raymond Kollock. I was Zelda Kollock's brother.

1 THE COURT: Mr. Kollock, I am very sorry for what you
2 and the family are having to go through with this. Now,
3 you are -- what do you do for a living, Mr. Kollock?

4 MR. RAYMOND KOLLOCK: I'm a civil engineer.

5 THE COURT: Pardon me?

6 MR. RAYMOND KOLLOCK: A civil engineer.

7 THE COURT: And where do you work?

8 MR. RAYMOND KOLLOCK: Washington, D.C., for D.C.
9 Water.

10 THE COURT: All right, Mr. Kollock, I'm glad to hear
11 from you, please, sir.

12 MR. RAYMOND KOLLOCK: Well, Your Honor, I just want to
13 say that September 14, 2013, is a day that I will never
14 forget. That's when John Everett Washington took the life
15 of my sister.

16 My sister, Zelda Kollock, she was not only a sister to
17 me; she was like a mother. She was there for me. She took
18 care of me. She was a good person, Your Honor. She served
19 her -- she served the state well working for the Department
20 of Social Services, as you know, well you know.

21 THE COURT: Yes, sir.

22 MR. RAYMOND KOLLOCK: She didn't do anything to
23 deserve this, Your Honor. I just had a son five months
24 ago, and he'll never get to know his aunt, who I loved so
25 much, and she meant so much to me.

1 Your Honor, I apologize for my brother's outburst. He
2 did not mean to do that, but he, he's just as passionate as
3 I am about my sister. He just shows it in a different kind
4 of way.

5 Your Honor, if -- I just love and miss her so much,
6 and I'll never forget what happened, and to know that John
7 was the last person to see my sister alive eats me alive
8 every day. Just to go to the house, and when I saw the
9 pool of blood where she had died just hurt me to my core,
10 and I think about it every day. But luckily I have my son,
11 Chris, to help me get through this today, and my beautiful
12 wife.

13 I don't mean to ramble on, Your Honor, but I just want
14 to let everyone know that my sister, Zelda Denise Kollock,
15 was a very good person. Eastern Star. Worked in the
16 community, and I just wanted everyone to know that domestic
17 violence is a serious issue, and everybody should pay
18 attention to the warning signs. I know in the state of
19 South Carolina domestic violence is at a high rate, and I
20 hope it changes. And I'm going to do everything I can try
21 to do to bring light to this issue now that it hit me close
22 to home. Thank you, Your Honor.

23 THE COURT: And, Mr. Kollock, again I'm very sorry,
24 and I understand. I accept your apology on your brother's
25 behalf. I think I would be unfortunately maybe in the same

1 position he is if something happened like this in my
2 family. So, I do, I do understand, and I wish you the very
3 best in raising your child.

4 MR. RAYMOND KOLLOCK: Thank you, sir.

5 THE COURT: All right. Thank you. Thank you. I
6 appreciate you coming to speak.

7 MR. RAYMOND KOLLOCK: Thank you.

8 THE COURT: Yes, sir.

9 Anybody else?

10 MS. CAVANAUGH: I don't believe so, Your Honor.

11 THE COURT: Okay, Ms. Cavanaugh.

12 MS. CAVANAUGH: Yes, Your Honor. Basically on the
13 circumstances of this case, the state is asking for a
14 sentence significantly higher than the minimum, Your Honor.
15 We do not believe that a sentence anywhere close to the
16 minimum is appropriate in this case.

17 Ms. Kollock was an upstanding member of the community.
18 She spent her life in public service, and even up to the
19 date of her death was still working in that capacity, Your
20 Honor.

21 She had asked the defendant several times to cease
22 trying to communicate with her and trying to reach out to
23 her. However, he refused, refused to accept that. She was
24 trying to move on with her life and on this night, he went
25 into her residence, chased her inside, and then shot her at

1 close range two times in the head and one time in the back.

2 Your Honor, as you can see, she has many, many people
3 who cared about her and who were very close with her, and
4 we just do not think that the nature of this case warrants
5 a sentence close to the minimum.

6 THE COURT: Thank you, Ms. Cavanaugh.

7 All right, Mr. Gasser.

8 MR. GASSER: May it please the court, Your Honor?
9 Your Honor, just so the record is, is complete, I think
10 it's important that the court knows that from the very
11 first time that I met with Mr. Washington -- now that he
12 has pled guilty and you have accepted his plea, as a matter
13 of law and as a matter of fact, I believe I can reveal
14 certain things that -- certain discussions that we had,
15 particularly during this phase of the guilty plea which is
16 commonly referred to as the mitigation phase.

17 THE COURT: Yes, sir.

18 MR. GASSER: He has indicated to me from the first
19 time that we met, after I had met with his, with his wife
20 and -- or his ex-wife and his daughter that he had wished
21 to plead guilty to murder. From the very -- before any --
22 the only paperwork I had was a, was a copy of the warrant.
23 Obviously, Your Honor, I had both an ethical and a
24 professional obligation to review all of the evidence and
25 to do the adequate research on the law, and to have -- I

1 don't know how many meetings Ms. Cavanaugh and I had to
2 make sure that there was sufficient evidence that the
3 Richland County Sheriff's Department and the solicitor's
4 office had before I could, as a member of the bar and as a
5 criminal defense attorney under the national professional
6 code of conduct, continue to advise him and be able to
7 advise his family and actually walk into a court of law.
8 So, that's what I have been spending several months in
9 doing.

10 Ms. Cavanaugh did a fine job of outlining the
11 evidence. There were three eyewitnesses to this particular
12 matter, one of whom knew Mr. Washington very, very well and
13 had had multiple conversations with him. That was the lady
14 that was on the phone. Mr. Washington left his cell phone
15 there in the driveway, another identifying factor. People
16 identified the car that he was in and that he had crashed
17 shortly thereafter, which was close, close to the scene.

18 He was aware of all of that evidence; we reviewed all
19 of that evidence, particularly the most damaging evidence
20 against him. But all along -- I think it's important.
21 Before he was reviewing that evidence, while he was
22 reviewing that evidence, while we were discussing the law,
23 at each and every time when I would meet with him and right
24 before I would leave, he indicated, looked me dead in the
25 eye and say I'm guilty of this crime, and I want to plead

1 guilty to this crime.

2 I had a number of conversations with other members of
3 the bar, reviewed the evidence, looked at the evidence, the
4 law in South Carolina on sufficient legal provocation. I
5 just needed to know that I could professionally walk into a
6 court of law and plead a client straight up, straight up to
7 murder. But I want the record to reflect that was my, that
8 was my doing because I felt I had that obligation. He all
9 along has been indicating to me and his family that is what
10 he's wanted, wanted to do.

11 After I felt that I had explored all avenues, all
12 potential differences, all the probabilities of a jury
13 trial, I had indicated to him that I believed that it was
14 in his best interest to come into court to do what he's
15 always been asking me to do, which was to come into court
16 and plead guilty and ask for whatever mercy this court
17 would be willing to give under the set of circumstances
18 that presents itself here today.

19 Your Honor, he is sixty years old. He was born in
20 Manning; he was raised in Summerton. So, his early
21 childhood and as he went through high school was in
22 Clarendon County. His first employment, Your Honor, was
23 with Consolidated Services Corporation. He actually became
24 a supervisor with that company, but he was a member of the
25 South Carolina National Guard on a part-time basis for

1 thirteen years. He loved serving his country. He loved
2 serving his state, so he decided to leave civilian work and
3 become a full-time member of the Guard, where he served for
4 another twenty-three years full-time in the Guard.

5 Your Honor, at the time of this incident, he was in
6 the administrative office working down there on Armory Road
7 off of Bluff, on Bluff Road. He was in the troop
8 assignments division, so he was very active working with
9 both officers and enlisted personnel during -- post, the
10 post 9/11 wars that we found ourselves in as a country.

11 Your Honor, he was married to Ms. Sheila Washington.
12 They were divorced in 1998, but the relationship remained
13 very amicable because they had a daughter, Jessica.
14 Jessica is twenty-seven years old. She, she could not be
15 here today. She just, she couldn't take the emotion, being
16 here today, but you will hear from her through a short
17 letter that her mom, Sheila, John's ex-wife, will read to
18 the court here shortly during the character witness
19 presentation.

20 Your Honor, the -- he was diagnosed. A friend of his,
21 a member of the Guard, Mr. John Edwards, actually noticed
22 some signs, warning signs. Had him go to a physician at
23 Moncrief Army Hospital, and the first documented,
24 preliminary diagnosis of severe depression was on January
25 the 28th. It is in his mental health and medical records

1 that both the state and the defense were able to obtain
2 shortly after this incident.

3 He was initially put on Wellbutrin, an antidepressant.
4 That was not strong enough. On March the 25th of 2011,
5 they upgraded his medication to Zoloft. So, he had been on
6 Zoloft for a period of eighteen months prior to this, prior
7 to this incident dealing with his severe depressive
8 episodes.

9 Your Honor, when -- I talked with several members that
10 worked with him at the South Carolina National Guard, and
11 there's two things I think that need to be highlighted
12 about John's background and his character. One is that of
13 a father.

14 He and Sheila, despite being divorced, raised a
15 beautiful young lady. She went to undergraduate school
16 here in South Carolina; she went on to grad school in the
17 Washington, D.C., area. She works for the National
18 Security Agency in Washington. She's twenty-seven years
19 old and lives right outside of Washington, D.C., in Prince
20 George's County, Maryland. She is a fine, attractive,
21 educated, young woman with incredible manners. I have met
22 her on multiple occasions.

23 And I've always felt that there's nothing more
24 successful in life than to raise -- to be a parent and to
25 raise children that turn out to be honest and ethical and

1 with good character, and I can vouch for that with his
2 daughter, Jessica. So, that is one highlight. He never
3 abandoned his daughter. In fact, just the opposite.

4 The other, Your Honor, is his service to his country.
5 The phrase he was the perfect soldier has been told to me
6 by so many people that I've interviewed that worked with
7 him, including high-ranking officials that worked under
8 General Spears when he was the, when he was the adjutant
9 general. He volunteered for the funeral service of every
10 guard member, no matter where they were in the state. He
11 felt it was his obligation, funerals that -- where nobody,
12 no family members appeared other than the deceased, and
13 those that were large. So, large and small, he felt it was
14 his obligation to volunteer for as many funeral services as
15 possible.

16 I have here, holding up to this court, all of his
17 service evaluations. All of his service evaluations were
18 always extremely, extremely positive. All of his
19 commendations he's been, over this thirty-six year period,
20 awarded. Commendation after commendation and meritorious
21 service awards. He gave thirty-six years of his, of his
22 life to the United States Army and to the South Carolina
23 Army National Guard, and that would be the second aspect of
24 his character that I want the court to -- I believe the
25 court needs to be aware about prior to sentencing.

1 Your Honor, there are four people that would briefly
2 to address the court. The first two are both current
3 active-duty members of the South Carolina Army National
4 Guard. The first will be Sergeant Patrick Jones.

5 THE COURT: Mr. Jones, there's a microphone right
6 there. Yes, sir. Your name for the record, please, sir.

7 MR. JONES: James Patrick Jones.

8 THE COURT: And, Mr. Jones, what would you like to
9 tell me? Yes, sir.

10 MR. JONES: As -- like he said, I'm a co-worker and
11 at, at the time his supervisor.

12 My background in the military, I've been in twenty-six
13 years now, and I believe I've known him in that time.
14 Initially we started working together, knowing each other
15 early to mid '90s time frame, early to mid '90s time. And
16 from that time up until now, we've worked together. He's
17 -- we've really worked together, and he's worked for me
18 multiple times throughout our -- our careers have crossed
19 paths. At the time, he was working for me as well for the
20 -- for about two years.

21 So, I'd just like to further attest to his, not only
22 his military career and service, but as well as his, his --
23 a little bit about his personal life as a, as a friend and
24 a son and a father. I can -- I've met his daughter and his
25 mother as well, and I can -- just from the time I've spent

1 with him at work, in -- at work and outside of work, I know
2 his family was, was his priority.

3 As far as his military service, like I said, I've,
4 I've been his supervisor and co-worker both over the years
5 and actually written some of the evaluations that Mr.
6 Gasser spoke of. His, his service was always -- from his
7 evaluations that I've done, that other -- others have done
8 for him and just working closely with him. Been on trips
9 outside of the office, around the state and around the
10 country, different trips that we've taken together, eating
11 lunch together. That's his -- his priority again is his,
12 is his family but with -- within the military, priority
13 was, was with the soldiers.

14 And in reaching the rank that he reached of sergeant
15 first class was -- it's, it's very, it's very commendable
16 for -- in the military, that's, that's pretty high. He
17 did, he did really well. He earned it. His performance
18 was exemplary over those years. He worked hard and, and
19 earned that sergeant first class rank, and the, the
20 commendable evaluations that he received. So, his military
21 service was a hundred percent commendable. That I can, I
22 can first-hand attest to because he worked, he worked hard.
23 He served his, his supervisors, his leaders, and the
24 soldiers from the whole state, over 9,000 of us. Served
25 them well and did a -- worked hard and did a very good job

1 for, for all of us.

2 THE COURT: Okay. Thank you, sir. I appreciate it.

3 MR. GASSER: Sergeant Suzanne Couch.

4 THE COURT: Your name, please, ma'am?

5 MS. COUCH: Natalie Suzanne Couch.

6 THE COURT: Couch, Ms. Couch?

7 MS. COUCH: Yes, sir.

8 THE COURT: Okay. Yes, ma'am. Ms. Couch, I'd like to
9 hear from you, please, ma'am.

10 MS. COUCH: You've heard about John's military
11 service. He's been like a brother to me; he's always been
12 there. If I've ever called him for anything, he would come
13 right away. He's a, a very good mechanic, so people at
14 work always go to him. He never would let anybody pay
15 him. He's always been, you know, good person.

16 (A PAUSE.)

17 THE COURT: Anything else?

18 MS. COUCH: I'm sorry.

19 THE COURT: That's okay. I just...

20 MS. COUCH: There have been numerous times that John
21 has -- you know, I would see him every morning. Every
22 morning we'd come in to work. I've known him for eleven
23 years. He didn't start work in the morning until, you
24 know, I would go get my coffee and he was coming to my
25 office or I was going to his, and he would always say good

1 morning. How are you?

2 (A PAUSE.)

3 THE COURT: Anything else?

4 MS. COUCH: He's the type of person, he would do --
5 he'd stop on the side of the road to help a stranger.

6 THE COURT: Yes, ma'am.

7 MS. COUCH: John is a good man. That's all I have to
8 say.

9 THE COURT: Okay. Thank you, ma'am.

10 MR. GASSER: John's sister, Janet Caldwell, would like
11 to speak on behalf of his family.

12 THE COURT: Okay.

13 MS. CALDWELL: Good morning.

14 THE COURT: Good morning, and you're Ms. Caldwell?

15 MS. CALDWELL: Yes. I am Janet Washington Caldwell.

16 THE COURT: Yes, ma'am. What would you like to tell
17 me, please, ma'am?

18 MS. CALDWELL: I would just like to tell everyone
19 about my brother. My brother and I, we have a close, close
20 relationship. My brother has always been an inspiration to
21 me. He took it upon himself when he was in high school to
22 work two jobs to, to help my family out. He was always
23 helpful in a lot of ways. When he was in high school
24 working these two jobs, he took care of his responsibility
25 for purchasing books for himself and supporting himself

1 through high school.

2 My father has always been proud of my brother,
3 especially when he joined the military. He thought that
4 was an honor because my father was in the military also.

5 My -- when my brother and I left home, we were always
6 together. We were always in the same city here in
7 Columbia. On the weekends, my brother and I would go down
8 to my parents' house, and before we left, my father and my,
9 my brother would always spend time together. And before
10 we, before we left, my brother would always turn to my
11 father, and he would always hand him something. I never
12 knew what it was. So, my father said you don't need to do
13 that. He says I'm just trying to do whatever I can do to
14 help you and Mom out for what you've done for us. He
15 didn't say what you did for me; he said what you did for
16 us.

17 When my brother and I would be on the way to coming
18 back to Columbia, he said, you know, I don't have a lot to
19 give mom and Dad, but whatever I can give them for all that
20 they've done for us -- they made sure that we were a part
21 of activities in school. They made sure that we were in
22 church together. Any -- anything that we need to be
23 involved in, we were involved in.

24 My brother was not the type of person who liked to
25 just sit around and be about nothing. In school, he wanted

1 to be a part of activities. He started out with Cub Scout,
2 Boy Scout, and I think all of that led up to him being in
3 the military. So, throughout this whole time, he's had
4 that respectful demeanor. We were raised in the family to
5 be respectful, to think of others, to treat everybody
6 right.

7 And even though we were not living in our hometown, we
8 went home on the weekends. We would go to church.
9 Sometimes we would go together; sometimes we would go in
10 separate vehicles. But when I got to church, if my brother
11 wasn't there, a few minutes I looked over. He was coming
12 in the church. So, we stayed connected throughout the
13 whole time; we have always been in each other's lives.
14 Even though he had his family and I had my family, we
15 always ended up back at my home, our hometown.

16 When my father died, there was my mother and at that
17 time I didn't know how we were going to continue to care
18 for her because we were here, my mother was there, and my
19 father was gone. I can recall I was expecting at the time,
20 so I didn't know quite how I was going to manage all that
21 and work.

22 My brother and I, we were -- we had gotten together
23 and said how are we going to care for our mother, even
24 though she was still in pretty good health, but we never
25 did. My brother took it upon himself, working a full-time

1 job, to go down to my mother's, sometimes two times a week,
2 to check on her to make sure everything was okay, and then
3 I would go on the weekends and tell him.

4 I can recall my mother calling various occasions
5 saying, you know, her car wasn't working or some
6 maintenance in the house, the pipes had burst and all that
7 type stuff. She would call me because she could get me
8 quicker than she could get my brother. Sometimes he would
9 be out in the field. I would call my brother and tell him
10 what was going on and I'd think to myself, well, it's,
11 like, on Tuesday. So, he probably won't get there until
12 the weekend. After I got home, I would call my mother and
13 said, well, I talked to my brother. She said he's here.
14 He's here.

15 He worked that full-time job, went down, took care of
16 whatever was going on, sometimes in the pouring rain, to
17 get her car, you know, so she wouldn't be without. And I
18 knew that -- you know, I spoke with her she said, well, he
19 must not have drill this weekend, Yes. He would come back
20 all times of the night, work the next day, have military
21 drill on the weekend, and that Sunday I'm saying I know he
22 won't be here for church. He's back there in church.

23 When church was over, my brother took part in any
24 other services. Can I offer -- help with the offering?
25 Sometimes they would call on him because they know that he

1 would help.

2 After that, I would be -- we spent time with my
3 mother. I would be on my way back to Columbia because I
4 need to work the next day, and I'm thinking my brother's on
5 way back, too. He's not. He is going around to the
6 elderly family members, most of them who had lost their
7 husbands. They're elderly and they're by themselves. He'd
8 always go by and check on them and see how they were doing.
9 Is, is there anything that you need? So, then when I would
10 talk to them and they'd say, yeah, your brother came by
11 last night. I said -- I asked them, well, what time did
12 you get back? Oh, it was about 12:00, 1:00, but he didn't
13 leave until he made sure that they were all okay.

14 So, within the last, I guess, five years or so, my
15 mother's health has really failed. My brother and I have
16 always been a part of caring for her. And I remember one
17 time probably about four years ago when she had some really
18 serious stuff going on that I talked to her about. I
19 talked to my brother and could barely hold back the tears,
20 and I was telling him. He said don't cry. It'll be okay.
21 He said set the appointment up. We're going to go
22 together; I'm going to be there right beside you. Whatever
23 they come up with, we'll deal with it together. And we
24 did, and I was so proud of my brother.

25 So, after my mother's health started to fail, my

1 brother would go down, check on her and, you know, the main
2 thing we needed to do was to, to help her to eat, keep her
3 strength up. She didn't have much of an appetite, but my
4 brother would go down, and he'd come up with different
5 things for her to eat just to keep her eating. He'd reach
6 out to me even now and say, well, you know, you got to
7 remember certain things she -- you need to taste for. Just
8 try and find different things that would help her to eat
9 better and keep her strength up. All that.

10 So as a son, as a brother, I can't say any more about
11 my brother. He has, he has been an inspiration to me all
12 this time. He's always said whatever I did or whatever I
13 do for my mom, I did it for us. So, now everything that I
14 do for my mom, I do it for us. Thank you.

15 THE COURT: Thank you, Ms. Caldwell.

16 MR. GASSER: And lastly, Your Honor, Sheila
17 Washington, which is John's ex-wife, will speak briefly.

18 THE COURT: Okay.

19 Hello, Ms. Washington.

20 MS. WASHINGTON: Hello.

21 THE COURT: How are you?

22 MS. WASHINGTON: As Mr. Gasser said, I'm Sheila
23 Washington. I am John's ex-wife and the mother of his
24 daughter.

25 I gave Jessica the option of speaking on her behalf

1 without her, and she would -- whether she wanted to write a
2 letter for her father, and I forgot my glasses. Excuse me.
3 I can't see without those. I'm sorry.

4 THE COURT: That's okay. I can't do anything without
5 mine.

6 MS. WASHINGTON: Thank you. She chose to write a
7 letter, and of course she would beg the court's apologies
8 for not being here, but she lives in D.C. She works there,
9 but the emotions would be too much for her. This is the
10 letter that she wanted me to read.

11 THE COURT: All right.

12 MS. WASHINGTON: Since the day I was born, my dad has
13 been by my side teaching me to ride bikes, taking
14 me to church, and going on more trips, from the
15 mountains to Disney World. In a society where
16 absent fathers has become customary, I count it a
17 blessing that my dad has been there for me every
18 step in my life, teaching me invaluable lessons
19 about respecting others, being assertive, working
20 hard, and taking time to enjoy life, all of which
21 I still value today. Even as an adult, I often
22 seek my dad for advice for personal and
23 professional matters and know that whatever
24 advice he gives me will be in my best interest.
25 He has been transparent in sharing mistakes he

1 has made in life, encouraging me to do the same.
2 Despite everything he has told me, it is the way
3 he has lived his life that has been the ultimate
4 example for me. He has always taken
5 responsibility for his actions and has never been
6 a person who uses excuses to escape from them.
7 He is respected amongst his family members,
8 friends, colleagues, and associates. When I was
9 sad, he made me smile. When I didn't understand,
10 he provided clarity by imparting his wisdom.
11 When I went astray, he corrected me and explained
12 to me all of our actions come with consequences.
13 My dad understand the consequences of his actions
14 and is willing to face those consequences head
15 on. He is remorseful and knows the impact this
16 has taken on his life and the lives of those
17 around him. His mistake should not take away
18 from the person he is at the heart and the
19 upstanding citizen he has been. He is a
20 god-fearing, family-oriented, hard-working man
21 who, for his entire life, has always put the
22 interests of others before his own. He has given
23 so much and never complained about what impact it
24 may have on him. At twenty-seven years old, I
25 still look up to my dad because he has showed me

1 the importance of hard work, honesty, and being a
2 good person and -- whom others respect. I love
3 my dad, and I will always love him because he is
4 the greatest dad, greatest man I know. I am who
5 I am today because of the dad he has been to me
6 my entire life.

7 Your Honor, I would just like to say as Jessica's
8 mother, I've been there along this way, and I've seen what
9 John has done for our daughter. He has been a wonderful
10 father, and I constantly tell John all the time as his
11 ex-wife and the mother to his daughter. Nobody can ever
12 take away him being a good father.

13 Jessica got everything that she needed and a lot of
14 what she wanted, sometimes against my word, but he was a
15 dad that spoiled his daughter because she was his princess.
16 When she moved to D.C., he would go up every -- about every
17 three or four months to make sure her car was operating
18 properly because he was not going to have his baby girl in
19 D.C. driving a car that was not serviced properly.

20 John was -- is a good father and he has a daughter
21 that is in D.C. that loves him tremendously. She received
22 her master's right after this incident happened on
23 September the 13th, 2013. I couldn't tell her this over
24 the telephone. So, I got in the car and I went to, went to
25 pick her up because I knew I couldn't tell her before I

1 brought her back. And she said, Mommy, my daddy won't be
2 able to see me march. I said no, but he will be there with
3 you in spirits. So, when December of 2014 -- she was able
4 to march because -- with her master's degree because of her
5 father. Thank you, Your Honor.

6 THE COURT: Okay. Thank you, ma'am.

7 All right, Mr. Gasser.

8 MR. GASSER: Your Honor, other than a very, very brief
9 -- one or two remarks I have, John would like to address
10 the court.

11 THE COURT: All right, Mr. Washington.

12 DEFENDANT: Yes, sir.

13 THE COURT: Be glad to hear from you, please, sir.

14 DEFENDANT: Yes, sir. Your Honor, to the Kollock
15 family, I apologize to you all for the terrible sin that I
16 committed by taking the life of your loved one, your
17 sister, your sister-in-law, and your friend. I'm so very
18 sorry that I let something possess me and took control of
19 me and caused me to take a human being's life. God gives
20 us life and breath, and I had no right to take it away. I
21 know that this has caused a lot of hurt and pain on all of
22 you, and for that I am truly, truly sorry.

23 I pray every day and night that God gives strength,
24 comfort, and healing to all of you. God knows I truly,
25 truly wish I could change what happened. I wish I could

1 bring Zelda back. I wish it was me instead of her; I don't
2 feel that it's right that I'm here and she's gone.

3 I thank God for the time that he gave me with Zelda.
4 I was always there for Zelda in her time of need, through
5 sickness, and the loss of family members. I truly loved
6 her. We were engaged. Zelda was a good person.

7 I know you all have happy memories of Zelda and
8 because of the senseless act I've committed, she's gone too
9 soon. I'm truly sorry. I'm ashamed and embarrassed. I've
10 destroyed her life, my life.

11 I've asked God many times why this had to happen, why
12 I had to be a part of this senseless violence going on in
13 the world now. I know Zelda is in heaven, and I will see
14 her again because I believe in the resurrection of the body
15 and life everlasting.

16 I'm so sorry. The life of a, a good person ended too
17 soon because of me, because of the, the senseless act I
18 committed. I'm truly sorry.

19 THE COURT: I thank you, Mr. Washington.

20 Mr. Gasser.

21 MR. GASSER: Judge, those are -- those have always
22 been his words one way or another since the first time I
23 met him. And over the eighteen times that I've had an
24 opportunity to spend with him, and nineteen being this
25 morning, he's always acknowledged responsibility for his

1 act and has demonstrated genuine remorse and contrition.

2 Based on his military career, his life leading up to
3 these few minutes, we obviously would ask you whatever
4 consideration you would give towards the lower end of the
5 sentence. We would appreciate it.

6 He has served 509 days at the Richland County
7 detention center. We'd obviously ask for time -- that he
8 receive credit.

9 THE COURT: Yes, sir.

10 MR. GASSER: And as an officer of the court, I
11 sincerely appreciate the time that you've given us during
12 this mitigation phase. Thank you.

13 THE COURT: Yes, sir.

14 (A PAUSE.)

15 THE COURT: All right, we'll stand down for about ten
16 minutes. I'll come back in here. I'll tell you what I'm
17 going to do, okay? Everybody, we'll stand down about ten
18 minutes. Thank y'all.

19 (OFF THE RECORD.)

20 THE COURT: All right, ladies and gentlemen, I just
21 want to remind y'all that I'm not going to have any kind of
22 emotional outbursts with the sentencing. So, if anybody
23 feels like they cannot maintain their composure in court at
24 this time, I'll give you an opportunity to step out right
25 now. Otherwise, I'm going to expect you to remain composed

1 while I do the sentencing. Okay.

2 Mr. Washington.

3 DEFENDANT: Yes, sir.

4 THE COURT: You've got a commendable record of service
5 to your, to your country and to your family.

6 DEFENDANT: Thank you, sir.

7 THE COURT: And you have had absolutely no prior
8 criminal record.

9 DEFENDANT: No, sir.

10 THE COURT: And I appreciate the fact that you are not
11 putting the Kollock family through a trial, and I
12 appreciate you accepting responsibility for your actions
13 from the very beginning and telling your attorney that,
14 even though I know he had to do his due diligence for us to
15 get here today.

16 DEFENDANT: Yes, sir.

17 THE COURT: However, this was a senseless act, as you
18 have said yourself.

19 DEFENDANT: Yes, sir.

20 THE COURT: And there is absolutely no excuse for your
21 killing of Ms. Kollock. And your decision on September the
22 14th has negatively impacted both families, all of your
23 friends, friends on both sides, and this community.

24 You know, I'm hoping that what happened will emphasize
25 the need to address domestic violence and mental-health

1 issues in this state, including, including depression.

2 DEFENDANT: Yes, sir.

3 SENTENCE OF THE COURT:

4 THE COURT: Mr. Washington, the sentence of this court
5 is that you are committed to the state Department of
6 Corrections for a period of forty years. I give you some
7 -- I give you credit for the 509 days you've served. Good
8 luck to you.

9 MR. GASSER: Thank you, Your Honor.

10 THE COURT: Thank you.

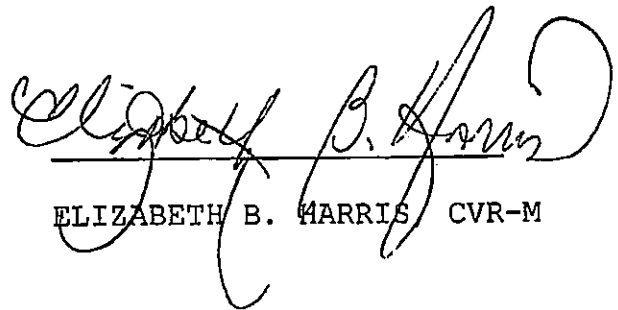
11 MS. CAVANAUGH: Thank you, Your Honor.

12 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 5TH DAY OF FEBRUARY, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS CVR-M

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 25TH, 2015

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JOHN EDWARD WASHINGTON, #362938,
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence Richland County Court of General Sessions, 1701 Main Street, Columbia, SC 29201
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-40-0387 (Murder)
 - (b) _____
 - (c) _____

Revised 3/2003

2015 CP400 72 45

RICHLAND COUNTY
FILED
2015 DEC -3 PM 4:06
JANETTE W. McNEEL
C.C.P. & U.S.

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 2/5/15 (40 years).
 - (b) _____
 - (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Attorney failed to file for an appeal.
 - (b) _____
 - (c) _____

Revised 3/2003

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of plea counsel.
 - (b) Involuntary guilty plea.
 - (c) Belated direct appeal.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to fully address the issue of Defendant's competency prior to, and during the plea proceedings.
 - (b) Failure to fully address Defendant's mental health issues prior to, and during the plea proceedings.
 - (c) Counsel failed to file a direct appeal at Defendant's request.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No.
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
 - (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

Revised 3/2003

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

Revised 3/2003

(a) PCR is the proper forum.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes.

(b) your trial, if any? _____

(c) your sentencing? Yes.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Johnathan S. Gasser, Esq.; 1529 Laurel St., Columbia, SC 29201

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Plea & sentencing.

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

A new trial.

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA

County of RICHLAND

VERIFICATION

I, John Edward Washington, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

John Edward Washington

SWORN to and subscribed before me this 13th
day of November, 2015.

Susan H. Frye (L.S.)
Notary Public

My Commission Expires

My Commission Expires: March 5, 2018

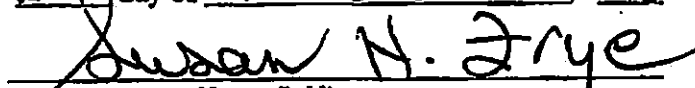
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, John Edward Washington, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
13th day of November, 2015.


Notary Public

My Commission Expires

My Commission Expires: _____ March 5, 2018

RICHLAND COUNTY
FILED
2015 DEC -3 PM 4: 06
JEANETTE W. McBRIDE
C.C.P. & G.S.

2013A4010203298

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

THE STATE

1308047814-R6

against

John Edward Washington

Address:

Columbia, SC 29203-9023

Phone:

SSN: 2

Sex: M Race: B Height: Weight:

DL State: SC DL #:

DOB: Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: Richard Carter - 1220

Offense: Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant John Edward Washington
on 09/18/13

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Personally appeared before me the affiant Richard Carter

being duly sworn deposes and says that defendant John Edward Washington

did within this county and state on or about 9/14/2013

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

violate the criminal laws of the

in the following particulars:

Richland Bond Court

DESCRIPTION OF OFFENSE: Murder

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on or about 9/14/13 while a.

in the Pontiac Magisterial District of Richland County, one John E.
Washington did commit the crime of Murder. It is believed the defendant committed the crime because he did with malice
aforethought shoot and kills the victim, Zelda Kollock, while armed with a handgun. The def. was positively identified by
witnesses. Affiant and others are witness to prove same.CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jasnette W. M. Bude
C.C.C.P. & G.S.RICHLAND COUNTY
SOUTH CAROLINA

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Affiant's Address

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/14/2013

defendant John Edward Washington

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland Bond Court

) as set forth below:

DESCRIPTION OF OFFENSE: Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicableSworn to and subscribed before me
on 9/18/2013

Signature of Issuing Judge

MR Metts

Judge Code: 7221

(L.S.)

Judge's Address

Judge's Telephone (803)576-3284

Issuing Court:

☐ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

BAIL set by

WITNESSES



Judge _____
on _____
Type and Amount: _____
Name of Surety: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____

Telephone: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

DISPOSITION before

Judge _____

on _____

by _____

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

JURORS

CODEFENDANTS

2011M 0450 1018
RICHMOND COUNTY
COURT
CLERK
OF SUPERIOR COURT
JAN 10 2011

COUNTY OF Richland
STATE VS.
John Edward Washington
AKA:
Race: BLACK Sex: M Age:
DOB: SS#:
Address:
City, State, Zip: Columbia, SC 29203-9023
DL#: SID#:
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Murder

INDICTMENT/CASE#: 2014-GS-40-00387

A/W#: 2013A4010203298

Date of Offense: 9/14/2013

S.C. Code § : 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0010

of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Kathryn Cavanaugh 77690 John Washington 9904
Cavanaugh, Kathryn SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 509 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$

% to County (if paid in installments) \$

TOTAL \$

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Jeanette W. McBride
C.C.C.P.&G.S.

RICHLAND COUNTY
SOUTH CAROLINA

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge Edwards

Judge Code: 2153

Sentence Date: 2/5/15

Clerk of Court/ Deputy Clerk Jeanette W. McBride

Court Reporter: Harriet

CCA/217 (03/2011)

WITNESSES

(S) Inv. Richard Carter
- RCSD

ARREST WARRANT NUMBER

2013A4010203298

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

MAR 13 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-40-00387

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2014

116

**THE STATE
vs.**

John Edward Washington

**Indictment for
MURDER**

SC Code 16-03-0010
CDR Code 0116

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to .

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED**
Jeanette W. McBride
- C.C.C.P.&G.S.
**RICHLAND COUNTY
SOUTH CAROLINA**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
FILED
MARCH 12 2014
CLERK OF COURT
RICHLAND COUNTY
COURT HOUSE
COLUMBIA, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on MARCH 12, 2014, the
Grand Jurors of Richland County present upon their oath:

MURDER

That John Edward Washington did in Richland County, on or about
September 14, 2013, kill the victim, Zelda Kollock, with malice
aforethought, either express or implied, by means of a gunshot wound, and
the victim did die as a proximate result thereof. All in violation of Section
16-03-0010, S. C. Code of Laws, (1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

John Edward Washington, #362938

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2015-CP-40-9245

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed December 3, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the March 2014 term of the Court of General Sessions for Richland County for murder (2014-GS-40-00387). Applicant was represented by Johnathan S. Gasser, Esq. On February 5, 2015, Applicant pleaded guilty to murder before the Honorable Edgar W. Dickson without negotiations or recommendation. On February 5, 2015, Judge Dickson sentenced Applicant to forty (40) years imprisonment for murder. Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Orangeburg County Clerk of Court regarding the subject conviction(s), the transcript from Applicant's trial, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Failure to fully address the issue of Defendant's [sic] competency [sp] prior to, and during the plea proceedings."
 - b. "Failure to fully address Defendant's mental health issues prior to, and during the plea proceedings."
2. Involuntary Guilty Plea
3. Violation of Due Process
 - a. "Belated direct appeal."

III.

Applicant's claim is an allegation of ineffective assistance of plea counsel. Respondent submits that Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The courts presume that counsel rendered adequate assistance and made all significant

decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Roscoe v.

State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

V.

Respondent therefore requests that this Court convene an evidentiary hearing on the issue of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR hearing. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

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

VIII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held solely on the claims of ineffective assistance of counsel.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

April 21, 2016

STATE OF SOUTH CAROLINA
COUNT OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2015-CP-40-07245

JOHN EDWARD WASHINGTON, #362938)

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

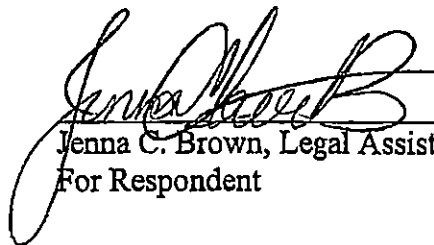
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this 27th day of April, 2016.


Jenna C. Brown, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-40-7245

JOHN WASHINGTON, 362938,)
Applicant,)

v.)

STATE OF SOUTH CAROLINA,)
Respondent,)

AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF

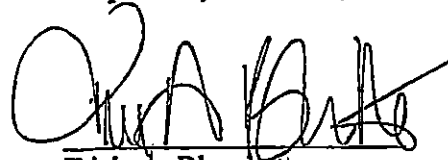
2018 MAR -6 PM 2:54
JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on December 3, 2015. The State filed a Return on December 2015. By and through his undersigned counsel, Applicant would move to amend his Application for Post Conviction Relief. In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his guilty plea. Applicant would further amend and explain the allegations set forth in his Application for Post-Conviction Relief by adding the following specific allegations of ineffective assistance of counsel:

1. Ineffective assistance of counsel that rendered his guilty plea involuntary due to counsel's failure to utilize mental health experts to review records and evaluate Applicant prior to the entry of his guilty plea and to assist in his plea proceeding, specifically, as follows:
 - a. Failure to utilize mental health experts to assist in plea negotiations.
 - b. Failure to utilize mental health experts to formulate possible defenses and/or in mitigation.
 - c. Failure to utilize mental health experts to ensure that Applicant's plea was knowingly and voluntarily entered.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tricia A. Blanchette', written over a horizontal line.

Tricia A. Blanchette
Attorney for Application
PO Box 2147
Leesville, SC 29070
(803) 908-3266

March 6, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-40-7245

JOHN WASHINGTON, 362938,)
Applicant,)

v.)

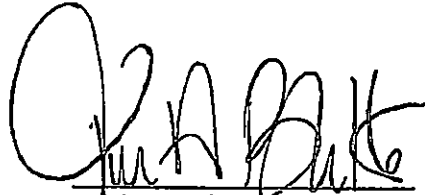
CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)
Respondent,)

RICHLAND COUNTY
FILED
2018 MAR -6 PM 2:34
JEANETTE W. McBRIDE
Clerk of Court
C.C.P. & G.S.

I, Tricia A. Blanchette, Attorney at Law, hereby certify that I that placed in the
mail 6th day of March 2018, an Amendment to Application for Post Conviction Relief
Jessica Kinard of the Attorney General's Office, at:

Office of the Attorney General
Att: Jessica Kinard, Ast. AG
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266

March 6, 2018

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF COMMON PLEAS
2015-CP-40-7245

JOHN WASHINGTON,
APPLICANT,

vs.

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
DEFENDANT.

March 22, 2018
Columbia, South Carolina

B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH, JUDGE.

A P P E A R A N C E S:

JESSICA KINARD, ESQ.
Attorney for the Defendant

TRICIA BLANCHETTE, ESQ.
Attorney for the Applicant

KAREN AMBROZIAK
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(DW) - Denotes Defense Witness

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(Applicant's Exhibits)			
1	CV of Dr. Brawley	3	9
2	May 2011 Evaluation	3	16
3	CV of Dr. Maddox	3	25
4	DMH Forensic Evaluation Report	3	28
5	HIPAA Release	3	70
6	Letter	3	82

All Exhibits were retained by the Clerk of Court for Richland County.

P R O C E E D I N G S

(WHEREUPON, Applicant's Exhibit Nos. 1 through 6 were marked for identification.)

MS. KINARD: Thank you, Your Honor. May it please the Court. This is the matter of John Edward Washington versus the State of South Carolina. It is a Fifth Circuit case, not First, I apologize. Richland County Case No. 2015-CP-40-7245. We're before the Court on an application for post-conviction relief that was filed December 3rd, 2015. It was also amended March 6th, 2018.

Mr. Washington is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Richland County Clerk of Court. He was indicted at the March 2014 term of the Richland County Grand Jury for murder. He was represented by Jonathan S. Gasser. On February 5th, 2015, Mr. Washington pled guilty to murder before the Honorable Edgar W. Dickson without negotiations or recommendations. On the same day, Judge Dickson sentenced him to 40 years imprisonment for murder. Mr. Washington did not appeal.

The State is present and ready to proceed. Mr. Washington is present represented by Tricia Blanchette.

MS. BLANCHETTE: Thank you, Your Honor. May it please the Court. Tricia Blanchette on behalf of Mr. John Washington. Before I go forward with my introduction,

1 Your Honor, I wanted to make sure that you had a copy of
2 the amended application that was submitted on March 6th of
3 2018. If not, I do have a copy for Your Honor.

4 THE COURT: I have one that's dated March 10th.

5 MS. BLANCHETTE: Probably the same. I have a file
6 date of March 6th. I don't know how you got that one,
7 Your Honor.

8 THE COURT: Well, I'm sorry, I may be misreading it.
9 Perhaps, it is March 6th.

10 MS. BLANCHETTE: I can hand this up so we can verify
11 if you like, Your Honor. May I approach?

12 THE COURT: Yes.

13 MS. BLANCHETTE: I just want to make sure we're all
14 on the same page before I begin.

15 Your Honor, this morning, I intend to call Dr. Tora
16 Brawley and Dr. Donna Maddox as my first witnesses. I did
17 prepare just a short overview of the plea transcript and
18 some of the pertinent facts that were brought at the plea
19 if Your Honor would like me to go over that at this time
20 to kind of lay the groundwork before I put those doctors
21 on the stand.

22 THE COURT: That would be fine. Certainly.

23 MS. BLANCHETTE: Your Honor, as we just mentioned, we
24 filed this amended application. By way of that amended
25 application, we're alleging ineffective assistance of

1 counsel that rendered Mr. Washington's guilty plea
2 involuntary due to counsel's failure to utilize mental
3 health experts to review records and evaluate applicant
4 prior to the entry of his guilty plea and to assist in his
5 plea proceedings. Specifically, as follows: Failure to
6 utilize mental health experts to assist in plea
7 negotiations, failure to utilize mental health experts to
8 formulate possible defenses and/or in mitigation, and
9 failure to utilize mental health experts to ensure that
10 applicant's plea was knowingly and voluntarily entered.

11 Now, Your Honor, turning to the plea transcript, as I
12 mentioned, I'm just going to highlight certain portions of
13 it and I'm going to acknowledge some things that were
14 brought forth at the plea itself. Beginning on Pages 3
15 through 5, Mr. Gasser, who was defense counsel, explains
16 that he has met with Mr. Washington 18 times. They've
17 reviewed the discovery and the case law and he consulted
18 with several veteran lawyers of the Richland County Bar
19 regarding possible defenses in this case.

20 Thereafter, on Pages 6 through 7, Judge Dickson
21 inquires of Mr. Washington regarding any mental health
22 issues. He indicates that he is on medication for
23 depression, but he does understand what is going on during
24 the proceeding.

25 Skipping over to Page 9, he's asked the standard

1 questions and responds that he is satisfied with his
2 attorney and he understands the things that his attorney
3 has told him.

4 I'd like to highlight on Page 13 that the State
5 indicates and I think all parties will agree today that
6 Mr. Washington has no prior record.

7 Then turning to Page 15, that is where Mr. Washington
8 right after the indictment is read, he collapses or has
9 some type of episode where the proceeding is stopped. It
10 says "A pause as Defendant begins to collapse".

11 Thereafter, Mr. Gasser explains that he's used to standing
12 at attention as a soldier as Mr. Washington had a lengthy
13 military career and he appears to have just locked his
14 knees. That explanation follows the collapse on Page 15.

15 Then again, at the top of Page 17, it says "A pause
16 as Defendant begins to collapse". Thereafter, the Judge
17 questions whether he understands, kind of what is going
18 on. Should we go forward with this proceeding?

19 On Page 18, Mr. Gasser says that he's looked into the
20 idea of competency and he's discussed the matter with
21 Mr. Washington's ex-wife, Sheila, but he never references
22 talking to any experts or anybody in the mental health
23 profession.

24 Just chronologically going through the transcript, on
25 19, they confer and Mr. Gasser says that Mr. Washington

1 knows what he's doing and wants to go forward.
2 Thereafter, on Page 20, he enters his plea. And on Page
3 21, the plea is accepted.

4 Skipping forward to Page 24, the State asks for a
5 sentence significantly higher than the minimum. And then
6 on Page 25, the defense phase of mitigation begins. In
7 mitigation, Mr. Gasser explains on Page 25 from the first
8 meeting, this case was always a plea. He goes on to say
9 that at the end of every meeting, Mr. Washington looked
10 him in the eye and said he was guilty of the crime.

11 He explains on Page 26 through 27 that he had a duty
12 professionally to confirm the evidence and he had concerns
13 that he had to kind of check off before he came into the
14 courtroom and pled a client straight up to murder.

15 He explains the plan on Page 27 as to ask for
16 whatever mercy he could get under the set of circumstances
17 that present itself here today.

18 On Pages 28 through 29, and I'd like to direct your
19 attention specifically to Page 28, Line 20. That is where
20 the issue of mental health comes up. He explains that he
21 was diagnosed with depression and he -- there's two
22 paragraphs there on Pages 28 through 29 that address
23 Mr. Gasser's understanding of Mr. Washington's mental
24 health situation.

25 On Page 30, Line 5, I'd like to point out that he

1 describes him as a perfect soldier. And that's kind of a
2 character trait or a description that he gives throughout.
3 Thereafter, his sister, Jan, speaks to the Court and then
4 the Defendant speaks to the Court on Page 43.

5 Specifically, the Defendant says on Page 43 that something
6 possessed him or took him over and it was a senseless act.

7 Mr. Gasser summarizes the presentation on Pages 44
8 through 45. Points out that his client has acknowledged
9 responsibility and asks the Court to consider the lower
10 end of the sentencing range.

11 Thereafter, Judge Dickson stands down for 10 minutes,
12 as reflected on Page 45. Then when Judge Dickson comes
13 back in, he specifically states that he hopes this will
14 emphasize the need to address domestic violence and this
15 will help issues in this state, including depression. And
16 then he sentences Mr. Washington to 40 years.

17 Thereafter, the PCR application was filed that we're
18 here on today and I'm prepared to call my first witness
19 unless the Court has any questions at this time.

20 THE COURT: I have no questions. You may proceed.

21 MS. BLANCHETTE: Your Honor, I'd call Dr. Tora
22 Brawley to the stand.

23 TORA BRAWLEY, Ph.D., after being
24 duly sworn, testified as follows:

25 THE WITNESS: Good morning.

1. THE COURT: Good morning.

2. DIRECT EXAMINATION

3. BY MS. BLANCHETTE:

4. Q Could you please state your name for the record?

5. A Tora Brawley.

6. MS. BLANCHETTE: Your Honor, may I approach the
7. witness?

8. THE COURT: You may.

9. MR. BLANCHETTE: Your Honor, would you like me to
10. continue to request or do I have ongoing permission to
11. approach?

12. THE COURT: Ongoing permission.

13. MS. BLANCHETTE: Thank you, Your Honor.

14. BY MS. BLANCHETTE:

15. Q Dr. Brawley, can you identify this document for the
16. record, please?

17. A It's my curriculum vitae.

18. MR. BLANCHETTE: Your Honor, at this time, I would
19. move the curriculum vitae of Dr. Brawley as Applicant's
20. No. 1.

21. MS. KINARD: No objection.

22. THE COURT: Granted.

23. MS. BLANCHETTE: Would you like a copy?

24. THE COURT: If you would.

25. (WHEREUPON, Applicant's Exhibit No. 1 was admitted

1 into evidence.)

2 BY MS. BLANCHETTE:

3 Q Dr. Brawley, have you been qualified as an expert
4 witness in the State of South Carolina prior to today?

5 A I have.

6 Q Approximately how many times have you been qualified?

7 A In South Carolina, probably 50 or more.

8 Q And what is the area of expertise you've been
9 qualified in?

10 A I'm a clinical neuropsychologist.

11 MS. BLANCHETTE: Your Honor, at this time, I would
12 move to admit Dr. Brawley as an expert as a clinical
13 neuropsychologist. I always trip up over that. And I
14 defer to the State, Your Honor.

15 MS. KINARD: We've spoken about this before and we've
16 agreed to stipulate to Dr. Brawley's expertise.

17 THE COURT: Motion is granted.

18 MS. BLANCHETTE: Thank you Your Honor.

19 BY MS. BLANCHETTE:

20 Q Dr. Brawley, please explain how you became involved
21 in the case of John Washington.

22 A I received a call from you. Dr. Maddox had evaluated
23 Mr. Washington and she had some concerns about his
24 cognition and was requesting that I perform an evaluation.

25 Q Did you perform an evaluation of Mr. Washington?

1 A I did.

2 Q On what date did you perform that evaluation?

3 A The evaluation was March 6th -- I'm sorry, the
4 evaluation was May 4th, 2017.

5 Q And is the proper terminology for what you conducted
6 an extended clinical interview?

7 A That's part of it. That's the interview portion.
8 And then I also do a battery of tests.

9 Q And that was going to be my second question. You
10 also did a battery of neuropsychological testing; is that
11 correct?

12 A That's correct.

13 Q Okay. I'm going to kind of take you through the
14 information that you've reported to me and I've provided
15 to the State.

16 As part of that interview and battery of tests, did
17 you first gain information from Mr. Washington?

18 A I did.

19 Q And what was the information that he provided to you
20 that was pertinent to your analysis in this case?

21 A Well, the first thing that I do is ask him what kind
22 of problems he is having, what he has noticed. So he gave
23 me a history that he was reporting problems with his
24 memory that went back several years. That back in 2011,
25 he was having problems with a senior leader course as part

1 of the military. They're required to do continuing
2 education and various courses. And he wasn't able to pass
3 the course. He failed the exam, the final exam. And they
4 allowed him to retake it, and he failed it again. He just
5 wasn't able to focus on the course materials. He wasn't
6 able to learn the new material.

7 He also told me that he's having problems with
8 concentration. He has trouble recalling things that --
9 recent conversations. He would become turned around more
10 easily, lose track of what he was saying in a sentence.
11 And, you know, he rated those difficulties right now as
12 severe for him.

13 Q Did he provide to you a social and family history
14 that was pertinent to your evaluation in this case?

15 A He did. You know, he just gave me his background
16 information. I asked about educational information. I
17 asked about work history. I asked about medical history.
18 I asked about psychiatric history. We cover all of that
19 in the interview.

20 Q And any of the information that he gave you, do you
21 think that's pertinent for the Court to understand today?

22 A He did report significant depression since 1998 and
23 he's continued to struggle with that.

24 Q And did he explain to you, and you may have just
25 covered this, any psychiatric or medical history?

1 A He did. He's reporting -- he was currently having
2 some vegetative symptoms, things like problems sleeping,
3 not feeling rested, decreased energy level, those types of
4 things that were also pertinent. He reported that he was
5 in a motorcycle accident around age 29 where he did
6 experience a head injury and a loss of consciousness, but
7 he did not receive any formal treatment at that time.

8 He reports another head injury in 1975, also, in a
9 car accident and one as well in 2013. In the 2013, he
10 reports that he hit his head and suffered loss of
11 consciousness and was in the hospital for three days.

12 Q And that would be the accident having followed the
13 incident that we're here about today?

14 A Correct.

15 Q And if you could just go through, so we have it in
16 the record, the lists of tests that you administered to
17 Mr. Washington?

18 A Certainly. I gave him Wechsler Adult Intelligence
19 Scale, fourth edition, the Wechsler Test of Adult Reading,
20 the Repeatable Battery for the Assessment of
21 Neuropsychological Status, a Verbal Theory Attention Test,
22 Information and Orientation Questions, Controlled Verbal
23 Fluency Test, Short Category Test Booklet Format, Finger
24 Oscillation, Groove Pegboard, Trailmaking Part A,
25 Trailmaking Part B, and Test of Memory Malinger.

1 Q And during your evaluation and testing, what were the
2 conditions and how did Mr. Washington appear?

3 A I tested him at Broad River. We had a nice quiet
4 room. He was fully cooperative and put forth excellent
5 effort. I always have to assess for effort just to make
6 sure there's no secondary gain, there's no exaggeration.
7 So I do -- I mentioned the test of memory malingering. He
8 put forth excellent effort.

9 Q And what were the results of your testing?

10 A Mr. Washington had some significant impairment. His
11 full scale IQ was at 74, which is at the fourth
12 percentile. His working memory index, his processing
13 speed, perceptual reasoning, verbal comprehension all on
14 the intelligence test were all impaired. On the R band,
15 the repeatable battery, his verbal learning was at the
16 third percentile. His ability to copy a complex figure
17 was at the third percentile. His ability to recall that
18 figure after 20 minutes was at the fifth percentile. His
19 judgment of line orientation was at the first percentile.
20 His speed of mental tracking was at the first percentile.
21 Multiple things. I mean, I can continue to go through.
22 His Trailmaking Part A was at the second percentile. So
23 he has multiple areas of deficit over several areas of
24 functioning, in most all areas of functioning.

25 So in summary, I said that the results were

1 consistent with the presence of brain deficiency and I
2 felt that he should undergo a full dementia workup.

3 Q Did also recommend that an MRI be done of
4 Mr. Washington?

5 A I think that was Dr. Maddox who ordered that test
6 based on my findings, that we found so many problems, she
7 wanted to get some imaging.

8 Q And what diagnosis -- and if you've already explained
9 that, I apologize, but what kind of layman or common term
10 diagnosis were your results consistent with?

11 A My results were consistent with a dementia.

12 Q Now, did you have the opportunity after you evaluated
13 and tested Mr. Washington to review military records that
14 were obtained by his defense attorney?

15 A I did. That was a great discovery. We always hope
16 for something like that. I wasn't aware that he had
17 previous neuropsychological testing in 2011. He was
18 seeing the psychiatric nurse at Fort Jackson because he
19 was reporting problems with, you know, he couldn't pass
20 the senior leader course. So she referred him to Georgia
21 to the traumatic brain injury clinic to have an evaluation
22 for testing. So it was great for me to be able to see
23 where he was in 2011 compared to where he was when I saw
24 him.

25 Q And Dr. Brawley, I'm going to hand you this document

1 and ask if you can identify it for the record, please?

2 A This is the evaluation that they conducted at Fort
3 Gordon, Georgia.

4 Q And this was the evaluation you were just referencing
5 that you reviewed as part of your analysis in this case;
6 is that correct?

7 A That's correct.

8 MS. BLANCHETTE: Your Honor, at this time, I would
9 move the May 2011 evaluation in as Applicant's No. 2.

10 MS. KINARD: It's the State's understanding that this
11 was relied upon by both Dr. Brawley and Dr. Maddox in the
12 formation of their reports. Additionally, I believe the
13 testimony will bear out this came from the Defense files.
14 So on that basis, the State does not have an objection.

15 THE COURT: Motion is granted.

16 MS. BLANCHETTE: Thank you, Your Honor. Here's a
17 copy.

18 (WHEREUPON, Applicant's Exhibit No. 2 was admitted
19 into evidence.)

20 BY MS. BLANCHETTE:

21 Q Now, Dr. Brawley, I know you said this was a great
22 discovery. Could you explain to us what information you
23 were able to glean from here and how that connected back
24 to the results that you were finding in this case?

25 A Right. Their overall finding was that -- let me

1 preface this by saying I'm not speaking ill of the
2 military. I'm a military wife. My husband has been in
3 the military for 33 years. And I did a practicum with the
4 military as part of my training.

5 They have -- their purpose of doing this evaluation
6 was to see if he meets attention standards. That's not a
7 super high bar for someone who's not in a combat position,
8 who's not flying an F16, or something like that. So they
9 were, basically, looking, overall, could he still do his
10 job. And he told them he wasn't having problems doing his
11 job per se, it was when he had to go learn new material,
12 such as the senior leader course. And they also spoke
13 with, I don't know if it was a boss or a coworker who said
14 yeah, he performs fine in the workplace. So overall, what
15 they were looking at was does he meet retention standards.
16 And he probably did at that time for doing the job he was
17 doing at the time.

18 But what -- and Dr. Maddox was the one who was
19 reviewing these records and said you need to look at these
20 because they said he haven't any deficits, but he did. So
21 when I went back through and looked at the report, he did
22 have seven different areas that I would consider deficits
23 that if I was doing the evaluation looking for an early
24 dementia, that would raise a red flag for me.

25 They weren't looking for an early dementia. They

1 were looking -- and they're a traumatic brain injury
2 clinic, so two very different beasts. The early dementias
3 are much more subtle than the deficits that you see with a
4 traumatic brain injury. So when I went back, I found
5 seven different areas in their testing that I would have
6 considered deficit based at that time.

7 Q And if Mr. Gasser had contacted you back at the time
8 of Mr. Washington's charges in 2013 and prior to his plea
9 in 2015, would you have been willing to review this report
10 for him?

11 A I would.

12 Q Would your findings have been the same as they are
13 today regarding the information contained in the 2011
14 report?

15 A Yes.

16 Q And based upon the information of the 2011 report,
17 would you have moved forward with the evaluation testing,
18 such as you have done with Mr. Washington prior to today?

19 A Yes.

20 Q And would you have been willing to assist Mr. Gasser
21 in testifying or preparing the defense of Mr. Washington?

22 A I would.

23 Q Would you have been willing also to potentially
24 testify at a plea proceeding?

25 A I would.

1 Q Let me ask you about one other document. Have you
2 reviewed the Department of Mental Health report that was
3 done prior to this proceeding at the request of
4 Mr. Washington's prior appointed counsel, Mr. Waller?

5 A Yes.

6 Q Okay. And what information would you like to share
7 regarding your review of that report?

8 A The one thing that I did note is they didn't do any
9 formal testing with him. I used to work for the
10 Department of Mental Health in the forensic services unit.
11 And when I was there with someone of those serious
12 charges, we would do further testing. We would do, at
13 least, a cognitive screen. At that time, they also did
14 MRIs and EEGs and called a neurologist as well. It's my
15 understanding they're not doing that anymore. So they
16 didn't do any formal testing with Mr. Washington at the
17 time of their evaluation.

18 Q And just to kind of dumb it down to my terminology,
19 the testing that you did went beyond that which was done
20 by the Department of Mental Health; is that correct?

21 A That's correct. They did just interviews and they
22 did what's called a mini mental status that they do as
23 part of the interview, but they didn't do any formal
24 testing.

25 Q Dr. Brawley, I know that you spent a lot of time

1 preparing for today. Is there anything further that you'd
2 like to provide to the Court regarding your findings in
3 this case?

4 A The one thing that I would state, another reason that
5 having the previous testing is great is because I can
6 compare where he is now and where he was then. Back then,
7 he had the seven areas of deficits. Now, he has many more
8 and many things have gotten much worse over the time. So
9 I do feel that there's something degenerative going on and
10 I feel he is declining with his cognitive steps.

11 Q What would have been your finding at the time if you
12 had reviewed the 2011 report? Would you have just
13 determined that further evaluation was needed?

14 A Yes.

15 Q And you would have conducted the evaluations that you
16 have done for today?

17 A Yes. And I would have requested a full dementia
18 workup like I did in my 2017 report.

19 MS. BLANCHETTE: Your Honor, I have no further
20 questions of this witness.

21 THE COURT: Cross-examination.

22 MS. KINARD: Beg the Court's indulgence, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. KINARD:

25 Q Good morning, Dr. Brawley.

1 A Good morning.

2 Q So in your review of your report, you listed the
3 different tests and the scores, for lack of a better term,
4 that you received on that?

5 A Correct.

6 Q And you mentioned that in the 2011 report, there were
7 seven areas of deficiency. Could you detail those
8 quickly, please?

9 A Certainly. His Booklet Category test was at the
10 eighth percentile. Trails A was at the ninth percentile.
11 Trails B was at the tenth percentile. His coding was at
12 the seventh percentile. His category fluency was at the
13 fourth percentile. His letter fluency was at the 13th
14 percentile. And similarities was at the 10th percentile.

15 Q And these are under the list of standardized test
16 results?

17 A This is in the addendum. These are listed in the
18 addendum.

19 Q I'm sorry. I was looking in the report itself from
20 2011. Is that detailed in there?

21 A Let's see. Now, I did have to rescore. They had
22 incorrectly scored Trailmaking Part A and Trailmaking Part
23 B. I rescored those using the norms that were provided by
24 the authors of those tests.

25 Q Okay.

1 A All right. So let's see. They kind of did a
2 mishmash. Some of these, they just put raw scores in, so
3 I had to go and score them. So sometimes, they put in raw
4 scores. Sometimes, they put in percentiles. Sometimes,
5 they put in a subtest score. So it is a bit of a
6 mishmash. So booklet category -- let's see. And they
7 often just gave the R band overall score, the 27.

8 Q Yes.

9 A And that's made up of 10 or 11 different subtests
10 that I broke down and scored them each individually.

11 Q So you took the information provided in the 2011
12 report and rescored it, rescaled it based on your
13 expertise and knowledge?

14 A That's correct.

15 Q Okay. Based on a first glance of the 2011 report,
16 including the conclusions, is it fair to say that it shows
17 he also gave good effort during this evaluation?

18 A Yes.

19 Q And it's consistent with his current IQ functioning?

20 A That is the other issue that I have with the report.
21 They did an estimate of his verbal IQ and they
22 inaccurately estimated. They estimated his low average.
23 When I go back and look at the things, at the oral reading
24 test that they gave and the information scores, all of
25 those were in the average range. So I estimate his

1 premorbid IQ should be in the average range. They kind of
2 discounted that through there. So that was the other
3 issue I had with their report.

4 Q Is it fair to state that in this report, it rules out
5 current cognitive disorder?

6 A They said that there was no global decline. And from
7 their perspective, like I said, I do think there were
8 deficits at that time, but for their standards, they
9 didn't notice any global decline and they felt like he met
10 retention standards.

11 Q You mentioned had you been performing this
12 examination, if you were in the shoes of the 2011
13 examiners, you would have looked for early signs of
14 dementia?

15 A If he had been sent to me clinically?

16 Q Yes.

17 A He had been sent to me clinically, I would have said
18 he has some areas of deficits that could be consistent
19 with an early dementia, further workup is needed. I would
20 have referred him to a neurologist and full dementia
21 workup.

22 Q Well, if he came to you with the symptoms he was
23 reporting, do those symptoms to you raise a red flag that
24 hey, this might be dementia?

25 A Yes.

1 Q But the records don't reflect that that was why he
2 was sent for this evaluation?

3 A He was sent because he was reporting cognitive
4 problems because he had failed the senior leader course
5 and he couldn't retain the information. That's why they
6 sent him.

7 Q Now, looking at the DMH report, which was done very
8 recently, in 2016, as I recall, that's Dr. Frierson's
9 report. Are these findings contradictory to yours or can
10 they be explained in conjunction?

11 A They weren't looking, also. I mean, I'm kind of a
12 different entity from them. That would be Dr. Maddox's
13 area.

14 Q Okay. Thank you. But you did state that they did
15 not run the tests that you ran with him?

16 A That's correct.

17 MS. KINARD: Beg the Court's indulgence.

18 Q As part of your examination, was there any attempt to
19 determine culpability or responsibility at the time of the
20 crime?

21 A No.

22 MS. KINARD: I have no further questions. Thank you.

23 MS. BLANCHETTE: Your Honor, I have no further
24 questions of this witness.

25 THE WITNESS: Thank you. May I be excused, Your

1 Honor?

2 MS. BLANCHETTE: I do not have her under subpoena,
3 Your Honor.

4 THE COURT: Sure.

5 MS. BLANCHETTE: Your Honor, I'd call Dr. Donna
6 Maddox to the stand.

7 DONNA MADDOX, M.D., after being
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. BLANCHETTE:

11 Q Could you please state your name for the record?

12 A Sure. Donna, middle name, Schwartz, S-C-H-W-A-R-T-Z,
13 last name, Maddox, M-A-D-D-O-X.

14 Q And Dr. Maddox, I'm going to hand you a document.
15 Can you identify that for the record, please?

16 A Yes, this is the most recent copy of my curriculum
17 vitae.

18 MS. BLANCHARD: Your Honor, at this time, I'd move to
19 admit the curriculum vitae of Dr. Maddox as Applicant's
20 No. 3.

21 MS. KINARD: No objection.

22 THE COURT: Motion is granted.

23 (WHEREUPON, Applicant's Exhibit No. 3 was admitted
24 into evidence.)

25 BY MS. BLANCHETTE:

1 Q Dr. Maddox, have you testified as an expert in the
2 State of South Carolina?

3 A I have.

4 Q Approximately how many times have you testified in
5 the State courts of South Carolina?

6 A Over 700.

7 Q And what is the area of expertise you are typically
8 qualified in?

9 A Forensic psychiatry.

10 MS. BLANCHETTE: Your Honor, at this time, I would
11 move Dr. Maddox as an expert in the area of forensic
12 psychiatry.

13 MS. KINARD: As with Dr. Brawley, we are familiar
14 with Dr. Maddox's expertise and stipulate to her
15 qualifications as an expert.

16 THE COURT: Motion is granted.

17 MS. BLANCHETTE: Thank you, Your Honor.

18 BY MS. BLANCHETTE:

19 Q Dr. Maddox, can you please explain how you became
20 involved in the case of John Washington?

21 A Certainly. You contacted me and asked me to evaluate
22 him.

23 Your Honor, at the time, he was at Broad River
24 Correctional Institute, so I went there and I evaluated
25 him last March, March 3rd. So it's been a little over a

1 year ago. March 3rd at the Broad River Correctional
2 Institute.

3 Q Before we get into the evaluation that you conducted
4 there at Broad River, can you explain to us the materials
5 that you reviewed in this case?

6 A Absolutely. By the time I had seen him, he had
7 already been evaluated by the Department of Mental Health,
8 so I had the evaluation from Dr. Frierson.

9 He also, Your Honor, after the charges, he had run
10 his car into a bridge and tried to kill himself after he
11 had killed his girlfriend, so he had a brain bleed. He
12 had some brain damage after that incident. So I reviewed
13 those records from Palmetto Richland.

14 Of course, I had the Moncrief Army Hospital's, which
15 predate his offense, from 2011 on where he had been
16 treated for depression and also the testing that Dr.
17 Brawley referred to, the neurocognitive deficits that he
18 had.

19 I had the incident reports related to his charges,
20 the crime scene analysis report, investigation notes. I
21 had statements of various witnesses, the autopsy. I also
22 reviewed the transcript of his plea.

23 And then later, I asked for a consultation with
24 Dr. Brawley and I reviewed her report. I also ordered an
25 MRI and reviewed those results as well.

1 Q And one of the items that you referenced was the
2 Department of Mental Health report that was done on
3 Mr. Washington; is that correct?

4 A Yes.

5 Q Can you identify this document for the record?

6 A Yea, this would be the Department of Mental Health
7 forensic evaluation report. It was completed on
8 October 17th. Dr. Frierson was presiding. His forensic
9 fellows were there. He had a medical student present and
10 a resident.

11 MS. BLANCHETTE: And, Your Honor, this report was
12 generated as a result of a court order in this case. I
13 would move this now as Applicant's No. 4 into evidence.

14 MS. KINARD: As part of the court order, it was also
15 sent directly to me and relied upon by the doctor, so we
16 have no objection.

17 THE COURT: Motion is granted.

18 (WHEREUPON, Applicant's Exhibit No. 4 was admitted
19 into evidence.)

20 BY MS. BLANCHETTE:

21 Q Now, Dr. Maddox, we've talked about the items that
22 you reviewed. Let's jump forward to your evaluation of
23 Mr. Washington at Broad River. What was the pertinent
24 information you gleaned from your interview portion of
25 your evaluation?

1 A Your Honor, he was very cooperative. And it was very
2 clear from seeing him, he still had significant
3 depression. He had lost weight. He's been trying to
4 function. He's been following the rules, but it was very
5 obvious. He had been treated for depression. He was
6 prescribed an antidepressant called Remeron, which is
7 commonly used to help people gain weight that have lost
8 weight and help people sleep. He was very what's called
9 lay mild affect. He would easily cry, especially when
10 talking about what he had done. He remained remorseful.

11 Upon further testing, I began getting a medical
12 history from him. And one of the things that struck out
13 is that he -- in trying to get a history from him, he
14 would forget things that were pretty important. So for
15 example, when I asked him about a history of head
16 injuries, he reported one, but then he forgot that he hit
17 a telephone pole and had a significant closed head injury
18 and later in the evaluation remarked to me, "How could I
19 forget that?"

20 So he was able to catch some of the things he could
21 not remember. So it was clear that his anxiety sometimes
22 would prevent him from remembering things. He was able to
23 give me a history. He was very cooperative.

24 I began my cognitive examination of him. And that's
25 when his deficits became very apparent, Your Honor. I

1 asked him -- I know you can't see this, but one of the
2 things we do, and Dr. Brawley had testified to it, you ask
3 them to copy a visual design. And, basically, you draw a
4 picture and have them copy it. And I had him draw a cube.
5 I drew a cube and asked him to copy the figure. And he
6 could not draw a cube. He drew, basically, one square and
7 two other lines. It was too difficult for him. And given
8 his age and his rank in the military and all the things
9 that he's done, I thought that was significant. So I had
10 him copy an easier one. I made it easier. So already
11 early on in the exam, I was concerned that he had some
12 deficits.

13 The next thing I did is I had him remember five
14 words. We use a test called the Montreal Cognitive
15 Assessment. It's a standard test that we use in
16 psychiatry. And you have them repeat five words. Well,
17 he had difficulty repeating the five words. I finally got
18 him to repeat those words. He showed deficits in
19 remembering them after five minutes. But what was most
20 significant, Your Honor, after 10 minutes, his brain made
21 up words. And that's called confabulation. And that is a
22 very prominent clinical symptom in dementia.

23 What happens is your brain forgets something, so it
24 fills in the gaps, so to speak. So, for example, if the
25 words were brown, tulip and eye dropper, someone who

1 confabulates might say red, flower and teaspoon. Your
2 brain remembers the category, but it doesn't remember the
3 new information that's been learned. So he demonstrated
4 inability to learn new information and to retain that even
5 after 10 minutes, which was of concern.

6 After that, I also performed a neurological screening
7 exam on him, which I do that for all patients now. And he
8 had what's called nystagmus, similar to the field sobriety
9 tests that police officers use. You have to track eye
10 movements. And you have what's called nystagmus, lateral
11 nystagmus. That's a very general finding. You can see
12 that with medications. You can certainly see that in
13 brain injury. You can see it with intoxication of
14 alcohol. But it certainly would be consistent with the
15 history of closed head injury that he had given me. I did
16 not see any other focal findings on his neurological exam.

17 So after that, given the findings on his cognitive
18 exam, I wanted further testing of him because I also
19 picked up that he had some deficits.

20 Q Okay. And just going back, you had the opportunity,
21 you said, to review his military records, specifically
22 from Moncrief, and then from when he was at Fort Gordon
23 from 2011. What information were you able to glean from
24 those records?

25 A Well, it was -- a few things. Number one, I think

1 the military really did help him. They tried very hard.
2 He was having difficulty. He couldn't pass his senior
3 leadership classes, so he went for help. And they treated
4 him for depression.

5 He had had some prior episodes, Your Honor. This
6 would have been his third episode of major depression in
7 his lifetime. He had had one earlier. I think the second
8 one he had was when the stock market dropped. He had lost
9 \$50,000 in stocks one year and had developed a depression.
10 And he had the depression at the time.

11 The military, in my opinion and similar to
12 Dr. Frierson, they picked up on the cognitive deficits,
13 but thought it was secondary to depression. And that does
14 happen. With depressive disorders, you can have
15 difficulty concentrating, you can have difficulty
16 remembering things because you're not able to pay
17 attention. So I think their working theory was his
18 problems in memory and concentration were coming from
19 depression. They aggressively treated his depression and
20 they also sent him, I refer to it to kind of like a study
21 group. He went and saw a psychologist that was helping
22 him with learning strategies to help him so he could pass
23 his test. And he eventually did pass the test. On his
24 third try, he did pass it. So in my opinion, they had
25 tried.

1 I was the one -- I was looking through his records
2 and found the test. Again, probably one of the places I
3 differ with mental health, Dr. Frierson, he put in his
4 report that the memory difficulties were found not to have
5 a cognitive disorder. However, when I looked at the
6 actual test and saw the percentages, I disagreed with them
7 and that's why I called your office. I showed you that
8 those test findings were abnormal and asked Dr. Brawley --
9 since that's her area of expertise, I asked her to look at
10 those because I did not consider them normal. And I
11 thought they were consistent with a cognitive disorder.

12 Q And that was from the testing conducted by the
13 Department of Mental Health and Dr. Frierson you made that
14 determination; is that correct?

15 A No, it's actually from the TBI Clinic tests from Fort
16 Gordon. But then I also noted that in the mental health
17 evaluation, Dr. Frierson just put in his report -- he gave
18 the conclusions that they did -- that the
19 neuropsychologist did in Fort Gordon, that there was no
20 presence of a cognitive disorder, but I disagreed with
21 that.

22 Q Then you said you referred myself to Dr. Brawley and
23 we coordinated to have her also do an evaluation and
24 testing of Mr. Washington. And those results were shared
25 with you?

1 A Yes.

2 Q And what were you able to do with those results?

3 A It was -- clearly, I was able to formulate an opinion
4 and a diagnosis. The diagnosis being that he had a
5 dementia and it predated this offense.

6 Q Can you explain why you reached the conclusion that
7 it predated this offense?

8 A Certainly. Because, as Dr. Brawley said, it's not
9 very often that we're able to actually have test results
10 of that nature, of that detail prior to an event.
11 Normally, we're able to do that anyway, even in the
12 absence of those records. Dr. Brawley is able -- some of
13 the things that she test, they never change over time.
14 They're called crystallized findings. So many times, even
15 when someone has dementia, if there are certain test
16 results, she's able to go back and premorbidly determine
17 what someone's IQ should have been, what the level of
18 function should have been. But in this case, we had much
19 more data points than that, a lot more. So we were able
20 to go back in time and see that those deficits were
21 present then.

22 Q And what was the opinions that she reached in the
23 case with Mr. Washington?

24 A Well, initially, Your Honor, my opinion to
25 Ms. Blanchette was that he probably would have had

1 diminished capacity and there was significant mitigation
2 that could have been presented. However, after that data,
3 it was very clear that he had frontal lobe dysfunction. I
4 think one of the things Dr. Brawley probably did not talk
5 about as much, but that she wrote in his report, if you
6 look at the results from 2011, most of those impairments
7 were in his frontal lobe functioning. Frontal lobe is
8 what makes you use judgment. That's what makes you pick
9 choices. That's what helps you decide things. So his
10 impairments were significantly in his frontal lobe.

11 So based on those findings, based on my evaluation of
12 him and his current neurocognitive status, and then based
13 on what he told me, it was my opinion that I would have
14 been able to testify that he could not conform his conduct
15 to the requirements of the law.

16 Now, I clearly thought he knew what he was doing. He
17 did not have criminal responsibility issue, Your Honor.
18 He reports that after he drove off from the crime scene
19 and realized what he had done that he tried to kill
20 himself and ran his car off the bridge. And it was a
21 significant suicide attempt, Your Honor. He did have a
22 brain hemorrhage after that. So in my opinion, it was
23 clear he knew what he was doing. But he would have been
24 my opinion that he could not conform his conduct to the
25 requirements of the law because it is dementia.

1 Persons with dementia, they have a symptom, Your
2 Honor, called perseveration. And what that means is they
3 get something in their mind and they're not able to change
4 their thinking. They can't get off track of a certain
5 thought. Dr. Brawley actually gave the best definition of
6 perseveration. She states it's similar to a pothole being
7 in the road and you're so used to driving a certain way on
8 the road that you go into the pothole every time. You
9 forget that it's there. So his brain, what it does, is it
10 will ruminate. It will focus on things and it won't
11 change gears. You can't switch tabs. And he was very
12 focused on his relationship. He didn't understand why it
13 had ended.

14 Now, on that day, he had drank an 18-ounce beer. But
15 there's no evidence -- again, he wasn't a chronic
16 alcoholic. I don't think he had enough alcohol to cause a
17 dementia. I certainly didn't attribute his dementia to
18 alcohol abuse at all. So it would have been my opinion
19 that he could not conform.

20 Q And there's two things I want to ask you about that.
21 One is, just to be clear, would that diagnosis impair his
22 impulse control?

23 A Absolutely.

24 Q Can you explain that?

25 A Sure. Again, it's part of the frontal lobe. When

1 you have -- for example, I've worked on a neurological
2 unit where people don't have frontal lobes. And the best
3 example I can give you is there was a woman and one day I
4 came up and she said, You have a very ugly dress on.
5 Normally, you might have that thought, but you'll frontal
6 lobe will kick in. You'll have that impulse and your
7 frontal lobe will say well, that's not a very nice thing
8 to say, so you would keep your opinion to yourself.

9 But in this case, when you have frontal lobe
10 impairment and an impulse, your ability to resist it is
11 greatly lessened. He doesn't have the same choices
12 available that he would had he not had dementia.

13 Q You mentioned alcohol, did he report to you a history
14 in his family of alcohol abuse?

15 A I'll have to review. I know his drug screens were
16 negative at the time of his -- when he was at the Richland
17 Memorial Hospital.

18 Q Let me ask you more specifically. Did he report to
19 you that either of his parents had an issue with alcohol
20 abuse?

21 A Yes, his father did. And alcoholism, when it runs in
22 the father's side of the family, it's a more serious
23 illness. But I had no evidence that he had any alcohol
24 disorders.

25 Q Okay. I just wanted to make sure we had a clear

1 history as far as that was concerned. Just going back,
2 I'm not sure we've mentioned it yet, but you did ask that
3 an MRI be conducted in this case; is that correct?

4 A That's correct.

5 Q And were there any findings you were able to make
6 based upon the MRI?

7 A Yes. It certainly showed that his findings were not
8 attributable to a structural lesion, like a brain tumor or
9 things like that. It was read as normal.

10 Q Okay. Dr. Maddox, is there anything else regarding
11 your findings or opinions that you would like to add
12 before I ask you about how you could have assisted
13 Mr. Gasser?

14 A No, ma'am.

15 Q Dr. Maddox, are you familiar with Attorney Johnny
16 Gasser?

17 A I am.

18 Q Have you worked with him on cases?

19 A Yes, and I consider him an excellent attorney.

20 Q And do you recall him reaching out to you on the case
21 of John Washington any time between 2013 and 2015?

22 A Not that I recall.

23 Q If he would have reached out to you, would you have
24 been willing to assist him with the case and evaluate
25 Mr. Washington?

1 A Absolutely.

2 Q Would you have conducted the same steps that you have
3 conducted in preparation for today?

4 A Yes.

5 Q And upon evaluation of Mr. Washington, do you feel
6 confident that you would have referred Mr. Gasser to Tora
7 Brawley?

8 A Yes.

9 Q And based upon your review of the Moncrief records
10 and the 2011 report from Fort Gordon, do you feel
11 confident that you would have had similar or the same
12 findings that you have today?

13 A Yes. If I can elaborate a little bit. I would have
14 referred him for neuropsychological testing even without
15 the 2011 Moncrief records because he had had a serious
16 closed head injury after this offense. That's why those
17 records are so helpful. If you look back in time -- if we
18 had just had his testing from the time of the evaluation
19 and saw those deficits, one could have said well, maybe
20 that came from the traumatic brain injury he had from his
21 car wreck. But the fact that we had those from 2011 -- I
22 would have referred him for the testing any way just to
23 make sure that he was competent given the seriousness of
24 that closed headed injury.

25 Q And typically, how is it that you assist defense

1 attorneys in putting together their case?

2 A I answer any questions they have and let them know my
3 opinion. And if they want me to testify, we discuss the
4 context of the testimony.

5 Q Do you regularly give them your findings and
6 potentially assist in discussing a possible plea in a case
7 or try to help in any way with plea negotiations?

8 A Only if they request. Normally, I'll just do similar
9 to what I've done today. I write a report and I'm
10 available to answer any questions the attorney has.

11 Q Okay.

12 A I'm not much of a lawyer. I usually don't
13 participate in trial strategies unless someone asked me a
14 specific question about their mental state.

15 Q And if a case does not -- let me ask you this, all
16 the cases that you're involved in, the hundreds of cases
17 that you've been involved in, do they always proceed to a
18 trial where you testify?

19 A No.

20 Q Are you often used in a mitigation capacity?

21 A Yes. And sometimes, I'm not called at all.
22 Sometimes, my opinion is not helpful.

23 Q Okay. In this case, would you have been willing to
24 provide consultation to Mr. Gasser?

25 A Absolutely.

1 Q Would you have been willing to assist in mitigation,
2 whether that be just in him presenting information to the
3 solicitor's office or you presenting information at the
4 plea?

5 A Yes.

6 Q And would you have testified in the capacity that you
7 have today at any plea or trial proceedings?

8 A Absolutely.

9 Q Dr. Maddox, I know you evaluated Mr. Washington just
10 over a year ago and you've been working on this case for
11 some time. Is there any other further information that
12 you'd like to provide to the Court today?

13 A Not that I can think of.

14 MS. BLANCHETTE: Your Honor, I have no further
15 questions at this time.

16 THE COURT: Cross-examination.

17 MS. KINARD: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. KINARD:

20 Q Good morning, Dr. Maddox.

21 A Good morning.

22 Q So you've already testified to the contents of your
23 report as well as the other reports that you reviewed.
24 One of the things you mentioned is you think Dr. Frierson
25 was incorrect in saying there was no disorder in the DMH

1 report that was completed?

2 A I think that's a little strong word. I think he just
3 -- which many people would have done, he took the results
4 that were provided from the tests at Moncrief, which said
5 there were no cognitive deficits and relied on that
6 report. I don't know if he would have looked at the
7 specific test results. I'm not sure if he did or not. So
8 I certainly wouldn't say he was wrong. He just relied
9 upon a conclusion that was in a previous report.

10 Q And you would agree with Dr. Brawley's assessment
11 that they did not perform a standard battery of tests?

12 A That's correct.

13 Q Now, based on your review of this case, how -- you
14 touched on it a little bit, but I want to know a little
15 more. How would Mr. Washington's symptoms have affected
16 him at the time of the crime?

17 A That's a great question. Many people with
18 dementia --

19 Your Honor, that's why I try to put the source. I
20 know that was kind of cryptic. But if you look at all the
21 dementia sources and -- what happened in the DSM-5, Your
22 Honor, we changed. We don't call it dementia anymore. We
23 have to have new names for everything. So it's a major
24 neurocognitive impairment, major neurocognitive disorder.

25 Many of these disorders present with depression and

1 they present with anxiety. So a lot of times, people come
2 into their primary care office or they'll come into their
3 psychiatrist and have complaints of mood disorder and
4 depression. And then when you do the testing like I did,
5 sometimes those findings can be seen with mood disorders
6 and anxiety disorders. So that's not uncommon at all.
7 But that's why you go on and you do the mental status
8 examination and you do cognitive testing so you can pick
9 up on those things.

10 So in looking at that, when you have dementia, your
11 mind, again, it will do what's called perseveration. You
12 may have depression more than normal. Most people early
13 on in dementia, they recognize something is wrong. Just
14 like he did, he knew he couldn't remember. He knew he was
15 having trouble focusing. And he went and got help for it.
16 He didn't know what else to do. But he didn't know he had
17 dementia. Nobody told him that, so he wasn't aware of his
18 condition. He just thought he had depression.

19 But what happens is they ruminate. They don't
20 understand changes. So for him, it was his opinion that
21 they had been together up until that May. They had gone
22 -- he had been engaged to her. He said he had a ring for
23 her. They had gone, I think he said, to Baltimore prior
24 to the event. And he thought they were still together.
25 Then a month later, he went to hug her and she said we're

1 not like that anymore.

2 And from that time on, probably that June until when
3 this crime happened, he had difficulty understanding that
4 they weren't in a relationship anymore. He reports he got
5 severely depressed. Even though he had passed his course,
6 he felt depressed because their relationship was over. He
7 fixated on her. He ruminated about it. He thought about
8 it.

9 And what he told me on the evening of the event is
10 that he had bought two 18-ounce beers after work, went
11 over to a friend's house, gave the friend one and he had
12 one. He drove by her home. She was across the street
13 with a neighbor. He said he waved to them both and that
14 the neighbor waved to him, but she did not. He went home.
15 And I think he had another car. I may be incorrect, but
16 for some reason I'm recalling that he had another vehicle.
17 He drove back by and went to go talk to her. And she was
18 in the garage and that's when he killed her.

19 Very consistent, again, that they persevere. He
20 doesn't understand why the relationship is over. They can
21 have what's called behavioral disturbances where you will
22 do things that you would never do before.

23 Very common, Your Honor, like in nursing homes where
24 there's demented people. They will hit you when they've
25 been people that hit in their lives. And they may curse

1 at you. They get very disinhibited and they don't really
2 have good control of their emotions. So in my opinion,
3 because of all of those things, I think his dementia led
4 him there. His dementia certainly made him aggressive and
5 impulsive when that had not been his history.

6 Q Okay. So in combination with that, was he in control
7 of any kind of moral faculties?

8 A Yes, I think he clearly knew -- after he killed her,
9 he clearly -- he knew it was wrong. He brought a gun
10 there. And that was evidenced by his trying to kill
11 himself after he had realized what he had done. So again,
12 I think he absolutely knew right from wrong. He knew what
13 he was doing.

14 Q Now, you've spoken about perseveration and how that
15 would lead him to fixate on the relationship and not
16 understand the end of the relationship. Could it also be
17 used to explain his fixation on the crime? For example,
18 the fact that there was the incident where she didn't
19 address him. He made the trip home to get a weapon, load
20 the weapon, drive back and then, you know, continue to the
21 suicide attempt. Could that be explained?

22 A Yes.

23 Q Okay. So a similar kind of fixation, just on a
24 different --

25 A Yes. You just have to take his behavior and know

1 that he's not someone that's done those things before.
2 And as his dementia was getting worse, he realized the
3 relationship was over. He's got these deficits. By the
4 way, he's not being treated for dementia. The one thing
5 that we didn't talk about is you can treat dementias. And
6 to this day, he's not on the correct medications that
7 would help his memory and prevent his dementia from
8 progressing.

9 You know, he went and got help. He didn't know he
10 had a dementia. He wasn't being treated for it. Then he
11 had the major change in his relationship. He was already
12 failing at work. So yes, his brain probably would have
13 perseverated on a lot of his losses, a lot of the things
14 he wasn't doing.

15 Q One question that I as a layperson, hopefully, I'm
16 not the only one who is not quite understanding this, but
17 the difference between knowing what he is doing and not
18 being able to conform his behavior to comply with that.
19 How is that possible that they can't work together?

20 A That's a good question. Knowing what you're doing --
21 to not know what you're doing, you would have to have some
22 kind of delusion, okay, that says okay, you know what, she
23 is my wife -- and you can have this in dementia.

24 I'll give you the best example I can give you with a
25 patient with dementia. He has dementia. He thinks that

1 she was still his wife, that somebody is lying to him
2 about it. He's going back to go get his wife. So you
3 would have to have some kind of delusion. In that
4 delusion, he would have to be able to justify why he
5 should kill her. And there's no evidence that he had
6 psychosis.

7 Now, sometimes you can have someone with a dementia
8 that's so confused they really don't know what they're
9 doing. You know, they're trying to get a gun -- I've had
10 a case where a man thought an intruder was in the house
11 and he went and got a gun and he shot the person and it
12 was his wife. He had a dementia. He just didn't know
13 what he was doing. He had misperceived the environment.

14 That's not Mr. Washington's case. He knew when he
15 got a gun and was driving back over there, there was a
16 chance something could happen. So he was aware that if
17 you bring a gun to a scene, there's a chance something
18 could happen. But in my opinion, what capacity to conform
19 means is at that time, at that moment when he was very
20 upset, his judgment was so impaired that he couldn't stop
21 himself.

22 Q Thank you. That certainly clarifies that. When you
23 worked with him, does he remember the incident?

24 A Yes. Some degrees, yes.

25 Q And certainly, you've met with him several years

1 after the incident, but have testified to his prior
2 records. Do you think the fact that you were reviewing
3 him after all this time had any affect on your ability to
4 render a full opinion?

5 A No. Again, I think -- the reason why I can say that
6 with certainty is because of the 2011 results. Had it
7 just been from that one data point and given the closed
8 head injury that he had in the emergency room, it would
9 have been more difficult. But the fact that we were able
10 to find those records, that's what gave me more certainty
11 and ability to render that opinion.

12 MS. KINARD: Thank you. I have no further questions.

13 MS. BLANCHETTE: Very briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. BLANCHETTE:

16 Q Dr. Maddox, you reviewed the transcript of the plea
17 proceedings; is that correct?

18 A Yes.

19 Q At any time, were any cognitive impairments mentioned
20 or was just the issue of his depression referenced?

21 A Correct. There were no mention, no mention at all of
22 any cognitive impairment. No mention of a dementia. No
23 mention of his difficulties, memory, focusing, paying
24 attention, those sorts of things.

25 Q And you also saw in the transcript where

1 Mr. Washington had two episodes where he collapsed?

2 A Yes.

3 Q Okay. And you weren't present in the courtroom that
4 day; is that correct?

5 A That's correct.

6 Q Okay. But what opinions were you able -- or findings
7 were you able to make based upon your review of that
8 transcript?

9 A I read the transcript. I still felt he was
10 competent.

11 I didn't have any information to suggest otherwise,
12 Your Honor. I thought Judge Dickson -- they had a
13 colloquy. There was enough written in that transcript
14 that I was able to opine that he knew what he was doing on
15 that day and he was able to assist in his defense and he
16 was cooperating.

17 Q But if you had been retained by Mr. Gasser, you would
18 have been there and been able to evaluate Mr. Washington,
19 much as you have for today, to determine if he was
20 competent to go forward with that proceeding?

21 A Yes.

22 Q And as far as the record reflects, that was not done;
23 is that correct?

24 A That is correct.

25 MS. BLANCHETTE: Your Honor, if I could beg the

1 Court's indulgence just one moment.

2 THE COURT: Sure.

3 (Pause.)

4 BY MS. BLANCHETTE:

5 Q And if you are not qualified to answer this question,
6 please do not, but when we're talking about capacity to
7 conform versus when the State was asking, essentially,
8 about the M'Naghten insanity standard; would you have
9 informed Johnny Gasser that it was your opinion that this
10 was a case that could be qualified as guilty, but mentally
11 ill?

12 A Yes.

13 MS. BLANCHETTE: Your Honor, I have no further
14 questions.

15 MS. KINARD: Nothing further, Your Honor.

16 THE COURT: Thank you, Doctor. You may step down.

17 THE WITNESS: Thank you, Your Honor.

18 MS. KINARD: Your Honor, I apologize, but could we
19 take a very brief break?

20 THE COURT: We certainly can.

21 We'll be in recess for five minutes.

22 (WHEREUPON, a short break was taken.)

23 MS. BLANCHETTE: Your Honor, I would call my next
24 witness to the stand, Jan Washington Caldwell.

25 JAN WASHINGTON CALDWELL, after being

1 duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. BLANCHETTE:

4 Q Can you please state your name for the record?

5 A My name is Jan Washington Caldwell.

6 Q Ms. Caldwell, how is it that you know the Applicant,
7 John Washington?

8 A He's my brother.

9 Q And did you provide a statement on his behalf at his
10 plea proceedings?

11 A Yes, I did.

12 Q And that's reflected in the plea transcript; is that
13 correct?

14 A Yes..

15 Q Let me ask you a little bit about your involvement in
16 his case and your knowledge of him. Is Mr. Washington
17 your older or younger brother?

18 A He's my only brother, my older brother.

19 Q And I won't ask age. I was just wondering if he's
20 younger or older?

21 A He's older.

22 Q So you have known him your entire life; is that
23 correct?

24 A My entire life.

25 Q And you're familiar with his military career; is that

1 correct?

2 A Yes, I am.

3 Q And when Mr. Gasser described your brother as a good
4 soldier, would you agree with that characterization of
5 your brother?

6 A Absolutely.

7 Q And in the plea proceedings and as it's reflected in
8 the transcript, I believe on Page 34, you gave an
9 explanation of the type of man your brother is, what you
10 knew about your brother, so we won't go back through those
11 things today.

12 A Okay.

13 Q But were you very involved in your brother's case?

14 A I was. Well, when the incident happened, his
15 daughter was the one who hired Mr. Gasser, and his
16 ex-wife. They were pretty much meeting with Mr. Gasser,
17 handling things. So because Mr. Gasser was in charge of
18 everything, he was kind of relaying the information back
19 and they were relaying the information back to me. So the
20 information that I was receiving, everything to me sounded
21 in order. I mean, I don't know a lot about the legal
22 system. That's not my expertise or anything. But I had
23 no questions about anything because everything seemed to
24 be going in order.

25 Q And do you recall having two meetings with

1 Mr. Gasser?

2 A I did.

3 Q Take us through what you discussed with him in that
4 first meeting on your brother's behalf.

5 A Okay. The first meeting, I was called upon to see if
6 I wanted to go down and meet with him and listen to, you
7 know, the 9-1-1 tape. So when I got there, I met him. I
8 listened to the 9-1-1 tape. And I guess it was probably
9 about -- maybe about five to ten minutes long.

10 And when I got through listening to the 9-1-1 tape, I
11 said, That's not my brother. That is not my brother. And
12 then I said -- and I saw his picture. That's not him.
13 Looking in his eyes, that is not my brother. Something
14 took -- something took over his mind. I kept saying
15 something took over his mind. And Mr. Gasser said, of
16 course, it did. That's not him. I met him. I know his
17 character. He had an out of body experience. That's what
18 you call it. It's nothing new. We see it all the time.

19 And I was -- I was stunned because I felt like
20 someone else knew what I knew, but I was just using the
21 wrong term. I kept saying take over his mind. So after
22 meeting with him, then I discovered well, there's another
23 term for it. It's called an out of body experience.

24 Q And did he share with you or did you all discuss at
25 that point whether it was going to be a plea case or a

1 trial case?

2 A At that time, he said that my brother didn't want to
3 have a plea -- a trial. He just wanted to have a hearing.

4 Q Okay. Did he talk with you about the plan for that
5 plea proceeding? What his plan was going to be as far as
6 requests to the Judge?

7 A Yeah, well, he said that he would meet with the Judge
8 and he would have a conversation with the Judge in his
9 chambers, that they would meet and he would ask the Judge
10 to have mercy and the Court to have mercy on John. And it
11 was out of character for John, so definitely was going to
12 ask for that.

13 Q And you had a second meeting with Mr. Gasser; is that
14 correct?

15 A That's correct.

16 Q And what took place during that second meeting? What
17 did y'all do?

18 A The second meeting, he just pretty much wanted to
19 prepare us for the hearing, how things would be done. You
20 know, you have both sides here and just kind of the
21 process that we would be going through. And, of course,
22 he did bring up again that, you know, we would -- I would
23 meet with the Judge and -- before the hearing and kind of
24 have a one-on-one with the Judge, and then that's when we
25 would ask the Court for mercy on him. And he told me that

1 I would need to speak on behalf of my brother in terms of
2 his childhood, the relationship with our parents, just to
3 that fact.

4 Q Okay. During your either one-on-one, face-to-face
5 interaction with Mr. Gasser or any other interactions, did
6 you ever discuss your brother's mental health or mental
7 capacity?

8 A No.

9 Q And if that had been discussed, is there an incident
10 that occurred at your mother's house that you would have
11 shared with him?

12 A Yeah, I would have because it just kind of caught me
13 off guard. We were going to meet my brother at my
14 mother's house one night, my husband and I. We needed to
15 put a rug down in her house. It was already late at night
16 because we all, you know, didn't get down there until
17 late. So we were trying to get the square measurements
18 together to put the rug down.

19 My husband and I, we were just kind of all talking
20 out. My husband and I was coming up with the same
21 measurements to put the rug down. When we called them
22 out, my brother said, No, no, that's not right. And we
23 were like, Yeah, you know, we figured this. He said, No,
24 that's not right. You got to take your square
25 measurements and you got to add and you got to get your

1 square measurements. What's so hard about this? We just
2 talking square measurements.

3 And I was like -- I sat there for a minute and I
4 said, Well -- I was trying to diffuse the situation. I
5 said, Why don't we just roll the rug out, you know, take
6 the tape off of it and just roll it out and then we can
7 see, you know, how we can put the rug down.

8 So we rolled it out and started, you know, putting it
9 up against the wall because we weren't dealing with an
10 empty floor. We had cabinets, everything we had to work
11 around. And when we were putting it up, he said, We're
12 just dealing with square measurements. I mean, what's the
13 big thing? I mean, what's the problem? Like I said, we
14 just went ahead and kind of bypassed that. We got the rug
15 down.

16 But then when it came to -- because of that, when it
17 came to the area that we needed to cut, I wasn't focused
18 on him cutting those areas. And I think my mom was kind
19 of having a conversation with him. So my husband got the
20 blade and we got it up against the wall and, you know, we
21 started cutting it. So by the time he got back with us,
22 we already had the -- had it to the point where we just
23 had to make the adjustments because I really don't want to
24 cut too much to have to get another rug.

25 Q You're explaining this incident to us, but since we

1 don't know your brother, let me ask you this. Was his
2 reaction out of character or something that was abnormal
3 to you?

4 A Yeah, it was. Because, I mean, we're putting a rug
5 down here. And, you know, I know it was late in the
6 afternoon, but when he said, I mean, what's the big deal
7 here? We're just putting a rug down. We're just talking
8 square measurements here. And, you know, the adding and
9 -- but it's just the -- I guess, the tone. And so I
10 thought well -- but like I said, my husband and I were
11 coming up with the same figures. He was coming up with
12 something totally different. And I thought well, maybe he
13 just had a long day or something. And our goal was just
14 to get that rug down because it was getting late.

15 Q And once I shared with you the findings of
16 Dr. Brawley and Dr. Maddox, did that incident just come
17 immediately to your memory?

18 A Yes.

19 Q And do you remember approximately when that would
20 have been?

21 A That would have been somewhere around 2011, 2012.

22 Q Okay. Now, I'm going to ask you a little bit
23 regarding your -- let me -- I'm sorry, let me go back to
24 mental health or mental capacity here a little bit more.
25 Would you classify your brother as a very private person?

1 A Very, very private.

2 Q And when you actually were interviewed at the
3 sheriff's department and asked if you knew if he was on
4 any mental health medication, what did you tell the
5 sheriff's department?

6 A When he asked, I told him that he was on -- he said,
7 Do you know if he was on any type of medication? I said,
8 One tablet. Because he had thyroid -- he had his thyroid
9 removed and he had to take that one pill every day.

10 Q Did you discover something differently when you were
11 at his home after he was incarcerated?

12 A Yes. We had to go to his home, you know, to pack up
13 stuff and clean up stuff. And I was in the kitchen and,
14 you know, had bags where we were putting a lot of stuff in
15 boxes packing up. And then I opened his drawer and there
16 were all these prescription bottles in there. I kept
17 saying, What is all this stuff in here? There were
18 bottles of Zoloft and there were bottles of sleeping
19 pills, so many bottles in that drawer.

20 And I'm asking myself, when did all this come about?
21 I mean, I know I didn't live with my brother and
22 everything, but all I knew about was the one pill. I had
23 no idea. I was very, very shocked about those tablets in
24 that drawer. And then it was a time that I didn't -- I
25 couldn't reach out to him to ask him what was all of that.

1 You know, what was it for, you know.

2 Q Now, let's talk a little bit what about you
3 understood going into the plea proceeding. What was the
4 amount of time that was your understanding from both your
5 brother and Mr. Gasser that your brother was facing at
6 that plea proceeding?

7 A Okay. When I met with Mr. Gasser, he said that he
8 was able to get the death penalty off the table. He spoke
9 with my brother in reference to 30 years.

10 Q And was 30 years the only term of years you ever
11 heard?

12 A Yes.

13 Q Now, let's talk a little bit about being in the
14 courtroom that day at the plea proceeding itself. Was
15 there media in the courtroom?

16 A Yes.

17 MS. KINARD: Your Honor, I object to this line of
18 questioning as I believe it's outside of any of the
19 allegations that are before the Court.

20 MS. BLANCHETTE: Your Honor, in response, I think it
21 goes exactly in line with the allegations. We're
22 addressing whether or not the plea was knowingly and
23 voluntarily entered and the mitigation information offered
24 as to whether or not counsel was ineffective in those
25 regards.

1 Also, Your Honor, I don't intend to call my client
2 today. I'm calling Ms. Washington at the advice of both
3 of the doctors that have testified. I don't intend to put
4 Mr. Washington on the stand. I'm asking her about her
5 firsthand experience with Mr. Gasser in the plea
6 proceeding.

7 THE COURT: All right. Overrule the objection. You
8 may proceed.

9 MS. KINARD: Thank you, Your Honor.

10 BY MS. BLANCHETTE:

11 Q You can answer my question. Was there media present
12 in the courtroom?

13 A Yes.

14 Q Was that a surprise to you?

15 A Total shock.

16 Q Okay. And as a result, did you leave immediately to
17 make sure your mother knew what was going on?

18 A Yes. Because while the proceedings were still going
19 on, I was trying to be attentive to what was going on, but
20 I was thinking about my mother. And, you know, she's a --
21 she catches every news station that comes on. My main
22 concern was that someone was going to get to her.
23 Something would be televised, someone would call her and
24 give her that news. And I don't know what it would have
25 done to her.

1 So after everything, my main goal was to rush down to
2 get to my mother before anyone could reach out to her or
3 before she could see it on TV to gently tell her what was
4 going on.

5 Q Did you also make a discovery in the courtroom that
6 day regarding Mr. Gasser's prior involvement with the
7 solicitor's office?

8 A Yes, I did. Because, you know, it's like my family
9 and I were together and he seemed familiar, looked
10 familiar, you know. I really didn't know who he was
11 until -- fully until afterwards.

12 Q And when you say you didn't know who he was, could
13 you explain just so we have a complete record?

14 A Yes. So after the way things turned out and a
15 comment that he made to me out in the lobby outside, when
16 we were on our way to go visit my mother, I Googled him
17 and pulled him up, and then that's when I realized he was
18 a prosecutor, just turned attorney. So then -- because
19 that, to me, is what happened that day. He switched roles
20 on my brother.

21 Q Let's talk a little bit about your brother and
22 your -- his appearance and the episodes that happened that
23 I've already pointed out to the Court where the
24 proceedings were stopped two different times. What was
25 your perception of your brother's appearance that day in

1 the courtroom?

2 A I felt like my brother was not in any condition to go
3 further. I felt he was slurring his words. I mean, I've
4 never been in any type of court proceeding like this. I
5 felt like standing up saying we need to stop with this,
6 but they went on with it. I just don't feel like he was
7 in his right mind to keep going on.

8 Q And during the proceedings, Mr. Gasser -- after those
9 episodes, Judge Dickson appears to be kind of questioning
10 whether or not the proceedings should be going on. And
11 Mr. Gasser informs the Court, and I'm just paraphrasing,
12 that he's spoken with his ex-wife, Sheila, and thoroughly
13 addressed the issue of competency. Do you agree that he
14 thoroughly addressed the issue of competency by just
15 talking to Mr. Washington's ex-wife, Sheila?

16 A I don't because --

17 MS. KINARD: Objection, Your Honor. That calls for a
18 legal conclusion regarding competency.

19 MS. BLANCHETTE: I'll leave it in Your Honor's
20 discretion.

21 THE COURT: I'll sustain the objection.

22 BY MS. BLANCHETTE:

23 Q Let me ask you a different question. Are you
24 familiar with Mr. Washington's ex-wife, Sheila?

25 A Yes.

1 Q Okay. At that time, would she have been as closely
2 interacting with John as you were?

3 A No.

4 Q Did Mr. Gasser ever discuss with you if you had any
5 concerns about your brother's mental health or his
6 competency or ability to go forward with the proceedings?

7 A Never.

8 Q Okay. And if he would have asked you, would you have
9 shared your concerns with him?

10 A Yes.

11 Q Now, after the legal proceeding, did you try to reach
12 out to Mr. Gasser?

13 A I did.

14 Q And what was the result of that?

15 A A lot of no answers. There were times when I would
16 call and his secretary would ask who I was and after I
17 told her who I was, it was well, he's not available or
18 he's out of the office.

19 So it was like he really didn't want to -- it's kind
20 of like it was over, so there's no reason to reach out to
21 me. That's the way I felt. But I felt that because he
22 was my brother's attorney and I'm the sister, you know, I
23 needed -- I was trying to get information, you know, some
24 of what he was asking about, he should have been readily
25 available to speak to me if I needed anything. But I

1 didn't feel that way.

2 Q And you had your brother's permission to communicate
3 directly with his --

4 A Yes.

5 Q With Mr. Gasser and with myself; is that correct?

6 A Yes.

7 Q And at any time, did Mr. Gasser communicate to you
8 prior to the plea that there was a need for mental health
9 professionals or to get some doctors on board?

10 A Never.

11 Q If he would have mentioned that, would you have given
12 him any push back or said no, that's not necessary?

13 A Not at all.

14 MS. BLANCHETTE: Your Honor, if I could beg the
15 Court's indulgence one moment?

16 THE COURT: All right.

17 (Pause.)

18 BY MS. BLANCHETTE:

19 Q And you may have already answered this and I
20 apologize, but did Mr. Gasser ever mention to you the
21 possibility of any defenses or offering information to the
22 Court about your brother's mental health?

23 A No.

24 MS. BLANCHETTE: Your Honor, I have no further
25 questions of this witness?

1 THE COURT: Cross-examination?

2 MS. KINARD: Thank you, Your Honor. Very briefly.

3 CROSS-EXAMINATION

4 BY MS. KINARD:

5 Q Ms. Caldwell, you mentioned that at the time of the
6 plea, you had some concerns; is that correct?

7 A (Nods in the affirmative.)

8 Q Please answer verbally so the court reporter can take
9 it down.

10 A Yes.

11 Q Thank you. Did you tell anyone about those concerns?

12 A No.

13 Q So you didn't tell your family and you didn't tell
14 Mr. Gasser?

15 A No.

16 Q Okay. And otherwise, generally, you've testified
17 that you felt like after the plea, Mr. Gasser was avoiding
18 you. Is that a fair statement?

19 A Yeah.

20 Q And you testified that your brother is a very private
21 person to the point that you weren't fully aware of his
22 mental conditions?

23 A No, I had no idea whatsoever about the mental
24 condition.

25 Q Thank you.

1 MS. KINARD: I have no further questions.

2 MS. BLANCHETTE: Your Honor, I have nothing further
3 of this witness.

4 THE COURT: Thank you, ma'am. You may step down.

5 MS. BLANCHETTE: Your Honor, at this juncture, as I
6 already indicated, I don't intend to call Mr. Washington.
7 I intended to call Mr. Gasser as my next witness. I've
8 looked around and I don't see that he is in the courtroom.
9 I know we've already discussed potentially needing to take
10 a break in the proceedings as a result.

11 MS. KINARD: We can break or I can try to get him on
12 the phone and see how far he is. If he's within 10
13 minutes, we might not want to switch over. It's up to the
14 Court's discretion.

15 THE COURT: Let's be at ease for a few minutes. Why
16 don't you see if you can find him?

17 MS. KINARD: I'll do it.

18 MS. BLANCHETTE: Thank you, Your Honor.

19 (WHEREUPON, a short break was taken.)

20 THE COURT: Ms. Blanchette, you may call your next
21 witness.

22 MS. BLANCHETTE: Yes, Your Honor. Your Honor, I
23 would call Attorney Johnny Gasser to the stand.

24 JONATHAN GASSER, after being duly
25 sworn, testified as follows:

1 THE COURT: Please be seated.

2 DIRECT EXAMINATION

3 BY MS. BLANCHETTE:

4 Q Can you please state your name for the record?

5 A My full name is Jonathan Scott Gasser.

6 Q And Mr. Gasser, what is your current occupation?

7 A I am currently a lawyer licensed to practice law in
8 the State of South Carolina. My law firm is Harris and
9 Gasser. It's just my law partner, Greg Harris, and myself
10 are the only two attorneys. We do primarily criminal
11 defense work.

12 Q How long have you been practicing law?

13 A This May will be 31 years.

14 Q And during those 31 years, what were your areas of
15 practice?

16 A Judge, for the first 15-and-a-half years, I was a
17 prosecutor in this very office here in this building in
18 the Fifth Circuit Solicitor's Office in Richland and
19 Kershaw Counties. The last nine of those 15 years, I was
20 the deputy solicitor, one year under Solicitor Harpootlian
21 and eight under Solicitor Geise. I then became a
22 supervisor Assistant U. S. Attorney supervising the
23 violent crimes section in the U. S. Attorney's office
24 throughout the State. For 13 months, I was the interim U.
25 S. Attorney between Strom Thurmond, Jr. and Reggie Lloyd.

1 So I have a total -- did that for almost five years, so 20
2 years, three months, two weeks and one day, I was
3 prosecutor in this state. So for the last 10 and a half
4 years, I've been doing primarily criminal defense work.

5 Q And do you recall the retainer -- when you were
6 retained to represent Mr. Washington?

7 A I do.

8 Q All right. Who was it that retained you on his
9 behalf?

10 A I believe it was -- on his behalf, it was his
11 ex-wife, Sheila Washington, and his daughter. But
12 primarily, Sheila Washington, is who I did most of my
13 communication with.

14 Q And do you also recall communicating with his sister,
15 Jan Washington Caldwell?

16 A I do. I recognize her in the courtroom.

17 Q And you called her as one of the people to speak on
18 his behalf at the plea proceeding; is that correct?

19 A That's correct.

20 Q Now, I want to ask you -- I'll be referencing the
21 plea transcript. I have that there in front of you. I've
22 already gone over it briefly with the Judge earlier this
23 morning. On Page 25, you explained that it was on a plea
24 track from the first meeting. You go on to explain that
25 at the close of every meeting with Mr. Washington, he

1 would look you in the eyes and let you know he was guilty
2 of the crime. So I kind of have the obvious question, was
3 this always a plea track case?

4 A Yes, it was -- well, let me rephrase that.
5 Certainly, I wanted to review the evidence. I wanted to
6 review evidence myself because at the time of the first
7 meeting, I didn't have access to the discovery. All I
8 had, basically, was a copy of the warrant and what I had
9 read in the newspaper, I believe.

10 But according to Mr. Washington and his version of
11 the facts of the case and then when I talked with
12 Ms. Cavanaugh and I talked with the investigator and they
13 told me and summarized for me an outline of the evidence
14 that was in the case, certainly, I thought if what they
15 were telling me was accurate, then I understood why
16 Mr. Washington all along was considering a plea.

17 And then when I got the discovery and I personally
18 reviewed the discovery myself, it became very clear and
19 evident to me that the facts of the case were pretty
20 overwhelming. And so a plea to something was really where
21 most of the focus was -- where my attention was, Your
22 Honor.

23 Q And you mentioned reviewing the discovery. Did you
24 also obtain records on your own?

25 A I did. I was able to have Mr. Washington sign a

1 waiver on a military form that I obtained in talking with
2 the military personnel. And we were able to obtain his
3 records that primarily came from, I believe, if my memory
4 serves me, Moncrief Army Hospital.

5 Q Mr. Gasser, I'm going to show you this document. Is
6 this the document you were just referencing?

7 A It is.

8 Q What does that appear to be for the record?

9 A This is an authorization for disclosure of medical or
10 dental information. So it's similar to a HIPAA release.

11 Q And by way of this request, you were asking for any
12 records from 2011 to 2013; is that correct?

13 A That is correct.

14 MS. BLANCHETTE: Your Honor, at this time, I would
15 move this HIPAA release in as an authorization and as
16 Applicant's No. 5?

17 MS. KINARD: No objection.

18 THE COURT: Motion granted.

19 (WHEREUPON, Applicant's Exhibit No. 5 was admitted
20 into evidence.)

21 BY MS. BLANCHETTE:

22 Q Mr. Gasser, do you recall receiving the records that
23 you had requested?

24 A I do.

25 Q And do you recall going through those records?

1 A I did very thoroughly.

2 Q Did you go through those on your own or did you
3 utilize anyone else's services in going through those
4 records?

5 A I read those records on my own. I'm very familiar
6 with those types of records.

7 Q Okay. And at any time, did you determine that you
8 needed to consult with a mental health expert?

9 A I thought about that, but the records were actually
10 very -- I mean, the records indicated what treatment he
11 was receiving, what diagnosis the medical personnel had
12 reached, a change in dosage, I remember -- or a change in
13 medication when it appeared to be not helping
14 Mr. Washington. And then it appeared that things were
15 going well for a period of time prior to the incident.

16 So I felt that -- I'm familiar with the symptoms of
17 depression, which was primarily -- if my memory recalls,
18 primarily one of the things Mr. Washington was being
19 treated by. But I felt at that time nothing jumped out at
20 me to the point where I felt it was necessary to obtain
21 the services of an expert medical, you know, psychologist
22 or psychiatrist.

23 Oh, one other thing I did do. Even though
24 Mr. Washington was divorced, he had an excellent
25 relationship with his ex-wife, Sheila Washington. And so

1 I spent a lot of time either meeting with, but also
2 talking with Ms. Washington and did a background with her
3 with regard to any history she recalled of any episodes,
4 both during their marriage, subsequent to their marriage
5 leading up to this particular incident. So I knew she was
6 of an important witness to me in determining whether or
7 not I felt it was appropriate to reach out to medical
8 personnel.

9 Q And you indicated in the transcript and,
10 specifically, on Page 18 that you spoke with his ex-wife,
11 Sheila, and thoroughly addressed the issue of competency.
12 Was she only one that you addressed that with?

13 A Yeah. She and I were the two that were primarily
14 communicating with Mr. Washington after he was arrested.
15 I was able to communicate with him and actually spend time
16 with him and observe him, interact with him. She probably
17 spoke to him on the phone. Well, I know she told me this
18 week two to three times. So she spent a lot of time
19 communicating him as well, having conversations with him
20 just like I had conversations with him. It wasn't simply
21 about the facts of the case or procedure. We discussed
22 his daughter. We discussed his background. We discussed
23 the military.

24 I felt it was important for me to have discussions
25 with Mr. Washington in a variety of topics for me to

1 personally assess whether or not he was understanding my
2 communications with him, the seriousness and gravity of
3 the charges, the elements of the offense, those sorts of
4 things because of the medical records I received at
5 Moncrief. I felt that the treatment he was receiving at
6 the time was appropriate at the time and I had no problem
7 communicating with him.

8 Q And Dr. Donna Maddox has already testified here
9 today. She testified that she has worked with you before.

10 Are you familiar with Dr. Donna Maddox?

11 A I've very familiar with Dr. Maddox.

12 Q And have you utilized her services on cases?

13 A I have used her both as a prosecutor as an expert,
14 cross-examined her when I was a prosecutor when she was an
15 expert for the other side, and used her since I've been in
16 private practice.

17 Q And is it fair to say that the diagnosis you
18 ascertained from your review of the records was that he
19 suffered from depression?

20 A Well, clearly, it was documented that he suffered
21 from depression is my understanding.

22 Q And did you pick up on any concerns regarding a
23 cognitive impairment in those records?

24 A It was addressed. I know that in the document I
25 reviewed yesterday and from one of the records, that was

1 addressed, but nothing that ever jumped out at me that he
2 was diminishing or had been diminishing over a period of
3 time that I recall.

4 In fact, that record I remember I reviewed yesterday
5 indicated that some of his testing or some of the
6 interpersonal discussions or communications with the
7 medical personnel indicated that his cognitive level
8 appeared to be higher than that. I believe it was on one
9 of the testing, one of the tests, if I recall reading that
10 right.

11 Q Just so we have a clear record, I'm going to show you
12 a report that's already been entered into evidence. You
13 said you reviewed a report yesterday. I'm going to show
14 you Applicant's No. 2. Is this the report that you were
15 referencing? It's dated May 2011.

16 A This is the report. And I was referencing statements
17 made in the conclusion aspect of this report of
18 Applicant's No. 2.

19 Q And I don't want to cut you off. Were you still
20 answering, Mr. Gasser?

21 A No, I'm good. I'm sorry.

22 Q Now, you said you reviewed that report yesterday. Do
23 you have an independent recollection of reviewing that
24 report at the time leading up to Mr. Washington's plea?

25 A If it was in the records, then I reviewed it. I

1 mean, I can't sit here and tell you I specifically recall
2 reading this document five years ago or four years ago,
3 but I recall when I look at this format and if it was in
4 the record, then I reviewed it.

5 I thoroughly reviewed the medical records. I
6 highlighted and tabbed the medical records when I created
7 my mitigation notebook or file. That was provided to
8 Solicitor Johnson himself because I went above the
9 assistant solicitor on several occasions with her
10 knowledge and consent trying to get the best deal I
11 possibly could for Mr. Washington.

12 Q I'm going to ask you about plea negotiations here in
13 a moment. But did you ever contemplate the possibility of
14 his diagnosis being something greater or different than
15 depression?

16 A I didn't. And it was based largely on not just the
17 reports of Moncrief Army because I know that medical
18 diagnosis, including psychological could be in error. It
19 was my interaction with -- based on my experience and my
20 interaction with Mr. Washington. And somebody independent
21 than me, another individual who knew him very, very well
22 and had spent a lot of time with him over many, many
23 years, I wanted her impressions, which were consistent and
24 corroborated my impressions. I just didn't -- when I was
25 communicating with him, nothing ever jumped out at me that

1 I observed or felt that there was a mental health problem.

2 Q And would you agree that prior to today, I provided
3 you the reports of Dr. Tora Brawley and Dr. Donna Maddox?

4 A I do. I've seen those reports and read them.

5 Q And you're aware of the diagnosis of dementia for Mr.
6 Washington?

7 A I'm aware of the very recent diagnosis of dementia,
8 correct.

9 Q And today, both Dr. Brawley and Dr. Maddox were able
10 to correlate and connect the results back to the 2011 test
11 that you have there in your hand. How would that have
12 played a factor in how you prepared the case and in your
13 plea negotiations?

14 A Well, that's a tough question to answer because
15 you're asking me that based on testing several years after
16 the plea, several more years after the event, and the
17 opinions of two individuals in 2018, you know, how that
18 might impact whether or not I would have sought expert
19 advice in 2013, 2014, leading up to the 2015 plea. I
20 mean, it's hard for me to answer that question because I
21 don't know the testing that's recently been done whether
22 those results would have been the same. Clearly, they
23 weren't the same with the Moncrief Army Hospital testing.
24 So I'm not sure how I can answer that question.

25 Q Let me ask it to you this way as more of a

1 hypothetical since you weren't in the courtroom for their
2 testimony today, if you had a diagnosis of dementia and
3 the current findings of Dr. Brawley and Dr. Maddox that
4 during their testimony they tie back to the 2011 results,
5 how would that have impacted your negotiations and your
6 preparation in this case?

7 A Well, if I had a -- if I felt that there was evidence
8 at the time that he was exhibiting symptoms of dementia or
9 was suffering from dementia, then I would have certainly,
10 at least, discussed with my law partner and other lawyers,
11 if they practice criminal defense work, what appropriate
12 steps I need to do to address that from GBMI possibly
13 perspective. I know that from practicing law, the
14 M'Naghten standard for insanity is significantly high.
15 And that never even -- that quickly, after reviewing these
16 medical records and meeting with Mr. Washington, that was
17 never really a consideration.

18 But my main concern was developing a mitigation
19 strategy, that included his mental health records. I
20 believe I addressed his mental health records during the
21 plea, but it was a mitigation strategy focusing on his
22 significant contribution serving his country in the
23 military.

24 I felt that -- I knew Judge Dickson was going to be
25 the sentencing judge, and I know that significant service

1 to one's country is a powerful mitigation -- it could be
2 powerful mitigation evidence. So that and his general
3 character, because he had an unblemished background, I was
4 primarily focusing on that because of my concern that he
5 was looking at a mandatory minimum of 30 years up to life
6 in prison.

7 And our goal, once I couldn't get the voluntary
8 manslaughter offer, my goal was to get as close to that 30
9 as I possibly could. So I was focusing on what I believed
10 to be the best mitigation evidence to do that.

11 Q And since you brought up mitigation evidence, I'm
12 going to jump there with you. Have you used Dr. Donna
13 Maddox or mental health professionals in putting together
14 mitigation in murder cases?

15 A I have not used her as a defense lawyer. I can't
16 recall as a prosecutor, but I know I haven't used her as a
17 defense lawyer in that regard.

18 Q Let me ask you this. How did this issue -- based
19 upon the records and your understanding this diagnosis of
20 depression, how did that factor into the plea negotiations
21 in this case?

22 A Well, the solicitor's office, which is not unusual
23 for prosecutors, their position is that if an individual
24 suffers from depression -- I remember having this
25 discussion with Solicitor Johnson, you know, if somebody

1 suffers from depression or is taking Zoloft, you know, I
2 can't set an example that any time you suffer from
3 depression and you're taking Zoloft and you go out and you
4 commit an extremely violent crime that you're going to get
5 a lesser-included offense. I'm not going to set that
6 standard.

7 You know, he would consider it and he did consider
8 it. He told me he considered it. I met with him for a
9 lengthy period of time when I handed him and then reviewed
10 the mitigation package that I prepared. And then had a
11 second subsequent meeting with him, as well to make
12 another pitch once I was informed his decision was not to
13 have his office extend a voluntary manslaughter offer.

14 Q Did you ever discuss the issue of diminished capacity
15 with the solicitor's office?

16 A I discussed his -- I wanted him to focus on --
17 Solicitor Johnson is a military officer himself. And so I
18 wanted him to understand that Mr. Washington, in serving
19 his country, has paid somewhat of a price in the sense
20 that, you know, he's suffering from depression brought on
21 by what, apparently, is some of the stress indicators in
22 his employment, which is for South Carolina National
23 Guard. So, certainly, I discussed that and included that
24 as one of the factors in requesting a voluntary
25 manslaughter plea.

1 Q Did you all ever discuss the possibility of a guilty
2 but mentally ill, a GBMI plea in this case?

3 A I don't believe we ever did. I could be wrong, but I
4 don't believe that we ever did.

5 Q In your presentation to the Court, you speak about
6 how it really pains you and professionally you had
7 concerns about bringing a client in to plead straight up
8 to murder. Do you recall making those statements to the
9 Court?

10 A Yeah, if it's in the transcript that I made the
11 statements. I can't imagine any defense lawyer not
12 feeling that way.

13 Q What specifically did you tell Mr. Washington about
14 the amount of time that he was facing as a result of the
15 guilty plea?

16 A I told him, and I believe I prepared a letter, that I
17 wanted him -- not only that I discussed this with him on
18 multiple occasions, but I also put it in writing so he was
19 very, very clear, that he have a copy that he could refer
20 to.

21 You know, I made it clear to him that despite the
22 fact that arguably based on the facts of the case, which
23 indicated that he had kicked down the front door, arguably
24 the State could have sought the death penalty.

25 I know that one of the first things that I did --

1 they could have charged him with burglary first, which is
2 an aggravating circumstance as we all know. And so early
3 on, I wanted to make sure that was not going to happen.
4 And normally, the policies of domestic-related situations
5 such as this, I know that, in particular, in this circuit,
6 they don't normally seek the death penalty. So that was
7 one thing I wanted to get off the table immediately once I
8 was retained. And then I -- so that was off the table, I
9 didn't have to discuss with him those issues.

10 And then I discussed with him the law, the definition
11 of murder, the definition of malice, the definition of
12 voluntary manslaughter, legal provocation, heat of
13 passion. I discussed with him sentencing, the fact there
14 was a mandatory minimum of 30. The fact that the State
15 legislature had abolished parole for certain crimes that
16 carried more than 15 years. This was included, obviously.
17 And that whatever sentence he received up to life in
18 prison, he would have to do day for day on the sentence.

19 Q I'm going to hand you a document, Mr. Gasser. Can
20 you identify this for the record, please?

21 A Yes, this is a letter that I prepared and prepared it
22 on January the 20th. I reviewed it with Mr. Washington
23 and he signed it and kept a copy of it on January 22nd,
24 2015.

25 Q And this is the letter you were just referencing in

1 your testimony; is that correct?

2 A That's correct.

3 MS. BLANCHETTE: Your Honor, at this time, I would
4 move the letter to Mr. Washington from Mr. Gasser, dated
5 January 20th, 2015, in as Applicant's No. 6.

6 MS. KINARD: Without objection.

7 THE COURT: The motion is granted.

8 (WHEREUPON, Applicant's Exhibit No. 6 was admitted
9 into evidence.)

10 BY MS. BLANCHETTE:

11 Q Mr. Gasser, I know that you tried to put everything
12 in black and white and you told us how you explained
13 everything to him, but did you have kind of a gut feeling
14 or any idea the amount of time you thought he was going to
15 be facing when he entered the guilty plea?

16 A You know, I got to know John very well and I like
17 John. And I was hoping for a sentence in the
18 32-to-33-year range or somewhere between 32 and 35 years.
19 Knowing that based on the facts of this case, I needed to
20 be a realist about it. And I said so to my law partner
21 and my colleagues that I discussed this case with.

22 The facts of this case were extremely aggravating. I
23 knew that it would be highly unlikely for a circuit court
24 judge to sentence to the minimum sentence given the
25 aggravating circumstance of the case and given what

1 Ms. Kollock went through, but I was hopeful. I felt real
2 confident in the mitigation package that I prepared for
3 the solicitor's office. I, basically, used some of the
4 same outline during my presentation to the Judge. So I
5 was hoping for something as close to 30 years as possible.

6 Q Now, on Page 24 of the transcript on Line 14, the
7 State asked for a sentence significantly higher than the
8 minimum. Were you aware that that request was going to be
9 made?

10 A Yeah, I knew that they were going to ask for a
11 sentence. They weren't going to ask for a specific -- I
12 knew that they weren't going to ask for life in prison. I
13 had gotten that assurance, that they weren't, actually,
14 going to go in there and request life. So I got that
15 assurance from the solicitor himself and then from
16 Ms. Cavanaugh. But in giving me that assurance, they
17 indicated that they did -- they were going to ask the
18 Court for, you know, a significant sentence and would
19 oppose the minimum sentence.

20 Q Did you convey that to Mr. Washington?

21 A I'm sure I did.

22 Q Now, during the plea itself, you described
23 Mr. Washington was a good soldier. At any time were you
24 concerned that he was just following your directions and
25 following your lead like a good soldier would and possibly

1 not understanding everything that was going on?

2 A No, I don't believe that.

3 Q Do you remember if you all had a discussion on when
4 he signed the letter dated January 20th, or if that was
5 mailed to him or how that came about that he signed that?
6 Do you remember?

7 A Oh, yeah, I remember clearly. That's a one-on-one
8 meeting. I mean, every meeting I had with him was
9 literally face-to-face in an empty room down in one of the
10 units, whatever unit he was being housed at. I had to go
11 into the unit. It was never an over-the-phone interview
12 or where we're looking at each other on a screen or
13 between a Plexiglass. It was all literally one-on-one
14 sitting next to him the way you would be if you were
15 sitting down right now. Every meeting I had with him,
16 which I believe were 18 personal face-to-face meetings
17 prior to the actual plea.

18 Q Now, let's talk about the plea proceeding that took
19 place in front of Judge Dickson. Right after Judge
20 Dickson read the indictments, and I believe it's on Page
21 15, there's a pause because Mr. Washington began to
22 collapse. And then just within a couple of pages, as it's
23 reflected in the transcript, it happens again. You were
24 obviously there. You know kind of what time period
25 passed. I can just read it. But take us through that.

1 Do you remember that when Mr. Washington collapsed twice
2 during the proceeding?

3 A I definitely remember once. I do remember once. And
4 I remember being concerned. And I also was observing him.
5 I don't remember if I was whispering to him or not that he
6 had locked his knees. I'm very familiar -- I went to an
7 all boys Catholic military high school in Washington, D.C.
8 And I've seen people faint before during drill and during
9 inspection for that very reason. So I knew that -- I was
10 concern about him locking his knees. And even the Court,
11 I believe -- well, the clerk of court makes reference to
12 it and observed the same thing. But I do remember the
13 fainting episode -- or not fainting episode, but the
14 episode that had occurred with him in the court.

15 Q And after the second one, it appears maybe you all
16 had a moment to confer and then you actually launch into
17 an explanation of how you talked to Sheila Washington and
18 you certainly looked into the issue of competency. So at
19 that juncture, do you remember, did it appear to be the
20 Court was questioning whether or not the plea should go
21 forward?

22 A No, I believe that's the standard -- that was during
23 the course of time that occurs in virtually every plea,
24 whether it's a shoplifting or a murder case, which is
25 during the colloquy between the Court and the individual

1 that's pleading, as well as a colloquy between the Court
2 and the defense attorney as to whether there are any
3 competency issues. So I think that's normal,
4 particularly, a homicide, in a murder case. That was
5 during the questions and colloquy that occur in every
6 case.

7 Q Well, let me direct your attention then to Page 17 in
8 the transcript. Right after it appears he has his second
9 episode, the Courts asks if you need to take a break. And
10 it appears that you do. Then the Court on Line 9 says,
11 You fainted twice. Are you thinking clearly right now?
12 Do we need to stand down?

13 Then again on Line 19, and I apologize if I'm going
14 too quickly, the Court again asks, Can we go forward? Do
15 we need to stand down? And then if you turn to Page 18,
16 that's when you launch into your explanation that you
17 thoroughly looked into the idea of competency.

18 A Right.

19 Q So did it appear to you, since you were there live,
20 I'm asking this question versus, you know, trying to
21 determine what the transcript says, that the Court was
22 questioning whether or not Mr. Washington was capable of
23 going forward?

24 A Well, I mean, the Court observed what he had
25 observed. If you look at the top of Page 17 -- and I

1 clearly knew I had an obligation as Mr. Washington's
2 lawyer, that both -- Mr. Washington and I both wanted a
3 break and was given a break. And I had an opportunity to
4 sit and talk to Mr. Washington, observe Mr. Washington,
5 have communications with him and felt at that point in
6 time that -- you know, I knew that he was -- he had
7 demonstrated significant remorse from the very first time
8 that I met him. I knew this was an extremely difficult
9 time for him having to walk into a courtroom and plead
10 guilty to a woman that he had professed love to and for
11 during the entire course of my representation of him. So
12 it wasn't unusual for, in particular, somebody with a
13 completely clean background like Mr. Washington had.

14 So I wanted to make sure and I knew I had an
15 obligation to make sure that he was lucid and could go
16 forward with what needed to be done mechanics-wise on any
17 guilty plea, but particularly something of this magnitude.

18 Q In your mitigation presentation, I'll direct your
19 attention to Page 27. Beginning on Line 11, you're
20 explaining how you explored all the avenues and the
21 decision was reached to come in and plead guilty. And on
22 Line 16, you say, Ask for whatever mercy this Court would
23 be willing to give under this set of circumstances that
24 presents itself here today.

25 Based upon the findings of Dr. Brawley and

1 Dr. Maddox, would you agree that the Judge did not have an
2 understanding of the full set of circumstances?

3 A I can't agree that because -- you know, it's just --
4 I mean, I don't want to refer to the phrase it was Monday
5 morning quarterbacking, but, I mean, in a lot of ways, I
6 believe it is. I mean, they're doing testing on him after
7 he's been incarcerated for a period of time and reaching
8 their conclusions, again, in 2018. That's not -- I don't
9 know how anyone can look at a crystal ball and indicate
10 that had the same type of testing been done and experts
11 looked at in 2013, 2014 and 2015 right before this plea
12 that the same conclusions would have been drawn. So, no,
13 I can't agree that.

14 Q And you stated earlier -- was there some strategy in
15 getting this case in front of Judge Dickson because of
16 Mr. Washington's military career? I think you mentioned
17 something regarding a correlation between the two.

18 A No, I just knew that Judge Dickson just happened to
19 be the judge that was sitting that week. I believe this
20 was the first plea I had ever done in front of Judge
21 Dickson.

22 Q And before he renders his sentence on the bottom of
23 Page 46, Judge Dickson had taken a 10-minute break, it
24 might have been longer. He stood down and then he came
25 back in and he said, I'm hoping that what happened will

1 emphasize the need to address domestic violence and mental
2 health issues in this State, including depression.

3 Did it appear to you that Judge Dickson was really
4 listening to the mitigation that you offered regarding
5 Mr. Washington's mental health and that factored into his
6 sentence?

7 A I'm sure it factored into his sentence. I'm sure it
8 did. Judge Dickson gave me all the time I needed and was
9 paying very, very close attention during my mitigation
10 presentation.

11 MS. BLANCHETTE: Your Honor, if I could beg the
12 Court's indulgence just one moment, please.

13 THE COURT: Yes, ma'am.

14 (Pause.)

15 MS. BLANCHETTE: Your Honor, I have nothing of this
16 witness.

17 THE COURT: Cross-examination.

18 MS. KINARD: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. KINARD:

21 Q You stated that you were retained to represent
22 Mr. Washington by his ex-wife and their daughter in
23 common; is that correct?

24 A That's correct.

25 Q And as part of that, did you have permission to speak

1 with both of those parties freely when it came to the
2 representation?

3 A Absolutely. Mr. Washington gave me that permission
4 verbally.

5 Q Did you have permission to speak with Mr.
6 Washington's sister in the same manner?

7 A I did.

8 Q Did you do so?

9 A I did.

10 Q Did you have individual meetings with her?

11 A I did.

12 Q Do you feel like you had a good relationship with her
13 and y'all communicated well?

14 A Certainly. I, also, not only met with her, but she
15 had all my numbers and she called me on several occasions
16 as well.

17 Q And your relationship with Mr. Washington himself, I
18 believe you testified you had about 18 visits with him and
19 those were all in person?

20 A That's correct.

21 Q And during those, do you feel like there was an ease
22 of communication between the two of you?

23 A No question about it.

24 Q You could communicate freely? He felt like he could
25 ask questions of you, is that your recollection?

1 A Yes.

2 Q During those times, could you estimate in hours
3 approximately how much time you spent with Mr. Washington?

4 A There's just no way for me -- particularly during the
5 reviewing the discovery aspect of this case. You've seen
6 how big the file is.

7 Q Okay. But it's safe to say you spent a large amount
8 of quality time with him, one-on-one?

9 A I can say that none of those visits were short
10 15-minute visits. I can that for sure.

11 Q And during that time, you testified I believe you saw
12 nothing that you would consider an issue of competency?

13 A That's correct.

14 Q In your consideration, you saw nothing you thought
15 would be a cognitive defect or deficiency?

16 A None whatsoever. Had I observed or felt that, then I
17 would have taken the appropriate steps.

18 Q And as you just said, you reviewed all the discovery
19 not only on your own, but with him. And in doing that,
20 you saw nothing in the records, including all the hospital
21 records that you read as portraying a cognitive deficit or
22 defect?

23 A I saw nothing.

24 Q And I believe you testified that speaking with
25 members of his family, those around him and, for example,

1 other military members that you had speak at trial, just,
2 in general, the investigation in this case, no one brought
3 to your attention anything that appeared to you to raise a
4 question of competency?

5 A None whatsoever. And I know I talked with some of
6 his closest -- people closest to him, some of the people
7 that we obtained character letters, that I was able to get
8 the character letters from about Mr. Washington's state of
9 mind around the time period of the incident because I felt
10 that was critical and important.

11 Q Is there anything memorable portrayed about his state
12 of mind around the time period of the incident?

13 A No, just it was a shock to everyone that it happened.
14 It was a shock that Mr. Washington would do -- you know,
15 do what happened. But there was nothing that was brought
16 to my attention from any of the people that associated
17 with him on a regular basis that they had any concerns of
18 any type of significance mental health issue.

19 Q Did any of them even mention the depression?

20 A I think one of them might have mentioned it or they
21 knew. I'd have to go back and look at the character
22 letters and look at the medical records who it was that
23 brought him the first time -- I believe that was back in
24 2011, escorted him or went with him to the hospital or the
25 mental health facility right prior to his initial

1 diagnosis. But there might have been a mention of earlier
2 on when he was first diagnosed. The bigger focus was
3 during the time period close in time to the incident.

4 Q Now, speaking of things close in time to the
5 incident, do you recall any factors or events close in
6 time to the incident that could have spurred
7 Mr. Washington to take the actions he did that night? By
8 that, I mean not only the depression, but were there
9 aggravating factors, so to speak, between him and the
10 victim that would have led him to take these actions?

11 A Well, I know that -- I believe it was in July. It
12 was part of the discovery that was provided. A local
13 attorney had sent Mr. Washington a cease -- commonly
14 referred to as a cease and desist letter. I've had to do
15 that in my capacity as a defense lawyer for a client, for
16 female clients, so I was aware of the general content and
17 nature when I received that and read that. So I knew that
18 that had been done.

19 John and I discussed it. He acknowledged that he had
20 received that letter and had read the letter. And, you
21 know, it concerned him because he clearly wanted to keep
22 the lines of communication open in hopes that they could
23 work on their relationship.

24 Q In his reaction to that letter, speaking about it
25 with you, did he seem disturbed in a way that set off any

1 bells for you?

2 A Not -- I could tell that he was still in love with
3 Ms. Kollock. I mean, it was apparent to me from my
4 conversations that he clearly still wanted to have a
5 relationship with her. And according to the evidence I
6 reviewed, she clearly didn't want to have a relationship
7 with him.

8 Q And in speaking of that and the way it might have
9 spurred on his behavior, could you briefly go through the
10 facts of what happened that night the way you understand
11 them?

12 A My recollection is that Mr. Washington worked. It
13 was a Saturday. He had worked part of the day or portions
14 of that day with his Army guard duties. He got off work
15 some time that mid-to-late afternoon. I believe he
16 traveled to a store and got a couple of tall beer cans,
17 went to a friend's house. He drank one of the beers and
18 gave one of the beers to his friend. Decided to drive his
19 car by Ms. Kollock's residence. Drove -- was driving by
20 her residence, it was still daylight out. Observed her
21 talking to a neighbor, pulled up. I can't recall whether
22 he just rolled down his window or he, actually, got out
23 and stood by his car, but, clearly, shouted out, spoke in
24 the direction of Ms. Kollock, indicated some sort of
25 address, you know, hello, hey, can I talk to you,

1 something of that effect, where she, for lack of a better
2 phrase, blew him off in front of the neighbor.

3 He then left, drove home, located his firearm, loaded
4 the gun, is my recollection, and then got back in his car
5 with the gun and drove back to Ms. Kollock's residence.
6 She was again outside, but when he pulled up, she ran into
7 the front door. One of the neighbors observed that and
8 was aware of the -- she was interviewed by law
9 enforcement. She was aware of the background between
10 Ms. Kollock and Mr. Washington and the fact that Ms.
11 Kollock had -- did not want to have anything to do with
12 Mr. Washington, so she immediately called 9-1-1.

13 The recording was preserved. She calls 9-1-1. And
14 then based on -- you could hear on the recording, based on
15 witness statements, forensic evidence, after Ms. Kollock
16 ran into the home, she was unable to lock the front door.
17 Mr. Washington used his foot to kick open the front door,
18 chased her through house, through the kitchen. In the
19 kitchen, there's a side door that leads to the garage.

20 At some point in time, he began firing the weapon. I
21 believe he struck her several times in the back. She was
22 able to make it -- the garage door was opened. According
23 to more witnesses, I believe he stood over her and shot
24 her again.

25 The garage door began to come down. I believe the

1 door came down on top of her body. Mr. Washington then
2 grabbed her by the lower legs, pulled her body into the
3 garage and the garage door shut.

4 He then got in his car, left. And it was never
5 really clear whether he intentionally -- or at some point
6 in time after the incident, his car drove into a bridge
7 abutment on I-77. I believe it was northbound. Just
8 completely totaled the car. It was a miracle that he
9 survived. He suffered a subarachnoid hemorrhage, I
10 believe, because that was one of the things that was
11 monitored, I made sure the jail monitored during the
12 course of his incarceration.

13 Q Thank you. Did he provide a statement to law
14 enforcement?

15 A He did not.

16 Q But regardless, in all of your conversations, I
17 believe you testified that from day one, he admitted guilt
18 and remorse?

19 A Yes.

20 Q Do you believe that those expressions were genuine?

21 A I believe -- based on the facts of the case, you
22 know, his acknowledgment and admission that he was guilty
23 as charged, clearly, to me was believable. And I do
24 believe, I believe John was remorseful.

25 Q You testified on direct and you stated in a plea that

1 it was your duty as his attorney to investigate the facts
2 as much as you could before you walk in and plead him
3 straight up to murder; is that correct?

4 A That's correct.

5 Q And I believe you testified, I just wanted to
6 clarify, you believed the evidence against him was
7 overwhelming?

8 A I believe it was.

9 Q Based on that and your mitigation, that's what led
10 you to advise him to enter this plea as he did?

11 A He wanted to plead guilty all along, but that's what
12 led me to believe that his desire to plead guilty, that
13 there was -- he had no defense. There was no defense that
14 would lead under any circumstances to an acquittal. I
15 don't believe that -- based on the facts of the case and
16 the law in South Carolina that any Judge would have even
17 charged voluntary manslaughter. I still believe to this
18 day that there isn't anything in the record where Ms.
19 Kollock legally -- any evidence that she legally provoked
20 Mr. Washington. So I just don't believe there's a factual
21 basis in the discovery and the evidence that would allow a
22 Judge to even charge voluntary manslaughter at a jury
23 trial.

24 So based on his desire, based on the law, based on
25 the facts of the case, I agreed with his decision to plead

1 guilty and just throw ourselves on the mercy of whoever
2 the Judge was that would be receiving the guilty plea and
3 holding the sentencing hearing.

4 Q So to clarify, based on the facts and the law in
5 South Carolina, do you believe that there is any lesser
6 charge that he could have received other than murder?

7 A I do not believe so.

8 Q So, certainly, looking at that as part of your
9 mitigation and your development of your packet, you said
10 you consulted with multiple family members, friends and
11 coworkers; is that correct?

12 A Correct.

13 Q And you took that mitigation packet straight to
14 Solicitor Johnson with Assistant Solicitor Cavanaugh's
15 permission and agreement?

16 A Correct.

17 Q And even with all that and all your testimony you
18 just said about voluntary manslaughter, you still are
19 argued for a voluntary manslaughter charge?

20 A I still argued for a voluntary -- of course, as you
21 well know, the government and the defense can agree to a
22 -- you know, there are plea negotiations, so I still was
23 arguing for -- on his behalf for voluntary manslaughter
24 plea, an offer for voluntary manslaughter.

25 Q And the topics discussed with people you interviewed,

1 was that mostly his military record or did that include a
2 variety of character considerations? What was in that
3 mitigation packet?

4 A The mitigation packet included all of his
5 commendations, documentation showing whenever he was
6 deployed, as far as being deployed, either to Europe or
7 being deployed within the United States. You know, people
8 in the military might get deployed to a combat theater or
9 might be deployed from a base in the United States to a
10 base overseas. But the base that they're being deployed
11 from is a critical base internally, so National Guard
12 people need to be -- it's still being called deployed to
13 be deployed within the Continental United States. And
14 that occurred with Mr. Washington on numerous occasions.
15 I had documents to that effect, as well, achievements
16 documentation. So everything that was positive that was
17 in document form in his military personnel file was part
18 of that mitigation packet. Virtually every document.

19 And then there was character letters as well. Then
20 there was the mental health records highlighting certain
21 things just to show that he had -- some of the things he
22 had been going through at the time. That's generally what
23 made up the mitigation packet.

24 Q Certainly, in speaking with that, you said on many
25 other occasions, you spoke with his ex-wife, Sheila?

1 A I can't even begin to tell you the number of times I
2 spoke with Sheila Washington.

3 Q What was her relationship like with him? Did she
4 have a lot of contact, did she visit? Can you describe
5 that at the time of your preparation for the plea?

6 A She had an excellent relationship with Mr. Washington
7 and vice versa. He wanted me -- Mr. Washington wanted me
8 to communicate as much as possible with Ms. Washington.

9 They both -- after discussing it over the phone,
10 Mr. Washington being incarcerated, Ms. Washington,
11 obviously, on the outside, they made a decision as mother
12 and father, as the mother and father of their daughter not
13 -- to keep their daughter out of this as much as possible.
14 They didn't want to put the emotional stress on her, so
15 they made that decision as her parents. And I obliged and
16 abided by their request.

17 Q In speaking with her and knowing that she certainly
18 had a personally history with him, how did she describe
19 Mr. Washington's state of mind or any concerns about his
20 health or capacity?

21 MS. BLANCHETTE: Your Honor, I object. Hearsay.

22 MS. KINARD: I don't believe I asked for necessarily
23 a statement to get -- he could, certainly, relay any
24 impression provided by Ms. Washington without quoting her
25 testimony -- or going into any words she used.

1 THE COURT: Well, I'll sustain the objection.
2 Rephrase your question and see if you get it that way.

3 MS. KINARD: Thank you, Your Honor.

4 BY MS. KINARD:

5 Q In meeting with Ms. Washington, did she give you any
6 indications that Mr. Washington might be having any mental
7 health issues or lack of competence or capacity?

8 A Let me put it this way, Your Honor. That issue was a
9 concern, clearly. I had many conversations with
10 Ms. Washington where I was asking the questions about any
11 concerns in her communications that she might have during
12 -- whatever conversations, whatever topics of
13 conversations that they were talking about over the course
14 of his incarceration, which was over a year. And I
15 factored that into my opinion and how I approached this
16 case. And after reviewing the Moncrief Army Hospital and
17 other mental health records and noting my conversations
18 with Ms. Washington, and then my personal interaction with
19 Mr. Washington, I never had an issue or a concern about
20 competency.

21 Q And also in your investigation of this case, was
22 there evidence that this action was part of a pattern of
23 conduct or lack of control or anything like that?

24 A No.

25 Q So there is no evidence of a pattern of behavior?

1 A None whatsoever.

2 Q Very briefly, Ms. Blanchette asked you about the
3 fainting or collapsing, however you want to phrase that.
4 And is it your testimony, I just want to clarify, that
5 Mr. Washington was, essentially, overwhelmed by the
6 situation?

7 A That's -- I mean, he locked his knees, which is never
8 a good thing, particularly when you're in a stressful
9 situation. And then I knew this was -- he had indicated
10 -- I remember reading in the transcript that -- and it
11 refreshed my memory that he didn't drink a lot of water
12 and he just -- it was clear that this was a very, very
13 emotionally difficult process for him.

14 And that's why I believe that after communicating
15 with him after the events -- Judge Dickson gave me
16 whatever time I needed. His responses to my questions
17 made it clear that he was being -- I mean, it was just an
18 overwhelming situation for him to be going through, but I
19 never was concerned that he understood what all his rights
20 were, that he understood why we were there, that he
21 understood what the purpose of our being there was. It
22 just didn't concern me, even after the events.

23 And, of course, I knew that Judge Dickson would have
24 the opportunity to make his own observations, as well and
25 listen to Mr. Washington's speech, how he was answering

1 questions. Not simply what his answers were, but how he
2 was answering the questions. So we moved forward.

3 Q Ms. Blanchette asked you about if you had had any
4 other -- perhaps, any of this evidence regarding
5 Mr. Washington's mental health, if you would have pursued
6 a GBMI defense or a plea pursuant to that. You testified
7 you probably would have looked into it. What would have
8 been the ultimate difference in this case if he pled
9 straight up to murder as he did or if the GBMI defense to
10 the plea was involved?

11 A Well, that's -- I don't know what the -- I mean, I
12 can't read -- I couldn't read Judge Dickson's mind. I
13 used the mental health records as mitigation. I mean, I
14 argued that and used that as mitigation both before the
15 plea trying to get a voluntary manslaughter and during the
16 plea.

17 But the sentence would still -- I mean, GBMI, my
18 understanding is, it just triggers maybe where you're
19 located and what type of treatment you get, but the facts
20 of the case are still considered. Judges still weigh the
21 aggravating circumstances with the mitigating
22 circumstances. And that's just a different type of
23 sentences as far as where you might be located, again,
24 what kind of treatment you might have. But I knew the
25 facts. The facts of this case was extremely aggravated

1 and I wanted to focus on what I felt were the stronger
2 mitigating aspects of the case and try to get that
3 sentence as close to 30 years as possible.

4 You know, it's hard for me to say -- you know, I'm
5 basing this on my years as a prosecutor, as well. I've
6 never experienced a situation or seen a pattern of judges
7 significantly lowering a sentence simply because it's a
8 GBMI plea and not a regular plea. But I don't have much
9 experience in that either as a prosecutor or defense
10 lawyer, but I can't recall that having any kind of -- in
11 any case I've been involved in or any lawyers -- having
12 discussions with colleagues that that was a huge
13 differential.

14 Q So it would still be a murder conviction?

15 A Correct.

16 Q And it would still be a minimum of 30 years?

17 A Correct.

18 Q As you stated, it might be a difference in how and
19 where it was severed?

20 A Correct. If he received the same sentence, correct.

21 MS. KINARD: Thank you. I have no further questions
22 at this time. Thank you.

23 THE COURT: Redirect?

24 MS. BLANCHETTE: Yes, Your Honor.

25 REDIRECT EXAMINATION

1 BY MS. BLANCHETTE:

2 Q Mr. Gasser, when you were giving your recitation of
3 the facts, you indicated that Mr. Washington had an
4 accident that nearly caused his death; is that correct?

5 A That's correct.

6 Q Did you ever look into the impact of the brain injury
7 and the resulting cognition issues that could come from
8 that that he suffered in that car crash?

9 A If I recall -- I got the medical records, I don't
10 believe it was a -- he did not stay in the hospital very
11 long. He didn't have brain surgery. So I don't believe
12 it was considered a -- you know, if you had to rate it as
13 severe, mild or medium, I mean, it would have been on the
14 lower scale because they let him out. But I know it was
15 monitored by the jail staff.

16 And then with my own personal interactions with him,
17 once the swelling went down after a week or so, I didn't
18 notice any -- and I talked to him about that, as well. I
19 wanted to know whether or not he was having any headaches
20 or any blurred vision. My recollection is that it healed
21 and that he never had any side effects as a result of it.

22 Q Now, when you said you discussed it with him, did you
23 ever ask him if he have ever had any other brain injuries
24 or closed head injuries?

25 A I don't recall. I mean, I don't remember having

1 those discussions with him.

2 Q And it is fair to say, though, that you never
3 consulted with a medical or mental health professional
4 regarding those matters?

5 A I did not.

6 MS. BLANCHETTE: Your Honor, I have no further
7 questions of this witness.

8 MS. KINARD: Nothing further.

9 THE COURT: Thank you. You may step down.

10 THE WITNESS: Thank you, Your Honor. On a side note,
11 I appreciate the Court accommodating me.

12 THE COURT: Certainly.

13 MS. BLANCHETTE: Your Honor, at this time, I would
14 ask if the Court would question my client. I don't intend
15 to put him on the stand. Just to ensure that he does
16 understand the relief the Court can give him as a result
17 of this hearing and to ensure that he does, in fact, want
18 to go forward and understand, you know, exactly why we're
19 here.

20 MS. KINARD: Your Honor, if I may interject, I
21 apologize. Mr. Gasser is here under my subpoena and I
22 just ask he be released if he desires.

23 THE COURT: You may be excused.

24 MS. KINARD: Thank you.

25 THE COURT: Mr. Washington, I need to ask you a few

1 questions.

2 THE APPLICANT: Yes, sir.

3 THE COURT: Can you hear me okay?

4 THE APPLICANT: Yes, sir.

5 THE COURT: Do you know why we're here today?

6 THE APPLICANT: Yes, sir, I do.

7 THE COURT: And the purpose of us going through all
8 this is what?

9 THE APPLICANT: To hopefully grant me a new trial.

10 THE COURT: Okay. You understand that's actually the
11 only thing the Court could do if the Court did anything on
12 your behalf?

13 THE APPLICANT: Yes, sir.

14 THE COURT: The Court can't change the sentence,
15 reduce the charges. All the Court could do would be give
16 you a new trial.

17 THE APPLICANT: Yes, sir.

18 THE COURT: And, actually, you might end with a
19 sentence greater than the one you have.

20 THE APPLICANT: Why would that be, sir?

21 THE COURT: Well, I don't know what's going to happen
22 if you get a new trial. Do you want a new trial starting
23 from scratch?

24 MS. BLANCHETTE: Your Honor, may I confer with
25 Mr. Washington for a moment? We have discussed this. I

1 may have just asked the question a little differently.
2 Just to make sure he understands what the Court is asking.

3 THE COURT: Certainly.

4 (Pause.)

5 THE COURT: Do you want to think about it over the
6 lunch break? Do you need to talk?

7 MS. BLANCHETTE: Your Honor, we've had two meetings
8 in the last three weeks where we went over this very
9 issue. I was just reminding him of some of our
10 discussions. Let me check with him real quickly.

11 THE COURT: Okay. Sure.

12 (Pause.)

13 MS. BLANCHETTE: Your Honor, I think he's prepared to
14 answer your question at this time.

15 THE COURT: You've had a chance to discuss with your
16 attorney this same issue?

17 THE APPLICANT: Yes, Your Honor.

18 THE COURT: Have you made a decision about what it is
19 you wish to do?

20 THE APPLICANT: Yes, sir, I understand.

21 THE COURT: And you wish to go forward?

22 THE APPLICANT: I do, Your Honor.

23 THE COURT: You're still asking the Court to grant
24 you a new trial; is that correct?

25 THE APPLICANT: Yes, sir.

1 THE COURT: Okay. Any questions about it at all?

2 THE APPLICANT: I can't think of any questions right
3 now, Your Honor.

4 THE COURT: All right. Thank you, sir.

5 THE APPLICANT: Thank you, sir.

6 MS. BLANCHETTE: Your Honor, I have no further
7 witnesses. I do have just several cases to hand up with
8 an explanation as to why I'm handing them up. I didn't
9 prepare any type of argument. I'm always happy to answer
10 any questions the Court has or do an argument. But I do
11 have some cases to hand up and a brief explanation when
12 the time is appropriate.

13 THE COURT: Okay.

14 MS. KINARD: The State has no witnesses, so I suppose
15 the time would be appropriate. We would like to present a
16 brief argument, at least, in response to the cases she
17 hands up.

18 THE COURT: Do you wish to submit briefs on the issue
19 or argument?

20 MS. BLANCHETTE: Your Honor, could I beg the Court's
21 indulgence just one moment?

22 THE COURT: Talk with your client.

23 MS. BLANCHETTE: Thank you, sir.

24 (Pause.)

25 MS. BLANCHETTE: Your Honor, I apologize. I was not

1 paying attention at that point, but I'm done discussing
2 with my client.

3 THE COURT: She made some real good legal arguments
4 just a moment ago. I'm just kidding.

5 My question was -- you wish to hand up cases. And my
6 following question is do y'all wish to submit briefs on
7 this issue or make a final argument now?

8 MS. BLANCHETTE: Was the State responding, Your
9 Honor?

10 MS. KINARD: We have not responded to that.

11 MS. BLANCHETTE: Your Honor, I have the cases for the
12 Court to consider and then whatever the Court would like
13 from there, I'm happy to provide. If you'd like a brief
14 at this juncture. I'm not sure what the State's position
15 is.

16 MS. KINARD: I'm ready to argue, but --

17 THE COURT: All right. We can have argument then.
18 Help me out.

19 MS. BLANCHETTE: Your Honor, I'm happy to provide a
20 brief argument and then I would also be happy to provide a
21 written brief if that would be helpful to the Court.

22 What I put together in anticipation of today not
23 fully knowing the testimony of Mr. Gasser, even though I
24 did call him as our witness. I have two cases that kind
25 of go to the state of the law in South Carolina regarding

1 mental health defenses.

2 Just to be fair to both sides and to the Court, I
3 have a copy of Jill vs. State, which I found to be the
4 most recent case addressing the fact that we do not have a
5 diminished capacity defense in South Carolina. I also
6 have a copy of State vs. Lewis, which was a 1997 case,
7 that would have been in existence at the time of this
8 guilty plea. This addresses -- there, Mr. Lewis raises
9 the issue of whether or not he should have been given an
10 insanity charge when he, as a layperson, and some of his
11 family members testified about severe depression.

12 In here our court, the Supreme Court found that
13 layperson's testimony regarding severe depression didn't
14 qualify or require an insanity charge. So those are the
15 two cases that would kind of go to the issues as far as
16 the mental health that we were raising today as to
17 defenses.

18 I also have a case, a copy of Reeves vs. State. That
19 was a recent Court of Appeals decision in 2015 and
20 certiorari was denied by the Supreme Court, so it is the
21 final decision on these issues in this state. In Reeves,
22 the Court found that counsel was ineffective for not
23 utilizing, in this case, a medical health professional.
24 But this would be the most recent case for ineffective
25 assistance of counsel for failure to utilize experts in

1 preparation of defense or in mitigation.

2 Then turning back to the issue of mental health, Your
3 Honor, I have a copy of Winkler vs. State, a recent
4 Supreme Court decision that was finalized in 2017. There,
5 the case was reversed. It's a death penalty case because
6 Mr. Winkler was denied a continuance to obtain mental
7 health professionals to look into an issue of brain
8 damage. So I provided that case just because it's close
9 to the issues that we're discussing today. As you can
10 see, Your Honor, I was not able to find anything directly
11 on point to this set of circumstances.

12 I also have a copy of Ramirez vs. State, also, a 2017
13 decision by the South Carolina Supreme Court. There, the
14 issue is whether a severely retarded individual should be
15 afforded PCR relief when prior to the guilty plea, they
16 failed to do an independent competency evaluation. And it
17 goes into the standard -- the two-prong standard of
18 Strickland and applies it to when issues of competency are
19 raised and points out it is, actually, a different
20 standard when issues of competency are raised.

21 Then I have a copy of Rosemond vs. Catoe. And Your
22 Honor, in this case, it deals with ineffective assistance
23 of counsel for failure to utilize mental health experts in
24 evidence in capital sentencing. As I conceded already, I
25 could not find a case directly on point to this case.

1 Most of the cases dealing with ineffective assistance and
2 mitigation are capital cases. But I did want to pull this
3 case because it is directly on point except for the fact
4 it is a death penalty case.

5 And then finally, I have copy of Davey vs. State. I
6 think Davey does the best job of addressing how the
7 two-prong Strickland test should be applied when you're
8 talking about guilty plea cases. And then when you're
9 talking about guilty cases where you get into the issues
10 of plea negotiations and plea mitigation. What Davey says
11 and what I would submit to this Court is that
12 Mr. Washington is entitled to effective assistance in the
13 plea negotiations phase. And Davey supports that, as well
14 as in the mitigation phase.

15 I would submit to you, Your Honor -- and this is a
16 very brief argument, a very succinct argument -- that
17 counsel was ineffective. He used his own as a lawyer, not
18 any type of mental health or medical expert, his analysis
19 of the Defendant to determine that he didn't need to look
20 further into competency and he didn't need to look further
21 into any mental health conditions when he knew he had a
22 diagnosis of a mental health illness. I would submit to
23 you that he was ineffective for not reaching out to an
24 expert to review the records.

25 In this case, that is exactly what we did. We

1 reached out to an expert to review those records that then
2 led to what we presented to you today. If he would have
3 taken that simple step, both Dr. Brawley and Dr. Maddox
4 testified that they would have discovered the issues that
5 they addressed today from that 2011 report and would have
6 done the evaluations that they did. And I am confident
7 and I hope the record reflects that their testimony was
8 that they could tie their findings from today regarding
9 this diagnosis of dementia back to 2011, which was prior
10 to the commission of this crime. So that's why it
11 matters, Your Honor. I wanted to ask them kind of a dumb
12 question of why does it matter, but that's why it matters.
13 Because of that report, they were able to --

14 And I know Mr. Gasser said I'm playing Monday morning
15 quarterbacking and bringing these experts in all these
16 years later. No, we are not. Our experts were able to
17 tie this back. And Mr. Gasser said himself he wanted to
18 give Judge Dickson the full set of the circumstances. He
19 did not get the full set of the circumstances. Your Honor
20 got the full set of the circumstances here today. I ask
21 that you consider that and find that he was ineffective
22 and there was resulting prejudice. And it's discussing
23 how resulting prejudice can look different.

24 In this case, we would submit to you the prejudice is
25 that it was never discussed, the GBMI, as far as what

1 Mr. Gasser said. It didn't come into the negotiations.
2 It didn't come into the mitigations. Neither did the
3 mental health findings that we also presented today. So
4 we submit there is prejudice throughout the whole process.
5 I also have concerns, Your Honor, that he rendered
6 ineffective assistance in not ensuring that this plea was
7 knowingly and voluntarily entered. And that is also in
8 our allegations.

9 Your Honor, I think I briefly covered everything.
10 I'm happy to answer any questions Your Honor has or submit
11 anything in writing that would be useful to the Court.

12 THE COURT: All right. Thank you. Were you going to
13 hand those cases up?

14 MS. BLANCHETTE: Yes, Your Honor. And they should be
15 in the order that I mentioned them.

16 THE COURT: Ms. Kinard.

17 MS. KINARD: Thank you, Your Honor. Quite simply, we
18 entirely disagree with the assertion that there is
19 prejudice in this case. We believe there is absolutely no
20 prejudice due to the facts and circumstances surrounding
21 both the incident and the preparation.

22 Mr. Washington, when he committed this crime, from
23 the moment it happened, he knew he had done it. He knew
24 he was guilty. He represented that to his attorney at
25 every step of the process and every meeting. Mr. Gasser

1 testified he showed genuine remorse and admitted his guilt
2 at every meeting. He said that there was never any
3 intention to go to trial because there was never any
4 question of guilt.

5 Mr. Gasser also testified that despite his best
6 efforts, he could not get any lesser included charge or
7 any lesser charge. Mr. Gasser also testified that based
8 on his understanding of South Carolina criminal law, there
9 is no other charge that this crime could qualify for other
10 than murder.

11 Based on all of those facts, including the
12 characterization of the facts by Mr. Gasser as
13 overwhelming, there is simply no other outcome that could
14 have happened here. There is no other outcome other than
15 Mr. Washington pleading guilty to murder, whether it is
16 pleading under GBMI or pleading straight up. The only
17 difference is a matter of sentence. And at this point,
18 unfortunately, in Mr. Washington's life that, ultimately,
19 may not make a difference.

20 He was sentenced to 40 years when the mandatory
21 minimum certainly was 30. And as Mr. Gasser testified, in
22 his previous experience with GBMI cases, usually the
23 sentence isn't different, just potentially how it is
24 served. So there's no indication whatsoever that the
25 sentence would have been different, that anything would

1 have been different in this outcome with Mr. Washington's
2 case.

3 The State also believes that no evidence has been
4 presented that this plea was anything less than knowing --
5 or freely entered knowingly and voluntarily. The plea
6 transcript is replete with questions to Mr. Washington and
7 to Mr. Gasser if he knows what he's doing, if he
8 understands why he's here today.

9 Much discussion was had about the incidents where he
10 swooned, for lack of a better term. Those were explained
11 due to emotional and difficult circumstances. He
12 recovered. He recovered to both his satisfaction and his
13 attorney's satisfaction, as well as the Judge's
14 satisfaction that he was able to enter the plea.

15 Furthermore, we also have Applicant's Exhibit 6, the
16 letter in which Mr. Gasser laid out the entirety of the
17 plea, the entirety of the facts and circumstances. He
18 testified he reviewed this with Mr. Washington, who, as
19 evidenced, signed it on the second page.

20 After 18 meetings between these two gentlemen, I
21 believe that Mr. Gasser was in the position to be able to
22 make a competent, reasonable evaluation of Mr.
23 Washington's present mental state. Certainly, he's not an
24 expert. That's not what we're alleging. But there is a
25 basic standard of whether an attorney thinks that his

1 client, his or her client is incapacitated, for lack of a
2 better term, to the point where further investigation or
3 medical attention may be necessary.

4 Mr. Gasser said he never once saw that. He saw the
5 depression diagnosis. He saw how it affected
6 Mr. Washington, but based on all his conversations, all of
7 his research and all of his investigations, he thought it
8 was a depression diagnosis. This was an isolated
9 incident. And Mr. Washington took full responsibility for
10 it and showed genuine remorse and heartache.

11 With all of these factors combined, certainly, this
12 plea was entered into freely, knowingly and voluntarily.
13 And, ultimately, there is no prejudice. The fact that we
14 have two very competent distinguished doctors come in here
15 and testify that yes, potentially, he was showing signs of
16 dementia prior to this incident really don't affect the
17 outcome of this case. Had that been used as mitigation,
18 it may have changed the sentence. We don't know. But the
19 fact is that he was going to plead to murder because that
20 is what happened and he admitted it from day one.

21 There is no change in this case. There is no
22 prejudice to Mr. Washington for -- excuse me, by
23 Mr. Gasser's decision not to reach out to other experts
24 based on his professional judgment and his strategic
25 reasons. So for that reason, the State avers that the

1 Strickland standard has not been met either by the
2 deficiency prong or the prejudice prong and therefore his
3 application should be denied.

4 THE COURT: Thank you. Any brief reply, response?
5 Not required.

6 MS. BLANCHETTE: Not unless Your Honor has any
7 questions.

8 THE COURT: I have no questions. I'm going to take
9 this matter under advisement, review the cases submitted
10 and we'll be in touch.

11 MS. BLANCHETTE: Thank you, Your Honor.

12 MS. KINARD: Thank you, Your Honor.

13 THE COURT: If I'm not in touch within 30 days, I
14 want both sides to send me an e-mail and say you've got a
15 matter under advisement, Judge.

16 The Court is in recess until 2:15.

17 *****END OF PROCEEDINGS*****
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22
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24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the hearing of the captioned case, relative to appeal, in Court of Common Pleas for Richland County, South Carolina, on the 22nd day of March, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 8, 2018

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

CURRICULUM VITAE

TORA L. BRAWLEY

EDUCATION:

1986	BA	The University of Texas, Austin, Texas Major: Pre Med/Psychology Minor: Sociology
1988	MA	California School of Professional Psychology Major: Clinical Psychology Proficiency: Neuropsychology (Full APA Accreditation)
1992	PhD	California School of Professional Psychology Major: Clinical Psychology Proficiency: Neuropsychology (Full APA Accreditation)

INTERNSHIP	Baylor College of Medicine, Department of Psychiatry Houston, Texas (Full APA Accreditation)
------------	---

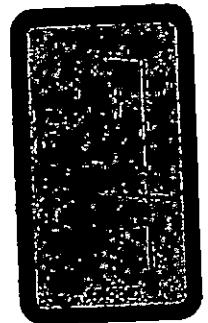
POSTDOCTORAL FELLOWSHIP	Duke University Medical Center, Department of Psychiatry/Medical Psychology Durham, North Carolina
----------------------------	--

ACADEMIC HONORS:

1985-1986	Dean's List, University of Texas at Austin
1986-1990	Dean's List, California School of Professional Psychology

LICENSES:

1999-Current	Licensed Clinical Psychologist State of South Carolina (License Number 752)
2012-Current	Temporary Practice Certificate, Board of Psychology State of Mississippi
1997-2000	Licensed Clinical Psychologist and Certified Health Services Provider State of North Carolina (License Number PP2327)
1993-2012	Certified and Licensed Clinical Psychologist State of Texas (License Number 24914)



PROFESSIONAL EXPERIENCE:

CURRENT	<u>Private Practitioner</u> Forensic Neuropsychology, Columbia, South Carolina
1999-2013	<u>Assistant Professor</u> South Carolina School of Medicine, Department of Neuropsychiatry and Behavioral Science, Columbia, South Carolina
1999-2002	<u>Clinical Psychologist - Forensic Neuropsychology</u> William S. Hall Psychiatric Institute - Forensic Unit, South Carolina Department of Mental Health, Columbia, South Carolina
1999-2002	<u>Faculty for Technical Trial Advocacy Course</u> National College of District Attorneys, Columbia, South Carolina
1999	<u>Neuropsychological Consultant</u> National Hockey League, Carolina Hurricanes, Raleigh, North Carolina
1998-1999	<u>Clinical Neuropsychologist</u> WakeMed Hospital, Rehabilitation Unit, Department of Neuropsychology, Raleigh, North Carolina
1997-1998	<u>Post-Doctoral Fellow/Clinical Associate</u> Duke University Medical Center, Department of Psychiatry/Medical Psychology, Durham, North Carolina
1992-1997	<u>Assistant Professor</u> Baylor College of Medicine, Department of Neurology, Houston, Texas.
1995-1997	<u>Co-Director</u> Baylor Post-Concussion Neurobehavioral Clinic, Baylor College of Medicine, Department of Neurology, Houston, Texas.
1990-1992	<u>Research Associate</u> Baylor College of Medicine, Department of Neurology, Houston, Texas.
1989-1990	<u>Psychology Intern</u> Baylor College of Medicine Outpatient Psychiatric Clinic, Houston, TX.
1989-1990	<u>Psychology Intern</u> Ben Taub General Hospital Emergency Room, Psychiatric Unit and Consultation and Liaison Service, Houston, Texas.
1989-1990	<u>Psychology Intern</u> Depelchin Children's Home, Cullen Bayou Place Outpatient Clinic, Houston, TX
1989-1990	<u>Psychology Intern</u>

PROFESSIONAL EXPERIENCE (CONT.)

- 1988-1989 Psychological Trainee
Fresno Community Hospital, Rehabilitation Psychology Department,
Fresno, California.
- 1988 Intake Counselor
Baylor College of Medicine, Sex Offender Treatment Program, Department of
Psychology, Houston, Texas.
- 1987-1989 Neuropsychological Assistant
Baylor College of Medicine, Dept. of Neurology, Houston, Texas.
- 1987-1988 Psychological Trainee
United States Air Force Mental Health Clinic, Castle Air Force Base, Atwater,
California.
- 1987 Psychological Trainee
Bullard High School, Scandinavian Jr. High and Jackson Elementary Schools,
Fresno, California.
- 1986 Psychological Technician
Medical Personnel Pool, Houston, Texas.
Placement: Harris County Psychiatric Hospital
- 1985 Mental Health Worker
Deer Park Psychiatric Hospital, Deer Park, Texas.
- 1985 Mental Health Worker
Austin State Hospital, Travis Unit, Austin, Texas.
- 1984 Volunteer Services
Texas Children's Hospital, Houston, Texas.
- 1984 Mental Health Worker
Extend-A-Care Program, Autistic Unit, Austin, Texas.

RESEARCH EXPERIENCE:

- 1987 Research Assistant
California School of Professional Psychology, Fresno, California.
- 1984 Research Assistant
Biopsychology Laboratory, University of Texas, Austin, Texas.

COMMUNITY CONSULTATION EXPERIENCE:

- 1990-1997 Counselor, Muscular Dystrophy Association ALS Clinic, Houston, Texas.
- 1989-1990 Psychological Service Provider, Women's Christian Halfway House,
Houston, Texas.
- 1989-1990 Psychology Intern, placed in Mid City Community Mental Health Center,
Houston, Texas.
- 1988 Alzheimer's Disease Association family support group, Fresno, California.

PUBLICATIONS AND INVITED LECTURES:

- Brawley, T.L. (2009, April). Forensic Neuropsychology. Presented at USC School of Medicine, Columbia, South Carolina.
- Brawley, T.L. (2005, June). Introduction to Forensic Neuropsychology. Presented to Center for Capital Litigation, Columbia, South Carolina.
- Brawley, T.L. (2004, March). Forensic Neuropsychology. Presented at William S. Hall Institute as Part of the Forensic Psychiatry Special Topics Seminar, Columbia, South Carolina.
- Brawley, T.L. (2003, February). Forensic Neuropsychological Assessment. Presented to Forensic Fellowship Program, William S. Hall Psychiatric Institute, Columbia, South Carolina.
- Brawley, T.L. (2003, January). Neuropsychological Assessment: Basic Overview for Psychiatrists. Presented to General Psychiatry Residency Program, University of South Carolina School of Medicine, Columbia, South Carolina.
- Buchman, A. L., Sohel, M., Brown, M., Jenden, D., Ahn, C., Roch, M., & Brawley, T. L. (2001). Visual Memory Improves Following Choline Supplementation in Long-Term Total Parenteral Nutrition. JPEN 25: 30-35.
- Brawley, T.L. (2000, May). Neuropsychological Evaluation of Traumatic Brain Injury: Forensic Implications. Presented to Forensic Grand Rounds, William S. Hall Psychiatric Institute, Columbia, South Carolina.
- Lande, R.G, Crawford, P., Shea S., Tezza, C, Brawley, T. (2000, January). How To Meet Your Duty to Provide Competent Legal Representation to Your Mentally Ill Client. Presented to Midyear Meeting of the South Carolina Bar, Charleston, South Carolina.
- Brawley, T.L. & Fowles, G. (1999, April). Functional Neuroanatomy and Brain Injury. Presented to WakeMed Rehab Brain Injury System Training Program, Raleigh, North Carolina.

Brawley, T. L. & Harrison, K. W. (1996, November). Mild Traumatic Brain Injury In the Managed Care Environment. A paper presented to the Brain Injury Association National Symposium, Dallas, Texas.

PUBLICATIONS AND INVITED LECTURES (CONT.):

Brawley, T. L., Cooke, N & Roll, P. (1996, September). The Neuropsychological Evaluation: Utility in a Neurology Setting. Presented to the Neuroscience Conference, Baylor College of Medicine, Department of Neurology, Houston, Texas.

Brawley, T. L. & Harrison, K. W. (1995, November). The Problem of Mild Traumatic Brain Injury. A paper presented to the Texas Psychological Association Annual Conference, San Antonio, Texas.

Brawley, T. L. & Harrison, K. W. (1995, October). The Post-Concussive Patient. Invited lecture To the Family Practice Residency Program, St. Joseph's Hospital, Houston, Texas.

Brawley, T. L. (1995, February). A Basic Overview of Neuropsychology. Invited lecture, Our Lady of the Lake University, Houston, Texas.

Brawley, T. L. & Lai, E. (1993, November). Perspectives of the Patient Evaluation. Paper presented at Alzheimer's Disease: Insights, Research and Decisions Conference, Houston, Texas.

Brawley, T. L. & Cooke, N. (1993, May). Mood Disorders and Memory Loss: Strategies to Remember. Presented to the Depressives and Manic Depressives Association (DMDA) support group, Houston, Texas.

Brawley, T. L. (1992). Alzheimer's disease and multi-infarct dementia: Neuropsychological and magnetic resonance correlates. Dissertation Abstract International, 53/11B, 6029.

Brawley, T. L. (1992, November). Handling Selective Behaviors in Dementia Patients. Paper presented at Harris County Hospital District Community Health Workshop.

Brawley, T. L. (1991, November). Ethical Issues in Alzheimer's Disease. Paper presented at Alzheimer's Disease: Pathways to Discovery Conference, Houston, Texas.

Brawley, T. L. (1991, June). Neuropsychological Testing: Basic Concepts, Ideas and Applications. Presented to Baylor College of Medicine medical students, Alzheimer's Disease Research Center, Department of Neurology.

Pirozzolo, F. J., Bonnefil, V., Brawley, T. (1991). Development of the embryonic, fetal and neonatal nervous system. In J. W. Gray & R. S. Dean (Eds.), Neuropsychology of Perinatal Complications (pp. 22-58). New York: Springer Press.

Brawley, T. L., & Cooke, N. (1991, April). Neuropsychological performance in Alzheimer's disease. Presented to the Neuroscience Conference, Baylor College of Medicine, Department of Neurology, Houston, Texas.

Cooke, N., & Brawley, T. L. (1991, April). Neuropsychological Performance in Dementia and Pseudodementia. Presented to the Neuroscience Conference, Houston, Texas.

REFERENCES: Available Upon Request

Patient: WASHINGTON, JOHN EDWARD
Treatment Facility: EISENHOWER AMC
Patient Status: Outpatient

Date: 31 May 2011 1230 EDT
Clinic: TBI MENTAL HEALTH

Appt Type: EST
Provider: COFFMAN, ROBERT L

Reason for Appointment: EVAL

Appointment Comments:
Ing

Vitals

Vitals Written by COFFMAN, ROBERT L @ 31 May 2011 1444 EDT

Tobacco Use: No, Alcohol Use: Yes, Alcohol Comments: 1-2 drinks x3 weekly, Pain Scale: 0 Pain Free

SO Note Written by COFFMAN, ROBERT L @ 31 May 2011 1456 EDT

Reason for Visit

Visit for: Patient was seen as part of multidisciplinary DDEAMC Neuroscience & Rehabilitation Center - TBI Clinic visit.

Encounter: 4 hours.

History of present illness

The Patient is a 56 year old male.

For review of relevant background information, see the added note below.

Visit related to Deployment: Yes ☐, No ☒.

Subjective

Limits of confidentiality were discussed and the patient agreed to the conditions. In that end, the patient also signed a consent form regarding limitations to confidentiality.

For relevant background information regarding chief complaints, medical, surgical, and psychiatric histories, please see the note below.

Physical findings

Patient arrived [on time] and was [unaccompanied].

[He] ambulated to the provider's office independently without assistive devices.

[No] obvious gait difficulties were noted.

[He] displayed [adequate] grooming and dress and [appeared] their stated age.

[His] demeanor was [forthright].

Eye contact was [good].

[His] interpersonal skills were [appropriate].

[No] psychomotor agitation or retardation was observed.

Speech was of [normal] volume but slow rate.

Thought process was linear and goal directed.

[He] [denied] current SI, HI, intent or plans.

[He] [denied] current auditory, visual, or tactile hallucinations.

Mood was described as [calm and down some last week].

Affect [was] congruent with mood.

[He] [was] alert and oriented times four.

Insight and judgment appeared [adequate].

Objective

Suicide Risk Assessment: After considering variables that influence suicide risk including prior suicide attempts, psychiatric diagnoses that elevate risk, age, gender, family background, interpersonal relationships, physical health, suicide risk variables regarding lethality/access/planning, affective control, degree of hope, family history of completed suicide, degree of willingness to seek help, connection with therapist, and degree of psychosocial support for dealing with current life stressors, current suicide risk is judged to be:

[XX] LOW

[] MODERATE

[] HIGH.

A/P Last updated by COFFMAN, ROBERT L @ 02 Jun 2011 1527 EDT

1. Depression: By history. Rule out Dysthymic Disorder.

Procedure(s):

-Performing Mental Status Exam - Cognitive x 1

-Psychiatric Evaluation Comprehensive Examination x 1

-Psychiatric Evaluation Review of Records and Reports x 1

-Psychologic Testing And Report Administered By Computer x 1

-Psychologic Testing And Report Administered By Physician x 1

Name/SSN: WASHINGTON, JOHN EDWARD, ...

Sex: M

Sponsor/SSN: WASHINGTON, JOHN EDWARD/249027483

FMP/SSN:

Tel H:

Rank: SERGEANT 1ST CLASS

DOB:

Tel W:

Unit: W8BGAA

PCat: AIS.2 USA NG ENLISTED

CS:

Outpt Rec. Rm: MACH OUTPT AD REC RM

MC Status: TRICARE PRIME (ACTIVE DUTY)

Status:

PCM: COMER, CAROLYN M

Insurance: No

Tel. PCM: 4/2210

CHRONOLOGICAL RECORD OF MEDICAL CARE

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STANDARD FORM 600 (REV. 5)
Prescribed by GSA and ICNIR
FIRM (41 CFR) 201-45.505

HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE		
31 May 2011 1230	Facility: D. D. Eisenhower AMC Ft Gordon GA	Clinic: TBI Mental Health	Provider: COFFMAN, ROBERT L.

Automated Neuropsychological Assessment Metrics - 4 (ANAM)
 Booklet Category Test
 Diagnostic Clinical Interview
 Expanded Controlled Oral Word Association Test (CFLJW)
 Personality Assessment Inventory (PAI)
 Prospective Memory Task
 Reliable Digit Span Procedure (RDS)
 Repeatable Battery for the Assessment of Neuropsychological Status – Form A (RBANS)
 Selected subtests from Wechsler Adult Intelligence Scale IV (i.e., WAIS; information, vocabulary, similarities)
 Selected subtests from Wechsler Adult Intelligence Scale III (i.e. WAIS; digit span)
 Test of Memory Malingering (TOMM)
 Trail Making Test parts A & B (TMT)
 Word Reading from Wide Range Achievement Test-IV (WRAT-IV)

Behavioral Observations during Standardized Testing: He was alert and oriented to self, year, month, date, day of the week, and general location. The patient was able to participate in conversational speech as well as attend to and follow instructions, indicating grossly intact receptive language skills. He displayed good frustration tolerance during testing. His affect was flat with slowed speech.

Note1: Given low average estimated IQ, as noted below, a "deficit" on a particular cognitive test is denoted when the patient's objective performance was at or below the 2nd percentile after their obtained test results were compared to persons of similar age, and wherein possible, education, sex, and ethnicity.

Note2: The patient's corrected visual acuity was adequate for participating in a neurobehavioral status exam without need for accommodations.

Standardized Test Results:

RDS, raw score = 11.
 RBANS EI = 0.
 CFLJW, raw score = 42.
 Booklet Category T1+T2 errors = 1.
 PAI T-Scores: ICN (46), INF (47), NIM (47), PIM (61).

Current and Pre-morbid IQ Estimate:

WAIS Verbal Comprehension index score = 78, 21%ile.
 Information, raw score = 9; 42%ile.
 WRAT Word Reading, standard score = 97; 42%ile.

Global Cognition:

RBANS Total index score = 91, 27%ile.

Expressive Language:

RBANS Language index score = 82, 12%ile.
 Picture naming, raw score = 10/10.
 Semantic fluency, raw score = 12 items in 60".
 CFL raw score = 26, 13%ile.
 WAIS Vocabulary raw score = 22; 27%ile.

Attention-Concentration:

RBANS Attention index score = 91, 27%ile.
 Digit span total score, raw score = 12, maximum digits successfully repeated forward was 8 (7 on WAIS Digit Span).

Name/SSN: WASHINGTON, JOHN EDWARD

Sex: M
 FMP/SSN: Tel H:
 DOB: Tel W:
 PCat: A15.2 USA NG ENLISTED CS:
 MC Status: TRICARE PRIME (ACTIVE DUTY) Status:
 Insurance: No

Sponsor/SSN: WASHINGTON, JOHN EDWARD/249027483
 Rank: SERGEANT 1ST CLASS
 Unit: W8BGAA
 Outpt Rec. Rm: MACH OUTPT AD REC RM
 PCM: COMER, CAROLYN M
 Tel. PCM: 4/2210

HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE		
31 May 2011 1230	Facility: D. D. Eisenhower AMC Ft Gordon GA	Clinic: TBI Mental Health	Provider: COFFMAN, ROBERT L.

Coding total score, raw score = 33.
WAIS Digit Span raw score = 18; 63%ile.

Speeded Information Processing & Reaction Time:

TMT part A, raw score = 60"; 14%ile.

ANAM Simple Reaction Time-Trial 1, Mean Reaction Time, raw score = 321; 20%ile.

Visuospatial Perception & Construction:

RBANS Visuospatial/Constructional index score = 100, 50%ile.

Figure copy, raw score = 19/20.

Line orientation, raw score = 16/20.

Learning & Memory:

RBANS Immediate Memory [new learning] = 97; 42%ile.

List learning = learned 7/10 words after 4 learning trials.

Story memory = learned 10/12 details from story after 2 learning trials.

RBANS Delayed Memory = 101; 53%ile.

List recall total score = recalled 7/7 words previously learned after 15 minute delay.

List recognition raw score = 20/20.

Story recall = recalled 9/10 previously learned details from story.

Figure recall = recalled 14/19 previously drawn features.

Prospective Memory: 4/4 & 2/2.

Aspects of Executive Functioning:

Booklet Category Test total errors = 95/208; 8%ile.

WAIS Similarities raw score = 15; 10%ile.

TMT part B, raw score = 169"; 18%ile.

Emotional Functioning:

PAI T-Scores:

SOM (43), ANX (52), ARD (50), DEP (56), MAN (36), PAR (49), SCZ (53), BOR (37), ANT (41), ALC (50), DRG (50),

AGG (35), SUI (51), STR (41), NON (39), RXR (33).

DOM (56), WRM (58).

Conclusions: The patient was oriented and gave GOOD effort throughout the evaluation. It is believed that the results of the current assessment accurately reflect the patient's cognitive status - at least in areas evaluated.

Cognitive testing performance is consistent with his current IQ functioning. No global decline in cognition is indicated; however, his performance on a measure of premorbid IQ, an uncommon reading paradigm, is significantly higher than his current IQ estimate. This is likely an artifact of an acquired word familiarity from recreational reading.

The patient performed within expectations given his IQ and when compared to other persons of similar age on tasks assessing expressive language, attention-concentration, speeded information processing, psychomotor reaction time, visuospatial/construction, learning and memory, and aspects of executive functioning. He demonstrated relative weakness in regards to tasks of concept formation and hypothesis testing. He demonstrated relative strengths in regards to tasks of basic attention and verbal recall.

Name/SSN: WASHINGTON, JOHN EDWARD

MP/SSN: Sex: M
DOB: Tel H:
Cat: A15.2 USA NG ENLISTED Tel W:
AC Status: TRICARE PRIME (ACTIVE DUTY) CS:
Insurance: No Status:

Sponsor/SSN: WASHINGTON, JOHN EDWARD/249027483
Rank: SERGEANT 1ST CLASS
Unit: W8BGAA
Outpt Rec. Rm: MACH OUTPT AD REC RM
PCM: COMER, CAROLYN M
Tel. PCM: 4/2210

CHRONOLOGICAL RECORD OF MEDICAL CARE

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STANDARD FORM 600 (REV. 5)
Prescribed by GSA and ICMR
FIRM (41 CFR) 201-45.505

HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE		
31 May 2011 1230	Facility: D. D. Eisenhower AMC Ft Gordon GA	Clinic: TBI Mental Health	Provider: COFFMAN, ROBERT L.

Emotionally, there was mild evidence to suggest positive impression (i.e. presenting oneself free of common shortcomings and reluctance to acknowledge problems). Within this context, he denied current situational stress and had adequate social support. He denied any clinically significant mood problems; however, he did indicate significant difficulty with concentration and organizing his thoughts. He endorsed adequate levels of self-confidence, sees himself as assertive, and enjoys relationships with others. In contrast, he is not satisfied with his current condition and reported a need for services/support related to his mood or unreported condition.

Today there is NO evidence that the patient is experiencing significant cognitive deficits. As such, the patient does NOT demonstrate compelling evidence to implicate a current cognitive disorder. Indeed both the patient and military collateral informant noted that there were no functional difficulties noted in his work station.

It is likely that his SUBJECTIVE memory and concentration issues are better explained by his self-reported tendency to worry, currently managed mood disturbance, and poor sleep hygiene.

The following diagnoses are offered:

- 1) Ruled OUT current cognitive disorder.
- 2) Rule out possible Dysthymic disorder, in partial remission.

Problem/Plan/Recommendations:

- 1) From a cognitive standpoint, in my opinion, the patient meets retention standards. This assertion is bolstered by military collateral informant's indication that there were no functional problems noted and the patient was likely deployable.
- 2) Continued follow up with medical providers for his conditions will be essential for continued good outcome. If not already considered, he may also benefit from behavioral therapy in conjunction with his current medication for palliation of his transient dysphoric mood and penchant for worry. Within this context, behavioral methods to promote sleep hygiene could be introduced and practiced.
- 3) During his re-attendance of Senior Leader Course it is recommended the patient use behavioral techniques to improved retention. For instance, he may study course material ahead of time (if possible), take notes in class, type out daily class notes before bedtime, and make flash cards with mock exam questions.
- 4) Follow up neuropsychological evaluation is not recommended. However, if there is a change in the patient's emotional or cognitive status, then the patient may benefit from a re-evaluation. The current evaluation can serve as a point of comparison.

Thank you for allowing us to participate in this Soldier's care.

Scott Mooney, PhD
DAC Neuropsychologist
Director, Neuropsychology Services
Neuroscience & Rehabilitation Center
Eisenhower Army Medical Center

Robert Coffman, PsyD
Clinical Psychology Resident
Eisenhower Army Medical Center

Signed By COFFMAN, ROBERT L (CPT MS Psychology Resident, D. D. Eisenhower AMC Ft Gordon GA) @ 02 Jun 2011 1527
Co-Signed By MOONEY, SCOTT R (PhD, DAC Neuropsychologist, DDEAMC Neuroscience & Rehabilitation Center) @ 03 Jun 2011 0955

CHANGE HISTORY

The following Disposition Note Was Overwritten by COFFMAN, ROBERT L @ 02 Jun 2011 1527 EDT:

Name/SSN: WASHINGTON, JOHN EDWARD

FMP/SSN:	Sex: M	Sponsor/SSN:	WASHINGTON, JOHN EDWARD/249027483
DOB:	Tel H:	Rank:	SERGEANT 1ST CLASS
PCat: A15.2 USA NG ENLISTED	Tel W:	Unit:	W8BGAA
MC Status: TRICARE PRIME (ACTIVE DUTY)	CS:	Outpt Rec. Rm:	MACH OUTPT AD REC RM
Insurance: No	Status:	PCM:	COMER, CAROLYN M
		Tel. PCM:	4/2210

CHRONOLOGICAL RECORD OF MEDICAL CARE

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STANDARD FORM 600 (REV. 5)
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FIRM (41 CFR) 201-45.505

HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE		
31 May 2011 1230	Facility: D. D. Eisenhower AMC Ft Gordon GA	Clinic: TBI Mental Health	Provider: COFFMAN, ROBERT L.

The Disposition section was last updated by COFFMAN, ROBERT L @ 02 Jun 2011 1527 EDT - see above. Previous Version of Disposition section was entered/updated by COFFMAN, ROBERT L @ 31 May 2011 1455 EDT.

Released w/o Limitations

Follow up: 2 week(s) in the TBI MENTAL HEALTH clinic or sooner if there are problems. - Comments: SM will report back to TBI clinic for testing results.

Discussed: Diagnosis, Medication(s)/Treatment(s), Alternatives, Potential Side Effects with Patient who indicated understanding.

~~The following A/P Note Was Overwritten by COFFMAN, ROBERT L @ 02 Jun 2011 1527 EDT:~~

The A/P section was last updated by COFFMAN, ROBERT L @ 02 Jun 2011 1527 EDT - see above. Previous Version of A/P section was entered/updated by COFFMAN, ROBERT L @ 31 May 2011 1455 EDT.

I. PSYCHIATRIC DIAGNOSIS OR CONDITION DEFERRED ON AXIS 1 (OTHER UNKNOWN AND UNSPECIFIED CAUSES OF MORBIDITY AND MORTALITY, NOT PGW

SYNDROME): The patient completed the evaluation today. I do have in my possession the scored cognitive and emotional status psychometric data and am in the process of writing an interpretative integrative report. Please understand that these detailed reports do take some time to generate. Once the note has been completed, I will amend the encounter, add the note below, and finalize the A/P and Disposition sections of this encounter as deemed clinically important.

During the interim, if a provider/case mgr/MEB physician involved in the patient's care would benefit from my clinical impressions of the data and offer preliminary feedback regarding differential diagnosis and treatment planning, then I welcome them to contact me either by Outlook or my office phone at (706) 787-2689.

Scott Mooney, PhD
DAC Neuropsychologist
Director, Neuropsychology Services
Neuroscience & Rehabilitation Center
Eisenhower Army Medical Center

Procedure(s):
-Psychiatric Evaluation Comprehensive Examination x 1
-Psychologic Testing And Report Administered By Computer x 1
-Psychologic Testing And Report Administered By Physician x 1
-Psychiatric Evaluation Review of Records and Reports x 1
-Performing Mental Status Exam - Cognitive x 1

~~The following Signature(s) No Longer Applies because this Encounter Was Opened for Amendment by COFFMAN, ROBERT L @ 02 Jun 2011 1525 EDT:~~

Signed: COFFMAN, ROBERT L (CPT MS Psychology Resident, D.D. Eisenhower AMC Ft Gordon GA) @ 31 May 2011 1457

Co-Signed: MOONEY, SCOTT (PhD, DAC Neuropsychologist, DDEAMC Neuroscience & Rehabilitation Center) @ 31 May 2011 1501

Name/SSN: WASHINGTON, JOHN EDWARD

Sex: M

Sponsor/SSN: WASHINGTON, JOHN EDWARD/249027483

FMP/SSN:

Tel H:

Rank: SERGEANT 1ST CLASS

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Tel W:

Unit: W8BGAA

PCat: A15.2 USA NG ENLISTED

CS:

Outpt Rec. Rm: MACH OUTPT AD REC RM

MC Status: TRICARE PRIME (ACTIVE DUTY)

Status:

PCM: COMER, CAROLYN M

Insurance: No

Tel. PCM: 4/2210

CHRONOLOGICAL RECORD OF MEDICAL CARE

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STANDARD FORM 600 (REV. 5)
Prescribed by GSA and ICMR
FIRM (41 CFR) 201-45.505

Curriculum Vitae
DONNA SCHWARTZ MADDOX
donnawattsmd@gmail.com

POSITIONS:

Contract Forensic Psychiatrist
Department of Mental Health

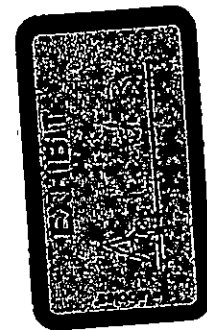
Contract General Psychiatrist
Harris Psychiatric Hospital

Psychiatric Service Director (certified)
Harris Psychiatric Hospital
Retired August 5, 2016

Clinical Professor of Psychiatry
Medical University of South Carolina
Department of Psychiatry and Behavioral Sciences

Associate Professor of Psychiatry
Greenville Hospital System
Department of Psychiatry

Professor of Psychiatry
Edward Via College of Osteopathic Medicine
Carolinas Campus



PROFESSIONAL LICENSURE:

South Carolina Medical License # 16574
Georgia Medical License #74584

EDUCATION:

1981 - 1985 B.A. Psychology
Furman University
Greenville, South Carolina

1985 - 1989 Doctor of Medicine
University of South Carolina School of Medicine
Columbia, South Carolina

BOARD CERTIFICATIONS:

Donna Schwartz-Watts, MD
Curriculum Vitae

Diplomate, Psychiatry, (Board Certification #40726), January 1995,
recertified 7/05- 12/2015
Added Qualifications in Forensic Psychiatry, July 1996 #471, recertified
7/06-12/16

POSTGRADUATE FELLOWSHIPS AND RESIDENCY POSITIONS:

- 1989 - 1993 Resident in General Psychiatry
 William S. Hall Psychiatric Institute
 Columbia, South Carolina
- 1993 - 1994 Fellowship in Forensic Psychiatry
 William S. Hall Psychiatric Institute
 Columbia, South Carolina

ACADEMIC POSITIONS/EMPLOYMENT/UNIVERSITY APPOINTMENTS:

- 7/2010-8/2013 Senior Psychiatrist
 Bryan Psychiatric Hospital
- 4/24/13 to present Clinical Professor of Forensic Psychiatry
 Medical University of South Carolina
 Department of Psychiatry and Behavioral Sciences
- 7/2010 to 2015 DMH Professor of Psychiatry
 University of South Carolina School of Medicine
 Department of Neuropsychiatry
- 7/2006-7/2010 Professor of Clinical Psychiatry
 Director, Forensic Psychiatry Services
 University of South Carolina School of Medicine
 Department of Neuropsychiatry and Behavioral Science
 3555 Harden Street Extension, Suite 102
 Columbia, South Carolina 29203
 (803) 434-4698 (803) 434-2367 (fax)
- Consulting and Treating Forensic Psychiatrist
 South Carolina Department of Juvenile Justice
- Consulting and Treating Forensic Psychiatrist
 South Carolina Department of Corrections
- 11/98-6/2009 Consulting and Treating Forensic Psychiatrist
 Behavioral Disorders Treatment Program
 (Sexually Violent Predator Program: SC 44-48-110)
 South Carolina Department of Mental Health

6/1997- 7/2006	Associate Professor Director, Forensic Services Department of Neuropsychiatry University of South Carolina School of Medicine
1/2004-7/2004	Acting Assistant Director, Psychiatry Residency Program University of South Carolina School of Medicine Department of Neuropsychiatry and Behavioral Science
9/1995-5/1997	Forensic Residency Training Director University of South Carolina School of Medicine
7 /1996 – 6/1997	Psychiatrist C. William S. Hall Psychiatric Institute Residential Treatment Director of NGRI Unit
1/1995 – 6/1996	Teaching Psychiatrist II William S. Hall Psychiatric Institute Out-patient Forensic Psychiatrist
1/1995 – 12/1997	Assistant Professor University of South Carolina School of Medicine Department of Neuropsychiatry
7/1994 –6/1995	Instructor University of South Carolina School of Medicine Department of Neuropsychiatry
7/1994 – 12/1994	Teaching Psychiatrist I William S. Hall Psychiatric Institute In-patient and Out-patient Forensic Psychiatrist

MEDICAL STAFF APPOINTMENTS

Patrick B. Harris Psychiatric Hospital
Bryan Psychiatric Hospital (current)
South Carolina Department of Corrections (courtesy)
South Carolina Department of Juvenile Justice (inactive 7/2010)
William S. Hall Psychiatric Institute
Palmetto Health Richland Memorial Hospital (courtesy)
Palmetto Health Baptist Medical Center (courtesy)
Providence Hospital (pending)

UNIVERSITY/ MEDICAL STAFF COMMITTEES:

2015-Present	Vice-President, medical Staff Harris Psychiatric Hospital
2007-2010	Member, Appointments and Promotions Committee, USC
2002- 2009	Member, Alumni Committee, USC School of Medicine
1996- 2010	Member, Residency Selection Committee
1995- 2010	Member, Residency Training Committee

2002- 2003	Member, Search Committee, Chairman of Neuropsychiatry
2000-2001	Member, Committee on Women USC
1997	Member, Traditions Committee USCSM
1997	Member, Search Committee, Director Rehabilitation Counseling
1997	Physician Advisor, Environment of Care
1996	Member, Search Committee Chair of Department of Neuropsychiatry and Director of Hall Institute
1996	Member, Finance Committee, University Specialty Clinics
1994-1996	Member, Infection Control Committee
1993-1994	Member, Research Committee

HONORS AND AWARDS:

2016	Clinical Mentor Award, University of South Carolina School of Medicine, Greenville, South Carolina
2007	Outstanding Female Physician Mentor Award
2004-2005	Outstanding Forensic Teaching Award Presented by the USC SOM Forensic Fellowship Training Program
1992	Rapporteur Scholarship in Forensic Psychiatry Presented by the American Academy of Psychiatry and the Law
1989	Neurology Award, School of Medicine
1985	Cum Laude Graduate, Furman University Phi Beta Kappa, Furman University Alpha Epsilon Delta, Furman University

MEMBERSHIPS AND OFFICES IN PROFESSIONAL ORGANIZATIONS:

2002-2009	American Board of Psychiatry and Neurology Forensic Certification Committee
1999-2009	American Board of Psychiatry and Neurology 1999-Present Board Examiner
1997-2003	Group for the Advancement of Psychiatry (GAP), General Member 1999 Chair
1992- Present	American Academy of Psychiatry and the Law (AAPL) 1995-2000 Rapoport Committee (President appointed) 1995-2000 Education Committee (President appointed) 1998-2000 Program Committee (President appointed) 1999 Program Chair 1995-97 Mentor to Rapoport Fellow
1989-1998	American Psychiatric Association, General Member

1989-1998 South Carolina Psychiatric Association
1995-1998 Federal Legislative Representative (President appointed)
1995-1999 Executive Council
1996-1998 Secretary-Treasurer

1997 NAMI Advisory Board Physician Representative

PUBLICATIONS:

Dehart, D., Dwyer, G., Seto, M., Letourneau E., Schwartz-Watts, D. Internet solicitation of children. A proposed typology of offenders based on their chats, E-mails and social network posts. Journal of Sexual Aggression, 2016

Schwartz-Watts DM: "Commentary: Stalking Risk Profile." The Journal of the American Academy of Psychiatry and the Law, 34:455-457, 2006.

Schwartz-Watts DM, Frierson RL: "20: Crisis Stabilization in Correctional Settings." in Clinical Practice in Correctional Medicine, Second Edition, edited by Michael Puisis, D.O., S.C. Mosby, Inc affiliate of Elsevier, Inc 2005.

Schwartz-Watts DM. "Asperger's Disorder and Murder." Analysis & Commentary The Journal of the American Academy of Psychiatry and the Law 33:390-3, 2005.

Schwartz-Watts DM, Rowell CN. "Commentary: Update on Assessing Risk for Violence Among Stalkers." The Journal of the American Academy of Psychiatry and the Law 31:440-3, 2003.

Giorgi-Guarnieri D, Zonana HV, Schwartz-Watts DM. "Practice Guideline: Forensic Psychiatric Evaluation of Defendants Raising the Insanity Defense." Supplement to The Journal of the American Academy of Psychiatry and the Law 30:2, 2002.

Frierson R, Schwartz-Watts D, Malone T, Morgan D. "Capital Versus Noncapital Murderers" in revision The Journal of the American Academy of Psychiatry and the Law, 1998.

Schwartz-Watts D, Morgan D. "Violent Versus Nonviolent Stalkers," accepted, The Journal of the American Academy of Psychiatry and the Law, 1998.

Schwartz-Watts D, Morgan D, Barnes C. "Stalkers: The South Carolina Experience," The Journal of the American Academy of Psychiatry and the Law, 1997, 24:541-545.

Schwartz-Watts D, Montgomery L, Morgan D. "Seroprevalence of Human Immunodeficiency Virus Among Pre-Trial Detainees," The Bulletin of the American Academy of Psychiatry and the Law, 1995, 23:285-289.

POSTERS:

Internet Chat Rooms: Who Solicits Children? R. Gregg Dwyer, MD, EdD, Donna Schwartz-Watts MD, William Burke, PhD, American Academy of Psychiatry and the Law 39th Annual Meeting, Seattle, WA October, 2008

PRESENTATIONS:

“Expert Testimony” Lecture to Medical University of South Carolina Forensic Residents, Charleston, SC 1/13/16

“Death Penalty and South Carolina” Lecture to Medical University of South Carolina Forensic Residents, Charleston, South Carolina, February 6, 2013

“Autistic Spectrum Disorders; What Capital Lawyers Should Know.” Death Penalty 2013, Sheraton Four Seasons, Greensboro January 25, 2013

“Predators Among Us” University of South Carolina 2012 Mini Med School, October 2, 2012, Columbia, South Carolina

“How Death is Different-Using ABA Guidelines to Meet the Standard of Care in Death Penalty Cases and Social History Investigations: The team Approach” with Joe VonKallist, Capital Case Workshop, September 19, 2012, Wilmington, North Carolina

“Protecting Mental Health” South Carolina Attorney General’s Continuing Legal Education Ethics Seminar, Blatt Building, Columbia, SC 12/2/11

“Autistic Spectrum Disorders and the Legal System “, DMH Annual CME, William S Hall Psychiatric Institute 9/11

“Issues of Mental Competency” South Carolina Circuit Court Judges Conference, Spartanburg, South Carolina, May 4-6, 2011

Stalking in the New Millennium”: Department of Mental Health Day Long CME, Columbia SC, October 2009

“Internet Predators”: South Carolina Psychiatric Association Annual Meeting, Myrtle Beach, South Carolina, 1/2009

“Internet Predators”: Panel Speaker, South Carolina Bar Association Annual Meeting, Myrtle Beach South Carolina, 1/2009

Internet Predators: ICAC Quarterly Meeting, Columbia, South Carolina 11/21/2008

Project Safe Childhood, Advanced Online Child Exploitation Seminar, National Advocacy Center Columbia, SC, July 29, 2008

“Violent Crimes and the Commitment of Sexually Violent Predators, MUSC Judges and Attorneys Substance Abuse and Ethics Seminar, Charleston, South Carolina, December 7, 2007

“Autistic Spectrum Disorders and Corrections” South Carolina Department of Corrections Mental Health Seminar, Columbia, South Carolina, December, 2007

“Pitfalls in Sex offender Commitment Hearings” Panel Speaker, American Academy of Psychiatry and the Law 38th Annual meeting, Miami, Florida, October 22, 2007

“Treating the Untreatable” Panel Speaker, American Academy of Psychiatry and the Law 38th Annual Meeting, Miami, Florida, October 19, 2007

“Risk Assessment in General Psychiatry: Department of Mental Health Annual Day Long CME, Columbia, SC September 21, 2007

“Mitigation in Noncapital Cases” SC Public Defender’s Conference, Myrtle Beach, SC October 2007.

“Nuts and Bolts of Sexually Violent Predator Proceedings” SC Bar CLE, Columbia, South Carolina July 27, 2007

University of South Carolina School of Medicine Founder’s Day Speaker for Woman in Medicine, Columbia, South Carolina, April 2007.

“Autistic Spectrum Disorders and Mitigation,” Washington DC March 2007

“Sex Crimes and their Aftermath II” Panel Discussion and Presentation, Jack Swerling Moderator, South Carolina Bar Association Conference, Charleston, SC, January 25, 2007

“Psychiatry for the Brilliant Fact Finders” Invited Speaker, South Carolina Judges Conference, Greenville, SC, May 12, 2006.

“Sex Crimes and their Aftermath” Panel Discussion and Presentation, Jack Swerling Moderator, South Carolina Bar Association Conference, Charleston, SC January 27, 2006.

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice National Institute of Trial Advocacy, Atlanta Georgia , June 4-5, 2005

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice National Institute of Trial Advocacy, Atlanta Georgia , June 5-6, 2004

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice National Institute of Trial Advocacy, New York, New York, June 20-21, 2003

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice, New York, New York. June 20-22, 2002.

South Carolina Probation, Paroles and Pardons Annual Conference. "A State of Mind". Myrtle Beach, SC. November 11, 2002.

American Academy of Psychiatry and the Law, "Difficult Case? Consult your Colleagues." Newport Beach, California. October 26, 2002

South Carolina Public Defender's Conference, "Issues and Concerns Regarding the Sexually Violent Predator Statute" Litchfield Beach, South Carolina, September 30, 2002

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice, New York, New York, June 28-30-2002.

American Academy of Psychiatry and the Law, "Death Penalty" Boston, MA, October 28, 2001

American Academy of Psychiatry and the Law, "Ask the Expert" and "The Difficult Case" Panel Discussions. Boston, MA, October 28, 2001

Habeas Institute, Guest Faculty Teaching for the Federal Defenders, US Department of Justice, New York, New York, June 14-17-2001.

Annual Capital Defense Training Seminar, "The Importance of Timing in the Presentation of Your Client's Story: Frontloading Mitigation" with John Blume, Attorney, Jekyll Island, Georgia, February 9, 2001

University of Texas, Department of Psychiatry Grand Rounds "Profile of a Stalker" San Antonio, Texas, December 19, 2000

Willford Hall Medical Center, Lackland Air Force Base, Texas, "Death Penalty Evaluations," December 18, 2000.

Willford Hall Medical Center, Lackland Air Force Base, Texas, "Texas Sexually Violent Predator Statute," December 18, 2000

American Academy of Psychiatry and the Law, "Juveniles Who Carry Weapons on School Grounds" Baltimore, Maryland, October 15, 1999

American Academy of Forensic Science, Workshop Presenter, San Francisco, 1998 "Classification and Typology of Stalkers."

Kansas City, Western Missouri Forensic Department, 1997 "Evaluation of Stalking."

University of South Carolina School of Medicine Women's Month Featured Presenter, 1997

"Stalkers: The South Carolina Experience."

American Academy of Psychiatry and the Law, Denver, CO, 1997 "Psychotic versus Nonpsychotic Stalkers."

American Academy of Psychiatry and the Law, Denver, CO, 1997 "Harassing Telephone Callers."

American Academy of Psychiatry and the Law, Denver, CO, 1997 Panel on Maintaining Competence sponsored by Education Committee

American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Violent Versus Nonviolent Stalkers",

American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Capital Versus Noncapital Murderers"

American Academy of Psychiatry and the Law, Puerto Rico, 1996 "Treatment of Insanity Acquittes Across the United States."

William S. Hall Psychiatric Institute Forensic Forum, 1996 "Evaluation and Treatment of Sexual Offenders."

Georgia Regional Forensic Forum, 1996 "Evaluation and Treatment of Sexual Offenders."

American Academy of Psychiatry and the Law, Seattle, Washington, 1995 "Stalkers: The South Carolina Experience"

South Carolina Psychiatric Association, Hilton Head Symposium, 1995 "What General Psychiatrists Need to Know About Forensic Psychiatry."

American Academy of Psychiatry and the Law Annual Conference, San Antonio, Texas 1993 "Seroprevalence of HIV Among Inpatient Pre-trial Detainees"

American Medical Association, North Carolina 1990 "Tertiary Metastases Presenting As Panhypopituitarism"

Present Grants:

Internet Crimes Against Children: Development of a Typology of Offenders for Use in Prevention, Investigations and Treatment; U.S. Department of Justice Office of Justice Programs Grant; 2010-MC-CX-003; Principle Investigator: RG Dwyer; Co-Principal Investigator: D DeHart; Co-Investigators/Consultants: R Moran, DM Schwartz-Watts, W Burke, DL Laufersweiler-Dwyer; 2010 - 2013

Internet Chat Room Solicitation of Children: A Study of Psychosocial and Criminal Justice Factors as

They Relate to Public Safety Risk; American Academy of Psychiatry and the Law Institute for Education and Research (AIER) Grant; Principal Investigator: RG Dwyer; Co-investigators: D DeHart, DM Schwartz-Watts, W Burke & R Moran; 2009 - 2010

(Revised 3/20/18)



State of South Carolina
Department of Mental Health

MENTAL HEALTH COMMISSION:

Alison Y. Evans, PsyD, Chair
Joan Moore, Vice Chair
Beverly Cardwell
Jane B. Jones
Everard Rutledge, PhD
J. Buxton Terry
Sharon L. Wilson

STATE DIRECTOR

John H. Magill

Jonathan Waller
Attorney at Law
1315 Blanding Street
Columbia, SC 29201

October 20, 2016

Division of Inpatient Services
G. Werber Bryan Psychiatric Hospital
Forensic Evaluation and Treatment Services
7801 Farrow Road, Building #6
Columbia, SC 29203
Information: (803) 935-6586

Re: The State of South Carolina vs. Washington, John
DMH Case #: 1038-1812
Richland County, Court of General Sessions

Dear Attorney Waller:

In accordance with the court order issued by the Honorable D. Craig Brown, evaluations of criminal responsibility and capacity to conform were conducted by the South Carolina Department of Mental Health (SCDMH) pursuant to S.C. Code Ann. § 17-24-10 (1976) and § 17-24-20 (1976).

Please see the attached report for the results of this evaluation.

This 9 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 17-24-10 (1976) and § 17-24-20 (1976).

10/20/16
Date

Allyson M. Sipes, Psy.D
Allyson M. Sipes, Psy.D
Clinical Director
Forensic Evaluation Services
Department of Mental Health

cc: Jessica Kinard, Assistant Solicitor, PO Box 11549, Columbia, SC 29211

AS/t1

MISSION STATEMENT
To support the recovery of people with mental illnesses.

DMH South Carolina
Department of
Mental Health

CRIMINAL RESPONSIBILITY / CAPACITY TO CONFORM EVALUATION
FORENSIC EVALUATION SERVICE
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH (SCDMH)

DATE OF EVALUATION: October 17, 2016

PRESIDING EXAMINER: Richard L. Frierson, M.D.
Professor of Clinical Psychiatry
University of South Carolina School of Medicine

SECOND EXAMINER: Jason L. Gandy, M.D.
Fellow in Forensic Psychiatry
University of South Carolina School of Medicine

OTHERS PRESENT: Urvi Shah, M.D.
Resident in Psychiatry
University of South Carolina School of Medicine

Miguel Maceda
Medical Student
University of South Carolina School of Medicine

PSYCHIATRIC DIAGNOSES (DSM-5):

Major Depressive Disorder

OPINION REGARDING CRIMINAL RESPONSIBILITY: Mr. Washington would have been criminally responsible for his actions on or about September 14, 2013.

OPINION REGARDING CAPACITY TO CONFORM: Mr. Washington would have had the capacity to conform his behavior to the requirements of the law on or about September 14, 2013.

DISPOSITION: Mr. Washington was returned to the South Carolina Department of Corrections at the conclusion of the evaluation.

IDENTIFYING INFORMATION: John Edward Washington is a 61-year-old African American male who was seen at Forensic Evaluation Service pursuant to a court order from the Richland County Court of Common Pleas. This court order requests an evaluation of his criminal responsibility and capacity to conform his conduct to the requirements of the law on or about September 14, 2013 pursuant to S.C. Code Ann. § 17-24-10 (1976). The defendant has been convicted of Murder and this evaluation is

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requested as part of Post-Conviction Relief proceedings. According to the court order, it was issued for the following reasons: "Applicant was being treated for severe depression since January of 2011. Applicant was being treated for these mental health concerns through a variety of methods including several different medications for approximately eighteen (18) months prior to this incident. Counsel for the Applicant represents to this court that there are concerns that Applicant may have also been suffering from an episode of severe depression and that he was unable to conform his conduct to the requirements of the law at the time of the incident."

CONFIDENTIALITY LIMITATIONS: Prior to participating in the evaluation, Mr. Washington was warned regarding the limitations of confidentiality. He was informed that the evaluation was court ordered. He was informed that the evaluators were employed by the South Carolina Department of Mental Health and were not paid by his attorney or the solicitor. He was informed that after the evaluation a report would be submitted to his attorney, the Attorney General's office, and the judge in his case. He was also informed that the evaluators could be called to court to testify at trial. He expressed an understanding of this information and he voluntarily agreed to participate in the evaluation.

SOURCES OF INFORMATION:

1. Richland County Court of Common Pleas court order for this evaluation received by the SCDMH Forensic Evaluation Service on September 16, 2016
2. SCDMH Forensic Evaluation Service Social Work Assessment conducted by Carol David, LISW-CP with information gathered from the defendant's sister, Jan Caldwell, on October 3, 2016
3. Application for Post-Conviction Relief dated November 13, 2015
4. Indictment for "Murder" dated March 12, 2014
5. Arrest warrant 2013A4010203298 for "Murder" dated September 14, 2013
6. Richland County Sheriff's Department (RCSD) incident and supplemental report dated September 14, 2013.
7. RCSD arrest report dated December 4, 2013
8. Narrative report undated
9. RCSD investigative follow up dated September 16, 2013
10. RCSD crime scene investigative analysis report dated October 1, 2013, October 2, 2013, and October 7, 2013
11. RCSD crime scene investigation bench notes dated September 14, 2013
12. Witness statement of Loretta Daily dated September 14, 2013
13. Witness statement of Timothy Gilleland dated September 14, 2013
14. Witness statement of Yolanda Morris dated September 14, 2013
15. Report of postmortem examination dated September 19, 2013
16. Transcript of court proceedings from The State of South Carolina vs. John Washington dated February 5, 2015
17. Medical records from Moncrief Army Health Clinic (MAHC) dated January 28, 2011 to May 15, 2013

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18. Medical records from Palmetto Health Richland Hospital dated September 14, 2013 to September 18, 2013
19. Medical records from South Carolina Department of Corrections dated February 12, 2015 to March 23, 2016
20. A clinical forensic interview with the defendant conducted on October 17, 2016 for approximately two hours

CURRENT PSYCHIATRIC HISTORY: Mr. Washington stated that he was at the evaluation to see if he was in his "right state of mind" on September 14, 2013. He indicated that nothing is good about his life in prison. The defendant reported that "I destroyed my life and great career, and I took the life of a good human being." He endorsed that this was his first criminal charge and that he had a "spotless" 36-year military career.

Mr. Washington reported that he felt "ok" but that he "had a *great* life" before going to prison. He endorsed falling asleep quickly. However, he indicated that he would wake up and not be able to fall back asleep due to thoughts about being in prison and what "I've done." The defendant reported that his appetite was good but that the prison food was "lousy."

He stated that he shares his cell with a roommate and that he has not been involved in fights since his incarceration. Mr. Washington reported that he watches television and reads the bible. The defendant endorsed that he seldom goes outside because he is "not in the mood." He indicated that his sister and a former co-worker visit him in prison.

He endorsed currently feeling sad and depressed. The defendant stated he felt depressed because "[prison] is not a life." He endorsed poor concentration and feelings of guilt, but he denied other symptoms of depression. Mr. Washington denied current suicidal or homicidal ideation. He stated that he discontinued taking his psychiatric medication after several months because his "life is over."

He endorsed frequent worry about his mother being taken care of and about his daughter. The defendant endorsed feeling restless throughout the day, frequent headaches, and difficulty sleeping due to worry. He denied symptoms of posttraumatic stress disorder, mania, or psychosis.

PAST PSYCHIATRIC HISTORY: The defendant reported that in retrospect he was depressed when he was a teenager due to his father's alcohol use. He indicated that after he left home, his symptoms of depression decreased but they returned during his divorce in 1998. Mr. Washington stated that he did not seek treatment for depression in 1998 and that his symptoms of depression decreased but never fully resolved after his divorce.

He endorsed that his depression worsened again in 2010 due to difficulty with Senior Leadership classes he was taking in order to maintain his military rank. The defendant

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subsequently failed his leadership classes twice. He reported that after failing the class for the second time he stated to a friend that "if it were not for my daughter I would give everything up." His friend walked with Mr. Washington to the Moncrief Army Health Clinic (MAHC) so that he could talk to someone about his depression.

The defendant reported that he previously considered suicide after his divorce and after his murder charge. He indicated that after his crime he intentionally wrecked his car in a suicide attempt. Mr. Washington denied a history of self-harm behavior. He denied a history of symptoms of mania or psychosis.

Medical records indicated that the defendant was seen at MAHC beginning in January of 2011. He exhibited symptoms of depression and was anxious regarding his army leadership classes. The defendant was initially diagnosed with Adjustment Disorder with Anxiety and Depressed Mood. He was initially prescribed sertraline (Zoloft[®], an antidepressant) and began seeing a therapist. During this time period, he was stated to exhibit a new-onset stutter. Mr. Washington was referred for evaluation of memory difficulties and was not found to have a cognitive disorder. His mood eventually improved after two increases in his antidepressant dosage. Medical records from October 2011 to May 15, 2013 stated that he was no longer depressed and his mood was "great."

South Carolina Department of Correction medical records since Mr. Washington's incarceration in 2015 indicated that he was depressed on initial assessment and that his sertraline was changed to fluoxetine (Prozac[®], an antidepressant). His mood is stated to improve to the extent that he stopped taking medications in August of 2015. In January of 2016 he was reported to request that his medications be restarted due to a return of his symptoms of depression. Although the SCDC records indicate he is currently prescribed an antidepressant, Mr. Washington told these examiners that he was not taking it.

REVIEW OF AVAILABLE MEDICAL RECORDS: The defendant was evaluated on the date of his crime in the Palmetto Health Richland Emergency Department after his motor vehicle accident. He was noted to have a subarachnoid hemorrhage and to not be able to "tell anything about the accident." His Urine Drug Screen (UDS) and alcohol screen were negative.

ALCOHOL AND SUBSTANCE USE HISTORY: Mr. Washington reported that he drinks socially but that he does not drink "a lot" due to witnessing his father's alcoholism. He reported drinking a "couple" beers per week and that at most, he drank approximately three beers per sitting. The defendant denied a history of alcohol withdrawal or development of a tolerance to alcohol. He denied DUI charges or problems related to his alcohol use.

He denied use of other illicit substances or misuse of prescription medications. Mr. Washington denied a history of substance abuse treatment.

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MEDICAL HISTORY: Mr. Washington has a history of a thyroidectomy due to medullary carcinoma of his thyroid gland. He currently takes levothyroxine sodium (Synthroid®, a thyroid hormone replacement) for hypothyroidism. The defendant denied known allergies to medications.

FAMILY HISTORY: Mr. Washington denied a family history of mental illness or suicide. He endorsed that his father was an alcoholic and that his mother had hypertension.

SOCIAL HISTORY: The defendant was born in Manning, SC, to Robert and Janie Washington. His mother worked as a cook in restaurants and then at a manufacturing plant. His father worked as a mechanic at a truck stop. Mr. Washington stated that his primary caregivers were his mother, father, and his grandparents. He indicated that his family was a "good, close family" and that he got along well with his two younger sisters. The defendant denied a history of physical or sexual, but he reported that his mother and father would argue when his father drank. Additionally, after his father lost his driver's license, he would force the defendant to drive him places where his father would drink. He reports often having to wait for his father for hours.

He reported that he graduated from Scott's Branch High School in 1973. Mr. Washington stated that he made "average" grades in regular classes and that he did not repeat grades. He denied behavioral problems in school or that he has harmed animals.

The defendant indicated that he worked for a structural steel company for 20 years and part-time for the Army National Guard before joining the Army National Guard full-time active duty in 1995. He was employed at the time of his arrest and had recently submitted paperwork to retire from the military in 2014. He denied trouble with bosses, having been fired from a job, or that he has received disability benefits.

Mr. Washington reported that his paperwork for retirement from the military was accepted and processed. He stated that he retired as an Sergeant First Class (E7) and that his job was Human Resources. The defendant denied that he had been in active combat.

He indicated that he was divorced once after ten years of marriage and that he had one daughter from this marriage. Mr. Washington denied a history of committing acts of domestic violence. He reported that he was in an eight-year relationship with the victim at the time of his crime; however, this is not consistent with witness statements and the victim's Cease and Desist letter to Mr. Washington. The defendant stated that at the time of his arrest he was living by himself.

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MENTAL STATUS EXAMINATION: Mr. Washington's hygiene was good. There were no abnormal movements noted. His speech was slow in rate and normal in volume. He paused for several seconds before his responses. These pauses were felt to represent a difficulty with concentration and slowed cognition due to his depression. He made good eye contact. He was alert and oriented to person, place, day, and date. He was cooperative with the interview. He was able to register three objects and he recalled three of them after a period of distraction. He was able to recall past personal information and we found no evidence of clinically significant long or short term memory impairment. He was able to name the current President and past Presidents in correct reverse order to George Bush, Sr. He was able to correctly perform a calculation. He performed a test of concentration, correctly spelling "world" backwards. He was able to serially subtract seven from 100, but did so slowly with visible effort. This difficulty with serial subtraction was also felt to be related to the defendant's depression. He could abstractly interpret a proverb and place similar objects in abstract categories. His judgement to a hypothetical situation was good. He reported a depressed mood. His affect (outward expression of mood) was constricted. He endorsed a sleep disturbance but denied an appetite disturbance. He denied suicidal or homicidal ideations. He denied current hallucinations or delusions. His thinking was linear and goal-directed.

DIAGNOSTIC FORMULATION: Mr. Washington endorsed a history of depression since childhood with worsening of symptoms during periods of stress. On interview, Mr. Washington exhibited cognitive slowing and difficulty with concentration. He reported depressed mood, feelings of guilt and worthlessness, insomnia, and poor concentration. The defendant stated that these symptoms are present most days for nearly all of the day. These symptoms cause clinically significant distress. Therefore, a diagnosis of Major Depressive Disorder is warranted.

ALLEGED INCIDENT: Mr. Washington reported that in May 2013 he and the victim visited Maryland together. He stated that after their trip he did not know anything was wrong with their relationship. He insisted that he had helped the victim move her belongings to Gastonia, NC, and that her move was because she retired and not to get away from him. He endorsed that in June 2013 the victim came to visit him and when he tried to hug her as she was leaving, she stated, "We aren't like that anymore." He reported that "things went downhill after that", and she did not return his calls and texts. Mr. Washington admitted that he received the Cease and Desist letter in July 2013 and that he continued to try to contact the victim. During this evaluation, the defendant demonstrated difficulty with accepting that the victim wished to cease contact with him and that she did not consider them to be in a relationship. He also disagreed with characterizing his behavior as stalking.

Mr. Washington reported that September 14, 2013 was a Saturday and that he worked at McEntire Joint National Guard Base that day. He stated that after work he stopped at Fort Jackson and purchased two 24-ounce cans of beer. The defendant indicated that he then stopped by a friend's house, that his friend drank one of the cans of beer, and

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that he drank the other can of beer. He endorsed that he drove to the victim's house to talk to her. When he arrived, the victim was outside of a neighbor's house having a conversation with the neighbor. Mr. Washington reported that he stopped in front of the neighbor's house, said hello to the victim and her friend, but that the victim did not respond. When asked how it made him feel that the victim would not speak with him, he replied "I don't know."

Mr. Washington stated that he does not remember everything that occurred between the time he left the victim's neighborhood and his subsequent detention at Alvin S. Glenn Detention Center. He indicated he then went to his home, changed clothes, and retrieved a handgun. The defendant reported that he returned to the victim's house because he wanted to try to talk to her again. He stated that he does not remember the drive back to the victim's house but that he does remember getting to her neighborhood.

Mr. Washington indicated that the victim was in the front yard of her house, that she saw him enter the neighborhood, and that she started to enter her home. He again stated he does not recall everything that happened, but that he thinks he met the victim at her garage door. The defendant reported that he remembers the gun falling to the floor, a gunshot discharging, and that it startled them. He endorsed that the next thing he recalled was "trying to get away." He stated that he moved the victim's body because he did not want the garage door to come down on her, but could not explain why he wanted to shut the garage door. Mr. Washington reported that he was driving down the interstate and "realized what I had done." He stated he then crashed his car in an attempt to kill himself. The defendant endorsed that his suicidal ideation began after his crime. He denied having suicidal thoughts before going to the victim's house.

CONCLUSION REGARDING CRIMINAL RESPONSIBILITY: The S.C. Code Ann. § 17-24-10 states a defendant is not criminally responsible if he or she "as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from legal or moral wrong or to recognize the particular act as charged as morally or legally wrong."

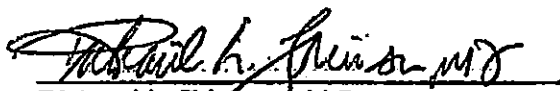
Mr. Washington is described in medical records from May 2013 to have a "great" mood and to not be depressed. He does not describe being depressed around the time of his crime. The defendant was able to work and desired to spend time with his friend around the time of his crime. These activities indicate that his functioning was not significantly impaired by symptoms of depression. There are no indications that around the time of his crime he was suffering from a mental illness that would affect his ability to distinguish right from wrong. The defendant attempted to conceal his crime by closing the garage door and he fled the scene of the alleged crime, both of which are consistent with a guilty mind and knowledge of wrongfulness. He also does not report a delusion about the alleged victim.

Therefore, it is our opinion that the defendant would have been criminally responsible pursuant to S.C. Code Ann. § 17-24-10 (1976).

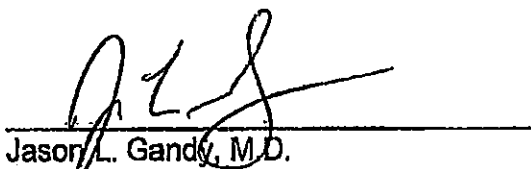
WASHINGTON, JOHN EDWARD
1038-1812
OUTPATIENT EVALUATION

CONCLUSION REGARDING CAPACITY TO CONFORM: The S.C. Code Ann. § 17-24-20 states that a defendant is guilty but mentally ill if he [or she] was able to distinguish legal or moral right from legal or moral wrong, "but because of mental disease or defect he [or she] lacked sufficient capacity to conform his [or her] conduct to the requirements of the law."

The defendant did not report a compulsion, command auditory hallucination or other symptoms of mental illness that would have impaired his ability to conform his conduct to the requirements of the law.



Richard L. Frierson, M.D.
Professor of Clinical Psychiatry
University of South Carolina School of Medicine



Jason L. Gandy, M.D.
Fellow in Forensic Psychiatry
University of South Carolina School of Medicine

WASHINGTON, JOHN EDWARD
1038-1812
OUTPATIENT EVALUATION

AUTHORIZATION FOR DISCLOSURE OF MEDICAL OR DENTAL INFORMATION

PRIVACY ACT STATEMENT

In accordance with the Privacy Act of 1974 (Public Law 93-579), the notice informs you of the purpose of the form and how it will be used. Please read it carefully.

AUTHORITY: Public Law 104-191; E.O. 9397 (SSAN); DoD 6025.18-R.

PRINCIPAL PURPOSE(S): This form is to provide the Military Treatment Facility/Dental Treatment Facility/TRICARE Health Plan with a means to request the use and/or disclosure of an individual's protected health information.

ROUTINE USE(S): To any third party or the individual upon authorization for the disclosure from the individual for: personal use; insurance; continued medical care; school; legal; retirement/separation; or other reasons.

DISCLOSURE: Voluntary. Failure to sign the authorization form will result in the non-release of the protected health information.

This form will not be used for the authorization to disclose alcohol or drug abuse patient information from medical records or for authorization to disclose information from records of an alcohol or drug abuse treatment program. In addition, any use as an authorization to use or disclose psychotherapy notes may not be combined with another authorization except one to use or disclose psychotherapy notes.

SECTION I - PATIENT DATA

1. NAME (Last, First, Middle Initial) WASHINGTON, John E.	2. DATE OF BIRTH (YYYYMMDD)	3. SOCIAL SECURITY NUMBER 3
4. PERIOD OF TREATMENT: FROM - TO (YYYYMMDD) 2011 to 2013/10/01	5. TYPE OF TREATMENT (X one) ☒ OUTPATIENT ☐ INPATIENT ☐ BOTH	

SECTION II - DISCLOSURE

6. I AUTHORIZE PT. JACKSON TROOP MEDICAL CLINIC TO RELEASE MY PATIENT INFORMATION TO:	
(Name of Facility/TRICARE Health Plan)	
a. NAME OF PHYSICIAN, FACILITY, OR TRICARE HEALTH PLAN: JONATHAN S. GASSER	b. ADDRESS (Street, City, State and ZIP Code) 1529 LAUREL STREET Columbia SC 29201
c. TELEPHONE (Include Area Code) 803-779-7080	d. FAX (Include Area Code) 803-746-0480
7. REASON FOR REQUEST/USE OF MEDICAL INFORMATION (X as applicable) ☐ PERSONAL USE ☐ CONTINUED MEDICAL CARE ☐ SCHOOL ☐ OTHER (Specify) ☐ INSURANCE ☐ RETIREMENT/SEPARATION ☒ LEGAL	
8. INFORMATION TO BE RELEASED Any and all medical and mental health records, documents, reports and/or correspondence from Dec. 2011 thru Sept. 2013	
9. AUTHORIZATION START DATE (YYYYMMDD) 2013/12/25	10. AUTHORIZATION EXPIRATION ☐ DATE (YYYYMMDD) ☒ ACTION COMPLETED

SECTION III - RELEASE AUTHORIZATION

I understand that:

- I have the right to revoke this authorization at any time. My revocation must be in writing and provided to the facility where my medical records are kept or to the TMA Privacy Officer if this is an authorization for information possessed by the TRICARE Health Plan rather than an MTF or DTF. I am aware that if I later revoke this authorization, the person(s) I herein name will have used and/or disclosed my protected information on the basis of this authorization.
- If I authorize my protected health information to be disclosed to someone who is not required to comply with federal privacy protection regulations, then such information may be re-disclosed and would no longer be protected.
- I have a right to inspect and receive a copy of my own protected health information to be used or disclosed, in accordance with the requirements of the federal privacy protection regulations found in the Privacy Act and 45 CFR 5164.524.
- The Military Health System (which includes the TRICARE Health Plan) may not condition treatment in MTFs/DTFs, payment by the TRICARE Health Plan, enrollment in the TRICARE Health Plan or eligibility for TRICARE Health Plan benefits on failure to obtain this authorization.

I request and authorize the named provider/treatment facility/TRICARE Health Plan to release the information described above to the named individual/organization indicated.

11. SIGNATURE OF PATIENT/PARENT/LEGAL REPRESENTATIVE John Washington	12. RELATIONSHIP TO PATIENT (If applicable) N/A	13. DATE (YYYYMMDD) 2013/12/25
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SECTION IV - FOR STAFF USE ONLY (To be completed only upon receipt of written revocation)

14. X IF APPLICABLE: ☐ AUTHORIZATION REVOKED	15. REVOCATION COMPLETED BY	16. DATE (YYYYMMDD)
17. IMPRINT OF PATIENT IDENTIFICATION PLATE WHEN AVAILABLE		SPONSOR NAME: SPONSOR RANK: FMP/SPONSOR SSN: BRANCH OF SERVICE: PHONE NUMBER:



HARRIS & GASSER
ATTORNEYS AT LAW
1529 LAUREL STREET
COLUMBIA, SC 29201
TELEPHONE (803) 779-7080
FACSIMILE (803) 746-0480

GREGORY P. HARRIS
greg@harrisgasserlaw.com

JONATHAN S. GASSER
johnny@harrisgasserlaw.com

January 20, 2015

John Washington #617218
Alvin S. Glenn Detention Center
201 John Mark Dial Drive
Columbia, South Carolina 29209

Dear John:

I want to memorialize in writing the decision that you have made regarding the current murder charge pending against you in Richland County. You have indicated to me, on several occasions, that you wish to forgo a jury trial and plead guilty, straight up, to murder. There are a number of important matters that we have discussed on numerous occasions that I want to make sure you understand.

As of the date of this letter, we have met sixteen times to discuss various issues regarding your case. The meetings have included a complete review of all of the evidence in your case, multiple discussions regarding potential defenses, a complete review of relevant statutory law, and a thorough discussion concerning sentencing matters. You have indicated to me that you are very much aware of the evidence the state has in its possession regarding the facts and circumstances surrounding the shooting death of Zelda Kollock on September 14, 2013. You also said that you understand that a plea to murder carries a mandatory minimum sentence of at least 30 years with a maximum sentence of life in prison. You know that the death penalty is not an issue in your case since I was able to keep the state from pursuing that option early in the process. Finally, you have told me that you understand that whatever sentence a judge orders on a murder charge plea is a "day for day sentence," meaning that you will have to do the entire sentence, no exceptions.

Please review this letter very carefully and sign at the bottom. If you have any questions concerning anything that I have stated in this letter or otherwise, or if you have concerns about any matters regarding your case, please bring them to my attention.



Sincerely,

Jonathan S. Gasser

JSG/awk

John Washington
January 20, 2015
Page 2

I have read this letter carefully and agree with the facts and circumstances as written.

John E. Washington
John Edward Washington

1/22/2015
Date

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

) Case No.: 2015-CP-40-09245

ORDER OF DISMISSAL

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I. PROCEDURAL HISTORY

Gasser, Esq. represented Applicant, and Kathryn Cavanaugh, Esq., of the Fifth Circuit Solicitor's Office, prosecuted the case. On February 5, 2015, Applicant pled guilty as indicted. The Honorable Edgar W. Dickson sentenced Applicant to imprisonment for a term of 40 years. Applicant did not appeal his plea or sentence.

Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective assistance of plea counsel" and "Involuntary guilty plea"
 - a. "Failure to fully address the issue of [Defendant's competency] prior to, and during the plea proceedings."
 - b. "Failure to fully address Defendant's mental health issues prior to, and during the plea proceedings."
2. "Belated direct appeal"
 - a. "Counsel failed to file a direct appeal at Defendant's request."

Applicant, by and through PCR counsel Tricia A. Blanchette, Esq., amended his application by filing on March 6, 2018, to allege the following:

1. "Ineffective assistance of counsel that rendered his guilty plea involuntary due to counsel's failure to utilize mental health experts to review records and evaluate Applicant prior to the entry of his guilty plea and to assist in his plea proceeding, specifically, as follows:"
 - a. "Failure to utilize mental health experts to assist in plea negotiations."
 - b. "Failure to utilize mental health experts to formulate possible defenses and/or in mitigation."
 - c. "Failure to utilize mental health experts to ensure that Applicant's plea was knowingly and voluntarily entered."

Applicant proceeded only on the amended allegations at the evidentiary hearing.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the

legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented. Because of the inextricably close relation between the allegations pertaining to Applicant's mental health, this Court addresses them together below.

A. Ineffective Assistance of Counsel & Involuntary Guilty Plea

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed

ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v.

U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

1. Failure to Evaluate Applicant's Mental Health, Consult Expert During Negotiations

Applicant alleges Counsel was ineffective in failing to retain an expert to evaluate his mental health status and use the results of such an evaluation as part of negotiating a more favorable set of terms for his guilty plea, or to develop possible defenses.

A criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007). At a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. Id., 372 S.C. at 331-32, 642 S.E.2d at

597. Counsel may reasonably rely on his own perceptions in determining what, if any, expert evaluation is necessary and appropriate to the determination and development of defenses. See Jeter v. State, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992) (finding Counsel reasonably relied on his own perceptions in deciding to not request a mental examination which may have formed the basis of an insanity defense or a determination of incompetency.).

Due process prohibits the conviction of a person who is mentally incompetent, and that right cannot be waived by a guilty plea. Id., 308 S.C. at 232, 417 S.E.2d at 595 (citing Bishop v. U.S., 350 U.S. 961 (1956); Pate v. Robinson, 383 U.S. 375 (1966)). The test of competency to enter a plea is the same as required to stand trial: the accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him. Id., 417 S.E.2d at 596 (citing State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976); Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980)). An applicant alleging incompetence in fact must show by a preponderance of the evidence he was incompetent at the time of his plea. Id.

Under South Carolina law, a defendant may be found guilty-but-mentally-ill if he or she, at the time of the commission of the offense, had the capacity to distinguish right from wrong, but because of mental disease or defect lacked sufficient capacity to conform his conduct to the requirements of the law. S.C. Code Ann. § 17-24-20(A). Where a person pleads or is otherwise found guilty-but-mentally-ill, he or she must be sentenced as provided by law for a defendant found guilty, but when committed to incarceration must first be retained at an appropriate facility for treatment until deemed safe for housing in the general population of the Department of Corrections. S.C. Code Ann. § 17-24-70.



The Plea

The plea court queried Applicant as to his mental health, to which Applicant replied that he was undergoing treatment for depression and taking medication as part of that treatment. (Tr. 6, ll. 7-23). The plea court asked if the medication affected Applicant's ability to understand what he was doing at the proceeding, to which Applicant replied in the negative. (Tr. 6-7). Applicant affirmed he was thinking clearly and understood exactly what he was doing. (Tr. 7, ll. 8-11). Later in the proceeding, Applicant collapsed during the plea court's examination of him; both the Clerk of Court and Counsel reported Applicant had locked his knees. (Tr. 15-16). Applicant recovered and affirmed he understood the allegations in the indictment. (Tr. 16, ll. 18-23). Applicant immediately collapsed a second time and court recessed a few minutes. (Tr. 16-17).

After the recess, the plea court again inquired as to Applicant's lucidity; Applicant wrote off the episode as the result of dehydration. (Tr. 17, ll. 9-17). The plea court then turned to Counsel and asked if Applicant could proceed, to which Counsel responded at length:

MR. GASSER: Since you're -- based on your question, we -- I thoroughly looked into the idea of competency during the time, particularly since he was in a significant motor vehicle accident after this incident in which he had a closed-head injury. That during my times and meeting with him, I felt that particularly as the weeks went on after this incident that he, he was thinking with clarity. He was extremely lucid. He's an intelligent man. We spent a significant amount of time, as you can imagine, together over the eighteen times that we have met. I met with him again this morning.

I also talked about these issues of competency with his ex-wife, Sheila Washington, who's in the courtroom, and she will be addressing the court shortly, Your Honor. And she has also on a regular basis, two to three times a week, had telephonic communication with Mr. Washington. She is somebody that has known him for, for thirty years. Has also indicated to me that she knows, she knows John. She's had conversations with John. She's talked about a variety of subject matters. She believes John to be lucid, and he understands what he's doing in his decision-making process.

(Tr. 17-18). Offered the opportunity to again speak with his client, Counsel again conferred with Applicant and thereafter reported to the plea court that he was "satisfied that he knows what he's doing today, what's going on right this – at this moment." (Tr. 18-19). Nonetheless, the plea court again asked Applicant if he was thinking clearly and understood what he was doing, which Applicant affirmed. (Tr. 19, ll. 11-15). The plea court noted Applicant's age and emphasized that "any sentence you get for this is essentially a life sentence[.]" which Applicant acknowledged. (Tr. 19-20). Applicant pled guilty and the plea court found the plea freely, voluntarily, and intelligently made. (Tr. 20-21).

In mitigation, Counsel confirmed the evidence against Applicant was extremely strong and that Applicant informed him at every meeting that he was guilty and wished to plead guilty. (Tr. 26-27). Counsel expressed some reservations about a client pleading straight-up to murder, but explained he "explored all avenues, all potential differences, all the probabilities of a jury trial," and concluded a plea for mercy was the best way forward. (Tr. 27, ll. 2-18). Counsel cited to Applicant's exemplary record of military service before briefly discussing Applicant's mental health issues discovered during his service:

Your Honor, the – he was diagnosed. A friend of his, a member of the Guard, Mr. John Edwards, actually noticed some signs, warning signs. Had him go to a physician at Moncrief Army Hospital, and the first documented, preliminary diagnosis of severe depression was on January the 28th. It is in his mental health and medical records that both the state and the defense were able to obtain shortly after this incident.

He was initially put on Wellbutrin, an antidepressant. That was not strong enough. On March the 25th of 2011, they upgraded his medication to Zoloft. So, he had been on Zoloft for a period of eighteen months prior to this, prior to this incident dealing with his severe depressive episodes.

(Tr. 28-29). A number of friends, family, and colleagues of Applicant spoke at length in mitigation. (Tr. 31-43). Immediately prior to sentencing, the plea court expressed the hope "that

what happened will emphasize the need to address domestic violence and mental-health issues in this state, including, including depression.” (Tr. 46-47).

The Evidentiary Hearing

At the evidentiary hearing, Applicant called two doctors who evaluated Applicant as part of this PCR action: Dr. Tora Brawley and Dr. Donna Maddox. Dr. Brawley, a clinical neuropsychologist in private practice, evaluated Applicant on May 4, 2017, at the request of Dr. Maddox. Dr. Brawley interviewed Applicant, who reported memory and concentration issues starting in 2011 during a senior leader course in the military, significant depression since 1998, and three head injuries suffered in 1975, 1984, and 2013. Dr. Brawley also conducted a battery of tests on Applicant and found that, at the time of the evaluation, Applicant’s IQ was at 74, at the fourth percentile. Dr. Brawley concluded Applicant suffered from a brain deficiency and recommended a full dementia workup. Dr. Brawley reviewed the results of Applicant’s previous neuropsychological testing conducted at Fort Gordon, Georgia in 2011, and contested its finding that Applicant suffered no mental deficits; the doctor argued the military wasn’t looking for dementia in their testing, but rather only sought to determine whether Applicant met retention standards. Dr. Brawley also criticized the report prepared by the South Carolina Department of Mental Health prior to the plea for relying only on interviews in lieu of any formal testing. Dr. Brawley concluded Applicant’s mental deficits at the present were more numerous than at the time of his evaluation in 2011, that Applicant’s condition was degenerative, and that he was declining in cognition. On cross-examination, Dr. Brawley conceded she did not attempt to determine culpability or responsibility at the time of the crime.

Dr. Maddox, qualified as an expert in forensic psychiatry, reviewed the evaluation by the Department of Mental Health, Applicant’s medical records from Palmetto Richland from the collision and injury after the killing, Applicant’s 2011 records form Moncrief Army Hospital,

records of the investigation and plea, Dr. Brawley's report, and the results of an MRI. From her interview with Applicant, Dr. Maddox reported he still suffered from significant depression, was still remorseful, and had been prescribed Remeron, an antidepressant. Dr. Maddox noted Applicant had difficulty remembering his history of head injuries and that his present deficits were very apparent. Dr. Maddox found Applicant could not draw a cube, confabulated words during a Montreal Cognitive Assessment, and exhibited nystagmus consistent with prior head injury. Dr. Maddox opined that both the military and DMH evaluations identified the cognitive deficits, but attributed them to Applicant's depression. Dr. Maddox asserted Applicant suffered frontal lobe dysfunction and that she would have been able to testify that Applicant could not conform his conduct to the requirements of the law due to his dementia. However, Dr. Maddox also conceded there was no question of Applicant's criminal responsibility—Applicant, overwhelmed with remorse, attempted to kill himself immediately after killing the victim. Dr. Maddox affirmed she would have been willing and able to assist Counsel had she been asked to do so.

On cross-examination, Dr. Maddox explained Applicant's condition would have led him to "ruminate" or fixate on a belief and would be unable to properly comprehend changes, such as a change in relationship status. The doctor testified Applicant's dementia made him aggressive and impulsive inconsistent with his prior personality, but again conceded Applicant knew right from wrong. Dr. Maddox asserted no difficulty in judging Applicant's capacity at the time of the killing thanks largely to Applicant's prior evaluation in 2011 as a point of comparison for his mental faculties. Dr. Maddox concluded the present matter was a case of "guilty, but mentally ill."

Applicant's sister, Jan Washington Caldwell, testified to hearing the 911 tape of Applicant in Counsel's office, at which time she told Counsel that the voice was not her brother,

in the sense that Applicant's voice was bizarre. Caldwell recalled the same response when looking at Applicant's picture. Caldwell testified Counsel never discussed Applicant's mental health or mental capacity with her. Caldwell then recalled an instance of Applicant getting fixated and irrationally upset while installing a rug in their mother's house in or about 2011 to 2012. Caldwell characterized Applicant as very, very private, and expressed surprise upon finding numerous prescription bottles while cleaning out his home after his incarceration. Caldwell recalled Applicant was slurring his words during the plea proceeding. On cross-examination, Caldwell admitted that though she had concerns about Applicant's mental fitness during the plea proceeding, she did not share those concerns with either Counsel or anybody else in her family. Caldwell additionally testified that she was completely unaware of Applicant's mental conditions previously.

Counsel testified to 31 years of experience practicing law, overwhelmingly in criminal practice. Though Applicant wished to plead all along, Counsel indicated his own initiative to investigate discovery in the case and other records he could obtain. In particular, Counsel had Applicant sign a waiver to permit him access to his medical records from Moncrief Army Hospital. Counsel considered consulting with a mental health expert, but found the records to be clear as to Applicant's diagnosis and treatment received. Counsel additionally spent considerable time consulting with Applicant's ex-wife, Sheila Washington, to explore Applicant's background and health, but learned nothing to lead him to believe expert consultation was necessary. Counsel discussed matters both related to and unrelated to the killing in order to confirm Applicant's understanding of things in light of the treatment indicated in the Moncrief records. Counsel affirmed he thoroughly reviewed the medical records and marked up a copy as part of his mitigation notebook. Based on his review of the records, his

consultation with Ms. Washington, and his interactions with Applicant, Counsel never had reason to believe Applicant had any mental health problems beyond his diagnosis for depression.

Counsel demurred as to whether Applicant's present-day diagnosis of dementia would have played a factor in his plea negotiations given the diagnosis was based on testing occurring several years after the plea, let alone the killing and subsequent suicide attempt. Counsel noted the M'Naghten standard was a high bar and, based on his investigation and observations, he felt that a plea of guilty-but-mentally-ill was never a realistic option. Instead, Counsel focused on mitigation, including his mental health records, but focused primarily on his exemplary military record, as he felt that would be most persuasive to Judge Dickson.

Counsel recalled going over the head of the assistant solicitor assigned to the case to negotiate with the elected circuit solicitor in order to try and attain the best deal possible. Counsel presented Applicant's history of depression and treatments to Solicitor Johnson, but noted the concern of the Fifth Circuit Solicitor's Office about setting a precedent that any indication of depression would result in relatively lenient treatment for extremely violent crime. Counsel reported the Solicitor considered the mitigation package provided, but the State was unwilling to offer a plea to voluntary manslaughter. Counsel described the facts of the case as extremely aggravating and that his realistic best hope was for a sentence in the low-to-mid 30's. Counsel recalled getting an assurance from the State that they would not ask for a specific sentence.

Counsel testified all of his meetings with Applicant were face-to-face, one-on-one, with no phone interviews or meetings separated by barriers, and that all of them were of substantial duration. Counsel recalled 18 meetings with Applicant. Counsel again observed and communicated with Applicant after his fainting episodes during the plea proceeding and was satisfied he was lucid. Counsel observed the plea court paid very close attention during the

entirety of his extended mitigation efforts. Counsel described the question of the present-day diagnosis as "Monday morning quarterbacking" and questioned whether it was realistic to conclude the same conclusions would have been reached had Applicant been tested between 2013 and 2015.

On cross-examination, Counsel denied ever observing anything in Applicant or in Applicant's medical history to suggest a cognitive defect or deficiency and that, had he so detected a deficiency, he would have followed up on it. None of the individuals who wrote letters or spoke on Applicant's behalf in mitigation reported anything to Counsel to indicate any concerns about his mental health. Counsel recalled the underlying facts of the case: Applicant drove by the victim's house only to be blown off by the victim, after which Applicant returned to his own home, retrieved and loaded his gun, drove back to the victim's house, chased her inside her home, kicked her front door down, chased her back into her garage, and shot her dead, with the killing shot captured on the recording of a neighbor's 911 call. Counsel again affirmed Applicant wanted to plea all along and, after investigating the case, Counsel agreed that there was no defense that he could present at trial. Counsel attributed Applicant's fainting at the plea proceeding to locking his knees while standing. As to the question of pursuing a guilty-but-mentally-ill defense, Counsel affirmed his focus was on mitigation, not the form of plea that would impact the character of his incarceration. Counsel described Applicant's post-killing head injury as mild beyond the immediate risk of death.

In closing, Applicant very briefly argued Counsel was ineffective in relying on his own judgment in lieu of retaining the expertise of a mental health or medical expert. Applicant asserted Counsel's failure to discuss the possibility of a guilty-but-mentally-ill plea prejudiced Applicant. In support of his position, Applicant provided seven cases: Gill v. State, 346 S.C. 209, 552 S.E.2d 26 (2001) ("diminished capacity doctrine" not recognized in South Carolina);

State v. Lewis, 328 S.C. 273, 494 S.E.2d 115 (1997) (where no evidence a defendant was unable to distinguish right or wrong, an insanity charge is not appropriate); Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015) (finding counsel deficient for failing to call an expert witness at trial to challenge the medical evidence presented by the State); Winkler v. State, 418 S.C. 643, 795 S.E.2d 686 (2016) (finding the PCR court abused its discretion in denying a continuance for Applicant to investigate potential brain damage and mental health issues); Ramirez v. State, 419 S.C. 14, 795 S.E.2d 841 (2017) (finding counsel deficient for failing obtain another competency evaluation after a second evaluation revealed severe mental retardation, but rendered no opinion as to legal competency); and Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009) (finding counsel deficient for failing to present evidence of defendant's alleged mental illness in capital mitigation, where counsel mistakenly believed the finding of competency foreclosed such a presentation). Respondent argued in reply that Applicant always wanted to plea, faced overwhelming evidence, and that a guilty-but-mentally-ill plea would not have been a meaningfully different outcome. Respondent further asserted no evidence was presented to show that the plea entered was anything less than knowingly, freely, and voluntarily entered. Respondent emphasized Counsel's numerous meetings with Applicant provided him a superior position to make a competent evaluation of Applicant's then-existing mental state. Respondent asserted Applicant failed to meet either prong of Strickland.

Ruling

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. First, there is no evidence in the record to raise a question of Applicant's legal competence. The testimony of both doctors and Counsel unequivocally show that Applicant knew and knows the difference between right and wrong, and immediately in the wake of the crime was struck with overwhelming remorse at the gravity of the wrong he then committed in killing the victim.

There is no evidence in the record to show Applicant was incapable of assisting counsel in the preparation of his defense, or in the determination of the appropriateness of pleading guilty. To the contrary, despite 18 extended face-to-face meetings with his client, Counsel testified he had no concerns about Applicant's mental fitness outside of his continuing battle with severe depression. As such, the plea was knowingly, intelligently, and voluntarily entered.

The Court finds Counsel properly and reasonably relied on his own judgment in determining the scope of necessary investigation. Counsel repeatedly met with Applicant, met with those who knew Applicant, and acquired Applicant's medical records from Moncrief. The Moncrief records, submitted to this Court as Applicant's Exhibit #2, clearly, unequivocally, and repeatedly concludes that, at the time of his 2011 evaluation, Applicant demonstrated "[n]o global decline in cognition" and that there was "NO evidence that the patient is experiencing significant cognitive defects." (emphasis original).

The Court finds Counsel reasonably applied his professional judgment in determining the most effective approach to mitigation—a focus on Applicant's record of service in the armed forces. Counsel thoroughly explored that record, presented mitigation witnesses consistent with that approach, and weighed his experience with the particular plea judge in determining the best mitigation strategy. Counsel offered applicant's history of depression to the plea court and cannot be said to be deficient for not belaboring the subject. Counsel effectively presented mitigation both during the plea proceeding, and as indicated in his testimony at the evidentiary hearing, during the course of his plea negotiations with the Fifth Circuit Solicitor's Office.

The Court finds Applicant has not shown any prejudice from Counsel's decisions for three reasons. First, Counsel agreed with Applicant's desire to plead guilty based on his professional judgment of the evidence against Applicant as overwhelming, a judgment that was not contested at the hearing and the basis of which will not be restated here in light of the review

above. Second, the possible alternative outcome of a guilty-but-mentally-ill plea is not substantially different from the plea here entered. The difference between a guilty plea and a GBMI plea is only the character of a defendant's incarceration during rehabilitation, not the duration of his sentence or certainty of his guilt. Third, the evidence presented shows Applicant was never interested in a trial, but that from the moment of the killing through to the present day he was intensely remorseful about his actions and wished only to plead his guilt to the Court.

For all of these reasons, this Court finds Applicant has not met his burden of proving either deficiency on the part of Counsel, nor prejudice therefrom. The Court finds Counsel did not err in declining to call upon the assistance of a mental health expert in plea negotiations, the formulation of defenses, the formulation of mitigation evidence, or in determining Applicant's competency. Accordingly, the application for post-conviction relief is **DENIED**.

2. Belated Appeal Claim

In the original application, Applicant alleged Counsel was deficient in failing to file an appeal at Applicant's request. No mention of this allegation was made by Applicant's PCR counsel during the opening statements at the evidentiary hearing, and no testimony or other evidence was offered in support of the allegation. As previously indicated, Applicant proceeded only on the interconnected allegations pertaining to the investigation of Applicant's mental health. Furthermore, Applicant has at no point indicated a desire for a belated appeal, but in response to Question 19 on the form application for post-conviction relief, indicated only a desire for "[a] new trial." This Court finds Applicant has not only failed to meet his burden as to this allegation, but has abandoned this claim for relief entirely. Accordingly, the application for post-conviction relief is **DENIED**.

III. CONCLUSION

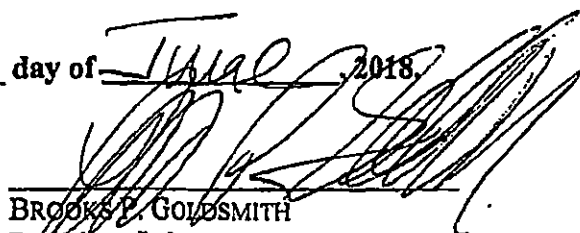
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 25 day of June, 2018.


BROOKS P. GOLDSMITH
Presiding Judge
Fifth Judicial Circuit


_____, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-40-09245

John Edward Washington, 362938,)
Applicant,)

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

MOTION PURSUANT TO
RULE 59(a) & (e)

Pursuant to Rule 59(a) and (e) of the South Carolina Rules of Civil Procedure, Applicant would move before this Court for reconsideration of the standing Order of Dismissal. This matter comes before the Court by way of an Application for Post-Conviction Relief filed on December 3, 2015.¹ The State filed a Return on April 27, 2016.

On March 6, 2018, Applicant, through counsel, filed the following Amendment:

In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his guilty plea. Applicant would further amend and explain the allegations set forth in his Application for Post-Conviction Relief by adding the following specific allegations of ineffective assistance of counsel:

1. Ineffective assistance of counsel that rendered his guilty plea involuntary due to counsel's failure to utilize mental health experts to review records and evaluate Applicant prior to the entry of his guilty plea and to assist in his plea proceeding, specifically, as follows:
 - a. Failure to utilize mental health experts to assist in plea negotiations.
 - b. Failure to utilize mental health experts to formulate possible defenses and/or in mitigation.
 - c. Failure to utilize mental health experts to ensure that Applicant's plea was knowingly and voluntarily entered.

¹ As is reflected in the Application, Applicant alleged ineffective assistance of plea counsel, involuntary guilty plea and requested a belated direct appeal.

An evidentiary hearing was convened on March 22, 2018 in front of the Honorable Brooks P. Goldsmith at the Richland County Courthouse.² Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Jessica E. Kinard, Assistant Attorney General. On June 25, 2018, Judge Goldsmith issued an Order of Dismissal, which was filed June 29, 2018. Applicant, through counsel, received a copy of the Order via email on July 2, 2018, from which this Motion timely follows.

In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post-conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. Therefore, Applicant respectfully requests that this Court review the evidentiary hearing transcript and ensure that specific findings of fact and conclusions of law are entered and that the arguments and testimony of each witness is properly addressed. Applicant urges the Court to thoroughly address each issue raised and would further urge the Court to reconsider the reasoning used to deny each issue raised.

Specifically, Applicant is concerned that the standing Order fails to address each allegation of ineffective assistance of counsel that rendered his guilty plea involuntary.

By way of the Amendment, Applicant made the following allegation:

Ineffective assistance of counsel that rendered his guilty plea involuntary due to counsel's failure to utilize mental health experts to review records and evaluate Applicant prior to the entry of his guilty plea and to assist in his plea proceeding, specifically, as follows:

² As was stated in the Amendment, Applicant proceeded under the allegations set forth in his Application, which were clarified and explained by the amended allegations. Applicant did not abandon any claims set forth in his original Application.

- a. Failure to utilize mental health experts to assist in plea negotiations.
- b. Failure to utilize mental health experts to formulate possible defenses and/or in mitigation.
- c. Failure to utilize mental health experts to ensure that Applicant's plea was knowingly and voluntarily entered.

Applicant submits that the standing Order seems to summarily address the specific allegations made, but the Order fails to address each allegation, on which testimony was offered, with specific findings and rulings as is required under Marlar.

Furthermore, Applicant would urge this Court to consider the South Carolina Supreme Court's recent clarification of the prejudice prong in cases stemming from a guilty plea in Frierson v. State, Op. No. 27801 (S.C. Sup. Ct. filed May 23, 2018) (Finding the South Carolina Court of Appeals exceeded the scope of the prejudice analysis in addressing overwhelming evidence of guilt.). Applicant submits that the reasoning addressing overwhelming evidence of guilty in the standing Order is in error in light of the holding in Frierson.

Finally, Applicant submits that testimony was elicited from plea counsel regarding the matter of a direct appeal. Therefore, the standing Order is in error regarding the findings that no testimony was offered in support of the claim of a belated direct appeal.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-40-7245

JOHN WASHINGTON, 362938,)
Applicant,)

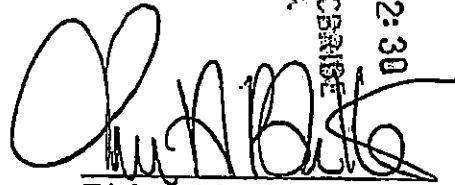
v.)

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)
Respondent,)

I, Tricia A. Blanchette, Attorney at Law, hereby certify that I that placed in the mail 3rd day of July 2018, Motion Pursuant to Rule 59, SCRCP, to Johnny E. James, Jr. of the Attorney General's Office, at:

Office of the Attorney General
Att: Johnny E. James, Jr., Asst. AG
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266

July 3, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
2015-CP-40-09245⁷

John Edward Washington,)

Applicant)

v.)

State of South Carolina,)

Respondent)

ORDER

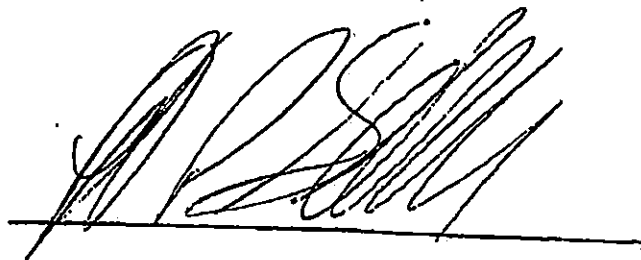
RICHLAND COUNTY
FILED
2018 AUG 31 PM 2:39
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter comes before the court upon Applicant's Motion Pursuant To Rule 59(a) & (e) dated July 3, 2018, wherein Applicant requests that the court alter, amend and/or reconsider its order dated June 25, 2018.

Respondent filed a response to the Motion. After considering the issues raised in the Motion I find no reason to alter, amend, and/or reconsider the order dated June 25, 2018.

It is therefore Ordered, Adjudged and Decreed that the Motion dated July 23, 2018 is Hereby Denied.

August 28, 2018



Brooks P. Goldsmith

Circuit Judge